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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

December 30, 2003

Jefferson City, Missouri

Volume 1

In the Matter of the Proposed)
Amendments to Commission Rule) Case No.
4 CSR 240-3.190, Filing and) EX-2003-0489
Reporting Requirements.)

BEFORE: _____

KENNARD L. JONES,
REGULATORY LAW JUDGE.
CONNIE MURRAY,
COMMISSIONER.

REPORTED BY:
TRACY L. THORPE, CSR, CCR
ASSOCIATED COURT REPORTERS

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1 JUDGE JONES: Good afternoon. This is the
2 rulemaking hearing for Case No. EX-2003-0489 in the matter
3 of the proposed amendments to Commission Rule 4 CSR
4 240-3.190, filing and reporting requirements.

5 The date of this hearing is December 30th,
6 2003. The location of the hearing is the Governor Office
7 Building in Jefferson City, Missouri. I am Kennard Jones,
8 the regulatory law judge presiding over this matter.

9 At this time I'll take entries of appearance
10 from Staff and Public Counsel.

11 MR. JOYCE: Dan Joyce, appearing on behalf of
12 Commission Staff, located at Post Office Box 360, Jefferson
13 City, Missouri 65102.

14 MR. COFFMAN: Appearing on behalf of the
15 office of the Public Counsel, John B. Coffman, PO Box 2230,
16 Jefferson City, Missouri 65102.

17 JUDGE JONES: Are there any other attorneys
18 present who would like to enter their appearance?

19 Go right ahead.

20 MR. BARNES: On behalf of AmerenUE, Michael F.
21 Barnes, attorney, 1901 Chouteau, St. Louis, Missouri 63103.

22 JUDGE JONES: Thank you.

23 Sworn testimony will be taken in this case
24 from the Staff of the Commission and the Office of Public
25 Counsel, and thereafter supporting comments will be heard,

1 followed by opposing comments. Because this is not a
2 contested matter, cross-examination will not be taken.
3 Following each testimony, the Commission may or may not have
4 questions of the witness.

5 Does Staff have a witness it would like to
6 present at this time?

7 MR. JOYCE: Yes, your Honor. I'd like to
8 tender Warren Wood, who's the manager of the energy
9 department at the Commission. And I also have an exhibit
10 I'd like to introduce into evidence.

11 JUDGE JONES: We'll go ahead and introduce
12 that exhibit first. We will mark this as Exhibit 1.

13 (Exhibit No. 1 was marked for identification.)

14 JUDGE JONES: Are there any objections to the
15 exhibit?

16 Let me restate that. If there aren't any
17 objections, can I hear no's from those who do not object?

18 MR. COFFMAN: No objection.

19 MR. BARNES: No objection.

20 JUDGE JONES: Exhibit 1 tendered by the Staff
21 of the Commission is admitted into the record.

22 (Exhibit No. 1 was received into evidence.)

23 JUDGE JONES: You may present your witness.

24 Let the record note that Warren Wood is
25 standing raising his right hand.

1 (Witness sworn.)

2 JUDGE JONES: You may be seated.

3 THE WITNESS: Thank you.

4 JUDGE JONES: And you may proceed with your
5 testimony.

6 WARREN WOOD testified as follows:

7 MR. WOOD: Thank you.

8 The proposed amendment that is the subject of
9 this public hearing was developed to update and clarify
10 reporting requirements for electric utilities and data
11 reporting requirements for accidents involving electrical
12 contact with facilities operated by either investor-owned
13 utilities or cooperatives.

14 The changes to Section 1 of the rule clarify
15 reporting requirements of electric utilities regarding data
16 used by the Staff and modeling utility plant operations and
17 fuel and purchase power prices. These changes were
18 necessitated by several instances when Staff was provided
19 with data that was not what was needed for modeling purposes
20 and Staff was notified late in an analysis cycle that the
21 data provided was something different than what was needed.

22 The changes to Sections 2, 3, and 5 of the
23 rule relate to electronic submittal of data in EFIS and
24 raising the power plant damage notification amount to
25 \$100,000 instead of \$50,000.

