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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
VOL. III
HEARING
IN THE MATTER OF: GR-2021-0320

April 25, 2022

PAMELA G. WILLIAMS, RPR
MISSOURI CCR #880

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INDEX OF EXHIBITS

Exhibit No.		Page No.
Exhibit No. 1	Earhart Testimony	33
Exhibit No. 2	Earhart Surrebuttal	33
Exhibit No. 100	Patterson Testimony	77
Exhibit No. 100C	Schedules 4 and 5	78
Exhibit No. 101	Patterson Surrebuttal	77
Exhibit No. 102	Corrected Schedules	79
Exhibit No. 102C	Corrected Schedules	79
Exhibit No. 300	Ervin, II Testimony	58
Exhibit No. 301	Ervin, II Surrebuttal	58
Exhibit No. 302	Ervin, Sr. Testimony	72

(The exhibits were retained by the parties.)

1	INDEX OF PROCEEDINGS	
2		Page No.
3	OPENING STATEMENT	
4	By Mr. Fisher	10
5	By Mr. Brownlee	17
6	By Ms. Myers	27
7	By Mr. Williams	30
8	EXAMINATION OF MS. EARHART	
9	By Mr. Fisher	32
10	By Mr. Brownlee	35
11	By Judge Pridgin	45
12	By Mr. Brownlee	52
13	By Mr. Fisher	53
14	EXAMINATION OF MR. ERVIN, II	
15	By Mr. Brownlee	57
16	By Mr. Fisher	60
17	By Mr. Brownlee	67
18	EXAMINATION OF MR. ERVIN, SR.	
19	By Mr. Brownlee	72
20	By Judge Pridgin	74
21	By Mr. Brownlee	77
22	EXAMINATION OF MR. PATTERSON	
23	By Ms. Myers	78
24	By Mr. Fisher	81
25	By Mr. Brownlee	85

1 By Judge Pridgin

96

2 By Ms. Myers

101

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IN THE MATTER OF:
File No. GR-2021-0320

The Public Service Commission Hearing
regarding the above captioned matter was held on
behalf of the parties via Webex on the 25th day of
April, 2022, before Pamela G. Williams, RPR, CSR MO.

1 APPEARANCES OF THE PARTIES:

2 ON BEHALF OF THE MISSOURI PUBLIC SERVICE COMM.:

3 Ms. Jamie Myers
200 Madison Street, Suite 800
4 Jefferson City, MO 65102

5 ON BEHALF OF OFFICE OF PUBLIC COUNSEL:

6 Mr. Nathan Williams
200 Madison Street, Suite 650
7 Jefferson City, MO 65102

8 ON BEHALF OF LIBERTY (Empire):

9 Mr. James M. Fisher and
Ms. Diana C. Carter
10 101 Madison Street, Suite 400
Jefferson City, MO 65101

11

12 ON BEHALF OF MIDWEST ENERGY GROUP:

13 Mr. Tim Opitz
308 E. High Street, Suite B101
14 Jefferson City, MO 65101

15 ON BEHALF OF MISSOURI SCHOOL BOARDS' ASS.:

16 Mr. Richard Brownlee, III
121 Madison Street
17 Jefferson City, MO 65101

18

19 ADMINISTRATIVE JUDGE:

20 Honorable Ron Pidgin

21

22 THE COURT REPORTER:

23 Ms. Pamela G. Williams
Veritext Legal Solutions
24 701 Market Street, Suite 310
St. Louis, Missouri 63101

25

1 IT IS HEREBY STIPULATED AND AGREED, that
2 this Public Service Commission hearing may be taken
3 in shorthand by and before Pamela G. Williams,
4 Registered Professional Reporter, Missouri Certified
5 Court Reporter, CCR #880, and afterwards transcribed
6 into typewriting.

7 * * * * *

8 JUDGE PRIDGIN: Good morning. We are on the
9 record. This is the evidentiary hearing in File No.
10 GR-2021-0320. It's in the matter of the request of
11 the Empire District Gas Company, d/b/a Liberty for
12 authority to file tariffs increasing rates for gas
13 service provided to customers in its Missouri
14 service area.

15 Good morning. I am Ron Pridgin. I'm
16 the Regulatory Law Judge assigned to preside over
17 this hearing this being held on April 25th, 2022.
18 We are in the government office building in
19 Jefferson City, Missouri and also using Webex for
20 this hearing. The time is approximately 8:40 a.m.

21 I would like to get entries of
22 appearance from counsel. Symmetry has already asked
23 to be excused from this hearing and I have granted
24 that request. So let me get entries of appearance
25 from the parties beginning with Empire District Gas,

1 please.

2 MR. FISHER: Thank you, Judge. On behalf of
3 Empire District Gas Company, let the record reflect
4 the appearance of Diana C Carter and James M.
5 Fisher. Our contact information's on the entry form
6 but since the reporter's not in the room, perhaps I
7 should go ahead and give you addresses.

8 My address, it's the law firm of
9 Fisher & Dougherty, PC, 101 Madison Street, Suite
10 400, Jefferson City, Missouri 65101. Ms. Carter's
11 address is, she's with Liberty Utilities in-house
12 counsel, and her address is 428 East Capital Avenue,
13 Suite 303, Jefferson City, Missouri 65101.

14 JUDGE PRIDGIN: Mr. Fischer, Thank you. On
15 behalf of the staff of the commission, please.

16 MS. MYERS: Good morning, Judge. On behalf
17 of the staff of the Missouri Public Service
18 Commission, this is Jamie Myers. My address is 200
19 Madison Street, Suite 800, Jefferson City, Missouri
20 65101.

21 JUDGE PRIDGIN: Ms. Myers, thank you. On
22 behalf of the Office of Public council, please.

23 MR. WILLIAMS: Nathan Williams, Chief Deputy
24 Public Counsel, P.O. Box 2230, Jefferson City,
25 Missouri 65102.

1 JUDGE PRIDGIN: Thank you, Mr. Williams. On
2 behalf of MSBA, please.

3 MR. BROWNLEE: Yes. Let the record show the
4 appearance of Richard Brownlee. My address is the
5 Gallery Level, 121 Madison Street, Jefferson City,
6 Missouri. I'm appearing on behalf of Missouri
7 School Boards' Association. With me today is Mike
8 Parnell, Executive Director. And I have two
9 witnesses. One is Louis Ervin, Sr. and Louis Ervin,
10 Jr.

11 JUDGE PRIDGIN: Mr. Brownlee, thank you. On
12 behalf of MECG, please.

13 MR. OPITZ: Good morning. Tim Opitz on
14 behalf of Midwest Energy Consumers Group. My
15 address is 308 East Highway, Suite B 101, Jefferson
16 City, Missouri 65101.

17 JUDGE PRIDGIN: Mr. Opitz, thank you. Have
18 I overlooked anyone? All right. I believe the
19 first order of business then, will be the order of
20 opening statements. And I show that Empire District
21 Gas will be the first to make an opening statement.
22 I'm sorry, I'm getting some feedback in the room,
23 I'm not sure who's on.

24 COMMISSIONER HOLSMAN: Judge, do you want to
25 acknowledge the commissioners in the room?

1 JUDGE PRIDGIN: I'm sorry, is this
2 Commissioner Holsman?

3 COMMISSIONER HOLSMAN: Yes, sir.

4 JUDGE PRIDGIN: All right. I see if there
5 are any commissioners that would like to make any
6 opening remarks before we go on to opening
7 statements?

8 COMMISSIONER HOLSMAN: I just want the
9 record to reflect which commissioners are present.

10 JUDGE PRIDGIN: Very good, Commissioner
11 Holsman, thank you. You are here. Commissioner
12 Holsman, thank you, sir. Any other commissioner
13 wishing to make any opening remarks? All right.
14 Thank you.

15 Anything further before we move on to
16 opening statements? All right. Mr. Fisher, when
17 you're ready, sir.

18 [OPENING STATEMENT]

19 BY MR. FISHER:

20 Good morning, Judge Pridgin and
21 Commissioners. Diana Carter and I will be
22 representing the Empire District Gas Company, d/b/a
23 Liberty in this case. As you know, Empire District
24 Gas filed a rate case requesting a \$1.36 billion
25 rate increase. This was the first rate increase

1 case for the company since 2010.

2 On April 12th, the parties filed a
3 stipulation and agreement, which resolved all of the
4 revenue requirement issues and all of the rate
5 design issues in the case. And I understand we will
6 be considering in an on the record presentation
7 format, that stipulation at the end of the hearing
8 today.

9 We were not able to settle the issues
10 raised by the Missouri School Boards' Association
11 and those issues are to be heard today. All of the
12 issues involve the school transportation program,
13 which EDG has been operating for about 20 years.

14 The school transportation program has
15 been working well from the company's perspective,
16 but EDG is willing to work with the Missouri School
17 Board Association and the staff and any other
18 interested party to improve it as we go forward into
19 the future.

20 As Staff Witness Patterson points out
21 in his rebuttal testimony on pages eight, nine and
22 ten, the issues raised by the association involve
23 very -- involve very little money on an annual basis
24 for each school that participates in the school
25 transportation program in a typical year.

1 The association has proposed three
2 changes to Empire's transportation service tier.
3 Two of these would involve changes to the current
4 commission approved tariff that Empire has not
5 proposed to change in the rate case.

6 The association has also opposed one
7 of Empire's proposed revisions to clarify that the
8 ultimate customer is responsible to pay the bill if
9 it's marketer or aggregator fails to pay the gas
10 transportation service, as what happened during that
11 winter storm year in February of last year.

12 But, Judge, the company proposes at
13 this time to withdraw that third issue relating on
14 our list of issues, Issue 1 C, which deals with the
15 customer responsibility clarification language. We
16 would propose to withdraw that and it doesn't need
17 to be heard at that time. And it's my understanding
18 that no other party objects to that request.

19 Both the company and the staff
20 recommend that the commission deny the association's
21 remaining two requests relating to the
22 transportation tariffs. And I'd like to just
23 briefly go through the company's position on these
24 three issues.

25 The first issue involves the

1 association's request to change Empire's existing
2 aggregation, balancing and charging -- and cash out
3 charges. These rates were approved by the
4 commission in Case No. GR2009-0434 and are just and
5 reasonable.

6 These charges came about as a result
7 of a settlement in that 2009 rate case. There was
8 extensive testimony on the transportation tariffs
9 and fees from six witnesses representing Empire,
10 staff, and a gas marketer company that supplied gas
11 to transportation customers.

12 The commission approved the
13 stipulation that settled the issue in that case and
14 established the current fees for aggregation,
15 balancing and cash out charges for small and medium
16 transportation customers.

17 These fees have remained unchanged
18 for the last 12 years. As staff witness Patterson
19 testifies, staff supports the existing charges for
20 Empire. But he suggested that since these types of
21 charges have not changed across the LBC industry for
22 many years, they may not be high enough to cover the
23 current cost of providing these services.

24 Now going to the cash out and
25 balancing issue. The association proposes to

1 eliminate cash out balancing and substitute what's
2 called a carry over method. Or in the alternative,
3 eliminate multipliers applied to the pricing of
4 larger imbalances.

5 When the commission reviews the
6 testimony of staff witness Patterson on pages eight,
7 nine and ten, the commission will quickly note that
8 these issues involve small amounts of money.
9 However, it will take some time, some effort and
10 expense for the parties and the commission to
11 reevaluate these charges in the future.

12 The staff has also pointed out that
13 the association's alternative carry over method has
14 some problems for Empire and has only recently been
15 adopted by Missouri's largest LBC, Spire of
16 Missouri.

17 Unlike Empire, Spire has its own
18 on -- on system storage facilities and is
19 considerably larger than Empire. There are also
20 differences in the billing practices of the
21 companies, which makes the school board
22 association's carry over method less desirable for
23 Empire.

24 The staff has also recommended that
25 the cash out method should be the norm for other

1 school transportation programs operated by all the
2 other LBCs in Missouri. I refer you to
3 Mr. Patterson's rebuttal on page eight, lines three
4 through five.

5 Second, the association proposes to
6 create a separate tariff that would apply only to
7 school transportation pools separate from the other
8 transportation tariffs.

9 Empire agrees that it would be
10 helpful and appropriate to develop a separate rate
11 schedule for the school transportation program
12 schools. Eventually, Empire hopes to have a
13 separate rate schedule for the school transportation
14 programs for both the Empire District Gas Company,
15 and its sister company, Liberty Utilities Midstates
16 that includes the best practices for school
17 transportation programs.

18 However, we do not believe that it
19 would be reasonable to merely adopt the standard
20 alone tariff that currently exists for Liberty
21 Utilities Midstates or to incorporate parts of that
22 tariff into the EDG tariff at this time.

23 The company believes that there
24 are -- needs to be significant updates and other
25 language improvements to the Liberty Midstates

1 school transportation tariff.

2 Empire has had discussions with staff
3 regarding some of these updates and improvements.
4 We believe it will take some time to discuss the
5 staff's perspective on these issues and develop and
6 implement some of these changes.

7 For example, we believe it would be
8 appropriate to change the cash out structure of the
9 midstates tariff to be more similar to the Empire
10 District Gas structure. Or some other type of cash
11 out structure that's acceptable to the association,
12 the commission staff and other interested parties.

13 We would -- we would propose to begin
14 discussing the provisions of the stand alone tariff
15 with the association and the staff and other
16 interested parties sometime after the conclusion of
17 this rate case. And have a revised tariff ready for
18 the commission's consideration, concurrent with
19 Liberty Midstates' next general rate case.

20 As you know, companies have to file
21 about every three years in order to keep their SRIS.
22 And Liberty Midstates has an SRIS, they -- their
23 SRIS was last effective in June of 2021, so they
24 would need to file it by 2024.

25 Thank you for your attention today.

1 Judge, I would take any of your questions and if
2 not, I'll be done.

3 JUDGE PRIDGIN: All right, Mr. Fischer,
4 thank you. Let me see if I have any bench
5 questions. Commissioner Holsman, any questions? I
6 don't hear anything. Commissioner Holsman, if you
7 have any questions, feel free to let me know.
8 Otherwise, Mr. Fisher, thank you.

9 MR. FISHER: Thank you.

10 COMMISSIONER HOLSMAN: Hey, Judge, I got no
11 questions, but it makes me star stick (phonetic)
12 every time I want to try to unmute so unless I
13 unmute, I don't have any questions.

14 JUDGE PRIDGIN: All right. Thank you.
15 Opening statement then from MSBA.

16 [OPENING STATEMENT]

17 BY MR. BROWNLEE:

18 Good morning, Judge and Commissioner.
19 I'm Richard Brownlee, I'm representing Missouri
20 School Boards' Association.

21 I had briefly thought over before
22 coming in here that I think my first public service
23 commission case was in 1974, which it's me getting
24 close to 50 years over here, so it's probably
25 time -- this may -- this may be my last case, as

1 well as being able to talk about the first case.

2 But, in any event, let me -- let me
3 talk about this a minute. And I -- I first would
4 like to comment, having at least some experience
5 with lots of different cases, water cases and gas,
6 electric, that this case, for as simple as it is, is
7 actually -- it's in a way complex, but we are also
8 sort of trapped in the procedural conundrum of rate
9 cases and when they have to be heard and otherwise.

10 So, there's a lot of what, I guess,
11 would be technical procedural issues that are here
12 that create problems, where if in a normal case that
13 you might have in a civil type of case where you
14 had, basically, as much time as you wanted to visit
15 and talk about the issues and try to come to some
16 resolution, in this particular case with rate cases
17 and timing, it's become a real issue. And one
18 that's mutual to all of us. I'd not pointing out
19 that anybody's created problems.

20 With me, and I'd like -- and I'll
21 turn to my opening. With me is Mike Parnell,
22 Executive Director of Missouri School Boards.
23 Mike's been here for a long, long time. And Louis
24 Ervin, Sr and Louis Ervin, II. I know Louis Ervin,
25 Sr. and I were at -- worked on the legislative when

1 the statute and unique statute I'm going to address
2 was passed in 2002. I think some of the
3 commissioners may have been in the house during that
4 time it passed. You all would remember if you were.

5 The Missouri School Boards
6 Associations is a 501 C (6) trade association. We
7 represent about 390 elementary and secondary school
8 districts, with about 2,650 school accounts that
9 utilize natural gas, off of, whether they're Spire,
10 different, almost all the different gas pipelines
11 that are, of course, subject to the statute. They
12 don't get to -- the gas companies don't get to opt
13 out, it's a mandatory statute that rules should rule
14 equally for everyone.

15 Under that statute, the schools have
16 organized a purchasing cooperative called MOPER
17 which is, really, a school board natural gas
18 consortium. We purchase gas through agents through
19 gas on the -- on the interstate pipelines and from
20 sources out state. It's typically transported in on
21 the interstate pipeline system. It's passed off to
22 the local utilities at a, I guess the word then
23 would be city gate. And then we utilize the
24 distribution system, the local distribution system
25 of the local utility to pass the gas to the schools.

1 The statute, again, was created in
2 2002. It was House Bill 1402. And it's been
3 codified and changed once, I think the next year or
4 so, but it's now Section 393.310.

5 If I had to say there's one thing
6 that's significant and unique about this case, it's
7 the fact that statute exists. No large industrials
8 have it, no -- I mean, the pipelines, no interstate
9 pipelines have it. It is unique to the schools and
10 it has some language that's binding. Whether it's
11 always been followed is an issue that the Judge and
12 you all have will to ponder, but the fact of it is,
13 it is Missouri law and a statutory format.

14 It creates an aggregate supply and
15 transportation program for all the eligible schools.
16 Requires the gas corporations to file tariffs for
17 year one, which I believe was 2003, as well as
18 thereafter. Those tariffs were required and, again,
19 this is statutory language requiring a minimum to
20 allow the purchasing of the natural gas supply and
21 transportation through this consortium.

22 The resale -- and, now, listen, the
23 resale and transport service of the gas corporation
24 must be at the cost less the transportation fee.
25 That is a -- that is a critical statement you'll

1 hear this morning, you'll see it in briefs, and it's
2 important in any later discussions as to exactly the
3 meaning of that.

4 The statute also allows for the
5 inclusion in those tariffs of all applicable
6 distribution costs, plus an aggravation and
7 balancing fee determined by the commission, that's
8 not to exceed four-tenths of one cents per therm,
9 delivered the first year.

10 There is no telemetry required for
11 the schools and no special metering, unless the
12 school uses, I believe, a hundred thousand therms
13 per year. The tariffs must have no negative impact,
14 financial impact on gas corporation, on other
15 customers, or, which I think the statute uses taxing
16 entities, which I believe is, really, the cities and
17 the counties.

18 Pipeline capacity is to be treated in
19 the large -- like the large industrials. That is,
20 the physical treatment of the gas and how it's
21 shipped, how it's delivered, how it's charged, is
22 handled that way so there's, really, no unique
23 circumstance for that. But, again, that's the
24 physical handling, not the costs. And that was
25 actually added a year or so afterwards in the

1 statute.

2 Interestingly, immediately after the
3 statute was passed in '02, there were seven gas
4 dockets created. One for -- that's applicable to
5 Empire was Aquila (phonetic), which was their
6 previous name. It's Case no. GT2003-0038. I'm
7 going to, at one point, ask the commission under
8 their rules of evidence, that the commission
9 administrative note the report and order in that
10 case, as well as any other matters in that file.
11 And I'll be passing out a copy of the report in
12 order -- at the conclusion of my statement.

13 There was an order in approving the
14 stipulation agreement on August 15th, 2002. It kind
15 of reviewed the history of the statute. It
16 recognized there would be model tariff sheets that
17 would have no material change. And that's, again,
18 another important where no material change in the
19 revenue requirements of the companies. And the
20 company would report its actual incremental costs
21 each year to the commission so they could compete
22 the over and under recovery of the -- the paired
23 commission, in their order, recognized their might
24 be a few small changes in revenue and financial
25 impact.

1 But, again, because the schools were
2 at a smaller volumeric numbers, that these -- the
3 commission held that nothing material, unless
4 otherwise shown. No party was allowed to have any
5 unreasonable delays, paragraph eight. And the
6 companies were also required to provide yearly data,
7 including the administrative costs, which are the
8 incremental costs and the gas costs, as well as gas
9 costs including distribution costs, and aggregation
10 and balancing fees.

11 I think as Jim mentioned, I'd say the
12 Grogman (phonetic) of this case, really, is two
13 things. It's the issue of cash out and carry over,
14 which I know my witnesses have addressed. And,
15 really, of all the years we've been involved in
16 this, this is the best presentation I can recall
17 where it's really historically been explained what
18 has gone on in this case from the inception to where
19 we are now. It's, really, a treatise on -- on the
20 gas transportation program in Missouri. And that
21 includes, I think, ours, our witnesses, the company
22 witnesses, as well as the staff witnesses. It's
23 really -- really a really, I'm loathe to --
24 reluctant to use the word good job, but it's very
25 complete and understandable.

1 Again, the issues in this case area
2 carry over and cash out and, again, the separate
3 tariff. I think we used a separate tariff. I deal
4 with that issue in a number of cases. It really
5 does make sense because it's -- this is such a
6 unique circumstance with the unique statute. The
7 separate tariff, to me, is the clearest way to deal
8 with it and -- and it -- deal with even adjustments
9 we might make. If you've got a separate tariff, it
10 just -- it accommodates that.

11 We think the current Empire position
12 is flawed. There's been no cost support for the
13 present filing on aggregation and balancing.
14 There's been, really, no cost support on even the
15 the cash out. And the cash out, the earlier case
16 that was talked about, has created a -- has created
17 a cash out that is for imbalances, that really is
18 applicable to large pipe lines and industrials. And
19 it creates the circumstance where if we're -- if the
20 schools are short, we're paying up to a hundred and
21 fifty percent penalty. And if the company is -- is
22 in error, we only get a 50 percent recement. So we
23 think per se, that current cash out and any other
24 cash out that models after that sliding scale,
25 again, is contrary to the statute in that it is

1 beyond the actual costs.

2 The rates that -- for the daily
3 computation are included and they're a public
4 record. They're in documents which are referred to,
5 I think, in the actual company statute. It's either
6 Natural Gas Weekly or Gas Daily. Those are, like,
7 the publications that give the -- the pricing for
8 gas. It's daily evidence and with monthly
9 summaries.

10 And, I guess, in conclusion, if there
11 is one here, we're talking about a statute in 2002.
12 And we are here 20 years later, still with an
13 unresolved situation on the actual cost of the gas
14 to these companies.

15 This matter had been kicked down the
16 road. The last time this was set, these rates that
17 were mentioned, I think in Jim's statement in that
18 case, the school board didn't participate in that
19 case, we didn't even receive notice from the
20 commission that it was going on. And I could say
21 that might be my fault with the notification system
22 then was not like EFIS today. And in any event, we
23 at that case when these were set, we weren't there.

24 As to waiting for the next general
25 rate case, maybe -- maybe that's not a choice. And

1 being very candid at that. We would, again, we're
2 believed to hear this company talk about their
3 willing to meet with us. We'd like, if we could --
4 as I said, if we could order pizza and start the
5 meeting today at 1, we'd like to do that.

