

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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James L. Finello |  
vs. |  
The Peoples Natural Gas |  
d/b/a Dominion Peoples |  
Initial Hearing

Docket No.: C-20065819

Pages: 1-45

Pittsburgh State Office Building  
11th Floor Hearing Room  
300 Liberty Avenue  
Pittsburgh, PA 15222

DOCUMENT  
FOLDER

June 14, 2006  
Commencing at 9:57 a.m.

BEFORE:

MICHAEL A. NEMEC, Administrative Law Judge

APPEARANCES:

HORACE P. PAYNE, JR., Esquire  
Dominion Resources Services, Inc.  
21st Floor  
624 Liberty Avenue  
Pittsburgh, PA 15222-3110  
For the Respondent

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PA PUBLIC UTILITY COMMISSION  
UTILITY BUREAU

REPORTER: KYLE E. MCCOWIN

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JUDGE NEMEC:

This morning we have case caption James  
L. Finello?

MR. FINELLO:

Finello (corrects pronunciation).

JUDGE NEMEC:

Finello versus the Peoples Natural Gas  
Company. It's docketed at C-20065819. Present in the  
hearing room is Mr. Finello. Also present is Attorney  
Horace Payne representing the Peoples Natural Gas  
Company. My name's Michael Nemec, I'm an  
Administrative Law Judge with the Pennsylvania Public  
Utility Commission. I've been assigned to conduct the  
initial hearing in this complaint proceeding. The way  
we're going to proceed is that we'll take your  
testimony first, Mr. --- help me again.

MR. FINELLO:

Finello.

JUDGE NEMEC:

Finello. As you present your testimony,  
I may have some questions for you. Once you're done,  
Mr. Payne may have some questions. Once you've  
finished your presentation then we'll hear from

1 Peoples. Each witness who testifies for Peoples, once  
2 they're finished with their Direct testimony, you may  
3 ask any questions that you have. And once their  
4 Direct testimony is finished, you can present anything  
5 you wish to at the end; okay? You get the first say  
6 and the last say in this. Okay. Sir, I'm going to  
7 ask you to raise your right hand.

8 -----

9 JAMES L. FINELLO, HAVING FIRST BEEN DULY SWORN,  
10 TESTIFIED AS FOLLOWS:

11 -----

12 JUDGE NEMEC:

13 Okay. Please state your name.

14 A. James Finello, F-I-N-E-L-L-O.

15 JUDGE NEMEC:

16 And your address, sir?

17 A. 1919 Woodside Road, Glenshaw, PA 15116.

18 JUDGE NEMEC:

19 Okay. So you've caused a complaint to be  
20 filed against Peoples Natural Gas Company and I want  
21 you to tell me, in your own words, what your complaint  
22 is.

23 A. Over ten years ago, Peoples Natural Gas was doing  
24 some work on the street I live and they were doing  
25 some digging and they cracked my driveway. They were

1 responsible, they called me and said they were going  
2 to come back and repair the driveway, the portion that  
3 they'd cracked and they did. They sent a contractor  
4 out and they repaired the driveway. This past year,  
5 Shaler Township, the township I live in, changed the  
6 policy that they have to have an external reader for  
7 all the water meters. They come up to install a new  
8 water meter and they were not able to do it because  
9 the shut-off valve, to shut my main water off, is  
10 buried in the slab of concrete that they had replaced.  
11 The water township identified the location of where  
12 the shut-off valve is through some underground meter  
13 device that they have and Mr. Booker had come out to  
14 the house personally and observed the spot where they  
15 say it's buried. It's buried under a piece of  
16 concrete that they had installed.

17 JUDGE NEMEC:

18 Okay. Sir, and what do you want the  
19 Commission to do?

20 A. Expose the curb feet, that's all I'm asking them  
21 to do. I'm not asking to replace the driveway, do  
22 anything, make a saw cut and come out. I don't think  
23 it's my responsibility to repair something that they  
24 did. Their records show that, you know, --- they've  
25 agreed to me that their records show that they did

1 break the sidewalk, they did have a subcontractor  
2 repair it. You know, make it whole, just make it the  
3 way it was.

4 JUDGE NEMEC:

5 Okay. Are you currently a customer of  
6 Peoples Natural Gas?

7 A. Yes, I am. I pay my bill every month on time.

8 JUDGE NEMEC:

9 Okay. Now were you present when the  
10 contractor repaved your driveway?

11 A. Was I there? I left the house that day and  
12 wherever I went. You know, I don't know specifically,  
13 you know.

14 JUDGE NEMEC:

15 Yes.

16 A. He showed up in the morning and when I got home at  
17 the end of that day it was repaired.

18 JUDGE NEMEC:

19 Peoples filed an answer in this case,  
20 they also filed a motion to dismiss. Did you receive  
21 a copy of that motion to dismiss?

22 A. Yes. I mean, they're saying it happened more than  
23 ten years ago and, Your Honor, my feeling is if their  
24 subcontractor would have installed a meter in the  
25 house and the house blows up ten years later, they

1 have no responsibility in someone's death? I don't  
2 think that's right. I think the passage of time does  
3 not alleviate them from any responsibility and I think  
4 if the Court would rule that, I think it's an  
5 injustice of their customers.

6 JUDGE NEMEC:

7 That's in the nature of argument; okay?  
8 Right now, I'm interested in trying to develop a  
9 factual record.

10 A. Sure.

11 JUDGE NEMEC:

12 Did you file a response to this motion?

13 A. I don't believe I did.

14 JUDGE NEMEC:

15 Okay. Now when you saw the work that the  
16 contractor had done, were you aware at that time that  
17 they had covered up the ---?

18 A. I didn't know whether they moved it, I didn't  
19 know. I didn't pay attention to it and it wasn't a  
20 big thing.

21 JUDGE NEMEC:

22 At the time that this was done, were you  
23 aware that the shut-off valve for the water supply was  
24 there?

25 A. Prior to that it was. Prior to them redoing the

1 sidewalk. There used to be a shut-off valve in my  
2 sidewalk.

