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AUDIO RECORDING  
MISSOURI PUBLIC SERVICE COMMISSION  
IN RE: THE PETITION OF EMPIRE DISTRICT ELECTRIC  
COMPANY, ET AL.  
CASE NOS. EO-2022-0040 & EO-2022-0193  
JUNE 14, 2022  
VOLUME 3

(Due to the quality of the recorded media, portions were unable to be transcribed and include inaudible portions. The transcript may also include misinterpreted words and/or unidentified speakers. The transcriber was not present at the time of the recording; therefore, this transcript should not be considered verbatim.)

TRANSCRIBED BY: MELISSA LANE

1 JUDGE WOODRUFF: All right. It's 8:30, so  
2 let's go ahead and get started. When we left off  
3 yesterday, I believe our next witness is Dr. Mushimba  
4 (phonetic).

5 DEAN COOPER: That's correct, Your Honor.  
6 Liberty would call Brian Mushimba.

7 RYAN SILVEY: Good morning, Judge.  
8 Commissioner Silvey is here.

9 JUDGE WOODRUFF: Good morning.

10 JASON HOLSMAN: Commissioner Holsman is  
11 here.

12 JUDGE WOODRUFF: Please raise your right  
13 hand. Do you solemnly swear or affirm that the  
14 testimony you're about to give in this matter is the  
15 truth, the whole truth, nothing but the truth?

16 THE WITNESS: I swear.

17 JUDGE WOODRUFF: Thank you.

18 DEAN COOPER: Mr. Mushimba, you can take  
19 your mask off, I think, while you're on the witness  
20 stand, if you're -- if that would be helpful.

21 THE WITNESS: Thank you.

22 EXAMINATION

23 BY DEAN COOPER:

24 Q. Would you state your name?

25 A. My name is Brian Mushimba.

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

3 A. Liberty Utilities as a senior director in  
4 charge of generation operations.

5 Q. And that includes generation operations for  
6 the Empire District Electric Company which does  
7 business as Liberty?

8 A. Yes, sir.

9 Q. Have you caused to be prepared for purposes  
10 of this proceeding certain surrebuttal testimony in  
11 question and answer form?

12 A. Yes.

13 Q. Has it been prepared in both public and  
14 confidential formats?

15 A. Yes.

16 Q. Is it your understanding that your  
17 surrebuttal testimony has been marked as Exhibit 10  
18 both public and confidential for identification?

19 A. Yes.

20 Q. Do you have any changes that you would make  
21 to that testimony at this time?

22 A. No.

23 Q. If I ask you the questions which are  
24 contained in Exhibit 10 today, would your answers be  
25 the same?

1 A. Yes, sir.

2 Q. Are those answers are true and correct to  
3 the best of your information and knowledge and belief?

4 A. Yes, sir.

5 DEAN COOPER: Your Honor, I would offer  
6 Exhibit 10 into evidence in both public and  
7 confidential formats and tender the witness for cross  
8 examination.

9 JUDGE WOODRUFF: All right. Ten, public  
10 and confidential have been offered. Any objections to  
11 their receipt? And they will be received. Cross  
12 examination. We would begin with Renew Missouri.  
13 Their attorney has been excused from appearing today.  
14 For MECG? For staff?

15 CURT STOKES: Thank you, Judge. Curt  
16 Stokes on behalf of staff this morning.

17 EXAMINATION

18 BY CURT STOKES:

19 Q. Dr. Mushimba, is it true that combustion  
20 tuning of a gas turbine is a process of controlling  
21 the fuel split ratio and the amount of combustion air  
22 to find the optimized combustion condition?

23 A. True.

24 Q. And is it true that combustion tuning must  
25 be ensured to avoid various instability factors for



1           A.    According to the materials data sheet that  
2 we have on the number two diesel that we use as  
3 backup, it measures fuel oil and under the  
4 temperatures that Riverton 10 operates, the range  
5 operates, the Winter Storm Uri was such a unique event  
6 that, that happened and the events that subsequently,  
7 you know, unfolded were unforeseen because of how just  
8 aggressive and unique that -- that event was. In our  
9 operations manuals, it calls for some type of heating  
10 system to be -- to be -- to be utilized, but the  
11 heating system would be fired from available, you  
12 know, electricity which during the system when  
13 everything was shutting down and natural gas was shut  
14 down, and you know, everything was really, for lack of  
15 a better word, falling around us because of our  
16 extreme conditions where the heating system would not  
17 have worked, so that's what we found ourselves  
18 against.

19           **Q.    So just to make sure I understand your**  
20 **testimony, there -- there wasn't any, I guess,**  
21 **procedure for using an alternative fuel for the diesel**  
22 **to get things heated up and running. The procedure**  
23 **you have in place is to heat the equipment, so that --**  
24 **the diesel, then, is, I guess, reaches a temperature**  
25 **where it will ignite; is that correct?**

1           A.    Yes.

2           NATHAN WILLIAMS:  Thank you.

3           JUDGE WOODRUFF:  And any questions from the  
4 commissioners online?

5           JASON HOLSMAN:  No questions, Judge.

6           RYAN SILVEY:  No questions, Judge.

7           JUDGE WOODRUFF:  I do have some questions.  
8 And I don't know if I'm going to get into anything  
9 highly confidential, but if I do, somebody stop me and  
10 we'll go back in camera.  First of all, can you just  
11 explain the concept of a black start, why is that  
12 important?

13           THE WITNESS:  Black start essentially is --  
14 is when you have to restart generation from a  
15 blackout.  So it's a total collapse of the system, you  
16 know, failure of the system, is blackout, all the  
17 generating units that are interconnected ordinarily  
18 and connected together to supply a lot of centers, all  
19 that collapses.  For that interconnectedness to be  
20 re-established, there's a unit that is designated to  
21 do that from an emergent fuel source such as number  
22 two fuel that we have at Riverton.  So ordinarily you  
23 would fire that unit on the emergent fuel oil and  
24 allow it to get set in generation capacity to allow  
25 other units to start coming off and re-establish the

1 interconnectedness.

2 JUDGE WOODRUFF: Okay. It's my  
3 understanding that you can't just start up the -- the  
4 coal fire plant without electricity coming into the  
5 system --

6 THE WITNESS: That's true.

7 JUDGE WOODRUFF: -- to power equipment and  
8 so forth.

9 THE WITNESS: That's true.

10 JUDGE WOODRUFF: There's been testimony  
11 about test firing and tuning. Can you explain those  
12 two terms, and how are they different?

13 THE WITNESS: Tuning is -- is essentially  
14 something that you do to model the behavior of your  
15 engine during certain conditions. You want to get the  
16 maximum generation capacity with minimal impact such  
17 as emission. So it's an entire process, technical  
18 engineering process of looking at oxygen fuel ratio  
19 and mixing with ignition for optimum combustion  
20 dynamics and to get your most output at a given  
21 temperature with many more emissions from the  
22 combustion process. It's recommended when conditions  
23 drastically change, and you want to operate in the  
24 best range possible.

25 JUDGE WOODRUFF: Okay. Now, tuning is --



1 you said it's based on the ambient test temperature.

2 THE WITNESS: Yeah.

3 JUDGE WOODRUFF: So if you want to tune  
4 your unit to operate at 70 degrees, do you have to be  
5 doing the tuning at 70 degrees?

6 THE WITNESS: Yes.

7 JUDGE WOODRUFF: So similarly, if you want  
8 to tune it for 10 below zero, you'd also have to be  
9 testing or tuning it at 10 below zero?

10 THE WITNESS: Yes.

11 JUDGE WOODRUFF: And then what about test  
12 firing? What is that?

13 THE WITNESS: Well, test firing could be  
14 just you're wanting to make sure that when you -- you  
15 know, you want to ignite your combustion engine is  
16 going to ignite to run to full speed, whatever other  
17 things you want to, to test during that fire --  
18 firing.

19 JUDGE WOODRUFF: Okay. So it's just  
20 starting it up without actually generating -- without  
21 sending electricity out into the grid?

22 THE WITNESS: Yes.

23 JUDGE WOODRUFF: Was the permit done for  
24 Riverton 11 allow for the units to be test fired with  
25 fuel oil?

1 THE WITNESS: No.

2 JUDGE WOODRUFF: Okay. Why is that?

3 THE WITNESS: The only time we're allowed

4 to operate unit -- black start unit on emergent fuel

5 is one, either total breakdown of the primary and its

6 source, and secondly, the need for electricity from

7 that station can only be made by that black start

8 unit. So essentially, you have to get into a

9 situation like Winter Storm Uri; otherwise, the permit

10 won't allow you to do anything to test, to tune or to

11 run.

12 JUDGE WOODRUFF: And this is based on the

13 Kansas air permits.

14 THE WITNESS: Yes. K-A-P, yes. Permit.

15 JUDGE WOODRUFF: Is that Kansas type

16 requirement or does every state have similar kind of

17 requirements?

18 THE WITNESS: I'm not sure.

19 JUDGE WOODRUFF: How frequently are these

20 Riverton units test fired with fuel oil?

21 THE WITNESS: We don't do it. The permit

22 doesn't allow us.

23 JUDGE WOODRUFF: They never do it?

24 THE WITNESS: Yeah. The permit doesn't

25 allow us.

1 JUDGE WOODRUFF: Okay. Now I've got some  
2 questions about sections 6-A, 6-B and 6-D and 6-E  
3 which I believe are of the -- from the Riverton 10, 11  
4 permits. They talk about different conditions in  
5 which tests can be -- can be made. Can you explain  
6 the difference in testing in those -- in those  
7 sections of the permit?

8 THE WITNESS: I think you're referring to  
9 the conditions, which the permit allows us to operate  
10 a black start unit. You know, essentially, what it  
11 says is that, one, the primary -- you know, any source  
12 that you use, natural gas, that system has to be not  
13 available, has to break down. Then, secondly, there  
14 will be no other way that generation from Riverton  
15 plant can happen unless you use the black start unit.  
16 That's the time that now you are able to use that  
17 permit, then allows you to operate, you know, the  
18 black start unit. And in our case, during Winter  
19 Storm Uri on December -- on February 15th, no -- the  
20 conditions were met and unit 11 which was black start  
21 capable was then attempted, you know, to -- to run.  
22 You know, we attempted -- over a period of 28 hours,  
23 we attempted 26 starts. You know, we expended all of  
24 the energy in trying to be able to fire and ignite the  
25 unit, including streamline some of the redundant,

1 logic, and some procedures that we could, you know,  
2 streamline as operations manual allowance and still  
3 the extreme nature of the temperatures that came  
4 through the subzero temperatures which is just that  
5 difficult.

6 JUDGE WOODRUFF: After Winter Storm Uri was  
7 over, were you able to determine what went wrong, why  
8 the unit wouldn't start, any particular?

9 THE WITNESS: Well, preliminary  
10 investigations into some of the events that happened  
11 point to just the -- the unit was -- we were  
12 attempting to operate the unit outside its prime test.  
13 It was just extremely cold.

14 JUDGE WOODRUFF: That's all the questions I  
15 have then. Any recross based on the questions from  
16 the bench?

17 CURT STOKES: Yes, Judge. This is Curt  
18 Stokes for staff again.

19 JUDGE WOODRUFF: Okay.

20 EXAMINATION

21 BY CURT STOKES:

22 Q. Dr. Mushimba, you attached the Kansas air  
23 permit as schedule BM-2 to your surrebuttal testimony;  
24 correct?

25 A. Correct.

1 Q. And that is a true and accurate copy of  
2 Liberty's air permit?

3 A. Correct.

4 Q. Page 14 of 72, of that schedule, it's --  
5 actually, I should say pages 11 -- page 13 and 14 of  
6 72. Under paragraph 6, it begins the use of number  
7 two fuel oil in the unit number 10, and unit number 11  
8 is permitted only under the following conditions; is  
9 that -- is that accurate?

10 A. Go ahead.

11 Q. Is that accurate?

12 A. That's what it says.

13 Q. Okay. Do you need a copy? Permission to  
14 approach the bench and the witness?

15 A. Thank you.

16 Q. Is that correct?

17 A. Correct.

18 Q. And then if you turn to page 14,  
19 subparagraph C, under that says, the owner or  
20 operator -- is that referring to Liberty?

21 A. Yes.

22 Q. Owner or operator?

23 A. Yes.

24 Q. Shall be permitted to use distillate fuel  
25 oils. Distillate fuel oils is the fuel oils referred

1 to earlier; correct?

2 A. Correct.

3 Q. Shall be permitted to use distillate fuel  
4 oils as needed to meet the black start testing  
5 requirements by any federal or state regulatory  
6 agency; correct?

7 A. Correct.

8 Q. And you said that the black start rules  
9 under NERC are that it be tested every three years;  
10 correct?

11 A. Correct.

12 Q. And that part of the end it says, none of  
13 the electricity produced during the test shall be sold  
14 on a bulk electrical system; correct?

15 A. Correct.

16 Q. Okay. Now, you also said earlier that  
17 tuning is recommended when conditions drastically  
18 change?

19 A. Correct.

20 Q. Did conditions drastically change during  
21 Winter Storm Uri?

22 A. Yes.

23 CURT STOKES: No further questions.

24 JUDGE WOODRUFF: All right. Public  
25 counsel.

1 NATHAN WILLIAMS: Nathan Williams.

2 EXAMINATION

3 BY NATHAN WILLIAMS:

4 Q. Do you recall testifying in response to ROJ  
5 that the units were -- during Storm Uri would have  
6 been operating outside their operating perimeters and  
7 that's why they did not operate?

8 A. Correct.

9 Q. What operating perimeters were they outside  
10 of?

11 A. By that I meant every design of a plant has  
12 certain conditions that it assumes, and the subzero  
13 temperatures that we experienced during Winter Storm  
14 Uri was the first of its kind.

15 Q. Was the issue at the plant getting the fuel  
16 into the unit?

17 A. It's -- the -- the issues where we failed  
18 to ignite certainly had to do with the temperature  
19 being very cold, subzero, very heavy, the -- the  
20 emergent oil being very cold, discussed issues, and  
21 flow issues, and when we tried to ignite failure to  
22 ignite as a result.

23 Q. I've heard the term easel gelling before.  
24 Was that described what occurred at the plant? Are  
25 you familiar with that term?

1 A. I'm not familiar.

2 Q. Well, you mentioned -- discuss, just how  
3 (inaudible) the diesel fuel get --

4 A. Yeah.

5 Q. Sorry, diesel. Fuel oil?

6 A. Yeah. Number two fuel oil gets impacted by  
7 the -- the temperature and that was certainly not  
8 ideal to operation temperature for it.

9 NATHAN WILLIAMS: No further questions.

10 DEAN COOPER: Thank you, Your Honor. I  
11 guess I'm going to start in the public session, but  
12 I'll probably need to go in camera at one point. And  
13 I forgot to announce who I was. Dean Cooper on behalf  
14 of Liberty.

15 EXAMINATION

16 BY DEAN COOPER:

17 Q. Mr. Mushimba, you talked about the -- what  
18 tuning is; correct?

19 A. Yes, sir.

20 Q. Will tuning on natural gas help anything  
21 for running the unit on fuel oil or do you have to  
22 tune separately for natural gas and separately for  
23 fuel oil?

24 A. Those are two different fuels, different  
25 characteristics and perimeters, and tuning on natural



1 gas would not translate the same results to fuel oil.

2 **Q. Is tuning something that -- that Liberty**  
3 **does on its own or does it use a third party**  
4 **consultant for that?**

5 A. A third party consultant comes in because  
6 there's quite a bit of (inaudible) that has to happen,  
7 the control engineer has to be there and walk the  
8 oxygen curve, you know, of the interim (sic) and  
9 direct every step, you know, seeing how the engine  
10 will perform. You're essentially stretching the  
11 engine to its limits and several times you trip, you  
12 know, cause several trips, along the way as you try to  
13 find that optimum environment.

14 **Q. So not something you decide to do in the --**  
15 **you're going to do in the morning, and you conduct it**  
16 **in the afternoon?**

17 A. Oh, no.

18 **Q. I take it, this is a long planning process?**

19 A. A long planning process.

20 CURT STOKES: Objection, leading.

21 JUDGE WOODRUFF: Sustained.

22 **Q. (By Dean Cooper:) How much planning does**  
23 **it entail to tune --**

24 A. Sometimes it's a -- it's as long as a year,  
25 but, you know, normally, we'll attempt to tune

1 whenever there's a modification of (inaudible)  
2 controls (inaudible) you know, things like that or the  
3 ambient temperatures changes. So summertime, if we're  
4 going to seal of our different temperatures, we may  
5 tune for summer, and then we tune for -- for farther  
6 temperatures, so it's several months of planning.

7 **Q. You were asked a question by the judge**  
8 **about -- generally, about why you're not allowed to**  
9 **tune on fuel oil, and we kind of danced around it a**  
10 **little bit. I think you referred -- did you refer to**  
11 **the air pollution permit as -- as the basis for why**  
12 **you don't?**

13 A. Correct. Only measurements for fuel oil.  
14 There's no provision in our air permit to tune or  
15 operate to fuel engines at Riverton.

16 **Q. Let's take a step back from that, though.**  
17 **I -- what is the reason that you're -- that you are**  
18 **prohibited from tuning on fuel oil? Is fuel oil --**  
19 **what was the danger to the environment, I suppose,**  
20 **from the fuel oil?**

21 A. Yeah. Well, I think the reason has to do  
22 with, you know the fact that combusting number two  
23 fuel oil in an emergency, the type of fuel it is, it  
24 is not something that you just really want to use.  
25 It's the weight bends. The emission it puts out -- it

1 puts out and the hum emissions that can come from it.

2 DEAN COOPER: Judge, can we go in camera at  
3 this point?

4 JUDGE WOODRUFF: Yes. We'll go to in  
5 camera.

6 (Hearing went in camera 2.)

7 JUDGE WOODRUFF: We'll come back in regular  
8 session then.

9 DEAN COOPER: And that's all the questions  
10 I have.

11 JUDGE WOODRUFF: Okay. Thank you. Then  
12 Dr. Mushimba, you can step down.

13 THE WITNESS: Thank you.

14 JUDGE WOODRUFF: Next witness is Drew  
15 Landoll.

16 DIANE CARTER: We would call Drew Landoll  
17 to the stand.

18 JUDGE WOODRUFF: Do you solemnly swear or  
19 affirm that the testimony you're about to give in this  
20 matter is the truth, the whole truth, and nothing but  
21 the truth?

22 THE WITNESS: I do.

23 JUDGE WOODRUFF: Thank you. You may  
24 inquire.

25 EXAMINATION

1 BY DIANE CARTER:

2 Q. If you'll state your full name, please.

3 A. Drew Landoll.

4 Q. By whom are you employed, and in what  
5 capacity?

6 A. Liberty Utility Service Corp, as the  
7 director of strategic projects.

8 Q. And does that include work for the Empire  
9 District Electric Company?

10 A. It does.

11 Q. Did you prepare pre-filed testimony that  
12 has been marked as Exhibits 13 and 14 in both public  
13 and confidential versions?

14 A. Yes.

15 Q. Do you have any changes for that testimony?

16 A. I do not.

17 Q. If I asked you those same questions from  
18 your direct testimony and your surrebuttal testimony  
19 today, would your answers be substantially the same?

20 A. Yes.

21 Q. And are those answers true and correct to  
22 the best of your information, knowledge, and belief?

23 A. Yes.

24 DIANE CARTER: I move for the admission of  
25 Exhibits 13, public and confidential, and 14, public

1 and confidential, and tender the witness for cross  
2 examination.

3 CURT STOKES: Your Honor, I don't have an  
4 objection, per se, just probably a clarification that  
5 there are active hyperlinks in Mr. Landoll's  
6 documents, particularly pages 3, 4, 6, 8 of his  
7 surrebuttal. I just want to make sure that whatever  
8 documents existed at that link at the time that it was  
9 prepared today or whatever might exist in the future  
10 are not being offered in the record; otherwise, I  
11 would have an objection, only to having those  
12 documents included.

13 JUDGE WOODRUFF: Object to hyperlinks.

14 DIANE CARTER: Those complete documents to  
15 be admitted in the record. It's -- they're simply  
16 footnotes for citations.

17 JUDGE WOODRUFF: Okay. Does that satisfy  
18 staff's concerns.

19 CURT STOKES: Yes.

20 JUDGE WOODRUFF: With that understanding,  
21 13 and 14, public and confidential will be received.  
22 For cross examination, we begin with MCEG. Staff.

23 CURT STOKES: Curt Stokes for staff. No  
24 questions.

25 JUDGE WOODRUFF: Public counsel.

1                   NATHAN WILLIAMS: Thank you, Judge. Nathan  
2 Williams.

3   EXAMINATION

4 BY NATHAN WILLIAMS:

5                   **Q. Good morning.**

6                   A. Good morning.

7                   **Q. In your testimony, you've attached some**  
8 **schedules of work product of other parties, Black and**  
9 **Veatch, and Midwest Environmental Consultants; do you**  
10 **recall that?**

11                  A. Surrebuttal or direct? The answer is yes,  
12 but either way, actually.

13                  **Q. It doesn't matter where --**

14                  A. Yeah.

15                  **Q. -- particularly. Did you personally**  
16 **participate in the preparation of any of those**  
17 **decommission cost estimates?**

18                  A. Yes.

19                  **Q. And how did you participate?**

20                  A. Our team that worked in our department  
21 strategic projects participated with the actual team  
22 members at Asbury and our project managers to help  
23 direct Black and Veatch on what we wanted to do, how we  
24 wanted to ultimately dispose of the facility and have  
25 them go and do their estimate. They use their

1 extensive background and experience on dismantlement.  
2 They're a very large firm who has a lot of  
3 information, so they -- they did the work of the  
4 estimate. We told them, you know, we're the ones  
5 wanting to, you know, move forward with this project.

6 **Q. So the consultants who actually came up**  
7 **with the estimates --**

8 A. Yes.

9 **Q. -- and didn't the Black and Veatch estimate**  
10 **change substantially between when it was first given,**  
11 **it looks like, I believe, January 4th of 2020, and the**  
12 **subsequent estimate in October of '21?**

13 A. It did.

14 **Q. And I believe the amounts are highly**  
15 **confidential, so I didn't want to go there.**

16 A. Correct.

17 **Q. But can you give an order of magnitude of**  
18 **the difference?**

19 A. Nearly -- it was -- it was removed -- or  
20 sorry. The cost was under half, from the original to  
21 the updated.

22 **Q. Wasn't it about a tenth?**

23 A. I would be happy to speak to the numbers  
24 themselves, but, yes, it was considerable.

25 **Q. Well, let me see. Your direct schedule**

1 DW-11-2 on page 5 of the -- well, by the pagination of  
2 the schedule, it would be page 8 of 9, the actual  
3 numbers appear there, do they not, under total cost  
4 including salvage?

5 A. Yes.

6 Q. And that's the Black and Veatch  
7 decommissioning cost study; correct?

8 A. Correct.

9 NATHAN WILLIAMS: No further questions of  
10 this witness at this time. Thank you.

11 JUDGE WOODRUFF: Thank you. Welcome  
12 questions from the bench. Any questions from the  
13 commissioners online?

14 JASON HOLSMAN: No commissioner -- no  
15 questions, Judge. Thank you.

16 JUDGE WOODRUFF: Thank you. I have no  
17 questions either, so no need for recross. Any  
18 redirect?

19 DIANE CARTER: No questions. Thank you.

20 JUDGE WOODRUFF: Okay. Then Mr. Landoll,  
21 you can step down. I believe we're moving over to a  
22 staff witness, Ms. McMellen.

23 CURT STOKES: Yes, Judge.

24 JUDGE WOODRUFF: Can you raise your right  
25 hand? Do you solemnly swear or affirm that the



1 testimony you're about to give in this matter is the  
2 truth, the whole truth, and nothing but the truth?

3 THE WITNESS: I do.

4 JUDGE WOODRUFF: Thank you. You may  
5 inquire.

6 CURT STOKES: Thank you, Your Honor. Curt  
7 Stokes on behalf of staff here.

8 EXAMINATION

9 BY CURT STOKES:

10 Q. Ms. McMellen, can you please state your  
11 full name for the record?

12 A. Amanda C. McMellen.

13 Q. And can you state in what capacity you are  
14 employed by the staff of the commission?

15 A. I'm a utility regulatory audit unit  
16 supervisor.

17 Q. And have you prepared in these proceedings  
18 rebuttal testimony marked as Exhibit 100, surrebuttal  
19 testimony marked as Exhibit 101, and certain  
20 calculations marked Exhibit 112, and Exhibit 113?

21 A. Correct.

22 Q. And you have corrections to make to these  
23 documents?

24 A. Yes. The rebuttal testimony.

25 Q. And can you state what those corrections

1     **are?**

2           A.     Okay. Starting on page 3, we have an  
3     update to our calculations for carrying costs for  
4     Storm Uri, and we have now moved to long-term debt of  
5     4.65 percent which causes these changes. The first  
6     one is on page 3 of my rebuttal, on line 4. I need to  
7     remove the word variable, change short to long, and  
8     then delete everything after debt rate. Continuing  
9     through line 5. The next change would be on page 3,  
10    line 17, that number is now 197,428,807. And in table  
11    1, I have three changes. One is the (inaudible) costs  
12    is now 15,242,121. The upfront financing cost are 3,  
13    560 and -- 560,713. And the total is 197,428,807.  
14    And then on page 4, starting on line 14, short-term  
15    should be long-term. And on 15, in the parenthesis,  
16    it should be 3.9 instead of 3.0 and 4.65 instead of  
17    3.58. And then my last change would be on page 5, on  
18    line 4, it's 3 million -- new number is \$3,560,713.  
19    That's all the changes I have.

20           **Q.     Okay. For Exhibit 112, you had some**  
21    **corrections to your Uri calculations; correct?**

22           A.     Correct.

23           **Q.     Can you describe those just very briefly?**

24           A.     It was just the update from what we thought  
25    it was short-term debt to long-term debt --

1 Q. Okay.

2 A. -- for carrying costs for storm Uri.

3 Q. Okay. And your understanding is that the  
4 copy of updated Exhibit 112 has been shared with the  
5 parties?

6 A. Correct.

7 Q. Okay. With the corrections you just  
8 stated, if I were to ask you the questions in those  
9 documents, would the answers be the same?

10 A. Yes.

11 Q. And are the other -- same corrected answers  
12 true and correct to the best of your knowledge and  
13 belief?

14 A. Yes.

15 CURT STOKES: Okay. Your Honor, I would  
16 move Staff Exhibit 100, Staff Exhibit 101, Staff  
17 Exhibit 112, and Staff Exhibit 113 into the record.

18 JUDGE WOODRUFF: Okay.

19 DEAN COOPER: Excuse me. Dean Cooper for  
20 Liberty. Not an objection, per se, but as was  
21 mentioned, I think, on Exhibit 112, we just got that  
22 this morning. We don't necessarily have a problem,  
23 but if you could defer your ruling on that until we  
24 have a chance to look at it a little bit more closely,  
25 we would appreciate that.

1 JUDGE WOODRUFF: Okay. I can do that. I  
2 also want to ask you about Exhibit 112. You indicated  
3 the updated version has been provided to the parties.  
4 Is that -- have you updated to the commissions website  
5 as well? I'm just wondering what has been offered.

6 DEAN COOPER: I need to look. I think we  
7 circulated at least by e-mail this morning.

8 THE WITNESS: I don't think it's been  
9 officially filed.

10 DEAN COOPER: I have not seen it yet.

11 JUDGE WOODRUFF: Because it was recently  
12 filed in E Scribe; right?

13 DEAN COOPER: Yes.

14 JUDGE WOODRUFF: A few days ago.

15 DEAN COOPER: Yeah. So we would need to  
16 update that.

17 JUDGE WOODRUFF: Okay. We'll defer ruling  
18 on that, at this point anyway, so. So 100, 101 have  
19 been offered. As well as 113. Any objections to  
20 those documents being received? Hearing none, they  
21 will be received. And as I indicated with 112, it's  
22 been offered, and we'll defer ruling on that to give  
23 parties time to look at that.

24 DEAN COOPER: Then I tender the witness for  
25 cross.

1 JUDGE WOODRUFF: And for cross we begin  
2 with MECG. To Liberty.

3 DEAN COOPER: Yes, Your Honor.

4 EXAMINATION

5 BY DEAN COOPER:

6 Q. Ms. McMellen, in your rebuttal testimony, I  
7 think this is on page 8, you talk about the use of  
8 long-term debt rate as -- for carrying costs; correct?  
9 And I'm looking at lines 1 through 3 if you want to  
10 reference.

11 A. That's in reference as to Asbury; correct?

12 Q. Correct. Yes.

13 A. Yes. You are correct.

14 Q. And I take it -- at the end of that  
15 sentence you talk about carrying rates to be applied  
16 from May to December of 2022; correct?

17 A. Correct.

18 Q. And I take it from that, that you're not  
19 applying carrying costs to the Asbury balance starting  
20 with the retirement of Asbury through May of 2022; is  
21 that correct?

22 A. Not in this calculation. It was included  
23 in the Asbury liability, AAO that was included in  
24 the -- the 2019 rate case.

25 Q. Okay. So that's part of my question then.

1 So what has been done from the date of retirement  
2 through May of 2022? You just assume that there's a  
3 return built into the rates; correct?

4 A. Correct.

5 Q. However, that return that's built into the  
6 rates has been added to the liability; correct?

7 A. Correct.

8 Q. So if that liability is applied, the result  
9 of that is that there will be no return and no  
10 carrying costs on Asbury from retirement through May  
11 of 2022; is that correct?

12 CURT STOKES: Objection. Compound.

13 JUDGE WOODRUFF: Overruled that objection.  
14 You can answer that question or have it asked again,  
15 if you'd like.

16 THE WITNESS: Can you please repeat the  
17 question?

18 DEAN COOPER: Sure. We can break that up.

19 Q. (By Dean Cooper:) So we're just talking  
20 about the fact that in your carrying costs  
21 calculation, you don't add any carrying costs from the  
22 date of retirement of Asbury through May of 2022;  
23 correct?

24 A. Correct. In that calculation, that's  
25 correct.

1 Q. Okay. And you did point out that  
2 there's -- it's assumed that there is a return for  
3 Asbury that's been built into the rates that would  
4 have been in effect from retirement through May of  
5 2022; correct?

6 A. Correct.

7 Q. Okay. But ultimately, that assumed return  
8 is included in the Asbury liability; correct?

9 A. Correct.

10 Q. So if we take that liability, we use that  
11 liability to offset against the Asbury amounts, the  
12 result of that is that there is no return, and there  
13 are no carrying costs for the company from the date of  
14 retirement through May of 2022; is that correct?

15 A. Well, it was included in rates, so they're  
16 getting a return on, but we don't believe that  
17 there -- the company should get a return on and of the  
18 unrecovered piece of Asbury, so there should be some  
19 sharing between the customers and the shareholders.

20 Q. But you would acknowledge, wouldn't you,  
21 under the way you've treated it, there is no return  
22 that ultimately goes to the company because it's a  
23 part of the -- what's in rates is part of the  
24 liability; correct?

25 A. Correct.

1 Q. And you haven't done anything to add a  
2 carrying cost to that period from the date of  
3 retirement through May of 2022; correct?

4 A. Correct.

5 Q. So if the result of that is the company  
6 receives -- at the end of this process receives no  
7 return and no carrying costs, isn't that contrary to  
8 the securitization statute which would call for  
9 carrying costs?

10 CURT STOKES: Objection. Calls for a legal  
11 conclusion.

12 JUDGE WOODRUFF: If you can answer, you can  
13 go ahead.

14 THE WITNESS: I don't know.

15 DEAN COOPER: That's all the questions I  
16 have, Your Honor.

17 JUDGE WOODRUFF: Counsel.

18 NATHAN WILLIAMS: No questions, thank you.

19 JUDGE WOODRUFF: All right. Questions from  
20 the commissioners online?

21 JASON HOLSMAN: No questions.

22 JUDGE WOODRUFF: Okay. I do have a couple  
23 of questions. Just kind of a general question, but on  
24 page 5, line 18 through -- through page 6 of your  
25 rebuttal testimony, you stated it was staff's position



1 that the prudent costs incurred by Liberty for the  
2 early retirement of Asbury are just and reasonable and  
3 in the public interest. Why does staff believe these  
4 costs associated with early retirement were just and  
5 reasonable?

6 THE WITNESS: They've been proven just and  
7 reasonable in the previous cases, and they have to be  
8 proved just and reasonable to be scrutinized.

9 JUDGE WOODRUFF: Okay.

10 THE WITNESS: And staff has made no  
11 prudence (sic) disallowances in the past two rate  
12 cases.

13 JUDGE WOODRUFF: The -- the past two rate  
14 cases are the ones you referred to earlier where they  
15 were proven just and reasonable?

16 THE WITNESS: Correct. At least for  
17 Asbury.

18 JUDGE WOODRUFF: Okay. Under issue 3-I,  
19 about the value of Asbury's AAO regulatory liability,  
20 staff stated its position was that the AAO was worth  
21 the value was 75.8 million, and the -- and the  
22 statement of position cited in number -- or a number  
23 in the schedule presented by Mr. Davis was the  
24 attachment three to your response, work papers -- do  
25 those work papers support that amount?

1 THE WITNESS: The 75.8, yes.

2 JUDGE WOODRUFF: Yes. Okay. What items  
3 are included in the amount, and why is your number  
4 different from the -- the value put forth by OPC and  
5 Liberty?

6 THE WITNESS: The biggest difference  
7 between staff and Liberty would be the AAO liability,  
8 the return on the liability, that the customers have  
9 already been paying back since the AAO went into  
10 effect and with OPC.

11 JUDGE WOODRUFF: That's what you were just  
12 discussing with counsel for Liberty; is that correct?

13 THE WITNESS: Correct. And there's also a  
14 portion that is related to the ADIT and access ADIT.

15 JUDGE WOODRUFF: Okay.

16 THE WITNESS: And the difference between  
17 staff and ADIT, I think the biggest difference is they  
18 removed the amount for the AQCS.

19 JUDGE WOODRUFF: Can you tell me what AQCS  
20 is?

21 THE WITNESS: It's part of the  
22 environmental upgrades that they did in 2014.

23 JUDGE WOODRUFF: Okay. Thank you. That's  
24 the only questions I have then. Any recross based on  
25 those questions from the bench? None. Redirect.

1 CURT STOKES: Curt Stokes for staff.

2 EXAMINATION

3 BY CURT STOKES:

4 Q. Ms. McMellen, you were asked about the  
5 return on a portion of staff's calculated AAO  
6 regulatory liability?

7 A. Correct.

8 Q. Can you explain what a return on a  
9 regulatory liability encompasses?

10 A. It's the return on the money that the  
11 customers already put forward when they paid for  
12 Asbury in rates in the 2019 case up until new rates  
13 went into effect in the most recent case.

14 Q. Now, in the 2019 rate case, ratepayers paid  
15 a full return of and on Asbury; correct?

16 A. Correct.

17 Q. And was it staff's position in the 2021  
18 rate case, that a return on and of Asbury was just and  
19 reasonable?

20 A. No. Asbury, there was no return on, just  
21 return of in the rate case until it was moved to  
22 securitization.

23 Q. So staff's position that the return on  
24 should be returned to ratepayers is consistent with  
25 its position in the 2021 rate case?

1 A. Correct.

2 Q. And tell me again, just a reminder, when we  
3 say return of, what does that mean?

4 A. It's basically the return of the expenses  
5 going -- they're getting 100 percent recovery of the  
6 expense portion, a return of, instead of return on,  
7 where they get a portion that is the weighted average  
8 cost of capital typically.

9 Q. Okay. So the return on, that's the profit?

10 A. Correct.

11 Q. And then the return of is just the return  
12 of what was invested?

13 A. Correct.

14 Q. Okay. Now, you say that there were no  
15 carrying costs from under your recommendation, from  
16 the date Asbury was retired; correct?

17 A. Correct.

18 Q. So when Asbury retired, was it used and  
19 useful?

20 A. No, it was not.

21 Q. Did Asbury serve customers during Winter  
22 Storm Uri?

23 A. It did not.

24 Q. And is -- what's Liberty seeking to recover  
25 here for Uri and Asbury?

1 A. Together, all together, around 266 million.

2 Q. Is it --

3 A. No, I'm sorry, 362 million.

4 Q. And are there any costs that associated  
5 with Uri and Asbury that Liberty is not seeking to  
6 recover?

7 A. Not that I'm aware of.

8 Q. So there -- there's no cost incurred with  
9 Uri, and there's no expenses associated with Asbury  
10 that Liberty is seeking to share with ratepayers?

11 A. Not that I'm aware of.

12 Q. In staff's opinion is it just and  
13 reasonable?

14 A. No, it is not.

15 CURT STOKES: No further questions.

16 JUDGE WOODRUFF: I need to apologize here.  
17 I do have one more question. After I ask the  
18 question, we'll go through the whole process again of  
19 recross and redirect. But this is a question about  
20 staff's proposed net book value for Asbury.

