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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Procedural Conference

May 7, 2013

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Jefferson City, Missouri

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Volume 1

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18 (Starting time of conference: 10:00 a.m.)

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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Procedural Conference

May 7, 2013

Jefferson City, Missouri

In The Matter Of An Investigation)
Of The Effects Of Rate Design) File No. EW-2011-0372
Modifications Associated With)
Demand-Side Cost Recovery)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

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3 ALSO PRESENT:

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5 Mr. Tim Rush, with Kansas City Power & Light

6 Company, KCP&L Greater Missouri Operations

7 Company

8 Mr. Morris Brubaker, MIEC

9 Mr. Steve W. Chriss, Walmart Store Corporation

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1 (Starting time of conference: 10:00 a.m.)

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

3 JUDGE WOODRUFF: Good morning, everyone, and
4 welcome to this conference. The first question everyone
5 is probably having in the room is what we're going to be
6 doing today. And this is a little bit of a unique
7 proceeding. It's not a contested case, we're not going to
8 be swearing witnesses, it's not a rulemaking hearing,
9 we're not going to be taking any testimony. The
10 Commission scheduled this as a conference as a way to try
11 and get more information from the interested stakeholders
12 and for a chance for the Commissioners to ask questions.

13 As you can see, Commissioner Jarrett is with me on
14 the bench here. Commissioner William Kenney is watching
15 from K.C. and indicating questions which I will ask for
16 him.

17 What I anticipate doing is give anybody that's
18 interested make a brief five, ten minutes, give us an
19 overview of what you're proposing the Commission do in
20 this case, and then we'll give the Commissioners a chance
21 to ask questions of the attorneys, and if there's any
22 questions the attorneys can't answer, we can have any
23 experts come forward. I'm not going to call on witnesses
24 because I'm not going to swear them. But we'll see how it
25 goes.

1 After everyone's had a chance to give their
2 initial statements and respond to questions, I'll give
3 everybody a chance to respond as well to what's been
4 presented by the other stakeholders. To start things out,
5 I want to establish who is here today. I won't -- again,
6 we're not taking evidence, so I'm not going to call
7 entries of appearance, but I do want to know who is here
8 for the Court Reporter's benefit.

9 So, just tell us who is here, beginning with
10 Staff.

11 MS. HERNANDEZ: Jennifer Hernandez.

12 JUDGE WOODRUFF: All right. For Public Counsel?

13 MS.BAKER: Christina Baker, and also Lewis Mills
14 may be in and out, and Ryan Kind.

15 JUDGE WOODRUFF: Okay. And, let's see. We had --
16 Empire filed written comments.

17 MS. CARTER: Yes. Diana C. Carter, Brydon
18 Swearengen, for Empire.

19 JUDGE WOODRUFF: Ameren Missouri.

20 MR. LOWERY: Jim Lowery, Smith Lewis, LLP, for
21 Ameren Missouri.

22 JUDGE WOODRUFF: And anyone here for MRDC?

23 MR. LANEERS: Andrew Laneers for Ameren Missouri,
24 also here for MRDC.

25 JUDGE WOODRUFF: And I see several other faces out

1 here who did not file written comments. Mr. Fischer.

2 MR. FISCHER: Yes, Judge. Jim Fischer on behalf
3 of Kansas City Power and Light and KCP&L Greater Missouri
4 Operations Company.

5 JUDGE WOODRUFF: Ms. Vuylsteke.

6 MS. VUYLSTEKE: Your Honor, Diana Vuylsteke, MIEC,
7 Bryan Cave. Also, Morris Brubaker. We did file some
8 comments, I believe, on July 22nd on behalf of MIEC, but
9 we did not file comments on April 3rd.

10 JUDGE WOODRUFF: All right. Thank you. And Mr.
11 Woodsmall.

12 MR. WOODSMALL: Thank you, your Honor. David
13 Woodsmall appearing on behalf of MIEC. Also here with me
14 today is Steve Chriss from Walmart

15 JUDGE WOODRUFF: And did I miss anyone?

16 MR. FISCHER: Judge, I also have Tim Rush with me
17 if you had specific questions of a technical nature.

18 JUDGE WOODRUFF: Let's go ahead and get started
19 with Staff since your the propelling party.

20 MS. HERNANDEZ: I do have a handout that,
21 hopefully, will make it easier to go through.

22 JUDGE WOODRUFF: Okay.

23 MS. HERNANDEZ: Podium?

24 JUDGE WOODRUFF: Yes, please.

25 MS. HERNANDEZ: Well, what I thought we might do

1 today is just give a little bit of where we've been, how
2 this started, and where we hope -- Staff hopes that the
3 Commission will go with this.

4 Um, as you're aware, in 2009, the Missouri
5 legislature passed and the Governor signed the Missouri
6 Energy Efficiency Investment Act. And MEEIA establishes
7 Missouri's policy to value demand-side investments equal
8 to traditional investment in supply and delivery
9 infrastructure and allow recovery of all reasonable and
10 prudent costs of delivering cost-effective demand-side
11 programs. Now, that was 2009. And, 2010, the Commission
12 opened docket EX-2010-0368, and, in that, there were four
13 proposed rules: 4 CSR 240-3.163, 3.164, 20.093 and
14 20.094. These rules became effective May 30, 2011; and,
15 to note, they have been upheld by the Missouri Court of
16 Appeals. And you can find that in efis under WD74676.

17 The last sentence of 393.1075.5, the MEEIA
18 statute, was not part of the first rulemaking. As you can
19 tell from this docket, it's a very complicated sentence,
20 and it was not necessary at the time that the other MEEIA
21 rules were being implemented to include that in the
22 rulemaking. Now, the sentence at issue in this docket is
23 the last sentence -- again, of 393.1075.5 -- and that
24 reads, "Prior to approving a rate design modification
25 associated with the demand-side cost recovery, the

1 commission shall conclude docket studying the effects
2 thereof and promulgate an appropriate rule." Now, in
3 doing so, I think there's a couple of things that should
4 be considered when reviewing this language.

5 First, Staff proposes that we add a new rule, that
6 being for CSR 240-20.095, so any language that the
7 Commission would want to propose and place in a rule-
8 making should go in a different section. That being so
9 the other rules are not opened up for possible other
10 amendments. We do have a couple of companies operating
11 now in their demand-side MEEIA programs plans, and Staff
12 believes it's important not to open up these rules for
13 potential modifications at this time. They will be
14 reviewed, um, I believe the statute says four years after
15 -- I'm sorry -- the rule says four years after they've
16 been implemented. So, there would be a time to review
17 them and make any changes that the parties feel necessary,
18 but now is not the time to do that.

19 Um, when looking at that sentence, also, the plain
20 meaning of the sentence should be considered. Since
21 there's no definition for the words that are used in that
22 sentence, Staff looks to Section 1.090 of Missouri
23 statutes which provides, "Words and phrases shall be taken
24 in their plain or ordinary sense, but technical words and
25 phrases having a peculiar and appropriate meaning in law

1 shall be understood according to their technical import."

2 There's a lot of case law on what that means.

3 I've included some there. But the principle is, "The
4 primary rule of statutory construction is to ascertain the
5 intent of the legislature from the language used, to give
6 effect to that intent if possible, and to consider the
7 words used in their plain and ordinary meaning." And
8 that's what Staff has -- I'll refer you back to Staff's
9 filing which has gone through the words of the sentence
10 and what we believe those mean.

11 The third point that's important to consider in
12 this rulemaking is the rule of general applicability
13 principle, and that is State agency action based upon a
14 statement of general applicability which shall be adopted
15 as a rule under Section 536.010 to 536.050. Now, there is
16 a lot of case law on that statute. I would urge anyone
17 interested to look at the annotated statutes for 536, and
18 that states changes in the statewide policies or rules
19 within the meaning of the Administrative Procedure Act,
20 and any agency in an announcement of policy or
21 interpretation of law that has future effect and acts on
22 unnamed and unspecified facts as a rule.

23 So, if the Commission was to set forth a policy
24 that certain rate design modifications are supported by
25 MEEIA, or becoming the policy of the State in support of

1 MEEIA, those would need to be incorporated within any
2 proposed rule.

3 And, so, with those three points, the Staff's
4 proposed regulatory language is the Commission has
5 concluded a docket studying the effects of, and approve
6 the following rate design modifications for use with
7 demand-side cost recovery that an electric utility may
8 propose in conjunction with its application for approval
9 or modification of DSM programs under rules 4 CSR
10 240-3.164 and 4 CSR 240-20.094; and, thereafter, the
11 Commission determines what rate design modifications to
12 include in the rule.

13 Again, we looked at and tried to define in the
14 context of the statute overall the words "prior", "rate
15 design modification", "docket", "studying the effects
16 thereof", and "rule". And, unless there are any questions
17 at this time?

18 JUDGE WOODRUFF: Mr. Jarrett.

19 COMMISSIONER JARRETT: Yeah, just a couple of
20 things.

21 Ms. Hernandez, thank you for your presentation.
22 As you know, the Commission approved MEEIA filings in the
23 context of, I believe, the last Ameren rate case and the
24 last KCP&L rate case. Is that -- is my memory correct?

25 MS. HERNANDEZ GMA.

1 COMMISSIONER JARRETT: Oh, GMA. Okay. Were there
2 rate design modifications in those?

3 MS. HERNANDEZ: No.

4 COMMISSIONER JARRETT: Okay. So, there's no
5 implication there that we might have approved a rate
6 design modification before?

7 MS. HERNANDEZ: Correct.

8 COMMISSIONER JARRETT: Including docket. Would
9 counsels for those companies agree with that?

10 MR. FISCHER: Given what I believe rate design
11 modification means, yes, I would agree with that.

12 COMMISSIONER JARRETT: Okay.

13 MR. RUSH: I would agree, too.

14 COMMISSIONER JARRET: Okay. So, what is Staff's
15 definition of rate design modification?

16 MS. HERNANDEZ: Um, again, there's nothing in the
17 statute that defines it, so we look to reputable sources
18 such as the -- I believe it's the NRRI -- well, the
19 National Regulatory Research Institute. They have listed
20 several types of mechanisms, as well as the Commission
21 did, bring in a speaker, part of this docket, and that
22 presenter did go over various types of rate design
23 modifications. Such examples could be flat block rates,
24 straight fixed variable, fixed cost recovery charge,
25 declining block rates, inclining block rates, customer

1 class specific rate structures, proportional rates, time
2 of use rates, seasonal rates, real time pricing,
3 decoupling. Let's see if there is any -- rate of return
4 matters, cost recovery riders, and I think that's all we
5 listed in our filing.

6 COMMISSIONER JARRETT: Okay. But what I'm really
7 trying to figure out, those are examples, I guess, of rate
8 design modification. But what is the definition of rate
9 design modification that Staff's advocating?

10 MS. HERNANDEZ: We have said that anything that
11 changes the way that costs are recovered.

12 COMMISSIONER JARRETT: Okay.

13 MS. HERNANDEZ: Or the way a utility collects the
14 cost reflected with the MEEIA side.

15 COMMISSIONER JARRETT: Doesn't that mean every
16 rate case would do rate design modification, because we
17 tweak different residential classes, we tweak the rates in
18 those, those are all -- those are all rate designs. We do
19 that really, virtually, in every rate case, don't we?

