Page 13 1 STATE OF MISSOURI PUBLIC SERVICE COMMISSION 2 3 4 TRANSCRIPT OF PROCEEDINGS Hearing 5 April 7, 2015 6 7 Jefferson City, Missouri Volume 5 8 9 In the Matter of the Empire ) District Electric Company for ) 10 Authority to File Tariffs ) Increasing Rates for Electric ) Case ER-2014-0351 11 Service Provided to Customers ) in the Company's Missouri ) 12 Service Area ) 13 KIM S. BURTON, Presiding, 14 REGULATORY LAW JUDGE. 15 16 REPORTED BY: 17 KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838 MIDWEST LITIGATION SERVICES 18 19 20 21 22 23 24 25

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1
                         APPEARANCES:
 2
     DIANA C. CARTER, Attorney at Law
            Brydon, Swearengen & England, P.C.
 3
            312 East Capitol
            Jefferson City, MO 65102-0456
 4
            (573)635 - 7166
 5
                  FOR: Empire District Electric
                        Company.
 6
     DAVID WOODSMALL, Attorney at Law
 7
            Woodsmall Law Office
            807 Winston Court
 8
            Jefferson City, MO 65101
            (573)797 - 0005
            david.woodsmall@woodsmalllaw.com
 9
10
                  FOR: MECG.
    MARC ELLINGER, Attorney at Law
11
            Blitz, Bardgett & Deutsch
12
            308 East High Street, Suite 301
            Jefferson City, MO 65101-3237
            (573)634 - 2500
13
            Mellinger@bbdlc.com
14
                  FOR: City of Joplin.
15
     ALEX ANTAL, Legal Counsel
     OLLIE M. GREEN, Senior Legal Counsel
16
            Department of Economic Development
17
            301 West High Street
            P.O. Box 1157
            Jefferson City, MO 65102
18
            (573) 526-4806
19
            Ollie.green@ded.mo.gov
                  FOR: Missouri Division of Energy.
20
21
     STUART CONRAD, Attorney at Law
            Finnegan, Conrad & Peterson
22
            3100 Broadway
            1209 Penntower Officer Center
23
            Kansas City, MO 64111
            (816)753-1122
24
            stucon@fcplaw.com
25
                  FOR: MEUA.
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Page 14

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Page 15
    CHRISTINA BAKER, Assistant Public Counsel
1
            Office of the Public Counsel
            P.O. Box 2230
 2
            200 Madison Street, Suite 650
            Jefferson City, MO 65102-2230
 3
            (573)751-4857
 4
                  FOR: Office of the Public Counsel
 5
                          and the Public.
 6
     ROBERT S. BERLIN, Senior Counsel
            Missouri Public Service Commission
 7
            P.O. Box 360
            200 Madison Street
 8
            Jefferson City, MO 65102
            (573)751-3234
 9
                  FOR: Staff of the Missouri Public
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                          Service Commission.
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Page 16 PROCEEDINGS 1 2 (WHEREUPON, the prehearing conference 3 began at 3:20 p.m.) JUDGE BURTON: It is now 3:20 on 4 5 Tuesday, March 7, 2015, and the Commission has set this time for a prehearing conference in File 6 7 No. ER-2014-0351, in the matter of the Empire District Electric Company for authority to file 8 tariffs increasing rates for electric service 9 provided to customers in the company's Missouri 10 service area. 11 12 At this time I will ask the parties to enter their appearance. On behalf of the Empire 13 District Electric Company. 14 15 MS. CARTER: Diana Carter of Brydon, Swearengen & England for the Empire District 16 17 Electric Company. 18 JUDGE BURTON: Thank you. On behalf of the Staff of the Missouri Public Service 19 Commission. 20 21 MR. BERLIN: Bob Berlin appearing on behalf of the Staff of the Missouri Public Service 22 Commission, Post Office Box 360, Jefferson City, 23 Missouri 65102. 24 25 JUDGE BURTON: Thank you. And Office

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Page 17
     of the Public Counsel?
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                 MS. BAKER: Thank you. Christina
 3
    Baker, P.O. Box 2230, Jefferson City, Missouri
     65102, appearing on behalf of the Office of the
 4
 5
    Public Counsel and the customers.
 6
                  JUDGE BURTON: Thank you. City of
 7
    Joplin, Missouri.
 8
                  MR. ELLINGER: Marc Ellinger of the
 9
    law firm of Blitz, Bardgett & Deutsch, 308 East
    High, Suite 301, Jefferson City, Missouri 65101, on
10
    behalf of City of Joplin.
11
12
                  JUDGE BURTON: Thank you. On behalf
13
     of the Missouri Department of Economic Development,
    Division of Energy.
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15
                  MS. GREEN: Ollie Green, 301 West
    High Street, P.O. Box 1157.
16
17
                  MR. ANTAL: And Alex Antal, same
18
     address.
19
                  JUDGE BURTON: Now, Mr. Antal, I just
    want to go ahead and clarify for everyone else
20
21
    here, you previously worked for the Staff of the
    Missouri Public Service Commission. It's my
22
    understanding that you've stated that the Staff has
23
24
    no objections to your appearing here on behalf of
     DED. Is that correct, Mr. Berlin?
25
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	Page 13
1	MR. BERLIN: That's correct.
2	JUDGE BURTON: Okay. Thank you.
3	Next we have the Midwest Energy Users Association.
4	MR. CONRAD: For MEUA, Stuart Conrad,
5	3100 Broadway, Suite 1209, KC, Mo, 64111.
6	JUDGE BURTON: Thank you. And on
7	behalf of the Midwest Energy Consumers Group.
8	MR. WOODSMALL: David Woodsmall for
9	MECG.
10	JUDGE BURTON: I believe that's
11	everyone. Have I missed anyone? Okay. Seeing no
12	hands.
13	Now, the reason we scheduled a
14	prehearing conference for now is because obviously
15	we have an evidentiary hearing which is set to
16	begin tomorrow, and I know the parties have stip
17	or have submitted a global agreement, which is a
18	nonunanimous Stipulation & Agreement, and all the
19	parties excepting MECG are parties to that
20	nonunanimous Stip & Agreement.
21	Also, all the parties here have filed
22	their second agreement regard the cross-examination
23	and admission of testimony and requesting that the
24	Commission waive the appearance of a list of
25	witnesses and revise this schedule so that the

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		Page 19
1	hearing will begin not this Thursday or Friday but	
2	next Thursday and Friday. I believe that's the	
3	16th and the 17th; is that correct?	
4	MS. CARTER: Yes.	
5	MR. BERLIN: Correct.	
6	JUDGE BURTON: I have concerns that	
7	right now, as it appears before us, the Commission	
8	is evaluating all of the issues that were presented	
9	in the original list of issues, and the Commission	
10	is still under the same standards that Fischer	
11	requires of making findings of fact on all of those	
12	issues regardless of the nonunanimous Stipulation &	
13	Agreement. Is that the understanding of everyone	
14	here?	
15	MR. BERLIN: Yes.	
16	MS. CARTER: Yes. We all agree that	
17	findings of fact are needed on every issue, and	
18	then I think the issue is whether or not any live	
19	testimony is needed. And the proposal of all	
20	parties is that live testimony would not be needed	
21	except for on the issues in our pleading yesterday.	
22	JUDGE BURTON: I think the Commission	
23	has some concerns and would like some explanation	
24	of how the parties feel the Commission will be	
25	making findings of specific facts on some of the	

		Page 20
1	issues identified in the list of issues when the	
2	only thing that was clarified under the agreement	
3	was that the parties are agreeing to a certain set	
4	amount for the revenue requirement.	
5	Is there going to be enough	
6	sufficient testimony in the record for each	
7	identifiable issue, including let's say EEI or	
8	incentives, things of that nature?	
9	MS. CARTER: We believe so, yes. The	
10	filed testimony contains, as you know, the large	
11	majority of all evidence that would be in a	
12	Commission record. Very little new evidence is	
13	presented during the live hearing portion. And	
14	nothing was agreed to in the nonunanimous global	
15	Stipulation & Agreement that is not supported by a	
16	party's prefiled testimony.	
17	JUDGE BURTON: Okay. So will the	
18	parties be able to identify, this is the amount of	
19	ROE that we are saying is fair and reasonable and	
20	it's supported by the evidence that's been	
21	submitted through the testimony that's already been	
22	filed?	
23	MS. CARTER: In line with what	
24	Judge Stearley did in the prior Missouri American	
25	Water Company case, it would be our intent to have	

		Page 21
1	a post-hearing brief for you that would help you to	
2	be able to render a similar order where the	
3	Commission could make specific findings on each and	
4	every issue and rely on particular evidence in the	
5	record and then be able to also, if it's what is	
6	determined by the Commission, accept the joint	
7	recommendation as a resolution of certain issues.	
8	JUDGE BURTON: Okay. I've heard from	
9	Empire. I would like the other parties to the	
10	agreement to acknowledge that that's their position	
11	going into this, that if we don't have any evidence	
12	presented on these issues through the hearing, that	
13	there is sufficient amounts to support the specific	
14	issues that have been identified by the parties.	
15	MS. BAKER: Certainly Public Counsel	
16	was a party to the Missouri American case and was a	
17	signatory to the partial in that one, and that's	
18	exactly how I see this one going. The Commission	
19	went through on each of the issues and pulled out	
20	findings of fact that were sufficient in that case,	
21	and then on the ones that were brought to hearing	
22	had specific findings of fact on whether the	
23	stipulation needed to be overruled on that issue.	
24	JUDGE BURTON: Okay. I want this to	
25	be clear. I do not want this to be a fishing	

		Page 22
1	expedition for the Commission or myself when it	
2	comes to writing this order where it's let me pull	
3	out a number from somewhere. The onus needs to be	
4	on the parties to identify the specific findings in	
5	each of the testimony that clearly supports what it	
6	is that they're wishing the Commission to support	
7	and not just we think this is reasonable but based	
8	off of sound evidence.	
9	MS. BAKER: What we can certainly do	
10	is to do proposed findings of facts, conclusions of	
11	law, which is done in most every case.	
12	MS. CARTER: And was ordered in the	
13	Missouri American Water Company case. It's my	
14	understanding that Judge Stearley took it another	
15	step farther than anything that was proposed.	
16	JUDGE BURTON: And Staff, your	
17	thoughts?	
18	MR. BERLIN: Staff concurs with	
19	Empire counsel and Public Counsel. We are	
20	following what Judge Stearley set forth in a 2007	
21	Missouri American Water rate case, WR-2007-0216,	
22	and	
23	JUDGE BURTON: I understand what	
24	Judge Stearley did, but I'm more concerned of what	
25	the appellate court said in Fischer.	

