

State of South Carolina)
) Court of Common Pleas
County of Newberry)

2015-CP-36-00120

Oien Family Investments, LLC)
 vs.) Transcript of Record
)
)
Piedmont Municipal Power)
Agency)
 Defendant)

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SC Court of Appeals

March 28th and 29th, 2016
Newberry, South Carolina

B E F O R E:

Honorable Lawton R. McIntosh, Judge

A P P E A R A N C E S:

Tom Pope, Esq.
Attorney for the Plaintiff

Bruce Bannister, Esq.
Luke Burke, Esq.
Attorneys for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(PW) Mike Frazier

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(PW) Lynn Oien

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1 (DW) Marc Regier

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EXHIBITS

Plaintiff's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>Page#</u>
1	1	GIS Map of Oien Property	X	116
2	2	Invoice for house plans	X	123
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5	5	Photos of Expert Bill Rogers	X	130
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7	7	Email from West to Oien 2/25/13	X	133
8	8	Letter of PMPA to Oien 8/14/14	X	151
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15	15	PMPA Report Transmission Line Rt.	X	24
16	16	Map of Oien Property PMPA185	X	152
17	17	Email Exchange June 2013	X	152
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24	Right of Way Easement		X	152
25	PMPA Electric Trans. Guidelines		X	152
26	PMPA Right of Way Estimate		X	152
27	Graydon Appraisal Cover Page		X	152
28	Email Exchange 3/28/14		X	152
29	Email, Frazier to Regier 3/31/14		X	152
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31	Email of Frazier to Smoak 9/29/14		X	33
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33	PMPA Report on Route Selection		X	152
34	Email dated 6/10/13		X	65
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38	Email Frazier to Regier 7/25/13		X	152
39	Memo of Counsel for Oien 10/1/14		X	63
40	Report of Expert Bill Rogers		X	84
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6	Email-Cobb-5/21/13		X	418
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9	Email-Marc R. 9/25/13		X	418
10	Email-Marc R. 10/29/13		X	418
11	Email-Marc R. 11/4/13		X	418
12	Email-Marc R. 11/12/13		X	418
13	Email-Marc R. 11/14/13		X	92
14	Email-M. Frazier 3/26/14		X	418
15	Email-M. Frazier 6/14/13		X	89
16	Email T. Abraham 7/5/13		X	420418
17	Email M. Frazier 7/8/13		X	90
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24	Email-Frazier		X	92
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Court's

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2	Transcript A. Cobb	X		397
3	Deposition of M. Rogers	X		481

1 THE COURT: Good morning.

2 MR. POPE: Good morning.

3 MR. BANNISTER: Good morning.

4 THE COURT: I have read your submissions. And, Mr.
5 Pope, would you tell me the issues that is for me to
6 decide today?

7 MR. POPE: Yes, sir. Your Honor, the issues to be
8 decided. One, is the taking for a public use. And that
9 is one position that we at least contend that is for one
10 customer, Kraft Foods, and it is not for public use as
11 defined by the case law. But secondly, equally, if not
12 more importantly is the case of Southern Development
13 versus South Carolina Public Services. I sent you the
14 brief, I didn't send the case. But the critical points of
15 that case and I will just summarize them right quick. In
16 that case the Court held, the lower Court, Master in
17 Equity, later a Circuit Judge, ruled that where a
18 defendant, where the defendant makes a choice of route for
19 a high voltage transmission line lacks a factual
20 foundation where that defendant in the route selection
21 process gives no concrete consideration to the land
22 acquisition cost, instead assuring, assuming that all land
23 in the general area has the same value. And where the
24 cost estimates prepared for alternate routes proposed do
25 not include land acquisition cost.

1 THE COURT: In that case, according to my notes there
2 are seven factors in the case and I have those factors
3 down, availability, cost, build, acquire, environmental
4 factors, public safety considerations, liability,
5 aesthetics.

6 MR. POPE: Of course, that case did say that that
7 wasn't an exclusive list. They also said that the
8 aesthetics, that case specifically relied on the
9 aesthetics being important and the anticipated use of the
10 property being important. And the failure to consider the
11 cost, all of those factors was arbitrary, capricious and
12 lack of factual foundation and it was not allowed.

13 THE COURT: You are talking about the landowners
14 anticipated use of the property?

15 MR. POPE: Sir?

16 THE COURT: The landowners anticipated use of the
17 property?

18 MR. POPE: Yes sir, the landowners use.

19 THE COURT: Okay. Mr. Bannister, did you read those
20 factors?

21 MR. BANNISTER: Judge, I agree that that is what he
22 wants you to consider.

23 THE COURT: Okay.

24 MR. BANNISTER: That is the case that was reversed
25 that granted estoppel, they said, yes, we agree.

1 THE COURT: Right, based on representation.

2 MR. BANNISTER: Generally you have to consider those
3 factors in determining which route we are going to choose.
4 We disagree with the application that they use that on a
5 specific piece of property you have to consider alternate
6 routes once you pick the route. Once you pick the route
7 you don't have to consider every piece of property in the
8 same way. In other words, Southern Development was about
9 the route, whether you picked route A which was from the,
10 from point A to point B, or route B which went entirely
11 off route A, somewhere else, or route C which was an
12 entirely different route. And in this case, you are going
13 to hear testimony, PMPA considered five different routes
14 and they settled on one crossing the Oien's property. And
15 that is all they have to do. We don't agree that once
16 they decide they are going to cross the Oien's property
17 they then have to pick, they have to do an additional
18 route and apply those factors to several different routes
19 across one owner's property; they can just pick the route
20 that they think is best and go forward from there.

21 THE COURT: Okay. Any other issues from your
22 standpoint?

23 MR. BANNISTER: Judge, it was my understanding that
24 they have abandoned the lack of accessing public use or if
25 that is, if they are, in fact, pursuing that, at some

1 point in this trial both parties, I accept they are going
2 to argue for attorneys fees. If they are going on the
3 lack of public use, because within a substation to service
4 the City of Newberry, they are saying that is not a public
5 use, I think that would be a consideration.

6 THE COURT: The arguments as I understand it,
7 apparently, primarily is going to service some, Kraft.

8 MR. BANNISTER: Kraft.

9 THE COURT: And my understanding from Mr. Pope's
10 group, since this is the only customer, that is not a
11 public use. Is that a correct statement, in very
12 simplistic terms?

13 MR. POPE: Yes, sir.

14 THE COURT: Are you pursuing that issue in this case?

15 MR. POPE: Yes, sir.

16 THE COURT: You are?

17 MR. POPE: Yes, sir.

18 THE COURT: Okay.

19 MR. BANNISTER: And despite all of the case law that
20 says a single customer supplied with electricity is a
21 public use, despite all of that case law and, okay. He is
22 arguing against that case, that is fine.

23 THE COURT: I just want to make sure, on the record,
24 everybody knows what we are fighting about today.

25 MR. BANNISTER: Thank you, Your Honor.

1 THE COURT: Mr. Pope, are you ready to call your
2 first witness?

3 MR. POPE: Yes sir, we are. We would call Mike
4 Frazier. Also, I offer for the Court, I have got a set of
5 exhibits.

6 THE COURT: Let's go ahead and do that.

7 MR. POPE: I gave it to the Court Reporter.

8 THE COURT: Is there any objection, Mr. Bannister, to
9 the proposed exhibits from the plaintiff? For the record,
10 any objections, Mr. Bannister, to the exhibits?

11 MR. BANNISTER: No, Your Honor.

12 THE COURT: And those are 1 through 44, is that
13 correct?

14 MR. POPE: Yes, sir.

15 THE COURT: And, Mr. Bannister, 1 through 26.

16 MR. BANNISTER: Judge, why don't we deal with them
17 one at a time.

18 THE COURT: That is why I was looking at it. That is
19 fine. All right, Mr. Pope.

20 MIKE FRAZIER, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Pope:

24 Q Mr. Frazier, you live in Greenville County?

25 A Correct.

1 Q Sir?

2 A Correct.

3 Q What's your position?

4 A At PMPA, I am the Director of Engineering and Power
5 Supply.

6 Q You've had that job about ten years?

7 A I've had that title for about ten years.

8 Q And during that ten-year, well, let's back up. PMPA
9 is called the Piedmont Municipal Power Agency, is that
10 right?

11 A Yes.

12 Q And your members are ten, approximately ten
13 municipalities that sell electricity?

14 A Ten municipal utilities, yes.

15 Q That would include Greer and Newberry's, eight of
16 them?

17 A Yes.

18 Q And in those ten years, your company, PMPA, has been
19 involved in four, prior to this, four transmission line
20 projects?

21 A Five.

22 Q And you, I think you told us you spent about five
23 percent of your time on transmission line projects?

24 A Over the course of the year.

25 Q Sir?

1 A Over the course of the year depending on what the
2 project requires.

3 Q Have you had any, you've not had any training in the
4 handling of a condemnation case, have you?

5 A This is, as far as training, it's been on the job.

6 Q Well, you testified in your deposition as far as
7 training, you depend on your lawyer to guide you in
8 dealing with property owners?

9 A Yes.

10 Q And you don't have, do you have any expertise in
11 right-of-way acquisitions?

12 A Just the transmission lines that I've already done.
13 Like I said, it's been on the job.

14 Q Are you a member of any right-of-way associations?

15 A No.

16 Q Are you familiar with the International Right-of-Way
17 Association?

18 A I have heard of it because of this transmission line,
19 but prior to that, no.

20 Q Well, you've heard that Mr. Rogers, our expert, is a
21 member of that, correct?

22 A Yes.

23 Q That's the first time you've heard of it?

24 A Yes.

25 Q All right. Now, are you familiar with being

1 certified as a right-of-way acquisition expert?

2 A Again, just recently.

3 Q And Mr. Rogers is certified, do you know that?

4 A Yeah.

5 Q Okay. Now, you've never been on the Oien property,
6 correct?

7 A I have.

8 Q You have. All right. Let's look it, get an overview
9 here. You've got the Duke Power Line that comes north and
10 south, is that correct?

11 A That is correct.

12 Q And that's the power source for the project that
13 we're here about today?

14 A Yes.

15 Q And the substation is built right here beside Kraft
16 Food?

17 A Yes.

18 Q And the route of the thing, of course, it wasn't
19 exactly like this, but that's the general route, it's 2.1
20 miles?

21 A I believe that's correct.

22 Q And the Oiens are the very first property you cross
23 from that power source, is that right?

24 A Correct.

25 Q So you had many options in, to tap onto that Duke

1 line, correct?

2 A We had, from that side of town, there were a few
3 options.

4 Q All right. But you had, would you agree that in
5 about 1500 to 2000 feet that Duke transmission line that
6 runs through the Oien edge of their property?

7 A That is correct. However, Duke Power would only give
8 taps at either mid-span or at a pole, I would think.

9 Q All right. You don't have any training in how to
10 deal with landowners to determine what their rights should
11 be; do you inform them about such things as that?

12 A Other than common knowledge, no.

13 Q Okay. Now, did you ever have contact with the Oiens
14 before November of 2013?

15 A Not direct contact, no.

16 Q All right. What contact, the project started in
17 February of 2013, is that right?

18 A PMPA had a committee meeting of its Board in March
19 that approved the project.

20 Q Sir?

21 A PMPA had a committee meeting where that project was
22 approved by the committee and recommended to the Board in
23 March of 2013.

24 Q Early March?

25 A Yes. I can't remember the exact date, but in March.

1 Q Now, would you, did you not write a letter to the
2 landowner affected by this project?

3 A The City of Newberry went out to contact all the
4 property owners.

5 Q So you delegated that to them?

6 A Yes.

7 Q Did you give any instructions to the City of Newberry
8 about how they would, how to talk to these landowners and
9 what they were to tell them?

10 A I did not get in any direct discussions since they
11 deal with other right-of-way with their electric and water
12 utilities.

13 Q Sir?

14 A Newberry deals with right-of-way acquisition for
15 their own system.

16 Q That's distribution, right?

17 A Yes, it is.

18 Q Now, distribution line is just getting power to some
19 consumers, some homeowners?

20 A It is talking to the property owners of those
21 affected.

22 Q The different, and the issues with a transmission
23 line are totally different from a distribution, aren't
24 they?

25 A They are similar and different, yes.

1 Q Well, a transmission line, in this instance, your
2 transmission line is for a pole 90-feet high, wasn't it?

3 A Yes, roughly. I don't think everyone is 90.

4 Q 80 to 100?

5 A Sure.

6 Q Now, are you aware of our Constitution in South
7 Carolina that provides that imminent domain is a very
8 powerful right that has to be cautiously exercised, would
9 you agree with that?

10 A I would agree.

11 Q And that you're taking somebody's private property,
12 correct?

13 A If required.

14 Q Well, you either acquire it or condemn it, but it's
15 you're taking private property?

16 A I meant required.

17 Q Sir?

18 A Required. We only do it if it's required.

19 Q In any event, it's private property that you're
20 taking that a homeowner would have a lot of questions
21 about that, wouldn't it?

22 A Potentially, yes.

23 Q But you didn't send any notification to the Oiens or
24 any other homeowners about the fact that, hey, we got a
25 line that's got to run generally these two miles to the

1 Kraft Plant, you didn't do that?

2 A PMPA did not send any directly to the customers. It
3 was all relayed to the City of Newberry and disbursed
4 through them.

5 Q Well, you've seen, you've gathered all of the
6 documents in this case for your lawyer to present to us,
7 486 pages, didn't you?

8 A Mostly between yeah, the City, yes.

9 Q And that you, there's no indication in there that
10 anybody wrote the Oiens about this project, correct?

11 MR. BANNISTER: Your Honor, I want to object. It is
12 irrelevant whether somebody is called or talked to the
13 Oiens in this case. They raised two issues, route
14 selection, and those are the factors that would be taken
15 into account. The landowner's opinion is irrelevant and
16 public use and you don't have to contact the landowner
17 about public use. So unless there's a different issue Mr.
18 Pope is raising, I don't think questions about the contact
19 and how it happened or what letters were written to the
20 Oiens is relevant for Your Honor today related to a
21 permanent injunction stopping this right-of-way.

22 THE COURT: Mr. Pope?

23 MR. POPE: Judge, these questions go to his route
24 selection.

25 THE COURT: I note your objection. I can figure it

1 out.

2 MR. BANNISTER: Okay. Thank you.

3 Q There's no letter to the Oiens about the nature of
4 the project or your general scope of it or anything else,
5 is that right?

6 A That is correct.

7 Q Okay. And the person that you delegated it to at the
8 City is Mr. Mark Regier?

9 A Yes.

10 Q Of course, Mr. Regier is a very nice person, but he
11 has no experience in transmission, acquisition, does he?

12 A Not transmission, no.

13 Q And never done one before this, correct?

14 A No.

15 Q And you didn't give him any instructions, did you?

16 A Other than just, you know, deal with the customers
17 like they normally would, no.

18 Q Well, if he'd never done it before, what's normal?

19 You wouldn't have, you hadn't, you gave him no advice?

20 A For acquiring right-of-way. That's the advice.

21 Q You gave him no advice?

22 A For transmission or distribution, talking to the
23 customers would be the same, calling them up, talking to
24 them.

25 Q Now, are you aware that Mr. Oien found out about the

1 transmission line from a neighbor of his?

2 A I've heard him say that.

3 Q And have you saw the email that the neighbor wrote
4 him?

5 A I have not.

6 Q You don't recall seeing the Plaintiff's exhibit 7?
7 I'll show it to you.

8 A Okay.

9 Q You have seen it?

10 A I have not.

11 Q Okay. So you never heard that Misty West contacted
12 the Oiens and said that there was a potential line that is
13 going to be run through their property. And I told that,
14 I, being Misty West said, there's no way you would
15 willingly give them an easement to cut your property in
16 half. You don't remember hearing about that?

17 A In hearing the depositions.

18 Q You heard about the email she sent, but you haven't
19 seen it, is that what you're saying?

20 A That is correct.

21 Q I show you, I believe, it's exhibit 15. You have
22 seen that, have you not?

23 A I have.

24 Q And this is a report issued by the, your engineering
25 firm?

1 A At the time this was presented, they were not
2 employed by PMPA.

3 Q Okay. Well, they issued a report February 28th,
4 2013?

5 A Yes.

6 Q And in that report, they set forth what would be the
7 start of the project, correct?

8 A This was the proposal made to the PMPA Transmission
9 Committee to get approval for the project.

10 Q Okay. And look at page marked PMPA 172 on that
11 exhibit 15. Is that right? You got it?

12 A I got 172.

13 Q And this is the preliminary, a statement of costs,
14 right?

15 A A preliminary statement, yes.

16 Q And you never seen another statement after this, have
17 you?

18 A No, not like this, no.

19 Q Since that time, correct?

20 A That's correct.

21 Q All right. And in there they've got right-of-way
22 purchase \$100,000.00, is that right?

23 A That's what's listed.

24 Q And that's based on 20 acres at \$5,000.00 an acre?

25 A Sounds about right.

1 Q Okay. And then they got right-of-way surveying
2 \$292,500.00, and then steel poles, the identical amount of
3 \$292,500.00, is that right?

4 A Yes.

5 MR. POPE: Okay. I'd offer exhibit 15.

6 THE COURT: Any objection?

7 MR. BANNISTER: No, Your Honor.

8 THE COURT: Admitted.

9 (Whereupon, Plaintiff's exhibit No. 15 was admitted
10 into evidence.)

11 Q I'll show you now exhibit 14. Have you ever seen
12 that exhibit?

13 A Yes.

14 Q The Transmission Committee voted on March 4th, 2013
15 to do the line, is that right?

16 A It was March 5th.

17 Q All right. Now, at that time, neither PMPA nor the
18 City had ever been to any landowner's property, is that
19 correct?

20 A I know PMPA hasn't.

21 Q Has not?

22 A Has not.

23 Q Okay. And you don't know anybody involved in this
24 project that had been on any landowner's property when the
25 line was approved, is that right?

1 A That I'm aware of, no.

2 Q Okay. Now, look on page PMPA 008. The first
3 paragraphs says, the City has received notice from their
4 largest customer of a plan to increase, facility
5 electrical demand in the immediate future with plans to
6 further expand the electrical demand over the course of
7 the next few years. That was the basis for the project,
8 is that right?

9 A That is what caused Newberry to have to build the
10 substation.

11 Q And that was based on Kraft Foods, that's the largest
12 customer in the City, is that right?

13 A That's the one they're talking about.

14 Q Now, you turn back to page PMPA 012. You'll see a
15 proposed route for all through there, is that correct?

16 A Yes.

17 Q That's a straight line right through the middle of
18 the Oien property, correct?

19 A That is the original proposed route.

20 Q And the final route is essentially the same but very
21 minor modifications, correct?

22 A It's similar, yes.

23 Q Virtually identical?

24 A Yes.

25 Q All right. Now, on there there are, it's a little

1 faded, but you can see it. There are dotted lines showing
2 alternate routes, A1, A2, A3, B1, B2, B3, is that correct?

3 A Yes.

4 Q And B1, B2, B3 were routes across the adjoining
5 landowner to the Oiens to the south, is that right?

6 A Yeah. I can't see the exact, the B's. But yeah, and
7 they're somewhere in there.

8 Q Sir?

9 A I can't exactly see without my glasses.

10 Q Do you need your glasses?

11 A So, I don't have them with me, so.

12 Q Are they over there?

13 A No, I don't have them with me.

14 Q Okay.

15 A But I'm assuming you're talking down here.

16 Q All right. Down here is B1, B2, B3.

17 A Okay.

18 Q And you never saw any route studies analyzing factors
19 as to B1, B2, B3, is that right?

20 A Our consulting engineer did not, you know, look at
21 those routes. We discussed them but no, there were no
22 studies done.

23 Q And you didn't do any studies?

24 A No.

25 Q All right. And as to A1, A2, A3, those routes all go

1 through the southern part of the Oien property, correct?

2 A Yes.

3 Q And you haven't seen any route studies of those three
4 routes?

5 A Not official route studies, no.

6 Q Well, meaning studies that analyze the factors that
7 the Court was talking about, aesthetics, cost of
8 acquisition, cost of instruction, safety, reliability and
9 those things, right?

10 A That's right. We discussed them, the consulting
11 engineer and I consulted.

12 Q And in those 486 pages of documents you produced for
13 us in this case, there's not a word about those route
14 studies, is there?

15 A No.

16 Q And you never met on the property with Ms. Oien, did
17 you?

18 A No.

19 MR. POPE: Your Honor, we'd offer exhibit 14.

20 THE COURT: Any objection?

21 MR. BANNISTER: No, Your Honor.

22 THE COURT: Admitted.

23 (Whereupon, Plaintiff's exhibit 14 was admitted into
24 evidence.)

25 Q And you never made an inquiry as to about what the

1 anticipated use of the property was for Mr. and Ms. Oien,
2 did you?

3 A No. Although, I mean, the City told us they were
4 going to build a home there.

5 Q And you didn't know at any time in this process that
6 the Oiens had already built, spent \$101,000.00 dollars
7 plus on a home site?

8 A No, we did not know that.

9 Q And did you, did you know where the home site was
10 going to be?

11 A Looking at the aerial map, we thought it was going to
12 be in the middle when it was suggested by the property
13 owner that we go to the northern route. And we started
14 drawing those maps. That's when we were told that the
15 home site was going to be up in that northern region and
16 that we need to move it again.

17 Q And you understand that it's perfectly understandable
18 for a landowner to want to look at every option that's out
19 there when a power line is going to be affecting their
20 property?

21 A I would see that.

22 Q Sir?

23 A Yes.

24 Q So you had a option when the southern route was
25 drawn, was it not, by Mr. Cobb?

1 A It was.

2 Q And that would have been about 1600 feet from their
3 home site?

4 A Approximately.

5 Q And the middle route is only a couple to 300 feet
6 from the home site?

7 A I think it's a little more than that.

8 Q So far?

9 A I think 4 or 500.

10 Q 400 or 500?

11 A It depends on where you put the line at.

12 Q Now, you'd never done a transmission project in
13 Newberry County before?

14 A That's correct.

15 Q And the person that made the decisions about the
16 routing of this line were you and your boss?

17 A As far as the final route, my engineer is the one who
18 said this would be the route, we would approve that.

19 Q Okay. You made the decision, you and your boss, not
20 an outside engineer, correct?

21 A Again, Alan Cobb would be the one to work out the
22 route with us. Once he's fine with it, then we would
23 approve it, yes.

24 Q Okay. But my question is you, PMPA, are charged with
25 building distribution, I mean, transmission lines. And

1 you and Mr. Smoak, your boss, are the ones that approved
2 it?

3 A We would have final approval, yes.

4 Q Well, now, in exhibit 15, we've already introduced
5 it, but there's no discussion at all about the factors in
6 that report, is there? This report on page PMPA 170 lists
7 environmental impact, land use, impact to individual
8 property owners, cost of the route, visual impact. It
9 doesn't make, it makes no comparison or comment about how
10 those factors affect Mr. Oien's property?

11 A Again, this was a proposal for the Transmission
12 Committee to approve. This is not a final report by any
13 means.

14 Q Okay. But no final report was ever issued on those
15 topics, was it?

16 A Not in those matters, no.

17 Q Now, is it not true that the route that was drawn on
18 exhibit 14 was based on Google Earth and the Newberry
19 County GIS?

20 A Yes.

21 Q It was based on no conversations with any landowners,
22 correct?

23 A Because at that time, no contact had been made. The
24 project had not been approved.

25 THE COURT: Based on Google Earth and what else?

1 MR. POPE: And the Newberry County GIS maps.

2 Q Of the aerial photographs, correct?

3 A Yes.

4 Q Now, I'm going to show you Plaintiff's exhibit 12
5 which was exhibit 2 to your deposition. Do you recognize
6 that?

7 A Yes.

8 Q That's the southern route?

9 A Yes..

10 Q And that was drawn by Mr. Cobb?

11 A Yes.

12 MR. BANNISTER: Which number is that, Your Honor?

13 THE COURT: No. 12.

14 MR. BANNISTER: No. 12. Thank you.

15 MR. POPE: Exhibit 12.

16 Q And is this a bigger copy of the same map and it's
17 slightly clearer, maybe?

18 A I think so.

19 Q Okay. So the route would be to tap into Duke below
20 their driveway, correct?

21 A And this is drawn without any Duke reference.

22 Q I know but that's where it started right there--

23 A That's where--

24 Q --and it went down the southern boundary and beside
25 the pond?

1 A The southern boundary, yeah.

2 Q All right. So you've never seen any route analysis
3 of the southern route, correct?

4 A Other than when we had permission to walk it and our
5 engineer looked at it and determined that this was going
6 to be a very difficult build if we took the southern
7 route.

8 Q But, and no analysis was done, correct?

9 A In my engineer's head.

10 Q Sir?

11 A And just in my engineer's head.

12 Q In your engineer's head?

13 A My engineer's, Alan Cobb.

14 Q Let me show you exhibit 31. This is an email you
15 wrote in September of '14, is that right?

16 THE COURT: What exhibit number is that, please, sir?

17 MR. POPE: Number 31, Your Honor.

18 Q And you wrote to your boss the end of the first
19 sentence, Mark, Mr. Regier reported to you that the Oien
20 want to settle. Money isn't an issue and the line needs
21 to go on the south side. They want to get all parties
22 together with decision-making so a solution can be come to
23 at this meeting. You saw that?

24 A Yes.

25 Q And you're aware from other references--

1 MR. POPE: We offer exhibit 31, Your Honor.

2 MR. BANNISTER: No objection.

3 THE COURT: Did you say no objection?

4 MR. BANNISTER: No objection.

5 THE COURT: I'm sorry. I was taking notes.

6 (Whereupon, Plaintiff's exhibit 31 was admitted into
7 evidence.)

8 Q And you're aware that the Oiens said then in that
9 message you got that the line needed to go to the south
10 side?

11 A That's what was in there.

12 Q All right. But you've never had an analysis that
13 would compare the southern route with the middle route,
14 have you?

15 A Again, only with my engineer, Alan Cobb.

16 Q Are you saying you did walk the southern route?

17 A Yes.

18 Q When?

19 A I believe it was sometime mid to late March.

20 Q Did you get permission?

21 A Yes. Through the City of Newberry.

22 Q You're not saying the transmission line is going to
23 cross ponds all the time, are you?

24 A They do cross water.

25 Q Okay. And I show you exhibit 39. And that's an

1 email you've seen, correct? You have it, right?

2 A It doesn't look familiar.

3 Q The top, the top paragraph number 1, routing the
4 line. That was a memo that you got through your
5 counselor, correct? It didn't come to you directly; it
6 came through your lawyer?

7 A I don't think I've seen it.

8 Q It's attached to the complaint.

9 A Okay.

10 Q So you read the complaint?

11 A Yes.

12 Q All right. It says here, October 1, 2014, The Oiens
13 reluctantly will agree to have the southern route along
14 the southern boundary of their property which PMPA drew
15 several months ago. To put the line anywhere else would
16 violate Southern Development versus S.C. Public Authority.
17 You were put on notice that that was an issue, correct?

18 A Yes.

19 Q But you still have no alternate routes, though,
20 between the southern route and the middle route?

21 A Because of what was agreed to in November of 2013.

22 Q Sir?

23 A Because of what was agreed to in 2013 in November.

24 Q All right. But you don't have a single piece of
25 paper where Mr. Oien said I want the middle route, do you?

1 A I just have a recording.

2 Q Yeah, but he doesn't say a word about the middle
3 route in there, does he?

4 A No, just to what we agreed to.

5 Q He gave you permission to survey the property to
6 answer questions, didn't he?

7 A He mentioned final survey.

8 Q To answer questions, correct, he told you that?

9 A No, that's not the way I left that meeting.

10 Q Well, if you heard it differently, why didn't you
11 send an email back to Mr. Oien and say, okay, we have an
12 agreement then. It's going to be the middle route.

13 A That's the way we left the meeting and he called me
14 back and agreed to it.

15 Q Why didn't you call him? You said you called him?

16 A I called, he left me a voice message, and I returned
17 his call and left a voice message back.

18 Q But you never talked to him?

19 A I never spoke with him, no.

20 Q But there's not a single piece of paper in this file
21 where PMPA has said, okay, Mr. Oien, thank you, we have
22 agreed on another route, right?

23 MR. BANNISTER: Judge, and he's answered that
24 question.

25 THE COURT: I sustain that. Go ahead and move on,

1 please, sir.

2 Q Other than your reference to the transcript, there's
3 nothing else?

4 A That's correct. When PMPA left the meeting, we felt
5 we had an agreement. Other discussions did continue with
6 the City of Newberry.

7 Q Okay. And do you remember when this phone
8 conversation was first brought into this litigation?

9 A The meeting was November 26th, so it was sometime a
10 week after that, I think.

11 Q I want to show you your answer. You helped your
12 counsel provide facts upon which that answer was based, is
13 that right?

14 A Yeah, I think that's my copy.

15 Q All right. Is that the answer y'all filed?

16 A I assume so.

17 Q Okay. Well, I'm going to ask you about it. In
18 paragraph nine, you pointed out that on September 2013 at
19 the request of Lynn and June Oien, a meeting was arranged
20 at the City Hall in Newberry to inquire about PMPA's plan,
21 is that correct?

22 A Now, number nine?

23 Q Of my, excuse me. I'm reading it. I'm going to let
24 you publish the answer when I get to finish it.

25 A I'm sorry.

1 Q All right. At that time, a City of Newberry
2 representative said they would let the Oiens know more
3 about the line later. Then, again, at the request of the
4 Oiens, a meeting at City Hall was scheduled on November
5 26th, 2013 where PMPA personnel were present. At that
6 time, PMPA had said that the plan was to route the
7 transmission line down the middle of the property and that
8 PMPA said it could do it either with the Oiens permission
9 or by condemnation. The Oiens expressed their extreme
10 concern, because of the proximity to their home site, the
11 aesthetics thereof and the damage to the remainder of
12 their property which would be caused. At that meeting,
13 the Oiens asked PMPA to answer questions about the purpose
14 of the line, taking the age of the area, the size of the
15 right-of-way, compensation, communication towers, the
16 number of poles, the location of the right-of-way,
17 property improvements, et cetera. The Oiens were
18 expecting answers to these questions. The Oiens informed
19 PMPA that under no circumstances could they consent for
20 PMPA to put a line that ran through the middle of the
21 property as the current proposed line does. And if there
22 was a justifiable reason for a line at all, they wanted
23 the line to run along the north southern route which is
24 where PMPA had originally designed it. Now, read your
25 answer here to paragraph nine.

1 A Paragraph nine is admitted insofar as on November 26,
2 2013. A meeting was held with the City of Newberry
3 representatives and PMPA employees. PMPA's engineer and
4 general manager were present along with the engineer for
5 the project. Proposed drawings of possible routes were
6 presented to the Plaintiff along with all information that
7 was available at the time. PMPA denies it did not supply
8 all information to the Plaintiffs that it had at the time.
9 Initially, PMPA and the City of Newberry considered a
10 southern route but determined the route to be unsuitable.
11 The Plaintiff also objected that large trees would be
12 destroyed and requested another route.

13 Q Okay. You don't say a word in that answer that, as a
14 result of that meeting, Mr. Oien agreed to any middle
15 route, do you?

16 A When we came to the meeting we had--

17 Q No, I'm asking what you put in the answer. You don't
18 say a word about him agreeing to anything, do you?

19 A No.

20 Q Now, I'm going to read you paragraph 11 of the
21 complaint, and you can read the answer to paragraph 11.
22 Eleven says, On August 14, 2014, PMPA sent a letter
23 enclosing an agreement reflecting the route through the
24 middle of Plaintiff's property as shown on exhibit A and
25 told Plaintiff's to sign and return it by August 22, 2014.

1 Consistent with what they had already told PMPA, the
2 Plaintiffs refused to sign the agreement. And what do you
3 say in response to that paragraph?

4 A Paragraph 11 is admitted.

5 Q So you admitted that they consistently told you that
6 they wanted the southern route and didn't want it in the
7 middle?

8 A I think we're admitting that we sent the document.

9 Q Okay. It says right here you admit to this sentence.
10 It's consistent with what they had already told PMPA,
11 Plaintiff's refused to sign the agreement. Correct?

12 A Yes..

13 Q And you sent on the middle route?

14 A It was for the final surveyed route.

15 Q The middle route?

16 A Yes..

17 Q And now are you aware that this property is 116
18 acres?

19 A Yes.

20 Q Are you familiar with the term, highest and best use?

21 A Yes.

22 Q And would you agree or disagree that this is the
23 highest best use of this property and not timberland?

24 A I'm not sure I'm qualified to say that.

25 Q Would you agree or disagree that this highest and

1 best use of this property is as a retirement-retreat type
2 setting?

3 A Well, I mean, there is a home on it now. I'm not
4 sure about retirement.

5 Q And you've heard about damage to remainder, correct?

6 A Yes.

7 Q Are you competent to answer questions about damage to
8 remainder?

9 A Insofar as my appraisal. Referring back to my
10 appraisal I had done.

11 Q Well, you had an appraisal done. You didn't tell Mr.
12 Graydon about the retirement home that was going to be put
13 over here, did you?

14 A I can't remember.

15 Q All right. There's no reference in his report to
16 that, right?

17 A I don't believe so, no.

18 Q All right. And Mr. Graydon in his report doesn't
19 make a single reference to the fact that he met with Mr.
20 and Ms. Oien and he didn't meet with them, correct?

21 A I honestly can't remember whether he did or not.

22 Q Well, his report does not reflect in that, correct?

23 A Okay.

24 Q Is that right?

25 A I'd have to go back and look. I don't recall.

1 Q Now, your engineer is from North Carolina, correct?

2 A Yes.

3 Q And would you agree or disagree that when you do a
4 right-of-way acquisition, it is of utmost importance that
5 a right-of-way, a agency seeking a right-of-way should be
6 very concerned about the desires and the needs and the
7 plans of a landowner?

8 A That it should be balanced, yes.

9 Q And do you think and you agree, don't you, that it
10 would be critical for PMPA to understand the land usage on
11 this Oien track, as well as any other tract, correct?

12 A We would look at the final evaluation of our engineer
13 and our appraisal and to determine that.

14 Q And before this action, you had never been to the
15 Oien property over to the home site area, had you?

16 A No.

17 Q And you'd never looked at the invoices they had,
18 correct?

19 A No.

20 Q And when they came to the meeting in November, they
21 had plans, a great big roll of plans that they paid
22 \$78,000.00 dollars for and they put them up on the table
23 there, right?

24 A I do recall that.

25 Q Did you look at them?

1 A I took them for their word that's what they were.

2 Q I mean, you didn't open them up?

3 A No.

4 Q Okay. And you understand that that was very
5 important to this landowner?

6 A Yes.

7 Q You're aware that numerous letters were written to
8 PMPA requesting meetings--

9 A I was--

10 Q --before this condemnation started?

11 A I was told by my attorney, yes.

12 Q I'm going to show you exhibit 9. Are those the
13 letters that you received copies of when I wrote to PMPA
14 and counsel on various dates before the condemnation
15 started? September 29th is the first one in 2014. That's
16 where I requested a meeting, correct?

17 A Yes.

18 MR. BANNISTER: And, Your Honor, I'm going to object
19 to the letters and the discussion of the letters that
20 happened post-notice of condemnation. And so if he's
21 going to get into things that happened after the
22 condemnation started, that is far afield of whether this
23 is for a public purpose and whether or not the selection
24 criteria for the route. Whether or not PMPA talked to Mr.
25 Pope and whether my office talked to Mr. Pope is

1 irrelevant for either of the two issues before Your Honor
2 today which is whether this is for public use or whether,
3 or route selection wasn't appropriate.

4 THE COURT: What is the relevance?

5 MR. POPE: Its relevant, Your Honor. These letters,
6 Judge, are before any condemnation happened.

7 THE COURT: Before they filed the action condemning
8 the property--

9 MR. POPE: Yes, sir.

10 THE COURT: --but after the determination of route
11 location is made. And do you agree with what Mr.
12 Bannister says?

13 MR. BANNISTER: Once the route was selected, then the
14 correspondence between lawyers is not relevant at all.

15 THE COURT: In other words, what I understand is that
16 before the condemnation action was filed but after PMPA
17 made the determination of the route location these letters
18 took place?

19 MR. POPE: They'd made their determination, but our
20 position is--

21 THE COURT: Yes, sir.

22 MR. POPE: --they never did an alternate route
23 comparison.

24 THE COURT: I understand, but I mean, just the timing
25 of these letters.

1 MR. POPE: That's the time.

2 THE COURT: All right. I'm going to sustain the
3 objection.

4 MR. BANNISTER: Thank you, Your Honor.

5 Q When was the decision made for the final route?

6 A In my mind, we had a final route in November 26th or
7 when Mr. Oien called me back after the 26th meeting.

8 Q Well, I want to show you exhibit 10.

9 THE COURT: November 26th will be in '13, 2013?

10 A Yes, sir.

11 Q Exhibit 10. And that's an email that you sent to the
12 engineer, excuse me, that Mr. Regier with the City sent to
13 you and the engineer stating that the Oiens were pretty
14 adamant that he wanted it at his southernmost property
15 line, correct?

16 A Yes.

17 Q All right. So when you got this email, did you ever
18 do the alternate route study yourself and see what the
19 construction cost was, see what damage you were, let's
20 look at the usage of his property and let's see which
21 route is reliable, which one is safe, which one can, what
22 the costs of acquisition are?

23 A The costs of the construction we knew would be more
24 if we went on the southern route. But since we had an
25 agreement with the property owners no, we did not.

1 Q This is 2013?

2 A Yes, sir; it is.

3 Q You still didn't do an alternate route analysis, did
4 you?

5 A No.

6 Q Okay.

7 A Other than discussing it with my engineer on
8 engineering costs and design.

9 MR. POPE: We offer exhibit 10.

10 THE COURT: Any objection. Any objection to exhibit
11 number 10?

12 MR. BANNISTER: No, Your Honor. No objection.

13 THE COURT: That'd be admitted.

14 (Whereupon, Plaintiff's exhibit number 10 was
15 admitted into evidence.)

16 Q Now, you're aware that the best practices in the
17 right-of-way business and the industry, the industry
18 standard of Duke, Carolina, I mean excuse me, Progress
19 Energy which used to be Carolina Power and Light, SCE&G
20 and Central Electric Power Cooperative all do objective
21 alternate route studies for every possible route and
22 compare the results of them?

23 A I'm aware that each utility has their own way of
24 doing things.

25 Q And that they're consistent?

1 A I have not compared how each one does it.

2 Q You would not challenge the validity of what I just
3 said, that they have a consistent policy whereby they do
4 written, comparative alternate route studies with all of
5 those factors and compare the routes on each property?

6 A I don't know that, no.

7 Q And, in fact, PMPA had no guidelines referring to
8 these type of alternate routes, does it?

9 A Because PMPA only builds short radio lines unlike
10 those other utilities, we do things a little different.

11 Q Well, the answer is you don't, is that right?.

12 A We don't look at it the same way, no.

13 Q Okay. But the effect on the landowner is the same
14 whether it's PMPA or SCE&G, correct?

15 A Yes.

16 Q Now, did you have, now, you do understand, though,
17 that the landowner whose property you get a right-of-way
18 on, they pay taxes on that?

19 A Yes.

20 Q So they continue to own the property where the
21 right-of-way is?

22 A Yes.

23 Q And they have to pay taxes?

24 A Yes.

25 Q That's another thing you're familiar with that the

1 landowner would be concerned about if the route, a line
2 would lay across their property, they don't get any
3 benefit from a line going across them and they got to pay
4 taxes on it?

5 A Generally, since the line is so up above the ground,
6 they have the most use of the land below.

7 Q Well, they can't build on it?

8 A Could not build on it, no.

9 Q Can't put any structures under it?

10 A No structures.

11 Q Okay. Now, you agree when I showed you exhibit 12
12 earlier that the routing of the southern route had no
13 dramatic turns on it, correct?

14 A It has two turns.

15 Q But they're not dramatic?

16 A No. I mean, one's about 45 and one's--

17 Q One is about 20 degrees--

18 A Something, 30.

19 Q --and the other is about 45 maybe?

20 A Yeah.

21 Q Sir?

22 A Yes.

23 Q And you have no independent basis to say that there's
24 anything wrong with the southern route at all?

25 A Other than what my engineers told me.

1 Q You said it cost more?

2 A It cost more and the design of putting the poles, the
3 pond that's drawn there backs well into the property line.

4 Q Now, transmission lines, the span of the transmission
5 lines here is somewhere between 600 and 900 feet, isn't
6 it?

7 A That's not what my engineer tells me.

8 Q It's several hundred feet, isn't it?

9 A Anywhere between 500 to 700, depending on terrain.

10 Q So that would not present a problem in spanning this
11 pond?

12 A Well, where the angle pole, one of the angle poles
13 you reference would be in the pond.

14 Q All right. You're not an engineer?

15 A I'm an electrical engineer.

16 Q But you're not a pole setter--

17 A No.

18 Q --that type engineer?

19 A No.

20 Q But Mr. Cobb said you could do the southern route,
21 it'd cost more, is that what he said?

22 A Anything can be done.

23 Q Well, he didn't say that. He said it, he said he
24 could do it, but it would cost more?

25 A Anything can be done, it would just cost more.

1 Q Is that a yes or no to my question?

2 A Yes.

3 Q Now, since you were not aware of Mr. Oien's plan to
4 put a vacation home on this home site here, were you aware
5 that he'd spent \$20 or \$25,000.00 clearing the home site?

6 A I had no idea how much he'd spent.

7 Q But you were aware that he'd cleared it?

8 A Yes.

9 Q And you're aware that that home site actually had a
10 well that he'd paid for right there?

11 A At some time, I did. I don't know when.

12 Q But before this all started, correct?

13 A No, not before it started.

14 Q Not before you started. I'm talking about before
15 PMPA ever having a, before March of 2013 he had a well on
16 this site?

17 A I don't think I knew that there was a well.

18 Q Well, did you know that he had a underground electric
19 power going to that site?

20 A I don't believe I knew that at the time, no.

21 Q You know it now?

22 A I know it now.

23 Q And you know about the well now?

24 A Yes.

25 Q And but you didn't look at the time. If you'd have

1 looked, you'd have known about it, correct?

2 A Well, I would. Yeah, I'd have to be on the property
3 to know.

4 Q Well, nobody reported to you, nobody from the City
5 reported to you, hey, this man spent money building a well
6 on the home site and was getting electric power
7 underground to the home site and clearing the home site;
8 nobody reported that to you?

9 A At some time, point they did.

10 Q During this case? During this litigation?

11 A Well, I mean during the whole discussion about where
12 to put the line, moving it from where we proposed it to
13 the southern side to the northern side at the center.

14 Q Well, you never explored that as being, wait a
15 minute, this is serious. We got a home site that's pretty
16 close to this middle line, didn't you?

17 A We have a lot of other homes that are closer than
18 that one to the line. You know, going over, underground
19 distribution line, it is not an issue.

20 Q Okay. And you've never seen anything in-writing that
21 confirmed that there's anything unsuitable about the
22 southern route?

23 A Not that I'm aware of.

24 Q And you've seen nothing in-writing about what
25 increased costs, if any, the southern route would present?

1 A Not specifically, no.

2 Q All right. Now, the southern route, just to be
3 clear, is slightly downhill from the middle route?

4 There's a drop. It's not a hill, but it goes down some,
5 does it not?

6 A It funnels down to the pond would be the lowest
7 point.

8 Q Yes. So it's somewhat low and not boggy low, but
9 low, correct, down the southern route?

10 A It's somewhat up and down in there.

11 Q But you'd agree?

12 A That it trends that way, yes.

13 Q All right. So that makes it all the less likely that
14 if you use the southern route, he could see it from his
15 home site?

16 A If you put it on the southern site, it would be less
17 of a chance, yes.

18 Q All right. So we got a southern route and you agree
19 that it does not have dramatic turns on it and you've seen
20 no documentation to show why it's not satisfactory,
21 correct?

22 A No documentation, just discussions.

23 Q And you now know that he had plans to build a home
24 that's going to cost upwards or up to a million dollars on
25 this home site, you know about that, right?

1 A Yes.

2 Q And you never asked Mr. Cobb to help you? Have you
3 ever done a route analysis yourself off of a route
4 evaluation?

5 A No.

6 Q Have you ever heard of it before this case?

7 A No.

8 Q Do you think that a condemning authority has to be
9 diligent to understand the landowners concerns about the
10 usage of their property?

11 A Within reason, yes.

12 Q Well, the route was picked through the middle of the
13 property and the exhibit we just looked at in March 2013,
14 correct?

15 A The proposed route, yes.

16 Q And the final route is virtually the same way, it's
17 straight through the middle, correct?

18 A Almost identical, yes.

19 MR. POPE: Your Honor, could I have just a moment.

20 Q Now I show you exhibit 43. Now, this is August 21,
21 2014.

22 MR. BANNISTER: And which number is that? I'm sorry.

23 MR. POPE: 43. 43, excuse me.

24 Q And at the bottom there on August 21, 2014, Mr. Oien,
25 and this is the only email you ever got from him?

1 A Directly, I think, yeah.

2 Q And you had sent him before this email a package
3 showing that you were going through the middle of the
4 property, correct?

5 A That's correct.

6 Q All right. And you were excited to know that you
7 thought he'd agree to that. What does it say here in the
8 middle of this sentence, the third sentence, we received
9 your package and your package for a right-of-way through
10 our property. I would like to clear up a point you made
11 in the first sentence of your letter. We did not agree to
12 any transmission line or route. Is that right?

13 A That's what it says.

14 Q And you didn't write him back?

15 A I did.

16 Q What'd you say?

17 A I was referring to the meeting where PMPA was present
18 which occurred prior to the meeting with the City of
19 Newberry. Forgive me. That's the date that I referenced.
20 The reference to may have been incorrect. At the meeting
21 with PMPA present, PMPA's engineering consultant had laid
22 out two proposed transmission line routes that you and
23 your wife reviewed. Soon after, you let me know that the
24 route that PMPA is now taking was your preferred route of
25 the two shown during that meeting.

1 Q And you pointed out that he did not agree at that
2 meeting to a new route, correct?

3 A He did. Not at the meeting. He said he would
4 consider the two routes that we laid out.

5 Q And in your answer to the complaint, you acknowledged
6 that in the November meeting you were talking about
7 multiple routes?

8 A No, not at the November meeting.

9 Q On paragraph nine of your answer, you admitted
10 paragraph nine insofar as you admitted that on November
11 26, 2013, a meeting was held with the City representatives
12 and PMPA and PMPA's engineering and general manager were
13 present, proposed drawings of possible routes were
14 presented to Plaintiff. Correct?

15 A Yes.

16 Q Okay.

17 A Two proposed routes.

18 Q Yeah. And during that meeting, you were, Mr. Oien
19 had questions to ask you that he wanted answers to,
20 correct?

21 A Yes..

22 Q And you said I can't get those questions answered
23 unless you let me have a survey to answer those, correct?

24 A We could not give specifics. We gave estimates at
25 that meeting.

1 Q I know and you needed a survey and a TOPO survey to
2 answer those questions?

3 A Some of those questions, yes.

4 Q So he authorized you to do that survey so he could
5 get answers to it?

6 A He chose the route and the final, in my mind.

7 Q He did what?

8 A We laid out two proposed maps and he agreed, they
9 agreed to the final map, final route.

10 Q Did he ever write to you and tell you he agreed to
11 the middle route?

12 A Only in the voice mail.

13 Q All right.. Here's the voice mail and let me, I want
14 to read it. Michael, it's Lynn Oien. We met with you the
15 other day in regard to the power line. We walked it. We
16 made the decision we want to stay with what you have right
17 now that you've originally drawn up as opposed to changing
18 it, so move forward and get final surveying done. Is that
19 right?

20 A Yes.

21 Q Did you ever get him the survey?

22 A Yes.

23 Q So when you determined the alternate route, you're
24 the one that makes that decision, correct, you and Mr.
25 Smoak?

1 A We had a final route. In working with the property
2 owners, we started having multiple routes.

3 Q Yeah. Well, this is the landowner. He's the first
4 one on the whole project and you had three possible
5 routes, the north which was too close to his home,
6 correct?

7 A Yes.

8 Q And the middle route, which you wanted from the
9 start, and the southern route was where he wanted it?

10 A Yes.

11 Q Now, what factors do you use to determine the
12 alternate routes when you compared those routes?

13 A We have a final route that we, a proposed route that
14 we will like to proceed on. In discussions with the
15 property owners would be the only time that we would move
16 that route.

17 Q But you never had a discussion with Mr. Oien about
18 his plans for the property, correct?

19 A The City of Newberry had those discussions.

20 Q But you never had them?

21 A No, sir.

22 Q And you're the one that makes the decision?

23 A Yes, sir.

24 Q And you never drew up a, let me show you. You have
25 seen Mr. Rogers' report?

1 A Yes.

2 Q And you're aware that he says the industry standard
3 is to take the possible routes and rate them so you can
4 compare them on all the different factors?

5 A I believe he said his standards are based on Central
6 Electric Cooperative's.

7 Q Right. And Duke and SCE&G and Progress, correct?

8 A I can't remember if he said that or not.

9 Q But he did that and you've seen his route ratings?

10 A I see that, yes.

11 Q And when he rated them, all the southern route came
12 out the best because it is the lowest, correct?

13 A I see that's how he ranked them.

14 Q Right. And you didn't do any route ratings like
15 that?

16 A Only based on what my engineer had told me.

17 Q Yeah, but it's your job. You said you made the
18 decision. You do the alternate routes?

19 A And I went with my engineer's decision.

20 Q Yeah, but he didn't do any of this either?

21 A No.

22 Q Sir?

23 A Not like that, no.

24 Q Well, not like anything, because he didn't have any
25 piece of paper with a route comparison, did he?

1 A Not a piece of paper, no.

2 Q And you understood that when Mr. Rogers did the route
3 comparisons, he acknowledged that the construction costs
4 for the southern route were higher than the middle route,
5 correct?

6 A He did.

7 Q But he factored in the home, which you didn't factor
8 in the home, correct?

9 A That's one reason why we went from the north route to
10 the middle, back to the middle route.

11 Q But you never knew until this case started that he
12 was going to put a million dollar house about 300 feet
13 from this line, correct?

14 A That's correct.

15 Q And you never bothered to ask?

16 A We were told.

17 Q You what?

18 A The City of Newberry is the one who referenced that
19 back to me.

20 Q But it's your decision, not their decision?

21 A Right. And which we didn't have a final route that
22 the property owner agreed on so, at that time.

23 Q Let me show you exhibit 32, and these are some emails
24 that were written in November of 2013. Is that right?

25 A Yes.

1 Q Now, on the second page is an email from you,
2 numbered PMPA 355?

3 A Yes.

4 Q And it doesn't have a date. I assume it's about the
5 time of November of 2013, correct?

6 A When?

7 Q It was sometime around November 25, 2013. This was
8 produced to us.

9 A Yes.

10 Q Okay. And in the middle of the second paragraph on
11 that second page of that exhibit 32, it says the Oiens,
12 and really their property manager, were upset that the
13 transmission line did not hug the property line as they
14 thought they had requested, right?

15 A Yes..

16 Q And then in the paragraph after that you say, after
17 talking with Alan, Mr. Cobb, your engineer, we don't see
18 an issue if we move to the property line. Or he doesn't
19 see an issue if we move to the property line. The issue
20 that does exist is that it requires another bend for
21 \$30-\$40,000.00. Is that right?

22 A For the one bend, yes.

23 Q So in November 2013, you knew, late November 2013,
24 you knew that they wanted to hug the property line and
25 that there was no impediment to that except Alan told you,

1 well, it'll cost \$70,000.00, excuse me, \$30-\$40,000.00
2 dollars more?

3 A And the fact that the pole would be in the water.

4 Q Well, there's no document anywhere that says any pole
5 has to be in the water. This is a little pond.

6 A Right.

7 Q And it's not more than a hundred feet across down
8 here, is it?

9 A It's not a hundred feet but, like I said, what you
10 can't see is where the water backs up well beyond the
11 property line.

12 Q There is no document that shows there is any
13 impediment to running a transmission line over this pond?

14 A No.

15 Q Is that correct?

16 A It can be done for the right amount of money.

17 Q Right. And the amount of money was \$30-\$40,000.00,
18 as far as you know, right?

19 A Only from one estimate.

20 Q Sir?

21 A Only from one estimate. We didn't have any--

22 Q Have you called anybody to find out if that was
23 accurate or not, correct?

24 MR. BANNISTER: And I--

25 THE COURT: Just one second. Do you have an

1 objection?

2 MR. BANNISTER: I think that I do. If I'm looking at
3 the right exhibit, the email he ended up referencing, the
4 middle line to, hug the middle property line.

5 THE COURT: I'm looking at exhibit 32, which is the
6 email at the top of the page dated November 25th, 2013,
7 Bates 355. It says that, The Oiens, and remind me if I'm
8 saying that right, Mr. Pope.

9 MR. POPE: The Oien; yes, sir.

10 THE COURT: The Oien, really the property manager
11 were upset, that the transmission line did not hug the
12 property line as they thought they had requested. Now,
13 where are you saying it says--

14 MR. BANNISTER: I'm sorry. He referenced the
15 southern property line and this email has got the middle
16 property line. It's where, I'm on the same email as you
17 are.

18 MR. POPE: Well, he's answered the question, Judge.

19 MR. BANNISTER: I just want to make sure I'm on the
20 right exhibit.

21 THE COURT: Okay. All right.

22 Q So based on this exhibit, the last thing you heard
23 was it was going to cost \$30-\$40,000.00 more to get down
24 to the southern line, correct?

25 A Without any detailed engineering costs, yeah.

1 Q All right. Now, did you ever have emailed and know
2 the landowner that you were trying to accommodate named
3 West?

4 A I never received any. The City of Newberry talked
5 with them.

6 Q There were reports by the landowner?

7 A Yes.

8 Q His name was Billy West?

9 A One of, yes.

10 Q Okay. He's a prominent property owner and developer
11 in this county?

12 A Yes.

13 MR. POPE: Excuse me one second.

14 Q Now, I show you exhibit 34. This is number, exhibit
15 6.

16 MR. POPE: Your Honor, we'll offer, I don't know if
17 we've offered exhibit 39 into evidence.

18 THE COURT: 39?

19 MR. POPE: And 32. I think there have been a couple
20 I haven't offered yet.

21 THE COURT: 39 is not into evidence.

22 MR. POPE: All right. I'd offer 39.

23 THE COURT: Any objection to 39 coming in?

24 MR. BANNISTER: I don't recall if he, I don't have an
25 objection to it.

1 THE COURT: Did you identify the author?

2 MR. POPE: Of 39?

3 THE COURT: Yes, sir.

4 MR. POPE: I sent it to Counsel, and it's attached to
5 the Complaint.

6 MR. BANNISTER: Then, no objection, Your Honor.

7 THE COURT: 39 will be admitted. And what else?

8 What other exhibit are you seeking to admit?

9 MR. POPE: The next is 32 off of that.

10 THE COURT: Any objection?

11 MR. BANNISTER: No objection to 32.

12 MR. POPE: Offer 43.

13 THE COURT: There were three.

14 Q All right. Now, at the bottom of Exhibit--

15 THE COURT: Hang on one second. Just one second,
16 please.

17 MR. POPE: Excuse me.

18 MR. BANNISTER: Your Honor, no objection to 43.

19 THE COURT: No objection to 43. Go ahead.

20 (Whereupon, Plaintiff's exhibits 32, 39 and 43 were
21 admitted into evidence.)

22 Q All right. Exhibit 34 is in your hand now, Mr.
23 Frazier?

24 A Yes.

25 Q All right. At the bottom of that, you got a, you

1 sent an email to Mr. Regier and you say, talking about
2 revising a line. This is June 10, 2013. It says, it
3 shows the center line running over the Oiens line. By
4 going any farther north, it worsens the King's Crossing.
5 And then on the next page you say at the top, we could
6 proceed as drawn which takes more of the King's property.
7 Now, who is the King?

8 A I am referring to Mr. West.

9 Q Why would you refer to him as the King?

10 A It's my understanding that in around Newberry, that's
11 what he's referred to as.

12 Q And what did that mean to you, that you had to do
13 what he said?

14 A No, that he is just the king of real estate, is what
15 I understand.

16 Q So were you showing favoritism to Mr., to the King
17 hereby being concerned about whether the line is going to
18 go across him?

19 A Not at all.

20 Q Then, why do you call him the King instead of Mr.
21 West?

22 MR. BANNISTER: Judge, I object to the relevancy of
23 what they call the next property owner.

24 THE COURT: I note your objection. I sustain it. I
25 will let you ask a little bit more to clarify.

1 MR. POPE: All right, sir.

2 THE COURT: What their alternatives were and what
3 they considered as to the names.

4 MR. POPE: Yes, sir.

5 Q But you weren't showing favoritism to Mr. West?

6 A No.

7 MR. POPE: All right. We offer exhibit 34.

8 MR.. BANNISTER: No objection.

9 THE COURT: Admitted.

10 (Whereupon, Plaintiff's exhibit 34 was admitted into
11 evidence.)

12 Q And then exhibit 35 is in the time-period of June 13
13 which was exhibit 7 to your deposition. On the second
14 page of that you write an email to Mr. Regier and in the
15 second sentence of that email, June 13, 2013 at 4:28 p.m.
16 you say, if the King didn't mind, we could bend it up a
17 little more, pass behind the little squares and hit the
18 southwest side of his property line. So again you're
19 referring to the King and if he didn't mind this or that,
20 is that right?

21 A As with any property owner, we're looking to
22 accommodate each one.

23 MR. POPE: I offer exhibit 35.

24 THE COURT: Any objection.

25 MR. BANNISTER: 36?

1 THE COURT: 35.

2 MR. POPE: Five, five, sorry.

3 THE COURT: No problem.

4 MR. BANNISTER: No objection, Your Honor.

5 THE COURT: Admitted.

6 (Whereupon, Plaintiff's exhibit 35 was admitted into
7 evidence.)

8 Q And then this is 36. This is the next marked.
9 Exhibit 36 is a email from you to Mr. Cobb, July 3, 2013.
10 And then you say, draw it where you think the King will be
11 happy. Split the baby. And let's look at it. Again,
12 you're talking about the King. Well, what were you doing
13 there?

14 A It's asking Mr. Cobb to make a revision, to show a
15 revision.

16 MR. POPE: We offer exhibit 36.

17 THE COURT: Any objection?

18 MR. BANNISTER: No objection.

19 THE COURT: Admitted.

20 (Whereupon, Plaintiff's exhibit 36 was admitted into
21 evidence.)

22 Q And exhibit 37 is an email, in the middle is an email
23 from you to Mr. Regier November 27, 2013 and read that for
24 us.

25 A Which part, the highlighted part?

1 Q It's just one line.

2 A Ha-ha. Maybe you should ask, just ask the King or

3 King pro tem to decide for them.

4 Q Was that a joke you were writing?

5 A Yes.

6 Q And the King is Mr. West?

7 A Yes.

8 Q And his daughter is one of the high officials in his

9 company, is that what you were referring to, Misty?

10 A No. I was referring to Lynn Oien.

11 Q Huh?

12 A I was referring to Lynn Oien as the pro tem.

13 Q Well, he's not a King. Why would he do that?

14 A He is acting difficult, and I was being flippant at

15 the time.

16 Q You thought he was acting difficult?

17 A Yes.

18 Q And you only met with him one time, that one time?

19 A Yes. The City of Newberry had met with him many

20 times.

21 Q But he was meeting with people that did not have any

22 training in transmission of a line right-of-way, correct?

23 A That would be, on transmission line right-of-way,

24 that'd be correct.

25 MR. POPE: Judge, could we take a short break.

1 THE COURT: Sure. All right. Well, let's take about
2 a 10-minute break.

3 MR. POPE: Would you remind the witness about his not
4 talking to anybody.

5 THE COURT: You can talk to people but not about your
6 testimony.

7 MR. FRAZIER: Okay.

8 (Whereupon, a short break was taken.)

9 CONTINUE DIRECT EXAMINATION

10 By Mr. Pope:

11 Q Were you informed that the Oiens went to the City
12 offices in March 2014 well before there was any
13 condemnation and told the City there's no way they would
14 ever accept the middle route?

15 A Yes.

16 Q Now, as you said earlier, the middle route was
17 initially drawn based on a photograph, Google Earth and
18 GIS is that right?

19 THE COURT: I'm sorry. Ask that question again. I
20 missed it.

21 MR. POPE: Sorry.

22 Q Did the, the middle route was initially drawn based
23 on Google Earth and photograph of the aerial photography?

24 A Yes.

25 Q And nothing else?

1 A It was drawn by Alan Cobb, so I don't know if he used
2 anything else.

3 Q It was a straight line?

4 A Attempted to, yes.

5 Q All right. Now, well, I'll show you exhibit 20.

6 This is number 9 to your deposition. It's a poor copy, so
7 we attached with it a clearer copy, the same photograph.

8 A Okay.

9 Q And this shows a drawing that designates final route,
10 correct?

11 A That's not what the file says.

12 Q Sir?

13 A That's not what the file says.. Let's see.

14 Q It shows a final route through the center of the Oien
15 property?

16 A It shows a line through it, yes.

17 Q And but the words under it saying what?

18 A There it is. Final route.

19 Q Okay.

20 THE COURT: Is that a trial exhibit or is that just,
21 I know you said it's to a deposition.

22 MR. POPE: Yes, sir; it is. It's exhibit 30--

23 THE COURT: 20.

24 MR. POPE: Excuse me. 20. Plaintiff's exhibit 20.

25 Q And the final route drawn right through the Oiens

1 property, correct,--

2 A Yes.

3 Q --is June 13, 2013, is that correct?

4 A That's the date of the file, yes.

5 Q And as far as you know, that was before the Oiens
6 were even talked to, is that right?

7 A They had been talked to prior to that, yes.

8 Q And do you know that of your own knowledge?

9 A I was told that.

10 Q You don't know that?

11 A I was told that.

12 Q You don't know that of your own knowledge?

13 A I was told that.

14 Q I know. But you don't, you had never talked to him
15 yourself before November?

16 A I never talked to them myself, no.

17 Q All right. So the final route depicted on this
18 drawing would appear to have been decided before, in June
19 2013, correct?

