

In the Matter of:

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI'S TARIFFS, etc.

ER-2019-0335 , VOL. XVII

March 11, 2020



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

March 11, 2020

Jefferson City, Missouri

Volume 17

In The Matter Of Union Electric)
Company d/b/a Ameren Missouri's)
Tariffs to Decrease Its Revenues For) File No. ER-2019-0335
Electric Service)

NANCY DIPPELL, Presiding
 SENIOR REGULATORY LAW JUDGE
RYAN SILVEY, Chairman,
WILLIAM P. KENNEY,
SCOTT T. RUPP,
MAIDA J. COLEMAN,
JASON R. HOLSMAN,
 COMMISSIONERS.

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P R O C E E D I N G S

1
2 JUDGE DIPPELL: Let's go on the record. Good
3 morning. This is March 11th, 2020, and my name is Nancy
4 Dippell. I'm the regulatory law judge assigned to this hearing.
5 This is Case Number ER-2019-0335 in matter of Union Electric
6 Company doing business as Ameren Missouri's Tariffs to Decrease
7 Its Revenues for Electric Service. We've come here today for
8 the evidentiary hearing and all of the issues have stipulation
9 and agreements except for the one fuel adjustment clause issue.
10 So that's what we're going to hear today.

11 We're going to begin with entries of appearance,
12 and I'd like to begin with the Company.

13 MR. LOWERY: Good morning, Your Honor, Jim
14 Lowery, Smith Lewis LLP, P.O. Box 918, Columbia, Missouri 65205,
15 appearing on behalf of Ameren Missouri.

16 MS. TATRO: Wendy Tatro, 1901 Chouteau Avenue,
17 St. Louis, Missouri 63103.

18 JUDGE DIPPELL: And commission Staff?

19 MS. BRETZ: Karen Bretz for Staff. The court
20 reporter has my information.

21 JUDGE DIPPELL: All right. Office of Public
22 Counsel?

23 MR. HALL: Good morning, Judge. Caleb Hall
24 appearing on behalf of the Office of Public Counsel. I
25 previously supplied my contact information to the court

1 reporter.

2 JUDGE DIPPELL: Okay. And the other parties who
3 did not have testimony specific to this issue asked to be
4 excused, and I have done so with my usual caveat that they waive
5 any right to make any objections or enter any additional
6 evidence on this issue.

7 So because one of the issues we had planned to
8 have today live, we did not enter testimony from that issue at
9 the presentation last Wednesday. So I'd like to go ahead and do
10 that. Can we begin with Ameren?

11 MR. LOWERY: Yes, Your Honor. We have, I
12 believe, seven pieces of testimony to enter on those other
13 issues starting with Exhibit 5, rebuttal testimony of Ben Hasse;
14 and then Exhibit 11, direct testimony of Laura Moore; Exhibit
15 12, rebuttal testimony of Laura Moore; Exhibit 13, surrebuttal
16 testimony of Laura Moore; Exhibit 14, direct testimony of John
17 Reed; 15, rebuttal testimony of John Reed; and 16, surrebuttal
18 testimony of John Reed. That should be all of our prefiled
19 testimony except for witnesses appearing today.

20 (WHEREIN; Ameren Exhibits 5, 11, 12, 13, 14, 15,
21 and 16 were offered into evidence.)

22 JUDGE DIPPELL: Thank you. Would there be any
23 objection to those exhibits coming into the record?

24 MS. BRETZ: None.

25 MR. HALL: No.

1 JUDGE DIPPELL: Seeing none, then I will admit
2 Exhibit 5, Exhibit 11, 12, 13, 14, 15, and 16.

3 (WHEREIN; Ameren Exhibits 5, 11, 12, 13, 14, 15,
4 and 16 were received into evidence.)

5 JUDGE DIPPELL: And then, Staff, you have
6 additional testimony?

7 MS. BRETZ: Yes, Judge, we have two exhibits.
8 We have what's been marked as Exhibit 120, which is the rebuttal
9 testimony of Mark Oligschlaeger; and then also Exhibit 127,
10 which is the surrebuttal testimony of Mark Oligschlaeger.

11 (WHEREIN; Staff Exhibits 120 and 127 were
12 offered into evidence.)

13 JUDGE DIPPELL: Okay. Would there be any
14 objection to those exhibits? Seeing none, I will admit Exhibit
15 120 and 127.

16 (WHEREIN; Staff Exhibits 120 and 127 were
17 received into evidence.)

18 JUDGE DIPPELL: And Public Counsel?

19 MR. HALL: Yes, Judge. Given the reconciliation
20 of the affiliate transaction issue, we have three exhibits for
21 admission. The direct rebuttal and surrebuttal testimony of
22 Robert Schallenberg. Those numbers are 206, 207, and 208
23 respectively. At this time I move for their admission.

24 JUDGE DIPPELL: And 207 and 208 both have
25 confidential versions?

1 MR. HALL: 207 has a public and a confidential
2 version, that's correct.

3 JUDGE DIPPELL: But not 208, just 207?

4 MR. HALL: Sorry. I missed that. 208 has a
5 public and confidential version as well.

6 (WHEREIN; OPC Exhibits 206, 207P, 207C, 208P,
7 and 208C were offered into evidence.)

8 JUDGE DIPPELL: Would there be any objection to
9 Exhibits 206, 207, and 208?

10 MR. LOWERY: No objection.

11 MS. BRETZ: None.

12 JUDGE DIPPELL: Seeing none, I will admit those
13 exhibits.

14 (WHEREIN; OPC Exhibits 206, 207P, 207C, 208P,
15 and 208C were received into evidence.)

16 JUDGE DIPPELL: And then yesterday Ameren filed
17 a motion to take official notice of multiple items. Would there
18 be any objection just in general to those items? And then if
19 there are, I'll get into the specifics.

20 MS. BRETZ: We don't have any, Judge.

21 JUDGE DIPPELL: All right. If there are no
22 objections to the Commission taking official notice of the
23 items, I'll just read them so that it's clear in the record.
24 Staff's fuel adjustment clause prudence review reports for
25 Ameren Missouri in File Numbers EO-2010-0255, EO-2012-0074,

1 EO-2013-0407, EO-2015-0060, EO-2016-0228, EO-2018-0067,
2 EO-2019-0257; the Commission's report and order in File Numbers
3 EO-2010-0255, and EO-2012-0074; and the Commission's orders
4 approving Staff's prudence reviews in File Numbers EO-2013-0407,
5 EO-2015-0060, EO-2016-0228, EO-2018-0067, and EO-2019-2057.
6 Then the fuel adjustment clause section of Commission reports
7 and orders in the following Ameren Missouri Electric cases,
8 which were ER-2008-0318, Pages 57 to 76; ER-2010-0036, Pages 72
9 to 80; ER-2011-0028, Pages 74 to 92; ER-2012-0166, Pages 73 to
10 93; ER-2014-0258; and also official notice of Commission Rule 20
11 CSR 4240-20-090; and last but not least, the fact that there
12 have been 32 adjustments to rates charged under Ameren
13 Missouri's Writer FAC since it first became effective starting
14 on March 1st of 2009. And with that the Commission will take
15 official notice of those items.

16 MR. LOWERY: Your Honor, I think this is clear
17 enough from the record based on case law under 536.070.5 since
18 we are -- since we are offering those documents you referenced
19 by reference, I think we're actually supposed to offer them. In
20 addition to taking notice of them, I think the statute
21 contemplates that we offer them. So I formally offer those
22 documents as well by reference.

23 JUDGE DIPPELL: And once again just so that it's
24 clear then would there be any objection to those items coming
25 into the record?

1 MR. HALL: None.

2 JUDGE DIPPELL: Seeing none, then those are
3 admitted by official notice by reference.

4 Okay. So Mr. Lowery also noted that the
5 testimony of Mr. Byrne on this issue got left off of the
6 official witness list or proposed witness list that you all had
7 filed. Does Ameren intend for Mr. Byrne to go first or second?

8 MR. LOWERY: We intended him to go after
9 Mr. Meyer, so second.

10 JUDGE DIPPELL: Okay. Then with that, I think
11 we can begin opening statements. The first opening statement is
12 Ameren Missouri.

13 MS. TATRO: Good morning, commissioners, Judge.
14 So every single issue in this case has been resolved by all of
15 the parties with one exception and that issue is the sharing
16 percentage to be used in the Company's fuel adjustment clause or
17 FAC. All of the parties agree that Ameren Missouri should
18 continue to have an FAC. All of the parties agree that the
19 cost, which cost should flow through the FAC and OPC only takes
20 issue with the sharing percentage in this case.

21 So let's start with some FAC history. Ameren
22 Missouri's FAC was first put into place in 2009, and consistent
23 with the Aquila FAC that had been approved before it, the tariff
24 included a 95-5 sharing percentage. That is, any net cost above
25 or below the amount included in base rates would be shared, 95

1 percent to customers and 5 percent to Ameren Missouri.

2 Now, the reasoning behind the 95-5 sharing was
3 that the Commission wanted utilities to have some additional
4 incentive to manage their FAC costs while also remaining
5 faithful to the overall purpose of the FAC, which is to allow
6 utilities to recover their prudently incurred FAC costs. Since
7 2009, all electric utilities in Missouri with an FAC have had
8 that 95-5 sharing percentage. Not that the Commission hasn't
9 been asked or that there haven't been efforts to change the
10 sharing percentage, there have been. In fact, if you look at
11 the rebuttal testimony of Andrew Meyer in this case,
12 specifically Exhibit AMM-R1 from which the information on this
13 document, which is kind of small up there and maybe I should
14 have printed it nice and large like I did for on-the-record, but
15 that lists every rate case since, I think, Ameren Missouri's
16 2007 rate case where there was discussion about sharing
17 percentages of the FAC.

18 If you were to count them, there are 18 cases in
19 which individuals challenged the FAC sharing percentage. Not
20 five, not ten, but 18. And of those 18 cases, Lena Mantle was
21 the witness that request the change in nine of them, and those
22 are the cases that are highlighted in yellow. That's the number
23 of times she's requested, with this case being number 10.

24 Now, despite the multiple requests, Ms. Mantle's
25 recommendations to change the sharing percentage have not been

1 adopted in a single case. In fact, in every case where any
2 party recommended a different sharing percentage, and that's the
3 18 listed up there, the Commission retained the 95-5 sharing.

4 As Mr. Byrne testifies, there is benefit in
5 regulatory stability and in the Commission not changing the
6 sharing percentage in each and every case despite having been
7 asked to do so multiple times. Otherwise, the sharing
8 percentage comes up for grabs in every rate case, it will result
9 in different sharing percentages for different utilities, and
10 will represent regulatory inconsistency at its worse, that is,
11 inconsistency without a reason.

12 This mechanism was not supposed to produce
13 winners or losers. It was supposed to allow for recovery of
14 prudently incurred costs over which the utility has little
15 control. So what is the basis for Ms. Mantle's recommendation?
16 Her testimony relies on a few arguments, vague warnings of FAC
17 abuses, an argument that Ameren Missouri could earn more under
18 increased sharing and a reliance upon a new capital investment
19 statute.

20 So let's discuss those. First, Ms. Mantle's
21 dire warning. She makes a truly ridiculous and frankly
22 offensive argument that Ameren Missouri in this case gained the
23 FAC by intentionally setting the NBEC in the case too low in
24 order to gain a PR benefit from filing for a rate decrease. She
25 went on in her testimony to assert that Ameren Missouri is

1 willing to suffer any loss created by the 5 percent showing --
2 sharing, again, for some PR benefit. Commissioners, this is
3 patently untrue. If you ask Ms. Mantle if she has any direct
4 evidence that Ameren Missouri manipulated it's NBEC calculation
5 in this case in order to obtain a rate decrease, she will answer
6 she does not. That is because there is no such evidence to
7 support this ridiculous claim. The only evidence and even this
8 is indirect is that she believes the off-system sales revenue
9 level used in the production cost model was too high. And even
10 if she's right, that doesn't prove manipulation. It only proves
11 that we have a difference of opinion on an input, an input
12 disagreement, nothing more. And, again, if you were to ask
13 Ms. Mantle where a disagreement on an input is proof of
14 deliberate manipulation, she will admit it is not.

15 And you don't have to take my word for it.
16 Staff proposes an even higher level of off-system sale revenue
17 in their modeling. Staff's NBEC and direct is lower than Ameren
18 Missouri's and Staff's true-up NBEC is even lower than that.
19 Staff's overall revenue requirement is lower than Ameren
20 Missouri's original ask. So if Ameren Missouri was manipulating
21 the calculations, NBEC -- Staff's NBEC calculation would have be
22 higher and its revenue requirement would have been higher, but
23 it was not. It was lower.

24 So does OPC and Ms. Mantle really believe that
25 Staff is in on some conspiracy with Ameren Missouri to force the

1 revenue requirement in this case negative? So how strongly does
2 OPC believe this manipulation argument? OPC signed the
3 stipulation and agreement in this case reserving only two
4 issues, one of which has subsequently been resolved.
5 The NBEC set forth in the stipulation uses Staff's true-up NBEC.
6 So Staff -- or so OPC agreed to use the lowest NBEC in this
7 case.

8 Surely OPC would not have agreed to that if it
9 believed it was the result of manipulation on the part of the
10 Company or on Staff. Again, it's an inflammatory insertion
11 without any direct evidence and you should pay it no mind.

12 Now, it is true that the cost decrease in Ameren
13 Missouri's NBEC are offsetting O&M increases elsewhere. That's
14 not proof of manipulation. Instead, it's a demonstration of the
15 effort that Andrew Meyer and his team put into properly managing
16 fuel costs. If anything, this proves the current sharing
17 percentage works, not that it does not. And the Company did not
18 hide this fact from its customers. I would point you to the
19 notice that was provided to all Ameren Missouri customers, a
20 notice that was written by Ameren Missouri and was approved by
21 this commission. The notice explicitly stated that, Overall
22 reduction in base rates proposed by Ameren Missouri in this case
23 is associated with the rebasing of these net energy costs. In
24 this case, the reduction in cost due to the rebase of net energy
25 costs is largely offset by net increases in other costs. If the

1 net energy cost had not been rebased in this case, the base
2 rates proposed by Ameren Missouri in this case would have
3 increased the typical residential customer bill by 3.7 percent,
4 end quote.

5 And there is more evidence that disproves
6 Ms. Mantle's allegations. As Mr. Meyer points out, Ameren
7 Missouri has undergone seven prudence reviews since 2009. Now,
8 two reviews involved a dispute about a classification of a
9 contract but even that was not used to justify an increase in
10 the sharing percentage as the Commission explicitly found in a
11 July report and order in ER-2011-0028.

12 And through all of these prudence reviews,
13 commissioners, the undeniable fact is that no party has argued
14 the Company imprudently managed its FAC costs or revenues. No
15 one says Ameren Missouri doesn't negotiate hard enough. No one
16 says it overpaid for coal. Nothing like that has been raised.
17 And accordingly, the Commission has never held that Ameren
18 Missouri acted imprudently in regard to its FAC at all.

19 Next, Ms. Mantle argues that a larger sharing
20 percentage could allow Ameren Missouri to keep more money if
21 actual costs are lower than the base amounts because we'd be
22 keeping 15 percent instead of 5. I submit to you that this
23 argument flies in the face of the purpose of the FAC. The FAC
24 should not be a vehicle for a utility to make money or to lose
25 money. It ought to be a mechanism to allow management of large

1 and volatile costs and revenues over which the Company has
2 little control.

3 Ameren Missouri, frankly, doesn't believe any
4 sharing mechanism is necessary. Virtually every utility across
5 the country has an FAC and only a few of them have any sharing
6 at all. But the Company has accepted and continues to accept
7 this commission's long-standing view that a 5 percent sharing
8 mechanism is warranted. And, commissioners, as you know, if the
9 Company were to mismanage its NBEC cost and revenues, the
10 Commission would disallow imprudent expenditures and in severe
11 cases, the Company could lose the FAC mechanism in total. These
12 are powerful incentives in the Company's opinion before we ever
13 even get to the sharing percentage.

14 Now, Ms. Mantle's newest argument is that Senate
15 Bill 564 set a sharing percentage of 85-15 and that that 85-15
16 percentage should be used for all utility incentive mechanisms.
17 Again there is no basis for her claim. Senate Bill 564 does set
18 a sharing percentage for Plant In-service Accounting or PISA,
19 but it didn't amend the FAC statute and didn't attempt to amend
20 the FAC statute. And as Ms. Mantle's surrebuttal testimony
21 makes it very clear, the PISA statute and the FAC statute deal
22 with very different aspects of utility cost.

23 Let me read you what she said on Pages 4 and 5
24 of her surrebuttal: As Ameren Missouri witnesses Byrne and
25 Meyer testified in their rebuttal testimony, PISA applies to

1 capital expenditures and the FAC applies to expenses. I,
2 Ms. Mantle, would take that one step further by saying that PISA
3 expenditures are completely under Ameren Missouri's control. It
4 can decide the timing and the amount of the expenditures.
5 Ameren Missouri has less control over its FAC costs. The FAC
6 costs are largely dependent upon the Midcontinent Independent
7 System Operators or MISO markets, fuel prices and load demands
8 of customers, end quote.

9 Now, commissioners, I can't speak for why
10 legislators adopted the 85-15 sharing requirement, but the law
11 sets the sharing percentage but only for capital investments
12 once a company has elected to adopt PISA.

13 Now, Ameren might take issue with Ms. Mantle's
14 idea that the Company doesn't have at least some required
15 capital investments, but certainly we have far more control over
16 PISA investments than we do FAC costs. I submit to you that
17 flips Ms. Mantle's arguments on its head. A greater incentive
18 might be required when an investment is discretionary than when
19 it -- the spending is over which the utility has little control.
20 In other words, her own argument demonstrates that a greater
21 sharing percentage for PISA makes more sense than a greater
22 sharing percentage for the FAC.

23 Ms. Mantle will also argue that the higher
24 sharing percentage the better Ameren Missouri will manage its
25 fuel costs and revenues, but nowhere does she tell you how. She

1 offers no evidence of what might happen. None. Her increase
2 incentive argument is theoretical, not based on fact and should
3 be rejected.

4 Now, finally, commissioners, you should
5 recognize there are real dollars involved in this argument. As
6 stated in Mr. Meyers' rebuttal testimony, since 2009 the 5
7 percent sharing mechanism has equated to \$42 million in actual
8 prudently incurred costs which have not been recovered by the
9 utility. That means a 15 percent sharing would have resulted in
10 \$126 million in unrecovered prudently incurred costs. Now,
11 perhaps Ms. Mantle does not consider those numbers significant,
12 but my management certainly does.

13 A change in the FAC sharing percentage is not
14 needed. Ameren Missouri manages these costs and revenues
15 appropriately and all such requests have been rejected by this
16 commission over and over and over. The fact is, we are here
17 again today to hear the same arguments as before. Your ruling
18 should be the same as it was before. There's no reason to
19 change the sharing percentage in the previous 18 cases where an
20 attempt to do so was made and there's no reason to do so today.

21 Thank you for your time.

22 JUDGE DIPPELL: Thank you. Commissioners, did
23 you have any questions for Ms. Tatro at this time?

24 COMMISSIONER KENNEY: I have no questions.

25 MS. TATRO: We have printouts of someone wanted

1 to see this. I know it's not very legible up there.

2 JUDGE DIPPELL. Ms. Tatro, could I get you to,
3 before you sit down, could I get you to come over here and --

4 MS. TATRO: You're asking me to do tech stuff.
5 Okay.

6 JUDGE DIPPELL: I am. Find the escape key on
7 the keyboard and I think that that will take your presentation
8 down, or you can just close it.

9 MR. LOWERY: No pressure.

10 MS. TATRO: Yeah. I warned you.

11 MR. HALL: We can bring that back up.

12 JUDGE DIPPELL: Okay. That's fine. Commission
13 Staff?

14 MS. BRETZ: Good morning. May it please the
15 Commission. My name is Karen Bretz representing Staff.

16 The fuel adjustment clause, commonly known as
17 the FAC, is designed to address fuel and purchase power cost
18 volatility, as well as off-systems sales.

19 JUDGE DIPPELL: Ms. Bretz, let me ask you to get
20 a little closer to your mic.

21 MS. BRETZ: Okay. I'll raise it up a little
22 bit. I'm a little taller than Ms. Tatro.

23 The Commission has traditionally applied a
24 sharing mechanism that allows the utility and its ratepayers to
25 share in over and under collections. If actual incurred fuel

1 and purchase power costs are less than estimated, 95 percent of
2 the savings is returned to customers and the utility keeps the
3 other 5 percent. At the same time, if actual incurred costs are
4 more than estimated, the utility receives more timely recovery
5 of 95 percent of the difference. The Commission has stated that
6 this sharing mechanism gives the utilities an incentive to
7 economize and allows ratepayers to share in any savings.

8 Staff and Ameren support maintaining this 95-5
9 sharing. OPC advocates for changing the mechanism to 85-15.
10 OPC advocates for this because OPC believes that Ameren is
11 trying to gain the FAC for PR purposes. OPC believes that while
12 Ameren has stated that this is a rate decrease, its actually a
13 rate increase. According to OPC, Ameren proposes artificially
14 low normalized fuel and purchase power cost in this case to keep
15 base rates down. OPC believes that Ameren will make up for this
16 difference with higher FAC costs down the road, and that the
17 95-5 sharing mechanism is not enough incentive for Ameren to
18 front end more normalized fuel and purchase power costs.

19 So where does OPC come up with this 85-15
20 proposal? OPC uses an analogy. It analogizes the FAC statute
21 to the Plant In-service Accounting commonly known as PISA
22 statute. The PISA statute allows a utility to recover 85
23 percent of total depreciation expenses and return associated
24 with eligible plant additions in subsequent rate cases. While
25 the FAC does not specify a sharing mechanism, the PISA statutory

1 -- the PISA statute is a statutory 85 percent requirement. PISA
2 is a significantly different type of regulatory mechanism from
3 the FAC in that PISA is a one-way street. Ratepayers always pay
4 for PISA up to the statutory rate caps and there is no refund
5 mechanism.

6 So where are the similarities between the FAC
7 and PISA statutes? Ms. Mantle states that the similarities that
8 both statutes create incentives to protect ratepayers'
9 interests. That's it. The differences in these two statutes
10 overshadow the similarities. Please keep in mind we are talking
11 about two different types of costs. PISA applies to capital
12 cost while the FAC applies to purchase power cost. FAC can
13 either be a ratepayer expense or a refund. PISA is always an
14 expense and it's a guaranteed recovery. OPC's analogy is not an
15 apples to apples analogy. It's actually apples to pineapples.

16 Also attached to Mr. Meyers' rebuttal testimony
17 is a list of cases in which the Commission has ordered a 95-5
18 sharing mechanism in the face of proposals from varying parties,
19 just not OPC, to split it in other ways. My point is that the
20 95-5 sharing mechanism has withstood challenges from numerous
21 parties. Further, all parties have had an opportunity to review
22 Ameren's fuel and purchase power costs and the modeling. As it
23 is, OPC has no proposed changes.

24 We recommend that you continue to order the 95-5
25 sharing mechanism. Thank you. And we will tender Staff member

1 Lisa Wildhaber to answer any questions that you may have later.

2 JUDGE DIPPELL: Any questions for Ms. Bretz?

3 COMMISSIONER HOLSMAN: No questions. Thank you.

4 JUDGE DIPPELL: Thank you, Ms. Bretz.

5 And I apologize, Mr. Coffman, I should've let
6 you make your entry of appearance. Would you like to do so at
7 this time?

8 MR. COFFMAN: Thank you, Your Honor. John
9 Coffman appearing on behalf of the Consumers Council of
10 Missouri, 871 Tuxedo Boulevard, St. Louis, Missouri 63119.

11 JUDGE DIPPELL: And did you have an opening
12 statement this morning?

13 MR. COFFMAN: I do.

14 JUDGE DIPPELL: All right.

15 MR. COFFMAN: Okay. May it please the
16 Commission. I'm representing the Consumers Council of Missouri,
17 and 30 years ago it was the Utility Consumers Council of
18 Missouri, under a different name, and at that time -- or rather
19 in the 1970s, that's when the history of the fuel adjustment
20 clause begins. So I'm going back, a little bit further back so,
21 you know -- from the beginning of Union Electric Company had its
22 certificate until about the mid 1970s. There was no fuel
23 adjustment clause. Fuel costs were overestimated and the
24 utility bore the risk. As you know, they have some control over
25 costs, and the problem which was definitely a double-digit

1 return on equity at that time was considered sufficient
2 compensation for the utility to manage the fuel costs.
3 Obviously, they have some control over fuel costs. Maybe not a
4 lot or -- you know, they say it's a little bit of control, but
5 it's some. Contrast that with utility customers. Utility
6 customers have zero control over these fuel costs. So it didn't
7 seem appropriate that there should be some special insurance
8 policy for the utility until about the mid-1970s and fuel costs
9 were becoming more volatile and were high at that time. The
10 Utility Consumers Council of Missouri thought that was unfair.
11 Piecemealing out this single issue mechanism didn't seem quite
12 fair. The consumers had to bear the volatility for this when
13 they had no control over it.

14 That issue was taken all the way to the Missouri
15 Supreme Court in the famous UCCM 1 case. You may have heard
16 about that. That's really the guiding star of us consumer
17 advocates in Missouri. It struck down the fuel adjustment
18 clause as being unfair. Although they did note that the
19 legislature had the ability to -- if they wanted to, to write it
20 in, but the current law said that the Public Service Commission
21 needs to look at all relevant factors and so you weren't -- you
22 shouldn't be breaking out and unraveling the rate case process.

23 So we went back to -- we went from the utility
24 bearing 100 percent of the risk to consumers bearing 100 percent
25 of the risk for a couple of years to back to the utility bearing

1 100 percent of the risk, and that was from 1979 to about 2009.
2 So for about 30 years we went back to the old way of doing
3 things where the utility had to bear 100 percent of the risk.
4 And during that time it was interesting. Ameren took the tactic
5 that they were actually kind of proud of. They said it forces
6 us to sharpen our pencils and they said, you know, our fuel
7 costs were better than other utilities because they had to
8 really focus on that cost because they have a lot at stake in
9 it.

10 Well, the legislature, in 2005, adopted a
11 statute for the fuel adjustment clause and that's where the
12 story, I guess, begins as you've been telling it before.

13 It's very clear from the statute that the
14 Commission is supposed to revisit this, that the Commission has
15 the ability to adopt, reject, or modify in every case. So I
16 think it is entirely appropriate that we talk about it. That
17 statute, as you know, also says that the Commission should
18 consider incentives. And in that first case in 2008, 2009, we
19 had a variety of different proposals. There was significant
20 testimony about how a 50-50 sharing would be an appropriate way
21 to do this. Some parties said 85-15 and so forth. No party
22 proposed anything as lopsided as 95-5 percent.

23 As I recall the agenda meeting at that time, all
24 the commissioners were looking at a significant balanced sharing
25 mechanism. One commissioner held out and didn't want any

1 sharing. That was Commissioner Murray, former state
2 representative Connie Wible Murray. And there was sort of a
3 negotiation at the Commission and they settled on 95-5. She
4 was willing to agree to at least 5 percent.

5 So at that time the understanding was that we
6 were going to see how that worked and continue to revisit the
7 issue, and it has. But for some reason that particular 95
8 percent lug that the consumers have to bear has continued case
9 after case after case, but it isn't fair. Utility has some
10 control. Consumers have none. Utility has a very generous
11 return on equity to manage its costs.

12 The standards shouldn't be prudence. The
13 standard should be is this what is going to really get the
14 attention of the utility. I think it is important -- I think it
15 is misleading to describe this as some sort of a disallowance.
16 It is not a disallowance. It is symmetrical. Costs go up and
17 down. The question is how much of an insurance policy should
18 consumers have to bear for something that they have no control
19 over? I say that the sharing should at least be 15 percent.
20 From a consumer perspective this is extremely lopsided and we
21 are not convinced that it has gotten Ameren to focus on these
22 costs. The most elegant and the best consumer protections are
23 those that are built in and are not based on prudence. We have
24 almost no confidence in the prudence process anymore. The
25 evidentiary burden has placed so high I'm not even aware of any

1 prudence that is actually succeeded in this case. And that
2 doesn't mean we don't have it. Look, my client can't afford a
3 fuel modeling system. It does not have the resources to
4 actually launch a prudence investigation. But we rest a little
5 easier at night knowing that the utility has some skin in the
6 game. So the question to you is, is 95-5 fair or can we balance
7 this a little bit better. That's all I have.

8 JUDGE DIPPELL: Thank you. Are there any
9 questions for Mr. Coffman?

10 COMMISSIONER KENNEY: No. Thank you,
11 Mr. Coffman.

12 JUDGE DIPPELL: Thank you, Mr. Coffman.
13 Office of Public Counsel?

14 MR. HALL: Let's just get this set up.

15 MR. KEEVIL: I thought Ms. Tatro erased that.

16 MS. TATRO: I tried.

17 MR. HALL: May it please the Commission. At the
18 outset I feel the need to depart from my semi-scripted notes and
19 presentation on this point, because I find it hard to sit there
20 quietly and have accusations thrown at my office that aren't
21 true. I encourage you to reread the testimony of Ms. Mantle.
22 Nowhere in her testimony does she allege that Ameren engaged in
23 any manipulation or that Staff engaged in manipulation. If
24 someone's feelings were hurt or if there were accusations on
25 this point, I wish that had been discussed with our office

1 prior. What Ms. Mantle's testimony spoke to was how the FAC can
2 operate and what impacts that can have for customers, regardless
3 of the utility.

4 Returning to the issue at hand, the final
5 dispute in this case is how much of a sharing mechanism should
6 exist within the FAC. Restated, how much of an incentive should
7 the Company have to reduce fuel costs and its utility operations
8 going forward.

9 We've all talked -- most of the attorneys here
10 have talked about history. Let's go back to bygone era of 2005
11 before we had an FAC. So here, this block that I put up on the
12 screen is a representation of fuel costs that are put into
13 rates. This is the NBEC number or net base energy cost number
14 that we discussed last week. This number includes projections
15 of off-system sales, it includes the cost to procure fuel, the
16 cost of operation, transmission. There's a multitude of other
17 factors that I'm grossly overstating. But regardless, in this
18 matrix here this is what we decided to go in rates and then that
19 is what is paid for prospectively going forward.

20 However, estimates don't often reflect reality
21 of the future. Oftentimes, a situation looks like this, with
22 this black box here. This, I'm calling a deficit. This
23 represents a scenario where costs have increased from what they
24 were projected in the rate case.

25 Without the FAC, the Company would have to eat

1 that until they come in for its next rate case. This is the
2 boogeyman that is referred to as regulatory lag. On the other
3 side, though, this is the incentive. This is what keeps -- this
4 is what incentivizes the Company to keep the costs low, and if
5 costs go below what were set in the rate case, that is a boom to
6 the Company going forward.

7 But then come 2006, we don't have this anymore.
8 We have an FAC. What happens in an FAC? This yellow block is a
9 representation of what customers foot. This -- again, this is
10 the example of when costs are higher from what they were
11 projected to be in the past for whatever reason, possibly the
12 cost of fuel went up, transmission cost, any other multitude of
13 factors. Customers are paying for 95 percent of the
14 differential. The Company's skin in the game is 5 percent, not
15 5 percent of total fuel costs, but less than 1 percent of total
16 fuel costs. We're only dealing with 5 percent of the
17 differential. With this FAC system, the utility is still
18 recovering over 99 percent of all fuel costs, of course, those
19 that are prudently incurred.

20 This is what we're talking about right now.
21 This five or less than 1 percent incentive. Where did this
22 incentive come from? This is the language of the authorized FAC
23 statute. Note that it doesn't say anything about a sharing
24 mechanism. It doesn't prescribe any specific number. It simply
25 advises that the Commission has discretion to include an

1 incentive to improve efficiency and cost effectiveness when it
2 approves any fuel adjustment clause.

