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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
August 22, 2014
Jefferson City, Missouri
Volume 13

In the Matter of Summit)
Natural Gas of Missouri)
Inc.'s Filing of Revised)
Tariffs to Increase its) Case No. GR-2014-0086
Annual Revenues for)
Natural Gas Service)

DANIEL R.E. JORDAN, Presiding,
SENIOR REGULATORY LAW JUDGE.
ROBERT S. KENNEY, Chairman
STEPHEN M. STOLL,
WILLIAM KENNEY,
DANIEL Y. HALL,
COMMISSIONERS.

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1 P R O C E E D I N G S

2 (WHEREUPON, the hearing resumed at
3 9:00 a.m.)

4 JUDGE JORDAN: Good morning,
5 everyone. Today is August 22nd of 2014, and this
6 is the time, nine o'clock in the morning, scheduled
7 to resume the evidentiary hearing in File
8 No. GR-2014-0086, which is in the matter of Summit
9 Natural Gas of Missouri, Incorporated's filing of
10 revised tariffs to increase its annual revenues for
11 natural gas service.

12 I'm Daniel Jordan. I'm the
13 Regulatory Law Judge assigned to this action. And
14 today's first bit of business will probably be
15 brief, I'm given to understand. I will start by
16 taking entries of appearance to show who's here
17 today. We'll start with Summit.

18 MS. CARTER: Paul Boudreau, Dean
19 Cooper and Diana Carter for Summit Natural Gas.

20 JUDGE JORDAN: Thank you. And for
21 the Staff of the Missouri Public Service
22 Commission.

23 MR. BORGMEYER: John Borgmeyer and
24 Akayla Jones appearing on behalf of the Staff of
25 the Missouri Public Service Commission.

1 JUDGE JORDAN: Thank you. For the
2 Office of Public Counsel.

3 MR. POSTON: Marc Poston for the
4 Office of the Public Counsel.

5 JUDGE JORDAN: Thank you. Let's see.
6 Missouri School Boards Association, I have excused
7 them for those portions of the hearing in which
8 they are not offering testimony.

9 Missouri Division of Energy.

10 MR. KNEE: Jeremy Knee on behalf of
11 the Department of Economic Development, Division of
12 Energy.

13 JUDGE JORDAN: And Missouri Propane
14 Gas Association. I've also excused them for those
15 portions of the hearing that they don't wish to
16 attend.

17 So I understand we have a preliminary
18 matter that the parties wish to discuss, and I
19 will -- I will look to Staff counsel to explain
20 that.

21 MR. BORGMEYER: Yes. Thank you, your
22 Honor. The parties have asked me to request a
23 recess of one hour in order to finalize what seems
24 to be an agreement in principle on some of the
25 issues this morning.

1 JUDGE JORDAN: Okay. And does anyone
2 have anything to add to that? Well, if that is
3 what the parties want, and that sounds
4 constructive, then we will go into recess for an
5 hour, and then we will come back and go back on the
6 record. We'll see you in about one hour. We're
7 off the record.

8 (A BREAK WAS HELD.)

9 JUDGE JORDAN: We're back on the
10 record and ready to resume the evidentiary hearing
11 in this action. I will have Staff counsel recap
12 what's taken place so far and where we're headed,
13 if you please.

14 Oh, before you do that, I want to
15 make sure that everyone has silenced their cell
16 phones and similar devices because we're going to
17 get into the substance of this pretty soon.

18 So Staff counsel, will you tell us
19 where we're at and where we're going?

20 MR. BORGMEYER: Yes. Thank you, your
21 Honor. Since we took a recess this morning, the
22 parties have met and discussed the energy
23 efficiency issues, and we have an agreement in
24 principle from the parties on those issues. We
25 have a stipulation that has been prepared but not

1 completely finalized. So I believe the intention
2 of the parties is to try the remaining issue this
3 morning and then basically wrap up the Stip &
4 Agreement on the energy efficiency issues after we
5 finish that issue.

6 JUDGE JORDAN: Okay. Now, I
7 understand that in my proposed order of witnesses,
8 we had witness Lawler available for two matters.
9 If I understand correctly, he will be taking the
10 stand just once; is that correct?

11 MR. COOPER: That's correct, your
12 Honor.

13 JUDGE JORDAN: Very good. And he
14 will be available for cross on all matters. Very
15 good. All the matters listed.

16 Okay, then. Then as I read our
17 list -- is there anything else that anyone wanted
18 to add on that matter?

19 (No response.)

20 JUDGE JORDAN: Okay. Good. Then as
21 I read what remains of our list of issues, we will
22 be taking testimony on rate increase and amount,
23 focusing on the subissue of merger purchase price.
24 And I think we're ready for opening statements on
25 that, so we will begin with Summit.

1 MR. COOPER: Thank you, your Honor.

2 As you stated, our -- the issue before us at this
3 time is how should the former Southern Missouri
4 Natural Gas assets be booked to plant in service in
5 light of its merger into Missouri Gas Utility that
6 was approved in GM-2011-0354.

7 The assets of the legacy Southern
8 Missouri Natural Gas system have been brought onto
9 Summit Natural Gas of Missouri's books at net
10 original cost, which is consistent with
11 longstanding Commission practice.

12 OPC's argument that the assets should
13 be booked at something other than net book value
14 because of the affiliate transaction rule is,
15 frankly, misplaced. The affiliate transaction
16 rules states that it is intended to provide
17 regulated -- or to prevent regulated utilities from
18 subsidizing their non-regulated operations. The
19 subject merger transaction was between two Missouri
20 regulated entities.

21 And more importantly, the affiliate
22 transaction rule sets out requirements for the
23 provision of goods and services. A merger of two
24 regulated entities is not the provision of goods
25 and services.

1 The OPC's merger purchase price
2 theory should also have no application in this
3 situation. I would point the Commission to a prior
4 decision in the joint matter of UtiliCorp United,
5 Inc. and St. Joe Light & Power Company, which is
6 Commission case EM-2000-292, also cited as
7 12 Mo. PSC 3rd 388, wherein the Commission provided
8 sort of a recap of why it utilizes net original
9 cost in these situations and said, The net original
10 cost rule was developed in order to protect
11 ratepayers from having to pay higher rates simply
12 because ownership of the utility plant has changed
13 without any actual change in the usefulness of the
14 plant.

15 Missouri has traditionally applied
16 the net original cost standard when considering the
17 ratemaking treatment of acquisition adjustments.
18 That means that the purchasing utility has not been
19 allowed to recover an acquisition premium from its
20 ratepayers, but it also means that ratepayers do
21 not receive lower rates through a decreased rate
22 base when the utility receives negative acquisition
23 adjustment.

24 Even if the company acquires an asset
25 at a bargain price, it is allowed to put the asset

1 into its rate base at its net original cost.

2 There is certainly no reason to
3 deviate from that practice in this case, especially
4 in this case because the ultimate owner of the
5 assets did not change as a result of the merger.

6 That's all I have. Thank you.

7 JUDGE JORDAN: Thank you. Any
8 inquiries of counsel as to the opening statement?
9 I'm not seeing any. Thank you.

10 The opening statement of Staff.

11 MR. BORGMEYER: Thank you, your
12 Honor. May it please the Commission?

13 Mr. Cooper basically read from the
14 same case that I was intending to from my opening
15 statement. I don't have a whole lot to add to
16 that. Just to say that once again the Commission
17 is being invited to depart from the well-worn path
18 of regulatory practice in Missouri in order to
19 achieve a dramatic result, and once again Staff is
20 here to urge the Commission to adhere to its past
21 practices, apply the net book value rule as
22 explained in Staff's testimony.

23 And, again, that's been the
24 longstanding practice in Missouri, and there's no
25 reason to depart from that in this case.

1 Thank you.

2 JUDGE JORDAN: Inquiries of Staff
3 counsel? Not seeing anything. Thank you, counsel.

4 Opening statement of the office of
5 Public Counsel.

6 MR. POSTON: May it please the
7 Commission?

8 The issue we ask you to resolve is
9 whether Summit should be allowed to charge its
10 customers more through rates than what it paid for
11 the Southern Missouri Natural Gas system just two
12 years ago.

13 Two years ago the Commission approved
14 MGU's acquisition of Southern Missouri Natural Gas.
15 Actually, I probably need to go in-camera at this
16 point. I think we're going to talk about a few
17 numbers that have been labeled HC.

18 MR. COOPER: Are they our numbers
19 that my people can stay in the room?

20 MR. POSTON: I apologize for that.
21 I've been told that the numbers I'm going to state
22 are not HC, so I can move forward.

23 JUDGE JORDAN: All right. So we will
24 not need to go in-camera; is that correct?

25 Mr. POSTON: That's correct.

1 JUDGE JORDAN: Very good.

2 MR. POSTON: Okay. As I said, two
3 years ago the Commission approved MGU's acquisition
4 of Southern Missouri Natural Gas, and the price
5 that MGU paid was over 19 and a half million
6 dollars less than recorded book value of these
7 assets.

8 MGU is now Summit Natural Gas, and
9 Summit's request to charge customers more than what
10 it paid for the assets should be rejected.

11 First, we believe it violate state
12 law. I know we heard some reference to a UtiliCorp
13 case, and in my brief I will distinguish between
14 that case and this case. We think it violates
15 state law because it would require ratepayers to
16 pay more than what the company actually paid for it
17 for the assets.

18 The second reason we oppose including
19 the bargain purchase discounted rates is because
20 this is a clear indication that the expansions did
21 not meet the company's projections. The
22 Commission's orders approving the company's
23 multiple expansion requests included conditions,
24 case after case requiring Summit to bear all the
25 risk that its projections would be met, and these

1 were the conditions that I provided for you in a
2 handout that I passed around on Tuesday.

3 Paying 19 and a half million less
4 than the book value, then requiring ratepayers to
5 pay the book value shifts that risk onto
6 ratepayers.

7 Public Counsel's witness Keri Roth
8 included in her testimony a company response to a
9 Public Counsel data request where Summit stated,
10 quote, all assets were recorded at their original
11 book value with an offsetting negative purchase
12 price adjustment of \$19,565,925, end quote. This
13 is in the company's financial records, but the --
14 I'm sorry. Strike that.

15 The company is now attempting to
16 require customers to pay for costs that the current
17 company has not incurred. Rejecting the 19 and a
18 half million from the company's rate base would not
19 only protect customers from shouldering the risks
20 of the expansion projects, as promised by the
21 company in those CCN cases, but would also partly
22 protect customers from an enormous rate increase.

23 This reduction represents just one
24 more mechanism the Commission has to help customers
25 avoid the risks that the company agreed to take.

1 The others we addressed earlier in this hearing,
2 and which we will address in greater detail in our
3 brief, and they include the imputation of volumes
4 as the Commission did in the first CCN case for
5 Tartan Energy, and also adjusting plant balances,
6 the capacity adjustment that the Staff did which
7 recognizes that a portion of the plant is in excess
8 of what's needed to serve customers.

9 The evidence regarding these
10 mechanisms or adjustments provide the Commission
11 with evidence supporting an order that offsets the
12 company's revenue requirement, perhaps down to no
13 increase at all if the Commission believes that all
14 these mechanisms are reasonable to protect
15 customers from assuming the risk that the
16 shareholders agreed to assume.

17 Thank you. That's all I have.

18 JUDGE JORDAN: Inquiries of the
19 Office of Public Counsel? Anything from the
20 Chairman or Commissioner Stoll?

21 CHAIRMAN KENNEY: No, thank you.

22 COMMISSIONER STOLL: No questions.

23 COMMISSIONER W. KENNEY: I have no
24 questions.

25 COMMISSIONER HALL: Yeah, I do have a

1 couple of questions. What would OPC's position be
2 if the acquisition price had been more than book
3 value, what would be the appropriate number to use
4 for rate base?

5 MR. POSTON: I can't answer that.
6 Perhaps our witness -- we'll have a witness taking
7 the stand shortly. Perhaps she can provide you
8 with an answer to that.

9 COMMISSIONER HALL: Are you aware of
10 whether OPC has taken a position in other cases in
11 that situation?

12 MR. POSTON: On like an acquisition
13 premium?

14 COMMISSIONER HALL: Yes.

15 MR. POSTON: I believe we have taken
16 positions in the past that that should not be
17 recovered.

18 COMMISSIONER HALL: So in the past
19 OPC has taken the position that if the acquisition
20 price is more than book value, you should go with
21 book value?

22 MR. POSTON: I believe that has been
23 the case, yes.

24 COMMISSIONER HALL: Have there been
25 other cases similar to this situation in this case

1 where book value was higher than the acquisition
2 price, are you aware of whether OPC has taken a
3 position in that situation previous to this case?

4 MR. POSTON: I am not.

5 COMMISSIONER HALL: Okay. Thank you.

6 JUDGE JORDAN: I have no questions
7 for you. Thank you. And with that, I believe
8 we're ready for Summit's presentation.

9 MR. BOUDREAU: Indeed. I'll call
10 Mr. Rick Lawler to the stand, please.

11 (Witness sworn.)

