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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
July 28, 2014
Jefferson City, Missouri
Volume 2

Noranda Aluminum, Inc.,
et al.,

Complainants,

v. File No. EC-2014-0223

Union Electric Company,
d/b/a Ameren Missouri,

Respondent.

MORRIS L. WOODRUFF, Presiding,
CHIEF REGULATORY LAW JUDGE.

ROBERT S. KENNEY, Chairman
WILLIAM KENNEY,
DANIEL Y. HALL,
SCOTT T. RUPP,
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838
MIDWEST LITIGATION SERVICES

1 APPEARANCES:
2 DIANA VUYLSTEKE, Attorney at Law
CAROLE ILES, Attorney at Law
3 Bryan Cave, LLP
211 North Broadway, Suite 3600
4 St. Louis, MO 63102
(314)259-2543
5 brent.roam@bryancave.com
6 FOR: Noranda Aluminum, Inc.
7 EDWARD F. DOWNEY, Attorney at Law
Bryan Cave, LLP
8 221 Bolivar Street, Suite 101
Jefferson City, MO 65101-1575
9 (573)556-6622
efdowney@bryancave.com

10
FOR: MIEC.
11 Noranda Aluminum.

12 THOMAS BYRNE, Attorney at Law
WENDY K. TATRO, Attorney at Law
13 MATT TOMC, Attorney at Law
Ameren Missouri
14 1901 Chouteau Avenue
St. Louis, MO 63103
15 (314)554-2237
tbyrne@ameren.com

16
17 JAMES B. LOWERY, Attorney at Law
Smith Lewis, LLP
111 South 9th Street, Suite 200
18 P.O. Box 918
Columbia, MO 65205-0918
19 (573)443-3141
lowery@smithlewis.com

20
FOR: Union Electric Company, Doing
21 Business as Ameren Missouri.

22 JOHN COFFMAN, Attorney at Law
871 Tuxedo Boulevard
23 St. Louis, MO 63119
(573)424-6779

24
FOR: Consumers Council of Missouri.
25 AARP.

1 THOMAS R. SCHWARZ, Attorney at Law
Blitz, Bardgett & Deutsch
2 308 East High Street, Suite 301
Jefferson City, MO 65101-3237
3 (573)634-2500
tschwarz@bbdlc.com

4
FOR: The Missouri Retailers
5 Association.

6 CHRISTINA BAKER, Senior Public Counsel
DUSTIN ALLISON, Public Counsel
7 MARC POSTON, Senior Public Counsel
Office of the Public Counsel
8 P.O. Box 2230
200 Madison Street, Suite 650
9 Jefferson City, MO 65102-2230
(573)751-4857

10
FOR: Office of the Public Counsel
11 and the Public.

12 KEVIN A. THOMPSON, Chief Staff Counsel
ALEXANDER ANTAL, Legal Counsel
13 WHITNEY HAMPTON, Legal Counsel
AKAYLA JONES, Legal Counsel
14 JAMIE MYERS, Rule 13 Intern
Missouri Public Service Commission
15 P.O. Box 360
200 Madison Street
16 Jefferson City, MO 65102
(573)751-3234

17
FOR: Staff of the Missouri Public
18 Service Commission.

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

2 (WHEREUPON, the evidentiary hearing
3 began at 8:30 a.m.)

4 JUDGE WOODRUFF: Good morning,
5 everyone, and welcome to the hearing on Noranda's
6 complaint against Union Electric Company, doing
7 business as Ameren Missouri. It's File
8 No. EC-2014-0223.

9 We'll begin today by taking entries
10 of appearance, beginning with Complainants.

11 MR. DOWNEY: Good morning, Judge.
12 Edward Downey, Carole Iles, Diana Vuylsteke on
13 behalf of Complainants, 221 Bolivar Street,
14 Suite 101, Jefferson City, Missouri 65101.

15 JUDGE WOODRUFF: On behalf of Ameren
16 Missouri.

17 MR. BYRNE: Your Honor, Tom Byrne,
18 Wendy Tatro and Matt Tomc on behalf of Ameren
19 Missouri. Our address is 1901 Chouteau Avenue,
20 St. Louis, Missouri 63103.

21 MR. LOWERY: Also entering his
22 appearance on behalf of Ameren Missouri, James B.
23 Lowery, Smith Lewis, LLP, P.O. Box 918, Columbia,
24 Missouri 65205.

25 JUDGE WOODRUFF: Thank you. For

1 Staff.

2 MR. THOMPSON: Thank you, Judge.
3 Kevin Thompson, Alex Antal, Whitney Hampton, Akayla
4 Jones and Jamie Myers for the Staff of the Missouri
5 Public Service Commission, Post Office Box 360,
6 Jefferson City, Missouri 65102.

7 JUDGE WOODRUFF: Public Counsel?

8 MS. BAKER: Thank you. Christina
9 Baker, Dustin Allison and Marc Poston for the
10 Office of the Public Counsel, P.O. Box 2230,
11 Jefferson City, Missouri 65102.

12 JUDGE WOODRUFF: For the Missouri
13 Retailers Association.

14 MR. SCHWARZ: Judge, Tim Schwarz,
15 Blitz, Bardgett & Deutsch, 308 East High Street,
16 Suite 301, Jefferson City, Missouri, for Missouri
17 Retailers Association.

18 JUDGE WOODRUFF: Thank you.
19 Continental Cement is a party. Mark Comley
20 indicated that he wanted to be excused, and he was
21 excused.

22 AARP and Consumers Council.

23 MR. COFFMAN: Appearing on behalf of
24 AARP and the Consumers Council of Missouri, I'm
25 John B. Coffman, 871 Tuxedo Boulevard, St. Louis,

1 Missouri 63112 -- I'm sorry -- 63119.

2 JUDGE WOODRUFF: River Cement is also
3 a party. Lisa Langeneckert asked to be excused,
4 and she is excused. MIEC.

5 MR. DOWNEY: Good morning, Judge.
6 Edward Downey, Carole Iles, Diane Vuylsteke, Bryan
7 Cave, LLP, 221 Bolivar Street, Suite 101,
8 Jefferson City, Missouri 65101.

9 JUDGE WOODRUFF: Wal-Mart Stores is
10 also a party, and they've also been excused for
11 Rick Chamberlain.

12 Cities of Ballwin and O'Fallon are
13 parties. Leland Curtis asked to be excused, and he
14 has been excused.

15 I believe that is all the parties.
16 There were a couple motions filed over the weekend
17 that we need to take up at this point. We'll first
18 deal with Consumer Council's motion to declassify
19 that was filed at 11:30 p.m. last night.
20 Mr. Coffman, if you want to address that?

21 MR. COFFMAN: Yes. Your Honor, the
22 very essence of this case today is how much Ameren
23 Electric is overearning, and the information that
24 is the basis of the Complainants' case here has
25 been declassified to a point, and Ameren Missouri

1 has agreed to make certain information based on
2 surveillance monitoring reports up through the end
3 of calendar year 2013.

4 But we believe that more recent and
5 evidence that some may consider more relevant is
6 going to be discussed today through the first
7 quarter of 2014. This is still information that's
8 almost four months old and is historical
9 information.

10 But it's really going to frustrate
11 the public's ability to know what's going on in
12 this hearing and what the real nature of the case
13 is if that information is going to be shielded from
14 the public.

15 And so we would ask that this -- that
16 the Commission make clear that the surveillance
17 reports that are being discussed in this case from
18 2012 up through the information in the first
19 quarter of 2014 be declassified so that we don't
20 have to go into in-camera proceedings every time
21 that information is revealed.

22 My clients are frustrated that they
23 were not able to hear as much as they would like to
24 of the previous complaint case, listening through
25 the online streaming, and I believe that the public

1 interest weighs in favor of making as much of this
2 information public as possible, especially when in
3 this case it is the very core of what's at issue.

4 And so we're talking about just those
5 particular surveillance reports. It's my
6 understanding that counsel for Noranda is going to
7 be discussing the results of those overearnings in
8 their opening statement. If that information is
9 not declassified, the opening statement in this --
10 from the Complainants will not be public, or at
11 least most of it will not be, or the most pertinent
12 parts, and we believe that good cause exists.

13 The very original purpose of
14 establishing the surveillance monitoring reports in
15 rule were the -- were the possibility that they
16 would be used in this kind of a proceeding. So I
17 can certainly understand why certain pieces of
18 information over time may be justified as highly
19 confidential and proprietary. I understand those
20 procedures, and the procedures work really well.

21 But what my clients are interested in
22 primarily is the bottom line numbers that are in
23 those reports, the bottom number, the actual earned
24 return on equity for the periods that are being
25 discussed in this case, from 2012 through --

1 JUDGE WOODRUFF: I'll ask for
2 responses. Does Ameren have a response?

3 MR. BYRNE: Yes, your Honor. My
4 first response is I haven't read the motion that
5 was filed at 11:30-something last night. But I can
6 say that, you know, we -- first of all, I disagree
7 with Mr. Coffman's representation of what this case
8 is about. It's not about past period underearnings
9 or overearnings of Ameren Missouri. What this case
10 is about, the fundamental question in this case is,
11 should Ameren Missouri's rates be lowered on a
12 going-forward basis?

13 We have supported the Commission's
14 rule that requires HC treatment of these
15 surveillance reports in general because we think it
16 facilitates communication between utilities and the
17 Commission Staff and the Commission about what
18 their earnings are.

19 If every surveillance report is
20 public, then every surveillance report is going to
21 have to be filed with disclaimers and explanations
22 and everything else because it will be used by
23 people improperly, I believe, in the press and
24 other places.

25 So we think it's very important to

1 facilitate communication between the utilities and
2 the Commission that these reports in general be
3 maintained highly confidential.

4 We've agreed in this case, because
5 two of the reports are so central to the case, the
6 entire analysis of Mr. Meyer's direct testimony was
7 based on the September 30th, 2013 report, and then
8 the analysis of both the Staff and Mr. Meyer in
9 his surrebuttal testimony were based on the
10 December 31st, 2013 report.

11 Because those documents are so
12 central to a lot of -- and so much of the testimony
13 deals with them, we voluntarily agreed to allow
14 them to be public so as not to burden the record.
15 But the reports, the other reports that are
16 mentioned only incidentally in this case we believe
17 should remain highly confidential.

18 JUDGE WOODRUFF: Any further
19 response?

20 MS. BAKER: I would say that, for
21 Public Counsel, we support Consumers Council's
22 motion to have this information open. I mean, that
23 is the crux of this case is the fact that the
24 customers themselves are affected so very directly
25 by the information that's within this hearing, but

1 yet they are completely shut out from a portion of
2 it, and that's not just and reasonable.

3 And certainly because this
4 information is in the past, that information is not
5 as confidential as maybe a current surveillance
6 report would be, and so we don't see that much of a
7 harm to Ameren.

8 Plus, as we're going through the
9 hearing today and we're dealing with the all
10 material relevant factors that go into this case,
11 certainly a trend of what the earnings were for
12 Ameren over this amount of time is very pertinent,
13 and the consumers deserve to know.

14 JUDGE WOODRUFF: I'd like to hear
15 from the Complainants.

16 MR. DOWNEY: Yes, Judge.
17 Complainants support this motion. I was intending
18 to -- because I maybe want to take the easy way out
19 for the lawyer, I was intending to just have
20 wholesale parts of my opening statement and
21 testimony in the record in-camera simply because
22 it's hard to figure out when to go in and out of
23 public view in these cases.

24 Ameren's already consented to
25 declassify the September 2013 report. I see no

1 reason why it can't consent to declassify the prior
2 reports, the December 2013 report and the March
3 2014 report. Those are all going to be evidence in
4 this case.

5 JUDGE WOODRUFF: Let me go back to --
6 Mr. Schwarz.

7 MR. SCHWARZ: I don't have a
8 particular position on the motion, but I would like
9 to point out to the Commission that the State's
10 general policy favors openness. That is, with
11 respect to public records, Chapter 610 makes public
12 records open the rule rather than the exception.

13 Supreme Court operating rule, I think
14 it's No. 2, deals with how civil courts deal with
15 requests to close records and again favors open
16 records.

17 And I guess a third point I want to
18 make is, while Mr. Byrne is correct that the rates
19 to be set are forward-going, this Commission has
20 always based its rate-setting actions on historical
21 data as opposed to projected or future, if you can
22 have future data.

23 And I guess finally, given that
24 Ameren is a regulated utility, I don't know -- and
25 I make no real comment on it, but I suggest the

1 Commission consider the fact that Ameren regulated
2 operations aren't -- don't face marketplace
3 competition. The need for protecting market-
4 sensitive information I think is probably reduced
5 in the case of any regulated utility, including
6 Ameren.

7 JUDGE WOODRUFF: Go back to Ameren.
8 What is the harm to Ameren if this public --
9 information is made public?

10 MR. BYRNE: Your Honor, when we filed
11 these pleadings, there was a rule that we relied on
12 that said it would be protected as highly
13 confidential. We relied on that rule. If we had
14 known these were to be made public, we might have
15 filed something different. I mean, we would have
16 filed the same -- the same things that we're
17 required to file, but we might have provided some
18 explanation or some context.

19 But we didn't do any of that because
20 we knew we were protected by the rule that was
21 going to require this to be treated as highly
22 confidential. If the rule starts getting changed
23 after we've already made the filing, that seems
24 really unfair to me, and I guess it will suggest
25 that we've just got to assume every -- every filing

1 that we make in the future, someone's going to try
2 to make it public, and then we're going to have to
3 do whatever disclaimers we need to or try to put it
4 in context or try to disable it from being used
5 against us in every future filing.

6 And it doesn't seem like that's in
7 the interest of the Commission or the public or
8 free communication between utilities and the
9 Commission.

10 JUDGE WOODRUFF: Okay. In general, I
11 agree with your response. I'm certainly not in
12 favor of trying to change the rule at this point.
13 Obviously we can't change the rule at this point.
14 At this point, however, all the -- two of the
15 surveillance reports have already been made public,
16 and we're talking about the reports just after and
17 the ones earlier.

18 MR. BYRNE: That's correct.

19 JUDGE WOODRUFF: Balancing the
20 interests in this case -- and this applies only to
21 this case and not to any other case in the future
22 -- I'm going to go ahead and grant the motion just
23 so that we can easily talk about this information
24 without going back and forth between in-camera.

25 I don't see this information in this

1 case has any -- or excuse me -- the public release
2 of this information in this case has any harmful
3 effect on Ameren Missouri, and I'm going to go
4 ahead and grant the motion.

5 All right. Then we also have Office
6 of Public Counsel shortly after 5 p.m. on Friday
7 filed a motion in limine, which is extremely broad.
8 Ameren Missouri filed a response to that yesterday
9 evening. Anyone wish to be heard on those motions?
10 Christina.

11 MS. BAKER: I guess Public Counsel
12 would just reiterate what's in its motion. The
13 filing of the Case ER-2014-0258, the filing of
14 the -- the notice itself was one thing, but
15 actually filing the case itself with testimony
16 makes that filing very prejudicial in this
17 particular case because it's something that the
18 first thing that the Commission will hear is, of
19 course we're not overearning. Look, we filed the
20 case.

21 And this case is not completed. It
22 can be pulled at any moment. And so its real
23 evidentiary bearing on this particular case is
24 nothing, but the prejudicial bearing on it is huge.

25 JUDGE WOODRUFF: Anyone wish to be

1 heard? Mr. Coffman first.

2 MR. COFFMAN: I just want to note
3 that my clients join in this motion as well.
4 Ameren has had sufficient due process in this case
5 to provide its defense to the complaint, and they
6 have provided some information about what they
7 think might be in the future.

8 But there is a large amount of
9 information that was filed in the just-filed 0258
10 case that has not been subject to the same back and
11 forth due process and is just sitting out there in
12 an unrelated case. It's not consolidated in this
13 case.

14 And we think that the motion is
15 proper so that that -- some of that information
16 that's not been tested and not been reviewed not
17 somehow get bootstrapped into this case by
18 reference.

19 JUDGE WOODRUFF: Yes, sir.

20 MR. LOWERY: Your Honor, for Ameren
21 Missouri, I find ironic that the very parties who
22 advocate for the declassification of the
23 surveillance reports and certainly would contend
24 that those reports are relevant, those reports, of
25 course, are based on perfect numbers. They're not

1 based on a cost of service study. There's no
2 normalizations, no annualizations, none of the
3 things that you would do to determine -- to set
4 rates.

5 I find it ironic that they claim that
6 those are highly relevant and, in fact, had to be
7 declassified, but they claim that there is no
8 relevance whatsoever to a comprehensive cost of
9 service study about the company's current revenue
10 requirement, a proposition that I think is really
11 preposterous.

12 As we indicated in our response, this
13 argument goes to the weight of the evidence, of the
14 fact that the case exists, the fact that there is a
15 comprehensive cost of service study and what it
16 shows. This argument goes to the weight that
17 should be given to that evidence by the Commission,
18 which is up to the Commission, but it certainly
19 does not go to its admissibility.

20 The issue in this case is whether or
21 not continuation of the company's rates into the
22 future would be unjust and unreasonable because the
23 company's revenue requirement, in fact -- the
24 company's revenue requirement on which those rates
25 is set is, in fact, too high.

1 We have direct evidence -- admittedly
2 folks can challenge it, folks can cross-examine
3 witnesses, folks can argue the Commission shouldn't
4 give it much weight, but we have relevant evidence
5 that our witnesses are aware of that I'm sure form
6 the basis of some of their testimony. In fact, the
7 fact that this case was going to be filed was the
8 subject -- was discussed in Mr. Cassidy's
9 testimony, it was discussed in Mr. Weiss'
10 testimony, and it is relevant.

11 And the standard for admissibility
12 isn't whether it might be prejudicial. I'm sure
13 that OPC finds it to be prejudicial, just like we
14 might argue a surveillance report that shows we
15 earned more than our last authorized ROE, that's
16 arguably prejudicial to us, but that's not the
17 test, particularly for an expert administrative
18 body. The Commission's not a jury that needs to be
19 protected from some kind of evidence that they
20 wouldn't understand or that might be somehow
21 inflammatory.

22 So I think it's pretty clear that
23 this is a fight about the weight to be given to the
24 evidence, which we're all free to argue about, but
25 certainly the evidence is admissible. And I don't

1 even know what the evidence is going to be, but
2 certainly in the course of examination -- in fact,
3 I don't know whether the Commissioners are going to
4 ask witnesses about the current rate case filing or
5 not, but perhaps they are.

6 And effectively, as you indicated at
7 the very beginning of this discussion, this motion
8 is very broadly sought in a way that essentially
9 would muzzle the witnesses and muzzle the
10 Commission arguably from inquiring about or
11 testifying about something that certainly is
12 relevant.

13 JUDGE WOODRUFF: All right. Your
14 last statement I think is key here, in that at this
15 point we don't know what the evidence might be
16 that's going to be presented.

17 MS. ILES: Your Honor, could I --

18 JUDGE WOODRUFF: Yes.

19 MS. ILES: I just wanted to add that
20 the Complainants also support the motion, and we
21 would just point out that although there's a lot of
22 information in the record at this point that's been
23 submitted in the new rate case, we've yet to
24 receive the work papers. So we really don't have
25 the ability to --

1 JUDGE WOODRUFF: All right. I'm
2 ready to rule on this. I'm not going to hear any
3 more arguments on it. As I indicated, at this
4 point we don't know what the evidence is going to
5 be that's going to be presented, if anybody
6 mentions it. I think a motion in limine that
7 suggests that we can't even mention the fact that
8 the motion is -- or the rate case has been filed I
9 think is overbroad.

10 As particular evidence is offered,
11 Public Counsel and all the other parties, of
12 course, have an opportunity to object. The
13 Commission will make a ruling on those particulars
14 at that time. But at this point the motion in
15 limine is denied.

16 MR. LOWERY: Your Honor, if it please
17 the Commission, I'd just like to state for the
18 record that we disagree that MIEC does not have
19 access to -- or Noranda does not have access to the
20 work papers. In fact, we believe they've had
21 access for some time.

22 That's an issue I guess we'll have to
23 take offline, but I can't let that sit on the
24 record, that allegation that they don't have access
25 to our work papers in the rate case.

1 JUDGE WOODRUFF: Okay. I think that
2 takes care of all the motions that were filed over
3 the weekend. Let's go ahead and premark -- we've
4 got one more matter from Staff.

5 MS. HAMPTON: I was informed last
6 week that Staff witness Sean Lange will be
7 unavailable until Thursday morning. I don't know
8 if any party will have questions for him.

9 JUDGE WOODRUFF: Do the parties know
10 at this point whether they'll have questions for
11 Mr. Lange?

12 MR. DOWNEY: I will not.
13 Complainants will not.

14 JUDGE WOODRUFF: You don't have to
15 tell me now, but sometime before the end of all the
16 other testimony we can deal with that question.

17 MR. DOWNEY: Judge, what I was going
18 to say is, you know, assuming -- you know, I've got
19 my finger on the pulse here. I'll be surprised if
20 this hearing takes more than two days.

21 JUDGE WOODRUFF: That was certainly
22 my feeling on it as well. So keep that in mind.
23 If we need to, we can come back on Thursday and do
24 just Mr. Lange.

25 MR. BYRNE: We do agree also that

1 it's two, three days tops on this hearing.

2 JUDGE WOODRUFF: All right.

3 MR. DOWNEY: If we go 'til
4 ten o'clock every night.

5 (Laughter.)

6 JUDGE WOODRUFF: I will make a
7 promise, based on what the court reporter told me,
8 we will not go tonight.

9 MR. LOWERY: Your Honor, I was
10 operating, unfortunately, on incorrect information.
11 I was told last night that the work papers had been
12 made available, but I'm told this morning just a
13 minute ago that they hadn't been. We thought we
14 had made them available. Apparently through
15 administrative error that didn't happen. So I just
16 want to correct the record.

17 JUDGE WOODRUFF: That was based on
18 your last -- on the last motion?

19 MR. LOWERY: That's correct.

20 JUDGE WOODRUFF: We'll deal with
21 Mr. Lange as we go along then.

22 MS. HAMPTON: Thank you.

23 JUDGE WOODRUFF: Any other matters
24 that we need to bring up before we -- we'll go
25 ahead and go off the record and mark exhibits here

1 before we take a break. We're off the record.

2 (AN OFF-THE-RECORD DISCUSSION WAS
3 HELD.)

4 (EXHIBIT NOS. 1 THROUGH 13 WERE
5 MARKED FOR IDENTIFICATION BY THE REPORTER.)

6 JUDGE WOODRUFF: We're break from our
7 break, and we're ready to begin with opening
8 statements, and for that we begin with
9 Complainants.

10 MR. DOWNEY: Good morning, Judge,
11 Mr. Chairman, Commissioner Hall.

12 I'm an old dog, and this is kind of a
13 new trick for me, trying to use the PowerPoint. So
14 we'll see how this works. Up on the screen, I've
15 reduced my opening statement to a PowerPoint
16 presentation. And just by way of background,
17 there's some things I'd like the Commission to
18 consider.

19 Section 393.130.1 requires just and
20 reasonable rates. Section 386.390.1 allows
21 ratepayers to file complaints over any charges.
22 Ameren Missouri has a fuel adjustment surcharge, a
23 fuel adjustment clause, an FAC. And as the
24 Commission knows, an FAC really is a game changer
25 in that it shifts much of the risk of the fuel

1 price increases from Ameren Missouri's shareholders
2 to Ameren Missouri's ratepayers.

3 As a condition for having an FAC,
4 this Commission has wisely required an electric
5 utility to file something called a surveillance
6 monitoring report. We're going to talk a lot about
7 those. Those reports contain a lot of useful
8 information. One piece of information is the
9 utility's, quote, actual earned return on equity,
10 ROE.

11 Ameren Missouri submitted on a
12 quarterly basis surveillance monitoring reports
13 since it obtained its FAC. Each monitoring report
14 was for a 12-month period ending in the month of
15 the report. So, for instance, the September 2013
16 report, which was prominently discussed by
17 Mr. Meyer in his direct, was for the 12-month
18 period ending September 30, 2013.

19 Significantly, each monitoring report
20 submitted the last two years by Ameren Missouri
21 shows an actual return on equity that was above the
22 Commission-authorized ROE. Each 1/10 of 1 percent
23 that the actual ROE exceeds the authorized ROE
24 means millions of dollars per year in higher rates
25 for ratepayers.

1 The Commission has given weight to
2 such reports. For instance, in Ameren Missouri's
3 last rate case, this Commission considered Ameren
4 Missouri's overearnings in a monitoring report as
5 one basis to deny what was designated plant in
6 service accounting. Those reports show that Ameren
7 Missouri has been overearning and continues to
8 overearn.

9 This is a slide we prepared. The
10 evidence will support this slide. You'll see
11 starting with the June 2012 report, Ameren's
12 authorized return on equity was 10.2 percent. It
13 actually earned 10.53 percent. In dollars per
14 year, that means \$18.64 million. So that's how
15 much extra ratepayers paid for that 12-month period
16 ending June 2012.

17 You'll see differing amounts of
18 exceedance of the authorized return on equity. The
19 high was March of 2013. The authorized return was
20 9.8 percent; the actual return on equity
21 12.28 percent. In dollars that meant for that
22 12-month period Ameren -- we're going to call this
23 overearned. Somebody might disagree, but I'm going
24 to say Ameren overearned by \$138.22 million.

25 You'll notice for each of these eight

1 reports Ameren Missouri has earned more than its
2 authorized return on equity. And if you average
3 the last column, you'll find that the average is
4 about \$50 million over a 12-month period.

5 This is a graph displaying the same
6 type of information on the last slide.

7 The next slide is actually a
8 calculation. I'm not sure how easy it is for you
9 to see that, but this is the backup to support the
10 previous column that -- or the previous slide that
11 had the dollars per 12-month period that the actual
12 ROE exceeded the authorized return on equity.

13 And then this slide shows, again, a
14 graph, a graph depicting the amount of the
15 overearnings. And you can see for that graph,
16 every point is above zero, meaning for the last
17 eight surveillance monitoring reports, Ameren
18 overearned, and pretty significantly overearned in
19 the first surveillance report submitted after the
20 decision came down in the last rate case. That was
21 the March 2013 report.

22 So one of the questions in this case
23 is, has Ameren Missouri overearned? I think the
24 answer to that question, according to the reports
25 that this Commission requires Ameren Missouri to

1 submit and Ameren Missouri has, in fact, prepared
2 and submitted, the answer to that question is yes.
3 According to the testimony of Mr. Meyer and
4 Mr. Gorman, the answer to that question again is
5 yes.

6 In addition, Ameren Missouri prepares
7 monthly reports like the surveillance reports that
8 it submits on a quarterly basis, but it does not
9 file them. Each of those reports since 2012 has
10 shown that Ameren Missouri was overearning; that
11 is, earning more than its authorized return on
12 equity.

13 In fairness, all parties agree that
14 simply because Ameren Missouri overearned does not
15 automatically mean that its rates are too high.
16 Mr. Meyer recognized this in his direct testimony
17 and his surrebuttal testimony. That is why
18 Mr. Meyer adjusted, annualized and normalized those
19 components that make up the ROE on those
20 surveillance monitoring reports.

21 For instance, the weather in a
22 reporting period should be normalized. Obviously
23 if we have hotter than normal weather, you would
24 expect Ameren to sell more product and its return
25 would be higher. Cooler than normal weather

1 certainly in the summer, you would expect its
2 revenues to be lower.

3 One of the questions is, well, why
4 didn't Mr. Meyer normalize weather in his direct
5 testimony? And the answer to that question is, the
6 surveillance monitoring report upon which he
7 relied, the September 2013 report, showed milder
8 than normal weather, and we later learned that was
9 a mistake on Ameren Missouri's reporting. So in
10 Mr. Meyer's surrebuttal testimony, he normalized
11 the weather. Actually, he used the weather
12 normalization figures that Staff prepared.

13 In Mr. Meyer's direct he made
14 14 adjustments to the actual reported ROE to
15 annualize and normalize the return on equity from
16 the September 2013 report. In his surrebuttal he
17 made 12 adjustments to the actual reported ROE to
18 annualize and normalize the ROE from the then more
19 recent December of 2013 report.

20 His surrebuttal testimony concludes
21 that Ameren Missouri's rates on an annualized and
22 normalized basis will continue to cause it to
23 overearn by a total of approximately \$49 million
24 per year. And again, that's over the 9.4 percent
25 return on equity that we offer through the

1 testimony of Mike Gorman.

2 That calculation -- well, without
3 that return on equity adjustment, Meyer concludes
4 that Ameren Missouri is overearning by
5 \$26.35 million annually over its currently
6 authorized 9.8 percent return on equity.

7 The following parties all support a
8 rate reduction for Ameren Missouri based upon the
9 prefiled testimony of Meyer and Gorman: The MIEC,
10 AARP, Consumers Council of Missouri, Missouri
11 Retailers Association and the Office of Public
12 Counsel.

13 Predictably, Ameren Missouri states
14 that it is not overearning, has not overearned and,
15 in any event, that the Complainants did not include
16 enough relevant factors to justify a change in
17 Ameren Missouri's rates.

18 The Staff takes the position that
19 more relevant factors must be considered and that
20 the overearnings are not material enough and not
21 shown to be continuing to justify a rate reduction.

22 So there's going to be a number of
23 questions presented in this case. One of the
24 questions I would submit is, what is the point of
25 requiring a surveillance monitoring report as a

1 condition of a fuel adjustment clause if when those
2 reports evidence overearning, the Commission does
3 nothing about it?

4 The other question is, what is the
5 point of a statute allowing ratepayers to challenge
6 a rate or charge as unreasonable if only the
7 company or the Commission's own Staff have the
8 resources needed to make the type of comprehensive
9 and compelling demonstration of overearning that
10 the Staff and Ameren Missouri argue is required in
11 this case?

12 Some of the ultimate questions, is
13 Ameren Missouri currently overearning? Is Ameren
14 Missouri overearning at its current authorized
15 9.8 percent return on equity? Should its
16 authorized return of equity be 9.4 percent or any
17 return on equity lower than 9.8 percent? Is Ameren
18 Missouri overearning at a 9.4 percent return on
19 equity? Ultimately the question is, should Ameren
20 Missouri's rates be lowered and by how much?

21 What's the evidence? Mike Gorman is
22 a highly respected witness on proper ROE rates, as
23 this Commission has recognized in prior decisions.
24 His opinion is that the appropriate rate should be
25 9.4 percent. Staff does not offer any proposed

1 return on equity, nor does any other party besides
2 Ameren Missouri.

3 In Ameren Missouri's last three rate
4 cases, Staff witness Murray offered proposed
5 returns on equity, and in each of those cases his
6 proposal was materially lower than the proposal of
7 Mike Gorman.

8 As I indicated, Ameren Missouri does
9 offer a return on equity in this case, and it
10 offers Mr. Hevert's opinion. And I apologize if I
11 mispronounced his name. His opinion is that the
12 return on equity should be between 10.2 percent and
13 10.6 percent.

14 This Commission should accept
15 Gorman's 9.4 percent return on equity as his is the
16 more reasonable calculation, particularly since
17 Mr. Hevert has lowered his recommended ROE since
18 Ameren Missouri's last rate case. So even
19 Mr. Hevert recognizes that the ROE now should be
20 lower than it was when the Commission last set
21 Ameren's ROE.

22 Mr. Meyer, I would submit, is also a
23 highly respected witness on rate case accounting,
24 having served for almost 30 years as a Staff
25 accountant. He offered the relevant factors that

1 this Commission should consider to decide whether
2 Ameren Missouri's rates is too high.

3 As I also indicated, he made
4 12 annualizations and normalizations in order to
5 reconcile Ameren Missouri's rate to its actual
6 return on equity. He determined, based upon the
7 actual ROE for 2013, that is December -- the year
8 ending December 2013, that Ameren Missouri's rates
9 are \$26.35 million too high, and that's with an ROE
10 of 9.8 percent, and almost \$50 million too high
11 with an ROE of 9.4 percent.

12 Staff notes that Complainants did not
13 perform a full audit and, therefore, concludes that
14 all relevant factors have not been considered. But
15 Meyer identified the relevant factors, the actual
16 ROE, the reasonable adjustments and normalizations
17 to tie that ROE to Ameren Missouri's rates.

18 When Staff witness Cassidy, who's
19 also an accountant, performs a similar analysis, he
20 concludes that Ameren Missouri's actual return for
21 2013 was \$39.1 million above its 9.8 percent
22 authorized return.

23 Cassidy notes that the new rates,
24 however, must reflect an amortization for deferred
25 solar rebates that Ameren Missouri says that it,

1 quote, may fully pay, close quotes, by the end of
2 August.

3 Cassidy concludes that amortization
4 would, quote, almost totally offset Staff's \$39.1
5 million approximation of earnings in excess of the
6 authorized ROE during calendar year 2013, close
7 quotes. As of March 31, 2014, those solar rebates
8 would only reduce the \$39.1 million in excess
9 earnings by 13.8 million, if the Commission allows
10 that amortization.

11 In short, Staff opposes a reduction
12 in rates based upon what Ameren Missouri says it
13 will spend, and this is consistent with the
14 position Ameren Missouri takes in this case.

15 Through the testimony of Lynn Barnes,
16 Ameren Missouri argues that it plans to add
17 substantial plant, and its anticipated expenditures
18 are the basis for claiming that it will not be
19 overearning in the future.

20 But the facts as evidenced by
21 Ameren's own surveillance report show that as of
22 March 31, 2014, it had a lower rate base than it
23 had on July 31, 2012, and that's the date for the
24 rate base determination upon which its current
25 rates were set. So its rate base has actually

1 dropped in spite of these expenditures.

2 Ameren Missouri also presents the
3 testimony of Gary Weiss. He notes that Meyer did
4 not do as detailed an audit as Ameren Missouri and
5 Staff normally do, and thus assumes that the
6 factors Meyer considered did not include all of the
7 relevant factors. He then criticized particular
8 adjustments of Meyer.

9 Mr. Weiss was careful, as were all
10 Ameren Missouri witnesses, not to offer to this
11 Commission his own reconciliation for Ameren
12 Missouri's reported actual return on equity for
13 2013 or for any other period.

14 Ameren Missouri's position in this
15 case is not so much that it did not overearn and is
16 not overearning, but rather with its planned future
17 expenditures, it will at some point before the end
18 of the year no longer be overearning.

19 So what's the relief requested?
20 Complainants seek an order reducing Ameren
21 Missouri's rates by \$49.464 million per year until
22 this Commission resets Ameren Missouri's rates
23 again. That order is consistent with the testimony
24 of Meyer and Gorman and would reflect a fair return
25 on equity of 9.4 percent and would allow Ameren

1 Missouri a reasonable opportunity to return that
2 return on equity.

3 I have nothing further, unless you
4 have questions.

5 JUDGE WOODRUFF: Any questions?

6 CHAIRMAN KENNEY: Just a couple.

7 Thanks, Mr. Downey.

8 So just to perhaps put Noranda's
9 position in my own words to make sure I'm clear,
10 all relevant factors, that analysis doesn't require
11 a full-blown rate case; is that correct?

12 MR. DOWNEY: Yes. Yes. And our
13 position is that all of the relevant factors have
14 been offered in this case.

15 CHAIRMAN KENNEY: The key word being
16 relevant --

17 MR. DOWNEY: Yes.

18 CHAIRMAN KENNEY: -- to this
19 overearnings complaint, correct?

20 MR. DOWNEY: Correct.

21 CHAIRMAN KENNEY: Why wouldn't the
22 testimony and the evidence that Ameren proffers
23 that with future expenditures it won't be
24 overearning, why is that not a relevant factor to
25 be considered?

1 MR. DOWNEY: I'm not suggesting that
2 it isn't a relevant factor. I don't think it --
3 let me back up.

4 I don't think this Commission
5 historically considers things like that to be
6 relevant factors. That's why the Commission
7 focuses on test years and past expenses. And, in
8 fact, I think if you look at the history of this
9 Commission, particularly in the '80s, you will find
10 utilities that right after they receive a rate
11 increase, they turn around and file another rate
12 case within weeks.

13 And the reason they do that is
14 because the Commission does not historically
15 consider future expenditures because they're not
16 known and measurable. I think that answers your
17 question. I'm not sure.

18 CHAIRMAN KENNEY: You made a
19 statement in your slide or the earlier PowerPoint
20 that each tenth of 1 percent amounts to millions of
21 dollars, and I think that was reflected in that
22 first slide. Do you have the -- can you provide us
23 a copy of that slide?

24 MR. DOWNEY: Yes, Mr. Chairman. I'm
25 trying to pull this slide up.

1 CHAIRMAN KENNEY: I have a hard time
2 seeing at this angle.

3 MR. DOWNEY: Okay. I will be
4 offering that as an exhibit.

5 CHAIRMAN KENNEY: Who's going to
6 testify about that, Mr. Meyer or Mr. Gorman?

7 MR. DOWNEY: If you ask questions of
8 Mr. Meyer, then he can testify about it.
9 Otherwise, I'll be asking other witnesses.

10 CHAIRMAN KENNEY: All right.

11 MR. DOWNEY: And I think,
12 Mr. Chairman, if you look at this spreadsheet which
13 unfortunately I guess you cannot see, that's where
14 the calculation is. And I'll be offering a copy of
15 that spreadsheet as well as an exhibit.

16 CHAIRMAN KENNEY: Let me just ask --
17 well, actually, that's it. That's all I have.
18 Thanks for your opening.

19 COMMISSIONER W. KENNEY: No
20 questions.

21 JUDGE WOODRUFF: Commissioner Hall?

22 COMMISSIONER HALL: Yeah. Good
23 morning.

24 MR. DOWNEY: Good morning.

25 COMMISSIONER HALL: In your

1 complaint, and you repeated it in your opening,
2 you're asking that this Commission revise Ameren's
3 rates so that they are just and reasonable, and you
4 and your client contend that that is a \$50 million
5 decrease in Ameren's rates.

6 What -- in this case, do you propose
7 any rate design revision?

8 MR. DOWNEY: No, we didn't. We
9 assumed it would be, as is typically done in rate
10 cases, an across-the-board decrease.

11 COMMISSIONER HALL: And what would
12 that across-the-board decrease do for Noranda's
13 rates?

14 MR. DOWNEY: It will obviously help.
15 Noranda's the largest customer, and it buys
16 10 percent of the power. So we would be talking
17 about millions of dollars of benefit to Noranda.

18 COMMISSIONER HALL: But you don't
19 know the exact number that that would --

20 MR. DOWNEY: I would say it -- well,
21 10 percent of \$50 million is 5 million. So I would
22 say it would be at least a couple of million. I
23 mean, as the Commission knows, Ameren's -- I mean
24 Noranda's rate, because the cost of service for
25 Noranda is lower, its rate is lower. So I can't

1 say that 10 percent of the 50 million would be the
2 benefit to Noranda. I think it would be less than
3 that.

4 COMMISSIONER HALL: What do you
5 believe is the standard which the Commission should
6 employ in determining your overearnings complaint,
7 what legal standard?

8 MR. DOWNEY: What legal standard? I
9 guess the question is whether there's competent and
10 substantial evidence in the record to support the
11 relief we're requesting, and I submit that there is
12 through the testimony of Gorman and Meyer.
13 Obviously there's evidence in the record for a
14 contrary finding.

15 COMMISSIONER HALL: Let me phrase it
16 this way. Staff has filed rebuttal testimony that
17 says that a utility's rate level should be subject
18 to an earnings investigation when there is evidence
19 that the utility's current rates are producing an
20 earnings level that materially exceeds its
21 authorized rate of return on equity, and that the
22 excessive earnings level is expected to be ongoing
23 in nature. Essentially a two-prong test,
24 materiality and ongoing nature. Do you agree with
25 that analysis?

1 MR. DOWNEY: No. No, I do not. I
2 certainly do not with the way the Staff has defined
3 materiality. What the Staff has said is --

4 COMMISSIONER HALL: Putting that
5 aside for a second, putting aside the definition of
6 materiality because that's something I wanted to
7 ask you about as well, but just do you believe that
8 it has to be material, that materially exceeds its
9 authorized ROE?

10 MR. DOWNEY: No, I don't. I think if
11 Ameren came in, Ameren Missouri came in and said we
12 want a \$4 million rate increase and they supported
13 it with testimony, I think the Commission would
14 have to grant Ameren that relief.

15 The same would be true here. I think
16 if we present testimony that supports a \$50 million
17 reduction in rates, first of all, I think that's
18 over 1 percent, but even if it's not, I would say,
19 if the evidence supports it, the Commission should
20 grant that relief.

21 COMMISSIONER HALL: Okay. So you
22 don't agree that materiality is required. How
23 about that the excessive earnings level be ongoing
24 in nature, do you believe that's required?

25 MR. DOWNEY: Typically in rate cases,

1 you typically look at known and measurable and you
2 make a determination from known and measurable what
3 the rate is going to be. And so -- and there will
4 be a true-up period, but that will be a historic
5 true-up period.

6 What Ameren Missouri is arguing and
7 what the Staff has apparently bought is, in the
8 future we plan to spend all this money, trust us
9 that our revenue requirement will be higher, and so
10 today you deny ratepayers the rate relief they're
11 entitled to. So we do not agree with that.

12 I would also say, as for the
13 materiality, I think this is material, even under
14 the Staff standard.

15 COMMISSIONER HALL: But that's not
16 required?

17 MR. DOWNEY: It's not required, and
18 even if it were required, I think this is material.

19 COMMISSIONER HALL: What do you
20 attribute Ameren's overearnings to? What external
21 factors do you believe either -- well, resulted in
22 their overearnings?

23 MR. DOWNEY: We've had this --

24 COMMISSIONER HALL: Or will you have
25 someone who can testify to that?

1 MR. DOWNEY: Yes, there will be
2 someone that can testify, and I encourage you to
3 ask him questions. That would be Mr. Meyer.

4 It's my understanding that part of
5 the reason is that the rate base has dropped by
6 \$180 million between the last rate case and the
7 last surveillance monitoring report, which was
8 March of 2014. It also may have something to do
9 with what I'll characterize as single-issue
10 ratemaking mechanisms, like the fuel adjustment
11 surcharge, like some of the other expenditures that
12 Ameren has tracked. But I don't know.

13 I mean, as you know, we argue
14 constantly against trackers, and we argued against
15 the fuel adjustment surcharge. Our concern in
16 every case is that if you just track expenses that
17 we know are going up, you're not tracking expenses
18 that are going down, you put utilities in an
19 overearning situation. Is that what happened here?
20 I don't know.

21 COMMISSIONER HALL: All right. Thank
22 you. I have no further questions.

23 JUDGE WOODRUFF: Thank you.
24 Mr. Downey, did MIEC have a separate opening?

25 MR. DOWNEY: No. And, Judge, we'll

1 probably -- the MIEC will probably not be
2 participating much in this proceeding.

3 JUDGE WOODRUFF: Okay. Thank you.
4 Public Counsel?

5 MS. BAKER: Good morning. May it
6 please the Commission?

7 This proceeding was commenced by the
8 excessive earnings complaint submitted by Noranda
9 Aluminum and 37 individual customers of Ameren
10 Missouri. Public Counsel supports the right to
11 bring meaningful overearnings complaints before the
12 Commission and acknowledges the Commission's
13 jurisdiction to decide these complaints based on
14 the case the Complainants bring before it.

15 In this complaint the question before
16 the Commission is, can and should the Commission
17 order a reduction in Ameren Missouri's rates, as
18 proposed by the complainants, to apply to service
19 rendered after the conclusion of this case?

20 In State ex rel Capital City Water
21 Company v PSC, the court is very clear that the
22 Commission's principal purpose is to serve and
23 protect the ratepayers. Rates must be just and
24 reasonable and provide the utility no more than the
25 cost of service plus an opportunity to earn a

1 profit up to but not exceeding the approved return
2 on equity, or ROE.

3 If the Commission makes a finding of
4 overearnings, then yes, the Commission can and
5 should order a reduction in rates on a going-
6 forward basis.

7 The evidence will show that the
8 testimony of Noranda witnesses, Mr. Greg Meyer and
9 Mr. Michael Gorman, supports a finding by the
10 Commission that Ameren Missouri is overearning.
11 Based on this, Noranda asked the Commission to
12 lower rates for customers accordingly.

13 The testimony of Staff witness,
14 Mr. John Cassidy, also supports a finding by the
15 Commission that Ameren Missouri is overearning.
16 Curiously, Staff still recommends against the
17 Commission lowering the rates for the customers as
18 a result.

19 The evidence will show that the
20 difference between the position of the -- of
21 Noranda -- of the position that Noranda takes on
22 the calculations of Mr. Meyer and the position that
23 Staff takes, despite the calculations of
24 Mr. Cassidy, comes down to a differing application
25 of the all relevant factors test that is used in

1 complaints such as this.

2 Under State ex rel Utility Consumers
3 Council of Missouri v Public Service Commission,
4 the Supreme Court has stated that the appropriate
5 level of rates must be determined based upon a
6 consideration of all relevant factors.

7 The evidence will show that
8 Mr. Meyer's calculations are based on Ameren
9 Missouri's own surveillance reports. As Mr. Meyer
10 notes, while surveillance data may not be the sole
11 basis for reducing rates, surveillance data is very
12 useful in determining the earnings of the utility
13 for a specified period of time, and those earnings
14 should be considered when analyzing other aspects
15 of the utility's costs.

16 Noranda witness Greg Meyer shows that
17 Ameren Missouri reported a 10.34 percent ROE in its
18 own surveillance report for the 12 months ending
19 December 31st, 2013. This 10.34 ROE represents an
20 approximate overearnings level of 31 million above
21 the Commission-authorized ROE of 9.8 during that
22 time frame.

23 Based on all material relevant
24 factors, including a 9.4 current market reasonable
25 ROE as calculated by Mr. Gorman, Mr. Meyer

1 calculates that Ameren Missouri overearned by
2 approximately 49.5 million in calendar year 2013.

3 Staff witness John Cassidy also bases
4 his testimony on Ameren Missouri's surveillance
5 reports and other material relevant factors.

6 Mr. Cassidy calculates that Ameren Missouri has
7 overearned by approximately 25.3 million in
8 calendar year 2013 even when making the
9 calculations at Ameren Missouri's current
10 Commission-authorized ROE of 9.8 percent.

11 If Staff's calculations were made at
12 the 9.4 ROE, which is supported by Mr. Gorman, it
13 is expected that the total amount of overearnings
14 would be quite similar to that calculated by
15 Mr. Meyer.

16 Still, Staff recommends against a
17 reduction in rates for the customers. Staff's
18 position is that even though its calculations show
19 a significant overearnings, the complaint fails to
20 consider all relevant factors in its revenue
21 requirement analysis.

22 To Staff, all relevant factors means
23 that the reasonableness of rates must be evaluated
24 in a complaint case the same way they're evaluated
25 in a general rate case. If no rate-case-type audit

1 and evaluation is done, then, according to Staff,
2 the all relevant factors test cannot be met.

3 According to Mr. Cassidy, in Staff's
4 opinion, three steps must be taken before a
5 complaint should even be filed. First, an
6 abbreviated high-level analysis of the utility's
7 actual reported earnings must be performed.

8 Second, if the results warrant
9 further investigation, a more detailed phase of
10 inquiry must be undertaken.

11 Third, and most importantly, if the
12 second phase points to significant overearnings, an
13 approximately five-month-long onsite full earnings
14 investigation audit must be performed and
15 apparently performed by Staff.

16 According to Staff, only if the
17 onsite audit showed substantial overearnings and
18 the near term outlook suggested no change in that
19 circumstance, then and only then should a complaint
20 be filed against a utility.

21 According to Mr. Cassidy, since the
22 third phase of an onsite full earnings
23 investigation audit was not performed in this case,
24 there is no support for the relief requested by the
25 Complainants.

1 And Public Counsel would state that
2 while this three-phase process before even getting
3 to a complaint may be the policy of Staff, it is
4 not a workable process for other complainants
5 seeking a meaningful opportunity to question the
6 earnings of the utility.

7 Other than the first phase, all
8 subsequent phases assume that the complainant will
9 have access to internal and confidential documents
10 held by the utility and that the utility will
11 welcome the potential complainant with open arms so
12 that a full onsite audit can be performed.

13 Much has and will be made of the fact
14 that the original calculations of Mr. Meyer
15 contained estimations that were made later changed
16 in his surrebuttal. However, this highlights the
17 problem that customers face when personally taking
18 on a utility, the problem of access to information.

19 The effect of Staff's position is
20 that a meaningful complaint can only be brought by
21 Staff, or possibly Public Counsel if Staff agrees
22 with Public Counsel's findings. That is not just
23 and reasonable. Staff and Public Counsel enjoy a
24 more expansive right of discovery, of confidential
25 information held by a utility like Ameren Missouri

1 than does a customer such as Noranda.

2 No utility like Ameren Missouri will
3 voluntarily provide the information Staff says is
4 required before determining if a complaint is
5 warranted. An individual complainant would
6 therefore be stymied at the very first phase of
7 Staff's process.

8 If an audit is necessary before
9 filing a complaint, then no meaningful right to
10 complaint for an individual customer like Noranda
11 can exist in the Commission's rules and in the
12 statutes.

13 Additionally, under Staff's
14 requirement that all reasonable factors must be
15 evaluated in a complaint case the same way that
16 they are evaluated in a general rate case would
17 necessitate a six-month or longer process just for
18 the earnings review audit.

19 To come to a full resolution of the
20 complaint would add several months to that time
21 frame. Therefore, according to Staff's
22 complaint -- therefore, according to Staff, a
23 complaint must follow the same 11-month time frame
24 of a general rate case. If the time frame is
25 shorter, as in this complaint, Staff, as it did in

1 this complaint, will not support a finding of
2 overearnings.

3 While requiring 11 months to properly
4 process a complaint may work for Staff, it is most
5 certainly detrimental to the customers. Staff is
6 not a customer of the utility, so paying more than
7 is necessary through rates does not actually affect
8 Staff's bottom line or its employees' well-being.
9 So there is no detriment to Staff to demand that a
10 full rate case be taken on to right the wrong of
11 overearning.

12 That is not the case with an
13 individual customer like Noranda. Customers are
14 personally affected by the overearning that has
15 been calculated by both Noranda and Staff. Every
16 month of paying more than just and reasonable rates
17 is detrimental.

18 Being required to pay more than is
19 just and reasonable while an 11-month Commission
20 process goes on could easily be devastating. If
21 the complaint process itself is detrimental and
22 potentially devastating to the complainant, then
23 there is no meaningful right to complaint.

24 As I stated earlier, the evidence
25 will show that the difference between the position

1 Noranda takes based on the calculations of
2 Mr. Meyer and the position that Staff takes based
3 on the calculations of Mr. Cassidy comes down to a
4 differing application of the all relevant factors
5 test that is used in complaints such as this.

6 It is not just and reasonable to
7 expect that a complaint made by an individual
8 customer have exactly the same requirements as what
9 Staff would like it to have. Due process requires
10 there be a reasonable process for an individual
11 customer like Noranda to meet its burden to prove
12 overearnings beyond a full rate-case-type process.

13 As AARP and Consumer Council of
14 Missouri state in their joint position statement,
15 consumers deserve to have timely reduction in rates
16 implemented based upon the record in this case
17 which contains all relevant factors necessary to
18 establish new rates pursuant to Chapters 386 and
19 393 of the Missouri statutes, of the Revised
20 Statutes of Missouri.

21 Missouri law contains no requirement
22 regarding the number of issues that the Commission
23 must review in order for the all relevant factors
24 test to be met. No matter what, the amount of
25 evidence required by the Commission for the

1 complainant to meet its burden must support a
2 meaningful right to complaint. It cannot be so
3 burdensome that the right to complaint is denied.

4 Therefore, lack of access to
5 confidential data and the detrimental effect of an
6 11-month process are reasonable factors to take
7 into account and cannot automatically cause the
8 complaint to fail.

9 In this case, the evidence will show
10 that the application of all relevant material
11 factors as used by both Noranda and Staff in their
12 calculations is just and reasonable for the
13 Commission to make a determination of overearnings.

14 Once the right to discovery allowed
15 access to documents Ameren Missouri would never
16 have provided to Noranda or any other individual
17 customer, both parties applied and took what they
18 believed to be the relevant material factors into
19 account without the requirement of a full 11-month
20 rate-case-type proceeding.

21 The evidence will show that based on
22 all material relevant factors, including a
23 9.4 current market reasonable ROE as calculated by
24 Mr. Gorman, Mr. Meyer calculates for Noranda that
25 Ameren Missouri overearned by approximately

1 \$49.5 million in calendar year 2013.

2 The evidence will also show that
3 based on that very same all material relevant
4 factors, Staff witness Mr. Cassidy calculates that
5 Ameren Missouri overearned by approximately
6 25.3 million in the calendar year 2013 even when
7 making those calculations based on the current ROE
8 of 9.8.

9 If Mr. Cassidy's calculations were
10 made at the 9.4 ROE supported by Mr. Gorman, those
11 total earnings calculated by Staff would be the
12 same as that calculated by Mr. Meyer.

13 As a result, the evidence will show
14 that Complainant has met its burden to prove with
15 clear and convincing evidence of overearnings using
16 the all material relevant factors test. The
17 evidence is supported by the calculations of Staff.

18 Therefore, the Commission can and
19 should make a finding of overearning and order a
20 reduction of rates to apply to service rendered
21 after the conclusion of this case. Thank you.

22 JUDGE WOODRUFF: Questions,
23 Mr. Chairman?

24 CHAIRMAN KENNEY: No questions.
25 Thank you.

1 JUDGE WOODRUFF: Commissioner Kenney?

2 COMMISSIONER W. KENNEY: No

3 questions.

4 JUDGE WOODRUFF: Commissioner Hall?

5 COMMISSIONER HALL: Yes. Thank you.

6 I had a couple of questions of Mr. Downey about the
7 correct standard to employ when resolving this
8 dispute, and we talked about materiality and
9 whether the excessive earnings level is ongoing in
10 nature. Do you believe that those are two
11 requirements for a successful overearnings
12 complaint?

13 MS. BAKER: I think that those are
14 certainly two things that the Commission can take
15 into account. I would say that materiality is a
16 high thing to include in this case, but the
17 Commission has to remember that materiality changes
18 depending upon who you look at. Materiality to
19 Ameren is quite a different thing than materiality
20 to the customer who has to pay the rate.

21 COMMISSIONER HALL: But do you
22 believe that materiality is required before the
23 Commission determines that an overearnings
24 complaint is meritorious?

25 MS. BAKER: I would say that, yes,

1 the Commission can take materiality into effect,
2 and if it were something where the overearnings
3 show quite low, that it could be put aside as
4 nonmaterial. I agree with that.

5 COMMISSIONER HALL: And how would you
6 define materiality, or how would you suggest that
7 this Commission define materiality if it is, in
8 fact, required in order to find that there is
9 overearnings?

10 MS. BAKER: Public Counsel did not
11 offer any testimony on that particular issue. So I
12 would just be stating that we would support the
13 materiality as defined by Noranda.

14 COMMISSIONER HALL: I don't believe
15 they defined it, but okay. So then the second
16 prong of the standard that we're discussing is that
17 the excessive earnings be ongoing in nature. Do
18 you believe that that is required for a successful
19 overearnings complaint?

20 MS. BAKER: I don't think that is
21 necessarily required, but it's certainly one of the
22 material relevant factors that would be taken into
23 account whenever you're making your decision,
24 because I would say for that, we talked a little
25 bit about the fact that Ameren is saying that

1 they're going to be putting in all of this plant
2 that's coming forward. One thing that was not
3 mentioned was, on the flip side, they will be
4 retiring plant.

5 And so looking back on some of the
6 things -- and I'm sure this will come up in the
7 testimony -- is how does what they're putting in
8 balance with what they're retiring? And so the --
9 the trend of overearnings is certainly a valid
10 concern in this particular case because, as
11 Mr. Downey showed in his PowerPoint, this is not
12 something that has only happened once or twice.
13 There is a trend here that shows that it's
14 consistent.

15 So I would say that the consistency
16 of it going forward is something that the
17 Commission will have to look at, especially when
18 we -- we do not take into account things that have
19 not happened yet. So really the Commission can
20 look at trends.

21 COMMISSIONER HALL: I have no further
22 questions. Thank you.

23 JUDGE WOODRUFF: Commissioner Rupp?

24 COMMISSIONER RUPP: No questions.

25 JUDGE WOODRUFF: I do have a

1 question. You indicated that it's Public Counsel's
2 belief that in an overearnings complaint situation
3 like this, the Commission can adjust rates without
4 going through a full Staff audit, the whole
5 11-month rate case procedure; is that correct?

6 MS. BAKER: Based on the material
7 relevant factors, yes.

8 JUDGE WOODRUFF: Does that go the
9 other way, too, if there's an underearning
10 complaint brought by a utility or ally, could the
11 Commission raise rates without a full Staff audit?

12 MS. BAKER: That is a different sort
13 of a situation because that would not be
14 necessarily a complaint by the utility. The
15 utility would come back in for a rate case, so --

16 JUDGE WOODRUFF: Could the utility
17 bring a complaint that its rates are too low?

18 MS. BAKER: I don't know of anything
19 in the statute that would keep them from
20 complaining that there was a problem with their --
21 with their rates, but the remedy --

22 JUDGE WOODRUFF: They normally do
23 that by filing new tariffs.

24 MS. BAKER: Right. Right. And that
25 would be their remedy would be file a new -- a new

1 rate case.

2 JUDGE WOODRUFF: Could a utility have
3 an ally file a complaint saying that the utility's
4 rates are too low?

5 MS. BAKER: I assume.

6 JUDGE WOODRUFF: Not officially an
7 ally, but --

8 MS. BAKER: I wouldn't know of
9 anything. I assume, sure, there could be backdoor
10 things by Ameren stating, yeah, you know, go up
11 there and fight for us. That could certainly
12 happen.

13 JUDGE WOODRUFF: And if that were to
14 happen, could the rates be increased without a full
15 Staff audit?

16 MS. BAKER: I don't know. I mean, I
17 guess the -- what is in front of the Commission is
18 how to deal with a complaint. If an all material
19 factors test is offered to the Commission and the
20 Commission felt that all material factors were met
21 in the evidence before it, I assume that they could
22 for a going-forward basis. They could not on a
23 replace in the past basis.

24 JUDGE WOODRUFF: Okay. Just
25 something that's been running through my mind, and

1 I thought I'd --

2 MS. BAKER: I'm not sure I'm the
3 right one to ask that.

4 JUDGE WOODRUFF: Well, anybody else
5 that wants to respond to that can, too.

6 MS. BAKER: I bet they don't want to.

7 JUDGE WOODRUFF: All right. Thank
8 you, Ms. Baker.

9 MS. BAKER: Thank you.

10 JUDGE WOODRUFF: All right. Then for
11 Consumers Council and AARP.

12 MR. COFFMAN: Good morning. May it
13 please the Commission? I'm John Coffman. I'm here
14 today on behalf of two clients, AARP and Consumers
15 Council of Missouri.

16 Starting with the basics, Missouri
17 law requires the Commission to balance the
18 interests of consumers and the utility and its
19 shareholders. And the statute 386.390.1 of the
20 Revised Statutes of Missouri suggests that
21 consumers can, as has been done in this case, file
22 a complaint as to the reasonableness of rates,
23 suggesting that in an evenhanded way the Commission
24 can adjust rates downward just as it does upward in
25 a regular file and suspend case.

1 So is -- why aren't there more
2 complaint cases like this filed? I've had folks
3 ask me that question. Why aren't there more rate
4 reduction cases filed? Why are most of the cases
5 that get all the attention the rate increase cases?

6 I would suggest that the reality is
7 that, despite what the law says, the cards are
8 stacked against consumers, that the scales of
9 justice in the real world are like this
10 (indicating).

11 And there's -- the reasons for that
12 fall into about three categories in my mind that
13 make this an asymmetrical process in reality. One
14 is asymmetrical access to records, asymmetrical
15 litigation resources, and asymmetrical regulations
16 that are single-issue or piecemeal related.

17 Dealing with just that right now, I
18 think one of the main drivers that we have seen
19 over the past few years has been the fuel
20 adjustment clause. So even though the Commission
21 takes all relevant factors into account and adjusts
22 the rates, this fuel adjustment clause goes forward
23 as the Commission has most recently applied it,
24 putting 95 percent of the risk of fuel volatility
25 on the consumer even though the consumer doesn't

1 have any ability to control that risk.

2 There are trackers and a variety of
3 other things that make overearnings more likely, I
4 think, than underearnings, all things being equal.
5 And as we've had here, there have been other
6 factors, including a reduction in rate base.

7 And I don't think that the dispute
8 really is that there -- whether or not there have
9 been overearnings. I don't think there's really
10 any serious dispute that there have been
11 significant and sustained overearnings over the
12 last two years and that those overearnings are
13 current. It's just a question of exactly how much
14 this utility is currently overearning.

15 The second, maybe not as I mentioned
16 it, but access to records is a real big issue as to
17 why you don't see more complaints filed under
18 386.390. The utility controls almost all of the
19 information that is relevant to changing rates. If
20 they want to file a rate increase, they have it at
21 their ready and they file it, and they usually
22 don't file much of that information, at least they
23 don't file the bottom line as highly confidential.

24 When the fuel adjustment clause went
25 into effect, as has been mentioned, there was a

1 provision that the Commission wisely included as to
2 the surveillance monitoring reports, and my
3 recollection, one of the main purposes driving that
4 was that if things got out of whack, as I believe
5 they are now, a party would have the ability to use
6 those reports to get the information together to
7 file a rate decrease case if there was substantial
8 and sustained overearnings.

9 The problem that we have encountered
10 over the last years is that those reports are
11 highly confidential. Even though most of the
12 people in this room have signed nondisclosure
13 agreements for attorneys and can see that
14 information, we can't discuss it with our clients
15 or I can't discuss it with my clients. The public
16 generally doesn't know what's in those reports.

17 We appreciate the Commission has
18 declassified the reports that are directly relevant
19 to this case today, and so now we can have that
20 discussion.

21 The third category that I think makes
22 the scales uneven and asymmetrical is litigation
23 resources. As you know, the utility in this area
24 of litigation is one of the most unique areas of
25 litigation in this way, is that the utility has the

1 ability to charge back to the other side, the
2 consumer side, virtually all of its litigation
3 expenses. The consumer side has to find its money
4 elsewhere, or with regards to the Public Counsel,
5 those also come -- those are funds coming from
6 consumers.

7 We are very thankful that the
8 Complainants, Noranda and others, filed this case
9 today. At least with regard to that one category
10 of unevenness, we have overcome that. They have
11 put together witnesses that I believe have
12 addressed all relevant factors.

13 So even though we have gone forward
14 with the fuel adjustment clause and other piecemeal
15 problems that have brought things out of whack, we
16 have one party that is able to go forward and put
17 the evidence in front of you to now adjust all
18 relevant factors.

19 We believe that the testimony of Greg
20 Meyer is persuasive that there is an ongoing
21 overearnings, and their total request of
22 \$49.4 million we agree with, and we think rates
23 should be reduced by that much at the conclusion of
24 this case.

25 If you look at the Staff's own

1 testimony, even though Staff is not recommending a
2 rate reduction, I think that you could base a rate
3 reduction on the Staff's own testimony. If you
4 look at the testimony of John Cassidy, you will see
5 that at least an unadjusted amount of
6 \$39.1 million, and then he makes some adjustments
7 after that.

8 But even at the end of it, they don't
9 have -- they don't see underearnings. The Staff
10 believes that there are currently overearnings.
11 Staff has stated that they don't recommend a rate
12 decrease because they don't believe that it is
13 material and ongoing.

14 And I'll address what I expect your
15 question to be, Commissioner Hall. That is, is
16 materiality a requirement? I'm not aware of any
17 legal case or statute that says that the Commission
18 has to apply some materiality standard. I suppose
19 if it was a very small amount, that you could make
20 some adjustment. There is a -- the courts do look
21 at the overall end result as to whether a decision
22 is legal.

23 But I do think that -- frankly, my
24 definition of materiality would be a million
25 dollars, and there's clearly more than a million

1 dollars at stake here. I'd say, even granting most
2 of Staff's concerns or projections about what might
3 happen in the future, you're still looking at
4 millions and millions of dollars.

5 And if the parties can prove based on
6 all relevant factors that there is an overearnings
7 and it's an overearning of a million dollars, I
8 think rates should be reduced by a million dollars.
9 I think most of my clients would agree with that,
10 and I think most members of the public would agree
11 that a million dollars is a material amount.

12 As to whether this is an ongoing
13 amount, I think we -- I think the evidence shows
14 that there has been a sustained amount of
15 overearning over about a two-year period and that
16 it is currently an overearning situation.

17 The ongoing argument is that perhaps
18 at some point at the end of this year or next year
19 there will be constriction expenses that will
20 offset this. Those have not occurred. Those are
21 speculative at this point. We don't know if those
22 are going to occur.

23 The legal standard that applies to
24 utility regulation is known and measurable.
25 Sometimes the Commission goes out beyond the test

1 year for some adjustments into the future, but only
2 those that are known and measurable in the record,
3 not for speculative matters or projected budgets.
4 That's not the way Missouri sets rates.

5 I think I would -- I might disagree
6 with earlier attorneys who were up here. I think
7 this is a full-blown rate case. There is no legal
8 requirement under Missouri that the Commission
9 Staff participate in a case. There's no
10 requirement that the Staff check off any certain
11 number of things.

12 This may be Staff practice. There
13 may be a list of things that they consider to be a
14 limited review or full review. That's not
15 necessarily the law. The law is all relevant
16 factors, and we believe that all relevant factors,
17 the major components of the cost of service formula
18 are here in front of you.

19 And we talked about the overearnings,
20 and return on equity, authorized return on equity
21 is one of those components. And Mike Gorman's
22 testimony I think is virtually unimpeachable.
23 Mr. Gorman has been the witness that over the last
24 few years has been most often granted the
25 Commission's reasoned decision on authorized return

1 on equity.

2 If you look over the past few years,
3 I think you'll find that if the Staff of the
4 Commission were to have performed their own return
5 on equity/cost of capital analysis, it likely would
6 have been much lower. Mr. Gorman usually falls
7 right about in the middle. I think his 9.4
8 recommendation is right in the middle of what is
9 fair in this case and has been recommended in
10 comparable situations.

11 So we respectfully request that the
12 Commission correct what -- the electric rates that
13 we believe are too high under the evidence that
14 will be taken in this case and lower the authorized
15 return from 9.8 to 9.4 and prove to the public that
16 regulation here at the Commission is evenhanded.
17 Any questions?

18 JUDGE WOODRUFF: Questions?

19 CHAIRMAN KENNEY: Yes, just a couple.
20 Mr. Coffman, thank you. So, I want to ask a
21 question about the time period at which we should
22 confine ourselves, because -- I'm going to ask
23 Noranda's witnesses about this, too, but you
24 mentioned it, that there's a two-year period of
25 sustained overearnings, right? And the rates from

1 the ER-2013-0166 case went into effect January of
2 2013. If we're looking at a period of
3 overearnings, why shouldn't we just confine
4 ourselves to the period in which rates were last
5 set? Why should we look even further than that?

6 How does -- because rates were reset
7 in January 2013 and those are the rates that are
8 currently in effect, and the allegation is that
9 Ameren is earning in excess of its authorized ROE,
10 shouldn't the authorized ROE and, therefore, the
11 time period that we're looking at be the time
12 period that's in effect from the last rate case and
13 only that period?

14 MR. COFFMAN: I think that would be a
15 reasonable way to look at it. I think certainly
16 you could put more weight on more recent earnings
17 information. I think in this case up through the
18 first quarter of 2014 probably would be the most
19 recent information that we have all relevant
20 factors in front of you on. I think that roughly
21 that one-year period would be a good test year, if
22 you will, to look at.

23 CHAIRMAN KENNEY: Okay. I wasn't
24 expecting you to agree with me so readily. That
25 took me by surprise.

1 All right. So let me ask a question
2 about the comment that you made about the FAC and
3 single-issue ratemaking mechanisms, because I think
4 as I understand your position is that the existence
5 of those single-issue ratemaking mechanisms
6 potentially contributes to the overearning.

7 And my question is with respect to
8 the FAC in particular. Your comment was that
9 customers have no control over the fuel volatility
10 and that they're forced to bear 95 percent of that
11 risk. Isn't the converse true, though, that Ameren
12 doesn't have much control over fuel volatility, and
13 that's why we have the FAC in the first place?

14 My question is this: Do you disagree
15 with all single-issue ratemaking mechanisms across
16 the board, or are there just particular types of
17 single-issue ratemaking mechanisms that you think
18 fundamentally depart from?

19 MR. COFFMAN: I think piecemeal
20 ratemaking is fundamentally unfair. Some are worse
21 than others, but unfortunately it seems like the
22 ones that have been adopted in most recent years
23 are ones that tend to favor the utility, tend to be
24 piecemealing out single issues that are more going
25 this way, whereas those factors that tend to go

1 this way are not taken into account, and then you
2 have -- someone has to go forward with an all
3 relevant factors review, as we are here, to bring
4 all the factors in line.

