

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

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14 BY: PATRICK D. SHAW,

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16 Appeared on behalf of the Petitioner;

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24 BY: MS. MELANIE JARVIS,

25

26 Appeared on behalf of the Respondent.

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1 HEARING OFFICER WEBB: Let's go on the
2 record.

3 Good morning. My name is Carol Webb and
4 this is the hearing for PCB-16-108, Abel Investments,
5 LLC, versus IEPA. It is September 7th and we are
6 beginning at 10:00 a.m.

7 For the record, although this facility is
8 located in Jackson County, there was no known public
9 interest in this case, so I granted the parties'
10 request to hold the hearing in Springfield.

11 There are no members of the public
12 present to comment but written public comment may be
13 filed with the Clerk by September 21st.

14 In this case, the Agency reduced payment
15 for costs incurred performing the Stage 1 Site
16 Investigation Plan and reduced the budget for the
17 Stage 2 Site Investigation Plan for Petitioner's site
18 located at 2101 South Illinois Avenue in Carbondale.

19 The Pollution Control Board members will
20 make the final decision in this case.

21 My purpose is to conduct the hearing in a
22 neutral and orderly manner so that we have a clear
23 record of the proceedings.

24 The decision deadline is November 17th.

1 This hearing was noticed pursuant to the Act and the
2 Board's Rules and will be conducted pursuant to
3 Sections 101.600 through 101.632 of the Board's
4 procedural rules.

5 At this time, I will ask the parties to
6 please make their appearances on the record.

7 MR. SHAW: Patrick Shaw for the
8 Petitioner.

9 MS. JARVIS: Melanie Jarvis for Illinois
10 EPA.

11 HEARING OFFICER WEBB: Thank you. Are
12 there any preliminary matters to discuss on the
13 record?

14 MS. JARVIS: There's just a little bit of
15 clarification.

16 From the Agency's decision letter, which
17 is found at page 121 of the administrative record,
18 items 1 and 2 under Stage 1 modifications are not
19 under appeal; and then from further under Stage 2,
20 which is found on page 125 of the record, number 6 is
21 not under appeal; and then when we go to the
22 Petitioner's brief, number 7 on the Petitioner's
23 brief, which is at page 2 of the brief, that actually
24 encompasses item 3, found at page 121 of the record,

1 and item 4, found at page 122 of the record.

2 Then number 9 on the Petitioner's brief,
3 also on page 2, encompasses items number 1 under
4 stage 2 modifications on page 122 of the record,
5 items number 2 and number 3 on page 123 of the
6 record, and items number 4 -- or no, 5; sorry 5 --
7 which is on page 124 of the record.

8 HEARING OFFICER WEBB: Okay. Mr. Shaw,
9 do you have anything you'd like to add to that?

10 MR. SHAW: No.

11 HEARING OFFICER WEBB: Okay. Would you
12 like to make an opening statement?

13 MR. SHAW: I'll just make a brief one.

14 As counsel mentioned, we've withdrawn our
15 objection to the PID issue that was in the Petition
16 for Review. There will be other Board opportunities
17 to address the PID issue. We didn't think it was
18 useful in this case to do so, and we never did make
19 any objection to the first two cuts in the denial
20 letter.

21 Today, we're going to present testimony
22 from Carol Rowe, President of CW3M, the consultant
23 for the Petitioner, regarding the personnel
24 consulting costs and I am going to try to go through

1 those sequentially in the -- in the Application order
2 and break those out. As counsel mentioned, those
3 were sort of combined in the Petition for Review.

4 And I think that's all I've got. Thank
5 you.

6 MS. JARVIS: I'll waive my opening
7 statement for the brief.

8 HEARING OFFICER WEBB: All right.
9 Mr. Shaw, you may call your first witness.

10 MR. SHAW: Yes. Mrs. Rowe.

11 HEARING OFFICER WEBB: Would you please
12 come have a seat up here, and would the court
13 reporter please swear in the witness.

14 (Witness sworn.)

15 CAROL L. ROWE

16 called as a witness on behalf of the Petitioner,
17 being first duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. SHAW:

21 Q. Will the witness please state her name
22 for the record?

23 A. It's Carol Rowe, R-O-W-E.

24 Q. And what is your occupation, Ms. Rowe?

1 A. I'm President of CW3M Company, senior
2 geologist.

3 Q. And what is your highest educational
4 attainment?

5 A. A master's.

6 Q. Master's in what?

7 A. Master's in environmental studies.

8 Q. And how long have you been with CW3M?

9 A. About 25 years, 26.

10 Q. And how long have you been involved in
11 leaking underground storage tank work with CW3M?

12 A. With CW3M for about 26 years and
13 underground storage tanks for probably five plus
14 years before that.

15 Q. And where was your five years before
16 that?

17 A. Initially, I was an intern with
18 Environmental Protection Agency with development of
19 the Groundwater Protection Act, and I left there to
20 go to Old Ben Coal Company and we began removing
21 underground storage tanks there long before it was a
22 real popular thing to do, so I got a good taste of
23 underground storage tanks and in all kinds of
24 different environments and around buildings, prep

1 plants, fuel maintenance yards and so forth, and then
2 predominantly through my business here.

3 Q. How many offices does CW3M have?

4 A. We have two. We have one in Springfield
5 and one in Marion, Illinois.

6 Q. And what are their different roles?

7 A. Pretty much the same role; however, our
8 Marion office is staffed with only one person right
9 now. We've had layoffs with budget cuts and so
10 forth, so the Marion office is a little slimly
11 staffed, but we have a geologist down there who
12 performs similar work as to the staff that we have in
13 the Springfield office.

14 Q. I'm going to -- are you familiar with the
15 Abel Investments' worksite?

16 A. Yes.

17 Q. What is CW3M's role with the Abel
18 Investments' worksite?

19 A. We did the early action work there and
20 then proceeded to do the Stage 1 and Stage 2
21 investigation at the site, so what's at hand right
22 now is the Stage 2 investigation plan.

23 Q. Let me approach you with what's been
24 marked as Petitioner's Exhibit 2.

1 (Petitioner's Exhibit 2 was identified
2 for the record.)

3 A. Okay. Thank you.

4 MR. SHAW: Ms. Hearing Officer, I have
5 extra copies, if it would be helpful to you, of all
6 the exhibits.

7 BY MR. SHAW:

8 Q. Do you recognize Petitioner's Exhibit
9 Number 2?

10 A. Yes.

11 Q. And what is that?

12 A. This is a page out of our Stage 1 budget.
13 The first portion of the page is the field portion.
14 The second portion is at least partially the budget
15 and somewhat of the reimbursement time for completing
16 the work.

17 Q. Was there a budget approved on this
18 project before the Stage 1 work was performed?

19 A. No.

20 Q. How does the program deal with budget
21 issues at the Stage 1 phase?

22 A. The activities for Stage 1 work are
23 generally prescribed by the Act; what locations were
24 to take soil samples, monitoring well locations are

1 prescribed. In this case, we had some additional
2 sampling work to do that was additionally requested,
3 so, in general, there's not a budget that's approved
4 prior to doing Stage 1 work. So these would be
5 generally actual costs that were incurred and then
6 you submit the actual costs as a budget.

7 Q. Okay. So the terminology is a little bit
8 confusing here?

9 A. Yeah, it's -- the nomenclature doesn't
10 quite fit but...

11 Q. So in terms of this budget, these are
12 actual costs incurred; is that what I understand you
13 to say?

14 A. Correct.

15 Q. I think the first cut that we're
16 addressing in this proceeding is the second item from
17 the bottom, Engineer III?

