

**STATE ARBITRATION BOARD**  
1022 LOTHIAN DRIVE  
TALLAHASSEE, FL 32312-2837  
PHONE: (904) 385-2852 OR (904) 942-0781 FAX: (904) 942-5632

28 July 1993

**NOTICE**

In the case of Apex Contracting, Inc. versus the Florida Department of Transportation on Project No. 10160-3526 in Hillsborough County, Florida, both parties are advised that State Arbitration Board Order No. 5-93 has been properly filed on July 26, 1993.



H. Eugene Cowger, PE  
Chairman & Clerk, S.A.B.

S.A.B. CLERK

JUL 26 1993

**FILED**

Copies of Order & Transcript to:

Mr. J.B. Lairscey, Jr., PE, Director, Office of Construction/FDOT  
Ms. Bonita Jones, Corporate Secretary/Apex Contracting, Inc.

STATE ARBITRATION BOARD

ORDER NO. 5-93

RE:

Request for Arbitration by  
Apex Contracting, Inc. on  
Job No. 10160-3526  
Hillsborough County

The following members of the State Arbitration Board  
participated in the disposition of this matter:

H. Eugene Cowger, P. E. Chairman  
Kenneth N. Morefield, P. E. Member  
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a  
request for arbitration commencing at 11:25 a.m., Wednesday  
June 2, 1993.

The Board Members, having fully considered the evidence  
presented at the hearing, now enter their order No. 5-93 in  
this cause.

ORDER

The Contractor presented a request for arbitration of a  
claim for release of liquidated damages and compensation for  
additional work totaling \$27,712.46.

RELEASE OF LIQUIDATED DAMAGES

No. 1 20 Calendar Days

1. The grounding rods actually required were longer than the  
10' length shown in the plans, causing a substantial overrun  
in the quantity of rods required.
2. When we realized that this overrun would occur we checked  
with our supplier and were assured that rods would be  
available on next day delivery from his warehouse in Tampa.

3. When we ran out of rods on June 9, 1992, we placed an order but our supplier was unable to deliver them until June 25, 1992. The manufacturer could not meet the demand for rods at that time because a principal competing manufacturer was experiencing manufacturing difficulties.

4. We did not attempt to change suppliers because of the difficulty in obtaining approval.

No. 2 30 Calendar Days

1. The first day we were on the job, we requested permission to use a Ditch Witch Model P-80 to place conduit under paved areas. The Department advised us that this equipment was not acceptable because it did not meet the requirements of their Maintenance Manual. That manual is not a contract document for this project.

2. On previous projects, we successfully installed conduit using equipment similar to the Model P-80 except that it did not have the guidance support equipment that is part of the Model P-80.

3. In discussing with Department maintenance personnel we were told that the preferred method for installing 2" conduit under paved areas is to jack a 4" casing and pull the conduit through the casing. The Department asked us to submit a price for this method, which we did. They never responded to our proposal.

4. Installation of conduit under paved areas prior to installing other runs of conduit is the normal procedure so that trenching can be modified to accommodate adjustments in

the under pavement runs.

5. We were delayed between January 10, 1992 and February 14, 1992.

No.3 2 Calendar Days

1. On April 30, 1992 we were instructed to stop work in the area North of Van Dyke Road because that work was being eliminated from the contract. We submitted prices covering the change in the scope of this work on May 13, 1992. We received a Supplemental Agreement for this change on August 14, 1992, after all work was completed.

2. After suspension of the charging of time on August 3, 1992, time charges were resumed for August 7th and 8th, the days on which we were removing the foundations we had installed North of Van Dyke Road.

No. 4 11 Calendar Days

Between February 12, 1992 and March 6, 1992 one of our two crews working on the project was ineffective because of conflicts with water mains and awaiting location of water mains that might be in conflict with our operations.

No. 5 3 Calendar Days

Additional contract time should have been granted due to rain on January 23, 1992, January 28, 1992 and February 5, 1992.

PART I \$3,886.86 PLUS  
Release of 2 Calendar Days Liquidated Damages

We were instructed by the Department to lower several lighting foundations that had been installed under their inspection. This was ordered after we brought the situation

to the attention of the Project Engineer. He overrode earlier decisions by the inspector.

PART II \$1,555.59 PLUS Release of 11 Calendar Days  
Liquidated Damages

The Department changed the size of the bridge joint compression seals. This caused us to incur extra costs and delayed completion of the work.

The Department of Transportation rebutted each part of the Contractor's claim as follows:

RELEASE OF LIQUIDATED DAMAGES

No. 1

1. Installing of grounding rods was not a controlling item of work during this period of time.
2. We checked with several other suppliers, who did not substantiate that there was a shortage of grounding rods during this period of time.
3. A plan note states that grounding rods shall be 10' long, but also requires that the minimum resistance to ground shall not exceed 25 OHMS. This is a typical note. The Contractor knew when he installed some ground rods well before June 9, 1992 that there would be a substantial overrun in the quantity of this item.

No. 2

1. Between January 20, 1992 and April 4, 1992, the Contractor made numerous attempts to demonstrate that the "pusher rod"

of the Ditch Witch Model P-80 could be controlled as to alignment. Some of these attempts were made with a factory representative present. He never successfully controlled line and grade.

2. The Model P-80 is sensitive to soil conditions.

3. Article 100-3 of the Standard Specifications covering experimental equipment states that equipment other than that normally used may be approved by the Engineer if the Contractor establishes that the proposed equipment will produce work equal in quality.

4. When the Contractor changed from the Model P-80, a pusher rod type machine, to a directional boring machine he was immediately able to demonstrate ability to control line and grade.

5. On other projects, the Contractor has elected to install conduit under paved areas utilizing a 4" casing at his expense.

No. 3

The two days charged during the period of time when the foundations North of Van Dyke Road were being removed was less than the 19 days represented by the prorata share of the allowable contract days represented by the work eliminated North of Van Dyke Road.

No. 4

1. Our records indicate only minimal utility conflict delays during the period in question.

2. Beginning on February 19th, the County had a crew working

ahead of the Contractor locating water mains.

No. 5

There was some rain on January 28, 1992 and February 5, 1992.

PART I

1. Index No. 17500 clearly shows that the top of a foundation is to be flush with the ground on the high side. Safety standards limit projections of foundations above the surface to 4 inches.

2. We question why only 26 of 339 foundations, all of which were installed under inspection, were too high.

PART II

1. We agree that compensation is due the Contractor for actual costs incurred due to the change in the size of bridge seals. We do not agree with the method of calculating the amount due.

2. The Contractor's schedule showed beginning bridge work on day 40, but he did not begin work on the bridge until day 170. If he had begun work in accordance with his schedule, the replacement seals would have been ordered and delivered within the allowable contract time.

The Board in considering the testimony and exhibits presented found the following points to be of particular significance:

RELEASE OF LIQUIDATED DAMAGES

No. 1

Other significant work not dependent on installation of grounding rods remained to be completed after June 25, 1992

No. 3

The only work on the project between July 21, 1992 and August 8, 1992 (date of conditional acceptance) was installing a missing ballast, removal of foundations North of Van Dyke Road and installing revised elastomeric bridge seals.

No. 4.

The plans and specifications did not identify any conflicts with water mains.

The Department gave notice to the utility owner of the Contractor's notice of intent to file a claim based on failure of the owner to relocate its facilities in a timely manner.

PART I

The inspector who viewed installation of the footings which had to be lowered was not present at the hearing for questioning. Testimony was presented by the Project Engineer that, when questioned, the inspector stated that he did not instruct the Contractor how to install the foundations.

PART II

The Department did not advise the Contractor of the plan error in the size of the bridge compression seals until installation began. Upon delivery of the replacement seals, the Contractor promptly installed them.

From the foregoing and in light of the testimony and exhibits presented, the State Arbitration Board finds as follows:



The Department is ordered to compensate the Contractor for his claim as follows:

RELEASE OF LIQUIDATED DAMAGES

Release assessed liquidated damages represented by 25 calendar days. The Board considered all requests for release of liquidated damages, including days requested in Part I and Part II, in arriving at this award.

PART I

Nothing

PART II

The amount of \$1,555.59.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 198.86 for Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$ 99.44 for Court Reporting Costs.

Tallahassee, Florida

Dated: 26 July 1993

Certified Copy:

H. Eugene Cowger  
H. Eugene Cowger, P. E.  
Chairman & Clerk, S.A.B.

26 July 1993  
Date

H. Eugene Cowger  
H. Eugene Cowger, P. E.  
Chairman & Clerk

K. N. Morefield  
K. N. Morefield, P. E.  
Member

John P. Roebuck  
John P. Roebuck  
Member

S.A.B. CLERK  
JUL 26 1993  
FILED

STATE ARBITRATION BOARD  
STATE OF FLORIDA

S.A.B. CLERK

JUL 26 1993

APEX CONTRACTING, INC. )  
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DEPARTMENT OF TRANSPORTATION )  

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**FILED**

PROJECT NO. 10160-3526

LOCATION: Hillsborough County,  
Florida

**ORIGINAL**

RE: Arbitration In The Above Matter

DATE: Wednesday, June 2, 1993

PLACE: Florida Transportation Center  
1007 Desoto Park Drive  
Tallahassee, Florida

TIME: Commenced at 11:25 a.m.  
Concluded at 12:45 p.m.