		Page 23
1	MR. BERLIN: The positions are within	
2	the parameters of the testimony that has been filed	
3	in this case.	
4	JUDGE BURTON: City of Joplin, you	
5	agree?	
6	MR. ELLINGER: We concur with counsel	
7	for Empire, OPC and Staff.	
8	JUDGE BURTON: And DED as well?	
9	MS. GREEN: Yes, Judge, we concur.	
10	JUDGE BURTON: Okay. Mr. Conrad?	
11	MR. CONRAD: Concur.	
12	JUDGE BURTON: Now, something else I	
13	want to address is that obviously we have some	
14	issues that need to be addressed at hearing, and	
15	the parties acknowledge there's if something	
16	happens and MECG argues this and the Commission	
17	finds their reasoning to be sound, this isn't going	
18	to impact the decision of the parties as far as the	
19	nonunanimous global Stipulation & Agreement? We're	
20	not going to have someone come back here afterwards	
21	and say, you know what, we didn't think it was	
22	going to go this way. We need some more testimony.	
23	We want to have another week or two of hearings.	
24	In other words, the other issues that	
25	the parties are addressing in the global	

		Page 24
1	settlement, and they're saying we want you to waive	
2	these witnesses, those issues are not going to be	
3	dragged back up if the Commission resolves anything	
4	in MECG's favor on the issues that are still live	
5	according to the parties?	
6	MS. CARTER: I think we all	
7	understand that, Judge. And just for	
8	clarification, we are not at this point asking the	
9	Commission to approve any stipulation. We knew	
10	when we entered into what we've called the global	
11	Stipulation & Agreement that there would be an	
12	objection. So we drafted the document knowing it	
13	would just become a joint recommendation.	
14	JUDGE BURTON: Okay. Now, I know	
15	that right now we are currently set to begin	
16	tomorrow, and I don't think anyone here or upstairs	
17	wants that to occur. And I know the parties have	
18	all acknowledged that they would prefer to have	
19	this start on the last two days of the originally	
20	scheduled hearing, which is next Thursday and	
21	Friday.	
22	However, the Commission has concerns,	
23	and I agree with those concerns, that we want to	
24	have sufficient time so that if the individual	
25	Commissioners have additional questions about any	

		Page 25
1	of the issues, we can bring witnesses up or we can	
2	address those issues, even if they are waived right	
3	now.	
4	So how does starting next Monday, the	
5	13th, and continuing through the 14th sound to	
6	everyone? And we'll go right now off of the	
7	schedule that everyone has already submitted for	
8	the second agreement with those issues.	
9	MR. WOODSMALL: The only thing I	
10	would mention there is my witness, who's still	
11	scheduled to testify a week from Friday on the	
12	17th, her father died and she traveled to India for	
13	her father's funeral. So she wouldn't be available	
14	until that Friday.	
15	To alleviate concerns, I can assure	
16	you from, I think from our standpoint, the	
17	questioning that we'll do, the witnesses that we'll	
18	ask, two days is plenty. I don't know what the	
19	Commissioners may ask. So if they want to start	
20	early to have other witnesses come up, I certainly	
21	have no problems with that. But as far as the	
22	witnesses that need to be crossed, we would easily	
23	have that done in two days.	
24	JUDGE BURTON: What about Overcast,	
25	wasn't there a concern about availability for	

Page 26 1 cross? 2 MS. CARTER: There is. Mr. Overcast 3 was only available when we were originally doing the hearing schedule for this -- for tomorrow and 4 5 this Thursday, and so he is not available at any time next week. However, Mr. Woodsmall and I have 6 7 discussed that. There's a possibility that he won't need to cross. 8 9 MR. WOODSMALL: There's I would say a 95 percent possibility -- I need to get through his 10 11 testimony again -- that I'm not going to need to 12 cross him. So we can add him to the list of witnesses who are waived. I just need to -- I have 13 the Ameren reply brief due Friday, and I need to 14 get to his testimony. Given the content of his 15 testimony, I'm reasonably confident I'll be able to 16 17 waive as well. 18 The other thing I would mention there is we have agreed that he could testify by 19 telephone if the Commission's amenable to that, 20 21 so --JUDGE BURTON: As long as the bridge 22 23 is open and available. MR. WOODSMALL: Yes. So I don't 24 think he will be a complicating factor either way. 25

Page 27 JUDGE BURTON: I understand the 1 2 difficulties that your witness is going through. 3 When is she going to be available? MR. WOODSMALL: A week from Friday, 4 5 the 17th. 6 JUDGE BURTON: That is the very first 7 date that she will be available? MR. WOODSMALL: Right. She's coming 8 into town on the afternoon of the 16th. So that's 9 why we pushed everything to the end of that week. 10 MS. BAKER: And I would mention that 11 12 many of us have out-of-town witnesses as well, and so if the Commission would see fit to let them 13 answer their questions by telephone, that would be 14 15 extremely helpful for many of us. JUDGE BURTON: Okay. Here's where 16 17 I'm facing a difficult situation that I'm asking for a little bit of a commiseration here, is that 18 the Commissioners themselves have not identified to 19 me what issues or what witnesses they might want to 20 21 be addressed. I am concerned that there might be 22 some of those issues, aside from whatever 23 24 cross-examination the parties consent to waive, that the Commissioners themselves would still like 25

		Page 28
1	to have addressed. So I do not want to just	
2	schedule this for the last Thursday and Friday.	
3	MR. WOODSMALL: Maybe to help a	
4	little bit, and I don't know if this will get us	
5	all the way there, the issues that we have for	
6	Thursday, we're doing opening statements and we	
7	have three little bitty things. I'm betting that	
8	Thursday will take all of two hours. So if the	
9	Commission wants other witnesses brought forward,	
10	we can use that entire afternoon for whoever,	
11	whatever purpose they want.	
12	JUDGE BURTON: Well, what about this:	
13	Can we just try to do the first day, which is the	
14	Thursday, at least push that back to Tuesday or	
15	Wednesday, the 14th or 15th, and if we need to have	
16	a little break for a few days until that Friday, so	
17	that we can, if we need to, have filler in between	
18	on those two days for any dates that the	
19	Commissioners might have additional issues. Will	
20	that work?	
21	MR. WOODSMALL: Works for me. So	
22	you're talking about possibly convening on Tuesday,	
23	the 14th?	
24	JUDGE BURTON: Yes.	
25	MR. WOODSMALL: We will do what we	

		Page 29
1	have for Thursday, and then we could use	
2	Wednesday/Thursday for filler as the Commission	
3	needs?	
4	JUDGE BURTON: Yes. And I understand	
5	that if this does become an issue where something	
6	happens, let's say, on the 14th where additional	
7	issues are addressed are requested by the	
8	Commissioners to be addressed by witnesses, that we	
9	try to see if we can get them on the phone if they	
10	cannot appear here in person. Does that work,	
11	Ms. Carter?	
12	MS. CARTER: Yes, it certainly works	
13	for Empire. Again, the Thursday and Friday we	
14	wanted to give the Commissioners an opportunity to	
15	discuss it in the agenda meeting to know who they	
16	would want to question. So we were putting it off	
17	for that and then also for David's witness.	
18	JUDGE BURTON: We still have an	
19	agenda this Friday, so I can still get that on for	
20	agenda for discussion this Friday.	
21	MS. CARTER: But yes, as far as	
22	Empire is concerned, we can be here any day next	
23	week or all days next week.	
24	JUDGE BURTON: Staff, I believe	
25	you're the only other party that I believe are	

Page 30 presenting witnesses for that Thursday. 1 2 MR. BERLIN: Correct. 3 JUDGE BURTON: And would that work for you? 4 5 MR. BERLIN: I'm sorry. To start did you say Wednesday or Tuesday? 6 7 JUDGE BURTON: Tuesday, the 14th. 8 MR. BERLIN: We can start on Tuesday. 9 JUDGE BURTON: Okay. 10 MS. BAKER: So are you considering 11 openings Thurs-- on Tuesday I mean? 12 JUDGE BURTON: Openings on Tuesday, 13 the 14th, and why don't we go ahead and say, does nine o'clock work for everyone? 14 15 MS. CARTER: Judge, are you wanting to also start with witnesses on Tuesday morning? 16 17 JUDGE BURTON: Yes. Just transplant the Thursday the 16th schedule with FAC and rate 18 comparison and revenue requirement with Kim Bolin, 19 I believe, finishing up, move that whole day to 20 21 Tuesday. MS. CARTER: This is a minor concern, 22 but for Empire folks, they travel in, and if we set 23 24 it in the afternoon, it keeps down travel costs if they can drive in and testify in the afternoon. 25

Page 31 But if you prefer morning, that's certainly okay as 1 2 well. 3 JUDGE BURTON: No. That's completely fine with me. Does that work with everyone else? 4 5 MR. BERLIN: Start at what, one o'clock, or what are you thinking? 6 7 MS. CARTER: Noon or whatever. JUDGE BURTON: Well, why don't we 8 9 start -- do they need to be there for opening? 10 MS. CARTER: No. JUDGE BURTON: Why don't we start 11 openings, let's say, around ten, and then we can 12 13 work in a lunch break and just assume we'll start with the witness testimony around one or so. Does 14 15 that work for you, Mr. Conrad? I feel like we're ignoring you. 16 17 MR. CONRAD: No. I've been ignored before. That's fine. 18 19 MS. CARTER: And I just want to verify, Mr. Woodsmall, I understand there's 20 difficulties with travel from India, but is it 21 possible for your witness to testify earlier via 22 phone? 23 24 MR. WOODSMALL: I would doubt given the -- I will try to get ahold of her. 25

		Page 32
1	Communication with her is very, very tough. So	
2	I'll try. The difference in time and the cost to	
3	call, I don't know.	
4	JUDGE BURTON: Or else you can send	
5	her an e-mail and let her know	
6	MR. WOODSMALL: I'll send her an	
7	e-mail.	
8	JUDGE BURTON: about the change	
9	and see if that would work.	
10	MR. WOODSMALL: The last e-mail I	
11	sent her took six days to respond. I'll do my best	
12	to find out.	
13	JUDGE BURTON: Yeah. If you can just	
14	file a little notice, you can do it informally with	
15	the e-mail chain, just to let us know what that	
16	status is.	
17	MR. WOODSMALL: Sure.	
18	JUDGE BURTON: And we'll plan on	
19	Tuesday the 14th with opening statements at	
20	ten o'clock and then the first witnesses beginning	
21	after lunch, at the earliest one o'clock. Then	
22	we'll have Wednesday and Thursday for any	
23	additional issues that the Commissioners might want	
24	to have addressed, and we'll address at that point	
25	on Tuesday if we do need those hearing dates.	