20 A I believe Alan Cobb, well, I don't want to put words
21 in his mouth. And there were several final routes when we
22 thought we had one, and then we had to change it.

23 Q Well, that, in fact, is the final route with, bear in
24 mind the magnification, right slap through the middle of
25 the property, correct?

1 A It goes, not the exact route that is what we deem the
2 final route now.

3 Q But--

4 A This one actually goes up in elevation where the
5 other one comes down and hugs the property line.

6 Q It's a matter of a few feet, it goes right through
7 the middle, essentially?

8 A It goes, if you want to say in the middle of the
9 property, the center of the property, yes.

10 Q And you agree that that one, this is from the
11 deposition of you, it was feasible to do the southern
12 route, but it would cost more. And that's your testimony?

13 A That is correct.

14 Q And the only thing you know is that without
15 substantiation you were informed that it would cost about
16 \$30-\$40,000.00 more?

17 A I can't remember where I got that number, but yeah.

18 Q Well, you had it in the email?

19 A That's what I put it in the email.

20 Q Okay. And you've seen no substantiation of whether
21 that's low or high, correct?

22 A Based on what I've seen now, it's probably low.

23 Q But that's a pretty small cost in the big project
24 like this, isn't it?

25 A It's over a million dollars.

1 Q So, I mean, \$30,000.00 is a small part of that?

2 A Relative to this property. Relative to this
3 property, it's a lot.

4 Q Well, it's a small amount, have been through about
5 the southern route if it'd take, take \$30,000.00 more than
6 the middle route and save yourself all the damages to the
7 neighbor.

8 A Yes, but Mr. Cobb believed there was probably more
9 costs based on what I know now.

10 Q Well, he didn't say that and you didn't say that in
11 your email, did you?

12 A No. Because no final engineering had been done on
13 the southern route.

14 Q And, in fact, no engineering was ever done on it to
15 see what the construction costs would be, is that right?

16 A No formal report had been generated, no.

17 Q And there's nothing in-writing, formal or not--

18 A No.

19 Q --that has been generated about construction costs
20 for the southern route?

21 A No.

22 Q Except the report from Mr. Rogers which you've seen,
23 correct?

24 A It's in generality, yes.

25 Q And then, basically, he said it's going to cost about

1 \$70,000.00 more to go to the southern route, but it's
2 going to save you a \$100,000.00 on condemnation costs?

3 A I would, let's defer to my design engineer over Mr.
4 Rogers.

5 Q But you never asked Mr. Cobb and he never provided
6 you an analysis like that?

7 A Because it's more costly.

8 Q Sir?

9 A Because it was going to be more costly.

10 Q To do the analysis?

11 A To do the route.

12 Q You didn't do a route analysis like Mr. Rogers did,
13 correct?

14 A No, he did not.

15 Q Now, you said the transmission, we have the document
16 that the Transmission Committee, PMPA, approved the start
17 of this document?

18 A Yes.

19 Q And you said they didn't approve a route?

20 A The proposed route was based on trying to take
21 straight-line approaches to the right-of-way, but then
22 also the southern routes, because we had heard that the
23 property manager who we learned was a neighbor had
24 suggested to look on the southern side.

25 Q February of 2013, the Transmission Committee approved

1 you to start and the route they were looking at was right
2 through the middle?

3 A Yes.

4 Q And they didn't, of course, they didn't have a route
5 study, because you hadn't been on the property, right?

6 A That's correct.

7 Q All right. Now, they never met again on it, so it
8 was up to you and Mr. Smoak at that point to decide what
9 alternates, if any, to pick, right?

10 A Correct.

11 Q And you said earlier you had never done an
12 alternative route study before, and you didn't on this
13 case, correct?

14 A That's right.

15 Q Now, you know that Mr. Cobb, he didn't meet with any
16 of the landowners either, right?

17 A I don't believe so up until November 26.

18 Q Now, you acknowledge that Mr. Regier was telling you
19 that the Oiens wanted the southern route, is that right?

20 A Yes.

21 Q And you ignored that?

22 A No, we discussed it.

23 Q But you didn't analyze it?

24 A Did not analyze it.

25 Q And you didn't compare it to the middle route, the

1 costs?

2 A If there was no analysis, we had discussions on, you
3 know, whether or not we can do that, what they would want.
4 We went several different places.

5 Q But you never did a cost analysis for, as the total
6 cost of the middle route versus the total cost of the
7 southern route; you never did that?

8 A No.

9 Q Okay.

10 THE COURT: Cross-examination.

11 MR. BANNISTER: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. BANNISTER:

15 Q Mr. Frazier, the Owens have alleged that the
16 substation was not for a, well, can you describe to the
17 Court what exactly the substation will do?

18 A Oh, as far as what it will do, it will provide power
19 to the City of Newberry's distribution grid.

20 Q Everybody?

21 A Yes.

22 Q All right. Is that an advantage or a disadvantage?

23 A Well, currently, their configuration is they lease
24 three deliveries from Duke Power. All three of these
25 deliveries go back to a large transformer substation they

1 have in Newberry, that Duke has in Newberry at high cost.
2 Building this new substation not only will provide
3 additional reliability but also be able to take two of
4 those current leased stations offline and also save money.

5 Q So it will save the rate payers, taxpayers of
6 Newberry County money?

7 A The City, yes.

8 Q The City. And it will give the City residents better
9 electricity, more reliable?

10 A Yes.

11 Q All right. Does it have any redundancy, you know,
12 will stop some of the power outages or anything like that?

13 A Yes, there were several power outages last year that
14 could have been prevented had this substation been up and
15 running.

16 Q Do you believe that will benefit the public or would
17 it be a, to not have their power go out?

18 A I'd see that as a big benefit to the City of
19 Newberry.

20 Q All right. Let me show you what's been marked as
21 exhibit 1 and see if you recognize that.

22 THE COURT: Is that Defendant's or Plaintiff?

23 MR. BANNISTER: That's Defendant's 1.

24 A Yes, sir.

25 Q What is it?

1 A I'm sorry.

2 MR. BANNISTER: I gave him my list, sorry about that.

3 Q Is that the resolution?

4 A Of?

5 Q Authorizing condemnation?

6 A It is.

7 Q Okay.

8 THE COURT: Is that the Council's resolution?

9 MR. BANNISTER: The Council resolution; yes, Your
10 Honor.

11 A Well, it's the resolution from the Piedmont
12 Municipality Agency Board.

13 Q Right: Authorizing condemnation of the tract at
14 issue, the line at issue in this case?

15 A Yeah.

16 MR. BANNISTER: And, Judge, I offer that as
17 Defendant's 1.

18 THE COURT: Any objection?

19 MR. POPE: No objection.

20 THE COURT: Admitted.

21 (Whereupon, Defendant's exhibit 1 was admitted into
22 evidence.)

23 Q Mr. Frazier, when you are looking at a transmission
24 line before condemnation when there is no proposed route
25 and you just have a spot, was there a particular spot

1 where you needed the transmission line to go or was it
2 just sort of anywhere in Newberry would be fine?

3 A Generally, when the proposal is made to PMPA, the
4 City has picked a substation location for it so that it's
5 my job to figure out where we can tap a Duke line and get
6 that power to the substation.

7 Q All right. In this case, the location of the
8 substation was already done, isn't that right?

9 A The City of Newberry owns a large piece of property
10 and they had, because most of their load is in that area,
11 they chose that for the site of their substation.

12 Q All right. And then the next step would be to
13 analyze ways to run a transmission line and did PMPA do
14 that?

15 A Yes.

16 Q All right. And how many, like did every line go
17 across the Oiens property or were there multiple ways you
18 could have gotten it to the substation that you looked at?

19 A No, there were, basically, two transmission lines
20 that served the Newberry area, the one that runs across
21 the Oiens property, and then another one west of the City.
22 We looked at routes trying to come from both of those
23 transmission lines.

24 Q All right. And in the process of deciding which of
25 those two, did you with your engineers figure out which

1 route would be preferable?

2 A Yes.

3 Q All right. If you can look at Defendant's exhibit
4 15. You still got that up there.

5 A Let me see.

6 MR. BANNISTER: Plaintiff's exhibit 15. I'm sorry,
7 Judge.

8 MR. POPE: I think it's already in evidence.

9 A Okay.

10 Q All right. So tell me what this is again?

11 A This is a proposal by the City of Newberry for PMPA
12 to build the transmission line.

13 Q All right. And in that do you, does PMPA reference
14 the factor that they have considered in selecting a route,
15 the west route versus the east route versus of the five
16 routes? Now, I'll reference you to PMPA 170 about halfway
17 down on the page.

18 A It's going. Just give me one second. Yes.

19 Q So, subsequently, we reviewed, and you tell me if I'm
20 reading it right. Subsequently, we reviewed multiple
21 options siting the transmission line with regard to, read
22 those things that you considered.

23 A Environmental impact, land use, impact to individual
24 property owners, cost of the route, visual impact.

25 Q Environmental impact, land use, impact to individual

1 property owners, cost of the route, visual impact. Is
2 that aesthetics, visual impact?

3 A I would deem that.

4 Q How about cost of route?

5 A Yes.

6 Q And so what PMPA proposed to the City of Newberry as
7 it relates to the transmission of the line is what is
8 shown on this map as the green line running through the
9 property of Oiens, is that right, the middle route?

10 A What was proposed in this report is going that middle
11 route.

12 Q Going the middle route. Taking all those things into
13 consideration, that was the preferred route with all the
14 other routes that you analyzed to get to the substation?

15 A Yes, that seemed to be the least impactful route.

16 Q All right. And if you'll look at Plaintiff's
17 exhibit, Plaintiff's 14; you still on that?

18 A I believe so.

19 Q Tell me what that is?

20 A This is the Minutes of the Transmission Committee
21 meeting that was held on March 5th.

22 Q Is this where the route was selected?

23 A This is where the transmission project was approved
24 and the consulting engineer approved to build it.

25 Q All right. And that route is the one that goes

1 through the middle of the Oiens property?

2 A That's the preferred route.

3 Q So of all the possible routes that were there,
4 because those five that you considered, right, this was
5 the preferred route?

6 A Yes.

7 THE COURT: There were five? I thought I heard two.

8 Q So go, if you can, Mr. Frazier, go back. When y'all
9 originally started, all the lines didn't go through the
10 Oiens property, did it? You looked at the west side to
11 bring in a line from the west?

12 A Yeah.

13 Q How many options from the west were there?

14 A I can't recall how many. There were multiple. We
15 always try to find the least path, so we'll look at both
16 sides and anywhere there's open land we'll try to do that,
17 because we're certainly not going to go through a house or
18 near a house if we can help it.

19 Q So were any of the, were any of the paths from the
20 west side of the substation doable?

21 A The problem with the west side is that there is a lot
22 more buildup of houses and structures on that side. Any
23 transmission line coming from there would be much longer
24 in route.

25 Q All right. And then on the east side, there were

1 multiple starting points, were there not?

2 A Yes.

3 Q And did you rule out the other starting points,
4 because they had that same problem?

5 A For the most part. There were some areas that, you
6 know, there are just too many unknowns. You know, whether
7 or not we could even go through a property or not and
8 there's some that was a subdivision that had not fully
9 developed, you know. But the houses were, the property
10 were set out, so it just seemed too risky to go that
11 route, plus it would be more expensive to go that route.

12 Q So you analyzed based on those factors multiple
13 routes before you settled on the preferred route?

14 A Yeah. Our engineer, you know, looked at all those
15 factors.

16 Q All right. So you start with the preferred route,
17 and then the City of Newberry went and talked to
18 landowners, is that right?

19 A That's correct.

20 Q And you don't take part in that part?

21 A No.

22 Q All right. The City of Newberry is negotiating, are
23 they not, for right-of-ways?

24 A They are talking to the property owner, letting them
25 know what's going on and then when we get to that stage, I

1 would prepare the right-of-way documents and send it to
2 Newberry to hand out to the property owners to review.

3 Q All right. Is this the practice of the City of
4 Newberry or PMPA to change the route but still go through
5 a contested condemnation?

6 A Say that again.

7 Q In other words, if Mr. West, Billy West said I'd
8 prefer the route to be on the southern part of my
9 property, but I still want to have a contested
10 condemnation; I still want you to file suit and I want a
11 jury trial about it. Is it your practice to change the
12 way you do the line, and then have a contested case over
13 just compensation or do you normally, when you reach an
14 agreement, that settles it, you work out all the details.
15 The right-of-way terms, just compensation, the location of
16 line, everything?

17 A No. We try to have one-hundred percent happy
18 property owners, you know, relatively speaking.

19 Q And when you can't have one-hundred percent happy
20 property owners, then what is your option?

21 A We work with them as much as we can and when we can't
22 work anymore, we have to condemn their property.

23 Q Okay. Part of the condemnation is you request a
24 grading?

25 A Yes....

1 Q Did you hire an A Grading?

2 A Yes.

3 Q Have you had a chance to review the appraisal
4 recently?

5 A Maybe not recently.

6 MR. POPE: We don't have any objection to the
7 appraisal--

8 THE COURT: Has that been marked as an exhibit?

9 MR. POPE: It's 40.

10 THE COURT: Exhibit 40 is admitted.

11 (Whereupon, Plaintiff's exhibit 40 was admitted into
12 evidence.)

13 Q Mr. Frazier, did your appraiser take into account
14 site improvements like the well and septic system?

15 A It says here that he did list improvements to the
16 property. Said that water, well and septic tank system as
17 well as this warehouse and shop with overhead doors.

18 Q Mr. Frazier did you, in determining the route did you
19 rely on your appraiser as it relates to the cost of the
20 acquisition?

21 A Well, after, of course, this was done, we had chosen
22 a route and the appraisal came back as we expected as far
23 as costs.

24 Q If your expert had said, I mean, it's not unusual to
25 have experts who disagree of valuation, is it?

1 A I wouldn't think so. Minor, minor costs.

2 Q And you would expect a landowner's appraisal to be
3 higher than the condemnor's appraisal?

4 A Yes, sir.

5 MR. POPE: Your Honor, he's leading the witness. I
6 know that I called him and wrote him a letter--

7 THE COURT: I'm going let him lead.

8 MR. BANNISTER: Thank you, Your Honor.

9 Q Based on your expert, do you believe you had
10 adequately considered the cost of acquisition in the
11 location of the line on the Oiens property?

12 A I do.

13 Q The original discussion about the southern route, now
14 I'm going to ask you what you know about the discussions
15 between the Oiens and the City of Newberry. The original
16 discussion, the first proposal was through the middle.
17 The Oiens or through their neighbor, I think there is an
18 email about they would prefer the southern route. Did the
19 Oiens reject the southern route?

20 A Yes. We had talked to or the City of Newberry had
21 talked to the, Mr. Mills, I believe his name is, about
22 getting on the property. He arranged that. My engineer
23 and I and a couple of other folks walked the southern
24 route. Became concerned with, you know, the terrain and
25 what we had seen down there. Then, before we had a chance

1 to do anything with that, the City of Newberry said that
2 the property owners had said that they wanted, they did
3 not like the southern route. That it opened up their
4 property to hunting or trespassing more readily and that
5 they preferred a more northern route.

6 Q So the answer is the Oiens rejected the southern
7 route?

8 A That's what I was told.

9 Q It opened it up to their neighbors who live in
10 smaller houses there like a subdivision right there?

11 A Some are and yes.

12 Q All right. And they wanted you to do a northern
13 route?

14 A Yes.

15 Q All right. And did y'all go out and start surveying
16 northern routes?

17 A Yeah. None of this was surveyed, but we started
18 looking for possible northern routes which is you'll kind
19 of see a green line on the north side. That's one of the
20 routes that we looked at. We looked at changing that more
21 so that it would hug the property line, as well, and then
22 we were told that the Oiens were building their house up
23 by that side, so without north and south, we went back to
24 the middle.

25 Q So the property owner rejected the northern lot and

1 said it was too close to their home site?

2 MR. POPE: I'm going to object. If he's giving
3 hearsay of what he's learned from somebody, I don't think
4 that's appropriate, Judge, so I object to that.

5 THE COURT: So outline the basis, please, sir. I
6 sustain the objection.

7 Q Let me show you the email. This is Defendant's 7.
8 Tell me what that email says.

9 A It's from Mr. Regier. It says, Mike, Oiens want the
10 line to run north of the middle of the property line.
11 North of the middle property line.

12 MR. BANNISTER: I'd offer that as exhibit 7.

13 THE COURT: Any objection.

14 MR. POPE: No objection.

15 THE COURT: Okay. Admitted.

16 (Whereupon, Defendant's exhibit 7 was admitted into
17 evidence.)

18 Q All right. I'll show you another email. Do you
19 recognize that email?

20 A Yes.

21 Q What is it?

22 A It's an email I wrote to Mark, and then Mark replied
23 back to me.

24 Q What does it reference about the Oiens position over
25 the power line?

1 A In the middle route, there were some trees that the
2 Oiens did not want taken, because we'd have to clear it
3 for the right-of-way. So this is asking so that we could
4 get some GPS coordinates for the trees so that we could
5 shift the line around them.

6 Q All right. And give me the timeframe that this email
7 would have come up? They had rejected the southern route
8 as it related to the neighbors and opening up their
9 property to trespassers and hunters. They had rejected
10 the northern route as it related to, it was too close to
11 their home site. And you are now negotiating with the
12 Oiens about the location of the middle route, is that
13 right?

14 A Yes.

15 Q There was some oak trees they wanted to keep?

16 A Yes.

17 Q And just for clarification, danger trees, what's the
18 angle you have to go up to make sure the tree doesn't fall
19 on the line?

20 A Generally, we take from the outside right-of-way, so
21 seventy-five feet, thirty-seven and a half from the center
22 line. We go up at a forty-five degree angle. Anything
23 above that gets cut.

24 Q So this was a discussion about what trees were going
25 to have to be removed to protect the power line?

1 A Yes.

2 Q All right. Let me show you another email. That is
3 Defendant's exhibit 15. 15 is still on the, I'm sorry.
4 I'd ask that we admit Defendant's 8.

5 THE COURT: 8, any objection to number 8 being
6 admitted?

7 MR. POPE: No objection.

8 THE COURT: Admitted.

9 (Whereupon, Defendant's exhibit 8 was admitted into
10 evidence.)

11 Q All right. Exhibit number 15, was that more
12 discussion by email regarding the middle route?

13 A Yes.

14 Q And could you miss the trees?

15 A Yes, we had drawn, basically, to another route that
16 would push the line down, I believe, far enough that we
17 would not have to cut the trees.

18 Q All right. And did you get an email--

19 MR. BANNISTER: All right. I'd ask for Defendant's
20 15 to be admitted.

21 THE COURT: Any objection.

22 MR. POPE: No objection.

23 THE COURT: Admitted.

24 (Whereupon, Defendant's exhibit 15 was admitted into
25 evidence.)

1 Q I show you what's marked as Defendant's 17. Is that
2 an email from your engineer?

3 A Yes.

4 Q And what is that email referencing?

5 A Let's see. My engineer talked with the surveyor
6 about the two trees or found out that it was just two
7 trees. It's his opinion that, let's see, we should
8 explain to them that it is cost-prohibitive to go around
9 the trees and see if they would agree.

10 Q More discussion internally about missing the oak
11 trees?

12 A Yes.

13 Q In the middle route?

14 A In the middle route.

15 MR. BANNISTER: All right. I would offer that as
16 Defendant's 17.

17 THE COURT: Any objection.

18 MR. POPE: No objection.

19 THE COURT: Admitted.

20 (Whereupon, Defendant's exhibit 17 was admitted into
21 evidence.)

22 Q I show you what's been marked as Defendant's 18. Is
23 that additional discussion about the effects the line
24 would have if you missed the oak trees?

25 A Let's see. Yes.

1 MR. BANNISTER: I'd offer that as Defendant's 18.

2 THE COURT: Admitted.

3 (Whereupon, Defendant's exhibit 18 was admitted into
4 evidence.)

5 Q I show you what's been marked as Defendant's 24. Is
6 that an email exchange between you and the City?

7 A Yes.

8 Q And does that reference, what does that reference?

9 MR. POPE: What's the number of that, please?

10 THE COURT: 24.

11 A 24.

12 MR. BANNISTER: That would be Defendant's 24.

13 A Let's see. This is talking about changing the line
14 and if we did so, we would have to re-engineer, resurvey,
15 redesign everything. This is in September '14. It's a
16 little bit, it's a year later.

17 Q This is continued discussion between PMPA and the
18 City about where the Oiens want the line to go?

19 A It's referencing a northern route again.

20 MR. BANNISTER: I'd offer that as Defendant's 24.

21 THE COURT: Mr. Pope, do you have any objection to
22 number 24?

23 MR. POPE: Sir?

24 THE COURT: Do you have any objection to 24?

25 MR. POPE: To 24?

1 THE COURT: Yes, sir.

2 MR. POPE: No, sir.

3 (Whereupon, Defendant's exhibit 24 was admitted into
4 evidence.)

5 Q I'm going to show you what's been marked as
6 Defendant's 13. Mr. Frazier, is Defendant's 13 questions
7 that you received from the landowner's agent, Mr. Major?

8 A Through the City of Newberry, yes.

9 Q And were there questions that Mr. Major was asking
10 you?

11 A Yes. There were some questions about the
12 right-of-way agreement and a few other things, I think.

13 Q Is that the right-of-way agreement that had the line
14 going through the middle of the property?

15 A It would have been drafted, so yes.

16 Q Those questions pertain to the right-of-way, where it
17 would be accessed, what the just compensation would be;
18 the remainder of the issues acquiring right-of-way, is
19 that right?

20 A Yes. This was a preliminary right-of-way agreement
21 for them to look at.

22 MR. BANNISTER: I'd offer that as Defendant's 13.

23 THE COURT: Any objection?

24 MR. POPE: No objection.

25 THE COURT: Admitted.

1 (Whereupon, Defendant's exhibit 13 was admitted into
2 evidence.)

3 Q Did you get a voice mail from Lynn Oien after that
4 email?

5 A I got a voice mail after a meeting on November 26th.

6 Q Is this, to the best of your knowledge, an accurate
7 transcription of the voice mail that the Plaintiff in this
8 case left you on your voice mail?

9 A Yes.

10 Q What did he say to you in that voice mail?

11 A Michael, it's Lynn Oien. We met with you the other
12 day in regards to the power line coming through our
13 property. We walked it. We made the decision that we
14 want to stay with you, what you have right now, that you
15 have originally drawn up originally as opposed to changing
16 it so you can move forward and get the final surveying
17 done and finish it up. My number is (that number) in case
18 you have any questions.

19 MR. BANNISTER: I offer that as Defendant's 3.

20 THE COURT: Any objection?

21 MR. POPE: No objection.

22 THE COURT: Admitted.

23 (Whereupon, Defendant's exhibit 3 was admitted into
24 evidence..)

25 Q Mr. Frazier, to draw the line around the oak trees

1 was going to adversely affect or was it going to adversely
2 affect the Oiens little garden field? To miss the oak
3 tree, what'd you have to do?

4 A To keep it at the center of the property, we'd
5 basically just had to tilt the line to get it to both ends
6 to match.

7 Q And was that voice mail related to not doing the tilt
8 in the line?

9 A We presented at the November 26 meeting both routes,
10 one that missed the oak trees and one that didn't. And
11 they, at the end of the meeting, they said, you know, let
12 us think about it and we'll call you so that was in
13 response to that.

14 Q And that phone call is to say never mind about the
15 oak trees, stay on the middle of the property line best
16 you can?

17 A Yes.

18 Q And the route that's currently being condemned
19 actually isn't the original middle route?

20 A It's not the exact middle, no.

21 Q It has a turn in it, an angle?

22 A Yes.

23 Q And is that angle, I'd ask you to look at Plaintiff's
24 exhibit 32.

25 A 32?

- 1 Q You got it.
- 2 A All right.
- 3 Q Excellent. All right. Plaintiff's 32 is an email
4 to, is it an email from Coleman, from you to Coleman?
- 5 A It's a, yeah, back and forth conversation.
- 6 Q All right. What does that picture imply or what does
7 that show?
- 8 A That's showing what we now call the final route.
- 9 Q All right. And where is that route?
- 10 A In the middle of the property.
- 11 Q All right. And is there a turn on that route?
- 12 A Yes.
- 13 Q And why would PMPA put a turn on that route instead
14 of just going straight?
- 15 A When we talked with Duke about tapping the line, they
16 wanted to tap in mid-span which is where the beginning of
17 that starts. So to keep the line at the property line, we
18 had to bend that down, put two bends in it.
- 19 Q Was that an accommodation for the Oiens or was that
20 an engineering assessment?
- 21 A No. PMPA would have come straight off of there and
22 gone perpendicular to the Duke transmission line. That
23 was an accommodation for the Oiens.
- 24 Q Okay. So there were changes made to the original
25 straight-shot line from the Duke power line across the

1 Oiens property at the request of the Oiens?

2 A Yes.

3 Q All right. Do you tell Duke where you're going to
4 tap the line or does Duke tell you where you can tap the
5 line?

6 A We basically give them an area and say we'd like to
7 tap it in here. They go back and do their engineering and
8 figure out a) can the line support a tap, and then b)
9 where does it make sense to tap it.

10 Q Okay. I have one more question about Defendant,
11 Plaintiff's exhibit 32, the email you were just looking
12 at. There's a reference in there to the cost to make
13 those turns. I guess, the next to the last paragraph--

14 A Yes.

15 Q And what is the cost to make those two turns in the
16 line that were requested by the Oiens and agreed to by
17 PMPA?

18 A The overall turns, I believe, in discussions with
19 Alan, I think he originally said \$80-\$85,000.00 at one
20 time. That's not stated here. I mean, at \$30-\$40 a turn,
21 you know, there's two turns, so \$80,000.00.

22 Q So \$60-\$80,000.00 to make that adjustment to the line
23 as an accommodation to the Oiens?

24 A Using these numbers, yes.

25 Q Okay. Defendant's 22, can you identify this email

1 and tell me whether or not, tell me the date and what you
2 believe to be the status of the property owner's
3 consideration of the line?

4 A This is an email. Mark Regier had asked me on the
5 November 27, 2013, I know you are, or, let's see. No, I
6 had written one to the people involved with the City and
7 to Mr. Cobb saying that, I know you all are on pins and
8 needles waiting to hear what the Oiens have to say. I'm
9 still waiting on the call. And then on November 30th of
10 2013, after I had received the phone call, I sent another
11 email out saying, it's official. Stay with the route as
12 last surveyed.

13 Q And that's in reference to the voice mail you got
14 saying go with the non-oak tree adjusted middle route?

15 A Yes.

16 Q Okay. And you believed that was a settled issue?

17 A Yeah, it was done in my mind.

18 Q Okay. You saw Mr. Pope's expert, Mr. Rogers, did a
19 route rating study. Have you had a chance to look at
20 that?

21 A I have.

22 Q If Mr. Rogers is wrong about the construction costs
23 related to the southern route, would that, and do you
24 believe that could change his rating?

25 A It would.

1 Q All right. If Mr. Rogers is wrong about the value of
2 the acquisition, do you believe that would change his
3 route ratings?

4 A It would.

5 Q When you go through the southern route, down there at
6 the pond area, right?

7 A In the pond and through some tough terrain.

8 Q Is it safer or less safe to put a transmission line
9 through and over a pond?

10 A I mean, you don't go over one if you can prefer it
11 but, I mean, it doesn't, I mean, if you have good
12 foundations on each side to work with, you know, you can
13 do it. But that's, you know, the problem.

14 Q Okay. All right. So if there's a problem is it part
15 of the fix if it's over a pond as opposed over a land
16 right-of-way?

17 A Definitely.

18 Q All right. Would you have problems accessing the
19 area that's in the wet part of the pond or in the pond
20 that you wouldn't have if you located it over land?

21 A Yes.

22 Q So from a servicing standpoint, it would be easier to
23 drive down the dirt right-of-way than it would be to drive
24 down the marshland?

25 A Yes.

1 Q All right. Are there environmental concerns that may
2 come up if you are locating your poles in a wetland?

3 A There is potential.

4 Q There'd be potential environmental concerns?

5 A I mean, you have to get a environmental wetlands, you
6 know, Alan, my engineer, refer us back, we actually hire a
7 consultant to do just the wetlands issue, because it's
8 such a big deal.

9 Q In other words, you have a route that has a wetland
10 big deal issue and you have a route that does not have a
11 wetland big deal issue, is that something you would
12 consider when looking at practices?

13 A Yes.

14 Q Okay. And as a result of the action filed by the
15 Oiens objection to the condemnation and asking for a
16 permanent, temporary and permanent injunction against
17 PMPA, did you hire a lawyer?

18 A Yes.

19 Q And has my firm represented you from that time until
20 now?

21 A Yes.

22 Q I'm going to ask you if you know what the current
23 fees through this trial are that you have paid or agreed
24 to pay for attorney fees, expert fees, and expenses.

25 A We've paid about \$55,000.00 so far.

1 Q And what do you anticipate your costs to be through
2 the end of his trial?

3 MR. POPE: Your Honor, fee is also and I think at
4 issue should not be--

5 THE COURT: I can figure it out. I'll give both of
6 you opportunity to cross-examination one another.

7 MR. POPE: And he didn't provide this as an exhibit,
8 and I don't object to that--

9 THE COURT: I know, but go ahead.

10 MR. BANNISTER: Thank you, Your Honor.

11 Q What will total defense cost of this action will be
12 at the end of this trial?

13 A More than that. It's, let's see--

14 Q It's going to be at least how much?

15 A Probably, let's see. I know there are--

16 MR. POPE: I don't think, we can take this up later.

17 THE COURT: Again, I'm going to let both of you turn
18 them in at the end of the trial.

19 MR. BANNISTER: Judge, let me just, maybe do it this
20 way. I'd like to offer my attorney's fee affidavit as an
21 exhibit.

22 THE COURT: Any objection to it coming in?

23 MR. BANNISTER: We can argue about it later.

24 THE COURT: Any objection?

25 MR. POPE: Well, I would only say, I don't object,

1 but I have a right to submit mine also.

2 THE COURT: Let me make it clear. I'm going to let
3 you, Mr. Pope, admit yours. I'm going to give you a
4 chance to cross-examine Mr. Bannister; Mr. Bannister to
5 cross-examine you. Either one of these documents.

6 MR. BANNISTER: Thank you, Your Honor. Number 27.

7 (Whereupon, Defendant's exhibit 27 was admitted into
8 evidence.)

9 A About \$7,000.00 more.

10 Q Mr. Frazier, one final comment. There's some
11 questions about this home site. Are you aware in South
12 Carolina that the frustration of future plans for a
13 landowner is not compensable in a condemnation action?

14 A I heard that.

15 Q You heard that. How about sentimental value of a
16 property from special interests that a homeowner would
17 have and you understand that's not compensable either?

18 A I would think not.

19 Q How about if they just really don't want you to run a
20 power line through their property, is that compensable?

21 A And well there's a lot of them that--

22 MR. POPE: This witness is not--

23 THE COURT: I sustain it. That's a leading question.

24 MR. BANNISTER: Judge, and I'll move on.

25 THE COURT: Okay, sir.

1 MR. BANNISTER: If they say we didn't, if PMPA did
2 not talk to the landowners and discuss what they wanted or
3 didn't want or what their future plans were, I object to
4 relevance. You said you can figure it out. I'm just
5 making sure that this witness to the extent anyone
6 believes he was supposed to find out the sentimental
7 future plans of the homeowners that that is not something
8 that's relevant for condemnation.

9 MR. POPE: Your Honor, I think that that's a legal
10 issue and I object.

11 THE COURT: I'm still going to sustain the objection
12 and I understand the issue, and I will make sure before we
13 finish with this trial that issue and that decision, that
14 I am clear on the issues I need to decide.

15 MR. BANNISTER: Thank you, Your Honor.

16 Q The last question. When doing evaluations, you
17 understand that the South Carolina law requires you to
18 determine the value of the property before the
19 condemnation and the value of the property after the
20 condemnation to determine what is the property
21 compensation for the land. And you understand that's the
22 standard by which you determine acquisition laws?

23 MR. POPE: I also object that's a legal issue for the
24 Court and it's obvious that I don't think this witness can
25 answer that.

1 THE COURT: Go ahead.

2 MR. BANNISTER: And I'm almost finished then--

3 THE COURT: I mean, I agree with him it's a legal
4 question, but I'm just trying to, if you open the door on
5 that particular issue, I'm going to allow it.

6 Q Answer best you can.

7 A My appraiser figured it that way, I believe.

8 Q And you relied on your appraiser in the location of
9 the route?

10 A Not for the location, just the cost of the
11 right-of-way acquisition.

12 Q The acquisition cost, right?

13 A Yeah.

14 MR. BANNISTER: No other questions, Your Honor.

15 THE COURT: Any redirect?

16 MR. POPE: Yes, sir.

17 REDIRECT EXAMINATION

18 By Mr. Pope:

19 Q He asked you about Plaintiff's exhibit 15.

20 A I've got some up here.

21 Q All right. Plaintiff's exhibit 15, Mr. Bannister
22 asked you about page PMPA.170 and it was, of course, it
23 lists the factors, environmental impact, land use, impact
24 to individual property owners, cost of the route, visual
25 impact. All those are factors?

1 A Would be, but that's what Mr. Cobb looked at.

2 Q All right. And this was in February 28, 2013?

3 A Yes.

4 Q And that was, again, this was before anybody had been
5 on anybody's property, any of the affected landowners,
6 correct?

7 A That's correct.

8 Q Based on a Google map and GIS, correct?

9 A Yes.

10 Q All right. And they did not access individual
11 tracts, this was just, they said we consider these factors
12 as to the 15 landowners, correct?

13 A Well, using, as you said, the GIS. I mean, we could
14 see the different tracts that we looked at.

15 Q Right. But there's no analysis anywhere either at
16 that time real early or later that applies to the Oien
17 tract comparing each of those factors on each route that
18 was possible, is that right?

19 A There is no documentation.

20 Q And that's correct?

21 A Yes.

22 Q Now, you were talked, you were asked about a number
23 of emails in June of 2013, correct?

24 A Yes.

25 Q Back here where you were talking about, well, let's

1 look at the north and, well, and let's look at the middle,
2 let's look at the south, is that right?

3 A Yes.

4 Q And that was very early in the process, correct?

5 A Middle of it.

6 Q Well, to the landowner, it was early, wasn't it?

7 A To my knowledge, the landowner had been involved
8 since February or March.

9 Q Well, what is the landowner here? It just says any
10 landowner. They won't, they don't like transmission
11 lines, they want to figure out what route you got in mind
12 and let's look at this one, let's look at that one, right?

13 A Yeah.. All, both the owners had been contacted by
14 June.

15 Q But you didn't contact them, you assume they had?

16 A The City of Newberry had contacted and provided me a
17 contact list with phone numbers.

18 Q Okay. But you don't know what contact they had made?

19 A I do not know what was ever said, no.

20 Q And you don't know whether they had been shown a map,
21 correct?

22 A I don't know what was discussed with each property
23 owner, right.

24 Q And you know now that Mr. Regier had never done a
25 transmission line before, correct?

1 A That's correct.

2 Q But this was all in June they were looking at the
3 middle, they were looking at the north, and they were
4 looking at the south, right?

5 A They had already eliminated the south--

6 Q Were they looking at those three or not?

7 MR. BANNISTER: Judge, he's got to let him answer.

8 THE COURT: Yeah, I agree. Let him finish his
9 answer.

10 A They had already reviewed the south and told us to
11 put it up north at around that time.

12 Q Well, I showed you on your direct examination emails
13 from your file saying they wanted it on the south, they
14 wanted it on the south, right?

15 A There are emails, yeah.

16 Q Sir?

17 A There are emails, yes.

18 Q Now, we talked about that voice mail. The voice mail
19 says nothing about the middle route does it?

20 A We were--

21 Q Does it say anything about the middle route?

22 A It does not say it, no.

23 Q All right. And when you filed your answer in this
24 case, you did not assert that he had made any agreement to
25 the middle route in November 2013, did he?

1 A We had--

2 Q No, is your answer in this case?

3 A It did not specifically reference that.

4 Q Now, he asked you a question, Counsel did, about the
5 wetlands, a big deal issue. You don't contend that going
6 across a pond like the one on exhibit 44 here is a big
7 deal, wetlands issue, do you?

8 A Going across the pond, depending on how much you have
9 to spend, will not be an issue, but where you have to set
10 your poles and how you access those poles would be.

11 Q And the transmission line was going--

12 A I'm sure some of them do, yes.

13 Q And now when you got this voice mail, you never wrote
14 Mr. Oien and said, okay, great, we all agree on the middle
15 route. You never did that, did you?

16 A I'm not even sure I have an email from him but he did
17 leave me his cell phone.

18 Q You could write him, you had his home address?

19 A He did leave me his cell phone, and I returned that
20 call and left him a voice message.

21 Q But you never said we have an agreement?

22 A I did in my voice message.

23 Q What voice mail was that?

24 A After he called and left his message, I returned his
25 call and left him a message.

1 Q Now, you never said that in your deposition, did you?

2 A Yes.

3 Q That you left him a message?

4 A If I didn't, then you didn't ask it.

5 Q All right. Now, you were asked the questions about
6 frustrations of a future landowner's intentions. Now, in
7 this case, well, you know, you didn't know when the
8 condemnation started, but you know now that the Oiens paid
9 over \$100,000.00 on this home site toward the home,
10 correct?

11 A They had spent some money, yes.

12 Q And the \$78,000.00 of that was for materials for the
13 home which they'd paid an advanced payment?

14 A Yes.

15 Q And that that would be forfeited if they don't build
16 that home?

17 A Under my understanding, they signed a three-year
18 contract and they've already forfeited that money.

19 Q All right. But for the plans, they're not
20 speculative?

21 A Pardon?

22 Q Their plans to do that are not speculative? That
23 they made a commitment to do it.

24 A There was intention, yeah.

25 Q Sir?

1 A I mean, just purchasing the plans and clearing, looks
2 like they were going to do something.

3 Q Yeah. You agree with that?

4 A Yeah.

5 Q Now, were you aware that the soil is very wet below
6 the dam on this exhibit 44 also?

7 A Yes.

8 THE COURT: Ask that question again, I missed,
9 please.

10 MR. POPE: Excuse me, Judge.

11 Q Are you, I asked the witness if he was aware that
12 below the dam there's some wet areas in there where the
13 water overflows from under the dam or over the dam,
14 correct?

15 A Yes. Well, I would expect there to be some wetland
16 in there, yeah.

17 Q I mean, there's no big deal going over there, either,
18 when they go over a pond, they go over a wetland or
19 wettish area?

20 A Depending on where the final design is, you have to
21 have soil buoyance to determine where you put a pole.

22 Q Well, as you said before there were no, it's feasible
23 to go the southern route, correct, you said that?

24 A It would be feasible.

25 Q And you think it'd cost about \$30-\$40,000.00 more,

1 right?

2 A Well, for two turns.

3 Q Yeah. Thank you.

4 A Plus, there could be other costs. We just don't
5 know. It's never been fleshed out.

6 MR. POPE: All right. Thank you.

7 MR. BANNISTER: I got one question.

8 THE COURT: All right.

9 RE CROSS-EXAMINATION

10 By Mr. Bannister:

11 Q Anything in the middle route power line that keeps
12 the Oiens from building the house that they ordered and
13 paid \$78,000.00 for?

14 A Not in my mind.

15 Q They can build it, right?

16 A Yes.

17 THE COURT: All right. Thank you, sir. You may step
18 down. How long is your next witness going to be?

19 MR. POPE: Well, my next witness would be one I would
20 want to finish the cross on it. I can publish a short
21 deposition in there.

22 THE COURT: All right. Okay.

23 MR. POPE: We got Coleman Smoak's deposition.

24 THE COURT: Coleman Smoak?

25 MR. POPE: It's his original deposition.

1 THE COURT: Mr. Bannister, any objection to this at
2 all? This is deposition of Coleman Smoak, do you have an
3 extra copy?

4 MR. POPE: Judge, this is not very long, so I'll just
5 read.

6 THE COURT: Okay. Going back. Any objections to the
7 deposition?

8 MR. BANNISTER: To the entire deposition coming in?

9 THE COURT: Yeah.

10 MR. BANNISTER: Okay.

11 REPORTER: All right. Judge, I guess, I'll mark that
12 as Court's 1?

13 THE COURT: Ma'am?

14 REPORTER: I can mark that as Court's 1?

15 THE COURT: That'll be fine.

16 (Whereupon, Court's exhibit 1 was marked for
17 identification.)

18 THE COURT: And just let the record reflect, I have
19 opened the original as a Court's exhibit.

20 MR. POPE: And we'll read, publishing portions of the
21 deposition of Coleman Smoak which was taken September 8,
22 2014.

23 THE COURT: Okay, sir.

24 (Whereupon, Mr. Pope read portions of the deposition
25 of Mr. Coleman Smoak into the record, starting at

1 12:23 p.m. and ended at 12:36 p.m.)

2 THE COURT: We will take a lunch break and be back at
3 1:30. Thank you.

4 (Whereupon, a lunch break was taken.)

5 THE COURT: All right, Mr. Pope.

6 MR. POPE: We would call Lynn Oien to the stand.

7 LYNN OIEN, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Pope:

11 Q All right. State your full name and address?

12 A Lynn E. Oien; 1216 Southeast Colony Way, Jupiter,
13 Florida.

14 Q Okay. Now, you wear a hearing aide, don't you, Mr.
15 Oien?

16 A I'm sorry?

17 Q You wear hearing aids?

18 A Yes, I do.

19 Q Just like I do, so you need to make sure you
20 understand the question and make sure I'm speaking loud
21 enough, okay?

22 A Okay.

23 Q All right. You're how old now?

24 A Sixty-nine.

25 Q Okay. And your wife, June, is here with you?

1 A Yes.

2 Q What job do you have in Florida?

3 A I'm self-employed, and I manufacture engine room
4 ventilation systems for boats.

5 Q And what's the name of your company?

6 A Delta T Systems.

7 Q And are you the owner of that business?

8 A Yes.

9 Q How many employees do you have down there?

10 A I have 22.

11 Q And what does Delta T Systems produce or sell?

12 A We produce, we manufacture and sell engine room
13 ventilation components, fans, dampers, control systems.
14 and we do that for a variety of vessels, pleasure boat,
15 work boat, and military and, basically, all sizes of
16 vessels from 35 feet up to a thousand feet.

17 Q And, in fact, did you put, is your system in use on
18 the, on a U.S. Navy aircraft carrier?

19 A Yes.

20 Q And your customers would, I think, you said would be
21 military and civilian?

22 A That's correct.

23 Q Do you have contracts with Coast Guard and the Navy
24 for your systems?

25 A Yes, the U.S. Coast Guard and the U.S. Navy, as well

1 as the U.S. Army and foreign military.

2 Q All right. Including, as far as military in what
3 foreign country?

4 A I'm sorry?

5 Q What foreign country's militaries?

6 A We do business with Indonesia, with the UAE, Egypt,
7 Israel, Panama.

8 Q Okay. Now, did you spend your early life and growing
9 up over in the State of Washington near Seattle?

10 A Yes.

11 Q And what was your work history like before Delta T?

12 A I was in the automotive aftermarket. We sold,
13 distributed internal engine parts to the aftermarket.

14 Q Okay. That was in Seattle?

15 A That's correct.

16 Q And after that, what'd you do?

17 A Prior to that I was in school.

18 Q No, after that, what did you do?

19 A After that, I sold gas turbines into the marine
20 marketplace.

21 Q And your background is in sales and marketing?

22 A That's correct.

23 Q You also, you and your staff, your small staff,
24 profits in-house in your business?

25 A That's correct.

1 Q All right. Now, you have been involved with the
2 management with Delta T Systems for how many years?

3 A Twenty-five.

4 Q Now, you have how many children?

5 A Two.

6 Q And they are 40 and 37?

7 A 40 and 37.

8 Q And they live where?

9 A Both of them live in Seattle, yeah.

10 Q Now, and you've been in Florida for 25 years?

11 A I'm sorry?

12 Q You've been in Florida 25 years?

13 A Yes.

14 Q Okay. How did you happen to find Newberry?

15 A We owned some property at The Cliffs in the northeast
16 corner of the State, and I had played in a number of golf
17 tournaments, the Pro Am, BMW Pro Am Tournament. And we
18 were driving up 26, it just so happened that we had never
19 come up 26. We'd always gone 75 through Atlanta, and we
20 were coming up through 26 on one weekend and it was about
21 5:00 o'clock at night. We saw a sign that said, Historic
22 Downtown Newberry, and so we decided to stop and have
23 dinner and we drove into the city and fell in love with
24 it.

25 Q And did you then start looking for property?

1 A We did. I wasn't initially. It was about two weeks
2 after that but yes, we started looking for property right
3 away.

4 Q And what were you looking for?

5 A We were looking for acreage. I had grown up on
6 acreage, and so I wanted to have something similar to what
7 I had when I was growing up.

8 Q Did you have your intention of buying a place that
9 you could grow trees and sell them or for retirement?

10 A No, for retirement. It was basically for retirement.
11 We always said that we were looking for our Mayberry and
12 we ended up in Newberry.

13 Q Now, you, the property you showed, this map which is
14 Plaintiff's exhibit 1. This is the property that you own?

15 A Yes, that's correct.

16 Q And it's 116 acres?

17 A Correct.

18 MR. POPE: We would offer exhibit 1.

19 THE COURT: Which exhibit is it?

20 MR. BANNISTER: No objection.

21 THE COURT: Exhibit number 1 admitted.

22 (Whereupon, Plaintiff's exhibit 1 was admitted into
23 evidence.)

24 Q All right. And did you buy this property from a
25 brother and a sister who actually owned each half of it?

1 A Yes, the brother owned part of it and the sister
2 owned the other part, John Halfacre.

3 Q Did you buy them at the same time?

4 A We bought them at the same time.

5 Q What year?

6 A Pardon?

7 Q What year?

8 A In 2005.

9 Q Okay. And this exhibit 1 shows the boundaries of it
10 from an aerial GIS map?

11 A That's correct.

12 Q Okay. And would you explain what, just sort of walk
13 us through the property. You can come down and point if
14 you want to.

15 A Sure.

16 Q The access road is down here in the lower right
17 corner?

18 A That's the, that's the gate. That's the entrance.

19 Q And that's O'Dell Road?

20 A That's O'Dell Road; that's correct. And O'Dell Road
21 used to come all the way to the first corner up there on
22 further right there. It used to come to that and we made
23 an agreement with the City, and we did a circle at the end
24 of O'Dell at our new gate and that became our property at
25 that point and we were responsible.

1 Q So O'Dell Road dead-ends at a gate on your property?

2 A That's correct.

3 Q Okay. And is that, tell me what attracted you to
4 buying that 116-acre tract?

5 A It's pristine. It's almost like a plantation when
6 you go on the property. It's very, very pristine and it's
7 remote. It's close to the city. There are, it's close to
8 a lot of activities. It's close to the hospital, Lowe's,
9 just about everything that you want. And it's, I believe,
10 it's about three miles from downtown. So it's very easy
11 to get in and out of town.

12 Q And your distance to Wal-Mart from your front gate?

13 A Oh, five minutes at the most.

14 Q And so the City limits is somewhere down to the left
15 lower corner of this?

16 A That's correct.

17 Q And the interstate is up here off the left and above
18 it?

19 A Correct. I-26.

20 Q Yeah. And so the quiet appealed to you?

21 A Very much so.

22 Q Being remote?

23 A Yes.

24 Q And what improvements did you do from 2005 forward?

25 A Started with the barn. We call it the barn. It's a

- 1 7,000 square foot shop and--
- 2 Q It's the white building that's shown on the--
- 3 A Correct.
- 4 Q --transmission line right around the right upper
- 5 corner?
- 6 A Correct. I did all the prep work for that, and I
- 7 pushed the road in, and then had the barn built.
- 8 Q How much money was invested in that barn?
- 9 A I'm sorry?
- 10 Q How much money was put into that investment for the
- 11 barn?
- 12 A It's about \$160,000.00, and we put a well in, as well
- 13 as a septic tank and for that space.
- 14 Q For the barn?
- 15 A Yes.
- 16 Q All right. Did you grade the roads that are shown
- 17 going--
- 18 A Yes.
- 19 Q --south to north to the barn?
- 20 A Yes.
- 21 Q Did you also grade a road going on this spot here to
- 22 the left of the barn?
- 23 A Yes.
- 24 Q What is that?
- 25 A That's the homesite that we were prepping, and so I

1 cleared that. Had it cut down, all of the timber off of
2 it, and I prepped the site and I did that in 2009.

3 Q All right. How much money did you invest clearing
4 the homesite?

5 A I'm sorry?

6 Q How much money did you spend in--

7 A I probably spent \$20-\$25,000.00.

8 Q Now, what about water to that homesite?

9 A We also put a well in there and power, so we ran
10 underground power from the main road to both the barn and
11 to the homesite.

12 Q Okay.

13 A We have 50 KVA power at the homesite.

14 Q I show you Plaintiff's exhibit 3. That's an invoice
15 dated 10/1/2008. Is that what you paid for, two wells?

16 A That's correct.

17 Q Is the top well the well to the homesite or is it a
18 well to the barn?

19 A It's the one at the homesite.

20 Q Okay. So the one at the bottom, the second pricing
21 is for the barn?

22 A Yes, the first well was almost 365 feet.

23 Q All right.

24 MR. POPE: We offer Plaintiff's exhibit 3.

25 THE COURT: Any objection?

1 MR. BANNISTER: No objection.

2 THE COURT: It's admitted.

3 (Whereupon, Plaintiff's exhibit 3 was admitted into
4 evidence.)

5 Q And did you also plan and pay in part for a home on
6 the homesite?

7 A Yes.

8 Q All right. I'm showing you exhibit 2.

9 A Yes.

10 Q What is exhibit 2?

11 A It's our Purchase and Sell Agreement that we made for
12 the home that was going to be on the site.

13 Q Is that the construction?

14 A It doesn't include any construction, just the
15 materials.

16 Q All right. That was dated when?

17 A The date is 9/23/2008.

18 Q All right. And the total price, ultimately, would be
19 how much?

20 A Well, with the building, it would probably be in the
21 \$900 to a million dollars.

22 Q Counting construction?

23 A Counting construction, yes.

24 Q All right. So materials alone were how much on that
25 contract?

1 A \$600,000.00.

2 Q Yeah. Now, you've paid how much of that total?

3 A I paid \$78,598.00.

4 Q And that was in September 2008?

5 A That's correct.

6 Q All right.

7 A That was for plans.

8 Q Did you have plans?

9 A Yes, we did.

10 Q Many pages of drawings and what not?

11 A Yes, we did.

12 Q Now, have you completed those plans for that
13 homesite?

14 A I'm sorry?

15 Q Have you completed the homesite?

16 A No.

17 Q 2008, was that a good year or a bad year?

18 A 2008 was a very bad year for almost everybody.

19 Q And, obviously, that was a worldwide phenomenon.

20 A Yes.

21 Q Did you get agreement from those people that they
22 would honor at least part of the money you paid down--

23 A Yes.

24 Q --in the future?

25 A Yes.

1 Q Is that contract still alive now?

2 A It is.

3 MR. POPE: I offer that exhibit 2 in evidence, Your
4 Honor.

5 THE COURT: Any objection?

6 MR. BANNISTER: No objection.

7 THE COURT: Admitted.

8 (Whereupon, Plaintiff's exhibit 2 was admitted into
9 evidence.)

10 Q Exhibit 4 is what?

11 A That's a picture of the actual home that was built in
12 another location and that's one of the reasons that we
13 liked it, because we had had an opportunity to look at it.

14 Q Okay. So exhibit 4 is going to be what materials
15 shown on number 4, are those going to be what you just
16 bought--

17 A That's correct.

18 Q --or obligated yourself to buy?

19 A That's correct.

20 Q All right. It is a very large home, is it not?

21 A About 9,000 square feet.

22 Q Okay.

23 MR. POPE: I'd offer exhibit 4 in evidence.

24 THE COURT: Any objection?

25 MR. BANNISTER: No, Your Honor.

1 THE COURT: Admitted.

2 (Whereupon, Plaintiff's exhibit 4 was admitted into
3 evidence.)

4 Q Now, when I was talking to you about improvements, I
5 meant to ask you about utilities. You have a well head
6 right there at the homesite?

7 A Yes, sir.

8 Q Do you have power there?

9 A Yes.

10 Q Where does it go? Where is it from?

11 A It comes from the main road where they went
12 underground and went all the way back underground.

13 Q Does it follow right here?

14 A Along the road there, yes.

15 Q It's underground?

16 A That's correct.

17 Q Is it clearly marked?

18 A I'm sorry?

19 Q Is your underground line marked--

20 A Yes.

21 Q --with PVC pipe?

22 A It's marked with PVC pipe.

23 Q Three feet high above line?

24 A Yes.

25 Q Now, you, in addition to building a big garage

1 barn-type building, what's in the barn building?

2 A We have a number of pieces of equipment. Have a
3 dozier, tracko, tractors, mowers. Equipment that I was
4 using to clear the sites and prep the sites.

5 Q All right. Have you, in the 10 years you've owned
6 this 116 acres, you and your wife were up here on a
7 regular basis?

8 A Yes.

9 Q Can you estimate how many times you've been up to do
10 maintenance on your--

11 A Well, we try to get up at least once-a-month and
12 lately, it's been more like once-a-quarter.

13 Q All right. Now, on the other part of the property,
14 obviously, a homesite is on the north half of it. On the
15 south half, there's a road that goes to your house right
16 here?

17 A That's correct.

18 Q And is that, that's where you stay when you come use
19 your property?

20 A Yes. It's about a 2,000 square foot home.

21 Q Is that a permanent plan to stay in that house?

22 A No.

23 Q It's small?

24 A It's too small and it's old.

25 Q And would you envision, what uses would you have for

1 it?

2 A We had planned on using that as a caretaker's home.
3 Having a place that someone could come and live and take
4 care of, is if we needed it.

5 Q Well, even though this cottage on this pond here is
6 near the southern border, you have no problem and you've
7 never expressed any problem with house being exposed to a
8 transmission line, is that right?

9 A No.

10 Q Now, let me show you exhibit 5 which are some
11 pictures that are taken by Mr. Rogers. I want to know if
12 you can identify them as the first picture in exhibit 5,
13 the entranceway?

14 A Yes, that's looking from the gate south.

15 Q Okay. And if you go past the tree there, the opening
16 to the left, there's a power pole?

17 A That's correct. That's the Duke power line.

18 Q And it's flat right there like a parking lot almost?

19 A That's correct.

20 Q All right, sir. And the next picture shows the area
21 where the current power pole is to the left of your
22 driveway?

23 A Yes. It'd be running south, looking south.

24 Q Okay. As you enter the Duke transmission line
25 right-of-way, it's to the left of the drive on the south

1 of the drive?

2 A That's correct.

3 Q Okay. So it's flat there?

4 A Yes.

5 Q Now, you've seen pictures that PMPA has brought and
6 showed you in mediation that they proposed to put a tap
7 wall way up here to the right?

8 A Yes.

9 Q Is that tap point way up there more accessible or
10 less accessible?

11 A Actually, their proposed tap, I believe, was even
12 further. I think that's pole number 34, if I remember
13 right.

14 Q Is that more accessible than the one you just pointed
15 out to the left of the driveway or south of the driveway?

16 A I'm sorry?

17 Q Which pole, tap point is more accessible for cars and
18 trucks?

19 A Oh, the southern one, of course.

20 Q When you look at the fourth picture. Is that the
21 access drive to your home?

22 A That is the, that one. This is, yeah, this is
23 heading into, before it splits and goes to the old home
24 and to the new home.

25 Q All right. And the next picture, the legal access

1 drive, that's another picture of that drive?

2 A Yes.

3 Q All right. Now, you're proud of your property there
4 and the work that you've done?

5 A Very much so.

6 Q All right. The next picture shows a labeled,
7 underground electric. Is that one of those PVC markings?

8 A That is.

9 Q Power you've already got for the homesite?

10 A Yes, that is.

11 Q And you don't use that underground power at any other
12 spot other than the homesite or the barn?

13 A And the barn.

14 Q Okay. Now, the photograph marked Access to lake
15 house. Does that show the gate area where you could go
16 through?

17 A That shows the gate area down to the old house.

18 Q Okay. To the existing cottage?

19 A Yes.

20 Q The next picture entranceway lake house shows the
21 same thing?

22 A Correct.

23 Q Do you have a picture of the lake house on here?

24 A Yes. Yes.

25 Q Okay. Another picture of the lake house?

- 1 A Yes.
- 2 Q Another picture of the lake house from the direction
3 of the pond?
- 4 A Correct.
- 5 Q You've got there a picture of the pond from the
6 general area of the lake house?
- 7 A Correct.
- 8 Q Looking towards the back, you've got pictures of the
9 pond itself, several pictures of the pond area?
- 10 A Yes.
- 11 Q Does that pond maintain a pretty constant size?
- 12 A I'm sorry?
- 13 Q Does it maintain a constant size pretty much?
- 14 A Yes, it does. It is controlled by a dam.
- 15 Q Is the slopping to the pond, is it like narrow or
16 relatively steep or is it well-contained or not, is it?
- 17 A It's not very steep, no.
- 18 Q Okay. Is the water contained in an area reasonably
19 well?
- 20 A Yes.
- 21 Q Do you also have any wet area below the dam?
- 22 A Yes. Almost all the way to the property line.
- 23 Q The area I am pointing?
- 24 A Property, yes. It's, in fact, it's very wet there.
25 Like three creeks that run through that from the drainage

1 from the pond.

2 Q The width of this would be something like 300 feet?

3 A That's probably pretty close.

4 Q Okay. The rest of the pond would be similar or less?

5 A Very similar, less on the tip.

6 Q Okay.

7 MR. POPE: And we would offer exhibit 5.

8 THE COURT: Any objection?

9 MR. BANNISTER: No objection, Your Honor..

10 THE COURT: Admitted.

11 (Whereupon, Plaintiff's exhibit number 5 was admitted
12 into evidence.)

13 Q Now, the first word you had had about PMPA, had you
14 ever heard of PMPA in the early part of 2013?

15 A No.

16 Q Did you hear about a transmission line being in the
17 neighborhood from someone?

18 A Yes.

19 Q From whom?

20 A I received an email from Misty West February 25th,
21 2013 stating that they had just had a meeting with the
22 City and that they were planning a power line through our
23 property, as well as theirs.

24 Q Is this exhibit 7, is that the email you got?

25 A Yes, it is. Correct.

1 Q And did you read it there when she said she told the
2 City that there was no way you would willingly give you an
3 easement to cut your property in-half?

4 A Yes.

5 Q What were you expecting to happen after you got, a
6 rumor or whatever you want to call it from Misty West?

7 A We weren't sure, but we were expecting from this that
8 they were going to contact us.

9 Q And did they contact you shortly after that at all?

10 A No.

11 Q Did you hear anything from them during the month of
12 March?

13 A No.

14 Q What about April?

15 A No.

16 Q At some point after that, did you see people on your
17 property?

18 A Yes.

19 Q In the early summer sometime?

20 A Yes.

21 Q Who'd you see?

22 A I was driving out and there were a group of folks
23 with a pickup just inside the gate. They identified
24 themselves as Duke Power, and they said they were looking
25 at the line.

1 Q It was just Duke Power people?

2 A No, I believe there were some City representatives
3 there, as well.

4 Q And did they say anything about a line route or
5 anything like that?

6 A No.

7 Q Did anybody from PMPA or on their behalf ever call
8 you or write you and say we want to come and show this
9 project to you, want to show you a map?

10 A No.

11 Q They never call you and contact you and say we want
12 to, we want to see the lay of the land so we can access
13 what our acquisition costs might be?

14 A No.

15 Q Then, later we've heard that they sent an appraiser
16 out there, did he? Mr. Graydon, they sent an appraiser
17 out there, he never met with you?

18 A No.

19 Q You never saw him?

20 A No.

21 Q And he never called you to ask about the use you had
22 of your property?

23 A No.

24 Q If he had called you, you would have gladly told him
25 what you've already told the Court about your plans for

1 this property, correct?

2 A That's correct.

3 Q Now, what, after you saw those folks, when did, did
4 you ever talk to Mr. Regier?

5 A I met Mr. Regier at a social function, luau for the
6 Opera House Guild, at Billy West's home.

7 Q Did you ever see or speak with Todd Guy?

8 A Yes.

9 MR. POPE: Excuse me. Before I get to that, I want
10 to offer exhibit 7 into evidence.

11 THE COURT: Any objection to exhibit 7?

12 MR. BANNISTER: No objection, Your Honor.

13 THE COURT: It's in.

14 (Whereupon, Plaintiff's exhibit 7 was admitted into
15 evidence.)

16 Q Did you talk to Todd Guy on occasion?

17 A Yes.

18 Q And did you tell, where did you tell him you wanted
19 the line to go?

20 A Well, at the time, the line hadn't been established
21 other than that they had said that or Todd had said they
22 were going to run it down the middle. So my big concern
23 was my driveway into the new house and also where the
24 poles were going to be. If they were going to go in
25 there, I wanted to know more information. We tagged some

1 of the trees that he felt that would be affected and what
2 trees I didn't want to have affected by the route.