21 THE WITNESS: Uh-huh.

22 JUDGE WOODRUFF: What is that proposed net  
23 book value?

24 THE WITNESS: We give the company's number  
25 of 159.4 million.

1 JUDGE WOODRUFF: Okay. And how was that  
2 number calculated?

3 THE WITNESS: It's actually calculated in  
4 Charlotte Emery's surrebuttal's testimony for the  
5 company. It was their updated amount of actual plant  
6 that was retired, and then a portion for construction  
7 projects that were never finished.

8 JUDGE WOODRUFF: Okay. And staff would  
9 accept those numbers.

10 THE WITNESS: Yes.

11 JUDGE WOODRUFF: Okay. What was the  
12 assumed closure date of Asbury used in those  
13 calculations?

14 THE WITNESS: There's a difference in  
15 opinion. Staff believes the last date that they ran  
16 Asbury was December 2019. And therefore, that should  
17 be the date of retirement. The company believes it  
18 should be when it was removed from SPP which was  
19 March 1st of 2020.

20 JUDGE WOODRUFF: And does that assumed  
21 closure date have any effect of calculation of net  
22 book value for Asbury?

23 THE WITNESS: It does. A slight  
24 difference. Staff's calculation is about 3 million  
25 with depreciation and other costs.

1 JUDGE WOODRUFF: Okay.

2 THE WITNESS: It was around 3 million.

3 JUDGE WOODRUFF: Did staff's calculations  
4 or staff's calculations shown anywhere in your work  
5 papers?

6 THE WITNESS: The difference between us and  
7 the company on -- no, but I can present those papers.

8 JUDGE WOODRUFF: Okay. And they're not  
9 part of what was already submitted?

10 THE WITNESS: I don't believe so.

11 JUDGE WOODRUFF: Okay. Staff, would you be  
12 able to present those -- offer those work papers? At  
13 some point? I don't suppose you have them in front of  
14 you now.

15 THE WITNESS: No, I don't now. But I could  
16 by the end of the day, if not earlier.

17 NATHAN WILLIAMS: This is Nathan Williams  
18 for public counsel. Judge, are you asking for  
19 reconciliation of the parties' positions?

20 JUDGE WOODRUFF: I don't know; am I?

21 NATHAN WILLIAMS: Sure sounds like a couple  
22 of them at least.

23 JUDGE WOODRUFF: Okay. Well, I think we --  
24 we would like to be able to see those calculations.  
25 If -- if the parties have additional testimony or

1 anything that they wish to present for that, I  
2 certainly don't have any objection to those. I guess  
3 I don't really understand what you mean by  
4 reconciliation of the positions.

5 NATHAN WILLIAMS: Just what the parties'  
6 positions are, and how they're -- I guess you want  
7 something about how they arrived at them?

8 JUDGE WOODRUFF: As far as the net book  
9 value for Asbury; is that what you're talking about?

10 NATHAN WILLIAMS: At least that.

11 JUDGE WOODRUFF: Well, I think at some  
12 point a reconciliation would certainly be helpful, and  
13 you're talking about a reconciliation on all issues?

14 NATHAN WILLIAMS: Depends on what the  
15 commission wants, of course.

16 JUDGE WOODRUFF: I think we would need that  
17 at some point, if there were to be an appeal  
18 certainly. Or at least similar to what would be done  
19 in a rate case. Let me -- let me think about it a  
20 little bit more, and we'll come back to that. At this  
21 point I'm concerned about getting those -- those  
22 calculations into the record for staff if -- if staff  
23 can get those -- as an additional exhibit.

24 CURT STOKES: Okay. We can do that.

25 JUDGE WOODRUFF: Thank you. All right.



1 Any recross based on those questions from the bench?

2 From the last question? Any additional redirect?

3 CURT STOKES: Maybe just one. Your Honor,  
4 this is Curt Stokes for staff.

5 Q. (By Curt Stokes:) Can you turn to page 3  
6 of, I believe, it's Exhibit 113? It's the referred to  
7 as attachment 3 also.

8 A. You said page 3 of attachment 3. Okay.

9 Q. And this is the calculation of the Asbury  
10 AAO liability. Is -- is the -- is the difference that  
11 we're talking about between the retirement dates, is  
12 that reflected in the depreciation expense on line 14  
13 there or -- or is that calculation reflected somewhere  
14 else?

15 A. That amount is what staff's calculation is.  
16 I would have to take the difference in what the  
17 company included in their liability, and then what we  
18 included for depreciation, all those items under return  
19 on Asbury.

20 CURT STOKES: You know what, Your Honor?  
21 Maybe I'll just submit the calculation later. I don't  
22 know if I can walk through all of it now without  
23 taking up a lot of time.

24 JUDGE WOODRUFF: Okay.

25 CURT STOKES: I apologize.

1 JUDGE WOODRUFF: Very good then.

2 Ms. McMellen, you can step down.

3 THE WITNESS: Thank you.

4 JUDGE WOODRUFF: And we're due for a break.  
5 Let's come back at 10 o'clock.

6 We can come back on the record. And I  
7 believe the next witness is Kim Bolin.

8 CURT STOKES: Yes, Your Honor. Please  
9 raise your right hand. Do you solemnly swear or  
10 affirm that the testimony you're about to give is  
11 the -- given in this matter is the truth, the whole  
12 truth, and nothing but the truth?

13 THE WITNESS: I do.

14 JUDGE WOODRUFF: Thank you. You may  
15 inquire.

16 EXAMINATION

17 BY CURT STOKES:

18 Q. Good morning, Ms. Bolin. Can you state  
19 your full name for the record, please?

20 A. My name is Kimberly Bolin.

21 Q. And what is your -- in what capacity are  
22 you employed with the staff of the commission?

23 A. I'm the director of financial and business  
24 analysis division of the staff.

25 Q. Have you prepared in these proceedings

1     **rebuttal testimony marked as Exhibit 102, both public**  
2     **and confidential, surrebuttal testimony marked as**  
3     **Exhibit 103, and certain calculations marked as**  
4     **Exhibit 111?**

5             A.    Yes, I have.

6             Q.    Do you have any corrections to those  
7     **documents?**

8             A.    Yes. I have a correction to my surrebuttal  
9     testimony. On page 3, in the table that starts on  
10    line 14, the total amount for Liberty should be  
11    \$33,752,995.

12            Q.    Can you just briefly explain that  
13    **correction?**

14            A.    It was an adding error in my table.

15            Q.    Okay. And that -- that line just reflects  
16    **Liberty's position --**

17            A.    Yes.

18            Q.    -- on something? Okay.

19            A.    Yeah.

20            Q.    With that correction, if I were to ask you  
21    **the questions in these documents, would the answers be**  
22    **the same?**

23            A.    Yes, they would.

24            Q.    And would the corrected answers -- are the  
25    **corrected answers true and correct to the best of your**

1 **knowledge and belief?**

2 A. Yes, they are.

3 CURT STOKES: Your Honor, I offer Exhibits  
4 102, both public and confidential. 103 and 111 into  
5 the record.

6 JUDGE WOODRUFF: All right. Exhibits 102,  
7 103 and 111 have been offered. Any objections to the  
8 receipt? Hearing none, they will be received.

9 CURT STOKES: And I tender the witness for  
10 cross.

11 JUDGE WOODRUFF: Okay. For cross  
12 examination, we begin with MECG.

13 TIM OPITZ: No questions, Judge.

14 JUDGE WOODRUFF: Liberty?

15 DEAN COOPER: Yes, Your Honor. This is  
16 Dean Cooper on behalf of Liberty.

17 EXAMINATION

18 BY DEAN COOPER:

19 **Q. Ms. Bolin, the staff agrees that**  
20 **scrutinizing the Winter Storm Uri and Asbury costs are**  
21 **expected to provide quantifiable net present value**  
22 **benefits to the customers; doesn't it?**

23 A. Yes.

24 **Q. And that benefit is a result of the use of**  
25 **the securitization process; correct?**

1 A. It is -- that is correct.

2 Q. Okay. Now, you've -- you have a fair  
3 amount of experience at the commission, but let me ask  
4 you this. Do you -- do you view yourself as a tax  
5 authority?

6 A. I have worked tax issues before on other  
7 rate cases. So, yes, I would consider myself somewhat  
8 of a tax authority.

9 Q. Somewhat of a tax authority?

10 A. Somewhat, yes.

11 Q. How about normalization, do you consider  
12 yourself an expert on normalization?

13 A. I have performed the calculations for  
14 determining normalized income tax in the past, yes.

15 Q. Okay. Now, in reading your testimony as to  
16 ADIT, it appears that ADIT in this context is a  
17 function of the amount to be recovered through the  
18 securitization; is that correct?

19 A. If I remember right, the net present value  
20 of the ADIT for Asbury is to be considered an offset  
21 to the scrutinized balance.

22 Q. Well -- and what I'm getting at is that --  
23 in your testimony, you identify -- you say that the  
24 company has -- because of the amount it seeks to  
25 scrutinize its ADIT is one number that's larger than

1 the number you identify for ADIT associated with the  
2 staff's securitization number for -- for Asbury?

3 A. That is correct, due to our differences on  
4 the asset retirement obligation.

5 Q. And while we're on that, real quick, your  
6 counsel yesterday -- let's see -- in opening statement  
7 said that you had seen additional information in the  
8 company's surrebuttal in support of those asset  
9 retirement obligations; correct?

10 A. That is correct. I have reviewed the  
11 surrebuttal testimony of Drew Landoll, and there was  
12 some independent analysis done on the ARO for CCR.

13 Q. Now, I think your counsel said -- and I  
14 won't -- I may be paraphrasing, but essentially said  
15 you're getting closer to being comfortable with  
16 Liberty's estimates; is that correct?

17 A. That is correct. I'm not at the exact same  
18 amount, but there is a number in Mr. Landoll's  
19 testimony on page 23 of 49 of DWL-1 of 16,995,561 that  
20 we believe we -- is probably appropriate to include,  
21 and that would be total company number.

22 Q. Not a jurisdictional piece?

23 A. Correct.

24 Q. Okay. So let's circle back to ADIT for a  
25 minute, and would you agree that -- that ADIT is

1 **essentially about tax timing differences?**

2 A. Yes, it is.

3 Q. **And when we say that, what does that mean**  
4 **to you?**

5 A. That the company will be paying a different  
6 amount of taxes than what we would determine for  
7 ratemaking purposes.

8 Q. **And, so at the beginning of that process,**  
9 **you would -- the difference in those two things,**  
10 **assuming that customers have paid more than the**  
11 **company pays in taxes, that additional amount -- and**  
12 **this is going to be a lawyer trying to say this which**  
13 **is dangerous -- but that becomes the ADIT; correct?**

14 A. Yes, it does.

15 Q. **But the assumption is that those taxes will**  
16 **eventually be paid; correct?**

17 A. The assumption is that by the end of the  
18 life, the book depreciation life, and the tax  
19 depreciation life, there will be no difference.

20 Q. **And in the interim, those amounts we've**  
21 **identified as the ADIT are used to reduce rate base;**  
22 **correct?**

23 A. That is correct.

24 Q. **And, so a real simple example, if we had a**  
25 **thousand dollars in rate base and a hundred dollars in**

1 ADIT, we would subtract the \$100 from the thousand and  
2 the 900 essentially would be what we would use to  
3 calculate the return, that would become a part of the  
4 annual revenue requirement; correct?

5 A. The return of the revenue requirement, yes.

6 Q. So ultimately, the rate implications of --  
7 of ADIT come from this -- this rate base impact, ADIT  
8 does not have a dollar for dollar impact on annual  
9 revenue requirement; correct? It has an indirect  
10 impact?

11 A. It does have an indirect impact, yes.

12 Q. Now, were you in the hearing yesterday when  
13 Mr. Stokes asked Ms. Emery to make modifications to  
14 her NPV ADIT calculations?

15 A. Yes, I was.

16 Q. Okay. And specifically, he asked her to  
17 change one of the cells from 2.47 to 6.77; correct?

18 A. And I think he also asked her to do it to 4  
19 percent, if I remember correctly.

20 Q. Now, did you use the rate of 2.47 in your  
21 NPV ADIT calculation?

22 A. To I used 4.

23 Q. And why did you use four?

24 A. That is the discount rate for  
25 securitization that we are proposing.



1 Q. Yeah. So that's --

2 A. Proposing, yes.

3 Q. So that's the difference between the 2.47  
4 and the 4 is, is that the 2.47 is what the company has  
5 identified as the bond securitization yield; correct?

6 A. Correct.

7 Q. And the 4 percent you used is what staff  
8 has identified is the bond securitization yield?

9 A. That is correct.

10 Q. Okay. Now, you said earlier that you were  
11 familiar with tax normalization rules; correct?

12 A. I am somewhat familiar with them, yes.

13 Q. Now, for lack of a better way saying it,  
14 violating normalization rules is a big deal; isn't it?

15 A. Yes, it is.

16 Q. And I think in other context we've talked  
17 about the fact that a violation of normalization rules  
18 can sort of eliminate your company's ability to -- to  
19 utilize accelerated depreciation and some other things  
20 on a going forward basis; correct?

21 A. That is possible, yes.

22 Q. And if -- if that results, that's a  
23 detriment to customers; correct?

24 A. Possibly could be, yes.

25 Q. As we walk through these issues, would you

1 agree that we're at least sort of walking towards that  
2 issue of whether we have normalization violation or  
3 not?

4 A. I don't know that we are anywhere near the  
5 normalization violation on this.

6 Q. I'm not asking whether you think there's a  
7 violation itself, but it's at least a question that  
8 needs to be asked, because it's part of the process;  
9 would you agree with that?

10 A. I don't know that it -- that it is an issue  
11 in this case.

12 Q. Let me ask you this. You have the  
13 difference obviously with -- with the discount or with  
14 the bond securitization yields that are being used by  
15 the company and the staff. And we don't know today  
16 what that ultimately will be; correct?

17 A. That is correct.

18 Q. And that plays a part in both the company's  
19 calculation and the staff's calculation; correct?

20 A. That is true.

21 Q. And we already talked about the fact that  
22 there are differences that result from the amount that  
23 the company seeks to scrutinize versus what staff  
24 recommends be scrutinized; correct?

25 A. That is correct.

1 Q. And we don't know the answer to what that's  
2 going to be today either?

3 A. That is true.

4 Q. Okay. So even to the best of our ability,  
5 we can't come up with the right number for ADIT  
6 sitting here today; can we?

7 A. That's correct. We have to know all the  
8 factors that go in to the Asbury scrutinized balance  
9 before we can determine that.

10 Q. Given that situation, would a tracker help  
11 to ensure that we don't overshoot, nor undershoot this  
12 number, nor accidentally lock ourselves into a  
13 normalization situation?

14 A. I don't know that it would help or hurt,  
15 either one.

16 Q. There certainly would not be any harm to a  
17 tracker?

18 A. There probably would not be as much harm,  
19 no, for a tracker.

20 Q. And ultimately, do you think -- don't you  
21 think it would help us get the number right in the  
22 long-term?

23 A. It is possible.

24 Q. Now, real quickly, these issues are grouped  
25 a lot of times between ADIT and access ADIT, as to

1     **access ADIT which is a separate issue than what we**  
2     **just discussed; isn't it? How would you describe**  
3     **access ADIT as an issue in this case?**

4             A.     I believe company and staff are the same on  
5     the access ADIT.

6             **Q.     That's where I was going with that. There**  
7     **is no dispute between the company and the staff?**

8             A.     Correct.

9             **Q.     Any substantial dispute between the company**  
10    **and staff on the access ADIT amount; correct?**

11            A.     That is correct. There is a difference  
12    between staff company -- well, staff and company have  
13    the same position, and OPC has a different position on  
14    it.

15            DEAN COOPER: That's all the questions I  
16    have, Your Honor.

17            JUDGE WOODRUFF: Public counsel. Do you  
18    have any questions from the commissioners online? I  
19    do have some questions. On page 3 of your rebuttal  
20    testimony, you state that Liberty filed a request for  
21    an AAO in case number EU-2021-0274 to seek recovery  
22    for the amount excluded from Liberty's FAC. One of  
23    the additions Liberty included in its request are  
24    carrying costs as weighted average cost of capital.  
25    What's been the commission's past practice with regard

1 to applying carrying cost for an AAO?

2 THE WITNESS: I have seen it allowed on  
3 some items, mainly -- my experience it's been more  
4 items that are related to capital such as repair of  
5 plant or replacement of plant.

6 JUDGE WOODRUFF: And what -- what rates  
7 would be applied in those situations?

8 THE WITNESS: I've seen a very -- a various  
9 amount of rates.

10 JUDGE WOODRUFF: Is there a --

11 THE WITNESS: I've seen AFUDC, I've seen  
12 long-term, short term. I don't know that there's  
13 really a standard.

14 JUDGE WOODRUFF: Okay. That was going to  
15 be my next question.

16 THE WITNESS: Yeah.

17 JUDGE WOODRUFF: Okay. How did staff  
18 calculate the net book value for Asbury?

19 THE WITNESS: That would -- that should be  
20 addressed more to Amanda.

21 JUDGE WOODRUFF: I did ask -- never mind.  
22 And carrying costs for the AAO originally was going to  
23 be short-term debt or long-term debt. Did staff  
24 decide to go on long-term debt on that?

25 THE WITNESS: Yes, we did.

1 JUDGE WOODRUFF: Do you know the specific  
2 amount that long-term debt carrying cost will amount  
3 to?

4 THE WITNESS: If I remember right, it's  
5 4.65. Again, Amanda would probably be the more  
6 correct witness to answer that.

7 JUDGE WOODRUFF: Okay. And would those  
8 carrying costs be consistent with the carrying costs  
9 used in Davis' rebuttal schedule?

10 THE WITNESS: Yes, they would.

11 JUDGE WOODRUFF: Okay. Your counsel in his  
12 opening addressed a theory that moving the threshold  
13 of the amount to be recovered in securitization could  
14 preserve the 95/5 sharing mechanism for fuel costs.  
15 Can you elaborate on that?

16 THE WITNESS: Could you repeat your  
17 question?

18 JUDGE WOODRUFF: Sure. Your counsel in his  
19 opening addressed a theory that moving the threshold  
20 of the amount to be recovered in securitization can  
21 preserve the 95/5 sharing mechanism for fuel costs.  
22 Can you elaborate on that?

23 THE WITNESS: A person that would be better  
24 to answer that is Brad Fortson (phonetic).

25 JUDGE WOODRUFF: Okay. Charlotte Emery in

1 her surrebuttal states that scrutinizing estimated  
2 balances before they're incurred does not create risk  
3 for customers. Does staff agree with that statement?

4 THE WITNESS: I don't know that it creates  
5 a risk, but I don't know that it's proper to include  
6 amounts that are estimated in the scrutinized balance.  
7 There is always the chance that -- these items should  
8 be trued up later, but I just think it is more proper  
9 to include amounts that are either -- are very well  
10 known. And not estimated.

11 JUDGE WOODRUFF: And what would be the  
12 reason for that?

13 THE WITNESS: It's just proper ratemaking.  
14 You look at what are the actual amounts.

15 JUDGE WOODRUFF: And please explain staff's  
16 position on the following disallowances for Asbury.  
17 First, the AAO regulatory liability.

18 THE WITNESS: Excuse me, could you repeat  
19 that again?

20 JUDGE WOODRUFF: Sure. What's staff's  
21 position on the disallowance for Asbury of AAO  
22 regulatory liability?

23 THE WITNESS: That would probably be a  
24 better question for Amanda McMellen.

25 JUDGE WOODRUFF: Okay. Same question for

1 ADIT.

2 THE WITNESS: What is our position on ADIT?

3 JUDGE WOODRUFF: Yes.

4 THE WITNESS: We have an amount of roughly  
5 17 million for an offset. We believe that is what we  
6 have ADIT of 22 million, then you do a net present  
7 value, and it comes to 17 million, roughly.

8 JUDGE WOODRUFF: Okay. Same for  
9 decommissioning.

10 THE WITNESS: Decommissioning, we had a  
11 value of -- of -- with the decommissioning and the  
12 AROs, we had a total amount of 23,445,264 -- or I'm  
13 sorry, we had an amount of \$8,339,713, but if we would  
14 include the amount listed in Drew Landoll's testimony,  
15 our amount would go to \$23,445,264.

16 JUDGE WOODRUFF: Okay. And that is the  
17 AROs?

18 THE WITNESS: The AROs and the  
19 decommissioning costs and an environmental regulatory  
20 asset.

21 JUDGE WOODRUFF: Okay. That's all the  
22 questions I have then. Any recross based on those  
23 questions from the bench? Okay.

24 CURT STOKES: Yes, Your Honor, Curt Stokes  
25 on behalf of staff.



1 EXAMINATION

2 BY CURT STOKES:

3 Q. Let's start with the questions -- you  
4 remember you were asked about a tracker for the ADIT  
5 amounts. Do you have an understanding of what exactly  
6 Liberty thinks should be tracked in regards to an  
7 ADIT?

8 A. I believe it's -- they are wanting to track  
9 the payments they will make to the IRS.

10 Q. Uh-huh. Now, how -- speaking of payments  
11 to the IRS, what is your understanding of what Liberty  
12 pays based on securitization?

13 A. Liberty will pay the taxes once the charges  
14 are charged to the ratepayers, and Liberty receives  
15 those scrutinized charges.

16 Q. Okay. Now, they don't pay money on the  
17 actual -- like, when they sell the bonds and they get  
18 that large infusion of cash, they don't pay on that  
19 cash initially; right?

20 A. That is correct.

21 Q. Okay. Now, elsewhere in your testimony,  
22 you talked about reconciliation mechanism; do you  
23 recall that?

24 A. Yes.

25 Q. To the extent that you're -- you know,

1 **staff would not be opposed to a tracker, would it be**  
2 **better to have ADIT accounted for in that same overall**  
3 **reconciliation mechanism than just an individual**  
4 **tracker?**

5 A. I don't know that we can do that per the  
6 statute. I think items can be tracked are the energy  
7 transition costs, and I don't believe ADIT is listed  
8 in there.

9 Q. Okay. So it would have to be its own?

10 A. Yes.

11 Q. Okay. Now, speaking of ADIT, what does  
12 **ADIT represent at a very -- fundamentally, what is it?**

13 A. It refers to the -- when the company in the  
14 beginning of the life of an asset, they incur -- for  
15 this example, they incur -- they get a higher tax  
16 break because their tax depreciation is higher than  
17 what we use for ratemaking purposes. So that is a  
18 deferred tax, and the company gets the benefit of the  
19 cash, so it is reflected as a rate base deduction in  
20 rate base. Over time, that amount should turn around,  
21 and the customer should get the benefit while the  
22 company is paying lower -- it has a lower tax  
23 deduction is paying higher taxes than what we would  
24 reflect in rates.

25 Q. Okay. So as long as the ADIT balance is

1 positive, that is money that ratepayers have paid to  
2 the company; correct?

3 A. It is the difference in the -- in the tax  
4 deductions.

5 Q. And -- and the company possesses that ADIT  
6 balance?

7 A. That is correct.

8 Q. And absent securitization, what would the  
9 company -- how would the company treat that ADIT  
10 balance over time?

11 A. Over time, it would eventually for like one  
12 item, it would eventually be zero.

13 Q. And what -- what brings it to zero? What  
14 transactions bring it to zero?

15 A. It is the differences that are corrected  
16 over time, and the customers receive the benefit.

17 Q. Got it. So the benefit is early on in the  
18 life of the asset customers are overpaying actual  
19 taxes, and late in the life of the asset, they're  
20 underpaying actual taxes?

21 A. That is correct.

22 Q. Okay. So when you talk about today there's  
23 a -- an ADIT balance, what is the tax benefit of that  
24 balance?

25 A. The customer should be receiving that tax

1 benefit.

2 Q. The full amount?

3 A. The full amount. Yes.

4 Q. Okay. If I had an obligation to credit you  
5 \$36 million over the next 13 years, would you accept  
6 payment \$5 million today?

7 A. No, I would not.

8 Q. Why not?

9 A. I don't think that would be an appropriate  
10 net present value.

11 Q. Yeah. And when you say, not an appropriate  
12 net present value, how do you calculate net present  
13 value?

14 A. You calculate it based on a rate and over  
15 so many years.

16 Q. Okay. Do you use -- do you multiply the  
17 annual balance by that annual rate? Or do you use a  
18 different calculation?

19 A. I would use the yearly amounts I would  
20 receive in the rate.

21 Q. And do you take those yearly amounts and  
22 multiply them by a percentage or do you -- do you use  
23 the NPV calculation?

24 A. I would use my NPV calculation.

25 Q. And would it be appropriate to take that

1     **yearly amount, multiply it by a -- by a discount rate,**  
2     **and then use the NPV calculation again using the NPV**  
3     **rate?**

4             A.    No, I would not.

5             **Q.    How did Charlotte Emery calculate NPV?**

6             A.    She looked at it as the actual rate base  
7     value.

8             **Q.    Okay.**

9             A.    And did the NPV on that.

10            **Q.    Well, first, she took the yearly amount of**  
11     **the rate pays and multiplied it by 2.47 percent;**  
12     **correct?**

13            A.    Correct. She used the revenue requirement  
14     value of rate base.

15            **Q.    And -- and, so using the revenue -- yeah.**  
16     **And from that, she again, used the NPV discount?**

17            A.    That is correct.

18            **Q.    And is that what you mean when you say she**  
19     **used a discounted it twice?**

20            A.    That is what I'm alluding to, yes.

21            **Q.    And did -- did your calculation use a**  
22     **discount calculation once?**

23            A.    It only discounted the amount once, that is  
24     correct.

25            **Q.    Okay. I think you'd already talked about**

1 the relationship between ADIT and the AROs, so if --  
2 if the commission were to agree with Liberty on the  
3 AROs, your ADIT would be significantly higher than 17  
4 million; correct?

5 A. That is correct.

6 Q. Assuming the ADIT balance is 36 million,  
7 what should the net present value of that ADIT be?

8 A. I believe in my testimony I said 32  
9 million. \$30,831,327.

10 Q. Okay. Let's move onto carrying cost rates.  
11 Are you familiar with the commission's treatment of  
12 the Joplin tornado AAO for Liberty?

13 A. The carrying costs were applied to the  
14 capital expenditures, and they used the AFUDC rate. I  
15 am familiar with that.

16 Q. Okay. So the -- what is AFUDC?

17 A. It is accumulated funds used during  
18 construction. It is usually calculated by first  
19 utilizing the short-term debt of the company, and then  
20 once all the short-term debt amount is used, then it  
21 moves to a weighted average cost of capital  
22 calculation.

23 Q. Okay. Now, a lot of the expenditures in  
24 the wake of the Joplin tornado, what kind of  
25 expenditures were those?

1           A.    A lot of them -- there were some O&M  
2    expenditures, but a lot of them were capital  
3    expenditures to repair or to replace a plant that was  
4    damaged during the tornado.

5           **Q.    And your recommendation is -- AFUDC is**  
6    **proper to apply to capital expenditures or -- or --**

7           A.    In that case, it was.

8           **Q.    Uh-huh.    Now, similar to -- similar to**  
9    **AFUDC, when you're talking about capital expenditures,**  
10   **you know, including that in rate base, that's what --**  
11   **that's your understanding what the commission did in**  
12   **the 2021 -- or I'm sorry, 2019.**

13          A.    Yes.  They included an unamortized balance  
14    of the Joplin tornado in rate base.

15          **Q.    Uh-huh.    Now, here, what are the**  
16    **expenditures we're talking about for Winter Storm Uri?**

17          A.    These are fuel and purchase power costs.

18          **Q.    Are there any capital costs associated --**

19          A.    I do not believe -- there's fuel and  
20    purchase power costs and some legal costs --

21          **Q.    Uh-huh.**

22          A.    -- that the company has included.

23          **Q.    Okay.    Is your recommendation for long-term**  
24    **debt based on the fact that it's fuel and purchase**  
25    **power and not capital expenditures?**

1           A.    Yes, it is.

2           CURT STOKES:   Okay.  No further questions.

3           JUDGE WOODRUFF:  All right.  Ms. Bolin,  
4   you can step down.  That takes care of the witnesses  
5   I've identified for today, but it indicates for time  
6   allows, we can go onto some more.  We'll go with, I  
7   believe, Brad Fortson would be next.

8           CURT STOKES:  Your Honor?

9           JUDGE WOODRUFF:  Yes.

10          CURT STOKES:  If it's okay with the  
11   commission -- and the parties have already consulted  
12   with Liberty on this -- I'd like to call Sarah Lange  
13   out of order to -- to avoid a potential scheduling  
14   conflict later this afternoon.

15          JUDGE WOODRUFF:  That will be fine.

16          NATHAN WILLIAMS:  Counsel, since staff  
17   brought up availability of witnesses, I'd like to  
18   inform the commission that Lena Mantle has a conflict  
19   for tomorrow morning.

20          JUDGE WOODRUFF:  Okay.

21          NATHAN WILLIAMS:  Just to make everyone  
22   aware.

23          JUDGE WOODRUFF:  She's on the -- if time  
24   allows for tomorrow, so.

25          NATHAN WILLIAMS:  I am not anticipating it



1 yet to be a problem, but you never know.

2 JUDGE WOODRUFF: Okay. Sorry. Please  
3 raise your right hand. Do you solemnly swear or  
4 affirm that the testimony you're about to give in this  
5 matter will be the truth, the whole truth, and nothing  
6 but the truth?

7 THE WITNESS: I do.

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

10 CURT STOKES: Thank you, Your Honor. Curt  
11 Stokes for staff.

12 EXAMINATION

13 BY CURT STOKES:

14 Q. Good morning, Ms. Lange. Can you please  
15 state your full name for the record?

16 A. Sarah (inaudible) Lange, L-A-N-G-E.

17 Q. And in what capacity are you employed by  
18 the staff?

19 A. I am an economist in the tariff and rate  
20 design group.

21 Q. Have you prepared in these proceedings  
22 certain rebuttal testimony marked as Exhibit 108?

23 A. I have.

24 Q. Do you have any corrections to make to that  
25 document?

1 A. Not that I'm aware of at this time.

2 Q. If I were to ask you the same questions of  
3 those documents, would your answers be the same?

4 A. Substantially, yes.

5 Q. And are the -- those answers true and  
6 correct to the best of your knowledge and belief?

7 A. Yes.

8 CURT STOKES: Your Honor, I offer  
9 Exhibit 108 into the record.

10 JUDGE WOODRUFF: 108 has been offered. Any  
11 objection to its receipt? Hearing none, it will be  
12 received. For cross examination, then, for Ms. Lange  
13 we begin with MECG.

14 TIM OPITZ: Just a few questions, Judge.  
15 Your Honor, can I -- can I ask -- I don't have with me  
16 exhibit numbers assigned to MECG.

17 JUDGE WOODRUFF: Sure.

18 TIM OPITZ: Can you remind me what that  
19 block might be?

20 JUDGE WOODRUFF: I definitely can. MECG  
21 begins with 300.

22 TIM OPITZ: Thank you, Judge. May I  
23 approach the bench and the witness?

24 JUDGE WOODRUFF: You may.

25 EXAMINATION

1 BY TIM OPITZ:

2 Q. Ms. Lange, in your rebuttal testimony, you  
3 mention that the -- I guess you address the testimony  
4 of -- of Ms. Emery and Ms. Hull and note that the  
5 classes listed in their tables are no longer accurate;  
6 is that correct?

7 A. Among other things, yes.

8 Q. And you were involved in Empire's last rate  
9 case that just completed in April?

10 A. Is there a question?

11 Q. Were you a witness or otherwise involved in  
12 Empire's last rate case that completed in April?

13 A. Yes.

14 Q. And after the completion of that rate case,  
15 were you involved in reviewing the rates that would be  
16 implemented, I guess, in -- in the new names of the  
17 rate classes?

18 A. I'm sorry, there were a couple of parts  
19 there. Could you help me out?

20 Q. So you were involved in -- in -- after the  
21 case in the commission's order were issued, you were  
22 involved in looking at the new rate, classes names,  
23 and the new rates that would be applied to each rate  
24 class; correct?

25 A. I was involved in review of the compliance

1 tariff. I was not the only witness involved, and I  
2 did not handle all aspects of that.

3 **Q. Okay. Do you -- I handed you, I guess,**  
4 **what I asked to be marked as MCEG Exhibit 300. Can**  
5 **you tell me -- have you seen this document before?**

6 A. I have not.

7 **Q. You've not seen it in an Excel format?**

8 A. I am not familiar with this document that  
9 you've handed me.

10 **Q. Okay. This document that I've handed you,**  
11 **does it contain the rate classes under the old Empire**  
12 **tariffs?**

13 A. I -- I see labeled current class revenues,  
14 and I see certain class designations provided there.  
15 Above it, I see reconfigured classes, and I see class  
16 designations listed there. This doesn't include the  
17 split out of the large general service class by  
18 primary and secondary that occurred in the rate  
19 schedules, and I have no knowledge of these other  
20 numbers provided on this page or these other columns.

21 **Q. The other number listed, just the headlines**  
22 **are stipulation revenues; is that correct?**

23 A. I see a heading of stipulation revenues. I  
24 am not familiar with the -- the quantities listed  
25 under that column.

1           **Q.    And there's another heading that says,**  
2 **revenue increase; correct? Around the middle of the**  
3 **page?**

4           A.    There is a column labeled revenue increase.  
5 I will note that this appears to make a distinction  
6 between the pre-mia (phonetic) and non pre-mia, and  
7 I -- assuming that this document is mathematically  
8 accurate, I don't know how mia is handled within this  
9 document.

10           **Q.    The total listed under revenue increase is**  
11 **35,515,913; do you see that?**

12           A.    I see where you have read that number.

13           **Q.    And that matches up with the revenue**  
14 **increase that was ordered in the resent Empire rate**  
15 **case; correct?**

16           A.    I don't recall. I'm not familiar with this  
17 document.

18           TIM OPITZ: That's all the questions I  
19 have.

20           JUDGE WOODRUFF: Do you offer Exhibit 300?

21           TIM OPITZ: Sure. I offer Exhibit 300 into  
22 the record.

23           NATHAN WILLIAMS: I object for lack of  
24 foundation.

25           JUDGE WOODRUFF: And the response?

1                   TIM OPITZ: Well, this witness has  
2 testified that she's not familiar with it, so there's  
3 no foundation I can lay.

4                   JUDGE WOODRUFF: Okay.

5                   NATHAN WILLIAMS: I should add that this is  
6 Nathan Williams who made the objection.

7                   JUDGE WOODRUFF: I understand. I'll  
8 sustain the objection. It will not be received.  
9 Okay. Then for Liberty.

10                  DEAN COOPER: Thank you, Your Honor.

11   EXAMINATION

12 BY DEAN COOPER:

13                  **Q. Ms. Lange, in your rebuttal testimony, you**  
14 **talk about access revenues and do a -- a calculation;**  
15 **correct?**

16                  A. It's probably more accurate to say I  
17 provide a summary of a calculation derived from the  
18 rate case, but yes. Yes, in general.

19                  **Q. And you can call those access base rate**  
20 **revenues; correct?**

21                  A. I don't -- I'm sorry, can you say that  
22 again?

23                  **Q. Well, I guess the distinction I'm trying to**  
24 **make, would you agree -- and I think you say it in**  
25 **here -- that these are revenues separate and apart**

1 **from the FAC?**

2 A. Yes. Yes, I agree with that distinction.

3 **Q. Okay. And what you've purported to provide**  
4 **us is a number of what you view to be access base rate**  
5 **revenues representing the revenue from sales made**  
6 **during the Winter Storm Uri period; correct?**

7 A. That's not entirely accurate. I believe  
8 early February there were some revenue adjustments in  
9 the opposite direction. This is simply the weather  
10 normalization for these classes from the prior rate --  
11 from the recently concluded rate case. This is the --  
12 the value associated with that from staff's revenue  
13 run, so I think there were -- were some, if you will,  
14 under earnings to use that term in a completely non  
15 accounting and non-rate of return sense earlier in the  
16 month that offset the over earnings, if you will,  
17 during the Uri period, and again, I'm not using that  
18 in a -- in a rate of return sense of earnings.

19 **Q. In the end, does your -- what you represent**  
20 **your testimony here, does it cover -- what period does**  
21 **it cover, then, given what you just told us?**

22 A. I believe because of the way Empire's  
23 billing months are arranged, to be completely  
24 confident on this, I need to look at Empire's billing  
25 cycles. I believe that it encompasses a period

1 starting for some customers in mid to early -- to mid  
2 January through late February, possibly into early  
3 March. Empire's billing cycles span -- I believe  
4 they're on a 28-day spread from the earliest to the  
5 latest, so since we have to review these  
6 information -- this information on a circular basis,  
7 to coincide with the billing cycles, there's really no  
8 way to isolate that period with the data that is  
9 available for the company. And that was an incredibly  
10 long explanation, so I answered your question.