REPORTED BY: CATHERINE WILKINSON  
CSR, CP, CCR  
Notary Public in and for  
the State of Florida at  
Large

WILKINSON & ASSOCIATES  
Certified Court Reporters  
Post Office Box 13461  
Tallahassee, Florida 32317

## APPEARANCES:

## MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman  
 Mr. Ken Morefield  
 Mr. Jack Roebuck

## APPEARING ON BEHALF OF APEX CONTRACTING, INC.:

Mr. Frank Whitney  
 Mr. Joe McCarty

## APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Ms. Sandra Piccirilli  
 Mr. Frank Proch  
 Mr. Grant Young  
 Mr. Tom Lay  
 Mr. Mike Irwin  
 Mr. Marty Sanchez  
 Mr. Ava Parker

\* \* \*

## I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1 and 2 in evidence	5
CERTIFICATE OF REPORTER	63

P R O C E E D I N G S

1  
2 CHAIRMAN COWGER: This is a hearing of the State  
3 Arbitration Board established in accordance with  
4 Section 337.185 of the Florida Statutes.

5 Mr. Ken Morefield was appointed as a member of  
6 the Board by the Secretary of the Department of  
7 Transportation. Mr. Jack Roebuck was elected by the  
8 construction companies under contract to the Department  
9 of Transportation.

10 These two members chose me, H. E. Cowger, to  
11 serve as the third member of the Board and as Chairman.

12 Our terms of office began July 1, 1991, and  
13 expire June 30, 1993.

14 Will all persons who intend to make an oral  
15 presentation during this hearing please raise your  
16 right hand and be sworn in.

17 (Whereupon, all witnesses were duly sworn.)

18 CHAIRMAN COWGER: The documents which put this  
19 arbitration hearing into being are hereby introduced as  
20 Exhibit 1. That's identified as the contractor's  
21 request for arbitration and the information that was  
22 attached thereto. This information has been furnished  
23 to the DOT with the request for -- with the notice of  
24 arbitration.

25 Does either party have any additional information

1 it wishes to put into the record as an exhibit?

2 MS. PICCIRILLI: The Department of Transportation  
3 does.

4 CHAIRMAN COWGER: Show us off the record.

5 (Discussion off the record)

6 CHAIRMAN COWGER: While we were off the record  
7 discussing exhibits, the DOT submitted a package of  
8 information which we will identify as Exhibit No. 2.

9 Does either party need additional time to -- does  
10 the contractor need additional time to review the DOT's  
11 exhibit?

12 MR. WHITNEY: Well, I suppose I do. I don't know  
13 how long this will take or I could respond to it  
14 afterwards in writing either way.

15 MR. ROEBUCK: You could respond to it when they  
16 use it in their defense.

17 MS. PICCIRILLI: I don't think there's any new  
18 information you haven't seen before.

19 MR. ROEBUCK: No surprises?

20 CHAIRMAN COWGER: Let's handle it this way, if we  
21 could. We will proceed on. If at the conclusion of  
22 the hearing the contractor feels that there was  
23 anything in this submittal that caused him to be  
24 improperly prepared for this hearing; that is, he  
25 cannot properly respond to any information that's in

1 the exhibit because he didn't have time to prepare,  
2 just say so and the Board will give you the opportunity  
3 to submit a written statement subsequent to the  
4 hearing.

5 And, DOT, you will have the opportunity to rebut  
6 on that statement in writing. Okay?

7 MS. PICCIRILLI: That will be fine.  
8 (Whereupon, Exhibit Nos. 1 and 2 were received in  
9 evidence.)

10 CHAIRMAN COWGER: The parties may offer such  
11 evidence and testimony during this hearing as is  
12 pertinent and material to the controversy and shall  
13 produce such additional evidence as the Board may deem  
14 necessary to an understanding and determination of the  
15 matter before it. The Board shall be the sole judge of  
16 the relevance and materiality of the evidence offered.

17 The parties are requested to assure that they  
18 receive properly identified copies of each exhibit  
19 submitted during this hearing and to retain these  
20 exhibits. The Board will furnish the parties a copy of  
21 the transcript of this hearing as being taken down by  
22 our court reporter, along with its final order, but  
23 will not furnish copies of the exhibits to the parties.

24 This hearing will be conducted in an informal  
25 manner. The contractor will elaborate on their claim,

1 and then DOT will offer rebuttal.

2 Either party may interrupt to bring out a point  
3 by coming through the chairman. However, for the sake  
4 of order I must instruct that only one person speak at  
5 a time. Also, so that our court reporter will be able  
6 to produce an accurate record, please introduce  
7 yourself the first time you speak.

8 We are ready for the contractor to begin his  
9 presentation. I would like to ask that you state the  
10 total amount of your claim at the beginning.

11 MR. WHITNEY: Okay. Would it be agreeable to do  
12 these by numbers?

13 CHAIRMAN COWGER: Yes. We just want the total  
14 amount of all of the claim.

15 MR. WHITNEY: I mean when we get to talking on  
16 these, can we take them --

17 CHAIRMAN COWGER: Let's have the total amount.

18 MR. WHITNEY: The total amount is \$27,712.46.

19 CHAIRMAN COWGER: Now, I will answer your  
20 question in a little bit more depth. You have two  
21 basic areas to deal with, liquidated damages and a  
22 couple of monetary claims.

23 MR. WHITNEY: Right.

24 CHAIRMAN COWGER: Let's try to deal with the  
25 liquidated damages as best we can first. I would

1 suggest that we stop -- that we deal with each portion  
2 of your liquidated damages claim individually. The  
3 contractor will present his statements, DOT will rebut  
4 it because I think they're separate enough. As we move  
5 on through if we see we can combine some of them, we  
6 will.

7 MR. WHITNEY: Each one, time extension request  
8 number one, I will start from there.

9 CHAIRMAN COWGER: Fine, and we will let them  
10 rebut so we don't get all confused.

11 MR. WHITNEY: I would like to add to this, it  
12 wasn't only the problems we had in getting the  
13 materials, but what caused the problems. We bid this  
14 project with 6,660 feet of grounding conductors. And  
15 the project ended up with right at 12,000.

16 So it was impossible to have that much material  
17 on hand at the time. And once we ran out -- we didn't  
18 even know we was going to need any material extra to do  
19 this job because it depends on the grounding situation  
20 that you run into, the ground and the soil.

21 So, we did foresee a possible problem. We  
22 contacted our supplier, and we asked him if we need  
23 additional ground rods how long is it going to take us  
24 to obtain these. And he told us the supplier had a  
25 warehouse in Tampa and we would be able to obtain them



1 immediately.

2 Well, we ran out of ground rods and we ordered  
3 those on June 4, the additional 15,000 feet. And then  
4 we were informed on the 10th that they were not in  
5 stock, they had run out, because the plants had been  
6 over-burdened. They did give us a small amount. We  
7 were promised the remainder of the package June 19.  
8 So, we didn't get them until June 25.

9 So, it's not a situation where we ordered those  
10 and 21 days later we got them. We were working on  
11 this. You really can't switch suppliers very easily in  
12 a situation like this. You have to have approvals.  
13 The approvals averaged 27 days on this job.

14 It was really caused by just a high demand toward  
15 the end of the job when we were putting the ground rods  
16 in. I would have expected not to have been charged any  
17 time without having to ask for it until that material  
18 could have been obtained.

19 CHAIRMAN COWGER: I think it's appropriate to let  
20 DOT rebut at this point on that item, and then we will  
21 come back and give the contractor an opportunity if he  
22 wants to.

23 MS. PICCIRILLI: There is one general thing that  
24 I would like to make a statement on because I think  
25 it's relevant to all seven issues that are being

1 addressed today. Of the seven -- and then I will go  
2 ahead and address this.

3 Of the seven issues that are being addressed  
4 today, only three of them occurred during the contract  
5 duration. They were brought up as issues. The other  
6 four occurred after the fact.

7 This project was conditionally accepted on  
8 August 8th. Four of them we didn't even have an idea  
9 about until they were officially submitted on  
10 December 2, 1992, when the job was completed August 8,  
11 1992.

12 A lot of these issues, the three that were  
13 brought up, and this happens to be one of them -- no,  
14 I take that back, this wasn't one of them. The three  
15 that were brought up during the contract were brought  
16 up, and we requested additional information, and they  
17 were never pursued. They were just one of those type  
18 of things with an intent to file claim, but were never  
19 pursued until after the project was completed.

20 I think, in my opinion, one of the major issues  
21 that brought all these to light was the fact that Apex  
22 Construction was 34 days delinquent -- 34 days late,  
23 and we had to pursue the delinquency issue. Most of  
24 these were brought up, in my opinion, because of the  
25 delinquency issue.

1           So, let me go back to the first one, the ground  
2           rods. On the grounds rods, in your package, you have a  
3           copy of the standard for the highway lighting. In that  
4           package the estimate of 6,000 comes from the fact that  
5           the engineer of record has an estimate of, basically --  
6           they don't know really how much ground rod they need at  
7           the time they do it because it's contingent upon the  
8           soil conditions and the soil resistance at the location  
9           where the lights are being installed.

10           There is a note at the bottom of the standard  
11           under concrete pole wiring where it says approved  
12           ground rods, ten feet long will be used or a minimum  
13           resistance to the ground not to exceed 25 ohms.

14           Obviously the engineer of record when he does his  
15           quantity just uses the ten feet, which is the standard.  
16           Obviously if you can't obtain the resistant required  
17           for the soil conditions, you have to go deeper.

18           Apex started installing ground rods in February,  
19           on February 27, 1991 -- it should be 1992, which is the  
20           beginning of the project. The project was complete  
21           August 8.

22           From the end of February at this point he knew,  
23           all of them were consistently running over ten feet,  
24           all of them. It wasn't like all of a sudden. And so  
25           he started installing ground rods February 27, but all

1 of a sudden there seemed to be a major need in, I think  
2 it was June was the date he used.

3 I guess the thing is the fact that if  
4 consistently we are installing more than we need,  
5 almost triple more than we need, so we are probably --  
6 and Grant, maybe you know this better than I do. What  
7 was our typical length?

