

The Revision of Commission's Rules Regarding Gas Utilities

ER-2019-0374, VOL 8

April 28, 2020



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Procedural Conference
April 28, 2020
Jefferson City, Missouri
Volume 8

In The Matter Of The Empire)
District Electric Company's)
Request For Authority To File)
Tariffs Increasing Rates For) File No. ER-2019-0374
Electric Service Provided To)
Customers In Its Missouri)
Service Area)

JOHN T. CLARK, Presiding
REGULATORY LAW JUDGE

REPORTED BY:
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A P P E A R A N C E S

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A P P E A R A N C E S
(Continued)

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P R O C E E D I N G S

1
2 JUDGE CLARK: Let's go on the record now.
3 Today's date is April 28, 2020, and it is currently 9:04
4 a.m. This Procedural Conference is being conducted via
5 teleconference via Zoom. The Commission has set aside
6 the time for this Procedural Conference in the case
7 captioned as In the Matter of the Empire District
8 Electric Company's Request for Authority to File Tariffs
9 Increasing Rates for Electric Service Provided to
10 Customers in its Missouri Service Area. That is File
11 No. ER-2019-0374.

12 My name is John Clark. I'm the Regulatory Law
13 Judge in this matter. I'm going to begin by asking the
14 attorneys to enter their appearance for the record
15 starting with the Empire District Electric Company?

16 MS. CARTER: Diana Carter for the Empire
17 District Electric Company.

18 JUDGE CLARK: Thank you, Ms. Carter. For the
19 Commission Staff?

20 MS. PAYNE: Whitney Payne on behalf of the
21 Staff of the Missouri Public Service. With me I have
22 Kevin Thompson, Mark Johnson, Travis Pringle, Casi
23 Aslin, Nicole Mers, Jamie Myers, Karen Bretz, Ron Irving
24 and Jeffrey Keevil.

25 And also participating for Staff possibly is

1 Natelle Dietrich, Mark Oligschlaeger, Kim Boland or
2 Michelle Bocklage.

3 JUDGE CLARK: Thank you. I'll just note for
4 the record that I just admitted somebody else. I don't
5 know who that is yet. For the Office of the Public
6 Counsel?

7 MR. WILLIAMS: Nathan Williams and Caleb Hall.
8 If we have technical people speak up, we'll have them
9 identify themselves later.

10 JUDGE CLARK: Thank you, Mr. Williams. For
11 the Natural Resources Defense Council and the Sierra
12 Club?

13 MR. ROBERTSON: Henry Robertson.

14 JUDGE CLARK: Thank you, Mr. Robertson. For
15 Renew Missouri?

16 MR. OPITZ: Tim Opitz on behalf of Renew
17 Missouri.

18 JUDGE CLARK: For the National Housing Trust?

19 MR. LINHARES: Andrew Linhares here for the
20 National Housing Trust.

21 JUDGE CLARK: And I know I've got some other
22 parties here, the retirees and the unions. Can you go
23 ahead and identify yourself? Mr. Woodsmall, what
24 parties are you representing?

25 MR. WOODSMALL: David Woodsmall on behalf of

1 Midwest Energy Consumers Group, as well as the Empire
2 District Electric SERP Recipients.

3 JUDGE CLARK: Thank you. Are there any other
4 parties that I've left out?

5 MR. JARRETT: Yes. Good morning, Judge. This
6 is Terry Jarrett on behalf of the Empire District
7 Retired Members and Spouses Association.

8 JUDGE CLARK: I apologize, Mr. Jarrett. Thank
9 you very much.

10 Okay. This Procedural Conference was called,
11 I had originally set that for the 22nd, I believe, or I
12 had planned to set it informally for the 22nd. I had
13 continued that date to today's date to give the
14 Commission additional time to examine the issues and get
15 questions to me. I had also -- Out of respect for that,
16 I also moved the procedural schedule allowing additional
17 time for each of the three briefings. I'm assuming that
18 nobody objected to that.

19 I apologize for getting everybody the
20 questions emailed last night. That was the earliest
21 possible moment I could get them to the parties after
22 organizing additional questions and incorporating them
23 in. I think the Commission did me a favor as much as
24 possible by breaking them down by issue. I'm assuming
25 all the parties received those?

1 MS. PAYNE: We did, Judge.

2 MR. OPITZ: Judge, Tim Opitz, I don't think I
3 received the list of questions from you.

4 JUDGE CLARK: You did not. I apologize. Let
5 me see.

6 MS. PAYNE: I can forward it, Judge, if that
7 would help. This is Whitney Payne.

8 JUDGE CLARK: I think I can do it right now.

9 MR. OPITZ: Thank you, Judge.

10 JUDGE CLARK: Let me know if you got that.

11 MR. OPITZ: I got it. Thank you very much,
12 Judge.

13 JUDGE CLARK: Thank you. I apologize. I'm
14 sorry you didn't get that. That means you probably
15 missed an email or two. I thought I had included
16 everybody and I felt particularly proud of myself today
17 for not forgetting to call on you. I seem to have blown
18 that away.

19 I guess to start off with there were many more
20 and more technical questions than I anticipated. My
21 original inclination had been to as much as possible
22 have the parties try and answer with evidence already
23 submitted into the record. It became very apparent that
24 that wasn't going to be possible. So whereas I had
25 originally intended to only have parties answer

1 testimonially questions that could not be answered with
2 existing testimony, I think that, and I think I
3 indicated this when I sent out the questions, it's going
4 to require some filing of additional testimony with the
5 initial briefs. Is there anybody who didn't understand
6 that?

7 MR. WILLIAMS: Judge, I understand that, but I
8 feel like that raises some issues.

9 JUDGE CLARK: It seems to me that it raises
10 some issues too. We can certainly discuss those issues.
11 It does certainly create some difficulties. As much as
12 possible I'm trying to keep the questions being asked as
13 much as possible as they could have been asked at a
14 hearing. Mr. Williams, why don't you let me know what
15 you see as the immediate issues?

16 MR. WILLIAMS: You asked for some additional
17 data request responses from us. The immediate issue I
18 see is responding to new evidence or having an
19 opportunity to test it I suppose. Also, I think, and
20 Diana Carter can confirm this or disagree, but I believe
21 some of the request is evidence is already in the
22 record.

23 JUDGE CLARK: That may be. Certainly if you
24 could point in the record to where that is that would be
25 sufficient to answer the question.

1 MR. WILLIAMS: And I say that, of course, with
2 the caveat that objections haven't been ruled on yet.

3 JUDGE CLARK: I agree. But if that additional
4 information is in the record, and there was -- I would
5 be honest I'm going to ask some questions here in a
6 minute and I have not had an opportunity, much of an
7 opportunity to start reading these newly submitted
8 testimony. I've just brushed the surface of it. Some
9 of my questions may appear obvious to the parties.
10 But in regard to that --

11 MS. CARTER: Judge.

12 JUDGE CLARK: Go ahead, Ms. Carter.

13 MS. CARTER: Thank you. I had one concern
14 with regard to timing. From my perspective, I'm feeling
15 a little outmanned on the call in terms of the number of
16 attorneys. I was wondering timewise are we firm on a
17 week from yesterday for when the additional testimony,
18 responses to questions, et cetera, will need to be in?

19 MR. KEEVIL: This is Jeff Keevil, Judge. I
20 was going to raise that question too. If you're looking
21 for additional testimony, as well as additional issues
22 to brief, I was going to suggest or staff was going to
23 suggest possibly we do this. There are currently three
24 rounds of briefs scheduled. I was going to suggest that
25 perhaps we do this when we respond to these with the

1 second round of briefs rather than with the first round
2 of briefs.

3 JUDGE CLARK: I see a procedural difficulty in
4 regard to due process there, and we can address that
5 momentarily. Let me pull up that schedule. Give me
6 just a minute. I've got a number of things open on my
7 desktop.

8 Okay. I do not have that in front of me so
9 I'm going to be running off memory with this. If memory
10 serves me correct, and somebody correct me if I'm wrong,
11 currently I have Monday the 4th set for initial briefs,
12 responses to Commission questions and objections to new
13 offers of evidence. I have the 11th set for responsive
14 briefs and the 18th set for reply briefs, findings of
15 fact and conclusions of law; is that correct?

16 MR. KEEVIL: I think that's correct, Judge.

17 MS. PAYNE: That is correct, Judge.

18 JUDGE CLARK: The problem I have is normally
19 when a Commission question is asked you have the parties
20 and they've done their direct, admitted their prefiled
21 testimony, then you have cross. The parties have waived
22 cross at least in regard to issues that were dealt with
23 essentially primarily with direct, rebuttal and
24 surrebuttal. That probably would not apply to the
25 Commission questions. At least that's the way I've

1 treated it since those can bring out new questions.
2 Then if this were a standard evidentiary hearing, then
3 the Commission would ask questions or be asked if they
4 wanted to ask questions. Then there would be an
5 opportunity for any party to ask questions based upon
6 those questions and finally a redirect. And in regard,
7 Mr. Keevil, to moving the due date for additional
8 testimony, it's that redirect that I have problems with.

9 MR. KEEVIL: We don't have redirect as it is,
10 though.

11 JUDGE CLARK: Huh?

12 MR. KEEVIL: We don't have redirect as --
13 Whether the thing gets filed next Monday or the
14 following Monday, either way there's no redirect.

15 JUDGE CLARK: Not in a conventional way. What
16 I was in my mind supposing was that if the parties filed
17 their answers to Commission questions with initial
18 briefs, if I allowed other parties to respond to those
19 with responsive briefs, then in the last brief filing
20 parties could essentially respond to that not with new
21 testimony but in their briefs if they wish.