11 **Q. Yes. So let's circle back around. So the**  
12 **longest period it could be from late January to early**  
13 **March of 2021; is that what you told me?**

14 A. It is -- it is a series of customers 26 to  
15 32-day bills. Some of those customers starting, I  
16 believe, in early January; although, I'm -- I'm not  
17 entirely sure without reference to external material  
18 on that to the latest ones being in late February,  
19 early March. Again, I would -- I would need to access  
20 billing data to confirm those dates, but essentially,  
21 this is set up so that the largest number of customers  
22 it is capturing that period of -- of the Storm Uri  
23 event, correct.

24 **Q. And it does not purport to assess**  
25 **whether -- for the calendar year 2021 Empire's, slash,**



1 **Liberty would have been what its revenues would have**  
2 **looked like in regard to normal weather for the entire**  
3 **calendar year of 2021; correct?**

4 A. That is not included in these figures,  
5 correct.

6 **Q. So if -- did you do that calculation for**  
7 **the entire year of 2021?**

8 A. That calculation was done in the rate case  
9 for purposes of this case to coincide with the Uri  
10 event. I isolated or I -- I caused others more  
11 familiar with the calculation to isolate those billing  
12 cycles for those billing months which are most closely  
13 related with the Uri event, and I apologize, this is  
14 definitely not my forte.

15 **Q. Who produced the number in the rate case**  
16 **for the calendar year 2021?**

17 A. If you'll continue to indulge me with a  
18 very complex answer to a very simple question, so I  
19 believe in that case for these classes, staff witness  
20 Kim Cox would have applied adjustments generated by  
21 staff witnesses, Michael Stallman, and Ari Purdell;  
22 however, that adjustment in the rate case was applied  
23 in conjunction with, I believe, the customer growth  
24 adjustment and possibly also a day's normalization to  
25 account for billing cycle differences over the course

1 of a year that would deviate from a total of 365.  
2 And, so what this presents is that weather  
3 normalization adjustment isolated from those growth  
4 and other adjustments that were applied in that single  
5 step in that rate case is my understanding.

6 **Q. But getting around, I guess, to my simple**  
7 **question, that would have been produced by Kim Cox?**

8 A. Not really.

9 **Q. Well, let's back up.**

10 A. Sure.

11 **Q. If I were looking for it in someone's**  
12 **testimony, whose testimony would it be in?**

13 A. So this exact calculation would not be in  
14 anyone's testimony, because the weather and those  
15 other adjustments were applied in a single step. What  
16 Ms. Cox prepared at my request for purposes of this  
17 testimony isolated the weather adjustment, so I could  
18 simply subtract pre-weather normalization determinants  
19 (sic) from post-weather normalization determinants is  
20 what is shown in my work paper.

21 **Q. So let's back around then. Given all that,**  
22 **would it be accurate to say you do not know what a**  
23 **similar calculation would look like if we were to**  
24 **examine the entire 2021 calendar year?**

25 A. Not without looking at staff's work papers

1 in the rate case.

2 **Q. Yeah. You provide, I think, what is**  
3 **some -- this proposed tariff language. How would you**  
4 **describe schedule SLKL-R2?**

5 A. I know we got particular about the terms we  
6 used. I want to say that we would call this specimen  
7 tariff language, but I will agree with proposed as  
8 well.

9 **Q. Okay. And hopefully, this is not a --**  
10 **well, we'll see where it goes. Would you agree with**  
11 **me that the securitization statute requires the**  
12 **commission to make its initial allocation or to**  
13 **identify the allocations to the classes as a part of**  
14 **its securitization order?**

15 A. Let me -- I know the language on that is --  
16 sorry. If you have a copy of the statute handy, that  
17 could save some time. I neglected to print one out  
18 this morning. I'm -- I think I quoted it in my  
19 testimony, but I'm looking for it.

20 **Q. Yeah. I think you did, too. Let's start**  
21 **there. Give me just a second. How about on page 11**  
22 **of your rebuttal? Line 13.**

23 A. Yes. And I apologize. I think your  
24 question was, does it state -- does the statute state  
25 that the commission is to order how it will be

1 allocated? Was that your question?

2 **Q. That was the question?**

3 A. Yes, sir. It does.

4 **Q. And it also says that it shall remain in**  
5 **effect until the electrical corporation completes a**  
6 **generate case or generate proceeding; correct?**

7 A. Yes. There's -- there's additional  
8 language there. Yes.

9 **Q. So -- and this is really just an**  
10 **explanation that I'm looking for from you. On page 5**  
11 **of your specimen tariff language, you've got some**  
12 **factors that are going to be as approved in most**  
13 **general recent rate case or in a proceeding conducted**  
14 **for that purpose. Does that have any relation to our**  
15 **allocation question?**

16 A. Yes. So I would recommend -- and I think  
17 it's in staff's position statement that we would  
18 recommend that for purposes of complying with this  
19 provision of the statute, the commission could simply  
20 include in its order something to the effect that it  
21 is allocated to the retail classes on the basis of  
22 each classes loss adjusted energy sales. And what  
23 these are on page 5 where it VAF, subscript prime, et  
24 cetera, what that is referring to would be for this  
25 case, we would simply adopt those from the FAC and

1 include those and that would by knowing the number of  
2 sales at each level, by knowing the loss adjustment  
3 factor to apply, you then have any -- any dollar value  
4 you may need to ascertain, I -- I do not know that it  
5 would be inconsistent with the statute to simply state  
6 the sentence, you know, that it is on -- on the basis  
7 of loss adjusted energy sales.

8 **Q. So I guess the language that's bothering me**  
9 **a little bit is the voltage adjustment factors**  
10 **approved in most recent generate case or any**  
11 **proceeding conducted for that purpose. I guess, first**  
12 **off, we wouldn't have any change until the first**  
13 **generate case; correct? Or -- go ahead.**

14 A. Any change in blank?

15 **Q. Let me back up. The allocations would not**  
16 **change until the first generate case; right?**

17 A. I -- I apologize that I seemingly have very  
18 obnoxious answers to your very simple questions. This  
19 is, of course, the complexity that makes regulations  
20 so interesting. That depends. One of my criticisms  
21 of these companies recommended mechanism is that you  
22 are attempting to keep revenues within classes even  
23 though determinants within those classes may change.  
24 And, so you could apply an energy allocation in that  
25 manner where you are tying that revenue requirement

1 back to -- I'm sorry, you are tying the securitization  
2 utility tariff charge revenue requirement back to an  
3 individual class based on an initial allocation, and  
4 then we just ignore if, say, a bunch of general  
5 service customers become residential customers or --  
6 or vice versa as has happened in recent Empire history  
7 or we would ignore if a customer who is a large  
8 customer who was served at primary voltage moves to  
9 the transmission voltage. You could do it that way.  
10 I -- I would be very cautious about doing it that way.

11 And circle back to your actual question  
12 which is where all this was headed, you would find  
13 these loss factors now based on the most recent rate  
14 case. I don't anticipate changing those loss factors  
15 until we get to a future rate case, but I think we  
16 recognize a party could file a complaint and say that  
17 the FAC or -- or other loss factors are inaccurate and  
18 they've done a law study and that it turns out that  
19 those factors need to change.

20 **Q. So ultimately, regardless of how we think**  
21 **it's going to work out, we have to be convinced that**  
22 **what we're doing is consistent with that statutory**  
23 **provision that -- that we were at; correct?**

24 A. Correct.

25 **Q. And, so those -- we -- it must be**

1     **approached in a way that the allocations once**  
2     **established in the securitization order, we have to be**  
3     **able to say, they do not -- they do not change in the**  
4     **first rate case; correct?**

5             A.    No.   That's -- that's where I think you  
6     need to be careful how you read that sentence.  So the  
7     initial allocation shall remain in effect.  What does  
8     it mean by allocation?  What I think it means by  
9     allocation or what I think it can be reasonably read  
10    by allocation is the voltage adjustment energy -- or  
11    I'm sorry, the voltage adjusted energy sales.  So that  
12    is the allocation.  The allocation is not, we take the  
13    energy sales for residential and apply a secondary  
14    loss factor.  We take -- do you see what I'm saying?  
15    I think that is a fair reading of that language.

16            **Q.    Yeah.  So the way you approached it, you**  
17     **certainly would argue that it -- it doesn't ignore**  
18     **that provision in the statute; correct?**

19            A.    I -- I believe I technically would not  
20    argue that.  My attorney would.  But I -- I think that  
21    what I've done here is consistent with the statute or  
22    I wouldn't have done it.

23            **Q.    Yeah.  Just a moment, Your Honor.  Just**  
24     **a -- kind of a backup of our initial discussion about**  
25     **the -- the access revenue adjustment.  In the way**

1     **you've done it, we've talked about -- you isolated a**  
2     **period; correct?**

3             A.     Correct.

4             **Q.     And -- but if we were in a rate case, we**  
5     **wouldn't isolate periods like that. I think that was**  
6     **implicit in your answer; correct? We would be working**  
7     **with a -- a test year or a test year updated, some**  
8     **sort of 12-month period; is that correct?**

9             A.     For a rate case, my experience is that for  
10    expense and revenue items you use a 12-month period,  
11    correct.

12            **Q.     Yep.**

13                    **That's all the questions I have, Your**  
14    **Honor.**

15                    JUDGE WOODRUFF: Public counsel.

16                    NATHAN WILLIAMS: Nathan Williams, no  
17    questions. Thank you.

18                    JUDGE WOODRUFF: I'll move up to questions  
19    from the bench. Any questions from the commissioners  
20    on the line? I do have some questions. Charlotte  
21    Emery's surrebuttal testimony suggested that the  
22    parties would file -- parties would collaborate and  
23    agree on a form of tariff prior to the financing order  
24    be issued. What -- do you know what timeline and  
25    process Liberty is proposing, and can the parties



1 agree on those terms?

2 THE WITNESS: So continuing my trend of  
3 long answers to simple questions, it depends. With  
4 the energy allocator approach, I think that based on  
5 my past experience with Empire and OPC, I think we can  
6 do a pretty short turnaround on that. We've -- we've  
7 worked collaboratively on tariffs on a pretty regular  
8 basis. If a class specific approach is adopted, that  
9 will become significantly more cumbersome, and a new  
10 design will -- will need to be developed and  
11 particularly, if a demand approach is adopted, that is  
12 not something the parties have contemplated in the  
13 prepared tariffs and not something we are able to  
14 lift, if you will, from -- from mia and merams  
15 (phonetic) and, you know, kind of existing tariff  
16 provisions. And, so that will require some more work  
17 and potential more dispute as -- as what those KW  
18 determinants might be, if that would be facilities  
19 demand, billing demand, some demand determinate that  
20 we may not have readily available, and I'll note we do  
21 not have normalized demand determinants that are as  
22 reliable as our KWH determinants, particularly for  
23 certain classes, so that process could be very  
24 lengthy.

25 JUDGE WOODRUFF: And is -- am I correct in

1 understanding, then, that the tariff does not need to  
2 be approved as part of the financing order.

3 THE WITNESS: I will defer to counsel on  
4 that. I -- I believe based on an early reading of the  
5 statute, it's been a while since I've studied it on  
6 this regard, that ideally we would know in this order  
7 what that tariff is supposed to look like, but that a  
8 final tariff would not be promulgated after the -- the  
9 bonds have been issued.

10 JUDGE WOODRUFF: Okay. And if the parties  
11 cannot gather and work this all out, how would the  
12 commission resolve the conclusion of what the tariff  
13 looks like?

14 THE WITNESS: Again, I think it depends  
15 on -- on that earlier -- well, I guess -- I don't  
16 know. That's the real answer. I don't know.

17 JUDGE WOODRUFF: Okay. Now, the next  
18 question is about issue 8 regarding the allocation of  
19 tariff charges among the retail customers. Please  
20 outline for the commission the difference between  
21 staff and Liberty's tariff allocations, and what's the  
22 significance of the difference?

23 THE WITNESS: If you're wanting a dollar  
24 value, I don't know that I can rapidly outline that.

25 JUDGE WOODRUFF: I'm not looking so much

1 for a dollar amount value, as I'm just --

2 THE WITNESS: Sure.

3 JUDGE WOODRUFF: -- for an idea of what the  
4 differences are.

5 THE WITNESS: Empire has had some different  
6 percentages thrown out, but my understanding is that  
7 they want to look at how total revenue was allocated  
8 in the last rate case, allocate that to the  
9 recomprised classes, figure out something to do about  
10 electrical vehicles, and then lock that down until the  
11 next occurs.

12 Staff's approach would be to say come up  
13 with total system sales loss adjusted, and that is the  
14 rate that gets applied to every KWH sold at the rate  
15 at which it is sold. True-ups would be on a total  
16 company basis. Reconciliations would be on a total  
17 company basis. Under the Empire approach, I believe  
18 that they are indicating you would need to do class  
19 specific true ups and reconciliations.

20 JUDGE WOODRUFF: Okay. And what impact  
21 does this -- these differences have on the large  
22 industrial classes?

23 THE WITNESS: I think it -- I think it  
24 depends. There are customers within the class, I  
25 think, who would prefer one approach over the other,

1 particularly if a demand charge is introduced. I  
2 think that there are some customers -- I don't think  
3 you could -- I'm sorry, could you ask it again?

4 JUDGE WOODRUFF: Okay. What I'm trying to  
5 get at is the idea that, does one process opposed to  
6 the other have a disproportionate impact on the larger  
7 rate classes for the larger industrials?

8 THE WITNESS: I think it matters if you're  
9 looking at a customer level or a class level. There  
10 will be -- anytime you do different allocation factors  
11 there are winners and losers, if you will. My  
12 understanding of what -- my understanding of the  
13 factors -- well, I don't know if Empire's is loss  
14 adjusted. In general, the Empire approach would  
15 initially recover less from -- for example, the large  
16 power classes. But if there were a change in that  
17 class, if a customer were drop off or were to drop  
18 down to a smaller class, then that change would need  
19 to be made up within the class. So it is hard to say  
20 as a whole if those customers would be better off or  
21 worse off under one proposal or the other.

22 JUDGE WOODRUFF: By statute, are the  
23 parties require to decide on the mechanism for  
24 allocating tariff charge among the retail customers as  
25 part of the process before the issuance of the

1 financing order?

2 THE WITNESS: I believe that needs to be  
3 included in the -- in the tariff -- or in the order.  
4 Again, that could be as simple as saying, on the basis  
5 of energy, adjusted sales or loss adjusted sales. I  
6 don't believe you need to include orders -- numbers in  
7 the order.

8 JUDGE WOODRUFF: Okay. What is the  
9 substantive differences between staff's tariff sheets  
10 and that proposed by Liberty?

11 THE WITNESS: Without taking a cheap shot,  
12 Liberty's includes terms that don't exist under  
13 Missouri regulatory law. I guess that was taking a  
14 cheap shot, but I didn't intend it in an ill-spirited  
15 way. The Liberty order appears to be lifted from  
16 another jurisdiction and is generally --

17 JUDGE WOODRUFF: Are you talking about the  
18 Liberty tariff?

19 THE WITNESS: Yes, I'm sorry. The Liberty  
20 tariff appended to the Liberty draft order. It  
21 includes terms that are not used in Missouri. It  
22 refers to a threshold rate, and threshold usage that  
23 appear to be integral to implements their true-up  
24 mechanism that are not defined in the tariff. When we  
25 acquired about it, Empire said, you know, yep, they

1 don't apply here, but it doesn't appear to work around  
2 was included for that. It refers to distribution  
3 rates when, in fact, its sales for all retail service.  
4 It -- the biggest issue is that it focuses on trueing  
5 up within classes and that -- that becomes very  
6 cumbersome, and frankly, I'm not sure how to do it and  
7 I'm -- I don't know that Empire is sure how to do it.  
8 I think Mr. Stokes inquired of -- of Ms. Emery  
9 yesterday, and I believe that was her response.

10 JUDGE WOODRUFF: Okay.

11 THE WITNESS: Staff's very similar in  
12 operation to mia resrams (phonetic) existing  
13 mechanisms under Missouri's tariffs.

14 JUDGE WOODRUFF: Given that the statute has  
15 a non-bypassable provision, does staff's proposed  
16 tariff sheet contemplate how it changes customer  
17 classes would be addressed in the future?

18 THE WITNESS: When you say customer  
19 classes, staff's tariff avoids that issue entirely.

20 JUDGE WOODRUFF: And how do you do that?

21 THE WITNESS: Because we -- we -- we  
22 recover on the basis of energy sales. So it matters  
23 what voltage you're served at, so we know how to  
24 adjust your rate to -- to fit what your voltage at  
25 transmission interval will be or what your usage

1 voltage transmission would be, I should say, but the  
2 customer's class doesn't matter in the way it matters  
3 in the Empire draft.

4 JUDGE WOODRUFF: That's all the questions I  
5 have. Cross based on questions for the bench? MECG?

6 TIM OPITZ: Thank you.

7 EXAMINATION

8 BY TIM OPITZ:

9 Q. Ms. Lange, the judge was asking about the  
10 impact on industrial classes compared to your proposal  
11 versus the company's proposal, and you said you  
12 weren't sure which one would have a bigger impact;  
13 correct?

14 A. Correct.

15 Q. And the reason you weren't sure is because  
16 you were suggesting that things may change in the  
17 future in regard to the number of customers in that  
18 class?

19 A. I don't believe I slated it to that  
20 concern. I also -- or I included in the -- the recent  
21 addition to the potential outcomes of a demand charge.

22 Q. Comparing the company's proposal as filed  
23 in direct, they were seeking to recover it as a  
24 kilowatt hour charge allocated to class; correct?

25 A. Subject to true-up within the class,

1 correct.

2 **Q. And yours is proposing to simply collect it**  
3 **from every customer, according to a kilowatt hour**  
4 **charge?**

5 A. Adjusted for the voltage for which that  
6 customer is served.

7 **Q. Essentially treating it like the FAC;**  
8 **correct?**

9 A. Correct.

10 **Q. Under those two scenarios, holding**  
11 **everything else equal, industrial customers would pay**  
12 **more under your proposal than under the company's**  
13 **proposal.**

14 A. I would have to do some math at what the  
15 applicable, I guess, average customer voltage is and  
16 what the difference is between energy sales and the  
17 company's allocation.

18 **Q. The company's allocation in Emery's**  
19 **testimony for large power, do you have Ms. Emery's**  
20 **testimony available to you?**

21 A. I don't have a copy with me up here.

22 TIM OPITZ: I have an electronic copy open,  
23 Judge. May I approach the witness and --

24 JUDGE WOODRUFF: You may.

25 TIM OPITZ: -- show her that?



1           **Q.     (By Tim Opitz:) Is that Ms. Emery's**  
2 **testimony?**

3           A.     If you're representing it to be Ms. Emery's  
4 testimony, I -- I -- I have no reason to dispute your  
5 representation that you've opened a document out of  
6 EFIS (phonetic).

7           **Q.     Okay. And for large power, what is the**  
8 **allocation proposed by the company there?**

9           A.     They seek a target revenue of 2,121,560.

10          **Q.     And to get your rate allocation using these**  
11 **figures here, you would take the total revenue target**  
12 **divided by the total class -- not total class usage,**  
13 **the total usage; correct?**

14          A.     Their usage here does not appear to be  
15 adjusted for losses and staff's revenue target. My  
16 understanding is significantly lower than that sought  
17 by Empire, so I would not do either of those things.

18          **Q.     All things equal, without the voltage**  
19 **adjustment the way to calculate a kilowatt hour rate,**  
20 **would be to divide the revenue target by the -- by the**  
21 **total usage; correct?**

22          A.     I --

23          **Q.     And that's how you -- that's how you get**  
24 **your kilowatt figure that you then propose to adjust**  
25 **by voltage; is that right?**

1           A.    No.  You project voltage -- you project  
2   sales at each level, and then you add that together,  
3   and then you divide.

4           **Q.    So it's your testimony that under the**  
5   **company's proposed allocation of 15.83 percent, you**  
6   **can't say that your method would allocate a larger**  
7   **percent than 15.83 percent of large power?**

8           A.    No.  I think you need to clarify between  
9   percent's and dollar values.  Staff is recommending a  
10  smaller dollar value be recovered.

11          **Q.    Staff is recommending a smaller dollar**  
12   **value, if we were to have the commission award staff's**  
13   **proposed dollar value, and the company were to prevail**  
14   **on getting its recovery method, it would get**  
15   **15.83 percent of that value to allocate to the large**  
16   **power class; correct?**

17          A.    Yeah.

18          **Q.    And under your method, get a larger**  
19   **percentage of that staff's value; correct?**

20          A.    I would expect it to be larger.  I don't  
21   think I've done that math.

22                   TIM OPITZ:  That's all I have.  Thank you.

23                   JUDGE WOODRUFF:  For Liberty.

24                   DEAN COOPER:  No questions, Your Honor.

25                   JUDGE WOODRUFF:  Public counsel.

1 NATHAN WILLIAMS: Nathan Williams. No  
2 questions, thank you.

3 JUDGE WOODRUFF: Then redirect.

4 CURT STOKES: Curt Stokes for staff.

5 EXAMINATION

6 BY CURT STOKES:

7 Q. Let's start with the weather revenue  
8 adjustment. You were asked that, like, in a rate case  
9 you would look at the full year?

10 A. Staff would look at the full year, correct.

11 Q. But this isn't the full rate case?

12 A. Correct.

13 Q. This is a securitization case?

14 A. Correct.

15 Q. And we're just looking at just costs  
16 incurred during Winter Storm Uri?

17 A. Yes.

18 Q. We're not looking at -- Liberty doesn't  
19 look at Winter Storm Uri in the context of a full test  
20 year?

21 A. I have not been involved in that portion of  
22 the case. It's my understanding that they are  
23 attempting to isolate to the period as closely as  
24 possible.

25 Q. Okay. When you say a company has earned

1 more than normal based on weather, you said you looked  
2 at the full month of February, based on billing cycle  
3 issues?

4 A. Well, it's essentially portions of the  
5 full -- portion -- portions of -- there's no easy way  
6 to say this, to get the portion of the month of  
7 February in which Uri occurred, we had to look at  
8 customer bill cycles, some of which began, I believe,  
9 in early January, and some of which concluded, I  
10 believe, in late February or early March, but it would  
11 be what we would refer to as the billing months of  
12 January and February.

13 Q. Good. So assume that a customer's billing  
14 period begins in mid-January, it would end 26 to  
15 32 days later, at some point, during Uri?

16 A. Making assumptions about Empire's billing  
17 practices and cycle dates and -- and that sort of  
18 thing, yes, that is what we assumed for purposes of  
19 the normalization in the rate case.

20 Q. Okay. But then for, like, a customer whose  
21 billing cycle began, like, right before, during or --  
22 before or during Uri, then that's the one that would  
23 be continued out through late February or early March;  
24 right?

25 A. Correct.

1           Q.    Okay.  Okay.  Let's go to -- you were asked  
2   about, you know, concerns with Liberty's cost  
3   allocation proposals.  You had mentioned, you know, an  
4   incomplete -- not matching up with all the current  
5   classes.  You said -- there were among others.  What  
6   are some other concerns you have?

7           A.    Their mechanism appears to rely on what is  
8   called a threshold rate and threshold usage.  I think  
9   what that is trying to accomplish is to deal with some  
10  of the rate switching potential, but it's not clear  
11  and it's certainly not defined, and I've been unable  
12  to work out a way that makes sense to me.  There's a  
13  rate switching issue.  There's how their true-up is  
14  actually implemented.  Essentially, within -- with  
15  their proposal, it appears that there would be risk,  
16  especially for large customers of rates, potentially  
17  doubling, you know, if you have a few customers -- if  
18  you have a small percentage of the number of customers  
19  who make up a large percentage of that class of sales,  
20  be KW or KWH, and those customers either cease to  
21  operate or move to another class, the customers within  
22  that class have to make up that shortfall.  And  
23  particularly, in the environment we've been in with,  
24  you know, industrial load declination, if you had one  
25  or two large customers that went out of business, you

1 would see that large customer rate potentially double.  
2 It -- that is -- that is -- that is my main concern is  
3 how the rate switching and customer attrition operate  
4 under their true up mechanism.

5 **Q. You mentioned customer attrition. What --**  
6 **would there also be a, you know, if -- if things**  
7 **change in the 13 years, you could actually see**  
8 **customer attritions to certain rate classes?**

9 A. Well, sure. I think we've seen steady  
10 residential and SGS customer growth which under  
11 Empire's proposal would cause those rate classes to  
12 have decreasing charges per customer until you get to  
13 a rate case when you would rebase everything -- or  
14 rebase is the wrong word in this context, but refresh  
15 and reallocate under their proposal.

16 **Q. Uh-huh. And would the consequences of**  
17 **customer attrition and growth and other things, would**  
18 **that risk -- without your proposal under Liberty's**  
19 **proposal, do you think it would risk under recovery of**  
20 **amounts needed to serve and receive bond?**

21 A. I think the greatest extent that I can  
22 answer that question would be to say that the larger a  
23 rate changes the higher the likelihood that you will  
24 have issues with obtaining full payment of that rate.

25 **Q. And is it your understanding that investors**

1     **are very sensitive to the true-up mechanism?**

2             A.     That -- that is -- that is my understanding  
3     from representations from staff's consultants.

4             **Q.     And is the true-up mechanism here related**  
5     **to your cost allocation proposal, meaning the -- using**  
6     **voltage adjusted energy sales to calculate?**

7             A.     I -- I don't know how you would have an  
8     allocation and a true-up that are not designed to work  
9     in tandem. I think you have to be cognizant of each  
10    when implementing either.

11            **Q.     So they're necessarily related?**

12            A.     Yes.

13            **Q.     So earlier you had mentioned that staff's**  
14     **approach kind of avoids the cost allocation, but**  
15     **staff's proposal of having cost allocated based on**  
16     **energy sales, that's just your way of addressing how**  
17     **you allocate costs; correct?**

18            A.     Yes. And if I may have misspoke, my  
19     intention was to say it avoids the obligation or the  
20     apparent -- it avoids the need for the commission to  
21     include finite percentages or dollar values in its  
22     order. It does not avoid allocating the cost. It  
23     necessarily is allocating the cost.

24            **Q.     Thank you. Now, you had read the statute**  
25     **earlier; right? I think it was on -- as you quoted**

1 **it, page 11, the statutes uses the word allocated**  
2 **among retail customer classes, not to phrase allocated**  
3 **between retail customer classes; is that correct?**

4 A. That appears to be the language.

5 CURT STOKES: Yeah. No further questions.

6 JUDGE WOODRUFF: All right. Then  
7 Ms. Lange, you can step down. Thank you very much.  
8 Next witness will be Mr. Fortson.

9 CURT STOKES: That's correct.

10 JUDGE WOODRUFF: Good morning. Do you  
11 solemnly swear or affirm the testimony you're about to  
12 give in this matter is the truth, the whole truth, and  
13 nothing but the truth?

14 THE WITNESS: I do.

15 JUDGE WOODRUFF: Thank you. You may  
16 inquire.

17 CURT STOKES: Thank you, Judge. This is  
18 Curt Stokes again for staff.

19 EXAMINATION

20 BY CURT STOKES:

21 **Q. Mr. Fortson, can you please state your full**  
22 **name for the record?**

23 A. Brad J. Fortson.

24 **Q. And in what capacity are you employed by**  
25 **the staff of the commission?**



1           A.    I am the regulatory compliance manager for  
2 the energy resources department.

3           **Q.    Have you reviewed in these proceedings**  
4 **rebuttal testimony marked as Exhibit 104?**

5           A.    Yes.

6           **Q.    And you're familiar with that -- that --**  
7 **everything in that rebuttal testimony; correct?**

8           A.    I am.

9           **Q.    Do you have any corrections to make --**

10          A.    I do not.

11          **Q.    -- to that exhibit?  If I were to ask you**  
12 **the questions in those documents, would your answers**  
13 **be the same?**

14          A.    They would.

15          **Q.    And the -- the answers to those questions**  
16 **are true and correct to the best of your knowledge and**  
17 **belief?**

18          A.    Yes.

19          **Q.    And would you adopt Exhibit 104 as your own**  
20 **testimony in this case?**

21          A.    I would.

22                   CURT STOKES:  I offer Exhibit 104 into  
23 evidence.

24                   JUDGE WOODRUFF:  104 has been offered.  Any  
25 objections to its receipt?  Hearing none, it will be

1 received.

2 CURT STOKES: I tender the witness for  
3 cross.

4 JUDGE WOODRUFF: Okay. For cross, we begin  
5 with MECG.

6 TIM OPITZ: No questions, Judge.

7 JUDGE WOODRUFF: Public counsel? Liberty?

8 DEAN COOPER: Dean Cooper for Liberty.  
9 Yes, Your Honor.

10 EXAMINATION

11 BY DEAN COOPER:

12 Q. Mr. Fortson, from pages 4, line 12 to page  
13 5, line 15 of, I guess, what -- what is now your  
14 testimony, there's a description of the staff's  
15 analysis in review of Liberty's deferred fuel and  
16 purchase power costs; isn't there?

17 A. What pages were those again, I'm sorry?

18 Q. I'm -- page 4 and starting -- actually,  
19 will start on line 12, there's a question, please  
20 describe the work conducted by staff regarding this  
21 application within the scope of the energy resources  
22 department; do you see that?

23 A. Sure, I do.

24 Q. Okay. And then, I think, that continues on  
25 over into page 5, and really, through line 15 after

1       there's a description of individual staff witnesses  
2       that worked on part of the review; do you see that?

3             A.    I do.

4             Q.    And would you agree with me that as a  
5       result of that review, there were no disallowances  
6       proposed by staff based upon imprudence?

7             A.    I wouldn't completely agree with that.

8             Q.    Well, let's back up. The disallowance  
9       identified in the testimony is the -- is essentially 5  
10      percent; correct?

11            A.    Yes.

12            Q.    Okay. And maybe this gets to what -- to  
13      what you're talking about. You also have a  
14      disallowance, I suppose, that's based upon the  
15      testimony of Jordan Hull; correct?

16            A.    We do, yes.

17            Q.    Okay. Now, as a part of staff's review,  
18      did it examine power purchase agreements where Liberty  
19      is making sales to other entities?

20            A.    It's my understanding we reviewed all of  
21      the Storm Uri costs, the fuel and purchase and power  
22      and all system sales.

23                    DEAN COOPER: Your Honor, may I approach  
24      the witness?

25                    JUDGE WOODRUFF: You may.

1           **Q. (By Dean Cooper:) Do you have before you a**  
2 **document that I just handed you?**

3           **A. I do have a document in front of me that**  
4 **you just handed me.**

5           **Q. What -- what does that appear to be?**

6           **A. It appears to be a data request.**

7           **Q. And let me caution you before we go**  
8 **further, at some point we may need to go in camera,**  
9 **but we'll -- we'll try to stay out of that for the**  
10 **time being. It's a data request from staff to the**  
11 **company?**

12          **A. It is.**

13          **Q. And there's an answer provided by the**  
14 **company?**

15          **A. There's a -- there's a response, yes.**

16          **Q. And attached to that response is a power**  
17 **purchase agreement; is that correct?**

18          **A. That is what appears to be.**

19          **Q. And the data request was submitted by Lisa**  
20 **Wildhaber (phonetic) -- I probably butchered that**  
21 **pronunciation, I apologize, but you can correct me on**  
22 **that, but that's -- that's a staff person that -- that**  
23 **requested this -- this power purchase agreement?**

24          **A. Lisa Wildhaber, yes.**

25          **Q. Wildhaber. And Lisa Wildhaber is mentioned**

1 specifically in your testimony as one of the staff  
2 persons doing the review in this case; correct?

3 A. Correct.

4 Q. And this is the sort of agreement that you  
5 would have expected staff to review as part of its  
6 work in this case?

7 A. Sure. Yes.

8 DEAN COOPER: Okay. Your Honor, can we go  
9 in camera at this point?

10 JUDGE WOODRUFF: All right.

11 (Hearing went in camera 3.)

12 JUDGE WOODRUFF: Let's come back into  
13 regular session then.

14 DEAN COOPER: That's all the questions I  
15 have at this point in time.

16 JUDGE WOODRUFF: Let's deal with  
17 (inaudible) then. Mr. Williams, do you still object?

18 NATHAN WILLIAMS: As before, I object to it  
19 being admitted as hearsay. I do not object to it  
20 being admitted for the purposes of a document of the  
21 nature of which staff would review and believe may  
22 have done so in this case.

23 JUDGE WOODRUFF: Okay. I'll go ahead and  
24 admit the -- the exhibit. If there's any issues about  
25 the content of it, you can address it in briefs.

1 Okay. Then for -- for cross, then we move over to  
2 public counsel. I'm sorry, you passed already. So  
3 we're back up to questions from the bench. Any  
4 questions from the commissioners on the -- the  
5 commissioners that are on the line? All right. I do  
6 have one question. And this is a question that --

7 JASON HOLSMAN: No questions.

8 JUDGE WOODRUFF: Thank you. Counsel, in  
9 his opening, addressed a theory of moving the  
10 threshold amount to be recovered in securitization  
11 could reserve the 95/5 sharing mechanism for fuel  
12 costs. Can you elaborate on that?

13 THE WITNESS: Yeah. So what I think  
14 Mr. Stokes was -- was getting at was, I think, more so  
15 if we -- if we don't preserve the 95/5 within  
16 securitization that could -- I think we run amuck  
17 greater risk of the parties being unable to agree what  
18 thresholds or amounts to -- the amount of cost to  
19 remain in the FAC as opposed to what is carved out and  
20 securitized. You could potentially see a -- a  
21 situation where if -- if the company's allowed to  
22 securitize a hundred percent as opposed to 95 percent,  
23 an instance where the company wants a -- a larger  
24 amount, they're more incentivized for a larger amount  
25 of costs for to be securitized; whereas, other parties

1 in would -- very likely argue which would lead to more  
2 cost in the FAC, so I think it's more preserving the  
3 95/5 within securitization, likely reduces the risk  
4 of -- of arguments as to what should be left in the  
5 FAC as opposed to carved out for securitization.

6 JUDGE WOODRUFF: Ultimately, up to the  
7 commission to make that decision?

8 THE WITNESS: Ultimately, yes, for sure.

9 JUDGE WOODRUFF: Okay. That's all the  
10 questions I have then. Any recross based on that  
11 question?

12 CURT STOKES: Yes, Your Honor.

13 JUDGE WOODRUFF: Recross first.

14 CURT STOKES: Oh, sorry.

15 NATHAN WILLIAMS: Thank you, Judge. Nathan  
16 Williams for public counsel.

17 EXAMINATION

18 BY NATHAN WILLIAMS:

19 Q. Didn't that event actually occur?

20 A. Yes. To some extent, it did.

21 NATHAN WILLIAMS: Thank you.

22 JUDGE WOODRUFF: Mr. Cooper.

23 DEAN COOPER: Thank you, Judge. Maybe real  
24 briefly.

25 EXAMINATION

1 BY DEAN COOPER:

2 Q. You would -- well, you would agree that  
3 there's no specific reference to the 95/5 sharing in  
4 the securitization statute; correct?

5 A. Similar to the FAC statute, it and the  
6 securitization statute neither explicitly speak to a  
7 sharing mechanism.

8 Q. Yeah. Well, the FAC may speak to a sharing  
9 mechanism, but not a certain dollar or not a certain  
10 percentage; right?

11 A. It makes -- to my knowledge, it makes no  
12 reference to specifically to a sharing mechanism.

13 Q. Would you agree that the 95/5 ratio that  
14 we're talking about here in regard to Liberty is a  
15 function of its -- its fuel adjustment clause?

16 A. There is a 95/5 sharing mechanism in the  
17 FAC, yes.

18 Q. And would you agree with me that -- that  
19 the commission indicated when that was adopted, that  
20 there was sufficient incentive to operate at optimal  
21 efficiency and still provide Liberty with an  
22 opportunity to earn a fair return on its investment?

23 A. Not knowing exactly where you got that  
24 from, I have seen language very similar to that  
25 from -- from previous commission orders.



1           **Q.    Okay.  So that sort of description would**  
2 **not surprise you then; right?**

3           A.    No, it would not.

4           **Q.    Hold on just a second.  Now, as we talked**  
5 **about before, other than this 5 percent disallowance**  
6 **and then, perhaps, the -- the disallowance proposed by**  
7 **staff witness Hull, staff didn't allege any imprudence**  
8 **associated with each fuel and purchase power cost; did**  
9 **it?**

10          A.    So my thoughts on that are this testimony  
11 doesn't explicitly state imprudence for the 95/5, but  
12 I would consider it alleged imprudence on the  
13 company's part of proposing a hundred percent of these  
14 fuel costs in this case.

15          **Q.    So nothing imprudent about the way they**  
16 **purchased their fuel and purchased power; correct?**

17          A.    Other than what the other -- Mr. Hull's  
18 disallowance, I would say it's more imprudent in  
19 action of this proposal as to action of its fuel  
20 costs.