12 MR. BOUDREAU: May it please the
13 Commission?

14 RICK LAWLER testified as follows:

15 DIRECT EXAMINATION BY MR. BOUDREAU:

16 Q. Good morning, sir. Would you state
17 your name for the record, please.

18 A. Rick H. Lawler.

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

21 A. I am employed by Summit Utilities as
22 a Chief Financial Officer for both Summit
23 Utilities, Inc. as well as Summit Natural Gas of
24 Missouri.

25 Q. And you are testifying on whose

1 **behalf today?**

2 A. Summit Natural Gas of Missouri.

3 **Q. Are you the same Rick Lawler that**
4 **caused to be prepared and filed rebuttal testimony**
5 **and surrebuttal testimony marked respectively as**
6 **Exhibits 8 and 9?**

7 A. Yes, I am.

8 **Q. Was that testimony prepared by you or**
9 **under your direct supervision?**

10 A. Yes, it was.

11 **Q. Do you have any corrections or**
12 **clarifications that you need to make to either of**
13 **those items of testimony?**

14 A. Not at this time.

15 **Q. If I were to ask you the questions**
16 **that are contained in your prepared rebuttal and**
17 **surrebuttal testimony today, would your answers**
18 **today be substantially the same?**

19 A. Yes, they would.

20 **Q. And are the answers as contained in**
21 **your testimony true and correct to the best of your**
22 **information, knowledge and belief?**

23 A. Yes.

24 MR. BOUDREAU: With that, I will
25 offer into the record Exhibits 7 and 8, and tender

1 this witness for cross-examination.

2 JUDGE JORDAN: I'm not hearing any
3 objections to those exhibits, so Exhibits No. 7 and
4 8 are entered into the record.

5 (SUMMIT EXHIBIT NOS. 7 AND 8 WERE
6 RECEIVED INTO EVIDENCE.)

7 MR. BOUDREAU: I might observe that
8 Mr. Lawler's testimony addresses two topics, and
9 he's prepared to answer questions with respect to
10 the booking of the Southern Natural -- Southern
11 Missouri Natural Gas assets. He also prepared --
12 his rebuttal testimony also address the issue of
13 capital structure.

14 JUDGE JORDAN: Thank you for that
15 clarification, and we will go to cross-examination
16 from Missouri Division of Energy.

17 MR. KNEE: Thank you, your Honor.
18 The Division of Energy will waive cross as to this
19 witness and I believe the other witnesses on this
20 issue. Thank you.

21 JUDGE JORDAN: Okay. Office of the
22 Public Counsel?

23 MR. POSTON: No questions. Thank
24 you.

25 JUDGE JORDAN: Cross-examination from

1 Staff?

2 MR. BORGMEYER: Staff has no
3 questions, your Honor.

4 JUDGE JORDAN: Any questions from the
5 Bench for this witness, from the Chairman?

6 CHAIRMAN KENNEY: No, thank you.

7 JUDGE JORDAN: Commissioner Stoll?

8 COMMISSIONER STOLL: No questions,
9 your Honor.

10 COMMISSIONER W. KENNEY: No, thank
11 you.

12 COMMISSIONER HALL: Yeah, I have one
13 question.

14 QUESTIONS BY COMMISSIONER HALL:

15 Q. Good morning.

16 A. Good morning.

17 Q. So my understanding is that the
18 acquisition price was \$19 million less than book
19 value?

20 A. Correct.

21 Q. Why is that? Why was that
22 transaction consummated at a price so divorced from
23 book value?

24 A. Well, the book value was established
25 per the records that we inherited when we acquired

1 that asset. We have the same parent. IIF is the
2 same parent for both entities. And that was the
3 price that was established for the acquisition of
4 those assets, being that we were two regulated
5 entities being combined at that time, and that was
6 the price that they determined because, in effect,
7 they were negotiating with themselves as to what
8 that price should be.

9 Q. So it was not an arm's-length
10 transaction?

11 A. Arm's length to the extent that it
12 was the same organization that was the owner of
13 both organizations. To determine what the
14 appropriate price per what they had on their books,
15 we are not privy to exactly what, you know, what
16 the values are that they have on their books at the
17 parent -- at the IIF level.

18 So was it arm's length? Obviously
19 there was discussions internally as to what the
20 appropriate price was that they wanted to
21 consummate that transaction.

22 COMMISSIONER HALL: Thank you.

23 JUDGE JORDAN: Recross from the
24 Office of Public Counsel?

25 MR. POSTON: Just one question.

1 RE CROSS-EXAMINATION BY MR. POSTON:

2 Q. Did Southern Missouri Natural Gas
3 seek competitive bids before it sold those assets
4 to MGU?

5 A. Did Summit --

6 Q. Was there a competitive bid process
7 that happened before the sale?

8 A. Well, we were not -- I was not
9 associated with that organization prior to. I
10 don't know what, you know, what the process was for
11 IIF's approach to seeking other potential
12 purchasers of those assets. So I would not know
13 what that process was.

14 MR. POSTON: Thank you. That's all.

15 JUDGE JORDAN: Recross from Staff?

16 MR. BORGMEYER: No, your Honor.

17 JUDGE JORDAN: And let me clarify.

18 For Missouri Division of Energy, since the Division
19 has waived cross and I'm assuming recross on each
20 of these witnesses, if that changes, speak up.
21 Otherwise, I'll simply pass over as I have with
22 those parties who are excused from attending.

23 Staff has no recross. Any redirect
24 from Summit?

25 MR. BOUDREAU: Yes. Thank you.

1 REDIRECT EXAMINATION BY MR. BOUDREAU:

2 Q. Mr. Lawler, in response to the -- you
3 got a question from Commissioner Hall about the
4 basis for the purchase price that was paid. Do you
5 know whether or not the price or the amount that
6 was booked in terms of -- let me rephrase this
7 question.

8 Do you know whether or not the amount
9 that was assigned to the acquisition price for
10 Southern Missouri Natural Gas, if that was based on
11 the price that IIF paid for that entity plus the
12 money that it was invested since that time by IIF?

13 A. That's my understanding. That's what
14 they represented to us as how they established that
15 specific price.

16 MR. BOUDREAU: I have no further
17 questions for the witness. Thank you.

18 JUDGE JORDAN: All right. Then you
19 may stand down. Thank you. That concludes
20 Summit's case in chief on this issue, so we will go
21 to Staff.

22 MR. BORGMEYER: Staff calls Amanda
23 McMellen.

24 JUDGE JORDAN: I have previously
25 sworn this witness, so I will not administer the

1 oath again. You're still under oath.

2 THE WITNESS: Thank you.

3 MR. BORGMEYER: Your Honor, I have
4 just a -- because we are not having an issue or a
5 witness on energy efficiency, I just need to move
6 to admit a few exhibits that we didn't do the last
7 time she was on the stand.

8 AMANDA McMELLEN testified as follows:

9 DIRECT EXAMINATION BY MR. BORGMEYER:

10 Q. Ms. McMellen, did you prepare or
11 cause to be prepared portions of Staff's Cost of
12 Service Report HC and NP marked as Staff's
13 Exhibit 103 and 104?

14 A. Yes, I did.

15 Q. And does Staff's Cost of Service
16 Report also include appendices marked as Staff
17 Exhibit 105?

18 A. Yes.

19 MR. BORGMEYER: Your Honor, Staff
20 would just move to admit Staff Exhibit 103, 104
21 and 105 at this time.

22 JUDGE JORDAN: And we're talking
23 about the exhibits themselves, not just parts of
24 them?

25 MR. BORGMEYER: The entire exhibits,

1 yes.

2 JUDGE JORDAN: Objections?

3 (No response.)

4 JUDGE JORDAN: I am not seeing any,
5 so the Commission will admit into the record Staff
6 Exhibits No. 103, 104 and 105.

7 (STAFF EXHIBIT NOS. 103, 104 AND 105
8 WERE RECEIVED INTO EVIDENCE.)

9 MR. BORGMAYER: I tender this witness
10 for cross.

11 JUDGE JORDAN: Cross-examination from
12 the Office of Public Counsel?

13 MR. POSTON: Yes. Thank you.

14 CROSS-EXAMINATION BY MR. POSTON:

15 Q. Good morning, Ms. McMellen.

16 A. Good morning.

17 Q. Is it Staff's position that the
18 19 and a half million dollar discount amount should
19 be recovered in rates?

20 A. Well, we put -- Staff books
21 everything at net book value. We feel that's the
22 objective way to value those assets.

23 Q. So that's yes, you believe that
24 should be recovered?

25 A. It should be included in rate base,

1 yes.

2 Q. And is it the Staff's position that
3 the company should be allowed to earn a return of
4 and a return on the 19 and a half million?

5 A. As being part of net book value, yes.

6 Q. Can you approximate what the return
7 on the 19 and a half million would amount to?

8 A. I don't have a calculator with me.

9 Q. Can you ballpark it without a
10 calculator?

11 MR. BORGMEYER: I'm just going to
12 object that it calls for speculation here. She
13 would just be doing rough calculations on the
14 stand.

15 JUDGE JORDAN: I'm getting the
16 impression it would not be helpful.

17 MR. POSTON: Well, maybe we can get a
18 calculator and she can do that calculation. I'm
19 seeing a potential calculator up there.

20 JUDGE JORDAN: I'll ask the witness,
21 how long will it take you to run these
22 calculations?

23 MR. BORGMEYER: I would just object
24 again to the witness performing calculations on the
25 stand. I'm not sure that that's the most reliable

1 way to calculate anything.

2 JUDGE JORDAN: Well, I'll ask the
3 witness, do you think you can perform -- can you
4 answer his question accurately with a calculator?

5 THE WITNESS: I don't believe so. I
6 think it would take a little bit more time to do
7 that calculation.

8 MR. POSTON: I'm just looking for an
9 estimate, a ballpark. It doesn't have to be down
10 to the accurate dollar. Just to give the
11 Commission an idea of what the return on this
12 19 and a half million would be.

13 MR. BORGMEYER: Your Honor, I don't
14 understand why Public Counsel couldn't have
15 provided that in their prefiled testimony.

16 JUDGE JORDAN: I understand that
17 objection, but this is a question of this witness,
18 and I think they have the right to at least inquire
19 of this witness what her answer would be. So I'm
20 going to overrule that objection, and I'm going to
21 ask the witness how long it would take for her to
22 give an answer within Public Counsel's description.

23 The reason I'm asking is because I
24 want to know if we need to go off the record or
25 not. It's not the best practice to run

1 calculations on the witness stand, but if you can
2 do it with reasonable efficiency in this
3 evidentiary hearing, then --

4 A. I can't do it right now on the stand.
5 It would be something I'd have to calculate
6 upstairs on my computer.

7 MR. POSTON: Oh, you would have to
8 calculate it upstairs?

9 THE WITNESS: Uh-huh.

10 JUDGE JORDAN: Okay. Then this is --
11 this really sounds more like a data request than an
12 inquiry on cross-examination. So I'm going to
13 sustain the objection on the basis of speculation.

14 BY MR. POSTON:

15 Q. Okay. How about this: What is the
16 Staff's proposed rate of return?

17 A. I believe it's 7.12 -- or 7.42. I'm
18 sorry.

19 Q. And there would also be -- I guess in
20 Staff's proposal there would also be a return on
21 depreciation expense associated with the 19 and a
22 half million?

23 A. Correct.

24 Q. And there would also be a tax on that
25 return?

1 A. Correct.

2 Q. To your knowledge, was there any sort
3 of RFP or competitive bid process for the sale of
4 Southern Missouri Natural Gas' assets?

5 A. Not that I'm aware of.

6 Q. When Laclede acquired MGE, didn't
7 that follow a competitive bid process?

8 A. I don't know. I wasn't part of that
9 case.

10 MR. POSTON: Thank you. That's all I
11 have.

12 JUDGE JORDAN: Cross-examination from
13 Summit?

14 CROSS-EXAMINATION BY MR. COOPER:

15 Q. If you know, was the Laclede purchase
16 of the MGE assets below or above net book value?

17 A. From my understanding, it was above
18 net book value.

19 MR. COOPER: That's all the questions
20 I have.

21 JUDGE JORDAN: Any questions from the
22 Bench? Mr. Chairman?

23 CHAIRMAN KENNEY: Just a couple.

24 QUESTIONS BY CHAIRMAN KENNEY:

25 Q. Good morning.

1 A. Good morning.

2 Q. Can you hear me okay?

3 A. Yes, I can.

4 Q. I just as a matter -- just as a
5 general regulatory proposition, the value of rate
6 base is typically supposed to encompass the value
7 of the assets that are providing service to
8 customers, right?

9 A. Correct.

10 Q. And in this case, there's the net
11 book value of the assets versus what the company
12 actually paid for those assets. That's the
13 discrepancy we have here, correct?

14 A. Yes, that's correct.

15 Q. So the net book value of the assets
16 is X; what the company actually paid is X minus
17 19 and a half million?

18 A. Correct.

19 Q. Why would Staff recommend that rate
20 base be X rather than X minus 19 and a half
21 million?

22 A. Staff's consistent position is net
23 book value. It's a more objective measurement of
24 those assets. We don't book at a premium -- go
25 ahead.

1 Q. Go ahead. I'm sorry. You go ahead.

2 I'm sorry.

3 A. We don't let them book at a premium,
4 and we don't feel it's for them to book at a
5 discount as well. Net book value is our consistent
6 position.