20 MS. HERNANDEZ: You do. But not in terms of
21 demand-side.

22 COMMISSIONER JARRETT: Right. But all of those
23 examples that you gave, there could be a million different
24 iterations of those based on the numbers, based on how you
25 want to apply them. Uh, so, isn't your rule fairly narrow

1 and prescriptive and not very flexible?

2 MS. HERNANDEZ: Um, I -- respectfully, I wouldn't
3 say that. I think that you can define certain broad terms
4 of rate design modifications. There could be some small
5 things that are different between proposals, but you would
6 generally study, say, decoupling. I don't know if that's
7 a good example from a technical standpoint but --

8 COMMISSIONER JARRETT: There's some dispute over
9 that is actually rate design, but I understand.

10 MS. HERNANDEZ: Right. But there are certain
11 things, say, Ameren would propose differently than, um,
12 KCPL, you would have still studied the general decoupling,
13 that would be put in the rule, and those different
14 applications, if you will, could be allowed in proposals.
15 So, with full stakeholder input, I think we could propose
16 a lot of the rate design modifications, and the Commission
17 sent those that they believe are appropriate and include
18 those in the rules so we could have a large list of
19 options that -- and you are right. If there is something
20 that we didn't consider that needed to be put in that in
21 our reading of the statute, there would need to be an
22 amendment to the rule made. But I think we can get around
23 this burdensome idea by including the rate design
24 modifications generally in the rule.

25 COMMISSIONER JARRETT: Well, that kind of causes a

1 difficulty, doesn't it? Because, if a company proposes a
2 rate design modification in the context of a rate case, we
3 have 11 months to decide it. Ratemaking takes a minimum
4 six months. So, how are we going to get that decided in
5 the context of a rate case if we have to promulgate a rule
6 and study it, promulgate the rate design modifications, as
7 long as it meets all the purposes and goals it needs?

8 MS. HERNANDEZ: Our position is we don't want to
9 be doing that in the context of a rate case. We need to
10 be doing that as a separate rulemaking. The options that
11 are included in the rule would be those that are allowed
12 -- the companies are allowed to propose, and, so, if
13 anything new was proposed in a rate case, that would need
14 to be placed in the rule if it didn't -- if it couldn't be
15 included in any of those broad categories of rate design
16 modification that are a part of the rule.

17 I think having a rule that states certain rate
18 design modifications would actually help the companies
19 plan for what they could include in a rate case or their
20 MEEIA filing.

21 COMMISSIONER JARRETT: I guess my concern is that
22 there might be some good ideas out there that we're not
23 able to consider if we have a prescriptive rule.

24 MS. HERNANDEZ: That's true in terms of a rate
25 case. But it's important to -- as you say, rate cases go

1 very fast, and there are many issues in rate cases. So,
2 Staff believes it's important to fully consider that, that
3 rate design modification, all the implications of it,
4 whether it does go well with demand-side programs and the
5 policy of MEEIA and that is those types of considerations.
6 And the time that's allowed in a rulemaking seems to be an
7 appropriate place for that that in a rate case.

8 COMMISSIONER JARRETT: Okay. Well, I don't have
9 any more questions, Ms. Hernandez. Thank you for your
10 presentation.

11 MS. HERNANDEZ: You're welcome.

12 JUDGE WOODRUFF: I have one question for you.

13 MS. HERNANDEZ: Yes, sir.

14 JUDGE WOODRUFF: Does that have any
15 recommendations on which particular modifications should
16 be included in the rule? At this point, you said whatever
17 the Commission decides, but do you have that
18 recommendation?

19 MS. HERNANDEZ: Um, not at this time. Um, wasn't
20 there one that we -- okay. Thank you. I had to have a
21 little bit of brain jogging there.

22 JUDGE WOODRUFF: That's all right.

23 MS. HERNANDEZ: The straight face variable is an
24 option that we believe the Commission has considered in
25 other cases, and it has been viewed in the context of

1 different rate cases. So, that has been, I believe,
2 studied enough that the Commission could decide to include
3 that in terms of the other rate design modifications. It
4 would depend -- we're not presenting any other options,
5 but it would just depend on whether the Commission felt
6 that it has studied them enough to include those in a
7 rule.

8 JUDGE WOODRUFF: Staff is doing the studying at
9 this point, so, ultimately, I assume Commission would want
10 to have some sort of recommendation from Staff as to what
11 is appropriate to include in the rule.

12 MS. HERNANDEZ: Okay. Well, to that effect, I
13 think Staff would need to -- would need to continue, I
14 guess, the workshop so we could have a study of the
15 different types of rate design modifications.

16 JUDGE WOODRUFF: So, you're not saying Commission
17 propose a rule next month. You're looking at further
18 study?

19 MS. HERNANDEZ: If what you're telling me is the
20 opinion of the Commissioners that they want
21 recommendations as in terms of what we think should be in
22 the rule, then yes. We -- in our filing, we propose that
23 the Commission could tell us what they believe they have
24 studied enough to feel comfortable putting in the rule,
25 but if -- if they feel that the Staff needs to study

1 certain things, then I think the straight fixed variable
2 is the only one we're comfortable with.

3 JUDGE WOODRUFF: Let me be clear what I'm asking.
4 They are only my questions. I'm not consulting with the
5 Commissioner, what they -- it's me. Don't want to mislead
6 anybody.

7 MS. HERNANDEZ: Sure.

8 JUDGE WOODRUFF: All right. Anything else,
9 Commissioner?

10 COMMISSIONER JARRETT: I guess I would ask, I know
11 we started this workshop probably about two years ago, a
12 little less than two years ago. Is there any rate design
13 modification that we haven't studied in this workshop at
14 this point, that you're aware of, or have we studied every
15 one that's out there?

16 MS. HERNANDEZ: I don't know if we could say we've
17 studied every one. We have looked at, in the context of
18 comments and presentations, quite a few.

19 COMMISSIONER JARRETT: Okay.

20 MS. HERNANDEZ: But I don't know if it's a
21 exhaustive list.

22 COMMISSIONER JARRETT: Okay. Thank you.

23 JUDGE WOODRUFF: Let's move to Public Counsel.

24 MS. BAKER: We did file a suggested language, and
25 I will let Ryan Kind discuss that.

1 JUDGE WOODRUFF: Okay. Mr. Kind, you want to come
2 up to the podium?

3 MR. KIND: Sure. Be glad to.

4 JUDGE WOODRUFF: If you would tell the Court
5 Reporter who you are.

6 MR. KIND: I'm Ryan Kind with the Missouri Office
7 of the Public Counsel.

8 Good morning, Commissioners. The comments that we
9 filed were fairly brief. We filed some comments where we
10 have proposed some specific language for a rule, and I
11 would -- I guess I want to sort of step back a little bit
12 and just provide some context for our language.

13 First of all, just in general, we would feel a
14 rate design modification as any change in the elements of
15 the existing charges for recovering demand-side cost. So,
16 if, for example, though, if in a rate case, there's just,
17 say, a 10 percent overall increase in revenue requirement
18 and just increase all rate elements equally by 10 percent,
19 don't change the relationship between rate elements, we
20 would not consider that to be a rate design change simply
21 because the absolute values of those individual rate
22 elements have changed in that type of manner.

23 And another part of just the overall basis for our
24 proposal is that we believe that the law still is not
25 settled as to whether MEEIA authorizes the Commission to

1 change rates in between rate cases. Because of that, the
2 language that we've proposed is very specific and it
3 relates only to rate design modifications that would be
4 made within a general rate proceeding. And, so, we have,
5 um, basically, a list of a couple of -- I'm sorry -- four
6 rate design modifications that we think could be included
7 in a rule, um, in terms of rate design changes that would
8 be modifications that would be permitted, and then we also
9 listed several that we think should not be permitted and
10 that that should be set forth in the rule.

11 And another little bit of background in materials
12 of what guided us in our proposed language is, um, um,
13 looking at the statute in, um, let's see, Section, uh,
14 393.1075.3, Subsection 2, um, there's a statement that
15 says the Commission shall ensure that utility financial
16 incentives are aligned with helping customers use energy
17 more efficiently and in a manner that sustains or enhances
18 utility customers incentives to use energy more
19 efficiently.

20 So, we have focused on the part of that sentence
21 that talks about a manner that sustains or enhances the
22 utilities customers incentives to use energy more
23 efficiently, and we think that should be -- that's set
24 forth in statute, it should be a guiding principle for,
25 um, rate design modifications that the Commission would

1 permit.

2 And, basically, what that means is that, you know,
3 from a very simple perspective, for instance, for
4 residential customers, there's two basic elements to the
5 charges for recovering costs from residential customers.
6 There's a customer charge and there's a variable charge.
7 Customer charge is generally a fixed charge, and the more
8 of cost recovery that you move into the customer charge
9 and away from variable charges, uh, that tends to create,
10 um, adverse impacts on the incentives for customers to use
11 energy more efficiently.

12 First of all, it's just the price signal that
13 customers receive for the incremental usage of energy. If
14 you lower that, you're giving -- you're, um, diminishing
15 the price signal for customers to use energy more
16 efficiently. Um, so, we've sort of looked at things in
17 that way, and, um, I guess in that, with respect to that
18 one particular piece of guidance in the rule, the only
19 rate design modification that the Staff appears to be
20 supporting putting in the rule at this point variable --
21 fixed variable rate design. We think that rate design is
22 inconsistent with this principle that's set forth in the
23 statute, and so it should not be included in a rule.

24 Um, I think another thing just that Commissioner
25 Jarrett has some questions about, what is a study. What

1 sort of level of study is necessary for us to decide that
2 we should include, say, that this particular rate design
3 modification we've had adequate study should be included
4 in the rule. We really think that that's up to the
5 Commission to determine, that there's a lot of flexibility
6 that's given there in the statutory language, that you
7 could look at the discussions that have occurred so far in
8 this workshop proceeding as being adequate. To say you
9 have performed a study that's such to -- sufficient to
10 support the rule language that's been proposed by Public
11 Counsel, but that really depends on the type of study that
12 the Commission feels it needs to rely on to be following
13 that statutory language.

14 And that's pretty much the extent of our overview
15 remarks, and I'll be glad to take any questions from the
16 bench.

17 JUDGE WOODRUFF: Mr. Jarrett.

18 COMMISSIONER JARRETT: Yes. Thank you, Mr. Kind.
19 Thank you, Mr. Kind, and I thank you for your very
20 succinct filings here, and the rule you propose is
21 certainly simple and easy to understand. Um, I wanted to
22 talk a little bit about you have the one section that
23 encourages rate designs or rate design modifications, and
24 then you have one that says that we -- that the
25 corporations can't propose these types of rate designs.

1 Um, a couple of the implement declining block
2 rates -- I can't remember where I read it, but I did read
3 it in this docket -- that there was at least one state
4 where they did, I guess, inclining block rates in the
5 summer and declining block rates in the winter, or vice
6 versa.

7 Uh, is that something that's just unique to that
8 state? How would that be beneficial or not beneficial?

9 MR. KIND: Um, that -- you will find that type,
10 that combination of rate design, and it would be inclining
11 block in the summer to give customers a price signal to
12 lower their usage at the time of peak which usually occurs
13 in the summer for electric utilities. Um, that type of
14 rate design was especially common 10, 20 years ago, and um
15 has been gradually phased out in a lot of different
16 states. Still exists in some states, and Missouri is an
17 example of where it still exists. We still have at least
18 a couple of utilities that have, um, declining block rates
19 in the winter.