21          **Q.    So imprudence of asking?**

22          A.    Imprudent asking for a hundred percent as  
23 opposed to 95 percent.

24          **Q.    Okay.  Now, if we start with the concept**  
25 **that the 95/5 is supposed to provide Liberty**

1 sufficient incentive to operate at optimal efficiency,  
2 and we have no imprudence alleged as to its fuel and  
3 purchase power activities, does the incentive have any  
4 purpose at all in this situation?

5 A. I think for -- for future cases and the --  
6 if and when another Storm Uri like event occurs,  
7 there's -- that incentive is very important.

8 Q. But as you indicated already, ultimately,  
9 that's a decision for the commission?

10 A. That is a decision for the commission.

11 Q. Right? So it's not as if by incentivizing  
12 the company one way or the other, the commission has  
13 backed itself into a hole, they maintain the authority  
14 to make that decision; correct?

15 A. Preserving the 95/5 within the  
16 securitization -- within securitization cases for fuel  
17 costs, I think allows for the same incentive as a 95/5  
18 is intended in the FAC.

19 Q. But in this case, it had no impact;  
20 correct?

21 A. Well, I wouldn't think -- one thing that I  
22 think needs to be noted that is in February 2021, if  
23 I -- if I remember right, and you know better than I,  
24 the securitization wasn't law at the time. So we  
25 wouldn't have -- assume wouldn't have been anticipated

1 to securitize or know that -- know that the company  
2 was going -- have an option to securitize, so I don't  
3 know that I can make a -- give an answer on 95/5 and  
4 securitization as it applies to Storm Uri, because at  
5 the time there's different variables in place all at  
6 the same time.

7 **Q. Yeah. But ultimately, you'd agree that the**  
8 **costs that we're talking about in this case seeking to**  
9 **securitize our extraordinary cost; correct?**

10 A. I would agree that the parties --  
11 extraordinary cost, yes.

12 DEAN COOPER: That's all the questions I  
13 have, Your Honor.

14 JUDGE WOODRUFF: Now redirect.

15 CURT STOKES: Finally, thank you. Sorry I  
16 jumped the gun earlier.

17 JUDGE WOODRUFF: That's all right.

18 EXAMINATION

19 BY CURT STOKES:

20 **Q. Mr. Fortson, you were asked about a -- a**  
21 **document earlier. Is that document -- are you able to**  
22 **authenticate that document that it is what it purports**  
23 **to be?**

24 A. I'm just taking it at face value as to what  
25 it states it is.

1 Q. You're not a party to that document?

2 A. No.

3 Q. You're not a signatory?

4 A. No.

5 Q. You weren't involved in the negotiations of  
6 it?

7 A. No.

8 Q. And you don't know what the -- the  
9 provisions mean?

10 A. Not specifically.

11 Q. You don't know if that contract is still in  
12 effect?

13 A. I do not.

14 Q. You don't know if there are subsequent  
15 amendments to that contract?

16 A. I do not.

17 Q. You don't know if that contract has been,  
18 you know, arbitrated?

19 A. I do not.

20 Q. You don't know if that contract has been  
21 litigated?

22 A. I do not.

23 Q. You don't know if there's a court or  
24 arbitrator that's interpreted in a way that you're not  
25 aware of?

1 A. No, I do not.

2 Q. Okay. Let's talk, then, about the -- the  
3 95/5 sharing mechanism mentioned in testimony. You  
4 were asked whether there was any impact from the 95/5  
5 sharing mechanism on Liberty's decisions in this case;  
6 correct?

7 A. Correct.

8 Q. Can you say for sure if -- that Liberty's  
9 actions would have been the same, if there were no  
10 95/5 sharing mechanism?

11 A. Can I ask a clarifying -- or to clarify --  
12 well, can you rephrase or repeat that?

13 Q. I guess to state it another way, isn't it a  
14 fact that there was no impact doesn't mean that the  
15 95/5 sharing mechanism was doing exactly the way it  
16 was designed to do?

17 A. Well, I would say, if I'm understanding  
18 your question correctly, that -- I mean, as I -- as I  
19 previously mentioned in a securitization -- what was  
20 known -- what wasn't law at the time, so the 95/5  
21 incentive that was in place for FAC for fuel costs  
22 should have been the incentive for the company to --  
23 as Mr. Cooper previously stated something to the  
24 effect of to be a sufficient incentive to operate  
25 optimally efficient.

1           **Q.    Now, do you remember Liberty's FAC filing**  
2           **in case ER-2021-0332?**

3           A.    I'm familiar with it.

4           **Q.    In that case, Liberty requested their FAC**  
5           **charge just to be reset in zero and anything above**  
6           **that they were asking to be deemed extraordinary --**  
7           **like an extraordinary cost?**

8           A.    Correct. That's how I recall it.

9           **Q.    So it was really -- what Liberty did is**  
10          **they started at a proposed fuel adjustment rate, and**  
11          **then backed into what costs they would deem**  
12          **extraordinary.**

13          A.    Sure. There was no definite number that  
14          determined what extraordinary was.

15          **Q.    Were there other proposals to set the cut**  
16          **off to what qualified as an extraordinary cost?**

17          A.    As I recall, Office of Public Counsel made  
18          a -- suggested another option that would have allowed  
19          for a higher rate -- higher FAC rate lower amount of  
20          extraordinary costs.

21          **Q.    Okay. And OPC's proposal, customers would**  
22          **have immediately seen a higher FAC rate?**

23          A.    Correct.

24          **Q.    Do you recall the magnitude of how much**  
25          **higher?**

1           A.    Ms. Mantle would, but I want to say it may  
2    have been \$8.  It was equivalent to the -- the highest  
3    amount that the commission had -- has ordered in an  
4    FAC or FR filing for Empire.

5           **Q.    You said it was around potentially \$8?**

6           A.    Subject to checking to -- a question for  
7    Ms. Mantle.

8           **Q.    Do you recall -- was staff concerned with**  
9    **that level of increase and that level -- under that**  
10 **proposal?**

11          A.    We were.  Both options were reasonable.  So  
12   ultimately, staff was -- honestly, I mean, just given  
13   the circumstances, I don't want to say we were -- we  
14   were indifferent.  It was what we can come to an  
15   agreement on, what can the company and Office of  
16   Public Counsel agree on that's reasonable, both are  
17   reasonable.  There was a concern of -- of a -- you  
18   know, a spike in -- immediately.

19          **Q.    You said there was a -- there was a lot to**  
20 **consider?**

21          A.    There was a lot to consider.

22          **Q.    Now, are you familiar with Liberty's AAO**  
23 **relating to the Uri cost?**

24          A.    Not as much, but somewhat.

25          **Q.    Are you familiar with their specific**

1 request in that case for commission language in an AA  
2 order stating that they would be entitled to recovery  
3 of that as they would be under the FAC?

4 A. I do recall that.

5 Q. And that case is still pending?

6 A. My understanding, yes.

7 Q. And Liberty's request under that AAO for  
8 that specific language is still pending before the  
9 commission; correct?

10 A. If I understand correctly, yes.

11 Q. So their alternative to securitization and  
12 AAO, they're saying do treat it like an FAC, that they  
13 are entitled to recovery?

14 A. That would be my understanding.

15 Q. Okay. If you can turn to page 3 of the  
16 rebuttal testimony where the -- the field adjustment  
17 clause -- or I'm sorry, yeah, where the field  
18 adjustment clause will -- is quoted. It's lines 1  
19 through 4.

20 A. Top of page 3, yes.

21 Q. Okay. Now, did you hear Ms. Emery testify  
22 that she believed that the rule prohibited  
23 extraordinary costs from being passed through?

24 A. I did.

25 Q. But the rule actually says -- and I quote,



1 extraordinary costs not to be passed through, if any,  
2 due to such costs being an insured loss are subject to  
3 reduction due to litigation or for any other reason.  
4 That's the full language of the rule; correct?

5 A. It is.

6 Q. Now, based on that, do you read that as  
7 just a blanket prohibition of all exclusion of  
8 extraordinary costs or does there have to be some  
9 reason to exclude extraordinary costs?

10 A. Yeah. I don't read this as a blanket --  
11 yeah, there are definitely perimeters around deeming  
12 such costs as extraordinary.

13 Q. Now, if -- if a utility were permitted to  
14 recover 100 percent fuel costs instead of 95 percent,  
15 would that be a reason -- would that be a reason not  
16 to exclude extraordinary costs from the FAC?

17 A. If the company is allowed to recover a  
18 hundred percent securitization, very likely see an  
19 instance where they would want a higher amount of  
20 extraordinary costs or deem every -- all fuel costs or  
21 whatever costs at hand would be extraordinary to carve  
22 out for securitization.

23 Q. But if somebody opposing a utility request  
24 could say, I don't want this extraordinary cost  
25 excluded, because I want the 95/5 sharing mechanism?

1 A. Correct.

2 CURT STOKES: No further questions.

3 JUDGE WOODRUFF: All right. Then

4 Mr. Fortson, you can step down.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: We're due for a lunch  
7 break. We'll break for lunch now and come back at  
8 1 o'clock.

9 It's 1 o'clock. Let's go ahead and get  
10 restarted. Okay. And we are now ready for our next  
11 witness, Jordan Hull. Please raise your right hand.  
12 Do you solemnly swear or affirm the testimony you're  
13 about to give in this matter, the whole truth, and  
14 nothing but the truth so help you God?

15 THE WITNESS: I do.

16 JUDGE WOODRUFF: Thank you. You may  
17 inquire.

18 CURT STOKES: Thank you, Your Honor. Curt  
19 Stokes on behalf of staff.

20 EXAMINATION

21 BY CURT STOKES:

22 Q. Mr. Hull, can you please state your full  
23 name for the record?

24 A. My name is Jordan Timothy Hull.

25 Q. And in what capacity are you employed by

1 **staff of the commission?**

2 A. I'm the associate engineer for the energy  
3 resources department.

4 **Q. And have you prepared in these proceedings**  
5 **certain rebuttal testimony marked as Exhibit 105 and**  
6 **public, confidential, and highly confidential?**

7 A. Yes.

8 **Q. And do you have any corrections to make to**  
9 **those documents?**

10 A. No.

11 **Q. If I were to ask you questions -- the same**  
12 **questions in those documents, would your answers be**  
13 **the same?**

14 A. Yes.

15 **Q. And your answers would be true and correct**  
16 **to the best of your knowledge and belief?**

17 A. Yes.

18 CURT STOKES: Your Honor, I offer  
19 Exhibit 105 in its public, confidential, and highly  
20 confidential versions into the record.

21 JUDGE WOODRUFF: 105 in its confidential,  
22 highly confidential, and public version has been  
23 offered. Any objection to its receipt? Hearing none,  
24 it will be received. For cross examination, we begin  
25 with MECG. Public counsel.

1 NATHAN WILLIAMS: Nathan Williams. No  
2 questions, thank you.

3 JUDGE WOODRUFF: All right. For Liberty.

4 DEAN COOPER: Your Honor, Dean Cooper for  
5 Liberty.

6 EXAMINATION

7 BY DEAN COOPER:

8 Q. Mr. Hull, in looking at your -- your  
9 proposed disallowance related to Riverton 11, it does  
10 not mention any adjustment to go from total company to  
11 Missouri jurisdictional. Did you make such an  
12 adjustment?

13 A. I don't think I understand your question.

14 Q. Well, I -- I take it that in your  
15 calculation -- and let me start with this. You first  
16 off considered -- well, how many megawatt did you  
17 consider to be in play with Riverton 11?

18 A. 15.

19 Q. And Riverton 11 is -- provides service to  
20 Missouri, Kansas, Oklahoma, Arkansas; would you agree?

21 A. I'm not sure.

22 Q. So you -- you don't have any idea what --  
23 what Missouri jurisdictional adjustment would be?

24 A. No. I know the capacity that is on  
25 Evergy -- or Empire's capacity balance sheet which is

1 what Empire would be using from -- could be using from  
2 that unit.

3 Q. And Empire -- let's say you're not aware of  
4 whether Empire serves in Kansas or Oklahoma or  
5 Arkansas; correct?

6 A. Whether Empire does?

7 Q. Uh-huh.

8 A. I think they reach into other states, yes.

9 Q. Okay. So...

10 A. Liberty Empire does.

11 Q. So they would have -- they would utilize  
12 that generation to serve all four states; correct?

13 A. I think they could.

14 Q. So the whole concept of -- of a total  
15 company cost for Liberty Empire versus Missouri  
16 jurisdictional cost is something that you're just not  
17 familiar with?

18 A. I think it would be appropriate in this  
19 situation.

20 Q. Were you in the hearing room this morning  
21 when Mr. Fortson was -- was on the witness stand?

22 A. I was.

23 Q. Did you hear us discuss what's been marked  
24 or what has been admitted in evidence as  
25 Exhibit 22-HC?

1 A. I don't have it in front of me, no.

2 Q. Okay. Did you hear us discuss it, though?

3 A. Yes.

4 Q. Do you want it in front of you?

5 A. I would.

6 DEAN COOPER: May I approach, Your Honor?

7 JUDGE WOODRUFF: You may.

8 Q. (By Dean Cooper:) Is that a document you  
9 had seen before I just handed it to you?

10 A. This is the first I'm seeing it, because  
11 you just handed it to me.

12 Q. So it would be safe to assume that you did  
13 not take anything into account in your disallowance  
14 related to SPP revenues that might be due to other  
15 entities than Empire; is that correct?

16 A. That would be correct.

17 Q. So you assumed all 15-megawatt, the SPP  
18 revenues associated with all 15 megawatts would be  
19 Empire's to keep?

20 A. Yes.

21 Q. Now, just hypothetically, if -- this is  
22 probably just simple math, if Empire was only due SPP  
23 revenues for one third of those 15 megawatts, your  
24 disallowance would be as simple as one third of what  
25 is reflected in your testimony; correct?

1 CURT STOKES: Your Honor, I would object as  
2 speculation and irrelevant. And lack of foundation.

3 JUDGE WOODRUFF: I'll overrule the  
4 objection. You can answer.

5 THE WITNESS: Can you say the question  
6 again?

7 Q. (By Dean Cooper:) Sure. So in your  
8 calculation, you essentially came up with a number  
9 that you assert represents SPP revenues associated  
10 with 15 megawatts. If hypothetically Empire were only  
11 to receive five of those 15 megawatts, your  
12 disallowance would be one third of what's reflected in  
13 your testimony; correct?

14 A. Yes. That would be the math.

15 DEAN COOPER: That's all the questions I  
16 have for right now, Your Honor.

17 JUDGE WOODRUFF: Questions from the bench.  
18 Any questions from the commissioners online? All  
19 right. I do have some questions. First a couple of  
20 questions relate to the idea that Liberty might have  
21 planned more effectively for Winter Storm Uri. After  
22 the retirement of Asbury, which had a capacity of  
23 approximately 190 megawatts, what dispatchable  
24 capacity did Liberty still have?

25 THE WITNESS: Wouldn't be able to say that

1 off the top of my head without looking at a capacity  
2 balance sheet to see if you subtract that from the  
3 total what it would be.

4 JUDGE WOODRUFF: Okay. Do you know if a  
5 capacity balance sheet was in the -- in the --

6 THE WITNESS: It's in the IRP.

7 JUDGE WOODRUFF: It's in the, what? IRP?

8 THE WITNESS: Yeah.

9 JUDGE WOODRUFF: Okay. Was Riverton 11  
10 capable and approved by the Kansas Department of  
11 Health and Environment to operate under emergent  
12 conditions of fuel oil during the February '21 -- 2021  
13 event?

14 THE WITNESS: Yes. They got a waiver to  
15 operate and the first stipulation to where they could  
16 operate was met in the permit.

17 JUDGE WOODRUFF: Okay.

18 THE WITNESS: Where gas supply was  
19 interrupted.

20 JUDGE WOODRUFF: When were they given that  
21 waiver?

22 THE WITNESS: That waiver was on the 15th.

23 JUDGE WOODRUFF: Of February?

24 THE WITNESS: Yes.

25 JUDGE WOODRUFF: So before that, they could



1 not have used it?

2 THE WITNESS: I think they still could have  
3 because it was already met, that their gas was  
4 interrupted.

5 JUDGE WOODRUFF: Okay. So there were --

6 THE WITNESS: There's nothing saying that  
7 they had to have gotten the waiver. I think it was  
8 more of a verification. That --

9 JUDGE WOODRUFF: Okay.

10 THE WITNESS: That's my understanding,  
11 based on reading the permit.

12 JUDGE WOODRUFF: Does the permit  
13 differentiate between operating with fuel oil and  
14 testing the fuel oil?

15 THE WITNESS: What do you mean by that?  
16 Can you clarify your question?

17 JUDGE WOODRUFF: I'll try. Is there any --  
18 is there anything in the permit that says even if they  
19 can't use the fuel oil, they can test with the fuel  
20 oil to make sure that it would work?

21 THE WITNESS: Yes. The -- the black start  
22 test requirements.

23 JUDGE WOODRUFF: Would that apply to  
24 Riverton 11 at that point?

25 THE WITNESS: According to their permit --

1 DEAN COOPER: Judge, I think when we  
2 get off into some of these identifications --

3 JUDGE WOODRUFF: I'm sorry.

4 THE WITNESS: Can we go in camera?

5 JUDGE WOODRUFF: Yeah. Let's go in camera  
6 for a moment.

7 (Hearing went in camera 4.)

8 JUDGE WOODRUFF: In Mr. Robinett's  
9 surrebuttal for counsel, he indicated that your  
10 proposed disallowance for Riverton 11 was very  
11 conservative and he proposed a further disallowance.  
12 What's staff's opinion on that proposed disallowance  
13 that -- that Mr. Robinett made?

14 THE WITNESS: I think which -- I don't know  
15 if we can be in camera for this or not.

16 JUDGE WOODRUFF: Well, we can go back into  
17 in camera, if we need to.

18 THE WITNESS: Okay.

19 JUDGE WOODRUFF: Let's go back to in  
20 camera.

21 (Hearing went in camera 5.)

22 JUDGE WOODRUFF: Back in regular session,  
23 and I have no further questions for the witness.  
24 We'll move to recross based on questions from the  
25 bench. And beginning with MECG.

1 TIM OPITZ: No questions, Your Honor.

2 JUDGE WOODRUFF: Public counsel.

3 NATHAN WILLIAMS: Thank you, Judge.

4 EXAMINATION

5 BY NATHAN WILLIAMS:

6 Q. Mr. Hull, do you recall testifying that  
7 Liberty had filled other tanks with diesel at other  
8 locations?

9 JUDGE WOODRUFF: Does this need to be in  
10 camera?

11 NATHAN WILLIAMS: I don't believe so.  
12 That's all I was going to say about it.

13 THE WITNESS: Okay. That's fine.

14 JUDGE WOODRUFF: If he's not concerned, I'm  
15 not concerned.

16 THE WITNESS: Me either. I just didn't  
17 want to step on toes.

18 JUDGE WOODRUFF: I understand.

19 Q. (By Nathan Williams:) Do you recall that?

20 A. Yes.

21 Q. Did Liberty create electricity from any of  
22 those other locations?

23 A. I don't know the answer to that.

24 Q. And -- well, let me clarify it a little  
25 bit. I don't think it's going to change your answer,

1 but those locations where Liberty had filled its fuel  
2 oil tanks aside from Riverton, did it run any of those  
3 units that used that fuel during Storm Uri?

4 A. I don't know the answer to that.

5 NATHAN WILLIAMS: Thank you.

6 JUDGE WOODRUFF: All right. For Liberty.

7 DEAN COOPER: Yes, Your Honor.

8 EXAMINATION

9 BY DEAN COOPER:

10 Q. Let's start with this fuel oil question.  
11 It is true that there are limitations on even under  
12 your reading of the permit on when Riverton 10 and  
13 Riverton 11 can run on fuel oil; correct?

14 A. Yes.

15 Q. And, so do you remember whether  
16 Mr. Mushimba testified as to why or that, because of  
17 that, that fuel oil would not be fully stocked at  
18 Riverton as opposed to other locations?

19 A. No, I do not.

20 JUDGE WOODRUFF: Mr. Cooper, if you can get  
21 a little bit closer to the microphone, you tend to  
22 speak kind of softly.

23 DEAN COOPER: Sorry. Now -- I apologize.  
24 Let me do a few more -- or a couple more things before  
25 we go in camera, Your Honor.

1           Q.    (By Dean Cooper:) Mr. Hull, in reading  
2 your statement of experience, your education, those  
3 sort of things, is it true you graduated from college  
4 in 2016?

5           A.    Yes.

6           Q.    And is it true that from college, you went  
7 to work for Missouri Department of Natural Resources?

8           A.    It is.

9           Q.    And you worked there for a few years and  
10 you came to work for the commission; correct?

11          A.    Correct.

12          Q.    And, so am I safe to assume that you've  
13 never worked for an electrical corporation or electric  
14 utility?

15          A.    That is correct.

16          Q.    Would I be safe to assume that you've never  
17 been responsible for either tuning or starting a  
18 combustion turbine similar to the one at Riverton 11?

19          A.    That's correct.

20          Q.    So you would also not have any experience  
21 trying to start such a turbine in subzero  
22 temperatures; correct?

23          A.    No.

24                DEAN COOPER: Your Honor, can we go in  
25 camera for a minute?

1 JUDGE WOODRUFF: All right. We'll go in  
2 camera at this point.

3 (Hearing went in camera 6.)

4 JUDGE WOODRUFF: Back in regular session.  
5 And Liberty has indicated they have no further  
6 questions, so we'll move to redirect.

7 CURT STOKES: Thank you, Your Honor. Curt  
8 Stokes for staff.

9 EXAMINATION

10 BY CURT STOKES:

11 Q. Can you generally -- are you familiar with  
12 the -- the Riverton facility, not just Riverton unit  
13 11?

14 A. Yeah. I'm generally.

15 Q. How many units are there?

16 A. There are three.

17 Q. Okay. Can you identify those?

18 A. Riverton 10, 11, and 12.

19 Q. Okay. During Winter Storm Uri, which ones  
20 were and were not operable?

21 A. All of them were offline because of gas  
22 issues.

23 Q. Okay.

24 A. Pressure issues.

25 Q. Was Riverton 10 offline for other reasons?

1 A. Because of bearing failure on the 8th.

2 Q. **And then Riverton 12, what -- was it down?**

3 A. Yes. Due to gas pressure issues.

4 Q. **Okay. So now previous to Uri, was Riverton**  
5 **10 -- or I'm sorry, Riverton 12 down for any reason?**

6 A. I don't believe so.

7 Q. **Okay. Was Riverton 12 generating**  
8 **electricity before Winter Storm Uri?**

9 A. Yes, I would assume so.

10 Q. **Okay.**

11 A. I just looked at the outages once it  
12 happened, so.

13 Q. **Okay. Now, you just answered Mr. Cooper**  
14 **that you had never actually started a unit or tuned a**  
15 **unit; correct?**

16 A. That is correct.

17 Q. **But you have written air permits; right?**

18 A. Yes, I have. That's what I did at Natural  
19 Resources, Missouri Department of Natural Resources.

20 Q. **How many years did you do that?**

21 A. Two and a half, three years.

22 Q. **Okay. And is the Kansas Department of**  
23 **Health and Environmental, is that equivalent of**  
24 **Missouri's Department of Natural Resources?**

25 A. That is my understanding.

1 Q. And when I refer to Kansas Department of  
2 Health and Environment, KDHE?

3 A. Uh-huh.

4 Q. Is KDHE the same thing as SPP?

5 A. As SPP?

6 Q. Uh-huh.

7 A. No.

8 Q. Those are two separate entities; right?

9 A. Correct.

10 Q. SPP requires one designated black start  
11 unit; correct?

12 A. Correct.

13 Q. You've read Liberty's air permit from KDHE?

14 A. Uh-huh.

15 Q. And you're familiar with it?

16 A. Yes.

17 Q. It has black start testing allowances for  
18 Riverton 10 and 11; correct?

19 A. Yes, it does.

20 Q. Is there anything in there about the unit  
21 being -- having to be designated with KDHE?

22 A. I did not read anything about that, in that  
23 permit.

24 Q. Okay. So based on your reading of the  
25 permit, regardless of the designation with SPP for



1 **KDHE purposes, would Liberty be allowed to engage in**  
2 **testing of any of its capable units?**

3 A. That is what that section says.

4 **Q. Okay. Now, SPP has a requirement to**  
5 **designate one unit; correct?**

6 A. Yes.

7 **Q. Do you think that -- why do you think**  
8 **there's a requirement for one designation? Is that a**  
9 **minimum requirement or is that a maximum requirement?**

10 A. I would think that would be a minimum  
11 requirement.

12 **Q. Right. Because maybe just having one unit**  
13 **would not be great?**

14 A. For reliability purposes, I think it would  
15 be better to have more than one, yes.

16 **Q. And Liberty had more than one?**

17 A. Correct. Well, they didn't have one --  
18 more than one designated, but they have more than one  
19 in their permit that they could have --

20 **Q. Uh-huh.**

21 A. -- used.

22 **Q. And as you read that permit, they could**  
23 **have maintained testing for all of its black start**  
24 **capable units regardless of whether their designation**  
25 **was at the time of the SPP?**

1 A. Yes.

2 **Q. And Liberty did not do that?**

3 A. According to the NERC standard, they had to  
4 test every three years, and the last time that I  
5 had -- whenever I asked, they said the last time they  
6 tested they said it was 2016.

7 **Q. Let's move onto the integrated resource**  
8 **plan filed by Liberty. You had referred to that**  
9 **earlier?**

10 A. Yeah.

11 **Q. What -- what did the IRP address with the**  
12 **commission?**

13 A. Basically, just said it was a dual fuel  
14 unit and that it can operate in winter and summer.  
15 And they have it designated as dual fuel for both  
16 peaks, both Liberty is dual peaking.

17 **Q. Now, you also heard the testimony of**  
18 **Dr. Mushimba this morning when he stated that tuning**  
19 **of a unit is something that's done regularly; correct?**

20 A. Yes. That was in his DR response.

21 **Q. And that would you -- tuning was**  
22 **recommended when you have extreme changes in**  
23 **temperature; right?**

24 A. Correct.

25 **Q. And what temperature was Riverton 11 tuned**

1 to?

2 A. 70 degrees.

3 Q. And as far as you can tell, had -- was  
4 tuning of Riverton something done --

5 DEAN COOPER: Objection, Your Honor. I  
6 think we're beyond the scope of cross and bench  
7 questions.

8 JUDGE WOODRUFF: I'll overrule the  
9 objection.

10 Q. (By Curt Stokes:) So as far as you can  
11 tell, was -- was Riverton 11 regularly tuned?

12 A. I wouldn't call 2016 regularly tuned.

13 Q. Now, I didn't say testing. I said tuned.

14 A. Tuned?

15 Q. Yeah.

16 A. Oh, it wasn't tuned at temperatures for  
17 winter seasons.

18 Q. Uh-huh. It was tuned to 70 degrees; right?

19 A. Right.

20 Q. And is tuning to 70 degrees consistent with  
21 a recommendation to tune to extreme weather changes?

22 A. I wouldn't call 70 degrees extreme weather,  
23 no.

24 Q. Uh-huh. And is Riverton 11, is that a  
25 peaking unit?



1 A. My name is J. Luebbert.

2 Q. And in what capacity are you employed with  
3 the staff of the commission?

4 A. I am the manager of the tariff and rate  
5 design department.

6 Q. Have you prepared in these proceedings  
7 rebuttal testimony marked as Exhibit 106?

8 A. Yes.

9 Q. And do you have any corrections to make to  
10 that document?

11 A. I do not.

12 Q. If I were to ask you the same questions in  
13 Exhibit 106, would your answers be the same?

14 A. They would be substantially similar, yes.

15 Q. And are -- are those answers true and  
16 correct to the best of your knowledge and belief?

17 A. Yes.

18 CURT STOKES: Your Honor, I offer  
19 Exhibit 106 into the record.

20 JUDGE WOODRUFF: All right. 106 has been  
21 offered. Any objections to its receipt? Hearing  
22 none, it will be received. And for cross examine, we  
23 begin with MECG, and you may approach.

24 EXAMINATION

25 BY TIM OPITZ:

1 Q. Good afternoon, Mr. Luebbert.

2 A. Good afternoon.

3 Q. In your testimony, you supported the  
4 mechanism proposed by witness Lange for securitizing  
5 costs; correct?

6 A. I believe my testimony is supportive of the  
7 allocation of costs for as bury.

8 Q. Using the same mechanism as described in  
9 the -- in the testimony of witness Lange?

10 A. Yes.

11 Q. And under that mechanism, would you agree  
12 that industrial classes will pay more than under the  
13 company's proposal?

14 A. I don't know that I can say that  
15 confidentially.

16 Q. All things being equal, customers remaining  
17 the same, moving forward in each class, could you --  
18 could you say that under the mechanism proposed by  
19 staff, industrial classes will pay more than the  
20 company's proposal?

21 A. I don't know.

22 Q. Why don't you know that?

23 A. To be frank, I wasn't a part of the -- the  
24 development of the class -- class cost of service  
25 study in the last rate case.

1 Q. In fact, staff didn't do a class cost of  
2 service in the last rate case; correct?

3 A. I don't know.

4 Q. Okay. Now, I handed you a document, and I  
5 think I'm up to Exhibit 301. Can you take a look at  
6 that document? And that's the report and order from  
7 Empire's most recent rate case; correct?

8 A. It appears to be.

9 Q. Can you turn to page 12 for number 20?  
10 Going to refer you to it.

11 A. Yes.

12 Q. And that's in the commission's findings of  
13 fact in that order. And it says, the results of  
14 Empire's class cost of service study, support a higher  
15 increase for residential customers since their current  
16 rates recover less than the cost of service. Did I  
17 read that correctly?

18 A. Mostly. It's -- it says it supports a  
19 higher rate increase.

20 Q. Higher rate increase. With that  
21 correction, you agree that's what the report and order  
22 said?

23 A. I believe that's -- you've -- that is  
24 correct.

25 Q. And if you would turn to page 10, are you

1 **there?**

2 A. I am.

3 Q. **On point 13, the commission notes that**  
4 **Empire prepared a class cost of service study; is that**  
5 **correct?**

6 A. That is what paragraph 13 says there.

7 Q. **And it doesn't say anything about staff**  
8 **preparing one; correct?**

9 A. It goes onto say MECG did not prepare a  
10 CCOS study, but modified Empire's CCOS study to  
11 produce its own results.

12 Q. **And --**

13 A. It does not mention staff.

14 Q. **It does not mention staff?**

15 A. No.

16 Q. **Okay. So that seems to indicate staff did**  
17 **not file a class cost of service study in that rate**  
18 **case?**

19 A. Again, I don't know.

20 Q. **Weren't you a witness who offered testimony**  
21 **in that rate case?**

22 A. I was.

23 Q. **Okay. I'll admit I don't support of you,**  
24 **but would you agree that if the commission wants to**  
25 **issue an order shifting more cost to industrial**



1 **customers, the commission can do that?**

2 A. Could you repeat your question? I'm sorry.

3 **Q. If the commission wanted to, they could**  
4 **issue an order shifting more costs onto industrial**  
5 **customers; would you agree they can do that?**

6 A. In what context?

7 CURT STOKES: Your Honor, I would object  
8 only to the extent that he's asking for a legal  
9 conclusion and not like a -- an expert opinion.

10 TIM OPITZ: I guess I'm not asking for a  
11 legal conclusion.

12 **Q. (By Tim Opitz:) I'm just -- in your**  
13 **understanding of how the commission issues orders, and**  
14 **in your understanding, in participating in cases that**  
15 **are instances where the commission shifts rates and**  
16 **increases to different classes; correct?**

17 A. Correct.

18 **Q. Do you think it's staff's role to inform**  
19 **the commission what the impact of its recommendations**  
20 **are on the customer classes?**

21 A. I would agree with that sentiment for the  
22 most part, yes.

23 **Q. You say for the most part. What part don't**  
24 **you agree with?**

25 A. I don't -- I guess there could be instances

1 where the impact isn't known at a given time, and to  
2 the extent that it would be speculation, I don't know  
3 that it's -- it's always true that we should be  
4 providing information, if that's the case.

5 **Q. And you didn't provide that information**  
6 **about the different impacts on rate classes between**  
7 **staff's mechanism and the company's mechanism in this**  
8 **case?**

9 A. I did not.

10 **Q. Okay. Did anyone from staff?**

11 A. I don't know.

12 **Q. Mr. Luebbert, what is your position with the**  
13 **commission?**

14 A. I'm the manager of the tariff and rate  
15 design department.

16 **Q. And in that role, do you supervise any**  
17 **employees?**

18 A. I do.

19 TIM OPITZ: Your Honor, may I approach  
20 again?

21 JUDGE WOODRUFF: You may.

22 TIM OPITZ: And just, Your Honor, for JUDGE  
23 WOODRUFF and counsel, I handed Mr. Luebbert what I  
24 previously circulated as Exhibit 300 also, so I'm  
25 going to ask about that as well. I didn't bring

1 additional copies in the ones I circulated earlier.

2 JUDGE WOODRUFF: I believe this has a cover  
3 sheet that 301 did --

4 TIM OPITZ: I did not hand you the 300.  
5 I'm just noting the one that I handed you earlier when  
6 Ms. Lange was testifying I'm going to reference  
7 because I handed Mr. Luebbert a copy as well.

8 JUDGE WOODRUFF: Okay.

9 Q. (By Tim Opitz:) Okay. Mr. Luebbert, that  
10 top document I gave you is Exhibit 300. Were you in  
11 the room when witness Lange was looking at it?

12 A. I was.

13 Q. And I guess the transcript will show what  
14 it shows, but basically, she denied knowing anything  
15 about that document; do you agree with that?

16 A. I don't know what Ms. Lange knows or  
17 doesn't.

18 Q. What did -- do you agree that she testified  
19 that she didn't know anything about that document?

20 A. I -- I'm not sure.

21 Q. Okay. Now, take a look at exhibit -- I  
22 guess I'll call it Exhibit 303. It's the one I handed  
23 you that's not an e-mail. And it's very similar to  
24 Exhibit 300; correct?

25 A. I'm not completely certain what I'm looking

1 at right now. I got -- I got a sheet here that  
2 says --

3 **Q. That's 300.**

4 A. -- 300, then there's an e-mail -- the  
5 other -- the last sheet?

6 **Q. Yes. And that looks very similar to**  
7 **Exhibit 300; correct?**

8 A. There are a lot of numbers here in a  
9 multitude of columns and rows, so I'm hesitant to  
10 say --

11 **Q. I'll propose to you that they're identical**  
12 **except for a comment bubble.**

13 A. Do you want me to verify that or --

14 **Q. Do you see a comment bubble on there?**

15 A. I do see a comment bubble.

16 **Q. And that comment is attributed to Sarah**  
17 **Lange; correct?**

18 A. That comment appears to --

19 NATHAN WILLIAMS: Your Honor, I'm going to  
20 object to relevance and foundation and hearsay.

21 JUDGE WOODRUFF: What is the relevance of  
22 this?

23 TIM OPITZ: This is a document that I asked  
24 Ms. Lange about earlier, and I'm asking, would it  
25 address your concern, if I cut to the chase and asked

1 Mr. Luebbert if he recognizes this document?

2 JUDGE WOODRUFF: I'll sustain the objection  
3 at this point.

4 TIM OPITZ: Okay.

5 JUDGE WOODRUFF: You can ask further  
6 questions.

7 **Q. (By Tim Opitz:) Mr. Luebbert, is this a**  
8 **document that you recognize?**

9 A. I can't say that I do.

10 **Q. So you didn't have any hand in preparing or**  
11 **commenting on this document?**

12 A. I don't believe so.

13 **Q. Okay. Can you look at the e-mail document?**  
14 **And that e-mail is from counsel for Empire; is that**  
15 **what that document shows?**

16 A. Yes. It appears to be from Diana Carter.

17 TIM OPITZ: Okay. And I guess, Your Honor,  
18 I'd have that marked as -- I think it would be 30 --  
19 30 --

20 JUDGE WOODRUFF: 300 is what we talked  
21 about with Ms. Lange. 301 was the report and order.

22 TIM OPITZ: 302 then.

23 JUDGE WOODRUFF: 30 -- did you want --

24 TIM OPITZ: I guess I'll call that one  
25 other 302, and this one 303.

1 JUDGE WOODRUFF: 303. Okay.

2 Q. (By Tim Opitz:) And that e-mail purports  
3 to contain a -- attachment or two of them; doesn't it?

4 A. Give me a moment to read it.

5 Q. It would be near the top.

6 A. It does appear to reference an attached  
7 work paper.

8 Q. Okay. Is it staff's policy that we need a  
9 forensic evidence trail before a witness can know  
10 something it looks like they themselves had a hand in  
11 making?

12 CURT STOKES: Objection. I think he  
13 just asked about how to lay a foundation for a  
14 document under Missouri law.

15 TIM OPITZ: I'll withdraw. I have no more  
16 questions, Your Honor.

17 JUDGE WOODRUFF: All right. We've got some  
18 documents here. Now, did you wish to offer any of  
19 them?

20 TIM OPITZ: I'll offer the report and  
21 order. The others I will not offer.

22 JUDGE WOODRUFF: Okay. So we're talking  
23 about report and order in ER-2021-0312. Any  
24 objections to its receipt? Hearing none, it will be  
25 received. These two are not offered. Okay. And

1 for -- further cross, then we'll go to public counsel.