22 MR. KEEVIL: I guess my suggestion, Judge, was
23 that if we do it with the second round of briefs we
24 would still have the third round of briefs to do what
25 you just suggested. We'd only -- You wouldn't have a

1 third bite at the apple so to speak but you would get
2 the chance to reply or rebut or whatever you want to
3 call it in the third round of briefs.

4 MR. WILLIAMS: Part of the problem I see is
5 the new evidence is coming in with the initial briefs
6 which is the same point in time when the objections to
7 offers of evidence are supposed to be made and that was
8 in contemplation of what we've already offered.

9 JUDGE CLARK: I understand it's a very, very
10 tight schedule.

11 MR. WILLIAMS: That really gives no
12 opportunity to object to the new evidence.

13 JUDGE CLARK: What do you mean? No
14 opportunity to object to the answers to the Commission
15 questions?

16 MR. WILLIAMS: Well, the new evidence. Not
17 necessarily the answers. I mean, if they're based on
18 what has been offered already, that's one thing. I
19 know, for example, responses to our data request the
20 Commission has asked for a couple of those. I don't
21 view that as problematic offhand but there may be
22 something that is. There are a lot of questions
23 directed to staff and Empire that look like they will
24 require new evidence. I'm not saying it will be
25 objectionable, but we should have the opportunity.

1 JUDGE CLARK: What's the issue with objecting
2 to that in responsive briefs?

3 MR. WILLIAMS: If that's what's being
4 contemplated, I don't know that it is objectionable
5 necessarily. The whole thing has gotten pretty screwy.
6 Right now the objections to offers of evidence were to
7 be done with the initial briefs which is the same time
8 when some of that evidence will first be offered
9 apparently.

10 JUDGE CLARK: Okay. Well, let me ask this
11 from a practical point of view. If I moved the
12 objections to offers of new evidence to the responsive
13 briefing date, does that resolve that problem?

14 MR. WILLIAMS: Well, I wouldn't want to push
15 it all back that far.

16 JUDGE CLARK: I have real concerns because
17 there was a lot of hesitation on my part to move the
18 date for final briefs from the 11th to the 18th, because
19 that makes a huge difference. Right now the way I see
20 it it's my expectation that this will go on for
21 Commission discussion on the 20th.

22 MR. WILLIAMS: My suggestion would be to leave
23 the objections to what's already been offered with the
24 initial briefs --

25 JUDGE CLARK: To allow for --

1 MR. WILLIAMS: -- and given the responsive
2 briefs to any new evidence could be made at that point
3 at least.

4 JUDGE CLARK: That I do not have a problem
5 with.

6 MR. WILLIAMS: I know we've been asked to
7 provide Empire responses to a couple of data requests.
8 We can file that today, I'm sure, if possible. We don't
9 have to wait until the May 4 to do that.

10 JUDGE CLARK: You may not have to wait until
11 May 4 to do that. I kind of want everything, you know,
12 I want something -- If you're going to be just filing
13 things in EFIS, I don't want it just filed as a data
14 request. I want something that signifies that it's
15 responsive to the Commission question.

16 MR. WILLIAMS: My thought was to just give it
17 an OPC exhibit number and file it.

18 JUDGE CLARK: I think that's fine. I'd like
19 you to do something to designate which question it's
20 answering.

21 MR. WILLIAMS: Okay.

22 JUDGE CLARK: Since we're not having live
23 testimony, I don't have that instant, you know, okay,
24 he's responding to this question.

25 MR. WILLIAMS: We can probably include it.

1 JUDGE CLARK: Thank you. That would be very
2 helpful.

3 MR. WILLIAMS: Fair enough.

4 MS. PAYNE: Judge, this is Ms. Payne for
5 staff. I would just follow up Mr. Keevil's concerns
6 about having the depth of the answers that the
7 Commission is seeking considering we're getting them now
8 and needing to provide them by Monday. Realistically
9 that means that we only have until Friday morning really
10 to have these responses to our support staff for
11 formatting and organizing to get that filed on Monday.
12 I'm counting, I believe, 43 questions directed to either
13 staff or all of the parties.

14 JUDGE CLARK: Yeah, there were -- Admittedly
15 there's a significant number of questions requiring
16 fairly detailed responses. I agree with that.

17 Let me pull up -- I'd like to have the
18 procedural schedule in front of me. Bear with me for
19 just a second while I find that. Okay. There it is.

20 Okay. If those are due on the 4th and
21 responsive briefs are due on the 11th, then what I've
22 got to work with between there, because I can't push
23 anything past the 18th at this point, what I've got to
24 do there is if you want additional time to get those
25 responses in, I'm going to have to clip some of the

1 space between the initial briefs and the responsive
2 briefs. Is there any objection to doing that?

3 MS. CARTER: Judge, what if we did -- this is
4 Diana. What if we did the 6th, the 13th and the 18th?

5 JUDGE CLARK: If it looks like I'm strained
6 here, it's because I am. I'll do the 6th, the 12th and
7 the 18th. I think the difficulty I'm having here is I
8 think the Commission really wants to get those answers
9 as quickly as possible.

10 MR. KEEVIL: Judge, let me ask a stupid
11 question since that's what I'm best at.

12 JUDGE CLARK: I very much doubt you can beat
13 me, Mr. Keevil, but go ahead.

14 MR. KEEVIL: I was looking at those questions
15 right before this call this morning. I assume the
16 Commission knows that they have a lot of detailed
17 questions on issues that even public counsel wasn't
18 objecting to.

19 JUDGE CLARK: I understand. We haven't gotten
20 to, and that may be along the lines of some of my
21 concerns and that is -- I'll go ahead and voice this now
22 because it's been an issue in the past. It's actually
23 been an issue in a recent rate case and that is where
24 once the stipulation becomes a position statement, all
25 aspects of it need to be supported evidentially. What

1 parties generally tend to do is they tend to kind of put
2 that off and say well, if nobody is objecting to that
3 anyway why are we bothering with it. That's because no
4 parties are disputing this issue is not a sufficient
5 finding of fact or conclusion of law. So the reason the
6 Commission has asked a lot of those questions are to try
7 and fill in those blanks even though the parties may not
8 be in conflict any more in regard to that aspect of the
9 position statement. Does that answer that?

10 MR. KEEVIL: Well, partly. If it's not in
11 conflict, then by definition it is not an issue. If
12 it's not an issue, it does not require direct finding of
13 fact or conclusion of law I would say.

14 JUDGE CLARK: But the problem is it's not a
15 stipulation. It's just merely a position. So it is
16 still an issue. It was one of the issues filed by the
17 parties.

18 MS. PAYNE: I apologize. I wasn't trying to
19 interrupt. The parties have contemplated filing some
20 type of modified document that would clarify things for
21 the Commission. I think what you're telling us is that
22 it would behoove us to proceed in such a manner.

23 JUDGE CLARK: Like I said, we're getting down
24 to the wire here for anything that would require any
25 sort of Commission approval in regard to -- I'm not

1 sure, I would have to actually talk to the Commissioners
2 and the various people who had input into the questions
3 whether some sort of stipulation that the parties could
4 agree to regarding all these issues would be sufficient
5 at this point or whether the Commission wants issues --
6 wants answers to all their questions. I'm happy to do
7 that and to get back to the parties as quickly as
8 possible.

9 MS. PAYNE: To clarify, Judge, I'm not
10 suggesting any kind of a universal stipulation but
11 simply a collection of the issues that have been agreed
12 to, and I do sympathize the parties have been very
13 clipped through all of this. We have not had sufficient
14 time to reach the conclusions and that that we needed to
15 throughout the entire case. I certainly was trying on
16 behalf of staff to get as much information to the
17 Commission as possible. In some cases it was zero hour
18 and we didn't have more time to clarify things further.

19 MR. WILLIAMS: This is Nathan Williams. I
20 know one issue that's floating out there and that's the
21 residential customer charge. The stipulation agrees
22 that it's \$13 --

23 JUDGE CLARK: And that's the 19, 13?

24 MR. WILLIAMS: Yes. Public counsel didn't
25 address it in the position statement, assuming it was no

1 longer a contested issue, but of course Empire argued
2 saying if you reject the global stipulation and make it
3 19. Of course, we can respond to that, but it was a bit
4 of a surprise. But it goes to the point you're getting
5 at, I think.

6 JUDGE CLARK: I know the question you're
7 referring to given that OPC didn't file anything in
8 regard to rate design in that regard. I believe the
9 question is why are they weighing in now. That seems to
10 be --

11 MR. WILLIAMS: Our position hasn't changed.
12 It still should be 13, but the reason we didn't address
13 it in the position statement was because of the global
14 stipulations.

15 JUDGE CLARK: I understand that. And if
16 that's the answer for the Commission, that should be the
17 filing for the Commission. Giving it to me at this
18 point doesn't do a lot. I guess this becomes extremely
19 difficult when the parties file what they have as a
20 global resolution knowing that a party is going to
21 object to it. You know it's going to default to a
22 position statement. And then everybody has both the
23 dual things of it is your position statement by rule I
24 believe and at that point you either have to -- you
25 support the position statement but given that the

1 parties are entitled to change positions, everybody also
2 puts forth either their default position or a
3 potentially new position. But we're getting way off
4 track. I'm going to answer Ms. Payne's question and
5 then we're going to go back to discussing whether any
6 part of the procedural schedule should be moved.

7 To answer your question, Ms. Payne, if the
8 parties want to file something in regard to the issues,
9 I'm happy to show it to the Commission and see if it
10 alleviates any of their concerns regarding anything and
11 get it back to the parties.

12 At this point in time I would assume that the
13 parties need to plan on answering all the questions.

14 MR. KEEVIL: Judge, Keevil's paraphrase here
15 then. You don't necessarily think it would be worth the
16 effort since the Commission may still and probably will
17 still have the questions that they already have. So we
18 might be best served to use our time elsewhere?