3 JUDGE NEMEC:

4 Okay. And that was there when it  
5 was ---?

6 A. That was there prior ---.

7 JUDGE NEMEC:

8 When it was cracked?

9 A. Yes, when it was cracked.

10 JUDGE NEMEC:

11 Okay. And I guess the question is then,  
12 were you aware that it was covered up?

13 A. At the time, no. I didn't really pay any  
14 attention to it.

15 JUDGE NEMEC:

16 Okay.

17 A. And the only reason it come to light was the water  
18 company came to put a new meter in and was unable to  
19 do it. They're the ones that identified the problem.

20 JUDGE NEMEC:

21 Okay. So what's involved in uncovering  
22 this valve?

23 A. I'm not a contractor. I'm sure a couple saw cuts  
24 or something like that. Mr. Booker was there. I  
25 mean, a couple saw cuts, that's all I'm asking for.

1 Probably costs less than the price of this hearing.  
2 I'm not asking to replace the sidewalk or the driveway  
3 or anything like that.

4 JUDGE NEMEC:

5 When did the township notify you that  
6 they needed access?

7 A. Sometime this year and I don't know the exact  
8 date.

9 JUDGE NEMEC:

10 In 2006?

11 A. May have been 2005. They sent a letter out.

12 JUDGE NEMEC:

13 Okay. Anything else, sir?

14 A. That's it.

15 JUDGE NEMEC:

16 Okay. Mr. Payne?

17 ATTORNEY PAYNE:

18 Yes. Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY ATTORNEY PAYNE:

21 Q. Good morning, sir.

22 A. Yes.

23 Q. Sir, you testified that you reside at 1919  
24 Woodside Road?

25 A. Correct.

1 Q. How long have you resided at that address?

2 A. Since 1980.

3 Q. Okay. So you resided there 26 years?

4 A. Correct.

5 Q. And you were there, obviously, when the gas  
6 company was out doing what it needed to do for its  
7 service line?

8 A. Yes. I owned the house at that time, yes.

9 Q. And over that period of time that you resided  
10 there up until the time that the gas company came and  
11 did its work, that water valve, I believe, was that  
12 exposed?

13 A. Correct.

14 Q. And how often did you use the driveway?

15 A. I use the driveway every day, sir.

16 Q. And I would imagine that you shovel the driveway  
17 in the winter time?

18 A. Yes, I do.

19 Q. And tend to the driveway ---

20 A. Yes, I do.

21 Q. --- during the summer, spring time ---

22 A. Yes, I do.

23 Q. --- when leaves and so forth accumulate? And it's  
24 your testimony that after the gas company completed  
25 its work, that that valve was covered up?

1 A. Correct.

2 Q. But you did not notice it until ten years after?

3 A. At the time, I thought maybe they moved the valve  
4 into the lawn or did something. I wasn't aware, you  
5 know.

6 Q. You thought that the gas company moved the valve?

7 A. The contractor maybe, I didn't really know. I  
8 didn't pay any attention to it, it wasn't an issue. I  
9 come home, the driveway was fine, they put a new pad  
10 down, it didn't make any difference to me.

11 Q. Do you know who owns the meter at your home?

12 A. The meter?

13 Q. Yes. The natural gas meter.

14 A. I would assume the gas company.

15 Q. The gas company owns the meter. I think you  
16 testified that if an explosion or something occurred  
17 ten years after the meter was set or whatever that,  
18 you know, whose responsibility would that be, it'd be  
19 the gas company's responsibility?

20 A. Absolutely. And I'll give you a reason. I'm a  
21 former homicide detective.

22 Q. Okay.

23 A. And I investigated a case at a hospital where this  
24 thing was installed improperly.

25 Q. Right.

1 A. So I'm very aware of what happens.

2 Q. Now the water valve, now who would that belong to?

3 The valve to your water meter?

4 A. I believe it belongs to me.

5 Q. It belongs to you and so it's your responsibility

6 to maintain it and what have you as the company's

7 responsibility would be to its facilities, its meter,

8 and piping, and so forth and so on?

9 A. I agree with you, but I'm not the one that buried  
10 it, your contractor did.

11 Q. Okay.

12 ATTORNEY PAYNE:

13 I believe I'm finished, Your Honor, at  
14 this point.

15 JUDGE NEMEC:

16 Okay.

17 ATTORNEY PAYNE:

18 Okay.

19 JUDGE NEMEC:

20 Anything you'd like to add at this point.

21 A. I'd like to ask Mr. Booker a question.

22 ATTORNEY PAYNE:

23 It's his turn next. I'm going to put him  
24 on. I just finished my Cross with you. At this time,  
25 Your Honor, I'd like to call Mr. Edward Booker, Jr.

1                   JUDGE NEMEC:

2                   Okay. Sir, please raise your right hand.

3 -----

4 EDWARD BOOKER, JR., HAVING FIRST BEEN DULY AFFIRMED,  
5 TESTIFIED AS FOLLOWS:

6 -----

7                   JUDGE NEMEC:

8                   You may proceed.

9                   ATTORNEY PAYNE:

10                  Okay. Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY ATTORNEY PAYNE:

13 Q. Mr. Booker, would you state your name for the  
14 record, please?

15 A. Edward Booker, Jr.

16 Q. Okay. And sir, by whom are you employed?

17 A. Dominion Peoples.

18 Q. And you're employed with Dominion Peoples in what  
19 capacity?

20 A. I'm senior claims agent.

21 Q. And could you just briefly for the record,  
22 describe your job duties?

23 A. I handle claims that come in, property damage  
24 claims that people make whenever the gas company,  
25 through doing work of some kind, damages property or

1 in the event that we've been negligent in some way in  
2 carrying out our responsibilities. I investigate  
3 those claims and then proceed to advise the company on  
4 how we should respond to try and settle them or deny  
5 them or however.