6 But in any event, I appreciate your
7 attention, I appreciate Commissioner Holsman being
8 here. I know he was, I think, in the school system
9 at one time. So we know this is dear to his heart.
10 And other than that, again, I'm going to, at the
11 point I think if we introduce the testimony, which
12 we believe I think in my series of 300 through 300,
13 I'm going to mark that one report and order as one
14 of the exhibits. And, again, note that their -- the
15 staff witness and we mentioned our witnesses
16 mentioned several other cases which might be
17 referred to by the parties in briefs or otherwise.

18 So, with that, I'm going to -- I'll
19 close and stand for any questions. I know this is a
20 little -- the procedure in this is not quite like a
21 civil trial, but if there's anything I could add at
22 this point as a non evidentiary comment, I'd be
23 happy to do that.

24 JUDGE PRIDGIN: Mr. Brownlee, thank you. I
25 will call staff counsel, Ms. Myers, up and then just

1 while you're changing, if I hear anything from
2 commissioner you can come back and answer questions
3 and otherwise we'll just move on to staff.

4 MR. BROWNLEE: You bet. Thank you.

5 JUDGE PRIDGIN: Thank you so much.

6 Ms. Myers, when you're ready.

7 [OPENING STATEMENT]

8 BY MS. MYERS:

9 Well, good morning and may it please
10 the Commission. My name is Jamie Myers. I am here
11 representing the staff of the Missouri Public
12 Service Commission.

13 Staff witness Keenan Patterson has
14 sponsored and prefiled rebuttal and surrebuttal
15 testimonies addressing the issues remaining in this
16 case. Mr. Patterson is here today to answer any
17 questions on this testimony, but just, briefly, I
18 would like to give an overview of staff's position.

19 First, staff recommends the
20 commission deny MSBA's request to modify Empire's
21 aggregation, balancing and cash out charges in this
22 case.

23 Staff's own analysis indicates that
24 Empire's aggregation and balancing costs have likely
25 increased since the development of Empire's current

1 fees from the prior rate case. The staff is not
2 proposing an increase in these fees. Instead, staff
3 recommends the commission approves Empire proposal
4 to allow the current fees to remain unchanged.

5 Empire's current fee for aggregation
6 and balancing services for small transportation
7 customers was developed from many rounds of
8 testimony, as Mr. Fisher mentioned, in Case No.
9 GR2009-0434.

10 As Staff Witness Patterson states in
11 his rebuttal testimony, the current fees are based
12 on the record developed in that case and can be
13 presumed just and reasonable.

14 Further, despite MSBA's many claims
15 that these fees are not based on costs, MSBA has not
16 presented reliable evidence on what Empire's actual
17 costs of providing aggregation and balancing
18 services to small and medial transportation customer
19 is, nor has MSBA provided reliable evidence
20 supporting what an appropriate cost base rate should
21 be.

22 Instated, MSBA advocates that the
23 commission either entirely eliminate these fees or
24 greatly reduce them. Regarding cash outs, cash outs
25 are a common and reasonable practice for resolving

1 imbalances for both gas corporations and interstate
2 pipelines.

3 Further, the application of
4 multipliers to cash out prices is another practice
5 of gas corporations and interstate pipelines to
6 provide an economic signal to encourage shippers to
7 closely balance gas delivered and received. The
8 specific multipliers currently used by Empire are
9 consistent with those that are charged by upstream
10 pipelines. Staff recommends the commission approve
11 Empire's proposal to maintain its current cash out
12 practices.

13 Lastly, staff recommends the
14 commission deny MSBA's request for a separate school
15 aggregation tariff at this time. A separate tariff
16 is not required by law, nor is it practically
17 necessary to implement a school aggregation program.
18 School aggregation pools are fundamentally
19 transportation customers. And Empire's current
20 transportation tariff has been able to adequately
21 address the unique statutory requirements for school
22 aggregation pools.

23 Now, as Mr. Fisher stated, as Empire
24 is willing to meet with staff and MSBA and other
25 stakeholders to look for a stand alone

1 transportation tariff in the future, staff is more
2 than happy to be part of that conversation. And, in
3 fact, has been part of that conversation. But,
4 again, at this point in time, the complexity of
5 doing that, it would be premature to try to do that
6 in this case.

7 Staff Witness Keenan Patterson,
8 again, has sponsored pre filed rebuttal and
9 surrebuttal testimonies on the staff recommendations
10 that I just mentioned. Mr. Patterson is here today
11 to answer questions on this topic and I here as
12 well, if you have any questions for me. Thank you.

13 JUDGE PRIDGIN: Ms. Myers, thank you so
14 much. And we'll see if we have any opening
15 statement from public counsel, Mr. Williams.

16 MR. WILLIAMS: Just briefly, thank you.

17 JUDGE PRIDGIN: When you're ready, sir.

18 [OPENING STATEMENT]

19 BY MR. WILLIAMS:

20 Good morning. Nathan Williams,
21 appearing on behalf of the Office of the Public
22 Counsel, may it please the Commission. Public
23 Counsel has no witnesses on any of these particular
24 issues in this case.

25 Public Counsel's primary concern is

1 potential and almost certainty of cross
2 subsidization due to imbalances. Public Counsel
3 understands that imbalances are measured monthly,
4 whereas spot market gas is done instantaneously,
5 which creates the potential for imbalances. And
6 that's, really, staff's concerns with these
7 transportation tariffs or school aggregation. It
8 does not have an issue with schools aggregating to
9 purchase natural gas, but it does have a concern if
10 the right price is going to those schools. And
11 that's it.

12 JUDGE PRIDGIN: Mr. Williams, thank you.
13 Any opening on behalf of MECG?

14 MR. OPITZ: No opening for MECG, thank you.

15 JUDGE PRIDGIN: Mr. Opitz, thank you. And
16 Symmetry has been excused from this hearing. All
17 right. Anything else before we proceed to cross
18 examination? I believe the first witness is going
19 to be Empire's witness, Ms. Earhart. Anything else?
20 Okay. And I don't know if Ms. Earhart's in the
21 hearing room or on Webex?

22 MR. BROWNLEE: Yes, she is here. I would
23 call Tatiana Earhart to the stand.

24 JUDGE PRIDGIN: All right. She'll come
25 forward to be sworn, please.

1 Good morning. If you'll raise your
2 right hand to be sworn please. Do you swear the
3 evidence you're about to give will be the truth, the
4 whole truth and nothing but the truth, so help you
5 God?

6 THE WITNESS: Yes.

7 JUDGE PRIDGIN: All right. Thank you very
8 much. And if you can try to speak into the
9 microphone more for people who are participating by
10 Webex. And, Mr. Fisher, when you're ready.

11 MR. FISHER: Thank you, Judge.

12 [EXAMINATION OF MS. EARHART]

13 QUESTIONS BY MR. FISHER:

14 Q Please state your name and address, for the
15 record?

16 A My name is Tatiana Earhart. My business
17 address is 602 South Joplin, Joplin, Missouri 64802.

18 Q Are you the same Tatiana Earhart that filed
19 rebuttal testimony and surrebuttal testimony in this
20 case?

21 A Yes.

22 Q For purposes of the record, I would like to
23 have the rebuttal testimony of Tatiana Earhart
24 marked as Exhibit No. 1 and the surrebuttal as
25 marked as No. 2.

1 (Whereupon, Exhibits Nos. 1 and
2 2 were marked for
3 identification.)

4 Q (By Mr. Fisher) Did you have any changes or
5 corrections that you need to make to either of those
6 pieces of testimony?

7 A I do. I need to make two -- one correction
8 and then one change. On my rebuttal testimony, on
9 page six, starting on line six, I answered to
10 Mr. Ervin's question regarding EDG's requirement
11 that schools with loads of over 40,000 CCFs
12 telemetry, I answered that incorrectly. I need to
13 change that to say that all transportation customers
14 with the exception of the individual schools
15 participating pursuant to Section 393.210, RSMO are
16 required to install telemetry at customer facility.
17 Individual schools participating pursuant to Section
18 393.310 with annual gas consumption greater than a
19 hundred thousand CCF are required to install
20 telemetry.

21 Q Okay. Would that replace the answer that
22 you have currently on page six, lines six through
23 eight?

24 A Correct.

25 Q Okay. And do you have another change or

1 correction you need to make?

2 A Yes. Referring to your opening statement
3 that we're going to withdraw the issue 1 C. So in
4 my surrebuttal, on page three, line five, we'd like
5 to remove that question and answer.

6 Q With those changes, if I ask you the
7 questions contained in exhibits 1 and 2, would your
8 answers be the same?

9 A Yes.

10 Q And are they true and correct to the best of
11 your knowledge and belief?

12 A Yes.

13 MR. FISHER: Your Honor, I would then move
14 for the admission of Exhibits No. 1 and 2 and tender
15 the witness for cross-examination.

16 JUDGE PRIDGIN: Mr. Fisher, thank you.
17 Exhibits 1 and 2 have been offered. Any objections?
18 Hearing none, Exhibits 1 and 2 are admitted into
19 evidence. We'll move to cross examination. Staff,
20 any questions?

21 MS. MYERS: No questions, Judge.

22 JUDGE PRIDGIN: All right. Thank you.
23 Public Counsel?

24 MR. WILLIAMS: No questions, thank you.

25 JUDGE PRIDGIN: Thank you. MECG?

1 MR. OPITZ: No, thank you, Judge.

2 JUDGE PRIDGIN: MSBA?

3 MR. BROWNLEE: Yes.

4 [CROSS EXAMINATION OF MS. EARHART]

5 QUESTIONS BY MR. BROWNLEE:

6 Q Good morning. I'm Richard Brownlee, I
7 represent the Missouri School Boards. I think we've
8 met earlier today and I know your company well and
9 Jim.

10 When were you first employed with
11 Empire? And I'm going to use -- well, let me ask
12 you another. Are you also employed by Midstates and
13 Liberty and Empire?

14 A I started with Empire District Company back
15 in December of 2008. I worked for the electric side
16 up until 2013. And then I came over to the Empire
17 District Gas side in 2016. And I'm currently in the
18 position of manager of gas supply for Central.
19 Which includes both Midstates and Empire District
20 Gas.

21 Q So I take it you were not employed by either
22 one of those at year 2002 when the statute was
23 passed?

24 A Correct.

25 Q Were you employed by any gas utility during

1 that period, that is prior to what I'd say this
2 hearing or this issue, were you familiar with the
3 Missouri School Boards' statute, which I'll refer
4 to?

5 A Prior to 2008?

6 Q Yes.

7 A No.

8 Q Okay. And you -- you testified, I believe,
9 the company generally supports staff's position on
10 aggregation and balancing; is that a fair statement?

11 A Staff's position?

12 Q Uh-huh.

13 A Yes.

14 Q Okay. And if staff's position on balancing,
15 aggregation or cash out proved to not be at cost,
16 would you then support the staff position?

17 A Well, the rates that are in the tariff right
18 now, they were analyzed to be at cost.

19 Q Okay. Do you know whether they, in fact,
20 are at cost on this case? I know they were set
21 much, much before this case, correct?

22 A Correct.

23 Q Yeah. And I'm talking about this case. Did
24 the company do any analysis on the cash out costs
25 for this case?

1 A No, the rates that are in the tariff today
2 were reviewed in the prior rate case.

3 Q No, I'm -- but, again, I understand that.
4 I'm asking about this case today. Did the company
5 provide any cost data to support the rates in this
6 case that you're asking the commissioner to approve
7 on cash out?

8 A We didn't change these rates, the rates were
9 reviewed back in the prior case.

10 Q So the answer's no, you didn't provide any
11 additional data in this case?

12 A No.

13 Q Okay. And the same for aggregation, did you
14 provide any -- any cost analysis for this case on
15 the aggregation portion of the issues before us?

16 A No.

17 Q And the same question for distribution
18 costs. Did you provide -- prepare any cost data for
19 this case at issue?

20 A No. All analysis was done in the prior
21 case.

22 Q Okay. And are you aware that the paragraph
23 four of that statute says that the -- that the -- at
24 the natural gas company shall apply gas corporations
25 costs of purchasing of such gas supplies and

1 transportation, you know that's in the statute,
2 correct?

3 A The statute says that it requires the
4 commission to establish the charges.

5 Q Okay. But if you didn't supply any
6 additional data, then the commission has nothing
7 from you, and I don't know if the staff, I can ask
8 them the same question. Did -- but you didn't
9 supply any additional costs for this case, did you?

10 A Not specifically.

11 Q Do you know of any -- any other rate case?
12 We've heard that the school boards didn't supply
13 any -- any cost data. Is it the obligation of the
14 school boards to supply cost data for cash out or
15 aggregation or balancing?

16 A We supplied the data to them through the
17 data request. They have the bills and all the cash
18 out materials.

19 Q Well, why didn't you do it if it was that
20 easy? And by you, I mean the company?

21 A It was not required for this rate case.

22 Q Okay. Well, you know that the statute says
23 here that the company's supposed to provide data on
24 the existing case -- I mean, on their costs. Even
25 though that was 20 years ago, the statute still is

1 exactly the same it was in then.

2 MR. FISHER: Your Honor, I would object to
3 that question. I think it's a mischaracterization
4 of the statute. It also calls for a legal
5 conclusion.

6 JUDGE PRIDGIN: I'll sustain.

7 Q (By Mr. Brownlee) On the rebuttal testimony,
8 you said you did not agree with -- and it's on page
9 six. Do you have that in front of you, page six,
10 lines nine through twelve? And there's a -- I
11 think, also you mentioned -- you didn't agree with
12 page 14, lines 22 and 23. I'm not going to approach
13 the witness because she's got her testimony. Let's
14 go to page six, lines nine through twelve. Do you
15 have that?

16 A Regarding the capacity release?

17 Q Yes.

18 A Yes.

19 Q Yeah. And you mentioned -- are there any
20 large volume MSBA schools on your utility system
21 that would be classified as large volume otherwise?

22 A Not to my knowledge. I don't believe -- we
23 do have a couple of colleges. But I don't think
24 those are MSBA.

25 Q Does your company release capacity to small

1 volume schools?

2 A Yes.

3 Q Does the statute state that a company must
4 provide for transportation to service to Missouri
5 schools on the system?

6 MR. FISHER: Objection again, legal
7 conclusion that's being called for.

8 MR. BROWNLEE: Well, I asked her if the
9 statute states that. That's not her opinion, she
10 can say if the statute states it, Your Honor. It
11 says what it says.

12 JUDGE PRIDGIN: Yeah, I'll overrule. She
13 can answer, if she knows. And if she doesn't she
14 can state that.

15 Q (By Mr. Brownlee) You want me to read it
16 again?

17 A Yes.

18 Q Does the statute state that the company must
19 provide for transportation service to the eligible
20 schools?

21 A Yes.

22 Q Yeah. And you -- do you know what year it
23 was, I think Mr. Fisher may have mentioned. Do you
24 know what the last time that the commission actually
25 changed the aggregation and balancing and cash out

1 charges; do you know what year that was?

2 A The rates became effective 2010.

3 Q And it was -- would you accept that I
4 believe it was GR2009-0434?

5 A Yes.

6 Q I think -- I think that's correct. I don't
7 mean to mislead you, that wasn't any tricky
8 question. But, without -- without the cost report
9 we've talked about, how does the commission make any
10 finding on that -- in the case --

11 A On the costs that were --

12 Q -- for balancing, aggregation or cash out?
13 How do they do it if there's no data from the company
14 on this issue?

15 A I'm not sure -- I'm not sure what was
16 provided in the previous rate case since I wasn't
17 involved. I'm not sure what witnesses they used for
18 that rate case. However, I do know that our
19 pipeline costs have only increased since 2010.

20 Q Right.

21 A Which means those costs have not gone down,
22 they've only gone up.

23 Q But those costs that you just talked about,
24 the increasing costs, wouldn't that be, normally,
25 something you'd put in your rate case?

1 A Potentially.

2 Q So if Public Counsel would like to know what
3 those increased costs were, just so we'd wonder
4 about subsidization, but the company hasn't produced
5 that, have they?

6 A No.

7 Q Excuse me a minute here. Do you -- do you
8 know personally, and I know it's from an earlier
9 case. Do you have any knowledge about the
10 aggregation and balancing charges that are currently
11 in your tariff and how they might compare to other
12 utilities? Do you -- In your preparation, did you
13 review that?

14 A No, I'm not familiar.

15 Q So you couldn't answer any questions about
16 that in terms of the actual dollar amounts compared
17 to other utilities?

18 A No.

19 Q Okay. Do you know, would you -- would you
20 accept that the aggregation and balancing charges
21 are five times higher than your sister company,
22 Liberty utilities?

23 A I'm not familiar with all the other
24 utilities' cost fractures. I just mostly -- I
25 recently took over Midstates. So I'm still learning

1 Midstates' cost structures.

2 Q Yeah. Well, I'm not to embarrass you, but I
3 mean, you didn't compare, for preparation today,
4 like, what you -- what these fees, what these rates
5 are compared to your sister company, that the
6 Missouri schools pay? You don't know whether
7 there's a five times disparity between your company,
8 Empire, and Liberty?

9 A Which -- which component?

10 Q Just the rates in general. For the
11 aggregation and balancing charges. Your -- they're
12 five times higher than your sister company. Are you
13 familiar with that?

14 A The aggregation charge is the same.

15 Q Yeah. And balancing, do you say they're the
16 same?

17 A The aggregation?

18 Q Yeah. And they're not five times higher
19 than -- that's your testimony?

20 A Not to my knowledge.

21 Q Okay.

22 A But I'm not as familiar with that.

23 Q Well, if you're not familiar, then you just
24 don't know; is that a fair statement?

25 A Yes.

1 MR. BROWNLEE: Okay. Could we have just a
2 minute, just take --

3 JUDGE PRIDGIN: Certainly.

4 Q (By Mr. Brownlee) All right. Right on just
5 that very last question. To be fair, if you
6 combined the current aggregation and balancing fees
7 of Empire, are you aware that they're five times
8 higher for the Missouri Schools than Liberty's
9 charges; are you familiar with that?

10 A No.

11 MR. BROWNLEE: Okay. All right. I think
12 that's all at this time. Thanks so much.
13 Appreciate it.

14 JUDGE PRIDGIN: All right. Thank you.
15 Let's see if we have any bench questions. I will
16 have a few questions for the witness. Commissioner
17 Holsman, any questions?

18 COMMISSIONER HOLSMAN: No, Judge. No
19 questions at this time.

20 JUDGE PRIDGIN: All right. Commissioner,
21 thank you. Any other commissioners that have any
22 questions? All right. Ms. Earhart, I'm going to
23 have a few questions for you.

24

25

1 [EXAMINATION OF MS. EARHART]

2 QUESTIONS BY JUDGE PRIDGIN:

3 Q If I could direct you to page three of your
4 rebuttal testimony. And more specifically, like the
5 bottom of page three, top of page four when you're
6 discussing balancing approaches.

7 Can you explain, I guess, in more
8 detail what -- what is Empire's concern with other
9 balancing approaches that create opportunities for
10 participants to the detriment of Empire's firm sales
11 customers?

12 A The carry over earned netting. There's a
13 couple of areas of concern for the company. The
14 first one is the company has limited resources to
15 use to balance the company's city gates. As
16 Patterson pointed out in his rebuttal testimony, the
17 line packs. Other utilities may be utilizing line
18 pack. To my knowledge, Empire does not utilize the
19 line packs so that doesn't give us the additional
20 flexibility.

21 Another one is, we do not have any on
22 system storage. So we can't pull from multiple
23 storage scenarios. Also, the storage that we use to
24 serve the firm sales customer is limited. We don't
25 have an abundant amount of storage for the system.

1 So any capacity that is being held for the firm
2 sales customers, it's crucial that we keep the
3 majority of that capacity for those firm sales
4 customers. The firm sales customers pay for that
5 storage capacity 365 days a year at a higher cost.

6 With netting and carrying over, I
7 think that there could be an opportunity for
8 unintentional scenario that would potentially harm
9 the firm sales customers. For example, if it was
10 November and we're heading into winter and the
11 prices are increasing, there may be some incentive
12 to go long, which leaves more in storage for the
13 colder months when the prices are higher, which
14 means that that short term storage would be taking
15 up the capacity it's meant for those firm customers.

16 And then, maybe towards the end of
17 winter, like if it was February and it's very cold,
18 then there may be incentive to go short in February.
19 Meaning, you're withdrawing more of the storage out
20 that was meant for the firm sales customers. And
21 being replaced later by the customer, for the
22 transportation customers in the lower priced months.

23 Q Okay. And I have a few questions and if
24 I -- if you've already answered them, please let me
25 know. You know, I may -- I may miss some of your

1 answers as it applies to all these questions.

2 But can you explain in more detail
3 how Empire's pipeline storage contracted for firm
4 sales customers would be used by aggregators if
5 netting or carry over of imbalances were used?

6 A If -- if you use the netting, if they carry
7 over a balance, so, if they're -- if they're long or
8 they're short, they've either used storage -- we
9 have storage withdrawal plan. And we're trying to
10 use a certain amount of storage each month. And if
11 it's unintentionally used during a different month,
12 then we have to make adjustments.

13 With the netting and carrying over, I
14 think it's just that that's an asset that the firm
15 sales customers are paying for 365 days a year. And
16 this is -- the solution that they're proposing is,
17 like, a short term storage solution, minus the
18 costs. But it's taking away that protection that's
19 meant for the firm sales customers.

20 Q Okay. If I can direct you to more, page
21 four of your rebuttal testimony. Can you explain
22 more in detail how aggregation and balancing fees
23 reduce gas commodity fees charged to your customers
24 through the purchase gas adjustment clause?

25 A The aggregation and balancing fees that we

1 collect from the different transportation pools are
2 directly credited to our PGA mechanism. So,
3 whatever the total gas cost is for the year, we --
4 we take those revenues and reduce our gas cost,
5 which goes back to the firm sales customers.

6 Q Okay. What does Empire do to balance the
7 small volume pools?

8 A Each day, when gas is sent to the gate, if
9 there is too much gas sent to each gate, which would
10 be a combination of your large volume, small volume
11 and sales customers, whatever the excess is, our MO
12 net of storage will take care of that. Or on days
13 where there's too little gas sent to the gate, the
14 storage will balance all of the city's gates.

15 Q How did Empire balance the small volume
16 pools during winter storm Yuri?

17 A When you say how, do you mean how much or?

18 Q I guess your method. I mean how much is
19 fine as well, but more your method.

20 A The method? We have a regression model that
21 predicts how much our system should use and how much
22 we should withdraw and any of the additional
23 shortage from the small volume pools gets balanced
24 from the storage.

25 Q Were there issues with those imbalances of

1 the small volume pool customers that impacted
2 Empire's distribution system as a whole?