18 A. Yes.

19 Q. What work did the Engineer III do at the
20 Stage 1 stage/phase?

21 A. The Engineer III or the technical person
22 would have been the person developing the budget that
23 went along with the technical portion of the plan to
24 present to the Agency, documenting not only the

1 costs, but the work that was performed in a manner
2 presentable to the Agency.

3 Q. Is that work that an account tech could
4 do?

5 A. Not necessarily. In this work, and I
6 think maybe IDOT and other types of technical work,
7 engineers, geologists, whatever, prepare the actual
8 budget estimates and perhaps an account tech could
9 plug it into a formula or a box, but the technical
10 person is the one who actually does the cost
11 estimating.

12 In this particular case, a lot of
13 information is extracted from an accounting system
14 and it comes out in kind of -- kind of a mess. It's
15 months and months or weeks and weeks of data, and for
16 that to be put into these nice little boxes that we
17 see here, not only does the engineer do that, but the
18 engineer and the other technical staff try to present
19 it in a way that's -- what we feel is reasonable, but
20 it also matches the technical plan, so for the work
21 that was performed. So it's not just that they fill
22 in a box; this work is performed along with preparing
23 the technical documents.

24 Q. I think there's also in Petitioner's

1 Exhibit 2, the last item on that page, senior project
2 manager. That item was also -- that item was cut
3 from the -- cut from the budget, slash, actual cost
4 provision. Do you see that? I mean, do you see that
5 item?

6 A. Yes.

7 Q. Could you describe what the senior
8 project manager's role was for that referenced item?

9 A. For our company, and I don't know about
10 others, the senior project manager works with the
11 account technician to take all the data that we have
12 and put it into a format that we can submit to the
13 Agency that fits what was done, what rates were
14 approved, and in a fashion that we can submit to the
15 Agency. There's a lot of back and forth that goes
16 on, a lot of editing, a lot of massaging, so to
17 speak, until we get it to just the right -- the right
18 point.

19 I'm the senior project manager in this
20 instance, and I would get the package, and if there
21 were hours over, for example, I would be the one to
22 say, Well, they don't fit the budget, and I would
23 say, Well, I have to write off hours or they don't
24 fit, so why don't they fit? And if there's a

1 reasonable explanation, let's find it. If there's
2 something wrong or they don't fit the technical plan,
3 what happened?

4 So I feed the account tech all the
5 information, and she, in turn, plugs into, quote, the
6 boxes, and sometimes we have a few months and
7 sometimes we have many months of work that gets
8 compiled into the reimbursement claim and it ends up
9 being put into the boxes, and this makes it look very
10 simple, but in truth, it's, you know, stacks and
11 stacks of information. So it's not just one person
12 that makes this task happen. And then once it's
13 completed, then we're comfortable having the engineer
14 sign off on the package.

15 Q. And the engineer is the senior
16 professional engineer?

17 A. Yes.

18 Q. And the senior professional engineer
19 charges at a higher rate, is that correct?

20 A. Yes.

21 Q. Is the role of a senior project manager
22 something that has changed recently at all for your
23 company?

24 A. No.

1 Q. Is this how you've been doing it for how
2 long?

3 A. Really, since 734, since we began doing
4 the billing and budgets since 2006. It's been
5 refined some but we haven't changed it drastically.

6 Q. The 734 is when they introduced the site
7 investigation phase. Is that when that occurred?

8 A. Yeah.

9 Q. Before that, it was site classification
10 was the shorthand for the program --

11 A. Uh-huh.

12 Q. -- approach?

13 A. Correct.

14 Q. Similarly, with the -- going back to the
15 Engineer III, has that approach to doing work for the
16 Engineer III changed recently?

17 A. No.

18 Q. Okay. I'm going to approach the witness
19 with Petitioner's Exhibit 3. Do you recognize
20 Petitioner's Exhibit 3?

21 (Petitioner's Exhibit 3 was identified
22 for the record.)

23 A. Yes.

24 Q. Can you identify it for me, please?

1 A. This is the Stage 2 budget section of a
2 budget package in the Stage 2 Plan and Budget.

3 Q. Now, what is the difference between the
4 Stage 1 and Stage 2 at this point, just to make sure
5 that's clear?

6 A. The Stage 1 doesn't have a budget prior
7 to doing the work, and the Stage 2, you get a budget
8 approved prior to implementing the work.

9 Q. Now, is it possible for purposes of the
10 budget that these numbers may not be the final -- the
11 final numbers when the work is actually performed?

12 A. Yes.

13 Q. I believe the first item in the budget
14 that was cut is the first line, senior project
15 manager. Do you see that item?

16 A. Yes.

17 Q. Could you please describe what the senior
18 project manager is doing with respect to that item?

19 A. The senior project manager role
20 throughout the whole budget process is working with
21 in this case the professional geologists to not only
22 review the budget when it's in its final form, but to
23 develop the budget along the way and to refine that
24 package as it's almost going out the door, so to

1 speak. So it's not that it's, you know, eight hours
2 at one time. It's a culmination of hours from, you
3 know, from start to finish, and it's somewhat of an
4 oversight, I guess, from start to finish.

5 And, you know, something that people
6 don't think about is the budget numbers aren't hard
7 and fast until we're really finished with the
8 project, so when we do what's considered an actual --
9 we don't really have those numbers until it goes out
10 the door, and we might be writing this thing as we're
11 developing these final numbers. So we try to get
12 these things as close as possible as we can, so --
13 but it's an oversight process during the whole budget
14 development.

15 When we develop the entire plan and
16 budget, there's a review process of the entire
17 document, but there's also work on just the budget
18 portion of it, so there's -- there's multiple facets
19 of developing a budget, and that's what the role of
20 the senior project manager is.

21 Q. It's my understanding you say the budget
22 and the plan are being worked on together, although
23 they're broken out separately in the application
24 here?

1 A. Yes.

2 Q. Okay. Is this similar to how you
3 budgeted the senior project manager's role or senior
4 project manager's role in budgets in the past?

5 A. Yes.

6 Q. I'm going to go on to the next item
7 referenced in the modifications. It's professional
8 geologist. It would be the third item on
9 Petitioner's Exhibit 3.

10 A. Uh-huh.

11 Q. And just to clarify something -- it may
12 be obvious -- the exhibits I'm giving to you with
13 the -- from the record with the writing and
14 highlighting on it, is that your writing or
15 highlighting?

16 A. No.

17 Q. Okay. It did not leave CW3M with that on
18 it?

19 A. No.

20 Q. I'm sure that's probably pretty clear by
21 these pictures. For the record, they're the notes
22 that indicate the cuts.

23 The third item, as I understand the
24 denial letter or modification, is that the

1 professional geologist's role is modified to senior
2 account technician. What is a professional geologist
3 needed for to prepare the budget?

4 A. In this particular case, the senior
5 professional geologist was preparing the Stage 2 Plan
6 and the Stage 2 Budget and was doing those tasks
7 simultaneously. So as they're preparing the
8 technical plan, they're also preparing the budget
9 items as they go.

10 So it's not really a task where, you
11 know, we write on a sheet of paper, hey, I need, you
12 know, tic, tic, tic, you know, two borings, two
13 wells, you know, five hours of this, two hours of
14 this, and an itemization that can be just handed over
15 to someone else to complete. They just do it on the
16 computer as they go. So there's not like a
17 multilayer in terms of clerical tasks here, so they
18 don't need to hand it over to an account tech to
19 finish. They just work on it themselves in pieces as
20 they develop each section of the budget.

21 So as they're developing the drilling
22 section, they put in the drilling portions of the
23 budget. As they're working on the plan section, they
24 develop the plan sections of the budget. So that

1 technical person develops each section of the Plan
2 and Budget as they go, and so they're the best person
3 to judge and itemize how many hours they think each
4 task is going to take.