2 NATHAN WILLIAMS: Nathan Williams for  
3 public counsel. No questions, thank you.

4 JUDGE WOODRUFF: For Liberty.

5 DEAN COOPER: Dean Cooper for Liberty. No  
6 questions.

7 JUDGE WOODRUFF: Okay. Do we have any  
8 questions from the commissioners on the -- online?

9 JASON HOLSMAN: No questions, Judge. Thank  
10 you.

11 JUDGE WOODRUFF: Thank you. On page -- in  
12 McMellen's rebuttal testimony, she stated that it was  
13 staff's position that the prudent costs incurred by  
14 Liberty for the early retirement of Asbury are just  
15 and reasonable and in the public interest. Why does  
16 staff believe that the early retirement of Asbury was  
17 prudent and reasonable?

18 THE WITNESS: I don't think that I can  
19 speak for the staff position on whether that decision  
20 was just and reasonable.

21 JUDGE WOODRUFF: Okay. Any recross based  
22 on those questions from the bench? Redirect?

23 CURT STOKES: Thank you, Your Honor. Curt  
24 Stokes on behalf of staff. Maybe just a side point of  
25 clarification. I want to make sure I have the --

1 Exhibit 301 is the report and order from case number  
2 ending 0312; is that right?

3 JUDGE WOODRUFF: That's correct.

4 EXAMINATION

5 BY CURT STOKES:

6 Q. Okay. Mr. Luebbert, can you turn -- or can  
7 you get page -- Exhibit 301 and turn to page 18?

8 A. That is the report and order; correct?

9 Q. Yes.

10 A. Okay.

11 Q. And the last paragraph, the second  
12 sentence, can you -- can you confirm that says, the  
13 commission is not addressing the validity of Empire's  
14 CCOS study, because the CCOS study and MECG modified  
15 study presented in this case are not the primary  
16 driving factor driving the commission's decision?

17 A. Yes. That is what it states.

18 CURT STOKES: No further questions, Your  
19 Honor.

20 JUDGE WOODRUFF: All right. Mr. Luebbert,  
21 you can step down, and I believe that would be the  
22 last witness for today. Anything else we need to take  
23 up before we adjourn for the day?

24 NATHAN WILLIAMS: This is Nathan Williams  
25 for public counsel. I don't know if you necessarily



1 need to take it up today, but the other day you  
2 reserved ruling on, I believe, it was Exhibit 21 which  
3 were the additional schedules to Ms. Emery's  
4 testimony.

5 JUDGE WOODRUFF: Correct.

6 NATHAN WILLIAMS: Public counsel has had an  
7 opportunity to review those and believes they are what  
8 they purport to be, so we're not making an objection  
9 to those exhibit -- that exhibit.

10 JUDGE WOODRUFF: Then 21 will be received  
11 into evidence.

12 DIANE CARTER: And Judge, that has been  
13 sent to that e-mail address you provided --

14 JUDGE WOODRUFF: Okay.

15 DIANE CARTER: -- as a separate document.

16 JUDGE WOODRUFF: Very good. Thank you.

17 CURT STOKES: I had two points, Your Honor.  
18 The first one was, we have Mark Davis scheduled to  
19 appear Thursday remotely. And, so at some point in  
20 time we'll need the Webex contact information for him  
21 to appear.

22 JUDGE WOODRUFF: Yes.

23 CURT STOKES: And then we also have  
24 Ms. McMellen working on a calculation right now that  
25 the commission requested. I think our intent is to

1 file that as Exhibit 116.

2 JUDGE WOODRUFF: Okay.

3 CURT STOKES: So -- just file that directly  
4 in EFIS and copy the e-mail address with the -- with  
5 the exhibits.

6 JUDGE WOODRUFF: Yes. And then bring it up  
7 when we get back on the record, and we'll admit it at  
8 that time --

9 CURT STOKES: Okay.

10 JUDGE WOODRUFF: -- or consider admitting  
11 it.

12 CURT STOKES: Thank you.

13 JUDGE WOODRUFF: Okay.

14 NATHAN WILLIAMS: Judge, this is Nathan  
15 Williams for public counsel. With regard to  
16 scheduling, I want to remind you that Ms. Mantle has a  
17 conflict tomorrow morning, at least part of the  
18 morning. So we may end up taking her in a different  
19 order than how she's listed, depending on how things  
20 play out.

21 JUDGE WOODRUFF: That'll be fine. For  
22 tomorrow, we have Michael Mocindy (phonetic) will be  
23 the first witness for Liberty, and then we would have  
24 Robinett, Mantle, Riley and Mark, and we can adjust  
25 those as we need to --

1 NATHAN WILLIAMS: Thank you.

2 JUDGE WOODRUFF: -- accommodating.

3 DIANE CARTER: Your Honor, just to give you  
4 a heads up on Mr. Mocindy, I just got a note from him  
5 that his flight has been delayed many times.

6 JUDGE WOODRUFF: Okay.

7 DIANE CARTER: He is now set to be able to  
8 fly in to St. Louis at -- by 9:00 tonight, but I will  
9 just give the heads up, I guess, that that could  
10 happen again. And, so we may need to reach out about  
11 a potential shifting for him as a witness.

12 JUDGE WOODRUFF: Okay. I assume that we  
13 can just move into the public counsel witnesses, then,  
14 if we need to first, other than Ms. Mantle.

15 NATHAN WILLIAMS: As far as I know.

16 JUDGE WOODRUFF: Okay. All right. Thank  
17 you.

18 DIANE CARTER: Thank you.

19 JUDGE WOODRUFF: Then we are adjourned  
20 until tomorrow morning.

21 (Audio ended.)

22

23

24

25

1 CERTIFICATE OF REPORTER

2  
3 I, Melissa J. Lane, Certified Court  
4 Reporter of Missouri, Certified Shorthand Reporter of  
5 Illinois and Registered Professional Reporter, do  
6 hereby certify that I was asked to prepare a  
7 transcript of proceedings had in the above-mentioned  
8 case, which proceedings were held with no court  
9 reporter present utilizing an open microphone system  
10 of preserving the record.

11 I further certify that the foregoing pages  
12 constitute a true and accurate reproduction of the  
13 proceedings as transcribed by me to the best of my  
14 ability and may include inaudible sections or  
15 misidentified speakers of said open microphone  
16 recording.

17 *Melissa J. Lane*



18  
19 Melissa J. Lane, CCR, CSR, RPR

20  
21  
22  
23  
24 Date:  
25

**AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022**

<b>A</b>				
	198:9,11 252:5	233:1,7,7,14,21	209:25	<b>allocate</b> 268:8
<b>AA</b> 297:1	254:8 255:16	236:5,25,25	227:10 250:4	275:6,15
<b>AAO</b> 214:23	256:7 259:22	237:1,3,5,10	281:11 299:12	280:17
218:19,20	333:12	241:1,2,6	317:14	<b>allocated</b> 261:1
219:7,9 220:5	<b>acknowledge</b>	242:4,7 243:2	<b>afternoon</b>	261:21 268:7
226:10 237:21	216:20	243:7,11,12,25	202:16 249:14	272:24
238:1,22	<b>acquired</b>	244:5,9,23	319:1,2	280:15 281:1,2
240:17,21	270:25	247:1,3,6,7	<b>AFUDC</b> 238:11	<b>allocating</b>
247:12	<b>action</b> 290:19	<b>adjourn</b> 329:23	247:14,16	269:24
296:22 297:7	290:19	<b>adjourned</b>	248:5,9	280:22,23
297:12	<b>actions</b> 294:9	332:19	<b>agency</b> 199:6	<b>allocation</b>
<b>ability</b> 234:18	<b>active</b> 206:5	<b>adjust</b> 271:24	<b>aggressive</b>	260:12 261:15
236:4 333:14	<b>activities</b> 291:3	274:24 331:24	191:8	262:24 263:3
<b>able</b> 196:16,24	<b>actual</b> 207:21	<b>adjusted</b>	<b>ago</b> 213:14	264:7,8,9,10
197:7 224:12	209:2 223:5	261:22 262:7	<b>agree</b> 231:25	264:12,12
224:24 264:3	240:14 242:17	264:11 268:13	235:1,9 240:3	267:18 269:10
266:13 292:21	244:18,20	269:14 270:5	247:2 255:24	273:17,18
304:25 332:7	246:6 263:11	270:5 273:5	256:2 260:7	274:8,10
<b>above-mentio...</b>	<b>add</b> 215:21 217:1	274:15 280:6	260:10	275:5 278:3
333:7	255:5 275:2	<b>adjustment</b>	265:23 266:1	280:5,8,14
<b>absent</b> 244:8	<b>added</b> 215:6	258:22,24	284:4,7	319:7
<b>accelerated</b>	<b>adding</b> 228:14	259:3,17	287:17 289:2	<b>allocations</b>
234:19	<b>addition</b> 272:21	262:2,9	289:13,18	260:13 262:15
<b>accept</b> 223:9	<b>additional</b>	264:10,25	292:7,10	264:1 267:21
245:5	224:25	274:19 276:8	296:16 301:20	<b>allocator</b> 266:4
<b>access</b> 219:14	225:23 226:2	289:15 295:10	319:11 320:21	<b>allow</b> 192:24,24
236:25 237:1	231:7 232:11	297:16,18	321:24 322:5	194:24 195:10
237:3,5,10	261:7 324:1	301:10,12,23	322:21,24	195:22,25
255:14,19	330:3	<b>adjustments</b>	324:15,18	<b>allowance</b>
256:4 257:19	<b>additions</b>	256:8 258:20	<b>agreement</b>	197:2
264:25	237:23	259:4,15	285:17,23	<b>allowances</b>
<b>accidentally</b>	<b>additive</b> 190:21	<b>admission</b>	286:4 296:15	313:17
236:12	<b>address</b> 252:3	205:24	<b>agreements</b>	<b>allowed</b> 195:3
<b>accommodati...</b>	286:25 315:11	<b>admit</b> 286:24	284:18	203:8 238:2
332:2	325:25	321:23 331:7	<b>agrees</b> 229:19	287:21 295:18
<b>accomplish</b>	330:13 331:4	<b>admitted</b>	<b>ahead</b> 187:2	298:17 314:1
278:9	<b>addressed</b>	206:15 286:19	198:10 217:13	<b>allows</b> 196:9,17
<b>account</b> 258:25	238:20	286:20	262:13	249:6,24
303:13	239:12,19	302:24	286:23 299:9	291:17
<b>accounted</b>	271:17 287:9	<b>admitting</b>	<b>air</b> 189:21 195:13	<b>alluding</b> 246:20
243:2	<b>addressing</b>	331:10	197:22 198:2	<b>alternative</b>
<b>accounting</b>	280:16 329:13	<b>adopt</b> 261:25	203:11,14	191:21 297:11
256:15	<b>ADIT</b> 219:14,14	282:19	312:17 313:13	<b>Amanda</b> 210:12
<b>accumulated</b>	219:17 230:16	<b>adopted</b> 266:8	<b>AL</b> 186:6	238:20 239:5
247:17	230:16,20,25	266:11 289:19	<b>allege</b> 290:7	240:24
<b>accurate</b> 198:1	231:1,24,25	<b>affirm</b> 187:13	<b>alleged</b> 290:12	<b>ambient</b> 190:4
	232:13,21	204:19	291:2	190:4 194:1

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

203:3 <b>amendments</b> 293:15 <b>amount</b> 189:21 218:25 219:3 219:18 223:5 226:15 228:10 230:3,17,24 231:18 232:6 232:11 235:22 237:10,22 238:9 239:2 239:2,13,20 241:4,12,13,14 241:15 243:20 245:2,3 246:1 246:10,23 247:20 268:1 287:10,18,24 287:24 295:19 296:3 298:19 <b>amounts</b> 208:14 216:11 232:20 240:6 240:9,14 242:5 245:19 245:21 279:20 287:18 <b>amuck</b> 287:16 <b>analysis</b> 227:24 231:12 283:15 <b>and/or</b> 186:15 <b>announce</b> 201:13 <b>annual</b> 233:4,8 245:17,17 <b>answer</b> 188:11 207:11 215:14 217:12 236:1 239:6,24 258:18 265:6 267:16 279:22 285:13 292:3 304:4 308:23	308:25 309:4 <b>answered</b> 257:10 312:13 <b>answers</b> 188:24 189:2 205:19 205:21 212:9 212:11 228:21 228:24,25 251:3,5 262:18 266:3 282:12,15 300:12,15 318:13,15 <b>anticipate</b> 263:14 <b>anticipated</b> 291:25 <b>anticipating</b> 249:25 <b>anyone's</b> 259:14 <b>anytime</b> 269:10 <b>anyway</b> 213:18 <b>apart</b> 255:25 <b>apologize</b> 222:16 226:25 258:13 260:23 262:17 285:21 309:23 <b>apparent</b> 280:20 <b>appeal</b> 225:17 <b>appear</b> 209:3 270:23 271:1 274:14 285:5 327:6 330:19 330:21 <b>appearing</b> 189:13 <b>appears</b> 230:16 254:5 270:15 278:7,15 281:4 285:6,18 320:8 325:18 326:16	<b>appended</b> 270:20 <b>applicable</b> 273:15 <b>application</b> 283:21 <b>applied</b> 214:15 215:8 238:7 247:13 252:23 258:20,22 259:4,15 268:14 <b>applies</b> 292:4 <b>apply</b> 248:6 262:3,24 264:13 271:1 306:23 <b>applying</b> 214:19 238:1 <b>appreciate</b> 212:25 <b>approach</b> 198:14 251:23 266:4,8,11 268:12,17,25 269:14 273:23 280:14 284:23 303:6 318:23 323:19 <b>approached</b> 264:1,16 <b>appropriate</b> 231:20 245:9 245:11,25 302:18 <b>approved</b> 261:12 262:10 267:2 305:10 <b>approximately</b> 304:23 <b>April</b> 252:9,12 <b>AQCS</b> 219:18,19 <b>arbitrated</b> 293:18 <b>arbitrator</b>	293:24 <b>argue</b> 264:17 264:20 288:1 <b>arguments</b> 288:4 <b>Ari</b> 258:21 <b>Arkansas</b> 301:20 302:5 <b>ARO</b> 231:12 <b>AROs</b> 241:12,17 241:18 247:1,3 <b>arranged</b> 256:23 <b>arrived</b> 225:7 <b>Asbury</b> 207:22 214:11,19,20 214:23 215:10 215:22 216:3 216:8,11,18 218:2,17 220:12,15,18 220:20 221:16 221:18,21,25 222:5,9,20 223:12,16,22 225:9 226:9 226:19 229:20 230:20 231:2 236:8 238:18 240:16,21 304:22 328:14,16 <b>Asbury's</b> 218:19 <b>ascertain</b> 262:4 <b>aside</b> 309:2 <b>asked</b> 203:7 205:17 215:14 220:4 233:13 233:16,18 235:8 242:4 253:4 276:8 278:1 292:20 294:4 315:5 325:23,25 327:13 333:6 <b>asking</b> 224:18	235:6 272:9 290:21,22 295:6 322:8 322:10 325:24 <b>aspects</b> 253:2 <b>assert</b> 304:9 <b>assess</b> 257:24 <b>asset</b> 231:4,8 241:20 243:14 244:18,19 <b>assigned</b> 251:16 <b>associate</b> 300:2 <b>associated</b> 218:4 222:4,9 231:1 248:18 256:12 290:8 303:18 304:9 <b>assume</b> 215:2 277:13 291:25 303:12 310:12 310:16 312:9 332:12 <b>assumed</b> 216:2 216:7 223:12 223:20 277:18 303:17 <b>assumes</b> 200:12 <b>assuming</b> 232:10 247:6 254:7 <b>assumption</b> 232:15,17 <b>assumptions</b> 277:16 <b>attached</b> 197:22 207:7 285:16 327:6 <b>attachment</b> 218:24 226:7 226:8 327:3 <b>attempt</b> 202:25 <b>attempted</b> 196:21,22,23 <b>attempting</b>
--	--	--	---	--

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

197:12 262:22 276:23 <b>attorney</b> 189:13 264:20 <b>attributed</b> 325:16 <b>attrition</b> 279:3,5 279:17 <b>attritions</b> 279:8 <b>Audio</b> 186:3 332:21 <b>audit</b> 210:15 <b>authenticate</b> 292:22 <b>authority</b> 230:5 230:8,9 291:13 <b>availability</b> 249:17 <b>available</b> 191:11 196:13 257:9 266:20 273:20 <b>average</b> 221:7 237:24 247:21 273:15 <b>avoid</b> 189:25 249:13 280:22 <b>avoids</b> 271:19 280:14,19,20 <b>award</b> 275:12 <b>aware</b> 222:7,11 249:22 251:1 293:25 302:3	307:16,19,22 311:4 331:7 <b>backed</b> 291:13 295:11 <b>background</b> 208:1 <b>backup</b> 191:3 264:24 <b>balance</b> 214:19 230:21 236:8 240:6 243:25 244:6,10,23 244:24 245:17 247:6 248:13 301:25 305:2,5 <b>balances</b> 240:2 <b>base</b> 232:21,25 233:7 243:19 243:20 246:6 246:14 248:10 248:14 255:19 256:4 <b>based</b> 194:1 195:12 197:15 219:24 226:1 241:22 242:12 245:14 248:24 263:3 263:13 266:4 267:4 272:5 277:1,2 280:15 284:6 284:14 288:10 298:6 306:11 307:24 313:24 328:21 <b>basically</b> 221:4 315:13 324:14 <b>basis</b> 203:11 234:20 257:6 261:21 262:6 266:8 268:16 268:17 270:4 271:22 <b>bearing</b> 312:1 <b>began</b> 277:8,21	<b>beginning</b> 232:8 243:14 307:25 <b>begins</b> 198:6 251:21 277:14 <b>behalf</b> 189:16 201:13 210:7 229:16 241:25 299:19 328:24 <b>behavior</b> 193:14 <b>belief</b> 189:3 205:22 212:13 229:1 251:6 282:17 300:16 318:16 <b>believe</b> 187:3 196:3 208:11 208:14 209:21 216:16 218:3 224:10 226:6 227:7 231:20 237:4 241:5 242:8 243:7 247:8 248:19 249:7 256:7 256:22,25 257:3,16 258:19,23 264:19 267:4 268:17 270:2 270:6 271:9 272:19 277:8 277:10 286:21 308:11 312:6 319:6 320:23 324:2 326:12 328:16 329:21 330:2 <b>believed</b> 297:22 <b>believes</b> 223:15 223:17 330:7 <b>bench</b> 197:16 198:14 209:12 219:25 226:1 241:23 251:23	265:19 272:5 287:3 304:17 307:25 316:6 328:22 <b>bends</b> 203:25 <b>benefit</b> 229:24 243:18,21 244:16,17,23 245:1 <b>benefits</b> 229:22 <b>best</b> 189:3 193:24 205:22 212:12 228:25 236:4 251:6 282:16 300:16 318:16 333:13 <b>better</b> 191:15 234:13 239:23 240:24 243:2 269:20 291:23 314:15 <b>beyond</b> 316:6 <b>big</b> 234:14 <b>bigger</b> 272:12 <b>biggest</b> 219:6 219:17 271:4 <b>bill</b> 277:8 <b>billing</b> 256:23 256:24 257:3 257:7,20 258:11,12,25 266:19 277:2 277:11,13,16,21 <b>bills</b> 257:15 <b>bit</b> 202:6 203:10 212:24 225:20 262:9 308:25 309:21 <b>black</b> 192:11,13 195:4,7 196:10 196:15,18,20 199:4,8 207:8 207:23 208:9	209:6 306:21 313:10,17 314:23 <b>blackout</b> 192:15 192:16 <b>blank</b> 262:14 <b>blanket</b> 298:7 298:10 <b>block</b> 251:19 <b>BM-2</b> 197:23 <b>Bolin</b> 227:7,18 227:20 229:19 249:3 <b>bond</b> 234:5,8 235:14 279:20 <b>bonds</b> 242:17 267:9 <b>book</b> 222:20 222:23 223:22 225:8 232:18 238:18 <b>bothering</b> 262:8 <b>Brad</b> 239:24 249:7 281:23 <b>break</b> 196:13 215:18 227:4 243:16 299:7 299:7 <b>breakdown</b> 195:5 <b>Brian</b> 187:6,25 <b>briefly</b> 190:9 211:23 228:12 288:24 <b>briefs</b> 286:25 <b>bring</b> 244:14 323:25 331:6 <b>brings</b> 244:13 <b>brought</b> 249:17 <b>bubble</b> 325:12 325:14,15 <b>built</b> 215:3,5 216:3 <b>bulk</b> 199:14 <b>bunch</b> 263:4
<b>B</b>				
<b>back</b> 192:10 203:16 204:7 219:9 225:20 227:5,6 231:24 257:11 259:9,21 262:15 263:1 263:2,11 284:8 286:12 287:3 299:7				

**AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022**

<b>business</b> 188:7 227:23 278:25	<b>called</b> 278:8 <b>calls</b> 191:9 217:10	<b>Carter</b> 204:16 205:1,24 206:14 209:19 326:16 330:12 330:15 332:3 332:7,18	<b>caused</b> 188:9 258:10 <b>causes</b> 211:5 <b>caution</b> 285:7 <b>cautious</b> 263:10 <b>CCOS</b> 321:10,10 329:14,14	271:16 279:23 315:22 316:21 <b>changing</b> 263:14 <b>characteristics</b> 201:25 <b>charge</b> 188:4 263:2 269:1 269:24 272:21,24 273:4 295:5
<b>butchered</b> 285:20	<b>camera</b> 190:8 190:10,12 192:10 201:12 204:2,5,6 285:8 286:9 286:11 307:4 307:5,7,15,17 307:20,21 308:10 309:25 310:25 311:2,3	<b>carve</b> 298:21 <b>carved</b> 287:19 288:5 <b>case</b> 186:7 196:18 214:24 220:12,13,14 220:18,21,25 225:19 235:11 237:3,21 248:7 252:9 252:12,14,21 254:15 255:18 256:11 258:8 258:9,15,19 258:22 259:5 260:1 261:6,13 261:25 262:10 262:13,16 263:14,15 264:4 265:4 265:9 268:8 276:8,11,13,22 277:19 279:13 282:20 286:2 286:6,22 290:14 291:19 292:8 294:5 295:2,4 297:1 297:5 319:25 320:2,7 321:18,21 323:4,8 329:1 329:15 333:8	<b>CCOS</b> 321:10,10 329:14,14 <b>CCR</b> 231:12 333:19 <b>cease</b> 278:20 <b>cells</b> 233:17 <b>centers</b> 192:18 <b>certain</b> 188:10 193:15 200:12 210:19 228:3 250:22 253:14 266:23 279:8 289:9,9 300:5 324:25 <b>certainly</b> 200:18 201:7 225:2,12,18 236:16 264:17 278:11 <b>CERTIFICATE</b> 333:1 <b>Certified</b> 333:3 333:4 <b>certify</b> 333:6,11 <b>cetera</b> 261:24 <b>chance</b> 212:24 240:7 <b>change</b> 190:5 193:23 199:18 199:20 208:10 211:7,9 211:17 233:17 262:12,14,16 262:23 263:19 264:3 269:16,18 272:16 279:7 308:25 <b>changes</b> 188:20 203:3 205:15 211:5,11,19	<b>charge</b> 188:4 263:2 269:1 269:24 272:21,24 273:4 295:5 <b>charged</b> 242:14 <b>charges</b> 242:13 242:15 267:19 279:12 <b>Charlotte</b> 223:4 239:25 246:5 265:20 <b>chase</b> 325:25 <b>cheap</b> 270:11,14 <b>checking</b> 296:6 <b>circle</b> 231:24 257:11 263:11 <b>circular</b> 257:6 <b>circulated</b> 213:7 323:24 324:1 <b>circumstances</b> 296:13 <b>citations</b> 206:16 <b>cited</b> 218:22 <b>clarification</b> 206:4 328:25 <b>clarify</b> 275:8 294:11 306:16 308:24 <b>clarifying</b> 294:11 <b>class</b> 252:24 253:13,14,15 253:17 263:3 266:8 268:18 268:24 269:9 269:17,18,19 272:2,18,24 272:25 274:12,12 275:16 278:19 278:21,22
<b>C</b>	<b>capability</b> 190:25 <b>capable</b> 196:21 305:10 314:2 314:24 <b>capacity</b> 188:2 192:24 193:16 205:5 210:13 227:21 250:17 281:24 299:25 301:24,25 304:22,24 305:1,5 318:2 <b>capital</b> 221:8 237:24 238:4 247:14,21 248:2,6,9,18 248:25 <b>capturing</b> 257:22 <b>care</b> 249:4 <b>careful</b> 264:6 <b>carrying</b> 211:3 212:2 214:8,15 214:19 215:10 215:20,21 216:13 217:2,7 217:9 221:15 237:24 238:1 238:22 239:2 239:8,8 247:10,13	<b>Carter</b> 204:16 205:1,24 206:14 209:19 326:16 330:12 330:15 332:3 332:7,18 <b>carve</b> 298:21 <b>carved</b> 287:19 288:5 <b>case</b> 186:7 196:18 214:24 220:12,13,14 220:18,21,25 225:19 235:11 237:3,21 248:7 252:9 252:12,14,21 254:15 255:18 256:11 258:8 258:9,15,19 258:22 259:5 260:1 261:6,13 261:25 262:10 262:13,16 263:14,15 264:4 265:4 265:9 268:8 276:8,11,13,22 277:19 279:13 282:20 286:2 286:6,22 290:14 291:19 292:8 294:5 295:2,4 297:1 297:5 319:25 320:2,7 321:18,21 323:4,8 329:1 329:15 333:8 <b>cases</b> 218:7,12 218:14 230:7 291:5,16 322:14 <b>cash</b> 242:18,19 243:19 <b>cause</b> 202:12 279:11	<b>caused</b> 188:9 258:10 <b>causes</b> 211:5 <b>caution</b> 285:7 <b>cautious</b> 263:10 <b>CCOS</b> 321:10,10 329:14,14 <b>CCR</b> 231:12 333:19 <b>cease</b> 278:20 <b>cells</b> 233:17 <b>centers</b> 192:18 <b>certain</b> 188:10 193:15 200:12 210:19 228:3 250:22 253:14 266:23 279:8 289:9,9 300:5 324:25 <b>certainly</b> 200:18 201:7 225:2,12,18 236:16 264:17 278:11 <b>CERTIFICATE</b> 333:1 <b>Certified</b> 333:3 333:4 <b>certify</b> 333:6,11 <b>cetera</b> 261:24 <b>chance</b> 212:24 240:7 <b>change</b> 190:5 193:23 199:18 199:20 208:10 211:7,9 211:17 233:17 262:12,14,16 262:23 263:19 264:3 269:16,18 272:16 279:7 308:25 <b>changes</b> 188:20 203:3 205:15 211:5,11,19	271:16 279:23 315:22 316:21 <b>changing</b> 263:14 <b>characteristics</b> 201:25 <b>charge</b> 188:4 263:2 269:1 269:24 272:21,24 273:4 295:5 <b>charged</b> 242:14 <b>charges</b> 242:13 242:15 267:19 279:12 <b>Charlotte</b> 223:4 239:25 246:5 265:20 <b>chase</b> 325:25 <b>cheap</b> 270:11,14 <b>checking</b> 296:6 <b>circle</b> 231:24 257:11 263:11 <b>circular</b> 257:6 <b>circulated</b> 213:7 323:24 324:1 <b>circumstances</b> 296:13 <b>citations</b> 206:16 <b>cited</b> 218:22 <b>clarification</b> 206:4 328:25 <b>clarify</b> 275:8 294:11 306:16 308:24 <b>clarifying</b> 294:11 <b>class</b> 252:24 253:13,14,15 253:17 263:3 266:8 268:18 268:24 269:9 269:17,18,19 272:2,18,24 272:25 274:12,12 275:16 278:19 278:21,22
<b>calculate</b> 233:3 238:18 245:12 245:14 246:5 274:19 280:6 <b>calculated</b> 220:5 223:2 223:3 247:18 <b>calculation</b> 214:22 215:21 215:24 223:21 223:24 226:9 226:13,15,21 233:21 235:19 235:19 245:18 245:23,24 246:2,21,22 247:22 255:14,17 258:6,8,11 259:13,23 301:15 304:8 330:24 <b>calculations</b> 210:20 211:3 211:21 223:13 224:3,4,24 225:22 228:3 230:13 233:14 <b>calendar</b> 257:25 258:3 258:16 259:24 <b>call</b> 187:6 204:16 217:8 249:12 255:19 260:6 316:12 316:22 324:22 326:24	<b>called</b> 278:8 <b>calls</b> 191:9 217:10 <b>camera</b> 190:8 190:10,12 192:10 201:12 204:2,5,6 285:8 286:9 286:11 307:4 307:5,7,15,17 307:20,21 308:10 309:25 310:25 311:2,3 <b>capability</b> 190:25 <b>capable</b> 196:21 305:10 314:2 314:24 <b>capacity</b> 188:2 192:24 193:16 205:5 210:13 227:21 250:17 281:24 299:25 301:24,25 304:22,24 305:1,5 318:2 <b>capital</b> 221:8 237:24 238:4 247:14,21 248:2,6,9,18 248:25 <b>capturing</b> 257:22 <b>care</b> 249:4 <b>careful</b> 264:6 <b>carrying</b> 211:3 212:2 214:8,15 214:19 215:10 215:20,21 216:13 217:2,7 217:9 221:15 237:24 238:1 238:22 239:2 239:8,8 247:10,13	<b>Carter</b> 204:16 205:1,24 206:14 209:19 326:16 330:12 330:15 332:3 332:7,18 <b>carve</b> 298:21 <b>carved</b> 287:19 288:5 <b>case</b> 186:7 196:18 214:24 220:12,13,14 220:18,21,25 225:19 235:11 237:3,21 248:7 252:9 252:12,14,21 254:15 255:18 256:11 258:8 258:9,15,19 258:22 259:5 260:1 261:6,13 261:25 262:10 262:13,16 263:14,15 264:4 265:4 265:9 268:8 276:8,11,13,22 277:19 279:13 282:20 286:2 286:6,22 290:14 291:19 292:8 294:5 295:2,4 297:1 297:5 319:25 320:2,7 321:18,21 323:4,8 329:1 329:15 333:8 <b>cases</b> 218:7,12 218:14 230:7 291:5,16 322:14 <b>cash</b> 242:18,19 243:19 <b>cause</b> 202:12 279:11	<b>caused</b> 188:9 258:10 <b>causes</b> 211:5 <b>caution</b> 285:7 <b>cautious</b> 263:10 <b>CCOS</b> 321:10,10 329:14,14 <b>CCR</b> 231:12 333:19 <b>cease</b> 278:20 <b>cells</b> 233:17 <b>centers</b> 192:18 <b>certain</b> 188:10 193:15 200:12 210:19 228:3 250:22 253:14 266:23 279:8 289:9,9 300:5 324:25 <b>certainly</b> 200:18 201:7 225:2,12,18 236:16 264:17 278:11 <b>CERTIFICATE</b> 333:1 <b>Certified</b> 333:3 333:4 <b>certify</b> 333:6,11 <b>cetera</b> 261:24 <b>chance</b> 212:24 240:7 <b>change</b> 190:5 193:23 199:18 199:20 208:10 211:7,9 211:17 233:17 262:12,14,16 262:23 263:19 264:3 269:16,18 272:16 279:7 308:25 <b>changes</b> 188:20 203:3 205:15 211:5,11,19	271:16 279:23 315:22 316:21 <b>changing</b> 263:14 <b>characteristics</b> 201:25 <b>charge</b> 188:4 263:2 269:1 269:24 272:21,24 273:4 295:5 <b>charged</b> 242:14 <b>charges</b> 242:13 242:15 267:19 279:12 <b>Charlotte</b> 223:4 239:25 246:5 265:20 <b>chase</b> 325:25 <b>cheap</b> 270:11,14 <b>checking</b> 296:6 <b>circle</b> 231:24 257:11 263:11 <b>circular</b> 257:6 <b>circulated</b> 213:7 323:24 324:1 <b>circumstances</b> 296:13 <b>citations</b> 206:16 <b>cited</b> 218:22 <b>clarification</b> 206:4 328:25 <b>clarify</b> 275:8 294:11 306:16 308:24 <b>clarifying</b> 294:11 <b>class</b> 252:24 253:13,14,15 253:17 263:3 266:8 268:18 268:24 269:9 269:17,18,19 272:2,18,24 272:25 274:12,12 275:16 278:19 278:21,22



AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

319:17,24,24 320:1,14 321:4 321:17 <b>classes</b> 252:5 252:17,22 253:11,15 256:10 258:19 260:13 261:21 261:22 262:22,23 266:23 268:9 268:22 269:7 269:16 271:5 271:17,19 272:10 278:5 279:8,11 281:2 281:3 319:12 319:19 322:16 322:20 323:6 <b>clause</b> 289:15 297:17,18 <b>clear</b> 278:10 <b>closed</b> 190:8 <b>closely</b> 212:24 258:12 276:23 <b>closer</b> 231:15 309:21 <b>closure</b> 223:12 223:21 <b>coal</b> 190:20 193:4 <b>cognizant</b> 280:9 <b>coincide</b> 257:7 258:9 <b>cold</b> 197:13 200:19,20 <b>collaborate</b> 265:22 <b>collaboratively</b> 266:7 <b>collapse</b> 192:15 <b>collapses</b> 192:19 <b>collect</b> 273:2 <b>college</b> 310:3,6	<b>column</b> 253:25 254:4 <b>columns</b> 253:20 325:9 <b>combustible</b> 190:22 <b>combusting</b> 203:22 <b>combustion</b> 189:19,21,22 189:24 193:19 193:22 194:15 310:18 <b>come</b> 204:1,7 225:20 227:5 227:6 233:7 236:5 268:12 286:12 296:14 299:7 <b>comes</b> 202:5 241:7 <b>comfortable</b> 231:15 <b>coming</b> 192:25 193:4 <b>comment</b> 325:12,14,15 325:16,18 <b>commenting</b> 326:11 <b>commission</b> 186:4 210:14 225:15 227:22 230:3 247:2 248:11 249:11,18 260:12,25 261:19 267:12 267:20 275:12 280:20 281:25 288:7 289:19,25 291:9,10,12 296:3 297:1,9 300:1 310:10 315:12 318:3	321:3,24 322:1,3,13,15 322:19 323:13 329:13 330:25 <b>commission's</b> 237:25 247:11 252:21 320:12 329:16 <b>commissioner</b> 187:8,10 209:14 <b>commissioners</b> 192:4 209:13 217:20 237:18 265:19 287:4 287:5 304:18 328:8 <b>commissions</b> 213:4 <b>companies</b> 262:21 <b>company</b> 186:6 188:6 205:9 216:13,17,22 217:5 223:5 223:17 224:7 226:17 230:24 231:21 232:5,11 234:4 235:15 235:23 237:4 237:7,9,12,12 243:13,18,22 244:2,5,9,9 247:19 248:22 257:9 268:16,17 274:8 275:13 276:25 285:11 285:14 287:23 291:12 292:1 294:22 296:15 298:17 301:10 302:15 <b>company's</b> 222:24 231:8	234:18 235:18 272:11,22 273:12,17,18 275:5 287:21 290:13 319:13 319:20 323:7 <b>compared</b> 272:10 <b>Comparing</b> 272:22 <b>complaint</b> 263:16 <b>complete</b> 206:14 <b>completed</b> 252:9,12 <b>completely</b> 256:14,23 284:7 324:25 <b>completes</b> 261:5 <b>completion</b> 252:14 <b>complex</b> 258:18 <b>complexity</b> 262:19 <b>compliance</b> 252:25 282:1 <b>complying</b> 261:18 <b>Compound</b> 215:12 <b>concept</b> 192:11 290:24 302:14 <b>concern</b> 272:20 279:2 296:17 325:25 <b>concerned</b> 225:21 296:8 308:14,15 <b>concerns</b> 206:18 278:2 278:6 <b>concluded</b> 256:11 277:9	<b>conclusion</b> 217:11 267:12 322:9,11 <b>condition</b> 189:22 <b>conditions</b> 190:4,5 191:16 193:15,22 196:4,9,20 198:8 199:17 199:20 200:12 305:12 <b>conduct</b> 202:15 <b>conducted</b> 261:13 262:11 283:20 <b>confident</b> 256:24 <b>confidential</b> 188:14,18 189:7,10 190:9 192:9 205:13 205:25 206:1 206:21 208:15 228:2 229:4 300:6,6,19,20 300:21,22 <b>confidentially</b> 319:15 <b>confirm</b> 257:20 329:12 <b>conflict</b> 249:14 249:18 331:17 <b>conjunction</b> 258:23 <b>connected</b> 192:18 <b>consequences</b> 279:16 <b>conservative</b> 307:11 <b>consider</b> 230:7 230:11 290:12 296:20,21 301:17 331:10 <b>considerable</b> 208:24
--	--	---	---	---