5 CHAIRMAN KENNEY: But haven't we
6 limited those types of single-issue ratemaking
7 mechanisms to those items of expense over which the
8 utility bears very little control? So do you
9 disagree it's not --

10 MR. COFFMAN: Well, it's a heck of a
11 lot more control than consumers have. And I think
12 that Ameren Missouri in past cases have stipulated
13 that they do have some control, and I think we have
14 seen some witnesses that even said they have
15 significant control. Maybe that was a different
16 utility.

17 But whereas they might not have
18 complete control over fuel costs, they definitely
19 have some control over it.

20 CHAIRMAN KENNEY: Okay. Thank you.

21 JUDGE WOODRUFF: Commissioner Kenney?

22 COMMISSIONER W. KENNEY: No.

23 JUDGE WOODRUFF: Commissioner Hall?

24 COMMISSIONER HALL: No, no questions.

25 JUDGE WOODRUFF: Commissioner Rupp?

1 COMMISSIONER RUPP: No.

2 JUDGE WOODRUFF: I'm going to ask you
3 the same question I asked Ms. Baker. Could the
4 Commission increase rates without a full Staff
5 audit?

6 MR. COFFMAN: I don't think there's a
7 legal requirement that Staff perform an audit.

8 JUDGE WOODRUFF: Okay. Missouri
9 Retailers.

10 MR. SCHWARZ: Good morning. May it
11 please the Commission? My name is Tim Schwarz. I
12 represent the Missouri Retailers Association.

13 This must be the Commission's season
14 for novel cases. The law permitting customer
15 complaints has been on the books as far as I can
16 tell since 1913. In my 16 years as Staff attorney
17 and Commission advisor and the eight years since, I
18 haven't heard of a single case where such a
19 complaint was brought. No one that I've talked to
20 has provided an example. So you get to deal with a
21 new issue.

22 I will address Judge Woodruff's
23 question. I think it's unquestioned the Commission
24 can permit rates to go into effect without a Staff
25 audit. Don't suspend the tariffs. The statutes

1 provide for it. The cases discuss it. Is it good
2 public policy? Probably not, particularly in cases
3 of this magnitude. But is it lawful? Yes.

4 I think that it might be helpful to
5 the Commission to think in terms -- of this case in
6 terms of regulatory lag. That is, the filing by
7 Ameren of the 0258 rate case gives this -- the
8 rates that should be adopted in this case a
9 definite end date, which is something again novel
10 in Commission practice. That is, 11 months from
11 July 2nd, new rates will go into effect.

12 But that's no reason for this
13 Commission to deny the consumers, the customers,
14 the benefits of the regulatory lag that the
15 historical records suggest is appropriate at this
16 point in time. That is, Ameren has enjoyed the
17 benefits of regulatory lag when its costs drop from
18 January of 2013 at least through, in the opinion of
19 the Complainants' witnesses, through March of 2014.
20 Ameren has continued to collect rates that were
21 above those -- collect rates that generated returns
22 above those authorized by the Commission.

23 There seems to be, in my view, undue
24 concern that -- that at some time between now and,
25 say, the 1st of January or perhaps late in the

1 fourth quarter of this year the situation will
2 reverse and customers might enjoy some regulatory
3 lag for that short period between, say, December of
4 2014 and June of 2015.

5 But the courts acknowledge that
6 regulatory lag occurs. It is no reason that you
7 can anticipate that the regulatory lag will reverse
8 over time, particularly true in a case like this
9 where you can reasonably predict when that lag is
10 going to reverse. There is no reason in regulatory
11 practice to deny customers the rates to which
12 they're entitled simply because for a short period
13 the regulatory lag reverses.

14 Ameren has filed its rate case, I'm
15 sure, at the earliest time that it could to
16 minimize that period of regulatory lag. That's in
17 their best interests. It's what they do all the
18 time. It is consistent with public policy. I have
19 no concerns about that.

20 By the same token, I don't think that
21 the fact that the regulatory lag is going to
22 reverse at some time in the future is any basis to
23 deny customers the rates to which they're entitled
24 now.

25 The evidence adduced by the

1 Complainants considers all relevant factors.
2 That's what the law requires. The law does not
3 require that the Complainants make an adjustment to
4 every single account of Ameren. The law does not
5 require that some particular approach be used to
6 analyze all relevant factors. It simply says that
7 all relevant factors must be considered.

8 If you look at a Staff accounting
9 schedule from any rate case, it's very instructive.
10 They're wonderful documents. It -- for instance,
11 an income statement, it lists by account number all
12 of the amounts that the company has entered. The
13 complaint in this case considers all -- well, let
14 me back up.

15 The Commission requires regulated
16 utilities to maintain their regulated books
17 according to the Uniform System of Accounts. So
18 all their reports are based on Uniform System of
19 Accounts. Their rate case filings are based on the
20 Uniform System of Accounts. Staff's and other
21 parties' analysis are based on the Uniform System
22 of Accounts.

23 The complaint in this case is
24 supported by consideration of rate base, of the
25 capital structure of the company, of the company's

1 revenues, the operating -- operating and
2 maintenance expenses and the administrative and
3 general expenses of AmerenUE, all as recorded
4 according to the Uniform System of Accounts. There
5 is no account that was excluded from consideration.
6 Certainly neither the Staff nor Ameren has pointed
7 out anything and said, oh, my, you didn't consider
8 Account 501-4 or Account 41. There's been none of
9 that.

10 So the evidence that the Complainants
11 have provided considers all relevant factors. Is
12 the approach different than Staff would take or the
13 company takes when it's presenting full-blown
14 cases? Obviously that's the case.

15 But the Complainants certainly at the
16 time they filed their complaint don't have
17 available to them the information that the Staff or
18 the company does.

19 That is, if my cousin in
20 St. Louis who is an Ameren customer goes up to
21 1900 Chouteau Avenue and says, hi, I'm here to
22 inspect the board minutes concerning your future
23 investment in coal-fired plants, he will be
24 escorted from the premises immediately, as he
25 should be. That's not information that's available

1 to customers.

2 And yet the General Assembly has
3 provided for customer complaints for the entirety
4 of this Commission's existence. So there needs to
5 be a different approach when customers file
6 complaints.

7 And the evidence that's been adduced
8 by the Complainants in this case is reasonable,
9 competent, substantial, and I believe that it
10 provides the basis for the Commission to make an
11 adjustment to Ameren's rates even though those
12 rates will only be in effect until sometime in June
13 of 2015.

14 I think that the questions of
15 materiality that have been raised by Commissioner
16 Hall need to be kept in context. As I read the
17 Staff's testimony, and I have -- my reading of it
18 is that Staff considers \$4 million a cutoff for
19 materiality in the context of whether they're going
20 to devote five intensive months of Staff resources
21 to a full-blown audit of the company books.

22 That is not the same as saying, gee,
23 in a rate case we won't make -- or propose an
24 adjustment if the adjustment is less than
25 \$4 million. Different context entirely.

1 Certainly my experience is that Staff
2 routinely, at least prior to taking cases to
3 hearing, will propose adjustments to accounts on
4 the order of 100,000 or \$50,000. There are -- the
5 threshold for what they will take to hearing is
6 much lower than \$4 million.

7 And I think certainly in this case
8 the Commission should keep in mind that Staff is
9 not the consumer advocate. Staff is this
10 Commission's investigative arm, and the consumers'
11 view of what is an appropriate adjustment can
12 differ and does differ in that respect.

13 So I think that probably concludes
14 what I wanted to bring to your attention, and I'd
15 entertain any questions if there are any.

16 CHAIRMAN KENNEY: I have none.
17 Thanks.

18 COMMISSIONER W. KENNEY: I have none.

19 COMMISSIONER HALL: I have none.

20 Thank you.

21 JUDGE WOODRUFF: None from me. Thank
22 you. Ballwin and O'Fallon, Wal-Mart, River Cement
23 and Continental have been excused, so we'll move to
24 Staff.

25 MR. THOMPSON: May it please the

1 Commission?

2 There's been a lot of talk already
3 this morning about Staff and Staff's position and
4 Staff's testimony and Staff's witnesses, and yet
5 only now is Staff offering an opening to you.
6 Staff has nothing to prove in this case. We don't
7 bear the burden of proof. That's carried by the
8 Complainants. It's their burden to show you that
9 there's an overearning that needs to be redressed
10 with a rate reduction.

11 Staff's position is that the
12 complaint has not been supported by adequate
13 evidence of material and continuing overearnings on
14 the part of Ameren Missouri. Staff doesn't believe
15 that all relevant factors have been considered.

16 What are all relevant factors? I
17 mean, the phrase comes from the jurisprudence of
18 rate cases. It comes from courts that have looked
19 at this Commission's decisions and commented
20 favorably or unfavorably on the particular decision
21 in front of them.

22 The statute says the Commission can
23 or may consider all factors that in its opinion are
24 relevant, and the courts have said, well, what that
25 means is you've got to consider all relevant

1 factors.

2 So what are all relevant factors? I
3 suggest all relevant factors are whatever you
4 decide they are in a particular case. All relevant
5 factors are whatever the Commission decides they
6 are.

7 Now, in front of you, this is an
8 adversary proceeding. The Complainants have
9 brought this complaint, the second in a series, and
10 it has been strenuously opposed and resisted by
11 Ameren Missouri.

12 And the beauty of the adversary
13 system that we have in this country is that the
14 parties will throw up and bring to you everything
15 they think you should consider. So if there are
16 any factors out there that nobody's mentioned, it's
17 on them. It's on them, and they can't be very
18 important if they -- if they have not been brought
19 to you in this case so far.

20 So all relevant factors are whatever
21 you decide they are. And do you have all relevant
22 factors in front of you? Maybe you do. You
23 certainly have all the factors the parties thought
24 were important enough to mention.

25 Now, there's not a full Staff audit.

1 Would you be surprised that the accountants who are
2 my clients, would you be surprised that they think
3 that anything less than what they do is inadequate?
4 I'm not surprised that that's how they feel, but
5 that doesn't mean that you have to agree to that.

6 Okay. Staff's accountants, they
7 believe, and they believe sincerely, that you have
8 not seen all relevant factors in this case. And as
9 their attorney, I'm telling you, that's what they
10 believe. That's what they have testified to. When
11 Mr. Cassidy and Mr. Oligschlaeger are on the stand
12 today, they will tell you that again, and they'll
13 tell you that under oath.

14 And a full Staff audit is an
15 important thing. The company has to be subjected
16 to it on a periodic basis just to keep it honest.
17 Just to keep it honest. You know, we talk in
18 regulatory accounting, we talk about what's above
19 the line and what's below the line. And what's
20 above the line gets charged to the ratepayers, and
21 what's below the line gets charged to the
22 shareholders.

23 So for every single account, you have
24 to check every once in a while to make sure
25 something hasn't crept up above the line that

1 should not have. So that's an important regulatory
2 function. But is it essential for the disclosing
3 and the discovery of all relevant factors? That's
4 for you to decide.

5 If the parties haven't brought you
6 all relevant factors today, that's on the parties.
7 They had every opportunity.

8 Now, there's been talk about this
9 standard, materiality and likely, likely to
10 continue, as I recall. That's not the standard
11 that applies to the Commission's decision. That's
12 Staff's standard for when it brings an overearnings
13 complaint.

14 We told you that to explain why we
15 have not brought an overearnings complaint despite
16 the clear and undeniable evidence that, in fact,
17 Ameren Missouri has been overearning. They're
18 overearning now, and they've been overearning for
19 at least two years. That's absolutely true.

20 And we thought, well, gosh, given
21 that, you might wonder where the heck has Staff
22 been? Why hasn't Staff brought this to your
23 attention? Why haven't we demanded a change in
24 rates? Well, let me answer that question. In
25 every rate case that has come before you, Staff has

1 said, set the return on equity low. Set the ROE
2 low. Mr. Downey was absolutely correct when he
3 told you that David Murray, as an expert witness
4 for Staff, in case after case after case has
5 recommended a low return on equity. The Commission
6 in case after case after case has rejected
7 Mr. Murray's position.

8 And I suggest to you that this
9 history of chronic and persistent overearnings that
10 we see here today is the result of setting the ROE
11 too high. The ROE has been set too high. Now, why
12 is that? It's because there are risk-shifting
13 mechanisms, and in case after case one is adopted
14 here, one is adopted there. We've heard talk about
15 them. Piecemeal ratemaking, Mr. Coffman referred
16 to. Single-issue ratemaking has been mentioned. I
17 mean, there's an FAC that shifts all the fuel risk.
18 There's trackers for various things.

19 The point is, is that each of those
20 things lowers the risk that the company faces. ROE
21 is supposed to be a measure of risk. It's supposed
22 to be based on risk, and investments have risk.
23 Every investment you make is risky, and the return
24 you expect as an investor is commensurate with the
25 risk you're subjecting your money to, right, the

1 risk that you ain't going to get what you bargained
2 for.

3 So when you add in these trackers,
4 when you add in this FAC, the risk that the company
5 faces, the risk that you as an investor in the
6 company face, that risk is reduced. The risk is
7 reduced.

8 Utility companies in general are
9 considered by investors to be safe harbors for
10 their money. Safe. The betas of utility companies
11 are inevitably lower than 1.0. That is, it is less
12 risky than the market as a whole. It's a safe
13 place to put your money. You may not get
14 spectacular returns, but you will get a return, and
15 you are very likely not to lose your money. So it
16 is not a risky thing to invest in a utility.

17 So how much of a return does that
18 investor have to have to invest in Ameren Missouri?
19 Well, I suggest to you that it's a lot less than
20 the 10.4 that Mr. Hevert has calculated. And that
21 is the same figure, by the way, that he recommends
22 in the testimony he has already filed in Case
23 ER-2014-0258, the file and suspend general rate
24 case that Ameren filed on July 3rd. It's also the
25 figure he recommends in the testimony he filed in

1 this case in response to Mr. Gorman.

2 And the 9.4 that Mr. Gorman has
3 brought to you, I think that's just about what
4 Staff recommended in Case ER-2012-0166. In its
5 brief, Staff, I believe, went to about 9.4, which
6 it found from Mr. Gorman's testimony, as I recall.

7 Now, Mr. Murray, had he done
8 testimony for this case, I'm sure he would have
9 been down below 9 somewhere.

10 I suggest to you, yes, Ameren is
11 overearning. Is there a cure for that? Yes, there
12 is. Set the return on equity lower than you have
13 been setting it. Set it lower. It's a monopoly
14 company. It sells something that everybody's got
15 to have, and there's no competition.

16 Now, in this particular case, do we
17 recommend a rate reduction? No, we don't. Why is
18 that? Because the raw data in front of you, the
19 surveillance reports, that's like taking a kid's
20 temperature. Okay, we have temperature readings,
21 but we have to interpret those. We have to
22 understand them. We have to put them in context.

23 And that's what Mr. Meyer and
24 Mr. Cassidy tell you about in their testimony. How
25 do you have to analyze that figure? How do you

1 normalize it? How do you buffer it? How do you
2 figure out what it really means? And Staff's
3 position is that the overearning, while real, is
4 not as large as Mr. Meyer would have you believe.

5 Staff thinks the overearning is not
6 so large. In fact, Staff thinks when you take all
7 the things into consideration for the future that
8 you have to, that it's not even material by Staff's
9 definition of that term.

10 Now, does that mean you -- you can't
11 lower it? No. The standard applicable to you is
12 just and reasonable. You have to set rates that
13 are just and reasonable. Materiality is not a
14 legal standard that applies to the acts of this
15 Commission.

16 And what's just and reasonable? The
17 courts tell us just and reasonable is just enough
18 money to cover those operating and maintenance
19 expenses and allow a reasonable opportunity to earn
20 a fair return. That's just and reasonable.

21 Staff thinks the rates are a little
22 bit higher than just and reasonable. That's why
23 there's this consistent overearning. In context,
24 appropriately understood, the overearning is not so
25 large as the Complainants suggest, not so large as

1 they would have you believe. And that's why Staff
2 does not join in their complaint today and does not
3 recommend that you reduce Ameren's rates.

4 Thank you very much.

5 JUDGE WOODRUFF: Questions?

6 CHAIRMAN KENNEY: Yes.

7 JUDGE WOODRUFF: Mr. Chairman.

8 CHAIRMAN KENNEY: You already
9 answered one of my questions, that this notion of
10 materiality and continuing overearnings is not a
11 legal standard found anywhere in the case law.

12 MR. THOMPSON: That's correct.

13 CHAIRMAN KENNEY: That's an internal
14 Staff standard --

15 MR. THOMPSON: Yes.

16 CHAIRMAN KENNEY: -- for what
17 triggers an overearnings complaint. So we can
18 disregard that as part of our legal analysis?

19 MR. THOMPSON: Yes, sir.

20 CHAIRMAN KENNEY: All right. But
21 Staff does say that we have not been presented with
22 all relevant factors?

23 MR. THOMPSON: That's what my
24 clients, the accountants, would have me say.

25 CHAIRMAN KENNEY: Because it's less

1 than what they would do in a rate case?

2 MR. THOMPSON: It is not what they
3 would bring to you.

4 CHAIRMAN KENNEY: So let me ask you
5 this as a legal question. So the provisions in the
6 statutes dealing with the file and suspend
7 mechanism are in a different portion of the statute
8 than that which allows for a complaint, right?

9 MR. THOMPSON: Yes, sir.

10 CHAIRMAN KENNEY: So isn't it --
11 doesn't it follow necessarily that what would be
12 done in a complaint case would be different than
13 what is done in a rate case?

14 MR. THOMPSON: No, sir, I don't think
15 so. If you look at Consumers Council and Jackson
16 County and other authoritative Supreme Court
17 discussions of the ratemaking process, they say
18 there's several different ways a case can be
19 initiated, but once it starts, it's the same thing.

20 CHAIRMAN KENNEY: But it can't be in
21 a complaint case because there's no tariff filing.
22 Somebody's bringing a complaint, so there's no
23 tariff to suspend.

24 MR. THOMPSON: Right. And the
25 tariffs that initiate a file and suspend case,

1 they're thrown out at the end of the case. When
2 the Commission issues its report and order, it
3 rejects those tariffs. So the Commission then
4 tells the company to file compliance tariffs that
5 enact a rate increase or decrease such as described
6 in the report and order.

7 So at the end of the complaint case,
8 you do the same thing. You order the company to
9 file new tariffs that reflect the decision that
10 you've made.

11 CHAIRMAN KENNEY: That's at the end,
12 but at the beginning, what happens at --

13 MR. THOMPSON: The beginning is
14 absolutely different.

15 CHAIRMAN KENNEY: So the conduct of
16 it's going to be different?

17 MR. THOMPSON: It's different in
18 significant respects. The burden of proof is
19 different. The burden of proof is on Complainants
20 instead of being on the company. There is no Staff
21 audit, as you've heard repeatedly. But the
22 standard applicable to the Commission is the same,
23 just and reasonable rates, all relevant factors.

24 CHAIRMAN KENNEY: I agree with that,
25 just and reasonable rates and all relevant factors,

1 be able to base our decisions on substantial and
2 competent evidence on the whole record.

3 MR. THOMPSON: Yes, sir.

4 CHAIRMAN KENNEY: But that doesn't
5 necessarily mean that we have to arrive at just and
6 reasonable rates at the same process by which we do
7 in a rate case.

8 MR. THOMPSON: No. Don't have to
9 arrive at them by the same process.

10 CHAIRMAN KENNEY: So Staff told you
11 to tell us that we don't have all relevant factors
12 in front of us?

13 MR. THOMPSON: That is what the
14 accountants believe.

15 CHAIRMAN KENNEY: Did they share with
16 you what those additional relevant factors would
17 be?

18 MR. THOMPSON: They did not.

19 CHAIRMAN KENNEY: Do you have any
20 notion as to what those additional relevant factors
21 would be?

22 MR. THOMPSON: You know, that's a
23 phrase that's like heartbreak of psoriasis. It's
24 easy to say. It sounds meaningful. It sounds
25 weighty, charged with all kinds of important

1 things, but what does it actually mean, all
2 relevant factors?

3 CHAIRMAN KENNEY: That's what I'm
4 asking you.

5 MR. THOMPSON: Well, what are they?
6 Point me to them. Tell me what they are. That's
7 why I said, in this adversarial proceeding, with
8 this company that is strongly resisting this
9 complaint, I would suppose as an attorney that able
10 counsel has brought you every relevant factor they
11 could think of. That's what I would suppose.

12 CHAIRMAN KENNEY: So you depart from
13 your accountants' assertion that we do not have all
14 relevant factors?

15 MR. THOMPSON: I'm a mere attorney.
16 I could not do an audit. I can hardly balance my
17 checkbook. Now, if you asked Mr. Oligschlaeger or
18 you asked Mr. Cassidy to tell you what are the
19 relevant factors that are not in front of you, they
20 will be able to tell you.

21 CHAIRMAN KENNEY: All right. But
22 you're telling me we have them?

23 MR. THOMPSON: I'm telling you that
24 they are whatever you say they are, and so if you
25 decide that you have them, then you have them.

1 Later you'll find out if the Court of Appeals
2 agrees with you.

3 CHAIRMAN KENNEY: All right. Let me
4 ask you another question about Mr. Murray's
5 recommended ROE in the last several rate cases, a
6 couple questions. So he's recommended lower ROEs?

7 MR. THOMPSON: Yes, sir.

8 CHAIRMAN KENNEY: And I think what
9 you were trying to demonstrate was that his
10 rationale for that was because Ameren had been
11 overearning?

12 MR. THOMPSON: His rationale for that
13 is that risk has systematically been removed.

14 CHAIRMAN KENNEY: Right. But he
15 never made an explicit recommendation that Ameren's
16 ROE should be X because it's been overearning?

17 MR. THOMPSON: No, he never has.

18 CHAIRMAN KENNEY: I think that's what
19 you were intending to imply.

20 MR. THOMPSON: Well, in the world of
21 financial analysis, that's not how they come up
22 with an ROE.

23 CHAIRMAN KENNEY: Exactly. So he
24 wasn't recommending a lower ROE because somehow
25 Ameren had been overearning since -- for some

1 period of time?

2 MR. THOMPSON: No, sir. But
3 logically, I mean, we go through these ratemaking
4 exercises every couple of years, every two, three
5 years, right? So how do you know if you've got it
6 right? We do the ratemaking based on history. How
7 much did they spend? How can we guess what they're
8 going to have to spend in the future?

9 And I would think that historically
10 that's also how you can judge the success of the
11 ratemaking effort. If it results in a rate that's
12 a little bit too high, then maybe the ROE was a
13 little bit too high.

14 CHAIRMAN KENNEY: Let me ask you
15 another question, though, because I am detecting an
16 inconsistency in Staff's position and something you
17 said. So Staff says that the reason it hasn't
18 recommended lowering Ameren's rates in this case is
19 because the overearnings aren't material or
20 continuing, but --

21 MR. THOMPSON: Are not -- yeah, not
22 expected to be continuing.

23 CHAIRMAN KENNEY: All right. I think
24 there was a phrase ongoing.

25 MR. THOMPSON: Right. Right.

1 CHAIRMAN KENNEY: But on the flip
2 side, you say they've been ongoing for two years?

3 MR. THOMPSON: Yes, sir, they have
4 been.

5 CHAIRMAN KENNEY: So they've been
6 ongoing in the past, but they're not expected to
7 continue in the future?

8 MR. THOMPSON: That's correct.

9 CHAIRMAN KENNEY: So from what I've
10 been able to glean thus far, and I suspect Ameren
11 will have something different to say, everybody
12 that's stood up here thus far agrees that Ameren is
13 overearning, it's just what do we do about that
14 information; is that fair?

15 MR. THOMPSON: I can't speak for
16 Ameren, but they may admit they're overearning,
17 too.

18 CHAIRMAN KENNEY: That's what I'm
19 saying. I said everybody that's been up here so
20 far.

21 MR. THOMPSON: Right. That's
22 correct.

23 CHAIRMAN KENNEY: Including Staff?

24 MR. THOMPSON: That's correct.

25 CHAIRMAN KENNEY: All right. Thank

1 you.

2 MR. THOMPSON: Thank you.

3 JUDGE WOODRUFF: Commissioner Kenney?

4 COMMISSIONER W. KENNEY: I just have
5 one brief question. I'm confused. Now, are you up
6 here representing Staff or the consumer groups?

7 MR. THOMPSON: I'm up here
8 representing Staff.

9 COMMISSIONER W. KENNEY: Because I
10 got confused by some of your comments.

11 MR. THOMPSON: I apologize.

12 COMMISSIONER W. KENNEY: No. I was
13 just curious.

14 JUDGE WOODRUFF: Commissioner Hall?

15 COMMISSIONER HALL: Well, I'm
16 confused as well but for some different reasons.
17 Staff believes that Noranda has adequately made a
18 case that there are overearnings; is that correct?

19 MR. THOMPSON: That is correct.
20 Staff believes there are overearnings.

21 COMMISSIONER HALL: And there is no
22 materiality requirement in Staff's belief or --

23 MR. THOMPSON: There's no materiality
24 requirement in the statute.

25 COMMISSIONER HALL: Well, in terms of

1 your position that you're advocating for us,
2 towards us. So there is overearnings?

3 MR. THOMPSON: Yes.

4 COMMISSIONER HALL: Materiality is
5 not required?

6 MR. THOMPSON: Yes.

7 COMMISSIONER HALL: And it doesn't
8 have to be ongoing in nature?

9 MR. THOMPSON: It does have to be
10 ongoing, because rates are made prospectively. In
11 other words, we make rates for an ideal year, ideal
12 future year, pro forma year. So when we -- those
13 overearnings are going to evaporate because of the
14 various things that Ameren has brought to the
15 Commission in ER-2014-0258.

16 COMMISSIONER HALL: So Staff's
17 position that the Commission should not grant the
18 relief requested by Noranda is twofold: One, that
19 the overearnings are not ongoing in nature; and
20 second, that there's been insufficient evidence
21 presented to us to make that determination?

22 MR. THOMPSON: That's correct. That
23 is Staff's position.

24 COMMISSIONER HALL: And Staff --
25 concerning the second, Staff could have done a cost

1 of service analysis and done a full-blown analysis
2 that is usually conducted in a rate case, right?

3 MR. THOMPSON: I don't believe
4 there's been a sufficient interval. It takes four
5 to five months.

6 COMMISSIONER HALL: So it's a time
7 issue?

8 MR. THOMPSON: Yes, sir.

9 COMMISSIONER HALL: Did Staff ever
10 make a request of the Commission or of the other
11 parties for additional time so that it could
12 undertake that analysis?

13 MR. THOMPSON: No, sir.

14 COMMISSIONER HALL: Why not?

15 MR. THOMPSON: Staff was fully
16 engaged with three gas rate cases. In other words,
17 there was a -- there's a resource limitation.

18 COMMISSIONER HALL: It seems like
19 kind of a Catch 22 for Noranda. What you're
20 telling me is -- or what your accountants are
21 telling you -- which I must say, I'm a little
22 uncomfortable with that distinction. I would
23 prefer if you would just say what Staff's position
24 is, not what accountants' positions are versus what
25 your position is.

1 Having said that, you're suggesting
2 that Noranda didn't put forth enough evidence to
3 show overearnings, they -- one. Two, Staff needed
4 to conduct an analysis in order to provide that
5 information. And three, you don't believe Staff
6 had the resources or the time to do that analysis?

7 MR. THOMPSON: That's correct.

8 COMMISSIONER HALL: So what should
9 Noranda have done?

10 MR. THOMPSON: I think Noranda has
11 done everything it could have done.

12 COMMISSIONER HALL: So in other
13 words, complaints such as this can never be
14 instigated by consumers and be meritorious unless
15 Staff joins in?

16 MR. THOMPSON: Well, as I said, all
17 relevant factors are whatever the Commission
18 decides they are.

19 COMMISSIONER HALL: But you're
20 telling us or your accountants are going to tell us
21 that all relevant factors include things other than
22 what Noranda has presented. So reading between the
23 lines, you're saying we should consider more
24 things.

25 MR. THOMPSON: Well, in a full audit

1 there's -- every account is examined and there's
2 literally hundreds of proposed adjustments.

3 COMMISSIONER HALL: Right. So my
4 question again is, it's Staff's position that this
5 Commission can never find an overearnings complaint
6 meritorious unless Staff joins in?

7 MR. THOMPSON: I don't know that I
8 would go that far. I would say that Staff --

9 COMMISSIONER HALL: As a practical
10 matter. Not as a legal matter, but as a practical
11 matter.

12 MR. THOMPSON: Perhaps. Perhaps that
13 is true.

14 COMMISSIONER HALL: Thank you.

15 COMMISSIONER W. KENNEY: Can I follow
16 up on that?

17 JUDGE WOODRUFF: Sure.

18 COMMISSIONER W. KENNEY: Just to
19 follow up, Mr. Thompson, did not Staff tell us
20 previously that they did not have enough time to
21 follow up on -- Commissioner Hall's, that they
22 would not have enough time to perform a full audit,
23 that they needed the full five months? Did they
24 not tell the Commission that?

25 MR. THOMPSON: Yes, they did.

1 COMMISSIONER W. KENNEY: And did the
2 Commission, because of the timing of this, decide
3 that since it was not Staff's complaint, that --
4 and Noranda had the burden of proof, that Staff
5 would do the best they could with the time that was
6 involved?

7 MR. THOMPSON: Absolutely.

8 COMMISSIONER W. KENNEY: But they
9 told us ahead of time that they would not have
10 enough time to do a full presentation?

11 MR. THOMPSON: Yes, sir.

12 COMMISSIONER W. KENNEY: All right.
13 Thank you.

14 CHAIRMAN KENNEY: Hold on a second,
15 because I'm going -- I'm confused again. I wasn't
16 before. I thought I was clear. But in response to
17 Commissioner Hall, you said that we don't have
18 sufficient evidence in front of us, and that --
19 that isn't what I gleaned from our discussion.
20 What I understood you to be saying was that Staff
21 didn't get to do what it would do in a normal rate
22 case, and so --

23 MR. THOMPSON: Right.

24 CHAIRMAN KENNEY: -- therefore, they
25 didn't believe we have all relevant factors in

1 front of us?

2 MR. THOMPSON: That's correct.

3 CHAIRMAN KENNEY: But you seem -- you
4 agreed with me, I thought you did, that that was
5 not -- I don't know how to put this -- that that's
6 what the auditors believed because of what they
7 normally do but not because it was founded in some
8 type of legal grounds?

9 MR. THOMPSON: The courts say you
10 have to consider all relevant factors. What are
11 they? As an attorney, I'm telling you that they
12 are whatever you say they are for a particular
13 case, and I --

14 CHAIRMAN KENNEY: And I think you
15 said -- let me stop you. I think you said in this
16 particular case the parties have put a bunch of
17 stuff in front of us.

18 MR. THOMPSON: That's correct.

19 CHAIRMAN KENNEY: And I think you
20 came just shy of saying that we did, in fact, have
21 enough evidence in front of us, but Staff didn't --

22 MR. THOMPSON: I think you can
23 conclude that you have all relevant factors in
24 front of you.

25 CHAIRMAN KENNEY: Okay. So --

1 MR. THOMPSON: But that's not Staff's
2 position. Okay. Is that -- is that a distinction
3 that doesn't make any sense?

4 CHAIRMAN KENNEY: It's a distinction
5 that I think -- it makes sense to me, but it's
6 unusual for the attorney to advocate a position
7 that might be different from his clients.

8 MR. THOMPSON: I have to tell you
9 what I believe the law is, and I believe the law is
10 that while you have to consider all relevant
11 factors, it is in your discretion to say what they
12 are.

13 CHAIRMAN KENNEY: I got that. I
14 think I follow what you're saying. So I want to go
15 back again to the distinction between a complaint
16 case and a file and suspend rate case, which are
17 found in different chapters, parts of the statute.

18 MR. THOMPSON: Yes, sir.

19 CHAIRMAN KENNEY: Does Staff -- do
20 you, as Staff's attorney, have an opinion about --
21 forget it. I'm not going to ask that question. I
22 don't have any other questions. Thank you.

23 COMMISSIONER W. KENNEY: I have one
24 more. Mr. Thompson?

25 MR. THOMPSON: Sir.

1 COMMISSIONER W. KENNEY: What is
2 Staff's position as to having all the relevant
3 factors?

4 MR. THOMPSON: Staff's position is
5 that you don't have them.

6 COMMISSIONER W. KENNEY: Thank you.

7 JUDGE WOODRUFF: You're excused.

8 MR. THOMPSON: Thank you.

9 JUDGE WOODRUFF: For Ameren.

10 MR. BYRNE: Thank you, Judge. Before
11 I start my prepared remarks, I'd like to address a
12 couple of points that were made by Mr. Thompson.
13 One position Mr. Thompson said, which I think is
14 completely wrong, is he said all relevant factors
15 is whatever the Commission thinks they are.

16 That's not true at all. The
17 Commission is obligated by the law to consider all
18 factors that are relevant to the calculation of
19 rates. They can't limit that just arbitrarily.
20 They've got to consider everything that's relevant
21 to calculating what the rates are. So it's not
22 entirely up to the Commission.

23 And I guess the second point,
24 Commissioner Hall, you asked Mr. Thompson what else
25 could Noranda do, and of course Mr. Thompson said,

1 oh, Noranda couldn't have done anything else.

2 That's not true at all either.

3 What Noranda could have done and
4 should have done in this case is they should have
5 advocated for a reasonable time frame whereby a
6 cost of service study could be done. They should
7 have asked us data requests asking for the
8 information to do a cost of service study, and they
9 should have done a cost of service study.

10 They didn't do any of that. They
11 pushed for an ultra-expedited procedural schedule.
12 Then they show up without a cost of service study,
13 and they ask you to change rates without
14 considering all relevant factors. They can't do
15 that, and it's their own fault that they're in this
16 position. They pushed for too expedited of a
17 schedule, and they didn't do the due diligence that
18 they need to do to support a rate reduction.

19 CHAIRMAN KENNEY: Mr. Byrne, let me
20 ask you a question about that since you -- you said
21 you were deviating from your prepared remarks. I'm
22 going to go ahead and ask a question now. Sorry.

23 MR. BYRNE: Sure.

24 CHAIRMAN KENNEY: But I'm going to do
25 it anyway. You just said that Noranda could have

1 conducted or requested somebody conduct a cost of
2 service study.

3 MR. BYRNE: Sure.

4 CHAIRMAN KENNEY: And the question I
5 asked earlier was, if we're talking about
6 overearnings based upon the rates that were set in
7 the ER-2012-0166 case, why do you need a cost of
8 service study?

9 Couldn't they just look at the
10 surveillance and evidence that shows what Ameren
11 was earning from January of '13 through some end
12 point, December of '13 let's say, because the rates
13 went into effect in the ER-2012 case January of
14 2013. Couldn't they just look at the surveillance
15 monitoring report and compare what was actually
16 earned to what was authorized? Why do -- because
17 the cost of service study is going to look at that
18 point in time, which would be different than the
19 point that's relevant to an overearnings complaint.

20 MR. BYRNE: Sure. I guess here's --
21 here's the difference, Commissioner. You know, the
22 ratemaking process is forward-looking. So you
23 don't -- you can't -- I mean, it's illegal in
24 Missouri to set rates to make up for any
25 overearnings or make up for any underearnings. The

1 real fact is over the last five years and certainly
2 over the last ten years, we've been underearning on
3 a book basis way more than we've been overearning,
4 you know.

5 But in any event, none of those --
6 none of those book earnings figures are all that
7 relevant to setting rates. What you have to do to
8 set rates is do a cost of service study.

9 CHAIRMAN KENNEY: To set rates
10 prospectively?

11 MR. BYRNE: Yeah.

12 CHAIRMAN KENNEY: We're talking about
13 an overearnings complaint that's looking at a
14 particular point in time and comparing it to the
15 rates that were set in the ER-2012 case.

16 MR. BYRNE: You can't do that. You
17 can't make up for past overearnings or
18 underearnings, you know. Whatever happened in the
19 past happened. A rate-setting process is forward
20 looking. It has to be. And so even if there were
21 underearnings in the past -- and we don't believe
22 there were, by the way. We believe if you
23 appropriately adjusted the book earnings for the
24 things you have to do on a regulated basis, we
25 don't believe we did overearn in the past.

1 But even if we did, let's assume we
2 did, for example, it's absolutely crystal clear to
3 us we were earning like -- our book earnings were
4 like 7 percent years ago, and that was clearly so
5 much -- that was, I know, 4 percent under what we
6 were authorized and we were clearly underearning.
7 But you can't go back and make up for past
8 underearnings.

9 And even if -- even if for some
10 reason you believe that our adjusted book
11 earnings -- let's say you believed our adjusted
12 book earnings for 2013 showed that we overearned.
13 You could not -- you don't have the power to go
14 back and retroactively make up for what happened in
15 the past. That's not how it works.

16 CHAIRMAN KENNEY: Well, would it be
17 retroactively making up for what happened in the
18 past? Because we wouldn't be ordering refunds. We
19 wouldn't be -- we would be setting rates presumably
20 at the end of this case through sometime when the
21 ER-2014 case is decided and new rates are set in
22 that case.

23 We'd be setting rates prospectively
24 based upon an allegation of overearning
25 retrospectively, but we wouldn't be ordering

1 refunds or trying to make up for that.

2 MR. BYRNE: Even if the form of --
3 what's the right word? Even if the form of
4 repayment is rates on a prospective basis, you
5 can't do that to retroactively make up for an
6 underearning because the utility underearns, and
7 you can't do it retroactively to make up for an
8 overearning if they overearn. The rates have to be
9 based on the current cost of service.

10 CHAIRMAN KENNEY: So what's the point
11 of an overearning -- what's the point of the
12 provision in the statute, then?

13 MR. BYRNE: The point of the
14 provision in the statute is if on a current basis,
15 if on a current basis your revenue requirement is
16 set too high for your costs currently, then it
17 would be appropriate to make a rate reduction. I
18 mean, I believe you have to --

19 CHAIRMAN KENNEY: Isn't that what
20 we'd be doing, we'd be determining that the revenue
21 requirement set in ER-2012-0166 was too high, too
22 high based upon the earnings for a particular
23 period of time, and we're going to adjust rates
24 accordingly?

25 MR. BYRNE: No, no, no. What

1 happened in 2012-0166 also doesn't matter. What
2 matters is, how do Ameren Missouri's current rates
3 compare to its current cost of service? And if you
4 believe its current rates are too high compared to
5 its current cost of service, then you can reduce
6 them.

7 CHAIRMAN KENNEY: So then under your
8 theory, then, we always have to -- so any
9 overearnings complaint by whomever it's brought
10 requires a cost of service study to be done?

11 MR. BYRNE: Yes, just like -- just
12 like every rate increase brought by the utility
13 requires a cost of service study. You've got to do
14 a cost of service study to know what the cost of
15 service is. So if you don't have one, you can't
16 set rates. You can't increase them for a utility.
17 You can't decrease them in response to a complaint.
18 You've got to know what the cost of service is.

19 CHAIRMAN KENNEY: Okay. I apologize.

20 MR. BYRNE: Okay. I'll maybe go
21 ahead. I was going to start out by saying, my name
22 is Tom Byrne and I'm an attorney representing
23 Ameren Missouri, along with my co-counsel.

24 The question that the Commission must
25 decide in this case is simple: Have the

1 Complainants sustained their burden of proving that
2 continuing Ameren Missouri's current rates would be
3 unjust and unreasonable because its current rates
4 are based on a revenue requirement that is too high
5 on a going-forward basis?

6 The evidence in this case will show
7 that Complainants have not come remotely close to
8 meeting this burden. Indeed, Complainants do not
9 even allege that continuing Ameren Missouri's
10 current rates after the date that this case would
11 be concluded would be unjust and unreasonable.

12 To the contrary, all the Complainants
13 allege is that during a past period Ameren
14 Missouri's book earnings, with a few adjustments,
15 were higher than the last return on equity
16 authorized by the Commission, and such an
17 allegation fails to carry the Complainants' burden
18 of proof as a matter of law.

19 Complainants have not met their
20 burden of proof in this case and cannot meet it
21 primarily for two reasons. First, the very limited
22 analysis that the Complainants' witness Greg Meyer
23 conducted falls far short of a full cost of service
24 study on which rates could be set, as I was just
25 talking about with Chairman Kenney.

1 Mr. Meyer simply took the company's
2 per-book earnings as of December 31st, 2013, made a
3 handful of adjustments that he thought were
4 appropriate. This Commission and really no other
5 commission has ever set rates based on such a
6 shortcut analysis, and for good reason.

7 The Missouri Supreme Court in the
8 UCCM decision determined that the Commission must
9 consider all relevant factors when it sets rates,
10 and that makes sense. If all relevant factors are
11 not considered, there is no way for the Commission
12 or anybody else to know if rates are too high or
13 too low or just right.

14 In setting rates, the Commission must
15 consider the utility's entire set of expenses,
16 revenues, rate base and its cost of capital and
17 make appropriate adjustments, annualizations and
18 normalizations as appropriate so that the
19 Commission can assure itself that the information
20 provides a reasonable proxy for what rates should
21 be in the future.

22 All these -- all these items are
23 relevant, indeed essential factors that must be
24 considered. But in this case, Mr. Meyer's analysis
25 does not even purport to consider most of those

1 relevant factors, let alone all relevant factors,
2 and, therefore, it cannot and should not be used to
3 set rates.

4 The Staff agrees that -- well, at
5 least most of the Staff. All of the Staff except
6 for Mr. Thompson, their attorney, agree that the
7 Complainants have not provided you with the
8 information needed to consider all relevant
9 factors.

10 Second, Mr. Meyer's analysis is
11 fatally deficient because it does not consider any
12 investments that Ameren Missouri has made and any
13 costs that it has incurred after December 31, 2013,
14 which is almost seven months ago.

15 The evidence will show that in 2014
16 alone, Ameren Missouri is in the process of
17 investing over \$1 billion in its infrastructure,
18 none of which was taken into account in Mr. Meyer's
19 analysis.

20 In addition, Ameren Missouri has paid
21 and is continuing to pay significant solar rebates,
22 \$91.9 million plus a 10 percent adder, most of
23 which was not taken into account in Mr. Meyer's
24 analysis.

25 And finally, there are other cost

1 increases that Ameren Missouri has actually
2 experienced in 2014, wage increases already paid to
3 union and management workers, and other cost
4 increases that Mr. Meyer has not taken into
5 account.

6 As I was discussing with Chairman
7 Kenney, ratemaking is a forward-looking process.
8 Rates must be set which will give a utility the
9 opportunity to recover its costs and earn a
10 reasonable return in the future when the rates will
11 be in effect.

12 But Mr. Meyer's analysis, which does
13 not consider significant costs that Ameren Missouri
14 has already incurred in 2014 and will incur before
15 the end of the year, does not meet that standard.

16 It is worth noting, as others have,
17 that on July 3rd Ameren Missouri filed for a rate
18 increase with the Commission. That filing is based
19 on a comprehensive cost of service study, and it
20 does consider costs that Ameren Missouri has
21 incurred in 2014 and major capital projects that
22 will be in service by year's end.

23 That filing shows that on a
24 going-forward basis, Ameren Missouri's rates should
25 be increased by \$264 million per year to allow the

1 company the opportunity to recover its costs and
2 earn a reasonable return.

3 This proceeding, Ameren Missouri's
4 rate case, will provide a forum in which all
5 parties and the Commission can fully address Ameren
6 Missouri's cost of service in the context of a full
7 cost of service study.

8 I'd like to take a closer look, if I
9 can operate this, at what Mr. Meyer filed in this
10 case. And I'm an old school person, so I'm using
11 ELMO rather than -- rather than PowerPoint.

12 So in Mr. -- I don't know if you can
13 see that or not, but in Mr. Meyer's direct
14 testimony, which was the original support for the
15 complaint filing, Mr. Meyer took the company's book
16 earnings reported in one of the surveillance
17 reports we've been talking about, specifically it
18 was the September 30th, 2013 surveillance report,
19 and he made just 14 adjustments to those book
20 earnings to arrive at a proposed rate reduction of
21 \$67 million, which is the bottom line figure on the
22 chart on the projector.

23 There were numerous problems with
24 Mr. Meyer's analysis. First, as I've been saying,
25 it did not come close to a comprehensive cost of

1 service study which this Commission has always
2 required when it sets rates. So 14 adjustments
3 isn't even in the ballpark of a cost of service
4 study.

5 Second, even the limited information
6 that Mr. Meyer relied upon was badly out of date.
7 The 12-month period covered by the surveillance
8 report was already almost five months stale when
9 the complaint was filed.

10 Most of the adjustments that
11 Mr. Meyer proposed were even more out of date.
12 Many of them were just cut and pasted Staff
13 adjustments out of Ameren Missouri's last rate
14 case.

15 So in other words, instead of doing
16 any analysis of what expenses Ameren Missouri was
17 currently incurring or incurred in 2013 or the 12
18 months ended 2013, he just went back to the last
19 rate case and cut and pasted the amount of the
20 Staff adjustment from the last rate case.

21 So, for example, he had an adjustment
22 for advertising and miscellaneous expenses. He
23 didn't look at any of your current advertising or
24 any advertising that we did during the 12-month
25 period that he studied. He just went back to the

1 2012 rate case and cut and pasted the Staff
2 adjustment for advertising into this analysis. And
3 the last rate case, the test year was -- I think it
4 was October 1st, 2010 to September 30th, 2011. So
5 it was -- it was a period that didn't match the
6 period he was studying, and it was a period that
7 was many, many months out of date.

8 He did the same thing with long-term
9 incentive. He just cut out of the last rate case,
10 didn't look at our long-term incentive. Same thing
11 was done with the Callaway refueling. He was using
12 the refueling from the last rate case. We've had a
13 refueling since. He didn't look at it. And so
14 there was a lot of outdated material that was in
15 there, in those 14 adjustments.

16 And then finally, Mr. Meyer's
17 analysis contained numerous outright errors. In
18 his rebuttal testimony, Ameren Missouri witness
19 Gary Weiss points out that aside from the ROE
20 adjustment, only two of those 14 adjustments were
21 calculated correctly.

22 I think one there was a -- one was
23 the elimination of the rate refund, that was
24 calculated correctly, and the interest on customer
25 deposits, which is about \$700,000, those were the

1 only two of the 14 adjustments that Mr. Meyer even
2 calculated correctly.

3 So the bottom line is that the
4 analysis Mr. Meyer provided in his direct testimony
5 was really bad, and we pointed that out in our
6 pleadings, but it just was.

7 In addition, not being a full cost of
8 service study, it was -- had far out of date
9 information and irrelevant information, and almost
10 all the adjustments were incorrectly calculated.

11 So when Mr. Meyer was confronted with
12 all these problems, which were systematic in his
13 analysis, he didn't try to defend his analysis in
14 surrebuttal testimony or fix it. Instead, when he
15 filed his surrebuttal testimony just a few weeks
16 ago, he completely abandoned his original
17 calculation, and he provided a brand-new analysis
18 based on a different time period with different
19 adjustments.

20 It's basically a brand-new case that
21 Mr. Meyer presented in surrebuttal testimony, and
22 here's his brand-new case. So he's got the same
23 kind of a table, but he started -- he decided to
24 start with a different period. So now instead of
25 the 12 months ended September 30th, 2013, he

1 switched to the 12 months ended December 31st,
2 2013.

3 And he had completely different
4 adjustments. He threw out six of his adjustments
5 from his original testimony. He added five more.
6 Even the ones that were the same categories were
7 different dollar amounts.

8 And he wound up with a proposed
9 earnings reduction that was a lot different than
10 what was in his direct testimony. He was now down
11 to \$49.5 million, which again is the very bottom
12 line that maybe you can see. So he's about 17 to
13 \$18 million less than the filing that he made just
14 a couple months earlier.

15 Since Mr. Meyer filed this new
16 analysis for the first time in his surrebuttal
17 testimony, we did not get the chance to file any
18 responsive testimony, but you can notice a couple
19 of things about his analysis just looking at it.

20 First -- and I think Noranda pointed
21 this out -- this \$49 million reduction, 23 million
22 or almost half of it is based on lowering the
23 return on equity, the company's return on equity
24 from
25 9.8 percent which was in the Commission's last

1 order to 9.4 percent.

2 And, you know, we believe there's
3 absolutely no evidence in this case that would
4 support a reduction of the company's return on
5 equity. Mr. Gorman, who is Noranda's own witness,
6 has a range of reasonable returns that includes the
7 existing 9.8 percent, and even he acknowledges that
8 9.8 percent is a reasonable return on equity.

9 Staff -- Staff actually, contrary to
10 what Mr. Thompson said, they're not silent on this.
11 They support retaining the existing 9.8 percent
12 return on equity.

13 And the company's witness,
14 Mr. Hevert, says that if you're going to reexamine
15 the company's cost of equity, it actually ought to
16 be increased to 10.4 percent. He's got a range of
17 10.2 to 10.6.

18 Given that evidence, there is no
19 basis in the record in this case that will allow
20 the Commission to lower the return on equity to
21 9.4 percent. You know, discussions of what Staff
22 witness would have filed if he would have filed
23 testimony probably are not a basis for the
24 Commission to lower the return on equity.

25 Anyway, if you take out the return on

1 equity adjustment, the remaining amount of the
2 adjustment that he's currently proposing is
3 \$26 million, which is a rate reduction of less than
4 1 percent. So if you throw out the ROE, which I
5 think you clearly have to, he's left with a rate
6 reduction less than 1 percent based on his
7 analysis.

8 So there are at least three reasons
9 why Mr. Meyer's revised proposal doesn't satisfy
10 the Complainants' burden of proof in this case.

11 First, just like the last analysis,
12 it's not remotely close to a full cost of service
13 that would allow the Commission under the UCCM case
14 to reset rates. It ignores numerous relevant and
15 essentially factors. The fundamental problem is
16 that without a complete analysis, no one has any
17 idea whether rates were too high, too low or just
18 right during this period that he looked at.

19 And it's worth noting that during our
20 last rate case -- I think someone else mentioned
21 this in their opening statement. During our last
22 rate case where the Commission ultimately ordered a
23 \$260 million rate increase, we had surveillance
24 reports all during that rate case that showed that
25 on a book basis we were earning in excess of our

1 rate of return.

2 And that proves pretty conclusively
3 that those aren't legitimate bases for setting
4 rates for a utility. You have to take into account
5 unusual things, unusual weather, unusual
6 adjustments. Book earnings are just not a
7 substitute for a cost of service analysis.

8 So anyway, if the Complainants had
9 done a full cost of service study in this case,
10 like we did in our recent rate case filing, it
11 would show that Ameren Missouri needs a significant
12 rate increase, not a rate decrease.

13 Second, even if Mr. Meyer's analysis
14 was completely accurate -- and let me make sure to
15 say, we do not agree it's completely accurate. We
16 think it's completely wrong. But even if it was
17 completely accurate and you accepted his analysis
18 as it is, the magnitude of the decrease that he is
19 recommending, which is less than 1 percent if you
20 don't change the return on equity, indicates that
21 no adjustment should be made.

22 The truth is, a return on equity set
23 by the Commission is a target. It's not a ceiling
24 and it's not a floor. And if you look at any
25 utility's earnings, their actual earnings, even

1 adjusted actual earnings, look at them in any given
2 period of time, they're not going to equal the
3 Commission's set ROE. They're going to be a little
4 higher or a little lower all the time, every period
5 that you look at.

6 So even if he was 100 percent right,
7 which he's not, the fact that during one historic
8 period we were less than 1 percent higher doesn't
9 justify. There's a magnitude issue here. And if
10 we were -- if we were less than 1 percent lower, it
11 wouldn't justify a rate increase either.

12 Actual earnings are always going to
13 move around. They're always going to be higher or
14 lower depending on what period you look at. That's
15 true for every utility.

16 And finally, perhaps most
17 significantly, is this problem with not taking into
18 account anything that happened after December 31st,
19 2013. There is a lot that has happened since 2013,
20 and some of it is -- some of it is items that won't
21 be in service until the end of the year, but a lot
22 of it's also already happened.

23 Ameren Missouri's in the process of
24 investing a billion dollars in infrastructure, and
25 we've -- the testimony of Ameren Missouri witness

1 Lynn Barnes discusses this in detail, provides some
2 of the projects, some of the in-service dates.
3 These are big projects.

4 We -- this summer, the first phase of
5 a \$170 million electrostatic precipitator project
6 is going in service at the Labadie plant, and the
7 second and final phase will be in service by year's
8 end. That's required pollution control equipment,
9 \$170 million.

10 The company's also putting in a
11 \$40 million accounting system that's supposed to be
12 operational by the end of this month, by the end of
13 July. So right now it's about to go in service or
14 it already is.

15 We've purchased a new reactor head.
16 Callaway nuclear plant needs a new reactor head,
17 and it costs about \$150 million. We already bought
18 the reactor head. We already shipped it to the
19 Callaway plant site. It's sitting there, but we
20 can't put it on the Callaway plant until the
21 outage, which is going to occur this fall. So this
22 fall we're going to put a \$150 million, you know,
23 reactor head on the Callaway plant, which we have
24 to do.

25 So these are -- these are real

1 investments that we're making. You know,
2 Ms. Barnes, I believe her testimony says we're
3 about 57 percent spent on these investments. We've
4 actually spent 57 percent of the money. So these
5 aren't speculative investments that might or might
6 not be made. These are things that we certainly
7 have to do, we're committed to do, and they will be
8 done.

9 And you can't ignore all these
10 investments, which is what Mr. Meyer is trying to
11 do. You can't ignore them when you set rates.

12 As I previously mentioned, we're also
13 in the process of paying out \$91.9 million in solar
14 rebates, which we are required by law to pay. And
15 there's also a 10 percent component to -- that the
16 parties have agreed to and the Commission has
17 approved to account for the -- for the cost of
18 money, for the cost of money in paying those out.
19 So it's like \$100 million, and so far we've paid
20 about \$65 million of them. We're expecting to
21 complete payment of all those by the end of the
22 year.

23 And again, Mr. Meyer has all but
24 completely ignored those. He included \$30 million,
25 which is the amount we spent as of the end of 2013.

1 Again, these are significant costs. We've already
2 incurred a bunch of them. We're about to incur
3 more. They can't be ignored when you set rates for
4 the future.

5 Finally, Mr. Meyer ignored material
6 expense increases. We've had wage increases to our
7 union workers and our management workers. He
8 didn't take any of that into account. Property
9 taxes are increasing in 2014 over what they were in
10 2013. He hasn't taken that into account.

11 Mr. Meyer's analysis turns a blind
12 eye to all of these cost increases and eliminates
13 consideration of anything that happened after
14 December 31st.

15 Mr. Meyer and the Complainants
16 complain that they didn't have access to sufficient
17 data. You heard that in a lot of the opening
18 statements, no access to sufficient data to permit
19 them to do a cost of service study.

20 The evidence in this case will show
21 that any problems the Complainants had in this case
22 were of their own making. The Complainants never
23 bothered to ask Ameren Missouri for any of the
24 information that could have been used to develop a
25 full cost of service study, and they insisted on an

1 extremely expedited procedural schedule that would
2 have made development of a cost of service study
3 extremely difficult in any event.

4 Noranda and its rate consultant,
5 Brubaker & Associates, unquestionably have the
6 resources to do a cost of service analysis.
7 They've got the money to do it, and they've got the
8 expertise to do it. People like Mr. Meyer and
9 Mr. Brubaker are more experienced experts than
10 people on the Staff are.

11 But the fact that they disabled
12 themselves from doing a cost of service study by
13 not -- by insisting on an extremely expedited
14 procedural schedule and not asking any of the
15 questions -- I mean, once they filed the complaint,
16 they certainly had discovery rights. They didn't
17 ask us a single data request for two months, and
18 they certainly never asked us data requests that
19 would have allowed them to do anything close to a
20 cost of service study.

21 So the bottom line is the
22 Complainants have completely failed to satisfy
23 their burden of proving that Ameren Missouri's
24 current rates are unjust and unreasonable for
25 current and future periods. There is no evidence

1 that Ameren Missouri's rates will not be just and
2 reasonable on a going-forward basis and, therefore,
3 the Commission must deny this complaint. Thank
4 you.

5 JUDGE WOODRUFF: Questions?

6 CHAIRMAN KENNEY: I don't have any.
7 I interrupted you and asked mine already. So thank
8 you.

9 COMMISSIONER HALL: So it sounds,
10 Mr. Byrne, that you believe that there is some type
11 of materiality requirement, that if there's
12 overearnings of a dollar or \$10 or a million
13 dollars, if it's not at some level, then the
14 Commission should not provide any relief?

15 MR. BYRNE: I do, and I think that's
16 a knife that cuts both ways. It's also for
17 underearning, and its -- I believe the Staff's
18 position about materiality and sustainability are
19 both true whether you're looking to increase rates
20 at the request of a utility or decrease rates at
21 the request of other people.

22 COMMISSIONER HALL: What legal
23 authority would you cite to support the materiality
24 requirement? And if you can't name a case or a
25 treatise offhand, at some point I'd like to get

1 that from you.

2 MR. BYRNE: Honestly, I can't name a
3 treatise or a case offhand. I mean, the UCCM case
4 considers all relevant factors. I think
5 materiality and sustainability might be relevant
6 factors that are -- but I don't have -- I really
7 don't have a good case for you that says it's got
8 to be material.

9 COMMISSIONER HALL: I would find that
10 legal authority for that position informative at
11 some point.

12 MR. BYRNE: I will.

13 COMMISSIONER HALL: I understand that
14 Ameren was put somewhat in an uncomfortable or an
15 awkward position with the change in position by
16 Noranda with their expert on the particular factors
17 that we should take into account in determining
18 overearnings or whether an overearnings complaint
19 is meritorious.

20 I'm wondering, are you going to have
21 witnesses that can specifically address some of
22 those factors? For example, weather normalization
23 where Noranda and Staff are in agreement and we
24 don't know where Ameren is on that particular
25 factor. Will you have anyone able to testify to

1 that issue?

2 MR. BYRNE: Sure. Mr. Weiss can
3 testify. And I can tell you a little bit about it
4 if you're interested.

5 COMMISSIONER HALL: Sure.

6 MR. BYRNE: I think he didn't -- you
7 know, in his direct testimony, Mr. Meyer did not do
8 weather normalization, and then what really
9 happened is in his surrebuttal testimony, a lot of
10 the adjustments that he has in there were adopted
11 from Staff's analysis. And so, you know, the --
12 the weather normalization, I don't think we
13 disagree that it's correct for what it is.

14 COMMISSIONER HALL: What about test
15 year days normalization?

16 MR. BYRNE: I think he got that from
17 the Staff who got it from us. I do think those --
18 I do think the 13 adjustments or however many he
19 has, maybe he has 12, in his surrebuttal testimony
20 are not -- we're not arguing that they're
21 incorrectly calculated like the direct testimony
22 was.

23 COMMISSIONER HALL: Well, you do
24 quibble with a couple of them, solar rebates --

25 MR. BYRNE: Sure.

1 COMMISSIONER HALL: -- depreciation,
2 labor.

3 MR. BYRNE: Sure. None of them have
4 been -- I'm just saying for what they are, for the
5 period of December 31st, 2013, they're correctly
6 calculated, yeah. None of it's been rolled forward
7 to pick up major changes that have occurred.
8 That's a deficiency of the whole analysis.

9 COMMISSIONER HALL: So they are
10 accurate for the 2013 calendar year?

11 MR. BYRNE: Right. I would say
12 accurate but incomplete for the 2013 calendar year
13 and don't roll forward.

14 COMMISSIONER HALL: And I have --

15 MR. BYRNE: And Mr. Weiss can -- you
16 might want to ask Mr. Weiss about that, too. He's
17 the expert.

18 COMMISSIONER HALL: I have an index
19 from the 2012 case with all of the factors that
20 were taken into account by the Commission in
21 setting rates in that case, and we've got 9, 10,
22 11, 12 pages of items. And I understand that your
23 client's position in this case is that we need to
24 look at every single one of those items?

25 MR. BYRNE: You certainly have to

1 look at all relevant factors. And I don't have the
2 list in front of me. If you thought one of them
3 wasn't relevant, you probably wouldn't have to look
4 at it. But you can't ignore 95 percent of them, I
5 don't think.

6 COMMISSIONER HALL: And you say that
7 Noranda never made data requests necessary in order
8 for it to do a cost of service report?

9 MR. BYRNE: That's correct.

10 COMMISSIONER HALL: And what would
11 that data request have looked like? Would it have
12 gone through each of these items and asked for
13 Ameren's current --

14 MR. BYRNE: Sure. For example, we
15 get a lot of data requests in processing a rate
16 case, but I know, for example, Staff sends us a
17 standard set of data requests -- we're just getting
18 them now in our existing rate case -- of like 165
19 data requests. It gives them all the information,
20 and then they have to ask more after that. There's
21 follow-ups after that. There's 165 or so data
22 requests that gives them all the basic information
23 to do a cost of service study.

24 Those are electronically available.
25 Obviously MIEC gets served with those every time.

1 They could have on the first day of their complaint
2 sent us the 165 data requests that are already
3 written for them by Staff that give you the basic
4 information that allow you to do a cost of service
5 study. They didn't do that. They didn't ask us
6 anything for two months, and then they didn't -- at
7 two months they didn't ask us that either.

8 COMMISSIONER HALL: I don't have any
9 further questions. Thank you.

10 JUDGE WOODRUFF: Commissioner Rupp?

11 COMMISSIONER RUPP: Yeah. Thank you.
12 Thank you very much. And I don't have the list
13 that Commissioner Hall was referring to, but one of
14 my questions kind of touches on that. In the test
15 year from the last rate case, was there a
16 calculation figured for future salary and union
17 dues increases?

18 MR. BYRNE: Yeah, there was. There's
19 an update period, so yes. There was an update
20 period where it was updated beyond the test year to
21 reflect the most current salary increase, yes.

22 COMMISSIONER RUPP: So the rates that
23 you're currently operating under, that factor has,
24 in effect, been thought of by the previous
25 Commission that set those rates?

1 MR. BYRNE: Yeah. I think, for
2 example, we would have had -- the rates took effect
3 on January 2nd, 2013, from that case, and those
4 would have reflected pay increases in 2012, which
5 were the most recent ones at that time. So since
6 then we've had pay increases in 2013, and now we've
7 had --

8 COMMISSIONER RUPP: My question,
9 though, is, did the previous Commission take into
10 consideration future increases in salary and union
11 dues in the calculation of those rates?

12 MR. BYRNE: They weren't future.
13 They had already -- they had already -- they
14 annualized ones that had already taken effect. Do
15 you see what I'm saying? And that's analogous to
16 this case because the ones that I'm talking about
17 have already taken effect, too, in 2014.

18 COMMISSIONER RUPP: And then same
19 thing on the property taxes, was there -- during
20 the test year, the last rate case, did they --

21 MR. BYRNE: I know there's always a
22 fight about property taxes because property taxes I
23 think -- there's always a fight about property
24 taxes because you don't write the check until the
25 very end of the year, and so even though -- even

1 though you -- I think you know what the amount is,
2 you haven't written the check yet, and I -- I don't
3 remember for sure, but I think since we hadn't
4 written the check yet, we didn't get credit for the
5 2012 property tax.

6 COMMISSIONER RUPP: Very good. Thank
7 you. And then you had said during that last rate
8 case, the book rates at several points through that
9 showed that you were overearning?

10 MR. BYRNE: Yes.

11 COMMISSIONER RUPP: I'm having
12 Internet troubles getting to all the documents
13 here. Do I have that? Has that been submitted?
14 If not, if so, can someone show me where it's at?

15 MR. BYRNE: It has been submitted,
16 you know. I know in -- not to -- I know in
17 Noranda's opening, they had a chart that showed --
18 well, it's in Mr. Cassidy's testimony. I know
19 that.

20 COMMISSIONER RUPP: I can find it.
21 I'm just -- PDFs are not loading here. So it's in
22 Cassidy. Okay.

23 MR. BYRNE: Yeah. He has every
24 report and --

25 COMMISSIONER RUPP: I can find it,

1 then. I couldn't pull it up. Thank you.

2 JUDGE WOODRUFF: I just have one real
3 brief question. It's kind of more procedural.
4 Since the Commission ordered that the past
5 information from earnings has been made public, is
6 there anything remaining in this case that would be
7 highly confidential?

8 MR. BYRNE: I think there is.
9 Ms. Barnes' testimony -- and we need to go back and
10 put -- there was a proprietary version of that, and
11 the reason her testimony is proprietary is
12 different than the earnings reports. She has
13 some -- a schedule that shows the budgeted cost of
14 capital projects, and that -- so for that separate
15 reason, that needs to still remain proprietary, but
16 I think that's it.

17 JUDGE WOODRUFF: We'll deal with that
18 if it comes up.

19 MR. BYRNE: It's only in her
20 schedules, I believe.

21 JUDGE WOODRUFF: Then you're excused.

22 MR. BYRNE: Okay. Thank you.

23 JUDGE WOODRUFF: That completes the
24 opening statements. We're due for a break. Let's
25 go ahead and take a lunch break now. We'll come

1 back from lunch at 12:30.

2 (A LUNCH BREAK WAS TAKEN.)

3 JUDGE WOODRUFF: Let's come to order,
4 please. We're back from lunch, and Mr. Meyer has
5 taken the stand. If you'd please raise your right
6 hand, I'll swear you in.

7 (Witness sworn.)

8 JUDGE WOODRUFF: Thank you. You may
9 inquire.

10 GREG MEYER testified as follows:

11 DIRECT EXAMINATION BY MR. DOWNEY:

12 **Q. Please state your name.**

13 A. Greg Meyer.

14 **Q. And are you the same Greg Meyer that**
15 **all the lawyers in opening statement were referring**
16 **to?**

17 A. Yes, I am.

18 **Q. Have you filed any prefiled testimony**
19 **or prepared any prefiled testimony in this case?**

20 A. Yes, I did.

21 **Q. Okay. Do you have Exhibit No. 1 in**
22 **front of you?**

23 A. Yes, I do.

24 **Q. What is that?**

25 A. It's my direct testimony in this

1 case.

2 Q. Okay. And is that under oath?

3 A. Yes.

4 Q. And if I were to ask you today the
5 questions asked of you in that direct testimony,
6 would your answers be the same?

7 A. No.

8 Q. Okay. Would you please tell the
9 Judge and the Commissioners how you would change
10 it?

11 A. Well, as you've heard through the
12 opening statements, we proposed a certain
13 calculation, an earnings calculation at
14 September 30th, 2013.

15 In my surrebuttal we updated that
16 calculation to December 31st, 2013, and some of the
17 adjustments that we discussed in our
18 September 30th, 2013 analysis are no longer
19 applicable, and so the reasons for including those
20 would not be correct today. So that would make the
21 testimony not as accurate as it should be.

22 Q. So would it be easy for you to go
23 through your direct testimony and identify each and
24 every change, or how do you want to address that?

25 A. I think the better way to address it

1 is just to concentrate on the December 31st, 2013
2 analysis, and if there's questions on the
3 September 30th, we can identify whether those have
4 carried forward or not.

5 Q. All right. Then let me ask you this
6 question: Except to the extent that your testimony
7 changed in your surrebuttal, if I were to ask you
8 the questions in your direct testimony today, would
9 your answers be the same?

10 A. Yes.

11 Q. All right. Now, let's switch to your
12 surrebuttal, and that is Exhibit 2. Do you have
13 that?

14 A. I do.

15 Q. And does that consist of both an HC
16 version and an NP version?

17 A. It does.

18 Q. And is that reclassified testimony?

19 A. It is.

20 Q. Also, was your direct reclassified?

21 A. It was.

22 Q. Was it originally HC?

23 A. Yes.

24 Q. And now it is NP?

25 A. Correct.

1 **Q. All right. Were you under oath when**
2 **you provided the surrebuttal testimony?**

3 A. Yes.

4 **Q. And if I were today to ask you the**
5 **questions asked in that surrebuttal testimony,**
6 **would your answers be the same?**

7 A. Yes, they would.

8 **Q. In all respects?**

9 A. I have some changes.

10 **Q. Okay. In what respects would you**
11 **change that testimony?**

12 A. Okay. On page 4 of my surrebuttal
13 reclassified, when we were going back through the
14 case, we noticed a minor adjustment that we had put
15 in the wrong capital structure value. So it has an
16 effect on these numbers on the Schedule 1, and I
17 can list, tell you the ones that have changed.

18 Line 1, instead of 31,020, it should
19 be 31,007. Line 7, which is the long-term
20 incentive and stock compensation disallowance,
21 instead of 13,333, it should be 13,332. The
22 subtotal line is listed at 26,354, and that should
23 be 26,341. Line 13, which is rate of return, the
24 23,110 should be 23,101, which comes down to a
25 total of, instead of 49,464, it should be 49,442,

1 reflecting a change of \$22,000.

2 Page 17, line 6, the 10.48 percentage
3 should be 10.45 in both instances on that line.
4 That was a typo. That's all the changes I'm aware
5 of.