5 You know, the account tech isn't the
6 person who's going to judge how many hours it's going
7 to take. Maybe they could fill in a box but they're
8 not the person who's making a judgment call. So it's
9 not -- it's not that information is being handed to
10 an account tech to fill out a form. They're just
11 doing it themselves on the computer and developing it
12 themselves.

13 Q. I think similar questions regarding the
14 next item, Engineer III, was reduced in the
15 modifications to senior account technician. What is
16 an Engineer III's role in preparing the -- developing
17 the budget for Stage 2?

18 A. In this particular case, they would be
19 possibly doing like either a drill plan or be looking
20 up information as to how many hours do we already
21 have in the Stage 2 phase so far, how many hours have
22 been entered into the system that I have to deal
23 with.

24 For example, if they're working on the

1 Plan section, how many hours are already entered into
2 the system for plan development? And so they're
3 working with the professional geologists to try to
4 hone in on developing these numbers. So that would
5 typically be their involvement, or they would be
6 working on the drilling section with the geologist.

7 Q. And the role of the Engineer III and
8 professional geologist, these are consistent with
9 how -- are these consistent with how CW3M has dealt
10 with it in the past?

11 A. Yes.

12 Q. Okay. I'm going to approach you and hand
13 you Petitioner's Exhibit 4. Do you recognize
14 Petitioner's Exhibit 4?

15 (Petitioner's Exhibit 4 was identified
16 for the record.)

17 A. Yes.

18 Q. Can you identify that for me, please?

19 A. This is the Stage 2 field section of the
20 budget.

21 Q. Okay. And I believe that the issue
22 raised on this item is regarding -- or this
23 Petitioner's Exhibit 4 is item -- the fourth item,
24 Engineer III, where there was a reduction made for

1 travel time. Could you tell me how travel time is
2 budgeted by CW3M?

3 A. We always develop our travel time from
4 the Springfield office. We typically don't know for
5 certain who will be assigned to the task for certain,
6 regardless of where the site might be located.

7 If there's two people going out on a
8 drilling job, for example, we don't know for certain
9 who will go. If the site is in southern Illinois,
10 it's -- it's ideal if we can pull our person from the
11 Marion office, but that can't always be the case
12 because we only have one person there right now. He
13 might be on another job, so we budget from the
14 Marion -- or from the Springfield office, and if he's
15 available, then he -- then he goes, and then, you
16 know...

17 Q. Well, let me stop you right there.

18 A. Okay.

19 Q. If it turns out the person from Marion's
20 office goes, what happens when you seek an
21 application for payment for that work?

22 A. The application for payment would be
23 whatever person went or persons went would be their
24 mileage from either Springfield or Marion, and it

1 would be their actual mileage one way roundtrip.

2 If we have multiple sites in one day,
3 there may only be like a one way trip, so it would be
4 whatever the trip was, so...

5 Q. Well, for example, if there was two
6 trips, it might be one way on one job and one way on
7 the second job; is that what you're saying?

8 A. Correct.

9 Q. But the mileage, if the work is done from
10 Marion, reimbursement is not sought for travel to and
11 from Springfield. I want to make sure we're clear on
12 that.

13 A. Correct.

14 Q. How do you check actual mileage?

15 A. It's off the odometer readings. The
16 personnel puts it on their timesheets and that's how
17 it's logged into the database.

18 Q. Okay. I'm going to approach you and hand
19 you Petitioner's Exhibit 5. Do you recognize
20 Petitioner's Exhibit 5?

21 (Petitioner's Exhibit 5 was identified
22 for the record.)

23 A. Yes.

24 Q. Could you identify it for me, please?

1 A. This is the SICR portion of the budget
2 pages.

3 Q. Okay. A cut was made for the senior
4 project manager. That's the first item on that page.
5 What is the role of the senior project manager in a
6 site investigation completion report?

7 A. Every completion report is reviewed not
8 just by the PE, but by myself. The PE is afforded
9 very little oversight time in all of these budgets,
10 and, therefore, you know, there's more technical
11 oversight that's needed throughout the entire
12 process, so there's -- there has to be technical
13 oversight in really every stage, and in this
14 particular stage in the SICR, the SICR is reviewed to
15 make sure that not only did we do what we set out to
16 do, but are we compliant with our own standards? Are
17 we compliant with whatever Agency standards are
18 current?

19 Each writer of each report may not see
20 every Agency letter that goes out, and I may see
21 every letter to know that there are trends, that
22 there are -- that there are new things that the
23 Agency wants to see or likes to see a different
24 approach, and those are the things that are attempted

1 to address in SICRs, and it's not just the review,
2 it's oversight of the whole process of getting the
3 SICR developed and put together. So it's more than
4 just reviewing the report; it's getting it from start
5 to finish and out the door. So it's getting all
6 these pieces put together to make sure that it does
7 get out the door.

8 Q. And when you say current Agency
9 standards, do you mean something other than Board
10 rulemaking?

11 A. Yes.

12 Q. And how do you learn about these Agency
13 standards?

14 A. Just letters, phone calls. You know,
15 there's certain -- you know, certain ways they want
16 samples taken or reports written, or even certain
17 project managers like things a certain way, and we
18 try to accommodate those so that our reports can be
19 approved, so...

20 As much as we'd like for it to be all
21 consistent, there are some variations, and not -- I
22 don't mean that in a bad way, but just some quirks,
23 and, you know, people like things in a certain way.

24 Some people say, well, I don't want all

1 those copies in this report. I'm going to cut your
2 copies. And others say, no, I want every single
3 thing in every report so I have it in front of me.
4 So things like that we try to address in certain
5 reports. So if you see everything and you know
6 certain trends, you try to do that in the reports,
7 but the whole process of getting the completion
8 report from having all this data and out the door
9 is -- is an oversight process and that's the project
10 manager role.

11 Q. And has the role of senior project
12 manager changed recently at all?

13 A. No.

14 Q. Is this something that you've done since
15 the site investigation idea began?

16 A. We've done it forever. In the evolution
17 of the forms, we've tried to break out by task and by
18 hour and itemization how much time it actually takes
19 to write a report, how much time it takes to draft a
20 report, how much time it takes to do -- for the PE to
21 stamp the report. We've tried to break that out and
22 the project management was broken out as well, so...

23 Q. Just more of a general matter, we've gone
24 through several items. In the cover letter in the

1 Application, the reference is made that the way this
2 process works for CW3M is similar to the way the
3 process works for the Agency. How does that -- how
4 is that true for the issues that we're talking about
5 here today?

6 A. When we talk to the Agency, we talk to a
7 project manager who's a technical person. We're not
8 talking to an account tech who's looking at our
9 budget, we're talking to technical people, and that
10 technical person is consulting a technical person,
11 and their supervisor is a technical person. They're
12 all technical people who are involved in a technical
13 process and I guess we view it the exact same way.

14 If there's a clerical component of this,
15 we would have a clerical person do that, but the way
16 it's done in our office, a technical person is
17 developing these in a technical -- you know, they're
18 on the computer. They're doing it themselves by a
19 technical person, and, you know, they're
20 communicating with a technical person at the Agency,
21 a project manager, and you know, I know that they
22 consult with the technical person and their unit
23 manager is a technical person, their section manager
24 is a technical person. So it seems to be mirrored in

1 the same -- in the same way, so...

2 MR. SHAW: I don't have any further
3 questions.

4 HEARING OFFICER WEBB: Thank you.
5 Ms. Jarvis?

6 CROSS EXAMINATION

7 BY MS. JARVIS:

8 Q. As senior project manager, which I
9 believe is what you said that you do, have you ever
10 been to the site that we're talking about, Abel?