20 And it's Public Counsel's view that the idea
21 behind and the justification for declining block rates is
22 sort of an artifact of an older form of utility regulation
23 and type of organized wholesale electric markets for
24 electric utilities that is no longer relevant today.

25 When electric utilities tended to operate more as

1 sort of separate islands that had their own resources for
2 serving their load and had interconnections with other
3 neighboring utilities largely just for reliability
4 purposes to back up their resources if they had an outage
5 in a generator. In that type of situation, declining
6 block rates made some sense because, if you had a utility
7 with excess capacity, you wanted to give customers a price
8 signal to fully utilize that excess capacity in the
9 wintertime.

10 And the other thing that's changed, I think, over
11 time -- and, well, I should say the way that's changed now
12 -- is that we have organized electrical cell markets, of
13 course, that are run by the RTOs for Missouri. It's the
14 MISO and SPC markets. MISO has a pretty fully-developed
15 market. SPC has a partially-developed market that is
16 supposed to be much more fully developed about a year from
17 now in terms of going to implementing the markets.

18 So, when you have that type of a regional
19 wholesale market, you don't really need a price signal
20 just to try and make sure that your customers will utilize
21 all of your excess capacity in the winter, and then you
22 will also find that utilities will be planning their
23 capacity additions on more of a regional basis so that you
24 really never get that excess capacity at an individual
25 utility to the extent that you would have back then.

1 So, the other thing that's changed over the last
2 10 or 20 years, I think, about the use of the declining
3 block rates is much greater sensitivity to the
4 environmental externalities associated with the generation
5 of electricity, particularly the generating electricity
6 from coal-fired power plants. So, there's people, I
7 think, question now the idea that we -- just because we
8 have this capacity of this electric-generated facility out
9 there, is it really best to fully utilize it? Is that
10 what's in society's best interest or, you know, does it
11 make more sense in some instances to encourage other
12 resources like energy efficiency.

13 So, I think that's the extent of my response to
14 your question in that area.

15 COMMISSIONER JARRETT: Okay. Thank you.

16 MR. KIND: Uh-huh.

17 COMMISSIONER JARRETT: The other one I had was, I
18 know voluntary time of use rates versus mandatory time of
19 use rates. Why is voluntary good and mandatory bad?

20 MR. KIND: Well, we see voluntary as being good
21 because it's something that if -- if the utility chooses
22 to offer it and if a customer chooses to take advantage of
23 it, then both the utility and the customer are better off.
24 That's clear. But if you have mandatory time of use
25 rates, there are going to be winners and losers in terms

1 of the individuals and what their bill will be as a result
2 of switching from the type of charges that we have now to
3 time of use.

4 And we think that it's really counter-productive
5 to just force that type of a rate design on -- especially
6 on smaller customers who often don't have the flexibility,
7 really, to change their usage a whole lot. I mean,
8 they're going to want to. If they're not, if everyone's
9 not away from the home during the day, they're going to
10 want to keep their home cool and keep it air conditioned,
11 and some of those people are going to be on a limited
12 income. Some are going to be, you know, the elderly
13 customers that they already spend a large portion of their
14 limited income on utility bills.

15 And, so, we think there is -- that there's just
16 really too many other public interest considerations to
17 make that policy on time of use rates a good policy for
18 the smallest customers.

19 COMMISSIONER JARRETT: Okay. And, then, one of
20 the things that you do want to discourage is the
21 implemented straight fixed variable rates. Don't we have
22 some variations of straight fixed variable rates here in
23 Missouri?

24 MR. KIND: We do. I think, as far as we know, we
25 just have one utility that has straight fixed variable

1 rate design, and that's MGE Gas.

2 COMMISSIONER JARRETT: Do you know what kind of
3 effect that has had on energy efficiency or demand in that
4 company?

5 MR. KIND: Well, there's never been a study done
6 on that, but if you just would, you know, economic theory
7 and it tells you that demand is elastic and and price
8 increases, demand decreases, and when you have a straight
9 fixed variable rate design, you've essentially set a flat
10 rate at zero for additional usage for the non-gas portion
11 of the bill. Customers are still going to pay more per
12 unit of usage for each unit of gas they use, but they'll
13 pay nothing more as a part of their margin rate, the cost
14 recovery that supports the distribution system and the
15 companies A&G, and things like that.

16 COMMISSIONER JARRETT: But isn't the idea between
17 the straight -- the idea of straight fixed variable rate
18 that it not necessarily incentivises the company, but it
19 -- there is no -- there is no disincentive in offering
20 energy efficiency programs and demand response programs,
21 and isn't that sort of the purpose of MEEIA, to
22 incentivise companies to provide these types of programs?

23 MR. KIND: Yeah. I wouldn't disagree with that.
24 I think it's more, instead of incentivising them to do it,
25 it's trying to remove the distance that they would face,

1 financial losses that could occur from encouraging energy
2 efficiency. Um, we just don't believe that that's the
3 best way to try to get rid of that disincentive.

4 And it actually -- while you can -- you may be
5 getting rid of the disincentive to -- for the utility to
6 aggressively do energy efficiency, um, my experience is
7 that you actually can also create some perverse incentive
8 because, when you have a straight fixed variable rate
9 design maybe charging people thirty, forty dollars just to
10 stay connected during the summertime and they're going to
11 say, The only thing I'm using in the summer is my gas
12 water heater. So, maybe I should switch to electric water
13 heat and avoid this bill.

14 And then I -- the experience of seeing, I think,
15 gas utilities responding to that and wanting to offer
16 customers incentives to -- for more efficient gas water
17 heaters when they're not even cost effective. So, there
18 are some sort of additional messy details to the use of
19 straight fixed variable, I think, that aren't readily
20 apparent.

21 COMMISSIONER JARRETT: Right. Are you aware of
22 any -- any studies -- studies done by any group looking at
23 straight fixed variable rates and energy efficiency, if it
24 encourages inefficiency, or energy efficiency, or if
25 there's -- how it affects energy efficiency programs, now,

1 like a national study?

2 MR. KIND: Yes. I am. There's been sort of an
3 ongoing national debate about different methods of
4 decoupling and the pros and cons of different methods.
5 And, as all of you know, straight fixed variable being one
6 a lot of people I believe to be a rather crude and less
7 than optimal approach to decoupling. I see that in
8 national studies. I don't have any specific national
9 studies to reference, but a couple of national
10 organizations that typically would study things in this
11 area would be NRRI and, also, RAP. And I think,
12 generally, the presentations and papers that I've seen
13 from those two organizations discourage the use of
14 straight fixed variable as a means to remove the
15 disincentive for energy efficiency.

16 COMMISSIONER JARRETT: Okay. I don't have any
17 further questions, Mr. Kind. Thank you for your
18 presentation.

19 JUDGE WOODRUFF: I have a couple questions, Mr.
20 Kind.

21 Public Counsel, in their written comments,
22 suggested certain methods of being included in
23 modification being included in the rule and certain be
24 discharged in the rule. I assume that means those methods
25 have been sufficiently studied in this case?

1 MR. KIND: From our perspective, yes, but that's a
2 Commission determination as to how that statutory language
3 should be interpreted. But there have been a lot of work
4 sheets where these different types of rate design
5 modifications have been discussed over most of the parties
6 and by people that have given presentations to the
7 parties.

8 JUDGE WOODRUFF: Are there any other possible
9 modifications out there that you think haven't been
10 sufficiently studied and that's why you didn't consider
11 them in the rule?

12 MR. KIND: Well, we're certainly open to looking
13 at others that should potentially be included. These are
14 the ones that we thought would be basically just a good
15 initial set that, just to get a rule in place, and to have
16 some guidance to Missouri electric utilities that we think
17 would be consistent with the guidance in the statute.

18 JUDGE WOODRUFF: And, if there were other methods
19 somebody proposed, the Commission could amend the rules?

20 MR. KIND: That's right. Yeah. And, of course,
21 as based on, you know, my earlier statement where we would
22 draw the line would be methods of rate design
23 modifications that require changes in rates in between
24 rate cases, because we don't think the law is settled yet
25 on whether MEEIA authorizes that.

1 JUDGE WOODRUFF: Okay. I would love to ask you
2 declining block rates basis, also. I know this has come
3 up before. Isn't one of the reasons of declining block
4 rates in the wintertime is to help customers who use
5 electric heat? Is that fair to say?

6 MR. KIND: Well, I think that you might hear that
7 as a piece of the argument as to why some people might
8 like declining block rates. I would look at it more from
9 the perspective of they are a tool to help electric
10 utilities encourage the use of electric heat. And I
11 think, if you think that at some point in time, whether
12 it's, you know, five, ten years off, our country will
13 finally be addressing the policies issued associated with
14 climate change, doesn't make sense to be encouraging
15 people to put in electric heat which has much greater
16 emissions relative to natural gas.

17 JUDGE WOODRUFF: That was going to be my next
18 question, about the efficiency of electric heat as
19 compared to natural gas heat.

20 MR. KIND: Well, there's a lot of types of
21 electric heat. Some are very efficient. You know,
22 there's electric resistance heat which is the least
23 efficient. It's essentially not much different than using
24 a bunch of a hundred-watt light bulbs to heat your
25 dwelling. And then there are ground source heat pumps

1 which are fairly efficient. I would say they compete well
2 -- pretty well with natural gas in our particular climate
3 zone in the absence of any cost imposed on customers for
4 their carbon emissions. And then there is ground source
5 heat pump which, uh, is very environmentally friendly,
6 very efficient, but also very costly, and something that,
7 frankly, most people can't afford.

8 JUDGE WOODRUFF: Well, thank you, Mr. Kind.

9 MR. KIND: You're welcome.

10 JUDGE WOODRUFF: Let's move on to Empire.

11 MS. CARTER: Empire's proposal in the written
12 comments takes a slightly different approach, and it is
13 very simplistic. When I read the sentence that we're all
14 discussing, I see nothing in there that would indicate the
15 particular types of potential rate design modifications
16 would need to be listed in the rule. Also, when you read
17 the language, the statute doesn't indicate that the rule
18 needs to come before the approval of a rate design
19 modification or after. The statute uses the word "and".
20 It doesn't use "then", and it doesn't use "first". I
21 believe that's significant with regard to the promulgation
22 of a rule.

23 The Commission right now has broad discretion
24 regarding rate design. The Commission needs to set just
25 and reasonable rates to assure safe and adequate service,

1 and that's not being limited, in my opinion, by the MEEIA
2 statute. The MEEIA statute -- the sentence, at least,
3 that we're discussing -- is not limiting regarding the
4 Commission's discretion and approval of rate design
5 modifications; and, therefore, Empire's proposing that the
6 rule also not be limiting. That any rule that is
7 promulgated doesn't tie the Commission down to particular
8 types of rate design modifications and, certainly, Empire
9 doesn't believe the Commission should be drafting a rule
10 that's going to limit what could be proposed, be it in a
11 rate case or in a MEEIA filing or in a separate filing.