3 A Yes.

4 Q What were those issues?

5 A During the storm, the school pools did not
6 send enough gas during the storm for reasonable
7 expectation of usage.

8 Q Does Empire have the ability to read school
9 gas meters without telemetry?

10 A The equipment that we installed has the
11 capability to produce daily reads, from what I
12 understand. It wouldn't be on a real time basis,
13 but at the end of the month it would be able to give
14 daily data, from what I understand.

15 Q Okay. Do you have a copy of Mr. Ervin,
16 Sr.'s corrected surrebuttal testimony?

17 A I do.

18 Q Okay. If I could direct you to appendix
19 four of that testimony. And let me know when you're
20 there.

21 A Surrebuttal?

22 Q Correct.

23 A And I'm sorry, one more time, appendix four?

24 Q Four, yes. And specifically, Empire's
25 response to data request 7.2.

1 A Seven point two, yes.

2 Q Okay. Do you know who James Young is that
3 responded to that data request?

4 A Yes.

5 Q I think the data requests asks if Empire
6 buys pipeline storage for transportation customers.
7 And Mr. Young said, no, but explained that Empire
8 uses upstream storage services; is that correct?

9 A Let me read the response.

10 Q Sure.

11 A Would you like my interpretation?

12 Q Well, actually, I just had a question and
13 you can also give your interpretation if you want.
14 Would the daily balancing for service provided to
15 the city gates include all gas including
16 transportation customers?

17 A Will you repeat that?

18 Q Sure. Would the daily balancing for service
19 provided to the system city gates include all gas
20 delivered to Empire, including the transportation
21 customers?

22 A Correct. It would balance everything at the
23 end of the day.

24 Q Okay. Great. Why is an analysis on the
25 impact to firm customers important before making any

1 tariff change to aggregation and balancing fees?

2 A An analysis of the storage and aggregation
3 fees. For -- for the benefit of the firm sales
4 customers, you would want to make sure that their
5 costs are being recovered, that they're not paying
6 for storage or transportation costs that other
7 customer are using.

8 Q Okay. Could you tell me why it takes time
9 to develop and implement changes to the STP tariff?

10 A Currently, Empire does not have a school
11 tariff, a stand alone school tariff. We have
12 transportation tariffs that have flexibility that
13 will allow the schools to still participate in a
14 transportation program. Our sister company does
15 have a stand alone tariff, which we had talked about
16 trying to model something along those lines.
17 However, that tariff needs to have major, just some
18 updates and language improvements. That going to
19 take some time.

20 JUDGE PRIDGIN: Okay. I think those are all
21 the questions I have, thank you. Let me see if we
22 have any recross, based on bench questions and I'll
23 begin with staff. Any questions?

24 MS. MYERS: No questions, Judge, thank you.

25 JUDGE PRIDGIN: Thank you. OPC?

1 MR. WILLIAMS: Thank you, no.

2 JUDGE PRIDGIN: MECG?

3 MR. OPITZ: No, thank you.

4 JUDGE PRIDGIN: MSBA?

5 [FURTHER EXAMINATION OF MS. EARHART]

6 QUESTIONS BY MR. BROWNLEE:

7 Q Regarding sort of the overall issue here,
8 the carry over, the tariffs, the special tariffs,
9 and your company, along with the school board and
10 with staff, were you -- were you around or were you
11 present during 2018 when the company proposed a
12 tariff change on these issues and with some meetings
13 that occurred?

14 A I was in the gas supply department in 2018.

15 Q Did you attend those meetings, any of them
16 at all or not?

17 A Are these the meetings with Jill Schwartz?

18 Q Yeah, I think. Yes.

19 A I did attend the meetings.

20 Q What were the purpose of those -- of those
21 meetings; do you recall?

22 A I was not the main lead on that, that
23 meeting.

24 Q Do you know if the commission -- or if the
25 company had filed some -- some actual tariffs to --

1 to address a number of these issues at that time?

2 A For Empire, not to my knowledge.

3 Q You don't know that?

4 A No.

5 Q Could they have? I mean, if -- if -- you
6 just don't know yourself whether proposed tariffs
7 were filed in 2018 to address these issues?

8 A Not to my knowledge.

9 Q And do you know whatever happened to that
10 filing?

11 A No.

12 MR. BROWNLEE: Okay. All right. Thanks so
13 much.

14 JUDGE PRIDGIN: Mr. Brownlee, thank you.
15 Any redirect, Mr. Fisher?

16 MR. FISHER: Just briefly, Your Honor.

17 [FURTHER EXAMINATION OF MS. EARHART]

18 QUESTIONS BY MR. FISHER:

19 Q Judge Pridgin asked you, I think, how
20 aggregation fees were treated related to the PGA.
21 Do you recall those questions?

22 A Yes.

23 Q Is it correct to conclude that aggregation
24 fees don't help the company's bottom line, they get
25 flowed back to help customers?

1 A Correct. None of those dollars are flowing
2 into the revenue for the company. They all go
3 directly back to the direct -- the firm sales
4 customers to reduce their costs.

5 Q So by raising those aggregation fees, it
6 wouldn't help the company's rate of return on equity
7 or rate of return on investment, right?

8 A No.

9 Q Did Empire District Gas Company request the
10 approval of any increases in aggregation balancing
11 or cash out fees in this case?

12 A No.

13 Q Are you aware that some rates are going up
14 as a result of the stipulation and agreement among
15 the parties on -- on other firm customers?

16 A Yes.

17 Q You were asked a question by Mr. Brownlee
18 about paragraph four of a statute. And that statute
19 happens to be attached to Louis Ervin, II's direct
20 testimony. Do you have a copy of Mr. Ervin's direct
21 testimony? And I'd like to refer you to that
22 statute that he includes at Appendix 1. Do you have
23 that now?

24 A Yes.

25 Q I'd like to refer for you to Section

1 393.310. And he asked you about paragraph four.
2 That paragraph states: "The tariffs required
3 pursuant to subsection 3 of this section shall, at a
4 minimum," and then I'd like to drop down to
5 subsection 2 there. Where it says: "Provide for
6 the resale of such natural gas supplies, including
7 related transportation costs to the eligible school
8 entities at the gas corporation's cost of purchasing
9 of gas supplies and transportation, plus all
10 applicable distribution costs." Is that what that
11 says?

12 A Yes.

13 Q So that says that that portion has to be at
14 cost; is that how you would read that?

15 A Correct.

16 Q Let's go on, though. It says: "Plus, an
17 aggregation and balancing fee to be determined by
18 the commission." Is that right? Is that what the
19 statute says?

20 A Correct.

21 Q Does that say to be determined at cost by
22 the commission?

23 A No.

24 Q Has the commission determined the
25 appropriate aggregation, balancing and cash out fees

1 for Empire District Gas in the past rate case?

2 A Yes.

3 MR. FISHER: That's all the questions I
4 have, Judge. Thank you.

5 JUDGE PRIDGIN: All right. Mr. Fisher,
6 thank you. Ms. Earhart, thank you very much. You
7 may step down. And I believe the next witness is
8 going to be MSBA's witness, Mr. Ervin, Sr; is that
9 correct?

10 MR. BROWNLEE: We would prefer to have Mr.
11 Ervin, Jr., be first if it would. I think then it
12 would allow if there's any follow-ups or historical
13 questions, Senior would be more in a position to
14 answer those.

15 JUDGE PRIDGIN: Okay. Sounds like MSBA
16 wants to call Mr. Ervin, II. Any objections or
17 anything further before he takes the stand? Okay.
18 Anything further before Mr. Ervin, II takes the
19 stands? All right. If you'll come forward to be
20 sworn, please, sir.

21 If you'll raise your right hand to be
22 sworn please. Do you swear the evidence you're
23 about to give will be the truth, the whole truth and
24 nothing but the truth, so help you God?

25 THE WITNESS: Yes, Your Honor.

1 JUDGE PRIDGIN: Thank you very much. You
2 may have a seat. And, Mr. Brownlee, when you're
3 ready, sir.

4 MR. BROWNLEE: Thank you.

5 [EXAMINATION OF MR. ERVIN, II]

6 QUESTIONS BY MR. BROWNLEE:

7 Q Would you please state your name for the
8 record?

9 A Louis Ervin, II.

10 Q By whom are you employed?

11 A I'm with LAV Energy Advisors, appearing on
12 behalf Missouri School Boards' Association.

13 Q And has your company represented the
14 Missouri School Boards' Association for a number of
15 years?

16 A Yes. Prior to me joining the company, Louis
17 Senior represented them since the beginning of 2002,
18 I believe.

19 Q You have uniquely the same name. Is he your
20 father?

21 A Yes, he is.

22 Q Okay. You have filed testimony in this
23 proceeding; is that not correct?

24 A That's correct.

25 Q And I think under the previous procedural

1 requirements from the Judge here, I believe we've
2 marked your direct testimony as Exhibit 300. And I
3 believe we have marked your surrebuttal testimony as
4 301; is that correct?

5 A If you say so.

6 (Whereupon, Exhibits Nos. 300
7 and 301 were marked for
8 identification.)

9 Q (By Mr. Brownlee) Have you -- that the two
10 sets of testimony you filed?

11 A Correct.

12 Q And if I ask you regarding 300, if -- if
13 there are any additions or corrections that you'd
14 like to make to -- on that set of testimony, as
15 Exhibit 300?

16 A No, there is not.

17 Q And if your answers -- if you were asked the
18 same questions and would your answers be the same?

19 A Yes, they would.

20 Q And, again, for Exhibit 301, have you filed
21 that testimony?

22 A Yes.

23 Q And is that your surrebuttal testimony?

24 A Yes, it is.

25 Q And, again, if I ask you -- if we ask you

1 the same questions, would your answers be the same?

2 A Yes, they would.

3 Q Are there any additions or corrections?

4 A No, there are not.

5 MR. BROWNLEE: Okay. And, Your Honor, at
6 this time, I'd also like to have the commission take
7 administrative notice and I think mark it probably
8 as Exhibit 303. And that's the order approving the
9 stipulation and agreement in the Case No.
10 GT-2003-30038, which was the original Equila
11 (phonetic) case that I believe was a predecessor of
12 Empire. And that was the case, one of the seven,
13 that was issued by the commission at the immediate
14 conclusion of the statute in the year. And at this
15 time, pass out copies of that.

16 At this time, Your Honor, I'm going
17 to go ahead and offer Exhibits 300, 301 and 303.
18 And also make note that there are a number of other
19 PSC decisions mentioned in various testimonies. And
20 I believe under the evidentiary rules contained at 4
21 CSR, whatever the evidentiary rule is for the
22 commission, there is a specific paragraph that deals
23 with prior administrative -- prior commission
24 records, public records and this would be one, along
25 with the others one. And I'd ask that the

1 commission would be able to take administrative
2 notice of those records and any subsequent documents
3 or briefs that might be filed.

4 And I will tender Mr. Ervin, II for
5 cross.

6 JUDGE PRIDGIN: Very good. Thank you.
7 Exhibits 300, 301 and 303 have all been offered.
8 Any objections? Hearing none, Exhibits 300, 301 and
9 303 are admitted. See if we have any cross
10 examination? MECG, any cross? Public Counsel?
11 Questions from staff?

12 MS. MYERS: No questions, Judge.

13 JUDGE PRIDGIN: Empire District Gas?

14 [EXAMINATION OF MR. ERVIN, II]

15 QUESTIONS BY MR. FISHER:

16 Q Good morning, Mr. Ervin. I have just a few
17 questions for you. I'd like to direct you to your
18 direct testimony on page four, at lines 15 and 16.
19 There you indicate that MSBA is the authorized
20 purchasing agent for approximately 2,390 STP
21 accounts. What does the STP account mean?

22 A School Transportation Program.

23 Q Out of which, 140 are in the Empire service
24 area; is that correct?

25 A That's correct what I stated and that's, to

1 the best of my knowledge, that's correct.

2 Q Does that mean that the association serves
3 140 schools in the Empire service area?

4 A That's the way I read that, yes.

5 Q Okay. So would it be correct to conclude
6 that the Empire service area represents roughly six
7 percent, if my calculator was right, of your total
8 number of schools that you serve in Missouri?

9 A If you checked your calculator, yes, sir.

10 Q Okay. On page five of your direct, on line
11 20, you state that STP was created in July of 2002
12 with the enactment of Section 393.310 RSMO; is that
13 right?

14 A Yes, sir.

15 Q So, has the School Transportation Program
16 been operating in the Empire service area for about
17 20 years?

18 A To the best of my knowledge, yes.

19 Q And then on page five of your direct, at
20 line 15, you state: "Schools, students, teachers
21 and taxpayers benefit from group purchasing of
22 natural gas. Absent these STP saving on gas supply
23 costs, schools would have fewer dollars for
24 teachers, computers and other classroom learning
25 tools;" is that right?

1 A That's what I stated, yes.

2 Q Would it be correct to conclude that the
3 Missouri schools have benefited as a result of the
4 school transportation program provided by Empire
5 District Gas and other LDCs?

6 A Yes.

7 Q Would you characterize the school
8 transportation program in the Empire service area as
9 a success during those years?

10 A Yes.

11 Q Then on page nine of your direct testimony,
12 at lines 17, you state: "MSBA would like to have
13 the commission order STP tariffs to comply with
14 Section 393.310 RSMO so that MSBA can avoid
15 intervention in rate cases"; is that right?

16 A Yes.

17 Q Is it correct that it's expensive for the
18 association to intervene in natural rate cases?

19 A Yes, it is.

20 Q Do you have an estimate of what you -- the
21 kind of costs you would avoid if you didn't have to
22 intervene in rate cases?

23 A I don't know that answer.

24 Q Okay. Mr. Ervin, would you agree with me
25 that Empire's aggregation and balancing fees have

1 been determined by, and established by the
2 commission in Empire's 2009 rate case?

3 A That's what I have understood.

4 Q Okay. The statute does not mandate how the
5 commission must establish the aggregation and
6 balancing fee; isn't that correct?

7 A I don't believe that's correct.

8 Q Okay. Has the school board association ever
9 filed a formal complaint against the Empire District
10 Gas Company in the 20 years that the transportation
11 program's been operating?

12 A I haven't been around that whole time. We
13 have definitely tried to work with every utility,
14 including Empire, as stated in 2018 and 2019. And
15 we're largely in agreement and otherwise would have
16 filed something that we had an agreement other than
17 staff said that they would prefer to be in a rate
18 case. So, you know, I don't -- I think that's the
19 extent of, that I'm aware of.

20 Q To your knowledge, there's never been a
21 whole formal complaint filed against Empire
22 District?

23 A I didn't testify to that one way or the
24 other, I don't know the answer. Senior would be
25 available to answer that question most likely.

1 Q All righty. No, that's fair. Thank you.
2 On page six of your direct testimony at line 16, you
3 begin explaining the nomination process and how it
4 affects cash outs and balancing; is that right?

5 A Yes.

6 Q Would you agree that if the aggregator or
7 the transportation customer agent does a good job of
8 nominating its expected customer rates, and with
9 that assumption, then the cash outs and balancing
10 penalties are really not a measured factor for the
11 customer or the pool administrator if he's doing a
12 good job nominating them, right?

13 A I don't know how you would define a god job
14 because this -- most of them are not daily telemetry
15 so, you know, the weather changes more than they can
16 predict. So I don't -- I don't know how to answer
17 that.

18 Q Okay. Well, isn't it true that it's when
19 the aggregator or the transportation customer agent
20 misses the mark, for whatever reason, weather or
21 anything else on his nominations, that's when cash
22 outs and balancing penalties become a concern?

23 A Yes. I would say that every utility is that
24 way and every customer's that way, yes.

25 Q Has MSBA estimated what would be the

1 expected impact, in dollars, if the commissioner
2 adopts your proposed aggregation and balancing fees
3 in this case?

4 A No, we have not.

5 Q You don't recall of giving us an estimate of
6 \$1800?

7 A I don't recall the estimate. I do know we
8 were not looking at total costs because we were
9 trying to make sure that we're looking at the
10 principal of -- of the statute and because it -- it
11 sets precedent.

12 Q Sitting here today, what would be an
13 estimate, in your opinion?

14 A I would have to check and look at volumes.

15 Q Okay. Do you think it would be less than
16 \$5,000?

17 A I'm really not sure.

18 Q Okay.

19 A It's not -- we didn't bring the issue up as
20 a -- as a dollar issue.

21 Q Let's turn to page 13 of your direct
22 testimony. On line four, where you state: "Making
23 schools ultimately liable for actions or inactions
24 of suppliers could effectively be used as a means to
25 eliminate the MSBA program and force schools to be

1 under Empire system supply which, typically, results
2 in the MSBA schools paying more for natural gas as
3 compared to the current managed program." Do you
4 see that?

5 A Yes, sir.

6 Q At the time you filed your testimony, did
7 you believe that Empire was attempting to eliminate
8 MSBA -- the MSBA program from in this case?

9 A I didn't know their intent. What I saw was
10 their -- their red line tariff to remove aggregators
11 and marketers from responsibility. So that -- I'm
12 not -- I'm not saying that was their intent.

13 Q Okay. Do you believe that's their intent
14 today?

15 A I don't know their intent.

16 Q Do you believe that Empire is trying to
17 force schools to be under the Empire system supply
18 in this case?

19 A I don't -- I don't have any reason to think
20 one way or the other, so I don't know.

21 Q Thank you for your patience, that's all I
22 have.

23 JUDGE PRIDGIN: Mr. Fischer, thank you. Let
24 me see if we have any bench questions. Commissioner
25 Holsman, any question, sir? I'm not hearing any and

1 I don't have any questions. We don't have any bench
2 questions, so no recross. And I believe this
3 witness can step down.

4 MR. BROWNLEE: I had a question.

5 JUDGE PRIDGIN: Okay, go ahead.

6 [FURTHER EXAMINATION OF MR. ERVIN, II]

7 QUESTIONS BY MR. BROWNLEE:

8 Q Mr. Ervin, Mr. Fisher asked you about the
9 size of the schools and the number of schools and
10 their system compared to the overall. If -- when
11 you have penalty provisions like in the current
12 tariff on the cash out, do schools have a way, to
13 your knowledge, of -- of adjusting any sort of
14 income to schools to pay those kind of penalties, to
15 pay those kind of charges?

16 A I mean, they have, as far as I know, they
17 don't adjust it based on those charges.

18 Q I mean, they don't -- they don't get to
19 raise their prices for the service schools provide?

20 A I guess not. I'm not the expert on the
21 schools.

22 Q Do you know whether schools get a huge
23 percent of their revenue off taxes? I mean, if they
24 get an unusual charge like a gas penalty, that can
25 have a significant derelictious effect on schools;

1 would it not?

2 A Yeah, my comment was that -- that these
3 schools are not in control of that and the weather
4 is more in control, even in the suppliers. And to
5 penalize them 50 percent either direction, either
6 over delivered or under delivered, which benefits
7 the PGA, or -- or take some away from a PGA, that's
8 out of their control.

9 And so, just the penalty is -- is the
10 issue. Not -- not the fact that there will be
11 imbalances.

12 Q And regarding the questions you were asked
13 about the costs to cash out and the costs of
14 aggregation, is it the position of -- of MSBA that
15 you want to eliminate cash out in this case?

16 A No. We -- we, really, specifically said
17 carry over would be the ideal way, but we also said
18 that there's nothing wrong with cash out in
19 principal and the methodology. It's just the fact
20 that they're paying a 50 percent premium or a
21 penalty if they have to buy more or they're getting
22 charged -- or they're getting deducted 50 percent of
23 the cost of gas. So that shows up -- up to 50
24 percent of the cost of gas. So that shows up
25 directly on their bills as a -- as a big hit.

1 So for example, if the cost of gas is
2 \$10, you know, then they're going to have to pay 15.
3 Now that's a high price, obviously, but we saw that
4 at polar vortex during Storm Yuri. And if they have
5 to give money back from their company, they'd be
6 getting it back at \$5 for what they already paid \$10
7 for. So that's -- that's the tiered cash out, the
8 highest level it would be 50 percent.

9 Q And, really, isn't that the Grogman of the
10 issue on cash out? It's just, philosophically it's
11 not wrong if it charges applicable costs?

12 A Correct.

13 Q And do you see -- and we've used that word
14 the add on. We've used the word penalty, haven't
15 we, and that show up in the testimony?

16 A Yes.

17 Q Is there -- is there any place in the -- in
18 the underlying statute where you see any reference
19 to a penalty in terms of the gas costs?

20 A No, there's not.

21 Q And that gas cost is not from the
22 transporter, the penalty's imposed by the utility;
23 is it not?

24 A That's correct.

25 MR. BROWNLEE: Okay. Thank you.

1 JUDGE PRIDGIN: All right. Mr. Brownlee,
2 thank you. And, Mr. Ervin, you can step down. And
3 I'm showing the time is just right around 10:00 so
4 this seems to be an appropriate time to take a mid
5 morning break. We'll take 15 minutes and resume at
6 10:15 with Mr. Ervin, Sr.'s testimony.

7 And I'll just remind everyone in the
8 hearing room that Webex is still streaming so
9 please, somebody outside can still hear you if
10 you're in the hearing room. Anything further before
11 we go off the record? I'm sorry, go ahead, Mr.
12 Brownlee. Okay, we'll go off the record. We'll
13 resume at 10:15. Thank you, we're off the record.

14 (Whereupon, a brief recess was
15 held off the record.)

16 JUDGE PRIDGIN: Let's go back on the record.
17 Good morning, we are on the record again in file No.
18 GR-2021-0320. Just as a bit of a road map where
19 we've been, where we're going.

20 We've had -- we finished off with Mr.
21 Ervin, II, I believe with this cross examination. I
22 understand Mr. Ervin, Sr. is the next scheduled
23 witness and I think I heard on the -- off the
24 record, rather, that no parties have any cross
25 examination for that witness; is that correct? I'm

1 hearing no response. I'm taking that as true.
2 Okay. I'll have him take the stand. I will have a
3 few questions for him and then we'll go on to
4 Mr. Patterson.

5 As far as the presentation on the
6 parties' stipulation and agreement, I'm unsure
7 exactly how we'll proceed with that, but my gut
8 reaction right now with commissioner response is
9 that we'll just simply continue forward after
10 Mr. Patterson's cross is done and take cross
11 examination -- or excuse me, take the on record
12 comments on the stipulation and see if we have any
13 bench questions on the stipulation.

14 So I just wanted to give you a heads
15 up we'll probably just keep going after
16 Mr. Patterson's cross is finished with the on the
17 record presentation on the stip.

18 So anything further before Mr. Ervin
19 is sworn in? All right. If you'll raise your right
20 hand to be sworn, please, sir. Do you swear the
21 evidence you're about to give will be the truth, the
22 whole truth and nothing but the truth, so help you
23 God?

24 THE WITNESS: I do.

25 JUDGE PRIDGIN: Thank you, sir. You may

1 have a seat. Mr. Brownlee, when you're ready, sir.

2 MR. BROWNLEE: Thank you, sir.

3 [EXAMINATION OF MR. ERVIN, SR.]