8 MR. YOUNG: Roughly 30 per average.

9 MS. PICCIRILLI: We averaged 30. It tripled. It  
10 went from 6,000 to 17,000. I would have thought at  
11 that point someone should have anticipated this. We  
12 had six months to anticipate this, which I have --  
13 I think is a real -- it wasn't like all of a sudden we  
14 got to one small area and all of a sudden we started  
15 exceeding this.

16 The other thing is Apex has done other lighting  
17 jobs in our district and probably other parts of the  
18 state. And typically we do overrun the quantity on  
19 grounding rods. So, that's not a new issue. It  
20 happens typically on most projects.

21 The next thing is obviously the grounding rods  
22 that we specify are not specialty items, they are  
23 standard items you can get from practically every  
24 supplier.

25 Also in your package is a summary that we have

1 done from the suppliers that we have dealt with in our  
2 district. It's a two-page summary. It's handout 1-4.

3 We have done some research with the suppliers.  
4 We have, you know, called them and said to the best of  
5 your knowledge do you know of any problems you had  
6 getting supply rods during this time frame.

7 And none of them said, obviously definitely  
8 because it's almost a year ago, but none of them can  
9 recall.

10 Some of these were with other lighting contracts  
11 we had going on at the same time. Typically on most of  
12 these contracts we overran the quantity in excess of  
13 the amount. Nobody else seemed to have problems  
14 getting them.

15 I will admit the quantity was a lot more than he  
16 anticipated, but yet I also feel he had six months  
17 advance notice to realize that maybe he needed them.  
18 And he didn't all of a sudden need 17,000 in one fell  
19 swoop.

20 The other thing, at that point we told  
21 Mr. Whitney when he brought this up, according to the  
22 specifications, you also have in your bid item as 1-2,  
23 if he has a problem getting his supplies, that we asked  
24 him that he needed to furnish substantiating letters  
25 from a representative number of manufacturers of the

1 material.

2 The only letter he supplied us is the one that's  
3 in the package from Eritech. Basically all they said  
4 was their systems were purged and they don't have the  
5 information. The systems were purged four months after  
6 the project was finished.

7 Once again, we don't feel he gave us a  
8 substantiating numbers of letters from representative  
9 manufacturers saying that he had a problem.

10 Furthermore, you know, the statement he made  
11 about getting suppliers approved, if we had known at  
12 that point he was having a problem, I don't think we  
13 would have waited 27 days to get him approved if we  
14 knew we were this late into the contract. This  
15 contract was supposed to be completed July 1.

16 The middle of June, all of a sudden he starts  
17 installing grounding rods, and you've got two weeks  
18 left on supposedly your contract days. The last  
19 contract day of his contract was July 1. Here in the  
20 middle of June, all of a sudden he starts installing  
21 grounding rods when you've got two weeks left in your  
22 contract.

23 The other issue is the grounding rods is not a  
24 controlling item of work. Therefore, typically time  
25 extensions are not given for items that are not

1 controlling items of work.

2 You also in there, have a copy of the schedule.  
3 To just go ahead and reiterate, ground rods are not  
4 even shown on this schedule. Ground rods can be  
5 installed at any time, before, after, during pole box  
6 installation, things such as that. It's really not a  
7 controlling item of work.

8 I think even if this were addressed during the  
9 time of the contract, I'm not sure we would have given  
10 him a time suspension just due to the fact it's not a  
11 controlling item of work. Our specifications say only  
12 those things -- we just don't feel he had substantiated  
13 from enough suppliers that he could not obtain the  
14 ground rods.

15 Do you all have anything else, Grant and Tom?  
16 Grant and Tom were the two that were actually on the  
17 job at the time. Do you have anything else?

18 MR. YOUNG: That pretty well covers it.

19 MR. MOREFIELD: Question for DOT. If they were  
20 supposed to know in February that it was taking 30  
21 feet, did not the Department know that it would take 30  
22 feet in February, also?

23 MS. PICCIRILLI: Yes, we did.

24 MR. MOREFIELD: Did you tell them that the  
25 quantity was obviously going to overrun?

1 MR. LAY: It had been discussed, yes.

2 MR. MOREFIELD: You are telling the Board that  
3 the contractor was notified the quantity was going to  
4 overrun earlier in the contract before he called a  
5 supplier and ordered more ground rods?

6 MR. LAY: Discussed that it appeared he would  
7 overrun, if they continued at that rate, yes.

8 MR. MOREFIELD: Contractor, do you agree you were  
9 notified?

10 MR. WHITNEY: Not the way she says, no way.

11 MR. MOREFIELD: Prior to your running out.

12 MR. WHITNEY: Yes, that's reason I called and  
13 made preparations to get them. I called my supplier.  
14 I thought I had them in the warehouse, sir. When we  
15 released them, they weren't there.

16 MS. PICCIRILLI: What you are saying is you did  
17 put your supplier on notice that you were probably  
18 going to overrun, and at that point he just didn't have  
19 a supply when you needed them?

20 MR. WHITNEY: Right. He told me he had them in  
21 the warehouse.

22 MR. ROEBUCK: Told him he had them, then when he  
23 went to pick them up, they weren't there.

24 MR. MOREFIELD: Did you try any other suppliers?

25 MR. WHITNEY: No, I did not. I will have to



1 agree with her, I did not. These situations are not  
2 always conducive to that. They say we are 21 days late  
3 because of this delay. You don't know you are going to  
4 be 21 days late when you get into this.

5 He says he's got them there. You go to get them.  
6 It may take you two or three days to find out he  
7 doesn't have them. Then it takes you another four or  
8 five days to see how long it will take to get them. He  
9 promised them to us a week earlier than we got them.  
10 It doesn't lend itself to go to these other suppliers.  
11 I did not go to other suppliers.

12 MS. PICCIRILLI: I think if the DOT at that point  
13 knew it would be a problem, and we do other highway  
14 lighting jobs, I don't think it would be a problem if  
15 he had said my supplier can't get them for me, but  
16 I can get them from this person locally, I can get them  
17 tomorrow.

18 I don't think that will be a problem in getting  
19 another supplier. You can see we have a list of six or  
20 seven suppliers that we use in our district. It was  
21 never brought to our attention that was a problem until  
22 December of 1992.

23 MR. WHITNEY: I think Tom and Grant knew that was  
24 a problem. They knew we didn't have them and we had to  
25 stop. We drove a few -- you mentioned we started

1 driving ground rods in January.

2 MS. PICCIRILLI: February, February 22nd.

3 MR. WHITNEY: Well, anyway, it was too early. We  
4 drove two or three rods down there experimenting with  
5 with the ones that you cannot extend. One of our  
6 general superintendents was down there. We did not  
7 start driving ground rods until the poles essentially  
8 were ready to go up or up.

9 Sandy, I don't think that you normally would  
10 drive ground rods and then try to put a box around it,  
11 then try to put a footing next to it. That's not the  
12 way it's done.

13 MS. PICCIRILLI: But would you consider it a  
14 controlling item of work?

15 MR. WHITNEY: Huh?

16 MS. PICCIRILLI: Would you consider it a  
17 controlling item of work?

18 MR. WHITNEY: When I've run out.

19 MS. PICCIRILLI: When you're two weeks from your  
20 last day and you've run out --

21 MR. WHITNEY: We could have gotten done. Had  
22 they been in there, we would have had them done.

23 MS. PICCIRILLI: But you had periodically put  
24 down ground rods, because I show here on March 3 you  
25 drove 550 feet of ground rods.

1 MR. WHITNEY: That's right. That's 55 ground  
2 rods. We started back then, right. We had already  
3 made preparation for this.

4 You are right, that I should have been able to  
5 anticipate it. I mentioned earlier I anticipated it.  
6 That's the reason I made arrangements to be sure  
7 I could get them because we had run into this on one  
8 other job in Alachua that it ran way over.

9 CHAIRMAN COWGER: I think we have heard about  
10 enough on this. As I understand it -- I did have one  
11 question -- there was some ground rods installed in  
12 February, but then you didn't really start on what  
13 I would call production installation of ground rods  
14 until much later?

15 MR. WHITNEY: We normally wouldn't do those until  
16 the footings and the ground boxes are in place. And  
17 you don't put those in first, then come back and put  
18 the other in.

19 CHAIRMAN COWGER: Explain to us a little bit, if  
20 you would, why it is that you felt that the ground rods  
21 were, in fact, a controlling item of work.

22 MR. WHITNEY: We were pretty much to the end of  
23 the job by the time we got to the end of this thing.  
24 It definitely extended the job. It extended it by the  
25 number of days that we asked for, the way that we saw

1           it.

2           CHAIRMAN COWGER: On the concrete where it  
3           shows -- on the drawing where it shows concrete pole  
4           wiring diagram, it shows the rod going down through the  
5           box or is it alongside the box? I guess it's along  
6           side the box.

7           MR. WHITNEY: No, it's in there.

8           CHAIRMAN COWGER: Could all of that work have  
9           been done except driving the ground rod?

10          MR. WHITNEY: It was done except the ground rods.

11          CHAIRMAN COWGER: The only thing to do on the  
12          poles was the ground rods, when you ran out of ground  
13          rods?

14          MR. WHITNEY: Right. The poles were up.

15          MR. McCARTY: I can't remember whether the poles  
16          were up or the footers.

17          MS. PICCIRILLI: You started installing the poles  
18          on day 122. The pole boxes, they started installing  
19          pole boxes February 14th. Typically every day they  
20          would put in four, five, six, ten pole boxes a day.

21          MR. WHITNEY: You're right. You could, if you  
22          wanted to do just everything at one time as you go, but  
23          normally you don't do it that way.

24          CHAIRMAN COWGER: At the time the contractor ran  
25          out of rods, which I think was June 9th, what work

1 remained to be done?