7 Q. But the rationale for not allowing an
8 acquisition premium -- well, what is the rationale
9 for not allowing an acquisition premium, if you
10 know?

11 A. Basically, Staff's position is to
12 book at net book value. That's more objective than
13 booking at a premium or a discount. That's my
14 understanding.

15 Q. So you don't know whether there is
16 any other rationale that this Commission has
17 articulated for not allowing an acquisition
18 premium, other than we just look at net book value?

19 A. I don't know.

20 CHAIRMAN KENNEY: All right. Thank
21 you.

22 THE WITNESS: Thank you.

23 COMMISSIONER STOLL: I have no
24 questions.

25 COMMISSIONER W. KENNEY: No

1 questions.

2 JUDGE JORDAN: Thank you, sir.

3 Commissioner Hall?

4 COMMISSIONER HALL: Yes.

5 QUESTIONS BY COMMISSIONER HALL:

6 Q. I just want to follow up on the line
7 of inquiry that you had with the Chairman. So it
8 is your understanding that Staff has never
9 advocated for either an acquisition premium or the
10 opposite, such as the case here?

11 A. That's typically not our position.
12 From my understanding, it has happened in the past,
13 but it's in special circumstances where it's
14 compelling where it should be at a premium or a
15 discount. I don't know -- I don't have complete
16 knowledge of that, but I'm aware that it has
17 happened in certain situations.

18 Q. I mean, we're supposed to set a
19 return on investment, and if there is not money
20 spent, if there's not investment, I'm confused as
21 to why we would include that in rate base. I guess
22 your answer and Staff's position is that it doesn't
23 matter what's paid, it's the value of what is
24 owned --

25 A. Well --

1 Q. -- and used?

2 A. Well, and specifically this company,
3 it's two regulated entities that merged into one.

4 Q. Yeah. I don't understand why that
5 matters.

6 A. So it should be booked at the actual
7 cost or the net book value that that -- of those
8 assets.

9 COMMISSIONER HALL: Okay. I would be
10 interested in -- and this is more directed at
11 counsel, but in the post-hearing briefs, I'd be
12 very interested in any case law that speaks to this
13 issue because I -- I would be intrigued by that
14 case law. Thank you.

15 JUDGE JORDAN: I have one question
16 for this witness.

17 QUESTIONS BY JUDGE JORDAN:

18 A. The standards that you're citing,
19 that you're employing for valuing these assets, do
20 they come from the Uniform System of Accounts?

21 A. Yes. That's part of it, yes.

22 Q. That's the only question I have.

23 Well, no. Now I have another question. What's the
24 other part?

25 A. You have the affiliate transaction

1 rule, and you also have the net book value rule.

2 Q. And where does the net book value
3 rule come from? I'm familiar with affiliate
4 transaction rule. That's a regulation of the
5 Commission. Net book value rule?

6 A. I don't know exactly what that cite
7 is. I'd have to refer that to my attorney.

8 Q. That's fine. Your answer is
9 complete. If you don't know, it's always okay to
10 say you don't know.

11 JUDGE JORDAN: Okay. Does that
12 generate any recross from the Office of Public
13 Counsel?

14 RECROSS-EXAMINATION BY MR. POSTON:

15 Q. Do you have a definition for market
16 value?

17 A. It's -- fair market value is the
18 price that would be priced at at value for that
19 system.

20 Q. How is that usually determined?

21 A. There's several different ways it can
22 be determined.

23 Q. Could one way be the actual sale
24 price?

25 A. That's one way.

1 MR. POSTON: Thank you. That's all.

2 JUDGE JORDAN: Recross from Summit?

3 MR. COOPER: A couple of things.

4 RECROSS-EXAMINATION BY MR. COOPER:

5 Q. Did Staff do any analysis of the,
6 what we're referring to as the purchase price in
7 terms of whether it did or did not represent a fair
8 market value?

9 A. No, we did not.

10 Q. And if you know, would the Uniform
11 System of Accounts require a waiver to book these
12 assets at something other than net book value?

13 A. I don't know.

14 MR. COOPER: That's all the questions
15 I have.

16 JUDGE JORDAN: Redirect from Staff?

17 MR. BORGMEYER: Thank you. Your
18 Honor.

19 REDIRECT EXAMINATION BY MR. BORGMEYER:

20 Q. Is net book value a part of the USOA?

21 A. Yes, it is.

22 Q. Is it Staff's position that
23 ratepayers should pay the actual value of the
24 assets that are used for service?

25 A. Yes, that's our position.

1 MR. BORGMAYER: No other questions,
2 your Honor.

3 JUDGE JORDAN: Then you may stand
4 down.

5 We're ready for the Office of Public
6 Counsel's presentation.

7 MR. POSTON: We call Keri Roth.
8 (Witness sworn.)

9 JUDGE JORDAN: Please be seated.

10 KERI ROTH testified as follows:

11 DIRECT EXAMINATION BY MR. POSTON:

12 Q. Please state your name.

13 A. Keri Roth.

14 Q. And what is your position?

15 A. Our position is --

16 Q. I'm sorry. With the Office -- you're
17 employed by the Office of Public Counsel, correct?

18 A. Correct.

19 Q. And what is your position with the
20 Public Counsel?

21 A. I'm an Accountant 1.

22 Q. Are you the same Keri Roth that
23 caused to be prepared and filed testimony that's
24 been premarked as Exhibits 200 and 201?

25 A. Yes.

1 **Q. Do you have any corrections to your**
2 **testimony?**

3 A. I do not.

4 **Q. If I were to ask you the questions in**
5 **the testimony today, would your answers be**
6 **substantially the same?**

7 A. Yes.

8 MR. POSTON: Your Honor, I'd offer
9 Exhibits 200 and 201.

10 JUDGE JORDAN: I'm not hearing any
11 objections to those exhibits, so they are admitted
12 into evidence.

13 (OPC EXHIBIT NOS. 200 AND 201 WERE
14 RECEIVED INTO EVIDENCE.)

15 MR. POSTON: I tender this witness
16 for cross-examination.

17 JUDGE JORDAN: Cross-examination from
18 Staff?

19 MR. BORGMEYER: Yes, your Honor.

20 CROSS-EXAMINATION BY MR. BORGMEYER:

21 **Q. Good morning, Ms. Roth.**

22 A. Good morning.

23 **Q. If the company pays more than net**
24 **original cost, do you think ratepayers should pay**
25 **the acquisition premium?**

1 A. No.

2 MR. BORGMEYER: That's all I have.

3 Thank you.

4 JUDGE JORDAN: Cross-examination from
5 Summit?

6 MR. COOPER: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. COOPER:

8 Q. On page 7 of your rebuttal testimony,
9 you cite as support for your bargain purchase
10 discount theory a 1977 Kansas City Power & Light
11 Company case, correct?

12 A. Correct.

13 Q. And from that case you quote language
14 concerning treatment of gains and losses from the
15 sale of utility plant, correct?

16 A. Correct.

17 Q. And would you agree with me that
18 there's no discussion of the term bargain purchase
19 discount in that case?

20 A. Correct.

21 Q. Would you also agree with me that the
22 portion of the case you cited concerned four sales
23 transactions?

24 A. Yes.

25 Q. Two of those sales were sales of

1 Kansas property to a Kansas City, Kansas municipal
2 utility, correct?

3 A. I believe so.

4 Q. And one of those was a sale of a
5 transmission line to the City of Independence,
6 correct?

7 A. I believe so.

8 Q. And one of those was the sale of
9 property that had been recorded as plant held for
10 future use, correct?

11 A. I think so.

12 Q. And none of those transactions
13 concerned the sale of Missouri plant from one
14 regulated utility to another, did it, or did they?

15 A. I don't think so.

16 Q. Now, I think also in your rebuttal
17 you state that a bargain purchase discount is a
18 business combination in which one corporate entity
19 is acquired by another for a dollar amount less
20 than fair market value of its net assets; is that
21 correct?

22 A. That's correct.

23 Q. Is fair market value the same as net
24 original cost?

25 A. Can you repeat that one more time?

1 Q. Do you believe that fair market value
2 is the same thing as net original cost?

3 A. I'm sorry.

4 Q. Well, let's try it this way. Are you
5 familiar with the recent Laclede purchase of the
6 MGE assets that was mentioned earlier today?

7 A. No.

8 Q. Not at all?

9 A. No.

10 Q. So you don't know whether the
11 purchase price was greater than or lesser than the
12 net book value --

13 A. No.

14 Q. -- of those MGE assets?

15 A. I don't.

16 Q. Would you agree with me that if
17 Laclede paid a price in excess of the net original
18 cost for those MGE assets, that the fair market
19 value was something greater than the net original
20 cost?

21 MR. POSTON: Your Honor, I object.
22 She just testified she's not familiar with that
23 case.

24 MR. COOPER: I think it was set out
25 as a question based upon a hypothetical. It

1 doesn't require her to know what happened in that
2 case.

3 MR. POSTON: It's a hypothetical
4 that's using those companies that she just
5 testified she was not familiar with.

6 JUDGE JORDAN: Well, it's either one
7 or the other. Do you feel you can answer that
8 question?

9 THE WITNESS: Can you repeat that
10 question, please?

11 BY MR. COOPER:

12 Q. If you will assume with me that
13 Laclede paid a price in excess of the net original
14 cost for those MGE assets, would you agree that the
15 fair market value was something different than the
16 net original cost?

17 MR. POSTON: Again, I object.
18 There's -- there's probably a lot of facts that go
19 into Laclede and MGE that could alter a decision if
20 she was familiar with that case.

21 JUDGE JORDAN: I'll overrule that
22 objection. Answer if you can.

23 THE WITNESS: I don't know.

24 MR. COOPER: That's all the questions
25 I have.

1 JUDGE JORDAN: Questions from the
2 Bench. Mr. Chairman, any questions for this
3 witness?

4 CHAIRMAN KENNEY: No, thank you.

5 JUDGE JORDAN: Commissioner Stoll?

6 COMMISSIONER STOLL: No, thank you,
7 Judge.

8 COMMISSIONER W. KENNEY: No, thank
9 you.

10 JUDGE JORDAN: Commissioner Hall?

11 COMMISSIONER HALL: Yes. I have a
12 few.

13 QUESTIONS BY COMMISSIONER HALL:

14 Q. On page 8 of your rebuttal, you
15 discuss the potential beneficial tax treatment that
16 would result from the bargain price in this case.
17 I was wondering if you could elaborate on that a
18 little bit for me.

19 A. Well, as I stated in my testimony, if
20 you assume that the owner's effective tax rate was
21 38 percent and the bargain purchase discount on the
22 sale was \$1, they have to report the loss on their
23 income taxes, and they would receive a benefit from
24 that because they wouldn't be paying taxes on the
25 loss. So, in effect, the actual loss would only be

1 62 cents, not the full \$1 for the example that I
2 made there.

3 Q. And what about the tax treatment for
4 the purchaser?

5 A. They would --

6 Q. Doesn't it kind of even out, so
7 it's --

8 A. I can't say for sure that it would
9 even out, but they would end up paying taxes on the
10 new property.

11 Q. And are they paying taxes -- and
12 maybe you're not the correct witness for this, but
13 I guess you opened the door on the topic. Are they
14 paying taxes on the -- on the book value or are
15 they paying it on what they -- on the price they
16 paid for the asset?

17 A. I'm not for sure on that.

18 COMMISSIONER HALL: Okay. Thank you.

19 JUDGE JORDAN: Recross from Staff?

20 MR. BORGMEYER: No, thank you, your
21 Honor.

22 JUDGE JORDAN: Recross from Summit?

23 MR. COOPER: Yes, your Honor.

24 RECROSS-EXAMINATION BY MR. COOPER:

25 Q. Your testimony about tax impacts is

1 not based on any review of what actually happened,
2 is it?

3 A. Correct.

4 Q. And you're aware that Mr. Lawler took
5 a different view of that in his surrebuttal
6 testimony, correct?

7 A. Correct.

8 MR. COOPER: That's all the questions
9 I have.

10 JUDGE JORDAN: Redirect from the
11 Office of Public Counsel?

12 MR. POSTON: Just one.

13 REDIRECT EXAMINATION BY MR. POSTON:

14 Q. You were just asked a question on
15 whether your tax impact was based on what actually
16 happened. It was based on -- strike that.

17 Was it based on the fact that the
18 company paid 19 and a half million dollars less
19 than the book value of the assets?

20 MR. COOPER: Objection, leading.

21 MR. POSTON: I thought I phrased it
22 was it based on. I'll rephrase it.

23 JUDGE JORDAN: Very good.

24 BY MR. POSTON:

25 Q. Was your tax impact testimony based

1 upon the fact that the company paid 19 and a half
2 million dollars less than --

3 MR. COOPER: Same objection.

4 JUDGE JORDAN: It's the same
5 question, so I'll sustain the objection. Can you
6 rephrase that one more time?

7 BY MR. POSTON:

8 Q. Okay. How about this: What did you
9 consider when you made that tax impact, when did
10 you your tax impact testimony?

11 A. The example was just trying to base
12 it on the 19 and a half million that was paid less
13 than the book value, just trying to show what the
14 tax effect would be on that.