6 Q. On line 7, is that the 37.-- wait a
7 second. Is the number on line 7 still highly
8 confidential?

9 A. No.

10 Q. Okay. Is the \$37.2 million number on
11 line 7, is that still correct?

12 A. Yes.

13 Q. Other than those corrections to your
14 testimony, would your answers be the same today if
15 I asked you those questions?

16 A. They would.

17 MR. DOWNEY: Okay. Judge, I would
18 offer Exhibits 1 and 2 at this time.

19 JUDGE WOODRUFF: Now, let me clarify
20 that nothing in his testimony is -- remains highly
21 confidential; is that correct?

22 MR. DOWNEY: I understand that part
23 of his surrebuttal is still highly confidential,
24 and I'm not sure which part. Mr. Meyer, could you
25 identify that?

1 THE WITNESS: I still think that the
2 discussion on the distribution maintenance and the
3 steam production maintenance using the budgeted
4 numbers for 2014 has been still considered to be
5 highly confidential by the company.

6 JUDGE WOODRUFF: Okay. So we'll
7 still have to have an NP and an HC version of 2,
8 then.

9 MR. DOWNEY: Yes, your Honor.

10 JUDGE WOODRUFF: Exhibit 1, which is
11 what was originally filed as HC and NP, it's all NP
12 now, right?

13 MR. DOWNEY: Correct.

14 JUDGE WOODRUFF: 1 and 2, which has
15 an NP and an HC version, have been offered. Any
16 objections to their receipt?

17 (No response.)

18 JUDGE WOODRUFF: Hearing none, they
19 will be received.

20 (EXHIBIT NOS. 1 AND 2NP/HC WERE
21 RECEIVED INTO EVIDENCE.)

22 JUDGE WOODRUFF: For
23 cross-examination, we would actually begin with
24 MIEC. I assume not.

25 MR. DOWNEY: No questions.

1 JUDGE WOODRUFF: Retailers?

2 MR. SCHWARZ: I have some, yes.

3 CROSS-EXAMINATION BY MR. SCHWARZ:

4 Q. Good afternoon, Mr. Meyer.

5 A. Good afternoon.

6 Q. You have -- between working as a
7 Staff accountant and working with Brubaker &
8 Associates, you've got more than 30 years'
9 experience as a regulatory auditor?

10 A. I've been a regulatory auditor since
11 1979.

12 Q. Have you worked on Ameren rate cases
13 before?

14 A. Yes, several.

15 Q. Beginning with the Staff's 2002
16 complaint case, have you worked every Ameren rate
17 proceeding since then?

18 A. Yes.

19 Q. Can you --

20 A. Well, let me clarify that. In the
21 2008 case, I didn't file testimony in that case,
22 but I acted as an advisor to Brubaker & Associates.

23 Q. What is your understanding of the
24 Uniform System of Accounts?

25 A. The Uniform System of Accounts are,

1 with its contraction USOA, is a document that
2 prescribes how utilities are to book their
3 investments and their expenses and recognize their
4 revenues.

5 Q. And how many accounts might there be
6 in the USOA? Hundreds?

7 A. Yes. I haven't counted them.

8 Q. Does the USOA provide directions for
9 how to record different transactions in the USOA
10 accounts?

11 A. Generally it does.

12 Q. Does the PSC require regulated
13 utilities to record their regulated financial
14 transactions in accord with USOA?

15 A. It's my understanding they do.

16 Q. Does Ameren do so?

17 A. I believe they do.

18 Q. From your experience, does Ameren --
19 does Ameren compile its reports to the Public
20 Service Commission and its rate case filings based
21 on its records kept pursuant to the USOA?

22 A. Yes.

23 Q. Does the Staff's rate case accounting
24 schedules and its recommendation, are they based on
25 accounting records that are maintained in the USOA

1 **format and accounts?**

2 A. Yes. I believe the accounting
3 schedules are set up in detail to the USOA
4 accounts.

5 Q. Is there a -- any accounting or
6 regulatory rule that requires that every USOA
7 account entry be adjusted in a rate proceeding?

8 A. No.

9 Q. Did your direct and surrebuttal
10 testimony consider Ameren Missouri's rate base per
11 the USOA records?

12 A. Both of my pieces of testimony
13 incorporated rate base as detailed in the
14 surveillance reports submitted by Ameren.

15 Q. Okay. And did you formulate a
16 capital structure for the company based on those
17 records?

18 A. Again, we used the capital structure
19 that was reported in the surveillance data.

20 Q. Okay. To your knowledge, are those
21 based on the accounting records of Ameren?

22 A. It's my understanding they are.

23 Q. And does your testimony -- strike
24 that.

25 Did your testimony exclude from

1 **consideration any USOA account that Ameren**
2 **maintains?**

3 A. Is your question did I make an
4 adjustment to exclude or --

5 Q. **Let me rephrase.**

6 A. Okay.

7 Q. **Did you -- when you were performing**
8 **your analysis, did you eliminate from consideration**
9 **any particular USOA account in which Ameren had**
10 **expenses, revenues or plant recorded?**

11 A. Not that I'm aware of.

12 Q. **You would be aware if you had said,**
13 **hmm, Account 511, I don't think I'll --**

14 A. No. Well, if your question is did I
15 make an adjustment to eliminate a certain account
16 when I did the September or December analysis, the
17 answer is no.

18 Q. **Thank you. Do you recall either**
19 **Staff or Ameren rebuttal or surrebuttal testimony**
20 **that identified any USOA account that you had**
21 **overlooked?**

22 A. No.

23 Q. **Did Complainants propose a test year**
24 **in this case?**

25 A. Yes.

1 Q. Did any parties oppose it?

2 A. Yes.

3 Q. Did the Commission adopt a test year
4 in this case?

5 A. No.

6 Q. Nevertheless, both Staff and the
7 Complainants analyzed Ameren's books and records as
8 of the 12 months ending December 31st of 2013; is
9 that correct?

10 A. Yes.

11 Q. Has there been an adjustment to
12 Ameren's reported advertising expense in every
13 Ameren rate proceeding since 2002, whether agreed
14 to by the parties or ordered by the Commission?

15 A. I believe it's a standard adjustment
16 that's proposed by the Staff in every rate case,
17 every Ameren rate case dating back to 1987 at
18 least.

19 Q. To your knowledge, has Ameren changed
20 the way that it records advertising expense since
21 the case in ER-2012-0166?

22 A. Could you repeat the question?

23 Q. To your knowledge, has Ameren changed
24 how it records advertising expense since the 2012
25 case?

1 A. I'm not aware that they've made a
2 change.

3 **Q. In your opinion as an expert**
4 **regulatory auditor, is the adjustment you propose**
5 **to advertising expense reasonable based on Ameren's**
6 **accounting practices in your Ameren rate case**
7 **experience?**

8 A. Well, we -- we did not make an
9 adjustment in the December analysis.

10 **Q. But you proposed one, and while you**
11 **may have abandoned it, I haven't. The question is,**
12 **is the adjustment that you proposed reasonable?**

13 A. I believe it would be a reasonable
14 adjustment.

15 **Q. Thank you. Are all of the**
16 **adjustments you recommend reasonable based on**
17 **Ameren's accounting records and practices in your**
18 **Ameren rate case experience?**

19 A. For which filing?

20 **Q. Let's say the surrebuttal at this**
21 **stage.**

22 A. All the adjustments I made in the
23 surrebuttal are reasonable adjustments.

24 MR. SCHWARZ: Thank you.

25 JUDGE WOODRUFF: Consumers Council?

1 MR. COFFMAN: Mr. Meyer did such a
2 good and thorough job, I have no questions.

3 JUDGE WOODRUFF: Public Counsel?

4 MS. BAKER: Thank you.

5 CROSS-EXAMINATION BY MS. BAKER:

6 Q. I just want to talk a little bit
7 about Staff's three-phase process in this. Are you
8 aware of that process mentioned in Mr. Cassidy's
9 testimony?

10 A. Yes, I am.

11 Q. And looking at the first phase of
12 that, would you agree that that is looking at
13 information that's readily available, documentation
14 that's not highly confidential, that could be done
15 fairly easily?

16 A. Can you direct me to the page in his
17 testimony?

18 Q. I'm sorry. As soon as I find it, I
19 will. Page 12 of his rebuttal, beginning on
20 line 4, you'll agree that he talks about a
21 three-stage process?

22 A. Correct.

23 Q. And he says in line 7, the first one
24 is a very abbreviated high-level analysis. Do you
25 see that?

1 A. Yes. That relies on the surveillance
2 data.

3 **Q. And is that information available to**
4 **everyone or is that information that's**
5 **confidential?**

6 A. No, it's not available to everyone.
7 Only parties to Ameren's FAC, fuel adjustment
8 clause proceedings have access to the surveillance
9 data, besides the Staff and the Office of Public
10 Counsel.

11 **Q. So an individual complainant would**
12 **not necessarily be able to move past Staff's first**
13 **stage in a complaint?**

14 A. That's correct, because not all
15 parties to the FAC would -- are all the customers
16 of Ameren.

17 **Q. And so would you agree that this is**
18 **basically the stage where your direct testimony**
19 **was?**

20 A. Well, I would contend that we've gone
21 deeper than Stage 1.

22 **Q. So looking down at line 15 where he**
23 **talks about Staff would begin a more detailed**
24 **review phase, that was basically where your direct**
25 **testimony was?**

1 A. I would say that we started with the
2 surveillance data as a beginning point, as a
3 starting point, and with limited public information
4 that we had and our experience in participating in
5 previous Ameren rate cases and the public
6 information we had from those rate cases, we
7 developed our September 30th analysis.

8 Now, if you weren't fortunate enough
9 to be a party to the FAC, your ability to even
10 produce what we did would be severely limited.

11 **Q. And then moving on to page 13,**
12 **Mr. Cassidy talks about how then they would go on**
13 **to an onsite review, audit-type process that takes**
14 **about five months. Do you recall that?**

15 A. Correct.

16 **Q. And you would agree that all three of**
17 **these phases would have to show a significant**
18 **amount of overearnings before Staff would even**
19 **consider filing the rate -- the complaint case; is**
20 **that correct?**

21 A. In the complaint cases that I've been
22 involved in with the Staff, it was a -- materiality
23 was definitely a factor that was considered by the
24 Staff.

25 **Q. All right. Looking at your change**

1 from direct testimony into surrebuttal testimony,
2 would you agree that a lot of that change was
3 because now you had access to more confidential
4 data from Ameren?

5 A. Well, the main driver in my mind is
6 the fact that we had the right of discovery. I
7 don't believe we would have been -- I don't believe
8 that we would have had -- answers to our discovery
9 would not have been provided by Ameren.

10 Q. So you could not have made the change
11 from what you provided to the Commission in direct
12 to what you provided in surrebuttal without the
13 right of discovery?

14 A. Correct.

15 Q. Now, looking at what you provided in
16 your surrebuttal, the table that was at issue
17 before on page 4 of your surrebuttal.

18 A. I'm there.

19 Q. Okay. There are basically 13 pieces
20 to this. You would agree that, looking at a rate
21 case, there are many more factors that are looked
22 into; is that correct?

23 A. Well, let's take this in pieces.

24 Okay.

25 Q. I was going to get there.

1 A. There appears to be more adjustments
2 in the Staff's cost of service. In fact, I think
3 Mr. Cassidy at some point lists them. So does
4 Mr. Weiss. These line items that we have here, in
5 many instances they reflect several adjustments
6 that are included in the Staff's cost of service.

7 **Q. So there can be many pieces of the**
8 **USOA that you were asked for -- asked about by**
9 **Mr. Schwarz in each of these numbers; is that what**
10 **you're saying?**

11 A. Well, yes. For instance, many of the
12 adjustments that you'll see to Staff's detailed
13 income statement that would hit -- that would only
14 apply -- one adjustment may only apply to that USOA
15 account would be for labor expense, and that's
16 included in line 9 of my adjustments. So labor
17 expense could include 30-plus adjustments in the
18 Staff's and the company's detailed cost of service
19 reports, and I've put that all together in one.

20 **Q. And so basically these 12, 13**
21 **descriptions are normal descriptions that could go**
22 **into a rate case?**

23 A. These were normal areas that should
24 be looked at, and they would be looked at in a rate
25 case.

1 **Q. In Mr. Cassidy's testimony, he**
2 **mentioned a materiality amount of 4 million. Did**
3 **you apply that particular materiality amount to**
4 **your analysis?**

5 A. No, because I have adjustments here
6 that are less than 4 million. It was the basis,
7 though, for not addressing certain -- two certain
8 adjustments, pensions and OPEBs, because
9 Mr. Cassidy and Mr. Weiss had a discussion that
10 those were not -- had not changed between what was
11 included in the rate case and what is reflected in
12 the December analysis.

13 **Q. Did you have a materiality amount**
14 **that you looked at?**

15 A. No.

16 **Q. So looking at this table here, would**
17 **you agree that this touches on all of the material**
18 **relevant factors from a rate case?**

19 A. I am not aware of any material
20 adjustment that needs to be made to this analysis.
21 I've not been provided -- this -- this table
22 reflects the feedback that I got from the Staff and
23 the company on what they believe were the material
24 adjustments that ignored or couldn't be addressed
25 in September, in the September analysis.

1 Q. And you made an adjustment here for
2 the rate of return beyond the 9.8 percent that was
3 approved by the Commission in the last rate case;
4 is that correct?

5 A. That's correct.

6 Q. And was that adjustment in your mind
7 a material relevant factor to bring these numbers
8 up to the date of December 31st, 2013?

9 A. It is a material adjustment. It's
10 Mr. Gorman's analysis of where the capital markets
11 are currently and what -- what an investor would
12 require as a reasonable return for Ameren.

13 Q. But you felt comfortable that that
14 was a material adjustment that you would add to
15 your total number of overearnings?

16 A. Absolutely. Return on equity issue
17 is usually one of the largest issues in a rate
18 case, so it has to be addressed.

19 Q. And you answered earlier that you've
20 been involved in Ameren rate cases, for several of
21 them in the past, correct?

22 A. Back to 1987.

23 Q. And you've been involved in other
24 rate cases as well, utility rate cases?

25 A. Yes.

1 **Q. And in your experience, is the trend**
2 **for a rate of return, return on equity trending**
3 **downward?**

4 A. I think that would be more
5 appropriately asked of Mr. Gorman.

6 **Q. All right. And looking at your**
7 **numbers of about 49 and a half million of**
8 **overearnings based on the rate of return of 9.4, if**
9 **that were adjusted to the 9.8 that Mr. Cassidy**
10 **uses, your number of 26.354 in this particular**
11 **table would match his quite well, wouldn't it?**

12 A. I didn't -- I didn't make a
13 comparison, but I can if you want to direct me to
14 it.

15 **Q. In his surrebuttal, page 7, line 18.**

16 A. Can you give me the reference again?

17 **Q. I'm sorry. On page 7, line 18,**
18 **before he takes a solar --**

19 A. Are you in his rebuttal or
20 surrebuttal?

21 **Q. Surrebuttal.**

22 A. And your question is? I'm sorry.

23 **Q. On line 18 he lists out a number**
24 **before making a solar -- solar rebates are taken**
25 **into account?**

1 A. Yes.

2 Q. He comes up with a number there.
3 That would be his number at a 9.8 percent ROE; is
4 that your understanding?

5 A. But that's at -- he portrays that at
6 March. The solar rebates figure that he's --

7 Q. Oh, I see.

8 A. -- adjusting is from March. But, I
9 mean -- but the conclusion is that there's still --
10 he still has identified over \$25 million of
11 overearnings.

12 Q. Right. And that fairly well matches
13 your amount before changing to a 9.4 on this
14 particular table of 26.3?

15 A. We're in the same range.

16 Q. Did you look at any future capital
17 projects for Ameren?

18 A. Well, I looked at what Ms. Barnes had
19 testified to because the numbers just weren't
20 coinciding with what I had seen in surveillance.
21 So the numbers I would -- the number I have to use
22 is highly con-- I think it's highly confidential.

23 Q. I don't need to go into numbers.
24 That's perfectly fine. I just wanted to know if --

25 A. She made a projection of how much

1 plant had been placed in service from the true-up
2 through April 30th of 2014, and my analysis would
3 suggest that -- I don't dispute that she put in --
4 that Ameren put in that much plant addition, but
5 she ignored the retirements associated during that
6 period.

7 And when you combine those two, the
8 projected increase that you would expect in plant
9 didn't materialize by almost half. So you have to
10 look at the whole picture when you're talking about
11 plant investments.

12 **Q. Because whenever you're dealing with**
13 **plant, you have plant that's put in that's**
14 **brand-new, but you also have plant that's taken out**
15 **of service. Is that what you're adjusting it --**

16 A. It's retired.

17 **Q. Retired. All right. And then**
18 **there -- wouldn't there be some adjustments for**
19 **plant that is left in place for depreciation to go**
20 **to lower that amount?**

21 A. That's correct, and that's -- I guess
22 that's the second part of the argument is that, in
23 the March surveillance data, the rate base that the
24 company reported is \$180 million less than the rate
25 base that was placed -- that was relied upon to set

1 the rates for the 2012 rate case.

2 **Q. And because there's less rate base,**
3 **if rates are staying the same, then there's more**
4 **earnings that the company receives from that?**

5 A. I think that's correct. Yes, that's
6 correct. There's a return built in to rates in the
7 2012 rate case that doesn't support plant that's in
8 existence today.

9 **Q. So all of that was taken into account**
10 **in your analysis of this case?**

11 MR. BYRNE: I'm going to object that
12 the question's leading. Every one of these
13 questions has been leading.

14 MS. BAKER: This is
15 cross-examination.

16 MR. BYRNE: Well, not from a friendly
17 party.

18 MS. BAKER: I mean, I'm trying to --

19 JUDGE WOODRUFF: Overruled.

20 MS. BAKER: Thank you.

21 THE WITNESS: Can you repeat the
22 question?

23 BY MS. BAKER:

24 **Q. So capital -- future capital projects**
25 **were thought about by you in your analysis of this**

1 **case?**

2 A. Well, we know for sure that through
3 March all the plant that was placed in service that
4 they're still overearning, that's in their
5 surveillance data. So that's been taken care of.

6 We asked for rate base through May,
7 June and July separately and -- so that we could
8 evaluate whether the investment is coming in as
9 they purport it to be, and the company refused to
10 answer that data request.

11 MS. BAKER: I think that's all the
12 questions that I have. Thank you.

13 JUDGE WOODRUFF: Okay. For Staff?

14 MR. ANTAL: Thank you, Judge.

15 CROSS-EXAMINATION BY MR. ANTAL:

16 **Q. Mr. Meyer, do you have a copy of your**
17 **surrebuttal testimony handy? Would you please turn**
18 **to page 4, Table 1?**

19 A. Sure. I'm there.

20 **Q. Okay. In your table you make several**
21 **adjustments to Ameren's surveillance report data.**
22 **Those adjustments, they were made with data from --**
23 **data not any more current than December 31st of**
24 **2013; is that correct?**

25 A. It's data up through December 31st,

1 2013, correct.

2 Q. Okay. And you didn't make any
3 updates for data more current than that
4 December 31st data?

5 A. Except that I analyzed the March
6 earnings in the surveillance report, and it
7 continues to support the findings I have here.

8 Q. Okay. I'd like to turn specifically
9 to the solar rebates adjustment that you made.
10 Now, you stated on page 5 of your surrebuttal that
11 those numbers were rebates paid by Ameren Missouri
12 through December 31st of 2013, correct?

13 A. That's correct.

14 Q. And that adjustment increases
15 Ameren's revenue requirements?

16 A. It does.

17 Q. Okay. And just to be -- to be clear,
18 when there's an increase in the revenue
19 requirements, that would decrease their
20 overearnings, correct?

21 A. I agree.

22 Q. Okay. Mr. Meyer, are you familiar
23 with the deposition taken of Gary Weiss on
24 July 18th in conjunction with this case?

25 A. I was at Mr. Weiss' deposition.

1 **Q. Okay. Are you aware of how much he**
2 **said -- he has said that Ameren has paid out in**
3 **solar rebates through June 30th of 2014?**

4 MR. DOWNEY: I'm going to object.
5 That's calling for hearsay.

6 JUDGE WOODRUFF: I'll sustain the
7 objection.

8 MR. ANTAL: All right. May I
9 approach the witness?

10 JUDGE WOODRUFF: You may. Are you
11 going to mark this as an exhibit?

12 MR. ANTAL: Yes, please.

13 JUDGE WOODRUFF: No. 14.

14 (EXHIBIT NO. 14 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 BY MR. ANTAL:

17 **Q. Mr. Meyer, would agree that what I've**
18 **just handed you appears to be a response by Ameren**
19 **Missouri to a Staff data request submitted by John**
20 **Cassidy?**

21 A. Appears to be.

22 **Q. Okay. And would the response --**
23 **would you agree that the response gives the solar**
24 **rebate expenditures that Ameren has paid through**
25 **August 1st of 2-- from August 1st, 2012 through**

1 **June 30th of 2014?**

2 A. It lists the dollars, correct.

3 **Q. Okay. And if you would turn to**
4 **page 2 of that document, towards the top where it**
5 **says grand total, would you agree that Ameren has**
6 **paid out --**

7 MR. DOWNEY: Go ahead. I might be
8 objecting. Go ahead and complete your question.

9 BY MR. ANTAL:

10 **Q. -- somewhere in the ballpark of close**
11 **to 63 million?**

12 MR. DOWNEY: Judge, same objection.
13 Just because he reads the hearsay from a document
14 doesn't make it anything other than hearsay. It's
15 an out-of-court statement by a non-witness.

16 JUDGE WOODRUFF: Any response?

17 MR. ANTAL: No, your Honor.

18 JUDGE WOODRUFF: I'll sustain the
19 objection.

20 BY MR. ANTAL:

21 **Q. Mr. Meyer, in preparing for**
22 **submitting your testimony in this case, did you**
23 **review the Stip and Agreements in ET-2014-0085?**

24 A. I did review the Stipulation and the
25 Order.

1 Q. Okay. Are you aware of the amount of
2 solar rebates that was agreed to in that Stip and
3 Agreements?

4 A. 91.9 million.

5 Q. Would you agree that does not include
6 a 10 percent adder?

7 A. I would agree with that.

8 Q. So it would be a total of roughly
9 101.1 million?

10 A. I'd agree with that.

11 Q. Okay. If you were -- and I realize
12 that you did not use this number in your analysis.
13 If you were to use that number in your analysis of
14 the solar rebates and amortized it over the
15 three-year period that you used, would it increase
16 Ameren's revenue requirement?

17 MR. DOWNEY: Judge, I'm going to
18 object on relevance. There's no evidence in the
19 record that this amount of money has been spent.
20 In fact, it's my understanding it hasn't been
21 spent. So I'm going to object on relevance
22 grounds.

23 JUDGE WOODRUFF: I'll overrule.

24 THE WITNESS: So are you asking me
25 under your hypothetical, if they spent 101 million,

1 which there's -- I have no knowledge that they
2 have, and I amortized that over how many years?

3 BY MR. ANTAL:

4 **Q. Three years as you used in your**
5 **analysis.**

6 A. That would be approximately
7 \$34 million.

8 **Q. Okay. And that would -- using the**
9 **same analysis, that would decrease their**
10 **overearnings?**

11 A. If you included the full amount, but
12 it would be an inappropriate adjustment.

13 MR. ANTAL: Okay. No further
14 questions. Thank you, Mr. Meyer.

15 JUDGE WOODRUFF: And I'm assuming
16 you're not going to offer 14?

17 MR. ANTAL: Sorry, your Honor. Yes,
18 we would like to -- well, no. You're right. I'm
19 not going to offer Exhibit 14.

20 JUDGE WOODRUFF: All right. Then for
21 further cross we'll go to Ameren.

22 CROSS-EXAMINATION BY MR. BYRNE:

23 **Q. Good afternoon, Mr. Meyer.**

24 A. Good afternoon, Mr. Byrne.

25 **Q. Do you have a copy of your deposition**

1 that I took of you on July 21st?

2 A. I do.

3 Q. Let me start by asking you a couple
4 of questions related to what Mr. Schwarz was asking
5 you about, the advertising and miscellaneous
6 adjustment from your direct testimony. Do you
7 remember those questions?

8 A. I do.

9 Q. Okay. My understanding is that you
10 have abandoned the advertising and miscellaneous
11 adjustment from your direct testimony; is that
12 correct?

13 A. Well, it's not included in your
14 December analysis, yes.

15 Q. So you're not recommending that
16 adjustment anymore, is that --

17 A. It's not part of our number. It's
18 still in your -- there's still an amount in your
19 cost of service for inappropriate advertising,
20 promotional giveaways, lobbying, but we have not
21 taken -- we don't have the resources to go through
22 and make that adjustment.

23 Q. So you're not proposing an
24 adjustment; is that true?

25 A. That's what I said.

1 **Q. And let me ask you this. As I**
2 **understand it, you haven't looked at any of Ameren**
3 **Missouri's existing advertising, either advertising**
4 **that it did in 2014 or 2013; is that true?**

5 A. We have not attempted to look at your
6 advertising.

7 **Q. And you haven't looked at any of the**
8 **miscellaneous expenses that were incurred over that**
9 **period of time; is that true?**

10 A. That's correct.

11 **Q. So as you sit here right now, you**
12 **don't know whether -- for sure whether there's**
13 **inappropriate advertising or miscellaneous**
14 **expenses; is that correct? I mean, if you haven't**
15 **looked at them.**

16 A. Well, based off history, Mr. Byrne,
17 and my rate case involvement back to 1987, I
18 believe as we sit here today, and myself under
19 oath, that you have inappropriate advertising,
20 promotional giveaways and lobbying expenses
21 associated with certain dues still included in your
22 rates.

23 **Q. But you haven't looked at them?**

24 A. That's what I said.

25 **Q. And my understanding is the amount of**

1 your adjustment that was in your direct testimony
2 was taken from our ER-2012-0166 case; is that
3 correct?

4 A. That is correct.

5 Q. And can you tell me exactly where you
6 got it, where you got the amount that you -- of
7 your adjustment?

8 A. We added up the adjustments from the
9 accounting schedules that reflected the Commission
10 Order.

11 Q. Okay. So it was actually out of the
12 Commission Order rather than the Staff
13 Recommendation?

14 A. The Staff puts out an -- or the Staff
15 put out an EMS run that reflects the Commission
16 Order.

17 Q. Do you know if the Commission made a
18 ruling after a contested hearing on those issues in
19 that case?

20 A. I don't understand your question.

21 Q. Well, let me ask it a different way.
22 Isn't it true that the advertising and
23 miscellaneous expenses were part of a settlement
24 that included multiple items in that case?

25 A. And all we were --

1 Q. Is that true or false?

2 A. I believe it was part of a
3 stipulation, yes.

4 Q. And it was a stipulation that
5 included multiple items, didn't it?

6 A. I believe it did.

7 Q. So there could be a tradeoff of
8 different items? It's not -- it's not possible to
9 quantify exactly what each item is in a black box
10 settlement including multiple items, is it?

11 A. Well, in this case I believe it is,
12 because the Staff's accounting schedules reflects
13 the Commission Order. So based off of what they
14 put together, they believe that those were the --
15 where the dollars should be assigned.

16 Q. Wouldn't the Commission Order just
17 have approved the black box settlement? The Order
18 approving the settlement would have just approved
19 the dollar adjustment for all of the items in the
20 settlement, wouldn't it have?

21 A. I suppose you could take a diff--
22 Ameren could take differently how you got to the
23 black box. I'm relying on how the Staff reflected
24 those adjustments as a part of the black box
25 settlement.

1 **Q. And you would agree with me that the**
2 **Staff's schedule that you referenced is not an**
3 **Order of the Commission?**

4 A. It reflects the Commission's Order.

5 **Q. Well, isn't the Order that's relevant**
6 **the Order that approved the black box settlement?**

7 A. Well, Mr. Byrne, I mean, I have an
8 accounting schedule that gets within probably
9 thousands of dollars of the Commission Order that
10 was put together by the Staff. So I believe it
11 reflects the Staff's position of that Order.

12 **Q. Okay. Maybe that's the better way to**
13 **say it, the Staff's position on what the Order**
14 **says.**

15 A. That's just what I told you before.
16 You can interpret it differently, too, on your
17 black box.

18 **Q. Okay. Fair enough. Okay. And I**
19 **think you answered this question before, but you've**
20 **been a regulatory auditor for a long time; isn't**
21 **that correct?**

22 A. July 1st, 1979.

23 **Q. And you worked for the Staff 29**
24 **years; is that right?**

25 A. Yes.

1 Q. And then started -- I think you
2 started the next Monday at Brubaker after you --

3 A. I had a weekend of retirement.

4 Q. And my understanding is that you were
5 first contacted about working on this case in the
6 third quarter of 2013; is that correct?

7 A. I believe in that area.

8 Q. And you started writing testimony and
9 doing the calculations that you ultimately filed in
10 this case in the fourth quarter of 2013; is that
11 correct?

12 A. Yes.

13 Q. And --

14 A. Because we -- just so we're clear, I
15 believe we --

16 Q. That's okay. You've answered my
17 question.

18 And then just to get the timeline
19 straight, the complaint was filed February 12th,
20 2014, right?

21 A. I have February 7th, or it was -- we
22 did file February 12th. You're correct.

23 Q. Isn't it true that in your analysis,
24 both in your direct and surrebuttal testimony, you
25 did not do all the steps that are typically done in

1 **developing a full cost of service study used to set**
2 **rates?**

3 A. Just so we're clear, is it your
4 question did I do a comprehensive rate study as
5 described by Mr. Weiss?

6 **Q. Yes.**

7 A. No.

8 **Q. Okay. And isn't it true that you did**
9 **not -- well, Noranda and the other Complainants did**
10 **not submit data requests or other forms of**
11 **discovery asking Ameren Missouri for the**
12 **information that would be necessary to conduct a**
13 **full cost of service study like Mr. Weiss**
14 **described; is that correct?**

15 A. I'm not sure I agree with that
16 question. I think my answer is no.

17 **Q. Okay.**

18 A. And the reason I say that is we
19 submitted a Data Request No. 8, and the request
20 was, please identify on an annual basis each and
21 every expense or cost that was included in the
22 determination of Ameren's current rates, and for
23 each such expense or cost, please state whether and
24 by how much each such expense or cost has increased
25 or decreased on an annual basis since the amount

1 was reported to the Commission for inclusion and
2 determination of the current rates. And the
3 response was, Noranda has that information.

4 In addition, we submitted a data
5 request -- and I don't know the exact number --
6 that asked for the operating reports of the
7 company, and we did not get those either.

8 Q. Could you turn to page 52 of your
9 deposition, line 12. And line 12, does the
10 question read, Let me ask you this: A lot of what
11 you said -- this is a good example of a general
12 problem that you've been identifying, which is lack
13 of access to company information; is that fair to
14 say? Answer: Yes. Did you ask the company for
15 this information? Answer: No.

16 Did I read that correctly?

17 A. You read it correctly, and that was
18 my answer then.

19 Q. Okay.

20 A. Subsequently I've reviewed --

21 Q. You've answered my question.

22 Would you agree with me that Noranda
23 and the other Complainants did not ask us a single
24 data request until April 21st, 2014, more than two
25 months after the complaint was filed?

1 A. I don't have the first -- I don't
2 have the date when we first submitted our data
3 request.

4 MR. BYRNE: Can I mark an exhibit?

5 JUDGE WOODRUFF: Sure.

6 MR. BYRNE: May I approach the
7 witness, your Honor?

8 JUDGE WOODRUFF: You may. This will
9 be No. 15.

10 (EXHIBIT NO. 15 WAS MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)

12 BY MR. BYRNE:

13 **Q. Mr. Meyer, can you identify what's**
14 **been marked as Exhibit No. 15?**

15 A. Appears to be an e-mail from Laurie
16 Nowack to yourself.

17 **Q. And what does the e-mail say?**

18 A. Attached please find Noranda's first
19 set of data requests to Ameren Missouri. Thanks,
20 Diana.

21 **Q. And is it signed by Diana Vuylsteke?**

22 A. It has her letter or signature, yes.

23 **Q. Okay. And what's the date of that**
24 **e-mail?**

25 A. April 21st of 2014.

1 Q. Do you have any reason to believe
2 that that's not the date that you asked your first
3 set of data requests?

4 A. I have no reason to doubt that.

5 Q. And you would agree with me that you
6 had the right to conduct discovery as soon as the
7 complaint was filed on February 12th, wouldn't you?

8 A. Yes.

9 Q. Isn't it true that Noranda or any
10 party that thought Ameren Missouri was overearning
11 could have asked the Commission to open an
12 investigatory docket so that that party and the
13 Commission Staff could conduct discovery about
14 possible overearnings? Wouldn't you agree that's
15 possible?

16 A. I believe it's possible.

17 Q. But the Complainants did not do that
18 in this case, did they?

19 A. I think the -- I think the
20 customers --

21 Q. Yes or no, did the Complainants do
22 that in this case?

23 A. No.

24 Q. Thanks. Isn't it true that
25 Brubaker & Associates is qualified to do a

1 comprehensive cost of service study if you had the
2 time and client commitment?

3 A. Yes, to some extent. We don't have
4 certain models that would be needed.

5 Q. Okay. Could you open your deposition
6 and turn to page 104, line 21. Question: So you
7 are qualified to do a comprehensive cost of service
8 study?

9 Answer: I believe we are if the --
10 if the time, the resources and the client committal
11 is available.

12 Did I read that correctly?

13 A. You did, but we had had a discussion
14 before that in this deposition about tools.

15 Q. I just asked if I read it correctly.
16 Your attorney can ask you questions on redirect if
17 he'd like to.

18 Would you agree that it takes about
19 six Staff auditors to do a comprehensive cost of
20 service study for Ameren Missouri?

21 A. That's generally what they use.

22 Q. Okay. And those Staff auditors have
23 varying levels of experience; is that correct?

24 A. That's correct.

25 Q. And most are not as experienced as

1 **you and others who work with Brubaker, are they?**

2 A. I'm torn to answer that question
3 after your opening statement, but generally they
4 don't have the years of experience that I do --

5 **Q. Isn't it true that --**

6 A. -- on average.

7 **Q. Isn't it true that it would have been**
8 **impossible or at least extremely difficult to**
9 **conduct a comprehensive cost of service study in**
10 **the time frame set for this case?**

11 A. By who?

12 **Q. By anyone.**

13 A. I don't know if the Staff could not
14 have done one. In order to do a comprehensive, I
15 believe, as we've discussed today, given the
16 standards that Mr. Weiss has testified from pages 5
17 to 16 of his testimony, there's only one party that
18 can do that, and that's the Staff.

19 **Q. Can you turn to page 109 of your**
20 **deposition. On line 20 it says, Question: I mean,**
21 **would it be fair to say that with the procedure**
22 **schedule that was adopted in this case, it was**
23 **essentially impossible for anyone to do a full cost**
24 **of service study in the time that was allowed?**

25 **Answer: I'm hesitant to say**

1 impossible. I would say that given Mr. Weiss'
2 definition of a comprehensive cost of service
3 study, it would have been extremely difficult.

4 Did I read that correctly?

5 A. You did.

6 Q. Okay. And isn't it true that the
7 Complainants' attorneys advocated for the expedited
8 schedule in this case?

9 A. Yes.

10 Q. In fact, isn't it true that the
11 Complainants' attorneys and the Office of the
12 Public Counsel and the Missouri Retailers
13 Association and MIEC and the Consumers Council all
14 advocated for a schedule that would have called for
15 hearings in this case to have begun barely four
16 months after the complaint was filed?

17 A. I believe a schedule like that was
18 proposed.

19 Q. And it was proposed by those people
20 that I listed; is that correct?

21 A. I don't know if it was initially
22 proposed by them, but I know it was supported by
23 them.

24 Q. Isn't it true that you believe that a
25 utility should never be allowed to increase its

1 **rates based on the kind of analysis you did in this**
2 **case?**

3 A. As I told you in my deposition, I
4 believe that a comprehensive cost of service study
5 is a requirement for a utility to raise its rates.

6 **Q. So isn't it true that you are**
7 **advocating for a lower evidentiary standard for**
8 **rate reductions than rate increases?**

9 A. Once again, as we discussed in my
10 deposition, the -- if that is the decision that a
11 total -- or a comprehensive cost of service study
12 must be prepared to lower rates, then if the
13 Commission makes that determination, there's only
14 one party that can effectuate that, and that is the
15 Staff.

16 **Q. Can you please turn to page 46 of**
17 **your deposition. Line 2, Question: That's the**
18 **reason that you're advocating, because you are**
19 **advocating for a lower standard for rate reductions**
20 **than rate increases, correct?**

21 **Answer: Yes, based off the**
22 **description that Mr. Weiss put in his testimony for**
23 **the -- 5 to 16.**

24 **Did I read that correctly?**

25 A. You did, but we had already

1 discussed --

2 Q. You've answered my question. And as
3 you discussed with some other parties, your
4 analysis of Ameren Missouri's cost of service
5 stopped at December 31st, 2013; isn't that correct?

6 A. Repeat the question.

7 Q. My understanding is that your
8 analysis of Ameren Missouri's cost of service
9 stopped at December 31st, 2013; is that correct?

10 A. No.

11 Q. The analysis you provided in your
12 surrebuttal testimony stopped at December 31st,
13 2013; isn't that correct?

14 A. No.

15 Q. Okay. Are you talking about you
16 looked at the March 31st surveillance?

17 A. Yes. That's a pretty important
18 belief in our belief is that it is -- you're still
19 overearning, 10.45.

20 Q. But you haven't provided the
21 Commission with any analysis of the March 31st,
22 2013 surveillance data, have you?

23 A. No. Only to say that the results
24 would continue.

25 Q. But you haven't had any adjustments

1 to that data like you did for the September or the
2 December surveillance data. You've just looked at
3 the raw surveillance data; is that correct?

4 A. As an indication -- as an indication
5 and support for the analysis that was done in
6 December.

7 Q. Okay. But the actual analysis was in
8 December; is that correct? Is that fair to say?

9 A. That's correct.

10 Q. And that's about seven months ago,
11 right?

12 A. Seven months, I'll agree.

13 Q. And are you aware that Ameren
14 Missouri has paid additional solar rebates in 2014?

15 A. Yes.

16 Q. And those rebates are not included in
17 your analysis, correct?

18 A. They are not.

19 Q. And are you aware that Ameren
20 Missouri's coal and coal transportation contracts,
21 the prices under those contracts increased on
22 January 1, 2014?

23 A. You collect those costs through a
24 fuel adjustment clause.

25 Q. That wasn't my question. Are you

1 **aware that the coal and coal transportation prices**
2 **increased on January 1st?**

3 A. I believe Mr. Cassidy put that in his
4 testimony.

5 **Q. And you didn't reflect those higher**
6 **prices in your analysis, did you?**

7 A. I don't need to.

8 **Q. But the answer is you didn't?**

9 A. Because I don't need to, because you
10 have a fuel adjustment clause.

11 **Q. Are you aware that Ameren Missouri**
12 **has experienced increases in the wages that it pays**
13 **its employees in 2014?**

14 A. Yes.

15 **Q. But you didn't include any of those**
16 **wage increases in your analysis of Ameren**
17 **Missouri's costs; is that correct?**

18 A. That's correct.

19 **Q. Are you aware that property taxes**
20 **will increase in 2014?**

21 A. No.

22 **Q. You didn't include any amount for any**
23 **property tax increase that might occur in your**
24 **analysis, did you?**

25 A. That's incorrect. I included --

1 Q. What amount did you include?

2 A. The 2013 property taxes are included
3 because they're included in the surveillance data.
4 You don't know what you're going to pay for
5 property taxes in 2014.

6 Q. Right. I guess my question was, you
7 did not include any amount for any increase in 2014
8 in your analysis; is that correct?

9 A. Because it's not known and
10 measurable.

11 Q. Okay. The answer is you didn't
12 include it, right?

13 A. I can't include something I don't
14 know and can't measure.

15 Q. And so the question is, did you
16 include anything?

17 A. And my answer is no.

18 Q. Great. Are you aware that Ameren
19 Missouri is in the process of spending over a
20 billion dollars in rate base additions in 2014?

21 A. I'm aware of Ms. Barnes' testimony.

22 Q. But you didn't include any plant that
23 Ameren Missouri has put or will put into service in
24 2014 in your analysis, did you?

25 A. Again, I looked at the -- through

1 March, you've included -- we've included -- excuse
2 me. Through March, the surveillance data includes
3 in-the-period investments. So you've got -- you
4 have already through March all the investment that
5 you put in service --

6 **Q. But, Mr. Meyer, could you answer the**
7 **question? I asked if you included any plant that**
8 **was put in service after 2014?**

9 A. And my answer is yes, Mr. Byrne, I
10 have, because I looked at the surveillance data.
11 In March 2014, you continued to overearn, and that
12 includes the end-of-period rate base. So yes, I
13 have.

14 **Q. Your numbers in your surrebuttal**
15 **testimony, which are based on December 31st, 2013,**
16 **do not include any plant additions in 2014, do**
17 **they?**

18 A. You're absolutely correct there.

19 **Q. Are you aware that Ameren Missouri is**
20 **investing approximately \$170 million in installing**
21 **electrostatic precipitators at the Labadie Energy**
22 **Center?**

23 A. It was listed in Ms. Barnes'
24 testimony.

25 **Q. But you didn't include any of that**

1 amount in your December 31st, 2013 analysis, did
2 you?

3 A. We attempted to get that information.
4 You wouldn't provide it.

5 Q. Are you aware that Ameren Missouri is
6 spending approximately \$150 million to replace the
7 reactor head at the Callaway nuclear plant?

8 A. Many of the projects that you're --

9 Q. Are you aware that we're spending
10 \$150 million? Answer the question, Mr. Meyer.

11 A. I believe it's in December of this
12 year.

13 Q. Okay. And that amount's not included
14 in your -- in your December 31st, 2013 analysis?

15 A. No.

16 Q. Isn't it true that given the level of
17 investment that Ameren Missouri is making, the
18 sustainability of your alleged overearnings is a
19 concern about this complaint case that you
20 discussed with your colleagues at Brubaker &
21 Associates?

22 A. Yes.

23 Q. In fact, isn't it true that if Ameren
24 Missouri makes the level of investments Ms. Barnes
25 has testified to, in your view it would be

1 impossible to maintain what you call an
2 overearnings situation as you've depicted it in
3 your testimony on a going-forward basis?

4 A. At some point, with the investment
5 that you claim you'll put in, you will not be able
6 to maintain a 9.8 percent return on equity. The
7 main question is when.

8 Q. Could you turn to page 24 of your
9 deposition. Beginning on line 2 it says, Question:
10 Has Mr. Rackers ever expressed any concern about
11 any aspect of the complaint case?

12 Answer: I think we both have concern
13 about the sustainability, which I described in my
14 surrebuttal testimony, given the projected levels
15 of investment that are discussed to be implemented
16 by Ameren.

17 Question: What do you mean by that?
18 Can you explain a little more?

19 Answer: Ms. Barnes claims that
20 between May 1, 2014 and December 31st, 2014, that
21 Ameren will invest approximate \$1 billion in plant
22 service. And that's what I described in my
23 surrebuttal testimony is that, given that level of
24 investment, it will be hard to maintain an
25 overearnings situation as we've depicted it here in

1 my surrebuttal and my direct.

2 Question: Wouldn't -- won't it
3 really be -- if that level of investment is made,
4 wouldn't it be impossible to maintain an
5 overearnings situation?

6 Answer: I agree with you. It would
7 be very difficult. If the premise is for the basis
8 of changing rates on a going-forward basis, that's
9 correct.

10 Did I read that correctly?

11 A. You did.

12 Q. And when you refer to Mr. Rackers,
13 can you explain who Mr. Rackers is?

14 A. The consultant with BAI.

15 Q. Isn't it true, Mr. Meyer, that you
16 don't know as you sit here today whether Ameren
17 Missouri's overearning situation, as you refer to
18 it, has turned around already or not?

19 A. I don't believe it's turned around.

20 Q. But isn't -- that's not the question.
21 Isn't it true that you don't know whether it's
22 turned around because you haven't done any analysis
23 after December 31st, 2013, other than looking at
24 the unadjusted earnings surveillance report in
25 March?

1 A. If you're asking me if I know, my
2 answer is, yes, I know you're still overearning as
3 I sit here today.

4 **Q. And what analysis do you base that**
5 **on?**

6 A. Based off of your filing, based off
7 of the surveillance at March 31, and based off the
8 ability -- or the fact that you won't respond to my
9 requests to get the investment which you claim is
10 the major driver. So based off what I have sitting
11 here today, I believe you're overearning.

12 **Q. But you don't know that we're**
13 **overearning; isn't that true? You believe it --**
14 **you may believe it, but you don't know it. You**
15 **don't have data that shows that we're overearning**
16 **right this very second; isn't that true?**

17 A. Mr. Byrne, based off my experience, I
18 believe you're overearning today, and I have to
19 bring my professional experience and expertise to
20 that.

21 **Q. Okay. You believe based on your**
22 **professional experience, but isn't it true that you**
23 **don't have objective evidence that we're**
24 **overearning right this very minute?**

25 A. Because you won't give me the

1 objective evidence. I asked for it. I can't get
2 it.

3 Q. Thank you. Would you agree that even
4 if a utility company earns greater than its
5 authorized return in a particular historical
6 period, the magnitude of the overearnings is a
7 relevant consideration in determining whether rates
8 should be adjusted on a going-forward basis?

9 A. You have to read that one more time.

10 Q. Would you agree that if a utility
11 earns in excess of its authorized return in a
12 particular historical period, the magnitude of the
13 overearnings is a relevant consideration in
14 determining whether rates should be adjusted on a
15 going-forward basis?

16 A. I would agree with that.

17 Q. You wouldn't argue with the fact that
18 it is normal that a utility's returns, even
19 adjusted for all the relevant mitigating factors,
20 bounces around above or below the last authorized
21 return in any period you look at, would you?

22 A. I would agree that that could happen,
23 yes.

24 Q. And would you agree that it's normal
25 for that to happen?

1 A. I'm hesitant to say normal because of
2 the fact that I believe since -- if you look back,
3 I know you provided some history of 54 months, or
4 Mr. Weiss did in his testimony in the last rate
5 case, but if you went back to 1987 forward, I think
6 you would show a substantial period of
7 overearnings.

8 So I hesitate to agree that it
9 bounces back and forth. I think there's been
10 history in this for your company where you have had
11 prolonged overearning situations.

12 **Q. Can you turn to page 29 of your**
13 **deposition, line 15?**

14 A. I'm there.

15 **Q. Okay. Doesn't it say, Question: I**
16 **guess what I'm asking you, isn't it normal that the**
17 **utility's return, even adjusted for all relevant**
18 **mitigating factors, isn't it normal that it would**
19 **bounce around above or below the authorized return**
20 **in any given time period that you look at?**

21 **Answer: I wouldn't argue with that.**

22 **Did I read that correctly?**

23 A. You did.

24 **Q. In any particular period the**
25 **utility's return would never actually match the**

1 authorized return, would it?

2 A. It would be very difficult.

3 Q. I think we discussed this or you
4 discussed this a little before with someone else,
5 but your total recommendation in your surrebuttal
6 testimony is \$49.5 million; is that correct?

7 A. Yes.

8 Q. And of that \$49 million, \$23 million
9 is based on reducing the authorized return on
10 equity from 9.8 percent to 9.4 percent; is that
11 correct?

12 A. That's correct.

13 Q. And so that leaves about \$26 million
14 left of the proposed reduction that's based on
15 other factors besides lowering the return on
16 equity; is that correct?

17 A. That's correct.

18 Q. And isn't it true that that
19 \$26 million is a little less than 1 percent of
20 Ameren Missouri's current revenue requirement?

21 A. Current retail rates?

22 Q. How about current retail rates?

23 A. Okay. Yes.

24 Q. Isn't it true that calculating a
25 revenue requirement for Ameren Missouri, or any

1 utility for that matter, is not an exact science?

2 A. I'd agree with that.

3 Q. It requires judgment, and there could
4 be a range of reasonable outcomes; isn't that true?

5 A. As we discussed in my deposition,
6 different people have different views of
7 reasonableness, yes.

8 Q. Isn't it true that when you are
9 dealing with permanent rates, the purpose of
10 ratemaking is not to make up for past underearnings
11 or overearnings, but rather to set rates that will
12 be appropriate for the future periods in which they
13 apply?

14 A. And once again, we talked about this
15 in the deposition, and I don't agree with that
16 because of the fact of trackers.

17 Q. Could you turn to page 32 of your
18 deposition, line 7? It says, Question: I mean,
19 aren't you supposed to set rates so that the
20 utility has -- in the future when the rates are in
21 effect, it has a reasonable opportunity to recover
22 its prudently incurred costs and earn a reasonable
23 return in that future period when the rates are in
24 effect:

25 Answer: I think the rates are

1 established to allow a utility to meet its
2 operating expenses. I'm sorry. I think rates are
3 established for a utility to pay its premium
4 incurred operating expenses and provide it with an
5 opportunity to earn a fair and reasonable rate of
6 return, yes.

7 Question: And, I mean, would it be
8 fair to say that the purpose of ratemaking is not
9 to make up for past underearnings or overearnings,
10 but rather to set rates that will be appropriate
11 for the future periods in which they apply?

12 Answer: When dealing with permanent
13 rates, I'd agree with that.

14 Did I read that correct?

15 A. Except premium should be prudently.

16 Q. Should be prudently?

17 A. Right.

18 Q. Okay.

19 A. But we discussed this concept --

20 Q. I think you answered my question,

21 Mr. Meyer.

22 I think we also talked about some of
23 your adjustments in Table 1 of your direct
24 testimony were taken from Staff adjustments from
25 File No. ER-2012-0166; is that correct? Your

1 **direct testimony.**

2 A. That's correct. Best information
3 available.

4 **Q. And do you know what the test year**
5 **from that case, File No. ER-2012-0166, was?**

6 A. Test year was September 30th, 2011,
7 12 months ending, true up through July 31st, 2012.

8 **Q. Okay. Isn't it true that during that**
9 **case, Ameren Missouri's surveillance reports showed**
10 **earned returns in excess of the Commission-**
11 **authorized returns?**

12 A. I have a surveillance report that
13 shows June of 2012, but that's as far back as I go,
14 and it was -- you were overearning in June of 2012.

15 **Q. And how about the next one after**
16 **that?**

17 A. That was beyond the scope of your
18 question, but I believe since --

19 **Q. Because it was still during that**
20 **case, right?**

21 A. Well, I thought you were --

22 **Q. The case ran through 2012.**

23 A. Your question was related to the test
24 year and the true-up, but I'll answer that you --
25 you've continuously overearned from June 2012 to

1 currently.

2 **Q. Okay. And nonetheless, the**
3 **Commission approved a rate increase of \$260 million**
4 **a year in that File No. ER-2012-0166; isn't that**
5 **correct?**

6 A. That's correct. But components of
7 that --

8 **Q. That answers my question.**

9 MR. BYRNE: Thank you, Mr. Meyer. I
10 have no other questions for you.

11 JUDGE WOODRUFF: Did you wish to
12 offer 15?

13 MR. BYRNE: Sure. I would offer
14 Exhibit No. 15.

15 JUDGE WOODRUFF: 15, which was that
16 e-mail about the data request, has been offered.
17 Any objections to its receipt?

18 (No response.)

19 JUDGE WOODRUFF: Hearing none, it
20 will be received.

21 (EXHIBIT NO. 15 WAS RECEIVED INTO
22 EVIDENCE.)

23 JUDGE WOODRUFF: Come up for
24 questions from the Bench, beginning with the
25 Chairman.

1 QUESTIONS BY CHAIRMAN KENNEY:

2 Q. Mr. Meyer, good afternoon.

3 A. Good afternoon.

4 Q. Just a couple of questions. I want
5 to go back to the questions that Staff asked you
6 with respect to the solar rebates and the
7 hypothetical about how much their overearnings
8 would be reduced if the full amount were placed
9 into your analysis.

10 A. Okay.

11 Q. I think the number was 101 million;
12 is that right? The 91 plus the --

13 A. Right.

14 Q. -- other 9.6 million? How much would
15 the overearnings be reduced if that hypothetically
16 were factored into your analysis? These are the
17 30-some-odd million that --

18 A. 33 million would be reduced from this
19 number.

20 Q. From the 49?

21 A. 49 million. But they haven't -- I
22 mean, this --

23 Q. I understand.

24 A. Okay.

25 Q. It's a hypothetical.

1 A. That's fair.

2 Q. Let me take the hypothetical further
3 and combine Mr. Byrne's question with Staff's
4 question. So 23 million of the 49 million assumes
5 a reduction in ROE from 9.8 to 9.4, so the balance
6 is 26 million. If we amortize that 101 million
7 over the three years, it completely wipes out that
8 overearnings, hypothetically?

9 A. Wait a minute. Let's make sure we're
10 all on the same hypothetical.

11 Q. All right.

12 A. If you take the -- I already have 10
13 in there.

14 Q. For --

15 A. Solar rebates.

16 Q. -- solar? So then --

17 A. And you haven't -- I mean, even
18 hypothetically --

19 Q. 10 of the 26?

20 A. They haven't hypothetically spent it
21 all, and --

22 Q. 10 of the 26 million?

23 A. 10 of the --

24 Q. I'm taking out the 23 million that's
25 attributable to the reduction in ROE.

1 A. Right. Okay. So 10 -- 10 is already
2 reflected in the 26.

3 Q. Okay. So that would only leave
4 another 24 million?

5 A. Right.

6 Q. So then it would take the -- it would
7 leave 2 million left?

8 A. If they hypothetically had spent it
9 all.

10 Q. All right. I just want to make sure
11 that I'm thinking about this correctly,
12 hypothetically.

13 All right. You mentioned or you were
14 asked extensively about the capability of
15 performing a full cost of service analysis and
16 whether you had the information available to do
17 that. Was your answer that Brubaker did not have
18 the information available to conduct a full cost of
19 service analysis or you didn't have the time to do
20 it?

21 A. Well, there's two things. To do a
22 comprehensive cost of service study as described by
23 Mr. Weiss, we don't have, we don't believe -- and I
24 discussed this with the prior Public Counsel,
25 Mr. Mills. No one has the resources and the

1 capability to do that except for the Staff.

2 **Q. Why do you say that?**

3 A. Because of the time commitment it
4 takes. We have -- Brubaker & Associates has
5 clients throughout the United States that require
6 work to be done. So it's not a matter of expertise
7 as Mr. Byrne led you to believe. We have to be
8 able to do multiple projects at all -- during the
9 year.

10 So we wouldn't have the capability,
11 nor would we believe there's a client out there
12 that would be willing to fund -- that's another
13 thing is you have to find a client that's willing
14 to spend the money to effectuate a comprehensive
15 cost of service study, and that's -- that's costly.

16 **Q. Well, then let me ask a threshold**
17 **question. Is a comprehensive cost of service study**
18 **as described in Mr. Weiss' testimony necessary to**
19 **sustain this overearnings complaint?**

20 A. Well, that's sort of the -- that's
21 sort of the policy decision that this Commission
22 has to make. We believe you can -- that you can
23 reduce the rates based off the information you have
24 in front of you today.

25 But if you require -- if you require

1 a comprehensive cost of service study to reduce
2 rates, what we're here to tell you today is there's
3 only one party that can do that, and that's the
4 Staff. So that you've precluded every customer and
5 the OPC from being able to do it. That's our
6 belief.

7 **Q. And if we take that as true that the**
8 **only entity that's capable of conducting a**
9 **comprehensive cost of study -- cost of service**
10 **study is our Staff, then that would render the**
11 **statutes that contemplate other people bringing**
12 **complaints impotent?**

13 A. Well, that's the -- that's the
14 quandary we're in.

15 **Q. That would be an absurd result.**

16 A. That's where we're -- that's where
17 we're at. You can't act on this if you're
18 requiring a comprehensive cost of service study
19 because you don't have one in front of you, but we
20 believe you can --

21 **Q. And nobody could do it but Staff?**

22 A. Nobody can do it in our -- yeah.
23 Now, do we have the experience? Yes. Do we have
24 the time able to do it? At most times, no. Do we
25 have a client that's willing to pay for that? Many

1 times, no. I don't know of a client that, probably
2 besides the one that's sponsoring this complaint,
3 could ever afford what it would take to do a
4 comprehensive cost of service study.

5 **Q. So let me go back to something else**
6 **Mr. Byrne said. He said you had available to you**
7 **the ability to gain the information that would have**
8 **allowed you to do it. Your response was we asked**
9 **you the question and Ameren said you already have**
10 **it in your possession?**

11 A. Right.

12 **Q. Did the question that you asked to**
13 **which they responded you already have it, would**
14 **that question have captured all the information**
15 **that you need to conduct a comprehensive cost of**
16 **service study?**

17 A. Well, if -- let's go back to what we
18 asked so we're all on the same page. What we asked
19 is, give us an analysis of the difference in your
20 current cost to serve, the current cost it takes
21 you to serve, to provide service, give us the
22 analysis that shows what has changed since rates
23 were last established and give us explanations for
24 those changes.

25 And the response back on that data

1 request was, you have all that information. I
2 don't believe we do. Then we followed, when we
3 saw -- just to give you a breath of what we were
4 trying to get, when we saw the -- Ms. Barnes'
5 testimony -- and we had heard about the large
6 amounts of investment before. I'm not going to
7 mislead you on that.

8 We put in a data request that said,
9 hey, give us the calculation of rate base, which
10 would include the investment that they claim
11 they're going to put in, give us that calculation
12 of rate base in the same format as you would the
13 surveillance data so that we can look at it and see
14 where you're at in that regard.

15 That would -- that would have
16 encompassed all the investment that they're putting
17 in or that they claim they're going to put in. We
18 wanted that for May, June and July.

19 **Q. What was their response to that?**

20 A. We object to providing it.

21 **Q. On what grounds?**

22 A. That it requires them to prepare a
23 report that they normally don't do. But let's
24 follow through on that. When we were doing the
25 deposition of Mr. Weiss, we found out that he --

1 him and his staff prepare what they'll call
2 off-month surveillance reports of similar nature,
3 and in that off-month surveillance report he has to
4 come up with a rate base, and it's similar to the
5 54 months that he provided in his testimony in the
6 last rate case. So in the off months, he's
7 calculating a rate base. So it's out there, but he
8 just refused to provide it.

9 Q. Okay. So --

10 A. Finally -- go ahead.

11 Q. Let me just ask you this about the
12 two questions that we were just talking about where
13 you asked -- you essentially asked Ameren to
14 provide you the analysis demonstrating the
15 difference in their rate base?

16 A. Right.

17 Q. In their cost of service, rather?

18 A. Well, we asked for the change.

19 Q. And then you asked -- right, for the
20 change. Then you asked for additional information
21 to support these anticipated new investments, the
22 electrostatic precipitator, et cetera?

23 A. Whatever you put.

24 Q. For whatever reason it wasn't given
25 to you. What steps did Noranda take to compel the

1 disclosure of that information? Were there any
2 follow-up DRs? Was there a motion to compel filed
3 before the Commission?

4 A. I don't believe there was a motion to
5 compel.

6 Q. Do you know why not?

7 A. No, I don't. Just as an adder,
8 though, you know, when you ask for an operating
9 report, a monthly operating report and you don't
10 get it, you really believe that that should go to
11 the level of asking for a motion to compel? I
12 mean, when you ask for the rate base --

13 Q. If you want it.

14 A. Well, if you ask for the rate base --
15 if the claim is that you haven't considered all
16 this investment that you're going to put in, you
17 know, that we're so short-sighted that we haven't
18 looked at, and when we ask for the information and
19 they don't give it to you, I mean, it's -- we're
20 not treated -- parties are not treated -- besides
21 the Staff and the Public Counsel, parties are not
22 treated the same. I'll tell you that right now.

23 Q. Well, I don't know how to respond to
24 that. I mean, that's what your lawyers are for.

25 CHAIRMAN KENNEY: All right. I don't

1 have any other questions.

2 JUDGE WOODRUFF: Commissioner Kenney.

3 COMMISSIONER W. KENNEY: Thank you,
4 your Honor.

5 QUESTIONS BY COMMISSIONER W. KENNEY:

6 Q. I don't know if it's just great minds
7 think alike or it's the name Kenney, but I have --
8 really, I have two questions based on the same
9 thing, and one of them I think you pretty much
10 answered dealing with resources, time commitment,
11 that -- so are you saying that only the Staff has
12 the ability to make a thorough cost of service
13 study in this situation?

14 A. I think Mr. Weiss uses the word
15 comprehensive, but thorough, same thing. Yes, I
16 agree.

17 Q. Then do you consider yours a
18 comprehensive or thorough study?

19 A. No. I have told you before that we
20 don't meet the comprehensive standard that
21 Mr. Weiss describes in his --

22 Q. For all those reasons?

23 A. Right. But we still believe you
24 can --

25 Q. Base it off the facts you have.

1 A. -- find it off something less, yes.

2 Q. And that was one of the concerns when
3 we first, you know, the complaint case came up and
4 the overearnings case, is the time factor. That
5 was something that was brought up immediately,
6 whether our Staff could even perform anything, and
7 I think we told them to do the best job they could.

8 You answered -- when Staff asked you
9 a question getting back to the solar rebates, and I
10 know you used the 30 million figure, you made a
11 statement, you said that including the solar
12 payments, whatever -- and I kind of took it as any
13 amount above what you have would be inappropriate.
14 Why would it be inappropriate?

15 A. Okay. One of the things that's
16 absent from this proceeding is that there's been --
17 there was no established starting point. We filed
18 for a test year in the case, and you made a
19 decision not to establish one.

20 But there has to be some point at
21 which you stop and look at the facts, and we would
22 argue that you probably need to stop someplace
23 between March and April because that's the --
24 that's the period -- we know March you're still
25 overearning.

1 There has to be a stopping point. If
2 you allow a utility -- and I've seen this before.
3 I mean, this argument of stale data. If you go
4 back to the 2002 rate case, the complaint case,
5 you'll see the exact same arguments made. And it's
6 a common argument made any time a utility is
7 challenged with their rates, you guys have used
8 stale data.

9 **Q. Okay. I'm not -- this isn't an**
10 **emotional question.**

11 A. I know, but my point is -- thank you.

12 **Q. I understand your -- I don't want to**
13 **get there.**

14 A. Okay.

15 **Q. My question is -- okay. And that**
16 **makes a lot of sense to me, have a cutoff date.**

17 A. Right.

18 **Q. I can understand that.**

19 A. If you do have a cutoff date, you
20 will find that they are still -- a reasonable
21 cutoff date, they are still overearning.

22 **Q. And I'm not here to --**

23 A. Right. That's --

24 **Q. -- discount that or confirm it. I'm**
25 **just saying, though, even if you take it -- your**

1 cutoff date was December 2013.

2 A. Well, we believe -- right, because
3 that's -- well, but again, we looked at the
4 analysis through March --

5 Q. So --

6 A. -- to say this is still overearning.

7 Q. But I'm going back to say, you said
8 it would be inappropriate to use --

9 A. It's inappropriate in my mind to go
10 to November and December because I believe --

11 Q. But I'm not saying -- I'm not even
12 saying that.

13 A. Okay.

14 Q. Is it inappropriate to use a -- can
15 you use a cutoff date somewhere in between?
16 Because there obviously would be -- there's
17 obviously more money that's been rebated in the
18 solar program, correct?

19 A. Correct.

20 Q. So that would change your table?

21 A. Absolutely.

22 Q. And it would change, as the Chairman
23 put it, if it was already paid out, I'm not saying
24 it has been. I'm not saying 50, 60 percent of it
25 has. I'm not saying any number. But that would

1 make an effect on how this works, just like the
2 other expenses that were -- whether it's
3 advertising, whether it's labor, everything makes a
4 little change.

5 A. Right.

6 Q. So you're just basing it off this,
7 and that's where you feel we have to do it, whether
8 it was adjusted up, if we put a date of June 1st,
9 you could adjust it up and say it would still give
10 us -- under your mind, it would still be an
11 overearnings --

12 A. Yes.

13 Q. -- complaint?

14 A. Yes.

15 Q. They're saying, if you go through the
16 end of the year, we're not going to be overearning
17 if you add it all in?

18 A. That's what they say, right. But if
19 you take a normal time frame, like --

20 Q. But that's what this -- you know,
21 like you said, this case does not allow for that.
22 I mean, in my mind it doesn't because we didn't set
23 anything.

24 A. Right.

25 Q. It was just, you know, but -- all

1 right. I appreciate your testimony.

2 A. Thank you.

3 JUDGE WOODRUFF: Commissioner Hall?

4 QUESTIONS BY COMMISSIONER HALL:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. So you would agree that under --
8 under our rules, the Commission could have ordered
9 Staff to do the type of investigation that would
10 have resulted in a full comprehensive cost of
11 service analysis?

12 A. Yes, you could have.

13 Q. But the Complainants did not request
14 that from the Commission, did they?

15 A. No.

16 Q. And I assume the reason why they did
17 not ask that is because it wouldn't have fit within
18 the time frame of an expedited hearing that they
19 were seeking; is that correct?

20 A. Correct. I think that the view was
21 that if there was a comprehensive audit done, that
22 that would have extended the period, substantially
23 extended the period, and it would have been
24 questionable whether they were still overearning.
25 I mean, typically, in my experience, complaints

1 take two years.

2 Q. So the reason why you sought an
3 expedited hearing was because your concern was
4 that, if you didn't do it quickly, they weren't
5 going to be overearning anymore?

6 A. I didn't -- I didn't set the
7 procedural schedule. I was just advised of can I
8 make certain dates.

9 Q. Well, I thought I heard you say -- so
10 please correct me if I misheard. I thought I heard
11 you say that -- that the reason why the
12 expedited -- why there was a request for an
13 expedited hearing was because if you wanted -- if
14 you -- if this hearing was on the normal schedule,
15 by the time we made a decision, Ameren may not be
16 overearning anymore.

17 A. Well, by normal --

18 Q. Did I misunderstand you?

19 A. By normal schedule, I'm looking at
20 two years. So that's -- that's the basis for my
21 description is that my experience when dealing with
22 complaints, they take two years to do. There's
23 no -- there's no timeline -- you're under no
24 timeline whatsoever to render a decision. So, you
25 know, I -- my experience with six to seven

1 complaints is that they generally take two years.

2 **Q. And so is the concern that rates**
3 **would not be reduced for two years, or is the**
4 **concern that once we made a decision, Ameren would**
5 **no longer be overearning?**

6 A. No. The concern is, and it's always
7 been a concern, is that it takes two years to
8 reduce the rates.

9 **Q. What do you believe are the factors**
10 **that have led to Ameren's overearnings?**

11 A. One of the factors is the fact that
12 they don't -- that as we sit here -- as we -- as I
13 was reviewing the March data, the March
14 surveillance data, it's 100 -- the rate base is
15 \$180 million less than when you established rates
16 in the last case.

17 There's been -- there's also several
18 operating efficiencies that they've achieved with
19 reductions in maintenance costs. So those are
20 flowing through to the -- to the benefit of the
21 company at this point.

22 Mr. -- obviously Mr. Gorman believes
23 that the rate of return should be reduced.
24 There's -- they're not spending as much, although
25 it's not reflected in their earnings, but I think

1 that some of the trackers are actually over what
2 they should be. They're not spending what's in the
3 tracked amounts. That affects the earnings.

4 Q. Okay. So on the -- on the rate -- on
5 the rate base being down \$180 million, that would
6 impact the ROE that they were receiving; it
7 wouldn't impact the actual revenues that they're
8 receiving, correct?

9 A. You're receiving -- customers are
10 paying for a rate base that's \$180 million higher
11 than what they have today. So yes, it does affect
12 how much you pay.

13 Q. No, no, no. My question, your -- in
14 your analysis, you compared the revenues that
15 Ameren was supposed to receive under the 2012 rate
16 case, and you're comparing that to the revenues
17 that Ameren is receiving during calendar year 2013,
18 and you're saying that between those two there's a,
19 well, \$25 million discrepancy and then an
20 additional \$25 million as a result of the ROE being
21 too high.

22 So the rate base being \$180 million
23 lower than it was in the 2012 rate case doesn't
24 impact the revenues that are coming in to Ameren,
25 but it does affect the ROE that they are enjoying,

1 or am I mis-- am I not understanding your
2 testimony?

3 A. A component of revenue requirement,
4 okay, is that you recover the prudently incurred
5 expenses and the return that Mr. Gorman puts
6 together with the combination of debt. You apply
7 that to their rate base. So that's a cost --
8 that's a cost in service is that calculation. Rate
9 base is included in his calculation and is a
10 component.

11 All we're saying is that since you
12 established rates in 2012, the rate base hasn't
13 stayed the same. It's actually gone down. So if
14 you recalculated the revenue requirement today, you
15 would lower rates because of that \$180 million.

16 Q. Okay.

17 A. I'm sorry. I just must not be
18 understanding your question.

19 Q. I think I got my answer. On the
20 operating efficiencies, do you believe that it is
21 good public policy for Ameren to be seeking
22 operating efficiencies?