3 Your predecessors decided on a ratio of 95-5.
4 They recognized that you had to include some type of efficiency
5 incentive. Otherwise, there would be no -- the Company would
6 pursue to recover all of the excess costs and argue that they
7 are all prudent. With some skin in the game, you're still
8 having some encouragement to reduce costs.

9 The issue that we are debating now is is that
10 enough. When 95-5 was selected, and it has been reaffirmed
11 since 2007, the market has changed. Technology has improved and
12 utilities have improved. We should recognize that and
13 reconsider this issue.

14 I have reprinted one of blocks from the prior
15 slide, again, showing the hypothetical where costs increase and
16 you have a utility with an FAC with a 95-5 sharing.

17 Let's look at the opposite example again. So
18 this clear box, I'm representing that that's the deficit when
19 costs decrease from what they were expected in the rate case.
20 Without an FAC, this is regulatory lag to the benefit of the
21 utility. They get to keep that until the fuel costs are
22 recalculated in the next rate case. With the fuel adjustment
23 clause with a 95-5 sharing, customers are getting 95 percent of
24 that gain. The utility is getting 5 percent. Again, 5 percent
25 of the differential, which is less than 1 percent.

1 Just last week Commission Rupp took umbrage with
2 whether a 1 percent price variation in a time of use rate would
3 be enough of a price signal to induce changing customer
4 behavior. If this commission is cognizant that 1 percent may
5 not be enough for time of use, we're simply asking for you to
6 consider and apply that same logic here in the fuel cost regime.
7 If the Company is only getting 1 percent of its gains, why would
8 it necessarily want to achieve those gains? And this is not an
9 accusation towards Ameren. This is just saying look at the
10 situation here.

11 Consider the issue of self-dispatch or
12 self-commitments that were brought in this case. Sierra Club
13 alleged certain self-commitment and self-dispatch practices on
14 Ameren -- or accused Ameren of certain self-dispatch and
15 self-committed activities. We are not raising those accusations
16 today, but in this scenario why wouldn't a utility self-commit?
17 If costs increase due to self-commit decisions, costs increase
18 and then they recover 95 percent of that increase.

19 Now, you might be saying to yourself, well, they
20 wouldn't do that because that gets caught on the back end with a
21 prudence review. Again, FAC only counts for prudent incurred
22 costs, and the self-dispatch as alleged by Sierra Club they're
23 alleging imprudence so that wouldn't work in the FAC, except
24 there's the realistic -- there's the practical real issue of
25 accounting for that in a prudence review.

1 When Commissioner Holsman asked for specific
2 data to be included and presented to the FAC, that was included
3 in the stipulation agreement that addressed the self-commit
4 issues. The answer from the Company was that that data was too
5 voluminous to even put into your filing system. An FAC review
6 is six months long and it addresses a multitude of issues that
7 are all put into the FAC, not just self-commit. I struggle to
8 see how an adequate prudence review of that one issue can be
9 done when everything else is considered.

10 I'd also invite you to read the testimony of
11 Staff's own witness Shawn Lange when discussing the self-commit
12 issue. He remarked that, Due to the highly confidential nature
13 of utilities market-bidding strategies, it is highly unlikely
14 that any party other than SPP or MISO have the raw data,
15 modeling software access, and resources to conduct such an
16 extensive analysis of market trends. Your staff is put in the
17 real problem scenario of they admit that they do not have all
18 data available to do a full complete prudence review of this one
19 issue in a prudence case.

20 In that situation, there is an inherent problem
21 with this framework. The utility will have more incentive to
22 engage in behavior where costs increase versus a situation where
23 they get 1 percent of the gains from reducing costs.

24 Now, how does OPC's proposal address that?
25 Again, here is a reprint of the current scenario and a

1 hypothetical where a utility like Ameren does the good thing and
2 reduce costs. Here is a representation of our proposal. We are
3 proposing tripling the efficiency incentive. The utility gets
4 15 percent of the gains and the customers only get 85 percent of
5 the gains. This is one of those rare instances in government
6 where you can have a win, win, win. The utility is still
7 recovering. Almost 99 percent of all fuel costs through this
8 FAC -- through our FAC mechanism. Customers are still insulated
9 from the majority -- they are still receiving fast majority of
10 the gains from fuel cost decreases and you can -- those two
11 results come from the fact that you have tripled the utility's
12 incentive to do better. This is not a punishment. This is a
13 balancing mechanism that is a good thing.

14 So why 85-15? Yes, Ms. Mantle turned to
15 recently passed legislation. SP564 passed in 2018 included the
16 Plans In-service Accounting provision or PISA. PISA had a
17 sharing mechanism for -- what is the best way to describe this
18 -- what was the concede of PISA? The promises that were made
19 down the street were that incentives were needed to encourage
20 utilities to engage in more capital investment in the state,
21 but, again, there was concern that if you just wholly
22 incentivize to and engage in capital expense that they'll just
23 run wild with money and engage in so much more cost and they'll
24 cause a rate shock. So a balancing was necessary.

25 The legislature, that is, representatives duly

1 elected by the people picked 85 percent, based off 15 percent is
2 the adequate skin in the game for the utility to still be
3 incentivized to engage in capital cost investment while also
4 insulating customers somewhat.

5 Now, there's been claim that this is a mismatch,
6 that FAC can't be compared to PISA because one's capital cost
7 and one's fuel costs. The idea is that capital cost can be
8 controlled but fuel cost can't. I mean, I think this is news to
9 a lot of people trading the markets right now. Capital cost can
10 increase due to international market. We've seen this with
11 tariffs, steel prices. Steel prices have gone up and fuel costs
12 are wholly -- fuel costs are not wholly in control of the
13 utility, but the utility does have control. They return to
14 short term and long-term contracts. There's hedging. Ameren
15 has an entire group devoted to the procurement of uranium, oil,
16 natural gas, and coal.

17 Frankly, if you go with our proposal, Ameren
18 would make money. Since Ameren's last rate case to now, Ameren
19 has given more money back to customers through the FAC than what
20 they -- they have given money back to customers through the FAC.
21 If we had gone with the 85-15 in Ameren's last rate case, Ameren
22 would make more money. That's what they are objecting to. The
23 only reason why you would have to disagree with that is that you
24 have to say that Ameren didn't have any control of its fuel
25 costs. I think that's a disservice to what the profession of --

1 the people Ameren is employing.

2 Why does Ameren Missouri employ Andrew Meyer to
3 be in charge of this fuel group if they have no control of their
4 fuel costs? Why not just have a single person who's pushing a
5 button at a randomly self-committing plant if there is no
6 control? There is control.

7 And we're not asking you to punch the Company.
8 We're asking you to increase the incentive for them to exercise
9 that control and to be better.

10 If you have any more questions on this point, I
11 can attempt to provide a more coherent -- I can attempt to
12 provide a coherent response. However, I invite you to ask
13 questions of our witness Ms. Mantle. She has nearly four
14 decades of experience in the utility sector working on both
15 Staff and Public Counsel. She has been working with the FAC
16 since its inception and she is our office's chief engineer.
17 Otherwise, in closing, I believe I have to formally ask that
18 this be -- I'm not admitting it for any -- I'm only asking that
19 it be in the record for demonstrative purposes.

20 JUDGE DIPPELL: I can mark that as a
21 demonstrative exhibit, and I will just -- just for the record
22 give it -- mark it as Exhibit 215 as a demonstrative exhibit,
23 and that is Public Counsel's PowerPoint from their opening
24 statement.

25 Are there any questions for Mr. Hall?

1 COMMISSIONER KENNEY: I have one brief question,
2 and I would ask Ms. Mantle but she hasn't been involved in all
3 these cases. But going back to 2008, OPC has recommended
4 sharing mechanisms from 50-50 all the way up to 90-10 and
5 several in between. Correct?

6 MR. HALL: Correct.

7 COMMISSIONER KENNEY: So this case, OPC is
8 recommending the 85-15 strictly on the fact that the legislature
9 made a decision on a piece of legislation to do that on what
10 many think is a different conflict?

11 MR. HALL: So I think that is a good question,
12 and that does deserve a clarification. So going back to this
13 slide -- I'm just going back one slide to Slide 5 addressing --
14 this shows our proposal versus what exists now. Public Counsel
15 has consistently believed that a higher incentive is needed in
16 the FAC, the utility needs more skin in the game, not only to
17 protect customers on the front end for when costs increase, but
18 also to encourage the utility to continue to decrease costs
19 going forward.

20 You're right, we have gone -- there has been
21 some different variations of the request. Even Staff at one
22 point suggested 85-15 in the past. Why we're picking 85-15 now
23 is because the legislature was silent when it first passed FAC.
24 It knew that you guys needed discretion to decide what incentive
25 was necessary, but it left that up to you. However, the

1 legislature has not stayed silent. When it most recent -- when
2 it has most recently been debating how much skin is needed in
3 the game, it drew on 85.

4 COMMISSIONER KENNEY: But the skin was -- you're
5 talking about fuel adjustment costs. Right?

6 MR. HALL: Yes. The debate that I'm --

7 COMMISSIONER KENNEY: This is the cost of --
8 we're talking about a fuel adjustment clause. Correct?

9 MR. HALL: Yes.

10 COMMISSIONER KENNEY: But the legislature did
11 not address a fuel adjustment clause. Right?

12 MR. HALL: The legislature did not amend this --
13 the legislature did not amend this statutory language regarding
14 the FAC and what the accepted mechanism is. Correct. I
15 believe --

16 COMMISSIONER KENNEY: They did talk about 85-15
17 in a different topic, a different subject, but it did involve
18 utilities. Correct?

19 MR. HALL: Correct.

20 COMMISSIONER KENNEY: So you're making the case
21 that because they made a distinction regarding a utility it goes
22 across the board? I mean, it should be in all costs?

23 MR. HALL: Rate mechanisms are inherently an
24 exception to the rule that I showed prior, which is that in a
25 pure regulatory lag framework there's just a zero-zero sharing.

1 I think since we have the most recent manifestation of what the
2 Missouri body politic is going to bear. That is 85-15. I think
3 that deserves some due consideration.

4 You are right, Commissioner, that they did not
5 amend this language. The legislature did not decide to
6 paternalistically tell you that this sharing in the infancy
7 shall be 85-15. But I don't believe it's because they wanted
8 you to just maintain 95-5 and stay the course with regulatory
9 nurtia; however, I do believe that this power was left to you
10 because there are cases, not in this case with Ameren that has
11 been a good actor recently, but there may be cases where a
12 higher sharing may be necessary, say a 50-50 sharing ratio may
13 be necessary if future evidence shows that a utility has engaged
14 in prudent behavior or isn't pursuing every cost effective
15 measure possible.

16 COMMISSIONER KENNEY: That makes sense. But
17 we're not saying Ameren has been imprudent. Correct?

18 MR. HALL: Correct.

19 COMMISSIONER KENNEY: The legislature told us
20 how PISA standard would be handled, 85-15. Correct?

21 MR. HALL: Correct.

22 COMMISSIONER KENNEY: Going forward. So they
23 told us it's 85-15 on PISA?

24 MR. HALL: Yes.

25 COMMISSIONER KENNEY: They haven't touched the

1 FAC, that statute? You just said they haven't -- that's what
2 we're dealing with. Right?

3 MR. HALL: So when you say haven't touched that
4 statute --

5 COMMISSIONER KENNEY: I mean, they didn't change
6 that statute? They didn't tell us what to do? They didn't go
7 in there and say we want it to be 85-15?

8 MR. HALL: So, Commissioner Kenney, I'm not
9 disagreeing with you. I'm not meaning --

10 COMMISSIONER KENNEY: You're not.

11 MR. HALL: There was -- there were amendments to
12 the specific statute. So SP564 did touch on that statute. So
13 for purpose of this record, this language --

14 COMMISSIONER KENNEY: You're dealing with five
15 ex-senators, offering an amendment doesn't mean much.

16 MR. HALL: So to answer your question, and
17 agreeing with you, this language that we're debating, that is
18 the language that authorizes the efficiency incentive, that was
19 not explicitly changed by SP564.

20 COMMISSIONER KENNEY: I think we agree on all
21 that.

22 MR. HALL: Yes.

23 COMMISSIONER KENNEY: Thank you.

24 JUDGE DIPPELL: Mr. Chairman, you had a
25 follow-up?

1 CHAIRMAN SILVEY: Yes. Thanks. Just to follow
2 up on that, the legislature clearly during that debate could
3 have?

4 MR. HALL: Could have amended this authorizing
5 language regarding the efficiency incentive? Yes, it could
6 have.

7 CHAIRMAN SILVEY: And they could have said
8 85-15, which is what you're wanting us to infer when they were
9 specifically silent; is that correct?

10 MR. HALL: What I'm asking you to consider from
11 the language within PISA is that we now have some explicit
12 guidance on what is the baseline sharing that is necessary to
13 encourage the utility to engage in investment while still
14 protecting customers. That is what the legislature decided was
15 a fair sharing. I don't believe the legislature --

16 CHAIRMAN SILVEY: But isn't it also fair to say
17 that the legislature decided that was a separate issue by not
18 addressing this when they specifically amended portions of this
19 statute?

20 MR. HALL: I can certainly see your argument,
21 Chairman, and reasonable minds may disagree, but I believe that
22 the legislature did not explicitly address this language for the
23 hypothetical that I presented, that 85-15 may be a baseline but
24 that there may be particular utilities that in certain instances
25 a different sharing mechanism may be required. Again, the FAC

1 statute does not state that the efficiency incentive is to be
2 uniform in all utilities. That is not to say we are targeting
3 Ameren on this issue. You can read the pre-file testimony of
4 Ms. Mantle in the ongoing Empire case, and we're raising the
5 85-15 again.

6 CHAIRMAN SILVEY: So following that line of
7 logic, that the Commission should have the ability to set the
8 rate differently to address specific situations where utilities
9 may need a higher cost-sharing. What has this utility done that
10 makes you believe that they should no longer have 95-5? Why are
11 we now talking about this?

12 MR. HALL: So there are two answers to that
13 question, and I think those hit on key points. One is that --
14 and with no offense to Ameren, they are the first -- they happen
15 to be the first utility with a rate case that is initiated
16 following the effective date of PISA. It would not have been
17 proper to raise that argument -- raise the PISA argument in the
18 last rate case. We're raising it as the rate cases come in.

19 CHAIRMAN SILVEY: But you've tried to -- you've
20 raised the argument of changing this cost-sharing in multiple
21 cases over the years.

22 MR. HALL: Oh, yes. But in this case I do
23 believe that there is, frankly, more basis than our past
24 arguments. It's a lot less nebulous. We are actually able to
25 point back to some specific guidance. And as a second answer to

1 your prior --

2 CHAIRMAN SILVEY: Is it specific guidance though
3 or is it you're inferring guidance when the legislature was
4 silent?

5 MR. HALL: I see it as specific guidance as to
6 what type of sharing was necessary to get legislation passed.

7 Now, as a second answer to your point though, so
8 we've heard from Ameren's counsel that this \$42 million figure
9 -- the \$42 million is real dollars, according to Ameren's
10 counsel. \$42 million is how much money and prudently incurred
11 cost that Ameren hasn't recovered over ten years throughout the
12 FAC. That is the 5 percent that was -- that is 5 percent of the
13 differential that was lost when costs increased over the past
14 ten years. If that is real dollars, then I wonder why Mr. Byrne
15 in his rebuttal testimony refers to \$218 million as not material
16 regarding the affiliate transaction issue. If \$218 million is
17 not material, I don't think \$42 million is an incentive. And so
18 that's why we think that a higher incentive may be necessary.

19 MR. LOWERY: And, Your Honor, I apologize, but
20 I'm going to have to object if Mr. Hall is going to testify
21 about what the record says. I'm confident Mr. Byrne did not say
22 \$218 million dollars -- the \$218 million disallowance that
23 Mr. Schallenberg proposed was not material. So he's misstating
24 the record. And I think since we don't have any other
25 opportunity to deal with that, I want to make sure the

1 Commission is aware of that.

2 MR. HALL: I would invite that the Commission
3 read the testimony now, and also I would remind everyone that
4 Mr. Byrne is going to be on the stand today and we can address
5 that.

6 JUDGE DIPPELL: The testimony will speak for
7 itself at this point, assuming that it gets entered into the
8 record.

9 CHAIRMAN SILVEY: I have no more questions at
10 this time.

11 JUDGE DIPPELL: Commissioner Rupp?

12 COMMISSIONER RUPP: Good morning. I appreciate
13 the shout out from the 1 percent from last week's. I guess this
14 boils down to -- you know, going back to your comment about, you
15 know, the hearing we had last week, if a half a cent is not
16 sending a price signal on the time of use rates, is -- are we
17 sending a price signal strong enough to this company to, you
18 know, change their behavior or to incentivize their behavior?
19 Is that kind of where you're going with this? Is there not
20 enough of an incentive for them to alter behavior where these
21 levels are?

22 MR. HALL: I think that was the argument I was
23 trying to make. I could state it more eloquently.

24 COMMISSIONER RUPP: No, no. I think you did it
25 well. I think the chairman brought up something like has Ameren

1 done anything, you know, to show evidence and stuff that they
2 haven't been prudent or done anything -- not cutting enough
3 costs or something. I can't remember exactly what he said, but
4 -- and I don't believe they have in this case. However, let's
5 assume there is a scenario where maybe there is a utility that
6 has historically lost, let's say, I don't know, \$100 million in
7 their hedging practices and there hasn't been any change from
8 that utility because there's not really an incentive because it
9 kind of flows through the FAC. Do you envision that being a
10 scenario where there's not a strong enough of a price signal to
11 the utility to change a behavior and change their practices when
12 they have continually just had cost, cost, cost?

13 MR. HALL: I can certainly imagine in that
14 hypothetical that that is a scenario where one person could -- a
15 person could reasonably ascribe that type of behavior to a lack
16 of incentive to decrease costs. I would need to know more
17 particulars on why the hedging practice was adopted and what
18 exactly we're dealing with.

19 COMMISSIONER RUPP: Then I sincerely hope that
20 in future cases that may come before this commission that your
21 guys' office take strong consideration of your argument if
22 certain situations like that were to present themselves.

23 MR. HALL: Of course. Duly noted.

24 COMMISSIONER RUPP: Excellent. Thank you.

25 JUDGE DIPPELL: Commissioner Holsman?

1 COMMISSIONER HOLSMAN: Thank you. So I had the
2 benefit of actually being in the room when this -- the 564 was
3 being debated and discussed. I think that it is very clear by
4 the legislature not taking a specific amendment or action on
5 this language, the intent was to allow for this commission to be
6 the arbiter of that percentage going forward, and the fact that
7 PISA is 85-15 as the legislature's determination that that's
8 where they wanted those percentages to fall for that particular
9 section of the statute.

10 Now, having said that, you also said that Ameren
11 hasn't done anything that has raised a flag or required to seek
12 a change from the 95-5 or that they've done anything to abuse
13 that. So why -- my position would be this commission because of
14 that statute possesses the ability to make those changes
15 whenever we determine those changes are necessary. So I
16 wouldn't automatically dismiss a change if a utility has shown
17 behavior that needs to have an adjustment. But this case may
18 not be that place to do it if, by your own admission, there
19 hasn't been the behavior to necessitate it.

20 So going forward, the scenario where you said
21 50-50 might be more appropriate to fix a problem, there's
22 nothing in that statute that prohibits us from making that
23 determination except for the circumstantial evidence that we'd
24 require at this time. So I'm open to future changes, but I
25 would like to see the evidence behind the utility's behavior

1 that's necessitating it.

2 MR. HALL: I can certainly respect that
3 response, Commissioner Holsman. But if I may, I think a
4 realistic consideration for our office is that we needed to
5 demonstrate that our suggestion that the FAC the share mechanism
6 should be changed we need to demonstrate that it's sincere. We
7 can't just say, well, 17 times is the charm. No. If we had not
8 -- there is a reason why this is one of that last remaining
9 issues to be litigated. If we hadn't raised this issue for this
10 case, when it came up in Empire this commission may reasonably
11 judge us as not being sincere in our arguments and that we're
12 just picking on Empire. I think Ameren is correct that
13 regulatory consistency is a key to good government. So we're
14 asking that the FAC incentive be changed for not only Ameren,
15 but --

16 COMMISSIONER HOLSMAN: But if regulatory
17 consistency were the paramount subject, the legislature would
18 have changed the statute and made it consistent with PISA. The
19 fact that they didn't means that consistency is not the most
20 important aspect here, that our judgment of being the
21 representatives for the Commission to make this determination is
22 what is important going forward. So if Empire has a different
23 set of circumstances that has your office saying we need to have
24 an adjustment here, that's up to us to decide whether that
25 evidence is there to agree with you, not necessarily just saying

1 we need to make a change for the sake of future cases that may
2 requisite.

3 MR. HALL: Commissioner Holsman, I don't believe
4 we actually disagree on that point, and you certainly have more
5 first-hand knowledge of what was discussed on the senate floor
6 versus my own. But we agree that the legislature maintain your
7 discretion. They have not paternalistically told you that FAC
8 shall remain 95-5 regardless of changes. From Ameren's filing
9 reduced its fuel costs like -- when they filed this case, it
10 reduced its fuel costs, its net based fuel costs \$108 million.
11 That was a good thing. They should be -- utilities should be
12 rewarded for good behavior and that is what the 85-15 proposal
13 does.

14 COMMISSIONER HOLSMAN: Apparently not according
15 to the utility in this particular instance. Maybe in one in the
16 future they may see a benefit in making that change, but now
17 they're in opposition to that change, and without any evidence
18 of saying it's requisite, I think that -- my position would be
19 open to that change in the future. So if your office sees it
20 being -- evidence as being present, I encourage you to continue
21 to have this discussion, but that's the position that I feel
22 we're at at this juncture. Thank you.

23 JUDGE DIPPELL: Commissioner Rupp, do you have
24 another question?

25 COMMISSIONER RUPP: Yes, I did. I want to

1 follow up on Commissioner Holsman's question. Would your office
2 take issue if this commission decided that the FAC amounts was
3 not uniform for all utilities, if we looked at it as an
4 incentive to the utility and we had made adjustments of those
5 based off the actions of that utility, or do you think from your
6 office standpoint that all utilities need to be treated the same
7 when it comes to the FAC?

8 MR. HALL: See, you never want to ask an
9 attorney an ever or a never question, because they'll never give
10 you a straight answer. But what I can tell you is, I see
11 nothing in this statute that prohibits that type of regulatory
12 framework where an FAC sharing mechanism may be different in one
13 utility versus another. Again, that's left to your discretion.
14 That's not what we're asking for at this time.

15 JUDGE DIPPELL: Any other questions,
16 commissioners?

17 All right. Mr. Hall, you may step down.

18 At this time I would like to go ahead and take a
19 short break. We're going to break for ten minutes, and then
20 when we return, we're going to try to continue with all of the
21 witnesses and maybe even finish before agenda time. We will
22 stop at probably around ten till noon for agenda.

23 So let's go ahead and take a short break and
24 come back at 10:15.

25 (OFF THE RECORD.)

1 JUDGE DIPPELL: Okay. We're back on record
2 after our break. We are ready to begin with witnesses. Ameren?

3 MR. LOWERY: Your Honor, we call Andrew Meyer to
4 the witness stand.

5 (Witness sworn.)

6 JUDGE DIPPELL: Go ahead, Mr. Lowery.

7 MR. LOWERY: Thank you, Your Honor.

8 ANDREW MEYER, being duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. LOWERY:

10 Q. Mr. Meyer, would you please state your name for
11 the record?

12 A. Andrew Meyer.

13 Q. Did you cause to be prepared for filing in this
14 docket three pieces of testimony direct, rebuttal, and
15 surrebuttal, which have been marked for identification as
16 Exhibits 6, 7, and 8?

17 A. Yes.

18 Q. Do you have any corrections to any of those
19 testimonies?

20 A. I do not.

21 Q. If I were to pose the questions that appear in
22 those testimonies to you today, would your answers be the same
23 as given in the testimony?

24 A. Yes, they would.

25 JUDGE DIPPELL: Mr. Meyer, could I get you to

1 move that microphone so that -- there. Thank you.

2 MR. LOWERY: With that, Your Honor, I offer the
3 direct, rebuttal, and surrebuttal testimonies of Mr. Meyer,
4 Exhibit 6, 7, 8 and tender the witness for cross-examination

5 (WHEREIN; Exhibits 6, 7, and 8 were offered into
6 evidence.)

7 JUDGE DIPPELL: Would there be any objection to
8 Exhibit 6, 7, or 8? Seeing none, then I will admit those
9 exhibits.

10 (WHEREIN; Exhibits 6, 7, and 8 were received
11 into evidence.)

12 JUDGE DIPPELL: Is there cross-examination by
13 staff?

14 MS. BRETZ: Nothing, Judge.

15 JUDGE DIPPELL: Consumers Council?

16 MR. COFFMAN: Sure, Your Honor.

17 CROSS-EXAMINATION BY MR. COFFMAN:

18 Q. Good morning, Mr. Meyers.

19 A. Good morning.

20 Q. My name is John Coffman. I represent Consumers
21 Council. Let me just ask you a couple of preliminary questions.

22 Is the fuel adjustment clause sharing mechanism
23 a mechanism that allocates cost or allocates risk?

24 A. My understanding of the fuel adjustment clause
25 mechanism is that it is designed to allow utilities to recover

1 prudently incurred fuel costs.

2 Q. But the sharing mechanism itself is a mechanism
3 that allocates risk between the utility and its shareholders and
4 the customers. Correct?

5 A. Yes. There's an incentive aspect to it, yes.

6 Q. And so when we're talking about 95 percent, 5
7 percent, we're not talking -- we're talking about which of the
8 two sides of the scales here have to bear the risk of
9 volatility. Correct?

10 A. And cost.

11 Q. Right. Right. And that translates into cost
12 and it could be up or down. But can you tell me why you think
13 it's fair that customers have to bear 95 percent of the
14 volatility of fuel costs in between rate cases?

15 A. The utility has an obligation to serve
16 affordably, and we have this generation fleet that's there,
17 that's a least cost solution, so we try to operate it, you know,
18 to provide reliable service.

19 Q. And the utility has some control of where those
20 fuel costs land. Correct?

21 A. We have a hedging program for most of the
22 commodities we manage, but that doesn't get us to 100 percent
23 certainty. And that hedging program only impacts the rate that
24 we might pay. There's still another aspect of the calculation
25 of the volume. It's rate times volume is going to get you the

1 total cost, and the volume of fuel consumed can fluctuate for
2 its own whole host of reasons, just like the rate can.

3 Q. How many employees, how many FTEs does Ameren
4 employ to manage fuel costs?

5 A. Specifically in our fuel procurement group
6 there's ten to 12, I guess.

7 Q. And I assume that there is -- that they're not
8 just sitting around just watching the numbers come in. Those
9 folks have to pay attention and make decisions to try keep those
10 costs under control. Correct?

11 A. Absolutely.

12 Q. And so you would concede, would you not, that
13 Ameren has some control, and those ten employees exercise
14 control in trying to manager those costs?

15 A. We do not control the market. The market
16 fluctuates with supply and demand, you know, at its own will.
17 We are a very, very small component of that. If you're talking
18 about the rates that we pay for specific commodities, yes the
19 hedging program allows us some influence over the rate. The
20 volume is still largely in question.

21 Q. And the decisions that those ten employees make
22 have consequences for what -- how the numbers actually fall out
23 in the fuel adjustment clause. Correct?

24 A. Yes.

25 Q. And do customers have any control over the

1 hedging, over the volume or the rates at all?

2 A. The fuel adjustment clause rates?

3 Q. Yeah. Do customers have any control over how
4 those costs fall out in the fuel adjustment clause charges that
5 they have to pay?

6 A. No, they do not.

7 Q. So why is it fair that customers have to bear 95
8 percent of the risk of those decisions?

9 A. Because they're costs that are prudently
10 incurred to result in a benefit to the customer.

11 Q. So you would agree with me that the 95-5 is a
12 risk sharing -- I mean, you can -- I guess you can look at it as
13 a cost sharing, but it's also a risk sharing. Right? The risk
14 of volatility, the risk of fuel cost changing over time.
15 Correct? That is, under this mechanism, the change is borne 95
16 percent on consumers and 5 percent on the utility under the
17 current mechanism; is that --

18 MR. LOWERY: Your Honor, I'm going to object.
19 It's asked and answer about three times.

20 MR. COFFMAN: I don't think I got a straight
21 answer.

22 JUDGE DIPPELL: I'll allow him to answer.

23 THE WITNESS: Yes, there is some risk on both
24 parties.

25 BY MR. COFFMAN:

1 Q. And when you allocate risk -- you know, a risk
2 doesn't go away by putting into a mechanism, it's transferred
3 from one side to the other. Right? If you were to change the
4 current mechanism from 95-5 to 85-15, that would be transferring
5 some of the risk from customers back to the utility. Correct?

6 A. Yes.

7 Q. Risk is a zero-sum gain. Do you agree with
8 that?

9 A. Sure.

10 Q. All right. And so Ameren is -- would you say
11 that Ameren is comfortable with only having to bear 5 percent?
12 Would you desire that to be zero percent? Would you like
13 consumers to bear 100 percent of the risk?

14 A. No. We propose keeping the status quo
15 mechanism.

16 Q. I mean, Ameren wasn't -- didn't like any
17 percentage originally, right, in 2008, 2009, but you've grown
18 accustomed to 5 percent? You can live with it; is that fair?

19 A. That's correct.

20 Q. Okay. And would you concede that it is a
21 symmetrical mechanism? So if the mechanism is changed to, say,
22 let the utility bear 15 percent of the risk of fluctuation,
23 would some years -- financially, would that benefit the utility
24 and some years not? It could go up and down; is that fair?

25 A. Yes.

1 Q. Okay. But you don't believe that that small
2 change from 5 to 15 percent would incent any more cost-effective
3 behavior?

4 A. We have a whole list of reasons why we try to
5 reduce fuel costs as much as we have. I mean, it starts with
6 the fuel adjustment clause in and of itself. As you described
7 earlier, you know, it's a privilege, not a right. And so we
8 totally recognize that we come forward and ask for it in every
9 one of these occasions and if we're not acting prudently, it
10 could just be taken away entirely. And then probably the next
11 biggest reason is the prudence review mechanism. You know,
12 we're making economic decisions, we're not considering 5 percent
13 of the exposure. We're making economic decisions on a full
14 notional value and if that decision is deemed to not be prudent,
15 we expect Staff to identify it in a prudence review and we
16 expect the Commission to disallow it.

17 Q. I know you're not a lawyer, but I assume that
18 you're intimately familiar with the fuel adjustment clause
19 statute? You've read it?

20 A. I've read it.

21 Q. And so you're familiar with the provision that
22 was projected up there that talks about the incentive mechanism
23 for cost effectiveness?

24 A. Right.

25 Q. And that provision doesn't say that that should

1 be based on bad acts or abuses by the utility, does it? It's
2 not set up as penalty?

3 MR. LOWERY: Objection to the extent it calls
4 for a legal conclusion about what the statute is set up to do or
5 not to do.

6 JUDGE DIPPELL: I agree.

7 MR. COFFMAN: I'll withdrawal.

8 JUDGE DIPPELL: Thank you.

9 BY MR. COFFMAN:

10 Q. Is it your opinion that Ameren should not have
11 to bear anymore than 5 percent of the volatility risk unless it
12 has been caught red-handed with some imprudence finding? Does
13 that --

14 A. We already -- in the instances where something
15 is deemed to be imprudent, we already bear more than 5 percent.
16 Again, whatever that decision, the notional exposure of that
17 decision was, I expect the full amount of it to be disallowed.

18 Q. Okay. All right. Well, let's just take all the
19 other considerations we talked about aside. If the sharing
20 percentage is -- if it were changed to say 50-50 sharing, there
21 would still be volatility, but it would be smoothed out over
22 time, would it not, for consumers from what it is currently?

23 A. Volatility in what? The actual fuel adjustment
24 clause rate?

25 Q. In how much fuel cost changes consumers have to

1 bear.

2 A. Who's paying the bill? Yes.

3 Q. This is what I'm trying to getting at. Tell me
4 if you agree. The sharing percentage in one sense is about
5 volatility. Right? How much customers should have to bear as
6 far as fuel cost changes in between rate cases?