15 Q. And is that what actually happened?

16 A. Yes.

17 MR. POSTON: Thank you. That's all.

18 JUDGE JORDAN: You may stand down.

19 Next witness.

20 MR. POSTON: We call Barbara
21 Meisenheimer.

22 JUDGE JORDAN: You've already been
23 sworn. I won't administer the oath again.
24 Counsel, you can proceed.

25 MR. POSTON: We tender the witness

1 for cross-examination.

2 JUDGE JORDAN: Very good. Any

3 cross-examination from Staff?

4 MR. BORGMEYER: No questions, your

5 Honor.

6 JUDGE JORDAN: Cross-examination from

7 Summit?

8 MR. COOPER: No questions.

9 JUDGE JORDAN: Questions from the
10 Bench on this witness on this issue, Mr. Chairman?

11 CHAIRMAN KENNEY: No, thank you.

12 Thanks, Ms. Meisenheimer.

13 JUDGE JORDAN: Commissioner Stoll?

14 COMMISSIONER STOLL: No, thank you,
15 your Honor.

16 JUDGE JORDAN: Commissioner Kenney?

17 COMMISSIONER W. KENNEY: No, thank
18 you.

19 JUDGE JORDAN: Commissioner Hall?

20 COMMISSIONER HALL: No questions.

21 Thank you.

22 JUDGE JORDAN: I have no questions

23 for this witness. You may stand down.

24 THE WITNESS: Thank you.

25 JUDGE JORDAN: Now, I understand that

1 that concludes our presentation of witnesses and
2 testimony. Staff counsel, I think you mentioned
3 earlier that you wanted to list the exhibits that
4 are entered into evidence by stipulation.

5 MR. BORGMEYER: Yes, your Honor.
6 Through the course of this case we've had a number
7 of Stipulations & Agreements that resulted in
8 witnesses not taking the stand, and just to make
9 sure the record is clear, I'd like to just read
10 those and have those formally admitted into
11 evidence on the record before we close the record.

12 JUDGE JORDAN: And you may certainly
13 do so, and anyone else that would like to do so may
14 also. Staff mentioned it first. We'll start with
15 Staff.

16 MR. BORGMEYER: Thank you, your
17 Honor. Those would be Staff Exhibit No. 109, 110,
18 111, 112, Staff Exhibit 115, 116, 120, 121, 122,
19 123 and 124, Staff Exhibit 127, 129, 132, and I
20 believe that's it.

21 JUDGE JORDAN: Summit, would you like
22 to do something similar?

23 MR. COOPER: We would, your Honor.
24 We would like to offer Exhibits 9, 10, 11 and 12.
25 Those would be the surrebuttal testimony of

1 Mr. Moody, the rebuttal and surrebuttal testimony
2 of Mr. Nitura, and the direct testimony of
3 Ms. Picard.

4 JUDGE JORDAN: Okay. Office of
5 Public Counsel?

6 MR. POSTON: Yes, thank you. We
7 offer into the record Exhibit 204 and 205. That's
8 the rebuttal and surrebuttal testimony of Jeff
9 Marke.

10 JUDGE JORDAN: Very good. And I'll
11 give everyone a chance to object or say anything on
12 that matter.

13 MR. KNEE: I believe the Division of
14 Energy would like to also offer a few exhibits that
15 were disclosed in the stipulation. Exhibits 500,
16 501 and 502. That's the direct, rebuttal and
17 surrebuttal of John Buchanan. Then 503 and 504,
18 the rebuttal and surrebuttal of Joe Gassner.

19 JUDGE JORDAN: All right. Anything
20 else? Yes.

21 MR. COOPER: Yes, your Honor. I
22 would like for you to check your list, if you
23 could, and let me know if Exhibits 18, 19 and 20
24 have been admitted. There is some memory that
25 perhaps the admission of those was put off until

1 Ms. Wankum was to appear the second time.

2 JUDGE JORDAN: I have them marked as
3 received, but if you think there's a question about
4 that, you can move their entry into the record now.

5 MR. COOPER: I will again move their
6 entry, then, just to be safe.

7 JUDGE JORDAN: And I'll -- I'm not
8 seeing any objections, and so if I haven't ruled on
9 that already, I'll rule on it now. They are
10 admitted into the record.

11 MR. COOPER: Thank you.

12 JUDGE JORDAN: Anything else on these
13 exhibits? Any objections or any other exhibits
14 that anyone wants to raise right now? Not seeing
15 any, the exhibits that have been recited will be
16 received into the record.

17 (SUMMIT EXHIBIT NOS. 9, 10, 11 AND
18 12, STAFF EXHIBIT NOS. 109, 110, 111, 112, 115,
19 116, 120, 121, 122, 123, 124, 127, 129 AND 132, OPC
20 EXHIBIT NOS. 204 AND 205 AND DIVISION OF ENERGY
21 EXHIBIT NOS. 500, 501, 502, 503 AND 504 WERE
22 RECEIVED INTO EVIDENCE.)

23 JUDGE JORDAN: Anything else before
24 we conclude this hearing? I'm not seeing anything.
25 So on behalf of the Commission, I will thank the

1 parties, and I will adjourn this hearing, and we
2 will go ahead and cancel the dates that have been
3 reserved for next week, unless anyone has a problem
4 with that.

5 Then with that, we are adjourned and
6 we are off the record.

7 (WHEREUPON, the hearing concluded at
8 10:52 a.m.)

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17
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19
20
21
22
23
24
25

I N D E X

RATE INCREASE REQUEST/AMOUNT
MERGER PURCHASE PRICE

Opening Statement by Mr. Cooper 403

Opening Statement by Mr. Borgmeyer 405

Opening Statement by Mr. Poston 406

SUMMIT'S EVIDENCE:

RICK LAWLER

Direct Examination by Mr. Boudreau 411

Questions by Commissioner Hall 414

Recross-Examination by Mr. Poston 416

Redirect Examination by Mr. Boudreau 417

STAFF'S EVIDENCE:

AMANDA McMELLEN

Direct Examination by Mr. Borgmeyer 418

Cross-Examination by Mr. Poston 419

Cross-Examination by Mr. Cooper 423

Questions by Chairman Kenney 423

Questions by Commissioner Hall 426

Questions by Judge Jordan 427

Recross-Examination by Mr. Poston 428

Recross-Examination by Mr. Cooper 429

Redirect Examination by Mr. Borgmeyer 429

OPC'S EVIDENCE:

KERI ROTH

Direct Examination by Mr. Poston 430

Cross-Examination by Mr. Borgmeyer 431

Cross-Examination by Mr. Cooper 432

Questions by Commissioner Hall 436

Recross-Examination by Mr. Cooper 437

Redirect Examination by Mr. Poston 438

BARBARA A. MEISENHEIMER 440

1	EXHIBITS INDEX		
2	SUMMIT'S EXHIBITS		
		MARKED	REC'D
3	EXHIBIT NO. 1		
4	Direct Testimony of James M. Anderson62 138		
5	EXHIBIT NO. 2		
6	Rebuttal Testimony of James M. Anderson62 138		
7	EXHIBIT NOS. 3NP/3HC		
8	Surrebuttal Testimony of James M. Anderson62 138		
9	EXHIBIT NO. 4		
10	Direct Testimony of Michelle A. Moorman	62	250
11	EXHIBIT NO. 5		
12	Rebuttal Testimony of Timothy R. Johnston62 250		
13	EXHIBIT NO. 6		
14	Surrebuttal Testimony of Timothy R. Johnston62 250		
15	EXHIBIT NO. 7		
16	Rebuttal Testimony of Rick H. Lawler	62	413
17	EXHIBIT NO. 8		
18	Surrebuttal Testimony of Rick H. Lawler	62	413
19	EXHIBIT NO. 9		
20	Surrebuttal Testimony of David Moody	62	443
21	EXHIBIT NO. 10		
22	Rebuttal Testimony of Renato Nitura, Jr.	62	443
23	EXHIBIT NO. 11		
24	Surrebuttal Testimony of Renato Nitura, Jr.	62	443
25			

1	SUMMIT'S EXHIBITS		
2	(Continued)		
		MARKED	REC'D
3	EXHIBIT NO. 12		
	Direct Testimony of Alicia L.		
4	Picard	62	443
5	EXHIBIT NO. 13		
	Direct Testimony of Tyson Porter	62	275
6			
	EXHIBIT NOS. 14NP/14HC		
7	Rebuttal Testimony of Tyson Porter	62	275
8	EXHIBIT NO. 15		
	Surrebuttal Testimony of Tyson		
9	Porter	62	275
10	EXHIBIT NO. 16		
	Direct Testimony of Kent Taylor	62	378
11			
	EXHIBIT NO. 17		
12	Rebuttal Testimony of Kent Taylor	62	378
13	EXHIBIT NO. 18		
	Direct Testimony of Martha R.		
14	Wankum	62	308
15	EXHIBIT NO. 19		
	Rebuttal Testimony of Martha R.		
16	Wankum	62	308
17	EXHIBIT NO. 20		
	Surrebuttal Testimony of Martha R.		
18	Wankum	62	308
19	EXHIBIT NO. 21		
	Summit Natural Gas DR No. 1	293	300
20			
21	STAFF'S EXHIBITS		
22	EXHIBIT NO. 100		
	Direct Testimony of Thomas M.		
23	Imhoff	62	326
24	EXHIBIT NO. 102		
	Direct Testimony of Amanda		
25	McMellen	62	283

1			
	STAFF'S EXHIBITS		
2	(Continued)		
		MARKED	REC'D
3	EXHIBIT NO. 103HC		
	Staff Report - Cost of Service	62	419
4			
	EXHIBIT NO. 104		
5	Staff Report - Cost of Service	62	419
6	EXHIBIT NO. 105		
	Staff Report - Cost of Service		
7	Appendices	62	419
8	EXHIBIT NO. 106		
	Staff Accounting Schedules	62	283
9			
	EXHIBIT NO. 107		
10	Direct Testimony of Thomas M.		
	Imhoff	62	326
11			
	EXHIBIT NO. 108		
12	Staff Report - Class Cost of		
	Service Rate Design	62	228*
13			233*
			326
14			
	EXHIBIT NO. 109		
15	Rebuttal Testimony of Michelle		
	Bocklage	62	443
16			
	EXHIBIT NO. 110		
17	Rebuttal Testimony of Kory Boustead	62	443
18	EXHIBIT NO. 111		
	Rebuttal Testimony of Kim Cox	62	443
19			
	EXHIBIT NO. 112		
20	Rebuttal Testimony of Michael J.		
	Ensrud	62	443
21			
	EXHIBIT NO. 13HC		
22	Rebuttal Testimony of Lesa Jenkins	62	287
23	EXHIBIT NO. 114		
	Rebuttal Testimony of Lesa Jenkins	62	287
24			
25			

1	STAFF'S EXHIBITS		
	(Continued)		
2		MARKED	REC'D
	EXHIBIT NO. 115		
3	Rebuttal Testimony of Robin		
	Kliethermes	62	233
4	EXHIBIT NO. 116		
5	Rebuttal Testimony of Phil Lock	62	443
6	EXHIBIT NO. 117		
	Rebuttal Testimony of Amanda		
7	McMellen	62	283
8	EXHIBIT NO. 118HC		
	Rebuttal Testimony of David Murray	62	154
9	EXHIBIT NO. 119		
10	Rebuttal Testimony of David Murray	62	154
11	EXHIBIT NO. 120		
	Rebuttal Testimony of John A.		
12	Robinett	62	443
13	EXHIBIT NO. 121		
	Rebuttal Testimony of Seoung		
14	Joun Won, Ph.D.	62	443
15	EXHIBIT NO. 122		
	Surrebuttal Testimony of		
16	Michelle Bocklage	62	443
17	EXHIBIT NO. 123		
	Surrebuttal Testimony of Kory		
18	Boustead	62	443
19	EXHIBIT NO. 124		
	Surrebuttal Testimony of Michael		
20	Ensrud	62	443
21	EXHIBIT NO. 125		
	Surrebuttal Testimony of		
22	Thomas M. Imhoff	62	326
23	EXHIBIT NO. 126		
	Surrebuttal Testimony of Lesa		
24	Jenkins	62	287
25			

1	STAFF'S EXHIBITS		
	(Continued)		
2		MARKED	REC'D
	EXHIBIT NO. 127		
3	Surrebuttal Testimony of Phil Lock	62	443
4	EXHIBIT NO. 128		
	Surrebuttal Testimony of Amanda		
5	McMellen62	283	
6	EXHIBIT NO. 129		
	Surrebuttal Testimony of Joel		
7	McNutt	62	233
8	EXHIBIT NO. 130HC		
	Surrebuttal Testimony of David		
9	Murray	62	154
10	EXHIBIT NO. 131		
	Surrebuttal Testimony of David		
11	Murray	62	154
12	EXHIBIT NO. 132		
	Surrebuttal Testimony of Henry E.		
13	Warren	62	443
14	EXHIBIT NO. 133		
	Reconciliation	62	283
15	EXHIBIT NO. 134		
16	Final Staff Reconciliation62	283	
17	EXHIBIT NO. 135		
	Branson District Final Staff		
18	Accounting Schedules	62	283
19	EXHIBIT NO. 136		
	Gallatin District Final Staff		
20	Accounting Schedules	62	283
21	EXHIBIT NO. 137		
	Rogersville District Final Staff		
22	Accounting Schedules	62	283
23	EXHIBIT NO. 138		
	Warsaw District Final Staff		
24	Accounting Schedules	62	283
25			