12 The statute -- the sentence that we're discussing
13 from MEEIA in no way limits the timing and in no way
14 limits the Commission's discretion regarding what types of
15 rate design modifications may be approved. It simply says
16 that the Commission be for approving a rate design
17 modification associated with the demand-side cost recovery
18 needs to do two things, study the effect and have a rule.
19 It doesn't say which comes first. It certainly doesn't
20 say that the rule needs to come after that study and name
21 a particular type of modification that was studied.

22 As Commissioner Jarrett pointed out, I don't
23 believe any of us here in this room can do a list of rate
24 design modifications. And we certainly couldn't define
25 them with specifics to each utility where we study every

1 electric utility and every possible variation that there
2 could be in order to name those in a rule. And we'd
3 encourage the Commission not to put itself in a position
4 where it's having to amend a rule every time there is some
5 new -- new way to help customers engage in energy
6 efficiency to help them save money, that the Commission
7 shouldn't need to go back to a rulemaking every time
8 there's a new idea.

9 And that's, really, the basics of Empire's
10 proposal is to keep it simple and not -- not bind the
11 Commission to any one set of possibilities.

12 THE COURT REPORTER: Your name, please?

13 MS. CARTER: Diana Carter with Brydon Swearengen,
14 England for Empire District Electric Company.

15 JUDGE WOODRUFF: Commissioner Jarrett.

16 COMMISSIONER JARRETT: Yes. Thank you, Ms.
17 Carter. Just a couple of questions.

18 It seems to me that, really, the policy, the
19 purpose of MEEIA is two-fold. It's supposed to give
20 financial incentives to utilities to implement energy
21 efficiency and demand onsite programs and timely recovery
22 of cost, and those things as an incentive. And then it's
23 also those programs, those incentives have to be aligned
24 with helping the customers use energy efficiency and use
25 these programs. So, you've got the company side, and

1 you've got the customer side. Should that also be a part
2 of our rule, that any rate design modification approved
3 meets both of those standards?

4 MS. CARTER: I've got to say I didn't consider
5 that before standing up here. I would say, if it's in a
6 statute, it doesn't need to be restated in a rule. Your
7 rule can't contradict the statute. There would be no
8 reason to have to restate everything that's in a statute
9 in a rule.

10 COMMISSIONER JARRETT: Right. But, you know, our
11 overarching goal in everything is the rates have to be
12 just and reasonable, and I just wondered if that was,
13 given -- given the broadness of scope of your proposal,
14 very flexible proposal, if there shouldn't at least be
15 something in the rule that indicates, you know, the
16 purpose of what we're supposed to be doing here is, on the
17 one hand, incentivising the company, but also those
18 incentives have to align with the company's customers
19 using and, actually, you know, engaging in energy
20 efficiency.

21 MS. CARTER: Yes. And I believe that's already in
22 the MEEIA rules. This would be an additional rule coming
23 out of the MEEIA statute, and I don't think would be read
24 as a stand alone.

25 COMMISSIONER JARRETT: Okay. Okay. Thank you.

1 JUDGE WOODRUFF: Just one question. It's my
2 understanding Empire's position would be the Commission
3 could go ahead and promulgate a particular rule, right now
4 there wouldn't be any need for study -- further study?

5 MS. CARTER: There would need to be rulemaking,
6 obviously, and go through that process, but Empire's not
7 proposing specific rate design modifications be listed in
8 a rule. So, yes, we're suggesting there can be just a
9 rule that codifies what the statute says, that utilities
10 can propose them and they can be approved by the
11 Commission after study.

12 JUDGE WOODRUFF: Okay. Thank you.

13 MS. CARTER: Thank you.

14 JUDGE WOODRUFF: Let's move to KCPL.

15 MR. FISCHER: Thank you, Judge. My name is Jim
16 Fischer, and I'm representing Kansas City Power and Light
17 Company and KCP&L Greater Missouri Operations Company in
18 this proceeding. My clients didn't file written comments
19 in this phase of the proceeding, but we would endorse the
20 comments that were just made by Diana Carter on behalf of
21 Empire, and also Ameren's written comments in this case.

22 The Commission currently does have, as Diana
23 Carter's indicated, wide discretion in rate design
24 matters, and we believe the Commission should continue to
25 have that. KCPL/GMO believes basis for approval of a rate

1 design modification associated with demand-side resources
2 should be no different today or in the future than it has
3 been today. We believe that any rate design modifications
4 should ultimately lead to a consideration by the
5 Commission of a specific tariff with a specific proposal
6 by utility.

7 We believe that the language that Empire suggested
8 would do that, would meet the statutory mandates of
9 393.1075, Subsection 5. It's a very broad statement and
10 gives the Commission lots of flexibility to look at these
11 rate design issues in the future.

12 Alternatively, the languages proposed by Ameren
13 would do the same thing. Pricing structures should be
14 designed to compliment energy efficiency and demand
15 response programs, as these programs provide customers
16 with the best means for controlling their energy
17 consumption. But pricing alone to produce won't produce
18 reliable energy efficiency savings. It's not in the
19 customers' best interest, and it's certainly not in the
20 companies' best interest to implement radical compensation
21 focus, less comfort for customers, inconvenience for
22 customers, less production, and less economic growth.

23 I think that's an important point to make. We
24 need to distinguish between energy efficiency versus
25 forced conservation programs, and some of the rate

1 structures that are sometimes considered are more in the
2 nature of forcing conservation rather than encouraging
3 energy efficiency.

4 KCP&L and GMO would oppose an adoption of any rule
5 such as the one that is suggested by Public Counsel that
6 would limit the flexibility of the companies to propose
7 specific rate designs, including the continuation of
8 declining block rate structures, increase customers
9 charges, or decoupling proposals. We believe the company
10 should have the flexibility in the future to propose any
11 rate design that they believe would be just and reasonable
12 and the Commission should have the flexibility to, in rate
13 cases and in rate design proceedings or other proceedings,
14 to fully consider those rate structures.

15 We don't know what the future will bring. We have
16 smart grid developing smart meters. There may be things
17 in the future that would encourage energy efficiency that
18 we haven't thought of today, and we don't think a list,
19 either, is a good thing to put in the rule today.

20 With that, I would be happy to answer your
21 questions. I would indicate that, just in reference to
22 one of the comments for Mr. Kind on the MEEIA statute, the
23 MEEIA rules, the Western District has upheld the MEEIA
24 rules to-date, and although there are some pending
25 applications to transfer to the Supreme Court, that has

1 not been adopted as yet.

2 JUDGE WOODRUFF: Mr. Jarrett.

3 COMMISSIONER JARRETT: Thank you, Mr. Fischer, for
4 your comments. I just had one question. I'll put you on
5 the spot.

6 MR. FISCHER: Okay.

7 COMMISSIONER JARRETT: I know the Empire, the
8 language, they just indicate that a utility can request
9 modification finding a tariff in a rate case, so we're
10 MEEIA filing or an independent filing. Ameren language is
11 similar, but they also propose that a company be required
12 to file a study showing the effects of their rate design
13 modification. Does KCPL have any position on which is
14 better, study or no study?

15 MR. FISCHER: Well, certainly, in a rate case or
16 in a rate design proceeding, I think you would have
17 testimony that would support that. The only -- if you had
18 a tariff filing that was not suspended, I suppose there
19 wouldn't necessarily have to be a study to make that rate
20 design change under the current law. That would be my --
21 I think the Commission would want to review the effects on
22 it unless it's clear on its face it's really not needed.

23 COMMISSIONER JARRETT: I can ask Ameren if they
24 mean like a formal study, like a cost of service study, or
25 whether it would just be an expert that comes in and

1 testifies, if that would count.

2 MR. FISCHER: I wouldn't want to burden the
3 ratepayers with the expense of a study if it really wasn't
4 needed to justify what the companies were proposing or
5 what other parties were proposing, but, um, on the other
6 hand, I would think the Commission would want to have the
7 information necessary to support what its decision would
8 be. So --

9 COMMISSIONER JARRETT: All right. Thank you, Mr.
10 Fischer.

11 JUDGE WOODRUFF: Thank you, Mr. Fischer. Let's
12 move to Ameren then.

13 MR. LOWERY: Good morning. I'm Jim Lowery with
14 Smith Lewis, LLP, representing Ameren Missouri. Many of
15 the things I was going to say have already been discussed,
16 so I'm going to try not to be repetitive, but at the same
17 time there are probably a few points I have to be covered
18 that may have been discussed a little bit.

19 One thing I think I can state that we can agree
20 with Office of the Public Counsel on is the Commission has
21 a great deal of discretion as to what "study" means in
22 this context. I think we certainly would agree with the
23 comments from Empire and from KCPL about the Commission's
24 longstanding discretion to adopt appropriate rate designs
25 as it sees fit and about the fact that we see nothing in

1 the MEEIA statute that is intended by the legislature to
2 prescribe or circumscribe that discretion. And I think
3 the problem with the Staff's proposal, and to a greater
4 extent OPC's proposal, is both of them are, if adopted,
5 going to circumscribe your discretion.

6 Commissioner Jarrett touched on -- and I have
7 jotted this time line down before I came here this morning
8 -- I think you said that, you know, there's at least
9 probably about a six-month process to do a rulemaking, and
10 that's what I had arrived at as well. Typically, unless
11 you do an emergency rule, that's what you're looking at.
12 Well, imagine the circumstance under Staff's proposal, for
13 example, where a utility proposes something, there's a
14 question about whether it fits in whatever categories may
15 get adopted or not, and you really can't discern that
16 question, perhaps, until testimony's done and maybe even
17 have the evidentiary hearing, what, seven months into the
18 rate case.

19 It's -- it's simply not practical, and it leads to
20 a very illogical and absurd result which is also touched
21 on to interpretation to that we would have to somehow --
22 and we couldn't do it anyhow if we wanted to -- somehow,
23 even if the Commission thought this was the greatest rate
24 design associated with energy efficiency that's ever been
25 proposed, that we somehow can't do it because we have to

1 somehow amend a rule we can't amend with what constitutes
2 a rate case.

3 That doesn't make any sense. It's not good
4 policy, and we don't think the statute requires you to do
5 that, and we would urge you not to take tools that you
6 have in the toolbox today out of the toolbox or to lock
7 the toolbox with respect to some of those tools. We would
8 urge you to maintain the circumstances where you can make
9 a decision based upon whatever study you deem necessary to
10 adopt whatever rate design modification you think is
11 appropriate.

12 Um, I would also comment -- let me go back to Mr.
13 Jarrett, to your question about the Ameren language versus
14 the Empire language. I think, when we said provide a
15 study, we recognize that the statute does say that you
16 need to study the effects of a demand, of a rate design
17 modification associated with demand-side management. We
18 agree -- I agree wholeheartedly with Ms. Carter it doesn't
19 say you have to study all those things today and then
20 adopt an appropriate rule. Doesn't temporarily require
21 that order. But if we, in a rate case or MEEIA case,
22 propose a rate design modification, we need to give you
23 something to study. And, so, what the level of that study
24 is, how detailed it is, you know, is it this thick or is
25 it more cursory, I think that's up to your discretion and

1 that's going to be up to what you think you need in order
2 to make that decision.

3 I think Empire's language works, and I think our
4 language works. But I don't think -- I don't think our
5 language suggests it has to be, you know, a 50-page study
6 with a lot of spreadsheets and charts. Could be we could
7 choose to do that, but I don't think we have to, and I
8 think it's going to depend on what it takes to make the
9 Commission comfortable this is the right thing to do.