7 A. It's an allocation of who's going to pay for
8 prudently incurred costs.

9 Q. And over time the more risk that consumers are
10 asked to bear, the more volatile those rates are likely to be in
11 between rate cases; is that fair?

12 A. I'm not sure I get to that conclusion.

13 Q. Do you understand the fuel adjustment clause to
14 be a volatility allocator, an allocator of volatility?

15 A. No. I consider the commodity market themselves
16 to be volatile and uncertain. The rate, to me, is a reflection
17 of what actual costs were, you know, when compared to the base
18 that was set in the rate case.

19 Q. And so it's your opinion that customers should
20 bear 95 percent of that actual volatility of fuel costs?

21 A. We've asked to keep the sharing mechanism the
22 same, yes.

23 Q. If that sharing percentage is changed to
24 allocate some of the risk back to the utility, would that not
25 result in a smoothing out the fuel adjustment clause changes for

1 consumers over time? The increases won't be as high and the
2 decreases won't be as low; is that fair?

3 A. If you're asking me to assume that the
4 deviations from the base factor are always the same and they
5 share in less of the cost, then yes.

6 Q. So which side -- which side do you think is
7 better? From the customer side and the utility side, which side
8 is better able to absorb volatility and costs? Take my mother
9 for example, living on a fixed income, do you think that she has
10 the financial tools to mitigate changes in her rates as well as
11 the Ameren Missouri utility?

12 A. I don't know.

13 MR. COFFMAN: Okay. Fair enough. That's all I
14 have.

15 JUDGE DIPPELL: Thank you. Public Counsel?

16 CROSS-EXAMINATION BY MR. HALL:

17 Q. Mr. Meyer, good morning.

18 A. Good morning.

19 Q. Help me out here. Am I getting this right?
20 You're the senior director of the Energy Management and Trading.
21 Is that a group within Ameren Missouri?

22 A. It is.

23 Q. How many people are in that group?

24 A. Roughly 50 people, but not all of them are
25 devoted to FAC management issues.

1 Q. Okay. Do you oversee all of those people?

2 A. I do.

3 Q. Is there anyone above you in the Energy
4 Management and Trading Group?

5 A. I report to the vice president and president of
6 Power Operations and Energy Management and Trading.

7 Q. Okay. How long have you been in that trading
8 group?

9 A. I've worked in that trading group essentially my
10 whole Ameren career, which is 21 years now.

11 Q. Twenty-one years. Have you always been with
12 Ameren?

13 A. I had a job previously, but no.

14 Q. Your testimony says you were employed with
15 Continental Grain Company; is that correct?

16 A. That's correct.

17 Q. I was looking into them. They're headquartered
18 in New York. Were you in New York or were you working in
19 Missouri?

20 A. I was working in Memphis.

21 Q. Okay. Thank you. When I hear Continental Grain
22 Company, they're a -- what were you doing there?

23 A. My role was a grain merchandiser, so I would
24 procure grain from local farmers or small elevators, and then we
25 would resell it for export purposes.

1 Q. So you were like trading commodities. Is that a
2 fair description of your job, you were working with trading
3 commodities?

4 A. It was a procurement function.

5 Q. How long were you in that job?

6 A. About two years.

7 Q. Mr. Meyer, do you have a copy of your testimony
8 in front of you?

9 A. I do.

10 Q. Could you turn to the schedule that you attached
11 in your rebuttal, AMMR1.

12 A. I have it.

13 Q. I don't want to come across as rude in this
14 question, but did -- so this was attached to your testimony.
15 Did you prepare this table?

16 A. No. It was prepared at my request.

17 Q. Did you review the cases that are listed in this
18 table?

19 A. No, not each one individually.

20 Q. Am I hearing correctly, you didn't review the
21 first one that's listed, ER-2007-0002?

22 A. Well, what do you mean by review? Did I read
23 all the testimony? Did I --

24 Q. Fair point. Did you read the report and order
25 for that rate case, ER-2007-0002?

1 A. No, I did not.

2 Q. You did not read that in that case the
3 Commission actually did not approve an FAC?

4 A. I did not read that. No.

5 MR. HALL: Your Honor, at this time I would ask
6 that the Commission take notice of this report and order from
7 that aforementioned docket, just as the Commission has with all
8 the other dockets listed.

9 JUDGE DIPPELL: Just one second. Would there be
10 any objection to the Commission taking notice of the report and
11 order in ER-2007-0002?

12 MS. TATRO: None here.

13 MR. LOWERY: I assume, Your Honor, that the
14 entire -- I mean, I don't care, but the entire report and order
15 or just the FAC section?

16 JUDGE DIPPELL: Since we don't have it before
17 us, I would say the entire report and order.

18 MR. LOWERY: No objection.

19 JUDGE DIPPELL. I will take notice of that.

20 MR. HALL: Thank you, Mr. Meyer. No further
21 questions.

22 JUDGE DIPPELL. Are there any commission
23 questions for Mr. Meyer? Mr. Chairman?

24 CHAIRMAN SILVEY: Yes. Thank you.

25 QUESTIONS BY CHAIRMAN SILVEY:

1 Q. How often under the current FAC have you seen
2 over recovery versus under recovery?

3 A. I just read those statistics here recently in
4 Lena's testimony I believe, but I think for the first part of us
5 having an FAC, you know, for roughly the first several years it
6 trended towards an under recovery, and so we were collecting
7 back additional actual expenses from customers, and most
8 recently it sort of switched to an over recovery. So we've been
9 offering refunds.

10 CHAIRMAN SILVEY: Thank you.

11 JUDGE DIPPELL: Commissioner Kenney?

12 COMMISSIONER KENNEY: Thank you.

13 QUESTIONS BY COMMISSIONER KENNEY:

14 Q. On your rebuttal testimony, Pages 12 and 13, on
15 Line 17 you said, There's a distinct minority of utilities
16 having sharing of costs at all. And then -- so I just had a
17 question, vertically integrated states, how many utilities have
18 FACs?

19 A. I don't have an exact answer for you. I'm
20 sorry.

21 Q. You don't know?

22 A. I don't know.

23 Q. The question on Page 15 says how would even
24 greater sharing percentage for Ameren Missouri compared to the
25 FACs of the other 97 utilities operating in non-restructured

1 states. That's on Page 12, question 15. So I would assume if I
2 took that to be like 98. I guess my question is: How many of
3 those utilities -- do you know how many of those utilities have
4 a sharing mechanism?

5 A. The Company commissioned a review of this. It's
6 probably been three and a half years ago where we broke it all
7 out and identified sharing mechanisms. I just do not have the
8 exact number of how many actually have a sharing mechanism for
9 you.

10 Q. Do you happen to know how many have a sharing
11 mechanism greater than 5 percent?

12 A. Again, I don't have the specific details of it.

13 Q. Okay. Well, the reason I'm asking those
14 questions is because you said that -- and I'm going to trying to
15 understand what it is -- that a distinct minority of utilities
16 have sharing of costs at all, from an investor standpoint and
17 from the standpoint of putting Missouri electric utilities on
18 comparable footing with their peers, even the 5 percent share of
19 net energy cost increases at Missouri utilities must bear places
20 them at a disadvantage. So I kind of want to know what is that
21 disadvantage and how does that additional -- what encompasses
22 that disadvantage that you feel that Ameren has that other
23 companies that don't have a cost-sharing mechanism don't have?

24 A. So in terms of a disadvantage from a utility
25 that recovers 100 percent of their cost versus, in this case,

1 Ameren Missouri that recovers 95 percent, I think the
2 disadvantage is in the investor perspective. So if you look at
3 a utility that is -- you know, there is a -- that has a fuel
4 adjustment clause mechanism that may not allow it to recover 100
5 percent of its prudently incurred costs or a fuel adjustment
6 mechanism that is, you know, subject to change with any
7 frequency. If I'm an investor, I would look at that and say
8 that's just another indication that the utility may not be able
9 to earn its allowed return on equity.

10 Q. Okay. Given the amounts we're talking about and
11 the size of Ameren, would that be considered de minimis?

12 A. Well, the number that we've been throwing about,
13 and, again, it's over ten years, is \$42 million. So I don't
14 consider that number de minimis.

15 COMMISSIONER KENNEY: Forty-two million dollars
16 over ten years. All right. Thank you.

17 JUDGE DIPPELL: Commissioner. Rupp, any
18 questions?

19 COMMISSIONER RUPP: No.

20 JUDGE DIPPELL: Commissioner Holsman -- I'm
21 sorry, Commissioner Coleman, do you have any questions?

22 COMMISSIONER COLEMAN: No. Thank you.

23 JUDGE DIPPELL: Commissioner Holsman?

24 COMMISSIONER HOLSMAN: Yes. Just one brief one.

25 QUESTIONS BY COMMISSIONER HOLSMAN:

1 Q. If cost sharing were to go to 85-15, do you
2 think that that would hasten the shuttering of coal plants?

3 A. The decision to shutter any coal plants is
4 really a long-term resource planning decision. So --

5 Q. Scheduling issues and, you know, you don't think
6 that it would provide an incentive to close the coal plants
7 faster than they would have otherwise?

8 A. No. I mean, when you're looking at the fuel
9 adjustment clause cost, you know, we're looking at the
10 short-term view of the market, you know, on an hourly, daily,
11 maybe up to a year basis. But that decision to shut the coal
12 plant really is a long-term planning decision. So I don't see
13 any connection there.

14 COMMISSIONER HOLSMAN: Thank you.

15 JUDGE DIPPELL: Are there any additional
16 cross-examination questions based on questions from the bench?
17 Staff?

18 MS. BRETZ: None.

19 JUDGE DIPPELL: Consumers Council?

20 MR. COFFMAN: Nope.

21 JUDGE DIPPELL: Public Counsel?

22 MR. HALL: Yes, briefly. Thank you.

23 CROSS-EXAMINATION BY MR. HALL:

24 Q. Mr. Meyer, in your conversation with
25 Commissioner Kenney you noted a hypothetical investor may look

1 at an 85-15 sharing and think that that's an indication the
2 utility may not reach its authorized return. Am I
3 characterizing your answer correctly?

4 A. Yes.

5 Q. Are you saying that Ameren Missouri is reliant
6 on a 95-5 sharing to reach its authorized return?

7 A. No. There's multiple factors.

8 MR. HALL: Thank you. No further questions.

9 JUDGE DIPPELL: Is there any redirect?

10 MR. LOWERY: Just a little bit, Your Honor.
11 Your Honor, if you would indulge me, I didn't anticipate this
12 question, but Commissioner Kenney had a number of questions
13 about how many other utilities and the 97 utility figure. I
14 have the work paper that Mr. Meyer relied upon for that with me,
15 if we can get the commission copies. I, obviously, can't give
16 you a copy off of my computer, but I'd like to refresh his
17 recollection about that, if I could.

18 JUDGE DIPPELL: Would there be any objection?

19 MR. HALL: Not an objection, but could other
20 counsel see this document before?

21 MR. LOWERY: You've seen it in discovery, at
22 least in the last case.

23 REDIRECT EXAMINATION BY MR. LOWERY:

24 Q. Mr. Meyer, you recall -- and I'll let you
25 operate the computer -- you recall Commissioner Kenney asking

1 you some questions about other electric utilities and the
2 sharing percentages that they did or did not have in their fuel
3 adjustment clauses? Do you recall that?

4 A. I do.

5 Q. And your testimony indicates that there were, I
6 believe, 97 other electric utilities that have fuel adjustment
7 clauses; is that right?

8 A. That's correct.

9 Q. And is this document in front of you, which we
10 will provide to the Commission, you -- you've mentioned
11 something about the Company commissioning a survey about three
12 or three and half years ago. Is this the source of the
13 information that you have in your testimony and that you were
14 discussing with Commissioner Kenney?

15 A. It is.

16 Q. Can you share with Commissioner Kenney, I guess,
17 some statistics that might answer the questions that he had?

18 A. So there's a line item in here, the FAC passes
19 through 100 percent of cost changes to ratepayers, at which
20 point in 2015 80 utilities had an FAC that had that mechanism.

21 Q. Out of 97?

22 A. Correct.

23 Q. And would those have included the Missouri
24 utilities that had 95-5?

25 A. That passed through 100 percent?

1 Q. Actually bad question. The 17 that had
2 something other than a hundred percent, would they have included
3 the Missouri utilities?

4 A. Yes.

5 Q. Any other statistics there that were responsive
6 to Commissioner Kenney's questions?

7 A. (Witness shook head.)

8 MR. LOWERY: Thank you. We'll get copies, Your
9 Honor, and mark it as an exhibit if you would like.

10 JUDGE DIPPELL: I don't think it's necessary,
11 unless the other parties would like it in the record.

12 MR. LOWERY: We can or we don't need to. I'm
13 just offering it up.

14 MR. HALL: I believe a witness is entitled to
15 look at a document to refresh his memory. This is -- refresh
16 his or her memory rather. If Ameren wishes to admit it, we have
17 no objection, but we have no preference.

18 JUDGE DIPPELL: We don't need it then,
19 Mr. Lowery.

20 MR. LOWERY: Okay. Thank you.

21 BY MR. LOWERY:

22 Q. I want to go in reverse order, just a couple of
23 questions. Commissioner Holsman asked you about whether or not
24 changing the sharing percent would have something to do with the
25 economics of the coal plants, right, in terms of when they might

1 be decommissioned or not decommissioned? Do remember that?

2 A. I do.

3 Q. When you are making decisions about committing
4 the units or what incremental costs you would bid the units into
5 the market, does the sharing percentage have anything to do with
6 those decisions?

7 A. No, absolutely not. When we're making unit
8 commitment decisions, we're considering the full notional value
9 of the decision, and so if we're deciding whether or not a unit
10 should be turned on and operate in the market for tomorrow,
11 we're doing a daily evaluation to try to inform us on what's in
12 the best interest of the customers, should it be running, will
13 it create a positive margin for them or not.

14 Q. So if the Company was bearing a greater
15 percentage of changes in the FAC, but the unit was economic for
16 customers, then the Company could continue to run the unit.
17 Right?

18 A. That's correct.

19 Q. You were asked some questions, I think they were
20 by Mr. Coffman primarily, about the 95-5 versus the 85-15, and
21 he was trying to get you to, I think, indicate that the 95-5 is
22 in your mind the right sharing percentage. Do you remember
23 those questions?

24 A. I do.

25 Q. What's your position on whether there ought to

1 be a sharing percentage -- in the absence of the Commission
2 having made this decision for the last 11 years, what would have
3 been your personal opinion about having a sharing percentage of
4 the FAC?

5 A. My personal opinion is that we don't need any
6 sharing percentage. I feel like we have our processes down and
7 we have all the -- you know, such that the unit commitment
8 decisions we're making, we're making those decisions in the vein
9 of what benefits customers most, and in terms of incentive to
10 keep the fuel costs down. I mentioned in a previous answer, I
11 feel like we have a list of reasons to incentivize us to manage
12 our fuel costs efficiently.

13 Q. Mr. Coffman asked you some questions about
14 control over -- who has relative control over the various
15 components. Do you remember that?

16 A. I do.

17 Q. And I think you answered -- you did mention
18 hedging that the Company does. Right?

19 A. Yes.

20 Q. Is hedging your fuel needs at a given time, does
21 that equate to control or are they different things?

22 A. It's not control. I mean, the point of the
23 hedging program is to narrow the range of possibilities on what
24 the ultimate expense may be. But, again, you're only providing
25 a fractional amount of certainty on the rate component. The

1 volume can still change, and so the ultimate expense, we have no
2 control over that.

3 Q. You were asked, I think, questions by
4 Mr. Coffman and by Mr. Hall about the number of employees you
5 have in your group. Do you remember those?

6 A. Yes.

7 Q. I think Mr. Coffman was more specific. He was
8 asking, I think, about employees that deal with fuel. Do you
9 remember that?

10 A. Yes.

11 Q. How have the decisions those employees made
12 recently, how have they manifested themselves in this rate case?

13 A. Again, as was previously mentioned in the
14 opening statements, but if you look at what we've done with net
15 fuel costs, I mean they've come down dramatically. So a
16 comparison of net base energy costs in this filed case compared
17 to net based energy costs in the filed case from 2016, they have
18 been reduced by \$108 million.

19 Q. And what was the sharing percentage that was in
20 place when you were taking those steps to reduce net fuel costs
21 by \$108 million?

22 A. It was 95-5.

23 Q. Just to be clear for the record, would your
24 actions have been any different if it was 100-0 or 85-15?

25 A. They would not.

1 MR. LOWERY: That is all I have, Your Honor.
2 Thank you.

3 JUDGE DIPPELL: Thank you. Mr. Meyer, you may
4 step down.

5 Would Ameren like to call its next witness?

6 MR. LOWERY: We call Tom Byrne to the stand.
7 (Witness sworn.)

8 JUDGE DIPPELL: Thank you. You can go ahead,
9 Mr. Lowery.

10 TOM BYRNE, having been duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. LOWERY:

12 Q. Please state your name for the record?

13 A. Tom Byrne.

14 Q. Mr. Byrne, did you cause and prepare for filing
15 in this docket direct and rebuttal testimony and surrebuttal
16 testimony marked for identification as Exhibits 2, 3, 4?

17 A. Yes, I did.

18 Q. Do you have any corrections to any of those
19 testimonies?

20 A. No.

21 Q. If I were to pose the questions that appear in
22 those testimonies to you today, would your answers be the same?

23 A. Yes.

24 MR. LOWERY: With that, Your Honor, I offer
25 Exhibits 2, 3, and 4 and tender Mr. Byrne for cross-examination.

1 (WHEREIN; Ameren Exhibits 2, 3 and 4 were
2 offered into evidence.)

3 JUDGE DIPPELL: Would there be any objection to
4 Exhibit 2, 3 or 4?

5 MS. TATRO: None here.

6 JUDGE DIPPELL: Seeing none, then I will admit
7 those exhibits.

8 (WHEREIN; Ameren Exhibits 2, 3 and 4 were
9 received into evidence.)

10 JUDGE DIPPELL: Is there cross-examination from
11 Staff?

12 MS. BRETZ: No, Your Honor.

13 JUDGE DIPPELL: Consumers Council?

14 MR. COFFMAN: I'll pass on Mr. Byrne for today.
15 Thanks.

16 JUDGE DIPPELL: Public Counsel?

17 MR. HALL: No questions. Thank you.

18 Good morning, Mr. Byrne.

19 THE WITNESS: Good morning.

20 JUDGE DIPPELL: Are there questions from the
21 Commission for Mr. Byrne?

22 All right. Oh, I'm sorry, Commissioner Rupp, go
23 ahead.

24 QUESTIONS BY COMMISSIONER RUPP:

25 Q. Good morning.

1 A. Good morning.

2 Q. Do you feel that \$218 million is irrelevant?

3 A. No. It is a huge number.

4 Q. Huge number. Is \$42 million irrelevant?

5 A. It's a huge number. It's very relevant.

6 Q. It's not a rounding error?

7 A. It's not a rounding error.

8 COMMISSIONER RUPP: Thank you.

9 JUDGE DIPPELL: All right. Any further
10 cross-examination based on Commission questions from Staff?

11 MS. BRETZ: Nothing.

12 JUDGE DIPPELL: Consumers Council?

13 MR. COFFMAN: No, Your Honor.

14 JUDGE DIPPELL: Public Counsel?

15 MR. HALL: None. Thank you.

16 JUDGE DIPPELL: Is there any redirect?

17 MR. LOWERY: Yes, Your Honor.

18 REDIRECT EXAMINATION BY MR. LOWERY:

19 Q. Mr. Byrne, Commissioner Rupp just asked you
20 about the \$218 million figure, and I assume that he probably
21 asked you that because of what Mr. Hall said during his
22 questioning and answers to his questions. Do recall that?

23 A. Yes.

24 Q. Did Mr. Hall fairly characterize your rebuttal
25 testimony when he indicated that you claim that you said that

1 \$218 was not material?

2 A. No, he didn't.

3 Q. Could you turn to Page 2, Lines 22 and 23 of
4 your rebuttal testimony, please.

5 A. Okay. I'm there.

6 Q. When you said that Ameren Missouri has no
7 material level of transactions with unregulated affiliates, to
8 what were you referring?

9 A. I was referring to affiliates other than AMS. I
10 basically was counting AMS as effectively a regulated utility,
11 and as you can see in the next sentence, I say nearly all of the
12 services Ameren Missouri receives from affiliates, about 97
13 percent of the dollars are with Ameren Services Company. So I
14 wasn't -- when I said it wasn't material, I wasn't talking about
15 the Ameren Service Company dollars which was the \$218 million.

16 MR. LOWERY: Thank you, Mr. Byrne. I have no
17 further questions, Your Honor.

18 JUDGE DIPPELL: All right. Thank you,
19 Mr. Byrne. You may step down.

20 I believe that concludes all the scheduled
21 witnesses for Ameren. We can begin with Staff.

22 MS. BRETZ: Staff calls Lisa Wildhaber.

23 (Witness sworn.)

24 JUDGE DIPPELL: You may go ahead with your
25 direct, Staff.

1 LISA WILDHABER, having been duly sworn, testified as follows:

2 DIRECT EXAMINATION BY MS. BRETZ:

3 Q. Good morning.

4 A. Good morning.

5 Q. Would you please state and spell your name for
6 the record?

7 A. It's Lisa Wildhaber, W-- L-I-S-A,
8 W-I-L-D-H-A-B-E-R.

9 Q. By whom are you employed and in what capacity?

10 A. I am a utility regulatory auditor with the
11 Missouri Public Service Commission.

12 Q. Are you the same Lisa Wildhaber who caused to be
13 prepared certain testimony which has been marked as rebuttal
14 testimony, Exhibit 123?

15 A. Yes.

16 Q. Do you have any changes or corrections to your
17 testimony?

18 A. No.

19 Q. If I asked those same questions to you today,
20 would your answers be the same?

21 A. Yes.

22 Q. Is your testimony true and correct to the best
23 of your knowledge?

24 A. Yes.

25 MS. BRETZ: Judge, we offer Exhibit 123.

1 (WHEREIN; Staff Exhibit 123 was offered into
2 evidence.)

3 JUDGE DIPPELL: Would there be any objection to
4 Exhibit 123? Seeing none, I will admit that.

5 (WHEREIN; Staff Exhibit 123 was received into
6 evidence.)

7 MS. BRETZ: And we tender Ms. Wildhaber for
8 cross-examination.

9 JUDGE DIPPELL: Is there any cross-examination
10 by Ameren?

11 MS. TATRO: Thank you.

12 CROSS-EXAMINATION BY MS. TATRO:

13 Q. Good morning.

14 A. Good morning.

15 Q. I don't think I've met you before, so nice to
16 meet you.

17 Did Staff review the testimony filed by OPC
18 witness Lena Mantle in this case?

19 A. Yes.

20 Q. Did Staff review Ameren Missouri's NEBC
21 calculation?

22 A. Yes.

23 Q. In reviewing Ameren Missouri's calculation, did
24 Staff find any evidence that Ameren Missouri had artificially
25 manipulated the results?

1 A. No.

2 Q. Is the fact that actual results turn out
3 different from a projected number evidence that the party
4 manipulated the results?

5 A. No.

6 MS. TATRO: I have no further questions.

7 JUDGE DIPPELL: Are there any cross-examination
8 from Consumers Council?

9 MR. COFFMAN: Yes, Your Honor.

10 CROSS-EXAMINATION BY MR. COFFMAN:

11 Q. Good morning.

12 A. Good morning.

13 Q. How long have you been working for the Staff on
14 this particular issue of fuel adjustment clause mechanism
15 issues?

16 A. I began employment with the Commission in June
17 of 2018.

18 Q. Okay. So you weren't here when this new version
19 of the fuel adjustment clause was adopted in 2009?

20 A. Correct.

21 Q. So I guess all you've ever known is the 95-5
22 percent sharing mechanism. Correct?

23 A. Correct.

24 Q. And you weren't here when the Public Service
25 Commission decided that small utilities would have a fuel

1 adjustment clause, the large utilities didn't need it? You
2 don't recall that?

3 MS. TATRO: I'm going to object that this is
4 assumed facts not in evidence.

5 JUDGE DIPPELL: Which facts?

6 MR. COFFMAN: I don't know what facts.

7 MS. TATRO: Well, he said you weren't here when
8 the Commission in 2009 determined blah, blah. There's no
9 evidence in the record about what the Commission determined in
10 2009.

11 MR. COFFMAN: Well, I think there is evidence,
12 or at least judicial notice of orders that refer to this.

13 JUDGE DIPPELL: I think that evidence is in the
14 record. She can answer.

15 BY MR. COFFMAN:

16 Q. So are you aware of previous decisions where
17 this commission has decided that the fuel adjustment clause
18 should be based on whether electric utilities, large or small,
19 you remember those -- reading any of those previous decisions?

20 MS. TATRO: Your Honor, I know you overruled my
21 objection, but I read all of these orders. I don't know of any
22 of them that talk about small or large utilities. So I don't
23 think there's any evidence about this in the record.

24 JUDGE DIPPELL: The original question was about
25 the percentage.

1 MR. COFFMAN: As I understand administrative law
2 in Missouri, cross-examination does not have to encompass only
3 the evidence in the record. My question is, are you aware of
4 decisions by the Public Service Commission regarding whether the
5 size of the utility matters as to whether a fuel adjustment
6 clauses is allowed.

7 JUDGE DIPPELL: Okay. That's stated just a
8 little bit different. Ms. Tatro, is your --

9 MS. TATRO: He can pose a hypothetical, I
10 suppose, or he can provide her a basis for his statement, but he
11 can't testify in asking a question. There's no evidence in the
12 record.

13 JUDGE DIPPELL: My question is, does your
14 objection still stand to the question he just asked, which was
15 is she aware of such decisions?

16 MS. TATRO: I'm okay with that question. Thank
17 you.

18 JUDGE DIPPELL: I will allow her to answer.

19 THE WITNESS: I am not aware of that.

20 BY MR. COFFMAN:

21 Q. So have you read previous fuel adjustment clause
22 decisions by this commission?

23 A. I have read some, yes.

24 Q. How many have you read? Have you read decisions
25 going back to 2007?

1 A. I don't think I've read back to 2007, no.

2 Q. All right. Do you understand the sharing
3 mechanism to be an allocation of risk between the utility and
4 its customers?

5 A. I understand it to be a mechanism designed to
6 give the Company an incentive if they appropriately manage their
7 fuel and purchase power costs.

8 Q. And the statutory provision that allows this
9 incentive mechanism refers to incentivizing cost-effectiveness;
10 is that fair?

11 MS. BRETZ: Judge, objection. This calls for a
12 legal conclusion.

13 JUDGE DIPPELL: Can you --

14 MR. COFFMAN: I don't think it does. I can
15 rephrase.

16 JUDGE DIPPELL: Thank you. Go ahead.

17 BY MR. COFFMAN:

18 Q. In your mind, is the sharing mechanism that has
19 been adopted in several cases -- is the idea of a sharing
20 mechanism designed to promote cost-effectiveness in your
21 opinion?

22 A. I think so, yes.

23 Q. And do you believe that the sharing mechanism is
24 a tool that is designed to punish a company that has abused the
25 system? Is it -- it's not designed to be a penalty, is it?

1 A. I can't address whether it's penalty,
2 punishment. I think I've said what my understanding is.

3 Q. Okay. But -- and Staff, in previous cases, has
4 recommended a sharing mechanism of 85-15 percent; is that
5 correct?

6 A. That's my understanding in cases past.

7 Q. And why is Staff comfortable with 95-5 percent
8 currently?

9 A. Because Staff has seen no evidence that -- we
10 haven't seen a pattern of imprudence in the prudence reviews
11 that would cause us to consider that the 95-5 needs to change.

12 Q. Are you aware of any rule or law or regulation
13 that says that customers have to bear 95 percent of the risk
14 until the Company is caught red-handed with an imprudence?

15 MS. TATRO: Judge, this argumentative, this
16 red-handed language.

17 MR. COFFMAN: That's exactly what tes--

18 JUDGE DIPPELL: I'll allow her to answer.

19 MR. COFFMAN: Exactly related to her previous
20 question.

21 JUDGE DIPPELL: Objection overruled. You can
22 answer.

23 THE WITNESS: Can you restate the question?

24 BY MR. COFFMAN:

25 Q. So is it Staff's opinion that customers have to

1 continue to bear 95 percent of the volatility until someone can
2 catch Ameren red-handed with some imprudence in their fuel
3 procurement practices? Is that what it would take for Staff to
4 come off of the 95-5 percent recommendation?

5 A. Staff would need to see a pattern of imprudence.
6 Whether you classify it as red-handed, I can't address that.

7 Q. So how is that related to cost-effectiveness?
8 Can a mechanism promote cost-effectiveness without there being a
9 pattern of abuse or imprudence?

10 A. I don't know.

11 Q. But you're telling me that in opinion the
12 Commission -- that this should continue to be allocated 95
13 percent on customers and only 5 percent on the utility until
14 there is an imprudence finding?

15 A. A pattern of imprudence that would make us
16 look --

17 Q. So more than -- there would need to be more than
18 one imprudence finding. Is that what you're saying?

19 A. I can't say how many it would take. I don't
20 know.

21 Q. Has Staff ever -- let me ask this: How hard is
22 it to make a prudence finding under the current regime?

23 A. We review a lot of information. I don't know
24 how to quantify that.

25 Q. Have you ever proposed a disallowance based on

1 imprudence?

2 A. I have not since I've been here. No.

3 Q. Are you aware of any attempt by Staff to make a
4 case for imprudence with Ameren?

5 A. With Ameren, I know in the past there has been.
6 Yes.

7 Q. And when was that?

8 A. The exact dates -- I know the case numbers were
9 2010 and 2012.

10 Q. And what happened in that situation?

11 A. I know it involved off-systems sales revenue and
12 the inclusion of certain contracts as revenues to flow through
13 the FAC.

14 Q. Was that issue resolved by settlement or did the
15 Commission decide that?

16 A. I don't know.

17 MR. COFFMAN: All right. That's all I have.
18 Thank you.

19 JUDGE DIPPELL: Is there cross-examination from
20 Public Counsel?

21 MR. HALL: Yes. Thank you.

22 CROSS-EXAMINATION BY MR. HALL:

23 Q. Good morning, Ms. Wildhaber.

24 A. Good morning.

25 Q. Am I saying that correctly?

1 A. That's close enough. Yes.

2 Q. I have a weakness with names.

3 A. That's all right.

4 Q. If I mispronounce your name, I want you to
5 correct me.

6 A. You're good. You're good.

7 Q. Ms. Wildhaber, you were just asked about, like,
8 your current duties and positions. How long have you been with
9 the Commission as an auditor?

10 A. As I mentioned, I was employed -- I started
11 employment June of 2018. So it will be two years in June.

12 Q. I must've missed that. Thank you.

13 Help me with the terminology. Would you say
14 you're -- is there an auditing group or an office? What is the
15 structure of your place on Staff right now?

16 A. I'm an auditor with the Energy Resources
17 Department. There is a separate auditing department with the
18 PSC.

19 Q. So your position with Energy Resources has an
20 auditing group and that group is responsible for looking at --
21 is a response to the FAC prudence filings?

22 A. Correct.

23 Q. Does your group also deal with MEEIA prudence --
24 Missouri Energy Efficiency Investment Act prudence filings?

25 A. Yes.

1 Q. Do you also deal with the resource planning
2 reviews as part of the integrated resource plan process?

3 A. We don't have active involvement with the -- or
4 the department does, the auditing group does not.

5 Q. Okay. So your internal group would not be
6 related to the IRP planning process then?

7 A. Not the internal group of auditors.

8 Q. What about prudence filings per the renewable
9 energy standard rate adjustment mechanism or RESRAM under
10 Missouri's renewable energy standard?

11 A. I have not been involved with that. No.

12 Q. Given your current position sitting here today
13 I'm going to assume that your group is also involved in general
14 rate case filings as well?