1	EXHIBIT NO. 139		
	Chart - Approximate Increases	336	
2			
	OPC'S EXHIBITS		
3		MARKED	REC'D
	EXHIBIT NO. 200		
4	Rebuttal Testimony of Keri Roth	62	431
5	EXHIBIT NO. 201		
	Surrebuttal Testimony of Keri Roth	62	431
6			
	EXHIBIT NO. 202		
7	Rebuttal Testimony of Barbara		
	Meisenheimer62 292		
8			
	EXHIBIT NO. 203		
9	Surrebuttal Testimony of Barbara		
	Meisenheimer62 292		
10			
	EXHIBIT NO. 204		
11	Rebuttal Testimony of Geoff Marke	62	443
12	EXHIBIT NO. 205		
	Surrebuttal Testimony of Geoff		
13	Marke	62	443
14	EXHIBIT NO. 206		
	Excerpt from Transcript in Case		
15	GA-94-127	255	258
16	EXHIBIT NO. 207HC		
	OPC Data Request No. 9	265	266
17			
	EXHIBIT NO. 208		
18	OPC Data Request No. 1110	267	269
19	EXHIBIT NO. 209		
	OPC Data Request No. 18	267	269
20			
	EXHIBIT NO. 210		
21	OPC Data Request No. 1101	277	279
22	EXHIBIT NO. 211		
	OPC Data Request No. 1104	277	279
23			
	EXHIBIT NO. 212		
24	Updated Surrebuttal Tables and		
	Schedule 1-HC of Barbara		
25	Meisenheimer291 292		

1	OPC'S EXHIBITS		
	(Continued)		
2		MARKED	REC'D
3	EXHIBIT NO. 213		
4	Updated schedule 1-HC - Reflects		
	the current billing units agreed		
	To by the parties	291	292
5			
	EXHIBIT NO. 214		
6	OPC Data Requests	379	380
7	MSBA'S EXHIBITS		
8	EXHIBIT NO. 400		
	Direct Testimony of Louie R.		
9	Ervin, Sr.	62	376
10	EXHIBIT NO. 401		
	Rebuttal Testimony of Louie R.		
11	Ervin, Sr.	62	376
12	EXHIBIT NO. 402		
	Surrebuttal Testimony of Louie R.		
13	Ervin, Sr.	62	376
14	EXHIBIT NO. 403		
	Staff Response to MSBA DR 0234329	334	
15			
	EXHIBIT NO. 404		
16	Spreadsheet - District Rate		
	Increases	367	376
17			
18	DIVISION OF ENERGY'S EXHIBITS		
19	EXHIBIT NO. 500		
	Direct Testimony of John Buchanan	62	443
20			
	EXHIBIT NO. 501		
21	Rebuttal Testimony of John		
	Buchanan	62	443
22			
	EXHIBIT NO. 502		
23	Surrebuttal Testimony of John		
	Buchanan	62	443
24			
	EXHIBIT NO. 503		
25	Rebuttal Testimony of Joe Gassner	62	443

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DIVISION OF ENERGY'S EXHIBITS
(Continued)

EXHIBIT NO. 504

Surrebuttal Testimony of Joe
Gassner 62 443

MPGA'S EXHIBITS

EXHIBIT NO. 600

Rebuttal Testimony of Brian T.
Brooks 62 302

EXHIBIT NO. 601HC

Rebuttal Testimony of Brian T.
Brooks 62 302

*Portion of the exhibit was received.

A				
above-entitled 454:9	442:25	428:8 435:7,22	427:19 429:12	410:4 419:25
Accountant 430:21	admit 418:6,20 419:5	answers 412:17 412:20 431:5	429:24 433:20 434:6,14,18	424:6,20 426:21 439:11
Accounting 448:8 450:18 450:20,22,24	admitted 431:11 441:10 442:24 443:10	apologize 406:20	435:14 438:19	based 417:10
Accounts 427:20 429:11	advocated 426:9	appear 443:1	assigned 399:13 417:9	434:25 438:1 438:15,16,17 438:22,25
accurate 421:10	affiliate 403:14 403:15,21	appearance 399:16	Associate 397:19	basically 402:3 405:13 425:11
accurately 421:4	agreed 408:25 409:16 452:4	APPEARANC... 397:1	associated 416:9 422:21	basis 417:4 422:13
achieve 405:19	ago 406:12,13 407:3	appearing 399:24	Association 397:12,18 400:6,14	bear 407:24
acquired 414:25 423:6 433:19	agree 432:17,21 434:16 435:14	appendices 418:16 448:7	assume 409:16 435:12 436:20	behalf 399:24 400:10 412:1 443:25
acquires 404:24	agreement 400:24 401:23 402:4	application 404:2	assuming 409:15 416:19	belief 412:22
acquisition 404:17,19,22 406:14 407:3 410:2,12,19 411:1 414:18 415:3 417:9 425:8,9,17 426:9 431:25	Agreements 441:7	applied 404:15	attempting 408:15	believe 402:1 407:11 410:15 410:22 411:7 413:19 419:23 421:5 422:17 433:3,7 434:1 441:20 442:13
action 399:13 401:11	ahead 424:25 425:1,1 444:2	apply 405:21	attend 400:16	believes 409:13
actual 404:13 427:6 428:23 429:23 436:25	Akayla 398:7 399:24	approach 416:11	attending 416:22	Bench 414:5 423:22 436:2 440:10
add 401:2 402:18 405:15	Alicia 447:3	appropriate 410:3 415:14 415:20	attorney 397:2,2 397:3,8,13 428:7	beneficial 436:15
address 409:2 413:12	allowed 404:19 404:25 406:9 420:3	approved 403:6 406:13 407:3	August 396:7 399:5	benefit 436:23
addressed 409:1	allowing 425:7,9 425:17	approving 407:22	available 402:8 402:14	best 412:21 421:25
addresses 413:8	alter 435:19	approximate 420:6 451:1	avoid 408:25	bid 416:6 423:3,7
adhere 405:20	Amanda 417:22 418:8 445:10 447:24 449:6 450:4	argument 403:12	aware 410:9 411:2 423:5 426:16 438:4	bids 416:3
adjourn 444:1	amendment 402:22 417:5,8 419:18 420:7 433:19	arm's 415:11,18	a.m 399:3 444:8	billing 452:4
adjourned 444:5	analysis 429:5	arm's-length 415:9		bit 399:14 421:6 436:18
adjusting 409:5	Anderson62 446:4,6,8	articulated 425:17	B	Boards 397:17 400:6
adjustment 404:23 408:12 409:6	annual 396:12 399:10	asked 400:22 438:14	back 401:5,5,9	Bocklage62 448:15 449:16
adjustments 404:17 409:10	answer 410:5,8 413:9 421:4,19 421:22 426:22	asking 421:23	balances 409:5	book 403:13 405:21 407:6 408:4,5,11 410:2,20,21 411:1 414:18 414:23,24 419:21 420:5
administer 417:25 439:23		asset 404:24,25 415:1 437:16	ballpark 420:9 421:9	
admission		assets 403:4,7,12 405:5 407:7,10 407:17 408:10 413:11 415:4 416:3,12 419:22 423:4 423:16 424:7 424:11,12,15 424:24 427:8	Barbara 439:20 445:21 451:7,9 451:24	
			bargain 404:25 407:19 432:9 432:18 433:17 436:16,21	
			base 404:22 405:1 408:18	

423:16,18 424:11,15,23 424:24 425:3,4 425:5,12,12,18 427:7 428:1,2,5 429:11,12,20 434:12 437:14 438:19 439:13 booked 403:4,13 417:6 427:6 booking 413:10 425:13 books 403:9 415:14,16 419:20 Borgmeyer 398:6 399:23,23 400:21 401:20 405:11 414:2 416:16 417:22 418:3,9,19,25 419:9 420:11 420:23 421:13 429:17,19 430:1 431:19 431:20 432:2 437:20 440:4 441:5,16 445:4 445:15,18 Borgmeyer418 445:11 Boudreau 397:2 399:18 411:9 411:12,15 412:24 413:7 416:25 417:1 417:16 445:7,8 Boustead62 448:17 449:18 Box 397:4,21 398:2,8 Branson 450:17 BREAK 401:8 Brian 453:6,8 brief 399:15 407:13 409:3 briefs 427:11	Brooks 453:6,8 brought 403:8 BROWNLEE 397:13 Brydon 397:3 Buchanan 442:17 452:19 Buchanan62 452:21,23 Building 397:20 business 399:14 433:18 <hr/> C <hr/> C 397:3 399:1 454:1,1 calculate 421:1 422:5,8 calculation 420:18 421:7 calculations 420:13,22,24 422:1 calculator 420:8 420:10,18,19 421:4 call 411:9 430:7 439:20 calls 417:22 420:12 cancel 444:2 capacity 409:6 411:20 capital 413:13 Capitol 397:4 caption 454:10 Carter 397:3 399:18,19 case 396:11 404:6 405:3,4 405:14,25 407:13,14,14 407:24,24 409:4 410:23 410:25 411:3 417:20 423:9 424:10 426:10	427:12,14 432:11,13,19 432:22 434:23 435:2,20 436:16 441:6 451:14 cases 408:21 410:10,25 cause 418:11 454:9 caused 412:4 430:23 CCN 408:21 409:4 CCR 396:22 454:19 cell 401:15 cents 437:1 certain 426:17 certainly 405:2 441:12 Certified 454:5 certify 454:7 Chairman 396:16 409:20 409:21 414:5,6 423:22,23,24 425:20 426:7 436:2,4 440:10 440:11 445:12 chance 442:11 change 404:13 405:5 changed 404:12 changes 416:20 charge 406:9 407:9 Chart 451:1 check 442:22 chief 398:6 411:22 417:20 circumstances 426:13 cite 428:6 432:9 cited 404:6 432:22 citing 427:18	City 396:8 397:5 397:10,15,21 398:3,9 432:10 433:1,5 454:15 clarification 413:15 clarifications 412:12 clarify 416:17 Class 448:12 clear 407:20 441:9 close 441:11 Cole 454:4,16 combination 433:18 combined 415:5 come 401:5 427:20 428:3 Commission 396:2 398:7,11 399:22,25 403:11 404:3,6 404:7 405:12 405:16,20 406:7,13 407:3 408:24 409:4 409:10,13 411:13 419:5 421:11 425:16 428:5 443:25 Commissioner 409:20,22,23 409:25 410:9 410:14,18,24 411:5 414:7,8 414:10,12,14 415:22 417:3 425:23,25 426:3,4,5 427:9 436:5,6,8,10,11 436:13 437:18 440:13,14,16 440:17,19,20 445:7,13,19 COMMISSIO... 396:18	Commission's 407:22 companies 435:4 company 404:5 404:24 407:16 408:8,15,17,21 408:25 420:3 424:11,16 427:2 431:23 432:11 438:18 439:1 company's 407:21,22 408:13,18 409:12 compelling 426:14 competitive 416:3,6 423:3,7 complete 426:15 428:9 completely 402:1 computer 422:6 concerned 432:22 433:13 concerning 432:14 conclude 443:24 concluded 444:7 concludes 417:19 441:1 conditions 407:23 408:1 confused 426:20 consider 439:9 considering 404:16 consistent 403:10 424:22 425:5 constructive 401:4 consummate 415:21 consummated 414:22 contained 412:16 412:20
---	--	--	--	--

