

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3 TRANSCRIPT OF PROCEEDINGS
4 EVIDENTIARY HEARING
5 SEPTEMBER 8, 2014
6 JEFFERSON CITY, MISSOURI 65102
7 VOLUME 11
8
9 IN THE MATTER OF LIBERTY UTILITIES)
10 (MIDSTATES NATURAL GAS) CORP. D/B/A)
11 LIBERTY UTILITIES' TARIFF REVISIONS) Case No.
12 DESIGNED TO IMPLEMENT A GENERAL) GR-2014-0152
13 RATE INCREASE FOR NATURAL GAS)
14 SERVICE IN THE MISSOURI SERVICE)
15 AREAS OF THE COMPANY)
16
17 RONALD D. PRIDGIN, Presiding
18 DEPUTY CHIEF REGULATORY LAW JUDGE
19 ROBERT S. KENNEY, Chairman
20 SCOTT T. RUPP
21 STEPHEN M. STOLL
22 WILLIAM. P. KENNEY
23 DANIEL Y. HALL
24 COMMISSIONERS
25 REPORTED BY SARAH POKORSKI, CCR. 745

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PROCEEDINGS

(EXHIBITS 1 THROUGH 49 MARKED FOR THE RECORD.)

JUDGE PRIDGIN: Good morning. We are on the record. This is the hearing in Case Number GR-2014-0152 in the matter of Liberty Utilities (Midstates Natural Gas) Corporation doing business as Liberty Utilities' Tariff Revision Designed To Implement A General Rate Increase For Natural Gas Service In The Missouri Service Areas of the Company. I am Ron Pridgin, and I'm the regulatory law judge assigned to preside over this hearing. We are beginning on September 8, 2014. We're in the Governor Office Building in Jefferson City, Missouri. The time is approximately 9:13 a.m. If I could get oral entries from counsel, please, beginning with the Company.

MR. FISCHER: Thank you, Judge. Let the record reflect the appearance of Larry W. Dority and James M. Fischer on behalf of the Company. Our contact information has been submitted to the court reporter in written form.

JUDGE PRIDGIN: Mr. Fischer, thank you. Mr. Dority, thank you. On behalf of the Staff of the Commission, please.

MR. KEEVIL: Yes, Judge. Appearing on

1 behalf of the Staff of the Missouri Public Service
2 Commission, Kevin Thompson, John Borgmeyer, Jeff
3 Keevil, Akayla Jones, Alexander Antal and Whitney
4 Hampton. And out contact information has also been
5 given to the court reporter in a written-entry form,
6 Judge.

7 JUDGE PRIDGIN: Mr. Keevil, thank you. On
8 behalf of the Office of the Public Counsel, please.

9 MR. POSTON: Thank you. Marc Poston,
10 appearing for the Office of the Public Counsel.

11 JUDGE PRIDGIN: Mr. Poston, thank you. On
12 behalf of Noranda Aluminum, please.

13 MR. DOWNEY: Thank you, Judge. Edward
14 Downey and Diana Vuylsteke, Bryan Cave, LLP, on behalf
15 of Noranda Aluminum, Inc.

16 JUDGE PRIDGIN: Mr. Downey, thank you. On
17 behalf of the Missouri Division of Energy, please.

18 MR. KNEE: On behalf of the Department of
19 Economic Development, Division of Energy, Jeremy Knee.
20 And the court reporter has contact information.

21 JUDGE PRIDGIN: Mr. Knee, thank you. Have
22 I overlooked anyone? All right. Just one small
23 housekeeping matter before we go on to opening or see
24 if counsel has anything else. I would ask everyone in
25 the hearing room if you don't -- if you have an

1 electronic device and don't turn it off, please at
2 least mute it so it doesn't interrupt during -- during
3 the hearing. And with that, I will inquire of counsel
4 if we have anything else that needs to be covered
5 before we proceed to opening statements.

6 MR. POSTON: Judge, I have one question. I
7 notice there's a number of PowerPoint presentations
8 this morning. With the Commissioners being off-site,
9 will the PowerPoints be what they see on their screen?

10 JUDGE PRIDGIN: Yes.

11 MR. POSTON: Okay.

12 JUDGE PRIDGIN: I will switch whenever we
13 go to PowerPoints, and I will switch over so that the
14 audience viewing online can see the PowerPoints.

15 MR. POSTON: Okay. Thank you.

16 JUDGE PRIDGIN: And if by chance, anyone
17 has a technological problem, please alert me, and I
18 will have to ask IT to assist, because I'm too busy
19 ruining my own technology up here to help you. I'm
20 not unwilling, I'm just unable.

21 MR. FISCHER: Judge, given the nature of
22 the special contracts issue, I'm going to have to go
23 in camera in the opening. I hope the Commissioners
24 off-site will still be able to see.

25 JUDGE PRIDGIN: They will not. I will have

1 to go in camera.

2 MR. FISCHER: Okay. So --

3 JUDGE PRIDGIN: And that will show as in
4 camera on -- they will be able to hear you --

5 MR. FISCHER: All right.

6 JUDGE PRIDGIN: -- but they will have to
7 go -- well, I have some -- Commissioner Hall is on the
8 phone. He'll be able to hear you. I don't -- I think
9 the Chairman is online. I don't -- I don't think he
10 will be able to hear, since we're --

11 CHAIRMAN KENNEY: I'm right -- Judge, can
12 you see me?

13 JUDGE PRIDGIN: I can. Yes, sir.

14 CHAIRMAN KENNEY: Yeah. I've got a
15 point-to-point connection.

16 JUDGE PRIDGIN: Okay.

17 CHAIRMAN KENNEY: So this isn't -- this
18 isn't with streaming, so I should be able to still see
19 everything.

20 MR. FISCHER: Fantastic. Thank you.

21 JUDGE PRIDGIN: You're welcome. All right.
22 Anything else before we go to opening? All right.
23 Start off will be Liberty. Mr. Dority or Mr. Fisher?
24 Mr. Fisher. And I would -- for many reasons, I would
25 ask counsel wherever you are to please speak clearly

1 into the microphone. We have people listening online
2 and on the phone. And so podium or table is fine with
3 me, but please into the microphone. And Mr. Fischer,
4 when you are ready.

5 OPENING STATEMENT BY MR. FISCHER:

6 MR. FISCHER: Thank you, Judge, very much.
7 Good morning. My name is Jim Fischer. I'll be
8 representing the Company, along with my partner, Larry
9 Dority, today. And the Company is Liberty Utilities,
10 Midstates Natural Gas Corp. doing business as Liberty
11 Utilities. I'll generally refer to the Company as
12 Liberty Utilities today. Commissioner Hall, can you
13 hear me okay?

14 COMMISSIONER HALL: Yes, I can.

15 MR. FISCHER: Okay. Very good. Thank you.

16 COMMISSIONER HALL: Thank you.

17 MR. FISCHER: This is the first rate case
18 for Liberty Utilities since the Commission authorized
19 Liberty to purchase the Missouri assets of ATMOS
20 Energy Corporation in Case Number GM-2012-0037. Since
21 beginning operations in August of 2012, Liberty has
22 effectively stepped into the shoes of ATMOS following
23 the terms of the stipulation and agreement in that
24 acquisition case. And this is an important point,
25 Judge. I -- as -- I'll discuss some of the issues in

1 this case. There were several instances where the
2 Company has followed the directives to step into the
3 shoes of ATMOS and follow the previous stipulations
4 and agreements and policies of ATMOS. But now,
5 apparently are being penalized by the Staff for doing
6 so. The Company has engaged in the business of
7 distributing and selling natural gas in the states of
8 Missouri, Illinois and Iowa, serving approximately
9 85,000 customers. About 65 percent of those customers
10 are Missouri customers. Liberty Utilities' ultimate
11 corporate parent, Algonquin Power & Utilities Corp.,
12 is a Canadian corporation whose stock is traded on the
13 Toronto Stock Exchange. Algonquin has two basic
14 business units. The first is a power generation unit
15 that owns and has interest in renewable energy
16 facilities and thermal energy facilities representing
17 about 1100 megawatts of capacity. The second unit is
18 a utility services unit that owns and operates 30
19 regulated utilities located in ten states that provide
20 retail water, sewer, electric and natural gas service.

21 I'm going to go to the PowerPoint to give
22 you just a rate case overview. On -- on February 6,
23 2014, Liberty filed revised tariff sheets which set
24 forth revised rate schedules and -- and charges for
25 all of Liberty's service areas in the state of

1 Missouri. It's designed to produce an increase of
2 approximately \$7.6 million dollars. Approximately
3 \$1.3 million of that is associated with the company's
4 infrastructure system replacement surcharge, or what
5 I'll refer to as the ISRS, which has been previously
6 approved by the Commission. The ISRS will be reset to
7 zero as a part of this case. Therefore, the Company
8 is really requesting \$6.3 million dollars of new
9 revenues in this case. And that represents about a
10 13-percent increase above test year revenues.

11 Now, the timing of the rate case was due,
12 in part, to the fact that Liberty agreed to a rate
13 case moratorium in the acquisition case. That rate
14 case moratorium ended at the end of last year,
15 December 31st. In addition, in order to continue its
16 ISRS, the Company needed to file a general rate case
17 no later than the middle part of February, 2014. So
18 as a result, there was a short window of time between
19 the time the rate case moratorium ended and the time
20 the ISRS statutes required the Company to file another
21 general rate case.

22 As David Swain, the state president of
23 Liberty, explains in his testimony, the Company is
24 making substantial investments in furthering Liberty
25 Utilities' local approach to management, service and

1 support. As the Company explained to the Commission
2 in the acquisition case, Liberty's philosophy is to
3 emphasize local management and local customer service.
4 Liberty Utilities has constructed significant new
5 facilities that will facilitate the company's local
6 emphasis in providing more responsive service to our
7 customers. Such investments include accounting and
8 billing software and the new regional headquarters in
9 Jackson, Missouri, as well as continued investments in
10 distribution facilities. Furthermore, the last rate
11 case for Liberty's predecessor Company included an
12 update period for investments and expenses that ended
13 on February 28, 2010, over four years ago.

14 While Liberty maintains a strong focus on
15 cost control, it's not immune to increasing operating
16 and maintenance expenses, which need to be reflected
17 in their rates if the Company is to be given a
18 reasonable opportunity to earn a reasonable rate of
19 return on investment. Like other gas companies,
20 though, Liberty has experienced declining revenues as
21 the number of customers has declined, and existing
22 customers have used less gas on a per capita basis, as
23 they weatherize their homes or use more efficient
24 heating equipment.

25 ATMOS' last general rate proceeding prior

1 to the sale to Liberty was 2010. So there's not been
2 a general rate increase for Liberty's customers for
3 about four years. Despite the fact that Liberty's
4 rate base is nearly \$25 million dollars more than the
5 ATMOS rate base included in the last general rate
6 case, the Staff initially filed a proposal for an
7 overall rate reduction for the Company in this case.
8 After updating its case, correcting some errors and
9 settling some smaller issues, the Staff is now
10 recommending an overall total Company increase of only
11 \$2865 in base rates, or essentially, no increase.
12 When -- when you consider the reset of the ISRS to
13 zero, then Staff's recommendation is really a \$1.3
14 million dollar decrease from current rate levels.

15 Liberty, the Staff and Public Counsel
16 filed a partial stipulation and agreement on August
17 the 12th of this year which resolved a long list of
18 accounting issues. The Commission approved that
19 stipulation on August 20th. Liberty has also
20 withdrawn its proposal related to main extension
21 tariffs and the compressed natural gas tariff.

22 The parties are also recommending that
23 the cost allocation manual issues be reviewed in a
24 separate working group.

25 According to the latest reconciliation,

1 on a district-by-district basis, the Staff is
2 proposing a rate reduction for the Southeast Missouri
3 District -- or what I refer to as SEMO -- of
4 \$1,063,063. That's a rate reduction. The Northeast
5 Missouri District -- or NEMO -- would have an increase
6 of \$941,936. And the Western Missouri District -- or
7 WEMO -- would receive an increase of \$123,846. Now,
8 intuitively, it makes little sense to have an overall
9 rate reduction -- or maybe only a minimal increase in
10 rates -- after the rate base has grown by more than
11 \$25,000,000 since the last ATMOS rate case. While
12 Staff has not alleged any imprudence in making these
13 investments, it is nevertheless recommending virtually
14 no increase in rates to reflect these substantial
15 investments.

16 As I mentioned, this is Liberty's first
17 Missouri rate case, and it will establish regulatory
18 policies for this company's operations in Missouri.
19 It will also signal to the company's management the
20 type of regulatory environment it should expect in
21 Missouri. It would be very unfortunate if the
22 Commission adopted the approaches being recommended by
23 Staff and Public Counsel in this case and provided a
24 major disincentive to the Company to make substantial
25 investments in Missouri.

1 Now, to understand how the Staff and
2 Public Counsel could reach their overall
3 recommendations, it's important for the Commission to
4 understand just a handful of adjustments that are
5 largely driving this result. As I'll explain shortly,
6 the special contracts imputation of revenues
7 adjustment, the Staff's ROE recommendation and its
8 capital structure recommendation and its
9 recommendation on depreciation rates for computers and
10 software largely explain how the Staff could reach
11 this rather surprising result.

12 I'd like to talk, first, about the
13 special contract revenue imputation adjustments, which
14 involve customer-specific contracts and
15 customer-specific information, so therefore, Judge,
16 I'd request that we go in camera for this portion of
17 the opening statement.

18 JUDGE PRIDGIN: If you'll bear with me.
19 Excuse me. If you'll bear with me just a moment.

20 (REPORTER'S NOTE: AT THIS POINT, AN IN-CAMERA SESSION
21 WAS HELD, WHICH IS CONTAINED IN VOLUME 12, PAGES 81
22 THROUGH 103 OF THE TRANSCRIPT.)

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1 JUDGE PRIDGIN: Mr. Fischer, thank you. If
2 you'll bear with me just a moment. Mr. Fischer, I'm
3 going to let you continue. I'm having trouble. We'll
4 be able to -- people will be able to hear you, so you
5 can go ahead, and I'm going to -- I'm going to work on
6 this and try to get the PowerPoint back up.

7 MR. FISCHER: Okay. I apologize for the
8 length of that in camera session, but --

9 There is also a \$1.1 million dollar issue
10 in this case related to two depreciation rates for the
11 corporate computer hardware and software. Liberty is
12 in agreement with Staff's other proposed depreciation
13 rates, but there are exceptions related to computer
14 hardware and software. The Staff position would
15 depreciate the corporate computer hardware and
16 software over 21 years. That's a depreciation rate
17 that's being proposed of 4.75 percent by Staff. The
18 Company believes that it's unrealistic to think that
19 the Company's computer equipment and software will
20 last for 21 years, given the pace of technological
21 obsolescence for computers today. Now, I just ask
22 you, Judge and Commissioners, to think about whether
23 you're expecting to use your same iPad, your computer
24 or your iPhone in the year 2035, 21 years from now. I
25 certainly don't expect to be using my same computer or

1 iPad in my retirement home in 21 years. Of course,
2 who knows what the computer technology will even look
3 like by that time. In 1993, whenever I look back 21
4 years, I didn't even have a cell phone. And I think
5 my office computer only had 40 megs of memory. By
6 using such a long life, Staff is able, though, to
7 lower its revenue requirement by over a million
8 dollars. The Company position is that it ought to be
9 a seven-year life for corporate system hardware,
10 for -- and software, and implement a life of 5.3 years
11 for PC hardware and software. Those lives equate to
12 depreciation rates of 14.29 percent and 18.98 percent
13 respectively. These depreciation rates are consistent
14 with rates used by ATMOS in the past, and provide a
15 realistic useful life for these systems. Apparently,
16 though, Staff's concern is that previous orders of the
17 Commission did not specifically order any specific
18 depreciation rates for these sub-accounts. Yet the
19 competent and substantial evidence will show that
20 ATMOS, Liberty, and even the Staff have used the
21 depreciation rates for these corporate accounts that
22 the Company is proposing. And they -- they -- we used
23 those in the 2010 ATMOS rate case. We tried to
24 investigate whether Staff also used these depreciation
25 rates in the 2006 ATMOS rate case. But Staff has

1 objected to providing us with those staff work papers.
2 Nevertheless, we're confident after our investigations
3 that they used the same rates in 2006. Staff
4 acknowledged in Mr. Robinnette's surrebuttal testimony
5 that they used the rates in 2010. We reviewed Staff's
6 cost of service report from 2010, and it indicated
7 Staff annualized depreciation -- depreciation expense
8 by applying currently authorized depreciation rates.
9 This implies to us that Staff used the same rates in
10 2010 as 2006. Furthermore, while we were denied
11 access to Staff's 2006 work papers, we did have ATMOS'
12 work papers, which indicated that ATMOS used these
13 rates in the 2006 rate case. A review of all of the
14 relevant testimony from Staff and the ATMOS witnesses
15 did not indicate any disagreement regarding these
16 rates, providing further evidence that Staff used them
17 also in 2006. We believe, though, more importantly,
18 that these corporate depreciation rates should
19 continue to be utilized until a comprehensive
20 depreciation study can -- can be completed in
21 Liberty's next rate case.

22 Okay. I'm sorry it's gone on long. I'm
23 just about done. But I want to give the Commission a
24 big-picture view of the issues. And I'd like to have
25 an exhibit marked to do that so you can see it a

1 little better.

2 JUDGE PRIDGIN: And Mr. Fischer, if you
3 have not -- have not previously marked this, I would
4 show we'd be down to Exhibit 50.

5 MR. FISCHER: Yes. It's not been
6 previously marked.

7 JUDGE PRIDGIN: All right. This will be
8 Exhibit 50.

9 (EXHIBIT 50 MARKED FOR THE RECORD.)

10 MR. FISCHER: 15?

11 JUDGE PRIDGIN: Five zero. 50.

12 MR. FISCHER: 50. I'm sorry. Good thing I
13 gave you an exhibit. Can't see that very well on the
14 screen.

15 As I mentioned earlier, the -- the
16 company's original request in the -- in the tariff
17 filing was for a \$7.6 million dollar rate increase,
18 with \$1.3 million associated with the ISRS. After
19 settling about \$1.3 million dollars worth of issues
20 and adjustments, Liberty's current case now supports a
21 \$6,286,063 increase. Much of the increase is, of
22 course, due to the company's investment in its new
23 regional office, the new billing and accounting
24 systems, and its distribution system. According to
25 the reconciliation, Staff's updated revenue

1 requirement is \$2865, on a total company basis. As I
2 mentioned, the company's case is -- now supports a
3 \$6.3 million dollar increase, which utilizes the ROE
4 of 10 and a half percent. Staff's case is
5 approximately \$2800, or virtually no increase at all.
6 And there are, as you can see from the exhibit, \$6.3
7 million dollars worth of differences in the issues
8 between Staff and Company. The largest are cost of
9 capital, \$2.4 million, imputed revenues, \$2.8,
10 depreciation of \$1.1 million. So there's total
11 differences of \$6.3 million dollars. Now, if the --
12 if the Commission decides to split the difference on
13 the cost of capital issues, then you'd add about \$1.2
14 million dollars to the Staff's case. If the
15 Commission adopts the previously approved position on
16 the Noranda and the General Mills contracts, then it
17 would add another \$1.9 million to the revenue
18 requirement. If the Commission chooses to also
19 recognize that the Source Gas tariff is an interstate
20 tariff outside the jurisdiction of the Commission, or
21 otherwise declines to adopt Staff's new revenue
22 requirement imputation adjustment, then the total
23 increase would go up to four million dollars before we
24 consider depreciation. If the Commission continues to
25 approve depreciation rates for the computer hardware

1 and software to recognize the technological
2 obsolescence of computer equipment and software, then
3 you add another \$1.1 million dollars. So assuming
4 that the Commission splits the difference in some way
5 on ROE and capital structure and generally follows its
6 past practices on other major issues, then the total
7 increase would be approximately \$5.1 million dollars
8 on a total company basis. If you want to look at it
9 on a district-by-district basis, the increase would
10 be: for SEMO, \$2.7 million; WEMO would be \$300,000;
11 and NEMO would be \$2.1; with a total of \$5.1, assuming
12 those assumptions that I just discussed.

13 Judge, we've also filed a stipulation
14 among the Staff -- or excuse me -- among the Public
15 Counsel and Noranda and the Department of Energy on
16 four issues, including rate design. We support that
17 stipulation and agreement, and if we need to discuss
18 that further after we hear from Staff, we'll be happy
19 to do that. But I think -- I think with regard to all
20 of those issues, those should be -- that's our
21 position, and we would support that.

22 I'm sorry I've gone on so long, but I'm
23 happy to answer your questions, or anyone from
24 St. Louis or on the phone.

25 JUDGE PRIDGIN: Mr. Fischer, thank you. I

1 don't have any questions. Mr. Chairman?

2 CHAIRMAN KENNEY: Good morning.

3 Mr. Fischer, thank you. And no need to apologize,
4 that was very helpful. Just a couple of quick
5 questions regarding the special -- can you hear me
6 okay, first of all?

7 MR. FISCHER: I can, thank you. And I can
8 see you on the screen, too.

9 CHAIRMAN KENNEY: Good. Good. The special
10 contracts revenue imputation with respect to Noranda
11 and General Mills, as I understand Staff's position,
12 it's essentially that those -- the terms of those
13 contracts expire upon the conclusion of this rate
14 case. Right?

15 MR. FISCHER: The -- the -- the original
16 ATMOS stipulation said they should do that. And
17 Noranda, they've actually entered into a new contract
18 at the same rates. Liberty and Noranda both entered
19 into that. And that would -- those are -- would go
20 forward.

21 CHAIRMAN KENNEY: General Mills has not
22 entered into any such --

23 MR. FISCHER: No. General Mills was a
24 contract that was extended year by year with a
25 termination clause in it. And that is still the --

1 the -- or the contract that was existing under ATMOS.

2 So it is a year-by-year extension that has been

3 extended.

4 CHAIRMAN KENNEY: So is Liberty's
5 justification for continuing those existing
6 contracts -- contracts essentially that they were in
7 place with ATMOS and they should therefore continue
8 forward because that's the expectation of the parties?

9 MR. FISCHER: We stepped into the shoes
10 of -- of ATMOS, and we were required to extend those
11 contracts at the existing rates, which we think were
12 reasonable. The rates that are -- are being suggested
13 for both Noranda and General Mills are the same rates
14 that were in the previous contracts that were
15 considered reasonable at that time. Yes.

16 CHAIRMAN KENNEY: But they were
17 contemplated that they would expire upon the filing or
18 conclusion of this rate case?

19 MR. FISCHER: Yeah. I suppose --

20 CHAIRMAN KENNEY: Is there an additional --

21 MR. FISCHER: I'm sorry?

22 CHAIRMAN KENNEY: Go ahead. No. Go ahead.

23 MR. FISCHER: I was going to say yeah, I
24 suppose if we hadn't filed the rate case, they would
25 still be in effect.

1 CHAIRMAN KENNEY: Is there any additional
2 independent justification for continuing at those
3 rates?

4 MR. FISCHER: Yes, sir. There certainly
5 is. If you look at General Mills being 1400 feet away
6 from the interstate pipeline, it's not hard to imagine
7 that if you increased their rates four times, that
8 they would look to -- to bypass that -- that system.
9 I don't know, but that's -- that seems like a
10 reasonable conclusion from the evidence. Noranda also
11 has witness Maurice Brubaker that has testified
12 regarding what he believes the cost of the
13 interruptible service is. Our rate that we are
14 charging under the existing contract is substantially
15 above that cost. You can probably ask him about that
16 cost justification. But back in the old days whenever
17 ATMOS entered into this contract, they were concerned
18 about either alternative uses of fuel or perhaps even
19 a bypass by Noranda. And I would think if you
20 increased their rates six or seven hundred percent,
21 they would certainly look at alternatives. We believe
22 that evidence is -- is in the record and would justify
23 continuation of -- of the existing contract rate.

24 CHAIRMAN KENNEY: All right. Thank you
25 very much. Those are all the questions I have for

1 now.

2 MR. FISCHER: Thank you very much.

3 JUDGE PRIDGIN: Mr. Chairman, thank you.

4 Commissioner Hall, any questions?

5 COMMISSIONER HALL: Yes. Can everyone hear
6 me?

7 MR. FISCHER: Yes. Thank you.

8 COMMISSIONER HALL: I just have, I think, a
9 couple of quick questions along the same line that the
10 Chairman was -- was on. And that is it's my
11 understanding that -- that Staff wants a cost of
12 service study done on the special contracts. Is that
13 correct?

14 MR. FISCHER: That's my understanding, that
15 that -- they believe a cost of service study should be
16 completed. And we are committed, in the next rate
17 case, to do a class cost of service study.

18 COMMISSIONER HALL: It's also my
19 understanding that -- that part of the reason why the
20 Staff was unable to view a cost of service report for
21 this rate case is there was certain information that
22 they were unable to get from the Company. Is that
23 correct?

24 MR. FISCHER: I don't believe that's
25 correct. You can ask Staff. They -- there was some

1 issues on some other issues where there were some data
2 issues. But in the original acquisition of Liberty
3 and ATMOS, there was a provision that said if the
4 Company didn't provide a class cost of service study,
5 then it would propose an across-the-board equal
6 percentage increase. In this case, given the short
7 time period and the window to get one done here, the
8 company decided not to do a class cost of service
9 study and proposed an equal percentage increase across
10 the board. It's not my understanding, though, that
11 that in any way impeded the Staff from doing a -- an
12 analysis of class cost of service or anything else,
13 but -- but we will be doing one in the next rate case,
14 and that -- I think everybody's committed to taking a
15 look at these contracts at that time.

16 COMMISSIONER HALL: Okay. It's also my
17 understanding that it's the Company's position that
18 if -- if the Commission were to, for lack of a better
19 word, not honor the -- the contracts with Noranda and
20 General Mills, that those companies might consider
21 bypassing Liberty and getting -- getting their natural
22 gas from a different company. Is that correct?

23 MR. FISCHER: That's one of the concerns.
24 There's also, obviously, a fuel-switching concern, or
25 reducing your -- your natural gas consumption if

1 you've got that kind of a rate increase.

2 COMMISSIONER HALL: Right. Would -- and
3 maybe these are questions for Staff or Noranda, but
4 would -- would -- would Noranda and General Mills be
5 able to acquire product from another company without
6 first coming to the Commission and -- and getting the
7 authority to do so?

8 MR. FISCHER: It's my understanding that
9 you can enter -- you can bypass and connect to an
10 interstate pipeline without authority from the
11 Missouri Commission.

12 COMMISSIONER HALL: Okay. I'll -- I'll --
13 I'll follow up that question with -- with Staff as
14 well, but I appreciate your response to that. I have
15 no further questions.

16 JUDGE PRIDGIN: Commissioner Hall, thank
17 you. Mr. Fischer, thank you very much. And we'll
18 hear from Staff next, I believe. Mr. Keevil, if
19 you're ready. And I will do my best to try to do this
20 as -- as natural place as I can, but I will need to
21 change something on the phone here at roughly 10:30 so
22 another Commissioner can join us. And -- and
23 Mr. Keevil, I will do my best not to interrupt you.
24 It depends on how long your opening goes, but I'll do
25 my best not to interrupt, because that's going to take

1 a couple of minutes.

2 MR. KEEVIL: Okay. I guess I have a
3 question before I get started, Judge. Mr. Fischer
4 went in camera for quite a while, but then when he was
5 discussing Exhibit 50, I believe we were public; were
6 we not? And I believe he -- he quoted the amounts of
7 the special contracts and the terms of the special
8 contracts in discussing Exhibit 50. So I -- the
9 reason I point this out is I was going to go in camera
10 also when discussing the special contracts. But based
11 on his discussion of Exhibit 50 --

12 MR. FISCHER: Judge, I -- I tried to avoid
13 getting specific with each contract, and talked only
14 the aggregate and the effect on revenue requirement
15 rather than anything related to the specific three
16 contracts. So I think -- I think the aggregate
17 information wouldn't be considered confidential.

18 JUDGE PRIDGIN: Okay.

19 MR. KEEVIL: Okay. All right. I'll try to
20 do as much of this public version as possible, Judge.
21 Take that down, if you would. I don't know how to do
22 that.

23 MR. FISCHER: I can help you, I think.
24 Will that be all right to just get that off?

25 MR. KEEVIL: Yeah. That's fine.

1 OPENING STATEMENT BY MR. KEEVIL:

2 MR. KEEVIL: I did have a few things I
3 would like to say in response to what Mr. Fischer
4 said. But since most of that was highly confidential,
5 I'll wait until I go in the highly confidential
6 portion, Judge, if that's okay.

7 JUDGE PRIDGIN: Certainly.

8 MR. KEEVIL: As you know, my name's Jeff
9 Keevil. I'm representing the Staff, along with
10 several other members of Staff counsel's office in
11 this case. If you look at the list of issues which
12 was filed in the case, you'll see that there are seven
13 what I'll call primary issues, each of which has -- or
14 not -- maybe not each, but many of which have two or
15 three, four sub-parts underneath it. Of these seven,
16 some involve what Staff would characterize as policy
17 matters which Staff believes should be decided by the
18 Commission rather than settled and effectively taken
19 away from the Commission's determination. Of the
20 seven, there are three -- and Mr. Fischer spent most
21 of his opening speaking about these -- three issues
22 which represent most, if not all of the revenue
23 requirement difference between Liberty and the Staff.
24 And these three are cost of capital, depreciation and
25 what I -- what -- what Staff refers to as the contract

1 customers. I believe that's the way it's listed in
2 the list of issues.

3 Addressing the cost of capital -- excuse
4 me -- basically, the cost of capital issue consists of
5 three sub-parts, capital structure, cost of debt and
6 cost of equity. On the capital structure, I'm not
7 going to give the -- I can say whose we're
8 recommending, just not the specific set. Right,
9 Mr. Fischer?

10 MR. FISCHER: Right. That's correct.

11 MR. KEEVIL: Okay. On the capital
12 structure issue, Staff is recommending the Commission
13 use the capital structure of Liberty Utilities
14 Midstates' parent corporation, LUCo -- that's capital
15 L, capital U, capital C, little L -- whereas the
16 company, Liberty, is sponsoring a capital structure
17 based on a capital assignment process which
18 hypothetically assumes that Liberty Utilities
19 Midstates has a capital structure consisting of a
20 certain percentage of equity and debt. Staff views
21 the capital structure that the company is proposing as
22 merely an internally assigned or allocated capital
23 structure that has no bearing on the cost of capital
24 for Liberty Utilities Midstates. LUCo, on the other
25 hand, whose capital structure Staff is recommending,

1 actually has a credit rating and issues debt, among
2 other things that do not apply when you're speaking of
3 the allocated capital structure of Liberty Midstates.
4 As for the cost of debt, because the allocation of the
5 cost of debt capital suffers from the same problems as
6 the allocation of the amount of debt for the capital
7 structure, Staff is recommending the Commission use a
8 cost of debt based on LUCo's capital structure. As --
9 since we're recommending use LUCo's capital structure,
10 we're saying use LUCo's cost of debt.

11 Also on the issue of cost of debt, I
12 would like to point out that Staff updated its cost of
13 debt in its rebuttal testimony. It actually slightly
14 went up. Because at the time Staff developed its
15 initial recommendation, there was limited data which
16 was available, or which, at least, was received.
17 Based on additional information Staff received from
18 the company, Staff updated its cost of debt, which as
19 I indicated, resulted in a slight -- slightly
20 increased recommended debt cost. I would also mention
21 that this problem in obtaining data was a recurrent
22 one throughout the preparation of this case and which
23 you will see mentioned several times by different
24 witnesses in the written testimony.

25 On the issue of cost of equity, Staff is

1 recommending a range of 8.2 percent to 9.2 percent,
2 which was developed through a comparable company cost
3 of equity analysis of a proxy group of companies using
4 a DCF methodology, and includes the addition of a
5 credit rating differential adjustment, which again,
6 take -- will cause it to go a little higher than it
7 otherwise would have. The company is recommending a
8 10.5 ROE, which is the high end of their calculated
9 ROE range. The main cause for the difference in
10 recommended ROE is what Staff believes to be the
11 company's inflated and unrealistic compound and
12 perpetual GDP growth rate assumption. Mr. Marevangepo
13 has testimony on that, and you can see further
14 explanation of that there.

15 Now, on the issue of depreciation, the
16 parties -- and I believe Mr. Fischer mentioned this --
17 the parties have agreed on all depreciation rates
18 except for four corporate allocated client
19 sub-accounts. Those would be accounts 399.1, 399.3,
20 399.4 and 399.5. Now, these sub-accounts currently
21 have no Commission ordered depreciation rates. The
22 Company has presented no evidence to the contrary on
23 that point. Therefore, Staff's recommended rates for
24 these sub-accounts reflect the currently ordered rates
25 for the corresponding general plant account, account

1 399. Liberty, on the other hand, is recommending the
2 continuation of rates, which according to Liberty,
3 were used by its predecessor, ATMOS. However, as I
4 mentioned just seconds ago, there is no evidence that
5 those rates were ever actually ordered by the
6 Commission. And Liberty -- Liberty is effectively
7 advocating a change in depreciation rates from the
8 current Commission-authorized rate for the general
9 plant account, and doing so without having a
10 depreciation study. Now, we don't have a depreciation
11 study in this case either, but we're not -- we're
12 saying okay, you don't have an ordered rate for those
13 sub-accounts, then use the rate for the general
14 account under which those sub-accounts fall, because
15 that general account does have a Commission ordered
16 rate.

17 Let me skip this next part. That's my in
18 camera part. And unless you want me to go in and out
19 and back again --

20 JUDGE PRIDGIN: I'd -- I'd prefer not to.

21 MR. KEEVIL: Okay. Okay. Let me skip over
22 to my -- my other non-in camera point that I wanted to
23 address. Just briefly. On the issue of rate
24 design -- excuse me -- due to the problem obtaining
25 data which -- which I mentioned earlier in regard to a

1 different witness, the billing determinants in this
2 case do not have updated ATMOS customer billing data
3 that would greatly increase the confidence level -- at
4 least the Staff's confidence level -- in the billing
5 determinants. And when I -- when I refer to updated
6 ATMOS customer billing data, that's because for -- I
7 believe it was five months -- and if not five months,
8 at least for a significant portion of the test year in
9 this case -- ATMOS was actually operating the system
10 and doing billing for Liberty. And that's -- that's
11 fine. We -- that was pursuant to the merger -- or the
12 acquisition case Mr. Fisher referred to. We're not --
13 we're not saying there's anything untoward about ATMOS
14 doing that for Liberty. But what we're saying is that
15 because of that split in operational control, if you
16 will, between ATMOS part of the year and Liberty part
17 of the year, Liberty has been unable, or at least was
18 unable to get the Staff the updated information from
19 ATMOS that Staff believed it needed to have a greater
20 level of confidence in the billing determinate. So
21 that's another situation where the data problem reared
22 its ugly head, so to speak. In addition, no party has
23 submitted a class cost of service study in this case.
24 Therefore, Staff is recommending, on the rate design
25 issue, that the rates reflect an equal percentage

1 change by rate category, rate class, and rate element,
2 since the current rates have been determined to be
3 just and reasonable.

4 I think at this point, Judge, I need to
5 go in camera for a little bit.

6 JUDGE PRIDGIN: Very good. If you'll bear
7 with me just a moment.

8 (REPORTER'S NOTE: AT THIS POINT, AN IN-CAMERA SESSION
9 WAS HELD, WHICH IS CONTAINED IN VOLUME 12, PAGES 124
10 THROUGH 132 OF THE TRANSCRIPT.)

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1 JUDGE PRIDGIN: All right. Mr. Keevil,
2 when you're ready.

3 MR. KEEVIL: Yeah. Just in conclusion,
4 Judge, the Staff will present several witnesses over
5 the next few days to support Staff's recommendations
6 on each of these issues, as well as the additional
7 issues set out in the list of issues.

8 In conclusion, Staff requests the
9 Commission find in favor of Staff on the issues to be
10 heard in this case as set forth in Staff's testimony,
11 exhibits and statements of position.

12 I don't know that -- whether you wanted
13 me to address that partial -- Mr. Fischer made
14 reference to a partial stipulation. I don't know if
15 you wanted me to address that now or wait for me to
16 file something in the case later.

17 JUDGE PRIDGIN: Whichever you prefer
18 Mr. Keevil.

19 MR. KEEVIL: Well, I was just thinking for
20 purposes of your scheduling the hearing, you might --
21 you might want -- you might want to know -- basically,
22 Staff objects to one portion of the partial
23 stipulation -- non-unanimous partial stipulation which
24 was filed last Friday. I believe the stipulation
25 addresses ISRS cost of removal, rate design and energy

1 efficiency. Those four issues. The only one of the
2 four issues that -- the resolution of which Staff
3 objects to in that stipulation is the rate design.
4 Okay. So the other three, we're fine with. It's just
5 the rate design. And that's why I mentioned rate
6 design briefly in my opening. With that, I would
7 say -- would you still like me to file something
8 written under the -- under the rule on non-unanimous
9 stips, or --

10 JUDGE PRIDGIN: I -- I -- I guess at your
11 convenience. I know you're -- I know you're busy
12 doing this. I guess so it's clear on the record what
13 Staff's position is, and everyone has a piece of
14 paper --

15 MR. KEEVIL: Okay.

16 JUDGE PRIDGIN: But I don't see any hurry.

17 MR. KEEVIL: Okay. Thank you. That --
18 that's all I had to say this morning, Judge, unless
19 there were some questions that I could answer.

20 Oh, there was one other thing. If I -- I
21 have to go in camera to say -- I don't think I have to
22 go in camera to say this. Mr. Fischer raised an
23 interstate jurisdictional issue in his opening. I'm
24 going to try to keep this vague so I don't have to go
25 in camera. He mentioned an interstate jurisdictional

1 issue. That's not an issue. Because -- just trust
2 me. When we go in camera later, or in the briefs --
3 we do not believe that's even an issue. This
4 Commission has the necessary authority it needs to
5 address that issue in this case. And you don't -- you
6 should not be thrown by that preemption reference that
7 Mr. Fischer made.