19 JUDGE CLARK: I'm not going to be your
20 attorney, Mr. Keevil, but thank you for asking. I don't
21 know how the parties -- I appreciate, I understand that
22 this has been a very difficult long run. I appreciate
23 that the parties attempted to do as much as possible
24 without having an evidentiary hearing on the record via
25 videoconference which would have been very difficult.

1 At the same time, when the Commission gets 46 unresolved
2 issues with more than 200 sub issues, it's daunting to
3 them, and a global stipulation that as a nontechnical
4 person and attorney I found very, very difficult to
5 understand until I was able to at least somewhat frame
6 it with the position statements.

7 The Commission has had to take those position
8 statements and decide on these questions. It's been
9 very rushed on everybody's part. And I know that this
10 has flown up in a way that nobody expected. But we are
11 down at the end now. Ms. Payne, if the parties want to
12 file something, I'm happy to take a look at it. I'm
13 happy to see that a decision is made regarding it as
14 quickly as possible and get to the parties as quickly as
15 possible. I'm happy to hold an on-the-fly conference if
16 need be. Those are essentially the options I have.

17 Getting back to what I indicated before, if
18 the parties need until the 6th to answer the
19 Commission's questions, I think that that's -- I think
20 that's acceptable. I know they're not going to be
21 excited about that. I'm not willing to move to the 13th
22 from the 11th because that's just not going to give
23 sufficient time to the Commission to review those
24 responses and for me to get a memo started and completed
25 with new information on the 18th.

1 MS. CARTER: Judge --

2 JUDGE CLARK: So I'm willing to do the 6th,
3 the 12th and the 18th. That's as much as I'm willing to
4 budge on the matter.

5 MS. CARTER: Judge, those dates work well for
6 the company. I would just want to make sure that the
7 6th would be for everything. I do think it will be more
8 efficient for everything to go together that initial
9 filing of responses to questions, initial briefs,
10 objections to evidence just so those can be coordinated.
11 If the first of everything is the 6th and then response
12 on the 12th and rebuttal, or reply I guess we'd call
13 that, on the 18th, that works for the company. We
14 appreciate that.

15 JUDGE CLARK: That would be the 6th for
16 initial briefs, objections to offers of evidence that
17 were made earlier and answers to the Commission
18 questions. That would make the 12th for responsive
19 briefs, any testimonial replies to Commission questions
20 and any objections to new evidence that came about as
21 part of answers to Commission questions --

22 MR. KEEVIL: Judge, sorry, on the 6th, to add
23 to Ms. Carter's list, you would have additional
24 testimony if necessary to answer the questions, right?

25 JUDGE CLARK: I think that's what the

1 Commission contemplated. In discussing this, the
2 Commission is looking -- In these answers what the
3 Commission is looking for is they are looking for things
4 that can be used as findings of fact and conclusions of
5 law -- or findings of fact to rely upon if necessary.
6 So an attorney opinion answering the question isn't
7 really particularly helpful in that regard.

8 MR. KEEVIL: I agree.

9 JUDGE CLARK: That was made quite clear to me.
10 I would expect to be answering, unless the answers
11 already exist in the record and you can point to where
12 it is with clarity and I look there and it says exactly
13 that, I would expect to be answering the questions with
14 testimony or evidence.

15 MR. WILLIAMS: Judge, this is Nathan Williams.
16 To that end under Affiliate Transactions, No. 2 asks for
17 APUC CAM and the 2019 Affiliate Transactions Annual
18 Report.

19 JUDGE CLARK: Let me pull that up real quick.
20 Which issue number is Affiliate Transactions?

21 MR. WILLIAMS: 18 on page 10.

22 JUDGE CLARK: That's question 2 for Empire.
23 Would Empire submit the APUC CAM in effect during the
24 test year and true-up period and annual report of its
25 2019 affiliate transactions as an exhibit in this case?

1 MR. WILLIAMS: Yes.

2 JUDGE CLARK: Okay. What's your question
3 regarding?

4 MR. WILLIAMS: Public counsel put the annual
5 report in as Exhibit, I believe it's 229C, I believe; is
6 that right, Diana?

7 MS. CARTER: I'm sorry, Nathan. What was
8 that?

9 MR. WILLIAMS: Wasn't 229C the affiliate
10 transactions report for 2019?

11 MS. CARTER: I don't have the exhibit list
12 pulled up, but that is something, for example, where I
13 think that the questions were directed to Empire I think
14 that would be a good one what the Judge was saying where
15 we can clearly or the attorney can just very clearly
16 point to existing record evidence to answer that
17 question instead of new testimony being needed.

18 JUDGE CLARK: If what's in the record now as
19 an exhibit of another party is exactly what's being
20 asked to be submitted, you can just say this has already
21 been submitted, here's where it is.

22 MR. WILLIAMS: I think the CAM is Exhibit 221.

23 MS. PAYNE: The affiliate transaction report
24 is 229.

25 JUDGE CLARK: Again, telling me at this point

1 during a procedural conference doesn't do a lot to me
2 other than explaining how you want to put it in a format
3 answering a Commission question.

4 MR. WILLIAMS: I was just letting you know
5 it's there in case somebody wants to look at it now.

6 JUDGE CLARK: I've made a note of that. I put
7 Issue 18 question 2 and you said 221 or 229?

8 MR. WILLIAMS: Both. I believe 221 is the CAM
9 and 229 is the report.

10 JUDGE CLARK: Are those both confidential? I
11 believe they are.

12 MR. WILLIAMS: Only the report.

13 JUDGE CLARK: So 229 is, 221 is not.

14 MR. WILLIAMS: Correct.

15 JUDGE CLARK: I'll make a note of that and I
16 will let somebody know.

17 MR. WILLIAMS: Empire can verify to the
18 accuracy of that but I believe that's the situation.

19 JUDGE CLARK: Okay. In going through, like I
20 said, I don't even think everything was caught that may
21 be there. I know from evidentiary hearings that
22 frequently, you know, when a Commission question is
23 asked the witness goes well, if you'll look at my report
24 or if you'll look at my testimony on page such and such
25 I answered that question. But as I indicated before, I

1 think with the exception of a few of these I think a lot
2 of these questions do require new evidence. Not new,
3 additional evidence.

4 Is there anybody who is objecting to -- I
5 don't know how much flack I'm going to get now about
6 moving it but we'll see. Is there anybody who is
7 objecting to the 6th, the 12th and the 18th?

8 MR. KEEVIL: As opposed to the 4th, the 11th
9 and the 18th?

10 JUDGE CLARK: As opposed to that.

11 MR. KEEVIL: Okay then. Just wanted to make
12 clear.

13 JUDGE CLARK: Okay. I'll issue an order today
14 modifying the procedural schedule as I just set forth.

15 MR. WILLIAMS: Thank you.

16 MS. PAYNE: Thanks, Judge.

17 JUDGE CLARK: All right. I think I already
18 indicated that I have addressed some of my personal
19 concerns. I think I've already said my concern is and
20 I've run into it in the past where the parties get so
21 caught up in supporting their own position statement
22 they fail to support the position statement that they
23 filed in their stipulation. I would like everybody to
24 be sure that there's adequate information in there to
25 support the stipulation as your position statement.

1 The case I'm thinking of is they had all filed
2 a stipulation that was essentially a black box
3 agreement, which is fine, but then a number was thrown
4 out for a rate of return and the return on equity and
5 capital structure which really weren't tied to anything.
6 I realized they were part of the agreement part of the
7 give and take process but none of those work at all as
8 findings of fact. So if there's something that's in the
9 stipulation, it needs to be supported. And since I'm
10 going to be having the parties do proposed findings of
11 fact and conclusions of law, you're going to find out
12 real quick where those holes are.

13 The next thing I'm going to ask, and it's just
14 because as I said I've only brushed the surface of
15 getting into the exhibits as they've been filed now as
16 exhibits, did any party submit testimony regarding an
17 AAO?

18 MR. KEEVIL: Yes and no, I mean.

19 MS. PAYNE: Staff discussed the AAO.

20 MR. KEEVIL: We've got testimony regarding
21 AAOs as well as Empire. Empire has got it and staff has
22 it.

23 JUDGE CLARK: You've got testimony -- the
24 parties that are supporting an AAO have testimony in
25 saying that this is an extraordinary event?

1 MR. KEEVIL: I don't remember if we used the
2 word extraordinary event or not. Diana, do you guys use
3 that?

4 MS. CARTER: No, I would have answered that
5 differently that we did not have testimony on an AAO.

6 MS. PAYNE: I apologize, Judge. I think we
7 took the Commission's order to include things in an AAO
8 and went from there.

9 JUDGE CLARK: I think there needs to be
10 evidentiary support for an AAO. I don't think the
11 Commission can just issue an AAO without evidentiary
12 support. So that may be something that the parties want
13 to address on the 6th. So if you want to file testimony
14 supportive of an AAO, please do so.

15 Otherwise, I think we find ourselves in -- I
16 think the Commission will find itself in a position in
17 the next rate case where they may be unable to address
18 certain issues and that's my concern.

19 MR. KEEVIL: Is the extraordinary event aspect
20 of it of most concern to you, Judge?

21 JUDGE CLARK: I'm concerned that all of the
22 prongs are met. That's the one that pops into my head.
23 That's the prong I'm most familiar with and the one
24 that's often most in dispute. In regard to supporting
25 an AAO, it would have to meet all of the statutory

1 requirements. I can't remember whether it's a statute
2 or a rule off the top of my head.

3 MR. KEEVIL: I think it's primarily just case
4 law.

5 JUDGE CLARK: Well, in regard to my personal
6 questions, if you can add to the list support for an AAO
7 if the parties are, in fact, supporting an AAO. If a
8 party is, in fact, not supporting an AAO, obviously they
9 don't need to file anything.