2 MR. WHITNEY: There was some work on the bridge,  
3 or was it?

4 MR. McCARTY: Yes.

5 MR. WHITNEY: Some of these will overlap.

6 MR. McCARTY: We still had PVC to put in and all.

7 MS. PICCIRILLI: If you would like to look under  
8 the June 9 schedule, that would have been day 161 of  
9 the contract. The only thing at that point he was  
10 doing, even though this number one item is a little  
11 broad, the only thing he's doing at that point is some  
12 conduit, which is the red line, conduit. The only  
13 thing he was doing was conduit. The other thing he was  
14 doing was a little bit of light pole installation under  
15 the bridge.

16 So, all the pole boxes up to that point had been  
17 installed.

18 MR. WHITNEY: Most of the -- now, the ground  
19 boxes or pole boxes are not put in until all the  
20 conduit is put in.

21 MS. PICCIRILLI: There were just a few.

22 MR. WHITNEY: The majority of the rods weren't  
23 in --

24 MS. PICCIRILLI: That's in the handout. This is  
25 stuff that's loose.

1 MR. WHITNEY: The majority of these rods were at  
2 the pole sites, not the pole boxes.

3 CHAIRMAN COWGER: Gentlemen, do you think we have  
4 enough on this? Let's go on to Item 2.

5 MR. WHITNEY: I guess this thing right here  
6 really got us started off wrong from day one. We had  
7 done four other jobs, one right on the Courtney  
8 Campbell Causeway, one in Alachua, one in Columbia  
9 County, one in St. Johns, and no one questioned our  
10 method of pushing a pipe under a road. I had never  
11 been questioned anywhere on this.

12 This is the first thing that we do on the job is  
13 to push it because that can be more difficult. It can  
14 also control where some of your line is going to end up  
15 being. You can't put your trenching in or we normally  
16 don't like to put our trenching in and then try to put  
17 a push-in because it might not go in where you're  
18 trying to push it in. There may be a hidden concrete  
19 wall under that road at that point.

20 So, we came here, this was the first thing we  
21 were going to start on. Before we ever got the machine  
22 unloaded we were told that it didn't meet one of your  
23 maintenance manuals. And we were told then that if we  
24 wanted to use that we would have to request to use it,  
25 which I did.

1           Then later we were -- I questioned why we were  
2 denied the use of this when the maintenance manual is  
3 not mentioned in the contract, is not part of the  
4 contract.

5           I was told at that time that it was an  
6 experimental piece of equipment and we would have to  
7 prove its worth, which I admit we had a hard time doing  
8 it. We had used that method on four preceding jobs and  
9 two or three afterwards. This is the only place we  
10 have not been able to use it.

11           CHAIRMAN COWGER: May I make sure that we  
12 understand what you're saying. On four preceding jobs  
13 you had used a similar method to jack conduit under  
14 streets and driveways and is that basically what it  
15 amounts to?

16           MR. WHITNEY: Right.

17           CHAIRMAN COWGER: But on this job, this was a new  
18 piece of equipment that you had not used before, is  
19 that correct?

20           MR. WHITNEY: No, it was not. We had just  
21 finished up a job in Baton Rouge, Louisiana with it.

22           CHAIRMAN COWGER: First time you had ever used it  
23 in Florida, is that right?

24           MR. WHITNEY: Yes. I will say the difference in  
25 this and the difference in the homemade ones that we

1 had is this had an electronic device on the end that  
2 would give you an indication the way the head was  
3 turned and you could guide it, supposedly, which we  
4 didn't have much luck here.

5 We were -- we tried it one time on the job, and  
6 it was turned down. It was in exceptionally very loose  
7 soil. The man I sent down here to oversee it, since it  
8 was new, told me he stepped in a trench and went  
9 halfway to his knees, it was just very soft material.  
10 It will not support the rod, it's very soft.

11 The tries that we have made with it, all except  
12 one, were made in the yard. And -- which was a good  
13 choice, go in there and mess the yard up, wouldn't be  
14 as bad as it would be out on the road.

15 But any yard you would have very different types  
16 of materials, layers of materials, very hard materials.  
17 So it really wasn't a trial that indicated what we  
18 would run into on the project.

19 CHAIRMAN COWGER: As I understand it, now, and  
20 correct me if I'm wrong, you brought this new piece of  
21 equipment out, you tried it on the job one time. You  
22 had this loose soil. You were not successful. Then  
23 you went back to the yard and experimented with the  
24 machine?

25 MR. WHITNEY: They didn't want us to use it on



1 the project. They told us we could use it in the yard.

2 CHAIRMAN COWGER: Were there any more attempts to  
3 use it on the project?

4 MR. WHITNEY: There was one other after all this,  
5 down by Wendy's. To the best of my knowledge that is  
6 correct.

7 CHAIRMAN COWGER: Let's let DOT come in and  
8 make some statements, then we will let you come back.  
9 I think it will be a lot easier than having people  
10 shaking their heads across the table at each other.

11 MS. PICCIRILLI: The first thing I would  
12 like to do is rebut a couple of statements made in  
13 Mr. Whitney's description. The first thing he says, he  
14 was, you know, from day one he said he was told the  
15 equipment wasn't acceptable.

16 I think the problem -- I think what he was told  
17 is the equipment didn't really have a track record in  
18 District 7. It had been used one time.

19 Based on the information I have found on this  
20 equipment and know about the equipment, this piece of  
21 equipment is very contingent on soil conditions. It  
22 depends on what you're pushing through, what you hit,  
23 that type of thing.

24 It wasn't, I don't think -- I don't think we  
25 said it wasn't acceptable, we said we really had never

1 really used it that readily in District 7. On the one  
2 job it was used was also a lighting job.

3 It was out of a different residency. I talked to  
4 that residency. They couldn't really tell me if they  
5 watched line and grade on it. The inspector who was on  
6 there didn't know. I'm not sure if that inspector was  
7 very experienced in highway lighting. They did tell us  
8 they did not really watch line and grade.

9 I think the reason was that because of this  
10 homemade piece of equipment that was being used, it  
11 didn't have the electronic head on it. You didn't have  
12 the piece of equipment to use it to check line and  
13 grade. They were just assuming it was getting it. It  
14 really wasn't checked the way it was now.

15 Another statement he made is that he said he had  
16 requested permission to use it. He requested on  
17 January 10. It was denied on February 14. The one  
18 thing I think is real important between those dates, it  
19 was demonstrated six times. And during those days it  
20 was denied three times, its use.

21 Another statement he made was, once again about  
22 having used it in Florida. I think there's two things  
23 you need to know. It's very contingent on the soil  
24 conditions, and it didn't have a track record in the  
25 district.

1           He also made a statement about if he would have  
2 known about this problem at the preconference, it could  
3 have been avoided. It was never brought up at the  
4 preconference, never discussed what type of equipment  
5 he would use. The maintenance manual he referred to,  
6 the maintenance manual says that we ask that you hold  
7 reasonable line and grade.

8           This particular lighting, I don't know how much  
9 you know about the Tampa area, but this was highway  
10 lighting on Dale Mabry from Van Dyke until Waters.  
11 That's a very, very highly traveled road.

12           We had real concerns about pushing this, not  
13 knowing what we were going to hit, what kind of  
14 clearances we were going to get, what was going to  
15 happen. But it was never discussed at the  
16 preconference.

17           The three things -- some of the things I'm going  
18 to have, first of all your handout labeled 2, and the  
19 other thing I'm going to refer to is this chronology  
20 that's loose in the front of your handout.

21           I have a couple of statements. First of all, we  
22 considered it an experiment with the equipment, like  
23 I said, because it didn't have a proven track record.

24           In there labeled 2-2 is a letter from maintenance  
25 saying that they have watched numerous demonstrations

1 of various types of methods for jacking, and they've  
2 watched pushing methods, and they just don't agree with  
3 pushing.

4 They say there's big problems with it, there's  
5 potential for pressure on the road base by up heaving.  
6 There's line and grade problems, potential to hit  
7 utilities, storm sewers, that type of thing.

8 The real important thing, we asked Mr. Whitney to  
9 do is okay, fine, let's consider it experimental  
10 because we didn't have a track record with it, just  
11 prove it to us. That's all we asked.

12 Even under the experimental spec it says just  
13 show us that the proposed equipment will produce work  
14 equal to that what we typically use in our district.  
15 That's all we asked. I didn't think it was that bad.

16 In your chronology what you will see, in the  
17 chronology there's italics typed. Those are the times  
18 he attempted to use this machine. And just to briefly  
19 go to a couple, like January 22nd was the first time he  
20 attempted it. What you will see, it says attempts.

21 What that means is it rose one foot in four foot.  
22 This is the chronology. It rose one foot in four foot,  
23 it rose a foot and a half in six foot. The next day  
24 tried it again, it rose a foot and a half in eight  
25 foot, rose a foot and a half in 18 feet.

1           The next day tried it again, it rose a foot and a  
2 half in four foot, it went down two foot in eight foot.

3           If you go through here, every place that is  
4 italics, we gave him numerous opportunities to  
5 demonstrate that machine on the project. These are  
6 actual project locations. Never once could he get the  
7 machine to work.

8           Now, how would he expect us to approve a machine  
9 that we can't get to do line and grade. And I think  
10 even if it was an acceptable method, I don't think we  
11 would have approved it because of the fact it couldn't  
12 do the job.

13           There is one time in here I think we even made a  
14 statement that he pushed it through and he had dug,  
15 I think it was February 7th, he had pushed it through.  
16 And the contractor excavated a six by six by 52 inch  
17 pit and couldn't find the head of the machine.

18           I think that's our biggest point is the fact  
19 that -- and if he could have showed us that this  
20 equipment worked and it could hold line and grade, we  
21 would be more than happy to approve it.