10 Another thing I thought I would address is what is
11 rate design. What is a rate design modification. And Ms.
12 Hernandez mentioned, I think she was talking about Dr.
13 Schmidt (ph) who made a presentation about a year ago, and
14 she was talking about rate design modifications and what
15 he discussed, and one of the things she brought up is that
16 he suggested decoupling. If you look at Dr. Schmidt's
17 presentation, it's clear that Dr. Schmidt agrees and, in
18 fact, Staff testified in this in Ameren's 2011 rate case
19 what rate design is. It is how you collect the revenue
20 requirement that has been allocated to the customer class.

21 In a rate case that includes rate design, you've
22 got three steps. You determine the revenue requirement;
23 you figure out how you allocate it, which you can do on
24 strict class cost of service; or you can do a combination
25 of revenue requirement and on policy, and then you get to

1 rate design.

2 And I think there's probably folks in the room
3 that don't agree, but if you're talking about pure
4 decoupling in the classic sense of pure decoupling, not
5 straight fixed variable but pure decoupling, I don't
6 believe pure decoupling is rate design. Decoupling
7 doesn't take place in that third aspect of how you would
8 implement rates.

9 And, so, to the extent that Ms. Hernandez
10 suggested that Dr. Schmidt, for example, suggested
11 decoupling rate design modification, I don't think he said
12 that, and I don't believe it.

13 Um, I think -- I think those are most of the
14 points. I mean, most of the other things we talked about,
15 I think, have been discussed, and I guess at that point I
16 would just ask if you have any questions we'd be happy to
17 try to answer them.

18 JUDGE WOODRUFF: Mr. Jarrett.

19 COMMISSIONER JARRETT: I guess my question is very
20 hypothetical, I guess, Mr. Lowery. Let's say we adopt
21 Staff's position and promulgate a rule listing certain --
22 certain rate designs that are acceptable. And then we get
23 in a rate case and there's a new -- new flavor of rate
24 design out there that somebody thought up as just the
25 greatest thing, it's just genius. And everybody in the

1 rate case, all the parties in the rate case agree, Hey,
2 this is something great. So, we get a stipulation and
3 agreement saying like we have in the prior filings, it's
4 all been stipulated to. Given that rule, could we approve
5 that settlement?

6 MR. FISCHER: Well, if you can -- if the rule
7 could fairly be read, the categories were broad enough,
8 let's say, to encompass whatever that settlement is, then
9 I suppose you could. But if they aren't and you know you
10 have a stipulation that objects to you could challenge it,
11 you could have a third party come in and file rehearing
12 and challenge it.

13 I mean, the fact that everybody's -- excuse me --
14 sort of holding hands and saying kumbaya at the time
15 doesn't necessarily make that, I mean, from a legal
16 challenge later. So, I think that's the concern. I think
17 you have to step back and ask yourself why would you adopt
18 a rule that does that? Why would you adopt a rule that
19 may circumscribe your ability to prove a settlement or to
20 make a decision in the face of a contest between parties?

21 Um -- and I can't think of a good reason to do it
22 unless -- and I think this is what Staff would probably
23 tell you -- unless the statute requires that you do that.
24 And it's my opinion the statute doesn't require you to do
25 that, that the General Assembly did not intend to

1 circumscribe your discretion, did not intend to put you in
2 that box. And if they didn't intend to put you in that
3 box -- and I would feel better about defending that
4 position on appeal, frankly, than the one that says they
5 did intend to do that -- if they didn't intend to put you
6 in that box, I would ask the Commission why would you want
7 to do that. Why would you want to create the hypothetical
8 that you just posited to me. It wouldn't exist if you
9 didn't put yourself in that box.

10 COMMISSIONER JARRETT: Thank you, Mr. Lowery.

11 JUDGE WOODRUFF: Thank you.

12 MR. LOWERY: Thank you.

13 JUDGE WOODRUFF: Move over to Ms. Vuylsteke and
14 MIEC.

15 MS. VUYLSTEKE: Good morning. MIEC's position is,
16 I think, in many respects, consistent with the positions
17 of Empire, KCPL, and Ameren. And the way in which it's
18 similar is I think we all agree that rate design is really
19 dependent on the context of a particular case, and that
20 rate design is fluid and there are many many factors that
21 make rate design not easily able to be stated in a rule.
22 What is appropriate varies according to revenues,
23 customers, and in many other moving parts.

24 And, so, we think that, since rate design in our
25 view is really not appropriate to put into a rule and be

1 so case specific, we actually recommended in our comments
2 filed on July 22nd that the Commission simply adopt a rule
3 in this case that says that rate design is most
4 appropriately handled on a case-by-case basis and not
5 generic. And, so, I think we're just taking to the next
6 level a solution that some people in the room seem to
7 agree upon, which is the Commission should not be bound,
8 the Commission should have complete flexibility, that
9 MEEIA does not require you to set forth various rate
10 designs that could be used, and that there could be some
11 unintended consequences of intending to do so.

12 If the Commission feels that it does, that MEEIA
13 is requiring you to establish a rule here, then we would
14 suggest the simple rule that rate design is not
15 appropriate for a generic rule.

16 JUDGE WOODRUFF: Commissioner Jarrett.

17 COMMISSIONER JARRETT: Okay. So, if I'm
18 understanding you correctly, we just need a one-sentence
19 rule that says this really should be done on a case-by-
20 case basis. We determine it should be done on a case-by-
21 case basis, and we've studied the effects of various rate
22 designs and feel it's just more appropriate to do it on
23 the case, something like that?

24 MS. VUYLSTEKE: I agree, Commissioner Jarrett.

25 COMMISSIONER JARRETT: Okay. Very simple. I like

1 that. I like the simplicity anyway. I don't want to
2 prejudge anything, but simple is good.

3 JUDGE WOODRUFF: And you indicated it was Mr.
4 Brubaker's idea?

5 MS. VUYLSTEKE: Correct.

6 JUDGE WOODRUFF: I just want to be clear that's
7 not me. We have two Morrisises.

8 COMMISSIONER JARRETT: We don't have any copyright
9 infringements on that.

10 JUDGE WOODRUFF: Thank you. Mr. Woodsmall.

11 MR. WOODSMALL: Your Honor, Mr. Chriss has brief
12 comments.

13 JUDGE WOODRUFF: Could you tell us who you are?

14 MR. CHRISS: Steve Chriss with Walmart Stores,
15 Incorporated. Thank you for having this meeting today.
16 We didn't file any written comments but taking notes in
17 the back and just wanted to give a business customer
18 perspective.

19 One of the things that I did note that, as long as
20 utilities charge business for energy, we'll look for ways
21 to save energy and save costs and pass on the savings to
22 our customer. Just from a profit perspective, operating
23 cost perspective, energy efficiency is very important to
24 us. So, I don't want to discount anything on the pricing
25 side, but I also want to stress it's just part of our

1 business and part of what we do.

2 In terms of the immediate issues, I like MIEC's
3 approach of a case-by-case basis, and then this quote from
4 Empire, Keep it simple. One of the processes that, you
5 know, we talked some about having to have a rulemaking
6 when there's a rate design change. Well, in California,
7 if a utility wants to have a rate case, they have one case
8 revenue requirement, one case allocation, one case R&L,
9 one case rate design. It's impossible, as a customer, to
10 keep on top of all of that.

11 You know, if, in fact, the State of Missouri has a
12 rate case process where everything is considered in one
13 case, all the costs and benefits could be considered,
14 appropriate rate designs can flow out of that from a
15 customer's perspective, that's an excellent process and we
16 don't -- we wouldn't want to see that diminished and have
17 certain issues cut out and, you know, put on the side and
18 considered elsewhere. Especially for rate design where
19 you have to have the costs that you're all indicating
20 designing for in front of you or also the rate design
21 could be mentioned, also, it could end up with weird
22 results.

23 A couple other points that I noted, it's important
24 to recognize that commercial industrial rates are
25 different than residential rates. Let me talk about high

1 fixed charges. You talk about those sorts of things. It
2 means one thing to residential customers and another thing
3 to commercial. Load factors are really important and
4 should always be considered. You know, and how fixed
5 costs are charged to high-load, low-load factor customers,
6 those are important.

7 Our history in Missouri with the rate cases, a
8 number of utilities have cost of service allocation issues
9 to where they are significant subsidies from one rate
10 class to another. And before you start, you know, looking
11 at how you flow the rates out of that, we need to be
12 looking at that and make sure the classes are charged
13 rates that, you know, approach the cost of service that
14 they cause the utilities to incur.

15 Got one more. I think that covers it. I thank
16 you for your time and the opportunity to appear.

17 JUDGE WOODRUFF: Thank you. Mr. Jarrett.

18 COMMISSIONER JARRETT: Thank you, sir. I
19 appreciate you being here and hearing Walmart's
20 perspective, because I know Walmart has been a leader
21 nationally -- and I guess internationally -- on the sort
22 of energy efficiency programs, and a lot of the things you
23 do are very good.

24 I guess from a policy perspective, is it your
25 opinion that, as an admission, we should remain flexible

1 and have as flexible rule as possible to allow
2 experimentation or to allow as many types of rate designs
3 as possible to be considered?

4 MR. CHRISS: Absolutely. You know, I was thinking
5 in the back that, you know, rate designs are sort of like
6 fingerprints. We've got three KCPL operating companies
7 here and their three rate designs aren't the same. So,
8 it's important to be able to take into consideration the
9 factors that impact each company. And, then, the other
10 issue with putting prescriptives into rule is that you may
11 have existing rate designs. So, I think Missouri, for
12 KCPL, has a facility charge that essentially rates per
13 kilowatt charge based on your highest demand on the last
14 12 months.

15 So, you can lower that over time, but it takes a
16 long time to lower that because, you know, you still have
17 a big load back. And then you still have what looks like
18 a declining block rate, but it's not. It's a load-
19 factored rate, so it's not -- the marginal charge isn't
20 what your usage is, it's where your load factor is.

21 There are a number of things you could take a
22 prescriptive rule, say no fixed variable, no declining
23 block, which takes this rate. I'm not saying whether or
24 not that makes sense, but it may make sense, and say but
25 we have to get rid of every single charge here because it

1 violates this rule.

2 COMMISSIONER JARRETT: Right. Of course,
3 everything we have to do when we decide a case has got to
4 be supported by competent evidence. A case-by-case
5 basis would allow that.

6 MR. CHRISS: Yes.

7 COMMISSIONER JARRETT: Thank you so much. I
8 appreciate you being here.

9 MR. CHRISS: Very well.

10 JUDGE WOODRUFF: Thank you, Mr. Chriss.

11 MRDC and Mr. Leneers?

12 MR. LENEERS: I'm actually filling in for MRDC, so
13 I'm not prepared.

14 JUDGE WOODRUFF: Did you want to come up and make
15 a statement at all?

16 MR. LENEERS: No. Thank you.

17 JUDGE WOODRUFF: Okay. All right then.

18 Mr. Jarrett, any general questions?

19 COMMISSIONER JARRETT: I have nothing further,
20 Judge. Thanks.

21 JUDGE WOODRUFF: All right. I said I'd give you a
22 chance to make any responsive comments you'd like. Now is
23 your chance. Anything from Staff.