4 QUESTIONS BY MR. BROWNLEE:

5 Q Please state your name for the record.

6 A Louis R. Ervin.

7 Q Sir, by whom are you employed?

8 A LEV Energy Advisors.

9 Q And have you caused testimony to be filed in
10 this current proceeding?

11 A Yes.

12 Q And have we previously asked and agreed the
13 court reporter would mark your testimony as Exhibit
14 302?

15 A Yes.

16 (Whereupon, Exhibit No. 302 was
17 marked for identification by the
18 reporter.)

19 Q Thank you. Very briefly, we -- you've
20 heard, and I know you're familiar with it, you --
21 were you not the Louis Ervin that were representing
22 the school board in the year 2002 when the statute
23 that we've talked about was passed?

24 A Yes, and before that, I think starting about
25 1998.

1 Q Okay. And -- and during the -- the
2 proceeding of various cases dealing with
3 transportation of the school issue, have you
4 represented the school board's in front of not just
5 this company, but I think most all of the other gas
6 utility cases that have occurred?

7 A Yes, I was witness in all seven utilities
8 back at that point in time. In 2002, there were
9 seven, now they're five, but I testified in each one
10 of those.

11 Q And there's one case that we did not
12 participate in; is that not correct?

13 A Well, there was a case in 2009 that we
14 didn't know about.

15 Q That we didn't, therefore, participate on?

16 MS. MYERS: Judge, I object. What's -- what
17 procedure is going on here? Are we providing
18 additional testimony?

19 JUDGE PRIDGIN: I'm going to sustain. I
20 mean, the point of this is already prefiled
21 testimony is here to stand cross. I'm going to
22 sustain.

23 Q (By Mr. Brownlee) Right. Well, I think you
24 covered that in your testimony. If I ask you the
25 same questions as indicated in Exhibit 3012, would

1 your answers be the same?

2 A Yes.

3 Q And are there any corrections or additions
4 you'd like to make at this time?

5 A No.

6 MR. BROWNLEE: Okay. At this time, Your
7 Honor, I'm going to offer Exhibit 302 and tender
8 Mr. Ervin for cross, which I believe you have
9 questions but I think other attorneys have waived.

10 JUDGE PRIDGIN: All right. Mr. Brownlee,
11 thank you. Exhibit 302 has been offered. Any
12 objections? Hearing none, Exhibit 302 is admitted.
13 And we'll just verify, does any -- any counsel have
14 cross examination for this witness? Going once,
15 going twice, very good. Mr. Holsman, any questions?
16 All right. Hearing none, I have just a few
17 questions for you, Mr. Ervin.

18 [CROSS EXAMINATION OF MR. ERVIN]

19 QUESTIONS BY JUDGE PRIDGIN:

20 Q If I could direct you to your surrebuttal
21 testimony, page ten. And, specifically, lines 11
22 through 13, please. And let me know when you're
23 there, please.

24 A I'm there.

25 Q Okay. Thank you. I believe in that

1 testimony you state that Section 393.310 RSMO
2 requires gas corporations to provide services to
3 small schools at incremental cost and that
4 surrebuttal also includes Appendix One, which is a
5 copy of that statute; is that correct?

6 A Yes.

7 Q Can you show me where in Section 393.310
8 there's any reference to cash out and pipeline
9 capacity releases?

10 A Yes. Now just to find it. Okay. Let's
11 see, we take it one at a time, I think. Okay. The
12 reference to incremental cost is under paragraph
13 five.

14 Q Well, that's not quite my question. My
15 question is, where does it state any reference to
16 cash out or pipeline capacity releases?

17 A The -- the reference to the cash out is
18 under paragraph two where it says the gas
19 corporations' costs of purchasing gas supply and
20 transportation. So I think I answered that.

21 Q Okay. Okay. And if I could --

22 A And then capacity.

23 Q All right.

24 A And then capacity, actually the capacity
25 part of the statute was not part of the 2002

1 statute, it came about a year later. And that is in
2 paragraph six.

3 Q Okay, thank you. If I could refer you to
4 page 11 of your surrebuttal and specifically lines
5 12 and 13. And let me know when you're there,
6 please.

7 A I'm there.

8 Q Okay, thank you. I think in those lines you
9 state under Section 393.10: "There will be neither
10 negative impacts on others nor penalties to eligible
11 small school entities." Can you show me where that
12 language is in the statute?

13 A It goes back to paragraph two where it says:
14 "At the gas corporations' cost of purchasing such
15 gas supplies."

16 Q Okay. And then, and lastly, if I could
17 refer you to page 13 of your testimony, lines five
18 and six. And if you can let me know when you're
19 there, please.

20 A I'm there.

21 Q Okay. I believe in that testimony you
22 state: "Staff did not represent schools' interests
23 in that case or comply with Section 3393.10." With
24 that statement, are you referring to File No.
25 GR2009-0434?

1 A I believe that's correct, yes.

2 JUDGE PRIDGIN: Okay, thank you. Those are
3 all the questions that I have. Since we've had some
4 bench questions, I'll ask if anybody has any cross
5 based on my questions? No cross, very good. Any
6 redirect?

7 [FURTHER EXAMINATION OF MR. ERVIN]

8 QUESTIONS BY MR. BROWNLEE:

9 Q Mr. Ervin, regarding the last question from
10 the judge about that case, that was the case we --
11 the school boards were not appropriate in; is that
12 correct?

13 A Correct.

14 Q Okay. We did not receive notice at that
15 time from the commission it was even filed?

16 A No.

17 MR. BROWNLEE: Okay. That was what I was
18 trying to get at earlier. Sorry, I didn't --

19 JUDGE PRIDGIN: No problem, thank you.

20 MR. BROWNLEE: That's all I have. And,
21 again, I'm going to reoffer those exhibits and that
22 would conclude our position. Did -- If I can ask a
23 question while I'm up here. Did you rule on the
24 admissibility of exhibit -- the exact -- the copy of
25 the report and order from that case?

1 JUDGE PRIDGIN: Yes, that's 303 and was
2 offered without objection and admitted. And thank
3 you, and 302's admitted. And, Mr. Ervin, thank you
4 very much, you may step down. And I believe that
5 leaves us to Mr. Patterson. Anything further from
6 counsel before Mr. Patterson is sworn? If you'll
7 come forward, sir, and be sworn.

8 If you'll raise your right hand to be
9 sworn, please. Do you swear the evidence you're
10 about to give will be the truth, the whole truth and
11 nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 JUDGE PRIDGIN: Thank you, sir, you may have
14 a set. Ms. Myers, when you're ready.

15 [EXAMINATION OF MR. PATTERSON]

16 QUESTIONS BY MS. MYERS:

17 Q Thank you. Mr. Patterson, please state your
18 full name for the record.

19 A My name is Keenan, K-E-E-N-A-N, Patterson,
20 P-A-T-T-E-R-S-O-N.

21 Q Thank you. And, Mr. Patterson, where are
22 you employed and what is your job title?

23 A I'm employed with the staff of the Missouri
24 Public Service Commission. My title is Senior
25 Professional Engineer.

1 Q And are you the same Keenan Patterson who
2 prepared or caused to be prepared the rebuttal
3 testimony that we are marking as Exhibit 100 and the
4 surrebuttal testimony that we are marking as Exhibit
5 101?

6 A I am.

7 (Whereupon, Exhibits Nos. 100
8 and 101 were marked for
9 identification by the reporter.)

10 Q (By Ms. Myers) Do you have anything you wish
11 to correct in either of those testimonies?

12 A Yes, I have corrections to Schedules 4 and 5
13 of my rebuttal testimony.

14 Q Okay. And those schedules are confidential,
15 Mr. Patterson?

16 A Yes.

17 MS. MYERS: Okay. Judge, we have provided
18 the parties present here with copies of those
19 corrections. Staff is going to offer those
20 corrected schedules Exhibit 102.

21 JUDGE PRIDGIN: And will that need to be 102
22 and then 102 HC?

23 MS. MYERS: 102 C. And same with
24 Mr. Keenan's -- or Mr. Keenan Patterson's rebuttal
25 testimony. It will be 100 Public and 100 C.

1 (Whereupon, Exhibits Nos. 102,
2 102 C and 100 C were marked for
3 identification by the reporter.)

4 Q (By Ms. Myers) All right. Mr. Patterson --
5 or aside from those corrections to Schedules 4 and
6 5, if I asked you the same questions today, would
7 your answers be the same?

8 A Yes.

9 Q So the information in these documents is
10 true and correct to the best of your knowledge and
11 belief?

12 A Yes.

13 MS. MYERS: All right. Thank you. Your
14 Honor, staff tenders Mr. Patterson for cross
15 examination. And we'll go ahead and offer Exhibits
16 100, 101 and 102.

17 JUDGE PRIDGIN: Okay. And if you could
18 again, so I could get down in my notes, let me know
19 exactly what those exhibits are, please?

20 MS. MYERS: Sure. Exhibit 100 is the
21 rebuttal testimony of Mr. Keenan Patterson, Public
22 and confidential versions. Exhibit 101 is the
23 surrebuttal testimony of Keenan Patterson. And
24 Exhibit 102 is the corrected confidential schedules
25 of Mr. Keenan Patterson. And then Schedules 4 and 5

1 of Mr. Keenan Patterson's rebuttal testimony. And
2 these are confidential in their entirety.

3 JUDGE PRIDGIN: Ms. Myers, thank you.
4 Exhibits 100, 101, and 102 have been offered. Any
5 objections? And those are admitted. That will be
6 Exhibit 100, public and confidential, Exhibit 101,
7 and Exhibit 102, confidential, those are all
8 admitted. Any cross-examination from Public
9 Counsel? Thank you. MEGC? Empire District Gas?
10 When you're ready, Mr. Fisher.

11 [EXAMINATION OF MR. PATTERSON]

12 QUESTIONS BY MR. FISHER:

13 Q Good morning, Mr. Patterson. I just have a
14 couple of questions or areas, anyway. I think I'd
15 like to begin by visiting with you about the staff's
16 position on the proposal to eliminate cash out,
17 balancing, and substitute the carry over method.
18 Are you familiar with those terms?

19 A Yes.

20 Q Is the cash out method used by other local
21 distribution companies in Missouri?

22 A Yes.

23 Q Would you characterize that as the
24 predominant method used?

25 A Yes.

1 Q To your knowledge, has it been used for a
2 number of years since the school transportation
3 program began?

4 A Yes.

5 Q On page fif -- or excuse me, on page four,
6 beginning at line 15, I believe you explained to the
7 commission why balancing is important; is that
8 right?

9 A Let me look.

10 Q Yeah, page four, beginning at line 15.

11 A Yes.

12 Q Would you explain how transportation
13 imbalances could cause the sales customers gas costs
14 to be higher than they would otherwise have been if
15 the costs had not been recovered from the
16 transportation customer?

17 A Well, any imbalance between the gas company,
18 in or out of the utility system, has to be managed
19 somehow. And so, the utility would be applying its
20 resources to those imbalances. Primarily, I would
21 think in a smaller utility either making withdrawals
22 or injections to storage on a interstate pipeline
23 or, potentially, depending on the severity of the
24 imbalance, purchasing gas to make up for a shortage.
25 And all those costs, at least initially, would tend

1 to flow through the purchase gas adjustment because
2 they are gas costs.

3 Q Would that mean since it flows through the
4 PGA, that it does not help or hurt the -- the gas
5 company's bottom line?

6 A Correct.

7 Q But it could affect the impact on firm
8 customers?

9 A Yes.

10 Q Okay. I'd like to ask you to turn to page
11 nine, line two. There you calculate the average
12 amount per school for some certain annual credits;
13 is that right?

14 A Let me review this briefly here.

15 Q Yes.

16 A Yes.

17 Q You have included in the numbers as
18 confidential numbers; is that right?

19 A Yes.

20 MR. FISHER: Judge, just for purposes of the
21 record, Empire doesn't believe these average numbers
22 need to be kept confidential, if the commission
23 would prefer to make them public. The table that he
24 has in his testimony probably could be kept
25 public -- or kept confidential, but the average

1 numbers, we would not object if they were made
2 public.

3 JUDGE PRIDGIN: Okay, thank you.

4 Q (By Mr. Fisher) On page nine at line two,
5 you calculate the average amount per school for the
6 annual credits; is that right?

7 A Yes.

8 Q And that number, I'm going to go ahead and
9 say it publicly, is \$47 per school, right?

10 A Yes.

11 Q And then on page ten of your rebuttal, you
12 discuss how much Empire charges the school
13 aggregation pools on aggregation and balancing fees;
14 is that right?

15 A Yes.

16 Q You testified that the average annual charge
17 is \$154 per school per year for aggregation and
18 balancing fees; is that correct?

19 A Yes.

20 Q So that's about \$13 a month if my calculator
21 works right?

22 A Approximately.

23 Q Is it your understanding that Empire's been
24 charging these fees since this last job rate case?

25 A Yes.

1 MR. FISHER: I think that's all the
2 questions I have. Thank you, Judge.

3 JUDGE PRIDGIN: Mr. Fisher, thank you. Any
4 cross from MSBA?

5 [CROSS EXAMINATION OF MR. PATTERSON]

6 QUESTIONS BY MR. BROWNLEE:

7 Q Good morning, sir. I'm Richard Brownlee, I
8 think we've met previously and probably over the
9 period of time in many years. I represent Missouri
10 School Boards' Association and I'd like to ask you
11 some questions about your testimony and the issues
12 in the case, I know you're very familiar.

13 Just on a couple of things that Mr.
14 Fisher was -- had just asked, while they're fresh in
15 my mind. The -- you said that the cash out was, I
16 think, the predominant whatever, called gas pricing
17 methodology, that the cash out was predominant in --
18 by the utilities in the State of Missouri; is that
19 correct?

20 A Yes.

21 Q Now, does that include how many companies?
22 Are you talking about seven -- or well, there are
23 fewer gas utilities now. What about -- what about
24 Spire?

25 A Spire cashes out everyone except the

1 schools.

2 Q Right. Okay. So, and you all, basically,
3 it's fair to say the staff is -- you prefer the
4 carry -- or the cash out method compared to the
5 carry over method?

6 A Yes.

7 Q And I think on several places in your
8 testimony you mention that the schools want to get
9 rid of cash out; is that your -- do you know that
10 you've testified to that on several occasions?

11 A I do believe I've mentioned that in my
12 testimony, yes.

13 Q Do you know whether they want to get rid of
14 it or just make sure that that -- Mr. Ervin, Jr.
15 testified that they want to -- cash out's okay as
16 long as it involves just the cost; isn't that a fair
17 statement is what he testified to?

18 A My understanding is his testimony is that
19 they proposed moving to carry out balancing and as
20 an alternative, adjusting the multipliers related to
21 cash out, yes.

22 Q So cash out could exist, it's their
23 objection is the multipliers; isn't that fair?
24 That's a fair statement, isn't it?

25 A I would say that is a reasonable statement.

1 Q Okay. Well, I want to make sure that the
2 commission understands that. Because the school
3 board, the way I read the testimony, is not against
4 cash out, they're against the multipliers that are
5 in effect. That's a fair statement; isn't it?

6 A They are against the multipliers.

7 Q Yeah, okay. And regarding the -- the
8 issue -- Well, let me -- let me go back here a
9 second here.

10 Were you working at the commission --
11 I know you were -- in 2018 and '19?

12 A Yes.

13 Q Were you familiar with that the company that
14 Spire -- I mean that Empire and the school boards
15 came forward with a tariff at that time in dealing
16 with these, I think all of these issues?

17 A They discussed tariff changes with staff
18 and, I believe, EDG.

19 Q Do you know if they filed a tariff?

20 A To my knowledge, they did not file a tariff.

21 Q Okay. And did you work and have meetings
22 with them on that tariff -- or on that the proposed
23 tariff draft?

24 A Yes, I attended meetings related to that.

25 Q And what was the result of all of that; do

1 you know?

2 A To my knowledge, nothing happened after
3 those meetings. There was no tariff filed.

4 Q And is it fair to state that the staff
5 opposed those tariff proposals from the company and
6 school board at that time?

7 A I would say that the staff had issues with
8 them.

9 Q Okay. Well, by issues there wasn't
10 supporting issues, was it?

11 A That is correct.

12 Q Okay. And do you know whether if it was
13 withdrawn at that time, whether since the three
14 years as elapsed, whether the company or staff has
15 worked on subsequent tariff proposal dealing with
16 cash out and balancing and aggregation?

17 MS. MYERS: Judge, I object. Mr. Patterson
18 just testified he was not aware of a tariff filing.

19 JUDGE PRIDGIN: Yeah --

20 MR. BROWNLEE: It's not a tariff filing.
21 And I said that work on tariff issues.

22 JUDGE PRIDGIN: Yeah, I'll overrule and let
23 him answer if he knows the answer.

24 THE WITNESS: I'm not, really, that familiar
25 with how much has gone on since then. I don't think

1 staff has been very involved in discussions on that
2 issue between then and this rate case.

3 Q (By Mr. Brownlee) Since the last rate case
4 when these rates were set, have you seen any further
5 filings from the company on any issues dealing with
6 school transportation?

7 A I'm not aware of any.

8 Q Okay. And you've worked on those cases,
9 have you not? On the Empire cases that have been
10 filed since then?

11 A Since 2009?

12 Q Yeah.

13 A I'm not even sure if there has been a rate
14 case since 2009.

15 Q Okay. And let me ask you, did -- have you
16 seen, in this case, any cost figures or supporting
17 documentation filed by the company to continue the
18 current charges for cash out, anything the company
19 has filed?

20 A New since the last case, no.

21 Q Okay. Same question for aggregation and
22 balancing. Any charges, any cost figures that the
23 company has filed since the last rate case?

24 A No.

25 Q Okay. And there are none in this case, are

1 there, from the company?

2 A Oh, I thought your last question meant since
3 the last case. There were filings in the last case,
4 but no new costs in this case.

5 Q Right. And so the only real figures have
6 come from the staff that you testified to; isn't
7 that correct, where you showed the chart I think
8 you've got on that one page?

9 A Yeah.

10 Q Okay. Is that a normal procedure for the
11 staff to file and do the accounting work for the
12 company in a rate case?

13 MS. MYERS: Judge, I object. This is an
14 unfair characterization of Mr. Patterson's
15 testimony.

16 JUDGE PRIDGIN: Yeah, I'll overrule.

17 THE WITNESS: Yeah, I wasn't trying to say
18 what the rate should be. I was simply trying to
19 support the motion that there was cost basis for
20 that rate in a previous case and that it was a
21 reasonable allocation of known costs.

22 Q (By Mr. Brownlee) Okay. But the charts
23 you've put in your testimony is current and recent
24 cases, it's not clear back to the last rate case; is
25 it?

1 A No, it represents current pipeline storage
2 rates.

3 Q Right. Okay. Have you ever worked for a
4 gas utility?

5 A No.

6 Q Have you ever contracted for natural gas
7 through in any way from a gas utility?

8 A No.

9 Q Okay. Do you follow the daily market price
10 and the fluctuations in gas?

11 A Not in detail.

12 Q Okay. If it were proved that the cash out
13 or carry over was contrary to the statute, would you
14 be supportive of this -- your position as staff?

15 A I suppose if it were proved that it were
16 contrary to law, it wouldn't matter what staff
17 thought about it. That would rule.

18 Q Well, you're aware, are you not, that a
19 statute could have been on the books for a long time
20 and not followed by the people who are suppose to
21 follow the statute; is that a fair statement?

22 A That's fair.

23 Q Yeah. And do you know whether, in fact,
24 since '02, this company has filed and always
25 supported in actual cost figure for -- to support

1 their -- their natural -- or their school tariff?

2 You don't understand?

3 A My presumption is that since the commission
4 approved those rates, they were adequately supported
5 in those cases.

6 Q And since that time, what'd you say, in '08?

7 A Or -- Or since 2002.

8 Q Yeah. Do you know -- you don't know
9 whether -- when's the last time the company filed
10 any cost justification for cash out, balancing, or
11 any of other factors that we've discussed today,
12 when was the last time?

13 A Well, there was evidence presented in the
14 2009 case related to the balancing fee.

15 Q Correct.

16 A The aggregation fee has been the same since
17 the beginning and has never had cost support from
18 anyone.

19 Q Well, there's been no support cost from
20 the -- this company for sure, right?

21 A Right. And then, the -- the cash out
22 multipliers are the same as those used by upstream
23 pipelines. So, those are the type of multipliers
24 that the company pays for its imbalances.

25 Q With your knowledge -- You are familiar with

1 the statute, are you not?

2 A Somewhat.

3 Q Yep. Well, you reviewed it, I'm sure you
4 have. You've filed extensive testimony surrounding
5 the statute and the schools, correct?

6 A Yes.

7 Q Okay. Do you know whether Spire has, since
8 the time of 2002, filed any kind of annual updated
9 documentation on any of the transportation cost
10 issues?

11 A Do you mean --

12 Q Have schools -- I mean, has Empire, I'm
13 sorry. Have they filed any annual updated cost
14 reports on any of their costs since 2002?

15 A I don't know.

16 Q None to your knowledge?

17 A No, in terms of, are you referring to what
18 the 2002 tariff stated about those filings?

19 Q Uh-huh.

20 A Yes. But those ended with at least the 2009
21 tariff, so that would have been the latest. And
22 between then, 2002 and 2009, I don't know if any
23 were filed.

24 Q And you don't know from 2009 to present
25 whether any have been filed?

1 A Not to my knowledge, no.

2 Q Okay. Do you believe the statute would
3 require that filing?

4 MR. FISHER: Judge, I'll object. I think
5 that's a legal conclusion.

6 JUDGE PRIDGIN: I'll sustain.

7 Q (By Mr. Brownlee) When you have a gas
8 company -- this is a general question -- when you
9 have a gas company, do you know whether that statute
10 would require that the school transportation issue
11 be a part of every rate case that any gas company
12 files?

13 A I don't think it specifically says that.

14 Q And it, clearly, has not been a part of
15 every case as far as you know from the gas companies
16 you worked on; is that correct?

17 A Correct. As far as I know, it's not been an
18 issue in every case.

19 Q And you understand that the statute does
20 require the gas corporation services will be at
21 cost?

22 A Yes, cost of service rate making applies,
23 really, everywhere.

24 Q And that says specifically, gas and
25 transportation; is that correct?

1 A Yes, it does specifically say gas purchase
2 and transportation costs.

3 Q Yeah. Do you see anywhere in the statutory
4 language the approval or the mention of penalties
5 for any of the services or any of the charges a
6 utility can make to the schools.

7 A Well, my understanding of the statute is
8 that it allows the gas corporation to collect all
9 the cost it has related to providing the service.
10 And there are gas costs associated with paying
11 penalties to upstream pipelines for imbalances.

12 Q But that's what the -- the penalties are
13 done -- provided by interstate pipelines that are
14 used there, correct?

15 A Yes.

16 Q And large industrials, correct?

17 A And all transportation customers at Empire
18 District.

19 Q But none of those other -- the other two
20 groups I just mentioned have -- none of them have a
21 specific statute dealing with how they should be
22 charged, correct?