22           We didn't have anything against this machine.  
23 The problem was that we just felt we didn't want to go  
24 give it a blanket approval because we didn't feel it  
25 had been proven. And that's all we asked, just

1 demonstrate to us that you could do it.

2 The other statement is, you can see in this  
3 chronology, we wrote him three letters, one on  
4 January 24, one on January 29, and one on February 15  
5 saying that we have concerns, we don't think this piece  
6 of equipment is going to work.

7 And you need to start doing something because he  
8 physically didn't start productive work on this project  
9 until the forty-second day of the contract because he  
10 was trying to demonstrate this machine. He didn't  
11 start doing any conduit, any basically pay items until  
12 the forty-second day of the contract. We were really  
13 concerned because of the fact that we knew he was  
14 falling behind schedule. He just kept trying to push  
15 this machine.

16 You know, that was a real concern of ours.  
17 Finally, he conceded that, yeah, okay, maybe this  
18 isn't going to work. He demonstrated his directional  
19 boring equipment, which is a typical method that we  
20 use. The first time it worked perfect, the next day we  
21 approved it. That's what he went with on the project.

22 Then obviously as you can tell from this  
23 schedule, once again what you have in orange versus  
24 what is in blue, he started in the forty-second day  
25 doing conduit, pole boxes on centers, but yet he was

1           supposed to start on the fourth day.

2           So, you know, right then he was 38 days behind  
3           schedule. He did no productive work on this project  
4           until the forty-second day.

5           We have numerous letters in our file. I have  
6           copies here. In this chronology you can see where we  
7           wrote him a letter on February 5th regarding his lack  
8           of progress because we were concerned.

9           I give him a lot of credit because he really  
10          wanted to prove this machine. I went out on a couple  
11          of the demonstrations. I wish the machine would have  
12          worked because of the fact that it seems like a good  
13          way to do it, but the problem was we just could not get  
14          him to hold line and grade.

15          A couple of other problems we thought, especially  
16          for this particular job and this particular equipment  
17          that we think Mr. Whitney needs to look at, we found  
18          that the push assembly had a tendency to slip during  
19          the demonstration. The line and grades obviously  
20          weren't accurate.

21          The other thing is you have to dig an extremely  
22          large pit once you pull it through to pull out the  
23          ten-foot length of pipe. We don't have a lot of  
24          right-of-way out there. We had a real limited  
25          right-of-way which made it logistically difficult to

1 use this machine.

2 The amount of equipment this particular method  
3 uses also isn't conducive to the limited right-of-way.  
4 We were on private property at some point.

5 The biggest problem is we gave him six documented  
6 chances to demonstrate this machine, and not once could  
7 he do it.

8 MR. WHITNEY: I'm going to mention the fact  
9 that this district has been not jacking two-inch  
10 conduit. The contractors have been putting four-inch  
11 casing on the road and pulling two-inch conduit through  
12 it.

13 MS. PICCIRILLI: That's an important statement,  
14 the contractor, not the district. That's the option  
15 the contractor has.

16 MR. WHITNEY: When I went to visit the  
17 maintenance people, they couldn't believe it was still  
18 going on. And for the record, until about three months  
19 ago, you already had let six more contracts still  
20 asking for the two-inch jack of conduit.

21 Jacking conduit is not accurate. I don't care if  
22 you use our system, a homemade system, whatever. It's  
23 not accurate. If you hit something it's going to move  
24 up, down, any way. You don't know where it's going.

25 And on the amount of space that was taken, Sandy,



1           it takes exactly the same amount of space on a system  
2           that we use as it does on the system proposed to use  
3           and it takes less space on the system we proposed to  
4           use than it would have if we had used it versus cason.

5           CHAIRMAN COWGER: Let me ask you at that point a  
6           couple of quick questions. The testimony I hear you  
7           saying about two inch versus four inch, this project  
8           was set up to actually jack the conduit through the  
9           ground?

10          MR. WHITNEY: Two inch.

11          CHAIRMAN COWGER: The four inch is jacking a  
12          casing and then inserting the conduit inside the  
13          casing, is that correct?

14          MR. WHITNEY: Yes. That's what most of the  
15          contractors are doing. They're actually putting the  
16          cason in, it's not galvanized, just plain steel, then  
17          they are pulling the PVC conduit through it.

18          CHAIRMAN COWGER: The casing, not cason.

19          MR. WHITNEY: Casing. I'm saying the wrong word.

20          CHAIRMAN COWGER: DOT, have you had numerous  
21          projects in the past where you have actually  
22          successfully or the contractor has successfully jacked  
23          the casing under the road then?

24          MR. LAY: Yes.

25          CHAIRMAN COWGER: I heard yes.

1 MR. LAY: Yes.

2 CHAIRMAN COWGER: Have you since changed projects  
3 where you used the casing method?

4 MR. LAY: Four inch or two, is what you are  
5 asking? We have used both since, both methods since.

6 MR. WHITNEY: What did you put the two inch in  
7 with?

8 MR. LAY: They used the soft bore method.

9 MR. WHITNEY: The what?

10 MR. LAY: Soft bore method.

11 MR. WHITNEY: What is that?

12 MR. LAY: The same thing you used, direct line,  
13 soft bore.

14 MR. WHITNEY: Okay.

15 MR. LAY: That's all classified soft bore. There  
16 are different manufacturers.

17 MR. WHITNEY: Had you all ever used that before  
18 we used it?

19 MR. LAY: No.

20 MR. WHITNEY: You indicated it had been used in  
21 the district.

22 MS. PICCIRILLI: I said you demonstrated --

23 MR. YOUNG: Promo.

24 MR. WHITNEY: I think ours was the first time we  
25 used that method.

1 MR. MOREFIELD: You did come up with a method to  
2 use the two inch --

3 MR. WHITNEY: Has the same guidance system as  
4 ours.

5 MR. LAY: It works.

6 MR. WHITNEY: I don't deny it works. My  
7 contention here is and what you are saying is not the  
8 case. That was setting on a truck in front of you  
9 all's office when I was told I could not use that  
10 because he was referring that it should be bored.

11 And he went and checked the spec. The spec says  
12 jack. Doesn't say a thing in the world about boring.  
13 That's the way that thing started.

14 MS. PICCIRILLI: Maybe he thought the specs said  
15 bored. When he went back and realized it said jack --

16 MR. WHITNEY: Then later on he said it was  
17 experimental --

18 MS. PICCIRILLI: Well, he couldn't --

19 MR. WHITNEY: It wasn't experimental until I was  
20 told I couldn't use it.

21 MS. PICCIRILLI: Just like the directional  
22 boring. You said it had never been used. It worked  
23 and we approved it the next day. That's all we asked.

24 CHAIRMAN COWGER: Okay. We are going to try to  
25 cut this off here in just a second, but I have a

1 question. How did this machine -- just tell me briefly  
2 how this P-80 worked.

3 MR. WHITNEY: The only difference between it and  
4 the directional boring is the directional boring turns  
5 pretty fast. It's got a tapered head on the end of it,  
6 same size, it's a two-inch rod. It's a pointed rod on  
7 the end but it's offset like that (indicating). If you  
8 get it in this direction and push it, it would go up.  
9 If you turn it this way, it will go down.

10 The directional bore, it just keeps turning.  
11 Once they want to change directions, they stop it and  
12 put it in the right direction and push it for two feet.  
13 They don't bore, they just push it. That changes the  
14 direction a little bit. It is a much smaller rod.  
15 It's a limberer rod than this. I think those boys  
16 definitely had a whole lot more experience in this than  
5 we did.

18 CHAIRMAN COWGER: The P-80 had the smaller rod?

19 MR. WHITNEY: It has the larger rod and it turns  
20 slower. It would only turn once in four feet and  
21 theirs would probably turn 40 times in four feet.

22 CHAIRMAN COWGER: What we have is we have a  
23 casing that we're trying to advance through the soil?

24 MR. WHITNEY: No, you push the rod across  
25 underneath. That's where you dig the pit to put the

1 casing on and pull it back. After you get across the  
2 road, then you pull it back.

3 CHAIRMAN COWGER: Okay. I didn't understand that.

4 MR. WHITNEY: Jim Bracey was telling me the  
5 reason I couldn't use that is because that was not  
6 being used here, what you all were using here was a  
7 four-inch casing and you are using augers. That is  
8 much more definite than where it goes. It's a whole  
9 lot more costly.

10 And I gave him a price for us doing it that way.  
11 I never heard from you all until I questioned him  
12 sometime later what happened to that. I was willing to  
13 get a contractor to do that, but if that's what you  
14 want under the ground, you ought to be specifying it  
15 instead of something different.

16 CHAIRMAN COWGER: Answer that. Why didn't --

17 MS. PICCIRILLI: There's two issues. Number one,  
18 first of all the thing about pushing it. Unfortunately  
19 that's a design issue. We don't do design drawings.  
20 We get the drawings and we have to do as we do.

21 Typically we've had that specification in other  
22 plans. The contractor has opted to go with the four  
23 and the two. That has not been our direction to him.  
24 He has opted to do that at his own expense.

25 MR. WHITNEY: That's right.

1 MS. PICCIRILLI: We have never paid a contractor  
2 to do four and two. If he wants to do four and two,  
3 that's fine with us. That's an approved method to do.  
4 That's his option.

5 Whether you classify this as an experimental  
6 piece of equipment or not, it didn't work. I don't  
7 know what you expected us to do to approve it. If it  
8 didn't work, we had to do something with it.