6 Q. And sir, how long have you held your current  
7 position?

8 A. About 18 years.

9 Q. And prior to that, who did you work for and what  
10 did you do?

11 A. Prior to that, I worked for Dominion Peoples and I  
12 was a foreman for the gas company.

13 Q. So you were out in the field offices ---

14 A. Yes.

15 Q. --- and what have you?

16 A. Yes.

17 Q. Okay. Sir, are you familiar with the complaint of  
18 James L. Finello against Dominion Peoples?

19 A. Yes, I am.

20 Q. And you're familiar in what way?

21 A. I received a letter from Mr. Finello that went to  
22 our claims department and when I presumed to conduct  
23 an investigation, I called him, I spoke with him,  
24 explained to him at that time that I didn't think that  
25 we would be accepting liability for something that had

1 happened that long ago ---.

2 Q. Mr. Booker, excuse me, just one question here.

3 When you were contacted by Mr. Finello, are you  
4 referring to the letter of October 31st, 2005 which is  
5 attached to Mr. Finello's complaint?

6 A. Yes.

7 Q. Okay. And you were explaining that you received  
8 this letter and you investigated the complaint?

9 A. Yes. I started an investigation by checking our  
10 files to see --- in his letter, he indicated that we  
11 had done work ten years ago, so I checked our files  
12 and he was right. We had done that in 1994 when we  
13 renewed our portion of the service that goes to his  
14 property.

15 Q. When you say renewed what, in lay terms, would  
16 that mean?

17 A. We went in and we replaced our piping underground.  
18 In his particular case at his residence, the main line  
19 is on the opposite side of the street from where his  
20 house sits and so we renewed the line that goes under  
21 the street into the curb valve that feeds his service  
22 line. He has a service line after that curb valve  
23 that goes from the curb valve back to the meter that's  
24 at his house. And so in 1994, we renewed our service  
25 that goes from the curb valve over to the main line.

1 Q. And did we, in the process of doing that, disturb  
2 his driveway?

3 A. There's a possibility we could have done that.  
4 I'm going to say I accepted what he said because we  
5 don't have any records that I could look at that would  
6 verify to tell me whether or not we replaced a section  
7 of sidewalk, we wouldn't retain those records for that  
8 period of time.

9 Q. Okay. What records would you retain?

10 A. We retain records as to the material that we use  
11 to install that service line, we keep those kind of  
12 records. We keep records on measurements so that we  
13 can locate our curb valve, we keep records on the,  
14 once again, measurements on the length from where the  
15 curb valve is to the main line, also they take  
16 triangular measurements from the corners of his house  
17 or of any house they take triangular measurements and  
18 so we keep all those kinds of records. We have those  
19 kinds of records on file so that in the event that we  
20 would have to go in and find those facilities we can  
21 find them.

22 Q. Okay. Let's assume that the company did disturb a  
23 portion of the Complainant's driveway, what then is  
24 the company's procedure? What would they have done to  
25 restore the driveway?

1 A. The employees that actually do the work, they  
2 would have been the ones that would go out and  
3 would've dug it up initially to make the renewal of  
4 the service lines. Whenever they finish their work,  
5 they would turn in a restoration slip indicating that  
6 there was damage done to a driveway and that it needed  
7 to be repaired so they would also usually turn in  
8 dimensions and different things like that. That's  
9 given to the foreman and then the foreman turns it  
10 over to a contractor; okay? And the contractor then  
11 goes out and does that work for us.

12 Q. Were you, Mr. Booker, able to discover any of  
13 those documentations, the documentations that the  
14 actual Dominion Peoples workers would have submitted  
15 to the foreman? Were those documents retrievable?

16 A. No, they weren't. We don't have those documents  
17 at this time.

18 Q. Okay. Well again, in hypothetical, let's assume  
19 that these documents were turned over to the  
20 supervisor and the supervisor then --- he engaged a  
21 contractor. Is this contracted work that the company  
22 normally would do?

23 A. Yes. What the company does is, I'm going to say  
24 at the beginning of the year, but I don't know exactly  
25 when it's done, but they bid out this work to

1 contractors and so contractors bid on them. And they  
2 have contractors that bid on concrete work, they also  
3 have contractors that bid on lawn restoration; okay?  
4 And so the lowest bidder gets it and then they would  
5 handle all of our concrete restoration work, they  
6 would handle all of that for the period of time that  
7 they won the bid for; okay? But depending on who wins  
8 a bid in various years, you could have a different  
9 contractor doing your concrete work every year; okay?  
10 Or however long the contracts would go with the  
11 contractors, it might go for a two year period, it  
12 might go for a one year period before they re-bid it,  
13 but usually there's a certain period of time and then  
14 they re-bid and the low bidder wins and that's who  
15 handles your concrete work for a particular area.

16 Q. Okay. All right. You basically described the  
17 general bidding process. Have you ever been privy to  
18 the contract themselves? Have you had an opportunity  
19 to look at a contract that would go out to a contractor  
20 to restore driveways, roadways, highways, what have  
21 you?

22 A. Yes, I have.

23 Q. And are you familiar in your capacity as  
24 investigator and as a foreman who actually handled  
25 these matters, are you familiar with the time span for

1 which these contracts are tied in, in terms of  
2 liability, after a contractor has done his or her  
3 work?

4 A. Yes. We hold the contractor responsible for their  
5 work for two years.

6 Q. Okay. Is there any magic with the two or are you  
7 familiar with that or ---?

8 A. It's my understanding, it is tied into statute of  
9 limitations for someone being able to file a lawsuit.

10 Q. Okay.

11 A. That's my understanding of it, I don't know if  
12 that's accurate or not, but ---

13 Q. Okay.

14 A. --- all I know is that's how long we hold our  
15 contractors responsible for their work, two years.

16 Q. And typically, would the contractor --- what is  
17 the contractor to do relative to the disturbance that  
18 the company has created? What is the basic charge to  
19 do?

