

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-06482
Appellate Docket No. 2013-000329

Harrison Partners, LLC, ... Appellant,

v.

Renewable Water Resources, ... Respondent.

RECORD ON APPEAL
VOLUME I

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a party could appeal decisions regarding the denial (or granting subject to conditions) of a Sewer Flow Acceptance Permit. (*See* R. at 5.) Governed by the procedures contained in the South Carolina Administrative Procedures Act (S.C. Code § 1-23-300), ReWa's Sewer Use Regulation allows aggrieved would-be permittees to appeal adverse decisions to: (1) first, a Hearing Officer; (2) secondly, to the Board of Commissioners; and (3) then to the Court of Common Pleas. (R. at 5.)

On March 16, 2010, the Circuit Court issued an Order dismissing the Parties' dispute without prejudice. (R. at 2-6.) In reference to Plaintiff's original Complaint, the Court found: "Plaintiffs' claims all rely upon the premise that ReWa improperly denied its request to operate a [Private Collector Sewer System]." (R. at 3.) The Court further found: "ReWa provided evidence of a process by which an aggrieved person may" appeal decisions relating to sewer use permits and private collector systems. (R. at 5.) Accordingly, the Court found: "that Plaintiff's claims against the ReWa Defendants be dismissed without prejudice pending Plaintiff's exhaustion of the administrative review process provided in the ReWa Regulations." (R. at 6.) Appellant did not move the Court to reconsider its March 16, 2010 Order, nor did Appellant appeal the Order. Accordingly, the Court's unappealed March 16, 2010 thereafter became final.

Pursuant to the Court's March 19, 2010 Order, the Parties proceeded to the ReWa Administrative Process. (*See* R. at 7-18.) Former Judge Michael A. Glenn presided as the designated Hearing Officer. (*See* R. at 18.) The Parties conducted substantial discovery in the administrative process. Hearing Officer Glenn then held an adjudicative hearing on March 23-25, 2011, lasting three (3) days and including the full direct and cross examinations of six witnesses, three from each side. (*See* R. at [i] – [iii].) The Parties submitted over forty

exhibits into the record and entered additional testimony, by consent, after the hearing. (See R. at 873-887.) Both Parties were allowed to submit written closings but Appellant elected not to do so, although Appellant did submit a proposed Order. (R. at 1093-1100.) In total, the parties compiled an eleven hundred (1100) page record in this case.

GROUND FOR APPEAL

Appellant has raised four (4) grounds on appeal. They are:

Issue #1: Did the Hearing Officer err in making numerous findings in the "Factual Background" of his decision?

Issue #2: Did the Hearing Officer err in not finding ReWa caused delays to Appellant's project and Appellant never completed its application for a flow acceptance permit?

Issue #3: Did the Hearing Officer err by finding the Appellant had no vested rights relating to receiving sewer service on the Subject Project?

Issue #4: Did the Hearing Officer err by failing to rule on the issue of the Contract Clauses of the United States and South Carolina Constitutions?

For the reasons set forth below, the Court affirms the decision of the Hearing Officer.

FINDINGS OF THE COURT

Issue #1: The Hearing Officer Grounded His Decision With Ample Factual Support.

First, as to Issue #1, the Court finds that several of the factual findings challenged by Appellant, for want of factual basis, would not materially change the Hearing Officer's decision even if, as Appellant contends, no factual basis supported the same. Appellant, for example, challenges the Hearing Officer's finding that Appellant knew no public sewer was offered in the area where it purchased the tract of land at issue. Appellant similarly takes exception to the Hearing Officer's findings about: whether basin-wide planning had been completed in the area in question; whether the Metropolitan Sewer Subdistrict declined to own the force main and pump station in question; whether collaboration with another developer

caused additional delays; and whether the peculiarities of Appellant's project caused problems in identifying a viable route for the sewer main running from Appellant's property. (See App. Brief, pp. 18-19.)

Appellant offers no explanation why any such findings materially impact the outcome of the administrative hearing. And, the Court fails to see how any of the factual recitations (as cited in the Administrative Order's "Factual Background," R. at 8-11) would materially change the ultimate ruling of Hearing Officer Glenn. Accordingly, the Court declines to disrupt the Hearing Officer's ruling based upon arguments lacking any materiality.

Second, even if such challenged findings proved material, ample evidence supports the Hearing Officer's factual findings now challenged by Appellant. Sitting in an appellate capacity, this Court must review the Hearing Officer's determinations under the standard of review prescribed by the South Carolina Administrative Procedures Act ("APA").² "Under the APA, [this Court cannot] substitute its judgment for that of [the Hearing Officer] as to the weight of the evidence on questions of fact." *Leventis v. South Carolina Dep't of Health & Environmental Control*, 340 S.C. 118, 130, 530 S.E.2d 643, 649-50 (Ct. App. 2000) (quoting *Ballenger v. Dep't of Health and Environmental Control*, 331 S.C. 247, 251, 500 S.E.2d 183, 185 (Ct. App. 1998); S.C. Code § 1-23-300(e).

The Hearing Officer's factual determinations should be affirmed unless clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *Id.*

² ReWa's Sewer use Regulation incorporates the hearing process, guidelines, and standard of review set forth in the South Carolina Administrative Procedures Act ("APA"). (See R. p. 1031, ReWa Sewer Use Reg. § 6.1, ¶ 2 ("[U]nder same guidelines applied to state agencies which are set forth in S.C. Code § 1-23-300(c).") The APA constrains a reviewing court from upsetting an agency's factual determinations, unless they are "(c) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." S.C. Code § 1-23-380(e).

"The possibility of drawing two inconsistent conclusions from the evidence" will not mean the Hearing Officer's conclusion was unsupported or improper. *Waters v. South Carolina Land Res. Conservation Comm'n.*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (quoting *Palmetto Alliance, Inc. v. South Carolina Pub. Serv. Comm'n.*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). The "burden is on the [Appellant] to prove convincingly that the [Hearing Officer's] decision is unsupported by the evidence." *Id.*; see also *Tennis v. S.C. Dep't. Soc. Servs.*, 355 S.C. 551, 558 (Ct. App. 2003).

Applying the aforementioned standards to this case, the Court finds substantial evidence supported the factual findings challenged by Appellant. (See Brief of App., pp. 18-19, Subsections A through E.) Indeed, contrary to Appellant's assertions, ample evidence of record exists to support the factual findings now challenged by Appellant in Issue #1.³ On the

³ An illustrative but non-exhaustive summary of the evidence of Record supporting the factual findings challenged by Appellant in Issue 1 includes: R. at 632: 8-25; R. at 633: 1-8 (Testimony of ReWa Engineering Supervisor Brian Bishop discussing basin-wide planning in subject basin as typical especially, when as here, no public sewer is in the basin.); R. 441: 4-8 (Indicating "when the development came on the table, there wasn't a plan for how that whole area would be handled."); R. at 438: 15-18 ("I think a lot will depend on how development occurs in the basin and how it works out, you know, with growth."); R. at 88: 4-25 ("[T]he sewer subdistricts said they weren't taking [pump stations] anymore."); R. at 109: 7-10 (Condor planned to own the pump station and force main because Metro did not want to own them.); R. at 95: 1-16 (Manifold main for both developments "kind of a unique issue here" causing, "an engineering coordination problem" and "question[s] for the design engineers for" each project); R. at 95: 1-16 ("meaning there's two separate submittals"); R. at 596: 4-16 (discussing atypical nature of manifold line); R. at 596: 21-25 (second project at least a year behind); R. at 816, Ex. 21; R. at 878 (p. 23: 2-22); R. at 993 (unanswered Request to Admit #7 stating: "The owners of the Riversway development" objected to one route "due to cost reasons."); R. at 822, Ex. 26 (reflecting uncertainty how two projects would build force main as of 4/14/08); R. at 96: 4-7 (reflecting project proposed unusual engineering aspects); R. at 229: 13-17 (discussing atypical manifold); R. at 596: 4-7 (Never approved project with similar engineering); R. at 596: 14-16 (Never permitted force main on ReWa property); R. at 596: 23-25; R. at 597: 1-2 (Collaborating project developer one year behind Appellant). Respondent cites additional evidence in its brief, see Respondent Brief, pp. 30-36, which the Court incorporates by reference in further support of the instant order.

other hand, many of the citations to the Record made by Appellant appear to be unfounded. The Court declines to address every one of the individual points in dispute. Any point not specifically addressed herein should be deemed as reviewed and found inadequate to upset the Hearing Officer's weighing of the evidence. Accordingly, as to Issue #1, the Court finds Appellant has failed to prove "convincingly that the [Hearing Officer's] decision was unsupported by the evidence." *Waters*, 321 S.C. at 219.

Issue 2: Ample Evidence Shows ReWa Did Not Cause Appellant's Delays and Appellant Never Submitted a Complete Permit Application.

As to Issue #2, Appellant was similarly required, but did not, prove the Hearing Officer's findings were "unsupported by the evidence." *See Waters*, 321 at 219; *see also supra discussion*. According to Appellant, the Hearing Officer erred by not finding ReWa caused delays to Appellant's project and further erred when concluding Appellant never completed its permit application by submitting information required by ReWa. Contrary to Appellant's assertions, however, the Court finds substantial evidence supported both aspects of the Hearing Officer's decision.

First, of the "two year" delay cited by Appellant (*see* Brief of App., p. 20), substantial evidence reflects the first eighteen months of delay resulted because Appellant failed to provide ReWa with information concerning its initial route (referred to by the Parties as the Flag Lot Route).⁴ After the problems with the Flag Lot were discovered, ReWa immediately began

⁴ At the project's inception, the evidence of Record reflects as follows: Bishop instructed Appellant to specify the initial route before completing substantial engineering work. (*See* R. at 805, Ex. 13.) Bishop sought to help Appellant avoid spending a lot of time and money until the route was approved. (R. at 578: 2-12.) Correspondence during the eighteen month period reflects Bishop repeatedly requested information about the location of the Flag Lot Route. (*See e.g.*, R. at 806, Ex. 14; R. at 807-808, Ex. 15.) Despite Bishop's requests, Appellant failed to specify the route location until August of 2007, nearly eighteen months after Bishop first

working with Appellant to identify an alternative route. Through no fault of ReWa, the alternative route (named by the Parties as the "Bishop Proposal") was rejected, even though viable. (See R. at 332: 14-21; *see also* R. at 993 (Unanswered Request for Admission #9.) A three month delay ensued before ReWa helped Appellant identify a final route (called the "River Route"). Appellant settled upon the River Route in late November of 2007.

The evidence of Record demonstrates the River Route was, in turn, delayed for three reasons. First, another governmental entity (not ReWa) raised concerns about Bolo's engineering calculations. (R. at 631: 11. 22-25; 632: 1-7; *see also* R. at 993 (Unanswered Request for Admission #10.) Second, Appellant began entertaining plans to build two force mains on ReWa's property (not one) but never disclosed this fact until mid January of 2008. (See R. p. 821, Ex. 25.) Third, the evidence reflects that Appellant and its collaborator, Riversway, never agreed how to design the force main across ReWa's property and, therefore, never completed finalized plans for the same. (See R. p. 822, Ex. 26.)⁵ Thus, the Court finds

requested the route. (R. p. 189, 11. 20-25); (R. p. 453, lines 5-8) (Route identified to Bishop in August 2007 timeframe because, "he'd come to me in August about that.") Even then, Appellant never submitted an easement application or the required surveys. (R. at 589: 4-18; R. at 130: 20-24 (No application for ReWa encroachment since no final plans.) Appellant similarly failed to submit engineering plans for the Flag Lot Route. (R. at 586: 18-25; p. 587: 1; R. at 130: 8-10.) When Appellant finally disclosed the proposed route to Bishop, he walked the route within only a few days with Appellant's surveyor, Mike Deaton. (R. at 604: 11. 14-23.) While walking the route, it became obvious to both Bishop and Deaton the route was not viable. (R. at 813, Ex. 20; R. at 608.) Bishop notified Appellant of the problems either the same day or next morning. (R. at 609: 2-7; R. at 813, Ex. 20; R. at 608.) Importantly, the problems with the Flag Lot Route could have been detected as early as March of 2006, had Appellant followed Bishop's instruction and supplied the requested information. (R. at 609: 22-25.)

⁵ ReWa's Executive Director, Ray Orvin, did testify the Board, at some point in late 2007, instructed staff not to approve private pump stations without further Board input. But, the testimony clearly was that ReWa's personnel were instructed to continue working with Appellant (and others) to finalize permit applications at all times prior to the Sewer Use Regulation's Amendment. (R. at 639: 12-16) (Never instructed to stop work); (R. at 492: 1-8)

the Hearing Officer did not err when he found ReWa did not cause the delays afflicting Appellant's project.

Second, the Court likewise finds the Hearing Officer did not err when he found Appellant failed to submit a complete permit application to ReWa. Initially, if Appellant did submit the finalized materials necessary for issuance of a Flow Acceptance Permit, then Appellant failed to introduce them to the Hearing Officer, as they appear nowhere in the Record. By contrast, ReWa submitted an abundance of evidence demonstrating Appellant, in fact, never completed its permit application.

The evidence of Record reflects that at the time of the regulatory amendment in May of 2008, Appellant had not: finalized its engineering plans for the force main, submitted an application for an easement across ReWa's land, had not finalized an agreement for the ownership of force mains and pump station with the public entities, and had not obtained a Flow Acceptance Permit. (See R. at 635-637; see also R. at 993 (Unanswered Requests for Admissions ##14, 15, and 18.) Moreover, the Hearing Officer cited Exhibits 13, 14, 15, 17, 18, 23, and 26 as documentary evidence reflecting Appellant failed to provide the information needed to obtain a Flow Acceptance Permit as first identified to Appellant by Bishop in Exhibit 13 from March of 2006. (R. at 12-14.) Bishop's testimony likewise confirms ReWa never received the required information and as of May of 2008, Appellant's project file remained "substantially incomplete." (R. at 637: 1-4.) Accordingly, as to Issue 2, Appellant has not "convincingly" proved the Hearing Officer's factual findings are "unsupported by the

(Instructed to continue working with Appellant "to get all of their paperwork in" and let Board evaluate.) No evidence of Record indicates ReWa's Board would not have granted the Flow Acceptance Permit, had Appellant's application ever been completed. Moreover, in the instance of Appellant, Board approval was required in any event, as Appellant required an easement from ReWa to complete its project. (R. 261: 1-4.) Only the Board could have granted the easement. (See *infra*.)

evidence." *Waters v. South Carolina Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

Issue 3: The Hearing Officer Did Not Err By Finding Appellant Lacked Vested Rights and That ReWa Did Not Retroactively Apply its Regulation.

The Court finds Appellant's claims both hinge *and* fail upon a previously unstated theory of vested rights. The Court notes Appellant never pleaded the Vested Rights issue. (See R. at 21-38.) On the appeal, Appellants argue that ReWa should have grandfathered its project under the Amendment to the Sewer Use Regulation, altogether allowing Appellant to escape the effect of the Sewer Use Regulation's May 5, 2008 Amendment. (See Brief of App., p. 40.) Stated differently, Appellant contends it had a legal right to be grandfathered under ReWa's Sewer Use Regulation before its amendment. Yet, no legal basis exists for such a request since an incomplete permit application, as a matter of law, fails to vest the rights of a would-be permittee.

Consistent with the Hearing Officer's ruling, without a complete permit application, a putative permittee's rights do not vest, since it would be impossible to determine *what* rights vested. (See R. at 17; *see also* R. at 637: 5-25; R. at 638: 1) (ReWa had insufficient information from Appellant even to know what it would be grandfathering.) As the leading local government law treatise notes:

[A]n application for a permit made before a zoning ordinance becomes effective gives in itself no right to a use excluded by the ordinance. Indeed, generally speaking, no preliminary proceedings to the obtaining of a permit give rise to any vested right to pursue a use in a zoned district.

8 *McQuillin Mun. Corp.* § 25:179.24 (3d ed.). This analysis applies here thereby foreclosing Appellant's vesting claims.

The Court finds the evidence reflects Appellant never submitted a finalized permit application and, therefore, had no vested rights prior to ReWa's May 5, 2008 amendment to the Sewer Use Regulation. As discussed *supra*, the evidence of record shows Appellant:

- Never submitted a finalized set of engineering plans for any proposed route;
- Never even applied for the necessary right of ways across ReWa's Plant property;
- Never executed an agreement with public utilities about the ownership of the proposed private pump station and force mains.

(R. at 635: 14-25; R. at 636: 25) (Appellant never submitted: finalized engineering plans for any proposed route, applications for right of way from ReWa, and never executed final agreement among service providers.)

Dating back to March of 2006, ReWa informed Appellant of these prerequisites to obtaining a Flow Acceptance Permit at the onset of the process. (See R. at 805-808; R. at 810, Ex. 13, 14, 15, & 17; R. at 636: 15-19). As a consequence, Appellant's failure to submit a complete application, as a matter of law, fails to vest any rights to obtain a Flow Acceptance Permit prior to the Sewer Use Regulation's amendment. See *In re Ross*, 151 Vt. 54, 557 A.2d 490 (1989); *City of Aspen v. Marshall*, 912 P.2d 56 (Colo. 1996); *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891 (Ct. App. 1986). Accordingly, substantial evidence supports the Hearing Officer's findings regarding the vesting of rights.

Appellant also questions the Hearing Officer's reliance upon the *Friarsgate* decision and instead insists the opinion of *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) controls. The Court finds the *Vulcan*

decision is inapposite to the instant facts in a number of ways. Accordingly, the Court rejects Appellant's reliance on *Vulcan*.

In *Vulcan*, Greenville County sought to impose *post facto* prohibitive zoning after *Vulcan* already commenced a nonconforming use it could pursue as a matter of right. *Id.* at 498. Here, the alleged nonconforming use (i.e., the incomplete plans submitted in Appellant's Flow Acceptance Permit Application) was the nonconforming use Appellant sought to commence, but could not, because a Flow Acceptance Permit never issued. In *Vulcan*, the Respondent did not need to obtain a grant of a real property interest (i.e., easement) before it could commence its nonconforming use. Here, Appellant concedes all of its plans for use required ReWa's Board to convey an easement before it could obtain a Flow Acceptance Permit and a DHEC permit to commence its nonconforming use in the first instance. (R. 261: 1-4.)⁶ Notably, ReWa had no legal obligation (ever) to grant an easement to Appellant.

In *Vulcan*, the Respondent only needed an operating permit from DHEC before it could commence mining granite on its property. *Id.* at 498. Unlike Appellant, the *Vulcan* Respondent had fully completed its DHEC application for an operating permit over a year before the County enacted the prohibitive zoning. *Id.* at 484 & 486. Here, Appellant's project file remained substantially incomplete when ReWa amended its Regulation and remains so, to date. (R. at 637: 2-4) Moreover, the *Vulcan* Court acknowledged the nonconforming use only vests if "already in existence at the time his property is zoned..." *Id.* at 498. In the instant case, the nonconforming use could not exist in advance of the issuance of an easement and

⁶ Appellant spends considerable time discussing the lack of an effective date in the ReWa's Amended Sewer Use Regulation. (See Brief of App., p. 11.) Apparently, Appellant has not actually analyzed the Regulation, as it clearly contains an effective date. (See R. at 1048.)

Flow Acceptance Permit. In short, ReWa did not apply its Amended Sewer Use Regulation retroactively. Accordingly, the Court affirms the Hearing Officer's decision.

Issue 4: The Hearing Officer Did Not Err By Finding ReWa's Amended Sewer Use Regulation Did Not Violate the Contracts Clause of the State and Federal Constitutions.

The Court finds Appellant's statements concerning alleged Contract Clause violations lack any merit. According to Appellant, "Appellant argued at the hearing that the enactment of the new regulations impaired its contract with Condor and Eastwood, thus violating the Contract Clause of the United States Constitution and South Carolina Constitution." (Appellant's Brief, p. 30.) The Court fails to see where Appellant ever raised this issue prior to the appeal.

Even after Respondent argued the issue cannot be raised for the first time on appeal, Appellant failed to supply the Court with any citation to the Record indicating where such grounds were previously pled and argued. Indeed, the issue appears nowhere in Appellant's Complaint from the proceeding below. (See R. at 19-38; *see also* R. at 15 ("[Appellant] has offered no evidence to contest the validity of the amended Sewer Use Regulation.")⁷ The Court finds Appellant cannot raise the issue for the first time on appeal. *Elam v. S.C. DOT*, 361 S.C. 9, 23 (2004).

Second, in evaluating legislative acts such as the Amended Sewer Use Regulation, "every presumption is made in favor of...constitutionality." *Knotts v. S.C. Dep't of Nat. Resour.*, 348 S.C. 1, 558 S.E.2d 511 (2002). A "legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable

⁷ Appellant never filed the necessary pleading to commence the administrative process. Nonetheless, the Hearing Officer allowed Appellant to proceed and used the original "complaint filed in the Court of Common Pleas." (R. at 12.)

doubt." *Joytime Distribs. & Amusement Co., Inc. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999); *see also Beaufort County v. State*, 353 S.C. 240, 242 (2003). Thus, the Court finds Appellant was required, but did not, prove "beyond a reasonable doubt" how ReWa's Sewer Use Regulation runs afoul of the State and Federal Contract Clauses.⁸

Finally, so long as ReWa's Sewer Use Amendment aimed to accomplish a "reasonable and necessary...public purpose," then, no constitutional infraction exists, even if everything else alleged by Appellant proved true. *Hodges v. Rainey*, 341 S.C. 79, 93, 533 S.E.2d 578, 585 (2000). The Hearing Officer made specific findings regarding the reasonability and necessity of the amendment based upon evidence presented. (*See R.* at 9-10 (Amendment designed to foreclose "long-term viability risks, environmental risks, and risks to development."); *see also R.* at 901: 21-25; *R.* at 902: 1-16.)

With respect to such policy determinations, then, the Court will, "properly defer to [ReWa's] legislative judgments as the necessity and reasonability" of the Amended Sewer Use Regulation. *United States Trust Co. v. New Jersey*, 431 U.S. 1, 17, 97 S.Ct. 1505, 1515 (1977). Accordingly, when the Court filters the evidence of Record through Appellant's burden of beyond a reasonable doubt and properly accords deference to ReWa's legislative authority, the decision of the Hearing Officer should be affirmed.

Additional Sustaining Grounds:

As raised by Respondent, the Court finds several additional sustaining grounds exist to affirm the decision of the Hearing Officer. *See I'On, LLC v. Town of Mt. Pleasant*, 338 S.C.

⁸ Appellant argues that the Court should show ReWa less deference because the Amended Sewer Use Regulation impairs a contract to which it is a party. (*See Appellant's Brief*, p. 32) The Court finds no evidence of Record demonstrating that ReWa's Amended Sewer Use Regulation impairs any existing contract to which ReWa was a party. Appellant did not provide the Court with any citation to the Record to support any such contention.

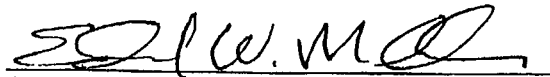
406, 526 S.E.2d 716 (2000) ("Under the present rules, a respondent—the "winner" in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.") Those grounds include:

- Appellant failed to follow the adjudicatory process and procedure required by ReWa's Sewer Use Regulation. (See Respondent's Brief, pp. 52-56.)
- Only ReWa's Commission could grant to Appellant an interest in land owned by ReWa. Until such time, Appellant could never obtain a vested interest in project plans. Yet, ReWa's Commission never granted such interest and Appellant conceded it had to have an easement across ReWa's land, "no matter which way [it] went." (R. at 261: 1-4; see also Respondent's Brief, pp. 56-58.)
- By operation of South Carolina's Statute of Frauds, Appellant had no right to cross ReWa's property absent a written conveyance, which it never obtained. (See Respondent's Brief, p. 58.)
- The doctrine of equitable estoppel has no application under the instant facts. See *Berkley Electric Co-Op, Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 417 S.E.2d 579 (1992). (See also Respondent's Brief, pp. 58-60.)
- Even if Appellant's arguments were otherwise correct, the pending ordinance doctrine would defeat Appellant's allegations. (See Brief of Resp., pp. 60-61.)

While Respondent raised all such issues in its brief opposing Appellant's grounds for appeal, Appellant provided no meaningful response to the same. Accordingly, the Court adopts such grounds as additional sustaining grounds in further support of its affirming the Hearing Officer's decision.

For the reasons set forth above, the Court **AFFIRMS** the decision of Hearing Officer Michael Glenn dated September 1, 2011.

IT IS SO ORDERED.



Honorable Edward W. Miller
Judge, Thirteenth Judicial Circuit

Greenville, South Carolina

11/16, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2011-CP-23-0485
FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

Harrison Partners, LLC vs. Renewable Water Resources

2013 JAN 11 P 1:32

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

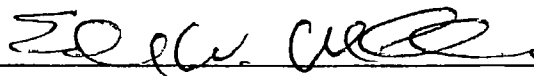
☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider is DENIED.

IT IS SO ORDERED.

Dated at Greenville, South Carolina, this 10th day of January, 2013.

Court Reporter:



PRESIDING JUDGE - EDWARD W. MILLER

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Robert C. Childs, III 2100 Poinsett Highway, Suite D
Greenville, SC 29609

Rivers Stillwell PO Box 10084 Greenville, SC 29603
Lane Davis PO Box 10084 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

The South Carolina Court of Appeals

Harrison Partners, LLC, Appellant,

v.

Renewable Water Resources, Respondent.

Appellate Case No. 2013-000329

ORDER

Respondent has filed a motion to dismiss or alternatively to require Appellant to comply with the South Carolina Appellate Court Rules. Appellant's motion to dismiss is denied. However, Appellant shall file an amended initial brief within thirty days of this order, including citations to the record for all "facts relevant to the issues presented for review." Rule 208(b)(1)(d), SCACR. Additionally, Appellant's amended initial brief will conform to the page limit requirements set forth in Rule 208(b)(5), SCACR, or Appellant will file a motion to exceed the page limit upon filing its amended initial brief.


FOR THE COURT

Columbia, South Carolina

cc:

Robert Clyde Childs, III, Esquire

J. Falkner Wilkes, Esquire

Rivers Samuel Stilwell, Esquire

Lane Whittaker Davis, Esquire

FILED
4/15/14


The South Carolina Court of Appeals

Harrison Partners, LLC, Appellant,

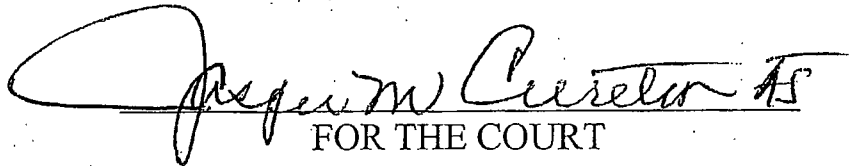
v.

Renewable Water Resources, Respondent.

Appellate Case No. 2013-000329

ORDER

After careful consideration, Respondent's motion to dismiss is denied. Nothing in this order prevents the parties from arguing the alternative sustaining grounds issue in their briefs.


FOR THE COURT

Columbia, South Carolina

cc:

Robert Clyde Childs, III
J. Falkner Wilkes
Rivers Samuel Stilwell
Lane Whittaker Davis

FILED

June 19, 2013

Harrison Partners,
L.L.C

vs.

Renewable Water
Resources

2011-CP-23-6482

Record for Administrative
Appeal
VOLUME 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Harrison Partners, L.L.C.,)

Civil Action No. 2011-CP-23-6482

Plaintiff,)

vs.)

Renewable Water Resources.)

Defendants.)

RECORD FOR ADMINISTRATIVE APPEAL

VOLUME I

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Attorneys for Renewable Water Resources

**RECORD FOR ADMINISTRATIVE APPEAL
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP2307710

Harrison Partners Llc vs. Sewer Authority Western Carolina Regional

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 19th day of March, 2010, and a copy mailed first class this 19th day of March, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

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Thomas PC P.O. Box 100200 Columbia, SC
29202

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Thomas W. Traxler Carter Smith Merriam
Rogers & Traxler P.O. Box 10828 Greenville, SC
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ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Harrison Partners, LLC & Grant Estates,)
LLC,)

Civil Action No. 2009-CP-23-7710

Plaintiffs,)

vs.)

Western Carolina Regional Sewer)
Authority, Raymond Orvin, Renewable)
Water Resources, Brian Bishop, JD)
Martin, Metro Sewer Subdistrict, Joe)
Thompson, and Mike Dickson,)

Defendants.)

ORDER

FILED-CLERK OF COURT
MAR 19 PM 12:28
CLERK OF COURT
MAR 19 PM 12:28

This matter is before the Court on a Motion to Dismiss ("Motion") filed pursuant to Rules 12(b)(1) & (6), SCRPC. The following Defendants joined in the Motion: Renewable Water Sources (f/k/a Western Carolina Regional Sewer Authority), Ray Orvin ("Orvin"), Brian Bishop ("Bishop"), and J.D. Martin ("Martin") (treated collectively as "ReWa"). The Court conducted a hearing on the Motion on January 19, 2010.

Plaintiffs appeared for the hearing and were represented by Attorney Franklin Turner, III of Rogers, Townsend & Thomas, P.C. ReWa appeared and was represented by Attorneys Leo Hill, Rivers Stilwell, and Lane Davis of Nelson Mullins Riley & Scarborough, LLP. The remaining defendants (treated collectively as "Metro") appeared and were represented by Thomas W. Traxler of Carter Smith Merriam Rogers & Traxler, PA.

I. BACKGROUND

The following facts are not in dispute by the Parties:

ReWa is a public service district and subdivision of the State of South Carolina. (Compl. ¶ 3). ReWa maintains sewer treatment facilities and operates sewage collection facilities. (Compl. ¶ 13). This case involves private collector sewer systems ("PCS's"). (Compl. ¶ 14). Plaintiffs intended to operate a PCS on land purchased for residential development. (Compl. ¶¶ 11, 14). Plaintiffs sought approval to connect their PCS to the ReWa system of sewer lines. (Compl. ¶ 14). ReWa amended its regulations governing PCS's on or around June of 2008. (Compl. ¶ 49).

Plaintiffs have brought the instant action asserting that ReWa wrongfully denied them the ability to establish certain PCS's. Plaintiffs assert claims for: breach of contract, breach of contract accompanied by a fraudulent act, unjust enrichment, negligence, negligent misrepresentation, interference with contractual relations, civil conspiracy, declaratory judgment, writ of mandamus, and a violation of South Carolina Unfair Trade Practices Act.

Plaintiffs' claims all rely upon the premise that ReWa improperly denied its request to operate a PCS and to connect to the ReWa sewer system. During the hearing on this matter, ReWa provided evidence of a process by which an aggrieved person may appeal the denial of a PCS permit. Specifically, the ReWa Sewer Use Regulations provide a hearing and reexamination process for aggrieved individuals.

Once a final decision is rendered, the Regulations provide that "[a]ny party aggrieved by a final decision of ReWa, other than in an enforcement case, may appeal such decision to the Court of Common Pleas in the County in which ReWa is located under the same guidelines applied to State agencies which are set forth in S.C. Code Ann. § 1-23-380." Id.

Plaintiffs candidly admitted during the hearing that they did not engage in this administrative review process.

II. LEGAL STANDARD

Subject matter jurisdiction is a preliminary question that must be resolved before other matters before the Court. It is "necessary that the jurisdictional point must be decided before any of the other questions.... As has been said, 'This question meets us at the threshold.' If the Court had no jurisdiction, the other questions...are rendered academic." Federal Land Bank v. State Highway Dep't, 172 S.C. 207, 210 (S.C. 1934). Similarly, the timeliness or ripeness of a case, "is a threshold issue that implicates subject matter jurisdiction, and like standing, emphasizes the need for a concrete injury for a justiciable claim to be presented.' The concepts of subject matter jurisdiction and ripeness are often discussed simultaneously as they both involve threshold requirements...." Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 633-634, 622 S.E.2d 733 (Ct. App. 2005) *overruled on other grounds* 379 S.C. 564, 666 S.E.2d 892 (2008).

The doctrine of exhaustion of administrative remedies generally is considered a rule of policy, convenience, and discretion, rather than one of law. Stinney v. Sumter School Dist. 17, 382 S.C. 352, 358, 675 S.E.2d 760, 763 (Ct. App. 2009). A court's determination "[w]hether administrative remedies must be exhausted is a matter within the circuit court's sound discretion..." Id. (citing Hyde v. S.C. Dept. of Mental Health, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994)). Courts have consistently held that "[t]he general rule is that administrative remedies must be exhausted absent circumstances that support an exception to application of the general rule." Id. (citing Hyde, 314 S.C. at 208, 442 S.E.2d at 583). "When an adequate administrative remedy is available to determine a question of fact, one must seek the administrative remedy or be precluded from pursuing relief in the courts." Id.

III. LAW/ANALYSIS

Here, Plaintiffs have failed to exhaust their administrative remedies as required by law and the Regulations. Both parties candidly admit that Plaintiffs have not sought the administrative review of ReWa's determination. The ReWa Regulations provide a method by which Plaintiffs may appeal this determination. The Regulations provide under Section 2:

2. Hearings Any person whose permit is denied, or is granted subject to conditions he deems unacceptable, shall have the right to request an Adjudicatory Hearing under the procedures provided in Section 8 and the ReWa Enforcement Management Strategy.

As further set forth in the ReWa Regulations a person may appeal a denial of a permit to:

(1) first, a hearing examiner, (2) secondly, to the Board of Commissioners of ReWa, and (3) upon a final decision, to the Court of Common Pleas. Plaintiffs, having failed to engage in this review process, have not exhausted their administrative remedies as required by law.

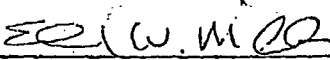
Here, ReWa, a subdivision of the State of South Carolina, has expressly incorporated the provisions of S.C. CODE ANN. § 1-23-380, which requires the exhaustion of administrative remedies prior to judicial review. This section, part of the Administrative Procedures Act, requires an individual "to exhaust[] all administrative remedies available" prior to seeking "judicial review." In violation of the Regulations and the Administrative Procedures Act (incorporated into the Regulations), Plaintiffs have failed to exhaust these administrative remedies prior to coming before the Court.

Where a party has failed to exhaust its administrative remedies, the party will be precluded from pursuing relief in the Court of Common Pleas. Stinney, 382 S.C. at 358, 675 S.E.2d at 763 ("one must seek the administrative remedy or be precluded from pursuing relief in the courts.") The Plaintiffs are, therefore, precluded from pursuing this action at this time.

IV. CONCLUSION

For the foregoing reasons, **NOW, THEREFORE, IT IS HEREBY ORDERED**, that Plaintiffs Claims against the ReWa Defendants be dismissed without prejudice pending Plaintiffs exhaustion of the administrative review process provided in the ReWa Regulations.

AND IT IS SO ORDERED.



Hon. Edward W. Miller
Circuit Court Judge, Thirteenth Judicial Circuit
Greenville County, South Carolina

Dated this, the 16 day of March, 2010

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GREENVILLE	)	Renewable Water Resources
	)	Administrative Hearing
Harrison Partners, LLC	)	
	)	
Petitioner,	)	
	)	
vs.	)	ADMINISTRATIVE DECISION
	)	
Renewable Water Resources,	)	
	)	
Respondent.	)	
_____	)	

PROCEDURAL BACKGROUND

The instant matter came before the Renewable Water Resources Administrative Hearing Process subsequent to an Order of the Greenville County Court of Common Pleas dated March 19, 2010 ("CP Order") in Civil Action Number 2009-CP-23-7710 ("CP Action"). In the CP Action, Petitioner Harrison Partners, LLC ("HP") sued Renewable Water Resources ("ReWa"), among others, for a wide-range of claims. The substance of the dispute involves HP's efforts to apply for a sewer flow acceptance permit ("Flow Acceptance Permit") from ReWa under circumstances where HP sought to use a private entity to own and operate a privately owned pump station and force main.

The Circuit Court dismissed the CP Action finding that, "Plaintiffs' claims all rely

upon the premise that ReWa improperly denied its request to operate a PCS and to connect to the ReWa sewer system." (Exhibit 28, p. 2.) During the CP Action, "[HP] candidly admitted during the hearing that they did not engage in [the ReWa] administrative review process."¹ (Id. at 2.) As a result, the Circuit Court found, "Plaintiffs have failed to exhaust their administrative remedies as required by law and the Regulations." (Id. at 4.) Specifically, the Circuit Court cited S.C. CODE ANN. §1-23-380, which is incorporated into ReWa's Sewer Use Regulation and requires "the exhaustion of administrative remedies prior to judicial review." (Id. at 4.) The CP Order "dismissed [HP's claims] without prejudice pending Plaintiffs' exhaustion of the administrative review process provided in the ReWa Regulations." (Id. at 5.) Thereafter, neither party appealed.

FACTUAL BACKGROUND

Beginning in the Spring/Summer of 2006, HP purchased land in the southern tip of Greenville County below ReWa's Lower Reedy Wastewater Treatment Plant. HP bought the property, although it knew no public sewer service was available in the

The Circuit Court noted this process as follows: "As further set forth in the ReWa Regulations a person may appeal a denial of a permit to: (1) first, a hearing examiner, (2) secondly, to the Board of Commissioners of ReWa, and (3) upon a final decision, to the Court of Common Pleas."

(Id. at 4.)

basin embracing the land and although it knew no public sewer service could be offered until public providers had reviewed and approved finalized engineering plans and issued a Flow Acceptance Permit. HP planned to build a residential housing development on the property which it later dubbed "Rivertrace."

HP hired the Insite Group, LLC from Columbia, South Carolina to provide engineering services on the project. Specifically, HP hired Scott Bolo, P.E. ("Bolo") as Rivertrace's head engineer. Bolo was simultaneously one of HP's shareholders. Bolo proposed to pump sewer up to the Lower Reedy Wastewater Treatment Plant with a pump station and force main.

Sewering the Rivertrace project presented many obstacles. First, as noted above, HP bought the land knowing no public sewer service existed in the area. Thus, no engineering study had previously been performed of the basin embracing HP's land. And, population densities in the basin did not yet justify studying how to sewer the area for basin-wide planning purposes.

Second, HP's project required a force main and pump station since it was located below the Lower Reedy Plant. While HP's land would be annexed into the Metropolitan Sewer Sub-District's ("Metro") service area, Metro declined to own and maintain the force main and pump station. As a result, HP intended that a private utility named Condor Environmental, LLC ("Condor") would own and maintain the

force main and pump station while Metro would own the collector lines. Metro's and Condor's lines would then discharge into ReWa trunk lines and travel to ReWa's Lower Reedy Treatment Plant.

Third, HP collaborated on the sewer line project with another entity named the Windsor Aughtry Company on its proposed development nearby called "Riversway." Essentially, the two developers sought to build their own separate collector systems and then, at some point, interconnect their force mains as they ran toward the treatment plant. The developers' plans differed over time but, at one point, they sought to have two privately owned pump stations with a "manifold into one line." Later, they proposed two separate but parallel force mains running through ReWa property.

The separate projects meant compounding the difficulties: two developers, two sets of engineers, two sets of plans, twice the routing problems, twice as many engineering issues, different sets of right of ways, twice the likelihood of delays, and negotiating two sets of agreements between the public and private parties participating in the sewer service. Windsor Aughtry was also approximately a year behind HP in relation to the timing of its project.

Fourth, unlike any other project, HP proposed to build its force main across ReWa's property. Addressing the mechanics of obtaining easements across ReWa's

treatment plant posed a set of obstacles never encountered before. Historically, ReWa had never allowed a party to have an easement across treatment plant property. Notwithstanding the same, ReWa told HP that it would consider the request, depending on where the line crossed its land and subject to meeting project requirements for obtaining sewer service.

The peculiarities of the project led to HP pursuing various routes and options over a several year period. The evidence of record reflected three primary routes: one referred to by the parties as the "Flag Lot Route"; a second called the "Bishop Proposal"; and a third dubbed as the "River Route." Only the Flag Lot Route and the River Route were seriously pursued by HP. Notably, both of those routes required HP to build a force main across ReWa's Lower Reedy Treatment Plant.

ISSUES FOR DETERMINATION

1. ReWa contends that HP failed to follow the administrative procedures proscribed by ReWa's Sewer Use Regulation.

FINDING: The administrative procedure for initiating an adjudicatory hearing is set out in Paragraph Nine (9) of ReWa's Sewer Use Regulation.

ReWa is correct in stating that the procedure was not strictly followed by HP; however, HP initially stated its position and contentions in a complaint filed in the Court of Common Pleas for Greenville County.

That Court dismissed the case pending an exhaustion of administrative remedies. The ReWa Executive Director then referred the case to the undersigned Hearing Officer for an Adjudicatory Hearing. I find that the failure of HP to strictly follow the requirements of the regulation to initiate the adjudicatory hearing process did not prejudice ReWa. HP's position was fully set forth in the complaint filed in the Court of Common Pleas. The essential requirements of Paragraph Nine (9) were met and the lack of strict compliance did not interfere with ReWa's ability to defend the case aggressively and thoroughly.

I find that the case is properly before the Hearing Officer.

2. HP contends that it's application for sewer service in Rivertrace subdivision was improperly handled by ReWa in that there were many delays caused by ReWa during a period of more than two (2) years.

FINDING: By email on March 16, 2006 (Exhibit 13), Brian Bishop notified Scott Bolo of the requirements for HP to obtain sewer service in it's development. The requirements outlined were never met by HP.

Eleven months later, by email on February 9, 2007 (Exhibit 14), Bishop informed Bolo that he would send an encroachment permit

application the following week. In the email he informed Bolo of the requirements to secure sewer service. HP did not comply with the stated requirements.

By email on February 14, 2007 (Exhibit 15), Bolo requested that Bishop provide a "flow acceptance letter". Bishop responded that the letter could not be forwarded until "we have the final plans for both subdivisions and the force main route along with working out the easement agreement".

Later in the day on February 14, 2007 Bolo and Bishop exchanged emails concerning the requirements with Bolo indicating that he would finalize the matter and forward to Bishop as requested (Exhibit 17).

By email of March 21, 2007 (Exhibit 18), Bolo acknowledged HP's failure to comply with requirements.

By email of July 3, 2007, Ashley Hornung, on behalf of HP, asked Bishop questions concerning the encroachment permit. The email acknowledges that HP has not provided an encroachment application nor survey sixteen (16) months after the process began.

By email on January 8, 2008, Ashley Hornung again

acknowledged that she was working on an encroachment application (Exhibit 23).

By letter dated April 14, 2008 (Exhibit 26), R.L. Fogleman, an engineer working for Windsor Aughtry acknowledged that final plans for a joint project had not been submitted or approved.

Brian Bishop, the ReWa employee who was the contact person for HP, testified that HP never sent him final plans for the proposed route of the force main, the pump station, or the route across ReWa property, never filed an encroachment application for consideration by ReWa's Board, and never filed signed agreements by all parties connected with the force main line and pump station.

HP's contention that unnecessary delays were caused by ReWa is not supported by the evidence. On the contrary, the evidence clearly shows that from the time HP learned of the requirements to receive approval of its project on March 16, 2006 it had never complied with the requirements by submitting the required information.

3. HP contends that it began its application process pursuant to ReWa regulations in place on March 16, 2006. The ReWa board adopted new and different regulations on May 5, 2008 which changed the requirements

applicable to HP's project. HP contends that the changes in the regulations are unconstitutional and should not be applied to it. HP further contends that it had a vested right to proceed under the original regulations and that its project should have been grandfathered and permitted pursuant to the regulations in effect in 2006.

FINDING: HP has offered no evidence to contest the validity of the amended Sewer Use Regulation or the constitutionality of the process followed by ReWa. The testimony of ReWa witnesses shows a reasonable and rational approach followed to amend the Sewer Use Regulation. The testimony of Board member John Boyette was that the Commission became aware of problems associated with the private ownership of pump stations in November, 2007 when pump stations began to proliferate. According to Boyette, ReWa's Board viewed unchecked, private ownership of pump stations as presenting long-term viability risks, environmental risks and, ultimately, a risk to development. Boyette also expressed concerns related to the fact that private entities do not last forever. The evidence reflects that ReWa's Board examined the issue and held public hearings on the content of the proposed amendments when submitted for public comment in

January, 2008. The Executive Director of ReWa met with sewer subdistricts. Thereafter, ReWa held a second public meeting concerning the regulatory amendment. Ultimately, ReWa amended its sewer use regulation in a way designed to allow the continued use of privately-owned pump stations, so long as a public entity agreed to backstop such ownership in the event problems arose. In amending its regulation, ReWa acted within the authority conferred upon it by its enabling legislation. It is not the province of this Hearing Officer to second guess the policy decisions of ReWa's Commission while acting in its legislative capacity.

The May 5, 2008 amendment to the sewer use regulation was constitutional and reasonable in light of ReWa's legislative purpose.

HP also contends that its project should have been grandfathered under the regulations in effect prior to the amendment of May 5, 2008. That contention is without merit. In Friarsgate, Inc. v Town of Irmo, 290 SC 266, 349 SE2d 891 (Ct. App. 1986), a real estate developer sought to enjoin Irmo from enforcing a new zoning ordinance relating to its property claiming that it was grandfathered and subject to regulations prior to the adoption of a new zoning

ordinance. The court examined whether the developer had acquired a vested right to build the entire condominium project prior to the new ordinance. The court ruled the developer had not acquired vested rights for all of its buildings because it had not obtained permits for all buildings before the enactment of the ordinance. The developer's failure to obtain building permits for the entire project foreclosed the vesting of rights to build the entire project even though one (1) building had been completed. See also, City of Aspen v Marshall, 912 P 2nd 56 (Colo. 1996); and Enway Ross, 151 Vt. 54, 557 A. 2nd 490 (1989).

Here HP failed to complete its Flow Acceptance Permit application before ReWa amended its sewer use regulation on May 5, 2008. The testimony showed that ReWa personnel were instructed to continue working with HP to finalize its permit application through the date of the regulation's amendment.

I find that HP failed to complete and submit the required documents to obtain a Flow Acceptance Permit before May 5, 2008. Without a complete application and finalized plans, ReWa's Commission had nothing before it to confer grandfathered status and

HP had no vested rights.

CONCLUSION

I have examined all of the allegations and causes of action in HP's Complaint as well as all allegations and contentions raised in the testimony at the Administrative Hearing. I find that the evidence fails to sustain any of the positions raised by HP in its Complaint or in its testimony.

NOW THEREFORE, IT IS ORDERED, that HP's request for relief is denied.

Michael D. Glenn
Michael D. Glenn
Designated Hearing Officer
Renewable Water Resources

September 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Harrison Partners, LLC,
Grant Estates, LLC,

Plaintiffs,

vs.

Western Carolina Regional Sewer
Authority, Raymond Orvin,
Renewable Water Resources, Brian Bishop,
JD Martin, Metro Sewer Subdistrict,
Joe Thompson, and Mike Dickson,

Defendants.

IN THE COURT OF COMMON PLEAS

OF THE THIRTEENTH JUDICIAL
CIRCUIT

C/A No.: 2009-CP-23- 7710

Summons

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA

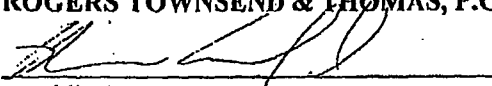
2009 SEP -9 A 9:40 C

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on counsel for the Plaintiffs Trey Turner at the Law Offices of Rogers, Townsend, & Thomas, PC, located at 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina, 29202-3200, within thirty (30) days after the service hereof, exclusive of the day of such service, failure to answer the Complaint within the time aforesaid, will result in judgment of default rendered against you for the relief demanded in the enclosed Complaint.

(Signature Page to Follow)

ROGERS TOWNSEND & THOMAS, P.C.


by **Franklin H. Turner**
220 Executive Center Drive
Post Office Box 100200 (29202)
Columbia, South Carolina 29210
T-(803) 771-7900
F-(803) 343-7017
Email: tturner@rtt-law.com
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
September 1, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

OF THE THIRTEENTH JUDICIAL
CIRCUIT

C/A No.: 2009-CP-23- 7710

Harrison Partners, LLC,
Grant Estates, LLC,

Plaintiffs,

COMPLAINT

vs.

Western Carolina Regional Sewer
Authority, Raymond Orvin,
Renewable Water Resources, Brian Bishop,
JD Martin, Metro Sewer Subdistrict,
Joe Thompson, and Mike Dickson,

Defendants.

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The Plaintiffs Harrison Partners, LLC, and Grant Estates, complaining of the Defendants Western Carolina Regional Sewer Authority, Raymond Orvin, Brian Bishop, and Metro Sewer Subdistrict would respectfully show unto this Honorable Court:

1. The Plaintiff Grants Estates, LLC ("Grant") is a LLC organized and existing under the laws of the State of South Carolina, maintaining its principal place of business in Lexington County, South Carolina.
2. The Plaintiff Harrison Partners, LLC ("Harrison") is a LLC organized and existing under the laws of the State of South Carolina, maintaining its principal place of business in Richland County, South Carolina.
3. The Defendant Renewable Water Resources ("ReWa") is a corporation and body politic in the State of South Carolina that is, upon information and belief, managed and

controlled by a nine-member commission, currently operating as Western Carolina Regional Sewer Authority.

4. The Defendant Western Carolina Regional Sewer Authority ("WCRSA") is a corporation and body politic in the State of South Carolina that is, upon information and belief, managed and controlled by a nine-member commission.

5. The Defendant Metropolitan Sewer Subdistrict ("Metro") is a corporation and body politic in the State of South Carolina that is, upon information and belief, managed and controlled by a three-member commission.

6. Upon information and belief, the Defendant Ray Orvin is an individual, citizen, and resident of the State of South Carolina in the County of Greenville. Upon information and belief he was the Director of Operations for Renewable Water Resources, formerly known as WCRSA ("ReWa"), and was involved in decisions and policy relating to Plaintiffs at all times relevant to this Complaint.

7. Upon information and belief, the Defendant Brian Bishop is an individual, citizen, and resident of the State of South Carolina in the County of Greenville. Upon information and belief he is an Engineering Supervisor for ReWa, and was involved in decisions and policy relating to Plaintiffs at all times relevant to this Complaint.

8. Upon information and belief, the Defendant JD Martin is an individual, citizen, and resident of the State of South Carolina in the county of Greenville. Upon information and belief he is the Chairman of the Board for ReWa, and was involved in decisions and policy relating to Plaintiffs at all times relevant to this Complaint.

9. Upon information and belief, the Defendant Joe Thompson is an individual, citizen, and resident of a state other than South Carolina. Upon information and belief he is the

engineering manager for Metro, and was involved in decisions and policy relating to Plaintiffs at all times relevant to this Complaint.

10. Upon information and belief, the Defendant Mike Dickson is an individual, citizen, and resident of the State of South Carolina in the county of Greenville. Upon information and belief he is the General Manager for Metro, and was involved in decisions and policy relating to Plaintiffs at all times relevant to this Complaint.

FACTS AS TO HARRISON PARTNERS

11. In or about February 2006, Plaintiff Harrison took an interest in property located at Tax Map No. 0576-01-01-011.00 in Greenville County, South Carolina for the purpose of developing the site for residential use.

12. Greenville County permitted the Harrison site for 121 lots.

13. In or about February 2006, WCRSA and the county of Greenville suggested that Plaintiff Harrison should annex into the Metropolitan Sewer subdistrict, ("Metro"). Harrison began that process, and the annexation was approved in or about August 2006, and Harrison had a contract for 121 lots that had been sold.

14. In or about March of 2006, WCRSA informed Plaintiff Harrison that it had sufficient sewage plant capacity to treat the sewage from the proposed subdivision, that Harrison was to have a pumping system designed through Metro using specifications developed by Condor Environmental, LLC ("Condor") and that Harrison needed to use Condor to operate the pump station.

15. On or about May 26, 2006, the plans for the Harrison subdivision were approved by the Greenville County Planning Commission with the express requirement that Harrison have the pump station and force main maintained by a publicly regulated sewer authority.

16. Upon information and belief neither WCRSA nor the Metropolitan Sewer subdistrict ("Metro") are regulated by the Public Service Commission ("PSC").

17. Upon information and belief Condor, with whom Harrison contracted at the direction of both the Greenville Planning Commission and WCRSA, is regulated by the PSC.

18. Harrison was asked to survey WCRSA property on multiple occasions at its expense, but with the data supplied to WCRSA.

19. Upon information and belief, Harrison's surveys benefited WCRSA and improved WCRSA's property at Harrison's expense.

20. In or about February and March of 2007 Harrison finalized a sewage pumping agreement that was approved by Metro, and WCRSA was directly informed that Harrison was close to completing its design and that it was still working with Condor.

21. On or about October 9, 2006, Harrison paid WCRSA to review Harrison's plans.

22. Upon information and belief, Harrison's check to WCRSA for plan review was cashed, but the plans were never reviewed.

23. From February of 2006 through May of 2007, Harrison, at the express direction of WCRSA, expended money to design the pumping system to Condor's specifications, prepared a contract with Condor, and delivered all permits and agreements to WCRSA, but WCRSA refused to move forward with the project and failed to inform Harrison that there might be a problem with Condor operating the pumping station.

24. As of September of 2007, a sewer line had been designed that satisfied the Metro and WCRSA requirements for service and WCRSA was informed that Harrison was in the field building, as was the standard procedure.

25. Harrison did not learn until December of 2007, after significant investment by Harrison, and after a year and a half of working closely with WCRSA on the project that Condor, with whom Harrison had a contract, would not be allowed to own and operate the pumping system, as was and has been the industry practice for at least the past 25 years.

26. From December 2007 through December 2008, Harrison continued to request a service letter that would allow Harrison to move forward with the project and that the South Carolina Department of Health and Environmental Control ("SCDHEC") be allowed to review the project plans that Harrison had paid WCRSA to review, but none of the inquiries received a meaningful reply.

27. Harrison also requested an explanation from WCRSA for the delay to the project and the resulting damages on numerous occasions throughout the project, but received no meaningful reply.

28. In May 2008, Harrison again requested a service letter/agreement so that it could de-annex from Metro, at WCRSA's suggestion and with WCRSA's assurance that it could provide sewer service. No service letter was provided, but Harrison was misled into believing that a solution was only 60 days away and that WCRSA was going to help Harrison.

29. Upon information and belief, WCRSA on numerous occasions represented to Harrison that that a resolution in Harrison's best interest was imminent.

30. In or about June of 2008, Harrison learned that WCRSA had adopted a policy regarding private collector systems. That policy, however, applied to sewer service requested within the WCRSA service area that was outside of the service area of any sewer subdistrict.

31. Harrison was annexed to the Metro subdistrict at the time of the WCRSA's new policy announcement.

32. In or about January or February of 2009, WCRSA issued a proposed rate schedule for operating the subject pumping station, but with prices roughly three times the agreement Harrison had with Condor.

FACTS AS TO GRANT ESTATES, LLC

33. Grant placed a parcel of property, Tax Map No. 0602-01-01-023.00 in Greenville County, South Carolina, under contract in or about May of 2007 for the purpose of developing the site for residential use.

34. Subsequent to the parcel being placed under contract, Grant entered a purchase contract for 48 lots in the subject subdivision, which was contingent upon sewage services being provided.

35. In or about May of 2007, WCRSA provided Harrison Partners with WCRSA's requirements to accept sewer flow from the subject site. The requirements did not set out any special ownership or operating requirements for the pumping station or state that such requirements would be different than what they had been in the past.

36. The subject property closed in June of 2007, and, on or about the following day, Grant received preliminary approval from the Greenville County Planning Commission, which expressly required that the subject pumping station and force main "are to be owned and maintained by a company regulated by the Public Service Commission such as Condor or United Utilities."

37. Upon information and belief neither WCRSA nor Metro are regulated by the PSC.

38. Upon information and belief, both Condor and United Utilities are regulated by the PSC.

39. Grant purchased the land in question for the price at which it sold based on, among other things, the capacity of WCRSA to provide sewage services to the respective properties.

40. Grant submitted its petition to be annexed into the Metro subdistrict in September of 2007, and that annexation was approved in November 2007.

41. From June 2007 through December 2007, the civil engineer hired by Grant to obtain permits for the project, was in frequent e-mail contact with WCRSA, but it was never stated that Condor or United Utilities would not be allowed to own and operate the pumping system, as is and has been the industry standard.

42. In or about December of 2007, Grant provided WCRSA with a check to pay for WCRSA's review of Grants' plans.

43. Upon information and belief, WCRSA cashed the Grants' check, but failed to review the subject plans.

44. In or about December of 2007 WCRSA informed Grant that the plans could not be reviewed until the board met to determine how pumping stations would be addressed in the future.

45. Despite the fact that the subject project was on-going and not in the future, and despite the fact WCRSA had accepted funds from Grant for a plan review, WCRSA refused to conduct a plan review of the project.

46. To no avail, Grant met with both WCRSA and Metro several times from December of 2007 through March of 2008 in an attempt to have WCRSA and Metro honor their agreement with Grant.

47. WCRSA repeatedly relayed to Grant during the December 2007 to June 2008 time period that it was confident that any new policy relating to pumping stations would "grandfather" in the Grant project, along with others.

48. In June of 2008, Grant was annexed to the Metro subdistrict.

49. Subsequent to the annexation, in or about June of 2008, Grant learned that WCRSA had adopted a policy regarding private collector systems. That policy, however, applied to sewer service requested within the WCRSA service area that was outside of the service area of any sewer subdistrict.

FACTS RELATING TO ALL PLAINTIFFS

50. Defendants' actions have resulted in the costs of developing the land for sale and to maintain the sewer system after sale being too high to be economically profitable.

51. Defendants further informed Plaintiffs that they had to contribute funds for a future upgrade and replacement of their pump systems. Upon information and belief, this money would not be held in escrow until such time as the repair or replacement was necessary, but would instead be placed into a general fund to be used at Defendants' discretion.

52. The amount demanded for the replacement fund would increase the cost of the planned residential lots to such an extent that they could not be reasonably or competitively sold.

53. Upon information and belief, the actual replacement cost is exponentially less than the figure cited by Defendants.

54. The Plaintiffs purchased the properties at a per acre price that reflected the availability of sewer hook-ups and with the understanding that a third-party contractor could operate the pumping station, this was directly due to assertions by WCRSA and Defendants' actions to the contrary are a direct and proximate cause of the Plaintiffs' damages.

55. As a direct and proximate result of the Defendants' actions Plaintiffs have been forced to breach contracts with third parties.

56. As a direct and proximate result of Defendants' actions the Plaintiffs have suffered a total loss of the properties' value for its intended use.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

57. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

58. Through the Defendant WCRSA's oral and written communications, and through the conduct of both the Defendant WCRSA and the Plaintiffs, a contract was formed.

59. Plaintiffs and Defendant WCRSA, through conduct and words, came to a meeting of the minds regarding all essential and material terms of the agreement.

60. At all relevant times, there existed among developers of South Carolina a long established custom or usage by which receipt of a letter of capacity represents a commitment by WCRSA to provide sewage hook-ups and an understanding that a third-party quasi-governmental entity, like Condor, could operate the pump station.

61. The standard industry procedure is to begin site work upon receipt of a sewer letter of capacity. Once such a letter has been issued by WCRSA there is not a question of service being provided if the site is built to the specifications required by DHEC and WCRSA.

62. This custom or usage was known by both Plaintiffs and Defendants.

63. At the specific instance and request of the Plaintiffs, and for their use and benefit, the Defendant WCRSA furnished capacity letter for and to the Plaintiffs. In or about June 2007, WCRSA did issue such capacity letters to the Plaintiffs.

64. As part of the understanding between the parties, WCRSA understood that the Plaintiffs would begin site work on the properties on the condition that WCRSA would then provide sewer hook-up to the properties at a reasonable cost and that Condor, or a similar entity, would operate the pumping stations.

65. Defendant WCRSA issued the letters of capacity to the Plaintiffs with the knowledge or reason to know that the Plaintiffs expected this to constitute a promise to provide service with an understanding that a third-party would operate the pumping station.

66. Plaintiffs relied upon this promise in purchasing the properties and in beginning site work in preparation for sewer hook-ups and had already expended substantial amounts of money prior to WCRSA's denials and demands.

67. Prior to WCRSA's denials and demands the Plaintiffs submitted plans to WCRSA with payment for review. WCRSA accepted the payments but refused or failed to review the plans.

68. Defendant WCRSA has breached its contracts with the Plaintiffs by refusing to recognize the existence of said contracts and by imposing the conditions required for services which were inconsistent with the existence of the contract.

69. This breach constitutes a failure to perform the promise which forms a whole part of the contract.

70. Defendant WCRSA has also breached the implied covenants of good faith and fair dealing that neither party will do anything which will injure the right of the other to receive benefits of agreement.

71. The Defendant WCRSA's breach entitles the Plaintiffs to recover actual, consequential, and punitive damages in an amount to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract with a Fraudulent Act)

72. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

73. Defendant WCRSA's actions towards the Plaintiffs were dishonest; Defendant WCRSA knew it would not offer sewer hook-ups to the Plaintiffs' properties absent a condition denying third-party operations of the pumping stations.

74. Defendant WCRSA allowed the Plaintiffs to invest substantial sums of money into the development of the properties with the knowledge that the Plaintiffs would be unlikely to recover said monies in the event that the contract was breached and thus left with no choice but to pay whatever price WCRSA decided to impose.

75. WCRSA's fraudulent conduct was separate and distinct from the act constituting the breach.

76. The Defendant WCRSA's breach entitles the Plaintiffs to recover actual, consequential, and punitive damages in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment)

77. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

78. The Plaintiff Harrison performed survey work that was of benefit to WCRSA for no payment.

79. Defendant WCRSA should have reasonably expected to pay for such services as provided by the Plaintiff Harrison.

80. As a result of the Plaintiff Harrison's work the Defendant WCRSA has been unjustly enriched in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION

(Negligence)

81. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

82. The Defendants owed a duty of care to the Plaintiffs the standard of which can be established by common law and industry standards.

83. Defendant WCRSA issued the letters of capacity to the Plaintiffs with the knowledge or reason to know that the Plaintiffs expected this to constitute a promise to provide service and the understanding that a third-party would operate the pumping stations.

84. By failing to warn the Plaintiffs that they would not be allowed to operate the pumping station independent of the Defendant WCRSA the Defendants have breached their duty of care to the Plaintiffs.

85. It was reasonably foreseeable that the Plaintiffs, as developers of the properties who were unaware of the intentions of the Defendants, would be injured and as a direct and proximate result of the Defendants' behavior the Plaintiffs have suffered the injuries described in this Complaint.