8 Thank you. That's all I have.

9 JUDGE PRIDGIN: All right. Mr. Keevil,
10 thank you. Before we see if we have any bench
11 questions, I do need to go off the record very briefly
12 to try to get Commissioner Kenney on the phone with
13 us. So if I could get everyone to be patient, this
14 should just take a couple of minutes. We'll go off
15 the record.

16 (OFF THE RECORD.)

17 JUDGE PRIDGIN: All right. Thank you.
18 Mr. Chairman, any questions?

19 CHAIRMAN KENNEY: Just a couple. Thank
20 you, Mr. Keevil.

21 MR. KEEVIL: Thank you.

22 CHAIRMAN KENNEY: You answered my question
23 that I was going to ask about the second stipulation,
24 so thank you for that. I want to ask about the
25 depreciation rates, and whether -- this -- I guess

1 this is -- may be a rather pedestrian question. But
2 does 21 years for computer equipment and software seem
3 reasonable, in light of how quickly technology
4 advances, and the rapid rate at which computer
5 equipment becomes obsolete?

6 MR. KEEVIL: Well, Mr. Chairman, if I
7 actually could -- I'd have to defer that to my
8 depreciation witness himself when we get into the
9 specifics of the -- you know, how the rates are
10 calculated. Like I said, the basis -- I can tell you
11 the basis for our use of that rate was the account 399
12 has the Commission-ordered rate of whatever it is --
13 4.75, I believe, that we're recommending. And each of
14 these sub-accounts that the company has no Commission
15 order -- ordered depreciation rates for are all under
16 account 399. Yet the company -- the company or staff
17 or anybody in this case has provided a depreciation
18 study for those specific accounts. So what we're
19 saying is until a depreciation study is performed for
20 those accounts, which we hope will be the next rate
21 case, then the -- the best fallback position -- in the
22 absence of a study to support a new rate, the best
23 fallback is the Commission-ordered rate for the
24 general account under which those sub-accounts fall.

25 CHAIRMAN KENNEY: So if -- if the answer to

1 my question is no, 21 years is not reasonable given
2 the obsolescence of computer equipment, then Staff's
3 position is that we should use that unreasonable time
4 period until a cost of service or a depreciation study
5 is conducted, just by default?

6 MR. KEEVIL: Well, by -- by default? I
7 mean, we have no other evidentiary basis to order -- I
8 mean, you know, they -- again, the company didn't do a
9 depreciation study either to support their rates of 14
10 or 18 or whatever it is they're claiming either. So,
11 you know, there's -- there's just -- there's nothing
12 to support any -- there's no study to support anything
13 other than the previously ordered rate, since those
14 rates are presumed to be, you know, just and
15 reasonable.

16 CHAIRMAN KENNEY: Okay. Okay. I'll --
17 I'll -- that's all I have. So -- well, let me make --
18 let me make a final question here. Other than the
19 rate design issue, then, the other three issues that
20 were in the stipulation Staff agrees to or just simply
21 doesn't object to?

22 MR. KEEVIL: A couple of them, we -- well,
23 actually, all I've -- all I've said officially,
24 Mr. Chairman, is we don't object to them. A couple of
25 them, we would probably actually agree to -- or could,

1 I should say, actually agree to. But -- but honestly
2 haven't -- haven't had that internal discussion to
3 that degree of specificity, because this thing was --
4 was filed Friday afternoon, I think, and -- we had
5 seen an earlier version of it prior to that, but the
6 earlier version did not include one of the issues
7 which wound up in the final version. So all I can
8 really say is we do not oppose the other three, but a
9 couple of them -- well, the ones that we
10 particularly -- if I remember correctly, cost of
11 removal and energy efficiency, we -- we probably could
12 actually agree to. I mean, just, you know,
13 out-and-out agree to. The ISRS, we -- we might or
14 might not be able to agree to it, but we do not
15 oppose. Okay. So it's just the --

16 CHAIRMAN KENNEY: Okay.

17 MR. KEEVIL: -- just the rate design, is
18 the bone of contention.

19 CHAIRMAN KENNEY: Fair enough. That's all
20 I have. Thank you.

21 JUDGE PRIDGIN: Mr. Chairman, thank you.
22 Commissioner Stoll, any questions?

23 COMMISSIONER STOLL: No questions.

24 JUDGE PRIDGIN: Thank you. Commissioner
25 Hall, are you with us?

1 COMMISSIONER HALL: Yes, I am.

2 JUDGE PRIDGIN: Any questions, sir?

3 COMMISSIONER HALL: Yes. A few. Good
4 morning. Can everyone hear me okay? Mr. Fischer
5 responded to a question of mine a moment ago
6 concerning Noranda and General Mills' ability to
7 purchase gas from -- from another supplier. And he
8 said, I believe, that under -- under federal law, they
9 could do that without Commission approval. Is that
10 correct? Is that your opinion as well?

11 MR. KEEVIL: Commissioner, I haven't done
12 the research on that in years, but as -- off the top
13 of my head, when you asked Mr. Fischer, I think -- I
14 think he's correct. I think they can legally do it.
15 There are questions of feasibility and viability of
16 doing it. But legally, I think they can. However,
17 like I said, I have to give that -- say that with the
18 caveat that I have not researched that in -- in quite
19 a while. But I think they can, legally.

20 COMMISSIONER HALL: Well, I believe it
21 would be of some value, at least for me, and perhaps
22 other members of the Commission, if -- if Staff could
23 come back some time in the very near future and give a
24 more researched opinion on that, because I -- I
25 believe that's an important issue.

1 Second, I'm wondering if -- if there is
2 any precedent whatsoever for the -- for the Commission
3 to grant a -- a discounted rate to use -- I believe
4 Staff's term -- a discounted rate pursuant to a
5 contract that is divorced from cost of service.

6 MR. KEEVIL: You said is there any
7 precedent for --

8 COMMISSIONER HALL: Yes. For the
9 Commission granting that type of discounted rate.

10 MR. KEEVIL: Well, you have, actually, I
11 think, two questions here. Or involve --
12 Commissioner, you've got the authorization to do it
13 question, and then you have the what rate do you use
14 for revenue purposes question. Again, I don't have a
15 case to cite you to, but I do know that other
16 companies have special contract tariffs in their
17 tariffs authorizing them to enter into special
18 contracts under the parameters set forth in their
19 special contracts tariff. Does that answer your
20 question?

21 COMMISSIONER HALL: Well, are you aware of
22 a situation where that special contract in a special
23 tariff is divorced from -- from cost of service?

24 MR. KEEVIL: Yes. Well, I shouldn't say --
25 I can't specifically say yes, because I haven't -- but

1 the whole concept of the special contract would be --
2 well, not cost -- it's not divorced from cost of
3 service of the incremental customer. That's -- see,
4 that's where you get into a whole myriad of issues
5 here. You have class cost of service, and then you
6 have the specific incremental customer cost of
7 service. And --

8 COMMISSIONER HALL: It's the incremental
9 cost of service that I'm concerned about or that I'm
10 interested in.

11 MR. KEEVIL: Okay. The customer-specific
12 incremental cost of service, I believe -- I believe
13 those are all in some manner or another tied to the
14 incremental customer cost of service, in regard to the
15 contracts themselves, whether the contract themselves
16 would be appropriate or not.

17 COMMISSIONER HALL: Okay. Mr. Fischer also
18 said -- and I don't have the exact number in front of
19 me, unfortunately -- that there was a specific amount
20 of cost of capital cost that these two customers --
21 Noranda and General Mills -- pick up. And what I'm
22 wondering is if -- if those two customers do, in fact,
23 leave -- leave the system -- and those costs do have
24 to be picked up by -- by other consumers, other
25 customers, are -- are -- are those other -- are those

1 other customers and consumers worse off?

2 MR. KEEVIL: If they leave the system?

3 COMMISSIONER HALL: Yes.

4 MR. KEEVIL: I suppose they -- well, the
5 system would not be receiving the payments that are
6 being made by Noranda and General Mills currently. So
7 to some extent, I suppose they -- they could be worse
8 off. You need to probably ask Mr. Imhoff that
9 question. But --

10 COMMISSIONER HALL: Okay.

11 MR. KEEVIL: I guess part of what I'm
12 thinking here is the -- we don't believe that the --
13 if you look at the difference between what they're
14 paying and what we believe they should be paying,
15 they're currently -- they're currently being asked to
16 subsidize those discounts, so there's -- there's some
17 issue of being worse off under which scenario. And --
18 and again, we don't believe that the evidence is in
19 the record, in this case at least, to support the
20 justification for the discounts. You know, if there
21 had been better justification for the discounts, such
22 as actual threat of -- of bypass or alternative fuel
23 or something of that nature -- and if you recall,
24 during Mr. Fisher's opening, he mentioned how far one
25 of the customers was from a pipeline. He did -- he

1 did not mention how far the other customer was. I
2 think that's telling that he did not mention the other
3 customer and its distance from the nearest pipeline.
4 I don't think I can say that in public session, so
5 I'll just leave it at that. But there's a whole lot
6 of -- a whole lot of considerations that go into this,
7 Commissioner.

8 COMMISSIONER HALL: Okay. Thank you. I
9 have no further questions at this time.

10 JUDGE PRIDGIN: All right. Commissioner
11 Hall, thank you. And I don't have any questions.
12 Mr. Keevil, thank you. And before we go on to opening
13 from Public Counsel, this looks to be as good time as
14 any to take a morning break. I show the time to be --
15 oh, not quite 10:55. Let's resume at ten after 11:00,
16 and then I will hear opening argument from Office of
17 Public Counsel. Thank you. We're off the record.

18 (OFF THE RECORD.)

19 JUDGE PRIDGIN: Good morning. We are back
20 on the record. I think we are ready to proceed with
21 opening statements from Public Counsel. Anything
22 before we hear from Public Counsel? All right.
23 Hearing nothing, Mr. Poston, when you're ready, sir.

24 OPENING STATEMENT BY MR. POSTON:

25 MR. POSTON: May it please the Commission.

1 Good morning. I've handed out a -- copies of the
2 slides -- the PowerPoint slides that I'd like to talk
3 about today. And I'd like to have this marked as
4 Exhibit 51, if I could.

5 JUDGE PRIDGIN: All right. 51, marked.

6 (EXHIBIT 51 MARKED FOR THE RECORD.)

7 MR. POSTON: Let me grab a copy.

8 JUDGE PRIDGIN: And Mr. Poston, this is --

9 MR. POSTON: That's --

10 JUDGE PRIDGIN: Okay. Very good. Thank
11 you.

12 MR. POSTON: I'll just jump in. First
13 issue that we're going to discuss once we get to the
14 witnesses today is the cost of capital and capital
15 structure. And the first issue asks what is the
16 capital structure. And so on this third slide I've
17 put together, I've shown the actual organizational
18 structure of the company. And what the facts will
19 show in this case is that -- will support using the
20 capital structure of the Liberty Utilities parent,
21 which has been referred to as LUCo -- LUCo. The
22 Staff's evidence shows that LUCo issues that equity.
23 They are the basis for a rating agency's review of the
24 risk of the company. It has a credit rating, it's
25 a -- it's market tested capital structure, and it's an

1 investable capital structure.

2 The facts will also show that it is
3 improper to use the capital structure of Algonquin
4 Power & Utilities Company, the top of the structure
5 here. It's -- that company gets significant cash
6 flows from unregulated operations, and so their risk
7 profile is not consistent with a regulated company.

8 And lastly is the Liberty Midstates. And
9 the Staff's evidence will show that capital structure
10 of Liberty Midstates is allocated and -- and therefore
11 it cannot be audited or verified. Liberty Midstates
12 has no credit rating, does not issue debt or equity,
13 and the capital structure has no consequence to
14 investors, and it's not a market -- market-tested
15 capital structure. And that's what Staff evidence
16 will show.

17 There's some additional problems with
18 Liberty's proposed capital structure. If you look
19 back in 2010 when ATMOS proposed a 50-percent
20 equity -- 50.62-percent -- and a 49.38-percent debt,
21 two years later, Liberty Midstates acquired ATMOS, and
22 now two years after that, we're seeing Liberty
23 proposing a much higher equity portion, 58.34 percent,
24 which in essence will increase rates for consumers by
25 raising that equity portion. And we don't think

1 that -- that increase is proper, because it would, in
2 essence, be a result of the acquisition. We don't
3 believe that's just and reasonable.

4 Moving on to cost of capital and ROE,
5 Staff's range, 8.2 percent to 9.2 percent, and Liberty
6 10 to 10.5. Staff's evidence shows that Liberty's
7 proposed ROE is overstated. And I've highlighted a
8 few of these reasons. It uses projected growth rates
9 that are much higher than published projections for
10 the overall United States economy. And I believe
11 Mr. Keevil addressed that issue. Staff's evidence
12 also shows that the company's proposed ROE assumes
13 equity investors in regulated utilities and
14 unregulated corporations require the same equity
15 returns, and that's not the case. The Company also
16 uses allowed ROEs as a basis for computing equity risk
17 premium. And Staff's evidence shows that allowed ROE
18 is typically higher than the actual cost of equity.

19 And I'd like to highlight a few customer
20 comments that -- that the Commission heard in the
21 public hearing and in the filed EFIS comments. And
22 the first one is from a Marcene Irwin from Butler,
23 Missouri. And this comment really gets to what -- the
24 struggles that customers are really having. She's a
25 widow on Social Security. She refers to her community

1 as being very small, with farmers, lot of retired.
2 And she really talks about how when she I guess pays
3 her bill, she really has to think about things like
4 medication -- can I take that medication now, can I
5 buy bread, can I buy milk this week. So this is a
6 very real problem facing a lot of customers of --
7 of -- of Liberty today. And just to add some numbers
8 to it, another customer, Virginia, from Jackson,
9 86-year-old senior citizen, says she can't afford to
10 pay more. And she says that she's living off of \$846
11 per month. And so I calculated that. That equals
12 \$27.81 cents per day. Initially when I prepared the
13 slide, I had just put \$27, but I think that eighty-one
14 cents is probably important to her when she has to
15 live on just \$27 a day. And so I highlight these
16 customers, because I ask you to please consider them
17 when you consider ROE for this company, and to set the
18 ROE as low as you think is reasonably possible to help
19 these customers get by day-to-day.

20 Depreciation, the only
21 Commission-authorized depreciation rate for the
22 account 399 that we've heard discussed today is the --
23 the rate that's being proposed by Staff and Office of
24 Public Counsel. Liberty's proposed rate has not been
25 authorized by this Commission, and until there is a

1 depreciation study done, we don't believe there should
2 be any changes.

3 This slide just highlights the
4 non-unanimous second partial stipulation that OPC,
5 Liberty and Department of Energy filed on Friday. As
6 you see, we've settled ISRS, cost of removal, rate
7 design and related issue. That related issue is the
8 foregone delivery charge. And then energy efficiency
9 and weatherization. And we heard from Staff that they
10 were okay with the -- with this agreement, with the
11 exception of -- of rate design. So I have prepared a
12 presentation to discuss rate design.

13 There's three issues under rate design.
14 Should rates be designed to reflect any change in
15 rates? Should the customer charge for NEMO and WEMO
16 decrease from current levels? And lastly, the issue
17 about the foregone delivery charge.

18 And to just briefly talk about our filed
19 case, our filed position on rate design was that in
20 NEMO, where the customer charge is currently \$22.68
21 cents that customers pay regardless of whether they
22 use any gas, that that should be reduced to \$15. And
23 in WEMO, propose that the \$20.17 rate should be
24 reduced to \$15 as well, and that there should be no
25 change to the SEMO, which is currently at \$13.75. And

1 we've provided cost support. This is based on the
2 rate case -- the 2010 rate case, where we found that
3 the cost specific to serve each customer in NEMO is
4 \$12.75. And for WEMO is \$10.34. And these -- so you
5 can see why we had originally proposed to reduce those
6 rates to \$15. And I've highlighted what -- the
7 customer-specific cost that -- that we include in that
8 are meters, regulators, service lines and associated
9 operating and maintenance expenses of those items, as
10 well as meter-reading and billing expenses. So this
11 is what we've agreed to with Liberty: For NEMO, the
12 \$22.68 rate would drop down to \$20, just a reduction
13 of \$2.68. WEMO, the \$20.71 rate would drop down to
14 \$20, just a seventeen-cent reduction. And there would
15 be no change to the SEMO.

16 So next, what I've done is I just wanted
17 to give the Commission, just to be able to visualize
18 what a customer from Liberty looks at -- sees when
19 they look at their bill. And I've -- I've provided
20 several examples based off of the customer's usage.
21 This first slide, the customer's using ten Ccfs. As
22 you can see, when you look at their bill, they've got
23 the ISRS charge. That's going to be a flat charge.
24 But when a customer uses only ten Ccfs, the actual gas
25 cost that they're paying is only \$5.35. But as you

1 can see, when you tack on the distribution commodity
2 rate, the delivery charge, and then taxes, the
3 customer with the roughly \$5 gas usage is paying a \$35
4 gas bill. And as you increase usage up to \$100,
5 you'll see -- you'll see that the difference is there.
6 And I've also gone up to \$200. I just provided that
7 so the Commission can look and see what a customer
8 sees on their bill, according to their usage.

9 Next, what we've done is looked at
10 Liberty's other LDCs. They also provide LDC service
11 in Illinois and Iowa. And I've ranked these service
12 areas by the customer charge. You can see that the
13 three Missouri areas have the highest customer charges
14 among -- among the three states. And if you look down
15 at Illinois -- on customers in Illinois getting the
16 same service as the customer here, is only paying
17 \$9.90 customer charge. In Iowa, it's \$7.95, which is
18 considerably lower than the \$22.68 or even the \$20.17
19 that you're seeing here in Missouri. And you'll see
20 under the commodities charge, there's a corresponding
21 difference there as well. As the customer pays less
22 for a delivery charge, they're paying more on the
23 commodity charge. And that's consistent. So the next
24 thought I had was well, okay, well, what does that
25 look like for a customer's bill if -- for different

1 levels of usage based off of this delivery charge and
2 the commodity rate. And I've highlighted the one,
3 two -- fourth column over, which is a low-usage
4 customer using ten Ccfs of gas. And you'll see in
5 Missouri, between the top, NEMO, and down at the
6 bottom, Iowa -- and even Illinois compared to NEMO --
7 customers in Missouri are -- that use low amounts of
8 gas are paying twice as much for their gas usage as in
9 these other states for Liberty's -- Liberty utilities.

10 Next few slides, I've highlighted some
11 customer responses to the high fixed delivery charge.
12 Vicky from Hannibal testified that she had \$4.29 of
13 usage, but her bill was \$31.85. She think's that's
14 ridiculous. You go on to Alicia, filed a comment in
15 EFIS. She raised the same -- same issue. They used
16 less than \$10 worth of utilities, yet they have to pay
17 an extra over \$20 just for using Liberty. And she
18 says she would like to see the service charge be only
19 a fraction of what they pay. I believe when she said
20 service charge, she's referring to the delivery
21 charge. And then the last response was also filed on
22 EFIS by Andrew. His biggest complaint is the delivery
23 charge. And he's even okay with a raise in rates as
24 long as the delivery charge stays the same.

25 And for the Commission's information,

1 I've also provided just comparison between the
2 customer charges Liberty provides -- and this is on
3 slide 24 -- between all of the LDCs in the state. And
4 I've put a star next to MGE, because that rate does
5 not go into effect until October 21st. It's --
6 currently, it's higher, but we've agreed to reduce
7 that rate. Staff and MGE agreed. And I also put a
8 star by Summit, because that was also the result of a
9 stipulation settlement between Staff and the company.
10 That rate's also not in effect. But as you can see,
11 Liberty, NEMO and WEMO -- WEMO is among the highest
12 customer charges in the state.

13 And so the next slide, I've highlighted
14 why a low delivery charge is just and reasonable.
15 First thing is it satisfies customer expectations.
16 Customers consistently complain about a high fixed
17 charge. And I've highlighted just a few of those
18 complaints. And we see that not here, we see that in
19 every rate case. Promotes conservation. Recovering
20 more cost through volumetric rate promotes
21 conservation. Customer will look at their bill,
22 they'll see that the impact of conserving will
23 actually have a higher impact on their bill if more of
24 the bill is tied to volumetric usage. And we've
25 provided studies that -- that confirm that. It also

1 mimics a competitive environment. The LDCs that are
2 facing significant competition have low delivery
3 charges. You see that in Summit and you can see that
4 in -- if I go back, you see that in even Laclede, like
5 in their Fidelity area, where that serves around the
6 city of Sullivan. Low delivery charges also promote
7 safety for low-income customers. This is -- this is a
8 serious issue when, because of a high delivery charge,
9 they're having to make decisions about medication and
10 purchasing bread and things like that. And lastly,
11 one of the reasons, it helps summer disconnects. If
12 you've got a low customer charge that they're having
13 to pay every -- every month regardless of usage, then
14 they have less incentive to disconnect that service
15 during the summer.

16 This slide just highlights some of the
17 sources for the conclusions we've reached on low
18 delivery charges. Just to let you see that these are
19 based off of studies that have been performed on
20 issues that are -- that -- that -- that address I
21 guess this exact same thing that we're -- we're asking
22 you to look at here. And these are reputable
23 associations and -- and US government agencies that
24 have reached these conclusions.

25 The last slide is just another customer

1 comment where this customer, David Johnson of
2 Hannibal, actually states that he agrees that an
3 incentive to use less is something that a small -- a
4 low delivery charge would -- would provide for
5 customers. And so I just want to leave you with that.
6 And that's all I have, unless you have some questions.

7 JUDGE PRIDGIN: Mr. Poston, thank you.
8 Mr. Chairman, any questions?

9 THE CHAIR: No questions. Thank you,
10 Mr. Poston.

11 JUDGE PRIDGIN: All right. Thank you.
12 Commissioner Stoll?

13 COMMISSIONER STOLL: No questions at this
14 time.

15 JUDGE PRIDGIN: All right. Thank you.
16 I'll see if we have any commissioners on the phone.
17 Commissioner Hall?

18 COMMISSIONER HALL: Yes. I'm here. I have
19 no questions at this time. Thank you.

20 JUDGE PRIDGIN: All right. Thank you.
21 Mr. Poston, thank you very much. And next, we will
22 hear from Noranda. Mr. Downey, when you're ready.

23 MR. DOWNEY: Morning, Judge.

24 JUDGE PRIDGIN: Morning.

25 OPENING STATEMENT BY MR. DOWNEY:

1 MR. DOWNEY: May it please the Commission.
2 I have a PowerPoint opening statement. And the
3 version that's been loaded on the computer that's on
4 the screen is the redacted version. What I've done is
5 made a copy of the -- the unredacted HC version. I've
6 provided a copy to all counsel, to the court reporter,
7 and to the Commissioners. And I think there's extra
8 copies for the Commissioners that are not present
9 today.

10 What I'd like to do is just spend maybe a
11 couple minutes in camera setting up the PowerPoint
12 presentation, so that you understand what numbers need
13 to be plugged into the redacted version that you'll
14 see on the screen.

15 JUDGE PRIDGIN: All right. If you'll bear
16 with me just a moment, please.

17 (REPORTER'S NOTE: AT THIS POINT, AN IN-CAMERA SESSION
18 WAS HELD, WHICH IS CONTAINED IN VOLUME 12, PAGES 156
19 THROUGH 157 OF THE TRANSCRIPT.)

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1 JUDGE PRIDGIN: We're back in public
2 session. Mr. Downey, when you're ready.

3 MR. DOWNEY: Okay. By way of background --
4 and I think the Commission probably understands
5 this -- Noranda is a unique customer, not just for
6 electric service, but also for gas service. Liberty
7 serves Noranda from its transmission system, and does
8 not use its distribution system for Noranda. Noranda
9 is the largest user of gas in the SEMO district.
10 Noranda is an interruptible customer. Noranda takes
11 service via a tap into the transmission system -- a
12 tap that Noranda pays for and uses, and no other
13 customer pays for or uses.

14 As I indicated in camera, Noranda is
15 currently paying a particular rate. It's redacted
16 on -- on this slide. But I've indicated what that
17 rate is. The only issue for Noranda in this case is
18 the rate that Liberty is to charge it for its
19 service -- for its transmission service. And Liberty
20 and Noranda have executed a contract continuing the
21 current rate for ten years, subject to Commission
22 approval now and at each subsequent rate case. That
23 is not a discounted rate. And I need to emphasize
24 that. It's not a discounted rate. We're not asking
25 this Commission to continue any kind of discount for

1 Noranda. It's above its cost of service. In the last
2 case, the Commission found this rate -- didn't
3 expressly, but indirectly found this rate to be a just
4 and reasonable rate. And you'll see that from the
5 order approving the stipulation and the review of the
6 stipulation itself, each of which are attached to one
7 of the testimonies of Ms. Cox. As I've indicated,
8 that rate is substantially above the cost to serve
9 Noranda.

10 Staff seems to argue that Noranda's rate
11 should be \$1.44 per McF, plus whatever rate increase
12 the Commission orders in this case for SEMO. Staff
13 bases that on its assumption that Noranda should be
14 lumped into the large firm general service class, or
15 the interruptible large volume gas service class --
16 I'm not sure which class. Doesn't really matter, they
17 have the same rates. The current rate for those
18 classes is substantially higher than Noranda's
19 currently approved rate. If you look at
20 Mr. Brubaker's testimony, you'll see -- and I think
21 Mr. Fischer alluded to it -- actually, I think it's
22 much higher -- it's a much higher percentage increase
23 than Mr. Fischer indicated in his opening statement.
24 And -- I probably should have mentioned this when we
25 were in camera. Can we go in camera just briefly,

1 Judge? I'm sorry.

2 JUDGE PRIDGIN: That's all right. Just one
3 moment, please.

4 (REPORTER'S NOTE: AT THIS POINT, AN IN-CAMERA SESSION
5 WAS HELD, WHICH IS CONTAINED IN VOLUME 12, PAGES 161
6 THROUGH 161 OF THE TRANSCRIPT.)

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1 JUDGE PRIDGIN: All right. We're back in
2 public session.

3 MR. DOWNEY: All right. Just to put the
4 Staff position in context here, under the -- the
5 proposed rate class that Staff would lump Noranda,
6 Noranda would be paying at least \$1.87 million dollars
7 per year, likely much more, if the -- the Commission
8 grants a rate increase. To put that in perspective,
9 the \$1.87 million would pay for the -- the cost of the
10 tap, which is minuscule. In addition, Noranda would
11 be paying for the entire cost of the transmission
12 system, 10 percent of the capacity of which Noranda
13 uses -- or I should say Liberty uses to serve Noranda.
14 In addition, Noranda would be paying \$780,000 a year
15 of the cost of the distribution system -- the
16 distribution system that Liberty does not even use to
17 serve Noranda.

18 What's the basis of the Staff position?
19 In spite of the stipulation to the contract rate in
20 the last rate case, and a stipulation that was signed
21 by Staff and OPC and approved by the Commission, Staff
22 implies that Liberty has been undercharging Noranda,
23 and giving Noranda a discounted rate, and because
24 there was no separate tariff for Noranda, that it
25 should have been lumped into the SEMO large firm

1 general service, or the interruptible large-volume gas
2 service classes. But unlike the customers in those
3 classes, Liberty does not use its distribution system
4 to serve Noranda. So once again, Noranda basically
5 stands in a class of its own. And significantly, as I
6 indicated in camera, the actual cost to serve Noranda
7 is so far below the rates of those classes as to
8 render their application to Noranda as unreasonable
9 and unjust.

10 What's the evidence? The evidence on
11 this issue is provided by one witness. That's
12 Mr. Brubaker. He noted that under no circumstance
13 should any cost of the distribution system be
14 allocated to Noranda, since Liberty does not use that
15 system to serve Noranda. He also determined that as
16 an interruptible customer, one would not normally
17 allocate any of the cost of the transmission system to
18 Noranda either. As an interruptible customer, the
19 actual cost to serve Noranda is -- and I don't believe
20 this is HC -- that would be three cents -- point oh
21 three dollars per McF. However, if the Commission
22 were to treat Noranda as a firm customer -- in other
23 words, assume that its service could not be
24 interrupted -- the cost would only be eleven cents per
25 McF. Nevertheless, Noranda agreed to the contract

1 rate that I indicated in camera.

2 And for -- unfortunately for you,
3 Mr. Chairman, you probably can't see this slide, but
4 it is the schedule from Maurice Brubaker's rebuttal.
5 And it's schedule MEB-1. And that is the -- that is
6 the calculation of the cost of the tap. And it's
7 minuscule. It's \$32,000 a year. In another
8 schedule -- or actually in work papers, Mr. Brubaker
9 determined what the -- what the fair share of the
10 transmission system costs for Noranda would be if
11 Noranda were, in fact, a firm customer instead of an
12 interruptible customer. And he's got a number of
13 calculations. It's a ten-page spreadsheet. But he
14 determined that the cost would be eight cents per McF.

15 While no other party offered the cost to
16 serve Noranda, Staff did criticize one data point that
17 Mr. Brubaker used. And Mr. Brubaker explains in his
18 surrebuttal that criticism is unfounded, because if he
19 altered his calculation based upon this criticism, the
20 calculated cost of service would have actually
21 decreased. As Brubaker's work papers show, his
22 calculation was based upon the trued-up figures used
23 by Staff and Liberty through March of 2014.
24 Brubaker's cost calculation is correct. The maximum
25 total cost to serve Noranda is thus three cents plus

1 eight cents equals eleven cents per McF.

2 So what relief is Noranda requesting?

3 Noranda asked the Commission to approve the contract
4 rate. It agreed to it. Even though it's
5 substantially above the cost to serve Noranda, it's
6 the rate Noranda's currently paying, and it agreed to
7 it. It seeks this relief whether or not the
8 Commission approves that rate in a tariff for a class
9 including only Noranda, or simply approves the rate by
10 approving the contract, as it has done in at least the
11 last two rate cases, and probably rate cases before
12 that. Alternatively, if the Commission sets any other
13 rate for Noranda, it should be a cost-based rate, no
14 higher than eleven cents per McF, which is the maximum
15 cost to serve Noranda.

16 I have nothing further, other than I'm
17 happy to answer any questions.

18 JUDGE PRIDGIN: Mr. Downey, thank you.

19 Mr. Chairman, any question?

20 CHAIRMAN KENNEY: Can I ask a question
21 about the contract without going in camera if I don't
22 mention the -- the financial terms?

23 MR. DOWNEY: I think so.

24 CHAIRMAN KENNEY: I just want to confirm
25 the length of the contract from -- from when to

1 when -- when would it expire?

2 MR. DOWNEY: That contract is attached to
3 Mr. Krygier's testimony, and -- and I believe it was
4 entered into this summer. And it's good for ten
5 years. It's, of course, subject to Commission
6 approval now -- the rate is -- and it's subject to
7 Commission approval in each and every rate case during
8 that ten-year term, it's my understanding.

9 CHAIRMAN KENNEY: And does it automatically
10 renew?

11 MR. DOWNEY: I believe so. Mr. Chairman,
12 I -- I'm certainly not an expert on that contract, but
13 I believe that's true.

14 CHAIRMAN KENNEY: Okay. That's fine.
15 Thanks, Mr. Downey. I don't have any other questions.

16 JUDGE PRIDGIN: Mr. Chairman, thank you.
17 Commissioner Stoll?

18 COMMISSIONER STOLL: I have no questions.
19 Thank you for your opening.

20 JUDGE PRIDGIN: Thank you. Commissioner
21 Hall?

22 COMMISSIONER HALL: I have no questions at
23 this time. Thank you.

24 JUDGE PRIDGIN: All right. Thank you.
25 Mr. Downey, thank you very much.

1 MR. DOWNEY: Thank you.

2 JUDGE PRIDGIN: And we'll next go on to
3 Division of Energy. Mr. Knee, when you're ready, sir.

4 OPENING STATEMENT BY MR. KNEE:

5 MR. KNEE: All right. Good morning. May
6 it please the Commission. Division of Energy supports
7 the Company's commitment to energy efficiency. And
8 happily, in this case, we're not alone in that
9 support. The Division, OPC and the Company filed a
10 partial stipulation agreed on Friday that agrees to
11 terms on energy efficiency. And the agreement affirms
12 the Company's existing energy efficiency program,
13 along with its goals and commitments. And you heard
14 from Staff a little bit ago that they do not object to
15 the energy efficiency portion of that agreement.
16 Stopped short of saying full-on support. So at this
17 moment, anyway, with this stipulation pending
18 approval, all the parties are on the same page
19 regarding energy efficiency. But it's my
20 understanding -- and I don't want to foreclose
21 alternative viewpoints from the Bench or far away in
22 St. Louis -- that these agreements are packaged deals
23 with interdependent terms. So if the stipulation is
24 not approved in its entirety, it's my understanding
25 that it's null and void, and it's not guaranteed that

1 the parties will coalesce again on the energy
2 efficiency issues if that's the case. So I would
3 encourage the Commission to approve the second partial
4 stipulation as it's filed. And we may end up taking
5 these issues up on Friday. And if that's the case,
6 I'll present further at that time.

7 JUDGE PRIDGIN: Mr. Knee, thank you very
8 much. Mr. Chairman, any questions?

9 CHAIRMAN KENNEY: No, thanks. Thanks,
10 Mr. Knee.

11 JUDGE PRIDGIN: Commissioner Stoll?

12 COMMISSIONER STOLL: No, thank you.

13 JUDGE PRIDGIN: And Commissioner Hall?

14 COMMISSIONER HALL: No questions. Thank
15 you very much.

16 JUDGE PRIDGIN: All right. Thank you.
17 Mr. Knee, thank you. And it looks like next would be
18 to begin evidence with cost of capital issues. And it
19 is approaching the noon hour, so this seems like a
20 natural break for lunch. Unless I hear anything
21 further from counsel, plan to resume with -- I guess
22 it's Liberty's cost of capital witness at 1:00. Is
23 there anything further from counsel before we break
24 for lunch?

25 MR. FISCHER: Judge, I would raise the

1 question of Mr. Hevert's travel schedule, and whether
2 you would like to take all cross of his testimony,
3 including the financial integrity piece at that --
4 when he takes the stand, or do you want me to take
5 that up later?

6 JUDGE PRIDGIN: I -- I certainly want to
7 try to accommodate travel schedules, and would ask
8 counsel to confer at lunch to see if there's some way
9 we could get this done where he could just be on
10 the -- on the stand once and then -- and be able to
11 get back to his flight.

12 MR. POSTON: That's fine.

13 MR. FISCHER: Is that a problem with
14 anybody?

15 MR. DOWNEY: No.

16 JUDGE PRIDGIN: I'm not hearing any
17 objections. It's certainly fine with the Bench.

18 MR. FISCHER: Thank you.

19 JUDGE PRIDGIN: You're welcome. Anything
20 further before we break for lunch? All right.
21 Hearing nothing further, we will go off the record,
22 and we will resume at 1:00. Thank you. We're off the
23 record.

24 (OFF THE RECORD.)

25 JUDGE PRIDGIN: All right. Good afternoon.

1 We are back on the record. I don't think we have
2 anything else to cover before we get to our first
3 witness, but let me verify with counsel. Is there
4 anything you need to bring to my attention before we
5 have our first witness? All right. Hearing nothing,
6 I believe I guess either Mr. Fischer or Mr. Dority, do
7 you have questions for this witness? And I'm sorry.
8 This is Mr. Hevert?

9 MR. FISCHER: Yes, sir.

10 JUDGE PRIDGIN: All right. And Mr. Hevert,
11 I ask you to raise your right hand to be sworn,
12 please. Do you swear the evidence you're about to
13 give is the truth, the whole truth and nothing but the
14 truth, so help you God?

15 THE WITNESS: Yes, I do.

16 JUDGE PRIDGIN: Thank you very much.

17 Please have a seat. And will you be questioning
18 whenever you're ready, sir?

19 MR. FISCHER: Yes, I will. Thank you.

20 ROBERT HEVERT TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. FISCHER:

23 Q. Good afternoon, Mr. Hevert. Would you state
24 your name and address for the record.

25 A. My name is Robert Hevert. Last name is

1 spelled H-E-V -- as in Victor -- E-R-T. And I am
2 managing partner of Sussex -- S-U-S-S-E-X -- Economic
3 Advisers of Framingham, Massachusetts.

4 Q. And are you the same Robert Hevert that
5 caused to be filed in this case direct, rebuttal and
6 surrebuttal on the topic of cost of capital and ROE?

7 A. Yes -- yes, I am.

8 Q. For your information, your direct has been
9 designated as Exhibit Number 5. Your rebuttal is
10 Number 6, HC, P and NP versions. And Number 7 is
11 designated as your surrebuttal, both the P and the NP
12 version. And then did you also cause to be filed
13 testimony on the special contract financial impact
14 issue that's in this case?

15 A. Yes, I did.

16 Q. For your information, that document has been
17 designated as Exhibit Number 8, HC and NP. Do you
18 have any corrections to any of those exhibits that you
19 need to make? I understand there might be one that's
20 in camera.

21 A. Yes. I have only one, and it unfortunately
22 would be in camera.

23 JUDGE PRIDGIN: All right. If I could ask
24 everyone to bear with me for just a moment, please.

25 (REPORTER'S NOTE: AT THIS POINT, AN IN-CAMERA SESSION

1 WAS HELD, WHICH IS CONTAINED IN VOLUME 12, PAGES 173
2 THROUGH 173 OF THE TRANSCRIPT.)

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1 JUDGE PRIDGIN: Okay. Are we're back in
2 public session.

3 Q. (BY MR. FISCHER.) Are there any other
4 corrections you need to make to any of your other
5 testimonies or schedules?