20 A. Basically they are to go in and to make the  
21 property the way it was whenever we found it or as  
22 close as possible to the way that we found it. So  
23 they would go in and there are certain --- we have  
24 certain criteria that they are supposed to use, for  
25 like say their concrete mix and if they're doing ---

1 there's a different mix or a different way that they  
2 would restore a sidewalk, for example, and a driveway;  
3 okay? But if the claimant's driveway had rods in it,  
4 for example, okay, then they would be required to  
5 replace it with rods in it; okay? The thickness of a  
6 driveway is usually a littler bit thicker than a  
7 sidewalk area, okay, so they would be required to do  
8 that too, also.

9 Q. So there's basic specifications that the company  
10 has in place ---

11 A. That's correct.

12 Q. --- for these contracts?

13 A. That's correct.

14 Q. And Mr. Booker, if in fact the work was not done  
15 to standard, is it normally the company's practice to  
16 put the contractor on notice that something has to be  
17 changed around or done differently?

18 A. That's correct. When a contractor is done with  
19 his work usually he submits an invoice for payment;  
20 okay, to the company and usually it's the charge of  
21 the foreman in the area to go around and, you know,  
22 just take a look. Just in general, just to verify  
23 that the contractor has done the work that he  
24 submitted his invoice for and then the foreman will  
25 okay it and then the contractor gets paid.

1 Q. Okay. Now that's with regard to the company, does  
2 the property owner? You had experiences where a  
3 property owner has a say, for example, you know, that  
4 grade is now causing water to flow into my garage or  
5 flow into my basement or what have you, various other  
6 problems that may have occurred in the process of  
7 restoring the driveway or the pavement?

8 A. Right. It's not unusual, I mean, the amount of  
9 work that we do, I see more claims than most people, I  
10 guess you could say. But I think in general, we don't  
11 get that many claims over all; okay? But it's not  
12 unusual for us to get a claim concerning a  
13 contractor's work, it may not be done up to the  
14 property owner's satisfaction.

15 Q. Okay. Now Mr. Finello had --- when he submitted  
16 his claim to you --- you've heard his testimony today,  
17 what he wants, and I suspect it's been basically the  
18 same throughout, that he just wants someone to cut in  
19 and expose that valve. What's the company's position?  
20 Why won't the company engage in this particular  
21 activity?

22 A. I base my decisions based on liability --- the  
23 company bases the decision on liability and whether or  
24 not we've been negligent in some way; okay, whether or  
25 not we've done something wrong. And as I looked at

1 this situation and I followed basically what he had  
2 said as far as like us doing the work there in 1994  
3 and damaging his driveway and then having it replaced,  
4 okay, once again I don't see where we did anything  
5 wrong, we followed what we should've done. If we  
6 damaged somebody's driveway, we should've replaced,  
7 which is what he says we did and we did that. Where I  
8 guess we disagree is that he's saying that we were  
9 negligent because our contractor covered up his water  
10 valve or water curb box. My position is that our  
11 contractor wouldn't have covered it up if it hadn't  
12 been exposed beforehand; okay? And if it would have  
13 been exposed beforehand and he didn't see it there  
14 afterwards, okay, he could've made a claim at that  
15 time, okay? But nothing was said for this period of  
16 time.

17 Q. And also Mr. Booker, I think it was your testimony  
18 that the supervisor or foreman would be out at the  
19 property. Would that person have a look at what was  
20 done prior to work commencing? I mean normally.

21 A. In some cases, yes, in some cases they may not. I  
22 don't know what the circumstances were that required  
23 this renewal, I mean, if it was a leaky situation. I  
24 couldn't guarantee you that a foreman had been down  
25 there to look this over beforehand.

1 Q. Mr. Booker, you said that you went out to Mr.  
2 Finello's property?

3 A. Yes, at his request. In our initial conversation  
4 I did explain to him that I thought with the amount of  
5 time that had passed that we wouldn't accept liability  
6 for this. He suggested that I needed to come out and  
7 take a look at it and after we talked for awhile I  
8 told him that I would come out. So I made  
9 arrangements to meet with him one day out at his  
10 property.

11 Q. Okay. And do you recall the month, the year?

12 A. I believe it was November of 2005. I didn't bring  
13 the exact date, ---

14 Q. Okay.

15 A. --- but I know we met in November. I'm pretty  
16 sure it was November 2005.

17 Q. And as part of your investigation, did you take  
18 pictures?

19 A. Yes, I did take photographs.

20 Q. You took photographs?

21 A. Yes.

22 ATTORNEY PAYNE:

23 Now, Your Honor, I'm going to pass out,  
24 just so Your Honor will get a better ---.

25 JUDGE NEMEC:

1 Show them to Mr. Finello first.

2 ATTORNEY PAYNE:

3 Sure. Is that your property?

4 MR. FINELLO:

5 My property, yes.

6 ATTORNEY PAYNE:

7 Your Honor, I'm passing out what I would  
8 ask be marked as Dominion Exhibit number One.

9 JUDGE NEMEC:

10 It may be so identified.

11 (Dominion Peoples Exhibit One marked for  
12 identification.)

13 BY ATTORNEY PAYNE:

14 Q. And I'm going to ask you Mr. Booker, if you will,  
15 can you tell us what that picture depicts?

16 A. Well I'm standing in the street and I'm taking a  
17 picture back towards Mr. Finello's house and what it  
18 shows is his driveway, one of his cars, and there's a  
19 yellow mark, you'll see, on the street. For some  
20 reason, someone had already marked the gas line.

21 Q. That yellow mark is indicative of the gas line  
22 moving from the street or the road in towards Mr.  
23 Finello's residence?

24 A. That's correct, yes. So the yellow mark, someone  
25 had marked that. Apparently there had been a One Call

1 or something done in this area for some reason, I  
2 don't know what that reason was for, but it lines up  
3 with --- if you look back at his house, you can just  
4 barely see the piping for the meter, it's kind of  
5 obscured by a bush, but right beside the car --- as  
6 you go past the car that's in this picture, you can  
7 see right at the house, there is a meter back there.  
8 So that's basically in line with where the gas service  
9 goes back toward his house.