1 A new Section 4 has been added to the rule.
2 This section follows language currently used in Iowa
3 statutes Section 199,25.5, accident reports. Missouri
4 Revised Statutes 2000, Section 386.310 and 394.160 provide
5 the Missouri Public Service Commission with safety
6 jurisdiction investor-owned electric utilities and
7 cooperatives. These sections, as well as Section 386.250
8 provide the PSC with rulemaking authority related to this
9 jurisdiction.
10 The deadline for public comments on this
11 proposed amendment was December 17th, 2003. Staff reviewed
12 all filed comments and suggested changes to the proposed
13 amendment and has prepared its responses to each of these
14 comments and suggested changes in Exhibit No. 1.
15 Staff would like to enter this exhibit into
16 evidence as has been done in this case and hopes that it
17 will help the Commission's in its determination of the final
18 language that this proposed amendment will reflect.
19 Staff notes that the comments of Sac Osage
20 Electric Cooperative were not yet filed in EFIS when this
21 exhibit was developed. Sac Osage did not make any comments
22 that had not already been made by other parties in this
23 case. That concludes my remarks.
24 JUDGE JONES: Thank you, Mr. Wood.
25 Commissioner Murray, do you have any

1 questions?

2 COMMISSIONER MURRAY: Thank you, Judge.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. In that we just received this exhibit, can you
5 walk us through where the Staff proposed changes based upon
6 comments received?

7 A. I certainly can.

8 If you look at Attachment A and you turn to
9 page 16, it's the first page of Attachment A.

10 Q. All right.

11 A. Under 1C, it's the bold text about six,
12 eight -- eight lines from the bottom of the page, we've
13 added the term "carbon-based fuel." Where it used to just
14 say "monthly as-burned fuel report for each generating
15 unit," we've added "carbon-based fuel."

16 Q. And that was in response to a number of
17 comments or one in particular?

18 A. To AmerenUE's comments, I believe, regarding
19 excepting -- taking an exception to nuclear fuel.

20 And the additional changes that were made are
21 on page 18 of the attach-- of the attachment or the exhibit
22 under Section 4. The fourth line down on Section 4, third
23 word from the left -- or from the right side where we added
24 "electrical contact with its energized electrical supplies
25 facilities." It emphasizes that this is -- what we're

1 interested in is contact with an electrical contact with
2 facilities, not necessarily a car wreck into a telephone
3 pole or things of that nature.

4 Q. Is it your opinion that that should remove the
5 concern of those who had filed comments saying that it was
6 too broadly -- it could be too broadly interpreted as to
7 what kind of contact you were talking about?

8 A. There was a contact -- there was a reference
9 or a comment indicating that there was a concern that it
10 could be legally interpreted too broadly. And this was in
11 response to that comment. We wanted to clarify it's
12 electrical contacts.

13 Q. And would it be your opinion that that should
14 remove that concern or should it just partially take care of
15 that concern?

16 A. Well, it addresses the specific concern, the
17 electrical or non-electrical contacts. There were other
18 comments regarding the -- the breadth of the rule to the
19 degree they don't believe that this Section 4 is needed. So
20 I wouldn't say it resolves all concern in that area.

21 Q. Okay. Go ahead.

22 A. The additional changes were on the one, two,
23 three -- sixth line down, the reference to \$10,000 has been
24 changed to \$20,000.

25 Q. Did any of the parties suggest that or did

1 those who were commenting suggest 100,000?

2 A. There were suggestions that it be removed,
3 that it be increased to \$50,000 and I believe it made be
4 consistent with the \$100,000 reporting requirement for power
5 plants.

6 Staff's recommendation here is in reference to
7 increase the amount, but not necessarily to the level that
8 other parties had suggested.

9 Q. Can you explain your rationale for choosing
10 20,000?

11 A. \$10,000 was considered a low enough level
12 that, you know, almost any -- any contact, you're likely to
13 end up receiving something. This will hopefully narrow the
14 significance that requires reporting somewhat.

15 It's recognized that, yes, it -- the time line
16 of this is such the 20,000 may well not be a known number at
17 the time the incident is noticed, but it will hopefully take
18 care of some complaints that really -- or accidents that
19 really aren't of significance, but nonetheless, have a
20 damage of maybe \$10,000 or less.