6 A. No, there are not.

7 Q. If I were to ask you the questions that are
8 contained in your prefiled testimonies, would your
9 answers be the same today?

10 A. Yes, they would.

11 Q. And do -- are your schedules correct and
12 accurate to the best of your knowledge and belief?

13 A. Yes, they are.

14 MR. FISCHER: Judge, then I would move for
15 the admission of Exhibit 5, 6, 7 and 8, and tender the
16 witness for cross-examination.

17 JUDGE PRIDGIN: Okay. Those exhibits have
18 been offered. Any objections? Hearing none, Exhibit
19 5 is admitted, Exhibit 6 -- and I have an HC slash P
20 version, a P version and an NP version. Those are all
21 admitted. Exhibit 7, both P and NP, are admitted.
22 Exhibit 8, HC slash P and NP are all admitted. And
23 cross-examination? Noranda, Mr. Downey, any
24 questions?

25 MR. DOWNEY: No cross.

1 JUDGE PRIDGIN: Thank you. I don't see

2 Mr. Knee. Mr. Poston?

3 MR. POSTON: No questions.

4 JUDGE PRIDGIN: And Mr. Thompson?

5 MR. THOMPSON: No questions. Thank you,

6 Judge.

7 JUDGE PRIDGIN: Very good. Mr. Chairman,

8 any questions?

9 CHAIRMAN KENNEY: No. Thank you. Thanks.

10 Good to see you, Mr. Hevert.

11 THE WITNESS: It's very nice to see you,

12 sir.

13 JUDGE PRIDGIN: All right. Thank you. No

14 questions here. I think you can make your plane. You

15 may be excused.

16 THE WITNESS: Thank you, sir.

17 JUDGE PRIDGIN: All right. And the next

18 witness -- please excuse me if I mis-pronounce -- and

19 please correct me. Is Mr. Marevangepo close?

20 THE WITNESS: That's correct.

21 JUDGE PRIDGIN: Close enough. All right.

22 Thank you. If you'll come forward to be sworn,

23 please. And if you'll raise your right hand to be

24 sworn, please. Do you swear the evidence you're about

25 to give will be the truth, the whole truth, nothing

1 but the truth, so help you God?

2 THE WITNESS: Yes, I do.

3 JUDGE PRIDGIN: Thank you very much.

4 Please have a seat. And Mr. Thompson, when you're
5 ready.

6 MR. THOMPSON: Thank you, Judge.

7 ZEPHANIA MAREVANGEPO TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. THOMPSON:

10 Q. Mr. Marevangepo, would you please spell your
11 name.

12 A. My first name, Z-E-P-H-A-N-I-A. My last name
13 is M-A-R-E-V-A-N-G-E-P-O.

14 Q. Thank you. And how are you employed?

15 A. I'm a utility regulatory auditor for Public
16 Service Commission.

17 Q. With the Public Service Commission. Thank
18 you. And Mr. Marevangepo, did you prepare or cause to
19 be prepared certain testimony -- and I refer to a
20 portion of the staff cost of service report which has
21 been marked as Exhibit 13, and appendix one to that
22 report which contains credentials; then Exhibit 15,
23 which is appendix two to that report; Exhibit 31,
24 which is rebuttal testimony, P and NP; and Exhibit 32,
25 which is surrebuttal testimony, P and NP. Did you

1 **cause -- prepare or cause to be prepared those items**
2 **of testimony?**

3 A. Yes.

4 **Q. Do you have any corrections to that testimony**
5 **today?**

6 A. Yes. On page 7 of the -- of the report --
7 revenue requirement cost of service report.

8 **Q. Page 7. Yes, sir.**

9 A. The table presented on page 7 was cut off, I
10 guess, when it was being formatted. So there's a
11 column that is missing. On the far right, it's
12 supposed to show on top, 9.2 percent.

13 MR. KEEVIL: We may need to go HC for this.

14 MR. THOMPSON: I think -- I believe this is
15 confidential, Judge. I'm sorry.

16 JUDGE PRIDGIN: All right. If you'll bear
17 with me. That's quite all right. We'll go in camera.
18 Just one moment, please.

19 MR. KEEVIL: Actually, I guess it's P
20 instead of C. Sorry.

21 (REPORTER'S NOTE: AT THIS POINT, AN IN-CAMERA SESSION
22 WAS HELD, WHICH IS CONTAINED IN VOLUME 12, PAGES 178
23 THROUGH 179 OF THE TRANSCRIPT.)

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1 JUDGE PRIDGIN: All right. Thank you.

2 We're back in public session.

3 THE WITNESS: So the last changes on page 3
4 of my surrebuttal testimony -- and that's on line
5 number -- line number 2 -- at the end of that
6 sentence, I have total debt, long-term debt. I just
7 crossed off the -- the debt after total. So it's
8 supposed to read total long-term debt.

9 Q. (BY MR. THOMPSON.) I see. There's an extra
10 word, debt?

11 A. Yes.

12 Q. Thank you. Any further corrections or
13 changes?

14 A. No.

15 Q. Very good. Now, with those corrections in
16 mind, is your testimony true and correct to the best
17 of your knowledge and belief?

18 A. Yes.

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

21 A. Yes.

22 MR. THOMPSON: With that, I would offer
23 Exhibits 15, 31 and 32.

24 JUDGE PRIDGIN: Any objection to those
25 exhibits? Okay. Hearing none, I have Exhibit 15,

1 both a P and NP version. Those are admitted. Exhibit
2 31, also P and NP, also admitted. Exhibit 32, also P
3 and NP, they are also admitted.

4 MR. THOMPSON: Thank you, Judge. At this
5 point, then, I will tender the witness for
6 cross-examination.

7 JUDGE PRIDGIN: Mr. Thompson, thank you.
8 Cross-examination? Mr. Poston, any questions?

9 MR. POSTON: No questions. Thank you.

10 JUDGE PRIDGIN: I don't see Mr. Knee.
11 Mr. Downey?

12 MR. DOWNEY: No questions.

13 JUDGE PRIDGIN: Liberty? Either Mr. Dority
14 or Mr. Fischer?

15 MR. FISCHER: Yes, Judge. I have a few.

16 CROSS-EXAMINATION

17 QUESTIONS BY MR. FISCHER:

18 Q. Good afternoon.

19 A. Afternoon.

20 Q. As I understand the Staff's cost of service
21 report, you are the expert that sponsors the Staff's
22 cost of capital and capital structure recommendations
23 in this case. Is that right?

24 A. Yes.

25 Q. I have just a couple preliminary questions

1 before we get to the substance. Appendix 1 on page
2 22, I think, summarized your background, your
3 education and employment background. Is that right?

4 A. Yes.

5 Q. It looks like you began your employment with
6 the Commission a few months after you earned your
7 undergraduate degree in December of 2008. Correct?

8 A. Yes.

9 Q. And then you received your masters in
10 business administration, I think, a couple -- well, a
11 year later with an emphasis in accounting in May of
12 2009. Is that right?

13 A. Yes.

14 Q. Did you take some finance classes related to
15 your MBA degree?

16 A. Yes, I did.

17 Q. Can you tell me about how many finance
18 classes you had in that regard in that degree?

19 A. For my MBA, I took two finance classes.

20 Q. Two? Okay. Is that six hours credit?

21 A. Yes.

22 Q. Prior to your employment with the Commission,
23 where have you worked?

24 A. I worked at ABB.

25 Q. That's the transformer company across the --

1 A. Across the river. Yes.

2 Q. Okay. Have you worked -- ever worked for any
3 other regulatory commission?

4 A. No.

5 Q. Have you ever worked for a public utility?

6 A. No.

7 Q. Have you ever worked for any type of
8 financial institution?

9 A. No.

10 Q. Have you ever advised any clients other than
11 the Staff on financial or economic issues?

12 A. No.

13 Q. Okay. I think on appendix 1, pages 23
14 through 24, you summarized your case participation
15 since 2010. Is that right?

16 A. That's right.

17 Q. And is it correct you filed your first
18 testimony in a Laclede Gas finance case in February of
19 2010, about four and a half years ago?

20 A. I believe that's correct.

21 Q. And then based on that summary, it appears
22 that you participated in roughly nine cases since
23 you've been here at the Commission prior to this one.

24 A. I believe that's correct.

25 Q. Okay. Have you ever testified before any

1 other state agency or federal agency?

2 A. No.

3 Q. It looks like, based on appendix one, that
4 most of the cases you've been involved with have
5 settled, fortunately. Is that right?

6 A. Yes, they did.

7 Q. Have you ever been subject to
8 cross-examination previously on cost of capital or
9 capital structure issues?

10 A. Yes.

11 Q. Was that the Emerald Point case?

12 A. Yes.

13 Q. And did that involve a small water and sewer
14 company with less than 400 customers?

15 A. Yes.

16 Q. Okay. With the exception of that Emerald
17 Point case, have you been subject to cross-examination
18 before on cost of capital or rate of return issues?

19 A. No.

20 Q. Okay. Well, we'll try to get through this as
21 quickly as we can here.

22 A. Sure.

23 Q. Would you turn to your -- the cost of service
24 report at page 7, line 12.

25 A. Yes. I'm there.

1 Q. There, you state your recommendation for ROE
2 in this case is in the range of 8.2 to 9.2. Is that
3 correct?

4 A. That's correct.

5 Q. And the midpoint would be 8.7 percent. Is
6 that correct?

7 A. That's correct.

8 Q. That recommendation, I think, is based on
9 your DCF results that are contained on schedule 11,
10 7.8 to 8.8. Is that right?

11 A. That's correct.

12 Q. Those DCF results are for your proxy
13 companies that are displayed on schedule 11. Is that
14 right?

15 A. Yes.

16 Q. You make an upward adjustment of point -- of
17 0.38 percent for -- or LUCo's credit rating. Is that
18 right?

19 A. That's right.

20 Q. Would you explain for the Commissioners why
21 you would make an adjustment for LUCo's credit rating?

22 A. Because my cost of equity recommendation was
23 based on a proxy group, so we did an average credit
24 rating for the proxy group, and it was an A rating.
25 And the Company's credit rating was a triple B, so it

1 was the difference between the company and the proxy
2 group.

3 Q. So your -- your proxy group or your average
4 companies have a higher credit rating than the LUCo
5 company has?

6 A. That's correct.

7 Q. And so for that reason, you made an upward
8 adjustment to the typical range that you would use if
9 there was comparable companies?

10 A. Yes.

11 Q. Okay. Do you believe it's appropriate to
12 raise the company's recommended range to account for
13 its lower credit rating?

14 A. It's appropriate to the extent that it's
15 based on a proxy group.

16 Q. Okay. Would you turn to the staff report on
17 page 33.

18 A. Yes.

19 Q. If you look at lines 23 through 26, on that
20 page, you state that it's not improbable that
21 investors are only requiring returns on common equity
22 in the 7 to 8 percent range for natural gas utility
23 stocks. Is that right?

24 A. That's right.

25 Q. And I think that you go on to state that

1 these estimates are consistent with common sense
2 tests. Is that right?

3 A. Yes.

4 Q. Do those common sense tests include your rule
5 of thumb method that you discuss in your staff report
6 at page 34, lines 1 through 15?

7 A. Yes.

8 Q. On page 34 at line 3, you state that a rule
9 of thumb method allows estimation of the cost of
10 equity by adding a risk premium to the yield to
11 maturity of the subject company's long-term debt. Is
12 that right?

13 A. That's right.

14 Q. And then you state that based on experience
15 in the US markets, the typical risk premium is in the
16 3 to 4-percent range. Is that right?

17 A. That's correct.

18 Q. Staff frequently applies the rule of thumb
19 method in your cost of capital recommendations. Is
20 that true?

21 A. I guess not necessarily true, I guess. This
22 was just a point of reasonable check. But as for my
23 recommendation, it's based on DCF. So the rule of
24 thumb was just --

25 Q. But Staff often does talk about the rule of

1 thumb method in your -- in your cost reports on cost
2 of capital and -- and capital structure issues. Isn't
3 that true?

4 A. That's correct.

5 Q. Has the Commission here in Missouri
6 previously accepted the rule of thumb method for
7 setting ROEs?

8 A. No.

9 Q. The Missouri Commission has sometimes
10 reviewed authorized returns in other jurisdictions in
11 setting their authorized ROEs in Missouri rate cases,
12 though. Isn't that true?

13 A. That is true.

14 Q. The Commission has used what they sometimes
15 refer to as a zone of reasonableness test when
16 establishing the company's ROE. Is that true?

17 A. I've seen that. That's true. But as for
18 whether they used it in the previous cases, I never
19 saw where they specifically say that in the most
20 recent cases.

21 Q. Okay. But you have seen some reports and
22 orders where they've talked about the zone of
23 reasonableness and whether some expert's ROE is in
24 that zone of reasonableness?

25 A. Yes. I've seen that.

1 **Q. Would you agree with me that the Commission**
2 **is more likely to look at the authorized returns in**
3 **other jurisdictions than to look at the rule of thumb**
4 **method in actually setting the ROE?**

5 MR. THOMPSON: Objection. Calls for
6 speculation.

7 JUDGE PRIDGIN: Could you ask the question
8 again, Mr. Fischer.

9 MR. FISCHER: Yes. I asked the question
10 would you agree that the Commission is more likely to
11 look at authorized returns in other jurisdictions than
12 to look at the rule of thumb method.

13 JUDGE PRIDGIN: I'll sustain.

14 **Q. (BY MR. FISCHER.) Would you agree with me**
15 **that in the past, the Commission has looked at**
16 **authorized returns in other jurisdictions?**

17 A. That is correct.

18 **Q. And I believe you indicated that to your**
19 **knowledge, they've never used the rule of thumb method**
20 **to set ROEs. Is that correct?**

21 A. That is correct.

22 **Q. Let's turn to page 34 at line 12.**

23 A. Of my cost of service report?

24 **Q. Let me see. Yeah. Are you with me there?**
25 **You state I think adding a 3-percent risk premium, the**

1 rule of thumb predicts a cost of common equity between
2 7.51 percent and 8.28 percent.

3 A. Yes.

4 Q. From your perspective, does the rule of thumb
5 method suggest to you that 7 to 8 percent is a more
6 reasonable range for the cost of equity for natural
7 gas companies?

8 A. It is a point of reasonableness. Yes.

9 Q. So it's a point of reasonableness, but it's
10 not necessarily a reasonable range for common equity?

11 A. This is not sponsoring my position. It's --
12 I sponsored my position based on DCF, and then I guess
13 at the end of the day, you just have to check to see
14 if what you sponsored makes sense or not. So that's
15 when we pull in the rule of thumb --

16 Q. Okay.

17 A. -- to see what result do we get if we just
18 try to check some of the measures.

19 Q. Well, do you agree that the rule of thumb
20 method suggests that 7 to 8 percent is a more
21 reasonable range for cost of equity?

22 A. That's what it suggests. Yes.

23 Q. If that's the case, then why didn't you
24 recommend an ROE in the range of 7 to 8 percent?

25 A. Because my recommendation was based on my

1 DCF.

2 Q. You principally relied on your DCF?

3 A. Yes.

4 Q. Your base range before the credit rating
5 agent -- before the credit rating adjustment is 7.8 to
6 8.8. Is that right?

7 A. Yes.

8 Q. And the midpoint of that range is 8.3
9 percent?

10 A. I believe so.

11 Q. And that's for the average natural gas
12 company contained in the proxy group. Is that right?

13 A. Yes. Before the adjustment.

14 Q. And how much did you add again for the -- the
15 adjustment?

16 A. .38 percent.

17 Q. Okay. Let's turn, if you would, to your
18 schedule 7 dash 2, which is entitled eight comparable
19 natural gas distribution companies for Summit Natural
20 Gas of Missouri. Are you there?

21 A. 7-2?

22 Q. Yes.

23 A. Yes.

24 Q. The credit rating range there is from triple
25 B plus to A plus. Is that right?

1 A. That's correct.

2 Q. And I believe you indicated that the Missouri
3 Commission gives weight to the authorized returns in
4 other jurisdictions. Is that right?

5 A. I believe they do.

6 Q. Have you reviewed the testimony and schedules
7 of Mr. Robert Hevert in this case?

8 A. Yes, I did.

9 Q. Do you happen to have his testimony? I --

10 A. The schedules?

11 Q. Yeah. Maybe it would be easier for me just
12 to hand you the schedule I have in mind.

13 A. Yeah. Sure.

14 Q. I'd like to ask you to review schedule
15 RBH-R19. And Counsel, I can give you my copy of that,
16 if that's all right with you.

17 MR. THOMPSON: That's fine, Mr. Fischer.

18 Q. (BY MR. FISCHER.) I'm going to ask you to
19 look at a return on page 13 of 14. And I've actually
20 highlighted it so you can see it quickly. There, I've
21 highlighted the return on equity of 8.83 percent,
22 which issued to a natural gas rate case on June 29th
23 of 2011. Do you see that 8.83 percent?

24 A. Yes, I do.

25 Q. Would you confirm for me that this 8.83

1 percent return is the lowest return listed on that
2 schedule, R19.

3 A. Yes. That is correct.

4 Q. And that schedule covers from January 3rd,
5 1980 to June 12, 2014. Is that right?

6 A. That's correct.

7 Q. And if I calculated that right, it's about 34
8 years?

9 A. That's about right.

10 Q. While you're looking at that schedule, the
11 last page of that schedule has the last four
12 authorized returns listed for June 14, which exceeded
13 10 percent. Is that right?

14 A. That is correct.

15 Q. Based on this information, would you agree
16 that the 8.83 percent is the lowest ROE authorized in
17 the last 34 years?

18 A. That is correct.

19 Q. Now, before your adjustment for the lower
20 credit rating quality of the company, Staff's range
21 would be 7.8 to 8.8. Is that right? Isn't that what
22 you told me?

23 A. Yes. That's correct.

24 Q. So the highest end of your range before the
25 credit rating adjustment is lower than the lowest

1 authorized rate of return on equity issued by any
2 regulatory agency in the last 34 years. Is that
3 right?

4 A. That is correct.

5 Q. And the midpoint of your range would be 8.3
6 percent, which would be even lower. Right?

7 A. That's correct.

8 Q. And you give a range because you believe any
9 authorized return in that range would be reasonable
10 from Staff's perspective. Is that right?

11 A. Yes. That's correct.

12 Q. So it's equally likely that a 7.8 percent is
13 the cost of equity as the high end of 8.8 percent,
14 from your perspective. Is that right?

15 A. Sorry. Would you please repeat that
16 question.

17 Q. Yes. Certainly. So it's equally as likely
18 that the bottom end of the range, 7.8 percent, is the
19 cost of equity as is the high end of the range at 8.8
20 percent. Isn't that what you're -- what you're
21 telling the Commission?

22 MR. THOMPSON: I'm going to object, Judge.
23 I believe he's mischaracterizing the testimony. The
24 recommended range that Mr. Marevangepo has sponsored
25 is 8.2 to 9.2.

1 MR. FISCHER: I can rephrase if you'd like,
2 Judge.

3 JUDGE PRIDGIN: That's fine.

4 Q. (BY MR. FISCHER.) That range of 7.8 to 8.8
5 is for your proxy companies. Is that right?

6 A. Yes.

7 Q. Is it equally likely, from your perspective,
8 that for those proxy companies, the 7.8 is the cost of
9 equity as is the high end of the range at 8.8?

10 A. That's correct.

11 Q. And that's the reason you give the Commission
12 a range to choose from; isn't it?

13 A. Yes.

14 Q. Going back to our earlier discussion, you
15 agreed, I think, that the rule of thumb method that --
16 or at least under that rule of thumb method, a
17 7-percent ROE is a likely estimate of the real cost of
18 equity to the average natural gas company before you
19 make a credit equality adjustment. Right?

20 A. The rule of thumb is 7.51. You said the rule
21 of thumb?

22 Q. Yes.

23 A. The lower end is 7.51. That's the one you're
24 referring to.

25 Q. Okay. A little bit higher, 7.51?

1 A. Yes.

2 **Q. Okay. So a 7.51 ROE is like -- is the likely**
3 **estimate of the real cost of equity in the average**
4 **natural gas company?**

5 A. Again, I guess my testimony is not based on
6 rule of thumb, so I guess it's based on my DCF. This
7 rule of thumb is just pretty much I guess a point of
8 self-check to say I guess is my recommendation
9 sensible or not. But otherwise, I'm not sponsoring
10 the rule of thumb range, so --

11 **Q. You wouldn't recommend a rule of thumb range**
12 **to the Commission?**

13 A. No. Otherwise, I would have recommended in
14 this case, but I just wanted the Commission to see
15 some of the measures that pretty much support my
16 recommendation.

17 **Q. And you said the Commission's never used the**
18 **rule of thumb anyway. Right?**

19 A. No, they did not.

20 **Q. Even though Staff often presents it.**

21 A. We -- I guess we didn't sponsor rule of
22 thumb, we just put it out there. It's I guess not for
23 the Commission to accept it, but it's for the
24 Commission to see our self-check, the process that we
25 went through when we were sponsoring our cost of

1 equity.

2 Q. Okay. Let's change gears a little bit and
3 talk about growth rates.

4 A. Okay.

5 Q. Would you turn to your schedule 11 to the
6 staff report, where you show your proposed range. I
7 think it shows a proposed range of growth of 4 to 5
8 percent.

9 A. Schedule 11. Yes.

10 Q. In there, you show a proposed range of growth
11 in the range of 4 to 5 percent. Is that right?

12 A. Yes.

13 Q. I didn't see on schedule 11 where you showed
14 how you derived that growth rate. Is there a footnote
15 or something there that I missed?

16 A. I think it's explained throughout my -- my
17 testimony, that -- I guess the growth rate section for
18 when I discussed my inputs, the -- the 4.5 is based on
19 the analysis that is presented I guess in schedules --
20 let me check here -- I guess if you look from
21 schedules 8.4, 8.5, 8.6, and the -- the GDP discussion
22 throughout my testimony, that's where you see I
23 discuss where that range came from. We looked at the
24 historical -- historical growth rate for the earnings
25 per share, value per share, and the dividend per share

1 from '68 to two thousand -- from 1968 to 2013. And
2 then we also -- I guess there's another table in my --
3 these are historicals, and then for -- for the
4 projected -- there's a table in our cost of service
5 report, I think that shows the projected I guess
6 yearly GDP I guess in the -- I think it's in the 2.4,
7 2.6 yearly GDP range. And if we add another 2 percent
8 for -- for the GDP deflector -- deflator, then I guess
9 you end up with a nominal GDP of about 4.6.

10 **Q. Okay. My question, was, though, does**
11 **schedule 7 show how you derived those growth rates?**

12 A. This --

13 MR. THOMPSON: Objection, Judge. He's
14 explained that the source of the growth rates is
15 explained in his testimony.

16 THE WITNESS: In my testimony.

17 **Q. (BY MR. FISCHER.) So the answer is no, it's**
18 **not in schedule 11, it's elsewhere. Correct?**

19 MR. THOMPSON: Could I get a ruling?

20 MR. FISCHER: I'm sorry. I apologize,
21 Kevin.

22 JUDGE PRIDGIN: I'll overrule, because I
23 think he's trying to answer the question, and I think
24 that follow-up question was trying to get him to
25 answer, so --

1 MR. THOMPSON: Thank you, Judge.

2 THE WITNESS: So yes, the -- it's not in
3 the schedule 11, but it's explained in my testimony.

4 Q. (BY MR. FISCHER.) Okay. Would you agree
5 that growth rates are a result of the application of
6 your personal judgment, too?

7 A. Not my personal judgment.

8 Q. Did someone else on Staff tell you to use 4
9 to 5-percent growth rates?

10 A. No. It's based on the judgment of the
11 experts that published those articles with the
12 projected growth rates.

13 Q. So is it correct that you didn't apply your
14 personal judgment?

15 A. I applied my personal judgment, I guess, in
16 the overall DCF itself, but as for the projections, I
17 didn't come up with any projections. So I think if
18 you are saying professional judgments, in I guess
19 formulating growth rate, no, I did not formulate a
20 growth rate. I was just putting together inputs that
21 are provided out there by the I guess growth rate
22 experts.

23 Q. I think you indicate in the staff report that
24 GDP growth rates represent an upper bound from your
25 perspective on reasonable growth estimates. Is that

1 right?

2 A. Yes.

3 Q. And I believe you indicate that the GDP
4 growth rate would be 4.86 percent. That would be the
5 upper bound. Is that right?

6 A. In my testimony, I think 4.86, 5 percent.

7 Q. That's correct?

8 A. That's correct.

9 Q. Okay. I think you provide a number of charts
10 showing gas utility earnings, capital expenditures and
11 GDP growth rates on pages 28 and 29. Is that right?
12 It's at the cost of service report.

13 A. Yes.

14 Q. On lines 3 through 5 of page 28, you note
15 that the early to mid-1970s was a period during which
16 the natural gas industry moved inversely to GDP
17 growth. Is that right?

18 A. Yes.

19 Q. Would you agree with me that that reflected
20 the period of the Arab oil embargo?

21 A. I believe so.

22 Q. It was a structural shift in the economy at
23 that point. Right?

24 A. I believe so.

25 Q. I know you also refer in your testimony to

1 the Energy Information Administration as a source of
2 data. You believe that's a reliable source of data?

3 A. Yes.

4 Q. Have you read the 2014 EIA Annual Energy
5 Outlook, by chance?

6 A. Yes, I did.

7 Q. Did you see that natural gas use is expected
8 to increase sharply as a result of the shale gas
9 exploration and development during that time?

10 A. Yes. I remember reading that.

11 Q. Do you remember even there were projections
12 as high as 56 percent increases in natural gas
13 production for the coming years?

14 A. I don't remember the specific details.

15 MR. FISCHER: Q. Okay. Counsel, I'd
16 like to refresh his memory a little bit. And here's a
17 page that I'm going to ask him to look at.

18 MR. THOMPSON: Okay. Thank you.

19 Q. (BY MR. FISCHER.) I've taken a page out of
20 that, MT23, and I've highlighted a sentence there.
21 Does that suggest that there's -- they're predicting a
22 56-percent increase in total natural gas production
23 from 2012 to 2040?

24 A. Yes.

25 Q. Okay. And does that seem reasonable to you,

1 based on your information of the -- the natural gas
2 industry?

3 A. I wouldn't know whether the number is
4 reasonable or not.

5 Q. Okay. Did you also see in the executive
6 summary of that report that these folks are projecting
7 that by 2035, natural gas will surpass coal as the
8 nation's largest source of energy for electricity
9 generation?

10 A. I don't remember that statement --

11 Q. Okay.

12 A. -- but if that's what they say --

13 MR. FISCHER: Counsel, I'd like to show him
14 that page.

15 MR. THOMPSON: I'm going to inquire about
16 the relevance of this, given that this is a gas
17 company rate case.

18 JUDGE PRIDGIN: Mr. Fischer?

19 MR. FISCHER: Yes, Judge. It would be our
20 position that there's a structural shift in the
21 economy that is going to be occurring in the next
22 several years, just like there was during the oil
23 embargo, and that that is not -- that information is
24 not being projected in historic numbers that are being
25 presented by the Staff in terms of growth rates.

1 JUDGE PRIDGIN: All right. I'll allow it.

2 Q. (BY MR. FISCHER.) Does this outlook report
3 suggest to you that they're projecting by 2035,
4 natural gas will surpass coal as the nation's largest
5 source of energy for electricity generation?

6 A. That is correct.

7 Q. So would you agree with me that natural gas
8 is expected to undergo a structural shift that may not
9 be reflected in the historical data that you present?

10 MR. THOMPSON: I object. Calls for
11 speculation.

12 JUDGE PRIDGIN: Can you state the question
13 again, Mr. Fischer. Would you agree with me that --

14 MR. FISCHER: Natural gas is expected to
15 forego -- or undergo -- I'm sorry -- undergo a
16 structural shift that may not be reflected in the
17 historical data that -- that the Staff presents.

18 JUDGE PRIDGIN: And your objection is to
19 speculation, but the question's going to is that a
20 change from the data that Staff presents. Am I
21 understanding this? Your objection is speculation.
22 Right?

23 MR. THOMPSON: That's correct, Judge.

24 JUDGE PRIDGIN: But your question is --

25 MR. FISCHER: It's not speculation. I'm

1 just asking whether he agrees with me that --

2 JUDGE PRIDGIN: It's different than what
3 the data the Staff presents.

4 MR. FISCHER: Yes.

5 JUDGE PRIDGIN: I'll -- I'll overrule.

6 THE WITNESS: I guess -- I guess this
7 statement suggests a shift. Yes.

8 Q. (BY MR. FISCHER.) And shale gas has made a
9 huge impact on our natural gas industry; hasn't it?

10 A. I believe it did.

11 Q. It's caused rates to come down substantially;
12 hasn't it?

13 A. I don't know if it's substantially. I guess
14 it's just a matter of opinion, I guess.

15 Q. Turning to page 12, lines 14 through 23 of
16 your rebuttal testimony.

17 A. Page 12?

18 Q. Yes. Page 12, lines 14 through 23.

19 A. Yes.

20 Q. There you say that Staff has reviewed
21 confidential asset and equity valuation reports
22 provided in the context of merger acquisition and
23 other financial investment advisor roles. Is that
24 right?

25 A. That's correct.

1 Q. And you indicate that you've never seen a
2 growth rate greater than 4 percent. Is that right?

3 A. Yes.

4 Q. Did you personally review these confidential
5 asset and equity valuation reports?

6 A. Yes, I did.

7 Q. But you didn't cite any specific reports. Is
8 that correct?

9 A. That's correct.

10 Q. So this is just a recollection of what you
11 remember seeing?

12 A. I didn't cite because it was highly
13 confidential information.

14 Q. Okay. And turning to page 15 of your
15 surrebuttal testimony again, you -- I think you
16 indicate that the ROE of 7 to 8 percent is more in
17 line with the cost of equity reported or implied by
18 equity analysts and financial advisors. Is that
19 right?

20 A. That's correct.

21 Q. Can you explain to me what you mean by
22 financial or investment advisor roles.

23 A. Their role? In this case, I was -- I was
24 just addressing this issue in the context of the
25 acquisition cases that we worked on. And those are

1 the same cases where I said the information was highly
2 confidential. But they were pretty much I guess
3 helping the company to understand whether the -- the
4 price that was being asked for the asset, whether it
5 was reasonable or not.

6 **Q. Have you ever performed a valuation of assets**
7 **as a financial or investment advisor?**

8 A. No.

9 **Q. Have you ever performed a valuation study in**
10 **the context of a public utility purchase or sale**
11 **transaction?**

12 A. No.

13 **Q. Is it your testimony that valuation analysis**
14 **used for those valuation purposes are the same as**
15 **those used to estimate the cost of equity in a**
16 **rate-making process?**

17 A. When you say the cost of equity in the
18 rate-making process, I guess that makes it different.
19 I guess would you please explain the cost of equity
20 for the rate-making process.

21 **Q. I'm asking what we're doing in this -- in the**
22 **context of this case, whether you're saying that the**
23 **valuation studies that you saw in the context of these**
24 **financial advisers doing transactions, is that the**
25 **same as those that you're suggesting should be used**

1 for cost equity in this rate-making process?

2 A. Yes.

3 Q. Have you reviewed the company -- the Missouri
4 Public Service Commission's report and order in the
5 Ameren rate case ER-2011-0028?

6 A. I did. I just don't remember the specifics.

7 Q. I'm going to hand you a portion of that
8 report and order, on page 19. Would you take a look
9 at paragraphs 19 and 20 for me.

10 MR. THOMPSON: Do you have a copy of that?

11 MR. FISCHER: I'm sorry. Didn't I give
12 you -- oh, I -- I quoted the wrong -- paragraphs, not
13 page numbers. Paragraphs.

14 MR. THOMPSON: Oh, I'm sorry. Thank you,
15 Counsel. I'm there.

16 MR. FISCHER: I apologize.

17 Q. (BY MR. FISCHER.) Let me know when you've
18 had a chance to review that -- those two paragraphs.

19 A. Okay. Yes. I --

20 Q. Would you agree with me that the Commission
21 has found in those paragraphs that Staff's reliance on
22 valuation analysis to support the reasonableness of
23 Staff's return on equity recommendation was misplaced?

24 A. That's what's stated in here. Yes.

25 Q. The Commission was persuaded by and accepted

1 Mr. Hevert's explanation why valuation analysis cited
2 by Staff were different from the analysis necessary to
3 evaluate a reasonable return on equity in the
4 rate-making process. Is that right?

5 A. This is correct.

6 MR. FISCHER: Judge, I'd like to talk about
7 the capital structure issue, the -- and I need to go
8 in camera, unfortunately, to do that.

9 JUDGE PRIDGIN: All right. Just one
10 moment, please.

11 (REPORTER'S NOTE: AT THIS POINT, AN IN-CAMERA SESSION
12 WAS HELD, WHICH IS CONTAINED IN VOLUME 12, PAGES 209
13 THROUGH 232 OF THE TRANSCRIPT.)

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1 JUDGE PRIDGIN: All right. We are back in
2 public forum.

3 Q. (BY MR. FISCHER.) Just about done.

4 A. No. It's okay.

5 Q. I'd like to switch to your testimony on the
6 financial integrity issues.

7 A. Okay.

8 Q. Prior to the time that Staff filed its case
9 recommending \$2.8 million dollars of revenue
10 imputation adjustments, did you do an analysis of the
11 financial impact of those recommendations on the
12 company, after the Commission accepted those
13 adjustments?

14 A. The impact -- no, I did not.

15 Q. I believe that Mr. Sommerer acknowledged in
16 his testimony that the adjustments would have a
17 material impact on the company. Do you agree?

18 A. I guess it depends on what you are looking at
19 when you say financial impact. I guess are you
20 talking about ratios, or are you talking about impact
21 on the company not getting cash flows? I don't know,
22 I guess. It depends on what you are referring to when
23 you say financial --

24 Q. So you might disagree with Mr. Sommerer?

25 A. I just wouldn't know. I guess he -- I don't

1 have an opinion on his position.

2 Q. Have you quantified the financial impact of
3 Staff's proposal on the company?

4 A. No.

5 Q. If you look at your surrebuttal testimony at
6 page 20, lines 10 through 14, I believe you indicate
7 that Mr. Hevert's analysis should be disregarded by
8 the Commission because it treats Staff's
9 recommendation as punishment. Is that right?

10 A. Sorry. Lines what?

11 Q. Lines 10 through 14.

12 A. Yes.

13 Q. Do you believe that Staff's revenue
14 imputation adjustments should be considered as
15 adjustments for imprudence?

16 A. When you say -- when you say revenue
17 adjustments, are you talking -- are we going back to
18 the -- to the special contracts?

19 Q. Yes. I'm talking about the revenue
20 imputation adjustments for the special contracts.

21 A. Sorry. Can you repeat the question.

22 Q. Yes. Certainly. Yes. Do you believe that
23 Staff's revenue imputation adjustments for the special
24 contracts should be considered as adjustments for
25 imprudence?

1 Q. And you understand that those are the same
2 rates that ATMOS was required to use, according to the
3 stipulation agreed to by Staff in the last ATMOS rate
4 case. Right?

5 A. Based on what you read, yes.

6 Q. And you understand that Liberty was required
7 to honor those commitments made by ATMOS?

8 A. I don't know.

9 MR. FISCHER: Okay. Judge, thank you very
10 much. That's all the questions I have.

11 JUDGE PRIDGIN: Mr. Fischer, thank you.
12 Mr. Chairman, any questions?

13 CHAIRMAN KENNEY: No. Mr. Marevangepo,
14 thank you very much for your testimony. I don't have
15 any questions.

16 THE WITNESS: Thank you.

17 JUDGE PRIDGIN: Thank you. Commissioner
18 Stoll?

19 COMMISSIONER STOLL: I have no questions.

20 JUDGE PRIDGIN: Do I have any Commissioners
21 on the phone? Apparently not. I have no questions.
22 Any redirect?

23 MR. THOMPSON: I think I have a little bit,
24 Judge.

25 REDIRECT EXAMINATION

1 QUESTIONS BY MR. THOMPSON:

2 Q. Mr. Marevangepo, you will recall some
3 questions about Mr. Fischer -- about Staff's rule of
4 thumb test. Do you recall those questions?

5 A. Yes.

6 Q. If you know, does Staff use the rule of thumb
7 test as a test of reasonableness or as an independent
8 basis for a cost of equity recommendation?

9 A. We presented that as -- as an independent I
10 guess analysis that helped us to check the
11 reasonableness of our recommendation.

12 Q. So if I understand you correctly, you're
13 saying it's used to test reasonableness?

14 A. Pretty much. Yes.

15 Q. Okay. Now, do you recall Mr. Fischer asked
16 you a number of questions about where your growth rate
17 range of 4 percent to 5 percent came from? Do you
18 recall?

19 A. Yes.

20 Q. And I just want to make sure that the answer
21 you gave is clear. Did it -- was it discussed in your
22 testimony?

23 A. Yes.

24 Q. And that would be in the staff cost of
25 service report?

1 A. Yes.

2 Q. As well as schedules 8.4, 8.5 and 8.6?

3 A. Yes.

4 Q. Okay. Now, Mr. Fischer also asked you if you
5 were familiar with some language in the Commission's
6 decision in case ER-2011-0028. Do you recall that
7 line of questioning?

8 A. Yes.

9 Q. Did you understand that testimony -- or
10 excuse me. Did you understand that language in the
11 report and order to forbid Staff from looking at
12 valuations in the future?