9 MR. WHITNEY: Most of our tests were in the job  
10 yard where it was not representative of the job.

11 MS. PICCIRILLI: I have six of them where it was  
12 physically on the job. Under Floyd Street --

13 MR. McCARTY: You all are talking about January,  
14 that's when I got on.

15 MR. LAY: It's on the daily report.

16 CHAIRMAN COWGER: DOT says it was attempted to be  
17 demonstrated six times on the project. The contractor  
18 is saying that's not the case.

19 MR. WHITNEY: I don't agree it was six times on  
20 the project. I know of two.

21 MS. PICCIRILLI: On this chronology I have  
22 physical locations.

23 MR. McCARTY: She has it here.

24 MR. LAY: The daily reports document that.

25 CHAIRMAN COWGER: We are going to leave this

1 item. We are going to accept it was tried six times on  
2 the project. Contractor, Mr. Whitney, if you feel it  
3 necessary to rebut that further, you obviously can't do  
4 it sitting here at this moment, furnish to the Board by  
5 no later than June 25 -- let's say June 20 a written  
6 statement on that and we will consider it.

7 Let's go on to Item 3.

8 MR. WHITNEY: The only thing I would like to add  
9 here is I didn't think I should be charged any time for  
10 this supplemental agreement. That's it.

11 CHAIRMAN COWGER: Let's let DOT come back on it.  
12 We're not going to spend much time on two days, I'll  
13 tell you that right now.

14 MS. PICCIRILLI: First of all, I don't think you  
15 were charged time. We didn't take time away on the  
16 supplemental agreement.

17 There were 19 light poles that we decided to  
18 delete the installation from the project because of the  
19 fact that it was conflicting with the new Northwest  
20 Expressway project. We didn't see any reason to put  
21 them up, take them down six months later.

22 We asked Mr. Whitney in May to give us a  
23 furnished price only for light poles and we were going  
24 to give them to maintenance.

25 The situation was the screw bases light poles

6  
1 were installed and needed to be removed. The screw-in  
2 bases were installed.

3 We had done a time suspension on the project.  
4 When we got the supplemental agreement back from  
5 Mr. Whitney, everything was fine. Once again, and  
6 because he physically does work on the project, we have  
7 to charge contract days. That's in our specification.  
8 If you're physically doing work you have to charge  
9 contract days.

10 When he returned the supplemental agreement, he  
11 asked for a day. He signed the supplemental agreement  
12 with no days. We charged him two days to take the  
13 screw-in bases out.

14 At that point once it had already been signed by  
15 everybody, the certification of funds had gone through,  
16 we feel with the deletion of installing those 19 light  
17 poles based on -- we just did a rough -- based on his  
18 production of installation of light poles -- we're  
19 talking not light poles only, but we're talking conduit  
20 that didn't have to go in, pole boxes that didn't have  
21 to go in, ground rods that didn't have to go in.

22 We probably saved him anywhere from two weeks to  
23 19 days of work for not having to install those 19  
24 light poles. We felt two days was a moot point when we  
25 saved him anywhere from 14 to 19 days. That's a



1 guesstimate based on his production.

2 We felt two days to take the bases out was  
3 minimal, which we didn't delete from his contract.

4 That was basically our position. At that point  
5 everything had been signed. Everything had been signed  
6 off by the attorneys. At that point we felt that two  
7 days was, you know, based on the 19 days that you  
8 probably saved, we didn't know it was an issue.

9 Then the point is if we give him the two days to  
10 take the screw-in bases out, do we delete 19 days from  
11 his contract for the work he didn't have to perform?

12 MR. WHITNEY: I will have to say something there.  
13 I made the agreement, not with you, but with Mr. Vogel.  
14 My concern was that by eliminating this it was going to  
15 hurt my time. He said it would not hurt my time.

16 And I did get charged two days for removing those  
17 screw footings. That's what I'm talking about here.  
18 It doesn't have anything to do with the poles.

19 We worked out there, I thought, two days removing  
20 footings that was on the supplemental agreement that we  
21 should not have been charged for, or we should have  
22 been given credit for.

23 MS. PICCIRILLI: You would have saved probably 19  
24 days not installing those poles --

25 MR. WHITNEY: Those poles were subbed out.

1 MS. PICCIRILLI: At this point according to our  
2 specifications he was already delinquent. We can't  
3 give a time extension when you're already out of  
4 contract time. He was out of contract time at this  
5 point. He was already in the 30th day of delinquency.  
6 Our point was that, you know, you save 19 days. So, if  
7 we give him the two days for the screw-in bases, do we  
8 delete the 19 days for the light poles.

9 CHAIRMAN COWGER: Let's go on to Item 4.

10 MR. WHITNEY: I rode this job with Jim Bracey,  
11 and Tom, I believe you and I, the three of us rode this  
12 to see if there were any conflicts.

13 MR. YOUNG: I didn't come on board until  
14 February.

15 MR. WHITNEY: Well, the three of us rode this.  
16 I didn't see any conflicts. The people who designed  
17 this laid this out without knowing where the utilities  
18 were. There were quite a few conflicts, major  
19 conflicts.

20 We are asking for 11 days here when we  
21 essentially got not much of anything done. There was  
22 actually more time than this. We were denied areas to  
23 work. Once we got production started then, as soon as  
24 the State released us to go to work above Barris  
25 Street. That's in essence all I have right now.

1                   CHAIRMAN COWGER: DOT, before you start, looking  
2 at your Exhibit 4-1, is this kind of a tabulation of  
3 what, delays?

4                   MS. PICCIRILLI: This is basically a tabulation  
5 of what he did during the time period.

6                   CHAIRMAN COWGER: Work done?

7                   MS. PICCIRILLI: Exactly, work physically done.  
8 It shows the people he had on board, the number of  
9 hours he worked, what work he did that -- let me just  
10 briefly go through this.

11                   This is a two-inch conduit underneath driveways,  
12 two-inch conduit for the lighting, the conductors, the  
13 bare conductors. This is Exhibit 4-1, the pole boxes  
14 that were installed during that time, the screw-in  
15 bases that were installed, the ground rods that were  
16 installed during that time.

17                   In the comments, on our daily reports, we only  
18 saw physically three conflicts that occurred with the  
19 water main where it was physically in the way and  
20 Mr. Whitney could not work. We're talking a project  
21 that was how long?

22                   MR. LAY: Seven miles.

23                   MS. PICCIRILLI: Was it seven miles --

24                   MR. LAY: Seven miles one way.

25                   MS. PICCIRILLI: So we're talking 14 miles of

1 highway lighting on this project. We saw three  
2 physical conflicts with the water main. And as you can  
3 see, one was hit at 9:30, fixed 11:15.

4 The other two days, it looks like based on his  
5 production levels, just based on the work that he had  
6 done on the other days, that he probably was impacted  
7 because of the fact that maybe he didn't get done, you  
8 know, like the underground conduit and the conductors,  
9 which he was typically doing before.

10 We had just -- in retrospect, let me also  
11 mention the fact that as you can see in the summary  
12 that you have in the pull-out section, we had  
13 offered Mr. Whitney a negotiation before he went to  
14 arbitration.

15 And in this particular issue we gave him, we  
16 offered him five days as a settlement for this, which  
17 we thought was more than fair. I mean, you know, there  
18 were areas he says that he wasn't able to work. There  
19 was 14 miles of light poles. He had just basically  
20 started production on the job two weeks before this  
21 time. You had 14 miles of highway lighting to install.

22 Based on his production -- and I also have  
23 production which I didn't include in here -- before and  
24 after, even after this time period he basically had  
25 this same type of production as he has here. It wasn't

1           like all of a sudden he was working and he was like,  
2           you know, installing 500 linear feet of conductors, and  
3           then all of a sudden he went to thousands and thousands  
4           of feet.

5                     His typical production was based on the days,  
6           what he was doing, was somewhere between 500 and 1,000  
7           feet.

8                     If he was impacted, I don't think it was  
9           significant except for maybe definitely, really those  
10          two days. But we offered five days in the settlement.

11                    CHAIRMAN COWGER: Quick question on this chart  
12          that we're looking at. Two-inch driveways, now is that  
13          jacking or whatever you call it?

14                    MS. PICCIRILLI: That was the directional boring,  
15          yes.

16                    CHAIRMAN COWGER: What about the two-inch  
17          underground?

18                    MR. WHITNEY: The driveways were not.

19                    MS. PICCIRILLI: Those were open cuts.

20                    CHAIRMAN COWGER: What is two-inch underground?

21                    MR. WHITNEY: Regular conduit, trenched in.

22                    CHAIRMAN COWGER: No jacking involved. Then the  
23          conductor is just putting in wire?

24                    MS. PICCIRILLI: Yes. Once we realized we were  
25          possibly having problems with the water main, the

1 County at that point, and this is very unusual for  
2 counties, at times had up to two, three-men crews out  
3 there in front of this production to spot the water  
4 mains, to make sure we didn't hit them anymore.

5 Obviously we didn't want to put Dale Mabry out of  
6 water. The County had up to two, but typically one  
7 full-time crew in front of Mr. Whitney's work to spot  
8 the water mains to make sure there weren't any more  
9 problems. The County people came on pretty much right  
10 after that 2-19 date, that they realized there could  
11 possibly be some more problems and they didn't want to  
12 shut Dale Mabry down. They had a full-time crew in  
13 front of him.

14 CHAIRMAN COWGER: When there were delays, what  
15 was delayed was a trenching operation then, when they  
16 were trying to either install conduit or wire by  
17 trenching, and they would encounter a water main, and  
18 that would delay the work?

19 Mr. Whitney, is that basically -- we are not  
20 talking about how much you were delayed, we are just  
21 talking about what operation --

22 MR. WHITNEY: I totally disagree with what she's  
23 saying.

24 CHAIRMAN COWGER: But what I'm saying --

25 MR. WHITNEY: Our delay was them telling us we

1           couldn't work in certain areas, we couldn't work until  
2           the utility companies got out there and got out of the  
3           way.