21 Q. And I think the rule still includes even with
22 your proposed changes the notification within one day; is
23 that right? The first notification?

24 A. It's a brief description of an accident by the
25 end of the first business day following the discovery of an

1 accident.

2 Q. So is it your belief that on the day of the
3 discovery of the accident that they should be able to know
4 whether it falls within the \$20,000 damages to property or
5 not?

6 A. It's not my expectation they would know what
7 that level is. It's my expectation that they may -- they
8 would look at it and say, Well, it looks like this house is
9 severely damaged, yes, that's probably over \$20,000; or, no,
10 it looks like a car was moderately damaged and it's likely
11 less than \$20,000. It's purely an estimate. It's not
12 expected to be anything that's a final number or based on
13 any sort of a cost appraisal of any significance.

14 Q. And the part of that same section that goes
15 for a requirement within five business days --

16 A. Uh-huh.

17 Q. -- or an update, is it the intent that if on
18 day No. 1 the company estimates -- the utility estimates
19 it's only \$15,000 worth of damage and, therefore, doesn't
20 have to be reported, is it the intent here with that five
21 business day update that at that time it should be known --
22 the amount of the damages should be known?

23 A. I wouldn't say that we would expect that it's
24 a known number at five business days either. Hopefully, if
25 it was a very rough estimate, maybe a little bit more time

1 has been spent to say, yeah, okay, we think it's more likely
2 a \$30,000 damage. We didn't realize that the house was very
3 mildly damaged but there were significant damage to some
4 expensive equipment in the house or something like that.

5 It's -- it's really just an estimate at that
6 point as well. I wouldn't say we would expect they would
7 have a solid number, have contractor estimates or whatever
8 on what the replacement costs were at that time.

9 Q. All right. And it's been a while since I've
10 actually read this rule and I may have known this at the
11 time I was originally looking at it, but what would happen
12 if the utility made a rough estimate that it was only -- it
13 was under \$20,000 damage and then at five business days
14 still made that same assumption, but later on discovered
15 that it was greater than that? Is there something in the
16 rule that tells what --

17 A. There's not a provision that says that there's
18 a follow-up reporting requirement if they find out later
19 that it was, in fact, over \$20,000. It's our hope that in
20 contact -- you know, through our contact over time they
21 would go ahead and contact us, but there's not a requirement
22 in the rule for that.

23 Q. So it's really not clear whether they have an
24 obligation to come forward if it is later discovered?

25 A. Well, the rule doesn't place an obligation on

1 them in that regard.

2 Q. All right. Thanks. Go ahead.

3 A. That was the extent of suggested changes that
4 we had to the rule.

5 Q. Now, there were a lot of comments, I believe,
6 from the co-ops indicating that they did not think it was
7 necessary to include them in this rule and that there was a
8 lot of duplication being required by this rule. Did Staff
9 consider those comments and determine that they were not
10 valid enough to require changes?

11 A. We did consider all of those comments and the
12 extent of our suggested changes are now shown. A number of
13 those comments that were suggested Staff considered and did
14 not suggest changes to the rule to the incorporate them.

15 Q. Why do you think co-ops should be included?

16 A. Should be included in the rule?

17 Q. Yes.

18 A. Well, currently under the two statutes that I
19 noted, there are references to safety jurisdiction of the
20 Commission regarding cooperatives. We currently have no
21 provisions in our rules that require any notification for
22 accidents that may involve safety violations.

23 This rule is an attempt to provide
24 notification and to provide us the opportunity to at least
25 be aware of an accident where our jurisdiction and safety

1 may warrant an investigation.

2 Q. And there were some complaints about that
3 requirement that the first report be received or be sent
4 within the first business day --

5 A. Uh-huh.

6 Q. -- being burdensome in that the resources
7 should be spent trying to eliminate any kind of a safety
8 problem --

9 A. Uh-huh.

10 Q. -- rather than be spent on making reports.

11 A. Yes.

12 Q. What was your consideration of that?

13 A. When Staff drafted this rule, there were
14 specific efforts made not to be cumbersome in this manner.
15 There is no requirement for an investigation by the utility.
16 This is simply notification.

17 We are currently receiving notifications from
18 Kansas City Power & Light that we believe would be
19 consistent with this rule. They typical constitute one
20 paragraph. And they are typically -- we have an average of
21 about three and a half of these per year.