23 A. Absolutely.

24 Q. And if -- what is their incentive to
25 seek operating efficiencies if whenever they do so,

1 **there's an overearnings complaint and that -- that**
2 **money is potentially disgorged?**

3 A. Well, there's an incentive because
4 for -- now for since June of 2012 they have
5 enjoyed, up until today and including today,
6 earning above their authorized return. So they're
7 enjoying a lot of money that they've kept.

8 I mean, I think you look at
9 Mr. Gorman's -- I'm sorry -- Mr. Downey's opening
10 statement, that graph. It's a lot of money they've
11 enjoyed. And now there was a -- there was a party
12 that came in and said, We're tired of paying for
13 that. We want to see what the rate should be,
14 what should be the real rates.

15 And that's what -- that's what
16 prompted this complaint is that it's not a -- it's
17 just not a once in a, you know, blip. They've been
18 overearning since June of 2012, and somebody said
19 enough's enough.

20 Q. **Could you give me a little more**
21 **detail about the -- you suggested that the third**
22 **reason why Ameren is overearning had something to**
23 **do with trackers. Could you --**

24 A. Their over-- their earnings right now
25 reflect the full amount of the tracked expenses

1 that have been included in rates. It's my
2 understanding that many of those trackers, they
3 haven't spent the money that you included in rates
4 in the last case. So, therefore, the earnings are
5 actually understated if you would have put it on an
6 actual basis for those particular trackers.

7 **Q. Which trackers are those?**

8 A. I believe vegetation management,
9 infrastructure inspections, either pensions or
10 OPEBs are all over, and then the other flip side of
11 that is under, but overall I believe the trackers
12 are collecting more than what's being spent on
13 those particular items. Storms is another one.

14 **Q. And why did you not include those in**
15 **your Table 1 on -- in your surrebuttal testimony?**

16 A. Well, those are -- those will be
17 addressed in the upcoming rate case. It wasn't a
18 material number.

19 **Q. Okay. So if it's not a material**
20 **number, I'll quit worrying about it and focus on --**

21 A. It just makes it conservative.

22 **Q. -- the operating efficiencies, and**
23 **you said that that's maintenance?**

24 A. Right. We -- for our September
25 analysis, we built in \$46 million of increased

1 maintenance expenses over what they'd incurred.
2 And when we came to the -- when we -- after the
3 complaint was given, we reviewed -- the Staff put
4 in a data request that we reviewed, and it showed
5 that the -- there is a reduced level of maintenance
6 expense associated with distribution and steam
7 production. So we pulled those adjustments.

8 COMMISSIONER HALL: Thank you.

9 THE WITNESS: Sure.

10 JUDGE WOODRUFF: Commissioner Rupp?

11 COMMISSIONER RUPP: No questions.

12 JUDGE WOODRUFF: Then we'll come down
13 to recross based on questions from the Bench.

14 MIEC?

15 MR. DOWNEY: No questions.

16 JUDGE WOODRUFF: Retailers?

17 MR. SCHWARZ: No questions.

18 JUDGE WOODRUFF: Consumers Council?

19 MR. COFFMAN: No questions.

20 JUDGE WOODRUFF: Public Counsel?

21 MS. BAKER: No questions. Thank you.

22 JUDGE WOODRUFF: For Staff?

23 MR. ANTAL: No questions, Judge.

24 JUDGE WOODRUFF: For Ameren?

25 MR. BYRNE: Thank you, your Honor.

1 RE-CROSS-EXAMINATION BY MR. BYRNE:

2 Q. Mr. Meyer, Chairman Kenney asked you
3 a hypothetical question about what if Ameren
4 Missouri actually had spent the full \$101 million
5 worth of solar rebates. Do you remember that line
6 of questions?

7 A. Yes.

8 Q. I have a different hypothetical along
9 the same lines. What if Ameren Missouri had
10 actually spent \$72 million of solar rebates, how
11 would that impact -- how would that number of solar
12 rebates impact your overearnings calculation or
13 your alleged overearnings calculation?

14 A. 72 million through what period?

15 Q. Today.

16 A. There would have been -- the
17 \$10 million adjustment would have been a
18 \$24 million adjustment.

19 Q. Okay. So then it would reduce the
20 amount of your alleged overearnings by 14 million;
21 is that correct?

22 A. Yes.

23 Q. You were talking about the -- some of
24 the difficulties with Chairman Kenney about doing a
25 full cost of service study, and I have a couple

1 questions. One is, are you familiar with
2 Utilitech, which is Mr. Brosch and Mr. Carver's
3 group in Kansas City?

4 A. I most certainly am.

5 Q. And do you know how many employees
6 they have?

7 A. No, I don't.

8 Q. Smaller firm than Brubaker?

9 A. I believe they are smaller.

10 Q. Okay. And are you aware that they do
11 cost of service studies on behalf of the staff of
12 the Hawaii Public Service Commission?

13 A. I know they're involved in Hawaii. I
14 don't know the extent of where they work.

15 Q. You don't know that they do the cost
16 of service studies for the staff of Hawaii?

17 A. I don't know.

18 Q. Has Brubaker & Associates ever done a
19 full cost of service study for anyone anywhere?

20 A. Well, I'm not sure, but --

21 Q. Fair enough.

22 A. -- the --

23 Q. That answers my question.

24 I guess one of the issues you talked
25 about was client resources to do a cost of service

1 study with Chairman Kenney. Do you recall that
2 line of discussion?

3 A. I do.

4 Q. Isn't it true that some of your
5 clients are major corporations, Fortune 500
6 corporations with a lot of resources?

7 A. Do you mean money?

8 Q. Money. Yes, that's what I mean.
9 Don't they have a lot of money?

10 A. They have a lot of money, but --

11 Q. That's what I wanted to know.

12 Doesn't Noranda have a lot of money?

13 A. According to them, no.

14 Q. You talked a little bit with one of
15 the Commissioners about stale data. I forget which
16 Commissioner was asking you. But isn't it relevant
17 when there's a situation where the utility's
18 spending an unusually large amount of money, isn't
19 there more of a reason to try to capture those
20 larger than usual expenditures when you're doing a
21 cost of service study?

22 A. I'm sorry. I don't understand your
23 question in relation to stale data.

24 Q. Well, I guess what I'm saying is, in
25 this case Ameren Missouri has huge capital projects

1 that are about to come online. Would you agree
2 with that?

3 A. That's what you purport.

4 Q. Well, I mean, come on. We've
5 purchased the nuclear reactor head and it's sitting
6 out at the Callaway site, isn't it? I mean --

7 A. Well, Mr. Byrne, I asked for this
8 information.

9 Q. Well, I guess my question is, if you
10 have a situation where a utility has a large amount
11 of capital investment that it's making, isn't it
12 particularly important to have the most recent data
13 that you can have in setting rates, or would you
14 disagree with that?

15 A. Up to a cutoff.

16 Q. You had a discussion with
17 Commissioner Hall about regulatory trackers that
18 are overfunded. Do you recall that discussion?

19 A. Yes.

20 Q. And isn't it true that those
21 trackers, the amounts in those trackers are tracked
22 as a regulatory liability, and ultimately they will
23 be amortized back through rates in the next rate
24 case?

25 A. Yeah. I mean, that's what I told

1 him. I hope I didn't mislead him.

2 Q. You've talked a little in response to
3 some Commissioner questions about your analysis
4 including March, an examination of March
5 surveillance data. Do you recall that?

6 A. Yes.

7 Q. And my understanding, though, is that
8 raw surveillance data is not sufficient to
9 establish rates; is that correct?

10 A. I agree with that.

11 Q. And isn't it true that you haven't
12 provided the Commission with any sort of analysis
13 of the March 2014 data? You haven't provided any
14 adjustments in the same way that you adjusted the
15 December 31st, 2013 surveillance data; is that
16 correct?

17 A. Well, I just used the March as a
18 benchmark to make sure that you had continued to
19 overearn.

20 Q. Right. But it's a benchmark that
21 hasn't been adjusted for any things that it has to
22 be adjusted for; isn't that correct?

23 A. Well, I think some of the adjustments
24 that are on December would apply to March. So I
25 think you're going to find that you're in the same

1 range of overearnings that we allege that you're in
2 in December.

3 MR. BYRNE: Thank you, Mr. Meyer. I
4 don't have anything else.

5 JUDGE WOODRUFF: Redirect?

6 MR. DOWNEY: Yes, Judge. I've got
7 quite --

8 JUDGE WOODRUFF: Make sure you use
9 your microphone.

10 MR. DOWNEY: Judge, I've got quite a
11 bit of redirect. Can we take a break?

12 JUDGE WOODRUFF: We can take a break.
13 I see cheers back there. Let's come back at 2:40.

14 (A BREAK WAS TAKEN.)

15 JUDGE WOODRUFF: Let's come to order,
16 please. We're back from break and ready for
17 redirect.

18 REDIRECT EXAMINATION BY MR. DOWNEY:

19 Q. Okay. Mr. Meyer, when a utility
20 overeans, is it possible that customers can
21 receive refunds of overearned revenues?

22 A. Yeah. That would be a -- that would
23 be a mechanism.

24 Q. Well, does the law allow for refunds
25 retroactively?

1 A. Oh, no. No. I'm sorry.

2 Q. So is there a reason why consumers
3 might want to get a decision quickly in an
4 overearnings case?

5 A. Well, the longer the -- the longer
6 the overearnings exist, the more ratepayers are
7 paying unjustified rates.

8 Q. Please tell the Commission why we do
9 not in this case -- I should say please tell the
10 Judge why we don't need a comprehensive and
11 completed class cost of service study in this case.

12 A. Well, we believe we've provided a
13 calculation that would support a rate reduction
14 based off of the factors that we've looked at.
15 We've addressed -- as several parties have said,
16 we've included all the relevant factors in our
17 analysis because they've been included in the
18 surveillance data that Ameren submits to the -- to
19 the Commission and the parties.

20 So we believe that something less
21 than a comprehensive study can be adopted to lower
22 rates in a complaint. Otherwise, as we've told you
23 before, there is no party, no customer group or --
24 and I believe the Public Counsel would not be able
25 to effectuate a rate complaint against a utility.

1 MR. DOWNEY: Judge, my next couple of
2 questions really go right to something Commissioner
3 Hall was asking. Do you think the Commissioners
4 will be back any time soon or not?

5 JUDGE WOODRUFF: As far as I know,
6 they will be. If you want to move on to something
7 else --

8 MR. DOWNEY: Really, all of this is
9 pretty important.

10 JUDGE WOODRUFF: Of course, it's --
11 for all I know, they're watching upstairs. Of
12 course, it's all going to be on the transcript.

13 MR. DOWNEY: All right.

14 JUDGE WOODRUFF: Will this be another
15 exhibit?

16 MR. DOWNEY: Yes, Judge. I think
17 we're up to 16, are we not?

18 JUDGE WOODRUFF: That would be
19 correct.

20 MR. DOWNEY: This would be
21 Exhibit 16.

22 (EXHIBIT NO. 16 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 BY MR. DOWNEY:

25 Q. Mr. Meyer, do you have Exhibit

1 **No. 16?**

2 A. Yes, I do.

3 **Q. What is that?**

4 A. This is the data request that Noranda
5 submitted to Ameren in its first set.

6 **Q. Is this the data request response**
7 **that you referenced during your cross-examination?**

8 A. Right. It's the request and the
9 response on May 9th, 2014.

10 **Q. And the -- it looks like a computer-**
11 **inserted typographical error on the second line of**
12 **that request. Do you see it?**

13 A. I'm not following.

14 **Q. I think Ameren Missouri is**
15 **misspelled. Do you see that? That's not the way**
16 **the original DR request was written, was it?**

17 A. No.

18 **Q. Okay. Other than that, is this the**
19 **request and Ameren's answer?**

20 A. Yes.

21 MR. DOWNEY: Thank you. I'll offer
22 Exhibit 16.

23 JUDGE WOODRUFF: Exhibit 16 has been
24 offered. Any objections to its receipt?

25 (No response.)

1 JUDGE WOODRUFF: Hearing no
2 objections, it will be received.

3 (EXHIBIT NO. 16 WAS RECEIVED INTO
4 EVIDENCE.)

5 BY MR. DOWNEY:

6 Q. Now, do you recall Commissioner Hall
7 asking you some questions about the \$180 million
8 difference in rate base?

9 A. Yes.

10 Q. Okay. And I think I was following
11 Commissioner Hall and maybe you weren't, but I
12 think what he was saying, what he was asking is,
13 the fact that the rate base went down doesn't
14 affect their revenues, is what he was asking. Is
15 that correct, that it doesn't affect revenues?

16 A. Right. I mean, until you -- until
17 you readjust, that's correct. The revenues -- the
18 revenues have stayed the same, although the rate
19 base has declined by \$180 million.

20 Q. Okay. And is the actual rate base a
21 factor you use in calculating the actual return on
22 equity?

23 A. Yes.

24 Q. Okay. So would it -- would the lower
25 rate base have an impact on the actual return on

1 equity?

2 A. Yes.

3 MR. DOWNEY: Okay. Judge, I'm going
4 to have Exhibit 17 through 22. We're going to hand
5 them all out now. Judge, I will say, Exhibit 17,
6 it's marked Exhibit 9, so that's an error. It's
7 also marked HC, and it's no longer HC.

8 JUDGE WOODRUFF: What's been handed
9 out is 17?

10 MR. DOWNEY: Yes. I guess I'd
11 encourage everybody cross through where it's
12 written Exhibit 9. I anticipated that would be the
13 exhibit number. And also cross through where it
14 says HC.

15 JUDGE WOODRUFF: And that's based on
16 the ruling made this morning.

17 MR. DOWNEY: The big thick one is
18 Exhibit 17.

19 (EXHIBIT NOS. 17 THROUGH 22 WERE
20 MARKED FOR IDENTIFICATION BY THE REPORTER.)

21 JUDGE WOODRUFF: 17 would be the
22 surveillance monitoring reports, the big thick one?

23 MR. DOWNEY: That's correct.

24 JUDGE WOODRUFF: 18 is the authorized
25 compared to actual ROE, the charts, June 2012

1 through March 2014?

2 MR. DOWNEY: That's correct.

3 JUDGE WOODRUFF: 19 is a graph of
4 authorized ROE compared to earned ROE?

5 MR. DOWNEY: Correct.

6 JUDGE WOODRUFF: 20 are ROE
7 calculations from -- from this case reported and
8 authorized?

9 MR. DOWNEY: Correct.

10 JUDGE WOODRUFF: 21 is again the
11 chart of excess revenues, and 22, I believe, would
12 be the same data in a table form.

13 MR. DOWNEY: Correct.

14 JUDGE WOODRUFF: Proceed.

15 BY MR. DOWNEY:

16 Q. Mr. Meyer, do you have all those
17 exhibits before you?

18 A. I do.

19 Q. Would you please tell the Commission
20 what Exhibit 17 is?

21 A. These are the surveillance reports
22 that are submitted by Ameren in compliance with the
23 fuel adjustment clause rules.

24 Q. And for what periods are these
25 reports?

1 A. Quarterly from June of 2012 through
2 March 31st of 2014.

3 **Q. All right. Now, you said quarterly.**
4 **Is each report for a quarter or is it for a**
5 **different period?**

6 A. They're submitted quarterly, but
7 they're a 12-month-to-date calculation.

8 **Q. Okay. And so are there two years'**
9 **worth of such reports here in Exhibit 17?**

10 A. Yes.

11 **Q. And do you know who prepares these**
12 **reports?**

13 A. It's my understanding they are
14 prepared by Mr. Weiss' staff.

15 **Q. And do you know whether when these --**
16 **do you know whether these are submitted to the**
17 **Staff of the Public Service Commission?**

18 A. I believe they are.

19 **Q. Okay. And do you know if they are**
20 **accompanied by an affidavit? If you don't know,**
21 **that's fine.**

22 A. I'm not sure.

23 **Q. Okay. So is the actual return on**
24 **equity reported anywhere on these reports?**

25 A. Yes.

1 Q. Okay. Would you tell the Commission
2 where? Let's do that for Tab 1, the report at
3 Tab 1.

4 A. I think it's consistent throughout
5 the reports, but it's page 2.

6 Q. Okay. Now, where on page 2?

7 A. Under the actual return -- earned
8 return on equity for this period, which was June
9 2012, it shows 10.53 percent.

10 Q. Is that under the column labeled
11 costs?

12 A. Correct.

13 Q. All right. And if we were to look at
14 the other reports here, would we -- Tabs 2 through
15 8, would we find the actual reported return on
16 equity in a similar location on those reports?

17 A. Yes.

18 Q. All right. I'd like you to look at
19 Exhibit 18, please.

20 A. Okay.

21 Q. Were you here this morning for my
22 opening statement?

23 A. I was.

24 Q. Okay. And was this document part of
25 the opening statement presentation?

1 A. I believe it was.

2 Q. Okay. Would you tell the Commission
3 what this document shows?

4 A. This document is information from the
5 surveillance reports submitted by Ameren, and what
6 it shows is for each 12-month period ending on the
7 quarters, what the authorized return was for Ameren
8 and what they actually achieved, and then
9 identifies what the excess of the actual return on
10 equities over the authorized, what that translates
11 into for overearning dollars.

12 Q. Dollars over what period?

13 A. For the 12-month period ending that
14 corresponds with the first column date.

15 Q. Would you satisfy yourself that the
16 authorized ROE reported in the second column is
17 accurate.

18 MR. BYRNE: Your Honor, I'm going to
19 lodge an objection to all of these documents other
20 than Exhibit 17, which is just the surveillance
21 reports. You know, any of these documents could
22 have been put in prefiled testimony of Mr. Meyer.
23 They had all this -- as much information when he
24 filed his testimony as they do now. For them to
25 wait until he's on redirect and there's no -- you

1 know, I haven't had a chance to review, my
2 witnesses haven't had a chance to review, I don't
3 have a chance to cross-examine him, and then they
4 just dump a whole bunch of documents containing
5 analysis into the record.

6 I also, you know, conducted a pretty
7 comprehensive deposition of Mr. Meyer on July 21st.
8 Obviously if any of this stuff would have been a
9 part of his testimony, I would have asked him about
10 it. It's just improper to dump it all in in
11 redirect testimony.

12 And not only that, they haven't even
13 tied it to anything that he was asked on
14 cross-examination. Even if -- even if it did, to
15 tie all these prepared analyses and prepared charts
16 that we've never seen before in redirect is
17 completely improper and I object.

18 MR. DOWNEY: May I respond, Judge?

19 JUDGE WOODRUFF: You may. Of course,
20 I'll recognize that they have not been offered yet
21 either, but you can respond at this point if you
22 wish.

23 MR. DOWNEY: First of all,
24 Mr. Byrne's had my opening statement in hard copy
25 since early this morning, so he's seen it before.

1 Most of these are slides from that.

2 Mr. Byrne asked Mr. Meyer about these
3 actual returns on equity bouncing around and that
4 that was pretty normal. So the whole point of this
5 is to show there is no bouncing around and this is
6 not normal. These actual returns on equity are
7 constantly a positive number above their authorized
8 return.

9 So I think it goes to that issue,
10 which Mr. Byrne himself is the one that raised on
11 cross.

12 JUDGE WOODRUFF: Well, I'm still
13 waiting for more foundation to be laid, which
14 you're in the process of doing. Mr. Byrne, you can
15 renew your objection when they are actually
16 offered, and I'll make a ruling at that time.

17 MR. BYRNE: Thank you, your Honor.

18 BY MR. DOWNEY:

19 **Q. Do you remember the question?**

20 A. I think I do, but let me -- was I
21 supposed to check to make sure that the authorized
22 returns in that column were reflective of what's in
23 the surveillance data?

24 **Q. Well, what is, in fact, the**
25 **authorized return in effect at that time?**

1 A. And I did that, and those -- this is
2 an accurate portrayal.

3 Q. Okay. Next column is the actual
4 return on equity as reported in those surveillance
5 monitoring reports. I think you've looked at this
6 before, but go ahead and --

7 A. I have.

8 Q. -- satisfy yourself that it's
9 accurate.

10 A. Those are accurate.

11 Q. All right. Now, the last column is
12 labeled overearning dollars per year. Do you see
13 the figures in that column?

14 A. Yes.

15 Q. Would you look at Exhibit 20.

16 A. Yes.

17 Q. Who prepared Exhibit 20?

18 A. I did.

19 Q. And is Exhibit 20 accurate?

20 A. Yes.

21 Q. Okay. And what does Exhibit 20 show?

22 A. The excess revenues that Ameren
23 recognized for each 12-month period based off the
24 quarterly surveillance data and compared to the
25 authorized rate of returns.

1 Q. Okay. So where did the information
2 come from that was used on Exhibit 20?

3 A. Ameren surveillance reports.

4 Q. Okay. Does the last column on
5 Exhibit 18 match the last -- the bottom row on
6 Exhibit 20?

7 A. Yes.

8 Q. All right. I'd now ask you to look
9 at Exhibit 19. Do you recognize that from my
10 opening statement this morning?

11 A. Yes.

12 Q. And what does this document show?

13 A. This tracks the return on equity that
14 Ameren -- the actual return on equity that Ameren
15 achieved for each of the surveillance periods for
16 the 12 months preceding the date of the
17 surveillance report against the authorized returns
18 that the Commission granted over that period of
19 time.

20 Q. Okay. Does this document accurately,
21 I guess, plot the points that we see on Exhibit 18?

22 A. Yes.

23 Q. Okay. And what is the blue line on
24 Exhibit 19?

25 A. The blue line is the actual returns.

1 Q. And what is the green line?

2 A. The authorized returns.

3 Q. And does the blue line ever dip below
4 the green line?

5 A. No.

6 Q. Do you see any bouncing around where
7 the actual return is below the green line?

8 A. No.

9 Q. Now, it would be normal, would it
10 not, for the actual return to bounce around that
11 green line, sometimes be above, sometimes be below?

12 A. It is generally believed, except for
13 a circumstance I described earlier in my testimony,
14 that the ROE should bounce back and forth or can
15 bounce back and forth.

16 Q. And this is, in fact, a discussion
17 you had with Mr. Byrne, right, on cross?

18 A. Right, when I described the earnings
19 of Ameren from 1987 forward.

20 Q. All right. Please look at
21 Exhibit 21.

22 A. I've got it.

23 Q. Do you know who prepared that?

24 A. It was prepared under my supervision.

25 Q. Okay. And is it true and accurate to

1 **the best of your knowledge and belief?**

2 A. Yes.

3 **Q. And what does it show?**

4 A. This is just a plotting that shows
5 the excessive earnings that Ameren has achieved
6 during the quarterly surveillance reports
7 reflecting the previous 12 months of operations.

8 **Q. Now, if Ameren's actual return on**
9 **equity were bouncing around, would we see that blue**
10 **line dip below zero?**

11 A. Yes.

12 **Q. Does it dip below zero?**

13 A. No.

14 **Q. All right. Last I'd like you to look**
15 **at Exhibit 22.**

16 A. Yes.

17 **Q. Who prepared this?**

18 A. I prepared this.

19 **Q. And what does it show?**

20 A. This shows the percentage of -- what
21 the percentage is that Ameren earned above its
22 authorized return for each of the eight quarterly
23 surveillance reports reflecting the previous
24 12 months operations of Ameren.

25 **Q. Okay. And what is the -- is that as**

1 a percentage of its return, authorized return on
2 equity?

3 A. Right. So, for instance, in June of
4 2012, Ameren earned 10.53. Its authorized was
5 10.2. The difference is .33 percent, which is --
6 means that it earned -- its earned return was
7 3.24 percent above the authorized.

8 Q. All right. Let's look at March of
9 2013. Same analysis, although here what are you
10 showing in terms of how -- the percentage that it
11 exceeded its authorized return on equity?

12 A. It was -- Ameren was -- in March
13 of -- March of 2013, Ameren's authorized return at
14 that time was 9.8 percent. It achieved an actual
15 return of 12.28 percent, which was a 2.48 percent
16 difference, which equates to 25.31 percent above
17 its authorized return.

18 Q. All right. And what is the average
19 percentage that Ameren exceeded its authorized
20 return on equity during this two-year period?

21 A. For two years of surveillance data,
22 Ameren has exceeded its authorized return by
23 8.89 percent.

24 Q. On average?

25 A. Yes.

1 **Q. Thank you.**

2 MR. DOWNEY: Judge, I'd offer
3 Exhibits 17 through 22.

4 JUDGE WOODRUFF: 17 through 22 have
5 been offered. Objections to their receipt?

6 MR. BYRNE: I do object, your Honor.
7 Once again, you know, these are -- I don't object
8 to 17, which is just flat out the surveillance
9 data, the raw surveillance data. I don't think
10 there's any issue with putting that in the record.
11 That's just objective information that was filed
12 quarterly by Ameren Missouri.

13 But what all the rest of these
14 documents is trying to do is paint the data in the
15 most -- in the light most favorable to the
16 Complainants. Of course, you know, they select the
17 time period that's most relevant. They don't make
18 adjustments that maybe ought to be made. And even
19 though it would be appropriate if they filed some
20 analysis like this as part of their testimony where
21 I would have a chance to cross-examine the person,
22 where I would have a chance to do discovery, where
23 I would have a chance to make sure it's not
24 misleading or not incorrect, to dump these kinds of
25 completed analyses into redirect is, in my opinion,

1 inappropriate, and it stops me from having any
2 ability to do discovery or to ask questions about
3 them. So I object.

4 JUDGE WOODRUFF: Mr. Downey?

5 MR. DOWNEY: Judge, I would say that
6 all of the documents I just introduced are based on
7 the one document that Mr. Byrne doesn't object to.
8 For instance, the last document, Exhibit 22, any
9 one of us with a calculator could compare the
10 actual return on equity as reported in those
11 documents to the authorized return and come up with
12 the exact same numbers that Mr. Meyer did. So I
13 don't know what level of discovery you need for
14 three minutes on a calculator.

15 MR. BYRNE: Well, then I don't think
16 he needs -- I don't think he needs that analysis if
17 it's that simple. I mean, what they've done is
18 they've painted the data in the most favorable
19 light in these other exhibits that they can, and I
20 don't get a chance to ask him any questions about
21 it or do any discovery.

22 JUDGE WOODRUFF: Do you want an
23 opportunity to ask him questions about these
24 documents at this point?

25 MR. DOWNEY: I have no objection.

1 MR. BYRNE: I don't know if that
2 solves my problem. I'll look at them. If you give
3 me an opportunity to ask him questions, can I have
4 ten minutes and see if I have any questions?

5 JUDGE WOODRUFF: Yes. We'll take a
6 break until 3:15.

7 (A BREAK WAS TAKEN.)

8 JUDGE WOODRUFF: Mr. Byrne, your
9 opportunity.

10 MR. BYRNE: Thank you, your Honor.

11 FURTHER RECROSS-EXAMINATION BY MR. BYRNE:

12 Q. Mr. Meyer, all of these documents and
13 the exhibits that -- starting with, I guess,
14 Exhibit 17 and going through -- what was the last
15 one that was offered, 22, your Honor?

16 JUDGE WOODRUFF: 22, yes.

17 BY MR. BYRNE:

18 Q. Those all address surveillance
19 reports from June 2012 to March 2014; is that
20 correct?

21 A. Yes.

22 Q. And isn't it true that June 2012 was
23 when Ameren Missouri first started -- where the
24 surveillance reports first started showing that
25 Ameren Missouri's actual earned return was in

1 **excess of what the Commission authorized?**

2 A. I think you asked me that earlier,
3 and I don't have any reports prior to June of --
4 well, I don't have the reports immediately prior to
5 June of 2012 to verify that.

6 MR. BYRNE: Okay. May I approach the
7 witness, your Honor?

8 JUDGE WOODRUFF: You certainly may.

9 BY MR. BYRNE:

10 **Q. Let me show you Mr. Weiss' testimony**
11 **from the last rate case. Do you recognize that?**

12 A. I do.

13 **Q. And is it Mr. Weiss' direct testimony**
14 **from our last rate case, File No. ER-2012-0166?**

15 A. It is.

16 **Q. And Mr. Weiss, if you turn to page 37**
17 **of that testimony, he talks about -- on lines 5, 6**
18 **and 7, he talks about the authorized returns since,**
19 **I guess, Case No. ER-2007-0002 up until the time of**
20 **the testimony, which ended with Case No.**
21 **ER-2011-0028. Do you see that?**

22 A. I do.

23 **Q. And he says that the authorized**
24 **returns in those cases during that period of time**
25 **were 10.2 percent, 10.76 percent, 10.1 percent and**

1 10.2 percent; is that correct?

2 A. Yes.

3 Q. So they're all above 10 percent, and
4 at least one of them is pretty high, pretty much
5 above 10 percent; is that true?

6 A. Yes.

7 Q. And then if you turn the page,
8 Mr. Weiss has a month-by-month description of
9 the -- for each month he shows a bunch of data, but
10 he shows the earned return on equity for each month
11 from June of 2007 until, looks like, November of
12 2011; is that correct?

13 A. Yes.

14 Q. And isn't it true that just, you
15 know, without going through every month, most of
16 the months are below and some are very
17 substantially below the authorized return; isn't
18 that true?

19 A. There are numerous returns that are
20 below 10 percent.

21 Q. So let's -- maybe we can categorize
22 them. Let's start from November -- the last
23 return, November of 2011 all the way back to
24 November of 2010, and it looks like in that
25 13-month period the lowest one is 7.18 percent, and

1 I guess the highest one is 9.27 percent, but
2 they're all below 10 percent during that period;
3 isn't that true?

4 A. They are all below 10 percent.

5 Q. And, of course, the authorized return
6 would have been above 10 percent, and the lowest
7 one is 7.18 percent; is that correct?

8 A. That's correct.

9 Q. During that whole period we were
10 underearning, and in some cases significantly
11 underearning, isn't that -- compared to the
12 authorized return; isn't that true?

13 A. You were underearning.

14 Q. Okay. So then in the next three
15 months, all right, we're above. We go 10, 11, 10.
16 So the -- going backwards from October of 2010 back
17 through August, that three-month period we're above
18 10 percent, right?

19 A. You are.

20 Q. But then starting in July of 2010 and
21 going all the way back to August of 2008, we're
22 never above 10 percent; isn't that true?

23 A. That's true.

24 Q. So there's a huge months-long where
25 we're never above 10 percent, right?

1 A. From August of 2008 through July of
2 2010, your ROE is not -- your actual ROE is not
3 above 10 percent.

4 Q. And look at some of those ROEs in
5 there. There's a 6.08 percent ROE in August of
6 2009; isn't that correct? 6.47 in July of 2009.
7 6.14 in June. I mean, some of those returns were
8 really far below the authorized return, aren't
9 they?

10 A. They're below 10 percent.

11 Q. Yeah. You know, 3 or 400 basis
12 points below 10 percent on some of those months;
13 isn't that true?

14 A. At least 300. I'm not sure about 4,
15 but we can sure try that.

16 MR. BYRNE: Your Honor, I'd like to
17 ask that you take official notice of Mr. -- I don't
18 have copies, other than the one I gave to
19 Mr. Meyer. I'd like to ask that you take official
20 notice of Mr. Meyer's revenue requirement testimony
21 in direct testimony -- I'm sorry. Mr. Weiss', not
22 Mr. Meyer's. Don't take notice of his.

23 MR. LOWERY: We're sure he would not
24 have filed.

25 MR. BYRNE: Mr. Weiss' direct

1 testimony in Case No. ER-2012-0166 with all these
2 actual earned return numbers in them.

3 JUDGE WOODRUFF: Any objections?

4 MR. DOWNEY: You know, Mr. Weiss is
5 going to be testifying probably tomorrow, maybe
6 this afternoon, but probably tomorrow. I don't
7 understand why this couldn't be introduced or the
8 offer made at that time.

9 MR. BYRNE: Because you're not
10 supposed to introduce new evidence with your own
11 witness on the witness stand is why I don't want to
12 do it with Mr. Weiss.

13 JUDGE WOODRUFF: I'll overrule the
14 objection. We'll take administrative notice of
15 that testimony.

16 CHAIRMAN KENNEY: To be clear, that's
17 Mr. Weiss' direct testimony in the rate case with
18 all the schedules?

19 MR. BYRNE: That's correct.

20 MR. SCHWARZ: And what's the number
21 on that?

22 JUDGE WOODRUFF: That's not been
23 marked as an exhibit.

24 MR. LOWERY: If I may, your Honor, I
25 think perhaps it might behoove us to look up what

1 exhibit number it is as admitted in the record, and
2 when we come back in time, then you can formally
3 reference that and take official notice.

4 JUDGE WOODRUFF: That would be
5 helpful.

6 BY MR. BYRNE:

7 Q. Okay, Mr. Meyer. Isn't it true that
8 when you show -- well, look on -- all these graphs
9 are similar. Look on Exhibit 19.

10 A. Are we done with Mr. Weiss?

11 Q. Yeah, I'm done with him. In fact,
12 I'll take it back.

13 If you look on Exhibit 19, that's the
14 one with graphs that showed the earned return
15 versus the authorized return. Do you see that?

16 A. Yes.

17 Q. And wouldn't you agree that the
18 earned returns on that graph and the other graphs
19 that you have don't reflect any adjustments for
20 things like weather or one-time nonrecurring
21 revenues or costs? Would you agree that these are
22 unadjusted for things like that?

23 A. Yeah, just like when we went through
24 with Mr. Weiss.

25 Q. Sure.

1 A. Okay.

2 Q. Fair enough. And isn't it true that
3 during the pendency -- well, you have some
4 information here that was pending during, I guess,
5 the -- in particular the June 30th, 2012, and the
6 September 30th, 2012, and even the December 31st,
7 2012 results all took place before Ameren Missouri
8 was awarded a \$260 million per year rate increase;
9 isn't that correct?

10 A. Those months are before the rate
11 increase, the last rate increase.

12 Q. So for whatever reason, the
13 Commission after it examined an exhaustive cost of
14 service study -- and you would agree, would you
15 not, that in ER-2012-0166 the Commission examined a
16 full cost of service study for the company,
17 wouldn't you?

18 A. Yes.

19 Q. So after it examined a full cost of
20 service study, notwithstanding the fact that this
21 graph shows book earnings to be above the
22 authorized ROE, the Commission still granted a
23 \$260 million rate increase; isn't that correct?

24 A. They granted a \$260 million rate
25 increase.

1 **Q. Wouldn't you agree with me that just**
2 **looking at book earnings versus authorized return**
3 **can be misleading?**

4 A. Can you repeat that?

5 **Q. Wouldn't you agree with me that just**
6 **looking at book earnings compared to Commission-**
7 **authorized ROEs could be misleading?**

8 A. Oh, I think it shows what you've
9 actually earned. I think there's mitigating
10 factors that maybe should be looked at, but this is
11 what you actually earned.

12 **Q. Okay. But you would agree that none**
13 **of those mitigating factors were looked at in any**
14 **of these exhibits; is that fair to say?**

15 A. Any of the months that we've looked
16 at in this graph and Mr. Weiss' graph, we haven't
17 looked at mitigating factors.

18 **Q. Okay.**

19 A. But that doesn't take away from the
20 fact that this is what you actually earned.

21 MR. BYRNE: Thank you, Mr. Meyer.
22 That's all the questions I have. I renew my
23 objection to all of these.

24 JUDGE WOODRUFF: The objections will
25 be denied. Exhibits 17 through 22 will be

1 received.

2 (EXHIBIT NOS. 17 THROUGH 22 WERE
3 RECEIVED INTO EVIDENCE.)

4 JUDGE WOODRUFF: Back to additional
5 redirect.

6 FURTHER REDIRECT EXAMINATION BY MR. DOWNEY:

7 Q. Mr. Meyer, did you testify in the
8 last Ameren Missouri rate case?

9 A. Yes.

10 Q. Do you recall when that trial was? I
11 was there. I don't recall. So I'm hoping you
12 will.

13 A. September/October of 2012.

14 Q. All right. When was the -- when was
15 the March of 2014 FAC report filed by Ameren? Do
16 you recall?

17 A. The reports are generally filed two
18 months after the end of the quarter.

19 Q. Okay. So let's focus on December of
20 2012. The Commission decided this case, this last
21 rate case in December of 2012, didn't it?

22 A. Rates went into effect at the
23 beginning of 2013.

24 Q. But you recall, was the decision in
25 December?

1 A. Yes.

2 Q. December of 2012?

3 A. Yes.

4 Q. So would the 2012, December of 2012
5 FAC report even have been prepared at the time the
6 Commission decided the last rate case?

7 A. No. We wouldn't get -- we would get
8 the December 2012 surveillance report in February,
9 end of February 2013.

10 Q. All right. So I think the
11 implication was that the Commission must have
12 considered that report and rejected it because it
13 authorized a rate increase. Is that even possible?

14 A. No, but -- and just so we're clear, I
15 mean, there's still a reference to \$260 million,
16 and that's what was granted, but a substantial
17 portion of that rate increase is for fuel.

18 Q. Okay. But don't leave me here on
19 these reports yet. The September of 2012 report,
20 when would that have been filed?

21 A. September of 2012?

22 Q. Yes. I'm sorry. September 2012.

23 A. November -- end of November 2012.

24 Q. And again, would that have been
25 before or after the trial of that rate case?

1 A. After.

2 Q. So the Commission couldn't have
3 considered that report either?

4 A. I'm not even sure the Commission gets
5 these reports.

6 Q. Okay. And I do -- I think you
7 testified that the June of 2012 report was, in
8 fact, considered by the Commission, do you recall?

9 A. I do believe that the June report was
10 a part of that case.

11 Q. All right.

12 A. It was brought up at least.

13 Q. Thank you. Now, Mr. Byrne referred
14 you to Mr. Weiss' testimony in the prior rate case.
15 Do you recall that?

16 A. Yes.

17 Q. And he referred you to a number of
18 periods of time where Mr. Weiss ran analysis of
19 actual versus authorized return on equity. Do you
20 recall that?

21 A. Yes. Monthly.

22 Q. Okay. Were some of those periods
23 prior to the time this Commission granted an FAC to
24 Ameren Missouri?

25 A. I don't have Mr. Weiss' testimony in

1 front of me, but I believe that it was prior to
2 2007, yes, those periods, they didn't have an FAC.

3 Q. Did Ameren receive an FAC sometime in
4 2009, do you recall?

5 A. That would be -- that would be my
6 recollection.

7 Q. Okay. My recollection is Mr. Byrne
8 was asking you to comment on actual returns on
9 equity going back at least to 2008. Do you recall
10 that?

11 A. Yes.

12 Q. All right.

13 A. I think he started in 2007, went
14 through 2011.

15 Q. So some of those periods would have
16 been prior to the time Ameren Missouri had an FAC?

17 A. Correct.

18 Q. When you were answering some
19 questions from Commissioner -- no disrespect
20 intended, but I want to distinguish you --
21 Commissioner Bill Kenney, do you recall some
22 questions you got from that Commissioner?

23 A. Yes.

24 Q. Okay. And you mentioned a 2002
25 complaint case, but you didn't really explain what

1 **it was you were referring to. What are you talking**
2 **about with the 2002 complaint case?**

3 A. I think that's when I got a little
4 overzealous. In the 2002 rate case, the Staff
5 performed an audit and reached the conclusion that
6 there was substantial overearnings in the case.
7 And the same argument that we hear today was
8 presented in that case, and it's presented as
9 almost a standard argument for a utility, is that
10 the data that you rely on is stale.

11 So this is not a new argument. And,
12 in fact, the Commission at that time, because of
13 delays in ruling on whether to proceed with the
14 complaint, ordered the Staff to do another audit of
15 that complaint. So the Staff did two audits that
16 continued to show that the -- that Ameren was
17 overearning at that point.

18 Ameren responded with a rate case
19 that said that, instead of it being lower, it
20 should be -- that the rate should be increased.
21 And as a result of negotiations, a stipulation was
22 rendered or reached that the rates should actually
23 be lowered.

24 **Q. All right. Now, when you say**
25 **complaint case of Staff, are you talking about a**

1 complaint case where the Staff was asking the
2 Commission to lower the rate?

3 A. Yes. We had to do it twice.

4 Q. All right. Now, I want to ask you a
5 number of questions about your deposition to follow
6 up some of the questioning you received from
7 Mr. Byrne. Do you have your deposition handy?

8 A. I do.

9 Q. There were a number of times where
10 you wanted to explain something and you were not
11 allowed to. So I'm going to give you that
12 opportunity. Okay. Page 32 of your deposition.

13 A. I'm there.

14 Q. Okay. Mr. Byrne was asking you some
15 questions. He was actually reading from the
16 deposition at line 7 through, I believe, 25, and
17 you wanted to explain something. What did you want
18 to explain to the Commission?

19 A. Mr. Byrne's leading question into
20 that is, don't you -- something to the effect of,
21 wouldn't you agree that past earnings should not be
22 considered when setting permanent rates? And
23 somewhere in this deposition we'd had the exact
24 same type of discussion, and I said no, I disagree
25 with that premise. And the reason I disagree is

1 that with the introduction of trackers that are now
2 put into rates where expenses need to be tracked,
3 it's my position that you have to look and
4 determine if the utility is overearning on their
5 book results during that period when they're trying
6 to track increased expenses.

7 I believe it's patently unfair for
8 customers to have to pay in a next rate case for
9 tracked expenses that increase during a period when
10 the company is reporting earnings in excess of its
11 authorized return.

12 I pointed out to Mr. Byrne in the
13 deposition, and I had put that in my surrebuttal
14 testimony when I described, I believe it's on
15 page 3 of my surrebuttal testimony, lines 10
16 through 15, where in a recent KCPL case where they
17 were requesting an AAO for transmission expense,
18 that we lodged the argument that they -- that not
19 only did they not qualify for the AAO under the
20 terms of what should be granted, but that during
21 the period for which they sought the AAO, they were
22 reporting earnings in excess of their authorized
23 return.

24 So that was the context that we had
25 that discussion. That's what I was trying to

1 answer.

2 Q. Thank you. Please turn to page 24 of
3 your deposition.

4 A. I'm there.

5 Q. This time I think -- actually, I
6 apologize. It may be kind of hard for the
7 Commission to follow along here. So this time I
8 want to kind of put it in context. But you were
9 asked some questions by Mr. Byrne about your
10 answers in the deposition on lines 17 through --
11 actually to the next page, and it is with reference
12 to level of investments and whether or not it would
13 be impossible to, you know, sustain this
14 overearnings case. Do you recall those questions?

15 A. I do.

16 Q. And you wanted to explain something.
17 What did you want to explain?

18 A. This goes back to the, what I'll call
19 the cutoff period. In Ms. Barnes' testimony she
20 identifies numerous construction projects that are
21 due to be placed in service in a November or
22 December time frame. So that we believe that
23 there's -- there should be a cutoff period for
24 which you consider the known and measurable effects
25 of their operations, and that we believe that given

1 a timetable where an order may be released in mid
2 October, that some -- most -- a lot of the
3 investment that has been discussed being placed in
4 service will be beyond the cutoff period or what
5 would be a reasonable period to consider their
6 operations.

7 Q. All right. Leaving the deposition
8 for just a second. Mr. Byrne was asking you some
9 questions about whether -- if Ameren invests enough
10 money in plant, whether it will not continue to be
11 overearning, and I think you answered at some point
12 and you wanted to say something additional and you
13 weren't allowed to do so. What was it you wanted
14 to say?

15 A. It goes along with the same thing
16 that we just discussed. I mean, a utility
17 continually invests in its operations, but just the
18 mere investment of it, you have to look at all the
19 components of rate base. And that's where we get
20 into the idea that currently Ameren's rate base as
21 of March was lower than what was in the 2012 case.

22 There also again has to be -- at a
23 certain point in time there just must be a cutoff
24 for considering the investment. And it's with that
25 cutoff that we believe we still have an

1 overearnings case at this point in time.

2 Q. Now, back to your deposition,
3 page 46. Are you there?

4 A. Yes, I'm there.

5 Q. Mr. Byrne was asking you some
6 questions about answers in that deposition, I
7 think lines 2 through 6, but I'm not a hundred
8 percent sure there. And the issue there was really
9 how does the standard in this case differ from the
10 standard in a rate case, and you wanted to say
11 something further in response to his question and
12 you were cut off. Do you recall that?

13 A. Yes.

14 Q. What did you want to say?

15 A. I think I discussed it with the
16 Commissioners, but a comprehensive audit, as we've
17 talked about before, just can't be -- can't be
18 performed by most -- or we're not aware of a party
19 that can perform it. So that leaves it to just the
20 Staff if you insist on a comprehensive rate study.

21 If there is -- if there is determined
22 that customers should have the ability to initiate
23 rate complaints against a utility, then inherent in
24 that decision is the belief that you cannot meet a
25 comprehensive rate study.

1 Q. I'd like you to turn to page 104 of
2 your deposition, and this is on the same topic.
3 Towards the bottom of that page, Mr. Byrne was
4 asking you some questions.

5 A. Yes.

6 Q. And the question was, you know, is
7 your firm qualified to do such a comprehensive
8 study? And you said something in your answer in
9 the deposition about time and resources and so
10 forth, and you wanted to say something further. Do
11 you recall what you wanted to say?

12 A. Yes.

13 Q. What was it?

14 A. The other item that we discussed in
15 the deposition and I discussed with Mr. Byrne is
16 that Brubaker & Associates doesn't have all the
17 tools that is available to the Staff. We are
18 fortunate enough that we have a fuel production
19 cost model, but we do not have a model to normalize
20 weather.

21 So we are at somewhat of an advantage
22 probably over other -- I know that like
23 Mr. Brubaker -- I'm sorry -- Mr. Byrne mentioned
24 Utilitech. To my knowledge, Utilitech does not
25 have a fuel production cost model. So consulting

1 firms don't necessarily have the tools that are
2 available to the Staff to do the audits.

3 **Q. All right. And Mr. Byrne was asking**
4 **you some questions about Complainants' right to**
5 **conduct discovery immediately and any party could**
6 **ask the Commission to open a case and the**
7 **Complainants didn't, and you wanted to say**
8 **something further in response to that line of**
9 **questioning. Ringing a bell with you?**

10 A. I think so.

11 **Q. Investigatory docket.**

12 A. Well, we did not -- we did not seek
13 to require the Staff to do an investigatory docket
14 into the rates. We believe that you -- that
15 customers should have the ability and the right to
16 lodge earnings complaints against utilities.

17 However, with that caveat, the
18 Commission must recognize that a party will not
19 have discovery responded to prior to getting
20 complaint status. It's just my experience that
21 that won't happen, that the utility won't -- not
22 just Ameren. Any utility in Missouri will not
23 respond to discovery requests from a customer group
24 that wants to lodge a complaint on their earnings.

25 **Q. All right. Back to your deposition**

1 on page 52.

2 A. I'm there.

3 Q. Okay. There was a question in that
4 deposition on that page, Did you ask the company
5 for certain information? Answer: No. You read
6 that, but you wanted to explain the answer in the
7 deposition. Do you recall that question? It was
8 by Mr. Byrne.

9 A. I don't -- I don't think I have
10 anything to add that I haven't already said today.

11 Q. All right. Mr. Byrne asked you about
12 how you got involved in this case and when you got
13 involved, and I think you said you were first
14 contacted the third quarter of 2013, you made
15 calculations in the fourth quarter of 2013, and
16 that the complaint was filed February 12th of 2014,
17 and you wanted to explain something.

18 A. Right.

19 Q. Do you recall what you wanted to
20 explain?

21 A. Yes. We would not have had
22 access -- and this is something that you talked
23 about earlier. We would not have had access to the
24 September data on surveillance. I believe it was
25 submitted to the parties on November 22nd of 2013.

1 **Q. All right. Just a few more**
2 **questions. Are you aware of any utilities in**
3 **Missouri obtaining rate increases after rate cases**
4 **and immediately turning around and filing for**
5 **another rate increase?**

6 A. Yes. I believe it was in the mid
7 '80s that utilities would get rate orders --
8 probably early '80s -- get rate orders and then
9 turn around and file a rate case within two weeks
10 of the rate order.

11 **Q. And why would that be relevant to the**
12 **Commission in this case?**

13 A. Well, in this case Ameren is arguing,
14 you know, just wait and it'll all -- the earnings
15 will -- the overearnings will dissipate or
16 disappear. And our belief is that you -- that
17 we've seen circumstances on the opposite side where
18 you can -- you can give them rate relief and they
19 just turn around and refill.

20 So there is -- in this particular
21 instance, the complaint that we filed we believe is
22 credible and it should be acted upon. And we've
23 just provided you another example where in the
24 other circumstances utilities have literally turned
25 around after the rate order and filed because they

1 weren't satisfied or they didn't believe that the
2 current cost of service was sufficient for them.

3 **Q. Did your analysis of Ameren**
4 **Missouri's yearend 12/31/13, December 31, 2013**
5 **earnings consider all relevant factors?**

6 A. Yes.

7 **Q. Would you please explain that?**

8 A. To the extent that the surveillance
9 data, which it does, compiles earnings -- I'm
10 sorry -- compiles the operations of Ameren for a
11 12-month period ending on December 31st, 2013, by
12 incorporating those results into our analysis, we
13 have recognized all the relevant operating
14 conditions that Ameren reported for December 31st,
15 2013.

16 In addition, we reviewed and
17 responded to the testimony offered by the Staff and
18 Ameren where they could have identified and where
19 they did identify certain circumstances or issues
20 that were not addressed in our September 30th
21 filing. We revised our filings for December and
22 filed.

23 **Q. As you sit here today under oath, is**
24 **Ameren Missouri overearning?**

25 A. Given the information we have today,

1 I believe they have -- they are.

2 **Q. As you sit here today, are Ameren --**
3 **is Ameren Missouri's rate too high?**

4 A. Since they're overearning, I believe
5 it is.

6 **Q. Okay. How much too high on a yearly**
7 **basis?**

8 A. Based off the March 31st data, I
9 would -- I would -- and since it increased from
10 10.32 in December to 10.45, I would argue that the
11 overearnings is still in the range that we
12 identified for December 31st, 2013.

13 **Q. Mr. Meyer, if known and measurable**
14 **data showed that Ameren Missouri was earning less**
15 **than its authorized return on equity, would we even**
16 **be here today?**

17 A. If the information was provided that
18 showed, as we sit here today, that Ameren was not
19 earning above its 9.8 percent ROE, I wouldn't be a
20 witness.

21 MR. DOWNEY: Thank you. I have
22 nothing further.

23 JUDGE WOODRUFF: All right. Then,
24 Mr. Meyer, you can step down.

25 MR. LOWERY: Your Honor, just very

1 briefly, Exhibit 5 was the exhibit in ER-2012-0166
2 for Mr. Weiss. For the record, that was the
3 exhibit you wanted to take notice of.

4 JUDGE WOODRUFF: Thank you very much.
5 Bringing up Mr. Gorman.

6 MS. ILES: We have an exhibit to hand
7 out with his testimony. It's just an errata sheet.

8 JUDGE WOODRUFF: We're up to 23.

9 (EXHIBIT NO. 23 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 (Witness sworn.)

12 JUDGE WOODRUFF: You may inquire when
13 you're ready.

14 MS. ILES: Does the court reporter
15 have Exhibit 3 and 4?

16 MICHAEL GORMAN testified as follows:

17 DIRECT EXAMINATION BY MS. ILES:

18 Q. Would you state your name and
19 business address for the record, please.

20 A. My name is Michael Gorman. My
21 business address is 16690 Swingley Ridge Road,
22 Chesterfield, Missouri.

23 Q. Could you tell us by whom you're
24 employed and in what capacity?

25 A. I'm employed by Brubaker & Associates

1 as a regulatory consultant.

2 Q. Are you the same Michael Gorman that
3 prepared prefiled testimony, both direct and
4 surrebuttal --

5 A. Yes.

6 Q. -- in this case?

7 A. I am, yes.

8 Q. And is that prefiled testimony, are
9 there copies of that in your hand right now marked
10 as Exhibits 3 and 4?

11 A. Yes.

12 Q. Were you under oath when you provided
13 this testimony, the written testimony?

14 A. I'm under oath now. Prefiled it, I
15 was not.

16 Q. It was sworn testimony, correct?

17 A. Yes.

18 Q. It included an affidavit?

19 A. Correct.

20 Q. All right. And if I were to ask you
21 today the questions included in that testimony,
22 would your answers be the same?

23 A. Yes, with the errata that -- I'm not
24 sure if this has been submitted yet, but there are
25 some corrections to my direct testimony.

1 Q. Okay. And have you prepared an
2 errata sheet that lists those corrections?

3 A. I have, yes.

4 Q. And is that the document that has
5 been labeled Exhibit 23 that you're holding right
6 now?

7 A. Yes.

8 Q. Other than the changes that are
9 listed on that errata sheet, would your answers be
10 the same?

11 A. They would.

12 MS. ILES: I'd move for admission of
13 Complainants' Exhibits 3, 4 and 23 at this time.

14 JUDGE WOODRUFF: Exhibits 3, 4 and 23
15 have been offered. Any objections to their
16 receipt?

17 (No response.)

18 JUDGE WOODRUFF: Hearing none, they
19 will be received.

20 (EXHIBIT NOS. 3, 4 AND 23 WERE
21 RECEIVED INTO EVIDENCE.)

22 JUDGE WOODRUFF: And for
23 cross-examination, then, beginning with MIEC?

24 MR. DOWNEY: No questions.

25 JUDGE WOODRUFF: The Retailers?

1 MR. SCHWARZ: No questions.

2 JUDGE WOODRUFF: Consumers Council?

3 MR. COFFMAN: Yes, I have a couple.

4 CROSS-EXAMINATION BY MR. COFFMAN:

5 Q. Good afternoon, Mr. Gorman.

6 A. Good afternoon.

7 Q. Would it be fair to say that the
8 Missouri Public Service Commission has found your
9 testimony to be the most persuasive and credible in
10 several past rate cases?

11 A. I think that's a matter of judgment,
12 but I believe the Commission has found my
13 recommendations to be worthy of consideration and
14 supporting their return on equity findings.

15 Q. They have indeed based their
16 determination on what an authorized return on
17 equity should be based on your analysis, have they
18 not?

19 A. That's my understanding, yes.

20 Q. Your analysis is often not as low as
21 even the Commission's own Staff recommendation in
22 the area of cost of capital, is it?

23 A. Generally, that's true, in Missouri.

24 Q. Have you viewed the position
25 statements of the parties in this case?

1 A. I did quickly review the position
2 statements, yes.

3 Q. There's a statement in the position
4 statement of the utility here that I was going to
5 ask you about. First let me ask you, do you
6 believe that the Missouri Commission should base
7 its authorized return on equity for a utility based
8 on the authorized return on equities of other
9 utility commissions?

10 A. I do not.

11 Q. That being said, could I -- could I
12 read you a statement that they made regarding your
13 return on equity recommendation and get you to
14 comment on it? This is -- this is a quote from the
15 Ameren Missouri's position statement. Quote, the
16 evidence in this case shows that the 9.8 ROE, in
17 fact, is lower than the average ROE authorized for
18 vertically integrated utilities since January 2013.
19 Do you recall seeing this statement?

20 A. I do.

21 Q. Do you agree with that statement?

22 A. Well, it was qualified as vertically
23 integrated, and I believe that was outlined in
24 Mr. Hevert's testimony, and that does not include
25 all the return on equity authorizations for

1 electric utilities. It excludes those for what are
2 characterized as distribution companies. And based
3 on those filings, excluding certain utilities in
4 the state of Virginia, I believe Mr. Hevert's
5 evidence shows that -- is 9.9 percent for 2013 and
6 the first quarter of 2014.

7 But when one considers all the
8 authorized returns on equity for all electric
9 utilities, that statement is not correct.
10 Excluding those decisions in Virginia, the
11 authorized return on equity was just under
12 9.6 percent, about 9.57 percent the first quarter
13 of this year.

14 In the second quarter of this year,
15 the industry-authorized return on equity for all
16 electric utilities was a little higher, but I think
17 that's because of a settlement in -- there are very
18 few decisions in the second quarter of this year.
19 One of them was in Wisconsin, and three of them
20 were in California.

21 Those authorized returns on equity
22 were not based on current commission findings on
23 current market cost of equity. Rather, they were
24 based on settlements which adopted the authorized
25 return on equity from previous cases or were

1 subject to an authorized return on equity which is
2 established on a three-year cycle for utilities in
3 California.

4 So the second quarter average I don't
5 think is characteristic of what commissions have
6 found to be the current market cost of equity for
7 utility companies.

8 So that's kind of a long explanation,
9 but I don't believe that there is accurate evidence
10 that shows that a 9.8 percent return on equity is
11 anything other than well above the current market
12 cost of equity for electric utility companies,
13 whether integrated or distribution companies. I
14 believe the market cost of equity is well below
15 that.

16 MR. COFFMAN: That's all I have.
17 Thank you.

18 JUDGE WOODRUFF: Public Counsel?

19 CROSS-EXAMINATION BY MS. BAKER:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. You would agree that a reasonable
23 return on equity reflects the reasonable cost of
24 capital for that particular utility?

25 A. I do.

1 Q. And you would agree that the current
2 market cost of capital is an important material
3 relevant factor in an overearnings investigation?

4 A. I do. I very strongly believe that.

5 Q. And in your experience, are we
6 experiencing a trend of lowering ROEs or ROEs that
7 are getting higher?

8 A. I believe the trend in authorized
9 returns on equity for electric utilities has been a
10 downward trend for many years, and it can -- it has
11 continued to be a downward trend up through at
12 least the first quarter of this year.

13 Again, the second quarter of this
14 year, I think there is some data which doesn't
15 reflect commissioners' findings on current market
16 cost of equity. So I think there is a bump in that
17 data, so to speak. But the trend I believe is
18 clearly a downward trend in authorized returns on
19 equity.

20 MS. BAKER: Thank you. No further
21 questions.

22 JUDGE WOODRUFF: For Staff?

23 MR. THOMPSON: Thank you, Judge.

24 CROSS-EXAMINATION BY MR. THOMPSON:

25 Q. Good afternoon, Mr. Gorman.

1 A. Good afternoon.

2 Q. The study that you did in this case,
3 did you do everything that you believed was
4 necessary to provide the Commission with the
5 information it needs to set return on equity in
6 this case?

7 A. I believe so, yes.

8 Q. And did you participate in Case
9 ER-2012-0166?

10 A. In Ameren's last rate case?

11 Q. Yes, sir.

12 A. Yes.

13 Q. Do you happen to recall what your
14 recommendation in that case was?

15 A. I believe it was 9.3 percent.

16 Q. So somewhat lower but close to the
17 recommendation you've made in this case?

18 A. Yes.

19 Q. Okay. Would you agree with me that
20 the return on equity recommendation is intended to
21 reflect the return required by investors to invest
22 in the company?

23 A. I do agree with that.

24 Q. And would you agree with me that the
25 required return is dependent on the perception of

1 the risk of the investment?

2 A. Yes.

3 Q. And would you agree with me that
4 there are some mechanisms that have been created
5 that reduce risk for electric utilities? Let me
6 give you an example, the fuel adjustment clause.

7 A. I am familiar with that, and it does
8 reduce risk, yes.

9 Q. And Ameren Missouri has a --

10 A. I'm sorry.

11 Q. Yes, sir.

12 A. It reduces risk to the utility. It
13 doesn't reduce risk overall. It actually shifts
14 risks from utility investors to utility customers.

15 Q. Okay. But from the point of view of
16 an investor, does it make the investment less
17 risky?

18 A. It does.

19 Q. And are you familiar with the term
20 tracker?

21 A. I am.

22 Q. And Ameren Missouri has several
23 trackers, does it not?

24 A. Yes.

25 Q. And do those also have the effect of

1 **shifting risk?**

2 A. They do.

3 MR. THOMPSON: I have no further
4 questions. Thank you very much.

5 JUDGE WOODRUFF: For Ameren?

6 CROSS-EXAMINATION BY MS. TATRO:

7 **Q. Good afternoon, Mr. Gorman.**

8 A. Good afternoon.

9 **Q. Do you have a transcript of the**
10 **deposition I took of you with you or do I need to**
11 **give you a copy?**

12 A. No. I have a copy.

13 **Q. Great. I believe you testified that**
14 **your recommendation in Ameren Missouri's previous**
15 **rate case, ER-2012-0166, was 9.3. Do you remember**
16 **what your range was?**

17 A. There was a tighter range at that
18 time because bond yields were a little lower. I
19 believe it was 9.-- I need to check it, but I
20 believe it was 30 basis points around the 9.3,
21 maybe 9.6.

22 MS. TATRO: May I approach?

23 JUDGE WOODRUFF: You may.

24 BY MS. TATRO:

25 **Q. I'm going to hand you your direct**

1 testimony from that case just to refresh your
2 recollection.

3 A. Thank you.

4 Q. You might look on page 2.

5 A. Thank you. Yes. It was a much
6 tighter range at that time. It was 9.2 to 9.4.

7 Q. Thank you. Now, what's your
8 recommended range in this case?

9 A. Range in this case is 8.9 to
10 9.85 percent.

11 Q. And would you agree with me that you
12 consider any number within that range to be
13 reasonable?

14 A. It is a reasonable estimate of the
15 current market cost of equity, yes.

16 Q. And please tell us, what is Ameren
17 Missouri's currently authorized rate of return?

18 A. 9.8 percent.

19 Q. Return on equity is what I mean.

20 A. 9.8 percent.

21 Q. So you agree that falls within your
22 range?

23 A. It does fall within my range of
24 reasonable estimates of the current market cost of
25 equity, yes.

1 **Q. So you'd agree with me that Ameren**
2 **Missouri's currently authorized return on equity is**
3 **reasonable?**

4 A. It is a reasonable estimate of the
5 current market cost of equity. For rate-setting
6 purposes, I would not agree that that is a
7 reasonable conclusion in this case.

8 **Q. It's within your range --**

9 A. It is.

10 **Q. -- that you recommend?**

11 A. It is.

12 **Q. And you agree that any number within**
13 **that range is reasonable, correct?**

14 A. It is a reasonable estimate of the
15 current market cost of equity. For rate-setting
16 purposes, generally I recommend the midpoint in my
17 estimated range.

18 **Q. Mr. Gorman, I didn't ask you your**
19 **recommendation. I asked you if any number within**
20 **your range is reasonable, and I believe you**
21 **answered yes, correct?**

22 A. You asked me whether or not
23 9.8 percent was reasonable for setting rates, and
24 my answer to that was no, not based on my study in
25 this case.

1 Q. Let's open up your deposition to
2 page 15, please.

3 A. I'm there.

4 Q. And what date did I depose you on?
5 Look at the top of the page.

6 A. July 21st.

7 Q. Of this year, right?

8 A. Yes. Thank you.

9 Q. So a week ago?

10 A. Yes.

11 Q. All right. Starting on line 12, tell
12 me if I read this correctly. Okay. Let's make
13 sure I understand your recommendations. Your range
14 is 8.9 to 9.85?

15 Answer: Correct.

16 Question: And you didn't change that
17 in your surrebuttal?

18 Answer: Correct.

19 Question: And your rec-- your
20 recommended ROE is 9.4 percent?

21 Answer: Yes.

22 Question: And you didn't change that
23 in your surrebuttal either?

24 Answer: Correct.

25 Question: Now, is it correct that

1 any number within the range that you put forth you
2 would consider reasonable?

3 Answer: Yes.

4 Question: And what is Ameren
5 Missouri's current authorized ROE?

6 Answer: 9.8.

7 Question: So that falls within your
8 reasonable range?

9 Answer: Yes.

10 And so would you -- or Question: So
11 would you agree that Ameren Missouri's currently
12 authorized rate is not unreasonable?

13 Answer: It's within my recommended
14 range, yes.

15 Question: Does that mean it's not
16 unreasonable?

17 Answer: It's within my re-- can't
18 read today. It's within my reasonable recommended
19 range. That would imply to me it's not
20 reasonable -- it's not unreasonable.

21 Did I read that correctly?

22 A. That's correct. And that's not
23 inconsistent with my testimony.

24 Q. Thank you, Mr. Gorman.

25 MS. TATRO: I have no further

1 questions.

2 JUDGE WOODRUFF: Okay. We'll come up
3 for questions from the Bench, then. Mr. Chairman?

4 QUESTIONS BY CHAIRMAN KENNEY:

5 Q. Thanks for being here, Mr. Gorman.

6 Good afternoon.

7 A. Thank you for having me.

8 Q. I want to just ask a couple of
9 questions about the risk-reducing mechanisms and
10 the conversation that you had with Mr. Thompson.
11 Is there any way to quantify or to translate into a
12 number of basis points the amount by which risk is
13 reduced and how that should be reflected in setting
14 ROE?

15 A. I wish there was because I must say
16 that I've been asked that question many times in
17 various jurisdictions and by you also. There is
18 not.

19 My recommendation is that to ensure
20 that the authorized return on equity is reasonable
21 for the investor and for customers, that if there
22 is an adjustment, that that adjustment should be
23 made to the return on equity where it still falls
24 within the estimated reasonable range but reflects
25 risk reduction aspects for that company,

1 particularly if they are new regulatory mechanisms
2 which lower their risk relative to what were
3 recognized in measuring a comparable risk proxy
4 group.

5 That would suggest that, going
6 forward, the operating risk of the enterprise would
7 be reduced by the changed regulatory mechanisms.

8 So I typically recommend that it
9 is -- an adjustment is made from the midpoint of my
10 recommended range to something still above the low
11 end of my recommended range but to the extent of
12 the risk that can help gain some judgment in how
13 much of a reduction from the midpoint would be
14 appropriate.

15 **Q. And there was discussion about**
16 **testimony in the last rate case, and you were in**
17 **the room earlier for the discussion with Mr. Meyer,**
18 **right?**

19 A. Yes.

20 **Q. And there was all this discussion**
21 **about the earned ROE that's reflected in**
22 **surveillance reports versus what was reflected in**
23 **Mr. Weiss' testimony from the last rate case. And**
24 **I think part of the explanation had to do with book**
25 **value versus something else. Do you remember that**

1 **testimony?**

2 A. I believe they were comparing actual
3 earned return of book equity compared to the
4 authorized return for a utility.

5 **Q. What's the distinction?**

6 A. The distinction is kind of a target
7 versus what the actual results turn out to be. The
8 actual earned return on book equity is what the
9 utility is actually earning. The authorized return
10 on equity is the rate of return that the Commission
11 says is reasonable for them to earn.

12 **Q. Well, there was another distinction**
13 **drawn. I think it may have been Mr. Byrne, but he**
14 **was talking about the actual ROE that's reflected**
15 **in the surveillance reports not being like a true**
16 **barometer of their return on equity. I'm not --**
17 **I'm paraphrasing.**

18 A. Yeah. I'm trying to recall exactly
19 what the distinctions were, but I know there was a
20 lot of characterizations by Mr. Byrne that in order
21 to convert the actual earned return on book equity
22 to a more normalized earned return reflecting all
23 the normal ratemaking adjustments requires more
24 than just looking at it with the recorded book
25 returns and book revenue and book operating

1 expenses where some of those revenues might be
2 adjusted up or down based on normalized conditions.
3 Certain operating expenses should be normalized
4 either up or down based on the actual normal
5 operating costs of the utility, so --

6 **Q. Which would then yield a different**
7 **result than what's reflected in the surveillance**
8 **reports as the earned ROE?**

9 A. That's correct.

10 **Q. Do you agree with that?**

11 A. I do, and that is consistent with
12 Mr. Meyer's analysis. He made certain normalizing
13 adjustments when he took the surveillance reports
14 and made adjustments to quantify whether or not he
15 found that the utility was overearning or
16 underearning. In this case he found they were
17 overearning.

18 **Q. So the actual earned ROE as it's**
19 **reflected in these surveillance reports doesn't end**
20 **the inquiry. There are adjustments that need to be**
21 **made. So that number standing alone doesn't tell**
22 **us everything we need to know?**

23 A. That's correct. It's the starting
24 point. It's the actual verifiable starting point
25 of the analysis, and then the adjustments that are

1 made thereafter are normalizing adjustments then
2 that can be subject to dispute within rate cases or
3 earnings complaints.

4 **Q. Even given those adjustments,**
5 **Mr. Meyer's result is that they're still**
6 **overearning?**

7 A. Correct.

8 CHAIRMAN KENNEY: I don't have any
9 other questions. Thank you.

10 JUDGE WOODRUFF: Commissioner Kenney?

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

13 JUDGE WOODRUFF: Commissioner Hall?

14 QUESTIONS BY COMMISSIONER HALL:

15 **Q. Good afternoon.**

16 A. Good afternoon.

17 **Q. Your expert testimony in the 2012**
18 **case was 8.9 to 9.85, is that -- did I get that**
19 **right?**

20 A. In this case, yes. I'm sorry. In
21 the last case it was much tighter. It was 9.2 --

22 **Q. Oh, I'm sorry.**

23 A. -- to 9.4. I kind of stumbled around
24 that. I appreciate Ameren showing me my testimony.

25 **Q. Okay. In a nutshell, what has**

1 **changed that has resulted in your changed expert**
2 **opinion on what is the appropriate ROE?**

3 A. Well, it's interesting, but the
4 actual change has been stock valuations have gone
5 up and dividend yields for stocks have come down
6 since the last case. Conversely, utility bonds and
7 treasury bond yields have gone up since the last
8 case.