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		Page 33
1	Otherwise, we will resume on the	
2	second date as scheduled here as identified in the	
3	agreement of the parties Friday, April 17th at nine	
4	o'clock in the morning with the miscellaneous	
5	tariffs and class cost of service and rate design	
6	issues. Okay. And this all, of course, is	
7	dependent upon your witness' availability to appear	
8	earlier, like that Wednesday or Thursday. Okay?	
9	All right. Are there any additional	
10	issues?	
11	MR. WOODSMALL: One of the things I	
12	was going to mention that I think might make your	
13	life easier is, you have a list of issues that by	
14	now is dated. There has been at least four class	
15	cost of service rate design issues that I've	
16	dropped regarding interruptible credits, and there	
17	are issues there are resolutions for issues that	
18	were in the stipulation that I agreed to.	
19	JUDGE BURTON: Let me ask you this:	
20	Is there a possibility that the parties could come	
21	together with a unanimous stipulation on those	
22	separate issues that all the parties agree to?	
23	MS. CARTER: Yes, there is a	
24	possibility. We were on a short time situation	
25	trying to get it before the Commissioners and	

		Page 34
1	before the hearing with all the other rate cases	
2	that are pending, and people have limited time, but	
3	to work that out. I was actually just getting	
4	ready to wait my turn and ask you if we could keep	
5	the room to talk.	
6	JUDGE BURTON: You can keep the room	
7	through 'til tomorrow morning as far as I am	
8	concerned. The phone line might not work, so,	
9	Mr. Conrad, I will give you I'll give you the	
10	phone number directly for this conference room.	
11	MR. WOODSMALL: I was going to	
12	mention two things. One, I think you have a good	
13	idea, to do a stipulation that will be unanimous	
14	that you can simply approve for those issues. But	
15	also, I think the most important thing is for us to	
16	give you a more an updated list of issues so you	
17	know the issues that are still outstanding after	
18	those issues that I've dropped and those issues	
19	that will be addressed in the stipulation.	
20	JUDGE BURTON: I certainly will not	
21	disagree with you on that.	
22	MR. WOODSMALL: So I think we should	
23	take a shot at doing that as well.	
24	JUDGE BURTON: Let me ask, and I'm	
25	not trying to hold a gun to your head here, but	

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		Page 35
1	realistically speaking, is it possible that the	
2	parties, if we give you the rest of the afternoon	
3	and tomorrow, can perhaps submit a unanimous	
4	stipulation on those issues by tomorrow, or is that	
5	just unrealistic? I mean, if it is, it is. It's	
6	okay to be honest about it.	
7	MS. BAKER: I don't know.	
8	JUDGE BURTON: Okay. Thank you.	
9	MS. CARTER: There's so much wrapped	
10	up if revenue requirement. If there's a dispute on	
11	revenue requirement	
12	JUDGE BURTON: How about this: I'm	
13	going to just hold a discussion place for Friday's	
14	agenda for the Empire issues, and for right now,	
15	we're going to try to work on the schedule that	
16	we've just agreed to as far as Tuesday and Friday,	
17	and I'll be sending out an order hopefully within	
18	the next 30 minutes or so canceling the hearings	
19	for the rest of this week, and do not expect a	
20	waiver necessarily at this point on the witnesses	
21	issue. I'm going to wait to see what the	
22	Commission wants to say and also what the parties	
23	present.	
24	MR. WOODSMALL: I'll let you know as	
25	soon as possible if I hear anything from my	

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Page 36
 1
     witness.
 2
                  JUDGE BURTON: I understand
 3
     completely. Thank you very much. It is
     appreciated. Okay. Any other additional issues?
 4
     Feel like we're on a roll.
 5
                  Okay. Well, in that case, I'm going
 6
 7
     to go ahead and go off the record, but we're going
     to keep the phone line going here, Mr. Keith and
 8
    Mr. Conrad, and I will after I get off give you the
 9
10
     line directly for this room.
11
                  MR. CONRAD: That would be great.
12
                  JUDGE BURTON: Thank you, everyone.
13
                  (WHEREUPON, the recorded portion of
14
     the prehearing conference concluded at 3:40 p.m.)
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		Page 37
1		
2	CERTIFICATE	
3	STATE OF MISSOURI)	
	) SS.	
4	COUNTY OF COLE )	
5	I, Kellene K. Feddersen, Certified	
6	Shorthand Reporter with the firm of Midwest	
7	Litigation Services, do hereby certify that I was	
8	personally present at the proceedings had in the	
9	above-entitled cause at the time and place set	
10	forth in the caption sheet thereof; that I then and	
11	there took down in Stenotype the proceedings had;	
12	and that the foregoing is a full, true and correct	
13	transcript of such Stenotype notes so made at such	
14	time and place.	
15	Given at my office in the City of	
16	Jefferson, County of Cole, State of Missouri.	
17		
	Kellene K. Feddersen, RPR, CSR, CCR	
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A	21:16 22:13,21	17:9	31:11 32:4,8,13	clarify 17:20
able 20:18 21:2,5	<b>amount</b> 20:4,18	based 22:7	32:18 33:19	<b>class</b> 33:5,14
26:16	amounts 21:13	<b>began</b> 16:3	34:6,20,24 35:8	<b>clear</b> 21:25
above-entitled	<b>answer</b> 27:14	beginning 32:20	35:12 36:2,12	clearly 22:5
37:9	<b>Antal</b> 14:15	<b>behalf</b> 16:13,18		<b>Cole</b> 37:4,16
accept 21:6	17:17,17,19	16:22 17:4,11	C	come 23:20 25:20
acknowledge	appear 29:10	17:12,24 18:7	<b>C</b> 14:2 16:1 37:2	33:20
21:10 23:15	33:7	<b>believe</b> 18:10	37:2	comes 22:2
	appearance	19:2 20:9 29:24	call 32:3	coming 27:8
acknowledged 24:18	16:13 18:24	29:25 30:20	called 24:10	commiseration
add 26:12	APPEARANC	<b>Berlin</b> 15:6 16:21	canceling 35:18	27:18
additional 24:25	14:1	16:21 17:25	Capitol 14:3	Commission
28:19 29:6	appearing 16:21	18:1 19:5,15	caption 37:10	13:1 15:6,10
28:19 29:6 32:23 33:9 36:4	17:4,24	22:18 23:1 30:2	Carter 14:2	16:5,20,23
address 17:18	appears 19:7	30:5,8 31:5	16:15,15 19:4	17:22 18:24
23:13 25:2	appellate 22:25	<b>best</b> 32:11	19:16 20:9,23	19:7,9,22,24
23:13 25:2 32:24	appreciated 36:4	betting 28:7	22:12 24:6 26:2	20:12 21:3,6,18
	approve 24:9	bit 27:18 28:4	29:11,12,21	22:1,6 23:16
<b>addressed</b> 23:14 27:21 28:1 29:7	34:14	bitty 28:7	30:15,22 31:7	24:3,9,22 27:13
29:8 32:24	<b>April</b> 13:5 33:3	Blitz 14:11 17:9	31:10,19 33:23	28:9 29:2 35:22
29:8 52:24 34:19	area 13:12 16:11	<b>Bob</b> 16:21	35:9	Commissioners
	argues 23:16	<b>Bolin</b> 30:19	case 13:10 20:25	24:25 25:19
addressing 23:25 admission 18:23	aside 27:23	Box 14:17 15:2,7	21:16,20 22:11	27:19,25 28:19
	asking 24:8	16:23 17:3,16	22:13,21 23:3	29:8,14 32:23
afternoon 27:9	27:17	break 28:16	36:6	33:25
28:10 30:24,25 35:2	Assistant 15:1	31:13	<b>cases</b> 34:1	Commission's
	Association 18:3	bridge 26:22	<b>cause</b> 37:9	26:20
<b>agenda</b> 29:15,19 29:20 35:14	<b>assume</b> 31:13	brief 21:1 26:14	<b>CCR</b> 13:17 37:17	Communication
	assure 25:15	bring 25:1	<b>Center</b> 14:22	32:1
<b>agree</b> 19:16 23:5 24:23 33:22	Attorney 14:2,6	Broadway 14:22	certain 20:3 21:7	Company 13:9
agreed 20:14	14:11,21	18:5	certainly 21:15	14:5 16:8,14,17
26:19 33:18	authority 13:10	brought 21:21	22:9 25:20	20:25 22:13
35:16	16:8	28:9	29:12 31:1	company's 13:11
<b>agreeing</b> 20:3	availability	<b>Brydon</b> 14:2	34:20	16:10
agreement 18:17	25:25 33:7	16:15	Certified 37:5	comparison
18:18,20,22	available 25:13	<b>BURTON</b> 13:13	certify 37:7	30:19
19:13 20:2,15	26:3,5,23 27:3	16:4,18,25 17:6	chain 32:15	completely 31:3
21:10 23:19	27:7	17:12,19 18:2,6	change 32:8	36:3
24:11 25:8 33:3		18:10 19:6,22	Christina 15:1	complicating
<b>ahead</b> 17:20	B	20:17 21:8,24	17:2	26:25
30:13 36:7	back 23:20 24:3	22:16,23 23:4,8	<b>City</b> 13:7 14:3,8	concern 25:25
ahold 31:25	28:14	23:10,12 24:14	14:12,14,18,23	30:22
Alex 14:15 17:17	Baker 15:1 17:2	25:24 26:22	15:3,8 16:23	concerned 22:24
alleviate 25:15	17:3 21:15 22:9	27:1,6,16 28:12	17:3,6,10,11	27:22 29:22
amenable 26:20	27:11 30:10	28:24 29:4,18	23:4 37:15	34:8
<b>Ameren</b> 26:14	35:7	29:24 30:3,7,9	clarification 24:8	concerns 19:6,23
American 20:24	Bardgett 14:11	30:12,17 31:3,8	clarified 20:2	24:22,23 25:15
	l	, ,-	l	Í

concluded 36:14	dates 28:18 32:25	34:18	extremely 27:15	<b>forth</b> 22:20 37:10
conclusions	David 14:6 18:8	<b>due</b> 26:14	e-mail 32:5,7,10	forward 28:9
22:10	David's 29:17		32:15	<b>four</b> 33:14
<b>concur</b> 23:6,9,11	david.woodsm	E		Friday 19:1,2
concurs 22:18	14:9	<b>E</b> 16:1,1 37:2,2	F	24:21 25:11,14
conference 16:2	day 28:13 29:22	<b>earlier</b> 31:22	<b>F</b> 37:2	26:14 27:4 28:2
16:6 18:14	30:20	33:8	<b>FAC</b> 30:18	28:16 29:13,19
34:10 36:14	days 24:19 25:18	earliest 32:21	facing 27:17	29:20 33:3
confident 26:16	25:23 28:16,18	<b>early</b> 25:20	fact 19:11,17	35:16
<b>Conrad</b> 14:21,21	29:23 32:11	<b>easier</b> 33:13	21:20,22	Friday's 35:13
18:4,4 23:10,11	decision 23:18	easily 25:22	<b>factor</b> 26:25	<b>full</b> 37:12
31:15,17 34:9	<b>DED</b> 17:25 23:8	East 14:3,12 17:9	<b>facts</b> 19:25 22:10	funeral 25:13
36:9,11	Department	Economic 14:16	fair 20:19	
consent 27:24	14:16 17:13	17:13	<b>far</b> 23:18 25:21	G
considering	dependent 33:7	<b>EEI</b> 20:7	29:21 34:7	<b>G</b> 16:1
30:10	design 33:5,15	<b>either</b> 26:25	35:16	getting 34:3
Consumers 18:7	determined 21:6	<b>electric</b> 13:9,10	farther 22:15	<b>give</b> 29:14 34:9,9
contains 20:10	<b>Deutsch</b> 14:11	14:5 16:8,9,14	<b>father</b> 25:12	34:16 35:2 36:9
content 26:15	17:9	16:17	father's 25:13	given 26:15
continuing 25:5	Development	Ellinger 14:11	<b>favor</b> 24:4	31:24 37:15
convening 28:22	14:16 17:13	17:8,8 23:6	Feddersen 13:17	<b>global</b> 18:17
<b>correct</b> 17:25	<b>Diana</b> 14:2 16:15	<b>Empire</b> 13:9 14:5	37:5,17	20:14 23:19,25
18:1 19:3,5	died 25:12	16:7,13,16 21:9	<b>feel</b> 19:24 31:15	24:10
30:2 37:12	difference 32:2	22:19 23:7	36:5	<b>go</b> 17:20 23:22
<b>cost</b> 32:2 33:5,15	difficult 27:17	29:13,22 30:23	<b>file</b> 13:10 16:6,8	25:6 30:13 36:7
<b>costs</b> 30:24	difficulties 27:2	35:14	32:14	36:7
counsel 14:15,16	31:21	Energy 14:20	<b>filed</b> 18:21 20:10	going 20:5 21:11
15:1,1,4,6 17:1	directly 34:10	17:14 18:3,7	20:22 23:2	21:18 23:17,20
17:5 21:15	36:10	England 14:2	filler 28:17 29:2	23:22 24:2
22:19,19 23:6	disagree 34:21	16:16	<b>find</b> 32:12	26:11 27:2,3
<b>County</b> 37:4,16	discuss 29:15	enter 16:13	<b>findings</b> 19:11,17	33:12 34:11
course 33:6	discussed 26:7	entered 24:10	19:25 21:3,20	35:13,15,21
court 14:7 22:25	discussion 29:20	<b>entire</b> 28:10	21:22 22:4,10	36:6,7,8
credits 33:16	35:13	ER-2014-0351	<b>finds</b> 23:17	<b>good</b> 34:12
<b>cross</b> 26:1,8,12	dispute 35:10	13:10 16:7	<b>fine</b> 31:4,18	great 36:11
crossed 25:22	<b>District</b> 13:9 14:5	evaluating 19:8	finishing 30:20	Green 14:16
cross-examinat	16:8,14,16	evidence 20:11	Finnegan 14:21	17:15,15 23:9
18:22 27:24	Division 14:20	20:12,20 21:4	<b>firm</b> 17:9 37:6	<b>Group</b> 18:7
<b>CSR</b> 13:17 37:17	17:14	21:11 22:8	<b>first</b> 27:6 28:13	<b>gun</b> 34:25
currently 24:15	document 24:12	evidentiary	32:20	
customers 13:11	doing 26:3 28:6	18:15	<b>Fischer</b> 19:10	$\frac{\mathrm{H}}{\mathrm{H}}$
16:10 17:5	34:23	exactly 21:18	22:25	hands 18:12
	<b>doubt</b> 31:24	excepting 18:19	fishing 21:25	happens 23:16
D	drafted 24:12	<b>expect</b> 35:19	<b>fit</b> 27:13	29:6
<b>D</b> 16:1	dragged 24:3	expedition 22:1	<b>folks</b> 30:23	head 34:25
date 27:7 33:2	drive 30:25	explanation	following 22:20	hear 35:25
dated 33:14	dropped 33:16	19:23	foregoing 37:12	<b>heard</b> 21:8
			I	l