24 MS. HERNANDEZ: Is sitting here okay?

25 JUDGE WOODRUFF: You can stay there. That's fine.

1 MS. HERNANDEZ: I think, certainly, Staff is not
2 trying to limit the Commission's authority in any way.
3 What we are trying to accomplish is making sure that any
4 Commission decision is -- the implications of such
5 decision is in line with the MEEIA statute and the MEEIA
6 policy. Um, rate design modification in terms of MEEIA is
7 different than rate design in the context of a rate case,
8 so I think there are different things that need to be
9 considered in light of MEEIA's policy. And that's why
10 those two can be considered different.

11 While I can appreciate the companies want -- or
12 the companies here want the flexibility, the implications
13 of certain rate design modifications must be known and
14 must be understood. Again, the intent of Staff is not to
15 limit the Commission's authority, nor is it to make a
16 process that's very difficult to follow. We want to
17 understand the implications of rate designs that are
18 suggested, and by having a rule that has studied certain
19 rate designs and approved those, the implications are
20 understood. And, certainly, if some great idea comes up,
21 we can study the effects of such idea and put that in the
22 rule for use.

23 Um, anything else? I think that's all the final
24 comments I have.

25 I did have one question, though, about the handout

1 that I had provided to everyone. I know this isn't an
2 evidentiary hearing, but should that be offered or is
3 there any problem with having that be reflected in the
4 record?

5 JUDGE WOODRUFF: We'll mark it as an Exhibit 1,
6 and it will be reflected in the record.

7 MS. HERNANDEZ: Thank you.

8 JUDGE WOODRUFF: Public Counsel?

9 MR. KIND: Yeah, just some brief concluding
10 remarks.

11 I just wanted to respond quickly to the rather
12 interesting hypothetical that Commissioner Jarrett posed
13 about the possibility of in a rate case the Commission
14 being presented with a settlement for approval that
15 included a rate design modification that had not
16 previously been authorized through rulemaking that
17 followed up on MEEIA statute. And I guess I would look at
18 that question a little bit -- in a little bit of a
19 different way than I think the response you got.

20 I would look at it in terms of that, well, first
21 of all, that as someone who has worked in the rate design
22 area for the last 25 years, I would just say in generally
23 that, you know, while large customer rates can be more
24 complex, I will acknowledge that -- that small customer
25 rates -- rate design really is not anything approaching

1 rocket science, and there have been -- you know, there
2 were books written on rate design decades ago, and many of
3 those principles really have not changed.

4 Many of the different alternative rate designs
5 have been discussed, the portfolio of options have not
6 substantially changed over the years. I would say the
7 major invasion in rate design that occurred that I'm aware
8 of was in the 1990s, the movement towards decoupling, and
9 that was a major new rate design. But, outside of that, I
10 really couldn't cite any major new ideas in the area of
11 rate design.

12 It's not to say that, you know, everything is
13 known. There can always be some surprises, but it's an
14 area where thousands of people have looked over the
15 different options and vetted options, proposed different
16 options. So, I would be very surprised that, somehow in a
17 settlement, there was some novel rate design concept that
18 really had never occurred to anyone and wouldn't have been
19 part of the Commission's consideration in adopting a rule
20 regarding rate design modifications.

21 Another perspective on that would be that you, the
22 Commission, I think is -- pretty much has been directed by
23 the legislature through the statute to determine what rate
24 design modifications are appropriate. And while you've
25 been given that direction, the Commission can, obviously,

1 sort of make their own public policy considerations in
2 terms of looking at a study and determining what rate
3 design specific modifications they think are in the public
4 interest.

5 I would say that, actually, this rule, it gives
6 you an opportunity to, then, to review different types of
7 rate designs, to take a close look at designs so that
8 you're not really rushed and confronted with something in
9 the context of a rate case, but you've already had more
10 time to consider it. And, so, I would see it as what
11 happens if the parties bring you a settlement that doesn't
12 -- that includes a rate design modification that isn't
13 permitted pursuant to the rule. I would say the parties
14 have done a poor job of crafting a settlement in that
15 they've crafted something that is not consistent with the
16 guidance that they've been provided by the Commission, in
17 that this rulemaking is actually an opportunity for the
18 Commission to provide input, provide some public policy
19 guidance pursuant to the legislature's direction, and that
20 will help to make sure that, in the future, when you are
21 presented with settlements then, that you get a work
22 product from the parties that the settlement they've
23 crafted is something consistent with what the Commission
24 thinks is good public policy.

25 Thank you.

1 JUDGE WOODRUFF: Thank you. Anything else from
2 Empire?

3 MS. CARTER: I just have one additional comment
4 that Commissioner Jarrett's hypothetical brought up for
5 me. Staff's proposed language not only speaks in terms of
6 what the Commission may approve, but it also could be read
7 as what limiting a utility might even propose. Their
8 language includes those words as well, but the Commission
9 has studied these particular rate designs and what follows
10 is the list of what the utility may propose. So, I think
11 one could argue that you couldn't even get to Commissioner
12 Jarrett's hypothetical because this rule could be read as
13 limiting what could even be put on the table for
14 consideration in a rate case.

15 JUDGE WOODRUFF: KCPL.

16 MR. FISCHER: Just briefly, Judge. I would just
17 note that the Commission, historically, has looked at many
18 factors, all relevant factors, whenever it's decided rate
19 structure issues or rate design, cost causation factors,
20 equity and fairness, as well as other regulatory policies
21 and not just energy efficiency. And I wouldn't want to
22 focus only on energy efficiency by listing a group of rate
23 structures that are somehow approved and somehow exclude
24 some of these other factors that you look at that where,
25 at least historically, the Commission has.

1 So, I would again just urge you to maintain your
2 flexibility.

3 JUDGE WOODRUFF: Ameren.

4 MR. LOWERY: I'm going to follow up on what Mr.
5 Fischer just said. It goes back to a comment that Mr.
6 Kind made during his initial remarks. Mr. Kind focused on
7 393.1075.3 Sub 2, and that's the -- there are three things
8 the Commission has to do to further the policy that's
9 reflected in MEEIA, timely cost recovery, align the
10 incentives of the utilities with helping customers use
11 more efficient, and timely updating three things.

12 What the OPC rule, in effect, does, it focuses
13 only on the second one of those what Mr. Kind mentions,
14 gives OPC's opinion what rate design advance that second
15 one and which ones don't advance that second one as of
16 today. You've got a broader mandate that you have to deal
17 with, and by focusing on only one, that drives you again
18 to circumscribe your discretion.

19 I would also agree with Ms. Carter and Mr. Fischer
20 that you don't have to even get to Commissioner Jarrett's
21 hypothetical if you adopt either OPC's proposal or the
22 Staff proposal because if it doesn't fit within the boxes
23 that they have drawn. You can't even talk about it in the
24 rate case, the muni case, or what have you.

25 Thank you.

1 JUDGE WOODRUFF: Commissioner.

2 COMMISSIONER JARRETT: This is for everyone. I
3 just want to point out that it just occurred to me when
4 you were discussing that, I think when we look at
5 prescriptive rules, I think generally one of the problems
6 might be -- and the gentleman from Walmart stated it very
7 succinctly -- for example, declining block rates, that's
8 the form. The function may not be based on different
9 factors. It may not really be a declining block rate at
10 all. So, if we -- if we prohibit declining block rates
11 per se, we can't consider declining block rates even if we
12 put different factors in that. As a function, it's really
13 not a declining block rate.

14 MR. LOWERY: Well, and the Commission, for
15 example, if there's a lot of uncertainties what various
16 descriptors mean, you just gave an example where there
17 could be uncertainty, of course, creates risk, and risk
18 sometimes creates risk version, and then utilities are
19 reluctant to propose things. Because what if we propose
20 them and you approve them and then it's appealed and we
21 don't know if it's going to work.

22 We don't know what the consequence of that is
23 going to be, so we end up -- you know, Mr. Kind indicated
24 rate design hasn't really changed, and I think maybe he
25 meant in the residential small general service-type areas

1 more, but we don't know if it's going to change. One
2 thing that has changed that Mr. Kind mentioned, for
3 example, we have RTOs, transparent positive cell markets,
4 real paradigm electric service. Early 2000s, all the rate
5 changes, we didn't have. We don't know what's going to
6 happen later.

7 And I'll go back to my rhetorical question. Why
8 do you want to prejudge those things and circumscribe your
9 discretion now, and I don't see any good end to doing that
10 as opposed to we can study a lot of complicated issues in
11 a rate case, we can surely study that and debate and have
12 hearings about particular rate design and allow you to
13 study it to the nth degree in a rate case as well and get
14 that done as well instead of try to do that today.

15 JUDGE WOODRUFF: I want to give Mr. Kind a chance
16 to respond to that.

17 MR. KIND: Thank you. I appreciate that.

18 Well, I think some good points have been raised,
19 and the point Mr. Chriss talks about, large customer rate
20 design and details of that, I would think that one
21 approach that the Commission could consider is to look at
22 Public Counsel's recommendations or specific rate design
23 modifications that we've listed as that they could just be
24 directed towards small customers. So, just directed
25 towards residential and small commercial customers.

1 You're not going to get the type of issues that
2 Mr. Chriss spoke about when you're talking about the rate
3 design for those customers. And the other thing I would
4 mention is that, you know, rules in general provide good
5 guidance. They provide guidance to utilities. They will
6 provide guidance to parties that draft stipulations and
7 agreements. But, occasionally, you will receive
8 settlements from parties that reference compliance with a
9 rule, and it's not unusual that those settlements would
10 talk about how a specific rule -- for instance, an
11 affiliate transaction rule -- would be complied with as
12 part of a settlement, and it may also as part of a
13 settlement show that here's an area where the parties
14 agree that the Commission should waive the specific rule,
15 and then you have an opportunity to find out as part of
16 the settlement process if there's good cause for waiving a
17 specific provision in a rule.

18 So, I think it's important when we talk about
19 rules that we do sort of set up this, you know, sort of
20 implied there's one size fits all type of framework. But
21 it's really not -- not terribly unusual at the Missouri
22 Commission for the Commission to depart from some of the
23 items in its rules, either as part of settlements or
24 contested cases.

25 JUDGE WOODRUFF: Thank you.

1 COMMISSIONER JARRETT: Thank you.

2 JUDGE WOODRUFF: Anything else from MIEC? Mr.

3 Brubaker?

4 MR. BRUBAKER: Thank you, sir. I just wanted to
5 comment on the concept of making a list of municipal rate
6 designs. If we try and rate it again, we think that's a
7 bad idea. We don't think the Commission should partake in
8 limiting the imagination of the parties solution specific
9 to particular utility costs and customers needs and rate
10 structures.

11 Just one quick example. Mr. Kind talked about
12 declining block rates and those to be referred or
13 encouraged took the industrials out of it -- which I
14 appreciate -- but even still, within the residential
15 class, to say that declining block rates are preferred
16 over single block rates is a judgment that large families
17 should pay more kilowatt per hour for their electricity
18 than a retired couple who lives in a condominium. I don't
19 think there's any basis in fact for that policy judgment
20 in the abstract.