13 A. I can say I read the -- the order. But I --
14 what I don't understand was I guess the basis for the
15 rejection, I guess to why I guess those numbers are
16 different, because I think the -- the order, I guess,
17 you know, when it try to -- ties in I guess what
18 Mr. Hevert recommended, it wasn't set out clear that I
19 guess a cost of equity is different from a -- from
20 ROE. And I still believe I guess even though I don't
21 know the specifics and the underlying information that
22 led to that I guess -- I guess rejection, I still
23 believe that the cost of equity is different from ROE,
24 and the same cost of equity that is used for valuation
25 purposes should be the same cost of equity that should

1 be used for rate-making purposes. But now I guess
2 when you try to say cost of equity is the same as ROE,
3 that's where you bring in the confusion to where
4 people who read that order can read it differently.
5 It depends on how they define cost of equity and ROE.
6 So those two things are different, and, you know, I --
7 I still say cost of equity that is used for valuation
8 should be used for rate making cost of equity, and
9 what ROE should be allowed in a rate-making process, I
10 guess that's another I guess different issue that
11 should be I guess talked about.

12 **Q. Okay. If the Commission were to adopt the**
13 **capital structure recommended by the company, would**
14 **that have a tendency to result in higher rates or**
15 **lower rates for rate payers?**

16 A. Higher rates.

17 **Q. Thank you. I have no further questions,**
18 **Judge.**

19 JUDGE PRIDGIN: All right. Mr. Thompson,
20 thank you. Mr. Marevangepo, thank you very much. You
21 can step down. You're excused. And let me verify
22 with counsel, it looks like that's all of the cost of
23 capital witnesses, and the next witnesses would be on
24 contract customer issues. And it looks to me that the
25 way that the -- that the issues are grouped, counsel

1 prefers to hear issues A, B and C on contract
2 customers at once and issue D at once, so that some
3 people will be coming to the stand more than once. Is
4 that how counsel wishes to proceed?

5 MR. KEEVIL: Yes, Judge. That was -- that
6 was the thinking behind -- because of the difference
7 between the contracts.

8 JUDGE PRIDGIN: Okay. That's certainly
9 fine with me. It looks like then Mr. Krygier is the
10 next witness.

11 MR. DOWNEY: Judge?

12 JUDGE PRIDGIN: I'm sorry.

13 MR. DOWNEY: As a -- as a point of
14 clarification, on the schedule, it shows Mr. Brubaker
15 addressing issue D, which is the Source Gas contract,
16 and I guess I missed this in reviewing the schedule.
17 He doesn't address that in his testimony.

18 THE COURT: Okay.

19 MR. DOWNEY: So I'm hoping that when he's
20 done with issues A, B and C, he can be released.

21 JUDGE PRIDGIN: Certainly. Fine with me.

22 MR. FISCHER: Judge, I'll ask if Mr. Hevert
23 can be excused from the proceeding.

24 JUDGE PRIDGIN: Any objections?

25 MR. THOMPSON: No objection.

1 JUDGE PRIDGIN: All right. He's excused.

2 MR. FISCHER: And can we have just a
3 five-minute break or so to change benches here?

4 JUDGE PRIDGIN: Certainly. Let's -- let's
5 make it more like ten. It shows 2:30 back here.
6 Let's -- let's resume at 2:40, please. Thank you.
7 We're off the record.

8 (OFF THE RECORD.)

9 JUDGE PRIDGIN: All right. We are back on
10 the record. And I believe Mr. Krygier is on the
11 witness stand, and we're ready for questions. Is
12 there anything further from counsel before we move on
13 to Mr. Krygier? All right. Hearing nothing,
14 Mr. Krygier, if you'll raise your right hand to be
15 sworn, please. Do you swear the evidence you're about
16 to give will be the truth, the whole truth and nothing
17 but the truth, so help you God?

18 THE WITNESS: I do.

19 JUDGE PRIDGIN: Thank you very much.
20 Please have a seat. And Mr. Fischer, whenever you're
21 ready.

22 MR. FISCHER: Thank you, Judge.

23 CHRISTOPHER KRYGIER TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 QUESTIONS BY MR. FISCHER:

1 Q. Please state your name and address for the
2 record.

3 A. My name is Christopher D. Krygier.
4 K-R-Y-G-I-E-R. And my business address is 2751 North
5 High Street, Jackson, Missouri 63755.

6 Q. Are you the same Christopher Krygier that
7 caused to be filed direct testimony, rebuttal
8 testimony and surrebuttal testimony that had both HC
9 and NP versions in this proceeding?

10 A. Yes.

11 Q. Those have been marked as Exhibit 2, 3 and 4,
12 for your information. Do you have any corrections you
13 need to make to any of those pieces of testimony?

14 A. Not at this time.

15 Q. If I were to ask you the questions that are
16 contained in Exhibits 2, 3 and 4 today, would your
17 answers be the same?

18 A. Materially.

19 Q. Are there -- the schedules that are attached,
20 are they accurate to the best of your knowledge and
21 belief?

22 A. Yes.

23 MR. FISCHER: Judge, with that, I would
24 move the admission of --

25 Q. (BY MR. FISCHER.) Well, let me ask you this.

1 **Is your testimony true and accurate to the best of**
2 **your knowledge and belief?**

3 A. Yes.

4 MR. FISCHER: Okay. I would move the
5 admission of Exhibit 2, 3 and 4 and tender the witness
6 for cross.

7 JUDGE PRIDGIN: All right. Any objections?

8 MR. KEEVIL: Sorry. Microphones always
9 throw me off. I don't know that I have an objection,
10 Judge, but I was somewhat surprised when Mr. Fischer
11 asked Mr. Krygier if his answers would be the same if
12 he asked him the question today and Mr. Krygier's
13 response was materially, implying to me that there
14 would be some differences. And I was just curious if
15 those related to the settled issues as opposed to
16 relating to the special contracts issue, or --

17 THE WITNESS: The -- there was no intent
18 there to try to break anything out or anything like
19 that.

20 MR. KEEVIL: Okay. So would -- I guess
21 permission to voir dire?

22 JUDGE PRIDGIN: Yeah. You can voir dire,
23 or counsel for Liberty can clarify.

24 MR. KEEVIL: Yeah. That would be fine.

25 **Q. (BY MR. FISCHER.) Would your answers be the**

1 same?

2 A. Yes.

3 MR. FISCHER: Judge, I tender the witness.

4 JUDGE PRIDGIN: Okay. Any objection to
5 Exhibits 2, 3 or 4? Hearing none, Exhibit 2, both NP
6 and HC, are admitted. Exhibit 3 NP and HC are
7 admitted. Exhibit 4, NP and HC are admitted. And
8 cross-examination, Mr. Downey?

9 MR. DOWNEY: Thank you, Judge.

10 CROSS-EXAMINATION

11 QUESTIONS BY MR. DOWNEY:

12 Q. Good afternoon.

13 A. Good afternoon, Mr. Downey.

14 Q. There should be an exhibit in front of you.

15 It looks like it's blue. Exhibit 23. Do you see
16 that?

17 A. Yes.

18 Q. Is that the surrebuttal testimony of Kim Cox?

19 A. Yes.

20 Q. I'd ask you to turn to page 3.

21 A. I'm there.

22 Q. And she claims that Liberty did not provide
23 adequate support for, quote, a special contract,
24 closed quotes, with Noranda. Right?

25 A. Correct.

1 Q. In fact, she says not only you provided
2 inadequate support, that you provided no support.
3 Correct?

4 A. Correct.

5 Q. And do you recall on that page that she
6 referenced Liberty's response to a DR?

7 A. Yes.

8 Q. Particularly DR 0267?

9 A. Yes.

10 Q. And turn to the back of that testimony. I
11 think it's the last two pages. Does she, in fact,
12 attach that response to her testimony?

13 A. Yes, she does.

14 Q. And who prepared that response?

15 A. It was prepared by me or under my direction.

16 Q. Very good. And that DR -- I'm going to
17 paraphrase a little bit, but it asks Liberty to
18 provide, quote, all supporting rationale and analysis,
19 closed quotes, to support the special contract with
20 Noranda.

21 A. Yes.

22 Q. Okay. That's paraphrasing from the
23 standpoint of the issue I'm addressing, which is for
24 Noranda. And in the answer to that DR, you referred
25 to prior rate cases that examined the special contract

1 issue. Correct?

2 A. Yes, I do.

3 Q. And you also mention that Noranda was an
4 interruptible customer.

5 A. Yes.

6 Q. What is -- what is an interruptible customer?
7 Can you explain that? I don't think it's in the
8 record yet.

9 A. Generally speaking, a customer whose service,
10 if there is a need to, can be interrupted in order to
11 assure gas supply to firm customers.

12 Q. Very good. Thank you. Now, you also, in
13 that DR response, referred to Mr. Swagger's testimony
14 in a prior case, GR-2006-0387, where he talked about
15 possibly bypassing the then ATMOS system.

16 A. Yes. I do make a reference to that -- to his
17 testimony in that document.

18 Q. And Mr. Swagger, is he deceased?

19 A. Yes.

20 Q. And then you reference the direct and
21 rebuttal testimonies of Don Johnstone in that same
22 case, GR-2006-03 -- 0387. Correct?

23 A. Yes, I do.

24 Q. And also his direct testimony in
25 GR-2010-0192?

1 A. Yes.

2 Q. Now, in fact, Ms. Cox quotes on page 4 of her
3 testimony from Mr. Swagger's testimony in her
4 surrebuttal. Correct?

5 MR. KEEVIL: Judge, I'm going to object to
6 this questioning. It sounds to me like Mr. Downey is
7 not cross-examining Mr. Krygier concerning his
8 testimony, but asking questions regarding
9 Mr. Krygier's understanding of Ms. Cox's testimony,
10 which I don't think is proper cross-examination.

11 JUDGE PRIDGIN: Mr. Downey?

12 MR. DOWNEY: Well, this is the witness
13 that -- that responded to the DR, and it's addressed
14 in Ms. Cox's testimony. This is my only opportunity
15 to ask him questions about that. So I think it's
16 entirely appropriate.

17 JUDGE PRIDGIN: I'll overrule.

18 THE WITNESS: Please remind me what the
19 question was.

20 Q. (BY MR. DOWNEY.) Yes. Does Ms. Cox quote
21 from Mr. Swagger's testimony in her surrebuttal on
22 page 4?

23 A. Yes.

24 Q. All right. And that was a discussion about
25 whether Noranda would or could bypass the then ATMOS

1 **system. Correct?**

2 A. Yes.

3 **Q. Now, she says nothing -- and hopefully you're**
4 **not going to have to read the entire surrebuttal, but**
5 **I hope you can remember it well enough to answer this**
6 **question. She says nothing about Mr. Johnstone's**
7 **testimony. Correct?**

8 A. I don't recall anything about Mr. Johnstone's
9 testimony within Ms. Cox's testimony.

10 **Q. Why don't you just take a minute here to**
11 **review it. I think it's only six pages long. Will**
12 **you please just confirm that fact.**

13 A. I don't see any references to Mr. Johnstone's
14 study within Ms. Cox's testimony.

15 **Q. All right. I'd like to show you some of the**
16 **testimonies that -- that you referred to in your DR**
17 **response. And I believe you've also addressed this in**
18 **your testimonies as well, but -- Mr. Krygier, do you**
19 **see Mr. Johnstone's direct testimony in GR-2006-0387?**

20 MR. KEEVIL: Judge, I'm going to object to
21 this again. The -- Mr. Downey is apparently trying
22 to, at this late date, drop into the record prepared
23 testimony from previous cases, I know which ultimately
24 stipulated out without -- well, strike -- trying to
25 introduce testimony from previous cases which

1 stipulated in which, you know, if they had wanted to
2 present these earlier, they certainly could have, but
3 haven't. And the -- Mr. Swagger, as Mr. Downey has
4 indicated, is now dead. I know Staff had some studies
5 in those cases to either rebutt or at least address
6 the same subject matter that Mr. Johnstone had. And I
7 think this is simply an improper attempt on the part
8 of Noranda to supplement the record with testimony
9 from stipulated cases without allowing the other
10 parties -- primarily Staff and Public Counsel -- the
11 opportunity to adequately prepare cross-examination or
12 discovery concerning those pieces of testimony.

13 JUDGE PRIDGIN: All right. And Mr. Downey,
14 let me give you a chance to respond. I mean, this
15 certainly seems like friendly cross, and I guess I'm
16 having a hard time seeing how this is crossing
17 Mr. Krygier on his testimony. So can you help me with
18 that.

19 MR. DOWNEY: Sure. Mr. Krygier, in his
20 testimony, defends the contract with Noranda. And
21 Ms. Cox and her testimony, and possibly others for
22 the -- for the Department are maintaining there's no
23 support that was provided for the special contract
24 with Noranda. And I think it goes to his testimony.
25 It also addresses Ms. Cox's testimony, which we can

1 cover later in cross of her, but -- where she
2 addresses Mr. Swagger's testimony, and in fact quotes
3 it on page four of her testimony.

4 JUDGE PRIDGIN: And I guess that's kind of
5 my point on friendly cross. I mean, you're certainly
6 welcome to cross-examine Ms. Cox like this, but I
7 mean, it sounds like -- I mean, I gave you a little
8 leeway, I think, on cross-examining -- you know,
9 giving friendly cross, but it sounds like we're going
10 to go down a long road that you can also go down with
11 Ms. Cox and get the same -- get the same information
12 into the record. So I'm going to -- I'm going to
13 sustain.

14 MR. DOWNEY: Okay, Judge. I'll cover this
15 with Ms. Cox.

16 Q. (BY MR. DOWNEY.) Mr. Krygier, are -- are you
17 familiar with Mr. Brubaker's testimony?

18 A. Yes.

19 MR. KEEVIL: Judge, same objection. This
20 is obviously friendly cross. He's trying to drop into
21 the record supporting work papers for Mr. Brubaker
22 because they didn't file them as attachments to
23 Mr. Brubaker's testimony for some reason. And, you
24 know, if they wanted them in the record, they should
25 have attached them to Mr. Brubaker's testimony under

1 the Commission's rules on testifying, and they did not
2 do so, and now they're trying to dump it in the record
3 as friendly cross of Mr. Krygier.

4 MR. DOWNEY: Judge, I'm not trying to dump
5 anything in the record. What I'm trying to do is
6 establish facts for my client in a case, and whether
7 it also benefits Liberty really doesn't matter. I
8 think I'm entitled to represent my client. And
9 Mr. Krygier does address cost issues in his testimony,
10 and I think I'm entitled to get his opinion on whether
11 Brubaker's work papers are consistent with his
12 understanding of the cost to serve Noranda. I think
13 it's highly relevant to the case, certainly.

14 JUDGE PRIDGIN: I'm going to overrule for
15 now. This does certainly seem like friendly cross.
16 And Mr. Brubaker is scheduled to stand
17 cross-examination on this issue, and you're certainly
18 welcome to question him on this. I'll overrule and
19 let you continue, though.

20 Q. Mr. Krygier, are you familiar with these work
21 papers?

22 A. Yes.

23 Q. And they, in fact, demonstrate Mr. Brubaker's
24 calculation of the cost to serve Noranda?

25 A. Yes.

1 Q. And the total cost to serve Noranda is less
2 than the current contract rate. Correct?

3 A. That's what this study indicates.

4 Q. Okay. And you've seen other cost studies for
5 the cost to serve Noranda. Correct?

6 A. Yes.

7 Q. Including in testimonies of Mr. Johnstone?

8 MR. KEEVIL: Objection, Judge. That's the
9 one you, just a moment ago, sustained my objection to
10 the admission of Mr. Johnstone's testimony and the
11 discussion thereof, and now he's asking again about
12 Mr. Johnstone's study.

13 MR. DOWNEY: Totally different issue,
14 Judge.

15 JUDGE PRIDGIN: I agree. I'll overrule.

16 Q. (BY MR. DOWNEY.) Do you recall the question?

17 A. Sorry.

18 Q. And you're familiar with other studies
19 showing the cost to serve Noranda. Correct?

20 A. Yes.

21 Q. And those studies also show that the cost to
22 serve Noranda is less than the contract rate?

23 A. Those studies show that. Yes.

24 Q. And that current contract price is HC; is it
25 not?

1 A. Yes.

2 MR. DOWNEY: Okay. No further questions.

3 JUDGE PRIDGIN: Mr. Downey, thank you. I
4 don't see Mr. Knee, but double-check. Division of
5 Energy, any questions? Office of Public Counsel?
6 Mr. Poston?

7 MR. POSTON: No questions. Thank you.

8 JUDGE PRIDGIN: Thank you. Mr. Keevil?

9 MR. KEEVIL: Yeah, Judge. I have a few.
10 Pardon me. I'm still making notes.

11 CROSS-EXAMINATION

12 QUESTIONS BY MR. KEEVIL:

13 Q. Okay. Good afternoon, Mr. Krygier.

14 A. Good afternoon, Mr. Keevil.

15 Q. Going back to something Mr. Downey was asking
16 you about earlier, which was the attachment to
17 Ms. Cox's testimony before -- staff data request
18 number 267 in your response. First of all, you do
19 agree that's a copy of your response to staff data
20 request 267 attached to the surrebuttal testimony of
21 Kim Cox?

22 A. Yes.

23 Q. I guess I should say it's schedule KC-2-1.

24 Is that the entirety of your response to that data

25 request? I believe it is, but I just want to get your

1 confirmation on that.

2 A. Yes.

3 Q. Okay. Going back to where I had planned to
4 start before Mr. Downey's cross, in the company's
5 statement of position, under -- under 2A, it -- the
6 last sentence of the response to 2A says the company
7 believes it has the authority to enter into such
8 contracts when it is reasonable and appropriate to do
9 so under its existing tariffs. Do you have a copy of
10 the company's statement of position, Mr. Krygier?

11 A. Not on me.

12 Q. Okay. Just asking your counsel to hand you a
13 copy, Mr. Krygier, just so you can confirm I read that
14 correctly, the company response to 2A. Did I -- did I
15 read that correctly?

16 A. Yes.

17 Q. Okay. It's that very last part that's a bit
18 confusing to me, where it says under its existing
19 tariffs. I'm curious, is -- is it your testimony,
20 Mr. Krygier, that Liberty's currently existing tariffs
21 authorize the special contracts with Noranda and
22 General Mills?

23 A. Can you point to me where in my testimony?

24 Q. No. I'm just asking. Is that your
25 testimony? I -- I didn't think it was, frankly, but

1 if I -- I see that show up in the company's statement
2 of position, and I was concerned that perhaps that was
3 now your testimony.

4 A. I guess I'm not sure how the statement of
5 position links to my testimony.

6 Q. Well, let me ask you this. Does the
7 statement of position link to your testimony? It's
8 your company's statement of position. Correct?

9 A. Yes.

10 Q. And you're the company witness on this issue.
11 Correct?

12 A. Yes.

13 Q. The only one, other than Mr. Hevert.
14 Correct?

15 A. On this issue. Yes.

16 Q. On this issue. Right. So is -- does that
17 statement in the company's statement of position -- is
18 that statement supported by your testimony?

19 A. I believe conceptually what this is referring
20 to --

21 Q. Now, Mr. Krygier, just is that statement
22 supported by your testimony.

23 A. I believe conceptually that -- when it says
24 that the company has the authority to enter into such
25 contracts when it is reasonable and appropriate to do

1 so, it's alluding to Commission orders where we have
2 had these special contracts in place --

3 Q. Mr. Krygier, I go back to my question. Does
4 your testimony support -- reference any existing
5 tariffs that authorize Liberty's contract with Noranda
6 and General Mills? Yes or no?

7 A. Current or future?

8 Q. Current.

9 A. I believe it goes back to the Commission
10 order.

11 Q. The stipulation that Mr. Fischer addressed in
12 his opening statement. Is that correct?

13 A. Among other Commission orders.

14 Q. So you're not -- or well, let me rephrase
15 that. Are you claiming that the company's tariffs
16 themselves provide authority for Liberty to enter into
17 the contracts with Noranda and General Mills?

18 A. And you're referring to the current contract?
19 Just double-checking.

20 Q. Well, actually, either -- when you say
21 current, are you referring to the Noranda -- the old
22 Noranda contract versus the one you entered into this
23 summer?

24 A. Correct. I'm defining the old one as the one
25 that was entered into in January of 2003 --

1 Q. Okay.

2 A. -- approximately.

3 Q. Okay. And the new Noranda contract entered
4 into this summer. And then there's only one General
5 Mills contract that we're dealing with in this case.
6 Correct? General Mills, I said.

7 A. Yes.

8 Q. Okay. So when you said am I -- or -- am I
9 asking about the current one or the new, I would
10 frankly say either, the old one or the new one. Is
11 there a tariff provision that -- in your current
12 tariff that authorized those contracts?

13 A. Well, that's part of why I believe the --

14 Q. Yes or no, Mr. Krygier? Is there a tariff in
15 your current tariffs which authorizes the contracts?
16 Yes or no?

17 A. Tariff sheet 34.

18 Q. Okay. So you're claiming that the negotiated
19 gas service -- excuse me -- negotiated gas sales
20 service tariff authorizes the contracts?

21 A. Well, I believe they were -- again, as I
22 said, Mr. Keevil -- authorized by Commission order.

23 Q. Well, the tariffs are authorized by
24 Commission order, but is it your understanding that
25 these contracts are under negotiated gas sales service

1 **tariff sheet 34 and 35?**

2 A. Well, I believe they could, and that's gone
3 back to the discussion that, in testimony,
4 Mr. Sommerer and I had. But conceptually, prior
5 Commission orders have approved these contracts from
6 the perspective of the rates being charged.

7 **Q. Can you point me to a Commission order that**
8 **says that contract is approved?**

9 A. The contract itself, no.

10 **Q. Okay.**

11 A. The rates, yes.

12 **Q. The rates, you -- you're referring to the**
13 **stipulation that Mr. -- Mr. Fischer referred to**
14 **earlier?**

15 A. The acquisition stip and then the rate case
16 stip.

17 **Q. The last rate case stip?**

18 A. Yes.

19 **Q. Okay.**

20 A. Thank you.

21 MR. KEEVIL: Judge, what exhibit number are
22 we up to?

23 JUDGE PRIDGIN: I have the next one being
24 Exhibit 53. If somebody else has something else,
25 please let me know. Sounds like it will be 53.

1 (EXHIBIT 53 MARKED FOR THE RECORD.)

2 Q. (BY MR. KEEVIL.) Mr. Krygier, can you
3 identify what I've handed you and what the Judge has
4 marked as Exhibit 53 as your response to staff data
5 request?

6 A. Data request number 0160.

7 Q. 0161?

8 A. Oh, I'm sorry. 0161.

9 Q. Okay. And does that -- does that data
10 request ask you for any customers who took service --
11 excuse me. This may be confidential.

12 JUDGE PRIDGIN: All right. We'll go in
13 camera.

14 MR. KEEVIL: No. It's not, Judge. It says
15 public on the second page. I apologize.

16 JUDGE PRIDGIN: That's all right. We're in
17 public forum.

18 Q. (BY MR. KEEVIL.) Does that request ask for
19 any customers who took service under the negotiated
20 gas service tariffs at any time during the test year
21 to please provide certain information? And then down
22 there under the response, your response states the
23 company did not have any customers who took service
24 under this tariff during the test year. Is that
25 correct?

1 A. That's what the response says.

2 **Q. Well, that's your response; is it not, sir?**

3 A. Yes.

4 **Q. Was your response wrong?**

5 A. The question you asked me was do we have
6 authority for the special contracts. And the answer I
7 said was see the previous Commission orders. So the
8 customers could take service under those orders --

9 **Q. Mr. Krygier -- excuse me -- I believe you**
10 **said that the tariff sheets 34 and 35 -- which are the**
11 **negotiated gas sales service tariffs; are they not?**

12 A. 34 and 35. Yes.

13 **Q. Right. I believe you said that those**
14 **authorize the -- the contracts.**

15 A. The question I thought you asked me was could
16 customers take service under that tariff --

17 **Q. No.**

18 A. -- for negotiated sales.

19 **Q. Did those -- did those -- were those**
20 **contracts authorized by any of your tariffs? And you**
21 **pointed us to the negotiated gas service tariff.**

22 **Correct?**

23 A. Yes.

24 **Q. And now this -- this data response says you**
25 **did not have any customers taking service under the**

1 negotiated gas service tariff during the test year.

2 Correct?

3 A. Yes.

4 Q. Okay. So you see my -- my confusion here?

5 You're saying on the one hand that that tariff

6 authorized those contracts, and then on the other

7 hand, you're saying you had no customers under that

8 tariff during the test year. Correct?

9 A. That's what I said. Yes.

10 Q. That's what you said. Okay. Just wanted to

11 make sure. Judge, I'd like to introduce Exhibit

12 Number 53.

13 JUDGE PRIDGIN: Any objection? Hearing

14 none, that is admitted.

15 MR. KEEVIL: Judge, I'm probably about to

16 step very close to some highly confidential stuff, so

17 it would probably be safer if we went in camera.

18 JUDGE PRIDGIN: All right. We'll go in camera. Just

19 a moment, please.

20 (REPORTER'S NOTE: AT THIS POINT, AN IN-CAMERA SESSION

21 WAS HELD, WHICH IS CONTAINED IN VOLUME 12, PAGES 262

22 THROUGH 267 OF THE TRANSCRIPT.)

23

24

25

1 JUDGE PRIDGIN: All right. We are back in
2 public forum. Mr. Chairman, any questions?

3 CHAIRMAN KENNEY: No questions. Thank you,
4 Mr. Krygier.

5 JUDGE PRIDGIN: All right. Thank you.
6 Commissioner Kenney?

7 COMMISSIONER KENNEY: No questions.

8 JUDGE PRIDGIN: And I don't know if I have
9 a commissioner on the phone. Commissioner Hall? All
10 right. I have no questions. Any redirect?

11 MR. FISCHER: Yes. Yes, Judge. Just a
12 few.

13 REDIRECT EXAMINATION

14 QUESTIONS BY MR. FISCHER:

15 Q. Mr. Krygier, Mr. Keevil asked you about your
16 tariff provisions. Is that right?

17 A. Yes.

18 Q. Were those tariff provisions adopted were
19 previously ATMOS tariff provisions that were adopted
20 by your company?

21 A. Yes, they were.

22 Q. Were you required to adopt those as a part of
23 the acquisition agreement?

24 A. Yes.

25 Q. Was the Noranda contract in existence at the

1 time that those tariffs were adopted?

2 A. Yes.

3 Q. Did Staff ever suggest to you that there was
4 no authority for that Noranda contract?

5 MR. KEEVIL: Objection. That's going into
6 settlement discussions in the prior -- or in the --
7 yeah -- prior case -- the acquisition case.

8 MR. FISCHER: I'm not asking about
9 settlement discussions. Did Staff -- may I ask the
10 question, Judge?

11 JUDGE PRIDGIN: You're asking if Staff ever
12 suggested? Is that the question?

13 MR. FISCHER: Yes.

14 JUDGE PRIDGIN: Yeah. I'll overrule.

15 THE WITNESS: Staff never suggested that to
16 me.

17 Q. (BY MR. FISCHER.) Was the General Mills
18 contract in existence at the time of the acquisition?

19 A. Yes, it was.

20 Q. Mr. Krygier also mentioned the stipulation
21 and agreement in that last ATMOS rate case. Do you
22 recall that?

23 A. Yes.

24 Q. I'd like to show you a copy of that -- that
25 stipulation and agreement in that last rate case.

1 MR. KEEVIL: The 092 case?

2 MR. FISCHER: Yes. The 092 case.

3 Q. (BY MR. FISCHER.) I'd like for you to review
4 paragraph number 7 related to special contracts.
5 Would you summarize what you believe that -- that
6 stipulation says.

7 MR. KEEVIL: Judge, I object to that. The
8 stipulation's in the record and speaks for itself.
9 What -- summarization of what Mr. Krygier believes it
10 says is therefore inappropriate, and the stipulation
11 can speak for itself.

12 JUDGE PRIDGIN: Mr. Fischer?

13 MR. FISCHER: I'll rephrase.

14 Q. (BY MR. FISCHER.) Mr. Krygier, under that
15 stipulation and agreement, did Liberty believe it had
16 any obligations?

17 A. Yes.

18 Q. And what were those obligations?

19 A. The stipulation speaks to the two special
20 contracts, in particular, Noranda and General Mills.
21 And what this obligation required of us was to take
22 the rates that were in effect in those contracts, and
23 continue them forward.

24 Q. And did you do that?

25 A. Yes.

1 **Q. And were there other parties that were**
2 **signatories to that particular provision?**

3 A. The rate case stip had several other parties
4 that were signatories to it.

5 **Q. And who were those parties?**

6 A. The company, Noranda, the Missouri Department
7 of Natural Resources, the Office of the Public
8 Counsel, and the Missouri Public Service Commission
9 Staff.

10 **Q. Was ATMOS required to extend the contracts at**
11 **any specific rate?**

12 A. Yes. It -- it specified that it -- the rates
13 should be extended were the rates that were in effect
14 at the end of the respective contracts' original term.

15 **Q. And were those the same rates that Liberty**
16 **charged during the test year period for Noranda and**
17 **General Mills?**

18 MR. KEEVIL: Judge, I'm going to object
19 again. This was, I believe, misrepresenting what the
20 stipulation itself says. If Mr. Fischer wants to read
21 the stipulation to Mr. Krygier, I suppose that would
22 be okay. But the stipulation speaks of requiring
23 ATMOS -- it says ATMOS shall offer to extend the
24 special contracts. It doesn't actually say anything
25 about extending the special contracts for -- doesn't

1 say that the special contracts are hereby extended.

2 It says ATMOS shall offer to extend the special -- the
3 special contract.

4 JUDGE PRIDGIN: Mr. Fischer?

5 MR. FISCHER: Judge, I'm asking for his
6 understanding of this provision.

7 JUDGE PRIDGIN: I'll -- I'll overrule.

8 THE WITNESS: Can you please restate the
9 question.

10 **Q. (BY MR. FISCHER.) Was ATMOS required to**
11 **offer to extend the Noranda and General Mills**
12 **contracts at any specific rate?**

13 A. Yes. It specified the rate in effect at the
14 end of the term of the contract.

15 **Q. And was that the same rate that Liberty**
16 **actually charged Noranda and General Mills during the**
17 **test year period?**

18 A. Yes.

19 **Q. And so Staff was suggesting that that was the**
20 **rate that should be used for that period. Is that --**
21 **is that your understanding?**

22 A. Absolutely.

23 **Q. And now is it your understanding that Staff**
24 **is suggesting that the Noranda rate should be 700**
25 **percent higher than what they agreed to in that**

1 stipulation?

2 A. Yes.

3 Q. Are they also suggesting to you that the
4 General Mills contract should be offered at a
5 435-percent increase above the rate that they
6 suggested in that stipulation should be used for that
7 period?

8 A. I believe the amount is -- is different than
9 the 435, but a significantly higher rate. Yes.

10 Q. And was Liberty required by the merger
11 acquisition stipulation agreement to honor the
12 obligations of ATMOS in previous stipulations and
13 agreement?

14 A. Explicitly.

15 Q. And did Liberty do so?

16 A. Yes.

17 Q. Had Liberty charged Noranda 700 percent more
18 than what was in that contract rate, do you believe
19 that that would have been following that stipulation
20 and agreement?

21 A. No. We would not have been following the
22 stipulation and agreements.

23 Q. Would it have been a violation of that
24 stipulation, in your mind?

25 A. In my mind, absolutely.

1 Q. If you had charged General Mills a
2 400-percent increase in the rate that was actually in
3 the contract, would that have been consistent with
4 that stipulation and agreement, in your mind?

5 MR. KEEVIL: Objection. I believe
6 Mr. Krygier, just seconds ago, said the rate -- the
7 increase was -- even according to Mr. Krygier -- is
8 not 400 percent.

9 JUDGE PRIDGIN: Mr. Fischer?

10 MR. FISCHER: I don't recall. I guess the
11 record will speak for itself.

12 Q. (BY MR. FISCHER.) But whatever the increase
13 was, would that have been consistent with that
14 contract or that stipulation and agreement?

15 A. That huge increase would not have been.

16 Q. Would any increase above the rate that was
17 included in the General Mills contract be consistent
18 with that?

19 A. No. Unless -- or pardon me. Can you please
20 rephrase.

21 Q. No. That's fine. You answered the question.
22 And Mr. Keevil seems to think the -- I may have
23 mischaracterized something on how much the increase
24 is. How much, in your mind, is the Staff suggesting
25 the rate should have been above the contract rate for

1 **General Mills?**

2 A. Approximately 180 percent.

3 **Q. 180 percent. Okay. I'm confused with the**
4 **Source Gas, I think. I apologize, Judge. Okay. So**
5 **the Staff required that ATMOS extend the contract for**
6 **Noranda and General Mills under that stipulation, if**
7 **I -- is that correct?**

8 A. Yes.

9 MR. KEEVIL: Object. Judge, I mean, again,
10 Mr. Krygier's not an attorney. The stipulation says
11 what it says. I -- I hate to, you know, disagree with
12 Mr. Krygier, but obviously his interpretation differs
13 substantially from Staff's interpretation, and the --
14 and I don't believe this cross-examination is -- is --
15 excuse me -- redirect examination is proper, based on
16 that. Secondly, the matter of the Staff requiring
17 Liberty to do something pursuant to the stipulation --
18 I mean, this was a stipulation all parties came
19 together and agreed. To the extent that anyone
20 required it, it would be the Commission. It wasn't
21 Staff requiring Liberty or ATMOS either one to do
22 anything under the stipulation. So I object to the
23 mischaracterization of -- of Staff's -- I wish we
24 could require people to do things, but we can't.

25 JUDGE PRIDGIN: All right. Mr. Fischer?

1 MR. FISCHER: Judge, I'm asking for his
2 understanding of that -- that provision, which is
3 something that was opened up during cross-examination.
4 Whether he's a lawyer or not doesn't matter. I'm
5 asking his understanding of it, the company's
6 understanding of it. And as far as whether Staff
7 required that, they were a signatory that -- of the
8 sentence that said Company shall be required to offer
9 to extend at specific rates. This was the
10 signatory -- Staff was a signatory, as was Public
11 Counsel, Noranda. Now, I'm asking whether -- whether
12 he understood that to be a requirement -- a mandatory
13 requirement of ATMOS.

14 JUDGE PRIDGIN: I'll overrule.

15 THE WITNESS: Can you please repeat the
16 question.

17 MR. FISCHER: Would the court reporter read
18 back my last question.

19 THE REPORTER: Did you mean the last
20 question before the objection?

21 MR. FISCHER: Yes.

22 THE REPORTER: Question: Okay. So the
23 Staff required that ATMOS extend the contract for
24 Noranda and General Mills under that stipulation, if
25 I -- is that correct.

1 MR. FISCHER: That's correct.

2 THE WITNESS: Yes. They did require it.

3 Q. (BY MR. FISCHER.) And was a specific rate
4 mentioned as a part of that extension?

5 A. Yes. The rate mentioned in here is the rate
6 that's in effect at the end of the respective
7 contract's original term.

8 Q. And is that the same rate that you charged
9 Noranda and General Mills during the test year?

10 A. Yes.

11 Q. And that is the time period that the
12 Commission staff is suggesting there should be an
13 adjustment to revenues. Correct?

14 A. Correct.

15 Q. Okay. You were also asked about the
16 company's statement of position. Do you recall that?

17 A. Yes.

18 Q. I'd like to show you the Staff's statement of
19 position on this, and ask you to read into the record
20 the highlighted sentence.

21 A. I'm reading from page 3, section 2, under
22 contract customers.

23 MR. KEEVIL: Judge, I'm going to object to
24 this. This is not redirect of Mr. Krygier. He's
25 trying to get into evidence something that's stated on

1 the statement of position. I, on the other hand, was
2 asking Mr. Krygier about his statement of position.
3 Mr. Fischer is asking Mr. Krygier about Staff's
4 statement of position. Totally improper.

5 JUDGE PRIDGIN: Mr. Fischer?

6 MR. FISCHER: I think it's totally proper
7 to ask the same question regarding their statement of
8 position and ask how it compares to the company's.

9 THE COURT: All right. I'll overrule.

10 THE WITNESS: Quote, any authorization for
11 those two contracts expires with this rate case. And
12 Liberty has no Commission-approved tariff which
13 authorizes such contracts on a going-forward basis.

14 **Q. (BY MR. FISCHER.) Does that first portion of**
15 **that statement imply to you that the Staff at least**
16 **considers that they -- there was authorization for**
17 **those contracts?**

18 A. Yes. That's how I would read that.

19 MR. FISCHER: That's all I have, Judge.

20 JUDGE PRIDGIN: All right. Mr. Fischer,
21 thank you. And Mr. Krygier, you may step down. I
22 understand you'll be back for issue D and perhaps
23 other -- other issues as well. Is that correct?

24 THE WITNESS: Potentially, yes.

25 JUDGE PRIDGIN: All right. All right.

1 MR. KEEVIL: Mr. Krygier, do you have
2 testimony on the Source Gas?

3 THE WITNESS: No. But I was -- when the
4 Judge asked about the other issues, I was thinking of
5 rate design.

6 MR. KEEVIL: Oh. Okay. Okay.

7 JUDGE PRIDGIN: And I see him under issue D
8 as a witness, but perhaps -- I just want to make sure
9 that he's not excused.

10 MR. KEEVIL: All right. Fine.

11 JUDGE PRIDGIN: Thank you. And I do show
12 Mr. Sommerer as the -- as the next witness. And let
13 me inquire of counsel, because if we're going to
14 continue, I at least want to give the court reporter
15 and the parties a short break. I mean, we're -- we're
16 a little ahead of schedule, not a lot. And I didn't
17 know if the parties had a preference, or had any
18 feeling on how long cross-examination would take for
19 Mr. Sommerer. Because we're -- we're approaching
20 4:00, and while I don't see 5:00 as being, you know,
21 something carved in stone, I don't want to necessarily
22 either stop right in the middle of cross at 5:00 or --
23 or continue on past 5:00 unnecessarily if we're on or
24 ahead of schedule. So if I could -- I guess if I
25 could poll the -- poll counsel and see if you have a

1 preference on moving forward or --

2 MR. KEEVIL: I'd say this would be a good
3 place to take a break, frankly, but --

4 JUDGE PRIDGIN: When you say take a break,
5 you mean take a break and come back, or take a break
6 for the day?

7 MR. KEEVIL: Take a break for the day.

8 JUDGE PRIDGIN: Okay.

9 MR. FISCHER: Judge, for what it's worth,
10 on these issues, I can pass Mr. Sommerer so we can
11 move on to Ms. Cox, for that matter, as far as I'm
12 concerned.