23 A Not to my knowledge.

24 Q Okay. Could I just have a minute, excuse me
25 for a second. I'm fading here for a moment.

1 Do you know whether the company buys
2 gas every day in order to supply to its customers,
3 including the schools?

4 A Well, I know they buy gas for every day.
5 Okay.

6 Q Yeah.

7 A I suspect they do end up buying gas every
8 day because there are other types of purchases
9 probably don't typically cover the full amount.

10 MR. BROWNLEE: Okay. All right. Thank you,
11 sir.

12 JUDGE PRIDGIN: All right. Mr. Brownlee,
13 thank you. I have just a few questions for
14 Mr. Patterson and we'll see if we have any recross
15 or redirect.

16 [EXAMINATION OF MR. PATTERSON]

17 QUESTIONS BY JUDGE PRIDGIN:

18 Q Mr. Patterson, if I could direct you to your
19 rebuttal. And, specifically, on page three, lines
20 two through four. And if you could let me know when
21 you're there, please.

22 A I'm there.

23 Q I believe that testimony states: "Empire
24 releases firm interstate pipeline capacity to its
25 transportation customers or their aggregators. And

1 those customers or the aggregators control the use
2 of that capacity." Is that correct?

3 A Yes.

4 Q Is this capacity release identified on an
5 interstate pipeline's electronic bulletin board that
6 any pipeline customer can acquire or is this
7 something different?

8 A My understanding is that it's something
9 different. That it's specifically set aside for
10 them in the tariff.

11 Q Okay. Can I direct you to page five, line
12 18, also your rebuttal and if you'll let me know
13 when you're there, please.

14 A Yes.

15 Q On line 18 at page five you describe:
16 "Spire Missouri requirements that school aggregation
17 pools be balanced by adjusting nominations." Can
18 you describe how nominations of gas per delivery are
19 made?

20 A Well, it's a little different for the
21 transportation customer because they, generally
22 also, have to give some kind of notice to the
23 utility about their nominations. Though, I think in
24 the case of Empire, Empire actually monitors that
25 through the -- the pipelines' bulletin boards.

1 But there are -- there is a schedule
2 of processes for nominating gas. Generally
3 speaking, most gas is nominated the day before the
4 gas day on which it's to flow. There are later
5 periods when they are able to make nominations or
6 adjust nominations even during the gas day.

7 But they would post their nomination
8 with the pipeline. There would be a process of
9 confirmation, communication back and forth between
10 the pipeline and the shipper confirming the
11 information. Then, kind of a reconciliation pipe
12 process where the pipeline would decide how much gas
13 is actually going to flow and how much of that will
14 be allocated to each of the shippers.

15 Q Okay, thank you. And can I direct you to
16 page eight of your rebuttal. I'm sorry, I don't
17 have a line number, but I'm looking for, I guess,
18 the area where you quote from Spire Missouri's rate
19 case GR2021-0108. Testimony that cash out balancing
20 of school aggregation pools is desirable. Do you
21 see that?

22 A Yes.

23 Q Can you give me an example of how a pool
24 operator can ship gas purchases to their financial
25 advantage if a cash out balancing provision isn't

1 used?

2 A Well, certainly. You could, in one month,
3 if you're anticipating a low or a high price, then
4 you could send less gas than you anticipate needing
5 or more gas than you anticipate needing. And then,
6 in the following month when you would anticipate
7 prices to normalize or -- or shift, you would make
8 up the difference then with more or less expensive
9 gas, depending on which way it might be an
10 advantage.

11 And, actually, under the current
12 system, that could even happen within a month since
13 Empire balances their transportation customers, all
14 of them including the schools, on a monthly basis.
15 Within a month, if you're saying I'm going to have
16 high prices tomorrow or the next couple of days, but
17 by the end of month, they're from going to drop
18 again, well, I can short now and then make up the
19 difference later in the month, not have an imbalance
20 or have all smaller imbalance, but still take
21 advantage of that price difference between today and
22 a month later.

23 Q Okay, thank you. And then finally, do you
24 have a copy of Section 393.310 in front of you?

25 A I can get it.

1 Q I believe it's in Mr. Ervin, Sr.'s corrected
2 surrebuttal as Appendix One, if that helps.

3 A Yes, I have it.

4 Q Okay. Thank you. At paragraph five for
5 that statute, it states that the aggregation program
6 will not have any negative financial impact on the
7 gas corporation, it's other customers or local
8 taxing authorities, and that the aggregation charge
9 is sufficient to generate revenue at least equal to
10 all incremental costs caused by the aggregation
11 program.

12 What is your understanding of the
13 phrase, at least equal to all incremental costs?

14 A My understanding of that is that that should
15 recover at least -- at least enough revenue to cover
16 the cost of administering this program.

17 Q What's your understanding of the -- of the
18 phrase "incremental costs" in that statute?

19 A It would be additional costs above and
20 beyond the service they're already providing for
21 transportation customers.

22 JUDGE PRIDGIN: All right. Thank you. I
23 think those are all the questions that I have. Let
24 me see if we have any recross based on my questions.
25 Any questions from Public Counsel?

1 MR. WILLIAMS: No, thank you.

2 JUDGE PRIDGIN: MEG? Empire District Gas?

3 MR. FISHER: No, thank you, Judge.

4 JUDGE PRIDGIN: MSBA? All right. Thank
5 you. I believe that then concludes Mr. Patterson's
6 examination. Thank you, sir, you may step down.

7 MS. MYERS: Oh, Judge, I just had probably
8 one or two redirect.

9 JUDGE PRIDGIN: I'm sorry, Ms. Myers, my
10 mistake.

11 MS. MYERS: Not a problem.

12 [FURTHER EXAMINATION OF MR. PATTERSON]

13 QUESTIONS BY MS. MYERS:

14 Q Thank you, Mr. Patterson. Just quickly,
15 Mr. Brownlee had asked you if you were familiar with
16 what he called the statute and I think the Judge
17 referred to that as Section 393.310. Is that your
18 understanding of what the statute is that
19 Mr. Brownlee was referring to?

20 A Yes.

21 Q Okay. And I think Mr. Brownlee asked you
22 several questions about, you know, if cash outs were
23 proven to be inconsistent with the statute would
24 staff still support them. Are cash outs mentioned
25 anywhere in the statute?

1 A No.

2 Q No. And Mr. Brownlee referred to it being
3 at cost. Are you familiar with the language, and I
4 believe it is in paragraph two: "Provide for the
5 sale of such natural gas supplies, including rate of
6 transportation service cost to the eligible school
7 entities at the gas corporation's cost of purchasing
8 of such gas supplies and transportation plus, all
9 applicable distribution costs. Plus, an aggregation
10 and balancing fee to be determined by the
11 commission."

12 Is that an accurate reading of the
13 statute?

14 A Yes.

15 MS. MYERS: All right, thank you. That's
16 all the questions I had for you. Thank you,
17 Mr. Patterson.

18 JUDGE PRIDGIN: Ms. Myers, thank you. I
19 apologize for the oversight. Now, I believe we're
20 done with the examination of Mr. Patterson. And you
21 may step down, sir. Thank you very much.

22 THE WITNESS: Thank you.

23 JUDGE PRIDGIN: And I believe that then,
24 concludes the evidentiary hearing and we will now
25 provide to the on the record presentation on the

1 stipulations. And unless the parties wish to go
2 otherwise, I would plan to simply go in the same
3 order as the order of opening statements and let
4 parties just tell me what they want to tell me about
5 the stipulation. Mr. Brownlee?

6 MR. BROWNLEE: If we could take one minute
7 to be excused?

8 JUDGE PRIDGIN: Oh, sure. We'll take a
9 brief recess for about ten minutes and we'll go back
10 on the record at ten after 11. All right. We are
11 off the record.

12 (Whereupon, the evidentiary
13 hearing proceeding was adjourned
14 at 11:00 a.m.)

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CERTIFICATE OF REPORTER

I, Pamela G. Williams, Certified Shorthand Reporter, within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing hearing was duly sworn; 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 hearing 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.

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Certified Shorthand Reporter
within the State of Missouri

&	16 60:18 64:2	2230 8:24	428 8:12
& 8:9	17 3:5 62:12	23 39:12	45 3:11
0	18 97:12,15	25 1:13	47 84:9
02 22:3 91:24	1800 65:6	25th 5:7 7:17	5
08 92:6	18113 104:18	27 3:6	5 2:6 69:6 79:12 80:6,25
1	19 87:11	3	5,000 65:16
1 2:3 12:14 26:5	1974 17:23	3 55:3	50 17:24 24:22 68:5,20,22,23 69:8
32:24 33:1 34:3,7	1998 72:25	30 3:7	501 19:6
34:14,17,18 54:22	2	300 2:10 26:12,12 58:2,6,12,15 59:17	52 3:12
1.36 10:24	2 2:4 32:25 33:2 34:7,14,17,18 55:5	60:7,8	53 3:13
10 3:4 69:2,6	2,390 60:20	301 2:11 58:4,7,20 59:17 60:7,8	57 3:15
100 2:5 79:3,7,25	2,650 19:8	3012 73:25	58 2:10,11
79:25 80:2,16,20	20 11:13 25:12 38:25 61:11,17	302 2:12 72:14,16 74:7,11,12	6
81:4,6	63:10	302's 78:3	6 19:6
100c 2:6	200 6:3,6 8:18	303 8:13 59:8,17 60:7,9 78:1	60 3:16
101 2:7 4:2 6:10	2002 19:2 20:2 22:14 25:11 35:22	308 6:13 9:15	602 32:17
8:9 9:15 79:5,8	57:17 61:11 72:22	310 6:24	63101 6:24
80:16,22 81:4,6	73:8 75:25 92:7	32 3:9	64802 32:17
102 2:8 79:20,21	93:8,14,18,22	33 2:3,4	650 6:6
79:22,23 80:1,2,16	2003 20:17	3393.10. 76:23	65101 6:10,14,17 8:10,13,20 9:16
80:24 81:4,7	2003-30038 59:10	35 3:10	65102 6:4,7 8:25
102c 2:9	2008 35:15 36:5	365 46:5 47:15	67 3:17
10:00 70:3	2009 13:7 63:2 73:13 89:11,14	390 19:7	7
10:15 70:6,13	92:14 93:20,22,24	393.10 76:9	7.2. 49:25
11 74:21 76:4	2010 11:1 41:2,19	393.210 33:15	701 6:24
103:10	2013 35:16	393.310 33:18 61:12 62:14 75:1	72 2:12 3:19
11:00 103:14	2016 35:17	75:7 99:24	74 3:20
12 13:18 76:5	2018 52:11,14 53:7 63:14 87:11	393.310. 20:4 55:1 101:17	77 2:5,7 3:21
121 6:16 9:5	2019 63:14	4	78 2:6 3:23
12th 11:2	2021 16:23	4 2:6 59:20 79:12 80:5,25	79 2:8,9
13 65:21 74:22	2021-0320 1:8 5:2 7:10 70:18	40,000 33:11	8
76:5,17 84:20	2022 1:13 5:8 7:17	400 6:10 8:10	800 6:3 8:19
14 39:12	2024 16:24		81 3:24
140 60:23 61:3	22 39:12		85 3:25
1402 20:2			880 1:17 7:5
15 60:18 61:20			
69:2 70:5 82:6,10			
154 84:17			
15th 22:14			

8:40 7:20	addressed 23:14	aggregating 31:8	amount 45:25
9	addresses 8:7	aggregation 13:2	47:10 83:12 84:5
96 4:1	addressing 27:15	13:14 23:9 24:13	96:9
a	adequately 29:20	27:21,24 28:5,17	amounts 14:8
a.m. 7:20 103:14	92:4	29:15,17,18,22	42:16
ability 49:8 104:7	adjourned 103:13	31:7 36:10,15	analysis 27:23
able 11:9 18:1	adjust 67:17 98:6	37:13,15 38:15	36:24 37:14,20
29:20 49:13 60:1	adjusting 67:13	40:25 41:12 42:10	50:24 51:2
98:5	86:20 97:17	42:20 43:11,14,17	analyzed 36:18
absent 61:22	adjustment 47:24	44:6 47:22,25	annual 11:23
abundant 45:25	83:1	51:1,2 53:20,23	33:18 83:12 84:6
accept 41:3 42:20	adjustments 24:8	54:5,10 55:17,25	84:16 93:8,13
acceptable 16:11	47:12	62:25 63:5 65:2	answer 27:2,16
accommodates	administering	68:14 84:13,13,17	30:11 33:21 34:5
24:10	100:16	88:16 89:21 92:16	40:13 42:15 56:14
account 60:21	administrative	97:16 98:20 100:5	62:23 63:24,25
accounting 90:11	6:19 22:9 23:7	100:8,10 102:9	64:16 88:23,23
accounts 19:8	59:7,23 60:1	aggregator 12:9	answer's 37:10
60:21	administrator	64:6,19	answered 33:9,12
accurate 102:12	64:11	aggregators 47:4	46:24 75:20
acknowledge 9:25	admissibility	66:10 96:25 97:1	answers 34:8 47:1
acquire 97:6	77:24	ago 38:25	58:17,18 59:1
action 104:11,16	admission 34:14	agree 39:8,11	74:1 80:7
actions 65:23	admitted 34:18	62:24 64:6	anticipate 99:4,5,6
actual 22:20 25:1	60:9 74:12 78:2,3	agreed 7:1 72:12	anticipating 99:3
25:5,13 28:16	81:5,8	agreement 11:3	anybody 77:4
42:16 52:25 91:25	adopt 15:19	22:14 54:14 59:9	anybody's 18:19
add 26:21 69:14	adopted 14:15	63:15,16 71:6	anyway 81:14
added 21:25	adopts 65:2	agrees 15:9	apologize 102:19
additional 37:11	advantage 98:25	ahead 8:7 59:17	appearance 7:22
38:6,9 45:19	99:10,21	67:5 70:11 80:15	7:24 8:4 9:4
48:22 73:18	advisors 57:11	84:8	appearances 6:1
100:19	72:8	allocated 98:14	appearing 9:6
additions 58:13	advocates 28:22	allocation 90:21	30:21 57:11
59:3 74:3	affect 83:7	allow 20:20 28:4	appears 104:5
address 8:8,11,12	agent 60:20 64:7	51:13 56:12	appendix 49:18,23
8:18 9:4,15 19:1	64:19	allowed 23:4	54:22 75:4 100:2
29:21 32:14,17	agents 19:18	allows 21:4 95:8	applicable 21:5
53:1,7	aggravation 21:6	alternative 14:2	22:4 24:18 55:10
	aggregate 20:14	14:13 86:20	69:11 102:9

<p>application 29:3 applied 14:3 applies 47:1 94:22 apply 15:6 37:24 applying 82:19 appreciate 26:6,7 44:13 approach 39:12 approaches 45:6,9 appropriate 15:10 16:8 28:20 55:25 70:4 77:11 approval 54:10 95:4 approve 29:10 37:6 approved 12:4 13:3,12 92:4 approves 28:3 approving 22:13 59:8 approximately 7:20 60:20 84:22 april 1:13 5:8 7:17 11:2 aquila 22:5 area 7:14 24:1 60:24 61:3,6,16 62:8 98:18 areas 45:13 81:14 aside 80:5 97:9 asked 7:22 40:8 53:19 54:17 55:1 58:17 67:8 68:12 72:12 80:6 85:14 101:15,21 asking 37:4,6 asks 50:5 ass 6:15 asset 47:14</p>	<p>assigned 7:16 associated 95:10 association 9:7 11:10,17,22 12:1,6 13:25 15:5 16:11 16:15 17:20 19:6 57:12,14 61:2 62:18 63:8 85:10 association's 12:20 13:1 14:13 14:22 associations 19:6 assumption 64:9 attached 54:19 attempting 66:7 attend 52:15,19 attended 87:24 attention 16:25 26:7 attorney 104:13 attorneys 74:9 august 22:14 authorities 100:8 authority 7:12 authorized 60:19 available 63:25 avenue 8:12 average 83:11,21 83:25 84:5,16 avoid 62:14,21 aware 37:22 44:7 54:13 63:19 88:18 89:7 91:18</p>	<p>balance 29:7 45:15 47:7 48:6 48:14,15 50:22 balanced 48:23 97:17 balances 99:13 balancing 13:2,15 13:25 14:1 21:7 23:10 24:13 27:21 27:24 28:6,17 36:10,14 38:15 40:25 41:12 42:10 42:20 43:11,15 44:6 45:6,9 47:22 47:25 50:14,18 51:1 54:10 55:17 55:25 62:25 63:6 64:4,9,22 65:2 81:17 82:7 84:13 84:18 86:19 88:16 89:22 92:10,14 98:19,25 102:10 base 28:20 based 28:11,15 51:22 67:17 77:5 100:24 basically 18:14 86:2 basis 11:23 49:12 90:19 99:14 began 82:3 beginning 7:25 57:17 82:6,10 92:17 behalf 5:7 6:2,5,8 6:12,15 8:2,15,16 8:22 9:2,6,12,14 30:21 31:13 57:12 belief 34:11 80:11 believe 9:18 15:18 16:4,7 20:17</p>	<p>21:12,16 26:12 31:18 36:8 39:22 41:4 56:7 57:18 58:1,3 59:11,20 63:7 66:7,13,16 67:2 70:21 74:8 74:25 76:21 77:1 78:4 82:6 83:21 86:11 87:18 94:2 96:23 100:1 101:5 102:4,19,23 believed 26:2 believes 15:23 bench 17:4 44:15 51:22 66:24 67:1 71:13 77:4 benefit 51:3 61:21 benefited 62:3 benefits 68:6 best 15:16 23:16 34:10 61:1,18 80:10 104:7 bet 27:4 beyond 25:1 100:20 big 68:25 bill 12:8 20:2 billing 14:20 billion 10:24 bills 38:17 68:25 binding 20:10 bit 70:18 board 11:17 14:21 19:17 25:18 52:9 63:8 72:22 87:3 88:6 97:5 board's 73:4 boards 6:15 9:7 11:10 17:20 18:22 19:5 35:7 36:3 38:12,14 57:12,14</p>
	b		
	<p>b 7:11 9:15 10:22 b101 6:13 back 27:2 35:14 37:9 48:5 53:25 54:3 69:5,6 70:16 73:8 76:13 87:8 90:24 98:9 103:9</p>		

<p>77:11 85:10 87:14 97:25 books 91:19 bottom 45:5 53:24 83:5 box 8:24 break 70:5 brief 70:14 103:9 briefly 12:23 17:21 27:17 30:16 53:16 72:19 83:14 briefs 21:1 26:17 60:3 bring 65:19 brownlee 3:5,10 3:12,15,17,19,21 3:25 6:16 9:3,4,11 17:17,19 26:24 27:4 31:22 35:3,5 35:6 39:7 40:8,15 44:1,4,11 52:6 53:12,14 54:17 56:10 57:2,4,6 58:9 59:5 67:4,7 69:25 70:1,12 72:1,2,4 73:23 74:6,10 77:8,17,20 85:6,7 88:20 89:3 90:22 94:7 96:10 96:12 101:15,19 101:21 102:2 103:5,6 building 7:18 bulletin 97:5,25 business 9:19 32:16 buy 68:21 96:4 buying 96:7 buys 50:6 96:1</p>	<p style="text-align: center;">c</p> <p>c 6:9 8:4 12:14 19:6 34:3 79:23 79:25 80:2,2 calculate 83:11 84:5 calculator 61:7,9 84:20 call 26:25 31:23 56:16 called 14:2 19:16 40:7 85:16 101:16 calls 39:4 candid 26:1 capability 49:11 capacity 21:18 39:16,25 46:1,3,5 46:15 75:9,16,22 75:24,24 96:24 97:2,4 capital 8:12 captioned 5:6 care 48:12 carry 14:2,13,22 23:13 24:2 45:12 47:5,6 52:8 68:17 81:17 86:4,5,19 91:13 carrying 46:6 47:13 carter 6:9 8:4 10:21 carter's 8:10 case 10:23,24 11:1 11:5 12:5 13:4,7 13:13 16:17,19 17:23,25 18:1,6,12 18:13,16 20:6 22:6,10 23:12,18 24:1,15 25:18,19 25:23,25 27:16,22</p>	<p>28:1,8,12 30:6,24 32:20 36:20,21,23 36:25 37:2,4,6,9 37:11,14,19,21 38:9,11,21,24 41:10,16,18,25 42:9 54:11 56:1 59:9,11,12 63:2,18 65:3 66:8,18 68:15 73:11,13 76:23 77:10,10,25 84:24 85:12 89:2 89:3,14,16,20,23 89:25 90:3,3,4,12 90:20,24 92:14 94:11,15,18 97:24 98:19 cases 18:5,5,9,16 24:4 26:16 62:15 62:18,22 73:2,6 89:8,9 90:24 92:5 cash 13:2,15,24 14:1,25 16:8,10 23:13 24:2,15,15 24:17,23,24 27:21 28:24,24 29:4,11 36:15,24 37:7 38:14,17 40:25 41:12 54:11 55:25 64:4,9,21 67:12 68:13,15,18 69:7 69:10 75:8,16,17 81:16,20 85:15,17 86:4,9,15,21,22 87:4 88:16 89:18 91:12 92:10,21 98:19,25 101:22 101:24 cashes 85:25 cause 82:13</p>	<p>caused 72:9 79:2 100:10 ccf 33:19 ccfs 33:11 ccr 1:17 7:5 central 35:18 cents 21:8 certain 47:10 83:12 certainly 44:3 99:2 certainty 31:1 certificate 104:1 certified 7:4 104:2 104:19 certify 104:4 change 12:5 13:1 16:8 22:17,18 33:8,13,25 37:8 51:1 52:12 changed 13:21 20:3 40:25 changes 12:2,3 16:6 22:24 33:4 34:6 51:9 64:15 87:17 changing 27:1 characterization 90:14 characterize 62:7 81:23 charge 43:14 67:24 84:16 100:8 charged 21:21 29:9 47:23 68:22 95:22 charges 13:3,6,15 13:19,21 14:11 27:21 38:4 41:1 42:10,20 43:11 44:9 67:15,17</p>
---	---	---	---