86. The Defendants acts and omissions were reckless, willful, wanton and, as a result, negligent, grossly negligent, and reckless. As such the Plaintiffs are entitled to actual, punitive, and consequential damages in an amount to be determined at trial.

AS A FIFTH CAUSE OF ACTION

(Negligent Misrepresentation)

87. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

88. The Defendants made the false statements describe herein in the preceding paragraphs knowing and intending that the Plaintiffs would purchase and improve the properties in reliance of those false statements.

89. The Defendant WCRSA had a pecuniary interest in making the representation to the Plaintiffs. The Defendants allowed the Plaintiffs to expend substantial amounts of money in improving the properties and deliberately placed the Plaintiffs in a position where the Plaintiffs would have no choice but to pay the exorbitant sums WCRSA planned to charge for the operation of the pumping stations.

90. The Defendants owed a duty of care to the Plaintiffs to see that truthful information was communicated to the Plaintiffs and the Defendants breached that duty by failing to exercise due care.

91. The Plaintiffs justifiably relied on the representations of the Defendants in both the purchase and the improvements undertaken on the properties and as a directly and proximate result of this reliance the Plaintiffs suffered pecuniary losses.

92. The actions of the Defendants entitle the Plaintiffs to recover actual, consequential, and punitive damages in an amount to be determined at trial.

AS A SIXTH CAUSE OF ACTION
(Interference with Contractual Relations)

93. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

94. The Plaintiffs had a valid contract with Condor as described in the preceding paragraphs of this Complaint.

95. Plaintiff Grant had a valid sales contract as described in the preceding paragraphs of this Complaint.

96. Plaintiff Harrison had a valid option contract as described in the preceding paragraphs of this Complaint.

97. At all times relevant to this action the Defendant WCRSA knew or should have known of the contract between the Plaintiffs and Condor.

98. At all times relevant to this action the Defendant WCRSA knew or should have known of the contract between the Plaintiffs and the purchasers of the sub-divided lots.

99. By forbidding the operation of the pumping systems by a third-party the Defendants intentionally procured the breach of the contract between the Plaintiffs and Condor.

100. But for the unjustified actions of the Defendants the contractual relations between the Plaintiffs and Condor would have continued.

101. By the price which the Defendants imposed for their services, the replacement fund they required, and the ensuing delays the Defendants intentionally procured the breach of the contract between the Plaintiffs Harrison and Grant and the purchasers.

102. But for the unjustified actions of the Defendants the contractual relations between the Plaintiffs Harrison and Grant and the purchasers would have continued.

103. The Defendants' interference with the contractual relations of the Plaintiffs directly and proximately caused the injuries discussed in this Complaint.

104. The actions of the Defendants entitle the Plaintiffs to recover actual, consequential, and punitive damages in an amount to be determined at trial.

FOR A SEVENTH CAUSE OF ACTION
(Civil Conspiracy)

105. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

106. The Defendants Orvin and Bishop acted in concert in the prosecution of the unlawful conduct described in the preceding paragraphs of this Complaint.

107. Through their respective positions at ReWa the Defendants Orvin and Bishop, along with the Defendant WCRSA, engaged in anti-competitive behavior.

108. Through their respective positions at ReWa the Defendants Orvin and Bishop, along with the Defendant WCRSA, conspired to place WCRSA in a monopoly position which would enable WCRSA to extract high rents and stifle competition.

109. The acts of the Defendants were perpetrated with the object to damage the businesses of the Plaintiffs and force them into a position where they would have no choice but to comply with the unreasonable demands of the Defendants.

110. As a result of the conspiracy present between the Defendants the Plaintiffs were damaged as described within this Complaint.

111. The conspiracy between the Defendants entitles the Plaintiffs to recover actual, consequential, and punitive damages in an amount to be determined at trial.

FOR AN EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

112. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

113. The financial requirement that WCRSA alleged to Harrison and Grant as necessary for future upgrades and replacement of the pump system was not to be held in escrow but was to be placed into a general fund to be used at the Defendants' discretion.

114. The financial requirement that WCRSA alleged to Harrison and Grant as necessary for future upgrades and replacement of the pump system constitutes a capital improvement tax.

115. Upon information and belief Defendant WCRSA does not have the authority to charge a tax as a condition of sewer service and the capital improvements tax is unconstitutional.

116. The Plaintiffs are entitled to a determination that the Defendants' tax is unconstitutional.

FOR A NINTH CAUSE OF ACTION
(Writ of Mandamus)

117. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

118. Defendants WCRSA and Metro have a duty to provide sewer service to the Plaintiffs.

119. The nature of the Defendants' duty of providing sewer service is ministerial.

120. The Plaintiffs have a legal right to sewer service under the terms of their agreements with the Defendants WCRSA and Metro and discharge of the Defendants' duty is necessary to protect the rights of the Plaintiffs.

121. The Plaintiffs lack any other legal remedy against the Defendants.

122. A writ of mandamus should be issued compelling Defendants WCRSA and Metro to provide sewer service.

FOR A TENTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)

123. The Plaintiffs incorporate herein by reference each and every allegation contained in the above paragraphs with the same force and effect as though fully set forth here.

124. The Defendants WCRSA and Metro have engaged in the following unlawful, unfair, or deceptive practices in the conduct of trade commerce, in violation of South Carolina Code Section 39-5-10 *et seq.*

- a. *Unreasonably delaying approval of the Plaintiffs projects while the Defendants considered and voted on a resolution to allow WCRSA to receive revenue from the operation of the pumping stations*
- b. *By charging the Plaintiffs exorbitant rates to run the pumping stations.*
- c. *By engaging in the anti-competitive conduct of eliminating the competition, monopolizing the market, charging unreasonably high rates, and arbitrarily charging a capital improvement tax as a condition of sewer service.*

125. These unfair and deceptive practices have the potential for repetition and as such have had an adverse impact upon the public interest.

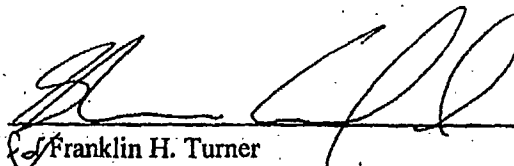
126. As a direct and proximate result of the Defendants' unfair and deceptive practices the Plaintiffs have sustained the damages described in this Complaint.

127. The Defendants' actions entitle the Plaintiffs to recover actual, consequential, and punitive damages in an amount to be determined at trial.

128. Additionally, the Plaintiffs are entitled to treble damages and reasonable attorneys fees for the aforementioned conduct of the Defendants because the Defendants willfully violated the South Carolina Unfair Trade Practices Act in that they knew or should have known such conduct violated the South Carolina Unfair Trade Practices Act.

WHEREFORE, Plaintiffs Harrison and Grant demand a jury trial and pray for judgment against the Defendants WCRSA, Orvin, Bishop, and Metro in a sum to be determined by the fact finder, for the costs of this action, any applicable punitive damages, and for such other and further relief as this court may deem just and proper. In the alternative the Plaintiffs demanded that this Court reverse Defendant WCRSA's decision and direct the Defendants to allow the

Plaintiffs to privately operated the pumping stations and any such equitable relief as this court
may deem just and proper.



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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Harrison Partners, LLC & Grant
Estates, LLC,

Plaintiffs,

vs.

Western Carolina Regional Sewer
Authority, Raymond Orvin, Renewable
Water Resources, Brian Bishop, JD
Martin, Metro Sewer Subdistrict, Joe
Thompson, and Mike Dickson,

Defendants.

Civil Action No. 2009-CP-23-7710

ANSWER
(Jury Trial Demanded)

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Defendants, Western Carolina Regional Sewer Authority, now known as Renewable Water Resources ("ReWa"), Raymond Orvin ("Orvin"), Brian Bishop ("Bishop"), and JD Martin ("Martin") (all treated collectively as "ReWa"), responding to Plaintiffs' Complaint, would respectfully show the Court as follows:

FOR A FIRST DEFENSE TO THE COMPLAINT

1. Unless specifically admitted, qualified, or otherwise explained, ReWa denies all allegations set forth in Plaintiffs' Complaint. Responding to Paragraph 1 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

2. Responding to Paragraph 2 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

3. Responding to Paragraph 3 of the Complaint, ReWa would show that it is a corporate body politic in the State of South Carolina and formerly operated as Western Carolina Regional Sewer Authority.

4. Responding to Paragraph 4 of the Complaint, ReWa would show that it formerly existed under the name style Western Carolina Regional Sewer Authority, but now exists as Renewable Water Resources. ReWa's Board of Directors contains nine (9) members. All remaining allegations contained in Paragraph 4 are denied.

5. Upon information and belief, the allegations contained in Paragraph 5 of the Complaint are admitted.

6. Responding to Paragraph 6 of the Complaint, ReWa admits Orvin was employed, and continues to be employed, by ReWa as the Director of Operations. All remaining allegations contained in Paragraph 6 of the Complaint are denied.

7. Responding to Paragraph 7 of the Complaint, ReWa admits Brian Bishop works for ReWa as an engineer. Bishop resides in Greenville County, South Carolina. All of the remaining allegations contained in Paragraph 7 are denied.

8. Responding to Paragraph 8 of the Complaint, ReWa admits JD Martin serves on ReWa's Board. Martin lives in Greenville County, South Carolina. All of the remaining allegations contained in Paragraph 8 are denied.

9. Responding to Paragraph 9 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

10. Responding to Paragraph 10 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

11. Responding to Paragraph 11 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

12. Responding to Paragraph 12 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

13. Responding to Paragraph 13 of the Complaint, the Paragraph's allegations lack specificity such that ReWa can properly investigate the same. Accordingly, as Paragraph 13 relates to ReWa, the Paragraph's allegations are denied. All of the remaining allegations contained in Paragraph 13 are denied.

14. Responding to Paragraph 14 of the Complaint, ReWa admits that sufficient plant capacity exists to serve the subdivision proposed by Harrison. All of the remaining allegations contained in Paragraph 14 are denied.

15. Responding to Paragraph 15 of the Complaint, ReWa would crave reference to the approvals from Greenville County Planning Commission cited in the Paragraph. To the extent Paragraph 15's allegations differ from the same, they are denied. All of the remaining allegations contained in Paragraph 15 are denied.

16. Responding to Paragraph 16 of the Complaint, ReWa admits the Public Service Commission ("PSC") does not regulate ReWa. The PSC, likewise, does not regulate the Metropolitan Sewer Subdistrict ("Metro"). ReWa constitutes an autonomous body politic with its own legislative authority. All of the remaining allegations contained in Paragraph 16 are denied.

17. Responding to Paragraph 17 of the Complaint, ReWa admits that Condor Environmental, LLC ("Condor"), as a private, for-profit sewer provider, is regulated by the PSC. All of the remaining allegations contained in Paragraph 17 are denied.

18. Responding to Paragraph 18 of the Complaint, ReWa denies asking Harrison to serve a property owned by ReWa. ReWa would show any surveys completed by Harrison were conducted in order to pursue Harrison's proposals for sewer treatment.

19. ReWa denies the allegations contained in Paragraph 19 of the Complaint.

20. Responding to Paragraph 20 of the Complaint, ReWa lacks sufficient information to respond to allegations concerning when Harrison may or may not have finalized contracts with third parties and, therefore, denies the same. In relation to the allegations concerning ReWa, the Paragraph's allegations lack sufficient specificity to allow ReWa to investigate the same. As a consequence, all of the remaining allegations contained in Paragraph 20 are denied.

21. Responding to Paragraph 21 of the Complaint, ReWa denies that any monies paid by Harrison were solely to review plans.

22. ReWa denies the allegations contained in Paragraph 22 of the Complaint.

23. ReWa denies the allegations contained in Paragraph 23 of the Complaint.

24. ReWa denies the allegations contained in Paragraph 24 of the Complaint.

25. Responding to Paragraph 25 of the Complaint, ReWa lacks sufficient information to respond to allegations concerning when Harrison may or may not have learned of a specific material fact and, therefore, denies the same. All of the remaining allegations contained in Paragraph 25 are denied.

26. ReWa denies the allegations contained in Paragraph 26 of the Complaint.

27. ReWa denies the allegations contained in Paragraph 27 of the Complaint.

28. ReWa denies the allegations contained in Paragraph 28 of the Complaint.

29. ReWa denies the allegations contained in Paragraph 29 of the Complaint.

30. Responding to Paragraph 30 of the Complaint, ReWa admits that it enacted a regulation disallowing connection from any collector sewer system owned by more than one user. To the extent Paragraph 30's allegations differ from the same, they are denied.

31. Responding to Paragraph 31 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

32. Responding to Paragraph 32 of the Complaint, ReWa admits that it has, on several occasions, made various commercial offers to Harrison in an effort to assist Harrison in resolving service issues. Harrison has refused the alternate scenarios proposed by ReWa. To the extent Paragraph 32's allegations differ from the same, they are denied.

33. Responding to Paragraph 33 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

34. Responding to Paragraph 34 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph and, therefore, denies the same.

35. Responding to Paragraph 35 of the Complaint, ReWa would crave reference to any written requirements cited in the Paragraph. To the extent the Paragraph's allegations differ from the same, they are denied. All of the remaining allegations contained in Paragraph 35 are denied.

36. Responding to Paragraph 36 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

37. Responding to Paragraph 37 of the Complaint, ReWa admits that it constitutes an autonomous legislative body and is not regulated by the PSC.

38. Responding to Paragraph 38 of the Complaint, it is admitted that Condor and United Utilities are both private, for-profit companies that are regulated by the PSC.

39. Responding to Paragraph 39 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

40. Responding to Paragraph 40 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

41. Responding to Paragraph 41 of the Complaint, ReWa craves reference to the e-mails cited in the Paragraph, if any exist. All allegations differing from the e-mails cited in Paragraph 41 are denied. All of the remaining allegations contained in Paragraph 41 are denied.

42. Responding to Paragraph 42 of the Complaint, ReWa denies that any payment of funds by Grant was solely for the review of plans.

43. ReWa denies the allegations contained in Paragraph 43 of the Complaint.

44. Responding to Paragraph 44 of the Complaint, ReWa admits that no plans containing private pump stations could be approved until ReWa's Board met to determine how pump stations would be addressed in the future. To the extent Paragraph 44's allegations differ from the same, they are denied.

45. ReWa denies the allegations contained in Paragraph 45 of the Complaint.

46. Responding to Paragraph 46 of the Complaint, ReWa admits that it met with Grant several times during the time period prescribed by the Paragraph. ReWa

denies ever having an agreement with Grant. All of the remaining allegations contained in Paragraph 46 are denied.

47. ReWa denies the allegations contained in Paragraph 47 of the Complaint.

48. Responding to Paragraph 48 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

49. ReWa denies the allegations contained in Paragraph 49 of the Complaint.

50. ReWa denies the allegations contained in Paragraph 50 of the Complaint.

51. Responding to Paragraph 51 of the Complaint, ReWa admits that Plaintiffs would have had to contribute funds to insure upgrades and replacements of their pump systems in order to protect the general public.

52. ReWa denies the allegations contained in Paragraph 52 of the Complaint.

53. ReWa denies the allegations contained in Paragraph 53 of the Complaint.

54. Responding to Paragraph 54 of the Complaint, ReWa lacks sufficient information to respond to the Paragraph's allegations and, therefore, denies the same.

55. ReWa denies the allegations contained in Paragraph 55 of the Complaint.

56. ReWa denies the allegations contained in Paragraph 56 of the Complaint.

57. Responding to Paragraph 57 of the Complaint, ReWa denies the Paragraph consistent with its prior responses to Plaintiffs' allegations.

58. ReWa denies the allegations contained in Paragraph 58 of the Complaint.

59. ReWa denies the allegations contained in Paragraph 59 of the Complaint.

60. ReWa denies the allegations contained in Paragraph 60 of the Complaint.

ReWa further denies that Condor constitutes a quasi-governmental entity.

61. ReWa denies the allegations contained in Paragraph 61 of the Complaint.

62. ReWa denies the allegations contained in Paragraph 62 of the Complaint.

63. Responding to Paragraph 63 of the Complaint, ReWa craves reference to the capacity letter cited in the Paragraph. To the extent the allegations contained in the Paragraph differ from the same, they are denied.

64. ReWa denies the allegations contained in Paragraph 64 of the Complaint.

65. ReWa denies the allegations contained in Paragraph 65 of the Complaint.

66. ReWa denies the allegations contained in Paragraph 66 of the Complaint.

67. ReWa denies the allegations contained in Paragraph 67 of the Complaint.

68. ReWa denies the allegations contained in Paragraph 68 of the Complaint.

69. ReWa denies the allegations contained in Paragraph 69 of the Complaint.

70. ReWa denies the allegations contained in Paragraph 70 of the Complaint.

71. ReWa denies the allegations contained in Paragraph 71 of the Complaint.

72. Responding to Paragraph 72 of the Complaint, ReWa denies the Paragraph consistent with its prior responses to the Complaint.

73. ReWa denies the allegations contained in Paragraph 73 of the Complaint.

74. ReWa denies the allegations contained in Paragraph 74 of the Complaint.

75. ReWa denies the allegations contained in Paragraph 75 of the Complaint.

76. ReWa denies the allegations contained in Paragraph 76 of the Complaint.

77. Responding to Paragraph 77 of the Complaint, ReWa denies the Paragraph's allegations consistent with its prior responses to the Complaint.

78. ReWa denies the allegations contained in Paragraph 78 of the Complaint.

79. ReWa denies the allegations contained in Paragraph 79 of the Complaint.

80. ReWa denies the allegations contained in Paragraph 80 of the Complaint.

81. Regarding Paragraph 81 of the Complaint, ReWa denies the allegations consistent with its prior responses.

82. Regarding Paragraph 82 of the Complaint, ReWa is informed and believes the Paragraph's allegations constitute a legal conclusion, for which no response is required. To the extent a response is required, ReWa denies the Paragraph's allegations as lacking sufficient specificity to permit a response.

83. ReWa denies the allegations contained in Paragraph 83 of the Complaint.

84. ReWa denies the allegations contained in Paragraph 84 of the Complaint.

85. ReWa denies the allegations contained in Paragraph 85 of the Complaint.

86. ReWa denies the allegations contained in Paragraph 86 of the Complaint.

87. Regarding Paragraph 87 of the Complaint, ReWa denies the Paragraph's allegations consistent with its prior responses.

88. ReWa denies the allegations contained in Paragraph 88 of the Complaint.

89. ReWa denies the allegations contained in Paragraph 89 of the Complaint.

90. ReWa denies the allegations contained in Paragraph 90 of the Complaint.

91. ReWa denies the allegations contained in Paragraph 91 of the Complaint.

92. ReWa denies the allegations contained in Paragraph 92 of the Complaint.

93. Regarding Paragraph 93 of the Complaint, ReWa denies the allegations consistent with its prior responses.

94. ReWa denies the allegations contained in Paragraph 94 of the Complaint.

95. ReWa denies the allegations contained in Paragraph 95 of the Complaint.

96. ReWa denies the allegations contained in Paragraph 96 of the Complaint.

97. ReWa denies the allegations contained in Paragraph 97 of the Complaint.

98. ReWa denies the allegations contained in Paragraph 98 of the Complaint.
99. ReWa denies the allegations contained in Paragraph 99 of the Complaint.
100. ReWa denies the allegations contained in Paragraph 100 of the Complaint.
101. ReWa denies the allegations contained in Paragraph 101 of the Complaint.
102. ReWa denies the allegations contained in Paragraph 102 of the Complaint.
103. ReWa denies the allegations contained in Paragraph 103 of the Complaint.
104. ReWa denies the allegations contained in Paragraph 104 of the Complaint.
105. Regarding Paragraph 105 of the Complaint, ReWa denies the Paragraph's allegations consistent with its prior responses.
106. ReWa denies the allegations contained in Paragraph 106 of the Complaint.
107. ReWa denies the allegations contained in Paragraph 107 of the Complaint.
108. ReWa denies the allegations contained in Paragraph 108 of the Complaint.
109. ReWa denies the allegations contained in Paragraph 109 of the Complaint.

110. ReWa denies the allegations contained in Paragraph 110 of the Complaint.

111. ReWa denies the allegations contained in Paragraph 111 of the Complaint.

112. Regarding Paragraph 112 of the Complaint, ReWa denies the Paragraph's allegations consistent with its prior responses.

113. ReWa denies the allegations contained in Paragraph 113 of the Complaint.

114. ReWa denies the allegations contained in Paragraph 114 of the Complaint.

115. ReWa denies the allegations contained in Paragraph 115 of the Complaint.

116. ReWa denies the allegations contained in Paragraph 116 of the Complaint.

117. Regarding Paragraph 117 of the Complaint, ReWa denies the Paragraph's allegations consistent with its prior responses.

118. ReWa denies the allegations contained in Paragraph 118 of the Complaint.

119. ReWa denies the allegations contained in Paragraph 119 of the Complaint.

120. ReWa denies the allegations contained in Paragraph 120 of the Complaint.

121. ReWa denies the allegations contained in Paragraph 121 of the Complaint.

122. ReWa denies the allegations contained in Paragraph 122 of the Complaint.

123. Regarding Paragraph 123 of the Complaint, ReWa denies the Paragraph's allegations consistent with its prior responses.

124. ReWa denies the allegations contained in Paragraph 124 of the Complaint, including all subparts.

125. ReWa denies the allegations contained in Paragraph 125 of the Complaint.

126. ReWa denies the allegations contained in Paragraph 126 of the Complaint.

127. ReWa denies the allegations contained in Paragraph 127 of the Complaint.

128. ReWa denies the allegations contained in Paragraph 128 of the Complaint.

129. ReWa denies all the allegations contained in the prayer for relief.

FOR A SECOND DEFENSE TO THE COMPLAINT
(Failure to State a Claim)

130. ReWa incorporates its prior responses to Plaintiffs' allegations by reference.

131. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiffs have failed to state a claim for which relief may be granted and the Complaint warrants dismissal.

FOR A THIRD DEFENSE TO THE COMPLAINT
(South Carolina Tort Claims Act)

132. ReWa incorporates its prior responses to Plaintiffs' allegations by reference.

133. Some or all of Plaintiffs' claims are barred by the South Carolina Tort Claims Act.

134. None of the individual Defendants constitute proper parties under the South Carolina Tort Claims Act.

135. Some or all of Plaintiffs' claims for damages are barred by the South Carolina Tort Claims Act.

FOR A FOURTH DEFENSE TO THE COMPLAINT
(Economic Loss Doctrine)

136. ReWa incorporates its prior responses to Plaintiffs' allegations by reference.

137. Some or all of Plaintiffs' claims are barred by the Economic Loss Doctrine.

FOR A FIFTH DEFENSE TO THE COMPLAINT
(Assumption of Risk)

138. ReWa incorporates its prior responses to Plaintiffs' allegations by reference.

139. Some or all of Plaintiffs' claims are barred by the doctrine of assumption of risk.

FOR A SIXTH DEFENSE TO THE COMPLAINT
(Contributory/Comparative Negligence)

140. ReWa incorporates its prior responses to Plaintiffs' allegations by reference.

141. Some or all of Plaintiffs' claims are barred, or reduced, by the doctrines of contributory and/or comparative negligence.

FOR A SEVENTH DEFENSE TO THE COMPLAINT
(Justification)

142. ReWa's incorporates its prior responses to Plaintiffs' allegations by reference.

143. Some or all of Plaintiffs' claims are barred by the doctrine of justification.

FOR AN EIGHTH DEFENSE TO THE COMPLAINT
(Failure to Plead Special Damages)

144. ReWa's incorporates its prior responses to Plaintiffs' allegations by reference.

145. Plaintiffs' claims for special damages are barred under Rule 9, S.C.R. Civ. P. for failure to plead special damages with specificity.

FOR A NINTH DEFENSE TO THE COMPLAINT
(Immunity)

146. ReWa's incorporates its prior responses to Plaintiffs' allegations by reference.

147. Some or all of Plaintiffs' claims are barred by the doctrine of immunity.

FOR A TENTH DEFENSE TO THE COMPLAINT
(Privilege)

148. ReWa incorporates its prior responses to Plaintiffs' allegations by reference.

149. Some or all of Plaintiffs' claims are barred by the doctrine of privilege.

FOR AN ELEVENTH DEFENSE TO THE COMPLAINT
(South Carolina UTPA)

150. ReWa incorporates its prior responses to Plaintiffs' allegations by reference.

151. Some or all of Plaintiffs' claims are barred by S.C. Code § 39-5-140.

FOR A TWELFTH DEFENSE TO THE COMPLAINT
(Privity of Contract)

152. ReWa incorporates its prior response to Plaintiffs' allegations by reference.

153. Some or all of Plaintiffs' claims fail due to the lack of privity of contract.

FOR A THIRTEENTH DEFENSE TO THE COMPLAINT
(Statute of Frauds)

154. ReWa incorporates its prior response to Plaintiffs' allegations by reference.

155. Some or all of Plaintiffs' claims are barred by the statute of frauds.

FOR A FOURTEENTH DEFENSE TO THE COMPLAINT
(Failure to Mitigate)

156. ReWa incorporates its prior response to Plaintiffs' allegations by reference.

157. Some or all of Plaintiffs' claims are barred by Plaintiffs' failure to mitigate their damages.

FOR A FIFTEENTH DEFENSE TO THE COMPLAINT
(Absolute Rights)

158. ReWa incorporates its prior response to Plaintiffs' allegations by reference.

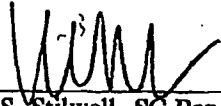
159. Some or all of Plaintiffs' claims are barred by the Absolute Rights doctrine.

WHEREFORE, having answered the Complaint of Plaintiffs, ReWa prays for the following relief:

1. Dismissal of the Complaint with prejudice with fees and costs awarded to ReWa;
2. All such other relief the Court deems necessary and just.

Respectfully submitted,

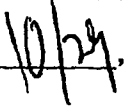
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Greenville, South Carolina

 10/29, 2009

CERTIFICATE OF SERVICE

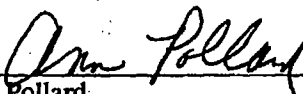
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Western Carolina Regional Sewer Authority, Raymond Orvin, Renewable Water Resources, Brian Bishop, and JD Martin, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same to the following address(es):

Pleadings:

ANSWER

Counsel Served:

Franklin Turner, Esq.
Rogers Townsend & Thomas, PC
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Ann Pollard
Administrative Assistant

Oct. 29, 2009

FILED CLERK OF COURT
GREENVILLE CO. S.C.
OCT 29 2009
P 2:28

ADMINISTRATIVE HEARING
March 22, 2011

1

In Re:
Renewable Water Resources, Inc.
Administrative Proceeding
Concerning Harrison Partners, LLC

COPY

ADMINISTRATIVE HEARING
VOLUME 1

DATE TAKEN: March 22, 2011
TIME BEGAN: 10:00 A.M.
TIME ENDED: 6:39 P.M.
LOCATION: Renewable Water Resources, Inc.
561 Mauldin Road
Mauldin, South Carolina

REPORTED BY: Sheila B. Smith, CVR-CM
GALLAGHER COURT REPORTING
864-234-5744

HEARING OFFICER: Michael D. Glenn, Esquire

864-234-5744

GALLAGHER COURT REPORTING

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ALSO ATTENDING: Ray Orvin
Scott Bolo
Stephen Graef
Brian Bishop
Charles Logue
Margaret Thrasher

(Note: Messrs. Graef and Bishop and Ms. Thrasher were not present after the lunch break.)

ADMINISTRATIVE HEARING
March 22, 2011

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24	attached in a separate binder. Exhibits 1-27 were marked	
25	on 3/22/11, day one of the Administrative Hearing.)	

1 HEARING OFFICER: This is an Administrative Hearing at
2 the Administrative Building of Renewable Water
3 Resources. The style of the case is Harrison
4 Partners, LLC, versus Renewable Water Resources.
5 The parties have furnished me their pleadings and
6 positions in the case, which I have reviewed, and
7 we're here today for that Administrative Hearing.
8 It's my understanding that the Administrative
9 Hearing is a part of the administrative procedure
10 of the Agency and that any appeal from the
11 decision at this hearing would be to the Court of
12 Common Pleas for Greenville County. Is that
13 correct?

14 MR. STILWELL: I think it -- I can't remember.

15 HEARING OFFICER: I'm sorry; I believe it goes to the
16 Board or some -- there's one more administrative
17 step I believe before any appeal would go to the
18 Circuit Court. I believe you're right. Mr.
19 Stilwell is here on behalf of the Agency. Mr.
20 Fulmer here is on behalf of the Petitioner. I
21 have read your pleadings, but I'll be glad to hear
22 any opening statements you'd like to have. I will
23 say for the benefit of the witnesses and the other
24 spectators, even though we'll sort of conduct it
25 like a trial, it'll be a little more relaxed than

1 a normal trial. The attorneys can stand or sit
2 and refer to me as Mike or Glenn or Hearing
3 officer or whatever they'd like, and we'll try to
4 keep it as informal as we can. But the purpose of
5 it is for me to get the facts from each side what
6 you want me to know to decide this case. I will
7 do that as expeditiously as possible. We'll
8 decide during the day how long we'll work today
9 and when we'll take breaks and lunch and so forth
10 and then continue tomorrow to hopefully finish the
11 case. All right. Mr. Fulmer?

12 MR. FULTON: Thank you. Fulton.

13 HEARING OFFICER: Fulton. I'm sorry.

14 MR. FULTON: That's okay. I figured we might as well
15 get that --

16 HEARING OFFICER: Well, I'm glad you told me that. I
17 had that written correctly here.

18 MR. FULTON: I brought little maps with me today, Mr.
19 Glenn, and Rivers and Lane have been gracious to
20 me and said that I could use that big map. Just
21 as you requested, we're not going to have a
22 compassionate opening statement, but just kind of
23 an orientation of what we're talking about.

24 My client, Harrison Partners -- and I
25 mentioned, this is Mr. Bolo, Scott Bolo, who is

1 the representative of Harrison Partners today,
2 made plans -- had an idea and made plans to
3 develop a subdivision in Greenville County called
4 River Trace. And this is the map that kind of
5 shows where it is near South Harrison Bridge
6 Road, just to orient you to the location, and New
7 Harrison Bridge Road, if you're familiar with
8 that area down south of here in Greenville.

9 And along with all the other things that
10 Harrison Partners did when it was trying to decide
11 about the development, along with all of the other
12 things that go along with development plans, had
13 to do with making sure they could get, you know,
14 roads in there, water service in there, and sewer
15 service, and that's why we're here today, because
16 of the dealings with Rewa and Metro and all of the
17 things that went on with trying to get permits as
18 to how they were going to deal with the sewer
19 service.

20 The original plans -- the original business
21 plans that Harrison Partners drew up included
22 having a company called Condor -- and this is Mr.
23 Gene McCall who's here today. He's going to be
24 our first witness. We're going to let him go
25 first before Mr. Bolo just out of convenience and

1 courtesy to Mr. McCall so he could go about the
2 rest of his day. The plan was for Condor to run a
3 pumping station. Condor is a private contractor,
4 and run a pumping station and then some run some
5 lines up to Rewa up here (indicating). And as I
6 said, this is just kind of a general orientation.
7 And what happened was, between the time that the
8 original plans were made by Harrison Partners and
9 then the original application with Greenville
10 County, and most significantly, the original
11 approach of Rewa -- approach to Rewa about getting
12 permits and getting them allowed and approved by
13 Rewa to use their system, use their plant, our
14 position is -- Harrison Partners' position is that
15 Rewa delayed -- extremely delayed to a significant
16 degree the process which takes in best case three,
17 four, five months to get initial petitions, all
18 the way through approval and even difficult cases
19 takes no more than eight, nine, ten, 11 months,
20 maybe a year if it's real complicated.

21 There was actually a two-year -- and it ended
22 up being three and four-year delay, or at least
23 three-year delay in getting approvals. And in the
24 meantime, Rewa, in the middle of the process --
25 and it's not even in the middle of the process.

1 our position is that well into the process, they
2 changed the rules. They changed the game plan.
3 They changed the requirement. By changing their
4 own regulations, voting as a Board -- and we're
5 going to hear some testimony about how that vote
6 was handled and whether, you know, the changes
7 were done correctly and all that, but in essence
8 came up with some new regulations and said, well,
9 even though it's been done that way using a
10 private contractor to run your pump station, run
11 it up to us, that even though that's the way it's
12 been done for decades, we're going to change our
13 rules right in the middle of your application
14 process and say that you can't have that anymore,
15 that even though you have built your business
16 plan, you have invested and committed to millions
17 of dollars worth of development, that we're now
18 going to change our mind and say that we have to
19 run and own your system only, we being Rewa.

20 In addition to Harrison Partners with regard
21 to River Trace and during this time period that
22 Rewa changed the regulation to prohibit that kind
23 of private running and owning, there were other
24 developments that had applications in the
25 pipeline. And you might hear me say throughout

1 the next couple days, in the pipeline. That's
2 kind of the shorthand that we've been using in our
3 depositions, in our discussions, to refer to seven
4 or eight other developments that at the time that
5 Rewa instituted this change in policy which
6 prohibited the kind of development that was
7 anticipated and the kind of sewer system that was
8 anticipated, there were seven or eight folks that
9 were well into the pipeline, and some of them were
10 at different stages. Some of them were kind of
11 new to the pipeline with application to Rewa.
12 Some, like Harrison Partners and River Trace, were
13 pretty far along. And our position at the time
14 during Board meetings and meetings with folks from
15 Rewa and other meetings was that you can't change
16 that. First of all, it's wrong to not allow
17 private ownership in the chain. We don't think
18 that's a good regulation and we don't think it's
19 right that Rewa changes its own regulations to
20 force everybody to just use only them. In and of
21 itself we believe, and many others believe, that
22 it was wrong. The change itself was wrong, but at
23 the very least, this is what we said. At the very
24 least, if you're going to make this change, please
25 don't make it retroactively applicable to us

1 because we have developed a very sophisticated
2 business plan. We have committed millions of
3 dollars based upon costs that we anticipated,
4 that we contracted for, and that we have signed
5 mortgages for large amounts of money. And now
6 here we are in the middle of our process and you
7 are changing it on us and at the very least, those
8 of us who have proceeded under one set of rules
9 should be allowed to proceed under those rules and
10 be, if nothing else, grandfathered in to the old
11 policy which would allow us to proceed under our
12 plan and one of the other things that significant.

13 And so that's why we're here today, Mr.
14 Glenn, with you. Rewa never did complete the
15 review and finalization and approval of the
16 applications and the requests put forth by
17 Harrison Partners, and we're here today asking you
18 to find -- to listen to all of the evidence and
19 hear all the testimony, consider the change in
20 policy and the behavior of the Rewa folks, and
21 make a decision that the way that Rewa instituted
22 this change in policy and the way that Rewa dealt
23 with Harrison Partners -- we're here today only
24 about Harrison Partners. We believe that
25 everybody in the pipeline got treated badly, but

1 what we're asking you today and tomorrow to
2 determine is that the way that Rewa dealt with
3 Harrison Partners was in contradiction to their
4 own policies. Their application of the change was
5 improperly done, and most significantly, that
6 there was such a long period of time from the
7 initial application and a long delay of, well,
8 let's see -- let's go up this route. Let's see
9 another route. No, now we decide we're going to
10 go this route, and a lot of hoops that Rewa asked
11 Scott and his partners to jump through -- Mr. Bolo
12 and his partners to jump through that caused an
13 enormous delay so that from the initial
14 application back in '06 -- or the initial approach
15 back in '06, that when the change in regulation
16 was finally waived by Rewa, oh, no, you can't do
17 it, there would have been plenty of time before
18 the change in regulation to have approved the
19 route and let them build it the way they wanted
20 to.

21 Our position is that not only was the change
22 applied midstream improper, but that the very
23 actions of Rewa itself in delaying Harrison
24 Partners in their process, looking at different
25 routes, making them survey different routes, long

1 periods of delay which with Harrison Partners
2 cooperated as well as it could each time, and then
3 by the time the change in regulation came and they
4 waived it and said, no, sorry, can't do it your
5 way, that their own behavior, their own delay had
6 done that.

7 HEARING OFFICER: Are you telling me that ReWa did at
8 some point agree to grandfather them in?

9 MR. FULTON: No. That's our point is that they did not,
10 and it was passionately pled, not only by Harrison
11 Partners, but by many other folks that were in the
12 pipeline, so to speak, if you'll let me continue
13 to use that shorthand, and our position is that
14 ReWa at some point in time -- we're not sure
15 exactly when, but before it passed its
16 regulations, they had it in their mind, and you'll
17 hear testimony today that they determined before
18 even the regulation that they were not going to
19 allow anymore private contractors, which was the
20 business plan by Harrison Partners and some other
21 developments you're going to hear about. They
22 decided that, we are not going to allow it
23 anymore, and they intended to frustrate the plans
24 of those already in the pipeline even before the
25 regulation was changed. And that was their whole

1 plan was to change the regulations to essentially
2 take the ability of our folks to do it the way
3 that they had planned and to take away the rights
4 of -- and Mr. McCall is here because he was -- his
5 company was deprived of the contract that was
6 going to run it, and took away his rights to his
7 business.

8 So anyway, I guess I got a little bit more
9 argumentative than I had planned to, and I
10 apologize. I said I was just going to kind of
11 give you a look at what we're talking about, but
12 what we're here today to ask you to do, Mr. Glenn,
13 is to see by the testimony and evidence that
14 Rewa's actions and the change in the regulations
15 and the way they applied that change was improper,
16 and that they should have grandfathered the
17 Harrison Partners project in, allowed them to
18 develop it under the initial plans without being
19 under the changed regulations, and in so doing --
20 and in not doing so, and stretching it out so long
21 and then finally not letting them do it, that it
22 caused the development to fail. It never
23 happened. It never went forward. It was --
24 you'll hear evidence that these guys had a
25 contract with the builder to come in and take down

1 the lots. These guys had a contract with Mr.
2 McCall's company to come in and build a sewer.
3 They put a big mortgage on the property and all
4 of a sudden, as any businessman knows, time is
5 money. And for a developer who's putting a big
6 investment, signing a big mortgage, and making big
7 plans, spending a lot of money on engineering and
8 preparation, that if you start stretching things
9 out a year, two years, three years, still can't
10 get sewer approval, still can't get sewer
11 approval, and finally it failed.

12 Now, you're also going to hear some testimony
13 that Rewa, under its new proposed regulations and
14 the newly-enacted regulations, the change, they
15 gave Harrison Partners and some other folks
16 proposals. They said, all right, look, you can't
17 do it your way. You can't let Condor run your
18 pump station, but we'll do it for you. Under our
19 new regulations, we'll do it for you, and they put
20 together some costs. And the costs was at least
21 twice as much, so here's these guys putting
22 together a business model, trying to figure out
23 how much they can sell a lot for, how much they're
24 going to charge for homeowners association dues,
25 figuring everything exactly -- or at least close

1 to what their plan is, and the only alternative
2 that Rewa offers them is at least twice as much
3 for them to run the system up there. It was
4 financially unviable for Harrison Partners. The
5 development never moved forward, and Harrison
6 Partners -- well, they got foreclosed on by the
7 bank and now have -- not only is the project dead,
8 didn't go forward, and all of the people who could
9 have worked on that project went forward, but
10 Harrison Partners itself has been extremely harmed
11 in that not only did it not get to do the
12 development, but they now have a large obligation
13 on a foreclosed mortgage.

14 So I guess that's kind of an overview, and
15 we're asking you to find that Rewa acted
16 improperly in those things. Thank you.

17 HEARING OFFICER: Let me ask you one question. Is it
18 your position that I can award any type of relief
19 other than to say it was proper or it wasn't
20 proper?

21 MR. FULTON: Well, my understanding about your role at
22 this stage in the process is that you can rule as
23 the Administrative Hearing Officer that Rewa
24 acted improperly and should have granted the
25 application, should have approved the plans as

1 proposed by Harrison Partners. And so your
2 finding today would be that that was improperly
3 done. It's not our understanding that this
4 Administrative procedure --

5 HEARING OFFICER: You don't think I can award damages or
6 anything like that?

7 MR. FULTON: -- can award damages, no.

8 HEARING OFFICER: Only determine whether the actions
9 were proper. That's what you think I can do?

10 MR. FULTON: That's our understanding of this level of
11 the Administrative proceedings. Now, what you'll
12 probably hear testimony about is that there was a
13 lawsuit filed, and that as a result of that
14 lawsuit being put on hold or dismissed, it was
15 sent back for this Administrative procedure. So
16 there will be, you know, subsequent things
17 happening, but as far as your role today, our
18 understanding is that what we would like you to do
19 after hearing the evidence -- seeing the evidence
20 and hearing the testimony, is determine that in
21 fact that Rewa's actions were improper under its
22 own regulations and under South Carolina law and
23 make such a ruling. Thank you.

24 HEARING OFFICER: All right. Thank you. Mr. Stilwell.

25 MR. STILWELL: Mr. Glenn, I appreciate Gene giving us

1 that last part, especially because we all suffer
2 from the lapsed time he talked about. And part
3 of it is there is this Administrative proceeding
4 which Judge Miller, about this time last year,
5 found that Mr. Bolo, before he could proceed with
6 this lawsuit, needed to exhaust his administrative
7 remedies and he referred to our enforcement
8 procedure.

9 And under that enforcement procedure, if you
10 want to start at the hearing, you're supposed to
11 file a pleading. We still don't have that
12 pleading. You're also supposed to request that
13 administratively 15 days after the denial of a
14 permit, which is what we're here for. That's what
15 Judge Miller found. This is about the denial of
16 a permit. We're so grossly late on that, I don't
17 even know what to do with it, but it grossly
18 complicates our effort here of looking at things
19 that happened in '06, '07, '08, '09, and '10. The
20 lack of a pleading also causes us some trouble in
21 framing the issues. But Judge Miller told us,
22 you're coming down here because your case is about
23 a denial of an application, and this was the gist
24 of our argument with Judge Miller. "Judge, what
25 application? What exactly -- we looked at so

1 many variations of serving this property, what
2 application is it he's saying he was entitled to
3 and when and where did he make it, and where are
4 the plans?" And the second thing was, where did
5 we deny it, because we offered service to this
6 property over and over and over. And there's
7 going to be, of course, an argument between us
8 about whether we were trying in good faith to get
9 service to that property or whether we were trying
10 to delay them. And there will be a lot of
11 different testimony about the different ways we
12 looked at that property.

13 I want to point out, too, on the
14 grandfathering issue that the issue about whether
15 they should have been grandfathered or not and
16 whether they had rights to be grandfathered under
17 the regulation or after, they're position they're
18 proposing is completely contrary to the law of
19 vesting in South Carolina. I mean just because
20 you're in the pipeline, the law is clear, you've
21 got no vested rights, and there's a ton of law on
22 that.

23 I want to just set a little more context on
24 why this project is so complicated. First of all,
25 you'll hear testimony about this idea that they

1 worked on it for three or four years. We'll show
2 that for -- they walked in in '06 talking about
3 this project and for a year and a half they didn't
4 do anything with it with us. They never even
5 knocked on the door to come in here and tell us
6 what it is they wanted to build. So if it took a
7 number of years, we'll talk about whose problem
8 that is. And then I want to talk about why it is
9 it was such a complicated project because there
10 may be testimony from this side, oh, this is just
11 your run of the mill project. And literally on
12 our side, you'll hear testimony that this is a
13 unique project. My dad always told me, be careful
14 how you use the word unique because it means one
15 of a kind. It's a much abused word. But you'll
16 find my people saying this is the hardest project
17 we ever worked on. And I want to take a little
18 time now to show you why, and this is just in
19 order of a little more orientation of what's going
20 on down here. (Speaking to Mr. Fulton): Gene,
21 this is a map of the county.

22 This is a map of the county, which is like
23 the blowout of what you're looking at there. And
24 if you'll look -- if you'll allow me, down at the
25 bottom here, this is the plant. This is the water

1 plant which is reflected right here (indicating),
2 the wastewater treatment plant. So the gist of
3 this map is to show you this -- and it's hard to
4 see with the faint light, but these two
5 neighborhoods are actually faintly in gray on the
6 bottom of this map. You can see them right here.

7 HEARING OFFICER: Were both of these neighborhoods
8 involved in the Plaintiff's project?

9 MR. STILWELL: That's exactly where I'm going, because
10 that's something that makes this very complicated.
11 When it first came in, this is the neighborhood
12 that brings us here today. This was the first
13 one, and then rapidly thereafter, a second one
14 shows up. And so their proposal was to come in
15 the back of the wastewater treatment plant and get
16 treated by us directly because why? This is what
17 I was saying. This is way down in Greenville
18 County. This is beyond -- this is back when the
19 economy was red hot. Then these neighborhoods
20 become to look vital, but in the midst of the
21 great recession that came after that, these are
22 the smoking ruins of development in Greenville
23 County. If you look at a satellite map, you'll
24 see up in here where the Metro subdistrict is,
25 you'll see pipe farms of neighborhoods that were

1 laid out and never built. So these were on the
2 edge of development, and the idea was this land is
3 a great purchase because there is no sewer down
4 here. You can get this land for cheap. The sewer
5 stops right there, so first off, right off, why is
6 this hard? There's no sewer down here. There's
7 no subdistrict down here. So the idea was we were
8 going to pump sewer uphill to the plant. Okay?
9 So it's going against gravity.

10 You'll hear testimony that pump stations --
11 we'll talk about pump stations almost exclusively
12 in here. Pump stations are like ten percent of
13 the development that happens. So a normal project
14 is everything runs downhill. You gravity to
15 somebody, and he's gravitying to somewhere else,
16 and it's all flowing downhill to the wastewater
17 treatment plant. This is the complete opposite of
18 that. So they're going to pump from one
19 neighborhood to another, and eventually -- and we
20 tell them, you've got to coordinate how you're
21 going to do this. You two neighborhoods got to
22 get together and figure out how you're going to do
23 that. That ain't easy. As a matter of fact, I
24 don't know if we'll ever determine what
25 engineering solution they determined they wanted

1 to take in the plant. Are they going to go
2 together in a Y? Are they going to go together in
3 a double barrel? There were so many things
4 discussed about. The question is, what did they
5 ever settle on? What is it that they wanted
6 grandfathered?

7 Mr. Bolo is not only a principal in the
8 company, he is the project engineer. He's the guy
9 who's supposed to be designing this. Now, he's
10 not designing this guy's plan. He's not designing
11 this guy's neighborhood, but he's the guy who's in
12 charge of showing this is how we want to go inside
13 your plant.

14 HEARING OFFICER: River --

15 MR. STILWELL: Riversway.

16 HEARING OFFICER: Riversway was owned by someone else?

17 MR. STILWELL: This is Windsor/Aughtry, Bo Aughtry's
18 company. So sometimes we'll call this Harrison
19 Partners, which is the company that owns it, and
20 we usually call that Windsor/Aughtry.

21 We'll look at the routing of how they were
22 going to go. What I was just talking about was
23 the what they were going to build on the plant.
24 What is it going to be? How big is the pipe going
25 to be? Where is going to go, and how is it going

1 to angle? We'll look at multiple routes that were
2 offered for how they were going to go in the
3 plant. Now, I said when they first came back
4 after a year and a half delay and looked at the
5 route they wanted to used, this was the route
6 right here (indicating). It came up beside the
7 plant right here. Okay? It's hard to tell, and
8 we'll look at later, but you see this V in here?
9 That's because there's a creek that goes through
10 there. There's a massive ravine sitting right
11 there. So the first time they ever looked at that
12 route, they figured out, this route's not going to
13 work. You can't run the force main right across
14 these ravines here. So what happened? There was
15 another route looked at at the top of the plant,
16 and we'll talk about that. And then eventually
17 there was another route looked at of going up the
18 river, use the flat part and go up the river. All
19 these were looked at and not settled on, what
20 route we were going to use and what we were going
21 to build, and no final plans and specs were ever
22 put in before the regulation even hit the table,
23 before the regulation even came up.

24 Now, this change in regulation had to do with
25 -- Mr. McCall was going to own that line that went

1 up across our property, and that was a private
2 line, and that's a policy issue. Are we going to
3 have private infrastructure serving customers and
4 running across public land? That was an issue,
5 and that's a policy issue. And the Board decided
6 to change its policy on that. Mr. McCall
7 participated in that process. There were two
8 public meetings on that process, but during that
9 process, ReWa never stopped trying to find a way
10 to serve this property. And as a matter of fact,
11 the critical thing -- and we'll look at this
12 regulation in detail. It did not prevent this
13 project from going forward. The regulation
14 changed while it was being drafted to where at the
15 end it had holes you could drive a truck through
16 as far as getting service to this property, and
17 principally being Mr. McCall could have owned the
18 whole tamale. He could have owned the collection
19 system in the neighborhood. He could have owned
20 the force -- the pump station and the force main.
21 He could have owned it all, but they didn't want
22 to do it that way. Between him and Metro and the
23 developers, they didn't want to do it that way.
24 Now, another way it could have happened is
25 Metro could have owned the whole thing. Well,

1 Metro didn't want to own it. And you'll see the
2 real -- the distinction between this pump station,
3 the problem with it, is no public entity wants to
4 own these pump stations. They're expensive to
5 operate, and generally the public entities have a
6 hard time getting their money back from the
7 neighborhood, right, because they're more
8 expensive than a gravity neighborhood. So it's
9 kind of a -- I don't want to overuse tamale, but
10 it's like a hot potato, these pump stations, who's
11 going to handle them.

12 But eventually, under the regulation, Metro
13 can own it, Condor can own it. They didn't want
14 to do it that way and so it wasn't inside our
15 regulation that we offered to own these, it's
16 inside our enabling act. As a final solution, we
17 said if no one else will take this and despite our
18 regulation Condor won't take it, take the whole
19 thing, we'll take it. Okay? ReWa did not want
20 that pump station. ReWa did not want to own that
21 collector system. We don't own collector systems.
22 We own the big trunk lines and the treatment
23 plants. We finally said, okay, we'll own that
24 thing and we worked with them to try to get to an
25 agreement on the cost. Now, they didn't like the

1 cost. We'll look at the numbers. We'll see if
2 our numbers are really twice what the total cost
3 would be for Condor charges, for ReWa charges,
4 and for Metro charges, and you'll see that our
5 numbers eventually are competitive. And we kept
6 negotiating with this guy right here (indicating).
7 We're still negotiating with this guy to get his
8 deal. Now, why are those negotiations taking so
9 long? Because nobody is building neighborhoods
10 in this economy. There will be testimony that at
11 most there's maybe been one patio home
12 neighborhood built in Greenville County in the
13 last three years.

14 At the end we're going to show that they
15 never put in final plans and specs on what they
16 wanted to get built. They never settled on the
17 engineering solution. They never settled on the
18 route. We not only didn't say no to them, we said
19 yes on occasion after occasion, but they insisted,
20 no, we want what we want. We want it our way and
21 we want to dictate all the terms and we're not
22 going to talk to you about your regulation or
23 about any of your concerns. Fundamentally you're
24 going to find the differences introspective.
25 Developers care about their neighborhood and

1 they're supposed to. ReWa cares about the fact
2 that we own this plant and DHEC owns our permits,
3 and we have an obligation to serve the whole area
4 together. So just serving one neighborhood solves
5 his problems. It doesn't solve the communities'
6 problems and it doesn't allow for orderly growth
7 and development of a sewer system.

8 The last question we're going to ask you is
9 on this issue of grandfathering, is considering
10 the lack of final plans and specs, the unsettled
11 nature of the financial terms, the unsettled
12 nature of routing. What is it exactly they would
13 have had us grandfather? And when we look at
14 this particular -- we're only here today on this
15 development. But consider they were farther along
16 than any of those other ones in the pipeline. And
17 so when you consider whether we should have
18 grandfathered or not, which at best is an absolute
19 discretionary issue for the Board, look at what
20 would we have grandfathered? I guess we'll go
21 ahead and start Mr. McCall now. That's all I
22 have, unless you have some questions.

23 HEARING OFFICER: Let me clear up one thing that's in my
24 mind on this issue with the new regulation and
25 whether it prohibited Condor from going forward

1 with that. I'm a little bit confused. As it
2 ended up, you said your position is that Condor
3 could have owned it all?

4 MR. STILWELL: Here's fundamentally what happens. Under
5 the original setup, Metro was going to annex these
6 two, and they did actually annex them. So these
7 became a part of the Metro system. And Gene, you
8 didn't -- I'm just trying to explain this
9 objectively. Metro would have owned the piece in
10 the streets, the collector system, and they would
11 have charged these people ad valorem taxes. But
12 the part where the pump station and the force main
13 would be taking the sewer to ReWa would have been
14 privately owned because Metro's position was we
15 don't have any way to collect that extra cost for
16 pump station, so give that to Condor. Condor has
17 a contract with the homeowners association and
18 that's how they get paid for that. The regulation
19 said we don't want this split up. We're okay with
20 private ownership, assuming that the whole thing
21 is owned by Condor. Like Condor owned this piece
22 and owned that piece, and if it stayed inside of
23 Metro, then Metro would have had to have agreed
24 under the regulation to back up the system, like
25 if something happened to Condor, Metro would back

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30

1 it up.

2 HEARING OFFICER: Okay. I got it now. We're ready to
3 go.

4 MR. FULTON: Mr. McCall, would you please come on up
5 here? And I believe this is where Mr. Glenn is
6 going to ask our witnesses -- now, it may be that
7 you have to pop up a little bit and come around
8 here in your explanation. Would it be better to
9 put it up here?

10 HEARING OFFICER: Well, I was thinking that.

11 MR. FULTON: Because it is going to require some
12 demonstrative things.

13 (OFF THE RECORD)

14 (EUGENE C. MCCALL, JR. DULY SWORN)

15 EXAMINATION BY MR. FULTON:

16 Q. Mr. McCall, will you please give us your full name
17 and tell us who you are, where you work, where you
18 worked, and in general what your background and
19 experience is in this field that we're here
20 talking about today just so that Mr. Glenn can
21 have an idea about your experience and knowledge,
22 and then more specifically your involvement in
23 this process today.

24 A. My full name is Eugene C. McCall, Jr. I began
25 life as a mechanical engineer. I have a

1 bachelor's and master's in mechanical engineering.
2 I worked for a few years for Black and Veatch,
3 one of the big engineering firms in the country,
4 actually an international firm, and then for
5 Tennessee Valley Authority and -- for two years.
6 Then I went back to school, got a Ph.D. in
7 environmental engineering and a J.D. in law; came
8 to South Carolina. I taught in the civil
9 engineering department at the University of South
10 Carolina for four years, taught water treatment
11 plant design, wastewater treatment plant design,
12 wastewater chemistry, and also environmental law
13 over in the School of Public Health and risk
14 assessment over there. I also worked in the legal
15 department at USC. I came to Greenville in 1988
16 to work full-time for Leatherwood Walker Todd and
17 Mann as an environmental attorney; did that for 12
18 years, decided to go out on my own in 1988, again
19 doing primarily environmental water law and then
20 -- and still continue to do that today. But in --
21 I work for Sam Weaver on two pump stations that
22 are in the Greenville County area that do provide
23 wastewater that ends up at Rewa, and he hired me
24 to represent him after those -- well, actually
25 after the first pump station because he said I

1 knew more about wastewater than his lawyer did.
2 I worked for him for a year or so and somebody
3 suggested that we get together and form a company,
4 and we formed Condor Environmental, LLC. The
5 reason for that company is a long time ago, Rewa
6 made a decision not to take pump stations anymore
7 from developers because, as Mr. Stilwell said,
8 they're kind of a pain and can be expensive to
9 operate and maintain. Also, as soon as they did
10 that, the sewer subdistricts said they weren't
11 taking them either, and so that created a niche.
12 Condor, LLC is a approved private utility,
13 wastewater utility by the Public Service
14 Commission, and again, we kind of filled that
15 niche. From 2003 to approximately 2007, we became
16 the private sewer utility that provided pump
17 station ownership and operation for various
18 subdivisions in Greenville County. And basically
19 what happened is all the good gravity flow
20 pastures, cow pastures were basically taken and
21 made subdivisions and so you had to a little
22 farther out and find one that was over the hill
23 from the gravity line. And so if you wanted to
24 develop it, you had to build a pump station and
25 force main to get it to tie into a gravity line.

1 I think we had 12 pump stations at that point in
2 time that we owned and operated in the Greenville
3 County area that did go to ReWa, or the wastewater
4 eventually got to ReWa. Typically they would flow
5 to Metro first, Metropolitan Sewer Subdistrict,
6 and then Metro would carry it on to Western.
7 There is also one in Berea, one in Travelers -- I
8 mean, sorry, Mauldin, and I think that's the other
9 districts that they're in as far as a collection
10 agency.

11 Q. Let me explore that just a little bit further. So
12 as I understand it, you and your company, Condor,
13 at the time, Condor, had extensive experience in
14 providing these pumping stations for these
15 developments?

16 A. Yeah. In our small company, we had over a hundred
17 years of wastewater experience.

18 Q. And that was experience that you had, not only
19 dealing with ReWa, but don't you have a couple
20 other stations, other -- elsewhere in this state?

21 A. Oh, yeah. At the moment -- well, it's still
22 Condor, LLC at the moment, but it's going to
23 become a project under my new company. We own and
24 -- well, we don't own, but we manage about 30 pump
25 stations for the towns of Hollywood, Ravenel, and

1 Meggett. We manage their collection system for
2 them. That's the largest one we have. They're
3 also others that we do manage. We manage two on-
4 site wastewater collection systems, or actually
5 collection and treatment systems on site and some
6 other smaller pump stations.

7 Q. However, a good deal of your experience and a good
8 deal of your company's work has to do with dealing
9 with the Metro company and ReWa -- excuse me; the
10 Metro District and ReWa; is that right?

11 A. Right. Well, through 2007, absolutely. That was
12 where we saw our business plan and we were growing
13 in that direction. Like I said, we had 12 pump
14 stations that we owned and operated and we had
15 seven more in the pipeline.

16 Q. Now, let me ask you this, if I might, Mr. McCall.
17 You heard some of the things that I said in my
18 opening statement and some of the things that Mr.
19 Stilwell said. And one of the things that will
20 probably be in dispute a little bit during these
21 next couple days has to do with the time frame to
22 get these things accomplished.

23 A. Uh-huh.

24 Q. So let me ask you this. Before we start talking
25 about exactly what happened in this case, in

1 general, in dealing with the whole process of
2 first having the idea and coming up with plans or
3 the proposal, getting it to the subdistricts and
4 then to ReWa and getting all the way through the
5 approval process to start work on this, what has
6 been your experience with approximately what the
7 average amount of time to get that done is? And
8 you can give us a range based upon complexity if
9 you'd like.

10 A. Typically I would say three to six months. I mean
11 we started our company in 2003. By 2007, we had
12 12, so that's approximately four per year, and
13 they were kind of staggered out like that. So,
14 you know, three to six months typically was the
15 time period from getting initial sewer approval
16 that flow was available wherever you were tying
17 into to having final plans approved.

18 Q. And let's talk about that flow available for a
19 minute because there are some procedural things in
20 this --

21 A. Uh-huh.

22 Q. -- that maybe it would be a good idea for you to
23 explain for Mr. Glenn. After the initial plans
24 are worked on with the developer, you talk about
25 it and get some approvals from Greenville County.

1 One of the first steps in approaching ReWa about
2 whether or not they can handle the waste is to
3 approach them and they issue what's called what?
4 What's the first thing they issue?

5 A. Well, there's a --

6 Q. Is it called a flow acceptance letter?

7 A. Yeah, flow letter.

8 Q. Or a capacity letter?

9 A. Yeah, capacity.

10 Q. Because there's a couple different terms. And I
11 guess one -- the initial one is where ReWa tells
12 you they have the capacity to handle it; is that
13 right?

14 A. That's correct. That -- in their -- basically
15 they typically look at their collection system and
16 see whether they have capacity in those lines,
17 whether -- and it can take the flow coming from
18 however many houses or your -- whatever you're
19 proposing in your subdivision. So you -- there's
20 a simple calculation as far as the number of
21 houses times the flow and then Western says -- or
22 ReWa says whether they have the flow capacity or
23 not.

24 Q. Right. So the real first response from ReWa is
25 the capacity letter?

1 A. Yes.

2 Q. And then in between, during those three, four,
3 five, six months is when all the engineering work
4 is done?

5 A. Uh-huh.

6 Q. And the proposals, and then at the very end, when
7 everything is approved, that's when the flow
8 acceptance comes from Rewa; is that right?

9 A. Yes, that's correct.

10 Q. So just because we'll be using these terms
11 throughout a couple days, the first thing after
12 the first approach to Rewa is the capacity. Okay,
13 we have capacity and if you -- you know, now we
14 can work on how it's going to work; the capacity
15 letter. And your experience is that three to six
16 months is the average time?

17 A. That's what I said, yep.

18 Q. And then what about if it gets a little bit more
19 complicated? Have you seen them go a little bit
20 longer than that?

21 A. I didn't look back, and I don't honestly remember
22 a real long time for any of the ones prior to
23 2007. But I mean it could possibly take a year,
24 but I don't think any longer than that at all any
25 of them have taken.

1 Q. Now, one of the things that Mr. Stilwell said in
2 his opening remarks had to do with this being a
3 unique project.

4 A. Uh-huh.

5 Q. And of course you've worked on a lot of these
6 projects, so you're very familiar with the
7 engineering needs and the gravity as opposed to
8 pump systems and where to run lines and all the
9 things that will be an issue, and that were an
10 issue back then.

11 A. Uh-huh.

12 Q. You're familiar with that, not only with regard to
13 this case, but just in general your years of
14 experience give you a lot of knowledge about that;
15 is that right?

16 A. That's correct I think.

17 Q. Based upon your experience and knowledge, Mr.
18 Stilwell said in his opening remarks that this was
19 a unique project. And I guess we might as well
20 start off by saying that, at least compared to
21 some projects that you've worked on with
22 developers, this had some engineering challenges,
23 didn't it?

24 A. Well, there's -- the first engineering challenge
25 that we hadn't run across up in the Upstate was

1 what's called a manifold force main. The original
2 idea was for -- to have a pump station at River
3 Trace and a pump station at Riversway, but then
4 they would join at some point obviously right at
5 Riversway like a Y and go through a common force
6 main and then to the Lower Reedy wastewater
7 treatment plant, and that's not typical here in
8 the Upstate. It's very common in the lower -- in
9 the coastal counties, lower -- in fact, Hollywood
10 has a force main that we deal with all the time --
11 I mean a manifold force main. So that was -- that
12 truly was kind of a unique issue here. But that
13 was more of an engineering coordination problem
14 and question for the two design engineers for the
15 Windsor/Aughtry group and the Harrison developers,
16 not necessarily for ReWa because it would have
17 been a private force main.