3 Q And at some point, you saw someone for the City that
4 they drew a southern route?

5 A Pardon me?

6 Q At some point, you saw that someone from the City
7 told you they had drawn a southern route?

8 A No, not until we met with them when we called the
9 meeting.

10 Q And that would have been what month?

11 A That would have been in September of 2013.

12 Q 2013?

13 A That's correct.

14 Q So the first route you saw was in September or did
15 you see routes--

16 A -- no, we saw a route with, Misty West had presented
17 a route that they had shown the middle route and the
18 southern route that she had said that would probably work
19 for us.

20 Q And so were you being briefed by the City or by the
21 PMPA about what their intentions were for your property
22 during the summer months of 2013?

23 A No.

24 Q Did you finally insist that there be a meeting?

25 A Yes.

1 Q You called a meeting?

2 A Yes, we called, we asked for a meeting with PMPA,
3 because we weren't getting where we needed to go with the
4 City.

5 Q And did you have a meeting with the City before that
6 in September about it?

7 A Yes, we did.

8 Q All right. When?

9 A It was the, I'm not sure of the exact date, but I
10 think it was, I think, the 24th or somewhere in there.

11 Q Of September?

12 A Yes.

13 Q 2013?

14 A That's correct.

15 Q And what, and was Paul Major with you there on that
16 meeting?

17 A Yes.

18 Q And he, how many options were presented at that time?

19 A Well, I think we looked at the three options that
20 were laid out, one that they had already drawn and one to
21 the north and one to the south.

22 Q And did you have, express yourself then or later
23 about the southern route?

24 A Yes. We said that the southern route would be
25 preferable just because it was away from the homesite and

1 it would make a lot more sense to do that.

2 Q And the middle route as they drew was just a straight
3 line right through the middle?

4 A Yes.

5 Q And you expressed your preference for the southern
6 route to how many people on how many different occasions?

7 A Well, in that meeting, there was Todd, Mark, and the
8 City Manager.

9 Q Okay.

10 A We expressed that to them and a number of times after
11 that also in the meeting with PMPA.

12 Q Well, did you also tell that to Mr. Regier on all the
13 occasions?

14 A Yes.

15 Q Is it clear to you that he understood or should have
16 understood you wanted a southern route?

17 A He should have understood, yes.

18 Q All right. Now, would you consider as a reasonable
19 person in talking with folks about a business deal and you
20 really need to look at every option?

21 A Yes.

22 Q And did you want to see and hear what they had to say
23 about any option, including the one you preferred?

24 A Yes, we did.

25 Q What did they want to talk about every time you

1 wanted to talk about a southern route?

2 A They wanted to talk about money and the center route,
3 because it was cheaper, a straight line and the southern
4 route was much more expensive.

5 Q Now, did you get any feedback after you made the
6 opinions of yours known and your wife was there also?

7 A Yes.

8 Q And Paul Major, the forester was there?

9 A That's correct.

10 Q All right. And did you make it clear in that meeting
11 that you wanted the southern route?

12 A Yes.

13 Q All right. And the southern, after September 27th,
14 did you get feedback that assured you that that was going
15 to happen?

16 A No.

17 Q So what did you do as requesting--

18 A -- we got no feedback. In fact, almost every time
19 we, well, we had to call all the meetings, and we would go
20 to a meeting and we wouldn't hear from them for three
21 months. They wouldn't answer calls. We had a couple of
22 brief discussions over the phone but nothing that was
23 related to anything other than trying to set up a meeting.

24 Q Okay. Notwithstanding that you wanted the southern
25 route, were you trying to work with them to try to listen

1 to what they had to say about some other route?

2 A Well, we were willing to listen to anything as long
3 as they could justify that it would be good for us and for
4 them.

5 Q But they never could, did they ever present a line
6 that did that except the southern route?

7 A They never came up with any clear proposals. We
8 asked for a number of poles, high-clip poles, location of
9 the poles, what the poles would look like and they never
10 came up or fixed locations or anything.

11 Q So now your homesite is right here, correct?

12 A Correct.

13 Q And did you also have a plan that you'd talk to Mr.
14 Major about regarding a pond?

15 A Yes.

16 Q Where was it going to go?

17 A Well, the pond was located to the southwest of the
18 homesite, south and west and it'd take, it would probably
19 be a--

20 Q Come down and draw where that's going to be.

21 A (Witness steps from witness stand.)

22 Q First, I'm going to put a circle or the X where your
23 homesite was, right there?

24 A Yeah, that's correct.

25 Q All right. Can you draw that approximate area of

1 your pond?

2 THE COURT: What was your question, please, sir?

3 MR. POPE: I'm asking him to draw the approximate
4 area of the pond he was going to install in front it.

5 THE COURT: Okay. I'm sorry.

6 Q And I'm going to draw this. Now, did you pick that
7 because of the land laid that way or because it was just
8 arbitrary?

9 A No, and because the land was set up for a good pond.
10 It's got three creeks running into it and a easy area down
11 south on the west side for a dam.

12 Q And so you spoke to Mr. Paul Major about helping you
13 thin those trees?

14 A Take the trees out, yes.

15 Q So you could do that?

16 A That's correct.

17 Q All right. Now, how far from that house site to the
18 line, if you could draw it on this map, and the one that
19 goes through the center?

20 A The original line which went through the center of
21 the garden area, it was about 200 feet to the, to that
22 line from the house.

23 Q And the final line, they moved it away from the
24 garden, but how far is that?

25 A Pardon?

1 Q The final line?

2 A It was about between 250 and 300 feet.

3 Q Okay. From that house site to the line?

4 A That's correct.

5 Q All right.

6 A It was about a hundred feet from the homesite to the
7 opening where it opened up into the garden area.

8 Q It was an open field?

9 A Yeah, so everything would be exposed.

10 Q Now, you understood that those transmission lines if
11 you run this, in doing these, they're going to be 80 to 93
12 feet high, correct?

13 A That's what they said, yes.

14 Q Does that, what does that do for your thought for a
15 retirement home and spending such a large sum of money and
16 having a transmission line running 400 feet away?

17 A We weren't happy about it. It's not something that
18 we had planned on and we were very unhappy about it.

19 Q Well, at this point, you had been working for several
20 years towards implementing step-by-step homesite, plans
21 for the home, the pond's next, and then you got to build
22 it, right?

23 A That's correct.

24 Q But you had already invested at least 15 percent of
25 the money you were ultimately going to spend building the

1 home?

2 A That's correct.

3 Q And they talked earlier in testimony, Mr. Frazier
4 talked earlier about the fact that you were wishy-washy;
5 you changed your mind and you didn't want the southern
6 route, then you didn't want the southern route. Is that
7 true that you were wishy-washy and told him you did not
8 want the southern route?

9 A No..

10 Q You had a major decision to make about these routes?

11 A Yes.

12 Q And you wanted to get all the information you could
13 get?

14 A That's correct.

15 Q And you consistently told them you wanted the
16 southern route?

17 A That's correct.

18 Q It did present a security concern, but it wasn't
19 enough that you didn't want it?

20 A That was the only concern we had was the security of
21 the property with the southern route.

22 Q Right. If using the southern route, is that going to
23 make the transmission lines easy to see or impossible to
24 see from that homesite?

25 A Impossible to see from that side.

1 Q And that's why you wanted it?

2 A That's correct.

3 Q And you told them that you didn't care about the
4 cottage, because you weren't going to be staying there;
5 that the aesthetics for that cottage weren't as important
6 as the homesite?

7 A That's correct.

8 Q Now, when you had a meeting on November 27th, you
9 said you called that meeting?

10 A Yes, we did.

11 Q Had you ever met with PMPA or had they ever contacted
12 you to want to meet with you?

13 A No.

14 Q So this case been pending nine months, well, nine
15 months, eight months?

16 A Yeah, that's correct.

17 Q And they had never called you?

18 A No.

19 Q And had Mr. Regier ever told you that he was
20 representing PMPA?

21 A No.

22 Q That he was on the board of PMPA?

23 A No.

24 Q All right. So you let him know you wanted to meet
25 with PMPA?

1 A That's correct.

2 Q And did they set up a meeting?

3 A They did set up a meeting.

4 Q And at that meeting, who was present?

5 A All of the City folks, Mark, Todd--

6 Q -- Todd Guy?

7 A Yes. Alan.

8 Q Mr. Regier. Alan Cobb was there?

9 A And, no, Alan; the city manager.

10 Q And also Mr. Frazier and, his boss, Mr. Smoak were

11 there?

12 A That's correct.

13 Q And what did you make clear at that meeting?

14 A Well, we made clear that we wanted to go the southern

15 route.

16 Q Were they accepting of that idea?

17 A We were willing, no, they weren't. They wanted us to

18 go up the middle and they insisted that we look at that.

19 And if we didn't go the center route; that they would take

20 it. And, so we asked how much they were going to pay us.

21 They said, well, based on our experience, about \$8,000.00.

22 And so we told them that we would consider the center

23 route if it was the only option, but we needed more

24 information.

25 Q What did he say, what did PMPA say they had to do to

1 get you that information?

2 A They had to do a survey and a TOPO.

3 Q And they need your consent for that?

4 A I'm sorry?

5 Q They needed your approval?

6 A They needed my approval to go on the property,
7 because they had already sent a surveyor on the property
8 without my approval and staked the property down the
9 center.

10 Q Now, of course, that's a trespass?

11 A That's correct.

12 Q And you were glad to give them permission if they'd
13 asked, wouldn't you?

14 A No.

15 Q You would have let them survey if they had asked?

16 A Oh, if they'd have asked, I probably would have,
17 yeah.

18 Q All right. So where did that meeting end? The
19 November 26th, 2013, meeting when did it, how did it end?

20 A Well, it ended with the fact that they wanted
21 permission to go on the property, and I told them that we
22 would think about whether it was something that we wanted
23 to do or even consider. And that I would let them know if
24 they would have permission to get on the property to do
25 the survey.

1 Q And allowing them to survey, you were going to get
2 answers to some questions you had?

3 A That's correct.

4 Q Did you ever agree to the middle route?

5 A No.

6 Q Did you call, you called Mr. Frazier a few days after
7 that?

8 A Yes, sometime in the next week.

9 Q You told him he had permission to survey, is that
10 right?

11 A That's correct.

12 Q All right. This Defendant's exhibit 3 is a
13 transcript of your voice mail to him?

14 A Yes.

15 Q Did you ever say middle route anywhere in there?

16 A No.

17 Q Did you ever say I consent to doing it exactly the
18 way you want to do it?

19 A No.

20 Q Did you ever say I give up my right to wanting a
21 southern route which I been telling you about for the last
22 six months?

23 A No.

24 Q Did he ever write you after this and say, Mr. Oien,
25 we now have an agreement, it's the middle route?

1 A No.

2 Q Did he write you and say we have an agreement?

3 MR. BANNISTER: Your Honor, I've been trying to be as
4 quite as I can.

5 MR. POPE: Excuse me. I was leading?

6 THE COURT: All right. Rephrase it.

7 Q Did you receive any communication from PMPA, either
8 email or letter, or phone call that said, we now have a
9 deal, middle route?

10 A No.

11 Q Okay.

12 THE COURT: No letter or phone call.

13 Q No letters, no phone calls, no emails about that
14 subject?

15 A That's correct.

16 Q Now, we heard testimony earlier that Mr. Frazier said
17 he called you back. Did you ever get any voice mail from
18 him?

19 A No.

20 Q Did you notice in the answer that PMPA did not say a
21 word about you agreed to the middle route?

22 A I'm sorry?

23 Q I said did you notice in the answer that PMPA filed
24 to the complaint, that PMPA did not mention that you had
25 agreed to the middle route?

- 1 A No.
- 2 Q Now, how much did you pay per acre for your
- 3 retirement house and property here, not the house, the
- 4 land, the 116 acres?
- 5 A Paid about \$3,500.00 dollars an acre.
- 6 Q And that was in 2005?
- 7 A That's correct.
- 8 Q All right. And how much is it worth an acre now
- 9 without any condemning value?
- 10 A It's worth probably well over \$5,000 an acre.
- 11 Q \$5,200.00?
- 12 A Yes.
- 13 Q How much damage did it do to your land value, in your
- 14 opinion as a landowner, to have a line through the middle
- 15 of your property?
- 16 A It would probably reduce it in-half, easily.
- 17 Q And do you think your property, I know you don't want
- 18 to brag, but your property is truly unique?
- 19 A Yes.
- 20 Q It's isolated?
- 21 A Yes.
- 22 Q It's wooded?
- 23 A Yes.
- 24 Q It's near amenities?
- 25 A Yes.

1 Q And it's beautiful?

2 A Yes.

3 Q So you paid almost \$400,000.00 for your property?

4 A Yes.

5 Q Now, what about with the power line to the south on
6 the southern route that they had drawn, what would that
7 affect, how would that have an effect on your neighbors,
8 their property?

9 A Well, it won't have nearly the effect that a line
10 through the center of it would.

11 Q And you would claim no damage to the remainder if
12 they do the southern route?

13 A That's correct.

14 Q But by using the middle route, you said you think
15 it's fifty percent devalued?

16 A Yes.

17 Q How much money have you put into your property on all
18 of these various repairs, construction of barns,
19 underground power and all the different things?

20 A Over \$800,000.00.

21 Q And that includes the land?

22 A That's correct.

23 Q So \$430 for the land and \$370 or so for the
24 improvements?

25 A That's correct.

1 Q And you mentioned a meeting on November 26th, 2013,
2 did you have your house plans with you?

3 A Yes.

4 Q Are these, a multi-set of house plans furnished to
5 you by Lindell Logging, Lindell Homes?

6 A Yes.

7 Q And this is part of what you paid \$78,000.00 for?

8 A That's correct.

9 Q And you had them at that meeting?

10 A Yes.

11 Q Did anybody in that meeting want to see those plans
12 or ask about them or let you explain them?

13 A No.

14 Q Was the attitude in those, in this one, one and only
15 meeting you had with PMPA, was their attitude, did it
16 appear to be that they wanted to listen and understand the
17 concerns of the landowners?

18 A That they wanted to understand?

19 Q Did it appear that they wanted to understand the
20 concerns for you, the landowner?

21 A No.

22 Q What did they want to talk about?

23 A They appeared to have already selected the route and
24 that they were going to put it down the middle whether we
25 liked it or not.

1 Q And did you make it clear at that meeting that you
2 didn't like that?

3 A We didn't like that.

4 Q All right. Now, did you see later the survey
5 results?

6 A Only when they, they, Mr. Frazier sent the proposal.

7 Q And you saw the middle route?

8 A Yes.

9 Q And did you go to the City in March of 2014?

10 A Yes.

11 Q And what'd you tell them then?

12 A We told them that we weren't, we wouldn't accept
13 their offer.

14 Q And you wanted the southern route?

15 A And I wanted the southern route.

16 Q And were you, you said you had, were you expecting to
17 have a response to that?

18 A Yes.

19 Q Did you get one?

20 A No.

21 Q Did you get the right-of-way agreement in August of
22 2014?

23 A In August of 2014.

24 Q Did you get a letter, I'll show you exhibit 8, from
25 PMPA August 14, 2014, that asks for you to either sign the

1 right-of-way or give a response by August 22?

2 A That's correct.

3 Q And does that letter, in the first sentence it says,
4 PMPA had been proceeding with the transmission line route
5 that was agreed to by both you, both of you, you and your
6 wife, at the meeting we had at the City on March 14, 2014.

7 Is that true?

8 A No it is not.

9 Q Is that the letter you just described, I mean, the
10 meeting you just described?

11 A That is.

12 Q And you made it clear you didn't want, you did not
13 want the middle line, you wanted the southern line?

14 A That's correct.

15 Q All right. So that was a misstatement?

16 A Yes.

17 Q All right.

18 MR. POPE: I offer Plaintiff's exhibit 8.

19 THE COURT: Any objection?

20 MR. BANNISTER: No, Your Honor.

21 THE COURT: You may.

22 (Whereupon, Plaintiff's 8 was admitted into
23 evidence.)

24 Q All right. And here's Plaintiff's exhibit 43 which
25 is written approximately a week later, August 21. This is

1 an email from you to Mr. Frazier?

2 A Yeah.

3 Q And what do you say in the second sentence?

4 A We did not agree to any transmission line route or
5 contract proposal.

6 Q So you set the record straight?

7 A Yes.

8 MR. POPE: I offer 43 into evidence.

9 THE COURT: Any objection?

10 MR. BANNISTER: No, Your Honor. Your Honor, if I
11 can, exhibits that were previously marked, I understood
12 included a bunch of transcripts. So we don't object to
13 any of the exhibits coming in. I understood he had
14 included in his transcript excerpts in the submissions.

15 THE COURT: You're not going to have an objection?

16 MR. BANNISTER: We don't have an objection to any of
17 the exhibits you've marked prior to trial.

18 THE COURT: Subject to, that would be exhibit 1
19 through 44 inconclusive?

20 MR. BANNISTER: Yes, sir; Your Honor.

21 THE COURT: Well, those will be admitted without
22 objection.

23 MR. POPE: Okay.

24 (Whereupon, exhibits 1 thru 44 were admitted into
25 evidence.)

1 Q So you made the record clear that your letter,
2 exhibit 43 on August 21, that in neither November nor in
3 March of '14 did you ever agree to the middle route?

4 A That's correct.

5 Q And this route is put in the south instead of where
6 it is in the middle, do you intend to build your vacation
7 home, your retirement home?

8 A I would have.

9 Q I'm talking about if it goes to the south?

10 A If it goes to the south.

11 Q You will?

12 A I would, yes.

13 Q If it goes through the middle, is that suitable for
14 the kind of homesite that you had planned?

15 A No.

16 Q And neither PMPA nor its appraiser ever came on the
17 property and looked at your homesite and talked to you
18 about those plans?

19 A No.

20 MR. POPE: Okay. Thank you.

21 THE COURT: Cross-examination.

22 MR. BANNISTER: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 By Mr. Bannister:

1 Q Mr. Oien, your lawyer asked you a lot of questions
2 about the home that you're going to build on the property.
3 Do you recall when you entered into that contract?

4 A Yes, it was in September of 2008.

5 Q And are you familiar with the contract?

6 A Yes.

7 Q Do you know when, according to the terms of the
8 contract, it expires?

9 A Yes.

10 Q And forfeit your down-payment?

11 A Yes.

12 Q And--

13 A I believe it--

14 Q --when does the contract say?

15 A It's one year, I believe.

16 Q All right. Let me refer you to line, to number 7,
17 paragraph 7 on page three of four, leading up to three
18 years.

19 A Paragraph what?

20 Q Seven.

21 A Seven.

22 Q The shipping date.

23 A The shipping date, yes.

24 Q The bottom of that paragraph?

25 A Three years.

1 Q Three years?

2 A Yes.

3 Q And did you have any materials shipped to your
4 homesite prior to June 23rd, 2011?

5 A No, I did not.

6 Q Does the proposed right-of-way through the center
7 route and the middle route interfere with your barn?

8 A No.

9 Q Did you have to move your barn?

10 A No.

11 Q Did you have to take any of your equipment out of
12 your barn?

13 A No.

14 Q Okay. Does the proposed right-of-way interfere with
15 the well that you have dug for your new home?

16 A No.

17 Q How about the electricity that you ran underground to
18 the homesite?

19 A It goes over the top of the easement; that's all.

20 Q You don't have to tear it out and start over?

21 A No.

22 Q Does part of the construction of the transmission
23 line make you ungrade or change the grade that you've
24 prepared for your homesite? I mean, are they going to put
25 dirt on there? Are they going to change the grading that

1 you've done for the homesite where you're going to build
2 your home?

3 A No.

4 Q Have you started construction of the pond yet?

5 A No.

6 Q Is the right-of-way, it looked like to me, is not
7 going to be anywhere close, it won't be, it won't
8 interfere with the construction of the pond that you were
9 planning?

10 A No.

11 Q Okay. All right. This big strip right here, can you
12 tell the Court what that is?

13 A That's the Duke Power right-of-way.

14 Q Is it a road?

15 A No, it's a right-of-way.

16 Q So there's not a road on there?

17 A No, sir.

18 Q That's just a transmission line?

19 A That's correct.

20 Q Do you know how close that transmission line is to
21 your barn?

22 A It's probably a hundred feet.

23 Q It's closer than the proposed transmission line is to
24 your barn?

25 A Yes, but the barn doesn't have anything to do with

1 it.

2 Q Okay. I'm just trying to make sure I understood,
3 because you said you built the barn to hold your equipment
4 before you knew where the transmission line was going to
5 go?

6 A Yes.

7 Q Okay. All right. And then this is, the red X is
8 your homesite?

9 A That's correct.

10 Q Do you know how close that is to the exhibit Duke
11 Power transmission line that goes through the woods right
12 there?

13 A It's probably about 350 feet or so.

14 Q Okay. So that transmission line was 350 feet from
15 your house, the dream home, right?

16 A That's correct.

17 Q And that is not going to interfere with your concept
18 of the perfect retirement location?

19 A That's correct.

20 Q Okay. All right. Now, you talked about not being
21 notified that there was, you weren't contacted by anybody
22 at the City of Newberry, or Todd Guy, or PMPA about the
23 transmission line until September, the meeting you called
24 in September, is that right?

25 A No.

1 Q No, that's not right?

2 A No.

3 Q Tell me, see I'm trying to follow what point you're
4 making by the timing of when?

5 A In June, we found out that they were out there. That
6 was all. We didn't have any discussions about the line.
7 It was just that I came out of the property and Duke Power
8 and they were having a discussion and it was obvious they
9 were, at the time it wasn't obvious. But later, it became
10 obvious they were talking about the tap point.

11 Q All right. And they were having that meeting in the
12 Duke Power right-of-way, right?

13 A That's correct.

14 Q All right. So you're not saying they were
15 trespassing that day you came out to their property?

16 A Yes, they did, because it's still my property and the
17 gate was open and then it was closed.

18 Q Okay.

19 A So they have to have access from my property, from my
20 gate in order to get on the Duke property.

21 Q So you're saying Duke property does not have access
22 to its right-of-way to take it's Duke Power employees out
23 there if it wants to?

24 A Yes, they do, but not at that point.

25 Q Not at that point?

1 A Not at my gate. They have access further down the
2 right-of-way.

3 Q They have a key to the gate?

4 A No.

5 Q How did they get through the gate?

6 A They opened the gate and came in. We were there, so
7 it was unlocked.

8 Q The gate was unlocked?

9 A Yes.

10 Q Does your gate span the Duke Power right-of-way so
11 that it blocks them from going down it?

12 A No. It spans the O'Dell Road.

13 Q O'Dell, is that a road?

14 A That's a road that comes into the--

15 Q A public road?

16 A --comes into the property.

17 Q Is it a public road or a private road?

18 A No, it's private. It's a public road up my gate, and
19 then it's private.

20 Q All right. But however they got on there, you say
21 they trespassed to get on there?

22 A No, I didn't. No, I didn't say they were
23 trespassing. I said that it appeared they were
24 trespassing, because I didn't know who they were. So I
25 stopped and asked who they were.

1 Q And did they tell you?

2 A Yes, they did.

3 Q Were they polite?

4 A Yes.

5 Q Did you have any problems with the discussion you had
6 with them?

7 A No. I let them continue to have their discussion,
8 and I went on about my business.

9 Q And at that time, you didn't know they were referring
10 to the right-of-way that would be crossing your property?

11 A No, they only, I could only guess at that point.

12 Q All right. And had you heard from Misty West prior
13 to that incident or did you hear from her afterward?

14 A Prior to.

15 Q While you were there, did you talk to her about the
16 right-of-way across your property?

17 A No, I didn't other than to get the information from
18 Todd Guy on how to contact them for contact information
19 for the City.

20 Q Okay. And when did they first contact the City about
21 the right-of-way?

22 A I called Todd Guy that next week to have him come out
23 and tell me what they were going to do.

24 THE COURT: Excuse me. I'm just not quite sure.

25 What's this, the week after Misty's email to you?

1 A No, the week after the Duke people were on the
2 property.

3 THE COURT: Thank you.

4 Q Are you sure it was in August?

5 A Not totally sure when it was. It would have been
6 June, I believe, actually is when they were on the
7 property.

8 Q All right. And you would have, it may be even May?

9 A Pardon me?

10 Q It may be May?

11 A No. May was, no, it was not done in May. We hadn't
12 heard from anybody in May other than Misty West.

13 Q So you ran into the Duke Power guy in June and called
14 Todd in June to talk to him and ask him to come out. When
15 did he come out and talk to you?

16 A I believe it was in August when we went back up,
17 because we aren't up there all the time.

18 Q All right. And you offered some testimony about the
19 delay and you had the personal meetings, but you live in
20 Florida, right?

21 A Pardon me?

22 Q You live in Florida?

23 A Yes.

24 Q So it's not like they can just bop over to Florida to
25 see you; they got to make an appointment and they got to

1 catch you when you're here, right?

2 A That's correct.

3 Q You didn't expect Todd Guy or anybody to come to see
4 you in Florida?

5 A Of course not.

6 Q Okay. All right. So the next time you were up here
7 after you saw him in June on your property, you met with
8 him and it was August and you met with Todd?

9 A Yes.

10 Q All right. You liked the homesite that you picked,
11 right, and you liked this piece of property, this 116
12 acres?

13 A Yes, very much.

14 Q All right. And you told your lawyer, you said it
15 was, the transmission line was going to reduce the value
16 of the 116 acres by half?

17 A Yes.

18 Q All right. What do you believe your property is
19 worth today as it sits with no transmission?

20 A It's worth probably in the \$650,000.00 range.

21 Q \$650,000.00?

22 A Somewhere in there.

23 Q All right. And so it's your testimony that if they
24 put the transmission line in the middle route pursuant to
25 the condemnation notice, that route, that it will be worth

1 \$325,000.00?

2 A That's correct.

3 Q What did you pay, do you remember what you paid for
4 the tract with the pond and the house on it?

5 A The original price?

6 Q Yes, sir.

7 A I believe it was about \$430,000.00.

8 Q Just the one tract?

9 A For one tract?

10 Q You know, you bought two, right?

11 A Yes. We bought them together, though.

12 Q What?

13 A One was, I can't remember the breakdown on it, but
14 one was 66 acres and one was 50 acres.

15 Q The 50-acre one with the home on it was \$280?

16 A That's about right.

17 Q And the one with no homesite with no home on it was
18 \$190,000.00?

19 A That's about right, yeah.

20 Q And do you believe, it's your testimony today that
21 those two pieces of property would be less now with the
22 transmission line than they would have been in 2005?

23 A The line splits it right in the middle. It's going
24 to have a big impact on how you sell it. You're going to
25 have to sell it as one piece.

1 Q Well, it didn't matter. You paid about \$470, I'm
2 just making sure I got it right. You paid \$470 and with
3 that transmission line, it'll be worth \$325?

4 A That's correct.

5 Q And you bought those two pieces separate? I mean,
6 you ultimately made them at the same time, but they were
7 different owners?

8 A That's correct.

9 Q And you bought one from one owner in a separate
10 transaction and one from another owner--

11 A That's correct.

12 Q --the next day?

13 A The same day or whatever. It was at the same time.
14 We did it all at the same time.

15 Q All right. In the September meeting when you talked
16 about the southern route, you did raise an issue that
17 there was some concern about the people next-door?

18 A No, I raised concern about the security from the
19 property next-door.

20 Q All right. Well, I, was the security for fear that
21 there would be dogs, horses and stuff coming over or was
22 it because there were people over there?

23 A Because there are people over there.

24 Q So you got security concerns about your neighbors?

25 A That's correct.

1 Q Okay. And whose idea was it to explore the northern
2 route?

3 A It was ours.

4 Q Your idea?

5 A Yes.

6 Q As an alternative to the southern route and the
7 middle route?

8 A That's correct.

9 Q Okay. Do you think it was reasonable for the people
10 at PMPA and the City of Newberry to believe, based on your
11 concerns about the exposure the southern route would give
12 to your neighbors and your request to explore a northern
13 route, that they believed you did not want the southern
14 route?

15 A No.

16 Q You don't believe that?

17 A No, that's correct. I don't believe that and, in
18 fact, when they drew the line for the northern route and
19 showed me that how much it would cut off the property, I
20 said that the northern route was totally out.

21 Q All right. And do you believe it was reasonable for
22 the people, the City of Newberry and PMPA to believe that
23 you for sure did not want the northern route?

24 A That's correct.

25 Q Okay. And based on it cutting off so much property?

1 A Based on what?

2 Q Based on that it cut off so much property and--

3 A That's correct. There is a little zag in there, a
4 zigzag that they have to go around, and they would have to
5 cut all that off. And they would go straight from the
6 pole across and it would take a big swath out of that and
7 it would be very close to the house.

8 Q When you were discussing the center route with the
9 PMPA and the City of Newberry, you asked if they could
10 draw the line to miss some oak trees?

11 A No. There was actually two center routes, the one
12 that they had surveyed and staked which went through the
13 center. And there was another, a second one that I said
14 if we have to put it through the center, I will like it to
15 go as close to the property line between the two pieces of
16 property as possible and that would have impacted the
17 trees going through there and that was one of the issues
18 that I had with that.

19 Q All right. And did they, subsequent to your concern
20 about the trees, did they draw a line to miss those trees?

21 A No. There was no way they could miss the trees going
22 down that line.

23 Q And didn't they angle it so as to avoid those trees
24 and put it basically in the middle of your, the little
25 field there?

1 A No. The only angle they had was at the tap point,
2 that it angled down to the property line, and then ran
3 down the property line from there.

4 Q And they never presented you with a drawing that was
5 designed to leave the oak trees in place?

6 A No, not on the property line.

7 Q And not on the property line, but somewhere down the
8 center adjusted to miss those trees?

9 A Well, the original property, the original survey was
10 down the middle and it didn't impact the trees. But that
11 was not a line that I wanted to start with. We didn't
12 want it going down the center. So we were the ones that
13 said if we have to consider a center line and a center
14 route; that we want it on the property line so that at
15 least it moves it away from where it's in plain sight of
16 the homesite. We're trying to get it as far south as we
17 could get it. But in no, and I never said that I wanted a
18 center route. I said if we have to consider it, I will
19 consider the route based on the property line.

20 Q So August 14, 2014 when you got Plaintiff's exhibit A
21 or PMPA, have you seen that?

22 MR. POPE: Which one?

23 MR. BANNISTER: A.

24 MR. POPE: Here it is.

25 MR. BANNISTER: Plaintiff's.

1 Q You were surprised to get a letter saying that PMPA
2 believed that you had agreed to the center route adjusting
3 the, hug the property line between the two tracts?

4 A Yes, that was in August of 2014, but that was when
5 they sent the proposal.

6 Q So you were or you were not surprised--

7 A Oh, I was surprised.

8 Q --when you get a letter that said, PMPA has been
9 proceeding with the transmission line route that was
10 agreed to by both of you at the meeting we had with the
11 City of Newberry.

12 A I was very shocked by that and also, I responded to
13 that immediately and told him that it was not accurate.

14 Q We're not in agreement with that?

15 A I'm sorry?

16 Q You said we're not in agreement with that?

17 A That's correct.

18 Q Was that correspondence that you weren't in agreement
19 with the terms of the right-of-way or that you wanted the
20 right-of-way agreement to have a clause, that you wanted
21 time to access, or just you didn't want anything to do
22 with it?

23 A We did not agree on anything in that meeting and
24 that's what I told him. There was nothing that we agreed
25 to. We agreed to no line, and we agreed to no or not to

1 the contract.

2 Q All right. This is a couple of questions. If the
3 transmission line takes a southern route and spans the
4 pond where you can see it from the house, do you believe
5 there is any damage to any of the remainder of your
6 property?

7 A Ask me that again, please. I'm sorry.

8 Q That's all right. If we take the southern route that
9 you've suggested, do you believe that the installation of
10 that transmission line damages any other part of your
11 property? Is there any damage to the remainder of the
12 property?

13 A There's damage just going across the property.
14 However, it's probably the least amount of damage that
15 would take place. It's like we already have one
16 transmission line going across the property and now we get
17 another one, so it's going to damage the property.

18 Q So and there will be parts of your property that are
19 located on the opposite side of the transmission line,
20 right?

21 A That's correct.

22 Q And you believe those to be damaged or not?

23 A No. Not if it's the southern route. It would be the
24 least amount of damage that could be caused.

25 Q I know. But do you understand I'm trying to figure

1 out if you mean the least amount of damage in that it
2 damages it, but just a little bit, or if you mean there is
3 no damage to the remainder?

4 A I would have a very hard time selling a million
5 dollar home to someone on a piece of property that had two
6 transmissions lines running through it.

7 Q Period?

8 A It would be very difficult.

9 Q So there would be damage to the remainder of the
10 property with the southern route transmission line that
11 was chosen?

12 A There would be some damage, yes.

13 Q And same for the northern line? If they chose the
14 northern route, which everybody rejected. But if they
15 chose that, there would be damage to the remainder;
16 because it would be a second transmission line through
17 your property?

18 A It would be some damage, yes.

19 Q Okay. And do you know how much that damage would be?

20 A No.

21 Q A third, fourth, ten percent?

22 A Probably ten to twenty percent depending upon, I
23 mean, if you put a value to the property per acre, yes.

24 Q Let's say you put a value on it that you did earlier,
25 \$600, gosh, \$650,000.00. That's what your property is

1 worth today without a second transmission line. What is
2 it worth if you put a transmission line on the southern
3 route?

4 A It would probably reduce it by somewhere in the
5 \$30,000.00 range I would guess.

6 Q Damage to the remainder?

7 A Yes.

8 Q Plus, the acquisition costs for the right-of-way,
9 right?

10 A That's correct.

11 Q And you lose some acreage when you do that?

12 A Yes.

13 Q And there'd be additional damage on top of that
14 remaining acreage?

15 A Yes.

16 Q All right. How about the northern route. I know
17 we're not, if you put it up there.

18 A It would probably be five to ten percent more just
19 because of the area it would take.

20 Q So it'd take more area, and then it would reduce it
21 by twenty percent?

22 A Probably, yes.

23 Q And it's your property--

24 A I'm not a real estate expert, so I don't know what it
25 would go for other than what I feel that I could get for

1 it.

2 Q It's your opinion as the owner of the land that the,
3 any transmission lines would have damaged the remainder of
4 the property by some percent?

5 A Yes.

6 Q All right. I got maybe two more questions or maybe
7 three more. How many proposed routes has PMPA showed you
8 throughout this process?

9 A Three.

10 Q Not PMPA, but all of the people dealing with this,
11 how many proposed routes did they put in front of you?

12 A There were four.

13 Q Four?

14 A Yes.

15 Q And which of those four have you said that's the
16 route that I want you to take?

17 A The south.

18 Q The what?

19 A The south, the southern route.

20 Q So you agree to the drawings as they were presented
21 to you for the southern route, that's your testimony
22 today?

23 A Yes.

24 Q All right. Real quick. You currently have a guy
25 who's helping you, Paul Major?

- 1 A Yes.
- 2 Q All right. He is your forester?
- 3 A Correct.
- 4 Q So if you cut timber, he gets commission?
- 5 A Correct.
- 6 Q Is he filling in a role for you; is he your appraiser
- 7 in this case?
- 8 A He is our appraiser, as well; yes.
- 9 Q Okay. And do you pay him by the hour or is he on a
- 10 contingency? How does he get paid?
- 11 A I pay him by the hour.
- 12 Q By the hour. All right.. If you build a homesite,
- 13 you build a home, does he make any money?
- 14 A If I build a home, would he make any money?
- 15 Q Sure.
- 16 A No.
- 17 Q He doesn't stand to gain anything if you build the
- 18 dream vacation home?
- 19 A I'm sorry?
- 20 Q He doesn't stand to gain any money if you build the
- 21 dream vacation or retirement home?
- 22 A No.
- 23 Q Does he get any money for taking trees off the
- 24 property for the right-of-way?
- 25 A Yes.

1 Q What does he get for that?

2 A I don't know. We haven't discussed that.

3 Q But he would be your guy that would sell that timber?

4 A That's correct.

5 Q Do you pay him to manage your property while you're
6 not here?

7 A Pardon me?

8 Q Does he manage your property while you're not here?

9 A No.

10 Q Who does that?

11 A I have no one doing that.

12 Q Did you have somebody back in 2013?

13 A No. I had a caretaker that watched the property but
14 no, he didn't manage it.

15 Q So is Paul Major doing that now?

16 A I'm sorry.

17 Q Is anybody doing, watching the property now?

18 A I have a neighbor that watches the front entrance
19 and, basically, watches the property when I'm gone.

20 Q Do you pay your neighbor anything?

21 A No.

22 Q Do you give him access to the pond or house?

23 A No.

24 Q Has he got a key to the house?

25 A No, he does not.

1 Q Does anybody other than you and your wife have a key
2 to the house?

3 A No.

4 Q You have alleged in your complaint that the
5 substation that will service the City of Newberry is not
6 for public purpose. Do you believe that that is true,
7 that it's not for a public purpose?

8 A I believe that's true. When we were there at the
9 very first meeting with them, they were very specific
10 about the fact that they had to pull the switch at the
11 Kraft Foods facility in April of 2014, so it was pretty
12 evident that it was based on Kraft Foods.

13 Q So you have alleged in your complaint that the taking
14 is not necessary and by that, you mean they don't even
15 line it off?

16 A I didn't say that. We asked them that if we, you
17 know, if they couldn't put the line in a different route,
18 did it have to come across our property and they said yes.
19 Mark Regier said yes, that it could come a different
20 direction but that it would cost too much money. That was
21 the end of the discussion.

22 Q So you guys don't really want any transmission line
23 on your property at all?

24 A We already have one that spans the entire width of
25 the property. We just didn't want another one.

1 Q That's what I meant. So you don't want another one?

2 A We don't.

3 Q This is really about you and your wife do not want
4 another transmission line on your property?

5 A That's correct, and I don't think you would be very
6 comfortable with a transmission line across your property.

7 MR. BANNISTER: Your Honor, no other questions.

8 THE COURT: Redirect.

9 MR. POPE: Yes.

10 REDIRECT EXAMINATION

11 By Mr. Pope:

12 Q This is as he said in redirect, Mr. Oien. You've
13 confirmed here today that you want the southern route,
14 correct?

15 A That's correct.

16 Q And you've said it all along?

17 A That's correct.

18 Q Now, he asked you a question about damage to the
19 remainder and that's something that Mr. Rogers and Paul
20 Major are going to deal with that, correct?

21 A That's correct.

22 Q Have you ever worked with damage to the remainder
23 before?

24 A No, I have never.

25 Q All right. If you use the southern route, you would

1 take the position that you would be entitled to whatever
2 acreage they take, compensation for that per three acres
3 or four or whatever it is, right?

4 A That's correct.

5 Q If there's no other damage to the rest of your
6 property?

7 A No.

8 Q All right. Because you can't see this other line
9 from your homesite, correct?

10 A That's correct.

11 Q Now, he asked you questions about public purpose and
12 necessity. You have no legal training whatsoever?

13 A No.

14 Q Now, when you said that you expressed some thought
15 that you were looking at three routes about security on
16 the southern route, you never took the southern route off
17 the table?

18 A No.

19 Q And considering all three routes, there is no
20 question in your mind today that the southern route is
21 what you have been telling them all along and what you
22 wanted?

23 A That's correct.

24 MR. POPE: And nothing further, Your Honor.

25 THE COURT: All right. Thank you, sir. You may step

1 down.

2 MR. OIEN: Thank you.

3 MR. POPE: Can we take a short break.

4 THE COURT: I was about, it's 3:00 o'clock, so let's
5 take about a 15-minute break.

6 (Whereupon, a short break was taken.)

7 THE COURT: All right, Mr. Pope.

8 MR. POPE: Call Paul Major to the stand.

9 Paul Major, being first duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 By Mr. Pope:

13 Q And where do you live, Mr. Major?

14 A 2309 Morris Road, Prosperity, South Carolina.

15 Q Your occupation is what?

16 A I'm a forestry consultant, and I am also broker real
17 estate, and I also appraise real estate.

18 Q And what's the name of your company?

19 A Major & Company.

20 Q All right. Education-wise, you graduated from where?

21 A Clemson University.

22 Q What year?

23 A 1973.

24 Q With a degree in what?

25 A Forest Management.

1 Q And what licenses do you hold as a forester?

2 A I'm a registered forester in North Carolina and South
3 Carolina. I hold the Certified Forester designation from
4 the Society of American Foresters, and the ACF designation
5 from the Association of Consulting Foresters.

6 Q Now, how many counties do you operate in as a
7 forester?

8 A We've worked all over the state but primarily,
9 Newberry and adjoining counties.

10 Q Have you been to Orangeburg?

11 A I have.

12 Q And many other counties?

13 A Yes, sir.

14 Q All right. Now, you also do real estate appraisals?

15 A I do.

16 Q On a regular basis?

17 A I do.

18 Q And what licenses do you have, do you hold in
19 appraisals?

20 A I'm a Certified General Real Estate Appraiser in
21 South Carolina.

22 Q And you've had that designation for a good long
23 while?

24 A Thirty years.

25 Q And your practice specializes in rural properties,

1 and retirement-type properties, and timber properties?

2 A Rural properties and timberland, primarily.

3 Q Okay. And your appraisal practice, real estate
4 appraisal practice is a slightly smaller geographic area
5 than the forestry?

6 A Oh, absolutely. Yeah.

7 Q Okay. How many counties do you do appraisals?

8 A Primarily, Newberry and adjoining counties, but we
9 will go outside of that area as demand requires.

10 Q All right. Now, have you made appraisals of real
11 estate that will be used by banks in making loans and
12 things like that?

13 A I have.

14 Q And you've done appraisals that have been accepted by
15 probate courts for the purposes of establishing values of
16 property?

17 A Yes.

18 Q And many other scenarios?

19 A Yes, sir.

20 Q Okay.

21 MR. POPE: Your Honor, I would offer Paul Major as a
22 expert both as a forester and as a real estate appraiser.

23 THE COURT: Any voir dire or do you stipulate?

24 MR. BANNISTER: Judge, and as it relates to, I
25 stipulate.

1 THE COURT: Okay. Very good. I find that he is both
2 an expert in forestry and real estate appraisal.

3 MR. POPE: Yes, sir.

4 THE COURT: Thank you.

5 Q. Approximately, when did your first involvement with
6 the Oien property, which is exhibit 1, Plaintiff's exhibit
7 1?

8 A Sometime in late 2012, I believe, I first met the
9 Oiens and we discussed forest management.

10 Q And were they interested in doing some sort of
11 selective thinning at some point?

12 A Yes. We, ultimately, prepared a management plan and
13 planned a thinning to be done on their property.

14 Q Is that a best practices thing to do if you own
15 timberland?

16 A It is, but their particular management plan was less
17 forest management timber-production oriented as it was
18 aesthetically-driven and with the cosmetics to make the
19 place look better.

20 Q Well, tell us, tell the Court about that project for
21 the property? Tell us how it sits and how it yields and
22 what drawbacks it has, if any, and what advantages it has
23 for its highest and best use.

24 A It's a unique property mostly in timber, partly open.
25 There is a very nice pond on the property. It lays very

1 well. It's a nice combination of pine and hardwood types.
2 It's visually appealing. There is a nice little cottage
3 down near the pond. It's unique in our marketplace.

4 Q And what about its accessibility and/or lack thereof?

5 A Part of its uniqueness is the fact that it's at the
6 end of a public road. There is no through-traffic. There
7 are no adjoining roads. It is unto itself. It's quiet
8 and unique.

9 Q What about its remoteness from stores and things?

10 A That's part of its uniqueness, as well. While it is
11 very remote in its field, it's very close to all the
12 amenities that one would want to have, shopping, medical
13 care, entertainment, the Interstate, and we're only an
14 hour from the airport. So it's a combination of many good
15 things.

16 Q Would you agree that it's a truly unique property?

17 A I think it is certainly a unique property.

18 Q And when Mr. Oien bought the property and paid
19 \$35-\$3700 an acre, do you think that was like top dollar
20 for that kind of property?

21 A Yes, that property was going at a very high rate in
22 the years that he bought the property, in the year that he
23 bought the property.

24 Q And he actually assembled two similar properties
25 together into one--

1 A Correct.

2 Q --making it more desirable or would it be less

3 desirable?

4 A It's certainly more desirable.

5 Q Okay. And what is the highest and best use of the

6 Oien tract, the 116 acres?

7 A In my view, it's as a high-end rural residential

8 homesite.

9 Q Okay. And you're aware that Mr. Oien has committed a

10 substantial amount of money to improve that property?

11 A Yes, sir.

12 Q Have you seen it with your own eyes?

13 A Have I been on the property?

14 Q Yeah.

15 A Yes, sir. Many times.

16 Q Well, tell us, you've been on the property how many

17 times?

18 A Oh, dozens.

19 Q Now, is there any, literally any square foot of that

20 property you haven't walked on?

21 A I've walked on most of it; yes, sir.

22 Q Well, tell us the features that you think make it

23 unique and make it desirable that add to value?

24 A Well, the pond I think is a very important part of

25 that value. There are other pond locations on the

1 property that make it desirable to expand its uniqueness
2 in that way. There is a good bit of hardwood on the
3 property in addition to the pine that's very aesthetically
4 pleasing. From a marketing point of view, I think it's
5 very desirable. Many people would view that as a great
6 place to live. The fact that it is so quiet and removed
7 unto itself makes it even more appealing to most people.

8 Q So you've seen Mr. Oien's barn that he built?

9 A I have.

10 Q You became familiar with the property several years
11 after he did all that?

12 A Yes.

13 Q All right. And the barn is like 7,000 square feet?

14 A It's large; yes, sir.

15 Q And you've seen what's in it?

16 A I have.

17 Q Tractors, backhoes--

18 A Farm equipment.

19 Q --bulldozers?

20 A Yes, sir.

21 Q And you've seen the homesite?

22 A I have.

23 Q And you're aware of what kind of power is installed
24 for that?

25 A Newberry Electric Coop has buried a line there for

1 residential use.

2 Q And what about other utilities?

3 A I am aware that there is a well there that's been
4 drilled.

5 Q And the site for the home is graded, too?

6 A It is.

7 Q And you've seen the picture of the house that Mr.
8 Oien was planning to build?

9 A I have.

10 Q And you heard the testimony he had about his
11 commitment and his down payment were made in the year the
12 economy crashed?

13 A Yes, sir.

14 Q And he still has plans--

15 A Yes, sir.

16 Q He doesn't have a power line in front of him?

17 A No.

18 Q Do you think that the Oiens are using this property
19 to its highest and best use?

20 A They are developing. It's a place that they visit
21 frequently.

22 Q Okay. Now, you've walked the old property. You've
23 walked the southern line, as well?

24 A Yes.

25 Q Do you see anything on the southern route that would

1 make it, in your opinion--

2 A No, sir.

3 Q --that would make it undesirable for the
4 right-of-way?

5 A Not that I see.

6 MR. BANNISTER: Your Honor, I'm going to object.

7 THE COURT: I will sustain the objection.

8 MR. BANNISTER: Thank you, Your Honor.

9 Q Have you walked lots of transmission rights-of-way in
10 your--

11 A Yes, sir.

12 Q --in your life?

13 A I have.

14 Q All right. Is the lay of the land on the southern
15 route consistent with any kinds of terrains--

16 MR. BANNISTER: Objection.

17 Q --that you've walked on on other rights-of-way?

18 THE COURT: Hang on.

19 MR. BANNISTER: Judge, I'm going to object to him
20 talking about where you can and can't put a transmission
21 line. He's qualified as a forestry expert and an
22 appraiser.

23 THE COURT: I agree, but I think the question is the
24 topography similar to right-of-ways, so you can ask that
25 if that's the question.

1 MR. POPE: Yes, sir.

2 THE COURT: I overrule the objection. All right.

3 Okay.

4 A I don't see anything very different from other power
5 line rights-of-way that I've seen.

6 Q And you've walked the entire southern boundary all
7 the way to the pond?

8 A I have; yes, sir.

9 Q And around the pond?

10 A Yes, sir.

11 Q What is the before value of this property, have you
12 computed that?

13 A I have. If my memory serves correctly, about
14 \$603,000.00 dollars is my estimate.

15 Q And what is the per acre evaluation to get
16 \$603,000.00?

17 A Right at \$5,200.00 dollars an acre.

18 Q Okay. \$5,200.00 per acre?

19 A Yes, sir.

20 Q Okay. Now, what, describe what the effect of a
21 middle or central right-of-way transmission line like
22 you've seen that PMPA is intending to try to do. What is
23 the effect of that on valuation of a property that's has a
24 highest and best use of, as you described, a high-end
25 residential retirement?

1 A I think it essentially eliminates that highest and
2 best use. I don't think a reasonable person or certainly
3 a buyer of real estate would build a house like that on
4 what you just showed me overlooking a power line.

5 Q And you've experienced that in your work--

6 A I have.

7 Q --the adverse effects of unattractive conditions?

8 A Yes, sir.

9 Q And do you believe or not believe that aesthetics
10 pays a central role in fair market value of a high-end
11 residential tract?

12 A It does. It impacts the marketability of the
13 property. I don't think a reasonable person would value
14 the property, pay the price necessary to get to the value
15 that I just mentioned.

16 Q Well, with the middle line, assuming the middle right
17 of the PMPA line were allowed and it went right through
18 the middle, is that going to be plainly visible assuming
19 that the poles are 70 to 90 feet high? Is that going to
20 be plainly visible from that homesite?

21 A I think so.

22 Q Is that going to be good or bad for the fair market
23 value?

24 A Negative.

25 Q What is it, have you marked, have you walked, marked

1 the distance from the homesite to the line through the
2 middle?

3 A Yes.

4 Q What is it?

5 A I would estimate it 400 feet.

6 Q And have you been consulted about doing a pond, a
7 small pond right by the homesite?

8 A Just southwest of the homesite; yes, sir.

9 Q Why is it southwest to the homesite?

10 A Because the terrain fits perfectly for a pond
11 construction. There are two opposing hills between which
12 a dam could be built at a fairly minimal cost.

13 Q And is there a spring or some water source for that?

14 A There are a couple of good water sources there. I
15 think it would be fed by itself. I mean, it wouldn't take
16 a large surface area to fill it. I believe there are easy
17 on-site water source.

18 Q It's drawn here where Mr. Oien--

19 A Yes, sir.

20 Q And that would be how big acreage, sir?

21 A Less than two, I think.

22 Q Sir?

23 A Less than two; more than one.

24 Q And did you go out and look to determine
25 approximately how many trees we might have to remove for

1 that?

2 A We have not done that yet.

3 Q That's, you were consulted about that?

4 A Yes, sir.

5 Q So what is the after value of the Oien property
6 assuming the middle line is used?

7 A I would reduce it to about \$380,000.00.

8 Q So that's over \$200 and something thousand dollars?

9 A Yes, sir.

10 Q Why is that?

11 A I think the market goes away with a line through the
12 middle of it for the high-end user.

13 Q Well, and that's because of the damage to the
14 remainder?

15 A It is.

16 Q What percentage or range did you experience that
17 high-end residential properties suffer to the remainder if
18 there's a transmission line, some of a similar type
19 project that goes through the middle?

20 A In my report, I indicated a range between 10 and 20
21 percent.

22 Q And what is--

23 A Damage to the remainder.

24 Q --is that a conservative range?

25 A That is an exceptionally conservative range; yes,

1 sir.

2 Q What's the full range if you're just being looking at
3 all options?

4 A I would say that the potential range would be up to
5 40 and maybe as much as 50 percent damage to the
6 remainder.

7 Q So what is the, assuming a 20 percent damage to the
8 remaining 112 acres middle ground, what is the value of
9 the damage to the remainder?

10 A As I recall, about \$116,000.00.

11 Q And if it's 15 percent worth of damage to the
12 remainder?

13 A Rated \$87,000.00.

14 Q Now, the opinions you've given about these values and
15 these damages, are they based on a reasonable degree of
16 certainty in your expertise as an appraiser and a
17 forester?

18 A Yes, sir.

19 Q Now, in your opinion, would it be likely that a
20 person based on your knowledge of a real estate sales with
21 whether he buys or whether he's selling, would a person
22 with a middle line through this property build a house, if
23 they build a house, but a house with the scope and scale
24 that Mr. and Ms. Oien were planning for their retirement?

25 A I don't think that the builder of a high-end home

1 like that would purchase this property for that purpose.

2 Q Now, is there any damage to the remainder if PMPA
3 takes the southern route that was drawn out on exhibit 12?
4 This is a blow-up of Plaintiff's exhibit 12. Have you
5 seen that?

6 A I did. I have.

7 Q And is that route, would that route produce any
8 damage to the remaining acreage of the Oiens property?

9 A Essentially, no. There's a, depending on the
10 location, the final location of that line, there might be
11 some sliver of land between the power line and the
12 property line, but I don't think that would be
13 significant.

14 Q That wouldn't consist of any damage, though?

15 A I'm sorry, sir?

16 Q That wouldn't be damage to the remainder, would it?

17 A No.

18 Q All right. Now, can you, is this property along the
19 southern border, the Oiens property, is it low or high?

20 A It's lower.

21 Q So can you visualize what a 70-foot line along the
22 southern route would be, whether it'd be visible from the
23 on-site or not?

24 A I don't think it would be at all.

25 Q Now, you're aware that there's a cottage down here at

1 the pond?

2 A Yes, sir.

3 Q And you've said there's no damage to the remainder
4 from the southern route?

5 A Correct.

6 Q So even though there's a house near the southern
7 route, you're saying there's no damage to the remainder?

8 A Correct.

9 Q And is that because the Oiens have told you that they
10 want the homesite to be where they've marked it on the
11 northern part?

12 A That would be my understanding in that from the
13 homesite you could not see the route, the line on the
14 southern route.

15 Q Now, did you, were you involved with the Oiens and
16 their discussions with PMPA and the City?

17 A Yes.

18 Q Did you go to the meeting on September 27th, 2013?

19 A I believe I did.

20 Q And that was you and the Oiens and the City?

21 A I believe that's correct.

22 Q And what was made clear by the Oiens about their
23 choice in the route?

24 A Their preference was clearly the southern route.

25 Q Did PMPA ever express an interest in using the

1 southern route?

2 A I don't recall any conversation from them affirming
3 the southern route in any way.

4 Q Did they push the conversation toward the middle
5 route each time?

6 A They were steadfast about the middle route--

7 Q Okay.

8 A --in every conversation.

9 Q Did Mr. Oien ever reject the southern route?

10 A Not in my presence.

11 Q And you were with him every time he met, when you met
12 again with the City, you were present, weren't you?

13 A. There was a meeting in November, and I was with him.
14 then.

15 Q Well, in the November 2013 meeting, who was present?

16 A Myself and the Oiens. I believe Al Harvey was there.
17 Mark was there. Mr. Smoak and Mr. Frazier from PMPA.

18 Q PMPA. And what was expressed by Mr. Oien and his
19 wife about what route they wanted there?

20 A I think, again, I came away with the impression that
21 clearly they wanted the southern route, but they had
22 questions about the central route to have information on
23 which to make the final decision.

24 Q What was said by PMPA about answering the questions
25 about the middle route?

1 A My recollection is they said they couldn't answer any
2 of those questions without a survey.

3 Q And they needed Mr. Oien to consent to a survey so
4 they could answer questions about this--

5 A Correct.

6 Q --about the central or middle route?

7 A Correct.

8 Q All right. When the meeting is over, was it clear to
9 you that the Oiens maintained their position and that PMPA
10 would maintain its position?

11 A Yes.

12 Q And PMPA's position was the middle route?

13 A Always.

14 Q And the Oiens position was the southern route?

15 A Always.

16 Q All right.

17 A But the willingness to question the middle route to
18 have full information to make a decision..

19 Q And did you feel like the Oiens just wanted some
20 quick answers and they wanted to really see data before
21 they could consider whether anything they could do in the
22 middle would be suitable?

23 A I think they were looking for full knowledge to make
24 a well-informed decision, but their preference clearly was
25 the southern route.

1 Q Okay. Now, did you go to another meeting in March
2 2014--

3 A Yes.

4 Q --with the Oiens at the City?

5 A I believe so; yes, sir.

6 Q And at that point, what was said by the Oiens to the
7 City?

8 A That the southern route was the route that they would
9 agree to.

10 Q The Oiens said that?

11 A Yes.

12 Q And they were rejecting the middle route?

13 A Yes, sir.

14 Q Okay. Did PMPA or the City ever produce any route
15 analysis showing the pros and cons of one route compared
16 to the other route, the southern and the middle?

17 A I never saw one.

18 Q Did they ever explain to you what costs might be
19 involved in the southern route or they may specifically
20 had shown you data?

21 A No, sir.

22 Q Do you feel like the Oiens were entirely reasonable?

23 A I think they were imminently reasonable.

24 Q Okay.

25 MR. BANNISTER: Object, Your Honor.

1 THE COURT: I sustain the objection. Go ahead.

2 Q And you've helped landowners in condemnation
3 situations before?

4 A Yes, sir.

5 Q And it's very delicate, is it not?

6 A It is.

7 Q And is it fair to say that many of them have
8 questions about procedures and--

9 A Yes.

10 Q --the routes and things like that?

11 A Yes.

12 Q Do you feel that PMPA was, what did you observe
13 PMPA's reaction to the Oien's questions and concerns to
14 be?

15 A I found them to be dismissive.

16 Q And what else?

17 A Arrogant.

18 Q What did they do that was arrogant?

19 A They failed to answer basic questions that we had.
20 They seemed resolved in getting that central route and
21 that any question that the Oiens raised was simply bother,
22 an irritant, a hurdle.

23 Q A hindrance; you just said a bother to them?

24 A Yes.

25 Q All right.

1 MR. POPE: Thank you, Mr. Major.

2 MR. BANNISTER: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 By Mr. Bannister:

5 Q Mr. Major, how many right-of-way appraisals have you
6 done before this one?

7 A Two.

8 Q Two others?

9 A Yes, sir.

10 Q Have you ever been qualified as an expert to any
11 right-of-ways in a condemnation case?

12 A Not specifically.

13 Q All right. Do you recall providing a report that
14 discovery, where did we put that?

15 MR. BANNISTER: Plaintiff's 45?

16 Q Let me show you this and ask if you recognize it.

17 A I do recognize it.

18 Q All right. And this is the report you produced in
19 discovery regarding your appraisal of the Oien family
20 property, is it not?

21 A Yes.

22 MR. BANNISTER: I don't think anybody has marked this
23 one.

24 THE COURT: Okay. All right.

25 MR. POPE: We don't object to it into evidence.

1 THE COURT: Sir?

2 MR. POPE: We do not object to the proposal going
3 in--

4 THE COURT: Thank you.

5 MR. POPE: Whatever number it is.

6 REPORTER: That's No. 28, Defendant's 28.

7 (Whereupon, Defendant's exhibit No. 28 was admitted
8 into evidence.)

9 Q Mr. Major, is this the appraisal that you prepared
10 for this case?

11 A Yes.

12 Q Have you prepared any other appraisal for this case?

13 A For this case; no, sir.

14 Q In your deposition, you said that you had some
15 comparable sales that you were going to send me. Did you
16 bring those today?

17 A I remember saying that I would send those to you.

18 Q You said you had them in your file. Did you bring
19 your file?

20 A I did not bring my file.

21 Q You never referenced any comparables to support your
22 opinion of the valuation that you just gave today, did
23 you?

24 A I did not bring any with me.

25 Q Do you recall determining in your appraisal that the

1 damage to the remainder of the middle route, if that's the
2 one that's chosen, was between 10 and 20 percent,
3 \$116,000.00?

4 A Yes.

5 Q And that there would be an additional 3.93 acres
6 taken at \$5,200 an acre; that would be the actual
7 right-of-way?

8 A Yes, sir.

9 Q All right. Where did the other money come from?

10 A What other money, sir?

11 Q Well, you testified that the damage to the property
12 would be \$213,000.00. According to your written
13 appraisal, it would be \$116 plus four acres at \$5,200.
14 You have damaged some additional property unless I'm doing
15 the math wrong, which I like to, let me add it up. 116
16 plus 3.93 times 52, what is that? Let me ask you a
17 different question. What's the total damage to the
18 property?

19 A About \$220,000.00.

20 Q And that's made up of what numbers?

21 A What I feel in my opinion would be the difference
22 between what the property is worth as it sits today with
23 the highest and best use that the Oiens have placed upon
24 the property and what the property could sell for today if
25 the power line in question on the central route were

1 constructed.

2 Q And maybe I'm not asking you these questions right.
3 It looks like in your report that you said \$116,000.00
4 would be the damage to the remainder?

5 A Yes.

6 Q In your report, you reference the balance of the,
7 taking the right-of-way.

8 A Yes.

9 Q And that's 3.93 times \$5,200 an acre, right? It is
10 approximately \$20,500.00.

11 A Yes.

12 Q So \$116 and \$20,500.00, that leaves about what,
13 \$80,000.00 in additional damage?

14 A Yes, sir.

15 Q Where is that from? Did you just make it up?

16 A Oh goodness, no.

17 Q Okay. It's not referenced in your report that
18 there's some diminishing of value it's, \$80,000.00, so I'm
19 just trying to figure out where it is.

20 A There is--

21 Q You can take a minute to read your report if you need
22 to.

23 A No. There are components of value here that vary
24 with circumstance. Things that may have impacted that
25 would be the value of the cottage at the lake. The value

1 of the barn that has been built on the property. Those
2 are kind of variables.

3 Q No wait, explain that to me. So the value of the
4 cottage goes up or down with the middle route?

5 A It remains the same.

6 Q Okay. All right. So that's not part of the
7 \$80,000.00 additional damage you've assigned to this
8 taking?

9 A No.

10 Q All right. How about the barn, are you damaging the
11 barn?

12 A I am not.

13 Q Okay. All right.

14 A But it contributes--

15 Q Where does that \$80,000.00 come from?

16 A It contributes to the value of the property as it's,
17 if it were to be sold with the right-of-way on it.

18 Q All right. And I apologize. I may be missing
19 something. Well, you're an appraiser, right?

20 A I am.

21 Q So what you're, if I understand your role, your role
22 is to take the property and determine what a willing buyer
23 and a willing seller would agree would be the fair market
24 value?