<p>69:11 84:12 89:18 89:22 95:5 charging 13:2 84:24 chart 90:7 charts 90:22 check 65:14 checked 61:9 chief 8:23 choice 25:25 circumstance 21:23 24:6,19 cities 21:16 city 6:4,7,10,14,17 7:19 8:10,13,19,24 9:5,16 19:23 45:15 50:15,19 city's 48:14 civil 18:13 26:21 claims 28:14 clarification 12:15 clarify 12:7 classified 39:21 classroom 61:24 clause 47:24 clear 90:24 clearest 24:7 clearly 94:14 close 17:24 26:19 closely 29:7 codified 20:3 cold 46:17 colder 46:13 collect 48:1 95:8 colleges 39:23 combination 48:10 combined 44:6 come 18:15 27:2 31:24 56:19 78:7 90:6</p>	<p>coming 17:22 comm 6:2 comment 18:4 26:22 68:2 comments 71:12 commission 1:3 5:5 7:2 8:15,18 12:4,20 13:4,12 14:5,7,10 16:12 17:23 21:7 22:7,8 22:21,23 23:3 25:20 27:10,12,20 28:3,23 29:10,14 30:22 38:4,6 40:24 41:9 52:24 55:18,22,24 59:6 59:13,22,23 60:1 62:13 63:2,5 77:15 78:24 82:7 83:22 87:2,10 92:3 102:11 commission's 16:18 commissioner 9:24 10:2,3,8,10 10:11,12 17:5,6,10 17:18 26:7 27:2 37:6 44:16,18,20 65:1 66:24 71:8 commissioners 9:25 10:5,9,21 19:3 44:21 commodity 47:23 common 28:25 communication 98:9 companies 14:21 16:20 19:12 22:19 23:6 25:14 81:21 85:21 94:15</p>	<p>company 7:11 8:3 10:22 11:1 12:12 12:19 13:10 15:14 15:15,23 22:20 23:21 24:21 25:5 26:2 35:8,14 36:9 36:24 37:4,24 38:20 39:25 40:3 40:18 41:13 42:4 42:21 43:5,7,12 45:13,14 51:14 52:9,11,25 54:2,9 57:13,16 63:10 69:5 73:5 82:17 87:13 88:5,14 89:5,17,18,23 90:1 90:12 91:24 92:9 92:20,24 94:8,9,11 96:1 company's 11:15 12:23 38:23 45:15 53:24 54:6 83:5 compare 42:11 43:3 compared 42:16 43:5 66:3 67:10 86:4 compete 22:21 complaint 63:9,21 complete 23:25 complex 18:7 complexity 30:4 comply 62:13 76:23 component 43:9 computation 25:3 computers 61:24 concern 30:25 31:9 45:8,13 64:22</p>	<p>concerns 31:6 conclude 53:23 61:5 62:2 77:22 concludes 101:5 102:24 conclusion 16:16 22:12 25:10 39:5 40:7 59:14 94:5 concurrent 16:18 confidential 79:14 80:22,24 81:2,6,7 83:18,22,25 confirmation 98:9 confirming 98:10 considerably 14:19 consideration 16:18 considering 11:6 consistent 29:9 consortium 19:18 20:21 consumers 9:14 consumption 33:18 contact 8:5 contained 34:7 59:20 continue 71:9 89:17 contracted 47:3 91:6 contrary 24:25 91:13,16 control 68:3,4,8 97:1 conundrum 18:8 conversation 30:2 30:3 cooperative 19:16</p>
---	---	---	---

<p>copies 59:15 79:18 copy 22:11 49:15 54:20 75:5 77:24 99:24 corporation 20:23 21:14 94:20 95:8 100:7 corporation's 55:8 102:7 corporations 20:16 29:1,5 37:24 75:2,19 76:14 correct 33:24 34:10 35:24 36:21 36:22 38:2 41:6 49:22 50:8,22 53:23 54:1 55:15 55:20 56:9 57:23 57:24 58:4,11 60:24,25 61:1,5 62:2,17 63:6,7 69:12,24 70:25 73:12 75:5 77:1 77:12,13 79:11 80:10 83:6 84:18 85:19 88:11 90:7 92:15 93:5 94:16 94:17,25 95:14,16 95:22 97:2 corrected 2:8,9 49:16 79:20 80:24 100:1 correction 33:7 34:1 corrections 33:5 58:13 59:3 74:3 79:12,19 80:5 cost 13:23 20:24 24:12,14 25:13 28:20 36:15,18,20</p>	<p>37:5,14,18 38:13 38:14 41:8 42:24 43:1 46:5 48:3,4 55:8,14,21 68:23 68:24 69:1,21 75:3,12 76:14 86:16 89:16,22 90:19 91:25 92:10 92:17,19 93:9,13 94:21,22 95:9 100:16 102:3,6,7 costs 21:6,24 22:20 23:7,8,8,9,9 25:1 27:24 28:15 28:17 36:24 37:18 37:25 38:9,24 41:11,19,21,23,24 42:3 47:18 51:5,6 54:4 55:7,10 61:23 62:21 65:8 68:13,13 69:11,19 75:19 82:13,15,25 83:2 90:4,21 93:14 95:2,10 100:10,13,18,19 102:9 council 8:22 counsel 6:5 7:22 8:12,24 26:25 30:15,22,23 31:2 34:23 42:2 60:10 74:13 78:6 81:9 100:25 104:9,13 counsel's 30:25 counties 21:17 couple 39:23 45:13 81:14 85:13 99:16 course 19:11 court 6:22 7:5 72:13</p>	<p>cover 13:22 96:9 100:15 covered 73:24 create 15:6 18:12 45:9 created 18:19 20:1 22:4 24:16,16 61:11 creates 20:14 24:19 31:5 credited 48:2 credits 83:12 84:6 critical 20:25 cross 31:1,17 34:15,19 35:4 60:5,9,10 70:21,24 71:10,10,16 73:21 74:8,14,18 77:4,5 80:14 81:8 85:4,5 crucial 46:2 csr 5:8 59:21 current 12:3 13:14 13:23 24:11,23 27:25 28:4,5,11 29:11,19 44:6 66:3 67:11 72:10 89:18 90:23 91:1 99:11 currently 15:20 29:8 33:22 35:17 42:10 51:10 customer 12:8,15 28:18 33:16 45:24 46:21 51:7 64:7,8 64:11,19 82:16 97:6,21 customer's 64:24 customers 7:13 13:11,16 21:15 28:7 29:19 33:13 45:11 46:2,4,4,9</p>	<p>46:15,20,22 47:4 47:15,19,23 48:5 48:11 49:1 50:6 50:16,21,25 51:4 53:25 54:4,15 82:13 83:8 95:17 96:2,25 97:1 99:13 100:7,21</p> <hr/> <p style="text-align: center;">d</p> <p>d 7:11 10:22 daily 25:2,6,8 49:11,14 50:14,18 64:14 91:9 data 23:6 37:5,11 37:18 38:6,13,14 38:16,17,23 41:13 49:14,25 50:3,5 day 5:7 48:8 50:23 96:2,4,8 98:3,4,6 days 46:5 47:15 48:12 99:16 deal 24:3,7,8 dealing 73:2 87:15 88:15 89:5 95:21 deals 12:14 59:22 dear 26:9 december 35:15 decide 98:12 decisions 59:19 deducted 68:22 define 64:13 definitely 63:13 delays 23:5 delivered 21:9,21 29:7 50:20 68:6,6 delivery 97:18 deny 12:20 27:20 29:14 department 52:14 depending 82:23 99:9</p>
--	--	---	--

<p>deputy 8:23 derelictious 67:25 describe 97:15,18 design 11:5 desirable 14:22 98:20 despite 28:14 detail 45:8 47:2,22 91:11 determined 21:7 55:17,21,24 63:1 102:10 detriment 45:10 develop 15:10 16:5 51:9 developed 28:7,12 development 27:25 diana 6:9 8:4 10:21 difference 99:8,19 99:21 differences 14:20 different 18:5 19:10,10 47:11 48:1 97:7,9,20 direct 45:3 47:20 49:18 54:3,19,20 58:2 60:17,18 61:10,19 62:11 64:2 65:21 74:20 96:18 97:11 98:15 direction 68:5 104:9 directly 48:2 54:3 68:25 director 9:8 18:22 discuss 16:4 84:12 discussed 87:17 92:11</p>	<p>discussing 16:14 45:6 discussions 16:2 21:2 89:1 disparity 43:7 distribution 19:24 19:24 21:6 23:9 37:17 49:2 55:10 81:21 102:9 district 7:11,25 8:3 9:20 10:22,23 15:14 16:10 35:14 35:17,19 54:9 56:1 60:13 62:5 63:9,22 81:9 95:18 101:2 districts 19:8 dockets 22:4 documentation 89:17 93:9 documents 25:4 60:2 80:9 doing 30:5 64:11 dollar 42:16 65:20 dollars 54:1 61:23 65:1 dougherty 8:9 draft 87:23 drop 55:4 99:17 due 31:2 duly 104:6</p> <hr/> <p style="text-align: center;">e</p> <hr/> <p>e 6:13 78:19,19,20 earhart 2:3,4 3:8 31:19,23 32:12,16 32:18,23 35:4 44:22 45:1 52:5 53:17 56:6 earhart's 31:20 earlier 24:15 35:8 42:8 77:18</p>	<p>earned 45:12 east 8:12 9:15 easy 38:20 economic 29:6 edg 11:13,16 15:22 87:18 edg's 33:10 effect 67:25 87:5 effective 16:23 41:2 effectively 65:24 effort 14:9 efis 25:22 eight 11:21 14:6 15:3 23:5 33:23 98:16 either 25:5 28:23 33:5 35:21 47:8 68:5,5 79:11 82:21 elapsed 88:14 electric 18:6 35:15 electronic 97:5 elementary 19:7 eligible 20:15 40:19 55:7 76:10 102:6 eliminate 14:1,3 28:23 65:25 66:7 68:15 81:16 embarrass 43:2 empire 6:8 7:11,25 8:3 9:20 10:22,23 12:4 13:9,20 14:14,17,19,23 15:9,12,14 16:2,9 22:5 24:11 28:3 29:8,23 35:11,13 35:14,16,19 43:8 44:7 45:18 48:6 48:15 49:8 50:5,7</p>	<p>50:20 51:10 53:2 54:9 56:1 59:12 60:13,23 61:3,6,16 62:4,8 63:9,14,21 66:1,7,16,17 81:9 83:21 84:12 87:14 89:9 93:12 95:17 96:23 97:24,24 99:13 101:2 empire's 12:2,7 13:1 27:20,24,25 28:5,16 29:11,19 31:19 45:8,10 47:3 49:2,24 62:25 63:2 84:23 employed 35:10 35:12,21,25 57:10 72:7 78:22,23 104:10,13 employee 104:13 enactment 61:12 encourage 29:6 ended 93:20 energy 6:12 9:14 57:11 72:8 engineer 78:25 entirely 28:23 entirety 81:2 entities 21:16 55:8 76:11 102:7 entries 7:21,24 entry 8:5 equal 100:9,13 equally 19:14 equila 59:10 equipment 49:10 equity 54:6 error 24:22 ervin 2:10,11,12 3:14,18 9:9,9 18:24,24,24 49:15</p>
---	--	---	---

<p>54:19 56:8,11,16 56:18 57:5,9 60:4 60:14,16 62:24 67:6,8 70:2,6,21 70:22 71:18 72:3 72:6,21 74:8,17,18 77:7,9 78:3 86:14 100:1 erwin's 33:10 54:20 establish 38:4 63:5 established 13:14 63:1 estimate 62:20 65:5,7,13 estimated 64:25 event 18:2 25:22 26:6 eventually 15:12 evidence 22:8 25:8 28:16,19 32:3 34:19 56:22 71:21 78:9 92:13 evidentiary 7:9 26:22 59:20,21 102:24 103:12 exact 77:24 exactly 21:2 39:1 71:7 80:19 examination 3:8 3:14,18,22 31:18 32:12 34:15,19 35:4 45:1 52:5 53:17 57:5 60:10 60:14 67:6 70:21 70:25 71:11 72:3 74:14,18 77:7 78:15 80:15 81:8 81:11 85:5 96:16 101:6,12 102:20</p>	<p>example 16:7 46:9 69:1 98:23 exceed 21:8 exception 33:14 excess 48:11 excuse 42:7 71:11 82:5 95:24 excused 7:23 31:16 103:7 executive 9:8 18:22 exhibit 2:2,3,4,5,6 2:7,8,9,10,11,12 32:24 58:2,15,20 59:8 72:13,16 73:25 74:7,11,12 77:24 79:3,4,20 80:20,22,24 81:6,6 81:7 exhibits 2:1,13 26:14 33:1 34:7 34:14,17,18 58:6 59:17 60:7,8 77:21 79:7 80:1 80:15,19 81:4 exist 86:22 existing 13:1,19 38:24 exists 15:20 20:7 expectation 49:7 expected 64:8 65:1 expense 14:10 expensive 62:17 99:8 experience 18:4 expert 67:20 explain 45:7 47:2 47:21 82:12 explained 23:17 50:7 82:6</p>	<p>explaining 64:3 extensive 13:8 93:4 extent 63:19</p> <hr/> <p style="text-align: center;">f</p> <hr/> <p>facilities 14:18 facility 33:16 fact 20:7,12 30:3 36:19 68:10,19 91:23 factor 64:10 factors 92:11 fading 95:25 fails 12:9 fair 36:10 43:24 44:5 64:1 86:3,16 86:23,24 87:5 88:4 91:21,22 familiar 36:2 42:14,23 43:13,22 43:23 44:9 72:20 81:18 85:12 87:13 88:24 92:25 101:15 102:3 far 67:16 71:5 94:15,17 father 57:20 fault 25:21 february 12:11 46:17,18 fee 20:24 21:7 28:5 55:17 63:6 92:14 92:16 102:10 feedback 9:22 feel 17:7 fees 13:9,14,17 23:10 28:1,2,4,11 28:15,23 43:4 44:6 47:22,23,25 51:1,3 53:20,24 54:5,11 55:25</p>	<p>62:25 65:2 84:13 84:18,24 fewer 61:23 85:23 fif 82:5 fifty 24:21 figure 91:25 figures 89:16,22 90:5 file 5:2 7:9,12 16:20,24 20:16 22:10 70:17 76:24 87:20 90:11 filed 10:24 11:2 30:8 32:18 52:25 53:7 57:22 58:10 58:20 60:3 63:9 63:16,21 66:6 72:9 77:15 87:19 88:3 89:10,17,19 89:23 91:24 92:9 93:4,8,13,23,25 files 94:12 filing 24:13 53:10 88:18,20 94:3 filings 89:5 90:3 93:18 finally 99:23 financial 21:14 22:24 98:24 100:6 financially 104:14 find 75:10 finding 41:10 fine 48:19 finished 70:20 71:16 firm 8:8 45:10,24 46:1,3,4,9,15,20 47:3,14,19 48:5 50:25 51:3 54:3 54:15 83:7 96:24</p>
--	--	---	--

<p>first 9:19,21 10:25 12:25 17:22 18:1 18:3 21:9 27:19 31:18 35:10 45:14 56:11 fischer 8:14 17:3 66:23 fisher 3:4,9,13,16 3:24 6:9 8:2,5,9 10:16,19 17:8,9 28:8 29:23 32:10 32:11,13 33:4 34:13,16 39:2 40:6,23 53:15,16 53:18 56:3,5 60:15 67:8 81:10 81:12 83:20 84:4 85:1,3,14 94:4 101:3 five 15:4 34:4 42:21 43:7,12,18 44:7 61:10,19 73:9 75:13 76:17 97:11,15 100:4 flawed 24:12 flexibility 45:20 51:12</p>	<p>formal 63:9,21 format 11:7 20:13 forth 98:9 forward 11:18 31:25 56:19 71:9 78:7 87:15 four 21:8 37:23 45:5 47:21 49:19 49:23,24 54:18 55:1 60:18 65:22 82:5,10 96:20 fractures 42:24 free 17:7 fresh 85:14 front 39:9 73:4 99:24 full 78:18 96:9 fundamentally 29:18 further 10:15 28:14 29:3 52:5 53:17 56:17,18 67:6 70:10 71:18 77:7 78:5 89:4 101:12 104:12 future 11:19 14:11 30:1</p>	<p>35:17,18,20,25 37:24,24,25 47:23 47:24 48:3,4,8,9 48:13 49:6,9 50:15,19 52:14 54:9 55:6,8,9 56:1 60:13 61:22,22 62:5 63:10 66:2 67:24 68:23,24 69:1,21 73:5 75:2 75:18,19 76:14,15 81:9 82:13,17,24 83:1,2,4 85:16,23 91:4,6,7,10 94:7,9 94:11,15,20,24 95:1,8,10 96:2,4,7 97:18 98:2,3,4,6 98:12,24 99:4,5,9 100:7 101:2 102:5 102:7,8 gast 69:19 gate 19:23 48:8,9 48:13 gates 45:15 48:14 50:15,19 general 16:19 25:24 43:10 94:8 generally 36:9 97:21 98:2 generate 100:9 getting 9:22 17:23 68:21,22 69:6 give 8:7 25:7 27:18 32:3 45:19 49:13 50:13 56:23 69:5 71:14,21 78:10 97:22 98:23 giving 65:5 go 8:7 10:6 11:18 12:23 39:14 46:12 46:18 54:2 55:16</p>	<p>59:17 67:5 70:11 70:11,12,16 71:3 80:15 84:8 87:8 103:1,2,9 god 32:5 56:24 64:13 71:23 78:11 goes 48:5 76:13 going 13:24 19:1 22:7 25:20 26:10 26:13,18 31:10,18 34:3 35:11 39:12 44:22 51:18 54:13 56:8 59:16 69:2 70:19 71:15 73:17 73:19,21 74:7,14 74:15 77:21 79:19 84:8 98:13 99:15 99:17 good 7:8,15 8:16 9:13 10:10,20 17:18 23:24 27:9 30:20 32:1 35:6 60:6,16 64:7,12 70:17 74:15 77:5 81:13 85:7 government 7:18 gr 1:8 5:2 7:10 70:18 gr2009-0434 13:4 28:9 41:4 76:25 gr2021-0108 98:19 granted 7:23 great 50:24 greater 33:18 greatly 28:24 grogman 23:12 69:9 group 6:12 9:14 61:21 groups 95:20</p>
<p>flow 83:1 98:4,13 flowed 53:25 flowing 54:1 flows 83:3 fluctuations 91:10 follow 56:12 91:9 91:21 followed 20:11 91:20 following 99:6 force 65:25 66:17 foregoing 104:5 form 8:5</p>	<p>g g 1:16 5:8 6:23 7:3 104:2 gallery 9:5 gas 7:11,12,25 8:3 9:21 10:22,24 12:9 13:10,10 15:14 16:10 18:5 19:9,10,12,17,18 19:19,25 20:16,20 20:23 21:14,20 22:3 23:8,8,20 25:6,6,8,13 29:1,5 29:7 31:4,9 33:18</p>	<p>g g 1:16 5:8 6:23 7:3 104:2 gallery 9:5 gas 7:11,12,25 8:3 9:21 10:22,24 12:9 13:10,10 15:14 16:10 18:5 19:9,10,12,17,18 19:19,25 20:16,20 20:23 21:14,20 22:3 23:8,8,20 25:6,6,8,13 29:1,5 29:7 31:4,9 33:18</p>	<p>g g 1:16 5:8 6:23 7:3 104:2 gallery 9:5 gas 7:11,12,25 8:3 9:21 10:22,24 12:9 13:10,10 15:14 16:10 18:5 19:9,10,12,17,18 19:19,25 20:16,20 20:23 21:14,20 22:3 23:8,8,20 25:6,6,8,13 29:1,5 29:7 31:4,9 33:18</p>

<p>gt 59:10 gt2003-0038 22:6 guess 18:10 19:22 25:10 45:7 48:18 67:20 98:17 gut 71:7</p>	<p>helps 100:2 hey 17:10 high 6:13 13:22 69:3 99:3,16 higher 42:21 43:12,18 44:8 46:5,13 82:14 highest 69:8 highway 9:15 historical 56:12 historically 23:17 history 22:15 hit 68:25 holsman 9:24 10:2 10:3,8,11,12 17:5 17:6,10 26:7 44:17,18 66:25 74:15 honor 34:13 39:2 40:10 53:16 56:25 59:5,16 74:7 80:14 honorable 6:20 hopes 15:12 house 8:11 19:3 20:2 huge 67:22 huh 36:12 93:19 hundred 21:12 24:20 33:19 hurt 83:4</p>	<p>ii's 54:19 iii 1:5 6:16 imbalance 82:17 82:24 99:19,20 imbalances 14:4 24:17 29:1 31:2,3 31:5 47:5 48:25 68:11 82:13,20 92:24 95:11 immediate 59:13 immediately 22:2 impact 21:13,14 22:25 50:25 65:1 83:7 100:6 impacted 49:1 impacts 76:10 implement 16:6 29:17 51:9 important 21:2 22:18 50:25 82:7 imposed 69:22 improve 11:18 improvements 15:25 16:3 51:18 inactions 65:23 incentive 46:11,18 inception 23:18 include 50:15,19 85:21 included 25:3 83:17 includes 15:16 23:21 35:19 54:22 75:4 including 23:7,9 50:15,20 55:6 63:14 96:3 99:14 102:5 inclusion 21:5 income 67:14</p>	<p>inconsistent 101:23 incorporate 15:21 incorrectly 33:12 increase 10:25,25 28:2 increased 27:25 41:19 42:3 increases 54:10 increasing 7:12 41:24 46:11 incremental 22:20 23:8 75:3,12 100:10,13,18 index 2:1 3:1 indicate 60:19 indicated 73:25 indicates 27:23 individual 33:14 33:17 industrials 20:7 21:19 24:18 95:16 industry 13:21 information 80:9 98:11 information's 8:5 initially 82:25 injections 82:22 install 33:16,19 installed 49:10 instantaneously 31:4 instated 28:22 intent 66:9,12,13 66:15 interested 11:18 16:12,16 104:15 interestingly 22:2 interests 76:22 interpretation 50:11,13</p>
h	i		
<p>hand 32:2 56:21 71:20 78:8 handled 21:22 handling 21:24 happen 99:12 happened 12:10 53:9 88:2 happens 54:19 happy 26:23 30:2 harm 46:8 hc 79:22 heading 46:10 heads 71:14 hear 17:6 21:1 26:2 27:1 70:9 heard 11:11 12:17 18:9 38:12 70:23 72:20 hearing 1:7 5:5 7:2,9,17,20,23 11:7 31:16,21 34:18 36:2 60:8 66:25 70:8,10 71:1 74:12,16 102:24 103:13 104:5,11 heart 26:9 held 5:6 7:17 23:3 46:1 70:15 help 32:4 53:24,25 54:6 56:24 71:22 78:11 83:4 helpful 15:10</p>	<p>ideal 68:17 identification 33:3 58:8 72:17 79:9 80:3 identified 97:4 ii 2:10,11 3:14 18:24 56:16,18 57:5,9 60:4,14 67:6 70:21</p>		