4                        It is not those four individual places, Sandy.  
5           That wasn't it at all. It was a delay for them to come  
6           out there and locate them. It was the water company  
7           who first told us, Tom, that they weren't going to come  
8           out there for two weeks.

9                        MS. PICCIRILLI: Did you locate it or relocate  
10           it?

11                       MR. WHITNEY: You proved my point on these  
12           sheets. There's two days there that have decent  
13           production, the 27th and 28th. The rest of them are  
14           half production. I asked for half of the time.  
15           There's 22 days there. We figured we got about half of  
16           the production during this time, and we asked for 11  
17           days.

18                       MS. PICCIRILLI: The thing was the County didn't  
19           have to relocate their utilities. They had to locate  
20           them.

21                       MR. WHITNEY: We had to know where they were.

22                       MS. PICCIRILLI: They had two full-time crews out  
23           there locating them.

24                       MR. LAY: We had a meeting on the job where I was  
25           present, you were present, Hillsborough County was

1 present. You agreed to go down and work north of Van  
2 Dyke to give them time to get ahead of you. You agreed  
3 with this at such time.

4 MR. WHITNEY: I thought I was working south of  
5 where they were going to be working. We couldn't go  
6 into Barris. Our daily reports show what we were  
7 getting done. We agree with what you've got here.  
8 Those two are nearly acceptable days there. The rest  
9 of them are no good.

10 MR. McCARTY: We had to move --

11 MR. WHITNEY: We had to skip around and hold our  
12 breaths. It wasn't the time it took for a pipe being  
13 in our way, it was knowing where -- some of them are  
14 even running with us. We had to move the lines over.

15 MS. PICCIRILLI: I think in -- I don't have the  
16 summaries for everybody, but your typical production  
17 days even after March 7 were 468. I mean you also have  
18 to remember that this is the beginning of the project.  
19 You were still trying to demonstrate this P-80 at this  
20 point, and all this other type of thing.

21 I think there's a comment, if I'm not mistaken,  
22 in this chronology that a -- there was a statement in  
23 here about a Mr. Hunt that he made, that he wasn't  
24 going to do anything until he figured out what was  
25 going to happen with the conduit.



1           MR. LAY: There's a page missing out of this, on  
2 mine. That's in February.

3           MR. PROCH: We don't have that.

4           MS. PICCIRILLI: Oh, there is a whole page  
5 missing. I will get a copy.

6           CHAIRMAN COWGER: What page number would that be?

7           MR. ROEBUCK: The chronology.

8           MS. PICCIRILLI: I'm sorry, I didn't realize that  
9 was missing. I can get some copies of that. It  
10 happens to be on the second page that there was a  
11 statement made on -- here it is, January 30. Mr. Hunt  
12 stated he didn't want to begin any other phases of the  
13 work until some of the two-inch galvanized jack in.  
14 That was January 30.

15           At this point we're trying to demonstrate the  
16 fact that -- he's trying to demonstrate the fact that  
17 we can jack in this two-inch conduit and they are  
18 basically saying we don't want to start any work until  
19 we can get some of the two-inch galvanized jack in.  
20 Right here we have a statement by one of his employees  
21 that says we are really got going to do anything until  
22 we can prove this Ditch Witch.

23           CHAIRMAN COWGER: We are going to let you say  
24 something, Mr. Whitney, and then we are going to move  
25 on.

1           MR. WHITNEY: This chart here shows that we did  
2 do something besides that, Sandy. We didn't get much  
3 done. My contention is during those 22 days we got  
4 about half done of what we should have. It has nothing  
5 to do with the P-80. It has to do with these  
6 operations right here. And one day in there, two days  
7 in a row we got halfway decent production.

8           CHAIRMAN COWGER: It's my understanding that the  
9 plans and specifications did not mention any utility  
10 conflicts at all. This came up after the work began.

11           It's admitted that there was conflict between  
12 underground work, particularly cables and conduits and  
13 the utilities that were there.

14           Okay. Mr. Morefield, Mr. Roebuck, do you have  
15 any questions on that? Okay. Let's go on to five.  
16 I don't think that should take but very little time.  
17 Five had to do with rain. DOT has already offered two  
18 days. Contractor is claiming three.

19           DOT, you did not grant those days, but offered  
20 them?

21           MS. PICCIRILLI: Yes.

22           CHAIRMAN COWGER: Go ahead, Mr. Whitney, do you  
23 have anything to say?

24           MR. WHITNEY: No. I will pass.

25           CHAIRMAN COWGER: Let's go on to Item No. 1 of

1 your claim for additional compensation.

2 MR. WHITNEY: I guess the principle that is  
3 involved here is that we were told that we were  
4 supposed to do what the inspectors told us out there,  
5 in no uncertain terms. And Tom and Jim Bracey called  
6 me to task out there one morning where one of the men  
7 didn't do exactly what the inspector told him to do and  
8 he was upset.

9 This is a case where Tom says he told the  
10 superintendents that we were to put the footings in two  
11 to four inches. After that while we was putting them  
12 in, the inspector who is not here today, was telling us  
13 the depth to put every one of them, which direction to  
14 turn them, the whole works.

15 And after that I think it was on April 20th,  
16 I think Joe talked to you, Tom -- I mean Grant, about  
17 this. And you said that they -- those footings were  
18 okay, but you wouldn't put it in writing.

19 And I was on the job sometime after this. I saw  
20 these footings sticking up. We put a lot of signs in.  
21 Normally you don't want the projections to be over  
22 about three and a half or four inches or they will be  
23 able to snag the bottom of a car.

24 I either called Tom or Mr. Vogel and told them,  
25 I don't think those footings are right out there. And

1 if we don't want to stand the poles up and pull all the  
2 wire up through those footings, then have to take it  
3 all back down and lower those footings -- it's quite  
4 involved.

5 Within a week then we were told to lower them  
6 all.

7 We lowered them all. You measured them on  
8 Thursday, I believe, and on Friday and Saturday he  
9 lowered them. Monday he was told to lower 18 more of  
10 them (indicating Mr. McCarty). We think we should be  
11 compensated for that.

12 CHAIRMAN COWGER: Let me ask a quick question.  
13 You used a screw-type foundation. What is a screw-type  
14 foundation, metal or concrete?

15 MR. WHITNEY: About a six foot tall, ten foot in  
16 diameter, with two flights on the bottom, a base plate  
17 on the top.

18 CHAIRMAN COWGER: Is it concrete or steel?

19 MR. WHITNEY: Steel.

20 MS. PICCIRILLI: Would you like to see a picture  
21 of it?

22 CHAIRMAN COWGER: Yes. What you had to do was go  
23 back and auger them further into the ground?

24 MR. WHITNEY: The conduit was already in them,  
25 the wire in them, you had to dig them up, pull them

1 out.

2 CHAIRMAN COWGER: So you had to disconnect some  
3 stuff that was already in them basically?

4 MR. WHITNEY: Right.

5 CHAIRMAN COWGER: The steel plate that's on the  
6 top is the same as the top of -- same elevation as the  
7 top of a concrete foundation would be basically?

8 MR. WHITNEY: Well, supposedly, but these were  
9 higher, considerably higher.

10 CHAIRMAN COWGER: Let's hear what DOT has to say  
11 about this.

12 MS. PICCIRILLI: A couple of comments. First of  
13 all, this is not the first job like this Mr. Whitney  
14 did.

15 Second, in the standard 17500 which you have in  
16 your handout, it explicitly says right on the standard,  
17 metal pole detail, which is in your first section, it  
18 explicitly says the top of concrete or screw-type  
19 foundations must be the same elevation as the  
20 surrounding terrain. It's right there in the standard.  
21 This is basically the way highway lighting is installed  
22 based on the standard.

23 The other thing, I think in your package you have  
24 a copy where Mr. Whitney submitted index 600 of the  
25 maintenance of traffic standards which explicitly

1 states that above-ground hazards will not project  
2 anywhere above four inches above the ground. That's  
3 like taboo.

4 He submitted that in his maintenance of traffic.  
5 He is aware of the fact that note existed. Even if he  
6 missed the note on the standard 17500, which I hope he  
7 didn't, it's also in the index 600 that you will not  
8 project anything above four inches above the ground.

9 Furthermore, we went out and did inventory of the  
10 screw-in foundations that were above four inches.  
11 There were 339 light poles on this project. Out of  
12 339, 26 needed to be adjusted.

13 If they had listened to the inspector -- they  
14 didn't listen to him on all of them. They only  
15 listened to him on 26 of them.

16 I think what is real important, first of all,  
17 I think it's a great complement to the inspectors.  
18 That doesn't happen very often. I don't know if that  
19 happened or not. I wasn't there. No one can really  
20 give me a straight answer.

21 I think the most important thing is it's his  
22 responsibility to do it per the standards. This is  
23 basically the standard he needs to use to install it.  
24 It explicitly says it needs to be at the level of the  
25 existing ground. And 26 out of 339 I think are pretty

1 good odds.

2 CHAIRMAN COWGER: Question, existing ground,  
3 words "on sloping ground," does that mean the high  
4 side?

5 MR. LAY: Yes, sir.

6 CHAIRMAN COWGER: And these did not, they were  
7 not flush with the existing ground on the high side?

8 MS. PICCIRILLI: Correct.

9 CHAIRMAN COWGER: It's not a question of the low  
10 side against the high side, it's a question, in DOT's  
11 opinion they were just too high?

12 MS. PICCIRILLI: Correct. Even if they weren't  
13 grounded, they exceeded the four inches, which is  
14 clearly a hazard.