21 If you want to look at specific customer
22 characteristics in a rate case and you come out with that
23 conclusion, that's fine. But just to say that absolutely,
24 I think, is not correct. It's really not encouraging wise
25 and efficient use. It's just discouraging large use

1 regardless of the reason the use is large. I don't think
2 we ought to go there.

3 JUDGE WOODRUFF: Okay. Anything else from
4 Walmart.

5 MR. CHRISS: We have no further comments.

6 JUDGE WOODRUFF: From MRDC?

7 MR. LENEERS: No. Thank you.

8 JUDGE WOODRUFF: All right. Well, thank you all
9 for coming today. It's been quite entertaining and
10 enlightening. And, with that, we are adjourned.

11 (Adjourned.)

12 (Whereupon, the record ended at 11:30 a.m.)

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)

3) ss.

4 COUNTY OF COLE)

5 I, Pamela S. Gentry, Certified Court
6 Reporter with the firm of Midwest Litigation Services, do
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14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

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Pamela S. Gentry, CCR #426

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TRANSCRIPT OF PROCEEDINGS 5/7/2013

A				
ability 46:19	59:15	35:4 43:1,1	51:13 61:21	30:24
able 16:23	advantage	amendment	approaching	assure 33:25
47:21 52:8	26:22	15:22	55:25	Attorney 3:21
above-entitled	adverse 22:10	amendments	appropriate	4:3,8,13,21
65:8	advocating	10:10	10:2,25 15:17	attorneys 3:13
absence 33:3	14:9	Ameren 4:2	17:7 18:11	6:21,22
absolute 20:21	affiliate 62:11	7:19,21,23	41:24 43:11	authority 54:2
absolutely 52:4	afford 33:7	12:23 15:11	43:20 47:22	54:15
63:23	agency 11:13	38:12 40:10	47:25 48:15	authorized
abstract 63:20	11:20	40:23 41:12	48:22 50:14	55:16
absurd 42:20	aggressively	41:14 43:13	56:24	authorizes
acceptable	29:6	47:17 59:3	appropriately	20:25 31:25
45:22	ago 19:11,12	Ameren's	48:4	Avenue 3:22
accomplish	24:14 44:13	37:21 44:18	approval 12:8	avoid 29:13
54:3	56:2	Andrew 5:4	33:18 34:4	aware 9:4
acknowledge	agree 13:9,11	7:23	37:25 55:14	19:14 29:21
55:24	13:13 41:19	annotated	approve 12:5	56:7
Act 9:6 11:19	41:22 43:18	11:17	46:4 58:6	A&G 28:15
action 11:13	43:18 45:3	announcement	60:20	a.m 1:18 6:1
acts 11:21	46:1 47:18	11:20	approved	64:12
add 10:5	48:7,24 59:19	answer 6:22	12:22 13:5	
additional	62:14	39:20 45:17	34:15 36:2	B
28:10 29:18	agreement 46:3	anticipate 6:17	37:10 54:19	B 4:2
36:22 58:3	agreements	anybody 6:17	58:23	back 11:8
additions 25:23	62:7	19:6	approving 9:24	20:11 25:4,25
address 44:10	agrees 44:17	anyway 49:1	34:16	35:7 43:12
addressing	ahead 8:18	apparent 29:20	April 8:9	46:17 49:17
32:13	37:3	appeal 47:4	area 26:14	52:5,17 59:5
adequate 23:3	air 27:10	appealed 60:20	30:11 55:22	61:7
23:8 33:25	align 36:18	Appeals 9:16	56:10,14	background
adjourned	59:9	appear 51:16	62:13	21:11
64:10,11	aligned 21:16	appearance 7:7	areas 60:25	bad 26:19 63:7
Administrative	35:23	appearing 8:13	argue 58:11	Baker 3:12
11:19	allocate 44:23	appears 22:19	argument 32:7	7:13 19:24
admission	allocated 44:20	applicability	arrived 42:10	based 11:13
51:25	allocation 50:8	11:12,14	artifact 24:22	14:24,24
adopt 41:24	51:8	application	ascertain 11:4	31:21 43:9
43:10,20	allow 9:9 52:1	12:8	asking 19:3	52:13 60:8
45:20 46:17	52:2 53:5	applications	aspect 45:7	basic 22:4
46:18 48:2	61:12	15:14 39:25	Assembly	basically 21:5
59:21	allowed 15:14	apply 14:25	46:25	22:2 31:14
adopted 11:14	16:11,12 17:6	appreciate	associated 2:11	basics 35:9
40:1 42:4,15	alternative	51:19 53:8	9:25 26:4	basis 20:23
adopting 56:19	56:4	54:11 61:17	32:13 34:17	25:23 32:2
adoption 39:4	Alternatively	63:14	38:1 42:24	37:25 48:4,20
advance 59:14	38:12	approach 30:7	43:17	48:21 50:3
	amend 31:19	33:12 50:3	assume 18:9	53:5 63:19

becoming 11:25	books 56:2	caption 65:9	62:16 65:8	39:9 51:1
beginning 7:9	Boulevard 2:20	carbon 33:4	causes 15:25	charging 29:9
behalf 8:2,8,13	bound 48:7	Carter 3:21	Cave 4:14 8:7	charts 44:6
37:20	box 3:7,15,23	7:17,17 33:11	CCR 2:19	CHIEF 2:14
believe 8:8	4:4 47:2,3,6,9	35:13,13,17	65:19	choose 44:7
10:14 11:10	boxes 59:22	36:4,21 37:5	cell 25:12 61:3	chooses 26:21
12:23 13:10	brain 17:21	37:13,20	certain 11:24	26:22
13:18 15:17	brief 6:18 20:9	43:18 58:3	15:3,10 16:17	Chriss 5:9 8:14
17:24 18:1,23	49:11 55:9	59:19	19:1 30:22,23	49:11,14,14
20:24 29:2	briefly 58:16	Carter's 37:23	45:21,22	52:4 53:6,9
30:6 33:21	bring 13:21	case 6:7,20	50:17 54:13	53:10 61:19
34:9,23 36:21	39:15 57:11	11:2,16 12:23	54:18	62:2 64:5
37:24 38:3,7	broad 15:3	12:24 14:16	certainly 23:21	Christina 3:12
39:9,11 45:6	16:15 33:23	14:19 16:2,5	31:12 34:8,19	7:13
45:12	38:9 46:7	16:9,13,19,25	34:24 38:19	christina.bak...
believes 10:12	broaden 59:16	17:7 20:16	40:15 41:22	3:17
17:2 37:25	broadness	30:25 34:11	54:1,20	circumscribe
bench 6:14	36:13	37:21 40:9,15	Certified 65:5	42:2,5 46:19
23:16	Broadway 4:15	42:18 43:2,21	certify 65:7	47:1 59:18
beneficial 24:8	brought 44:15	43:21 44:18	challenge 46:10	61:8
24:8	58:4	44:21 45:23	46:12,16	circumstance
benefit 7:8	Brubaker 5:8	46:1,1 47:19	chance 6:12,20	42:12
benefits 50:13	8:7 63:3,4	48:1,3,20,21	7:1,3 53:22	circumstances
best 26:9,10	Brubaker's	48:23 50:7,7	53:23 61:15	43:8
29:3 38:16,19	49:4	50:8,8,9,12	change 20:14	cite 56:10
38:20	Bryan 4:14 8:7	50:13 53:3	20:19,20 21:1	City 1:9 2:8,21
better 26:23	Brydon 3:22	54:7 55:13	27:7 32:14	3:8,16,23 4:7
40:14 47:3	7:17 35:13	57:9 58:14	40:20 50:6	4:10,24 5:5
big 52:17	Building 3:6,14	59:24,24	61:1	8:3 37:16
bill 27:1 28:11	bulbs 32:24	61:11,13	changed 20:22	65:14
29:13	bunch 32:24	63:22	25:10,11 26:1	class 14:1
bills 27:14	burden 41:2	cases 16:25	56:3,6 60:24	44:20,24
bind 35:10	burdensome	17:1,25 18:1	61:2	51:10 63:15
bit 6:6 9:1	15:23	21:1 31:24	changes 10:17	classes 14:17
17:21 20:11	business 49:17	39:13 51:7	11:18 14:11	51:12
21:11 23:22	49:20 50:1	62:24	21:7 31:23	classic 45:4
41:18 55:18	C	case-by 48:19	61:5	clear 19:3
55:18	C 3:1,21 4:1	48:20	characteristics	26:24 40:22
block 13:23,25	5:1 6:2 7:17	case-by-case	63:22	44:17 49:6
13:25 24:1,4	65:1,1	48:4 50:3	charge 13:24	clients 37:18
24:5,11,18,21	California 50:6	53:4	22:6,6,7,7,8	climate 32:14
25:6 26:3	call 6:23 7:6	categories	49:20 52:12	33:2
32:2,3,8 39:8	capacity 25:7,8	16:15 42:14	52:13,19,25	close 57:7
52:18,23 60:7	25:21,23,24	46:7	charged 51:5	coal-fired 26:6
60:9,10,11,13	26:8	causation	51:12	codifies 37:9
63:12,15,16	Capitol 3:22	58:19	charges 20:15	Cole 65:4,15
		cause 51:14	22:5,9 27:2	collect 44:19

TRANSCRIPT OF PROCEEDINGS 5/7/2013

collects 14:13	37:22,24 38:5	28:15,22	57:8	16:9 17:25
Columbia 4:5	38:10 39:12	38:20 39:6	conjunction	19:17 20:12
combination	40:21 41:6,20	41:4 52:6	12:8	41:22 47:19
24:10 44:24	42:23 44:9	54:11,12	connected	54:7 57:9
come 6:23 20:1	47:6 48:2,7,8	company 3:20	29:10	continuation
32:2 33:18	48:12 54:4	4:7,7 5:6,7	cons 30:4	39:7
34:20 46:11	55:13 56:22	8:4 16:1 28:4	consequence	continue 18:13
53:14 63:22	56:25 57:16	28:18 35:14	60:22	37:24
comes 34:19	57:18,23 58:6	35:25 36:17	consequences	contradict 36:7
40:25 54:20	58:8,17,25	37:17,17 39:9	48:11	controlling
comfort 38:21	59:8 60:14	40:11 52:9	conservation	38:16
comfortable	61:21 62:14	company's	38:25 39:2	Cont'd 4:1 5:1
18:24 19:2	62:22,22 63:7	36:18	consider 11:6	cool 27:10
44:9	Commissioner	compared	11:11 15:20	copyright 49:8
coming 36:22	6:13,14 12:19	32:19	16:23 17:2	Corporation
64:9	13:1,4,8,12	compensation	20:20 31:10	5:9
comment 43:12	13:14 14:6,12	38:20	36:4 39:14	corporations
58:3 59:5	14:15,22 15:8	compete 33:1	57:10 60:11	23:25
63:5	15:25 16:21	competence	61:21	correct 12:24
comments 7:16	17:8 19:5,9	53:4	consideration	13:7 49:5
8:1,8,9 19:18	19:10,19,22	complete 48:8	38:4 52:8	63:24 65:11
20:8,9 30:21	22:24 23:18	complex 55:24	56:19 58:14	correctly 48:18
33:12 37:18	26:15,17	compliance	considerations	cost 2:11 9:25
37:20,21	27:19 28:2,16	62:8	17:5 27:16	12:7 13:24
39:22 40:4	29:21 30:16	complicated	57:1	14:4,14 20:15
41:23 48:1	34:22 35:15	9:19 61:10	considered	22:8 28:13
49:12,16	35:16 36:10	complied 62:11	10:4,20 17:24	29:17 33:3
53:22 54:24	36:25 40:3,7	compliment	39:1 50:12,13	34:17 35:22
64:5	40:23 41:9	38:14	50:18 51:4	40:24 44:24
commercial	42:6 45:19	concept 56:17	52:3 54:9,10	49:23 51:8,13
50:24 51:3	47:10 48:16	63:5	consistent	58:19 59:9
61:25	48:17,24,25	concern 16:21	31:17 47:16	costly 33:6
commission 1:3	49:8 51:18	46:16	57:15,23	costs 9:10
2:3 3:3,6,14	53:2,7,19	conclude 10:1	constitutes	14:11 22:5
6:10,19 9:3	55:12 58:4,11	concluded 12:5	43:1	49:21 50:13
9:11 10:1,7	59:20 60:1,2	concluding	construction	50:19 51:5
11:23 12:4,11	63:1	55:9	11:4	63:9
12:22 13:20	Commissione...	conclusion	consulting 19:4	cost-effective
15:16 17:17	6:12,20 18:20	63:23	CONSUMERS	9:10
17:24 18:2,5	20:8	conditioned	4:12	Counsel 3:5,11
18:9,16,23	Commission's	27:10	consumption	7:12 19:23
20:25 21:15	34:4,14 41:23	condominium	38:17	20:7 23:11
21:25 23:5,12	54:2,15 56:19	63:18	contest 46:20	30:21 39:5
31:2,19 33:23	common 24:14	conference 1:8	contested 6:7	41:20 55:8
33:24 34:7,9	companies	1:18 2:7 6:1,4	62:24	counsels 13:9
34:16 35:3,6	10:10 13:9	6:10	context 12:14	Counsel's
35:11 37:2,11	16:12,18	confronted	12:23 16:2,5	24:20 61:22