<p>Continued 447:2 448:2 449:1 450:1 452:1 453:1 Cooper 397:2 399:19 402:11 403:1 405:13 406:18 423:14 423:19 429:3,4 429:14 432:6,7 434:24 435:11 435:24 437:23 437:24 438:8 438:20 439:3 440:8 441:23 442:21 443:5 443:11 445:12 445:14,18,19 Cooper403 445:3 corporate 433:18 correct 402:10 402:11 406:24 406:25 412:21 414:20 422:23 423:1 424:9,13 424:14,18 430:17,18 432:11,12,15 432:16,20 433:2,6,10,21 433:22 437:12 438:3,6,7 454:12 corrections 412:11 431:1 correctly 402:9 cost 403:10 404:9 404:10,16 405:1 418:11 418:15 427:7 431:24 433:24 434:2,18,20 435:14,16 448:3,5,6,12 costs 408:16 counsel 397:19 398:1,1,4,6,7</p>	<p>400:2,4,19 401:11,18 405:8 406:3,3,5 408:9 409:19 413:22 415:24 419:12 421:14 427:11 428:13 430:17,20 438:11 439:24 441:2 442:5 Counsel's 408:7 421:22 430:6 Counsel/Gas 398:6 County 454:4,16 couple 410:1 423:23 429:3 course 441:6 Cox 448:18 cross 402:14 413:18 416:19 419:10 cross-examinat... 413:1,15,25 419:11,14 422:12 423:12 423:14 431:16 431:17,20 432:4,7 440:1,3 440:6 445:11 445:12,18,18 CSR 396:22 454:19 current 408:16 452:4 customers 406:10 407:9 408:16,19,22 408:24 409:8 409:15 424:8</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 397:19 398:1 399:1 445:1 Daniel 396:15,18 399:12 data 408:9</p>	<p>422:11 451:16 451:18,19,21 451:22 452:6 dates 444:2 David 446:20 449:8,10 450:8 450:10 Dcooper@bry... 397:6 Dean 397:2 399:18 decision 404:4 435:19 decreased 404:21 definition 428:15 depart 405:17,25 Department 397:19 400:11 depreciation 422:21 Deputy 398:6 description 421:22 Design 448:12 detail 409:2 determine 415:13 determined 415:6 428:20 428:22 developed 404:10 Development 397:19 400:11 deviate 405:3 devices 401:16 Diana 397:3 399:19 different 428:21 435:15 438:5 direct 411:15 412:9 418:9 430:11 442:2 442:16 445:7 445:11,17 446:4,10 447:3 447:5,10,13,22</p>	<p>447:24 448:10 452:8,19 directed 427:10 disclosed 442:15 discount 419:18 425:5,13 426:15 432:10 432:19 433:17 436:21 discounted 407:19 discrepancy 424:13 discuss 400:18 436:15 discussed 401:22 discussion 432:18 discussions 415:19 distinguish 407:13 District 450:17 450:19,21,23 452:16 Division 397:23 400:9,11 413:16,18 416:18,18 442:13 443:20 452:18 453:1 divorced 414:22 doing 420:13 dollar 419:18 421:10 433:19 dollars 407:6 438:18 439:2 door 437:13 DR 447:19 452:14 dramatic 405:19</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 399:1,1 445:1 450:12 454:1,1 earlier 409:1 434:6 441:3</p>	<p>earn 420:3 East 397:4,9 Economic 397:19 400:11 effect 415:6 436:25 439:14 effective 436:20 efficiency 401:23 402:4 418:5 422:2 either 412:12 426:9 435:6 elaborate 436:17 employed 411:19 411:21 430:17 employing 427:19 EM-2000-292 404:6 encompass 424:6 energy 397:23 400:9,12 401:22 402:4 409:5 413:16 413:18 416:18 418:5 442:14 443:20 ENERGY'S 452:18 453:1 England 397:3 enormous 408:22 Ensrud 448:20 449:20 entered 413:4 441:4 entire 418:25 entities 403:20 403:24 415:2,5 427:3 entity 417:11 433:18 entries 399:16 entry 443:4,6 Ervin 452:9,11 452:13 especially 405:3 established</p>
--	---	--	--	---

<p>414:24 415:3 417:14 estimate 421:9 evidence 409:9 409:11 413:6 419:8 431:12 431:14 441:4 441:11 443:22 445:5,9,16 evidentiary 396:6 399:7 401:10 422:3 exactly 415:15 428:6 Examination 411:15 417:1 418:9 429:19 430:11 438:13 445:7,8,11,15 445:17,20 example 437:1 439:11 Excerpt 451:14 excess 409:7 434:17 435:13 excused 400:6,14 416:22 exhibit 413:5 418:13,17,20 419:7 431:13 441:17,18,19 442:7 443:17 443:18,20,21 446:3,5,7,9,11 446:13,15,17 446:19,21,23 447:3,5,6,8,10 447:11,13,15 447:17,19,22 447:24 448:3,4 448:6,8,9,11,14 448:16,18,19 448:21,23 449:2,4,6,8,9 449:11,13,15 449:17,19,21 449:23 450:2,4</p>	<p>450:6,8,10,12 450:14,15,17 450:19,21,23 451:1,3,5,6,8 451:10,12,14 451:16,17,19 451:20,22,23 452:3,5,8,10,12 452:14,15,19 452:20,22,24 453:2,5,7,9 exhibits 412:6,25 413:3,3 418:6 418:23,25 419:6 430:24 431:9,11 441:3 441:24 442:14 442:15,23 443:13,13,15 446:1,2 447:1 447:21 448:1 449:1 450:1 451:2 452:1,7 452:18 453:1,4 expansion 407:23 408:20 expansions 407:20 expense 422:21 explain 400:19 explained 405:22 extent 415:11</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>F 454:1 fact 438:17 439:1 facts 435:18 fair 428:17 429:7 433:20,23 434:1,18 435:15 familiar 428:3 434:5,22 435:5 435:20 far 401:12 Feddersen 396:22 454:5</p>	<p>454:19 feel 419:21 425:4 435:7 File 399:7 filed 412:4 430:23 filing 396:11 399:9 Final 450:16,17 450:19,21,23 finalize 400:23 finalized 402:1 financial 408:13 411:22 fine 428:8 finish 402:5 firm 454:6 first 399:14 407:11 409:4 441:14 focusing 402:23 follow 423:7 426:6 follows 411:14 418:8 430:10 foregoing 454:12 formally 441:10 former 403:3 forth 454:10 forward 406:22 four 432:22 frankly 403:15 full 437:1 454:12 further 417:16 future 433:10</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 399:1 gains 432:14 Gallatin 450:19 Gallery 397:14 gas 396:10,12 397:7,12 399:9 399:11,19 400:14 403:4,5 403:8,9 406:11 406:14 407:4,8</p>	<p>411:23 412:2 413:11 416:2 417:10 423:4 447:19 Gassner 442:18 452:25 453:3 GA-94-127 451:15 general 397:19 424:5 generate 428:12 Geoff 451:11,12 getting 420:15 give 421:10,22 442:11 given 399:15 454:15 GM-2011-0354 403:6 go 401:4,5 406:15,24 410:20 413:15 417:20 421:24 424:24 425:1,1 435:18 444:2 going 401:16,19 406:16,21 420:11 421:20 421:20 422:12 good 399:4 402:13,15,20 407:1 411:16 414:15,16 419:15,16 423:25 424:1 431:21,22 438:23 440:2 442:10 goods 403:23,24 greater 409:2 434:11,19 GR-2014-0086 396:11 399:8 guess 422:19 426:21 437:13</p> <hr/> <p style="text-align: center;">H</p> <hr/>	<p>H 411:18 446:16 446:18 half 407:5 408:3 408:18 419:18 420:4,7 421:12 422:22 424:17 424:20 438:18 439:1,12 Hall 396:18 409:25 410:9 410:14,18,24 411:5 414:12 414:14 415:22 417:3 426:3,4,5 427:9 436:10 436:11,13 437:18 440:19 440:20 Hall414 445:7 Hall426 445:13 Hall436 445:19 handout 408:2 happened 416:7 426:12,17 435:1 438:1,16 439:15 Harry 397:20 HC 406:17,22 418:12 headed 401:12 Healy 397:9,9 hear 424:2 heard 407:12 hearing 396:6 399:2,7 400:7 400:15 401:10 409:1 413:2 422:3 431:10 443:24 444:1,7 held 401:8 433:9 help 408:24 helpful 420:16 Henry 450:12 High 397:9,20 higher 404:11 411:1 Honor 400:22</p>
---	--	--	--	---

401:21 402:12 403:1 405:12 413:17 414:3,9 416:16 418:3 418:19 421:13 429:18 430:2 431:8,19 432:6 434:21 437:21 437:23 440:5 440:15 441:5 441:17,23 442:21 hour 400:23 401:5,6 hypothetical 434:25 435:3	Independence 433:5 INDEX 446:1 indication 407:20 information 412:22 inherited 414:25 inquire 421:18 inquiries 405:8 406:2 409:18 inquiry 422:12 426:7 intended 403:16 intending 405:14 intention 402:1 interested 427:10 427:12 internally 415:19 intrigued 427:13 invested 417:12 investment 426:19,20 invited 405:17 in-camera 406:15,24 issue 402:2,5 403:2 406:8 413:12,20 417:20 418:4 427:13 440:10 issues 400:25 401:23,24 402:4,21 items 412:13	Jeremy 397:19 400:10 jeremy.knee@... 397:22 Joe 404:5 442:18 452:25 453:3 Joel 450:6 John 398:6 399:23 442:17 449:11 452:19 452:21,23 Johnston62 446:12,14 joint 404:4 Jones 398:7 399:24 Jordan 396:15 399:4,12,20 400:1,5,13 401:1,9 402:6 402:13,20 405:7 406:2,23 407:1 409:18 411:6 413:2,14 413:21,25 414:4,7 415:23 416:15,17 417:18,24 418:22 419:2,4 419:11 420:15 420:20 421:2 421:16 422:10 423:12,21 426:2 427:15 427:17 428:11 429:2,16 430:3 430:9 431:10 431:17 432:4 435:6,21 436:1 436:5,7,10 437:19,22 438:10,23 439:4,18,22 440:2,6,9,13,16 440:19,22,25 441:12,21 442:4,10,19 443:2,7,12,23 445:13	443:2,7,12,23 445:13 Joun 449:14 Jr 446:22,24 Judge 396:16 399:4,13,20 400:1,5,13 401:1,9 402:6 402:13,20 405:7 406:2,23 407:1 409:18 411:6 413:2,14 413:21,25 414:4,7 415:23 416:15,17 417:18,24 418:22 419:2,4 419:11 420:15 420:20 421:2 421:16 422:10 423:12,21 426:2 427:15 427:17 428:11 429:2,16 430:3 430:9 431:10 431:17 432:4 435:6,21 436:1 436:5,7,10 437:19,22 438:10,23 439:4,18,22 440:2,6,9,13,16 440:19,22,25 441:12,21 442:4,10,19 443:2,7,12,23 445:13	409:23 414:6 414:10 423:23 423:24 425:20 425:25 436:4,8 440:11,16,17 445:12 Kent 447:10,12 Keri 408:7 430:7 430:10,13,22 445:17 451:4,5 KEVIN 398:6 Kim 448:18 kind 437:6 Kliethermes 449:3 Knee 397:19 400:10,10 413:17 442:13 know 407:12 415:15 416:10 416:10,12 417:5,8 421:24 423:8,15 425:10,15,19 426:15 428:6,9 428:10 429:10 429:13 434:10 435:1,23 442:23 knowledge 412:22 423:2 426:16 Kory 448:17 449:17
I				
idea 421:11 IIF 415:1,17 417:11,12 IIF's 416:11 Imhoff 447:23 448:10 449:22 impact 438:15,25 439:9,10 impacts 437:25 importantly 403:21 impression 420:16 imputation 409:3 include 409:3 418:16 426:21 included 407:23 408:8 419:25 including 407:18 income 436:23 Incorporated's 399:9 increase 396:11 399:10 402:22 408:22 409:13 445:2 Increases 451:1 452:16 incurred 408:17	J			
	J 448:20 James 446:4,6,8 JARRETT 397:8 Jeff 442:8 Jefferson 396:8 397:5,10,15,21 398:3,9 454:16 Jenkins 449:24 Jenkins 448:22 448:23			
		K		
		K 396:22 454:5 454:19 Kansas 432:10 433:1,1,1 Kellene 396:22 454:5,19 Kenney 396:16 396:17 409:21		
			L	
			L 397:2 447:3 labeled 406:17 Laclede 423:6,15 434:5,17 435:13,19 language 432:13 law 396:16 397:2 397:2,3,8,13 399:13 407:12 407:15 427:12 427:14	