18 Q. Well, this is a good chance now to talk about this
19 case in particular and then we'll go back and talk
20 a little bit more about the engineering
21 challenges.

22 A. Okay.

23 Q. If you would, please, tell Mr. Glenn about how you
24 first got approached and got involved with the
25 River Trace project and then how it became that it

1 started to be a joint discussion about the two
2 projects.

3 A. Well, initially I think I did get a call either
4 from Mr. Bolo or one of his partners about, again,
5 owning and operating the pump station for Harrison
6 Partners. And shortly after that, I got a call
7 either from Jay Alexander from Windsor/Aughtry or
8 -- I can't remember. It may have been one of the
9 engineers working for them and they said, "Yeah,
10 we're going to -- we're looking at putting this
11 manifold force main.

12 Q. So you're talking about the Riversway?

13 A. Riversway, right.

14 Q. Just so Mr. Glenn understands you, you got
15 approached by the Harrison Partners?

16 A. Right.

17 Q. And then the idea was that maybe to make a
18 combined effort?

19 A. Right.

20 Q. Go ahead.

21 A. And that was sometime in 2006. I don't remember
22 the exact dates. And then we certainly said -- we
23 met with -- I think it was Lee, and I forget Lee's
24 last name at the moment, and Mr. Bolo. We talked
25 several times. We developed a contract to own and

1 operate the pump station and, again, I forget
2 exactly the date that we signed that contract.
3 But -- and I did receive an email that Mr. Bolo
4 forwarded me that was from Brian Bishop to Mr.
5 Bolo, said, "Yep, we have capacity and make sure
6 Condor is happy with this, you know, proposed
7 design." I don't remember the exact words, but
8 something like that. So he -- again, Condor kind
9 of filled the niche of owning and operating a pump
10 station.

11 HEARING OFFICER: Own and operate it, not design it?

12 WITNESS: That's correct. What we did is -- yeah. We
13 didn't put our engineering stamp on it. That was
14 up to the engineers designing the community like
15 Mr. Bolo for River Trace.

16 HEARING OFFICER: Is it your normal way to do that to
17 look at the plans that they submit and then decide
18 if you're going to be willing to do it?

19 WITNESS CONTINUES:

20 A. Right. And we said that we're willing to do it,
21 assuming that they incorporate our suggestions,
22 which oftentimes we help tweak the plans to we
23 think make it a better station and one that will
24 last longer and be actually easier to operate.

25 EXAMINATION RESUMED BY MR. FULTON:

- 1 Q. And you said this was sometime in 2006?
- 2 A. Yes.
- 3 Q. And at that point in time, the Harrison Partners
- 4 had started their efforts --
- 5 A. Yes.
- 6 Q. -- with Greenville County and all in?
- 7 A. And we did actually help them get an encroachment
- 8 permit in the -- I think -- and I can't remember
- 9 now whether it's for the entrance or for the sewer
- 10 and the utility right-of-way of the county so that
- 11 that process would be taken care of.
- 12 Q. And the idea was that the pumping station would be
- 13 down at River Trace?
- 14 A. Well, there would be a pump station presumably
- 15 originally both at River Trace and then another
- 16 one at Riversway that would tie into each other
- 17 into common force main.
- 18 Q. And you mentioned that you actually did enter into
- 19 an agreement?
- 20 A. Yes.
- 21 Q. Condor, you being condor?
- 22 A. Yes.
- 23 Q. With the Harrison Partners to provide this
- 24 service; is that right?
- 25 A. That's correct.

1 MR. FULTON: Mr. Glenn, I'm going to approach the
2 witness and yourself, if you don't mind, and ask
3 him to take a look at a document.

4 EXAMINATION RESUMED BY MR. FULTON:

5 Q. Take a look at what I've just handed you, please,
6 Mr. McCall. Does that appear to be a copy of the
7 contract you just mentioned?

8 A. Yes, it is.

9 MR. FULTON: I'd like to have this marked, Mr. Glenn, as
10 our first exhibit.

11 HEARING OFFICER: Without objection, it'll be
12 Plaintiff's 1.

13 (EXHIBIT NUMBER 1 MARKED)

14 EXAMINATION RESUMED BY MR. FULTON:

15 Q. Let me sit back down. I'm used to standing up.
16 So you originally had discussions -- I think we
17 had gotten up to the point where you had
18 discussions about providing this service. And at
19 some point in time, you entered into a contract,
20 and I notice that that contract is dated 2007.

21 A. Yes.

22 Q. But you really started interacting earlier -- much
23 earlier on than that, in 2006?

24 A. Yes.

25 Q. And, in fact, even before the contract was signed,

1 is it correct that you had discussions with the
2 folks at River Trace and Riversway and had worked
3 out details and had at least verbally agreed that
4 you could do it, even before the official
5 contract?

6 A. Oh, yes. Yeah.

7 Q. You were working toward the idea that this will
8 work and we'll do it; is that right?

9 A. Yeah. There's no question that I believe the
10 force main would have worked. And it was -- you
11 know, this kind of represented the codification of
12 our discussions as far as the River Trace and
13 Harrison Partners. And again, we anticipated
14 having a similar agreement with Riversway,
15 Windsor/Aughtry.

16 MR. FULTON: Excuse me just one second.

17 (Side conference between Mr. Fulton and Mr. Bolo.)

18 MR. FULTON: Excuse me, Mr. Glenn. We just needed to
19 clear something up.

20 EXAMINATION RESUMED BY MR. FULTON:

21 Q. Now, you mentioned a few minutes ago that you saw
22 an email from Brian Bishop?

23 A. Yes.

24 Q. Which is where he indicated that there was
25 capacity, and that he indicated his knowledge that

1 the Harrison Partners/River Trace plan involved
2 using you for the pump station, right?

3 A. That's correct.

4 Q. There's no question in your mind that at the
5 beginning of this process and for a long time
6 through this process, that the folks at ReWa
7 understood exactly what the River Trace plan was
8 and that was for Metro to -- as Mr. Stilwell
9 pointed out earlier, since they were annexed into
10 Metro, that Metro would handle the system in the
11 neighborhood, but that you folks would handle the
12 lift all the way up to ReWa?

13 A. Right.

14 MR. STILWELL: Mr. Glenn, I'm going to have to interpose
15 a leading objection. I mean I want this to move
16 along, but I'd rather the witness testify than
17 counsel.

18 HEARING OFFICER: Yeah, that was a pretty good one
19 there.

20 MR. FULTON: That was a pretty good one. I thought it
21 through carefully.

22 EXAMINATION RESUMED BY MR. FULTON:

23 Q. Let me just ask again this. I'll ask this
24 question. I'll try to ask it better. Is there
25 any question in your mind that ReWa, during the

1 entire beginning part of this process in 2006,
2 2007 understood that Harrison Partners and River
3 Trace intended for Condor to own and operate the
4 pumping station and the line up to ReWa? Is there
5 any question in your mind that they understood
6 that was the plan?

7 A. ReWa absolutely understood that that was going to
8 happen, because, again, Mr. Bishop said, "Make
9 sure Condor's, you know, happy with your design as
10 far as the pump station force main."

11 HEARING OFFICER: Who is Bishop?

12 WITNESS CONTINUES:

13 A. Mr. Bishop back there. He's the head engineer who
14 typically -- well, not typically. He does provide
15 the flow capacity letters and, again, that's just
16 how things are done. And when Mr. Bishop says
17 it's okay, everybody goes on forward.

18 EXAMINATION RESUMED BY MR. FULTON:

19 Q. And I'm glad that came out. Now, let's just
20 clarify this. Brian Bishop is the ReWa engineer
21 who was the point person with whom you folks and
22 developers dealt with -- with whom you dealt to
23 get these approvals and get everything approved;
24 is that right?

25 A. That's correct. Every developer dealt with Mr.

1 Bishop.

2 Q. And so all through that process, ReWa understood
3 Harrison Partners' plan?

4 A. Yes. And I believe, although I can't remember
5 because I wasn't there, that ReWa was actually the
6 one that suggested River Trace get annexed into
7 Metro to make it an easier process and so that
8 Metro would be able to take the gravity lines.

9 Q. Now, then there's a period of time in '06 and '07
10 that after, as you testified, the initial approach
11 by these two developers and the agreement with
12 what might be done -- did there come a period of
13 time of working out engineering details? Was that
14 kind of what happened there?

15 A. Yes. And I think at that point in time,
16 Riversway, or the Windsor/Aughtry folks were not
17 on the same time table as y'all's development.
18 And for reasons I'm not quite sure, but it was
19 decided that they would have separate force mains,
20 and that was in 2007, shortly after this at some
21 point. And so it became a simpler project because
22 then the traditional pump station force main from
23 River Trace all the way up to the treatment plant
24 was fairly standard practice.

25 Q. Now, we're going to have some testimony later from

1 Mr. Bolo and I guess also from the Rewa folks
2 about the different options that were explored.

3 A. Uh-huh.

4 Q. But at least based upon your knowledge and while
5 we have you here before you leave today, tell Mr.
6 Glenn a little bit about those engineering things
7 that they looked at, the different routes, the
8 different -- what you understood that was trying
9 to be worked out.

10 A. Well, there's obviously -- the practicalities of
11 what you want is the shortest route typically to
12 get there. That's typically a -- price per foot
13 is a major consideration. And as far as the
14 pressure loss, typically the shortest route would
15 get you there the best. Sometimes there are hills
16 in the way. Sometimes there's maybe some private
17 property where a developer cannot get a sewer
18 easement to get across except at an exorbitant
19 price, and so sometimes you take a little loop
20 around to get there. But in this case, if I
21 remember right, after crossing just one or two
22 little properties, which they had already worked
23 out, pretty much it was going to be along the
24 Greenville County highway -- or secondary road
25 right-of-way, which is an easy way to go because

1 the county gives you the right to put the sewer in
2 their road right-of-way and you don't have to get
3 permission from the separate private property
4 owners. Now, this one I said would go to the
5 treatment plant. It actually would go to a
6 manhole outside of the wastewater treatment plant
7 where all the other gravity lines come to and
8 terminate at before they all collectively go into
9 the sewer treatment plant.

10 HEARING OFFICER: How far is it from the edge of River
11 Trace up to where the line would run?

12 WITNESS CONTINUES:

13 A. I forget exactly, but just looking here, about --
14 looks like about three quarters of a mile,
15 something like that. So that's not an
16 extraordinarily long force main. There's some
17 that are actually seven or eight miles long.

18 EXAMINATION RESUMED BY MR. FULTON:

19 Q: So we're now up to the time between '06 through
20 '07 that these engineering things are being worked
21 on. And did you become aware at a certain time in
22 a certain way that ReWa actually had different
23 intentions?

24 A. Yes, I did in about -- it was about November of
25 2007. I was told that -- I was not at the

1 meeting, that Mr. Boyette said, "Well, instead of
2 Condor making money on pump stations, we're going
3 to make -- we ought to be making the money on pump
4 stations."

5 Q. Well, let me be clear about that. What meeting
6 are you talking about?

7 A. This was a sewer -- kind of a regular sewer, kind
8 of utility meeting that there was kind of a
9 steering committee from the wastewater community,
10 the subdistricts, which there's 17 sewer
11 subdistricts, including the municipalities around
12 here. Plus Rewa would get together on a regular
13 basis and talk about sewer issues.

14 Q. And who was it that said that?

15 A. Who told me that?

16 Q. No. Who --

17 A. Oh, Mr. Boyette.

18 Q. And who is he?

19 A. He was -- at that time, I think he was chairman of
20 the Rewa Board.

21 Q. And what did he say?

22 A. He said, "If Condor can make money on this, we --
23 they shouldn't be, we should be making money on
24 these pump stations."

25 Q. So what happened next?

1 MR. STILWELL: May I just lodge a retroactive hearsay
2 objection to that?

3 HEARING OFFICER: I'll wait and see if I hear it from
4 somebody else.

5 WITNESS: I'm sorry; repeat the question.

6 EXAMINATION RESUMED BY MR. FULTON:

7 Q. I was just going to say -- my original question is
8 you came to learn that ReWa had other intentions?

9 A. Yes.

10 Q. That was the first thing. And tell me what
11 happened next, just based upon your knowledge.

12 A. Well, what happened next is I think Mr. Rivers
13 helped draft the new regulation, or an amendment
14 to the current sewer use regulation that would
15 essentially prohibit a private ownership of a
16 wastewater pump station and force main, and their
17 intent was to put us out of business, which
18 they've done. We've -- Condor Environmental's
19 going away. We're splitting it up because of the
20 -- we can't have anymore in Greenville County.

21 Q. Now, you just told us about one thing that you
22 heard at a Board meeting to which there was a
23 hearsay objection. But tell us about other things
24 that you actually yourself were involved with.

25 Take us through the chronology of your experience

1 with this whole process starting with what you
2 heard and meetings you went to and what you were
3 told by Rewa personnel.

4 A. Again, I can't remember exactly, but I was
5 forwarded a copy -- I think it was actually maybe
6 in December of '07, but it was early January,
7 February, if not in December of a proposed
8 amendment to the sewer use reg that would, again,
9 basically, like I said, prohibit private
10 ownership. Now, it doesn't say that in exact
11 words, but effectively that's what happens.

12 Q. Well, this might be a good chance for you to
13 explain to Mr. Glenn the idea that Mr. Stilwell
14 addressed a little bit in his opening about, you
15 know, Metro opening a part and then what the
16 regulation really prevented, what it actually
17 prevented happening.

18 A. Well, the regulation says that you can have
19 ownership of -- or kind of split ownership of a
20 collection system by two public entities, so Metro
21 could own part and the city of Simpsonville could
22 own part if they wanted to, and that would be
23 okay. But what the regulation says, that you
24 could not have a system that was split ownership
25 between a private and a public utility.

1 Q. So the original plan that Mr. Stilwell mentioned
2 in his opening, which was the plan, was Metro to
3 run the local system?

4 A. Right, the gravity system within the subdivision,
5 which is typically what they do and what Metro was
6 happy doing. That's their job.

7 Q. And then you would be in the middle?

8 A. And then we would own the normal pump station
9 force main which Metro want own and which prior to
10 this Rewa didn't want. But now they said we
11 either had to own it all -- so they were putting
12 us against Metro because Metro wanted the gravity
13 line. So they said, "Condor, you either have to
14 become a competitor with Metro -- you have to take
15 this gravity sewer and the pump station force main
16 or you take nothing. And Metro, you can't have a
17 policy like we have that says we aren't going to
18 take the pump stations. You've got to either take
19 -- if Metro wants it, they've got to take the
20 gravity and the pump station force main." So they
21 basically put us into a impossible position. The
22 other thing is Mr. Stilwell said, "well, we could
23 have taken it all." Like I said, once you put it
24 in Metro, we basically couldn't deny them their
25 ad valorem tax. They -- you know, they'd be

1 collecting tax for doing nothing, and that
2 wouldn't be right. And the other thing is, it
3 says that basically Metro -- I think Mr. Stilwell
4 said the word backstop a private entity. And so
5 what that would say is Metro would have -- if they
6 allowed us to take the pump station and gravity
7 lines, then we could operate it for ten years,
8 take all the money, and go to Bermuda and leave
9 it a big mess and Metro has to pay to fix it.
10 Why would any public utility basically indemnify
11 -- in fact they're not able legally I believe to
12 indemnify a private entity. And that's what
13 essentially this regulation requires, and that's
14 why it basically, you know, forestalled anymore
15 private ownership of wastewater pump stations and
16 force mains.

17 Q. So are you essentially saying that you disagreed
18 with Mr. Stilwell's earlier statement that you
19 could have owned and run the whole thing?

20 A. No, because Metro never would have approved it.
21 Had it been out of the Metro district, possibly,
22 but they asked it to get it and once they got in,
23 there was no way to get out necessarily. And
24 also, we didn't want to become a competitor with
25 Metro, and also, again, Metro wasn't going to

1 approve backstopping us no matter what we did or
2 didn't do.

3 Q. So in reality, it wasn't possible?

4 A. No, it wasn't possible. They basically should
5 have just used the words, there's no more private
6 utilities that can be part of this system. And
7 what happened is the 12 -pump stations that we got
8 before were under the radar. We basically dealt
9 with Metro because our wastewater would flow to
10 Metro and then to ReWa. So that -- ReWa really
11 didn't realize the significance maybe of the pump
12 stations and this one -- well, there's two things.
13 One is this would actually -- as River said, the
14 force main would actually go onto the ReWa
15 property and terminate at the common manhole that
16 then would flow into the plant, and that got the
17 -- this particular force main on their radar. And
18 the other thing, then they realized that there
19 were about seven other -- well, six other pump
20 stations that were on the horizon. And they did
21 not want that many new privately owned wastewater
22 pump stations in their system or any privately
23 owned part.

24 Q. And you, in Mr. -- did you hear Mr. Stilwell say
25 at the beginning that the Board -- I wrote it

1 down. "The Board decided to change its policy
2 about letting a private line go across ReWa
3 property." That's what you're talking about,
4 right?

5 A. Well, yeah. Mr. Stilwell, after we had decided
6 that this was going to be a separate force main,
7 he just said, "We aren't going to allow that" at
8 our meeting. He told me that. He said, "We just
9 can't let a private utility come on, that
10 Western's dealing with 17 public utilities. They
11 don't want a private one." But again, the reason
12 for that is -- Mr. Orvin told me that 15 years ago
13 I believe it was, that the collection systems were
14 the problem and he was going to get rid of them.
15 So the idea is to bring them into ReWa eventually.
16 You can do that. You can take a public -- another
17 special purpose district and by the stroke of a
18 legislative pen make it part of ReWa, but you
19 can't do that with a private system. And that's
20 why they didn't want anymore private systems.

21 Q. Well, let's back up a little bit because you just
22 mentioned that about what Mr. Orvin told you.

23 A. Uh-huh.

24 Q. Will you elaborate on that a little bit more about
25 what -- your impression and why you got the

1 impression about what ReWa's whole mind set and
2 plan was and how you first got it and when you
3 first got it?

4 A. This was when the Reedy River trunk line was being
5 proposed. It was a five-foot diameter pipe to
6 basically take care of overflows that happened
7 during rainfall events so that Cleveland Park
8 wouldn't keep flooding sewage. Anytime there was
9 a rainfall event, typically the sewage would come
10 pumping out of the manholes, and that was because
11 of what's called inflow and infiltration that was
12 coming into the old City of Greenville system,
13 Parker and Berea particularly because they're --
14 you know, some parts are a hundred years old,
15 leaked like a sieve, or at least used to, and
16 water would come in and without anyplace to go,
17 the lines were full, the sewer manholes would pop.
18 And again, you'd have sewage in Cleveland Park, so
19 this was to relieve that problem to accept that
20 greater rainfall flow and bring it to the Mauldin
21 wastewater treatment plant. I was representing
22 Suitt Construction Company that was -- had
23 property in the proposed route, and they weren't
24 happy with some of the things that were going on.
25 So we were kind of on the opposite side, but still

1 we did a lot of talking. And that was when Mr.
2 Orvin said, "Well, the problem of course is these
3 collector systems and we'll get rid of them."

4 That's strategic Army planning, in my opinion.

5 Q. And that was how long ago?

6 A. Approximately 15 years ago. I believe that's
7 still the strategic plan.

8 Q. To get rid of all --

9 A. Yeah, to bring -- first bring them into Metro and
10 then bring Metro into ReWa.

11 Q. And if they were in Metro, that would work. But
12 if they were privately owned, that wouldn't work?

13 A. No. They'd have to pay us for them, and that's
14 why he didn't want anymore private ones. Again,
15 all of a sudden, we got on their radar screen
16 because of having to cross onto the ReWa property.
17 There's nothing momentous about that other than it
18 -- they became aware of -- then again of the seven
19 pump stations that were on the drawing boards.
20 And they just said, "No, we're not going to allow
21 that to happen."

22 Q. I'm going to ask you one more question before we
23 kind of go back to the chronology of what happened
24 at the different meetings and what you heard.

25 A. Okay.

1 Q. One of the things -- the initial approval by
2 Greenville requires that whoever runs the system
3 be Public Service Commission, PSC-approved; is
4 that right?

5 MR. STILWELL: Objection.

6 WITNESS ANSWERS:

7 A. I'm not sure if Greenville requires that. When
8 you say Greenville, I'm not quite sure of --

9 EXAMINATION RESUMED BY MR. FULTON:

10 Q. I'm sorry. The county.

11 A. The county. I don't even know if the county
12 requires that. They may. But DHEC requires
13 that.

14 HEARING OFFICER: DHEC requires what now?

15 WITNESS CONTINUES:

16 A. That anybody who takes over and runs a wastewater
17 pump station or gravity lines be an approved
18 private utility under the PSC, and we were.

19 EXAMINATION RESUMED BY MR. FULTON:

20 Q. Is Metro?

21 A. Yes. Well, no, I take it back. Metro's
22 different.

23 Q. Right. They're not --

24 A. Metro is a special purpose district, just like
25 ReWa is a special purpose district. So they're a

1 state-created entity and the PSC doesn't mess with
2 them. So --

3 Q. So the answer is no, isn't it? They're not PSC-
4 approved?

5 A. They're not, no. No, they're not PSC-approved.

6 Q. So actually, for them to run this system that you
7 were planning to run, that would go against the
8 DHEC requirements, wouldn't it?

9 A. It goes against the DHEC policy. I'm not sure
10 there's actually a regulatory requirement in place
11 that requires that. And DHEC prefers that, you
12 know, systems be owned and operated by public
13 entities. There's no question about that because
14 that public entity theoretically will be there
15 forever, although there's a lot of talk about
16 getting other special purpose districts, so maybe
17 they won't be there forever.

18 Q. Let's go back to the chronology then.

19 A. Yeah.

20 Q. I'm sorry I kind of got you off track there.
21 Because then we got into a period of time when you
22 found out about the change in policy that you
23 started getting involved and going to some
24 meetings?

25 A. Right.

1 Q. Please tell Mr. Glenn about that.

2 A. Well, there was a lot of discussion back and
3 forth, emails and proposed revisions. And then
4 ReWa held a public hearing on the proposed
5 regulation.

6 Q. That was in '08?

7 A. Yes. That was in early '08. I forget, again,
8 exactly the month or date, but early '08. And I
9 remember we presented objections for Condor, LLC.
10 I think Taylors Fire and Sewer District and also
11 the Gantt Fire and Sewer District presented
12 written objections to the way the proposed
13 regulation was worded. And Metro we thought was
14 going to present something, but they ended up not
15 doing that. I remember two Board members were
16 sleeping during the whole thing, not just
17 sleeping, but laid back sleeping. It was not even
18 looking like you're praying or resting, but -- so
19 they didn't -- I mean it appeared to be just a
20 technical -- or technicality solving public
21 hearing. And then I think because of the sleeping
22 Board members, they decided to have another public
23 hearing about 30 days after that, and they did.
24 In that, several of the Board members were
25 missing, but they still had the public hearing.

1 And the same -- basically the same comments were
2 submitted.

3 Q. And these were comments by entities like yourself
4 opposing this proposed change in regulation; is
5 that correct?

6 A. That's correct.

7 Q. And then at that time, did you and others give
8 reasons for your opposition to the proposal?

9 A. Well, sure. Our opposition was --

10 Q. I'm not going to ask you to repeat what you've
11 already given them, but I just -- I'm asking, did
12 you make that known and did others make that known
13 in these public hearings?

14 A. Oh, sure. Sure. We made it known that we thought
15 the -- first we thought the regulation was not
16 legal because, again, if -- it's kind of like
17 discrimination. Again, if we're approved by the
18 PSC, ReWa can't say, "We're going to allow Metro
19 to take the lines, but not you, and we'll allow
20 Metro and Taylors to take the lines, but not Metro
21 and Condor." That's just an improper, and we
22 believe, illegal discrimination that they don't
23 have the right to do. And that was one of our
24 complaints or --

25 Q. What about the retroactive application?

1 A. Well, at that point in time, again, all the
2 subdivisions were kind of moving along. I think
3 we had contracts with three or four of them. I
4 know with Langford, Harvest Glenn, and with River
5 Trace. I can't remember, but I think there's one
6 more. But those were moving on and all seven were
7 moving forward, but it did appear that every time
8 that something would be finalized by the
9 developer, Rewa would come up with another
10 wrinkle, no, we can't have that. And the last
11 none was that Rivers Stilwell basically told us
12 that they weren't going to allow the force main
13 owned by a private utility coming onto to Rewa
14 property.

15 Q. And that was very clearly said to you by Mr.
16 Stilwell?

17 A. Very clear.

18 Q. Was that at one of those meetings or --

19 A. No. That was a separate private meeting we had
20 together. Somebody else was there, and I can't
21 remember who, but Mr. Stilwell and I were there.

22 Q. Did you ever find out how Rewa's ultimate proposal
23 to the Harrison Partners to run the whole system
24 compared to the price that you had to agreed to,
25 the contract you agreed to?

1 A. I can't remember if I actually saw the numbers
2 that were proposed by ReWa to Harrison Partners.
3 But I did see the actual numbers that were
4 proposed to the Riversway, the Windsor/Aughtry
5 group. And my understanding is they exchanged
6 those numbers between each other and they were
7 basically the same. And so I saw the Riversway
8 numbers and I heard about the River Trace numbers.

9 Q. How did they compare?

10 A. Well, they were about twice of what we said we
11 would own and operate the station, and -- so twice
12 the price to the ultimate homeowners who would own
13 the homes within those subdivisions.

14 Q. In your experience dealing with these developers
15 over the years, and these developments over the
16 years, what does that do to a business plan? What
17 does that do to a developer's ability to even deal
18 with that kind of change in price?

19 A. It was a significant escalation of the price that
20 they would have to charge for the lot, and also
21 that they would have to charge through the
22 homeowners association for the regime fees to
23 maintain the pump station and possibly -- I didn't
24 know the financial details of where they were
25 trying to get their price range, or price points

1 for their houses, but it would add a substantial
2 cost and could make it implausible to go forward.

3 Q. In fact, that's what happened with River Trace,
4 isn't it?

5 A. My understanding is -- yeah, from Mr. Bolo. I
6 mean he told me it just -- that made it
7 financially infeasible, impractical. But by that
8 point in time, too, by all these delays, in
9 November of 2008, we had a hearing -- or not a
10 hearing. We came to a regular Board meeting right
11 here.

12 Q. A ReWa Board meeting?

13 A. A ReWa Board meeting, and I had requested to get
14 on the agenda to grandfather these seven projects
15 that --

16 Q. This was after the -- after they were enacted,
17 right?

18 A. Yeah. The reg I think became effective May of
19 2008; may have been June, but I think May.

20 Q. I'm sorry to interrupt. Go ahead.

21 A. And in talking with Mr. Stilwell, I said, "Well,
22 the reg's not fair, but even if we live with the
23 reg going forward, it shouldn't apply to these
24 seven projects." And he said, "Well, if you want
25 to come to the Board and make your presentation,

1 do it." So I did get on the agenda to do that.
2 We gave a proposal to the Board that these seven
3 projects should be grandfathered. And although
4 the designs were not complete for all of them as
5 far as ReWa was concerned, the flow was available
6 for all of those. So I think at that point in
7 time, we were ready for a decision.

8 Q. And what was the -- what did you hear from the
9 Board? What did the Board say?

10 A. At the time, J. D. Martin was the chairman, and
11 Mr. Martin heard my presentation. There were a
12 few questions. One I remember was Mr. Whittaker
13 asked a question. He was a Board member. I can't
14 remember -- we got a question or so from another
15 Board member or so, and that was about it. All
16 the other Board members didn't say anything and
17 then I think Mr. Bolo, you know, just asked, "Can
18 I say something?" And Mr. Martin said, "No, you
19 can't. This is not a public hearing," but when
20 we came in the door, there was a sign-up sheet.
21 It said do you want -- are you just here, an
22 attendance sheet, or do you want to talk. And Mr.
23 Bolo signed that he wanted talk sheet. There was
24 no indication that you had to be on the agenda
25 beforehand to talk. There was just those two

1 sheets, and he said, "Well, I signed the sheet to
2 talk." And Mr. Martin said, "No. You had to be
3 on the agenda ahead of time if you wanted to talk,
4 and if you want a decision quick, you'll sit down
5 and be quiet. If you want a public hearing, we'll
6 come back for next month, have a public hearing,
7 and it'll take longer to get a decision." So Mr.
8 Bolo sat down and quit talking.

9 Q. Mr. Martin told him to sit down and be quiet?

10 A. I forget the exact words, but essentially that,
11 "And if you want a decision quickly," and so he
12 did. And I should say today, I have never gotten
13 the decision from the Board on that -- those --
14 that request. So they have never decided, but
15 effectively they've killed the projects by
16 dragging them out so long. The economic recession
17 has taken care of the rest. But that was
18 certainly improper, for the Board not to respond,
19 particularly when he said he would get back to us
20 quickly.

21 Q. So that was the whole point. You were looking for
22 a quick decision --

23 A. Yes.

24 Q. -- about the grandfathering?

25 A. That's right.

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1 Q. And not only did they not get back to you quickly,
2 but they still haven't?

3 A. Still haven't.

4 Q. To today?

5 A. Today; never got a word.

6 MR. FULTON: One moment, please, Mr. Glenn.

7 (Side conference between Mr. Fulton and Mr. Bolo.)

8 EXAMINATION RESUMED BY MR. FULTON:

9 Q. Just a couple more questions, please, Mr. McCall.
10 We talked a little bit before about DHEC requiring
11 that anybody who operates a pump station be PSC-
12 approved, and that Condor was?

13 A. Yes.

14 Q. Is it your understanding that the plat that got
15 approved for Harrison Partners by Greenville
16 County actually also had that stamped on it, that
17 this plat is approved, providing that whoever runs
18 that system is PSC-approved?

19 MR. STILWELL: Objection; hearsay.

20 WITNESS ANSWERS:

21 A. I didn't see that approval and I'm not sure. But
22 usually the Greenville County always does have a
23 -- they call it a utility coordinating session
24 amongst the fire folks, the road folks, the sewer
25 folks, and the water folks, and electrical folks,

1 to make sure that everybody who has to provide
2 utilities and services to that subdivision are all
3 in agreement that it will be served and can be
4 served properly before Greenville County will
5 approve that plat. So if it has plat approval,
6 then Rewa said, "Yes, fine."

7 Q. And let me ask you one other question. You
8 mentioned some things about some of the Rewa Board
9 members.

10 A. Yes.

11 Q. Different things about them. Are you aware of any
12 ethics violation or charges of ethics violations
13 that have been brought against some Rewa Board
14 members?

15 MR. STILWELL: Hearing Officer, can we take this up in
16 camera?

17 HEARING OFFICER: Why don't we go ahead and take a break
18 right now?

19 (BREAK; OFF THE RECORD)

20 HEARING OFFICER: There was some proffered testimony
21 before we recessed by the Plaintiff-Petitioner
22 concerning ethical violations of some -- or
23 potential possible ethical violations. There was
24 an objection. I heard it in camera. I sustained
25 the objection on the ground that as I understand

1 it, the proffered testimony would have to do with
2 a report and possible investigation. There has
3 been no decision, and under the state ethics laws,
4 that's a confidential process and not allowed to
5 be made public, so I sustained the objection.

6 MR. FULTON: Thank you, Mr. Glenn. I have just a
7 couple other questions, if I might, for Mr. McCall
8 and then I'll turn over the witness.

9 EXAMINATION RESUMED BY MR. FULTON:

10 Q. Mr. McCall, after we kind of moved past the phase
11 of the new regulations and then the talk of
12 grandfathering and then you already testified
13 that you came before the Board and asked about
14 grandfathering and so forth, did you become aware
15 in any way that either Mr. Stilwell or any other
16 member of Rewa, any other employee of Rewa, or
17 agent of Rewa, actually was also in favor and may
18 have suggested anything to the Board or anybody
19 else --

20 MR. STILWELL: Objection.

21 EXAMINATION RESUMED BY MR. FULTON:

22 Q. -- encouraging them to allow the grandfathering?

23 MR. STILWELL: Hearsay.

24 HEARING OFFICER: You can tell me anything you have
25 heard that you know of your own knowledge.

1 WITNESS ANSWERS:

2 A. The only conversation I had was Mr. Stilwell and
3 he said that I could present that to the Board and
4 they should consider it. I don't know that he
5 said they would likely rule one way or the other,
6 but they, in fact, never ruled.

7 EXAMINATION RESUMED BY MR. FULTON:

8 Q. Did you get the impression from him that he was in
9 favor allowing the grandfathering?

10 MR. STILWELL: Objection.

11 WITNESS ANSWERS:

12 A. Well, just general legal principals is a
13 regulation is not retroactive. And based on that
14 -- and there was a case in Greenville County where
15 Vulcan Materials wanted to open another quarry in
16 southern Greenville County and Greenville County,
17 through the petition of some of the local
18 landowners, residents around the quarry, re-zoned
19 -- did spot zoning to make it improper to have a
20 quarry there.

21 MR. STILWELL: May I just lodge an objection? I'm
22 pretty sure all the lawyers in the room have read
23 the Vulcan Quarry case. So --

24 HEARING OFFICER: I'm familiar with it.

25 WITNESS CONTINUES:

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1 A. Anyway, that's -- it states legal principals that
2 regs are not retroactive. And so --

3 EXAMINATION RESUMED BY MR. FULTON:

4 Q. Did you get any impression from Mr. Stilwell or
5 anybody else at Rewa that they understood that and
6 that was their feeling?

7 A. I remember Mr. Whittaker, during the Board
8 meeting, kind of appeared to have some sympathy
9 with that position. But I don't remember anybody
10 else.

11 Q. Okay. Those are all the questions I have. Thank
12 you very much, Mr. McCall.

13 A. Yes, sir.

14 EXAMINATION BY MR. STILWELL:

15 Q. Gene, I'm just going to give you this just in case
16 we need it.

17 A. Yes, sir.

18 Q. I just took your deposition Friday, so it ought to
19 be pretty fresh. Let me ask you -- I'm going to
20 loan you my pen, or if you have one, can you show
21 me where you said they were going to manifold that
22 thing on the map? Can you just put a mark on that
23 for me?

24 A. I don't remember where, but I think it was going
25 to be -- you know, there would be a pump station.

1 And the pump station always has to be at the lower
2 elevation of the subdivision, and I can't remember
3 whether the pump station would be back here or if
4 the low spot went over here to the creek. The low
5 spot probably would have been on this side of this
6 one (indicating), probably would have been around
7 here, the lower elevation here. And then you'd
8 have a force main coming through here, a force
9 main coming through here, so approximately around
10 here would be the Y (indicating).

11 HEARING OFFICER: That's where they would join together?

12 WITNESS CONTINUES:

13 A. Right.

14 HEARING OFFICER: And then go in one pipe onto the --

15 WITNESS CONTINUES:

16 A. Right. But that idea went away pretty quickly
17 because Riversway said, "No. We're going to --
18 we aren't on the same time schedule as River
19 Trace, the Harrison guys, so you need to do a
20 separate" --

21 EXAMINATION RESUMED BY MR. STILWELL:

22 Q. The project engineer for the River Trace project
23 was actually Scott Bolo, correct?

24 A. Yes, that's correct.

25 Q. It wasn't you, right?

- 1 A. No, no, no. It wasn't me.
- 2 Q. So you weren't in charge of drawing the plans or
- 3 either the collector system or the force main,
- 4 were you?
- 5 A. No, but it had to be approved by me ultimately.
- 6 But as -- not only me, but other folks, too, but
- 7 DHEC --
- 8 Q. And you never did see finalized plans for the pump
- 9 station and force main, did you?
- 10 A. No, because the target kept shifting.
- 11 Q. And there had to be some way that they were going
- 12 to get across the Rewa property, right, either by
- 13 easement or by encroachment permit?
- 14 A. Yes.
- 15 Q. So you have to have finalized plans and specs
- 16 before you go to get that easement or encroachment
- 17 permit, correct?
- 18 A. That's correct. That usually comes towards the
- 19 final stages, yes.
- 20 Q. And since there were never any finalized plans and
- 21 specs, there was never any application made for an
- 22 encroachment permit or a easement to Rewa, was
- 23 there?
- 24 A. There was not that I know of.
- 25 Q. And you mentioned -- I had said that the project

- 1 was unique. One of the aspects of that, you've
2 never run a line across Rewa property, have you?
- 3 A. No, but I've run a line across other utilities
4 properties or right-of-ways, and we just do a
5 joint kind of -- I guess you call it almost a
6 reciprocal easement or right-of-way just to give
7 us rights to do maintenance if we need to and them
8 to do maintenance if they need to. There didn't
9 seem to be a problem with that.
- 10 Q. You said also that you've never connected any one
11 of your lines directly to a Rewa line, have you?
- 12 A. No, but this thing -- the logical thing to do
13 since that would have been the most logical route.
- 14 Q. But it's the first time you'd seen it done, right?
- 15 A. Sure, but that wasn't the case on the other six
16 subdivisions. They would have gone to Metro or to
17 some of the other subdistricts, and they were kind
18 of treated the same way as this project,
19 stonewalled.
- 20 Q. So those may have well flown under the radar like
21 the other 12?
- 22 A. Oh, no, no. Well, they may have, but all of a
23 sudden, all the new private utility projects
24 coming up got big time on the radar and then Rewa
25 made the decision, it appeared to me, that they

1 just weren't going to allow any of these.

2 Q. So in addition to being a private line on ReWa
3 property and also directing it into ReWa
4 infrastructure, there was also a clump of these
5 coming through the pipeline at the same time?

6 A. Yes. I just told you that.

7 Q. Now, you're not in charge of picking a route, are
8 you, of how the force main is going to get up to
9 the plant or anything? That's not your job, is
10 it?

11 A. It's not my job, but typically the engineer asks,
12 you know, out of -- first out of courtesy, and
13 then second, based on our experience in the
14 Upstate kind of where might be a logical way to
15 go.

16 Q. We hadn't really talked about -- are you aware
17 generally of what the first route discussed was as
18 far as getting into the plant? Like you showed me
19 where the manifold was. Where was the route that
20 was going to get it into the plant?

21 A. I don't remember that one.

22 Q. You're not even sure what the routes were?

23 A. No. I just know that it would -- I don't remember
24 exactly, no. And I don't remember whether it went
25 around to the left or went around to the right;

1 doesn't matter really.

2 Q. If I said the flag lot route, you wouldn't know
3 what that was?

4 A. I know what a flag lot is, but I don't know that
5 particular route, no.

6 Q. And you don't know any of the particular issues
7 with any of the routes that were looked at, right?

8 A. No, I don't.

9 Q. You are aware that there was look at taking it
10 directly to a Metro line on the top of the plant,
11 that that was one of the options?

12 A. Later on, yes, that became one of the options.

13 Q. And part of that option was Metro wanted to make
14 them upsize the line, to charge them to upsize
15 that line?

16 A. I don't remember hearing that. It may have been,
17 but I don't -- I wasn't part of that discussion.

18 Q. So you wouldn't be aware of any of the
19 topographical concerns of the flag lot route?
20 You never heard those before?

21 A. I did not walk it. I did not see a survey, so no,
22 I don't know the topographic, but I know there are
23 plenty of topographic problems with several pump
24 force main routes. You know, basically you can
25 overcome that.

1 Q. You never saw the survey of any of the routes?

2 A. No, not that I -- well, I may have seen an overall
3 plat, but I don't remember seeing a detailed
4 survey.

5 Q. I want to ask you -- I got these yesterday from
6 Scott.

7 A. Okay.

8 Q. And I'm going to ask for your help as an engineer.
9 I'm going to let you look at them first and ask
10 you if you've ever seen them. I'll give you some
11 time to look through them. There's a bunch of
12 them.

13 A. (Reviewing documents.)

14 Q. Gene, I'm not going to ask you any detailed
15 engineering questions. I couldn't ask them if I
16 wanted to.

17 A. Okay. Well, why don't you ask them? And then
18 I'll take a closer look if I need to. I've never
19 seen any of these details before. This appears to
20 be the general lot layout for the River Trace, and
21 I've seen something like this. I don't know if
22 I've seen this particular part.

23 Q. I just want to focus on this part. You've never
24 seen this part, have you, the part where it's
25 going into the ReWa property? You've never seen

1 that at all?

2 A. Again, I saw -- when Scott and I think Joe Clark
3 one time came up and we talked about it. Lee and
4 I talked about it one time. I have seen kind of a
5 eight and a half by 11 sheet that showed --

6 Q. A regular size sheet?

7 A. Yeah, a regular size sheet that showed a route,
8 and it may have been this route. I don't
9 remember. It may not have been.

10 Q. I'm talking about on the top of the map, the dark
11 black line that's like a triple black line on top.

12 A. I've never -- right. I see that.

13 Q. You've never seen that before?

14 A. Well, I've never seen this particular drawing
15 before. And I don't remember this particular
16 route, no, but --

17 HEARING OFFICER: Are we going to mark these?

18 MR. STILWELL: Yes, sir. And we'll just put the sticker
19 on the top one so we know that's the one we're
20 talking about.

21 (EXHIBIT NUMBER 2 MARKED)

22 HEARING OFFICER: That's been marked as Exhibit 2.

23 We'll just go straight through.

24 EXAMINATION RESUMED BY MR. STILWELL:

25 Q. Gene, just generally, all these things in the back

1 pertain to the actual neighborhood itself, don't
2 they, instead of to the force main?

3 A. These -- I mean just the ones I looked at. And I
4 don't know if these are the same as these
5 (indicating). Are they? I didn't even look to
6 see. But it's clear that this does appear to be
7 a gravity line, eight-inch gravity line. It does
8 not -- it's -- you know, and a manhole, so these
9 are some gravity lines somewhere. I don't know if
10 they're in the neighborhood or somewhere else. I
11 can't tell.

12 Q. Generally, that's how the collector system in the
13 neighborhood was, a gravity system?

14 A. Oh, yes. It would have been a gravity system.

15 Q. And just to be clear for Mr. Glenn, the force main
16 is the anti-gravity system? It's going against
17 gravity?

18 A. Right. It's pressurized to pump over the hill.

19 HEARING OFFICER: Run it downhill to the pump, then pump
20 it back up?

21 WITNESS CONTINUES:

22 A. Pump it over, yes, sir.

23 EXAMINATION RESUMED BY MR. STILWELL:

24 Q. And if this is the ReWa plant up here where the
25 dark line is on my right hand at the top --

1 A. Okay.

2 Q. -- everything between the neighborhood down here
3 and up here is force main area, correct?

4 A. Yes, it would be. Now, this -- I don't know if
5 this is gravity or not or if this is a force main.
6 I can't even tell at the moment. It -- this
7 appears to be a gravity sewer here, but I don't
8 know.

9 Q. So looking at this, the part that's in dark black
10 at the top, you can't even tell if it's gravity or
11 force main or what?

12 A. It says Regional Sewer, so I would assume that's
13 gravity.

14 Q. And would you consider this bottom part to be
15 final plans and specifications, the part in the
16 neighborhood, or are those preliminary plans and
17 specifications?

18 A. This is not a final plan design submitted for like
19 DHEC approval, no. I don't -- it doesn't even
20 have a date on it. I know -- it doesn't have a
21 stamp on it, so I wouldn't consider this a final
22 plan.

23 Q. And the part at the top with just a black mark on
24 it, that then surely is not final plans and specs
25 on a route, is it?

1 A. Doesn't appear to be.

2 Q. And in fact, I don't know if you can look in here,
3 there's no engineering solution for any of this
4 stuff that's under the dark line at the top, is
5 there?

6 A. I'm not sure if these -- let's see. I don't know
7 if this section represents the sewer on the ReWa
8 property or sewer on the -- within the
9 subdivision. I can't tell by --

10 Q. You're referring to the part about River Bluff
11 Boulevard. And I'll just represent to you River
12 Bluff Boulevard is apparently one of the streets
13 in the neighborhood.

14 A. Okay. That would make sense. That would make
15 sense.

16 Q. And, in fact, in between the part at the top and
17 the part at the middle, there's nothing, is there?
18 There's no indication of any route or any -- what
19 it's going to be, is there?

20 A. No, but we had talked that I knew they had to
21 cross another private property for a little ways
22 and then they would be along the roadway in the
23 utility. So that was the general kind of
24 conceptual route.

25 Q. And that's certainly nothing you could ever get

- 1 DHEC approval for, that level of detail?
- 2 A. Well, DHEC would require basically -- if Metro
3 were involved, a Metro approval and a ReWa
4 approval before they gave the DHEC approval. So
5 you still have to get things worked out,
6 particular with ReWa before you do submit a final
7 plan to DHEC.
- 8 Q. But this one you couldn't get DHEC approval on,
9 it'd have to be more detailed than that?
- 10 A. Well, of course it would have to be.
- 11 Q. And this part at the top with the black line,
12 that's not a survey, is it? There's no northings
13 and eastings on there. Did I say that right?
- 14 A. You said it.
- 15 Q. So that's not a survey, is it?
- 16 A. Well, that's not a survey, no.
- 17 Q. And certainly the part in the middle without
18 anything in it, that ain't a survey either, is it?
- 19 A. No, but you usually don't do a detailed final
20 design until you have approval from ReWa as to
21 whether you're going to be allowed to connect to
22 whatever sewer it is or to Metro to connect to the
23 sewer before you waste your time doing a final
24 design. So they wouldn't have done that, and like
25 I said, you said, "Now we aren't going to let you

- 1 connect there."
- 2 Q. I want to go on and look at your contract.
- 3 A. Okay.
- 4 Q. Actually I guess you've got it up there.
- 5 A. Yeah, I do.
- 6 Q. I think it's Exhibit 1?
- 7 A. Yes.
- 8 Q. Now, on contracts such as this, you own 12 other
- 9 pump stations in Greenville County?
- 10 A. I think it was originally 12. Now it's 11 because
- 11 one went away.
- 12 Q. We'll talk about that one that went away. But
- 13 those pump stations are worth almost two million
- 14 dollars?
- 15 A. We talked about it, you know, a million to two --
- 16 two million if you had to replace them. On fair
- 17 market value, probably a million.
- 18 Q. And the gross sales of the company were something
- 19 like \$900,000 on those pump stations?
- 20 A. No. You asked me what the gross sales of the
- 21 company was. I said \$900,000.
- 22 Q. And the pump stations is something less than that?
- 23 A. Yes.
- 24 Q. It's a substantial part of the Condor business,
- 25 isn't it?

- 1 A. No.
- 2 Q. It's not anymore?
- 3 A. Wasn't then. It was probably about -- well, I
4 say -- wait a minute. It was probably 15 to 20
5 percent of the Condor business.
- 6 Q. Let's look at some of the particular terms in the
7 contract.
- 8 A. Okay.
- 9 Q. I want to look first -- I don't want to get into
10 the details of it, but I wanted to look on page 4.
- 11 A. Okay.
- 12 Q. The second paragraph of page 4.
- 13 A. Yes, sir.
- 14 Q. Harrison is actually this neighborhood that we're
15 talking about, right? Harrison Partners is the
16 company that owns it?
- 17 A. That's correct.
- 18 Q. The line that says, "Harrison agrees that it
19 grants permission for additional properties to
20 connect to this PSFM" --
- 21 A. Yes.
- 22 Q. -- this pump station was actually something that
23 could have served possibly other neighborhoods in
24 the area?
- 25 A. Possibly.

1 Q. And that right to tie on those other pump stations
2 under this contract would belong to Condor, right?

3 A. Yes, but I -- remember Harrison asked for that to
4 be added because they were anticipating purchasing
5 additional properties in this area and adding them
6 to the pump station.

7 Q. But that right under the contract belonged to you,
8 not to Harrison, correct?

9 A. Well, what we -- we had the right to say basically
10 whether the pump station was adequate as it stood
11 at that point in time completed for the River
12 Trace Subdivision to accommodate the additional
13 flow. And it says if it has to be upgraded to
14 accept additional flow, then Harrison or whomever
15 they wanted to bring into the new development
16 would have to pay for those upgrades, whether it's
17 larger pumps or larger wet well or whatever.

18 Q. So they'd pay for the upgrade, but then you'd be
19 able to make the money off the additional homes
20 added onto it?

21 A. That's correct.

22 Q. Because it says, "Condor may charge them
23 separately for such wastewater flows," right?

24 A. Yes. Yes.

25 Q. And did you tell me Friday that you could possibly

- 1 put up to 1,800 houses on this pump station?
- 2 A. I believe I did, yes, sir.
- 3 Q. And this one neighborhood itself was something
- 4 like 200 houses?
- 5 A. I told you I couldn't remember the number, but it
- 6 looks like -- I don't know if that's 200, but it's
- 7 a hundred to 200, yes.
- 8 Q. So you potentially could have been a major player
- 9 down there, having like five, six, seven
- 10 neighborhoods on that pump station?
- 11 A. Possibly.
- 12 Q. And did you tell me that these two pump stations
- 13 for Riversway and -- we talked about how much all
- 14 of them were worth. They were basically worth
- 15 about four million dollars apiece to you?
- 16 A. That's a good estimate, yes.
- 17 Q. So you weren't happy about this change in your
- 18 business operation, were you?
- 19 A. No, because ReWa was intentionally interfering
- 20 with a contractual relationship.
- 21 Q. And you thought about suing them for it, right?
- 22 A. I thought about it.
- 23 Q. It's not the first time you thought about suing
- 24 ReWa either, is it?
- 25 A. No. That's the first time.

- 1 Q. Is it?
- 2 A. Yeah.
- 3 Q. How about when they took away the Kilgore pump
4 station when the gravity line came through?
- 5 A. Oh, I'm sorry; you're right.
- 6 Q. Right?
- 7 A. That did. We thought about that.
- 8 Q. Let's talk about that a little bit. When a
9 gravity line comes through, generally the pump
10 station is abandoned, or its decommissioned, and
11 then the flow goes to gravity, right?
- 12 A. Yes.
- 13 Q. And in this setup -- let's just use this for an
14 example because it's up here. If ReWa eventually
15 built a plant down lower on the Reedy River, then
16 if a gravity system was built through these
17 neighborhoods, the flow would go down toward the
18 new plant, right?
- 19 A. That's correct, theoretically, because there may
20 be a hill in between. But generally --
- 21 Q. We talked about the twelfth pump station, the one
22 you used to have that went away.
- 23 A. Uh-huh.
- 24 Q. That one actually went away because ReWa ran a
25 gravity line through the area, correct?

1 A. That's correct. That's correct.

2 Q. And then you decommissioned your pump station,
3 right?

4 A. That's correct.

5 Q. And then flow went to gravity?

6 A. That's correct.

7 Q. And you were so upset about that, that you thought
8 about suing Rewa for a condemnation action?

9 A. I wasn't upset, I was looking at it as a business
10 loss, and if there was anything that we might want
11 to do about it.

12 Q. Let's look at --

13 A. But we decided not to sue. For one reason, I
14 didn't want to make that my full-time job at
15 Condor. The other thing is it wouldn't make sense
16 for me because I'm not a regular litigator in
17 court. And so I would have had to hire an
18 attorney to do a condemnation action, and so it
19 would have cost a lot of money and taken a long
20 time, plus at the time, we still had additional
21 pump stations on the horizon. So we figured,
22 well, one went away. In our new contracts, we
23 might change things a little bit and might work
24 out possibly a predetermined price that Rewa might
25 pay if they went away, but we didn't get that far.

1 Q. So as long as you didn't sue Rewa on that one, you
2 might get some others under the radar?

3 A. No, no. What we decided was that the equipment
4 was still ours, so we ended up selling the control
5 panel to another entity, made some money; selling
6 the generator to somebody else. We made some
7 money, so it wasn't a total loss. We just decided
8 that that was a better way to go than fighting
9 Rewa.

10 Q. And you said since that happened, you changed your
11 Condor contracts, right?

12 A. Well, I was getting ready to, but then y'all
13 changed your mind about whether we could even have
14 additional contracts. And so we -- that process
15 came to a halt.

16 Q. Let's look at Exhibit 1 now. I want to direct
17 your attention to page 5.

18 A. Okay.

19 Q. Paragraph 7(a) says, "This agreement will
20 terminate if a public entity agrees to assume the
21 operation of the premises."

22 A. Right.

23 Q. This term was in your contract on the twelfth pump
24 station, the one you lost?

25 A. Yes, it was, or something very similar. Yes.

- 1 Q. And this is what you changed after that experience
2 on the twelfth one?
- 3 A. No, because this contract is not between Condor
4 and ReWa, it's between Condor and the -- basically
5 the developer and the -- ultimately the homeowners
6 association. So --
- 7 Q. But this is something you were going to change on
8 the new contracts?
- 9 A. Well, I -- no. I was going to add another term
10 that hopefully we were thinking might have a
11 clause where we worked out with ReWa, how pump
12 stations would be taken away, and presumably some
13 compensation. But we didn't -- we never got to
14 those discussions because of the new reg.
- 15 Q. So the new agreement was going to -- this was
16 between you and the homeowners, right?
- 17 A. This agreement, yes.
- 18 Q. So the new agreement was going to say, you can
19 terminate us, but you're going to have to pay us
20 for it, right?
- 21 A. No, but that ReWa would have to pay,
22 theoretically.
- 23 Q. You were going to put in a contract with the
24 homeowners association that ReWa was going to have
25 to pay Condor for running a gravity line through

1 the basin?

2 A. Typically when a private piece of property is
3 basically taken over, totally put out of service
4 by a public entity, that public entity has to pay
5 compensation, yes.

6 Q. So that was going to put Condor in a blocking
7 situation as far as gravity lines, wasn't it?

8 A. No. It would put -- my thoughts were that it
9 would put a predetermined price so there wasn't
10 going to be any fight over who does what and how.

11 Q. These pump stations and force mains that you --
12 you told me you carried them on your books at a
13 zero basis, right?

14 A. That's what I told you.

15 Q. That's because you paid nothing to build it,
16 correct?

17 A. Neither does Rewa, but there are tremendous
18 expenses involved in maintaining them.

19 Q. I just asked, you didn't pay anything for those
20 pump stations and force mains?

21 A. And I answered you, and I said I -- we did not pay
22 anything, but it cost a tremendous amount to be
23 ready to replace them, to maintain them, just like
24 Rewa has to do.

25 Q. But the new contract mechanism was going to be

1 such that when these free pump stations were
2 replaced by gravity systems, Condor was going to
3 be paid by ReWa for them?

4 A. They're not free pump stations. They come with a
5 --

6 Q. They were costless pump stations to Condor?

7 A. No. There's an inherent cost that comes with pump
8 stations. That's why ReWa did not want them
9 initially, because there's tremendous liability
10 that comes with pump stations and tremendous
11 operation requirements that cost money and
12 tremendous replacement costs that cost money.

13 Q. Let's just leave it that the contract was going to
14 be that ReWa was going to pay you for the pump
15 stations and force mains when a gravity sewer came
16 through. That's how the contract was going to
17 work?

18 A. That's how I hoped it would eventually work, that
19 a public entity would have to pay to take over a
20 private entity.

21 Q. And this contract that we have here is actually
22 executed. This is with Mr. Bolo's company, right?

23 A. That's correct.

24 Q. But you didn't have contracts executed with Mr.
25 Willis, who we'll hear from later, and from the

- 1 guys at Riversway. Those contracts weren't
2 signed, were they?
- 3 A. They were not signed, although tremendous -- well,
4 I say tremendous. Substantial work had been done
5 by both the developers and some work had been done
6 by us in preliminary work to get even to the point
7 of discussing signing the contract.
- 8 Q. So they weren't signed?
- 9 A. That's correct. They weren't signed.
- 10 Q. I want to talk a little bit more about when the
11 gravity line came through Kilgore Plantation. Is
12 that what the name of it was?
- 13 A. Uh-huh. That's -- Kilgore Farms I think.
- 14 Q. Kilgore Farms. Were you aware then that the
15 Kilgore Farms developer had paid an escrow charge
16 to fund the construction of that gravity line when
17 it came through?
- 18 A. Yeah. Rewa always requires the developer to enter
19 into what's called an illusory contract with Rewa.
- 20 Q. Well, hang on a second. It was called an illusory
21 contract?
- 22 A. No. Of course it wasn't called that.
- 23 Q. That's Gene McCall's label, right?
- 24 A. No. That's actually a Black's dictionary
25 definition. When Rewa gives no consideration for

1 the contract and the developer has to pay a
2 substantial amount of money, maybe \$100,000, and
3 Rewa says, some day if we were to build this
4 gravity sewer, your portion will be \$100,000, but
5 we don't guarantee at all that we'll build it, but
6 you got to give us \$100,000 to pass go. So that's
7 an illusory contract under any legal books or --

8 Q. And the Kilgore developer paid something along the
9 lines of \$100,000 as an escrow charge?

10 A. I forget exactly, but it was a substantial amount,
11 something along -- like that, yeah. And they
12 actually built the sewer, which was amazing.

13 Q. I was going to say, so the illusoriness of it
14 evaporated when the gravity line was actually
15 built, correct?

16 A. No. It's -- the illusory contract did not go
17 away, it's just everybody was surprised that
18 actually Western -- or Rewa actually put in a
19 gravity sewer.

20 Q. And when the gravity line was paid, I don't know
21 if you know this, but the escrow was actually
22 taken down and used to build that gravity line,
23 wasn't it?

24 A. I'm sure it was used to contribute to the --

25 Q. Right, because it didn't cover it all?

- 1 A. Right. It would not have covered it all. Other
2 developers paid for the other parts -- portion.
- 3 Q. And you knew charging those gravity line escrows
4 is part of Rewa's practice because, like you said,
5 you all had a hundred years of sewer experience?
- 6 A. Yeah, because Rewa can.
- 7 Q. And Sam actually used to work for Rewa, right?
8 Your partner, Sam, was a Rewa employee?
- 9 A. He was the head operator, yes, wastewater operator
10 for Rewa back in the good ole days.
- 11 Q. And so you told Scott Bolo and Jay Alexander
12 they'd have to pay a gravity line escrow charge on
13 these developments, too, didn't you?
- 14 A. No, I didn't tell them that. That didn't come up
15 in our conversations.
- 16 Q. You didn't tell them that?
- 17 A. I don't remember telling them that, but maybe I
18 did. We talked a lot. But if they'd asked, I
19 would have said, yeah, you got to pay it because
20 Western makes you pay it. It's not right, but
21 they make you pay it.
- 22 Q. So you don't know whether that gravity line escrow
23 charge was in their business plan or not. You
24 never saw the business plan, did you?
- 25 A. I never saw the business plan.

1 Q. We talked briefly Friday about back in the day, in
2 the seventies and eighties. There actually used
3 to be government money available to build trunk
4 lines, true?

5 A. Yes.

6 Q. Long since evaporated?

7 A. That's correct.

8 Q. And these days, generally trunk lines are funded
9 by new development. Developers pay for it?

10 A. And we discussed that Friday, that oftentimes
11 that's the case, that the utility requires the
12 developer to pay either a portion -- an allocated
13 portion of that gravity line or sometimes the
14 whole cost, depending on how it is. But
15 oftentimes, the public utilities also use their
16 general funds to construct additional gravity
17 lines to various parts of the county just because
18 they think it's the right thing to do.

19 Q. Sometimes they contribute to it and sometimes the
20 developers pay?

21 A. That's right.

22 Q. And the developers will pay -- for instance, if
23 you were extending a gravity line, the developers
24 generally pay for that?

25 A. Typically, yes.

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- 1 Q. Let's go talk about the regulation.
- 2 A. Okay.
- 3 Q. I don't think we've marked it yet, so for Mr.
- 4 Glenn it'd probably help if we actually put a copy
- 5 in the record so he can read it.
- 6 HEARING OFFICER: This will be Number 3?
- 7 MR. FULTON: Without objection.
- 8 (EXHIBIT NUMBER 3 MARKED)
- 9 EXAMINATION RESUMED BY MR. STILWELL:
- 10 Q. Gene, can I ask you a couple questions before we
- 11 get into the meat of it?
- 12 A. Sure.
- 13 Q. Did you have a chance to read it? You've read it
- 14 before, right?
- 15 A. What, the reg?
- 16 Q. Yeah.
- 17 A. I haven't read it probably in a year or so, but
- 18 I'm generally familiar with it.
- 19 Q. How about we go through it paragraph by paragraph,
- 20 like I'll stop and let you read it.
- 21 A. Okay.
- 22 Q. First of all, I just wanted to say you mentioned
- 23 you actually went to two public hearings on this
- 24 regulation, right?
- 25 A. I did.

1 Q. And none of the developers went to those public
2 hearings, did they?

3 A. I don't know everybody who went to the public
4 hearing. There may be 30 people at the public
5 hearing, so I don't know if they were developers
6 there or not.

7 Q. But Scott Bolo wasn't there, was he?

8 A. No, I don't believe so.

9 Q. I went to them. I remember -- you tell me if I'm
10 right or wrong about this. You were there. Kelly
11 was there.

12 A. Yes.

13 Q. And Gene Stansell was there?

14 A. Mike Stansell.

15 Q. Mike Stansell. And then was Mike Dixon at one of
16 them?

17 A. He missed the first one. He came to the second
18 one, yeah.

19 Q. And those are people who run subdistricts other
20 than yourself?

21 A. That's correct.

22 Q. I want to direct -- you saw different drafts of
23 this regulation as it went through the process,
24 didn't you?

25 A. I did see, you know, some various drafts. I don't

- 1 remember how many.
- 2 Q. And when you mentioned that I told you that a
3 private line couldn't come through ReWa property,
4 that was actually before this regulation was
5 finalized, wasn't it?
- 6 A. Yes. You all were enforcing the reg before it
7 actually came along.
- 8 Q. Now, let's look at this reg and see if it actually
9 does forbid a private line from coming through
10 ReWa property.
- 11 A. No, it doesn't.
- 12 Q. It doesn't, does it?
- 13 A. Not on its face, but from all practicality, yes,
14 it does.
- 15 Q. You talk about practicality. I want to talk about
16 what it says. Let's look at paragraph 2 first.
- 17 A. All right.
- 18 Q. That paragraph talks about service requests
19 outside of the service area of a subdistrict.
20 okay?
- 21 A. All right.
- 22 Q. So if these neighborhoods were not in Metro, then
23 Condor could have owned the whole system, couldn't
24 they?
- 25 A. Theoretically, yes, Condor could have. But Metro

1 has regularly -- anytime a development takes place
2 that wasn't specifically within the Metro defined
3 district, they would annex into the Metro so Metro
4 could own the gravity because Metro wanted the ad
5 valorem taxes. And so again, that would have put
6 us at odds with Metro.