15 A. Correct.

16 Q. And you do auditing as part of this case as
17 well?

18 A. Correct.

19 Q. Are you also involved in the true-up filings
20 that occurred in the rate cases?

21 A. Not as heavily as the actual auditing
22 department.

23 Q. And along with all of those responsibilities,
24 there's the internal administrative duties that have to be done
25 within your group as well. Correct?

1 A. Yes.

2 Q. So a prudence review under the fuel adjustment
3 clause, that takes six months? Am I remembering correctly?

4 A. I think approximately, yes.

5 Q. Is that an internal goal or is that prescribed
6 by rule?

7 A. It's prescribed by rule.

8 Q. And for those six months, your department is
9 dealing with all these other duties. Correct?

10 A. All that you've mentioned. Yes.

11 Q. Other than IRP, which you pointed out you are
12 not --

13 A. Correct.

14 MR. HALL: Your Honor, may I approach?

15 JUDGE DIPPELL: Go ahead.

16 MR. HALL: For the record, I have just presented
17 the witness with a copy of Ameren -- the seventh prudence review
18 of Ameren's fuel adjustment clause. I believe this is already
19 in the record per a motion from Ameren Missouri.

20 JUDGE DIPPELL: What is the case?

21 MR. HALL: EO-2019-0257.

22 BY MR. HALL:

23 Q. Ms. Wildhaber, will you please turn to Pages 30
24 and 31? There is a confidential and a public version, but we
25 will only be discussing public matters. Am I reading correctly

1 that you contributed to this portion of the report regarding
2 FERC accounts 565 and 456.1?

3 A. Correct.

4 Q. And what is this a review of?

5 A. It has to do with transmission costs and
6 revenues.

7 Q. Can you explain that broaderly? What are these
8 two accounts focused on?

9 A. Because it is part of what comes under costs and
10 accounts that flow through the FAC.

11 Q. In this review, you found no imprudence activity
12 on the part of Ameren. Correct?

13 A. Correct.

14 Q. There's a list -- I'm looking at Subheading 4 on
15 Page 31 that there's a listing of documents reviewed. Am I
16 understanding correctly this is the scope of your review for
17 this one issue?

18 A. These are part of -- these are the documents I
19 reviewed.

20 Q. So you looked at data requests. Correct?

21 A. Yes.

22 Q. You looked at work papers? Correct?

23 A. Yes.

24 Q. Monthly reports during the review period; is
25 that correct?

1 A. Yes.

2 Q. And you also looked at general ledgers and
3 journals during the review period?

4 A. Yes.

5 Q. So that's only a list of four things. How large
6 were those documents just for this issue?

7 A. I don't know offhand how large these were. The
8 monthly reports are extensive.

9 Q. Did you look at what other companies' activities
10 were regarding transmission costs and revenues in your review?

11 A. Other companies besides Ameren you're talking
12 about?

13 Q. Yes.

14 A. No.

15 Q. Did you look at activity in other regional
16 transmission operators in your review?

17 A. As part of my review, no.

18 Q. And other than these four listed documents, was
19 there anything else that you reviewed to come to your
20 conclusion?

21 A. I don't know offhand. I'd have to go back and
22 review.

23 Q. Do you believe that Staff would've been able to
24 review more documents if it had more than six months to review
25 in a prudence review? I realize I said review five times in

1 that sentence.

2 A. Can you ask that again?

3 Q. Of course. If a prudence review was longer than
4 six months, do you think you could have reviewed more than four
5 documents, or four lists of documents I should say?

6 A. Yeah, I reviewed more than four documents. I
7 don't know. I've never -- I haven't experience that, so I don't
8 know.

9 Q. Ms. Wildhaber, will you please turn to Pages 34
10 and I believe your conclusion is ultimately on Pages 37 and 38.
11 Is this another portion of the staff report that you contribute
12 to?

13 A. Yes, with another staff person.

14 Q. The caption heading is FERC 447 off-system sales
15 revenue. What are you looking at for this one issue?

16 A. I think the report -- that section explains what
17 all was looked at for -- I don't know -- I don't know how
18 detailed you want to get with that.

19 Q. Well, pretend I'm -- what is the action for this
20 issue that Staff is trying to decide whether that action was
21 prudent or imprudent? Is the question was Ameren prudent in
22 exercising off-system sales? What exactly are you looking at
23 for this issue?

24 A. Well, we looked at -- or I looked at all of the
25 documents that are listed there and included in that is looking

1 at the general ledger for line by line transactions of what went
2 into the off-system sales revenue that flowed through the FAC.

3 Q. And this is the same general ledger that you
4 looked at for the previous issue we discussed?

5 A. Different accounts, but yes.

6 Q. Different accounts, but -- actually, let's focus
7 on the documents reviewed. For this one issue, you, again,
8 looked at all -- I'll be quicker this time. You looked at data
9 requests, the general ledger we discussed, work papers, certain
10 MISO schedules and tariff modules and you looked at FERC
11 definitions from a federal government website. Am I reading
12 this correctly?

13 A. Yes.

14 Q. Was there anything else that was considered for
15 determination on this one issue?

16 A. I think that list is at least the majority of
17 them.

18 Q. Let's focus on Page 36 for make whole -- there's
19 a subsection on make whole payments. What are make whole
20 payments?

21 A. Do you want me to read what I've got there?

22 Q. Can you try to -- explain to som--

23 A. It has to do with making -- in general, it has
24 to do with making the Company whole when there are price drops
25 or price inconsistencies out of their control when they are

1 forced to -- or when they do participate.

2 Q. Am I understanding correctly these are entries
3 Ameren makes, like you said, to make itself whole because of its
4 responsibilities to its regional transmission operator?

5 A. I don't think I understood the question.

6 Q. Allow me to restate it. Am I understanding that
7 these make whole payments are necessary to, again, make Ameren
8 whole because of the costs it incurs simply because it's
9 operating within the MISO regional transmission operator
10 network?

11 A. I would say probably yes. In general, yes.

12 Q. Okay. On Lines 21 through 23 you talk about
13 your review. It says Staff only reviewed these transactions for
14 accounting accuracy. What does that mean, accounting accuracy?

15 A. That would mean as far as the appropriate -- to
16 make sure that the costs that went through the FAC were
17 appropriate based on the FERC accounts, the subaccounts, and
18 reconciliation between all of the sources of information for
19 this OSSR.

20 Q. Are you reviewing the information the Company
21 has given you?

22 A. What the Company is providing everyone as far as
23 monthly reports and --

24 Q. So does this accounting accuracy review look at
25 the experience of other utilities over this same time frame?

1 A. I did not look at that. No.

2 Q. And it doesn't look at what's occurring in other
3 regional transmission operators?

4 A. Again, I did not look at that. No.

5 Q. Ms. Wildhaber, were you in the room during my
6 opening?

7 A. Yes.

8 Q. Did you hear my quoting of Mr. Lange's
9 testimony?

10 A. I heard it, but I couldn't repeat it back to
11 you.

12 MR. HALL: Your Honor, may I approach again?

13 JUDGE DIPPELL: Yes.

14 BY MR. HALL:

15 Q. Ms. Wildhaber, I was quoting from Page 4. If
16 you wouldn't mind reading Lines 5 through 8 -- no, 5 through 7.

17 A. Due to the highly confidential nature of
18 utilities market bidding strategies, it is highly unlikely that
19 any party other than SPP or MISO have the raw data modeling
20 software access and resources to conduct such an extensive
21 analysis of market trends.

22 Q. Do you think Mr. Lange is wrong?

23 A. I wouldn't say he's wrong. I just -- I don't
24 have an opinion right now on this.

25 MR. HALL: Thank you. No further questions.

1 JUDGE DIPPELL: Thank you. Are there questions
2 from the Commission for Ms. Wildhaber? Mr. Chairman?

3 CHAIRMAN SILVEY: Thank you.

4 QUESTIONS BY CHAIRMAN SILVEY:

5 Q. In your rebuttal you state that you didn't find
6 enough evidence was presented to warrant changing the current
7 cost-sharing mechanism to 85-15. What type of evidence should
8 the Commission be looking for to make that determination?

9 A. As far as Staff goes with imprudence, it really
10 could be anything that affects the fuel adjustment clause, any
11 costs going into that. As I mentioned, you know, in earlier
12 cases it dealt with off-system sales revenue. It could -- it
13 could deal with natural gas cost hedging. I can't predict what
14 could happen in the future, but it would certainly be -- and,
15 again, I know I'm repeating myself -- it would have to be
16 looking at a pattern of any number of imprudences with any of
17 these fuel cost areas or the accounts that go through the fuel
18 adjustment clause and the numbers that are recovered.

19 Q. And nothing that you looked at indicated to you
20 that we should move from 95-5 to 85-15?

21 A. I've seen no evidence of imprudency that would
22 cause me to think we need to look at the 95-5 differently.

23 CHAIRMAN SILVEY: Thank you.

24 JUDGE DIPPELL: Commissioner Kenney?

25 COMMISSIONER KENNEY: No. Thank you. Very

1 much.

2 JUDGE DIPPELL: Commissioner Rupp?

3 QUESTIONS BY COMMISSIONER RUPP:

4 Q. Morning.

5 A. Morning.

6 Q. I wanted to follow up on a couple interactions
7 you had with the Office of Public Counsel. You stated that you
8 would -- Staff would not recommend any changes to the FAC cost
9 sharing unless they saw a pattern of imprudence in their cost --
10 in controlling their costs. You also stated that in the past
11 Staff had recommended an 85-15 in previous cases for this
12 utility and other utilities maybe. Then you also stated that in
13 2010 and 2012 to your memory that that was the last time that
14 Staff had brought an imprudence charge against the Company. Did
15 I write my notes down correctly?

16 A. Uh-huh.

17 Q. Okay. In those 2010 and 2012 cases where Staff
18 felt the Company acted imprudently, did you correspondingly
19 suggest an 85-15 cost sharing because of those?

20 A. I can't say for sure. I don't think so.

21 Q. Okay. So even when -- if that's the case, even
22 if you did find imprudence, you did not recommend a change to
23 the cost sharing?

24 A. I'm not sure what Staff did at that time. I do
25 know the two cases -- my understanding was it was the same issue

1 but possibly carried over because it dealt with specific
2 contracts.

3 Q. Okay.

4 A. So that may have had a play -- a factor in what
5 Staff recommended at the time.

6 Q. Okay. You also stated that the FAC is a sharing
7 mechanism that gives the Company an incentive if they properly
8 manage their fuel purchasing. Were you characterizing that as
9 the Company is being given this mechanism because they properly
10 managed their fuel purchasing and they're given the FAC cost
11 sharing of 95-5?

12 A. My understanding was it's an incentive for them
13 to appropriately manage their fuel and purchase power costs.

14 Q. So it's an incentive for them to appropriately
15 manage their costs, it's not incentive so they will properly
16 manage their costs. Is it an incentive to entice behavior or is
17 it you've shown prudence in your decisions so we're going to
18 allow you this because you've shown prudence in managing your
19 costs? I guess is it given proactively or reactively based off
20 the Company's history?

21 A. I mean, it depends on the periods. Certainly
22 it's both, I believe.

23 Q. Okay. So Staff then would believe that
24 providing -- allowing the Company to have a 95-5 cost sharing
25 can be viewed as a benefit to the Company for past prudent

1 decisions and managing their costs?

2 A. Yes.

3 COMMISSIONER RUPP: Okay. That's all I have.

4 Thank you.

5 JUDGE DIPPELL: Commissioner Holsman, any
6 questions?

7 COMMISSIONER HOLSMAN: No questions.

8 JUDGE DIPPELL: Is there further
9 cross-examination based on commission questions from Ameren?

10 MS. TATRO: None.

11 JUDGE DIPPELL: Consumers Council?

12 MR. COFFMAN: No, Your Honor.

13 JUDGE DIPPELL: Public Counsel?

14 MR. HALL: None. Thank you.

15 JUDGE DIPPELL: Is there redirect?

16 MS. BRETZ: Yes, ma'am.

17 JUDGE DIPPELL: Go ahead.

18 REDIRECT EXAMINATION BY MS. BRETZ:

19 Q. Could you please turn to Ameren's seventh
20 prudence review report?

21 A. Yes.

22 Q. Turning to Page 31, Mr. Hall was asking you to
23 describe some documents in Section 4?

24 A. Yes.

25 Q. I'm not going to belabor this point, but Letter

1 A is responses to some data requests. I'm sure this has been a
2 while ago and you don't recall what's in the data request, but
3 is it safe to characterize data requests as often containing
4 several pages, numerous documents, it's not just a single sheet
5 of paper?

6 A. Correct. Many times.

7 Q. And Letter B is Ameren's work papers. What are
8 Ameren's work papers typically?

9 A. These are -- it could be any number of Excel
10 worksheets to support the numbers they provided us.

11 Q. And often these workbooks will have multiple
12 tabs in them?

13 A. Correct.

14 Q. Is it fair to characterize work papers as often
15 being voluminous?

16 A. Yes.

17 Q. And you also looked at Ameren's monthly reports.
18 What kind of reports are these?

19 A. Again, it -- they are Excel worksheets with
20 several tabs of information, much information regarding the fuel
21 costs. Just a wide variety of information.

22 Q. And you also reviewed Ameren's general ledgers
23 and journals?

24 A. Correct.

25 Q. And it's fair to say that those are pretty long

1 too?

2 A. Yes. Yes.

3 Q. If you could please turn to Page 37, going over
4 to Page 38. Letter A are responses to Staff data requests. You
5 already stated that those can often be very long, it's just not
6 necessarily a single page of paper?

7 A. Yes.

8 Q. And the work papers you examined, that's Letter
9 B, those can often be voluminous?

10 A. Correct.

11 Q. The general ledgers are often voluminous also?

12 A. Correct.

13 Q. And Letter D is MISO schedules and MISO tariff
14 Module C and F. Could you describe MISO schedules?

15 A. Based on what -- from this website, I -- it has
16 to do -- it has to do with explaining the elements that I used
17 -- the elements that I reviewed in this OSSR section. But
18 beyond that, I can't tell you what is specifically stated in
19 Module C and Module F. I don't know.

20 Q. Okay. And the FERC definitions, that speaks for
21 itself pretty much.

22 A. Correct.

23 Q. That's something you pulled off the website?

24 A. (Witness nodded head.)

25 Q. And Mr. Hall also asked you to look at the

1 rebuttal testimony of Shawn Lange?

2 A. Yes.

3 Q. If you could turn to Page 4 please. He pulled
4 out a sentence towards the top of the page about it's unlikely
5 that any other party other than SPP or MISO have the raw data,
6 modeling software access, and resources. Do you know what he's
7 referring to there, Mr. Lange? If you could skip up a couple of
8 sentences, you might see that.

9 A. I -- I know basically what it is dealing with,
10 but I can't answer any self-scheduling questions. So, no, I'm
11 not aware of that.

12 Q. Does self-scheduling have anything to do with
13 the FAC?

14 A. It's involved in the FAC prudence reviews.

15 Q. But when you review data from Ameren, do you
16 have any problem getting data or materials or anything from
17 Ameren that you need?

18 A. Typically, no.

19 Q. They provide everything that you need to do your
20 prudence reviews?

21 A. Correct.

22 Q. Was Mr. Lange's testimony in response to the FAC
23 review in this case?

24 A. Not that I'm aware of. No.

25 Q. Do you know what he was responding to?

1 A. I thought he was responding to the self-commit
2 issue in and of itself.

3 Q. Okay. You stated that if you found that Ameren
4 was not managing its costs correctly that you would bring it to
5 the Commission's review. Right?

6 A. Correct.

7 Q. Does OPC have that same opportunity to review
8 Ameren's costs?

9 A. I believe so. Yes.

10 Q. So OPC gets all the same information that you do
11 through data requests and they're available to depose witnesses
12 just like Staff can?

13 A. That's my understanding. Yes.

14 Q. Are you aware of whether OPC does any analysis?

15 A. I can't answer as to what they do. I don't
16 know.

17 Q. To the best of your knowledge, has OPC ever
18 found any imprudence?

19 A. I think in the past there have been cases where
20 -- yes. They have found imprudence or they -- and sometimes
21 they have agreed with Staff's position of finding imprudence.

22 Q. But have they found any imprudence on their own?

23 A. I don't know offhand. I don't know.

24 Q. Did you find imprudence recently in some MEEIA
25 media reviews?

1 A. Yes.

2 Q. And which reviews were those?

3 A. We found recently in the Ameren MEEIA prudence
4 review.

5 Q. And what was your recommendation?

6 A. I can only speak to my issue, and that involved
7 throughput disincentive. I know other staff cited imprudence
8 with some of the costs that they were recovering or trying to
9 recovery through that mechanism.

10 Q. And what was your suggestion? I'm sorry, I just
11 didn't hear it.

12 A. I had suggested a disallowance regarding
13 throughput disincentive.

14 Q. And do you know how that was resolved?

15 A. The parties -- the parties agreed to a black box
16 settlement.

17 Q. Was there requested -- or did your group find
18 disallowance in a KCP&L and FAC review?

19 A. Yes, in the past.

20 Q. Do you remember how long ago that was?

21 A. I know when the hearing was. I can't tell you
22 offhand what the -- the period that was covered in it.

23 Q. Do you recall what the imprudence was or the
24 found imprudence?

25 A. What was brought to hearing was the renewable

1 energy credits. Staff proposed a disallowance because it
2 appeared the Company had not taken any action to attempt to
3 generate revenue from unused RECs that were not used for RES
4 compliance.

5 Q. And how was that resolved?

6 A. It was -- there was a hearing, but I think
7 the -- I think it's been -- I think it's still in process after
8 the Commission made the decision.

9 Q. Okay. Do you have anything else to mention
10 regarding the last FAC filings of Ameren?

11 A. There's been talk of over recovery and under
12 recovery, and for the last -- for the last eight filings since
13 the last general rate case, it has resulted in a total over
14 recovery in which 95 percent of that over recovery was refunded
15 back to the customers.

16 MS. BRETZ: Okay. Thank you.

17 JUDGE DIPPELL: Thank you. You may step down.
18 Oh, I'm sorry, Commissioner Rupp, you had a question?

19 COMMISSIONER RUPP: Yes.

20 QUESTIONS BY COMMISSIONER RUPP:

21 Q. And this may be not your area of expertise, but
22 the \$32 million rate reduction that's in the stip, what is that
23 equate to on an average customer's bill on a percentage? Do you
24 know?

25 A. I'm sorry. I don't know that.

1 COMMISSIONER RUPP: If somebody would get me
2 that, that would be great, because I didn't see it broken out
3 that way. Thank you.

4 JUDGE DIPPELL: The stipulation is noticed for
5 agenda this afternoon for discussion, and if the parties could
6 find that number for Commissioner Rupp.

7 MR. LOWERY: I think we can do it by probably
8 some pretty basic algebra because we know what the decrease was
9 from the point seven million that we asked for. So someone will
10 do the algebra and try to get you the number by noon.

11 JUDGE DIPPELL: Thank you.

12 MR. LOWERY: I don't think it's in the record,
13 but I think the algebra will tell us.

14 JUDGE DIPPELL: Thank you. Ms. Wildhaber, you
15 may step down. Thank you.

16 I think that was our only Staff witness.

17 Public counsel?

18 MR. HALL: Public Counsel calls Lena Mantle to
19 the stand.

20 (Witness sworn.)

21 JUDGE DIPPELL: You can go ahead, Mr. Hall.

22 LENA MANTLE, having been duly sworn testified as follows:

23 DIRECT EXAMINATION BY MR. HALL:

24 Q. Ms. Mantle, good morning.

25 A. Good morning.

1 Q. Would you please state your name and spell it
2 for the court reporter?

3 A. My name is Lena M. Mantle, Lena is L-E-N-A,
4 Mantle, M-A-N-T-L-E.

5 Q. And by whom are you employed and in what
6 capacity?

7 A. I'm employed by the Office of Public Counsel.
8 My title is senior analyst.

9 Q. And on whose behalf are you testifying today?

10 A. I'm testifying on behalf of the Office of Public
11 Counsel.

12 Q. Did you cause to be filed in this case direct,
13 rebuttal, and surrebuttal testimony under your name?

14 A. Yes, I did.

15 Q. And that is the direct, rebuttal, and
16 surrebuttal testimony that is marked for Exhibit 200, 201 and
17 202. Am I correct?

18 A. Yes. And I left my copies on your desk.

19 MR. HALL: Your Honor, if I may approach my
20 witness to give her her copy?

21 JUDGE DIPPELL: Go ahead.

22 BY MR. HALL:

23 Q. If I asked the same questions that are included
24 in that testimony, would your answers be the same or
25 substantially similar?

1 A. I do have one correction in my direct testimony.

2 Q. And where is that?

3 A. On Page 3, Line 19, I would -- the sentence that
4 starts with, It is the comparison of the sum of these two
5 pieces. I would like to strike the words "the comparison of."
6 The sentence should read, It is the sum of these two pieces of
7 normalized revenue requirement that is compared to the
8 normalized revenue requirement in the test year to determine if
9 there needs to be an increase or decrease in rates.

10 Q. Other than that correction, do you have any
11 other corrections you need to make to your testimony?

12 A. No, I do not.

13 Q. Are the answers included in these testimonies
14 true and accurate as to your understanding and belief?

15 A. Yes, they are.

16 MR. HALL: Your Honor, at this time I move for
17 admission of Exhibits 200, 201, 202.

18 (WHEREIN; OPC Exhibits 200, 201P, 201C, and 202
19 were offered into evidence.)

20 JUDGE DIPPELL: Would there be any objection to
21 Exhibit 200, 201, plus the confidential version. Correct?

22 MR. HALL: Yes. I should have been clearer.
23 Exhibit 201, both public and confidential, and 202, which is --
24 there's no confidential version.

25 JUDGE DIPPELL: Thank you. So 200, 201, both

1 public and confidential, and 202. Any objection?

2 MS. TATRO: No.

3 JUDGE DIPPELL: Seeing none, then I will admit
4 those Exhibits.

5 (WHEREIN; OPC Exhibits 200, 201P, 201C, and 202
6 were received into evidence.)

7 MR. HALL: I tender the witness for cross.

8 JUDGE DIPPELL: Is there any cross-examination
9 by Consumers Council.

10 MR. COFFMAN: Yes, Your Honor.

11 CROSS-EXAMINATION BY MR. COFFMAN:

12 Q. Good morning, Ms. Mantle.

13 A. Good morning.

14 Q. Whether the Commission adopts a 95-5 or an 85-15
15 sharing percentage in this case, we don't know whether or not
16 the dollar impact will be negative or positive for consumers, do
17 we, over the next few years?

18 A. We don't know the total direction. It will be
19 negative or positive, but it could very well be both over the
20 next few years.

21 Q. But can we not say with certainty that it will
22 have an impact on the volatility that consumers will have to
23 absorb?

24 A. It will have an impact on the volatility of
25 their bills that they see because they will be recovering or

1 being returned varying amounts. Every four months it changes.

2 Q. Regardless of what degree of care or prudence
3 the utility engages in, this decision will have an impact on how
4 radically the rates may be able to change in between rate cases;
5 is that fair?

6 A. Inasmuch as the -- the FAC charge, yes. There
7 are several other surcharges now that the utilities can offer.

8 Q. Why do you think it's fair that consumers should
9 have to bear even 85 percent of the changes of one cost in
10 between rate cases?

11 A. Personally, I don't think the customers should
12 bear any of the costs. I think it should be back like it was.
13 But this commission has determined that an FAC should be -- the
14 companies, the utilities should be allowed to collect some of
15 those costs in between rate cases. I believe 5 percent is very
16 little skin in the game, typically less than -- about half a --
17 over the time period of Ameren's FAC, Ameren has actually not
18 absorbed anywhere close to 5 percent of these costs. They've
19 only absorbed .67 percent of their fuel costs, and the
20 ratepayers have had to absorb the other 99.6 -- or .4 percent of
21 the costs.

22 The customers have one resource. They can
23 reduce their own usage, but they can't do anything about their
24 neighbor. They can't do anything about the big industrial plant
25 down the road that drives -- that changes those rates too.

1 There's nothing in particular that says they only -- that that
2 one thing that they control how much they use will really even
3 impact the fuel costs at all.

4 Q. So assuming we didn't even have this rate case,
5 that a rate reduction wasn't proposed, would the fuel adjustment
6 clause be allowing during this correct period an increase in
7 customer bills even though the overall revenue requirement of
8 the Company is going down?

9 A. I'm not for sure I understand your question.

10 Q. Let me just ask you in general. Doesn't the
11 fuel adjustment clause allow rates to go up for customers even
12 when the overall cost of service to the utility is going in a
13 downward direction?

14 A. Yes. And it -- and really what the customer
15 sees is the bill, and that's what they -- it allows that bill to
16 go up even if their other costs are going down in between rate
17 cases, because it's just looking at -- it's not just one cost.
18 There are several in the FAC that -- a limited view and that
19 gets to be passed through to the customers, 95 percent of it.

20 Q. And what was the -- what direction did fuel
21 costs change in the most recent fuel adjustment clause change?

22 A. They went down.

23 Q. In your mind is the sharing mechanism designed
24 to be a reward or a punishment for prudent or imprudent
25 behavior?

1 A. It should not be seen as a punishment. It
2 should be a reward for cost effective behavior, behavior that
3 continually strives to improve and to get better and to be more
4 efficient, that while you may reach the pinnacle of efficiency
5 today, tomorrow it will be different. And to have some, what's
6 been referred to as skin in the game for the utility, helps them
7 to keep looking towards that.

8 Q. But should that incentive be viewed as a
9 punishment or a reward or just as good policy that promotes the
10 most cost effective behavior?

11 A. It should be seen as good policy, and, of
12 course, whether it's a reward or a stick or a carrot, depends on
13 which end that you're on. But it's just good common sense that
14 if you allow a reward, allow the utility to have more money if
15 they save money or not be able to recover as much if they don't,
16 that's common sense that people will act in their best interest.

17 Q. So you've been doing this a long time and you've
18 been watching Ameren's activities for, say, several decades; is
19 that fair?

20 A. That is fair.

21 Q. And over the time -- and you've monitored this
22 utility at times when they had no fuel adjustment clause and
23 then when they've had a fuel adjustment clause; is that right?

24 A. That is correct.

25 Q. Have you noticed any change in the way that the

1 fuel costs are managed with and without the fuel adjustment
2 clause in general?

3 A. I know now it is much more complex than it was
4 before -- and it doesn't have anything to do with the fuel
5 adjustment clause. It's the market, the MISO market. They are
6 a lot more complex. The decisions are made based on different
7 things now than they were prior. I also have seen in rate cases
8 the determination of the fuel costs -- before there was an FAC,
9 that was a highly contested issue. Now, it is typically -- you
10 know, it's not a contested issue anymore.

11 Q. Okay. And during times when there was a fuel
12 adjustment clause and there wasn't and the back-and-forth, did
13 you see the Public Service Commission make any changes to the
14 return on equity for Union Electric, Ameren Missouri, as a
15 result of the change in this mechanism?

16 A. There's been a change in the ROE, but I do
17 not -- that is not my area of expertise. My general
18 understanding is there's a lot that goes into that, and I have
19 not seen that the FAC drives that number. And it used to be
20 high because the markets were different than they are now. Even
21 nine, nine and a half is higher now. But it was 14, 12 to 14
22 percent previously.

23 Q. But allowing this monopoly utility to transfer
24 95 percent of one of its biggest expenses, how significant is
25 that change on the utility's business risk?

1 MS. TATRO: Your Honor, I'm going to object.
2 She just said she doesn't -- it's not her area of expertise.

3 MR. COFFMAN: I'm not asking about return on
4 equity or cost of capital specifically. I'm asking about
5 business risk.

6 MS. TATRO: Business risk underlies what is
7 allowed for the return on equity.

8 MR. COFFMAN: Can I get that on the record?

9 JUDGE DIPPELL: I'll sustain the objection.

10 MR. COFFMAN: That is all I have then.

11 JUDGE DIPPELL: Is there cross-examination from
12 Staff?

13 MS. BRETZ: None.

14 JUDGE DIPPELL: Ameren?

15 MS. TATRO: Good morning.

16 THE WITNESS: Good morning.

17 MS. TATRO: I don't have any questions. Have a
18 good day.

19 JUDGE DIPPELL: Are there questions for
20 Ms. Mantle from the Commission? Mr. Chairman?

21 CHAIRMAN SILVEY: Yes.

22 QUESTIONS BY CHAIRMAN SILVEY:

23 Q. Are you asserting in anyway that the Company
24 could do more or isn't doing enough to keep its costs as low as
25 possible related to fuel?

1 A. I'm asserting that a certain amount of pressure
2 needs to be continually on a utility. Whether it's Ameren UE,
3 Evergy, Empire, a certain amount of pressure needs to stay on
4 them so that they are efficient. Complacency can come and set
5 in on the utility that's doing a good job. And I'm not saying
6 Ameren isn't, but today's market is different than tomorrow's
7 market and it's different than yesterday's market, and the
8 decisions that have to be made, there should be -- what is good
9 practice today is likely not necessarily going to be a good
10 practice next year. So to say that today they're doing the best
11 and therefore they don't need anything to keep them efficient
12 isn't look -- is putting blinders on.

13 The FAC looks at costs going on a forward basis,
14 unlike a lot of our work here at the commission where we look at
15 the historical. This is setting things for a progression,
16 what's going to happen, you know, after you make this
17 determination. So --

18 Q. But can you predict the future?

19 A. No. I wouldn't be here if I could predict the
20 future.

21 Q. So then you can in no reasonably way say that 95
22 percent -- the 95-5 is not an appropriate amount moving forward?

23 A. I don't believe anybody in this case has said
24 95-5 is appropriate because of anything other than that's the
25 way that it's always been. Nobody has said this 95-5 is right

1 because of these measures. The same way that I've been asked to
2 say, well, what makes it right for 85-15, there's been --

3 Q. Well, have you shown in any way that 95-5 is not
4 right?

5 A. There is no way to know because that is the only
6 thing that has ever been done by this commission.

7 Q. Has there ever been a prudence case brought on
8 this issue?

9 A. On the issue of the appropriate sharing
10 mechanism?

11 Q. On the fuel adjustment clause.

12 A. We -- there -- we have, just in the past -- the
13 Office of Public Counsel has in just the past three years
14 brought up several issues. Not with Ameren, but with Evergy and
15 Empire, and there have been some things that we have caught in
16 FAC rate change cases for Ameren that did not rise to a prudence
17 audit, but different things that have been done that were
18 corrected along the way. So, yes, we have done -- our office
19 has looked at prudence and we have placed before you instances
20 where we felt the utilities were acting in an imprudent manner.

21 Q. But in this particular case with the evidence
22 before us, nothing -- no one is alleging that this has been
23 imprudent?

24 A. No, and we --

25 Q. This company has acted imprudently?

1 A. No. No, we haven't.

2 Q. And that the 95-5 has not worked for this
3 company in this case?

4 A. I believe they can be imprudent if they move
5 85-15. I think you're trying to tie two different things
6 together that don't necessarily tie together.

7 Q. Well, I guess I'm just trying to understand the
8 rationale of we have no reason to believe or you have presented
9 no reason to believe that this has been inappropriate ratio thus
10 far, but you think it might be in the future. But we can't
11 predict the future, so you can't say it's not. Like, I'm just
12 trying to -- it just seems like a muddled logical mess to me.

13 A. It is a muddled logical mess. And I will say
14 that, you know, in this time of decreasing fuel costs, it kind
15 of befuddles me that the utilities don't want to move to an
16 85-15. If you truly believe that their net base energy costs is
17 a good one, then they will make money. They will make more
18 profit off of our 85-15 versus their 95-5.

19 Q. Did you sign off on that base energy cost?

20 A. Yes, we did.

21 Q. So you also believe it's appropriate?

22 A. We looked at all factors in the stipulation and
23 agreement in addition -- and including the fact that our
24 customers would get a rate decrease sooner. So it is one of the
25 things that we looked at in determining whether or not we would

1 sign the stipulation and agreement.