Lawler 402:8 411:10,14,18 412:3 417:2 438:4 445:6 446:16,18	Madison 397:15 398:2,8	451:25	413:11,16	need 406:15,24 412:12 418:5 421:24
Lawler's 413:8	Marc 398:1 400:3	Meisenheimer 62 451:7,9	416:2,18	needed 409:8
leading 438:20	Marke 442:9 451:11,13	memory 442:24	417:10 423:4	negative 404:22 408:11
legacy 403:7	marked 412:5 418:12,16	mentioned 434:6 441:2,14	433:13 454:2 454:16	negotiating 415:7
Legal 398:7	443:2 446:2	merged 427:3	Missouri's 403:9	net 403:9,13 404:8,9,16 405:1,21 419:21 420:5 423:16,18 424:10,15,22 425:5,12,18 427:7 428:1,2,5 429:12,20 431:23 433:20 433:23 434:2 434:12,17,19 435:13,16
length 415:11,18	447:2 448:2	merger 402:23 403:5,19,23 404:1 405:5 445:2	Mo 397:5,10,15 397:21 398:3,9 404:7	never 426:8
Lesa 448:22,23 449:23	449:2 450:2 451:3 452:2	met 401:22 407:25	money 417:12 426:19	new 437:10
lesser 434:11	market 428:15 428:17 429:8 433:20,23 434:1,18 435:15	MGE 423:6,16 434:6,14,18 435:14,19	Moody 442:1 446:20	nine 399:6
let's 400:5 434:4	Martha 447:13 447:15,17	MGU 407:5,8 416:4	Moorman 446:10	Nitura 442:2 446:22,24
level 397:14 415:17	matter 396:10 399:8 400:18 402:18 404:4 424:4 426:23 442:12	MGU's 406:14 407:3	morning 399:4,6 400:25 401:21 402:3 411:16 414:15,16 419:15,16 423:25 424:1 431:21,22	non-regulated 403:18
light 403:5 404:5 432:10	Martha 447:13 447:15,17	Michael 448:20 449:19	move 406:22 418:5,20 443:4 443:5	NOS 413:5 419:7 431:13 443:17 443:18,20,21 446:7 447:6
line 426:6 433:5	matter 396:10 399:8 400:18 402:18 404:4 424:4 426:23 442:12	Michelle 446:10 448:15 449:16	MPGA'S 453:4	notes 454:13
list 402:17,21 441:3 442:22	matters 402:8,14 402:15 427:5	Midwest 396:22 454:6	MSBA 452:14	NP 418:12
listed 402:15	McMellen 417:23 418:8 418:10 419:15 445:10	million 407:5 408:3,18 414:18 419:18 420:4,7 421:12 422:22 424:17 424:21 438:18 439:2,12	MSBA'S 452:7	number 410:3 441:6
Litigation 396:22 454:7	McMellen 62 447:25 449:7 450:5	minus 424:16,20	multiple 407:23	numbers 406:17 406:18,21
little 421:6 436:18	McMellen 62 447:25 449:7 450:5	misplaced 403:15	municipal 433:1	<hr/> O <hr/>
LLC 397:14	McNutt 450:7	Missouri 396:1,8 396:10 397:7 397:12,17 398:7,10 399:9 399:21,25 400:6,9,13 403:3,5,8,19 404:15 405:18 405:24 406:11 406:14 407:4 411:24 412:2	Murray 449:8,10 450:9,11	O 399:1
Lock 449:5 450:3	mean 426:18		N 399:1 445:1	oath 418:1,1 439:23
long 420:21 421:21	means 404:18,20		name 411:17 430:12	object 420:12,23 434:21 435:17 442:11
longstanding 403:11 405:24	measurement 424:23		natural 396:10 396:12 397:7 399:9,11,19 403:4,8,9 406:11,14 407:4,8 411:23 412:2 413:10 413:11 416:2 417:10 423:4 447:19	objection 421:17
look 400:19 425:18	mechanism 408:24			
looking 421:8	mechanisms 409:10,14			
loss 436:22,25,25	meet 407:21			
losses 432:14	Meisenheimer 439:21 440:12 445:21			
lot 405:15 435:18	Meisenheimer...			
Louie 452:8,10 452:12				
lower 404:21				
<hr/> M <hr/>				
M 396:17 397:8 446:4,6,8 447:22 448:10 449:22				

<p>421:20 422:13 435:22 438:20 439:3,5 objections 413:3 419:2 431:11 443:8,13 objective 419:22 424:23 425:12 observe 413:7 Obviously 415:18 offer 412:25 431:8 441:24 442:7,14 offering 400:8 office 397:20 398:1,4 400:2,4 406:4 409:19 413:21 415:24 419:12 428:12 430:5,16,17 438:11 442:4 454:15 Officer 411:22 offsets 409:11 offsetting 408:11 Oh 401:14 422:7 okay 401:1 402:6 402:16,20 407:2 411:5 413:21 422:10 422:15 424:2 427:9 428:9,11 437:18 439:8 442:4 once 402:10 405:16,19 OPC 410:10,19 411:2 431:13 443:19 451:16 451:18,19,21 451:22 452:6 OPC's 403:12 404:1 410:1 445:16 451:2 452:1 opened 437:13</p>	<p>opening 402:24 405:8,10,14 406:4 445:3,4,4 operations 403:18 oppose 407:18 opposite 426:10 order 400:23 402:7 404:10 405:18 409:11 orders 407:22 organization 415:12 416:9 organizations 415:13 original 403:10 404:8,9,16 405:1 408:10 431:24 433:24 434:2,17,19 435:13,16 overrule 421:20 435:21 owned 426:24 owner 405:4 415:12 ownership 404:12 owner's 436:20 o'clock 399:6</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 399:1 page 432:8 436:14 paid 406:10 407:5,10,16 417:4,11 424:12,16 426:23 434:17 435:13 437:16 438:18 439:1 439:12 parent 415:1,2 415:17 part 420:5 423:8 427:21,24</p>	<p>429:20 parties 400:18,22 401:3,22,24 402:2 416:22 444:1 452:4 partly 408:21 parts 418:23 pass 416:21 passed 408:2 path 405:17 Paul 397:2 399:18 paulb@brydo... 397:6 pay 404:11 407:16 408:5 408:16 429:23 431:24 paying 408:3 436:24 437:9 437:11,14,15 pays 431:23 people 406:19 percent 436:21 perform 421:3 performing 420:24 personally 454:8 Phil 449:5 450:3 phones 401:16 phrased 438:21 Ph.D 449:14 Picard 442:3 447:4 place 401:12 454:9,14 plant 403:4 404:12,14 409:5,7 432:15 433:9,13 please 401:13 405:12 406:6 411:10,12,17 430:9,12 435:10 plus 417:11 point 404:3</p>	<p>406:16 Porter 447:5,7,9 portion 409:7 432:22 453:9 portions 400:7 400:15 418:11 position 410:1,10 410:19 411:3 419:17 420:2 424:22 425:6 425:11 426:11 426:22 429:22 429:25 430:14 430:15,19 positions 410:16 Poston 398:1 400:3,3 406:6 406:20,25 407:2 410:5,12 410:15,22 411:4 413:23 415:25 416:1 416:14 419:13 419:14 420:17 421:8 422:7,14 423:10 428:14 429:1 430:7,11 431:8,15 434:21 435:3 435:17 438:12 438:13,21,24 439:7,17,20,25 442:6 445:8,11 445:14,17,20 Poston406 445:4 post-hearing 427:11 potential 416:11 420:19 436:15 Power 404:5 432:10 practice 403:11 405:3,18,24 421:25 practices 405:21 prefiled 421:15 preliminary</p>	<p>400:17 premarked 430:24 premium 404:19 410:13 424:24 425:3,8,9,13,18 426:9,14 431:25 prepare 418:10 prepared 401:25 412:4,8,16 413:9,11 418:11 430:23 present 454:8 presentation 411:8 430:6 441:1 Presiding 396:15 pretty 401:17 prevent 403:17 previous 411:3 previously 417:24 price 402:23 404:1,25 407:4 408:12 410:2 410:20 411:2 414:18,22 415:3,6,8,14,20 417:4,5,9,11,15 428:18,24 429:6 434:11 434:17 435:13 436:16 437:15 445:2 priced 428:18 principle 400:24 401:24 prior 404:3 416:9 privy 415:15 probably 399:14 406:15 435:18 problem 444:3 proceed 439:24 proceedings 396:5 454:8,11 process 416:6,10</p>
---	--	--	--	--

<p>416:13 423:3,7 projections 407:21,25 projects 408:20 promised 408:20 Propane 397:12 400:13 property 433:1,9 437:10 proposal 422:20 proposed 402:7 422:16 proposition 424:5 protect 404:10 408:19,22 409:14 provide 403:16 409:10 410:7 provided 404:7 408:1 421:15 providing 424:7 provision 403:23 403:24 PSC 404:7 Public 396:2 398:1,1,4,5,7 398:10 399:21 399:25 400:2,4 406:5 408:7,9 409:19 413:22 415:24 419:12 421:14,22 428:12 430:5 430:17,20 438:11 442:5 purchase 402:23 404:1 407:19 408:11 417:4 423:15 429:6 432:9,18 433:17 434:5 434:11 436:21 445:2 purchaser 437:4 purchasers 416:12</p>	<p>purchasing 404:18 put 404:25 419:20 442:25 P.C 397:3 P.O 397:4,21 398:2,8</p> <hr/> <p style="text-align: center;">Q</p> <p>question 414:13 415:25 417:3,7 421:4,17 427:15,22,23 434:25 435:8 435:10 438:14 439:5 443:3 questions 409:22 409:24 410:1 411:6 412:15 413:9,23 414:3 414:4,8,14 417:17 423:19 423:21,24 425:24 426:1,5 427:17 429:14 430:1 431:4 435:24 436:1,2 436:13 438:8 440:4,8,9,20,22 445:7,12,13,13 445:19 quote 408:10,12 432:13</p> <hr/> <p style="text-align: center;">R</p> <p>R 399:1 446:12 446:14 447:13 447:15,17 452:8,10,12 454:1 raise 443:14 rate 402:22 404:21 405:1 408:18,22 410:4 419:25 422:16 424:5 424:19 426:21</p>	<p>436:20 445:2 448:12 452:16 ratemaking 404:17 ratepayers 404:11,20,20 407:15 408:4,6 429:23 431:24 rates 404:11,21 406:10 407:19 419:19 rationale 425:7,8 425:16 rbrownlee@rs... 397:16 read 402:16,21 405:13 441:9 ready 401:10 402:24 411:8 430:5 really 422:11 reason 405:2,25 407:18 421:23 reasonable 409:14 422:2 rebuttal 412:4,16 413:12 432:8 433:16 436:14 442:1,8,16,18 446:6,12,16,22 447:7,12,15 448:15,17,18 448:20,22,23 449:3,5,6,8,10 449:11,13 451:4,7,11 452:10,21,25 453:6,8 recap 401:11 404:8 receive 404:21 436:23 received 413:6 419:8 431:14 443:3,16,22 453:9 receives 404:22</p>	<p>recess 400:23 401:4,21 recited 443:15 recognizes 409:7 recommend 424:19 Reconciliation 450:14 Reconciliation62 450:16 record 401:6,7 401:10 411:17 412:25 413:4 419:5 421:24 441:9,11,11 442:7 443:4,10 443:16 444:6 recorded 407:6 408:10 433:9 records 408:13 414:25 recover 404:19 recovered 410:17 419:19,24 recross 415:23 416:15,19,23 428:12 429:2 437:19,22 Recross-Exami... 416:1 428:14 429:4 437:24 445:8,14,14,19 REC'D 446:2 447:2 448:2 449:2 450:2 451:3 452:2 redirect 416:23 417:1 429:16 429:19 438:10 438:13 445:8 445:15,20 reduction 408:23 refer 428:7 reference 407:12 referring 429:6 Reflects 452:3 regarding 409:9</p>	<p>regulated 403:17 403:17,20,24 415:4 427:3 433:14 regulation 428:4 regulatory 396:16 399:13 405:18 424:5 rejected 407:10 Rejecting 408:17 reliable 420:25 remaining 402:2 remains 402:21 Renato 446:22 446:24 repeat 433:25 435:9 rephrase 417:6 438:22 439:6 report 418:12,16 436:22 448:3,5 448:6,12 REPORTED 396:21 Reporter 454:6 represent 429:7 represented 417:14 represents 408:23 request 400:22 407:9 408:9 422:11 451:16 451:18,19,21 451:22 requests 407:23 Requests379 452:6 REQUEST/A... 445:2 require 407:15 408:16 429:11 435:1 requirement 409:12 requirements 403:22</p>
--	--	--	--	--

requiring 407:24 408:4	room 406:19	seek 416:3	sort 404:8 423:2	445:9 447:21
reserved 444:3	Roth 408:7 430:7	seeking 416:11	sounds 401:3	448:1 449:1
resolve 406:8	430:10,13,22	Senior 396:16	422:11	450:1
respect 413:9	431:21 445:17	398:1	Southern 403:3,7	stand 402:10
respectively	451:4,5	Seoung 449:13	406:11,14	410:7 411:10
412:5	rough 420:13	serve 409:8	407:4 413:10	417:19 418:7
response 402:19	RPR 396:22	service 396:2,12	413:10 416:2	420:14,25
408:8 417:2	454:19	398:7,11	417:10 423:4	422:1,4 430:3
419:3 452:14	RSBIII 397:14	399:11,21,25	speak 416:20	439:18 440:23
result 405:5,19	rule 403:14,22	403:4 418:12	speaks 427:12	441:8
436:16	404:10 405:21	418:15 424:7	special 426:13	standard 404:16
resulted 441:7	428:1,1,3,4,5	429:24 448:6	specific 417:15	standards 427:18
resume 399:7	443:9	448:12	specifically 427:2	start 399:15,17
401:10	ruled 443:8	services 396:22	speculation	441:14
resumed 399:2	rules 403:16	403:23,25	420:12 422:13	state 396:1
return 420:3,4,6	run 420:21	454:7	spent 426:20	397:20 406:21
421:11 422:16	421:25	Service62 448:3	Spreadsheet	407:11,15
422:20,25	R.E 396:15	448:5	452:16	411:16 430:12
426:19		set 426:18 434:24	Sr 452:9,11,13	433:17 454:2
revenue 409:12	S	454:9	ss 454:3	454:16
revenues 396:12	s 396:11,16	sets 403:22	St 404:5	stated 403:2
399:10	397:13,20	shareholders	Staff 398:6,10	408:9 436:19
review 438:1	399:1	409:16	399:21,24	statement 405:8
revised 396:11	safe 443:6	sheet 454:10	400:19 401:11	405:10,15
399:10	sale 416:7 423:3	shifts 408:5	401:18 405:10	406:4 445:3,4,4
RFP 423:3	428:23 432:15	Shorthand 454:6	405:19 406:2	statements
RICHARD	433:4,8,13	shortly 410:7	409:6 414:1,2	402:24
397:13	436:22	shouldering	416:15,23	states 403:16
Rick 411:10,14	sales 432:22,25	408:19	417:21,22	stay 406:19
411:18 412:3	432:25	show 399:16	418:16,19,20	Stenotype 454:11
445:6 446:16	schedule 451:24	439:13	419:5,7,20	454:13
446:18	452:3	silenced 401:15	424:19 426:8	STEPHEN
right 406:23	scheduled 399:6	similar 401:16	429:5,16	396:17
417:18 421:18	Schedules 450:18	410:25 441:22	431:18 437:19	Stip 402:3
422:4 424:8	450:20,22,24	simply 404:11	440:3 441:2,14	stipulation
425:20 442:19	Schedules62	416:21	441:15,17,18	401:25 441:4
443:14	448:8	sir 411:16 426:2	441:19 443:18	442:15
risk 407:25 408:5	School 397:17	situation 404:3	448:3,5,6,8,12	Stipulations
409:15	400:6	410:11,25	450:16,17,19	441:7
risks 408:19,25	seated 430:9	411:3	450:21,23	Stoll 396:17
ROBERT 396:16	second 407:18	situations 404:9	452:14	409:20,22
Robin 449:3	443:1	426:17	Staff's 405:22	414:7,8 425:23
Robinett62	see 400:5 401:6	sold 416:3	418:11,12,15	436:5,6 440:13
449:12	seeing 405:9	soon 401:17	419:17 420:2	440:14
Rogersville	406:3 419:4	sorry 408:14	422:16,20	Street 397:9,20
450:21	420:19 443:8	422:18 425:1,2	424:22 425:11	398:2,8
	443:14,24	430:16 434:3	426:22 429:22	strike 408:14