Г

hearing 13:4	27:23 28:5,19	24:14,17 25:18	26:18 27:11	number 22:3
18:15 19:1	29:7 32:23 33:6	28:4 29:15 32:3	33:12 34:12	34:10
20:13 21:12,21	33:10,13,15,17	32:5,15 34:17	<b>MEUA</b> 14:25	54.10
23:14 24:20	33:17,22 34:14	35:7,24	18:4	0
26:4 32:25 34:1	34:16,17,18,18	<b>knowing</b> 24:12	<b>Midwest</b> 13:17	<b>O</b> 16:1
hearings 23:23	35:4,14 36:4	Kilowing 24.12	18:3,7 37:6	objection 24:12
35:18	55.4,14 50.4	L	minor 30:22	objections 17:24
help 21:1 28:3	J	large 20:10	minutes 35:18	obviously 18:14
helpful 27:15	Jefferson 13:7	<b>law</b> 13:14 14:2,6	miscellaneous	23:13
<b>High</b> 14:12,17	14:3,8,12,18	14:7,11,21 17:9	33:4	occur 24:17
17:10,16	15:3,8 16:23	22:11	<b>missed</b> 18:11	office 14:7 15:1,4
hold 34:25 35:13	17:3,10 37:16	Legal 14:15,16	<b>Missouri</b> 13:1,7	16:23,25 17:4
honest 35:6	joint 21:6 24:13	let's 20:7 29:6	13:11 14:20	37:15
hopefully 35:17	<b>Joplin</b> 14:14 17:7	31:12	15:6,9 16:10,19	<b>Officer</b> 14:22
hours 28:8	17:11 23:4	life 33:13	16:22,24 17:3,7	okay 18:2,11
11001320.0	<b>Judge</b> 13:14 16:4	limited 34:2	17:10,13,22	20:17 21:8,24
I	16:18,25 17:6	line 20:23 34:8	20:24 21:16	23:10 24:14
<b>idea</b> 34:13	17:12,19 18:2,6	36:8,10	22:13,21 37:3	27:16 30:9 31:1
identifiable 20:7	18:10 19:6,22	list 18:24 19:9	37:16	33:6,8 35:6,8
identified 20:1	20:17,24 21:8	20:1 26:12	<b>Mo</b> 14:3,8,12,18	36:4,6
21:14 27:19	21:24 22:14,16	33:13 34:16	14:23 15:3,8	<b>Ollie</b> 14:16 17:15
33:2	22:20,23,24	Litigation 13:17	18:5	Ollie.green@d
identify 20:18	23:4,8,9,10,12	37:7	Monday 25:4	14:19
22:4	24:7,14 25:24	little 20:12 27:18	morning 30:16	ones 21:21
ignored 31:17	26:22 27:1,6,16	28:4,7,16 32:14	31:1 33:4 34:7	<b>onus</b> 22:3
ignoring 31:16	28:12,24 29:4	live 19:18,20	<b>move</b> 30:20	<b>OPC</b> 23:7
<b>impact</b> 23:18	29:18,24 30:3,7	20:13 24:4		<b>open</b> 26:23
important 34:15	30:9,12,15,17	long 26:22	<u> </u>	opening 28:6
incentives 20:8	31:3,8,11 32:4	lunch 31:13	<b>N</b> 16:1	31:9 32:19
including 20:7	32:8,13,18	32:21	nature 20:8	openings 30:11
increasing 13:10	33:19 34:6,20		necessarily 35:20	30:12 31:12
16:9	34:24 35:8,12	$\frac{M}{M}$	need 23:14,22	opportunity
<b>India</b> 25:12	36:2,12	<b>M</b> 14:16	25:22 26:8,10	29:14
31:21	K	Madison 15:2,7	26:11,13,14	order 21:2 22:2
individual 24:24		<b>majority</b> 20:11	28:15,17 31:9	35:17
informally 32:14	<b>K</b> 13:17 37:5,17	making 19:11,25	32:25	ordered 22:12
intent 20:25	Kansas 14:23	Marc 14:11 17:8	needed 19:17,19	original 19:9
interruptible	<b>KC</b> 18:5	March 16:5	19:20 21:23	originally 24:19
33:16	<b>keep</b> 34:4,6 36:8	matter 13:9 16:7	needs 22:3 29:3	26:3
<b>issue</b> 19:17,18	<b>keeps</b> 30:24	mean 30:11 35:5 MECG 14:10	<b>new</b> 20:12	outstanding
20:7 21:4,23	<b>Keith</b> 36:8 <b>Kellene</b> 13:17	18:9,19 23:16	<b>nine</b> 30:14 33:3	34:17
29:5 35:21	37:5,17	<b>MECG's</b> 24:4	nonunanimous	out-of-town
issues 19:8,9,12	<b>Kim</b> 13:13 30:19	meeting 29:15	18:18,20 19:12	27:12
19:21 20:1,1	knew 24:9	Mellinger@bb	20:14 23:19	Overcast 25:24
21:7,12,14,19	know 18:16	14:13	Noon 31:7	26:2
23:14,24 24:2,4	20:10 23:21	mention 25:10	notes 37:13	overruled 21:23
25:1,2,8 27:20	20.10 23.21	mention 23.10	<b>notice</b> 32:14	<b>o'clock</b> 30:14
	I	I	1	I