10 Another thing that I would like to have in
11 there, just because I haven't seen it and because there
12 are so many issues on the table, if somebody could in
13 one of the answers put what the standard ratemaking
14 formula is because I can't just pluck that out of the
15 air. Even if it's readily available, it needs to be in
16 evidence.

17 MR. KEEVIL: Don't we have that in our direct
18 report?

19 MS. CARTER: Oh, surely.

20 MS. PAYNE: We'll address it.

21 JUDGE CLARK: It may be. Like I said, I'm not
22 sure off the top of my head. There's been an incredible
23 amount of stuff filed in this case. I think we've
24 addressed everything. I'm going to summarize it
25 briefly. Everybody tell me if that's their

1 understanding.

2 So the way I see it right now, just had it up,
3 on the 6th, initial briefs, objections to offers of
4 evidence, answers to Commission questions will be filed.
5 On the 12th, responsive briefs will be filed and at that
6 time any party can respond to responses to Commission
7 questions. Any party can reply to those as well as --

8 MR. WILLIAMS: That could include evidence?

9 JUDGE CLARK: I'm sorry?

10 MR. WILLIAMS: And that could include
11 evidence?

12 JUDGE CLARK: I think it would have to.

13 MR. WILLIAMS: Thank you.

14 JUDGE CLARK: And then I'm going to limit
15 reply briefs. I don't want them to see any new evidence
16 with reply briefs. Let's go back to the May 12
17 responsive briefs and replies to answers to Commission's
18 questions, that will include at that time any objections
19 to new evidence that's offered. That will make the
20 final reply briefs, proposed findings of fact,
21 conclusions of law, objections to any additional
22 evidence that was offered during responsive briefs and
23 reply to Commission questions and that will be it.

24 If there are objections to any evidence that
25 is offered at the time of the responsive brief, those

1 objections can be included with reply briefs, but those
2 objections are not additional evidence at that point.
3 Does that sound reasonable to everybody?

4 MR. WILLIAMS: Judge, there's only one thing
5 that comes to mind. In anticipation of how the
6 Commission may rule on some objections, how would offers
7 of evidence for preserving it in the record for purposes
8 of review be handled?

9 JUDGE CLARK: That I think you had actually
10 addressed last time. You had asked that anything that
11 was objected to that the Commission determined would not
12 come in that I basically take in as an offer of proof.
13 Am I correct in that?

14 MR. WILLIAMS: You are correct.

15 JUDGE CLARK: So that's how I was planning on
16 handling that.

17 MR. WILLIAMS: I appreciate that. That works.
18 Thank you.

19 JUDGE CLARK: If there's no objection, I'm
20 assuming I'll just do that for all the parties; that if
21 something is struck out that the parties would like that
22 to be an offer of proof unless I receive notice
23 otherwise.

24 Okay. I'm just going to go through and just
25 kind of get assent from the parties. Is everything I've

1 said agreeable to the Empire District Electric Company?

2 MS. CARTER: Yes, Judge.

3 JUDGE CLARK: Commission staff?

4 MS. PAYNE: Yes, Judge.

5 JUDGE CLARK: Office of the Public Counsel?

6 MS. CARTER: I'm sorry, Judge.

7 JUDGE CLARK: Go ahead.

8 MS. CARTER: Since Nathan had mentioned about
9 the Asbury situation and offers of proof, the other
10 thing that's not specifically contemplated in the
11 schedule is if the company needs to present evidence on
12 Asbury. Right now the record is such that the company
13 hasn't based on the Commission's three prior rulings
14 that Asbury -- the retirement of Asbury is not an issue
15 in this case. So if the Commission were to reverse that
16 decision by not sustaining the objections I'll be filing
17 on the 6th regarding Asbury information, then the
18 company would need an opportunity to present Asbury
19 testimony.

20 MR. KEEVIL: Diana, that's what you do on the
21 6th.

22 MS. CARTER: The Commission hasn't reversed
23 their ruling.

24 MR. WILLIAMS: I believe what the Commission
25 ruled was that it was not going to do an isolated

1 adjustment for even the true-up period.

2 JUDGE CLARK: That's my recollection.

3 MS. CARTER: To rely on that, we need to
4 present testimony.

5 JUDGE CLARK: I'm sorry. Say that again,
6 please.

7 MS. CARTER: If the Commission were to change
8 the decision regarding making an adjustment for the
9 retirement of Asbury in this case, then the company
10 needs an opportunity to present evidence on that because
11 we have relied on the Commission's two prior written
12 orders and then, Judge, your verbal direction to us.

13 JUDGE CLARK: That's correct. I think the
14 problem is, is I think at this point almost all
15 objections are going to be taken with the case. If
16 there's something the company needs to file, I think
17 they ought to go ahead and file it.

18 Now, that creates some problems because I'm
19 not sure how to do that. I'm not sure how to handle
20 we're filing this only to be used in the --

21 MR. KEEVIL: Event.

22 JUDGE CLARK: Thank you, Mr. Keevil. I'm
23 sorry. I'm trying to think through the process and
24 thinking if there's a way I can address this earlier but
25 I don't think there is. I think you should file

1 something, an exhibit, with the idea that you're asking
2 that it be admitted as an offer of proof only if such
3 and such an event occurs. That's rather clumsy but
4 that's the best I've got.

5 MR. KEEVIL: It really wouldn't be an offer of
6 proof in that instance, Judge. It would be if then you
7 turned around --

8 MR. WILLIAMS: I think he's suggesting a
9 contingent offer of evidence.

10 MR. KEEVIL: Offer of evidence, yeah.

11 JUDGE CLARK: I think that's a good way of
12 putting it, contingent offer of evidence is fine.

13 MR. WILLIAMS: We've been up front about it.
14 We're arguing Asbury is an annualization adjustment.

15 JUDGE CLARK: I understand that. I don't want
16 to go into specifics right now. I want to keep it
17 really on the technical aspects of evidence and not what
18 the evidence is. If Empire is worried that the
19 Commission will reverse its previous order and decide to
20 consider stuff from Asbury, it can submit a contingent
21 exhibit but there needs to be something, some kind of
22 cover pleading that designates it so that I know that so
23 that I can tell the Commission that this evidence only
24 comes into play if.

25 MS. CARTER: I'm sorry to make it more

1 difficult, Judge. That we would -- I think that we
2 would have to object to that we are required to now at
3 this time throw together evidence on a billion dollar
4 issue when we've relied for months on the Commission's
5 ruling.

6 JUDGE CLARK: I understand. I'm not empowered
7 to speak for the Commission in regard to this. Do I
8 think it's likely that the Commission is going to change
9 its ruling? No, I don't. Could they? That's entirely
10 possible. But there's been nothing that's been said so
11 far. In the Commission -- In the orders put out by the
12 Commission, there's been nothing to indicate that in my
13 mind the Commission is still contemplating an AAO.

14 MS. CARTER: Thank you, Judge. I'm sorry. I
15 just wanted to clarify when I said I didn't object on
16 the 6th, 12th and 18th. That's excluding the Asbury
17 issue. I definitely appreciate having the first date
18 moved out to the 6th. I think that will allow all
19 parties to get better information to the Commission.

20 JUDGE CLARK: Okay. If you have -- Like I
21 said, if you're objecting, if you're filing -- If you're
22 objecting like you're going to to the Office of the
23 Public Counsel putting in stuff regarding Asbury and
24 you're also objecting to having to put together evidence
25 to essentially contingently file, I think that those are

1 two objections that need to be addressed with objections
2 on the 6th. Okay?

3 MS. CARTER: Yes. Thanks.

4 JUDGE CLARK: I don't think --

5 MR. WILLIAMS: Judge, are you going to address
6 the offers of proof in how you're going to proceed with
7 this in the order you issue?

8 JUDGE CLARK: I would anticipate, for example,
9 MECG filed motions to strike and those motions to strike
10 are going to be taken with the case. I would assume
11 that most objections are going to be taken with the case
12 and that you'll have your answers in the report and
13 order.

14 MR. WILLIAMS: I understand about the ruling.
15 I'm just talking about the process of whatever is
16 objected to is treated as an offer of proof so that it's
17 in the record for purposes of any review. Are you going
18 to address that in your written order is what I'm
19 asking.

20 JUDGE CLARK: I'm going to address that in the
21 written order. I think I'll have to because the thing
22 is we won't have a record to rely on. So what I will
23 probably do, Mr. Williams, what comes to mind off the
24 top of my head is something simple to the effect of, you
25 know, Office of the Public Counsel's Exhibits 7, 13, 57

1 were designated as offers of proof. That's what I
2 anticipate.

3 MR. WILLIAMS: Okay. Thank you.

4 JUDGE CLARK: I don't think I'm going to go
5 into the particulars of what those are. I'll just
6 assume that those exhibits have been designated and
7 accepted as offers of proof. Okay?

8 MR. WILLIAMS: Yes.

9 JUDGE CLARK: Okay. This has been a much
10 livelier conference than I expected. Let me get back to
11 where I was before. I had asked the Empire District
12 Electric Company if they were agreeable and they
13 indicated their agreement with everything with the
14 exception in regards to some things they're going to be
15 filing objections are.

16 The Commission staff, are you agreeable to the
17 changes that I'm making to the procedural schedule?

18 MS. PAYNE: Yes, thank you.

19 JUDGE CLARK: Office of the Public Counsel?

20 MR. WILLIAMS: Yes.

21 JUDGE CLARK: National Housing Trust?

22 MR. LINHARES: Yes, Judge.

23 JUDGE CLARK: Thank you.

24 MR. HALL: Judge. Sorry. Pardon my
25 interruption. This is Caleb with OPC. I was not muted.

1 I just wanted clarification on the role of responsive
2 briefs versus the initial brief I heard you mention in
3 response to the Commission questions. In those formats,
4 my understanding is you want an answer --

5 JUDGE CLARK: The initial briefs are going to
6 answer Commission questions. If any party has any
7 comments they want to make regarding those answers to
8 Commission's questions and they want those to be
9 testimonial in nature, then those need to be, along with
10 the responsive briefs, those need to be included.
11 Essentially it's an opportunity to respond to any new
12 evidence that's submitted as an answer to a Commission
13 question. Does that clarify that?