25 A Yes.

1 Q Not Mr. Oien, not anybody else in this courtroom, but
2 just a willing buyer, a willing seller with general
3 motivation to buy and sell?

4 A Yes.

5 Q And it's your testimony in your professional opinion
6 as an appraiser and as it sits now, the property would
7 sell for \$603,000.00?

8 A Yes.

9 Q And then it is your testimony, if I understood it
10 correctly, that if the right-of-way is put in the middle
11 of the property, the value of the property after the
12 taking would be \$380,000.00?

13 A Yes.

14 Q All right. And I'm asking you, because you gave us a
15 report in discovery. And we asked you about it in your
16 deposition. And you said there would be a \$116,000.00
17 reduction in value as a result of having a transmission
18 line.

19 A Yes.

20 Q That's your damage to the remainder?

21 A Yes.

22 Q We got that?

23 A Yes.

24 Q And then it would be the 3.93 acres, about \$20,000.00
25 for the right-of-way, actual ground where the transmission

1 line is going to go?

2 A Correct.

3 Q So on top of the \$116, I guess, just to, how much
4 that gets us to?

5 A \$131,040.00.

6 Q Okay. \$136.

7 A Right.

8 Q So what's the difference? Like what is the basis of
9 your opinion for why the fair market value has dropped an
10 additional \$80,000.00?

11 A In my report, I was being very conservative.

12 Q You were?

13 A I was.

14 Q Okay. So your report is wrong?

15 A It's not wrong; it's conservative.

16 Q Okay. So maybe I misunderstood your testimony. Why
17 don't you go back through your opinion as to the things
18 that affect the value of the property? What's the value
19 of the right-of-way?

20 A The value of the right-of-way itself?

21 Q Yes.

22 A Whatever the acreage is times the \$5,200 dollars that
23 I found.

24 Q \$20,000.00?

25 A Yes.

1 Q Okay. So what else did you use to determine the
2 diminishing value?

3 A Looking at the, not only at the comparable sales, I'm
4 aware of--

5 Q All right. So which comparable sales?

6 MR. POPE: Your Honor, he has to let him finish his
7 answer.

8 THE COURT: Just one second. Have you requested
9 comparable sales to be discovered?

10 MR. BANNISTER: We requested everything, we didn't
11 get it. In his deposition, he said he had it in his file
12 and we still don't have them.

13 THE COURT: Mr. Pope, you need to have that--

14 MR. POPE: They haven't requested anything. They
15 haven't made a single request for production. They didn't
16 file one. Nothing.

17 MR. BANNISTER: We asked for his report.

18 THE COURT: I want those here tomorrow, okay?

19 MR. POPE: Sir?

20 THE COURT: Those comparables have to be here
21 tomorrow.

22 MR. POPE: Okay.

23 THE COURT: And subject to him being re-called, but
24 go ahead.

25 MR. POPE: That's fine.

1 Q All right. So you looked at comparables. What else?

2 A There were, because this is a unique property and a
3 unique circumstance. I looked at other situations. I
4 found four different litigations, two of which were in
5 Newberry County, in which a right-of-way was imposed on a
6 property and juries found damages for those properties.
7 Those damages ranged from 20-25 percent up to as much as
8 60 percent. That gave me some guidance as to where things
9 could be. I found on the conservative side of that. I
10 also--

11 Q Okay. Can I interrupt you.

12 A Please do.

13 Q We can do them one at a time. So you relied on jury
14 verdicts for contested right-of-way cases in Newberry
15 County?

16 A Two of them.

17 Q Two, to determine the fair market value of the Oiens
18 property?

19 A No.

20 Q No.

21 A Just to kind of serve as a confirmation of what I was
22 finding from comparable sales.

23 Q Okay. All right. So you referred to jury verdicts
24 to confirm your comps?

25 A Right.

1 Q Okay. Go ahead.

2 A I also had a conversation with a gentleman named Mike
3 Fisher, who is the director or, yeah, Director of Luxury
4 Property Sales for an organization called United Country
5 Real Estate. It's a national franchise firm specializing
6 in the sale of rural properties and recreational
7 properties. One of their specialty property groups is
8 Luxury Properties. Mike Fisher is the director of that
9 property group. I described to him the scenario that I
10 found on the Oien property and asked him under those
11 circumstances, in your experience, how would that, if it
12 would at all diminish the value of the property. And he
13 said that in his experience that would result in a
14 diminution of value of between 10 and 50 percent depending
15 on the market at the time.

16 Q And so he's a real estate agent?

17 A Yes. He's an auctioneer.

18 Q Okay. So the auctioneer, you asked an auctioneer,
19 what he thought?

20 A I did.

21 Q You based your opinion on the auctioneer's opinion of
22 what the diminution value would be?

23 A To confirm my opinion based on the comparable sales
24 that I had seen.

25 Q His name is Mike Fisher?

1 A It is.

2 Q Luxury, tell me the name of his company again?

3 A His company is the Redfield Group. It's an auction
4 company in Alabama. He is associated, he's an affiliate
5 of United Country Real Estate based in Kansas City.

6 Q So you asked an Alabama/Kansas City auctioneer
7 whether or not the comps you were seeing were right?

8 A He has sold property all over the United States.

9 Q In Newberry?

10 A He's sold some property in Newberry, yes.

11 Q All right. What else did you do?

12 A That's it.

13 Q All right. Describe for me the comps that you used,
14 how many acres, how long ago were they sold, did they have
15 a house, did they not have a house. Give me some idea
16 like what those looked like.

17 A I looked at rural property sales ranging in age and
18 ranging in size from 50 to 200 acres.

19 Q So I'm just talking about the four. Now, give me the
20 first one. Tract one of the comps that you looked at to
21 determine that this was the damage?

22 A I don't have those numbers or references in my head.
23 I can produce the documents, but I can't, don't have them
24 in my mind.

25 Q But there were four of them?

1 A Comparable sales?

2 Q Yes, sir.

3 A Yes, sir.

4 Q Did they have houses on them?

5 A One did.

6 Q Did you adjust for the homesite--

7 A I did.

8 Q --or the house?

9 A I did.

10 Q And they were between 50 and 200 acres?

11 A Yes, sir.

12 Q And how recent were they?

13 A Within the last twenty-four months.

14 Q Twenty-four months. And they, all in Newberry
15 County?

16 A No, sir.

17 Q Do you recall whereabouts they were?

18 A I believe one was in Newberry and others, the others
19 were in others, other counties. One, I believe, was in
20 Laurens, two in Laurens, and one in Union.

21 Q Can you tell me anything else about the comps, if
22 they're square, if they're regular size, did they border a
23 power transmission line?

24 A I don't think there were transmission lines already
25 on any of them already.

1 Q All right. And you mean that there were transmission
2 lines after you looked at them or they weren't on there
3 yet?

4 A These were not lines involved in takings. These were
5 lines, these were comparable sales indicating land values
6 in these, in our general market area.

7 Q All right. And maybe I didn't understand. Did the
8 four comps that you used have anything to do with power
9 lines?

10 A Not specifically; no, sir.

11 Q So there weren't power lines going through the center
12 up them and that's not how you developed this theory of
13 the 20 percent reduction of every acre, property?

14 A I looked at what I believe the value of the property
15 as it is today, the Oien property, the subject property.

16 Q \$603,000.00.

17 A Yes, sir.

18 Q We got you.

19 A All right. And I looked at what the value of
20 properties would be if their highest and best use were not
21 as a high-end rural residence that would not be typically
22 attractive to that purpose.

23 Q So what made those properties not attractive to being
24 a high net worth retirement--

25 A -- lack of the amenities that this subject property

1 has.

2 Q Okay. Wait. All right. So lack of amenities being
3 what, they weren't close to town; they were close to a
4 hospital; they weren't close to the Interstate?

5 A Yes.

6 Q Right. And how, I mean, I'm trying to understand how
7 you get there.

8 A Right.

9 Q Just walk us through it. And those properties do not
10 have what amenities?

11 A They lack the unique character that the Oien property
12 does have in terms of their remote environment compared to
13 their proximity to other facilities or amenities being
14 shopping and the city and so forth.

15 Q All right. So after the power line goes through the
16 center of this property, will the property still have
17 access to the amenities in Newberry, the hospital, the
18 Interstate, it will still be at the end of a private or a
19 public road with no neighbors. All right. So which
20 amenities go away when we put the utility line in?

21 A The purchasers of that property in my view, in my
22 opinion that the power line in the middle of this property
23 will remove the highest best use of the Oien property. It
24 eliminates that as a potential homesite of the, for the
25 type of home that the Oiens have planned and have been

1 developing their property towards the construction of.

2 Q But, Mr. Major, you understand, don't you, that it's
3 not about the Oiens or the Oien's plans. It's about the
4 fair market value of the property. So just because the
5 Oiens are frustrated with the future plans they had
6 doesn't mean that because they are frustrated and they are
7 not going to do what they planned to do, the property is
8 worth less. It's worth whatever, and tell me if I'm
9 wrong, worth whatever a willing buyer would pay to
10 purchase it and you're saying that there are no buyers
11 that would buy the piece of property that the Oiens
12 currently own for any value above the \$380 that you put on
13 it, there are just no buyers? Are there no rich guys who
14 wanted to stay out there?

15 A There are, I don't think there are any buyers for the
16 property to be used as the Oiens intended it to be used,
17 intend to use it.

18 Q Would you agree with me that there are buyers out
19 there who would pay more than \$380,000.00 for that
20 property even with the transmission line down the middle?

21 A I don't believe there would be.

22 Q So that's your testimony? Your testimony is nobody
23 would pay that much? They'd pay that much but no more for
24 that piece of property with that second transmission line?

25 A I think a reasonable typical, typically motivated

1 buyer wouldn't pay more than that in order to put a
2 high-end home on it.

3 Q Well, what about to put a low-end home on it?

4 A Certainly.

5 Q For a low-end home?

6 A No, they, no, I misunderstood your question. Ask it
7 again, please.

8 Q Is there anybody, is there any purchasers out there
9 who would use the property for something different than a
10 9,000 square foot pond lake house that would pay more than
11 \$380,000.00 for the 116 acres minus the middle route
12 that's out there? Is it your testimony that there's no
13 willing buyers that would pay more than that?

14 A I think that's probably where it is, yes and I think
15 that--

16 Q Well, you're the expert.

17 A Yes.

18 Q So you got to either say yes or no.

19 A Yes. Yes.

20 Q That's your opinion?

21 A Yes.

22 Q And you have comparables that you say support that
23 opinion?

24 A In my opinion.

25 Q All right. The last thing. In talking about the

1 aesthetics of the power line. I understand that going
2 through the middle you'd be able to see it from a certain
3 distance, right?

4 A Yes.

5 Q When you talk about aesthetics, is the view of the
6 power line really what you're talking about or are there
7 other things that go with aesthetics?

8 A I'm not sure if I understand your question.

9 Q All right. Well, how does, is the damage to the
10 remainder a result of the fact that you can see the power
11 line or is the damage to the remainder the fact that it's
12 there or is the damage to, what is the damaged remainder?
13 How, like what is it about the power lines, is it just the
14 location, the fact that it's in the middle?

15 A The fact of its middle location does adversely affect
16 the value of the property, yes.

17 Q The entire property?

18 A In my opinion; yes, sir.

19 Q So the lake house and the pond that's currently on
20 the property--

21 A Yes.

22 Q --is worth less as a result of the power line being
23 put at the top of the hill even though you can't see it?

24 A I didn't say, well, the property as a whole is worth
25 less with the power line on it.

1 Q If you put the power pole and the transmission line
2 on the southern route where it runs in front of the lake
3 house and over the pond and through the marsh that way,
4 does it devalue or hurt the value of the lake house in any
5 way?

6 A I don't think it adversely affects it much at all.

7 Q The property as it sits now, barn, cleared site for a
8 luxury home and as it is worth \$603,000.00. It's your
9 testimony that that lake house is not worth any less by
10 having a power line run by it with no power line?

11 A And now it's not worth less, with the intended
12 southern route.

13 Q So I understand that you are offering your opinion of
14 what the Oiens want to do with their property, but I'm
15 talking about the fair market value of the property as it
16 sits today.

17 A Yes.

18 Q The barn, a cleared-out field, a well, and a lake
19 house. Are you telling me that the lake house to a
20 willing buyer and willing seller is worth just as much
21 with a power line running across it as it is without it?

22 A I don't think the southern route is going to
23 adversely impact the value of the lake house, the cottage.
24 It's an old home, old cottage that doesn't contribute that
25 much to the value of the home.

1 Q Doesn't contribute that much to the value of the
2 home?

3 A Correct.

4 Q Even though you can see the transmission lines from
5 the porch overlooking the lake, pond, whatever it is?

6 A Yes. Yes.

7 Q So if you took the lake house and stuck it up there
8 where the luxury home is going to be, it would have the
9 same effect on the lake house sitting on the Oiens
10 homesite as it does sitting on the pond where it is now;
11 would the value of it be the same?

12 A It would not.

13 Q Why?

14 A The location of the intended Oien home is well-suited
15 to developing the property as they intended. The highest
16 and best use, in my opinion, is, is the site of a luxury
17 home, high-end rural residential property. I think that
18 the cottage at the, on the pond is inconsequential, not
19 inconsequential, but contributes very little. If one
20 takes the middle out of the property with the
21 right-of-way, which most people would view as unsightly,
22 people don't build 9,000 square foot homes to overlook a
23 power line. So yes, it affects the marketability. It
24 limits the market. A reasonable typically motivated buyer
25 would not purchase the property for a high-end home.

1 There might be plenty of homesites there for smaller
2 homes, but the uniqueness of the property goes away if
3 it's not used at its highest and best use which, in my
4 opinion, is as a high-end rural residential property.

5 Q Do you have an opinion of the value of timber, land
6 per acre in Newberry County?

7 A I do.

8 Q What is that?

9 A Depending on what's on it and where it is, I would
10 say anywhere from \$1,500.00 to \$3,000.00 an acre depending
11 on the amount of timber in its location.

12 Q Do you have an opinion on the value of that little
13 lake house and pond?

14 A The pond contributes significantly to the property,
15 because it's difficult to build a pond these days. The
16 lake house, I would say contributes some to the property,
17 \$50-\$75,000.00, something like that.

18 MR. BANNISTER: No other questions, Your Honor.

19 THE COURT: Thank you. Any redirect?

20 MR. POPE: Yes, sir.

21 REDIRECT EXAMINATION

22 By Mr. Pope:

23 Q Can you identify the Newberry County range for timber
24 property is \$1,600.00 per acre to \$3,000.00 per acre or
25 something like that?

1 A Yes, sir.

2 Q And you also identified that you felt like the after
3 value with this middle route on this property is
4 \$380,000.00 which is about \$33-\$3,400.00 an acre, is that
5 right?

6 A Yes, sir.

7 Q And is that also about, if you do the math and I'm
8 trying to do it, I guess, about 35 percent damage to the
9 remainder?

10 A I would say so, yes.

11 Q All right. Is that, you've identified in your report
12 that a conservative number would be 10 percent, 15
13 percent, and 20 percent, but you felt the full range was
14 10 percent to 40 percent or 35 to 40 percent?

15 A I think that's justified, yes.

16 Q So, so the, the \$3,800.00, \$380,000.00 range that you
17 said the after value is with that middle route still
18 values the property for somebody. Do you think there's a
19 buyer at \$3,400.00 an acre?

20 A Yes, sir.

21 Q But not at \$5,200.00 an acre?

22 A That's correct.

23 Q Is that what you're saying?

24 A Yes, sir.

25 Q Okay. So the range or the value afterwards is still

1 higher than what you identified as the county average?

2 A Yes, sir.

3 Q Because the property is close to town, even though
4 you, if you had a power line it'd be open-looking and
5 you'd still have access to amenities. You'd still have a
6 dead-end road, a cul-de-sac on the property, correct?

7 A Yes.

8 Q And you'd still have nice trees that had been
9 carefully managed over the years?

10 A Yes, sir.

11 Q But you don't have the high-end residential highest
12 and best use, is that what you're saying?

13 A Correct.

14 Q All right. And you're going to get the comparable
15 sales that the Judge requested?

16 A Absolutely.

17 Q But at that deposition, you weren't requested to
18 bring them to them?

19 A I did not understand to bring them.

20 Q And as far as you know, no request to produce
21 anything was ever made through me?

22 A No, sir.

23 Q All right. But you will certainly comply?

24 A Sir?

25 Q You will certainly comply?

1 A I will.

2 Q Okay. So you're saying that, as I heard you describe
3 the before situation with the property, you said it's
4 extremely unique, it's a 100 acres, which is a somewhat
5 large tract for residential, very near town, very isolated
6 and quiet, peaceful. Is there another tract of 100 acres
7 within three miles of Newberry like that?

8 A Not that I'm aware of.

9 Q Within 20 miles of Newberry that you're aware of?

10 A Not that I'm aware of.

11 Q You think it's that unique?

12 A It's very unique.

13 Q So it still has a value with the line?

14 A It does.

15 Q \$3,400.00 an acre is what you're saying?

16 A I think so.

17 MR. POPE: I think that's all I have. Thank you.

18 THE COURT: Anything further?

19 MR. BANNISTER: No, Your Honor.

20 THE COURT: And may this witness be excused for the
21 day?

22 MR. POPE: Sir?

23 THE COURT: May this witness be excused for the day?
24 He might have a problem?

25 MR. POPE: No, sir. I think he's going to go dig up

1 that information.

2 MR. BANNISTER: Just bring those comps back tomorrow.

3 THE COURT: Right. He's going to bring them back
4 tomorrow.

5 MR. MAJOR: Certainly.

6 THE COURT: Does that present you with any problems?

7 MR. MAJOR: Not a problem. No, sir.

8 THE COURT: Thank you so much.

9 MR. MAJOR: Thank you.

10 MR. POPE: We call Bill Rogers.

11 BILL ROGERS, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Pope:

15 Q What's the name of your company, Mr. Rogers?

16 A It's William Rogers Company, LLC.

17 Q All right. And you live in Irmo?

18 A I do.

19 Q All right. Where did you work and you retired
20 recently, is that correct?

21 A I did. I retired from Central Electric Power
22 Cooperative, Incorporated.

23 Q And for the last 12 years up until your recent
24 retirement and your position was Manager of Right-of-way
25 Services?

1 A That's correct.

2 Q Is that the highest right-of-way position at Central
3 Electric?

4 A It is.

5 Q All right. Central Electric Power Cooperative does
6 transmission services for all the cooperatives in South
7 Carolina?

8 A Right. Central Electric is owned by all of the
9 electric coops in the State of South Carolina, and they
10 are tasked with doing the electric transmission line
11 projects for the specific coops.

12 Q And do you have memberships in right-of-way
13 acquisition organizations?

14 A Right. I'm a senior member of the International
15 Right-of-Way Association.

16 Q And do you have a designation or a certification
17 through them?

18 A It's called SRWA. That means Senior Right-of-Way
19 Agent.

20 Q And do you go, and the membership of that is
21 comprised of folks that involve an electric transmissions,
22 gas lines, and other things like that?

23 A Right. It's all the folks that are, really any
24 utility industry. Includes right-of-way personnel,
25 surveyors, attorneys, appraisers, different types of

1 consultants, nationwide and internally. It's got
2 thousands of members.

3 Q All right. Now, when you started and you finish,
4 what college did you go to?

5 A I graduated from Georgia State University in 1972
6 with a Bachelors in Real Estate.

7 Q But before you went to Central Electric and just to
8 go through your work history, you worked for Georgia Power
9 for a number of years?

10 A I worked for Georgia Power for about 14 years in
11 their land department and right-of way acquisition, plant
12 site acquisition, substation acquisitions and acquisitions
13 of office buildings and office headquarters.

14 Q And then you, after leaving Georgia Power in 1984,
15 you were a real estate consultant?

16 A Right. I was a real estate, commercial real estate
17 broker in the Atlanta area and along with that did
18 consultant work for different power companies, including
19 Georgia Power Company, Oglethorpe Power Corporation, which
20 is now called Georgia Transmission.

21 Q All right.

22 A I then went, you want me to take it from there.

23 Q Go ahead.

24 A I then went to work for Central Electric in 1990 as a
25 contract right-of-way agent, specifically tasked with the

1 doing appraisals for their individual tracts on
2 right-of-way projects.

3 Q And when you were manager of Right-of-Way Services at
4 Central Electric, that was from 2004 to 2016, January?

5 A Right. I started at Central in 1999 as supervisor of
6 Right-of-Way Services, and then they promoted me in 2004,
7 I believe, to manager of Right-of-Way Services.

8 Q As manager of Right-of-Way Services, did you
9 regularly work with staff people who were engineers?

10 A Sure. We had a team that was comprised of my area
11 which was right-of-way acquisition. We had three agents
12 and a paralegal. We also had a team of engineers that we
13 worked closely and in tandem with on our projects from
14 the, from the beginning portion of it which is really the
15 siting of the routing portion of it, and then going
16 forward.

17 Q Now, how many different transmission projects did you
18 work on with Central Electric first?

19 A There are over a 100 that I can, that I know of.

20 Q And those are all over South Carolina?

21 A Yes, they're all over South Carolina.

22 Q And each of them would involve multiple landowners,
23 is that right?

24 A Yes.

25 Q And you actually performed right-of-way acquisition

1 services for Central Electric?

2 A We did. Our first role in the process, we pretty
3 much had a process down pat where we would be working with
4 our engineering portion of the staff on routing or siting
5 of transmission lines and that's where we looked at the
6 alternate route studies.

7 Q And what prompted you to be sensitive about alternate
8 route studies?

9 A Well, like I said, I came to work for Central in 1990
10 as a contract right-of-way agent to do individual tract
11 appraisals and those are appraisals to acquire easements
12 for their transmission projects. In 1991, corporate
13 counsel advised me to write up a procedure or a policy to
14 conduct alternate route cost studies that they were going
15 to use to implement where their alternate route studies in
16 the site selection process.

17 Q And that was based on what legal development?

18 A It came from the Southern Development case vs. South
19 Carolina Public Service Authority.

20 Q All right. And what did you make sure, that you
21 taught your right-of-way agents at Central Electric?

22 A Well, Central Electric and most all other utilities
23 that I've worked with in South Carolina and in Georgia, in
24 fact all of them, take the right of imminent domain very
25 seriously. And also with that is the acquisition of

1 easements through condemnation extremely serious, and a
2 paper-trail, proper documentation being open to the public
3 about what you're doing, why you're doing it and how
4 you're going about doing it was essential to our business
5 model.

6 Q Did you base your procedures after 1991 on what was
7 directed in the Southern Development?

8 A Right. It was, we had already, we were already doing
9 alternate route studies, as I think a lot of other
10 utilities were. But the Southern Development case
11 according to attorneys as it's explained to me dealt with
12 more about right-of-way costs exact, and that was pretty
13 much was developing estimates as to what it would cost to
14 acquire the right-of-way. And that was to be based on
15 land use and how the project would cross the proposed
16 landowner's property.

17 Q And you said you were taught at Central Electric that
18 imminent domain was a very serious right?

19 A It is a serious right.

20 Q Well, explain for some of the practical applications
21 of understanding what is a sensitive route in dealing with
22 landowners?

23 A Well, once you go through the siting process and you
24 go through the alternate route studies and a selected
25 route is chosen, it's based on those studies and those are

1 basically empirical studies. They're not just looking at
2 maps and looking at general concepts or saying so much.
3 We look at the wetlands, the threat to endangered species,
4 the cultural resources, the cost to build the line, of
5 course, is important, the engineering costs to buy it and
6 also the estimated cost to buy the, for the right-of-way.
7 All those things go into play and a route is chosen
8 through a committee, a selected route. And so what our
9 process is, immediately once a selected route is chosen,
10 we would, and other companies that I've worked for, the
11 first task would be to notify all property owners along
12 the line that you have a project. And give them, usually,
13 a letter is sent out, a letter of notification where each
14 property owner is given notice of this and, basically,
15 stating who you are, what you're trying to do and what the
16 project is about, general ideas about the project and
17 advising them that you would have representatives in the
18 area to meet with them on an individual basis. And,
19 basically, that's sort of evolved and gotten a little
20 better in the last decade or so. The fact that we put in
21 800 numbers and given emails so that property owners can
22 contact us. The first visit to a property owner is the
23 most important, because you're trying to find out from
24 that property owner what his issues are. Ninety percent
25 of right-of-way that you can buy, let's put it this way.

1 Most of the problems with right-of-way has to do with
2 something besides money. It has to do with the way folks
3 have been treated in the past. It has to do with
4 possible, in this particular case, homesite development
5 and you get that information from the property owner and
6 by meeting with that property owner and getting that
7 feedback from them. And you can find out quickly what the
8 crux of the problem is and try to resolve that problem.
9 If you can get it situated on a person's land where you
10 can live with and that person can live with it, you got a
11 doggone good chance of buying that right-of-way without
12 having to go through the process of condemnation.

13 Q And as far as the starting point, no, excuse me. Let
14 me ask you. What have you reviewed in this particular
15 case? Have you reviewed the PMPA documents 1 through 486?

16 A I reviewed all the discovery information that you had
17 supplied me.

18 Q Did you read the deposition of Mr. Cobb and Mr.
19 Regier and Mr. Frazer and Mr. Guy?

20 A I did.

21 Q And Mr. Oien?

22 A I did.

23 Q And you've sat here today all day listening?

24 A I did.

25 Q And based on all that information, you have come here

1 today to render opinions, is that right?

2 A Right. And the opinion that I have--

3 MR. BANNISTER: Judge.

4 Q No, I'm sorry. We'll ask you that in a minute.

5 MR. POPE: I'm going to tender Mr. Bill Rogers--

6 THE COURT: Right-of-way acquisition.

7 MR. POPE: Mr. Bill Rogers as an expert in
8 right-of-way acquisition.

9 THE COURT: Any voir dire or do you stipulate?

10 MR. BANNISTER: I'm not sure I understand exactly
11 what he's, what he intends to offer, so I may ask him some
12 questions if that's okay.

13 MR. POPE: Proper procedures for right-of-way
14 acquisition.

15 THE COURT: Does that satisfy?

16 MR. BANNISTER: For procedures for land acquisition.

17 THE COURT: Proper procedures.

18 MR. BANNISTER: He's an expert in proper procedures
19 for land acquisition?

20 MR. POPE: And condemnation.

21 THE COURT: Right, and condemnation.

22 MR. BANNISTER: And condemnation.

23 THE COURT: Proper procedures for right-of-way
24 acquisition in condemnation cases.

25 MR. BANNISTER: Good.

1 THE COURT: Okay. So stipulated.

2 Q And you've come to render opinions about that topic
3 as your area of expertise, is that right?

4 A Right. Besides working for Central, I have done work
5 with Progress Energy, done work with SCE&G, formerly
6 Carolina Power & Light which became Progress Energy, which
7 became Duke. And through my association, International
8 Right-of-Way Association, have become very familiar with
9 the alternate route studies that different companies do.
10 Because we're always trying to get better and each of our
11 attorneys as they've succeeded themselves through the
12 years from the 1990's to the current corporate attorney,
13 the first thing they want to know do you have a written
14 procedure to do alternate route studies and do you have a
15 written procedure to do the alternate route cost studies.
16 The cost studies pretty much fell totally on my end of the
17 stick and we did have that, and I've reviewed this, the
18 discovery information and where it appeared, there were
19 some routes drawn on maps. That's just the start of the
20 process. I did not see a single report or alternate route
21 study.

22 Q So now you listened today when we talked about that
23 in February, late February of 2013, Mr. Cobb submitted a
24 plan to go forward with a route from the Duke Power
25 transmission line to the substation; you saw that?

1 A I did.

2 Q And was there any alternate route study accompanying
3 that?

4 A There was no study that I saw.

5 Q All right. Now, it was testified earlier today that
6 that route was based on a Google Earth and a GIS map,
7 meaning nobody had ever been on the property and no
8 landowner had been talked to, is that right?

9 A Yes.

10 Q All right. And there's nothing wrong with starting
11 that way is, just to draw a line, and then we'll go talk
12 and find out?

13 A And that's exactly how you start.

14 Q Right, but was there any finishing to it? You saw
15 they started, but did they ever talk to the landowners and
16 ascertain those desires, and then do an alternate route
17 study for each landowner?

18 A Well, the way you do it is and I think that, you
19 know, you get started by putting various routes on a map
20 and your engineers work on that, along with the
21 right-of-way folks. Because you got to bring in the real
22 estate component into developing these general routes.
23 Once you have your general routes, they may be four or
24 five; they may be two or three. It doesn't matter the
25 length of the line either. The line could be a mile; it

1 could be 25 miles. You do these alternate route studies
2 to be able to show the public or when you get ready to go
3 to condemnation that you've done your proper due diligence
4 and routing; that you haven't been arbitrary; that you've
5 been objective and fair-minded. And the way you go about
6 doing it is you take each route and you as far as offering
7 a route cost study, and you do it for everything else, all
8 the other variables, too. But alternate route cost
9 studies, you look at every tract. You've either had an
10 appraiser give you a general market study of the area.
11 That's basically a study area that you're looking at
12 putting, getting from point A to point B and you've got
13 all these various routes contained in that study area. So
14 you've got that information, and then from the, actually
15 you can use, it's very good to use GIS and the county
16 information, but it's also to go out and look at each
17 route and you actually go out and inspect properties best
18 you can without getting on them, because you don't have
19 the right to get on them. At this point, you're doing a
20 utility study, basically. So you're going in and you're
21 estimating the cost to acquire. You're not forming an
22 opinion of value. That's what appraisers do. You're
23 giving your committee or your selection group, whoever is
24 making the selection, the metrics and the information on
25 which to base decisions about developing the preferred

1 route. So you look at each tract and so you go do, and
2 you say you got 10 tracts and you'll evaluate each tract.
3 Some of them may be small single-family residential
4 properties. Some may be large tracts. Some may be a
5 tract such as Mr. Oien's, Mr. and Ms. Oien's is on. And
6 you look at those and you try to figure out what's it
7 going to cost to acquire. Well, you got it on a map and
8 you see you're going down the middle of a piece of
9 property. I've been in the seat of the acquisition agent
10 for a long time, and I've bought a lot of right-of-way and
11 been in a plenty of condemnations, and I sat at that table
12 over there where the verdicts have come down when they're,
13 you go across the middle of a man's property or a lady's
14 property. You're going to pay a heck of a lot more for it
15 than you are if you go along the property lines. You
16 can't always go down the property lines. And so you try
17 to evaluate and give your committee an estimate of what
18 it's going to cost to acquire that particular property.
19 At the end of the day for each route, you'll have an
20 analysis of the various components such as the
21 environmental, the wetlands, number of tracts, the land
22 use categories are broken down from different kind of
23 categories, and then you'll have a cost to acquire and in
24 that cost to acquire, you also estimate the damages. We
25 just did a line before I retired in Newberry County from

1 the community of Fairview up to the IP plant right there
2 in Prosperity. It was about a seven-mile line. We looked
3 at about six or seven different alternative routes and
4 when we evaluated them in terms of alternate route cost
5 studies, the engineers took the Google Earth. That's
6 fine. We went out there on the ground and looked from
7 roads, and they had a couple of the lines going across
8 houses or going right by houses. So those had to be
9 tweaked. Even though they went near houses, we assigned
10 proximity damages to it. Now, this damage thing has
11 changed quite a bit in the last few years.. Like I said, I
12 been in court a bunch. Been on a bunch of mediations and
13 the damages are always present... There have been studies
14 after studies that come out, so they go anywhere from 10
15 percent to 35 percent:

16 Q That's for damage to the remainder?

17 A Damage to the remainder. And so when I did this,
18 what basically I did in this report here is to evaluate
19 relocation analysis and applied the principals of an
20 alternate cost studies to relocation or, in other words,
21 say PMPA had picked out the middle route. Then, there
22 were a couple of other possibility or alternatives that we
23 looked at, and I had the luxury of doing it sort of after
24 the fact and was able to take the expert who formed the
25 opinion of the value, Mr. Major, use his numbers in there.

1 I also interviewed Mr. Oien, and he was telling me that
2 the southern route was not going to give him concerns
3 regarding damages to remainder. The northern route, there
4 was a couple of severance parcels, but and I think in the
5 end, it wasn't even being considered by anybody. I think
6 basically what you have here is you've got a middle route
7 that has a fixed number that PMPA knows what it's going to
8 cost to build it and engineer, but it's got another number
9 that nobody knows what that's going to be and that's the
10 damage of remainder. And when you try to evaluate it and
11 in every one of the cases I've been involved with, you try
12 to provide the best information available. Use the best
13 practices available, and that's to use studies based on
14 your experience and so forth giving folks the information
15 on which to make a decision.

16 Q And the alternate route studies can be done with
17 checking with the landowner, going on the property and
18 looking at the usage that the landowner have and the
19 aesthetics. You can't tell aesthetics from a mountain,
20 necessarily?

21 A No, you need to be on the property. And also in this
22 particular case, because it's got to do, you're not
23 looking at the rest of the line. You're looking as
24 applies to this landowner and the main thing you got to be
25 concerned there is, is that the exit point is at the same

1 place that their preferred route was selected, which
2 that's what we did. The tap points, I've been involved
3 with tap point acquisitions with Central with plenty of
4 them with Santee Cooper. Duke does it a little different.
5 They buy a separate little parcel of land but 99 percent
6 of the time, these folks want great access to their tap
7 points and that's to be able to get to that point and
8 restore power, be able to build it and maintain it from
9 there, because see that's the key. That's where they are
10 switching and that's where the power is coming from Duke,
11 in this case, to PMPA.

12 Q And let's talk about the tract. You've been and
13 visited the Oien property, have you not?

14 A I have.

15 Q And what were your observations about the property
16 and the possible middle route or the southern route? Talk
17 about the property first.

18 A Okay. The property is, it is a pretty piece of
19 property and you've heard Mr. Major talk about it. You
20 heard Mr. Oien talk about it. It is beautiful. It's
21 well-maintained. I would probably, we would probably put
22 a usage on it as a residential estate, something of that
23 nature. Something a little bit above a residential--

24 MR. BANNISTER: Your Honor, I'm going to object to
25 him saying how he would, in his opinion he would use the

1 property. I mean that's, the question is he's an expert
2 on the procedure about which you acquire right-of-way in a
3 land condemnation case. What he thinks is the highest and
4 best use of the property is not in his scope of expertise.

5 MR. POPE: He evaluates aesthetics, Your Honor.

6 THE COURT: Yeah, I think this gentleman testified
7 that in doing his right-of-way, that he had to look at
8 alternative costs and look at the costs involved, and I
9 think it's necessary for that, so I'm going to note your
10 objection. I'm overruling the objection.

11 A So it is a beautiful piece of property and once you
12 go on it, you can see that someone has done some
13 preliminary work in there to do something else with it.
14 Then, that falls back into your right-of-way acquisition
15 process. When you go meet with a property owner and say
16 if I'm representing PMPA, I'm going to explain to the
17 Oiens what the project is, what our proposed route and
18 discussing with him his issues, he's going to pull out
19 those plans. He's going to pull out those pictures. He's
20 going to, you can, you know, it doesn't take a genius to
21 walk out there and see that there's underground utilities
22 and there's well head and there's a extremely nice shed.
23 So something's getting ready to happen there. It's got
24 the pond. And so, basically, from there that tips you off
25 as a right-of-way agent, okay? Our issue here is

1 location. Where can we try to locate this project to work
2 with Mr. Oien? At the same time, look after the company's
3 interest. Well, the way you do that is you go through
4 this process and, you know, he may mention some routing to
5 you. There may have been some discussed. So you take it
6 back and you evaluate it and you get your engineer out
7 there with you, usually, an engineer and a surveyor and
8 the property owner. You can agree on the ground what will
9 work for him and what will work for you.

10 Q But when you do it--

11 A Generally, that will work, and then you're talking
12 about, you're taking damages, the unknown factor of
13 damages off the table.

14 Q But when you do it all for the route study, you have
15 engineers working with you as part of what you do as an
16 expert?

17 A Right. You bring in the engineering, the design
18 engineers. You bring in your environmental engineers.
19 You're working with consultants that are biologist that do
20 the wetlands studies, the cultural resource implications.
21 You got, a lot of this information you can get easily, but
22 a lot of it you've got folks that you do business with.
23 You do so many of these projects and so many of these
24 lines, you can pick up the telephone and say, okay, I've
25 got a line in Newberry County and send me some, we're

1 looking at these alternatives. I need to know information
2 regarding these things. And so when Central took this
3 process to its committee, you had specifics and you had
4 metrics for each and every route. That takes us back to
5 here. So they pick the middle route, and then you find,
6 then you're in the next step. You're in the acquisition
7 phase and that's where you're trying to make it work out
8 with the property owner.

9 Q And so you'll do your own route studies as you get
10 into the acquisition phase?

11 A Well, you're not, no. You've selected the route
12 based on your alternate route studies, okay? You've done
13 your alternate route studies. In fact, when you do your
14 alternate route studies, you want to be as objective and
15 fair-minded as possible.

16 Q But in this case do you see any indication in the
17 testimony or the depositions of PMPA persons or engineers
18 or in the written record that they did any alternate route
19 studies to pick a route?

20 A There were no route studies done.

21 Q Okay. All right. Now, and you said then the next
22 step after you have a route, then you talk to the
23 landowner, correct?

24 A You talk, you're in the phase we're in we're talking
25 about right now, acquisition. So you go in and you do a

1 study like I've done here to look at the various specific
2 routes, and this is a little bit different, because you're
3 looking specifically from the landowners point of view.
4 You're looking at things that could be brought up in
5 court, but you don't know how it's going to end up. I
6 mean, you may think you know, but I can tell you, juries
7 may change your mind in a hurry. And so based on all of
8 that experience is how I look at presenting the damage
9 factor to the company.

10 Q Okay. And you've done a full report where you
11 analyze your opinions and the reasons for them, and you've
12 also provided at the back of the report an alternate route
13 cost study?

14 A I have.

15 Q Okay. And is that cost study the same kind of study
16 you would have done if this were your project way before
17 any condemnation was talked about?

18 A Well, ours will be more detailed up front, okay?
19 You've got the cost study and you've got the alternate
20 route studies. You've selected the route, so you're into
21 the route now, but the landowner's made a relocation
22 request or he's indicated this is not going to work. So
23 then you do another study similar to what I have here and
24 this is what I prepared in this particular case.

25 Q Okay.

1 A And it's a mini-route study that's applicable to that
2 specific property.

3 Q Okay. And in your experience with Central Electric,
4 what percent of those relocation-type consideration
5 requests were granted by Central Electric?

6 A If we got 10, we would probably, we would grant nine;
7 90 percent usually. Now, there's a strong foundation of
8 being able to, we always took the approach if you can get
9 it situated on the person's property where you can live
10 with and you take that unknown out of the deal, the
11 unknown being the jury and, you know, you're going to be,
12 this is an easement in perpetuity. You're going to be a
13 neighbor to that landowner forever and if you can work
14 that out and your company can live with it and it doesn't
15 affect the line or compromise a line, then you try to do
16 it. In some cases, you just can't do it.

17 Q Exhibit 40 is your bio or resume?

18 A Yes, it is.

19 MR. POPE: I should have offered that earlier. I
20 offer it as an exhibit.

21 THE COURT: Any objection to his C.V.?

22 MR. BANNISTER: No, Your Honor.

23 THE COURT: Admitted.

24 (Whereupon, Plaintiff's exhibit 40 was admitted into
25 evidence.)

1 Q And exhibit 40 is your alternate route study that
2 you, report that you prepared, is that right?

3 A Yes.

4 Q Okay. Now, are you familiar, the route study you had
5 performed, are you familiar with whether or not other
6 utility companies such as SCE&G, Duke, Progress Energy,
7 whether they use almost identical alternate route studies?

8 A They do alternate route studies, yes, and they do
9 include the costs.

10 Q Are they--

11 A They're similar. Yes, they're similar to the format.
12 Not exactly. Everybody does things a little different.

13 Q Do they consider the same factors you've considered?

14 A Yes.

15 Q Do they compare alternate routes with one another to
16 score them?

17 A Some do. Some let the committee choose.

18 Q A committee?

19 A Committee, the selection committee.

20 Q Okay. All right. Now, I want to ask you first to
21 talk about the estimate total cost. Can you see any
22 indication, do you think this is required by Southern
23 Development?

24 A Yes.

25 Q Did you see any indication or any document or any

1 testimony that PMPA did estimated total costs?

2 A No.

3 Q And taking the report that they filed before they
4 started anything based on their Google Maps, they had the
5 right-of-way purchase costs of \$100,000.00, which is
6 \$5,000.00 times 20 acres, is that right?

7 A That's right. This is about a 2.1 mile line
8 according to this information. They looked at only the
9 right-of-way itself. They did not look at how it affected
10 the individual property owners land, and there's about 20
11 acres in that and it's \$5,000.00 an acre which is in line
12 with what their appraiser put on it which was \$5,000.00 an
13 acre.

14 Q But was there any paper anywhere in the file of PMPA
15 or testimony that indicated they reassessed right-of-way
16 costs anywhere on any tract?

17 A No.

18 Q On any of the 15 tracts?

19 A No.

20 THE COURT: Let me make sure I understand. The
21 figures you're citing in your many route studies is based
22 on what you anticipate a jury would award based on your
23 experience, is that correct?

24 A Yes, sir.

25 THE COURT: Thank you.

1 Q And you've sat through as an expert witness at
2 condemnation cases, have you not?

3 A Yes, I have.

4 Q And you've seen the power lines, because all of your
5 occasions would be power lines and transmission lines?

6 A They've been power lines and our process, we've been
7 enjoined a couple of times, too, when I was at Central
8 and, of course, we've been challenged and the studies much
9 deeper in scope than this, because this is applicable to
10 only one tract, were introduced in those cases. And,
11 fortunately, we were upheld as to our process. We had a
12 written trail, paper trail showing exactly--

13 Q And this ultimate route study was prepared in
14 connection with the underlying acquisition or for
15 condemnation and not for court in a challenge, is that
16 right?

17 A It's done ahead of time.

18 Q So you're going to have it in every file that you
19 acquire property, is that right?

20 A Yes, you are.

21 Q And, in fact, you said you were challenged four times
22 when you were with Central?

23 A Four times.

24 Q And you just went to your file and pulled out the
25 alternate route studies, and then there was clearly a

1 basis that the law says developed by you?

2 A Yes. We wrote that process in 1991. I know we were
3 challenged twice in the nineties from IP, and I think
4 different lines, the same county, and then another
5 challenge in Darlington County; two different lines, the
6 same property owners, so the same thing.

7 Q You've walked out--

8 A The same thing.

9 Q Excuse me. I'm sorry.

10 A Go ahead.

11 Q You've walked out to the property?

12 A I have.

13 Q And you've seen now where they've cleared out to this
14 part right here?

15 A Yes, I have.

16 MR. POPE: And this is exhibit 44, Judge.

17 Q And the Oien property closely identified on the right
18 side and it's tract 338-2 is where they cleared it. So
19 the connection point is right there?

20 A Yes.

21 Q Did you assess the route studies using the end of the
22 northern route or the southern route was rejected by
23 everybody using a northern route connection point there, a
24 middle route connection point there, and a southern route
25 connection point there?

1 A Yes..

2 Q And the southern route was similar to exhibit 12,
3 except you had a different connection point at the end?

4 A Yes.

5 Q Now, tell us what your estimated total costs were for
6 the, we've skipped the northern route.

7 A I'm going to get to that page.. Did you say forget
8 the northern?

9 Q Did you do the construction costs for the north?

10 A I did construction engineering costs.

11 Q And then you also did right-of-way--

12 A Right-of-way acquisition. And the right-of-way
13 acquisition, again, this is only applicable to this
14 particular tract, but our construction costs I used were
15 based on a, like I said, 115 KD line, 70-foot wide
16 right-of-way. It's about a seven-mile line in Newberry
17 County. These costs are not estimates. These costs are
18 actual.

19 Q In 2015?

20 A Now, Central builds a different type of line than
21 PMPA, so their, you know, theirs may be a little bit. But
22 PMPA's cost estimates were even less than Central. But to
23 compare apples to apples, what I knew to be correct as to
24 what Central paid for the construction costs of a 115 KD
25 line in Newberry County that had angles, guide wires and

1 so forth.

2 MR. BANNISTER: Judge, I'm going to object. He's an
3 expert who's qualified as an expert with the procedures
4 for acquiring right-of-ways and land condemnation cases.
5 He is now testifying to what he believes in his expert
6 opinion it would cost to put in the lines that are subject
7 to the three routes. He's not an engineer. There's no
8 testimony about him qualifying as an engineer so far as to
9 corroborate that.

10 THE COURT: All right. I got you. Tell me what
11 basis he has for giving his opinion.

12 MR. POPE: All right. Under Rule 703, Bases of
13 Expert Opinion.

14 THE COURT: No, no, no, no. I'm familiar with, I'm
15 talking about his basis.

16 MR. POPE: Yeah. He works with engineers and he does
17 these studies with their input. He regularly relies on
18 their input, and he relied on it here that these are the
19 actual costs for a project in Newberry County in 2015.

20 THE COURT: Are you saying that those are reports
21 that are prepared for him and he'll go sit down and study
22 them?

23 MR. POPE: I'm sorry. I didn't hear the--

24 THE COURT: In other words, an engineer prepares the
25 report as to the cost to construct the middle line, the

1 north line, the whatever one it is.

2 MR. BANNISTER: In consultation of him.

3 THE COURT: Hang on. Hang on. I'm trying to ask a
4 question. Then, there is an engineering cost associated
5 with that. Those figures are provided by engineers,
6 right?

7 MR. POPE: Right.

8 THE COURT: Just because he, allows him to give
9 expert testimony. There's not a lot of hearsay, and it
10 places on his expertise, but go ahead.

11 Q All right.

12 THE COURT: Stop for a second.

13 MR. BANNISTER: So, I need to make sure I follow
14 this. I believe what he just testified to is that those
15 costs are from a line different from this one that he
16 worked on previously that he's taken his knowledge of
17 those engineering costs and he's plucked them out of a
18 different line and he's dropped it down on the Oiens
19 property and said, eh, it's about the same.

20 THE COURT: Is that true?

21 A It is. It is to a degree.

22 MR. BANNISTER: I will renew my objection.

23 THE COURT: I'm going to entertain what he has to
24 say, and then I will rule on your objection. I just want
25 to hear it first.

1 MR. BANNISTER: Thank you, Your Honor.

2 THE COURT: Because you are saying to me, Mr. Rogers.

3 A Yeah, that's okay.

4 THE COURT: I am so sorry.

5 A No problem.

6 THE COURT: That essentially, and when I did my job
7 as right-of-way guy people brought me these figures and
8 these are the figures that we used at Central and we build
9 different type of lines than what the PMPA folks do, so
10 their figure is a little bit less.

11 A It is different. From my review of the, and also I
12 think whereas the PMPA, and I told Mr. Pope this, PMPA
13 number may be higher on that route is that on their angle
14 turns, they probably use self-supporting poles as opposed
15 to using guide and anchor poles and Central's, of course,
16 it is different. It's smaller poles. It's still a 115 KD
17 line. We use taller poles. They span further. But and
18 the bottom line is this. When you get down to comparing
19 the two alternatives is that the cost of the middle route
20 is known by PMPA, the cost to build it. They know that.
21 The unknown is the right-of-way acquisition cost. They
22 don't know what that's going to be regardless of who has
23 appraised what and what their testimony is going to be,
24 they don't know what a jury will end up doing. That's an
25 unknown. And if you take their numbers and kind of play

1 around with it of the increased construction costs and
2 engineering costs, it's almost offset by the cost to
3 acquire the southern route. In other words, it's going to
4 cost more to build the southern route, but it's going to
5 cost you, you'll have a known number as to what it's going
6 to cost.

7 THE COURT: Hang on. I'll sustain your objection. I
8 think that's beyond his expertise and just because it is
9 something relied upon it's hearsay information by other
10 folks and it's not necessarily this case. I am not saying
11 you're not, okay, sir?

12 A I got you.

13 THE COURT: Okay. Go ahead. So I'm going to sustain
14 the objection.

15 MR. BANNISTER: Thank you, Your Honor.

16 THE COURT: I'll let you proffer the records for the
17 record.

18 MR. POPE: Yes, sir.

19 THE COURT: But I'm not going to consider for
20 testimony.

21 MR. BANNISTER: All right.

22 Q.. Mr. Rogers, the type of information you used for your
23 estimated total cost is based on the same unit, is it
24 based on the information you were provided by engineers
25 working on a job in Newberry County and you regularly rely

1 upon experts such as those engineers in your field in
2 forming opinions on a regular basis, is that right?

3 A I do.

4 Q All right. Do you feel that the information you use
5 from engineers on this route analysis is reliable and
6 standard procedure that you've been following for the last
7 twenty plus years?

8 A Yes.

9 THE COURT: All right. Let's take a, I hear you and
10 I note you're moving to have it considered, but I'm not
11 going to do that, but you're on the record. Let's take a
12 break.

13 (Whereupon, a short break was taken.)

14 THE COURT: I want to amend my prior ruling somewhat.
15 I was back there banging around with my law clerk and
16 thinking about it. Concern, my primary concern is he's
17 taking testimony and figures from somebody else that he
18 doesn't have, to develop himself, but still the hearsay
19 rule is it's provided by somebody else. Just because you
20 can allow it, doesn't mean it's admissible in his opinion.
21 But the concern I have is my understanding of what this
22 guy's function is look, we want to be prepared for
23 alternate routes if we have somebody we can't deal with or
24 we can't do it, and it's all about economics--

25 MR. POPE: Right.

1 THE COURT: --basically and at the end of the day, we
2 want to, because it's peaceful to do so on a cost basis or
3 we're prepared to go in front of a jury to justify what
4 we've done, but it's all economics. So that being said,
5 part of his expertise would be making a determination
6 whether the alternate routes cost more or less than--

7 MR. POPE: Right.

8 THE COURT: --but not necessarily the exact figures
9 which come from somebody else. Okay? So, you know, and I
10 don't mind him giving some qualifiers substantially more
11 or significantly more or significantly less, somewhat and
12 it might even be more, but the actual figures themselves,
13 I'm not going to let in, okay? I know that you may
14 proffer and you move, you made an objection to--

15 MR. POPE: Judge, can I proffer a couple of more
16 things on that before?

17 THE COURT: Yeah, absolutely.

18 MR. POPE: Sir?

19 THE COURT: Renew your basis for me so that at the
20 end so I'll know that that's what you're going to do.
21 Thank you.

22 MR. BANNISTER: Judge, and just so I can make sure I
23 got it.

24 THE COURT: Am I just being totally confusing to you?

25 MR. BANNISTER: Maybe.

1 THE COURT: Okay.

2 MR. BANNISTER: The objection was him testifying to
3 what construction costs would be on the different routes,
4 because he's getting those numbers from discussions with
5 engineers about lines that were done somewhere else--

6 THE COURT: Okay.

7 MR. BANNISTER: --and he's taking those engineering
8 costs for a different power company and say, well, they'd
9 probably be about the same on this project and, therefore,
10 I'm just going to use general math. And so that's about
11 this much, and he's putting actual numbers on paper that
12 are unrelated to this project.

13 THE COURT: Right.

14 MR. BANNISTER: And so we were objecting to him
15 testifying to numbers on construction costs or engineering
16 costs unless he has actual, unless someone has actually
17 done the engineering construction on these three
18 properties, on these three routes. And he said he was in
19 no way giving an actual number on this route; he was just
20 taking his prior experience and guessing what the
21 construction costs would be.

22 THE COURT: Well, and when I made my ruling it was
23 based on hearsay, relevancy and credibility. Three bases
24 I gave for it. But I do hear and that what you're saying
25 is not relevant to this case.

1 MR. BANNISTER: Thank you, Your Honor.

2 THE COURT: Okay. And I will sustain it. Go ahead.

3 MR. POPE: Shall I continue with the proffer?

4 THE COURT: Yes. No, please and you make it for the
5 record.

6 MR. POPE: Thank you.

7 Q Mr. Rogers, you've done, as you've said, you've done
8 previous route studies and which were then the cases were
9 subject to a challenge later?

10 A Yes.

11 Q And you presented your route studies?

12 A Yes.

13 Q Did you use the same methodology in those that you'd
14 used in the one from the Oien case?

15 A Yes.

16 Q And you took unit costs from a project in Newberry
17 County in 2015, did you not?

18 A Yes.

19 Q And those unit costs included reports and
20 conversations and what not with engineers or construction,
21 correct?

22 A Correct.

23 Q Something you'd been doing for 25 years?

24 A Longer than that.

25 Q Okay. As part of your rendering an opinion, every

1 time you do a route study, it's an opinion, isn't it?

2 A It is an opinion. That's all it is.

3 Q And the basis--

4 A It's an estimate.

5 Q --basis for it is includes consultations with
6 engineers on those cases that you, while you were employed
7 by Central?

8 A Right.

9 Q And that's the same methodology you're using today,
10 are you not, the unit costs based on a line in Newberry
11 County in 2015?

12 A Right. Striving for consistency in each particular
13 one you do.

14 Q Now, I want to ask you to go through the estimated
15 costs for each of the routes. It is in your report there.
16 Let's go to the middle and southern route.

17 A Are you looking at that summary there?

18 Q Well, I'm looking at--

19 A Or you want to go to the specific. Well, basically,
20 the middle, basically, what I did is I had that exhibit
21 that showed the routes done to scale so I could scale off
22 some distances and try to figure it out from there as far
23 as the distances that you needed to input into your
24 developing a construct cost and engineering cost. And
25 again, I base that using the same numbers as the

1 Central/Fairview line. The cost estimates, right-of-way
2 cost estimates were done specifically in accordance to the
3 cost estimate process that I wrote in 1991 for Central
4 Electric and that's to look at the right-of-way acreage,
5 the actual acreage.

6 Q Look at your summary on the right-of-way costs that
7 you have in your report.

8 A You want it on the middle one?

9 Q Yeah.

10 A Okay. On the middle one, I estimated it to be 2200
11 feet, 3.95 acres and the actual right-of-way costs. I used
12 \$5,200 dollars per acre. That's based on Mr. Major's
13 appraisal and that comes to \$20,540. The damage to
14 remainder, again, I relied on Mr. Major, the 112 acres at
15 15 percent. Now, I've seen that number vary from 10 to 35
16 percent from studies and you just don't know about that.
17 The reason I put the \$75,000, that came in because again,
18 this is what you're doing here is you're just trying to
19 find out where the landowner is coming from and where the
20 company is coming from to try to match the number, and he
21 has \$75,000.00 in it. I since learned he's got more money
22 than that into this particular house site. Duke area is
23 only eight-hundredths of an acre. It's just a simple math
24 there, and so I got that the total right-of-way cost
25 estimate was--

1 MR. BANNISTER: Judge--

2 A --was \$182,960.00.

3 MR. BANNISTER: Your Honor, are we still in the
4 proffer?

5 THE COURT: He's still in the proffer.

6 MR. BANNISTER: I'm sorry.

7 MR. POPE: This is in his report and it's already in
8 evidence. This is exhibit 40.

9 THE COURT: Well, hang on. That's why I asked you to
10 move at the end of your proffer, so I'd know.

11 MR. POPE: Oh, okay. I thought I'd gone past the
12 proffer.

13 MR. BANNISTER: Okay.

14 THE COURT: So you're done with your proffer?

15 MR. POPE: Well, before I got to this topic.

16 THE COURT: Okay. And this report is in evidence by
17 stipulation, is that correct?

18 MR. POPE: Right. Yes, sir.

19 THE COURT: Okay.

20 MR. BANNISTER: It is, Judge. I believe what he
21 testified to was the \$75,000.00 came from Mr. Major. Mr.
22 Major did not testify to that.

23 THE COURT: I think he said the \$5,200.00 came from
24 Mr. Major.

25 A All of these numbers came from Mr. Major's report.

1 He put \$75,000.00 in his report. I got that from
2 somewhere or either that or it came from Mr. Oien,
3 interview with Mr. Oien.

4 THE COURT: Let's stop for a second. I mean, I'm
5 sorry to keep interrupting.

6 A No, you're okay.

7 THE COURT: What is your objection?

8 MR. BANNISTER: My objection is he just testified
9 that Mr. Major testified that there's \$75,000.00 damage to
10 the homesite. And I do not believe Mr. Major offered
11 testimony that there was any damage to the homesite, just
12 a general decrease in value of the property. And I kept
13 asking what's the \$80,000.00 and he just said that
14 generally that's what it is. So if Mr. Rogers is saying
15 that there's damage to homesite, that's inconsistent with
16 Mr. Major's testimony, unless he got it from somewhere
17 else.

18 THE COURT: Now, please, I mean, listen, I'm slow. I
19 am from Anderson. So you have got to give me a break. I
20 believe in the sense what this gentleman said. I put in a
21 lot of money in the preparation of this land or something,
22 the cost factor. But then your expert appraiser said
23 there's been damage to the, well, there is damage to it.
24 looks like the middle--

25 MR. BANNISTER: He said that was part of the damage

1 to the remainder.

2 THE COURT: Sure. I mean, \$75,000.00 dollars go to
3 the remainder.

4 MR. BANNISTER: Judge, that's damage to the
5 remainder, 112 acres.

6 THE COURT: I don't have it in my notes that I've
7 seen that. I don't have it in front of me, so let me see
8 it.

9 MR. BANNISTER: I'm just trying to make sure if he's
10 repeating what he says--

11 THE COURT: He needs to be consistent.

12 MR. BANNISTER: I think it's the one I wrote on.
13 Disregard my notes.

14 THE COURT: Well, he has damages to remainder there
15 of \$75,000.00, so that's what, that would be consistent
16 with what--

17 MR. POPE: Right.

18 THE COURT: --this gentleman right here said, right?

19 MR. POPE: Yes, sir.

20 THE COURT: Okay. I'm going to note your objection.
21 I'm going to overrule the objection.

22 MR. BANNISTER: Thank you, Your Honor.

23 Q Continue on, Mr. Rogers, please.

24 A And so I got a total estimated right-of-way cost of
25 \$182,960.00.

1 Q And do you think using 15 percent damage to the
2 remainder per acre was conservative or liberal?

3 A It'd probably be on the conservative side, because
4 it's just impossible to tell what a jury would do, but
5 certain tracts, larger tracts are damaged less. Smaller
6 tracts are damaged more, but when you go through the
7 middle, you can expect to be hit with damages pretty good.

8 Q All right. Now, you're going now to your total
9 right-of-way on the route, the southern route?

10 A The southern route, it's further. It's 3,200 feet,
11 approximately. That's to get to the, back to the exit
12 point from the tap. 5.51 acres of right-of-way and \$5,200
13 dollars per acre is \$28,650.00. I did not damage the
14 remainder there simply because the request was to put it
15 on the south side by the landowner, and the landowner
16 wasn't expecting damages there. So using that premise, we
17 did not damage that at all. I put the Duke area in there
18 and I got \$29,100.00.

19 Q So the, you said that the right-of-way costs for the
20 southern route are, conservatively speaking, about
21 \$160,000-\$50,000 less than the middle route costs?

22 A Yes. Yes.

23 Q And if the damage to the remainder was, in fact,
24 higher, 20 percent, 30 percent or 35 percent, then that
25 number would rise?

1 A It could.

2 Q All right. Now, tell us what the estimated total
3 cost you analyzed in your report?

4 A Two--

5 THE COURT: Hang on. That is information that Mr.
6 Bannister has objected to and I've sustained that
7 objection, so are you making a proffer?

8 MR. POPE: This is a proffer.

9 THE COURT: Okay. Please let me know, thank you.

10 MR. POPE: I'm sorry.

11 Q The estimated total cost that was computed by you and
12 your note says that they were actual costs, is that right?

13 A Yes.

14 Q And then did you use the same unit costs that were
15 used by Central Electric's construction people on a line
16 in Newberry County during 2015?

17 A Yes.

18 Q And you, the unit costs was noted to be how much?

19 A Construction \$3.25 a mile or \$61.55 a foot.

20 Q And the engineering costs?

21 A \$1.10 a mile or \$20.83 a foot.

22 Q Is that based on the actual engineering costs?

23 A That's actually what they paid for that line for
24 engineering costs and constructions costs.

25 Q Well, would the, and you noted here that the PMPA

1 estimate of construction costs higher or lower than what
2 you've got?

3 A Their costs is lower based on their study they issued
4 in February, what they didn't, yeah, their cost is lower,
5 \$378 instead of \$570. That's a total. Central, it was
6 \$435.

7 Q \$435,000.00?

8 A Yes.

9 Q Did you compare apples to apples? On each route, did
10 you use the same consistent number?

11 A I did.

12 Q And is this the kind of analysis that you did relying
13 on construction numbers throughout your career at Central
14 Electric?

15 A Yes, we did.

16 Q Now, would you say--

17 MR. POPE: I think the proffer is over, Your Honor.

18 THE COURT: I'm going to still, I know you're, I
19 assume that you're moving to go ahead and allow that
20 testimony. I'm going to deny that. I'm going to ask you
21 did you have an exhibit that reflects that other than the
22 blow-up?

23 MR. POPE: Yes, sir. He's got it in his report.

24 THE COURT: He's got it in his hand. Let's make that
25 Court exhibit number 2 in case I'm incorrect in my ruling.

1 REPORTER: Okay. That report is already marked as an
2 exhibit.

3 A Okay. 40, the Plaintiff's.

4 THE COURT: Well, hang on.

5 A Plaintiff's 40.

6 THE COURT: I thought 40 was different numbers.

7 MR. POPE: 40 was his whole report.

8 THE COURT: Well, if we can go back for a second,
9 then, Mr. Bannister if y'all stipulate this is admissible.
10 What is the objection right after we've already admitted
11 it?