7 Q. We're going to talk about paragraph 3 next.

8 A. Okay.

9 Q. But if these districts -- if these neighborhoods
10 were not in Metro, Condor could have owned the
11 owned tamale, as I said?

12 A. It states -- yes, in black and white. Yes, that's
13 a -- or that is a legal possibility.

14 Q. And then secondly, if you're in paragraph 2 and
15 you're outside of Metro, there's no requirement
16 that Metro backstop that system, is there?

17 A. Right. But this goes against the historical
18 practice in Greenville County when a development
19 comes about, just like cities won't annex. Metro
20 wanted to annex, so that would have put us as a
21 competitor to Metro and that would not be what
22 they wanted us to do, not what we wanted to do,
23 and would -- and I don't think would be the best
24 thing for the greater Greenville area.

25 Q. You talked about historical practice. This would

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- 1 have been a change in how you had done it before,
2 wouldn't it?
- 3 A. Yes.
- 4 Q. Change is painful, isn't it?
- 5 A. well, it's not legal based on this reg I don't
6 believe.
- 7 Q. People don't like to change, do they?
- 8 A. Generally not.
- 9 Q. Is it generally your understanding that
10 regulations change things?
- 11 A. Yes, but usually not retroactively.
- 12 Q. Now, you understood after that Board meeting where
13 you all came in here and asked to be grandfathered
14 -- that was around November of '08, right?
- 15 A. It was November of '08.
- 16 Q. You understand around that time Metro did not want
17 to let these guys de-annex from Metro, right?
- 18 A. That's my understanding. I --
- 19 Q. You understand after that request to grandfather,
20 Metro actually agreed to let them be annexed?
- 21 A. It was -- various proposals would be made by ReWa
22 to throw another option out there, which I believe
23 was just another rabbit trail. I do not think
24 those were good faith offers by --
- 25 Q. Your answer is yeah, you understood Metro would

1 have let them de-annex from Metro, those two
2 neighborhoods?

3 A. Because it was such of a mess and that ReWa
4 wasn't going to let it happen. Metro wanted the
5 development to happen, in my opinion. They wanted
6 to let it happen and y'all said no.

7 Q. I don't think I heard that word, but the answer to
8 that question was yes?

9 A. Yes, from my understanding. I was not at those
10 meetings anyway.

11 Q. So if they had de-annexed, you could have owned
12 the whole thing with no Metro backup under
13 paragraph 2, right?

14 A. No, because you said we couldn't come onto ReWa
15 property so I could not have.

16 Q. That was before the regulation was enacted,
17 correct? You just said that.

18 A. But you -- I'm confused now. You said -- you told
19 me, "You cannot, as a public" -- I mean, sorry,
20 "As a private utility come onto ReWa property."
21 You said, "We might work out something where the
22 homeowners can own it," so it's --

23 Q. And that was a year prior to Metro agreeing to de-
24 annex, wasn't it?

25 A. Right. Y'all just kept shifting the target, but

- 1 never intending to approve anything.
- 2 Q. Let's go down to paragraph 3.
- 3 A. Okay.
- 4 Q. Paragraph 3 is requests for service inside the
- 5 service area?
- 6 A. Right.
- 7 Q. And inside that service area, like if they had
- 8 stayed in Metro, you still could have owned the
- 9 whole thing, the whole system, correct?
- 10 A. That's correct. But I already told you that that
- 11 -- but Metro wouldn't want that to happen. Their
- 12 commission would not have approved that because
- 13 they wanted the gravity lines.
- 14 Q. Do you know whether Metro's commission actually
- 15 agreed to that before the regulation was enacted?
- 16 A. Agreed what?
- 17 Q. Agreed to let you own the whole thing as long as
- 18 they backed it up.
- 19 A. I don't know. I never heard.
- 20 Q. But you know that Metro didn't actually come and
- 21 protest the regulation, correct?
- 22 A. Yeah. I believe there was a little side deal
- 23 worked out with Rewa and Metro.
- 24 Q. But you didn't like -- you actually didn't want to
- 25 own the whole system. You made that decision,

- 1 didn't you?
- 2 A. We were basically told that when it says backstop
- 3 -- I don't remember the words. Let's see, let me
- 4 find it here. It's been a while.
- 5 Q. It's that second paragraph in paragraph 3. It
- 6 talks about uncured, unsafe, or unsanitary
- 7 conditions.
- 8 A. Yeah.
- 9 Q. Then the subdistrict will assume ownership.
- 10 A. Right. Right. This basically -- it doesn't say
- 11 indemnify, but basically it says, you know, that
- 12 the subdistrict will correct any mistakes of the
- 13 private owner. And in the first paragraph it
- 14 says, Western Carolina shall consider the
- 15 collector system that was under the private
- 16 utility a part of the subdistrict. And so
- 17 basically you're -- backstop's not the right word.
- 18 Indemnitor is the right word.
- 19 Q. Now, let me ask you that. It doesn't say
- 20 indemnity, right?
- 21 A. No, but in an effect requires the equivalent of.
- 22 Q. And the first draft actually did say indemnity,
- 23 didn't it?
- 24 A. Right, but you all -- you're very good with words
- 25 and you came up with different words that mean the

- 1 same thing.
- 2 Q. And you talked about like what if Gene McCall and
- 3 Sam Weaver get a wild hair and they just go to
- 4 Bermuda, just take off.
- 5 A. Right.
- 6 Q. And under the situation that you had with your
- 7 contract with Harrison Partners, there is no
- 8 public backstop, is there?
- 9 A. Yes, there is.
- 10 Q. Who is the bag holder if you go to Bermuda?
- 11 A. The Public Service Commission requires us to have
- 12 a bond. And there's a bond that the Public
- 13 Service Commission can take and cause, you know,
- 14 to be applied to fixing a problem and presumably
- 15 getting another operator to take the problem, take
- 16 care of the --
- 17 Q. How much was your bond for this neighborhood?
- 18 A. I don't remember.
- 19 Q. But who was going to actually do the work? It had
- 20 to be somebody who knew how to run a sewer, right?
- 21 A. And that's why Metro did not like the idea of
- 22 letting, say, us be in a non Metro area because
- 23 they still would get stuck with it, if there were
- 24 problems.
- 25 Q. Let's hang on a second. Let's talk about public

1 entities getting stuck with sewer systems that run
2 off the tracks.

3 A. Yes.

4 Q. Metro got stuck with Slater, didn't they?

5 A. No. They got money for Slater.

6 Q. But they took over Slater because it was
7 dysfunctional, right?

8 A. No. They got federal money to take over Slater
9 to make it a beautiful system. And of course
10 they'll take it over if it's a new system.

11 They're replacing the whole system in Slater.

12 Q. Let's say Slater was a good deal for Metro.

13 A. It was a great deal for Metro.

14 Q. The Altamont neighborhood up on Paris Mountain
15 with sewer running down the side of the hill,
16 that wasn't a good deal for Rewa, was it?

17 A. Of course it was a good deal for Rewa. You're
18 making money on it. You have no requirements in
19 your NPDES permit. There are absolutely no
20 requirements. You monitor and report. There are
21 no effluent limits on that, and you're making I
22 think something like \$1,500 a month. An operator
23 comes up there periodically, not very often, and
24 he doesn't do squat.

25 Q. DHEC has the permit through our plants, right?

- 1 A. DHEC screwed up. No. DHEC screwed up on
2 Altamont.
- 3 Q. And who did they ask to fix it?
- 4 A. Huh?
- 5 Q. Who did DHEC ask to fix it? Rewa, didn't they?
- 6 A. No. They didn't ask Rewa to fix it. They said
7 will you run it, again under the radar, not
8 provide a real treatment plant, but provide a
9 little aeration and coronation so it just kind of
10 -- the problem kind of gets under the radar so it
11 doesn't get in the newspaper every day. So they
12 didn't fix it.
- 13 Q. Rewa actually runs Altamont under a federal
14 consent order, correct?
- 15 A. Because DHEC screwed up. I told them to do
16 different things and they didn't.
- 17 Q. And when DHEC needed somebody to fix it, they came
18 to Rewa, right?
- 19 A. Like I said, Rewa has not fixed the problem. Rewa
20 put a Band-Aid and duct-taped the problem.
- 21 Q. I can agree with you on that. We can agree it's
22 still a problem, isn't it?
- 23 A. It's still a problem. So Rewa is making money and
24 not doing a proper job.
- 25 Q. We'll ask Ray about how much money they're making

- 1 on it.
- 2 A. Okay.
- 3 Q. Let's talk about grandfathering.
- 4 A. Well, he's an accountant. He knows how to make
- 5 money.
- 6 Q. Grandfathering. We're going to talk about the
- 7 time when the developers came in here to ask for
- 8 --
- 9 A. Yes.
- 10 Q. None of those developers had final plans and
- 11 specs, right?
- 12 A. But three developers at least, and maybe four, had
- 13 a contract already in place that was approved by
- 14 ReWa.
- 15 Q. I heard you on that. I just asked you, did they
- 16 have final plans and specs or not, and you said
- 17 no.
- 18 A. Because they don't have final plans and specs at
- 19 that point in time. You never do.
- 20 Q. And these seven people were all on different
- 21 stages of their development process, right?
- 22 A. That's correct, yes.
- 23 Q. And you said that there was never any response
- 24 from the Board --
- 25 A. That's correct.

1 Q. -- to your request to grandfather?

2 A. That's correct. I never got a response, and Mr.
3 Martin said it'd be quick.

4 Q. That meeting was in November of '08, wasn't it?

5 A. That's correct.

6 (EXHIBIT NUMBER 4 MARKED)

7 EXAMINATION RESUMED BY MR. STILWELL:

8 Q. I just handed you a letter from Mr. Martin to Mr.
9 Bolo. What's the date on that letter?

10 A. That letter is December 4, 2008.

11 Q. So that was actually before the next Board meeting
12 to the one you went to, wasn't it?

13 A. I don't know. I -- yeah. I mean the next one
14 would have been in December. I don't know when
15 the Board meeting was.

16 Q. I don't know if we got our Tuesdays right, but
17 that's basically a month after the Board meeting
18 where you requested to be grandfathered, right?

19 A. Okay. That's probably correct.

20 Q. And Mr. Glenn has a copy of that letter, but in
21 that letter, doesn't Mr. Martin --

22 HEARING OFFICER: Did you mark it?

23 WITNESS: Number 4.

24 EXAMINATION RESUMED BY MR. STILWELL:

25 Q. In that letter, Mr. Martin says Metro is still

1 thinking about owning the whole system, doesn't
2 he?

3 A. Yeah. This isn't an answer. This is saying we're
4 still discussing a whole bunch of stuff, yeah.

5 Q. Does he say Metro is thinking about owning the
6 whole system?

7 A. No. It just says, "At the meeting, Metro
8 discussed serving Riversway and River Trace
9 developments," which typically to me would be
10 gravity.

11 Q. You have an advantage because I gave you my copy,
12 but doesn't it say there was a meeting with Metro
13 and with members of the delegation to discuss
14 these two neighborhoods, which would have been
15 after you requested to grandfather these
16 neighborhoods, correct?

17 A. That's correct.

18 Q. And options for public ownership were discussed,
19 correct, according to that letter?

20 A. Well, it doesn't say force main. It says -- you

21 know, I would say Metro discussed serving
22 Riversway and River Trace. I wouldn't say that
23 means gravity, and --

24 Q. And the end of that letter actually says if that
25 doesn't work, Rewa will own these systems, doesn't

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1 it?

2 A. No. It says, "We'll honor our commitment to serve
3 those developments," which means take wastewater.
4 I mean you can read this any way -- I've never
5 seen this letter before. I never was sent a copy.
6 I was never responded to directly with my -- to my
7 request, and I'd never gotten anything on the
8 other six subdivisions, but this doesn't answer
9 the question.

10 Q. well, you just finished mine. You answered a
11 question I didn't ask, which was you had never
12 seen that letter before I handed it to you today?

13 A. That's what I told you, that I'd never seen it.

14 Q. Okay. That's all the questions I have.

15 A. Okay.

16 HEARING OFFICER: Anything in reply?

17 MR. FULTON: Yes. One moment, please.

18 REEXAMINATION BY MR. FULTON:

19 Q. Mr. Stilwell asked you about plans that you might
20 have had if you had had any other contracts that
21 changed the provision about termination if a
22 public entity assumed the operation of the
23 premises. And regardless of that, that wasn't --
24 there were no changes in this contract?

25 A. No. That was a legal contract.

1 Q. That you had with Harrison Partners. And it says
2 right in here --

3 A. Yes.

4 Q. -- regardless of what you might have been thinking
5 about changing if you had ever made any changes?

6 A. That's correct.

7 Q. And as you have already said, despite the exact
8 language that is used in this amended amendment to
9 the regulation, your testimony is very clearly
10 that from a practical standpoint, the effect of it
11 is to prohibit you, a private entity --

12 MR. STILWELL: Objection; leading.

13 WITNESS ANSWERS:

14 A. My belief was the intent and effect of this
15 regulation was to keep private entities from
16 owning any pump station or force main within the
17 Rewa system, and it worked.

18 REEXAMINATION RESUMED BY MR. FULTON:

19 Q. And that's based upon your experience in the
20 field?

21 A. Uh-huh.

22 Q. And, in fact, since that time nobody has here in
23 Greenville County, have they?

24 A. To my knowledge, nobody has.

25 Q. So it worked?

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1 A. Yes, it did work. And like I said, we're breaking
2 up Condor because of that because that part of the
3 business has gone away. And so Sam and I have not
4 officially completed the split, but we're -- but
5 Condor is going to go away eventually.

6 Q. So in addition to the things that you heard me say
7 in my opening statement about how the actions of
8 ReWa and this amendment caused the development of
9 River Trace and Harrison Partners extreme
10 hardship, it's also caused Condor extreme
11 hardship?

12 A. Yes. Like I said, it wasn't the only reason, but
13 it contributed to the breakup of our company, yes.

14 Q. As far as you know, no other private company since
15 this amendment has been permitted, have they?

16 A. No other private company has been permitted that I
17 know of.

18 Q. All right. Those are all the questions I have.
19 Thank you.

20 HEARING OFFICER: I have a few.

21 WITNESS: Yes, sir.

22 EXAMINATION BY HEARING OFFICER:

23 Q. Have you or anyone at your company or anyone else
24 challenged the regulations in court?

25 A. No, sir. Like I said, we thought about

1 challenging the regulations and suing ReWa for
2 intentional interference with a contractual
3 relationship. I knew that Mr. Orvin could
4 allocate a small percentage of his budget and
5 bury us in paperwork for Mr. Stilwell and his
6 colleagues. I had to think. I knew Lane, but I
7 was going to say Mr. Davis. And they'd be --
8 they'd have fun doing it, and so I said -- I
9 didn't want my full employment to be fighting
10 ReWa. I didn't think that was beneficial for our
11 company.

12 Q. Let's suppose that there had been no regulation
13 changes.

14 A. Yes.

15 Q. When is it -- in the process of getting things
16 approved, when do you file an official document
17 saying ReWa, here's what we want to do, we want
18 your approval? When does that take place?

19 A. Well, again, the -- that takes place typically
20 relatively soon in the process. But you have to
21 know -- you have to get the subdivision plat
22 approved, which again we discussed had been
23 approved. And that only gets approved after
24 Greenville County Planning Commission talks to all
25 the utilities, water, fire, sewer, and says, are

1 you okay with this. Is this all right, and ReWa
2 approved that. And again --

3 Q. And at that point, is what ReWa is telling the
4 county, we have the capacity if they build the
5 system in a way that we approve?

6 A. That's correct. Then the --

7 Q. When does that system building get applied for?

8 A. The other key item you need before you can do a
9 detail design and make your final application is
10 knowing where you're tying into. The manhole that
11 you're tying into that will be the termination of
12 your rural collector system that will then become
13 either part of the -- another sewer subdistrict's
14 gravity system or to ReWa. Again, before this, it
15 had been Metro typically or another sewer system.
16 And you had to make sure that Metro had the
17 appropriate flow capacity and then ReWa had the
18 additional flow capacity in their trunk lines.
19 But you need that final point, and that was the
20 sticking point. They would never give approval
21 for the -- okay, you can tie in here. And so you
22 can't do a final design till you know where your
23 terminate is.

24 Q. Did Metro actually agree to take River Trace,
25 annex it? Is that what --

1 A. No. My -- well, they did annex it in. But again,
2 they annexed it to take the gravity lines. Metro
3 assumed that Condor was going to take the pump
4 station and force main when they annexed it in.
5 Mr. Bishop assumed that. He basically approved
6 that. He said, "Make sure Condor is okay with all
7 this." And so the problem was is -- again, once
8 ReWa says, oh, lord, we got this private utility
9 that wants to connect to not our -- literally our
10 wastewater plant, but a manhole on our treatment
11 plant's property. We don't want private systems
12 in ReWa, so let's figure out a way to fix it. And
13 like I said, Mr. Boyette decided he'd make money.

14 MR. STILWELL: I thought we weren't going to do
15 closings.

16 WITNESS: I'm answering his question.

17 MR. STILWELL: I'm just teasing.

18 EXAMINATION RESUMED BY HEARING OFFICER:

19 Q. I want to know -- it's in the law where you
20 referred to about zoning and so forth.

21 A. Yes, sir.

22 Q. To get grandfathered, you file something.
23 There's a point where after that you might get
24 grandfathered or you might not.

25 A. That was Mr. Stilwell and --

1 Q. where do you file something here and when did you
2 file something with ReWa -- I'm sorry, when did
3 you file the plans or application or whatever it
4 is.

5 MR. STILWELL: That's basically the substance of Mr.
6 Bolo and Mr. Bishop's testimony is, what did you
7 file and what is it you wanted to build. And that
8 was why Judge Miller sent us here. I don't want
9 to get all into the legal end of it, but it's like
10 what was filed?

11 WITNESS CONTINUES:

12 A. Mr. Stilwell and I talked. He said, "Go ahead and
13 file your request to have these seven subdivisions
14 grandfathered. Let the Board decide." And so
15 that is the point where we knew whether these guys
16 were wasting their time --

17 EXAMINATION RESUMED BY HEARING OFFICER:

18 Q. My question is, what were you wanting to
19 grandfather? I know you wanted to do something,
20 but had you submitted an application and plans
21 saying, since our plans are already in, we ought
22 to be grandfathered?

23 A. No. The question was the -- our conceptual ideas
24 were in. And the conceptual on all of these were
25 for that the appropriate utility -- most of them

1 Metro, although one was Taylors. I think one was
2 Berea for another pump station. They would take
3 the gravity lines and Condor would own the pump
4 station, which was not consistent with their new
5 regulation. But again, a substantial investment
6 of time and money had gone into all of these
7 proposed subdivisions at that point in time. We
8 needed an answer -- Condor needed an answer, and
9 the developers, as to whether they were going to
10 grandfather us or not. And so whether it would be
11 allowed to have, again, the split gravity system
12 and the force pump station and force main for
13 Condor, and they would never answer that question.
14 And as they said in December of '08, they -- well,
15 let's try something different. It was even in mid
16 2009 that Scott called me and said they were going
17 to the Appalachian COG, to the, you know, 208 plan
18 guy there and talk to him and that they were going
19 to meet with Ray and see if they could work out
20 something there. So there were proposal after
21 proposal by ReWa to say, well, let's try it this
22 way. Let's try it this way. But they never would
23 answer my question. I think my formal request
24 deserved a formal answer. We never got it.
25 Q. But you're not in the litigation?

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1 A. No, sir. I'm not in the litigation. We decided
2 --

3 Q. The Plaintiff, or the Petitioner here didn't ask
4 for that, you asked for it?

5 A. Well -- but we discussed it and basically we were
6 doing it on their behalf. We were making that
7 request on their behalf.

8 REEXAMINATION BY MR. STILWELL:

9 Q. Let me ask you this question seriously, Gene.

10 A. Sure.

11 Q. That request to get a final decision and a written
12 decision with the reasons --

13 A. Yeah.

14 Q. -- was in connection with Scott's request to get
15 his deposit back from you, wasn't it?

16 A. No, no, no, not -- absolutely not.

17 Q. He asked you for the security deposit back?

18 A. He did. Oh, sure, he asked for it back. I never
19 gave it back. But I mean long before then I said
20 I have never heard whether Rewa's going to approve
21 it or not, and they never did.

22 HEARING OFFICER: Anything else for this witness?

23 MR. STILWELL: That's all from me. Thank you.

24 HEARING OFFICER: I think it'd be better to stop for
25 lunch now between witnesses.

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1 (BREAK; OFF THE RECORD)

2 HEARING OFFICER: Are we ready to begin?

3 MR. FULTON: Mr. Scott Bolo.

4 (SCOTT T. BOLO DULY SWORN)

5 EXAMINATION BY MR. FULTON:

6 Q. Mr. Bolo, give us your full name and -- well, give
7 us your full name.

8 A. Scott T. Bolo.

9 Q. And because we're going to be talking about
10 engineering things, in addition to your ownership
11 and involvement with Harrison Partners, tell us,
12 please, about your educational background and your
13 certifications.

14 A. I attended Clemson University and obtained a
15 bachelor of science and then went on to University
16 of Florida to obtain a -- to earn a master of
17 engineering with a specialty in environmental
18 engineering. I also have a degree from USC in
19 international business from the famous MIBS
20 program.

21 Q. At least for now it's still called the Moore
22 School of Business, right?

23 A. Correct.

24 Q. And tell us a little bit about your work
25 experience in engineering and also with regard to

1 development, just some of the different things
2 you've done.

3 A. As a early on engineering, I worked here in
4 Greenville for a company called Arcadis, the
5 Piedmont Olsen Hensley Group. I had dealings with
6 several different utilities, as well as sewer
7 design here in the Upstate. I worked under Bob
8 Frommberger, John Chambers, Dave Holland, some of
9 the most well-respected engineers in the Upstate.
10 I think Bob was engineer of the year the year
11 after I started working for him for the State of
12 South Carolina.

13 Q. What kind of engineering different types?

14 A. Specifically in water and wastewater for Arcadis.

15 Q. And then tell us about different involvements
16 you've had. We know that Harrison Partners is a
17 group that you're involved with, but before that
18 and maybe at the same time of that, have you done
19 real estate development before?

20 A. Sure. Our firm was involved in the early 2000's
21 in Florida. We did a development down there on
22 the gulf coast. Since that time I've been
23 involved in real estate development as an owner,
24 as well as an engineer. We probably permitted 30
25 or 40 subdivisions in various different counties

1 across mostly the midlands and some in the Upstate
2 as well.

3 Q. And so it's safe to say that you are an
4 experienced, or at least somewhat experienced real
5 estate developer?

6 A. I'd say in some areas I'm more experienced than
7 certain engineers. And in other areas, I'm not as
8 experienced.

9 Q. Would you please tell Mr. Glenn about Harrison
10 Partners?

11 A. Harrison Partners was conceived by one of the
12 partners by the name of Lee Sotomayer. Lee lives
13 here in the Taylors area. Lee had identified a
14 tract of land down there on Harrison Bridge Road
15 that he thought would be good for development.
16 As part of our normal process, whenever we do a
17 project, we went and collected the availability
18 letters and all of the other due diligence to make
19 sure that all the utilities would be available to
20 the subdivision. Prior to our purchase we
21 received a flow availability letter from the
22 western Carolina folks which has been the practice
23 of -- as I'm aware for at least two decades.

24 Q. And you're saying that the flow capacity letter
25 or email that you got from Brian Bishop you got

1 before you made -- before Harrison Partners made a
2 final financial commitment?

3 A. That's right. We had our attorneys involved.
4 They reviewed to make sure that, you know,
5 everything looked on the up and up. And we had a
6 closing based on the information that we had
7 gathered at that time.

8 Q. I'd like to back up a little bit now. And without
9 going into too much detail, you just said that
10 Harrison Partners was formed to explore the
11 department of River Trace and then you started
12 going through the process of getting the permits
13 and so forth. Again, just briefly tell me what
14 the different things were.

15 A. We made sure that there was water available to the
16 site. Someone contacted Murray Dodd, the
17 Greenville Water guy and he said yeah, that water
18 was available. The pressure was sufficient. We
19 looked at the access. Obviously there was a road
20 there. There's a county road that was available.
21 The power was there. The electrical from Duke was
22 right there. The cable was also available, and we
23 found out later that gas was also available in the
24 area. So we made sure that all the utilities were
25 available, that they were in existence, and we

1 even went so far as to get a letter from Mr.
2 Bishop indicating that they would be willing to
3 serve the property with certain conditions
4 attached.

5 Q. Right. And that's what we've been calling the
6 capacity letter, right?

7 A. That's right.

8 Q. Now, how does back before -- how does that time
9 wise connect to your applications to Greenville
10 County and their approval of the plat and so
11 forth?

12 A. Well, after we got the general understanding that
13 the property was going to, you know, work out from
14 the standpoint of being feasible, we went to the
15 county because the county has what they call the
16 Planning Commission meeting. And every project
17 that is approved in the county goes to the
18 Planning Commission meeting. And the reason why
19 that meeting was so important, Mr. Glenn, was
20 because at that meeting, the county gave us
21 specific directions. They actually provided us
22 with the writing -- in writing what the steps
23 were. We heard Mr. Stilwell indicate that it was
24 hearsay that the county told us to contract with
25 a PSC company. Actually it was stamped as a

1 requirement on our plat from the county as a
2 condition of obtaining our permit from the county
3 to develop the property.

4 Q. What was that that was stamped on the plat?

5 A. That the developer was required to contract with a
6 PSC-regulated company. So we followed the -- both
7 the instructions from Greenville County, as well
8 as the instructions that we received from Mr.
9 Orvin and from Mr. Bishop indicating to us that we
10 have to go contract with Condor because that was
11 the process. That was the way it worked. In
12 Greenville County you had to, and the reason you
13 had to, because it was stamped on your plat.

14 MR. DAVIS: I object to this on hearsay grounds. If he
15 wants to talk about the plat, why don't we put the
16 plat in evidence?

17 MR. STILWELL: It's hearsay without a plat.

18 MR. DAVIS: If he has a plat -- he's the engineer. He's
19 been talking about it all day.

20 WITNESS: The county has the plat.

21 HEARING OFFICER: Are you going to offer the plat?

22 WITNESS: The plat has --

23 HEARING OFFICER: Hold on. Are you going to offer the
24 plat?

25 MR. FULTON: If I may approach the witness. Is it big

1 enough to read on there?

2 WITNESS: You can't read it, but that is on there. I
3 mean that's part of the -- it's on this. Sir, we
4 did the --

5 HEARING OFFICER: Is this the plat?

6 MR. FULTON: Yeah.

7 WITNESS: It's -- this is the plat I believe. I don't
8 want to say that I know for sure. I wasn't the
9 one that prepared it. It was prepared by a
10 surveyor, but it does have the rules for the
11 county to --

12 HEARING OFFICER: Hold up a minute.

13 MR. DAVIS: Sir, may I approach? Is this the same
14 document? I had something printed off the county
15 website, too.

16 WITNESS: No, that's not it.

17 MR. DAVIS: Can I see what we're talking about?

18 WITNESS: It's Exhibit A. We've already presented it to
19 you, sir. You have it --

20 HEARING OFFICER: You don't need to fuss with him.

21 MR. FULTON: We'll offer that as the next numbered
22 exhibit.

23 HEARING OFFICER: All right. Go ahead and mark this.

24 MR. FULTON: What number is that, Sheila?

25 COURT REPORTER: Five.

1 (EXHIBIT NUMBER 5 MARKED)

2 MR. DAVIS: I just would renew the objection that if
3 we're going to testify about the content of a
4 document, I should be entitled to at least read
5 the comment that he's trying to say is on this
6 plat. And if I can't, then I think I'm at a
7 disadvantage. I think it's unfair. I understand
8 that you're going to let the evidence in
9 liberally, but --

10 HEARING OFFICER: I'll hear him. It will mean more to
11 me if I can see it.

12 MR. DAVIS: Me, too.

13 EXAMINATION RESUMED BY MR. FULTON:

14 Q. Scott, is there any question in your mind that
15 that's a requirement on the plat?

16 A. It's absolutely no question in my mind. And as a
17 matter of fact, it's a matter of public record.
18 And not only is it stamped just on this plat, I'm
19 shocked that the counsel isn't aware of the fact
20 that that's the way it works on every single
21 plat.

22 Q. Let me ask you another question. Let me back up a
23 little bit because at this point now we're talking
24 about the requirement that you use a PSC-approved
25 -- we're talking about the requirement for and

1 your plan to use a PSC-approved company to handle
2 this for you, and that was Condor, right?

3 A. Yes, sir.

4 Q. Now, when you sit down with your partners and
5 Harrison Partners decides whether or not it's
6 going to try to develop a piece of property, you
7 put together a business plan and made some
8 calculations to decide whether or not to do it;
9 is that right?

10 A. Yes. Absolutely that's correct, and moreover we
11 had contacted windsor/Aughtry because we were
12 going to do a joint install with the windsor/
13 Aughtry company.

14 Q. And those are the folks that had Riversway?

15 A. Yes, sir, that's correct. And as a matter of
16 fact, we did enter into an agreement with
17 Riversway and with Condor and had a contract with
18 both of those entities in place and both of those
19 contracts were interfered with by the new
20 regulation that occurred two years -- oh, I'm
21 sorry, it's almost three years after our initial
22 conversation.

23 MR. DAVIS: Note my objection to that testimony, for the
24 record. It calls for a legal conclusion.

25 HEARING OFFICER: Sustained.

1 EXAMINATION RESUMED BY MR. FULTON:

2 Q. And this may just be common sense, and I know Mr.
3 Glenn knows this, but just to get it on the
4 record, when you put together a business plan to
5 make the decision of whether to buy a big piece of
6 property and develop it, you figure on what all
7 the costs are going to be based upon the things
8 that you have found out to that point?

9 A. Yes, sir. And not only that, we prepared our
10 engineering plans and had complete sets of
11 engineering plans for all the collector systems,
12 all the force mains, and three different
13 engineering solutions. Moreover, we had a
14 complete engineering package submitted to Rewa
15 and they cashed our check accepting our completed
16 application package.

17 Q. But let's back up a little bit. I'm going to try
18 to stay chronological here.

19 A. Sure.

20 Q. Because I want to talk about -- as you heard me
21 say in some of my opening statement, you guys had
22 a business plan that was based upon one set of
23 rules, one understanding. And I just want to
24 establish for Mr. Glenn the fact that Harrison
25 Partners had a particular plan, which included

1 that Metro was going to take over the system in
2 the subdivision.

3 MR. DAVIS: Leading.

4 EXAMINATION RESUMED BY MR. FULTON:

5 Q. What was the plan that you guys counted on?

6 A. Well, the plan was to go with the instructions
7 that we received from the county that they stamp
8 on every approved plat.

9 Q. Which was what? What was your plan for?

10 A. You have to contract with a PSC-regulated company
11 for any type of force main or transport work.

12 MR. DAVIS: Renewed objection; no basis for this in the
13 record.

14 EXAMINATION RESUMED BY MR. FULTON:

15 Q. I'm asking the question of what your plan was.
16 Okay? Just tell -- what was your business plan
17 to --

18 A. Our business plan was to conform with the plan
19 that we were given from the county. Our
20 understanding was conveyed to us from the county,
21 as well as from Rewa. Mr. Bishop told us
22 specifically to go and contract with Condor. It
23 wasn't something we selected. In fact, let me
24 add to that. At the beginning, we tried to do a
25 private system and go around Condor. We did not

1 want to use Condor, but we were forced to use
2 Condor because when I went to the meeting with the
3 Planning Commission, the people at the Planning
4 Commission said, "Well, what's the deal? We here
5 that there's not an agreement between Condor and
6 your development," and I spoke. I personally
7 spoke --

8 MR. DAVIS: Your Honor, this is improper testimony. I
9 object. This is hearsay. It's calling for
10 something that's out of the record. If they
11 wanted to bring these witnesses, they could have.
12 I don't get a chance to question them about it.
13 That's unfair and prejudiced to my client. I
14 don't want it in the record.

15 HEARING OFFICER: I'm going to overrule your objection.
16 I'm not taking it for the truth that that's what
17 happened, but that's what he based his plan on.

18 MR. FULTON: And he's going to talk about what he --

19 HEARING OFFICER: Whether it happened or not, I haven't
20 heard that yet.

21 WITNESS: And sir, I want to point out to these
22 gentlemen, it's a matter of the public record.
23 And --

24 HEARING OFFICER: Listen, if you've got a public record,
25 bring it in here before me. Okay?

1 WITNESS: Okay.

2 HEARING OFFICER: I need to know what the facts are of
3 the case.

4 WITNESS: I thought they did, sir.

5 HEARING OFFICER: I don't want to argue with you, and I
6 don't intend to. I know you're upset.

7 WITNESS: I am upset.

8 HEARING OFFICER: I will listen to all testimony and I
9 will look at any documents you have, but I'm
10 looking for the documents.

11 WITNESS: Okay.

12 EXAMINATION RESUMED BY MR. FULTON:

13 Q. Scott, let's try to keep it -- you know, try to
14 keep it simple so that we can just convey what we
15 need to convey. Okay? So my question is, the
16 business plan that Harrison Partners was planning
17 to use with regard to the sewer system was exactly
18 what? Just explain that.

19 A. We were supposed to use a collector system that
20 the collection would be done by Metropolitan Sewer
21 system. The process was that we submit our plans
22 to Metropolitan. Metropolitan was the reviewing
23 agency. They had the DHEC review authority. They
24 were the delegated review for DHEC. So we
25 completed all of our design, 100 percent design

1 complete for the collector system. The collector
2 system then ran down to a pump station down the
3 river. Based on multiple directions we were given
4 by others, not our decision, we used Condor, and
5 Condor was to pump from the pump station up here
6 to the plant. That was the intention.

7 Q. And that was what you built your business model on
8 and that's what you used to make your decisions to
9 invest in the land, buy the land, and move forward
10 with the development; is that right?

11 A. Yes, sir. And in early 2006, we had formulated
12 all those strategies. In early 2006, we had all
13 that stuff under consideration, and in early 2006,
14 we embarked in earnest on the detailed design
15 whereby we completed our engineering design
16 packages, not once, but three separate times, had
17 completely engineered all the different options.

18 Q. Let's talk about that for a second, because we're
19 going to -- I'd like to move chronologically
20 through it. Because after that beginning part in
21 2006, you just said three different designs. And
22 there's been a little testimony already about some
23 changes in the route, so let's get into that now.
24 After you had everything first submitted to ReWa
25 and you had gotten the flow capacity letter

1 already from Brian, and then came the details
2 about the routes. And I don't want to get into
3 too much detail, but tell us a little bit about
4 what happened next with regard to the different
5 engineering plans.

6 A. Well, you know, the thing is is really with the
7 first route, you know, we had designed it. And I
8 heard some discussion this morning about, well,
9 those aren't surveys or whatever. Well, that
10 actually is the stakeout plan from the
11 development, and just because the northings and
12 eastings aren't shown on the line doesn't mean
13 that the data's not there.

14 Q. Well, tell us chronologically what happened.

15 A. The -- my understanding -- and it's been three
16 years ago. This is a long time ago, but basically
17 there was a first route, sir, through the plant
18 that kind of came up through what Mr. Stilwell
19 referred to as a flag lot. And that kind of came
20 up through the top of the plant up to here, over
21 to the tie-in point somewhere up in here, as best
22 I can recollect, and that was a route that Mr.
23 Bishop identified. The ReWa people told us that's
24 where to put it.

25 Q. So that was the first thing, and that came from

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1 them?

2 A. Yes, sir, that's right.

3 Q. So what did you do in response to that?

4 A. Well, we went out and surveyed the route, put
5 together detailed engineering drawings, did all
6 the calculations, figured out everything that
7 needed to happen to get, you know, the service up
8 to that point.

9 HEARING OFFICER: And what was the name of that? What
10 did you say?

11 WITNESS: They call it the flag lot route, sir.

12 HEARING OFFICER: Flag lot?

13 WITNESS CONTINUES:

14 A. Yes, sir, F-L-A-G. And then it was funny because,
15 you know, they had known about the route for
16 months and at the last minute we got out there
17 with some of our survey and construction guys.
18 And they were like, okay -- you know, we were
19 getting ready to clear some trees and stuff. And
20 Brian was like, "oh, you know, that ravine looks
21 deep." And we were just kind of scratching our
22 heads because his contractors -- I mean, let's
23 understand --

24 MR. DAVIS: I object to this. Mr. Bolo was not even at
25 this meeting.

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1 WITNESS: What meeting, sir? I didn't refer to a
2 meeting.

3 MR. DAVIS: You said you got out there and Brian
4 scratched his head and said a bunch of things.
5 You weren't out there on that day, were you?

6 WITNESS CONTINUES:

7 A. I said Brian went to the meeting and that's a
8 decision he made. You know, how he came to that
9 decision I may not be privy to, but I do know that
10 he made that decision, don't I?

11 HEARING OFFICER: And who is Brian?

12 WITNESS CONTINUES:

13 A. Mr. Bishop. He's with the Western Authority
14 Regional Sewer, ReWa. But, you know, sir, we've
15 laid pipelines and done work in all kinds of
16 challenging situations and that crossing was no
17 consequence whatsoever. You heard Mr. Gene with
18 Condor, he testified to that as well. That was
19 just a straw dog. So -- you know, but we're
20 compliant. So they said, "well, you all don't do
21 that route. Here, we've got another route for
22 you.

23 EXAMINATION RESUMED BY MR. FULTON:

24 Q. And where was that?

25 A. I can't remember if we went to the river next or

1 if we went up the road, but I think it may have
2 been the road. I'm not really sure. I'm not sure
3 which came first and which came next.

4 Q. Show us the road, what your best recollection of
5 the second thing they told you is?

6 A. The road route was going to come up Harrison
7 Bridge Road here, sir, and it was going to come
8 up somewhere in this area (indicating), and then
9 it was going to come back. They had asked us to
10 come through a private residence and they asked
11 us to use a Metropolitan easement for liability
12 reasons and capacity reasons and other engineering
13 reasons. And I understand Metropolitan did not
14 want to allow that to happen, so eventually that
15 ended up dying. We did go try and purchase a
16 private right-of-way out there also. We spoke to
17 Mr. Knight. We spoke to various different people.
18 I mean we must have spent six months working on
19 it. I was --

20 Q. This was after you had done work on the first
21 route?

22 A. That's right. And I was initially working with
23 Joe Clark. You know, you heard testimony, but
24 this whole financial scenario drove Joe to have a
25 heart attack and he had to have triple bypass

1 surgery and almost died. So the hardship of this
2 just became way to much for Mr. Clark and he --

3 Q. You're talking about the length of time?

4 A. Yeah, the length of time, the amount of stress,
5 just the impossibility of the working conditions.
6 So unfortunately Mr. Clark, who was the person who
7 would normally liaise with these folks, had to
8 step to the side and I had to fill his role.

9 Q. He was one of your partners?

10 A. He was a senior partner and he had -- you know, he
11 was -- he had 40 years of development experience.
12 And of course when he had his heart attack he
13 almost died. His doctor told him, you know, this
14 is not something you need to be worried about.

15 Q. So this is the second route that they proposed and
16 you did work to try to accomplish that?

17 A. Right. This second route, we went -- like I said,
18 we met with Mr. Knight, and we tried to work out
19 easements. There's a really nice old fellow that
20 works -- that lives over here, has a horse farm,
21 and he was kind of okay with it. Mr. Knight -- as
22 I mentioned, there's a -- sir, there's a Metro
23 utility easement to Mr. Knight's property. And
24 when they put it in, apparently things went very
25 poorly, so Mr. Knight was like, "Oh, I don't want

1 to do that again. That was the worst" -- so
2 anyway, all that work just went away to the
3 wayside. I also want to point out, when we did
4 the surveys on the treatment site, not just once,
5 we did two detailed surveys, one on the river and
6 one out here. We did it at our expense and we
7 provided the data to Rewa and it benefitted them,
8 obviously; to have the survey data, but we only
9 did it because we thought we were going to get
10 sewer service out of the deal. We wouldn't have
11 gone out and done all the engineering work and
12 provided them with free engineering services if we
13 did not think we were going to get the connection.
14 So it really seemed like it rises to the level of
15 a contract when people actually go out and --

16 MR. DAVIS: Objection. Your Honor, this is completely
17 irrelevant.

18 HEARING OFFICER: I sustain the objection as to whether
19 it was a contract or not.

20 EXAMINATION RESUMED BY MR. FULTON:

21 Q. Let me just ask you about what we've marked as
22 Exhibit 2. Tell us what this is.

23 A. This is a stakeout drawing. This is not a
24 detailed set of plans. They were speaking about
25 this is an engineering plan. That's absolutely

1 right. This is what they requested of me at our
2 last meeting, which is, show me the survey that
3 goes through Western Carolina plant, and this is
4 what they call a stakeout drawing. It's made up
5 of engineer's data points. Moreover, the
6 discussion about surveying the route here is moot.
7 It's minutia, and it's designed to bog us down in
8 details that mean nothing. And the reason why is
9 because we already provided bearings, distances,
10 data, and all that stuff for the river route.
11 And I know there's not a dispute about that, so
12 whether we surveyed one route, sir, or two routes,
13 sir, or three routes, sir, it's moot because the
14 work was done. It was paid for by us and it was
15 provided to them.

16 Q. And this is as a result of them saying this route
17 --

18 A. Yeah. "Do this. Go do this work, provide us with
19 the data. Then come back. Give us the data.
20 We'll look it over." And not only -- it's not
21 true that we didn't have complete engineering
22 designs, sir. We had complete engineering design
23 and were completely vested in this project from
24 the time that we had our engineering drawings
25 complete.

1 MR. DAVIS: Your Honor, I object. This is hearsay, too.

2 HEARING OFFICER: Sustained.

3 MR. DAVIS: If he has complete engineering drawings,

4 let's --

5 HEARING OFFICER: I sustained your objection. If you're

6 going to testify that you had completed drawings,

7 I want to see them and when they were submitted.

8 WITNESS: Yes, sir, that's fair.

9 EXAMINATION RESUMED BY MR. FULTON:

10 Q. So we were talking about the second thing.

11 A. Uh-huh.

12 Q. And then what happened?

13 A. Well, you know, it's just go chase another dead
14 end. I mean after we did this route and up this
15 way, sir, on the flag route, did all the
16 engineering drawings and the survey, all this
17 stuff, and then we did the Knight thing -- or
18 maybe the river was first, basically every time
19 we came back, there was some objection. Oh, we
20 don't like that route because we've got something
21 in the way. Oh, we don't like that route because
22 well, we don't Condor to own the line. Oh, we do
23 want Condor to own the line. No, we want the
24 homeowners to own the line. No, we don't know who
25 we want to own the line. It was just an endless

1 to-do list and basically what they were doing was
2 trying to say, oh, well, you're not vested.
3 You're not vested. You're not a hundred percent
4 engineering complete and we were.

5 MR. DAVIS: I object to this, Your Honor. He's
6 speculating on what Rewa had in its mind.

7 HEARING OFFICER: Sustained.

8 WITNESS CONTINUES:

9 A. I know we were a hundred percent engineering
10 design complete. That's not speculation. And I
11 know that the --

12 HEARING OFFICER: Mr. Bolo?

13 WITNESS: Yes, sir.

14 HEARING OFFICER: You can say all day long that you had
15 all of them complete and filed. And when I see
16 that, it will be a fact. Until I do, I'm going to
17 sustain this objection.

18 WITNESS: Oh, I'm sorry, sir. I don't mean to speak out
19 of turn. I was just answering a question.

20 EXAMINATION RESUMED BY MR. FULTON:

21 Q. Let me show you another email and a sketch and ask
22 you to identify what that is for us.

23 A. This is where Mr. Bishop identifies the survey
24 that we provided to Rewa. Specifically he
25 identifies the river route and identifies all the

1 engineering as being complete.

2 MR. FULTON: I'd like to have that marked as our next
3 number.

4 WITNESS CONTINUES:

5 A. And, in fact, if you look at the final page, he
6 says --

7 HEARING OFFICER: Let's mark it first. What number is
8 this?

9 COURT REPORTER: Six.

10 MR. FULTON: And it's a group of three pages, including
11 two emails and a map.

12 (EXHIBIT NUMBER 6 MARKED)

13 WITNESS CONTINUES:

14 A. In fact, on the end here, sir, on the final page
15 I wanted to show you he says, "Please let me know"
16 - - I say to him, "Please let me know if this
17 layout is okay so I can get the easement
18 document." Actually Ashley wrote this. I don't
19 want to misquote. It's Ashley, a girl who worked
20 for me. She says, "Let us know if this survey is
21 complete so we can get the encroachment permit
22 application done." So --

23 EXAMINATION RESUMED BY MR. FULTON:

24 Q. And then what's attached?

25 A. Well, this is the -- this is a copy of the survey

1 that was completed. And we have a full size one
2 that was admitted as evidence, but was never
3 stamped in by -- but there's never been a debate
4 whether the complete survey was done for the river
5 route. No one's ever debated that.

6 Q. And Mr. Glenn asked to see it.

7 A. Yes, sir.

8 Q. And that's what that is, right?

9 A. Yes, sir, that's correct. But I can remember at
10 the time it was an extreme hardship to come up
11 with the money to pay for the survey, but given
12 the fact that we anticipated --

13 HEARING OFFICER: Do you have another copy of this?

14 MR. FULTON: You know, I thought I had four of
15 everything, and I think I handed -- I had four of
16 everything in each of these folders and I handed
17 one to Lane and I --

18 MR. DAVIS: Sir, you can have mine.

19 HEARING OFFICER: I'll get that one back if I need it.

20 WITNESS CONTINUES:

21 A. So I guess to more fully answer your question,
22 yes, sir. the survey work was completed. Yes,
23 sir, the engineering data was provided to ReWa.
24 Yes, sir, we did pay for that, and yes, sir, the
25 only reason we did pay for that was because we

1 expected to receive service.

2 EXAMINATION RESUMED BY MR. FULTON:

3 Q. Let me show you -- how much did -- what's the
4 date, Scott? If you'll look at Number 6 for me.

5 A. Sir?

6 Q. What's the date on that that we know --

7 A. January 11, 2008.

8 Q. Right. Let me show you something else, and I do
9 have the right amount of copies of this one. This
10 is a September 17, 2007 email with an attachment,
11 and we may be bumping around a little bit
12 chronologically here. But since we were asked to
13 make sure we saw all the different plans and
14 things that were submitted, I just wanted you to
15 identify this for me.

16 A. Yeah. This is evidently where they sent us on
17 another wild goose chase to go and pursue a route
18 at the top of the plant. So this is the second
19 route that I guess we surveyed, and the location
20 of the old route would be the first route that we
21 surveyed.

22 Q. And you sent that to Dr. Graef, who was with Rewa
23 on September 17, 2007; is that right?

24 A. Yes, sir.

25 MR. FULTON: I'd like to mark that as Number 7, please.

1 HEARING OFFICER: It will be admitted.

2 (EXHIBIT NUMBER 7 MARKED)

3 EXAMINATION RESUMED BY MR. FULTON:

4 Q. So you were doing a lot of engineering work on
5 different routes proposed by Rewa?

6 A. A lot of work, sir.

7 MR. DAVIS: Object.

8 EXAMINATION RESUMED BY MR. FULTON:

9 Q. And this is over what period of time? I mean you
10 did this application in '06.

11 A. Sir, from February of 2006 we worked diligently,
12 not just me, but several people in my company
13 completing the detailed engineering design which
14 was submitted to the Metropolitan Sewer District.
15 I believe in our deposition, as well as in our --
16 the materials we submitted, there's an email from
17 Mike Dixon saying he was done with us. We had met
18 his standard. We talked about that --

19 Q. That's the Metro guy?

20 A. That's the Metro guy.

21 MR. DAVIS: Objection; hearsay.

22 WITNESS CONTINUES:

23 A. No. It was discussed in a deposition, sir. And
24 it's --

25 EXAMINATION RESUMED BY MR. FULTON:

1 Q. We'll find email. So my question is this. About
2 how long? You started in '06.

3 A. Yes, sir.

4 Q. And the engineering efforts by you and the changes
5 by Rewa, what period of time did this cover?

6 A. Years literally.

7 Q. And at any time during that time, or at least for
8 a long time during that time, did you have any
9 inclination whatsoever from Rewa that they were
10 not going to allow your original business plan
11 which was to let Condor handle that unit?

12 A. No. And what really upsets me is because they're
13 totally misrepresenting what they say; oh, well,
14 the developers didn't come to public hearings.

15 MR. DAVIS: Objection.

16 WITNESS CONTINUES:

17 A. We were not invited to the public hearing. None
18 of us were invited to the public hearings.

19 MR. DAVIS: Your Honor?

20 EXAMINATION RESUMED BY MR. FULTON:

21 Q. But my question is just this.

22 HEARING OFFICER: He can say whether he was invited to
23 the public hearing or not.

24 WITNESS CONTINUES:

25 A. I mean I know whether I was invited or not, don't

1 I?

2 HEARING OFFICER: If you would just answer your lawyer's
3 questions. Okay? Don't editorialize the --

4 WITNESS: It just seems silly, sir. I'm sorry.

5 HEARING OFFICER: Well, it may be silly to you, but
6 you're in here hoping that I'm going to listen and
7 do what I think is right, and that's what I plan
8 to do. You're making it very difficult.

9 WITNESS: Fair enough.

10 EXAMINATION RESUMED BY MR. FULTON:

11 Q. And up until the time that there was the first
12 inkling of this change, which really included a
13 long period of time you just said, you had no
14 indication from ReWa that they were not going to
15 allow you to follow your business plan, which was
16 to let Condor handle the station; is that correct?

17 A. Not only that, after we received the policy, they
18 continued to say that they would work it out, that
19 it would be okay.

20 Q. But at least until -- let's just keep it -- I'm
21 going to try to keep it chronologically here to
22 help Mr. Glenn. My question is, at least until
23 that policy got rolled out, there was definitely
24 no inclination that was going to be a problem,
25 right?

- 1 A. No, no, not at all. I mean, you know, they --
2 this was what was approved by the county. How
3 could they say it was going to be a problem. It
4 was the plan.
- 5 Q. So the question is -- now let's talk about after
6 all this time goes by and the different
7 engineering things you talked about. What was
8 the first inclination -- and you heard Mr. McCall
9 talk about it a little bit today, but what was
10 your first inclination, either inclination or
11 information you got about all of a sudden, Rewa
12 was going to change their policy?
- 13 A. Well, I guess it would be when we went to the
14 Board meeting. And I heard that there was a new
15 policy that was going to be brought on board and,
16 you know, that that new policy was going to affect
17 the subdivision. But when I got up and spoke to
18 Mr. Martin, I asked him specifically, I said, "We
19 really need a quick answer. We really want you
20 and the Board to take a good look at this and
21 review this and let us know what your decision
22 is," and they never answered.
- 23 Q. But that was in that late November, '08 Board
24 meeting. I'm actually talking about back when
25 you first found out, maybe near the end of '07 or

1 beginning of '08 about the proposed change.

2 A. I'm not sure I knew before the Board meeting that
3 the change was going to have -- that it was really
4 even in effect. I think the Board meeting was the
5 first time it kind of hit our radar screen. But,
6 you know, when you go to the Board meeting and the
7 Board says, "We're going to work it out. We're
8 going to make you guys whole," and as I heard in
9 the depositions and as on the record, they had
10 told people, "We think you'll be grandfathered
11 in."

12 Q. Well, let's talk about the grandfathering because
13 you heard -- Mr. McCall testified a little bit
14 about it today, but I'd like you to tell Mr. Glenn
15 what your personal involvement and recollections
16 were about the efforts once you found out about
17 the change to try to get ReWa to understand about
18 the fact that you had already started and you
19 wanted to be grandfathered.

20 A. You know, sir, the process was so slow, I really
21 -- you know, it was a little bit beyond
22 frustrating because we kept going and saying --
23 you know, basically on our knees begging, pleading
24 for help. And -- because we have children and we
25 want them to grow up and have a life and, you

1 know, obviously we don't want them to live in
2 financial ruin. So we showed up and made an
3 impassioned plea to the Board, and that was like
4 '08. Was that 11/08? Was that right? You know,
5 I can't really remember exactly what happened, but
6 it just went from one excuse to another. Like
7 when we got the prices, the prices were round to
8 the nearest hundred --

9 HEARING OFFICER: Let me stop you there. He asked you
10 about grandfathering and your memory, and I was
11 interested in hearing your answer.

12 WITNESS CONTINUES:

13 A. I don't have any memory of any response. I
14 remember Gene requesting at the Board to have them
15 make the decision and then I also got up to speak
16 and I, you know, tried to impress on the Board
17 how, you know, we really needed help. We were
18 begging for mercy. And --

19 EXAMINATION RESUMED BY MR. FULTON:

20 Q. Now, let me ask you this. Except for in the Board
21 meeting, was there any time before that that you
22 had any discussions with either Mr. Bishop or Mr.
23 Stilwell or anybody about the change and what it
24 meant to you, and that you needed to be
25 grandfathered?

1 A. I'm not sure. I do know at some point Mr.
2 Stilwell basically took control of the situation
3 and, you know, really basically he told me not to
4 communicate with anyone at ReWa, to communicate
5 only through him.

6 Q. And so you're talking about asking to be
7 grandfathered in. And Mr. McCall testified that
8 he made the request on behalf of Harrison
9 Partners?

10 A. Yeah, and we followed up. We were allowed to
11 speak briefly.

12 Q. And you did make that request to the Board?

13 A. Yeah. I just reiterated basically what Gene
14 said, but I added my own personal sentiment to it
15 because, like I pointed out specifically, you
16 know, my partners in Harrison Partners are good
17 people. And Joe Clark -- I didn't feel like it
18 was necessary for him to have a heart attack. I
19 don't feel like --

20 MR. DAVIS: Your Honor, object. He's talking about a
21 failed commercial project.

22 HEARING OFFICER: Let's get back. If you'll listen to
23 your lawyer and answer his questions, you'll do a
24 lot better.

25 WITNESS: I thought I was answering his --

1 HEARING OFFICER: No, you weren't. We weren't talking
2 about heart attacks. We were talking about did
3 you request grandfathering, and if so, when and
4 what was the response.

5 EXAMINATION RESUMED BY MR. FULTON:

6 Q. Let me rephrase. First of all, we're talking now
7 about a Board meeting in '09, late '09. And this
8 is almost how long after your first approach to
9 ReWa about getting sewer service?

10 A. 2006 was my first approach.

11 Q. Now, you heard Mr. McCall testify earlier about
12 the average amount of time it would take to put
13 something through, even if it was difficult
14 engineering. Do you recall what he said?

15 A. Yes, sir, and I would echo that. You know, we
16 never, sir, had any permit go longer than eight
17 months, and a year at the outside would be
18 absolutely unconscionable. To go two -- over two
19 years without any real commitment from ReWa,
20 unconscionable.

21 Q. And during this time, you purchased the property,
22 right?

23 A. Yes, sir.

24 Q. Mortgage payments on the property?

25 A. Interest payments every month, mortgage payments..

1 Q. And, in fact, you actually had a contract. You
2 had lined up a builder to come in and part of your
3 business plan was that you had lined up a builder
4 to come in and develop that property, didn't you?

5 A. Yes, sir, that's right. Eastwood Homes had a
6 contract to come in and buy all the lots on a
7 takedown, and as a matter of fact, they ended up
8 getting hurt, too, by this.

9 Q. I'd like to show you a document that I'd like to
10 get marked as Exhibit Number 8. But first, if you
11 could identify, is this the contract that you had
12 with Eastwood Homes to come in --

13 A. Yes.

14 Q. -- and develop your property?

15 A. Yes, sir.

16 MR. FULTON: Would you hand that over to Sheila,
17 please?

18 (EXHIBIT NUMBER 8 MARKED)

19 EXAMINATION RESUMED BY MR. FULTON:

20 Q. When you make a business plan and you know you're
21 going to enter into a commitment and have costs
22 like interest payments and enter into contracts
23 with builders, part of your thinking as a
24 businessman is an approximate amount of time it's
25 going to take to get this done; isn't that right?

1 MR. DAVIS: Your Honor, leading. Objection; compound.

2 HEARING OFFICER: Ask him what his plan was.

3 EXAMINATION RESUMED BY MR. FULTON:

4 Q. Let me ask you this. As a businessman, Mr. Bolo,
5 and as a developer, experienced developer, how did
6 this long period of time affect everything you had
7 done?

8 A. In 2006, when we acquired the property, we had
9 significant contingency funds. And as a matter of
10 fact, we were able to survive for four and a half
11 years, even with this extensive delay, and our
12 property was not foreclosed on until -- I believe
13 it was December of '10. I'm not entirely certain,
14 but I think that's the date, within a month of
15 there.

16 Q. '09?

17 A. Or was that '09? Yeah, you would know. I'm sorry
18 about that. But I mean from 2006 to 2010, we
19 carried the project with our own means, sir, and
20 we didn't -- we weren't stretched to the limit.
21 We had a significant contingency and we had not,
22 you know, just shortcut the process and been
23 underfunded. We were fully funded for the full
24 construction amount. And as a matter of fact,
25 I've had conversations with Eastwood recently

1 where they indicated they would have honored this
2 contract.

3 MR. DAVIS: Hearsay.

4 HEARING OFFICER: Sustained.

5 EXAMINATION RESUMED BY MR. FULTON:

6 Q. Was it your understanding that Eastwood stood
7 ready to honor its contract for a pretty good
8 period of time?

9 A. Absolutely. I met with Joe Dority.

10 MR. DAVIS: Hearsay, Your Honor.

11 EXAMINATION RESUMED BY MR. FULTON:

12 Q. Now, we come up to November of '09. You ask to
13 grandfather in. But even after the amendments and
14 even after the change, there was still a lot of
15 back and forth -- or was there still a lot of back
16 and forth, even for months after that about still
17 trying to work it out?

18 A. I'll be honest with you. I had some serious
19 concerns about the regulation that they're holding
20 up here in court. I think that it's been changed
21 after the fact. And the correspondence that we
22 received, it's been admitted in the depos, is
23 different.

24 Q. Well, let me just ask you this, though, because
25 maybe you didn't understand my question.

1 A. That's in your --

2 Q. I really wanted to tell Mr. Glenn that even after
3 the change, even after the amendment, even after
4 they said, "well, you can't do your business
5 plan," and even after you asked for grandfathering
6 and never got a response, you --

7 MR. DAVIS: Objection; leading.

8 MR. FULTON: Well, I'm kind of reiterating what has been
9 testified to.

10 HEARING OFFICER: Go ahead.

11 EXAMINATION RESUMED BY MR. FULTON:

12 Q. And even after that point, wasn't there still a
13 lot of back and forth to try to work it out with
14 ReWa?

15 A. Absolutely. And as a matter of fact, I went to
16 the Appalachian of Governments. There are notes
17 from that meeting. These folks were in attendance
18 at that meeting. And I specifically asked them,
19 and I held up the regulation, and I said, "This
20 doesn't apply to us because we're not outside of
21 the sewer district." And Mr. Orvin said, and I
22 quote, in front of 20 people, "well, we think you
23 are." So that's why I know, and if you look at
24 what was submitted as far as the documents and the
25 -- that's been admitted as evidence, the version

1 changed. There's three different versions that's
2 in evidence.

3 MR. DAVIS: I object to all of this stuff. Show me the
4 documents so I can at least respond to it.

5 HEARING OFFICER: I have one resolution, one change in
6 evidence. If there are others, your lawyer will
7 put them in.

8 WITNESS: Yes, sir.

9 EXAMINATION RESUMED BY MR. FULTON:

10 Q. Let me just ask it this way. Did you see
11 different versions during the time --

12 A. Not only did I see different versions, but in the
13 deposition, Mr. Stilwell said, and I quote, "Now,
14 there were different versions of this. You're
15 aware of that?"

16 Q. And I'm just asking, at different times, you saw
17 different versions of the amendment, right?

18 A. Yes, sir.

19 Q. And now we're late into '09 now. And the
20 amendment is out there, and really what I wanted
21 you to tell Mr. Glenn about was the fact that even
22 after the request for grandfathering, didn't you
23 still work -- have some back and forth with Rewa
24 about trying to make it still happen?

25 A. Oh, absolutely for months. And truthfully, they

1 didn't even disclose cost to us until, you know,
2 well into 2010. The first date I remember seeing
3 any cost data was like March of 2010, and they
4 weren't final numbers. Everything was labeled as
5 preliminary, in other words, as of March, 2010.
6 They didn't know the numbers. Everything was
7 preliminary. Nothing had been finalized. We were
8 just entering into our very early discussions in
9 March of 2010 on what it would look like, what the
10 business arrangement would be, you know, exactly
11 what it would look like.

12 Q. Well, let me ask you this, Mr. Bolo.

13 A. Or is that '09? I don't want to misquote. I
14 think that's '09. I'm sorry if I misstated that.

15 Q. That's why I walked over here because --

16 A. And I'm pretty sure there's a document with a date
17 on it that shows that.

18 Q. Let me ask you this question, because again -- and
19 I know you have a lot to say. I know you have a
20 lot to say, but I'm trying to keep this
21 chronological a little bit.

22 A. Yeah; I apologize. I'm real passionate about the
23 subject.

24 Q. And I'm just trying to help us stay chronological
25 so that we can kind of understand through it. So

1 after the change in regulation, and even after the
2 request for grandfathering and no response back,
3 then ReWa made its proposal for it to run the
4 whole thing, right?

5 A. Yeah. I guess that was like March of '09 we were
6 talking about when they finally delivered us with
7 a number, sir. And, you know, remember, we
8 entered into this in '06. To get the prices in
9 '09, three years after we entered into the
10 agreement, made it extremely difficult to do any
11 planning.

12 Q. Well, let me just ask this, okay, because I want
13 to make sure that Mr. Glenn understands this
14 particular chronology. Okay? You had a business
15 plan that had Condor in the mix, right?

16 A. Yes, sir.

17 Q. And then after the changed amendment that they
18 were applying to you, ReWa then said, "We want to
19 do it all"; is that right?

20 MR. DAVIS: Objection to characterization.

21 EXAMINATION RESUMED BY MR. FULTON:

22 Q. In other words --

23 MR. DAVIS: That's not what the reg says.

24 EXAMINATION RESUMED BY MR. FULTON:

25 Q. Did ReWa give you a proposal on how much it would

1 cost for them to do it all?