14 MR. HALL: Yeah. I was a little confused.
15 Thank you.

16 JUDGE CLARK: You were breaking up there a
17 bit, Mr. Hall. Can you say that last sentence again,
18 please?

19 MR. HALL: I was just saying I was a little
20 confused. Thank you.

21 JUDGE CLARK: Does that clarify?

22 MR. KEEVIL: Let me ask the question. Is that
23 the only thing you see in the responsive brief? I would
24 think the responsive brief would respond to whatever was
25 filed initially and including the Commission questions.

1 JUDGE CLARK: Let me just separate these two
2 because I think the thing is it's multiple pleadings
3 that are due on different dates. So you have the
4 initial brief, the initial brief that it's own thing
5 separate and apart from answers to Commission questions.
6 Answers to Commission questions are their own
7 independent filing separate from the initial briefs.
8 Likewise you have responsive briefs. Responsive briefs
9 are the separate filing from any additional evidence or
10 any additional testimony that's being submitted in
11 response to new evidence. The only point objections can
12 be filed -- actually it would be my preference that
13 objections be filed separately from the briefs. I don't
14 want the briefs to become an amalgamation of stuff. I'd
15 like the briefs, objections and evidence to be
16 separated, and I think that makes the most sense.

17 And then the final round you'll have any reply
18 briefs, proposed findings of fact and conclusions of law
19 and finally that would be any objections or comments on
20 items filed in response to the responses to Commission
21 questions but no new evidence at that point. So that
22 would be merely a pleading essentially. Is that clear?

23 MR. KEEVIL: Yeah, I think so.

24 MS. PAYNE: If Mr. Keevil understands it, then
25 I'm okay.

1 MR. KEEVIL: Let me ask one quick follow up.
2 I agree with you that the answers to questions would be
3 separate, because that's evidentiary, would be separate
4 from the briefs which is legal, but the brief at that
5 time would also or could also reference the testimony
6 being filed concurrently therewith.

7 JUDGE CLARK: Absolutely. Brief is argument.

8 MR. KEEVIL: The what?

9 JUDGE CLARK: Brief is argument. So yes. I'm
10 going on. Natural Resources Defense Council and Sierra
11 Club, are you agreeable to modifications of the
12 procedural schedule and the parameters I've put forth?

13 MR. ROBERTSON: We are, Judge.

14 JUDGE CLARK: Renew Missouri?

15 MR. OPITZ: Okay with us, Judge. Thank you.

16 JUDGE CLARK: Mr. Woodsmall, your parties?

17 MR. WOODSMALL: Yes, we're fine. Thank you.

18 JUDGE CLARK: And finally, Mr. Jarrett, your
19 party?

20 MR. JARRETT: Yes, Judge. We're fine, thanks.

21 JUDGE CLARK: Is there anybody I haven't
22 addressed? Okay. Are there any other matters or any
23 issues that need to be addressed by the Commission at
24 this procedural conference? I hear none at this time.
25 I'm going to say if the parties are deciding to file

1 something by way of a stipulation or otherwise in regard
2 to issues that they believe are resolved and they want
3 me to address that in some format, the earlier I can get
4 that the better. I'm very time cramped at this point to
5 get stuff done. So I would appreciate that. That's the
6 only other thing I can think of at this point.

7 No, I know what I meant to say. If for
8 whatever reason there needs to be another procedural
9 conference or one would be assistive to the parties, if
10 you can get together and let me know I would be more
11 than happy to have one.

12 MS. MERS: Judge Clark, this is Nicole Mers
13 with staff. I actually do have one question about one
14 of the Commission questions if you could clarify.

15 JUDGE CLARK: It's possible but it's not
16 guaranteed. Go ahead.

17 MS. MERS: Okay. On No. 11 under the WNAR
18 SRLE questions and it's about Robin Kliethermes'
19 rebuttal testimony --

20 JUDGE CLARK: Give me the issue number,
21 please.

22 MS. MERS: One second. Let me pull that up.

23 MR. OPITZ: It's on page 5, Judge.

24 MS. MERS: Yes. Issue 4.

25 JUDGE CLARK: Issue 4, No. 11. Let me read it

1 real quick. It would be easier if I read it first.
2 Okay. What's your question? This seems to be yes and
3 no questions.

4 MS. MERS: Just to clarify what data they're
5 looking for, so would A just simply be a question of did
6 staff take actual rate case data and apply it to the
7 mechanism; is that an accurate restatement?

8 JUDGE CLARK: What you're talking about is
9 you're talking about answering the question and then
10 clarifying the answer. If the answer is no, then
11 there's nothing further that needs to be presented. If
12 the answer is yes, then really there probably ought to
13 be at least some summary presented in regard to that I
14 would think.

15 MS. MERS: Okay. And then 4B if the answer is
16 yes per the estimated bill, is it a number of estimated
17 -- Is the Commission looking for like a number of
18 estimated bills in a month, the difference for all of
19 those bills and how much they were over or under what
20 the non estimated bill was and then the impact if you
21 took all of say 50 were over and 50 were under and you
22 netted them, would it be, you know, washout or --

23 JUDGE CLARK: I think the way you stated that.
24 I don't think we're looking for -- I don't think we're
25 looking for a particular time period because the

1 question is that's really -- that would really be the
2 Commission asking staff to create evidence. So I guess
3 the question is has staff performed this analysis and
4 what is the summary of their results.

5 MS. MERS: Okay. Thank you.

6 JUDGE CLARK: And if that's, you know, so many
7 bills over a month, that's fine. If it's so many bills
8 over a year, if it's this amount over a year or this
9 amount over a week. Any of those -- It's essentially
10 asking how did you look at it, did you perform an
11 analysis and what did your analysis conclude.

12 Anything else? Okay. Then with that in mind,
13 are there any other questions regarding Commission
14 questions at this time? I hear none. And with that in
15 mind, I will adjourn this hearing and we will go off the
16 record. Thank you all for appearing here today. This
17 has certainly been educational to me.