12 MR. BANNISTER: It's an objection to him testifying
13 to the numbers.

14 THE COURT: But the numbers were contained in his
15 report.

16 MR. BANNISTER: Yeah, until he said they weren't from
17 this project.

18 THE COURT: All right.

19 MR. BANNISTER: I thought he had talked to engineers
20 about what this project was, and I recognize that he can
21 rely on other experts to form an opinion.

22 THE COURT: Right.

23 MR. BANNISTER: And that creates a problem in this.

24 THE COURT: I got you. You know, I'm going to let it
25 in for what it's worth. It's already into evidence. I do

1 note your objection, and I'm just, exhibit for what it's
2 worth.

3 MR. BANNISTER: Thank you, Your Honor.

4 THE COURT: I do overall agree with Mr. Bannister.

5 MR. POPE: Thank you.

6 THE COURT: All right.

7 MR. POPE: But it's in evidence for what it's worth?

8 THE COURT: Sir?

9 MR. POPE: It's in evidence for what it's worth.

10 THE COURT: It's in evidence for what it's worth.

11 Thank you. No, we're not marking number 2 a court
12 exhibit, because it's already in evidence as number 40, is
13 that correct?

14 MR. POPE: Yes, sir.

15 REPORTER: Okay. Well, wait a minute. I got one of
16 them marked 40, so I'll just mark that one also as a court
17 exhibit, you want to pull some of that out of it and mark
18 that as a court exhibit?

19 THE COURT: No, it's already in.

20 MR. POPE: It's all part of it.

21 THE COURT: It's already part of one exhibit number
22 40, is that correct?

23 MR. POPE: The whole thing is in there.

24 THE COURT: How much longer do you think you have
25 with this gentleman?

1 MR. POPE: How much longer?

2 THE COURT: Yeah.

3 MR. POPE: I don't think a whole lot.

4 THE COURT: Okay. I'm not trying to, you know, to
5 rush you. I want you to be able to talk to him all you
6 want. I just want to make sure that we have a good time
7 for everybody else to break.

8 MR. POPE: But we will, will we do his cross before
9 we leave?

10 THE COURT: Sir?

11 MR. POPE: Will we do cross-examination today?

12 THE COURT: My intention was going ahead and breaking
13 for the day unless that's a problem for everybody. You
14 know, I'm fine, but I just want the staff and everybody to
15 be okay, too. I'm here and I'm staying here, so it
16 doesn't make a difference to me.

17 MR. POPE: Yes, sir.

18 THE COURT: Okay.

19 MR. POPE: We're happy either way. I would like to
20 finish it.

21 THE COURT: Okay.

22 CONTINUE DIRECT EXAMINATION

23 By Mr. Pope:

24 Q Now, you were deposed, the report was furnished over,
25 what's today, about a month ago, three weeks ago, wasn't

1 it?

2 A Yes.

3 Q And you were deposed two weeks ago or I think was it
4 ten days ago?

5 A I think it's a little, last week?

6 Q And you were questioned about this very report then,
7 were you not?

8 A Yes.

9 Q All right. So now we've, in going through the
10 estimated total costs, you had said that the total cost of
11 the middle route was \$364,000.00, is that right?

12 A That's my opinion, yes.

13 Q And that's construction, engineering and right-of-way
14 acquisition?

15 A Yes.

16 Q All right. What are the total costs of the southern
17 route?

18 A \$292,007.00.

19 Q All right. So that's whatever that is, \$70,000.00 or
20 so later, lower than the middle route?

21 A Yes.

22 Q All right. And that includes construction,
23 engineering and right-of-way?

24 A Yes.

25 Q And no damage to the remainder?

1 A It's got damages to remainder in it.

2 Q To the south?

3 A None in the south, no.

4 Q All right. Now, did you, this is an important
5 component of a route study, is it not?

6 A Yes.

7 Q That's related total costs?

8 A Yes.

9 Q All right. Now, route ratings is where you make your
10 conclusions as a right-of-way expert, the route ratings?

11 A Yes.

12 Q Explain to the Court what each category on that sheet
13 in your report, exhibit 40, right before your conclusion,
14 explain what this means?

15 A Well, basically, I rated them on a scale of one to
16 three, one being the best and three being the worst.

17 Looking at the various, the variables that go into
18 evaluating these particular routes, one being the costs,
19 two being the tap, three being the access, aesthetics,
20 wetlands, structures. And so by structures, those are
21 buildings or proposed buildings or whatever you can,
22 whatever may be out there, and the environmental, and then
23 did a ranking of it and, basically, these were my
24 opinions, of course. The north was the least, you want me
25 to go through it?

1 Q Yeah, we pretty much cancel out the north in the
2 interest of time because neither did the condemnor or the
3 Oiens compare the middle and southern. Let's focus on
4 those two parts.

5 A Okay. I had the southern being ranked two and the
6 middle being ranked three regarding costs. Tap, it's been
7 my experience that when you can tap with great access,
8 easy access that the southern tap was superior to the
9 middle tap. You had to go up the right-of-way.

10 Q Now, show, come down here if you would and just point
11 to the map to show the Court where the southern tap is
12 versus the tap for the middle.

13 A This is that O'Dell Road going into the property.
14 There's a circle here and there's a gate somewhere in here
15 and this is the Duke right-of-way. There is a pole up
16 here. This is the middle tap here. This is about 600
17 feet up this right-of-way. It's kind of rough and all,
18 but this is a paved road here. There's tap points in this
19 cleared area through here that are possible to be used.

20 Q Have you worked with Duke in acquiring tap points on
21 a frequent basis?

22 A We've done about, I guess, 10 or 11 with Duke, yes.

23 Q Were they easy to work with?

24 A Fairly easy, yes.

25 Q Do you have any reason to think that the southern tap

1 point for the southern route wouldn't work?

2 A Not to my knowledge. I don't see any reason why it
3 would not work.

4 Q Now, is the area on the left here as wide is as flat?

5 A It is.

6 Q And is it almost like a parking lot near that pole?

7 A It is.

8 Q And Duke likes to do tap points not on the pole?

9 A No, they like to go sort of near mid-span like
10 everybody does.

11 Q Okay. All right. So you go through tap. What about
12 access?

13 A Well, that, obviously, that access you have paved
14 road access to it and the middle route, you would have to
15 go up the right-of-way about 5-600 feet.

16 Q Is it hilly up there?

17 A It's an incline yeah, and, you know. It'd be harder
18 to get your trucks in there.

19 Q What about the rating for aesthetics?

20 A That's based on the, what the use of the property was
21 going, is going to be. Clearly, from the landowner's
22 perspective, the aesthetics on the southern route, he
23 doesn't have a problem with or they don't have a problem
24 with. The middle route, they have great problems with,
25 because it's a planned home he is going to build on it.

1 Q Is consideration for aesthetics totally different if
2 you have a timber tract if he was just growing timbers and
3 no residences on it and no houses and stuff?

4 A Yes, it would be less. I mean, there would be not as
5 much aesthetic problem with a timber tract unless you're
6 talking to timber people.

7 Q So you say the south is the best and the middle is
8 the worst aesthetically?

9 A Yes.

10 Q All right. And so then you go to, what's the next
11 criteria you look at?

12 A Wetlands, and I put that the south, obviously, has
13 the pond that you have, you'll have to design around. Try
14 to, actually, figure a way you go down there and try to
15 span it would be the best way to design something through
16 there. But, obviously, you have a wetlands area there,
17 although those are, that's a perpendicular wetland,
18 cross-land, relatively nothing to those. Central falls
19 under a nationwide permit. Most utilities do where they
20 don't have to apply for specific mitigation for wetlands.
21 So that's not a big deal. That's every line that Central
22 does wetlands are involved with some shape or fashion.
23 The middle route came in number two because there is, it
24 goes down near the dam area of the pond and I just, you
25 know, you couldn't tell, it's not on a National Wetlands

1 Inventory list, and you'd have to do site-specific
2 wetlands study to determine that. But, obviously, it
3 would not have as obviously problems as the southern
4 route.

5 Q All right. What's the next category of route
6 ratings?

7 A Structures. On the southern, there is no apparent
8 problem with the lodge house or the caretaker's home, so I
9 evaluate it as number one with the least incursion on
10 structures. The third one, the middle route would have
11 the, would be number three because of the proposed home
12 that Mr. Oien is planning on building on it and the pond
13 that he'd planned on putting in the area which would be
14 opening up more cleared space and making the line more
15 visible.

16 Q All right. So after you presented all your ratings,
17 what conclusion did you come up to?

18 A Well, I came up that the southern route would be the
19 best ranked rating of the three or the two. The middle
20 route, and this is as it applies to this particular
21 property, yes.

22 Q Did you see any factual basis, objective basis using
23 a route study in the PMPA records or testimony, any
24 factual basis to justify selecting a middle route?

25 A I didn't see a route study, period. There was no

1 route study done on this line, from the information.

2 Q So your answer is, was there a factual basis or none
3 for that phase?

4 A None.

5 Q Now, you believe the criteria you have identified
6 today for a proper alternate route study requirement for
7 each property owner on a transmission line is the industry
8 standard, the standards you are given and those that are
9 followed by your industry, the utilities?

10 A It is.

11 Q All right. Do you feel like that standard was
12 adhered to here by PMPA?

13 A No.

14 Q And your opinions as stated herein have been to a
15 reasonable degree of certainty for someone with expertise
16 in the area of right-of-way acquisitions?

17 A Yes.

18 Q And route studies?

19 A Yes.

20 Q All right.

21 THE COURT: How long do you anticipate your
22 cross-examination to be?

23 MR. BANNISTER: Thirty minutes. That's my best
24 guess.

25 THE COURT: Well, I'm not going to hold you to it,

1 guessing. Do you, would anybody have a problem with going
2 ahead and letting him try to finish up and we can excuse
3 this witness for today until he has to come back in cross
4 for the Plaintiffs?

5 MR. BANNISTER: No, Your Honor.

6 THE COURT: All right. Let's do that.

7 MR. BANNISTER: If it suits the Court, it suits us.
8 If it suits Your Honor, it suits us.

9 CROSS-EXAMINATION

10 By Mr. Bannister:

11 Q Mr. Rogers.

12 A Yes.

13 Q In your report, you talked about industry standards,
14 the South Carolina legal, courts of South Carolina, those
15 are all based on the Southern Development case, is that
16 right?

17 A They're based on that, plus my experience of being
18 involved in injunctions and challenges for the last 20
19 years.

20 Q So what other cases do you rely on where the Court
21 has said or the statute or what statutes do you rely on
22 where it says you must do a written, alternate route
23 selection prior to commencing condemnation? Other than
24 Southern Development, what other cases or statutes are you
25 relying on?

1 A I'm relying on what my counsel has told me to do,
2 which is to do written studies. I don't know how you do a
3 study without doing it in-writing.

4 Q Mr. Rogers, in other words, your lawyer has told you
5 that's the way to do it. And in your opinion, your
6 lawyers are right?

7 A Yes.

8 Q Did you ask your lawyers if that was the only way to
9 do an alternate route study?

10 A No. I was tasked with developing the process, I
11 wrote the process, and they accepted it. And again, it's
12 been submitted in various challenges and injunctions.

13 Q So you wrote the written policy for the company that
14 you worked for?

15 A I did.

16 Q And you believe that created the industry standard by
17 which every other condemnor should follow?

18 A No. I've worked with other, that was our, that's the
19 way we did it. But I've worked with other, at that time,
20 again, I was contract right-of-way agent for Central
21 Electric, and I did work for other utilities in the state.
22 I worked for Progress Energy. I've done work with SCE&G
23 and I've seen their studies. They're very similar to
24 these types of studies. So that's, I'm just saying they
25 had written reports for their studies.

1 Q As long as a study is done that complies with the
2 Southern Development case, isn't that all the Court and
3 the statutes require?

4 A I don't know.

5 Q Okay. Well, let's talk about this report.

6 A Okay.

7 Q You did a route rating, right?

8 A Correct.

9 Q Are all of those factors considered equal?

10 A In this particular case, yes.

11 Q All right. And are you aware in your experience of
12 acquiring right-of-ways that the courts believe that cost
13 should be weighed the most other than, you know, ease of
14 access or wetlands or aesthetics, you look at cost first?

15 A I would say cost and the cost to acquire.

16 Q Sure. You weigh costs heavier than you weigh all the
17 others?

18 A Right.

19 Q Okay. So what adjustments did you make in your
20 expert report on route ratings to give a greater weight to
21 costs.

22 A I didn't.

23 Q Okay. All right. And then did you, you did not
24 contact an engineer about the actual construction costs or
25 engineering costs for any of these routes, did you?

1 A I talked with our engineers and I actually saw the
2 invoices of what we paid for the Fairview line which is,
3 again, it's a different line.

4 Q Okay. But not for this one?

5 MR. POPE: Well, Your Honor, he hadn't finished his
6 answer.

7 THE COURT: All right. I think he was done, but go
8 ahead and let him finish his answer first. Go ahead.

9 A It is a different line, but I did rely on their
10 information from the actual and not estimated costs. I
11 wanted to use actual costs and, again, it's a different
12 type of line.

13 Q All right. But, I guess, let me ask you the next
14 question.

15 A Okay.

16 Q If the construction costs for the north, middle and
17 south routes are different than what you presume they are
18 and let's say the construction costs for the south route
19 is a million dollars. That would eliminate the south
20 route, wouldn't it, it'd be too expensive?

21 A It would.

22 Q All right. And at some point, less than a million
23 dollars, you have to start weighing the factors?

24 A Yes.

25 Q Yeah. Okay. All right. Let's talk about the

1 acquisition costs. You relied on Mr. Major's testimony
2 and his report, did you not?

3 A I did.

4 Q And when you worked for Central, did you always use
5 the landowner's appraisal when determining the acquisition
6 costs or did sometimes you used the appraiser that you
7 hired through Central to make that analysis?

8 A Basically, the way, when we looked at this is a
9 location type of request where you're looking at different
10 locations on the landowner's property. So you wanted to
11 look at all possibilities there. So if he had appraisals
12 and he had other information that you could use in
13 presenting that information to your management, you would
14 use that in addition to your own appraisals and your own
15 studies. So you weigh, all of that would go into that
16 ball of wax.

17 Q All right. Mr. Rogers, in acquiring right-of-ways
18 for Central and where you gained your expertise and the
19 procedures used, did you use, have you ever had the
20 opportunity to use Mr. Graydon's appraisals in determining
21 route selection?

22 A Not in determining route selection.

23 Q What have you used his appraisals for?

24 A To acquire easements.

25 Q Okay. Do you know Mr. Graydon?

1 A We've hired him.

2 Q Not on this case?

3 A No. He worked for us at Central.

4 Q All right. But you know him?

5 A I know Dave.

6 Q You think his work product is okay?

7 A It's a good product.

8 Q Is he a fairly decent appraiser?

9 A Yes.

10 Q Certified?

11 A Yes.

12 Q Isn't he an MAI?

13 A He's an MAI.

14 Q Is that a designation for, what is that, please?

15 A Member of the Appraisal Institute.

16 Q All right. And so as the condemnor and we're just
17 talking about the procedure by which a condemnor acquires
18 the right-of-way. If they're looking at the cost of
19 acquisition, is it normal for the condemnor to rely on
20 their expert as it relates to the cost of acquisition as
21 opposed to the opinion of the landowner or the landowners
22 appraisal?

23 A Well, to do it, if you're trying to resolve the
24 matter and that's what you're all, that's the goal of what
25 you're trying to do. You're trying to buy a right-of-way.

1 MR. BANNISTER: Instruct him to answer the question.

2 And then he can give hypothetical--

3 A It's not a hypothetical.

4 THE COURT: Y'all, stop, stop, stop, stop, stop.

5 Answer the question he asked you, then explain it if you
6 need to, okay, sir?

7 A Okay. Go ahead. Could you restate the question,
8 please?

9 Q Yes, sir. In the procedures by which you determine
10 which route to use, in your experience, does the condemnor
11 use their own experts to determine the cost of acquisition
12 or do they rely on the landowner's expert to determine the
13 cost of acquisition?

14 A They use their own.

15 Q Okay.

16 THE COURT: Now, do you want to explain that?

17 A I would like to.

18 THE COURT: Okay, sir:

19 A In this particular case and in any kind of case, you
20 get a, you're doing your due diligence, so you have
21 appraisals on each tract, so you're trying to buy
22 right-of-way. You run in a situation like this where you
23 meet with a property owner and he's got issues, serious
24 issues and it could be resulting in big monetary problems,
25 so you want to look at as much information as you can to

1 avoid having to get to where we are today. And so you, if
2 he's got appraisals, if he's got different, he's got
3 information such as these plans, that should give you a
4 red flag, okay. You're presenting your appraisal as your
5 offer to buy the right-of-way. The landowner, at the same
6 time, is giving his counter to you. You're trying to make
7 a deal. And so by looking at the situation, if you're, if
8 I'm trying to buy this right-of-way and I'm working for
9 PMPA, I'm taking the deal back to PMPA and said look,
10 here's what might do the deal if you can move it. Well,
11 you're going to say, you know, we're going to look at this
12 appraisal, we're going to look at what he's got to say and
13 may take a different look, another look at it and go from
14 there. And the whole idea is to get the two together
15 somewhere to reach an agreement where your group can live
16 with it and the landowner can live with and you got to
17 sign the easement and go your own way.

18 Q All right. So bear with me on this hypothetical,
19 okay? After a certain number of meetings, you reach the
20 point as the condemnor that you cannot make an agreement.
21 Have you ever reached that point with a landowner?

22 A Certainly.

23 Q Okay. And the condemnor then has to condemn a route?

24 A Correct.

25 Q And if the condemnor considers their expert's opinion

1 as to relates to the acquisition costs and damage to the
2 remainder, they consider their engineer's expert opinion
3 as it relates to the cost of construction, of constructing
4 their routes and they look at the aesthetics and they look
5 at all the other factors, safety, reliability,
6 accessibility, the whole deal and they locate the route.
7 Does the landowner's opinion trump the condemnor's
8 decision about where to put the line?

9 A At that point, you've filed a condemnation, I assume?

10 Q Yes, sir.

11 A Once you file a condemnation, you know, that's what
12 you're condemning the route that you've selected. And
13 you're basing your condemnation on the proposed
14 acquisition which is, I guess, on a survey and on an
15 easement that is drawn up for the landowner to look at.
16 But once you file, then it goes into the next step which
17 is either trying to resolve it somehow which a lot of
18 cases get resolved before they ever go to trial or you go
19 to the mediation. And at that point, their side gets
20 brought in, too, and I've been in a lot of mediations and
21 while we would love to be able to mediate everything, it's
22 never that way. It's some of theirs and some of yours.
23 It's trying to work out a solution to the deal.

24 Q Okay. So as I understand, you are here to testify
25 about the proper procedure from the time PMPA decided that

1 they needed a transmission line, to the point they file a
2 condemnation. Is that right or wrong about what you're
3 here for?

4 A I'm here to testify or to give an opinion on whether
5 or not PMPA did alternate studies, and I've given that
6 opinion and to also testify or give an opinion as to
7 whether or not they followed proper procedures or went
8 through the process and through the acquisition process.

9 Q Okay. You relied, if I remember, on the opinion of
10 Mr. Major in his, if I remember right, you said the damage
11 was \$182,000.00, \$182,916.00 was the acquisition cost
12 according to Mr. Major?

13 A Yes.

14 Q All right. If Mr. Major had not provided that
15 appraisal prior to the notice of condemnation being sent,
16 would it change your opinion about whether or not PMPA had
17 followed the appropriate procedure to determine which of
18 those routes to select?

19 A Well, if I was asked to do an independent study of
20 it, an independent review and to provide my input into the
21 situation regarding the middle route, then I would
22 recommend or to advise whomever is choosing that route
23 that there could be some damages, serious damages to it,
24 but simply because you're going through the middle and
25 simply based on our experience. Both Dave and Paul came

1 very close to the same per acre price. The deal is the
2 damages. The damages are always then, and so in this
3 particular case, I felt like using Mr. Major's information
4 would be more accurate than my trying to insert an
5 estimate.

6 Q Okay. And, I guess, in your report, you point out
7 that you have the benefit. So we getting a little bit
8 back in time and have all the information available to
9 you, that's available today.

10 A Yes.

11 Q But what you, what I'm asking you to do is go back in
12 time if you're PMPA and you're doing the procedures
13 necessary to determine the route that you're going to
14 condemn and you've been provided no appraisal, the \$182 is
15 never provided. All you have is the appraisal from Dave,
16 the appraisal you got. If you only have one appraisal, is
17 there any reason why you would assign a higher number than
18 your appraiser said it's worth in doing the alternate
19 route study for acquisition costs?

20 A In doing the route acquisition costs, that's not,
21 that's different from the appraisal, okay? Let me,
22 let's--

23 Q I mean, you only have one appraisal. That's what I'm
24 asking you.

25 MR. POPE: He needs to allow him--

1 THE COURT: Yeah. Let him finish his answer.

2 A All right. When you do alternate route studies,
3 which there were none done on this project?

4 Q There were no written one done, right?

5 A No written one and I still don't know how you do, I
6 still don't know how you present that to anybody. I don't
7 know how you present it here in this courtroom. I just
8 don't know how to do it. You have to have, to me, you
9 have to have the written documentation of how you do
10 things and again, as I stated earlier, companies I've
11 worked for whether it's Central or SCE&G or whoever it is,
12 they go out and they get market studies on various land
13 uses. They look at each individual tract. They look, and
14 this is on proposed, their current alternatives, A, B, C,
15 and D, whatever they are, each individual tract and they
16 give an estimate as to what it will cost to acquire that
17 tract. That estimate is not just taking 20 acres and
18 multiplying it by \$5,000.00 an acre and getting
19 \$100,000.00. That estimate is based on applying
20 information which you've gleamed from the market using
21 your experience and applying that to each individual
22 property and coming up with the cost to acquire that
23 particular route. So that is done extraneously. Once,
24 and you're talking about two different things. The
25 alternate route studies are done and a selected route is

1 made. Once a selected route is made, then you go through
2 the process of obtaining, of your due diligence where
3 you're doing your title work, you're doing your appraisal
4 work, you're doing forestry consultant work. You're
5 getting all that done. So there are two different phases
6 here that you're talking about. The main thing I'm giving
7 an opinion on, two things really. One is the alternate
8 route cost study and alternate route studies, which I
9 still think they need to be in-writing. I don't know if
10 there is a written law to say that fact, but I'm saying
11 that companies do use it. They produce everything
12 in-writing. How do you, how else do you have a paper
13 trail. And then when you are in an acquisition process,
14 once you've selected that route based on that information,
15 then you get your appraisal, and then you go try to buy
16 the right-of-way from Mr. Oien. And then at that time
17 when you make, separate from the alternate route
18 appraisals and now you're trying to buy the right-of-way,
19 Mr. Oien has got information. I'm the right-of-way agent.
20 I've got Dave's appraisal, I'm armed with it. I got to
21 meet with him. I give it to him. I show it to him and
22 make a presentation and an offer on that basis and go from
23 there. So there are two different, there's separate
24 things. So I'm doing on the three possibilities crossing
25 Mr. Oien's property. I've got the luxury of looking at it

1 retrospectively through their appraisals, not appearing
2 ahead of time. That should have already been done. The
3 routing should have already been selected based on the
4 criteria I stated earlier. I don't think that was done in
5 this case.

6 Q And you base it on the fact there's nothing
7 in-writing?

8 A There's nothing in-writing.

9 Q Right. But if they did it, and they had a meeting
10 where they went through all the alternate routes with a
11 study of that of PMPA like Mr. Frazier said they did
12 earlier, then you would, if they did all the steps that
13 you're talking about and they considered all of the input
14 and market data and jury potential verdicts and everything
15 else, if they considered everything at a meeting like Mr.
16 Frazier suggested that they did with their engineer in his
17 testimony, if they did that, then did they comply with the
18 alternate route analysis?

19 A I don't know how you would do that, because how do
20 you tell, they had, at one time, I saw six different
21 routes, and I think they've testified they had 12 or 15
22 landowners per involved in this one. So if you've got six
23 different routes and say you just got 12 landowners,
24 that's 72 different properties that you've got to be able
25 to recall and how you crossed them and what their cost is.

1 I don't know how you do without either having some written
2 notes or some written report. And so if they're able to
3 do that, if they are able to do that and they can prove
4 that, that they did that in a venue such as this, then I
5 would say yes. But I don't know how you do that without
6 having it in-writing.

7 Q So the good news is the burden of proof is on the
8 Oiens, so they got to prove that we didn't do it. You
9 understand that, right?

10 A I don't.

11 Q Okay. All right. So a couple of more questions.
12 You were, we've sort of gotten away from the northern
13 route.

14 A Yes.

15 Q When you were doing your consideration of the
16 northern route, some of those such as aesthetics got a
17 better ranking than the middle route. Is it possible that
18 the, the transmission line, now I'm talking about your
19 route rating.

20 A I got you.

21 Q Is it possible that the transmission route going
22 through their homesite would have a worse aesthetics on
23 the property than the transmission line going through the
24 center; is that just a judgment call that you made?

25 A That's a judgment call I made based on measuring,

1 trying to measure the distances.

2 Q So the north route is ranked higher than the middle
3 route as it relates to wetlands, but don't they both
4 cross, basically the same wet spot underneath the dam?
5 Regardless of how you come out of there, you're coming out
6 over that wet spot. Shouldn't they be ranked equally or
7 did you just make a judgment call that the middle route
8 was--

9 A I made a judgment call on that based on proximity of
10 the middle route to the dam.

11 Q All right.

12 A We figuring this may be a little further from it.

13 Q Okay. And structures, you put that the northern
14 route ranked better based on the existing structures that
15 the, well, I guess, structures, and generally you said
16 that the north route was better than the middle route and
17 you ranked the middle route last?

18 A Yes.

19 Q But all the testimony I've heard today is that the
20 middle route doesn't interfere with any structures and it
21 certainly is further away from the proposed hypothetical
22 structure than a line that would be directly behind it.
23 So I'm trying to figure out how you ranked the northern
24 route as a better route for structures than the middle
25 route?

1 A Again, that's a judgment call I made just trying to
2 scale it off, scaling off various from the home place,
3 from the proposed home place to the northern route and to
4 the middle route.

5 Q All right. Well, how about access. You said the
6 south has access. You talking about access to the
7 right-of-way--

8 A To the tap point and to the tap point.

9 Q All right. So you got the tap point as the second
10 one.

11 A Yes.

12 Q So explain to me how you rank the tap point; what
13 does that mean?

14 A Well, a tap, you got better access so the two really
15 go hand-in-hand. So the key is from all the projects I've
16 done with Duke, they want easy access to the tap point.
17 We've even had to go buy additional access to get to tap
18 points.

19 Q So the tap point is off the Duke right-of-way?

20 A Yes, it's off the Duke right-of-way.

21 Q And does Duke have access to their right-of-way?

22 A They have access to their right-of-way.

23 Q And it's a straight shot, right?

24 A It is.

25 Q So what's the difference between?

1 A You've got a paved road to the south. You've got a
2 paved road and relative level area right in there dropping
3 down from the pole.

4 Q All right. Is the paved road behind the fence or in
5 front of the fence?

6 A It goes through the fence. It leads in right up to
7 the transmission line right-of-way.

8 Q I know, but who has access to that paved road past
9 the fence?

10 A It turns, well, the Oiens, sits there.

11 Q All right. Does Duke have a right-of-way down that
12 paved road?

13 A Their right-of-way crosses the paved road. Okay.
14 The paved road is perpendicular crossing it. The O'Dell
15 Road and, I guess, we show it on that map.

16 Q It would appear that Duke will have access to its
17 right-of-way and they would have, it would just be this
18 pole versus the next pole versus the next pole?

19 A I mean, you got to go, to go to the middle route,
20 you'd have to go up about 400 or 500 feet up the
21 right-of-way. You could come in the paved road and go up
22 their right-of-way. But and see, I mean, this is right
23 here at it.

24 Q I mean, does it go--

25 A It's my opinion.

1 Q They go up, and I'm just asking you and subjectively,
2 you're ranking the southern route better, because you only
3 have to go 100 feet instead of 400 feet to get to the tap?

4 A You have better access, and you have better tapping,
5 in my opinion.

6 Q Okay. And the access is based on the same thing?

7 A The same thing.

8 Q To get to that right-of-way, you got to, instead of
9 100 feet, you got to go 400?

10 A Yes, that's my opinion.

11 Q So don't you kind of count the tap and the access
12 twice.

13 A They go hand-in-hand. Again, they go hand-in-hand,
14 yes.

15 Q All right. Did you consider the fact that in this
16 other route you got to go through the wetlands and the
17 marsh and maybe across the pond, and then perhaps access
18 to the entire right-of-way would not be as desirable as
19 you would have if you went on a route that is not in a
20 marsh?

21 A I looked at that, and I think the access could be
22 virtually the same here, the same application as you just
23 made going out that right-of-way here. You could go down
24 the right-of-way there and come in from the other side on
25 the other side of the pond and when you have physical

1 features that maybe can cause some problems, then you try
2 to access it different ways.

3 Q But that was another judgment call.

4 A Judgment call, yes.

5 Q Access to do work if you needed to?

6 A Yes.

7 Q Okay. And then we agreed the cost, we don't actually
8 have any actual engineering construction costs? You don't
9 have any actual engineering costs to put in this line?

10 A For this type and this particular time of
11 construction, no.

12 Q For this particular line?

13 A No.

14 Q You don't. Is it possible that PMPA in analyzing
15 those routes would use their own judgment and come to a
16 different conclusion than you have?

17 A Possibly.

18 Q And that's a duty and responsibility that's been
19 placed on PMPA and as a condemnor, somebody granted that
20 power by the state, to decide the appropriate route to
21 condemn.

22 A That's correct.

23 MR. BANNISTER: No other questions, Your Honor.

24 THE COURT: Thank you, sir. Any redirect?

25 MR. POPE: Yes, sir.

REDIRECT EXAMINATION

By Mr. Pope:

Q Now, he's asking the question if construction costs for the southern line was going to be a million dollars, would that make a difference. Is there anything in the record to support the fact that the southern route would involve any extraordinary costs other than making just a couple of turns?

A No, there's not.

Q Now, you've also been a certified appraiser in past years, have you not?

A Yes, in the past.

Q Now, when you look at Mr. Graydon's appraisal and, of course, he's a good appraiser?

A He is.

Q Is it obvious from that appraisal that he never spoke to Mr. Oien?

A He would have it in his report that he would have had a site visit with Mr. Oien or spoke to him on the phone.

Q And Mr. Oien said he didn't speak to him.

A And it was not in his report that he did.

Q And was it clear that Mr. Graydon had not seen the homesite details that we've heard testimony about today, the clearing and well and all that?

A He may have been able to physical inspect that, but

1 what he didn't have knowledge of were the plans that Mr.
2 Oien has gone to a lot of trouble to develop an expense.

3 Q Yes.

4 A Also his photo of his type of home he's going to
5 build there. He didn't have that information simply
6 because he didn't talk to Mr. Oien.

7 Q All right. And would you say that would be an
8 important piece of information?

9 A That's something I would want him to find out.

10 Q All right. Now, if I understand you correctly, in
11 your expertise as a right-of-way acquisition person for
12 transmission lines, if you see a proposed line based on a
13 Google Map or anything else, if you see it going through
14 the middle of a tract that's residential, has a
15 residential component, particular high-end residential, is
16 that not a red flag?

17 A It is. It is and there's going to be possible
18 damages to the remainders.

19 Q And you are testifying that that range could be from
20 10 percent to the remainder to 40 percent of the
21 remainder?

22 A I've seen 10 to 35, but I've seen higher than that.
23 It depends on who's doing the study.

24 Q Okay. Now, questions were asked to you about the,
25 well, there's no written study but maybe they talked about

1 it or are there any notes in any of the PMPA documents
2 that showed any relevance or any touching on a route
3 study, an alternate cost study or any such study that's
4 required?

5 A Not at all.

6 Q Now, the question was asked to you was it possible
7 that PMPA came and looked at the data and came to a
8 different conclusion that you do. You said it's possible,
9 and is it probable if they had done due diligence that
10 that would have happened?

11 A I don't think so.

12 Q Is that your professional opinion?

13 A That's my opinion.

14 Q When you sit here at this time after
15 cross-examinations, looking at everything and asking
16 everything and do you see any factual basis for selecting
17 the middle route over the southern?

18 A No.

19 THE COURT: May this witness be excused?

20 MR. BANNISTER: Yes, sir. May I ask him one
21 question?

22 THE COURT: Yes.

23 RECROSS-EXAMINATION

24 By Mr. Bannister:

25 Q Are you aware that Mr. Oien had Mr. Major escort the

1 appraiser out on the property?

2 A I'm not. I'm not aware of that at all.

3 Q Okay.

4 MR. BANNISTER: That's all, Judge.

5 THE COURT: Sir, you may be excused.

6 MR. ROGERS: Thank you.

7 THE COURT: All right. Anything from the Plaintiff
8 before we break for the day?

9 MR. POPE: We have nothing.

10 THE COURT: From the Defense?

11 MR. BANNISTER: Just I want, I was just interested if
12 he had any additional witnesses that he's going to call or
13 if that is it.

14 MR. POPE: It is possible I won't call any more.

15 THE COURT: Since you're an out of town, what time
16 you want to start?

17 MR. BANNISTER: So I got a witness coming from
18 Charlotte, and so if I knew that his plan was on
19 additional witnesses. Actually, that's not true. I can
20 start whenever you want to.

21 THE COURT: Let's, how about you, do you have a
22 preference?

23 MR. POPE: It doesn't matter, Judge.

24 THE COURT: I like starting early.

25 MR. BANNISTER: 9:00 o'clock is fine.

1 THE COURT: You sure? Okay. Let's start at 9:00
2 o'clock. If you have a problem with a witness, we'll
3 cover it.

4 MR. BANNISTER: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 (Whereupon, the trial will resume the next morning at
7 9:00 a.m.)

8 MARCH 29, 2016

9 THE COURT: All right. Mr. Pope, I believe yesterday
10 when we finished, you were going to ponder about it
11 overnight as to whether or not you were going to rest or
12 call additional witnesses.

13 MR. POPE: Yes, sir. We're going to rest, but we are
14 also going to withdraw the claim for public use.

15 THE COURT: Okay.

16 MR. POPE: And focusing on the routes stated and
17 challenged.

18 THE COURT: Very good.

19 MR. POPE: And Mr. Major is here with the comps.

20 THE COURT: Did you, do you have those comparables?

21 MR. BANNISTER: He just gave those to me, yes, Your
22 Honor.

23 THE COURT: Okay. So you want a few minutes to look
24 over it? What I was thinking is that you might want to
25 look over it. If you have any questions, I'll let you

1 recall him.

2 MR. BANNISTER: All right. So I have my appraiser
3 here and if you can give him five minutes to look at them,
4 I think I'll, he'll be my first witness.

5 THE COURT: Okay. All right. I'll tell you what.
6 I'm going to go back and look at some more cases anyway.
7 Would you send her back when you're ready to go with your
8 guy?

9 MR. BANNISTER: Yes, sir.

10 THE COURT: Okay.

11 MR. BANNISTER: I do want to argue on--

12 THE COURT: Well, let's go ahead and do some motions,
13 too. I assume you've got some motions.

14 MR. BANNISTER: Okay.

15 THE COURT: Do you want to, go ahead.

16 MR. BANNISTER: Yes, sir. I want to move for a
17 directed verdict on the issue of, so there were two things
18 we decided, withdrawing the first one which is public use.
19 The second one is whether or not there was a clear abuse
20 of discretion. And in this case, Judge, they carried the
21 burden of proving that there was a clear abuse of
22 discretion, so they have to offer some evidence that shows
23 that there wasn't an abuse of discretion. And to do that,
24 they would have to show, in this case, following the
25 southern development, they would have to show an alternate

1 route. They would have to do an analysis of that route
2 and present it to Your Honor in such a way that they prove
3 it was a more favorable route wasn't considered. In the
4 testimony, you heard us that there were other routes that
5 were considered by PMPA, but those routes were rejected
6 and the center line was chosen for a variety of reasons.
7 They didn't offer any evidence as to construction costs.
8 And so without evidence related to the construction costs
9 on the southern route, you're not in a position to second
10 guess indemnity of the decision to go the middle route.
11 The testimony that's in the record is that the condemning
12 authority through Mike Frazier, PMPA, considered all the
13 factors necessary to determine that the middle route was
14 the favorable, was the route that they should use. To
15 prove that that is not a route that should be used, the
16 burden is on the Plaintiff to present evidence as to the
17 other routes and all the factors associated with them. So
18 failing to have an engineer who's done a study and
19 actually put the cost of that line in the record fails to
20 meet the burden of proof and the Defendants in this case
21 would be entitled to a directed verdict on the issue of
22 clear abuse of discretion. So on just the engineering by
23 failing to offer credible evidence on the actual
24 engineering costs associated with the alternate route, the
25 Plaintiff fails to meet their burden of proof.

1 THE COURT: Let me, may I interject something here,
2 please, sir?

3 MR. BANNISTER: Yes, sir.

4 THE COURT: It seems to me that although his records
5 could be somewhat confused by the first, I am inclined to
6 allow Mr. Pope to move that evidence into the record. I
7 didn't think, by stipulation, the Defendant and Defense
8 had entered all of this stuff, exhibits into evidence in
9 the case. So there is some evidence in the record as to
10 the cost of the southern line and the middle line, is that
11 not correct?

12 MR. BANNISTER: Judge, actually and you're, the
13 report is in and I went back and reread the report last
14 night. It clearly states that it's not related to this
15 actual line. It's related to another line that the expert
16 had been involved in. And so even the report acknowledges
17 that it's not related to this line. It is the cost based
18 on a different kind of line, installed by a different
19 electric company and a different project. So even the
20 report itself doesn't have any actual comparison of actual
21 costs. It has comparison of costs as it would have been
22 installed somewhere else. So there's no analysis that has
23 been offered by the Plaintiff as to the cost of
24 construction on this other route with the pond. There has
25 been no engineering. There's been no survey done of the

1 southern route by the Plaintiff to show that it's
2 feasible. The Plaintiff's got to prove that it's a
3 feasible route. They got to prove, they got to offer to
4 you what it would cost to build that route and failing to
5 do that, they don't meet their burden of showing there was
6 an alternate route that was feasible and that the cost
7 would be less than the middle route. And, therefore, the
8 theory of their case fails for having not met that one
9 issue. So it would be our position, Judge, that the case
10 has been about what the property that's being condemned is
11 worth. They want to say it's worth a lot more than what
12 our expert says it's worth. That's the crux of their
13 argument is we abused our discretion, because we don't
14 agree with their appraiser and his evaluation of the
15 middle route for the condemnation. To be a clear abuse of
16 discretion, they would have to show that we did not rely
17 on an expert to determine the condemnation costs. We have
18 an appraisal which is in the record for you to see that we
19 relied on this data prior to our condemnation. This is
20 vastly different than the appraisal offered by the
21 Plaintiff. Two, the appraisal offered by the Plaintiff
22 wasn't offered until after the condemnation was started,
23 and so you can't abuse your discretion, because you didn't
24 consider information that wasn't available to you. So no
25 appraiser, no expert, no landowner said this is going to

1 cost you \$180,000.00 to take the center route until after
2 we had taken it. The condemnation started, and then we
3 were presented with an appraisal by Mr. Major saying, now,
4 y'all messed up, we think it's worth a lot more than that.
5 I'm not, I understand at this point in the trial I can't
6 argue with you about the believability or accuracy of Mr.
7 Major's appraisal. I'm not asking you to consider that.
8 What I'm asking you to consider is the fact that when the
9 decision was made to condemn the property, there was no
10 appraisal for Mr. Major. There was an appraisal from a
11 highly-trained expert who is recognized in the field by
12 even their experts as being a good appraiser who said that
13 condemnation costs, fair market value, is much less than
14 what they say it is now. And that's not proving a clear
15 abuse of discretion. It's not whether they're right or
16 wrong; it's whether or not we made a decision that was
17 arbitrary and capricious. And you have the appraisal we
18 relied on and if you rely on that, if you look at that
19 value which is what was available to PMPA at the time,
20 Judge, there was no, they're entitled to rely on their
21 expert. There's no reason why the Plaintiffs have pointed
22 to, that that expert was not a reasonable expert to use.
23 And Mr. Rogers testified that you always rely on your
24 experts when locating lines as it's related to the taking
25 value. You don't rely on the landowners expert. And so

1 we're asking you to direct a verdict in favor of the
2 Defendant, denying the injunction, and basically recognize
3 that they failed to meet the burden of proof which is on
4 them to prove that there was a clear abuse of discretion
5 in the selection of the middle route for the rolling of
6 the transmission line.

7 THE COURT: Mr. Pope.

8 MR. POPE: Yes, sir. Southern Development was
9 somewhat revolutionary and counsel did not address some of
10 the things stated in that case. It said in that case that
11 indemnity authority either didn't consider or improperly
12 considered certain criteria. One of those criteria is
13 aesthetics. In that case, they said that had they looked
14 at aesthetics, they would have seen that line in that case
15 was visible from several golf holes that were going to be
16 put on that site. And that was an important decision,
17 aesthetics. And in this case, there's been no
18 consideration of that. Another thing they said is that no
19 property owners were contacted before the route was chosen
20 regarding anticipated use. That's exactly what happened
21 here. The Oiens had an anticipated use that does not
22 appear anywhere in that claim or in their consideration,
23 they never talked to him. They never looked at his home
24 plans. They just brought him to a meeting. They said
25 that in that case they failed to consider the cost to

1 acquire the land. Well, if they had talked to him, the
2 cost of acquiring the land would have been different in
3 our view. The Court also said in that case that the, that
4 there's no factual basis for the route selection, then
5 that's an abuse of discretion, and the witness can't talk
6 about abuse of discretion, that's a legal term. But if
7 you don't have a factual basis and that's what Mr. Rogers
8 said, there's no factual basis, because he didn't do a
9 route study. He said that the industry standard and the
10 best practices of right-of-way acquisition is to do an
11 alternate route study. And so he could see exactly where
12 the criteria scale will score, and so you can compare
13 route one with route two and route three.

14 THE COURT: Well, let me ask you this. I think Mr.
15 Rogers conceded on the stand yesterday that if the fact
16 their, PMPA did consider the factors as set forth in this
17 case, the seven different factors that you look at,
18 although it might not be the right and I think he said I
19 don't see how you can do it with 72 different properties
20 or something along those lines if you, in fact, did it,
21 that would not necessarily constitute abuse of discretion.

22 MR. POPE: He said that he found that it would be
23 impossible to do that without a written study.

24 THE COURT: Well, he, I think he found it
25 unbelievable that they, in fact, did do alternate route

1 studies based on the lack of written, I guess, memorial or
2 no reports.

3 MR. POPE: Yeah, no notes, no reports.

4 THE COURT: Right. But if, are you aware and I know
5 that you've been involved in this a lot, is there any
6 requirement after that you're aware of that says that you,
7 besides best practices that you have to have it in-writing
8 in order to meet the standard of considering alternate
9 routes?

10 MR. POPE: There is no case and Southern Development
11 didn't address it and there is no case that says it. Mr.
12 Rogers identified best practices. He identified the
13 standard in the industry. SCE&G, Duke, Progress Energy,
14 they all do it the way he does it in almost identical
15 fashion.

16 THE COURT: And, you know, I guess the question seems
17 to be assuming that PMPA did not adhere to best practices,
18 does that equate into an abuse of discretion?

19 MR. POPE: Yes, sir.

20 THE COURT: All right. And I assume that's your
21 argument in this case?

22 MR. POPE: We think it is. Otherwise, every
23 condemning authority could, after the fact, say I
24 identified and checked, I considered that route and I
25 considered this one and no proof of anything--

1 THE COURT: Isn't that more of a credibility issue
2 than meeting the standard of whether or not there is an
3 abuse of discretion?

4 MR. POPE: Well, I think, I don't think it's
5 credibility, but I think he has identified the industry
6 standards and that industry standard has to be met. If it
7 didn't get met, it's an abuse of discretion.

8 THE COURT: All right. Now, the costs?

9 MR. POPE: The same thing. I mean, you have to have
10 documentation. He identified the southern route as being
11 the preferable route.

12 THE COURT: But, as you know, the burden is on your
13 side of the case to prove lack of cost consideration. I
14 mean, there's no alternate route cost in the record--

15 MR. POPE: That's right.

16 THE COURT: --potentially or at least alleged by the
17 Plaintiff, and what is your response to that?

18 MR. POPE: I would probably say when you have the
19 only person that's going to testify in this case about the
20 standards of right-of-way transmission acquisition and he
21 set the standard and that is proof that they did not
22 adhere, that is proof of arbitrary and capriciousness.
23 There is no factual basis.

24 THE COURT: I'm going to take that under advisement.
25 Do you need a minute or two or is your guy ready to go?

1 MR. BANNISTER: If I can talk to him a minute or two,
2 Judge.

3 THE COURT: All right. If you would just send word
4 back right quick.

5 MR. BANNISTER: I know you're wanting to talk about
6 your or think about a directed verdict. I might just
7 mention that in some of their exhibits that they show that
8 they are, they show all the alternate routes they ran. And
9 Mr. Frazier testified they considered all of the alternate
10 routes and selected the center route.

11 THE COURT: I think the record is clear that just by
12 conversation between the Plaintiff and the representative
13 from PMPA, the alternate routes were a topic.

14 MR. BANNISTER: Yes, sir. He made a bold statement
15 there were no written evidence that any alternate routes
16 were considered. And I think the record is full of
17 alternate routes that were considered. And the only
18 evidence in the record is Mr. Frazier's testimony that
19 PMPA considered all those factors in picking which route
20 to choose.

21 THE COURT: All right. Would you send word back to
22 me?

23 MR. BANNISTER: Yes, sir. Thank you, Your Honor.

24 (Whereupon, a short break was taken.)

25 THE COURT: Mr. Bannister.

1 MR. BANNISTER: We call David Graydon to the stand.
2 David Graydon, being
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Bannister:

6 Q Mr. Graydon?

7 A Yes.

8 Q What do you do for a living?

9 A I'm a real estate appraiser.

10 Q All right. And who do you work for?

11 A I'm affiliated with Wilkins Norwood Appraisal and
12 Associates.

13 Q All right. And tell the Court briefly what your
14 qualifications are to do appraisals?

15 A I am a state certified appraiser which is what the
16 government requires and at the state certified level, you
17 are enabled to appraise any property type.

18 Q So you can do commercial/residential?

19 A Right, as a state certified appraisal. I'm also an
20 MAI, which means I'm a member of the Appraisal Institute.
21 That's our own governing body similar to a CPA, as to an
22 accountant, and there are approximately 70 or 80 of us in
23 South Carolina.

24 Q All right. And do you have to take extra classes to
25 be--

1 A We have to take continuing education.

2 Q Above and beyond what a general real estate appraiser
3 would take?

4 A Yes.

5 Q To kind of what the standards are and what you have
6 to do to do an appraisal properly?

7 A Correct.

8 Q Okay.

9 MR. POPE: Your Honor, I stipulate that he's a
10 qualified real estate appraiser.

11 THE COURT: So stipulated in the field of appraisal?

12 MR. POPE: Sir?

13 THE COURT: In the field of appraisal?

14 MR. BANNISTER: Appraisal and land evaluation.

15 THE COURT: And land evaluation.

16 Q Mr. Graydon, were you hired to do an appraisal by
17 PMPA before and after a piece of property they represented
18 they were going to acquire a right-of-way over?

19 A I was.

20 Q And that's already in evidence, but tell the Court
21 when did you do that?

22 A I did the appraisal in 2013.

23 Q All right. Did you update it after that?

24 A I have not updated it.

25 Q All right. Look, you got your appraisal there?

1 A I do.

2 Q Let's make sure, I hope it's the right one. Did you
3 do it in January of 2014?

4 A Yes. Yes, I did. I'm sorry I said 2013, but I had
5 done some in--

6 Q I just want to make sure I'm looking at the right
7 one.

8 A Right.

9 Q Did you, tell the Court what you did to appraise the
10 property.

11 A In the process, the first thing I did was I studied
12 the engineer drawing I was provided to see what the
13 right-of-way would be on the subject property. After I
14 did that, I inspected the property, and I analyzed the
15 highest and best use of the property and came, and I
16 looked at comparable sales. I was appraising land in this
17 assignment. I looked at comparable sales, and I came up
18 with a value per acre and after studying the plans, I
19 applied that to the size of the acquisition and came up
20 with a value of \$21,075.00.

21 Q All right. As part of that appraisal, did you have
22 an opportunity to walk out on the property?

23 A Yes, sir; I did.

24 Q Did you go through the house that's out there?

25 A I did not go inside the house, but I saw the house.

1 Q All right. Did you see the pond?

2 A I saw the pond.

3 Q Did you see the Duke Power transmission line?

4 A Right. There's an existing Duke Power transmission
5 line that traverses the property on the east side.

6 Q Let me, I'll point to Plaintiff's exhibit number 44.
7 This is the transmission line that is in existence?

8 A It is.

9 Q All right. Is this the Plaintiff's property over
10 here?

11 A It is.

12 Q So they, how many acres is that about?

13 A It's approximately 15 acres or so on the east side of
14 the existing power line.

15 Q All right. And so, and I'm just making sure I got
16 this right. There is currently a transmission line that
17 cuts through a portion of the Plaintiff's property?

18 A Yes, sir.

19 Q All right. In valuing the 15 acres over there, did
20 you decrease the value of that since it was cut off from
21 the rest of the property?

22 A No. That was an existing condition.

23 Q And but did you take that into account?

24 A I did take that into account, and it's a large enough
25 tract on that side that it could be used. It's not being

1 affected any by the new right-of-way. And so I don't
2 think that there is any consequence of that existing
3 condition.

4 Q Okay. So when you appraised the property, determined
5 the fair market value--

6 A Right.

7 Q --of \$5,000.00 an acre?

8 A Yes, sir.

9 Q You determined that that transmission line as an
10 existing issue, you didn't make an adjustment for that?

11 A No. No, I did not, because it, that existing
12 transmission line did not have an impact on the property
13 to the extent that it would have lowered its value from
14 \$5,000.00 per hour.

15 Q Are there places on the property you could see it,
16 though?

17 A Yes. Yes, you can. When you are, you know, in the
18 area of that line and when you are close to the entrance
19 of the property on the east side.

20 Q In other words, when you come in the cul-de-sac where
21 the property stops/starts, you have to drive under the
22 transmission line, don't you?

23 A You do.

24 Q So once you're on the Plaintiff's property, you drive
25 under the transmission line to get to the rest of the

1 property?

2 A Yes, sir.

3 Q Okay. And tell me about the, did you determine that
4 there would be any detrimental effects by the transmission
5 line running through the middle to the remainder of the
6 property?

7 A I did for the proposed transmission line.

8 Q All right. For the proposed transmission line, what
9 did you determine the damage to be to the remainder?

10 A I determined that there would be no damages to the
11 remainder.

12 Q Okay. And why is that and it cuts it into two
13 tracts, right, a 60-acre tract and a 40-acre tract?

14 A It does. But it is a distance from the house that's
15 there. In my studies, I have found that unless a house is
16 within 300 feet or less to a transmission line, that it
17 is, does not have any loss in value. And it has, as it
18 divides it and it divides it pretty close to that existing
19 tax map line on the property, that the size of each of the
20 tracts north and south of the existing, or excuse me, the
21 proposed transmission line is sufficient that there is no
22 loss in value.

23 Q Okay. So what about, were you aware when you did the
24 appraisal that the owners had graded a homesite, I'm
25 pointing to it on exhibit 44, were you aware of that?

1 A Yes, I was.

2 Q And that there was, I saw in your appraisal that you
3 reported there was a well or septic tank, underground
4 electric utility that ran out there, were you aware of
5 that when you did your appraisal?

6 A Correct.

7 Q And knowing that there was a homesite planned, you
8 did not determine in your professional opinion that there
9 was any damage--

10 MR. POPE: He's leading the witness; objection.

11 THE COURT: Rephrase, please.

12 MR. BANNISTER: Sorry.

13 Q Did you have that information?

14 A I did.

15 Q Okay. And what did you determine would be the damage
16 to that homesite?

17 A I don't think that the homesite is damaged. It's far
18 enough away from the new proposed transmission line that
19 there are no damages to it.

20 Q All right. Now, Mr. Graydon, I'll just believe that
21 there was testimony that this was a high-end residential
22 homesite. Do you have any experience appraising high-end
23 residential homesite estates?

24 A I do.

25 Q All right. And in your experience, would this be

1 one?

2 A It certainly has the potential for it.

3 Q What, what kind, tell me about your experience. What
4 size property does it take to be a, is it like a 100 acres
5 or is it 50 acres?

6 A No.

7 Q What size do you have to get to before you're a
8 high-end estate?

9 A It has to be large enough where, you know, there is
10 sufficient land around the house. Recently, I've had the
11 pleasure of working in the Cedar Creek area in Richland
12 County, and it's a very hilly, wooded area that is
13 atypical of what you think of Columbia. And in that area,
14 there are lots that are anywhere from, most of them are
15 close to 20 acres up to over 30 acres, and they have
16 existing transmission lines that run through them and the
17 lots sold with the existing transmission lines on them.
18 And it did not keep those lots from being developed with
19 value ranges of approximately, some of them starting
20 around \$500,000.00 to a million dollars. Some of them
21 also have built barns and equestrian facilities on the
22 properties.

23 Q And you're telling this Court that some of those
24 tracts you've appraised had existing power line running
25 through them and sold anyway?

1 A They sold anyway.

2 Q Did you have the opportunity to investigate the
3 marketability of those or see how long it took them to
4 sell?

5 A Yes. Yes, I did. I saw what the sale prices of the
6 land was and also some of them had been, you know, listed
7 for sale and I've studied them and they do not have any
8 loss in value because their sites are 10 or 20 acres,
9 that's sufficient for them to be developed as a rural
10 estate site. Even though they're approximately 10 miles
11 from Columbia, they are, have a rural setting and they,
12 the land is very similar to say the foothills region in
13 South Carolina.

14 Q So and your opinion then is the transmission line
15 crossing the middle of this property exclude it from being
16 a high-end residential real estate estate?

17 A No, sir; it doesn't. The part that is south of the
18 proposed line according to my calculations would be 49.68
19 acres. The area that is north of the transmission line
20 would be 62.60 acres. Those tracts have no reduction in
21 their being functional and able to be developed.

22 Q Okay. Mr. Graydon, did you have a chance to look at
23 any other proposed routes that crossed the property, the
24 southern route or the northern route?

25 A No, I did not. I based it on the plans I was

1 provided.

2 Q And did you have the opportunity to review some of
3 the comps that were provided this morning by Mr. Major
4 that he used to support his evaluation of the property?

5 A I did.

6 Q Was there anything remarkable about those comps when
7 compared to the evaluation that Mr. Major put on the
8 property of \$5,200 an acre?

9 A I saw that those comps had adjusted values from
10 \$3,000.00 plus per acre to over \$4,000.00 per acre and
11 none of them were as high as \$5,000.00 per acre.

12 Q If you had relied solely on those comps in forming
13 your opinion of value, what would your per acre value have
14 been?

15 A Approximately \$4,000.00 or so per acre based on their
16 adjusted values.

17 Q All right. And generally accepted rules of good
18 appraisals, if you're going to value something at \$5,200
19 an acre, do you normally have to have some comparables
20 that would support that kind of value per acre?

21 A Yes, sir.

22 Q If an appraiser opines that a piece of property in
23 his opinion is \$5,200 dollars an acre and the only
24 supporting comparable sales he has are the sales that you
25 were provided, could you explain how he added that

1 \$1,200.00 dollars per acre to the value?

2 A No, sir.

3 Q Would it be appropriate for a appraiser to contact an
4 auctioneer in Kansas City and ask him what he thinks it
5 should go for?

6 MR. POPE: Object to the form.

7 A I don't think so.

8 THE COURT: Just one second.

9 MR. POPE: He can't pit one witness against another.

10 THE COURT: I sustain that objection.

11 Q Is there anything in the rules covering how you're
12 supposed to do an appraisal that would allow an appraiser
13 to seek the opinion of someone who is not familiar with
14 the property to get information to ask their opinion of
15 what it's worth? Can you rely on somebody else's opinion
16 about what the property is worth?

17 A An appraisal has to follow USPAP standards and for
18 any type of assumption or limiting conditions that are
19 made in the appraisal, the appraisal has to be
20 appropriately supported.

21 Q All right. And is it appropriate support to contact
22 an auctioneer and ask his opinion?

23 A I couldn't understand how that would give a valid
24 answer.

25 Q All right. Let me ask you another one. Does the

1 USPAP allow you to use contested jury trial verdicts as a
2 basis for valuation?

3 A Typically, no. Because that is under the threat of
4 condemnation and also it doesn't meet the requirements of
5 market value where you have a willing value and a willing
6 seller.

7 Q So the answer to that would be no?

8 A No.

9 MR. POPE: Object. He's leading the witness and we
10 move to strike.

11 THE COURT: Overruled.

12 MR. BANNISTER: Thank you, Your Honor.

13 Q And in your consideration of the property value, well
14 did you value the timber?

15 A Pardon?

16 Q Did you value the timber?

17 A No, sir. I'm not a timber cruiser and my value is
18 just of the land only.

19 MR. BANNISTER: No other questions.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 By Mr. Pope:

23 Q Mr. Graydon, you represent primarily, you work for
24 condemning authorities, correct?

25 A I do.

1 Q Would you agree there would be over 90 percent of
2 your work is for condemning authorities?

3 A No, sir.

4 Q But it's the vast majority of your work is for
5 condemning authorities?

6 A No, sir. A portion is, but I also work for property
7 owners, and I also do appraisals, typical appraisals for
8 banks. I don't do just solely imminent domain work.

9 Q Yes, sir. Well, excluding imminent domain work,
10 though, you work mostly for condemning authorities?

11 A Yes, they hire more appraisals than individual
12 homeowners do.

13 Q Now, you never talked to, this is Mr. Lynn Oien's
14 wife, June, here. You never met them?

15 A I never did.

16 Q And do you agree that having knowledge of the planned
17 developed and usage of a property is very important?

18 A It depends on what that is. If something has not
19 been developed on a property, then there's no payment for
20 it. I've always been, had the understanding that
21 frustration of plans is non-compensable.

22 Q Yes, sir. We're not talking about hypothetical. I'm
23 not talking about speculation. I understand that. I'm
24 talking about if a landowner has a specific plan for the
25 property and has committed over \$100,000.00 towards that

1 plan, you'd want to know about it, wouldn't you?

2 A I would want to know about it.

3 Q But you didn't know about it in his instance?

4 A I knew that there was a future homesite when I went,
5 I went out there and when I inspected it, I was
6 accompanied by their representative, Mr. Major.

7 Q All right. But you didn't see the plans for a home?

8 A No, I didn't see the plans for the home.

9 Q And you didn't know that they had put \$100,000.00 in
10 the homesite, grading the homesite, paying \$78,000.00 for
11 the materials on a down-payment--

12 A And it--

13 Q --and digging a well at the cost of \$3,500. You saw
14 the well, but you didn't know what the plans were, did
15 you?

16 A No, I did not know about any details of the plans. I
17 know it's still a considerable distance from the existing
18 or from the new power line right-of-way.

19 Q Yes, sir. And you said about 300 feet or so or less
20 wouldn't have an effect, but if it was closer than that,
21 it would?

22 A It could; yes, sir.

23 Q All right. Well here, you've got a power line
24 through the middle and you've got what looks like 300, 200
25 feet of cleared ground making the visibility issue much

1 more obvious, correct?

2 A I have that the distance from the existing residence
3 is approximately 500 feet from the proposed restaurant,
4 excuse me, residence is approximately 670 feet. So they
5 are over 300 feet away from the proposed line.

6 Q And you understand that aesthetics is an important
7 part of appraisals, that aesthetics, poor aesthetics from
8 transmission lines?

9 A It can be.

10 Q All right. Now, do you recognize that, you know Bill
11 Rogers from formerly Central Electric Power Coop?

12 A I do.

13 Q And you recognize him to be a prominent expert in the
14 field of right-of-way acquisition?

15 MR. BANNISTER: Objection, Your Honor.

16 A I know he does a lot of acquisitions, yes.

17 THE COURT: Just one second. Just one second. You
18 have an objection?

19 MR. BANNISTER: His opinion about another expert is
20 not relevant.

21 THE COURT: I agree. I sustain the objection.

22 Q Have you worked with Mr. Rogers?

23 A I have. I've worked for his company.

24 Q You know, we talked about the existing Duke line, but
25 we can see here that it's heavily wooded on each side of

1 that transmission line that pre-existed this situation?

2 A Yes, sir.

3 Q So even if you got 150-200 feet away, you don't see
4 it much, do you?

5 A And correct.

6 Q Were you asked to compare or were you asked to read
7 the values of running a southern line or a northern line
8 or any other route?

9 A No, sir.

10 Q And you agree, I take it, I'm not sure, I want to
11 know, but do you agree that the Oien property is quiet
12 special? And let me point out some factors and see if you
13 agree or not. First of all, it's a large tract very close
14 to the City of Newberry?