2 A. Yes.

3 Q. And how did the cost of that compare to your
4 originally planned costs?

5 A. You know, the cost is not something that I really
6 dove into a lot because I was the engineer of
7 record. I was doing a lot of the planning and
8 engineering. Joe Clark was more talking with Mr.
9 Orvin and the other people at Rewa, at least
10 initially, about prices and costs. And I think
11 his -- you know, Joe had some problems. I took
12 over but, you know, we really didn't have any
13 understanding of what was going on until -- price
14 wise.

15 Q. But then when you did find out, was it a lot more?

16 A. Oh, yeah. The immediate reaction was, oh, this
17 isn't going to work. And, you know, Joe was
18 talking with Ernie Willis, and also with the folks
19 at Windsor/Aughtry, and no one among the group --
20 in fact, no one among the seven or eight -- is it
21 seven or eight?

22 Q. People in the pipeline?

23 A. Yeah. All the people in the pipeline -- nobody
24 could make it work for them.

25 MR. DAVIS: Objection; hearsay. He's testifying to what

1 his partner talked about to other people.

2 HEARING OFFICER: Sustained.

3 WITNESS CONTINUES:

4 A. Okay. I know for a fact, to answer your question

5 ---

6 EXAMINATION RESUMED BY MR. FULTON:

7 Q. Well, hang on a second. Hang on just one second

8 because I think I can ask it a little more

9 carefully.

10 A. Sure.

11 Q. Not only were you the engineer of record that was

12 trying to engineer all this, but you were also at

13 a certain point in time just dealing with it as a

14 developer; is that right?

15 A. That's right, both.

16 Q. And your original plan, which included Condor, had

17 a certain cost built in; is that right?

18 A. That's right.

19 Q. And when Rewa finally gave you its proposal, is it

20 safe to say that it was considerably more than the

21 original business plan?

22 A. Absolutely. It was a lot more.

23 Q. How much more? Can you quantify it?

24 A. I heard between two and three times was the amount

25 that it was more. And since that time, we've

1 heard a lot about that.

2 Q. Now, just --

3 A. Can I add something to that? Because I think
4 there's something important. It wasn't
5 economically feasible for our partner, Windsor/
6 Aughtry, and that was another compounded problem
7 because we had a joint installation agreement, a
8 contract with them, to joint install.

9 Q. That's the folks up river, right?

10 A. Yes, sir. We had a contract with Riversway to
11 enter into a joint installation agreement through
12 the plant and to tie in. So at the point Windsor/
13 Aughtry decided, hey, this is a game changer and
14 it's not economically feasible and we're not
15 going to do it, at that point, not only did we
16 have the impact of the increase in charges and
17 fees and expenses and carry time, but we also
18 lost our partner, who is one of the most
19 experienced developers in the Upstate. And, you
20 know, our thinking was -- is, you know, not that
21 we didn't look at it, but if it's not good enough
22 for Windsor/Aughtry and Bo Aughtry, if it's not
23 good enough for Grand Estates with their 30 or 40
24 years of development experience, it's obviously
25 not going to be good enough for Eastwood. And

1 low and behold, when we talked to Eastwood, it
2 was not.

3 Q. Those were the builders that --

4 A. That's correct.

5 Q. -- had contracted to come in at a certain
6 expectation?

7 A. That's correct, because -- and what I do remember
8 from that is that they said that the HOA rates
9 would go up so high, that it would make it
10 completely economically unfeasible.

11 MR. DAVIS: Objection; hearsay.

12 HEARING OFFICER: Sustained.

13 EXAMINATION RESUMED BY MR. FULTON:

14 Q. Let me ask it this way. Under the new proposed
15 numbers that you got from Rewa doing the whole
16 thing, was your builder willing to enter into this
17 contract at that price point?

18 MR. DAVIS: Hearsay.

19 WITNESS ANSWERS:

20 A. No, sir. It interfered with our contract.

21 EXAMINATION RESUMED BY MR. FULTON:

22 Q. And you just said something about one of the
23 reasons was that it was going to raise the
24 homeowners dues?

25 A. Yeah. The HOA dues would have gone up, and Ernie

1 explained that very eloquently in his deposition.

2 Q. And he'll testify, so --

3 A. Right.

4 Q. -- we'll let him do that. But I just wanted to
5 make sure Mr. Glenn understood that the change in
6 plans and a change in price made a difference to
7 Harrison Partners as to whether or not it could
8 even do what it was planning to do?

9 A. The change in price was a death blow to us, and
10 the structuring of the fees was not economically
11 feasible. It's something that had never been done
12 before in the county. This situation had never
13 occurred before, and there was no real thought
14 behind it. It was just kind of one of those
15 things that was -- well, I don't know how --

16 MR. DAVIS: Objection; speculation.

17 WITNESS CONTINUES:

18 A. It didn't appear to me that there was any thought
19 put behind it because they had round numbers in
20 the numbers that were exactly rounded to the
21 hundred thousand dollars. And as an engineer, I
22 can tell you I've never seen anybody install a
23 pipeline before and have it come up at exactly
24 \$100,000 rounded to four or five places. It just
25 didn't seem feasible.

1 EXAMINATION RESUMED BY MR. FULTON:

2 Q. Let me ask you this question. If, at the
3 beginning of the project in '06, before you
4 signed the mortgage, before you entered into the
5 contract, Rewa had told you, "We are going to make
6 you get all your service from us, and it's going
7 to be at these numbers" that looked like the ones
8 you eventually got, would you have undertaken the
9 development?

10 MR. DAVIS: Calls for a hypothetical. Objection.

11 HEARING OFFICER: Overruled.

12 WITNESS ANSWERS:

13 A. Not only would we have not entered into the
14 development, there's no way we would have spent
15 tens of thousands of dollars doing all this
16 engineering work, surveying their plant, providing
17 them with the data so that they can use the data
18 for their benefit, and we don't even get the
19 service that we agreed to. You know, that's the
20 whole thing that was very upsetting is we provided
21 services for them with the expectation of having
22 a connection. And we provided those services
23 faithfully over a period of two-three years, basin
24 studies, surveys, all kinds of data and we never
25 -- we -- for all of our efforts and all of our

1 patience and all our due diligence, we were
2 rewarded with bankruptcy.

3 EXAMINATION RESUMED BY MR. FULTON:

4 Q. And eventually the development failed?

5 A. You know, I have two small children. It looks
6 like I'm going to be facing bankruptcy because of
7 this, and if this is good regulation, to bankrupt
8 seven different projects -- or I don't know how
9 many got bankrupted. Don't let me misquote.

10 MR. DAVIS: Objection; argumentative.

11 HEARING OFFICER: Overruled.

12 WITNESS CONTINUES:

13 A. But, you know, it just -- it was so unnecessary.
14 And we were in there on our knees begging these
15 people, I mean we were just begging them. And
16 they just had no concern for the economic impact,
17 and it wasn't just us. Okay? The builders lost
18 their deposit they gave us. The contractors that
19 were out there, all those guys lost all that work,
20 and they went home. It destroyed my personal
21 business, the InSite Group. I'm looking at
22 financial insolvency. The bank's coming after me
23 for deficiency, and I'm one of many, many, many
24 different people, you know. They didn't have
25 these engineering challenges. They didn't have

1 all these other things that -- you know, that
2 we're going to talk about that are -- that I don't
3 think are important. But guess what, none of them
4 could hook up either, none of them. Doesn't
5 matter how simple the engineering was, none of
6 them could hook up. None of them did hook up.

7 EXAMINATION RESUMED BY MR. FULTON:

8 Q. And the bank foreclosed on Harrison Partners on
9 the property?

10 A. Yes, sir. They foreclosed on us, and I understand
11 there were other people in that group that were
12 foreclosed on also.

13 Q. And in addition to foreclosure on the property,
14 they are seeking deficiency judgments after the --
15 from the individual partners, including yourself?

16 A. That's correct.

17 Q. How much?

18 A. A million five I believe, a million six.

19 Q. So you are now facing a personal deficiency
20 judgment against you, Scott Bolo, for over a
21 million dollars?

22 A. Yes, sir, I am and also Joe Clark, who has had a
23 subsequent massive heart attack and almost died.

24 Q. Any other partners?

25 A. And Mr. Studer, who is, you know, obviously facing

1 extreme difficulty and Mr. Sotomayer, all of us.

2 Q. Did you ever -- did it ever come to your
3 attention, either through your discussions with
4 Mr. Stilwell or anybody at ReWa that either Mr.
5 Stilwell or anybody else was in favor of or at
6 least was going to try to convince ReWa to do the
7 grandfathering?

8 A. Mr. Stilwell told me personally that he
9 recommended to the Board that we be grandfathered
10 in. He also approached me and offered a
11 settlement out in the parking lot.

12 MR. DAVIS: Your Honor?

13 HEARING OFFICER: Wait a minute. Sustained.

14 MR. STILWELL: Of course it's not true.

15 EXAMINATION RESUMED BY MR. FULTON:

16 Q. Did you ever have any -- come to any understanding
17 about whether or not Brian Bishop was in favor of
18 the grandfathering one way or another? And if
19 not --

20 A. Not me personally. I heard that was in favor of
21 it, but that's hearsay. So --

22 Q. And you heard Mr. McCall testify earlier that his
23 impression was after the appeal for
24 grandfathering, he never heard anything back,
25 right?

1 A. None of us ever heard anything back. And --

2 Q. And then Mr. Stilwell showed the letter which
3 we've marked as Exhibit 4. Let me ask you to take
4 a look at Exhibit 4. Did you see that when Mr.
5 Stilwell was asking Mr. McCall about it?

6 A. I've never seen this letter before.

7 Q. Is it your testimony that you did not receive this
8 letter from Mr. McCall?

9 A. As far as I know, I didn't ever see this letter.

10 Q. And does that letter say -- even reading it now,
11 does that say we will or won't grandfather you?

12 A. No. It -- to me -- I read it. It's weasel-
13 worded, like a lot of these other things. It's
14 just -- and they don't want to commit to anything.
15 They want to leave it loose. The whole thing is
16 about delay, delay, delay, delay, because if you
17 delay long enough, nobody can fight you, and
18 that's their tactic as I see it is to use delay,
19 delay, delay and wait everybody out.

20 MR. FULTON: Bear with me, please, Mr. Glenn.

21 HEARING OFFICER: Take your time.

22 MR. FULTON: Thank you.

23 EXAMINATION RESUMED BY MR. FULTON:

24 Q. Let me just show you a document that I think we've
25 previously looked at in depositions. But take a

1 look at this document and tell me what that is.
2 Is that a proposal from reWa for running the whole
3 system?

4 A. Yeah. This looks like some of the -- this looks
5 like the very first thing that we may have gotten
6 from them.

7 MR. FULTON: Can we mark that, please, as our next
8 number, Sheila?

9 HEARING OFFICER: This will be 9?

10 COURT REPORTER: Nine.

11 (EXHIBIT NUMBER 9 MARKED)

12 EXAMINATION RESUMED BY MR. FULTON:

13 Q. Mr. Bolo, is that at least one of the drafts of
14 estimated costs that reWa was proposing to you?

15 A. Yes, sir.

16 Q. And is it your testimony that it is significantly
17 higher than your business plan?

18 A. Yes, sir.

19 Q. Does it make your business plan unworkable, and
20 did it, in fact, make your business plan
21 unworkable?

22 A. Yes. And not only did it make it unworkable, but
23 if you'll look at the numbers on the reserve
24 account costs, that's where I'm talking about they
25 round perfectly to 100,000. Does that --

1 Q. What does that mean to you?

2 A. It means that it's based off of just swags.

3 MR. DAVIS: Objection; speculation.

4 HEARING OFFICER: Sustained.

5 EXAMINATION RESUMED BY MR. FULTON:

6 Q. Did you think that they were really -- let me
7 withdraw that question because it calls for
8 speculation as well. Let me show you another
9 document that Mr. Glenn had asked, wanted to see
10 the different plans that you worked on engineering
11 wise. Just take a look at that and tell us what
12 it is. We'll mark it as Number 10.

13 A. This is a survey of the river route.

14 MR. FULTON: Hang on just a second. She has to stick
15 and talk at the same time.

16 (EXHIBIT NUMBER 10 MARKED)

17 EXAMINATION RESUMED BY MR. FULTON:

18 Q. What is Number 10?

19 A. It's a detailed survey of the river route with
20 northings, eastings, bearings, distances, all the
21 things that they said before that were needed in a
22 survey.

23 Q. And you did, at their request, prepare this and
24 submit it; is that right?

25 A. Actually it was produced by Terry Stogner, who's a

1 professional surveyor here in the Upstate.

2 Q. I'm sorry; I didn't mean that you, yourself did
3 it. I meant they did it for Harrison Partners,
4 correct?

5 A. Yes, sir. This is evidence that we completed a
6 detailed survey of the site, had complete
7 engineering data for this route, and all this
8 data is evident on this drawing and easily seen.

9 Q. So any suggestion that Harrison Partners, with
10 the help of InSite Group and other folks, didn't
11 submit what was supposed to be submitted, would
12 you say that's true or untrue?

13 A. That's factually incorrect. It's 100 percent
14 incorrect. Not only did we submit all the design
15 for one route, we submitted all the design for
16 three different routes.

17 Q. And we've actually looked at two or three of them
18 here attached to these emails, right?

19 A. Yes, sir.

20 MR. DAVIS: Objection, Your Honor. We have not actually
21 looked at --

22 WITNESS CONTINUES:

23 A. And -- well, I think I testified, and I'm a
24 professional engineer, that this is based on
25 survey data. So, in fact, this is based off

1 survey data. This is, in fact, the northings,
2 eastings, bearings, and distances and there is,
3 in fact, engineering data on these lines.

4 EXAMINATION RESUMED BY MR. FULTON:

5 Q. You're talking about Exhibit Number 2?

6 A. That's right.

7 Q. It just doesn't show on here?

8 A. Yeah, it just doesn't show. I mean you would have
9 to label. You click on the labels and they come
10 up.

11 Q. So in other words, this was provided to ReWa in
12 the electronic data, you said?

13 A. Sir, I think all of our data was submitted to
14 ReWa, and certainly was submitted to Metropolitan
15 as part of their detailed design review. That's
16 the other thing that has been misrepresented is
17 Metropolitan does the design review, not ReWa.
18 ReWa's delegated reviews are completed by
19 Metropolitan.

20 Q. Mr. Bolo, is it your testimony that you complied
21 with every request that ReWa made of you to try to
22 make this work?

23 A. Not only is that my testimony, that was the
24 testimony of Mr. Orvin and Mr. Graef, as all --

25 Q. Well, we're going to have them later today or

- 1 tomorrow. So what Mr. Glenn wants to here today
2 is your testimony. Is it your testimony that
3 Harrison Partners cooperated with, tried, and did
4 submit everything that was requested to Rewa and
5 Metro? Because they work in conjunction, right?
6 A. You know, not only did InSite do it, but it's my
7 understanding that the other groups did as well.
8 Q. But you know that Harrison Partners did it for
9 their project, right?
10 A. We received a letter from Mike Dixon saying we
11 were engineering complete far as --
12 MR. DAVIS: Objection; hearsay.
13 HEARING OFFICER: Who is Mike Dixon?
14 WITNESS: He is the manager of Metropolitan Sewer
15 District, sir.
16 MR. DAVIS: Your Honor, he's referenced a letter.
17 Where's the letter?
18 WITNESS CONTINUES:
19 A. I thought it was in the discovery. I thought we
20 even read it in our discovery.
21 EXAMINATION RESUMED BY MR. FULTON:
22 Q. I just asked you if you turned everything in.
23 A. Yes.
24 Q. And you cooperated fully?
25 A. Yes.

1 Q. Gave them everything they asked for?

2 A. Yes, sir.

3 Q. Spending a lot of your own money? And when I say
4 your own, I mean Harrison Partners.

5 A. Yes, sir. And as a matter of fact, even after
6 there was no money to pay for engineering work, I
7 continued to come up to meetings at my own expense
8 for a period of over a year, spending time, money,
9 providing data, and trying to work solutions.

10 Even after the company didn't have the wherewithal
11 to pay for it, I did it on my own for free.

12 Q. When you did the engineering work on the three
13 different proposed routes, were they routes
14 proposed by Rewa?

15 A. Yes, sir. Since we were coming across their
16 property, they dictated the route. We don't
17 dictate the route to them, they dictate the route
18 to us.

19 Q. So they proposed one and you explored it and
20 submitted documents?

21 A. Yes, sir.

22 Q. And then they didn't like that one. They asked
23 you to look at another one. You did the work on
24 it, and you submitted the documents?

25 A. Yes, sir, at great expense, too.

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1 Q. And then a third one?

2 A. Yes, sir. And not only that, we did basin
3 studies, sir. I did a study of this basin and
4 provided the data to ReWa through Metro, but
5 basically we studied the things they were talking
6 about, you know, what are the different areas
7 that can flow down, how can they feed back to the
8 plant. It wasn't just studying the route, sir.
9 I did a basin study of the whole entire basin and
10 provided that, in conjunction with Mike Dixon at
11 Metro, you know, kind of working together and in
12 tandem. You know, I don't think we agreed on
13 everything, but as far as the basin dynamic went,
14 I think we were generally in agreement.

15 MR. FULTON: One moment, please. I'm sorry; I had the
16 correct document. Those are all the questions I
17 have for now.

18 WITNESS: Can we take a minute?

19 HEARING OFFICER: We'll take five minutes.

20 (BREAK; OFF THE RECORD)

21 (EXHIBIT NUMBER 11 MARKED)

22 EXAMINATION BY MR. DAVIS:

23 Q. Good afternoon, Mr. Bolo. You and I have met
24 previously. I have some questions I'd like to ask
25 you. I'm going to show you what has been marked

- 1 as Exhibit 11. Have you ever seen this document
2 before?
- 3 A. Yes, sir.
- 4 Q. Is this a document dated March 2, 2009?
- 5 A. Yes, sir.
- 6 Q. The author is Shaun Cranford?
- 7 A. Yes, sir.
- 8 Q. Shaun Cranford was your lawyer from Rogers
9 Townsend?
- 10 A. Yes, sir. He was one of them.
- 11 Q. And this letter is addressed to Elizabeth B.
12 Fleming, Chairman of the Public Service
13 Commission?
- 14 A. Evidently.
- 15 Q. And in it, Mr. Cranford, on your behalf, is asking
16 for a meeting with the Public Service Commission
17 about Western Carolina; is that right?
- 18 A. Yes, sir.
- 19 Q. You're carbon copied on this letter?
- 20 A. I see that.
- 21 Q. If I understand your prior testimony correctly,
22 this is the letter that you're relying on in
23 relation to commencing this adjudicatory hearing;
24 is that correct?
- 25 A. I don't think I ever said that.

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- 1 Q. Well, let's look. Do you remember having your
2 deposition taken in this case?
- 3 A. Yes, I do.
- 4 Q. Do you remember taking a sworn oath?
- 5 A. Yes, I do.
- 6 Q. Did that deposition occur over two days?
- 7 A. Two, but not consecutive, yes, it did.
- 8 Q. Those days were January 21st and January 28th,
9 right?
- 10 A. I don't know that, but I have no reason to dispute
11 that.
- 12 Q. Can you turn to page 35 of volume 1 of your
13 deposition transcript?
- 14 A. Okay.
- 15 Q. I'll direct your attention to line 13.
- 16 A. Lucky 13. Okay.
- 17 Q. And I asked, "Did Mr. McCabe, to your knowledge,
18 ever file a written request for an adjudicatory
19 hearing within 15 days as provided by paragraph 9
20 of this regulation that we just read?" Answer:
21 "Yes, sir, he did." Question: "He did?" Answer:
22 "Yes, sir." Question. "Okay. Where is that
23 written request?" "It's at the PSC." If you turn
24 the page, sir, on page 36,, I'll direct your
25 attention to line 10. Question: "okay. Did he

1 ever send a written request for an adjudicatory
2 hearing to ReWa?" Answer: "He sent -- yes, sir.
3 Again, he sent a copy of the request for a hearing
4 at the PSC."

5 A. So?

6 Q. Did I read that correctly?

7 A. I think you did, yeah.

8 Q. So what your testimony was on January 21st was
9 that you were relying on this letter to the PSC to
10 commence the ReWa adjudicatory hearing?

11 MR. FULTON: Object. That's --

12 WITNESS ANSWERS:

13 A. No, I don't think so. I never said that. I said
14 -- you asked me what we did to exhaust our remedy
15 was the way I understood the question. This is
16 just one of the steps, one of many that we took,
17 to seek relief through whatever, an administrative
18 hearing, through appeals to other parties. Now,
19 at the meeting that we went to, the Board meeting,
20 Ryan McCabe was there at the ReWa meeting and Mr.
21 McCabe told me to make the request at the Board
22 meeting. And that's why I got up and spoke to
23 make the request to be grandfathered in after Mr.
24 McCall spoke. So --

25 EXAMINATION RESUMED BY MR. DAVIS:

1 Q. Isn't it true --

2 A. Let me finish, please. So if I requested it at
3 the meeting, I thought that that was appropriate
4 and that was my request for an administrative
5 process, which was followed up with this work to
6 ask another party to let us enter into an
7 administrative process to have the case heard.
8 Now, I think what you're saying is is that we
9 didn't fill out a written request and submit it to
10 the PSC. Let me just nip this in the bud and say
11 -- or to the Rewa and say, I don't know of any
12 written request that was made. I was not the
13 attorney. And I will stipulate that I don't know
14 if he requested it in writing or not from Rewa.

15 Q. In fact, no written request was ever made for an
16 adjudicatory hearing to Rewa; isn't that true?

17 A. I don't know that, but let me --

18 Q. You've never seen one.

19 A. I don't know that. But it's kind of like that
20 bank commercial where the kid comes in and one of
21 them gets ice cream and the other one gets
22 nothing. I mean if you come and you request it at
23 the Board meeting, isn't it kind of improper to
24 hold out and not let us know that we're supposed
25 to do that? It seems disingenuous to me.

1 Q. You're testimony here today is that at the Board
2 meeting, you specifically requested an
3 adjudicatory hearing?

4 A. My request at the Board meeting was to be
5 grandfathered in and I asked them to take that
6 under consideration and they said they would. I
7 didn't know anything about requesting an
8 adjudicatory hearing or any of that other stuff.
9 I didn't know at that time that it was required.

10 Q. And you didn't know because you never read the
11 ReWa sewer use regulation?

12 A. I didn't know because I wasn't responsible for the
13 legal aspects of this project. I relied on my
14 attorney for that.

15 Q. You were the head engineer on the River Trace
16 project, right?

17 A. Right, not the lawyer. I was the engineer.

18 Q. And in connection with the River Trace project,
19 you never read the ReWa sewer use reg not one
20 time, did you?

21 A. Well, we didn't read the sewer use reg on the
22 appeals, but as far as knowing what the process
23 was, knowing what the established procedure was in
24 Greenville County, we did know that from our
25 experience working here.

1 Q. Did you read the ReWa sewer use regulation?

2 A. I don't know.

3 Q. Do you remember during your deposition telling me
4 that you did not?

5 A. That could be right. I mean I don't have a
6 recollection of reading them or not reading them.
7 Did I maybe read one or two sections? Perhaps.

8 Q. So at your deposition you remembered you didn't
9 read it, but today you don't remember whether you
10 read it or not?

11 A. I don't know that I said I didn't read it. Didn't
12 I say I wasn't sure? And even if I did read it,
13 what's that got to do with the price of tea in
14 China?

15 Q. In fact, sir, you never -- or Harrison Partners
16 never sent the letter to ReWa that is prescribed
17 by the sewer use reg to commence the adjudicatory
18 hearing process, did it?

19 A. We're in a adjudicatory hearing process, so isn't
20 that a moot point?

21 Q. I'm asking you a question. You didn't send one,
22 did you?

23 A. I personally did not. I don't have any knowledge
24 whether Mr. McCabe sent one or not.

25 Q. And you've never seen one, right?

1 A. You know, other than I heard one, but no, I've
2 never seen one.

3 Q. And ReWa has never received one.

4 A. So you're saying that a oral request isn't
5 sufficient?

6 Q. Well, let me ask you about that. Let me ask you
7 what your sworn testimony is. You're saying that
8 at the November, 2008 ReWa Board meeting, you
9 stood up and asked for an adjudicatory hearing?

10 A. At the Board meeting that they're speaking of, I
11 was allowed to speak. And this is one of the
12 things, sir, that really bothers me.

13 Q. Did you ask for an adjudicatory hearing?

14 MR. FULTON: He's trying to answer.

15 WITNESS ANSWERS:

16 A. I'm trying to answer the question, sir. Is it
17 okay if I answer the question?

18 Q. Go ahead, as long as you do it.

19 A. This is one of the things that is particularly --

20 HEARING OFFICER: Listen, I'm not concerned about what
21 concerns you or doesn't. I want to know facts.

22 WITNESS: Yeah.

23 HEARING OFFICER: He asked you a question and I want to
24 know, did you request one.

25 WITNESS CONTINUES:

1 A. Yeah. The facts -- yes, sir.

2 HEARING OFFICER: And if you didn't --

3 WITNESS CONTINUES:

4 A. Yes, sir. The quick, short answer is yes, sir, I
5 did. I actually told them -- "I'm begging you"
6 was the words that I used, "That we beg you for
7 relief." We're pleading to him.

8 EXAMINATION RESUMED BY MR. DAVIS:

9 Q. Did you ask for an adjudicatory hearing?

10 A. Yes.

11 Q. You said, "I want an adjudicatory hearing"?

12 That's your sworn testimony?

13 A. No. I didn't use those words.

14 Q. What words did you use instead?

15 A. I echoed what Gene from Condor said, that we
16 requested a decision on the grandfathering issue.
17 We knew that we had vested rights in this project.
18 We knew that a retroactive law was illegal under
19 the U.S. Constitution, and we were begging for
20 relief, begging.

21 Q. The Rewa regulation requires the written request
22 to identify your interest in the particular
23 dispute, does it not?

24 A. I don't know that.

25 Q. It also requires you to identify what the major

1 issues are in the dispute, right?

2 A. But see, these whole rules that you're quoting
3 here are nonsense, and let me tell you why;
4 because we're in an adjudicatory hearing and I did
5 write a letter and it didn't have any of those
6 things in it. So your question is non sequitur.

7 Q. What letter are you --

8 A. No. Let me finish. Let me finish answering it.
9 I wrote you all a letter. It's admitted in the
10 deposition, asking for a hearing. This is
11 recently, within the last year. It's part of the
12 discovery. It's in there. Okay? So this letter
13 -- does that letter contain all these elements
14 that you're saying?

15 Q. I don't know what letter you're talking about.

16 A. So the letter doesn't. And my point is, if the
17 letter was acceptable for -- good enough to get
18 this adjudicatory hearing, and it didn't meet the
19 standard that you're talking about, then you've
20 waived that. You've waived that requirement by
21 accepting that letter. And if you waive that
22 right now, you should have waived it before when
23 we asked you. Moreover, I feel like it was so
24 disingenuous when we came to your Board and begged
25 you, I mean begged you -- I was practically in

1 tears at that meeting -- for relief. And you guys
2 said, "Yeah, we're going to give you that relief.
3 We're going to make a decision," and then no
4 decision was ever made. You just -- I, like an
5 idiot, am just one of these trusting people, and
6 then I got run through one ringer, through another
7 ringer, through another ringer. And the end
8 result was that's all nonsense because if it --

9 Q. The truth is, Scott --

10 A. If the requirement was --

11 HEARING OFFICER: Wait a minute. We're never going to
12 finish this.

13 WITNESS: Well, do I get a chance to answer a question?
14 I mean I'm defending my whole life here, sir.

15 HEARING OFFICER: Mr. Bolo, I'm doing my very best to
16 be patient and to listen to the evidence in this
17 case. I know you are angry with these people and
18 you can write that down and submit it to me later
19 if you want to.

20 WITNESS: I'm angry.

21 HEARING OFFICER: I'm interested -- the question here
22 now is they're asking you, did you initiate the
23 hearing in a certain way. You either did or you
24 didn't. Whether that's waived or not is up to me
25 to decide. I'm to decide whether or not this is

- 1 an issue that's important.
- 2 WITNESS: Certainly.
- 3 HEARING OFFICER: So if you will just answer the
- 4 questions, we'll get there.
- 5 EXAMINATION RESUMED BY MR. DAVIS:
- 6 Q. Scott, you referenced a letter. What letter are
- 7 you talking about?
- 8 A. The letter that got us to this hearing. I had to
- 9 file a letter with the court to get this hearing.
- 10 I wrote the letter personally.
- 11 Q. Who was the letter to?
- 12 A. I don't remember. I think it was to Rivers,
- 13 wasn't it?
- 14 Q. You filed the letter with the court?
- 15 A. No, no, no. I think I sent it to ReWa is my
- 16 understanding. I mean I sent a letter and I said,
- 17 "Look" -- in the email, and I sent to you all,
- 18 someone at ReWa. And I said, "Look, I'm asking
- 19 for the hearing. I don't know what's happened.
- 20 Why are we not going to an administrative hearing?
- 21 When's the hearing happening?" And the letter was
- 22 submitted to you.
- 23 Q. Oh, Scott, are you referring to something that was
- 24 written after the court dismissed your lawsuit?
- 25 A. Yes.

1 Q. So the letter you're relying on occurred after
2 Judge Miller dismissed the Harrison Partners
3 lawsuit?

4 A. Right.

5 MR. FULTON: Object to the characterization of relying
6 on.

7 WITNESS CONTINUES:

8 A. And then the judge, what did he decide? He
9 decided that the request was just and that the
10 letter requesting it was sufficient to grant the
11 hearing.

12 EXAMINATION RESUMED BY MR. DAVIS:

13 Q. Scott, what are you talking about?

14 A. Well, we're here, aren't we?

15 Q. Well, Judge Miller's order can speak for itself.
16 Let's talk about what I'm going to mark as the
17 next exhibit.

18 (EXHIBIT NUMBER 12 MARKED)

19 EXAMINATION RESUMED BY MR. DAVIS:

20 Q. Back in 2009, when your lawyer received this
21 letter from the Office of Regulatory Staff, did
22 Harrison Partners request -- send a written
23 request for an adjudicatory hearing at that point
24 in time to ReWa?

25 A. Harrison Partners doesn't send legal requests

1 unless we don't have legal representation. And
2 then --

3 Q. This letter is dated April 21, 2009.

4 A. Yes, it is.

5 Q. And it is advising you that the Public Service
6 Commission has no jurisdiction over Rewa, right,
7 or what they would identify as Western Carolina
8 Regional Sewer?

9 A. I'd have to refer to my attorney. I -- you know,
10 I --

11 Q. At any point in time -- scratch that. Let me ask
12 this question. Isn't it true that as we sit here
13 today, you cannot identify a pleading that you
14 filed with Rewa that actually commenced this
15 administrative process?

16 A. No, that's incorrect. What commenced this process
17 was the letter I sent either to Rewa or to the
18 judge, and that's why we're here it's my
19 understanding.

20 Q. Are you testifying that you have an administrative
21 pleading that you haven't provided to the Hearing
22 officer?

23 A. No. I would have had to submit it. How did I get
24 the hearing? I had to submit it to you or the
25 court, right? so you have it.

1 Q. Have you filed an initial pleading that commenced
2 this process?

3 A. I sent a -- I don't know what you're calling a
4 pleading. I wrote a letter to somebody and they
5 granted this hearing, so yes, I did.

6 Q. And, in fact, doesn't the Rewa regulation require
7 that you file an initial pleading that has all
8 sorts of specific requirements?

9 A. I don't know that. You've told me that.

10 Q. And Harrison Partners never filed one, did they?

11 A. Well, we can't file something we don't know
12 exists.

13 Q. And that requirement is outlined in the Rewa
14 regulation, is it not?

15 A. I don't know that. I've heard you say that.

16 Q. You don't know that because you never read it,
17 right?

18 A. Well, you know, it's kind of funny because what
19 you're trying to do is hide behind regulatory
20 minutia and that may be fine, but the thing is is
21 you all had a request verbally from Mr. McCall at
22 the meeting. If you chose to ignore that request
23 or not address his question, then I think that's
24 totally disingenuous.

25 Q. Harrison Partners did not file an initial pleading

1 to commence this administrative process, did it?

2 A. I don't know that. I mean maybe Shaun did or Ryan
3 did. I'm not the attorney.

4 HEARING OFFICER: Let the record show that I will decide
5 that issue. I've had the order of the court
6 dismissing the case until administrative remedies
7 are exhausted, and I will rule on whether it was
8 proper administrative procedure followed by the
9 Petitioner and whether it's properly before the
10 panel -- Hearing Officer; excuse me.

11 EXAMINATION RESUMED BY MR. DAVIS:

12 Q. Harrison Partners is a member-managed limited
13 liability company, is it not?

14 A. Yes.

15 Q. There are four members of Harrison Partners?

16 A. That's right.

17 Q. There's you?

18 A. Right.

19 Q. There's Lee Sotamayer?

20 A. That's right.

21 Q. Tom Studer?

22 A. Yep.

23 Q. Joe Clark?

24 A. That's right.

25 Q. And are any of the other members here today?

- 1 A. Nope.
- 2 Q. Has Harrison Partners' members signed a corporate
3 resolution authorizing you to be here on behalf of
4 Harrison Partners?
- 5 A. No. We voted verbally. We had a meeting by
6 telephone and it wasn't altogether, and we decided
7 to go forward.
- 8 Q. When did that occur?
- 9 A. Several times. And as a matter of fact, I just
10 spoke with Tom Studer in the presence of Mr.
11 Fulton, what was that, yesterday -- the day
12 before. And Mr. Studer was like, "Great. I'd
13 love to be there. Joe and I send our regards."
14 Unfortunately, Joe had a heart attack because of
15 all this and almost died, so -- and he just
16 couldn't come.
- 17 Q. What does Joe Clark know about this administrative
18 proceeding?
- 19 A. Almost nothing except that we're suing Rewa and
20 he hopes that his children who have special
21 circumstances aren't forced into poverty.
- 22 Q. And Lee Sotomayer doesn't know about this either,
23 does he?
- 24 A. Oh, he knows we're suing Rewa.
- 25 Q. Does he know you're testifying on behalf of

1 Harrison Partners today?

2 A. I don't know.

3 Q. Two of your -- two of the four members of Harrison
4 Partners don't even know you're here, do they?

5 A. Doesn't really matter.

6 Q. Let's look at the document that you discussed with
7 your lawyer earlier on direct. Some of these have
8 blank stickers on them because I didn't know I was
9 -- so if you see one, that's what it is.

10 (EXHIBIT NUMBER 13 MARKED)

11 EXAMINATION RESUMED BY MR. DAVIS:

12 Q. Is this a document from Brian Bishop to you dated
13 March 16, 2006?

14 A. Yes.

15 Q. It's an email, right?

16 A. It is.

17 Q. When did you first meet Brian Bishop?

18 A. I don't know, sir.

19 Q. Didn't you testify during your deposition that you
20 have known him for 20 years and worked with him?

21 A. I think I said when I was at Arcadis-Piedmont,
22 that we knew of Brian, that he worked at ReWa.

23 Q. In fact, I think you testified to a specific year,
24 didn't you? You met him in 1995?

25 A. I don't even think he worked here in 1995.

1 Q. And you testified that Brian Bishop was like a
2 rock star to you growing up. Do you remember
3 saying that?

4 A. Yeah, I do. I remember him. Boy, has that
5 opinion changed.

6 Q. And you testified that Bishop was a good guy?

7 A. You know, that was my initial take, that he would
8 be honest and forthcoming. But after hearing his
9 deposition, I was pretty sadly disappointed about
10 that one.

11 Q. And you testified in January of this year that
12 Bishop had always been honest with you, didn't
13 you?

14 A. You know, just because Brian had done things in
15 the past in a specific way, that doesn't mean
16 anything about what he's doing today.

17 Q. You testified during your deposition that Brian
18 had always been honest with you, didn't you?

19 A. Did I -- yes, I did, but I did not testify that I
20 thought that he had handled this well.

21 Q. Now, we started to talk about this a little bit.
22 You were the head engineer on River Trace, right?

23 A. I was the head engineer.

24 Q. And you were ultimately responsible for the stuff
25 getting done on the project?

- 1 A. Me and other people, yeah. There wasn't -- I
2 didn't work on it in a vacuum. There were other
3 licensed professionals in my firm that were also
4 preparing these documents, not just me. I had a
5 professional land surveyor who was working with us
6 at the time, and I had EI's that were pretty
7 professional.
- 8 Q. Being the head engineer means you're ultimately
9 responsible, though, right?
- 10 A. Yes and no.
- 11 Q. Are you responsible to make sure that everything
12 gets filed timely?
- 13 A. Everything, no. The engineering documents, yes.
- 14 Q. The documents that you would have to submit to
15 Metro, for example?
- 16 A. That's one example, yeah.
- 17 Q. The documents that you'd have to submit to Rewa?
- 18 A. Those are examples.
- 19 Q. Isn't it true that until recently, you were
20 somewhat unclear about what type of entity Rewa
21 even was?
- 22 A. I think I told you it was an evil entity, so I
23 wasn't confused about that part.
- 24 Q. You didn't know what sort of organization was
25 until recently, right?

1 A. Well, I had approached a legislator early on, so I
2 knew that it was a governmental body. But I
3 wasn't really sure, since I'm not a lawyer, what
4 you were calling yourselves, whether you were a
5 corporation or a special purpose district is
6 something that you all mentioned. But I fail to
7 see how me identifying what entity you are has a
8 bearing on anything.

9 Q. And you didn't understand what, if any,
10 relationship existed between ReWa and Metro, the
11 subdistrict, right?

12 A. Oh, no. We understood that.

13 Q. You remember testifying during your deposition
14 that you thought Metro was a subsidiary of ReWa?

15 A. Oh, we did. They're a subdistrict to ReWa, right?

16 Q. No. Remember testifying that you thought they
17 were a subsidiary to ReWa?

18 A. I would maintain that they do what you tell them,
19 so you call them what they want. You have control
20 over them.

21 Q. Do you still think they're a subsidiary?

22 A. I think you control what they do.

23 Q. I'm asking you a question. Is Metro a subsidiary
24 of ReWa?

25 A. They are an entity who marches to your beat.

- 1 Q. Why don't you answer my question?
- 2 A. I don't know if they're a subsidiary.
- 3 Q. So as you sit here today, you don't know what
- 4 their relationship is either, do you?
- 5 A. I know they act like a subsidiary of Rewa.
- 6 Q. When Harrison Partners purchased the River Trace
- 7 property, you knew that gravity sewer was not
- 8 available in that basin, right?
- 9 A. Yes and no.
- 10 Q. Was gravity sewer available in the basin where the
- 11 property River Trace purchased was located?
- 12 A. There's a gravity solution.
- 13 Q. Was there gravity sewer service available in that
- 14 basin at the time?
- 15 A. Yes and no. Do you want me to clarify that
- 16 answer?
- 17 Q. No.
- 18 A. Okay.
- 19 Q. Can you turn to page 44 of your deposition,
- 20 please?
- 21 A. Forty-four did you say, sir?
- 22 Q. Yes, sir.
- 23 A. What line?
- 24 Q. Twenty-five.
- 25 A. Twenty-five; okay.

1 Q. And I say to you, "Okay. Before you purchased
2 the" -- turn over the page -- "property, then it
3 is fair to say that you knew gravity sewer service
4 was not available to the property?" "That's
5 correct."

6 A. That answer, it's not a complete answer.

7 Q. When I asked you the question during your
8 deposition on January 21st, your testimony was
9 that you knew there wasn't gravity sewer service,
10 fair?

11 A. I have more information now.

12 Q. When I asked you on January 21st, that was your
13 answer, right?

14 A. Yes.

15 Q. I'd like to kind of turn your attention a little
16 bit to the body of this document dated March 16,
17 2006. And the first line of this email from Brian
18 Bishop to you states, and I quote, "Western
19 Carolina currently has sufficient wastewater
20 treatment capacity at our Lower Reedy plant to
21 serve this property based on a two-year build-
22 out," end quote. Can we agree that that's a
23 confirmation of capacity as opposed to a flow
24 acceptance letter?

25 A. Well, to me this letter is a conditional approval.

1 In other words, we have the flow available, but
2 you will meet these following conditions. But it
3 doesn't say this is subject to change at any given
4 time and we could just deny you service even if
5 you do meet these conditions. Where does it say
6 that in there?

7 Q. Can we agree that this is a confirmation of
8 capacity? You knew that you weren't getting flow
9 acceptance approval with this email, did you not?

10 A. No, no.

11 Q. There's no way to read this document otherwise, is
12 there?

13 A. Oh, you discredit yourself. You know more than
14 that. You discredit yourself tremendously by
15 saying that. I can't believe you would say that.

16 Q. Scott, do you know the difference between a
17 capacity letter and a flow acceptance letter?

18 A. But you realize what --

19 Q. Scott, do you know the difference between a
20 capacity letter and a flow acceptance letter?

21 A. This is a flow acceptance letter by the way that
22 -- the way that Western Carolina does it, this is
23 a flow acceptance letter if you meet certain
24 conditions. And you discredit yourself by saying
25 it's not.

1 Q. Well, I'm not really concerned about your opinion
2 of whether I'm discredited or not. What I'm
3 concerned about is the answers to my questions.
4 And if I understand what you're testifying today
5 is that as the head engineer on the River Trace
6 project, what you believed this March 16, 2006
7 letter was was a capacity letter, even though --
8 or a flow acceptance letter, even though nothing
9 had been done at this point? That's your
10 testimony?

11 A. What it is it's a -- everyone else does it the
12 same way. It's a condition flow acceptance
13 letter. And what it means is you shall conform
14 with these things so that you fit under our cap.
15 You know, obviously you want to make sure we're
16 doing certain things. But recognize in this
17 letter, if you'll read paragraph 3, okay, "The
18 pump station must meet Western Carolina,
19 Metropolitan Sewer, and if applicable, Condor's
20 specifications. Also, an agreement will be
21 required to define ownership, operation of the
22 pump station and force main." Mr. Bishop knew at
23 the time of the writing of this letter that Condor
24 was going to own and operate that force main.
25 That's a condition and a stipulation of his

1 letter. So how do you back off that now when you
2 wrote it on March 16th, this is the way it's going
3 to be? You're going to use Condor. And now I
4 think I hear you saying, well, wait a minute. We
5 want to back off that. We're not sure we like
6 that letter.

7 Q. Mr. Bolo, we can sit here and I'll let you say
8 whatever you want. I don't know if the Hearing
9 Officer will, but eventually you're going to
10 answer my questions.

11 A. I answered it.

12 HEARING OFFICER: He answered it. He said it's an
13 acceptance letter.

14 MR. FULTON: Conditional.

15 HEARING OFFICER: With conditions.

16 EXAMINATION RESUMED BY MR. DAVIS:

17 Q. The second paragraph of this letter says, "Please
18 keep in mind that Western Carolina has not made a
19 determination regarding right-of-way access
20 through our treatment plant property. It would
21 recommend that you provide us with potential force
22 main route for our review before you finalize your
23 design."

24 A. Uh-huh.

25 Q. Did I read that correctly?

1 A. You read the words correctly.

2 Q. The date of this email was March 16, 2006?

3 A. Uh-huh.

4 Q. Was this email in relation to the flag lot route?

5 A. It wasn't in relation to any route.

6 Q. There was no route at this point?

7 A. That's correct.

8 Q. However, why if there is no route, Scott, can you

9 explain to me why you needed a termination

10 regarding a right-of-way access through our

11 treatment plant property?

12 A. I don't understand the question.

13 Q. I think you do.

14 A. It doesn't make any sense. Can you rephrase it or
15 reword it?

16 Q. This email specifically references a right-of-way
17 through our treatment plant property. Do you see
18 that?

19 A. Yeah.

20 Q. Your testimony is as of March 16, 2006, this
21 doesn't relate to a specific route?

22 A. It doesn't.

23 Q. If it doesn't relate to a specific route, why do
24 you need a right-of-way through our treatment
25 plant property?

1 A. You're kidding, right? Well, we have to go
2 through the plant to get to the tie-in point, so
3 we'd have to have an easement no matter which way
4 we went.

5 Q. So the only possible way that Harrison Partners
6 could ever get sewer, according to what you just
7 said, is if you go across our property?

8 A. And you knew that as of March 16, 2006, and it
9 doesn't say in here, "Anyway, we're not going to
10 grant you a right-of-way access. We're not going
11 to give you a right-of-way access. A right-of-way
12 access won't be granted. You can't put a private
13 utility" -- let me answer the question. "You
14 can't put a private utility on there." It doesn't
15 have any of those stipulations, so you're adding
16 new stipulations after we have this agreement in
17 here where you acknowledge your letter says, "You
18 will need a right-of-way access through our
19 treatment plant property." You knew that.

20 Q. Is it your sworn testimony that Harrison Partners
21 couldn't get sewer service in any other way unless
22 it went across ReWa's property?

23 A. No. My testimony is that that was the original
24 plan as of March 16, 2006, and as evidenced, 100
25 percent substantiated by the writings of your own

- 1 engineer.
- 2 Q. So earlier I thought I heard you testify that
- 3 Brian Bishop came up with the flag lot route
- 4 proposal?
- 5 A. Yeah.
- 6 Q. Is that right?
- 7 A. I think I said, Skippy, didn't I, or something
- 8 like when you deposed me? I think that was the
- 9 words I used. Yeah, absolutely. What do you
- 10 think, we could go out there and just be like,
- 11 yeah, we're coming through here, guys. I mean
- 12 they would never allow that.
- 13 Q. When is it that you contend that Brian Bishop came
- 14 up with the flag lot route?
- 15 A. I don't contend. I don't know when he came up
- 16 with it. This is 2006, man; sometime after
- 17 February, 2006 and before February or March of
- 18 2008 when, you know --
- 19 Q. You were testifying when your lawyer was asking
- 20 you questions --
- 21 A. But this is --
- 22 Q. -- that you were absolutely certain that Brian
- 23 Bishop came up with the flag lot route, right?
- 24 A. But, Lane, what does --
- 25 Q. Is that not right?

1 A. This has nothing to do with --

2 HEARING OFFICER: I'm going to decide what's got to do
3 with what.

4 WITNESS CONTINUES:

5 A. Okay, cool. So the question was?

6 EXAMINATION RESUMED BY MR. DAVIS:

7 Q. On direct, you testified that Brian Bishop
8 absolutely came up with the flag lot route, right?

9 A. Yes.

10 Q. And now when I'm asking you, when did that happen
11 that you're so absolutely certain, you can't
12 identify when the conversation ever occurred.

13 A. You've got it all in the depositions and the
14 evidence, sir. It's not -- that's not a --
15 something that's -- we're wondering about if that
16 happened. You guys testified that he picked the
17 route, went over there and said it's not going to
18 work.

19 Q. Scott, I'm going to get in an argument over
20 testimony with you, but I'll just note for the
21 record that that's absolutely not what the
22 testimony was.

23 A. Really?

24 Q. Let's look at what Bishop is telling you here.
25 He's telling you that for Rewa to make a

1 determination about a right-of-way, he recommends
2 that you provide him, or us, ReWa, with a
3 potential force main route before going through
4 the engineering process, right?

5 A. "I would recommend" -- "it would recommend that
6 you provide us with a potential force main route
7 for our review before you finalize your design."

8 Q. Before you do a bunch of engineering work, shore
9 up the proposed route. Brian Bishop is telling
10 you that on March 16, 2006, is he not?

11 A. And that's what we did. We went by -- look, we
12 didn't even know ReWa owned a flag lot.

13 Q. I'm asking you a question. That's what Brian
14 Bishop is telling you as of this date, right?

15 A. Right. Brian Bishop told us that we needed to
16 provide him with a force main route, but we did
17 not select the flag lot route because we didn't
18 even know that you all owned the flag lot -- or
19 that ReWa owned the flag lot. They came up with
20 that. They suggested that, and as a matter of
21 fact, in our first discussions, Mike and I came
22 into the plant, drove in through the access road
23 with ReWa's permission. We didn't go out to the
24 plant without their permission. They knew we were
25 going out there. Then we came up -- we walked

1 down through this area up near the top looking at
2 the area, looking at it in general, looking at
3 obstructions and all that kind of stuff. So this
4 top route was something that ReWa for sure came up
5 with. And then later, Mr. Orvin said, "Hey, look,
6 we think we may do some expansion up in the top
7 part of the plant and that where your line is
8 could obstruct with construction of the plant."
9 So we said, "Okay, that's pretty reasonable. I
10 mean that doesn't sound crazy to us. That's a
11 pretty reasonable request." So what we did is we
12 came -- we proposed to come up to the top of the
13 lot because, Mr. Glenn, you can't build a
14 structure within 50 feet of this line -- property
15 line anyway because there's a setback requirement.
16 Like in other words, you can't build an industrial
17 building right on the property line. So what we
18 suggested to ReWa was, "Hey, let's not go reinvent
19 the wheel. Let's come up with a simple solution
20 to this," and the simple solution that we
21 presented to Mr. Bishop was, "Let's come up on
22 this top property line here. Y'all can't build
23 there anyway. There's a setback. You can't
24 touch it, and let's come up this way and then
25 we'll come over and we'll go down." That's a

1 simple solution; would have worked for everybody.
2 But the -- you know, and this is what really got
3 us thinking that there wasn't a real solution to
4 be had because they're like, "No, no, no. You
5 all go up here and tie in to Metro's line and go
6 through this fellow's backyard here and then" --
7 and then just the whole thing was just a wild
8 goose chase because we could never get that guy to
9 agree to that. And that's kind of the way I
10 remember that.

11 Q. So that's sort of an elaborate way of confirming
12 that your sworn testimony to Mr. Glenn as a
13 Hearing Officer is that Brian Bishop came up with
14 that flag lot route, right?

15 A. Well, I know for sure that none of my employees
16 knew about that flag lot, so I didn't come up with
17 it. I would have to be -- you know, I'd have to
18 ask Mr. Bishop -- or we would have to ask Mr.
19 Bishop.

20 Q. On direct, you testified it was Bishop and now
21 you're saying we need to ask Mr. Bishop; is that
22 right?

23 A. Well, what -- I think what I testified was -- is
24 my people would not be allowed to select the route
25 through the plant.

1 Q. The third paragraph of Mr. Bishop's March 16th
2 email goes through and basically tells you project
3 requirements that you're going to need to
4 accomplish. And does this email not identify that
5 the pump station has to meet all the requirements
6 of Western Carolina, Metro, and Condor, and that
7 you're going to have to get an agreement by all
8 the parties with respect to the ownership,
9 operation of the pump station and force main, and
10 that the agreement is going to have to be signed
11 by all the parties in order for the project to be
12 approved, and that you're going to have to comply
13 with Western Carolina's standards, then you're
14 going to have to comply with Metro's standards,
15 and you're going to have to comply with Greenville
16 County Planning Commission standards? Mr. Bishop
17 told you all that stuff on March 16, 2006. Can we
18 agree about that?

19 A. Mr. Bishop did tell us that we'd have to meet
20 these requirements, but he told us we'd have to
21 meet them under the old standard, the county
22 standard, the one that was stamped on the plat,
23 the one that was approved by the county, and that
24 we were told to pursue. He didn't tell us that,
25 "We're going to -- two years after you guys come

1 and talk to us, we're going to retroactively put
2 in place a new policy that's going to completely
3 change the way that the force main people, the
4 collector system, and the treatment people
5 interact." Where does it say in there that after
6 two and a half years after this that they're going
7 to change the sewer use regulation and then I'm
8 going to have a completely new set of requirements
9 to jump through? Where does it say that on here
10 on this letter?

11 Q. My question is a lot more simple than that, Scott.
12 I'm just asking you, does Mr. Bishop's
13 correspondence not reflect that you're going to
14 have to meet all of the --

15 A. It does not reflect what we had to meet, no. It
16 doesn't reflect the new requirements that you put
17 in place as of 2008 that are not reflected in the
18 letter.

19 Q. I'm not talking about anything to do with 2008.
20 I'm talking to you about the requirements that I
21 just ticked off.

22 A. No.

23 Q. It reflects that, does it not?

24 A. The requirements are not accurately shown because
25 the requirements changed. And passing a

1 retroactive law is illegal as outlined in the U.S.
2 Constitution for both states and for the federal
3 government.

4 Q. Let's look at what we'll mark as Exhibit 14.

5 (EXHIBIT NUMBER 14 MARKED)

6 HEARING OFFICER: With conditions.

7 EXAMINATION RESUMED BY MR. DAVIS:

8 Q. Now, can we -- let's see what we can agree about.

9 We haven't been doing so well so far. This is an
10 email from Brian Bishop. Can we agree about that?

11 A. It's from Brian Bishop, yep.

12 Q. And it's to you, yes?

13 A. The first part is.

14 Q. The top email is to you. And the subject line is,
15 "Encroachment permit." Can we agree about that?

16 A. The second line, sir?

17 Q. The subject line in the --

18 A. The subject line, yes.

19 Q. And it's dated February 9, 2007?

20 A. That's right.

21 Q. And can we agree that the first sentence is
22 referencing encroachment permits?

23 A. Yes.

24 Q. And it says, "I will send you our encroachment
25 permit application next week," right? That's what

1 it says?

2 A. Wait a minute. Are you saying that we have an
3 approved route?

4 Q. I'm asking you, does this page say, and I quote,
5 "I will send you our encroachment permit
6 application next week," end quote? Does it say
7 that?

8 A. Yes.

9 Q. Can we agree that Brian Bishop send the
10 encroachment permit application to you?

11 A. I don't know that. He may have.

12 Q. You don't deny that Brian Bishop sent it to you,
13 right?

14 A. I deny that I received it.

15 Q. The final sentence of that first paragraph, can we
16 agree that it says, and I quote, "You should talk
17 to Condor Environmental to make sure they are okay
18 with signing the encroachment permit and
19 maintaining the required insurance," end quote?
20 Does it say that?

21 A. Yes. In fact, we did go to Condor and they did
22 sign the encroachment permits that we were
23 required to have.

24 Q. When did they do that?

25 A. I don't know.

1 Q. Well, you just testified they did it. Did they do
2 it in close temporal proximity of this email?

3 A. I don't know.

4 Q. You have no idea?

5 A. Well, I know they signed the encroachment permit,
6 so --

7 Q. What did they do with it once they had it?

8 A. Well, we went to the DOT so that we could get our
9 approvals.

10 Q. Did Condor ever execute ReWa encroachment permit
11 applications?

12 A. No. You wouldn't let them.

13 Q. Your testimony is that ReWa prevented Condor from
14 submitting the encroachment application?

15 A. Mr. Stilwell and I had a conversation and he said,
16 "We've got a little bit of heartburn about Condor
17 owning the lines." And I believe that we had
18 testimony of that specifically this morning, that
19 ReWa had heartburn -- or had a problem with
20 private ownership on their property. Can we agree
21 to that?

22 Q. Now, at this point in time --

23 A. I'm not done answering the question, sir.

24 Q. -- we are talking about the flag lot route, right?

25 A. I'm not done answering the question.

1 Q. Well, you never really seemed to answer it anyway,
2 so at this point in time --

3 A. I can't do this anymore.

4 Q. -- we're talking about the flag lot route, right?
5 Was the first route the flag lot route?

6 A. The flag lot route was one of the routes. I
7 believe it was the first route.

8 Q. So as of February of 2007, we're talking about the
9 flag lot route, right?

10 A. I don't know that.

11 Q. You're the head engineer on the project and you
12 don't know what route you were dealing with on
13 February 9, 2007?

14 A. No, not specifically. We may have been over here
15 actually -- if my memory serves, I believe we were
16 on the river route because we never got down to
17 talking about encroachment permits on the first
18 route, so I think you're incorrect. I believe
19 that you're mistaken. It's understandable. It's
20 a long time line, but when we spoke with Mr.
21 Stilwell -- when Mr. Stilwell basically took over
22 and said, "On the encroachment permits, I'm going
23 to be involved." And then Mr. Stilwell was
24 talking with Gene at Condor about -- you know, as
25 he -- as Gene testified this morning, "Hey, we've

1 got some heartburn about a private utility coming
2 across our property." So they wouldn't allow
3 Condor to complete the encroachment permits
4 because they wouldn't allow Condor to own the
5 line.

6 Q. In fact, wasn't the route --

7 A. And let me add to that.

8 Q. -- not even in play until October of the following
9 year.

10 A. Moreover, when we went to the river route, the
11 problem increased incrementally because then, sir,
12 what they did is they said, "Oh, Condor can't own
13 it. The HOA has to own it."

14 HEARING OFFICER: Let me stop this. You all are going
15 all over the map here. You got this thing in '06
16 saying here's what you got to do to get this thing
17 going. What did you do?

18 WITNESS: I went to Condor Environmental. I asked them
19 to sign the encroachment permit. They did sign
20 the encroachment permit.

21 HEARING OFFICER: I'm talking about a year before that.
22 It tells you what you've got to comply with. Did
23 you do that, and when? Exhibit 13.

24 WITNESS CONTINUES: This is 14. This is 3.

25 MR. FULTON: It is 3. I think it's 3.

1 WITNESS: This is 13 that I'm holding here. Yes, sir, I
2 did all those things.

3 HEARING OFFICER: When did you do those? And did you
4 submit that to Rewa in writing?

5 WITNESS: No, sir. The Metropolitan Sewer Authority is
6 DHEC's delegated authority. So all of our design
7 of the collector system and our preliminary design
8 of the force main was all in conjunction with
9 Metropolitan. Now, ReWa was involved in those
10 discussions and involved in the design, but our
11 iterations of designs, sir, were going back and
12 forth.

13 HEARING OFFICER: When did you get those -- when did you
14 give those to Metro?

15 WITNESS: I believe we were design complete sometime in
16 mid '07 or --

17 HEARING OFFICER: A year and a half after this?

18 WITNESS: Yeah. About a year and a half after this we
19 were design complete with Metro. And we got
20 correspondence from them saying, "You all have met
21 the standard."

22 HEARING OFFICER: So when you got this next email from
23 Brian Bishop in February of '07, you hadn't done
24 anything since '06?

25 WITNESS: Oh, no. We had been engineering the entire

1 time.

2 HEARING OFFICER: You haven't submitted anything to get
3 approval?

4 WITNESS: Oh, we submitted -- the entire time we were
5 submitting to Metropolitan, and then Rewa would be
6 copied on what we were submitting to Metropolitan.

7 HEARING OFFICER: Where is that? That's I want to know.

8 WITNESS: I mean it's all stuff that was submitted to
9 the county.

10 HEARING OFFICER: You're saying they didn't do anything,
11 they delayed. And I'm saying they told you what
12 to do. Did you do it? Show it to me.

13 WITNESS: Uh-huh.

14 HEARING OFFICER: That's what I'm looking for, and I'm
15 looking from their side, too, at the same time. I
16 want to know the time line, like when you talked
17 to Rivers Stilwell. You keep talking about a
18 discussion, but I don't know if that's '06 or '08
19 or '09. And that makes a big difference.

20 WITNESS: The time of this was in February of '07, sir,
21 and at that time in February of '07 we were to the
22 point of talking about encroachment permit
23 applications.

24 HEARING OFFICER: Right. And did you submit that?

25 WITNESS: Yes, sir.

1 HEARING OFFICER: When?

2 WITNESS: We submitted immediately thereafter in March
3 or April. We submitted to the DOT the
4 encroachment permit applications. Moreover, we
5 met with Mr. Stilwell where he raised the
6 objection about --

7 HEARING OFFICER: Wait a minute. When did you meet with
8 him?

9 MR. STILWELL: He's in the wrong year. I can't stand
10 this.

11 HEARING OFFICER: That's all right. Let him say.

12 WITNESS: Well, I don't really remember when we met with
13 Mr. Stilwell. But, you know, obviously in '07 we
14 were talking about encroachment permit
15 applications, so it was after this. It'd have to
16 be, wouldn't it? So some --

17 MR. DAVIS: Judge, there are several different routes.
18 And the next route doesn't even come into play
19 until August of this year.

20 HEARING OFFICER: What is the first route you proposed?

21 WITNESS: We didn't. We didn't propose any. What we
22 did is Mr. Bishop told us to come through the top
23 of the plant.

24 MR. DAVIS: Mr. Bishop is going to refute that
25 testimony, Your Honor.

1 WITNESS: So Mr. Bishop just told us come through
2 wherever you want through your plant?

3 HEARING OFFICER: In this letter, he says, "You tell us
4 your route." You never did that?

5 WITNESS: He said, "Propose to us a route that would
6 work." You know, I don't know what the boys did
7 day to day in the design stuff, but I do know that
8 the flag lot came from ReWa. In other words, our
9 initial discussions and conversations were to come
10 down this road here, sir. This was the access
11 point as we knew it, was to come through here.
12 And I was involved in that early-on planning and
13 discussions about coming in through the entrance.

14 HEARING OFFICER: Okay. Sorry. Go ahead.

15 EXAMINATION RESUMED BY MR. DAVIS:

16 Q. No problem. Let me turn your attention to the
17 second paragraph of Bishop's February 9, 2007
18 email. And it says, and I quote, "As part of the
19 permit application, we need the survey map and
20 description for the portion of the force main
21 which will be located on our property," end quote.
22 Do you see that?

23 A. I do.

24 Q. Did I read that correctly?

25 A. Yeah. Yeah.

1 Q. So is it a fair conclusion to make that as of
2 February 9, 2007, you hadn't done a survey map or
3 submitted a description for the force main which
4 was going to be located on ReWa's property?

5 A. No. That's factually incorrect.

6 Q. Factually incorrect? Well, if it's factually
7 incorrect, why is Brian Bishop asking you for it
8 on February 9, 2007?

9 A. Could I refer you to Exhibit 10 to answer the
10 question?

11 Q. Sure. I'd like you to show me Exhibit 10.

12 A. Exhibit 10, dated 7/10/06 shows all the bearings,
13 distances, lengths, angles, northings, eastings.
14 So, in fact, you're wrong. You're wrong, because
15 it was produced in '07.

16 MR. DAVIS: Just for purposes of the record, Your Honor,
17 I'd like to just note that Exhibit 10 is a survey
18 of the river route, which was the third route at
19 issue in this case, and it didn't even come into
20 play until October of this year, of '07.