9 So it's kind of a conundrum about
10 where the capital market costs are. So there's a
11 lot of discussion about whether or not some
12 normalizing adjustments need to be made to reflect
13 the capital costs today to accurately estimate what
14 a utility's cost of capital is.

15 In the last case, utility bond yields
16 and treasury bond yields in particular were still
17 very low as the Federal Reserve was still in a very
18 aggressive quantitative easing program in order to
19 stimulate the economy. They did it by pumping lots
20 of liquidity into the marketplace, and they had
21 been for years, and they're just now winding it
22 down and have a tentative plan to terminate that
23 relatively soon.

24 So interest rates came up a little
25 bit because of that, because the economy's

1 improving. And because the Federal Reserve has
2 seen strength in the economy since then, they're
3 willing to terminate the quantitative easing
4 program which was designed to keep long-term
5 interest rates for treasuries and certain corporate
6 bonds lower.

7 So they've come back to a more normal
8 level, but those normal levels, even with
9 reasonable estimates of equity risk premium, still
10 suggest the current market cost of equity for a
11 utility company is very low today.

12 The low end of my recommended range
13 is really driven by changes in stock prices for
14 utilities. They have gone up. Yields have come
15 down. Growth outlooks have strengthened a little
16 bit since the last case. But the market cost of
17 equity based on utility stock prices suggests
18 common equity costs are lower today based on those
19 valuations and their growth outlooks. Conversely,
20 yield dividend -- or bond yield, treasury bond
21 yields and utility bond yields would suggest the
22 opposite, that they're a little bit higher.

23 So my range is a little wider now
24 than it was in the last case, reflecting both of
25 those two observable market instruments that are

1 used to measure the cost of equity.

2 COMMISSIONER HALL: That's helpful.

3 Thank you.

4 JUDGE WOODRUFF: All right. Then
5 we're back for recross based on questions from the
6 Bench. MIEC?

7 MR. DOWNEY: No questions.

8 JUDGE WOODRUFF: Retailers?

9 MR. SCHWARZ: No questions.

10 JUDGE WOODRUFF: Consumers Council?

11 MR. COFFMAN: No questions.

12 JUDGE WOODRUFF: Public Counsel?

13 MS. BAKER: No questions. Thank you.

14 JUDGE WOODRUFF: Staff?

15 MR. THOMPSON: Thank you.

16 RECROSS-EXAMINATION BY MR. THOMPSON:

17 **Q. If the Commission were to discontinue**
18 **Ameren Missouri's FAC, how would you adjust your**
19 **recommendation in this case?**

20 A. I don't know that I made an explicit
21 adjustment either for or against the FAC. I do
22 know that prior to Ameren implementing the FAC,
23 they had a pretty effective hedge program for coal
24 prices, kind of a portfolio approach and pretty --
25 pretty routine rate cases allowed them to pretty

1 effectively manage that fuel cost.

2 So I would still recommend the same
3 methodology I described to the Chairman, that you
4 would start at the midpoint and you would make an
5 upward or lower adjustment if some of that
6 commodity price risk was shifted back to investors.

7 I can't say how much I would
8 recommend because I haven't really looked at that
9 and looked to the extent of what other mechanisms
10 would be available to the company to put that
11 commodity risk off to a third party, you know, to a
12 coal supplier or gas supplier, in which case
13 investors still wouldn't have to take the risk, but
14 customers largely would have to take the fixed
15 price nature of those commodity contracts.

16 So it would require some study. It's
17 not an obvious adjustment, but you need to look at
18 the facts underlying the change.

19 **Q. So you might move from the midpoint**
20 **of 9.4 some distance towards 9.85, the high end of**
21 **your range?**

22 A. Depending on what investigation of
23 whether or not the investors actually are taking
24 the commodity risk, that might be appropriate, yes.

25 MR. THOMPSON: Thank you very much.

1 JUDGE WOODRUFF: Recross from Ameren?

2 RECROSS-EXAMINATION BY MS. TATRO:

3 Q. Mr. Gorman, isn't it common for
4 utilities in other jurisdictions to have various
5 trackers and/or riders --

6 A. Yes.

7 Q. -- such as what Ameren Missouri has?

8 A. Sorry. I keep jumping the gun. Yes.

9 MS. TATRO: Thank you.

10 JUDGE WOODRUFF: Redirect?

11 REDIRECT EXAMINATION BY MS. ILES:

12 Q. Mr. Gorman, just a couple questions.
13 Ms. Tatro asked you about your range and whether or
14 not all of the amounts included in your range were
15 reasonable, and you drew a distinction between your
16 range and the -- your recommendation. Could you
17 explain the difference in terms of those two
18 things?

19 A. I can. The question she asked me
20 here was different than the question she asked in
21 my deposition. In my deposition she said would a
22 finding of return on equity fall anywhere within
23 your range be reasonable, and the answer is yes.
24 But the question she asked here was, would setting
25 rates based on the 9.8 percent be reasonable, and

1 my answer there is no. It is within my recommended
2 range, but generally I recommend the midpoint of my
3 range for setting rates. And that's appropriate
4 because the high end of range would -- rate setting
5 is intended to balance the interests of customers
6 and shareholders. I believe the high end of the
7 range would tilt the balance in favor of investors,
8 and the low end of the range would tilt the balance
9 in favor of the customers.

10 The midpoint is a balanced authorized
11 return on equity estimate, unless there's
12 extenuating circumstances which justify moving
13 above or below the midpoint, such as new rider
14 mechanisms which would reduce the operating risk of
15 the utility when the rates are in effect or
16 increase it if they're eliminated.

17 So I said in my deposition and I
18 agree that a return on equity in my range is a
19 reasonable estimate of what the current cost of
20 equity is. But for rate setting the most balanced
21 and reasonable return on equity is the midpoint of
22 the range, not the high end of the range. And
23 that's what I was trying to convey to her in my
24 cross.

25 Q. And Mr. Thompson asked you about

1 **whether or not the study that you provided provides**
2 **all of the information necessary for the Commission**
3 **to set return on equity in this case. And I wanted**
4 **to ask you to follow up on that, is the analysis**
5 **that you provided in this case the same as what you**
6 **typically provide in a rate case, an Ameren rate**
7 **case?**

8 A. I generally -- measuring the return
9 on equity, yes. I'd generally be more critical of
10 my review of the capital structure of the company
11 and their embedded debt costs.

12 **Q. With respect to return on equity?**

13 A. Yeah. It's the same.

14 MS. ILES: No further questions.

15 JUDGE WOODRUFF: You can step down.

16 Let's move to Staff's witness. Mr. Won will be the
17 first witness.

18 (Witness sworn.)

19 JUDGE WOODRUFF: You may inquire when
20 you're ready.

21 SEOUNG JOUN WON, Ph.D. testified as follows:

22 DIRECT EXAMINATION BY MS. MYERS:

23 **Q. Dr. Won, would you please state your**
24 **full name for the record.**

25 A. My name is Seoung Joun Won.

1 Q. Thank you. Dr. Won, where are you
2 employed and in what capacity?

3 A. I work for Missouri Public Service
4 Commission as a Regulatory Economist 3.

5 Q. Great. Dr. Won, are you the same
6 Seoung Joun Won who prepared or caused to be
7 prepared the testimony that's been marked as
8 Exhibit 9?

9 A. Yes.

10 Q. Do you have anything you wish to
11 correct in this particular testimony?

12 A. No.

13 Q. With that in mind, if I asked you the
14 same questions today, would your answers be the
15 same?

16 A. Yes.

17 Q. Is the information in this document
18 true and correct to the best of your knowledge?

19 A. Yes.

20 MS. MYERS: All right. Your Honor,
21 Staff offers Exhibit 9 and tenders the witness for
22 cross.

23 JUDGE WOODRUFF: Exhibit 9 has been
24 offered. Any objections to its receipt?

25 (No response.)

1 JUDGE WOODRUFF: Hearing none, it
2 will be received.

3 (EXHIBIT NO. 9 WAS RECEIVED INTO
4 EVIDENCE.)

5 JUDGE WOODRUFF: For
6 cross-examination, we begin with Ameren.

7 MS. TATRO: No questions.

8 JUDGE WOODRUFF: Public Counsel?

9 MS. BAKER: No questions. Thank you.

10 JUDGE WOODRUFF: Consumers Council?

11 MR. COFFMAN: No questions.

12 JUDGE WOODRUFF: Retailers?

13 MR. SCHWARZ: No questions, Judge.

14 JUDGE WOODRUFF: MIEC?

15 MR. DOWNEY: No questions.

16 JUDGE WOODRUFF: Complainants?

17 MR. DOWNEY: No questions.

18 JUDGE WOODRUFF: Come up then for
19 questions from the Bench. Mr. Chairman?

20 CHAIRMAN KENNEY: No questions.

21 Thanks, Dr. Won.

22 JUDGE WOODRUFF: Commissioner Kenney?

23 COMMISSIONER W. KENNEY: No
24 questions.

25 JUDGE WOODRUFF: Commissioner Hall?

1 COMMISSIONER HALL: No questions,
2 your Honor. Thank you.

3 JUDGE WOODRUFF: Commissioner Rupp?

4 COMMISSIONER RUPP: No.

5 JUDGE WOODRUFF: No questions from
6 the Bench, so no recross and no redirect, and you
7 can step down.

8 The next witness on the stand for
9 Staff is Mr. Lange, and I understand he is not here
10 today.

11 MR. THOMPSON: He is unavailable
12 until Thursday.

13 JUDGE WOODRUFF: Let me ask, does
14 anyone have any cross-examination for Mr. Lange?

15 MS. TATRO: Ameren Missouri does not.

16 JUDGE WOODRUFF: All right. I don't
17 see anybody else indicating they do. Do
18 Commissioners have any questions they wanted to ask
19 Mr. Lange? All right. Then why don't you go
20 ahead and offer his testimony and we'll get him out
21 of the way.

22 MR. THOMPSON: Thank you, Judge.
23 Staff would offer Exhibit No. 10, the rebuttal
24 testimony of Sean Lange.

25 JUDGE WOODRUFF: Exhibit No. 10 has

1 been offered. Any objections to its receipt?

2 (No response.)

3 JUDGE WOODRUFF: Hearing none, it
4 will be received.

5 (EXHIBIT NO. 10 WAS RECEIVED INTO
6 EVIDENCE.)

7 JUDGE WOODRUFF: And we'll move on to
8 Mr. Cassidy.

9 (Witness sworn.)

10 JUDGE WOODRUFF: You may inquire.

11 JOHN P. CASSIDY testified as follows:

12 DIRECT EXAMINATION BY MR. THOMPSON:

13 Q. State your name, please.

14 A. John Cassidy.

15 Q. And how do you spell your last name,
16 Mr. Cassidy?

17 A. C-a-s-s-i-d-y.

18 Q. And how are you employed,
19 Mr. Cassidy?

20 A. I'm a Utility Regulatory Auditor 5
21 with the Missouri Public Service Commission Staff.

22 Q. Are you the same John Cassidy who
23 caused to be prepared the testimony that has been
24 marked as Staff Exhibit 12 and Staff Exhibit 13? I
25 believe Exhibit 12 is your rebuttal testimony HC

1 and NP, corrected and declassified, and Exhibit 13
2 is your surrebuttal testimony HC and NP.

3 A. Yes.

4 Q. And do you have any corrections or
5 changes to that testimony today?

6 A. I have no corrections.

7 Q. And if I were to ask you the same
8 questions today that's contained in that testimony,
9 would your answers be the same?

10 A. Yes.

11 Q. And are those answers true and
12 correct to the best of your knowledge and belief?

13 A. They are.

14 MR. THOMPSON: Your Honor, at this
15 time I would offer Exhibits 12 and 13.

16 JUDGE WOODRUFF: Let me clarify.
17 12, is there still an HC version of that? I think
18 we talked about that this morning. Is there
19 anything in your testimony that should be HC?

20 THE WITNESS: Rebuttal testimony,
21 there is still evidence that's HC, increases
22 related to fuel and also to the power plant
23 maintenance, distribution maintenance.

24 JUDGE WOODRUFF: So we have a 12HC
25 and 12NP?

1 MR. THOMPSON: Yes, Judge.

2 JUDGE WOODRUFF: And we have 13,
3 which would be now all NP; is that correct?

4 THE WITNESS: We have a reclassified
5 version that still has some HC material in it.

6 JUDGE WOODRUFF: For the same reason
7 as for the --

8 MR. THOMPSON: I think we have, yes,
9 an HC and an NP version of both.

10 JUDGE WOODRUFF: So 12HC and NP and
11 13HC and NP have been offered. Any objections to
12 their receipt?

13 (No response.)

14 JUDGE WOODRUFF: Hearing none, they
15 will be received.

16 (EXHIBIT NOS. 12HC, 12NP, 13HC AND
17 13NP WERE RECEIVED INTO EVIDENCE.)

18 MR. THOMPSON: Thank you, Judge. I
19 tender Mr. Cassidy for cross-examination.

20 JUDGE WOODRUFF: Beginning with
21 Ameren.

22 CROSS-EXAMINATION BY MR. LOWERY:

23 Q. Good afternoon, Mr. Cassidy.

24 A. Good afternoon.

25 Q. Mr. Cassidy, you report the

1 surveillance results for the last several quarters
2 in your rebuttal testimony, do you not, that we've
3 had a lot of discussion about today?

4 A. Yes.

5 Q. And, in fact, as we also discussed
6 today, back during the last rate case there were
7 surveillance report reporting a 10.53 percent ROE,
8 which was above the company's authorized return at
9 that time; is that not correct?

10 A. Yes. June of -- June 30th of 2012.

11 Q. And, in fact, it was certainly above
12 Staff's recommendation as to what the ROE should be
13 in that case; is that correct?

14 A. Yes.

15 Q. And it was above the ROE the
16 Commission ultimately determined to be appropriate
17 for use in setting rates, correct?

18 A. Yes.

19 MR. LOWERY: May I approach, your
20 Honor?

21 JUDGE WOODRUFF: You may. Will this
22 be 24 then?

23 MR. LOWERY: To be honest, your
24 Honor, I've lost --

25 JUDGE WOODRUFF: That's the number.

1 MR. LOWERY: Yes, it is. Yes.

2 (EXHIBIT NO. 24 WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. LOWERY:

5 Q. Mr. Cassidy, I've handed you what's
6 been marked for identification as Exhibit 24. Do
7 you recognize that document?

8 A. Yes, I do.

9 Q. And am I correct in describing that
10 document as the reconciliation that the Staff filed
11 in our last rate case that showed the differences
12 between the request that the company had made for a
13 rate increase and the recommendations of at least
14 really three parties who have revenue requirement
15 testimony in the case; is that right?

16 A. That's correct.

17 Q. And despite there being a
18 surveillance report that indicated that we were
19 earning more than our last authorized ROE and, in
20 fact, more than Staff was recommending in the case,
21 the Staff nevertheless was recommending a rate
22 increase of approximately \$202 million, correct?

23 A. Yes.

24 Q. And the Commission ultimately ordered
25 a rate increase of approximately \$260 million,

1 right?

2 A. That's correct.

3 Q. And the Staff receives these
4 surveillance reports every quarter, do they not?

5 A. They do.

6 Q. And you most certainly look at them,
7 do you not?

8 A. Yes, I do.

9 Q. Is it fair to characterize your role
10 over the last several years with respect to Ameren
11 Missouri as lead auditor?

12 A. Lead auditor or case coordinator.

13 Q. Okay. And I take it, Mr. Cassidy,
14 that as you've received these surveillance reports
15 over the last few quarters, if as the case
16 coordinator or the lead auditor you felt that those
17 surveillance reports indicated that the company's
18 rates had become unjust and unreasonable, that you
19 would be recommending to your superiors that some
20 action be taken, would you not?

21 A. Certainly.

22 Q. And you have not done that; isn't
23 that true?

24 A. We have not done that.

25 Q. Because you don't believe that those

1 surveillance reports -- you have not believed that
2 those surveillance reports show that the rates have
3 become unjust and unreasonable, do you?

4 A. Well, the surveillance reports have
5 limited use. They require substantial adjustment
6 in order to get a meaningful assessment.

7 Q. You were here when Mr. Gorman
8 testified a few minutes ago?

9 A. Yes.

10 Q. And I don't want to put words in his
11 mouth, but as I heard his testimony in response, I
12 think, to maybe the Chairman's questions, he said
13 something along the lines of you take the
14 surveillance report and that's a starting point,
15 and then you adjust for that, and that's how you
16 figure out what rates should be. Did you hear him
17 testify something to that effect?

18 A. I believe so.

19 Q. Doesn't he have it just backwards?
20 Isn't it true that what you do is you look at the
21 company's revenues, their expenses, their rate
22 base, you look at that for an appropriate test
23 period that you think will be reflective of what
24 rates -- what conditions will be in the future,
25 then you normalize and annualize and throw out

1 extraordinary one-time items. That's how you
2 develop what rates should be as opposed to starting
3 with surveillance results; isn't that true?

4 A. Well, I mean, what you've described
5 is normal ratemaking protocol, but, I mean, you can
6 also use the surveillance reports as a tool or a
7 guide or a benchmark in order to begin that type of
8 analysis that you've described.

9 Q. And if you see -- if you see the
10 surveillance reports and it's suggesting you need
11 to go that next step, then you do that, right?

12 A. Yes.

13 Q. But in building your revenue
14 requirement, you don't build it off the
15 surveillance report, correct?

16 A. No. No.

17 Q. And Mr. Thompson this morning, he
18 said something along the lines of, well, the
19 auditors always think you should look at
20 everything. Do you remember that?

21 A. Can you restate that question?

22 Q. I think Mr. Thompson said something
23 along the lines when he was discussing all relevant
24 factors, something along the lines of, well, the
25 auditors, or maybe he said the accountants, they

1 always think you should look at all of the numbers.

2 Do you recall something along those lines?

3 A. Well, I think it's essential that you
4 look at all the relevant factors when resetting
5 rates.

6 Q. And when you go through the exercise
7 of looking at all the revenues, expenses, rate
8 base, in a test year that you believe ought to be
9 representative of that future period when rates
10 will be in effect, you do that because if you
11 don't, it may very well lead you to a false
12 conclusion; isn't that true?

13 A. That's true.

14 Q. You don't think you're wasting your
15 time when you spend four or five months doing that,
16 do you?

17 A. Certainly not.

18 Q. And I've heard Mr. Weiss tell me on
19 many occasions when we're preparing a rate case and
20 we're trying to get the case together and we need
21 the revenue requirement and we're saying, Gary,
22 what's the number, what's the number? And
23 Mr. Weiss often will say, I'm not done yet. I
24 can't give you a number. Do you have that
25 experience on the Staff sometimes?

1 A. Yes, frequently.

2 Q. And the other thing that I've noticed
3 that happens over the years is that when we
4 browbeat him enough to give us a number two or
5 three weeks again, well, okay, maybe it's about
6 this. But when really he gets done with the study,
7 that number sometimes moves quite a bit. Have you
8 had that experience?

9 A. I have had that experience.

10 Q. Is that because determining an
11 appropriate cost of service is a fairly complex
12 exercise?

13 A. It's an extremely complex and
14 interactive exercise.

15 Q. So until you've done the work, you
16 don't really know what the answer is; isn't that
17 true?

18 A. True.

19 MR. LOWERY: I don't have anything
20 further, your Honor. Thank you.

21 JUDGE WOODRUFF: Did you wish to
22 offer 24?

23 MR. LOWERY: I would.

24 JUDGE WOODRUFF: 24 has been offered.

25 Any objections to its receipt?

1 (No response.)

2 JUDGE WOODRUFF: Hearing none, it
3 will be received.

4 (EXHIBIT NO. 24 WAS RECEIVED INTO
5 EVIDENCE.)

6 JUDGE WOODRUFF: For
7 cross-examination, then, with Public Counsel.

8 CROSS-EXAMINATION BY MS. BAKER:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Going back into your final
12 calculation, you did calculate out at an ROE of
13 9.8 --

14 A. Are you at my surrebuttal testimony?

15 Q. In your surrebuttal, yes. Your final
16 calculation was about a \$25.3 million overearnings;
17 is that correct?

18 A. Well, I don't know that I would
19 characterize it as overearnings.

20 Q. Okay.

21 A. But the calculation shows that, based
22 on the limited review that we performed at this
23 point in time and when you take in consideration
24 9.8 percent, which is the current authorized ROE
25 which has taken into consideration all the relevant

1 factors, and when you also take into consideration
2 solar rebates that have been paid through
3 March 31st, that's where our assessment lands.

4 **Q. And you are aware that Mr. Meyer**
5 **calculated based on a 9.4 ROE, correct?**

6 A. Yes.

7 **Q. If your calculation were to be based**
8 **on a 9.4 ROE, would you expect yours to match**
9 **somewhat closely to Mr. Meyer's 49.5 million?**

10 A. I was in the room when you asked
11 Mr. Meyer that. Yes, the calculation would be
12 fairly close.

13 MS. BAKER: No further questions.

14 Thank you.

15 JUDGE WOODRUFF: Consumers Council?

16 MR. COFFMAN: Yes. Thank you.

17 CROSS-EXAMINATION BY MR. COFFMAN:

18 **Q. Good afternoon, Mr. Cassidy.**

19 A. Good afternoon.

20 **Q. In -- you -- in your testimony you**
21 **have discussed, I guess, Staff's view of what all**
22 **relevant factors are, correct?**

23 A. Yes.

24 **Q. Is that -- is that based on a court**
25 **case or a statute or some legal standard that your**

1 **counsel gave you, or was it based on some**
2 **accounting practices within the Staff?**

3 A. Well, in my rebuttal testimony I
4 cited the UCCM case, and I have also made an
5 assessment of, you know, what all relevant factors
6 would be required, you know, in terms of putting
7 together a full cost of service calculation.

8 **Q. Does the UCCM case include a**
9 **checklist of all the auditing procedures you should**
10 **go through?**

11 A. It does not specifically list those
12 items.

13 **Q. Would you agree generally with your**
14 **counsel's assessment that if parties to this case**
15 **have not brought an issue forward in testimony thus**
16 **far, it might not be that serious?**

17 A. I don't know.

18 **Q. Let me ask you about your assessment**
19 **of all relevant factors. Is there -- is there a**
20 **Staff auditor's handbook that you follow in**
21 **determining what a full or comprehensive review is**
22 **of the cost of service?**

23 A. Well, there's certainly longstanding
24 practice with what it takes to put together a full
25 and meaningful cost of service calculation, and I

1 guess based on what I've seen from Noranda and what
2 Staff has certainly done in this case, this doesn't
3 reach that threshold.

4 Q. You discussed in your testimony sort
5 of a three-tiered approach, that you might get more
6 and more detailed in your analysis if you were to
7 do a cost of service study, and you went a ways
8 down that path in this case, did you not?

9 A. Yes. I would say I completed Stage 1
10 and parts of Stage 2 of that three-stage --

11 Q. And would you say -- sorry

12 A. -- of that three-stage process.

13 Q. And would you say that that
14 three-stage process is designed to prioritize the
15 biggest items so that you are looking at the most
16 material or the largest items initially before you
17 get down further and further into the weeds?

18 A. Certainly.

19 Q. And so given the limitations on your
20 time and resources in this case, do you believe
21 that the Staff has properly prioritized on the most
22 important or largest dollar items in its review?

23 A. It has attempted to do that.

24 Q. So would it be fair to assume that
25 the other -- the other issues or accounts that were

1 not reviewed would more likely be of smaller
2 monetary significance than the ones that you did
3 look at?

4 A. They probably are -- they are of
5 smaller monetary significance and most likely
6 could, but collectively they could have a very
7 significant impact on our assessment.

8 Q. Of those items that were not -- of
9 those smaller items that were not thoroughly
10 reviewed, do you have any knowledge about
11 whether -- or belief as to whether those items
12 would be more likely to increase or decrease the
13 overall cost of service?

14 A. Absent performing that full cost of
15 service calculation, I don't know which direction
16 it may go.

17 Q. Would it be fair to assume that some
18 might go up and some might go down?

19 A. That's fair.

20 Q. And would it be just as likely that
21 the overall impact would be increasing the overall
22 cost of service as much as it would be decreasing
23 the overall cost of service to look at those items?

24 A. I don't know if it has an equal
25 likelihood, but it could go either way.

1 **Q. You have no reason to believe it**
2 **would go one way or the other if you did all those**
3 **other little accounts?**

4 A. At this time, I don't know.

5 **Q. The materiality that you discuss in**
6 **your testimony, this is, I assume, a Staff -- a**
7 **longstanding Staff practice as far as what is --**
8 **when a cost of service appears material enough to**
9 **go to a full review, is that -- would that be a**
10 **fair assessment?**

11 A. Yeah. And I believe
12 Mr. Oligschlaeger has discussed that materiality
13 standard as being something, a starting point and
14 it's based upon 1 percent of a utility's operating
15 revenues, and at that threshold that would
16 certainly generate interest on the Staff's part to
17 conduct some sort of an analysis.

18 **Q. Is that materiality standard that**
19 **Staff has traditionally followed, is that in any**
20 **written document at the Commission?**

21 A. It's in no written document that I've
22 seen.

23 **Q. Is it sort of oral tradition handed**
24 **down from one accountant to another?**

25 A. It's certainly kind of an internal

1 policy within the auditing department.

2 Q. Would you say it's a rule of thumb
3 more than a hard and fast rule?

4 A. A rule of thumb, yes.

5 Q. In applying that rule of thumb to
6 Ameren Missouri, which is the largest regulated
7 utility the Commission regulates, would that --
8 what would that 1 percent amount be for this
9 utility?

10 A. I think the company's reported
11 revenues, operating revenues was close to
12 2.8 billion, so it would be roughly 28 million.

13 Q. \$28 million?

14 A. Uh-huh.

15 Q. Does the Staff rule of thumb, this
16 1 percent rule of thumb apply only as far as a
17 percentage or is there a dollar amount that might
18 also affect the judgment about whether to go
19 further?

20 Is that -- when you're talking about
21 \$28 million, which is only 1 percent of Ameren's
22 revenue requirement, might that number be big
23 enough that, even though it was under 1 percent,
24 that the Staff take further steps to look at it?

25 A. Well, if the number gets much smaller

1 and, you know, as we look at more and more issues,
2 there's greater risk that what we're looking at as
3 possible overearnings might flip and become an
4 underearnings situation. So, you know, having a
5 benchmark of 1 percent is a fairly good starting
6 point for Staff is how I would characterize it.

7 **Q. Do you think if you were talking to**
8 **just an individual residential electric consumer,**
9 **that they might think that \$25 million was worth**
10 **further auditing investigation?**

11 A. Well, I don't know what that -- what
12 their perspective might be. However, it's been my
13 experience that when we have pursued overearnings
14 in past cases or in past instances, it's been a
15 much more significant number than 1 percent.

16 **Q. If a utility were to file tariffs**
17 **initiating a file and suspend rate increase case**
18 **that was in the neighborhood of a 1 percent rate**
19 **increase, what level of review do you believe that**
20 **the Staff would engage, a one, two or three**
21 **three-tier review?**

22 A. If the -- could you restate your
23 question? I missed the first part.

24 **Q. Let me just state a hypothetical.**
25 **What if Ameren Missouri filed a rate increase case**

1 that was asking for a \$28 million rate increase,
2 would Staff do a limited review or would it do a
3 more thorough review?

4 A. Well, if the company filed a rate
5 increase request, there's an 11-month statutory
6 requirement that we process that case. We would
7 certainly review all relevant factors.

8 However, traditionally Ameren has not
9 filed or sought rate increases in the amount of
10 1 percent. Their increases have been generally
11 10 percent or higher, with the exception of the
12 most recent, which is 9.65 percent.

13 Q. So how am I to reconcile the standard
14 that you're telling me you have for a file and
15 suspend increase case with a rate reduction
16 complaint case? I hear you saying that, no matter
17 how much it is, if it's a file and suspend case
18 you're going to go all out, but if it's a rate
19 complaint case, you might not if it's not up to
20 1 percent. Isn't that a double standard?

21 A. Well, there's less -- when you lower
22 that threshold in an overearnings, we have the
23 burden of proof. The Staff would have the burden
24 of proof. And those cases are a very arduous task,
25 having participated in four of those in my career.

1 They take a long amount of time, and they're a lot
2 of work.

3 And so, you know, to reduce or lower
4 what you're saying Staff's threshold should be is,
5 you know, there's a risk in that if we go down that
6 road, that we may be pursuing an earnings complaint
7 may turn into underearnings.

8 **Q. I hear what you're saying, but in**
9 **this case here today, the Staff doesn't bear the**
10 **burden of proof, does it?**

11 A. No.

12 **Q. So based on your best -- your best**
13 **guess at the moment, knowing that you have not done**
14 **the most thorough review that you would like to**
15 **have done, you still come up with a conclusion that**
16 **this utility is overearning in the neighborhood of,**
17 **say, \$25 million; is that fair?**

18 A. No.

19 **Q. How much are they overearning at this**
20 **point, your best guess?**

21 A. Staff has made an assessment based on
22 a limited review that, you know, it would appear
23 that company's earnings are 26 million above
24 authorized, but it hasn't taken into consideration
25 all the relevant factors, and it is not pushing

1 this recommendation as some sort of a ratemaking
2 recommendation. It was developed with the idea of
3 should we pursue a full cost of service
4 calculation.

5 **Q. Well, you hesitate to use the word**
6 **overearnings; is that fair?**

7 A. Yes.

8 **Q. But you believe it's \$25 million in**
9 **excess of their authorized return?**

10 A. That's what our limited review shows,
11 but this limited review has a very low degree of
12 certainty. If we were to perform a full cost of
13 service calculation, that would have a much higher
14 degree of certainty with regard to its accuracy.

15 **Q. But if someone is putting you on the**
16 **spot, and I guess you are on the spot, you're on**
17 **the witness stand now, and you have to make your**
18 **best guess as to where the numbers are as of this**
19 **date based on the record that we have here so far,**
20 **and you can't say maybe, you have to say yes or no,**
21 **would you -- wouldn't you have to say that this**
22 **utility is overearning?**

23 MR. LOWERY: Objection. Calls for
24 speculation.

25 JUDGE WOODRUFF: Sustained.

1 MR. COFFMAN: All right. That's all
2 that I have. Thank you.

3 JUDGE WOODRUFF: All right. The
4 Retailers?

5 MR. SCHWARZ: I sit in the cheap
6 seats. I don't have a microphone.

7 CROSS-EXAMINATION BY MR. SCHWARZ:

8 Q. Good afternoon, Mr. Cassidy.

9 A. Good afternoon.

10 Q. I want to call your attention to, in
11 your rebuttal testimony, page 27, line 7 and 8.
12 That's where I think the -- what you were calling
13 the \$4 million threshold, that's where you mention
14 it.

15 And I just want to be clear that
16 that's something that you consider when you are
17 faced with deciding whether Staff should devote
18 substantial resources to a full-blown
19 investigation, earnings investigation on its own;
20 is that correct?

21 A. Yes.

22 Q. It should not be taken to mean that
23 in a -- in an actual rate proceeding, that Staff
24 would not make an adjustment to the company's books
25 of less than \$4 million?

1 A. Certainly not.

2 Q. So Staff frequently makes adjustments
3 that are less than \$4 million in a rate proceeding?

4 A. Yes, it does.

5 Q. Are you aware that the Commission has
6 in its June 11th Order recognized and declared that
7 this is a general rate proceeding?

8 A. I have read that.

9 Q. Okay. What is the matching
10 principle?

11 A. The matching principle is designed to
12 keep revenues, expenses and rate base in a proper
13 relationship for a set period of time.

14 Q. All right. And part of the purpose
15 of that is so that in setting future rates the --
16 an appropriate relationship among those elements
17 will be maintained; is that right?

18 A. That's correct.

19 Q. Okay. So that that's one reason that
20 you would have a test year in a rate case; is that
21 correct?

22 A. Yes.

23 Q. And it's likely also the reason that
24 you would do true-ups and adjustments for known and
25 measurable changes that occur after the test year;

1 **is that correct?**

2 A. Well, when you make -- when you go
3 out to an update period, you need to maintain that
4 relationship, yes.

5 **Q. Yes. Yes. In this case, can you**
6 **tell me what Ameren's expenditures for solar**
7 **rebates was at December 31 of 2013?**

8 A. I believe that's in my testimony.
9 Well, I have -- in my rebuttal testimony I've
10 actually referred to solar rebates at March 31st.
11 So I don't have December right at my fingertips.

12 **Q. What was it at March 31st?**

13 A. I believe it was -- on an annual
14 basis, it would be 13.8 million. I think the total
15 with the cost adder that they'd spent through
16 March 31 was 41.6 million.

17 **Q. So as of March 31 of 2014, they had**
18 **spent, with the adder, \$41 million?**

19 A. 41.6.

20 **Q. And if you amortize that over three**
21 **years, what do you get?**

22 A. 13.8 million.

23 **Q. You have worked Ameren rate cases**
24 **since 2002 at least?**

25 A. Yes.

1 **Q. Has Staff made an adjustment in those**
2 **cases for advertising, miscellaneous costs?**

3 A. It has.

4 **Q. Do you remember what the biggest**
5 **adjustment that Staff proposed was?**

6 A. I don't recall, but I do remember one
7 case, a case or two ago, where the level of
8 advertising that we proposed for disallowance was
9 much higher than other cases.

10 **Q. What --**

11 A. I just -- I don't recall. I mean,
12 it's --

13 **Q. That's fine. That's fine. If you**
14 **don't recall, I always told you guys that that's a**
15 **fine answer when you're on the stand, and it still**
16 **is.**

17 **Does Ameren routinely experience**
18 **increases in its contracted price for fuel as of**
19 **January 1?**

20 A. For commodity coal and for coal
21 transportation.

22 **Q. Do they experience payroll increases**
23 **on January 1 annually?**

24 A. I think it's in January, April and
25 July.

1 Q. Okay. If Ameren wanted to -- well,
2 let me back up a step.

3 After Ameren or any utility files a
4 major rate increase case, Staff in structuring and
5 the parties in structuring the procedural schedule
6 will typically schedule Staff's direct testimony
7 145 to 165 days after the case is filed, is that --

8 A. Yeah.

9 Q. You wrangle over that?

10 A. Yes, we do. Generally 155 days.

11 Q. So if Ameren wanted to capture plant
12 that was going to go into service late in the
13 fourth quarter of 2014, what's the earliest date
14 that they could file their case and have those
15 considered in a true-up?

16 A. July would probably be pretty good
17 timing for that.

18 Q. And the same thing for the July --
19 excuse me -- the January 1st?

20 A. Yes. That's -- that's how they've
21 structured their filing in this, in the
22 ER-2014-0258 case, and that's how they also handled
23 it in ER-2007-0002.

24 Q. So by filing their rate case then,
25 they are minimizing the regulatory lag they will

1 **experience as far as plant going into service**
2 **before it's recognized in rates?**

3 A. In my mind, yes.

4 Q. Okay. There's been a lot of
5 **discussion about surveillance reports. You've**
6 **reviewed them on a regular basis?**

7 A. Yes.

8 Q. Were you here when I asked Mr. Meyer
9 **questions about the Uniform System of Accounts?**

10 A. I was.

11 Q. You're familiar with the Uniform
12 **System of Accounts?**

13 A. Yes, I am.

14 Q. Ameren keep its records, its
15 **financial records for regulatory purposes**
16 **consistent, as ordered by the Commission, with the**
17 **USOA?**

18 A. Yes. In conformance with that, yes.

19 Q. The surveillance reports are based on
20 **the USOA accounting entries?**

21 A. Yes.

22 Q. Are you -- you didn't say anything in
23 **your rebuttal testimony or your surrebuttal**
24 **testimony. Are there any of the USOA accounts, be**
25 **they rate base, revenue, A&G, O&M, that aren't**

1 **reflected in Mr. Meyer's testimony?**

2 A. They are reflected in total, but they
3 are not fully adjusted.

4 **Q. But to the extent that the USOA**
5 **encompasses all of the relevant financial**
6 **transactions of the utility in the aggregate, all**
7 **relevant factors would be reflected, would they**
8 **not?**

9 A. No.

10 **Q. Why not?**

11 A. Because there are other elements or
12 aspects to a review that Mr. Meyer has conducted
13 that he has not -- he has not conducted in his
14 assessment.

15 **Q. Well, that goes to adjustments, does**
16 **it not?**

17 A. It does.

18 **Q. But is there any regulatory principle**
19 **that says all USOA balances have to be adjusted in**
20 **a rate case?**

21 A. No.

22 **Q. If a party basically doesn't make**
23 **adjustments that favor it in a rate case, that**
24 **party is leaving money on the table, is it not?**

25 A. I don't understand your question.

1 Q. Well, if, for instance, the Staff --
2 Staff's audit indicated that an adjustment needed
3 to be made to advertising in the amount of two and
4 a half million dollars and it didn't make that
5 adjustment, that adjustment -- those revenues would
6 remain on the table as far as getting the
7 appropriate revenue requirement; is that correct?

8 A. If that happened in a full assessment
9 of all the relevant factors, yes. But in this case
10 and in this proceeding, we haven't been able to
11 conduct that full assessment of all the relevant
12 factors in order to assess advertising that would
13 require an ad-by-ad review consistent with the KCPL
14 standard that the Commission authorized in an Order
15 back in the 1980s, and we haven't had time to
16 conduct that analysis.

17 Q. I understand that. But that -- that
18 expense is in the case. It may be a better
19 reflection if there were an adjustment made to it,
20 but that factor is still before the Commission for
21 consideration, is it not?

22 A. Yes.

23 Q. And you have not identified, nor has
24 Ameren, any particular expense, revenue item, rate
25 base item by USOA account that is not in this rate

1 case; is that correct?

2 A. As I said earlier, all of the costs
3 that are reflected in the USOA are in that report,
4 but they haven't been all fully adjusted.

5 Q. They haven't been adjusted?

6 A. Yeah.

7 Q. So that the -- and that's fine. I
8 think that that's driving -- that's getting at what
9 we're driving at here. All of the relevant costs
10 are here. There may be some that could -- and we
11 say costs, but it also is true of revenue and plant
12 in service. There may be adjustments that in other
13 circumstances we might recommend, but those --
14 everything that the Commission needs for decision
15 is here, and if the -- if an adjustment isn't made,
16 it will either favor the ratepayers or it will
17 favor the utility based on whether it's -- the
18 direction of the adjustment. Would you agree with
19 that?

20 A. No. Without all of those
21 adjustments, I don't believe all of the information
22 that's needed to make an assessment of rates is
23 present in -- by -- or made available by any party
24 in this case.

25 Q. Okay. Ameren could have filed its

1 rate case in January, could it not?

2 A. I guess that's possible.

3 Q. But had it done so, the -- it's
4 unlikely that it would have recovered the bulk of
5 the increase in costs that it -- that it is seeking
6 in the rate case that it filed in July; is that
7 correct?

8 A. That's true.

9 MR. SCHWARZ: I think that's all I
10 have.

11 JUDGE WOODRUFF: All right. And it
12 is fast approaching five o'clock. I'm assuming
13 there will be at least some cross-examination from
14 Complainants.

15 MR. DOWNEY: Yes.

16 JUDGE WOODRUFF: See nodding. So
17 we're going to stop for the night at this point.
18 No going 'til ten o'clock tonight. So we'll resume
19 at 8:30 in the morning. At this point we are
20 adjourned.

21 (WHEREUPON, the evidentiary hearing
22 was adjourned at 4:57 p.m.)

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1	I N D E X	
2	Opening Statement by Mr. Downey	45
	Opening Statement by Ms. Baker	65
3	Opening Statement by Mr. Coffman	81
	Opening Statement by Mr. Schwarz	93
4	Opening Statement by Mr. Thompson	99
	Opening Statement by Mr. Byrne	124
5		
6	COMPLAINANTS' EVIDENCE:	
7	GREG MEYER	
	Direct Examination by Mr. Downey	157
8	Cross-Examination by Mr. Schwarz	163
	Cross-Examination by Ms. Baker	169
9	Cross-Examination by Mr. Antal	180
	Cross-Examination by Mr. Byrne	185
10	Questions by Chairman Kenney	216
	Questions by Commissioner W. Kenney	225
11	Questions by Commissioner Hall	230
	Recross-Examination by Mr. Byrne	238
12	Redirect Examination by Mr. Downey	243
	Further Recross-Examination by	
13	Mr. Byrne	262
	Further Redirect Examination by	
14	Mr. Downey	271
15	MICHAEL P. GORMAN	
	Direct Examination by Ms. Iles	287
16	Cross-Examination by Mr. Coffman	290
	Cross-Examination by Ms. Baker	293
17	Cross-Examination by Mr. Thompson	294
	Cross-Examination by Ms. Tatro	297
18	Questions by Chairman Kenney	302
	Questions by Commissioner Hall	306
19	Recross-Examination by Mr. Thompson	309
	Recross-Examination by Ms. Tatro	311
20	Redirect Examination by Ms. Iles	311
21		
22	STAFF'S EVIDENCE:	
23	SEOUNG JOUN WON, Ph.D.	
	Direct Examination by Ms. Myers	313
24		
25		

1 JOHN P. CASSIDY

Direct Examination by Mr. Thompson 317

2 Cross-Examination by Mr. Lowery 319

Cross-Examination by Ms. Baker 327

3 Cross-Examination by Mr. Coffman 328

Cross-Examination by Mr. Schwarz 338

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

	EXHIBITS INDEX	MARKED	RECEIVED
1			
2			
3	EXHIBIT NO. 1		
4	Direct Testimony of Greg R. Meyer	45	162
5			
6	EXHIBIT NO. 2NP/HC		
7	Surrebuttal Testimony of Greg R. Meyer	45	162
8			
9	EXHIBIT NO. 3		
10	Direct Testimony of Michael P. Gorman	45	289
11			
12	EXHIBIT NO. 4		
13	Surrebuttal Testimony of Michael P. Gorman45289		
14			
15	EXHIBIT NO. 5		
16	Rebuttal Testimony of Gary S. Weiss	45	
17			
18	EXHIBIT NO. 6		
19	Rebuttal Testimony of Lynn M. Barnes	45	
20			
21	EXHIBIT NO. 7		
22	Rebuttal Testimony of Robert B. Hevert	45	
23			
24	EXHIBIT NO. 8		
25	Rebuttal Testimony of John J. Reed	45	
26			
27	EXHIBIT NO. 9		
28	Rebuttal Testimony of Seoung Joun Won, Ph.D.	45	315
29			
30	EXHIBIT NO. 10		
31	Rebuttal Testimony of Shawn E. Lange	45	317
32			
33	EXHIBIT NO. 11		
34	Rebuttal Testimony of Mark L. Oligschlaeger	45	
35			

1	EXHIBIT NO. 12NP/HC		
	Reclassified Rebuttal		
2	Testimony of John P. Cassidy	45	319
3	EXHIBIT NO. 13NP/HC		
	Reclassified Surrebuttal		
4	Testimony of John P. Cassidy	45	319
5	EXHIBIT NO. 14		
	Ameren Missouri Response to		
6	MPSC Data Request No. MPSC		
	0015s2	182	
7			
	EXHIBIT NO. 15		
8	April 21, 2014 E-Mail from		
	Laurie Nowack	194	215
9			
	EXHIBIT NO. 16		
10	Ameren Missouri Response to		
	Noranda Data Request		
11	No. Noranda 8	245	247
12	EXHIBIT NO. 17		
	Surveillance Monitoring		
13	Reports	248	271
14	EXHIBIT NO. 18		
	Chart - Authorized ROE,		
15	Actual ROE, Over-earnings		
	\$/year	248	271
16			
	EXHIBIT NO. 19		
17	Authorized ROE Compared to		
	Earned ROE	248	271
18			
	EXHIBIT NO. 20		
19	Ameren Missouri ROE		
	Calculations	248	271
20			
	EXHIBIT NO. 21		
21	Ameren Missouri Excess		
	Revenues	248	271
22			
	EXHIBIT NO. 22		
23	Chart - Authorized ROE,		
	Actual ROE, Difference, % of		
24	ROE Above Authorized ROE	248	271
25			

1 EXHIBIT NO. 23

Errata to Gorman Direct

2 Testimony 287 289

3 EXHIBIT NO. 24

Staff Reconciliation

4 File No. ER-2012-0166321327

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C E R T I F I C A T E

STATE OF MISSOURI)

) ss.

COUNTY OF COLE)

I, Kellene K. Feddersen, Certified
Shorthand Reporter with the firm of Midwest
Litigation Services, do hereby certify that I was
personally present at the proceedings had in the
above-entitled cause at the time and place set
forth in the caption sheet thereof; that I then and
there took down in Stenotype the proceedings had;
and that the foregoing is a full, true and correct
transcript of such Stenotype notes so made at such
time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR

A	accord 164:14	accurately 256:20 307:13	340:15,18	178:15
AAO 277:17,19 277:21	account 74:7,19 76:15 77:23	achieved 232:18 252:8 256:15	addition 49:6 133:20 138:7	adjustment 45:22,23 51:3
AARP 24:25 27:22,24 51:10 73:13 81:11,14	78:18 82:21 92:1 96:4,11 97:5,8,8 102:23	258:5 259:14	178:4 193:4 285:16	52:1 64:10,15 82:20,22 83:24
abandoned 138:16 168:11 186:10	120:1 133:18 133:23 134:5 142:4 143:18	acknowledge 95:5	additional 111:16,20	85:14 86:20 96:3 98:11,24
abbreviated 69:6 169:24	145:17 146:8 146:10 149:17	acknowledges 65:12 140:7	118:11 201:14 223:20 233:20	98:24 99:11 136:20,21
ability 29:11 41:25 83:1 84:5 85:1 171:9 208:8 221:7 225:12 261:2 280:22 282:15	151:20 165:7 166:1,9,13,15 166:20 173:15	across-the-board 60:10,12	271:4 279:12	137:2,20 141:1 141:2 142:21
able 29:23 85:16 111:1 112:9,20 115:10 149:25 170:12 206:5 219:8 220:5,24 244:24 344:24 345:10	176:25 179:9 345:25	act 220:17	Additionally 71:13	160:14 166:4 166:15 167:11
above-entitled 353:9	accountant 53:25 54:19 163:7 332:24	acted 163:22 284:22	additions 203:20 204:16	167:15 168:4,9 168:12,14
absent 226:16 331:14	accountants 102:1,6 108:24 111:14 112:13 118:20,24 119:20 324:25	action 322:20	address 26:19 28:20 86:14	170:7 173:14 174:20 175:1,6
absolutely 103:19 104:2 110:14 121:7 128:2 140:3 175:16 204:18 228:21 234:23	accounting 47:6 53:23 96:8 102:18 144:11 164:23,25 165:2,5,21 168:6,17 188:9 189:12 190:8 329:2 343:20	actions 34:20	93:22 124:11 135:5 149:21 158:24,25 262:18 287:19 287:21	175:9,14 181:9 181:14 185:12 186:6,11,16,22 186:24 188:1,7 189:19 201:24
absurd 220:15	accounts 96:17 96:19,20,22 97:4 99:3 163:24,25 164:5,10 165:1 165:4 330:25 332:3 343:9,12 343:24	acts 107:14	addressed 85:12 174:24 175:18 236:17 244:15 285:20	202:10 238:17 238:18 249:23 296:6 302:22 302:22 303:9 309:21 310:5 310:17 323:5 338:24 341:1,5 345:2,5,5,19 346:15,18
accept 53:14	accuracy 337:14	actual 30:23 46:9 46:21,23 47:20 48:11 50:14,17 54:5,7,15,20 56:12 69:7 142:25 143:1 143:12 201:7 233:7 236:6 247:20,21,25 248:25 250:23 251:7,15 252:9 254:3,6 255:3 256:14,25 257:7,10 258:8 259:14 261:10 262:25 266:2 267:2 273:19 274:8 304:2,7,8 304:14,21 305:4,18,24 307:4 338:23 351:15,23	addressing 174:7	309:21 310:5 310:17 323:5 338:24 341:1,5 345:2,5,5,19 346:15,18
accepted 142:17	accurate 142:14 142:15,17 151:10,12 158:21 252:17 255:2,9,10,19 257:25 293:9	add 41:19 55:16 71:20 105:3,4 175:14 229:17 283:10	adduced 95:25 98:7	adjustments 50:14,17 54:16 56:8 86:6 88:1 99:3 120:2 131:14 132:3 132:17 135:19 136:2,10,13 137:15,20 138:1,10,19 139:4,4 142:6 150:10,18 158:17 168:16 168:22,23 173:1,5,12,16 173:17 174:5,8 174:24 178:18
access 42:19,19 42:21,24 70:9 70:18 74:4,15 82:14 83:16 146:16,18 170:8 172:3 193:13 283:22 283:23		added 139:5 188:8	adequate 100:12	
accompanied 250:20		adder 133:22 184:6 224:7	adequately 116:17	
			adjoined 347:20,22	
			adjust 79:3 81:24 85:17 129:23 229:9 309:18 323:15	
			adjusted 49:18 127:23 128:10 128:11 143:1 165:7 176:9 209:8,14,19 210:17 229:8 242:14,21,22 305:2 344:3,19 346:4,5	
			adjusting 177:8	

180:21,22 188:8 189:24 200:25 213:23 213:24 237:7 242:14,23 260:18 268:19 304:23 305:13 305:14,20,25 306:1,4 307:12 339:2,24 344:15,23 346:12,21 adjusts 82:21 administrative 40:17 44:15 97:2 267:14 admissibility 39:19 40:11 admissible 40:25 admission 289:12 admit 115:16 admitted 268:1 admittedly 40:1 adopt 167:3 adopted 91:22 94:8 104:13,14 150:10 197:22 244:21 292:24 advantage 281:21 adversarial 112:7 adversary 101:8 101:12 advertising 136:22,23,24 137:2 167:12 167:20,24 168:5 186:5,10 186:19 187:3,3 187:6,13,19 188:22 229:3 341:2,8 345:3 345:12 advised 231:7 advisor 93:17	163:22 advocate 38:22 99:9 123:6 advocated 125:5 198:7,14 advocating 117:1 199:7,18,19 ad-by-ad 345:13 affect 72:7 233:11,25 247:14,15 333:18 affidavit 250:20 288:18 afford 221:3 afternoon 163:4 163:5 185:23 185:24 216:2,3 230:5,6 267:6 290:5,6 293:20 293:21 294:25 295:1 297:7,8 302:6 306:15 306:16 319:23 319:24 327:9 327:10 328:18 328:19 338:8,9 aggregate 344:6 aggressive 307:18 ago 44:13 128:4 133:14 138:16 201:10 300:9 323:8 341:7 agree 36:11 43:25 49:13 61:24 62:22 63:11 77:4 85:22 87:9,10 90:24 102:5 110:24 133:6 142:15 169:12 169:20 170:17 171:16 172:2 172:20 174:17 181:21 182:17 182:23 183:5	184:5,7,10 190:1 192:15 193:22 195:5 195:14 196:18 201:12 207:6 209:3,10,16,22 209:24 210:8 212:2,15 213:13 225:16 230:7 241:1 242:10 268:17 268:21 269:14 270:1,5,12 276:21 291:21 293:22 294:1 295:19,23,24 296:3 298:11 298:21 299:1,6 299:12 301:11 305:10 312:18 329:13 346:18 agreed 29:1 32:4 32:13 122:4 145:16 167:13 184:2 agreement 149:23 agreements 84:13 183:23 184:3 agrees 70:21 113:2 115:12 133:4 ahead 36:22 37:4 43:3 44:25 121:9 125:22 130:21 156:25 183:7,8 223:10 255:6 316:20 ain't 105:1 Akayla 25:13 27:3 al 23:9 Alex 27:3 ALEXANDER 25:12 alike 225:7	allegation 42:24 90:8 128:24 131:17 allege 131:9,13 243:1 alleged 205:18 238:13,20 Allison 25:6 27:9 allow 32:13 56:25 107:19 134:25 140:19 141:13 153:4 213:1 227:2 229:21 243:24 allowed 74:14 147:19 197:24 198:25 221:8 276:11 279:13 309:25 allowing 52:5 allows 45:20 55:9 109:8 ally 79:10 80:3,7 Aluminum 23:9 24:6,11 65:9 Ameren 23:13 24:13,21 26:7 26:15,18,22 28:22,25 31:2,9 31:11 33:7,12 34:24 35:1,6,7 35:8 37:3,8 38:4,20 45:22 46:1,2,11,20 47:2,3,6,22,24 48:1,17,23,25 49:1,6,10,14,24 50:9,21 51:4,8 51:13,17 52:10 52:13,13,17,19 53:2,3,8,18 54:2,5,8,17,20 54:25 55:12,14 55:16 56:2,4,10 56:11,14,20,22 56:25 57:22 62:11,11,14	63:6 64:12 65:9 65:17 66:10,15 67:8,17 68:1,4 68:6,9 70:25 71:2 74:15,25 75:5 76:19 77:25 80:10 90:9 91:11 92:12 94:7,16 94:20 95:14 96:4 97:6,20 100:14 101:11 103:17 105:18 105:24 106:10 113:10,25 115:10,12,16 117:14 124:9 126:10 130:2 130:23 131:2,9 131:13 133:12 133:16,20 134:1,13,17,20 134:24 135:3,5 136:13,16 137:18 142:11 143:23,25 146:23 147:23 148:1 149:14 149:24 163:12 163:16 164:16 164:18,19 165:10,14,21 166:1,9,19 167:13,17,19 167:23 168:6 168:18 170:16 171:5 172:4,9 175:12,20 177:17 178:4 181:11 182:2 182:18,24 183:5 185:21 187:2 189:22 192:11 194:19 195:10 196:20 200:4,8 201:13 201:19 202:11
--	---	---	--	---

202:16 203:18 203:23 204:19 205:5,17,23 206:16,21 207:16 211:20 211:25 214:9 221:9 223:13 231:15 232:4 233:15,17,24 234:21 235:22 237:24 238:3,9 240:25 244:18 246:5,14 249:22 252:5,7 255:22 256:3 256:14,14 257:19 258:5 258:21,24 259:4,12,19,22 260:12 262:23 262:25 269:7 271:8,15 273:24 274:3 274:16 275:16 275:18 279:9 282:22 284:13 285:3,10,14,18 285:24 286:2,3 286:14,18 291:15 296:9 296:22 297:5 297:14 298:16 299:1 301:4,11 306:24 309:18 309:22 311:1,7 313:6 315:6 316:15 319:21 322:10 333:6 334:25 335:8 340:23 341:17 342:1,3,11 343:14 345:24 346:25 351:5 351:10,19,21 AmerenUE 97:3 Ameren's 33:24 47:11 53:21	55:21 60:2,5,23 63:20 98:11 108:3 113:15 114:18 152:13 167:7,12 168:5 168:17 170:7 180:21 181:15 184:16 192:22 232:10 246:19 258:8 259:13 279:20 295:10 333:21 340:6 amortization 54:24 55:3,10 amortize 217:6 340:20 amortized 184:14 185:2 241:23 amount 33:12 38:8 48:14 68:13 73:24 86:5,19 87:11 87:13,14 136:19 141:1 145:25 155:1 171:18 174:2,3 174:13 177:13 178:20 184:1 184:19 185:11 186:18 187:25 188:6 192:25 202:22 203:1,7 205:1 216:8 226:13 235:25 238:20 240:18 241:10 302:12 333:8,17 335:9 336:1 345:3 amounts 47:17 58:20 96:12 139:7 222:6 233:3 241:21 311:14 amount's 205:13 analogous 154:15	analyses 253:15 260:25 analysis 32:6,8 54:19 57:10 61:25 68:21 69:6 89:5 96:21 108:18 113:21 118:1,1,12 119:4,6 131:22 132:6,24 133:10,19,24 134:12 135:24 136:16 137:2 137:17 138:4 138:13,13,17 139:16,19 141:7,11,16 142:7,13,17 146:11 147:6 150:11 151:8 158:18 159:2 166:8,16 168:9 169:24 171:7 174:4,12,20,25 175:10 178:2 179:10,25 184:12,13 185:5,9 186:14 191:23 199:1 200:4,8,11,21 201:5,7,17 202:6,16,24 203:8,24 205:1 205:14 207:22 208:4 216:9,16 218:15,19 221:19,22 223:14 228:4 230:11 233:14 236:25 242:3 242:12 244:17 253:5 259:9 260:20 261:16 273:18 285:3 285:12 290:17 290:20 305:12 305:25 313:4	324:8 330:6 332:17 345:16 analyze 96:6 106:25 analyzed 167:7 181:5 analyzing 67:14 and/or 311:5 angle 59:2 annual 192:20,25 340:13 annualizations 39:2 54:4 132:17 annualize 50:15 50:18 323:25 annualized 49:18 50:21 154:14 annually 51:5 341:23 answer 48:24 49:2,4 50:5 103:24 166:17 180:10 192:16 193:14,15,18 196:9 197:2,25 199:21 202:8 203:11,17 204:6,9 205:10 206:12,19 207:6 208:2 210:21 212:25 213:12 214:24 218:17 234:19 246:19 278:1 281:8 283:5,6 299:24 300:15 300:18,21,24 301:3,6,9,13,17 311:23 312:1 326:16 341:15 answered 108:9 175:19 190:19 191:16 193:21 200:2 213:20 225:10 226:8 279:11 299:21	answering 274:18 answers 58:16 158:6 159:9 160:6 161:14 172:8 215:8 239:23 278:10 280:6 288:22 289:9 314:14 318:9,11 Antal 25:12 27:3 180:14,15 182:8,12,16 183:9,17,20 185:3,13,17 237:23 Antal180 348:9 anticipate 95:7 anticipated 55:17 223:21 248:12 anybody 42:5 81:4 132:12 316:17 anymore 186:16 231:5,16 anyway 125:25 140:25 142:8 apologize 53:10 116:11 130:19 278:6 apparently 44:14 63:7 69:15 Appeals 113:1 appear 336:22 appearance 26:10,22 APPEARANC... 24:1 Appearing 27:23 appears 173:1 182:18,21 194:15 332:8 applicable 107:11 110:22 158:19 application
---	---	---	---	--

66:24 73:4 74:10 applied 74:17 82:23 applies 36:20 87:23 103:11 107:14 apply 65:18 75:20 86:18 173:14,14 174:3 212:13 213:11 234:6 242:24 333:16 applying 333:5 appreciate 84:17 230:1 306:24 approach 96:5 97:12 98:5 182:9 194:6 263:6 297:22 309:24 320:19 330:5 approaching 347:12 appropriate 52:24 67:4 94:15 99:11 129:17 132:4 132:17,18 212:12 213:10 260:19 303:14 307:2 310:24 312:3 320:16 323:22 326:11 339:16 345:7 appropriately 107:24 127:23 176:5 approved 66:1 145:17 175:3 189:17,18 190:6 215:3 approving 189:18 approximate 67:20 206:21 approximately	50:23 68:2,7 69:13 74:25 75:5 185:6 204:20 205:6 321:22,25 approximation 55:5 April 178:2 193:24 194:25 226:23 341:24 351:8 arbitrarily 124:19 arduous 335:24 area 84:23 191:7 290:22 areas 84:24 173:23 arguably 40:16 41:10 argue 40:3,14,24 52:10 64:13 209:17 210:21 226:22 286:10 argued 64:14 argues 55:16 arguing 63:6 150:20 284:13 argument 39:13 39:16 87:17 178:22 227:3,6 275:7,9,11 277:18 arguments 42:3 227:5 arm 99:10 arms 70:11 arrive 111:5,9 135:20 aside 62:5,5 77:3 137:19 asked 28:3,13 66:11 93:3 112:17,18 124:24 125:7 126:5 147:18 148:7 152:12	158:5 160:5 161:15 173:8,8 176:5 180:6 193:6 195:2,11 196:15 204:7 209:1 216:5 218:14 221:8 221:12,18,18 223:13,13,18 223:19,20 226:8 238:2 241:7 253:9,13 254:2 263:2 278:9 283:11 299:19,22 302:16 311:13 311:19,20,24 312:25 314:13 328:10 343:8 asking 59:9 60:2 112:4 125:7 147:14 184:24 186:3,4 192:11 208:1 210:16 224:11 240:16 245:3 247:7,12 247:14 274:8 276:1,14 279:8 280:5 281:4 282:3 335:1 aspect 206:11 aspects 67:14 302:25 344:12 Assembly 98:2 assertion 112:13 assess 345:12 assessment 323:6 328:3 329:5,14 329:18 331:7 332:10 336:21 344:14 345:8 345:11 346:22 assigned 189:15 associated 178:5 187:21 237:6 Associates 147:5 163:8,22	195:25 205:21 219:4 239:18 281:16 287:25 Association 25:5 27:13,17 51:11 93:12 198:13 assume 35:25 70:8 80:5,9,21 128:1 162:24 230:16 330:24 331:17 332:6 assumed 60:9 assumes 56:5 217:4 assuming 43:18 185:15 347:12 assure 132:19 asymmetrical 82:13,14,14,15 84:22 Attached 194:18 attempted 187:5 205:3 330:23 attention 82:5 99:14 103:23 338:10 attorney 24:2,2,7 24:12,12,13,16 24:22 25:1 93:16 102:9 112:9,15 122:11 123:6 123:20 130:22 133:6 196:16 attorneys 84:13 88:6 198:7,11 attributable 217:25 attribute 63:20 audit 54:13 56:4 68:25 69:14,17 69:23 70:12 71:8,18 79:4,11 80:15 93:5,7,25 98:21 101:25 102:14 110:21 112:16 119:25	120:22 230:21 275:5,14 280:16 345:2 auditing 329:9 333:1 334:10 auditor 163:9,10 168:4 190:20 317:20 322:11 322:12,16 auditors 122:6 196:19,22 324:19,25 auditor's 329:20 audits 275:15 282:2 audit-type 171:13 August 55:2 182:25,25 265:17,21 266:1,5 authoritative 109:16 authority 148:23 149:10 authorizations 291:25 authorized 40:15 46:23 47:12,18 47:19 48:2,12 49:11 51:6 52:14,16 54:22 55:6 61:21 62:9 88:20,25 89:14 90:9,10 94:22 126:16 128:6 131:16 209:5 209:11,20 210:19 211:1,9 214:11 235:6 248:24 249:4,8 252:7,10,16 254:7,21,25 255:25 256:17 257:2 258:22 259:1,4,7,11,13 259:17,19,22
---	--	--	---	---

263:18,23 264:17 265:5 265:12 266:8 268:15 269:22 270:2,7 272:13 273:19 277:11 277:22 286:15 290:16 291:7,8 291:17 292:8 292:11,21,24 293:1 294:8,18 298:17 299:2 301:5,12 302:20 304:4,9 312:10 320:8 321:19 327:24 336:24 337:9 345:14 351:14 351:17,23,24 automatically 49:15 74:7 available 44:12 44:14 97:17,25 152:24 169:13 170:3,6 196:11 214:3 218:16 218:18 221:6 281:17 282:2 310:10 346:23 Avenue 24:14 26:19 97:21 average 48:2,3 197:6 259:18 259:24 291:17 293:4 awarded 269:8 aware 40:5 86:16 161:4 166:11 166:12 168:1 169:8 174:19 182:1 184:1 201:13,19 202:1,11,19 203:18,21 204:19 205:5,9 239:10 280:18 284:2 328:4	339:5 awkward 149:15 A&G 343:25 a.m 26:3 <hr/> B B 24:16 26:22 27:25 350:15 back 34:5 35:7 36:24 38:10 43:23 58:3 78:5 79:15 85:1 96:14 123:15 128:7,14 136:18,25 156:9 157:1,4 160:13 167:17 175:22 187:17 210:2,5,9 214:13 216:5 221:5,17,25 226:9 227:4 228:7 241:23 243:13,13,16 245:4 257:14 257:15 264:23 265:16,21 268:2,12 271:4 274:9 278:18 280:2 282:25 308:7 309:5 310:6 320:6 327:11 342:2 345:15 backdoor 80:9 background 45:16 backup 48:9 backwards 265:16 323:19 bad 138:5 badly 136:6 BAI 207:14 Baker 25:6 27:8 27:9 32:20 37:11 65:5 76:13,25 77:10	77:20 79:6,12 79:18,24 80:5,8 80:16 81:2,6,8 81:9 93:3 169:4 169:5 179:14 179:18,20,23 180:11 237:21 293:19 294:20 309:13 315:9 327:8 328:13 348:2 Baker169 348:8 Baker293 348:16 Baker327 349:2 balance 78:8 81:17 112:16 217:5 312:5,7,8 balanced 312:10 312:20 balances 344:19 Balancing 36:19 ballpark 136:3 183:10 Ballwin 28:12 99:22 Bardgett 25:1 27:15 barely 198:15 bargained 105:1 Barnes 55:15 144:1 145:2 156:9 177:18 203:21 204:23 205:24 206:19 222:4 278:19 350:13 barometer 304:16 base 55:22,24,25 64:5 83:6 86:2 96:24 111:1 132:16 165:10 165:13 178:23 178:25 179:2 180:6 203:20 204:12 208:4 222:9,12 223:4	223:7,15 224:12,14 225:25 232:14 233:5,10,22 234:7,9,12 247:8,13,19,20 247:25 279:19 279:20 291:6 323:22 325:8 339:12 343:25 345:25 based 29:1 32:7,9 34:20 38:25 39:1 44:7,17 51:8 54:6 55:12 65:13 66:11 67:5,8,23 73:1 73:2,16 74:21 75:3,7 79:6 87:5 96:18,19 96:21 104:22 114:6 126:6 128:24 129:9 129:22 131:4 132:5 134:18 138:18 139:22 141:6 164:20 164:24 165:16 165:21 168:5 168:16 176:8 187:16 189:13 199:1,21 204:15 208:6,6 208:7,10,17,21 211:9,14 219:23 225:8 237:13 244:14 248:15 255:23 261:6 286:8 290:15,17 291:7 292:2,22 292:24 299:24 305:2,4 308:17 308:18 309:5 311:25 327:21 328:5,7,24 329:1 330:1	332:14 336:12 336:21 337:19 343:19 346:17 bases 68:3 142:3 basic 152:22 153:3 basically 138:20 170:18,24 172:19 173:20 344:22 basics 81:16 basing 229:6 basis 28:24 31:12 40:6 46:12 47:5 49:8 50:22 55:18 66:6 67:11 80:22,23 95:22 98:10 102:16 127:3 127:24 129:4 129:14,15 131:5 134:24 140:19,23 141:25 148:2 174:6 192:20 192:25 206:3 207:7,8 209:8 209:15 231:20 236:6 266:11 286:7 297:20 302:12 340:14 343:6 bear 91:10 100:7 336:9 bearing 37:23,24 bears 92:8 beauty 101:12 began 26:3 beginning 26:10 41:7 110:12,13 163:15 169:19 171:2 206:9 215:24 271:23 289:23 319:20 begun 198:15 behalf 26:13,15 26:18,22 27:23
--	--	---	--	---