15 A It is.

16 Q And for a retirement home, there's very little noise
17 out there, correct?

18 A I don't know if there, you know, how much noise there
19 is.

20 Q Well, you drive down a dirt road for a mile or a
21 paved road for a mile to get to it, correct?

22 A Well--

23 Q Is that right?

24 A Yes.

25 Q And it dead ends in there, so there's no through

1 traffic or cross traffic--

2 A Right. Right.

3 Q --or worry about traffic, correct?

4 A It's at the end of a cul-de-sac.

5 Q Now, that would make it ideal for someone who wanted
6 to retire and build a nice home would it not?

7 A I think, yes. I think it's a good location for it.

8 Q Now, you've testified in condemnation cases?

9 A Yes.

10 Q And you are aware that juries have the right to
11 determine what damage to remainder there is, correct?

12 A Correct.

13 Q And you've seen them return damage to the remainder
14 even though one witness said there wasn't none, right?

15 A I don't know what individual witnesses have said.

16 Q You've never experienced that in court?

17 A Between what different witnesses have said, I don't
18 know what has transpired between them.

19 Q All right. So you deny that there have been cases
20 tried in this courtroom where one witness said there was
21 no damage to remainder and the other witness said there
22 was and the jury awarded substantial damages?

23 MR. BANNISTER: Your Honor, I'd object to a lot of
24 questions about what's happened in other cases about other
25 property in other condemnation. I don't think that's

1 relevant to what the issues are in this case.

2 THE COURT: What is the relevance?

3 MR. POPE: Well, he's on cross-examination, Your
4 Honor, and--

5 THE COURT: I understand that.

6 MR. POPE: --and I think damages to the remainder is
7 a prevalent concept, because of what juries do.

8 THE COURT: Say that again.

9 MR. POPE: Damages to the remainder are prevalent
10 because of what juries do.

11 THE COURT: Well, and it would seem to me, although a
12 factor that I have to consider or PMPA should consider is
13 cost to build or cost to acquire, but what a jury may do
14 in a subsequent suit would not be relevant to this hearing
15 today as to the right to condemn. I mean, it seems to me
16 that it's just apples and oranges and I'm not sure if what
17 juries have done in the past have any relevance to this
18 case today. So tell me what the relevance is.

19 MR. POPE: Well, I was going to ask him if he's
20 testified in cases and juries have awarded damage to
21 remainder where he said there was none.

22 THE COURT: Well, I'll give you a little leeway, but
23 let's go ahead and but I'm not sure it's very relevant.

24 MR. POPE: Sir?

25 THE COURT: I don't, I'm not sure it's very relevant,

1 but go ahead.

2 MR. POPE: Okay.

3 A I cannot name any cases where a jury awarded damages
4 when I said that there was none.

5 THE COURT: Okay.

6 Q Now, you arrived at a value for the right-of-way area
7 of \$5,000.00 an acre, correct?

8 A Yes, sir.

9 Q Okay. Are you aware of what the Oiens paid for the
10 property 10 years before in 2005?

11 A I am.

12 Q Wasn't it something like \$3,600.00?

13 A It's in that vicinity, it is.

14 Q Now, the comparable sales grid that you have from Mr.
15 Major from yesterday, do you have that? Have you looked
16 at it?

17 A I did.

18 Q These tracts, there are pictures of them attached,
19 the four comparables. These tracts are inferior to the
20 Oien tract, correct?

21 A I don't know. I have not seen these tracts
22 in-person. I do not know if they are inferior.

23 Q So you can't tell us whether or not these are not,
24 also they're not estate type high-end residential tracts?

25 A No, I cannot.

1 Q Do they appear to be from the photographs timber
2 tracts?

3 A They certainly seem to have timber on them, yes.

4 Q And your assessments of those comparables would lead
5 you to conclude that those properties are worth the
6 average of somewhere about \$2,500 dollars an acre?

7 A Right. Yeah. If they were average, that's where
8 they might come in at, but that's improper to average
9 comparables. Typically, what should take place is the
10 ones that are more similar to the subject property are
11 weighed more heavily.

12 Q But the standard is what a willing buyer or a willing
13 seller would agree on, is that right?

14 A That is the basis for market value.

15 Q And when an auctioneer sells property, you got a
16 willing seller and a willing buyer? It might be an
17 awkward concept, but it's the same thing.

18 A And there's other stipulations--

19 Q Is that right?

20 A --in that there is no atypical financing that neither
21 party was under duress when the tract sold. It's more
22 than just a willing buyer and willing seller to meet the
23 definition of market value by USPAP.

24 Q Okay. But an auctioneer is looking for top dollar
25 and there's no duress involved, correct?

1 A But it's not when that auctioneer sells a property,
2 it has not been, it has not necessarily been exposed on
3 the market for a reasonable marketing time.

4 Q All right. When there's an auction of real estate,
5 people show up, interested buyers, correct?

6 A Well, yes.

7 Q So the concept is the same. When the property is
8 auctioned, some willing buyer out there offers the bid
9 that they're going to bid and it's sold for that price?

10 A No, sir; it's not.

11 Q It's not?

12 A No, sir; it certainly isn't. And I'll be glad to
13 read the definition of market value for you.

14 Q Well, go ahead.

15 A And that is that the buyer and seller are typically
16 motivated. There's no atypical motivation. The buyer and
17 seller are well-informed and well-advised and each is
18 acting in what he considers his own best interest. A
19 reasonable time is allowed for exposure in the open market
20 and with an auction, there is no guarantee that there's
21 been reasonable time. And so that's why I don't think
22 that an auction meets the criteria of market value.

23 Q So you did not compare the cost to acquire any other
24 route against the Oien property?

25 A No, sir.

1 Q And if you used the comparables on this sales grid
2 that Mr. Major handed up this morning, you would come up
3 with a value that was somewhat close to the value of this
4 property after a power line, wouldn't you?

5 A I don't know. I haven't done that and I haven't
6 looked at his comparables. I haven't compared them to the
7 subject property, and I don't know. I haven't done that.

8 Q But in Newberry County, you would agree that Newberry
9 County property is substantially different from properties
10 in Columbia that you alluded to in terms of the market and
11 in terms of usage?

12 A Those land tracts that I referred to at Cedar Creek,
13 they all sold somewhere in the range of and from around
14 \$3,000.00 to \$8,000.00 per acre. These are close to the
15 Fairfield County line, although they're in Richland
16 County. And so for these rural tract sales in Richland
17 County, their values are similar to similar-sized tracts
18 in and around Newberry.

19 Q You have never seen any route studies about this
20 property that were generated by PMPA, is that right?

21 A I haven't.

22 Q And how much have you been paid for your work in this
23 case?

24 A I believe it was a thousand dollars.

25 Q Including today?

1 A I have not determined what my fee is for today.

2 Q So you charged a thousand dollars to do this
3 eighty-page report?

4 A Yes.

5 Q How many hours did you spend?

6 A I don't know.

7 Q Well, estimate for us?

8 A I probably have somewhere between 10-15 hours in it.

9 Q What's your normal hourly rate?

10 A It varies from \$100.00 to \$200.00 per hour.

11 Q What is it in this case?

12 A For today, it's \$200.00 per hour.

13 Q So your rate is normally \$200.00 an hour and you've
14 charged them a thousand dollars for an eighty-page report?

15 A Yeah. It was part of a project. It wasn't the only
16 property I appraised, and the fee would have been more if
17 I had just done one appraisal.

18 Q Have you used the same comps in most or many cases?

19 A No, it varied.

20 Q Did you use any of the same comps you used here on
21 these other tracts?

22 A Yeah, most likely I did.

23 Q And you used them in the case of the tract up here,
24 right here.

25 A I don't recall.

1 Q How about Kibler, is that his name?

2 A Yes, that's sounds, that sounds familiar.

3 Q Did you ever meet Mr. Kibler?

4 A I believe I did, yes.

5 Q Where's he from?

6 A I don't, I don't recall. This appraisal was done two

7 years ago and details about, you know, a property owner

8 was from, I may have not never found out.

9 Q Did they live in Newberry?

10 A He may have. I don't recall.

11 Q Do you remember what you said to him?

12 A I don't, I don't recall.

13 Q Well, did you know that Mr. Kibler lived in San

14 Diego, California or did they live in Newberry?

15 MR. BANNISTER: Judge, I won't to object to the

16 relevance of where the neighbor lives.

17 A I mean, I just, I don't remember.

18 THE COURT: Stop, stop, stop, please. Go ahead.

19 MR. BANNISTER: I object to the relevancy of the

20 neighbors and where they live and the line of questions

21 about anything that happened that's unrelated to this

22 problem.

23 THE COURT: All right. Overruled.

24 Q He lives in San Diego, California. Did you know

25 that?

1 A Well, I do now. I don't recall that.

2 Q All right. But you did all the appraisal work for
3 this project, 15 different landowners, correct?

4 A That sounds about right.

5 Q All right. Well, your comparable sheet on Mr.
6 Kibler, I'll show you his. Is those familiar, the same
7 comps, 21 acres on Old Whitmire Highway? Is that one of
8 yours in the Oien case?

9 A Right. I did use that.

10 Q All right. Did you use SC Hwy 219, 10.49 acres?

11 A I did.

12 Q Did you use Highway 773?

13 A I did.

14 Q Did you use New Hope Road, 35 acres?

15 A I did.

16 Q Did you use US Hwy 121, 14.1 acres?

17 A That's the subject property.

18 Q Excuse me. I'm sorry. Morningdale Drive, that was,
19 sorry. Morningside Drive, did you use that one?

20 A I did.

21 Q Did you use Saint Luke's Church Road, 10.8 acres?

22 A I did.

23 Q Did you use Highway 395, 36.57 acres?

24 A Yes.

25 Q Did you use Highway 395, 21.59 acres?

- 1 A Yes.
- 2 Q So you used the same twelve comparable sales for
- 3 Kibler tract, as well as the Oien tract, is that right?
- 4 A No, sir.
- 5 Q You used every one I just named, that was all you
- 6 did?
- 7 A You said the same twelve sales. I didn't use twelve
- 8 sales in his report.
- 9 Q How many did you use in the Oien?
- 10 A I used twelve.
- 11 Q There are also twelve in Kibler, correct?
- 12 A No, there's not.
- 13 Q That's what it says?
- 14 A That's sale number twelve.
- 15 Q That's right. Comparable number twelve?
- 16 A Right, that's comparable number twelve.
- 17 Q You used 12 comparables in Kibler?
- 18 A No, sir; I didn't.
- 19 Q But that's what it says?
- 20 A No, sir. That's not what it says.
- 21 Q All right. You tell me what it says?
- 22 A Well, then I need to hold the report.
- 23 Q Okay.
- 24 A I used, all of these same sales were used in Oien.
- 25 Q Okay.

1 A But I used eight of the twelve sales.

2 Q Okay.

3 A You asked me if I used--

4 Q So you only used eight in Oien, but they're the same
5 eight that were listed in Kibler?

6 A Right.

7 Q All right. And Kibler's tract is nothing like the
8 Oien tract, is it? It's a skinny, long, rectangle shown
9 on exhibit 44 as 338-2. It's kind of a trapezoid or
10 rectangular long tract, correct?

11 A It has an irregular shape to it.

12 Q It's on Highway 121?

13 A Yes. It has, it's, it has highway frontage.

14 Q It's not an estate high-end residential top use, is
15 it, highest and best use?

16 A It's large enough. I don't see why it couldn't be.

17 Q All right. So you think a high-end residential house
18 would be one like Kibler on 121 which has what, 200 feet
19 or 300 feet of frontage on 121?

20 A It has the potential for commercial development.
21 Typically, tracts that have highway frontage sell for more
22 per acre than those that do not.

23 Q Did you use those same comparables you used in Kibler
24 on all the other 13 tracts?

25 A No, sir; I did not.

1 Q Is that just a consequence that you picked Kibler and
2 you used all of those same comparables in Kibler that you
3 used in Oien?

4 A Well, they're similar. They would have different
5 adjustments made to them, but they're comparables that can
6 be, a comparable is not just isolated to one subject
7 property. A comparable can be used on various tracts.

8 Q But isn't it, you charge a thousand dollars for each
9 one of your appraisals, almost 15 landowners that were
10 subject to this transmission line?

11 A That's what I believe my fee was.

12 Q All right. So you got it, you did it at a discount
13 because you were using the same comparables on all of
14 them?

15 A We base it on time and if there are--

16 Q Sir? Why do you keep looking at counsel? Please
17 look at me.

18 A Okay.

19 THE COURT: No, no, no, no. We are non-jury.

20 MR. POPE: Excuse me. I'm sorry, sorry.

21 A There, you use the best comparables that are. If the
22 comparables should be used on more than one tract, then
23 you use them.

24 Q And you used the same comparables and equivalent on
25 Oien and you used them also on the other 13 landowners?

1 A No, sir; I did not.

2 MR. BANNISTER: Judge, I know--

3 THE COURT: Let me ask Mr. Pope something.. In this
4 proceeding--

5 MR. POPE: Sir?

6 THE COURT: In this proceeding today.

7 MR. POPE: Yes, sir.

8 THE COURT: You know, I know there are a number of
9 factors that PMPA is supposed to consider as costs, cost
10 to build, cost to construct, cost to acquire.

11 MR. POPE: Yes, sir.

12 THE COURT: But we have a gentleman which you
13 stipulated is a state-certified appraiser and a MAI
14 appraiser.

15 MR. POPE: Yes, sir. I'm not talking about--

16 THE COURT: As long as the power company used
17 somebody to give them appraisals--

18 MR. POPE: Yes.

19 THE COURT: --wouldn't that not be more relevant to
20 any subsequent action to determine damage to remainder but
21 not whether or not the power company used its discretion
22 in making its determination of the line location?

23 MR. POPE: It would be relevant in both I'd say,
24 because his methodology is, I stipulated he's qualified,
25 but his methodology in this instance, I think, is subject

1 to cross. And I'm not going any farther.

2 THE COURT: I'm going to sustain the objection. I
3 think that we are going a little far afield.

4 MR. POPE: All right, sir.

5 MR. BANNISTER: Thank you, Your Honor.

6 Q Exhibit 4 is a picture of the home that Mr. Oien has
7 paid \$78,000.00 for plans and down-payment on. Have you
8 seen that before?

9 A No, I haven't.

10 Q Thank you.

11 THE COURT: Redirect?

12 MR. BANNISTER: Just briefly.

13 REDIRECT EXAMINATION

14 By Mr. Bannister:

15 Q After they put in the center power line, will the
16 property still be close to the City of Newberry?

17 A Yes, sir.

18 Q Will it still be quiet?

19 A Yes.

20 Q As it is now?

21 A Right.

22 Q Will it still be an ideal location to retail and the
23 highway and Newberry?

24 A Right.

25 Q When you do appraisals, do you generally factor in

1 what a jury might do, is that part of the USPAP
2 considerations?

3 A No.

4 Q Did you take into consideration in your evaluation
5 the fact that there is a site that was cleared, that you
6 knew there was a site that was cleared and you took that
7 into account, did you not?

8 A Right.

9 Q And the persons who escorted you on the property was
10 who--

11 A It was Mr. Major.

12 Q All right. And so you can't make the property owners
13 come out there with you, can you?

14 A No, sir.

15 Q That's not one of the things you're empowered to do
16 as a licensed appraiser?

17 A Correct.

18 Q So if the property owner sends a surrogate, you got
19 to take what you're given?

20 A Correct.

21 Q If the property owner thought it was important that
22 he be there, he could have been there, right?

23 A Yes, sir.

24 Q Okay. Is there a reason why you used twelve comps
25 instead of four?

1 A I had the data, and I thought that those comparables
2 merited using in the appraisal and I did.

3 Q In every piece of property, you made separate
4 adjustments based on the comps and that particular
5 property and the way it factors?

6 A Correct.

7 Q So you adjust for the pond, you adjust for the
8 existing house, you adjust for the existing homesite,
9 size, road frontage, acreage, all that. Each one is
10 unique, is it not?

11 A They are.

12 MR. BANNISTER: And no other questions, Your Honor.

13 RECROSS-EXAMINATION

14 By Mr. Pope:

15 Q Do you use the comparables for Kibler and the
16 comparables for this one, you're saying that the Oien, do
17 you assess value because it's backed up to the Sumter
18 National Forest?

19 A I took its location into consideration.

20 Q All right. Now, would you agree or disagree that a
21 transmission line that goes through the middle of a
22 high-end residential highest and best use property is a
23 red flag--

24 A It does not necessarily mean that there is damages,
25 but damages need to be, should be taken into

1 consideration.

2 Q All right. Did you have any notation in your
3 appraisal that you then considered damage to the
4 remainder?

5 A If I had included damages, it would have been spelled
6 out in the report.

7 Q But you did not say there are no damages to
8 remainder?

9 A No, but I cited the differences from the improvements
10 on the, existing improvements on the property. And that's
11 what I based my decision on that if there are not damages
12 based on that and those decisions were based on the case
13 studies that I have studied about transmission lines and
14 those case studies indicate that typically within 300
15 feet, there are, or even up to 500 feet there are no
16 damages.

17 Q And there is not one word in your 80-page report that
18 says damage to remainder or no damage to remainder?

19 A No, I did not put that in the report, because I do
20 not think there were damages to the property.

21 Q And you saw no studies in this case by PMPA about
22 these routes, is that right?

23 A Yes, sir. I saw no studies. That's what I
24 previously told you.

25 Q Okay.

1 MR. BANNISTER: Nothing further, Your Honor, and I
2 ask that this witness be excused.

3 THE COURT: Sure. Thank you, sir. You may be
4 excused. Is there any reason why Mr. Major can't be
5 excused now that he's brought his comparables?

6 MR. BANNISTER: No, sir.

7 THE COURT: So he's welcome to stay, but he's free to
8 leave if he likes and thank you for doing that this
9 morning.

10 MR. MAJOR: Yes, sir.

11 THE COURT: I know that's an inconvenience. Thank
12 you, Mr. Rogers. The same with Mr. Rogers. Does anybody
13 have any objection if he wants to leave to be excused?

14 MR. POPE: I want him to stay.

15 THE COURT: You want him to stay? All right. Mr.
16 Rogers, you get to stay.

17 MR. BANNISTER: Judge, I expect this witness to be a
18 little bit lengthy.

19 THE COURT: Do you want to take a quick break?

20 MR. BANNISTER: Yes, sir.

21 THE COURT: All right. Let's take about a 10-minute
22 break.

23 (Whereupon, a short break was taken.)

24 MR. BANNISTER: Your Honor, we call Alan Cobb to the
25 stand.

1 THE COURT: Todd, T-O-D-D?

2 MR. BANNISTER: Cobb.

3 THE COURT: Cobb?

4 MR. BANNISTER: C-O-B-B.

5 THE COURT: All right.

6 ALAN COBB; being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Bannister:

10 Q Mr. Cobb, what do you do for a living?

11 A I am a professional engineer.

12 Q Who do you work for?

13 A I work mostly for municipals that own their own.
14 utility systems.

15 Q Okay. You got your own company?

16 A Yes, sir.

17 Q How, what part of your practice is devoted to doing
18 municipal utility work?

19 A Probably ninety-nine plus percent.

20 Q Ninety-nine percent. All right. Are you licensed in
21 South Carolina?

22 A Yes, sir.

23 Q You do work in South Carolina?

24 A Yes, sir.

25 Q And were you involved in the transmission line

1 project for PMPA--

2 A Yes.

3 Q --in the City of Newberry?

4 A Yes.

5 Q All right. If you can, walk the Court through the
6 steps that happens when a city like Newberry decides they
7 want to have a transmission line and a substation. Who
8 locates the substation location? Is that something you do
9 as the engineer or is that something the City of Newberry
10 does?

11 A We do it together. It's a collaborative effort.

12 Q So you would work with the City of Newberry to locate
13 the property for the substation?

14 A Yes, sir.

15 Q All right. And then who at the City of Newberry
16 would you work with?

17 A I'm sorry?

18 Q Who at the City of Newberry?

19 A Mark Regier and Todd Guy.

20 Q Anybody else?

21 A And not to my knowledge. Actually, my partner worked
22 out most of the substation, actual location with the City
23 of Newberry.

24 Q All right. And then the next step would be the
25 transmission line, right?

1 A Yes, sir.

2 Q Do you know how long ago they started talking about a
3 substation?

4 A I've seen some of my drawings back in earlier
5 mid-2000 that we've been looking for property and trying
6 to upgrade their system.

7 Q So 2000 to 2005, they were talking about long-range
8 plan of upgrading the system?

9 A I was actually, spent a day here looking at maps and
10 looking at sites trying to, with the previous utility
11 director trying to find a suitable substation site at that
12 point.

13 Q Okay. And now I'm talking about this project which
14 is the running of the transmission line from somebody with
15 power to the substation. Walk the Court through the steps
16 that you take as you try to determine transmission line
17 locations; what do you do first?

18 A Good old Google Earth and GIS. We take a broad brush
19 and look and say, okay, we know where point B is. The
20 first thing we have to do is find a transmission line, and
21 then once we find that transmission line and in that
22 process I'm working with Mr. Frazier at PMPA, we have to
23 approach Duke and say, number one, can we tap this
24 transmission line somewhere with this kind of load
25 projection, long-range. And once they say yes, then we

1 say okay we've got a line.

2 Q All right. In this case, were there, was there only
3 one line you could tap or were there two?

4 A In this case, they actually said they could, we could
5 tap either the west side or the east side.

6 Q And that's because you got to make sure Duke has
7 enough power to feed your transmission line and your
8 substation?

9 A That is correct.

10 Q So if they were close to their max where they
11 couldn't produce enough, they would tell you no?

12 A They could, yes.

13 Q All right. But in this case they told you either of
14 those two lines would work and that you look at the
15 options, the east line versus the west line?

16 A Yes, sir.

17 Q All right. Tell me about the, which one did y'all
18 project?

19 A The west side.

20 Q The west side. All right. What was wrong with the
21 west side?

22 A Well, it would have been about twice the length,
23 number one.

24 Q It was further away?

25 A Sir?

1 Q It was further from the--

2 A Yes.

3 Q --substation.

4 A It was fraught with issues. It was certainly more
5 urban and commercial property in the area. A lot more
6 twists and--

7 Q There were more homes and structures?

8 A Yes.

9 Q Okay.

10 A And we searched, I thought we had a couple of three
11 corridors that we might could get through from the west
12 and I spent time down here. Todd and I rode around one
13 day looking.

14 Q Now, wait a minute. So on the west side, you would
15 have identified a couple of routes, three?

16 A We looked at three possible ways to get through
17 there. We don't really have a route yet. I mean, this
18 route--

19 Q All right. You start with the Google Earth and the
20 GIS map?

21 A Yes.

22 Q And you figure out where you might be able to go, and
23 then you came to Newberry?

24 A Yes, sir.

25 Q And you looked at those three routes and what did you

1 find about those three routes?

2 A Well, part of the process is we got to go from point
3 A to point B. Then, okay, we can get from here to here.
4 Okay. Then, if we are somewhere in this area, how do we
5 get from here to here, and then somewhere in this area and
6 every time you shift this way or that way in one section,
7 it impacts that you're trying to do in another section.
8 So there were places we could have probably made it work
9 but when we got into town, especially having to come
10 across Newberry Property to get to the substation site, we
11 finally just said this is not feasible to do it,
12 especially when we look at the east side.

13 Q Okay. Give me an example of one obstacle that you
14 would have had to have overcome that made you rule out a
15 particular route from that side?

16 A Lack of right-of-way space, expensive right-of-way
17 space.

18 Q And what would be expensive right-of-way, like you'd
19 have to go through somebody's house?

20 A We would have had to in some cases gone, had to gone
21 through places that had already been subdivided with
22 planned subdivisions. We had one area where we really
23 needed to get through and when we sat and looked at it on
24 the ground said there's no way in the world that we can
25 make this work.

1 Q And you say no way in the world you can make it work
2 from an engineering standpoint?

3 A Yes. From a right-of-way standpoint, it's just
4 sometimes you can't--

5 Q From a right-of-way or from an engineer or is that
6 kind of the same?

7 A You've got to look at both. I mean, you can't
8 engineer a line to go in there if you can't get the
9 right-of-way, I guess.

10 Q All right. So on the route, so you, on the route
11 from the west side where you determined that you had to go
12 through a space where there was insufficient space to do a
13 right-of-way, did you hire an appraiser to come out and
14 tell you what that line was going to cost if you did
15 condemn the house and bulldoze it and relocate the people?

16 A We did not.

17 Q All right. And did you from your own experience rule
18 out that route based on--

19 MR. POPE: Objection. He's leading the witness.

20 THE COURT: Rephrase, please.

21 Q How did you rule it out, then?

22 A Well, aside from the extra length of the line, there
23 was no opportunity to go from point A to point B,
24 obviously, in a straight line which is the most preferred.
25 And looking at all the twists and turns, the angles that

1 we would have to put in. Just every time we looked at it,
2 we were just running up against more and more
3 complications and, finally, it doesn't matter if somebody
4 gives you the property, it's too expensive to build the
5 line.

6 Q And who would have been involved in that
7 decision-making to rule out one of those routes, you by
8 yourself or other people?

9 A Me, the City, and PMPA.

10 Q So y'all didn't compartmentalize the decisions, y'all
11 all got together and talked about it?

12 A Absolutely.

13 Q And did you, the engineer, and the City and PMPA get
14 together and determine that there was no route from the
15 west side that would be acceptable based on what factors?

16 A Primarily, when compared to the east side.

17 Q Compared?

18 A Compared to the east side routes.

19 Q Compared to the east side routes?

20 A Yes.

21 Q So they weren't as good as the east side routes?

22 A No.

23 Q So then you come to the east side. How many
24 potential routes did y'all find starting on the east side?

25 A We looked at initially 10 to 12 plus, at least.

1 Q 10 to 12 routes?

2 A Yes.

3 Q And when you looked at those routes, do you, who, who
4 would have been in the meetings looking at those routes?

5 A Well, it depends. I mean, there were times, my first
6 job is, okay, once we decide we're coming from the east
7 side is, again, the objective without regard to who owns
8 the lands or this or this. I take a good hard look. I
9 talked with Mr. Frazier. We talked with the City folks.

10 Q All right. So let me redirect you a little bit.

11 A Okay.

12 Q The way you start off locating the route, you don't
13 care whether it's a Newberry farmer or a rich guy from
14 Florida, you're just looking at the map?

15 A I don't even care to know property owners. I can't
16 be objective.

17 Q So you don't look at the names or where they're from
18 or what they do for a living?

19 A No, sir.

20 Q So when you were doing this initial route evaluation,
21 you did not know you were crossing the land of Mr. Oien?

22 A No, sir.

23 Q You ever met Mr. Oien?

24 A Had I or have I?

25 Q Had you?

1 A I had never met him.

2 Q Did you know any of the landowners of any of the
3 proposed routes to the substation?

4 A No, sir.

5 Q Okay. So you just objective, looked at the map to
6 figure out what was appeared to be possible?

7 A Correct.

8 Q All right. And then did you visit those routes on
9 the ground in Newberry?

10 A At some point. Some of them ruled themselves out
11 prior to--

12 Q Give me an example of how a route rules itself out?

13 A Looking at, okay, we might can go this way. Well, it
14 was a good thought, but we're going to end up--

15 Q I'm going to show you Plaintiff's exhibit 14, I think
16 that's 14, that's got some alternate routes on there.

17 A Yes.

18 Q I guess those are in red?

19 A Yes.

20 Q I guess it's marked PMPA 12. It's the, maybe the
21 third to the last. That's not all the routes you
22 considered for the east side, is it?

23 A No, sir.

24 Q There were other routes that were excluded before you
25 got to that list?

1 A There were actually other routes that cropped up in
2 other areas. Even after this point, we were still
3 searching and trying to find the most suitable route.

4 Q All right. So the Judge needs to understand how this
5 works.

6 A Okay.

7 Q So after you do the objective map layout then what
8 happens, do you have a meeting with the City of Newberry,
9 do you go out to the property and look at those routes, or
10 what do you do?

11 A Primary, initially, Mike and I are talking since I'm
12 working primarily for PMPA, and then once we come--

13 Q So what do y'all talk about?

14 A We talk about what I think about each of these
15 individual route segments, what he thinks. At some point,
16 once we got through this, we came down and actually walked
17 the properties and looked.

18 Q All right. So would there be instances where a
19 route, once you got to really examining it, would have
20 some problem like it crossed somebody's house?

21 A Probably, that's possible, but not most probable. It
22 could be terrain-related. Most of the time, we can work
23 that out, but wetlands, coupled with the rain can be an
24 issue from an installation standpoint and a long-term
25 maintenance standpoint.

1 Q All right. So construction costs and maintenance,
2 accessibility would be something where you would get to a
3 line and say we're not doing that because that's going to
4 be too expensive or not?

5 A Right.

6 Q Or like on the east side you thought you had enough
7 room, but it turns out, the structures are too close and
8 so you can't go that way?

9 MR. POPE: Your Honor, he's leading the witness.

10 THE COURT: Rephrase your question.

11 Q Was there ever anytime that a route was ruled out
12 because of structures?

13 A Yes.

14 Q Structures would be one of those things that you'd
15 gotten to one that it was a proposed route that would make
16 that route not acceptable?

17 A Absolutely.

18 Q Okay. And Mike Frazier was your contact at PMPA and
19 y'all would meet, is that right?

20 A Yes.

21 Q And how many routes did y'all discuss as being
22 potential routes, from the east side?

23 A That's a tough question to answer, because there are
24 actually route segments that we look at. Okay. How do we
25 hit, again, from here to here. We know we got to get

1 point A to point B. We need to negotiate this part, this
2 part, and this part and this part, and then pull all the
3 pieces together and mix and match sort of like putting
4 pieces of a puzzle together.

5 Q So it's not like you have line A and line B and
6 they're completely separate?

7 A Right.

8 Q Do you start at the substation and go toward the line
9 or you start at the line and go toward the substation?

10 A You got to, you've got to keep both in mind. You've
11 got to say, okay, I've got to find a place to start,
12 because I already know where I need to end up.

13 Q How many meetings did you have with the City and PMPA
14 or discussions or email exchanges about the location of
15 the line, the preferred route?

16 A The preferred route probably Mike, Mr. Frazier and I
17 would have telephone conversations. These things are
18 somewhat complex and it's tough to relay information
19 through emails a lot of times, so we would have telephone
20 conversations discussing pros and cons. He would send me
21 a sketch. I would send him a sketch. We'd both be
22 looking at the same thing and well, let's try this, try
23 this, try this. I'd work that up. We'd talk about. Once
24 we had several possible options that we thought could be
25 feasible, we ended up meeting. I know we had one meeting

1 in Newberry with Mike, myself, Todd and Mark. We were in
2 the Newberry conference room.

3 Q Sure. Let me make sure I got them right, you, PMPA,
4 Mike Frazier, Todd Guy, the City of Newberry--

5 A And Mark Regier.

6 Q Mark Regier of the City of Newberry?

7 A Yes. And we had all these, we had these drawings and
8 we had them up on the high-def big screen so we could get
9 very detailed looks at it.

10 Q And that's in the City of Newberry?

11 A Yes.

12 Q In their conference room?

13 A Yes.

14 Q And you would have brought your lap top?

15 A Yes.

16 Q Looking at the big screens and y'all looked at the
17 routes that you talked about?

18 MR. POPE: Now, he's continuing to lead the witness.

19 THE COURT: Rephrase it.

20 Q Anybody else in that meeting?

21 A Not that I recall, and I'm not even sure that we only
22 had one meeting. That would be a question for someone
23 else, but I believe it was just one. I know there are
24 other meetings that took place, but I believe we only had
25 one for that specific purpose.

1 Q Tell me the factors that you consider and y'all
2 discussed in that meeting related to each of the
3 alternatives?

4 A Cost, obviously.

5 Q The cost of construction?

6 A Cost of construction. Where we think the route needs
7 to go and why based on costs. And this is, again, looking
8 at primarily the preferred route. So now we're starting
9 to get into specific discussions about more detailed land
10 use, property owners and that sort of thing. I mean, it's
11 a very small short line. It progresses fairly quickly.

12 Q Let me show you what's been marked as Plaintiff's
13 exhibit 15.

14 THE COURT: 15?

15 MR. BANNISTER: 15.

16 A Yeah.

17 Q Is this your report?

18 A Yes, sir.

19 Q All right. And in this report you say that you
20 consider environmental impact. That's on page PMPA 170
21 and it's the third page.

22 A Okay.

23 Q Is that something y'all discussed in that group,
24 City, PMPA?

25 A Yes.

- 1 Q The engineer?
- 2 A Yes.
- 3 Q And you talked about that for each of the lines?
- 4 A Yes.
- 5 Q How about the land use?
- 6 A Yes.
- 7 Q Each of the options. Did you discuss land use?
- 8 A Yes.
- 9 Q How about the impact of individual property owners?
- 10 A Yes.
- 11 Q You've discussed that?
- 12 A Yes.
- 13 Q How about the cost of the route?
- 14 A At that point, we looked at a lot of options but from
- 15 a cost of construction, primarily at that point, we could
- 16 make minor changes in the line and not impact the cost
- 17 enough from an engineering construction standpoint to make
- 18 it significant to consider.
- 19 Q All right. Visual and impact of the line, did y'all
- 20 talk about where it's going to be and what it was going to
- 21 look like?
- 22 A Yes.
- 23 Q And was one of the things you considered the
- 24 right-of-way purchase?
- 25 A To a point. We weren't at the point that we had any

1 way to know just exactly what that might be.

2 Q And that's when you were talking in a group, in those
3 initial meetings that you tried to settle on a route?

4 A Right.

5 Q Okay. And so y'all had those meetings, and then did
6 you settle on a route?

7 A To be perfectly honest, I can't say for sure at that
8 meeting.

9 Q Well, not at that meeting. You said you had several
10 meetings.

11 A I had--

12 Q What would you have done after that meeting?

13 A Well, I would have taken that information and gone
14 back. I believe, that the City was going to look, talk to
15 some of the property owners impacted, and I was going to
16 go back and try to fine tune that route.

17 Q Okay. So after the meeting with the City, PMPA and
18 you, you would have gone back home or back to the office
19 to work on the engineering and the City would have gone to
20 physically inspect the property?

21 A Yes.

22 Q Perhaps talk to landowners. Did you talk to any
23 landowners.

24 MR. POPE: Judge, I object. He's asking what he
25 would do, maybe he should ask him what he did. I think

1 that question is inappropriate, because it implies--

2 MR. BANNISTER: All right.

3 Q Did you go back to your office and working on the
4 engineering?

5 A Yes, sir.

6 Q All right. And do you know whether or not the City
7 of Newberry went and did a physical inspection and talked
8 to the landowners?

9 A I know over time they did. I can't say who, when,
10 what, where, but I recall numerous conversations, emails
11 and discussions about that.

12 Q And as a result of those discussions, did y'all
13 change the location of the line either dramatically or
14 make small adjustments?

15 A Only as it pertained to the Oiens property.

16 Q Okay. So when did you prepare this report?

17 A February of '13.

18 Q February 28th, 2013?

19 A Yes, sir.

20 Q And then did you present that at some point to the
21 PMPA or City of Newberry for approval of the transmission
22 line when they were going to vote on it?

23 A Yes.

24 Q All right. And so at that point, you would have
25 identified the preferred line, the preferred location of

1 the transmission line?

2 A Yes.

3 Q Okay. Then, what happens? Did you, were you done,
4 you didn't have any more involvement or was there
5 additional things that you were asked to do by PMPA or
6 City of Newberry?

7 A We were asked to at some point to look at what ends
8 up being called the southern route.

9 Q So at some point, who asked you to do that, do you
10 remember?

11 A I'm sure it was a collaboration of Mark and Mike, the
12 City of Newberry and PMPA.

13 Q Would it have been over the phone or would it have
14 been in a meeting, how would they have contacted you and
15 asked you to do that?

16 A It could have been either of those. I can't recall
17 that.

18 Q All right. So when considering the southern route--

19 A Yes.

20 Q What's the first thing you have to do to see whether
21 or not it's feasible?

22 A The first thing is to say, okay, do we think it's
23 reasonable for Duke to give us a tap point at that
24 location.

25 Q And did you make that inquiry to Duke and did you get

1 an answer?

2 A Not at that point in time, because I was reasonably
3 certain based on experience that that would not happened.
4 They have subsequently gotten back to us and they said no,
5 we will not give you a tap there.

6 MR. POPE: Objection on hearsay.

7 THE COURT: Sustained.

8 Q Based on your conversations with Duke Energy, did you
9 come to the conclusion that a tap where they, where the
10 Oiens asked for it was not feasible?

11 MR. POPE: Your Honor, objection. Leading.

12 MR. BANNISTER: Judge, he's an engineer; designed the
13 line.

14 THE COURT: I overrule the objection.

15 MR. BANNISTER: Thank you, Your Honor.

16 A First off, it's not within my scope of services here
17 to communicate with Duke. Their contract is with PMPA, so
18 Mr. Frazier with PMPA.

19 MR. POPE: Your Honor, excuse me. Can he talk
20 louder, I can't hear him.

21 A Oh, I'm sorry.

22 THE COURT: Pull a little bit closer.

23 A I don't have direct contact--

24 Q Let me start over.

25 A Okay.

1 Q You said the first step would be to determine whether
2 or not the tap was feasible?

3 A Yes.

4 Q And did you determine whether or not the tap was
5 feasible?

6 A Initially, as I stated from experience, I was
7 reasonably certain that we would not get a tap there and
8 at that point in time, Duke had made it clear when we had
9 a meeting on-site that they wanted us as close to mid-span
10 as possible. That was their preference.

11 Q And you were initially asked to give your engineering
12 opinion related to or engineer the southern route based on
13 what location, off a pole or mid-span?

14 A We were expecting we would have to be as close to
15 mid-span as possible just as Duke had recommended.

16 Q And that was from an on-site meeting that you were
17 in?

18 A Yes, sir.

19 Q Did you meet Mr. Oien when you were out there--

20 A I did not.

21 Q --on the Duke right-of-way?

22 A Did not. That was a day with Duke representatives
23 and we were walking the right-of-way looking at possible
24 tap locations.

25 Q And that was not the same day Mr. Oien referenced he

1 had--

2 A I have no idea.

3 Q Okay. All right. So were there problems with the
4 tap point or not on the southern route?

5 A Based on Duke's preference and what they had told us
6 at that point; yes, sir.

7 Q Okay. And then did you look at the number of turns
8 that would be necessary to do the southern route?

9 A We did.

10 Q And based on your experience, could you determine
11 what additional costs would be added to the project if you
12 did the southern route?

13 MR. POPE: He's leading the witness again.

14 THE COURT: Overruled.

15 Q And you can go a piece at a time if you want to.
16 What are the additional pole costs?

17 A I would say roughly \$200,000.00 just in pole costs
18 and installation costs.

19 Q Pole costs and installation. Does that include costs
20 to negotiate the wetlands?

21 A No, sir.

22 Q And could the wetlands create a problem for the
23 installation of the poles?

24 A They could.

25 Q Now, when I say wetlands, I think about

1 environmentalist who, you know, snapper snails and stuff
2 you got to not touch.

3 A Yes.

4 Q Is that what you mean when you say wetlands or are
5 you talking about just like the physical characteristics.

6 A Talking about both. I mean, you never know.
7 Hopefully, you don't find a snail larder or something in
8 there, but we would ultimately have to get an
9 environmental scientist in there--

10 Q Is that--

11 A --to issue a report.

12 Q In your experience, is that free?

13 A No, sir.

14 Q Did you need that kind of environmental scientist in
15 the middle route?

16 A Yes, sir.

17 Q Where?

18 A About I'd say four to six locations, but they're
19 minor. They're just crossings and they're essentially
20 perpendicular or angular crossings and we just have to, he
21 just has to satisfy the U.S. Corp of Engineers that we're
22 not going to adversely impact a wetland area.

23 Q Okay. So the additional construction costs, if I
24 heard you correctly, would be \$200,000.00 for poles and
25 installation?

1 A Yes.

2 Q Could that be higher if the wetlands created
3 additional problems you're unaware of?

4 A It could be.

5 Q Did you do a full analysis of the wetlands once you
6 determined how much more expensive that route was going to
7 be?

8 A We did not, because at some point, I was told that
9 the property owners did not want the southern route.

10 Q Okay. At some point, did you do the engineering for
11 the, a northern route?

12 A Yes, sir.

13 Q And does that add actual construction costs to the
14 project?

15 A Yes, sir.

16 Q Can you give the Court your estimate of what those
17 additional engineering costs would be if you went the
18 northern route?

19 A Probably less than \$100,000.00.

20 Q Less than \$100,000.00?

21 A Yes.

22 Q Were you subsequently told to stop working on the
23 northern route?

24 A I was told that the property owners rejected the
25 northern route.

1 MR. POPE: Objection. That's hearsay.

2 THE COURT: Sustained. Lay a foundation first.

3 Q Did you finish doing all the final engineering on the
4 northern route or did somebody advise you that that was no
5 longer a, were you told to quit working on that?

6 A I was told to stop work on it. We just essentially
7 drew a line on the map and said, okay, here's where we
8 think we can tap the line. We can come over, turn, stay
9 as far away as possible, stay as close to the edges of the
10 property that we reasonably could, and it turned out that
11 the property owners said that they did not want that
12 route. It was too close.

13 Q Okay. If you would, for the Court, can you come down
14 to exhibit 44 and point to where those extra turns were
15 going to be on the southern route and while you're doing
16 it, discuss the angle of the turns and any other problems
17 that you see related to the southern route line.

18 A As it stands right now--

19 Q Speak as loud as you can so everybody can hear you.

20 A As it stands right now we planning on tapping about
21 this location, coming down and the straight line except
22 for this angle.

23 Q All right.

24 A I have actually taken a look at it and the poles, the
25 equipment that was bought from here could actually be slid

1 down and I don't see a problem. I say that it's
2 important, because self-supporting poles are engineered
3 poles that are specific to angles. So then we would come
4 from this point just like we would here.

5 Q Now, are you going to be that close to the property
6 line or would you be next to the driveway?

7 A At that point, we'll be at the driveway.

8 Q At the driveway.

9 A There will be, from what I, it sounds like there are
10 going to be three additional poles sitting along the
11 driveway as you coming out the property, Duke will give us
12 a hand-off at the edge of their right-of-way---

13 MR. POPE: Your Honor, can we have the record reflect
14 that he's pointed to the southern boundaries.

15 THE COURT: It so reflects.

16 A And then we're required, more than five degree angle
17 and that has to be a lot of tension, no more than 600
18 pounds. So we'll come over some 40 or 50 feet west of the
19 right-of-way and come right into the, tap pole at the base
20 of it and that'll be our first pole. Then, we can turn.
21 That's when we can turn and start towards the southern
22 route.

23 Q All right. So without input from this particular
24 landowner, would you normally put that many poles next to
25 somebody's driveway?

1 A I wouldn't. I would prefer not to.

2 Q Okay. But that's the southern route. So tell, point
3 to the other angles you'd have to make to continue on the
4 southern route?

5 A If we're making the assumption that we're going to
6 follow the property line as closely as is reasonable,
7 we're going to have somewhere around a 30 to 40 degree
8 angle right here..

9 Q Now, do you go straight to that angle or do you go
10 down to the property line and turn?

11 A I would expect at this point having not done any more
12 than a cursory review, we will come down and look at the
13 property line if we needed to.

14 Q And so the first turn would be when you get to the
15 property line?

16 A That's correct.

17 Q And then the next turn would be where?

18 A It would be in this area and you can see that we
19 have, that may back up or go along somebody else's
20 property. I don't, I'm not sure. I would have to take a
21 hard look at it. The only thing I know at this point, the
22 line will end up turning in this general area, but I can't
23 just tell you exactly.

24 Q All right. That's the second turning pole?

25 A Yes.

1 Q And then is that it for a job?

2 A Well, we've got to negotiate a, problem somewhere in
3 this area. We got to, fairly steep angle because keeping
4 in mind, we end up in this area. So we come, another turn
5 down here, intercept our location here, and then we turn
6 here.

7 Q So four--

8 A Traverses.

9 Q --four poles?

10 A Four poles.

11 Q You can sit back down. In your experience, what do
12 those poles cost?

13 A They vary. Our additional straight-line poles are
14 not much more.

15 Q Just talk about the ones that are on the southern
16 route.

17 A Right. If we have any additional straight-line
18 poles.

19 Q When you get to the property line and you make that
20 first turn, how much is that pole?

21 A That's probably installed cost barring any foundation
22 issues, because these are engineered poles with the
23 caisson foundation, I would say somewhere between
24 \$40-\$50,000.00 installed.

25 Q All right. How about the second pole where you're

1 turning down there in the wetlands?

2 A I would say that would be fairly close. Maybe \$40
3 range on that one.

4 Q How about the third turn?

5 A That would be in the \$60-grand plus.

6 Q All right. And how about the final pole turn to
7 connect to the line?

8 A I would have to say that would be another \$60-grand
9 plus. And these are based on actual poles we bought for
10 this Newberry job plus recent labor prices we've gotten
11 for drilling and pouring caissons and installing poles
12 exactly like these.

13 Q So in the meeting with the City of Newberry and PMPA
14 and you talking about the cost of the different options,
15 you would have looked at the straight-line option which is
16 shorter than the southern option, is that right?

17 A Yes, sir.

18 Q It has less poles than the southern option?

19 A Yes.

20 Q And does it come fairly close to the lake cabin down
21 there?

22 A Fairly close.

23 Q How would you describe it? Can you see it from the
24 existing house?

25 A I would, to be honest if it were my pond, I probably

1 wouldn't want the transmission line that close, you know,
2 but that's from my point of view.

3 Q Sure. Prior to locating the line in the middle of
4 the Oiens property, did you, City and PMPA look at the
5 southern line and rule it out?

6 A Yes, we did.

7 Q And was that based on factors that are in your report
8 that you consider to determine which line was to be the
9 preferable line?

10 MR. POPE: Object to the form. He's leading the
11 witness.

12 THE COURT: Rephrase.

13 Q Did you make that decision individually, you,
14 yourself, or did y'all do it as a group?

15 A We did it as a group. We actually walked the
16 property and then, subsequently, when we found that we may
17 have an issue with the water and the wetlands, we actually
18 had the surveyor go in and give us edge of water all the
19 way around so we could see at that point in time where all
20 the water we would have to deal with was, the major areas,
21 and so then we looked at that. In fact, I got a call from
22 the surveyor and he says, Alan, I've got bad news.

23 MR. POPE: Judge, object--

24 THE COURT: Sustained.

25 Q Now, don't tell me what the surveyor said, but did

1 you ultimately get a survey of the water?

2 A Yes, sir.

3 Q Was it more or less than you thought it would be?

4 A Quite a bit more.

5 Q Quite a bit more.

6 A In this case, it was bad.

7 Q Now, were there any terrain issues? We looked at a
8 flat map. Is it all flat out there? There's some gullies
9 and ditches and rises and falls, anything about it?

10 A Well, yes, sir. But, you know, we have to build
11 transmission lines across country. We just have to deal
12 with that and some areas are better than others, some
13 worse than others.

14 Q Were there terrain issues coming the southern route
15 that you would not have in the middle route?

16 A There are some.

17 Q Were there, I think you testified there were some
18 environmental issues with the southern route that you
19 would not have with the middle route?

20 A That's correct. That's what we expect.

21 Q In your proposal to PMPA regarding the transmission
22 line you say that you consider the cost of the route, the
23 right-of-way purchase. How did you figure the
24 right-of-way purchase, did you get the input from the City
25 of Newberry on what they thought per acre?

1 A I did.

2 Q And what did they think per acre?

3 A As well as I remember it was--

4 MR. POPE: That's hearsay.

5 Q Because their position is they didn't consider it and
6 so--

7 THE COURT: Well, I understand that. The objection
8 is hearsay. I'm going to sustain the objection.

9 Q Who all did you talk to, well, what is that break? A
10 hundred thousand dollar cost break and what is that?

11 A Roughly, \$5,000.00 an acre.

12 Q \$5,000.00 an acre.

13 A On average.

14 Q Did you have a chance to review the proposal of David
15 Graydon before today?

16 A It's been quite a while.

17 Q Were you surprised to see that his professional
18 opinion--

19 MR. POPE: No, no. This is beyond the scope.

20 Q --was \$5,000.00 an acre?

21 THE COURT: Sir?

22 MR. POPE: He's not an appraisal expert. It's beyond
23 the scope of testimony.

24 THE COURT: Please give him the foundation where he
25 can respond to that, please, sir, without pitting the

1 witness.

2 MR. BANNISTER: All right.

3 Q In the discussions that you had with the City of
4 Newberry, PMPA, yourself about the location of the line,
5 did y'all talk about acquisition costs?

6 A We did.

7 Q Okay. And is that the basis of where you got the
8 \$5,000.00 an acre from those discussions in your opinion?

9 A That was actually an elevated number on my part that
10 was considerably above what I was told the land might be
11 worth.

12 Q Okay. The last questions I got is the changes that
13 you consider to the middle route, preferred line, that the
14 Oiens requested, did that change everybody else's lines
15 down the path?

16 A No, actually that, it had both a negative and a
17 positive impact on the line.

18 Q Some people came out better and some people came out
19 worse?

20 A Well, that was really about the only impact was the
21 cost. It didn't impact any other property owner. That
22 was our focus, hopefully, that we kept this local and try
23 to accommodate them as best we can. So we were able to
24 straighten out one very slight angle as we, that was
25 initially there when we were leaving the Oiens property

1 going west. But we had to add an angle pole, a more
2 severe angle pole to get down to the property line as they
3 requested, so plus or minus, it was plus maybe \$20 grand.

4 Q And in the final drawings and how you crossed the
5 Oiens property, did you adjust that line at the request of
6 the Oiens?

7 A Yes, sir.

8 MR. POPE: Objection, well, he never talked to the
9 Oiens. I object to any hearsay.

10 THE COURT: Rephrase.

11 Q Okay. So did you do the engineering to put a zag in
12 the line down to the property line?

13 A Yes, sir.

14 Q All right. Is there any engineering purpose for that
15 zag that you know of other than to accommodate a request
16 by the landowner?

17 A No, sir.

18 MR. BANNISTER: Judge, no other questions.

19 THE COURT: All right. Cross-examination.

20 CROSS-EXAMINATION

21 By Mr. Pope:

22 Q Mr. Cobb.

23 A Yes, sir.

24 Q Exhibit 15 that you talked about earlier is a report
25 you made in February 2013?

1 A Yes, sir.

2 Q When you made that report, it was based on Google
3 Earth and GIS photos, correct?

4 A Yes.

5 Q You had not been on the property?

6 A I don't believe so, sir. No.

7 Q All right. And you had certainly not talked to Mr.
8 Oien, is that right?

9 A I don't think but, no.

10 Q Sir?

11 A No, I have not.

12 Q All right.

13 A I had not.

14 Q And you have a list of the factors here on page
15 PMPA-170, but there is no commentary about those factors
16 or how they were used, correct?

17 A That's correct.

18 Q All right. And you have no documentation or notes
19 reflecting anything about environmental impact, is that
20 right?

21 A Not at that point.

22 Q All right. And you have no notes or report about
23 land use, is that right?

24 A Not at that point.

25 Q And you have no report or notes about impact to

1 individual property owners, is that right?

2 A That's right.

3 Q And you have no notes or report about the cost of the
4 route or any alternate routes, is that right?

5 A That's correct.

6 Q And you have no notes or report about visual impact,
7 is that right?

8 A That's correct.

9 Q And you issued no report after February 2013,
10 correct?

11 A Other than reporting to my boss at PMPA.

12 Q I'm not talking about conversations. I'm talking
13 about reports.

14 A Not a written report; no, sir.

15 Q All right. And you have no notes after exhibit 15
16 that reflect you did any analysis on alternate routes and
17 the factors you have listed in this report in 2013 and
18 that are compared to alternate routes nor was any analysis
19 made, is that right?

20 A Just emails and phone conversations.

21 Q And, excuse me, did you see the route rating, have
22 you seen the report from the right-of-way acquisition
23 expert that testified yesterday?

24 A I did.

25 Q All right. And you saw where he analyzed the cost of

1 the line, the tap, the access, the aesthetics, the
2 wetlands, the structures and the environmental?

3 A Yes.

4 Q And you compared one route with another?

5 A Yes, sir.

6 Q Do you have any document that shows such information?

7 A No, sir.

8 Q All right. Do you have any notes that reflect any
9 data about that information? The reason I ask, none have
10 been produced in this case.

11 A And not to my knowledge.

12 Q All right. So you did you say a verbal effort to
13 compare alternate routes, is that right?

14 A More than verbal.

15 Q Well, it's either written or verbal, so which was it?

16 A No, I can mentally compare those, sir.

17 Q Sir?

18 A I can mentally compare those.

19 Q Yes, sir. So there was mental?

20 A Yes.

21 Q All right. There's no document that shows what the
22 results of the analyses were, is that right?

23 A That's correct.

24 Q Okay.

25 A Other than emails and phone conversations.

1 Q Now, you're, your office is in Charlotte, of course?

2 A Yes.

3 Q And you're president of your firm?

4 A Yes, sir.

5 Q And what percent of your work is in South Carolina
6 versus North Carolina?

7 A What percent?

8 Q I mean just roughly. Are you eighty percent in North
9 Carolina; fifty/fifty?

10 A Well, the problem is we work in more states than
11 North and South Carolina.

12 Q What percent of your work is not in South Carolina?

13 A Probably, at least seventy or eighty, I would think,
14 would not be in South Carolina.

15 Q All right. Thirty, twenty to thirty is not South
16 Carolina?

17 A Could be.

18 Q Have you, the decision of routing is done by your
19 client, PMPA, is that right; they call the shots?

20 A I have recommendations, sir.

21 Q Yes, you worked with them, but as far as the decision
22 on a route, one route versus another is done by PMPA?

23 A It is.

24 Q Okay. Now, had you ever heard of the Southern
25 Development case of our Appellate Court?

1 A No, sir. Before this issue?

2 Q Yes, sir.

3 A No, sir.

4 Q And you've heard about it in connection with this
5 litigation?

6 A Yes, sir.

7 Q Okay. Now, did you do any written route analyses
8 from Duke's Power source coming from the west side? I
9 realize this project is from the east, correct?

10 A Yes.

11 Q All right. Did you do it, any assessment on the
12 routes coming from the west?

13 A Yes, sir.

14 Q Did you write them down?

15 A No, sir.

16 Q And you never contacted the Oiens; that wasn't your
17 job, was it?

18 A No, it's not a part of my job.

19 Q And you didn't meet them until this case that we're
20 here about today?

21 A I met them at a meeting--

22 Q Excuse me, November of 2013?

23 A I think. Yeah, that's when we met.

24 Q And you recognize that aesthetics to a landowner is
25 an important factor, correct?

1 A Yes, sir.

2 Q And there's nothing unusual about considering
3 alternate routes on every landowner affected by a
4 transmission line project, is that right?

5 A Within reason.

6 Q But I say it's not unusual to consider two, three,
7 four, route options on each landowner, correct, depending
8 on the size of the tract, of course?

9 A It depends on the length of line, number of property
10 owners. But it would be unusual to consider for the most,
11 for the most of this line to my line and the route we
12 took. The line was only adjusted from the Duke
13 transmission line to the western boundary of the Oiens
14 property--

15 Q Okay.

16 A --per property owner request.

17 Q And was the starting point for this entire project
18 was the Oiens property; in other words, you wanted to get
19 to the Duke transmission that runs through the edge of
20 their property?

21 A Yes, sir.

22 Q So that was the starting point?

23 A Yes.

24 Q So it sounds like you have a line coming from
25 landowner on either side of the Oiens, they're the first

1 ones on the property?

2 A Absolutely.

3 Q So you had lots of options, because you had a long
4 1,500 or so feet of transmission line by Duke?

5 A Just on first blush. Yes, sir; it appears that.

6 Q And have you ever seen this picture of the home that
7 they had invested \$78,000.00 down on building on the site?

8 A No, sir.

9 Q Had you ever been told that they had invested
10 \$100,000.00 on their homesite?

11 A At some point in the process, yes.

12 Q And that was during this case, is that right?

13 A I can't remember when I first heard it to be honest.

14 Q Well, you've seen information that they spent, that
15 they built a garage and over here and have you ever seen
16 that garage?

17 A I've seen the garage.

18 Q It's a big 7,000 square foot barn, I think?

19 A Yes.

20 Q And the homesite is just above, just west of that
21 barn. Did you ever see that homesite?

22 A Possibly.

23 Q You don't recall it specifically?

24 A No, sir.

25 Q Did you ever see the well that they had paid to have

1 drilled on the homesite?

2 A No, sir.

3 Q All right. Would it be fair to say that that
4 information was really something that PMPA would have
5 known about and should have known about, not you?

6 A At that point in the process, whether there's a well
7 or if I saw a well, that doesn't necessarily mean that
8 it's intended to be used for, it was serving a residence.

9 Q Were you aware--

10 A I wouldn't know.

11 Q I'm sorry. Go ahead.

12 A I wouldn't know at that point.

13 Q All right. At what point?

14 A At the, and initially.

15 Q I'm sorry?

16 A Initially.

17 Q Well, I mean, you didn't know about it later before
18 you did the final line, did you?

19 A No.

20 Q Were you aware that they had underground electricity
21 to the homesite?

22 A Most everybody has underground electricity this day
23 and time. No, I mean, there would have been no need for
24 me to know that.

25 Q All right. I didn't say there was, but you didn't

1 know they had underground electricity?

2 A No, sir.

3 Q And you didn't see the PVC pipe sticking up with
4 stickers all over them?

5 A Possibly.

6 Q But you don't remember?

7 A I don't recall.

8 Q Now, one of the things that you like to do as an
9 engineer is go straight on a straight line, don't you?

10 A Yes, sir.

11 Q It makes your job a lot easier, doesn't it?

12 A And it keeps the client's pocketbook a little fuller.

13 Q Sir?

14 A It doesn't cost quite as much either.

15 Q Yeah. And so you initially saw as the straightest
16 line for you is just go right through the middle of the
17 Oien property and based on the maps, that's what you did?

18 A Based on looking at two separately deeded pieces of
19 property; yes, sir.

20 Q And it was based on the maps, initially?

21 A Yeah.

22 Q Correct?

23 A Correct.

24 Q All right. And then later after you'd done more
25 work, the line essentially is right through the middle

1 still? I mean, it's 10 feet here or there?

2 A It's on the property line, yes.

3 Q And it's right through the middle?

4 A If you say so.

5 Q Well, do you disagree?

6 A It's on the property line of two adjacent properties
7 and that, but it turns out that seams, that their intent
8 was to essentially keep the properties together--

9 Q Well, they used--

10 A --and treat them as one, how about that?

11 Q Yeah, but treat them as one, but I'm just talking
12 about the route of the line is give or take three acres,
13 it's right through the middle of the property?

14 A I would say yes.

15 Q Now, you said you were at a meeting November 2013?

16 A Yes, I think that's what it was.

17 Q That was down at the City Hall in Newberry?

18 A Yes.

19 Q And do you understand that Mr. and Ms. Oien were
20 there?

21 A I met them there.

22 Q And Mr. Major was there?

23 A I think he was, yes.

24 Q All right. And PMPA was there?

25 A Yes.

1 Q Mr. Frazier, Mr. Smoak?

2 A Yes.

3 Q And did you understand that the Oiens had been very
4 frustrated, because they wanted, because they had never
5 met with PMPA before?

6 A I had heard those conversations, and I was there. I
7 don't remember verbatim what went on--

8 Q Yes, sir.

9 A --in the meeting.

10 Q But you had either read or heard that the Oiens were
11 upset, because PMPA never contacted them from February
12 when you did your report all the way to November of 2013?

13 A I can't remember when, honestly, I started here that,
14 but at some point in the process; yes, I did hear that.

15 Q And but part of that meeting was to discuss options,
16 show them preliminary, very preliminary pole locations,
17 and we were expecting to discuss why we would need them to
18 be there as opposed to somewhere else, is that what you
19 said?

20 A Yes.

21 Q Okay. Now, the length between spans on the poles,
22 yeah, on this project was approximately what, 600 to 800
23 feet?

24 A I would say probably 400 to maybe 700. Somewhere in
25 that range.

1 Q And how many poles did you say go through the middle
2 route that you selected the straight shot across the
3 middle?

4 A I'm thinking probably four to five.

5 Q But four to five go through the middle route and if I
6 heard you right, the same number of poles go on the
7 southern route?

8 A No, I did not say that, sir.

9 Q But you counted them again for me. You said four or
10 five on the middle route and how many on the southern
11 route?

12 A We were talking about angle poles at that point. I
13 haven't done enough detailed analysis to know. It could
14 take maybe one or two more poles, state line poles--

15 Q On the southern route?

16 A --could, but it may not. But those at roughly
17 \$10,000.00 a pole, that's not a significant cost. That's,
18 it's the angle poles that are the issue.

19 Q So it involves two more poles to go on the south, is
20 that what you're saying?

21 A It might involve one or two straight-line poles.

22 Q Well, I'm talking about total poles. It takes two
23 more poles on the south or more than that?

24 A More than that.

25 Q Well, tell us.

1 A Well--

2 Q Did you not do a route study of the southern route?

3 A Yes, I did.

4 Q You didn't do it in-writing, so tell us today what

5 you, how many poles on the south?

6 A Do you want me to come back down there again like I

7 did a while ago or just?

8 Q Yes, sir. If you want to.

9 A Thanks. What I said is it takes a pole here that's--

10 Q That's one at the, lowest part.

11 A This would be our first angle, somewhere in this

12 area.

13 Q At the corner?

14 A At the corner.

15 Q Below the pond?

16 A Assuming we're going to follow the property line this

17 far.

18 Q If I'm just going the, I'm just identifying for the

19 record. That's in the area of the pond?

20 A Right. We'll have to come back here and over here.

21 I don't even know that we can do it and stay on this

22 property. I don't know that yet, but I do know that's

23 roughly \$40,000.00 pole.

24 Q The one at the corner?

25 A Yes.

1 Q All right, sir. And then there's another up here?

2 A There may be one here but that's, that's, we got
3 those up here. Then, we got roughly a 90-degree angle
4 through there in the neighborhood of a \$60,000.00 pole
5 which, earlier, and then we'll come back here and
6 intercept.