13 JUDGE PRIDGIN: Okay. What I'm
14 hearing is -- and let me see if we -- if any other
15 counsel has anything to add.

16 MR. DOWNEY: Judge, I won't have anything
17 for Mr. Sommerer.

18 JUDGE PRIDGIN: Okay. So it sounds like we
19 would have very few, if any, questions for
20 Mr. Sommerer. And then let me move on to the next
21 step. About Ms. Cox, do you anticipate you have quite
22 a bit of cross for Ms. Cox?

23 MR. FISCHER: I will have cross for
24 Ms. Cox, although I'm not sure how long it will go.

25 JUDGE PRIDGIN: All right. Let me -- what

1 I'm thinking is let me let Mr. Sommerer take the stand
2 and see if we have any cross or bench questions, and
3 then since we're approaching 4:00, that might be a
4 good time to -- to knock off for the day.

5 MR. KEEVIL: And I can go ahead and offer
6 Mr. Sommerer's exhibits and take care of that. Yeah.
7 That's good.

8 JUDGE PRIDGIN: All right. So
9 Mr. Sommerer, if you'll approach the stand. Is there
10 anything further before Mr. Sommerer stands cross?
11 All right. Mr. Sommerer, if you'll raise your right
12 hand and be sworn, please. Do you swear the evidence
13 you're about to give will be the truth, the whole
14 truth and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 JUDGE PRIDGIN: Thank you very much. And
17 you may have a seat. And Mr. Keevil, when you're
18 ready.

19 MR. KEEVIL: Thank you, Judge.

20 DAVID SOMMERER TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. KEEVIL:

23 Q. Mr. Sommerer, would you spell your name for
24 the record. First and last.

25 A. David Sommerer. D-A-V-I-D. S-O-M-M-E-R-E-R.

1 Q. Thank you, sir. And by whom are you employed
2 and in what capacity?

3 A. I am employed by the Missouri Public Service
4 Commission as the manager of the procurement analysis
5 unit.

6 Q. And did you contribute at least a portion
7 of -- of the Staff's revenue requirement cost of
8 service report in this proceeding?

9 A. Yes.

10 Q. And I believe your credentials then would
11 have also been included among Staff's appendix one in
12 this proceeding. Is that your understanding?

13 A. Yes.

14 Q. I honestly do not recall whether you had
15 any -- any schedules to that initial testimony. Do
16 you remember, Mr. Sommerer? Did you have schedules in
17 either appendix two or appendix three to the cost of
18 service report? I don't think you did.

19 A. I don't recall any schedules except to the
20 extent we included the credentials in the case
21 participation list as a --

22 Q. Right. That one's in appendix one. Right.
23 But I don't think you had any additional schedules to
24 your direct testimony. Is that --

25 A. That's correct.

1 Q. Correct? Okay. Moving on, then, to the -- I
2 believe you also contributed a portion to the Staff's
3 class cost of service and rate design report under
4 tariffs -- some tariff language. Is that correct,
5 sir?

6 A. That's correct.

7 MR. KEEVIL: Okay. By the way, Judge, I --
8 I apologize. I should have said this a moment ago.
9 The first report I was asking Mr. Sommerer about is
10 what's been marked as Exhibit 13. The appendix one
11 has been marked Exhibit 14. And this report -- this
12 class cost-of-service rate design report that I just
13 asked him about has been marked Exhibit 18.

14 Q. (BY MR. KEEVIL.) Moving on, then, did you
15 also file additional testimony in this case which has
16 been -- or not premarked, but been marked as Exhibit
17 39, the surrebuttal testimony of David Sommerer?

18 A. Yes.

19 Q. And you did not file rebuttal testimony in
20 this case. Is that correct, Mr. Sommerer?

21 A. That is correct.

22 Q. Okay. Now, do you have any additions or
23 corrections you need to make to any of the -- starting
24 with your surrebuttal testimony, Exhibit 39, do you
25 have any additions or corrections you need to make to

1 that?

2 A. No.

3 Q. Okay. And going to the -- the other exhibit,
4 the direct testimony exhibits, do you have additions
5 or corrections to anything contained in those?

6 A. No.

7 Q. So if I were to ask you the questions
8 contained in the Exhibits 13, 14, 18 and 39, I believe
9 it was, would your answers today be the same or
10 substantially the same as contained in those exhibits?

11 A. Yes, sir.

12 MR. KEEVIL: Okay. With that, Judge, I
13 would offer -- let's see. I can't offer the reports
14 yet, but I would -- I would offer Exhibit 39, and
15 tender the witness for cross-examination.

16 JUDGE PRIDGIN: Excuse me. Mr. Keevil,
17 thank you. Any objections?

18 MR. FISCHER: Judge, I believe Mr. Sommerer
19 will be coming back to talk specifically about the
20 Source Gas issue.

21 MR. KEEVIL: You're right. You're right.
22 I apologize. I should have waited to offer 39. I do
23 apologize for that.

24 JUDGE PRIDGIN: So you'll withdraw --

25 MR. KEEVIL: I'll withdraw the offer.

1 Yeah.

2 JUDGE PRIDGIN: Thank you very much.

3 Anything further, Mr. Keevil?

4 MR. KEEVIL: No.

5 JUDGE PRIDGIN: All right.

6 MR. KEEVIL: Thank you, Judge. Tender the
7 witness.

8 JUDGE PRIDGIN: All right. Mr. Poston, any
9 questions?

10 MR. POSTON: No questions.

11 JUDGE PRIDGIN: I don't see Mr. Knee.
12 Mr. Downey?

13 MR. DOWNEY: No questions.

14 JUDGE PRIDGIN: Okay. Mr. Fischer,
15 Mr. Dority?

16 MR. FISCHER: Judge, I have no questions
17 for contract customer issues A, B and C for
18 Mr. Sommerer. I will reserve the right to talk to him
19 about Source Gas.

20 JUDGE PRIDGIN: All right. Very good.
21 Thank you. Any bench questions? Mr. Chairman?

22 CHAIRMAN KENNEY: No questions. Thanks,
23 Mr. Sommerer.

24 THE WITNESS: Thank you.

25 JUDGE PRIDGIN: Thank you. Commissioner

1 Stoll?

2 COMMISSIONER STOLL: No questions either.

3 Thank you.

4 JUDGE PRIDGIN: Commissioner Kenney?

5 COMMISSIONER KENNEY: No questions. Thank
6 you.

7 THE WITNESS: Thank you.

8 JUDGE PRIDGIN: Do I have a Commissioner on
9 the phone? All right. I don't have any questions.
10 Mr. Sommerer, thank you very much. You may step down.

11 THE WITNESS: Thank you.

12 JUDGE PRIDGIN: And it is my inclination to
13 call it a day, if you think you're going to have
14 fairly extensive cross-examination for Ms. Cox, and
15 since we seem to be a little bit ahead of schedule.
16 But let me see if counsel agrees or want to --

17 MR. KEEVIL: I think that would be a good
18 thing to do, Judge.

19 JUDGE PRIDGIN: Any objection? Any
20 concerns? All right. From what I -- what I
21 understand, then, is we will begin with Ms. Cox on the
22 stand in the morning at 8:30. Any -- any objections?
23 Anything further from counsel before we adjourn for
24 the day?

25 MR. KEEVIL: Just confirm, Judge -- I

1 apologize. Exhibits 53 through 56 have all been
2 admitted into the record. Correct?

3 JUDGE PRIDGIN: Let me verify. Yes.

4 MR. KEEVIL: Okay. Thank you.

5 JUDGE PRIDGIN: All right. Anything
6 further from counsel before we go off the record? All
7 right. We stand adjourned. We will resume at 8:30 in
8 the morning. Thank you. We are off the record.

9

10 (WHEREUPON THE PROCEEDINGS WERE ADJOURNED.)

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	I N D E X	
		Page
1		
2		
3	Opening Statement by Mr. Fischer	74
4	Opening Statement by Mr. Keevil	117
5	Opening Statement by Mr. Poston	143
6	Opening Statement by Mr. Downey	154
7	Opening Statement by Mr. Knee	
8	167	
9		
10	Testimony of Robert Hevert	
11	Direct Examination by Mr. Fischer	170
12		
13	Testimony of Zephania Marevangepo	
14	Direct Examination by Mr. Thompson	176
15	Cross-Examination by Mr. Fischer	181
16	Redirect Examination by Mr. Thompson	236
17		
18	Testimony of Christopher Krygier	
19	Direct Examination by Mr. Fischer	241
20	Cross-Examination by Mr. Downey	244
21	Cross-Examination by Mr. Keevil	253
22	Cross-Examination by Mr. Fischer	268
23		
24	Testimony of David Sommerer	
25	Direct Examination by Mr. Keevil	281

1	E X H I B I T I N D E X			
2	Liberty Exhibit 1	Direct Testimony of David Swain	70	
3				
4	Liberty Exhibit 2	Direct Testimony of Christopher Krygier	70	244
5	Liberty Exhibit 2HC	Gas Transportation Agreement with Noranda Aluminum, Inc.	70	244
6				
7	Liberty Exhibit 2	Billing Determinants Study	70	244
8				
9	Liberty Exhibit 3HC	Rebuttal Testimony of Christopher Krygier	70	244
10	Liberty Exhibit 3NP	Rebuttal Testimony of Christopher Krygier	70	244
11				
12	Liberty Exhibit 4HC	Surrebuttal Testimony of Christopher Krygier	70	244
13	Liberty Exhibit 4NP	Surrebuttal Testimony of Christopher Krygier	70	244
14				
15	Liberty Exhibit 5	Direct Testimony of Robert Hevert	70	174
16	Liberty Exhibit 6HC/P	Rebuttal Testimony of Robert Hevert	70	174
17				
18	Liberty Exhibit 6P	Rebuttal Testimony of Robert Hevert	70	174
19	Liberty Exhibit 6NP	Rebuttal Testimony of Robert Hevert	70	174
20				
21	Liberty Exhibit 6	Scheduled Attachment to Testimony of Robert Hevert	70	174
22	Liberty Exhibit 7P	Surrebuttal Testimony of Robert Hevert	70	174
23				
24	Liberty Exhibit 7NP	Surrebuttal Testimony of Robert Hevert	70	174
25	Liberty Exhibit 8HC/P	Rebuttal Testimony of	70	174

1	E X H I B I T I N D E X			
2				
3	Liberty Exhibit 8NP	Rebuttal Testimony of	70	174
4		Robert Hevert		
5	Liberty Exhibit 9	Direct Testimony of	70	
6		James Fallert		
7	Liberty Exhibit 9	Cost of Service Model	70	
8	Liberty Exhibit 10P	Rebuttal Testimony of	70	
9		James Fallert		
10	Liberty Exhibit 10NP	Rebuttal Testimony of	70	
11		James Fallert		
12	Liberty Exhibit 11	Surrebuttal Testimony of	70	
13		James Fallert		
14	Liberty Exhibit 12HC	Rebuttal Testimony of	70	
15		Francisco C. DaFonte		
16	Liberty Exhibit 12NP	Rebuttal Testimony of	70	
17		Francisco C. DaFonte		
18	OPC Exhibit 13NP	Staff Report	70	
19		Revenue Requirement		
20		Cost of Service		
21	OPC Exhibit 13HC/P	Staff Report	70	
22		Revenue Requirement		
23		Cost of Service		
24	OPC Exhibit 13P	Staff Report	70	
25		Revenue Requirement		
26		Cost of Service		
27	OPC Exhibit 14	Staff Report	70	
28		Cost of Service		
29		Revenue Requirement		
30		Appendix 1		
31	OPC Exhibit 15NP	Support for Staff	70	181
32		Cost of Capital		
33		Recommendations		
34	OPC Exhibit 15P	Support for Staff	70	181
35		Cost of Capital		

1		E X H I B I T I N D E X	
2	OPC Exhibit 16	Other Staff Schedules	70
3	OPC Exhibit 17	Direct Accounting Schedules	70
4			
5	OPC Exhibit 18HC/P	Class Cost of Service and Rate Design Staff Report	70
6			
7	OPC Exhibit 18P	Class Cost of Service and Rate Design Staff Report	70
8			
9	OPC Exhibit 18NP	Class Cost of Service and Rate Design Staff Report	70
10			
11	OPC Exhibit 19	Rebuttal Accounting Schedules	70
12	OPC Exhibit 20	Rebuttal Testimony of Kofi A. Boateng	70
13			
14	OPC Exhibit 21	Rebuttal Testimony of Kory Boustead	70
15	OPC Exhibit 22NP	Rebuttal Testimony of Kim Cox	70
16			
17	OPC Exhibit 22HC	Rebuttal Testimony of Kim Cox	70
18	OPC Exhibit 23HC	Surrebuttal Testimony of Kim Cox	70
19			
20	OPC Exhibit 23NP	Surrebuttal Testimony of Kim Cox	70
21	OPC Exhibit 24	Rebuttal Testimony of Lisa M. Ferguson	70
22			
23	OPC Exhibit 25NP	Direct Testimony of Lisa K. Hanneken	70
24	OPC Exhibit 25P	Direct Testimony of Lisa K. Hanneken	70
25			

1	E X H I B I T I N D E X		
2	OPC Exhibit 26	Rebuttal Testimony of Lisa K. Hanneken	70
3			
4	OPC Exhibit 27NP	Direct Testimony of Thomas M. Imhoff	70
5	OPC Exhibit 27HC/P	Direct Testimony of Thomas M. Imhoff	70
6			
7	OPC Exhibit 27HC/P	Direct Testimony of Thomas M. Imhoff	70
8	OPC Exhibit 28	Direct Testimony of Thomas M. Imhoff	70
9			
10	OPC Exhibit 29	Rebuttal Testimony of Thomas M. Imhoff	70
11	OPC Exhibit 30NP	Surrebuttal Testimony of Thomas M. Imhoff	70
12			
13	OPC Exhibit 30HC	Surrebuttal Testimony of Thomas M. Imhoff	70
14	OPC Exhibit 31P	Rebuttal Testimony of Zephania Marevangepo	70 181
15			
16	OPC Exhibit 31NP	Rebuttal Testimony of Zephania Marevangepo	70 181
17	OPC Exhibit 32NP	Surrebuttal Testimony of Zephania Marevangepo	70 181
18			
19	OPC Exhibit 32P	Surrebuttal Testimony of Zephania Marevangepo	70 181
20	OPC Exhibit 33NP	Rebuttal Testimony of Joel McNutt	70
21			
22	OPC Exhibit 33HC	Rebuttal Testimony of Joel McNutt	70
23	OPC Exhibit 34HC	Staff Request to File Highly Confidential	70
24		Schedules to the Testimony of Joel McNutt	
25			

1	E X H I B I T I N D E X		
2	OPC Exhibit 35	Rebuttal Testimony of John A. Robinette	70
3			
4	OPC Exhibit 36	Surrebuttal Testimony of John A. Robinette	70
5	OPC Exhibit 37	Rebuttal Testimony of Sarah B. Sharpe	70
6			
7	OPC Exhibit 38	Surrebuttal Testimony of Sarah B. Sharpe	70
8	OPC Exhibit 39HC	Surrebuttal Testimony of David M. Sommerer	70
9			
10	OPC Exhibit 39NP	Surrebuttal Testimony of David M. Sommerer	70
11	OPC Exhibit 40	Rebuttal Testimony of Seoung Joun Won	70
12			
13	Staff Exhibit 41HC	Rebuttal Testimony of Barbara Meisenheimer	70
14	Staff Exhibit 41NP	Rebuttal Testimony of Barbara Meisenheimer	70
15			
16	Staff Exhibit 42	Surrebuttal Testimony of Barbara Meisenheimer	70
17	Staff Exhibit 43	Rebuttal Testimony of William Addo	70
18			
19	Staff Exhibit 44	Surrebuttal Testimony of William Addo	70
20	Staff Exhibit 45	Surrebuttal Testimony of Geoff Marke	70
21			
22	Noranda Exhibit 46	Rebuttal Testimony of Maurice Brubaker	70
23	Noranda Exhibit 46HC	Rebuttal Testimony of Maurice Brubaker	70
24			
25	Noranda Exhibit 47HC	Surrebuttal Testimony of Maurice Brubaker	70

1	E X H I B I T I N D E X			
2	Noranda Exhibit 47	Surrebuttal Testimony of Maurice Brubaker	70	
3				
4	DED Exhibit 48	Direct Testimony of John Buchanan	70	
5	DED Exhibit 49	Surrebuttal Testimony of John Buchanan	70	
6				
7	Liberty Exhibit 50	Primary Revenue Requirement Issues	107	
8	OPC Exhibit 51	PowerPoint Presentation	144	
9	Noranda Exhibit 52	PowerPoint Presentation	156	
10	Staff Exhibit 53	Respond Data Request	259	261
11	Staff Exhibit 54	Respond Data Request	263	263
12	Staff Exhibit 55	Respond Data Request	263	264
13	Staff Exhibit 56	Negotiated Gas Sales Service	265	265
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1
2
3
4
5
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CERTIFICATE OF REPORTER

STATE OF MISSOURI)
) ss.
COUNTY OF FRANKLIN)

I, Sarah J. Pokorski, Certified Court Reporter within and for the State of Missouri, do hereby certify that the transcript of the hearing appearing in the foregoing pages 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.

Sarah Pokorski, CCR 745

A	144:17 146:18 149:24 163:6 163:19 add 108:13,17 109:3 147:7 191:14 198:7 280:15 adding 187:10 189:25 addition 76:15 120:4 122:22 162:10,14 additional 111:20 112:1 119:17 133:6 145:17 282:23 283:15 additions 283:22 283:25 284:4 Addo 293:17,19 address 121:23 133:13,15 135:5 153:20 170:24 240:17 242:1,4 249:5 251:9 addressed 146:11 247:13 248:17 256:11 addresses 133:25 249:25 250:2 addressing 118:3 205:24 240:15 245:23 adequate 244:23 adequately 249:11 adjourn 286:23 adjourned 287:7 287:10 adjustment 80:7 108:22 120:5 185:16,21 186:8 191:5,13 191:15 193:19 193:25 195:19 235:3,4,12,13	277:13 adjustments 80:4 80:13 107:20 233:10,13,16 234:14,15,17 234:20,23,24 administration 182:10 201:1 admission 174:15 242:24 243:5 252:10 admitted 174:19 174:21,21,22 181:1,2,3 244:6 244:7,7 261:14 287:2 adopt 108:21 239:12 268:22 adopted 79:22 268:18,19 269:1 adopts 108:15 advances 136:4 advised 183:10 advisers 171:3 206:24 advisor 204:23 205:22 206:7 advisors 205:18 advocating 121:7 affirms 167:11 afford 147:9 afternoon 138:4 169:25 170:23 181:18,19 244:12,13 253:13,14 agencies 153:23 agency 184:1,1 194:2 agency's 144:23 agent 191:5 aggregate 116:14 116:16 ago 77:13 121:4 139:5 167:14 183:19 252:9	274:6 283:8 agree 137:25 138:1,12,13,14 189:1,10,14 190:19 193:15 199:4 200:19 203:7,13 207:20 233:17 252:15 253:19 agreed 76:12 120:17 149:11 152:6,7 163:25 165:4,6 167:10 195:15 236:3 272:25 275:19 agreement 74:23 78:16 104:12 109:17 148:10 167:11,15 268:23 269:21 269:25 270:15 273:11,13,20 274:4,14 289:5 agreements 75:4 167:22 273:22 agrees 137:20 154:2 167:10 204:1 286:16 ahead 104:5 111:22,22 279:16,24 281:5 286:15 Akayla 69:22 71:3 alert 72:17 Alexander 69:22 71:3 Algonquin 75:11 75:13 145:3 Alicia 151:14 alleged 79:12 allocate 163:17 allocated 118:22 119:3 120:18 145:10 163:14 allocation 78:23 119:4,6	allow 203:1 allowed 146:16 146:17 239:9 allowing 249:9 allows 187:9 alluded 159:21 alluding 256:1 altered 164:19 alternative 112:18 142:22 167:21 Alternatively 165:12 alternatives 112:21 Aluminum 69:7 71:12,15 289:6 Ameren 207:5 amount 119:6 141:19 273:8 amounts 116:6 151:7 analysis 114:12 120:3 197:19 206:13 207:22 208:1,2 233:10 234:7 237:10 245:18 282:4 analysts 205:18 Andrew 151:22 Annual 201:4 annualized 106:7 answer 109:23 134:19 136:25 140:19 165:17 198:17,23,25 237:20 245:24 248:5 260:6 answered 135:22 274:21 answers 174:9 180:20 242:17 243:11,25 284:9 Antal 69:22 71:3 anticipate 280:21 anybody 136:17
----------	--	---	--	---

<p>169:14 anyway 167:17 196:18 apologize 104:7 110:3 198:20 207:16 259:15 275:4 283:8 284:22,23 287:1 apparently 75:5 105:15 236:21 248:21 appearance 70:18 APPEARANC... 69:1 appearing 70:25 71:10 295:8 appears 183:21 appendix 176:21 176:23 182:1 183:13 184:3 282:11,17,17 282:22 283:10 290:21 application 163:8 199:5 applied 199:15 applies 187:18 apply 119:2 199:13 applying 106:8 appreciate 115:14 approach 76:25 281:9 approaches 79:22 approaching 168:19 279:19 281:3 appropriate 141:16 186:11 186:14 247:16 254:8 255:25 approval 139:9 158:22 166:6,7</p>	<p>167:18 approve 108:25 165:3 168:3 approved 76:6 78:18 108:15 159:19 162:21 167:24 258:5,8 approves 165:8,9 approving 159:5 165:10 approximately 70:14 75:8 76:2 76:2 108:5 109:7 257:2 275:2 Arab 200:20 area 153:5 areas 68:15 70:9 75:25 150:12 150:13 argue 159:10 argument 143:16 articles 199:11 asked 139:13 142:15 165:3 180:19 189:9 206:4 237:15 238:4 243:11 243:12 260:5 260:15 268:15 277:15 279:4 283:13 asking 153:21 158:24 204:1 206:21 247:8 252:11 253:15 254:12,24 257:9 269:8,11 272:5 276:1,5 276:11 278:2,3 283:9 asks 144:15 245:17 asset 204:21 205:5 206:4 assets 74:19 206:6</p>	<p>assigned 70:11 118:22 assignment 118:17 assist 72:18 associated 76:3 107:18 149:8 associations 153:23 assume 163:23 assumes 118:18 146:12 assuming 109:3 109:11 assumption 120:12 159:13 assumptions 109:12 assure 246:11 ATMOS 74:19 74:22 75:3,4 77:25 78:5 79:11 105:14 105:20,23,25 106:11,12,14 110:16 111:1,7 111:10 112:17 114:3 121:3 122:2,6,9,13,16 122:19 145:19 145:21 236:2,3 236:7 246:15 247:25 268:19 269:21 271:10 271:23,23 272:2,10 273:12 275:5 275:21 276:13 276:23 attach 245:12 attached 159:6 166:2 242:19 250:25 253:20 attachment 253:16 289:20 attachments 250:22</p>	<p>attempt 249:7 attention 170:4 attorney 275:10 295:14 audience 72:14 audited 145:11 auditor 176:15 August 74:21 78:16,19 authority 115:7 115:10 135:4 254:7 255:24 256:16 260:6 269:4 authorization 140:12 278:10 278:16 authorize 254:21 256:5 260:14 authorized 74:18 106:8 147:25 188:10,11 189:2,11,16 192:3 193:12 193:16 194:1,9 257:12,22,23 260:20 261:6 authorizes 257:15,20 278:13 authorizing 140:17 automatically 166:9 available 119:16 average 185:23 186:3 191:11 195:18 196:3 avoid 116:12 aware 140:21 a.m 70:14</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>B 185:25 191:25 240:1,20 285:17 289:1 290:1 291:1</p>	<p>292:1 293:1,5,7 294:1 back 104:6 105:3 112:16 121:19 139:23 143:19 145:19 153:4 158:1 162:1 169:11 170:1 174:1 180:2 195:14 233:1 234:17 241:5,9 245:10 253:15 254:3 256:3,9 258:3 268:1 276:18 278:22 280:5 284:19 background 158:3 182:2,3 Barbara 293:13 293:14,16 base 78:4,5,11 79:10 191:4 based 116:10 118:17 119:8 119:17 149:1 149:20 151:1 153:19 164:19 164:22 183:21 184:3 185:8,23 186:15 187:14 187:23 190:12 190:25 193:15 196:5,6 197:18 199:10 202:1 236:5 275:15 bases 159:13 basic 75:13 basically 118:4 133:21 163:4 basis 77:22 79:1 108:1 109:8,9 136:10,11 137:7 144:23 146:16 162:18 237:8 238:14 278:13 bear 80:18,19</p>
--	---	---	---	---

104:2 123:6 155:15 171:24 177:16 bearing 118:23 began 182:5 beginning 70:12 70:15 74:21 behalf 70:19,23 71:1,8,12,14,17 71:18 belief 174:12 180:17 242:21 243:2 believe 106:17 112:21 113:15 113:24 115:18 116:5,6 118:1 120:16 122:7 133:24 135:3 136:13 139:8 139:20,25 140:3 141:12 141:12 142:12 142:14,18 146:3,10 148:1 151:19 163:19 166:3,11,13 170:6 177:14 183:20,24 186:11 189:18 191:10 192:2,5 194:8,23 200:3 200:21,24 201:2 204:10 233:15 234:6 234:13,22 235:9,22 238:20,23 241:10 248:17 253:25 255:19 255:23 256:9 257:13,21 258:2 260:9,13 270:5,15 271:19 273:8 273:18 274:5 275:14 282:10	283:2 284:8,18 believed 122:19 235:7 believes 104:18 112:12 117:17 120:10 254:7 270:9 bench 135:10 167:21 169:17 281:2 285:21 benches 241:3 benefits 251:7 best 115:19,23,25 136:21,22 174:12 180:16 242:20 243:1 295:9 better 107:1 114:18 142:21 biggest 151:22 big-picture 106:24 bill 147:3 149:19 149:22 150:4,8 150:25 151:13 152:21,23,24 billing 77:8 107:23 122:1,2 122:4,6,10,20 149:10 289:7 bit 123:5 167:14 195:25 197:2 201:16 235:17 236:23 245:17 254:17 280:22 286:15 blue 244:15 board 114:10 Boateng 291:12 Bolivar 69:9 bone 138:18 Borgmeyer 69:21 71:2 bottom 151:6 194:18 bound 199:24 200:5	Boustead 291:14 Box 69:17,23 bread 147:5 153:10 break 143:14 168:20,23 169:20 241:3 243:18 279:15 280:3,4,5,5,7 briefly 121:23 134:6 135:11 148:18 159:25 briefs 135:2 bring 170:4 239:3 Brubaker 112:11 163:12 164:8 164:17,17 240:14 250:21 251:16 293:22 293:23,25 294:2 Brubaker's 159:20 164:4 164:21,24 250:17,23,25 251:11,23 Bryan 69:8 71:14 Buchanan 294:4 294:5 Building 70:13 business 70:6 74:10 75:6,14 182:10 242:4 busy 72:18 134:11 Butler 146:22 buy 147:5,5 bypass 112:8,19 115:9 142:22 247:25 bypassing 114:21 246:15	285:17 290:11 290:13 calculated 120:8 136:10 147:11 164:20 193:7 calculation 164:6 164:19,22,24 251:24 calculations 164:13 call 117:13 286:13 Calls 189:5 203:10 camera 72:23 73:1,4 80:16 104:8 116:4,9 121:18,22 123:5 134:21 134:22,25 135:2 155:11 158:14 159:25 159:25 163:6 164:1 165:21 171:20,22 177:17 208:8 259:13 261:17 261:18 Canadian 75:12 capacity 75:17 162:12 282:2 capita 77:22 capital 80:8 108:9,13 109:5 117:24 118:3,4 118:5,6,11,13 118:14,15,15 118:16,17,19 118:21,22,23 118:25 119:3,5 119:6,8,9 141:20 144:14 144:14,16,20 144:25 145:1,3 145:9,13,15,18 146:4 168:18 168:22 171:6	181:22,22 184:8,9,18 187:19 188:2,2 200:10 208:7 239:13,23 290:23,25 care 281:6 carved 279:21 case 68:11 70:4 74:17,20,24 75:1,22 76:7,9 76:11,13,13,14 76:16,19,21 77:2,11 78:6,7 78:8 79:11,17 79:23 104:10 105:23,25 106:13,21 107:20 108:2,4 108:14 110:14 111:18,24 113:17,21 114:6,13 117:11,12 119:22 121:11 122:2,9,12,23 133:10,16 135:5 136:17 136:21 140:15 142:19 144:19 146:15 148:19 149:2,2 152:19 158:17,22 159:2,12 162:20 166:7 167:8 168:2,5 171:5,14 181:23 183:14 183:18 184:11 184:17 185:2 190:23 192:7 192:22 196:14 202:17 205:23 206:22 207:5 233:8 236:4 238:6 246:14 246:22 251:6
C				
C 118:15 177:20 240:1,20				

251:13 257:5 258:15,17 269:7,7,21,25 270:1,2 271:3 278:11 282:20 283:15,20 cases 165:11,11 183:22 184:4 188:11,18,20 205:25 206:1 245:25 248:23 248:25 249:5,9 cash 145:5 233:21 category 123:1 cause 120:6,9 171:12 176:18 177:1,1 caused 171:5 204:11 242:7 Cave 69:8 71:14 caveat 139:18 Ccfs 149:21,24 151:4 CCR 68:25 295:18 cell 105:4 cents 147:12,14 148:21 163:20 163:24 164:14 164:25 165:1,1 165:14 certain 113:21 118:20 176:19 259:21 certainly 104:25 112:4,21 117:7 166:12 169:6 169:17 194:17 234:22 240:8 240:21 241:4 249:2,15 250:5 251:13,15,17 CERTIFICATE 295:1 Certified 295:6 certify 295:8	CHAIR 154:9 Chairman 68:19 73:9,11,14,17 110:1,2,9,21 111:4,16,20,22 112:1,24 113:3 113:10 135:18 135:19,22 136:6,25 137:16,24 138:16,19,21 154:8 164:3 165:19,20,24 166:9,11,14,16 168:8,9 175:7,9 236:12,13 268:2,3 285:21 285:22 chance 72:16 201:5 207:18 249:14 change 115:21 121:7 123:1 148:14,25 149:15 197:2 203:20 241:3 changes 148:2 180:3,13 characterize 117:16 235:11 charge 148:8,15 148:17,20 149:23,23 150:2,12,17,20 150:22,23 151:1,11,18,20 151:21,23,24 152:14,17 153:8,12 154:4 158:18 235:8,9 235:23 charged 258:6 271:16 272:16 273:17 274:1 277:8 charges 75:24 150:13 152:2	152:12 153:3,6 153:18 charging 112:14 charts 200:9 check 187:22 190:13,18 197:20 237:10 CHIEF 68:18 choose 195:12 chooses 108:18 Christopher 241:23 242:3,6 288:18 289:4,9 289:10,12,13 circumstance 163:12 cite 140:15 205:7 205:12 cited 208:1 citizen 147:9 city 68:6 69:5,10 69:14,17,24 70:13 153:6 claiming 137:10 256:15 257:18 claims 244:22 clarification 240:14 clarify 243:23 class 113:17 114:4,8,12 122:23 123:1 141:5 159:14 159:15,16 162:5 163:5 165:8 283:3,12 291:4,6,8 classes 159:18 163:2,3,7 182:14,18,19 clause 110:25 clear 134:12 237:21 238:18 clearly 73:25 client 120:18 251:6,8 clients 183:10	close 175:19,21 261:16 closed 244:24 245:19 coal 202:7 203:4 coalesce 168:1 column 151:3 177:11 come 139:23 175:22 199:17 204:11 280:5 coming 115:6 201:13 240:3 284:19 comment 146:23 151:14 154:1 comments 146:20,21 commission 68:2 69:20 70:24 71:2 74:18 76:6 77:1 78:18 79:22 80:3 105:17 106:23 108:12,15,18 108:20,24 109:4 114:18 115:6,11 117:18 118:12 119:7 120:21 121:6,15 133:9 135:4 136:14 139:9,22 140:2 140:9 143:25 146:20 147:25 149:17 150:7 155:1 158:4,21 158:25 159:2 159:12 162:7 162:21 163:21 165:3,8,12 166:5,7 167:6 168:3 176:16 176:17 182:6 182:22 183:3 183:23 188:5,9 188:14 189:1	189:10,15 192:3 194:21 195:11 196:12 196:14,23,24 207:20,25 233:12 234:8 239:12 256:1,9 256:13 257:22 257:24 258:5,7 260:7 271:8 275:20 277:12 282:4 commissioner 73:7 74:12,14 74:16 113:4,5,8 113:18 114:16 115:2,12,16,22 135:12 138:22 138:23,24 139:1,3,11,20 140:8,12,21 141:8,17 142:3 142:10 143:7,8 143:10 154:12 154:13,17,18 166:17,18,20 166:22 168:11 168:12,13,14 236:17,19 268:6,7,9,9 285:25 286:2,4 286:5,8 commissioners 68:24 72:8,23 104:22 154:16 155:7,8 185:20 236:20 Commission's 117:19 151:25 196:17 207:4 238:5 251:1 Commission-a... 278:12 Commission-a... 121:8 147:21 Commission-o... 136:12,23
---	---	--	--	--

commitment 167:7	254:14 255:10 255:24 259:23	109:2 136:2,4 137:2 155:3	consequence 145:13	context 162:4 204:22 205:24
commitments 167:13 236:7	268:20 271:6 276:8	computers 80:9 104:21	conservation 152:19,21	206:10,22,23
committed 113:16 114:14	company's 76:3 77:5 79:18,19	computing 146:16	conserving 152:22	continuation 112:23 121:2
commodities 150:20	104:19 107:16 107:22 108:2	concept 141:1	consider 78:12 108:24 114:20	continue 76:15 104:3 106:19
commodity 150:1 150:23 151:2	114:17 120:11 146:12 167:7	conceptually 255:19,23 258:4	147:16,17	111:7 158:25 251:19 270:23 279:14,23
common 186:21 187:1,4 190:1 190:10	167:12 185:25 186:12 187:11 188:16 254:4	concern 105:16 114:24	considerably 150:18	continued 77:9 continues 108:24 continuing 111:5
community 146:25	254:10 255:1,8 255:17 256:15	concerned 112:17 141:9 255:2 280:12	considerations 143:6	112:2 158:20
companies 77:19 114:20 120:3 140:16 185:13 186:4,9 190:7 191:19 195:5,8	276:5 277:16 278:8	concerning 139:6 247:7 249:12	considered 111:15 116:17 234:14,24 235:13	contract 80:13 110:17,24 111:1 112:14 112:17,23 116:13 117:25 140:5,16,22 141:1,15 158:20 162:19 163:25 165:3 165:10,21,25 166:2,12 171:13 239:24 240:1,15 244:23 245:19 245:25 249:20 249:23 252:2 252:22,24 256:5,18,22 257:3,5 258:8,9 268:25 269:4 269:18 272:3 272:14 273:4 273:18 274:3 274:14,17,25 275:5 276:23 277:22 285:17
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	comparable 120:2 186:9 191:18	concerns 114:23 286:20	considers 278:16 consistent 105:13 145:7 150:23 187:1 251:11 274:3,13,17	166:2,12 171:13 239:24 240:1,15 244:23 245:19 245:25 249:20 249:23 252:2 252:22,24 256:5,18,22 257:3,5 258:8,9 268:25 269:4 269:18 272:3 272:14 273:4 273:18 274:3 274:14,17,25 275:5 276:23 277:22 285:17
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	compared 151:6 compares 278:8	conclusion 110:13 111:18 112:10 133:3,8	consistently 152:16	163:25 165:3 165:10,21,25 166:2,12 171:13 239:24 240:1,15 244:23 245:19 245:25 249:20 249:23 252:2 252:22,24 256:5,18,22 257:3,5 258:8,9 268:25 269:4 269:18 272:3 272:14 273:4 273:18 274:3 274:14,17,25 275:5 276:23 277:22 285:17
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	comparison 152:1	conclusions 153:17,24	consisting 118:19 consists 118:4 constructed 77:4 consumers 141:24 142:1 145:24	252:22,24 256:5,18,22 257:3,5 258:8,9 268:25 269:4 269:18 272:3 272:14 273:4 273:18 274:3 274:14,17,25 275:5 276:23 277:22 285:17
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	competent 105:19	conducted 137:5 confer 169:8	consumption 114:25	contracts 72:22 80:6,14 108:16 110:10,13 111:6,6,11,14 113:12 114:15 114:19 116:7,8 116:10,16
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	competition 153:2	confidence 122:3 122:4,20	contact 70:20 71:4,20	
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	competitive 153:1	confident 106:2	contained 80:21 123:9 155:18 160:5 172:1 174:8 177:22 185:9 191:12 208:12 235:23 242:16 261:21 284:5,8,10	
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	complain 152:16	confidential 116:17 117:4,5 177:15 204:21 205:4,13 206:2 259:11 261:16 292:23	contains 176:22 contemplated 111:17	
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	complaint 151:22	confirmation 254:1	contention 138:18	
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	complaints 152:18	confused 275:3 confusing 254:18 confusion 239:3 261:4		
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	completed 106:20 113:16	connect 115:9 connection 73:15		
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	compound 120:11			
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	comprehensive 106:19			
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	compressed 78:21			
company 68:15 70:9,16,19 74:8 74:9,11 75:2,6 76:7,16,20,23 77:1,11,17 78:7 78:10 79:24 104:18 105:8 105:22 108:1,8 109:8 113:22 114:4,8,22 115:5 118:16 118:21 119:18 120:2,7,22 136:14,16,16 137:8 144:18 144:24 145:4,5 145:7 146:15 147:17 152:9 167:9 182:25 184:14 186:1,5 191:12 193:20 195:18 196:4 202:17 206:3 207:3 233:12 233:17,21 234:3 235:23 239:13 254:6	computer 104:11 104:13,15,19 104:23,25 105:2,5 108:25			