2 Q. But you did sign off on that?

3 A. Yes. OPC did.

4 CHAIRMAN SILVEY: Thank you.

5 COMMISSIONER KENNEY: I have no questions.

6 JUDGE DIPPELL: Commissioner Rupp?

7 QUESTIONS BY COMMISSIONER RUPP:

8 Q. Good morning.

9 A. Good morning.

10 Q. Following up on your conversation with the
11 chairman there, you stated that the current FAC's 95-5 sharing,
12 the logic behind it is a muddled mess. Is that because the
13 reason we have a 95-5 was borne out of a negotiation between
14 commissioners to try to get three votes and so they arbitrarily
15 picked the numbers to try to -- so that they could get to a
16 majority?

17 A. That would be the genesis of the muddled mess.
18 There was nothing to -- nothing to back that 95-5 up. I will
19 say that Ameren Missouri, when they got their first FAC and then
20 filed another case right on the heels of that -- and that
21 commission asked the parties to propose -- after we filed direct
22 testimony, after we'd filed other testimony, that commission
23 came back and said, Parties give us something other than 95-5.
24 And at that point I came back in that case and said we haven't
25 had enough experience with 95-5. Ameren hadn't even filed its

1 first rate change under that new FAC.

2 So there's been commissions in the past that
3 have questioned the 95-5. It's been a while since that. So
4 it's -- you saw my name on the list of all the different times
5 that, you know -- and I believe this commission deserves --
6 placed in front of it the ability to change if it so sees. And
7 so the fact that it's been 95-5 doesn't mean it should be that
8 forever.

9 Q. So 95-5 was arbitrarily picked and it became the
10 default status quo; hence, changing the status quo tend to be
11 difficult especially after time goes by?

12 A. That is correct.

13 Q. And you stated that very shortly after this was
14 established, the Commission at that time had interest of
15 possibly changing 95-5 or was wanting to do something different
16 but the relative fact that they had just started it recently,
17 the argument was, well, there's not enough -- you're going to
18 mess up our data because we just started this. We need data and
19 stuff. We can't change it right now, because we don't even know
20 how this is working yet.

21 A. It was we haven't even had a -- I think there
22 had been one rate change.

23 Q. Right.

24 A. And that kind of says, well, then why now, why
25 shouldn't I have more data. The fact is I've got one point. I

1 don't know what would be different if you changed it. We've got
2 one point and everybody assumes that that's the optimal point.

3 Q. And we assume it's the optimal point because
4 it's the status quo?

5 A. Yes.

6 Q. And that's just what we've always done?

7 A. Yes.

8 Q. And now you're in a position of having to defend
9 an 85-15, a 75-25, a 90-10 or whatever and prove that it is the
10 right thing to do, but we're not proving that 95-5 is the right
11 thing to do?

12 A. That is correct.

13 Q. Okay. Going back to your rebuttal testimony,
14 and you don't have to look it up, I'll just kind of summarize it
15 and you can tell me what we're talking about. You were
16 responding to Sierra Club, I think. It's on Page 17 of your
17 rebuttal testimony if you want to look it up. Talking about
18 coal plants must run in the MISO market where you were asked on
19 Line 11, What is the impact on customers when Ameren Missouri
20 designates these units as must run despite it not being economic
21 for them to run.

22 And then you respond, Because Ameren Missouri
23 has an FAC where only 5 percent of increased cost is absorbed by
24 Ameren Missouri, it only sees the impact of 5 percent of extra
25 costs. The other 95 percent of the uneconomic decisions -- I'm

1 sorry, I'm talking really fast -- paid for by the Ameren
2 Missouri's ratepayers through its FAC.

3 And the next question on Line 17 was, In your
4 opinion would Ameren Missouri be designated these plants as must
5 run if it did not have an FAC. To which the answer was, I do
6 not believe that Ameren Missouri would be dispatching these
7 units in this manner if it did not have an FAC. Did I summarize
8 that correctly or read --

9 A. You read that correctly. Yes.

10 Q. So my question to you is, would Ameren Missouri
11 be dispatching these units in this manner under your sharing
12 percentage proposal of 85-15?

13 A. I don't know. I mean, a very honest answer, 15
14 percent still isn't very much. The Sierra Club, I think the
15 total was -- you know, it was less than a million dollars. So
16 we're talking about even 15 percent of that is not a large
17 number. But I do think it would be more likely at 15 percent
18 than it would be 5 percent.

19 Q. So do you view this FAC sharing percentage and
20 the self-commit issue is intertwined?

21 A. I believe that -- yes, I do, because when Ameren
22 sees very little impact for the self-committing when it knows
23 it's going to recover those costs because as it's already been
24 said, the volume of data to do a prudence audit over every one
25 of these decisions, Ameren doesn't even keep that data for

1 anybody to look at it to whether or not it was prudent. I'm not
2 saying -- I realize that's a huge volume of data, but just --
3 you know -- and I got sidetracked there. But there's a lot of
4 decisions. And data is not kept for prudence audits. I don't
5 think that it's thrown away so that a prudence audit can't be
6 done. Please don't hear me say that. I don't think Ameren is
7 intentionally saying, well, they're going to do a prudence audit
8 of that so I'll throw it away. There's a lot of decisions to be
9 made and when they're going to receive most of their -- 95
10 percent of that difference anyway, then I think there's very
11 little incentive for them to make economic decisions.

12 COMMISSIONER RUPP: Thank you.

13 JUDGE DIPPELL: Commissioner Coleman, any
14 questions?

15 COMMISSIONER COLEMAN: None.

16 JUDGE DIPPELL: Commissioner Holsman?

17 COMMISSIONER HOLSMAN: No.

18 JUDGE DIPPELL: Mr. Chairman, you have
19 additional questions?

20 CHAIRMAN SILVEY: Thank you. Yeah. Just a
21 quick follow-up.

22 FURTHER QUESTIONS BY CHAIRMAN SILVEY:

23 Q. And I think you kind of touched on it in your
24 conversation with Commissioner Rupp, but does a 5 percent cost
25 share offer any incentive to Ameren to control costs?

1 A. In my opinion, it does not. It's not 5 percent
2 -- it's 5 percent of a incremental difference. So we're talking
3 less than 1 percent of their total fuel costs.

4 Q. So you don't believe it offers any incentive?

5 A. No, I do not.

6 Q. It could be 5 percent or it could be zero?

7 A. That's right.

8 Q. And this commission could find it to be zero?

9 A. And it would probably be about the same
10 incentive, yes.

11 CHAIRMAN SILVEY: Okay. Thank you.

12 JUDGE DIPPELL: Is there cross-examination based
13 on commission questions from Consumers Council?

14 MR. COFFMAN: No, Your Honor.

15 JUDGE DIPPELL: Staff?

16 MS. BRETZ: No.

17 JUDGE DIPPELL: Ameren?

18 MS. TATRO: Yes. Thank you.

19 RE-CROSS-EXAMINATION BY MS. TATRO:

20 Q. So, Ms. Mantle, what your -- well, let me start
21 by -- Commissioner Rupp asked you some questions talking about
22 the genesis of the 95-5 sharing. Do you remember those
23 questions?

24 A. Yes.

25 Q. And I think you talked about the FAC for Ameren

1 Missouri being granted in 2009; is that correct?

2 A. It was in their 2008 case, yeah.

3 Q. Probably 2009?

4 A. March 2009, I believe.

5 Q. Okay. And Ameren Missouri certainly had the FAC
6 at issue in every rate case filing since then. Correct?

7 A. Yes.

8 Q. And you saw the attachment to Andrew Meyers --
9 the exhibit to Andrew Meyers rebuttal testimony that listed all
10 of the different cases and which parties had presented
11 alternatives to the 95-5 sharing. Correct?

12 A. It listed all but three cases. I'm just
13 assuming those got overlooked. And it also included a case
14 where -- Ameren's first case in which you asked for an FAC where
15 you did not get it. So it wasn't just -- but it is a list of
16 all the rate cases, yes.

17 Q. Fair enough. So when Ameren Missouri filed case
18 ER-2011-0028, would you have still been on staff?

19 A. Yes, I was.

20 Q. Okay. And did you raise -- did you suggest a
21 different sharing percentage at that time?

22 MR. HALL: I don't mean to interrupt, but if it
23 will aid in questioning, we have copies of the schedule that
24 Ms. Tatro is referring to, if the witness would like to review
25 that.

1 THE WITNESS: Which case were you were referring
2 to, Ms. Tatro?

3 MS. TATRO: ER-2011-0028.

4 THE WITNESS: So that would have been two cases
5 removed from the case where you received your FAC.

6 BY MS. TATRO:

7 Q. Were you the witness for Staff on the FAC
8 sharing percentage in that case?

9 A. No.

10 Q. Who was?

11 A. Matt Barnes.

12 Q. Okay. And did Mr. Barnes recommend a different
13 FAC sharing percentage?

14 A. He recommended 85-15.

15 MS. TATRO: May I approach?

16 JUDGE DIPPELL: Yes. Go ahead.

17 MS. TATRO: So I only have to do this once, I'm
18 going to give you two of them.

19 JUDGE DIPPELL: Could You show that to her
20 attorney?

21 MS. TATRO: Yes. This is the section on the
22 report and order. And I don't have copies because I didn't
23 assume we'd be doing this.

24 THE WITNESS: And, Ms. Tatro, I did realize I
25 was looking at the Empire case that Matt Barnes provided

1 testimony in that case. You're talking about ER-2011-0028. I
2 was the witness in that case, and it was 85-15.

3 BY MS. TATRO:

4 Q. Okay. I'll hand you these two documents. I
5 apologize. It's my only copy. We have taken notice of these so
6 they are in the record. But looking at the document from
7 ER-2011-0028, it's the report and order from that rate case.
8 Correct?

9 A. Yes.

10 Q. And I've only given you a portion of it. But
11 could you turn to page -- I believe it's Page 86?

12 A. Okay.

13 Q. There about a third of the way down it says
14 decision, meaning commission decision. Well, first of all, it's
15 in the FAC section right where -- if you look through there,
16 it's talking about the sharing percentage. Correct?

17 MR. HALL: I'm not so sure this is an objection,
18 but can I ask before we go down this rabbit hole for Ms. Tatro
19 to identify which commissioner question this is responding or
20 reference to?

21 MS. TATRO: It was Commissioner Rupp, which I
22 previously stated.

23 THE WITNESS: Yes, it's about the sharing
24 mechanism.

25 BY MS. TATRO:

1 Q. And can you read for me the paragraph that's
2 under the heading decision? I think it's conveniently
3 highlighted for your convenience.

4 A. Staff stated reasons for experimenting with
5 adjusting the sharing mechanism of Ameren Missouri's fuel
6 adjustment clause to implement an 85-15 split do not withstand
7 scrutiny. Imposing a significant financial burden on the
8 company simply to experiment with an alternative sharing
9 mechanism would be unfair to the Company. The Commission finds
10 that there is no reason to change the sharing percentages in the
11 fuel adjustment clause under which Ameren Missouri has operated
12 for the past several years. The Commission will retain the
13 current 95-5 sharing mechanism included in Ameren Missouri's
14 fuel adjustment clause.

15 Q. So you would agree with me, Ms. Mantle, that the
16 Commission made an affirmative decision that it was going to
17 retain the 95-5 rather than follow your experimentation offer?

18 A. I would not -- the Commission characterizes it
19 as an experiment and the Commission that was there at this time
20 did come up with -- that is the decision that they made.

21 Q. Okay. Then the second document that I provided
22 you is from ER-2012-0166; is that correct?

23 A. Yes.

24 Q. Again, that another Ameren Missouri rate case?

25 A. Yes.

1 Q. And, again, I provided you the section on the
2 FAC; is that correct?

3 A. That is what it seems, yes.

4 Q. All right. And if you would turn to Page 83 --

5 MR. COFFMAN: Your Honor, I'm going to object.
6 I'm not sure that I see the connection to the inquiry that
7 Commissioner Rupp had with this witness. If Ms. Tatro wants to
8 recite various past orders on this issue, they've placed them in
9 the record. They have the ability to cite it in their brief. I
10 don't see the point of having the witness just read selected
11 paragraphs that they like from previous orders into the record.
12 It's already in the record.

13 JUDGE DIPPELL: I'm going to overrule your
14 objection. I believe it relates to Commissioner Rupp's
15 question, and as long as it's not too onerous a provision of the
16 statute or the report and order, you can go ahead.

17 MS. TATRO: Thank you.

18 BY MS. TATRO:

19 Q. So, Ms. Mantle, are you on Page 83?

20 A. Yes.

21 Q. And, again, there is a section labeled decision
22 and there's a paragraph. I did not conveniently highlight it
23 for you this time, but is that -- can you read that to yourself
24 please?

25 A. (Witness complied.) Okay.

1 Q. And, again, that contains very similar language
2 to the order that you read previously, the 2011 case. Correct?

3 A. Actually, it looks like it was a cut-and-paste
4 expect for 95-5 had percentage after it instead of just with no
5 percentage. It is the very same paragraph.

6 Q. Okay. And, again, this paragraph says that the
7 Commission declines to experiment with adjusting the sharing
8 mechanism of the FAC. Correct?

9 A. Yes.

10 Q. And that -- were you the witness for Staff in
11 this case?

12 A. Yes.

13 Q. And it also says that the Commission makes --
14 and in this paragraph the Commission makes an affirmative
15 determination that there's no reason to change the sharing
16 percentage in Ameren Missouri's fuel adjustment clause.
17 Correct?

18 A. The Commission did make a decision that there
19 was no reason to change the sharing percentage in these cases.

20 Q. It's a specific finding. Right?

21 A. It's under decision in their order.

22 Q. And the language says, The Commission finds?

23 A. Yes. The Commission finds there is no reason to
24 change the sharing percentages in the fuel adjustment clause.

25 MS. TATRO: Thank you, Ms. Mantle. Nothing

1 further.

2 JUDGE DIPPELL: Are there any redirect
3 questions?

4 MR. HALL: Just a couple. Thank you.

5 REDIRECT EXAMINATION BY MR. HALL:

6 Q. Ms. Mantle, Commissioner Silvey asked you about
7 your justification for proposing 85-15 sharing versus the
8 current 95-5 sharing. Do you recall that conversation?

9 A. Yes.

10 Q. Do you recall, I believe it was in response to
11 Commissioner Silvey, that you also remarked that you would
12 prefer a situation without any FAC in your personal preference.
13 Correct?

14 A. That is my personal preference. Yes.

15 Q. But that's not what you're asking for in this
16 case. Correct?

17 A. No, it is not. Our office decided that it would
18 file testimony that did recommend that there be an FAC for
19 Ameren Missouri.

20 Q. So then why are we asking to -- why are asking
21 to change the sharing mechanism versus strike the whole thing?

22 A. It has become established practice in the state
23 of Missouri to have a fuel adjustment clause. What I have
24 learned over these years with the fuel adjustment clause is that
25 it is always changing and it should always -- it should always

1 be allowed to be changed with change in circumstances. In every
2 one of the cases Ameren, Evergy, Empire, the utilities always
3 ask for changes, modifications to their FAC, and this is a
4 modification based off of what our office saw that the
5 legislature had set what it believed was an appropriate
6 incentive to result in action from the utility. We saw that as
7 direction that we should also be asking for a change in the
8 sharing percentage for the FAC.

9 Q. When you just referenced modifications to the
10 FAC, am I correct, you're talking about certain inputs that have
11 been added to the FAC that weren't originally with the FAC?

12 A. There's been costs added. There's been costs
13 changed. There's been changes to accumulation periods and
14 recovery periods. There have been all types of changes in the
15 rate cases before the Commission, just as the statute envisioned
16 when it said that it could only be changed or modified,
17 continued, discontinued or approved in a rate case. So it is an
18 evolving creature, the FAC is.

19 Q. Chairman Silvey also asked you about our
20 office's agreement to the net base energy costs. You reviewed
21 the net base energy cost numbers that were proposed by Staff and
22 the Company for this case. Correct?

23 A. Yes, I have.

24 Q. And in your work from both -- in your work from
25 being on both Staff and OPC, you've reviewed net base energy

1 cost filings before. Correct?

2 A. Yes.

3 Q. In your experience has net base energy costs
4 calculated in a rate case matched what the future is going
5 forward?

6 A. It has not.

7 Q. And that mismatch is not because of any active
8 decision by a party, that's just how math works?

9 A. It's -- the net base energy cost is based off of
10 historical and projected from production cost modeling, and it
11 will not -- it does not take into account all the things that
12 happen just on a daily basis. So it will always be wrong, just
13 as it was before there was an FAC, that fuel costs that was
14 included in rates was always wrong.

15 MR. HALL: Thank you, Ms. Mantle. No further
16 questions.

17 JUDGE DIPPELL: All right. Thank you,
18 Ms. Mantle. You may step down.

19 I believe that concludes all of our witness
20 testimony. Is there any other matters that the parties need to
21 discuss on the record?

22 MR. LOWERY: Commissioner Rupp, would you like
23 your figures before you leave?

24 COMMISSIONER RUPP: Sure.

25 MR. LOWERY: Appendix J to the corrected

1 stipulation that was filed, I think, on March 2nd has the
2 figures. It's about a 1.24 percent overall decrease.
3 Residential is 1.15 percent. Residential -- typical residential
4 customer would be about \$1.15, \$1.20 a month.

5 COMMISSIONER RUPP: Excellent. Thank you.

6 JUDGE DIPPELL: Thank you for that. Is there
7 any other items that the parties need before we adjourn?

8 MR. LOWERY: Real quick, not that I'm pushing
9 for it immediately or anything, we have plenty of time, but
10 transcripts, when do you expect them?

11 JUDGE DIPPELL: Right now, the transcripts are
12 set to be returned to the Commission on the third business day
13 from today.

14 MR. LOWERY: They will be available next week
15 then.

16 JUDGE DIPPELL: So we'll get them in the record
17 as soon -- in EFIS as soon as we can after we receive them and
18 make sure everything is correct.

19 Briefs are scheduled to be -- initial briefs are
20 scheduled to be filed March 30th; reply briefs, April 7th.

21 We haven't ordered this in a long time, but I
22 will invite you all to file proposed findings of fact and
23 conclusions of law if you would like. You're not required to by
24 any means, but they will not be rejected.

25 Anything else?

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I do appreciate the amount of work that went into the stipulations and agreements and limiting this hearing to a few hours. So thank you all for your hard work on that.

The stipulation is scheduled to be discussed in agenda in a few minutes, so with that we can adjourn and go off the record. Thank you.

(THE HEARING HAS CONCLUDED.)

(OFF THE RECORD.)

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CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081

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9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Opening statement by Ms. Tatro	295
Opening statement by Ms. Bretz	305
Opening statement by Mr. Coffman307	
Opening statement by Mr. Hall	311

AMEREN MISSOURI'S EVIDENCE

ANDREW MEYER

Direct Examination by Mr. Lowery333	
Cross-Examination by Mr. Coffman334	
Cross-Examination by Mr. Hall	342
Questions by Chairman Silvey	345
Questions by Commissioner Kenney346	
Questions by Commissioner Holsman	348
Cross-Examination by Mr. Hall	349
Redirect Examination by Mr. Lowery	350

TOM BYRNE

Direct Examination by Mr. Lowery356	
Questions by Commissioner Rupp	357
Redirect Examination by Mr. Lowery	358

STAFF'S EVIDENCE

LISA WILDHABER

Direct Examination by Ms. Bretz	360
Cross-Examination by Ms. Tatro	361
Cross-Examination by Mr. Coffman362	
Cross-Examination by Mr. Hall	368
Questions by Chairman Silvey	378
Questions by Commissioner Rupp	379
Redirect Examination by Ms. Bretz	381
Further questions by Commissioner Rupp387	

PUBLIC COUNSEL'S EVIDENCE

LENA MANTLE

Direct Examination by Mr. Hall	388
Cross-Examination by Mr. Coffman391	
Questions by Chairman Silvey	396
Questions by Commissioner Rupp	400
Questions by Chairman Silvey	404
Recross-Examination by Ms. Tatro405	
Redirect Examination by Mr. Hall412	

	EXHIBIT INDEX	OFFERED	REC'D
1			
2	AMEREN MISSOURI:		
3	Exhibit 2 Direct testimony of Tom Byrne	357	357
4			
5	Exhibit 3 Rebuttal testimony of Tom Byrne	357	357
6			
7	Exhibit 4 Surrebuttal testimony of Tom Byrne	357	357
8			
9	Exhibit 5 Rebuttal testimony of Ben Hasse	391	291
10			
11	Exhibit 6 Direct testimony of Andrew Meyer	334	334
12			
13	Exhibit 7 Rebuttal testimony of Andrew Meyer	334	334
14			
15	Exhibit 8 Surrebuttal testimony of Andrew Meyer	334	334
16			
17	Exhibit 11 Direct testimony of Laura Moore	291	292
18			
19	Exhibit 12 Rebuttal testimony of Laura Moore	291	292
20			
21	Exhibit 13 Surrebuttal testimony of Laura Moore	291	292
22			
23	Exhibit 14 Direct testimony of John Reed	291	292
24			
25	Exhibit 15 Rebuttal testimony of John Reed	291	292
26			
27	Exhibit 16 Surrebuttal testimony of John Reed	291	292
28			
29	STAFF OF PUBLIC SERVICE COMMISSION:		
30			
31	Exhibit 120 Rebuttal testimony of Mark L. Oligschlaeger	292	292
32			
33	Exhibit 123 Rebuttal testimony of Lisa Wildhaber	361	361

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX		
Exhibit 127	292	292
Surrebuttal testimony of Mark L. Oligschlaeger		
OFFICE OF PUBLIC COUNSEL:		
Exhibit 200	390	391
Direct testimony of Lena Mantle		
Exhibit 201C	390	391
Confidential rebuttal testimony of Lena Mantle		
Exhibit 201P	390	391
Public rebuttal testimony of Lena Mantle		
Exhibit 202	390	391
Surrebuttal testimony of Lena Mantle		
Exhibit 206	293	293
Direct testimony of Robert Schallenberg		
Exhibit 207C	293	293
Confidential rebuttal testimony of Robert Schallenberg		
Exhibit 207P	293	293
Public rebuttal testimony of Robert Schallenberg		
Exhibit 208C	293	293
Confidential surrebuttal testimony of Robert Schallenberg		
Exhibit 208P	293	293
Public surrebuttal testimony of Robert Schallenberg		

<hr/> \$ <hr/>	14 291:16,20 292:2,3 395:21	2015 351:20	38 374:10 383:4
\$1.15 415:4	15 291:17,20 292:2,3 300:22 303:9 310:19 317:4 318:1 338:22 339:2 346:23 347:1 403:13,16,17	2016 355:17	<hr/> 4 <hr/>
\$1.20 415:4	16 291:17,21 292:2,4	2018 317:15 362:17 369:11	4 301:23 356:16,25 357:1,4,8 372:14 377:15 381:23 384:3 392:20
\$100 328:6	17 330:7 346:15 352:1 402:16 403:3	201C 390:18 391:5	4240-20-090 294:11
\$108 331:10 355:18, 21	18 296:18,20 297:3 303:19	201P 390:18 391:5	447 374:14
\$126 303:10	19 390:3	202 389:17 390:17,18, 23 391:1,5	456.1 372:2
\$218 326:15,16,22 358:2,20 359:1,15	1901 290:16	2020 290:3	<hr/> 5 <hr/>
\$32 387:22	1970s 307:19,22	206 292:22 293:6,9,14	5 291:13,20 292:2,3 296:1 298:1 300:22 301:7,23 303:6 305:3 310:4 313:14,15,16 314:24 320:13 326:12 335:6 337:16 338:11, 18 339:2,12 340:11,15 347:11,18 367:13 377:16 392:15,18 402:23,24 403:18 404:24 405:1,2,6
\$42 303:7 326:8,9,10, 17 348:13 358:4	1979 309:1	207 292:22,24 293:1, 3,9	
<hr/> 1 <hr/>	1st 294:14	207C 293:6,14	
1 308:15 313:15,21 314:25 315:2,4,7 316:23 327:13 405:3	<hr/> 2 <hr/>	207P 293:6,14	
1.15 415:3	2 356:16,25 357:1,4,8 359:3	208 292:22,24 293:3, 4,9	
1.24 415:2	20 294:10	208C 293:7,15	
10 296:23	200 389:16 390:17,18, 21,25 391:5	208P 293:6,14	
100 308:24 309:1,3 335:22 338:13 347:25 348:4 351:19,25	2005 309:10 312:10	21 343:10 376:12	
100-0 355:24	2006 313:7	215 319:22	
10:15 332:24	2007 296:16 314:11 364:25 365:1	22 359:3	
11 291:14,20 292:2,3 354:2 402:19	2008 309:18 320:3 338:17 406:2	23 359:3 376:12	
11th 290:3	2009 294:14 295:22 296:7 300:7 303:6 309:1,18 338:17 362:19 363:8,10 406:1,3,4	2nd 415:1	
12 291:15,20 292:2,3 336:6 346:14 347:1 395:21	201 389:16 390:17,21, 23,25	<hr/> 3 <hr/>	
120 292:8,11,15,16	2010 368:9 379:13,17	3 356:16,25 357:1,4,8 390:3	
123 360:14,25 361:1, 4,5	2011 411:2	3.7 300:3	
127 292:9,11,15,16	2012 368:9 379:13,17	30 307:17 309:2 371:23	
13 291:15,20 292:2,3 346:14		30th 415:20	
		31 371:24 372:15 381:22	
		32 294:12	
		34 374:9	
		36 375:18	
		37 374:10 383:3	
			<hr/> 6 <hr/>
			6 333:16 334:4,5,8,10
			63103 290:17
			63119 307:10
			65205 290:14
			67 392:19

7	95 295:25 305:1,5 310:7 313:13 314:23 315:18 335:6,13 337:7,15 341:20 348:1 366:13 367:1,12 387:14 393:19 395:24 397:21 402:25 404:9	abuses 297:17 340:1 accept 301:6 accepted 301:6 321:14 access 316:15 377:20 384:6 account 414:11 accounting 301:18 305:21 315:25 317:16 376:14,24 accounts 372:2,8,10 375:5,6 376:17 378:17 accumulation 413:13 accuracy 376:14,24 accurate 390:14 accusation 315:9 accusations 311:20, 24 315:15 accused 315:14 accustomed 338:18 achieve 315:8 act 369:24 394:16 acted 300:18 379:18 398:25 acting 339:9 398:20 action 329:4 374:19, 20 387:2 413:6 actions 332:5 355:24 active 370:3 414:7 activities 315:15 373:9 394:18 activity 372:11 373:15 actor 322:11 acts 340:1 actual 300:21 303:7 304:25 305:3 340:23 341:17,20 346:7 362:2	370:21 added 413:11,12 addition 294:20 399:23 additional 291:5 292:6 296:3 346:7 347:21 349:15 404:19 additions 305:24 address 304:17 316:24 321:11 324:22 325:8 327:4 366:1 367:6 addressed 316:3 addresses 316:6 addressing 320:13 324:18 adequate 316:8 318:2 adjourn 415:7 adjusting 409:5 411:7 adjustment 290:9 293:24 294:6 295:16 304:16 307:19,23 308:17 309:11 314:2, 22 321:5,8,11 329:17 330:24 334:22,24 336:23 337:2,4 339:6, 18 340:23 341:13,25 348:4,5 349:9 351:3,6 362:14,19 363:1,17 364:5,21 370:9 371:2, 18 378:10,18 393:5, 11,21 394:22,23 395:1,5,12 398:11 409:6,11,14 411:16,24 412:23,24 adjustments 294:12 332:4 administrative 364:1 370:24 admission 292:21,23 329:18 390:17 admit 292:1,14
8	95-5 295:24 296:2,8 297:3 305:8,17 306:17,20,24 309:22 310:3 311:6 314:3,10, 16,23 322:8 325:10 329:12 331:8 337:11 338:4 350:6 351:24 353:20,21 355:22 362:21 366:7,11 367:4 378:20,22 380:11,24 391:14 397:22,24,25 398:3 399:2,18 400:11,13,18,23,25 401:3,7,9,15 402:10 405:22 406:11 409:13, 17 411:4 412:8 97 346:25 350:13 351:6,21 359:12 98 347:2 99 313:18 317:7 99.6 392:20		
9	A		
7 333:16 334:4,5,8,10 377:16 72 294:8 73 294:9 74 294:9 75-25 402:9 76 294:8 7th 415:20	Aare 383:4 ability 308:19 309:15 325:7 329:14 401:6 410:9 absence 354:1 absolutely 336:11 353:7 absorb 342:8 391:23 392:20 absorbed 392:18,19 402:23 abuse 329:12 367:9 abused 365:24		
8 333:16 334:4,5,8,10 377:16 80 294:9 351:20 83 410:4,19 85 305:22 306:1 317:4 318:1 321:3 392:9 85-15 301:15 302:10 305:9,19 309:21 317:14 318:21 320:8, 22 321:16 322:2,7,20, 23 323:7 324:8,23 325:5 329:7 331:12 338:4 349:1 350:1 353:20 355:24 366:4 378:7,20 379:11,19 391:14 398:2 399:5, 16,18 402:9 403:12 407:14 408:2 409:6 412:7 86 408:11 871 307:10			
90-10 320:4 402:9 918 290:14 92 294:9 93 294:10			