Г

33:4         prefiled 20:16 prehearing 16:2 predist 20:16         rates 13:10 16:9 ready 34:4 realistically 35:1 reasonably 20:19         RPR 13:17 37:17 stas 13:15 15:16 16:1         25:5 specific 19:25 staff 15:9 16:19           P 16:1 partace 21:17 particular 21:4 parties 16:12         prefiled 20:16 prehearing 16:2 social and point 22:19         rates 13:10 16:9 ready 34:4 reasonably 20:16         RPR 13:17 37:17 superity 30:16         25:5 specific 19:25 staff 15:9 16:19           parties 16:12 20:13 21:17 parties 16:12         20:13 21:12 precontable 20:19         reasonably 20:16 staff 15:9 16:19         Staff 15:9 16:19           22:4 23:15,18 20:13 21:22 22:4 23:15,18 protosed 22:10 party 21:16         Presiding 13:13 pro 20:24 problems 25:21 proposed 12:10         record 20:6,12 proposed 22:10         regard 18:22 proposed 22:10         sec 11:8 227 regard 18:22         sec 11:8 27:13 sec 11:8:11 state 17:23 state	31:6 32:20,21	prefer 24:18 31:1	33:5,15 34:1	36:10	sound 22:8 23:17
P         prehearing 16:2         ready 34:4         speaking 35:1           P 16:1         36:14         reason 18:13         reason 20:13         sitil 13:15:6 16:1           particular 21:4         7:8         22:7         24:1         staff 15:9 16:19           particular 21:4         present 35:23         reasonably 26:16         schedule 18:25         21:7,13,13,22 22:4           particular 21:4         presenting 30:1         reasonably 26:16         schedule 18:25         22:17,13,13,22 22:4           particular 21:4         presenting 16:12         20:13 21:12         recommendation         30:18 35:15         20:24           point 20:24         previously 17:21         precedings 13:4         record 20:6,12         24:20 25:11         standards 19:10           23:25 24:5,17         problems 25:21         regard 18:22         25:8 33:2         30:5,816 31:5           29:25         proposed 22:10         regard 18:22         regard 18:22         30:5,816 31:5           party 21:16         proyled 13:11         rely 21:4         send 18:23         stated 17:23           pending 34:2         proble 23:10         15:14,56,69         seni 32:17         state 22:13         state 22:13           proble 24:2         pulic 13:1 15:1         rely 26:14         seni 32:17		•	,		
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$					
P 16:1       36:14       reason 18:13       S 13:13 15:6 16:1       21:3,13,22 22:4         parameters 23:2       present 35:23       saying 20:19       saying 20:19       Staff 15:9 16:19         partial 21:17       7:8       20:13 21:12       reasonable 20:19       saying 20:19       Staff 15:9 16:19         particular 21:4       present 35:23       reasonably 26:16       schedule 18:25       schedule 18:25       22:16.18 23:7         19:20,24 20:3       presiding 13:13       previously 17:21       record 20:6,12       24:20 25:11       standpoint 25:16         22:4 23:15.18       problems 25:21       record 20:6,12       24:20 33:2       30:5,8,63 15:5       31:4         33:22 35:22 35:2,25       proposed 12:10       proposed 12:10       rely 21:4       seed 18:22       30:5,8,16 31:5         party 21:16       proposed 22:10       13:14       send 32:4,6       state 17:23       state 17:23         person 29:10       16:19,22 17:1,5       13:16       separate 33:22       state 17:23       state 17:23         person 29:10       16:19,22 17:1,5       requisting 18:23       16:9,11,19,22       state 17:23       state 17:23         person 29:10       16:19,22 17:1,5       requisting 18:23       service 13:1,11       state 13:137:3       37:16	P		v	S	
parameters 23:2 partial 21:17         present 35:23 37:8         reasonable 20:19 22:7         saying 20:19 24:1         ss 37:3 24:1         ss 37:3 15:9         ss 37:3 24:1         ss 37:3 24:1         ss 37:3 24:1         ss 37:3 24:1         ss 37:3 25:7         ss 37:3 26:4         ss 37:3 24:1         ss 37:3 25:7         ss 37:3 26:4         ss 37:3 24:1         ss 37:3 25:7         ss 37:3 26:4         ss 37:3 22:17          ss 37:3 22:17         <	<b>P</b> 16:1		•	<b>S</b> 13:13 15:6 16:1	_ <b>≜</b>
partial 21:17         37:8         22:7         24:1         Staff 15:9 16:19           particular 21:4         presented 19:8         casonably 26:16         schedule 18:25         schedule 18:25         22:17, 23:22         22:17, 24:13         schedule 18:13         schedule 18:14	parameters 23:2			saying 20:19	, ,
particular 21:4 parties 16:12         presented 19:8 20:13 21:12         reasonably 26:16 resoning 23:17         schedule 18:25 25:7 26:4 28:2         16:22 17:21,23 22:16,18 23:7           18:16,19,19,21 19:20,24 20:3         presenting 30:1 previously 17:21 proi 20:24         presoning 23:17 previously 17:21         scheduled 18:13 scheduled 18:13         standpoint 25:16 standpoint 25:16           22:4 23:15,18 23:25 24:5,17 party 21:16 party 21:16 perding 34:2         proposal 19:19 proposal 19:19 proposed 22:10         record 20:6,12 21:5 36:17         24:20 25:11 second 18:22         30:5,8,16,31:5 starting 25:4           29:25 peroposal 22:10 party 21:16 perding 34:2         37:8,11 provided 13:11 16:10         regardless 19:12 regardless 19:12         Seci 18:27:13 sec 33:26         State 17:23 state 13:137:3           13:14 perding 34:2         provided 13:11 person 29:10         16:19,22 17:1,5 13:14         regaves 29:10 reguested 29:7 party 32:16         status 32:16 service 13:1,11         status 32:16 service 13:1,11           plan 23:18 plan 23:18 plan 23:18 plan 23:18 position 21:10 position 21:10 position 21:10         put 22: position 21:10 position 21:10         put 16:3 36:14 question 24:27         status 32:17 reguirement 33:12         status 19:10 signal 22:15 stip 18:16,20           36:13 position 22:11 possibility 26:7 26:10 33:20,224 positions 23:11 position 21:10         put 16:3 36:14 question 24:25         stipuation 18:18 signal 21:2         stipuation 18:18 signal 21:2           70:14         Reporter 37:6 signal 39:51:0,11<		•			
parties 16:12         20:13 21:12         reasoning 23:17         25:7 26:4 28:2         22:16,18 23:7           19:20,24 20:3         presenting 30:1         Presiding 13:13         30:18 35:15         29:24           20:18 21:9,14         previously 17:21         reasoning 23:17         30:18 35:15         29:24           22:4 23:15,18         prior 20:24         21:5 36:7         33:2         standards 19:10           23:22 35:2,22         yroblems 25:21         recorded 36:13         second 18:22         30:5,8,16 31:5           29:25         proposed 19:19         proposed 22:10         REGULATORY         send 32:4,6         start 24:19 25:19           29:25         provided 13:11         rely 21:4         readed 35:17         stated 17:23         stated 17:23           29:10         15:1,4,5,6,9         13:16         send 32:14         state 21:18         state 20:16           person 29:10         16:19,22 17:1,5         13:16         service 13:1,11         status 32:16           party's 20:16         puble 21:19         requesting 18:23         status 32:16         status 22:19           person 29:10         16:19,22 17:1,5         13:16         service 13:1,11         state 22:13           party's 20:17         puble 21:19         requesting 18:27         st	particular 21:4	• • • •		schedule 18:25	
18:16,19,19,21       presenting 30:1       recommendation       30:18 35:15       29:24         19:20,24 20:3       presiding 13:13       precord 20:6,12       24:20 25:11       standards 19:10         22:4 23:15,18       proto 20:24       21:5 36:7       sceond 18:22       30:58 35:2       31:9         23:25 24:5,17       problems 25:21       precord 20:6,12       25:8 33:2       30:58 35:2       31:9,11,13         29:25       proposal 19:19       proposed 22:10       regardless 19:12       29:9 32:9 35:21       31:9,11,13         29:25       proposed 22:10       13:14       regardless 19:12       Seeing 18:11       starting 25:4         pending 34:2       provided 13:11       reguesting 18:23       sending 35:17       statet 17:23         person 29:10       16:19,22 17:1,5       13:16       sending 35:17       status 32:16         person 29:10       16:19,22 17:1,5       13:16       separate 33:21       stearley 20:24         phone 29:9 31:23       pulle 21:19       requesting 18:23       reguesting 18:23       reguesting 18:23       15:6       status 32:16         starty 20:12       pulle 21:19       pulle 20:19       requesting 18:23       reguesting 18:23       rif:4       37:13         percent 26:10       pulle 21:19	1 <b>•</b>	•		25:7 26:4 28:2	· · · ·
19:20,24 20:3       Presiding 31:13       21:7 24:13       scheduled 18:13       standards 19:10         20:18 21:9,14       proio 20:24       21:5 36:7       33:2       standards 19:10         23:25 24:5,17       proceedings 13:4       pregard 18:22       33:2       scheduled 18:13       standards 19:10         33:22 35:2,22       37:8,11       proposed 19:19       pregard 18:22       25:8 33:2       31:9,11,13         33:22 35:2,22       37:8,11       proposed 22:10       REGULATORY       Seeing 18:11       starting 25:4         9arty 21:16       prooked 13:11       rely 21:4       sending 35:17       state 17:23       state 17:23         9arty 2:016       provided 13:11       rely 21:4       sending 35:17       state 13:1,37:3       state 32:16         9corecat 26:10       provided 13:11       rely 21:4       sending 35:17       state 32:16       state 32:16         9cores 14:21       public 13:1 15:1       rely 26:14       service 13:1,11       status 32:16       start 24:19 20:24         9creson 14:21       public 13:1 15:1       requested 29:7       15:16       status 32:16       status 32:16         9bore 29:9 31:23       34:8,10 36:8       public 13:16       requested 29:7       16:9,11,19,22       stap 22:15       stiplation 18:18	<b>A</b>		0	30:18 35:15	-
20:18 21:9,14 22:4 23:15,18 23:25 24:5,17 23:25 24:5,17 29:25         Previously 17:21 protocedings 13:4 protocedings 13:4 proceedings 13:4 proceedings 13:4 proceedings 13:4 33:22 35:2,22 37:8,11 proposed 22:10 29:25         24:20 25:11 33:2 30:5,8,16 31:5 proceedings 13:4 proposed 22:10 22:15         33:2 record 20:6,12 precord 20:6,12 precord 20:6,12 proceedings 13:4 proposed 22:10 22:15         24:20 25:11 standpoint 25:16 start 24:19 25:19 30:5,8,16 31:5 see 21:18 27:13 starting 25:4 Start 13:1 37:3 37:16           29:25         37:8,11 proposed 22:10 22:15         regardless 19:12 16:10         see 21:18 27:13 see 21:18 27:13 starting 25:4         start 13:1 37:3 37:16           Penntower 14:22 personally 37:8         provided 13:11 16:10         rely 26:14 reply 26:14         sending 35:17 state 13:1 13:16         stated 17:23 state 13:1 21:5           Personally 37:8         17:22 21:15 22:19         REPORTED requirement puble 21:19         service 13:1,11 37:13         start 24:19 25:16 state 13:10           Parsonally 37:8         17:22 21:15 22:19         requirement puble 21:19         13:12 15:6.10 16:9,11,19,22 17:22 33:5.15         stip 18:16,20 stip 18:16,20           place 35:13 37:9 point 24:8 32:24 35:20         puble 27:10 puble 27:10         resolutions 33:17 resolutions 33:17 positions 23:1 positions 23:1 positions 23:12 positions 23:12         25:17 25:17         resolutions 33:17 resolutions 33:17 resolutions 33:17 signatory 21:17 signatory 21:17 signato				scheduled 18:13	
22:4 23:15,18         prior 20:24         72:5 36:7         33:2         33:2         start 24:19 25:19           23:25 24:5,17         problems 25:21         recorded 36:13         regard 18:22         25:8 33:2         31:2         start 24:19 25:19           23:22 35:2,22         37:8,11         regard 18:22         25:8 33:2         31:1         second 18:22         31:1         25:8 33:2         31:1         31:1         29:9 32:9 35:21         Start 24:19 25:19           party 21:16         provided 13:11         rely 21:4         rely 21:4         send 32:46         State 13: 17:3         37:16           person 29:10         16:19,22 17:1,5         reguested 29:7         reguested 29:7         send 32:21         send 32:21         Stenotype 37:11           plend 39:513 37:9         pulle 21:19         pulle 21:19         requested 29:7         16:9,11,19,22         stip 18:16,20           plend 39:51:0         reguested 29:7         reguested 29:7         16:9,11,19,22         stip 18:16,20         stip 18:16,20           protion 20:13         pm 16:3 36:14         resolution 33:17         resolution 21:7         20:3 2:20         24:9,11 33:18           pleading 19:21         potion 29:16         questioning         30:19 35:10,11         sturt 14:12,17           posible 31:22	,	e		24:20 25:11	
23:25 24:5.17 27:24 33:3.20 33:22 35:2,22 9arty 21:16 party 21:16 party 21:16 people 34:2 people 34:2 people 34:2       problems 25:21 proposed 19:19 proposed 19:19 proposed 22:10       recorded 36:13 regard 18:22 regarding 33:16 regarding 31:16 regarding 31:17 state 31:17 31:16 stervice 13:117 31:12 15:6,10 31:12 15:2,11 submit 32:3 submit 32:3 submi			,	33:2	-
27:24 33:3.20       37:8,11       regard 18:22       25:8 33:2       319,11,13         33:22 35:2,22       37:8,11       regard 18:212       29:9 32:9 32:9 32:5       319,11,13         yarty's 20:16       proposed 22:10       21:5       REGULATORY       Seeing 18:11       37:16         yarty's 20:16       provided 13:11       rely 21:4       send 32:4,6       state 13:1 37:3         people 34:2       provide 13:1 15:1       reguestion 20:14       send 32:16       state 21:10         person 29:10       15:1,4,5,6,9       REPORTED       sent 32:11       state 33:22         phone 29:9 31:23       requesting 18:23       requesting 18:23       requesting 18:23       requesting 18:23         place 35:13 37:9       putting 29:16       pushed 27:10       regord 18:23       services 13:17       state 22:15         stiplating 19:21       putting 29:16       resolution 33:17       24:15 30:23       stiplation 18:18         position 21:10       0       resolution 33:17       resolution 33:17       settlement 24:1       stiplation 18:18         si:20       p.0 14:17 15:2,7       resolution 33:17       settlement 24:1       stiplation 18:18         position 21:10       0       resolution 33:17       settlement 24:1       stiplation 18:18	,	<b></b>		second 18:22	