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

<b>considered</b> 186:18 230:20 301:16	<b>Cooper</b> 187:5 187:18,23 189:5 201:10 201:13,16	212:6,12 214:8 214:11,12,13,16 214:17,21 215:3,4,6,7,11	281:9 282:7 282:16 284:10 284:15 285:17 285:21 286:2	222:8 237:24 238:1 239:2 247:10,21 278:2 280:5
<b>consistent</b> 220:24 239:8 263:22 264:21 316:20	202:22 204:2 204:9 212:19 212:19 213:6 213:10,13,15	215:23,24,25 216:5,6,8,9,14 216:24,25 217:3,4 218:16	286:3 289:4 290:16 291:14 291:20 292:9 294:6,7 295:8	280:14,15,22 280:23 287:18 288:2 290:8 292:9
<b>constitute</b> 333:12	213:24 214:3 214:5 215:18 215:19 217:15	219:12,13 220:7,15,16 221:1,10,13,16 221:17 228:25	295:23 297:9 298:4 299:1 300:15 302:5 302:12 303:15	292:11 295:7 295:16 296:23 298:24
<b>construction</b> 223:6 247:18	229:15,16,18 237:15 255:10 255:12	229:25 230:1 230:18 231:3 231:9,10,16,17 231:23 232:13	303:16,25 304:13 309:13 310:10,11,15,19 310:22 312:15	302:15,16 319:24 320:1 320:14,16 321:4,17,25
<b>consultant</b> 202:4,5	284:23 285:1 286:8,14 288:22,23	232:16,22,23 233:4,9,17 234:5,6,9,11 234:20,23	312:16 313:9,11 313:12,18 314:5,17 315:19,24	<b>costs</b> 211:3,11 212:2 214:8,19 215:10,20,21 216:13 217:7,9
<b>consultants</b> 207:9 208:6 280:3	289:1 292:12 294:23 301:4 301:4,7 303:6	235:16,17,19 235:24,25 236:7 237:8 237:10,11	318:16 319:5 320:2,7,24 321:5,8 322:16,17	320:14,16 321:4,17,25 321:16 313:9,11 313:12,18 314:5,17 315:19,24
<b>consulted</b> 249:11	303:8 304:7 304:15 307:1 309:7,9,20,23	246:12,13,17 246:24 247:4 247:5 251:6 252:6,24	324:24 325:7 325:17 329:3 329:8 330:5 <b>corrected</b>	218:1,4 221:15 222:4 223:25 229:20 237:24 238:22 239:8
<b>contact</b> 330:20	310:1,24 312:13 316:5 328:5,5	244:2,7,21 254:15 255:15 255:20 256:6 257:23 258:3	<b>correction</b> 228:8,13,20 320:21 <b>corrections</b>	222:4 223:25 229:20 237:24 238:22 239:8 239:8,14,21 241:19 243:7
<b>contain</b> 253:11 327:3	<b>copies</b> 324:1 <b>copy</b> 198:1,13 212:4 260:16	258:5 261:6 262:13 263:23,24 264:4,18	244:15 <b>correction</b> 228:8,13,20 320:21 <b>corrections</b>	247:13 248:17 248:18,20,20 276:15 280:17 283:16 284:21
<b>contained</b> 188:24	273:21,22 324:7 331:4 <b>Corp</b> 205:6	265:2,3,6,8,11 266:25 272:13,14,24 273:1,8,9	<b>correction</b> 228:8,13,20 320:21 <b>corrections</b>	276:15 280:17 283:16 284:21 287:12,25 290:14,20 291:17 292:8
<b>contemplate</b> 271:16	<b>corporation</b> 261:5 310:13 <b>correct</b> 187:5	274:13,21 275:16,19 276:10,12,14 277:25	294:21 295:11 295:20 297:23 298:1 298:2,8,9,12 298:14,16,20	229:20 237:24 238:22 239:8 239:8,14,21 241:19 243:7 247:13 248:17
<b>contemplated</b> 266:12	189:2 191:25 197:24,25 198:3,16,17	277:25 280:17 281:3 281:9 282:7 282:16 284:10	299:1 300:15 302:5 302:12 303:15 303:16,25	247:13 248:17 248:18,20,20 276:15 280:17 283:16 284:21 287:12,25 290:14,20 291:17 292:8
<b>content</b> 286:25	199:1,2,6,7,10 199:11,14,15,19 200:8 201:18	282:9 300:8 318:9 <b>correctly</b>	304:13 309:13 310:10,11,15,19 310:22 312:15 312:16 313:9,11	292:11 295:7 295:16 296:23 298:24 302:15,16 319:24 320:1 320:14,16 321:4,17,25
<b>context</b> 230:16 234:16 276:19 279:14 322:6	203:13 205:21 208:16 209:7 209:8 210:21	282:9 300:8 318:9 <b>correctly</b>	312:16 313:9,11 313:12,18 314:5,17 315:19,24	320:14,16 321:4,17,25 321:16 313:9,11 313:12,18 314:5,17 315:19,24
<b>continue</b> 258:17	211:8 266:2 <b>contract</b> 293:11 293:15,17,20	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	222:4 223:25 229:20 237:24 238:22 239:8 239:8,14,21 241:19 243:7
<b>continued</b> 277:23	211:8 266:2 <b>contract</b> 293:11 293:15,17,20	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	247:13 248:17 248:18,20,20 276:15 280:17 283:16 284:21 287:12,25 290:14,20 291:17 292:8
<b>continues</b> 283:24	199:1,2,6,7,10 199:11,14,15,19 200:8 201:18	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	291:17 292:8 294:21 295:11 295:20 297:23 298:1 298:2,8,9,12 298:14,16,20
<b>continuing</b> 211:8 266:2	203:13 205:21 208:16 209:7 209:8 210:21	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	298:14,16,20 298:20,21 319:5,7 322:4 328:13 <b>counsel</b> 190:12
<b>contract</b> 293:11 293:15,17,20	211:21,22 212:4 260:16 273:21,22	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	199:25 206:25 217:17 219:12 224:18 231:6,13
<b>contrary</b> 217:7	211:21,22 212:4 260:16 273:21,22	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	199:25 206:25 217:17 219:12 224:18 231:6,13
<b>control</b> 202:7	211:21,22 212:4 260:16 273:21,22	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	199:25 206:25 217:17 219:12 224:18 231:6,13
<b>controlling</b> 189:20	211:21,22 212:4 260:16 273:21,22	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	199:25 206:25 217:17 219:12 224:18 231:6,13
<b>controls</b> 203:2	211:21,22 212:4 260:16 273:21,22	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	199:25 206:25 217:17 219:12 224:18 231:6,13
<b>convinced</b> 263:21	211:21,22 212:4 260:16 273:21,22	282:9 300:8 318:9 <b>correctly</b>	318:16 319:5 320:2,7,24 321:5,8 322:16,17	199:25 206:25 217:17 219:12 224:18 231:6,13

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

237:17 239:11	197:17,17,21	322:20	330:18	291:9,10,14
239:18 249:16	199:23	<b>customer's</b>	<b>Davis'</b> 239:9	328:19 329:16
265:15 267:3	202:20 206:3	272:2 277:13	<b>day</b> 224:16	<b>decisions</b>
275:25 283:7	206:19,23,23	<b>customers</b>	329:23 330:1	294:5
287:2,8	209:23 210:6	216:19 219:8	<b>day's</b> 258:24	<b>declination</b>
288:16 295:17	210:6,9 212:15	220:11 221:21	<b>days</b> 213:14	278:24
296:16	215:12 217:10	229:22	277:15	<b>decommission</b>
300:25 307:9	220:1,1,3	232:10	<b>deal</b> 234:14	207:17
308:2 323:23	222:15	234:23 240:3	278:9 286:16	<b>decommission...</b>
326:14 328:1	225:24 226:3	244:16,18	<b>Dean</b> 187:5,18	209:7 241:9
328:3 329:25	226:4,5,20	257:1,14,15,21	187:23 189:5	241:10,11,19
330:6 331:15	226:25 227:8	263:5,5	201:10,13,16	<b>decreasing</b>
332:13	227:17 229:3	267:19	202:22 204:2	279:12
<b>couple</b> 217:22	229:9 241:24	268:24 269:2	204:9 212:19	<b>deduction</b>
224:21 252:18	241:24 242:2	269:20,24	212:19 213:6	243:19,23
304:19	249:2,8,10	272:17 273:11	213:10,13,15	<b>deductions</b>
309:24	250:10,10,13	278:16,17,18	213:24 214:3	244:4
<b>course</b> 225:15	251:8 276:4,4	278:20,21,25	214:5 215:18	<b>deem</b> 295:11
258:25	276:6 281:5,9	295:21 319:16	215:19 217:15	298:20
262:19	281:17,18,20	320:15 322:1	229:15,16,18	<b>deemed</b> 295:6
<b>court</b> 293:23	282:22 283:2	322:5	237:15 255:10	<b>deeming</b> 298:11
333:3,8	288:12,14	<b>cut</b> 295:15	255:12	<b>defer</b> 212:23
<b>cover</b> 256:20	292:15,19	325:25	275:24 283:8	213:17,22
256:21 324:2	299:2,18,18,21	<b>cycle</b> 258:25	283:8,11	267:3
<b>Cox</b> 258:20	300:18 304:1	277:2,17,21	284:23 285:1	<b>deferred</b> 243:18
259:7,16	311:7,7,10	<b>cycles</b> 256:25	286:8,14	283:15
<b>create</b> 240:2	316:10 317:9	257:3,7	288:23 289:1	<b>defined</b> 270:24
308:21	317:20,23	258:12 277:8	292:12 301:4	278:11
<b>creates</b> 240:4	318:18 322:7		301:4,7 303:6	<b>definite</b> 295:13
<b>credit</b> 245:4	327:12	<b>D</b>	303:8 304:7	<b>definitely</b>
<b>criticisms</b>	328:23,23	<b>damaged</b>	304:15 307:1	251:20 258:14
262:20	329:5,18	248:4	309:7,9,23	298:11
<b>cross</b> 189:7,11	330:17,23	<b>danced</b> 203:9	310:1,24 316:5	<b>degrees</b> 194:4
206:1,22	331:3,9,12	<b>danger</b> 203:19	328:5,5	194:5 316:2,18
213:25 214:1	<b>curve</b> 202:8	<b>dangerous</b>	<b>debt</b> 211:4,8,25	316:20,22
229:10,11	<b>customer</b>	232:13	211:25 214:8	317:7
251:12 272:5	243:21	<b>data</b> 191:1 257:8	238:23,23,24	<b>delayed</b> 332:5
283:3,4 287:1	244:25	257:20 285:6	239:2 247:19	<b>delete</b> 211:8
300:24 316:6	258:23 263:7	285:10,19	247:20	<b>demand</b> 266:11
318:22 328:1	263:8 269:9	<b>date</b> 215:1,22	248:24	266:19,19,19
<b>CSR</b> 333:19	269:17 271:16	216:13 217:2	<b>December</b>	266:21 269:1
<b>cumbersome</b>	271:18 273:3,6	221:16 223:12	196:19 214:16	272:21
266:9 271:6	273:15 277:8	223:15,17,21	223:16	<b>denied</b> 324:14
<b>current</b> 253:13	277:20 279:1	333:24	<b>decide</b> 202:14	<b>department</b>
278:4 320:15	279:3,5,8,10	<b>dates</b> 226:11	238:24	207:20 282:2
<b>Curt</b> 189:15,15	279:12,17	257:20 277:17	269:23	283:22 300:3
189:18 190:7	281:2,3	<b>Davis</b> 218:23	<b>decision</b> 288:7	305:10 310:7

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

312:19,22,24	<b>determinate</b>	268:5 269:10	269:6	<b>double</b> 279:1
313:1 318:5	266:19	292:5 322:16	<b>dispute</b> 237:7,9	<b>doubling</b> 278:17
323:15	<b>determine</b>	323:6 331:18	266:17 274:4	<b>Dr</b> 187:3 189:19
<b>depending</b>	197:7 232:6	<b>differentiate</b>	<b>distillate</b> 198:24	190:15 197:22
331:19	236:9	306:13	198:25 199:3	204:12 315:18
<b>depends</b>	<b>determined</b>	<b>difficult</b> 190:17	<b>distinction</b>	315:20
225:14	295:14	197:5	254:5 255:23	<b>draft</b> 270:20
262:20 266:3	<b>determining</b>	<b>direct</b> 202:9	256:2	272:3
267:14	230:14	205:18 207:11	<b>distribution</b>	<b>drastically</b>
268:24	<b>detriment</b>	207:23	271:2	193:23 199:17
<b>deprecation</b>	234:23	208:25	<b>District</b> 186:5	199:20
223:25	<b>developed</b>	272:23	188:6 205:9	<b>Drew</b> 204:14,16
226:12,18	266:10	<b>direction</b> 256:9	<b>divide</b> 274:20	205:3 231:11
232:18,19	<b>development</b>	<b>directly</b> 331:3	275:3	241:14
243:16	319:24	<b>director</b> 188:3	<b>divided</b> 274:12	<b>driving</b> 329:16
<b>depreciation</b>	<b>deviate</b> 259:1	205:7 227:23	<b>division</b> 227:24	329:16
234:19	<b>Diana</b> 326:16	<b>disallowance</b>	<b>document</b>	<b>drop</b> 269:17,17
<b>derived</b> 255:17	<b>DIANE</b> 204:16	240:21 284:8	250:25 253:5	<b>dual</b> 315:13,15
<b>describe</b> 211:23	205:1,24	284:14 290:5	253:8,10	315:16
237:2 260:4	206:14 209:19	290:6,18	254:7,9,17	<b>due</b> 186:12
283:20	330:12,15	301:9 303:13	274:5 285:2,3	227:4 231:3
<b>described</b>	332:3,7,18	303:24	286:20	298:2,3
200:24 319:8	<b>diesel</b> 190:17,17	304:12 307:10	292:21,21,22	299:6 303:14
<b>description</b>	191:2,21,24	307:11,12	293:1 303:8	303:22 312:3
283:14 284:1	201:3,5 308:7	<b>disallowances</b>	318:10 320:4	<b>DW-11-2</b> 209:1
290:1	<b>difference</b>	218:11 240:16	320:6 324:10	<b>DWL-1</b> 231:19
<b>design</b> 200:11	196:6 208:18	284:5	324:15,19	<b>dynamics</b>
250:20	219:6,16,17	<b>discount</b>	325:23 326:1	193:20
266:10 318:5	223:14,24	233:24	326:8,11,13,15	
323:15	224:6 226:10	235:13 246:1	327:14 330:15	<b>E</b>
<b>designate</b> 314:5	226:16 232:9	246:16,22	<b>documents</b>	<b>E</b> 213:12
<b>designated</b>	232:19 234:3	<b>discounted</b>	206:6,8,12,14	<b>e-mail</b> 213:7
192:20 313:10	235:13 237:11	246:19,23	210:23 212:9	324:23 325:4
313:21 314:18	244:3 267:20	<b>discuss</b> 201:2	213:20 228:7	326:13,14
315:15	267:22	302:23 303:2	228:21 251:3	327:2 330:13
<b>designation</b>	273:16	<b>discussed</b>	282:12 300:9	331:4
313:25 314:8	<b>differences</b>	200:20 237:2	300:12 327:18	<b>earlier</b> 199:1,16
314:24	231:3 232:1	<b>discussing</b>	<b>doing</b> 194:5	218:14 224:16
<b>designations</b>	235:22	219:12	263:10,22	234:10 256:15
253:14,16	244:15	<b>discussion</b>	286:2 294:15	267:15 280:13
<b>designed</b>	258:25 268:4	264:24	<b>dollar</b> 233:8,8	280:25
280:8 294:16	268:21 270:9	<b>dismantlement</b>	262:3 267:23	292:16,21
317:3	<b>different</b> 193:12	208:1	268:1 275:9	315:9 324:1,5
<b>determinants</b>	196:4 201:24	<b>dispatchable</b>	275:10,11,13	325:24
259:18,19	201:24 203:4	304:23	280:21 289:9	<b>earliest</b> 257:4
262:23	219:4 232:5	<b>dispose</b> 207:24	<b>dollars</b> 232:25	<b>early</b> 218:2,4
266:18,21,22	237:13 245:18	<b>disproportion...</b>	232:25	244:17 256:8

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

257:1,2,12,16 257:19 267:4 277:9,10,23 328:14,16 earn 289:22 earned 276:25 earnings 256:14,16,18 easel 200:23 easy 277:5 economist 250:19 education 310:2 effect 216:4 219:10 220:13 223:21 261:5 261:20 264:7 293:12 294:24 effectively 304:21 efficiency 289:21 291:1 efficient 294:25 EFIS 274:6 331:4 either 190:22 190:24 195:5 207:12 209:17 236:2,15 240:9 274:17 278:20 280:10 308:16 310:17 elaborate 239:15,22 287:12 electric 186:5 188:6 205:9 310:13 electrical 199:14 261:5 268:10 310:13 317:5,6 electricity 191:12 193:4 194:21 195:6	199:13 308:21 312:8 electronic 273:22 eliminate 234:18 emergency 203:23 emergent 192:21,23 195:4 200:20 305:11 Emery 233:13 239:25 246:5 252:4 271:8 297:21 Emery's 223:4 265:21 273:18 273:19 274:1,3 330:3 emission 193:17 203:25 emissions 193:21 204:1 Empire 186:5 188:6 205:8 253:11 254:14 263:6 266:5 268:5,17 269:14 270:25 271:7 272:3 274:17 296:4 302:1,3 302:4,6,10,15 303:15,22 304:10 321:4 326:14 Empire's 252:8 252:12 256:22,24 257:3,25 269:13 277:16 279:11 301:25 303:19 320:7 320:14 321:10 329:13 employed 188:1	205:4 210:14 227:22 250:17 281:24 299:25 318:2 employees 323:17 encompasses 220:9 256:25 ended 332:21 energy 196:24 243:6 261:22 262:7,24 264:10,11,13 266:4 270:5 271:22 273:16 280:6,16 282:2 283:21 300:2 engage 314:1 engine 193:15 194:15 202:9 202:11 engineer 202:7 300:2 engineering 193:18 engines 190:20 203:15 ensure 236:11 ensured 189:25 entail 202:23 entire 193:17 258:2,7 259:24 entirely 256:7 257:17 271:19 entities 284:19 303:15 313:8 entitled 297:2 297:13 environment 202:13 203:19 278:23 305:11 313:2 environmental 207:9 219:22 241:19 312:23	EO-2022-0040 186:7 EO-2022-0193 186:7 equal 273:11 274:18 319:16 equipment 191:23 193:7 equivalent 296:2 312:23 ER-2021-0312 327:23 ER-2021-0332 295:2 error 228:14 especially 278:16 essentially 192:13 193:13 195:8 196:10 202:10 231:14 232:1 233:2 257:20 273:7 277:4 278:14 284:9 304:8 established 264:2 estimate 207:25 208:4 208:9,12 estimated 240:1,6,10 estimates 207:17 208:7 231:16 et 186:6 261:23 EU-2021-0274 237:21 event 191:5,8 257:23 258:10,13 288:19 291:6 305:13 events 191:6 197:10 eventually 232:16 244:11	244:12 Evergy 301:25 evidence 189:6 282:23 302:24 327:9 330:11 exact 231:17 259:13 exactly 242:5 289:23 294:15 examination 187:22 189:8 189:12,17 190:13 197:20 200:2 201:15 204:25 206:2 206:22 207:3 210:8 214:4 220:2 227:16 229:12,17 242:1 250:12 251:12,25 255:11 272:7 276:5 281:19 283:10 288:17 288:25 292:18 299:20 300:24 301:6 308:4 309:8 311:9 317:22 318:24 329:4 examine 259:24 284:18 318:22 example 232:24 243:15 269:15 Excel 253:7 exclude 298:9 298:16 excluded 237:22 298:25 exclusion 298:7
---	---	--	--	--

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

<b>Excuse</b> 212:19 240:18	190:20 208:1 230:3 238:3	<b>facilities</b> 266:18	274:11	<b>fly</b> 332:8
<b>excused</b> 189:13	265:9 266:5	<b>facility</b> 207:24	<b>file</b> 263:16	<b>focuses</b> 271:4
<b>exhibit</b> 188:17	310:2,20	311:12	265:22 321:17	<b>following</b> 198:8
188:24 189:6	<b>experienced</b>	<b>fact</b> 203:22	331:1,3	240:16
210:18,19,20	200:13	215:20 234:17	<b>filed</b> 213:9,12	<b>footnotes</b>
210:20 211:20	<b>expert</b> 230:12	235:21	237:20	206:16
212:4,16,16,17	322:9	248:24 271:3	272:22 315:8	<b>foregoing</b>
212:17,21	<b>explain</b> 192:11	294:14 320:1	<b>filing</b> 295:1	333:11
213:2 225:23	193:11 196:5	320:13	296:4	<b>forensic</b> 327:9
226:6 228:1,3	<b>explain</b> 192:11	<b>factor</b> 262:3	<b>filled</b> 308:7	<b>forgot</b> 201:13
228:4 250:22	193:11 196:5	264:14 329:16	309:1	<b>form</b> 188:11
251:9,16	220:8 228:12	<b>factors</b> 189:25	<b>final</b> 267:8	265:23
253:4 254:20	240:15	236:8 261:12	<b>Finally</b> 292:15	<b>format</b> 253:7
254:21 282:4	<b>explanation</b>	262:9 263:13	<b>financial</b>	<b>formats</b> 188:14
282:11,19,22	257:10 261:10	263:14,17,19	227:23	189:7
286:24 300:5	<b>explicitly</b> 289:6	269:10,13	<b>financing</b> 211:12	<b>forte</b> 258:14
300:19	290:11	<b>failed</b> 200:17	265:23 267:2	<b>forth</b> 193:8
302:25 318:7	<b>extensive</b> 208:1	<b>failure</b> 192:16	270:1	219:4
318:13,19	<b>extent</b> 242:25	200:21 312:1	<b>find</b> 189:22	<b>Fortson</b> 239:24
320:5 323:24	279:21	<b>fair</b> 230:2	202:13 263:12	249:7 281:8
324:10,21,22	288:20 322:8	264:15	<b>findings</b> 320:12	281:21,23
324:24 325:7	323:2	289:22	<b>fine</b> 249:15	283:12
329:1,7 330:2	<b>external</b> 257:17	<b>falling</b> 191:15	308:13 331:21	292:20 299:4
330:9,9 331:1	<b>extraordinary</b>	<b>familiar</b> 200:25	<b>finished</b> 223:7	302:21
<b>exhibits</b> 205:12	292:9,11	201:1 234:11,12	<b>finite</b> 280:21	<b>forward</b> 190:23
205:25 229:3	295:6,7,12,14	247:11,15	<b>fire</b> 192:23	208:5 220:11
229:6 331:5	295:16,20	253:8,24	193:4 194:17	234:20 319:17
<b>exist</b> 206:9	297:23 298:1	254:16 255:2	196:24	<b>found</b> 191:17
270:12	298:8,9,12,16	258:11 282:6	<b>fired</b> 191:11	<b>foundation</b>
<b>existed</b> 206:8	298:20,21,24	295:3 296:22	194:24 195:20	254:24 255:3
<b>existing</b> 266:15	<b>extreme</b> 191:16	296:25	<b>firing</b> 193:11	304:2 325:20
271:12	197:3 315:22	302:17 311:11	194:12,13,18	327:13
<b>expect</b> 275:20	316:21,22	313:15	<b>firm</b> 208:2	<b>four</b> 233:23
<b>expected</b>	<b>extremely</b>	<b>far</b> 225:8 316:3	<b>first</b> 192:10	302:12
229:21 286:5	197:13	316:10 332:15	200:14 208:10	<b>FR</b> 296:4
<b>expended</b>	<b>F</b>	<b>farther</b> 203:5	211:5 240:17	<b>frank</b> 319:23
196:23	<b>FAC</b> 237:22	<b>February</b> 196:19	246:10 247:18	<b>frankly</b> 271:6
<b>expenditures</b>	256:1 261:25	256:8 257:2	262:11,12,16	<b>frequently</b>
247:14,23,25	263:17 273:7	257:18 277:2	264:4 288:13	195:19
248:2,3,6,9,16	287:19 288:2	277:7,10,12,23	301:15 303:10	<b>front</b> 224:13
248:25	288:5 289:5	291:22 305:12	304:19 305:15	285:3 303:1,4
<b>expense</b> 221:6	289:8,17	305:23	330:18 331:23	<b>fuel</b> 189:21
226:12 265:10	291:18 294:21	<b>federal</b> 199:5	332:14	190:24 191:3
<b>expenses</b> 221:4	295:1,4,19,22	<b>field</b> 297:16,17	<b>fit</b> 271:24	191:21 192:21
222:9	296:4 297:3	<b>figure</b> 268:9	<b>five</b> 304:11	192:22,23
<b>experience</b>	297:12 298:16	274:24	<b>flight</b> 332:5	193:18 194:25
	<b>face</b> 292:24	<b>figures</b> 258:4	<b>flow</b> 200:21	195:4,20

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

198:7,24,25	<b>future</b> 206:9	<b>given</b> 190:4	<b>greater</b> 287:17	312:12
198:25 199:3	263:15 271:17	193:20 208:10	<b>greatest</b> 279:21	<b>happy</b> 208:23
200:15 201:3	272:17 291:5	227:11 236:10	<b>grid</b> 194:21	<b>hard</b> 269:19
201:5,6,21,23		256:21 259:21	<b>group</b> 250:20	<b>harm</b> 236:16,18
202:1 203:9	<b>G</b>	271:14 296:12	<b>grouped</b>	<b>head</b> 305:1
203:13,15,18	<b>gas</b> 189:20	305:20 323:1	236:24	<b>headed</b> 263:12
203:18,20,23	190:1 191:13	<b>go</b> 187:2 190:7	<b>growth</b> 258:23	<b>heading</b>
203:23	196:12 201:20	192:10 198:10	259:3 279:10	253:23 254:1
239:14,21	201:22 202:1	201:12 204:2	279:17	<b>headlines</b>
248:17,19,24	305:18 306:3	204:4 207:25	<b>guess</b> 191:20	253:21
283:15 284:21	311:21 312:3	208:15 217:13	191:24 201:11	<b>heads</b> 332:4,9
287:11 289:15	<b>gather</b> 267:11	222:18 236:8	225:2,6	<b>Health</b> 305:11
290:8,14,16,19	<b>gelling</b> 200:23	238:24 241:15	252:3,16	312:23 313:2
291:2,16	<b>general</b> 217:23	249:6,6	253:3 255:23	<b>hear</b> 297:21
294:21 295:10	253:17 255:18	262:13 278:1	259:6 262:8	302:23 303:2
298:14,20	261:13 263:4	285:7,8 286:8	262:11 267:15	<b>heard</b> 200:23
305:12 306:13	269:14	286:23 299:9	270:13 273:15	315:17
306:14,19,19	<b>generally</b> 203:8	301:10 307:4	283:13 294:13	<b>hearing</b> 190:10
309:1,3,10,13	270:16 311:11	307:5,16,19	322:10,25	204:6 213:20
309:17 315:13	311:14	309:25	324:13,22	229:8 233:12
315:15	<b>generate</b> 261:6	310:24 311:1	326:17,24	251:11 282:25
<b>fuels</b> 201:24	261:6 262:10	328:1	332:9	286:11 300:23
<b>full</b> 194:16	262:13,16	<b>God</b> 299:14	<b>gun</b> 292:16	302:20 307:7
205:2 210:11	<b>generated</b>	<b>goes</b> 216:22	<b>H</b>	307:21 311:3
220:15 227:19	258:20	260:10 321:9	<b>half</b> 208:20	318:21 327:24
245:2,3	<b>generating</b>	<b>going</b> 190:8,8	312:21	<b>hearsay</b> 286:19
250:15 276:9	192:17 194:20	190:23 192:8	<b>hand</b> 187:13	325:20
276:10,11,19	312:7	194:16 201:11	209:25 227:9	<b>heat</b> 191:23
277:2,5	<b>generation</b>	202:15 203:4	250:3 298:21	<b>heated</b> 191:22
279:24 281:21	188:4,5 192:14	221:5 232:12	299:11 317:13	<b>heating</b> 191:9,11
298:4 299:22	192:24 193:16	234:20 236:2	324:4 326:10	191:16
317:24	196:14 302:12	237:6 238:14	327:10	<b>heavy</b> 200:19
<b>fully</b> 309:17	<b>getting</b> 200:15	238:22 261:12	<b>handed</b> 253:3	<b>held</b> 333:8
<b>function</b> 230:17	216:16 221:5	263:21 292:2	253:9,10	<b>help</b> 201:20
289:15	225:21	308:12,25	285:2,4	207:22
<b>fundamentally</b>	230:22 231:15	320:10	303:9,11	236:10,14,21
243:12	259:6 275:14	323:25 324:6	320:4 323:23	252:19 299:14
<b>funds</b> 247:17	287:14	325:19	324:5,7,22	<b>helpful</b> 187:20
<b>further</b> 199:23	<b>give</b> 187:14	<b>good</b> 187:7,9	<b>handle</b> 253:2	225:12
201:9 209:9	204:19 208:17	207:5,6 227:1	<b>handled</b> 254:8	<b>hesitant</b> 325:9
222:15 249:2	210:1 213:22	227:18 250:14	<b>handy</b> 260:16	<b>higher</b> 243:15
281:5 285:8	222:24	277:13 281:10	<b>happen</b> 196:15	243:16,23
299:2 307:11	227:10 250:4	319:1,2 330:16	202:6 317:7	247:3 279:23
307:23 311:5	260:21 281:12	<b>gotten</b> 306:7	332:10	295:19,19,22
317:9 326:5	292:3 299:13	<b>graduated</b>	<b>happened</b> 191:6	295:25
328:1 329:18	317:14 327:4	310:3	197:10 263:6	298:19 320:14
333:11	332:3,9	<b>great</b> 314:13		320:19,20

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

highest 296:2	284:15 290:7	immediately	240:9 241:14	indirect 233:9
highly 190:9	299:11,22,24	295:22	253:16 261:20	233:11
192:9 208:14	301:8 308:6	296:18	262:1 270:6	individual
300:6,19,22	310:1 317:11	impact 193:16	280:21 333:14	243:3 263:3
history 263:6	Hull's 290:17	233:7,8,10,11	included	284:1
Hold 290:4	hum 204:1	268:20 269:6	206:12 214:22	indulge 258:17
holding 273:10	hundred	272:10,12	214:23 216:8	industrial
hole 291:13	232:25	291:19 294:4	216:15 219:3	268:22
Holsman 187:10	287:22	294:14 322:19	226:17,18	272:10 273:11
187:10 192:5	290:13,22	323:1	237:23	278:24 319:12
209:14 217:21	298:18	impacted 201:6	248:13,22	319:19 321:25
287:7 328:9	hurt 236:14	impacts 323:6	258:4 270:3	322:4
honestly 296:12	hydrocarbon	implemented	271:2 272:20	industrials
Honor 187:5	190:22	252:16 278:14	includes 188:5	269:7
189:5 190:7	hyperlinks	implementing	270:12,21	inform 249:18
201:10 206:3	206:5,13	280:10	including	322:18
210:6 212:15	hypothetically	implements	196:25 209:4	information
214:3 217:16	303:21 304:10	270:23	248:10	189:3 190:9
226:3,20		implications	income 230:14	205:22 208:3
227:8 229:3	I	233:6	incomplete	231:7 257:6,6
229:15 237:16	idea 268:3	implicit 265:6	278:4	323:4,5
241:24 249:8	269:5 301:22	important	inconsistent	330:20
250:10 251:8	304:20	192:12 291:7	262:5	infusion 242:18
251:15 255:10	ideal 201:8	imprudence	increase 254:2	initial 260:12
264:23	ideally 267:6	284:6 290:7	254:4,10,14	263:3 264:7
265:14	identical 325:11	290:11,12,21	296:9 320:15	264:24
275:24 283:9	identification	291:2	320:19,20	initially 242:19
284:23 286:8	188:18	imprudent	increases	269:15
288:12 292:13	identifications	290:15,18,22	322:16	inquire 204:24
299:18 300:18	307:2	inaccurate	incredibly	210:5 227:15
301:4 303:6	identified	263:17	257:9	250:9 281:16
304:1,16 308:1	232:21 234:5	inaudible	incur 243:14,15	299:17 317:19
309:7,25	234:8 249:5	186:13 201:3	incurred 218:1	inquired 271:8
310:24 311:7	284:9	202:6 203:1,2	222:8 240:2	instability
316:5 317:10	identify 230:23	211:11 250:16	276:16 328:13	189:25
318:18 322:7	231:1 260:13	286:17 333:14	independent	instance
323:19,22	311:17	incentive	231:12	287:23
325:19 326:17	ignite 190:17	289:20 291:1	indicate 321:16	298:19
327:16	191:25 194:15	291:3,7,17	indicated 213:2	instances
328:23	194:16 196:24	294:21,22,24	213:21 289:19	322:15,25
329:19 330:17	200:18,21,22	incentivized	291:8 307:9	insured 298:2
332:3	ignition 193:19	287:24	311:5	integral 270:23
hopefully 260:9	ignore 263:4,7	incentivizing	indicates 249:5	integrated
hour 272:24	264:17	291:11	indicating	315:7
273:3 274:19	ill-spirited	include 186:13	268:18	intend 270:14
hours 196:22	270:14	186:14 205:8	indifferent	intended 291:18
Hull 252:4	Illinois 333:5	231:20 240:5	296:14	intent 330:25



AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

intention 280:19	237:3 267:18 271:4,19	199:24 202:21 203:7 204:2,4	275:23,25 276:3 281:6	<b>K</b>
interconnected 192:17	278:13 321:25 322:4	204:7,11,14,18 204:23	281:10,15,17 282:24 283:4	<b>K-A-P</b> 195:14
interconnecte... 192:19 193:1	<b>issued</b> 252:21 265:24 267:9	206:13,17,20 206:25 207:1	283:6,7 284:25	<b>Kansas</b> 195:13 195:15 197:22 301:20 302:4 305:10 312:22 313:1
interest 218:3 328:15	<b>issues</b> 200:17 200:20,21	209:11,15,16 209:20,23,24	286:10,12,16 286:23 287:8	301:20 302:4 305:10 312:22 313:1
interesting 262:20	225:13 230:6 234:25	210:4 212:18 213:1,11,14,17	288:6,9,13,15 288:22,23	<b>KDHE</b> 313:2,4 313:13,21 314:1
interim 202:8 232:20	236:24 277:3 279:24	214:1 215:13 217:12,17,19	292:14,17 299:3,6,16	<b>keep</b> 262:22 303:19
interpreted 293:24	286:24 311:22 311:24 312:3	217:22 218:9 218:13,18	300:21 301:3 303:7 304:3	<b>kilowatt</b> 272:24 273:3 274:19 274:24
interrupted 305:19 306:4	322:13 <b>item</b> 244:12	219:2,11,15,19 219:23 222:16	304:17 305:4 305:7,9,17,20	<b>Kim</b> 227:7 258:20 259:7
interval 271:25	<b>items</b> 219:2 226:18 238:3	222:22 223:1 223:8,11,20	305:23,25 306:5,9,12,17	<b>Kimberly</b> 227:20
introduced 269:1	238:4 240:7 243:6 265:10	224:1,3,8,11,18 224:20,23	306:23 307:1 307:3,5,8,16	<b>kind</b> 195:16 200:14 203:9 217:23 247:24 264:24 266:15 280:14 309:22
invested 221:12	<b>J</b>	225:8,11,16,25 226:24 227:1	307:19,22 308:2,3,9,14	<b>know</b> 191:7,12,14 192:8,16 194:15 196:10 196:11,17,21,22 196:23 197:1 202:8,9,12,25 203:2,22 208:4,5 217:14 224:20 226:20,22 235:4,10,15 236:1,7,14 238:12 239:1 240:4,5 242:25 243:5 248:10 250:1 254:8 259:22 260:5,15 262:4,6 265:24 266:15 267:6 267:16,16,24
investigations 197:10	<b>J</b> 281:23 317:12 318:1 333:3,19	227:4,14 229:6,11,13,14	308:18 309:6 309:20 311:1,4	
investment 289:22	<b>January</b> 208:11 257:2,12,16	237:17 238:6 238:10,14,17	316:8 317:11,18 318:20 323:21	
investors 279:25	277:9,12 <b>JASON</b> 187:10	238:21 239:1 239:7,11,18,25	323:22 324:2 324:8 325:21	
involved 252:8 252:11,15,20	192:5 209:14 217:21 287:7	240:11,15,20 240:25 241:3	326:2,5,20 326:23 327:1	
252:22,25	328:9 <b>Joplin</b> 247:12	241:8,16,21 249:3,9,15,20	327:17,22 328:4,7,9,11,21	
253:1 276:21	247:24 248:14	249:23 250:2 250:8 251:10	329:3,20 330:5,10,12,14	
293:5	<b>Jordan</b> 284:15 299:11,24	251:14,17,20 251:22,24	330:16,22 331:2,6,10,13	
<b>IRP</b> 305:6,7 315:11	<b>judge</b> 187:1,7,9 187:12,17	254:20,25 255:4,7	331:14,21 332:2,6,12,16	
irrelevant 304:2	189:9,15 190:11 192:3,5	265:15,18 266:25	332:19 <b>jumped</b> 292:16	
<b>IRS</b> 242:9,11	192:6,7 193:2 193:7,10,25	267:10,17,25 268:3,20	<b>JUNE</b> 186:8 <b>jurisdiction</b> 270:16	
isolate 257:8 258:11 265:5	194:3,7,11,19 194:23 195:2	269:4,22 270:8,17	<b>jurisdictional</b> 231:22 301:11 301:23 302:16	
276:23	195:12,15,19 195:23 196:1	271:10,14,20 272:4,9		
isolated 258:10 259:3,17	197:6,14,17,19	273:23,24		
265:1				
<b>issuance</b> 269:25				
<b>issue</b> 200:15 218:18 235:2				
235:10 237:1				