140:18,19 141:15 234:18 234:20,24 235:23 240:7 243:16 254:8 254:21 255:25 256:2,17 257:12,15,20 257:25 258:5 260:6,14,20 261:6 270:4,20 270:22 271:10 271:14,24,25 272:1,12 278:11,13,17 contract's 277:7 contrary 120:22 contribute 282:6 contributed 283:2 control 77:15 122:15 convenience 134:11 copies 144:1 155:8 copy 144:7 155:5 155:6 192:15 207:10 253:19 254:9,13 269:24 Corp 68:10 74:10 75:11 corporate 75:11 104:11,15 105:9,21 106:18 120:18 corporation 70:6 74:20 75:12 118:14 corporations 146:14 correct 113:13 113:23,25 114:22 118:10 139:10,14 164:24 174:11	175:19,20 180:16 182:7 183:17,20,24 185:3,4,6,7,11 186:6 187:17 188:4 189:17 189:20,21 192:1 193:3,6 193:14,18,23 194:4,7,11 195:10 198:18 199:13 200:7,8 203:6,23 204:25 205:8,9 205:20 208:5 244:25 245:3,4 246:1,22 247:4 248:1,7 252:2,5 252:19 255:8 255:11,14 256:12,24 257:6 259:25 260:22 261:2,8 275:7 276:25 277:1,13,14 278:23 282:25 283:1,4,6,20,21 287:2 correcting 78:8 corrections 171:18 174:4 177:4 180:12 180:15 242:12 283:23,25 284:5 correctly 138:10 237:12 254:14 254:15 corresponding 120:25 150:20 cost 77:15 78:23 106:6 108:8,13 112:12,15,16 113:11,15,17 113:20 114:4,8 114:12 117:24 118:3,4,5,6,23	119:4,5,8,10,11 119:12,18,20 119:25 120:2 122:23 133:25 137:4 138:10 140:5,23 141:2 141:2,5,6,9,12 141:14,20,20 144:14 146:4 146:18 148:6 149:1,3,7,25 152:20 159:1,8 162:9,11,15 163:6,13,17,19 163:24 164:6 164:14,15,20 164:24,25 165:5,15 168:18,22 171:6 176:20 177:7 181:20 181:22 184:8 184:18,23 185:22 187:9 187:19 188:1,1 189:23 190:1,6 190:21 194:13 194:19 195:8 195:17 196:3 196:25 198:4 200:12 205:17 206:15,17,19 207:1 237:8,24 238:19,23,24 238:25 239:2,5 239:7,8,22 251:9,12,24 252:1,4,5,19,21 282:7,17 283:3 290:5,15,17,19 290:20,23,25 291:4,6,8 costs 141:23 164:10 cost-based 165:13 cost-of-service	283:12 counsel 69:16 70:15 71:8,10 71:24 72:3 73:25 78:15 79:23 80:2 109:15 143:13 143:17,21,22 147:24 155:6 168:21,23 169:8 170:3 192:15 201:15 202:13 207:15 239:22,25 240:4 241:12 243:23 249:10 253:5 254:12 271:8 276:11 279:13,25 280:15 286:16 286:23 287:6 295:11,14 counsel's 117:10 COUNTY 295:4 couple 110:4 113:9 116:1 135:14,19 137:22,24 138:9 155:11 181:25 182:10 course 105:1 107:22 166:5 court 70:20 71:5 71:20 155:6 240:18 276:17 278:9 279:14 295:6 cover 170:2 250:1,14 covered 72:4 covers 193:4 Cox 159:7 244:18 247:2,20 249:21 250:6 250:11,15 253:21 280:11 280:21,22,24	286:14,21 291:15,17,18 291:20 Cox's 247:9,14 248:9,14 249:25 253:17 credentials 176:22 282:10 282:20 credit 119:1 120:5 144:24 145:12 182:20 185:17,21,23 185:25 186:4 186:13 191:4,5 191:24 193:20 193:25 195:19 criticism 164:18 164:19 criticize 164:16 cross 169:2 174:25 243:6 249:15 250:1,5 250:9,20 251:3 251:15 254:4 279:22 280:22 280:23 281:2 281:10 crossed 180:7 crossing 249:16 cross-examinat... 174:16,23 181:6,8,16 184:8,17 244:8 244:10 247:10 249:11 251:17 253:11 275:14 276:3 279:18 284:15 286:14 288:15,20,21 288:22 cross-examine 250:6 cross-examining 247:7 250:8 curious 243:14 254:19
---	---	---	---	---

<p>current 78:14 107:20 121:8 123:2 148:16 158:21 159:17 252:2,24 256:7 256:8,18,21 257:9,11,15 currently 106:8 120:20,24 142:6,15,15 148:20,25 152:6 158:15 159:19 165:6 254:20 customer 77:3 122:2,6 141:3,6 141:14 143:1,3 146:19 147:8 148:15,20 149:3,18,24 150:3,7,12,13 150:16,17,21 151:4,11 152:2 152:12,15,21 153:12,25 154:1 158:5,10 158:13 163:16 163:18,22 164:11,12 239:24 246:4,6 246:9 285:17 customers 75:9,9 75:10 77:7,21 77:22 78:2 118:1 141:20 141:22,25 142:1,25 146:24 147:6 147:16,19 148:21 150:15 151:7 152:16 153:7 154:5 163:2 184:14 235:7,9 240:2 246:11 259:10 259:19,23 260:8,16,25</p>	<p>261:7 277:22 customer's 149:20,21 150:25 customer-speci... 80:14,15 141:11 149:7 cut 177:9</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 68:17 69:13 240:2,15 242:3 278:22 279:7 288:1 289:1 290:1 291:1 292:1 293:1 294:1 DaFonte 290:11 290:13 DANIEL 68:23 dash 191:18 data 114:1 119:15,21 121:25 122:2,6 122:21 164:16 201:2,2 203:9 203:17,20 204:3 253:17 253:19,24 259:4,6,9 260:24 294:10 294:11,12 date 248:22 David 76:22 154:1 281:20 281:25 283:17 288:24 289:2 293:8,10 day 147:12,15 190:13 280:6,7 281:4 286:13 286:24 days 112:16 133:5 day-to-day 147:19 DCF 120:4 185:9</p>	<p>185:12 187:23 190:12 191:1,2 196:6 199:16 dead 249:4 dealing 257:5 deals 167:22 debt 118:5,20 119:1,4,5,6,8 119:10,11,13 119:18,20 145:12,20 180:6,6,7,8,10 187:11 deceased 246:18 December 76:15 182:7 decided 114:8 117:17 decides 108:12 decision 238:6 decisions 153:9 declined 77:21 declines 108:21 declining 77:20 decrease 78:14 148:16 decreased 164:21 DED 294:3,5 default 137:5,6 defends 249:20 defer 136:7 define 239:5 defining 256:24 deflator 198:8 deflector 198:8 degree 138:3 182:7,15,18 delivery 148:8,17 150:2,22 151:1 151:11,20,22 151:24 152:14 153:2,6,8,18 154:4 demonstrate 251:23 denied 106:10 Department</p>	<p>69:12 71:18 109:15 148:5 249:22 271:6 depends 115:24 233:18,22 239:5 depreciate 104:15 depreciation 80:9 104:10,12 104:16 105:12 105:13,18,21 105:24 106:7,7 106:8,18,20 108:10,24,25 117:24 120:15 120:17,21 121:7,10,10 135:25 136:8 136:15,17,19 137:4,9 147:20 147:21 148:1 DEPUTY 68:18 derived 197:14 198:11 design 109:16 121:24 122:24 133:25 134:3,5 134:6 137:19 138:17 148:7 148:11,12,13 148:19 279:5 283:3,12 291:5 291:7,9 designated 171:9 171:11,17 designed 68:12 70:7 76:1 148:14 Despite 78:3 details 201:14 determinants 122:1,5 289:7 determinate 122:20 determination 117:19</p>	<p>determined 123:2 163:15 164:9,14 developed 119:14 120:2 development 69:12 71:19 201:9 device 72:1 Diana 69:9 71:14 difference 108:12 109:4 117:23 120:9 142:13 150:5 150:21 186:1 240:6 differences 108:7 108:11 243:14 different 114:22 119:23 122:1 150:25 204:2 206:18 208:2 238:16,19,23 239:6,10 252:13 273:8 differential 120:5 differently 239:4 differs 275:12 dire 243:21,22 direct 170:21 171:5,8 176:8 241:24 242:7 246:20,24 248:19 281:21 282:24 284:4 288:11,14,19 288:25 289:2,3 289:14 290:4 291:3,22,24 292:3,5,6,8 294:3 direction 235:5 245:15 295:11 directives 75:2 disagree 233:24 275:11</p>
---	--	--	--	--

disagreement 106:15	Division 69:12 71:17,19 167:3	250:14,16 251:4 252:13	277:6	77:12
disconnect 153:14	167:6,9 253:4	252:16 253:2,3	effectively 74:22 117:18 121:6	energy 69:12 71:17,19 74:20
disconnects 153:11	divorced 140:5 140:23 141:2	253:15 280:16	efficiency 134:1 138:11 148:8	75:15,16 109:15 133:25
discount 158:25	document 171:16 246:17	288:6,20	167:7,11,12,15 167:19 168:2	138:11 148:5,8 167:3,6,7,11,12
discounted 140:3 140:4,9 158:23	doing 70:6 74:10 75:5 114:11,13	Downey's 254:4	efficient 77:23	167:15,19 168:1 201:1,4
158:24 162:23	121:9 122:10	DR 245:6,8,16,24 246:13 247:13	EFIS 146:21 151:15,22	202:8 203:5 253:5
discounts 142:16 142:20,21	122:14 134:12	248:16	EIA 201:4	engaged 75:6
discovery 249:12	139:16 206:21	driving 80:5	eight 164:14 165:1 191:18	enter 115:9 140:17 254:7
discuss 74:25 109:17 144:13	206:24	drop 149:12,13 248:22 250:20	eighty-one 147:13	255:24 256:16
148:12 187:5	dollar 78:14 104:9 107:17	due 76:11 107:22 121:24	either 112:18 121:11 137:9	entered 110:17 110:18,22
197:23	108:3	dump 251:2,4	137:10 163:18	112:17 166:4
discussed 109:12 147:22 197:18	dollars 76:2,8 78:4 105:8	D-A-V-I-D 281:25	170:6 181:13	256:22,25 257:3
237:21	107:19 108:7	D/B/A 68:10	249:5 256:20	entire 162:11 248:4
discussing 116:5 116:8,10	108:11,14,23	<hr/> E <hr/>	257:10 275:21	entirely 247:16
discussion 116:11 138:2	109:3,7 162:6	E 288:1 289:1,1	279:22 282:17	entirety 167:24 253:24
195:14 197:21	163:21 233:9	290:1,1 291:1,1	286:2	entitled 191:18 251:8,10
247:24 252:11	235:12	292:1,1 293:1,1	electric 75:20 158:6	entries 70:15
258:3	Don 246:21	294:1,1	electricity 202:8 203:5	environment 79:20 153:1
discussions 269:6 269:9	Dority 69:3,4 70:18,23 73:23	earlier 107:15 121:25 138:5,6	electronic 72:1	equal 114:5,9 122:25
disincentive 79:24	74:9 170:6	195:14 249:2	element 123:1	equality 195:19
displayed 185:13	181:13 285:15	253:16 258:14	eleven 163:24 165:1,14	equally 194:12 194:17 195:7
disregarded 234:7	double-check 253:4	early 200:15	embargo 200:20 202:23	equals 147:11 165:1
distance 143:3	double-checking 256:19	earn 77:18	Emerald 184:11 184:16	equate 105:11
distributing 75:7	Downey 69:8 71:13,14,16	earned 182:6	emphasis 77:6 182:11	equipment 77:24 104:19 109:2
distribution 77:10 107:24	154:22,23,25	earnings 197:24 200:10	emphasize 77:3 158:23	136:2,5 137:2
150:1 158:8	155:1 158:2,3	easier 192:11	employed 176:14 282:1,3 295:12	equity 118:6,20 119:25 120:3
162:15,16	162:3 165:18	economic 69:12 71:19 171:2	295:14	144:22 145:12
163:3,13	165:23 166:2	183:11	employee 295:14	145:20,23,25
191:19	166:11,15,25	economy 146:10 200:22 202:21	employment 182:3,5,22	146:13,14,16
district 79:3,5,6 158:9	167:1 169:15	education 182:3	encourage 168:3	146:18 185:22
district-by-dist... 79:1 109:9	174:23,25	Edward 69:8 71:13	ended 76:14,19	
dividend 197:25	181:11,12	effect 111:25 116:14 152:5		
	240:11,13,19	152:10 270:22		
	244:8,9,11,13	271:13 272:13		
	247:6,11,12,20			
	248:21 249:3			
	249:13,19			

186:21 187:10 190:1,6,10,21 192:21 194:1 194:13,19 195:9,18 196:3 197:1 204:21 205:5,17,18 206:15,17,19 207:1,23 208:3 237:8 238:19 238:23,24,25 239:2,5,7,8 errors 78:8 ER-2011-0028 207:5 238:6 essence 145:24 146:2 essentially 78:11 110:12 111:6 establish 79:17 251:6 establishing 188:16 estimate 195:17 196:3 206:15 estimates 187:1 199:25 estimation 187:9 evaluate 208:3 everybody's 114:14 evidence 105:19 106:16 112:10 112:22 120:22 121:4 142:18 144:22 145:9 145:15 146:6 146:11,17 163:10,10 168:18 170:12 175:24 241:15 277:25 281:12 evidentiary 68:4 137:7 exact 141:18 153:21 examination	170:21 176:8 236:25 241:24 268:13 275:15 281:21 288:11 288:14,16,19 288:25 examined 245:25 examples 149:20 exceeded 193:12 exception 148:11 184:16 exceptions 104:13 Exchange 75:13 excuse 80:19 109:14 118:3 121:24 175:18 238:10 257:19 259:11 260:9 275:15 284:16 excused 175:15 239:21 240:23 241:1 279:9 executed 158:20 executive 202:5 exhibit 106:25 107:4,8,9,13 108:6 116:5,8 116:11 144:4,6 171:9,17 174:15,18,19 174:21,22 176:21,22,23 176:24 180:25 181:1,2 242:11 243:5 244:5,6,7 244:14,15 258:21,24 259:1,4 261:11 283:10,11,13 283:16,24 284:3,14 289:2 289:3,5,7,8,10 289:11,13,14 289:16,17,19 289:20,22,23 289:25 290:2,4	290:5,6,8,9,11 290:12,14,16 290:18,20,22 290:24 291:2,3 291:4,6,8,10,12 291:13,15,16 291:18,19,21 291:22,24 292:2,3,5,6,8,9 292:11,12,14 292:15,17,18 292:20,21,23 293:2,3,5,6,8,9 293:11,12,14 293:15,17,18 293:20,21,23 293:24 294:2,3 294:5,6,8,9,10 294:11,12,13 exhibits 70:2 133:11 171:18 174:17 180:23 180:25 242:16 244:5 281:6 284:4,8,10 287:1 existence 268:25 269:18 existing 77:21 111:1,5,11 112:14,23 167:12 254:9 254:18,20 256:4 expect 79:20 104:25 expectation 111:8 expectations 152:15 expected 201:7 203:8,14 expecting 104:23 expenditures 200:10 expense 106:7 expenses 77:12	77:16 149:9,10 experience 187:14 experienced 77:20 expert 166:12 181:21 experts 199:11 199:22 expert's 188:23 expire 110:13 111:17 166:1 expires 278:11 explain 80:5,10 185:20 205:21 206:19 246:7 explained 77:1 197:16 198:14 198:15 199:3 explains 76:23 164:17 explanation 120:14 208:1 Explicitly 273:14 exploration 201:9 expressly 159:3 extend 111:10 271:10,23 272:2,11 275:5 276:9,23 extended 110:24 111:3 271:13 272:1 extending 271:25 extension 78:20 111:2 277:4 extensive 286:14 extent 142:7 186:14 275:19 282:20 extra 151:17 155:7 180:9 E-R-T 171:1	facilitate 77:5 facilities 75:16 75:16 77:5,10 facing 147:6 153:2 fact 76:12 78:3 141:22 164:11 245:1,11 247:2 248:12 250:2 251:23 facts 144:18 145:2 251:6 fair 138:19 164:9 fairly 286:14 fall 121:14 136:24 fallback 136:21 136:23 Fallert 290:4,7,8 290:10 familiar 238:5 250:17 251:20 252:18 Fantastic 73:20 far 142:24 143:1 163:7 167:21 177:11 276:6 280:11 farmers 147:1 favor 133:9 feasibility 139:15 February 75:22 76:17 77:13 183:18 federal 139:8 184:1 feeling 279:18 feet 112:5 Ferguson 291:21 Fidelity 153:5 figures 164:22 file 76:16,20 133:16 134:7 250:22 283:15 283:19 292:23 filed 75:23 78:6 78:16 109:13
---	---	---	--	---

F

F 69:8

111:24 117:12 133:24 138:4 146:21 148:5 148:18,19 151:14,21 167:9 168:4 171:5,12 183:17 233:8 242:7 filing 107:17 111:17 final 137:18 138:7 finance 182:14 182:17,19 183:18 financial 165:22 169:3 171:13 183:8,11 204:23 205:18 205:22 206:7 206:24 233:6 233:11,19,23 234:2 financially 295:15 find 133:9 fine 74:2 116:25 122:11 134:4 166:14 169:12 169:17 192:17 195:3 240:9,21 243:24 274:21 279:10 firm 159:14 162:25 163:22 164:11 246:11 first 74:17 75:14 79:16 80:12 110:6 115:6 144:12,15 146:22 149:21 152:15 170:2,5 176:12 183:17 253:18 278:14 281:24 283:9 Fischer 69:3,4	70:17,19,22 72:21 73:2,5,20 74:3,5,6,7,15 74:17 104:1,2,7 107:2,5,10,12 109:25 110:3,7 110:15,23 111:9,19,21,23 112:4 113:2,7 113:14,24 114:23 115:8 115:17 116:3 116:12,23 117:3,20 118:9 118:10 120:16 133:13 134:22 135:7 139:4,13 141:17 159:21 159:23 168:25 169:13,18 170:6,9,19,22 174:3,14 181:14,15,17 189:8,9,14 192:17,18 195:1,4 198:17 198:20 199:4 201:15,19 202:13,18,19 203:2,13,14,25 204:4,8 207:11 207:16,17 208:6 233:3 235:21 236:9 236:11 237:3 237:15 238:4 240:22 241:2 241:20,22,25 242:23,25 243:4,10,25 244:3 256:11 258:13 268:11 268:14 269:8 269:13,17 270:2,3,12,13 270:14 271:20 272:4,5,10	274:9,10,12 275:25 276:1 276:17,21 277:1,3 278:3,5 278:6,14,19,20 280:9,23 284:18 285:14 285:16 288:3 288:11,15,19 288:22 Fisher 73:23,24 122:12 Fisher's 142:24 five 107:11 122:7 122:7 five-minute 241:3 fixed 151:11 152:16 flat 149:23 flight 169:11 flows 145:6 233:21 focus 77:14 folks 202:6 follow 75:3 115:13 followed 75:2 following 74:22 273:19,21 follows 109:5 170:20 176:7 241:23 281:20 follow-up 198:24 footnote 197:14 forbid 238:11 foreclose 167:20 forego 203:15 foregoing 295:9 foregone 148:8 148:17 form 70:21 71:5 formatted 177:10 formulate 199:19 formulating 199:19	forth 75:24 133:10 140:18 fortunately 184:5 forum 233:2 259:17 268:2 forward 110:20 111:8 175:22 270:23 280:1 found 149:2 159:2,3 207:21 four 77:13 78:3 108:23 109:16 112:7 117:15 120:18 134:1,2 183:19 193:11 250:3 fourth 151:3 fraction 151:19 Framingham 171:3 Francisco 290:11 290:13 FRANKLIN 295:4 frankly 254:25 257:10 280:3 frequently 187:18 Friday 133:24 138:4 148:5 167:10 168:5 friendly 249:15 250:5,9,20 251:3,15 front 141:18 244:14 fuel 112:18 142:22 fuel-switching 114:24 full-on 167:16 further 106:16 109:18 115:15 120:13 143:9 165:16 168:6 168:21,23	169:20,21 180:12 239:17 241:12 253:2 281:10 285:3 286:23 287:6 295:13 furthering 76:24 Furthermore 77:10 106:10 future 139:23 238:12 256:7 <hr/> G <hr/> gas 68:10,13 70:6 70:8 74:10 75:7 75:20 77:19,22 78:21 108:19 114:22,25 139:7 148:22 149:24 150:3,4 151:4,8,8 158:6 158:9 159:15 163:1 183:18 186:22 190:7 191:11,19,20 192:22 195:18 196:4 200:10 200:16 201:7,8 201:12,22 202:1,7,16 203:4,7,14 204:8,9 240:15 246:11 257:19 257:19,25 259:20 260:11 260:21 261:1 275:4 279:2 284:20 285:19 289:5 294:13 GDP 120:12 197:21 198:6,7 198:8,9 199:24 200:3,11,16 gears 197:2 general 68:12 70:8 76:16,21 77:25 78:2,5
--	---	---	---	---

108:16 110:11 110:21,23 111:13 112:5 114:20 115:4 120:25 121:8 121:13,15 136:24 139:6 141:21 142:6 159:14 163:1 235:24 254:22 256:6,17 257:4 257:6 269:17 270:20 271:17 272:11,16 273:4 274:1,17 275:1,6 276:24 277:9 generally 74:11 109:5 246:9 generation 75:14 202:9 203:5 Geoff 293:20 getting 114:21,21 115:6 116:13 150:15 233:21 give 75:21 106:23 118:7 139:17 139:23 149:17 170:13 175:25 192:15 194:8 195:11 207:11 241:16 249:14 279:14 281:13 given 71:5 72:21 77:17 104:20 114:6 137:1 202:16 gives 192:3 giving 162:23 250:9 GM-2012-0037 74:20 go 71:23 72:13 72:22 73:1,7,22 75:21 80:16 104:5 108:23 110:19 111:22	111:22 116:9 117:5 120:6 121:18 123:5 134:21,22,24 135:2,11,14 143:6,12 151:14 152:5 153:4 159:25 167:2 169:21 177:13,17 186:25 208:7 250:10,10 256:3 259:12 261:18 280:24 281:5 287:6 goals 167:13 God 170:14 176:1 241:17 281:14 goes 115:24 249:24 256:9 going 72:22 75:21 104:3,5,5 111:23 115:25 116:9 118:7 134:24 135:23 144:13 149:23 165:21 192:18 194:22 195:14 201:17 202:15 202:21 203:19 207:7 234:17 235:14 245:16 247:5 248:4,20 250:9,12,12 251:14 253:15 254:3 269:5 271:18 277:23 279:13 284:3 286:13 going-forward 278:13 good 70:3 74:7 74:15 107:12 110:2,9,9 123:6 139:3 143:13 143:19 144:1	144:10 166:4 167:5 169:25 170:23 175:7 175:10 180:15 181:18 244:12 244:13 245:16 246:12 253:13 253:14 280:2 281:4,7 285:20 286:17 government 153:23 Governor 70:12 grab 144:7 grant 140:3 granting 140:9 grants 162:8 greater 122:19 205:2 greatly 122:3 group 78:24 120:3 185:23 185:24 186:2,3 186:15 191:12 grouped 239:25 grown 79:10 growth 120:12 146:8 197:3,7 197:10,14,17 197:24 198:11 198:14 199:5,9 199:12,19,20 199:21,24,25 200:4,11,17 202:25 205:2 237:16 GR-2006-03 246:22 GR-2006-0387 246:14 248:19 GR-2010-0192 246:25 GR-2014-0152 68:12 70:5 guaranteed 167:25 guess 116:2	134:10,12 135:25 142:11 147:2 153:21 168:21 170:6 177:10,19 187:21,21 190:12 196:5,6 196:7,8,21,22 197:17,19,20 198:2,5,6,8 199:15,18,21 204:6,6,13,14 206:2,18,19 233:18,19,22 233:25 235:1,1 235:3,8,10,10 237:10 238:14 238:15,15,16 238:17,19,20 238:22,22 239:1,10,10,11 240:16 243:20 249:15 250:4 253:23 255:4 274:10 279:24 <hr/> H H 289:1 290:1 291:1 292:1 293:1 294:1 half 108:4 183:19 Hall 68:23 73:7 74:12,14,16 113:4,5,8,18 114:16 115:2 115:12,16 138:25 139:1,3 139:20 140:8 140:21 141:8 141:17 142:3 142:10 143:8 143:11 154:17 154:18 166:21 166:22 168:13 168:14 268:9 Hampton 69:23 71:4	hand 118:25 121:1 170:11 175:23 192:12 207:7 241:14 254:12 261:5,7 278:1 281:12 handed 144:1 259:3 handful 80:4 Hanneken 291:23,24 292:2 Hannibal 151:12 154:2 happen 192:9 happily 167:8 happy 109:18,23 165:17 hard 112:6 249:16 hardware 104:11 104:14,15 105:9,11 108:25 hate 275:11 HC 155:5 163:20 171:10,17 174:19,22 177:13 242:8 244:6,6,7 252:24 head 122:22 139:13 headquarters 77:8 hear 73:4,8,10 74:13 104:4 109:18 110:5 113:5 115:18 139:4 143:16 143:22 154:22 168:20 240:1 heard 133:10 146:20 147:22 148:9 167:13 hearing 68:4 70:4,11 71:25
--	--	--	--	--

72:3 133:20 143:23 146:21 169:16,21 170:5 174:18 180:25 241:13 244:5 261:13 280:14 295:8 295:13 heating 77:24 HELD 80:21 123:9 155:18 160:5 172:1 177:22 208:12 261:21 help 72:19 116:23 147:18 170:14 176:1 241:17 249:17 281:14 helped 237:10 helpful 110:4 helping 206:3 helps 153:11 Hevert 170:8,10 170:20,23,25 171:4 175:10 192:7 238:18 240:22 255:13 288:10 289:15 289:16,18,19 289:21,22,24 290:3 Hevert's 169:1 208:1 234:7 He'll 73:8 high 69:13 120:8 151:11 152:16 153:8 194:13 194:19 195:9 201:12 242:5 higher 120:6 145:23 146:9 146:18 152:6 152:23 159:18 159:22,22 165:14 186:4 195:25 239:14	239:16 272:25 273:9 highest 150:13 152:11 193:24 highlight 146:19 147:15 highlighted 146:7 149:6 151:2,10 152:13,17 192:20,21 201:20 277:20 highlights 148:3 153:16 highly 117:4,5 205:12 206:1 251:13 261:16 292:23 historic 202:24 historical 197:24 197:24 203:9 203:17 historicals 198:3 home 105:1 homes 77:23 honestly 138:1 282:14 honor 114:19 236:7 273:11 hope 72:23 136:20 248:5 hopefully 248:3 hoping 240:19 hour 168:19 hours 182:20 housekeeping 71:23 huge 204:9 274:15 hundred 112:20 hurry 134:16 hypothetically 118:18 H-E-V 171:1 <hr/> I <hr/> identify 259:3	Illinois 75:8 150:11,15,15 151:6 imagine 112:6 Imhoff 142:8 292:4,5,7,8,10 292:11,13 immune 77:15 impact 152:22,23 171:13 204:9 233:11,14,17 233:19,20 234:2 impeded 114:11 implement 68:12 70:8 105:10 implied 205:17 implies 106:9 162:22 imply 278:15 implying 243:13 important 74:24 80:3 139:25 147:14 importantly 106:17 improbable 186:20 improper 145:3 249:7 278:4 imprudence 79:12 234:15 234:25 235:13 235:17 imprudent 235:22 imputation 80:6 80:13 108:22 110:10 233:10 234:14,20,23 235:2 imputed 108:9 235:3,3,10 inadequate 245:2 inappropriate 270:10 incentive 153:14	154:3 inclination 286:12 include 77:7 138:6 149:7 187:4 included 77:11 78:5 274:17 282:11,20 includes 120:4 including 109:16 165:9 169:3 252:7 increase 68:13 70:8 76:1,10 78:2,10,11 79:5 79:7,9,14 107:17,21,21 108:3,5,23 109:7,9 114:6,9 115:1 122:3 145:24 146:1 150:4 159:11 159:22 162:8 201:8,22 273:5 274:2,7,12,15 274:16,23 increased 112:7 112:20 119:20 increases 201:12 increasing 77:15 incremental 141:3,6,8,12,14 independent 112:2 237:7,9 indicate 106:15 199:23 200:3 205:1,16 234:6 indicated 106:6 106:12 119:19 158:14,16 159:7,23 163:6 164:1 189:18 192:2 249:4 indicates 252:3 indirectly 159:3 industry 200:16	202:2 204:9 inflated 120:11 information 70:20 71:4,20 80:15 113:21 116:17 119:17 122:18 151:25 171:8,16 193:15 201:1 202:1,23 205:13 206:1 238:21 242:12 250:11 259:21 infrastructure 76:4 initial 119:15 282:15 initially 78:6 147:12 inputs 197:18 199:20 inquire 72:3 202:15 279:13 instances 75:1 institution 183:8 integrity 169:3 233:6 intent 243:17 interdependent 167:23 interest 75:15 interested 141:10 295:15 internal 138:2 internally 118:22 interpretation 275:12,13 interrupt 72:2 115:23,25 interrupted 163:24 246:10 interruptible 112:13 158:10 159:15 163:1 163:16,18 164:12 246:4,6 interstate 108:19
---	---	---	---	---

112:6 115:10 134:23,25 introduce 248:25 261:11 intuitively 79:8 inversely 200:16 investable 145:1 investigate 105:24 investigations 106:2 investment 77:19 107:22 204:23 205:22 206:7 investments 76:24 77:7,9,12 79:13,15,25 investors 145:14 146:13 186:21 involve 80:14 117:16 140:11 184:13 involved 184:4 IN-CAMERA 80:20 123:8 155:17 160:4 171:25 177:21 208:11 261:20 Iowa 75:8 150:11 150:17 151:6 iPad 104:23 105:1 iPhone 104:24 Irwin 146:22 ISRS 76:5,6,16 76:20 78:12 107:18 133:25 138:13 148:6 149:23 issue 72:22 104:9 118:4,12 119:11,25 120:15 121:23 122:25 134:23 135:1,1,3,5 137:19 139:25 142:17 144:13	144:15 145:12 146:11 148:7,7 148:16 151:15 153:8 158:17 163:11 171:14 205:24 208:7 239:10 240:2 240:15 243:16 245:23 246:1 251:17 252:13 255:10,15,16 278:22 279:7 284:20 issued 192:22 194:1 issues 74:25 78:9 78:18,23 106:24 107:19 108:7,13 109:6 109:16,20 114:1,1,2 117:11,13,21 118:2 119:1 133:6,7,7,9 134:1,2 137:19 138:6 141:4 144:22 148:13 153:20 168:2,5 168:18 183:11 184:9,18 188:2 233:6 239:24 239:25 240:1 240:20 243:15 251:9 278:23 279:4 280:10 285:17 294:7 items 149:9 177:1	Jeff 69:21 71:2 117:8 Jefferson 68:6 69:5,10,14,17 69:24 70:13 Jeremy 69:13 71:19 Jim 74:7 Joel 292:20,22,24 John 69:21 71:2 293:2,4 294:4,5 Johnson 154:1 Johnstone 246:21 249:6 252:7 Johnstone's 248:6,8,13,19 252:10,12 join 115:22 Jones 69:22 71:3 Joun 293:11 judge 68:18 70:3 70:10,17,22,25 71:6,7,11,13,16 71:21 72:6,10 72:12,16,21,25 73:3,6,11,13,16 73:21 74:6,25 80:15,18 104:1 104:22 107:2,7 107:11 109:13 109:25 113:3 115:16 116:3 116:12,18,20 117:6,7 121:20 123:4,6 133:1,4 133:17 134:10 134:16,18 135:9,17 138:21,24 139:2 143:10 143:19 144:5,8 144:10 154:7 154:11,15,20 154:23,24 155:15 158:1 160:1,2 162:1	165:18 166:16 166:20,24 167:2 168:7,11 168:13,16,25 169:6,16,19,25 170:10,16 171:23 174:1 174:14,17 175:1,4,6,7,13 175:17,21 176:3,6 177:15 177:16 180:1 180:24 181:4,7 181:10,13,15 189:7,13 194:22 195:2,3 198:13,22 199:1 202:18 202:19 203:1 203:12,18,23 203:24 204:2,5 208:6,9 233:1 235:14,18 236:9,11,17,20 236:24 239:18 239:19 240:5,8 240:11,12,21 240:22,24 241:1,4,9,19,22 242:23 243:7 243:10,22 244:3,4,9 247:5 247:11,17 248:20 249:13 250:4,14,19 251:4,14 252:8 252:14,15 253:3,8,9 258:21,23 259:3,12,14,16 261:11,13,15 261:18 268:1,5 268:8,11 269:10,11,14 270:7,12 271:18 272:4,5 272:7 274:9	275:4,9,25 276:1,14 277:23 278:5 278:19,20,25 279:4,7,11 280:4,8,9,13,16 280:18,25 281:8,16,19 283:7 284:12 284:16,18,24 285:2,5,6,8,11 285:14,16,20 285:25 286:4,8 286:12,18,19 286:25 287:3,5 judgment 199:6 199:7,10,14,15 judgments 199:18 jump 144:12 June 192:22 193:5,12 jurisdiction 108:20 jurisdictional 134:23,25 jurisdictions 188:10 189:3 189:11,16 192:4 justification 111:5 112:2,16 142:20,21 justify 112:22
				K
				K 291:23,24 292:2 KC-2-1 253:23 keep 134:24 Keevil 69:21 70:25 71:3,7 115:18,23 116:2,19,25 117:1,2,8,9 118:11 121:21 133:1,3,18,19