22 We don't consider it burdensome to provide us
23 notification potentially as simply as loading -- as getting
24 into EFIS and typing in the notification and sending it in
25 and/or potentially an e-mail. You know, we could work with

1 the utilities on that. But it's a brief description of the
2 incident. It's not an investigation or a report coming out
3 of such investigation within a day. It's simply
4 notification within a short time.

5 And the interest in having a quick
6 notification is if it's a significant accident that may
7 appear to be an issue of a safety violation, if we find out
8 about it five, ten days later, it's very possible that
9 everything at the site has already been changed, there's
10 been repairs made, lines pulled, new lines put in, whatever
11 and it may not be of much use to us to show up ten days
12 after it happened. And ideally we find out about it first
13 business day following, if it warrants it, we send somebody
14 to take a look.

15 Q. And that would be just as important for co-ops
16 as investor-owned utilities, I assume?

17 A. Yes. I believe so.

18 Q. In relation to the co-op issue, some of the
19 comments were that they're required to have their systems
20 inspected by a licensed engineer for safety issues and
21 compliance with code --

22 A. Uh-huh.

23 Q. -- and that they're regulated by RUS and
24 required by insurers to meet safety requirements and that
25 many of them participate in NRECA's safety accreditation

1 program --

2 A. Uh-huh.

3 Q. -- and that all participate in Missouri
4 Electric Cooperative Insurance Plan Safety Audits.

5 Is it Staff's position that even with all of
6 those factors in place, the Public Service Commission is
7 still charged with some jurisdiction over safety issues and,
8 therefore, can't just leave it to those --

9 A. It is -- it is my expectation that the
10 critical energy delivery systems in Missouri would be
11 designed according to code, inspected by licensed engineers
12 and/or have seals -- you know, their seals on the drawings
13 that go into that equipment and that they would be
14 maintained in a safe manner. I think that's true of our
15 cooperatives, our municipals, our regulated utilities.

16 The statute that points to the Commission's
17 safety jurisdiction doesn't provide for exceptions if
18 equipment is sealed by an engineer, inspected by some other
19 organization. It simply points to our obligations of -- or
20 our jurisdiction on safety.

21 Without notification of the incident, we
22 potentially will have no knowledge of it and would not
23 potentially perform an investigation where one really would
24 have been warranted.

25 I guess the long -- short answer to it is that

1 I'm -- I'm relieved and not really surprised that all of
2 these requirements are there, but at the same time if we are
3 not notified of an accident, we don't know to investigate
4 it.

5 COMMISSIONER MURRAY: All right. I think
6 that's all I have. Thank you.

7 THE WITNESS: Okay. Thank you.

8 JUDGE JONES: You may step down, Mr. Wood.

9 THE WITNESS: Thank you very much.

10 JUDGE JONES: Does Staff have any other
11 witnesses it would like to tender?

12 MR. JOYCE: No, your Honor.

13 JUDGE JONES: Does Office of the Public
14 Counsel have any witnesses it would like to tender?

15 MR. COFFMAN: I have no witnesses to offer. I
16 would simply state that the Office of Public Counsel
17 supports the proposed rule as revised in this Exhibit 1. I
18 reviewed that and we support the rule with the revisions
19 that the Commission Staff have proposed and discussed.

20 JUDGE JONES: Thank you.

21 Are there any other comments in support of the
22 rule? Would you please come forward and be sworn? Please
23 state your name.

24 MR. BARNES: Michael Barnes.

25 (Witness sworn.)

1 JUDGE JONES: You may testify. Actually, you
2 may be able to testify from the podium unless you'd rather
3 sit. I take that back. Because the camera's on here, would
4 you go ahead and sit here? Sorry about that.

5 MICHAEL BARNES testified as follows:

6 MR. BARNES: My name is Michael Barnes. I'm
7 an attorney for AmerenUE.

8 I support certain portions of the proposed --
9 proposed revised rule. We are the only electric utility
10 that evidently filed comments about the -- with the
11 reporting requirements other than the new requirement,
12 paragraph 4.