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

269:13	<b>Landoll's</b> 206:5	248:20 322:8	283:8 284:18	254:10 331:19
270:25 271:7	231:18 241:14	322:11	289:14,21	<b>litigated</b> 293:21
271:23 278:2	<b>Lane</b> 186:21	<b>Lena</b> 249:18	290:25 295:4	<b>litigation</b> 298:3
278:3,17,24	333:3,19	<b>lengthy</b> 266:24	295:9 301:3,5	<b>little</b> 203:10
279:6 280:7	<b>Lange</b> 249:12	<b>let's</b> 187:2	302:10,15	212:24
291:23 292:1,1	250:14,16	190:15 203:16	304:20,24	225:20 262:9
292:3 293:8	251:12 252:2	227:5 231:6	308:7,21	308:24
293:11,14,17,18	255:13 272:9	231:24 242:3	309:1,6 311:5	309:21
293:20,23	281:7 319:4,9	247:10 257:11	314:1,16 315:2	<b>load</b> 278:24
296:18 301:24	324:6,11,16	259:9,21	315:8,16	<b>locations</b> 308:8
305:4 307:14	325:17,24	260:20 276:7	328:4,5,14	308:22 309:1
308:23 309:4	326:21	278:1 284:8	331:23	309:18
319:14,21,22	<b>language</b>	286:12,16	<b>Liberty's</b> 198:2	<b>lock</b> 236:12
320:3 321:19	260:3,7,15	294:2 299:9	228:16 231:16	268:10
323:2,11	261:8,11 262:8	302:3 307:5	237:22	<b>logic</b> 197:1
324:16,19	264:15 281:4	307:19 309:10	267:21 270:12	<b>long</b> 202:18,19
327:9 329:25	289:24 297:1	315:7	278:2 279:18	202:24 211:7
332:15	297:8 298:4	<b>level</b> 262:2	283:15 294:5	243:25
<b>knowing</b> 262:1	<b>large</b> 208:2	269:9,9	294:8 295:1	257:10 266:3
262:2 289:23	242:18 253:17	275:2 296:9	296:22 297:7	<b>long-term</b> 211:4
324:14	263:7 268:21	296:9	313:13	211:15,25
<b>knowledge</b>	269:15 273:19	<b>liability</b> 214:23	<b>life</b> 232:18,18,19	214:8 236:22
189:3 205:22	274:7 275:7	215:6,8 216:8	243:14 244:18	238:12,23,24
212:12 229:1	275:15 278:16	216:10,11,24	244:19	239:2 248:23
251:6 253:19	278:19,25	218:19 219:7,8	<b>lift</b> 266:14	<b>longer</b> 252:5
282:16 289:11	279:1	220:6,9	<b>lifted</b> 270:15	<b>longest</b> 257:12
300:16 318:16	<b>larger</b> 230:25	226:10,17	<b>likelihood</b>	<b>look</b> 212:24
<b>known</b> 240:10	269:6,7 275:6	240:17,22	279:23	213:6,23
294:20 323:1	275:18,20	<b>Liberty</b> 187:6	<b>limitations</b>	240:14
<b>knows</b> 324:16	279:22	188:3,7	309:11	256:24
<b>KW</b> 266:17	287:23,24	198:20 201:14	<b>limits</b> 202:11	259:23 267:7
278:20	<b>largest</b> 257:21	202:2 205:6	<b>line</b> 211:6,9,10	268:7 276:9
<b>KWH</b> 266:22	<b>late</b> 244:19	212:20 214:2	211:14,18	276:10,19
268:14	257:2,12,18	218:1 219:5,7	217:24 226:12	277:7 320:5
278:20	277:10,23	219:12 221:24	228:10,15	324:21 326:13
	<b>latest</b> 257:5,18	222:5,10	260:22	<b>looked</b> 246:6
<b>L</b>	<b>law</b> 263:18	228:10 229:14	265:20	258:2 277:1
<b>L-A-N-G-E</b>	270:13 291:24	229:16	283:12,13,19	312:11
250:16	294:20	237:20,23	283:25 287:5	<b>looking</b> 193:18
<b>labeled</b> 253:13	327:14	242:6,11,13,14	<b>lines</b> 214:9	214:9 252:22
254:4	<b>lawyer</b> 232:12	247:2,12	297:18	259:11,25
<b>lack</b> 191:14	<b>lay</b> 255:3	249:12 255:9	<b>link</b> 206:8	260:19 261:10
234:13	327:13	258:1 265:25	<b>Lisa</b> 285:19,24	267:25 269:9
254:23 304:2	<b>lead</b> 288:1	270:10,15,18	285:25	276:15,18
<b>Landoll</b> 204:15	<b>leading</b> 202:20	270:19,20	<b>listed</b> 241:14	301:8 305:1
204:16 205:3	<b>left</b> 187:2 288:4	275:23	243:7 252:5	324:11,25
209:20 231:11	<b>legal</b> 217:10	276:18 283:7	253:16,21,24	<b>looks</b> 208:11

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

267:13 325:6 327:10 losers 269:11 loss 261:22 262:2,7 263:13,14,17 264:14 268:13 269:13 270:5 298:2 losses 274:15 lot 190:21 192:18 208:2 226:23 236:25 247:23 248:1 248:2 296:19 296:21 325:8 Louis 332:8 lower 243:22 243:22 274:16 295:19 Luebbert 317:12 317:24 318:1 319:1 323:12 323:23 324:7 324:9 326:1,7 329:6,20 lunch 299:6,7	331:24 332:14 manual 197:2 manuals 191:9 March 223:19 257:3,13,19 277:10,23 Mark 330:18 331:24 marked 188:17 205:12 210:18 210:19,20 228:1,2,3 250:22 253:4 282:4 300:5 302:23 318:7 326:18 mask 187:19 matches 254:13 matching 278:4 material 257:17 materials 191:1 math 273:14 275:21 303:22 304:14 mathematically 254:7 matter 187:14 204:20 207:13 210:1 227:11 250:5 272:2 281:12 299:13 317:15 matters 269:8 271:22 272:2 maximum 193:16 314:9 McMellen 209:22 210:10,12 214:6 220:4 227:2 240:24 330:24 McMellen's 328:12 mean 221:3 225:3 232:3	246:18 264:8 293:9 294:14 294:18 296:12 306:15 meaning 280:5 means 264:8 meant 200:11 measurements 203:13 measures 191:3 MECG 189:14 206:22 214:2 229:12 251:13 251:16,20 253:4 272:5 283:5 300:25 307:25 318:23 321:9 329:14 mechanism 239:14,21 242:22 243:3 262:21 269:23 270:24 278:7 279:4 280:1,4 287:11 289:7 289:9,12,16 294:3,5,10,15 298:25 319:4 319:8,11,18 323:7,7 mechanisms 271:13 media 186:12 meet 199:4 megawatt 301:16 megawatts 303:18,23 304:10,11,23 Melissa 186:21 333:3,19 members 207:22 mention 252:3 301:10 321:13	321:14 mentioned 201:2 212:21 278:3 279:5 280:13 285:25 294:3 294:19 merams 266:14 met 196:20 305:16 306:3 method 275:6 275:14,18 mia 254:8 266:14 271:12 Michael 258:21 331:22 microphone 309:21 333:9 333:15 mid 257:1,1 mid-January 277:14 middle 254:2 Midwest 207:9 million 211:18 218:21 222:1,3 222:25 223:24 224:2 241:5,6,7 245:5,6 247:4 247:6,9 mind 238:21 minimal 193:16 minimum 314:9 314:10 minute 231:25 310:25 misidentified 333:15 misinterpreted 186:15 Missouri 186:4 189:12 270:13 270:21 301:11 301:20,23 302:15 310:7 312:19 327:14	333:4 Missouri's 271:13 312:24 misspoke 280:18 mixing 193:19 Mocindy 331:22 332:4 model 193:14 modification 203:1 modifications 233:13 modified 321:10 329:14 moment 264:23 307:6 327:4 money 220:10 242:16 244:1 month 256:16 277:2,6 months 203:6 256:23 258:12 277:11 morning 187:7,9 189:16 202:15 207:5,6 212:22 213:7 227:18 249:19 250:14 260:18 281:10 302:20 315:18 317:21 331:17,18 332:20 move 190:23 205:24 208:5 212:16 247:10 265:18 278:21 287:1 307:24 311:6 315:7 332:13 moved 211:4 220:21 moves 247:21 263:8 moving 209:21
<b>M</b>				
magnitude 208:17 295:24 main 279:2 maintain 291:13 maintained 314:23 making 277:16 284:19 327:11 330:8 manager 282:1 318:4 323:14 managers 207:22 manner 262:25 Mantle 249:18 296:1,7 331:16				

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

239:12,19 287:9 319:17 <b>multiplied</b> 246:11 <b>multiply</b> 245:16 245:22 246:1 <b>multitude</b> 325:9 <b>Mushimba</b> 187:3,6,18,25 189:19 190:15 197:22 201:17 204:12 309:16 315:18	201:22,25 310:7 312:18 312:19,24 <b>nature</b> 197:3 286:21 <b>near</b> 235:4 327:5 <b>Nearly</b> 208:19 <b>necessarily</b> 212:22 280:11 280:23 329:25 <b>need</b> 195:6 198:13 201:12 209:17 211:6 213:6,15 222:16 225:16 256:24 257:19 262:4 263:19 264:6 266:10 267:1 268:18 269:18 270:6 275:8 280:20 285:8 307:17 308:9 327:8 329:22 330:1,20 331:25 332:10 332:14 <b>needed</b> 199:4 279:20 <b>needs</b> 235:8 270:2 291:22 <b>neglected</b> 260:17 <b>negotiations</b> 293:5 <b>neither</b> 289:6 <b>NERC</b> 199:9 315:3 <b>net</b> 222:20,22 223:21 225:8 229:21 230:19 238:18 241:6 245:10,12,12 247:7 <b>never</b> 195:23	223:7 238:21 250:1 310:13 310:16 312:14 <b>new</b> 211:18 220:12 252:16 252:22,23 266:9 <b>non</b> 254:6 256:14 <b>non-bypassa...</b> 271:15 <b>non-rate</b> 256:15 <b>normal</b> 258:2 277:1 <b>normalization</b> 230:11,12 234:11,14,17 235:2,5 236:13 256:10 258:24 259:3 259:18,19 277:19 <b>normalized</b> 230:14 266:21 <b>normally</b> 202:25 <b>NOS</b> 186:7 <b>note</b> 252:4 254:5 266:20 332:4 <b>noted</b> 291:22 <b>notes</b> 321:3 <b>noting</b> 324:5 <b>NPV</b> 233:14,21 245:23,24 246:2,2,5,9 246:16 <b>number</b> 190:17 191:2 192:21 198:6,7,7 201:6 203:22 211:10,18 218:22,22 219:3 222:24 223:2 230:25 231:1,2,18,21 236:5,12,21	237:21 253:21 254:12 256:4 257:21 258:15 262:1 272:17 278:18 295:13 304:8 320:9 329:1 <b>numbers</b> 208:23 209:3 223:9 251:16 253:20 270:6 325:8 <hr/> <b>O</b> <hr/> <b>o'clock</b> 227:5 299:8,9 <b>O&amp;M</b> 248:1 <b>object</b> 206:13 254:23 286:17,18,19 304:1 322:7 325:20 <b>objection</b> 202:20 206:4 206:11 212:20 215:12,13 217:10 225:2 251:11 255:6,8 300:23 304:4 316:5,9 326:2 327:12 330:8 <b>objections</b> 189:10 213:19 229:7 282:25 318:21 327:24 <b>obligation</b> 231:4 245:4 280:19 <b>obligations</b> 231:9 <b>obnoxious</b> 262:18 <b>obtaining</b> 279:24 <b>obviously</b> 235:13 <b>occur</b> 288:19 <b>occurred</b>	200:24 253:18 277:7 <b>occurs</b> 268:11 291:6 <b>October</b> 208:12 <b>offer</b> 189:5 224:12 229:3 251:8 254:20 254:21 282:22 300:18 318:18 327:18,20,21 <b>offered</b> 189:10 206:10 213:5 213:19,22 229:7 251:10 282:24 300:23 318:21 321:20 327:25 <b>Office</b> 295:17 296:15 <b>officially</b> 213:9 <b>offline</b> 311:21,25 <b>offset</b> 216:11 230:20 241:5 256:16 <b>Oh</b> 202:17 288:14 316:16 <b>oil</b> 191:3 192:23 194:25 195:20 198:7 200:20 201:5,6,21,23 202:1 203:9 203:13,18,18 203:20,23 305:12 306:13 306:14,19,20 309:2,10,13,17 <b>oils</b> 198:25,25 198:25 199:4 <b>okay</b> 193:2,25 194:19 195:2 196:1 197:19 198:13 199:16 204:11 206:17 209:20 211:2
--	--	--	---	---

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

211:20 212:1,3 212:7,15,18 213:1,17 214:25 216:1,7 217:22 218:9 218:18 219:2 219:15,23 221:9,14 223:1 223:8,11 224:1 224:8,11,23 225:24 226:8 226:24 228:15,18 229:11 230:2 230:15 231:24 233:16 234:10 236:4 238:14 238:17 239:7 239:11,25 240:25 241:8 241:16,21,23 242:16,21 243:9,11,25 244:22 245:4 245:16 246:8 246:25 247:10,16,23 248:23 249:2 249:10,20 250:2 253:3 253:10 255:4 255:9 256:3 260:9 267:10 267:17 268:20 269:4 270:8 271:10 274:7 276:25 277:20 278:1,1 283:4,24 284:12,17 286:8,23 287:1 288:9 290:1,24 294:2 295:21 297:15,21 299:10 302:9 303:2 305:4	305:9,17 306:5,9 307:18 308:13 311:17,19,23 312:4,7,10,13 312:22 313:24 314:4 317:19 320:4 321:16 321:23 323:10 324:8,9,21 326:4,13,17 327:1,8,22,25 328:7,21 329:6,10 330:14 331:2 331:9,13 332:6,12,16 <b>Oklahoma</b> 301:20 302:4 <b>old</b> 253:11 <b>once</b> 242:13 246:22,23 247:20 264:1 312:11 <b>ones</b> 208:4 218:14 257:18 311:19 324:1 <b>online</b> 192:4 209:13 217:20 237:18 304:18 328:8 <b>OPC</b> 219:4,10 237:13 266:5 <b>OPC's</b> 295:21 <b>open</b> 273:22 333:9,15 <b>opened</b> 274:5 <b>opening</b> 231:6 239:12,19 287:9 <b>operable</b> 311:20 <b>operate</b> 193:23 194:4 195:4 196:9,17 197:12 200:7 203:15 278:21 279:3 289:20	291:1 294:24 305:11,15,16 315:14 <b>operates</b> 191:4 191:5 <b>operating</b> 200:6,6,9 306:13 <b>operation</b> 190:1 201:8 271:12 <b>operations</b> 188:4,5 191:9 197:2 <b>operator</b> 198:20,22 <b>opinion</b> 222:12 223:15 307:12 322:9 <b>Opitz</b> 229:13 251:14,18,22 252:1 254:18 254:21 255:1 272:6,8 273:22,25 274:1 275:22 283:6 308:1 318:25 322:10 322:12 323:19 323:22 324:4 324:9 325:23 326:4,7,17,22 326:24 327:2 327:15,20 <b>opportunity</b> 289:22 330:7 <b>opposed</b> 243:1 269:5 287:19 287:22 288:5 290:23 309:18 <b>opposing</b> 298:23 <b>opposite</b> 256:9 <b>optimal</b> 289:20 291:1 <b>optimally</b> 294:25	<b>optimized</b> 189:22 <b>optimum</b> 193:19 202:13 <b>option</b> 292:2 295:18 <b>options</b> 296:11 <b>order</b> 208:17 249:13 252:21 260:14,25 261:20 264:2 265:23 267:2 267:6 270:1,3 270:7,15,20 280:22 297:2 320:6,13,21 321:25 322:4 326:21 327:21 327:23 329:1 329:8 331:19 <b>ordered</b> 254:14 296:3 <b>orders</b> 270:6 289:25 322:13 <b>ordinarily</b> 192:17,22 <b>original</b> 208:20 <b>originally</b> 238:22 <b>outages</b> 312:11 <b>outcomes</b> 272:21 <b>outline</b> 267:20 267:24 <b>output</b> 193:20 <b>outside</b> 197:12 200:6,9 <b>overall</b> 243:2 <b>overpaying</b> 244:18 <b>overrule</b> 304:3 316:8 <b>Overruled</b> 215:13 <b>overshoot</b> 236:11	<b>owner</b> 198:19 198:22 <b>oxygen</b> 193:18 202:8 <hr/> <b>P</b> <hr/> <b>page</b> 198:4,5,18 209:1,2 211:2 211:6,9,14,17 214:7 217:24 217:24 226:5 226:8 228:9 231:19 237:19 253:20 254:3 260:21 261:10 261:23 281:1 283:12,18,25 297:15,20 320:9,25 328:11 329:7,7 <b>pages</b> 198:5 206:6 283:12 283:17 333:11 <b>pagination</b> 209:1 <b>paid</b> 220:11,14 232:10,16 244:1 <b>paper</b> 259:20 327:7 <b>papers</b> 218:24 218:25 224:5 224:7,12 259:25 <b>paragraph</b> 198:6 321:6 329:11 <b>paraphrasing</b> 231:14 <b>parenthesis</b> 211:15 <b>part</b> 199:12 214:25 216:23 216:23 219:21 224:9 233:3 235:8,18 260:13 267:2
--	---	---	--	--

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

269:25 284:2 284:17 286:5 290:13 319:23 322:22,23,23 331:17 <b>participate</b> 207:16,19 <b>participated</b> 207:21 <b>participating</b> 322:14 <b>particular</b> 197:8 260:5 <b>particularly</b> 206:6 207:15 266:11,22 269:1 278:23 <b>parties</b> 207:8 212:5 213:3 213:23 224:25 249:11 265:22,22,25 266:12 267:10 269:23 287:17,25 292:10 <b>parties'</b> 224:19 225:5 <b>parts</b> 252:18 <b>party</b> 202:3,5 263:16 293:1 <b>passed</b> 287:2 297:23 298:1 <b>pay</b> 242:13,16 242:18 273:11 319:12,19 <b>paying</b> 219:9 232:5 243:22 243:23 <b>payment</b> 245:6 279:24 <b>payments</b> 242:9,10 <b>pays</b> 232:11 242:12 246:11 <b>peak</b> 317:4,6,6 <b>peaking</b> 315:16	316:25 317:1,2 <b>peaks</b> 315:16 <b>pending</b> 297:5 297:8 <b>percent</b> 211:5 221:5 233:19 234:7 246:11 275:5,7,7,15 284:10 287:22,22 290:5,13,22 290:23 298:14,14,18 <b>percent's</b> 275:9 <b>percentage</b> 245:22 275:19 278:18 278:19 289:10 <b>percentages</b> 268:6 280:21 <b>perform</b> 202:10 <b>performed</b> 230:13 <b>perimeters</b> 200:6,9 201:25 298:11 <b>period</b> 196:22 217:2 256:6 256:17,20,25 257:8,12,22 265:2,8,10 276:23 277:14 <b>periods</b> 265:5 <b>Permission</b> 198:13 <b>permit</b> 194:23 195:9,14,21,24 196:7,9,17 197:23 198:2 203:11,14 305:16 306:11 306:12,18,25 309:12 313:13 313:23,25 314:19,22 <b>permits</b> 195:13 196:4 312:17	<b>permitted</b> 198:8 198:24 199:3 298:13 <b>person</b> 239:23 285:22 <b>personally</b> 207:15 <b>persons</b> 286:2 <b>PETITION</b> 186:5 <b>phonetic</b> 187:4 239:24 254:6 266:15 271:12 274:6 285:20 331:22 <b>phrase</b> 281:2 <b>piece</b> 216:18 231:22 <b>place</b> 191:23 292:5 294:21 <b>plan</b> 315:8 <b>planned</b> 304:21 <b>planning</b> 202:18,19,22 203:6 <b>plant</b> 193:4 196:15 200:11 200:15,24 223:5 238:5 238:5 248:3 <b>play</b> 301:17 331:20 <b>plays</b> 235:18 <b>please</b> 187:12 205:2 210:10 215:16 227:8 227:19 240:15 250:2,14 267:19 281:21 283:19 299:11 299:22 317:24 <b>point</b> 197:11 201:12 204:3 213:18 216:1 224:13 225:12 225:17,21 277:15 285:8	286:9,15 306:24 311:2 321:3 326:3 328:24 330:19 <b>points</b> 330:17 <b>policy</b> 327:8 <b>pollution</b> 203:11 <b>portion</b> 219:14 220:5 221:6,7 223:6 276:21 277:5,6 <b>portions</b> 186:12 186:14 277:4,5 <b>position</b> 217:25 218:20,22 220:17,23,25 228:16 237:13 237:13 240:16 240:21 241:2 261:17 323:12 328:13,19 <b>positions</b> 224:19 225:4 225:6 <b>positive</b> 244:1 <b>possesses</b> 244:5 <b>possible</b> 193:24 234:21 236:23 276:24 <b>possibly</b> 234:24 257:2 258:24 <b>post-weather</b> 259:19 <b>potential</b> 249:13 266:17 272:21 278:10 332:11 <b>potentially</b> 278:16 279:1 287:20 296:5 <b>power</b> 193:7 248:17,20,25 269:16 273:19	274:7 275:7 275:16 283:16 284:18,21 285:16,23 290:8,16 291:3 <b>practice</b> 237:25 <b>practices</b> 277:17 <b>pre-filed</b> 205:11 <b>pre-mia</b> 254:6 254:6 <b>pre-weather</b> 259:18 <b>prefer</b> 268:25 <b>preliminary</b> 197:9 <b>preparation</b> 207:16 <b>prepare</b> 205:11 321:9 333:6 <b>prepared</b> 188:9 188:13 206:9 210:17 227:25 250:21 259:16 266:13 300:4 318:6 321:4 <b>preparing</b> 321:8 326:10 <b>present</b> 186:16 224:7,12 225:1 229:21 230:19 241:6 245:10,12,12 247:7 333:9 <b>presented</b> 218:23 329:15 <b>presents</b> 259:2 <b>preserve</b> 239:14,21 287:15 <b>preserving</b> 288:2 291:15 333:10 <b>pressure</b> 311:24 312:3 <b>pretty</b> 266:6,7
---	---	--	---	---

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

prevail 275:13	product 207:8	proved 218:8	330:8	192:5,6,7
previous 218:7	Professional	proven 218:6,15	purported	196:2 197:14
289:25 312:4	333:5	provide 229:21	256:3	197:15 199:23
previously	profit 221:9	255:17 256:3	purports	201:9 204:9
294:19,23	prohibited	260:2 289:21	292:22 327:2	205:17
323:24	203:18	290:25 323:5	purpose 261:14	206:24 209:9
primary 195:5	297:22	provided 213:3	262:11 291:4	209:12,12,15
196:11 253:18	prohibition	253:14,20	purposes 188:9	209:17,19
263:8 329:15	298:7	285:13 330:13	232:7 243:17	212:8 217:15
prime 197:12	project 207:22	provides 301:19	258:9 259:16	217:18,19,21
261:23	208:5 275:1,1	providing 323:4	261:18 277:18	217:23 219:24
print 260:17	projects 205:7	provision	286:20 314:1	219:25 222:15
prior 256:10	207:21 223:7	203:14 261:19	314:14	226:1 228:21
265:23	promulgated	263:23	put 219:4 220:11	229:13 237:15
probably 201:12	267:8	264:18 271:15	puts 203:25	237:18,19
206:4 231:20	pronunciation	provisions	204:1	241:22,23
236:18 239:5	285:21	266:16 293:9	<u>Q</u>	242:3 249:2
240:23	proper 240:5,8	prudency 218:11	qualified	251:2,14
255:16	240:13 248:6	prudent 218:1	295:16	254:18 262:18
285:20	proposal	328:13,17	quality 186:12	265:13,17,18
303:22	269:21 272:10	public 186:4	quantifiable	265:19,20
problem 212:22	272:11,22	188:13,18	229:21	266:3 272:4,5
250:1	273:12,13	189:6,9 190:12	quantities	275:24 276:2
procedure	278:15 279:11	199:24 201:11	253:24	281:5 282:12
191:21,22	279:15,18,19	205:12,25,25	question 188:11	282:15 283:6
procedures	280:5,15	206:21,25	203:7 214:25	286:14 287:3
197:1	290:19 295:21	218:3 224:18	215:14,17	287:4,7
proceeding	296:10 319:13	228:1 229:4	217:23 222:17	288:10 292:12
188:10 261:6	319:20	237:17 265:15	222:18,19	299:2 300:11
261:13 262:11	proposals	275:25 283:7	226:2 235:7	300:12 301:2
proceedings	278:3 295:15	287:2 288:16	238:15 239:17	304:15,17,18
210:17 227:25	propose	295:17 296:16	240:24,25	304:19,20
250:21 282:3	274:24 325:11	300:6,19,22	252:10 257:10	307:23,24
300:4 318:6	proposed	300:25 308:2	258:18 259:7	308:1 311:6
333:7,8,13	222:20,22	328:1,3,15	260:24 261:1	316:7 317:9
process 189:20	260:3,7	329:25 330:6	261:2,15	318:12 326:6
193:17,18,22	270:10 271:15	331:15 332:13	263:11 267:18	327:16 328:3
202:18,19	274:8 275:5	purchase	279:22	328:6,8,9,22
217:6 222:18	275:13 284:6	248:17,20,24	283:19 287:6	329:18
229:25 232:8	290:6 295:10	283:16 284:18	287:6 288:11	quick 231:5
235:8 265:25	301:9 307:10	284:21 285:17	294:18 296:6	quickly 236:24
266:23 269:5	307:11,12	285:23 290:8	301:13 304:5	quite 202:6
269:25	319:4,18	291:3	306:16 309:10	quote 297:25
produce 321:11	proposing	purchased	322:2	quoted 260:18
produced	233:25 234:2	290:16,16	questions	280:25
199:13 258:15	265:25 273:2	Purdell 258:21	188:23 192:3	297:18
259:7	290:13	purport 257:24		

**AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022**

<p align="center"><b>R</b></p> <p><b>raise</b> 187:12 209:24 227:9 250:3 299:11 317:13 <b>ran</b> 223:15 <b>range</b> 191:4 193:24 <b>rapidly</b> 267:24 <b>rate</b> 211:8 214:8 214:24 218:11 218:13 220:14 220:18,21,25 225:19 230:7 232:21,25 233:6,7,20,24 243:19,20 245:14,17,20 246:1,3,6,11,14 247:14 248:10 248:14 250:19 252:8,12,14,17 252:22,23 253:11,18 254:14 255:18 255:19 256:4 256:10,11,18 258:8,15,22 259:5 260:1 261:13 263:13 263:15 264:4 265:4,9 268:8,14,14 269:7 270:22 271:24 274:10 274:19 276:8 276:11 277:19 278:8,10,13 279:1,3,8,11,13 279:23,24 295:10,19,19 295:22 318:4 319:25 320:2 320:7,19,20 321:17,21 323:6,14</p>	<p><b>ratemaking</b> 232:7 240:13 243:17 <b>ratepayers</b> 220:14,24 222:10 242:14 244:1 <b>rates</b> 214:15 215:3,6 216:3 216:15,23 220:12,12 238:6,9 243:24 247:10 252:15 252:23 271:3 278:16 320:16 322:15 <b>ratio</b> 189:21 193:18 289:13 <b>re-establish</b> 192:25 <b>re-established</b> 192:20 <b>reach</b> 302:8 332:10 <b>reaches</b> 191:24 <b>read</b> 254:12 264:6,9 280:24 298:6 298:10 313:13 313:22 314:22 320:17 327:4 <b>readily</b> 266:20 <b>reading</b> 230:15 264:15 267:4 306:11 309:12 310:1 313:24 <b>ready</b> 299:10 <b>real</b> 231:5 232:24 236:24 267:16 288:23 <b>reallocate</b> 279:15 <b>really</b> 191:14 203:24 225:3</p>	<p>238:13 257:7 259:8 261:9 283:25 295:9 <b>reason</b> 203:17 203:21 240:12 272:15 274:4 298:3,9,15,15 312:5 <b>reasonable</b> 218:2,5,7,8,15 220:19 222:13 296:11,16,17 328:15,17,20 <b>reasonably</b> 264:9 <b>reasons</b> 311:25 <b>rebase</b> 279:13 279:14 <b>rebuttal</b> 210:18 210:24 211:6 214:6 217:25 228:1 237:19 239:9 250:22 252:2 255:13 260:22 282:4 282:7 297:16 300:5 318:7 328:12 <b>recall</b> 190:18 200:4 207:10 242:23 254:16 295:8 295:17,24 296:8 297:4 308:6,19 <b>receipt</b> 189:11 229:8 251:11 282:25 300:23 318:21 327:24 <b>receive</b> 244:16 245:20 279:20 304:11 <b>received</b> 189:11 206:21 213:20 213:21 229:8 251:12 255:8</p>	<p>283:1 300:24 318:22 327:25 330:10 <b>receives</b> 217:6 217:6 242:14 <b>receiving</b> 244:25 <b>recognize</b> 263:16 326:8 <b>recognizes</b> 326:1 <b>recommend</b> 261:16,18 <b>recommenda...</b> 221:15 248:5 248:23 316:21 <b>recommenda...</b> 322:19 <b>recommended</b> 193:22 199:17 262:21 315:22 <b>recommending</b> 275:9,11 <b>recommends</b> 235:24 <b>recomprised</b> 268:9 <b>reconciliation</b> 224:19 225:4 225:12,13 242:22 243:3 <b>reconciliations</b> 268:16,19 <b>reconfigured</b> 253:15 <b>record</b> 206:10 206:15 210:11 212:17 225:22 227:6,19 229:5 250:15 251:9 254:22 281:22 299:23 300:20 317:25 318:19 331:7 333:10</p>	<p><b>recorded</b> 186:12 <b>recording</b> 186:3 186:17 333:16 <b>recover</b> 221:24 222:6 269:15 271:22 272:23 298:14,17 320:16 <b>recovered</b> 230:17 239:13 239:20 275:10 287:10 <b>recovery</b> 221:5 237:21 275:14 279:19 297:2 297:13 <b>recross</b> 197:15 209:17 219:24 222:19 226:1 241:22 288:10 288:13 307:24 328:21 <b>redirect</b> 209:18 219:25 222:19 226:2 276:3 292:14 311:6 328:22 <b>reduce</b> 232:21 <b>reduces</b> 288:3 <b>reduction</b> 298:3 <b>redundant</b> 196:25 <b>refer</b> 203:10 277:11 313:1 320:10 <b>reference</b> 214:10,11 257:17 289:3 289:12 324:6 327:6 <b>referred</b> 198:25 203:10 218:14 226:6 315:8</p>
---	---	--	--	--



AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

referring 196:8 198:20 261:24	relevance 325:20,21	256:5 274:3	resrams 271:12	265:10 268:7
refers 243:13 270:22 271:2	reliability 314:14	represents 304:9	restart 192:14	274:9,11,15,20
reflect 243:24	reliable 266:22	reproduction 333:12	restarted 299:10	276:7
reflected 226:12,13 243:19 303:25 304:12	rely 278:7	request 237:20 237:23	result 200:22 215:8 216:12 217:5 229:24 235:22 284:5	revenues 253:13,22,23 255:14,20,25 256:5 258:1 262:22 303:14,18,23 304:9
reflects 228:15	remain 261:4 264:7 287:19	request 237:20 237:23	results 202:1 234:22 320:13 321:11	review 252:25 257:5 283:15 284:2,5,17 286:2,5,21 330:7
refresh 279:14	remaining 319:16	requested 285:23 295:4 330:25	retired 221:16 221:18 223:6	reviewed 231:10 282:3 284:20
regard 237:25 258:2 267:6 272:17 289:14 331:15	remember 230:19 233:19 239:4 242:4 291:23 295:1 309:15	require 266:16 269:23	retirement 214:20 215:1 215:10,22 216:4,14 217:3 218:2,4 223:17 226:11 231:4,9 304:22 328:14,16	reviewing 252:15
regarding 267:18 283:20	remind 251:18 331:16	requirement 195:16 233:4 233:5,9 246:13 262:25 263:2 314:4,8,9,9,11	return 215:3,5,9 216:2,7,12,16 216:17,21 217:7 219:8 220:5,8,10,15 220:18,20,21 220:23 221:3 221:4,6,6,9,11 221:11 226:18 233:3,5 256:15,18 289:22	right 187:1,12 189:9 190:11 199:24 209:24 213:12 217:19 225:25 227:9 229:6 230:19 236:5 236:21 239:4 242:19 249:3 250:3 262:16 274:25 277:21 277:24 280:25 281:6 286:10 287:5 289:10 290:2 291:11,23 292:17 299:3 299:11 301:3 304:16,19 309:6 311:1 312:17 313:8 314:12 315:23 316:18,19 317:13 318:20 325:1 327:17 329:2,20 330:24
regardless 263:20 313:25 314:24	reminder 221:2	requirements 195:17 199:5 306:22		
Registered 333:5	remotely 330:19	requires 260:11 313:10		
regular 204:7 266:7 286:13 307:22 311:4	remove 211:7	resent 254:14		
regularly 315:19 316:11,12	removed 208:19 219:18 223:18	reserve 287:11		
regulations 262:19	Renew 189:12	reserved 330:2		
regulatory 199:5 210:15 218:19 220:6 220:9 240:17 240:22 241:19 270:13 282:1	repair 238:4 248:3	reset 295:5		
relate 304:20	repeat 215:16 239:16 240:18 294:12 322:2	residential 263:5 264:13 279:10 320:15		
related 219:14 238:4 258:13 280:4,11 301:9 303:14	rephrase 294:12	resolve 267:12		
relating 296:23	replace 248:3	resource 315:7		
relation 261:14	replacement 238:5	resources 282:2 283:21 300:3 310:7 312:19,19,24		
relationship 247:1	report 320:6,21 326:21 327:20,23 329:1,8	response 200:4 218:24 254:25 271:9 285:15,16 315:20		
	reporter 333:1,4 333:4,5,9	responsible 310:17		
	represent 243:12 256:19			
	representation 274:5			
	representatio... 280:3			
	representing			