134:15,17 135:9,20,21 136:6 137:6,22 138:17 139:11 140:6,10,24 141:11 142:2,4 142:11 143:12 146:11 177:13 177:19 240:5 243:8,20,24 247:5 248:20 250:19 252:8 253:8,9,12,14 257:22 258:21 259:2,14,18 261:15 268:15 269:5 270:1,7 271:18 274:5 274:22 275:9 277:23 279:1,6 279:10 280:2,7 281:5,17,19,22 283:7,14 284:12,16,21 284:25 285:3,4 285:6 286:17 286:25 287:4 288:4,21,25 Kenney 68:19,22 73:11,14,17 110:2,9,21 111:4,16,20,22 112:1,24 135:12,19,22 136:25 137:16 138:16,19 165:20,24 166:9,14 168:9 175:9 236:13 268:3,6,7 285:22 286:4,5 Kevin 69:20 71:2 198:21 Kim 244:18 253:21 291:15 291:17,18,20 kind 115:1	158:25 250:4 Knee 69:13 71:18 71:19,21 167:3 167:4,5 168:7 168:10,17 175:2 181:10 253:4 285:11 288:7 knock 281:4 know 112:9 116:21 117:8 133:12,14,21 134:11,11 136:9 137:8,11 137:14 138:12 140:15 142:20 200:25 202:3 204:13 207:17 233:21,25 235:19,20,25 236:8 237:6 238:17,21 239:6 243:9 248:23 249:1,4 250:8,24 258:25 268:8 275:11 279:17 279:20 knowledge 174:12 180:17 189:19 242:20 243:2 knows 105:2 Kofi 291:12 Kory 291:14 Krygier 240:9 241:10,13,14 241:23 242:3,6 243:11 247:7 248:18 249:17 249:19 250:16 251:3,9,20 253:13 254:10 254:13,20 255:21 256:3 257:14 259:2 260:9 268:4,15	269:20 270:9 270:14 271:21 274:6,7 275:12 277:24 278:2,3 278:21 279:1 288:18 289:4,9 289:10,12,13 Krygier's 166:3 243:12 247:9 275:10 K-R-Y-G-I-E-R 242:4 <hr/> L L 118:15,15 lack 114:18 Laclede 153:4 183:18 language 238:5 238:10 283:4 large 159:14,15 162:25 largely 80:5,10 largest 108:8 158:9 202:8 203:4 large-volume 163:1 Larry 69:4 70:18 74:8 lastly 145:8 148:16 153:10 late 248:22 latest 78:25 law 68:18 70:10 139:8 lawyer 276:4 LDC 150:10 LDCs 150:10 152:3 153:1 leave 141:23,23 142:2 143:5 154:5 led 238:22 leeway 250:8 legally 139:14,16 139:19	length 104:8 165:25 let's 143:15 189:22 191:17 197:2 235:11 235:11 241:4,4 241:6,6 284:13 level 122:3,4,20 levels 78:14 148:16 151:1 Liberty 68:9,11 69:3 70:5,7 73:23 74:9,10 74:12,18,19,21 75:10,23 76:12 76:23,24 77:4 77:14,20 78:1 78:15,19 104:11 105:20 110:18 114:2 114:21 117:23 118:13,16,18 118:24 119:3 121:1,2,6,6 122:10,14,16 122:17 144:20 145:8,10,11,21 145:22 146:5 147:7 148:5 149:11,18 151:9,17 152:2 152:11 158:6 158:18,19 162:13,16,22 163:3,14 164:23 181:13 235:8 236:6 243:23 244:22 245:17 251:7 256:16 270:15 271:15 272:15 273:10,15,17 275:17,21 278:12 289:2,3 289:5,7,8,10,11 289:13,14,16 289:17,19,20	289:22,23,25 290:2,4,5,6,8,9 290:11,12 294:6 Liberty's 75:25 77:2,11 78:2,3 79:16 106:21 107:20 111:4 145:18 146:6 147:24 150:10 151:9 168:22 245:6 254:20 256:5 life 105:6,9,10,15 light 136:3 limited 119:15 line 113:9 180:4 180:5 184:24 187:8 189:22 205:17 238:7 lines 149:8 186:19 187:6 200:14 204:15 204:18 234:6 234:10,11 link 255:7 links 255:5 Lisa 291:21,23 291:24 292:2 list 78:17 117:11 118:2 133:7 282:21 listed 118:1 193:1,12 listening 74:1 little 79:8 107:1 118:15 120:6 123:5 167:14 195:25 197:2 201:16 236:23 245:17 250:7 279:16 286:15 live 147:15 lives 105:11 living 147:10 LLP 69:8 71:14 loaded 155:3
--	---	---	---	--

local 76:25 77:3 77:3,5	low-income 153:7	176:7,10,18 194:24 235:16	249:14 250:5,7 250:7 275:9,18	midpoint 185:5 191:8 194:5
located 75:19	low-usage 151:3	236:13 237:2	276:19 279:15	Midstates 68:10
long 78:17 105:6 106:22 109:22 115:24 151:24 248:11 250:10 279:18 280:24	LUCo 118:14,24 144:21,21,22 186:4	239:20 288:13 292:14,16,17 292:19	measures 190:18 196:15	70:6 74:10 118:14,19,24 119:3 145:8,10 145:11,21
long-term 180:6 180:8 187:11	LUCo's 119:8,9 119:10 185:17 185:21	Marke 293:20	MEB-1 164:5	mid-1970s 200:15
look 105:2,3 109:8 112:5,8 112:21 114:15 117:11 142:13 145:18 149:19 149:22 150:7 150:14,25 152:21 153:22 159:19 186:19 189:2,3,11,12 192:19 197:20 201:17 207:8 234:5	lump 162:5	marked 70:2 106:25 107:3,6 107:9 144:3,5,6 176:21 242:11 259:1,4 283:10 283:11,13,16	medication 147:4 147:4 153:9	milk 147:5
looked 150:9 189:15 197:23	lumped 159:14 162:25	market 144:25 145:14	megawatts 75:17	million 76:2,3,8 78:4,14 104:9 105:7 107:17 107:18,19 108:3,7,9,10,11 108:14,17,23 109:3,7,10 162:6,9 233:9 235:12
looking 193:10 233:18 238:11	lunch 168:20,24 169:8,20	markets 187:15	meps 105:5	Mills 108:16 110:11,21,23 111:13 112:5 114:20 115:4 139:6 141:21 142:6 235:24 254:22 256:6 256:17 257:5,6 269:17 270:20 271:17 272:11 272:16 273:4 274:1,17 275:1 275:6 276:24 277:9
looks 143:13 149:18 168:17 182:5 184:3 239:22,24 240:9 244:15	<hr/> M <hr/> M 68:21 69:4 70:19 291:21 292:4,5,7,8,10 292:11,13 293:8,10	market-tested 145:14	Meisenheimer 293:13,14,16	
lot 143:5,6 147:1 147:6 279:16	Madison 69:5	Massachusetts 171:3	members 117:10 139:22	
Louis 109:24 167:22	main 78:20 120:9	masters 182:9	memory 105:5 201:16	
low 147:18 151:7 152:14 153:2,6 153:12,17 154:4	maintaining 249:22	material 233:17	mention 119:20 143:1,2 165:22 246:3	
lower 105:7 150:18 186:13 193:19,25 194:6 195:23 239:15	maintains 77:14 77:16 149:9	materially 242:18 243:13	mentioned 79:16 107:15 108:2 119:23 120:16 121:4,25 134:5 134:25 142:24 159:24 269:20 277:4,5	
lowest 193:1,16 193:25	major 79:24 109:6	matter 68:9 70:5 71:23 159:16 204:14 249:6 251:7 275:16 276:4 280:11	merely 118:22	
	making 76:24 79:12 239:8 253:10	matters 117:17	merger 122:11 204:22 273:10	
	management 76:25 77:3 79:19	maturity 187:11	meters 149:8	
	manager 282:4	Maurice 112:11 164:4 293:22 293:23,25 294:2	meter-reading 149:10	
	managing 171:2	maximum 164:24 165:14	method 187:5,9 187:19 188:1,6 189:4,12,19 190:5,20 195:15,16	
	mandatory 276:12	MBA 182:15,19	methodology 120:4	
	manner 141:13	McF 159:11 163:21,25 164:14 165:1 165:14	MGE 152:4,7	
	manual 78:23	McNutt 292:20 292:22,24	microphone 74:1 74:3	
	Marc 69:16 71:9	mean 137:7,8 138:12 205:21 235:8,18	Microphones 243:8	
	Marcene 146:22		middle 76:17 279:22	
	March 164:23			
	Marevangepo 120:12 175:19			

mischaracteriz... 274:23	154:24 167:5 286:22 287:8	279:21	71:12,15	171:25 177:21		
mischaracteriz... 194:23	move 174:14	necessary 135:4 208:2	108:16 109:15 110:10,17,18	200:14 208:11 261:20		
misplaced 207:23	241:12 242:24 243:4 280:11 280:20	need 77:16 109:17 110:3 115:20 123:4 135:11 142:8 155:12 158:23 170:4 171:19 174:4 177:13 208:7 242:13 246:10 283:23 283:25	111:13 112:10 112:19 114:19 115:3,4 139:6 141:21 142:6 154:22 158:5,7 158:8,8,10,10 158:12,14,17 158:20 159:1,9 159:13 162:5,6 162:10,12,13 162:14,17,22 162:23,24 163:4,4,6,8,14 163:15,18,19 163:22,25 164:10,11,16 164:25 165:2,3 165:5,9,13,15 174:23 235:24 244:24 245:20 245:24 246:3 247:25 249:8 249:20,24 251:12,24 252:1,5,19,22 254:21 256:5 256:17,21,22 257:3 268:25 269:4 270:20 271:6,16 272:11,16,24 273:17 275:6 276:11,24 277:9 289:5 293:21,23,24 294:2,9	noted 163:12 notes 253:10 notice 72:7 NP 171:10,11,17 174:20,21,22 176:24,25 181:1,2,3 242:9 244:5,6,7 null 167:25 number 70:4 72:7 74:20 77:21 141:18 164:12 171:9 171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4		
misrepresenting 271:19	moved 200:16 moving 146:4 280:1 283:1,14	needed 76:16 122:19	162:10,12,13 162:14,17,22 162:23,24 163:4,4,6,8,14 163:15,18,19 163:22,25 164:10,11,16 164:25 165:2,3 165:5,9,13,15 174:23 235:24 244:24 245:20 245:24 246:3 247:25 249:8 249:20,24 251:12,24 252:1,5,19,22 254:21 256:5 256:17,21,22 257:3 268:25 269:4 270:20 271:6,16 272:11,16,24 273:17 275:6 276:11,24 277:9 289:5 293:21,23,24 294:2,9	NP 171:10,11,17 174:20,21,22 176:24,25 181:1,2,3 242:9 244:5,6,7 null 167:25 number 70:4 72:7 74:20 77:21 141:18 164:12 171:9 171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4		
missed 197:15 240:16	MT23 201:20 mute 72:2 myriad 141:4 M-A-R-E-V-A... 176:13	needs 72:4 135:4	163:15,18,19 163:22,25 164:10,11,16 164:25 165:2,3 165:5,9,13,15 174:23 235:24 244:24 245:20 245:24 246:3 247:25 249:8 249:20,24 251:12,24 252:1,5,19,22 254:21 256:5 256:17,21,22 257:3 268:25 269:4 270:20 271:6,16 272:11,16,24 273:17 275:6 276:11,24 277:9 289:5 293:21,23,24 294:2,9	numbers 147:7 155:12 202:24 207:13 238:15		
missing 177:11	N	negotiated 257:18,19,25 259:19 260:11 260:18,21 261:1 294:13	166:10,12,13 166:14,17,22 166:23,24 167:4,4,6,8,14 167:15,18,19 167:22,25 168:10,11,16 168:25 169:2,3 169:5,9,13,15 174:23 235:24 244:24 245:20 245:24 246:3 247:25 249:8 249:20,24 251:12,24 252:1,5,19,22 254:21 256:5 256:17,21,22 257:3 268:25 269:4 270:20 271:6,16 272:11,16,24 273:17 275:6 276:11,24 277:9 289:5 293:21,23,24 294:2,9	O		
Missouri 68:1,6 68:14 69:5,10 69:14,17,24 70:9,13 71:1,17 74:19 75:8,10 76:1 77:9 79:2 79:5,6,17,18,21 79:25 115:11 146:23 150:13 150:19 151:5,7 188:5,9,11 191:20 192:2 207:3 242:5 271:6,8 282:3 295:2,7	N 288:1 289:1 290:1 291:1 292:1 293:1 294:1	neither 295:11	169:10,11,16 169:25 169:8 169:20,24 169:25,19,22 170:21 256:5 170:25 256:17,21,22 170:29 256:25 170:36 256:25 170:43 256:25 170:50 256:25 170:57 256:25 170:64 256:25 170:71 256:25 170:78 256:25 170:85 256:25 170:92 256:25 170:99 256:25 170:106 256:25 170:113 256:25 170:120 256:25 170:127 256:25 170:134 256:25 170:141 256:25 170:148 256:25 170:155 256:25 170:162 256:25 170:169 256:25 170:176 256:25 170:183 256:25 170:190 256:25 170:197 256:25 170:204 256:25 170:211 256:25 170:218 256:25 170:225 256:25 170:232 256:25 170:239 256:25 170:246 256:25 170:253 256:25 170:260 256:25 170:267 256:25 170:274 256:25 170:281 256:25 170:288 256:25 170:295 256:25 170:302 256:25 170:309 256:25 170:316 256:25 170:323 256:25 170:330 256:25 170:337 256:25 170:344 256:25 170:351 256:25 170:358 256:25 170:365 256:25 170:372 256:25 170:379 256:25 170:386 256:25 170:393 256:25 170:400 256:25 170:407 256:25 170:414 256:25 170:421 256:25 170:428 256:25 170:435 256:25 170:442 256:25 170:449 256:25 170:456 256:25 170:463 256:25 170:470 256:25 170:477 256:25 170:484 256:25 170:491 256:25 170:498 256:25 170:505 256:25 170:512 256:25 170:519 256:25 170:526 256:25 170:533 256:25 170:540 256:25 170:547 256:25 170:554 256:25 170:561 256:25 170:568 256:25 170:575 256:25 170:582 256:25 170:589 256:25 170:596 256:25 170:603 256:25 170:610 256:25 170:617 256:25 170:624 256:25 170:631 256:25 170:638 256:25 170:645 256:25 170:652 256:25 170:659 256:25 170:666 256:25 170:673 256:25 170:680 256:25 170:687 256:25 170:694 256:25 170:701 256:25 170:708 256:25 170:715 256:25 170:722 256:25 170:729 256:25 170:736 256:25 170:743 256:25 170:750 256:25 170:757 256:25 170:764 256:25 170:771 256:25 170:778 256:25 170:785 256:25 170:792 256:25 170:799 256:25 170:806 256:25 170:813 256:25 170:820 256:25 170:827 256:25 170:834 256:25 170:841 256:25 170:848 256:25 170:855 256:25 170:862 256:25 170:869 256:25 170:876 256:25 170:883 256:25 170:890 256:25 170:897 256:25 170:904 256:25 170:911 256:25 170:918 256:25 170:925 256:25 170:932 256:25 170:939 256:25 170:946 256:25 170:953 256:25 170:960 256:25 170:967 256:25 170:974 256:25 170:981 256:25 170:988 256:25 170:995 256:25	name 74:7 170:24,25,25 176:11,12,12 242:1,3 281:23	never 188:18 189:19 196:17 205:1 269:15	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4
mis-pronounce 175:18	name's 117:8	NEMO 79:5 109:11 148:15 148:20 149:3 149:11 151:5,6 152:11	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4	object 137:21,24 167:14 194:22 203:10 235:14 247:5 248:20 270:7 271:18 275:9,22 277:23		
Model 290:5	nation's 202:8 203:4	new 76:8 77:4,8 107:22,23 108:21 110:17 136:22 257:3,9 257:10	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4	objected 106:1		
moment 80:19 104:2 123:7 139:5 155:16 160:3 167:17 171:24 177:18 208:10 252:9 261:19 283:8	natural 68:10,13 70:6,8 74:10 75:7,20 78:21 114:21,25 115:20 168:20 186:22 190:6 191:11,19,19 192:22 195:18 196:4 200:16 201:7,12,22 202:1,7 203:4,7 203:14 204:9 271:7	nice 175:11	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4	objection 180:24 189:5 198:13 203:18,21 240:25 243:9 244:4 250:19 252:8,9 261:13 269:5 274:5 276:20 286:19		
mis-pronounce 175:18	nature 72:21 142:23	nominal 198:9	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4	objections 169:17 174:18 240:24 243:7 284:17 286:22		
Model 290:5	near 139:23	non-in 121:22	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4			
moment 80:19 104:2 123:7 139:5 155:16 160:3 167:17 171:24 177:18 208:10 252:9 261:19 283:8	nearest 143:3	non-unanimous 133:23 134:8 148:4	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4			
month 147:11 153:13	nearly 78:4	noon 168:19	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4			
months 122:7,7 182:6	necessarily 187:21 190:10	Noranda 69:7	171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4			
moratorium 76:13,14,19			171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4			
morning 70:3 72:8 74:7 110:2 134:18 139:4 143:14,19 144:1 154:23			171:10,10,17 180:5,5 200:9 202:3 237:16 253:18 258:21 259:6 261:12 270:4			

objects 133:22 134:3	137:16,16 138:15,16	online 72:14 73:9 74:1	105:17 136:15 137:7 159:5	177:19 181:1,2 181:2
obligation 270:21	139:4 141:11 141:17 142:10	OPC 148:4	207:4,8 238:11 238:13,16	pace 104:20
obligations 270:16,18 273:12	143:8 144:10 148:10 150:24 151:23 158:3	162:21 167:9 290:14,16,18 290:20,22,24 291:2,3,4,6,8 291:10,12,13 291:15,16,18 291:19,21,22 291:24 292:2,3 292:5,6,8,9,11 292:12,14,15 292:17,18,20 292:21,23 293:2,3,5,6,8,9 293:11 294:8	239:4 246:10 256:10 257:22 257:24 258:7	packaged 167:22 page 167:18 177:6,8,9 180:3 182:1 184:24 186:17,20 187:6,8 189:22 192:19 193:11 200:14 201:17 201:19 202:14 204:15,17,18 205:14 207:8 207:13 234:6 244:20 245:5 247:2,22 250:3 259:15 277:21 288:2
obsolescence 104:21 109:2 137:2	166:14 174:1 174:17 180:25 182:20 183:2	opened 276:3	ordered 120:21 120:24 121:5 121:12,15 136:15 137:13	pages 80:21 123:9 155:18 160:5 172:1 177:22 183:13 200:11 208:12 235:17 245:11 248:11 261:21 295:9
obsolete 136:5	183:13,25 184:16,20 186:11,16 188:21 190:16 191:17 195:25 196:2 197:2,4 198:10 199:4 200:9 201:15 201:18,25 202:5,11 205:14 207:19 233:4,7 236:9 237:15 238:4 239:12 240:8 240:18 243:4 243:20 244:4 245:22 250:14 252:4 253:2,13 254:3,12,17 257:1,3,8,18 258:10,19 259:9 261:4,10 271:22 275:3,4 276:22 277:15 279:6,6 280:8 280:13,18 283:1,7,22 284:3,12 285:14 287:4	opening 71:23 72:5,23 73:22 74:5 80:17 115:24 117:1 117:21 134:6 134:23 142:24 143:12,16,21 143:24 154:25 155:2 159:23 166:19 167:4 256:12 288:3,4 288:5,6,7	orders 105:16 159:12 188:22 256:1,13 258:5 260:7,8	paper 134:14 papers 106:1,11 106:12 164:8 164:21 250:21 251:11,21
obtaining 119:21 121:24		operates 75:18	organizational 144:17	paragraph 270:4
obviously 114:24 250:20 275:12		operating 77:15 122:9 149:9	original 107:16 110:15 114:2 271:14 277:7	paragraphs 207:9,12,13,18 207:21
occurring 202:21		operational 122:15	originally 149:5	parameters 140:18
October 152:5		operations 74:21 79:18 145:6	ought 105:8	paraphrase 245:17
offer 180:22 271:23 272:2 272:11 276:8 281:5 284:13 284:13,14,22 284:25		opinion 139:10 139:24 204:14 234:1 251:10	outcome 295:16	paraphrasing 245:22
offered 164:15 174:18 273:4		opportunity 77:18 247:14 249:11	outlook 201:5 203:2	pardon 253:10 274:19
office 69:16 70:13 71:8,10 105:5 107:23 117:10 143:16 147:23 253:5 271:7		oppose 138:8,15 opposed 243:15	outside 108:20	parent 75:11 118:14 144:20
officially 137:23		oral 70:14	out-and-out 138:13	part 76:7,12,17
off-site 72:8,24		order 76:15	overall 78:7,10 79:8 80:2 146:10 199:16	
oh 134:20 143:15 163:20 207:12 207:14 259:8 279:6	old 112:16 256:21,24 257:10		overlooked 71:22	
oil 200:20 202:22	once 144:13 163:4 169:10 240:2,2,3		overrule 198:22 204:5 235:18 247:17 251:14 251:18 252:15 269:14 272:7 276:14 278:9	
okay 72:11,15 73:2,16 74:13 74:15 104:7 106:22 110:6 114:16 115:12 116:2,18,19 117:6 118:11 121:12,21,21 134:4,15,17	ones 138:9 one's 282:22		overstated 146:7 overview 75:22 owns 75:15,18	
			P	
			P 68:22 171:10 171:11 174:19 174:20,21,22 176:24,25	

<p>113:19 121:17 121:18 122:16 122:16 142:11 249:7 254:17 257:13 268:22 277:4 partial 78:16 133:13,14,22 133:23 148:4 167:10 168:3 participated 183:22 participation 183:14 282:21 particular 158:15 270:20 271:2 particularly 138:10 245:8 parties 78:22 111:8 120:16 120:17 167:18 168:1 249:10 271:1,3,5 275:18 279:15 279:17 295:12 295:15 partner 74:8 171:2 party 122:22 164:15 pass 280:10 patient 135:13 pay 147:10 148:21 151:16 151:19 153:13 162:9 payers 239:15 paying 142:14,14 149:25 150:3 150:16,22 151:8 158:15 162:6,11,14 165:6 payments 142:5 pays 147:2 150:21 158:12</p>	<p>158:13 PC 105:11 pedestrian 136:1 penalized 75:5 pending 167:17 people 74:1 104:4 239:4 240:3 275:24 percent 75:9 104:17 105:12 105:12 108:4 112:20 120:1,1 145:23 146:5,5 162:12 177:12 185:5,17 186:22 190:2,2 190:5,20,24 191:9,16 192:21,23 193:1,13,16 194:6,12,13,18 194:20 197:8 197:11 198:7 200:4,6 201:12 205:2,16 237:17,17 272:25 273:17 274:8 275:2,3 percentage 114:6 114:9 118:20 122:25 159:22 performed 136:19 153:19 206:6,9 period 77:12 114:7 137:4 200:15,20 271:16 272:17 272:20 273:7 277:11 permission 243:21 perpetual 120:12 personal 199:6,7 199:14,15 personally 205:4 perspective</p>	<p>162:8 190:4 194:10,14 195:7 199:25 258:6 persuaded 207:25 philosophy 77:2 phone 73:8 74:2 105:4 109:24 115:21 135:12 154:16 236:21 268:9 286:9 pick 141:21 picked 141:24 piece 134:13 169:3 pieces 242:13 249:12 pipeline 112:6 115:10 142:25 143:3 place 111:7 115:20 256:2 280:3 plan 168:21 plane 175:14 planned 254:3 plant 120:25 121:9 please 70:15,24 71:8,12,17 72:1 72:17 73:25 74:3 143:25 147:16 155:1 155:16 160:3 167:6 170:12 170:17 171:24 175:18,19,23 175:24 176:4 176:10 177:18 194:15 206:19 208:10 241:6 241:15,20 242:1 247:18 248:12 258:25 259:21 261:19 272:8 274:19</p>	<p>276:15 281:12 plugged 155:13 plus 159:11 164:25 191:25 191:25 podium 74:2 point 74:24 80:20 116:9 119:12 120:23 121:22 123:4,8 155:17 160:4 163:20 164:16 171:25 177:21 181:5 184:11 184:17 185:16 187:22 190:8,9 196:7 200:23 208:11 240:13 250:5 254:23 258:7 261:20 pointed 260:21 point-to-point 73:15 Pokorski 68:25 295:6,18 policies 75:4 79:18 policy 117:16 poll 279:25,25 portion 80:16 117:6 122:8 133:22 145:23 145:25 167:15 176:20 207:7 278:14 282:6 283:2 position 104:14 105:8 108:15 109:21 110:11 114:17 133:11 134:13 136:21 137:3 148:19 162:4,18 190:11,12 202:20 234:1 254:5,10 255:2 255:5,7,8,17</p>	<p>277:16,19 278:1,2,4,8 possible 116:20 147:18 possibly 246:15 249:21 Poston 69:16 71:9,9,11 72:6 72:11,15 143:23,24,25 144:7,8,9,12 154:7,10,21 169:12 175:2,3 181:8,9 253:6,7 285:8,10 288:5 Potentially 278:24 power 75:11,14 145:4 PowerPoint 72:7 75:21 104:6 144:2 155:2,11 294:8,9 PowerPoints 72:9,13,14 practices 109:6 precedent 140:2 140:7 predecessor 77:11 121:3 predicting 201:21 predicts 190:1 preemption 135:6 prefer 121:20 133:17 preference 279:17 280:1 prefers 240:1 prefiled 174:8 preliminary 181:25 premarked 283:16 premium 146:17 187:10,15</p>
---	---	---	--	--

189:25 preparation 119:22 prepare 176:18 177:1 249:11 prepared 147:12 148:11 176:19 177:1 245:14 245:15 248:22 present 133:4 155:8 168:6 203:9 249:2 presentation 148:12 155:12 294:8,9 presentations 72:7 presented 120:22 177:9 197:19 202:25 237:9 presents 196:20 203:17,20 204:3 preside 70:11 president 76:22 Presiding 68:17 presumed 137:14 pretty 196:7,15 206:2 237:14 previous 75:3 105:16 111:14 188:18 248:23 248:25 260:7 273:12 previously 76:5 107:3,6 108:15 137:13 184:8 188:6 268:19 price 206:4 252:24 Pridgin 68:17 70:3,10,22 71:7 71:11,16,21 72:10,12,16,25 73:3,6,13,16,21 80:18 104:1 107:2,7,11	109:25 113:3 115:16 116:18 117:7 121:20 123:6 133:1,17 134:10,16 135:9,17 138:21,24 139:2 143:10 143:19 144:5,8 144:10 154:7 154:11,15,20 154:24 155:15 158:1 160:2 162:1 165:18 166:16,20,24 167:2 168:7,11 168:13,16 169:6,16,19,25 170:10,16 171:23 174:1 174:17 175:1,4 175:7,13,17,21 176:3 177:16 180:1,24 181:7 181:10,13 189:7,13 195:3 198:22 202:18 203:1,12,18,24 204:2,5 208:9 233:1 235:18 236:11,17,20 239:19 240:8 240:12,21,24 241:1,4,9,19 243:7,22 244:4 247:11,17 249:13 250:4 251:14 252:15 253:3,8 258:23 259:12,16 261:13,18 268:1,5,8 269:11,14 270:12 272:4,7 274:9 275:25 276:14 278:5 278:20,25	279:7,11 280:4 280:8,13,18,25 281:8,16 284:16,24 285:2,5,8,11,14 285:20,25 286:4,8,12,19 287:3,5 primarily 249:10 primary 117:13 294:6 principally 191:2 prior 77:25 138:5 182:22 183:23 233:8 245:25 246:14 258:4 269:6,7 probably 112:15 137:25 138:11 142:8 147:14 158:4 159:24 164:3 165:11 261:15,17 problem 72:17 119:21 121:24 122:21 147:6 169:13 235:1 problems 119:5 145:17 proceed 72:5 143:20 240:4 proceeding 77:25 240:23 242:9 282:8,12 PROCEEDIN... 68:3 70:1 287:10 process 118:17 196:24 206:16 206:18,20 207:1 208:4 239:9 procurement 282:4 produce 76:1 product 115:5 production	201:13,22 professional 199:18 profile 145:7 program 167:12 projected 146:8 198:4,5 199:12 202:24 projecting 202:6 203:3 projections 146:9 199:16 199:17 201:11 promote 153:6 promotes 152:19 152:20 proper 146:1 247:10 275:15 278:6 proposal 78:6,20 234:3 propose 114:5 148:23 proposed 104:12 104:17 114:9 145:18,19 146:7,12 147:23,24 149:5 162:5 197:6,7,10 proposing 79:2 105:22 118:21 145:23 provide 75:19 105:14 114:4 150:10 154:4 200:9 244:22 245:18 256:16 259:21 provided 79:23 136:17 149:1 149:19 150:6 152:1,25 155:6 163:11 199:21 204:22 245:1,2 249:23 provides 152:2	providing 77:6 106:1,16 provision 114:3 257:11 271:2 272:6 276:2 provisions 268:16,18,19 proxy 120:3 185:12,23,24 186:1,3,15 191:12 195:5,8 public 68:2 69:16 69:20 71:1,8,10 78:15 79:23 80:2 109:14 116:5,20 143:4 143:13,17,21 143:22 146:21 147:24 158:1 162:2 174:2 176:15,17 180:2 183:5 206:10 207:4 233:2 249:10 253:5 259:15 259:17 268:2 271:7,8 276:10 282:3 published 146:9 199:11 pull 190:15 punishment 234:9 purchase 74:19 139:7 206:10 purchasing 153:10 purposes 133:20 140:14 206:14 238:25 239:1 pursuant 122:11 140:4 275:17 put 144:17 147:13 152:4,7 162:3,8 196:22 putting 199:20 P.O 69:17,23
---	---	--	--	---

<p style="text-align: center;">Q</p> <p>quality 193:20 quantified 234:2 question 72:6 115:13 116:3 135:22 136:1 137:1,18 139:5 140:13,14,20 142:9 165:19 165:20 169:1 189:7,9 194:16 198:10,23,24 203:12,24 234:21 243:12 247:19 248:6 251:18 252:16 256:3 260:5,15 269:10,12 272:9 274:21 276:16,18,20 276:22 278:7 questioning 170:17 238:7 247:6 questions 109:23 110:1,5 112:25 113:4,9 115:3 115:15 134:19 135:11,18 138:22,23 139:2,15 140:11 143:9 143:11 154:6,8 154:9,13,19 165:17 166:15 166:18,22 168:8,14 170:7 170:22 174:7 174:24 175:3,5 175:8,14 176:9 180:19 181:8,9 181:12,17,25 236:10,12,15 236:19,21 237:1,3,4,16 239:17 241:11 241:25 242:15</p>	<p>244:11 247:8 247:15 253:2,5 253:7,12 268:2 268:3,7,10,14 280:19 281:2 281:22 284:7 285:9,10,13,16 285:21,22 286:2,5,9 question's 203:19 quick 110:4 113:9 quickly 136:3 184:21 192:20 quite 116:4 139:18 143:15 177:17 280:21 quote 244:23 245:18 247:20 278:10 quoted 116:6 207:12 quotes 244:24 245:19 247:2 250:2</p> <hr/> <p style="text-align: center;">R</p> <p>raise 151:23 168:25 170:11 175:23 186:12 241:14 281:11 raised 134:22 151:15 raising 145:25 range 120:1,9 146:5 185:2 186:8,12,22 187:16 190:6 190:10,21,24 191:4,8,24 193:20,24 194:5,8,9,18,19 194:24 195:4,9 195:12 196:10 196:11 197:6,7 197:10,11,23</p>	<p>198:7 237:17 ranked 150:11 rapid 136:4 rate 68:13 70:8 74:17 75:22,24 76:11,12,13,16 76:19,21 77:10 77:18,25 78:2,4 78:5,5,7,14 79:2,4,9,10,11 79:17 104:16 105:23,25 106:13,21 107:17 109:16 110:13 111:18 111:24 112:13 112:23 113:16 113:21 114:13 115:1 120:12 121:8,12,13,16 121:23 122:24 123:1,1,1 133:25 134:3,5 134:5 136:4,11 136:12,20,22 136:23 137:13 137:19 138:17 140:3,4,9,13 147:21,23,24 148:6,11,12,13 148:19,23 149:2,2,12,13 150:2 151:2 152:4,7,19,20 158:15,17,18 158:21,22,23 158:24 159:2,3 159:4,8,10,11 159:17,19 162:5,8,19,20 162:23 164:1 165:4,6,8,9,11 165:11,13,13 166:6,7 184:18 188:11 192:22 194:1 197:14 197:17,24</p>	<p>199:19,20,21 200:4 202:17 205:2 207:5 236:3 237:16 239:8,15 245:25 252:2 252:22 258:15 258:17 269:21 269:25 271:3 271:11 272:12 272:13,15,20 272:24 273:5,9 273:18 274:2,6 274:16,25,25 277:3,5,5,8 278:11 279:5 283:3,12 291:5 291:7,9 rates 77:17 78:11 79:10,14 80:9 104:10,13 105:12,13,14 105:18,21,25 106:3,5,8,9,13 106:16,18 108:25 110:18 111:11,12,13 112:3,7,20 120:17,21,23 120:24 121:2,5 121:7 122:25 123:2 135:25 136:9,15 137:9 137:14 145:24 146:8 148:14 148:15 149:6 151:23 159:17 163:7 197:3 198:11,14 199:5,9,12,24 200:11 202:25 204:11 235:23 236:2 239:14 239:15,16 258:6,11,12 270:22 271:12 271:13,15</p>	<p>276:9 rate's 152:10 rate-making 206:16,18,20 207:1 208:4 239:1,9 rating 119:1 120:5 144:23 144:24 145:12 185:17,21,24 185:24,25 186:4,13 191:4 191:5,24 193:20,25 rationale 245:18 ratios 233:20 RBH-R19 192:15 reach 80:2,10 reached 153:17 153:24 read 180:8 201:4 236:5 238:13 239:4,4 248:4 254:13,15 271:20 276:17 277:19 278:18 reading 201:10 277:21 ready 74:4 115:19 133:2 143:20,23 154:22 158:2 167:3 170:18 176:5 241:11 241:21 281:18 real 147:6 195:17 196:3 realistic 105:15 really 76:8 78:13 138:8 146:23 146:24 147:2,3 159:16 251:7 reared 122:21 reason 113:19 116:9 186:7 195:11 235:6 250:23</p>
---	---	---	--	---

<p>reasonable 77:18 77:18 111:12 111:15 112:10 123:3 136:3 137:1,15 146:3 152:14 159:4 187:22 190:6 190:10,21 194:9 199:25 201:25 202:4 206:5 208:3 254:8 255:25</p> <p>reasonableness 188:15,23,24 190:8,9 207:22 237:7,11,13</p> <p>reasonably 147:18</p> <p>reasons 73:24 146:8 153:11</p> <p>rebutt 249:5</p> <p>rebuttal 119:13 164:4 171:5,9 176:24 204:16 242:7 246:21 283:19 289:8 289:10,16,17 289:19,25 290:2,6,8,11,12 291:10,12,13 291:15,16,21 292:2,9,14,15 292:20,21 293:2,5,11,12 293:14,17,21 293:23</p> <p>recall 142:23 237:2,4,15,18 238:6 245:5 248:8 252:16 269:22 274:10 277:16 282:14 282:19</p> <p>receive 79:7</p> <p>received 119:16 119:17 182:9</p> <p>receiving 142:5</p>	<p>recognize 108:19 109:1</p> <p>recollection 205:10</p> <p>recommend 190:24 196:11</p> <p>recommendation 78:13 80:7,8,9 119:15 185:1,8 185:22 187:23 190:25 196:8 196:16 207:23 234:9 237:8,11</p> <p>recommendati... 80:3 133:5 181:22 187:19 233:11 290:23</p> <p>recommended 79:22 119:20 120:10,23 186:12 194:24 196:13 235:7 238:18 239:13</p> <p>recommending 78:10,22 79:13 118:8,12,25 119:7,9 120:1,7 121:1 122:24 136:13 233:9</p> <p>reconciliation 78:25 107:25</p> <p>record 70:2,4,18 107:9 112:22 134:12 135:11 135:15,16 142:19 143:17 143:18,20 144:6 169:21 169:23,24 170:1,24 241:7 241:8,10 242:2 246:8 248:22 249:8 250:12 250:21,24 251:2,5 259:1 270:8 274:11 277:19 281:24</p>	<p>287:2,6,8</p> <p>Recovering 152:19</p> <p>recurrent 119:21</p> <p>redacted 155:4 155:13 158:15</p> <p>redirect 236:22 236:25 268:10 268:13 275:15 277:24 288:16</p> <p>reduce 149:5 152:6</p> <p>reduced 148:22 148:24 295:10</p> <p>reducing 114:25</p> <p>reduction 78:7 79:2,4,9 149:12 149:14</p> <p>refer 74:11 76:5 79:3 122:5 176:19 188:15 200:25</p> <p>reference 133:14 135:6 246:16 246:20 256:4</p> <p>referenced 245:6</p> <p>references 248:13</p> <p>referred 122:12 144:21 245:24 246:13 248:16 258:13</p> <p>referring 151:20 195:24 233:22 255:19 256:18 256:21 258:12</p> <p>refers 117:25 146:25</p> <p>reflect 70:18 79:14 120:24 122:25 148:14</p> <p>reflected 77:16 200:19 203:9 203:16</p> <p>refresh 201:16</p> <p>regard 109:19 121:25 141:14</p>	<p>182:18</p> <p>regarding 106:15 110:5 112:12 167:19 247:8 278:7</p> <p>regardless 148:21 153:13</p> <p>regional 77:8 107:23</p> <p>regulated 75:19 145:7 146:13</p> <p>regulators 149:8</p> <p>regulatory 68:18 70:10 79:17,20 176:15 183:3 194:2</p> <p>rejection 238:15 238:22</p> <p>related 78:20 104:10,13 116:15 148:7,7 182:14 243:15 270:4 295:11</p> <p>relating 243:16</p> <p>relative 295:13</p> <p>released 240:20</p> <p>relevance 202:16</p> <p>relevant 106:14 251:13</p> <p>reliable 201:2</p> <p>reliance 207:21</p> <p>relied 191:2</p> <p>relief 165:2,7</p> <p>remember 138:10 201:10 201:11,14 202:10 205:11 207:6 248:5 282:16</p> <p>remind 247:18</p> <p>removal 133:25 138:11 148:6</p> <p>render 163:8</p> <p>renew 166:10</p> <p>renewable 75:15</p> <p>repeat 194:15 234:21 276:15</p>	<p>rephrase 195:1 256:14 270:13 274:20</p> <p>replacement 76:4</p> <p>report 106:6 113:20 176:20 176:22,23 177:6,7 181:21 184:24 186:16 187:5 189:23 197:6 198:5 199:23 200:12 202:6 203:2 207:4,8 237:25 238:11 282:8 282:18 283:3,9 283:11,12 290:14,16,18 290:20 291:5,7 291:9</p> <p>reported 68:25 205:17</p> <p>reporter 70:21 71:5,20 155:6 276:17,19,22 279:14 295:1,7</p> <p>REPORTER'S 80:20 123:8 155:17 160:4 171:25 177:21 208:11 261:20</p> <p>reports 188:1,21 204:21 205:5,7 284:13</p> <p>represent 117:22 199:24 251:8</p> <p>representing 74:8 75:16 117:9</p> <p>represents 76:9</p> <p>reputable 153:22</p> <p>request 80:16 107:16 253:17 253:20,25 259:5,6,10,18 292:23 294:10 294:11,12</p>
---	--	--	--	---