11 A. Yes.

12 Q. And who is in the Marion office?

13 A. Rob Stanley.

14 Q. And who's the project manager on Abel?

15 A. Rob Stanley wrote the report.

16 Q. So he's the project manager?

17 A. He's the lead on this project.

18 Q. So does that mean he's the project
19 manager while you're the senior project manager? I'm
20 just trying to figure out how that all works.

21 A. We kind of work in teams, so...

22 Q. Okay. Who is the Engineer III that we've
23 been talking about?

24 A. In this case, I believe it would probably

1 be Ed Smith, I think.

2 Q. Okay. Now, is the Engineer III the same
3 as the professional engineer?

4 A. The senior professional engineer?

5 Q. Yeah.

6 A. Could be. We have a couple of Engineer
7 IIIs, so...

8 Q. And your Engineer IIIs are all
9 professional engineers?

10 A. No.

11 Q. Okay. And who's the professional
12 geologist?

13 A. Rob Stanley.

14 Q. So you testified that the Engineer III is
15 developing the budget along with the technical
16 portion of the plan, and in the record, I believe
17 we're on Stage 1, so let me just get to that.

18 A. I say that. I think I meant the
19 professional geologist was developing the plan --

20 Q. Oh, okay.

21 A. -- I think on this one but...

22 Q. Let me just look, then, because I had it
23 as Engineer III. Now, this one, the Engineer III did
24 the budget calculations in preparation and was

1 reduced to account tech, and that's on page 55 of the
2 record, I believe. It's your Exhibit --

3 MR. SHAW: 2.

4 MS. JARVIS: -- 2.

5 THE WITNESS: Oh, Stage 1. Okay. Okay.

6 BY MS. JARVIS:

7 Q. Okay. I just wanted to make sure I was
8 clear on that. Let me go to the next page.

9 Okay. Let's go on to Stage 2. We might
10 be going back and forth, the way my questions are.
11 On Stage 2, which I believe is your Exhibit 3, page
12 66, we have the Engineer III down for eight hours of
13 budget development.

14 A. Okay.

15 Q. And I think this is where you were
16 talking about how they're doing the budget as they
17 develop the plan, and we have on page 65 of the
18 record -- and I'll go ahead and show that to you. I
19 don't have it as an exhibit. We have Engineer III as
20 developing the plan for eight hours.

21 A. He contributed to this plan. This is
22 probably the primary person on the plan and he
23 assisted on this plan.

24 Q. Okay. So this would be the --

1 A. This is the drill plan design.

2 Q. Okay.

3 A. And he would be the primary person on the
4 plan.

5 Q. So the professional geologist spent 36
6 hours developing the plan.

7 A. Uh-huh.

8 Q. Okay. And the professional geologist
9 we're talking about is Rob Stanley.

10 A. Uh-huh.

11 Q. And then when we go over to page 66, we
12 have a professional geologist, okay?

13 A. Uh-huh.

14 Q. And he spent an additional 14 hours
15 developing the budget, but you said that he does it
16 at the same time he does the other thing. So he has
17 36 hours developing a plan, in which he's doing the
18 budget at the same time, but then he also charged for
19 an additional 14 hours doing the budget; correct?

20 A. Well, simultaneous -- I mean, you're
21 going to be working on pieces of plans and budgets.

22 Q. Right, but he's doing it at the same time
23 as he goes through it.

24 A. Yeah, in a sense. You're going to be

1 developing the shells of your budget as you go
2 through your plan. The plan is the bulk of the work
3 and you're going to be making the notations on what
4 your plan or some of the pieces of your budget are
5 going to incorporate as you're working on your plan.
6 It's not going to look like this.

7 Q. No, I understand. This is the result of
8 all those hours. It tells you how many hours they
9 worked on each thing.

10 A. For example, like the drilling portion,
11 you know, what happened during the drilling is going
12 to come out of writing the plan, and then from there
13 you're going to get those hours that were
14 incorporated in the drilling, so those pieces are
15 going to be developed while you're writing your plan.

16 Q. Okay. So we're going to go back to Stage
17 1. Sorry about that. I'm going to go back to
18 Engineer III because I lost my train of thought
19 before when we were discussing it, but Engineer III
20 on Exhibit 2 has 18 hours for Stage 1 budget
21 calculations and preparation, and according to what I
22 have that you testified was that they prepare
23 estimates, and a technical person actually does the
24 cost estimations, but in this case when we're talking

1 about Stage 1, there wouldn't be any estimates, would
2 there, because it's actual costs.

3 A. You still have to put in a budget. You
4 still have to put this stuff together.

5 Q. Right, but it doesn't really count as
6 estimating because you have the actual costs.

7 A. Right. You still have to weed through
8 all the stuff and make sure that it lines up and
9 matches with what happened in the field and what you
10 drilled is what you did and it lines up with --

11 Q. Right, but there's no estimation.

12 A. There's no estimation, no.

13 MS. JARVIS: Okay. Let me just double
14 check. I think that might be all, Carol. I know
15 you're sitting there going, woo hoo.

16 BY MS. JARVIS:

17 Q. I do have one more question and that goes
18 back to the difference between the onsite person,
19 which I would think would be the project manager, and
20 the senior project manager. What exactly are the
21 differences of their roles in oversight? Because --
22 and I just want you to clarify because, to me, it
23 sounds a lot like the senior project manager is doing
24 what the project manager should be doing in oversight

1 and making sure everything is run the way that it's
2 supposed to on a project. So if you could just
3 explain the differences between what a project
4 manager is doing in their oversight and what a senior
5 project manager is doing in their oversight.

6 A. The onsite person may not even be what
7 you're viewing as the project manager.

8 Q. Okay.

9 A. You know, we may send out two other
10 people to -- hey, they're in the vicinity, go get
11 some samples. You know, I mean, it's...

12 Q. But there's a lead person who's
13 responsible for --

14 A. There is a lead.

15 Q. If you get two other people going out to
16 the site to do samples, do they then report back to
17 the lead person?

18 A. They generally report back to the senior
19 project manager, but there is a lead, you're correct.
20 There is a lead person and that's typically the
21 person writing the report, but what we didn't do in
22 any of this is build in hours into a report writing
23 or a drafting or any of those items, project
24 management.

1 Q. Right. And that's what I'm confused
2 about is what exactly the lead person does versus
3 what you as the senior project manager on this site
4 was supposed to do because, to me, the lead person
5 gathers all of the information, writes the reports,
6 okay, or the plan and the budget. In this case, we
7 have a combination of both. We have an actual report
8 of actual things that were done and an actual cost,
9 and then we have going forward to Stage 2, which is
10 what we're going to do in the future and what it's
11 going to cost us in the future and, to me, the lead
12 person who's onsite -- I know I'm calling them a
13 project manager -- to us, that's what the person
14 would be because he's supposed to be managing the
15 site. That's the person that would do that.

16 A. And that may not --

17 Q. And it sounds very similar to what you're
18 doing, so it looks to me -- it looks to the Agency as
19 if it's duplicative.

20 A. And it may not be me.

21 Q. No. I understand in this case, though,
22 it's you.

23 A. It may be someone else. The senior
24 project manager may end up being the senior geologist

1 or whoever, but we itemized out the report writing.
2 We itemized out each one of these other things as
3 tasks in order to make those very clear what was
4 writing a report, what was drafting, what was field,
5 what was each item, and made it clear what was
6 project management.

7 Q. And is there a reason that it's the
8 senior project manager who's doing it as opposed to
9 the lead person? I mean, obviously, the project
10 manager gets paid less than the senior project
11 manager possibly.