33:22 35:2,22 party 21:16       proposel 19:19 proposed 22:10       regarding 33:16 regarding 33:16       see 21:18 27:13 29:9 32:9 35:21       starting 25:4 Starting 25:4         party's 20:16 pending 34:2       provided 13:11 16:10       redy 21:4 reduce 21:2       seeing 18:11 send 32:46       state 17:23 state 17:23         pending 34:2       provided 13:11 16:10       rely 21:4 reduce 21:2       seeing 18:11 send 32:46       state 17:23 state 17:23         person 29:10 person 29:10       16:19,22 17:15 22:19       reporter 37:6 requested 29:7       13:16 requested 29:7       service 13:1,11 13:12 15:6,10       Stearley 20:24 status 32:16         phace 35:13 37:9       pulle 21:19 puls 28:14       pulle 21:19 puls 28:14       requested 29:7 requirement       16:9,11,19,22 17:22 33:5,15       step 22:15 stip 18:16,20         place 35:13 37:9       puls 28:11 push 28:14       35:10,11       37:7 resolution 21:7       20:3 22:20 20:3 22:20       stip 18:13 21:23 23:19         place 35:13 37:9       push 28:14 push 28:14       push 28:14 push 28:14       35:10,11       37:7         point 24:8 32:24 position 21:10 position 21:10 positions 23:1 possible 31:22       P.C 14:2 stor 22:17       resolves 24:3 30:19 35:10,11       short 33:24 stort 14:21 18:4       Stort 14:21 18:4 stucon@fcpla         possible 31:22 possible 31:22       27:14       revise 18:52 75:17       singatory 21:17 similar 21:2       submit 41:21 15:2	,	-			
party 21:16         proposal 19:19         regardless 19:12         29:9 32:9 35:21         State 13:1 37:3           29:25         party's 20:16         22:15         REGULATORY         Seeing 18:11         37:16           pending 34:2         provosal 19:19         redy 21:14         sending 35:17         State 13:1 37:3         37:16           pentower 14:22         public 13:11         rely 21:4         render 21:2         render 21:2         render 37:6         sending 35:17         state 32:19           person 29:10         16:19,22 17:1,5         13:16         separate 33:22         sent 32:11         stenty 20:24           person 29:10         16:19,22 17:1,5         13:16         separate 33:22         separate 33:22         stenty 20:24           place 35:13 37:9         pulled 21:19         requirement         17:22 33:5,15         step 22:15         stip 18:16,20           plandig 19:21         pulled 21:19         purpose 28:11         20:4 30:19         37:7         19:12 20:15         stip 18:16,20           plandig 19:21         putled 27:10         resolution 21:7         resolution 21:7         24:15 30:23         33:21 34:13,19           point 24:8 32:24         put 16:3 36:14         resolution 33:17         short 33:24         Stuere 14:12,17           possible 3	· · · · ·		0		· · ·
29:25       proposal 22:10       REGULATORY       Seeing 18:11       State 17:23         party's 20:16       provided 13:11       rely 21:4       sending 35:17       state 17:23         pending 34:2       provided 13:11       rely 21:4       sending 35:17       state 17:23         people 34:2       provided 13:11       rely 21:4       sending 35:17       state 32:10         percent 26:10       person 29:10       15:1,4,5,6,9       render 21:2       Senior 13:11       status 32:16         person 29:10       16:19,22 17:1,5       REPORTED       service 13:1,11       Stearley 20:24         phone 29:9 31:23       pulle 21:19       requested 29:7       13:12 15:6,10       37:13         place 35:13 37:9       pulle 21:19       requirement       17:22 33:5,15       stip 18:16,20         plan 32:18       pushed 27:10       requires 19:11       set 16:5 18:15       stipulation 18:18         position 21:10       pot 14:17 15:2,7       resolution 31:17       24:15 30:23       33:21 34:13,19         position 21:10       Q       question 29:16       revise 18:25       similar 21:2       submit 35:3         position 21:10       Q       Resolution 29:16       submit 35:3       submit 35:3       submit 14:12.118:4         possible 31:22 <th>· · · · ·</th> <th>/</th> <th>0 0</th> <th></th> <th>e</th>	· · · · ·	/	0 0		e
party's 20:16 pending 34:2         provided 13:11 16:10         13:14 rely 21:4         send 32:4,6 sending 35:17         stated 17:23 stated 17:23           people 34:2 people 34:2         provided 13:11 16:10         rely 21:4         sending 35:17         stated 17:23           people 34:2         public 13:1 15:1         render 21:2         Senior 14:16         32:19           person 29:10         16:19,22 17:1,5         reporter 37:6         service 13:1,11         stated 37:22           person 14:21         puble 21:19         pull 22:2         requested 29:7         13:12 15:6,10         37:13           phone 29:9 31:23         pull 22:2         pull 22:2         requesting 18:23         16:9,11,19,22         stip 18:16,20           place 35:13 37:9         pull 22:19         pushed 27:10         requirement         17:22 33:5,15         stip 18:16,20           plan 32:18         pushed 27:10         requires 19:11         services 13:17         stipulation 18:18           portion 20:13         36:13         port 14:17 15:2,7         resolutions 33:17         24:15 30:23         33:21 34:13,19           position 21:10         pusting 29:16         resume 33:1         short 33:24         Street 14:12,17           position 23:1         postion 23:1         postion 29:16         revise 18:25         signat	<b>-</b>				
pending 34:2       provided 13:11       rely 21:4       sending 35:17       statements 28:6         people 34:2       people 34:2       public 13:1 15:1       rely 21:4       render 21:2       rely 21:4       sending 35:17       statements 28:6         person 29:10       15:1,4,5,6,9       rely 21:4       rely 21:4       sending 35:17       statements 28:6         person 29:10       15:1,4,5,6,9       rely 21:5       separate 33:22       separate 33:22       separate 33:22       separate 33:22       set 10:9,11,19,22       17:12       37:13         phone 29:9 31:23       pull 22:2       pull 22:2       requesting 18:23       requesting 18:23       requesting 18:23       step 22:15       stip 18:16,20         place 35:13 37:9       pull 22:2       pull 22:19       requesting 18:23       requirement       20:4 30:19       set 16:5 18:15       stip 18:16,20         plate 35:13 37:9       pushed 27:10       requires 19:11       resolutions 33:17       resolutions 33:17       24:15 30:23       33:21 34:13,19         point 24:8 32:24       settion 29:16       settion 33:17       resolutions 33:17       resolutions 33:17       statement 24:1       street 14:12,17       15:2,7 17:16         possibil	party's 20:16			U	
Penntower 14:22       profile 10       render 21:2       Senior 14:16       32:19         people 34:2       public 13:1 15:1       render 21:2       regly 26:14       15:6       sett 32:11       status 32:16         person 29:10       16:19,22 17:1,5       15:1,4,5,6,9       15:6       set 32:11       status 32:16         person 29:10       16:19,22 17:1,5       13:16       separate 33:22       separate 33:22       22:14,20,24         phone 29:9 31:23       pulle 21:19       pulle 21:19       requested 29:7       16:9,11,19,22       stenotype 37:11         place 35:13 37:9       pulle 21:19       pushed 27:10       requires 19:11       requires 19:11       set 16:5 18:15       stipulation 18:18         plan 32:18       pushed 27:10       putting 29:16       resolution 21:7       resolution 33:17       set 16:5 18:15       21:23 23:19         point 24:8 32:24       p.C 14:2       p.m 16:3 36:14       resolves 24:3       37:10       steet 14:12,17         position 21:10       positions 23:11       resultion 29:16       stot 34:23       signatory 21:17       submit 35:3         possible 31:22       27:14       27:14       33:9 35:14       stot 34:23       submit 35:3         possibly 28:22       Post 16:23       R 16:1 37:2       27:14					
people 34:2         Public 13:1 15:1         reply 26:14         15:6         status 32:16           percent 26:10         15:1,4,5,6,9         15:1,4,5,6,9         15:1,4,5,6,9         15:1         separate 33:22         22:14,20,24           person 14:21         22:19         13:16         separate 33:22         service 13:1,11         Stearley 20:24           phone 29:9 31:23         34:8,10 36:8         pulle 21:19         requested 29:7         16:9,11,19,22         step 22:15           place 35:13 37:9         pulle 21:19         requirement         17:22 33:5,15         stip 18:16,20           place 35:13 37:9         pulmose 28:11         20:4 30:19         Services 13:17         stip 18:16,20           place 35:13 37:9         push 28:14         35:10,11         requires 19:11         resolution 21:7         20:3 22:20         stip 18:16,20           plading 19:21         putting 29:16         resolution 33:17         24:15 30:23         33:21 34:13,19           point 24:8 32:24         p.m 16:3 36:14         resolution 32:11         settlement 24:1         Street 14:12,17           position 21:10         question 29:16         questions 24:25         resolution 32:11         short 33:24         Stuant 14:21 18:4           position 21:10         Q         25:17         resolution 33:		<b>L</b>	v	e	
percent 26:10       result in 1:11       REPORTED       sent 32:11       Stearley 20:24         person 29:10       15:1,4,5,6,9       13:16       separate 33:22       service 13:1,11       Stearley 20:24         person 14:21       22:19       requested 29:7       requested 29:7       requested 29:7       requested 29:7       13:12 15:6,10       37:13         phone 29:9 31:23       pull 22:2       requested 29:7       requested 29:7       16:9,11,19,22       step 22:15         place 35:13 37:9       pull 22:2       requirement       37:14       35:10,11       37:7       19:12 00:15         plan 32:18       puled 27:10       pushed 27:10       resolution 21:7       resolution 21:7       20:3 22:20       24:9,11 33:18         pleading 19:21       putting 29:16       resolution 33:17       24:15 30:23       33:21 34:13,19         point 24:8 32:24       p.m 16:3 36:14       resolution 32:11       settlement 24:1       Street 14:12,17         portion 20:13       36:13       0       15:17       revenue 20:4       Short 33:24       Stuart 14:21 18:4         position 21:10       puestions 24:25       25:17       25:2,6 27:8       signatory 21:17       submit 35:3         possible 31:22       pustion 29:16       questions 24:25       25:2,6 27:8					
person 29:1016:19,92:17:1513:16separate 33:2222:14,20,24personally 37:817:22 21:1522:19requested 29:713:12 15:6,1037:13phone 29:9 31:23pull 22:2requested 29:716:9,11,19,2237:13phone 29:9 31:23pull 21:19requested 29:716:9,11,19,2237:13place 35:13 37:9purpose 28:1120:4 30:1937:7step 22:15jan 32:18pushed 27:10requires 19:1137:7step 22:15pladeding 19:21putting 29:16requires 19:11set 16:5 18:1521:23 23:19plate 35:20p.C 14:2resolution 33:1724:15 30:2333:21 34:13,19portion 20:1317:3,16resolves 24:337:935:4jastin 21:10Qresultion 22:11set 37:10steret 14:12,17position 21:10question 29:16short 33:24stuart 14:21 18:4position 21:10Qstignatory 21:17signatory 21:17position 21:1025:17question 29:16signatory 21:17possible 31:2225:17guestions 24:25signatory 21:17jossibly 28:22RRSignatory 21:17postilo 21:2527:1433:9 35:14situation 27:17postilo 21:62RROBERT 15:633:24postilo 23:16ROBERT 15:633:24postilo 23:2016:1 37:2postilo 23:2016:1 37:2postilo 23:2016:1 37:2postilo 23:2016:1 37:2postilo 23:2516:1 37:2<			1 0	sent 32:11	
personally 37:817:12:21:15Reporter 37:6requested 29:7strvice 13:1,11Stenotype 37:11Peterson 14:2122:19pull 22:2requesting 18:2316:9,11,19,2237:13phone 29:9 31:23jull 22:2pull 21:19requesting 18:2316:9,11,19,22step 22:15jace 35:13 37:9jull 22:2requesting 18:2317:22 33:5,15step 22:15jace 35:13 37:9pull 22:2requesting 18:2317:22 33:5,15step 22:15jace 35:13 37:9pull 22:2requirement37:7step 22:15jace 35:13 37:9pull 29:16requires 19:1137:7step 22:15pleading 19:21putting 29:16resolution 21:720:3 22:2024:9,11 33:18jent 22:18putting 29:16resolutions 33:1724:15 30:2333:21 34:13,19jont 24:8 32:24p.m 16:3 36:14resolves 24:337:935:4jostion 20:1317:3,16rest 35:2,19steltement 24:1short 33:24josition 21:10questioning25:17revenue 20:4short 33:24josibility 26:725:1725:17signatory 21:17signatory 21:17josibly 28:2225:1725:2,6 27:8similar 21:2submit 35:3josibly 28:22RROBERT 15:633:24submit 41:12 15:2post-hearingR 16:1 37:2rol 36:5sion 35:2517:10 18:5	-				U U
Peterson 14:21       21:12       requested 29:7       13:12 15:6.10       37:13         phone 29:9 31:23       yull 22:2       requested 29:7       13:12 15:6.10       37:13         step 22:15       yull 22:2       requested 29:7       13:12 15:6.10       37:13         phone 29:9 31:23       yull 22:2       requested 29:7       13:12 15:6.10       37:13         place 35:13 37:9       yull 22:19       purpose 28:11       20:4 30:19       37:7       step 22:15         place 35:13 37:9       yumpose 28:11       yushed 27:10       requirement       17:22 3:5.15       stipulation 18:18         plan 32:18       pushed 27:10       requires 19:11       set 16:5 18:15       21:23 23:19         pleading 19:21       putting 29:16       resolution 21:7       20:3 22:20       24:9,11 33:18         point 24:8 32:24       p.m 16:3 36:14       resolves 24:3       37:9       35:4         position 21:10       Q       resolves 24:3       37:10       street 14:12,17         position 21:10       Q       submit 35:10,11       short 33:24       Street 14:12,17         possibility 26:7       25:17       question 29:16       submit 35:3       submit 35:3         possible 31:22       27:14       Strevice 13:17       submit 35:3	<b>▲</b>			<b>^</b>	