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

332:16	192:6	scrutinize	see 190:16	serve 221:21
<b>Riley</b> 331:24		230:25	208:25	279:20
<b>risk</b> 240:2,5	<b>S</b>	235:23	224:24 231:6	302:12
278:15 279:18	<b>safe</b> 303:12	<b>scrutinized</b>	253:13,14,15	<b>served</b> 263:8
279:19 287:17	310:12,16	218:8 230:21	253:15,23	271:23 273:6
288:3	<b>sales</b> 256:5	235:24 236:8	254:11,12	<b>serves</b> 302:4
<b>Riverton</b> 190:24	261:22 262:2	240:6 242:15	260:10 264:14	<b>service</b> 186:4
191:4 192:22	262:7 264:11	<b>scrutinizing</b>	279:1,7	205:6 253:17
194:24 195:20	264:13 268:13	229:20 240:1	283:22 284:2	263:5 271:3
196:3,14	270:5,5 271:3	<b>se</b> 206:4	287:20	301:19 319:24
203:15 301:9	271:22 273:16	212:20	298:18 305:2	320:2,14,16
301:17,19	275:2 278:19	<b>seal</b> 203:4	325:14,15	321:4,17
305:9 306:24	280:6,16	<b>seasons</b> 316:17	<b>seeing</b> 202:9	<b>session</b> 201:11
307:10 309:2	284:19,22	<b>second</b> 260:21	303:10	204:8 286:13
309:12,13,18	<b>salvage</b> 209:4	290:4 329:11	<b>seek</b> 237:21	307:22 311:4
310:18 311:12	<b>Sarah</b> 249:12	<b>secondary</b>	274:9	<b>set</b> 192:24
311:12,18,25	250:16 325:16	253:18 264:13	<b>seeking</b> 221:24	257:21 295:15
312:2,4,5,7	<b>satisfy</b> 206:17	<b>secondly</b> 195:6	222:5,10	332:7
313:18 315:25	<b>save</b> 260:17	196:13	272:23 292:8	<b>SGS</b> 279:10
316:4,11,24	<b>saying</b> 234:13	<b>section</b> 314:3	<b>seeks</b> 230:24	<b>share</b> 222:10
<b>Robinett</b> 307:13	264:14 270:4	<b>sections</b> 196:2	235:23	<b>shared</b> 212:4
331:24	297:12 306:6	196:7 333:14	<b>seemingly</b>	<b>shareholders</b>
<b>Robinett's</b>	<b>says</b> 196:11	<b>securitization</b>	262:17	216:19
307:8	198:12,19	217:8 220:22	<b>seen</b> 213:10	<b>sharing</b> 216:19
<b>ROJ</b> 200:4	199:12 254:1	229:25	231:7 238:2,8	239:14,21
<b>role</b> 322:18	261:4 297:25	230:18 231:2	238:11,11	287:11 289:3,7
323:16	306:18 314:3	233:25 234:5	253:5,7 279:9	289:8,12,16
<b>room</b> 302:20	320:13,18	234:8 235:14	289:24	294:3,5,10,15
317:20 324:11	321:6 325:2	239:13,20	295:22 303:9	298:25
<b>roughly</b> 241:4,7	329:12	242:12 244:8	<b>sell</b> 242:17	<b>sheet</b> 191:1
<b>routinely</b> 190:4	<b>scenarios</b>	260:11,14	<b>sending</b> 194:21	271:16 301:25
<b>rows</b> 325:9	273:10	263:1 264:2	<b>senior</b> 188:3	305:2,5 324:3
<b>RPR</b> 333:19	<b>schedule</b>	276:13 287:10	<b>sense</b> 256:15	325:1,5
<b>rule</b> 297:22,25	197:23 198:4	287:16 288:3	256:18 278:12	<b>sheets</b> 270:9
298:4	208:25 209:2	288:5 289:4	<b>sensitive</b> 280:1	<b>shifting</b> 321:25
<b>rules</b> 199:8	218:23 239:9	289:6 291:16	<b>sent</b> 330:13	322:4 332:11
234:11,14,17	260:4	291:16,24	<b>sentence</b>	<b>shifts</b> 322:15
<b>ruling</b> 212:23	<b>scheduled</b>	292:4 294:19	214:15 262:6	<b>short</b> 211:7
213:17,22	330:18	297:11 298:18	264:6 329:12	238:12 266:6
330:2	<b>schedules</b>	298:22	<b>sentiment</b>	<b>short-term</b>
<b>run</b> 194:16	207:8 253:19	<b>securitize</b>	322:21	211:14,25
195:11 196:21	330:3	287:22 292:1	<b>separate</b> 237:1	238:23
256:13 287:16	<b>scheduling</b>	292:2,9	255:25 313:8	247:19,20
309:2,13	249:13 331:16	<b>securitized</b>	330:15	<b>shortfall</b> 278:22
<b>running</b> 191:22	<b>scope</b> 283:21	287:20,25	<b>separately</b>	<b>Shorthand</b>
201:21	316:6	<b>securitizing</b>	201:22,22	333:4
<b>RYAN</b> 187:7	<b>Scribe</b> 213:12	319:4	<b>series</b> 257:14	<b>shot</b> 270:11,14

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

show 273:25 324:13	302:19	speak 208:23	238:23 240:3	195:4,7 196:10
shown 224:4 259:20	situations 238:7	289:6,8	241:25 243:1	196:15,18,20
shows 324:14 326:15	slash 257:25	309:22	249:16 250:11	197:8 199:4,8
SHull 198:24 199:3,13 261:4 264:7	slated 272:19	328:19	250:18 258:19	201:11 242:3
shut 191:13	slight 223:23	speakers	258:21 267:21	260:20 276:7
shutting 191:13	SLKL-R2 260:4	186:15 333:15	275:9,11	283:19
sic 202:8 218:11 259:19	small 278:18	speaking	276:4,10	290:24 301:15
side 328:24	smaller 269:18	242:10 243:11	281:18,25	306:21 309:10
signatory 293:3	275:10,11	specific 239:1	283:20 284:1	310:21 313:10
significance	softly 309:22	266:8 268:19	284:6 285:10	313:17 314:23
267:22	sold 199:13	289:3 296:25	285:22 286:1	started 187:2
significantly	268:14,15	297:8	286:5,21	295:10 312:14
247:3 266:9	solemnly 187:13	specifically	290:7,7 296:8	starting 194:20
274:16	204:18	233:16 286:1	296:12 299:19	211:2,14 214:19
Silvey 187:7,8 192:6	209:25 227:9	289:12 293:10	300:1 311:8	257:1,15
similar 195:16 225:18 248:8	250:3 281:11	specimen	318:3 319:19	283:18 310:17
248:8 259:23	299:12 317:13	260:6 261:11	320:1 321:7,13	starts 196:23
271:11 289:5	somebody	speculation	321:14,16	228:9
289:24 310:18	192:9 298:23	304:2 323:2	323:10 328:16	state 187:24
318:14 324:23	someone's	speed 194:16	328:19,24	195:16 199:5
325:6	259:11	spike 296:18	staff's 206:18	205:2 210:10
similarly 194:7	somewhat	split 189:21	217:25 220:5	210:13,25
simple 232:24	230:7,9,10	253:17	220:17,23	227:18
258:18 259:6	234:12	SPP 223:18	222:12,20	237:20
262:18 266:3	296:24	303:14,17,22	223:24 224:3	250:15
270:4 303:22	sorry 201:5	304:9 313:4,5	224:4 226:15	260:24,24
303:24	208:20 222:3	313:10,25	231:2 235:19	262:5 281:21
simply 206:15	241:13 248:12	314:4,25	240:15,20	290:11 294:13
256:9 259:18	250:2 252:18	spread 257:4	256:12	299:22
261:19,25	255:21 260:16	St 332:8	259:25 261:17	317:24
262:5 273:2	263:1 264:11	stable 190:1	268:12 270:9	stated 212:8
single 259:4,15	269:3 270:19	staff 189:14,16	271:11,15,19	217:25 218:20
sir 188:8 189:1,4 190:19 201:19	283:17 287:2	197:18 206:22	274:15 275:12	294:23 315:18
261:3	288:14 292:15	206:23	275:19 280:3	328:12
sitting 236:6	297:17 307:3	209:22 210:7	280:13,15	statement
situation 195:9	299:17 307:3	210:14 212:16	283:14 284:17	218:22 231:6
236:10,13	309:23 312:5	212:16,16,17	307:12 322:18	240:3 261:17
287:21 291:4	322:2	218:3,10,20	323:7 327:8	310:2
	sort 234:18	219:7,17 220:1	328:13	states 240:1
	235:1 265:8	223:8,15	Stallman	292:25 302:8
	277:17 286:4	224:11 225:22	258:21	302:12 329:17
	290:1 310:3	225:22 226:4	stand 187:20	stating 297:2
	sought 274:16	227:22,24	204:17 302:21	station 195:7
	sounds 224:21	229:19 234:7	standard	statute 217:8
	source 192:21	235:15,23	238:13 315:3	243:6 260:11
	195:6 196:11	237:4,7,10,12	start 192:11,13	260:16,24
	span 257:3	237:12 238:17	192:25 193:3	261:19 262:5

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

264:18,21 267:5 269:22 271:14 280:24 289:4,5,6 <b>statutes</b> 281:1 <b>statutory</b> 263:22 <b>stay</b> 285:9 <b>steady</b> 279:9 <b>step</b> 202:9 203:16 204:12 209:21 227:2 249:4 259:5 259:15 281:7 299:4 308:17 317:11 329:21 <b>stipulation</b> 253:22,23 305:15 <b>stocked</b> 309:17 <b>Stokes</b> 189:15 189:16,18 190:7 197:17 197:18,21 199:23 202:20 206:3 206:19,23,23 209:23 210:6 210:7,9 212:15 215:12 217:10 220:1,1,3 222:15 225:24 226:3 226:4,5,20 226:25 227:8 227:17 229:3 229:9 233:13 241:24,24 242:2 249:2 249:8,10 250:10,11,13 251:8 271:8 276:4,4,6 281:5,9,17,18 281:20 282:22 283:2 287:14 288:12	288:14 292:15 292:19 299:2 299:18,19,21 300:18 304:1 311:7,8,10 316:10 317:9 317:20,23 318:18 322:7 327:12 328:23,24 329:5,18 330:17,23 331:3,9,12 <b>stop</b> 192:9 <b>storm</b> 191:5 195:9 196:19 197:6 199:21 200:5,13 211:4 212:2 221:22 229:20 248:16 256:6 257:22 276:16,19 284:21 291:6 292:4 304:21 309:3 311:19 312:8 <b>strategic</b> 205:7 207:21 <b>streamline</b> 196:25 197:2 <b>stretching</b> 202:10 <b>studied</b> 267:5 <b>study</b> 209:7 263:18 319:25 320:14 321:4 321:10,10,17 329:14,14,15 <b>subject</b> 272:25 296:6 298:2 <b>submit</b> 226:21 <b>submitted</b> 224:9 285:19 <b>subparagraph</b> 198:19 <b>subscript</b>	261:23 <b>subsequent</b> 208:12 293:14 <b>subsequently</b> 191:6 <b>substantial</b> 237:9 <b>substantially</b> 205:19 208:10 251:4 318:14 <b>substantive</b> 270:9 <b>subtract</b> 233:1 259:18 305:2 <b>subzero</b> 197:4 200:12,19 310:21 <b>sufficient</b> 289:20 291:1 294:24 <b>suggested</b> 265:21 295:18 <b>suggesting</b> 272:16 <b>summary</b> 255:17 <b>summer</b> 203:5 315:14 <b>summertime</b> 203:3 <b>supervise</b> 323:16 <b>supervisor</b> 210:16 <b>supply</b> 192:18 305:18 <b>support</b> 218:25 231:8 320:14 321:23 <b>supported</b> 319:3 <b>supportive</b> 319:6 <b>supports</b> 320:18 <b>suppose</b>	203:19 224:13 284:14 <b>supposed</b> 267:7 290:25 <b>sure</b> 191:19 194:14 195:18 206:7 215:18 224:21 239:18 240:20 251:17 254:21 257:17 259:10 268:2 271:6,7 272:12 272:15 279:9 283:23 286:7 288:8 294:8 295:13 301:21 304:7 306:20 324:20 328:25 <b>surprise</b> 290:2 <b>surrebuttal</b> 188:10,17 197:23 205:18 206:7 207:11 210:18 228:2 228:8 231:8,11 240:1 265:21 307:9 <b>surrebuttal's</b> 223:4 <b>sustain</b> 255:8 326:2 <b>Sustained</b> 202:21 <b>swear</b> 187:13,16 204:18 209:25 227:9 250:3 281:11 299:12 317:13 <b>switching</b> 278:10,13 279:3 <b>system</b> 191:10,11 191:12,16 192:15,16 193:5 196:12 199:14 268:13	284:22 333:9 <hr/> <p style="text-align: center;">T</p> <hr/> <b>table</b> 211:10 228:9,14 <b>tables</b> 252:5 <b>take</b> 187:18 202:18 203:16 214:14,18 216:10 226:16 245:21,25 264:12,14 274:11 301:14 303:13 320:5 324:21 329:22 330:1 <b>takes</b> 249:4 <b>talk</b> 196:4 214:7 214:15 244:22 255:14 294:2 317:20 <b>talked</b> 201:17 234:16 235:21 242:22 246:25 265:1 290:4 326:20 <b>talking</b> 215:19 225:9,13 226:11 248:9 248:16 270:17 284:13 289:14 292:8 327:22 <b>tandem</b> 280:9 <b>tanks</b> 308:7 309:2 <b>target</b> 274:9,11 274:15,20 <b>tariff</b> 250:19 253:1 260:3,7 261:11 263:2 265:23 266:15 267:1 267:7,8,12,19 267:21 269:24 270:3 270:9,18,20 270:24 271:16
--	---	--	---	--

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

271:19 318:4 323:14 <b>tariffs</b> 253:12 266:7,13 271:13 <b>tax</b> 230:4,6,8,9 230:14 232:1 232:18 234:11 243:15,16,18 243:22 244:3 244:23,25 <b>taxes</b> 232:6,11 232:15 242:13 243:23 244:19,20 <b>team</b> 207:20,21 <b>technical</b> 193:17 <b>technically</b> 264:19 <b>tell</b> 219:19 221:2 253:5 316:3,11 317:2 <b>temperature</b> 190:16 191:24 193:21 194:1 200:18 201:7 201:8 315:23 315:25 <b>temperatures</b> 191:4 197:3,4 200:13 203:3 203:4,6 310:22 316:16 <b>Ten</b> 189:9 <b>tend</b> 309:21 <b>tender</b> 189:7 206:1 213:24 229:9 283:2 <b>tenth</b> 208:22 <b>term</b> 200:23,25 238:12 256:14 <b>terms</b> 193:12 260:5 266:1 270:12,21 <b>test</b> 193:11 194:1 194:11,13,17,24 195:10,20	197:12 199:13 265:7,7 276:19 306:19 306:22 315:4 <b>tested</b> 199:9 315:6 <b>testified</b> 190:15 255:2 309:16 324:18 <b>testify</b> 297:21 <b>testifying</b> 200:4 308:6 324:6 <b>testimony</b> 187:14 188:10 188:17,21 190:18 191:20 193:10 197:23 204:19 205:11 205:15,18,18 207:7 210:1,18 210:19,24 214:6 217:25 223:4 224:25 227:10 228:1 228:2,9 230:15,23 231:11,19 237:20 241:14 242:21 247:8 250:4,22 252:2,3 255:13 256:20 259:12,12,14 259:17 260:19 265:21 273:19 273:20 274:2 274:4 275:4 281:11 282:4,7 282:20 283:14 284:9 284:15 286:1 290:10 294:3 297:16 299:12 300:5 303:25 304:13 315:17 317:14 318:7	319:3,6,9 321:20 328:12 330:4 <b>testing</b> 194:9 196:6 199:4 306:14 313:17 314:2,23 316:13 <b>tests</b> 196:5 <b>thank</b> 187:17,21 189:15 192:2 198:15 201:10 204:11,13,23 207:1 209:10 209:11,15,16 209:19 210:4 210:6 217:18 219:23 225:25 227:3 227:14 250:8 250:10 251:22 255:10 265:17 272:6 275:22 276:2 280:24 281:7,15,17 287:8 288:15 288:21,23 292:15 299:5 299:16,18 301:2 308:3 309:5 311:7 317:18 328:3 328:9,11,23 330:16 331:12 332:1,16,18 <b>theory</b> 239:12 239:19 287:9 <b>thing</b> 277:18 291:21 313:4 <b>things</b> 190:23 191:22 194:17 203:2 232:9 234:19 252:7 272:16 274:17 274:18 279:6 279:17 309:24 310:3	319:16 331:19 <b>think</b> 187:19 190:8 196:8 203:10,21 212:21 213:6,8 214:7 219:17 224:23 225:11 225:16,19 231:13 233:18 234:16 235:6 236:20,21 240:8 243:6 245:9 246:25 255:24 256:13 260:2 260:18,20,23 261:16 263:15 263:20 264:5 264:8,9,15,20 265:5 266:4 266:5 267:14 268:23,23,25 269:2,2,8 271:8 275:8 275:21 278:8 279:9,19,21 280:9,25 283:24 287:13,14,16 288:2 291:5 291:17,21,22 301:13 302:8 302:13,18 306:2,7 307:1 307:14 308:25 314:7 314:7,10,14 316:6 320:5 322:18 326:18 327:12 328:18 330:25 <b>thinks</b> 242:6 <b>third</b> 202:3,5 303:23,24 304:12 <b>thought</b> 211:24 <b>thoughts</b>	290:10 <b>thousand</b> 232:25 233:1 <b>three</b> 199:9 211:11 218:24 311:16 312:21 315:4 <b>threshold</b> 239:12,19 270:22,22 278:8,8 287:10 <b>thresholds</b> 287:18 <b>thrown</b> 268:6 <b>Thursday</b> 330:19 <b>Tim</b> 229:13 251:14,18,22 252:1 254:18 254:21 255:1 272:6,8 273:22,25 274:1 275:22 283:6 308:1 318:25 322:10 322:12 323:19 323:22 324:4 324:9 325:23 326:4,7,17,22 326:24 327:2 327:15,20 <b>time</b> 186:16 188:21 195:3 196:16 206:8 209:10 213:23 226:23 243:20 244:10,11,16 249:5,23 251:1 260:17 285:10 286:15 291:24 292:5 292:6 294:20 314:25 315:4 315:5 323:1 330:20 331:8
--	---	--	--	---

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

<p> <b>timeline</b> 265:24  <b>times</b> 190:21            202:11 236:25            332:5  <b>timing</b> 232:1  <b>Timothy</b> 299:24  <b>today</b> 188:24            189:13 205:19            206:9 235:15            236:2,6            244:22 245:6            249:5 329:22            330:1  <b>toes</b> 308:17  <b>told</b> 208:4            256:21 257:13  <b>tomorrow</b>            249:19,24            331:17,22            332:20  <b>tonight</b> 332:8  <b>top</b> 297:20            305:1 324:10            327:5  <b>tornado</b> 247:12            247:24 248:4            248:14  <b>total</b> 192:15            195:5 209:3            211:13 228:10            231:21 241:12            254:10 259:1            268:7,13,15,16            274:11,12,12,13            274:21 301:10            302:14 305:3  <b>track</b> 242:8  <b>tracked</b> 242:6            243:6  <b>tracker</b> 236:10            236:17,19            242:4 243:1,4  <b>trail</b> 327:9  <b>transactions</b>            244:14  <b>transcribed</b>            186:13,21         </p>	<p>           333:13  <b>transcriber</b>            186:16  <b>transcript</b>            186:14,17            324:13 333:7  <b>transition</b> 243:7  <b>translate</b> 202:1  <b>transmission</b>            263:9 271:25            272:1  <b>treat</b> 244:9            297:12  <b>treated</b> 216:21  <b>treating</b> 273:7  <b>treatment</b>            247:11  <b>trend</b> 266:2  <b>tried</b> 200:21  <b>trip</b> 202:11  <b>trips</b> 202:12  <b>true</b> 189:2,19,23            189:24 190:2            190:3,6 193:6            193:9 198:1            205:21 212:12            228:25            235:20 236:3            251:5 268:19            279:4 282:16            300:15 309:11            310:3,6 318:15            323:3 333:12  <b>true-up</b> 270:23            272:25            278:13 280:1            280:4,8  <b>True-ups</b>            268:15  <b>trued</b> 240:8  <b>trueing</b> 271:4  <b>truth</b> 187:15,15            187:15 204:20            204:20,21            210:2,2,2            227:11,12,12            250:5,5,6         </p>	<p>           281:12,12,13            299:13,14            317:15,15,16  <b>try</b> 202:12            285:9 306:17  <b>trying</b> 196:24            232:12            255:23 269:4            278:9 310:21  <b>tune</b> 194:3,8            195:10 201:22            202:23,25            203:5,5,9,14            316:21  <b>tuned</b> 312:14            315:25 316:11            316:12,13,14,16            316:18  <b>tuning</b> 189:20            189:24 190:3            193:11,13,25            194:5,9 199:17            201:18,20,25            202:2 203:18            310:17 315:18            315:21 316:4            316:20  <b>turbine</b> 189:20            190:1 310:18            310:21  <b>turn</b> 198:18            226:5 243:20            297:15 320:9            320:25 329:6            329:7  <b>turnaround</b>            266:6  <b>turns</b> 263:18  <b>twice</b> 246:19  <b>two</b> 191:2            192:22 193:12            198:7 201:6            201:24            203:22 218:11            218:13 232:9            273:10            278:25 312:21         </p>	<p>           313:8 327:3            327:25 330:17  <b>tying</b> 262:25            263:1  <b>type</b> 191:9            195:15 203:23  <b>typically</b> 221:8  <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <b>Uh-huh</b> 222:21            242:10 248:8            248:15,21            279:16 302:7            313:3,6,14            314:20 316:18            316:24  <b>ultimately</b>            207:24 216:7            216:22 233:6            235:16            236:20            263:20 288:6            288:8 291:8            292:7 296:12  <b>unable</b> 186:13            278:11 287:17  <b>unamortized</b>            248:13  <b>underpaying</b>            244:20  <b>undershoot</b>            236:11  <b>understand</b>            191:19 225:3            255:7 297:10            301:13 308:18  <b>understanding</b>            188:16 193:3            206:20 212:3            242:5,11            248:11 259:5            267:1 268:6            269:12,12            274:16            276:22            279:25 280:2            284:20         </p>	<p>           294:17 297:6            297:14 306:10            312:25 322:13            322:14  <b>unfolded</b> 191:7  <b>unforeseen</b>            191:7  <b>unidentified</b>            186:15  <b>unique</b> 191:5,8  <b>unit</b> 192:20,23            194:4 195:4,4            195:8 196:10            196:15,18,20            196:25 197:8            197:11,12 198:7            198:7 200:16            201:21 210:15            302:2 311:12            312:14,15            313:11,20            314:5,12            315:14,19            316:25 317:1  <b>units</b> 192:17,25            194:24 195:20            200:5 309:3            311:15 314:2            314:24 317:2  <b>unrecovered</b>            216:18  <b>update</b> 211:3,24            213:16  <b>updated</b> 208:21            212:4 213:3,4            223:5 265:7  <b>upfront</b> 211:12  <b>upgrades</b>            219:22  <b>ups</b> 268:19  <b>Uri</b> 191:5 195:9            196:19 197:6            199:21 200:5            200:14 211:4            211:21 212:2            221:22,25            222:5,9         </p>
--	--	--	---	---

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

229:20	219:4 222:20	273:15 274:18	278:12 280:16	307:7,21
248:16 256:6	222:23	274:25 275:1	290:15 291:12	310:6 311:3
256:17	223:22 225:9	280:6	293:24	<b>weren't</b> 272:12
257:22 258:9	229:21 230:19	<b>VOLUME</b> 186:9	294:13,15	272:15 293:5
258:13 276:16	238:18 241:7		<b>we'll</b> 192:10	321:20
276:19 277:7	241:11 245:10	<b>W</b>	202:25 204:4	<b>Wildhaber</b>
277:15,22	245:12,13	<b>waiver</b> 305:14	204:7 213:17	285:20,24,25
284:21 291:6	246:7,14	305:21,22	213:22 222:18	285:25
292:4 296:23	247:7 256:12	306:7	225:20 249:6	<b>Williams</b> 190:14
304:21 309:3	262:3 267:24	<b>wake</b> 247:24	260:10 285:9	192:2 200:1,1
311:19 312:4,8	268:1 275:10	<b>walk</b> 202:7	285:9 299:7	200:3 201:9
<b>usage</b> 270:22	275:12,13,15	226:22	307:24 311:1,6	207:1,2,4
271:25 274:12	275:19	234:25	328:1 330:20	209:9 217:18
274:13,14,21	292:24	<b>walking</b> 235:1	331:7	224:17,17,21
278:8	<b>values</b> 275:9	<b>want</b> 193:15,23	<b>we're</b> 190:8,11	225:5,10,14
<b>use</b> 191:2 196:12	280:21	194:3,7,15,17	195:3 203:3	249:16,21,25
196:15,16	<b>variable</b> 211:7	203:24 206:7	208:4 209:21	254:23 255:5
198:6,24	<b>variables</b> 292:5	208:15 213:2	215:19 226:11	255:6 265:16
199:3 202:3	<b>various</b> 189:25	214:9 225:6	227:4 231:5	265:16 276:1,1
203:24	238:8	260:6 268:7	235:1 248:16	286:17,18
207:25 214:7	<b>Veatch</b> 207:9	296:1,13	263:22	288:15,16,18
216:10 229:24	207:23 208:9	298:19,24,25	276:15,18	288:21 301:1,1
233:2,20,23	209:6	303:4 308:17	287:3 289:14	308:3,5,11,19
243:17 245:16	<b>vehicles</b> 268:10	325:13	292:8 299:6	309:5 325:19
245:17,19,22	<b>verbatim</b> 186:18	326:23	316:6 327:22	328:2,2
245:24 246:2	<b>verification</b>	328:25 331:16	330:8	329:24,24
246:21 256:14	306:8	<b>wanted</b> 207:23	<b>we've</b> 232:20	330:6 331:14
265:10 306:19	<b>verify</b> 325:13	207:24 322:3	234:16 265:1	331:15 332:1
317:5,6	<b>versa</b> 263:6	<b>wanting</b> 194:14	266:6,6	332:15
<b>useful</b> 221:19	<b>version</b> 213:3	208:5 242:8	278:23 279:9	<b>winners</b> 269:11
<b>uses</b> 281:1	300:22	267:23	327:17	<b>winter</b> 191:5
<b>usually</b> 247:18	<b>versions</b> 205:13	<b>wants</b> 225:15	<b>weather</b> 256:9	195:9 196:18
<b>Utilities</b> 188:3	300:20	287:23	258:2 259:2	197:6 199:21
<b>utility</b> 205:6	<b>versus</b> 235:23	321:24	259:14,17	200:13 221:21
210:15 263:2	272:11 302:15	<b>wasn't</b> 191:20	276:7 277:1	229:20
298:13,23	<b>vice</b> 263:6	208:22	316:21,22	248:16 256:6
310:14	<b>view</b> 230:4	291:24	<b>Webex</b> 330:20	276:16,19
<b>utilize</b> 234:19	256:4	294:20 316:16	<b>website</b> 213:4	304:21 311:19
302:11	<b>violating</b> 234:14	319:23	<b>weight</b> 203:25	312:8 315:14
<b>utilized</b> 191:10	<b>violation</b> 234:17	<b>way</b> 196:14	<b>weighted</b> 221:7	316:17
<b>utilizing</b> 247:19	235:2,5,7	202:12 207:12	237:24 247:21	<b>wish</b> 225:1
333:9	<b>volatile</b> 190:24	216:21 234:13	<b>Welcome</b>	327:18
	<b>voltage</b> 262:9	256:22 257:8	209:11	<b>withdraw</b>
<b>V</b>	263:8,9	263:9,10	<b>went</b> 190:10	327:15
<b>VAF</b> 261:23	264:10,11	264:1,16,25	197:7 204:6	<b>witness</b> 187:3
<b>validity</b> 329:13	271:23,24	270:15 272:2	219:9 220:13	187:16,19,21
<b>value</b> 218:19,21	272:1 273:5	274:19 277:5	278:25 286:11	189:7 192:13

AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

193:6,9,13	308:13,16	238:21 239:1	327:17,22	201:6 203:21
194:2,6,10,13	317:12,17	239:7,11,18,25	328:4,7,11,21	207:14 213:15
194:22 195:1,3	319:4,9	240:11,15,20	329:3,20	228:19 234:1
195:14,18,21	321:20 324:11	240:25 241:3	330:5,10,14,16	238:16 245:11
195:24 196:8	327:9 328:18	241:8,16,21	330:22 331:2	246:15 260:2
197:9 198:14	329:22	249:3,9,15,20	331:6,10,13,21	260:20
204:13,14,22	331:23 332:11	249:23 250:2	332:2,6,12,16	264:16,23
206:1 209:10	<b>witnesses</b>	250:8 251:10	332:19	275:17 281:5
209:22 210:3	249:4,17	251:17,20,24	<b>word</b> 191:15	287:13 289:8
213:8,24	258:21 284:1	254:20,25	211:7 279:14	292:7 297:17
215:16 217:14	332:13	255:4,7	281:1	298:10,11
218:6,10,16	<b>wondering</b>	265:15,18	<b>words</b> 186:15	305:8 307:5
219:1,6,13,16	213:5	266:25	<b>work</b> 205:8	311:14 315:10
219:21 222:21	<b>WOODRUFF</b>	267:10,17,25	207:8 208:3	316:15
222:24 223:3	187:1,9,12,17	268:3,20	218:24,25	<b>year</b> 202:24
223:10,14,23	189:9 190:11	269:4,22	224:4,12	257:25 258:3
224:2,6,10,15	192:3,7 193:2	270:8,17	259:20,25	258:7,16
227:3,7,13	193:7,10,25	271:10,14,20	263:21 266:16	259:1,24
229:9 238:2	194:3,7,11,19	272:4 273:24	267:11 271:1	265:7,7 276:9
238:8,11,16,19	194:23 195:2	275:23,25	278:12 280:8	276:10,20
238:25 239:4	195:12,15,19	276:3 281:6	283:20 286:6	<b>yearly</b> 245:19
239:6,10,16	195:23 196:1	281:10,15	306:20 310:7	245:21 246:1
239:23 240:4	197:6,14,19	282:24 283:4	310:10 327:7	246:10
240:13,18,23	199:24 202:21	283:7 284:25	<b>worked</b> 191:17	<b>years</b> 199:9
241:2,4,10,18	204:4,7,11,14	286:10,12,16	207:20 230:6	245:5,15
250:7 251:23	204:18,23	286:23 287:8	266:7 284:2	279:7 310:9
252:11 253:1	206:13,17,20	288:6,9,13,22	310:9,13	312:20,21
255:1 258:19	206:25 209:11	292:14,17	<b>working</b> 265:6	315:4
266:2 267:3	209:16,20,24	299:3,6,16	330:24	<b>yep</b> 265:12
267:14,23	210:4 212:18	300:21 301:3	<b>worse</b> 269:21	270:25
268:2,5,23	213:1,11,14,17	303:7 304:3	<b>worth</b> 218:20	<b>yesterday</b> 187:3
269:8 270:2	214:1 215:13	304:17 305:4	<b>wouldn't</b> 197:8	231:6 233:12
270:11,19	217:12,17,19	305:7,9,17,20	216:20 262:12	271:9
271:11,18,21	217:22 218:9	305:23,25	264:22 265:5	<b>yield</b> 234:5,8
273:23 281:8	218:13,18	306:5,9,12,17	284:7 291:21	<b>yields</b> 235:14
281:14 283:2	219:2,11,15,19	306:23 307:3	291:25,25	
284:24	219:23 222:16	307:5,8,16,19	304:25 316:12	<hr/> <b>Z</b> <hr/>
287:13 288:8	222:22 223:1	307:22 308:2	316:22	<b>zero</b> 194:8,9
290:7 299:5	223:8,11,20	308:9,14,18	<b>written</b> 312:17	244:12,13,14
299:11,15	224:1,3,8,11	309:6,20 311:1	<b>wrong</b> 197:7	295:5
302:21 304:5	224:20,23	311:4 316:8	279:14	<hr/> <b>o</b> <hr/>
304:25 305:6	225:8,11,16,25	317:11,18		<b>0312</b> 329:2
305:8,14,18	226:24 227:1	318:20 323:21	<hr/> <b>X</b> <hr/>	
305:22,24	227:4,14	323:23 324:2	<hr/> <b>Y</b> <hr/>	
306:2,6,10,15	229:6,11,14	324:8 325:21	<b>yeah</b> 194:2	<hr/> <b>1</b> <hr/>
306:21,25	237:17 238:6	326:2,5,20	195:24 201:4	1190:10 211:11
307:4,14,18,23	238:10,14,17	326:23 327:1		214:9 297:18



AUDIO TRANSCRIPTION, VOLUME 3 6/14/2022

299:8,9	<b>116</b> 331:1	<b>2016</b> 310:4	<b>30,831,327</b>	<hr/> <b>6</b> <hr/>
<b>10</b> 188:17,24	<b>12</b> 283:12,19	315:6 316:12	247:9	6 198:6 206:6
189:6 190:24	311:18 312:2,5	<b>2019</b> 214:24	<b>300</b> 251:21	217:24 311:3
191:4 194:8,9	312:7 320:9	220:12,14	253:4 254:20	<b>6-A</b> 196:2
196:3 198:7	<b>12-month</b> 265:8	223:16 248:12	254:21	<b>6-B</b> 196:2
227:5 309:12	265:10	<b>2020</b> 208:11	323:24 324:4	<b>6-D</b> 196:2
311:18,25	<b>13</b> 198:5 205:12	223:19	324:10,24	<b>6-E</b> 196:2
312:5 313:18	205:25	<b>2021</b> 220:17,25	325:3,4,7	<b>6.77</b> 233:17
320:25	206:21 245:5	248:12 257:13	326:20	<hr/> <b>7</b> <hr/>
<b>100</b> 210:18	260:22 279:7	257:25 258:3	<b>301</b> 320:5	<b>70</b> 194:4,5
212:16 213:18	321:3,6	258:7,16	324:3 326:21	316:2,18,20
221:5 233:1	<b>14</b> 186:8 198:4,5	259:24	329:1,7	316:22 317:7
298:14	198:18 205:12	291:22 305:12	<b>302</b> 326:22,25	<b>72</b> 198:4,6
<b>101</b> 210:19	205:25	<b>2022</b> 186:8	<b>303</b> 324:22	<b>75.8</b> 218:21
212:16 213:18	206:21 211:14	214:16,20	326:25 327:1	219:1
<b>102</b> 228:1 229:4	226:12 228:10	215:2,11,22	<b>32</b> 247:8 277:15	<hr/> <b>8</b> <hr/>
229:6	<b>15</b> 211:15 283:13	216:5,14 217:3	<b>32-day</b> 257:15	<b>8</b> 206:6 209:2
<b>103</b> 228:3	283:25 301:18	<b>21</b> 208:12	<b>33,752,995</b>	214:7 267:18
229:4,7	303:18,23	305:12 330:2	228:11	296:2,5
<b>104</b> 282:4,19,22	304:10,11	330:10	<b>35,515,913</b>	<b>8,339,713</b>
282:24	<b>15-megawatt</b>	<b>22</b> 241:6	254:11	241:13
<b>105</b> 300:5,19,21	303:17	<b>22-HC</b> 302:25	<b>36</b> 245:5 247:6	<b>8:30</b> 187:1
<b>106</b> 318:7,13,19	<b>15,242,121</b>	<b>23</b> 231:19	<b>362</b> 222:3	<b>8th</b> 312:1
318:20	211:12	<b>23,445,264</b>	<b>365</b> 259:1	<hr/> <b>9</b> <hr/>
<b>108</b> 250:22	<b>15.83</b> 275:5,7	241:12,15	<hr/> <b>4</b> <hr/>	<b>9</b> 209:2
251:9,10	275:15	<b>26</b> 196:23	<b>4</b> 206:6 211:6,14	<b>9:00</b> 332:8
<b>11</b> 190:24	<b>159.4</b> 222:25	257:14 277:14	211:18 233:18	<b>900</b> 233:2
194:24 196:3	<b>15th</b> 196:19	<b>266</b> 222:1	233:22 234:4	<b>95</b> 287:22
196:20 198:5	305:22	<b>28</b> 196:22	234:7 283:12	290:23
198:7 260:21	<b>16,995,561</b>	<b>28-day</b> 257:4	283:18 297:19	298:14
281:1 301:9,17	231:19	<hr/> <b>3</b> <hr/>	307:7	<b>95/5</b> 239:14,21
301:19 305:9	<b>17</b> 211:10 241:5,7	<b>3</b> 186:9 206:6	<b>4.65</b> 211:5,16	287:11,15
306:24	247:3	211:2,6,9,12,18	239:5	288:3 289:3
307:10 309:13	<b>18</b> 217:24 329:7	214:9 223:24	<b>49</b> 231:19	289:13,16
310:18 311:13	<b>190</b> 304:23	224:2 226:5,7	<b>4th</b> 208:11	290:11,25
311:18 313:18	<b>197,428,807</b>	226:8,8	<hr/> <b>5</b> <hr/>	291:15,17
315:25 316:11	211:10,13	228:9 237:19	<b>5</b> 209:1 211:9,17	292:3 294:3,4
316:24	<b>1st</b> 223:19	286:11 297:15	217:24 245:6	294:10,15,20
<b>111</b> 228:4 229:4	<hr/> <b>2</b> <hr/>	297:20	261:10,23	298:25
229:7	<b>2</b> 204:6	<b>3-I</b> 218:18	283:13,25	
<b>112</b> 210:20	<b>2,121,560</b> 274:9	<b>3,560,713</b>	284:9 290:5	
211:20 212:4	<b>2.47</b> 233:17,20	211:18	307:21	
212:17,21	234:3,4	<b>3.0</b> 211:16	<b>560</b> 211:13	
213:2,21	246:11	<b>3.58</b> 211:17	<b>560,713</b> 211:13	
<b>113</b> 210:20	<b>20</b> 320:9	<b>3.9</b> 211:16		
212:17 213:19	<b>2014</b> 219:22	<b>30</b> 326:18,19,23		
226:6				