293:12 298:14 316:17 334:8 352:16 357:6 361:4 391:3	407:16 410:16	18,21,24 319:1,2 322:10,17 325:3,14 326:11 327:25 329:10 330:12,14 333:2 336:3,13 338:10,11,16 340:10 342:11,21 343:10,12 346:24 347:22 348:1,11 350:5 352:16 356:5 357:1,8 359:6,12,13,15,21 361:10,20,23,24 367:2 368:4,5 371:17,19 372:12 373:11 374:21 376:3,7 381:9 384:15, 17 385:3 386:3 387:10 392:17 395:14 396:14 397:2,6 398:14,16 400:19,25 402:19,22, 24 403:1,4,6,10,21,25 404:6,25 405:17,25 406:5,17 409:5,11,13, 24 411:16 412:19 413:2	333:22 356:22 358:22 360:20 389:24 390:13
admitted 295:3	aid 406:23		anticipate 350:11
admitting 319:18	algebra 388:8,10,13		anymore 310:24 313:7 340:11 395:10
adopt 302:12 309:15	allegations 300:6		apologize 307:5 326:19 408:5
adopted 297:1 302:10 309:10 328:17 362:19 365:19	allege 311:22		Apparently 331:14
adopts 391:14	alleged 315:13,22		appearance 290:11 307:6
advises 313:25	alleging 315:23 398:22		appeared 387:2
advocates 305:9,10 308:17	allocate 338:1 341:24		appearing 290:15,24 291:19 307:9
affects 378:10	allocated 367:12		Appendix 414:25
affiliate 292:20 326:16	allocates 334:23 335:3		apples 306:15
affiliates 359:7,9,12	allocation 341:7 365:3		applied 304:23
affirmative 409:16 411:14	allocator 341:14		applies 301:25 302:1 306:11,12
afford 311:2	allowed 348:9 364:6 392:14 396:7 413:1		apply 315:6
affordably 335:16	allowing 380:24 393:6 395:23	Ameren's 306:22 318:18,21 326:8,9 331:8 371:18 381:19 382:7,8,17,22 385:8 392:17 394:18 406:14	approach 371:14 377:12 389:19 407:15
aforementioned 345:7	alter 327:20	AMM-R1 296:12	appropriately 303:15 365:6 380:13,14
afternoon 388:5	alternative 409:8	AMMR1 344:11	approve 345:3
agenda 309:23 332:21,22 388:5	alternatives 406:11	amount 295:25 302:4 340:17 354:25 397:1, 3,22	approved 295:23 299:20 413:17
agree 295:17,18 310:4 323:20 330:25 331:6 337:11 338:7 340:6 341:4 409:15	amend 301:19 321:12,13 322:5	amounts 300:21 332:2 348:10 392:1	approves 314:2
agreed 299:6,8 385:21 386:15	amended 324:4,18	AMS 359:9,10	approving 294:4
agreeing 323:17	amendment 323:15 329:4	analogizes 305:20	approximately 371:4
agreement 299:3 316:3 399:23 400:1 413:20	amendments 323:11	analogy 305:20 306:14,15	April 415:20
agreements 290:9	Ameren 290:6,15 291:10,20 292:3 293:16,25 294:7,12 295:7,12,17,21 296:1, 15 297:17,22,25 298:4,17,19,20,25 299:12,19,20,22 300:2,6,15,17,20 301:3,24 302:3,5,13, 24 303:14 305:8,10, 12,13,15,17 309:4 310:21 311:22 315:9, 14 317:1 318:14,17,	analysis 316:16 377:21 385:14	Aquila 295:23
ahead 291:9 332:18, 23 333:6 356:8 357:23 359:24 365:16 371:15 381:17 388:21 389:21		analyst 389:8	arbiter 329:6
		Andrew 296:11 299:15 319:2 333:3,8, 12 406:8,9	arbitrarily 400:14 401:9
		answers 325:12	area 387:21 395:17 396:2
			areas 378:17
			argue 302:23 314:6

argued 300:13	audit 398:17 403:24 404:5,7	355:16 399:16,19 413:20,21,25 414:3,9	believes 298:8 305:10,11,15
argues 300:19	auditing 369:14,17, 20 370:4,16,21	based 294:17 303:2 310:23 318:1 331:10 332:5 340:1 349:16 355:17 358:10 363:18 367:25 376:17 380:19 381:9 383:15 395:6 405:12 413:4 414:9	Ben 291:13
argument 297:17,22 299:2 300:23 301:14 302:20 303:2,5 324:20 325:17,20 327:22 328:21 401:17	auditor 360:10 369:9, 16	baseline 324:12,23	bench 349:16
argumentative 366:15	auditors 370:7	basic 388:8	benefit 297:4,24 298:2 314:20 329:2 331:16 337:10 338:23 380:25
arguments 297:16 302:17 303:17 325:24 330:11	audits 404:4	basically 359:10 384:9	benefits 354:9
artificially 305:13 361:24	authorized 313:22 350:2,6	basis 297:15 301:17 325:23 349:11 364:10 397:13 414:12	bid 353:4
ascribe 328:15	authorizes 323:18	basis 297:15 301:17 325:23 349:11 364:10 397:13 414:12	bidding 377:18
aspect 330:20 335:5, 24	authorizing 324:4	bear 308:12 309:3 310:8,18 322:2 335:8, 13 337:7 338:11,13,22 340:11,15 341:1,5,10, 20 347:19 366:13 367:1 392:9,12	big 392:24
aspects 301:22	automatically 329:16	bearing 308:24,25 353:14	biggest 339:11 395:24
assert 297:25	Avenue 290:16	begin 290:11,12 291:10 295:11 333:2 359:21	bill 300:3 301:15,17 341:2 387:23 393:15
asserting 396:23 397:1	average 387:23	beginning 307:21	bills 391:25 393:7
assigned 290:4	aware 310:25 327:1 363:16 364:3,15,19 366:12 368:3 384:11, 24 385:14	begins 307:20 309:12	bit 304:22 307:20 308:4 311:7 350:10 364:8
assume 328:5 336:7 339:17 342:3 345:13 347:1 358:20 370:13 402:3 407:23	B	behalf 290:15,24 307:9 389:9,10	black 312:22 386:15
assumed 363:4	back 304:11 307:20 308:23,25 309:2 312:10 315:20 318:19, 20 320:3,12,13 325:25 327:14 332:24 333:1 338:5 341:24 346:7 364:25 365:1 373:21 377:10 387:15 392:12 400:18,23,24 402:13	behavior 315:4 316:22 322:14 327:18, 20 328:11,15 329:17, 19,25 331:12 339:3 380:16 393:25 394:2, 10	blah 363:8
assumes 402:2	back-and-forth 395:12	belabor 381:25	blinders 397:12
assuming 327:7 393:4 406:13	bad 340:1 352:1	belief 390:14	block 312:11 313:8
attached 306:16 344:10,14	balance 311:6	believed 299:9 320:15 413:5	blocks 314:14
attachment 406:8	balanced 309:24		board 321:22
attempt 301:19 303:20 319:11 368:3 387:2	balancing 317:13,24		body 322:2
attention 310:14 336:9	Barnes 407:11,12,25		boils 327:14
attorney 332:9 407:20	base 295:25 299:22 300:1,21 305:15 312:13 341:17 342:4		boogeyman 313:2
attorneys 312:9			boom 313:5
			bore 307:24
			borne 337:15 400:13
			Boulevard 307:10
			box 290:14 312:22 314:18 386:15
			break 332:19,23 333:2
			breaking 308:22

Bretz 290:19 291:24 292:7 293:11,20 304:14,15,19,21 307:2,4 334:14 349:18 357:12 358:11 359:22 360:2,25 361:7 365:11 381:16,18 387:16 396:13 405:16	capital 297:18 302:1, 11,15 306:11 317:20, 22 318:3,6,7,9 396:4	caught 315:20 340:12 366:14 398:15	charged 294:12
briefly 349:22	caps 306:4	caused 360:12	charges 337:4
briefs 415:19,20	caption 374:14	caveat 291:4	charm 330:7
bring 304:11 385:4	care 345:14 392:2	cent 327:15	chief 319:16
broadly 372:7	career 343:10	certainty 335:23 354:25 391:21	Chouteau 290:16
broke 347:6	carried 380:1	certificate 307:22	circumstances 330:23 413:1
broken 388:2	carrot 394:12	chairman 323:24 324:1,7,16,21 325:6, 19 326:2 327:9,25 345:23,24,25 346:10 378:2,3,4,23 396:20, 21,22 400:4,11 404:18,20,22 405:11 413:19	circumstantial 329:23
brought 315:12 327:25 379:14 386:25 398:7,14	case 290:5 294:17 295:14,20 296:11,15, 16,23 297:1,6,8,22,23 298:5 299:1,3,7,22,24 300:1,2 305:14 308:15,22 309:15,18 310:8,9 311:1 312:5, 24 313:1,5 314:19,22 315:12 316:19 318:18, 21 320:7 321:20 322:10 325:4,15,18,22 328:4 329:17 330:10 331:9 341:18 344:25 345:2 347:25 350:22 355:12,16,17 361:18 368:4,8 370:14,16 371:20 379:21 384:23 387:13 389:12 391:15 393:4 397:23 398:7,21 399:3 400:20,24 406:2,6,13,14,17 407:1,5,8,25 408:1,2,7 409:24 411:2,11 412:16 413:17,22 414:4	challenged 296:19	cite 410:9
built 310:23	cases 294:7 296:18, 20,22 301:11 303:19 305:24 306:17 320:3 322:10,11 325:18,21 328:20 331:1 335:14 341:6,11 344:17 365:19 366:3,6 370:20 378:12 379:11,17,25 385:19 392:4,10,15 393:17 395:7 398:16 406:10,12,16 407:4 411:19 413:2,15	challenges 306:20	cited 386:7
burden 310:25 409:7	catch 367:2	change 296:9,21,25 303:13,19 323:5 327:18 328:7,11 329:12,16 331:1,16, 17,19 337:15 338:3 339:2 348:6 355:1 366:11 379:22 392:4 393:21 394:25 395:15, 16,25 398:16 401:1,6, 19,22 409:10 411:15, 19,24 412:21 413:1,7	claim 298:7 301:17 318:5 358:25
business 290:6 395:25 396:5,6 415:12		changed 314:11 323:19 330:6,14,18 338:21 340:20 341:23 402:1 413:1,13,16	clarification 320:12
button 319:5		changing 297:5 305:9 315:3 325:20 337:14 352:24 378:6 401:10,15 412:25	classification 300:8
bygone 312:10		characterize 358:24 382:3,14	classify 367:6
Byrne 295:5,7 297:4 301:24 326:14,21 327:4 356:6,10,13,14, 25 357:14,18,21 358:19 359:16,19		characterizes 409:18	clause 290:9 293:24 294:6 295:16 304:16 307:20,23 308:18 309:11 314:2,23 321:8,11 334:22,24 336:23 337:2,4 339:6, 18 340:24 341:13,25 348:4 349:9 362:14,19 363:1,17 364:21 371:3,18 378:10,18 393:6,11,21 394:22,23 395:2,5,12 398:11 409:6,11,14 411:16,24 412:23,24
C		characterizing 350:3 380:8	clauses 351:3,7 364:6
calculated 414:4		charge 319:3 379:14 392:6	clear 293:23 294:16, 24 301:21 309:13 314:18 329:3 355:23
calculation 298:4,21 335:24 361:21,23			clearer 390:22
calculations 298:21			client 311:2
Caleb 290:23			close 304:8 349:6 369:1 392:18
call 333:3 356:5,6			closer 304:20
calling 312:22			closing 319:17
calls 340:3 359:22 365:11 388:18			
capacity 360:9 389:6			

Club 315:12,22 402:16 403:14	391:14 392:13 395:13 396:20 397:14 398:6 400:21,22 401:5,14 405:8,13 408:14 409:9,12,16,18,19 411:7,13,14,18,22,23 413:15 415:12	commonly 304:16 305:21	concludes 359:20 414:19
coal 300:16 318:16 349:2,3,6,11 352:25 402:18	commission's 294:2,3 301:7 385:5	companies 347:23 373:11 392:14	conclusion 340:4 341:12 365:12 373:20 374:10
Coffman 307:5,8,9, 13,15 311:9,11,12 334:16,17,20 337:20, 25 340:7,9 342:13 349:20 353:20 354:13 355:4,7 357:14 358:13 362:9,10 363:6,11,15 364:1,20 365:14,17 366:17,19,24 368:17 381:12 391:10,11 396:3,8,10 405:14 410:5	commissioned 347:5	companies' 373:9	conclusions 415:23
cognizant 315:4	commissioner 303:24 307:3 309:25 310:1 311:10 316:1 320:1,7 321:4,7,10,16, 20 322:4,16,19,22,25 323:5,8,10,14,20,23 327:11,12,24 328:19, 24,25 329:1 330:3,16 331:3,14,23,25 332:1 346:11,12,13 348:15, 17,19,20,21,22,23,24, 25 349:14,25 350:12, 25 351:14,16 352:6,23 357:22,24 358:8,19 378:24,25 379:2,3 381:3,5,7 387:18,19, 20 388:1,6 400:5,6,7 404:12,13,15,16,17,24 405:21 408:19,21 410:7,14 412:6,11 414:22,24 415:5	company 290:6,12 299:10,17 300:14 301:1,6,9,11 302:12, 14 307:21 312:7,25 313:4,6 314:5 315:7 316:4 319:7 327:17 343:15,22 347:5 351:11 353:14,16 354:18 359:13,15 365:6,24 366:14 375:24 376:20,22 379:14,18 380:7,9,24, 25 387:2 393:8 396:23 398:25 399:3 409:8,9 413:22	conduct 316:15 377:20
coherent 319:11,12	Company's 295:16 301:12 313:14 380:20	comparable 347:18	confidence 310:24
Coleman 348:21,22 404:13,15	comparison 355:16 390:4,5	compared 318:6 341:17 346:24 355:16 390:7	confident 326:21
collect 392:14	compensation 308:2	comparably 347:18	confidential 292:25 293:1,5 316:12 371:24 377:17 390:21,23,24 391:1
collecting 346:6	Complacency 397:4	complete 316:18	conflict 320:10
collections 304:25	complete 316:18	completely 302:3	connection 349:13 410:6
Columbia 290:14	complex 395:3,6	complex 395:3,6	Connie 310:2
comfortable 338:11 366:7	compliance 387:4	complied 410:25	consequences 336:22
comment 327:14	commissions 401:2	component 336:17 354:25	consideration 322:3 328:21 330:4
commission 290:18 293:22 294:6,10,14 296:3,8 297:3,5 299:21 300:10,17 301:10 303:16 304:12, 15,23 305:5 306:17 307:16 308:20 309:14, 17 310:3 311:17 313:25 315:1,4 325:7 327:1,2 328:20 329:5, 13 330:10,21 332:2 339:16 345:3,6,7,10, 22 350:15 351:10 354:1 357:21 358:10 360:11 362:16,25 363:8,9,17 364:4,22 367:12 368:15 369:9 378:2,8 381:9 387:8	commitment 353:8 354:7	comparison 355:16 390:4,5	considerations 340:19
	committing 353:3	compensation 308:2	considered 308:1 316:9 348:11 375:14
	commodities 335:22 336:18 344:1,3	Complacency 397:4	consistency 330:13, 17,19
	commodity 341:15	complete 316:18	consistent 295:22 330:18
	common 394:13,16	completely 302:3	consistently 320:15
		complex 395:3,6	conspiracy 298:25
		compliance 387:4	consumed 336:1
		complied 410:25	consumer 308:16 310:20,22
		component 336:17 354:25	consumers 307:9,16, 17 308:10,12,24 310:8,10,18 334:15,20 337:16 338:13 340:22, 25 341:9 342:1 349:19 357:13 358:12 362:8 381:11 391:9,16,22
		components 354:15	
		computer 350:16,25	
		concede 317:18 336:12 338:20	
		concern 317:21	

<p>392:8 405:13 contact 290:25 contemplates 294:21 contested 395:9,10 Continental 343:15, 21 continually 328:12 394:3 397:2 continue 295:18 306:24 310:6 320:18 331:20 332:20 353:16 367:1,12 continued 310:8 413:17 continues 301:6 contract 300:9 contracts 318:14 368:12 380:2 Contrast 308:5 contribute 374:11 contributed 372:1 control 297:15 301:2 302:3,5,15,19 307:24 308:3,4,6,13 310:10, 18 318:12,13,24 319:3,6,9 335:19 336:10,13,14,15,25 337:3 354:14,21,22 355:2 375:25 393:2 404:25 controlled 318:8 controlling 379:10 convenience 409:3 conveniently 409:2 410:22 conversation 349:24 400:10 404:24 412:8 convinced 310:21 copies 350:15 352:8 389:18 406:23 407:22</p>	<p>copy 344:7 350:16 371:17 389:20 408:5 correct 293:2 320:5,6 321:8,14,18,19 322:17,18,20,21 324:9 330:12 335:4,9,20 336:10,23 337:15 338:5,19 343:15,16 351:8,22 353:18 360:22 362:20,22,23 366:5 369:5,22 370:15,18,25 371:9,13 372:3,12,13,20,22,25 382:6,13,24 383:10, 12,22 384:21 385:6 389:17 390:21 393:6 394:24 401:12 402:12 406:1,6,11 408:8,16 409:22 410:2 411:2,8, 17 412:13,16 413:10, 22 414:1 415:18 corrected 398:18 414:25 correction 390:1,10 corrections 333:18 356:18 360:16 390:11 correctly 344:20 350:3 368:25 371:3,25 372:16 375:12 376:2 379:15 385:4 403:8,9 correspondingly 379:18 cost 295:19,24 298:9 299:12,24 300:1 301:9,22 304:17 305:14 306:12 309:8 312:13,15,16 313:12 314:1 315:6 317:10,23 318:3,6,7,8,9 321:7 322:14 326:11 328:12 334:23 335:10,11,17 336:1 337:13,14 339:23 340:25 341:6 342:5 347:19,25 349:1,9 351:19 378:13,17 379:8,9,19, 23 380:10,24 392:9 393:12,17 394:2,10 396:4 399:19 402:23</p>	<p>404:24 413:21 414:1, 9,10 cost-effective 339:2 cost-effectiveness 365:9,20 367:7,8 cost-sharing 325:9, 20 347:23 378:7 costs 296:4,6 297:14 299:16,23,25 300:14, 21 301:1 302:5,6,16, 25 303:8,10,14 305:1, 3,16,18 306:11,22 307:23,25 308:2,3,6,8 309:7 310:11,16,22 312:7,12,23 313:4,5, 10,15,16,18 314:6,8, 15,19,21 315:17,22 316:22,23 317:2,7 318:7,11,12,25 319:4 320:17,18 321:5,22 326:13 328:3,16 331:9,10 335:1,14,20 336:4,10,14 337:4,9 339:5 341:8,17,20 342:8 346:16 347:16 348:5 353:4 354:10,12 355:15,16,17,20 365:7 372:5,9 373:10 376:8, 16 378:11 379:10 380:13,15,16,19 381:1 382:21 385:4,8 386:8 392:12,15,18,19,21 393:3,16,21 395:1,8 396:24 397:13 399:14, 16 402:25 403:23 404:25 405:3 413:12, 20 414:3,13 Council 307:9,16,17 308:10 334:15,21 349:19 357:13 358:12 362:8 381:11 391:9 405:13 counsel 290:22,24 292:18 311:13 319:15 320:14 326:8,10 342:15 349:21 350:20 357:16 358:14 368:20 379:7 381:13 388:17, 18 389:7,11 398:13</p>	<p>Counsel's 319:23 count 296:18 counting 359:10 country 301:5 counts 315:21 couple 308:25 334:21 352:22 379:6 384:7 412:4 court 290:19,25 308:15 389:2 covered 386:22 create 306:8 353:13 created 298:1 creature 413:18 credits 387:1 cross 391:7 cross-examination 334:4,12,17 342:16 349:16,23 356:25 357:10 358:10 361:8, 9,12 362:7,10 364:2 368:19,22 381:9 391:8,11 396:11 405:12 CSR 294:11 current 299:16 308:20 316:25 337:17 338:4 346:1 367:22 369:8 370:12 378:6 400:11 409:13 412:8 customer 300:3 315:3 337:10 342:7 393:7,14 415:4 customer's 387:23 customers 296:1 299:18,19 302:8 305:2 308:5,6 312:2 313:9, 13 314:23 317:4,8 318:4,19,20 320:17 324:14 335:4,13 336:25 337:3,7 338:5 341:5,19 346:7 353:12,16 354:9 365:4</p>
---	--	---	---

366:13,25 367:13 387:15 392:11,22 393:11,19 399:24 402:19	354:2 387:8 392:3 408:14 409:2,16,20 410:21 411:18,21 414:8	department 369:17 370:4,22 371:8	378:22
cut-and-paste 411:3	decisions 315:17 336:9,21 337:8 339:12,13 353:3,6,8 354:8 355:11 363:16, 19 364:4,15,22,24 380:17 381:1 395:6 397:8 402:25 403:25 404:4,8,11	dependent 302:6	difficult 401:11
cutting 328:2		depends 380:21 394:12	Dippell 290:2,4,18,21 291:2,22 292:1,5,13, 18,24 293:3,8,12,16, 21 294:23 295:2,10 303:22 304:2,6,12,19 307:2,4,11,14 311:8, 12 319:20 323:24 327:6,11 328:25 331:23 332:15 333:1, 6,25 334:7,12,15 337:22 340:6,8 342:15 345:9,16,19,22 346:11 348:17,20,23 349:15, 19,21 350:9,18 352:10,18 356:3,8 357:3,6,10,13,16,20 358:9,12,14,16 359:18,24 361:3,9 362:7 363:5,13,24 364:7,13,18 365:13,16 366:18,21 368:19 371:15,20 377:13 378:1,24 379:2 381:5, 8,11,13,15,17 387:17 388:4,11,14,21 389:21 390:20,25 391:3,8 396:9,11,14,19 400:6 404:13,16,18 405:12, 15,17 407:16,19 410:13 412:2 414:17 415:6,11,16
D		depose 385:11	
daily 349:10 353:11 414:12	declines 411:7	depreciation 305:23	
data 316:2,4,14,18 372:20 375:8 377:19 382:1,2,3 383:4 384:5, 15,16 385:11 401:18, 25 403:24,25 404:2,4	decommissioned 353:1	describe 310:15 317:17 381:23 383:14	
date 325:16	decrease 290:6 297:24 298:5 299:12 305:12 314:19 320:18 328:16 388:8 390:9 399:24 415:2	description 344:2	
dates 368:8	decreases 317:10 342:2	deserve 320:12	
day 396:18 415:12	decreasing 399:14	deserves 322:3 401:5	
de 348:11,14	deemed 339:14 340:15	designated 403:4	
deal 301:21 326:25 355:8 369:23 370:1 378:13	default 401:10	designates 402:20	
dealing 313:16 323:2, 14 328:18 371:9 384:9	defend 402:8	designed 304:17 334:25 365:5,20,24,25 393:23	
dealt 378:12 380:1	deficit 312:22 314:18	desire 338:12	
debate 321:6 324:2	definitions 375:11 383:20	desk 389:18	
debated 329:3	degree 392:2	detailed 374:18	
debating 314:9 321:2 323:17	deliberate 298:14	details 347:12	
decades 319:14 394:18	demand 336:16	determination 329:7,23 330:21 375:15 378:8 395:8 397:17 411:15	
decide 302:4 320:24 322:5 330:24 368:15 374:20	demands 302:7	determine 329:15 390:8	
decided 312:18 314:3 324:14,17 332:2 362:25 363:17 412:17	demonstrate 330:5,6	determined 363:8,9 392:13	
deciding 353:9	demonstrates 302:20	determining 399:25	
decision 320:9 339:14 340:16,17 349:3,4,11,12 353:9	demonstration 299:14	deviations 342:4	
	demonstrative 319:19,21,22	devoted 318:15 342:25	
	depart 311:18	difference 298:11 305:5,16 404:10 405:2	
		differences 306:9	
		differential 313:14, 17 314:25 326:13	
		differently 325:8	
			direction 391:18 393:13,20 413:7
			director 342:20
			disadvantage 347:20,21,22,24 348:2
			disagree 318:23 324:21 331:4

<p>disagreeing 323:9</p> <p>disagreement 298:12,13</p> <p>disallow 301:10 339:16</p> <p>disallowance 310:15,16 326:22 367:25 386:12,18 387:1</p> <p>disallowed 340:17</p> <p>discontinued 413:17</p> <p>discovery 350:21</p> <p>discretion 313:25 320:24 331:7 332:13</p> <p>discretionary 302:18</p> <p>discuss 297:20 414:21</p> <p>discussed 311:25 312:14 329:3 331:5 375:4,9</p> <p>discussing 316:11 351:14 371:25</p> <p>discussion 296:16 331:21 388:5</p> <p>disincentive 386:7, 13</p> <p>dismiss 329:16</p> <p>dispatching 403:6, 11</p> <p>disproves 300:5</p> <p>dispute 300:8 312:5</p> <p>disservice 318:25</p> <p>distinct 346:15 347:15</p> <p>distinction 321:21</p> <p>docket 333:14 345:7 356:15</p> <p>dockets 345:8</p> <p>document 296:13 350:20 351:9 352:15</p>	<p>408:6 409:21</p> <p>documents 294:18, 22 372:15,18 373:6, 18,24 374:5,6,25 375:7 381:23 382:4 408:4</p> <p>dollar 391:16</p> <p>dollars 303:5 326:9, 14,22 348:15 359:13, 15 403:15</p> <p>double-digit 307:25</p> <p>downward 393:13</p> <p>dramatically 355:15</p> <p>drew 321:3</p> <p>drives 392:25 395:19</p> <p>drops 375:24</p> <p>due 299:24 315:17 316:12 318:10 322:3 377:17</p> <p>duly 317:25 328:23 333:8 356:10 360:1 388:22</p> <p>duties 369:8 370:24 371:9</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier 339:7 378:11</p> <p>earn 297:17 348:9</p> <p>easier 311:5</p> <p>eat 312:25</p> <p>economic 339:12,13 353:15 402:20 404:11</p> <p>economics 352:25</p> <p>economize 305:7</p> <p>effective 294:13 322:14 325:16 394:2, 10</p> <p>effectively 359:10</p> <p>effectiveness 314:1 339:23</p>	<p>efficiency 314:1,4 317:3 323:18 324:5 325:1 369:24 394:4</p> <p>efficient 394:4 397:4, 11</p> <p>efficiently 354:12</p> <p>effort 299:15</p> <p>efforts 296:9</p> <p>EFIS 415:17</p> <p>elected 302:12 318:1</p> <p>electric 290:5,7 294:7 296:7 307:21 347:17 351:1,6 363:18 395:14</p> <p>elegant 310:22</p> <p>elements 383:16,17</p> <p>elevators 343:24</p> <p>eligible 305:24</p> <p>eloquently 327:23</p> <p>Empire 325:4 330:10, 12,22 397:3 398:15 407:25 413:2</p> <p>employ 319:2 336:4</p> <p>employed 343:14 360:9 369:10 389:5,7</p> <p>employees 336:3,13, 21 355:4,8,11</p> <p>employing 319:1</p> <p>employment 362:16 369:11</p> <p>encompass 364:2</p> <p>encompasses 347:21</p> <p>encourage 311:21 317:19 320:18 324:13 331:20</p> <p>encouragement 314:8</p> <p>end 300:4 302:8 305:18 315:20 320:17 394:13</p>	<p>energy 299:23,24 300:1 312:13 342:20 343:3,6 347:19 355:16,17 369:16,19, 24 370:9,10 387:1 399:16,19 413:20,21, 25 414:3,9</p> <p>engage 316:22 317:20,22,23 318:3 324:13</p> <p>engaged 311:22,23 322:13</p> <p>engages 392:3</p> <p>engineer 319:16</p> <p>enter 291:5,8,12</p> <p>entered 327:7</p> <p>entice 380:16</p> <p>entire 318:15 345:14, 17</p> <p>entitled 352:14</p> <p>entries 290:11 376:2</p> <p>entry 307:6</p> <p>envision 328:9</p> <p>envisioned 413:15</p> <p>EO-2010-0255 293:25 294:3</p> <p>EO-2012-0074 293:25 294:3</p> <p>EO-2013-0407 294:1, 4</p> <p>EO-2015-0060 294:1, 5</p> <p>EO-2016-0228 294:1, 5</p> <p>EO-2018-0067 294:1, 5</p> <p>EO-2019-0257 294:2 371:21</p> <p>EO-2019-2057 294:5</p> <p>equate 354:21 387:23</p>
--	---	--	---

equated 303:7	evolving 413:18	305:23 346:7 395:24	7,12 342:25 345:3,15
equity 308:1 310:11 348:9 395:14 396:4,7	ex-senators 323:15	experience 319:14 374:7 376:25 400:25 414:3	346:1,5 351:18,20 353:15 354:4 368:13 369:21 372:10 375:2 376:16 379:8 380:6,10 384:13,14,22 386:18 387:10 392:6,13,17 393:18 395:8,19 397:13 398:16 400:19 401:1 402:23 403:2,5, 7,19 405:25 406:5,14 407:5,7,13 408:15 410:2 411:8 412:12,18 413:3,8,10,11,18 414:13
ER-2007-0002 344:21,25 345:11	EXAMINATION 333:9 350:23 356:11 358:18 360:2 381:18 388:23 412:5	experiment 409:8,19 411:7	FAC's 400:11
ER-2008-0318 294:8	examined 383:8	experimentation 409:17	face 300:23 306:18
ER-2010-0036 294:8	Excel 382:9,19	experimenting 409:4	FACS 346:18,25
ER-2011-0028 294:9 300:11 406:18 407:3 408:1,7	Excellent 328:24 415:5	expertise 387:21 395:17 396:2	fact 294:11 296:10 297:1 299:18 300:13 303:2,16 317:11 320:8 329:6 330:19 362:2 399:23 401:7,16,25 415:22
ER-2012-0166 294:9 409:22	exception 295:15 321:24	explain 372:7 375:22	factor 342:4 380:4
ER-2014-0258 294:10	excess 314:6	explaining 383:16	factors 308:21 312:17 313:13 350:7 399:22
ER-2019-0335 290:5	excused 291:4	explains 374:16	facts 363:4,5,6
era 312:10	exercise 319:8 336:13	explicit 324:11	fair 308:12 310:9 311:6 324:15,16 335:13 337:7 338:18, 24 341:11 342:2,13 344:2,24 365:10 382:14,25 392:5,8 394:19,20 406:17
erased 311:15	exercising 374:22	explicitly 299:21 300:10 323:19 324:22	fairly 358:24
error 358:6,7	exhibit 291:13,14,15, 16 292:2,8,9,14 296:12 319:21,22 334:4,8 352:9 357:4 360:14,25 361:1,4,5 389:16 390:21,23 406:9	export 343:25	faithful 296:5
escape 304:6	exhibits 291:20,23 292:3,7,11,14,16,20 293:6,9,13,14 333:16 334:5,9,10 356:16,25 357:1,7,8 390:17,18 391:4,5	exposure 339:13 340:16	fall 329:8 336:22 337:4
essentially 343:9	exist 312:6	extensive 316:16 373:8 377:20	familiar 339:18,21
established 401:14 412:22	exists 320:14	extent 340:3	famous 308:15
estimated 305:1,4	expect 339:15,16 340:17 411:4 415:10	extra 402:24	farmers 343:24
estimates 312:20	expected 314:19	extremely 310:20	fast 317:9 403:1
evaluation 353:11	expenditures 301:10 302:1,3,4	F	faster 349:7
Evergy 397:3 398:14 413:2	expense 306:13,14 317:22 354:24 355:1	FAC 294:13 295:17, 18,19,21,22,23 296:4, 5,6,7,17,19 297:16,23 300:14,18,23 301:5, 11,19,20,21 302:1,5, 16,22 303:13 304:17 305:11,16,20,25 306:3,6,12 312:1,6,11, 25 313:8,17,22 314:16,20 315:21,23 316:2,5,7 317:8 318:6, 19,20 319:15 320:16, 23 321:14 323:1 324:25 326:12 328:9 330:5,14 331:7 332:2,	
evidence 291:6,21 292:4,12,17 293:7,15 298:4,6,7 299:11 300:5 303:1 322:13 328:1 329:23,25 330:25 331:17,20 334:6,11 357:2,9 361:2,6,24 362:3 363:4,9,11,13,23 364:3,11 366:9 378:6, 7,21 390:19 391:6 398:21	expenses 302:1		
evidentiary 290:8 310:25			

<p>federal 375:11</p> <p>feel 311:18 331:21 347:22 354:6,11 358:2</p> <p>feelings 311:24</p> <p>felt 379:18 398:20</p> <p>FERC 372:2 374:14 375:10 376:17 383:20</p> <p>figure 326:8 350:13 358:20</p> <p>figures 414:23 415:2</p> <p>file 293:25 294:2,4 412:18 415:22</p> <p>filed 293:16 295:7 331:9 355:16,17 361:17 389:12 400:20, 21,22,25 406:17 415:1,20</p> <p>filing 297:24 316:5 331:8 333:13 356:14 406:6</p> <p>filings 369:21,24 370:8,14,19 387:10,12 414:1</p> <p>final 312:4</p> <p>finally 303:4</p> <p>financial 342:10 409:7</p> <p>financially 338:23</p> <p>find 304:6 311:19 361:24 378:5 379:22 385:24 386:17 388:6 405:8</p> <p>finding 340:12 367:14,18,22 385:21 411:20</p> <p>findings 415:22</p> <p>finds 409:9 411:22,23</p> <p>fine 304:12</p> <p>finish 332:21</p> <p>first-hand 331:5</p>	<p>fix 329:21</p> <p>fixed 342:9</p> <p>flag 329:11</p> <p>fleet 335:16</p> <p>flies 300:23</p> <p>flips 302:17</p> <p>floor 331:5</p> <p>flow 295:19 368:12 372:10</p> <p>flowed 375:2</p> <p>flows 328:9</p> <p>fluctuate 336:1</p> <p>fluctuates 336:16</p> <p>fluctuation 338:22</p> <p>focus 309:8 310:21 375:6,18</p> <p>focused 372:8</p> <p>folks 336:9</p> <p>follow 324:1 332:1 379:6 409:17</p> <p>follow-up 323:25 404:21</p> <p>foot 313:9</p> <p>footing 347:18</p> <p>force 298:25</p> <p>forced 376:1</p> <p>forces 309:5</p> <p>forever 401:8</p> <p>formally 294:21 319:17</p> <p>Forty-two 348:15</p> <p>forward 312:8,19 313:6 320:19 322:22 329:6,20 330:22 339:8 397:13,22 414:5</p> <p>found 300:10 372:11 385:3,18,20,22 386:3, 24</p>	<p>fractional 354:25</p> <p>frame 376:25</p> <p>framework 316:21 321:25 332:12</p> <p>frankly 297:21 301:3 318:17 325:23</p> <p>frequency 348:7</p> <p>front 305:18 320:17 344:8 351:9 401:6</p> <p>FTES 336:3</p> <p>fuel 290:9 293:24 294:6 295:16 299:16 302:7,25 304:16,17,25 305:14,18 306:22 307:19,22,23 308:2,3, 6,8,17 309:6,11 311:3 312:7,12,15 313:12, 15,16,18 314:2,21,22 315:6 317:7,10 318:7, 8,11,12,24 319:3,4 321:5,8,11 331:9,10 334:22,24 335:1,14,20 336:1,4,5,23 337:2,4, 14 339:5,6,18 340:23, 25 341:6,13,20,25 348:3,5 349:8 351:2,6 354:10,12,20 355:8, 15,20 362:14,19,25 363:17 364:5,21 365:7 367:2 371:2,18 378:10,17 380:8,10,13 382:20 392:19 393:3, 5,11,20,21 394:22,23 395:1,4,8,11 396:25 398:11 399:14 405:3 409:5,11,14 411:16,24 412:23,24 414:13</p> <p>full 316:18 339:13 340:17 353:8</p> <p>function 344:4</p> <p>future 312:21 322:13 328:20 329:24 331:1, 16,19 378:14 397:18, 20 399:10,11 414:4</p>	<p>G</p> <hr/> <p>gain 297:24 305:11 314:24 338:7</p> <p>gained 297:22</p> <p>gains 315:7,8 316:23 317:4,5,10</p> <p>game 311:6 313:14 314:7 318:2 320:16 321:3 392:16 394:6</p> <p>gas 318:16 378:13</p> <p>general 293:18 370:13 373:2 375:1,3, 9,23 376:11 382:22 383:11 387:13 393:10 395:2,17</p> <p>generate 387:3</p> <p>generation 335:16</p> <p>generous 310:10</p> <p>genesis 400:17 405:22</p> <p>give 319:22 332:9 350:15 365:6 389:20 400:23 407:18</p> <p>goal 371:5</p> <p>good 290:2,13,23 295:13 304:14 317:1, 13 320:11 322:11 327:12 330:13 331:11, 12 334:18,19 342:17, 18 357:18,19,25 358:1 360:3,4 361:13,14 362:11,12 368:23,24 369:6 388:24,25 391:12,13 394:9,11,13 396:15,16,18 397:5,8, 9 399:17 400:8,9</p> <p>government 317:5 330:13 375:11</p> <p>grabs 297:8</p> <p>grain 343:15,21,23,24</p> <p>granted 406:1</p>
--	--	--	---