21 WITNESS CONTINUES:

22 A. No, that's wrong.

23 EXAMINATION RESUMED BY MR. DAVIS:

24 Q. We're going to get to the correspondence --

25 A. It's wrong.

- 1 Q. -- that reflects it.
- 2 A. That's factually incorrect, just like this was
- 3 factually incorrect.
- 4 Q. Well, you got to say what you think is factually
- 5 incorrect, and --
- 6 A. No. I demonstrated it. I'm not saying it.
- 7 Q. Let's keep going. You contend in this dispute --
- 8 A. Let's go back to that.
- 9 Q. -- that the encroachment permits were Condor's
- 10 responsibility; is that right?
- 11 A. No, I didn't say that.
- 12 Q. You didn't testify that the encroachment permits
- 13 were Condor's responsibility to file?
- 14 A. Nope. I said they could sign off on them, and
- 15 they were required to sign off on them.
- 16 Q. And they would send them in?
- 17 A. Maybe that's how I actually arranged for it,
- 18 perhaps, but they got in anyway. They were sent
- 19 to DOT.
- 20 Q. Were they sent to ReWa?
- 21 A. You know, I don't know. They weren't on ReWa's
- 22 property.
- 23 Q. Your force main was on ReWa's property, was it
- 24 not?
- 25 A. No, sir. You never allowed -- based on the

1 testimony this morning, we established --
2 concretized the fact that you would not allow
3 Condor to come on your property. So I think your
4 question is designed to mislead.

5 Q. Sir, at this point in time, we haven't even
6 received the proposed route from you to deny your
7 request, have we?

8 A. What point in time?

9 Q. February 9, 2007, the date of the email that we
10 were just --

11 A. Wrong, wrong, wrong. And let me, again, direct
12 your Exhibit 10 dated 7/10/06. This is the route.
13 This is the northings, eastings. This is entire
14 survey data. This is sufficient to produce
15 easement, drawings, documents, whatever's
16 necessary. So your question and your assertions
17 are wrong.

18 Q. Well, let's just -- we'll just confirm for the
19 record that that's your testimony.

20 A. That you're wrong. Okay.

21 Q. And we'll keep going. Your testimony's in the
22 record.

23 (Side conference between Mr. Davis and Mr. Stilwell.)

24 EXAMINATION RESUMED BY MR. DAVIS:

25 Q. Do you remember me asking you about encroachment

- 1 permits filed with Rewa during your deposition?
- 2 A. Nope.
- 3 Q. During your deposition, you testified that Condor
- 4 filed the encroachment permits with Rewa or Metro.
- 5 A. Does it say that, or you're making that up?
- 6 Q. That's what your testimony says.
- 7 A. What page is that on?
- 8 Q. Your testimony on page 223 of your deposition.
- 9 A. Is that book 1, sir, or --
- 10 Q. Yes, volume 1. And I quote line 1. "Your sworn
- 11 testimony is they actually filed the encroachment
- 12 permit application?" "Absolutely." "Okay. Why
- 13 haven't they been produced?" "Well, they are not
- 14 turned in, too. The encroachment permits were
- 15 filled out by Condor Environmental, as it says in
- 16 the letter. You should talk to Condor
- 17 Environmental to make sure they're okay with
- 18 signing the encroachment permits." "Okay. So
- 19 your testimony is that Condor Environmental filed
- 20 the encroachment permits?" Answer: They signed
- 21 and filed them as we were directed to do by Brian
- 22 Bishop in February of '09." Question: And when we
- 23 looked at later exhibits stating that in July of
- 24 '07 you still hadn't filed the encroachment permit
- 25 application, that was inaccurate somehow?"

1 Answer: Condor signed them on the day that we --
2 or soon after we had the permit with them. They
3 were submitted. They were just never approved.
4 That's my understanding." "And your testimony
5 would be that those applications came from
6 Condor?" Answer: Yes, sir."

7 A. Uh-huh.

8 Q. That was your sworn testimony?

9 A. You say Condor submitted them. I think Condor
10 maybe did. Maybe our guys did, but at the end of
11 the day --

12 Q. I don't say anything. That was your testimony.

13 A. Who cares who submitted them? It's moot. You're
14 getting in this minutia stuff again. I mean these
15 are just details that mean nothing. The
16 encroachment permit was filed. Yes, it was filed.
17 Whether they filed it or I filed it, I wouldn't
18 know. I don't do the paperwork day to day. I
19 have ten people working for me.

20 Q. Mr. Bolo, the purpose of the encroachment permit
21 was so you could cross our property, right?

22 A. But you wouldn't allow the encroachment -- you're
23 mixing -- you're talking -- you're holding up an
24 apple and saying, "How does that compare to this
25 orange over here." I'm talking about the DOT

1 encroachment permit.

2 HEARING OFFICER: If you filed an encroachment permit,
3 if so, where is it?

4 WITNESS: Yes, I did.

5 HEARING OFFICER: Let me have it.

6 WITNESS: I filed it with the DOT. And --

7 HEARING OFFICER: I don't care if you filed it or
8 Condor. I want to know did you file one. This
9 letter says, "I'm sending you an application.
10 You've got to get the right people to sign it and
11 file it." Did you file it? And if so, where is
12 it?

13 WITNESS: Yes, we filed it. It went to the DOT. We did
14 not --

15 HEARING OFFICER: DOT's got nothing to do with the sewer
16 encroachment.

17 WITNESS: It does when it's on --

18 HEARING OFFICER: You have to go across their property,
19 but it's a different permit from the way I read
20 this.

21 WITNESS: Well, we did submit the DOT encroachment
22 permit, to answer the question. We were not
23 allowed to submit the encroachment permit on the
24 ReWa property.

25 HEARING OFFICER: You mean after he wrote this email,

1 you've submitted on and he didn't take it?

2 WITNESS: Well, as I -- we had sworn testimony from Gene
3 from Condor this morning, when they went to go get
4 it, Mr. Stilwell expressed some serious concerns
5 about having -- this is on the record -- about
6 having a private utility own a line across Rewa
7 property. At that point, Rewa, through Mr.
8 Stilwell, made the decision to approach DHEC with
9 an application for the homeowners to own the line
10 across the Rewa property. That was the --
11 immediately rejected because I went and spoke
12 personally with Wayne Stokes at DHEC about it.
13 And he said, "Scott, that's going back to the old
14 model of Altamont where we got private owners, an
15 HOA owning the system, and we're not going to do
16 that." And I mean come on. They --

17 EXAMINATION RESUMED BY MR. DAVIS:

18 Q. Scott, let's go through the routes.

19 A. They sent me down there to get this permit for
20 the homeowners to own the line and they know that
21 would never be approved.

22 Q. Let's go through the routes. Can we agree that
23 the first route was the flag lot route?

24 A. Yes.

25 Q. And that route was roughly in play from '06 until

1 August of '07. Can we agree about that?

2 A. I don't know the dates, I mean I really don't. I
3 can't remember what happened in '07.

4 Q. Can we agree that the next potential route was the
5 Bishop proposal?

6 A. I believe that it was.

7 Q. And that came into play after the flag lot route,
8 because that was number two?

9 A. You know, I remember y'all sending me off in six
10 different directions. None of them ended up being
11 worth anything because --

12 Q. Scott, I'm trying to help the Hearing Officer at
13 least understand the routes. Can you help me at
14 least help him understand the routes? Can you do
15 that? The second route was the Bishop proposal,
16 was it not?

17 A. I believe that it was.

18 Q. And that was in play in September and October of
19 '07. Can we agree about that?

20 A. I'm hesitant to agree to the dates, but in
21 general, I believe that was the second route.

22 Q. Subject to the dates, that's generally when it
23 came. The third route was the river route, was it
24 not, the third route?

25 A. I believe it was.

- 1 Q. And that came into play roughly around
2 Thanksgiving of '07? And I'm not going to --
3 A. I mean I don't want to get married to these dates.
4 Q. November of '07.
5 A. I can't remember the exact dates of what happened.
6 Q. And that was the last major route on the table,
7 was it not?
8 A. There was a gravity option that came up later.
9 Q. So there was a gravity option after that?
10 A. Right.
11 Q. So there we go. We've got the flag lot, Bishop.
12 We have river, and then gravity option. Now, at
13 the point in time that we're talking about now,
14 February of '07, can we agree that we were talking
15 about the flag lot route?
16 A. Beats me.
17 Q. So as River Trace's head engineer, you can't tell
18 the Hearing Officer what you were even working on
19 at that point in time?
20 A. Well, if you'd let me go through my notes and
21 check everything and see what dates and refer to
22 -- you know, I don't have anything to go by but
23 sheerly memory so it's difficult to answer that
24 question six years after --
25 Q. I have a better idea. Could we go through the

1 finalized engineering plans that you contend that
2 were submitted to ReWa and see the dates on those?

3 A. Yeah. Metro's got them.

4 Q. Why don't you have a copy of your engineering
5 plans?

6 A. I don't know if I mentioned to you, but when you
7 guys dropped a bomb on our business and on our
8 houses and wrecked everybody's livelihood, the
9 company disbanded. So, you know, we don't have
10 all the resources. We've moved twice. Some of
11 the paperwork's been lost, but that's why we have
12 you good government people. You can hold onto all
13 those papers. When we need them, we'll let you
14 know.

15 Q. So the InSite Group hasn't maintained any of the
16 project files for any of these routes? That's
17 your testimony?

18 A. No, no, no. No. We have detailed project files,
19 and we have a lot of information. But you all
20 never subpoenaed any information from InSite
21 Group.

22 Q. And are you -- well, first of all that's not true.
23 But that aside --

24 A. No, it's true. It's factual.

25 Q. -- are you here today without any of those

- 1 finalized plans that you're alleging that you had?
- 2 A. Oh, no. I gave all that stuff to McCabe and our
- 3 other lawyers at Rogers, Townsend, Thomas, and
- 4 also all that stuff is on file at Greenville
- 5 County; can easily be gotten.
- 6 Q. But even though it's easily gotten, you still
- 7 don't have it today?
- 8 A. Where is your copy of it?
- 9 Q. I asked you for it.
- 10 A. Oh. But it's at the county, but you didn't go
- 11 over there and --
- 12 Q. ReWa doesn't have any finalized plans, sir. Do
- 13 you realize that?
- 14 A. But Metro does. And do you realize that ReWa
- 15 doesn't have delegated authority from DHEC. I
- 16 guess you don't understand the process is ReWa
- 17 really doesn't examine the plans, do they? Who
- 18 examines the plans is Metropolitan. Isn't that
- 19 right?
- 20 Q. That's usually true, isn't it, Scott, except for
- 21 when you're building a force main across our
- 22 actual property.
- 23 A. Well, gee, guy, there was seven other developers
- 24 and they didn't have a technical solution.
- 25 HEARING OFFICER: We're not talking about other

1 developers, we're talking about what were you
2 required to do, and what did you do, and when did
3 you do it?

4 WITNESS: Yeah, but it's disingenuous, sir, because they
5 just --

6 HEARING OFFICER: Well, I may be disingenuous, but I'm
7 going to decide the case.

8 WITNESS: No. I said they're being disingenuous.

9 (EXHIBIT NUMBER 15 MARKED)

10 EXAMINATION RESUMED BY MR. DAVIS:

11 Q. Scott, let's look at the email that I just handed
12 you. It's 15. Now, down at the bottom of this
13 email, this is an email from you to Brian Bishop.
14 Can we agree about that?

15 A. The top one or the bottom?

16 Q. The bottom one on the page of the exhibit I just
17 handed you.

18 A. It's from Brian to me.

19 Q. No. It's from Scott Bolo to Brian Bishop, dated
20 February 12, 2007.

21 A. Right. Okay, the very bottom one. All right.

22 Q. And in this email, the last sentence, you're
23 asking from Mr. Bishop a willingness to serve
24 letter for this project because it's requirement
25 for DHEC permits. Do you see that?

1 A. "Could you please send me a willingness to serve
2 letter for this project? It is a requirement for
3 the DHEC permits."

4 Q. And this letter is two days after the last exhibit
5 that we just looked at where Mr. Bishop went
6 through and told you that he needed final plans
7 and profiles for both subdivisions, force main
8 route, flow requests, right, three days later?

9 A. Right. That's correct.

10 Q. And on February 14th, Mr. Bishop emails you back
11 and says, again, "Scott, to get a flow acceptance
12 letter, you got to have final plans for both
13 subdivisions." That's what it says, right, the
14 middle email on this page, Exhibit 15?

15 A. You said again. That's the first time I see it.

16 Q. We just looked at Exhibit 14. And Exhibit 14, on
17 February 9, 2007, Mr. Bishop is telling you
18 specifically, "We need final plans for both --
19 profiles for both subdivisions and the force main
20 route, along with a flow request in order to
21 provide you with a flow acceptance letter." He
22 went through and told you all that stuff, told you
23 that on February 9th. Three days later, you come
24 back, after he told you that and say, "Give me a
25 flow acceptance letter."

1 A. Right. Right, because we did have final plans and
2 we did have a force main route, and it was all
3 final.

4 Q. And Brian emails you back and says, "Hey, I need
5 final plans for both subdivisions. I need final
6 plans for a force main route, and I need to work
7 out the easement agreement with you." That's what
8 he says on February 14th, right?

9 A. He had it.

10 Q. Is your testimony that Brian Bishop had all of
11 that stuff as of February 14, 2007? That's your
12 sworn testimony.

13 A. Yeah. My testimony is -- it says right here. It
14 says, "We need the final plans for both
15 subdivisions." Well, the final plans for our
16 subdivision were done. They were done and they
17 were blessed by Metro. The force main route --
18 as we showed you guys in the exhibit, we had to
19 establish the force main route. And the easement
20 agreement was something that ReWa refused to work
21 out because they could just hold it up and say,
22 "Oh, you're not grandfathered. You don't have a
23 vested -- we're holding this out."

24 Q. So Mr. Bishop --

25 A. It was all about creating a retroactive policy.

- 1 Q. If Mr. Bishop --
- 2 A. It's a subterfuge.
- 3 Q. If Mr. Bishop has all of these things, why is he
- 4 asking you for them?
- 5 A. I don't know. The thing is is he doesn't receive
- 6 them, Metro does. I don't believe that he's
- 7 saying he doesn't have these, I believe what he's
- 8 saying is, "We don't have the easement agreement."
- 9 And I don't think that he didn't not get the plans
- 10 later. I think what never happened was the
- 11 easement agreement never got worked out. And that
- 12 was -- you know, you can dance around -- and we
- 13 weren't engineering complete. The thing is, sir,
- 14 we were, in fact, 99.9 percent engineering
- 15 complete. But if you never allow our route and
- 16 you never allow us to finalize it, you just keep
- 17 us in perpetual limbo forever.
- 18 Q. Scott, I want you to look at the email on top of
- 19 yours. And this is actually from --
- 20 A. Where's that at, Lane?
- 21 Q. The exhibit we were just looking at.
- 22 A. Okay.
- 23 Q. Go to the top of the page. See where it says,
- 24 "From"?
- 25 A. Yeah.

- 1 Q. Scott Bolo is right next to that?
- 2 A. Right here, yeah.
- 3 Q. And that's dated February 14, 2007. And you write
4 back, "Okay, thanks. Edward is putting the
5 easements together. We can finalize our
6 subdivision and forward it to your attention,"
7 right?
- 8 A. And do you know what that means? What you're
9 saying --
- 10 Q. It means that you're contradicting yourself.
- 11 A. No. You are, because right here it says all we're
12 working on is the easements. We're putting the
13 easements together, and that's when we were
14 working with Mr. Stilwell on the easements. If
15 you wouldn't let us finish the easements, we ipso
16 facto could not finish. You made it impossible
17 for us to finish, and you did it on purpose.
- 18 Q. Isn't it, in fact, true that you never identified
19 the proposed route across the Rewa property --
- 20 A. We identified --
- 21 Q. -- until August of 2007?
- 22 A. -- three of them, sir, not just one.
- 23 Q. I'm asking you a question. I'd like you to answer
24 it just -- I mean it's your sworn testimony.
- 25 A. I did.

- 1 Q. Isn't it true that you didn't identify the
2 proposed route until August of 2007?
3 A. What proposed route, sir?
4 Q. The proposed route across ReWa's property for the
5 force main that you were trying to build.
6 A. Is that the river route that you're speaking of?
7 Q. No. We're talking about the flag lot route.
8 A. Are you saying that we didn't have the route until
9 2007?
10 Q. That's exactly what I'm saying.
11 A. Okay. Well, why is that a problem?
12 Q. Do you disagree with that?
13 A. I don't have any information that shows me that it
14 is or isn't true.
15 Q. So Brian Bishop tells you in March of 2006, he
16 says, "Scott, before you down this engineering
17 road, get me the proposed route. Let's shore that
18 up." In August of 2007, roughly 18 months later,
19 you still haven't given the guy the proposed
20 route. Isn't that a fact?
21 A. That was -- that's just wrong. That's just wrong,
22 and it's misrepresenting, and shame on you for
23 doing that.
24 Q. Well, we're going to see some documents and we'll
25 see how much I'm misrepresenting and how much you

1 are.

2 A. You guys just ran around. You were giving us
3 chores to do to keep us busy. There was no
4 genuine effort to connect service, and if there
5 was, then one of those seven other developments --
6 you know, you're hiding behind the technicality of
7 this. But what about those other developments?
8 None of them got permitted, none, and they didn't
9 have a technical solution. They didn't have a
10 problem with technical issues, and they didn't get
11 hooked up either.

12 Q. Did you ever --

13 A. So this doesn't have anything, in my opinion, to
14 do with a technical difficulty of this, this has
15 to do with a way for you all to disenfranchise our
16 properties.

17 Q. Was this a technically difficult project?

18 A. No, it wasn't. Technically difficult's sending a
19 man to the moon.

20 Q. Was this a technically challenging project?

21 A. No, it wasn't.

22 Q. Not technically difficult?

23 A. No. ReWa made it technically challenging on
24 purpose by demanding that we manifold them
25 together and at the time I'll tell you, I was

1 sitting there going, man, this is bad engineering
2 practice. It's really, really bad engineering
3 practice to manifold. And --

4 Q. Was this --

5 A. Let me answer the question. And I didn't
6 understand why you wanted us to manifold until
7 later, and then I realized it was just a goose
8 chase. You wanted to make it as complicated as
9 possible, but there was a very simple solution.
10 We could have had two force mains. We could have
11 had a force main coming from Riversway coming up
12 the river and tying in over here (indicating).
13 That would have served this entire basin. Okay?
14 We could have had one here (indicating) and had a
15 second force main pumped up into the plant. It
16 wouldn't have caused any problems. It wouldn't
17 have had any interference with the plant. It
18 wouldn't have been technically challenging, and it
19 wouldn't have caused all this disruption. In a
20 similar fashion, we could have easily come up to
21 the top of this and come across here and tied in.
22 You guys, I understand what you're doing, but the
23 bottom line was you weren't responsive. You
24 wouldn't allow us to do the connection.
25 Q. We weren't responsive?

1 A. No. You were not responsive.

2 Q. Technically, this project's not technically
3 difficult?

4 A. No, it's not.

5 Q. The project is not technically challenging?

6 A. Well, I mean I guess it maybe a master's level
7 project, but it's not a Ph.D. level project.

8 Q. It's not a hard project? Is it atypical?

9 A. It shouldn't take a sewer authority five years to
10 come up with a new plan after you implement a new
11 policy. And here we are five years after you
12 implemented this new policy and none of the seven
13 disenfranchised. And Riversway is still in this
14 negotiation after five years and they still can't
15 hook up, and they don't have any technical
16 challenges with pumping to the plant. They don't
17 have any manifolding. They don't have any other
18 pipelines. You just denied them.

19 (EXHIBIT NUMBER 16 MARKED)

20 EXAMINATION RESUMED BY MR. DAVIS:

21 Q. Let me show you what we've marked as Exhibit 16.

22 Have you ever been to the InSite Group's website?

23 A. Yeah.

24 Q. They actually have the River Trace project on it,
25 don't they?

- 1 A. I don't think it's on there anymore.
- 2 Q. Well, it was at one time. And isn't it true that
- 3 when you're advertising for InSite Group, you say
- 4 a little bit -- something different about the
- 5 River Trace project? In fact, don't you say that
- 6 the project was, and I quote, "Technically
- 7 challenging," end quote?
- 8 A. (Witness nods.)
- 9 Q. Is that a yes?
- 10 A. It does say technically challenging.
- 11 Q. Does the InSite Group participate in false
- 12 advertising?
- 13 A. No, I don't think so.
- 14 Q. As the head engineer on this River Trace project
- 15 that doesn't -- hasn't really gotten off the
- 16 ground, I mean would you agree that this ad is
- 17 somewhat misleading?
- 18 A. Well, I think at the time you all had told us that
- 19 it was going to work out. So we based our
- 20 understanding on the promises that you made to us
- 21 and based on, "Oh, it'll work out. This thing's
- 22 going to get done. We're going to take care of
- 23 it. These things will get finished." So yeah, we
- 24 relied on what you told us.
- 25 Q. Now, when you say at the time, are you referring

- 1 to February of 2011 when I printed this out?
- 2 A. I do not -- I don't know the time frames on this.
- 3 You know, if there's something that's on there
- 4 that's not right, we'll make a change to it.
- 5 Q. "InSite Group completed the design and
- 6 construction management." Was that true?
- 7 A. Yes, it was.
- 8 Q. It completed the construction management?
- 9 A. We completed all the construction management that
- 10 was done on site.
- 11 Q. Oh. So they didn't really complete the
- 12 construction management, it just completed the
- 13 construction management on --
- 14 A. Well, you completed it for us.
- 15 Q. How about the Cherokee Chores? Is that an actual
- 16 project that goes through?
- 17 A. Yes.
- 18 Q. So that exists? We could go see those houses?
- 19 A. Yes.
- 20 Q. But right below that, you've got the River Trace
- 21 project, right? You just testified five minutes
- 22 ago that the River Trace project wasn't
- 23 technically challenging, right?
- 24 A. Yeah. You know, like I said, it's a master's
- 25 project, not a Ph.D. project. So there's varying

1 degrees of technical challenge. Let me clarify
2 that even more. What made it technically
3 challenging was dealing with the permitting
4 authority and dealing with the manifold
5 requirements and the other requirements. If they
6 had allowed us to engineer the project without
7 interfering with it, it would have been a lot more
8 simple.

9 Q. Except, Scott, out of fairness to me, that's not
10 what the InSite Group's ad says, is it?

11 A. You know what, you're trying to attack me on this
12 puny little minutia, but you've disenfranchised
13 seven people and wrecked their lives. So if that
14 gives you glory to come out and say we're bad and
15 makes you feel good, great, but you destroyed the
16 lives of a lot of people.

17 Q. Let's turn your attention back to Exhibit 15.
18 That was the one we were just looking at. Do you
19 find it peculiar, from your world view, that Brian
20 Bishop keeps asking you for the force main route
21 when, according to your sworn testimony, he was
22 the one who came up with the flag lot route?

23 A. You know, obviously we provided the Hearing
24 Officer with our detailed survey of the river
25 route. Obviously that was complete. I find it

1 obviously disingenuous that you're asking for
2 materials that you have in your possession over an
3 over again. Moreover, I think if you read further
4 through the thread, which you produced to us and
5 gave us, in our response we say, "okay. We're
6 putting easements together. We're going to
7 finalize everything and forward it to your
8 attention."

9 Q. Yeah. We can finalize our subdivision. You
10 hadn't finalized it yet, right?

11 A. Well, we had --

12 Q. You're still working?

13 A. No. The easements weren't done. That was what
14 was left to finalize and that was the only thing
15 left to provide. They already knew that we had
16 finalized our plans to Metro because Metro had
17 agreed to them and signed off on them. They said
18 they were fine, "We're done with you. You go on."

19 Q. Well, let's go to the next document. The Hearing
20 Officer can draw his own conclusion from the
21 exhibit.

22 (EXHIBIT NUMBER 17 MARKED)

23 EXAMINATION RESUMED BY MR. DAVIS:

24 Q. Bishop responds to your email that we just
25 reviewed in Exhibit 15 with an email of his own

1 February 14, 2007, and it's addressed to you,
2 right?

3 A. Uh-huh.

4 Q. And in it, he's basically saying, "Hey, look, in
5 your submittal to ReWa," -- can we agree he's
6 referencing a submittal to ReWa?

7 A. Yeah.

8 Q. We can agree about that. So he's saying, "when
9 you submit this stuff to ReWa, here's what I need
10 from you. You got to get the review fee. You got
11 to get the request for flow, and not to exceed a
12 two-year build-out. You got to get stamped plans,
13 and that we'll need a statement that the pump
14 stations are designed to the minimum requirements
15 for ReWa." At this point, he's telling you, "Hey,
16 look, once you get us that, you've got be patient
17 because these are not typical plans," right?

18 A. Yeah. I mean I'm reading that, what he said.

19 Q. And you disagree that these are not -- these are
20 typical plans?

21 A. You know, this is not technology like sending a
22 person to the moon. We've been pumping brown
23 water --

24 HEARING OFFICER: You've talked about that enough on
25 both sides whether it's typical or not or

1 difficult.

2 EXAMINATION RESUMED BY MR. DAVIS:

3 Q. Can I ask one quick question before we go to the
4 next exhibit? Number two, bullet point number
5 two, "Not to exceed two-year build-out." You
6 understood as of this point in time that the two-
7 year build-out was the maximum amount of flow that
8 they were going to allow?

9 A. And do you understand how disingenuous that is
10 when in February 14, 2007 they're talking about
11 we can't exceed a two-year build-out and then
12 Windsor/Aughtry is in the process with us.
13 They've already exceeded the two-year build-out
14 now, so I guess this doesn't apply to them.
15 What's really interesting about this letter is
16 number one, there's a \$220 review fee for each
17 subdivision. We paid that. We paid the \$220
18 review fee. Rewa's cashed our check. They
19 requested the flow request. They got the stamped
20 plans, and they also got the statement that the
21 pump stations are not designed to meet Rewa's
22 minimum requirements. They accepted our
23 submittal. They deposited our check, which
24 subsequently cleared the bank. But even though
25 we paid our dues, we paid our fees, they never

1 reviewed our plans. And the reason they wouldn't
2 review our plans is because, as we say on the
3 17th, "We're putting the easements together. We
4 can finalize our subdivision and forward it to
5 your attention." It was 100 percent design
6 complete. We were fully design complete. What we
7 didn't have at that time was easements, and that
8 was because Mr. Stilwell said the whole thing
9 about -- it's not funny.

10 Q. Well, you're just wrong.

11 A. No, no, no. I'm not wrong, and I'm going to
12 finish answering the question before you interrupt
13 me.

14 MR. STILWELL: You hadn't even met me yet, Scott.

15 WITNESS CONTINUES:

16 A. Mr. Stilwell was the one who told us that Condor
17 could not put the line on the Rewa property. And
18 Mr. Gene testified to that this morning in detail.

19 EXAMINATION RESUMED BY MR. DAVIS:

20 Q. Scott, the question I had was about the two-year
21 capacity. And getting back to that, the two-year
22 capacity was also something that Rewa told you
23 about in Exhibit 13, which was the March 16, 2006
24 email?

25 A. The two-year capacity's renewable.

1 Q. I'm just asking you a simple question. They tell
2 you about the two-year capacity in March of '06,
3 and they're telling you about it again in the last
4 exhibit, Exhibit 17, right? Can we agree about
5 that, or do we have to actually go through and
6 read the words, two-year capacity, in both of
7 these things?

8 A. Again, it's just more weasel words that they put
9 on everything so they can back off of it later. I
10 mean have you seen the way everything's written?

11 Q. Scott?

12 A. Yeah.

13 Q. Do these documents tell you about the two-year
14 capacity? Simple question. The one we just
15 looked at, bullet point number two says not to
16 exceed two-year build-out. Can we agree that
17 Exhibit 17, bullet point two, says that?

18 A. That in the King's English does say that.

19 Q. Can we agree that Exhibit 13, first paragraph,
20 last sentence, "The developer/builder can prepay
21 the new account for these units exceeding the two-
22 year build-out." In the sentence before it, it
23 says, "A two-year build-out represents 80 to 100
24 homes. Therefore, this project should be
25 constructed in two phases." It says that, right?

1 Can we agree to that?

2 A. Right. We met with Mr. Bishop in detail and he
3 told us we had to split it in two phases because
4 of -- Rewa couldn't allocate more than a hundred
5 units at a time.

6 (EXHIBIT NUMBER 18 MARKED)

7 EXAMINATION RESUMED BY MR. DAVIS:

8 Q. Now, let's look at the next one. This is an email
9 from you to Brian Bishop, and it's dated March 21,
10 2007.

11 A. That's right.

12 Q. At this point in time, we're about a year into
13 this project, right?

14 A. Maybe a little more, yeah.

15 Q. A couple weeks more. The first email was from
16 March 6 or 16th or something?

17 A. February of 2006 was the first --

18 Q. So maybe we're at 13 months. And at this point in
19 time, you write in paragraph 2, and I quote, "We
20 are collecting the DOT encroachment permit and
21 finalizing the WCRSA easement forms forwarded,"
22 end quote. Do you see that?

23 A. I do.

24 Q. So can we confirm that Rewa had forwarded the
25 easement forms?

1 A. Yeah. Mr. Stilwell sent me the easement forms and
2 then provided me with instructions. And as you
3 indicated to me, previously Mr. Stilwell said I
4 did not know him as of February, 2007, February-
5 March, and this obviously indicates I did know him
6 at that time.

7 Q. Actually it doesn't because we'll see a document
8 later, but my question is more simple than that.
9 I'd appreciate if you could just answer it. You
10 got the easement forms from ReWa, right? This is
11 what that document reflects. It says that --

12 A. No, it doesn't say that. It says, "We're
13 finalizing the easement forms forwarded."

14 Q. So you had easement forms for ReWa, right?

15 A. As of March, 2007, you had sent --

16 Q. Someone had sent them?

17 A. -- a preliminary form of easement forms, but it
18 wasn't the final version. You sent a different
19 version later. Remember? Because you said Gene
20 couldn't come on the ReWa property and then we had
21 to change the easement agreement, and Gene agreed
22 to that. He agreed to deed it over to the HOA,
23 but then when I went to Stokes, the HOA wouldn't
24 allow the HOA to own it -- I mean the DHEC
25 wouldn't allow them to own it.

- 1 Q. Do you think --
- 2 A. Wait. I have more.
- 3 Q. Can we agree that the rad in force main design
- 4 would be something that would be important to
- 5 ReWa?
- 6 A. Well, what's most important in here is that the
- 7 engineering drawings were designed and confirmed
- 8 by Metro, so the design was final. According to
- 9 Metro, it was final design.
- 10 Q. I'm asking you a completely different question
- 11 than you're answering.
- 12 A. No. It's --
- 13 Q. Can we agree that the force main was going to
- 14 cross ReWa's property, right?
- 15 A. You never allowed that.
- 16 Q. The proposed route was across ReWa's property, was
- 17 it not?
- 18 A. Yeah, but you wouldn't allow it. You asked me if
- 19 the route was across the property, and you
- 20 wouldn't allow the route.
- 21 Q. Can we agree that the design in route of the force
- 22 main that you were proposing to construct across
- 23 the Lower Reedy treatment plant property would be
- 24 important to ReWa?
- 25 A. Evidently, because we studied four different

1 routes and engineering design completed three of
2 them.

3 Q. And it's important to Rewa because it's got an 80
4 plus million dollar treatment plant on that
5 property, right?

6 A. No. The reason it was important to Rewa was
7 because you were delaying the process to implement
8 a retroactive law, violating the Constitution of
9 the United States of America. That's why it was
10 important. It was a subterfuge designed to draw
11 out the process. Look, you had 20 other -- seven
12 other developments that didn't have any technical
13 challenge, and you wouldn't let them connect
14 either, right? They didn't connect. No one did.

15 Q. This email is from March 21, 2007, right?

16 A. It is.

17 Q. March 21, 2007 reflects that you hadn't sent in
18 the easement application yet.

19 A. Well, maybe because you all hadn't approved the
20 route. You -- see, it's a catch-22. How can we
21 submit a permit for a route you won't approve.
22 We kept designing the route, engineering it,
23 engineering completing it, and then we go to
24 submit it and you say, "Oh, wait, we got an
25 ownership issue," or, "Oh, wait, we have a

1 location issue." You know, you just put a bag
2 over our heads, punch us in the face, and then
3 sent us off to do another bidding and it was
4 endless tasks like that time and time and time
5 again. But no, you never allowed us -- we were
6 there. Mr. Stilwell could have just signed the
7 encroachment permits, given them to Condor. We
8 were done. That was it, but you didn't allow that
9 to happen.

10 Q. It's true, isn't it, that you haven't even
11 identified the proposed route to us yet?

12 A. No, it's not true. We had the river route, and
13 you guys loved the river route. In fact, I've
14 heard you told -- this is hearsay. Then he goes
15 --

16 Q. Scott, we were still on the flag lot route at this
17 point in time.

18 A. But have told Windsor/Aughtry that we could have
19 gone up the river route.

20 Q. Scott, I'm talking about March 21, 2007.
21 Remember?

22 A. I'm answering your questions. Do you want to go
23 back to then? That's fine.

24 Q. I'm talking about the fact that March 21, 2007.
25 It was the flag lot route that was in play, right,

- 1 or don't you know that?
- 2 A. In March of 2007? Well, no, I don't know that off
- 3 the top of my head because you guys had us do four
- 4 different routes and this is 2011.
- 5 Q. So let's keep going because maybe we can come to
- 6 some sort of contention --
- 7 A. Oh, I want to point out --
- 8 Q. -- about what routes we're talking about and what
- 9 it is that you hadn't done.
- 10 A. As of March 21, 2007, this says, "Metro comments
- 11 were integrated into the engineering drawings."
- 12 That means we were engineering complete as of
- 13 March 21, 2007 because Metropolitan is a delegated
- 14 reviewer for DHEC. They would not have approved
- 15 the plans unless they were complete.
- 16 Q. Scott, is it your sworn testimony that we had
- 17 complete engineering plans for your entire route
- 18 all the way up through the Lower Reedy plant as of
- 19 that date?
- 20 A. I don't know if it was as of that date, but
- 21 certainly subsequent to that you did.
- 22 Q. I just want the Hearing Officer to note this fact,
- 23 because we'll hear from some ReWa employees later.
- 24 Your sworn testimony today --
- 25 A. Well, the ReWa employees lied in their deposition.

1 Q. From your sworn testimony today, you're saying
2 that you had design complete finalized stamped
3 engineering plans that reflected the entire route
4 all the way through the Lower Reedy plant,
5 including the force main on our property? That's
6 your sworn testimony?

7 A. Well, we had completed all of the collector system
8 drawings. We had completed the design route for
9 the force main, absolutely, and that's
10 substantiated 100 percent by the route that I
11 demonstrated to you earlier today.

12 Q. Isn't it true you hadn't even completed a survey
13 yet of the force main on ReWa's property as of
14 this date?

15 A. Oh, no. We had completed several surveys. I
16 don't know if it was before that date or after
17 that date, but we completed them as you requested
18 them.

19 Q. I just want to --

20 A. So we took them as they came. We didn't have the
21 opportunity to survey routes in advance of knowing
22 where you wanted them to be.

23 Q. I just want to make this clear for the record.
24 Your testimony is that as of March 21, 2007, you
25 had completed a survey for the force main across

1 Rewa's Lower Reedy treatment plant?

2 A. I think that we just held up an exhibit that
3 demonstrated that.

4 Q. And that route at that time was the flag lot
5 route?

6 A. I don't know.

7 Q. You don't know. You don't know, but yet you are
8 perfectly willing to testify under oath with
9 absolute certainty that you had a survey done at
10 that date?

11 A. Yeah, because we provided it to you.

12 Q. You don't even know what route we're talking
13 about.

14 A. Well, I know that we surveyed the different
15 routes, so what does it matter which route we're
16 talking about? That's a moot point. If we
17 surveyed all of them, does it matter where --

18 (EXHIBIT NUMBER 19 MARKED)

19 EXAMINATION RESUMED BY MR. DAVIS:

20 Q. Let's look at the next exhibit. This is an email.

21 A. Which one is this number, 19?

22 Q. Yes, sir. This is an email dated Tuesday, July 3,
23 2007. Ashley Hornung, she worked for you, right?

24 A. Yes.

25 Q. And this email is to Brian Bishop, right?

- 1 A. Yes.
- 2 Q. It's about River Trace?
- 3 A. Looks like it, yeah.
- 4 Q. And she says in her email, and I quote, third
5 sentence, "I have an encroachment permit to
6 encroach onto Western Carolina's property with our
7 force main. I am trying to get this thing filled
8 out quickly, but I am waiting on some info from
9 our surveyor. I was just curious if they would
10 be a long process to get this encroachment. Also,
11 it says that you all need to get two copies of the
12 survey for the encroachment. Does this need to
13 be a survey or can I just send two copies of our
14 line that is on engineering sheets? If you would
15 please let me know," end quote. At this point in
16 time, number one, the encroachment permit
17 application still hasn't been filed with Rewa?
- 18 A. Let me clarify that. That's only on Rewa
19 property, not the DOT encroachment permit that you
20 were speaking of earlier.
- 21 Q. I'm talking about the Rewa encroachment permit
22 application.
- 23 A. Didn't I just testify that you all would not let
24 us file that?
- 25 Q. I'm asking you a question.

1 A. Go ahead.

2 Q. As of July 3, 2007, does this document not reflect
3 that InSite Group still has not submitted an
4 encroachment permit application with ReWa for the
5 force main?

6 A. Only with regard to the path across your plant.

7 And the only reason we haven't done it is because
8 you won't let us.

9 Q. I understand that that's what you want to testify
10 to. That's fine.

11 A. No, that's the truth.

12 Q. Well, this email is saying, "Can I submit
13 something other than a survey," does it not?

14 A. So?

15 Q. She wants to submit something other than a survey
16 because you hadn't surveyed the lot yet; isn't
17 that correct?

18 A. No. She's asking what the submittal needs to
19 consist of, not saying that we haven't done the
20 survey.

21 Q. InSite Group has the flag lot route survey sitting
22 on a shelf?

23 A. This isn't -- this is not the flag route.

24 Q. Ashley can go -- oh, it's not?

25 A. Evidently not, because it's July 3rd of '07.

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1 Q. July 3rd of '07, sir, you are still working on the
2 flag lot route, are you not?

3 A. I don't know,

4 Q. So you just testified that it was not flag lot
5 route. You have no idea. You have no idea what
6 you're talking about.

7 A. Well, you just held up a time line and told me,
8 you said, "Isn't it true that you were down on the
9 river in 2007?"

10 Q. No.

11 A. And you just entered into the testimony that --

12 Q. No, sir.

13 A. -- these time lines are about this, this, and that
14 and the other.

15 Q. I just want to let the record reflect the river
16 route was not even an issue until October or
17 November of this year.

18 A. But she's -- are you reading this? Because she
19 says in here, "I'm getting some information back
20 from our surveyor." So what does surveyors do out
21 in the field specifically?

22 Q. And she says --

23 A. They do surveys, right?

24 Q. "Also, it says that I need two copies of the
25 survey for the encroachment. Does this need to be

1 Q. So a survey or can I submit something else?"

2 A. So you're asking me, did we have a surveyor in the
3 field, and here in this -- right here she says,

4 "our surveyor's out in the field collecting the

5 data. Do you need the survey or can we put it on

6 our engineering sheets?" That means the bearings

7 and distances and lines can be put on our

8 engineering drawings or we can submit them

9 separately by a PLS. That doesn't mean it hasn't

10 been done, but that's a nice try on that one.

11 Q. This means that your surveyor is still out there

12 trying to get the survey data --

13 A. That does not mean that.

14 -- that Brian Bishop asked you for months before.

15 A. Where does it say that the surveyor's still out

16 there collecting data? Show me where it says that

17 part.

18 Q. I'd like you to show me the survey.

19 A. I just did. I presented it to you. There's the

20 data right there.

21 Q. First of all, we were talking about how your

22 deposition lasted two days. Do you remember that?

23 Remember we talked about that earlier?

24 A. So what, Lane?

25 Q. I'm just asking you a question, Scott. I'm just

1 asking you a question. In your first deposition,
2 you told me that you had detailed surveys,
3 everything done for the flag lot route that went
4 across the Lower Reedy treatment plant.

5 A. I said it was done by INSite Survey and Mapping.
6 He's no longer in business. The PLS is gone.

7 Q. I asked you --

8 A. Do you know where it went? Do you know why he got
9 let off? Do you know what happened?

10 Q. I asked you if you could bring it to me to the
11 next deposition.

12 A. That's what I had. That's the survey stakeout
13 drawing as provided by the surveyor. That's the
14 only data I have on my server. That's the only
15 information I currently have access to.

16 Q. You told me you could.

17 A. That's it.

18 Q. The following week, when your deposition was taken
19 on the 28th, you produced a blank CD to the court
20 reporter.

21 A. That's not right.

22 Q. That's not right? Well, the Madam Court Reporter
23 reported there was no data on that CD, sir.

24 A. You know what --

25 Q. I proceeded then, did I not, to ask you for the

1 detailed survey drawings that you had in your
2 possession for a month and a half, sent you six
3 different emails.

4 A. No, you didn't. No, you didn't. You didn't send
5 me six emails.

6 Q. I sent your lawyer six emails.

7 A. You didn't send me any emails.

8 Q. Well, I contacted your lawyer and requested that
9 you produce --

10 A. You didn't -- I didn't know about it. It's there.

11 Q. -- the detailed survey drawing.

12 A. So what? We did three other surveys. Where are
13 they? You have those, too, right? You have the
14 data.

15 Q. You didn't produce the flag lot route survey, as I
16 requested, until yesterday.

17 A. You didn't produce information on a FOIA request
18 from four years ago.

19 Q. The detailed survey produced in your email
20 yesterday, which you told me during your
21 depositions, had all the latitude, longitude,
22 data, northings, eastings, all the stuff that I
23 needed.

24 A. You don't understand.

25 Q. It's right there (indicating).

1 A. That's an engineered line. It has northings,
2 eastings, elevations. You can't read it because
3 you're not an engineer, but if you take that
4 digital copy to your engineer, he can read it.

5 Q. I sent your digital copy, sir, to a professional
6 CAD copy service. That's what came back.

7 A. Yeah, because the layers aren't turned on, but you
8 don't know about layers, do you?

9 Q. I know that you produced a blank CD to me and
10 swore, under oath, that it contained all of that
11 data. And then when I got the data later, it
12 looked like that. That's what I know.

13 A. Well, you know what I know, is that you're making
14 a bunch of silly points over stuff that's just
15 minutia in an effort to conceal your crimes. You
16 guys don't have the right to retroactively put in
17 place laws. You don't have that right.

18 Q. In fact, is it not -- is Mike Deaton with -- or
19 was he with the InSite Group?

20 A. Yes.

21 Q. Was Mike Deaton a surveyor?

22 A. No.

23 Q. What was Mike Deaton? What did he do?

24 A. Construction.

25 Q. Sewer line construction? What did he do?

1 A. Yes.

2 Q. Well, you do more than just that, right, don't
3 you? Are you aware that Mike Deaton from the
4 InSite Group did not contact Brian Bishop to
5 arrange for a survey of the flag lot route until
6 August of '07?

7 A. Oh, so you mean he did survey it in August of '07?

8 Q. No. He never completed it, because we'll talk
9 about the next document.

10 (EXHIBIT NUMBER 20 MARKED)

11 EXAMINATION RESUMED BY MR. DAVIS:

12 Q. I'm going to show you what is an email string
13 between you and Brian Bishop from August 29, 2007.

14 The below email is from Brian Bishop dated August
15 29th to you. And he says in it, "Scott," and I
16 quote, "Mike Deaton with your firm and I attempted
17 to walk the proposed route through our Lower Reedy
18 wastewater treatment plant property. It was not
19 as I had expected. Two-thirds of the route is
20 heavily forested with one particular section that
21 drops off 20 plus feet and then rises 30 feet.

22 There is no room to reroute the force main to
23 decrease the elevation. Construction through
24 this area would be very expensive. An access
25 road would have to be built. The force main line

- 1 would be very deep, very difficult construction.
2 A significant number of trees would have to be
3 removed. There's high potential for rock. Also,
4 we are installing security measures at the site
5 and have new fiber optic running along the access
6 road down to our plant. I also do want to deal
7 with having Condor owning a force main on our
8 property given the new security measures. WCRSA
9 is also not receptive to having trees removed or
10 having the potential for rock blasting on our
11 site," end quote. Do you see that? Do you see
12 where that email says that?
- 13 A. I totally disagree with his assessment.
- 14 Q. That's fine. But that's what the email says, and
15 he sends it to you on August 29, 2007, right?
- 16 A. Yeah. The problem is that Brian Bishop doesn't
17 know the first thing about constructing a force
18 main. He's not a licensed contractor. As far as
19 I know, he has no experience with installing a
20 force main.
- 21 Q. The reason why Mike Deaton and Brian are walking
22 the flag lot route on August 29, 2007, is because
23 Mike Deaton had called him on August 28, 2007 in
24 order to try to make arrangements to set up the
25 survey, which had not yet been completed. Is that

1 not true?

2 A. That's incorrect. It was to clear the lot. Mike
3 is the construction guy. We had already done the
4 survey. And as a matter of fact, it was done by a
5 professional surveyor by the name of Dan
6 Bonenfant, and he, as a part of InSite Survey and
7 Mapping, prepared and completed a survey, not only
8 of the route, but of the structures on your site,
9 and in addition to that fence lines, et cetera, et
10 cetera, et cetera, all that other kind of stuff.

11 Q. Of course you brought that survey with you today?

12 A. Now, Mike Deaton was on the -- because you didn't
13 subpoena InSite Survey and Mapping. I don't have
14 the access to that data. It was the PLS that --

15 Q. Can we agree that I specifically asked you for the
16 detailed survey data?

17 A. And I have what I have in my possession, and I
18 gave you everything that I have in my possession.

19 And that does, in fact, got northings, bearings,
20 distances, labels on it. So back to the --

21 In answering the question, Mike Deaton, as I
22 indicated, was the construction man. He was going
23 out to the site on August 29, 2007 to construct a
24 line, to clear the right-of-way and go in. So
25 that's why he met -- it was a pre-constructability

- 1 review on the line and on the route.
- 2 Q. Scott?
- 3 A. It wasn't a meeting to coordinate the survey. The
- 4 survey was done.
- 5 Q. I would like you to -- if you don't mind, would
- 6 you stand up and specifically show me something on
- 7 the map? Can you show the Hearing Officer the
- 8 exact route that you are testifying under oath
- 9 that was going to be cleared on the flag lot route
- 10 on that day?
- 11 A. The flag lot's not shown on here that I can see.
- 12 Q. Well, tell me what you were going to clear.
- 13 A. The flag lot.
- 14 Q. Well, where would it be on that map?
- 15 A. It would be -- it's probably -- it may be this
- 16 here (indicating). But I don't think that this
- 17 accurately represents the parcels in this area
- 18 because I believe we have another drawing that
- 19 shows the flag lot route.
- 20 Q. Let's get to that in a second, but let's talk
- 21 about this for a second before you skip off. Tell
- 22 me exactly what it is that you're contending was
- 23 being cleared. Just go ahead and show me what it
- 24 is that was going to be cleared. Draw that for me
- 25 with this pen.

- 1 A. It was somewhere in this area right here
2 (indicating) coming across from the road, across
3 one of these lots, and coming across up here and
4 down.
5 Q. So you were going to clear --
6 A. It's right here, sir, on --
7 Q. Great. Let's --
8 A. And here's the flag lot, too, (indicating).
9 Q. We need to slow down and help the court reporter
10 out. With respect to Exhibit 2, your sworn
11 testimony is that Mike Deaton was out there to
12 clear the route highlighted in black?
13 A. Right.
14 Q. And he was going to clear all the way up to Rewa's
15 plant?
16 A. No, sir.
17 Q. No, he wasn't?
18 A. No, sir.
19 Q. Where was he going to stop?
20 A. I don't know exactly where trees were. I believe
21 it was in this area (indicating). Once you get on
22 the Rewa property, there are no trees. It's only
23 on the flag lot.
24 Q. So he was only going to clear the flag lot?
25 A. When you get on the Rewa property, it's grassed.

1 There's a fence around the site and it's grass, so
2 there would have been no tree clearing on the
3 site.

4 Q. But he was only going to clear the flag lot; is
5 that right?

6 A. Well, there was no clearing on the route on the
7 plant, so the only clearing would have been done
8 on the flag lot.

9 Q. That's what I'm trying -- I'm trying to ascertain
10 exactly what your testimony is for the Hearing
11 Officer. You can sit down. Your testimony is
12 that Brian Bishop invited him to do that?

13 A. Well, evidently. He didn't go out there for
14 nothing.

15 Q. And your testimony is that Brian Bishop invited
16 him to go out there and clear the flag lot before
17 you had even resolved the encroachment permit
18 application?

19 A. The process that we were going through was
20 identifying the route. Part of that was a
21 constructability review. My understanding was
22 Mike was going out with the survey with Mr. Bishop
23 to complete a constructability review prior to
24 Rewa allowing the construction of the line.

25 Q. At that point in time, an encroachment permit

1 application hadn't even been filed yet, had it?

2 A: Well, why would you complete an encroachment
3 permit application for a route that wasn't
4 approved?

5 Q: And, in fact, you've never submitted a survey of
6 the flag lot route to ReWa?

7 A: No. We did submit a survey to ReWa. You keep
8 saying that and I just want to make it abundantly
9 clear. A professional land surveyor completed the
10 route. The route was provided to ReWa.

11 Q: As we sit here today -- you know, I have been
12 saying this a lot. As we sit here today, you
13 still haven't given them one, have you?

14 A: I don't have it in my possession currently.

15 Q: Let's keep going. The response that you gave Mr.
16 Bishop, you know, you just testified, I think,
17 that he was completely off the mark in his
18 analysis of the flag lot. Is that a fair
19 characterization?

20 A: I was pretty shocked when I found out that there
21 was some really basic engineering aspects that
22 ReWa and ReWa employees never seemed to have a
23 grasp on. And they kept hiring these consultants
24 to figure it out. "Oh, we'll get Rogers and
25 Callcott or, you know, somebody else to figure it

1 our for us."

2 Q. And so you were so shocked and surprised and
3 confused, that what you actually wrote in response
4 was, and I quote, "Mike had mentioned you had some
5 concerns with the route. I read your notes and
6 can understand what you're talking about the
7 route," end quote. That was the response of a
8 shocked and surprised Scott Bolo?

9 A. Well, what year was this? This is August of 2007,
10 so I'm a year and a half into this, right? And
11 I'm a diplomatic, professional engineer, so would
12 it be appropriate to respond with, "I think you
13 don't know what you're talking about. You
14 obviously don't have any experience in this area.
15 Your observations are way off base"? No. What
16 you say is, "okay, I see you have concerns here.
17 I'm going to try and address them in the design
18 and I'll get back to you."

19 Q. I can understand what you're saying about the
20 route, right? That's what you say when you
21 object.

22 A. No. What you say when you object politely is,
23 "I'm going to take a look at it and I'll get back
24 to you." And that's what I say here is, "I'm
25 going to look at your suggestions and call you

1 "over back."

2 Q. And so the next thing that happened was down
3 below, and this is when we actually switch from
4 route one to route two, right, because down below,
5 Bishop is saying, "Hey, look, as it turns out,
6 once I walked that route, it was a bad idea. How
7 about this proposal"?

8 A. But do you understand how this discussions about
9 the route is a completely moot and unnecessary
10 discussion to have with the Hearing Officer?

11 Q. What I understand, Scott, is that the first 17
12 months, 18 months of delay fell pretty much so at
13 your own hand?

14 A. No.

15 MR. FULTON: Object.

16 WITNESS CONTINUES:

17 A. Not at all. That's completely incorrect.

18 HEARING OFFICER: It's an argument, I agree.

19 EXAMINATION RESUMED BY MR. DAVIS:

20 Q. But let's talk, because I -- we can agree about
21 this, I think. I mean this email, dated August
22 29, 2007, was the first time the Bishop route, the
23 second route, came into play?

24 A. Yes and no. I mean at the very beginning we had
25 originally contemplated going up and finding our

1 own access to the plant. You know, we have not
2 explored that. That is something that we looked
3 at as individual developers from the very get-go.

4 Q. And down at the bottom of this page is a proposed
5 route that Brian Bishop is communicating to you?

6 A. But do you understand -- look, I hear what you're
7 saying.

8 Q. I'm just asking you --

9 A. I know.

10 Q. -- is this when it comes into play?

11 A. And let me clarify. Let me clarify. There were
12 three routes. Okay? We did go through all the
13 process of engineering and doing what we wanted to
14 do to figure out how to make Rewa happy. I think
15 we all agree on that. There were three routes.
16 We studied the routes. Can we agree on that? I
17 think so, but now look what you got. You got
18 Riversway. Riversway is all alone. Okay?
19 Riversway doesn't have any manifolding. There's
20 no other developments that come into play, but
21 they can't get service either and their route's
22 defined. It's not technically challenging. It's
23 a single force main. There's no other offsets for
24 them. They still can't get it. This is six years
25 now after they entered into discussions with Rewa,

1 six years. You've got one development. There's.
2 no technical challenge. They still can't get
3 service.

4 Q. August 29, 2007 was when what we've been calling
5 the Bishop proposal came into play, right? Just
6 can we hang a date on it for the Hearing Officer
7 so he knows the chronology? That's when Brian
8 Bishop is saying to you, "Hey, why don't you go up
9 North Harrison Bridge Road instead"?

10 A. I don't have anything that shows me that. I don't
11 have any evidence of that.

12 Q. We were just looking at the last exhibit.

13 A. Which was 19 or 20? Was it 20?

14 Q. It's 20, I think. And down at the bottom, you see
15 there are four numbers, one, two, three, four?

16 A. Uh-huh.

17 Q. And in that, Brian Bishop is saying, "Hey, look,
18 why don't you run your force main up Harrison
19 Bridge Road to Metropolitan's gravity sewer."

20 That was bullet point number three, right?

21 A. Yeah, but that was impossible because, as we heard
22 testimony earlier, Metropolitan would not allow us
23 to use that route.

24 Q. Scott, all I'm asking you for the purposes of this
25 question to see if we can establish a fact, that's

1 when -- this date, August 29th, is when Brian
2 Bishop came up with that proposal. That's what he
3 wrote in this email, right?

4 A. He identifies it as one potential option. But
5 the thing is is even when we had a viable option,
6 which was identified in the river route, even
7 when we were survey complete, design complete,
8 everything was complete, then you -- Rewa wouldn't
9 allow us to file the encroachment permit. It was
10 just an endless series of objections and delays
11 that we could never reconcile. And not only us,
12 all the other developers. Nobody was ever able to
13 reconcile it, none of them.

14 Q. Now, you previously testified that you loved the
15 Bishop proposal, did you not?

16 A. I would have loved it if it would have worked, but
17 Metropolitan wouldn't allow us to use their
18 easement.

19 Q. You previously testified that the Bishop proposal
20 was a viable engineering proposal?

21 A. Engineering wise, it was. But it didn't -- it did
22 not offset the fact that the economic terms that
23 Rewa required of this project -- it didn't matter,
24 sir, about the engineering because at the end of
25 the day we couldn't pay twice the price for the

1 service. So the engineering's a big discussion
2 they want to focus on, but it was economically
3 infeasible from go.

4 Q. There were two different connection points on
5 these proposed routes, right? You could --

6 A. But if we couldn't pay for the service, what's the
7 point? There could have been --

8 Q. Scott, just answer the question. We'll get to
9 that. There were two different possible
10 connection points when you went up North Harrison
11 Bridge Road on the Bishop proposal, right?

12 A. Two different ones? Well, one option was to go to
13 the Metropolitan sewer line, which Metro refused.

14 And then the other option was to go through Mr.
15 Knight's property, which we did go and beg Mr.
16 Knight. And he didn't want it because of his
17 first experience with the sewer line coming
18 through. So the Bishop proposal was infeasible
19 from go.

20 Q. So let's talk about those two. There were two
21 different connection points. The first one was a
22 Metro plant proposal. Can we agree about that?

23 A. They were both Metro connection points.

24 Q. The first one was a Metro connection point. Metro
25 had an existing line on that property, didn't it?

- 1 A. Yes.
- 2 Q. And the issue there was that you wanted, or could
3 have, at least, upsized that line, right?
- 4 A. And I asked Metropolitan about that. I said,
5 "Look, what's the deal? Why can't we go through
6 there?" And they told me that Mr. Knight -- I
7 don't know if they litigated or there was the
8 threat of litigation, but they determined it was
9 not feasible. There were also wetlands issues
10 because the line went through a wetlands. So they
11 were engineering and environmental reasons why, in
12 addition to the fact that Mike Dixon told me,
13 "Hey, look, Rewa changed their regulation. You
14 guys are coming and asking us now to do something
15 that, you know, we don't do. And it's not
16 incumbent on us to accommodate you because Rewa
17 changed their regulation after the fact.
- 18 Q. So you're telling me that what Mike Dixon told you
19 -- Mike Dixon is executive director of
20 Metropolitan?
- 21 A. Yes, sir.
- 22 Q. You're telling me that in this time frame, shortly
23 after Bishop responds to you, that you go to
24 Metropolitan and you have a conversation about
25 upsizing the line, right?

1 A: Right.

2 Q: And what Mike Dixon tells you in that time frame
3 is, "Hey, just because ReWa changed its reg
4 doesn't mean we're going to do something kind of
5 crazy," something like that?

6 A: What he said was a bunch of stuff mostly relating
7 to the technical feasibility of this stuff.

8 Q: Well, tell me what he said about the ReWa reg.

9 A: Well, what he says, that you all were in
10 discussions on how to manage the new policy and
11 that things were in a state of change and that,
12 you know, the -- I don't know the exact wording he
13 uses. But you all were fighting over who was not
14 going to provide service was basically the way I
15 understood it because I even asked Metropolitan, I
16 said, "Well, will you all run the pump station?"
17 And he was like, "Man, you know, we don't want to
18 do that." And I said, "But can't you really? Can
19 you do it?" And they were -- you know, they were
20 like, "Well, it's not our fault that ReWa changed
21 their reg. why should we be forced" -- and we
22 just got caught in the middle. It was a big --
23 you know, you guys were fighting with each other
24 and Condor was fighting, and we were just in the
25 middle.

1 Q. The time frame that we're talking about now is in
2 September of 2007, right?

3 A. Was it the --

4 Q. Well, look at the exhibit.

5 A. Yeah. Sure.

6 Q. It's August 29.

7 A. Yeah. Somewhere -- August-September, yeah. Okay.

8 Q. So when you're having the Dixon conversation, it's
9 September of '07 sometime because it comes after
10 the Bishop email and you diligently go out and try
11 to find out?

12 A. I would say it was probably in '07. I mean --

13 Q. And Rewa didn't even amend its reg until May of
14 '08, right?

15 A. Well, that's another thing that just blows me
16 away. You know, what was happening is you guys
17 were enforcing this regulation before it was even
18 on the books.

19 Q. And they weren't even considering changing policy
20 until months after this?

21 A. No, that's not true. You all had been having
22 discussions, as I understand it, with HBA and, you
23 know, you had these community hearings and other
24 things. It was definitely on the radar screen and
25 you all had already made a decision that none of

1 our projects were going forward. I mean Gene
2 testified to that this morning.

3 Q: Did you tell Bishop what your opinion of his
4 proposed route was?

5 A: I don't think we knew enough about the issues with
6 Mr. Knight and Metropolitan at that time. But,
7 you know, I certainly -- or we did, certainly
8 conveyed to him that we weren't able to find a
9 resolution that way, as evidenced by our moving to
10 the river route.

11 Q. Were you in Metro's subdistrict at this point?

12 A: We annexed into Metropolitan's subdistrict as
13 required by Greenville County and the instructions
14 that we received, and everyone receives in the
15 county when they permit on a force main.

16 Q: So is the answer yes?

17 A: I think so.

18 Q: And do you believe Metro has an obligation to
19 serve customers in its subdistrict?

20 A: Yes and no.

21 Q: And you were one of the customers in its
22 subdistrict?

23 A: We were definitely in the Metropolitan
24 subdistrict. That's without a doubt.

25 Q: And isn't it true that Metro could have upsized

1 that line and provided you service?

2 A. They say they couldn't. I think there's -- we
3 felt like they could have if they wanted to, but
4 that may be an engineering difference of opinion.

5 Q. You, sitting here today, believe that if Metro
6 wanted to provide you service, they could have
7 upsized that line?

8 A. It seemed to me that it was either they could, or
9 it was like on the borderline, you know what I
10 mean? It was pretty close; could have gone either
11 way.

12 Q. And Metro queried the possibility of you obtaining
13 service on that route?

14 A. Mr. Knight ultimately did because the problem with
15 the easement was -- it was -- I think it was like
16 20 feet. There was no way going to be enough
17 space to dig through a wetlands in a tractor on
18 20 feet because you have to -- you know, you have
19 to stockpile your material. You got to have
20 somewhere to put it. And then, you know, I think
21 everyone was sitting there going no way are you
22 going through those two ponds on 20 feet, and I
23 would agree with that. From a constructability
24 standpoint, it would have been nearly impossible.

25 Q. It wasn't Rewa that queried that route, though,

1 ...right?

2 A. I don't think -- you all didn't have any say-so.

3 ... I mean it wasn't your property.

4 Q. Your sworn testimony isn't that ReWa somehow
5 convinced Metro --

6 A. No. They sent us --

7 Q. -- to refuse to upsize its line, are you?

8 A. They sent us on a route that was infeasible at the
9 end of the day.

10 Q. But that wasn't ReWa's fault, was it?

11 A. You know what, I don't really understand the
12 dynamic between Metro and ReWa. I understand you
13 all were pressuring them to take it, and I
14 understand they didn't want to. I don't
15 understand why.

16 Q. So ReWa was actually trying to get Metro to do it?

17 A. I think so. I think you all were fighting a -- I
18 think ReWa said, "We're not going to do it." And
19 then Metro said, "Well, we're not going to do it
20 either."

21 Q. Metro was trying -- or ReWa was trying to help you
22 with Metro, right?

23 A. No. You weren't trying to help.

24 Q. Oh, okay.

25 A. Well, I mean if you were trying to help me, all

1 you had to do is say, "okay, we're going to
2 grandfather you guys in." And then I wouldn't be
3 going into a deficiency hearing. I would -- all
4 you had to do was show me one little ounce of
5 mercy.