10 Q. Okay. If we were to walk that line, the line  
11 being the yellow line, to Mr. Finello's home where the  
12 meter is situated, that would be the customer service  
13 line?

14 A. For the most part, it would be the customer  
15 service line after our curb valve; okay? Our curb  
16 valve is probably somewhere in this vicinity, I don't  
17 know exactly where our curb valve is.

18 JUDGE NEMEC:

19 By this vicinity, are you indicating the  
20 yellow dot?

21 A. I don't think that our curb valve would be sitting  
22 there. Okay. That it is right in the curb of the  
23 street.

24 JUDGE NEMEC:

25 Yes.

1 A. Okay. I think it would probably be more on his  
2 property someplace, but I don't have the exact  
3 location of it. It's not shown in this picture is  
4 what I should be saying. We have some measurements  
5 for it in event we would need to find it.

6 ATTORNEY PAYNE:

7 Your Honor, I'm going to pass out what we  
8 would ask to be marked as Dominion Exhibit Number Two.

9 JUDGE NEMEC:

10 Okay. It's identified.

11 (Dominion Peoples Exhibit Two marked for  
12 identification.)

13 BY ATTORNEY PAYNE:

14 Q. And Mr. Booker, I'm going to ask you what this is  
15 a picture of?

16 A. Once again, this is a picture of Mr. Finello's  
17 property. I'm taking a photograph that includes his  
18 entire driveway and as I expanded or took a broader  
19 shot, you're able to see on the right hand side of the  
20 photograph, there's a blue line there at the curb,  
21 once again, which shows --- normally blue is used to  
22 depict water lines, yellow is for gas lines. So there  
23 is a blue line there that shows where the water line  
24 is coming in to his property. Also this shot is  
25 showing, and he explained this to me, that even though

1 are service line came in on the left side of his  
2 property and it appears that we might have or would  
3 have cracked the wing of his driveway, he explained to  
4 me that they replaced his driveway to the expansion  
5 joints and there's like a, it's not a triangle  
6 exactly, but that whole lower section of his driveway  
7 that goes to the expansion joint along there was what  
8 he said that our contractor replaced back in 1994.  
9 And that is our procedure usually that if we crack  
10 somebody's driveway, we don't go in and just make a  
11 patch in the driveway, we usually go back to the  
12 expansion joints. So that did make sense, that  
13 followed what we would have done.

14 Q. Okay. Is it possible Mr. Booker, I mean, just  
15 possible that from 1994 to the present that there  
16 could have been some other problems with the driveway  
17 that may have required work done by another  
18 contractor? Just a possibility, not something that I  
19 would say occurred.

20 A. I guess that's a possibility. He didn't indicate  
21 that there had been any other work in his driveway.

22 Q. Okay.

23 ATTORNEY PAYNE:

24 Your Honor, I'm going to ask that this  
25 next document be identified as Dominion Exhibit Three.

1                   JUDGE NEMEC:

2                   Yes, it may be so identified.

3                   (Dominion Peoples Exhibit Three marked  
4                   for identification.)

5 BY ATTORNEY PAYNE:

6 Q.   And Mr. Booker, could you tell us what this is a  
7 picture of?

8 A.   Okay. That's another shot of his driveway. And  
9 this shot basically pictures --- I tried to focus in  
10 on the area that he explained to me was the area that  
11 was replaced. And, as I said before, that would match  
12 up with our procedures to try and replace a section of  
13 driveway to the expansion joints and as you can see  
14 there's a cut out section here and that looks to be a  
15 new section of concrete right there. The other thing  
16 that this photograph is showing is he pointed out to  
17 me that there was a blue mark on his driveway and that  
18 is the location where the water line had told him  
19 where the water valve had been covered over. And so  
20 that's basically what this photograph shows. Also in  
21 the street there, you can see the blue line coming  
22 across the street that lines up with the dot.

23                   ATTORNEY PAYNE:

24                   One second, Your Honor.

25 BY ATTORNEY PAYNE:

1 Q. Now Mr. Booker, after your initial investigation,  
2 did you at sometime, subsequent to when the complaint  
3 was filed, do any further investigation relative to  
4 this matter?

5 A. After we met that day, I told him I needed to come  
6 back in and investigate and talk with some other  
7 people about it and then I think it was shortly after  
8 that I called him and I denied his claim over the  
9 telephone. After he made his complaint to the PUC, we  
10 did try --- because of the meetings that we had in  
11 trying to resolve this ---.

12 Q. You're talking now of the settlement conference  
13 that the Commission had ---

14 A. That's right.

15 Q. --- directed that we participated in?

16 A. That's right. He requested that we try, and when  
17 I say he, Mr. Finello, requested that we try to get  
18 some information on the contractors that had done the  
19 work in 1994, the restoration work in 1994. So I did  
20 try to find additional information or try to find some  
21 information period on the contractors that we had in  
22 1994 and I couldn't find anything, we don't have that  
23 information.

24 ATTORNEY PAYNE:

25 Your Honor, I have no further questions.

1                   JUDGE NEMEC:

2                   Okay. Mr. Finello, your turn.

3 CROSS EXAMINATION

4 BY MR. FINELLO:

5 Q. Mr. Booker, when I first filed my complaint you  
6 just denied the claim automatically; did you not? You  
7 called me and said we're not going to do this.

8 A. Yes. I told you at the time, whenever I called  
9 you on the phone, that I didn't think that we would  
10 accept liability for this because of the time.

11 Q. And I then asked you to come --- I said, you know,  
12 just come out and see, you know, what you've done  
13 here?

14 A. Yes.

15 Q. All right. Also, I did show you where the shut-  
16 off valve is in the grass, we did expose that that day  
17 when you were out there that day?

18 A. I don't remember us actually exposing it.

19 Q. All right. Now from this picture here to the gas  
20 meter, would you be able to replace that line into my  
21 lawn without breaking the driveway?