18 (Off the record.)
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<p>\$</p> <hr/> <p>\$13 90:22</p> <hr/> <p>1</p> <hr/> <p>10 95:21</p> <p>11th 82:13 85:18 87:21 93:22 98:8</p> <p>12 102:16</p> <p>12th 88:6 94:3,12,18 98:7 102:5 107:16</p> <p>13 90:23 91:12 108:25</p> <p>13th 88:4 93:21</p> <p>18 95:21 97:7</p> <p>18th 82:14 85:18 87:23 88:4,7 93:25 94:3,13 98:7,9 107:16</p> <p>19 90:23 91:3</p> <hr/> <p>2</p> <hr/> <p>2 95:16,22 97:7</p> <p>200 93:2</p> <p>2019 95:17,25 96:10</p> <p>2020 76:3</p> <p>20th 85:21</p> <p>221 96:22 97:7,8,13</p> <p>229 96:24 97:7,9,13</p> <p>229C 96:5,9</p> <p>22nd 78:11,12</p> <p>28 76:3</p> <hr/> <p>4</p> <hr/> <p>4 86:9,11</p> <p>43 87:12</p> <p>46 93:1</p>	<p>4th 82:11 87:20 98:8</p> <hr/> <p>5</p> <hr/> <p>57 108:25</p> <hr/> <p>6</p> <hr/> <p>6th 88:4,6 93:18 94:2, 7,11,15,22 98:7 100:13 102:3 104:17, 21 107:16,18 108:2</p> <hr/> <p>7</p> <hr/> <p>7 108:25</p> <hr/> <p>9</p> <hr/> <p>9:04 76:3</p> <hr/> <p>A</p> <hr/> <p>a.m. 76:4</p> <p>AAO 99:17,19,24 100:5,7,10,11,14,25 101:6,7,8 107:13</p> <p>AAOS 99:21</p> <p>acceptable 93:20</p> <p>accepted 109:7</p> <p>accuracy 97:18</p> <p>add 94:22 101:6</p> <p>additional 78:14,16, 22 80:4,16 81:3,17,21 83:7 87:24 94:23 98:3 102:21 103:2 111:9,10</p> <p>address 82:4 90:25 91:12 100:13,17 101:20 105:24 108:5, 18,20</p> <p>addressed 98:18 101:24 103:10 108:1</p> <p>adequate 98:24</p>	<p>adjustment 105:1,8 106:14</p> <p>admitted 77:4 82:20 106:2</p> <p>Admittedly 87:14</p> <p>affiliate 95:16,17,20, 25 96:9,23</p> <p>agree 81:3 87:16 90:4 95:8</p> <p>agreeable 104:1 109:12,16</p> <p>agreed 90:11</p> <p>agreement 99:3,6 109:13</p> <p>agrees 90:21</p> <p>ahead 77:23 81:12 88:13,21 104:7 105:17</p> <p>air 101:15</p> <p>alleviates 92:10</p> <p>allowed 83:18</p> <p>allowing 78:16</p> <p>amalgamation 111:14</p> <p>amount 101:23</p> <p>Andrew 77:19</p> <p>annual 95:17,24 96:4</p> <p>annualization 106:14</p> <p>answering 86:20 92:13 95:6,10,13 97:3</p> <p>answers 83:17 84:14, 17 87:6 88:8 90:6 94:17,21 95:2,10 101:13 102:4,17 108:12 110:7 111:5,6</p> <p>anticipate 108:8 109:2</p> <p>anticipated 79:20</p> <p>anticipation 103:5</p>	<p>apologize 78:8,19 79:4,13 89:18 100:6</p> <p>apparent 79:23</p> <p>apparently 85:9</p> <p>appearance 76:14</p> <p>apple 84:1</p> <p>apply 82:24</p> <p>approval 89:25</p> <p>April 76:3</p> <p>APUC 95:17,23</p> <p>Area 76:10</p> <p>argued 91:1</p> <p>arguing 106:14</p> <p>Asbury 104:9,12,14, 17,18 105:9 106:14,20 107:16,23</p> <p>asks 95:16</p> <p>Aslin 76:23</p> <p>aspect 89:8 100:19</p> <p>aspects 88:25 106:17</p> <p>assent 103:25</p> <p>Association 78:7</p> <p>assume 88:15 92:12 108:10 109:6</p> <p>assuming 78:17,24 90:25 103:20</p> <p>attempted 92:23</p> <p>attorney 92:20 93:4 95:6 96:15</p> <p>attorneys 76:14 81:16</p> <p>Authority 76:8</p> <hr/> <p>B</p> <hr/> <p>back 85:15 90:7 92:5, 11 93:17 102:16 109:10</p>
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<p>based 83:5 84:17 104:13</p> <p>basically 103:12</p> <p>Bear 87:18</p> <p>beat 88:12</p> <p>begin 76:13</p> <p>behalf 76:20 77:16,25 78:6 90:16</p> <p>behoove 89:22</p> <p>billion 107:3</p> <p>bit 91:3 110:17</p> <p>bite 84:1</p> <p>black 99:2</p> <p>blanks 89:7</p> <p>blown 79:17</p> <p>Bocklage 77:2</p> <p>Boland 77:1</p> <p>bothering 89:3</p> <p>box 99:2</p> <p>breaking 78:24 110:16</p> <p>Bretz 76:23</p> <p>briefing 85:13</p> <p>briefings 78:17</p> <p>briefly 101:25</p> <p>briefs 80:5 81:24 82:1,2,11,14 83:18,19, 21,23,24 84:3,5 85:2, 7,18,24 86:2 87:21 88:1,2 94:9,16,19 102:3,5,15,16,17,20, 22 103:1 110:2,5,10 111:7,8,13,14,15,18</p> <p>bring 83:1</p> <p>brushed 81:8 99:14</p> <p>budge 94:4</p>	<hr/> <p>C</p> <hr/> <p>Caleb 77:7 109:25</p> <p>call 79:17 81:15 84:3 88:15 94:12</p> <p>called 78:10</p> <p>CAM 95:17,23 96:22 97:8</p> <p>capital 99:5</p> <p>captioned 76:7</p> <p>Carter 76:16,18 80:20 81:11,12,13 88:3 94:1, 5 96:7,11 100:4 101:19 104:2,6,8,22 105:3,7 106:25 107:14 108:3</p> <p>Carter's 94:23</p> <p>case 76:6 88:23 90:15 95:25 97:5 99:1 100:17 101:3,23 104:15 105:9,15 108:10,11</p> <p>cases 90:17</p> <p>Casi 76:22</p> <p>caught 97:20 98:21</p> <p>caveat 81:2</p> <p>cetera 81:18</p> <p>chance 84:2</p> <p>change 92:1 105:7 107:8</p> <p>changed 91:11</p> <p>charge 90:21</p> <p>clarification 110:1</p> <p>clarify 89:20 90:9,18 107:15 110:13,21</p> <p>clarity 95:12</p> <p>Clark 76:2,12,18 77:3, 10,14,18,21 78:3,8 79:4,8,10,13 80:9,23 81:3,12 82:3,18 83:11,</p>	<p>15 84:9,13 85:1,10,16, 25 86:4,10,18,22 87:1, 14 88:5,12,19 89:14, 23 90:23 91:6,15 92:19 94:2,15,25 95:9, 19,22 96:2,18,25 97:6, 10,13,15,19 98:10,13, 17 99:23 100:9,21 101:5,21 102:9,12,14 103:9,15,19 104:3,5,7 105:2,5,13,22 106:11, 15 107:6,20 108:4,8, 20 109:4,9,19,21,23 110:5,16,21 111:1</p> <p>clear 95:9 98:12 111:22</p> <p>clip 87:25</p> <p>clipped 90:13</p> <p>Club 77:12</p> <p>clumsy 106:3</p> <p>collection 90:11</p> <p>comments 110:7 111:19</p> <p>Commission 76:5,19 78:14,23 82:12,19,25 83:3,17 84:14,20 85:21 86:15 87:7 88:8, 16 89:6,21,25 90:5,17 91:16,17 92:9,16 93:1, 7,23 94:17,19,21 95:1, 2,3 97:3,22 100:11,16 102:4,6,23 103:6,11 104:3,15,22,24 105:7 106:19,23 107:7,8,11, 12,13,19 109:16 110:3,6,12,25 111:5,6, 20</p> <p>Commission's 93:19 100:7 102:17 104:13 105:11 107:4 110:8</p> <p>Commissioners 90:1</p> <p>company 76:15,17 94:6,13 104:1,11,12, 18 105:9,16 109:12</p> <p>Company's 76:8</p>	<p>completed 93:24</p> <p>concern 81:13 98:19 100:18,20</p> <p>concerned 100:21</p> <p>concerns 85:16 87:5 88:21 92:10 98:19</p> <p>conclusion 89:5,13</p> <p>conclusions 82:15 90:14 95:4 99:11 102:21 111:18</p> <p>conducted 76:4</p> <p>conference 76:4,6 78:10 93:15 97:1 109:10</p> <p>confidential 97:10</p> <p>confirm 80:20</p> <p>conflict 89:8,11</p> <p>confused 110:14,20</p> <p>Consumers 78:1</p> <p>contemplated 85:4 89:19 95:1 104:10</p> <p>contemplating 107:13</p> <p>contemplation 84:8</p> <p>contested 91:1</p> <p>contingent 106:9,12, 20</p> <p>contingently 107:25</p> <p>continued 78:13</p> <p>conventional 83:15</p> <p>coordinated 94:10</p> <p>correct 82:10,15,16, 17 97:14 103:13,14 105:13</p> <p>Council 77:11</p> <p>counsel 77:6 88:17 90:24 96:4 104:5 107:23 109:19</p> <p>Counsel's 108:25</p>
--	---	--	---

counting 87:12	difference 85:19	email 79:15	96:5,11,19,22 106:1, 21
couple 84:20 86:7	differently 100:5	emailed 78:20	exhibits 99:15,16 108:25 109:6
cover 106:22	difficult 91:19 92:22, 25 93:4 107:1	Empire 76:7,15,16 78:1,6 84:23 86:7 91:1 95:22,23 96:13 97:17 99:21 104:1 106:18 109:11	exist 95:11
create 80:11	difficulties 80:11	empowered 107:6	existing 80:2 96:16
creates 105:18	difficulty 82:3 88:7	end 93:11 95:16	expect 95:10,13
cross 82:21,22	direct 82:20,23 89:12 101:17	Energy 78:1	expectation 85:20
customer 90:21	directed 84:23 87:12 96:13	enter 76:14	expected 93:10 109:10
Customers 76:10	direction 105:12	entire 90:15	explaining 97:2
<hr/>	disagree 80:20	entitled 92:1	extraordinary 99:25 100:2,19
D	discuss 80:10	equity 99:4	extremely 91:18
<hr/>	discussed 99:19	ER-2019-0374 76:11	<hr/>
data 80:17 84:19 86:7, 13	discussing 92:5 95:1	essentially 82:23 83:20 93:16 99:2 107:25 110:11 111:22	F
date 76:3 78:13 83:7 85:13,18 107:17	discussion 85:21	event 99:25 100:2,19 105:21 106:3	fact 82:15 89:5,13 95:4,5 99:8,11 101:7,8 102:20 111:18
dates 94:5 111:3	dispute 100:24	everybody's 93:9	fail 98:22
daunting 93:2	disputing 89:4	evidence 79:22 80:18,21 82:13 84:5,7, 12,16,24 85:6,8,12 86:2 94:10,16,20 95:14 96:16 98:2,3 101:16 102:4,8,11,15, 19,22,24 103:2,7 104:11 105:10 106:9, 10,12,17,18,23 107:3, 24 110:12 111:9,11, 15,21	Fair 87:3
David 77:25	District 76:7,15,17 78:2,6 104:1 109:11	evidentially 88:25	fairly 87:16
dealt 82:22	document 89:20	evidentiary 83:2 92:24 97:21 100:10,11	familiar 100:23
decide 93:8 106:19	dollar 107:3	examine 78:14	favor 78:23
decision 93:13 104:16 105:8	doubt 88:12	exception 98:1 109:14	feel 80:8
default 91:21 92:2	dual 91:23	excited 93:21	feeling 81:14
Defense 77:11	due 82:4 83:7 87:20, 21 111:3	excluding 107:16	felt 79:16
definition 89:11	<hr/>	exhibit 86:17 95:25	file 76:8,10 86:8,17 91:7,19 92:8 93:12 100:13 101:9 105:16, 17,25 107:25
depth 87:6	E		filed 83:13,16 86:13 87:11 89:16 98:23 99:1,15 101:23 102:4, 5 108:9 110:25 111:12,13,20
design 91:8	earlier 94:17 105:24		filing 80:4 83:19 86:12 89:19 91:17 94:9 104:16 105:20 107:21 109:15 111:7,9
designate 86:19	earliest 78:20		
designated 109:1,6	effect 95:23 108:24		
designates 106:22	efficient 94:8		
desktop 82:7	effort 92:16		
detailed 87:16 88:16	EFIS 86:13		
determined 103:11	Electric 76:8,9,15,17 78:2 104:1 109:12		
Diana 76:16 80:20 88:4 96:6 100:2 104:20			
Dietrich 77:1			