7 Q Up here at the Kibler property?

8 A Right.

9 Q Take back towards the Kraft property.

10 A And our discussion a while ago was about the fact
11 that we're actually adding these angels.

12 Q Three of them?

13 A Yes, sir.

14 Q But you didn't do any written costs assessment of the
15 costs of the southern line there?

16 A Sir, when I've got a state line of poles, with my
17 experience, and I take that line and turn it into
18 essentially it looks like a bowl instead of a straight
19 line, it's curved, I know the line's going to be to some
20 extent longer and the construction costs and the material
21 costs are going to be more expensive.

22 Q But you didn't quantify that in any report along the
23 way, did you?

24 A I did not, because it turned out not to be an issue.

25 Q And wouldn't it be obvious to you that the southern

1 route would be more aesthetically-pleasing to someone,
2 homesite in terms we just talked about?

3 A Based on what I know today, I think you could
4 certainly make that argument.

5 Q So you agree with that?

6 A It's like I said earlier, if it were my--

7 Q You need to agree or disagree.

8 MR. BANNISTER: Judge, I'm going to object. I don't
9 think he's qualified to offer an opinion about--

10 THE COURT: Tell me what your specific question is.

11 MR. POPE: My question was, does he agree that
12 aesthetically, the southern route is preferable to the
13 middle.

14 THE COURT: I overrule the objection.

15 A Could you say that again now?

16 Q Do you agree that using the southern route is
17 aesthetically better than the middle route if you use, if
18 you're talking about the homesite that you didn't know
19 about?

20 A To me, I'd have to try to decide what tradeoffs I
21 could really deal with, because I don't know that I would
22 necessarily want the line going around my pond. But, like
23 I said earlier, that's a personal preference and it's not
24 my property. I don't have those plans for it.

25 Q And is it fair to say that aesthetics is a

1 consideration where your client's specific problem is, not
2 yours?

3 A It's a collective problem and, I mean, we all
4 certainly want to think about aesthetics, but not
5 everybody things a transmission line looks good.

6 Q Now, it was talked about earlier in your report you
7 have drawn six alternate routes coming off the Duke line:
8 A1, A2, A3, B1, B2, B3 and our exhibit 15.

9 A I can't read the drawings in exhibit 15.

10 Q Sir?

11 A I can't read the drawings in this exhibit 15.

12 Q I'll take these. Let me give you a better copy.

13 Actually, this is 14. It's attached as PMPA 12 on exhibit
14 14, Plaintiff's 14.

15 A Is that one right here?

16 Q That's the same one you have. Can you see yours all
17 right?

18 A Yes, sir.

19 Q You didn't have glasses?

20 A No, sir.

21 Q Okay. You see here you've got A1, A2, A3. They're
22 all southern routes that were drawn based on Google Maps,
23 Google Earth, correct?

24 A No, sir.

25 Q They weren't?

1 A They're all southerly, more southerly routes, not all
2 the southern routes and it was also utilizing Newberry
3 County GIS system.

4 Q Okay. All right. So A1, A2, A3 were done in
5 February 2013 based on Google Earth and the GIS?

6 A Yes, sir.

7 Q All right. And then you also on this same page,
8 exhibit 14, PMPA 12, you also have B1, B2, B3 which is a
9 route that, for the line that would go on a southerly
10 property owner. Not the Oiens, but the property owner
11 below them, is that right?

12 A Yes, sir.

13 Q And you didn't do any route analyses of either A1
14 through A3 or B1 through B3, correct? You didn't do a
15 route cost analysis or route studies, compared the
16 factors?

17 A I did.

18 Q And it's not in-writing?

19 A That doesn't mean I didn't do it, sir.

20 Q I'm just saying is it in-writing?

21 A No, sir.

22 Q Are there any notes about A1, A2, A3 or B1, B2, B3?

23 A Not that I know of.

24 Q So can you reconstruct that analysis for us in
25 detail? What, how much was it going to cost to run the

1 line on B1?

2 A Well, number one, and like I said earlier, some of
3 these routes tend to rule themselves out just by default,
4 I guess. We don't need to do a cost analysis on every one
5 of these routes to determine whether it looks to be valid.
6 In some cases, what you did just to show options when you
7 revisit it, it just absolutely makes no sense to do it to
8 start with.

9 Q Do you even remember what you analyzed about B1 or
10 route number 1, B1?

11 A I do not at this point.

12 Q Do you have any idea what the land acquisition cost
13 of B1 would be?

14 A I would say, where is B1?

15 Q I'll point to you if you don't mind my pointing?

16 A I don't mind.

17 Q All right. B1 is that long line that's above B2.

18 A Looking at that, I expect that already subdivided
19 property more landowners, more property owners.

20 Q There's no home up, and according to this map, there
21 is no home anywhere near B1, is that right?

22 A That's not true. There are, it goes behind
23 residential lots.

24 Q Say again?

25 A Sir?

1 Q Say that again. I'm sorry.

2 A I said it goes behind existing residential lots.

3 Q All right. But it doesn't go through any property
4 owners that have a house on it?

5 A I don't believe so.

6 Q All right. And you can't tell us what the land
7 acquisition cost for that was or the construction costs,
8 can you?

9 A Except that I think in both cases it would exceed the
10 route that we ended proposing.

11 Q Well, did you, what about the aesthetics of B1 and
12 B2?

13 A In lots of cases, it would possibly rank better. In
14 other cases, it would not.

15 Q Did you ever walk B1, B2 and B3?

16 A I walked some of that area, but not all of it, sir.

17 Q You never talked to the property owner or any of the
18 property owners that had you routed as B1, B2 or B3?

19 A Sir?

20 Q I said you never talked to any of the property owners
21 involved in routes B1 and B2 and B3?

22 A No.

23 Q And you don't remember anything today about what you
24 saw when you went down and looked at the routes B1, B2 and
25 B3, is that right?

1 A Well, it's like I said earlier. Changing and making
2 that dramatic of a change dramatically impacts the rest of
3 the line routing, as well. You can't just take it apart
4 and say let me take this parcel and move it 2,000 feet in
5 this direction, because that impacts -- you've ultimately
6 got to get from point A to point B and there can't be a
7 disconnect anywhere in there. They have to be connected.

8 Q So when you did your report in February 2013--

9 A Yes.

10 Q --you basically laid this out and go these are the
11 alternates we're looking at, correct?

12 A Yes, sir.

13 Q So I want to know what you did when you looked at it
14 and according to match the routes on PMPA 1, 2 or the
15 exhibit 14 and if you look at exhibit 44, which is in
16 evidence, it appears that you're going through woods for
17 most of the way. Is that correct or not correct?

18 A Most of the way right there.

19 Q Okay. So you can't tell me whether B1 or B2 or B3 is
20 10 percent worse than this middle route through the Oiens
21 or 20 percent worse or 50 percent worse, is that right?

22 A I can tell you it's more expensive.

23 Q But you don't have any analysis of the factors
24 in-writing?

25 A No, sir.

1 MR. BANNISTER: Judge, that's been asked and answer
2 ad nauseam.

3 MR. POPE: It has.

4 THE COURT: And overruled.

5 Q All right. Going now to the A1, A2, A3 because it
6 affects the Oiens property. Did you do any, other than
7 what you've just told us, have you done any work on A1 or
8 A2?

9 A Can you show me which is A1 and A1, there are three.

10 Q I believe, it's the top line. That one right there.
11 And then A2 is the one below it, and A3 hugs the property
12 line.

13 A Okay.

14 Q All right. So I'm asking you now about A1 and A2?

15 A Other than issues from at that point tapping the
16 line.

17 Q Sir?

18 A Other than issues ultimately tapping, from a
19 standpoint of tapping the line, making the tap, having a
20 place to connect to.

21 Q But you never talked to anybody at Duke about getting
22 a tap?

23 A Ultimately, we did.

24 Q When I deposed you, you said you had never talked to
25 anybody at Duke?

1 A Because they'd rendered, they've given us their
2 decision since that time, sir.

3 Q All right.

4 A And they concurred with my original judgment.

5 Q Sir?

6 A They concurred with my original thoughts.

7 Q But you said you had never talked to Duke from 2013,
8 2014 or even as of the time of your deposition in December
9 of 2015, correct?

10 A No, I didn't say that.

11 Q In your deposition, I'm going to pull your
12 deposition.

13 A Okay.

14 MR. POPE: May I open it up?

15 THE COURT: And let me open it up and make it a court
16 exhibit, please, and that'll be Court exhibit 3 or is that
17 2. So this will be a court exhibit, the next in line.

18 MR. POPE: Okay. Thank you.

19 (Whereupon, Court's exhibit No. 2 marked for
20 identification.)

21 A Okay.

22 Q I said 74. All right. It's at the very bottom of
23 74. There's a question, and I'm going to read it.

24 Question, Duke had never told you they would not give
25 you a tap there, correct? What was your answer at the top

1 of 75?

2 A Okay. So you're saying--

3 Q I'm reading my question.

4 MR. BANNISTER: Judge, I'm going to object. He said,
5 the question was you told me you'd never talked to Duke.
6 He said that's not true, and now he's impeaching him with
7 something totally different.

8 MR. POPE: No.

9 MR. BANNISTER: Did Duke tell him something
10 specifically.

11 MR. POPE: This is cross.

12 MR. BANNISTER: I think he should at least ask a
13 question before--

14 THE COURT: Well, I agree with that, but where are
15 the questions concerning whether or not he'd had
16 conversations with Duke.

17 MR. POPE: Well, I want it to be clear that when he
18 was doing route studies, he never talked to Duke. That's
19 what he says here.

20 THE COURT: Ask him a question.

21 Q Duke has never told you they would not give you a tap
22 here, correct? What is your answer?

23 A Right there. It's, that's Correct.

24 Q Now, did you say, I'm looking at that other exhibit
25 that's up there with you, exhibit 14, page P12 which has

1 the alternate routes on it. Now, you've said that you
2 didn't do any written alternate route studies, so I'm
3 going to ask you about your verbal route studies. Did you
4 do more or less route study on B1, B2 or B3 versus A1, A2
5 and A3?

6 A First off, I don't have exhibit 14.

7 Q Sorry. It's the one under the deposition on your, if
8 you'll close that. This one right there. It's that one.

9 A That says 12.

10 Q This is page 12, PMPA-12.

11 A Oh, okay.

12 Q Of exhibit 14. I'm just saying did you do any more
13 or less verbal route study of A1, A2, A3 versus B1, B2,
14 B3?

15 A Did I do any more or less?

16 Q Yeah, you just said, and did you do this same
17 so-called route study on B1, B2, B3 that you say you did
18 on A1, A2, A3?

19 A Yes.

20 Q What was that?

21 A Again, first point of emphasis is a tap point,
22 period. A tap point; you have to find a place that we
23 fill like Duke will allow us to tap the line. Then, we
24 have to look at relative costs based on construction and
25 we have to look at right-of-way from a terrain, wetlands

1 import--

2 Q All right. Do you remember getting--

3 A --as it impacts construction.

4 Q How did A1 and A2 and A3 compare aesthetically with
5 B1, B2 and B3?

6 A Aesthetically, I would say--

7 Q Well, how did you consider it then? Not say now.
8 How do you remember it when you were supposed to be doing
9 this study?

10 A Say that again, please.

11 Q How do you remember it? What took place back in the
12 day, back in 2013 or '14 regarding your route study of A1,
13 A2, A3 compared to B1, B2, B3? Aesthetically, how did
14 they compare?

15 A They compare from a standpoint of aesthetics. I'd
16 say most of the property going across through that area
17 would essentially be a non-issue, because it's through the
18 woods. There's nothing else there.

19 Q So B1, B2, B3 is just woods?

20 A Mostly, all of them, until you get to that
21 residential area over there.

22 Q So B1, B2, B3 don't involve a high-end residential
23 retreat type of place?

24 A I don't know that.

25 MR. POPE: Could we take just like a five-minute

1 break, Your Honor?

2 THE COURT: Yes, that'll be fine. You can step down.
3 Just don't talk to anybody about your testimony.

4 (Whereupon, a short break was taken.)

5 THE COURT: All right, Mr. Pope.

6 CONTINUE CROSS-EXAMINATION

7 By Mr. Pope:

8 Q Now, Mr. Cobb, we were talking about A1, A2, A3 and
9 the routes B1, B2 and B3--

10 A Yes, sir.

11 Q --when we took a break. Can you tell us what the
12 cost to acquire each of those lines would have been?

13 A Cost to acquire, you're talking right-of-way?

14 Q The cost of the property to go A1, A2, A3 or B1, B2,
15 B3?

16 A At that point in time, I would have had my original
17 estimate of \$5,000.00 an acre.

18 Q So what about B1, B2, B3 where you're going through
19 this timbered property?

20 A It could be more or less, but at that point, we're
21 looking at average property value.

22 Q All right. But you have no notes about any such
23 analysis about cost to acquire any of those routes, is
24 that right?

25 A Other than what was in my report, sir.

1 Q And your report doesn't say anything about these
2 routes. It just lists, shows a map with no narrative,
3 correct?

4 A Correct.

5 Q And you can't recall anything specific you said when
6 the Oiens called a meeting in November 2013, is that
7 right, about route selection?

8 A I cannot.

9 Q And is it fair to say that you don't recall them
10 bringing it up or not bringing it up, route selection
11 being their choice for the southern route, do you?

12 A I do not.

13 Q But you don't deny they brought it up, you just don't
14 know?

15 A I just don't know.

16 Q Now, would it be fair to say that you really did not
17 do any kind of in-depth analysis of any of those routes
18 that we just talked about, those six routes?

19 A I did enough to know from an engineering standpoint
20 that they would not be one of the preferred.

21 Q Well, look at page 51 of your deposition. On page
22 50, I was asking you about those same routes, A1, A2, A3,
23 B1, B2, B3 and I asked you what they meant, and you said
24 they represent initial possible alternate routes, correct?

25 A Where are we at now?

- 1 Q That's on page 50.
- 2 A 50, oh, okay.
- 3 Q Is that correct, though?
- 4 A What, what did, where are we?
- 5 Q Well, I was on line 14, my question and your answer
- 6 was, correct me if I'm wrong, they represent initial
- 7 possible alternate routes prior to an in-depth
- 8 investigation on the ground. Is that right?
- 9 A That's true.
- 10 Q All right. And then I asked you if you'll look at
- 11 page 51, did you do a route study in all six of these
- 12 routes and I said, you said, all but six. I said, no, on
- 13 all six of these routes. Line 5, what was your answer?
- 14 A Line 5? Not in-depth.
- 15 Q So you didn't do any in-depth analysis of cost of
- 16 construction, cost to acquire the land, the aesthetics,
- 17 the environmental, any of those issues, is that right?
- 18 A If you're talking about how they compared in detail,
- 19 in detail with some of the other routes, no. I compared
- 20 them to another depth to know that they weren't worth
- 21 considering--
- 22 Q Well, which of those six routes was the worst route?
- 23 A Probably, the very bottom.
- 24 Q B3?
- 25 A I would say.

1 Q All right. But what's that based on?

2 A Well, that's based on the fact that assuming tap
3 costs are equal, they all three, ultimately, end up at
4 their western and the same point in space.

5 Q All right.

6 A So now we're looking at cost to construct primarily
7 and B3 has more angles. It's got two more angles in it.

8 Q Sir?

9 A It has two more angles in it, so that means more cost
10 to construct it.

11 Q Well, what about environmental?

12 A We have not gotten to that point yet.

13 Q The point is you don't have any analysis of all those
14 factors for any of these routes, do you?

15 A Not written.

16 Q Well, I understand that. I'm trying to understand
17 since you're relying on some verbal or thought process.
18 Now, the decision on route analysis falls with PMPA,
19 eventually, right?

20 A Based on my recommendations.

21 Q All right. But you didn't have any analysis verbally
22 that I understand, now, and you're here to explain your
23 verbal analysis--

24 A Okay.

25 Q --and all these factors are listed in southern route.

1 You didn't do that. And I'm not talking about today's
2 analysis. I'm talking about the analysis you applied in
3 2013.

4 A Mike Frazier and I discussed these.

5 Q Sir?

6 A Mike Frazier and I discussed these with my client.

7 Q Well, tell us about what you discussed about
8 environmental on each of those six routes?

9 A I can't remember, sir.

10 Q All right. Tell us what you discussed about cost to
11 acquire land on each of those routes?

12 A We probably did not.

13 Q You didn't?

14 A I would say not, because I would say today looking
15 back since I obviously can't remember, but I would say
16 there is no significant cost difference in the land on
17 either of them.

18 Q Right, but you didn't do a cost to acquire each of
19 those routes. They're different lengths and they go
20 through different parts, but you didn't do any analysis to
21 distinguish the values, is that right?

22 A The minor length doesn't make an overall--

23 Q Sir?

24 A That minor length difference does not make an overall
25 difference in the project.

1 Q Can you tell us the dollars or the cost to acquire
2 any of those A1 through B3 routes?

3 A Not a dollar amount.

4 Q What about the aesthetics of A1, A2, A3, B1 through
5 B3, what about those? Which one's best? Which one's
6 worst? What'd you analyze, anything?

7 A They were, I would say they're all equal until you
8 get to their western end and they become all the same,
9 because they'll each have almost the same impact on the
10 residential area.

11 Q Did you ever later go and walk B1 and B2 and B3 to
12 ascertain those?

13 A I looked at a lot of these areas from the street,
14 from the road, but it didn't necessitate the complete walk
15 of every route.

16 Q All right. Can you remember any route you did walk
17 of those six routes?

18 A Probably, I can't.

19 Q I want you to just say from your memory. Don't guess
20 if you, just tell us.

21 A I'm not guessing. No, I'm not guessing. I'm trying
22 to figure out which one. It would be the third one from
23 the bottom.

24 Q Is that B1?

25 A I can't read that, sir.

1 Q Well, let me look.

2 A This one across here.

3 Q All right. That is B1. You agree that that's B1?

4 A Yeah.

5 Q Is my copy easier for you?

6 A Not really.

7 Q Can't see that?

8 A I can see the B.

9 Q All right. You can see B1. Okay.

10 A I was concerned about water again, and there are

11 ponds there.

12 Q But you don't do the costs dealing with the pond?

13 A No, sir.

14 Q Now, these ponds, and crossing a pond is not unusual

15 for a transmission line?

16 A Absolutely not.

17 Q Can you tell us what the anticipated use of the

18 properties in B1, B2 and B3 are?

19 A B1 is--

20 Q B1, B2, B3. You did line numbers?

21 A We never progressed to that point with those options.

22 Q All right. Well, studying these alternates, B1

23 through B3, you didn't talk to a landowner and you don't

24 know what the anticipated uses of those properties were,

25 is that right?

1 A We did not.

2 Q So you don't know that?

3 A I know we, what is your question, do I know that?

4 Q The question is do you know the anticipated use of
5 those properties, A1, I mean, B1 through B3?

6 A No, sir.

7 Q Do you know anything about the safety issue related
8 to B1, B2 and B3? Did you analyze that?

9 A I analyzed that in the final route design.

10 Q B1 and B2 and B3?

11 A Safety is not an issue. Safety is purely by code.

12 Q Purely what?

13 A By code and regulations; engineering details.

14 Q And B1, B2 and B3 did those not, neither of those
15 routes, none of those three options go through property
16 owners or house, that situation, is that right?

17 A Not that I can tell from these drawings.

18 Q That appears to be correct what I said?

19 A That appears to be correct.

20 Q They were dismissed based on cost, is that what
21 you're saying?

22 A No, sir.

23 Q What were they dismissed, for what reason?

24 A They were dismissed of because of, again, we have to
25 get from point A to point B and we've got to connect the

1 dots in the middle so when, if you break this thing up,
2 essentially, like an east side, middle and west side
3 that's how it played itself out. The west side has, had
4 issues we had to work around. The east side of it should
5 had issues we had worked around. The middle of the
6 property or the line was fairly straight-forward.

7 Q When you say the middle of the B1, B2, B3 property?

8 A I'm talking about if you take, if you take this line,
9 this two-mile line--

10 Q Two-mile line. Okay.

11 A And split east, middle, west, and then start looking
12 at these options, well, then you carry that through to how
13 does that impact the middle section, and then how does
14 that impact the west section and we've got to ultimately
15 end up with a balance--

16 Q All right.

17 A --that works in all three of those cases.

18 Q And you have to analyze those options with regard to
19 that balance, don't you?

20 A Yes, sir.

21 Q All right. Well, let's look at B1, B2, B3. All
22 start at the Duke transmission line.

23 A That's a given.

24 Q So we're okay there?

25 A We're good there.

1 Q All right. And then we go across and we end up on
2 page PMPA-12 hitting at a right-angle, the same line that
3 goes through the Oien property, correct?

4 A After going by and through residential property.

5 Q Well, identify residential property on here for me?

6 A Here, here.

7 Q All right. You're pointing to houses, through their
8 property but they go near it, is that what you mean?

9 A Goes near it, yes.

10 Q All right. Did you do an analysis of what the cost
11 was going to be had you used that route, the cost to
12 acquire?

13 A Which route?

14 Q The B route, any of the B routes?

15 A Never got to that point.

16 Q Well, in fact, B3 would be far below those
17 properties, wouldn't it?

18 A They all end up at the same point. They all end up
19 at the same point on the west end. As it passed the
20 properties; yes, it would be a bit further way.

21 Q All right. So the problem you're addresses would be
22 the other houses, but B3 doesn't go through.

23 A It's the more expensive option at that point, though.

24 Q But you don't have an analysis that shows us that, is
25 that right?

1 A I can't show you, no.

2 Q Now, after this initial report you made at PMPA based
3 on GIS and Google Earth of 2013, you never went back to
4 PMPA, is that right? You never made another report?

5 A I didn't make a written report to PMPA, no.

6 Q So the decision that Mr. Frazier said was his, is
7 that right, on the route?

8 A Ultimately, I would say so. I couldn't tell you if
9 he had to consult with anyone inside his firm, but he was
10 my contact.

11 MR. POPE: Thank you, Mr. Cobb.

12 THE COURT: Redirect?

13 MR. BANNISTER: Just briefly, Your Honor.

14 REDIRECT EXAMINATION

15 By Mr. Bannister:

16 Q All of the B routes that y'all were referring to, B1,
17 B2 or B3, all come together in the B route that crosses
18 121 and, ultimately, intersects at the line, is that
19 right?

20 A That's correct.

21 Q And where they come together, they cross fairly close
22 to an existing residence, don't they?

23 MR. POPE: He's leading the witness. I object.

24 THE COURT: Overruled.

25 A I think it did. The problem is I need larger maps.

1 I'm used to dealing with more details, but I think it did.

2 Q And that line goes through, what is all those little
3 blue squares? I can't tell.

4 A That's residential property that I understood at the
5 time from talking with the guys at the City that had been
6 subdivided but hadn't been developed yet.

7 Q A subdivision?

8 A Yes, sir.

9 Q So from the time B1, B2 and B3 intersect crosses, and
10 just tell me if I'm wrong, very close to a house, and then
11 intersects through a subdivision?

12 A I believe that to be correct, yes.

13 Q Is that why you ruled out B1, B2 and B3 was because
14 they all cross--

15 MR. POPE: He is leading.

16 Q --a subdivision that--

17 THE COURT: Just one second. What was your
18 objection?

19 MR. POPE: Leading. Leading.

20 THE COURT: Overruled. Go ahead.

21 Q Is that why you ruled out all the B tracts, because
22 you'd have to, basically, condemn somebody's residence,
23 and then cut all that subdivision down the middle?

24 A I mean, yes, yes.

25 Q So did you have to do, do you believe to properly

1 determine the feasibility of B3, that you need to do an
2 environmental study of B3 once you ruled out where B3 is
3 going to connect to 3?

4 A No.

5 Q Would that be a waste of time?

6 A And money.

7 Q And money. So you ultimately, come to A, right?

8 A Yes.

9 Q All right. You've heard the testimony about the
10 aesthetics of the power line as it interferes, according
11 to Mr. Oien, on his 115 acres?

12 A Yes, sir.

13 Q Did you hear that testimony?

14 A I did.

15 Q All right. For the purposes of this question, I want
16 you to assume that any transmission line that's within 600
17 feet, how far is the homesite to the transmission line?

18 A I cannot recall. I can't remember. It seemed like
19 it was, you talked about the proposed or the existing?

20 Q Where it's going to go, the middle route.

21 A I think it was 3-400 feet, but I can't.

22 Q All right. Let's say it's 300.

23 A Yeah.

24 Q For purposes of this hypothetical. If the
25 transmission line is aesthetically unpleasing at 300 feet,

1 had you chosen line A that runs behind all those little
2 houses, you see it?

3 A Yes, sir.

4 Q How many people, how many existing houses where
5 people live and parked their cars and raise their family,
6 how many of those people would be within the 300 feet that
7 Mr. Oien says is objectionable; can you count them?

8 A Maybe a half a dozen. I can't--

9 Q Six?

10 A Is that close? One, two, maybe even more. It's
11 these up--

12 Q Count. Count them.

13 A Well, I'm assuming. I can't, if there are houses
14 here, you know, and I expect there are. Maybe a dozen,
15 maybe.

16 Q So 12 existing residences would be affected by the A
17 line if a transmission line is objectionable to have in
18 your back yard at 300 feet?

19 A That, I would have to agree with that.

20 Q Is potentially that--

21 A A did nothing to mitigate the issues with the ponds
22 and the wetlands.

23 Q And it had a issue with the pond?

24 A Yes.

25 Q So you affect all of those neighbors and you got to

1 cross a pond?

2 A Correct.

3 Q So when you're doing this analysis in aesthetics,
4 right, and what it's going to look like, do you consider
5 only the people who have high net worth retirement
6 homesites or do you consider everybody who's going to be
7 able to see the line?

8 A When I'm laying out a line initially, I prefer not to
9 even know who owns the property. It's purely objective
10 from an engineering standpoint.

11 Q So you would just treat everybody the same?

12 A Oh, I wouldn't know how to do any different at that
13 point.

14 Q All right. The last question. We've talked a lot
15 about the Southern Development factors. Did you consider
16 those when determining the final location of the
17 transmission line as it crosses the Oiens property?

18 A Yes.

19 MR. BANNISTER: No other questions, Your Honor.

20 THE COURT: All right. You may step down. Do you
21 have any questions?

22 MR. POPE: A couple of follow-ups.

23 RECROSS-EXAMINATION

24 By Mr. Pope:

25 Q Mr. Cobb, you drew the alternates, B1, B2 and B3?

1 A That's correct.

2 Q And the alternate route B routes go under south of

3 those poles, correct?

4 A Say, say that again?

5 Q It's shown on the map. In other words, right, B3

6 ought to go south of those houses on that road, correct?

7 A Yes, sir.

8 Q All right. And all the houses are close on the north

9 end, so they would be over 300 feet?

10 A From this drawing, I can't tell.

11 Q And you drew it. You were expected, I take it, when

12 you drew it to do a workup or a route study on each of

13 those routes?

14 A I was working off a bigger drawing than this, sir.

15 Q I mean, you drew it. You intended to work it up.

16 A To scale.

17 Q And there's no document--

18 A I wasn't, I had no intention to work up completely

19 every one of those routes. No, I never had that

20 intention.

21 Q And you say you had to cross a pond, the pond shown--

22 A Well, but it's still water.

23 Q It's not an obstacle.

24 A If I'm there, it's easy to look at.

25 Q Sir?

1 A If I'm there, it's easy to take a look at. It's a
2 physical, if I'm there, it's easy to look at. It's a
3 physical feature.

4 Q All right.

5 MR. POPE: May I have your indulgence a second.

6 THE COURT: Sure.

7 A That's 14.

8 Q Exhibit 31, have you ever shared that, with the
9 Oiens, they implied that they wanted some special
10 treatment. You said, The Oiens want to settle. Money
11 isn't an issue. The line needs to go to the south side.
12 Mr. Frazier identified that yesterday. He wrote his boss.

13 A Just give me a minute, if you would, to read this;
14 please.

15 MR. BANNISTER: Which one is that?

16 MR. POPE: 31.

17 MR. BANNISTER: 31.

18 A I don't recall seeing that at all.

19 Q Okay.

20 MR. POPE: No further questions.

21 THE COURT: May this witness be excused?

22 MR. BANNISTER: Yes, Your Honor.

23 THE COURT: All right. Thank you, sir.

24 MR. COBB: Thank you.

25 THE COURT: All right. Let's take a break till

1 quarter of 2:00 if that will be sufficient?

2 MR. BANNISTER: I would request you give us till
3 2:00.

4 THE COURT: Sure. I'll be glad to.

5 (Whereupon, a break was taken.)

6 THE COURT: You ready with your next witness?

7 MR. BANNISTER: I am, Your Honor. I'd also move,
8 well, I think we've got an agreement on most of the
9 Defendant's exhibits that aren't already in evidence
10 except for exhibit 21 which I think is in the unredacted
11 form. So I would move at this time that, by agreement,
12 all of those would be entered as evidence.

13 COURT REPORTER: That would be 1 through 28.

14 THE COURT: One through?

15 COURT REPORTER: 28, except for 21.

16 THE COURT: Is that correct?

17 MR. POPE: Yes, except for 21.

18 THE COURT: Okay. One through, except for 21. Okay.
19 1 through 28 except for 21 will be admitted by
20 stipulation.

21 (Whereupon, Defendant's exhibits 1 thru 20 were
22 admitted into evidence.)

23 (Whereupon, Defendant's exhibits 22 thru 28 were
24 admitted into evidence.)
25

1 (Whereupon, Defendant's Exhibit 21 was marked for
2 identification only.)

3 MR. BANNISTER: Thank you, Your Honor. Call Todd
4 Guy.

5 TODD GUY, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Bannister:

9 Q Mr. Guy, who do you work for?

10 A The City of Newberry.

11 Q And what do you do?

12 A I'm an electric foreman.

13 Q And have you grown up in Newberry?

14 A Yes, sir.

15 Q You lived here all your life?

16 A Most of my life.

17 Q All right. How long have you worked for the City of
18 Newberry?

19 A I've been back with the City now going on 16 years.

20 Q And how old are you?

21 A How old?

22 Q Yes, sir.

23 A I'm 49.

24 Q Where did you work prior to working for the City of
25 Newberry?

1 A I worked, I was self-employed for a couple of years.
2 The first time I left here, I left, I worked here five
3 years before. I left here for about two and a half years.
4 Before that, I worked at Shakespeare in Newberry.

5 Q As part of your job at Newberry in January/February
6 of 2013, did you get an assignment related to a
7 transmission line?

8 A Yes, sir.

9 Q What was that assignment?

10 A Well, I kind of took it on myself to make a courtesy
11 call to most of the landowners to let them know what was
12 kind of going on.

13 Q And that, was that related to the location of a
14 transmission line?

15 A Yes, sir.

16 Q And you knew who those landowners were?

17 A I had to talk to people, the GIS tax maps, that kind
18 of thing.

19 Q All right. So I'm going to look into so that I
20 understand. As it relates to the Oiens property, the
21 first time you would have been responsible for contacting
22 anybody relating to transmission line, including the
23 Oiens, was in February of 2013?

24 A Somewhere around that point.

25 Q And then what was the last time you had contact with

1 the Oiens about the transmission line?

2 A There was a call made from me to Mr. Major about who
3 gave me permission to be on their property and all that.
4 That was somewhere around June.

5 Q So in June when Mr. Major called, was that, were you
6 taken off that assignment as it related to the Oiens?

7 A Yes, sir.

8 Q Okay. So that's your involvement in 2013, February
9 until June?

10 A Yes, sir.

11 Q Okay. The first time you met with the Oiens, where,
12 were you?

13 A Well, it first come up, I was talking to Mr. West and
14 got the information of who the people were and he--

15 Q Mr. West is the neighbor?

16 A Yes, sir. And he gave me the name of the man that
17 was overseeing the property, which was a Mills.

18 Q Did you get a name?

19 A Yes, sir.

20 Q What was his name?

21 A Mills.

22 Q Mills?

23 A Yes, sir.

24 Q All right. So did you contact Mills?

25 A Yes, sir. I went out and talked to Mr. Mills one day

1 and we called Mr. Oien from his carport that afternoon.

2 Q From Mills' house?

3 A House phone.

4 Q Is that his last name, Mills?

5 A Yes, sir.

6 Q Mill or Mills?

7 A Mills.

8 Q Mills. All right. And you talked to Mr. Oien then?

9 A On the phone.

10 Q On the phone?

11 A Yes, sir.

12 Q And did y'all discuss that there was a transmission
13 line?

14 A I kind of described on what was going on, kind of
15 what was happening was a transmission line coming through.
16 We had to do a tap with Duke. Let them know that, you
17 know, we needed to get together anytime we could to
18 discuss what was going on.

19 Q And did he make arrangements to meet you at his
20 property?

21 A Exactly, I don't know sure when and all that, but we
22 met eventually on his property.

23 Q So he did, and was he there by himself or was his
24 wife there?

25 A As I recall, I think his wife was with him.

1 Q All right. And did you bring maps or pictures?

2 A Well, I kind of started off at first, you know, we

3 was doing a transmission line and we was discussing the

4 center property in between the two properties, and he said

5 he didn't like that idea. That let's proceed with the

6 bottom side of the property, stay on the property line.

7 Q So Mr. Oien--

8 A Yes, sir.

9 Q --said I don't like the center route, I want to look

10 at the southern?

11 A Yes, sir.

12 THE COURT: Hang on. I'm confused. I thought this

13 was Mills, but this is Mr. Oien and his wife, is that

14 correct?

15 MR. BANNISTER: I'm sorry.

16 Q So after you left Mr. Mills' house having talked with

17 the Oiens, you met the Oiens at the property?

18 A Yes, sir. Later on. That was maybe a week later or

19 so, and I don't know exactly the time frame.

20 Q All right. And so you met Mr. and Ms. Oiens on their

21 property and discussed the center route transmission line?

22 A Yes, sir.

23 Q All right. And what did they say?

24 A Let's go with the southern route. Let's look at it.

25 If we can do something different. I was there, just like

1 I said, as a courtesy call trying to help see what people
2 wanted and what they didn't want...

3 Q Is that what you were doing with all the property
4 owners?

5 A Yes, sir.

6 Q Okay. And so you reported back to PMPA, the City of
7 Newberry?

8 A Yes, sir.

9 Q And Mr. Cobb and they wanted the southern route?

10 A Yes, sir.

11 Q And did a route on the southern side of their
12 property get drawn?

13 A Yes, sir.

14 Q Did you meet with them again?

15 A Yes, sir.

16 Q Did you show them the drawings of the southern route?

17 A Yes, sir.

18 Q All right. And what did they say?

19 A They didn't really like the southern route, because
20 it would be taking away the buffer of the neighbors right
21 at the bottom of the property line.

22 Q All right. And this, would it be this buffer between
23 the lake and these home sites?

24 A Yes, sir.

25 Q Okay. And when you were talking to the Oiens, did

1 y'all discuss that that transmission line would be very
2 close to those peoples houses?

3 A No, sir.

4 Q No. The Oiens are not concerned about their
5 neighbors?

6 A They just didn't want the buffer gone.

7 Q They wanted the buffer.

8 A Was the main reason why they didn't want it.

9 Q Did they say something about security?

10 A Just didn't want to see the buffer, the property
11 owners next-door.

12 Q Got you. They didn't want to, what now?

13 A See the property owners next-door.

14 Q They don't want to see their, all right. Did they
15 tell you at that time that they had planned a homesite up
16 on the northern place and that's where they were going to
17 build their \$600,000.00 home?

18 A I don't know exactly when the home property came
19 involved, but after that, I said and, you know, we can
20 look at a different route. And that's when we moved it to
21 the northern route and I know the home property came
22 involved at that time.

23 Q Okay. So they said no on the southern route and
24 let's explore a northern route?

25 A Yes, sir.

1 Q And I haven't been out there. Just to be clear, if
2 you are standing on the proposed homesite--

3 A Yes, sir.

4 Q --could you see these houses if you cleared those
5 trees out?

6 A I don't think so.

7 Q Okay. Just making sure.

8 A Yes, sir.

9 Q All right. So you went to explore the northern
10 route. Now, what did you have done as related to the
11 northern route?

12 A Well, we made one map of, you know, hooking it around
13 the property land there and it wasn't quite far enough, so
14 we had to hook it out a little further to get it further
15 away from the proposed site of the house.

16 Q All right. So walk me through this, because I want
17 to make sure I understand what's happening. You drew a
18 northern path?

19 A Yes, sir.

20 Q Or somebody did, right?

21 A Yes, sir.

22 Q You didn't draw it?

23 A No, sir. I didn't draw it.

24 Q You don't work, do your, do that?

25 A No, sir.

1 Q You just reported we needed a northern route and
2 somebody at the City of Newberry or PMPA engineer drew
3 your route and you took it back to the others?

4 A Yes, sir.

5 Q And were you on the property when you met with them?

6 A I think so.

7 Q Okay. And you showed them the northern route?

8 A Yes, sir.

9 Q And what did they say, did they love it?

10 A Well, and we had to tweak it a little bit more to get
11 it further away from the proposed site.

12 Q All right. When you say we had to tweak it, you mean
13 Oiens wanted you to tweak it--

14 A Yes, sir.

15 Q --to get further away from the proposed homesite?

16 A Yes, sir.

17 Q Is that right?

18 A Yes, sir.

19 Q All right. And so you went back to the City, PMPA,
20 the engineers and said give us another option, they want
21 it further up?

22 A Yes, sir.

23 Q All right. And then did you take that new northern
24 route back to the others?

25 A Yes, sir.

1 Q What'd they say?

2 A Well, they denied it, because it being wrapped around
3 the property homestead area or the proposed building site
4 and said let's move it back to the center.

5 Q So the Oiens rejected the northern route and you said
6 denied, but they didn't want, they didn't want it?

7 A They didn't want it.

8 Q Did you agree with them that's kind of a weird place
9 to put it if they're going to build a house up there?

10 A Well, it wasn't really my position to say that but
11 no, I didn't agree with it but, you know, I was doing what
12 they wanted to do.

13 Q All right. And so you went back to explore the
14 center route?

15 A Yes, sir.

16 Q All right. And did you come back to the center and
17 meet with the Oiens again to talk about the center route?

18 A Yeah. That's when we kind of got involved on some
19 oak trees and some very tall oaks that was involved.

20 Q Was there a question by the Oiens about where
21 precisely the line would be in the center? They wanted to
22 know where it was going to go and what oak trees they were
23 going to have to cut down?

24 A Yes. Yes, sir.

25 Q Okay. And could you show them exactly when you were

1 in your meeting with them out there that day?

2 A No, sir. I couldn't tell them exactly where the

3 property, the two properties were different in the center

4 line.

5 Q Because it just goes through some woods, right?

6 A Yes, sir.

7 Q Okay. So what did you propose?

8 A I proposed I'd have to get our surveyors in to, you

9 know, kind of stake it and see where the center line was.

10 Q And did the Oiens give you permission to have the

11 surveyors come out and stake the center line?

12 A Yes, sir.

13 Q And did that happen?

14 A As far as I know; yes, sir. That's kind of, in that

15 area is kind of when June came in and I kind of fell out

16 of it.

17 Q All right. And then in June, there was a phone call

18 from Mr. Major?

19 A Yes, sir.

20 Q And do you know the nature of that phone call; who

21 did he call?

22 A He called me.

23 Q He called you?

24 A Yes, sir.

25 Q And what did he say to you?

1 A He was wanting to know who give me permission to be
2 on the property? If I had a document, easement document
3 saying that I could be on the property and I told him the
4 only time I ever been on the property is with Mr. Oiens
5 and then, or Mr. Mills.

6 Q And did you report that conversation to the folks at
7 the City of Newberry?

8 A Yes, sir; I did.

9 Q And did they tell, and what did they tell you to do
10 after that conversation with Mr. Major where he challenged
11 your right to be on the property?

12 A My boss, Marc Regier, said it's getting kind of
13 technical; it's time for me to just step out.

14 Q Okay. And was that the last meeting you had with the
15 Oiens, and then the last conversation you had with Mr.
16 Major about the route?

17 A Yes, sir.

18 Q And all of that happened between February when you
19 started the work on the transmission line and the phone
20 call from Mr. Major to you accusing you of trespassing?

21 A Yes, sir.

22 Q Okay.

23 MR. BANNISTER: No other questions, Your Honor.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION

1 By Mr. Pope:

2 Q Mr. Guy, you, of course, have never been, this is the
3 land acquisition project you'd ever worked on?

4 A Yes, sir; that's correct.

5 Q And you had never been involved in a condemnation
6 before?

7 A No, sir.

8 Q And you had never worked on a transmission line
9 project?

10 A No, sir.

11 Q And you don't know anything about any of the
12 requirements for land acquisition?

13 A No, sir.

14 Q And did you know that, do you know Misty West?

15 A Yes, sir.

16 Q She's the vice president of West Electric?

17 A Yes, sir.

18 Q All right. Did you know that on, in exhibit 7 here,
19 Plaintiff's exhibit 7, she had alerted Mr. Oien by email
20 that there was a line that might be coming through their
21 property and that she had told them there was no way you
22 willingly give them an easement to cut your property in
23 half?

24 A I didn't know about the email, but I did, that's who
25 I contacted. I was there with Mr. West when he gave me

1 the contact name and number of Mr. Mills.

2 Q Okay. And do you understand that just from this one
3 project that landowners like to look at options?

4 A Yes, sir.

5 Q And that's reasonable, isn't it?

6 A Yes, sir. And I think we gave them plenty of
7 options.

8 Q So throughout your experience, there were three
9 options?

10 A Yes, sir.

11 Q And that no final decision had been made about any of
12 those options when you stopped in June of 2013?

13 A No, sir.

14 Q Is that right?

15 A Yes, sir.

16 Q And you didn't construe the situation when you left
17 working on this project to be any final objection by the
18 Oiens of the southern route, did you?

19 A No, sir.

20 Q And, of course, that was almost three years ago?

21 A Yes, sir.

22 Q All right. Now, I think you understand from your
23 experience with this property that people do not like
24 lines going through the middle of their property?

25 A Most people.

- 1 Q You would agree with that?
- 2 A Yes, sir.
- 3 Q And you've never seen any comparison in-writing,
- 4 which I call a route analysis or something like that, that
- 5 PMPA did to show the advantages or disadvantages of the
- 6 north, the south and the middle route?
- 7 A We looked at plenty of other various routes. The
- 8 main way to go with it is the least amount of property
- 9 owners and the shortest amount of distance.
- 10 Q A straight line?
- 11 A It was about as straight as you could get it.
- 12 Q But what I meant was you weren't party to any
- 13 discussions that would talk about land acquisition costs
- 14 and aesthetics and environmental concerns and something
- 15 like that?
- 16 A No, sir.
- 17 Q And do you understand from your project that once
- 18 people, and some landowners don't want the line anywhere,
- 19 of course, on their property, correct?
- 20 A Sir? Say it again.
- 21 Q And some landowners when you would confront them on
- 22 this project didn't want a line anywhere, of course,
- 23 right?
- 24 A Yes, sir.
- 25 Q But if they have to have it, most of them want it to

1 run along the edge of their property, doesn't it?

2 A Yes, sir.

3 MR. POPE: Nothing further.

4 THE COURT: Redirect?

5 MR. BANNISTER: None, Your Honor.

6 THE COURT: Thank you, sir. You may step down.

7 MR. GUY: Thank you.

8 MR. BANNISTER: We'd ask that he be excused.

9 THE COURT: There's any objection to him being
10 excused?

11 MR. POPE: No, sir. That's fine.

12 THE COURT: All right. Thank you, sir. You may
13 leave.

14 MR. GUY: Thank you.

15 THE COURT: The next witness, please, sir.

16 MR. BANNISTER: Marc Regier.

17 MARC REGIER, being
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Bannister:

21 Q Mr. Regier, who do you work for?

22 A The City of Newberry.

23 Q And how long have you been with the City of Newberry?

24 A About seven and a half years.

25 Q Were you here with the City of, well, what's your

1 title with the City of Newberry?

2 A Utilities Director.

3 Q Utilities Director; is that what you've done since
4 you've been with the City?

5 A No, I started off in Information Services. Then, I
6 went into Utilities as the Assistant Utility Director, and
7 then I took over as Interim in February. Sorry.

8 Q Move just a little closer to that mic.

9 A Sorry. Can you hear me?

10 Q Yes. All right. Did you take part in the location
11 that we've been talking?

12 A I did.

13 Q You were with the City when that was going on?

14 A Correct.

15 Q All right. And then were you with the City when the
16 transmission line was being planned?

17 A Correct.

18 Q Did you participate in the planning meetings about
19 the line with PMPA and the engineers?

20 A I did.

21 Q Can you give the Court, briefly, but I know it'll
22 take a little bit, briefly sort of a outline of the
23 meetings and conversations that you had either with the
24 Oiens or about the Oiens and the location of the line on
25 their property?

1 A All right. So you don't want me to start prior to
2 that with the substation? You want me to start in--

3 Q Well, start in February 2013 about how the process
4 started with the acquisition of the line.

5 A Well, we, after we had met quite a few times and had
6 looked at, you know, various--

7 Q Actually, you know, go back. In the planning stage
8 where the line was going to be, did you participate with
9 PMPA and the engineers?

10 A I did.

11 Q All right. So what, describe for the Court what that
12 looked like?

13 A So as other folks have said, we tried to site a
14 substation near where our load center is and we tried to
15 find something that would be able to get, you know,
16 situated in a place where it wouldn't affect a lot of
17 homeowners and it wouldn't be aesthetically, you know,
18 unpleasing to folks. After siting the substation, we
19 began to have conversations with PMPA and Mike about how
20 to get to the station.

21 Q And when you say Mike, you mean Mike Frazier?

22 A Mike Frazier, yeah. At that point, we began to look
23 around as been said earlier, the west and the east side.
24 I remember at one point we looked at a route through the
25 west side that was, you know, 50-60 properties. We went

1 through a kind of lengthy back and forth and phone
2 conversations about the various possibilities. We looked
3 at trying to go down the commercial, through the
4 commercial district. We tried to look going through the
5 residential districts, and then ultimately landed on the
6 possibility that ran us kind of through the woods and
7 didn't impact as many owners, property owners. So at that
8 point, we began the process of kind of looking at various,
9 you know, mutations of the line, of kind of that specific
10 line and looked at, you know, how can we get out of this
11 station, how can we try to, of those property owners is
12 there a way we can impact even less than that. And then,
13 you know, we kind of set some of the kind of boundaries we
14 wanted to kind of stay with and without, you know, running
15 into homes and things like that. So at that point, we
16 created a list of potential property owners that were
17 there that would be, you know, potentially impacted by it
18 and with that list, we sat down and went through GIS. And
19 then Todd knew some of the people just from growing up
20 around here and I asked Todd at that point, would you go
21 out and, you know, you know a lot of these people, you
22 grew up with some of these kids and, you know, things like
23 that, some of them are people you went to school with and
24 just kind of let them know that hey, this is going on and
25 we are, you know, potentially looking in your vicinity as

1 a potential route. As he stated, he did that and
2 interacted with some folks. Now, moving into the Oiens, I
3 know that he had asked Billy West. He reported back to me
4 that day that Billy actually knew the owner and had some,
5 Billy somewhat take some claim for helping bring them to
6 town and was real excited about them being in town. And,
7 you know, I said well do you have a way to contact them
8 and he said well, they're going to reach out to them, but
9 we're going to, there's a property manager or somebody
10 who's got a key that we can hopefully talk with. After
11 that, we went through and, you know, he continued to talk
12 with other property owners. He drove down to people's
13 houses in Chapin to meet with them and, you know, kind of
14 explain what was going on and tried to make it as, you
15 know, as personal as something like this can be. It's not
16 something anybody wants but, you know, it's a fact of
17 life. It's got to, you know, there is, we have an
18 obligation to serve people and that's what we've got to
19 do. So at that point, you know, we had some mutations.
20 The southern line came up like he said. We had Alan and
21 those look at, you know, drawings for it and possibilities
22 for it. Then, I actually had a conversation with Mr. Oien
23 and he told me that he would prefer the northern route and
24 we, again, spent some time--

25 Q And this is Mr. Oien?

1 A Mr. Oien, yeah.

2 Q Okay.

3 A And we spent some time and Alan made some drawings.
4 Mike and I talked about, you know, various possibilities
5 and in that process, as Todd said, we had, we'd learned
6 that there's a homesite going to be in the clearing and we
7 were asked, as he said, we were asked to kind of move the
8 line kind of away from the homesite. And I remember at
9 one point thinking hey, let's go ahead and pay, we the
10 City of Newberry, pay for the difference. If this is the
11 way they want to do it, we'll pay for the angle poles,
12 because Mike was concerned that there were costs that we
13 were kind of mounting. But from my standpoint and from
14 Todd's standpoint, you know, our goal was can we, you
15 know, is there anything that we can do? Is there anything
16 that we as the City can help facilitate to get people as
17 okay with it as possible. And I remember having a
18 conversation where I said, well, and I think Mike and I
19 talked and he said something like, well, it's going to
20 cost another, you know, \$80 or a \$120,000.00 for these
21 other angles that you're putting in now. And I, you know,
22 I remember saying well we, you know, maybe there's
23 something we can do to help, you know, facilitate that to
24 keep everybody, I mean, you know--

25 Q We being the City of Newberry?

1 A We being the City of Newberry. Yeah. Sorry.

2 Q So PMPA was, bears the cost of the line? You as the
3 City of Newberry are trying to get the landowners and make
4 sure they're completely satisfied from the City's
5 perspective to do that?

6 A Correct. So the way that the agreement works with
7 PMPA is that they will pay for 110 percent of the
8 appraised value. Anything above and beyond that is the
9 responsibility of the member city. So for us, anything
10 above that was, you know, going to come on our, and then
11 you know, so we kind of drew those up. We had
12 conversations and then Todd went out and met with the
13 Oiens. I don't remember if it was Mr. or Ms. and both.

14 Q All right. So you're, where were you?

15 A We were looking at the northern routes. Then, Todd
16 met with the Oiens and the conversation of the middle
17 route came up, and we began to start looking at some, you
18 know, mutations at the middle of the property. At that
19 point, Todd and I had a meeting with Mr. Oien and we
20 showed him some maps in early June about kind of going
21 through the middle of the property. And I remember
22 frantically printing off a picture of five or six
23 different types of transmission poles, so I could kind of
24 show, hey, this is kind of what it looks like, what we
25 expect that it would look like. And we met with them and

1 as most interactions were with him early on, it was
2 pleasant. I mean, I felt like we were making some
3 headway. We bounced around a little bit and we'd spent
4 some money and, you know, I felt like we were doing the
5 neighborly thing to try to make it work out. And after
6 the kind of middle line, you know, we had a conversation
7 about it and he wanted to kind of see where it was. We
8 sent the surveyor out there to look at it and kind of spot
9 the line for him, the middle of the property and the like
10 and I believe at one point, he was out there on a tractor
11 of his own kind of clearing some to try to figure out
12 where the route was.

13 Q So wait a minute. Wait a minute. He was on a
14 tractor, bush-hogging the route where he thought the
15 right-of-way would go?

16 A I don't know. I'm not, I'm a city person. I don't
17 know what a tractor or a backhoe or some sort of machine.

18 Q Some kind of machine?

19 A Some sort of machine or anything.

20 Q In the woods? How do you know that's what he was
21 doing?

22 A I mean, he said that's what he was doing.

23 Q Okay. So he was, he told you he was on his
24 equipment--

25 A Well, he was looking for the center of his property.

1 He was looking for the irons that were in the ground.

2 Q Okay.

3 A So after that, you know, he realized where the line
4 was going to be and there have other folks have said,
5 there was some conversation about the specific trees and
6 the need to try to miss those. And we then paid for the
7 surveyor to go back out there and try to get the angles
8 of, that we would need for the trees to make sure that we
9 didn't clip the tops of those trees. Around that point,
10 Mr. Oien went out of the country and my next conversation
11 was after Todd got the phone call from Mr. Major kind of
12 really changed the tone of the whole conversation. It
13 became very adversarial. It was not, it just was not the
14 same type of interaction that Todd or I had had with them.

15 Q That was in June?

16 A In June, yeah.

17 Q From 2013, February to June, that's what you've been
18 talking about this far?

19 A Yes.

20 Q All the middle route, southern route, the northern
21 route, the second northern route and back to the middle
22 route, the bush-hogging of the center route, the talk
23 about the oak trees, all that was prior to Mr. Major
24 getting involved?

25 A Correct.

1 Q Okay.

2 A He got involved. Todd told me about it. I said

3 look, just leave it alone right now. Let's keep looking

4 at the rest of the property, because what was happening

5 every time we would change the line, it was causing

6 changes on, you know, the other end of the properties. So

7 again, in order to try to, as Mike Frazier and Alan Cobb

8 had said, you know, from our standpoint, if we could keep

9 it as straight as possible, it keeps costs down and things

10 like that. So as we're doing these mutations, you know,

11 northern side, southern side, middle, it's moving things

12 on the opposite end of the line. So we kind of worked on

13 that for a little bit and, you know, tried to see, okay,

14 can we go here. I remember quite a few different

15 mutations along the two Kibler properties, you know, is

16 there a way we can just stay on one and not have to

17 involve the other or, you know, are we going to end up

18 clipping both of them. And, you know, again, with the

19 goal being to minimize the number of folks that are

20 impacted by it. I then received a call from Mr. Major in

21 July, I believe, maybe latter July saying hey, I haven't

22 heard back from Todd, but my client, Mr. Oien, wants an

23 update on the transmission line. We at that point shortly

24 thereafter went out and met with Duke about the

25 possibility of tapping the line. There was no real

1 additional information at that point other than we were
2 trying to figure out a way can we get around these trees,
3 tap the line and do all that type of stuff. We then had
4 the first conversation at the City with the Oiens, and
5 they expressed some concern about kind of the positioning
6 of the line along the property line, as it relates to the
7 property line and asked if we put the, could put the bend
8 in there to try to get, I believe actually it was Ms. Oien
9 that kind of wanted, when she was driving in, didn't want
10 to see some poles and things like that and, you know,
11 could we bend it around this way. So I went back to Mike
12 and Alan and said hey, you guys, you know, is there
13 something we can do here? Again, if it's something that
14 is above and beyond what you guys think, you know, is
15 feasible, you know, we'll try to see what we can do to
16 facilitate it. So we went through that process and kind
17 of added that little dogleg into the initial or jag,
18 whatever you call it, in the initial start off and after
19 that, we had some kind of conversations with Mr. Major
20 about he started kind of asking for, you know, he wanted
21 the right-of-way agreement. He wanted me to give him a
22 cost of the timber. He wanted me to give him a cost of
23 the land. He wanted to give, you know, give this full
24 report and I told him, well, we're, I don't know that
25 we're a hundred percent where this line is just yet,

1 because it's moved a couple of times over the last eight,
2 nine months. So we went back and again, tried to kind of
3 solidify what we had and figure out is there a way, you
4 know, is there anything better that we can do, is there
5 anything that, you know, can we kind of finalize this and
6 say hey, if we can work with this, then we're good to go.

7 Q All right. Well, let me ask you a question to make
8 sure I understand. Mr. Major was representing to you that
9 he was acting on behalf of the Oiens?

10 A Absolutely.

11 Q And are you, did you have any personal interaction
12 with the Oiens after Mr. Major got involved where they
13 acknowledge that Mr. Major was acting on their behalf?

14 A Yeah. We had some meetings at City Hall where it was
15 specified that he was going to be out of the country or do
16 something and that I needed to relay any information to
17 Paul Major. So I began to funnel everything through him
18 so that he was involved. I didn't know what arrangement
19 they had, but that's what he asked me to do, so that's
20 what I did.

21 Q And that's what Oiens and Major did and you just
22 complied with those requests?

23 A Correct.

24 Q By including Major in all these decisions?

25 A Correct.

1 Q Okay. All right. Keep going. So Major wants timber
2 values, right-of-way details, and he wants you to start
3 talking money?

4 A Right. And the first, I asked Mike to send me a copy
5 of the standard kind of PMPA right-of-way agreement and he
6 sent it to me, and I passed that along to Mr. Major who, I
7 believe, he said he had talked with the Oiens and that his
8 clients were unhappy with some of the verbiage in there
9 and they were not willing to, you know, or unhappy with
10 certain aspects of it relating to the antennas and the
11 antenna provision and the easement and things like that,
12 the perpetual easement. But again, he said, you know, I
13 want to, I need you to come up with an offer; I want you
14 to come up with a timber value, and I want you to come up
15 with, you know, a total compensation package, I believe he
16 called it. And again, the interactions with the Oiens
17 were pretty pleasant. The interactions with Mr. Major
18 were pretty adversarial. I mean, he told me on just about
19 every occasion that I met with him that the Oiens, that
20 his clients would gladly welcome condemnation and they
21 would find that 12 of their peers would side with them
22 over the power company, which is exactly what Todd and I
23 were trying to avoid from the get-go. You know, I'm not
24 adding doglegs. I'm not moving the line around to condemn
25 it. Obviously, we're trying to keep everybody, again, as

1 happy as possible so.

2 Q All right. Let me interrupt you for one second and
3 show you what's been marked as Plaintiff's 12 and ask you
4 if that's an email where you were responding to some of
5 the questions that you just outlined.

6 A Yeah, this is a email that Mike Frazier and the folks
7 at PMPA worked, some responses to specific questions that
8 Mr. Major had.

9 Q Mr. Major had on behalf of the Oiens related to the
10 right-of-way agreement and the offer of a pole count and
11 that sort of thing?

12 A Correct.

13 Q Okay. I show you what's been marked as Plaintiff's
14 exhibit 11. Is that an email where you're communicating
15 with Paul?

16 A Yes.

17 Q What are you asking for permission to do there?

18 A At that point, we were trying to get back out,
19 because he was pretty adamant about trying to get, he
20 wanted to know exactly, we had kind of, he had backed off
21 a little bit of some of the right-of-way stuff, but he
22 wanted to know the value of the timber and wanted to know
23 the value of the land. And I said before we can get
24 there, we've got to have an official survey done. We had,
25 you know, we sent somebody out to mark a center line and,

1 you know, we had pegged some points along the lake, but we
2 hadn't done a true survey other than, you know, hey this
3 is the approximate square footage and this is the cost per
4 acre. So at that point, we were asking for access to the
5 property so that we could send the surveyors back out
6 there.

7 Q And what was the date of that?

8 A November 4th.

9 Q All right. Let me show you what's been marked as
10 Defendant's 12. Do you recognize that email?

11 A Yes.

12 Q Is that an email you got from Paul?

13 A It is.

14 Q And the last paragraph of his email, what does he
15 make clear?

16 A Well, two things and, you know, first he's asking get
17 the survey done and Mr. Oiens allowed us to get on the
18 property. Get the survey done. Get me the offer of pole
19 count location and what have you. But then at the end of
20 it, again, it's this kind of almost passive-aggressive.
21 It's hey, we're working together but, oh by the way, we're
22 never going to sign your right-of-way agreement. And
23 then, you know, again, we're in November, so it's eight
24 months since we started and the tone is we're not going to
25 sign it. You know, he's telling me hey.

1 Q And that was after you had answered the questions
2 about the terms and y'all had talked about the
3 right-of-way agreement. The Oiens agent, Mr. Major, was
4 telling you we're never going to sign a right-of-way
5 agreement.

6 MR. POPE: A leading question, Your Honor. I object.

7 THE COURT: Say that again.

8 MR. POPE: Leading.

9 THE COURT: Rephrase your question.

10 Q And tell me where in the timeline this was as it
11 relates to the route that you're discussing, that you've
12 had surveyed, that they've asked for a timber count, where
13 are we in the process.

14 A Well, we didn't talk about any of the routes after
15 June through, you know, November. We were on the middle
16 route and we were talking at that point about right-of-way
17 language and value. And again, you know, it's I'm not
18 going to sign the right-of-way agreement and my clients
19 would rather you just come and condemn us, because you're
20 the big, bad power company, and I think he actually called
21 us that at one point.

22 Q Okay. The discussions with PMPA, the City of
23 Newberry, the engineers, the Oiens and Mr. Major about
24 changing the route, were you trying to negotiate in
25 good-faith a route that was acceptable to everybody?

1 A Yeah. I think that was the, that was the goal and
2 Todd and mine from the get-go. I mean, again, and this is
3 not something that I wanted to necessarily do, but the
4 City has needed a substation for 20 years.

5 Q And the culmination of those negotiations would be
6 deciding of a right-of-way, would they not?

7 A Correct.

8 Q In other words, you weren't negotiating for fun?
9 There was both the City, PMPA needed a resolution to where
10 to put the transmission line?

11 A Correct.

12 Q Okay. At some, at the point you got an email from
13 Mr. Major that said my clients will never reach an
14 agreement with you, did you then believe that continuing
15 to negotiate about potential alternate routes would not
16 lead to the ultimate goal which was deciding the
17 right-of-way?

18 MR. POPE: And that's a leading question.

19 THE COURT: Overruled. Continue.

20 A Could you ask me the question again?

21 Q No, probably not. I can try. In November when you
22 got the email from Mr. Major referencing the Oiens refusal
23 to ever sign a right-of-way, did you believe that that
24 portion of the right-of-way acquisition where you
25 negotiated the landowner for the signing of a right-of-way

1 had ended?

2 A No, and I, I guess, I fault myself for some of that
3 being somewhat optimistic that we could work through
4 because, again, my interactions with the Oiens themselves
5 were good. This guy's gotten kind of in the middle of it
6 and he's, you know, I think a little bit more agitated
7 than everybody else was and I thought hey, you know, I
8 think we can still work through this. We've figured out
9 that we can bend this and do this and work it out for them
10 but, you know, I'm kind of getting this push back from
11 him. And, again, the interactions that I had with the
12 Oiens up until that point was pretty good. You know, I
13 felt like we were working together to come to a solution
14 and but, you know, I think at that point we still, we went
15 through, had the survey done and we brought the appraiser,
16 met with Mr. Major. They walked around. We got the
17 report back from that and Mike gave me the full report
18 which I sent on to Mr. Major. And, you know, he came back
19 and said that the value was too low and, again, you know,
20 we went through the whole threat of condemnation and that
21 type of thing.