phone 29:9 31:23 34:8,10 36:8 place 35:13 37:9 37:14       pull 22:2 pulled 21:19 purpose 28:11 push 28:14       requesting 18:23 16:9,11,19,22 17:22 33:5,15       16:9,11,19,22 step 22:15       step 22:15 stip 18:16,20         place 35:13 37:9 37:14       pull 22:2 pulled 21:19       requirement push 28:14       16:9,11,19,22 17:22 33:5,15       step 22:15 stip 18:16,20         place 35:13 37:9 37:14       push 28:14       35:10,11       37:7       19:12 20:15         plading 19:21       pushed 27:10       requires 19:11       set 16:5 18:15       21:23 23:19         pleading 19:21       putting 29:16       resolution 21:7       20:3 22:20       24:9,11 33:18         point 24:8 32:24       p.m 16:3 36:14       resolves 24:3       37:9       35:4         position 21:10       position 23:11       resume 33:1       resume 33:1       short 33:24       Stuart 14:21 18:4         possibility 26:7       25:17       question 29:16       30:19 35:10,11       short 34:23       14:24         possible 31:22       27:14       25:17       submit 35:3       submit 35:3       submitted 18:17         possibly 28:22       27:14       ROBERT 15:6       33:24       sit 32:11       submitted 18:17         post-hearing       R 16:1 37:2       roll 36:5       soon 35:25       17:10 18:5			-	· · ·	• •
34:8,10 36:8       pulled 21:19       requirement       17:22 33:5,15       stip 18:16,20         place 35:13 37:9       pulled 21:19       purpose 28:11       20:4 30:19       37:7       stip 18:16,20         plan 32:18       push 28:14       35:10,11       37:7       19:12 20:15       stip 18:16         place 35:13 37:9       push 28:14       35:10,11       37:7       19:12 20:15       stip 18:16,20         plan 32:18       pushed 27:10       pushed 27:10       requires 19:11       set 16:5 18:15       21:23 23:19         plan 42:8 32:24       putting 29:16       P.C 14:2       resolution 33:17       24:15 30:23       33:21 34:13,19         point 24:8 32:24       p.m 16:3 36:14       resolves 24:3       resolves 24:3       37:9       35:4         position 21:10       Q       revenue 20:4       short 33:24       Street 14:12,17         position 21:10       question 29:16       question 29:16       signatory 21:17       submit 35:3         position 22:11       revenue 20:4       short 33:24       stucon@fcpla       14:24         possibly 28:22       27:14       25:2,6 27:8       signatory 21:17       submit 35:3         postion 22:2       R 16:1 37:2       rol 36:5       33:24       stue 14:12 15:2 <tr< th=""><th></th><th></th><th>-</th><th>,</th><th></th></tr<>			-	,	
place 35:13 37:9 37:14       purpose 28:11 push 28:14       20:4 30:19 35:10,11       Services 13:17 37:7       stip 10:10,10       stip 10:10,10         plan 32:18 pleading 19:21 pleading 19:21       pushed 27:10 putting 29:16       20:4 30:19       37:7       37:7       37:14         pleading 19:21 pleading 19:21       pushed 27:10       putting 29:16       resolution 21:7       20:3 22:20       24:9,11 33:18         point 24:8 32:24       p. 16:3 36:14       resolutions 33:17       24:15 30:23       33:21 34:13,19         portion 20:13       16:3 36:14       resolutions 33:17       settlement 24:1       Street 14:12,17         position 21:10       Q       resume 33:1       short 33:24       Street 14:12,17         position 21:10       Q       revenue 20:4       Shorthand 37:6       stucon@fcpla         position 21:10       guestion 29:16       guestions 24:25       signatory 21:17       submit 35:3         posibility 26:7       25:17       guestions 24:25       signatory 21:17       submit 35:3         possibly 28:22       27:14       R       R06ERT 15:6       33:24       submit 20:6         post-hearing       R 16:1 37:2       roll 36:5       soon 35:25       17:10 18:5	-				
37:14       push 28:14       35:10,11       37:7       19:12 20:15         pleading 19:21       pushed 27:10       requires 19:11       set 16:5 18:15       21:23 23:19         pleading 19:21       putting 29:16       resolution 21:7       20:3 22:20       24:9,11 33:18         pleaty 25:18       p.C 14:2       resolution 33:17       24:15 30:23       33:21 34:13,19         point 24:8 32:24       p.m 16:3 36:14       resolves 24:3       37:9       35:4         portion 20:13       17:3,16       resolves 24:3       resolves 24:3       short 33:24         positions 23:1       question 29:16       revenue 20:4       short 33:24       Stuart 14:21 18:4         possible 31:22       25:17       questions 24:25       signatory 21:17       submit 35:3         possibly 28:22       27:14       R 16:1 37:2       R 16:1 37:2       ROBERT 15:6       33:24       Suita 14:12 15:2         post 16:23       m t= 22 21 20 21 20:19       roll 36:5       soon 35:25       17:10 18:5	,	<b></b>	-		· ·
plan 32:18       pushed 27:10       requires 19:11       set 16:5 18:15       21:23 23:19         plending 19:21       putting 29:16       requires 19:11       20:3 22:20       24:9,11 33:18         plenty 25:18       p.C 14:2       resolutions 33:17       24:15 30:23       33:21 34:13,19         point 24:8 32:24       p.m 16:3 36:14       resolutions 33:17       resolutions 33:17       24:15 30:23       33:21 34:13,19         portion 20:13       17:3,16       resume 33:1       short 33:24       Street 14:12,17         position 21:10       Q       revenue 20:4       short 33:24       Stuart 14:21 18:4         possibility 26:7       question 29:16       signatory 21:17       similar 21:2       submit 35:3         possible 31:22       27:14       25:2,6 27:8       simply 34:14       submit 35:3         post 16:23       R       16:1 37:2       ROBERT 15:6       33:24       submit 20:6         post-hearing       R 16:1 37:2       roll 36:5       soon 35:25       17:10 18:5	-	<b>·</b> ·			<b>▲</b>
pleading 19:21       putting 29:16       resolution 21:7       20:3 22:20       24:9,11 33:18         point 24:8 32:24       p.C 14:2       resolutions 33:17       24:15 30:23       33:21 34:13,19         portion 20:13       position 21:10       p.O 14:17 15:2,7       resolves 24:3       37:9       35:4         position 21:10       position 22:11       resolves 24:3       resume 33:1       short 33:24       Street 14:12,17         position 21:10       Q       revenue 20:4       short 33:24       Street 14:12,17         position 21:10       Q       revenue 20:4       short 33:24       Stuart 14:21 18:4         possibility 26:7       guestion 29:16       guestion 29:16       submit 35:3       submit 35:3         possible 31:22       27:14       25:2,6 27:8       signatory 21:17       submit 35:3         post 16:23       R 16:1 37:2       R16:1 37:2       R16:1 37:2       six 32:11       submit 20:6         post-hearing       mt 2:22 22       Post 16:23       R 16:1 37:2       roll 36:5       soon 35:25       17:10 18:5	<b>plan</b> 32:18	1	· · · · · · · · · · · · · · · · · · ·		
plenty 25:18       p.C 14:2       resolution 11:1       24:15 30:23       33:21 34:13,19         point 24:8 32:24       p.m 16:3 36:14       p.C 14:2       resolution 33:17       24:15 30:23       33:21 34:13,19         portion 20:13       17:3,16       respond 32:11       settlement 24:1       street 14:12,17         position 21:10       Q       resume 33:1       short 33:24       Street 14:12,17         position 21:10       Q       revenue 20:4       short 33:24       Stuart 14:21 18:4         position 23:1       puestion 29:16       guestion 29:16       30:19 35:10,11       short 34:23       submit 35:3         possible 31:22       25:17       guestions 24:25       25:2,6 27:8       signatory 21:17       submit 35:3         possibly 28:22       R       16:1 37:2       ROBERT 15:6       33:24       submit 42:12 15:2         post-hearing       R 16:1 37:2       roll 36:5       soon 35:25       17:10 18:5	1 <b>•</b>		-		
point 24:8 32:24 35:20       p.m 16:3 36:14       resolves 24:3 respond 32:11       37:9 settlement 24:1 sheet 37:10       35:4         portion 20:13 36:13       p.m 16:3 36:14 P.O 14:17 15:2,7 17:3,16       resolves 24:3 respond 32:11       37:9 settlement 24:1 sheet 37:10       35:4         position 21:10 positions 23:1 possibility 26:7 26:10 33:20,24 possible 31:22 35:1,25       Q question 29:16 questions 24:25       resolves 24:3 respond 32:11 rest 35:2,19       35:4       Street 14:12,17 15:2,7 17:16         possibility 26:7 26:10 33:20,24       Q questions 24:25       revenue 20:4 30:19 35:10,11       Shorthand 37:6 shot 34:23       Stuart 14:21 18:4         possible 31:22 35:1,25       25:17 questions 24:25       revise 18:25 right 19:7 24:15       similar 21:2 simply 34:14       submitt 35:3 submitted 18:17         possibly 28:22       R 16:1 37:2 post-hearing       R 16:1 37:2 roll 36:5       ROBERT 15:6 ROE 20:19 roll 36:5       33:24 six 32:11 soon 35:25       Suite 14:12 15:2 17:10 18:5					,
35:20       P.O 14:17 15:2,7       respond 32:11       settlement 24:1       Street 14:12,17         portion 20:13       36:13       position 21:10       mestion 29:16       resume 33:1       short 33:24       Street 14:12,17         position 21:10       Q       revenue 20:4       short 33:24       Stuart 14:21 18:4         position 23:1       question 29:16       revenue 20:4       shot 34:23       stucon@fcpla         possible 31:22       25:17       questions 24:25       right 19:7 24:15       similar 21:2       submit 35:3         possibly 28:22       Post 16:23       R       R16:1 37:2       ROBERT 15:6       33:24       street 14:12 15:2         post-hearing       revenue 20:4       six 32:11       street 14:12.17       15:2,7 17:16         post 16:23       R       16:1 37:2       robit 0:5 2:17       six 32:11       submit 35:3         post 16:23       R 16:1 37:2       rol 36:5       six 32:11       stuation 27:17       stue 14:12 15:2         post 16:23       R 16:1 37:2       rol 36:5       soon 35:25       17:10 18:5					· · · ·
portion 20:13 36:13 position 21:10 positions 23:1 possibility 26:7 26:10 33:20,24 possible 31:22 35:1,25 possibly 28:22 Post 16:23 post-hearing       17:3,16 17:3,16       rest 35:2,19 rest 35:2,10 short 33:24 signatory 21:17 submit 35:3 submitted 18:17 20:21 25:7 sufficient 20:6 21:13,20 24:24 Suite 14:12 15:2 17:10 18:5	-	<b></b>			
36:13       0       1110,10       1110,10       1110,10         position 21:10       0       resume 33:1       short 33:24       Stuart 14:21 18:4         position 21:10       0       10:19 35:10,11       short 33:24       Stuart 14:21 18:4         possibility 26:7       25:17       30:19 35:10,11       short 34:23       signatory 21:17         possible 31:22       25:17       19:7 24:15       similar 21:2       submit 35:3         possibly 28:22       27:14       25:2,6 27:8       situation 27:17       sufficient 20:6         post 16:23       R       16:1 37:2       ROBERT 15:6       33:24       six 32:11         post 16:23       met 22:21 20:19       roll 36:5       12:10 18:5		,	-		,
<b>Q Q revenue</b> 20:4 <b>Shorthand</b> 37:6 <b>stucon@fcpla position</b> 21:10 <b>question</b> 29:16 <b>question</b> 29:16 <b>shorthand</b> 37:6 <b>stucon@fcpla possibility</b> 26:7 <b>questioning</b> 25:17 <b>signatory</b> 21:17 <b>submit</b> 35:3 <b>possible</b> 31:22       25:17 <b>questions</b> 24:25 <b>2</b> 5:2,6 27:8 <b>similar</b> 21:2 <b>submit</b> 35:3 <b>possibly</b> 28:22 <b>Post</b> 16:23 <b>R R R R R post-hearing R</b> 16:1 37:2 <b>roll</b> 36:5 <b>six</b> 32:11 <b>six</b> 32:11 <b>suite</b> 14:12 15:2 <b>roll</b> 36:5 <b>roll</b> 36:5 <b>roll</b> 36:5 <b>roll</b> 36:5 <b>roll</b> 36:5 <b>roll</b> 36:5	-	17.5,10	-		r
positions 23:1       question 29:16       30:19 35:10,11       shot 34:23       14:24         possibility 26:7       25:17       25:17       signatory 21:17       similar 21:2         possible 31:22       25:17       questions 24:25       25:2,6 27:8       simply 34:14       14:24         possibly 28:22       27:14       33:9 35:14       situation 27:17       submitted 18:17         post-hearing       R 16:1 37:2       ROBERT 15:6       33:24       six 32:11       suite 14:12 15:2         post-hearing       mate 22:21 20:18       roll 36:5       soon 35:25       17:10 18:5		0			
possibility 26:7       questioning       revise 18:25       signatory 21:17       submit 35:3         26:10 33:20,24       25:17       revise 18:25       similar 21:2       submit 35:3         possible 31:22       25:17       questions 24:25       25:2,6 27:8       simply 34:14       20:21 25:7         35:1,25       27:14       33:9 35:14       situation 27:17       sufficient 20:6         possibly 28:22       R       ROBERT 15:6       33:24       six 32:11         post-hearing       mtt 22:21 20:18       roll 36:5       soon 35:25       17:10 18:5	-	question 29:16			-
26:10 33:20,24       25:17       right 19:7 24:15       similar 21:2       submitted 18:17         possible 31:22       questions 24:25       27:14       situation 27:17       submitted 18:17         possibly 28:22       27:14       33:9 35:14       situation 27:17       sufficient 20:6         Post 16:23       R       R0E 20:19       six 32:11       suite 14:12 15:2         post-hearing       mtx 22:21 20:18       roll 36:5       six 35:25       17:10 18:5	1	-			
possible 31:22 35:1,25       questions 24:25 27:14       right 10:10 and 25:2,6 27:8 33:9 35:14       simply 34:14 situation 27:17       sufficient 20:6 20:21 25:7         possibly 28:22       R       ROBERT 15:6 ROE 20:19       six 32:11 soon 35:25       suite 14:12 15:2 17:10 18:5				0	
35:1,25       27:14       33:9 35:14       situation 27:17       sufficient 20:6         possibly 28:22       R       ROBERT 15:6       33:24       sufficient 20:6         post 16:23       R 16:1 37:2       roll 36:5       six 32:11       suite 14:12 15:2         post -hearing       roll 36:5       roll 36:5       17:10 18:5			0		
possibly 28:22       R       ROBERT 15:6       33:24       21:13,20 24:24         Post 16:23       R 16:1 37:2       roll 36:5       six 32:11       soon 35:25       17:10 18:5	<b>A</b>	-	,	1 0	
Post 16:23 post-hearingR R 16:1 37:2 mut 22:21 20:18ROE 20:19 roll 36:5six 32:11 soon 35:25Suite 14:12 15:2 17:10 18:5	,				
post-hearing         R 16:1 37:2 roll 36:5         roll 20:19 soon 35:25         soon 35:25         17:10 18:5		R			· ·
		<b>R</b> 16:1 37:2			
		rate 22:21 30:18			
			1.0011.5 1.5,0,10		Support 21.15