<p>requesting 76:8 165:2 requests 133:8 require 146:14 275:24 277:2 required 76:20 111:10 236:2,6 268:22 270:21 271:10 272:10 273:10 275:5 275:20 276:7,8 276:23 requirement 105:7 108:1,18 108:22 116:14 117:23 177:7 276:12,13 282:7 290:14 290:16,18,21 294:7 requiring 186:21 271:22 275:16 275:21 research 139:12 researched 139:18,24 reserve 285:18 reset 76:6 78:12 resolution 134:2 resolved 78:17 Resources 271:7 respect 110:10 respective 271:14 277:6 respectively 105:13 respond 249:14 294:10,11,12 responded 139:5 247:13 response 115:14 117:3 151:21 243:13 245:6 245:12,14 246:13 248:17 253:18,19,24 254:6,14 259:4</p>	<p>259:22,22 260:1,2,4,24 responses 151:11 responsive 77:6 restate 272:8 result 76:18 80:5 80:11 146:2 152:8 190:17 199:5 201:8 239:14 resulted 119:19 results 185:9,12 resume 143:15 168:21 169:22 241:6 287:7 retail 75:20 retired 147:1 retirement 105:1 return 77:19 184:18 192:19 192:21 193:1,1 194:1,9 207:23 208:3 returns 146:15 186:21 188:10 189:2,11,16 192:3 193:12 revenue 80:13 105:7 107:25 108:17,21 110:10 116:14 117:22 140:14 177:7 233:9 234:13,16,19 234:23 235:4 282:7 290:14 290:16,18,21 294:6 revenues 76:9,10 77:20 80:6 108:9 277:13 review 106:13 144:23 159:5 192:14 205:4 207:18 248:11 270:3 reviewed 78:23</p>	<p>106:5 188:10 192:6 204:20 207:3 reviewing 240:16 revised 75:23,24 Revision 70:7 REVISIONS 68:11 ridiculous 151:14 right 71:22 73:5 73:11,21,22 107:7 110:14 112:24 115:2 116:19,24 118:8,10 133:1 135:9,17 143:10,22 144:5 154:11 154:15,20 155:15 160:2 162:1,3 166:24 167:5 168:16 169:20,25 170:5,10,11 171:23 175:13 175:17,21,23 177:11,16,17 180:1 181:23 182:3,12 183:15,16 184:5 185:10 185:14,18,19 186:23,24 187:2,12,13,16 191:6,12,25 192:4,16 193:5 193:7,9,13,21 194:3,6,10,14 195:5,19 196:18 197:11 200:1,5,11,17 200:23 203:1 203:22 204:24 205:2,19 208:4 208:9 233:1 234:9 236:4</p>	<p>239:19 241:1,9 241:13,14 243:7 244:24 247:24 248:15 249:13 255:16 259:12,16 260:13 261:18 268:1,5,10,16 275:25 278:9 278:20,25,25 279:10,22 280:25 281:8 281:11,11 282:22,22 284:21,21 285:5,8,18,20 286:9,20 287:5 287:7 risk 144:24 145:6 146:16 187:10 187:15 189:25 river 183:1 road 250:10 Robert 68:19 170:20,25 171:4 192:7 288:10 289:15 289:16,18,19 289:21,22,24 290:3 Robinette 293:2 293:4 Robinette's 106:4 ROE 80:7 108:3 109:5 120:8,9 120:10 146:4,7 146:12,17 147:17,18 171:6 185:1 188:16,23 189:4 190:24 193:16 195:17 196:2 205:16 238:20,23 239:2,5,9 ROEs 146:16</p>	<p>188:7,11 189:20 role 205:23 roles 204:23 205:22 Ron 70:10 RONALD 68:17 room 71:25 roughly 115:21 150:3 183:22 ruining 72:19 rule 134:8 187:4 187:8,18,23,25 188:6 189:3,12 189:19 190:1,4 190:15,19 195:15,16,20 195:20 196:6,7 196:10,11,18 196:21 237:3,6 rules 251:1 ruling 198:19 RUPP 68:20 R19 193:2</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 68:19 safer 261:17 safety 153:7 sale 78:1 206:10 sales 257:19,25 260:11,18 294:13 Sarah 68:25 293:5,7 295:6 295:18 satisfies 152:15 saw 188:19 206:23 saying 119:10 121:12 122:13 122:14 136:19 167:16 199:18 206:22 237:13 261:5,7 says 147:9,10 151:18 245:1</p>
--	---	--	---	---

248:3,6 254:6 254:18 255:23 258:8 259:14 260:1,24 270:6 270:10 271:20 271:23 272:2 275:10,11 scenario 142:17 schedule 164:4,5 164:8 169:1 185:9,13 191:18 192:12 192:14 193:2,4 193:10,11 197:5,9,13 198:11,18 199:3 240:14 240:16 253:23 279:16,24 286:15 scheduled 251:16 289:20 schedules 75:24 169:7 174:5,11 192:6,10 197:19,21 238:2 242:19 282:15,16,19 282:23 291:2,3 291:11 292:24 scheduling 133:20 SCOTT 68:20 screen 72:9 107:14 110:8 155:4,14 seat 170:17 176:4 241:20 281:17 second 75:17 135:23 140:1 148:4 168:3 259:15 Secondly 275:16 seconds 121:4 274:6 section 197:17 277:21	Security 146:25 see 71:23 72:9,14 72:24 73:12,18 106:25 107:13 108:6 110:8 117:12 119:23 120:13 134:16 135:10 141:3 148:6 149:5,22 150:1,5,5,7,12 150:19 151:4 151:18 152:10 152:18,18,22 153:3,3,4,18 154:16 155:14 159:4,20 164:3 169:8 175:1,10 175:11 180:9 181:10 189:24 190:13,17 192:20,23 196:14,24 197:13,22 201:7 202:5 244:15 248:13 248:19 253:4 255:1 260:7 261:4 279:7,20 279:25 280:14 281:2 284:13 285:11 286:16 seeing 145:22 150:19 205:11 249:16 seeks 165:7 seen 138:5 188:17,21,25 205:1 252:4 sees 149:18 150:8 self-check 196:8 196:24 selling 75:7 SEMO 79:3 109:10 148:25 149:15 158:9 159:12 162:25 senior 147:9	sense 79:8 187:1 187:4 190:14 sensible 196:9 sentence 180:6 201:20 254:6 276:8 277:20 Seoung 293:11 separate 78:24 162:24 September 68:5 70:12 serious 153:8 serve 149:3 159:8 162:13,17 163:4,6,15,19 164:16,25 165:5,15 251:12,24 252:1,5,19,22 serves 153:5 158:7 service 68:2,14 68:14 69:20 70:9,9 71:1 75:20,25 76:25 77:3,6 106:6 112:13 113:12 113:15,17,20 114:4,8,12 122:23 137:4 140:5,23 141:3 141:5,7,9,12,14 149:8 150:10 150:11,16 151:18,20 153:14 158:6,6 158:11,19,19 159:1,14,15 163:1,2,23 164:20 176:16 176:17,20 177:7 181:20 184:23 189:23 198:4 200:12 207:4 237:25 246:9 257:19 257:20,25	259:10,19,20 259:23 260:8 260:11,16,21 260:25 261:1 271:8 282:3,8 282:18 283:3 290:5,15,17,19 290:20 291:4,6 291:8 294:13 services 75:18 serving 75:8 session 80:20 104:8 123:8 143:4 155:17 158:2 160:4 162:2 171:25 174:2 177:21 180:2 208:11 261:20 set 75:23 118:8 133:7,10 140:18 147:17 189:20 238:18 sets 165:12 setting 155:11 188:7,11 189:4 settled 117:18 148:6 184:5 243:15 settlement 152:9 269:6,9 settling 78:9 107:19 seven 112:20 117:12,15,20 seventeen-cent 149:14 seven-year 105:9 sewer 75:20 184:13 shale 201:8 204:8 share 164:9 197:25,25,25 Sharpe 293:5,7 sharply 201:8 sheet 257:17 258:1	sheets 75:23 260:10 shift 200:22 202:20 203:8 203:16 204:7 shoes 74:22 75:3 111:9 short 76:18 114:6 167:16 279:15 shortly 80:5 show 73:3 105:19 107:4 143:14 144:19 145:2,9 145:16 164:21 177:12 197:6 197:10 198:11 202:13 248:15 252:21,23 255:1 269:24 277:18 279:11 showed 197:13 showing 200:10 252:19 shown 144:17 shows 144:22 146:6,12,17 197:7 198:5 240:14 241:5 signal 79:19 signatories 271:2 271:4 signatory 276:7 276:10,10 signed 162:20 significant 77:4 122:8 145:5 153:2 significantly 163:5 273:9 simply 137:20 165:9 249:7 sir 73:13 112:4 139:2 143:23 167:3 170:9,18 175:12,16 177:8 260:2 282:1 283:5
--	--	--	--	--

284:11	sorry 106:22	201:14 205:7	117:9,10,16,17	108:4,14,21
situation 122:21	107:12 109:22	271:11 272:12	117:23,25	110:11 120:23
140:22	111:21 160:1	276:9 277:3	118:12,20,25	122:4 133:5,10
six 112:20 182:20	170:7 177:15	specifically	119:7,12,14,17	134:13 137:2
248:11	177:20 194:15	105:17 140:25	119:18,25	140:4 144:22
skip 121:17,21	198:20 203:15	188:19 284:19	120:10 122:18	145:9 146:5,6
slash 174:19,22	207:11,14	specificity 138:3	122:19,24	146:11,17
slide 144:16	234:10,21	specifics 136:9	133:4,8,9,22	181:20,21
147:13 148:3	240:12 243:8	207:6 238:21	134:2 136:16	193:20 194:10
149:21 152:3	252:17 259:8	specified 271:12	137:20 139:22	207:21,23
152:13 153:16	sounds 247:6	272:13	145:15 147:23	234:3,8,13,23
153:25 158:16	250:7,9 258:25	speculation	148:9 152:7,9	237:3 275:13
164:3	280:18	189:6 203:11	159:10,12	275:23 277:18
slides 144:2,2	source 108:19	203:19,21,25	162:4,5,18,21	278:3 282:7,11
151:10	198:14 201:1,2	spell 176:10	162:21 164:16	283:2
slight 119:19	202:8 203:5	281:23	164:23 167:14	stand 169:4,10
slightly 119:13	240:15 275:4	spelled 171:1	176:20 183:11	240:3 241:11
119:19	279:2 284:20	spend 155:10	186:16 187:5	251:16 281:1,9
small 71:22	285:19	spent 117:20	187:18,25	286:22 287:7
147:1 154:3	sources 153:17	spite 162:19	196:20 197:6	standpoint
184:13	Southeast 79:2	split 108:12	199:8,23	245:23
smaller 78:9	speak 73:25	122:15	202:25 203:17	stands 163:5
Social 146:25	122:22 270:11	splits 109:4	203:20 204:3	281:10
software 77:8	274:11	sponsor 196:21	204:20 208:2	star 152:4,8
80:10 104:11	speaking 117:21	sponsored	233:8 235:2,5	start 73:23 254:4
104:14,16,19	119:2 246:9	190:12,14	236:3 237:6,24	started 116:3
105:10,11	speaks 270:8,19	194:24 235:6,6	238:11 249:4	starting 283:23
109:1,2 136:2	271:22	sponsoring	249:10 253:17	state 68:1 75:25
somebody	special 72:22	118:16 190:11	253:19 259:4	76:22 152:3,12
258:24	80:6,13 110:5,9	196:9,25	269:3,9,11,15	170:23 184:1
somewhat	113:12 116:7,7	sponsors 181:21	271:9 272:19	185:1 186:20
243:10	116:10 140:16	spreadsheet	272:23 274:24	186:25 187:8
Sommerer	140:17,19,22	164:13	275:5,16,21	187:14 189:25
233:15,24	140:22 141:1	ss 295:3	276:6,10,23	203:12 242:1
258:4 279:12	171:13 234:18	St 109:24 167:22	277:12 278:15	295:2,7
279:19 280:10	234:20,23	staff 69:20 70:23	290:14,16,18	stated 207:24
280:17,20	243:16 244:23	71:1 75:5 78:6	290:20,22,24	277:25
281:1,9,10,11	245:19,25	78:9,15 79:1,12	291:2,5,7,9	statement 74:5
281:20,23,25	249:23 254:21	79:23 80:1,10	292:23 293:12	80:17 117:1
282:16 283:9	256:2 260:6	104:14,17	293:14,15,17	143:24 154:25
283:17,20	270:4,19	105:6,20,24,25	293:18,20	155:2 159:23
284:18 285:18	271:24,25	106:1,3,7,9,14	294:10,11,12	167:4 202:10
285:23 286:10	272:1,2,3	106:16 108:8	294:13	204:7 254:5,10
288:24 293:8	specific 105:17	109:14,18	Staff's 78:13	255:1,4,7,8,17
293:10	116:13,15	113:11,20,25	80:7 104:12	255:17,18,21
Sommerer's	118:8 136:18	114:11 115:3	105:16 106:5	256:12 277:16
281:6	141:6,19 149:3	115:13,18	106:11 107:25	277:18 278:1,2

278:4,7,15 288:3,4,5,6,7 statements 72:5 133:11 143:21 states 75:7,19 146:10 150:14 151:9 154:2 259:22 statutes 76:20 stays 151:24 step 75:2 239:21 261:16 278:21 280:21 286:10 STEPHEN 68:21 stepped 74:22 111:9 stip 258:15,16,17 271:3 stips 134:9 stipulated 248:24 249:1,9 stipulation 74:23 78:16,19 109:13,17 110:16 133:14 133:23,23,24 134:3 135:23 137:20 148:4 152:9 159:5,6 162:19,20 167:10,17,23 168:4 236:3 256:11 258:13 269:20,25 270:6,10,15,19 271:20,21,22 273:1,6,11,19 273:22,24 274:4,14 275:6 275:10,17,18 275:22 276:24 stipulations 75:3 273:12 stipulation's 270:8 stock 75:12,13 stocks 186:23	Stoll 68:21 138:22,23 154:12,13 166:17,18 168:11,12 236:18,19 286:1,2 stone 279:21 stop 279:22 Stopped 167:16 streaming 73:18 Street 69:5,9,13 242:5 strike 248:24 strong 77:14 structural 200:22 202:20 203:8,16 structure 80:8 109:5 118:5,6 118:12,13,16 118:19,21,23 118:25 119:3,7 119:8,9 144:15 144:16,18,20 144:25 145:1,3 145:4,9,13,15 145:18 181:22 184:9 188:2 208:7 239:13 struggles 146:24 studies 152:25 153:19 206:23 249:4 252:4,18 252:21,23 study 106:20 113:12,15,17 114:4,9 121:10 121:11 122:23 136:18,19,22 137:4,9,12 148:1 206:9 248:14 252:3 252:12 289:7 stuff 261:16 subject 158:21 166:5,6 184:7	184:17 187:11 249:6 submitted 70:20 122:23 subsequent 158:22 subsidize 142:16 substance 182:1 substantial 76:24 79:14,24 105:19 substantially 112:14 159:8 159:18 165:5 204:11,13 275:13 284:10 sub-accounts 105:18 120:19 120:20,24 121:13,14 136:14,24 sub-parts 117:15 118:5 suffers 119:5 suggest 190:5 201:21 203:3 269:3 suggested 111:12 269:12,15 273:6 suggesting 206:25 272:19 272:24 273:3 274:24 277:12 suggests 190:20 190:22 204:7 Suite 69:5,9 Sullivan 153:6 summarization 270:9 summarize 270:5 summarized 182:2 183:14 summary 183:21 202:6 summer 153:11 153:15 166:4	256:23 257:4 Summit 152:8 153:3 191:19 supplement 249:8 supplier 139:7 supply 246:11 support 77:1 109:16,21 133:5 136:22 137:9,12,12 142:19 144:19 149:1 167:9,16 196:15 207:22 244:23 245:2,2 245:19 249:23 256:4 290:22 290:24 supported 255:18,22 supporting 245:18 250:21 supports 107:20 108:2 167:6 suppose 111:19 111:24 142:4,7 271:21 supposed 177:12 180:8 surcharge 76:4 sure 159:16 184:22 192:13 237:20 249:19 255:4 261:11 279:8 280:24 surpass 202:7 203:4 surprised 243:10 surprising 80:11 surrebuttal 106:4 164:18 171:6,11 176:25 180:4 205:15 234:5 242:8 244:18 247:4,21 248:4 253:20 283:17	283:24 289:11 289:13,22,23 290:9 291:18 291:19 292:11 292:12,17,18 293:3,6,8,9,15 293:18,20,24 294:2,5 Sussex 171:2 sustain 189:13 250:13 sustained 252:9 Swagger 246:18 249:3 Swagger's 246:13 247:3 247:21 250:2 Swain 76:22 289:2 swear 170:12 175:24 241:15 281:12 switch 72:12,13 233:5 sworn 170:11 175:22,24 241:15 281:12 system 76:4 105:9 107:24 112:8 122:9 141:23 142:2,5 158:7,8,11 162:12,15,16 163:3,13,15,17 164:10 246:15 248:1 systems 105:15 107:24 S-O-M-M-E-R... 281:25 S-U-S-S-E-X 171:2 <hr/> T T 68:20 289:1 290:1 291:1 292:1 293:1
---	--	--	---	--

294:1	254:9,19,20	testify 235:17	289:2,3,8,10,11	180:1,12 181:4
table 74:2 177:9	256:5,15	testifying 251:1	289:13,14,16	181:7,9 199:1
198:2,4	257:15,23	testimonies	289:17,19,21	201:18 207:14
tack 150:1	259:20 260:11	159:7 174:5,8	289:22,23,25	236:9,11,14,16
take 115:25	260:20 269:1	246:21 248:16	290:2,4,6,8,9	236:17 239:17
116:21 120:6	283:4	248:18 252:7	290:11,12	239:20,20
135:14 143:14	taxes 150:2	testimony 76:23	291:12,13,15	241:6,19,22
147:4 169:2,4	technological	106:4,14	291:16,18,19	244:9 246:12
182:14 207:8	72:17 104:20	119:13,24	291:21,22,24	253:3,7,8
248:10 260:8	109:1	120:13 133:10	292:2,3,5,6,8,9	258:20 268:3,5
260:16 270:21	technology 72:19	159:20 166:3	292:11,12,14	278:21 279:11
279:18 280:3,4	105:2 136:3	169:2 171:13	292:15,17,18	281:16,19
280:5,5,7 281:1	tell 136:10	176:19,24,25	292:20,21,24	282:1 284:17
281:6	182:17 199:8	177:2,4 180:4	293:2,3,5,6,8,9	285:2,6,21,24
taken 117:18	telling 143:2	180:16 183:18	293:11,12,14	285:25 286:3,5
201:19 295:9	194:21	192:6,9 194:23	293:15,17,18	286:7,10,11
295:13	ten 75:19 143:15	196:5 197:17	293:20,21,23	287:4,8
takes 158:10	149:21,24	197:22 198:15	293:24 294:2,3	thanks 166:15
169:4	151:4 158:21	198:16 199:3	294:5	168:9,9 175:9
talk 80:12 144:2	166:4 241:5	200:6,25	tests 187:2,4	285:22
148:18 187:25	tendency 239:14	204:16 205:15	thank 70:17,22	thereof 252:11
197:3 208:6	tender 174:15	206:13 233:5	70:23 71:7,9,11	thereto 295:15
284:19 285:18	181:5 243:5	233:16 234:5	71:13,16,21	thermal 75:16
talked 116:13	244:3 284:15	236:14 237:22	72:15 73:20	thing 107:12
188:22 239:11	285:6	238:9 240:17	74:6,15,16	134:20 138:3
246:14	ten-page 164:13	242:7,8,8,13	104:1 109:25	152:15 153:21
talking 233:20	ten-year 166:8	243:1 244:18	110:3,7 112:24	286:18
233:20 234:17	term 140:4 166:8	245:10,12	113:2,3,7	things 117:2
234:19	271:14 272:14	246:13,17,24	115:16,17	119:2 147:3
talks 147:2	277:7	247:3,3,8,9,14	134:17 135:8	153:10 239:6
tap 158:11,12	termination	247:21 248:7,9	135:10,17,19	275:24
162:10 164:6	110:25	248:9,14,19,23	135:21,24	think 73:8,9
tariff 68:11 70:7	terms 74:23	248:25 249:8	138:20,21,24	104:18,22
75:23 78:21	110:12 116:7	249:12,17,20	143:8,11,12,17	105:4 109:19
107:16 108:19	165:22 167:11	249:21,24,25	144:10 154:7,9	109:19 111:11
108:20 140:19	167:23 202:25	250:2,3,17,23	154:11,15,19	112:19 113:8
140:23 162:24	test 76:10 122:8	250:25 251:9	154:20,21	114:14 116:16
165:8 257:11	188:15 237:4,7	252:10 253:17	165:18 166:16	116:16,23
257:12,14,17	237:7,13	253:20 254:19	166:19,20,23	123:4 134:21
257:20 258:1	259:20,24	254:23,25	166:24,25	138:4 139:13
259:24 260:10	261:1,8 271:16	255:3,5,7,18,22	167:1 168:7,12	139:14,14,16
260:16,21	272:17 277:9	256:4 258:3	168:14,16,17	139:19 140:11
261:1,5,8	tested 144:25	279:2 282:15	169:18,22	143:2,4,20
268:16,18,19	testified 112:11	282:24 283:15	170:16,19	145:25 147:3
278:12 283:4	151:12 170:20	283:17,19,24	175:1,5,9,13,16	147:13,18
tariffs 78:21	176:7 183:25	284:4 288:10	175:22 176:3,6	155:7 158:4
140:16,17	241:23 281:20	288:13,18,24	176:14,17	159:20,21

165:23 170:1 175:14 177:14 182:2,10 183:13 185:8 186:25 189:25 195:15 197:7 197:16 198:5,6 198:23,23 199:17,23 200:6,9 205:15 235:2 236:23 238:16 245:11 246:7 247:10 247:15 248:11 249:7,24 250:8 251:8,10,12 254:25 274:22 275:4 278:6 282:18,23 286:13,17 thinking 133:19 142:12 240:6 279:4 281:1 think's 151:13 third 144:16 Thomas 292:4,5 292:7,8,10,11 292:13 Thompson 69:20 71:2 175:4,5 176:4,6,9 177:14 180:9 180:22 181:4,7 189:5 192:17 194:22 198:13 198:19 199:1 201:18 202:15 203:10,23 207:10,14 235:14,16 236:23 237:1 239:19 240:25 288:14,16 thought 150:24 260:15 thousand 198:1 threat 142:22	three 116:15 117:15,20,21 117:24 118:5 134:4 137:19 138:8 148:13 150:13,14 163:20,21 164:25 282:17 throw 243:9 thrown 135:6 thumb 187:5,9 187:18,24 188:1,6 189:3 189:12,19 190:1,4,15,19 195:15,16,20 195:21 196:6,7 196:10,11,18 196:22 237:4,6 tied 141:13 152:24 ties 238:17 time 70:13 76:18 76:19,19 105:3 111:15 114:7 114:15 119:14 137:3 139:23 143:9,13,14 154:14,19 166:23 168:6 201:9 233:8 242:14 249:16 259:20 269:1 269:18 277:11 281:4 times 112:7 119:23 timing 76:11 today 74:9,12 104:21 144:3 144:14 147:7 147:22 155:9 174:9 177:5 180:19 242:16 243:12 284:9 told 193:22 top 139:12 145:4	151:5 177:12 topic 171:6 Toronto 75:13 total 78:10 108:1 108:10,22 109:6,8,11 164:25 180:6,7 180:8 201:22 252:1 totally 252:13 278:4,6 traded 75:12 transaction 206:11 transactions 206:24 transcript 68:3 80:22 123:10 155:19 160:6 172:2 177:23 208:13 261:22 295:8 transformer 182:25 transmission 158:7,11,19 162:11 163:17 164:10 Transportation 289:5 travel 169:1,7 treat 163:22 treats 234:8 tried 105:23 116:12 triple 185:25 191:24 trouble 104:3 true 166:13 180:16 187:20 187:21 188:3 188:12,13,16 188:17 243:1 trued-up 164:22 trust 135:1 truth 170:13,13 170:14 175:25	175:25 176:1 241:16,16,17 281:13,14,14 try 104:6 115:19 116:19 134:24 135:12 169:7 184:20 190:18 238:17 239:2 243:18 trying 198:23,24 248:21,24 250:20 251:2,4 251:5 277:25 turn 72:1 184:23 186:16 189:22 191:17 197:5 244:20 245:10 turning 204:15 205:14 twice 151:8 two 75:13 104:10 117:14 140:11 141:20,22 145:21,22 151:3 165:11 176:23 182:19 182:20 198:1 207:18 239:6 245:11 270:19 278:11 282:17 type 79:20 140:9 183:7 typewriting 295:10 typical 186:8 187:15 typically 146:18	undercharging 162:22 undergo 203:8 203:15,15 undergraduate 182:7 underlying 238:21 underneath 117:15 understand 80:1 80:4 110:11 155:12 171:19 181:20 206:3 236:1,6 237:12 238:9,10,14 278:22 286:21 understanding 113:11,14,19 114:10,17 115:8 166:8 167:20,24 203:21 235:4 247:9 251:12 257:24 272:6 272:21,23 276:2,5,6 282:12 understands 158:4 understood 276:12 unfortunate 79:21 unfortunately 141:19 164:2 171:21 208:8 unfounded 164:18 unique 158:5 unit 75:14,17,18 282:5 United 146:10 units 75:14 unjust 163:9 unnecessarily 279:23
---	---	---	---	--

U

U 118:15
ugly 122:22
ultimate 75:10
ultimately
248:23
unable 72:20
113:20,22
122:17,18

unrealistic 104:18 120:11	144:20 145:4 146:13 151:9	void 167:25	weight 192:3	71:3
unreasonable 137:3 163:8	151:16 235:8	voir 243:21,22	welcome 73:21 169:19 250:6 251:18	widow 146:25
unredacted 155:5	utility 75:18	volume 68:7 80:21 123:9 155:18 159:15 160:5 172:1 177:22 208:12 261:21	WEMO 79:7 109:10 148:15 148:23 149:4 149:13 152:11 152:11	William 68:22 293:17,19
unregulated 145:6 146:14	176:15 183:5 186:22 200:10 206:10	volumetric 152:20,24	went 116:4 119:14 196:25 261:17	window 76:18 114:7
untoward 122:13	utilized 106:19	Vuylsteke 69:9 71:14	West 69:13	wish 275:23
unwilling 72:20	utilizes 108:3		Western 79:6	wishes 240:4
update 77:12	V	W	we'll 104:3 109:18 115:17 135:14 167:2 177:17 184:20 259:12 261:18	withdraw 284:24 284:25
updated 107:25 119:12,18 122:2,5,18	vague 134:24	W 69:4 70:18	we're 70:12 73:10 106:2 118:7 119:9,10 121:11,11 122:12,13,14 134:4 136:13 136:18 143:17 144:13 145:22 153:21,21 158:1,24 162:1 167:8 169:22 174:1 180:2 206:21 241:7 241:11 250:9 257:5 259:16 279:13,15,15 279:19,19,23 281:3	withdrawn 78:20
updating 78:8	valuation 204:21 205:5 206:6,9 206:13,14,23 207:22 208:1 238:24 239:7	wait 117:5 133:15	West 69:13	witness 112:11 122:1 136:8 163:11 168:22 170:3,5,7,15 174:16 175:11 175:16,18,20 176:2 180:3 181:5 198:16 199:2 204:6 235:15,20 236:16 240:10 241:11,18 243:5,17 244:3 247:12,18 255:10 269:15 272:8 276:15 277:2 278:10 278:24 279:3,8 279:12 281:15 284:15 285:7 285:24 286:7 286:11
upper 199:24 200:5	valuations 238:12	waited 284:22	Western 79:6	witnesses 106:14 119:24 133:4 144:14 239:23 239:23
upward 185:16 186:7	value 139:21 197:25	want 106:23 109:8 121:18 133:21,21 135:24 154:5 165:24 167:20 169:4,6 237:20 253:25 279:8 279:14,21 286:16	we've 109:13 147:22 148:6 149:1,11 150:9 152:6,24 153:17	word 114:19 180:10
usage 149:20 150:3,4,8 151:1 151:8,13 152:24 153:13	verified 145:11	wanted 121:22 133:12,15 149:16 196:14 249:1 250:24 261:10	whatsoever 140:2	work 104:5 106:1,11,12 164:8,21 250:21 251:11
use 77:23 104:23 118:13 119:7,9 119:10 121:13 136:11 137:3 140:3,13 145:3 148:22 151:7 154:3 158:8 162:16 163:3 163:14 186:8 199:8 201:7 236:2 237:6	verify 170:3 239:21 287:3	wants 113:11 271:20	Whichever 133:17	
useful 105:15	version 116:20 138:5,6,7 155:3 155:4,5,13 171:12 174:20 174:20,20 181:1	wasn't 238:18 275:20	Whitney 69:23	
user 158:9	versions 171:10 242:9	water 75:20 184:13		
uses 112:18 146:8,16 149:24 158:12 158:13 162:13 162:13	versus 256:22	way 109:4 114:11 118:1 158:3 169:8 235:22 239:25 283:7		
utilities 68:9,11 69:3 70:5,7 74:9,11,12,18 75:10,11,19 76:25 77:4 118:13,18,24	viability 139:15	weatherization 148:9		
	Vicky 151:12	weatherize 77:23		
	Victor 171:1	week 147:5		
	view 106:24 113:20			
	viewing 72:14			
	viewpoints 167:21			
	views 118:20			
	violation 273:23			
	Virginia 147:8			
	virtually 79:13 108:5			
	visualize 149:17			

251:20	years 77:13 78:3	235:12	289:2 290:21	144 294:8
worked 182:23	104:16,20,24	\$20 149:12,14	1:00 168:22	15 107:10 176:22
182:24 183:2,2	105:1,4,10	151:17	169:22	180:23,25
183:5,7 205:25	136:2 137:1	\$20.17 148:23	10 108:4 146:6	187:6 205:14
working 78:24	139:12 145:21	150:18	162:12 193:13	15NP 290:22
worse 142:1,7,17	145:22 158:21	\$20.71 149:13	234:6,11	15P 290:24
worth 107:19	166:5 183:19	\$200 150:6	10NP 290:8	154 288:6
108:7 151:16	193:8,17 194:2	\$22.68 148:20	10P 290:6	156 155:18 294:9
280:9	201:13 202:22	149:12 150:18	10.5 120:8 146:6	157 155:19
wouldn't 116:17	year-by-year	\$25 78:4	10:30 115:21	16 291:2
196:11 202:3	111:2	\$25,000,000	10:55 143:15	161 160:5,6
233:25 235:15	yield 187:10	79:11	101 69:5,9	167 288:8
235:20		\$27 147:13,15	103 80:22	17 291:3
wound 138:7	Z	\$27.81 147:12	107 294:6	170 288:11
written 70:21	Zephania 176:7	\$2800 108:5	11 68:7 185:9,13	173 172:1,2
119:24 134:8	288:13 292:14	\$2865 78:11	197:5,9,13	174 289:14,16,17
written-entry	292:16,17,19	108:1	198:18 199:3	289:19,21,22
71:5	zero 76:7 78:13	\$300,000 109:10	290:9	289:23,25
wrong 207:12	107:11	\$31.85 151:13	11:00 143:15	290:2
260:4	zone 188:15,22	\$32,000 164:7	1100 75:17	176 288:14
	188:24	\$35 150:3	117 288:4	178 177:22
X	Z-E-P-H-A-N-...	\$4.29 151:12	12 80:21 123:9	179 177:23
X 288:1 289:1,1	176:12	\$5 150:3	155:18 160:5	18 137:10 283:13
290:1,1 291:1,1		\$5.1 109:7,11	172:1 177:22	284:8
292:1,1 293:1,1	\$	\$5.35 149:25	184:24 189:22	18HC/P 291:4
294:1,1	\$1,063,063 79:4	\$6,286,063	193:5 204:15	18NP 291:8
	\$1.1 104:9	107:21	204:17,18	18P 291:6
Y	108:10 109:3	\$6.3 76:8 108:3,6	208:12 261:21	18.98 105:12
Y 68:23	\$1.2 108:13	108:11	12HC 290:11	180 275:2,3
yeah 73:14	\$1.3 76:3 78:13	\$7.6 76:2 107:17	12NP 290:12	181 288:15
111:19,23	107:18,19	\$7.95 150:17	12th 78:17	290:22,24
116:25 133:3	\$1.44 159:11	\$780,000 162:14	124 123:9	292:14,15,17
189:24 192:11	\$1.87 162:6,9	\$846 147:10	13 176:21 192:19	292:18
192:13 243:22	\$1.9 108:17	\$9.90 150:17	283:10 284:8	19 207:8,9
243:24 253:9	\$10 151:16	\$941,936 79:6	13HC/P 290:16	235:17 291:10
269:7,14 281:6	\$10.34 149:4		13NP 290:14	1968 198:1
285:1	\$100 150:4	0	13P 290:18	1980 193:5
year 76:10,14	\$12.75 149:4	0.38 185:17	13-percent 76:10	1993 105:3
78:17 104:24	\$123,846 79:7	0160 259:6	132 123:10	
110:24,24	\$13.75 148:25	0161 259:7,8	14 137:9 192:19	2
122:8,16,17	149:6	0267 245:8	193:12 204:15	2 180:5 191:18
162:7,14 164:7	\$15 148:22,24	0387 246:22	204:18 234:6	198:7 242:11
182:11 259:20	149:6	092 270:1,2	234:11 283:11	242:16 243:5
259:24 261:1,8	\$2.1 109:11		284:8 290:20	244:5,5 277:21
271:16 272:17	\$2.4 108:9	1	14.29 105:12	289:3,7
277:9	\$2.68 149:13	1 70:2 182:1	1400 112:5	2A 254:5,6,14
yearly 198:6,7	\$2.7 109:10	183:13 187:6	143 288:5	2HC 289:5

<p>2.4 198:6 2.6 198:7 2:30 241:5 2:40 241:6 20 207:9 234:6 235:17 291:12 20th 78:19 2003 256:25 2006 105:25 106:3,10,11,13 106:17 2008 182:7 2009 182:12 2010 77:13 78:1 105:23 106:5,6 106:10 145:19 149:2 183:15 183:19 2011 192:23 2012 74:21 201:23 2013 198:1 2014 68:5 70:12 75:23 76:17 164:23 193:5 201:4 2035 104:24 202:7 203:3 2040 201:23 209 208:12 21 104:16,20,24 105:1,3 136:2 137:1 291:13 21st 152:5 22 182:2 22HC 291:16 22NP 291:15 221 69:9 2230 69:17 23 183:13 186:19 204:15,18 244:15 23HC 291:18 23NP 291:19 232 208:13 236 288:16 24 152:3 183:14</p>	<p>291:21 241 288:19 244 288:20 289:3 289:5,7,8,10,11 289:13 25NP 291:22 25P 291:24 253 288:21 259 294:10 26 186:19 292:2 261 294:10 262 261:21 263 294:11,11,12 264 294:12 265 294:13,13 267 253:18,20 261:22 268 288:22 27HC/P 292:5,6 27NP 292:3 2751 242:4 28 77:13 200:11 200:14 292:8 281 288:25 29 200:11 292:9 29th 192:22</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 180:3 187:8,16 200:14 242:11 242:16 243:5 244:5,6,20 277:21 3HC 289:8 3NP 289:10 3rd 193:4 3-percent 189:25 30 75:18 30HC 292:12 30NP 292:11 301 69:13 31 176:23 180:23 181:2 31NP 292:15 31P 292:14 31st 76:15 32 176:24 180:23</p>	<p>181:2 32NP 292:17 32P 292:18 33 186:17 33HC 292:21 33NP 292:20 34 187:6,8 189:22 193:7 193:17 194:2 257:17 258:1 260:10,12 34HC 292:23 35 258:1 260:10 260:12 293:2 36 293:3 360 69:23 37 293:5 38 191:16 293:6 39 283:17,24 284:8,14,22 39HC 293:8 39NP 293:9 399 121:1 136:11 136:16 147:22 399.1 120:19 399.3 120:19 399.4 120:20 399.5 120:20</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 197:7,11 199:8 205:2 237:17 242:11,16 243:5 244:5,7 247:2,22 4HC 289:11 4NP 289:13 4-percent 187:16 4.5 197:18 4.6 198:9 4.75 104:17 136:13 4.86 200:4,6 4:00 279:20 281:3 40 105:5 293:11 400 69:5 184:14</p>	<p>274:8 400-percent 274:2 41HC 293:12 41NP 293:14 42 293:15 43 293:17 435 273:9 435-percent 273:5 44 293:18 45 293:20 46 293:21 46HC 293:23 47 294:2 47HC 293:24 48 294:3 49 70:2 294:5 49.38-percent 145:20</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 171:9 174:15 174:19 197:7 197:11 200:6 200:14 237:17 289:14 5-percent 199:9 5.3 105:10 5:00 279:20,22 279:23 50 107:4,8,9,11 107:12 116:5,8 116:11 294:6 50-percent 145:19 50.62-percent 145:20 51 144:4,5,6 294:8 52 294:9 53 258:24,25 259:1,4 261:12 287:1 294:10 54 294:11 55 294:12 56 201:12 287:1</p>	<p>294:13 56-percent 201:22 573-522-3304 69:14 573-526-4887 69:24 573-556-6622 69:10 573-636-6758 69:6 573-751-5558 69:18 58.34 145:23</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 75:22 171:10 174:15,19 289:20 6HC/P 289:16 6NP 289:19 6P 289:17 63755 242:5 65 75:9 65101 69:5,10,17 69:24 65102 68:6 69:14 68 198:1</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 171:10 174:15 174:21 177:6,8 177:9 184:24 186:22 190:5 190:20,24 191:18 198:11 205:16 270:4 7NP 289:23 7P 289:22 7-percent 195:17 7-2 191:21 7.51 190:2 195:20,23,25 196:2 7.8 185:10 191:5 193:21 194:12 194:18 195:4,8</p>
---	--	--	---	---

<p>70 289:2,3,5,7,8 289:10,11,13 289:14,16,17 289:19,21,22 289:23,25 290:2,4,5,6,8,9 290:11,12,14 290:16,18,20 290:22,24 291:2,3,4,6,8 291:10,12,13 291:15,16,18 291:19,21,22 291:24 292:2,3 292:5,6,8,9,11 292:12,14,15 292:17,18,20 292:21,23 293:2,3,5,6,8,9 293:11,12,14 293:15,17,18 293:20,21,23 293:24 294:2,3 294:5 700 272:24 273:17 74 288:3 745 68:25 295:18</p> <hr/> <p style="text-align: center;">8</p> <p>8 68:5 70:12 171:17 174:15 174:22 186:22 190:5,20,24 205:16 8HC/P 289:25 8NP 290:2 8.2 120:1 146:5 185:2 194:25 8.28 190:2 8.3 191:8 194:5 8.4 197:21 238:2 8.5 197:21 238:2 8.6 197:21 238:2 8.7 185:5 8.8 185:10 191:6 193:21 194:13</p>	<p>194:19 195:4,9 8.83 192:21,23,25 193:16 8:30 286:22 287:7 81 80:21 85,000 75:9 86-year-old 147:9</p> <hr/> <p style="text-align: center;">9</p> <p>9 290:4,5 9.2 120:1 146:5 177:12 185:2 194:25 9:13 70:14</p>			
---	---	--	--	--