6 Q. Now, one of the --

7 A. And nothing was preventing you from doing that.

8 Q. One of the routes that your lawyer put into
9 evidence in Exhibit 7, and I think referred to it
10 as a final design route, was in relation to the
11 Bishop proposal, right?

12 MR. FULTON: What's the date on that?

13 MR. DAVIS: 9/17. And I think it was Exhibit 7. It's
14 this one here (indicating).

15 MR. FULTON: I got it. Thank you.

16 WITNESS: What was the question? I'm sorry.

17 EXAMINATION RESUMED BY MR. DAVIS:

18 Q. This plan -- set of plans that is reflected as
19 attached to Exhibit 7 relates to the route
20 proposed by Brian Bishop? It's on page 2. What
21 I'm asking you is, does page 2 of Exhibit 7
22 reflect the Bishop proposal?

23 A. No.

24 Q. Does it reflect a force main going up North
25 Harrison Bridge Road?

1 A. It does.

2 Q. And it is connecting to one of the two possible
3 connection points that were off of North Harrison
4 Bridge Road?

5 A. Correct, sir, but this is not the Bishop proposal.
6 This is actually the option before the Bishop
7 proposal. If you'll look, this goes through
8 private property. This is on Mr. Knight's
9 property. The actual gravity line in by
10 Metropolitan is up higher.

11 Q. When is the email attached to it dated?

12 A. Well, the email's Monday, September, '07.

13 Q. And Brian Bishop gave you his proposal on August
14 29, 2007?

15 A. Yeah. Yeah, he did. I think this may be post
16 exploring the Bishop route. When we found out
17 that would not work, through our work up here, you
18 know, obviously we're exploring all the different
19 options. And one of the options was to go through
20 the private, you know, property here of this
21 gentleman and then Mr. Knight over here. Well,
22 when we initially looked at this --

23 Q. Let me ask you a question, Scott. At this point
24 in time, you're still working with Windsor/
25 Aughttry, right?

1 A. Yeah. Yeah. We're still --

2 Q. You had a contract with them?

3 A. If we had gotten it up until the point of 2010,
4 we would have been working with them.

5 Q. And, in fact, isn't the reason why you sort of
6 bailed on the Bishop proposal was because Windsor/
7 Aughtry objected to it?

8 A. Well, even if Windsor/Aughtry had objected to it,
9 we didn't have the luxury of sitting around and
10 waiting. We would have had to make it work one
11 way or another.

12 Q. Well, let's look at the next document, see if we
13 can see what's true.

14 (EXHIBIT NUMBER 21 MARKED)

15 EXAMINATION RESUMED BY MR. DAVIS:

16 Q. And here there's an email -- there's two emails.
17 And the lower one is from you to S. Graef, and
18 that's Dr. Graef at Rewa, right?

19 A. Right.

20 Q. And this is dated September 30, 2004, and you --

21 A. That's 2004, sir?

22 Q. Well, actually you're right. It's 2007. There's
23 -- I don't know why your email says 2004, but if
24 you look up above, the forward from Graef --

25 A. Okay. Well, I don't -- I'm not going to -- if it

1 says 2004, then I -- you know, I don't know. I
2 don't know when it was sent.

3 Q. Fair enough. Let's look up above. Do you see the
4 email from Graef to Bishop?

5 A. I don't know.

6 Q. Do you see the email up above from Graef to
7 Bishop?

8 A. From Steve to Brian, yeah, I do.

9 Q. And a carbon copy to you?

10 A. Yeah, I see that.

11 Q. And it's forwarding the revised route, which is
12 down below, and it's dated October 1, 2007, is it
13 not?

14 A. Well, his response is, but my email is dated '04.

15 Q. I'm asking you a -- were you even working on the
16 project with Windsor/Aughtry in 2004?

17 A. No. But what I'm pointing out is I have no way of
18 knowing since the date is obviously wrong on this
19 email when it was sent. And I don't know if he
20 replied to the email October 2007, a year after I
21 sent it. I couldn't speculate on how long it took
22 him to reply to it.

23 Q. Fair enough. Well, let's just talk about what it
24 says and we'll go from there. Your email says,
25 and I quote, "I talked to my partners at Windsor/

1 Aughtry and was told that they were not willing --
2 they are not willing to accept the longer route.
3 They said they would get back to me Wednesday
4 after some discussions they are planning," end
5 quote. Do you see that?

6 A. Again, I don't know when it was written and it's
7 hard to understand the context. And the time --

8 Q. Isn't it true that shortly after October 1, 2007,
9 Harrison Partners abandoned the Bishop proposal
10 and came back to ReWa and we had to formulate a
11 new proposal?

12 A. You know, I think you're getting the facts
13 backwards there. The reason why we didn't pursue
14 the route at the top was because it wasn't
15 allowed. I mean if we had been given any
16 opportunity to get to the plant, we would have
17 been forced to take it, as long as it didn't
18 rewrite the rates and remake everything so high.
19 So all this discussion about this route, that
20 route, you jump through this hoop, that hoop,
21 blah, blah, blah, blah, blah --

22 Q. Scott, do you deny --

23 A. Let me answer the question, sir. We did not even
24 get the prices until well after this date. So
25 what y'all did is you said, "Go this route, go

1 that route, go this route, go that route. All
2 right, we're going to figure out something. We'll
3 get you there. We'll get you there," and then I
4 don't even think we got the prices until -- I
5 don't even know. When was the first date we saw
6 them? But it just dragged out and dragged out and
7 dragged out and we couldn't get anything done.

8 Q. Scott, do you deny that your joint venture,
9 Windsor/Aughtry, objected to the costs of this
10 project?

11 A. Absolutely they objected to it.

12 Q. They objected to the cost of the Bishop proposal,
13 right?

14 A. Well, they didn't have the luxury of paying for
15 the Bishop proposal because we weren't allowed to
16 go that way. So you see, that's the thing is is
17 you're taking this out of context. It's not a
18 feasible route, so it doesn't matter if they
19 approve it or reject it or any of that. It's not
20 feasible. It was impossible to reach the plant
21 with the Bishop proposal.

22 Q. I know that you want to talk about that. I want
23 a specific question to you, because there may be
24 people in the world who disagree with you about
25 the viability of that route. And what I want to

1 know separate and apart from that --

2 A. well, it doesn't matter as long as it's
3 Metropolitan.

4 Q. What I want to know separate and apart from that
5 is it's, in fact, true that Windsor/Aughtry
6 objected to the cost associated with the Bishop
7 proposal, did they not?

8 A. I cannot testify to whether they would have done
9 it or not. I understand they had some concerns
10 about the route, and they said that they would get
11 back to me. I didn't say that they weren't going
12 to do it. I mean can you blame them? You're
13 asking them to come all the way up from over here,
14 all the way up, down here, around here, over, and
15 on private property come around and access your
16 plant and they're that far away. That smacks of
17 ridiculousness. Why couldn't you allow them a
18 route up the river like you eventually did and
19 allowed them to do -- or your discussions now are
20 about that, and then we wouldn't have to go. So
21 of course I think they objected to it, because who
22 wouldn't? Look how far -- they're going to have
23 to come all the way down this road, all the way
24 down North Harrison, then all the way up here, and
25 not even on your property. You wouldn't give us

1 even an inch on your property. You wanted us to
2 come way up here to Mr. Knight's property up here
3 (indicating) and then come across and over. And
4 you want to -- you think that that's unreasonable?
5 I mean --

6 Q. Scott, please turn to your deposition, page 260.

7 A. You know what I mean? It's just -- they -- of
8 course it's silly. I mean it's all silly.

9 Q. When I had your deposition taken, you understood
10 you were under oath, right?

11 A. Sure.

12 Q. Let's look at line 2. Question: "So Windsor/
13 Aughtry came back now and told you that this
14 proposal was cost prohibitive, didn't they?" "I
15 don't know. They got a final number. I think
16 they were concerned that the cost would be high."
17 Question: "Windsor/Aughtry voiced concerns about
18 the cost of this proposal without ever running
19 the numbers?" Answer: "I don't know what their
20 engineer did. I don't know what work they did.
21 I know that they were concerned about various
22 different routes, exactly what they were four
23 years ago later." Okay? I'm asking you
24 specifically about the Bishop proposal, and you're
25 telling me that they expressed concerns that the

1 cost would be high, right?

2 A. Didn't I just say that, going all the way -- that
3 super long way around would be more expensive?

4 Q. That's the next question. They're expressing
5 concerns that the costs would be high, but you and
6 Riversway never actually ran the numbers, did you?

7 A. What do you mean never ran the numbers?

8 Q. You never made a cost calculation for the Bishop
9 proposal.

10 A. No, that's not true. And even if we had done a
11 cost calculation, as I mentioned to you now for
12 the fourth time, Mr. Knight wasn't going to allow
13 the access. Metropolitan wasn't going to allow
14 the access. It was infeasible. At the point it
15 became infeasible from a practical matter, the
16 cost of it became irrelevant.

17 Q. And tell me about the Knight connection point.

18 WITNESS: Is this a exhibit, ma'am, or is this my --
19 okay, you have a copy. All right, I got it. Let
20 me give her hers back because I know otherwise I'm
21 going to end up screwing up here. Let me give all
22 these marked back to her.

23 (OFF THE RECORD)

24 WITNESS: Sorry. Go ahead.

25 (EXHIBIT NUMBER 22 MARKED)

1 EXAMINATION RESUMED BY MR. DAVIS:

2 Q. So what happens now is that you went back to Rewa,
3 right? And you sit down with -- was that a yes?

4 You did go back to Rewa after you decided you
5 weren't going to do the Bishop route?

6 A. No. We didn't make that decision. The decision
7 was made for us that the Bishop route was not
8 going to be feasible.

9 Q. That decision was made for you that the Bishop
10 route wouldn't be feasible by someone other than
11 Rewa, right?

12 A. Well, I believe that Rewa knew the entire time
13 that Metropolitan was not going to allow that.

14 Q. And so you came back -- well, put that aside for a
15 second. We'll come back and say the next thing
16 you did was you came back to Rewa and you met with
17 Brian Bishop and Dr. Graef again?

18 A. When?

19 Q. In October and November of 2007. And the next
20 route that you came up with was the river route?

21 A. No. We didn't come up with any of the routes.
22 Metropolitan and Rewa were running the show. All
23 we did was jump through the hoops you all set up.
24 You picked the river route.

25 Q. And the river route actually crosses over our

1 property, right?

2 A. That's correct.

3 Q. And so your testimony here today, as I understand
4 it, is that ReWa is intentionally trying to query
5 your ability to build sewer lines by granting you
6 easements over its property?

7 A. You never granted any easements over your
8 property, ipso facto, and that is where you
9 delayed me and delayed me and delayed me and
10 delayed me and prevented us from getting a permit.
11 And the reason why you did that I think is because
12 ReWa wants to control the last mile of service.

13 Q. You never filed --

14 (BEGINNING OF REDACTED TESTIMONY) (Sealed in envelope.)

15 [--- Confidential
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4 (END OF REDACTED TESTIMONY)

5 EXAMINATION RESUMED BY MR. DAVIS:

6 Q. Let's look at the exhibit. I kind of lost the
7 number on it. What was it?

8 COURT REPORTER: It's 22.

9 WITNESS CONTINUES:

10 A. But that's the goal, is to control the last mile.

11 EXAMINATION RESUMED BY MR. DAVIS:

12 Q. Sir, Harrison Partners never filed encroachment
13 permit applications with Rewa for any of these
14 routes, did it, not one?

15 A. Badgering.

16 Q. Harrison Partners did not file --

17 A. Badger.

18 HEARING OFFICER: All right. I've had about enough of
19 this. You answer the question and don't holler
20 anymore.

21 EXAMINATION RESUMED BY MR. DAVIS:

22 Q. Harrison Partners didn't file an application for
23 an easement with Rewa with respect to any one of
24 these routes, did it?

25 A. You wouldn't allow us a feasible option, so we

1 didn't -- we did actually have one that had the
2 HOA on it that we took to DHEC and we asked them
3 to approve it, and guess what? As you all know,
4 they would not allow the HOA to own the
5 encroachment over the Rewa plant so it was
6 denied.

7 Q. Who denied it?

8 A. DHEC.

9 Q. So once again, Rewa's trying to help you get sewer
10 service --

11 A. What you did --

12 Q. -- and DHEC denied it?

13 A. -- was you sent me down a dead end.

14 Q. Rewa, according to your world view, is
15 purposefully conspiring to get DHEC to prevent you
16 from getting permission to build sewer lines
17 across its land?

18 A. No, no. What it is is you all know that Altamont
19 -- you know the history of Altamont. And you know
20 that there's no way in God's green earth -- so
21 you're saying on the record that you didn't know
22 that DHEC would deny a private utility to own an
23 easement? You all didn't know that as of 2007?

24 Q. Look at Exhibit 22. This is an email from you to
25 Brian Bishop dated November 26, 2007. And the

- 1 reason why I want to point this email out to you,
2 because it's in this time frame, I don't know
3 exactly when, but somewhere around here that the
4 river route comes into play, correct?
- 5 A. I can't read this copy. Is this your only copy?
- 6 Q. I can probably get you a better one. Let's see.
7 That's a legitimate point. It doesn't look that
8 great, so let me see if I can get you another one.
9 Exhibit 13 to your deposition is the same
10 document. There you go. Is that better?
- 11 A. Yes, thank you.
- 12 Q. The last sentence of the first paragraph, "As I
13 understand it, we are coming up the river now,"
14 right? That's what it says?
- 15 A. I must be on a different page. Is there a second
16 page to this?
- 17 Q. It says, and I quote, "As I understand it, we are
18 coming up the river now."
- 19 A. I see it. Okay.
- 20 Q. That's what it says, right?
- 21 A. Yeah.
- 22 Q. So can we agree -- and I'm not asking you to a
23 specific date because apparently conversation has
24 been occurring. But somewhere around this time
25 frame is when the river route came into play?

- 1 A. Yes. And let me point out specifically Ashley had
2 contacted Brian asking for a route to the head
3 works of the plant. We did ask every single time
4 for a route, and in this case specifically we
5 point out the route was provided by Rewa. We
6 didn't provide the route. Ashley contacted Brian
7 asking for a route to the head works of the plant.
8 "As I understand it, we're coming up the river
9 now," meaning Brian selected the river route, just
10 like Brian selected all of the routes.
- 11 Q. I know that's what you want the fact to be, but
12 let's talk about this document.
- 13 A. Well, we documented that.
- 14 Q. It's dated November 26, 2007. And so all that
15 prior testimony from earlier today when you were
16 telling the Hearing Officer about the survey
17 routes of the river route and how, you know,
18 Rivers was talking to you. It was not even until
19 this point in time, in November of 2007, was it?
- 20 A. You know, we surveyed and did so much work for
21 free out there, it's really hard to keep track of
22 it. I don't usually give away free work. We do
23 document the work we bill normally a little bit
24 better.
- 25 Q. About an hour ago, you were testifying under oath

1 that the route we were talking about in March of
2 '07 was the river route.

3 A. No, that's not true. I specifically said I don't
4 remember any specific dates, and I never said
5 anything or tried to misrepresent anything. And
6 you tried in vain to go down that route for so
7 long now it's just -- it's not even worthy.

8 Q. If they're truly trying to retard your project,
9 why don't they just tell you no?

10 A. Well, I think they should have told us that in
11 2006, "No, you can't come across our property."
12 But instead, what did they say? "You'll have to
13 obtain an easement across our property indicating
14 -- yes, we would do that. We would give an
15 easement, yeah, as long as you meet our criteria,"
16 but you didn't say that.

17 Q. Now, you previously -- and I'm just curious if
18 this has changed or not. But you previously
19 testified that the river route got killed somehow,
20 that it got abandoned or it was objected to and it
21 was objected to by ReWa. Do you still believe
22 that today?

23 A. Well, that goes back to the easement issue,
24 doesn't it? No, the river route wasn't rejected.
25 And as I understand it, you all have blessed the

1 river route since then. It's blessed, right?

2 Q. So what we can agree on today is that ReWa was
3 fine with the river?

4 A. No. What I said is you all blessed the route.
5 You would never give us the permit to encroach
6 ever. We never got that. You wouldn't give it to
7 Condor. You wouldn't give it to the HOA, and as
8 far as I know, you all never wanted to operate the
9 force main and pump station until the time when
10 you produced numbers that were twice what the
11 competitive rate was.

12 Q. When I asked you about this during your
13 deposition, your sworn testimony was that ReWa
14 took the river route off the table.

15 A. I think that there were objections about the
16 structures that specifically came from Brian
17 Bishop. So what I saw was, "Here's the route
18 guys. We're okay with this route." And then we
19 did -- we went out and we surveyed the entire
20 route, and then after that happened, now let's try
21 and find some straw dogs. Well, the first straw
22 dog was the structures, so we did -- we went out.
23 We surveyed the structures. Mr. Stogner provided
24 all of the structures. Mr. Bishop asked for the
25 structures. We were coming over, so we further

1 defined the process. But at the end of the day,
2 you all would not allow us to get an encroachment
3 permit.

4 Q. What were the structures that we objected to?

5 A. I don't know. I wasn't the surveyor on the
6 project and I wasn't dealing specifically on that
7 item.

8 Q. You were the head engineer?

9 A. Yes, I was. But once they discovered what the
10 route was that was acceptable, I'd review it. But
11 I don't review all the preliminary work that's
12 done in our shop.

13 (EXHIBIT NUMBER 23 MARKED)

14 EXAMINATION RESUMED BY MR. DAVIS:

15 Q. Let me show you what's marked as Exhibit 23. And
16 this is an email from Ashley Hornung dated January
17 9, 2008. And she is emailing Brian Bishop, and
18 what Ms. Hornung is telling Mr. Bishop is, "Hey,
19 I've attached" -- and I quote, "I've attached a
20 proposed route through your property and I have
21 labeled them to show which structures we will be
22 going over," end quote, right?

23 A. That's right.

24 Q. Are those the same structures you just talked
25 about?

1 A. Yeah.

2 Q. Those are the same structures you said ReWa
3 objected to and said, "Hey, that route's a no-go
4 because of those structures"?

5 A. Brian raised the objection, or the concern about
6 the structures. And so Ashley accordingly labeled
7 and showed the structures which we'd be going
8 over, just like he requested.

9 Q. And is your testimony that the structures killed
10 the route?

11 A. The structures were a straw dog that was rolled
12 out to delay the route from occurring.

13 (EXHIBIT NUMBER 24 MARKED)

14 EXAMINATION RESUMED BY MR. DAVIS:

15 Q. Straw dog; okay. Let's look at this next exhibit
16 about the straw dog that you've testified has been
17 intended to create a delay by ReWa in this matter.
18 This is Exhibit 24. This is an email from Brian
19 Bishop to Ashley Hornung dated January 11, 2008.
20 He's responding to her prior email from January
21 9th, and I quote. He says, "The route in general
22 looks to be okay. Do you know if the surveyor
23 places any stakes in the field so that we could
24 visually see the route? Also, the survey shows
25 what I believe is the property pins on the north

1 portion the property. It appears that the force
2 main route along this area is not on our property,
3 nor is the fence," end quote. So Mr. Bishop is
4 saying, "Hey, the route you gave to me on January
5 9th that reflects the structures" you said were
6 the straw dog of delay, he emails back and says,
7 "Looks okay. The only thing that may be a problem
8 is that whatever route you designed isn't on our
9 property," right? That was the problem. And you
10 were the one who designed the route?

11 A. Wrong.

12 Q. Oh, I'm wrong? InSite Group --

13 A. We didn't design -- you don't design a route. You
14 go out in the field. Mr. Bishop went out with Mr.
15 Stogner and I was suppose it was one of your
16 representatives, and they showed him approximately
17 where the line was going to go. Then Mr. Stogner
18 surveyed that and then sent the data back to us
19 which we took and looked at and then sent back to
20 you all at ReWa.

21 Q. Did you review the data?

22 A. Well, Ashley did, obviously, right?

23 Q. If she reviewed the data, how did she not catch
24 that you actually built this line off of our
25 property?

- 1 A. There was no line built, sir. It was a survey.
- 2 Q. Well, the proposed line that you had on the survey
- 3 actually went off of our property.
- 4 A. Well, you know --
- 5 Q. That's a legitimate concern, isn't it?
- 6 A. Have you all ever made a mistake?
- 7 Q. I'm just asking.
- 8 A. Do you think it was okay for Ashley to make a
- 9 mistake?
- 10 Q. Well, I'm just asking you because your testimony
- 11 was that these structures were some straw dog that
- 12 caused a delay. Bishop comes back and says
- 13 nothing about the structures. He says the routes
- 14 are okay. What he says is, "Dude, the problem is
- 15 the route's not even on our property," right?
- 16 A. Yeah, but --
- 17 Q. That's a straw dog?
- 18 A. But what you don't show here is the time between
- 19 when the survey was done and when Rewa did its
- 20 review of the survey and when we got back the
- 21 objection about the structures. So there was a
- 22 period of time between the survey being completed
- 23 and when the survey was submitted. And in the
- 24 interim, which was a considerable amount of time,
- 25 there was a request for structures to be labeled

1 so he could review whether it would be okay,
2 whether they were going over them.

3 Q. So we looked at an exhibit that was dated November
4 26th, okay, from you talking about it looks like
5 we're coming up the river now, right? And by
6 January 11, 2008, Brian Bishop is responding to
7 Ashley that the route in general, as reflected in
8 the survey, looks to be okay.

9 A. That's three months later.

10 Q. November 26th and January 11th.

11 A. November, December, January.

12 Q. December, January, not to mention you've got
13 Thanksgiving and Christmas in there, right, Scott?

14 A. But who did the route? We did, and we did it
15 within, what, two months. That's extremely fast.
16 That's a lot faster than most people would be able
17 to do it, part one, and part two, "The route in
18 general looks to be okay." Okay, great; January.

19 But then where is it where we'd have the discussion
20 about the encroachment permits again? It's not
21 until the spring, right? It's not until the
22 spring when we work through all these details, but
23 add that up. You got the resurvey, the delay on
24 the review, which wasn't substantial, but all
25 these things added up. It wasn't six months, it

1 was eight months or nine months, and this is one
2 route, one out of four.

3 Q. Did ReWa cause you to draw the line on someone
4 else's property?

5 A. Well, the line that was drawn was a mistake, but
6 it was obviously corrected quickly because we go
7 into discussions about the encroachment permit
8 thereafter. So ReWa's remedy -- and here's the
9 thing, Lane. Even if all the engineering stuff
10 worked out, even if we were perfect engineers, at
11 the end of the day, if it's not economically
12 feasible, who cares?

13 Q. Are you contending the river route wasn't
14 economically feasible?

15 A. I'm contending that the fees that were proposed by
16 ReWa were economically infeasible.

17 Q. The fees that you're talking about -- just to be
18 clear for the record, the fees that you're talking
19 about were fees associated with ReWa owning this
20 force main and pump station for Harrison Partners
21 after the amendment of the regulation in May of
22 '08, right?

23 A. But we submitted our application and started the
24 process in 2006. And we were engineering complete
25 except for this minutia on the -- you know, the

1 alignment that you guys kept joking around with,
2 you know.

3 Q. The minutia of your not submitting surveys and
4 proposed routes for 17 months?

5 A. Well, you said we didn't do any surveys.

6 Q. The minutia of Metro -- well, you went out with
7 Deaton to do a survey in August of '07?

8 A. But you said we didn't do any.

9 Q. Because when we walked the route, it wasn't
10 viable, Scott.

11 A. But you guys are contesting that we didn't
12 surveys, but you just said we did the survey in
13 '07.

14 Q. No, you didn't do a survey.

15 A. You didn't?

16 Q. Anyway, let's keep going. Do you want to take a
17 break?

18 MR. STILWELL: We've been going a long time.

19 WITNESS: I'm fine.

20 HEARING OFFICER: Can you go five minutes longer? Keep
21 going.

22 MR. DAVIS: I don't have -- I would say I probably have
23 about half an hour.

24 HEARING OFFICER: Let's finish him today. We can take a
25 break.

- 1 (BREAK; OFF THE RECORD)
- 2 (EXHIBIT NUMBER 25 MARKED)
- 3 EXAMINATION RESUMED BY MR. DAVIS:
- 4 Q. Let me show you what's been marked as Exhibit 25.
- 5 chip Fogleman is the engineer for Riversway?
- 6 A. Yes, sir.
- 7 Q. Riversway is the joint venture on the property for
- 8 this project?
- 9 A. Yes, sir.
- 10 Q. And the concept was that Riversway would have its
- 11 collector system and River Trace would have a
- 12 collector system, and then they would manifold
- 13 together and have a force main?
- 14 A. Dr. Graef and Mr. Bishop had presented several
- 15 different options, that being one of them.
- 16 Q. At this point in time, that's the particular
- 17 route, or version that you're pursuing, isn't it?
- 18 A. As of 2008, yes. The river route was the route we
- 19 were looking at.
- 20 Q. And what Fogleman is writing to Bishop down here
- 21 below is, and I quote, "My understanding is that
- 22 you have approved a route to your plant for a 20"
- 23 -- I guess a 20-foot easement. He forgot foot,
- 24 but "20 easement for the Riversway S.D.,"
- 25 subdivision, "and the River Trace S.D. I've been

1 told this easement can be used for two separate
2 force mains," end quote. Do you see that?

3 A: I see where he writes that, yes.

4 Q. And he writes, one for Riversway and one for River
5 Trace, right?

6 A. Right.

7 Q. And prior to this time, no one had ever even
8 mentioned that to Brian Bishop, had they?

9 A: Well, in the initial options analysis that was
10 provided by Rewa, that was one of the options that
11 was listed as a potential.

12 Q: Rewa proposed that you could build two separate
13 force mains across its property?

14 A: I believe it was outlined in Graef's email where
15 he listed the different options available. There
16 was four and one of them was Riversway pumping
17 over to a lift station at River Trace and then
18 pumping from River Trace directly to the plant.
19 The other one was a force main coming from here to
20 the plant and another one from here to the plant.
21 The third option was pumping to the middle and
22 doing a manifold here, which was the most
23 technically challenging option. The other two
24 were easy. The one with the manifold, it was
25 pretty technically challenging because you got a

1 pump pumping against another pump, and that's
2 tough. That's tough and it's also not good
3 engineering practice because it wears the pumps
4 out quickly.

5 Q. So the project was technically challenging?

6 A. Only if you selected the most technically
7 challenging option.

8 Q. Only if you select the hard parts of the design?

9 A. No, only if you selected the most technically
10 challenging option. Having two separate force
11 mains was a piece of cake. Moreover, having a
12 force main that pumped over to River Trace and
13 then from River Trace up to here was not
14 technically challenging. The only thing that Chip
15 Fogleman struggled with technically was the
16 manifolding part.

17 Q. The two force mains that he is talking about here,
18 what size are they?

19 A. I don't know.

20 Q. Aren't these two small force mains?

21 A. It would be impossible for me to know what he was
22 anticipating.

23 Q. And the Graef email that you're talking about came
24 significantly after this, did it not?

25 A. I think it was a few months.

1 Q. Well, didn't Graef start sending you potential
2 options after the amendment of the regulation?

3 A. I don't know.

4 Q. At any rate, on January 16, 2008, Bishop is
5 stating that, "Nobody's ever told me anything
6 about two force mains coming on ReWa property,"
7 right? That's fair? That's what he's saying?

8 A. I don't know that anyone had ever discussed it
9 with him, but it had certainly been a topic of
10 conversation amongst the people doing the
11 engineering, and that would include Metropolitan.

12 Q. But the force mains are on ReWa property, right?

13 A. Certainly, but Metropolitan was the one that was
14 doing the detailed engineering design and review
15 for the force mains on your property.

16 Q. But ReWa told you from the beginning, did it not,
17 that the design and location of the force main on
18 its property was an important issue to it?

19 A. They identified in the very first correspondence
20 that they knew a force main would be required
21 across their property.

22 Q. And they told you that the designs and location
23 were important to it, right?

24 A. I think that goes without saying.

25 Q. Because it's their property?

1 A. Well, it is important for even having a detailed
2 documentation that you have to have the bearings
3 and distances and the lines off of the property.

4 Q. Now, isn't it true that sometime in February of
5 2008, Metro started raising objections to your
6 engineering work?

7 A. Well, at the end of the day -- well, no. Are you
8 referring to the basin study?

9 Q. I don't know. Tell me. It's true that Metro is
10 expressing --

11 A. The only engineering differences that we had in
12 opinion, we reached a final engineering design
13 that they had approved of and we already
14 documented that. There was an email that said we
15 met Metro's standard that we'd reviewed earlier,
16 but the only thing that was left was you guys to
17 allow us the encroachment permit on the property.
18 That's it.

19 Q. Is the answer to my question yes or no that they
20 started voicing objections to your engineering
21 record?

22 A. They expressed concerns with my assertion that
23 they should take over the pump station, because I
24 said, "Look, I think you guys -- can't you take"
25 -- I asked a question. I said, "Can't you guys

1 operate pump stations?" And they said -- I
2 believe they said, "Yes, we operated some in the
3 state," but there's a criteria for the line size.
4 If the line size is over a certain size, then they
5 can't. If it's under a certain size, then they
6 can.

7 Q. So out of fairness to ReWa, even you believed that
8 ReWa should be providing a retail service with
9 respect to River Trace?

10 A. I didn't say that.

11 Q. Well, didn't you just say that you thought that
12 they should take over the pump station?

13 A. Who?

14 Q. Metro.

15 A. Well, what I thought was that since we had entered
16 the process in '06 and the regulation didn't occur
17 until '08, that we should fall under the
18 grandfather, the old regulations, particularly
19 since all of our business negotiations, the
20 instructions from Greenville County on the plat,
21 all of the past dealings had been done in that
22 way.

23 Q. Did you or did you not believe that Metro should
24 take over the pump station?

25 A. I believe that they should consider that as an

1 option. I didn't believe that they needed to
2 react to a change in someone else's regulations
3 because that doesn't seem fair.

4 Q. Did you think that Metro should take over the pump
5 station?

6 A. I'm not qualified to make that decision. I
7 thought they could if they wanted to, but I don't
8 know what the specific rules are between ReWa and
9 Metro and how you all have sorted that out.

10 Q. So as the head engineer on the River Trace
11 project, you have no opinion about that?

12 A. I felt like Metropolitan should have served us.
13 They felt like, based on their engineering
14 evaluation --

15 Q. I'm not asking you about Metro, what Metro thinks.
16 I'm asking you what Scott Bolo, as a part owner
17 in River Trace and as the head engineer on this
18 project believed in relation to Metro's ownership
19 of the pump station.

20 A. I believe that if Metropolitan had acquired some
21 of the flood plane, that it was easy to do.
22 Without acquiring some of the flood plane, it
23 would have been difficult, but I still believe it
24 may have been feasible. I think I was most
25 concerned that they didn't really even consider

1 know it.

2 Q. Now, isn't it also true that at some point,
3 Metropolitan told you to discontinue working on
4 the project?

5 A. Yes. They told us that we had met their standard
6 and we were not required to do anymore engineering
7 as far as they were concerned. And they wanted us
8 to hold off until we had the arrangement between
9 you all and them figured out.

10 Q. So Metro is objecting to your engineering work,
11 but --

12 A. No, sir. They're not objecting to my engineering
13 work.

14 Q. -- Metro has approved your whole plan?

15 A. They approved -- in fact, they approved my
16 collector system plans and not only did they
17 approve all of the collector system plans, they
18 had already looked at not one route, but four
19 different routes, and two of them with complete
20 design. And remember Rogers and Callcott did a
21 study. These guys -- Fogleman did a study,
22 manifolding, not manifolding, drainage -- I mean
23 lots of engineering work went into it.

24 Q. Scott, I've got this burning question I'd like to
25 know. We've gone through all these documents

- 1 about all these different routes and it's only a
2 fraction of the documents, right? Can we agree
3 about that? There was a ton of documents?
4 A. Well, I supplied Rogers, Townsend and Thomas with
5 stacks of documents at least this tall
6 (indicating). But the relevancy of them -- you
7 know, I don't know how relevant they are.
8 Q. And I guess my question is that you've testified
9 today over and over and over that ReWa prevented
10 you somehow from filing an easement application.
11 And my question is, where is there a single
12 document where you have emailed ReWa where it
13 says, "Hey, why won't you tell me what route?"
14 Why is there not a single document that supports
15 this sworn testimony that you've said quite
16 adamantly four or five times?
17 A. You know --
18 Q. Not a single document, Scott.
19 A. You know, it's really interesting. You keep
20 getting the cart up in front of your horse.
21 Q. Do I?
22 A. Yeah, you do, and it's embarrassing because you
23 need to realize something that's so fundamental.
24 Let's take a moment to go over this, shall we?
25 Q. Uh-huh.

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1 A: If the prices that are being charged by the folks
2 that are going to run this system are cost
3 prohibitive to the point where our builder won't
4 sign up for them, does it really matter if we have
5 the most direct route to the plant, or if we go
6 around it, or if we come from outer space, or if
7 we teleport the waste there? No, it doesn't
8 matter. The fact is that the project, as
9 represented by you all, and the numbers were not
10 economically feasible. So we can go through this
11 bad nauseam about, "Oh, you didn't do this. You're
12 a bad engineer. You didn't do that. You're a bad
13 engineer. You didn't do this." But the fact is
14 there were seven other people in the pipeline.
15 They didn't have all this.

16 Q: I know that that's your safe place. Let's come
17 back to this and ask this question.

18 A: It's not my safe place.

19 Q: The regulation was amended in May of 2008. Where
20 is --

21 A: Well, we --

22 Q: -- the documentation that evidences that you
23 contacted Rewa and said, "Hey, I'm trying to
24 submit my easement application. Will you just
25 tell me what route to go?" There's not a single

1 document that supports any of your contentions in
2 that regard.

3 A. Absolutely to the contrary.

4 Q. Name one.

5 A. How did we come up with four different routes, out
6 of osmosis? I mean clearly the ReWa people were
7 working with us hand in hand throughout the entire
8 process.

9 Q. What we're talking about is the force main on our
10 property, right? You understand that what we're
11 talking about is Harrison Partners filing an
12 application to us saying, "Will you grant us an
13 easement so we can run our force main across it?"
14 That's what we're talking about. Can we --

15 A. I don't understand the question.

16 Q. Well, your testimony --

17 A. We went begging you repeatedly. Evidently you
18 provided us with the route and you provided us
19 with the documents and then we went the first time
20 -- we tried to get Condor on the documents, on the
21 easement documents that you provided us. Well,
22 that wasn't okay. You wouldn't allow Condor to
23 own the line. Then what you said --

24 HEARING OFFICER: Wait a minute. When did that come
25 about? Wasn't that long after anything we've

1 of looked at?

2 WITNESS: It was in Gene's testimony this morning, sir.

3 I'm not exactly sure of the date.

4 HEARING OFFICER: Didn't the change where they said

5 Condor can't do it was in May of '08?

6 WITNESS: That could be about -- that sounds right.

7 HEARING OFFICER: And up till now, nobody's talked about

8 that in all these emails we've looked at, right?

9 WITNESS: Right. In May of '08, somewhere around that
10 time, I --

11 HEARING OFFICER: So up until May of '08, had you ever

12 submitted an application for encroachment across

13 their property?

14 WITNESS: Well, we had gone out, surveyed the route, and

15 we had attempted to finalize the language in that

16 time frame. And what we were told us was first,

17 Condor was going to be on the encroachment permit

18 application. And what they raised was, "We don't

19 want Condor owning the line across our property.

20 would they be willing to deed it over to a third

21 party?" That's when we went down to DHEC and we

22 said, "Condor's agreed to do this. Now we're

23 going to deed it over to a third party and that

24 third party is the homeowners association." And

25 that point, DHEC came back and said, "We're not

1 going to allow the homeowners association to own
2 that easement to go up that route."

3 HEARING OFFICER: When was this?

4 MR. STILWELL: That's false hearsay.

5 WITNESS: What part, sir?

6 HEARING OFFICER: When was this you're talking about?

7 WITNESS: Which part is false?

8 HEARING OFFICER: What is this you're talking about?

9 When was this?

10 WITNESS: When I went and spoke with Mr. Stokes. It
11 would have been around the time that Mr. Stilwell
12 asked if Condor would be -- when they forwarded
13 the easements, would Condor be willing to allow
14 that to be owned by somebody else? And Gene said
15 yes, he would. He'd be --

16 HEARING OFFICER: So is that after these February
17 emails?

18 WITNESS: I think so, sir.

19 (EXHIBIT NUMBER 26 MARKED)

20 EXAMINATION RESUMED BY MR. DAVIS:

21 Q. Now, what I want to show you next is -- remember
22 when we were talking about the two force main
23 issue on ReWa property that cropped up in January?

24 A. Uh-huh.

25 Q. Isn't the truth that that issue never got

1 it resolved?

2 A. About one force main in --

3 Q. About whether there'd be one or two force mains.

4 A. I wouldn't deny that. I think that we were so
5 concerned about having one versus two, given the
6 timing of the Riversway Subdivision.

7 Q. So this here, this document we're looking at --
8 just give me the number, if you don't mind.

9 Number 26. Exhibit 26 is an email from R. L.
10 Fogleman, which is Chip Fogleman, and he's
11 Riversway's engineer. And it's to Joe Thompson
12 at Metro, and Riversway, through Fogleman, is
13 collaborating with River Trace, through you, and
14 we're discussing the force main on Rewa property.
15 And what this reflects is that the same issue that
16 came up in January hadn't been resolved. Chip
17 Fogleman writes, and I quote, "Also, per our
18 conversation, we are not sure at this time if we
19 will be using a combined force main from Harrison
20 Bridge to the Western Carolina site or two
21 separate force mains in the same right-of-way.
22 We will review this design and make this final
23 determination as soon as we begin finalizing our
24 design," right? That's what he writes?
25 A. Right. They were way behind us in their design.

- 1 I mean admittedly they were way behind us in
2 their --
- 3 Q. And they were your joint venture, right?
- 4 A. They were.
- 5 Q. You were tying your two systems together?
- 6 A. They were going to help us to install the line
7 from our tie-in point to the plant, whether that
8 was one force main or two. We were still going to
9 partner on it either way.
- 10 Q. And the truth is that the piece of the line that
11 would go across Rewa property hadn't been decided
12 by Riversway or River Trace as being either one or
13 two force mains as of April 14, 2008. That's
14 true?
- 15 A. As of April 14, 2008, it had been studied both
16 ways ad nauseam and there were no engineering
17 uncertainties as of that date. Now, if we're
18 going to go with two separate force mains, that
19 would have made it really, really simple. Okay?
20 That would have been a simple calculation. If we
21 were going to manifold, that had been studied, not
22 only by us and Fogleman, but also by a third-party
23 engineer who was hired by your firm, I believe.
- 24 Q. The decision of whether you're going to have one
25 or two separate force mains is one that is

1 ... necessary before you can file the application for
2 ... the easement, right?

3 A. Unless what you've decided is -- or found out in
4 March or maybe early April, 2008 is that the
5 ... prices that you're proposing to charge are
6 ... economically infeasible.

7 Q. Scott, the regulation had not even been amended
8 ... yet.

9 A. Well, there was public comment period before it
10 ... was written, right? And it was filed in --

11 Q. Scott, let me help you. You're making a mistake
12 ... on this. That stuff hasn't even come into play

13 ... yet.

14 A. When was it filed, the regulation?

15 Q. The regulation was amended on May 5, 2008.

16 A. And you had public comment period before that?

17 Q. But the whole pricing issue --

18 A. But you had public --

19 Q. -- didn't occur until after the amendment of the
20 ... regulation.

21 A. But you had public comment period about that
22 ... before that?

23 Q. True. But let's talk --

24 A. And what I'm contending is that Mr. -- you know,
25 ... that these folks had an understanding that you

1 were changing your regulations at that time,
2 didn't they not? I mean if you had public
3 hearings, they knew about it, right? They didn't
4 not attend, did they?

5 Q. What I am asking you is, it is a fact that within
6 only a few weeks of the regulation's amendment,
7 this document reflects that your joint ventures,
8 plans, hadn't been finalized. The force main
9 route across ReWa's property was still up in the
10 air as to being one or two force mains. Can we
11 agree that that's what Chip Fogleman is
12 communicating in this document?

13 A. The easement had been determined by a survey that
14 we provided to Western Carolina at that time or
15 before that date, which we just discussed. And
16 also at that time, the engineering design and
17 calculations had been done for various different
18 iterations. At this time there had not been a
19 determination made by ReWa who was going to
20 operate, maintain design standards for the pump
21 station. You all, as I understand it, were still
22 conversing with Metro and other people because at
23 that time you were in the public comment period,
24 which meant you were working on the regulation,
25 right? That's absolutely correct.

1 Q. Scott, I just think that you're confused. But

2 let's keep going.

3 A. No. What I think is you just lost that point.

4 Q. Scott, let me ask you a question. Remember a few

5 minutes ago you testified to the Hearing Officer

6 when he asked you questions about whether you had

7 filed an easement application with respect to that

8 route? Do you remember that?

9 A. I believe that we did get the easement

10 application. We attempted to file it, but DHEC

11 would not allow the homeowners association to own

12 it.

13 Q. And prior to that, you had testified that -- in

14 relation to the same question that the reason why

15 it never got finalized was because ReWa somehow

16 kept you from doing it. Remember that?

17 A. You told me that someone else had to own the force

18 main line, didn't you?

19 Q. And the reality --

20 A. And the person that you said that needed to own

21 the force main line was not acceptable to DHEC.

22 Q. The reality is is that the reason why you didn't

23 get the easement is because you never filed the

24 application. And the reality is is you didn't

25 file the applications because you didn't know what

1 the finalized design was going to entail, isn't
2 that a fact?

3 A. Well, the reality is as of April 14, 2008, as
4 it says right there, we were waiting on you all to
5 take a couple of decisions that you left hanging
6 out there and then after you published the prices,
7 which I believe the first prices that we got were
8 labeled, "Preliminary-only for discussion" were
9 sent in March, which is pre this letter, right?

10 So I think the shift for the owners, maybe not for
11 the engineers, shifted from, "Hey, wait, who cares
12 if we can engineer this thing and make it work."

13 It's not economically feasible."

14 (EXHIBIT NUMBER 27 MARKED)

15 EXAMINATION RESUMED BY MR. DAVIS:

16 Q. Now, this document is Exhibit 27. And this is the
17 actual amendment to the sewer use regulation. I
18 think you've read this before, but --

19 A. Well, and this is another thing that's really
20 concerning to us because there was a copy of this
21 that was forwarded and also a copy that was pulled
22 out at the ACOG meeting. And it's different than
23 this copy, so I don't know how it changed, but
24 it's different.

25 Q. Scott, I'm not going to get into a conversation

1 with you about some document that you don't have
2 here.

3 A. No, no. It's presented in the evidence. It's the
4 actual email from Dr. Graef to me, and you
5 attached to your email a copy of the regulation.
6 This isn't hearsay. This is in writing.

7 Q. Then maybe your lawyer could enter it into
8 evidence on redirect.

9 A. It has been entered already, sir.

10 Q. Well, we'll look at it. This document is dated
11 May 5, 2008, correct?

12 A. Yeah, but it's cut. That's what I'm telling you,
13 that this document is changed from the document
14 that was presented at the ACOG meeting and that
15 Mr. Orvin read from at the ACOG meeting. And if
16 we had the meeting minutes and the notes from
17 that, it would reflect that.

18 Q. Underneath Exhibit 27, a private utility could
19 serve River Trace, could it not?

20 A. Yeah, but as I mentioned, this is a different
21 version than what we were originally provided.
22 And, you know, I just --

23 Q. I'm not going to engage you with documents that
24 you've never produced.

25 A. Well, I'm not going to --

1 Q. I'm talking about --

2 A. -- verify the validity of a false document.

3 HEARING OFFICER: He's not asking you to verify the
4 validity of that.

5 WITNESS CONTINUES:

6 A. Okay. You're asking me to read it?

7 EXAMINATION RESUMED BY MR. DAVIS:

8 Q. I'm asking you about Exhibit 27. Exhibit 27 would
9 permit a private utility to serve River Trace?

10 A. Only if they own the entire system.

11 Q. Right. Now --

12 A. But Metro wouldn't allow that. We told you that
13 before.

14 Q. And you had an opportunity to de-annex from Metro?

15 A. Again, a de-annexation has never occurred in the
16 County of Greenville. You imposed a retroactive
17 regulation two and a half years after this and
18 your remedy is to do a de-annexation that's never
19 been done before in the county? I mean none of
20 the seven developers chose that route.

21 Q. Can we agree that --

22 A. None of them. No one de-annexed.

23 Q. -- Metro, in fact, would have allowed it, though,
24 would they not have?

25 A. They would have -- sir? I'm sorry.

1 Q. Metro had agreed to allow the de-annexation, had
2 they not?

3 A. I don't have any knowledge of that.

4 Q. Because you didn't even explore it?

5 A. Well, what I did is I talked to everybody else.
6 And the developers decided the only way we had a
7 chance was to stick together.

8 Q. And it was possible, even underneath this reg, to
9 de-annex and have a private utility other than
10 Condor serve you, right?

11 A. But you know what, we never saw what you charged
12 for the collector system or how that was going to
13 get worked out with Metro if you were to take the
14 collector system. None of that was ever
15 discussed.

16 Q. Scott, a private utility could have provided
17 service to River Trace if you had de-annexed,
18 right?

19 A. I don't know that.

20 Q. You never talked to any private utility other than
21 Condor, did you?

22 A. Well, we talked to the Greenville County attorney
23 about de-annexing and he said he didn't have any
24 knowledge of how that could be done. So it wasn't
25 that we didn't explore it or we dismissed it out

- 1 of hand. we didn't feel like going and setting a
2 legal precedent was our job after you all had
3 changed the regulation and tried to enforce it
4 retroactively.
- 5 Q. Are you aware of any other private utility
6 companies that exist?
- 7 A. Several.
- 8 Q. Did you call any of them?
- 9 A. Yes.
- 10 Q. Who else did you call?
- 11 A. What do you mean?
- 12 Q. Well, Condor said it wouldn't own the whole
13 system. After Condor said that, did you call any
14 other private utility companies?
- 15 A. Yes. There's -- only other utility private
16 provider that works in Greenville County is
17 United.
- 18 Q. And what did United tell you?
- 19 A. No.
- 20 Q. They told you no?
- 21 A. They said, "we don't want to do work up there. We
22 don't want to get involved with Rewa. It's too
23 much difficulty."
- 24 Q. As of May 5, 2008, had Harrison Partners received
25 a flow acceptance letter from Rewa?

1 A. Yes.

2 Q. It had?

3 A. Uh-huh. Yeah, we covered that, the very first
4 document you gave to me.

5 Q. So you're contending that the 3/16/06 email
6 constituted a flow acceptance letter?

7 A. It's a conditional flow acceptance letter.

8 Q. Do you remember testifying during your deposition
9 that it was a capacity letter?

10 A. Yeah. I think it was a capacity letter. They're
11 basically -- do you have a -- an acceptance letter
12 until everything's final and approved. This is
13 the process you all set up.

14 Q. Do you remember testifying in your deposition that
15 you agreed that it was not a flow acceptance
16 letter?

17 A. Again, you know you call it one thing, I call it
18 another thing. It's a tomato or a tomato. If you
19 want to call it that, that's fine.

20 Q. No, Scott. Today you're trying to testify, under
21 oath, that it's a flow acceptance letter.

22 A. I think it is.

23 Q. On January 21st, I asked you the same question and
24 you testified, "No, it's a capacity letter."

25 A. Isn't it both?

1 Q. No.

2 A. Well, you're saying if you meet the conditions --

3 Q. In fact --

4 A. Wait a minute. Let me follow up on that. I
5 believe that if I met the conditions that you put
6 in the letter, that I'd get the service. And I
7 did meet the conditions in the letter and I didn't
8 get the service. Not only that, I would have
9 never gone out and done basin studies, surveys,
10 all that work. The reason that I did the work was
11 to get the service. You led me to have the
12 expectation that you were going to allow me to
13 connect if I did all that work, and that's why I
14 did all that work and provided it to you all for
15 free. The improvements that I did on your
16 property were what led me to believe that we
17 would get the service, and not under some new
18 arrangement and some new policy with totally
19 different rules and totally different prices and
20 two and a half years after we started the process
21 and made commitments, had obligations.

22 Q. Can you turn to page 67 of your deposition,
23 please?

24 A. Yes, sir.

25 Q. You're sure you understood that you were under

1 "oath on the day you were deposed?

2 MR. FULTON: Objection.

3 WITNESS ANSWERS:

4 A: I mean come on, man. It's been a long day. Do
5 you really need to say those things. I mean
6 that's just nasty. It's just nasty. You're
7 calling into question --

8 HEARING OFFICER: All right. You've talked enough. Go
9 on and ask the question and move on. He's under
10 oath and I know it.

11 WITNESS CONTINUES:

12 A: What page was it, sir?

13 EXAMINATION RESUMED BY MR. DAVIS:

14 Q: Sixty-seven.

15 A: Sixty-seven. Okay.

16 Q: And on page 67, we are discussing the March email
17 from 2006 from Brian Bishop. And in it, I ask
18 you, "Do you understand the difference between a
19 capacity letter and flow acceptance letter?" You
20 answered, "Yes, sir." I asked you, "Is this a
21 capacity letter?" "Yes, sir." "Okay. As of
22 March 16, 2006, is it fair to say that Brian
23 Bishop has informed you in this email, and I
24 quote, 'please keep in mind that western Carolina
25 has not made a determination regarding right-of-

1 way access through our treatment plant.'" But
2 that's different than your testimony today, isn't
3 it?

4 A. No. I said it was a capacity letter, but I said
5 if you meet the criteria, or the caveats in
6 there, then it's an acceptance letter. It's a
7 conditional acceptance, period. It is, because
8 if it's not, then the letter is a false document.
9 It's either one or the other. Is it a false
10 document or is it a conditional acceptance, which
11 one?

12 Q. And as of May 5, 2008, had you obtained easements
13 across Rewa's land?

14 A. You've asked me that several times today, sir.

15 Q. No, I didn't. I want you to answer the question.
16 Did you obtain --

17 A. As of 2008, five of 2008?

18 Q. May 5, 2008. Did you have easements across Rewa's
19 land?

20 A. You never granted us easements the entire time, so
21 the answer would be no.

22 Q. As of May 5, 2008, had you executed, signed an
23 agreement with Metro, Rewa, and Condon about the
24 ownership of the pump station and the force main?

25 A. Yes and no. We sent Mr. Stilwell a copy of our

1 contract with Condor for his use. And we

2 understood --

3 Q: Did you execute a contract --

4 HEARING OFFICER: Let him answer the question.

5 WITNESS CONTINUES:

6 A: And we understood that from the contract with

7 Condor, that Mr. Stilwell was going to prepare an

8 agreement for us that mirrored that agreement. In

9 other words, it would be comparable to that

10 agreement. We would have never contemplated that

11 he would send us an agreement that was

12 significantly different in terms of cost, price

13 structuring, and other items that made it

14 economically infeasible.

15 EXAMINATION RESUMED BY MR. DAVIS:

16 Q: Scott, I don't think the questions is that hard.

17 A: I answered it.

18 Q: As of May 5, 2008, had you signed a contract with

19 ReWa, Metro, and Condor about the ownership of a

20 force main and pump station?

21 A: We definitely had a contract with Condor at that

22 time. I believe we produced -- you asked me that,

23 didn't I sign a contract with Condor. I heard

24 that.

25 Q: No. I was asking you whether you signed a

1 contract with those three parties. You answer
2 about your contract with Condor. My question is
3 pretty simple. Brian Bishop tells you on March --
4 in March of '06 that you have to have that
5 agreement before you can get a flow acceptance
6 letter. He says you have to have an agreement
7 with Condor. He tells you you have to have an
8 agreement with ReWa, and with Metro, and they all
9 have to sign the same agreement. He tells you
10 that on day one. And my question is, on May 5,
11 2008, had you signed one with those parties? Why
12 is this question so hard?

13 A. No. We had not answered -- we had not signed it
14 as of May, 2008. And the reason why we hadn't
15 signed it as of May, 2008 is because you came up
16 with a new regulation that prevented us from being
17 able to sign up under our original and agreed-to
18 scenario, as directed by Greenville County and as
19 stamped on our plat.

20 Q. So your analysis is that the May 5, 2008 amendment
21 prevented the agreement from being executed before
22 May 5, 2008?

23 A. Of course. And as you know, and as you brought to
24 our attention, there was a public comment period
25 that extended well before the May, 2008 date, so

1 you all know that. You were in the public comment
2 period. You know that. You knew it was in the
3 pipeline. You didn't tell us, but you knew it was
4 in the pipeline.

5 Q. And as of May 5, 2008, isn't it true that you
6 hadn't submitted finalized engineering plans with
7 respect to the force main that you were proposing
8 to be built on ReWa's property?

9 A. No. I think as of that time, we had engineering
10 studied this thing to death.

11 Q. We just looked at a letter that reflected that
12 only a few weeks earlier, you hadn't even decided
13 whether you were going to do two mains or one
14 main.

15 A. But it had been engineered both ways.

16 Q. And you hadn't decided, had you?

17 A. No, you hadn't decided. We needed you to make the
18 decision. Let's be clear on this. You guys were
19 the ones that were making the decision. It wasn't
20 us. And you're delaying making that decision --

21 Q. Sir sit back.

22 A. -- kept us from being able to make the decision.

23 Q. Sit back.

24 A. Just so we're clear. Okay?

25 Q. I'll let the Hearing Officer determine the import

- 1 of Exhibit 26. Isn't it true that, in fact, at
2 some point, Rewa even offered to own the -- after
3 the amendment, Rewa came back and offered to own
4 the pump station and the force main as a potential
5 option. That was a potential option, right?
- 6 A. But you said one person had to own the collector,
7 the force main, and the pump station. So that
8 would have violated your own regulation.
- 9 Q. According to you.
- 10 A. Oh, no.
- 11 Q. I'm asking you --
- 12 A. Ipso facto, according to the policy you passed.
- 13 Q. I'm asking you a question. That option was out
14 there after the amendment of the regulation,
15 right?
- 16 A. What option, sir?
- 17 Q. That Rewa would own the force main and pump
18 station for the River Trace subdivision.
- 19 A. Well, only if they owned the collector system.
- 20 Q. It was an option --
- 21 A. It was not allowed under the policy, no.
- 22 Q. And in addition, at one point you even examined
23 the possibility of building a package plant on
24 River Trace, right?
- 25 A. That's correct.

1 Q. And ReWa even offered to own that for you if it
2 provided you a viable solution?

3 A. You know what's interesting is you keep going back
4 to viable solution, but you completely somehow
5 magically omit the financial part of it. You see,
6 if the financial numbers don't work and it costs
7 twice as much as the neighbor across the street,
8 even it doesn't matter at all. You're getting the cart
9 never back up in front of the horse again.

10 Q. Well, isn't it true that you didn't even respond
11 to ReWa's offer to own the package plant for you
12 as a potential option?

13 A. Well, I didn't make that decision. The ACOG said
14 we do not want to see that as an engineering
15 solution on this property. And, in fact, what the
16 ACOG specifically said is, "You all are within the
17 ReWa service area." Okay, and what does that
18 mean? What is the ReWa service area? Well, the
19 ReWa service area evidently, I learned this,
20 extends down well past the Reedy River plant way
21 down to here in the ACOG planning document. Well,
22 what does that mean? Sewer availability. That
23 means that according to the regional plan, sewer
24 availability is available not just to here, but
25 way down to here (indicating) past our plant. But

1 is there sewer really available after studying the
2 ACOG proposals? No, there's no sewer service
3 available because there's sewer service available
4 if you agree to spend millions of dollars and jump
5 through a billion hoops. But the ACOG plan
6 showing service and this being in -- it shows it's
7 in the Western Carolina service area.

8 Q. Isn't it, in fact, true that ACOG would have
9 approved a ReWa-owned package plant on River
10 Trace?

11 A. That's not what we discussed in our meeting. They
12 discouraged me from doing that. And, in fact, I
13 went out in the parking lot with one of the guys
14 from the ACOG who specifically said, "Look, we
15 want y'all to have a solution," but I would say as
16 of that date, we realized there was a problem. We
17 knew that there was a problem and there wasn't
18 really a remedy.

19 Q. And ReWa is giving you -- contacts you and says,
20 "If you want to pursue a package plant in the
21 River Trace Subdivision, we would agree to own it
22 in order to get you a viable solution." Did it
23 not do that?

24 A. You know this --

25 Q. And your response was a no response.

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- 1 A. This was after the ACOG said that wasn't going to
2 happen.
- 3 Q. The ACOG said that you weren't going to put a
4 package plant on it, right?
- 5 A. Well, the ACOG said, "You're in the ReWa treatment
6 area. Thou shalt use a ReWa treatment plant."
7 They were not encouraging anyone to go in and do a
8 package plant. They discouraged it strenuously.
- 9 Q. And, in fact, at one point the -- well, let's just
10 scratch that.
- 11 A. But yeah, we didn't ever give up. I mean we just
12 kept trying different things. I mean we were
13 diligent. We were desperate, you know, so just
14 trying to survive.
- 15 Q. Mr. Bolo, I appreciate your time this afternoon.
- 16 A. Thank you.
- 17 Q. And I have no further questions.
- 18 (OFF THE RECORD)
- 19 REEXAMINATION BY MR. FULTON:
- 20 Q. Just to confirm, all of the routes were picked by
21 ReWa?
- 22 A. Yeah, absolutely. I mean it would be folly for us
23 to go out there and pick routes randomly through
24 their plant.
- 25 Q. And regardless of these questions about the

1 different routes and the engineering, as you've
2 already stated, none of the other folks in the
3 pipeline got approval at all, did they?

4 A. No, sir.

5 Q. And there's been a lot of questions about you
6 getting the easements and submitting some final
7 engineering plans. And you've already testified
8 that you were really not allowed to do that, that
9 ReWa prevented you from doing that. But just take
10 a moment, if you would, because I think it's
11 important, and explain to Mr. Glenn about how much
12 work was done and -- let me ask this in a way
13 that's not leading.

14 MR. STILWELL: Thank you.

15 REEXAMINATION RESUMED BY MR. FULTON:

16 Q. There have been some questions --

17 A. Just ask the question.

18 Q. There have been some questions about final
19 engineering documents and getting the easements
20 finally filed. And I know that -- and I think
21 that Mr. Glenn is wondering about whether that
22 might be important as to whether you never got the
23 permit. And I would like you to explain, which
24 you already have some and Gene did this morning,
25 about what was trying to be decided before the

1 final, final things were in and why you couldn't
2 file those easements.

3 A. Right. I'm -- really there was some engineering
4 uncertainty and the primary one I think was
5 whether we were going with a manifold or not with
6 a manifold. That wasn't a decision that we were
7 able to make. That was a decision the authority
8 had to make. The other I think being that
9 obviously was in contention over that period of
10 time was the exact route to the plant. And we
11 really did -- sir, we tried to react to those and
12 engineer the best we could. Chip Fogleman, I
13 think these people would agree, are -- good
14 engineer. He's a good guy. And it wasn't just
15 me, it was everybody. Nobody could get to that
16 final step.

17 Q. And if you had been allowed to, it would have been
18 easy?

19 A. Piece of cake.

20 MR. FULTON: And allow me a little leeway here, if you
21 might.

22 HEARING OFFICER: Sure.

23 MR. STILWELL: We'll see.

24 WITNESS: We'll do a quick objection on this and I was
25 just waiting for him to say.

1 REEXAMINATION RESUMED BY MR. FULTON:

2 Q. And what I'm trying to do is help Mr. Glenn
3 understand this distinction, and I think he does.

4 But I would be remiss if I didn't make sure the
5 point was made.

6 MR. STILWELL: We close on each day now?

7 MR. FULTON: No. I'm trying to ask a question.

8 WITNESS: He's a Realtor. He's always closing.

9 REEXAMINATION RESUMED BY MR. FULTON:

10 Q. If you were at a delicatessen and you were
11 standing there looking at the guy across the
12 counter and you said to him, "why haven't you
13 handed me my stuff yet," but you hadn't asked him
14 you hadn't even told him what you wanted, that
15 would clearly be a matter of, there's no way he
16 could give you what you wanted because you hadn't
17 submitted your order, right?

18 A. Right.

19 Q. This situation as far as the final, final
20 engineering documents with all the t's crossed
21 and everything, any position that Rewa might be
22 taking that you hadn't done that yet is a
23 different situation than not having done any work
24 at all toward that end, right? You understand the
25 different I'm trying to make?

1 A. Oh, yeah. I mean basically we were just waiting
2 on a decision. We had engineered it three or
3 four different ways, as I'm sure Chip and other
4 engineers, and even their engineers probably would
5 agree there was a lot of engineering study done to
6 this. And not only on the one route, but on a
7 couple different ones.

8 Q. And so it wasn't you preventing the final filings
9 or the final reasons, it was Rewa?

10 A. We needed them to take a decision on -- I mean,
11 you know, we can't submit everything as final,
12 final until, as you -- or as was indicated in
13 here, we need the encroachment. That's part of
14 the submittal. But we did submit the entire
15 submittal with the \$220, which they cashed the
16 check and told us at that time our submittal was
17 sufficient.

18 Q. So there's no question there was a submittal?

19 A. Oh, and they cashed the check.

20 Q. And I'm bouncing around to some different things.
21 I'm just going down my list here. You've
22 testified a couple times, and I know that it's
23 been hard to ask you and the other witnesses to
24 think back years and years and years and try to
25 remember the sequences and the dates. But do you

1 I can remember even when in the sequence -- even if you
2 I can't remember the dates, maybe when in the
3 the sequence of events and the different routes that
4 Mike Dixon told Metro that he told you that you
5 had met Metro's --

6 A It was at the point when we did the submittal to
7 Bishop because that was what was required. Metro
8 was a designed and delegated review for DHEC.

9 Once we met their standard, we sent the package
10 over to Mr. Bishop for his blessing.

11 Q Would you please explain for Mr. Glenn the whole
12 idea about submitting things to Metro rather than
13 straight to ReWa?

14 A As I understand it, sir, the subdistricts act as
15 the delegated review for DHEC. ReWa does, of
16 course, review the plans to make sure that they're
17 acceptable to them and that they meet their
18 standard. But the review is actually done with
19 Metropolitan, so the large majority of our work,
20 maybe 95, 98 percent of it would have been with
21 Metropolitan in an ongoing basis because they're
22 the delegated reviewer for DHEC.