22 A. Well it depends on how they would do it. We have  
23 two ways that they replace lines. One is they do what  
24 they refer to as an open cut, okay, that would be that  
25 they just go in and dig the road in order to replace

1 the service. Another thing that they do is they  
2 insert a smaller line and usually it's plastic, they  
3 insert it through a larger steel line. If that steel  
4 line went under your driveway like that, they could've  
5 just dug a hole and there's a possibility that they  
6 could've dug a hole right at the curve valve and over  
7 at the main line and inserted and not had to touch  
8 your driveway. I'm only saying that that's a  
9 possibility, sir.

10 Q. But your records showed that they did do that work  
11 and they did repair my driveway, you told me that one  
12 time; did you not?

13 A. I was never able to find anything concerning your  
14 driveway. I'm assuming that --- what you just pointed  
15 out right now, there is a chance that your driveway  
16 could've been broke by us; okay? And I'm also saying  
17 to you that the way that we make repairs, we usually  
18 go to an expansion joint so there's a good chance that  
19 this section may have been replaced by us.

20 Q. Do you have any of the records of this? Did you  
21 bring any of the records here today from this work  
22 you've done on my property?

23 A. Yes.

24 Q. Is there any remarks showing that they broke the  
25 driveway?

1 A. No, sir. There wouldn't be anything like that.

2 The records that we maintain, the records that we  
3 keep, are records concerning material that we use.

4 Q. Well did you use plastic or metal pipe going  
5 through there?

6 A. Let me take a look at it and see. It's plastic.  
7 They installed 34 feet of plastic tubing and that was  
8 one inch CTS. Now that means copper tubing size,  
9 that's all. So it was plastic pipe.

10 Q. By those records, does it tell you whether they  
11 fished a line through there or whether they dug it up?

12 A. There's nothing here that indicates --- sometimes  
13 what they will show as reclaimed material, they'll  
14 show the piping that they used as conduit, you know,  
15 they'll put the footage in there and they'll show it  
16 as reclaimed material. I don't see where they show  
17 that on this service order.

18 Q. So from those records they would have had to break  
19 the sidewalk?

20 A. I couldn't say that for sure, sir, they may have.  
21 I'm saying to you that I don't know one way or the  
22 other whether they did or they didn't. As I look at  
23 how it lines up, there's a possibility that we could  
24 have done that; okay? And I'm also saying to you that  
25 I realize it was replaced back to the expansion joint

1 and that's normally what we do. You have a new  
2 section of driveway there that was replaced back to  
3 the expansion joint; okay? So that all looks like  
4 things that we would've done, okay, but as far as  
5 being able to look at some document and tell you  
6 specifically that we did or we didn't, I'm sorry, I  
7 can't tell you that. I don't have that information.

8 Q. Mr. Booker, if your subcontractor installed a  
9 meter on a house, 15 years later the house blew up,  
10 would Dominion Peoples have any liability there?

11 A. First off, we don't allow subcontractors to  
12 install meters, we install our own meters; okay?  
13 That's the very first ---.

14 Q. If your subcontractor put a line in and the line  
15 was faulty and a house blew up 15 years later, would  
16 you have any liability?

17 A. It would depend on the circumstances; okay? It  
18 would depend on the circumstances of what the  
19 investigation proved.

20 Q. So the passage of time has nothing to do with your  
21 liability?

22 A. I think it depends on, once again, the  
23 circumstances in what we're talking about. If I could  
24 just state one thing. As far as my understanding in  
25 these things, okay, as I handle claims, okay, and I

1 think this does go to the point of what you're asking  
2 as far as like the passing of time, as I handle  
3 claims, periodically I get claims that involve damage  
4 to sanitary sewage lines; okay? And there have been  
5 instances where sanitary sewer line --- where our  
6 lines were put in possibly five or ten years, okay,  
7 before and people will report a problem with their  
8 sanitary sewer line; okay? Because a sanitary sewer  
9 line is buried and there's no way for a person to  
10 actually know what's going on, they don't know if it's  
11 a root, they don't know what the problem is; okay?  
12 When they report that to us, okay, that's whenever ---  
13 this is my understanding, that's whenever the statute  
14 of limitation begins to run, whenever they become  
15 aware of it and they bring it to our attention. And  
16 the reason for that is because it's something that  
17 they had no way of knowing, okay, it's buried; okay?  
18 Something that's open and obvious, okay, that's on the  
19 surface and that someone can see it's not, at least  
20 from my standpoint as I handle claims, I do look at it  
21 differently; okay?

22 Q. Just another situation. I mean, say your  
23 subcontractor --- you have this map that you use to  
24 mark underground lines.

25 A. Okay.

1 Q. Everything you do is marked out; right? You know  
2 exactly where all your underground lines are?

3 A. We do have ---.

4 Q. And document?

5 A. We do. We do have maps. We have a mapping system  
6 and we have all of that, but we don't allow our  
7 contractors or any contractor to go just by the maps.  
8 What we require is that people, anybody that's going  
9 to do any digging any place, is required to call  
10 Pennsylvania One Call and we have somebody come out  
11 and locate the lines. We don't want anybody just to  
12 rely on the maps on the mapping system; okay? The  
13 maps are used as a kind of like a guide, but before  
14 anybody does any digging we expect them to put it on  
15 Pennsylvania One Call so that they'll know exactly  
16 where those lines are because someone has to come out  
17 and actually locate them to know where those lines  
18 are, not just go by the maps.

19 Q. And it is your contention that your subcontractors  
20 would restore something to --- it's your company  
21 policy, if something was improperly installed from the  
22 beginning, your subcontractor would reinstall it  
23 properly; is that what you're telling me? Is it in  
24 your company policy?

25 A. Our policy is to try to get our customer's

1 property back to the same condition that we found it  
2 in, as close as we can. We try to restore our  
3 customer's property as close as we can to the  
4 condition that we initially found it in, that is our  
5 policy.

6 Q. But you said to me that they probably found the  
7 curb box buried; did you not say that? And then he  
8 reburied it; did you not tell me that?