12 A. Possibly.

13 Q. Okay.

14 A. Or it could be -- in actuality, it could
15 be a lower rate. I mean, those -- and in the actual
16 hours, those hours may not be the actual hours when a
17 claim comes in.

18 Q. So you're talking now about Stage 2?

19 A. (Witness nods in the affirmative.)

20 Q. Because we have actual hours, and I just
21 don't want the record to get confused. When you talk
22 about actual hours coming in, you're talking about
23 the reimbursement stage of Stage 2.

24 A. Right. Right.

1 MS. JARVIS: Okay. Let me just confer
2 and...

3 HEARING OFFICER WEBB: That's fine.

4 BY MS. JARVIS:

5 Q. Okay. I guess the question is, are the
6 Stage 1 actual hours going to be the same in the
7 reimbursement claim?

8 A. The Stage 1, yeah, they'll probably be
9 fairly close to these, I would presume.

10 MS. JARVIS: Okay. I have no further
11 questions.

12 HEARING OFFICER WEBB: Mr. Shaw?

13 MR. SHAW: Just maybe one.

14 REDIRECT EXAMINATION

15 BY MR. SHAW:

16 Q. Just generally speaking, we have -- some
17 of these entries involve people preparing plans and
18 budgets, either individually or in groups. Actually,
19 it looks like mostly these are group projects. If a
20 person is working on the plan and budget, how are
21 they allocating their time on these forms? How do
22 you decide what time went to the budget, what time
23 went to the plan?

24 A. Say that again.

1 Q. If someone is working on a plan and a
2 budget, preparing a plan or budget -- and budget, and
3 both of these tasks are being done simultaneously or
4 together, how does CW3M allocate time to the plan and
5 to the budget?

6 A. They would put that on their timesheet.
7 I mean, they'll try to break out the time involved
8 that's actually writing the plan and then writing the
9 budget, you know. They'll try to break that out on
10 their timesheets, so that we know, so that we can log
11 it into the system, and that's the only way that we
12 can spit out, you know, this kind of detail.

13 Q. For example, an hour increment, are they
14 charging for a plan and charging for a budget at the
15 same time, or how is that working? If they sit down
16 to work on this document, are they doing work on the
17 plan and budget at the same time according to
18 accounting software, or are they doing the work
19 separately? Are you following me on that?

20 A. No. I mean, time gets broken down into
21 quarter hour increments, so...

22 Q. If somebody bills an hour on preparing a
23 plan, are they simultaneously able to bill an hour
24 for the budget at the same time?

1 A. No.

2 MR. SHAW: Okay. Thank you. That's all
3 I have.

4 HEARING OFFICER WEBB: Ms. Jarvis?

5 MS. JARVIS: I have nothing further.

6 HEARING OFFICER WEBB: Okay. Thank you,
7 Ms. Rowe.

8 MS. ROWE: Do you need these?

9 HEARING OFFICER WEBB: I have a set.

10 MR. SHAW: Well, those are the nice sets.
11 The nice set probably needs to be where the other one
12 goes.

13 HEARING OFFICER WEBB: Do you want me to
14 keep them?

15 MR. SHAW: Yes.

16 HEARING OFFICER WEBB: Except I don't
17 have a nice Exhibit 1.

18 Mr. Shaw, would you like to call another
19 witness?

20 MR. SHAW: No. I would like to admit
21 Petitioner's Exhibit 1 into the record. That's the
22 instructions for the budget and billing forms.

23 (Petitioner's Exhibit 1 was identified
24 for the record.

1 It's my understanding that Melanie
2 doesn't object to that.

3 MS. JARVIS: No.

4 MR. SHAW: We're not presenting any
5 verbal testimony today on the measuring wheel, just
6 the documents, and I think Exhibits 2, 3, 4 and 5, I
7 would just describe them as demonstrative exhibits,
8 so it's not really needed to admit those.

9 MS. JARVIS: Right, because they're part
10 of the record.

11 HEARING OFFICER WEBB: Okay. So...

12 MR. SHAW: I rest my case.

13 HEARING OFFICER WEBB: Okay.

14 Petitioner's Exhibit 1 is admitted into the record,
15 and, I mean, I can go ahead and admit 2, 3, 4 and 5
16 just for convenience' sake.

17 (Petitioner's Exhibits 1 through 5 were
18 admitted into evidence.)

19 All right. Ms. Jarvis you may call your
20 first witness.

21 MS. JARVIS: Sure.

22 First, is Rob Stanley here?

23 MR. SHAW: Yes.

24 MS. JARVIS: I would call Rob Stanley. I

1 just have a quick question for you, if you don't
2 mind.

3 HEARING OFFICER WEBB: Up here,
4 Mr. Stanley. Would the court reporter please swear
5 in the witness?

6 (Witness sworn.)

7 ROB STANLEY
8 called as a witness on behalf of the Respondent,
9 being first duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MS. JARVIS:

13 Q. Mr. Stanley, if you could please state
14 your name.

15 A. Rob Stanley.

16 Q. And what is your profession?

17 A. I'm a geologist, a professional
18 geologist.

19 Q. And who do you work for?

20 A. CW3M.

21 Q. And where are you located?

22 A. Marion.

23 Q. Do you live in Marion?

24 A. No, I do not.

1 Q. Where do you live?

2 A. I live in Johnson City, Illinois.

3 Q. Which is down --

4 A. Down the road.

5 Q. Okay. What is your -- what was your
6 involvement in this case?

7 A. I prepared the plan and the budget and
8 drawings.

9 Q. And have you been at the site?

10 A. I have, yes.

11 MS. JARVIS: Okay. That's all of the
12 questions I have.

13 HEARING OFFICER WEBB: Okay. Mr. Shaw,
14 would you like to follow up?

15 MR. SHAW: No. No questions.

16 HEARING OFFICER WEBB: Okay. Thank you,
17 Mr. Stanley.

18 (Witness excused.)

19 All right. You may call your next
20 witness.

21 MS. JARVIS: Okay. I call Shirlene
22 South.

23 HEARING OFFICER WEBB: Would the court
24 reporter please swear in the witness?

1 (Witness sworn.)

2 HEARING OFFICER WEBB: I'm sorry. I
3 didn't catch your name.

4 THE WITNESS: Shirlene South.

5 HEARING OFFICER WEBB: Shirlene? And
6 what's your last name?

7 THE WITNESS: South, like the direction.

8 HEARING OFFICER WEBB: South, okay.
9 Thank you.

10 SHIRLENE SOUTH

11 called as a witness on behalf of the Respondent,
12 being first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. JARVIS:

16 Q. Okay. Can you please state your name?

17 A. Shirlene South.

18 Q. And what's your occupation?

19 A. Project manager with the underground
20 storage tank section.

21 Q. And who do you work for?

22 A. Mike Lowder.

23 Q. Okay. So you work at the Illinois EPA?

24 A. Yes.

1 Q. And what is your role in relation to Abel
2 Investments?

3 A. I'm the project manager. I review and
4 submit letters or reply to the letters.

5 Q. And in this case did you write the
6 Agency's May 10, 2016, final decision letter?

7 A. Yes.

8 MS. JARVIS: And I do not have this
9 marked as an exhibit, but it's part of the record
10 starting at page 118. I'm just going to hand her a
11 copy of the letter, if there's no objection.

12 MR. SHAW: No objection.

13 MS. JARVIS: Since we're going to be
14 going through it line by line.

15 BY MS. JARVIS:

16 Q. So I want you to turn to the third page
17 of the decision letter, which is page 121 in the
18 record, and we're just going to go item to item,
19 okay?