81:14 239:11 behoove 267:25 belief 79:2 116:22 200:18 200:18 220:6 258:1 280:24 284:16 318:12 331:11 believe 28:15 29:4,25 30:12 31:23 32:16 42:20 61:5 62:7 62:24 63:21 76:10,22 77:14 77:18 84:4 85:11,19 86:12 88:16 89:13 98:9 100:14 102:7,7,10 106:5 107:4 108:1 111:14 118:3 119:5 121:25 123:9,9 127:21,22,25 128:10 129:18 130:4 140:2 145:2 148:10 148:17 156:20 164:17 165:2 167:15 168:13 172:7,7 174:23 187:18 189:2,6 189:11,14 190:10 191:7 191:15 195:1 195:16 196:9 197:15 198:17 198:24 199:4 202:3 205:11 207:19 208:11 208:13,14,18 208:21 210:2 214:18 218:23 219:7,11,22 220:20 222:2 224:4,10 225:23 228:2	228:10 232:9 234:20 236:8 236:11 239:9 244:12,20,24 249:11 250:18 252:1 273:9 274:1 276:16 277:7,14 278:22,25 279:25 282:14 283:24 284:6 284:21 285:1 286:1,4 290:12 291:6,23 292:4 293:9,14 294:4 294:8,17 295:7 295:15 297:13 297:19,20 299:20 304:2 312:6 317:25 322:25 323:18 325:8 330:20 332:1,11 334:19 337:8 340:8,13 346:21 believed 74:18 122:6 128:11 257:12 295:3 323:1 believes 86:10 116:17,20 232:22 bell 282:9 Bench 215:24 237:13 302:3 309:6 315:19 316:6 benchmark 242:18,20 324:7 334:5 benefit 60:17 61:2 232:20 benefits 94:14,17 best 95:17 121:5 214:2 226:7 258:1 314:18	318:12 336:12 336:12,20 337:18 bet 81:6 betas 105:10 better 158:25 190:12 345:18 beyond 73:12 87:25 153:20 175:2 214:17 279:4 big 83:16 144:3 248:17,22 333:22 biggest 330:15 341:4 Bill 274:21 billion 133:17 143:24 203:20 206:21 333:12 bit 77:25 107:22 114:12,13 150:3 169:6 240:14 243:11 307:25 308:16 308:22 326:7 black 189:9,17 189:23,24 190:6,17 blind 146:11 blip 235:17 Blitz 25:1 27:15 blue 256:23,25 257:3 258:9 board 91:16 97:22 body 40:18 Bolivar 24:8 26:13 28:7 bond 297:18 307:7,15,16 308:20,20,21 bonds 307:6 308:6 book 127:3,6,23 128:3,10,12 131:14 135:15	135:19 141:25 142:6 155:8 164:2 269:21 270:2,6 277:5 303:24 304:3,8 304:21,24,25 304:25 books 93:15 96:16 98:21 167:7 338:24 bootstrapped 38:17 bothered 146:23 bottom 30:22,23 72:8 83:23 135:21 138:3 139:11 147:21 256:5 281:3 bought 63:7 144:17 Boulevard 24:22 27:25 bounce 210:19 257:10,14,15 bounces 209:20 210:9 bouncing 254:3,5 257:6 258:9 box 24:18 25:8 25:15 26:23 27:5,10 189:9 189:17,23,24 190:6,17 brand-new 138:17,20,22 178:14 break 45:1,6,7 156:24,25 157:2 243:11 243:12,14,16 262:6,7 breath 222:3 brent.roam@b... 24:5 brief 106:5 116:5 156:3 briefly 287:1	bring 44:24 65:11,14 79:17 92:3 99:14 101:14 109:3 175:7 208:19 bringing 109:22 220:11 287:5 brings 103:12 broad 37:7 broadly 41:8 Broadway 24:3 Brosch 239:2 brought 70:20 79:10 85:15 93:19 101:9,18 103:5,15,22 106:3 112:10 117:14 130:9 130:12 226:5 273:12 329:15 browbeat 326:4 Brubaker 147:5 147:9 163:7,22 191:2 195:25 197:1 205:20 218:17 219:4 239:8,18 281:16,23 287:25 Bryan 24:3,7 28:6 budgeted 156:13 162:3 budgets 88:3 buffer 107:1 build 324:14 building 324:13 built 179:6 236:25 bulk 347:4 bump 294:16 bunch 122:16 146:2 253:4 264:9 burden 32:14 73:11 74:1 75:14 100:7,8
--	---	---	---	--

110:18,19 121:4 131:1,8 131:17,20 141:10 147:23 335:23,23 336:10 burdensome 74:3 business 24:21 26:7 287:19,21 buys 60:15 Byrne 24:12 26:17,17 31:3 34:18 35:10 36:18 43:25 124:10 125:19 125:23 126:3 126:20 127:11 127:16 129:2 129:13,25 130:11,20,22 148:10,15 149:2,12 150:2 150:6,16,25 151:3,11,15,25 152:9,14 153:18 154:1 154:12,21 155:10,15,23 156:8,19,22 179:11,16 185:22,24 187:16 190:7 194:4,6,12 204:9 208:17 215:9,13 219:7 221:6 237:25 238:1 241:7 243:3 252:18 254:2,10,14,17 257:17 260:6 261:7,15 262:1 262:8,10,11,17 263:6,9 266:16 266:25 267:9 267:19 268:6 270:21 273:13	274:7 276:7,14 277:12 278:9 279:8 280:5 281:3,15,23 282:3 283:8,11 304:13,20 348:4,11,13 Byrne's 217:3 253:24 276:19 Byrne185 348:9 <hr/> C C 26:1 353:2,2 calculate 327:12 calculated 67:25 68:14 72:15 74:23 75:11,12 105:20 137:21 137:24 138:2 138:10 150:21 151:6 328:5 calculates 68:1,6 74:24 75:4 calculating 124:21 211:24 223:7 247:21 calculation 48:8 51:2 53:16 59:14 124:18 138:17 153:16 154:11 158:13 158:13,16 222:9,11 234:8 234:9 238:12 238:13 244:13 250:7 327:12 327:16,21 328:7,11 329:7 329:25 331:15 337:4,13 calculations 66:22,23 67:8 68:9,11,18 70:14 73:1,3 74:12 75:7,9,17 191:9 249:7 283:15	Calculations248 351:19 calculator 261:9 261:14 calendar 29:3 55:6 68:2,8 75:1,6 151:10 151:12 233:17 California 292:20 293:3 call 47:22 206:1 223:1 278:18 338:10 Callaway 137:11 144:16,19,20 144:23 205:7 241:6 called 46:5 198:14 calling 182:5 338:12 Calls 337:23 capability 218:14 219:1,10 capable 220:8 capacity 287:24 314:2 capital 65:20 89:5 96:25 132:16 134:21 156:14 160:15 165:16,18 175:10 177:16 179:24,24 240:25 241:11 290:22 293:24 294:2 307:10 307:13,14 313:10 caption 353:10 capture 240:19 342:11 captured 221:14 cards 82:7 care 43:2 180:5 career 335:25 careful 56:9	Carole 24:2 26:12 28:6 carried 100:7 159:4 carry 131:17 Carver's 239:2 case 28:22,24 29:12,17,24 30:3,25 31:7,9 31:10 32:4,5,16 32:23 33:10 34:4 35:5 36:20 36:21,21 37:1,2 37:13,15,17,20 37:21,23 38:4 38:10,12,13,17 39:14,20 40:7 41:4,23 42:8,25 47:3 48:20,22 51:23 52:11 53:9,18,23 55:14 56:15 57:11,14 58:12 60:6 64:6,16 65:14,19 68:24 68:25 69:23 71:15,16,24 72:10,12 73:16 74:9 75:21 76:16 78:10 79:5,15 80:1 81:21,25 84:7 84:19 85:8,24 86:17 88:7,9 89:9,14 90:1,12 90:17 93:18 94:5,7,8 95:8 95:14 96:9,13 96:19,23 97:14 98:8,23 99:7 100:6 101:4,19 102:8 103:25 104:4,4,4,6,6,6 104:13,13 105:22,24 106:1,4,8,16 108:11 109:1	109:12,13,18 109:21,25 110:1,7 111:7 114:18 116:18 118:2 121:22 122:13,16 123:16,16 125:4 126:7,13 127:15 128:20 128:21,22 130:25 131:6 131:10,20 132:24 135:4 135:10 136:14 136:19,20 137:1,3,9,12 138:20,22 140:3,19 141:10,13,20 141:22,24 142:9,10 146:20,21 148:24 149:3,3 149:7 151:19 151:21,23 152:16,18 153:15 154:3 154:16,20 155:8 156:6 157:19 158:1 160:14 163:16 163:21,21 164:20,23 166:24 167:4 167:16,17,21 167:25 168:6 168:18 171:19 172:21 173:22 173:25 174:11 174:18 175:3 175:18 179:1,7 179:10 180:1 181:24 183:22 187:17 188:2 188:19,24 189:11 191:5 191:10 195:18
--	---	---	--	--

195:22 197:10 197:22 198:8 198:15 199:2 205:19 206:11 210:5 214:5,9 214:20,22 223:6 226:3,4 226:18 227:4,4 229:21 232:16 233:16,23 236:4,17 240:25 241:24 244:4,9,11 249:7 263:11 263:14,19,20 267:1,17 271:8 271:20,21 272:6,25 273:10,14 274:25 275:2,4 275:6,8,18,25 276:1 277:8,16 278:14 279:21 280:1,9,10 282:6 283:12 284:9,12,13 288:6 290:25 291:16 295:2,6 295:8,10,14,17 297:15 298:1,8 298:9 299:7,25 303:16,23 305:16 306:18 306:20,21 307:6,8,15 308:16,24 309:19 310:12 313:3,5,6,7 320:6,13 321:11,15,20 322:12,15 325:19,20 328:25 329:4,8 329:14 330:2,8 330:20 334:17 334:25 335:6 335:15,16,17	335:19 336:9 339:20 340:5 341:7,7 342:4,7 342:14,22,24 344:20,23 345:9,18 346:1 346:24 347:1,6 cases 33:23 53:4 53:5 60:10 62:25 82:2,4,4 82:5 92:12 93:14 94:1,2 97:14 99:2 100:18 113:5 118:16 163:12 171:5,6,21 175:20,24,24 263:24 265:10 284:3 290:10 292:25 306:2 309:25 334:14 335:24 340:23 341:2,9 Cassidy 54:18,23 55:3 66:14,24 68:3,6 69:3,21 73:3 75:4 86:4 102:11 106:24 112:18 155:22 171:12 173:3 174:9 176:9 182:20 202:3 317:8,11,14,16 317:19,22 319:19,23,25 321:5 322:13 328:18 338:8 349:1 351:2,4 Cassidy's 40:8 75:9 155:18 169:8 174:1 Catch 118:19 categories 82:12 139:6 categorize 264:21 category 84:21	85:9 cause 30:12 50:22 74:7 353:9 caused 314:6 317:23 Cave 24:3,7 28:7 caveat 282:17 CCR 23:24 353:17 ceiling 142:23 Cement 27:19 28:2 99:22 Center 204:22 central 32:5,12 certain 29:1 30:17 88:10 158:12 166:15 174:7,7 187:21 196:4 231:8 279:23 283:5 285:19 292:3 305:3,12 308:5 certainly 30:17 33:3,11 36:11 38:23 39:18 40:25 41:2,11 43:21 50:1 62:2 72:5 76:14 77:21 78:9 80:11 90:15 97:6,15 99:1,7 101:23 127:1 145:6 147:16 147:18 151:25 239:4 263:8 320:11 322:6 322:21 325:17 329:23 330:2 330:18 332:16 332:25 335:7 339:1 certainty 337:12 337:14 Certified 353:5 certify 353:7 cetera 223:22	Chairman 23:18 45:11 57:6,15 57:18,21 58:18 58:24 59:1,5,10 59:12,16 75:23 75:24 89:19 90:23 92:5,20 99:16 108:6,7,8 108:13,16,20 108:25 109:4 109:10,20 110:11,15,24 111:4,10,15,19 112:3,12,21 113:3,8,14,18 113:23 114:14 114:23 115:1,5 115:9,18,23,25 121:14,24 122:3,14,19,25 123:4,13,19 125:19,24 126:4 127:9,12 128:16 129:10 129:19 130:7 130:19 131:25 134:6 148:6 215:25 216:1 224:25 228:22 238:2,24 240:1 267:16 302:3,4 306:8 310:3 315:19,20 348:10,18 Chairman's 323:12 challenge 40:2 52:5 challenged 227:7 Chamberlain 28:11 chance 139:17 253:1,2,3 260:21,22,23 261:20 change 36:12,13 51:16 69:18	103:23 125:13 142:20 149:15 158:9,24 160:11 161:1 168:2 171:25 172:2,10 223:18,20 228:20,22 229:4 300:16 300:22 307:4 310:18 changed 35:22 70:15 159:7 160:17 167:19 167:23 174:10 221:22 303:7 307:1,1 changer 45:24 changes 76:17 151:7 160:9 161:4 221:24 289:8 308:13 318:5 339:25 changing 83:19 177:13 207:8 Chapter 34:11 chapters 73:18 123:17 characteristic 293:5 characterizatio... 304:20 characterize 64:9 322:9 327:19 334:6 characterized 292:2 charge 52:6 85:1 charged 102:20 102:21 111:25 charges 45:21 chart 135:22 155:17 249:11 351:14,23 charts 248:25 253:15 cheap 338:5
--	---	--	--	--

<p>check 88:10 102:24 154:24 155:2,4 254:21 297:19</p> <p>checkbook 112:17</p> <p>checklist 329:9</p> <p>cheers 243:13</p> <p>Chesterfield 287:22</p> <p>Chief 23:17 25:12</p> <p>Chouteau 24:14 26:19 97:21</p> <p>Christina 25:6 27:8 37:10</p> <p>chronic 104:9</p> <p>circumstance 69:19 257:13</p> <p>circumstances 284:17,24 285:19 312:12 346:13</p> <p>cite 148:23</p> <p>cited 329:4</p> <p>Cities 28:12</p> <p>City 23:7 24:8 25:2,9,16 26:14 27:6,11,16 28:8 65:20 239:3 353:15</p> <p>civil 34:14</p> <p>claim 39:5,7 206:5 208:9 222:10,17 224:15</p> <p>claiming 55:18</p> <p>claims 206:19</p> <p>clarify 161:19 163:20 318:16</p> <p>class 244:11</p> <p>clause 45:23 52:1 82:20,22 83:24 85:14 170:8 201:24 202:10 249:23 296:6</p> <p>clear 29:16 40:22</p>	<p>57:9 65:21 75:15 103:16 121:16 128:2 181:17 191:14 192:3 267:16 272:14 338:15</p> <p>clearly 86:25 128:4,6 141:5 294:18</p> <p>client 60:4 196:2 196:10 219:11 219:13 220:25 221:1 239:25</p> <p>clients 29:22 30:21 38:3 81:14 84:14,15 87:9 102:2 108:24 123:7 219:5 240:5</p> <p>client's 151:23</p> <p>close 34:15 55:1 55:6 131:7 135:25 141:12 147:19 183:10 295:16 328:12 333:11</p> <p>closely 328:9</p> <p>closer 135:8</p> <p>coal 201:20,20 202:1,1 309:23 310:12 341:20 341:20</p> <p>coal-fired 97:23</p> <p>Coffman 24:22 27:23,25 28:20 28:21 38:1,2 81:12,13 89:20 90:14 91:19 92:10 93:6 104:15 169:1 237:19 290:3,4 293:16 309:11 315:11 328:16 328:17 338:1 348:3,16 349:3</p> <p>Coffman's 31:7</p> <p>coinciding</p>	<p>177:20</p> <p>Cole 353:4,16</p> <p>colleagues 205:20</p> <p>collect 94:20,21 201:23</p> <p>collecting 236:12</p> <p>collectively 331:6</p> <p>Columbia 24:18 26:23</p> <p>column 48:3,10 251:10 252:14 252:16 254:22 255:3,11,13 256:4</p> <p>combination 234:6</p> <p>combine 178:7 217:3</p> <p>come 43:23 71:19 78:6 79:15 85:5 103:25 113:21 131:7 135:25 156:25 157:3 215:23 223:4 237:12 241:1,4 243:13,15 256:2 261:11 268:2 302:2 307:5 308:7,14 315:18 336:15</p> <p>comes 66:24 73:3 100:17,18 156:18 160:24 177:2</p> <p>comfortable 175:13</p> <p>coming 78:2 85:5 180:8 233:24</p> <p>Comley 27:19</p> <p>commenced 65:7</p> <p>commensurate 104:24</p> <p>comment 34:25 91:2,8 274:8 291:14</p> <p>commented</p>	<p>100:19</p> <p>comments 116:10</p> <p>commission 23:2 25:14,18 27:5 29:16 31:17,17 32:2 34:9,19 35:1 36:7,9 37:18 39:17,18 40:3 41:10 42:13,17 45:17 45:24 46:4 47:1 47:3 48:25 52:2 52:23 53:14,20 54:1 55:9 56:11 56:22 58:4,6,9 58:14 60:2,23 61:5 62:13,19 65:6,12,16,16 66:3,4,10,11,15 66:17 67:3 72:19 73:22,25 74:13 75:18 76:14,17,23 77:1,7 78:17,19 79:3,11 80:17 80:19,20 81:13 81:17,23 82:20 82:23 84:1,17 86:17 87:25 88:8 89:4,12,16 93:4,11,17,23 94:5,10,13,22 96:15 98:10 99:8 100:1,22 101:5 104:5 107:15 110:2,3 110:22 117:15 117:17 118:10 119:17 120:5 120:24 121:2 124:15,17,22 130:24 131:16 132:4,5,8,11,14 132:19 134:18 135:5 136:1 140:20,24</p>	<p>141:13,22 142:23 145:16 148:3,14 151:20 153:25 154:9 156:4 164:20 167:3 167:14 172:11 175:3 188:9,12 188:15,17 189:13,16 190:3,9 193:1 195:11,13 199:13 200:21 214:10 215:3 219:21 224:3 230:8,14 239:12 242:12 244:8,19 249:19 250:17 251:1 252:2 256:18 263:1 269:13,15,22 270:6 271:20 272:6,11 273:2 273:4,8,23 275:12 276:2 276:18 278:7 282:6,18 284:12 290:8 290:12 291:6 292:22 295:4 304:10 309:17 313:2 314:4 317:21 320:16 321:24 332:20 333:7 339:5 343:16 345:14 345:20 346:14</p> <p>Commissioner 45:11 59:19,21 59:22,25 60:11 60:18 61:4,15 62:4,21 63:15 63:19,24 64:21 76:1,2,4,5,21 77:5,14 78:21 78:23,24 86:15</p>
--	--	---	--	---

92:21,22,23,24 92:25 93:1 98:15 99:18,19 116:3,4,9,12,14 116:15,21,25 117:4,7,16,24 118:6,9,14,18 119:8,12,19 120:3,9,14,15 120:18,21 121:1,8,12,17 123:23 124:1,6 124:24 126:21 148:9,22 149:9 149:13 150:5 150:14,23 151:1,9,14,18 152:6,10 153:8 153:10,11,13 153:22 154:8 154:18 155:6 155:11,20,25 225:2,3,5 230:3 230:4 237:8,10 237:11 240:16 241:17 242:3 245:2 247:6,11 274:19,21,22 306:10,11,13 306:14 309:2 315:22,23,25 316:1,3,4 348:10,11,18 commissioners 23:20 41:3 158:9 240:15 245:3 280:16 294:15 316:18 commissions 291:9 293:5 Commission's 31:13 40:18 52:7 65:12,22 71:11 88:25 93:13 98:4 99:10 100:19 103:11 139:25	143:3 190:4 290:21 Commission-a... 46:22 67:21 68:10 commitment 196:2 219:3 225:10 committal 196:10 committed 145:7 commodity 310:6 310:11,15,24 341:20 common 227:6 308:18 311:3 communication 31:16 32:1 36:8 companies 105:8 105:10 292:2 293:7,12,13 company 23:12 24:20 26:6 52:7 65:21 96:12,25 97:13,18 98:21 102:15 104:20 105:4,6 106:14 110:4,8,20 112:8 135:1 162:5 165:16 174:23 178:24 179:4 180:9 193:7,13,14 209:4 210:10 232:21 269:16 277:10 283:4 295:22 302:25 308:11 310:10 313:10 321:12 335:4 company's 39:9 39:21,23,24 96:25 132:1 135:15 139:23 140:4,13,15 144:10 173:18 320:8 322:17	323:21 333:10 336:23 338:24 comparable 89:10 303:3 compare 126:15 130:3 261:9 compared 130:4 233:14 248:25 249:4 255:24 265:11 270:6 304:3 351:17 comparing 127:14 233:16 304:2 comparison 176:13 compel 223:25 224:2,5,11 compelling 52:9 compensation 160:20 competent 61:9 98:9 111:2 competition 35:3 106:15 compile 164:19 compiles 285:9 285:10 complain 146:16 complainant 70:8,11 71:5 72:22 74:1 75:14 170:11 complainants 23:10 26:10,13 28:24 30:10 33:15,17 41:20 43:13 45:9 51:15 54:12 56:20 65:14,18 69:25 70:4 85:8 94:19 96:1,3 97:10,15 98:8 100:8 101:8 107:25 110:19 131:1,7,8,12,17 131:19,22	133:7 141:10 142:8 146:15 146:21,22 147:22 166:23 167:7 192:9 193:23 195:17 195:21 198:7 198:11 230:13 260:16 282:4,7 289:13 315:16 347:14 348:6 complaining 79:20 complaint 26:6 29:24 38:5 57:19 60:1 61:6 65:8,15 68:19 68:24 69:5,19 70:3,20 71:4,9 71:10,15,20,22 71:23,25 72:1,4 72:21,23 73:7 74:2,3,8 76:12 76:24 77:19 79:2,10,14,17 80:3,18 81:22 82:2 93:19 96:13,23 97:16 100:12 101:9 103:13,15 108:2,17 109:8 109:12,21,22 110:7 112:9 120:5 121:3 123:15 126:19 127:13 130:9 130:17 135:15 136:9 147:15 148:3 149:18 153:1 163:16 170:13 171:19 171:21 191:19 193:25 195:7 198:16 205:19 206:11 219:19 221:2 226:3 227:4 229:13	235:1,16 237:3 244:22,25 274:25 275:2 275:14,15,25 276:1 282:20 282:24 283:16 284:21 335:16 335:19 336:6 complaints 45:21 65:11,13 67:1 73:5 83:17 93:15 98:3,6 119:13 220:12 230:25 231:22 232:1 280:23 282:16 306:3 complete 92:18 141:16 145:21 183:8 completed 37:21 244:11 260:25 330:9 completely 33:1 124:14 138:16 139:3 142:14 142:15,16,17 145:24 147:22 217:7 253:17 completes 156:23 complex 326:11 326:13 compliance 110:4 249:22 component 145:15 234:3 234:10 components 49:19 88:17,21 215:6 279:19 comprehensive 39:8,15 52:8 134:19 135:25 192:4 196:1,7 196:19 197:9 197:14 198:2 199:4,11 218:22 219:14
--	---	---	--	---

219:17 220:1,9 220:18 221:4 221:15 225:15 225:18,20 230:10,21 244:10,21 253:7 280:16 280:20,25 281:7 329:21 computer 246:10 con 177:22 concentrate 159:1 concept 213:19 concern 64:15 78:10 94:24 205:19 206:10 206:12 231:3 232:2,4,6,7 concerning 97:22 117:25 concerns 87:2 95:19 226:2 conclude 122:23 concluded 131:11 concludes 50:20 51:3 54:13,20 55:3 99:13 conclusion 65:19 75:21 85:23 177:9 275:5 299:7 325:12 336:15 conclusively 142:2 condition 46:3 52:1 conditions 285:14 305:2 323:24 conduct 110:15 119:4 126:1 192:12 195:6 195:13 197:9 218:18 221:15 282:5 332:17	345:11,16 conducted 118:2 126:1 131:23 253:6 344:12 344:13 conducting 220:8 confidential 30:19 32:3,17 33:5 35:13,22 70:9,24 74:5 83:23 84:11 156:7 161:8,21 161:23 162:5 169:14 170:5 172:3 177:22 confine 89:22 90:3 confirm 227:24 conformance 343:18 confronted 138:11 confused 116:5 116:10,16 121:15 conjunction 181:24 consent 34:1 consented 33:24 conservative 236:21 consider 29:5 35:1 45:18 54:1 58:15 68:20 88:13 97:7 100:23,25 101:15 119:23 122:10 123:10 124:17,20 132:9,15,25 133:8,11 134:13,20 165:10 171:19 225:17 278:24 279:5 285:5 298:12 301:2 338:16	consideration 67:6 96:24 97:5 107:7 146:13 154:10 166:1,8 209:7,13 290:13 327:23 327:25 328:1 336:24 345:21 considered 47:3 51:19 54:14 56:6 57:25 67:14 96:7 100:15 105:9 132:11,24 162:4 171:23 224:15 272:12 273:3,8 276:22 342:15 considering 125:14 279:24 considers 58:5 96:1,13 97:11 98:18 149:4 292:7 consist 159:15 consistency 78:15 consistent 55:13 56:23 78:14 95:18 107:23 251:4 305:11 343:16 345:13 consolidated 38:12 constantly 64:14 254:7 constriction 87:19 construction 278:20 consultant 147:4 207:14 288:1 consulting 281:25 consumer 28:18 73:13 82:25,25 85:2,3 99:9	116:6 334:8 consumers 24:24 27:22,24 32:21 33:13 51:10 67:2 73:15 81:11,14,18,21 82:8 85:6 92:11 94:13 99:10 109:15 119:14 168:25 198:13 237:18 244:2 290:2 309:10 315:10 328:15 contacted 191:5 283:14 contain 46:7 contained 70:15 137:17 318:8 containing 253:4 contains 73:17 73:21 contemplate 220:11 contend 38:23 60:4 170:20 contested 188:18 context 35:18 36:4 98:16,19 98:25 106:22 107:23 135:6 277:24 278:8 Continental 27:19 99:23 continually 279:17 continuation 39:21 continue 50:22 103:10 115:7 200:24 279:10 continued 94:20 204:11 242:18 275:16 294:11 continues 47:7 181:7 continuing 51:21 100:13 108:10	114:20,22 131:2,9 133:21 continuously 214:25 contracted 341:18 contraction 164:1 contracts 201:20 201:21 310:15 contrary 61:14 131:12 140:9 contributes 91:6 control 83:1 91:9 91:12 92:8,11 92:13,15,18,19 144:8 controls 83:18 conundrum 307:9 conversation 302:10 converse 91:11 Conversely 307:6 308:19 convert 304:21 convey 312:23 convincing 75:15 Cooler 49:25 coordinator 322:12,16 copies 266:18 288:9 copy 58:23 59:14 180:16 185:25 253:24 297:11 297:12 core 30:3 corporate 308:5 corporations 240:5,6 correct 34:18 36:18 44:16,19 57:11,19,20 76:7 79:5 89:12 104:2 108:12 115:8,22,24
--	---	---	---	--

116:18,19	305:23 306:7	192:24 196:1,7	67:3 73:13	132:7 287:14
117:22 119:7	314:11,18	196:19 197:9	81:11,15	328:24
122:2,18	318:12 319:3	197:23 198:2	109:15 168:25	courts 34:14
150:13 152:9	320:9,13,17	199:4,11 200:4	198:13 237:18	86:20 95:5
158:20 159:25	321:9,16,22	200:8 218:15	290:2 309:10	100:18,24
161:11,21	322:2 324:15	218:18,22	315:10 328:15	107:17 122:9
162:13 167:9	327:17 328:5	219:15,17	Council's 28:18	cousin 97:19
169:22 170:14	328:22 338:20	220:1,9,9,18	32:21	cover 107:18
171:15,20	339:18,21	221:4,15,20,20	counsel 25:6,6,7	covered 136:7
172:14,22	340:1 345:7	223:17 225:12	25:7,10,12,12	co-counsel
175:4,5,21	346:1 347:7	230:10 234:7,8	25:13,13 27:7	130:23
178:21 179:5,6	353:12	238:25 239:11	27:10 30:6	created 296:4
180:24 181:1	corrected 318:1	239:15,19,25	32:21 37:6,11	credible 284:22
181:12,13,20	corrections	240:21 244:11	42:11 51:12	290:9
183:2 186:12	161:13 288:25	269:13,16,19	65:4,10 70:1,21	credit 155:4
187:10,14	289:2 318:4,6	281:19,25	70:23 77:10	crept 102:25
188:3,4 190:21	correctly 137:21	285:2 290:22	85:4 112:10	critical 313:9
191:6,11,22	137:24 138:2	292:23 293:6	169:3 170:10	criticized 56:7
192:14 196:23	151:5 193:16	293:12,14,23	198:12 218:24	cross 185:21
196:24 198:20	193:17 196:12	294:2,16	224:21 237:20	248:11,13
199:20 200:5,9	196:15 198:4	298:15,24	244:24 293:18	254:11 257:17
200:13 201:3,8	199:24 207:10	299:5,15	309:12 315:8	312:24 314:22
201:9,17	210:22 218:11	307:14 308:10	327:7 329:1	cross-examinat...
202:17,18	300:12 301:21	308:16 309:1	counsel's 70:22	162:23 163:3
203:8 204:18	corresponds	310:1 312:19	79:1 329:14	169:5 179:15
207:9 211:6,11	252:14	326:11 329:7	counted 164:7	180:15 185:22
211:12,16,17	cost 39:1,8,15	329:22,25	country 101:13	246:7 253:14
213:14,25	60:24 65:25	330:7 331:13	County 109:16	289:23 290:4
214:2 215:5,6	88:17 117:25	331:14,22,23	353:4,16	293:19 294:24
228:18,19	125:6,8,9,12	332:8 337:3,12	couple 28:16	297:6 315:6
230:19,20	126:1,7,17	340:15	57:6 60:22 76:6	316:14 319:19
231:10 233:8	127:8 129:9	costly 219:15	89:19 113:6	319:22 327:7,8
238:21 242:9	130:3,5,10,13	costs 67:15 92:18	114:4 124:12	328:17 338:7
242:16,22	130:14,14,18	94:17 129:16	139:14,18	347:13 348:8,8
245:19 247:15	131:23 132:16	133:13 134:9	150:24 186:3	348:9,9,16,16
247:17 248:23	133:25 134:3	134:13,20	216:4 238:25	348:17,17
249:2,5,9,13	134:19 135:6,7	135:1 144:17	245:1 290:3	349:2,2,3,3
251:12 262:20	135:25 136:3	146:1 201:23	302:8 311:12	cross-examine
264:1,12 265:7	138:7 140:15	202:17 212:22	course 37:19	40:2 253:3
265:8 266:6	141:12 142:7,9	232:19 251:11	38:25 41:2	260:21
267:19 269:9	145:17,18	268:21 305:5	42:12 124:25	crux 32:23
269:23 274:17	146:12,19,25	307:10,13	245:10,12	crystal 128:2
288:16,19	147:2,6,12,20	308:18 313:11	253:19 260:16	CSR 23:24
292:9 299:13	152:8,23 153:4	341:2 346:2,9	265:5	353:17
299:21 300:15	156:13 173:2,6	346:11 347:5	court 34:13 44:7	cure 106:11
300:18,24,25	173:18 186:19	Council 24:24	65:21 67:4	curious 116:13
301:22 305:9	192:1,13,21,23	27:22,24 51:10	109:16 113:1	Curiously 66:16

<p>current 33:5 39:9 41:4 52:14 55:24 61:19 67:24 68:9 74:23 75:7 83:13 129:9,14 129:15 130:2,3 130:4,5 131:2,3 131:10 136:23 147:24,25 152:13 153:21 180:23 181:3 192:22 193:2 211:20,21,22 221:20,20 285:2 292:22 292:23 293:6 293:11 294:1 294:15 298:15 298:24 299:5 299:15 301:5 308:10 312:19 327:24</p> <p>currently 51:5 52:13 83:14 86:10 87:16 90:8 129:16 136:17 141:2 153:23 175:11 215:1 279:20 298:17 299:2 301:11</p> <p>Curtis 28:13</p> <p>customer 60:15 71:1,10 72:6,13 73:8,11 74:17 76:20 93:14 97:20 98:3 137:24 220:4 244:23 282:23</p> <p>customers 32:24 65:9 66:12,17 68:17 70:17 72:5,13 91:9 94:13 95:2,11 95:23 98:1,5 170:15 195:20</p>	<p>233:9 243:20 277:8 280:22 282:15 296:14 302:21 310:14 312:5,9</p> <p>cut 136:12,19 137:1,9 280:12</p> <p>cutoff 98:18 227:16,19,21 228:1,15 241:15 278:19 278:23 279:4 279:23,25</p> <p>cuts 148:16</p> <p>cycle 293:2</p> <p>C-a-s-s-i-d-y 317:17</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 26:1 348:1</p> <p>DANIEL 23:19</p> <p>data 34:21,22 67:10,11 74:5 106:18 125:7 146:17,18 147:17,18 152:7,11,15,17 152:19,21 153:2 165:19 170:2,9 171:2 172:4 178:23 180:5,10,21,22 180:23,25 181:3,4 182:19 192:10,19 193:4,24 194:2 194:19 195:3 200:22 201:1,2 201:3 203:3 204:2,10 208:15 215:16 221:25 222:8 222:13 227:3,8 232:13,14 237:4 240:15 240:23 241:12 242:5,8,13,15</p>	<p>244:18 246:4,6 249:12 254:23 255:24 259:21 260:9,9,14 261:18 264:9 275:10 283:24 285:9 286:8,14 294:14,17 351:6,10</p> <p>date 55:23 94:9 131:10 136:6 136:11 137:7 138:8 175:8 194:2,23 195:2 227:16,19,21 228:1,15 229:8 252:14 256:16 300:4 337:19 342:13</p> <p>dates 144:2 231:8</p> <p>dating 167:17</p> <p>David 104:3</p> <p>day 153:1</p> <p>days 43:20 44:1 150:15 342:7 342:10</p> <p>deal 28:18 34:14 43:16 44:20 80:18 93:20 156:17</p> <p>dealing 33:9 82:17 109:6 178:12 212:9 213:12 225:10 231:21</p> <p>deals 32:13 34:14</p> <p>debt 234:6 313:11</p> <p>December 32:10 34:2 50:19 54:7 54:8 67:19 95:3 126:12 132:2 133:13 139:1 143:18 146:14 151:5 158:16 159:1 166:16 167:8 168:9</p>	<p>174:12 175:8 180:23,25 181:4,12 186:14 200:5,9 200:12 201:2,6 201:8 204:15 205:1,11,14 206:20 207:23 228:1,10 242:15,24 243:2 269:6 271:19,21,25 272:2,4,8 278:22 285:4 285:11,14,21 286:10,12 340:7,11</p> <p>decide 54:1 65:13 101:4,21 103:4 112:25 121:2 130:25</p> <p>decided 128:21 138:23 271:20 272:6</p> <p>decides 101:5 119:18</p> <p>deciding 338:17</p> <p>decision 48:20 77:23 86:21 88:25 100:20 103:11 110:9 132:8 199:10 219:21 226:19 231:15,24 232:4 244:3 271:24 280:24 346:14</p> <p>decisions 52:23 100:19 111:1 292:10,18</p> <p>declared 339:6</p> <p>declassification 38:22</p> <p>declassified 28:25 29:19 30:9 39:7 84:18 318:1</p>	<p>declassify 28:18 33:25 34:1</p> <p>declined 247:19</p> <p>decrease 60:5,10 60:12 84:7 86:12 110:5 130:17 142:12 142:18 148:20 181:19 185:9 331:12</p> <p>decreased 192:25</p> <p>decreasing 331:22</p> <p>deeper 170:21</p> <p>defend 138:13</p> <p>defense 38:5</p> <p>deferred 54:24</p> <p>deficiency 151:8</p> <p>deficient 133:11</p> <p>define 77:6,7</p> <p>defined 62:2 77:13,15</p> <p>definite 94:9</p> <p>definitely 92:18 171:23</p> <p>definition 62:5 86:24 107:9 198:2</p> <p>degree 337:11,14</p> <p>delays 275:13</p> <p>demand 72:9</p> <p>demanded 103:23</p> <p>demonstrate 113:9</p> <p>demonstrating 223:14</p> <p>demonstration 52:9</p> <p>denied 42:15 74:3 270:25</p> <p>deny 47:5 63:10 94:13 95:11,23 148:3</p> <p>depart 91:18 112:12</p> <p>department</p>
--	---	--	--	--

<p>333:1 dependent 295:25 depending 76:18 143:14 310:22 depicted 206:2 206:25 depicting 48:14 depose 300:4 deposition 181:23,25 185:25 193:9 196:5,14 197:20 199:3 199:10,17 206:9 210:13 212:5,15,18 222:25 253:7 276:5,7,12,16 276:23 277:13 278:3,10 279:7 280:2,6 281:2,9 281:15 282:25 283:4,7 297:10 300:1 311:21 311:21 312:17 deposits 137:25 depreciation 151:1 178:19 described 110:5 192:5,14 206:13,22 218:22 219:18 257:13,18 277:14 310:3 324:4,8 describes 225:21 describing 321:9 description 199:22 231:21 264:8 descriptions 173:21,21 deserve 33:13 73:15 design 60:7 designated 47:5</p>	<p>designed 308:4 330:14 339:11 despite 66:23 82:7 103:15 321:17 detail 144:1 165:3 235:21 detailed 56:4 69:9 165:13 170:23 173:12 173:18 330:6 detecting 114:15 determination 55:24 63:2 74:13 117:21 192:22 193:2 199:13 290:16 determine 39:3 277:4 determined 54:6 67:5 132:8 280:21 320:16 determines 76:23 determining 61:6 67:12 71:4 129:20 149:17 209:7,14 326:10 329:21 detriment 72:9 detrimental 72:5 72:17,21 74:5 Deutsch 25:1 27:15 devastating 72:20,22 develop 146:24 324:2 developed 171:7 337:2 developing 192:1 development 147:2 deviating 125:21 devote 98:20 338:17 Diana 24:2 26:12 194:20,21</p>	<p>Diane 28:6 diff 189:21 differ 99:12,12 280:9 difference 66:20 72:25 126:21 221:19 223:15 247:8 259:5,16 311:17 351:23 differences 321:11 different 35:15 76:19 79:12 92:15 97:12 98:5,25 109:7 109:12,18 110:14,16,17 110:19 115:11 116:16 123:7 123:17 126:18 138:18,18,24 139:3,7,9 156:12 164:9 188:21 189:8 212:6,6 238:8 250:5 305:6 311:20 differently 189:22 190:16 differing 47:17 66:24 73:4 difficult 147:3 197:8 198:3 207:7 211:2 difficulties 238:24 diligence 125:17 dip 257:3 258:10 258:12 direct 32:6 40:1 46:17 49:16 50:4,13 135:13 138:4 139:10 150:7,21 157:11,25 158:5,23 159:8 159:20 165:9</p>	<p>169:16 170:18 170:24 172:1 172:11 176:13 186:6,11 188:1 191:24 207:1 213:23 214:1 263:13 266:21 266:25 267:17 287:17 288:3 288:25 297:25 313:22 317:12 342:6 348:7,15 348:23 349:1 350:3,7 352:1 direction 331:15 346:18 directions 164:8 directly 32:24 84:18 disable 36:4 disabled 147:11 disagree 31:6 42:18 47:23 88:5 91:14 92:9 150:13 241:14 276:24,25 disallowance 160:20 341:8 disappear 284:16 disclaimers 31:21 36:3 disclosing 103:2 disclosure 224:1 discontinue 309:17 discount 227:24 discovery 70:24 74:14 103:3 147:16 172:6,8 172:13 192:11 195:6,13 260:22 261:2 261:13,21 282:5,19,23 discrepancy 233:19 discretion 123:11</p>	<p>discuss 84:14,15 94:1 332:5 discussed 29:6 29:17 30:25 40:8,9 46:16 158:17 197:15 199:9 200:1,3 205:20 206:15 211:3,4 212:5 213:19 218:24 279:3,16 280:15 281:14 281:15 320:5 328:21 330:4 332:12 discusses 144:1 discussing 30:7 77:16 134:6 324:23 discussion 41:7 45:2 84:20 121:19 162:2 174:9 196:13 240:2 241:16 241:18 257:16 276:24 277:25 303:15,17,20 307:11 320:3 343:5 discussions 109:17 140:21 disgorged 235:2 displaying 48:5 dispute 76:8 83:7 83:10 178:3 306:2 disregard 108:18 disrespect 274:19 dissipate 284:15 distance 310:20 distinction 118:22 123:2,4 123:15 304:5,6 304:12 311:15 distinctions 304:19</p>
---	--	--	---	--

<p>274:20 distribution 162:2 237:6 292:2 293:13 318:23 dividend 307:5 308:20 docket 195:12 282:11,13 document 164:1 183:4,13 251:24 252:3,4 256:12,20 261:7,8 289:4 314:17 321:7 321:10 332:20 332:21 documentation 169:13 documents 32:11 70:9 74:15 96:10 155:12 252:19,21 253:4 260:14 261:6,11,24 262:12 dog 45:12 doing 24:20 26:6 129:20 136:15 147:12 191:9 222:24 238:24 240:20 254:14 325:15 dollar 139:7 148:12 189:19 330:22 333:17 dollars 46:24 47:13,21 48:11 58:21 60:17 86:25 87:1,4,7 87:8,11 143:24 148:13 183:2 189:15 190:9 203:20 252:11 252:12 255:12 345:4 double 335:20</p>	<p>doubt 195:4 Downey 24:7 26:11,12 28:5,6 33:16 43:12,17 44:3 45:10 57:7 57:12,17,20 58:1,24 59:3,7 59:11,24 60:8 60:14,20 61:8 62:1,10,25 63:17,23 64:1 64:24,25 76:6 78:11 104:2 157:11 161:17 161:22 162:9 162:13,25 182:4 183:7,12 184:17 237:15 243:6,10,18 245:1,8,13,16 245:20,24 246:21 247:5 248:3,10,17,23 249:2,5,9,13,15 253:18,23 254:18 260:2 261:4,5,25 267:4 271:6 286:21 289:24 309:7 315:15 315:17 347:15 348:2,7,12 Downey's 235:9 Downey271 348:14 downward 81:24 176:3 294:10 294:11,18 Dr 246:16 313:23 314:1,5 315:21 drawn 304:13 drew 311:15 driven 308:13 driver 172:5 208:10 drivers 82:18 driving 84:3</p>	<p>346:8,9 drop 94:17 dropped 56:1 64:5 DRs 224:2 due 38:4,11 73:9 125:17 156:24 278:21 dues 153:17 154:11 187:21 dump 253:4,10 260:24 Dustin 25:6 27:9 d/b/a 23:13</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 26:1,1 348:1 350:21 353:2,2 earlier 36:17 58:19 72:24 88:6 126:5 139:14 175:19 257:13 263:2 283:23 303:17 346:2 earliest 95:15 342:13 early 253:25 284:8 earn 65:25 107:19 134:9 135:2 212:22 213:5 304:11 earned 30:23 40:15 46:9 47:13 48:1 126:16 214:10 249:4 251:7 258:21 259:4,6 259:6 262:25 264:10 267:2 268:14,18 270:9,11,20 303:21 304:3,8 304:21,22 305:8,18 351:17</p>	<p>earning 49:11 90:9 126:11 128:3 141:25 235:6 286:14 286:19 304:9 321:19 earnings 31:18 33:11 55:5,9 61:18,20,22 62:23 65:8 67:12,13 69:7 69:13,22 70:6 71:18 75:11 76:9 77:17 90:16 127:6,23 128:3,11,12 129:22 131:14 132:2 135:16 135:20 139:9 142:6,25,25 143:1,12 156:5 156:12 158:13 179:4 181:6 207:24 232:25 233:3 235:24 236:4 257:18 258:5 269:21 270:2,6 276:21 277:10,22 282:16,24 284:14 285:5,9 306:3 336:6,23 338:19 earns 209:4,11 easily 36:23 72:20 169:15 easing 307:18 308:3 East 25:2 27:15 easy 33:18 48:8 111:24 158:22 Economist 314:4 economy 307:19 308:2 economy's 307:25 EC-2014-0223</p>	<p>23:11 26:8 Edward 24:7 26:12 28:6 eddowney@br... 24:9 effect 37:3 70:19 74:5 77:1 83:25 90:1,8,12 93:24 94:11 98:12 126:13 134:11 153:24 154:2 154:14,17 160:16 212:21 212:24 229:1 254:25 271:22 276:20 296:25 312:15 323:17 325:10 effective 309:23 effectively 41:6 310:1 effects 278:24 effectuate 199:14 219:14 244:25 efficiencies 232:18 234:20 234:22,25 236:22 effort 114:11 eight 47:25 48:17 93:17 258:22 either 63:21 125:2 143:11 153:7 166:18 187:3 193:7 236:9 253:21 273:3 300:23 305:4 309:21 331:25 346:16 electric 23:12 24:20 26:6 28:23 46:4 89:12 292:1,8 292:16 293:12 294:9 296:5 334:8 electronically</p>
--	---	---	--	--

<p>electrostatic 144:5 204:21 223:22 elements 339:16 344:11 eliminate 166:8 166:15 eliminated 312:16 eliminates 146:12 elimination 137:23 ELMO 135:11 embedded 313:11 emotional 227:10 employ 61:6 76:7 employed 287:24 287:25 314:2 317:18 employees 72:8 202:13 239:5 EMS 188:15 enact 110:5 encompassed 222:16 encompasses 344:5 encountered 84:9 encourage 64:2 248:11 ended 136:18 138:25 139:1 263:20 end-of-period 204:12 Energy 204:21 engage 334:20 engaged 118:16 enjoy 70:23 95:2 enjoyed 94:16 235:5,11 enjoying 233:25 235:7 enough's 235:19</p>	<p>ensure 302:19 entered 96:12 entering 26:21 enterprise 303:6 entertain 99:15 entire 32:6 132:15 entirely 98:25 124:22 entirety 98:3 entitled 63:11 95:12,23 entity 220:8 entries 26:9 343:20 entry 165:7 equal 83:4 143:2 331:24 equates 259:16 equipment 144:8 equities 252:10 291:8 equity 30:24 46:9 46:21 47:12,18 47:20 48:2,12 49:12 50:15,25 51:3,6 52:15,16 52:17,19 53:1,5 53:9,12,15 54:6 56:12,25 57:2 61:21 66:2 88:20,20 89:1 104:1,5 106:12 131:15 139:23 139:23 140:5,8 140:12,15,20 140:24 141:1 142:20,22 175:16 176:2 206:6 211:10 211:16 247:22 248:1 250:24 251:8,16 254:3 254:6 255:4 256:13,14 258:9 259:2,11 259:20 261:10</p>	<p>264:10 273:19 274:9 286:15 290:14,17 291:7,13,25 292:8,11,15,21 292:23,25 293:1,6,10,12 293:14,23 294:9,16,19 295:5,20 298:15,19,25 299:2,5,15 302:20,23 304:3,8,10,16 304:21 308:9 308:10,17,18 309:1 311:22 312:11,18,20 312:21 313:3,9 313:12 equity/cost 89:5 errata 287:7 288:23 289:2,9 352:1 error 44:15 246:11 248:6 errors 137:17 ER-2007-0002 263:19 342:23 ER-2011-0028 263:21 ER-2012 126:13 127:15 ER-2012-0166 106:4 126:7 129:21 167:21 188:2 213:25 214:5 215:4 263:14 267:1 269:15 287:1 295:9 297:15 ER-2012-0166... 352:4 ER-2013-0166 90:1 ER-2014 128:21 ER-2014-0258</p>	<p>37:13 105:23 117:15 342:22 escorted 97:24 especially 30:2 78:17 essence 28:22 essential 103:2 132:23 325:3 essentially 41:8 61:23 141:15 197:23 223:13 establish 73:18 226:19 242:9 established 213:1 213:3 221:23 226:17 232:15 234:12 293:2 establishing 30:14 estimate 298:14 299:4,14 307:13 312:19 estimated 299:17 302:24 estimates 298:24 308:9 estimate,unless 312:11 estimations 70:15 et 23:9 223:22 ET-2014-0085 183:23 evaluate 180:8 evaluated 68:23 68:24 71:15,16 evaluation 69:1 evaporate 117:13 evenhanded 81:23 89:16 evening 37:9 event 51:15 127:5 147:3 everybody 115:11,19 248:11 everybody's</p>	<p>106:14 evidence 29:5 34:3 39:13,17 40:1,4,19,24,25 41:1,15 42:4,10 47:10 52:2,21 57:22 61:10,13 61:18 62:19 66:7,19 67:7 72:24 73:25 74:9,21 75:2,13 75:15,17 80:21 85:17 87:13 89:13 95:25 97:10 98:7 100:13 103:16 111:2 117:20 119:2 121:18 122:21 126:10 131:6 133:15 140:3,18 146:20 147:25 162:21 184:18 208:23 209:1 215:22 247:4 267:10 271:3 289:21 291:16 292:5 293:9 315:4 317:6 318:21 319:17 327:5 348:6,22 evidenced 55:20 evidentiary 23:5 26:2 37:23 199:7 347:21 ex 65:20 67:2 exact 60:19 193:5 212:1 227:5 261:12 276:23 exactly 73:8 83:13 113:23 188:5 189:9 304:18 examination 41:2 157:11 242:4 243:18 271:6 287:17</p>
--	--	---	---	--

<p>311:11 313:22 317:12 348:7 348:12,13,15 348:20,23 349:1 examined 120:1 269:13,15,19 example 93:20 128:2 136:21 149:22 152:14 152:16 154:2 193:11 284:23 296:6 exceedance 47:18 exceeded 48:12 259:11,19,22 exceeding 66:1 exceeds 46:23 61:20 62:8 exception 34:12 335:11 excess 55:5,8 90:9 141:25 209:11 214:10 249:11 252:9 255:22 263:1 277:10,22 337:9 351:21 excessive 61:22 62:23 65:8 76:9 77:17 258:5 exclude 165:25 166:4 excluded 97:5 excludes 292:1 excluding 292:3 292:10 excuse 37:1 204:1 342:19 excused 27:20,21 28:3,4,10,13,14 99:23 124:7 156:21 exercise 325:6 326:12,14 exercises 114:4</p>	<p>exhaustive 269:13 exhibit 45:4 59:4 59:15 157:21 159:12 162:10 162:20 182:11 182:14 185:19 194:4,10,14 215:14,21 245:15,21,22 245:25 246:22 246:23 247:3 248:4,5,6,12,13 248:18,19 249:20 250:9 251:19 252:20 255:15,17,19 255:21 256:2,5 256:6,9,21,24 257:21 258:15 261:8 262:14 267:23 268:1,9 268:13 271:2 287:1,1,3,6,9 287:15 289:5 289:20 314:8 314:21,23 315:3 316:23 316:25 317:5 317:24,24,25 318:1 319:16 321:2,6 327:4 350:2,4,6,8,10 350:12,14,16 350:18,20,22 351:1,3,5,7,9 351:12,14,16 351:18,20,22 352:1,3 exhibits 44:25 161:18 249:17 260:3 261:19 262:13 270:14 270:25 288:10 289:13,14 318:15 350:1 exist 71:11 244:6</p>	<p>existence 91:4 98:4 179:8 existing 140:7,11 152:18 187:3 exists 30:12 39:14 expansive 70:24 expect 49:24 50:1 73:7 86:14 104:24 178:8 328:8 expected 61:22 68:13 114:22 115:6 expecting 90:24 145:20 expedited 125:16 147:1,13 198:7 230:18 231:3 231:12,13 expenditures 55:17 56:1,17 57:23 58:15 64:11 182:24 240:20 340:6 expense 92:7 146:6 167:12 167:20,24 168:5 173:15 173:17 192:21 192:23,24 237:6 277:17 345:18,24 expenses 58:7 64:16,17 85:3 87:19 97:2,3 107:19 132:15 136:16,22 164:3 166:10 187:8,14,20 188:23 213:2,4 229:2 234:5 235:25 237:1 277:2,6,9 305:1 305:3 323:21 325:7 339:12 experience 99:1</p>	<p>163:9 164:18 168:7,18 171:4 176:1 196:23 197:4 208:17 208:19,22 220:23 230:25 231:21,25 282:20 294:5 325:25 326:8,9 334:13 341:17 341:22 343:1 experienced 134:2 147:9 196:25 202:12 experiencing 294:6 expert 40:17 104:3 149:16 151:17 168:3 306:17 307:1 expertise 147:8 208:19 219:6 experts 147:9 explain 103:14 206:18 207:13 274:25 276:10 276:17,18 278:16,17 283:6,17,20 285:7 311:17 explanation 35:18 293:8 303:24 explanations 31:21 221:23 explicit 113:15 309:20 expressed 206:10 extended 230:22 230:23 extensively 218:14 extent 159:6 196:3 239:14 285:8 303:11 310:9 344:4 extenuating</p>	<p>312:12 external 63:20 extra 47:15 extraordinary 324:1 extremely 37:7 147:1,3,13 197:8 198:3 326:13 eye 146:12 e-mail 194:15,17 194:24 215:16 351:8</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>F 24:7 353:2 FAC 45:23,24 46:3,13 91:2,8 91:13 104:17 105:4 170:7,15 171:9 271:15 272:5 273:23 274:2,3,16 309:18,21,22 face 35:2 70:17 105:6 faced 338:17 faces 104:20 105:5 facilitate 32:1 facilitates 31:16 fact 32:23 35:1 39:6,14,14,23 39:25 40:6,7 41:2 42:7,20 49:1 58:8 70:13 77:8,25 95:21 103:16 107:6 122:20 127:1 143:7 147:11 172:6 173:2 184:20 198:10 205:23 208:8 209:17 210:2 212:16 232:11 247:13 254:24 257:16 268:11</p>
---	---	---	---	---

269:20 270:20 273:8 275:12 291:17 320:5 320:11 321:20 factor 57:24 58:2 112:10 149:25 153:23 171:23 175:7 226:4 247:21 294:3 345:20 factored 216:16 factors 33:10 51:16,19 53:25 54:14,15 56:6,7 57:10,13 58:6 63:21 66:25 67:6,24 68:5,20 68:22 69:2 71:14 73:4,17 73:23 74:6,11 74:18,22 75:4 75:16 77:22 79:7 80:19,20 82:21 83:6 85:12,18 87:6 88:16,16 90:20 91:25 92:3,4 96:1,6,7 97:11 100:15,16,23 101:1,2,3,5,16 101:20,22,23 102:8 103:3,6 108:22 110:23 110:25 111:11 111:16,20 112:2,14,19 119:17,21 121:25 122:10 122:23 123:11 124:3,14,18 125:14 132:9 132:10,23 133:1,1,9 141:15 149:4,6 149:16,22 151:19 152:1 172:21 174:18	209:19 210:18 211:15 232:9 232:11 244:14 244:16 270:10 270:13,17 285:5 324:24 325:4 328:1,22 329:5,19 335:7 336:25 344:7 345:9,12 facts 55:20 225:25 226:21 310:18 fail 74:8 failed 147:22 fails 68:19 131:17 fair 56:24 89:9 107:20 115:14 190:18 193:13 197:21 201:8 213:5,8 217:1 239:21 269:2 270:14 290:7 322:9 330:24 331:17,19 332:10 336:17 337:6 fairly 169:15 177:12 326:11 328:12 334:5 fairness 49:13 fall 82:12 144:21 144:22 298:23 311:22 falls 89:6 131:23 298:21 301:7 302:23 false 189:1 325:11 familiar 181:22 239:1 296:7,19 343:11 far 93:15 101:19 115:10,12,20 120:8 131:23 138:8 145:19	214:13 245:5 266:8 329:16 332:7 333:16 337:19 343:1 345:6 fast 333:3 347:12 fatally 133:11 fault 125:15 favor 30:1 36:12 91:23 312:7,9 344:23 346:16 346:17 favorable 260:15 261:18 favorably 100:20 favours 34:10,15 February 191:19 191:21,22 195:7 272:8,9 283:16 Feddersen 23:24 353:5,17 Federal 307:17 308:1 feedback 174:22 feel 102:4 229:7 feeling 43:22 felt 80:20 175:13 322:16 fight 40:23 80:11 154:22,23 figure 33:22 105:21,25 106:25 107:2 135:21 177:6 226:10 323:16 figured 153:16 figures 50:12 127:6 255:13 file 23:11 26:7 35:17 45:21 46:5 49:9 58:11 79:25 80:3 81:21,25 83:20 83:21,22,23 84:7 98:5 105:23 109:6	109:25 110:4,9 123:16 139:17 163:21 191:22 213:25 214:5 215:4 263:14 284:9 334:16 334:17 335:14 335:17 342:14 352:4 filed 28:16,19 31:5,21 35:10 35:15,16 37:7,8 37:19 38:9 40:7 42:8 43:2 61:16 69:5,20 82:2,4 83:17 85:8 95:14 97:16 105:22,24,25 134:17 135:9 136:9 138:15 139:15 140:22 140:22 147:15 157:18 162:11 191:9,19 193:25 195:7 198:16 224:2 226:17 252:24 260:11,19 266:24 271:15 271:17 272:20 283:16 284:21 284:25 285:22 321:10 334:25 335:4,9 342:7 346:25 347:6 files 342:3 filing 35:23,25 36:5 37:13,13 37:15,16 41:4 71:9 79:23 94:6 109:21 134:18 134:23 135:15 139:13 142:10 168:19 171:19 208:6 284:4 285:21 342:21 342:24	filings 96:19 164:20 285:21 292:3 final 144:7 327:11,15 finally 34:23 133:25 137:16 143:16 146:5 223:10 financial 113:21 164:13 343:15 344:5 find 38:21 39:5 48:3 58:9 77:8 85:3 89:3 113:1 120:5 149:9 155:20,25 169:18 194:18 219:13 226:1 227:20 242:25 251:15 finding 61:14 66:3,9,14 72:1 75:19 311:22 findings 70:22 181:7 290:14 292:22 294:15 finds 40:13 fine 177:24 250:21 341:13 341:13,15 346:7 finger 43:19 fingertips 340:11 firm 239:8 281:7 353:6 firms 282:1 first 28:17 29:6 29:18 31:4,6 37:18 38:1 48:19 58:22 62:17 69:5 70:7 71:6 90:18 91:13 131:21 135:24 139:16 139:20 141:11 144:4 153:1
--	---	---	---	--

169:11,23 170:12 191:5 194:1,2,18 195:2 226:3 246:5 252:14 253:23 262:23 262:24 283:13 291:5 292:6,12 294:12 313:17 334:23 fit 230:17 five 98:20 118:5 120:23 127:1 136:8 139:5 171:14 325:15 347:12 five-month-long 69:13 fix 138:14 fixed 310:14 flat 260:8 flip 78:3 115:1 236:10 334:3 floor 142:24 flowing 232:20 focus 236:20 271:19 focuses 58:7 folks 40:2,2,3 82:2 follow 71:23 109:11 120:15 120:19,21 123:14 222:24 276:5 278:7 313:4 329:20 followed 222:2 332:19 following 51:7 246:13 247:10 follows 157:10 287:16 313:21 317:11 follow-up 224:2 follow-ups 152:21 forced 91:10	foregoing 353:12 forget 123:21 240:15 form 40:5 129:2 129:3 249:12 forma 117:12 formally 268:2 format 165:1 222:12 forms 192:10 formula 88:17 formulate 165:15 forth 36:24 38:11 119:2 210:9 257:14,15 281:10 301:1 353:10 fortunate 171:8 281:18 Fortune 240:5 forum 135:4 forward 66:6 78:2,16 82:22 85:13,16 92:2 127:19 151:6 151:13 159:4 210:5 257:19 303:6 329:15 forward-going 34:19 forward-looking 126:22 134:7 found 106:6 108:11 123:17 222:25 290:8 290:12 293:6 305:15,16 foundation 254:13 founded 122:7 four 29:8 118:4 198:15 325:15 335:25 fourth 95:1 191:10 283:15 342:13 frame 67:22	71:21,23,24 125:5 197:10 229:19 230:18 278:22 frankly 86:23 free 36:8 40:24 frequently 326:1 339:2 Friday 37:6 friendly 179:16 front 80:17 85:17 88:18 90:20 100:21 101:7 101:22 106:18 111:12 112:19 121:18 122:1 122:17,21,24 152:2 157:22 219:24 220:19 274:1 frustrate 29:10 frustrated 29:22 fuel 45:22,23,25 52:1 64:10,15 82:19,22,24 83:24 85:14 91:9,12 92:18 104:17 170:7 201:24 202:10 249:23 272:17 281:18,25 296:6 310:1 318:22 341:18 full 54:13 69:13 69:22 70:12 71:19 72:10 73:12 74:19 79:4,11 80:14 88:14 93:4 101:25 102:14 119:25 120:22 120:23 121:10 131:23 135:6 138:7 141:12 142:9 146:25 185:11 192:1 192:13 197:23	216:8 218:15 218:18 230:10 235:25 238:4 238:25 239:19 269:16,19 313:24 329:7 329:21,24 331:14 332:9 337:3,12 345:8 345:11 353:12 fully 55:1 118:15 135:5 344:3 346:4 full-blown 57:11 88:7 97:13 98:21 118:1 338:18 function 103:2 fund 219:12 fundamental 31:10 141:15 fundamentally 91:18,20 funds 85:5 further 32:18 57:3 64:22 69:9 78:21 90:5 153:9 185:13 185:21 217:2 262:11 271:6 280:11 281:10 282:8 286:22 294:20 297:3 301:25 313:14 326:20 328:13 330:17,17 333:19,24 334:10 348:12 348:13 future 34:21,22 36:1,5,21 38:7 39:22 55:19 56:16 57:23 58:15 63:8 87:3 88:1 95:22 97:22 107:7 114:8 115:7	117:12 132:21 134:10 146:4 147:25 153:16 154:10,12 177:16 179:24 212:12,20,23 213:11 323:24 325:9 339:15 <hr/> G G 26:1 gain 221:7 303:12 game 45:24 Gary 56:3 137:19 181:23 325:21 350:11 gas 118:16 310:12 gee 98:22 general 31:15 32:2 34:10 36:10 68:25 71:16,24 97:3 98:2 105:8,23 193:11 339:7 generally 84:16 164:11 196:21 197:3 232:1 257:12 271:17 290:23 299:16 312:2 313:8,9 329:13 335:10 342:10 generate 332:16 generated 94:21 getting 35:22 70:2 152:17 155:12 226:9 282:19 294:7 345:6 346:8 give 40:4 134:8 153:3 176:16 208:25 221:19 221:21,23 222:3,9,11 224:19 229:9
--	---	---	---	--

<p>235:20 262:2 276:11 284:18 296:6 297:11 325:24 326:4 giveaways 186:20 187:20 given 34:23 39:17 40:23 47:1 103:20 140:18 143:1 197:15 198:1 205:16 206:14 206:23 210:20 223:24 237:3 278:25 285:25 306:4 330:19 353:15 gives 94:7 152:19 152:22 182:23 glean 115:10 gleaned 121:19 go 29:20 33:10 33:22 34:5 35:7 36:22 37:3 39:19 43:3 44:3 44:8,21,24,25 79:8 80:10 85:16 91:25 92:2 93:24 94:11 114:3 120:8 123:14 125:22 128:7 128:13 130:20 144:13 156:9 156:25 158:22 171:12 173:21 177:23 178:19 183:7,8 185:21 186:21 214:13 216:5 221:5,17 223:10 224:10 227:3 228:9 229:15 245:2 255:6 265:15 316:19 324:11 325:6 329:10 331:16,18,18</p>	<p>331:25 332:2,9 333:18 335:18 336:5 340:2 342:12 goes 39:13,16 72:20 82:22 87:25 97:20 254:9 278:18 279:15 344:15 going 29:6,10,11 29:13 30:6 31:20 33:8 34:3 35:21 36:1,2,22 36:24 37:3 40:7 41:1,3,16 42:2 42:4,5 43:17 46:6 47:22,23 51:22 59:5 63:3 64:17,18 66:5 78:1,16 79:4 87:22 89:22 91:24 93:2 95:10,21 98:19 105:1 110:16 114:8 117:13 119:20 121:15 123:21 125:22 125:24 126:17 129:23 130:21 140:14 143:2,3 143:12,13 144:6,21,22 149:20 160:13 172:25 179:11 182:4,11 184:17,21 185:16,19 203:4 222:6,11 222:17 224:16 228:7 229:16 231:5 242:25 245:12 248:3,4 252:18 262:14 264:15 265:16 265:21 267:5 274:9 276:11 291:4 297:25</p>	<p>303:5 327:11 335:18 342:12 343:1 347:17 347:18 going-forward 31:12 80:22 131:5 134:24 148:2 206:3 207:8 209:8,15 good 26:4,11 28:5 30:12 45:10 59:22,24 65:5 81:12 90:21 93:10 94:1 132:6 149:7 155:6 163:4,5 169:2 185:23,24 193:11 216:2,3 230:5,6 234:21 290:5,6 293:20 293:21 294:25 295:1 297:7,8 302:6 306:15 306:16 319:23 319:24 327:9 327:10 328:18 328:19 334:5 338:8,9 342:16 Gorman 49:4 51:1,9 52:21 53:7 56:24 59:6 61:12 66:9 67:25 68:12 74:24 75:10 88:23 89:6 106:1,2 140:5 176:5 232:22 234:5 287:5,16 287:20 288:2 290:5 294:25 297:7 299:18 301:24 302:5 311:3,12 323:7 348:15 350:7 352:1 Gorman's 53:15</p>	<p>88:21 106:6 175:10 235:9 Gorman45289 350:9 gosh 103:20 grand 183:5 grant 36:22 37:4 62:14,20 117:17 granted 88:24 256:18 269:22 269:24 272:16 273:23 277:20 granting 87:1 graph 48:5,14,14 48:15 235:10 249:3 268:18 269:21 270:16 270:16 graphs 268:8,14 268:18 great 203:18 225:6 297:13 314:5 greater 209:4 334:2 green 257:1,4,7 257:11 Greg 66:8 67:16 85:19 131:22 157:10,13,14 348:7 350:3,5 grounds 122:8 184:22 222:21 group 239:3 244:23 282:23 303:4 groups 116:6 growth 308:15 308:19 guess 34:17,23 35:24 37:11 42:22 59:13 61:9 80:17 114:7 124:23 126:20 178:21 203:6 210:16</p>	<p>239:24 240:24 241:9 248:10 256:21 262:13 263:19 265:1 269:4 328:21 330:1 336:13 336:20 337:16 337:18 347:2 guide 324:7 gun 311:8 guys 227:7 341:14</p> <hr/> <p style="text-align: center;">H</p> <p>half 139:22 176:7 178:9 345:4 Hall 23:19 45:11 59:21,22,25 60:11,18 61:4 61:15 62:4,21 63:15,19,24 64:21 76:4,5,21 77:5,14 78:21 86:15 92:23,24 98:16 99:19 116:14,15,21 116:25 117:4,7 117:16,24 118:6,9,14,18 119:8,12,19 120:3,9,14 121:17 124:24 148:9,22 149:9 149:13 150:5 150:14,23 151:1,9,14,18 152:6,10 153:8 153:13 230:3,4 237:8 241:17 245:3 247:6,11 306:13,14 309:2 315:25 316:1 Hall's 120:21 Hall230 348:11 Hall306 348:18 Hampton 25:13</p>
---	---	---	---	--

<p>27:3 43:5 44:22 hand 157:6 248:4 287:6 288:9 297:25 handbook 329:20 handed 182:18 248:8 321:5 332:23 handful 132:3 handled 342:22 handy 180:17 276:7 happen 44:15 80:12,14 87:3 209:22,25 282:21 295:13 happened 64:19 78:12,19 127:18,19 128:14,17 130:1 143:18 143:19,22 146:13 150:9 345:8 happens 110:12 326:3 harbors 105:9 hard 33:22 59:1 206:24 253:24 278:6 333:3 harm 33:7 35:8 harmful 37:2 Hawaii 239:12 239:13,16 HC 31:14 159:15 159:22 162:7 162:11,15 248:7,7,14 317:25 318:2 318:17,19,21 319:5,9 head 144:15,16 144:18,23 205:7 241:5 hear 29:23 33:14 37:18 42:2</p>	<p>275:7 323:16 335:16 336:8 heard 37:9 38:1 93:18 104:14 110:21 146:17 158:11 222:5 231:9,10 323:11 325:18 hearing 23:5 26:2,5 29:12 32:25 33:9 43:20 44:1 99:3 99:5 162:18 188:18 215:19 230:18 231:3 231:13,14 247:1 289:18 315:1 317:3 319:14 327:2 347:21 hearings 198:15 hearsay 182:5 183:13,14 heartbreak 111:23 heck 92:10 103:21 hedge 309:23 held 45:3 70:10 70:25 help 60:14 303:12 helpful 94:4 268:5 309:2 hesitant 197:25 210:1 hesitate 210:8 337:5 Hevert 53:17,19 105:20 140:14 350:15 Hevert's 53:10 291:24 292:4 hey 222:9 hi 97:21 high 25:2 27:15 39:25 47:19</p>	<p>49:15 54:2,9,10 76:16 89:13 104:11,11 114:12,13 129:16,21,22 130:4 131:4 132:12 141:17 233:21 264:4 286:3,6 310:20 312:4,6,22 higher 46:24 49:25 63:9 107:22 131:15 143:4,8,13 202:5 233:10 292:16 294:7 308:22 335:11 337:13 341:9 highest 265:1 highlights 70:16 highly 30:18 32:3 32:17 35:12,21 39:6 52:22 53:23 83:23 84:11 156:7 161:7,20,23 162:5 169:14 177:22,22 high-level 69:6 169:24 historic 63:4 143:7 historical 29:8 34:20 94:15 209:5,12 historically 58:5 58:14 114:9 history 58:8 104:9 114:6 187:16 210:3 210:10 hit 173:13 hmm 166:13 Hold 121:14 holding 289:5 honest 102:16,17 320:23</p>	<p>Honestly 149:2 Honor 26:17 28:21 31:3 35:10 38:20 41:17 42:16 44:9 162:9 183:17 185:17 194:7 225:4 237:25 252:18 254:17 260:6 262:10,15 263:7 266:16 267:24 286:25 314:20 316:2 318:14 320:20 320:24 326:20 hope 242:1 hoping 271:11 hotter 49:23 huge 37:24 240:25 265:24 hundred 280:7 hundreds 120:2 164:6 hypothetical 184:25 216:7 216:25 217:2 217:10 238:3,8 334:24 hypothetically 216:15 217:8 217:18,20 218:8,12</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 141:17 279:20 337:2 ideal 117:11,11 identification 45:5 182:15 194:11 245:23 248:20 287:10 321:3,6 identified 54:15 166:20 177:10 285:18 286:12 345:23</p>	<p>identifies 252:9 278:20 identify 158:23 159:3 161:25 192:20 194:13 285:19 identifying 193:12 ignore 145:9,11 152:4 ignored 145:24 146:3,5 174:24 178:5 ignores 141:14 Iles 24:2 26:12 28:6 41:17,19 287:6,14,17 289:12 311:11 313:14 348:20 Iles287 348:15 illegal 126:23 immediately 97:24 226:5 263:4 282:5 284:4 impact 233:6,7 233:24 238:11 238:12 247:25 331:7,21 implemented 73:16 206:15 implementing 309:22 implication 272:11 imply 113:19 301:19 important 31:25 101:18,24 102:15 103:1 111:25 200:17 241:12 245:9 294:2 330:22 importantly 69:11 impossible 197:8 197:23 198:1</p>
---	--	---	--	---