9 A. What I said was, if I could just state it in my  
10 own words; okay? And that is that it would be my  
11 position that they never saw a curb box there period.  
12 They wouldn't have found it, they wouldn't have been  
13 looking for it. Okay. Their charge was or their  
14 responsibility was to replace the section of driveway  
15 that we damaged so they would've come out, they  
16 would've jack hammered that driveway, cleaned that  
17 out, they would've done their job as far as like  
18 replacing it with stone and whatnot. If they saw a  
19 curb box sticking up then they would have made sure  
20 that it was still obvious; okay? But if they never  
21 saw a curb valve sticking up then they would have just  
22 done their work and put it back.

23 Q. So they would've buried a curb box, that'd been  
24 your company policy to reinstall it improperly?

25 A. No. They would not even know that a water curb

1 box was there if they didn't see it. What I'm trying  
2 to tell you, sir, if it was already buried whenever  
3 they got there, okay, and buried below the depth that  
4 they go to make the repairs to the driveway, okay,  
5 than they would have just done their job, okay, and  
6 they wouldn't have bothered to uncover it. They  
7 wouldn't have gone looking for a water curb box unless  
8 it was all ready visible. If it was already visible  
9 or if it became visible during their work, then they  
10 would've exposed it, they would've left it exposed;  
11 okay? But they're not going to go in and look for a  
12 water box.

13 Q. Did you interview the contractor that did this  
14 work?

15 A. No, I didn't. I don't even know who the  
16 contractor was that did this work.

17 MR. FINELLO:

18 I'm done, Your Honor.

19 JUDGE NEMEC:

20 I think I have just one question, Mr.  
21 Booker. Thirty-four (34) feet of plastic pipe, could  
22 that have been to reline or to carry the gas line from  
23 the opposite side of the road to the curb box?

24 A. Yes, sir.

25 JUDGE NEMEC:

1 I mean it wouldn't have been on Mr.  
2 Finello's property?

3 A. That's right. That 34 feet was the piping that  
4 went under the road. From the main line on the  
5 opposite side of the street, it would have went under  
6 the road.

7 JUDGE NEMEC:

8 To the curb box wherever it is on his  
9 property?

10 A. The curb box on his property.

11 JUDGE NEMEC:

12 I wasn't sure that was clear.

13 MR. FINELLO:

14 Your Honor, one more thing. I mean, when  
15 Mr. Booker come to my house, I uncovered the shut-off  
16 valve for the gas. It's right here on the lawn and I  
17 showed it to him that day. It's about three feet  
18 inside ---.

19 JUDGE NEMEC:

20 What exhibit number is that? Is that the  
21 first one?

22 MR. FINELLO:

23 The first one, Your Honor.

24 JUDGE NEMEC:

25 Yes.

1                   MR. FINELLO:

2                   When he come to my house ---.

3                   JUDGE NEMEC:

4                   Wait. You're pointing to where the ---

5                   MR. FINELLO:

6                   His shut-off valve.

7                   JUDGE NEMEC:

8                   --- yellow line come to the diagonal  
9 line?

10                  MR. FINELLO:

11                  The gas line runs underneath my driveway  
12 and the shut-off valve is in my lawn.

13                  JUDGE NEMEC:

14                  Yes. Okay.

15                  MR. FINELLO:

16                  And that's where it sits and they had to  
17 do this. They had to break the sidewalk to do this.

18                  JUDGE NEMEC:

19                  Okay. The triangular portion of the  
20 sidewalk?

21                  MR. FINELLO:

22                  Yes. It's called an apron.

23                  JUDGE NEMEC:

24                  So in your questioning when you were  
25 talking about the curb box, you were talking about the

1 gas curb box?

2 MR. FINELLO:

3 The gas curb box. It's in my lawn and  
4 they cracked my driveway, they had to break up my  
5 driveway, and I was nice about it, I didn't --- you  
6 know, do what you got to do. I'm just asking them to  
7 restore it to its original condition.

8 JUDGE NEMEC:

9 Okay. And your testimony also is that  
10 the water valve was exposed at the time prior to the  
11 repaving?

12 MR. FINELLO:

13 Absolutely.

14 JUDGE NEMEC:

15 And of course it is not now. And your  
16 testimony, I assume, is that it was located where the  
17 municipal authority or whoever it is ---.

18 MR. FINELLO:

19 They use a device to find it. They use  
20 some electronic device to find it.

21 JUDGE NEMEC:

22 Yes. It is a municipal authority or ---?

23 MR. FINELLO:

24 Yes. It's Shaler Water Authority.

25 JUDGE NEMEC:

1                   Did they indicate that they would make  
2 the opening and ---?

3                   MR. FINELLO:

4                   No.

5                   JUDGE NEMEC:

6                   No?

7                   MR. FINELLO:

8                   No. They told me, you know, I have to  
9 have it opened. It's my responsibility. But I can  
10 assure you 100 percent, there was a shut-off valve in  
11 that driveway before they replaced it.

12                   JUDGE NEMEC:

13                   Okay. Anything else?

14                   ATTORNEY PAYNE:

15                   I believe not, Your Honor.

16                   JUDGE NEMEC:

17                   Okay.

18                   ATTORNEY PAYNE:

19                   Your Honor, I would just ask that these  
20 exhibits be moved into the record.

21                   JUDGE NEMEC:

22                   Okay. Any objections to the exhibits?

23                   MR. FINELLO:

24                   No.

25                   JUDGE NEMEC:

1 Dominion Exhibits One, Two and Three are  
2 admitted. Mr. Finello, anything else you'd like to  
3 add? I said you get the last say.

4 MR. FINELLO:

5 Your Honor, listen, you know, I don't  
6 want to be here, honestly. This costs more than it  
7 would cost them to have someone come out and cut a  
8 curb feet in there. You know, I just want them to  
9 restore my property as they found it and the fact that  
10 they tell me that if there was no curb feet in there,  
11 they would have reburied it, that doesn't even make  
12 sense. You know, and I'm just going to tell you there  
13 was a curb feet before they put that driveway in.