20 A. Okay.

21 Q. So for item number 3, you cut \$984 --
22 \$984.24. Would you please explain the basis of that
23 cut?

24 A. It did not appear to me that an Engineer

1 III should be doing the work of what I assumed to be
2 an accountant tech job.

3 Q. And why did you feel that way?

4 A. In my opinion, a budget would be someone
5 in accounting. An engineer does planning and
6 drilling and that type of work.

7 Q. Okay. So you reduced this to a senior
8 account technician?

9 A. Yes.

10 Q. Okay. Let's go on. Let's turn the page
11 to number 4, and you cut \$1,457.88 for technical
12 oversight/compliance/reimbursement review. Would you
13 like to go ahead and describe that cut?

14 A. I called and asked about what
15 oversight/compliance/reimbursement review was, and
16 from the phone conversation, it was explained to me
17 that Carol Rowe or another person reviewed ongoing
18 work on a project, and that to keep it on track, and
19 I would assume that those are the job of the project
20 manager to keep track of a project.

21 Q. And who did you call and talk to?

22 A. I called, I believe, Vince or Rob
23 Stanley.

24 Q. Okay. If you look --

1 A. I talked to both of them.

2 Q. Yeah. If you look to the last paragraph
3 of that one, who does it indicate that you talked to?
4 It starts with, "per phone conversation."

5 A. Rob Stanley.

6 Q. Okay. And let's go ahead and go to
7 number 5, which the petitioners did not discuss, but
8 we're going to. You cut \$54 for indirect corrective
9 action costs for a measuring wheel. So could you
10 please explain that cut?

11 A. Management has made a decision that a
12 measuring wheel is an indirect cost and we are now
13 not paying that. We don't consider it to be
14 reimbursable.

15 MS. JARVIS: Okay. At this time, I just
16 want to present our Agency Exhibit 1, which is just
17 Black's Law Dictionary, and there was no objection,
18 that defines direct and indirect costs.

19 HEARING OFFICER WEBB: Okay. Agency
20 Exhibit 1 is admitted.

21 (Agency Exhibit 1 was identified for
22 the record and admitted into evidence.)

23 BY MS. JARVIS:

24 Q. Let's go on to Stage 2. You cut \$991.28,

1 again for technical oversight. Now we're talking
2 about a budget and not the actual costs that we were
3 before. So can you explain that cut?

4 A. Once again, it seemed to be a -- I had
5 asked for an explanation. I applied the same
6 response that I got to that line item and it appeared
7 to be something that the project manager would do.

8 Q. Okay.

9 A. And it would be part of their job title,
10 so it would be considered almost duplicative in
11 nature.

12 Q. Okay. Let's go on to number 2, \$660.52,
13 costs for professional geologist which exceeded the
14 minimal requirements, and why did you cut that one?

15 A. Once again, it appears to be something
16 that an account technician would do rather than a
17 geologist.

18 Q. And then if we could just go ahead to
19 number 3, \$456.80, costs for an Engineer III.

20 A. Once again, it appears to be something
21 that an accountant would do when dealing with money
22 matters.

23 Q. Okay. So in the budget there were two
24 separate line items that you felt were more attuned

1 to an accountant as opposed to other professional
2 geologists or an Engineer III.

3 A. Yes.

4 Q. Okay. Let's turn it over and go to
5 number 4, which is \$797.93 for travel time, and if
6 you could please explain that cut.

7 A. When I called to talk to Rob, Vince
8 informed me that he was in the Marion office, and
9 since he's the project manager, I would be assuming
10 that he would be the one on the project, and so I
11 gave them time for the Springfield person to be
12 driving down, and he would driving from the Marion
13 office, so I reduced his time to fit in with that.

14 Q. Okay. Let's go on to number 5, which is
15 a reduction of \$743.46 for costs for the site
16 investigation completion report.

17 A. Partly, I didn't understand why the site
18 investigation completion report wasn't in this part
19 of the letter at this point in time, and also, once
20 again, it seems to be duplicative of doing the
21 project manager's work.

22 Q. And what do you mean that it wasn't in
23 the letter?

24 A. There's no indication that they were

1 going to be at that stage of the site investigation
2 completion report.

3 Q. So you were surprised to see it in their
4 submittal at all?

5 A. At that point in time.

6 MS. JARVIS: Okay. I have no further
7 questions.

8 HEARING OFFICER WEBB: Mr. Shaw?

9 MR. SHAW: I'll try to keep it short.

10 THE WITNESS: Okay.

11 CROSS EXAMINATION

12 BY MR. SHAW:

13 Q. How long have you worked for the Illinois
14 Environmental Protection Agency?

15 A. Since 1992.

16 Q. How long have you been in the LUST
17 division?

18 A. Since 2014 -- 2004. Sorry about that.

19 Q. And since 2004, have you had essentially
20 the same job?

21 A. Yes.

22 Q. And that is?

23 A. That's project manager in the underground
24 storage tank section.

1 Q. Have you ever worked for a consulting
2 firm?

3 A. No.

4 Q. As part of your job, do you review
5 budgets?

6 A. Yes.

7 Q. And who's your supervisor next up from
8 you?

9 A. Michael Lowder.

10 Q. Michael Lowder? Do you know what his
11 title is?

12 A. Supervisor.

13 Q. Does Mike Lowder review your work in
14 reviewing budgets?

15 A. He gives a quick review, yes.

16 Q. Does Michael Lowder ever indicate to you
17 changes in Agency policy, such as indirect cost
18 issues?

19 A. That was a management decision.

20 Q. Okay. Is Michael Lowder management?

21 A. Yes.

22 Q. Okay. But it wasn't him individually.
23 Now, is he the one -- just to be clear, is he the one
24 who communicated to you that management had made a

1 decision regarding indirect costs?

2 A. I think it was a section-wide decision.

3 Q. Okay. And how did you learn about this?

4 A. Section meeting.

5 Q. Okay. And do you remember who was
6 speaking at the section meeting?

7 A. Greg Dunn.

8 Q. And who is Greg Dunn?

9 A. Section manager.

10 Q. Okay. Do you know when this meeting was,
11 approximately?

12 A. Sometime since Greg Dunn became the
13 section manager.

14 Q. In regards to indirect costs, were there
15 other issues besides measuring wheels discussed as
16 indirect costs?

17 A. Cameras.

18 Q. Cameras? Measuring wheels and cameras is
19 all that you recall?

20 A. At this point in time, yes.

21 Q. Do you know whether or not the Agency is
22 anticipating any rulemaking on the issue of indirect
23 costs?

24 A. No.

1 Q. A couple of these items you indicated you
2 believed that the job the senior project manager was
3 doing was better filled by the project manager. Is
4 that a fair summary or not a fair summary?

5 A. Say that again, please?

6 Q. A couple of the cuts you made,
7 specifically with respect to senior project
8 manager -- I have a quote from your letter here.
9 "The Illinois EPA would assume that these are the
10 duties of the project manager assigned to the site."

11 A. Can you tell me what you're looking at?

12 Q. I'm looking at the first cut of Stage 2.

13 A. Yes, I did make that decision. I do
14 believe it should be in accounting, senior account
15 technician.

16 Q. Except that, I guess, are you saying the
17 project manager is the same as the account
18 technician?

19 A. The first -- the first cut number -- I'm
20 sorry. I'm looking at Stage 1.

21 Q. I'm sorry. I'll give you plenty of time
22 to look at it. It gets confusing, I know.

23 A. So the first cut for the Stage 1. Stage
24 2. First, when I called, I took the explanation they

1 gave me, which was that this would be reviewed by
2 another person, and as I stated in the letter, the
3 EPA would assume that these are the duties of the
4 project manager assigned to the site.