<p>great 388:2</p> <p>greater 302:17,20,21 346:24 347:11 353:14</p> <p>grossly 312:17</p> <p>group 318:15 319:3 336:5 342:21,23 343:4,8,9 355:5 369:14,20,23 370:4,5, 7,13,25 386:17</p> <p>grown 338:17</p> <p>guaranteed 306:14</p> <p>guess 309:12 327:13 336:6 337:12 347:2 351:16 362:21 380:19 399:7</p> <p>guidance 324:12 325:25 326:2,3,5</p> <p>guiding 308:16</p> <p>guys 320:24</p> <p>guys' 328:21</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 327:15 347:6 351:12 392:16 395:21</p> <p>Hall 290:23 291:25 292:19 293:1,4 295:1 304:11 311:14,17 319:25 320:6,11 321:6,9,12,19,23 322:18,21,24 323:3,8, 11,16,22 324:4,10,20 325:12,22 326:5,20 327:2,22 328:13,23 330:2 331:3 332:8,17 342:16 345:5,20 349:22,23 350:8,19 352:14 355:4 357:17 358:15,21,24 368:21, 22 371:14,16,21,22 377:12,14,25 381:14, 22 383:25 388:18,21, 23 389:19,22 390:16, 22 391:7 406:22 408:17 412:4,5 414:15</p>	<p>hand 312:4 408:4</p> <p>handled 322:20</p> <p>happen 303:1 325:14 347:10 378:14 397:16 414:12</p> <p>happened 368:10</p> <p>hard 300:15 311:19 367:21</p> <p>Hasse 291:13</p> <p>hasten 349:2</p> <p>head 302:17 352:7 383:24</p> <p>heading 374:14 409:2</p> <p>headquartered 343:17</p> <p>hear 290:10 303:17 343:21 377:8 386:11 404:6</p> <p>heard 308:15 326:8 377:10</p> <p>hearing 290:4,8 327:15 344:20 386:21, 25 387:6</p> <p>heavily 370:21</p> <p>hedging 318:14 328:7,17 335:21,23 336:19 337:1 354:18, 20,23 378:13</p> <p>heels 400:20</p> <p>held 300:17 309:25</p> <p>helps 394:6</p> <p>hide 299:18</p> <p>high 298:9 308:9 310:25 342:1 395:20</p> <p>higher 298:16,22 302:23 305:16 313:10 320:15 322:12 325:9 326:18 395:21</p> <p>highlight 410:22</p> <p>highlighted 296:22 409:3</p>	<p>highly 316:12,13 377:17,18 395:9</p> <p>historical 397:15 414:10</p> <p>historically 328:6</p> <p>history 295:21 307:19 312:10 380:20</p> <p>hit 325:13</p> <p>hole 408:18</p> <p>Holsman 307:3 316:1 328:25 329:1 330:3,16 331:3,14 348:20,23, 24,25 349:14 352:23 381:5,7 404:16,17</p> <p>Holsman's 332:1</p> <p>honest 403:13</p> <p>Honor 290:13 291:11 294:16 307:8 326:19 333:3,7 334:2,16 337:18 345:5,13 350:10,11 352:9 356:1,24 357:12 358:13,17 359:17 362:9 363:20 371:14 377:12 381:12 389:19 390:16 391:10 396:1 405:14 410:5</p> <p>hope 328:19</p> <p>host 336:2</p> <p>hourly 349:10</p> <p>huge 358:3,4,5 404:2</p> <p>hundred 352:2</p> <p>hurt 311:24</p> <p>hypothetical 314:15 317:1 324:23 328:14 349:25 364:9</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 302:14 318:7 365:19</p> <p>identification 333:15 356:16</p>	<p>identified 347:7</p> <p>identify 339:15 408:19</p> <p>imagine 328:13</p> <p>immediately 415:9</p> <p>impact 391:16,22,24 392:3 393:3 402:19,24 403:22</p> <p>impacts 312:2 335:23</p> <p>implement 409:6</p> <p>important 310:14 330:20,22</p> <p>Imposing 409:7</p> <p>improve 314:1 394:3</p> <p>improved 314:11,12</p> <p>imprudence 315:23 340:12 366:10,14 367:2,5,9,14,15,18 368:1,4 372:11 378:9 379:9,14,22 385:18, 20,21,22,24 386:7,23, 24</p> <p>imprudences 378:16</p> <p>imprudence 378:21</p> <p>imprudent 301:10 322:17 340:15 374:21 393:24 398:20,23 399:4</p> <p>imprudently 300:14, 18 379:18 398:25</p> <p>In-service 301:18 305:21 317:16</p> <p>inappropriate 399:9</p> <p>incent 339:2</p> <p>incentive 296:4 301:16 302:17 303:2 305:6,17 312:6 313:3, 21,22 314:1,5 316:21 317:3,12 319:8 320:15,24 323:18 324:5 325:1 326:17,18 327:20 328:8,16 330:14 332:4 335:5</p>
---	--	--	---

<p>339:22 349:6 354:9 365:6,9 380:7,12,14, 15,16 394:8 404:11,25 405:4,10 413:6</p> <p>incentives 301:12 306:8 309:18 317:19</p> <p>incentivize 317:22 327:18 354:11</p> <p>incentivized 318:3</p> <p>incentivizes 313:4</p> <p>incentivizing 365:9</p> <p>inception 319:16</p> <p>include 313:25 314:4</p> <p>included 295:24,25 316:2 317:15 351:23 352:2 374:25 389:23 390:13 406:13 409:13 414:14</p> <p>includes 312:14,15</p> <p>including 399:23</p> <p>inclusion 368:12</p> <p>income 342:9</p> <p>inconsistencies 375:25</p> <p>inconsistency 297:10,11</p> <p>increase 300:9 303:1 305:13 314:15 315:17, 18 316:22 318:10 319:8 320:17 390:9 393:6</p> <p>increased 297:18 300:3 312:23 326:13 402:23</p> <p>increases 299:13,25 342:1 347:19</p> <p>incremental 353:4 405:2</p> <p>incurred 296:6 297:14 303:8,10 304:25 305:3 313:19 315:21 326:10 335:1 337:10 341:8 348:5</p>	<p>incurs 376:8</p> <p>Independent 302:6</p> <p>indication 348:8 350:1</p> <p>indirect 298:8</p> <p>individually 344:19</p> <p>individuals 296:19</p> <p>induce 315:3</p> <p>indulge 350:11</p> <p>industrial 392:24</p> <p>infancy 322:6</p> <p>infer 324:8</p> <p>inferring 326:3</p> <p>inflammatory 299:10</p> <p>influence 336:19</p> <p>inform 353:11</p> <p>information 290:20, 25 296:12 351:13 367:23 376:18,20 382:20,21 385:10</p> <p>inherent 316:20</p> <p>inherently 321:23</p> <p>initial 415:19</p> <p>initiated 325:15</p> <p>input 298:11,13</p> <p>inputs 413:10</p> <p>inquiry 410:6</p> <p>insertion 299:10</p> <p>instance 331:15</p> <p>instances 317:5 324:24 340:14 398:19</p> <p>insulated 317:8</p> <p>insulating 318:4</p> <p>insurance 308:7 310:17</p> <p>integrated 346:17 370:2</p>	<p>intend 295:7</p> <p>intended 295:8</p> <p>intent 329:5</p> <p>intentionally 297:23 404:7</p> <p>interactions 379:6</p> <p>interest 353:12 394:16 401:14</p> <p>interesting 309:4</p> <p>interests 306:9</p> <p>internal 370:5,7,24 371:5</p> <p>international 318:10</p> <p>interrupt 406:22</p> <p>intertwined 403:20</p> <p>intimately 339:18</p> <p>investigation 311:4</p> <p>investment 297:18 302:18 317:20 318:3 324:13 369:24</p> <p>investments 302:11, 15,16</p> <p>investor 347:16 348:2,7 349:25</p> <p>invite 316:10 319:12 327:2 415:22</p> <p>involve 321:17</p> <p>involved 300:8 303:5 320:2 368:11 370:11, 13,19 384:14 386:6</p> <p>involvement 370:3</p> <p>IRP 370:6 371:11</p> <p>irrelevant 358:2,4</p> <p>issue 290:9 291:3,6,8 292:20 295:5,14,15,20 302:13 308:11,14 310:7 312:4 314:9,13 315:11,24 316:8,12,19 324:17 325:3 326:16 330:9 332:2 362:14</p>	<p>368:14 372:17 373:6 374:15,20,23 375:4,7, 15 379:25 385:2 386:6 395:9,10 398:8,9 403:20 406:6 410:8</p> <p>issues 290:8 291:7, 13 299:4 316:4,6 330:9 342:25 349:5 362:15 398:14</p> <p>item 351:18</p> <p>items 293:17,18,23 294:15,24 415:7</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>Jim 290:13</p> <p>job 343:13 344:2,5 397:5</p> <p>John 291:16,17,18 307:8 334:20</p> <p>journals 373:3 382:23</p> <p>judge 290:2,4,18,21, 23 291:2,22 292:1,5,7, 13,18,19,24 293:3,8, 12,16,20,21 294:23 295:2,10,13 303:22 304:2,6,12,19 307:2,4, 11,14 311:8,12 319:20 323:24 327:6,11 328:25 330:11 331:23 332:15 333:1,6,25 334:7,12,14,15 337:22 340:6,8 342:15 345:9, 16,19,22 346:11 348:17,20,23 349:15, 19,21 350:9,18 352:10,18 356:3,8 357:3,6,10,13,16,20 358:9,12,14,16 359:18,24 360:25 361:3,9 362:7 363:5, 13,24 364:7,13,18 365:11,13,16 366:15, 18,21 368:19 371:15, 20 377:13 378:1,24 379:2 381:5,8,11,13, 15,17 387:17 388:4,</p>
--	---	---	--

11,14,21 389:21 390:20,25 391:3,8 396:9,11,14,19 400:6 404:13,16,18 405:12, 15,17 407:16,19 410:13 412:2 414:17 415:6,11,16	knowledge 331:5 360:23 385:17	legislation 317:15 320:9 326:6	logical 399:12,13
judgment 330:20	<hr/> L <hr/>	legislators 302:10	long 316:6 343:7 344:5 362:13 369:8 382:25 383:5 386:20 394:17 410:15 415:21
judicial 363:12	L-E-N-A 389:3	legislature 308:19 309:10 317:25 320:8, 23 321:1,10,12,13 322:5,19 324:2,14,15, 17,22 326:3 329:4 330:17 331:6 413:5	long-standing 301:7
July 300:11	L-I-S-A 360:7	legislature's 329:7	long-term 318:14 349:4,12
junction 331:22	labeled 410:21	Lena 296:20 361:18 388:18,22 389:3	longer 325:10 374:3
June 362:16 369:11	lack 328:15	Lena's 346:4	looked 332:3 372:20, 22 373:2 374:17,24 375:4,8,10 378:19 382:17 398:19 399:22, 25
justification 412:7	lag 313:2 314:20 321:25	Letter 381:25 382:7 383:4,8,13	lopsided 309:22 310:20
justify 300:9	land 335:20	level 298:9,16 359:7	lose 300:24 301:11
<hr/> K <hr/>	Lange 316:11 377:22 384:1,7	levels 327:21	losers 297:13
Karen 290:19 304:15	Lange's 377:8 384:22	Lewis 290:14	loss 298:1
KCP&L 386:18	language 313:22 321:13 322:5 323:13, 17,18 324:5,11,22 329:5 366:16 411:1,22	limited 393:18	lost 326:13 328:6
keeping 300:22 338:14	large 296:14 300:25 363:1,18,22 373:5,7 403:16	Lines 359:3 376:12 377:16	lot 308:4 309:8 318:9 325:24 367:23 395:6, 18 397:14 404:3,8
KEEVIL 311:15	largely 299:25 302:6 336:20	Lisa 307:1 359:22 360:1,7,12	Louis 290:17 307:10
Kenney 303:24 311:10 320:1,7 321:4, 7,10,16,20 322:16,19, 22,25 323:5,8,14,20, 23 346:11,12,13 348:15 349:25 350:12, 25 351:14,16 378:24, 25 400:5	larger 300:19	list 295:6 306:17 339:4 354:11 372:14 373:5 375:16 401:4 406:15	low 297:23 305:14 313:4 342:2 396:24
Kenney's 352:6	launch 311:4	listed 297:3 344:17, 21 345:8 373:18 374:25 406:9,12	lower 298:17,18,19, 23 300:21
KENNY 323:10	Laura 291:14,15,16	listing 372:15	Lowery 290:13,14 291:11 293:10 294:16 295:4,8 304:9 326:19 333:3,6,7,9 334:2 337:18 340:3 345:13, 18 350:10,21,23 352:8,12,19,20,21 356:1,6,9,11,24 358:17,18 359:16 388:7,12 414:22,25 415:8,14
key 304:6 325:13 330:13	law 290:4 294:17 302:10 308:20 364:1 366:12 415:23	lists 296:15 374:5	lowest 299:6
keyboard 304:7	lawyer 339:17	litigated 330:9	lug 310:8
kind 296:13 309:5 327:19 328:9 347:20 382:18 399:14 401:24 402:14 404:23	learned 412:24	live 291:8 338:18	
knew 320:24	leave 414:23	living 342:9	
knowing 311:5	ledger 375:1,3,9	LLP 290:14	
	ledgers 373:2 382:22 383:11	load 302:7	
	left 295:5 320:25 322:9 332:13 389:18	local 343:24	
	legal 340:4 365:12	logic 315:6 325:7 400:12	
	legible 304:1		

M			
M-A-N-T-L-E 389:4	manifested 355:12	matrix 312:18	354:10 355:13 369:10 371:10 378:11
made 303:20 317:18 320:9 321:21 330:18 332:4 354:2 355:11 387:8 395:6 397:8 404:9 409:16,20	manipulated 298:4 361:25 362:4	Matt 407:11,25	merchandise 343:23
maintain 322:8 331:6	manipulating 298:20	matter 290:5	mess 399:12,13 400:12,17 401:18
maintaining 305:8	manipulation 298:10,14 299:2,9,14 311:23	matters 364:5 371:25 414:20	met 361:15
majority 317:9 375:16 400:16	manner 398:20 403:7,11	meaning 323:9 408:14	Meyer 295:9 296:11 299:15 300:6 301:25 319:2 333:3,8,10,12, 25 334:3 342:17 344:7 345:20,23 349:24 350:14,24 356:3
make 291:5 300:24 305:15 307:6 318:18, 22 326:25 327:23 329:14 330:21 331:1 336:9,21 367:15,22 368:3 375:18,19 376:3,7,16 378:8 390:11 395:13 397:16 399:17 404:11 411:18 415:18	Mantle 296:20 298:3, 13,24 300:19 302:2,23 303:11 306:7 311:21 317:14 319:13 320:2 325:4 361:18 388:18, 22,24 389:3,4 391:12 396:20 405:20 409:15 410:19 411:25 412:6 414:15,18	means 303:9 330:19 415:24	Meyers 334:18 406:8, 9
makes 297:21 301:21 302:21 322:16 325:10 376:3 398:2 411:13,14	Mantle's 296:24 297:15,20 300:6 301:14,20 302:13,17 312:1	measure 322:15	Meyers' 303:6 306:16
making 321:20 329:22 331:16 339:12, 13 353:3,7 354:8 375:23,24	March 290:3 294:14 406:4 415:1,20	measures 398:1	mic 304:20
manage 296:4 302:24 308:2 310:11 335:22 336:4 354:11 365:6 380:8,13,15,16	margin 353:13	mechanism 297:12 300:25 301:4,8,11 303:7 304:24 305:6,9, 17,25 306:2,5,18,20, 25 308:11 309:25 312:5 313:24 317:8, 13,17 321:14 324:25 330:5 332:12 334:22, 23,25 335:2 337:15,17 338:2,4,15,21 339:11, 22 341:21 347:4,8,11, 23 348:4,6 351:20 362:14,22 365:3,5,9, 18,20,23 366:4 367:8 370:9 378:7 380:7,9 386:9 393:23 395:15 398:10 408:24 409:5, 9,13 411:8 412:21	microphone 334:1
managed 300:14 380:10 395:1	mark 292:9,10 319:20,22 352:9	mechanisms 301:16 320:4 321:23 347:7	mid 307:22
management 300:25 303:12 342:20,25 343:4,6	marked 292:8 333:15 356:16 360:13 389:16	media 385:25	mid-1970s 308:8
manager 336:14	market 314:11 316:16 318:10 336:15 341:15 349:10 353:5,10 377:18,21 395:5 397:6,7 402:18	MEEIA 369:23 385:24 386:3	Midcontinent 302:6
manages 303:14	market-bidding 316:13	meet 361:16	million 303:7,10 326:8,9,10,15,16,17, 22 328:6 331:10 348:13,15 355:18,21 358:2,4,20 359:15 387:22 388:9 403:15
managing 299:15 380:18 381:1 385:4	markets 302:7 318:9 395:20	meeting 309:23	mind 299:11 306:10 353:22 365:18 377:16 393:23
manifestation 322:1	matched 414:4	member 306:25	minds 324:21
	material 326:15,17,23 359:1,7,14	memory 352:15,16 379:13	minimis 348:11,14
	materials 384:16	Memphis 343:20	minority 346:15 347:15
	math 414:8	mention 354:17 387:9	minutes 332:19
		mentioned 351:10	misleading 310:15
			mismanage 301:9
			mismatch 318:5 414:7
			MISO 302:7 316:14 375:10 376:9 377:19

<p>383:13,14 384:5 395:5 402:18</p> <p>mispronounce 369:4</p> <p>missed 293:4 369:12</p> <p>Missouri 290:14,15, 17 293:25 294:7 295:12,17 296:1,7 297:17,22,25 298:4, 20,25 299:19,20,22 300:2,7,15,18,20 301:3,24 302:5,24 303:14 307:10,16,18 308:10,14,17 319:2 322:2 342:11,21 343:19 346:24 347:17, 19 348:1 350:5 351:23 352:3 359:6,12 360:11 361:24 364:2 369:24 371:19 395:14 400:19 402:19,22,24 403:4,6, 10 406:1,5,17 409:11, 24 412:19,23</p> <p>Missouri's 290:6 294:13 295:22 296:15 298:18,20 299:13 302:3 361:20,23 370:10 403:2 409:5,13 411:16</p> <p>misstating 326:23</p> <p>mitigate 342:10</p> <p>model 298:9</p> <p>modeling 298:17 306:22 311:3 316:15 377:19 384:6 414:10</p> <p>modification 413:4</p> <p>modifications 413:3, 9</p> <p>modified 413:16</p> <p>modify 309:15</p> <p>Module 383:14,19</p> <p>modules 375:10</p> <p>money 300:20,24,25 317:23 318:18,19,20, 22 326:10 394:14,15</p>	<p>399:17</p> <p>monitored 394:21</p> <p>monopoly 395:23</p> <p>month 415:4</p> <p>monthly 372:24 373:8 376:23 382:17</p> <p>months 316:6 371:3, 8 373:24 374:4 392:1</p> <p>Moore 291:14,15,16</p> <p>morning 290:3,13,23 295:13 304:14 307:12 327:12 334:18,19 342:17,18 357:18,19, 25 358:1 360:3,4 361:13,14 362:11,12 368:23,24 379:4,5 388:24,25 391:12,13 396:15,16 400:8,9</p> <p>mother 342:8</p> <p>motion 293:17 371:19</p> <p>move 292:23 334:1 378:20 390:16 399:4, 15</p> <p>moving 397:22</p> <p>muddled 399:12,13 400:12,17</p> <p>multiple 293:17 296:24 297:7 325:20 350:7 382:11</p> <p>multitude 312:16 313:12 316:6</p> <p>Murray 310:1,2</p> <p>must've 369:12</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>names 369:2</p> <p>Nancy 290:3</p> <p>narrow 354:23</p> <p>natural 318:16 378:13</p> <p>nature 316:12 377:17</p>	<p>NBEC 297:23 298:4, 17,18,21 299:5,6,13 301:9 312:13</p> <p>NEBC 361:20</p> <p>nebulous 325:24</p> <p>necessarily 315:8 330:25 383:6 397:9 399:6</p> <p>necessitate 329:19</p> <p>necessitating 330:1</p> <p>needed 303:14 317:19 320:15,24 321:2 330:4</p> <p>negative 299:1 391:16,19</p> <p>negotiate 300:15</p> <p>negotiation 310:3 400:13</p> <p>neighbor 392:24</p> <p>net 295:24 299:23,24, 25 300:1 312:13 331:10 347:19 355:14, 16,17,20 399:16 413:20,21,25 414:3,9</p> <p>network 376:10</p> <p>newest 301:14</p> <p>news 318:8</p> <p>nice 296:14 361:15</p> <p>night 311:5</p> <p>nodded 383:24</p> <p>non-restructured 346:25</p> <p>noon 332:22 388:10</p> <p>normalized 305:14, 18 390:7,8</p> <p>note 308:18 313:23</p> <p>noted 295:4 328:23 349:25</p> <p>notes 311:18 379:15</p>	<p>notice 293:17,22 294:10,15,20 295:3 299:19,20,21 345:6, 10,19 363:12 408:5</p> <p>noticed 388:4 394:25</p> <p>notional 339:14 340:16 353:8</p> <p>number 290:5 296:22,23 312:13,14 313:24 347:8 348:12, 14 350:12 355:4 358:3,4,5 362:3 378:16 382:9 388:6,10 395:19 403:17</p> <p>numbers 292:22 293:25 294:2,4 303:11 336:8,22 368:8 378:18 382:10 400:15 413:21</p> <p>numerous 306:20 382:4</p> <p>nurtia 322:9</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O&m 299:13</p> <p>object 326:20 337:18 363:3 396:1 410:5</p> <p>objecting 318:22</p> <p>objection 291:23 292:14 293:8,10,18 294:24 334:7 340:3 345:10,18 350:18,19 352:17 357:3 361:3 363:21 364:14 365:11 366:21 390:20 391:1 396:9 408:17 410:14</p> <p>objections 291:5 293:22</p> <p>obligation 335:15</p> <p>obtain 298:5</p> <p>occasions 339:9</p> <p>occurred 370:20</p> <p>occurring 377:2</p>
---	---	---	--

<p>off-system 298:8,16 312:15 374:14,22 375:2 378:12</p> <p>off-systems 304:18 368:11</p> <p>offense 325:14</p> <p>offensive 297:22</p> <p>offer 294:19,21 334:2 356:24 360:25 392:7 404:25 409:17</p> <p>offered 291:21 292:12 293:7 334:5 357:2 361:1 390:19</p> <p>offering 294:18 323:15 346:9 352:13</p> <p>offers 303:1 405:4</p> <p>offhand 373:7,21 385:23 386:22</p> <p>office 290:21,24 311:13,20,25 328:21 330:4,23 331:19 332:1,6 369:14 379:7 389:7,10 398:13,18 412:17 413:4</p> <p>office's 319:16 413:20</p> <p>official 293:17,22 294:10,15 295:3,6</p> <p>offset 299:25</p> <p>offsetting 299:13</p> <p>Ofentimes 312:21</p> <p>oil 318:15</p> <p>Oligschlaeger 292:9,10</p> <p>on-the-record 296:14</p> <p>one's 318:6,7</p> <p>one-way 306:3</p> <p>onerous 410:15</p> <p>ongoing 325:4</p>	<p>OPC 293:6,14 295:19 298:24 299:2,6,8 305:9,10,11,13,15,19, 20 306:19,23 320:3,7 361:17 385:7,10,14,17 390:18 391:5 400:3 413:25</p> <p>OPC's 306:14 316:24</p> <p>open 329:24 331:19</p> <p>opening 295:11 307:11 319:23 355:14 377:6</p> <p>operate 312:2 335:17 350:25 353:10</p> <p>operated 409:11</p> <p>operating 346:25 376:9</p> <p>operation 312:16</p> <p>operations 312:7 343:6</p> <p>operator 376:4,9</p> <p>operators 302:7 373:16 377:3</p> <p>opinion 298:11 301:12 340:10 341:19 354:3,5 365:21 366:25 367:11 377:24 403:4 405:1</p> <p>opportunity 306:21 326:25 385:7</p> <p>opposite 314:17</p> <p>opposition 331:17</p> <p>optimal 402:2,3</p> <p>order 294:2 297:24 298:5 300:11 306:24 344:24 345:6,11,14,17 352:22 407:22 408:7 410:16 411:2,21</p> <p>ordered 306:17 415:21</p> <p>orders 294:3,7 363:12,21 410:8,11</p>	<p>original 298:20 363:24</p> <p>originally 338:17 413:11</p> <p>OSSR 376:19 383:17</p> <p>outset 311:18</p> <p>overestimated 307:23</p> <p>overlooked 406:13</p> <p>overpaid 300:16</p> <p>overrule 410:13</p> <p>overruled 363:20 366:21</p> <p>oversee 343:1</p> <p>overshadow 306:10</p> <p>overstating 312:17</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P.O. 290:14</p> <p>pages 294:8,9 301:23 346:14 371:23 374:9, 10 382:4</p> <p>paid 312:19 403:1</p> <p>paper 350:14 382:5 383:6</p> <p>papers 372:22 375:9 382:7,8,14 383:8</p> <p>paragraph 409:1 410:22 411:5,6,14</p> <p>paragraphs 410:11</p> <p>paramount 330:17</p> <p>part 299:9 346:4 370:2,16 372:9,12,18 373:17</p> <p>participate 376:1</p> <p>particulars 328:17</p> <p>parties 291:2 295:15, 17,18 306:18,21 309:21 337:24 352:11</p>	<p>386:15 388:5 400:21, 23 406:10 414:20 415:7</p> <p>party 297:2 300:13 309:21 316:14 362:3 377:19 384:5 414:8</p> <p>pass 357:14</p> <p>passed 317:15 320:23 326:6 351:25 393:19</p> <p>passes 351:18</p> <p>past 313:11 320:22 325:23 326:13 366:6 368:5 379:10 380:25 385:19 386:19 398:12, 13 401:2 409:12 410:8</p> <p>patently 298:3</p> <p>paternalistically 322:6 331:7</p> <p>pattern 366:10 367:5, 9,15 378:16 379:9</p> <p>pay 299:11 306:3 335:24 336:9,18 337:5 341:7</p> <p>paying 313:13 341:2</p> <p>payments 375:19,20 376:7</p> <p>peers 347:18</p> <p>penalty 340:2 365:25 366:1</p> <p>pencils 309:6</p> <p>people 318:1,9 319:1 342:23,24 343:1 394:16</p> <p>percent 296:1 298:1 300:3,22 301:7 303:7, 9 305:1,3,5,23 306:1 308:24 309:1,3,22 310:4,8,19 313:13,14, 15,16,18,21 314:23, 24,25 315:2,4,7,18 316:23 317:4,7 318:1 326:12 327:13 335:6, 7,13,22 337:8,16</p>
---	---	---	--