<p>206:1 207:4 278:13 impotent 220:12 improper 253:10 253:17 improperly 31:23 improving 308:1 inadequate 102:3 inappropriate 185:12 186:19 187:13,19 226:13,14 228:8,9,14 261:1 incentive 137:9 137:10 160:20 234:24 235:3 incidentally 32:16 include 51:15 56:6 76:16 119:21 173:17 184:5 202:15 202:22 203:1,7 203:12,13,16 203:22 204:16 204:25 222:10 236:14 291:24 329:8 included 84:1 145:24 173:6 173:16 174:11 185:11 186:13 187:21 188:24 189:5 192:21 201:16 202:25 203:2,3 204:1,1 204:7 205:13 234:9 236:1,3 244:16,17 288:18,21 311:14 includes 140:6 204:2,12 including 35:5 67:24 74:22</p>	<p>83:6 115:23 158:19 189:10 226:11 235:5 242:4 inclusion 193:1 income 96:11 173:13 incomplete 151:12 inconsistency 114:16 inconsistent 301:23 incorporated 165:13 incorporating 285:12 incorrect 44:10 202:25 260:24 incorrectly 138:10 150:21 increase 58:11 62:12 82:5 83:20 93:4 110:5 130:12 130:16 134:18 141:23 142:12 143:11 148:19 153:21 178:8 181:18 184:15 198:25 202:20 202:23 203:7 215:3 269:8,11 269:11,23,25 272:13,17 277:9 284:5 312:16 321:13 321:22,25 331:12 334:17 334:19,25 335:1,5,15 342:4 347:5 increased 80:14 134:25 140:16 192:24 201:21 202:2 236:25 275:20 277:6</p>	<p>286:9 increases 46:1 134:1,2,4 146:6 146:6,12 153:17 154:4,6 154:10 181:14 199:8,20 202:12,16 284:3 318:21 335:9,10 341:18,22 increasing 146:9 331:21 incur 134:14 146:2 incurred 133:13 134:14,21 136:17 146:2 187:8 212:22 213:4 234:4 237:1 incurring 136:17 index 151:18 350:1 indicated 27:20 39:12 41:6 42:3 53:8 54:3 79:1 321:18 322:17 345:2 indicates 142:20 indicating 82:10 316:17 indication 201:4 201:4 individual 65:9 71:5,10 72:13 73:7,10 74:16 170:11 334:8 industry-autho... 292:15 inevitably 105:11 inflammatory 40:21 information 28:23 29:1,7,9 29:13,18,21 30:2,8,18 32:22</p>	<p>32:25 33:4,4 35:4,9 36:23,25 37:2 38:6,9,15 41:22 44:10 46:8,8 48:6 70:18,25 71:3 83:19,22 84:6 84:14 90:17,19 97:17,25 115:14 119:5 125:8 132:19 133:8 136:5 138:9,9 146:24 152:19,22 153:4 156:5 169:13 170:3,4 171:3,6 192:12 193:3,13,15 205:3 214:2 218:16,18 219:23 221:7 221:14 222:1 223:20 224:1 224:18 241:8 252:4,23 256:1 260:11 269:4 283:5 285:25 286:17 295:5 313:2 314:17 346:21 informative 149:10 informed 43:5 infrastructure 133:17 143:24 236:9 inherent 280:23 initially 198:21 330:16 initiate 109:25 280:22 initiated 109:19 initiating 334:17 inmy 206:22 inquire 157:9 287:12 313:19 317:10</p>	<p>inquiring 41:10 inquiry 69:10 305:20 inserted 246:11 insist 280:20 insisted 146:25 insisting 147:13 inspect 97:22 inspections 236:9 installing 204:20 instance 46:15 47:2 49:21 96:10 173:11 259:3 261:8 284:21 345:1 instances 161:3 173:5 334:14 instigated 119:14 instructive 96:9 instruments 308:25 insufficient 117:20 integrated 291:18,23 293:13 intended 274:20 295:20 312:5 intending 33:17 33:19 113:19 intensive 98:20 interactive 326:14 interest 30:1 36:7 137:24 307:24 308:5 332:16 interested 30:21 150:4 interesting 307:3 interests 36:20 81:18 95:17 312:5 Intern 25:14 internal 70:9 108:13 332:25 Internet 155:12 interpret 106:21</p>
--	---	---	--	---

<p>190:16 interrupted 148:7 interval 118:4 introduce 267:10 introduced 261:6 267:7 introduction 277:1 invest 105:16,18 206:21 295:21 investigation 61:18 69:9,14 69:23 230:9 294:3 310:22 334:10 338:19 338:19 investigative 99:10 investigatory 195:12 282:11 282:13 investing 133:17 143:24 204:20 investment 97:23 104:23 180:8 204:4 205:17 206:4,15,24 207:3 208:9 222:6,10,16 224:16 241:11 279:3,18,24 296:1,16 investments 104:22 133:12 145:1,3,5,10 164:3 178:11 204:3 205:24 223:21 278:12 investor 104:24 105:5,18 175:11 296:16 302:21 investors 105:9 295:21 296:14 310:6,13,23 312:7</p>	<p>invests 279:9,17 involved 121:6 171:22 175:20 175:23 239:13 283:12,13 involvement 187:17 in-camera 29:20 33:21 36:24 in-service 144:2 in-the-period 204:3 ironic 38:21 39:5 irrelevant 138:9 issue 30:3 39:20 42:22 77:11 83:16 93:21 118:7 143:9 150:1 172:16 175:16 254:9 260:10 280:8 329:15 issues 73:22 91:24 110:2 175:17 188:18 239:24 285:19 330:25 334:1 item 189:9 281:14 345:24 345:25 items 92:7 132:22 143:20 151:22,24 152:12 173:4 188:24 189:5,8 189:10,19 236:13 324:1 329:12 330:15 330:16,22 331:8,9,11,23 it'll 284:14</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 350:17 Jackson 109:15 James 24:16 26:22</p>	<p>Jamie 25:14 27:4 January 90:1,7 94:18,25 126:11,13 154:3 201:22 202:2 291:18 341:19,23,24 342:19 347:1 Jefferson 23:7 24:8 25:2,9,16 26:14 27:6,11 27:16 28:8 353:16 job 169:2 226:7 John 24:22 27:25 66:14 68:3 81:13 86:4 182:19 317:11 317:14,22 349:1 350:17 351:2,4 join 38:3 108:2 joins 119:15 120:6 joint 73:14 Jones 25:13 27:4 Joun 313:21,25 314:6 348:23 350:19 judge 23:17 26:4 26:11,15,25 27:2,7,12,14,18 28:2,5,9 31:1 32:18 33:14,16 34:5 35:7 36:10 36:19 37:25 38:19 41:13,18 42:1 43:1,9,14 43:17,21 44:2,6 44:17,20,23 45:6,10 57:5 59:21 64:23,25 65:3 75:22 76:1 76:4 78:23,25 79:8,16,22 80:2 80:6,13,24 81:4 81:7,10 89:18</p>	<p>92:21,23,25 93:2,8,22 99:21 108:5,7 114:10 116:3,14 120:17 124:7,9 124:10 148:5 153:10 156:2 156:17,21,23 157:3,8 158:9 161:17,19 162:6,10,14,18 162:22 163:1 168:25 169:3 179:19 180:13 180:14 182:6 182:10,13 183:12,16,18 184:17,23 185:15,20 194:5,8 215:11 215:15,19,23 225:2 230:3 237:10,12,16 237:18,20,22 237:23,24 243:5,6,8,10,12 243:15 244:10 245:1,5,10,14 245:16,18 246:23 247:1 248:3,5,8,15,21 248:24 249:3,6 249:10,14 253:18,19 254:12 260:2,4 261:4,5,22 262:5,8,16 263:8 267:3,13 267:22 268:4 270:24 271:4 286:23 287:4,8 287:12 289:14 289:18,22,25 290:2 293:18 294:22,23 297:5,23 302:2 306:10,13</p>	<p>309:4,8,10,12 309:14 311:1 311:10 313:15 313:19 314:23 315:1,5,8,10,12 315:13,14,16 315:18,22,25 316:3,5,13,16 316:22,25 317:3,7,10 318:16,24 319:1,2,6,10,14 319:18,20 320:21,25 326:21,24 327:2,6 328:15 337:25 338:3 347:11,16 judgment 212:3 290:11 303:12 333:18 July 23:6 55:23 94:11 105:24 134:17 144:13 180:7 181:24 186:1 190:22 214:7 222:18 253:7 265:20 266:1,6 300:6 341:25 342:16 342:18 347:6 jumping 311:8 June 47:11,16 95:4 98:12 180:7 182:3 183:1 214:13 214:14,25 222:18 229:8 235:4,18 248:25 250:1 251:8 259:3 262:19,22 263:3,5 264:11 266:7 269:5 273:7,9 320:10 320:10 339:6 jurisdiction</p>
---	---	---	---	--

65:13	122:14,19,25	127:4,18 128:5	167:23 185:1	law 23:17 24:2,2
jurisdictions	123:4,13,19,23	130:14,18	258:1 281:24	24:7,12,12,13
302:17 311:4	124:1,6 125:19	132:12 135:12	314:18 318:12	24:16,22 25:1
jurisprudence	125:24 126:4	140:2,21	331:10	73:21 81:17
100:17	127:9,12	144:22 145:1	known 35:14	82:7 88:15,15
jury 40:18	128:16 129:10	149:24 150:7	58:16 63:1,2	93:14 96:2,2,4
justice 82:9	129:19 130:7	150:11 152:16	87:24 88:2	108:11 123:9,9
justified 30:18	130:19 131:25	154:21 155:1	203:9 278:24	124:17 131:18
justify 51:16,21	134:7 148:6	155:16,16,16	286:13 339:24	145:14 243:24
143:9,11	216:1 224:25	155:18 177:24	knows 45:24	lawful 94:3
312:12	225:2,3,5,7	180:2 187:12	60:23	lawyer 33:19
just-filed 38:9	238:2,24 240:1	188:17 193:5		lawyers 157:15
	267:16 274:21	197:13 198:21	L	224:24
K	302:4 306:8,10	198:22 203:4	L 23:17 350:23	lead 322:11,12
K 23:24 24:12	306:11 315:20	203:14 207:16	Labadie 144:6	322:16 325:11
353:5,17	315:22,23	207:21 208:1,2	204:21	leading 179:12
Kansas 239:3	348:10,18	208:12,14	labeled 251:10	179:13 276:19
KCPL 277:16	Kenney 225	210:3 214:4	255:12 289:5	learned 50:8
345:13	348:10	221:1 224:6,8	labor 151:2	leave 218:3,7
keep 43:22 79:19	kept 98:16	224:17,23	173:15,16	272:18
99:8 102:16,17	164:21 235:7	225:6 226:3,10	229:3	leaves 211:13
308:4 311:8	Kevin 25:12 27:3	226:24 227:11	lack 74:4 193:12	280:19
339:12 343:14	key 41:14 57:15	229:20,25	lag 94:6,14,17	leaving 279:7
Kellene 23:24	kid's 106:19	231:25 235:17	95:3,6,7,9,13	344:24
353:5,17	kind 30:16 40:19	239:5,13,14,15	95:16,21	led 219:7 232:10
Kenney 23:18,19	45:12 118:19	239:17 240:11	342:25	left 141:5 178:19
57:6,15,18,21	138:23 153:14	245:5,11	laid 254:13	211:14 218:7
58:18 59:1,5,10	156:3 199:1	250:11,15,16	lands 328:3	legal 25:12,13,13
59:16,19 75:24	226:12 278:6,8	250:19,20	Lange 43:6,11,24	61:7,8 86:17,22
76:1,2 89:19	293:8 304:6	252:21 253:1,6	44:21 316:9,14	87:23 88:7 93:7
90:23 92:5,20	306:23 307:9	257:23 260:7	316:19,24	107:14 108:11
92:21,22 99:16	309:24 332:25	260:16 261:13	350:21	108:18 109:5
99:18 108:6,8	kinds 111:25	262:1 264:15	Langeneckert	120:10 122:8
108:13,16,20	260:24	266:11 267:4	28:3	148:22 149:10
108:25 109:4	knew 35:20	278:13 281:6	large 38:8 107:4	328:25
109:10,20	knife 148:16	281:22 284:14	107:6,25,25	legitimate 142:3
110:11,15,24	know 29:11 31:6	304:19 305:22	222:5 240:18	Leland 28:13
111:4,10,15,19	33:13 34:24	309:20,22	241:10	letter 194:22
112:3,12,21	41:1,3,15 42:4	310:11 326:16	largely 310:14	let's 43:3 126:12
113:3,8,14,18	43:7,9,18,18	327:18 329:5,6	larger 240:20	128:1,11
113:23 114:14	60:19 64:12,13	329:17 331:15	largest 60:15	156:24 157:3
114:23 115:1,5	64:17,20 79:18	331:24 332:4	175:17 330:16	159:11 168:20
115:9,18,23,25	80:8,10,16	334:1,4,11	330:22 333:6	172:23 217:9
116:3,4,9,12	84:16,23 87:21	336:3,5,22	late 94:25 342:12	221:17 222:23
120:15,18	102:17 111:22	knowing 336:13	Laughter 44:5	243:13,15
121:1,8,12,14	114:5 120:7	knowledge	Laurie 194:15	251:2 259:8
121:24 122:3	122:5 126:21	165:20 167:19	351:8	264:21,22

<p>300:12 313:16 level 61:17,20,22 62:23 67:5,20 76:9 148:13 205:16,24 206:23 207:3 224:11 237:5 261:13 278:12 308:8 334:19 341:7 levels 196:23 206:14 308:8 Lewis 24:17 26:23 liability 241:22 light 260:15 261:19 likelihood 331:25 limine 37:7 42:6 42:15 limit 124:19 limitation 118:17 limitations 330:19 limited 88:14 92:6 131:21 136:5 171:3,10 323:5 327:22 335:2 336:22 337:10,11 line 30:22 72:8 83:23 92:4 102:19,19,20 102:21,25 135:21 138:3 139:12 147:21 160:18,19,22 160:23 161:2,3 161:6,7,11 169:20,23 170:22 173:4 173:16 176:15 176:17,23 193:9,9 196:6 197:20 199:17 206:9 210:13 212:18 238:5</p>	<p>240:2 246:11 256:23,25 257:1,3,4,7,11 258:10 276:16 282:8 300:11 338:11 lines 119:23 238:9 263:17 277:15 278:10 280:7 323:13 324:18,23,24 325:2 liquidity 307:20 Lisa 28:3 list 88:13 152:2 153:12 160:17 329:11 listed 160:22 198:20 204:23 289:9 listening 29:24 lists 96:11 173:3 176:23 183:2 289:2 literally 120:2 284:24 litigation 23:24 82:15 84:22,24 84:25 85:2 353:7 little 77:24 92:8 107:21 114:12 114:13 118:21 143:3,4 150:3 169:6 206:18 211:4,19 229:4 235:20 240:14 242:2 275:3 292:16 297:18 307:24 308:15 308:22,23 332:3 LLP 24:3,7,17 26:23 28:7 loading 155:21 lobbying 186:20 187:20</p>	<p>location 251:16 lodge 252:19 282:16,24 lodged 277:18 logically 114:3 long 190:20 293:8 336:1 longer 56:18 71:17 158:18 232:5 244:5,5 248:7 longstanding 329:23 332:7 long-term 137:8 137:10 160:19 308:4 look 37:19 58:8 59:12 63:1 76:18 78:17,20 85:25 86:4,20 89:2 90:5,15,22 96:8 109:15 126:9,14,17 135:8 136:23 137:10,13 142:24 143:1,5 143:14 151:24 152:1,3 177:16 178:10 187:5 209:21 210:2 210:20 222:13 226:21 235:8 251:13,18 255:15 256:8 257:20 258:14 259:8 262:2 266:4 267:25 268:8,9,13 277:3 279:18 298:4 300:5 310:17 322:6 323:20,22 324:19 325:1,4 331:3,23 333:24 334:1 looked 100:18 141:18 152:11</p>	<p>172:21 173:24 173:24 174:14 177:18 187:2,7 187:15,23 200:16 201:2 203:25 204:10 224:18 228:3 244:14 255:5 270:10,13,15 270:17 310:8,9 looking 78:5 87:3 90:2,11 127:13 127:20 139:19 148:19 169:11 169:12 170:22 171:25 172:15 172:20 174:16 176:6 207:23 231:19 270:2,6 304:24 325:7 330:15 334:2 looks 246:10 264:11,24 lose 105:15 lost 320:24 lot 32:12 41:21 46:6,7 92:11 100:2 105:19 137:14 139:9 143:19,21 146:17 150:9 152:15 172:2 193:10 227:16 235:7,10 240:6 240:9,10,12 279:2 304:20 307:11 320:3 336:1 343:4 lots 307:19 Louis 24:4,14,23 26:20 27:25 97:20 low 77:3 79:17 80:4 104:1,2,5 132:13 141:17 290:20 303:10 307:17 308:11</p>	<p>308:12 312:8 337:11 lower 50:2 52:17 53:6,20 55:22 60:25,25 66:12 89:6,14 99:6 105:11 106:12 106:13 107:11 113:6,24 140:20,24 143:4,10,14 178:20 199:7 199:12,19 233:23 234:15 244:21 247:24 275:19 276:2 279:21 291:17 295:16 297:18 303:2 308:6,18 310:5 335:21 336:3 lowered 31:11 52:20 53:17 275:23 lowering 66:17 114:18 139:22 211:15 294:6 lowers 104:20 Lowery 24:16 26:21,23 38:20 42:16 44:9,19 266:23 267:24 286:25 319:22 320:19,23 321:1,4 326:19 326:23 337:23 349:2 lowery@smith... 24:19 lowest 264:25 265:6 lunch 156:25 157:1,2,4 Lynn 55:15 144:1 350:13</p>
--	--	---	---	--

M

M 350:13	262:19 271:15	294:2 319:5	261:17 266:7	274:24 281:23
Madison 25:8,15	279:21 286:8	330:16 332:8	272:15 279:16	mentions 42:6
magnitude 94:3	328:3 340:10	materiality 61:24	298:19 301:15	mere 112:15
142:18 143:9	340:12,16,17	62:3,6,22 63:13	324:4,5 338:22	279:18
209:6,12	mark 27:19	76:8,15,17,18	341:11	meritorious
main 82:18 84:3	44:25 182:11	76:19,22 77:1,6	meaning 48:16	76:24 119:14
172:5 206:7	194:4 350:23	77:7,13 86:16	meaningful	120:6 149:19
maintain 96:16	marked 45:5	86:18,24 98:15	65:11 70:5,20	met 69:2 73:24
206:1,6,24	182:14 194:10	98:19 103:9	71:9 72:23 74:2	75:14 80:20
207:4 340:3	194:14 245:22	107:13 108:10	111:24 323:6	131:19
maintained 32:3	248:6,7,20	116:22,23	329:25	methodology
164:25 339:17	267:23 287:9	117:4 148:11	means 46:24	310:3
maintains 166:2	288:9 314:7	148:18,23	47:14 68:22	Meyer 32:8
maintenance	317:24 321:2,6	149:5 171:22	100:25 107:2	46:17 49:3,16
97:2 107:18	350:1	174:2,3,13	259:6	49:18 50:4 51:3
162:2,3 232:19	market 35:3	332:5,12,18	meant 47:21	51:9 53:22
236:23 237:1,5	67:24 74:23	materialize 178:9	measurable	54:15 56:3,6,8
318:23,23	105:12 292:23	materially 53:6	58:16 63:1,2	56:24 59:6,8
major 88:17	293:6,11,14	61:20 62:8	87:24 88:2	61:12 64:3 66:8
134:21 151:7	294:2,15	Matt 24:13 26:18	203:10 278:24	66:22 67:9,16
208:10 240:5	298:15,24	matter 43:4	286:13 339:25	67:25 68:15
342:4	299:5,15	73:24 120:10	measure 104:21	70:14 73:2
making 30:1 68:8	307:10 308:10	120:10,11	203:14 309:1	74:24 75:12
75:7 77:23	308:16,25	130:1 131:18	measuring 303:3	85:20 106:23
128:17 145:1	marketplace	212:1 219:6	313:8	107:4 131:22
146:22 176:24	35:2 307:20	290:11 335:16	mechanism	132:1 134:4
205:17 241:11	markets 175:10	matters 44:23	109:7 243:23	135:9,15 136:6
manage 310:1	match 137:5	88:3 130:2	mechanisms	136:11 138:1,4
management	176:11 210:25	mean 32:22	64:10 91:3,5,15	138:11,21
134:3 146:7	256:5 328:8	35:15 49:15	91:17 92:7	139:15 145:10
236:8	matches 177:12	60:23,23 64:13	104:13 296:4	145:23 146:5
Marc 25:7 27:9	matching 339:9	80:16 100:17	302:9 303:1,7	146:15 147:8
March 34:2	339:11	102:5 104:17	310:9 312:14	150:7 157:4,10
47:19 48:21	material 33:10	107:10 111:5	meet 73:11 74:1	157:13,14
55:7,22 64:8	51:20 62:8	112:1 114:3	131:20 134:15	161:24 163:4
94:19 177:6,8	63:13,18 67:23	126:23 129:18	213:1 225:20	169:1 180:16
178:23 180:3	68:5 74:10,18	147:15 149:3	280:24	181:22 182:17
181:5 200:16	74:22 75:3,16	177:9 179:18	meeting 131:8	183:21 185:14
200:21 204:1,2	77:22 79:6	187:14 190:7	members 87:10	185:23 194:13
204:4,11	80:18,20 86:13	197:20 206:17	mention 42:7	204:6 205:10
207:25 208:7	87:11 100:13	212:18 213:7	101:24 338:13	207:15 213:21
226:23,24	107:8 114:19	216:22 217:17	mentioned 32:16	215:9 216:2
228:4 232:13	137:14 146:5	224:12,19,24	78:3 83:15,25	238:2 243:3,19
232:13 242:4,4	149:8 174:17	227:3 229:22	89:24 101:16	245:25 249:16
242:13,17,24	174:19,23	230:25 235:8	104:16 141:20	252:22 253:7
249:1 250:2	175:7,9,14	240:7,8 241:4,6	145:12 169:8	254:2 261:12
259:8,12,13	236:18,19	241:25 247:16	174:2 218:13	262:12 266:19

268:7 270:21 271:7 286:13 286:24 303:17 328:4,11 343:8 344:12 348:7 350:3,5 Meyer's 32:6 50:10,13 67:8 132:24 133:10 133:18,23 134:12 135:13 135:24 137:16 141:9 142:13 146:11 266:20 266:22 305:12 306:5 328:9 344:1 Michael 66:9 287:16,20 288:2 348:15 350:7,9 microphone 243:9 338:6 mid 279:1 284:6 middle 89:7,8 midpoint 299:16 303:9,13 310:4 310:19 312:2 312:10,13,21 Midwest 23:24 353:6 MIEC 24:10 28:4 42:18 51:9 64:24 65:1 152:25 162:24 198:13 237:14 289:23 309:6 315:14 Mike 51:1 52:21 53:7 88:21 milder 50:7 million 47:14,24 48:4 50:23 51:5 54:9,10,21 55:5 55:8,9 56:21 60:4,21,21,22 61:1 62:12,16	64:6 67:20 68:2 68:7 75:1,6 85:22 86:6,24 86:25 87:7,8,11 98:18,25 99:6 133:22 134:25 135:21 139:11 139:13,21,21 141:3,23 144:5 144:9,11,17,22 145:13,19,20 145:24 148:12 161:10 174:2,6 176:7 177:10 178:24 183:11 184:4,9,25 185:7 204:20 205:6,10 211:6 211:8,8,13,19 215:3 216:11 216:14,17,18 216:21 217:4,4 217:6,6,22,24 218:4,7 226:10 232:15 233:5 233:10,19,20 233:22 234:15 236:25 238:4 238:10,14,17 238:18,20 247:7,19 269:8 269:23,24 272:15 321:22 321:25 327:16 328:9 333:12 333:13,21 334:9 335:1 336:17,23 337:8 338:13 338:25 339:3 340:14,16,18 340:22 345:4 millions 46:24 58:20 60:17 87:4,4 Mills 218:25 mind 43:22 80:25	82:12 99:8 172:5 175:6 228:9 229:10 229:22 314:13 343:3 minds 225:6 mine 148:7 minimize 95:16 minimizing 342:25 minor 160:14 minute 44:13 208:24 217:9 minutes 97:22 261:14 262:4 323:8 mis 234:1 miscellaneous 136:22 186:5 186:10 187:8 187:13 188:23 341:2 misheard 231:10 mislead 222:7 242:1 misleading 260:24 270:3,7 mispronounced 53:11 missed 334:23 Missouri 23:1,7 23:13 24:13,21 24:24 25:4,14 25:17 26:7,14 26:16,19,20,22 26:24 27:4,6,11 27:12,16,16,24 28:1,8,25 31:9 37:3,8 38:21 45:22 46:11,20 47:7 48:1,23,25 49:1,6,10,14 51:4,8,10,10,13 52:10,13,14,18 53:2,8 54:25 55:12,14,16 56:2,4,10 57:1	62:11 63:6 65:10 66:10,15 67:3,17 68:1,6 70:25 71:2 73:14,19,20,21 74:15,25 75:5 81:15,16,20 88:4,8 92:12 93:8,12 100:14 101:11 103:17 105:18 126:24 130:23 132:7 133:12,16,20 134:1,13,17,20 136:16 137:18 142:11 143:25 146:23 181:11 182:19 192:11 194:19 195:10 196:20 198:12 201:14 202:11 203:19,23 204:19 205:5 205:17,24 211:25 238:4,9 240:25 246:14 260:12 262:23 269:7 271:8 273:24 274:16 282:22 284:3 285:24 286:14 287:22 290:8 290:23 291:6 296:9,22 311:7 314:3 316:15 317:21 322:11 333:6 334:25 351:5,10,19,21 353:3,16 Missouri's 31:11 46:1,2 47:2,4 50:9,21 51:17 52:20 53:3,18 54:2,5,8,17,20 56:12,14,21,22 65:17 67:9 68:4 68:9 130:2	131:2,9,14 134:24 135:3,6 136:13 143:23 147:23 148:1 165:10 187:3 200:4,8 201:20 202:17 207:17 211:20 214:9 262:25 285:4 286:3 291:15 297:14 298:17 299:2 301:5,11 309:18 misspelled 246:15 mistake 50:9 misunderstand 231:18 mitigating 209:19 210:18 270:9,13,17 MO 24:4,8,14,18 24:23 25:2,9,16 model 281:19,19 281:25 models 196:4 moment 37:22 336:13 Monday 191:2 monetary 331:2 331:5 money 63:8 85:3 104:25 105:10 105:13,15 107:18 145:4 145:18,18 147:7 184:19 219:14 228:17 235:2,7,10 236:3 240:7,8,9 240:10,12,18 279:10 344:24 monitoring 29:2 30:14 46:6,12 46:13,19 47:4 48:17 49:20 50:6 51:25 64:7
---	---	--	--	--

84:2 126:15 248:22 255:5 351:12 monopoly 106:13 month 46:14 72:16 144:12 264:9,10,15 monthly 49:7 224:9 273:21 months 29:8 67:18 71:20 72:3 94:10 98:20 118:5 120:23 133:14 136:8,18 137:7 138:25 139:1 139:14 147:17 153:6,7 167:8 171:14 193:25 198:16 201:10 201:12 210:3 214:7 223:5,6 256:16 258:7 258:24 264:16 265:15 266:12 269:10 270:15 271:18 325:15 months-long 265:24 month-by-mon... 264:8 morning 26:4,11 28:5 43:7 44:12 45:10 59:23,24 65:5 81:12 93:10 100:3 248:16 251:21 253:25 256:10 318:18 324:17 347:19 MORRIS 23:17 motion 28:18 31:4 32:22 33:17 34:8 36:22 37:4,7,12 38:3,14 41:7,20 42:6,8,14 44:18	224:2,4,11 motions 28:16 37:9 43:2 mouth 323:11 move 99:23 143:13 170:12 245:6 289:12 310:19 313:16 317:7 moves 326:7 moving 171:11 312:12 MPSC 351:6,6 multiple 188:24 189:5,10 219:8 Murray 53:4 104:3 106:7 Murray's 104:7 113:4 muzzle 41:9,9 Myers 25:14 27:4 313:22 314:20 348:23 <hr/> N <hr/> N 26:1 348:1 name 53:11 93:11 130:21 148:24 149:2 157:12 225:7 287:18,20 313:24,25 317:13,15 nature 29:12 61:23,24 62:24 76:10 77:17 117:8,19 223:2 310:15 near 69:18 necessarily 77:21 79:14 88:15 109:11 111:5 170:12 282:1 necessary 71:8 72:7 73:17 152:7 192:12 219:18 295:4	313:2 necessitate 71:17 need 28:17 35:3 36:3 43:23 44:24 98:16 125:18 126:7 151:23 156:9 177:23 202:7,9 221:15 226:22 244:10 261:13 277:2 297:10 297:19 305:20 305:22 307:12 310:17 324:10 325:20 340:3 needed 52:8 119:3 120:23 133:8 196:4 345:2 346:22 needs 40:18 98:4 100:9 142:11 144:16 156:15 174:20 261:16 261:16 295:5 346:14 negotiations 275:21 neighborhood 334:18 336:16 neither 97:6 never 74:15 113:15,17 119:13 120:5 146:22 147:18 152:7 198:25 210:25 253:16 265:22,25 nevertheless 167:6 321:21 new 41:23 45:13 54:23 73:18 79:23,25,25 93:21 94:11 110:9 128:21 139:15 144:15 144:16 223:21 267:10 275:11	303:1 312:13 night 28:19 31:5 44:4,11 347:17 nobody's 101:16 nodding 347:16 nondisclosure 84:12 nonmaterial 77:4 nonrecurring 268:20 non-witness 183:15 Noranda 23:9 24:6,11 30:6 42:19 60:17,25 61:2 65:8 66:8 66:11,21,21 67:16 71:1,10 72:13,15 73:1 73:11 74:11,16 74:24 77:13 85:8 116:17 117:18 118:19 119:2,9,10,22 121:4 124:25 125:1,3,25 139:20 147:4 149:16,23 152:7 192:9 193:3,22 195:9 223:25 240:12 246:4 330:1 351:10,11 Noranda's 26:5 57:8 60:12,15 60:24 89:23 140:5 155:17 194:18 normal 49:23,25 50:8 121:21 173:21,23 209:18,24 210:1,16,18 229:19 231:14 231:17,19 254:4,6 257:9 304:23 305:4	308:7,8 324:5 normalization 50:12 149:22 150:8,12,15 normalizations 39:2 54:4,16 132:18 normalize 50:4 50:15,18 107:1 281:19 323:25 normalized 49:18,22 50:10 50:22 304:22 305:2,3 normalizing 305:12 306:1 307:12 normally 56:5 79:22 122:7 222:23 North 24:3 NOS 45:4 162:20 248:19 271:2 289:20 319:16 note 38:2 notes 54:12,23 56:3 67:10 353:13 notice 37:14 47:25 139:18 266:17,20,22 267:14 268:3 287:3 noticed 160:14 326:2 noting 134:16 141:19 notion 108:9 111:20 notwithstanding 269:20 novel 93:14 94:9 November 228:10 264:11 264:22,23,24 272:23,23 278:21 283:25
--	---	--	--	---

<p>Nowack 194:16 351:8 NP 159:16,24 162:7,11,11,15 318:1,2 319:3,9 319:10,11 nuclear 144:16 205:7 241:5 number 30:23 51:22 60:19 73:22 88:11 96:11 161:7,10 175:15 176:10 176:23 177:2,3 177:21 184:12 184:13 186:17 193:5 216:11 216:19 228:25 236:18,20 238:11 248:13 254:7 267:20 268:1 273:17 276:5,9 298:12 299:12,19 301:1 302:12 305:21 320:25 325:22,22,24 326:4,7 333:22 333:25 334:15 numbers 30:22 38:25 160:16 162:4 173:9 175:7 176:7 177:19,21,23 181:11 204:14 261:12 267:2 325:1 337:18 numerous 135:23 137:17 141:14 264:19 278:20 nutshell 306:25</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 26:1 oath 102:13 158:2 160:1</p>	<p>187:19 285:23 288:12,14 object 42:12 179:11 182:4 184:18,21 222:20 253:17 260:6,7 261:3,7 objecting 183:8 objection 182:7 183:12,19 252:19 254:15 261:25 267:14 270:23 337:23 objections 162:16 215:17 246:24 247:2 260:5 267:3 270:24 289:15 314:24 317:1 319:11 326:25 objective 208:23 209:1 260:11 obligated 124:17 observable 308:25 obtained 46:13 obtaining 284:3 obvious 310:17 obviously 36:13 49:22 60:14 61:13 97:14 152:25 228:16 228:17 232:22 253:8 occasions 325:19 occur 87:22 144:21 202:23 339:25 occurred 87:20 151:7 occurs 95:6 October 137:4 265:16 279:2 offer 50:25 52:25 53:9 56:10 77:11 161:18 185:16,19</p>	<p>215:12,13 246:21 260:2 267:8 316:20 316:23 318:15 326:22 offered 42:10 53:4,25 57:14 80:19 162:15 215:16 246:24 253:20 254:16 260:5 262:15 285:17 289:15 314:24 317:1 319:11 326:24 offering 59:4,14 100:5 offers 53:10 314:21 offhand 148:25 149:3 office 25:7,10 27:5,10 37:5 51:11 170:9 198:11 353:15 official 266:17,19 268:3 officially 80:6 offline 42:23 offset 55:4 87:20 off-month 223:2 223:3 OFF-THE-RE... 45:2 oh 97:7 125:1 177:7 244:1 270:8 306:22 okay 36:10 43:1 59:3 62:21 65:3 77:15 80:24 90:23 92:20 93:8 102:6 106:20 122:25 123:2 130:19 130:20 155:22 156:22 157:21 158:2,8 160:10 160:12 161:10</p>	<p>161:17 162:6 165:15,20 166:6 172:19 172:24 180:13 180:20 181:2,8 181:17,22 182:1,22 183:3 184:1,11 185:8 185:13 186:9 188:11 190:12 190:18,18 191:16 192:8 192:17 193:19 194:23 196:5 196:22 198:6 200:15 201:7 203:11 205:13 208:21 210:15 211:23 213:18 214:8 215:2 216:10,24 218:1,3 223:9 226:15 227:9 227:14,15 228:13 233:4 234:4,16 236:19 238:19 239:10 243:19 246:18 247:10 247:20,24 248:3 250:8,19 250:23 251:1,6 251:20,24 252:2 255:3,21 256:1,4,20,23 257:25 258:25 263:6 265:14 268:7 269:1 270:12,18 271:19 272:18 273:6,22 274:7 274:24 276:12 276:14 283:3 286:6 289:1 295:19 296:15 300:12 302:2 306:25 322:13</p>	<p>326:5 327:20 339:9,19 342:1 343:4 346:25 old 29:8 45:12 135:10 Oligschlaeger 102:11 112:17 332:12 350:23 once 74:14 78:12 102:24 109:19 147:15 199:9 212:14 232:4 235:17 260:7 ones 36:17 91:22 91:23 139:6 154:5,14,16 160:17 331:2 one-time 268:20 324:1 one-year 90:21 ongoing 61:22,24 62:23 76:9 77:17 85:20 86:13 87:12,17 114:24 115:2,6 117:8,10,19 online 29:25 241:1 onsite 69:13,17 69:22 70:12 171:13 OPC 40:13 220:5 OPEBs 174:8 236:10 open 32:22 34:12 34:15 70:11 195:11 196:5 282:6 300:1 opening 30:8,9 33:20 45:7,15 59:18 60:1 64:24 100:5 141:21 146:17 155:17 156:24 157:15 158:12 197:3 235:9 251:22,25</p>
--	---	---	--	--

<p>253:24 256:10 348:2,2,3,3,4,4 openness 34:10 operate 135:9 operating 34:13 44:10 97:1,1 107:18 153:23 193:6 213:2,4 224:8,9 232:18 234:20,22,25 236:22 285:13 303:6 304:25 305:3,5 312:14 332:14 333:11 operational 144:12 operations 35:2 258:7,24 278:25 279:6 279:17 285:10 opinion 52:24 53:10,11 69:4 94:18 100:23 123:20 168:3 260:25 307:2 opportunity 42:12 57:1 65:25 70:5 103:7 107:19 134:9 135:1 212:21 213:5 261:23 262:3,9 276:12 oppose 167:1 opposed 34:21 101:10 324:2 opposes 55:11 opposite 284:17 308:22 oral 332:23 order 54:4 56:20 56:23 65:17 66:5 73:23 75:19 77:8 99:4 110:2,6,8 119:4 140:1 152:7 157:3 183:25</p>	<p>188:10,12,16 189:13,16,17 190:3,4,5,6,9 190:11,13 197:14 243:15 279:1 284:10 284:25 304:20 307:18 323:6 324:7 339:6 345:12,14 ordered 141:22 156:4 167:14 230:8 275:14 321:24 343:16 ordering 128:18 128:25 orders 284:7,8 original 30:13 70:14 135:14 138:16 139:5 246:16 originally 159:22 162:11 ought 140:15 260:18 325:8 outage 144:21 outcomes 212:4 outdated 137:14 outlined 291:23 outlook 69:18 outlooks 308:15 308:19 outright 137:17 out-of-court 183:15 overall 86:21 236:11 296:13 331:13,21,21 331:23 overbroad 42:9 overcome 85:10 overearn 47:8 50:23 56:15 127:25 129:8 204:11 242:19 overearned 47:23,24 48:18</p>	<p>48:18,23 49:14 51:14 68:1,7 74:25 75:5 128:12 214:25 243:21 overearning 28:23 37:19 47:7 49:10 51:4 51:14 52:2,9,13 52:14,18 55:19 56:16,18 57:24 64:19 66:10,15 72:11,14 75:19 83:14 87:7,15 87:16 91:6 100:9 103:17 103:18,18 106:11 107:3,5 107:23,24 113:11,16,25 115:13,16 127:3 128:24 129:8,11 155:9 180:4 195:10 200:19 207:17 208:2,11,13,15 208:18,24 210:11 214:14 226:25 227:21 228:6 229:16 230:24 231:5 231:16 232:5 235:18,22 252:11 255:12 275:17 277:4 279:11 285:24 286:4 305:15 305:17 306:6 336:16,19 337:22 overearnings 30:7 31:9 47:4 48:15 51:20 57:19 61:6 63:20,22 65:11 66:4 67:20 68:13,19 69:12</p>	<p>69:17 72:2 73:12 74:13 75:15 76:11,23 77:2,9,19 78:9 79:2 83:3,9,11 83:12 84:8 85:21 86:10 87:6 88:19 89:25 90:3 100:13 103:12 103:15 104:9 108:10,17 114:19 116:18 116:20 117:2 117:13,19 119:3 120:5 126:6,19,25 127:13,17 130:9 148:12 149:18,18 171:18 175:15 176:8 177:11 181:20 185:10 195:14 205:18 206:2,25 207:5 209:6,13 210:7 212:11 213:9 216:7,15 217:8 219:19 226:4 229:11 232:10 235:1 238:12 238:13,20 243:1 244:4,6 275:6 278:14 280:1 284:15 286:11 294:3 327:16,19 334:3,13 335:22 337:6 overearns 243:20 overfunded 241:18 overlooked 166:21 overrule 184:23 267:13 Overruled</p>	<p>179:19 overzealous 275:4 Over-earnings 351:15 O&M 343:25 o'clock 44:4 347:12,18 O'Fallon 28:12 99:22</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 26:1 317:11 348:15 349:1 350:7,9 351:2,4 page 160:12 161:2 169:16 169:19 171:11 172:17 176:15 176:17 180:18 181:10 183:4 193:8 196:6 197:19 199:16 206:8 210:12 212:17 221:18 251:5,6 263:16 264:7 276:12 277:15 278:2 278:11 280:3 281:1,3 283:1,4 298:4 300:2,5 338:11 pages 151:22 197:16 paid 47:15 133:20 134:2 145:19 181:11 182:2,24 183:6 201:14 228:23 328:2 paint 260:14 painted 261:18 papers 41:24 42:20,25 44:11 paraphrasing 304:17 part 64:4 100:14</p>
---	--	---	---	---

108:18 161:22 161:24 178:22 186:17 188:23 189:2,24 251:24 253:9 260:20 273:10 303:24 332:16 334:23 339:14 participate 88:9 295:8 participated 335:25 participating 65:2 171:4 particular 30:5 34:8 37:17,23 42:10 56:7 77:11 78:10 91:8,16 96:5 100:20 101:4 106:16 122:12 122:16 127:14 129:22 149:16 149:24 166:9 174:3 176:10 177:14 209:5 209:12 210:24 236:6,13 269:5 284:20 293:24 307:16 314:11 345:24 particularly 40:17 53:16 58:9 94:2 95:8 241:12 303:1 particulars 42:13 parties 28:13,15 38:21 42:11 43:9 49:13 51:7 74:17 87:5 96:21 101:14 101:23 103:5,6 118:11 122:16 135:5 145:16 167:1,14 170:7 170:15 200:3 224:20,21	244:15,19 283:25 290:25 321:14 329:14 342:5 parts 30:12 33:20 123:17 330:10 party 27:19 28:3 28:10 43:8 53:1 84:5 85:16 171:9 179:17 195:10,12 197:17 199:14 220:3 235:11 244:23 280:18 282:5,18 310:11 344:22 344:24 346:23 pasted 136:12,19 137:1 patently 277:7 path 330:8 pay 55:1 72:18 76:20 133:21 145:14 154:4,6 203:4 213:3 220:25 233:12 277:8 paying 72:6,16 145:13,18 233:10 235:12 244:7 payment 145:21 payments 226:12 payroll 341:22 pays 202:12 PDFs 155:21 pendency 269:3 pending 269:4 pensions 174:8 236:9 people 31:23 84:12 147:8,10 148:21 198:19 212:6 220:11 percent 46:22 47:12,13,20,21 50:24 51:6	52:15,16,17,18 52:25 53:12,13 53:15 54:10,11 54:21 56:25 58:20 60:16,21 61:1 62:18 67:17 68:10 82:24 91:10 128:4,5 133:22 139:25 140:1,7 140:8,11,16,21 141:4,6 142:19 143:6,8,10 145:3,4,15 152:4 175:2 177:3 184:6 206:6 211:10 211:10,19 228:24 251:9 259:5,7,14,15 259:15,16,23 263:25,25,25 264:1,3,5,20,25 265:1,2,4,6,7 265:18,22,25 266:3,5,10,12 280:8 286:19 292:5,12,12 293:10 295:15 298:10,18,20 299:23 300:20 311:25 320:7 327:24 332:14 333:8,16,21,23 334:5,15,18 335:10,11,12 335:20 percentage 161:2 258:20,21 259:1,10,19 333:17 perception 295:25 perfect 38:25 perfectly 177:24 perform 54:13 93:7 120:22	226:6 280:19 337:12 performed 69:7 69:14,15,23 70:12 89:4 275:5 280:18 327:22 performing 166:7 218:15 331:14 performs 54:19 period 31:8 46:14,18 47:15 47:22 48:4,11 49:22 56:13 63:4,5 67:13 87:15 89:21,24 90:2,4,11,12,13 90:21 95:3,12 95:16 114:1 129:23 131:13 136:7,25 137:5 137:6,6 138:18 138:24 141:18 143:2,4,8,14 151:5 153:19 153:20 178:6 184:15 187:9 209:6,12,21 210:6,20,24 212:23 226:24 230:22,23 238:14 250:5 251:8 252:6,12 252:13 255:23 256:18 259:20 260:17 263:24 264:25 265:2,9 265:17 277:5,9 277:21 278:19 278:23 279:4,5 285:11 323:23 325:9 339:13 340:3 periodic 102:16 periods 30:24 147:25 212:12	213:11 249:24 256:15 273:18 273:22 274:2 274:15 permanent 212:9 213:12 276:22 permit 93:24 146:18 permitting 93:14 persistent 104:9 person 135:10 260:21 personally 70:17 72:14 353:8 perspective 334:12 persuasive 85:20 290:9 pertinent 30:11 33:12 per-book 132:2 phase 69:9,12,22 70:7 71:6 144:4 144:7 169:11 170:24 phases 70:8 171:17 phrase 61:15 100:17 111:23 114:24 Ph.D 313:21 348:23 350:19 pick 151:7 picture 178:10 piece 46:8 piecemeal 82:16 85:14 91:19 104:15 piecemealing 91:24 pieces 30:17 165:12 172:19 172:23 173:7 place 91:13 105:13 178:19 269:7 353:9,14 placed 178:1,25
--	---	---	--	--

<p>180:3 216:8 278:21 279:3 places 31:24 plan 63:8 307:22 planned 56:16 plans 55:16 plant 47:5 55:17 78:1,4 144:6,16 144:19,20,23 166:10 178:1,4 178:8,11,13,13 178:14,19 179:7 180:3 203:22 204:7 204:16 205:7 206:21 279:10 318:22 342:11 343:1 346:11 plants 97:23 pleadings 35:11 138:6 please 42:16 65:6 81:13 93:11 99:25 157:4,5 157:12 158:8 180:17 182:12 192:20,23 194:18 199:16 231:10 243:16 244:8,9 249:19 251:19 257:20 278:2 285:7 287:19 298:16 300:2 313:23 317:13 plot 256:21 plotting 258:4 plus 33:8 65:25 133:22 216:12 point 28:17,25 34:9,17 36:12 36:13,14 41:15 41:21,22 42:4 42:14 43:10 48:16 51:24 52:5 56:17 87:18,21 94:16</p>	<p>104:19 112:6 124:23 126:12 126:18,19 127:14 129:10 129:11,13 148:25 149:11 171:2,3 173:3 206:4 226:17 226:20 227:1 227:11 232:21 253:21 254:4 261:24 275:17 279:11,23 280:1 296:15 305:24,24 323:14 327:23 332:13 334:6 336:20 347:17 347:19 pointed 97:6 138:5 139:20 277:12 points 69:12 124:12 137:19 155:8 256:21 266:12 297:20 302:12 policy 34:10 70:3 94:2 95:18 219:21 234:21 333:1 pollution 144:8 portfolio 309:24 portion 33:1 109:7 272:17 portrayal 255:2 portrays 177:5 position 34:8 51:18 55:14 56:14 57:9,13 66:20,21,22 68:18 70:19 72:25 73:2,14 91:4 100:3,11 104:7 107:3 114:16 117:1 117:17,23</p>	<p>118:23,25 120:4 123:2,6 124:2,4,13 125:16 148:18 149:10,15,15 151:23 190:11 190:13 277:3 290:24 291:1,3 291:15 positions 118:24 positive 254:7 possession 221:10 possibility 30:15 possible 30:2 189:8 195:14 195:15,16 243:20 272:13 334:3 347:2 possibly 70:21 Post 27:5 Poston 25:7 27:9 potential 70:11 potentially 72:22 91:6 235:2 power 60:16 128:13 318:22 PowerPoint 45:13,15 58:19 78:11 135:11 practical 120:9 120:10 practice 88:12 94:10 95:11 329:24 332:7 practices 168:6 168:17 329:2 preceding 256:16 precipitator 144:5 223:22 precipitators 204:21 precluded 220:4 predict 95:9 Predictably 51:13 prefer 118:23</p>	<p>prefiled 51:9 157:18,19 252:22 288:3,8 288:14 prejudicial 37:16 37:24 40:12,13 40:16 premark 43:3 premise 207:7 276:25 premises 97:24 premium 213:3 213:15 308:9 prepare 222:22 223:1 prepared 47:9 49:1 50:12 124:11 125:21 157:19 199:12 250:14 253:15 253:15 255:17 257:23,24 258:17,18 272:5 288:3 289:1 314:6,7 317:23 prepares 49:6 250:11 preparing 183:21 325:19 preposterous 39:11 prescribes 164:2 present 62:16 346:23 353:8 presentation 45:16 121:10 251:25 presented 41:16 42:5 51:23 108:21 117:21 119:22 138:21 275:8,8 presenting 97:13 presents 56:2 Presiding 23:17 press 31:23</p>	<p>presumably 128:19 pretty 40:22 48:18 142:2 200:17 225:9 245:9 253:6 254:4 264:4,4 309:23,24,25 309:25 342:16 previous 29:24 48:10,10 153:24 154:9 171:5 258:7,23 292:25 297:14 previously 120:20 145:12 price 46:1 310:6 310:15 341:18 prices 201:21 202:1,6 308:13 308:17 309:24 primarily 30:22 131:21 principal 65:22 principle 339:10 339:11 344:18 prior 34:1 52:23 99:2 218:24 263:3,4 273:14 273:23 274:1 274:16 282:19 309:22 prioritize 330:14 prioritized 330:21 pro 117:12 probably 35:4 65:1,1 90:18 94:2 99:13 140:23 152:3 190:8 221:1 226:22 267:5,6 281:22 284:8 331:4 342:16 problem 70:17 70:18 79:20 84:9 141:15</p>
--	--	---	--	---

<p>143:17 193:12 262:2 problems 85:15 135:23 138:12 146:21 procedural 125:11 147:1 147:14 156:3 231:7 342:5 procedure 79:5 197:21 procedures 30:20,20 329:9 proceed 249:14 275:13 proceeding 30:16 65:2,7 74:20 101:8 112:7 135:3 163:17 165:7 167:13 226:16 338:23 339:3,7 345:10 proceedings 23:4 29:20 170:8 353:8,11 process 38:4,11 70:2,4 71:7,17 72:4,20,21 73:9 73:10,12 74:6 82:13 109:17 111:6,9 126:22 127:19 133:16 134:7 143:23 145:13 169:7,8 169:21 171:13 203:19 254:14 330:12,14 335:6 processing 152:15 produce 171:10 producing 61:19 product 49:24 production 162:3 237:7 281:18 281:25 professional</p>	<p>208:19,22 proffers 57:22 profit 66:1 program 228:18 307:18 308:4 309:23 project 144:5 projected 34:21 88:3 178:8 206:14 projection 177:25 projections 87:2 projector 135:22 projects 134:21 144:2,3 156:14 177:17 179:24 205:8 219:8 240:25 278:20 prolonged 210:11 prominently 46:16 promise 44:7 promotional 186:20 187:20 prompted 235:16 prong 77:16 proof 100:7 110:18,19 121:4 131:18 131:20 141:10 335:23,24 336:10 proper 38:15 52:22 339:12 properly 72:3 330:21 property 146:8 154:19,22,22 154:23 155:5 202:19,23 203:2,5 proposal 53:6,6 141:9 propose 60:6 98:23 99:3</p>	<p>166:23 168:4 proposed 52:25 53:4 65:18 120:2 135:20 136:11 139:8 158:12 167:16 168:10,12 198:18,19,22 211:14 341:5,8 proposing 141:2 186:23 proposition 39:10 proprietary 30:19 156:10 156:11,15 prospective 129:4 prospectively 117:10 127:10 128:23 protect 65:23 protected 35:12 35:20 40:19 protecting 35:3 protocol 324:5 prove 73:11 75:14 87:5 89:15 100:6 proves 142:2 provide 38:5 58:22 65:24 71:3 94:1 119:4 135:4 148:14 164:8 205:4 213:4 221:21 223:8,14 295:4 313:6 provided 35:17 38:6 74:16 93:20 97:11 98:3 133:7 138:4,17 160:2 172:9,11,12,15 174:21 200:11 200:20 210:3 223:5 242:12</p>	<p>242:13 244:12 284:23 286:17 288:12 313:1,5 provides 98:10 132:20 144:1 313:1 providing 222:20 proving 131:1 147:23 provision 84:1 129:12,14 provisions 109:5 proxy 132:20 303:3 prudently 212:22 213:15,16 234:4 PSC 65:21 164:12 psoriasis 111:23 public 23:2 25:6 25:6,7,7,10,11 25:14,17 27:5,7 27:10 29:14,25 30:2,10 31:20 32:14,21 33:23 34:11,11 35:8,9 35:14 36:2,7,15 37:1,6,11 42:11 51:11 65:4,10 67:3 70:1,21,22 70:23 77:10 79:1 84:15 85:4 87:10 89:15 94:2 95:18 156:5 164:19 169:3 170:9 171:3,5 198:12 218:24 224:21 234:21 237:20 239:12 244:24 250:17 290:8 293:18 309:12 314:3 315:8 317:21 327:7 public's 29:11 pull 58:25 156:1</p>	<p>pulled 37:22 237:7 pulse 43:19 pumping 307:19 purchased 144:15 241:5 purport 132:25 180:9 241:3 purpose 30:13 65:22 212:9 213:8 339:14 purposes 84:3 299:6,16 343:15 pursuant 73:18 164:21 pursue 337:3 pursued 334:13 pursuing 336:6 pushed 125:11 125:16 pushing 336:25 put 36:3 57:8 64:18 77:3 85:11,16 90:16 105:13 106:22 119:2 122:5,16 144:20,22 149:14 156:10 160:14 173:19 178:3,4,13 188:15 189:14 190:10 199:22 202:3 203:23 203:23 204:5,8 206:5 222:8,11 222:17 223:23 224:16 228:23 229:8 236:5 237:3 252:22 277:2,13 278:8 301:1 310:10 323:10 329:24 puts 188:14 234:5 putting 62:4,5 78:1,7 82:24</p>
--	--	--	--	--

<p>144:10 222:16 260:10 329:6 337:15 p.m 28:19 37:6 347:22 P.O 24:18 25:8 25:15 26:23 27:10</p> <hr/> <p style="text-align: center;">Q</p> <p>qualified 195:25 196:7 281:7 291:22 qualify 277:19 quandary 220:14 quantify 189:9 302:11 305:14 quantitative 307:18 308:3 quarter 29:7,19 90:18 95:1 191:6,10 250:4 271:18 283:14 283:15 292:6 292:12,14,18 293:4 294:12 294:13 322:4 342:13 quarterly 46:12 49:8 250:1,3,6 255:24 258:6 258:22 260:12 quarters 252:7 320:1 322:15 question 31:10 43:16 48:24 49:2,4 50:5 52:4,19 58:17 61:9 65:15 70:5 79:1 82:3 83:13 86:15 89:21 91:1,7,14 93:3 93:23 103:24 109:5 113:4 114:15 116:5 120:4 123:21 125:20,22</p>	<p>126:4 130:24 154:8 156:3 159:6 166:3,14 167:22 168:11 176:22 179:22 183:8 188:20 190:19 191:17 192:4,16 193:10,21 196:6 197:2,20 199:17 200:2,6 201:25 203:6 203:15 204:7 205:10 206:7,9 206:17 207:2 207:20 210:15 212:18 213:7 213:20 214:18 214:23 215:8 217:3,4 219:17 221:9,12,14 226:9 227:10 227:15 233:13 234:18 238:3 239:23 240:23 241:9 254:19 276:19 280:11 281:6 283:3,7 300:16,19,22 300:25 301:4,7 301:10,15 302:16 311:19 311:20,24 324:21 334:23 344:25 questionable 230:24 questioning 276:6 282:9 questions 43:8 43:10 48:22 50:3 51:23,24 52:12 57:4,5 59:7,20 64:3,22 75:22,24 76:3,6 78:22,24 89:17 89:18 92:24</p>	<p>98:14 99:15 108:5,9 113:6 123:22 147:15 148:5 153:9,14 158:5 159:2,8 160:5 161:15 162:25 169:2 179:13 180:12 185:14 186:4,7 196:16 215:10 215:24 216:1,4 216:5 223:12 225:1,5,8 230:4 237:11,13,15 237:17,19,21 237:23 238:6 239:1 242:3 245:2 247:7 261:2,20,23 262:3,4 270:22 274:19,22 276:5,15 278:9 278:14 279:9 280:6 281:4 282:4 284:2 288:21 289:24 290:1 294:21 297:4 302:1,3,4 302:9 306:9,14 309:5,7,9,11,13 311:12 313:14 314:14 315:7,9 315:11,13,15 315:17,19,20 315:24 316:1,5 316:18 318:8 323:12 328:13 343:9 348:10 348:10,11,18 348:18 question's 179:12 quibble 150:24 quickly 231:4 244:3 291:1 quit 236:20 quite 68:14 76:19</p>	<p>77:3 176:11 243:7,10 326:7 quote 46:9 55:1,4 291:14,15 quotes 55:1,7</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 25:1 26:1 350:3,5 353:2 Rackers 206:10 207:12,13 raise 79:11 157:5 199:5 raised 98:15 254:10 ran 214:22 273:18 range 140:6,16 177:15 212:4 243:1 286:11 297:16,17 298:6,8,9,12,22 298:23 299:8 299:13,17,20 300:13 301:1,8 301:14,19 302:24 303:10 303:11 308:12 308:23 310:21 311:13,14,16 311:23 312:2,3 312:4,7,8,18,22 312:22 rate 41:4,23 42:8 42:25 47:3 48:20 51:8,21 52:6,24 53:3,18 53:23 54:5 55:22,24,25 57:11 58:10,11 60:7,9,24,25 61:17,21 62:12 62:25 63:3,10 64:5,6 68:25 71:16,24 72:10 76:20 79:5,15 80:1 82:3,5</p>	<p>83:6,20 84:7 86:2,2,11 88:7 90:12 94:7 95:14 96:9,19 96:24 98:23 100:10,18 103:25 105:23 106:17 109:1 109:13 110:5 111:7 113:5 114:11 118:2 118:16 121:21 123:16 125:18 129:17 130:12 132:16 134:17 135:4,20 136:13,19,20 137:1,3,9,12,23 141:3,5,20,22 141:23,24 142:1,10,12,12 143:11 147:4 152:15,18 153:15 154:20 155:7 160:23 163:12,16 164:20,23 165:7,10,13 167:13,16,17 168:6,18 171:5 171:6,19 172:20 173:22 173:24 174:11 174:18 175:2,3 175:17,20,24 175:24 176:2,8 178:23,24 179:1,2,7 180:6 187:17 192:4 199:8,8,19,20 203:20 204:12 210:4 213:5 215:3 222:9,12 223:4,6,7,15 224:12,14 227:4 232:14 232:23 233:4,5</p>
---	---	--	--	--

233:10,15,22	134:7 212:10	136:2 141:14	reactor 144:15	156:15 192:18
233:23 234:7,8	213:8 304:23	141:17 142:4	144:16,18,23	195:1,4 199:18
234:12 235:13	324:5 337:1	145:11 146:3	205:7 241:5	223:24 230:16
236:17 241:23	ratepayers 45:21	147:24 148:1	read 31:4 98:16	231:2,11
244:13,25	46:2,25 47:15	148:19,20	193:10,16,17	235:22 240:19
247:8,13,18,20	52:5 63:10	151:21 153:22	196:12,15	244:2 269:12
247:25 255:25	65:23 102:20	153:25 154:2	198:4 199:24	276:25 319:6
263:11,14	244:6 346:16	154:11 155:8	207:10 209:9	332:1 339:19
267:17 269:8	rates 31:11 34:18	179:1,3,6	210:22 213:14	339:23
269:10,11,23	39:4,21,24	187:22 192:2	283:5 291:12	reasonable 33:2
269:24 271:8	45:20 46:24	192:22 193:2	300:12 301:18	45:20 53:16
271:21 272:6	49:15 50:21	199:1,5,12	301:21 339:8	54:16 57:1 60:3
272:13,17,25	51:17 52:20,22	207:8 209:7,14	readily 90:24	65:24 67:24
273:14 275:4	54:2,8,17,23	211:21,22	169:13	70:23 71:14
275:18,20	55:12,25 56:21	212:9,11,19,20	reading 98:17	72:16,19 73:6
276:2 277:8	56:22 60:3,5,13	212:23,25	119:22 276:15	73:10 74:6,12
279:19,20	61:19 62:17	213:2,10,13	readings 106:20	74:23 90:15
280:10,20,23	65:17,23 66:5	219:23 220:2	readjust 247:17	98:8 107:12,13
280:25 284:3,3	66:12,17 67:5	221:22 227:7	reads 183:13	107:16,17,19
284:5,7,8,9,10	67:11 68:17,23	232:2,8,15	ready 42:2 45:7	107:20,22
284:18,25	72:7,16 73:15	234:12,15	83:21 243:16	110:23,25
286:3 290:10	73:18 75:20	235:14 236:1,3	287:13 313:20	111:6 125:5
295:10 297:15	79:3,11,17,21	241:13,23	real 29:12 34:25	132:20 134:10
298:17 301:12	80:4,14 81:22	242:9 244:7,22	37:22 82:9	135:2 140:6,8
303:16,23	81:24 82:22	271:22 275:22	83:16 107:3	148:2 168:5,12
304:10 306:2	83:19 85:22	276:22 277:2	127:1 144:25	168:13,16,23
309:25 312:4	87:8 88:4 89:12	282:14 299:23	156:2 235:14	175:12 212:4
312:20 313:6,6	89:25 90:4,6,7	307:24 308:5	reality 82:6,13	212:21,22
320:6 321:11	93:4,24 94:8,11	311:25 312:3	realize 184:11	213:5 227:20
321:13,21,25	94:20,21 95:11	312:15 320:17	really 29:10	279:5 293:22
323:21 325:7	95:23 98:11,12	322:18 323:2	30:20 35:24	293:23 298:13
325:19 334:17	103:24 107:12	323:16,24	39:10 41:24	298:14,24
334:18,25	107:21 108:3	324:2 325:5,9	45:24 78:19	299:3,4,7,13,14
335:1,4,9,15,18	110:23,25	339:15 343:2	83:8,9 107:2	299:20,23
338:23 339:3,7	111:6 114:18	346:22	132:4 138:5	301:2,8,18,20
339:12,20	117:10,11	rate-case-type	149:6 150:8	302:20,24
340:23 342:4	124:19,21	68:25 73:12	207:3 224:10	304:11 308:9
342:24 343:25	125:13 126:6	74:20	225:8 245:2,8	311:15,23,25
344:20,23	126:12,24	rate-setting	266:8 274:25	312:19,21
345:24,25	127:7,8,9,15	34:20 127:19	280:8 308:13	reasonableness
347:1,6	128:19,21,23	299:5,15	310:8 321:14	68:23 81:22
ratemaking	129:4,8,23	rationale 113:10	326:6,16	212:7
64:10 91:3,5,15	130:2,4,16	113:12	reason 34:1	reasonably 95:9
91:17,20 92:6	131:2,3,10,24	raw 106:18 201:3	58:13 64:5	reasoned 88:25
104:15,16	132:5,9,12,14	242:8 260:9	94:12 95:6,10	reasons 82:11
109:17 114:3,6	132:20 133:3	reach 330:3	114:17 128:10	116:16 131:21
114:11 126:22	134:8,10,24	reached 275:5,22	132:6 156:11	141:8 158:19

225:22	58:10 233:15	290:13 300:13	recovered 347:4	199:19 232:19
rebate 182:24	243:21 274:3	321:13	recross 237:13	Reed 350:17
rebated 228:17	received 162:19	recommended	309:5 311:1	reexamine
rebates 54:25	162:21 215:20	53:17 89:9	316:6	140:14
55:7 133:21	215:21 247:2,3	104:5 106:4	Recross-Exami...	refer 207:12,17
145:14 150:24	271:1,3 276:6	113:5,6 114:18	238:1 262:11	reference 38:18
176:24 177:6	289:19,21	298:8 300:20	309:16 311:2	176:16 268:3
181:9,11 182:3	315:2,3 317:4,5	301:13,18	348:11,12,19	272:15 278:11
184:2,14	319:15,17	303:10,11	348:19	referenced 190:2
201:14,16	322:14 327:3,4	308:12 312:1	redirect 196:16	246:7
216:6 217:15	350:1	recommending	243:5,11,17,18	referred 104:15
226:9 238:5,10	receives 179:4	86:1 113:24	252:25 253:11	273:13,17
238:12 328:2	322:3	142:19 186:15	253:16 260:25	340:10
340:7,10	receiving 233:6,8	321:20,21	271:5,6 311:10	referring 153:13
rebuttal 61:16	233:9,17	322:19	311:11 316:6	157:15 275:1
137:18 166:19	reclassified 319:4	recommends	348:12,13,20	refill 284:19
169:19 176:19	reclassified	66:16 68:16	redressed 100:9	reflect 54:24
316:23 317:25	159:18,20	105:21,25	reduce 55:8	56:24 110:9
318:20 320:2	160:13 351:1,3	reconcile 54:5	108:3 130:5	153:21 173:5
329:3 338:11	recognize 164:3	335:13	219:23 220:1	202:5 235:25
340:9 343:23	253:20 256:9	reconciliation	232:8 238:19	268:19 294:15
350:11,13,15	263:11 282:18	56:11 321:10	296:5,8,13	295:21 307:12
350:17,19,21	321:7	352:3	312:14 336:3	reflected 58:21
350:23 351:1	recognized 49:16	record 32:14	reduced 35:4	154:4 174:11
rec 300:19	52:23 255:23	33:21 41:22	45:15 85:23	188:9 189:23
recalculated	285:13 303:3	42:18,24 44:16	87:8 105:6,7	218:2 232:25
234:14	339:6 343:2	44:25 45:1	216:8,15,18	302:13 303:21
recall 103:10	recognizes 53:19	61:10,13 73:16	232:3,23 237:5	303:22 304:14
106:6 166:18	recollection 84:3	88:2 111:2	302:13 303:7	305:7,19 344:1
171:14 240:1	274:6,7 298:2	140:19 164:9	reduces 296:12	344:2,7 346:3
241:18 242:5	recommend	164:13 184:19	reducing 56:20	reflecting 161:1
247:6 271:10	86:11 106:17	253:5 260:10	67:11 211:9	258:7,23
271:11,16,24	108:3 168:16	268:1 287:2,19	reduction 51:8	304:22 308:24
273:8,15,20	299:10,16	313:24 337:19	51:21 55:11	reflection 345:19
274:4,9,21	303:8 310:2,8	recorded 97:3	62:17 65:17	reflective 254:22
278:14 280:12	312:2 346:13	166:10 304:24	66:5 68:17	323:23
281:11 283:7	recommendation	records 34:11,12	73:15 75:20	reflects 174:22
283:19 291:19	89:8 113:15	34:15,16 82:14	82:4 83:6 86:2	188:15 189:12
295:13 304:18	164:24 188:13	83:16 94:15	86:3 100:10	190:4,11
325:2 341:6,11	211:5 290:21	164:21,25	106:17 125:18	293:23 302:24
341:14	291:13 295:14	165:11,17,21	129:17 135:20	refresh 298:1
receipt 162:16	295:17,20	167:7,20,24	139:9,21 140:4	refueling 137:11
215:17 246:24	297:14 299:19	168:17 343:14	141:3,6 211:14	137:12,13
260:5 289:16	302:19 309:19	343:15	217:5,25	refund 137:23
314:24 317:1	311:16 320:12	recover 134:9	244:13 302:25	refunds 128:18
319:12 326:25	337:1,2	135:1 212:21	303:13 335:15	129:1 243:21
receive 41:24	recommendati...	234:4	reductions 199:8	243:24