5 Q. But for purposes of that item, there is
6 no project manager identified as doing any work on
7 the budget.

8 A. Are we discussing Stage 1?

9 Q. Let me go to the Application. Okay.
10 Where's Exhibit 3, Petitioner's Exhibit 3?

11 A. The first line item.

12 Q. Let me ask you, before we get too far
13 with that, just to make sure the record's clean.
14 There's highlighting on this exhibit. Is that yours?

15 A. Yes.

16 Q. There's also notes on this exhibit
17 handwritten. Are those yours, too?

18 A. Yes.

19 Q. Okay. Are all the handwriting that you
20 recall on the application yours or would that have
21 been by a supervisor?

22 A. I believe it's mine.

23 Q. Okay. In looking at the first item on
24 Petitioner's Exhibit 3, the senior project manager,

1 that was cut and you indicated you assume that would
2 be work for a project manager. However, there's no
3 project manager doing any work on that budget, isn't
4 that correct?

5 A. The way it reads is as if he is reviewing
6 work already done, compliance and oversight.

7 Q. He's -- I'm sorry. Who is he in
8 this that you're referring to?

9 A. I'm going to assume either Rob Stanley or
10 Carol Rowe. And below it, you have a geologist who's
11 doing a budget certification who's also reviewing the
12 work. It's my understanding that the senior
13 professional engineer who's doing the budget
14 certification would be doing those duties.

15 Q. Okay. If the professional -- if that
16 person was doing those duties, would the hours be
17 more? Wouldn't their hours be eight more, if you're
18 going to have the -- if that person reviewed the
19 work, wouldn't that be eight hours more to do that
20 work?

21 A. It depends on how long it takes them to
22 read it.

23 Q. You just cut all the oversight and
24 compliance completely, though; correct?

1 A. Because I didn't receive any
2 justification for it.

3 Q. And when was this justification sought?

4 A. In the phone conversation.

5 Q. Was there a place in the application to
6 provide justification?

7 A. We're here on an appeal.

8 Q. I'm sorry. What did you say?

9 A. We are here at an appeal.

10 Q. Did you -- did any of your denial
11 reasoning include rejecting the site investigation
12 completion report as inappropriate in this
13 application?

14 A. I found the placement of it odd.

15 Q. You found it odd, but you did not reject
16 it for that reason. I mean, if it's inappropriate to
17 put the site investigation completion report --

18 A. Yeah. They can put it in another place
19 when it's the correct timing for it.

20 Q. Do you consider yourself an account
21 technician?

22 A. No.

23 Q. You review lots of plans and budgets and
24 they come as packages together, is that correct?

1 A. Yes.

2 Q. And is one of your jobs to make sure that
3 the plan and budget mesh together?

4 A. Yes.

5 Q. Who helps you with this beside yourself
6 on just an average plan and budget? When a plan and
7 budget comes in to you, what kind of help do you get,
8 or do you do it all yourself?

9 A. I basically do it myself.

10 Q. Do you have any clerical staff to support
11 you?

12 A. No.

13 Q. So you're doing a lot of the typing
14 yourself that ultimately creates the final product?

15 A. Yes.

16 Q. Is that how it's always been or is that
17 somewhat recent?

18 A. That's the way it's always been.

19 Q. In terms of oversight, do you receive
20 oversight on projects?

21 A. Some from Michael Lowder.

22 Q. Anybody -- who did you say again? Oh,
23 Mike. I'm sorry. Anybody else besides Mike Lowder?

24 A. No.

1 Q. Do you ever receive oversight from Brian
2 Bauer?

3 A. I've gone and asked him questions about
4 different things.

5 Q. And without getting into specifics, what
6 type of things would you be asking him about?

7 A. Has he seen this before? Are these
8 average number of hours? Has he seen this on a
9 budget before when he was reviewing?

10 Q. Who is Mike Lowder's immediate
11 supervisor?

12 A. Greg Dunn.

13 MR. SHAW: I don't have any further
14 questions.

15 REDIRECT EXAMINATION

16 BY MS. JARVIS:

17 Q. I just want to take you back to the
18 Exhibit 3. There was a professional geologist listed
19 on that page -- did you see Exhibit 3 -- for 14
20 hours, correct?

21 A. Yes.

22 MS. JARVIS: Okay. I have no further
23 questions.

24 MR. SHAW: I don't have any.

1 HEARING OFFICER WEBB: Thank you,
2 Ms. South.

3 (Witness excused.)

4 Ms. Jarvis, do you have anything else you
5 would like to present today?

6 MS. JARVIS: Oh, yeah. Here's your
7 Petition, Exhibit 3.

8 I want to call Mike Lowder for just a
9 brief question.

10 (Witness sworn.)

11 MIKE LOWDER

12 called as a witness on behalf of the Respondent,
13 being first duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. JARVIS:

17 Q. State your name.

18 A. Mike Lowder.

19 Q. And what's your -- where are you
20 employed?

21 A. Illinois EPA.

22 Q. And what is your title?

23 A. I'm a unit manager. The title that is on
24 my pay stub would be public service administrator.

1 Q. Okay. And do you know Shirlene South?

2 A. Yes.

3 Q. And what is your role in connection to
4 Ms. South?

5 A. She reports directly to me. She is my
6 project manager.

7 Q. And she testified that you look at what
8 she prepares, is that true?

9 A. Yes. I review the letters that they give
10 me, and I may sometimes look through the plans and
11 budgets, but not usually in great detail.

12 Q. And how long does that oversight usually
13 take?

14 A. If I'm just looking through the letter
15 and briefly looking through what she has reviewed, a
16 few minutes, 10 minutes, 15, somewhere in there.

17 MS. JARVIS: Okay. I have no further
18 questions.

19 CROSS EXAMINATION

20 BY MR. SHAW:

21 Q. What are the responsibilities of the unit
22 manager?

23 A. The unit manager has staff that reports
24 directly to him or her and we review the letters that

1 are generated by the staff for the plans and budgets
2 that come in. That's a lot of the duties.

3 Q. Is it your responsibility to coordinate
4 practices for consistency purposes amongst the
5 different project managers?

6 A. Yes.

7 Q. How do you do that?

8 A. Well, we -- if there's modifications or
9 rejections, then we may discuss them just so we're
10 being consistent as a section among the managers.

11 Q. And how does that information get to the
12 staff?

13 A. Well, I mean, if we're looking at the
14 letters, we just want to make sure that we're being
15 consistent across the board. If there's something
16 that we want to relate to the staff, that could
17 either be through me relaying it to my staff that
18 directly report to me or it could be from a
19 section-wide standpoint through a meeting that we
20 have that it is related at that time.

21 MR. SHAW: No further questions.

22 MS. JARVIS: I have nothing further.

23 HEARING OFFICER WEBB: Thank you,

24 Mr. Lowder.

1 (Witness excused.)

2 MS. JARVIS: Okay. Now I'm going to call
3 Brian Bauer.

4 HEARING OFFICER WEBB: Okay.

5 (Witness sworn.)

6 BRIAN BAUER

7 called as a witness on behalf of the Respondent,
8 being first duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MS. JARVIS:

12 Q. Okay. Would you please state your name?

13 A. Brian Bauer.

14 Q. And what's your occupation?

15 A. Project manager, Illinois EPA.

16 Q. And I was going to go on with, where are
17 you employed, and how long have you been a project
18 manager at the Illinois EPA?

19 A. Over 24 years.

20 Q. Okay. And I'm going to ask you some
21 questions regarding the cuts in this case. Are you
22 familiar with this case?

23 A. Somewhat, yes.

24 Q. Okay. I want to focus on the measuring

1 wheel and, as you know, the measuring wheel was cut
2 for being an indirect cost. Could you please explain
3 that decision and why it was cut?