<p>438:16 structure 413:13 subissue 402:23 subject 403:19 subsidizing 403:18 substance 401:17 substantially 412:18 431:6 Suite 397:9 398:2 Summit 396:10 397:7 399:8,17 399:19 402:25 403:9 406:9 407:8,24 408:9 411:21,22,23 412:2 413:5 416:5,24 423:13 429:2 432:5 437:22 440:7 441:21 443:17 447:19 Summit's 407:9 411:8 417:20 445:5 446:2 447:1 supervision 412:9 support 432:9 supporting 409:11 supposed 424:6 426:18 sure 401:15 420:25 437:8 437:17 441:9 surrebuttal 412:5,17 438:5 441:25 442:1,8 442:17,18 446:8,14,18,20 446:24 447:8 447:17 449:15 449:17,19,21 449:23 450:3,4 450:6,8,10,12 451:5,9,12,24</p>	<p>452:12,23 453:3 sustain 422:13 439:5 Swarengen 397:3 sworn 411:11 417:25 430:8 439:23 system 403:8 406:11 427:20 428:19 429:11</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 453:6,8 454:1,1 Tables 451:24 take 408:25 420:21 421:6 421:21 taken 401:12 410:10,15,19 411:2 talk 406:16 talking 418:22 tariffs 396:11 399:10 Tartan 409:5 tax 422:24 436:15,20 437:3,25 438:15,25 439:9,10,14 taxes 436:23,24 437:9,11,14 Taylor 447:10,12 tell 401:18 tender 412:25 419:9 431:15 439:25 term 432:18 terms 417:6 429:7 TERRY 397:8 Terry@healyl... 397:11 testified 411:14 418:8 430:10</p>	<p>434:22 435:5 testifying 411:25 testimony 400:8 402:22 405:22 408:8 412:4,5,8 412:13,17,21 413:8,12 421:15 430:23 431:2,5 432:8 436:19 437:25 438:6,25 439:10 441:2 441:25 442:1,2 442:8 446:4,6,8 446:10,12,14 446:16,18,20 446:22,24 447:3,5,7,8,10 447:12,13,15 447:17,22,24 448:10,15,17 448:18,20,22 448:23 449:3,5 449:6,8,10,11 449:13,15,17 449:19,21,23 450:3,4,6,8,10 450:12 451:4,5 451:7,9,11,12 452:8,10,12,19 452:21,23,25 453:3,6,8 thank 399:20 400:1,5,21 401:20 403:1 405:6,7,9,11 406:1,3 409:17 409:21 411:5,7 413:14,17,20 413:23 414:6 414:10 415:22 416:14,25 417:17,19 418:2 419:13 423:10 425:20 425:22 426:2 427:14 429:1</p>	<p>429:17 432:3,6 436:4,6,8 437:18,20 439:17 440:11 440:14,17,21 440:24 441:16 442:6 443:11 443:25 Thanks 440:12 theory 404:2 432:10 thereof 454:10 thing 434:2 things 429:3 think 402:24 406:16 407:14 421:3,6,18 431:24 433:11 433:15,16 434:24 441:2 443:3 Thomas 447:22 448:10 449:22 THOMPSON 398:6 thought 438:21 time 399:6 403:3 412:14 415:5 417:12 418:7 418:21 421:6 433:25 439:6 443:1 454:9,14 Timothy 446:12 446:14 today 399:5,17 412:1,17,18 431:5 434:6 today's 399:14 told 406:21 topic 437:13 topics 413:8 traditionally 404:15 transaction 403:14,15,19 403:22 414:22 415:10,21</p>	<p>427:25 428:4 transactions 432:23 433:12 transcript 396:5 451:14 454:13 transmission 433:5 treatment 404:17 432:14 436:15 437:3 true 412:21 454:12 Truman 397:20 try 402:2 434:4 trying 439:11,13 Tuesday 408:2 two 402:8 403:19 403:23 406:11 406:13 407:2 413:8 415:4 427:3 432:25 typically 424:6 426:11 Tyson 447:5,7,8</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>Uh-huh 422:9 ultimate 405:4 understand 399:15 400:17 402:7,9 421:14 421:16 427:4 440:25 understanding 414:17 417:13 423:17 425:14 426:8,12 Uniform 427:20 429:10 United 404:4 units 452:4 Updated 451:24 452:3 upstairs 422:6,8 urge 405:20 use 410:3 433:10 usefulness</p>
--	---	--	---	---

404:13 USOA 429:20 usually 428:20 UtiliCorp 404:4 407:12 utilities 403:17 411:21,23 utility 403:5 404:12,18,22 432:15 433:2 433:14 utilizes 404:8	waived 416:19 waiver 429:11 Wankum 443:1 447:14,16,18 want 401:3,14 421:24 426:6 wanted 402:17 415:20 441:3 wants 443:14 Warren 450:13 Warsaw 450:23 wasn't 423:8 way 419:22 421:1 428:23 428:25 434:4 ways 428:21 week 444:3 well-worn 405:17 West 397:20 we'll 399:17 401:6 410:6 441:14 we're 401:6,9,12 401:16,19,19 402:24 406:16 411:8 418:22 426:18 429:6 430:5 we've 441:6 WILLIAM 396:17 wish 400:15,18 witness 402:8 408:7 410:6,6 411:11 413:1 413:19 414:5 417:17,25 418:2,5 419:9 420:20,24 421:3,5,17,19 421:21 422:1,9 425:22 427:16 430:8 431:15 435:9,23 436:3 437:12 439:19 439:25 440:10	440:23,24 witnesses 402:7 413:19 416:20 441:1,8 Won 449:14 wondering 436:17 wouldn't 436:24 wrap 402:3	107 448:9 108 448:11 109 441:17 443:18 448:14 11 441:24 443:17 446:23 110 441:17 443:18 448:16 1101 451:21 1104 451:22 111 441:18 443:18 448:18 1110 451:18 112 441:18 443:18 448:19 114 448:23 115 441:18 443:18 449:2 1157 397:21 116 441:18 443:19 449:4 117 449:6 118HC 449:8 119 449:9 12 404:7 441:24 443:18 447:3 120 441:18 443:19 449:11 121 397:15 441:18 443:19 449:13 122 441:18 443:19 449:15 123 441:19 443:19 449:17 124 441:19 443:19 449:19 125 449:21 126 449:23 127 441:19 443:19 450:2 128 450:4 129 441:19 443:19 450:6 13 396:8 447:5 13HC 448:21 130HC 450:8	131 450:10 132 441:19 443:19 450:12 133 450:14 134 450:15 135 450:17 136 450:19 137 450:21 138 446:4,6,8 450:23 139 451:1 14NP/14HC 447:6 15 447:8 154 449:8,10 450:9,11 16 447:10 17 447:11 18 442:23 447:13 451:19 19 407:5 408:3 408:17 419:18 420:4,7 421:12 422:21 424:17 424:20 438:18 439:1,12 442:23 447:15 1977 432:10
V		X		2
value 403:13 405:21 407:6 408:4,5,11 410:3,20,21 411:1 414:19 414:23,24 419:21,22 420:5 423:16 423:18 424:5,6 424:11,15,23 425:5,12,18 426:23 427:7 428:1,2,5,16,17 428:18 429:8 429:12,20,23 433:20,23 434:1,12,19 435:15 437:14 438:19 439:13 values 415:16 valuing 427:19 versus 424:11 view 438:5 violate 407:11 violates 407:14 Volume 396:8 volumes 409:3	way 419:22 421:1 428:23 428:25 434:4 ways 428:21 week 444:3 well-worn 405:17 West 397:20 we'll 399:17 401:6 410:6 441:14 we're 401:6,9,12 401:16,19,19 402:24 406:16 411:8 418:22 426:18 429:6 430:5 we've 441:6 WILLIAM 396:17 wish 400:15,18 witness 402:8 408:7 410:6,6 411:11 413:1 413:19 414:5 417:17,25 418:2,5 419:9 420:20,24 421:3,5,17,19 421:21 422:1,9 425:22 427:16 430:8 431:15 435:9,23 436:3 437:12 439:19 439:25 440:10	X 424:16,16,20 424:20 445:1	Y	
		\$		
		\$1 436:22 437:1 \$19 414:18 \$19,565,925 408:12		
		0		
		0234329 452:14		
		1		
		1 430:21 446:3 447:19 1-HC 451:24 452:3 10 441:24 443:17 446:21 10:52 444:8 100 447:22 102 447:24 103 418:13,20 419:6,7 103HC 448:3 104 418:13,20 419:6,7 448:4 105 418:17,21 419:6,7 448:6 106 448:8		

<p>209 451:19 21 447:19 210 451:20 211 451:22 212 451:23 213 452:3 214 452:5 22 396:7 397:9 22nd 399:5 2230 398:2 228 448:12 233 448:13 449:3 450:7 250 446:10,12,14 255 451:15 258 451:15 265 451:16 266 451:16 267 451:18,19 269 451:18,19 275 447:5,7,9 277 451:21,22 279 451:21,22 283 447:25 448:8 449:7 450:5,14 450:16,18,20 450:22,24 287 448:22,23 449:24 291 452:4 292 451:7,9,25 452:4 293 447:19</p> <hr/> <p style="text-align: center;">3</p> <p>3NP/3HC 446:7 3rd 404:7 300 447:19 301 397:20 302 453:6,8 308 447:14,16,18 312 397:4 326 447:23 448:10,13 449:22 334 452:14 336 451:1</p>	<p>360 398:8 367 452:16 376 452:9,11,13 452:16 378 447:10,12 38 436:21 380 452:6 388 404:7</p> <hr/> <p style="text-align: center;">4</p> <p>4 446:9 400 452:8 401 452:10 402 452:12 403 452:14 404 452:15 405 445:4 411 445:7 413 446:16,18 416 445:8 417 445:8 419 445:11 448:3 448:5,7 423 445:12,12 427 445:13 428 445:14 429 445:14,15 430 445:17 431 445:18 451:4 451:5 432 445:18 437 445:19 438 445:20 440 445:21 443 446:20,22,24 447:4 448:15 448:17,18,20 449:5,12,14,16 449:18,20 450:3,13 451:11,13 452:19,21,23 452:25 453:3 456 397:4</p> <hr/> <p style="text-align: center;">5</p> <p>5 446:11</p>	<p>500 442:15 443:21 452:19 501 442:16 443:21 452:20 502 442:16 443:21 452:22 503 442:17 443:21 452:24 504 442:17 443:21 453:2 514 397:9 573)415-8379 397:10 573)522-3304 397:22 573)616-1911 397:16 573)635-7166 397:5 573)751-3234 398:9 573)751-4857 398:3</p> <hr/> <p style="text-align: center;">6</p> <p>6 446:13 600 453:5 601HC 453:7 62 437:1 446:10 446:16,18,20 446:22,24 447:4,5,7,9,10 447:12,14,16 447:18,23 448:7,10,12,18 448:20,22,23 449:3,5,8,10,14 449:20,22,24 450:3,7,9,11,13 450:14,18,20 450:22,24 451:4,5,11,13 452:9,11,13,19 452:25 453:3,6 453:8 650 398:2 65101 397:10,15</p>	<p>65102 397:21 398:9 65102-0456 397:5 65102-2230 398:3</p> <hr/> <p style="text-align: center;">7</p> <p>7 412:25 413:3,5 432:8 446:15 7.12 422:17 7.42 422:17</p> <hr/> <p style="text-align: center;">8</p> <p>8 412:6,25 413:4 413:5 436:14 446:17 838 396:22</p> <hr/> <p style="text-align: center;">9</p> <p>9 412:6 441:24 443:17 446:19 451:16 9:00 399:3</p>
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