fill 89:7	Group 78:1	included 79:15 103:1 110:10	Jeff 81:19
final 85:18 102:20 111:17	guess 79:19 83:22 91:18 94:12	including 110:25	Jeffrey 76:24
finally 83:6 111:19	guys 100:2	incorporating 78:22	John 76:12
find 87:19 99:11 100:15,16	<hr/> H <hr/>	Increasing 76:9	Johnson 76:22
finding 89:5,12	Hall 77:7 109:24 110:14,17,19	incredible 101:22	Judge 76:2,13,18 77:3,10,14,18,21 78:3, 5,8 79:1,2,4,6,8,9,10, 12,13 80:7,9,23 81:3, 11,12,19 82:3,16,17, 18 83:11,15,22 84:9, 13 85:1,10,16,25 86:4, 10,18,22 87:1,4,14 88:3,5,10,12,19 89:14, 23 90:9,23 91:6,15 92:14,19 94:1,2,5,15, 22,25 95:9,15,19,22 96:2,14,18,25 97:6,10, 13,15,19 98:10,13,16, 17 99:23 100:6,9,20, 21 101:5,21 102:9,12, 14 103:4,9,15,19 104:2,3,4,5,6,7 105:2, 5,12,13,22 106:6,11, 15 107:1,6,14,20 108:4,5,8,20 109:4,9, 19,21,22,23,24 110:5, 16,21 111:1
findings 82:14 95:4,5 99:8,10 102:20 111:18	handle 105:19	independent 111:7	<hr/> K <hr/>
fine 86:18 99:3 106:12	handled 103:8	informally 78:12	Karen 76:23
firm 81:16	handling 103:16	information 81:4 90:16 93:25 98:24 104:17 107:19	Keevil 76:24 81:19 82:16 83:7,9,12,22 88:10,13,14 89:10 92:14,20 94:22 95:8 98:8,11 99:18,20 100:1,19 101:3,17 104:20 105:21,22 106:5,10 110:22 111:23,24
flack 98:5	happy 90:6 92:9 93:12,13,15	initial 80:5 82:11 83:17 84:5 85:7,24 88:1 94:8,9,16 102:3 110:2,5 111:4,7	Kevin 76:22
floating 90:20	head 100:22 101:2,22 108:24	initially 110:25	Kim 77:1
flown 93:10	heard 110:2	input 90:2	kind 86:11 89:1 90:10 103:25 106:21
follow 87:5	hearing 80:14 83:2 92:24	instance 106:6	knowing 91:20
forgetting 79:17	hearings 97:21	instant 86:23	
format 97:2	helpful 87:2 95:7	intended 79:25	
formats 110:3	Henry 77:13	interrupt 89:19	
formatting 87:11	hesitation 85:17	interruption 109:25	
formula 101:14	hold 93:15	Irving 76:23	
forward 79:6	holes 99:12	isolated 104:25	
found 93:4	honest 81:5	issue 78:24 80:17 85:1 88:22,23 89:4,11, 12,16 90:20 91:1 95:20 97:7 98:13 100:11 104:14 107:4, 17 108:7	
frame 93:5	hour 90:17	issues 78:14 80:8,10, 15 81:21 82:22 88:17 89:16 90:4,5,11 92:8 93:2 100:18 101:12	
frequently 97:22	Housing 77:18,20 109:21	items 111:20	
Friday 87:9	huge 85:19	<hr/> J <hr/>	
front 82:8 87:18 106:13	<hr/> I <hr/>	Jamie 76:23	
<hr/> G <hr/>	idea 106:1	Jarrett 78:5,6,8	
generally 89:1	identify 77:9,23		
give 78:13 82:5 86:16 93:22 99:7	inclination 79:21		
Giving 91:17	include 86:25 100:7 102:8,10,18		
global 91:2,13,20 93:3			
good 78:5 96:14 106:11			

L	<p>memo 93:24</p> <p>memory 82:9</p> <p>mention 110:2</p> <p>mentioned 104:8</p> <p>Mers 76:23</p> <p>met 100:22</p> <p>Michelle 77:2</p> <p>Midwest 78:1</p> <p>mind 83:16 103:5 107:13 108:23</p> <p>minute 81:6 82:6</p> <p>missed 79:15</p> <p>Missouri 76:10,21 77:15,17</p> <p>modified 89:20</p> <p>modifying 98:14</p> <p>moment 78:21</p> <p>momentarily 82:5</p> <p>Monday 82:11 83:13, 14 87:8,11</p> <p>months 107:4</p> <p>morning 78:5 87:9 88:15</p> <p>motions 108:9</p> <p>move 85:17 93:21</p> <p>moved 78:16 85:11 92:6 107:18</p> <p>moving 83:7 98:6</p> <p>multiple 111:2</p> <p>muted 109:25</p> <p>Myers 76:23</p>	<p>National 77:18,20 109:21</p> <p>Natural 77:11</p> <p>nature 110:9</p> <p>necessarily 84:17 85:5 92:15</p> <p>needed 90:14 96:17</p> <p>needing 87:8</p> <p>newly 81:7</p> <p>Nicole 76:23</p> <p>night 78:20</p> <p>nontechnical 93:3</p> <p>note 77:3 97:6,15</p> <p>notice 103:22</p> <p>number 81:15 82:6 86:17 87:15 95:20 99:3</p>	<p>5,9,10,12 108:16</p> <p>offered 84:8,18 85:8, 23 102:19,22,25</p> <p>offers 82:13 84:7 85:6,12 94:16 102:3 103:6 104:9 108:6 109:1,7</p> <p>offhand 84:21</p> <p>Office 77:5 104:5 107:22 108:25 109:19</p> <p>Oligschlaeger 77:1</p> <p>on-the-fly 93:15</p> <p>OPC 86:17 91:7 109:25</p> <p>open 82:6</p> <p>opinion 95:6</p> <p>Opitz 77:16 79:2,9,11</p> <p>opportunity 80:19 81:6,7 83:5 84:12,14, 25 104:18 105:10 110:11</p> <p>opposed 98:8,10</p> <p>options 93:16</p> <p>order 98:13 100:7 106:19 108:7,13,18,21</p> <p>orders 105:12 107:11</p> <p>organizing 78:22 87:11</p> <p>original 79:21</p> <p>originally 78:11 79:25</p> <p>outmanned 81:15</p>
M	<p>made 84:7 86:2 93:13 94:17 95:9 97:6</p> <p>make 91:2 94:6,18 97:15 98:11 102:19 106:25 110:7</p> <p>makes 85:19 111:16</p> <p>making 105:8 109:17</p> <p>manner 89:22</p> <p>Mark 76:22 77:1</p> <p>matter 76:7,13 94:4</p> <p>means 79:14 87:9</p> <p>MECG 108:9</p> <p>meet all 100:25</p> <p>Members 78:7</p>	O	<p>object 84:12,14 91:21 107:2,15</p> <p>objected 78:18 103:11 108:16</p> <p>objecting 85:1 88:18 89:2 98:4,7 107:21,22, 24</p> <p>objection 88:2 103:19</p> <p>objectionable 84:25 85:4</p> <p>objections 81:2 82:12 84:6 85:6,12,23 94:10,16,20 102:3,18, 21,24 103:1,2,6 104:16 105:15 108:1, 11 109:15 111:11,13, 15,19</p> <p>obvious 81:9</p> <p>occurs 106:3</p> <p>offer 103:12,22 106:2,</p>
	N		P
	<p>Natelle 77:1</p> <p>Nathan 77:7 90:19 95:15 96:7 104:8</p>		<p>paraphrase 92:14</p> <p>Pardon 109:24</p> <p>part 84:4 85:17 92:6 93:9 94:21 99:6</p> <p>participating 76:25</p>