4 A. Yeah. It was an Agency, you know,
5 decision, to cut these across the board. The Agency
6 looked at what these particular items cost to
7 purchase. We found that the average cost was pretty
8 nominal and that the rental rates by all consultants
9 that were asking for this piece of equipment seemed
10 to be unreasonable, based on the purchase price.

11 Q. And when you looked at this, did you find
12 a rental for a measuring wheel?

13 A. I did not find any rentals for a
14 measuring wheel, no.

15 Q. So you could not find a place to rent a
16 measuring wheel?

17 A. That's correct.

18 Q. Do you recall how much a measuring wheel
19 costs?

20 A. I think the average was \$40, maybe up to
21 \$60 for a high end one.

22 Q. Okay. Now, let's go on to technical
23 oversight/compliance/reimbursement. Are you familiar
24 with the decision to make those cuts?

1 A. Yeah. Yeah.

2 Q. And can you describe the basis for those
3 cuts?

4 A. The Agency doesn't really know what --
5 they think that it seems to be duplicative and we
6 really -- the Agency really doesn't know what they're
7 getting for that. It doesn't -- we've asked for --
8 you know, across the board, we've asked for
9 documentation or technical information as to what is
10 actually, you know, what the Agency's getting for
11 that and those costs, you know.

12 Q. So someone could submit supporting
13 documentation and get these costs paid?

14 A. Yes, if they --

15 Q. And then are you familiar with the
16 reduction of Engineer III or professional geologist
17 to account tech? What exactly goes into the
18 preparation, I guess, of a budget in your view?

19 A. Well, I think on the Stage 1 cost that
20 she did allow, you know, some -- I believe it was
21 eight hours of senior project manager, she didn't
22 reduce those rates, and then so there was some
23 technical aspects to that budget, but the -- the data
24 entry portions of it, what seems to be the

1 calculations of the, you know, the Engineer III that
2 it was reduced down to, we thought that was an
3 account type position where it really wasn't, you
4 know, technical in nature. It was just taking the
5 actual costs and putting them into the budget.

6 Q. And what exactly calculations are
7 involved at a Stage 1?

8 A. I don't know. The forms self calculate,
9 so they would be data entry, unless there was some
10 internal thing that we're not aware of.

11 MS. JARVIS: Okay. That's all the
12 questions I have then. Your witness.

13 CROSS EXAMINATION

14 BY MR. SHAW:

15 Q. Mr. Bauer, you said your job title's
16 project manager?

17 A. I think officially, yes.

18 Q. What are your job responsibilities?

19 A. Presently, I oversee the reimbursement
20 program, I guess.

21 Q. Are you a supervisor over other project
22 managers?

23 A. No.

24 Q. Are you in the budget and planning stage?

1 Are you in the payment stage, if that distinction
2 makes sense to you?

3 A. Most of my activities are with regards to
4 the reimbursement stage, but I do work a lot with
5 the -- on the budget stage; anything to do with the
6 reimbursement.

7 Q. And when you say reimbursement, are you
8 referring to the applications for payment or are you
9 referring to something broader than that?

10 A. Something broader than that. I mean,
11 like the budgets and the applications, I mean, I do
12 help.

13 Q. Do you help review plan applications and
14 budgets, applications for plans and budgets?

15 A. I help people, yes.

16 Q. Okay. Did you help with respect to this
17 particular appeal, the matters in this particular
18 appeal?

19 A. I do not recall.

20 Q. Is it possible you did supervise a
21 little?

22 A. It's possible.

23 Q. Do you know if there's any preparation
24 under way to report costs relating to measuring

1 wheels and how they should be addressed in the Board
2 regulations through the rulemaking?

3 A. No.

4 Q. Are you familiar with the proceed -- the
5 procedures and the Board regulations for a triennial
6 review of costs in industry?

7 A. I'm not familiar.

8 Q. Every three years, the Agency -- there's
9 a rule that states the Agency...

10 MS. JARVIS: I'm going to object because
11 counsel is now testifying.

12 MR. SHAW: He's not familiar with it.
13 I'm trying to see if this will refresh his memory.

14 MS. JARVIS: You didn't say if anything
15 would refresh his recollection. You were testifying.

16 HEARING OFFICER WEBB: Try again.

17 BY MR. SHAW:

18 Q. Does the Agency have any practice in
19 place to report to the Board costs in the underground
20 storage industry?

21 A. I do not know.

22 Q. Who would know?

23 A. I would have to say someone up the chain;
24 a manager, something like that.

1 Q. Who is your immediate supervisor?

2 A. Steve Colantino.

3 Q. And who does he report to?

4 A. Greg Dunn.

5 Q. Are you an account tech?

6 A. No.

7 Q. Do you know if the Agency has made any
8 effort to review whether or not consulting's hourly
9 rates are consistent with hours charged in the
10 industry; in other words, the rates that are set in
11 the Board regulations?

12 A. I don't know.

13 Q. Anything comparable to what apparently
14 you guys have done with respect to measuring wheels?

15 A. No.

16 MR. SHAW: No further questions.

17 MS. JARVIS: I think I only have two
18 questions.

19 REDIRECT EXAMINATION

20 BY MS. JARVIS:

21 Q. You're not in charge of the decision as
22 to whether or not the Agency does rulemaking, is that
23 correct?

24 A. That's correct.

1 Q. And above Mr. Dunn, who is above him?

2 A. Heather Nifong.

3 Q. And what is her title?

4 A. She's the bureau chief.

5 Q. Okay. Did the Agency in the past have
6 accountants?

7 A. Yes.

8 Q. And the Agency no longer has accountants.

9 A. They did lay off almost all the
10 accountants. We have one account tech, two or
11 something like that.

12 MS. JARVIS: Okay. I have no further
13 questions.

14 MR. SHAW: I have no questions.

15 MS. JARVIS: And we rest.

16 HEARING OFFICER WEBB: All right. And
17 that's B-A-U-E-R?

18 THE WITNESS: Correct.

19 HEARING OFFICER WEBB: Okay. The Agency
20 rests.

21 The transcript is due by September 14th
22 and will be posted on the Board's website.

23 The public comment deadline is September
24 21st. Public comment must be filed in accordance

1 with Section 101.628 of the Board's procedural rules.

2 The Petitioner's brief is due by
3 September 30th and Respondents's brief will be due by
4 October 17th, and Petitioner's reply brief will be
5 due by October 26th, assuming that Mr. Shaw files a
6 deadline waiver to December 1st. Actually, can we
7 make that December 8th, just in case? I don't know
8 when the first meeting in December is. It's either
9 the 1st or the 8th.

10 MR. SHAW: Yeah, that's fine.

11 HEARING OFFICER WEBB: Okay. December
12 8th.

13 Mr. Shaw, would you like to make any
14 closing statements?

15 MR. SHAW: I will reserve that for the
16 brief.

17 MS. JARVIS: We will also reserve it for
18 the brief.

19 HEARING OFFICER WEBB: Great.

20 At this time, I will conclude the
21 proceedings and we stand adjourned. Thank you
22 everyone.

23 (Hearing concluded at 11:50 a.m.)

24

September 7, 2016

1 STATE OF ILLINOIS)
2 COUNTY OF MACON) SS

3

4 I, LISA HAHN PETERMAN, CSR, RMR, in and for the
5 County of Macon, State of Illinois, DO HEREBY CERTIFY,
6 that I am a court reporter doing business in the State of
7 Illinois; that I reported by means of machine shorthand
8 the proceedings held in the foregoing cause, and that the
9 foregoing is a true and correct transcript of my
10 shorthand notes so taken as aforesaid.

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Lisa Hahn Peterman, CSR, RMR
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