22 Q So hold on. So Mr. Major said he didn't like the
23 appraisal. Did he give you his appraisal?

24 A No, he didn't. He told me at that point that his
25 client rejected the offer. That, you know, he thought it

1 was not fair and I still had not given him a value of the
2 timber. He kept coming back to that.

3 Q And when did the Oiens make you a counter offer or
4 Mr. Major, the Oiens through Mr. Major? Did they ever say
5 we'll take X?

6 A No. We never got a, I mean, again, at that point it
7 was, you know, we gave the appraisal and I kind of
8 thought, as with some of the other property owners, say,
9 well, you know, I think it's worth this and whatever and I
10 didn't get that back. What I got back is this is not
11 just. We need more information on the timber and stuff
12 like that. And then shortly thereafter, you know, they
13 said that they wanted to change the line to the southern
14 route and, at that point, I guess I kind of, the wind got
15 out of my sail at that point. You know, it's now a year
16 going on. I got a substation that's completed.

17 Q So when did they come back to you? If you remember,
18 when was the time frame when they came back and said we
19 changed our mine, we want to go to southern route?

20 A It was after the appraisal was completed on the
21 center line. So it would have been March 14, I think.

22 Q So all the emails from Mr. Major up till that point
23 wanted an appraisal for the center route?

24 A Correct.

25 Q The timber values for the center route?

1 A Correct.

2 Q The survey of the center route. And when you made
3 them that offer, which you made an offer of the appraisal,
4 I suppose?

5 A Yeah. I sent him the entire, I actually sent him the
6 entire packet, 80 pages or whatever it was.

7 Q And they said we want to do the southern route?

8 A He got back and said my clients want to do the
9 southern route, and then we had subsequent meetings at the
10 City where they were, you know, they told us that they
11 wanted the southern route.

12 Q Okay. Let me show you what's been marked as
13 Plaintiff's exhibit 10.

14 A You want those back?

15 Q Yeah, I'll take that back. Let me see if that's, is
16 that Defendant's 10. Sorry, that may be the wrong one.
17 Disregard that. I can't hardly read sometimes. Do you
18 recognize that email?

19 A I do.

20 MR. POPE: What exhibit?

21 MR. BANNISTER: 10. It's Plaintiff's 10, not
22 Defendant's 10.

23 MR. POPE: Okay, sir.

24 Q Do you recognize that email?

25 A I do.

1 Q I believe, explain that email? Who's it from? Who's
2 it to?

3 A This is from Alan Cobb and, again, we're working
4 through and talking about the possibility of different
5 routes, you know, based on changes that we are doing on
6 the Oien property. And he asked the question of when do
7 you think we will hear from the owners on the west side of
8 121, if we cross more toward the middle of their property,
9 to which I responded, he was pretty adamant that he wanted
10 the line at the southernmost property. And if you
11 continue on in the email. He comes back and says, what
12 are you referencing, and I send back the tax map number of
13 the Wilson west tract.

14 Q Which one is that on here?

15 A Well, you want me to get up?

16 Q Yeah, if you don't mind.

17 A (Witness complies.)

18 Q This tract on the opposite of 121?

19 A Yeah. 337-2-11.

20 Q So what, what you're referring to is not in April of
21 2013 that the Oien were adamant about the southern route,
22 but somebody completely different on the other side of 121
23 is adamant about the southern route?

24 A Yeah. The only question in the email was answered
25 and that was, what do you think we will hear from the

1 owners on the west side of 121.

2 Q Which is--

3 A Which is 337-2-11.

4 Q Okay. Did you reach some time frame or at this point
5 a year into the project, a year into the project where you
6 needed to move forward with the case?

7 A Yeah. By March, we had already taken delivery of the
8 transformers and the substation and we were wiring
9 everything up. We had already done a secondary back feed
10 around to kind of stabilize loads. We were running into a
11 situation where we were overloaded in certain areas. We
12 were going to have to tie some stations together. So we
13 went through that process and took delivery of our large
14 power transformers and around that time in March, we were
15 at the point where we were ready to energize the
16 substation. So we had, the City had spent 3.6 million
17 dollars at that point.

18 Q On the substation?

19 A On the substation.

20 Q And you were ready for the line to get turned on?

21 A Still waiting.

22 Q And you heard from the Oiens that they now wanted to
23 change routes?

24 A I heard from Paul Major that they wanted--

25 Q Paul Major?

1 A Correct.

2 Q That the Oiens wanted to change routes?

3 A Correct.

4 Q Did you have any other meetings after that with the
5 Oiens?

6 A I did. And I don't recall exactly the time frame,
7 but we had another meeting. And then I believe in the
8 fall or late summer, early fall, the condemnation papers
9 went out at that point, and Mr. Pope per the Oiens request
10 contacted the City Manager and asked if we could come and
11 meet with them at his office to discuss the possibility of
12 going down the southern route.

13 Q And did you meet with them?

14 A We did.

15 Q And did you decide to change the route or stay with
16 the center route?

17 A No, and at that point, I mean, and I--

18 Q Had you at that point started acquiring other
19 right-of-ways down the line?

20 A We were, we were, at that point, virtually done with
21 the other right-of-way acquisition. But yeah. Again, you
22 know, and got a lot of wind out of the sail and after a
23 year of trying to make something work and, actually, you
24 know, putting our own kind of rate payers out and saying
25 hey, you know, we can try to work something out here

1 that's going to work for everybody. And then kind of
2 being slapped back and saying no, we're going to, you
3 know, we're going to try again and we're not going to
4 agree with this and not going to agree to that. And, you
5 know, and at that point when the condemnation papers, I
6 mean, I got to move. I mean, I can't, I'm trying hard to,
7 you know, be as understanding and conscientious of kind of
8 the hey, you treat people the way you want to be treated
9 and, you know, but I got a job to do and I got 5,000
10 customers I have to answer to and I've got rate payer
11 dollars sitting there. And I just, you know, I can't
12 stand by anymore and wait for, you know, hey, let's do
13 another mutation. Let's try to engineer something else.
14 Let's try to do something else. Let's see if we can still
15 come to an agreement on the right-of-way papers. I mean,
16 we're talking about a line, but we still hadn't ever
17 solved the issue of the antennas or the, I mean, we talked
18 about it, but there was never hey, this is okay or that's
19 okay. It wasn't until recently that I heard that, you
20 know, we could sign a right-of-way agreement.

21 Q In other words, the Oiens never agreed to the terms
22 of the right-of-way that you would ultimately need signed
23 regardless of where it was?

24 A Correct.

25 Q And the place that you thought it was that they were

1 asking you for making a demand of PMPA, the City of
2 Newberry for money for just compensation and saying you
3 were undervalued. They abandoned that route and went to a
4 new route?

5 A Yeah, I think, I don't know if they did it or it was
6 relayed to me through Mr. Major.

7 Q All right. But somebody on their side ultimately
8 says, okay, whatever you thought, we're going to do
9 something different. So at some point when you filed the
10 condemnation, you've abandoned trying to work out an
11 agreement with the landowner, and so now you were
12 condemning the property? Just to make sure I got it
13 right. You're still going to negotiate and try to work it
14 out but changing the line at this point is passed?

15 A But still, we leave a dogleg in it, because that's
16 kind of what, when the interactions that I had with the
17 Majors' were kind of one on one, that's where we had kind
18 of agreed on the line going.

19 Q All right. You didn't go back on your commitment to
20 put the angle in the line from the tap point so that you
21 hug the property line down the middle, did you?

22 A No. That's what I was saying. I mean, still in the
23 condemnation, the line has that in it, because that's, at
24 the time, that's what they wanted to have and what I was
25 trying to facilitate.

1 Q I guess, they've alleged that, you know, y'all were
2 bullies and arrogant and didn't know how they'd been able
3 to discuss the line, but the line you ultimately condemned
4 is more expensive and is adjusted per their request?

5 A That's correct.

6 Q Did anything stop you from just getting rid of that
7 accommodation to the Oiens and running it straight?

8 A That's kind of what we had agreed on and that's kind
9 of the way I wanted to leave it.

10 Q So you didn't go back on your agreement that you'd
11 adjust it, you just condemned what you believed to be the
12 best of three bad turns?

13 A Correct.

14 Q All right. So going through the route selection
15 process, were you part of the route selection meetings
16 that went on?

17 A We went through quite a few kind of mutations and
18 conversations whether it was over the phone or at City
19 Hall.

20 Q All right. So let's go through from the point that
21 you got to, okay. That's, let me show you what's marked
22 Plaintiff's exhibit 14. There was a good bit of
23 discussion with Mr. Cobb about the alternative routes that
24 are shown there in red. Let me ask you first about the B
25 routes. There's three iterations that all meet at the B,

1 the red B, and then go when they intersect the 90 degree
2 angle with the line. You see that?

3 A Yes.

4 Q Were you in meetings when that route was rejected?

5 A Yeah. I think I had a lot to do with the rejection
6 of that route.

7 Q All right. And tell me how the discussion went
8 related to that route?

9 A The goal is to minimize the number of property owners
10 that are impacted and with any of the B properties, I'm
11 getting way to close to homes. I mean, at the end of the
12 day, I got to cross through. I got to tear up a bunch of
13 properties and some of them on the back side of this B
14 line, I remember going out and looking at them and there
15 wouldn't be any property left. I mean, that the parcel
16 that's there would be gone, so I'd be taking up entire
17 parcels as I kind of traversed through the land there.

18 Q Was there at least one house that would have to be
19 condemned?

20 A Yeah, there was a business that would have to be
21 condemned as well. In the B drawing, it runs right over
22 the top of a business.

23 Q And how many lots would the subdivision lose if you
24 drew it on the B line?

25 A There are at least two of the parcels in that.

1 subdivision that would be gone once you add the
2 right-of-way in, but there is others that would be
3 impacted pretty significant. I mean, those aren't huge
4 parcels. So if you take 75 feet from the back side of
5 them, there's not much left there, especially when you get
6 into those more narrow ones around the end there.

7 Q So and the meeting discussing the construction of the
8 subdivision and the condemnation of the business and the
9 house, was that sufficient to warrant, is that basically
10 what caused y'all to not choose B?

11 A Again, from my standpoint, my goals were to try to
12 minimize the number of properties that were affected.
13 There are, you know, more properties affected just in this
14 portion of the line than there were through the other
15 proposed route.

16 Q And you are sort of the City of Newberry's
17 representative in the discussions about route selection?

18 A I'm the one that's going to deal with people
19 complaining here in town.

20 Q And so when the court in Southern Development says
21 intended use of property, discussions with landowners, and
22 Mr. Rogers said that's an important part of the route
23 acquisition analysis, B, from your standpoint was not
24 acceptable?

25 A Absolutely not.

1 Q Was there any point then in going and asking the
2 landowners that would be affected by B3, B2 or B1 what
3 they intended to use their land for?

4 A Not in my mind.

5 Q Why not?

6 A Because again, I'm going to double the number of
7 properties that I'm going to impact.

8 Q Because ultimately you're going to get to the where
9 it becomes just the B line and that portion is
10 unacceptable?

11 A That portion is unacceptable. Yeah. I mean, you're
12 tearing right through the middle of a subdivision,
13 potential subdivision.

14 Q Okay. Now, let me ask you about some of the
15 properties that might be affected on A1, A2 and A3. Did
16 you look at that choice of lot?

17 A We did, yeah.

18 Q Were you in the meeting with PMPA, the engineer, Todd
19 Guy and who else was there?

20 A As Alan stated earlier, we had a few meetings where
21 we sat down in the conference room and ate lunch and
22 talked about and I had my computer and he had his out, and
23 we were looking at different tracts and parcels and ways
24 that we could try to snake this thing through and impact
25 it.

1 Q Did y'all have a big screen T.V. in there?

2 A We did.

3 Q You hooked your computers up to it?

4 A We had them both, yeah.

5 Q So y'all could all look at the same drawing?

6 A We were.

7 Q In hi-def?

8 A As hi-def as it can be.

9 Q So look at A1. And you heard the engineer talking

10 about going back, wetlands and the pond and that will be a

11 challenge from an environmental and engineering

12 standpoint. You heard him talk about the cost of the

13 additional angle poles.

14 A Yes.

15 Q As a representative of the City of Newberry, did you

16 consider anything for the option of A1, is that A1? I'm

17 sorry, A3.

18 A Well, any of the A routes--

19 Q A3, the bottom one.

20 A Okay. Well, any of the A routes just would, because

21 of the proximity to the homes.

22 Q Proximity to the homesite of Mr. Oiens?

23 A No. A1 is, you know, I don't have a scale here, but

24 it's awfully close to the, I guess, what we're referring

25 to as the cottage now, but was the home on the property.

1 And A3, you know, potentially is going to impact all of
2 those property owners in that subdivision south of the
3 Oiens property.

4 Q How many people live in it? How many home sites
5 would be basically have their back yard be power line,
6 right?

7 A I'd say at least 10 or 11.

8 Q So do you know if people live out there?

9 A They do.

10 Q Are there actual houses?

11 A There are.

12 Q Is that why you rejected the A option?

13 A That's why I was pretty adamant that we not, you
14 know, again, my goal was to minimize the number of
15 properties that we were affecting.

16 Q All right. So in the hypothetical that Mr. Oien's is
17 correct and Mr. Major is correct. If location of a, pole
18 transmission line within 600 feet of a home reduces its
19 value by 10 to 20 percent, how many of those houses are
20 within 300 or 400 feet to those transmission lines if they
21 were constructed on the A route or the B route?

22 A I'd say there are about 16 to 20 that would be
23 damaged.

24 Q Do you need an appraisal to tell you that it would be
25 more expensive to pay 16 people who own homes 20 percent

1 of their home price than it would be to pay one landowner
2 who doesn't have a house on this property for the damage
3 the transmission line would cause? Do you need an
4 appraiser to come in and appraise all those houses to tell
5 you that?

6 A No, not at all. And the problem there is that, I
7 mean, some of those houses are 250 feet from the property
8 line. I mean if 600 feet is too close, 250 is too close.

9 Q Well, once you looked at that and knew there were
10 houses there, did you believe that route was rejected and,
11 therefore, the appraisals would not be necessary? Is that
12 how the meeting went?

13 A We as the City, I was not going to say hey, I want
14 y'all to look at this line and do a bunch of appraisals
15 and surveys for something that I would have a difficult
16 time, you know, standing up and explaining to people why
17 I'm doing that instead of going through the woods.

18 Q And that's what the route that was ultimately
19 selected goes through the woods, doesn't it?

20 A Correct.

21 Q Did you have an opportunity to talk to Ms. Oien's?

22 A I did.

23 Q And did she tell you anything about her personal
24 feelings about where the line should go?

25 A Early on, she had some concerns about the garden at

1 the homesite and wanting to, you know, ask questions about
2 what it would look like and what kind of trees. I
3 remember having a meeting with the city manager where we
4 went through some conversation about trees and things like
5 that in the right-of-way and kind of what could be grown
6 around it, and then we also had the conversation about the
7 kind of the dogleg in the line. But I remember a
8 conversation at the very end, kind of in this process,
9 where she made it pretty clear she just didn't want the
10 line on her property.

11 Q She made it clear she didn't want it on her property
12 at all?

13 A Correct.

14 Q Did she ask you to move it to somebody else's
15 property?

16 A She indicated that she, couldn't you guys put this
17 line on somebody else's property?

18 Q Did you believe from your conversation with her that
19 she felt entitled for you to do that?

20 A I mean, I think it was a, you know, kind of go and do
21 that. But again, at that point, I kind of felt like it
22 was a moot point. You know, we had already gone through
23 various mutations of the line.

24 Q Do you believe this lawsuit is just following through
25 with Ms. Oien's desire to have the line moved somewhere

1 else and an attempt to stop the City of Newberry and PMPA
2 from putting a transmission line--

3 MR. POPE: Objection.

4 THE COURT: Sustained.

5 MR. POPE: Object. He can't--

6 MR. BANNISTER: Okay.

7 THE COURT: I already sustained it.

8 Cross-examination.

9 MR. POPE: Thank you.

10 CROSS-EXAMINATION

11 By Mr. Pope:

12 Q Mr. Regier, you have been with the City about four
13 years?

14 A Seven.

15 Q Seven. Excuse me. You started as the IT director?

16 A Correct.

17 Q And you have never been involved in a transmission
18 line acquisition before, is that right?

19 A Correct.

20 Q And I take it you had no training with regard to
21 procedure for land acquisitions, is that right?

22 A I had no, I have no formal training for land
23 acquisitions.

24 Q That's all right.

25 A Can you hear me?

1 Q You're a little bit too close.

2 A Better?

3 Q Yeah.

4 A I have no formal training for land acquisitions, but
5 I would say that I'm well-versed in customer service.

6 Q All right. And you've never been involved in any
7 route selection for a transmission line or ever, is that
8 right?

9 A I was, as we talked about in the deposition, I was
10 involved in--

11 Q -- transmission.

12 A --not transmission, distribution.

13 Q And have you ever heard of the Southern Development
14 case before this case?

15 A I have not.

16 Q Now, you understand that options are frequently
17 looked at with regard to individual property owners
18 through a transmission line?

19 A Sure.

20 Q And it's perfectly reasonable for landowners to look
21 at those options and consider all of them, and then make a
22 decision?

23 A I think we looked at a lot of them.

24 Q Huh?

25 A Yes, and I think we looked at a lot of them.

1 Q And you as the City representative, you were a
2 liaison, really, for it, correct, in this process?

3 A Yeah. To a degree, yeah. I mean, I would say I
4 was--

5 Q Well, didn't you say that in your deposition you were
6 a liaison?

7 A Yeah, I mean, to a degree I am.

8 Q And you would agree that communications with
9 homeowners are imperative, good communications?

10 A That's what we tried to do, yeah.

11 Q And so now we've got routes that are being looked at
12 and you as the City rep, your company, PMPA has perhaps
13 deadlines, correct, or proposed deadlines for a route, for
14 a project?

15 A Well, I think we were the one implementing the
16 deadlines.

17 Q Well, you have a deadline?

18 A Right..

19 Q All right. But the point is, there's been no
20 testimony that you never told the Oiens, now you got to
21 make a decision on these three routes. We got 30 days or
22 20 days or 40 days?

23 A It's a difficult decision.

24 Q I'm sorry?

25 A It's a difficult decision having a line, again, as we

1 talked about in my deposition.

2 Q Yeah. They're not aware of your deadlines, correct?

3 A No. I think we told that we had, I mean as we have
4 discussed, we talked about the deadline. You know, I
5 think Mr. Oien even referenced us needing to flip the
6 switch at a certain time.

7 Q I know. What about a deadline to establish a route,
8 so to speak. You never told him of a date--

9 MR. BANNISTER: Now, he just answered that question.
10 He said that he didn't.

11 THE COURT: Well, repeat your answer and repeat your
12 question and he can answer it.

13 Q You never told the Oiens that you had a certain date
14 by which you had to know which route they wanted?

15 A No. I believe we did and Mr. Oien referenced it.

16 Q What date was it?

17 THE COURT: Well, let him finish. Let him finish.
18 Go ahead.

19 A Mr. Oien referenced it. I believe the date was April
20 of the following year we had to have the loading change.

21 Q You needed a decision by April of 2014?

22 A No, I needed to have the substation energized, if
23 possible, by that point.

24 Q Well, that was two years ago?

25 A Correct.

1 Q All right. But you don't begrudge landowners from
2 looking at various options?

3 A No, and that's why I, as the City, was willing to
4 explore all options and try to work with them.

5 Q In Defendant's exhibit 11, give me those back.

6 A Okay. Thank you.

7 Q Defendant's exhibit 11, that's my copy, and so I'm
8 trying to read it.

9 A Okay.

10 Q All right. You wrote Mr. Major and said you wanted
11 to know if PMPA could send out their survey to provide the
12 information the Oiens requested, right?

13 A Correct.

14 Q Okay. So it's obvious that at that date which was
15 November 4, 2013, they were looking to get that
16 information so they could make some determination of which
17 route?

18 A Correct. But I don't think there was a determined--

19 Q And they, did they come to City Hall in March of 2014
20 after that survey and tell you that they could not live
21 with the middle route or the south?

22 A They come back in March and told me that they could
23 not accept the terms of the right-of-way agreement, accept
24 the compensation and that they wanted the southern, and
25 wanted us to look at the southern route.

1 Q That was March of 2014?

2 A It was about that time, yeah.

3 Q After they got the results of the survey from
4 November, and do you remember having the survey done?

5 A After we got access to the property--

6 Q The survey, excuse me. Sorry.

7 A Go ahead.

8 Q You did, the survey was done like February of 2014,
9 wasn't it?

10 A I don't remember when the survey was done.

11 Q A couple of months after November?

12 A Well, I think we got the word back in the middle of
13 November and we began the process of, you know, getting
14 the surveyor to go out there and we got them out there,
15 and then I think the appraisal was done shortly
16 thereafter. We put their appraisal ahead of everybody
17 else's to try to get it back to them.

18 Q And when they got the results of the survey when they
19 came to your office with Mr. Major and said we can't
20 accept the middle route, please do the south, the southern
21 route, correct?

22 A I don't remember them asking for the southern route.

23 Q Didn't you just say that they rejected the middle
24 route?

25 A I believe they rejected the terms of the right-of-way

1 agreement and it's still at that point in March Mr. Major
2 was asking about compensation for the middle route. So
3 then at the very end of the meeting, we had the
4 conversation where they said hey, can you look at the
5 southern route and at that point, you know, we're, I'm a
6 year in and I started a year ago on the southern route.

7 Q But you had never told them that it was going to be
8 too late for them to request the southern route by March
9 of 2014?

10 A They were aware of the timeline that we had.

11 Q How do you know, you never wrote them? Did you write
12 them a letter?

13 A Did I write them a letter?

14 Q Did you write and say please tell me by this date or
15 it's going to be too late?

16 A No, we met face to face.

17 Q And in March, she told you she didn't want the middle
18 route?

19 A Correct.

20 Q Did you ever write them and say, well, you got 30
21 more days to accept it or tell us what you want to do?

22 A No. Mr. Major made it clear that he wanted us to
23 condemn the property if we wanted to go the middle route.

24 Q Now, you referred, did you, your email referred to
25 Mr. Billy West as the king?

1 A That's correct.

2 Q Why is that?

3 A As I said in my deposition when I worked at the
4 college, he was involved in every committee and we just
5 referenced him as the king, because everything seemed to
6 always have to go through him. So I, when I moved over to
7 the City I--

8 Q So you had to talk to him rather than directly to the
9 Oiens?

10 A No, I didn't talk to him directly about the Oien
11 tract. Todd Guy talked with him and got Misty to reach
12 out to them and reach out to Mr. Mills.

13 Q And you had some meetings on the site, is that right?

14 A I did.

15 THE COURT: Did you say the media?

16 A Meetings.

17 Q Meetings.

18 THE COURT: Meetings. Meetings. Thank you.

19 Q And you had three meetings on the site March the
20 13th, 2013, is that correct?

21 A That sounds about right.

22 Q Mr. Frazier, Cobb, and yourself and Todd Guy?

23 A Sounds about right.

24 Q And the Oiens weren't--

25 A And Mr. Mills.

1 Q --present?

2 A No, Mr. Mills was there.

3 Q And you had a meeting of August 8th, 2013 on-site
4 with yourself, Mr. Frazier, Cobb, and Duke Power, is that
5 right?

6 A That sounds about right.

7 Q And you didn't invite the Oiens to that either,
8 correct; you didn't see them that day?

9 A I didn't see them that day. No, the last interaction
10 I had with the Oiens on their property was in June.

11 Q I'm sorry?

12 A The last conversation I had with the Oiens was on
13 their property, on their property was in June. That was
14 the last on their property.

15 Q And you understood, you had, when the Oiens would ask
16 you questions when you would call them or see them, you
17 would have to defer to PMPA to get answers, correct?

18 A Not always, no. I mean, we, again, there's some
19 stuff that I could answer and there's other things, you
20 know, hey, what's this pole going to look like? How many
21 poles are there, things like that. Then there was other
22 stuff about, you know, when Major got involved where he
23 was asking about cost of timber and, you know, I'd give
24 that to an expert.

25 Q I understand that. But I'm just saying if they had

1 technical questions, you had to go to PMPA--

2 A I went to the engineer.

3 Q I'm sorry?

4 A I went to the engineer.

5 Q Mr. Frazier?

6 A Mr. Cobb or Mr. Frazier.

7 Q Oh, Mr. Cobb?

8 A Yeah.

9 Q But you understand that the Oiens were a little
10 frustrated because of the condemnation and sort of being
11 open or active and the process, the project had been
12 active until November.

13 A Like other property owners have never met with PMPA.
14 We facilitated and tried to facilitate the right-of-way
15 agreement signing during those eight months or so.

16 Q Well, you understand that they were frustrated,
17 whether it was valid or not, and they were frustrated they
18 wanted to see the horse's mouth--

19 MR. BANNISTER: Judge, I'm going to object to the
20 question about whether or not he knows if somebody's
21 frustrated.

22 THE COURT: Just lay your foundation.

23 MR. POPE: All right..

24 Q Did Mr. and Ms. Oien express frustration that they
25 had not heard from PMPA directly, and they wanted to speak

1 to the horse's mouth?

2 A Mr. Major did.

3 Q All right. And based on the request of the Oiens,
4 you had your first and only meeting with PMPA, they did,
5 November 26, 2013?

6 A That's the only meeting that I know they were in with
7 PMPA.

8 Q Then, you had a survey done after that to answer some
9 questions they had, and then they came to your office in
10 March and said we can't do the middle route, it has to be
11 the south, correct?

12 A They came back and said they were not going to agree
13 to the middle route.

14 Q But you learned at some point around that time that
15 they wanted the southern route?

16 A They asked if we could put the line on the southern
17 route, in and out there, yes.

18 Q I'm sorry?

19 A Yes, they asked us if we could put the line on the
20 southern side of the property--

21 Q Okay.

22 A --around that time frame.

23 Q And the southern route it had already been drawn by,
24 it's Plaintiff's exhibit 12, and it was drawn by Mr. Cobb
25 at some point prior to that, and this drawing exhibit 12

1 is a engineer's drawing?

2 A Correct.

3 Q Okay. Because that's what they were referring to
4 when they said southern route, correct?

5 A I don't know. We never got to a drawing and say hey,
6 sketch this. That was the original southern route that we
7 talked about that they had some concerns about the buffer.

8 Q But this is the only southern route that had been
9 drawn at that point, exhibit 12?

10 A Right. That's the southern route that we used the
11 year prior.

12 Q And you'd never worked with PMPA before on a project
13 like this, is that right?

14 A Not on a transmission line.

15 MR. POPE: Judge, could we take about a five-minute
16 break.

17 THE COURT: Sure. Take a five-minute break. You
18 can't speak to anybody during the break about your
19 testimony.

20 MR. REGIER: Okay.

21 (Whereupon, a short break was taken.)

22 CONTINUE CROSS-EXAMINATION

23 By Mr. Pope:

24 Q Mr. Regier, so for the last two years it's been clear
25 to you that the Oiens have adamantly requested the

1 southern route since March of 2014?

2 A That's my understanding.

3 Q All right. Now, we talked about the time frame from
4 the condemnation. Now, let's take, for instance, the
5 average person's knowledge of condemnation is pretty low,
6 correct?

7 A Yeah.

8 Q All right. We got a bridge down here on Collins
9 Street that's now closed for rebuilding.

10 A Correct.

11 Q It's a condemnation project, right?

12 A I don't believe it is.

13 Q Well, it's right by your office. They're condemning
14 some land around the bridge for that project?

15 A No condemnation. I don't believe there's any
16 condemnation in that project.

17 Q Well, the church. You ever heard of Bethlehem
18 Baptist Church?

19 A Yeah.

20 Q Well, they have their property being--

21 A I don't know.

22 Q Well, anyway the point is everybody--

23 A That's DOT's.

24 THE COURT: Hang on. Let him finish. Go ahead.

25 A It's a DOT project.

1 Q I'm sorry?

2 A It's a DOT bridge.

3 Q Yeah. Well, I don't mean it's a City project.

4 A Yeah. Well, I don't know what happened. I know that
5 Bethlehem and the DOT were working together on it, but I
6 don't know what.

7 Q Right. My point is telling you is that project has
8 been in the works for like three or four years, you know
9 that?

10 A I don't know how long it's been.

11 Q A long time.

12 A Sure. Sure.

13 Q Yeah. So with condemnation projects, sometimes it's
14 hurry up and wait. They're going to do something, then
15 they don't, then wait, and they do it, and the landowner
16 doesn't know these timeframes, correct?

17 A I don't know what the landowner would know.

18 Q Well, unless he's told, he's not going to know.

19 A Well, I don't, I never told any of the landowners
20 that we were going to condemn their property.

21 Q Okay.

22 A I spent a year trying to avoid it.

23 Q The condemnation here commenced February of 2015?

24 A I don't know when it officially started.

25 Q That's when the notice of condemnation was filed,

1 correct?

2 A I don't know.

3 Q All right.

4 A I thought there was something in August, that August
5 the 14th that started the process.

6 Q We will get to that shortly. You talked a while ago
7 about routes B1, A1, A3. I want to ask you if you're sure
8 what you just said.

9 A I don't have a map in front of me.

10 Q Do you have your deposition? Okay. This is your
11 original deposition and we've asked that it be marked
12 Court's exhibit whatever.

13 THE COURT: It would be Court's Exhibit--

14 MR. BANNISTER: Judge, that's, which deposition is
15 that?

16 THE COURT: This is the deposition of Marc Regier.

17 MR. BANNISTER: Okay. Sorry.

18 COURT REPORTER: It'll be Court's No. 3.

19 THE COURT: Is that Court number 3?

20 COURT REPORTER: Yes, sir.

21 (Whereupon, Court's exhibit No. 3 was marked for
22 identification.)

23 Q All right. Mr. Regier, I'll ask you to please turn
24 to page 62, line 15. My question was this, are you aware
25 of any discussion or route analyses for any of those six

1 options or routes, A1, A2, A3, B1, B2, B3. And your
2 answer was, I don't, I don't believe so. Is that correct?

3 A That's what's written here, yeah.

4 Q Yeah.

5 MR. BANNISTER: What line is that?

6 MR. POPE: 15 through 18.

7 MR. BANNISTER: Thank you.

8 Q And then I went on and ask you on line 19, you see no
9 written, no comparisons of those routes using the criteria
10 for route selection.

11 A Yes. In all the questions, you were asking about the
12 written and I don't believe, I still don't believe that
13 there was any written.

14 Q Lines 15, it didn't ask you about written. It says,
15 are you aware of any discussions or route analyses for any
16 of those six options. You said no, not that you remember.

17 A No, but you, did we talk about written prior to--

18 THE COURT: Just one second. You got to answer his
19 questions, and then you can explain it.

20 A Oh, I'm sorry.

21 THE COURT: Go ahead.

22 A One more time.

23 Q The question was you were asked if you were aware of
24 any of discussions, that means talk, about or a route
25 analyses for any of those six options, and you said you

1 didn't remember any, is that right?

2 A At the time, I didn't remember any.

3 Q This was October 7, 2015. What was wrong with your
4 memory then?

5 A What was wrong with my memory is that--

6 MR. BANNISTER: Judge, he said I didn't remember
7 anything. Mr. Pope interrupted him and asked him what's
8 wrong with his memory. He's entitled to finish his
9 answer.

10 THE COURT: I agree.

11 MR. POPE: Okay.

12 THE COURT: Let him finish.

13 A So I'd said I didn't believe so. I didn't spend time
14 going through 580 whatever pages of all my emails after I
15 sent them to you. I then prior to the trial went back
16 through all of my notes and, you know, I directly recall
17 having these conversations.

18 Q You produced 486 pages or PMPA did about this entire
19 case, correct?

20 A I believe it's somewhere around there.

21 Q All right. There's no word in any of those records
22 that references any discussions you had about those
23 routes, nothing. Can you direct me to one?

24 A No, but going through and replaying the entire thing
25 and starting at the beginning looking through all the

1 emails, it began to kind of agitate my memory and get me
2 remembering all of the very, I mean, the three years of
3 conversation that I've had on this project.

4 Q Yes, sir. And you said when I asked you in this
5 deposition that you had met two hours with your lawyer
6 before the deposition, is that right?

7 A And we were there for two hours.

8 Q No, not at the deposition. I asked you at the
9 deposition how long did you meet to prepare for the
10 deposition with your lawyer and you said two hours.

11 A Correct. And then you asked me what I looked at and
12 I said nothing and you said what did we talk about. And I
13 said we talked about the procedures of a deposition, but I
14 mean two hours to look through 400 pages, I can't read
15 that fast.

16 Q What would you, could you have possibly have looked
17 because it hadn't been produced? What could you have
18 looked at that would have refreshed your memory about a
19 discussion, a mouth to ear discussion?

20 A Going back through the process. Looking back through
21 all the emails, rereading them and remembering the
22 conversations. You know, and again, after three years of
23 this, I still today find myself going hey, I remember this
24 conversation what was with this person. You know, it's
25 not that my memory is terrible, but it, it's three years

1 and we're asking for specific details.

2 Q There's no allusion to any conversation, but not only
3 is it not directly referenced, it's not indirectly
4 referenced in any of these various documents?

5 A No. I'm not saying that it is. But what I'm saying
6 is that after going, after having to go through every
7 single one of these emails, I begin to redraw the history
8 and remember what all transpired.

9 Q All right. Well, look at page 63, line 11.
10 Question, let's look at the A routes first, A1, A2, A3,
11 and then we'll go to B. What was your answer about 13?

12 A I don't recall any conversation about A1, A2, A3, but
13 I vaguely remember having a conversation about the
14 inability to tap the Duke line somewhere further south
15 than that.

16 Q That's all you remembered then, is that right?

17 A That's correct.

18 Q You didn't remember anything about suitability of the
19 line or what property owners might be within 300 feet or
20 anything, is that right?

21 A No, not at the time.

22 Q Okay. Then, I showed you on page 64 or I'll ask you
23 now before I show it to you. There are not any problems
24 with routing on exhibit 2 to the Frazier deposition which
25 is the southern route. Is that right?

1 A I'm sorry. One more time.

2 Q Page 64, line 2, are you aware of any problems with
3 the routing on exhibit 2 to the Frazier deposition which
4 is the southern route. And your answer was, as you stated
5 before, I'm not an engineer, but I don't know. We kind of
6 abandoned that after they told us they didn't want to go
7 that way.

8 A Right.

9 Q And you weren't aware at that time of any problems
10 with the southern route, correct?

11 A No, I didn't have a problem with the northern route.
12 They dictated they didn't want the southern route. They
13 didn't want the northern route. They didn't want the
14 middle route. They wanted the southern route again. I
15 mean, at no point did I tell them you can't do that there.
16 I tried to facilitate it every single time.

17 Q And in your experience with this one transmission
18 line prior to, you agree that landowners you encountered
19 would not generally want a transmission line through the
20 middle of their property?

21 A Sure.

22 Q Okay. And since the Oiens were frustrated by not
23 talking with PMPA, we'd identified that you had had three
24 meetings on-site with PMPA and Duke and yourself with the
25 City, that they weren't included. I'm not saying they had

1 to be included, but wouldn't it have been helpful for them
2 to get answers if you had told them you were going to meet
3 and invite them to join you?

4 A If I recall correctly, most of the time, they would
5 let us know that they were in town, I mean the day they
6 were here or the day before they were coming to town. And
7 there were a couple of times when Mr. Major was involved
8 that he knew Mr. Oiens schedule and he said he'll be here
9 this Friday, can we sit down and talk.

10 Q Now, you told us this morning, contrary to your
11 deposition, not this morning but this afternoon, contrary
12 to your deposition, that you remembered discussions about
13 A1, A2, A3 and the B routes as well, that you had your
14 computer out, but you have no notes that you have printed
15 from that computer about any route analysis or any factors
16 considered, correct?

17 A No, we were just looking at it on the screen through
18 the GIS.

19 Q Now, you're not qualified and you don't hold yourself
20 qualified to do a route analysis, right?

21 A I think a route analysis, as we've talked about ad
22 nauseam over the last two days is done by a conglomeration
23 of experts. And I think you've had those experts in with
24 some personal attention and you come up with, you know,
25 analysis that hopefully fits the engineering, the land,

1 the right-of-way, and the most importantly, the property
2 owner.

3 Q But that's an uninformed opinion, is it not? It's a
4 lay opinion?

5 A A lay opinion? I mean I could--

6 Q You're not qualified to access construction costs are
7 you?

8 MR. BANNISTER: Judge, if he ask him and he answers,
9 he can't impeach him.

10 THE COURT: Sustain the question. You ask the
11 question. Go ahead.

12 A Could you repeat the question?

13 Q You have no qualifications to do construction costs
14 analysis, right?

15 A No, I rely on engineers to do construction costs.

16 Q And you have no qualifications about aesthetics as it
17 affects land value, correct?

18 A I don't have any formal qualification.

19 Q And you don't have any qualifications about the cost
20 to acquire property?

21 A No, I would use an appraiser.

22 Q Okay. And, in fact, your degree is not engineering,
23 it's in education?

24 A Correct.

25 Q And you graduated from Newberry College in 2009?

1 A Technically, in '11.

2 Q '11? Okay. Now, you told us earlier today, contrary
3 to what you said in your deposition, that you had looked
4 at these routes A1, A2, A3 and they were all too close to
5 adjacent homeowners and, you know, Mr. Cobb didn't analyze
6 that. Mr. Frazier didn't analyze that. How are you able,
7 what expertise did you have to analyze that?

8 A It doesn't take a rocket scientist or an engineer, no
9 offense to those guys, to figure out that one parcel
10 versus 15 parcels is going to be a better path.

11 Q In fact, you've never seen a route selection study or
12 review or audit until you saw Mr. Rogers in this case, is
13 that right?

14 A I have never seen the way the Southern Company does
15 route analysis; that's correct.

16 Q I'm sorry?

17 A I've never seen the way that Southern does a routing
18 analysis.

19 Q You've never seen that routing analysis?

20 A I've never seen the way that they do it; that's
21 correct.

22 Q All right. And they haven't produced one for this
23 case?

24 A Who?

25 Q Southern, your--

1 A Central or whatever you call it. Now, what do they
2 call it, Central Electric?

3 Q I'm talking about and your expert didn't produce a
4 route analysis, right?

5 THE COURT: We are well aware we don't have a route
6 analysis in this case.

7 MR. POPE: Okay.

8 Q Now, since this was your first project, did you ever
9 relay back to PMPA that they ought to be coming down and
10 talking to the landowners and explaining the details of
11 the project to the Oiens?

12 A I don't know that I specifically asked them, because,
13 again, I felt like we--

14 Q I'm sorry?

15 A I said I don't know that I specifically asked them.
16 I felt that we, Todd and I, were making good headway with
17 Mr. Oien in coming to a solution that was going to work
18 for them and for us. I didn't see a need to bring
19 somebody from out of town to come down and interface with
20 them if we were able to handle it like we did with the
21 other property owners.

22 Q But PMPA was the condemning authority?

23 A Correct.

24 Q And they thought that, wanted to be talking to them
25 to find out some technical aspects of the condemnation?

1 A At no point did we mention, the only time the word
2 condemnation came up was when Mr. Major brought it up. I
3 never told the Oiens that I wanted to condemn their
4 property. I never told them that I was even thinking of
5 condemning the property or was even going to aid in the
6 process of doing that. My goal is just simply to meet
7 with them and try to find something that would work for
8 everyone..

9 Q And you never told PMPA that they ought to be coming
10 down and talking to them about it, because you said it was
11 never your intent to condemn it, is that right?

12 A I don't know that I never said hey, PMPA, you need to
13 come down here or not come down here, but I know that we
14 were trying to solve it, at least initially, at a local
15 level. I think when Mr. Major came back and started
16 asking all of the details, I said, Mike, you guys are
17 going to have to come down here and answer these
18 questions, much like you did in that document that I just
19 had. You're going to have to come down. They want to
20 know specifics about what antenna is going to be there and
21 this, that and the other, and I wasn't qualified as I said
22 to answer those questions.

23 Q All right. Page 46 of your deposition. At the top
24 of that page, line 1. I asked you, since this was your
25 first transmission line project, did you not think or did

1 you ever tell PMPA they ought to be coming and talking and
2 explaining the details of the condemnation. And your
3 answer was what?

4 A No, because it was never our intent to condemn the
5 property. And I still today believe that at no point was
6 it the City of Newberry's intent to condemn the Oien
7 property.

8 Q Well, they told you in March 2014 after the surveyor
9 had done and answered their questions, that they had seen
10 it, they had reviewed the options, and they wanted not the
11 middle route, they wanted the southern route. Did you
12 ever tell them well, you got 30 days you're going to have
13 to decide something right now or we're going to condemn it
14 in 30 days?

15 A No, because in the same conversation at the same
16 meeting, we were still talking about, I think, the term
17 that Mr. Major used was just compensation. So, I mean,
18 we're still talking about the middle but kind of, it was
19 the same, the initial comments about the southern route
20 were much like the initial comments about we don't want it
21 on our property. I mean, it's, you know, we explored the
22 southern route literally a year prior to that.

23 Q And many landowners initially say they don't want it
24 on their property, that's just a common--

25 MR. BANNISTER: Judge, I'm going to object and hear

1 me out. The issue for Your Honor to decide is whether or
2 not the proper procedures were followed in route selection
3 prior to the condemnation being filed where PMPA condemns
4 the center route. Whether or not PMPA or somebody
5 assigned by PMPA or the City of Newberry negotiated with
6 the landowners doesn't matter, because there's nothing in
7 the statutes that require the City of Newberry and PMPA to
8 negotiate with the landowners about where they want to
9 condemn the line. That is purely in the discretion of the
10 condemning authority prior that they go through the steps
11 and none of those steps require ongoing negotiation or
12 notice to the landowner they're going to condemn or
13 anything else. They just have to, when they're selecting
14 the route which is what we're here about, they have to
15 consider the factors related to the route they select.

16 THE COURT: So in a nutshell you're saying this is
17 not relevant?

18 MR. BANNISTER: Yes, sir. And that's going to
19 probably apply to a host of, I mean, I didn't raise that
20 issue, but we're kind of going over the same ground.

21 THE COURT: Well, how is this line of questioning
22 decide--

23 MR. POPE: I'm getting close to it.

24 THE COURT: Hang on. Hang on. Besides replowing
25 over ground, how is this relevant to the analysis as to

1 whether or not you did meet the factors of Southern
2 Development?

3 MR. POPE: It's probably collateral--

4 THE COURT: I sustain the objection.

5 MR. POPE: All right. So from, now, this question
6 and I know you are going to object again, probably. But
7 they have accused the Oiens, having keep changing their
8 minds and our review is there wasn't a changing of minds
9 as much as wanting to see all the information on the
10 available routes. So I would like to pursue a couple of
11 questions.

12 THE COURT: Ask the question, and then we'll hear as
13 to whether or not it's being objected to.

14 MR. POPE: All right.

15 Q So from March 2014 for the next two years, the Oiens
16 have maintained their wish to have the southern route as
17 being the best route consistent with what their expert
18 also has said, correct?

19 MR. BANNISTER: Your Honor, I'm going to object to
20 the question. There's one issue before the Court and
21 that's whether or not--

22 THE COURT: Let me say this. I note your objection.
23 I can ferry it out. I also understand, got relative
24 issues with bad-faith, fraudulent-type activity, estoppel
25 issues that was pled, the different factors set forth in

1 the Southern Development case and whether or not there has
2 been unreasonable peripheral damage to the Plaintiffs
3 property by the location of the line. That is in my mind
4 what I look at, okay?

5 MR. BANNISTER: Okay.

6 THE COURT: Now, I hear you and you may disagree, but
7 that's what I'm pulling out of the case, okay. I'm going
8 to give a little leeway. This is nonjury and y'all can
9 correct me if I make an--

10 MR. BANNISTER: Can I make one comment, and then
11 I'll--

12 MR. POPE: Your Honor, I don't think--

13 THE COURT: Hang on. Hang on. I can run the court.

14 MR. BANNISTER: You said you're going to consider
15 bad-faith?

16 THE COURT: If it's an issue that's been raised in
17 the case.

18 MR. BANNISTER: There were four factors that they
19 raised and when you started this case you said one of the
20 issues and they said public use and the failure to allow
21 the Southern Development as related to the way they've
22 selected the route, the route-selection criteria. There
23 are other grounds for objecting to a condemnation,
24 bad-faith, fraud, public use, lack of necessity. And
25 they've abandoned those and they've, and at the start of,

1 and in his case--

2 THE COURT: Well, I'm saying to you if those are
3 appropriate, those are factors in these type of cases to
4 consider. And if they haven't alleged them, they're not
5 an issue. If they've abandoned them, there's not an
6 issue.. We'll clarify that. I'm going to give him a
7 little leeway with his questions so we can move on.

8 MR. BANNISTER: Thank you, Your Honor.

9 THE COURT: Thank you.

10 A You were asking about March of 2014 and what happens.

11 Q Yeah. There was no change of opinion expressed by
12 the Oiens from March of 2014 following that they wanted
13 the southern route, right?

14 A They have, in the interactions that I've had with
15 them, they've made it clear from that point on that they
16 would prefer that we look at the southern route.

17 Q Thank you.

18 THE COURT: Redirect.

19 MR. BANNISTER: Briefly.

20 REDIRECT EXAMINATION

21 By Mr. Bannister:

22 Q And the Oiens have never agreed to a southern route
23 right-of-way, have they?

24 MR. POPE: Your Honor, I object. He's leading his
25 own witness.

1 THE COURT: Please rephrase.

2 Q Is there a southern route survey that's been
3 presented to you by anyone that shows exactly where that
4 would be?

5 A No.

6 Q Has there been an appraisal of by the Oiens or anyone
7 of the southern route?

8 A No.

9 Q Have they agreed to the terms of the right-of-way
10 that they objected to previously for the southern route?

11 A I've not seen anything..

12 Q Were you present for Mr. Oien's deposition?

13 A I was.

14 Q Do you recall him testifying in that that he was told
15 that the switch had to come on in April?

16 A I recall hearing that.

17 Q And that you had to have the line acquired by then?

18 A I remember that.

19 Q I said April of 2014, right? That was the deadline,
20 April of 2014?

21 A April of '14, yeah.

22 Q And there was a title problem, just for the Court's--

23 A Correct.

24 Q And the title problem had to be cleared which PMPA
25 did that.

1 A Correct.

2 Q On the Oiens property?

3 A It took a while to get, before we could get the
4 appraisal done, it took a while because of the sister
5 still having ownership in the property or something like
6 that.

7 Q And so now that the condemnation started a good bit
8 later than had been anticipated--

9 A -- much later than I wanted it to, and I'm already
10 behind.

11 MR. BANNISTER: Judge, no other questions.

12 THE COURT: All right. Any recross?

13 RECROSS-EXAMINATION

14 By Mr. Pope:

15 Q One thing. The only southern route that had been
16 drawn is the one that Mr. Cobb drew, correct?

17 A That's the only one I know of.

18 MR. POPE: That's all.

19 THE COURT: Can this witness be excused?

20 MR. POPE: Yes, sir.

21 MR. BANNISTER: I think he's going to stay.

22 THE COURT: Oh, is he? All right. You're excused if
23 you want to be.

24 MR. BANNISTER: Thank you, Judge.

25 THE COURT: Any other witnesses?

1 MR. BANNISTER: Can you give me two minutes?

2 THE COURT: Yes, sir.

3 (Whereupon, a short break was taken.)

4 MR. BANNISTER: Judge, no other.

5 THE COURT: No other witnesses?

6 MR. BANNISTER: No other witnesses. That's the
7 Defense's case.

8 THE COURT: Okay. Mr. Pope, is the Plaintiff going
9 to call any witnesses in reply?

10 MR. POPE: No, Your Honor.

11 THE COURT: All right. Good. The evidence is in.
12 Renew your motions, please?

13 MR. BANNISTER: You want me to go all the way back
14 through it or not?

15 THE COURT: Just renew it for the record.

16 MR. BANNISTER: I'll renew my motion for directed
17 verdict.

18 THE COURT: There you go. Let me tell you to the
19 extent. Well, look, here's what I was referring to
20 earlier as to what the standard is out of Southern
21 Development. This is a court of equity, a court of
22 equity, exercise the condemnation power to list the
23 condemning authority as acting in bad-faith, fraudulently
24 or with clear abuse of discretion. And Southern
25 Development defines said abuse of discretion as failure to

1 consider the factors they outline. Does anybody disagree
2 with that proposition?

3 MR. BANNISTER: No, Your Honor.

4 THE COURT: Do you?

5 MR. POPE: No, sir.

6 THE COURT: And the standard the Plaintiffs have to
7 meet also is that they have to--

8 MR. POPE: Can I get closer, Judge? I'm sorry.

9 THE COURT: Yes, but the standard has to show that
10 it's unreasonably hurtful to their particular property.
11 Do you agree with that?

12 MR. POPE: Unreasonably hurtful?

13 THE COURT: Unreasonably hurtful and that is the--

14 MR. POPE: I'm not sure I agree.

15 THE COURT: Okay. Those are the standards I'm
16 looking at and if somebody wants to correct me, please do.
17 Send it to me in an email. I don't want an email battle.
18 But I have several questions I want to ask. Number one,
19 Mr. Bannister, you made a statement at the beginning of
20 the case is that once the condemning authority determines
21 it's route, then they don't have to further go through the
22 factors specifically in Southern Development.

23 MR. BANNISTER: Once, once, can I answer you?

24 THE COURT: Let me ask my question--

25 MR. BANNISTER: Yes, sir.

1 THE COURT: And then you explain it. We have
2 testimony that West proposed or considered corridors.
3 They can do that. It goes east and you have particular
4 corridors, and then they select a particular route and it
5 was going to follow up the middle. Once that's done as
6 opposed to the other particular corridors, is it your
7 contention that no further analysis has to be done.
8 Factors under Southern Development, if they did those
9 factors in determining those routes.

10 MR. BANNISTER: Judge, it's our condition, it's our
11 contention that they, the final route that's selected,
12 they have to consider all the factors outlined in Southern
13 Development.

14 THE COURT: Okay.

15 MR. BANNISTER: The failure to consider all of those
16 factors in the route that they select would be the abuse
17 of discretion.

18 THE COURT: Is there a timing requirement at all as
19 to when those factors are considered?

20 MR. BANNISTER: I believe it's, the way I read it is
21 when they condemn, they are declaring this is the route--

22 THE COURT: Okay. Do you disagree with that?.

23 MR. POPE: I disagree that they have to consider
24 alternate routes, as well as the final route.

25 THE COURT: Sir?

1 MR. POPE: They have to compare the chosen route, the
2 one that they say is final with the alternate route.

3 THE COURT: Okay. Go ahead. I stopped you from
4 answering. I'm going to give you an opportunity. Go
5 ahead.

6 MR. BANNISTER: I believe what it says is they have
7 to consider all the factors of the route that they've
8 chose and they have to consider alternate routes. There's
9 nothing in Southern Development that says they have to do
10 a full-blown review of every alternate route that is
11 available anywhere, between two equally appropriate
12 routes, they just get to pick one. That's the
13 responsibility the condemning authority has between
14 accepting routes, they have to pick one. And the Court is
15 not supposed to go behind the condemning authority and
16 make a better selection. As long as the condemning
17 authority considered all the factors set forth in Southern
18 Development on the route that they selected. So it would
19 be a clear abuse of discretion if they didn't consider any
20 other route. And it would be a clear abuse of discretion
21 if they didn't consider all the factors in the route that
22 they chose. But it doesn't say that every route that they
23 choose, they don't choose, they have to consider all the
24 factors on all the routes that they decide not to use.

25 THE COURT: And you disagree with that?

1 MR. POPE: I don't.

2 THE COURT: You don't.

3 MR. POPE: I don't.

4 THE COURT: You just say that other routes that are
5 not chosen, they have to compare to the route that is
6 chosen?

7 MR. POPE: That's right.

8 THE COURT: Where does it say that?

9 MR. POPE: They have to look at all the alternates to
10 see which is the best and if they got a chosen route, they
11 still have to compare apples and apples.

12 THE COURT: Well, okay. Let me look at exhibit 14,
13 Plaintiff's exhibit 14. Clearly, on routes B, routes A,
14 you have proximity issues with existing developmental
15 developments. So once you see that, what's the benefit of
16 going through, let me ask you a more factual-based
17 question about your clients positions.

18 MR. POPE: I think that the routes that should have
19 been thoroughly analyzed are the ones that Mr. Rogers did
20 which is on the Oien property, A, B, Nettles, north and
21 south and they really eliminated the north, because
22 neither party really wanted it. So we really focused on
23 the south and the middle.

24 THE COURT: So, I guess, the question I was trying to
25 inartfully ask the question earlier. According to your

1 position, a condemning authority has to make a per parcel
2 or per owner factual analysis under the Southern
3 Development case as opposed to that analysis, as to these
4 proposed routes. In other words, we looked at the entire
5 route and the factors of the Southern Development case are
6 met as opposed to as it applies to these particular plans.

7 MR. POPE: I'm not sure I understood, but I approach
8 it--

9 THE COURT: Well, okay.

10 MR. POPE: We only look at the Oien property.

11 THE COURT: Hang on. Hang on. I'm the condemning
12 authority, and I've got ten tracts. I mean, obviously, I
13 think everybody can agree to limit the number of tracts
14 you go through. But assuming, do I have to go through an
15 individualized analysis under Southern for the passage as
16 it pertains to this particular tract as compared to the
17 route as a whole or can I just make it based on the route
18 as a whole where it may not necessarily meet the factors
19 on this particular area, but along the entire length of
20 it, therefore, we will pick this route.

21 MR. POPE: Well, we don't quarrel with the route--

22 THE COURT: You're not answering my question.

23 MR. POPE: I'm not sure I understood it.

24 THE COURT: Well, okay. I mean, do you have to make
25 an individualized analysis per parcel?

1 MR. POPE: Yes, sir. Per tract; yes, sir.

2 THE COURT: All right. What's your position?

3 MR. BANNISTER: We do not.

4 THE COURT: In other words, you're saying you make it
5 as to the entire route, because one piece of, one tract
6 may not necessarily fit, but the entire lot has to be
7 considered would.

8 MR. BANNISTER: Yes.

9 THE COURT: And I'm sorry I'm being obtuse about the
10 way I'm asking the question.

11 MR. POPE: Well, I think that the Southern
12 Development case talked about one tract, and but they also
13 talked about alternate routes off of that tract. Our case
14 is stronger and we're not saying put it on somebody else.

15 THE COURT: Well, the Southern case, let me, let me
16 ask you this. How do your clients explain exhibit No. 44,
17 43?

18 MR. POPE: 43?

19 THE COURT: Yeah. And that is you been taking the
20 position since March of 2014, your clients were absolutely
21 clear that they wanted to have this Southern route be
22 followed?

23 MR. POPE: Yes, sir.

24 THE COURT: However, as of August 21st, 2014, they
25 said we don't agree to any of them. How do they explain

1 that?

2 MR. POPE: Well, they say they didn't agree at that
3 meeting.

4 THE COURT: I'm reading it. I read exactly what it
5 said.

6 MR. POPE: There are other documents in the record
7 that say they're adamant about the southern route, about
8 the southern route.

9 THE COURT: I understand that. But they're saying,
10 because, quite frankly, first and foremost, we don't want
11 this on our property and I quite understand that. I
12 wouldn't want it on my property. Then, okay, let's not do
13 the southern route, let's show up north. No, we don't
14 want to go up north. Let's go back to the middle. Then,
15 you know, we really don't want this on our property at all
16 and we can't agree to anything on our property. And
17 that's the way it seems like to me, so they're bouncing
18 around and understandably, because you don't want this on
19 that beautiful piece of property going through it. I
20 mean, I quite understand it. But to take the position
21 that they have said, you know, we've wanted this southern
22 route since March 2014 I think belies the evidence I can't
23 put my hands around. So tell me where I'm wrong.

24 MR. POPE: Well, Mr. Regier admitted it.

25 THE COURT: Sir?

1 MR. POPE: Mr. Regier said he thought that was what
2 their position was. So he understood it that way.

3 THE COURT: Sir?

4 MR. POPE: He understood it that way.

5 THE COURT: All right. Well, okay. I'm not going to
6 rule today, but I'm going to tell you my preliminary
7 thoughts on the case. I don't want a war of emails, but
8 I, if y'all want to respond. But my thoughts are, quite
9 frankly, I think you raised appropriate factors. I think
10 that the pleadings can't be read, at least under the rules
11 of criminal justice to include bad-faith. Fraud, I don't
12 think you even pled that. But I don't believe that there
13 is an obligation for condemning authority to meet the gold
14 standard that's established by Mr. Rogers. Clearly, he's
15 got the Rolls Royce of the standards of evaluation of
16 alternate routes and created it. But just because the
17 condemning authority end did not make this in-writing does
18 not mean that this, this is the best practices does not
19 mean they didn't consider the factors. And I think you
20 are going to be, there's no really way they could have
21 done that based on the number of properties, based on the
22 number of different factors. I think they could have done
23 this, inadequately considered it or they did it at all. I
24 think you're, which I hear what you are saying. But, you
25 know, I don't think they're required to have it

1 in-writing, although, quite frankly, I'd probably
2 understand it, but since this is their first time, it
3 could have been done on a much more professional basis. I
4 mean, since they're new at it. Mr. Rogers admitted, and I
5 seem to be picking on you, Mr. Rogers, the
6 cross-examination if, in fact, the condemning authority
7 had considered these factors, regardless of whether or not
8 it's in-writing, exercise his judgment; i.e., use of
9 discretion and location of the line. So the question is
10 did they not, all the evidence that you have heard in this
11 case, I don't think you met that burden and statutorily,
12 frankly. There's no way to put this in bad-faith in this
13 case. In fact, quite frankly, the evidence states that
14 the condemning authority tried to meet with
15 representatives or with the Plaintiffs themselves to
16 locate where the easement was going and to appease their
17 concerns. I think that from all I can tell that the
18 Plaintiffs were a lot more congenial to deal with than
19 this other gentleman was. But, be that as it may, and,
20 quite frankly, were less than, as far as professionalism
21 in this case. It doesn't amount to anything that people
22 are not being professional, somebody using a little bit,
23 being a little bit more lax in their indications than they
24 should have. Again, no evidence as far as their conduct.
25 And there is no evidence at all based on other cases,

1 there's any estoppel issue. You didn't raise estoppel.

2 MR. POPE: We didn't raise estoppel.

3 THE COURT: So I'm not considering it. And,
4 therefore, my thoughts are in this case and that the
5 Defendants did, in fact, use their discretion in
6 determining where this easement was going to go,
7 therefore, they did not abuse their discretion in the
8 Southern case and the facts of Southern. And we went over
9 those factors in the beginning of the case. But I have
10 written those factors down, availability of alternate
11 routes and costs, cost of building, cost to acquire,
12 environmental factors, public authorities, state
13 considerations, liability and aesthetics. And that has to
14 be both standard for obtaining the line in the first
15 place. You know, with that being said, this is kind of a
16 personal aside, because I'm sure your clients know better
17 than me, but as you go forward, if I do and I am inclined
18 to decline your petition in equity to enjoin construction
19 of this line. My ruling will be of the damages. Contrary
20 to the authority's expert, who I thought was very credible
21 that there was no damage to remainder, I thought that was
22 almost beyond believability in the sense you can build a
23 high-rise transmission line through the middle of
24 somebody's property, especially as pristine this property
25 is and there not be any damages. In my, when you do a

1 jury trial could very easily find up to the value to
2 correct or install the southern route that you were
3 proposing. So at the end of the day that those, while
4 you're correct in, being the end result, you may end up
5 cutting off your nose to spite your face. I think the
6 evidence showed that the B routes and the A routes are so
7 obviously problematic that they didn't need any further
8 analysis under the Southern case and those are my general
9 thoughts about what I'm going to do on this case. Now,
10 again, gentlemen, if you want to correct me, I don't care
11 about any particular format. Just send it to me and say,
12 look, this is where you're wrong. This is where your
13 analysis is wrong and this is what the facts dictate that
14 you consider something else. Send it to me by email.
15 What kind of time frame do you need, how much time do you
16 think you need?

17 MR. POPE: I'd probably need what about till next to
18 a week or is that too long? A week from Wednesday?

19 THE COURT: Yes, sir. That'd be good. I'll tell you
20 what, give yourself a week. If you need additional time,
21 you can have it.

22 MR. POPE: I just got a couple of things coming up
23 that I'm going to have to deal with this week.

24 THE COURT: Right. And if you want to respond to
25 him, just try to do it as quickly as possible within 48

1 hours, if possible. If not, let me know.

2 MR. BANNISTER: I will respond within 48 hours and
3 I'd ask you not to let it go too long.

4 THE COURT: Yeah. Well, I'm not, because you're
5 right. That's a good point, it needs to be, this thing
6 needs to be resolved so they can get started.

7 MR. BANNISTER: Yes, sir.

8 THE COURT: Okay. All right. Gentlemen, I was
9 looking forward to watching both of you because you're
10 both very prepared and professional. I want to thank you
11 for that and having the case prepared. Thank you very
12 much.

13 MR. BANNISTER: Thank you, Your Honor.

14 THE COURT: This case is adjourned.

15 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the
Eighth Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the County of Newberry, South
Carolina on the 29th of March, 2016.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

October 3, 2016

Joy E. Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026