Г

	1	1	1	1
22:6	28:6,8,14 29:1	<b>Users</b> 18:3	wishing 22:6	<b>17th</b> 19:3 25:12
supported 20:15	29:13 30:1,18		witness 25:10	27:5 33:3
20:20	32:22 33:8	<u> </u>	27:2 29:17	
supports 22:5	<b>time</b> 16:6,12	<b>verify</b> 31:20	31:14,22 33:7	2
<b>Sure</b> 32:17	24:24 26:6 32:2	<b>Volume</b> 13:7	36:1	200 15:2,7
Swearengen 14:2	33:24 34:2 37:9	W	witnesses 18:25	<b>2007</b> 22:20
16:16	37:14		24:2 25:1,17,20	<b>2015</b> 13:5 16:5
	tomorrow 18:16	wait 34:4 35:21	25:22 26:13	<b>2230</b> 15:2 17:3
<u> </u>	24:16 26:4 34:7	<b>waive</b> 18:24 24:1 26:17 27:24	27:12,20 28:9	3
<b>T</b> 37:2,2	35:3,4		29:8 30:1,16	
take 28:8 34:23	tough 32:1	waived 25:2	32:20 35:20	<b>3:20</b> 16:3,4
talk 34:5	town 27:9	26:13	Woodsmall 14:6	<b>3:40</b> 36:14
talking 28:22	transcript 13:4	waiver 35:20	14:7 18:8,8	<b>30</b> 35:18
tariffs 13:10 16:9	37:13	want 17:20 21:24	25:9 26:6,9,24	<b>301</b> 14:12,17
33:5	transplant 30:17	21:25 23:13,23	27:4,8 28:3,21	17:10,15
telephone 26:20	travel 30:23,24	24:1,23 25:19	28:25 31:20,24	<b>308</b> 14:12 17:9
27:14	31:21	27:20 28:1,11	32:6,10,17	<b>3100</b> 14:22 18:5
ten 31:12 32:20	traveled 25:12	29:16 31:19	33:11 34:11,22	<b>312</b> 14:3
testify 25:11	<b>true</b> 37:12	32:23	35:24	<b>360</b> 15:7 16:23
26:19 30:25	<b>try</b> 28:13 29:9	wanted 29:14	words 23:24	5
31:22	31:25 32:2	wanting 30:15	work 28:20	<b>5</b> 13:7
testimony 18:23	35:15	wants 24:17 28:9	29:10 30:3,14	573)526-4806
19:19,20 20:6	<b>trying</b> 33:25	35:22	31:4,13,15 32:9	14:18
20:10,16,21	34:25	wasn't 25:25	34:3,8 35:15	573)634-2500
22:5 23:2,22	Tuesday 16:5	Water 20:25	worked 17:21	14:13
26:11,15,16	28:14,22 30:6,7	22:13,21	works 28:21	573)635-7166
31:14	30:8,11,12,16	way 23:22 26:25	29:12	14:4
Thank 16:18,25	30:21 32:19,25	28:5	wouldn't 25:13	573)751-3234
17:2,6,12 18:2	35:16	Wednesday	wrapped 35:9	15:8
18:6 35:8 36:3	<b>turn</b> 34:4	28:15 30:6	writing 22:2	573)751-4857
36:12	<b>two</b> 23:23 24:19	32:22 33:8	WR-2007-0216	15:3
<b>thereof</b> 37:10	25:18,23 28:8	Wednesday/Th	22:21	573)797-0005
thing 20:2 25:9	28:18 34:12	29:2		14:8
26:18 34:15		week 23:23 25:11	<u> </u>	14.0
things 20:8 28:7	U	26:6 27:4,10	Yeah 32:13	6
33:11 34:12	unanimous 33:21	29:23,23 35:19	yesterday 19:21	<b>64111</b> 14:23 18:5
think 19:18,22	34:13 35:3	went 21:19	1	<b>650</b> 15:2
22:7 23:21 24:6	understand	West 14:17 17:15		<b>65101</b> 14:8 17:10
24:16 25:16	22:23 24:7 27:1	<b>we'll</b> 25:6,17,17	<b>1157</b> 14:17 17:16	65101-3237
26:25 33:12	29:4 31:20 36:2	31:13 32:18,22	<b>1209</b> 14:22 18:5	14:12
34:12,15,22	understanding	32:24 walna 22:10 28:6	<b>13th</b> 25:5	<b>65102</b> 14:18 15:8
thinking 31:6	17:23 19:13	we're 23:19 28:6	<b>14th</b> 25:5 28:15	16:24 17:4
thoughts 22:17	22:14	31:15 35:15	28:23 29:6 30:7	<b>65102-0456</b> 14:3
<b>three</b> 28:7	unrealistic 35:5	36:5,7	30:13 32:19	<b>65102-0430</b> 11:3
<b>Thurs</b> 30:11	updated 34:16	<b>we've</b> 24:10	<b>15th</b> 28:15	
Thursday 19:1,2	upstairs 24:16	35:16	<b>16th</b> 19:3 27:9	7
24:20 26:5 28:2	<b>use</b> 28:10 29:1	Winston 14:7	30:18	7 13:5 16:5
	I	I	I	I

	_	_	-	
8				
<b>807</b> 14:7				
816)753-1122				
14:23				
<b>338</b> 13:17				
9				
<b>5</b> 26:10				
0.10				