<p>interstate 19:19 19:21 20:8 29:1,5 82:22 95:13 96:24 97:5</p> <p>intervene 62:18,22</p> <p>intervention 62:15</p> <p>introduce 26:11</p> <p>investment 54:7</p> <p>involve 11:12,22 11:23 12:3 14:8</p> <p>involved 23:15 41:17 89:1</p> <p>involves 12:25 86:16</p> <p>issue 12:13,14,25 13:13,25 18:17 20:11 23:13 24:4 31:8 34:3 36:2 37:19 41:14 52:7 65:19,20 68:10 69:10 73:3 87:8 89:2 94:10,18</p> <p>issued 59:13</p> <p>issues 11:4,5,9,11 11:12,22 12:14,24 14:8 16:5 18:11 18:15 24:1 27:15 30:24 37:15 48:25 49:4 52:12 53:1,7 85:11 87:16 88:7 88:9,10,21 89:5 93:10</p>	<p>jim 23:11 35:9</p> <p>jim's 25:17</p> <p>job 23:24 64:7,12 64:13 78:22 84:24</p> <p>joining 57:16</p> <p>joplin 32:17,17</p> <p>jr 9:10 56:11 86:14</p> <p>judge 3:11,20 4:1 6:19 7:8,16 8:2,14 8:16,21 9:1,11,17 9:24 10:1,4,10,20 12:12 17:1,3,10,14 17:18 20:11 26:24 27:5 30:13,17 31:12,15,24 32:7 32:11 34:16,21,22 34:25 35:1,2 39:6 40:12 44:3,14,18 44:20 45:2 51:20 51:24,25 52:2,4 53:14,19 56:4,5,15 57:1 58:1 60:6,12 60:13 66:23 67:5 70:1,16 71:25 73:16,19 74:10,19 77:2,10,19 78:1,13 79:17,21 80:17 81:3 83:20 84:3 85:2,3 88:17,19,22 90:13,16 94:4,6 96:12,17 100:22 101:2,3,4,7,9,16 102:18,23 103:8</p> <p>july 61:11</p> <p>june 16:23</p> <p>justification 92:10</p>	<p>80:21,23,25 81:1</p> <p>keenan's 79:24</p> <p>keep 16:21 46:2 71:15</p> <p>kept 83:22,24,25</p> <p>kicked 25:15</p> <p>kind 22:14 62:21 67:14,15 93:8 97:22 98:11</p> <p>know 10:23 16:20 17:7 18:24 23:14 26:8,9,19 31:20 35:8 36:19,20 38:1,7,11,22 40:22 40:24 41:1,18 42:2,8,8,19 43:6 43:24 46:25,25 49:19 50:2 52:24 53:3,6,9 62:23 63:18,24 64:13,15 64:16 65:7 66:9 66:15,20 67:16,22 69:2 72:20 73:14 74:22 76:5,18 80:18 85:12 86:9 86:13 87:11,19 88:1,12 91:23 92:8,8 93:7,15,22 93:24 94:9,15,17 96:1,4,20 97:12 101:22</p> <p>knowledge 34:11 39:22 42:9 43:20 45:18 53:2,8 61:1 61:18 63:20 67:13 80:10 82:1 87:20 88:2 92:25 93:16 94:1 95:23</p> <p>known 90:21</p> <p>knows 40:13 88:23</p>	<p>i</p> <p>language 12:15 15:25 20:10,19 51:18 76:12 95:4 102:3</p> <p>large 20:7 21:19 21:19 24:18 39:20 39:21 48:10 95:16</p> <p>largely 63:15</p> <p>larger 14:4,19</p> <p>largest 14:15</p> <p>lastly 29:13 76:16</p> <p>latest 93:21</p> <p>lav 57:11</p> <p>law 7:16 8:8 20:13 29:16 91:16</p> <p>lbc 13:21 14:15</p> <p>lbcs 15:2</p> <p>ldcs 62:5</p> <p>lead 52:22</p> <p>learning 42:25 61:24</p> <p>leaves 46:12 78:5</p> <p>legal 6:23 39:4 40:6 94:5</p> <p>legislative 18:25</p> <p>lev 72:8</p> <p>level 9:5 69:8</p> <p>liable 65:23</p> <p>liberty 6:8 7:11 8:11 10:23 15:15 15:20,25 16:19,22 35:13 42:22 43:8</p> <p>liberty's 44:8</p> <p>lime 53:24</p> <p>limited 45:14,24</p> <p>line 33:9 34:4 45:17,17,19 61:10 61:20 64:2 65:22 66:10 82:6,10 83:5,11 84:4</p>
<p>j</p>	<p>k</p>	<p>known 90:21</p> <p>knows 40:13 88:23</p>	<p>liberty's 44:8</p> <p>lime 53:24</p> <p>limited 45:14,24</p> <p>line 33:9 34:4 45:17,17,19 61:10 61:20 64:2 65:22 66:10 82:6,10 83:5,11 84:4</p>
<p>james 6:9 8:4 50:2</p> <p>jamie 6:3 8:18 27:10</p> <p>jefferson 6:4,7,10 6:14,17 7:19 8:10 8:13,19,24 9:5,15</p> <p>jill 52:17</p>	<p>k 78:19</p> <p>keenan 27:13 30:7 78:19 79:1,24</p>	<p>known 90:21</p> <p>knows 40:13 88:23</p>	<p>liberty's 44:8</p> <p>lime 53:24</p> <p>limited 45:14,24</p> <p>line 33:9 34:4 45:17,17,19 61:10 61:20 64:2 65:22 66:10 82:6,10 83:5,11 84:4</p>

<p>97:11,15 98:17 lines 15:3 24:18 33:22 39:10,12,14 51:16 60:18 62:12 74:21 76:4,8,17 96:19 list 12:14 listen 20:22 little 11:23 26:20 48:13 97:20 loads 33:11 loathe 23:23 local 19:22,24,25 81:20 100:7 long 18:23,23 46:12 47:7 86:16 91:19 look 29:25 65:14 82:9 looking 65:8,9 98:17 lot 18:10 lots 18:5 louis 6:24 9:9,9 18:23,24,24 54:19 57:9,16 72:6,21 low 99:3 lower 46:22</p>	<p>manager 35:18 mandate 63:4 mandatory 19:13 map 70:18 mark 26:13 59:7 64:20 72:13 marked 32:24,25 33:2 58:2,3,7 72:17 79:8 80:2 market 6:24 31:4 91:9 marketer 12:9 13:10 marketers 66:11 marking 79:3,4 material 22:17,18 23:3 materials 38:18 matter 1:8 5:1,6 7:10 25:15 91:16 matters 22:10 mean 20:8 38:20 38:24 41:7 43:3 48:17,18 53:5 60:21 61:2 67:16 67:18,23 73:20 83:3 87:14 93:11 93:12 meaning 21:3 46:19 means 41:21 46:14 65:24 meant 46:15,20 47:19 90:2 measured 31:3 64:10 mecg 9:12 31:13 31:14 34:25 52:2 60:10 81:9 101:2 mechanism 48:2</p>	<p>medial 28:18 medium 13:15 meet 26:3 29:24 meeting 26:5 52:23 meetings 52:12,15 52:17,19,21 87:21 87:24 88:3 mention 86:8 95:4 mentioned 23:11 25:17 26:15,16 28:8 30:10 39:11 39:19 40:23 59:19 86:11 95:20 101:24 merely 15:19 met 35:8 85:8 metering 21:11 meters 49:9 method 14:2,13,22 14:25 48:18,19,20 81:17,20,24 86:4 methodology 68:19 85:17 microphone 32:9 mid 70:4 midstates 15:15 15:21,25 16:9,19 16:22 35:12,19 42:25 43:1 midwest 6:12 9:14 mike 9:7 18:21 mike's 18:23 mind 85:15 minimum 20:19 55:4 minus 47:17 minute 18:3 42:7 44:2 95:24 103:6 minutes 70:5 103:9</p>	<p>mischaracterizat... 39:3 mislead 41:7 misses 64:20 missouri 1:4,17 6:2,15,24 7:4,13 7:19 8:10,13,17,19 8:25 9:6,6,16 11:10,16 14:16 15:2 17:19 18:22 19:5 20:13 23:20 27:11 32:17 35:7 36:3 40:4 43:6 44:8 57:12,14 61:8 62:3 78:23 81:21 85:9,18 97:16 104:3,20 missouri's 14:15 98:18 mistake 101:10 mo 5:8 6:4,7,10,14 6:17 48:11 model 22:16 48:20 51:16 models 24:24 modify 27:20 moment 95:25 money 11:23 14:8 69:5 monitors 97:24 month 47:10,11 49:13 84:20 99:2 99:6,12,15,17,19 99:22 monthly 25:8 31:3 99:14 months 46:13,22 moper 19:16 morning 7:8,15 8:16 9:13 10:20 17:18 21:1 27:9</p>
<p>m</p>			
<p>m 6:9 8:4 madison 6:3,6,10 6:16 8:9,19 9:5 main 52:22 maintain 29:11 major 51:17 majority 46:3 making 50:25 65:22 82:21 94:22 managed 66:3 82:18</p>			

<p>30:20 32:1 35:6 60:16 70:5,17 81:13 85:7 motion 90:19 mouthed 86:5 move 10:15 27:3 34:13,19 moving 86:19 msba 9:2 17:15 28:15,19,22 29:24 35:2 39:20,24 52:4 56:15 60:19 62:12,14 64:25 65:25 66:2,8,8 68:14 85:4 101:4 msba's 27:20 28:14 29:14 56:8 multiple 45:22 multipliers 14:3 29:4,8 86:20,23 87:4,6 92:22,23 mutual 18:18 myers 3:6,23 4:2 6:3 8:16,18,21 26:25 27:6,8,10 30:13 34:21 51:24 60:12 73:16 78:14 78:16 79:10,17,23 80:4,13,20 81:3 88:17 90:13 101:7 101:9,11,13 102:15,18</p>	<p>37:24 55:6 61:22 62:18 66:2 91:6 92:1 102:5 necessary 29:17 need 12:16 16:24 33:5,7,12 34:1 79:21 83:22 needing 99:4,5 needs 15:24 51:17 negative 21:13 76:10 100:6 neither 76:9 104:9 net 48:12 netting 45:12 46:6 47:5,6,13 never 63:20 92:17 new 89:20 90:4 nine 11:21 14:7 39:10,14 62:11 83:11 84:4 nominated 98:3 nominating 64:8 64:12 98:2 nomination 64:3 98:7 nominations 64:21 97:17,18,23 98:5,6 non 26:22 norm 14:25 normal 18:12 90:10 normalize 99:7 normally 41:24 nos 33:1 58:6 79:7 80:1 note 14:7 22:9 26:14 59:18 75:14 notes 80:18 notice 25:19 59:7 60:2 77:14 97:22</p>	<p>notification 25:21 november 46:10 number 24:4 53:1 57:14 59:18 61:8 67:9 82:2 84:8 98:17 numbers 23:2 83:17,18,21 84:1</p> <hr/> <p style="text-align: center;">o</p> <p>o 78:20 object 39:2 73:16 84:1 88:17 90:13 94:4 objection 40:6 78:2 86:23 objections 34:17 56:16 60:8 74:12 81:5 objects 12:18 obligation 38:13 obviously 69:3 occasions 86:10 occurred 52:13 73:6 offer 59:17 74:7 79:19 80:15 offered 34:17 60:7 74:11 78:2 81:4 office 6:5 7:18 8:22 30:21 oh 90:2 101:7 103:8 okay 31:20 33:21 33:25 36:8,14,19 37:13,22 38:5,22 42:19 43:21 44:1 44:11 46:23 47:20 48:6 49:15,18 50:2,24 51:8,20 53:12 56:15,17 57:22 59:5 61:5</p>	<p>61:10 62:24 63:4 63:8 64:18 65:15 65:18 66:13 67:5 69:25 70:12 71:2 73:1 74:6,25 75:10,11,21,21 76:3,8,16,21 77:2 77:14,17 79:14,17 80:17 83:10 84:3 86:2,15 87:1,7,21 88:9,12 89:8,15,21 89:25 90:10,22 91:3,9,12 93:7 94:2 95:24 96:5 96:10 97:11 98:15 99:23 100:4 101:21 once 20:3 74:14 opc 51:25 opening 3:3 9:20 9:21 10:6,6,13,16 10:18 17:15,16 18:21 27:7 30:14 30:18 31:13,14 34:2 103:3 operated 15:1 operating 11:13 61:16 63:11 operator 98:24 opinion 40:9 65:13 opitz 6:13 9:13,13 9:17 31:14,15 35:1 52:3 opportunities 45:9 opportunity 46:7 opposed 12:6 88:5 opt 19:12 order 9:19,19 16:21 22:9,12,13 22:23 26:4,13 59:8 62:13 77:25</p>
<p style="text-align: center;">n</p> <p>n 78:19,19,20 name 22:6 27:10 32:14,16 57:7,19 72:5 78:18,19 nathan 6:6 8:23 30:20 natural 19:9,17 20:20 25:6 31:9</p>			

<p>96:2 103:3,3 organized 19:16 original 59:10 out's 86:15 outcome 104:15 outs 28:24,24 64:4 64:9,22 101:22,24 outside 70:9 overall 52:7 67:10 overlooked 9:18 overrule 40:12 88:22 90:16 oversight 102:19 overview 27:18</p>	<p>part 30:2,3 75:25 75:25 94:11,14 participants 45:10 participate 25:18 51:13 73:12,15 participates 11:24 participating 32:9 33:15,17 particular 18:16 30:23 parties 2:13 5:7 6:1 7:25 11:2 14:10 16:12,16 26:17 54:15 70:24 71:6 79:18 103:1 103:4 104:10,14 parts 15:21 party 11:18 12:18 23:4 pass 19:25 59:15 passed 19:2,4,21 22:3 35:23 72:23 passing 22:11 patience 66:21 patterson 2:5,7 3:22 11:20 13:18 14:6 27:13,16 28:10 30:7,10 45:16 71:4 78:5,6 78:15,17,19,21 79:1,15 80:4,14,21 80:23,25 81:11,13 85:5 88:17 96:14 96:16,18 101:12 101:14 102:17,20 patterson's 15:3 71:10,16 79:24 81:1 90:14 101:5 pay 12:8,9 43:6 46:4 67:14,15 69:2</p>	<p>paying 24:20 47:15 51:5 66:2 68:20 95:10 pays 92:24 pc 8:9 penalize 68:5 penalties 64:10,22 67:14 76:10 95:4 95:11,12 penalty 24:21 67:11,24 68:9,21 69:14,19 penalty's 69:22 people 32:9 91:20 percent 24:21,22 61:7 67:23 68:5 68:20,22,24 69:8 period 36:1 85:9 periods 98:5 personally 42:8 perspective 11:15 16:5 pga 48:2 53:20 68:7,7 83:4 philosophically 69:10 phonetic 17:11 22:5 23:12 59:11 phrase 100:13,18 physical 21:20,24 pidgin 6:20 pieces 33:6 pipe 24:18 98:11 pipeline 19:21 21:18 41:19 47:3 50:6 75:8,16 82:22 91:1 96:24 97:6 98:8,10,12 pipeline's 97:5 pipelines 19:10,19 20:8,9 29:2,5,10</p>	<p>92:23 95:11,13 97:25 pizza 26:4 place 69:17 places 86:7 plan 47:9 103:2 please 8:1,15,22 9:2,12 27:9 30:22 31:25 32:2,14 46:24 56:20,22 57:7 70:9 71:20 72:5 74:22,23 76:6,19 78:9,17 80:19 96:21 97:13 plus 21:6 55:9,16 102:8,9 point 22:7 26:11 26:22 30:4 50:1 73:8,20 pointed 14:12 45:16 pointing 18:18 points 11:20 polar 69:4 ponder 20:12 pool 49:1 64:11 98:23 pools 15:7 29:18 29:22 48:1,7,16,23 49:5 84:13 97:17 98:20 portion 37:15 55:13 position 12:23 24:11 27:18 35:18 36:9,11,14,16 56:13 68:14 77:22 81:16 91:14 post 98:7 potential 31:1,5</p>
<p style="text-align: center;">p</p>			
<p>p 78:20 p.o. 8:24 pack 45:18 packs 45:17,19 page 2:2 3:2 15:3 33:9,22 34:4 39:8 39:9,12,14 45:3,5 45:5 47:20 60:18 61:10,19 62:11 64:2 65:21 74:21 76:4,17 82:5,5,10 83:10 84:4,11 90:8 96:19 97:11 97:15 98:16 pages 11:21 14:6 paid 69:6 paired 22:22 pamela 1:16 5:8 6:23 7:3 104:2 paragraph 23:5 37:22 54:18 55:1 55:2 59:22 75:12 75:18 76:2,13 100:4 102:4 parnell 9:8 18:21</p>			

<p>potentially 42:1 46:8 82:23</p> <p>practically 29:16</p> <p>practice 28:25 29:4</p> <p>practices 14:20 15:16 29:12</p> <p>pre 30:8</p> <p>precedent 65:11</p> <p>predecessor 59:11</p> <p>predict 64:16</p> <p>predicts 48:21</p> <p>predominant 81:24 85:16,17</p> <p>prefer 56:10 63:17 83:23 86:3</p> <p>prefiled 27:14 73:20</p> <p>premature 30:5</p> <p>premium 68:20</p> <p>preparation 42:12 43:3</p> <p>prepare 37:18</p> <p>prepared 79:2,2</p> <p>present 10:9 24:13 52:11 79:18 93:24</p> <p>presentation 11:6 23:16 71:5,17 102:25</p> <p>presented 28:16 92:13</p> <p>preside 7:16</p> <p>presumed 28:13</p> <p>presumption 92:3</p> <p>previous 22:6 41:16 57:25 90:20</p> <p>previously 72:12 85:8</p> <p>price 31:10 69:3 91:9 99:3,21</p>	<p>priced 46:22</p> <p>prices 29:4 46:11 46:13 67:19 99:7 99:16</p> <p>pricing 14:3 25:7 85:16</p> <p>pridgin 3:11,20 4:1 7:8,15 8:14,21 9:1,11,17 10:1,4 10:10,20 17:3,14 26:24 27:5 30:13 30:17 31:12,15,24 32:7 34:16,22,25 35:2 39:6 40:12 44:3,14,20 45:2 51:20,25 52:2,4 53:14,19 56:5,15 57:1 60:6,13 66:23 67:5 70:1 70:16 71:25 73:19 74:10,19 77:2,19 78:1,13 79:21 80:17 81:3 84:3 85:3 88:19,22 90:16 94:6 96:12 96:17 100:22 101:2,4,9 102:18 102:23 103:8</p> <p>primarily 82:20</p> <p>primary 30:25</p> <p>principal 65:10 68:19</p> <p>prior 28:1 36:1,5 37:2,9,20 57:16 59:23,23</p> <p>probably 17:24 59:7 71:15 83:24 85:8 96:9 101:7</p> <p>problem 77:19 101:11</p>	<p>problems 14:14 18:12,19</p> <p>procedural 18:8 18:11 57:25</p> <p>procedure 26:20 73:17 90:10</p> <p>proceed 31:17 71:7</p> <p>proceeding 57:23 72:10 73:2 103:13</p> <p>proceedings 3:1</p> <p>process 64:3 98:8 98:12</p> <p>processes 98:2</p> <p>produce 49:11</p> <p>produced 42:4</p> <p>professional 7:4 78:25</p> <p>program 11:12,14 11:25 15:11 20:15 23:20 29:17 51:14 60:22 61:15 62:4 62:8 65:25 66:3,8 82:3 100:5,11,16</p> <p>program's 63:11</p> <p>programs 15:1,14 15:17</p> <p>proposal 28:3 29:11 81:16 88:15</p> <p>proposals 88:5</p> <p>propose 12:16 16:13</p> <p>proposed 12:1,5,7 52:11 53:6 65:2 86:19 87:22</p> <p>proposes 12:12 13:25 15:5</p> <p>proposing 28:2 47:16</p> <p>protection 47:18</p>	<p>proved 36:15 91:12,15</p> <p>proven 101:23</p> <p>provide 23:6 29:6 37:5,10,14,18 38:23 40:4,19 55:5 67:19 75:2 102:4,25</p> <p>provided 7:13 28:19 41:16 50:14 50:19 62:4 79:17 95:13</p> <p>providing 13:23 28:17 73:17 95:9 100:20</p> <p>provision 98:25</p> <p>provisions 16:14 67:11</p> <p>psc 59:19</p> <p>public 1:3 5:5 6:2 6:5 7:2 8:17,22,24 17:22 25:3 27:11 30:15,21,22,25 31:2 34:23 42:2 59:24 60:10 78:24 79:25 80:21 81:6 81:8 83:23,25 84:2 100:25</p> <p>publications 25:7</p> <p>publicly 84:9</p> <p>pull 45:22</p> <p>purchase 19:18 31:9 47:24 83:1 95:1</p> <p>purchases 96:8 98:24</p> <p>purchasing 19:16 20:20 37:25 55:8 60:20 61:21 75:19 76:14 82:24 102:7</p>
--	---	--	---