14 JUDGE NEMEC:

15 I'm sure to you, sir, it looks like a  
16 very straightforward matter. Commission has  
17 jurisdiction over service. Service is a very broad  
18 term, you know, service provided by Public Utility.  
19 The question I have to determine initially in this  
20 case is whether what was done here comes under the  
21 definition of service. If I find that that's the  
22 case, then I have to decide what's the responsibility  
23 of the Utility with regard to your claim. If I find  
24 that what was done here does not come under the  
25 Commission's definition of service, than what you were

1 told earlier about taking your claim to Common Pleas  
 2 Court, for example, or to a magistrate or whatever,  
 3 that would probably be true. It's not a cut and dry,  
 4 open and shut matter unfortunately, I wish it were.  
 5 It's an interesting factual situation and it's a  
 6 difficult factual situation; okay? My job is to take  
 7 the record we've made here, prepare an initial  
 8 Decision, you'll receive that in the mail, either  
 9 party who disagrees with any of the findings or  
 10 conclusions that I reach can file exceptions. If you  
 11 file exceptions, it requires the entire matter to be  
 12 reviewed by the Commission. Any questions? Okay.  
 13 Thank you very much.

14 MR. FINELLO:

15 Thank you.

16 JUDGE NEMEC:

17 The hearing's concluded and you're  
 18 adjourned.

19 ATTORNEY PAYNE:

20 Thank you, Your Honor.

21 \* \* \* \* \*

22 HEARING CONCLUDED AT 10:49 A.M.

23 \* \* \* \* \*

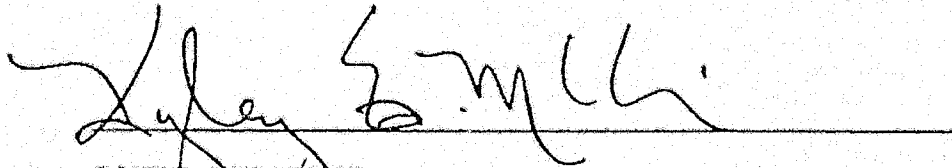
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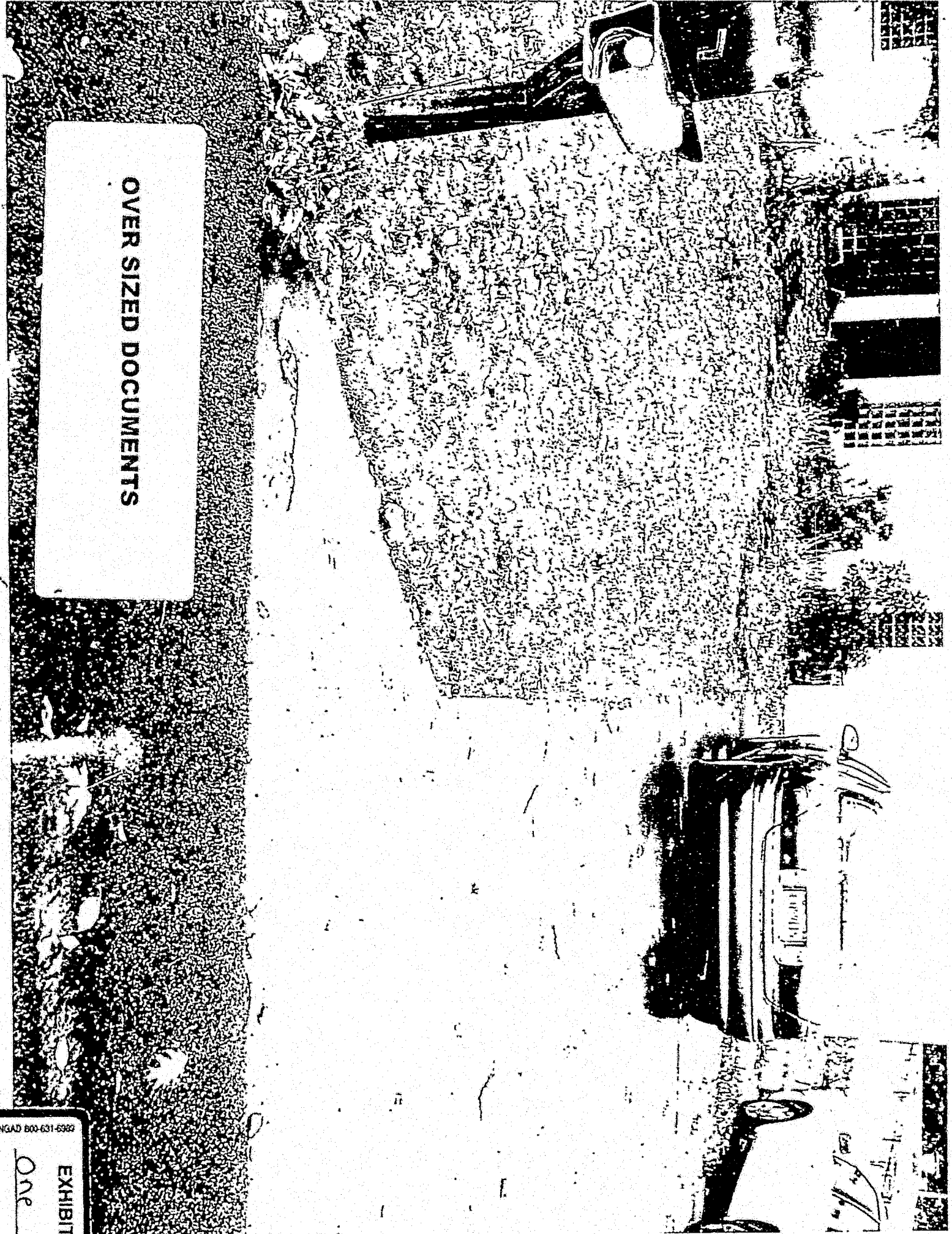
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OVER SIZED DOCUMENTS

PENGAD 800-631-6982

One

EXHIBIT



OVER SIZED DOCUMENTS

PENBAG 800-631-6989

EXHIBIT

128



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EXHIBIT

Three