<p>particulars 109:5</p> <p>parties 77:22,24 78:4, 21,25 79:22,25 81:9 82:19,21 83:16,18,20 87:13 89:1,4,7,17,19 90:3,7,12 91:19 92:1, 8,11,13,21,23 93:11, 14,18 98:20 99:10,24 100:12 101:7 103:20, 21,25 107:19</p> <p>partly 89:10</p> <p>party 83:5 91:20 96:19 99:16 101:8 102:6,7 110:6</p> <p>past 87:23 88:22 98:20</p> <p>Payne 76:20 79:1,6,7 82:17 87:4 89:18 90:9 92:7 93:11 96:23 98:16 99:19 100:6 101:20 104:4 109:18 111:24</p> <p>Payne's 92:4</p> <p>people 77:8 90:2</p> <p>period 95:24 105:1</p> <p>person 93:4</p> <p>personal 98:18 101:5</p> <p>perspective 81:14</p> <p>plan 92:13</p> <p>planned 78:12</p> <p>planning 103:15</p> <p>play 106:24</p> <p>pleading 106:22 111:22</p> <p>pleadings 111:2</p> <p>pluck 101:14</p> <p>point 80:24 84:6 85:11 86:2 87:23 90:5 91:4,18,24 92:12 95:11 96:16,25 103:2 105:14 111:11,21</p> <p>pops 100:22</p>	<p>position 88:24 89:9, 15 90:25 91:11,13,22, 23,25 92:2,3 93:6,7 98:21,22,25 100:16</p> <p>positions 92:1</p> <p>possibly 76:25 81:23</p> <p>potentially 92:3</p> <p>practical 85:11</p> <p>preference 111:12</p> <p>prefiled 82:20</p> <p>present 104:11,18 105:4,10</p> <p>preserving 103:7</p> <p>pretty 85:5</p> <p>previous 106:19</p> <p>primarily 82:23 101:3</p> <p>Pringle 76:22</p> <p>prior 104:13 105:11</p> <p>problem 82:18 84:4 85:13 86:4 89:14 105:14</p> <p>problematic 84:21</p> <p>problems 83:8 105:18</p> <p>procedural 76:4,6 78:10,16 82:3 87:18 92:6 97:1 98:14 109:17</p> <p>proceed 89:22 108:6</p> <p>process 82:4 99:7 105:23 108:15</p> <p>prong 100:23</p> <p>prongs 100:22</p> <p>proof 103:12,22 104:9 106:2,6 108:6,16 109:1,7</p> <p>proposed 99:10 102:20 111:18</p> <p>proud 79:16</p>	<p>provide 86:7 87:8</p> <p>Provided 76:9</p> <p>public 76:21 77:5 88:17 90:24 96:4 104:5 107:23 108:25 109:19</p> <p>pull 82:5 87:17 95:19</p> <p>pulled 96:12</p> <p>purposes 103:7 108:17</p> <p>push 85:14 87:22</p> <p>put 89:1 96:4 97:2,6 101:13 107:11,24</p> <p>puts 92:2</p> <p>putting 106:12 107:23</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 80:25 81:20 82:19 86:15,19,24 88:11 91:6,9 92:4,7 95:6,22 96:2,17 97:3, 7,22,25 110:13,22</p> <p>questions 78:15,20, 22 79:3,20 80:1,3,12 81:5,9,18 82:12,25 83:1,3,4,5,6,17 84:15, 22 87:12,15 88:14,17 89:6 90:2,6 92:13,17 93:8,19 94:9,18,19,21, 24 95:13 96:13 98:2 101:6 102:4,7,18,23 110:3,6,8,25 111:5,6, 21</p> <p>quick 95:19 99:12</p> <p>quickly 88:9 90:7 93:14</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raise 81:20</p> <p>raises 80:8,9</p>	<p>rate 88:23 91:8 99:4 100:17</p> <p>ratemaking 101:13</p> <p>Rates 76:9</p> <p>reach 90:14</p> <p>readily 101:15</p> <p>reading 81:7</p> <p>real 85:16 95:19 99:12</p> <p>Realistically 87:8</p> <p>realized 99:6</p> <p>reason 89:5 91:12</p> <p>reasonable 103:3</p> <p>rebut 84:2</p> <p>rebuttal 82:23 94:12</p> <p>receive 103:22</p> <p>received 78:25 79:3</p> <p>recent 88:23</p> <p>Recipients 78:2</p> <p>recollection 105:2</p> <p>record 76:2,14 77:4 79:23 80:22,24 81:4 92:24 95:11 96:16,18 103:7 104:12 108:17, 22</p> <p>redirect 83:6,8,9,12, 14</p> <p>referring 91:7</p> <p>regard 81:10,14 82:4, 22 83:6 89:8,25 91:8 92:8 95:7 100:24 101:5 107:7</p> <p>Regulatory 76:12</p> <p>reject 91:2</p> <p>relied 105:11 107:4</p> <p>rely 95:5 105:3 108:22</p> <p>remember 100:1 101:1</p> <p>Renew 77:15,16</p>
---	---	---	---

replies 94:19 102:17	retirement 104:14 105:9	serves 82:10	strike 108:9
reply 82:14 84:2 94:12 102:7,15,16,20, 23 103:1 111:17	return 99:4	Service 76:9,10,21	struck 103:21
report 95:18,24 96:5, 10,23 97:9,12,23 101:18 108:12	reverse 104:15 106:19	set 76:5 78:11,12 82:11,13,14 98:14	structure 99:5
representing 77:24	reversed 104:22	show 92:9	stuff 101:23 106:20 107:23 111:14
request 76:8 80:17, 21 84:19 86:14	review 93:23 103:8 108:17	Sierra 77:11	stupid 88:10
requests 86:7	Robertson 77:13,14	significant 87:15	submit 95:23 99:16 106:20
require 80:4 84:24 89:12,24 98:2	role 110:1	signifies 86:14	submitted 79:23 81:7 96:20,21 110:12 111:10
required 107:2	Ron 76:23	simple 108:24	sufficient 80:25 89:4 90:4,13 93:23
requirements 101:1	round 82:1 83:23,24 84:3 111:17	simply 90:11	suggest 81:22,23,24
requiring 87:15	rounds 81:24	situation 97:18 104:9	suggested 83:25
residential 90:21	rule 91:23 101:2 103:6	sort 89:25 90:3	suggesting 90:10 106:8
resolution 91:20	ruled 81:2 104:25	sound 103:3	suggestion 83:22 85:22
resolve 85:13	ruling 104:23 107:5,9 108:14	space 88:1	summarize 101:24
Resources 77:11	rulings 104:13	speak 77:8 84:1 107:7	support 87:10 91:25 98:22,25 100:10,12 101:6
respect 78:15	run 92:22 98:20	specifically 104:10	supported 88:25 99:9
respond 81:25 83:18, 20 91:3 102:6 110:11, 24	running 82:9	specifics 106:16	supporting 98:21 99:24 100:24 101:7,8
responding 80:18 86:24	rushed 93:9	Spouses 78:7	supportive 100:14
response 94:11 110:3 111:11,20	<hr/> S <hr/>	staff 76:19,21,25 81:22 84:23 87:5,10, 13 90:16 99:19,21 104:3 109:16	suppose 80:19
responses 80:17 81:18 82:12 84:19 86:7 87:10,16,25 93:24 94:9 102:6 111:20	schedule 78:16 82:5 84:10 87:18 92:6 98:14 104:11 109:17	standard 83:2 101:13	supposed 84:7
responsive 82:13 83:19 85:2,12 86:1,15 87:21 88:1 94:18 102:5,17,22,25 110:1, 10,23,24 111:8	scheduled 81:24	start 79:19 81:7	supposing 83:16
Retired 78:7	screwy 85:5	started 93:24	surely 101:19
retirees 77:22	seeking 87:7	starting 76:15	surface 81:8 99:14
	sense 111:16	statement 88:24 89:9 90:25 91:13,22,23,25 98:21,22,25	surprise 91:4
	sentence 110:17	statements 93:6,8	surrebuttal 82:24
	separate 111:1,5,7,9	statute 101:1	sustaining 104:16
	separated 111:16	statutory 100:25	sympathize 90:12
	separately 111:13	stipulation 88:24 89:15 90:3,10,21 91:2 93:3 98:23,25 99:2,9	
	SERP 78:2	stipulations 91:14	
	served 92:18	strained 88:5	

T	<p>time 76:6 78:14,17 84:6 85:7 87:24 90:14, 18 92:12,18 93:1,23 102:6,18,25 103:10 107:3</p> <p>timewise 81:16</p> <p>timing 81:14</p> <p>today 79:16 86:8 98:13</p> <p>today's 76:3 78:13</p> <p>top 101:2,22 108:24</p> <p>track 92:4</p> <p>transaction 96:23</p> <p>transactions 95:16, 17,20,25 96:10</p> <p>Travis 76:22</p> <p>treated 83:1 108:16</p> <p>true-up 95:24 105:1</p> <p>Trust 77:18,20 109:21</p> <p>turned 106:7</p> <p>type 89:20</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>unable 100:17</p> <p>understand 80:5,7 84:9 88:19 91:15 92:21 93:5 106:15 107:6 108:14</p> <p>understanding 102:1 110:4</p> <p>understands 111:24</p> <p>unions 77:22</p> <p>universal 90:10</p> <p>unresolved 93:1</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>verbal 105:12</p>	<p>verify 97:17</p> <p>versus 110:2</p> <p>videoconference 92:25</p> <p>view 84:21 85:11</p> <p>voice 88:21</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 86:9,10</p> <p>waived 82:21</p> <p>wanted 83:4 98:11 107:15 110:1</p> <p>week 81:17</p> <p>weighing 91:9</p> <p>Whitney 76:20 79:7</p> <p>Williams 77:7,10 80:7,14,16 81:1 84:4, 11,16 85:3,14,22 86:1, 6,16,21,25 87:3 90:19, 24 91:11 95:15,21 96:1,4,9,22 97:4,8,12, 14,17 98:15 102:8,10, 13 103:4,14,17 104:24 106:8,13 108:5,14,23 109:3,8,20</p> <p>wire 89:24</p> <p>wondering 81:16</p> <p>Woodsmall 77:23,25</p> <p>word 100:2</p> <p>work 87:22 94:5 99:7</p> <p>works 94:13 103:17</p> <p>worried 106:18</p> <p>worth 92:15</p> <p>written 105:11 108:18,21</p> <p>wrong 82:10</p>	Y
<p>table 101:12</p> <p>talk 90:1</p> <p>talking 108:15</p> <p>Tariffs 76:8</p> <p>technical 77:8 79:20 106:17</p> <p>teleconference 76:5</p> <p>telling 89:21 96:25</p> <p>tend 89:1</p> <p>terms 81:15</p> <p>Terry 78:6</p> <p>test 80:19 95:24</p> <p>testimonial 94:19 110:9</p> <p>testimonially 80:1</p> <p>testimony 80:2,4 81:8,17,21 82:21 83:8, 21 86:23 94:24 95:14 96:17 97:24 99:16,20, 23,24 100:5,13 104:19 105:4 111:10</p> <p>thing 83:13 84:18 85:5 99:13 101:10 103:4 104:10 108:21 110:23 111:2,4</p> <p>things 82:6 86:13 89:20 90:18 91:23 95:3 100:7 109:14</p> <p>thinking 99:1 105:24</p> <p>Thompson 76:22</p> <p>thought 79:15 86:16</p> <p>throw 107:3</p> <p>thrown 99:3</p> <p>tied 99:5</p> <p>tight 84:10</p> <p>Tim 77:16 79:2</p>	<p>year 95:24</p> <p>yesterday 81:17</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zoom 76:5</p>		