23 Q And submitted to them and looked at with them by
24 ReWa?

25 A In conjunction with ReWa.

1 Q. Let me ask you this question going onto another
2 issue. There was some discussion about the fact
3 that the Riversway folks were significantly behind
4 you and would that have somehow been another thing
5 that held up your approval. But even though they
6 were significantly behind you, you could have
7 still partnered with them in the building of your
8 part, right?

9 A. Yeah. And this is a really important point, too,
10 because basically what we had at the time of plat
11 approval from Greenville County was a land plan.
12 why is that important? Because DHEC sets out
13 certain flow rates. Riversway had a certain
14 number of units that they were going to have. We
15 had a certain number of units that we were going
16 to have. Well, big deal, what does that do for
17 us? Well, it tells us how much waste each one of
18 these is going to generate. DHEC says
19 approximately 350 gallons per residential unit.
20 So in our engineering calculations, we need to
21 design for -- and DHEC requires us to design for
22 a flow rate per unit. And the reason that we do
23 this is because Susie and John may use 500 gallons
24 a day. Tom and his wife may use 100 gallons a
25 day. So DHEC comes up with a number that everyone

1. It's generally accepted. So DHEC comes
2. up with a number that everyone uses and is
3. generally accepted. So not knowing the exact and
4. final detail of the layout in the collector system
5. of Riversway is not important for anything
6. downstream of the collector because once you get
7. off the property, the only thing that comes into
8. play is the total amount of flow. In other words,
9. the detailed design for every single line that
10. goes in the ground in here is not really important
11. because the number of units is relatively static.
12. It's not subject to change.
13. So they being behind you in their progress
14. wouldn't have delayed, as long as you had factored
15. in whatever it was going to be?
16. As long as, you know, their plan did not change
17. and that their land plan did not change, and it
18. has not from that date, then yes, the date that we
19. were using was sufficient.
20. The letter from '06 that we've been calling a
21. capacity letter and also referring to as a
22. conditional acceptance letter, you don't deny that
23. it was a capacity availability letter, do you?
24. You know, I think it was a capacity availability
25. letter with the stipulation that it stops being a

1 capacity letter and starts being more of a service
2 letter once you jump through the hoops. And I'm
3 not just talking about jumping through the hoops
4 of designing and submitting plans, I'm talking
5 about the hoops of coming in and providing
6 detailed engineering services to the plant for
7 free. That's what made it rise to the level of a
8 contract.

9 MR. DAVIS: Objection. Your Honor?

10 HEARING OFFICER: It'll be up to me to --

11 MR. DAVIS: Rise to the level of a contract?

12 HEARING OFFICER: He can say that if he wants to. I
13 don't have to determine it that way.

14 WITNESS: What's wrong with that? What's wrong with --

15 HEARING OFFICER: It's not a contract. Go ahead.

16 WITNESS CONTINUES:

17 A. Oh, okay. But in my mind we had a deal, and I
18 would have never gone out and done all that work
19 on the property. I wouldn't have gotten all that
20 information together. I wouldn't have done all
21 those studies for free without having a deal. It
22 would have just been dumb. Who would do that.

23 REEXAMINATION RESUMED BY MR. FULTON:

24 Q. In fact, I wrote this down verbatim as you said it
25 when talking about that letter. You said, "I

1. I believed that if I met the expectations in the
2. letter, I will get the service. I met the
3. expectations and I didn't get the service." Isn't
4. that the bottom line?

5. A. And not only that, I met four different sets of
6. expectations and requirements. I hit a moving
7. target three out of four times, and that still
8. wasn't good enough.

9. Q. Now, one of the things you said when you were
10. being asked about May of '08, but then you started
11. talking about the ACOG meeting, which was in the
12. summer of '08; is that right?

13. A. Yeah. Well, you know, we didn't really get the
14. numbers, my recollection is, until late spring of
15. '08. So we really didn't even know what kind of
16. dog we were looking at till then. And, you know,
17. then we proceeded to explore all our remedies and
18. look for options to find a solution that was a
19. win-win, not just for us, but also, you know,
20. we're -- we live in South Carolina, too. We're
21. not from Massachusetts coming down here to wreck
22. the place. So --

23. Q. And you were actually talking about the ACOG
24. meeting and conversations you had around the time
25. of that meeting, which is when you said the

1 comment, "As of that date, we kind of knew we had
2 a problem"?

3 A. Yeah. I mean once the ACOG wouldn't support us in
4 *our bid, yeah, I think that's the point where we*
5 knew that we had a problem.

6 Q. But even with the rule change in May and
7 everything else that you've talked about --

8 A. You know --

9 Q. -- you were still trying up until that time and
10 still had hope that it would work out?

11 A. Oh, I'll tell you, I used to work for Boyette over
12 there at Piedmont. And just like Brian, I thought
13 he was a hell of a good guy. And so when we went
14 to the meeting and the Board members looked us in
15 the eyeballs and said, "We're going to take care
16 of it. We're going to make you whole," we did
17 that. We sat down and shut up. We did what we
18 were supposed to do. We followed their orders.
19 We were good soldiers. You know, we marched in a
20 straight line, did what we were supposed to do.

21 Q. You relied upon what they said, didn't you?

22 MR. DAVIS: Object.

23 HEARING OFFICE: You can answer.

24 WITNESS ANSWERS:

25 A. Yeah, absolutely. I mean as -- again, there's no

1 conscionable reason we would go out and do
2 thousands of engineering work and provide it to
3 them for free without the expectation of getting a
4 connection.

5 REEXAMINATION RESUMED BY MR. FULTON:

6 Q. Looking at the email from Wednesday, March 21st,
7 from Scott to Brian -- and I am sorry, I did not
8 write what number that is.

9 HEARING OFFICER: Is that '06 or '07?

10 MR. FULTON: And I apologize for not writing exhibit
11 numbers on there.

12 MR. DAVIS: '07.

13 REEXAMINATION RESUMED BY MR. FULTON:

14 Q. Yeah, '07. March 21, '07, from Scott to Brian,
15 copy to Ashley. Just take a look at that for me,
16 Scott.

17 MR. DAVIS: What number was it?

18 HEARING OFFICER: It's 18 I believe. I think it's 18.

19 MR. FULTON: That's is, 18, yeah.

20 REEXAMINATION RESUMED BY MR. FULTON:

21 Q. Scott, you're looking at what we've marked as
22 Exhibit 18. Doesn't the language in that clearly
23 indicate that things were submitted to Metro and
24 Metro had made comments on it?

25 A. Yes, sir.

1 Q. Proving that there was submissions?

2 A. As of March 21, 2007, Metro had indicated to us
3 that they were satisfied with the engineering
4 drawings. And that's why I comment in there,
5 "Hopefully the Metro has the drawings where
6 they're ready for your comments and corrections,"
7 meaning we had 100 percent design complete
8 satisfied Metro at that point.

9 Q. And you had sent it all into Metro?

10 A. Yes, sir.

11 Q. And, in fact, they had gotten it and made comments
12 on it?

13 A. That's right. They had blessed it at that point
14 and allowed it to go to Rewa.

15 Q. So any suggestion that you folks weren't doing
16 things and turning things in just is not true?

17 A. Well, again, I don't think they're trying to
18 misrepresent. Rewa only handles a very small
19 portion of the actual permitting work. And it's
20 only when Metro communicates back to them that
21 they get involved typically. So typically it's a
22 very brief review. Now in this case, due to the
23 force main on their property, they took a larger
24 interest. But yes, 95 percent of our work was
25 with Metropolitan engineering wise.

1 Q. And I told you in the car on the way up here, at
2 the very end of your testimony I'd ask if there's
3 anything else you wanted to say to Mr. Glenn. But
4 since it's 6:36, I'll ask Mr. Glenn if I'm allowed
5 to give you that opportunity.

6 HEARING OFFICER: You can give him that opportunity.

7 WITNESS: You know, I just wanted to impress upon the
8 Court and just beg for mercy because, sir, we've
9 obviously been in this process since 2006. You
10 know, I'm not going to contend that I'm a perfect
11 person. I got a lot of shortcomings. There's a
12 lot of people on this project that got hurt really
13 bad, especially Mr. Clark, and I just don't think
14 it's right, what happened. I mean how can you go
15 through three or four years of working your heart
16 out and doing everything right and then at the end
17 of the day have these people just laugh in your
18 face and turn their back on you. And now I don't
19 even know if my children are going to have a house
20 to live in. How's that fair to us when we did all
21 we could and were honest and we worked so hard and
22 this is what we get? I got to live with this. I
23 got to try and make a living while I come and get
24 deposed for two days and go to countless hearings
25 and why? Why am I here? Because no one else can

ADMINISTRATIVE HEARING
March 22, 2011

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1 do it. They're all bankrupt or they're all too
2 scared to come to Court. You heard Mr. Condor --
3 Mr. Gene. So this isn't about -- it's a human
4 thing. Imposing a regulation on someone three
5 years or whatever it happened, that's why it's in
6 our U.S. Constitution, because as citizens we have
7 a right to be protected from retroactive laws.

8 HEARING OFFICER: Anything else?

9 MR. FULTON: Not for this witness. Thank you.

10 (ADMINISTRATIVE HEARING [3/22/11] CONCLUDED AT 6:39
11 P.M.)

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GALLAGHER COURT REPORTING

864-234-5744

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CERTIFICATE

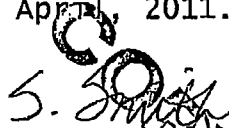
I, the undersigned, Sheila B. Smith, CVR-CM,
Notary Public in and for the State of South Carolina,
do hereby certify that the foregoing Administrative
Hearing was taken on March 22, 2011;

That the within witnesses were sworn to tell the
truth, and that the foregoing is an accurate
transcription of the testimony taken under oath;

That all exhibits entered herein are attached
hereto (if requested by counsel) and made a part of
this Administrative Hearing.

I further certify that I am neither counsel nor
solicitor to any of the parties in said suit, nor
interested in the event of the cause.

In witness whereof, I have hereunto set my hand
and seal this 11th day of April, 2011.



Sheila B. Smith, CVR-CM
Notary Public for South Carolina
My Commission Expires: 3/9/2014

Harrison Partners,
L.L.C

vs.

Renewable Water
Resources

2011-CP-23-6482

Record for Administrative
Appeal
VOLUME 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Harrison Partners, L.L.C.,	)	Civil Action No. 2011-CP-23-6482
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Renewable Water Resources.	)	
	)	
Defendants.	)	
	)	

RECORD FOR ADMINISTRATIVE APPEAL

VOLUME II

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In Re:
Renewable Water Resources, Inc.
Administrative Proceeding
Concerning Harrison Partners, LLC

COPY

ADMINISTRATIVE HEARING
VOLUME 2

DATE TAKEN: March 23, 2011
TIME BEGAN: 9:33 A.M.
TIME ENDED: 6:30 P.M.
LOCATION: Renewable Water Resources, Inc.
561 Mauldin Road
Mauldin, South Carolina

REPORTED BY: Sheila B. Smith, CVR-CM
GALLAGHER COURT REPORTING
864-234-5744

HEARING OFFICER: Michael D. Glenn, Esquire

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GALLAGHER COURT REPORTING

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ALSO ATTENDING: Scott Bolo
Charles Logue

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22	(Note: Exhibits 1-45, except for those retained, are	
23	attached in a separate binder. Exhibits 44 and 45	
24	were retained by counsel for ReWa.)	
25		

1 HEARING OFFICER: We're on the record now. This is day
2 2 of an Administrative Hearing at Renewable Water
3 Resources. The case is Harrison Partners, LLC
4 versus Renewable Water Resources. Yesterday, we
5 took testimony from Plaintiff's witnesses. As I
6 understand it, the Plaintiff has one more witness,
7 so we will go ahead and begin the defense case and
8 later today, we'll take the last Plaintiff's
9 witness out of order.

10 MR. STILWELL: I want do some housekeeping to make sure
11 we do what need to to move those exhibits into
12 evidence, however many we did yesterday, 27 or
13 something like that.

14 HEARING OFFICER: I had 27. Correct. We had 27
15 exhibits yesterday and they were all accepted
16 into evidence. And I don't believe we had any
17 objections to any of them, so they were all
18 accepted without objection.

19 (RAY T. ORVIN, JR. DULY SWORN)

20 EXAMINATION BY MR. STILWELL:

21 Q. Ray, we're going to spend some time today just on
22 an overview instead of individual documents.
23 Okay? To start, I just want to ask you some
24 personal questions for the Hearing Officer. Can
25 you just tell me where you're from and what your

1 background is education wise?

2 A. Yeah. I'm actually from the Charleston area, grew
3 up in the Charleston-Ladson area, went to high
4 school there; worked for the government as an
5 electronics technician for about seven or so years
6 and then went into business for myself, moved to
7 Beaufort, was there 20 some years. I actually did
8 tax returns and a little property management kind
9 of thing. And during that period I went back to
10 school, got a tech degree, an undergraduate degree
11 from Limestone and a master's from Webster's and
12 a doctorate from Arbris (phonetic) University.
13 So over the life span, sort of been a life of
14 learning. In '84, I went to work for Beaufort-
15 Jasper Water and Sewer Authority as their director
16 of finance administration.

17 Q. Is that how you got in the sewer business?

18 A. Pretty much how I got in the sewer business. And
19 in '92 had an opportunity to come up to what was
20 then Western Carolina in a similar capacity, and
21 then about a year later I became the executive
22 director and have been operating in that capacity
23 since. That was a quick thumbnail.

24 Q. Well, and then on the side of that, you've been
25 doing Army service for some 25 years or --

1 A. Yeah. Yeah, I got an opportunity back in 1967 to
2 either get shot at or get in a Reserve unit. I
3 was fortunate enough to get in a Reserve unit,
4 stayed there a short period of time. I think I
5 was kidding folks on the deposition. It was only
6 39 years, 11 months, and 28 days. They finally
7 wrote me a letter and said they'd pay me if I
8 promised not to show back up, so I took them up on
9 their offer.

10 Q. Are you actually still in the Reserve unit?

11 A. No. I am retired. I retired -- it'll be five
12 years actually December. I held various positions
13 there. I started out as enlisted. I was a combat
14 medic, worked my way up through the enlisted ranks
15 and around '81 had an opportunity to become a
16 warrant officer, and I became a personnel warrant,
17 personnel administration type functions. And of
18 course now you get moved around and get
19 opportunities to do different things, but pretty
20 much stayed in the administrative area for the
21 whole tour.

22 Q. And your wife is also some E-8 or something like
23 that, or is she a warrant officer, too?

24 A. No. She outranks me. She was a sergeant major.
25 She's also in personnel, so -- yeah.

1 Q. And you said when you came up here to work for
2 Western Carolina. What was your job then? You
3 were like the number two guy in the organization?

4 A. At the time I was the director for administration
5 and finance. We also had a technical director at
6 the time and we worked directly for the executive
7 director.

8 Q. It was organized a little bit differently?

9 A. Yeah. It was more centrally instead of
10 decentralized.

11 Q. And now other than the Board, you're the number
12 one guy, right? You're the executive director?

13 A. That's what they tell me, yes.

14 Q. Tell me something about how you're split up now.
15 I want you to go between the people we're going to
16 have like Brian, where he exists in the
17 organization relative to you.

18 A. Okay. We actually restructured three, three and
19 a half years ago when we took the technical
20 director's position, which at the time managed the
21 lab, engineering, operations, and pretreatment,
22 and split it. And now we have an operations
23 director who manages the operations functions, and
24 the technical director handles the pretreatment,
25 the lab, and engineering. We also created a IT

1 director position to give better focus to the
2 technology which is changing the way our business
3 is operating and give better focus to that. We
4 retain our administration-finance position and our
5 HR position that we have in there. So we've got a
6 operations manager, IT manager, HR manager,
7 operations manager, and finance manager.

8 MR. FULTON: Excuse me a second. I'm sorry to
9 interrupt. Mr. Glenn, we had a ruling about some
10 sequestering of witnesses yesterday. And I think
11 we need to ask Dr. Graef to step out.

12 MR. STILWELL: Well, I've got a corporate rep, just
13 like the depositions.

14 MR. FULTON: He's your corporate rep (indicating).

15 MR. STILWELL: I can't talk to him during his testimony
16 about his testimony.

17 MR. FULTON: Well, Dr. Graef is going to testify later
18 today, Mr. Glenn.

19 HEARING OFFICER: I think it'd better for you not to be
20 in to hear Mr. Orvin's testimony.

21 MR. FULTON: Thank you. I'm sorry to interrupt.

22 (OFF THE RECORD)

23 EXAMINATION RESUMED BY MR. STILWELL:

24 Q. I made the mistake of asking a corporate guy about
25 his corporate organization.

- 1 A. Yeah.
- 2 Q. Let's just do this.
- 3 A. You want to go down to Brian?
- 4 Q. I want to do -- it goes like this. There's you.
- 5 Then there's a set of directors?
- 6 A. Right.
- 7 Q. And Dr. Graef is one of those?
- 8 A. Right. Well, he was. He's retired.
- 9 Q. Dr. Graef is a consultant to the organization?
- 10 HEARING OFFICER: How do you spell his name?
- 11 MR. STILWELL: G-R-A-E-F.
- 12 WITNESS ANSWERS:
- 13 A. You get the directors. And I guess getting down
- 14 to engineering, we got a technical director. Then
- 15 there's an engineering manager and underneath the
- 16 engineering manager, you have folks like Brian
- 17 Bishop.
- 18 MR. STILWELL: Charlie, you need to sit over here. He
- 19 doesn't like this litigation stuff so much.
- 20 EXAMINATION RESUMED BY MR. STILWELL:
- 21 Q. This is actually the new Dr. Graef, right?
- 22 A. That's the new Dr. Graef. He's really not a Dr.
- 23 Graef, he's a Charlie Logue.
- 24 Q. Underneath the technical director is the
- 25 engineering department?

- 1 A. Right.
- 2 Q. And then there's a head of engineering, who's
- 3 Charles now, right?
- 4 A. Right.
- 5 Q. It used to be Lauren?
- 6 A. Used to be Lauren.
- 7 Q. And then underneath them is where Brian is in the
- 8 organization?
- 9 A. That's correct.
- 10 Q. How many people are -- Brian is in the middle of
- 11 the engineering department?
- 12 A. He's a manager. There are three management
- 13 positions underneath the engineering manager.
- 14 They specialize in things like construction or new
- 15 development, infiltration inflow in the plant.
- 16 Q. We'll come back and talk about the people in the
- 17 organization in a minute. But first I want to
- 18 shift over to the -- and I left out the Board,
- 19 right? How many people are on your Board?
- 20 A. Nine.
- 21 Q. I wanted to go over to the piece to talk about
- 22 your relationship with Metro. You all are both
- 23 SPDs?
- 24 A. Restate your question.
- 25 Q. The part about -- I'm going to ask you questions

1 about your relationship to Metro.

2 A. Oh, Metro.

3 Q. Metro.

4 A. I missed that. Yeah, we're both special purpose
5 districts. We both have charters from the
6 legislature to provide functions.

7 Q. There was a bunch of confusing stuff yesterday
8 about subsidiary, nonsubsidiary, and how that
9 works. Can you just explain in your terms what's
10 the relationship to Metro as a subdistrict?

11 A. Metro is a special purpose district. There's
12 several of them that we have, and they all have
13 charters from the legislature to provide a certain
14 service.

15 Q. Enabling acts is what you're talking about?

16 A. Enabling acts and similar to us, in our enabling
17 act it says we can own trunk lines and processing
18 facilities. Metro owns what we call the retail
19 side of the house, and they're also the ones who
20 have the responsibility of ensuring new
21 development is connected to the system. So we
22 have different roles and they have their own Board
23 and their own charter.

24 Q. I wanted to go back to that part about when you
25 say they're the retail side of the house. Can you

1 explain to Mr. Glenn basically like you've got the
2 trunks and the plants and they've got -- what that
3 means exactly.

4 A. Right. The way I interpret the legislation is
5 they're the ones that would be a first contact
6 with the developer that we needed service. They
7 would coordinate that service generally through
8 their system, and that would pretty much be the
9 end of it other than we would get copies of the
10 plans and specs and ensure that, you know, we
11 didn't have a problem with the capacity in our
12 line or we had available capacity in our plant.
13 If they could not tie in to one of the district
14 lines, then they could make a request through the
15 district, is the way it really ought to work, to
16 connect to one of our lines. And then we would
17 coordinate that with the folks.

18 Q. And yesterday, we spent a good bit of time talking
19 about the developers working directly with our
20 staff.

21 A. Uh-huh.

22 Q. Can you talk a little bit about what you generally
23 refer to as a direct connect and how that's
24 different than what you just talked about?

25 A. Well, generally they will work through the

1 subdistrict and tie in to a subdistrict line.

2 Q. And that would be like yesterday when we were
3 talking about tying in at the top of the plant to
4 a Metro line?

5 A. Yeah. If they went up the road and tied in. We
6 would generally get copies of plans and specs and
7 we would get a request to ask if they were tying
8 into a line that tied into one of ours, whether
9 there was enough capacity in our line. You know,
10 when you tie in, you may tie into a Metro line
11 which ties into one of our lines. So we would
12 validate there was enough capacity in our lines
13 and there was available capacity at the plant.

14 HEARING OFFICER: Who generally asks you that?

15 WITNESS: Well, generally that will come at the same
16 time they go to the district. There's usually a
17 meeting with the developer in the district and
18 those questions are addressed at that meeting.

19 HEARING OFFICER: By district, you're talking about the
20 developer at Metro usually meets. Do you have a
21 representative there or do they furnish you the
22 information?

23 WITNESS: We -- it used to be they used to furnish it,
24 but a few years ago we started meeting with them
25 on each project because we were having problems.

1 And so we wound up meeting with them.

2 EXAMINATION RESUMED BY MR. STILWELL:

3 Q. Ray, first of all, we've talked about Metro. But
4 aren't there something like 17 subdistricts and
5 municipalities inside the ReWa area?

6 A. Right. And they have their own rules and
7 regulations, just like we do.

8 Q. Now, Metro is somewhat of a special district.
9 It's my understanding, and you correct me if I'm
10 wrong, they basically cover what's not in some
11 other city or municipality?

12 A. That's correct. Their initial charter provided
13 for them to cover any area within the ReWa service
14 district that was not covered by an existing
15 municipality or special purpose district. That
16 changed a little bit when home rule came in, but
17 that's the way their original charter was
18 structured.

19 Q. Right now, if you took the whole -- I think that
20 map right there has generally the whole ReWa
21 service area. There are large chunks of this that
22 Metro doesn't cover?

23 A. There are areas of this that Metro does not cover
24 because under home rule, the county council
25 changed their boundaries. In certain areas, they

1 reduced their boundaries.

2 Q. I want to make sure that -- and this is just by
3 way of background. You were talking about
4 sometimes you tie to their line and then tie to
5 our line. On this map up here, is that green line
6 one of our trunk lines?

7 A. That green line is our trunk line. I believe that
8 (indicating) is a Metro line.

9 Q. The red one?

10 A. The red one.

11 Q. So somewhat like a spider web with lines?

12 A. Yes. And they interconnect from district to
13 district.

14 Q. That part right there is something that came up.
15 And Gene was talking about he didn't like how
16 public could tie to public, you know, when we were
17 talking about split systems?

18 A. Right.

19 Q. This is out of order. But while you're right
20 there, can you tell me how it is sometimes
21 district lines tie to other district lines?

22 A. You -- well, let's take a good example, Travelers
23 Rest. Well -- yeah, we'll take Travelers Rest.
24 Right above Travelers Rest, there's Slater-
25 Marietta -- well, back up. That's not a good

1 example.

2 Q. I know there's some between Taylors and Wade
3 Hampton.

4 A. Taylors. You will find that there's some
5 connection between Metro and Taylors, and Metro,
6 Taylors, and our lines. You will find that some
7 of it will flow from, let's say, Taylors into
8 Western Carolina, which flows into Metro's, which
9 flows back into Western Carolina. It's a spider
10 web of publicly-owned collector and trunk line
11 systems.

12 Q. Is it generally just a single pipe that just keeps
13 cutting through different political boundaries?

14 A. The trunk lines generally are, but then the
15 collector lines may or may not be. I call it
16 collector lines. They're really the lateral lines
17 that go out from the trunk lines.

18 Q. I want to go back to talking about Metro's
19 relationship. And yesterday, Scott kept saying
20 something about Metro being our DHEC delegated
21 plan reviewer. Have you ever heard of such a
22 thing in your life?

23 A. Metro is a delegated plan reviewer for the Metro
24 district.

25 Q. They do their work?

1 A. Just for the district. They're not delegated to
2 do work for us.

3 Q. Before we get down into like what has been
4 referred to as the minutia, is there any question
5 whether Metro would have been reviewing plans and
6 specifications for a piece of sewer infrastructure
7 that was coming across Rewa property?

8 A. They may have been, but that would have only been
9 because they wanted to. If it comes across our
10 property, we're going to be the people who decide
11 the location, the connection point, the tie-ins,
12 and everything else.

13 Q. Is there any way that they would have authority to
14 approve that infrastructure coming across your
15 property or what the infrastructure would do?

16 A. No.

17 Q. Listen, you're not the guys that looks at the
18 plans and specs in the end anyway, right?

19 A. No. I am not the one who would make the final
20 decisions on the sizing or even the tie-in. I
21 might have overall input into whether it's the
22 best thing for our -- for the community and our
23 agency.

24 Q. That stuff will be later. That will be Brian and
25 Dr. Graef?

1 A. Right.

2 Q. Let's go to -- let's talk about this project
3 itself. Let's transition into when you first knew
4 something about this project. And I understand
5 yesterday we talked about all this '06 stuff.
6 When did Ray Orvin know about what we've got on
7 the board right there?

8 A. I believe it would have been August of '07 where
9 Brian brought to me a proposal for a developer who
10 wanted to tie into the back of our facility. And
11 they were going to come up some flag lots that we
12 had been acquiring that cross our property and
13 connect to the --

14 Q. And this is a good time to actually clear up,
15 because people were all over the map about what
16 are the flag lots and where are they?

17 A. Okay.

18 Q. Can you just show us exactly what that is?

19 A. According to this map, these are several lots
20 right in here, and you will see these little
21 lines. These are called -- these are basically
22 driveways. This kind of development comes into
23 play where someone decides they want to develop a
24 piece of property and they don't want to go
25 through the Planning Commission. And there's a

- 1 provision, as I understand it, and you can check
2 with them, that you can develop it as individual
3 lots with a individual driveway out to the main
4 road, and that's how these lots were developed.
5 We call them flag lots.
- 6 Q. So they're coming off of a single driveway?
- 7 A. No. They're not -- they have their own driveway.
- 8 Q. Right, coming onto a road?
- 9 A. Coming onto a road right here (indicating).
- 10 Q. There was some testimony yesterday about clearing
11 the flag lots. The flag lot route is clear
12 already, isn't it?
- 13 A. Yeah. Well, the flag lots are clear. There are a
14 few trees right in this area here (indicating).
- 15 Q. But the part -- there was testimony about -- I
16 don't know how recently you've been down to the
17 plant, but I've seen some aerial photos. The
18 piece about that our plant is all grass and there
19 are no trees to be cleared, is that accurate?
- 20 A. I haven't been down there to walk this line, so I
21 really can't answer that.
- 22 Q. We'll get Brian to --
- 23 A. Brian can probably speak better to that.
- 24 Q. The whole thing is fenced, isn't it?
- 25 A. Yes.

1 Q. The plant?

2 A. Yes.

3 Q. Can you show Mr. Glenn basically where it goes to
4 the flag lots to where it goes to our property?

5 A. This is our property line right here (indicating).
6 So -- and at the time, we had been acquiring some
7 of these properties in here. And it may be a good
8 time to elaborate on the overall issue that was
9 concerning me and this. We have some primary
10 clarifiers right here.

11 HEARING OFFICER: Some what?

12 WITNESS CONTINUES:

13 A. They're called primary clarifiers. When stuff
14 comes -- this is the initial treatment. If you're
15 going to have odors in the plant, that's where
16 you'll have them.

17 EXAMINATION RESUMED BY MR. STILWELL:

18 Q. Those are basically basins, right?

19 A. Basins. They're big circular basins. This
20 gentleman developed this property unbeknownst to
21 us and sold these lots. These folks moved in and
22 the first thing was they started getting that odor
23 and it become a really public relations problem
24 for us, the delegation, county council. So we
25 would -- had been acquiring these properties to

1 get these people out of that kind of a situation,
2 sort of a good neighbor. That's how we wound up
3 with some of these flag lots. The line, as I
4 proposed --

5 Q. You're saying because you own some of them now?

6 A. Yeah. Right. So they were willing to come up
7 these lots and through this part of the plant here
8 (indicating). And the concern I had was this is
9 all high ground, though we don't own this. We
10 would wind up doing development in here because we
11 would most probably put more primary clarifiers
12 there and other infrastructures. So I had
13 concerns about this route, both from a --

14 HEARING OFFICER: So where your finger is now on the
15 white part there, you do not own it? Yours is on
16 the -- only the dark part?

17 WITNESS: No. It's this (indicating).

18 HEARING OFFICER: Okay. I got you.

19 EXAMINATION RESUMED BY MR. STILWELL:

20 Q. Will you show Mr. Glenn where that house is that's
21 right up on the front of the road in front of our
22 property?

23 A. We got one right here (indicating). There's a
24 house right here. He's got a great view, by the
25 way. He looks straight over our facility, so he's

1 -- that gentleman's right there. But the concern
2 I had was we already had some infrastructure in
3 there. And to have a private force main run
4 through this section of the pipe was cutting us
5 off from potentially expanding this direction.
6 And we had a problem here we didn't want to
7 exacerbate by going in there and digging it up and
8 putting a force main through it.

9 Q. Before we get to the part about whether it's
10 public or private, let's just talk -- was it your
11 understanding this was going to be a four or six-
12 inch pipe or something coming in the back door?

13 A. As I understand it, these two folks were working
14 together and they were going to put a pipe up
15 here. I'm not sure the size. Brian can answer
16 that.

17 Q. I just want to talk about relative to like what
18 was going to come in the back door relative to
19 what's coming in the front. That green line up
20 there is like this, is like a five-foot line or
21 something?

22 A. No. That line's probably 48 to 54 inches, or 60
23 inches.

24 Q. And just to get a perspective, and we talked about
25 this a little earlier, like a perspective of the

1 kind of flow coming in the back versus the size of
2 that plant.

3 A. Well, I think the flow in here would have been
4 about four -- we would have had to permit
5 approximately -- as I understand, these are
6 houses. So it would have been 400 gallons per lot
7 on both of these developments. And I believe --
8 I'm not sure the number in here, but --

9 Q. A couple hundred or --

10 A. Well, if you have a hundred -- a couple hundred
11 lots, it's about 80,000 gallons, somewhere in that
12 area.

13 Q. So the two neighborhoods were something like
14 80,000?

15 A. No. This one would have been about 80. This one
16 over here, I'm not sure.

17 Q. And the size of the plant is what? It's over --

18 A. It's a 10.5 million gallon a day permit on that
19 plant. It's a fairly large facility.

20 Q. And it's also -- basically there's anticipation
21 that it will grow?

22 A. Yes. This is a growing area. We have full
23 expectations that plant will expand.

24 Q. And so your concern was that the other -- the main
25 coming in the back door not interfere with the

1 overall plant?

2 A. Yeah. It was the operational necessities that I
3 saw long-term, long range on the plant and the
4 issues dealing with the community rife here. That
5 route was not what I would consider a viable
6 route.

7 Q. Let me talk about -- let me step back and just
8 talk about when you talk about strategic plan.

9 A. Uh-huh.

10 Q. The growth in the area for that plant, that plant
11 is basically the last plant that we have on the
12 Reedy River, right?

13 A. That's the -- on the Reedy River, that's the
14 farthest -- the plant would get farthest to the
15 southeast, right.

16 Q. And is it generally designed to serve the property
17 that's above it by gravity?

18 A. Yes.

19 Q. The growth in this area below the plant, what's
20 going to serve the vast majority of that property?

21 A. well, initially they would probably have to pump
22 back to this facility here or go with an
23 alternative facility until a new plant would be
24 built further downstream.

25 Q. I don't have the perspective. The new plant we

1 talked about being like a Huff Creek plant or
2 something?

3 A. Yes.

4 Q. If we stack boards up, how many more boards would
5 the Huff Creek plant be now, at one more board or
6 two more boards? How much further down would that
7 be?

8 A. I don't know. I don't know what the scale is on
9 this board, but this -- I think that plant is
10 probably three or four miles downstream.

11 Q. Is there an idea how long it will take to get that
12 plant? I mean I know the recession has stopped
13 all the development, but what's the long-range
14 plan for building that plant?

15 A. It is on the strategic plan. There's no date to
16 build it. I think a lot of it will depend on how
17 development occurs in the basin and how it works
18 out, you know, with growth.

19 Q. Even if some of these neighborhoods at the top
20 pump up to Lower Reedy, when the new plant is up,
21 or when there is a new pump station below, would
22 all that stuff be taken down?

23 A. Yeah. Eventually you would have a gravity line
24 that would probably run somewhere down this --
25 would run down this river basin somewhere to that

1 plant. And anything that was being pumped back
2 would probably have to -- it would flow into that
3 gravity line because gravity is the cheapest way
4 to serve. Pump stations are expensive. They're
5 big maintenance items. They're prone to fail. So
6 -- and I think you heard the other day, nobody
7 likes pump stations if we can get around having
8 pump stations, but the reality is you're going to
9 have to have some. That's the way you grow a
10 system.

11 Q. Now, I don't want to skip to something that's too
12 complicated. But the gist of how that basin is
13 going to be served and how the regional pump
14 station is going to work and all that stuff, when
15 these guys came in, that work had not been done,
16 had it?

17 A. No. It was just a concept.

18 Q. Has some of it been done since then?

19 A. There has been a study done to talk about serving
20 the area I want to say -- it may not quite be on
21 the map, but it's to a point down here
22 (indicating). I think there was a study done
23 about a pump station in this area here and then on
24 down at another location further down. This would
25 open up I think -- I don't know, a couple thousand

1 acres potentially. And then if you moved it on
2 down, it was probably double it.

3 Q: I just want to tell you, everything we talked
4 about yesterday was basically tiny pump stations
5 to serve two neighborhoods?

6 A. Right.

7 Q. What you're talking about, is that more regional
8 concept?

9 A. Yes.

10 Q. Who's in charge of thinking regionally in that
11 area?

12 A. That would be -- that would depend on how you
13 wanted to look at it. That could be the
14 subdistrict. That could be a joint venture with
15 Renewable Water. It could be Renewable Water.

16 Q. Up at the top of the board, there's some little
17 yellow -- those are the fingers of how far down
18 Metro has come?

19 A. You're talking about these areas here
20 (indicating).

21 Q. Yeah.

22 A. Yeah, and I think they've annexed these.

23 Q. But I mean that's where Metro basically ends?
24 That's where it peters out?

25 A. Yeah, somewhere in that area if this map is

1 correct. And I didn't have anything to do with
2 the development of this map, but if those colors
3 are identified right, uh-huh.

4 Q. I just want to lead this part by just saying, is
5 it fair to say when these developments came on the
6 table, there wasn't a plan for how that whole area
7 would be handled?

8 A. No.

9 Q. Was that a complicating factor with this project?

10 A. It was a complicating factor with that project
11 because these guys were so focused on their
12 situation. We have to look at it from a little
13 broader context. You know, there is more real
14 estate in here. There are other issues about how
15 you would tie in, who would own the
16 infrastructure. So yeah, I guess in business
17 terms, our plan would have been we really needed
18 to be looking at how to serve the whole area.

19 Q. You can have a seat. I'll just ask you some
20 general questions. When the plan first came to
21 you with that idea about the flag lot, were both
22 those neighborhoods on the table?

23 A. I believe so, yes.

24 Q. Were you involved in -- there was discussion
25 about, we're going to manifold it or we're going

1 to double barrel it, all that. Was that in Ray
2 Orvin's world or was that somewhere else?

3 A. I hadn't -- I had conversations I believe with
4 either Dr. Graef or Brian about how they were
5 going to do that. And I was left with the
6 impression that there would be one line coming up,
7 so it would have had to be manifold. And then
8 later on, there was questions that came up and I
9 want to say they came up from Riversway, but it
10 may have been River Trace or both about whether
11 the manifold would function correctly or not. And
12 we were already doing a little basic planning
13 study with one of our consultants, so we threw
14 that question to him to give him an answer, which
15 we -- they -- it would work, and we provided that
16 data back to them.

17 Q. So there were multiple I'll call it engineering
18 solutions discussed during the course of this?

19 A. I'm sure there were.

20 Q. Tell me like from Graef's perspective -- there was
21 a discussion about -- and I think there was an
22 exhibit marked about nobody ever told me about two
23 mains. What were your concerns about whether
24 there would be one or two force mains coming
25 through the property?

1 A. Well, the more pipes you got going through the
2 property, the more infrastructure you have to deal
3 with, so that was one of the concerns. The second
4 concern was -- I think at the time they were both
5 looked at as being privately owned. And if you're
6 going to be putting those across our property, we
7 had some concerns about whether that was the best
8 way to do it or not -- or I had some concerns
9 about it.

10 Q. Well, go back to the private part. I want to hit
11 one more thing about -- there was discussion about
12 having two separate force mains. And Mr. Bolo
13 said, "Oh, that's easy to do." Do you recall that
14 yesterday?

15 A. Uh-huh. Yes.

16 Q. Now, there was also some discussion about the
17 Windsor/Aughtry people being up to a year behind
18 the other people. How would you have felt about
19 them coming onto your property to build these
20 things at different times?

21 A. We probably would have had them build them both at
22 the same time if we had agreed to two force mains
23 because they would have had to go in the same
24 proximate ditch.

25 Q. So they were basically on the inside of the plant

1 once?

2 A. Yeah.

3 Q. Let's just talk about the private part versus the
4 public part. Have you ever had a private pump
5 force main go across your plant property?

6 A. No. This was very unique to us.

7 Q. Even before we go to private or not, have you ever
8 even had another public force main go across plant
9 property?

10 A. Not that I know of, not since I've been here that
11 I can recall, no.

12 Q. So public or private, a force main running across
13 plant property is unique to ReWa, as far as you
14 know?

15 A. Yes, and it would be something we looked at very
16 carefully.

17 Q. I want to talk about the private versus public
18 part. We're going to shift to another chapter.
19 You were here yesterday when Gene testified?

20 A. Yes, I was.

21 Q. Did you hear him say that he contemplated suing
22 ReWa when you put in the Peters Creek gravity
23 line?

24 A. Yes.

25 Q. Would that concern you?

1 A. The lawsuit?

2 Q. Well, what I mean is like if -- there are other
3 privately-owned pump stations out there. Gene
4 talked about like a dozen of them or something?

5 A. Yeah.

6 Q. Is a pump station generally a temporary solution
7 until the gravity line comes?

8 A. A pump station -- the way we have interpreted the
9 208 plan and the Appalachian Counsel of
10 Governments has interpreted the plan are
11 temporary structures. And I know we get into the
12 definition of what's temporary and it could be
13 there an awful long time, but the reality is
14 wherever and whenever we can go to gravity, that
15 is the preferred option. And anything that goes
16 in other than that is there only until you have
17 gravity available.

18 Q. In the sewer world, gravity is preferred over not
19 gravity, right?

20 A. For operational and cost efficiency, yes.

21 Q. What kind of effect would it have on the
22 development of a gravity system if private
23 developers were in there with lawsuits when you
24 built the gravity system, not developers, but
25 private pump station owners?

1 A. It would complicate trying to provide efficient
2 cost-effective service to the entire area.

3 Q. I don't know if we missed this part, but when the
4 gravity line would be built down this part of the
5 Reedy River, either going to like a halfway point
6 pump station or going all the way down to the new
7 plant, these two neighborhoods then would dump
8 into the gravity line, correct?

9 A. That's correct.

10 Q. And generally it would go down the river route?
11 That's kind of how it works?

12 A. Uh-huh.

13 Q. We talked about the plant may not be built for a
14 long time, but some of the solutions you talked
15 about were pump stations that were like a quarter
16 way or halfway down the river?

17 A. Right. Yes.

18 Q. And so that would be bigger pump stations?

19 A. Yeah. They would be bigger pump stations and they
20 would be designed to serve all the developable
21 property within that drainage basin.

22 Q. So the gravity line that might serve these
23 neighborhoods could be built well in advance of
24 when the plant down the river was built?

25 A. Yeah, probably -- it would probably -- you would

1 probably have one, possibly two plants that would
2 be pumping back initially to Lower Reedy and then
3 you would go down and build a plant, put the rest
4 of the gravity line in.

5 Q. We talked about the lawsuit problem with the
6 private pump stations being in there. What other
7 policy issues are there -- or what other concerns
8 were there about private lines in the system?

9 A. Well, the whole issue with private lines is the
10 long-term viability. We've had issues up at Paris
11 Mountain with a little area up there, and the
12 concerns are --

13 Q. Wait. Are you talking about Altamont now?

14 A. Altamont, yes.

15 Q. I don't know if the Hearing Officer knows we
16 talked a lot about Altamont. Can you tell him,
17 just in a nutshell, what Altamont was all about?

18 A. Okay. Altamont was a privately-owned -- I call it
19 a package plant up on Paris Mountain.

20 Q. Can you stop and just say what a package plant
21 is? It took me years working with you all before
22 I knew what a package plant was.

23 A. It's a -- it's just a very small facility, has
24 limited capabilities to treat, but run correctly,
25 it operates well. And usually a developer will

1 put those in as a temporary facility until the
2 regional facilities are available and then they're
3 closed down. A good example of that was when I
4 got here, I believe we had something like 27
5 plants. A lot of those were in little
6 subdivisions or communities and we have managed to
7 eliminate those facilities and go with regional or
8 subregional sites.

9 Q. It's my understanding Altamont was a privately-
10 owned system that served basically Paris Mountain?

11 A. That's correct. I think there were 26 or 27 lots.

12 Q. So it basically covered one side of Paris
13 Mountain?

14 A. Right. Just the tiptop of it.

15 Q. What happened?

16 A. That was privately owned. The developer decided
17 that he didn't want to do it anymore and he
18 abandoned the site. It wound up going to EPA and
19 DHEC asked us to become the trustee for the site
20 and to try to bring it back into compliance as
21 best we could. We --

22 Q. When you say DHEC asked you to take it, could you
23 just comment on your relationship with DHEC? Was
24 that what you called an offer you can't refuse?

25 A. Politically you can't refuse it.

1 Q. Why do you say that? I mean I --

2 A. We're in the wastewater business. There -- that
3 area is in the overall district. We legally
4 probably could have said no, but politically it's
5 not the best thing to do. Our charter is to serve
6 the community, and they were part of the
7 community.

8 Q. You all were people who hold the permits on the
9 plants, right?

10 A. We have permits on all of our facilities.

11 Q. I mean that DHEC controls those?

12 A. That's correct.

13 Q. Mr. McCall was in here talking about what a good
14 deal Altamont was for Rewa. Is that a good money
15 maker for Rewa?

16 A. No. We have been managing that thing for
17 approximately four years or so and we're still
18 short about \$17,000 in costs that we were trying
19 to adjust and correct either through adjusting the
20 way we look at charging them, or potentially
21 looking at increasing their fees.

22 Q. Speaking of making money in the sewer business,
23 there was another comment Mr. McCall made which
24 I'm sure is going to be very entertaining to Mr.
25 Boyette. But how about is a pump station a money

1 making venture for Rewa?

2 A. No. Our business plan and strategy is we break
3 even. We don't make money on any of this stuff.

4 Q. There was a concept that there was somehow a
5 master conspiracy that Rewa wanted to own all the
6 pump stations in the world. Is that what your
7 strategic plan is?

8 A. No. And I made the comment to several people that
9 anytime they'd like to have some pump stations,
10 I'd really like to try to figure out how to give
11 them a few, but the reality is we do have them.
12 It is part of the process. It is part of the
13 system.

14 Q. Some of those old pump stations you've got, do you
15 actually have some that serve single neighborhoods
16 and things?

17 A. Yes.

18 Q. Am I right that you all don't do any of those for
19 a separate fee like he ended up talking about for
20 this?

21 A. Those pump stations are inside our district and we
22 operate them as part of our overall system.

23 Q. But you don't charge the neighborhoods separately
24 for them, right?

25 A. No.

1 Q. It's just folded into the system?

2 A. Right.

3 Q. I want to go to other examples. Now, there are
4 some -- Gene said he had 11 other private pump
5 stations in the system. Does ReWa own any
6 collector system?

7 A. No.

8 Q. When I say collector system, I may be butchering
9 the term. But I'm generally talking about the
10 system, the gravity system inside the
11 neighborhood?

12 A. Yes. The gravity systems inside these
13 neighborhoods we do not -- we don't have any --

14 Q. That's what the subdistricts do?

15 A. That's their charter.

16 Q. Are there other private utilities like Gene who
17 are like PSC-controlled who own collector systems
18 and pump stations and force mains? As I said,
19 they own the whole tamale?

20 A. Yes.

21 Q. Up here in your district?

22 A. Yes.

23 Q. There was a discussion yesterday about United
24 Utilities wasn't interested in coming to the
25 Upstate. Do you have a United Utilities facility

1 here in Western Carolina's district?

2 A. Actually if my memory serves me right, there are
3 either three or four.

4 Q. Where they own the whole tamale?

5 A. Yep.

6 Q. Let's move over and talk about -- back to the flag
7 lot route. You said Brian came to you and said,
8 "There's a discussion about going up here"?

9 A. Uh-huh.

10 Q. What happened? What was the result of that when
11 you learned about these projects?

12 A. The result of that was I basically told them that
13 I was not in favor of that route, and -- based on
14 the discussion we had earlier, the public issues,
15 as well as our own operational and future needs,
16 and that they really needed to be looking at
17 another alternative to those flag lots. And I --
18 we even I think discussed at the time about, "Has
19 anybody really ,looked at that?" And they went
20 out and looked at it and came back and basically
21 said, "You know, you were right. We need to find
22 another route because there are some construction
23 issues and operational issues in that area."

24 Q. So is it your -- and we'll talk to Brian about
25 this later. Is it your understanding that Brian

1 went out there and met with somebody from Mr.
2 Bolo's company and looked at it?

3 A. You might want to talk to Brian about that, but I
4 believe so, yeah.

5 Q. And this was in the August time frame, August,
6 2007?

7 A. That's correct, because that is -- we -- he'd come
8 to me in August about that.

9 Q. You know, just generally before we get to it, but
10 just a preview with Brian, I don't know if you
11 remember this or not. But you see where the river
12 bows into the middle of the plant there?

13 A. Right here (indicating)?

14 Q. Yes. You see the bow in it that comes toward you?
15 Keep going down, right there.

16 A. Yeah.

17 Q. And in military parlance, is that a draw in the
18 terrain?

19 A. Well, I don't have the contour lines, but it
20 probably would be.

21 Q. We'll look at them later, but are there some what
22 people have described as ravines on the property
23 through there?

24 A. I've not walked it. You'll have to ask Brian.

25 Q. We'll leave that for the people who went out

1 there. Did they come back to you and tell you
2 there were problems with the route? You just
3 talked about --

4 A. Yeah. After I pretty much said, "This is not
5 going to work. This is not going to be where we
6 need to put this thing."

7 Q. So what was the solution offered them? If that
8 route is not going to work, then what was offered
9 to them?

10 A. I tasked Brian and Dr. Graef with going back to
11 the folks and looking for alternate routes. And
12 I thought there were three other routes that were
13 offered up that they could consider, not that
14 those were the only routes that they could
15 consider, but those were the ones that we could
16 come to terms on. And I think they explored most
17 of those routes.

18 Q. Let's talk about -- there was a set of routes
19 called the Bishop proposal that was gone over
20 yesterday, which were Metro tie-in points?

21 A. Right.

22 Q. Was that a strong preference of yours, that they
23 tie to Metro instead of direct-connecting to Rewa?

24 A. Well, since they're in Metro's district, I would
25 have thought that that would have been the

1 appropriate approach to doing that.

2 Q. What do you know about the Metro tie-in points?
3 We looked at it in some detail yesterday and we'll
4 do it again with Brian. But just generally, why
5 didn't they tie into the Metro lines at the top;
6 do you know?

7 A. Only secondhand information that either Metro did
8 not want them to tie in their line for either
9 operational or political reasons. You know, they
10 -- I don't know other than that.

11 Q. Did there ever come a point in time where they
12 came back to you and said, "We need another
13 route"?

14 A. Right. I mean they came back I think -- they
15 didn't come back to me. I think they came back to
16 Brian and Dr. Graef. And --

17 Q. Then they came to you?

18 A. No. I think they started looking at other routes
19 because they had already been charged with trying
20 to work with these people. Our goal was to try to
21 help these people get service, you know, and if we
22 can do that and facilitate that, we will. But
23 we've also got to look at our own needs in the
24 process of doing that.

25 Q. How did the river route -- we call it the river

1 route. How did that get on the table? Tell me
2 that story.

3 A. I think I made that suggestion after they had
4 looked at this route. I thought they had looked
5 at a route -- and I could be mistaken, but I think
6 Metro has a tie-in over here (indicating)
7 somewhere.

8 Q. So then they even looked at going around inside
9 the plant?

10 A. Yeah. Right, and then I said, well, if they've
11 got to come through the plant, then they need to
12 come through the plant at a point where we're not
13 going to have to deal with those facilities if we
14 expand. And the river route seemed the only
15 optional route left.

16 Q. So basically that's in the flood plane basically?

17 A. Yeah. That was another reason, because it was in
18 an area that would not be utilized generally other
19 than for trunk lines and so forth.

20 Q. So we basically couldn't build anything down in
21 there anyway?

22 A. We wouldn't be down in there.

23 Q. There was some brief discussion late in the day
24 about, "Oh, we heard that there was infrastructure
25 and it wouldn't work after all." Was it your

1 understanding that the river route was doable?

2 A. Yeah. It was my understanding that the river
3 route was doable, and I thought I'd seen an email
4 from Mr. Bolo where it said they had looked at it
5 and had come to terms on it. And, you know, that
6 was where it was left with me. I never looked at
7 it any longer than that because I figured, well,
8 we got a route, let's go for it.

9 Q. Now, all this discussion of the river route and
10 stuff, you know, going through the different
11 routes and coming to the river route, that
12 predates the change in the regulation coming on
13 the table?

14 A. Yeah.

15 Q. Why did the river route not happen; do you know?

16 A. I have no idea.

17 Q. We'll ask some people. But there was a time where
18 the river route was there and if they had gotten
19 it done, that would have come in before the
20 regulation ever discussed any change?

21 A. Yeah. There was a window of opportunity for that.

22 Q. You had mentioned one time I think you all were at
23 the COG. Tell me this. Did you go to the COG and
24 have a discussion with Scott and with Jay about
25 the window of opportunity on the river route?

- 1 A. The thrust of the meeting wasn't that, but I did
2 explain to them that there was a small window of
3 opportunity between August and November or
4 December where if they had gotten everything in,
5 gotten it approved, they would have got what they
6 asked for.
- 7 Q. What was Scott's reaction to that?
- 8 A. Well, they were somewhat upset that I even brought
9 it up. But the reality is, there was a window
10 there. It wasn't a great big window, but there
11 was an opportunity for that to occur.
- 12 Q. Was Scott upset at Jay at that meeting?
- 13 A. I think Scott was upset with me at that meeting.
14 I'm not sure he was upset with Jay.
- 15 Q. What did Jay say about the window of opportunity?
- 16 A. It was my understanding that he concurred, yeah,
17 there was a small window there. Now, whether they
18 could react in that period of time, I don't know.
- 19 Q. Let's shift and talk about the regulation. I
20 don't know exactly what I said when I stood up
21 yesterday, but I said something about there was a
22 policy about private line ownership on ReWa
23 property. Did you say that there actually weren't
24 any private lines on ReWa's property before this?
- 25 A. No. There were no lines, so there wouldn't have

1 been a policy.

2 Q. So there wasn't even a policy?

3 A. Huh-uh.

4 Q. I know we talked about there were some other pump
5 stations, privately-owned pump stations, Gene's.
6 Was there actually a policy, a written down policy
7 on how ReWa would treat private pump stations
8 before this regulation?

9 A. No.

10 Q. How did it come up with you or with the Board to
11 look at a policy on privately-owned pump stations?

12 A. Sometime in late October, Brian brought to me, you
13 know, sort of a stack, I don't know five-six of
14 these private-public -- what we call private-
15 public deals, that the district would own the
16 collector system and then there would be a private
17 force main pump station, and was concerned about
18 the proliferation of that approach and wanted
19 guidance on it. And I said, well, Brian, you
20 know, maybe we need to chat with the Board because
21 they had had some things in the past about the
22 relationship of the private vendor to the
23 community and the cost. I knew that was out
24 there. And I said, well, let's just go ask the
25 Board what they want to do.

1 Q. Let me get that teed up a little better. The part
2 you said this -- when he came in there with a
3 stack, this was a couple months or something after
4 he came to you about --

5 A. It was late October because I believe we went in
6 to the Board in November or early December.

7 Q. But in relation -- so when he came to you with
8 these projects at first, it was like in August?

9 A. No, no, no, no. He came to me in August to talk
10 about this line.

11 Q. Right. That had to do with just these two?

12 A. Yeah. That was just that project there. It had
13 nothing to do with pump stations.

14 Q. Then he came to you in late October with a stack
15 of private pump station projects?

16 A. Yeah, that's correct.

17 Q. When we were talking about the organization, we
18 really didn't talk about your relation to the
19 Board. When you said you got a stack of private
20 pump station applications, tell me your thinking
21 of how this goes to the Board. Why does this need
22 to go to the Board?

23 A. Well, my driver was that there had been some
24 preliminary comments made -- expressed to me by a
25 Board member or two about the fact that people

1 were paying an ad valorem tax and then they were
2 paying a fee for the pump station force main and
3 their costs -- they were concerned -- they didn't
4 like the idea. And I said, well, you know, I know
5 that's out there. I don't know how big a deal it
6 is, but I think what we need to do is go to the
7 Board, at least make them aware that there is now
8 several of those projects that are -- you know,
9 have been submitted and ask them for guidance on
10 it because that was a concern that was expressed
11 to me.

12 Q. I want to stop and go back and do a little piece
13 of homework on Board responsibilities versus staff
14 responsibilities.

15 A. Right.

16 Q. Before we go on and talk about the pump station
17 policy. This issue of granting an easement or an
18 encroachment permit across ReWa property, that's a
19 Board function, isn't it?

20 A. Oh, yeah. It -- even if I had agreed with the
21 staff's proposal, I wasn't the final say-so. It
22 would have had to have gone to the Board. They're
23 the only people who can give that easement across
24 that property and approve it. So, you know, staff
25 can recommend a lot of stuff, but when it gets to

1 the Board, they have the final say.

2 Q. But is it generally true you can say no, but you
3 couldn't say yes to a property right in the Rewa
4 property?

5 A. Right.

6 Q. Let's go back to talk about the policy of the pump
7 stations. You had said something about -- and I
8 apologize. I was thinking about my next question
9 while you were talking. You said something about
10 there was something on the radar screen about
11 homeowners being upset with rates and stuff. Tell
12 me about that again.

13 A. Well, that -- I mean that was in some casual
14 conversation. You know, you really need to chat
15 with the Board about that, but a couple of them
16 had -- I think they had gotten some phone calls
17 maybe from a delegation member, maybe from a
18 homeowner, maybe from both.

19 Q. I mean just to be clear, the delegation -- you
20 mean the legislature?

21 A. Legislative delegation; about why are they paying
22 twice? They're paying an ad valorem tax in here
23 and then they're paying a private vendor for the
24 pump station and force main, whereas traditionally
25 it's all owned by one group. It's -- and it's

1 usually in the public sector.

2 Q. I think Mr. Willis is going to talk about this,
3 but I want to go over that piece about the ad
4 valorem. Let's just take River Trace, for
5 example. If River Trace is in Metro, let's talk
6 about who they pay for their sewer. Who gets paid
7 for what? Who do they pay for their collector
8 system?

9 A. Metro.

10 Q. And they pay that through a tax?

11 A. At the time it was -- yeah, and it's still through
12 a tax.

13 Q. And if Condor owned the pump station and force
14 main, who do they pay for that piece of their
15 sewer system?

16 A. Well, it would depend on the agreement. And I'm
17 not privy to what it is, but generally, from what
18 I understand, it would go to the homeowner
19 association.

20 Q. So the homeowners pay directly for that to Condor?

21 A. Or a private vendor.

22 Q. Or to their own develop and it pays; okay. And
23 the homeowner, just to be clear, they're paying
24 the taxes, too, right?

25 A. Right.

- 1 Q. In addition to that, somebody would pay a tap fee
2 to Metro, too, right?
- 3 A. They pay a tap fee to Metro. When they tie on --
4 they would pay a connection fee to us when they
5 tie on. And then we would bill them for the cost
6 of maintaining our trunk line system and
7 processing fee.
- 8 Q. I'm going go back. ReWa is going to charge
9 everybody down here, too, for the cost of the
10 trunks in the plants, right?
- 11 A. That's correct.
- 12 Q. And you all's money comes through -- it comes on
13 your water bill, but it's a separate charge,
14 right?
- 15 A. It's a fee.
- 16 Q. It's a usage charge?
- 17 A. That's correct.
- 18 Q. And it's based on how much water you use, right?
- 19 A. That's correct.
- 20 Q. Scott had something about like, "We can't sell our
21 property if it costs twice as much as the property
22 next door." Ray, do pump station systems always
23 cost more than gravity systems?
- 24 A. Pump -- yes. That's why you want to do gravity.
- 25 Q. Now, no matter how the money comes out, whether it

1 comes out in taxes, fees, or usage charge, or
2 anything, ultimately the homeowner pays all that
3 money?

4 A. The homeowner is going to pay it all.

5 Q. You guys got a tap fee, too, right?

6 A. We have a capacity fee, \$2,500 capacity fee.

7 Q. I lost track, so let's get back to where we were.
8 When you took it to the Board and said, "I've got
9 a stack of private pump station things," what
10 happened at that point?

11 A. They immediately gave us guidance to work with
12 these developers, but we want to hold up on
13 approving the pump station portion of their
14 proposal until such time as we can come up with a
15 firm policy, i.e., regulation.

16 Q. And did the work with the staff on getting these
17 things as timely built continue?

18 A. Yes, they did.

19 Q. And when did this come up? Was it at the November
20 Board meeting?

21 A. If my memory serves me correctly, it'd been the
22 November Board meeting, the December Board meeting
23 at the latest. I think it was the November Board
24 meeting.

25 Q. And at that time, there wasn't any idea about how

1 this was going to ultimately -- what the
2 regulation was going to look like, right?

3 A. No.

4 Q. Now, the regulation ended up getting passed in May
5 of 08?

6 A. I believe it was May or June. It may have been
7 June.

8 Q. I think it's up there. I think it's got a May
9 date on it.

10 A. A May date?

11 Q. Yeah, it does.

12 A. It does.

13 Q. It's one of the exhibits. We're doing pretty good
14 without the exhibits so far. Let's try to keep
15 going. I want to overview just the time during
16 which the regulation was drafted. If you could
17 just tell us the story a little bit about who was
18 involved in that, who you all talked to, and then
19 I'll help you with some questions as you go.

20 A. The process?

21 Q. Right.

22 A. Okay.

23 Q. Just generally. I mean first of all, it had to be
24 drafted, right?

25 A. Yes, it had to be drafted. Then it was

1 communicated to the districts. I believe Condor
2 may have gotten contacted on that since they --

3 Q. When you say the districts, you're talking about
4 Metro, Taylors, all those guys?

5 A. The districts in the cities. There was a public
6 hearing scheduled they conducted in January.

7 Q. That was the one at County Square?

8 A. At County Square. There was --

9 Q. Ray, were any of the developers at that meeting?

10 A. Not that I can remember.

11 Q. It was a public meeting, wasn't it?

12 A. It was a noticed meeting, yes. There was notices
13 in the news and --

14 Q. There was another public hearing in April,
15 something like that?

16 A. They took input, and based on the input they went
17 back and made some modifications to the document
18 and decided to hold another public hearing.

19 Q. When you say they and the document, you mean the
20 Board?

21 A. The Board.

22 Q. And the regulation, right?

23 A. The Board and the regulation, that's correct.

24 Q. That first public meeting, Gene was there, right,
25 and he spoke?

- 1 A. Gene McCall was there.
- 2 Q. Do you recall him sending a letter to the Board
- 3 threatening to sue them before then?
- 4 A. There was a letter. I don't know whether it was
- 5 -- Gene sent the letter or --
- 6 Q. Do you remember Sandy Stern?
- 7 A. Sandy Stern. Whether it was sent by Gene or -- it
- 8 wasn't sent by him individually. I think his
- 9 organization sent the letter.
- 10 Q. Condor sent the letter?
- 11 A. Condor sent the letter.
- 12 Q. In fairness, when I say Gene, I'm talking about
- 13 Condor.
- 14 A. Right.
- 15 Q. Do you remember generally who made comments at
- 16 that meeting? Gene?
- 17 A. Gene was there. I think a Dixon --
- 18 Q. Kelly?
- 19 A. Kelly; the gentleman from Gantt were there.
- 20 Q. Those last two you mentioned, Kelly, Mike Dixon?
- 21 A. And Mike Stansell.
- 22 Q. Mike Stansell. Those all three are people who run
- 23 subdistricts, right?
- 24 A. They run -- they are managers for various
- 25 subdistricts.

1 Q. At the second public hearing -- well, in between,
2 before and after those, were drafts -- were there
3 meetings held with subdistricts and Condor and
4 other people, including the delegation, about the
5 regulation?

6 A. Yes. There was communication about the
7 regulation.

8 Q. Some of it was by you and some of it was by the
9 Board?

10 A. Yes.

11 Q. I don't want to get out the drafts of the
12 regulation, but there's all this -- I'll tell you
13 what we can do with the regulation, one thing,
14 because I just want to confirm. There's all this
15 discussion about this thing's been cooked and
16 whatnot. I want you to look at this regulation
17 and tell me if this is the right regulation. Is
18 that the pump station agreement? Let's get the
19 right document up there. I handed you Exhibit 2
20 from yesterday.

21 A. This is Exhibit 3.

22 Q. Without my glasses, you've got --

23 A. I got my glasses. (Reviewing document.) I
24 believe this is the same document that's in the
25 regulation today.