<p>338:11,12,13,18,22 339:2,12 340:11,15 341:20 347:11,18,25 348:1,5 351:19,25 352:2,24 359:13 362:22 366:4,7,13 367:1,4,13 387:14 392:9,15,18,19,20 393:19 395:22,24 397:22 402:23,24,25 403:14,16,17,18 404:10,24 405:1,2,3,6 415:2,3</p> <p>percentage 295:16, 20,24 296:8,10,19,25 297:2,6,8 299:17 300:10,20 301:13,15, 16,18 302:11,21,22,24 303:13,19 329:6 338:17 340:20 341:4, 23 346:24 353:5,15,22 354:1,3,6 355:19 363:25 387:23 391:15 403:12,19 406:21 407:8,13 408:16 411:4,5,16,19 413:8</p> <p>percentages 296:17 297:9 329:8 351:2 409:10 411:24</p> <p>period 372:24 373:3 386:22 392:17 393:6</p> <p>periods 380:21 413:13,14</p> <p>person 319:4 328:14, 15 374:13</p> <p>personal 354:3,5 412:12,14</p> <p>Personally 392:11</p> <p>perspective 310:20 348:2</p> <p>picked 318:1 400:15 401:9</p> <p>picking 320:22 330:12</p> <p>piece 320:9</p> <p>Piecemealing</p>	<p>308:11</p> <p>pieces 291:12 333:14 390:5,6</p> <p>pineapples 306:15</p> <p>pinnacle 394:4</p> <p>PISA 301:18,21,25 302:2,12,16,21 305:21,22,25 306:1,3, 4,7,11,13 317:16,18 318:6 322:20,23 324:11 325:16,17 329:7 330:18</p> <p>place 295:22 329:18 355:20 369:15</p> <p>places 347:19</p> <p>plan 370:2</p> <p>planned 291:7</p> <p>planning 349:4,12 370:1,6</p> <p>Plans 317:16</p> <p>plant 301:18 305:21, 24 319:5 349:12 392:24</p> <p>plants 349:2,3,6 352:25 402:18 403:4</p> <p>play 380:4</p> <p>plenty 415:9</p> <p>point 299:18 306:19 311:19,25 319:10 320:22 325:25 326:7 327:7 331:4 344:24 351:20 354:22 381:25 388:9 400:24 401:25 402:2,3 410:10</p> <p>pointed 371:11</p> <p>points 300:6 325:13</p> <p>policy 308:8 310:17 394:9,11</p> <p>politic 322:2</p> <p>portion 372:1 374:11 408:10</p>	<p>portions 324:18</p> <p>pose 333:21 356:21 364:9</p> <p>position 329:13 331:18,21 353:25 369:19 370:12 385:21 402:8</p> <p>positions 369:8</p> <p>positive 353:13 391:16,19</p> <p>possesses 329:14</p> <p>possibilities 354:23</p> <p>possibly 313:11 380:1 401:15</p> <p>power 304:17 305:1, 14,18 306:12,22 322:9 343:6 365:7 380:13</p> <p>powerful 301:12</p> <p>Powerpoint 319:23</p> <p>PR 297:24 298:2 305:11</p> <p>practical 315:24</p> <p>practice 328:17 397:9,10 412:22</p> <p>practices 315:13 328:7,11 367:3</p> <p>pre-file 325:3</p> <p>predecessors 314:3</p> <p>predict 378:13 397:18,19 399:11</p> <p>prefer 412:12</p> <p>preference 352:17 412:12,14</p> <p>prefiled 291:18</p> <p>preliminary 334:21</p> <p>prepare 344:15 356:14</p> <p>prepared 333:13 344:16 360:13</p>	<p>prescribe 313:24</p> <p>prescribed 371:5,7</p> <p>present 328:22 331:20</p> <p>presentation 291:9 304:7 311:19</p> <p>presented 316:2 324:23 371:16 378:6 399:8 406:10</p> <p>president 343:5</p> <p>pressure 304:9 397:1,3</p> <p>pretend 374:19</p> <p>pretty 382:25 383:21 388:8</p> <p>previous 303:19 354:10 363:16,19 364:21 366:3,19 375:4 379:11 410:11</p> <p>previously 290:25 343:13 355:13 395:22 408:22 411:2</p> <p>price 315:2,3 327:16, 17 328:10 375:24,25</p> <p>prices 302:7 318:11</p> <p>primarily 353:20</p> <p>printed 296:14</p> <p>printouts 303:25</p> <p>prior 312:1 314:14 321:24 326:1 395:7</p> <p>privilege 339:7</p> <p>proactively 380:19</p> <p>problem 307:25 316:17,20 329:21 384:16</p> <p>process 308:22 310:24 370:2,6 387:7</p> <p>processes 354:6</p> <p>procure 312:15 343:24</p>
---	---	---	---

procurement 318:15 336:5 344:4 367:3	prospectively 312:19	311:13 319:15,23 320:14 342:15 349:21 357:16 358:14 360:11 362:24 364:4 368:20 371:24,25 379:7 381:13 388:17,18 389:7,10 390:23 391:1 395:13 398:13	questioned 401:3
produce 297:12	protect 306:8 320:17	pulled 383:23 384:3	questioning 358:22 406:23
production 298:9 414:10	protecting 324:14	punch 319:7	questions 303:23,24 307:1,2,3 311:9 319:10,13,25 327:9 332:15 333:21 334:21 345:21,23,25 346:13 347:14 348:18,21,25 349:16 350:8,12 351:1,17 352:6,23 353:19,23 354:13 355:3 356:21 357:17, 20,24 358:10,22 359:17 360:19 362:6 377:25 378:1,4 379:3 381:6,7,9 384:10 387:20 389:23 396:17, 19,22 400:5,7 404:14, 19,22 405:13,21,23 412:3 414:16
profession 318:25	protections 310:22	punish 365:24	quick 404:21 415:8
profit 399:18	proud 309:5	punishment 317:12 366:2 393:24 394:1,9	quicker 375:8
program 335:21,23 336:19 354:23	prove 298:10 402:9	purchase 304:17 305:1,14,18 306:12,22 365:7 380:13	quietly 311:20
progression 397:15	proves 298:10 299:16	purchasing 380:8,10	quo 338:14 401:10 402:4
prohibits 329:22 332:11	provide 319:11,12 335:18 349:6 351:10 364:10 384:19	pure 321:25	quote 300:4 302:8
projected 312:24 313:11 339:22 362:3 414:10	provided 299:19 382:10 407:25 409:21 410:1	purpose 296:5 300:23 323:13	quoting 377:8,15
projections 312:14	providing 354:24 376:22 380:24	purposes 305:11 319:19 343:25	<hr/> R <hr/>
promises 317:18	proving 402:10	pursue 314:6	rabbit 408:18
promote 365:20 367:8	provision 317:16 339:21,25 365:8 410:15	pursuing 322:14	radically 392:4
promotes 394:9	prudence 293:24 294:4 300:7,12 310:12,23,24 311:1,4 315:21,25 316:8,18,19 339:11,15 366:10 367:22 369:21,23,24 370:8 371:2,17 373:25 374:3 380:17,18 381:20 384:14,20 386:3 392:2 398:7,16 403:24 404:4,5,7	pushing 319:4 415:8	raise 304:21 325:17 406:20
proof 298:13 299:14	prudent 314:7 315:21 322:14 328:2 339:14 374:21 380:25 393:24 404:1	put 295:22 299:15 312:11,12 316:5,7,16	raised 300:16 325:20 329:11 330:9
proper 325:17	prudency 398:19	putting 338:2 347:17 397:12	raising 315:15 325:4, 18
properly 299:15 380:7,9,15	prudently 296:6 297:14 303:8,10 313:19 326:10 335:1 337:9 339:9 341:8 348:5	<hr/> Q <hr/>	randomly 319:5
proposal 305:20 316:24 317:2 318:17 320:14 331:12 403:12	PSC 369:18	quantify 367:24	range 354:23
proposals 306:18 309:19	public 290:21,24 292:18 293:1,5 308:20	question 310:17 311:6 320:1,11 323:16 325:13 331:24 332:1,9 336:20 344:14 346:17, 23 347:1,2 350:12 352:1 363:24 364:3, 11,13,14,16 366:20,23 374:21 376:5 387:18 393:9 403:3,10 408:19 410:15	rare 317:5
propose 338:14 400:21			rate 296:15,16 297:8,
proposed 295:6 299:22 300:2 306:23 309:22 326:23 367:25 387:1 393:5 413:21 415:22			
proposes 298:16 305:13			
proposing 317:3 412:7			

<p>24 298:5 305:12,13,24 306:4 308:22 312:24 313:1,5 314:19,22 315:2 317:24 318:18, 21 321:23 325:8,15,18 335:14,23,25 336:2,19 340:24 341:6,11,16,18 344:25 354:25 355:12 370:9,14,20 387:13,22 392:4,10,15 393:4,5, 16 395:7 398:16 399:24 401:1,22 406:6,16 408:7 409:24 413:15,17 414:4</p> <p>ratepayer 306:13</p> <p>ratepayers 304:24 305:7 306:3 351:19 392:20 403:2</p> <p>ratepayers' 306:8</p> <p>rates 294:12 295:25 299:22 300:2 305:15 312:13,18 327:16 336:18 337:1,2 341:10 342:10 390:9 392:4,25 393:11 414:14</p> <p>ratio 314:3 322:12 399:9</p> <p>rationale 399:8</p> <p>raw 316:14 377:19 384:5</p> <p>reach 350:2,6 394:4</p> <p>reactively 380:19</p> <p>read 293:23 301:23 316:10 325:3 327:3 339:19,20 344:22,24 345:2,4 346:3 363:21 364:21,23,24 365:1 375:21 390:6 403:8,9 409:1 410:10,23 411:2</p> <p>reading 363:19 371:25 375:11 377:16</p> <p>ready 333:2</p> <p>reaffirmed 314:10</p> <p>real 303:5 315:24 316:17 326:9,14 415:8</p>	<p>realistic 315:24 330:4</p> <p>reality 312:20</p> <p>realize 373:25 404:2 407:24</p> <p>reason 297:11 303:18,20 310:7 313:11 318:23 330:8 339:11 347:13 399:8,9 400:13 409:10 411:15, 19,23</p> <p>reasonable 324:21</p> <p>reasoning 296:2</p> <p>reasons 336:2 339:4 354:11 409:4</p> <p>rebase 299:24</p> <p>rebased 300:1</p> <p>rebasing 299:23</p> <p>rebuttal 291:13,15,17 292:8,21 296:11 301:25 303:6 306:16 326:15 333:14 334:3 344:11 346:14 356:15 358:24 359:4 360:13 378:5 384:1 389:13,15 402:13,17 406:9</p> <p>recalculated 314:22</p> <p>recall 309:23 350:24, 25 351:3 358:22 363:2 382:2 386:23 412:8,10</p> <p>receive 404:9 415:17</p> <p>received 292:4,17 293:15 334:10 357:9 361:5 391:6 407:5</p> <p>receives 305:4 359:12</p> <p>receiving 317:9</p> <p>recent 321:1 322:1 393:21</p> <p>recently 317:15 321:2 322:11 346:3,8 355:12 385:24 386:3 401:16</p> <p>recite 410:8</p>	<p>recognize 303:5 314:12 339:8</p> <p>recognized 314:4</p> <p>recollection 350:17</p> <p>recommend 306:24 379:8,22 407:12 412:18</p> <p>recommendation 297:15 367:4 386:5</p> <p>recommendations 296:25</p> <p>recommended 297:2 320:3 366:4 379:11 380:5 407:14</p> <p>recommending 320:8</p> <p>reconciliation 292:19 376:18</p> <p>reconsider 314:13</p> <p>record 290:2 291:23 293:23 294:17,25 319:19,21 323:13 326:21,24 327:8 332:25 333:1,11 352:11 355:23 356:12 360:6 363:9,14,23 364:3,12 371:16,19 388:12 396:8 408:6 410:9,11,12 414:21 415:16</p> <p>recover 296:6 305:22 314:6 315:18 334:25 348:4 394:15 403:23</p> <p>recovered 303:8 326:11 378:18</p> <p>recovering 313:18 317:7 386:8 391:25</p> <p>recovers 347:25 348:1</p> <p>recovery 297:13 305:4 306:14 346:2,6, 8 386:9 387:11,12,14 413:14</p>	<p>RECROSS- EXAMINATION 405:19</p> <p>RECS 387:3</p> <p>red-handed 340:12 366:14,16 367:2,6</p> <p>redirect 350:9,23 358:16,18 381:15,18 412:2,5</p> <p>reduce 312:7 314:8 317:2 339:5 355:20 392:23</p> <p>reduced 331:9,10 355:18</p> <p>reducing 316:23</p> <p>reduction 299:22,24 387:22 393:5</p> <p>Reed 291:17,18</p> <p>refer 363:12</p> <p>reference 294:19,22 295:3 408:20</p> <p>referenced 294:18 413:9</p> <p>referred 313:2 394:6</p> <p>referring 359:8,9 384:7 406:24 407:1</p> <p>refers 326:15 365:9</p> <p>reflect 312:20</p> <p>reflection 341:16</p> <p>refresh 350:16 352:15</p> <p>refund 306:4,13</p> <p>refunded 387:14</p> <p>refunds 346:9</p> <p>regard 300:18</p> <p>regime 315:6 367:22</p> <p>regional 373:15 376:4,9 377:3</p> <p>regulated 359:10</p>
---	---	---	---

regulation 366:12	343:5 344:24 345:6, 10,14,17 372:1	resolved 295:14 299:4 368:14 386:14 387:5	Returning 312:4
regulatory 290:4 297:5,10 306:2 313:2 314:20 321:25 322:8 330:13,16 332:11 360:10	374:11,16 381:20 407:22 408:7 410:16	resource 349:4 370:1,2 392:22	revenue 298:8,16,19, 22 299:1 368:11 374:15 375:2 378:12 387:3 390:7,8 393:7
reject 309:15	reporter 290:20 291:1 389:2	resources 311:3 316:15 369:16,19 377:20 384:6	revenues 290:7 300:14 301:1,9 302:25 303:14 368:12 372:6 373:10
rejected 303:3,15 415:24	reports 293:24 294:6 372:24 373:8 376:23 382:17,18	respect 330:2	reverse 352:22
related 366:19 367:7 370:6 396:25	represent 297:10 334:20	respond 402:22	review 293:24 306:21 315:21,25 316:5,8,18 339:11,15 344:17,20, 22 347:5 361:17,20 367:23 371:2,17 372:4,11,16,24 373:3, 10,16,17,22,24,25 374:3 376:13,24 381:20 384:15,23 385:5,7 386:4,18 406:24
relates 410:14	representation 312:12 313:9 317:2	responding 384:25 385:1 402:16 408:19	reviewed 372:15,19 373:19 374:4,6 375:7 376:13 382:22 383:17 413:20,25
relative 354:14 401:16	representative 310:2	response 319:12 330:3 369:21 384:22 412:10	reviewing 361:23 376:20
relevant 308:21 358:5	representatives 317:25 330:21	responses 382:1 383:4	reviews 294:4 300:7, 8,12 366:10 370:2 384:14,20 385:25 386:2
reliable 335:18	representing 304:15 307:16 314:18	responsibilities 370:23 376:4	revisit 309:14 310:6
reliance 297:18	represents 312:23	responsible 369:20	reward 393:24 394:2, 9,12,14
reliant 350:5	reprint 316:25	responsive 352:5	rewarded 331:12
relied 350:14	reprinted 314:14	RESRAM 370:9	ridiculous 297:21 298:7
relies 297:16	request 296:21 320:21 344:16 382:2	rest 311:4	rise 398:16
remain 331:8	requested 296:23 386:17	restate 366:23 376:6	risk 307:24 308:24,25 309:1,3 334:23 335:3, 8 337:8,12,13,14,23 338:1,5,7,13,22 340:11 341:9,24 365:3 366:13 395:25 396:5,6
remaining 296:4 330:8	requests 296:24 303:15 372:20 375:9 382:1,3 383:4 385:11	Restated 312:6	road 305:16 392:25
remarked 316:12 412:11	require 329:24	result 297:8 299:9 337:10 341:25 395:15 413:6	
remember 328:3 353:1,22 354:15 355:5,9 363:19 386:20 405:22	required 302:14,18 324:25 329:11 415:23	resulted 303:9 387:13	
remembering 371:3	requirement 298:19, 22 299:1 302:10 306:1 390:7,8 393:7	results 317:11 361:25 362:2,4	
remind 327:3	requisite 331:2,18	retain 409:12,17	
removed 407:5	reread 311:21	retained 297:3	
renewable 370:8,10 386:25	RES 387:3	return 305:23 308:1 310:11 318:13 332:20 348:9 350:2,6 395:14 396:3,7	
repeat 377:10	resell 343:25	returned 305:2 392:1 415:12	
repeating 378:15	reserving 299:3		
rephrase 365:15	residential 300:3 415:3		
reply 415:20			
report 294:2 300:11			

Robert 292:22	schedule 344:10 406:23	senior 342:20 389:8	324:12,15,25 326:6
ROE 395:16	scheduled 359:20 415:19,20	sense 302:21 322:16 341:4 394:13,16	332:12 334:22 335:2 337:12,13 340:19,20 341:4,21,23 346:16,24 347:4,7,8,10,16 349:1 350:1,6 351:2 352:24 353:5,22 354:1,3,6 355:19 362:22 365:2, 18,19,23 366:4 379:9, 19,23 380:6,11,24 391:15 393:23 398:9 400:11 403:11,19 405:22 406:11,21 407:8,13 408:16,23 409:5,8,10,13 411:7, 15,19,24 412:7,8,21 413:8
role 343:23	schedules 375:10 383:13,14	sentence 359:11 374:1 384:4 390:3,6	
room 329:2 377:5	Scheduling 349:5	sentences 384:8	
roughly 342:24 346:5	scope 372:16	separate 324:17 369:17	
rounding 358:6,7	screen 312:12	serve 335:15	
rude 344:13	scrutiny 409:7	service 290:7 308:20 335:18 359:15 360:11 362:24 364:4 393:12 395:13	
rule 294:10 321:24 366:12 371:6,7	section 294:6 329:9 345:15 374:16 381:23 383:17 407:21 408:15 410:1,21	services 359:12,13	
ruling 303:17	sector 319:14	set 299:5 301:15,17 311:14 313:5 325:7 330:23 340:2,4 341:18 397:4 413:5 415:12	sharpen 309:6
run 317:23 353:16 402:18,20,21 403:5	seek 329:11	sets 302:11	Shawn 316:11 384:1
running 353:12	sees 331:19 393:15 401:6 402:24 403:22	setting 297:23 397:15	sheet 382:4
Rupp 315:1 327:11, 12,24 328:19,24 331:23,25 348:17,19 357:22,24 358:8,19 379:2,3 381:3 387:18, 19,20 388:1,6 400:6,7 404:12,24 405:21 408:21 410:7 414:22, 24 415:5	selected 314:10 410:10	settled 310:3	shock 317:24
Rupp's 410:14	self-commit 315:16, 17 316:3,7,11 385:1 403:20	settlement 368:14 386:16	shook 352:7
	self-commitment 315:13	seventh 371:17 381:19	short 318:14 332:19, 23
	self-commitments 315:12	severe 301:10	short-term 349:10
S	self-committed 315:15	share 304:25 305:7 330:5 342:5 347:18 351:16 404:25	shortly 401:13
safe 382:3	self-committing 319:5 403:22	shared 295:25	should've 307:5
sake 331:1	self-dispatch 315:11,13,14,22	shareholders 335:3	shout 327:13
sale 298:16	self-scheduling 384:10,12	sharing 295:15,20,24 296:2,8,10,16,19,25 297:2,3,6,7,9,18 298:2 299:16 300:10,19 301:4,5,7,13,15,18 302:10,11,21,22,24 303:7,9,13,19 304:24 305:6,9,17,25 306:18, 20,25 309:20,24 310:1,19 312:5 313:23 314:16,23 317:17 320:4 321:25 322:6,12	show 328:1 407:19
sales 298:8 304:18 312:15 368:11 374:14, 22 375:2 378:12	semi-scripted 311:18		showed 321:24
save 394:15	senate 301:14,17 331:5		showing 298:1 314:15
savings 305:2,7	sending 327:16,17		shown 329:16 380:17,18 398:3
scales 335:8			shows 320:14 322:13
scenario 312:23 315:16 316:17,25 328:5,10,14 329:20			shut 349:11
Schallenberg 292:22 326:23			shutter 349:3
			shuttering 349:2
			side 313:3 338:3 342:6,7
			sides 335:8

sidetracked 404:3	skip 384:7	St 290:17 307:10	385:3 400:11 401:13 408:22 409:4
Sierra 315:12,22 402:16 403:14	slide 314:15 320:13	stability 297:5	statement 295:11 307:12 319:24 364:10
sign 399:19 400:1,2	small 296:13 336:17 339:1 343:24 362:25 363:18,22	staff 290:18,19 292:5, 11,16 298:16,25 299:6,10 304:13,15 305:8 306:25 311:23 316:16 319:15 320:21 334:13 339:15 349:17 357:11 358:10 359:21, 22,25 361:1,5,17,20, 24 362:13 366:3,7,9 367:3,5,21 368:3 369:15 373:23 374:11, 13,20 376:13 378:9 379:8,11,14,17,24 380:5,23 383:4 385:12 386:7 387:1 388:16 396:12 405:15 406:18 407:7 409:4 411:10 413:21,25	statements 295:11 355:14
signal 315:3 327:16, 17 328:10	Smith 290:14	Staff's 293:24 294:4 298:17,18,19,21 299:5 316:11 366:25 385:21	states 306:7 346:17 347:1
signed 299:2	smoothed 340:21	stake 309:8	statistics 346:3 351:17 352:5
significant 303:11 309:19,24 395:24 409:7	smoothing 341:25	stand 327:4 333:4 356:6 364:14 388:19	statue 297:19
significantly 306:2	software 316:15 377:20 384:6	standard 310:13 322:20 370:9,10	status 338:14 401:10 402:4
silent 320:23 321:1 324:9 326:4	solution 335:17	standards 310:12	statute 294:20 301:19,20,21 305:20, 22 306:1 309:11,13,17 313:23 323:1,4,6,12 324:19 325:1 329:9, 14,22 330:18 332:11 339:19 340:4 410:16 413:15
Silvey 324:1,7,16 325:6,19 326:2 327:9 345:24,25 346:10 378:3,4,23 396:21,22 400:4 404:20,22 405:11 412:6,11 413:19	som-- 375:22	standpoint 332:6 347:16,17	statutes 306:7,8,9
similar 389:25 411:1	someone's 311:24	star 308:16	statutory 305:25 306:1,4 321:13 365:8
similarities 306:6,7, 10	sooner 399:24	start 295:21 405:20	stay 322:8 397:3
simply 313:24 315:5 376:8 409:8	sort 310:2,15 346:8	started 369:10 401:16,18	stayed 321:1
sincere 330:6,11	source 351:12	starting 291:13 294:13	steel 318:11
sincerely 328:19	sources 376:18	starts 339:5 390:4	step 302:2 332:17 356:4 359:19 387:17 388:15 414:18
single 295:14 297:1 308:11 319:4 382:4 383:6	SP564 317:15 323:12, 19	state 310:1 317:20 325:1 327:23 333:10 356:12 360:5 378:5 389:1 412:22	steps 355:20
sit 304:3 311:19	speak 302:9 327:6 386:6	stated 299:21 303:6 305:5,12 364:7 379:7, 10,12 380:6 383:5,18	stick 394:12
sitting 336:8 370:12	speaks 383:20		stip 387:22
situation 312:21 315:10 316:20,22 368:10 412:12	special 308:7		stipulation 290:8 299:3,5 316:3 388:4 399:22 400:1 415:1
situations 325:8 328:22	specific 291:3 313:24 316:1 323:12 325:8,25 326:2,5 329:4 336:18 347:12 355:7 380:1 411:20		stop 332:22
size 348:11 364:5	specifically 296:12 324:9,18 336:5 383:18 396:4		story 309:12
skin 311:5 313:14 314:7 318:2 320:16 321:2,4 392:16 394:6	specifics 293:19		straight 332:10 337:20
	spell 360:5 389:1		strategies 316:13
	spending 302:19		
	split 306:19 409:6		
	spoke 312:1		
	SPP 316:14 377:19 384:5		

377:18	382:10	taller 304:22	testimony 291:3,8, 12,13,14,15,16,17,18, 19 292:6,9,10,21 295:5 296:11 297:16, 25 301:20,25 303:6 306:16 309:20 311:21, 22 312:1 316:10 325:3 326:15 327:3,6 333:14,23 343:14 344:7,14,23 346:4,14 351:5,13 356:15,16 358:25 359:4 360:13, 14,17,22 361:17 377:9 384:1,22 389:13,16,24 390:1,11 400:22 402:13,17 406:9 408:1 412:18 414:20
street 306:3 317:19	suppose 364:10	targeting 325:2	
strictly 320:8	supposed 294:19 297:12,13 309:14	tariff 295:23 375:10 383:13	
strike 390:5 412:21	Supreme 308:15	tariffs 290:6 318:11	
strives 394:3	surcharges 392:7	Tatro 290:16 295:13 303:23,25 304:2,4,10, 22 311:15,16 345:12 357:5 361:11,12 362:6 363:3,7,20 364:8,9,16 366:15 381:10 391:2 396:1,6,15,17 405:18, 19 406:24 407:2,3,6, 15,17,21,24 408:3,18, 21,25 410:7,17,18 411:25	
strong 327:17 328:10,21	Surely 299:8	team 299:15	theoretical 303:2
strongly 299:1	surrebuttal 291:15, 17 292:10,21 301:20, 24 333:15 334:3 356:15 389:13,16	tech 304:4	thing 317:1,13 331:11 393:2 398:6 402:10,11 412:21
struck 308:17	survey 351:11	Technology 314:11	things 309:3 354:21 373:5 395:7 397:15 398:15,17 399:5,25 414:11
structure 369:15	sustain 396:9	telling 309:12 367:11	thought 308:10 311:15 385:1
struggle 316:7	switched 346:8	ten 296:20 326:11,14 332:19,22 336:6,13,21 348:13,16	throughput 386:7,13
stuff 304:4 328:1 401:19	sworn 333:5,8 356:7, 10 359:23 360:1 388:20,22	tend 401:10	throw 404:8
subaccounts 376:17	symmetrical 310:16 338:21	tender 306:25 334:4 356:25 361:7 391:7	throwing 348:12
Subheading 372:14	system 302:7 311:3 313:17 316:5 365:25	term 318:14	thrown 311:20 404:5
subject 321:17 330:17 348:6		terminology 369:13	tie 399:5,6
submit 300:22 302:16	T	terms 347:24 352:25 354:9	till 332:22
subsection 375:19	table 344:15,18	tes-- 366:17	time 292:23 303:21,23 305:3 307:7,18 308:1, 9 309:4,23 310:5 315:2,5 327:10,16 329:24 332:14,18,21 337:14 340:22 341:9 342:1 345:5 354:20 375:8 376:25 379:13, 24 380:5 390:16 392:17 394:17,21 399:14 401:11,14 406:21 409:19 410:23 415:9,21
subsequent 305:24	tabs 382:12,20	test 390:8	
subsequently 299:4	tactic 309:4	testified 301:25 333:8 356:10 360:1 388:22	
substantially 389:25	takes 295:19 371:3	testifies 297:4	
succeeded 311:1	taking 293:22 294:20 329:4 345:10 355:20	testify 326:20 364:11	
suffer 298:1	talk 309:16 321:16 363:22 376:12 387:11	testifying 389:9,10	
sufficient 308:1	talked 312:9,10 340:19 405:25	testimonies 333:19, 22 334:3 356:19,22 390:13	
suggest 379:19 406:20	talking 306:10 313:20 321:5,8 325:11 335:6, 7 336:17 348:10 359:14 373:11 402:15, 17 403:1,16 405:2,21 408:1,16 413:10		
suggested 320:22 386:12	talks 339:22		
suggestion 330:5 386:10			
sum 390:4,6			
summarize 402:14 403:7			
supplied 290:25			
supply 336:16			
support 298:7 305:8			

timely 305:4	transferred 338:2	uncertain 341:16	376:25 377:18 379:12
times 296:23 297:7 330:7 335:25 337:19 373:25 382:6 394:22 395:11 401:4	transferring 338:4	undeniable 300:13	392:7,14 398:20 399:15 413:2
timing 302:4	translates 335:11	undergone 300:7	utility 297:14 300:24
title 389:8	transmission 312:16 313:12 372:5 373:10, 16 376:4,9 377:3	underlies 396:6	301:4,16,22 302:19 303:9 304:24 305:2,4, 22 307:17,24 308:2,5, 8,10,23,25 309:3 310:9,10,14 311:5 312:3,7 313:17 314:16,21,24 315:16 316:21 317:1,3,6 318:2,13 319:14 320:16,18 321:21 322:13 324:13 325:9, 15 328:5,8,11 329:16 331:15 332:4,5,13 335:3,15,19 337:16 338:5,22,23 340:1 341:24 342:7,11 347:24 348:3,8 350:2, 13 359:10 360:10 364:5 365:3 367:13 379:12 392:3 393:12 394:6,14,22 395:23 397:2,5 413:6
today 290:7,10 291:8, 19 303:17,20 315:16 327:4 333:22 356:22 357:14 360:19 370:12 389:9 394:5 397:9,10 415:13	treated 332:6	understand 341:13 347:15 364:1 365:2,5 393:9 399:7	utility's 317:11 329:25 395:25
today's 397:6	trended 346:6	understanding 310:5 334:24 366:2,6 372:16 376:2,6 379:25 380:12 385:13 390:14 395:18	
told 322:19,23 331:7	trends 316:16 377:21	understood 376:5	<hr/> V <hr/>
Tom 356:6,10,13	tripled 317:11	uneconomic 402:25	vague 297:16
tomorrow 353:10 394:5	tripling 317:3	unfair 308:10,18 409:9	variation 315:2
tomorrow's 397:6	true 299:12 311:21 360:22 390:14	uniform 325:2 332:3	variations 320:21
tool 365:24	true-up 298:18 299:5 370:19	Union 290:5 307:21 395:14	variety 309:19 382:21
tools 342:10	turn 344:10 359:3 362:2 371:23 374:9 381:19 383:3 384:3 408:11 410:4	unit 353:7,9,15,16 354:7	varying 306:18 392:1
top 384:4	turned 317:14 353:10	units 353:4 402:20 403:7,11	vehicle 300:24
topic 321:17	Turning 381:22	unlike 397:14	vein 354:8
total 301:11 305:23 313:15 336:1 387:13 391:18 403:15 405:3	Tuxedo 307:10	unraveling 308:22	version 293:2,5 362:18 371:24 390:21, 24
totally 339:8	Twenty-one 343:11	unrecovered 303:10	versions 292:25
touch 323:12	type 306:2 314:4 326:6 328:15 332:11 378:7	unregulated 359:7	versus 316:22 320:14 331:6 332:13 346:2 347:25 353:20 399:18 412:7,21
touched 322:25 323:3 404:23	types 306:11 413:14	untrue 298:3	
trading 318:9 342:20 343:4,6,7,9 344:1,2	typical 300:3 415:3	unused 387:3	
traditionally 304:23	typically 382:8 384:18 392:16 395:9	uranium 318:15	
transaction 292:20 326:16	<hr/> U <hr/>	usage 392:23	
transactions 359:7 375:1 376:13	UCCM 308:15	usual 291:4	
transcripts 415:10, 11	UE 397:2	utilities 296:3,6,7 297:9 305:6 309:7 314:12 316:13 317:20 321:18 324:24 325:2,8 331:11 332:3,6 334:25 346:15,17,25 347:3, 15,17,19 350:13 351:1,6,20,24 352:3 362:25 363:1,18,22	
transfer 395:23	Uh-huh 379:16		
	ultimate 354:24 355:1		
	ultimately 374:10		
	umbrage 315:1		

<p>vertically 346:17</p> <p>vice 343:5</p> <p>view 301:7 349:10 393:18 403:19</p> <p>viewed 380:25 394:8</p> <p>Virtually 301:4</p> <p>volatile 301:1 308:9 341:10,16</p> <p>volatility 304:18 308:12 335:9,14 337:14 340:11,21,23 341:5,14,20 342:8 367:1 391:22,24</p> <p>volume 335:25 336:1, 20 337:1 355:1 403:24 404:2</p> <p>voluminous 316:5 382:15 383:9,11</p> <p>votes 400:14</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>W-- 360:7</p> <p>W-I-L-D-H-A-B-E-R 360:8</p> <p>waive 291:4</p> <p>wanted 296:3 303:25 308:19 322:7 329:8 379:6</p> <p>wanting 324:8 401:15</p> <p>warned 304:10</p> <p>warning 297:21</p> <p>warnings 297:16</p> <p>warrant 378:6</p> <p>warranted 301:8</p> <p>watching 336:8 394:18</p> <p>ways 306:19</p> <p>weakness 369:2</p> <p>website 375:11</p>	<p>383:15,23</p> <p>Wednesday 291:9</p> <p>week 312:14 315:1 327:15 415:14</p> <p>week's 327:13</p> <p>Wendy 290:16</p> <p>wholly 317:21 318:12</p> <p>Wible 310:2</p> <p>wide 382:21</p> <p>wild 317:23</p> <p>Wildhaber 307:1 359:22 360:1,7,12 361:7 368:23 369:7 371:23 374:9 377:5,15 378:2 388:14</p> <p>win 317:6</p> <p>winners 297:13</p> <p>wishes 352:16</p> <p>withdrawal 340:7</p> <p>withstand 409:6</p> <p>withstood 306:20</p> <p>witnesses 291:19 301:24 332:21 333:2 359:21 385:11</p> <p>word 298:15</p> <p>words 302:20 390:5</p> <p>work 315:23 350:14 372:22 375:9 382:7,8, 14 383:8 397:14 413:24</p> <p>workbooks 382:11</p> <p>worked 310:6 343:9 399:2</p> <p>working 319:14,15 343:18,20 344:2 362:13 401:20</p> <p>works 299:17 414:8</p> <p>worksheets 382:10, 19</p>	<p>worse 297:10</p> <p>would've 373:23</p> <p>write 308:19 379:15</p> <p>Writer 294:13</p> <p>written 299:20</p> <p>wrong 377:22,23 414:12,14</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 349:11 390:8 397:10</p> <p>years 307:17 308:25 309:2 325:21 326:11, 14 338:23,24 343:10, 11 344:6 346:5 347:6 348:13,16 351:12 354:2 369:11 391:17, 20 398:13 409:12 412:24</p> <p>yellow 296:22 313:8</p> <p>yesterday 293:16</p> <p>yesterday's 397:7</p> <p>York 343:18</p> <p>Youmay 414:18</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero-sum 338:7</p> <p>zero-zero 321:25</p>
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