13 We've been reporting these monthly things like
14 fuel and other system measurements for I think 12 years now
15 and I think we're pretty good at it and we can live with
16 most of the requirements as amended.

17 Union Electric supports the raising from
18 50,000 to 100,000 dollars, the reporting requirements for
19 certain contracts and agreements and certain accidents at
20 power plants.

21 We have no objection to the EFIS reporting
22 requirement.

23 We had some concerns -- interpretation
24 concerns about the new requirements in paragraph 1C. My
25 quick glance at the Commission's exhibit seems to indicate

1 that Staff has taken a good faith look at that and will give
2 the utilities some leeway in how it reports those specific
3 things each month. That's all I have in support.

4 JUDGE JONES: Thank you, Mr. Barnes.

5 Commissioner Murray, any questions?

6 COMMISSIONER MURRAY: Do you have any
7 significant opposition to the rule, or are you waiting to
8 state that at the time that we ask for comments in
9 opposition?

10 THE WITNESS: I'm waiting until the comments
11 in opposition.

12 COMMISSIONER MURRAY: All right. Thank you.

13 JUDGE JONES: You may step down.

14 Are there any other comments in support of the
15 rule?

16 Seeing none, I'll now ask for comments in
17 opposition to the rule.

18 Mr. Barnes, it seems you recently indicated
19 you have comments in opposition. You may come to the
20 witness stand and hold under your aforementioned
21 affirmation.

22 MICHAEL BARNES testified as follows:

23 MR. BARNES: I'd just like to quickly go
24 through our comments on the proposed new rule, paragraph 4.

25 Our first comment is that I think there is no

1 dispute that having an additional reporting requirement
2 within 24 hours will be an administrative burden on an
3 electric utility.

4 When there is, God forbid, a fatality or an
5 accident or property damage, I get involved if it involves
6 OSHA, our claims department attorney gets involved, they
7 bring the insurers in, there may be an accident scene where
8 people are gathering evidence.

9 If OSHA's involved, the OSHA inspector will be
10 involved very quickly and he or she requires witnesses and
11 statements and evidence. There may be police and emergency
12 reports and people to deal with. If an employee is
13 involved, our human resources people spring into action with
14 the next of kin if it's an injury or a death. If the person
15 is hospitalized, there is -- obviously company personnel
16 will be at the hospital providing what support they can.

17 The first 24 hours can be very busy, and
18 adding an additional report like this will just add to
19 the -- what I call maybe the craziness sometimes. Now,
20 obviously we can do this, but we would rather not do it.

21 Union Electric also questions the need for
22 this reporting requirement. I believe for decades now the
23 Staff has had the statutory authority to investigate whether
24 the utilities are following the safety procedures and
25 clearances.

1 I know that from time to time I have received
2 informal inquiries from the Staff about an accident and I
3 have given data to them, I have given copies of accident
4 reports, I've referred them to other people. And as far as
5 I know, there has been no problem updating Staff on an
6 accident or incident as Staff may have an interest.

7 Union Electric just doesn't see the need for
8 this. I'm not -- the company is not aware of any great
9 increase in the number of accidents or incidents or the
10 severity thereof.

11 If the Commission is not willing to eliminate
12 paragraph 4 in its entirety, then we urge the Commission to
13 make certain changes to it to make it more reasonable and
14 relevant. Union Electric suggested and Staff happily has
15 gone along with the language change that will emphasize that
16 we're talking here about electrical contacts with utility
17 facilities rather than, for example, just a car running into
18 a utility pole, which I think happens every day in our
19 service area.

20 If there is going to be an initial report, we
21 would request that a follow-up report not be mandatory. We
22 suggest that the Staff, if it wants, request a follow-up
23 report and the utility will comply within a certain number
24 of business days.

25 That way if the Staff does have an interest in

1 a particular incident, they can follow up and ask for it and
2 the utility will follow up accordingly. We just don't see
3 the need to have a follow-up investigation five business
4 days after every initial report.

5 Staff has proposed now to raise the \$10,000
6 to \$20,000. Ameren suggests that's still too low. If I had
7 driven my better car here today and if that had been damaged
8 by an electrical contact, that might be \$20,000 of damage.
9 I'm not sure the Commission is interested in \$20,000 put in
10 that context.