15 CHAIRMAN COWGER: Mr. Whitney.

16 MR. McCARTY: My name is Joe McCarty. I'm the  
17 superintendent of the job. I want to say what you are  
18 saying is there was 27. There was 45. I lowered 27  
19 the first time. I came back the second time. Grant  
20 made another list. We put those footings in for the  
21 discretion of the inspector. He was there.

22 And right, like you said, there wasn't that many  
23 of them, but the location where they was, he said well,  
24 this one is going to fill up with dirt, we are going to  
25 leave it a little high.

1           I went to Grant because he was over this other  
2 fellow, myself personally and asked him, what are we  
3 going to do about these high footings. And it never  
4 was solved until Tom told me to lower them. I put the  
5 footings in to O.D.'s discretion and then I had to go  
6 back and lower them.

7           MS. PICCIRILLI: I think we all know that is  
8 standard.

9           MR. McCARTY: If I didn't put it in, leave it  
10 where O.D. wanted it, Tom would come back and been mad  
11 at me and then tried to shut me down --

12          MS. PICCIRILLI: Maybe that would be the great  
13 thing to do because Tom would come out --

14          CHAIRMAN COWGER: We are arguing. What the Board  
15 needs to know is what the contractor is saying is that  
16 the inspector directed me to install them in a manner  
17 that they were installed and later DOT came back and  
18 overrode the director's -- inspector's decision.

19          Now can DOT say anything that addresses that  
20 specific comment?

21          MR. LAY: I specifically asked O.D. Browning, did  
22 you instruct him to do this, and his response to me was  
23 no. That's all I have to go on that.

24          One-third of the poles that they lowered did  
25 not -- only one-third of the poles that they lowered



1 had conduit in them. The remainder of them all they  
2 had to do was screw them in. Approximately one-third  
3 they had to cut the conduit out to lower them, but  
4 two-thirds they did not.

5 MR. WHITNEY: Sandy, this is the first job that  
6 we did with screw foundations. We have done other  
7 lighting jobs. You mentioned that a minute ago.  
8 I thought you were inferring that we should know.

9 MS. PICCIRILLI: You've done concrete foundations  
10 which say it has to be --

11 MR. WHITNEY: I was well aware of the projection.  
12 That's the reason I called Tom or Vogel and brought it  
13 to their attention because I didn't think it was a safe  
14 situation. That's all I have.

15 MS. PICCIRILLI: One other comment, if I knew the  
16 issue was with O.D., I would have brought him. In the  
17 list of people that Mr. Whitney wanted to hear, O.D.'s  
18 name wasn't on it.

19 CHAIRMAN COWGER: I don't think we need to know  
20 any more on that. Where is the note on this 17500?

21 MS. PICCIRILLI: It's right here, highlighted in  
22 orange.

23 CHAIRMAN COWGER: It doesn't say anything about  
24 four inches, just must be the same elevation.

25 MS. PICCIRILLI: And the --

1                   CHAIRMAN COWGER: That four inches comes out of  
2 the safety standard?

3                   MS. PICCIRILLI: Yes.

4                   CHAIRMAN COWGER: Mr. Morefield, Mr. Roebuck, any  
5 more questions?

6                   MR. MOREFIELD: No.

7                   MR. ROEBUCK: No.

8                   CHAIRMAN COWGER: Let's go to two. This appears  
9 to be merely a dispute. There's no question about  
10 settlement for compensation. It's a dispute solely on  
11 how much, correct?

12                   MR. WHITNEY: I don't think there's much dispute  
13 on that. They had offered us, and we had accepted it  
14 until I looked down and there was no days on it.

15                   I asked Tom, you're not giving me any days on  
16 this. It definitely delayed us. He said I'm not going  
17 to give you any days. That's when we tossed the towel  
18 in.

19                   CHAIRMAN COWGER: You were willing to accept  
20 DOT's offer as long as there were some days tied to it?

21                   MR. WHITNEY: Right.

22                   CHAIRMAN COWGER: You are really not --

23                   MR. WHITNEY: They withdrew their offer. Their  
24 offer was \$1532.57. They had an error in it.

25                   MS. PICCIRILLI: You're right. It is an error.

1                   CHAIRMAN COWGER: So, FDOT's offer is very close  
2 to what you're claiming?

3                   MS. PICCIRILLI: Dollar-wise.

4                   MR. WHITNEY: Yes, I have no problem with that.

5                   CHAIRMAN COWGER: So there was an error in the  
6 calculations?

7                   MR. WHITNEY: That's not the reason we disagreed.  
8 The reason we disagreed was because there wasn't any  
9 time allowed on it. That was the last item we was  
10 waiting for when we were waiting on those ground rods  
11 down there, too.

12                   CHAIRMAN COWGER: So you wouldn't accept it  
13 because it didn't have any time on it?

14                   MR. WHITNEY: Yes.

15                   CHAIRMAN COWGER: I think we have heard all we  
16 need to hear on that.

17                   MS. PICCIRILLI: Wait a minute. I disagree.  
18 The reason I disagree is if you look on his schedule,  
19 Mr. Whitney was supposed to work on the bridge on day  
20 44 of the contract. It was supposed to take  
21 approximately ten days, two weeks.

22                   He didn't start working on it until day 160 of a  
23 170-day contract. If he would have realized at day 40  
24 that he needed different expansion joints, the 11 days  
25 that are at issue here wouldn't have been an issue.

1 That isn't a controlling item of work. I mean it was  
2 supposed to take him ten days.

3 Because of the fact he didn't do it at day 44 and  
4 started at day 160, it made it a controlling item of  
5 work.

6 And from what I've been told by my people in  
7 the field, Mr. Whitney's work was contingent on a  
8 subcontractor getting the work done on the bridge. His  
9 contractor, I don't know why, didn't show up until day  
10 160 of a 170-day contract.

11 So, if he would have shown up when he was  
12 supposed to, it wouldn't have been an issue. He would  
13 have had, you know, 130 days to get those expansion  
14 joints.

15 CHAIRMAN COWGER: You're strictly addressing  
16 additional contract time related to the delay --  
17 related to this particular delay?

18 MS. PICCIRILLI: The thing is this isn't a  
19 controlling item of work. That's what I'm saying. You  
20 typically don't give time extensions for controlling  
21 items of work. Because he waited so near the end of  
22 the contract to do it, it became a controlling item of  
23 work. It was not a controlling item of work.

24 CHAIRMAN COWGER: I see what you mean. I missed  
25 in my summary of this thing that the contractor was

1 also asking for 11 days. Okay. We understand.

2 MR. WHITNEY: I agree with what she is saying,  
3 but there is a reason for that. I don't know if  
4 I wrote it out or not. I think I did. But I talked to  
5 Jim Bracey at the preconstruction conference.

6 I questioned the method they were using there.  
7 I told him we had put metal ones -- metal caps onto the  
8 bridge caps before. He talked to the bridge people and  
9 they said we don't like that. Let us take another look  
10 at it. It was some time. That changed our schedule.

11 Now, there was some time before he wrote me a  
12 letter, and you've got a copy of the letter, when he  
13 told me we could go ahead and use it.

14 Okay. We do bridge work in Kentucky. If we had  
15 done that first, we would have done that with our crew.  
16 I had trouble finding a subcontractor. That's the  
17 reason he was so late. The one I finally got was tied  
18 up. He got there as soon as he could.

19 MS. PICCIRILLI: He got there as soon as he  
20 could.

21 MR. WHITNEY: Right.

22 MS. PICCIRILLI: That's a critical point.

23 MR. WHITNEY: But there was a reason for it being  
24 delayed on that progress schedule that you're looking  
25 at.

1 MS. PICCIRILLI: The submittal that you made for  
2 the shop drawings for that plate was submitted, it was  
3 rejected because it wasn't a proper submittal. There  
4 were problems with the submittal, things such as that,  
5 which once again aren't our fault.

6 MR. WHITNEY: We're not asking for that.

7 MS. PICCIRILLI: The bridge was not a controlling  
8 item of work. The fact that it was delayed until day  
9 160 it became a controlling item of work.

10 CHAIRMAN COWGER: I think the Board has heard  
11 everything they need to hear on this issue.

12 Mr. Morefield, Mr. Roebuck, any questions?

13 MR. MOREFIELD: No.

14 MR. ROEBUCK: No.

15 CHAIRMAN COWGER: Before we close, DOT, you are  
16 going to furnish the Board the copy of the second page  
17 of your chronological information?

18 MS. PICCIRILLI: Yes.

19 CHAIRMAN COWGER: If you will have that to us in  
20 the next week or two, that will be helpful.

21 MS. PICCIRILLI: No problem. I apologize that it  
22 wasn't there.

23 CHAIRMAN COWGER: This hearing is hereby closed.  
24 The Board will meet on July 20 to deliberate on this  
25 claim. You will have our final order shortly

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thereafter.  
(Whereupon, the hearing was concluded at 12:45 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA )

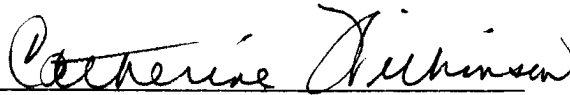
COUNTY OF LEON )

I CATHERINE WILKINSON, Certified Shorthand Reporter  
and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings were  
taken before me at the time and place therein designated;  
that my shorthand notes were thereafter reduced to  
typewriting under my supervision; and the foregoing pages  
numbered 1 through 62 are a true and correct record of the  
aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee,  
attorney or counsel of any of the parties, nor relative or  
employee of such attorney or counsel, nor financially  
interested in the foregoing action.

WITNESS MY HAND AND SEAL this, the 18<sup>th</sup> day of June,  
A.D., 1993, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,  
STATE OF FLORIDA.

  
CATHERINE WILKINSON  
CSR, CP, CCR  
Post Office Box 13461  
Tallahassee, Florida 32317

My Commission Expires June 27, 1994