<p>refused 180:9 223:8 regard 85:9 222:14 337:14 regarding 73:22 291:12 regards 85:4 regular 81:25 343:6 regulated 34:24 35:1,5 96:15,16 127:24 164:12 164:13 333:6 regulates 333:7 regulation 87:24 89:16 regulations 82:15 regulatory 23:17 94:6,14,17 95:2 95:6,7,10,13,16 95:21 102:18 103:1 163:9,10 165:6 168:4 190:20 241:17 241:22 288:1 303:1,7 314:4 317:20 342:25 343:15 344:18 reiterate 37:12 rejected 104:6 272:12 rejects 110:3 rel 65:20 67:2 related 82:16 186:4 214:23 318:22 relation 240:23 relationship 339:13,16 340:4 relative 303:2 relatively 307:23 release 37:1 released 279:1 relevance 39:8 184:18,21</p>	<p>relevant 29:5 33:10 38:24 39:6 40:4,10 41:12 51:16,19 53:25 54:14,15 56:7 57:10,13 57:16,24 58:2,6 66:25 67:6,23 68:5,20,22 69:2 73:4,17,23 74:10,18,22 75:3,16 77:22 79:7 82:21 83:19 84:18 85:12,18 87:6 88:15,16 90:19 92:3 96:1,6,7 97:11 100:15 100:16,24,25 101:2,3,4,20,21 102:8 103:3,6 108:22 110:23 110:25 111:11 111:16,20 112:2,10,14,19 119:17,21 121:25 122:10 122:23 123:10 124:2,14,18,20 125:14 126:19 127:7 132:9,10 132:23 133:1,1 133:8 141:14 149:4,5 152:1,3 174:18 175:7 190:5 209:7,13 209:19 210:17 240:16 244:16 260:17 284:11 285:5,13 294:3 324:23 325:4 327:25 328:22 329:5,19 335:7 336:25 344:5,7 345:9,11 346:9 relied 35:11,13 50:7 136:6</p>	<p>178:25 relief 56:19 61:11 62:14,20 63:10 69:24 117:18 148:14 284:18 relies 170:1 rely 275:10 relying 189:23 remain 32:17 156:15 345:6 remaining 141:1 156:6 remains 161:20 remarks 124:11 125:21 remedy 79:21,25 remember 76:17 155:3 186:7 238:5 254:19 297:15 303:25 324:20 341:4,6 remotely 131:7 141:12 removed 113:13 render 220:10 231:24 rendered 65:19 75:20 275:22 renew 254:15 270:22 repayment 129:4 repeat 167:22 179:21 200:6 270:4 repeated 60:1 repeatedly 110:21 rephrase 166:5 replace 80:23 205:6 report 31:19,20 32:7,10 33:6,25 34:2,3 40:14 46:6,13,15,16 46:19 47:4,11 48:19,21 50:6,7 50:16,19 51:25</p>	<p>55:21 64:7 67:18 110:2,6 126:15 135:18 136:8 152:8 155:24 180:21 181:6 207:24 214:12 222:23 223:3 224:9,9 250:4 251:2 256:17 271:15 272:5,8,12,19 273:3,7,9 319:25 320:7 321:18 323:14 324:15 346:3 reported 23:23 50:14,17 56:12 67:17 69:7 135:16 165:19 167:12 178:24 193:1 249:7 250:24 251:15 252:16 255:4 261:10 285:14 333:10 reporter 44:7 45:5 182:15 194:11 245:23 248:20 287:10 287:14 321:3 353:6 reporting 49:22 50:9 277:10,22 320:7 reports 29:2,17 30:5,14,23 31:15 32:2,5,15 32:15 34:2 36:15,16 38:23 38:24,24 46:7 46:12 47:2,6 48:1,17,24 49:7 49:7,9,20 52:2 67:9 68:5 84:2 84:6,10,16,18 96:18 106:19 135:17 141:24</p>	<p>156:12 164:19 165:14 173:19 193:6 214:9 223:2 248:22 249:21,25 250:9,12,24 251:5,14,16 252:5,21 255:5 256:3 258:6,23 262:19,24 263:3,4 271:17 272:19 273:5 303:22 304:15 305:8,13,19 322:4,14,17 323:1,2,4 324:6 324:10 343:5 343:19 351:13 represent 93:12 representation 31:7 representative 325:9 representing 116:6,8 130:22 represents 67:19 request 85:21 89:11 118:10 147:17 148:20 148:21 152:11 180:10 182:19 192:19,19 193:5,24 194:3 215:16 222:1,8 230:13 231:12 237:4 246:4,6,8 246:12,16,19 321:12 335:5 351:6,10 requested 56:19 69:24 117:18 126:1 requesting 61:11 277:17 requests 34:15 125:7 147:18 152:7,15,17,19</p>
--	---	--	--	---

152:22 153:2 192:10 194:19 195:3 208:9 282:23 require 35:21 57:10 96:3,5 164:12 175:12 219:5,25,25 282:13 310:16 323:5 345:13 required 35:17 46:4 52:10 62:22,24 63:16 63:17,18 71:4 72:18 73:25 76:22 77:8,18 77:21 117:5 136:2 144:8 145:14 295:21 295:25 329:6 requirement 39:10,23,24 63:9 68:21 71:14 73:21 74:19 86:16 88:8,10 93:7 116:22,24 129:15,21 131:4 148:11 148:24 184:16 199:5 211:20 211:25 234:3 234:14 266:20 321:14 324:14 325:21 333:22 335:6 345:7 requirements 73:8 76:11 181:15,19 requires 31:14 45:19 48:25 73:9 81:17 96:2 96:15 130:10 130:13 165:6 212:3 222:22 304:23 requiring 51:25	72:3 220:18 Reserve 307:17 308:1 reset 90:6 141:14 resets 56:22 resetting 325:4 residential 334:8 resisted 101:10 resisting 112:8 resolution 71:19 resolving 76:7 resource 118:17 resources 52:8 82:15 84:23 98:20 119:6 147:6 186:21 196:10 218:25 225:10 239:25 240:6 281:9 330:20 338:18 respect 34:11 91:7 99:12 216:6 313:12 322:10 respected 52:22 53:23 respectfully 89:11 respects 110:18 160:8,10 respond 81:5 208:8 224:23 253:18,21 282:23 responded 221:13 275:18 282:19 285:17 Respondent 23:14 response 31:2,4 32:19 36:11 37:8 39:12 106:1 121:16 130:17 162:17 182:18,22,23 183:16 193:3 215:18 221:8	221:25 222:19 242:2 246:6,9 246:25 280:11 282:8 289:17 314:25 317:2 319:13 323:11 327:1 351:5,10 responses 31:2 responsive 139:18 rest 260:13 restate 324:21 334:22 result 66:18 75:13 86:21 104:10 220:15 233:20 275:21 305:7 306:5 resulted 63:21 230:10 307:1 results 30:7 69:8 114:11 200:23 269:7 277:5 285:12 304:7 320:1 324:3 resume 347:18 retail 211:21,22 Retailers 25:4 27:13,17 51:11 93:9,12 163:1 198:12 237:16 289:25 309:8 315:12 338:4 retaining 140:11 retired 178:16,17 retirement 191:3 retirements 178:5 retiring 78:4,8 retroactively 128:14,17 129:5,7 243:25 retrospectively 128:25 return 30:24 46:9,21 47:12 47:18,19,20	48:2,12 49:11 49:24 50:15,25 51:3,6 52:15,16 52:17,18 53:1,9 53:12,15 54:6 54:20,22 56:12 56:24 57:1,2 61:21 66:1 88:20,20,25 89:4,15 104:1,5 104:23 105:14 105:17 106:12 107:20 131:15 134:10 135:2 139:23,23 140:4,8,12,20 140:24,25 142:1,20,22 160:23 175:2 175:12,16 176:2,2,8 179:6 206:6 209:5,11 209:21 210:17 210:19,25 211:1,9,15 212:23 213:6 232:23 234:5 235:6 247:21 247:25 250:23 251:7,8,15 252:7,9 254:8 254:25 255:4 256:13,14 257:7,10 258:8 258:22 259:1,1 259:6,11,13,15 259:17,20,22 261:10,11 262:25 264:10 264:17,23 265:5,12 266:8 267:2 268:14 268:15 270:2 273:19 277:11 277:23 286:15 290:14,16 291:7,8,13,25	292:11,15,25 293:1,10,23 295:5,20,21,25 298:17,19 299:2 302:20 302:23 304:3,4 304:8,9,10,16 304:21,22 311:22 312:11 312:18,21 313:3,8,12 320:8 337:9 returns 53:5 94:21 105:14 140:6 209:18 214:10,11 254:3,6,22 255:25 256:17 256:25 257:2 263:18,24 264:19 266:7 268:18 274:8 292:8,21 294:9 294:18 304:25 revealed 29:21 revenue 39:9,23 39:24 63:9 68:20 129:15 129:20 131:4 181:15,18 184:16 211:20 211:25 234:3 234:14 266:20 304:25 321:14 324:13 325:21 333:22 343:25 345:7,24 346:11 revenues 50:2 97:1 132:16 164:4 166:10 233:7,14,16,24 243:21 247:14 247:15,17,18 249:11 255:22 268:21 305:1 323:21 325:7
---	--	---	---	--

<p>332:15 333:11 333:11 339:12 345:5 Revenues248271 351:21 reverse 95:2,7,10 95:22 reverses 95:13 review 71:18 73:23 88:14,14 92:3 170:24 171:13 183:23 183:24 253:1,2 291:1 313:10 327:22 329:21 330:22 332:9 334:19,21 335:2,3,7 336:14,22 337:10,11 344:12 345:13 reviewed 38:16 193:20 237:3,4 285:16 331:1 331:10 343:6 reviewing 232:13 revise 60:2 revised 73:19 81:20 141:9 285:21 revision 60:7 Rick 28:11 rider 312:13 riders 311:5 Ridge 287:21 right 37:5 41:13 42:1 44:2 58:10 59:10 64:21 65:10 70:24 71:9 72:10,23 74:2,3,14 79:24 79:24 81:3,7,10 82:17 89:7,8,25 91:1 108:20 109:8,24 112:21 113:3 113:14 114:5,6</p>	<p>114:23,25,25 115:21,25 118:2 120:3 121:12,23 129:3 132:13 141:18 143:6 144:13 151:11 157:5 159:5,11 160:1 162:12 171:25 172:6 172:13 176:6 177:12 178:17 182:8 185:18 185:20 187:11 190:24 191:20 195:6 201:11 203:6,12 208:16,24 213:17 214:20 216:12,13 217:11 218:1,5 218:10,13 221:11 223:16 223:19 224:22 224:25 225:23 227:17,23 228:2 229:5,18 229:24 230:1 235:24 236:24 242:20 245:2 245:13 246:8 247:16 250:3 251:13,18 255:11 256:8 257:17,18,20 258:14 259:3,8 259:18 265:15 265:18,25 271:14 272:10 273:11 274:12 275:24 276:4 279:7 282:3,4 282:15,25 283:11,18 284:1 286:23 288:9,20 289:5 300:7,11</p>	<p>303:18 306:19 309:4 314:20 316:16,19 321:15 322:1 324:11 338:1,3 339:14,17 340:11 347:11 rights 147:16 right,the 104:25 Ringing 282:9 risk 45:25 82:24 83:1 91:11 104:17,20,21 104:22,22,25 105:1,4,5,6,6 113:13 296:1,5 296:8,12,13 297:1 302:12 302:25 303:2,3 303:6,12 308:9 310:6,11,13,24 312:14 334:2 336:5 risks 296:14 risky 104:23 105:12,16 296:17 risk-reducing 302:9 risk-shifting 104:12 River 28:2 99:22 road 287:21 336:6 Robert 23:18 350:15 ROE 40:15 46:10 46:22,23,23 48:12 49:19 50:14,17,18 52:22 53:17,19 53:21 54:7,9,11 54:16,17 55:6 62:9 66:2 67:17 67:19,21,25 68:10,12 74:23 75:7,10 90:9,10</p>	<p>104:1,10,11,20 113:5,16,22,24 114:12 137:19 141:4 143:3 177:3 217:5,25 233:6,20,25 248:25 249:4,4 249:6 252:16 257:14 266:2,2 266:5 269:22 286:19 291:16 291:17 300:20 301:5 302:14 303:21 304:14 305:8,18 307:2 320:7,12,15 321:19 327:12 327:24 328:5,8 351:14,15,17 351:17,19,23 351:23,24,24 ROEs 113:6 266:4 270:7 294:6,6 role 322:9 roll 151:13 rolled 151:6 room 84:12 303:17 328:10 roughly 90:20 184:8 333:12 routine 309:25 routinely 99:2 341:17 row 256:5 RPR 23:24 353:17 rule 25:14 30:15 31:14 34:12,13 35:11,13,20,22 36:12,13 42:2 165:6 333:2,3,4 333:5,15,16 rules 71:11 230:8 249:23 ruling 42:13 188:18 248:16</p>	<p>254:16 275:13 run 188:15 running 80:25 Rupp 23:20 78:23,24 92:25 93:1 153:10,11 153:22 154:8 154:18 155:6 155:11,20,25 237:10,11 316:3,4</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 23:18 26:1 350:11 safe 105:9,10,12 salary 153:16,21 154:10 satisfied 285:1 satisfy 141:9 147:22 252:15 255:8 saw 222:3,4 saying 77:25 80:3 98:22 115:19 119:23 121:20 122:20 123:14 130:21 135:24 151:4 154:15 173:10 225:11 227:25 228:11,12,23 228:24,25 229:15 233:18 234:11 240:24 247:12 325:21 335:16 336:4,8 says 54:25 55:12 61:17 71:3 82:7 86:17 96:6 97:21 100:22 114:17 140:14 145:2 149:7 169:23 183:5 190:14 197:20 206:9 212:18 248:14 263:23</p>
--	---	---	--	---

<p>304:11 344:19 scales 82:8 84:22 schedule 96:9 125:11,17 147:1,14 156:13 160:16 190:2,8 197:22 198:8,14,17 231:7,14,19 342:5,6 schedules 156:20 164:24 165:3 188:9 189:12 267:18 school 135:10 Schwarz 25:1 27:14,14 34:6,7 93:10,11 163:2 163:3 168:24 173:9 186:4 237:17 267:20 290:1 309:9 315:13 338:5,7 347:9 348:3,8 349:3 science 212:1 scope 214:17 SCOTT 23:20 screen 45:14 Sean 43:6 316:24 season 93:13 seats 338:6 second 62:5 69:8 69:12 77:15 83:15 101:9 117:20,25 121:14 124:23 133:10 136:5 142:13 144:7 161:7 178:22 208:16 246:11 252:16 279:8 292:14,18 293:4 294:13 Section 45:19,20 see 33:6,25 36:25 45:14 47:10,17</p>	<p>48:9,15 59:13 83:17 84:13 86:4,9 104:10 135:13 139:12 154:15 169:25 173:12 177:7 222:13 227:5 235:13 243:13 246:12,15 255:12 256:21 257:6 258:9 262:4 263:21 268:15 316:17 324:9,9 347:16 seeing 59:2 291:19 seek 56:20 234:25 282:12 seeking 70:5 230:19 234:21 347:5 seen 82:18 92:14 102:8 177:20 227:2 253:16 253:25 284:17 308:2 330:1 332:22 select 260:16 sell 49:24 sells 106:14 sends 152:16 Senior 25:6,7 sense 123:3,5 132:10 227:16 sensitive 35:4 sent 153:2 Seoung 313:21 313:25 314:6 348:23 350:19 separate 64:24 156:14 separately 180:7 September 32:7 33:25 46:15,18 50:7,16 135:18 137:4 138:25 158:14,18</p>	<p>159:3 166:16 171:7 174:25 174:25 201:1 214:6 236:24 269:6 272:19 272:21,22 283:24 285:20 September/Oct... 271:13 series 101:9 serious 83:10 329:16 serve 65:22 221:20,21 served 53:24 152:25 service 23:2 25:14,18 27:5 39:1,9,15 47:6 60:24 65:18,25 67:3 75:20 88:17 118:1 125:6,8,9,12 126:2,8,17 127:8 129:9 130:3,5,10,13 130:14,15,18 131:23 134:19 134:22 135:6,7 136:1,3 138:8 141:12 142:7,9 143:21 144:6,7 144:13 146:19 146:25 147:2,6 147:12,20 152:8,23 153:4 164:20 173:2,6 173:18 178:1 178:15 180:3 186:19 192:1 192:13 196:1,7 196:20 197:9 197:24 198:2 199:4,11 200:4 200:8 203:23 204:5,8 206:22 218:15,19,22</p>	<p>219:15,17 220:1,9,18 221:4,16,21 223:17 225:12 230:11 234:8 238:25 239:11 239:12,16,19 239:25 240:21 244:11 250:17 269:14,16,20 278:21 279:4 285:2 290:8 314:3 317:21 326:11 329:7 329:22,25 330:7 331:13 331:15,22,23 332:8 337:3,13 342:12 343:1 346:12 Services 23:24 353:7 set 34:19 39:3,25 53:20 55:25 90:5 104:1,1,11 106:12,13 107:12 126:6 126:24 127:8,9 127:15 128:21 129:16,21 130:16 131:24 132:5,15 133:3 134:8 142:22 143:3 145:11 146:3 152:17 153:25 165:3 178:25 192:1 194:19 195:3 197:10 212:11 212:19 213:10 229:22 231:6 246:5 295:5 313:3 339:13 353:9 sets 88:4 132:9 136:2 setting 104:10</p>	<p>106:13 127:7 128:19,23 132:14 142:3 151:21 241:13 276:22 299:23 302:13 311:24 312:3,4,20 320:17 339:15 settlement 188:23 189:10 189:17,18,20 189:25 190:6 292:17 settlements 292:24 seven 133:14 201:10,12 231:25 severely 171:10 share 111:15 shareholders 46:1 81:19 102:22 312:6 Shawn 350:21 sheet 287:7 289:2 289:9 353:10 shielded 29:13 shifted 310:6 shifting 297:1 shifts 45:25 104:17 296:13 shipped 144:18 short 55:11 95:3 95:12 131:23 shortcut 132:6 shorter 71:25 Shorthand 353:6 shortly 37:6 short-sighted 224:17 show 47:6 55:21 66:7,19 67:7 68:18 72:25 74:9,21 75:2,13 77:3 100:8 119:3 125:12 131:6 133:15</p>
---	--	--	---	---

142:11 146:20 155:14 171:17 210:6 254:5 255:21 256:12 258:3,19 263:10 268:8 275:16 323:2 showed 50:7 69:17 78:11 128:12 141:24 155:9,17 214:9 237:4 268:14 286:14,18 321:11 showing 259:10 262:24 306:24 shown 49:10 51:21 shows 39:16 40:14 46:21 48:13 67:16 78:13 87:13 126:10 134:23 156:13 208:15 214:13 221:22 251:9 252:3,6 258:4,20 264:9 264:10 269:21 270:8 291:16 292:5 293:10 327:21 337:10 shut 33:1 shy 122:20 side 78:3 85:1,2,3 115:2 236:10 284:17 signature 194:22 signed 84:12 194:21 significance 331:2,5 significant 68:19 69:12 83:11 92:15 110:18 133:21 134:13 142:11 146:1 171:17 331:7	334:15 significantly 46:19 48:18 143:17 265:10 silent 140:10 similar 54:19 68:14 223:2,4 251:16 268:9 simple 130:25 261:17 simply 33:21 49:14 95:12 96:6 132:1 sincerely 102:7 single 91:24 93:18 96:4 102:23 147:17 151:24 193:23 single-issue 64:9 82:16 91:3,5,15 91:17 92:6 104:16 sir 38:19 108:19 109:9,14 111:3 113:7 114:2 115:3 118:8,13 121:11 123:18 123:25 295:11 296:11 sit 42:23 187:11 187:18 207:16 208:3 232:12 285:23 286:2 286:18 338:5 site 144:19 241:6 sitting 38:11 144:19 208:10 241:5 situation 64:19 79:2,13 87:16 95:1 206:2,25 207:5,17 225:13 240:17 241:10 334:4 situations 89:10 210:11 six 139:4 196:19	231:25 six-month 71:17 slide 47:9,10 48:6 48:7,10,13 58:19,22,23,25 slides 254:1 small 86:19 smaller 239:8,9 331:1,5,9 333:25 Smith 24:17 26:23 solar 54:25 55:7 133:21 145:13 150:24 176:18 176:24,24 177:6 181:9 182:3,23 184:2 184:14 201:14 216:6 217:15 217:16 226:9 226:11 228:18 238:5,10,11 328:2 340:6,10 sole 67:10 solves 262:2 somebody 47:23 126:1 235:18 Somebody's 109:22 someone's 36:1 someplace 226:22 somewhat 149:14 281:21 295:16 328:9 soon 169:18 195:6 245:4 307:23 sorry 28:1 125:22 169:18 176:17,22 185:17 213:2 234:17 235:9 240:22 244:1 266:21 272:22 281:23 285:10	296:10 306:20 306:22 311:8 330:11 sort 79:12 219:20 219:21 242:12 330:4 332:17 332:23 337:1 sought 41:8 231:2 277:21 335:9 sounds 111:24,24 148:9 South 24:17 speak 115:15 294:17 specifically 135:17 149:21 181:8 329:11 specified 67:13 spectacular 105:14 speculation 337:24 speculative 87:21 88:3 145:5 spell 317:15 spend 55:13 63:8 114:7,8 219:14 325:15 spending 203:19 205:6,9 232:24 233:2 240:18 spent 145:3,4,25 184:19,21,25 217:20 218:8 236:3,12 238:4 238:10 340:15 340:18 spite 56:1 sponsoring 221:2 spot 337:16,16 spreadsheet 59:12,15 ss 353:3 St 24:4,14,23 26:20 27:25 97:20	stacked 82:8 staff 25:12,17 27:1,4 31:17 32:8 43:4,6 50:12 51:18 52:7,10,25 53:4 53:24 54:12,18 55:11 56:5 61:16 62:2,3 63:7,14 66:13 66:16,23 68:3 68:16,22 69:1 69:15,16 70:3 70:21,21,23 71:3,22,25 72:4 72:5,9,15 73:2 73:9 74:11 75:4 75:11,17 79:4 79:11 80:15 86:1,9,11 88:9 88:10,12 89:3 93:4,7,16,24 96:8 97:6,12,17 98:18,20 99:1,8 99:9,24 100:3,5 100:6,14 101:25 102:14 103:21,22,25 104:4 106:4,5 107:5,6,21 108:1,14,21 110:20 111:10 114:17 115:23 116:6,8,17,20 117:24,25 118:9,15 119:3 119:5,15 120:6 120:8,19 121:4 121:20 122:21 123:19 133:4,5 133:5 136:12 136:20 137:1 140:9,9,21 147:10 149:23 150:17 152:16 153:3 163:7 166:19 167:6
---	--	---	--	---

167:16 170:9	116:22 117:16	310:4	79:19 81:19	27:15 28:7
170:23 171:18	117:23 118:23	started 138:23	86:17 100:22	strength 308:2
171:22,24	120:4 121:3	171:1 191:1,2,8	109:7 116:24	strengthened
174:22 180:13	123:1,20 124:2	262:23,24	123:17 129:12	308:15
182:19 188:12	124:4 148:17	274:13	129:14 328:25	strenuously
188:14,14	150:11 163:15	starting 47:11	statutes 71:12	101:10
189:23 190:10	164:23 169:7	81:16 171:3	73:19,20 81:20	strike 165:23
190:23 195:13	170:12 173:2,6	226:17 262:13	93:25 109:6	strongly 112:8
196:19,22	173:12,18	265:20 300:11	220:11	294:4
197:13,18	189:12 190:2	305:23,24	statutory 335:5	structure 96:25
199:15 213:24	190:11,13	323:14 324:2	stayed 234:13	160:15 165:16
216:5 219:1	217:3 313:16	332:13 334:5	247:18	165:18 313:10
220:4,10,21	320:12 328:21	starts 35:22	staying 179:3	structured
223:1 224:21	332:16 336:4	109:19	steam 162:3	342:21
225:11 226:6,8	342:6 345:2	state 23:1 42:17	237:6	structuring
230:9 237:3,22	348:22	65:20 67:2 70:1	Stenotype 353:11	342:4,5
239:11,16	stage 168:21	73:14 157:12	353:13	studied 136:25
250:14,17	170:13,18,21	192:23 287:18	step 286:24	studies 239:11,16
275:4,14,15,25	330:9,10	292:4 313:23	313:15 316:7	study 39:1,9,15
276:1 280:20	stake 87:1	317:13 334:24	324:11 342:2	125:6,8,9,12
281:17 282:2	stale 136:8 227:3	353:3,16	steps 69:4 191:25	126:2,8,17
282:13 285:17	227:8 240:15	stated 67:4 72:24	223:25 333:24	127:8 130:10
290:21 294:22	240:23 275:10	86:11 181:10	stimulate 307:19	130:13,14
309:14 314:21	stand 102:11	statement 30:8,9	Stip 183:23	131:24 134:19
316:9,23	157:5 267:11	33:20 41:14	184:2	135:7 136:1,4
317:21,24,24	316:8 337:17	45:15 58:19	stipulated 92:12	138:8 142:9
321:10,20,21	341:15	73:14 96:11	stipulation	146:19,25
322:3 325:25	standard 40:11	141:21 157:15	183:24 189:3,4	147:2,12,20
329:2,20 330:2	61:5,7,8 63:14	173:13 183:15	275:21	152:23 153:5
330:21 332:6,7	76:7 77:16	197:3 226:11	stock 160:20	192:1,4,13
332:19 333:15	86:18 87:23	235:10 251:22	307:4 308:13	196:1,8,20
333:24 334:6	103:9,10,12	251:25 253:24	308:17	197:9,24 198:3
334:20 335:2	107:11,14	256:10 291:3,4	stocks 307:5	199:4,11
335:23 336:9	108:11,14	291:12,15,19	stood 115:12	218:22 219:15
336:21 338:17	110:22 134:15	291:21 292:9	stop 122:15	219:17 220:1,9
338:23 339:2	152:17 167:15	348:2,2,3,3,4,4	226:21,22	220:10,18
341:1,5 342:4	199:7,19	statements 45:8	347:17	221:4,16
345:1 352:3	225:20 275:9	146:18 156:24	stopped 200:5,9	225:13,18
Staff's 55:4	280:9,10	158:12 290:25	200:12	238:25 239:19
68:11,17 69:3	328:25 332:13	291:2	stopping 227:1	240:1,21
70:19 71:7,13	332:18 335:13	states 51:13	stops 261:1	244:11,21
71:21 72:8	335:20 345:14	219:5	Stores 28:9	269:14,16,20
85:25 86:3 87:2	standards 197:16	State's 34:9	Storms 236:13	280:20,25
96:20 98:17	standing 305:21	stating 77:12	straight 191:19	281:8 295:2
100:3,4,4,11	start 124:11	80:10	streaming 29:25	299:24 310:16
102:6 103:12	130:21 138:24	status 282:20	Street 24:8,17	313:1 326:6
107:2,8 114:16	186:3 264:22	statute 52:5	25:2,8,15 26:13	330:7

studying 137:6	242:8 285:2	supposed 104:21	191:24 200:12	304:15 305:7
stuff 122:17	suggest 34:25	104:21 144:11	204:14 206:14	305:13,19
253:8	35:24 77:6 82:6	212:19 233:15	206:23 207:1	320:1,7 321:18
stumbled 306:23	94:15 101:3	254:21 267:10	211:5 236:15	322:4,14,17
stymied 71:6	104:8 105:19	Supreme 34:13	277:13,15	323:1,2,4,14
subject 38:10	106:10 107:25	67:4 109:16	288:4 300:17	324:3,6,10,15
40:8 61:17	178:3 303:5	132:7	300:23 318:2	343:5,19
293:1 306:2	308:10,21	surcharge 45:22	327:14,15	351:12
subjected 102:15	suggested 69:18	64:11,15	343:23 350:5,9	suspect 115:10
subjecting	235:21	sure 40:5,12 48:8	351:3	suspend 81:25
104:25	suggesting 58:1	57:9 58:17 78:6	surveillance 29:2	93:25 105:23
submit 49:1	81:23 119:1	80:9 81:2 95:15	29:16 30:5,14	109:6,23,25
51:24 53:22	324:10	102:24 106:8	31:15,19,20	123:16 334:17
61:11 192:10	suggests 42:7	120:17 125:23	33:5 36:15	335:15,17
submits 49:8	81:20 308:17	126:3,20	38:23 40:14	sustain 182:6
244:18	Suite 24:3,8,17	142:14 150:2,5	46:5,12 48:17	183:18 219:19
submitted 41:23	25:2,8 26:14	150:25 151:3	48:19 49:7,20	278:13
46:11,20 48:19	27:16 28:7	152:14 155:3	50:6 51:25	sustainability
49:2 65:8	summer 50:1	161:24 180:2	55:21 64:7 67:9	148:18 149:5
155:13,15	144:4	180:19 187:12	67:10,11,18	205:18 206:13
165:14 182:19	superiors 322:19	192:15 194:5	68:4 84:2	sustained 83:11
192:19 193:4	supervision	215:13 217:9	106:19 126:10	84:8 87:14
194:2 246:5	257:24	218:10 237:9	126:14 135:16	89:25 131:1
249:22 250:6	supplier 310:12	239:20 242:18	135:18 136:7	337:25
250:16 252:5	310:12	243:8 250:22	141:23 165:14	swear 157:6
283:25 288:24	support 32:21	254:21 260:23	165:19 170:1,8	Swingley 287:21
submitting	33:17 41:20	266:14,15,23	171:2 177:20	switch 159:11
183:22	47:10 48:9 51:7	268:25 273:4	178:23 180:5	switched 139:1
subsequent 70:8	61:10 69:24	280:8 288:24	180:21 181:6	sworn 157:7
Subsequently	72:1 74:1 77:12	300:13	200:16,22	287:11 288:16
193:20	125:18 135:14	surprise 90:25	201:2,3 203:3	313:18 317:9
substantial 55:17	140:4,11	surprised 43:19	204:2,10	system 96:17,18
61:10 69:17	148:23 179:7	102:1,2,4	207:24 208:7	96:20,21 97:4
84:7 98:9 111:1	181:7 201:5	surrebuttal 32:9	214:9,12	101:13 144:11
210:6 272:16	223:21 244:13	49:17 50:10,16	222:13 223:2,3	163:24,25
275:6 323:5	supported 31:13	50:20 70:16	232:14 242:5,8	343:9,12
338:18	62:12 68:12	138:14,15,21	242:15 244:18	systematic
substantially	75:10,17 96:24	139:16 150:9	248:22 249:21	138:12
230:22 264:17	100:12 198:22	150:19 158:15	252:5,20	systematically
substitute 142:7	supporting	159:7,12 160:2	254:23 255:4	113:13
subtotal 160:22	290:14	160:5,12	255:24 256:3	
success 114:10	supports 62:16	161:23 165:9	256:15,17	T
successful 76:11	62:19 65:10	166:19 168:20	258:6,23	T 23:20 353:2,2
77:18	66:9,14	168:23 172:1	259:21 260:8,9	Tab 251:2,3
sufficient 38:4	suppose 86:18	172:12,16,17	262:18,24	table 138:23
118:4 121:18	112:9,11	176:15,20,21	272:8 283:24	172:16 174:16
146:16,18	189:21	180:17 181:10	285:8 303:22	174:21 176:11

177:14 180:18	118:4 171:13	24:15	167:3 214:4,6	165:12,23,25
180:20 213:23	176:18 196:18	tell 43:15 93:16	214:23 226:18	166:19 169:9
228:20 236:15	219:4 221:20	102:12,13	323:22 325:8	169:17 170:18
249:12 345:6	232:7 329:24	106:24 107:17	339:20,25	170:25 172:1,1
Tabs 251:14	talk 36:23 46:6	111:11 112:6	tested 38:16	174:1 180:17
take 28:17 33:18	100:2 102:17	112:18,20	testified 102:10	183:22 186:6
42:23 45:1 74:6	102:18 103:8	119:20 120:19	157:10 177:19	186:11 188:1
76:14 77:1	104:14 169:6	120:24 123:8	197:16 205:25	191:8,24
78:18 97:12	talked 76:8 77:24	150:3 158:8	273:7 287:16	197:17 199:22
99:5 107:6	88:19 93:19	160:17 188:5	297:13 313:21	200:12 202:4
135:8 140:25	212:14 213:22	220:2 224:22	317:11 323:8	203:21 204:15
142:4 146:8	239:24 240:14	244:8,9 249:19	testify 59:6,8	204:24 206:3
149:17 154:9	242:2 280:17	251:1 252:2	63:25 64:2	206:14,23
156:25 172:23	283:22 318:18	287:23 298:16	149:25 150:3	210:4 211:6
189:21,22	talking 30:4	300:11 305:21	271:7 323:17	213:24 214:1
217:2,12 218:6	36:16 60:16	325:18 340:6	testifying 41:11	219:18 222:5
220:7 221:3	126:5 127:12	telling 102:9	267:5	223:5 230:1
223:25 227:25	131:25 135:17	112:22,23	testimony 32:6,9	234:2 236:15
229:19 231:1	154:16 178:10	118:20,21	32:12 33:21	252:22,24
231:22 232:1	200:15 223:12	119:20 122:11	37:15 40:6,9,10	253:9,11
243:11,12	238:23 275:1	335:14	43:16 49:3,16	257:13 260:20
262:5 266:17	275:25 304:14	tells 110:4	49:17 50:5,10	263:10,13,17
266:19,22	333:20 334:7	temperature	50:20 51:1,9	263:20 266:20
267:14 268:3	talks 169:20	106:20,20	55:15 56:3,23	266:21 267:1
268:12 270:19	170:23 171:12	ten 44:4 127:2	57:22 61:12,16	267:15,17
287:3 310:13	263:17,18	262:4 347:18	62:13,16 66:8	273:14,25
310:14 322:13	target 142:23	tend 91:23,23,25	66:13 68:4	277:14,15
323:13 327:23	304:6	tender 319:19	77:11 78:7	278:19 285:17
328:1 333:24	tariff 109:21,23	tenders 314:21	85:19 86:1,3,4	287:7 288:3,8
336:1	tariffs 79:23	tentative 307:22	88:22 98:17	288:13,13,16
taken 69:4 72:10	93:25 109:25	tenth 58:20	100:4 105:22	288:21,25
77:22 89:14	110:3,4,9	term 69:18 107:9	105:25 106:6,8	290:9 291:24
92:1 133:18,23	334:16	296:19	106:24 135:14	298:1 301:23
134:4 146:10	task 335:24	terminate 307:22	137:18 138:4	303:16,23
151:20 154:14	Tatro 24:12	308:3	138:14,15,21	304:1 306:17
154:17 157:2,5	26:18 297:6,22	terms 94:5,6	139:5,10,17,18	306:24 314:7
176:24 178:14	297:24 301:25	116:25 259:10	140:23 143:25	314:11 316:20
179:9 180:5	311:2,9,13	277:20 311:17	145:2 150:7,9	316:24 317:23
181:23 186:21	315:7 316:15	329:6	150:19,21	317:25 318:2,5
188:2 213:24	348:19	test 40:17 58:7	155:18 156:9	318:8,19,20
243:14 262:7	Tatro 297 348:17	61:23 66:25	156:11 157:18	320:2 321:15
322:20 327:25	tax 155:5 202:23	69:2 73:5,24	157:19,25	323:11 327:14
336:24 338:22	taxes 146:9	75:16 80:19	158:5,21,23	328:20 329:3
takes 43:2,20	154:19,22,22	87:25 90:21	159:6,8,18	329:15 330:4
51:18 55:14	154:24 202:19	137:3 150:14	160:2,5,11	332:6 338:11
66:21,23 73:1,2	203:2,5	153:14,20	161:14,20	340:8,9 342:6
82:21 97:13	tbyrne@amere...	154:20 166:23	163:21 165:10	343:23,24

344:1 350:3,5,7 350:9,11,13,15 350:17,19,21 350:23 351:2,4 352:2 thank 26:25 27:2 27:8,18 44:22 64:21,23 65:3 75:21,25 76:5 78:22 81:7,9 89:20 92:20 99:20,21 108:4 115:25 116:2 120:14 121:13 123:22 124:6,8 124:10 148:3,7 153:9,11,12 155:6 156:1,22 157:8 166:18 168:15,24 169:4 179:20 180:12,14 185:14 209:3 215:9 225:3 227:11 230:2 237:8,21,25 243:3 246:21 254:17 260:1 262:10 270:21 273:13 278:2 286:21 287:4 293:17 294:20 294:23 297:4 298:3,5,7 300:8 301:24 302:7 306:9,11 309:3 309:13,15 310:25 311:9 314:1 315:9 316:2,22 319:18 326:20 328:14,16 338:2 thankful 85:7 Thanks 57:7 59:18 99:17 194:19 195:24	302:5 315:21 theory 130:8 thereof 353:10 they'd 237:1 340:15 thick 248:17,22 thing 37:14,18 76:16,19 78:2 102:15 105:16 109:19 110:8 137:8,10 154:19 219:13 225:9,15 279:15 326:2 342:18 things 35:16 39:3 45:17 58:5 76:14 78:6,18 80:10 83:3,4 84:4 85:15 88:11,13 104:18,20 107:7 112:1 117:14 119:21 119:24 127:24 139:19 142:5 145:6 218:21 226:15 242:21 268:20,22 311:18 think 31:15,25 34:13 35:4 38:7 38:14 39:10 40:22 41:14 42:6,9 43:1 48:23 58:2,4,8 58:16,21 59:11 61:2 62:10,13 62:15,17 63:13 63:18 76:13 77:20 82:18 83:4,7,9 84:21 85:22 86:2,23 87:8,9,10,13,13 88:5,6,22 89:3 89:7 90:14,15 90:17,20 91:3	91:17,19 92:11 92:13 93:6,23 94:4,5 95:20 98:14 99:7,13 101:15 102:2 106:3 109:14 112:11 113:8 113:18 114:9 114:23 119:10 122:14,15,19 122:22 123:5 123:14 124:13 137:3,22 139:20 141:5 141:20 142:16 148:15 149:4 150:6,12,16,17 150:18 152:5 154:1,23 155:1 155:3 156:8,16 158:25 162:1 166:13 173:2 176:4 177:22 179:5 180:11 190:19 191:1 192:16 195:19 195:19 206:12 210:5,9 211:3 212:25 213:2 213:20,22 216:11 225:7,9 225:14 226:7 230:20 232:25 234:19 235:8 242:23,25 245:3,16 246:14 247:10 247:12 251:4 254:9,20 255:5 260:9 261:15 261:16 263:2 267:25 270:8,9 272:10 273:6 274:13 275:3 278:5 279:11 280:7,15 282:10 283:9	283:13 290:11 292:16 293:5 294:14,16 303:24 304:13 318:17 319:8 323:12,23 324:19,22 325:1,3,14 333:10 334:7,9 338:12 340:14 341:24 346:8 347:9 thinking 218:11 thinks 107:5,6,21 124:15 third 34:17 69:11 69:22 84:21 191:6 235:21 283:14 310:11 THOMAS 24:12 25:1 Thompson 25:12 27:2,3 99:25 108:12,15,19 108:23 109:2,9 109:14,24 110:13,17 111:3,8,13,18 111:22 112:5 112:15,23 113:7,12,17,20 114:2,21,25 115:3,8,15,21 115:24 116:2,7 116:11,19,23 117:3,6,9,22 118:3,8,13,15 119:7,10,16,25 120:7,12,19,25 121:7,11,23 122:2,9,18,22 123:1,8,18,24 123:25 124:4,8 124:12,13,24 124:25 133:6 140:10 294:23 294:24 297:3	302:10 309:15 309:16 310:25 312:25 316:11 316:22 317:12 318:14 319:1,8 319:18 324:17 324:22 348:4 348:17 349:1 Thompson 309 348:19 thorough 169:2 225:12,15,18 335:3 336:14 thoroughly 331:9 thought 44:13 81:1 101:23 103:20 121:16 122:4 132:3 152:2 153:24 179:25 195:10 214:21 231:9 231:10 thousands 190:9 three 44:1 53:3 69:4 82:12 114:4 118:16 119:5 141:8 171:16 185:4 217:7 261:14 265:14 292:19 321:14 326:5 334:20 340:20 three-month 265:17 three-phase 70:2 169:7 three-stage 169:21 330:10 330:12,14 three-tier 334:21 three-tiered 330:5 three-year 184:15 293:2 threshold 99:5 219:16 330:3 332:15 335:22
---	--	--	--	--

<p>336:4 338:13 threw 139:4 throw 101:14 141:4 323:25 thrown 110:1 thumb 333:2,4,5 333:15,16 Thursday 43:7 43:23 316:12 tie 54:17 253:15 tied 253:13 tighter 297:17 298:6 306:21 tilt 312:7,8 Tim 27:14 93:11 time 29:20 30:18 33:12 42:14,21 59:1 67:13,22 71:20,23,24 89:21 90:11,11 94:16,24 95:8 95:15,18,22 97:16 114:1 118:6,11 119:6 120:20,22 121:5,9,10 125:5 126:18 127:14 129:23 138:18 139:16 143:2,4 152:25 154:5 161:18 187:9 190:20 196:2,10 197:10,24 209:9 210:20 218:19 219:3 220:24 225:10 226:4 227:6 229:19 230:18 231:15 245:4 254:16,25 256:19 259:14 260:17 263:19 263:24 267:8 268:2 272:5 273:18,23 274:16 275:12</p>	<p>278:5,7,22 279:23 280:1 281:9 289:13 297:18 298:6 318:15 320:9 325:15 327:23 330:20 332:4 336:1 339:13 345:15 353:9 353:14 timeline 191:18 231:23,24 timely 73:15 times 220:24 221:1 276:9 302:16 timetable 279:1 timing 121:2 342:17 tired 235:12 today 26:9 28:22 29:6 33:9 63:10 81:14 84:19 85:9 102:12 103:6 104:10 108:2 158:4,20 159:8 160:4 161:14 179:8 187:18 197:15 207:16 208:3 208:11,18 219:24 220:2 233:11 234:14 235:5,5 238:15 275:7 283:10 285:23,25 286:2,16,18 288:21 301:18 307:13 308:11 308:18 314:14 316:10 318:5,8 320:3,6 336:9 token 95:20 told 44:7,11,12 103:14 104:3 111:10 121:9 190:15 199:3</p>	<p>225:19 226:7 241:25 244:22 341:14 Tom 26:17 130:22 Tomc 24:13 26:18 tomorrow 267:5 267:6 tonight 44:8 347:18 tool 324:6 tools 196:14 281:17 282:1 top 183:4 300:5 topic 281:2 tops 44:1 torn 197:2 total 50:23 68:13 75:11 85:21 160:25 175:15 183:5 184:8 199:11 211:5 340:14 344:2 totally 55:4 touches 153:14 174:17 track 64:16 277:6 tracked 64:12 233:3 235:25 241:21 277:2,9 tracker 296:20 trackers 64:14 83:2 104:18 105:3 212:16 233:1 235:23 236:2,6,7,11 241:17,21,21 277:1 296:23 311:5 tracking 64:17 tracks 256:13 tradeoff 189:7 tradition 332:23 traditionally 332:19 335:8</p>	<p>transactions 164:9,14 344:6 transcript 23:4 245:12 297:9 353:13 translate 302:11 translates 252:10 transmission 277:17 transportation 201:20 202:1 341:21 treasuries 308:5 treasury 307:7 307:16 308:20 treated 35:21 224:20,20,22 treatise 148:25 149:3 treatment 31:14 trend 33:11 78:9 78:13 176:1 294:6,8,10,11 294:17,18 trending 176:2 trends 78:20 trial 271:10 272:25 trick 45:13 triggers 108:17 troubles 155:12 true 62:15 91:11 95:8 103:19 120:13 124:16 125:2 143:15 148:19 186:24 187:4,9 188:22 189:1 191:23 192:8 195:9,24 197:5,7 198:6 198:10,24 199:6 205:16 205:23 207:15 207:21 208:13 208:16,22 211:18,24 212:4,8 214:8</p>	<p>220:7 240:4 241:20 242:11 257:25 262:22 264:5,14,18 265:3,12,22,23 266:13 268:7 269:2 290:23 304:15 314:18 318:11 322:23 323:20 324:3 325:12,13 326:17,18 346:11 347:8 353:12 trued 214:7 true-up 63:4,5 178:1 214:24 342:15 true-ups 339:24 trust 63:8 truths 142:22 try 36:1,3,4 138:13 240:19 266:15 trying 36:12 45:13 58:25 113:9 129:1 145:10 179:18 222:4 260:14 277:5,25 304:18 312:23 325:20 tschwarz@bbd... 25:3 turn 58:11 180:17 181:8 183:3 193:8 196:6 197:19 199:16 206:8 210:12 212:17 263:16 264:7 278:2 281:1 284:9,19 304:7 336:7 turned 207:18,19 207:22 284:24 turning 284:4</p>
--	--	---	---	---

<p>turns 146:11 Tuxedo 24:22 27:25 twice 78:12 276:3 two 32:5 36:14 43:20 44:1 46:20 76:10,14 81:14 83:12 103:19 114:4 115:2 119:3 131:21 137:20 138:1 147:17 153:6,7 174:7 178:7 193:24 218:21 223:12 225:8 231:1,20 231:22 232:1,3 232:7 233:18 250:8 259:21 271:17 275:15 284:9 308:25 311:17 326:4 334:20 341:7 345:3 twofold 117:18 two-prong 61:23 two-year 87:15 89:24 259:20 type 48:6 52:8 122:8 148:10 230:9 276:24 324:7 types 91:16 92:6 typically 60:9 62:25 63:1 191:25 230:25 303:8 313:6 342:6 typo 161:4 typographical 246:11</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>UCCM 132:8 141:13 149:3 329:4,8 Uh-huh 333:14</p>	<p>ultimate 52:12 ultimately 52:19 141:22 191:9 241:22 320:16 321:24 ultra-expedited 125:11 unadjusted 86:5 207:24 268:22 unavailable 43:7 316:11 uncomfortable 118:22 149:14 undeniable 103:16 underearning 79:9 127:2 128:6 129:6 148:17 265:10 265:11,13 305:16 underearnings 31:8 83:4 86:9 126:25 127:18 127:21 128:8 212:10 213:9 334:4 336:7 underearns 129:6 underlying 310:18 understand 30:17,19 40:20 91:4 106:22 149:13 151:22 161:22 187:2 188:20 216:23 227:12,18 240:22 267:7 300:13 316:9 344:25 345:17 understanding 30:6 64:4 163:23 164:15 165:22 177:4 184:20 186:9 187:25 191:4</p>	<p>200:7 234:1,18 236:2 242:7 250:13 290:19 understated 236:5 understood 107:24 121:20 undertake 118:12 undertaken 69:10 undue 94:23 uneven 84:22 unevenness 85:10 unfair 35:24 91:20 277:7 unfavorably 100:20 unfortunately 44:10 59:13 91:21 Uniform 96:17 96:18,20,21 97:4 163:24,25 343:9,11 unimpeachable 88:22 union 23:12 24:20 26:6 134:3 146:7 153:16 154:10 unique 84:24 United 219:5 unjust 39:22 131:3,11 147:24 322:18 323:3 unjustified 244:7 unquestionably 147:5 unquestioned 93:23 unreasonable 39:22 52:6 131:3,11 147:24 301:12</p>	<p>301:16,20 322:18 323:3 unrelated 38:12 unusual 123:6 142:5,5,5 unusually 240:18 upcoming 236:17 update 153:19,19 340:3 updated 153:20 158:15 updates 181:3 upstairs 245:11 upward 81:24 310:5 use 45:13 84:5 177:21 184:12 184:13 196:21 228:8,14,15 243:8 247:21 320:17 323:5 324:6 337:5 useful 46:7 67:12 uses 176:10 225:14 USOA 164:1,6,8 164:9,14,21,25 165:3,6,11 166:1,9,20 173:8,14 343:17,20,24 344:4,19 345:25 346:3 usual 240:20 usually 83:21 89:6 118:2 175:17 Utilitech 239:2 281:24,24 utilities 31:16 32:1 36:8 58:10 64:18 96:16 164:2,13 282:16 284:2,7 284:24 291:18 292:1,3,9,16 293:2 294:9</p>	<p>296:5 308:14 311:4 utility 34:24 35:5 46:5 65:24 67:2 67:12 69:20 70:6,10,10,18 70:25 71:2 72:6 79:10,14,15,16 80:2 81:18 83:14,18 84:23 84:25 87:24 91:23 92:8,16 105:8,10,16 129:6 130:12 130:16 134:8 142:4 143:15 148:20 175:24 198:25 199:5 209:4,10 212:1 212:20 213:1,3 227:2,6 241:10 243:19 244:25 275:9 277:4 279:16 280:23 282:21,22 291:4,7,9 293:7 293:12,24 296:12,14,14 304:4,9 305:5 305:15 307:6 307:15 308:11 308:17,21 312:15 317:20 333:7,9 334:16 336:16 337:22 342:3 344:6 346:17 utility's 46:9 61:17,19 67:15 69:6 80:3 132:15 142:25 209:18 210:17 210:25 240:17 307:14 332:14</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v 23:11 65:21</p>
--	---	--	---	---

67:3	120:15,18	113:24 121:15	192:13 197:16	129:23 144:22
valid 78:9	121:1,8,12	152:3 201:25	198:1 199:22	145:1,2,7,12,20
valuations 307:4	123:23 124:1,6	223:24 236:17	210:4 218:23	146:2 150:20
308:19	225:3,5 306:11	wasting 325:14	219:18 222:25	152:17 156:24
value 160:15	315:23 348:10	watching 245:11	225:14,21	157:4 177:15
303:25	wage 134:2 146:6	Water 65:20	250:14 263:10	191:14 192:3
variety 83:2	202:16	way 33:18 41:8	263:13,16	205:9 208:12
various 104:18	wages 202:12	45:16 61:16	264:8 266:21	208:15,23
117:14 302:17	wait 161:6 217:9	62:2 68:24	266:25 267:4	217:9 220:2,14
311:4	252:25 284:14	71:15 79:9	267:12,17	220:16,17
varying 196:23	waiting 254:13	81:23 84:25	268:10,24	221:18 224:17
vegetation 236:8	Wal-Mart 28:9	88:4 90:15	270:16 273:14	224:19 229:16
verifiable 305:24	99:22	91:25 92:1	273:18,25	234:11 235:12
verify 263:5	want 28:20 33:18	105:21 127:3	287:2 303:23	243:16 245:17
version 156:10	34:17 38:2	127:22 132:11	325:18,23	248:4 265:15
159:16,16	44:16 62:12	158:25 167:20	350:11	265:17,21,25
162:7,15	81:6 83:20	188:21 190:12	welcome 26:5	266:23 272:14
318:17 319:5,9	89:20 123:14	242:14 246:15	70:11	280:18 287:8
versus 118:24	151:16 158:24	264:23 265:21	well-being 72:8	309:5 325:19
268:15 270:2	169:6 176:13	302:11 316:21	Wendy 24:12	325:20,21
273:19 303:22	216:4 218:10	331:25 332:2	26:18	334:2 346:9
303:25 304:7	224:13 227:12	ways 109:18	went 83:24 90:1	347:17
vertically 291:18	235:13 244:3	148:16 330:7	106:5 126:13	we've 32:4 35:23
291:22	245:6 261:22	weather 49:21,23	136:18,25	35:25 41:23
view 33:23 94:23	267:11 274:20	49:25 50:4,8,11	210:5 247:13	43:3 63:23 83:5
99:11 205:25	276:4,17 278:8	50:11 142:5	268:23 271:22	104:14 127:2,3
230:20 296:15	278:17 280:14	149:22 150:8	274:13 330:7	135:17 137:12
328:21	302:8 323:10	150:12 268:20	weren't 154:12	143:25 144:15
viewed 290:24	338:10,15	281:20	171:8 177:19	145:3,19 146:1
views 212:6	wanted 27:20	weeds 330:17	231:4 247:11	146:6 151:21
Virginia 292:4	41:19 62:6	week 43:6 300:9	279:13 285:1	154:6,6 170:20
292:10	99:14 177:24	weekend 28:16	we'll 26:9 28:17	197:15 204:1
virtually 85:2	222:18 231:13	43:3 191:3	42:22 44:20,24	206:25 241:4
88:22	240:11 276:10	weeks 58:12	45:14 64:25	244:12,14,15
volatility 82:24	276:17 278:16	138:15 284:9	99:23 156:17	244:16,22
91:9,12	279:12,13	326:5	156:25 162:6	253:16 270:15
Volume 23:7	280:10 281:10	weights 30:1	185:21 237:12	280:16 284:17
voluntarily 32:13	281:11 282:7	weight 39:13,16	262:5 267:14	284:22 320:2
71:3	283:6,17,19	40:4,23 47:1	302:2 316:20	whack 84:4
Vuylsteke 24:2	287:3 313:3	90:16	317:7 347:18	85:15
26:12 28:6	316:18 342:1	weighty 111:25	we're 30:4 33:8,9	whatsoever 39:8
194:21	342:11	Weiss 40:9 56:3	35:16 36:2,16	231:24
<hr/>	wants 81:5	56:9 137:19	37:19 40:24	Whitney 25:13
W	282:24	150:2 151:15	45:1,6,7 46:6	27:3
W 59:19 76:2	warrant 69:8	151:16 173:4	47:22 61:11	wholesale 33:20
92:22 99:18	warranted 71:5	174:9 181:23	77:16 90:2,11	wider 308:23
116:4,9,12	wasn't 90:23	181:25 192:5	126:5 127:12	WILLIAM

<p>23:19 willing 219:12,13 220:25 308:3 winding 307:21 wipes 217:7 Wisconsin 292:19 wisely 46:4 84:1 wish 37:9,25 215:11 253:22 302:15 314:10 326:21 witness 43:6 52:22 53:4,23 54:18 66:13 67:16 68:3 75:4 88:23 104:3 131:22 137:18 140:5,13,22 143:25 157:7 162:1 179:21 182:9 184:24 194:7 237:9 263:7 267:11 267:11 286:20 287:11 313:16 313:17,18 314:21 316:8 317:9 318:20 319:4 337:17 witnesses 40:3,5 41:4,9 56:10 59:9 66:8 85:11 89:23 92:14 94:19 100:4 149:21 253:2 Won 313:16,21 313:23,25 314:1,5,6 315:21 348:23 350:19 wonder 103:21 wonderful 96:10 wondering 149:20 WOODRUFF 23:17 26:4,15</p>	<p>26:25 27:7,12 27:18 28:2,9 31:1 32:18 33:14 34:5 35:7 36:10,19 37:25 38:19 41:13,18 42:1 43:1,9,14 43:21 44:2,6,17 44:20,23 45:6 57:5 59:21 64:23 65:3 75:22 76:1,4 78:23,25 79:8 79:16,22 80:2,6 80:13,24 81:4,7 81:10 89:18 92:21,23,25 93:2,8 99:21 108:5,7 116:3 116:14 120:17 124:7,9 148:5 153:10 156:2 156:17,21,23 157:3,8 161:19 162:6,10,14,18 162:22 163:1 168:25 169:3 179:19 180:13 182:6,10,13 183:16,18 184:23 185:15 185:20 194:5,8 215:11,15,19 215:23 225:2 230:3 237:10 237:12,16,18 237:20,22,24 243:5,8,12,15 245:5,10,14,18 246:23 247:1 248:8,15,21,24 249:3,6,10,14 253:19 254:12 260:4 261:4,22 262:5,8,16 263:8 267:3,13 267:22 268:4</p>	<p>270:24 271:4 286:23 287:4,8 287:12 289:14 289:18,22,25 290:2 293:18 294:22 297:5 297:23 302:2 306:10,13 309:4,8,10,12 309:14 311:1 311:10 313:15 313:19 314:23 315:1,5,8,10,12 315:14,16,18 315:22,25 316:3,5,13,16 316:25 317:3,7 317:10 318:16 318:24 319:2,6 319:10,14,20 320:21,25 326:21,24 327:2,6 328:15 337:25 338:3 347:11,16 Woodruff's 93:22 word 57:15 129:3 225:14 337:5 words 57:9 117:11 118:16 119:13 136:15 323:10 work 30:20 41:24 42:20,25 44:11 72:4 197:1 219:6 239:14 314:3 326:15 336:2 workable 70:4 worked 163:12 163:16 190:23 340:23 workers 134:3 146:7,7 working 163:6,7</p>	<p>191:5 works 45:14 128:15 229:1 world 82:9 113:20 worrying 236:20 worse 91:20 worth 134:16 141:19 238:5 250:9 334:9 worthy 290:13 wouldn't 40:20 57:21 80:8 128:18,19,25 143:11 152:3 176:11 178:18 189:16,20 195:7,14 205:4 207:2,4 209:17 210:21 219:10 230:17 233:7 268:17 269:17 270:1,5 272:7 276:21 286:19 310:13 337:21 wound 139:8 wrangle 342:9 write 154:24 writing 191:8 written 153:3 155:2,4 246:16 248:12 288:13 332:20,21 wrong 72:10 124:14 142:16 160:15 <hr/> X <hr/> X 113:16 348:1 <hr/> Y <hr/> Y 23:19 yeah 59:22 80:10 114:21 127:11 151:6 153:11 153:18 154:1 155:23 220:22</p>	<p>241:25 243:22 266:11 268:11 268:23 304:18 313:13 332:11 342:8 346:6 year 29:3 46:24 47:14 50:24 54:7 55:6 56:18 56:21 68:2,8 75:1,6 87:18,18 88:1 90:21 95:1 117:11,12,12 134:15,25 137:3 143:21 145:22 150:15 151:10,12 153:15,20 154:20,25 166:23 167:3 205:12 214:4,6 214:24 215:4 219:9 226:18 229:16 233:17 255:12 269:8 292:13,14,18 294:12,14 300:7 325:8 339:20,25 351:15 yearend 285:4 yearly 286:6 years 46:20 53:24 58:7 82:19 83:12 84:10 88:24 89:2 91:22 93:16,17 103:19 114:4,5 115:2 127:1,2 128:4 163:8 185:2,4 190:24 197:4 217:7 231:1,20,22 232:1,3,7 250:8 259:21 294:10 307:21 322:10 326:3 340:21</p>
---	--	--	---	---

<p>year's 134:22 144:7 yesterday 37:8 yield 305:6 308:20,20 yields 297:18 307:5,7,15,16 308:14,21,21</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero 48:16 258:10,12</p> <hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$1 133:17 206:21 \$10 148:12 238:17 \$100 145:19 \$101 238:4 \$138.22 47:24 \$150 144:17,22 205:6,10 \$170 144:5,9 204:20 \$18 139:13 \$18.64 47:14 \$180 64:6 178:24 232:15 233:5 233:10,22 234:15 247:7 247:19 \$202 321:22 \$22,000 161:1 \$23 211:8 \$24 238:18 \$25 177:10 233:19,20 334:9 336:17 337:8 \$25.3 327:16 \$26 141:3 211:13 211:19 \$26.35 51:5 54:9 \$260 141:23 215:3 269:8,23 269:24 272:15 321:25</p>	<p>\$264 134:25 \$28 333:13,21 335:1 \$30 145:24 \$34 185:7 \$37.2 161:10 \$39.1 54:21 55:4 55:8 86:6 \$4 62:12 98:18 98:25 99:6 338:13,25 339:3 \$40 144:11 \$41 340:18 \$46 236:25 \$49 50:23 139:21 211:8 \$49.4 85:22 \$49.464 56:21 \$49.5 75:1 139:11 211:6 \$50 48:4 54:10 60:4,21 62:16 \$50,000 99:4 \$65 145:20 \$67 135:21 \$700,000 137:25 \$72 238:10 \$91.9 133:22 145:13</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>0015s2 351:6 0258 38:9 94:7</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 45:4 46:22 58:20 62:18 141:4,6 142:19 143:8,10 157:21 160:16 160:18 161:18 162:10,14,20 170:21 180:18 201:22 206:20 211:19 213:23 236:15 251:2,3</p>	<p>330:9 332:14 333:8,16,21,23 334:5,15,18 335:10,20 341:19,23 350:2 1st 94:25 137:4 182:25,25 190:22 202:2 229:8 342:19 1.0 105:11 1/10 46:22 10 60:16,21 61:1 133:22 145:15 151:21 184:6 217:12,19,22 217:23 218:1,1 264:3,5,20 265:2,4,6,15,15 265:18,22,25 266:3,10,12 277:15 316:23 316:25 317:5 335:11 350:20 10.1 263:25 10.2 47:12 53:12 140:17 259:5 263:25 264:1 10.32 286:10 10.34 67:17,19 10.4 105:20 140:16 10.45 161:3 200:19 286:10 10.48 161:2 10.53 47:13 251:9 259:4 320:7 10.6 53:13 140:17 10.76 263:25 100 143:6 232:14 100,000 99:4 101 24:8 26:14 28:7 184:25 216:11 217:6 101.1 184:9</p>	<p>104 196:6 281:1 109 197:19 11 72:3 94:10 151:22 265:15 350:22 11th 339:6 11-month 71:23 72:19 74:6,19 79:5 335:5 11:30 28:19 11:30-something 31:5 111 24:17 12 50:17 54:4 67:18 136:17 138:25 139:1 150:19 151:22 167:8 169:19 173:20 193:9,9 214:7 256:16 258:7,24 300:11 317:24 317:25 318:15 318:17 12HC 318:24 319:10,16 12NP 318:25 319:16 12NP/HC 351:1 12th 191:19,22 195:7 283:16 12-month 46:14 46:17 47:15,22 48:4,11 136:7 136:24 252:6 252:13 255:23 285:11 12-month-to-d... 250:7 12.28 47:21 259:15 12/31/13 285:4 12:30 157:1 124 348:4 13 25:14 45:4 126:11,12 150:18 160:23</p>	<p>171:11 172:19 173:20 317:24 318:1,15 319:2 13HC 319:11,16 13NP 319:17 13NP/HC 351:3 13,332 160:21 13,333 160:21 13-month 264:25 13.8 55:9 340:14 340:22 14 50:14 135:19 136:2 137:15 137:20 138:1 182:13,14 185:16,19 238:20 351:5 145 342:7 15 170:22 194:9 194:10,14 210:13 215:12 215:14,15,21 277:16 300:2 351:7 155 342:10 157 348:7 16 93:16 197:17 199:23 245:17 245:21,22 246:1,22,23 247:3 351:9 162 350:3,5 163 348:8 165 152:18,21 153:2 342:7 16690 287:21 17 139:12 161:2 248:4,5,9,18,19 248:21 249:20 250:9 252:20 260:3,4,8 262:14 270:25 271:2 278:10 351:12 18 176:15,17,23 248:24 251:19 256:5,21</p>
---	--	--	---	--

351:14	2009 266:6,6 274:4	159:1 167:8 175:8 180:24	22 118:19 248:4 248:19 249:11	<u>3</u>
18th 181:24	2010 137:4 264:24 265:16	181:1,12 187:4 191:6,10 200:5	258:15 260:3,4 261:8 262:15	3 266:11 277:15
182 351:6	265:20 266:2	200:9,13,22 203:2 204:15	262:16 270:25 271:2 351:22	287:15 288:10
19 249:3 256:9 256:24 268:9 268:13 351:16	2011 137:4 214:6 264:12,23 274:14	205:1,14 207:23 228:1	221 24:8 26:13 28:7	289:13,14,20 314:4 350:6
1900 97:21	2012 29:18 30:25 47:11,16 49:9	233:17 242:15 259:9,13	22nd 283:25	3rd 105:24 134:17
1901 24:14 26:19	55:23 137:1 151:19 154:4	271:23 272:9 283:14,15,25	221 24:8 26:13 28:7	3.24 259:7
1913 93:16	155:5 167:24 179:1,7 182:25	285:4,11,15 286:12 291:18	2230 25:8 27:10	3:15 262:6
194 351:8	214:7,13,14,22 214:25 233:15	292:5 340:7	23 139:21 217:4 217:24 287:8,9	30 46:18 53:24 163:8 226:10
1979 163:11 190:22	233:23 234:12 235:4,18	2014 23:6 29:7 29:19 34:3 55:7	289:5,13,14,20 352:1	297:20
1980s 345:15	248:25 250:1 251:9 259:4	55:22 64:8 90:18 94:19	23,101 160:24	30th 32:7 135:18 137:4 138:25
1987 167:17 175:22 187:17 210:5 257:19	262:19,22 263:5 269:5,6,7	95:4 133:15 134:2,14,21	23,110 160:24	158:14,18
<u>2</u>	271:13,20,21 272:2,4,4,8,19	146:9 154:17 162:4 178:2	238 348:11	159:3 171:7
2 23:7 34:14 159:12 161:18 162:7,14 182:25 183:4 199:17 206:9 218:7 251:5,6 251:14 280:7 298:4 330:10	272:21,22,23 273:7 279:21 306:17 320:10	182:3 183:1 187:4 191:20 193:24 194:25	24 206:8 218:4 278:2 320:22 321:2,6 326:22 326:24 327:4 352:3	178:2 182:3 183:1 214:6 269:5,6 285:20 320:10
2nd 94:11 154:3	2012-0166 130:1	201:14,22 202:13,20	243 348:12	30-plus 173:17
2NP/HC 162:20 350:4	2013 29:3 32:7 32:10 33:25	203:5,7,20,24 204:8,11,16	245 351:11	30-some-odd 216:17
2.48 259:15	34:2 46:15,18 47:19 48:21	206:20,20 242:13 246:9	247 351:11	300 266:14
2.8 333:12	50:7,16,19 54:7 54:8,21 55:6	249:1 250:2 262:19 271:15	248 351:13,15,17 351:24	301 25:2 27:16
2:40 243:13	56:13 67:19 68:2,8 75:1,6	283:16 292:6 340:17 342:13 351:8	25 276:16	302 348:18
20 197:20 249:6 255:15,17,19 255:21 256:2,6 351:18	90:2,7 94:18 126:14 128:12	2015 95:4 98:13	25.3 68:7 75:6	308 25:2 27:15
200 24:17 25:8 25:15	132:2 133:13 135:18 136:17	21 196:6 249:10 257:21 351:8 351:20	26 217:6,19,22 218:2 336:23	31 55:7,22,23 67:20 133:13
2002 163:15 167:13 227:4 274:24 275:2,4 340:24	136:18 138:25 139:2 143:19	21st 186:1 193:24 194:25 253:7 300:6	26,341 160:23	208:7 285:4 340:7,16,17
2007 264:11 274:2,13	143:19 145:25 146:10 151:5	211 24:3	26,354 160:22	31st 32:10 67:19 132:2 139:1
2008 163:21 265:21 266:1 274:9	151:10,12 154:3,6 158:14 158:16,18	215 351:8 216 348:10	26.3 177:14	143:18 146:14 151:5 158:16
			26.354 176:10	159:1 167:8 175:8 180:23
			262 348:13	180:25 181:4 181:12 200:5,9
			27 338:11	200:12,16,21 204:15 205:1
			271 351:13,15,17 351:19,24	205:14 206:20 207:23 214:7
			28 23:6 333:12	242:15 250:2 269:6 285:11
			287 352:2	285:14 286:8 286:12 328:3
			289 350:7 352:2	
			29 190:23 210:12	
			290 348:16	
			294 348:17	

340:10,12 31,007 160:19 31,020 160:18 311 348:19,20 313 348:23 314)259-2543 24:4 314)554-2237 24:15 315 350:19 317 349:1 350:21 319 349:2 351:2 351:4 32 212:17 276:12 328 349:3 33 216:18 259:5 338 349:3 360 25:15 27:5 3600 24:3 37 65:9 161:6 263:16 386 73:18 386.390 83:18 386.390.1 45:20 81:19 393 73:19 393.130.1 45:19	49,442 160:25 49,464 160:25 49.5 68:2 328:9	65101-1575 24:8 65101-3237 25:2 65102 25:16 27:6 27:11 65102-2230 25:9 65205 26:24 65205-0918 24:18	54:11 56:25 67:24 68:12 74:23 75:10 89:7,15 106:2,5 140:1,21 176:8 177:13 211:10 217:5 298:6 300:20 306:23 310:20 328:5,8 9.57 292:12 9.6 216:14 292:12 297:21 9.65 335:12 9.8 47:20 51:6 52:15,17 54:10 54:21 67:21 68:10 75:8 89:15 139:25 140:7,8,11 175:2 176:9 177:3 206:6 211:10 217:5 259:14 286:19 291:16 293:10 298:18,20 299:23 301:6 311:25 327:13 327:24 9.85 298:10 300:14 306:18 310:20 9.9 292:5 91 216:12 91.9 184:4 918 24:18 26:23 93 348:3 95 82:24 91:10 152:4 99 348:4
<hr/> 4 <hr/> 4 128:5 160:12 169:20 172:17 174:2,6 180:18 266:14 287:15 288:10 289:13 289:14,20 350:8 4:57 347:22 400 266:11 41 97:8 41.6 340:16,19 45 348:2 350:3,5 350:7,11,13,15 350:17,19,21 350:23 351:2,4 46 199:16 280:3 49 176:7 216:20 216:21 217:4	<hr/> 5 <hr/> 5 37:6 60:21 181:10 197:16 199:23 263:17 287:1 317:20 350:10 50 61:1 228:24 500 240:5 501-4 97:8 511 166:13 52 193:8 283:1 54 210:3 223:5 57 145:3,4 573)424-6779 24:23 573)443-3141 24:19 573)556-6622 24:9 573)634-2500 25:3 573)751-3234 25:16 573)751-4857 25:9	<hr/> 7 <hr/> 7 128:4 160:19 161:6,7,11 169:23 176:15 176:17 212:18 263:18 276:16 338:11 350:14 7th 191:21 7.18 264:25 265:7 72 238:14	<hr/> 8 <hr/> 8 192:19 251:15 338:11 350:16 351:11 8.89 259:23 8.9 298:9 300:14 306:18 8:30 26:3 347:19 80s 58:9 284:7,8 81 348:3 838 23:24 871 24:22 27:25
	<hr/> 6 <hr/> 6 161:2 263:17 280:7 350:12 6.08 266:5 6.14 266:7 6.47 266:6 60 228:24 610 34:11 63 183:11 63102 24:4 63103 24:14 26:20 63112 28:1 63119 24:23 28:1 65 348:2 650 25:8 65101 26:14 28:8	<hr/> 9 <hr/> 9 106:9 151:21 173:16 248:6 248:12 297:19 314:8,21,23 315:3 350:18 9th 24:17 246:9 9.2 298:6 306:21 9.27 265:1 9.3 295:15 297:15,20 9.4 50:24 52:16 52:18,25 53:15	