<p>purpose 52:20 purposes 32:22 83:20 pursuant 33:15,17 55:3 put 41:25 90:23</p>	<p style="text-align: center;">r</p> <p>r 72:6 78:20 raise 32:1 56:21 67:19 71:19 78:8 raised 11:10,22 raising 54:5 rate 10:24,25,25 11:4 12:5 13:7 15:10,13 16:17,19 18:8,16 25:25 28:1,20 37:2 38:11,21 41:16,18 41:25 54:6,7 56:1 62:15,18,22 63:2 63:17 84:24 89:2 89:3,13,23 90:12 90:18,20,24 94:11 94:22 98:18 102:5</p>	<p>69:9 88:24 94:23 reason 64:20 66:19 reasonable 13:5 15:19 28:13,25 49:6 86:25 90:21 rebuttal 11:21 15:3 27:14 28:11 30:8 32:19,23 33:8 39:7 45:4,16 47:21 79:2,13,24 80:21 81:1 84:11 96:19 97:12 98:16 recall 23:16 52:21 53:21 65:5,7 receive 25:19 77:14 received 29:7 recess 70:14 103:9 recognized 22:16 22:23 recommend 12:20 recommendations 30:9 recommended 14:24 recommends 27:19 28:3 29:10 29:13 reconciliation 98:11 record 7:9 8:3 9:3 10:9 11:6 25:4 28:12 32:15,22 57:8 70:11,12,13 70:15,16,17,24 71:11,17 72:5 78:18 83:21 102:25 103:10,11 records 59:24,24 60:2</p>	<p>recover 100:15 recovered 51:5 82:15 recovery 22:22 recrement 24:22 recross 51:22 67:2 96:14 100:24 red 66:10 redirect 53:15 77:6 96:15 101:8 reduce 28:24 47:23 48:4 54:4 reduced 104:8 reevaluate 14:11 refer 15:2 36:3 54:21,25 76:3,17 reference 69:18 75:8,12,15,17 referred 25:4 26:17 101:17 102:2 referring 34:2 76:24 93:17 101:19 reflect 8:3 10:9 regarding 5:6 16:3 28:24 33:10 39:16 52:7 58:12 68:12 77:9 87:7 registered 7:4 regression 48:20 regulatory 7:16 related 53:20 55:7 86:20 87:24 92:14 95:9 104:10 relating 12:13,21 relative 104:12 release 39:16,25 97:4 releases 75:9,16 96:24</p>
<p style="text-align: center;">q</p>	<p>question 33:10 34:5 37:17 38:8 39:3 41:8 44:5 50:12 54:17 63:25 66:25 67:4 75:14 75:15 77:9,23 89:21 90:2 94:8 questions 17:1,5,5 17:7,11,13 26:19 27:2,17 30:11,12 32:13 34:7,20,21 34:24 35:5 42:15 44:15,16,17,19,22 44:23 45:2 46:23 47:1 51:21,22,23 51:24 52:6 53:18 53:21 56:3,13 57:6 58:18 59:1 60:11,12,15,17 66:24 67:1,2,7 68:12 71:3,13 72:4 73:25 74:9 74:15,17,19 77:3,4 77:5,8 78:16 80:6 81:12,14 85:2,6,11 96:13,17 100:23 100:24,25 101:13 101:22 102:16 quickly 14:7 101:14 quite 26:20 75:14 quote 98:18</p>	<p>rates 7:12 13:3 25:2,16 36:17 37:1,5,8,8 41:2 43:4,10 54:13 64:8 89:4 91:2 92:4 reaction 71:8 read 40:15 49:8 50:9 55:14 61:4 87:3 reading 102:12 reads 49:11 ready 10:17 16:17 27:6 30:17 32:10 57:3 72:1 78:14 81:10 real 18:17 49:12 90:5 really 19:17 21:16 21:22 23:12,15,17 23:19,23,23,23 24:4,14,17 31:6 64:10 65:17 68:16</p>	<p>question 33:10 34:5 37:17 38:8 39:3 41:8 44:5 50:12 54:17 63:25 66:25 67:4 75:14 75:15 77:9,23 89:21 90:2 94:8 questions 17:1,5,5 17:7,11,13 26:19 27:2,17 30:11,12 32:13 34:7,20,21 34:24 35:5 42:15 44:15,16,17,19,22 44:23 45:2 46:23 47:1 51:21,22,23 51:24 52:6 53:18 53:21 56:3,13 57:6 58:18 59:1 60:11,12,15,17 66:24 67:1,2,7 68:12 71:3,13 72:4 73:25 74:9 74:15,17,19 77:3,4 77:5,8 78:16 80:6 81:12,14 85:2,6,11 96:13,17 100:23 100:24,25 101:13 101:22 102:16 quickly 14:7 101:14 quite 26:20 75:14 quote 98:18</p>

reliable 28:16,19 reluctant 23:24 remain 28:4 remained 13:17 remaining 12:21 27:15 remarks 10:6,13 remember 19:4 remind 70:7 remove 34:5 66:10 reoffer 77:21 repeat 50:17 replace 33:21 replaced 46:21 report 22:9,11,20 26:13 41:8 77:25 reporter 6:22 7:4 7:5 72:13,18 79:9 80:3 104:1,3,19 reporter's 8:6 reports 93:14 represent 19:7 35:7 76:22 85:9 represented 57:13 57:17 73:4 representing 10:22 13:9 17:19 27:11 72:21 represents 61:6 91:1 request 7:10,24 12:18 13:1 27:20 29:14 38:17 49:25 50:3 54:9 requesting 10:24 requests 12:21 50:5 require 94:3,10,20 required 20:18 21:10 23:6 29:16 33:16,19 38:21	55:2 requirement 11:4 33:10 requirements 22:19 29:21 58:1 97:16 requires 20:16 38:3 75:2 requiring 20:19 resale 20:22,23 55:6 resolution 18:16 resolved 11:3 resolving 28:25 resources 45:14 82:20 responded 50:3 response 49:25 50:9 71:1,8 responsibility 12:15 66:11 responsible 12:8 result 13:6 54:14 62:3 87:25 results 66:1 resume 70:5,13 retained 2:13 return 54:6,7 revenue 11:4 22:19,24 54:2 67:23 100:9,15 revenues 48:4 review 42:13 83:14 reviewed 22:15 37:2,9 93:3 reviews 14:5 revised 16:17 revisions 12:7 richard 6:16 9:4 17:19 35:6 85:7	rid 86:9,13 right 9:18 10:4,13 10:16 17:3,14 31:10,17,24 32:2,7 34:22 36:17 41:20 44:4,4,11,14,20,22 53:12 54:7 55:18 56:5,19,21 61:7,13 61:25 62:15 64:4 64:12 70:1,3 71:8 71:19,19 73:23 74:10,16 75:23 78:8 80:4,13 82:8 83:13,18 84:6,9,14 84:21 86:2 90:5 91:3 92:20,21 96:10,12 100:22 101:4 102:15 103:10 righty 64:1 road 25:16 70:18 ron 6:20 7:15 room 8:6 9:22,25 31:21 70:8,10 roughly 61:6 rounds 28:7 rpr 1:16 5:8 rsmo 33:15 61:12 62:14 75:1 rule 19:13 59:21 77:23 91:17 rules 19:13 22:8 59:20	saving 61:22 saw 66:9 69:3 saying 66:12 99:15 says 37:23 38:3,22 40:11,11 55:5,11 55:13,16,19 75:18 76:13 94:13,24 scale 24:24 scenario 46:8 scenarios 45:23 schedule 15:11,13 98:1 scheduled 70:22 schedules 2:6,8,9 79:12,14,20 80:5 80:24,25 school 6:15 9:7 11:10,12,14,16,24 11:24 14:21 15:1 15:7,11,13,16 16:1 17:20 18:22 19:5 19:7,8,17 21:12 25:18 26:8 29:14 29:17,18,21 31:7 35:7 36:3 38:12 38:14 49:5,8 51:10,11 52:9 55:7 57:12,14 60:22 61:15 62:4 62:7 63:8 72:22 73:3,4 76:11 77:11 82:2 83:12 84:5,9,12,17 85:10 87:2,14 88:6 89:6 92:1 94:10 97:16 98:20 102:6 schools 15:12 19:15,25 20:9,15 21:11 23:1 24:20 31:8,10 33:11,14 33:17 39:20 40:1
		s	
		s 78:20	
		sale 102:5	
		sales 45:10,24 46:2 46:3,4,9,20 47:4 47:15,19 48:5,11 51:3 54:3 82:13	

<p>40:5,20 43:6 44:8 51:13 61:3,8,20,23 62:3 65:23,25 66:2,17 67:9,9,12 67:14,19,21,22,25 68:3 75:3 76:22 86:1,8 93:5,12 95:6 96:3 99:14</p> <p>schwartz 52:17 se 24:23 seat 57:2 72:1 second 15:5 87:9 95:25 secondary 19:7 section 20:4 33:15 33:17 54:25 55:3 61:12 62:14 75:1 75:7 76:9,23 99:24 101:17 see 10:4 17:4 21:1 30:14 44:15 51:21 60:9 66:4,24 69:13,18 71:12 75:11 95:3 96:14 98:21 100:24 seen 89:4,16 send 49:6 99:4 senior 56:13 57:17 63:24 78:24 sense 24:5 sent 48:8,9,13 separate 15:6,7,10 15:13 24:2,3,7,9 29:14,15 series 26:12 serve 45:24 61:8 serves 61:2 service 1:3 5:5 6:2 7:2,13,14 8:17 12:2,10 17:22 20:23 27:12 40:4</p>	<p>40:19 50:14,18 60:23 61:3,6,16 62:8 67:19 78:24 94:22 95:9 100:20 102:6 services 13:23 28:6,18 50:8 75:2 94:20 95:5 set 25:16,23 36:20 58:14 78:14 89:4 97:9 sets 58:10 65:11 settle 11:9 settled 13:13 settlement 13:7 seven 22:3 50:1 59:12 73:7,9 85:22 severity 82:23 she'll 31:24 sheets 22:16 shift 99:7 ship 98:24 shipped 21:21 shipper 98:10 shippers 29:6 98:14 short 24:20 46:14 46:18 47:8,17 99:18 shortage 48:23 82:24 shorthand 7:3 104:2,19 show 9:3,20 69:15 75:7 76:11 showed 90:7 showing 70:3 shown 23:4 shows 68:23,24</p>	<p>side 35:15,17 signal 29:6 signature 104:18 significant 15:24 20:6 67:25 similar 16:9 simple 18:6 simply 71:9 90:18 103:2 sir 10:3,12,17 30:17 56:20 57:3 61:9,14 66:5,25 71:20,25 72:1,2,7 78:7,13 85:7 96:11 101:6 102:21 sister 15:15 42:21 43:5,12 51:14 sitting 65:12 situation 25:13 six 13:9 33:9,9,22 33:22 39:9,9,14 61:6 64:2 76:2,18 size 67:9 sliding 24:24 small 13:15 14:8 22:24 28:6,18 39:25 48:7,10,15 48:23 49:1 75:3 76:11 smaller 23:2 82:21 99:20 solution 47:16,17 solutions 6:23 somebody 70:9 somewhat 93:2 sorry 9:22 10:1 49:23 70:11 77:18 93:13 98:16 101:9 sort 18:8 52:7 67:13</p>	<p>sounds 56:15 sources 19:20 south 32:17 speak 32:8 speaking 98:3 special 21:11 52:8 specific 29:8 59:22 95:21 specifically 38:10 45:4 49:24 68:16 74:21 76:4 94:13 94:24 95:1 96:19 97:9 spire 14:15,17 19:9 85:24,25 87:14 93:7 97:16 98:18 sponsored 27:14 30:8 spot 31:4 sr 2:12 3:18 9:9 18:24,25 56:8 70:22 72:3 sr.'s 49:16 70:6 100:1 sris 16:21,22,23 st 6:24 staff 8:15,17 11:17 11:20 12:19 13:10 13:18,19 14:6,12 14:24 16:2,12,15 23:22 26:15,25 27:3,11,13,19 28:1 28:2,10 29:10,13 29:24 30:1,7,9 34:19 36:16 38:7 51:23 52:10 60:11 63:17 76:22 78:23 79:19 80:14 86:3 87:17 88:4,7,14 89:1 90:6,11</p>
---	---	--	--

<p>91:14,16 101:24 staff's 16:5 27:18 27:23 31:6 36:9 36:11,14 81:15 stakeholders 29:25 stand 16:14 26:19 29:25 31:23 51:11 51:15 56:17 71:2 73:21 standard 15:19 stands 56:19 star 17:11 start 26:4 started 35:14 starting 33:9 72:24 state 1:4 19:20 32:14 40:3,14,18 57:7 61:11,20 62:12 65:22 72:5 75:1,15 76:9,22 78:17 85:18 88:4 104:3,20 stated 29:23 60:25 62:1 63:14 93:18 statement 3:3 9:21 10:18 17:15,16 20:25 22:12 25:17 27:7 30:15,18 34:2 36:10 43:24 76:24 86:17,24,25 87:5 91:21 statements 9:20 10:7,16 103:3 states 28:10 40:9 40:10 55:2 96:23 100:5 statute 19:1,1,11 19:13,15 20:1,7 21:4,15 22:1,3,15</p>	<p>24:6,25 25:5,11 35:22 36:3 37:23 38:1,3,22,25 39:4 40:3,9,10,18 54:18 54:18,22 55:19 59:14 63:4 65:10 69:18 72:22 75:5 75:25 76:1,12 91:13,19,21 93:1,5 94:2,9,19 95:7,21 100:5,18 101:16 101:18,23,25 102:13 statutory 20:13,19 29:21 95:3 step 56:7 67:3 70:2 78:4 101:6 102:21 stick 17:11 stip 71:17 stipulated 7:1 stipulation 11:3,7 13:13 22:14 54:14 59:9 71:6,12,13 103:5 stipulations 103:1 storage 14:18 45:22,23,23,25 46:5,12,14,19 47:3 47:8,9,10,17 48:12 48:14,24 50:6,8 51:2,6 82:22 91:1 storm 12:11 48:16 49:5,6 69:4 stp 51:9 60:20,21 61:11,22 62:13 streaming 70:8 street 6:3,6,10,13 6:16,24 8:9,19 9:5 structure 16:8,10 16:11</p>	<p>structures 43:1 students 61:20 subject 19:11 subsection 55:3,5 subsequent 60:2 88:15 subsidization 31:2 42:4 substitute 14:1 81:17 success 62:9 sufficient 100:9 suggested 13:20 suite 6:3,6,10,13 6:24 8:9,13,19 9:15 summaries 25:9 supplied 13:10 38:16 suppliers 65:24 68:4 supplies 37:25 55:6,9 76:15 102:5,8 supply 20:14,20 35:18 38:5,9,12,14 52:14 61:22 66:1 66:17 75:19 96:2 support 24:12,14 36:16 37:5 90:19 91:25 92:17,19 101:24 supported 91:25 92:4 supporting 28:20 88:10 89:16 supportive 91:14 supports 13:19 36:9 suppose 91:15,20</p>	<p>supposed 38:23 sure 9:23 41:15,15 41:17 50:10,18 51:4 65:9,17 80:20 86:14 87:1 89:13 92:20 93:3 103:8 surrebuttal 2:4,7 2:11 27:14 30:9 32:19,24 34:4 49:16,21 58:3,23 74:20 75:4 76:4 79:4 80:23 100:2 surrounding 93:4 suspect 96:7 sustain 39:6 73:19 73:22 94:6 swear 32:2 56:22 71:20 78:9 sworn 31:25 32:2 56:20,22 71:19,20 78:6,7,9 104:6 symmetry 7:22 31:16 system 14:18 19:21,24,24 25:21 26:8 39:20 40:5 45:22,25 48:21 49:2 50:19 66:1 66:17 67:10 82:18 99:12</p> <hr/> <p style="text-align: center;">t</p> <hr/> <p>t 78:20,20 table 83:23 take 14:9 16:4 17:1 35:21 44:2 48:4,12 51:19 59:6 60:1 68:7 70:4,5 71:2,10,11 75:11 99:20 103:6 103:8</p>
--	---	--	---

<p>taken 7:2 104:7,11 takes 51:8 56:17 56:18 talk 18:1,3,15 26:2 talked 24:16 41:9 41:23 51:15 72:23 talking 25:11 36:23 85:22 tariff 12:4 15:6,20 15:22,22 16:1,9,14 16:17 22:16 24:3 24:3,7,9 29:15,15 29:20 30:1 36:17 37:1 42:11 51:1,9 51:11,11,15,17 52:12 66:10 67:12 87:15,17,19,20,22 87:23 88:3,5,15,18 88:20,21 92:1 93:18,21 97:10 tariffs 7:12 12:22 13:8 15:8 20:16 20:18 21:5,13 31:7 51:12 52:8,8 52:25 53:6 55:2 62:13 tatiana 31:23 32:16,18,23 taxes 67:23 taxing 21:15 100:8 taxpayers 61:21 teachers 61:20,24 technical 18:11 telemetry 21:10 33:12,16,20 49:9 64:14 tell 51:8 103:4,4 ten 11:22 14:7 74:21 84:11 103:9 103:10</p>	<p>tend 82:25 tender 34:14 60:4 74:7 tenders 80:14 tenths 21:8 term 46:14 47:17 terms 42:16 69:19 81:18 93:17 testified 36:8 73:9 84:16 86:10,15,17 88:18 90:6 testifies 13:19 testify 63:23 testimonies 27:15 30:9 59:19 79:11 testimony 2:3,5,10 2:12 11:21 13:8 14:6 26:11 27:17 28:8,11 32:19,19 32:23 33:6,8 39:7 39:13 43:19 45:4 45:16 47:21 49:16 49:19 54:20,21 57:22 58:2,3,10,14 58:21,23 60:18 62:11 64:2 65:22 66:6 69:15 70:6 72:9,13 73:18,21 73:24 74:21 75:1 76:17,21 79:3,4,13 79:25 80:21,23 81:1 83:24 85:11 86:8,12,18 87:3 90:15,23 93:4 96:23 98:19 104:5 104:6 thank 8:2,14,21 9:1,11,17 10:11,12 10:14 16:25 17:4 17:8,9,14 26:24 27:4,5 30:12,13,16</p>	<p>31:12,14,15 32:7 32:11 34:16,22,24 34:25 35:1 44:14 44:21 51:21,24,25 52:1,3 53:14 56:4 56:6,6 57:1,4 60:6 64:1 66:21,23 69:25 70:2,13 71:25 72:2,19 74:11,25 76:3,8 77:2,19 78:2,3,13 78:17,21 80:13 81:3,9 84:3 85:2,3 96:10,13 98:15 99:23 100:4,22 101:1,3,4,6,14 102:15,16,18,21 102:22 thanks 44:12 53:12 thereto 104:14 therm 21:8 therms 21:12 thing 20:5 things 23:13 85:13 think 17:22 19:2 20:3 21:15 23:11 23:21 24:3,11,23 25:5,17 26:8,11,12 35:7 39:3,11,23 40:23 41:6,6 44:11 46:7 47:14 50:5 51:20 52:18 53:19 56:11 57:25 59:7 63:18 65:15 66:19 70:23 72:24 73:5,23 74:9 75:11,20 76:8 81:14 82:21 85:1 85:8,16 86:7 87:16 88:25 90:7</p>	<p>94:4,13 97:23 100:23 101:16,21 third 12:13 thought 17:21 90:2 91:17 thousand 21:12 33:19 three 12:1,24 15:3 16:21 34:4 45:3,5 88:13 96:19 tier 12:2 tiered 69:7 tim 6:13 9:13 time 7:20 12:13,17 14:9 15:22 16:4 17:12,25 18:14,23 19:4 25:16 26:9 29:15 30:4 40:24 44:12,19 49:12,23 51:8,19 53:1 59:6 59:15,16 63:12 66:6 70:3,4 73:8 74:4,6 75:11 77:15 85:9 87:15 88:6,13 91:19 92:6,9,12 93:8 times 42:21 43:7 43:12,18 44:7 timing 18:17 title 78:22,24 today 9:7 11:8,11 16:25 25:22 26:5 27:16 30:10 35:8 37:1,4 43:3 65:12 66:14 80:6 92:11 99:21 tomorrow 99:16 tools 61:25 top 45:5 topic 30:11</p>
--	---	--	--

<p>total 48:3 61:7 65:8 trade 19:6 transcribed 7:5 transport 20:23 transportation 11:12,14,25 12:2 12:10,22 13:8,11 13:16 15:1,7,8,11 15:13,17 16:1 20:15,21,24 23:20 28:6,18 29:19,20 30:1 31:7 33:13 38:1 40:4,19 46:22 48:1 50:6 50:16,20 51:6,12 51:14 55:7,9 60:22 61:15 62:4 62:8 63:10 64:7 64:19 73:3 75:20 82:2,12,16 89:6 93:9 94:10,25 95:2,17 96:25 97:21 99:13 100:21 102:6,8 transported 19:20 transporter 69:22 trapped 18:8 treated 21:18 53:20 treatise 23:19 treatment 21:20 trial 26:21 tricky 41:7 tried 63:13 true 34:10 64:18 71:1 80:10 truth 32:3,4,4 56:23,23,24 71:21 71:22,22 78:10,10 78:11</p>	<p>try 17:12 18:15 30:5 32:8 trying 47:9 51:16 65:9 66:16 77:18 90:17,18 turn 18:21 65:21 83:10 twelve 39:10,14 twice 74:15 two 9:8 12:3,21 23:12 33:7 50:1 58:9 75:18 76:13 83:11 84:4 95:19 96:20 101:8 102:4 type 16:10 18:13 92:23 types 13:20 96:8 typewriting 7:6 104:8 typical 11:25 typically 19:20 66:1 96:9</p>	<p>understood 63:3 unfair 90:14 unintentional 46:8 unintentionally 47:11 unique 19:1 20:6,9 21:22 24:6,6 29:21 uniquely 57:19 unmute 17:12,13 unreasonable 23:5 unresolved 25:13 unsure 71:6 unusual 67:24 updated 93:8,13 updates 15:24 16:3 51:18 ups 56:12 upstream 29:9 50:8 92:22 95:11 usage 49:7 use 23:24 35:11 45:15,23 47:6,10 48:21 97:1 uses 21:12,15 50:8 utilities 8:11 15:15 15:21 19:22 42:12 42:17,22,24 45:17 73:7 85:18,23 utility 19:25 35:25 39:20 63:13 64:23 69:22 73:6 82:18 82:19,21 91:4,7 95:6 97:23 utilize 19:9,23 45:18 utilizing 45:17</p>	<p>veritext 6:23 versions 80:22 visit 18:14 visiting 81:15 vol 1:5 volume 39:20,21 40:1 48:7,10,10,15 48:23 49:1 volumeric 23:2 volumes 65:14 vortex 69:4</p>
	u		w
	<p>uh 36:12 93:19 ultimate 12:8 ultimately 65:23 unchanged 13:17 28:4 underlying 69:18 understand 11:5 37:3 49:12,14 70:22 92:2 94:19 understandable 23:25 understanding 12:17 84:23 86:18 95:7 97:8 100:12 100:14,17 101:18 understands 31:3 87:2</p>	<p>v</p> <p>various 59:19 73:2 verify 74:13</p>	<p>waiting 25:24 waived 74:9 want 9:24 10:8 17:12 40:15 50:13 51:4 68:15 86:8 86:13,15 87:1 103:4 wanted 18:14 71:14 wants 56:16 water 18:5 way 18:7 21:22 24:7 61:4 63:23 64:24,24 66:20 67:12 68:17 87:3 91:7 99:9 we've 23:15 35:7 38:12 41:9 58:1 69:13,14 70:19,20 72:23 77:3 85:8 92:11 weather 64:15,20 68:3 webex 5:7 7:19 31:21 32:10 70:8 weekly 25:6 what'd 92:6 when's 92:9</p>

<p>williams 1:16 3:7 5:8 6:6,23 7:3 8:23,23 9:1 30:15 30:16,19,20 31:12 34:24 52:1 101:1 104:2 willing 11:16 26:3 29:24 winter 12:11 46:10,17 48:16 wish 79:10 103:1 wishing 10:13 withdraw 12:13 12:16 34:3 48:22 withdrawal 47:9 withdrawals 82:21 withdrawing 46:19 withdrawn 88:13 witness 11:20 13:18 14:6 26:15 27:13 28:10 30:7 31:18,19 32:6 34:15 39:13 44:16 56:7,8,25 67:3 70:23,25 71:24 73:7 74:14 78:12 88:24 90:17 102:22 104:4,6 witnesses 9:9 13:9 23:14,21,22,22 26:15 30:23 41:17 wonder 42:3 word 19:22 23:24 69:13,14 work 11:16 63:13 87:21 88:21 90:11 worked 18:25 35:15 88:15 89:8 91:3 94:16</p>	<p>working 11:15 87:10 works 84:21 wrong 68:18 69:11</p> <hr/> <p style="text-align: center;">y</p> <hr/> <p>yeah 36:23 39:19 40:12,22 43:2,15 43:18 52:18 68:2 82:10 87:7 88:19 88:22 89:12 90:9 90:16,17 91:23 92:8 95:3 96:6 year 11:25 12:11 12:11 20:3,17 21:9,13,25 22:21 35:22 40:22 41:1 46:5 47:15 48:3 59:14 72:22 76:1 84:17 yearly 23:6 years 11:13 13:18 13:22 16:21 17:24 23:15 25:12 38:25 57:15 61:17 62:9 63:10 82:2 85:9 88:14 yep 93:3 young 50:2,7 yuri 48:16 69:4</p>
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