11 We suggested \$50,000. I think maybe another
12 comment or suggestion was \$100,000 as being more appropriate
13 and as probably being a better indicator of where the
14 Staff's interest and efforts would be as far as property
15 damage goes. That completes my testimony.

16 JUDGE JONES: Thank you, Mr. Barnes.

17 Commissioner Murray, do you have questions?

18 COMMISSIONER MURRAY: Yes. Thank you.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. What is the current company policy regarding
21 reporting of incidents, the initial reporting?

22 A. Reporting to whom?

23 Q. Well, from your testimony it sounds as if
24 reporting -- making a phone call on the first day is
25 something that is new and might be burdensome. So how would

1 you first report an accident or an incident to the
2 Commission now under the current rules?

3 A. The current rules require reporting an
4 accident if it happens in a power plant. Rule 4 kind of
5 expands that to all of our electrical facilities. At the
6 present time I think we report initially a power plant
7 accident either by phone or by EFIS and follow it up later
8 in -- according to the rule.

9 Q. So many of the accidents or incidents that
10 would be required to be reported here just would not be
11 reported; is that right?

12 A. At the present time, no, they would not be
13 reported.

14 Q. And is it your testimony that there's no
15 reason for Staff to know about those or that there's no need
16 that they be reported?

17 A. The company recognizes the Staff has the
18 authority to ensure that the National Electrical Safety Code
19 is followed. I think if an accident or incident is serious
20 enough that it makes the newspaper, I think it would become
21 known to Staff that way, as I think it has in the past. I
22 think maybe in the past Staff has received phone calls from
23 people or maybe from the press wanting comment from the
24 Staff about a certain incident or accident.

25 Q. But there's no consistent manner in which

1 Staff would be assured of knowing? It's just sort of if
2 they pick it up in the newspaper or someone calls them and
3 no affirmative duty on the company to make Staff aware; is
4 that right?

5 A. That is the present state of affairs.

6 Q. Your request that a follow-up report not be
7 mandatory if the initial report is required, do you see that
8 as a burdensome requirement?

9 A. It certainly adds to what we have to do as far
10 as an accident investigation goes. In one respect, it's a
11 little more difficult than the initial reporting because
12 you're talking about something that happens five days after
13 the accident. And I think as you go over time, human nature
14 being what it is, I think there are -- people will maybe
15 just forget to -- to have that five-day report compiled and
16 turned in.

17 Q. Is it the five days or would you be more
18 inclined to agree with a follow-up that was not that soon
19 after the accident, like a 15-day or 30-day follow-up?

20 A. I would not be any more amenable to a longer
21 period of time. I think it's just the idea of having to do
22 a follow-up report to every incident reported.

23 Q. And your position would be that if Staff finds
24 it significant enough that there needs to be follow up, that
25 Staff would request a follow-up report?

1 A. Yes, ma'am.

2 Q. And in terms of potential liability, the

3 reporting creating a paper trail for potential litigants, is

4 that a problem that -- I don't remember if that was in your

5 comments or not?

6 A. It was not in our comments. It was in quite a

7 few of the cooperative's comments. That is a concern.

8 Quite frankly, I'm not sure what protection the Commission

9 gives these report -- these monthly reports and reports

10 under this rule. I haven't gone into that. My -- my

11 understanding is that the plaintiff's attorney, for example,

12 could issue you -- issue the Commission a subpoena for that,

13 and I don't know how that would be treated by the

14 Commission.

15 COMMISSIONER MURRAY: Okay. I think that's

16 all the questions I have. Thank you.

17 JUDGE JONES: Thank you, Mr. Barnes. You may

18 step down.

19 Is there anyone else who would like to make

20 comments in opposition to the proposed rule? Seeing none,

21 we will conclude the hearing.

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22
23
24
25

I N D E X

STAFF'S EVIDENCE

WARREN WOOD	5
Questions by Commissioner Murray	7

AMEREN'S EVIDENCE

MICHAEL BARNES	17
MICHAEL BARNES	18
Questions by Commissioner Murray	21

1	EXHIBITS INDEX		
2	Exhibit No. 1	Marked	Rec'd
3	Suggested Changes to Proposed Amendment	4	4
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			