count 41:1	35:5,24 36:18	defending 47:3	31:4,22 33:15	developed
counter-prod...	38:15,19,21	define 12:13	33:18,24 34:4	25:16
27:4	38:22 39:8	15:3 34:24	34:8,15,16,24	developing
country 32:12	47:23 51:2,5	defines 13:17	36:2 37:7,23	39:16
County 65:4,15	59:10 61:24	definition	38:1,3,11	DEVELOP...
couple 10:3,10	61:25 62:3	10:21 13:15	39:11,13	3:6
12:19 21:5	63:9	14:8	40:12,16,20	Diana 3:21
24:1,18 30:9	customer's	degree 61:13	42:24 43:10	4:12 7:17 8:6
30:19 35:17	50:15	delivering 9:10	43:16,22	35:13 37:20
50:23 63:18	cut 50:17	delivery 9:8	44:11,11,14	37:22
course 25:13		demand 28:3,7	44:19,21 45:1	different 10:8
31:20 53:2	D	28:8,20 35:21	45:6,11,24	14:17,23 15:5
60:17	D 6:2	38:14 43:16	47:18,20,21	15:13 18:1,15
Court 4:23 7:8	David 4:20	52:13	47:24 48:3,14	24:15 30:3,4
9:15 20:4	8:12	demand-side	50:6,9,18,20	31:4 32:23
35:12 39:25	day 27:9	2:11 9:7,10	54:6,7,13	33:12 38:2
65:5	dcarter@bry...	9:25 10:11	55:15,21,25	50:25 54:7,8
covered 41:17	3:24	12:7 14:21	56:2,7,9,11	54:10 55:19
covers 51:15	deal 41:21	17:4 20:15	56:17,20,24	56:4,15,15
crafted 57:15	59:16	34:17 38:1	57:3,12 58:19	57:6 60:8,12
57:23	debate 30:3	43:17	59:14 60:24	differently
crafting 57:14	61:11	depart 62:22	61:12,20,22	15:11
create 22:9	decades 56:2	DEPARTME...	62:3	difficult 54:16
29:7 47:7	decide 16:3	3:5	designed 38:14	difficulty 16:1
creates 60:17	18:2 23:1	depend 18:4,5	designing	diminished
60:18	53:3	44:8	50:20	50:16
crude 30:6	decided 16:4	dependent	designs 14:18	diminishing
CSR 9:13 10:6	58:18	47:19	23:23,25 39:7	22:14
12:9,10	decides 17:17	depends 23:11	41:24 45:22	directed 56:22
current 40:20	decision 41:7	descriptors	48:10,22	61:24,24
currently 37:22	43:9 44:2	60:16	50:14 52:2,5	direction 56:25
cursor 43:25	46:20 54:4,5	design 2:10	52:7,11 54:17	57:19
customer 13:25	declining 13:25	9:24 11:24	54:19 56:4	disagree 28:23
22:6,7,8	24:1,5,18,21	12:6,11,15	57:7,7 58:9	discern 42:15
26:22,23 36:1	25:5 26:2	13:2,6,10,15	63:6	discharged
44:20 49:17	32:2,3,8 39:8	13:22 14:8,9	detailed 43:24	30:24
49:22 50:9	52:18,22 60:7	14:16 15:4,9	details 29:18	discount 49:24
55:23,24	60:9,10,11,13	15:16,23 16:2	61:20	discourage
61:19 63:21	63:12,15	16:6,15,18	determination	27:20 30:13
customers	decoupling	17:3 18:3,15	31:2	discouraging
21:16,18,22	14:3 15:6,12	19:12 20:14	determine 23:5	63:25
22:4,5,10,13	30:4,7 39:9	20:20 21:3,6	44:22 48:20	discretion
22:15 24:11	44:16 45:4,4	21:7,25 22:19	56:23	33:23 34:4,14
25:7,20 27:6	45:5,6,6,11	22:21,21 23:2	determines	37:23 41:21
27:13,18	56:8	23:23 24:10	12:11	41:24 42:2,5
28:11 29:16	decreases 28:8	24:14 27:5	determining	43:25 47:1
32:4 33:3	deem 43:9	28:1,9 29:9	57:2	59:18 61:9

discuss 19:25	earlier 31:21	electrical 25:12	39:3,17 42:24	61:3 63:11
discussed 31:5	Early 61:4	electricity 26:5	49:20,21,23	examples 13:23
41:15,18	easier 8:21	26:5 63:17	51:22 58:21	14:7,23
44:15 45:15	easily 47:21	electric-gene...	58:22	excellent 50:15
56:5	East 3:22	26:8	engage 35:5	excess 25:7,8
discussing	easy 23:21	elements 20:14	engaging 36:19	25:21,24
33:14 34:3,12	economic 3:5	20:18,19,22	England 3:22	exclude 58:23
60:4	28:6 38:22	22:4	35:14	excuse 46:13
discussions	effect 11:6,21	emergency	enhances 21:17	exhaustive
23:7	18:12 28:3	42:11	21:21	19:21
disincentive	34:18 59:12	emissions	enlightening	Exhibit 55:5
28:19 29:3,5	effective 9:14	32:16	64:10	exist 47:8
30:15	29:17	emissions	ensure 21:15	existing 20:15
dispute 15:8	effects 2:10	33:4	entertaining	52:11
distance 28:25	10:1 12:5,15	Empire 3:20	64:9	exists 24:16,17
distinguish	40:12,21	7:16,18 33:10	entries 7:7	expense 41:3
38:24	43:16 48:21	34:8 35:14	environmental	experience
distribution	54:21	37:21 38:7	26:4	29:6,14
28:14	efficiency 9:6	40:7 41:23	environment...	experimentat...
District 3:20	26:12 28:3,20	43:14 47:17	33:5	52:2
35:14 39:23	29:2,6,23,24	50:4 58:2	equal 9:7	expert 40:25
dmvuylsteke...	29:25 30:15	Empire's 33:11	equally 20:18	experts 6:23
4:18	32:18 35:6,21	34:5 35:9	equity 58:20	extent 23:14
docket 9:12,19	35:24 36:20	37:2,6 44:3	especially	25:25 26:13
9:22 10:1	38:14,18,24	encompass	24:14 27:5	42:4 45:9
12:5,15 13:8	39:3,17 42:24	46:8	50:18	externalities
13:21 24:3	49:23 51:22	encourage	essentially 28:9	26:4
doing 6:6,17	58:21,22	26:11 32:10	32:23 52:12	EX-2010-0368
10:3 16:9,10	efficient 29:16	35:3 39:17	establish 7:5	9:12
18:8 36:16	32:21,23 33:1	encouraged	48:13	
61:9	33:6 59:11	63:13	establishes 9:6	F
dollars 29:9	63:25	encourages	everybody 7:3	F 65:1
DORITY 4:9	efficiently	23:23 29:24	45:25	face 17:23
Dr 44:12,16,17	21:17,19,23	encouraging	everybody's	28:25 40:22
45:10	22:11,16	29:1 32:14	46:13	46:20
draft 62:6	efis 9:16	39:2 63:24	everyone's 7:1	faces 7:25
drafting 34:9	either 39:19	ended 64:12	27:8	facility 26:8
draw 31:22	59:21 62:23	endorse 37:19	evidence 7:6	52:12
drawn 59:23	elastic 28:7	energy 4:12 9:6	53:4	fact 41:25
drives 59:17	elderly 27:12	21:16,18,22	evidentiary	44:18 46:13
DSM 12:9	electric 3:20	22:11,13,15	42:17 55:2	50:11 63:19
dwelling 32:25	12:7 24:13,23	26:12 28:3,20	EW-2011-0372	factor 51:5
	24:24,25	29:1,6,23,24	2:10	52:20
E	29:12 31:16	29:25 30:15	example 15:7	factored 52:19
E 3:1,1 4:1,1	32:5,9,10,15	35:5,20,24	20:16 24:17	factors 47:20
5:1,1 6:2,2	32:18,21,22	36:19 38:14	42:13 45:10	51:3 52:9
65:1,1	35:1,14 61:4	38:16,18,24	60:7,15,16	58:18,18,19

58:24 60:9,12	34:19 55:20	foregoing	15:24 22:7	41:15,16 42:5
facts 11:22	Fischer 4:8,9	65:11	30:12 55:22	44:1,8 59:4
fair 32:5	8:1,2,2,16	form 24:22	60:5	60:21,23 61:1
fairly 14:25	13:10 37:15	60:8	generating	61:5 62:1
20:9 33:1	37:16 40:3,6	formal 40:24	26:5	good 6:3 15:7
46:7	40:15 41:2,10	forth 11:23	generation	16:22 20:8
fairness 58:20	41:11 46:6	21:10,24	26:4	26:19,20
families 63:16	58:16 59:5,19	22:22 48:9	generator 25:5	27:17 31:14
far 23:7 27:24	fit 41:25 59:22	65:9	generic 48:5,15	39:19 41:13
fast 17:1	fits 42:14 62:20	forty 29:9	genius 45:25	43:3 46:21
feel 10:17	five 6:18 32:12	forward 6:23	gentleman 60:6	47:15 49:2
18:24,25	fixed 13:24,24	four 9:12 10:14	Gentry 2:19	51:23 57:24
20:13 47:3	19:1 22:7,21	10:15 21:5	65:5,19	61:9,18 62:4
48:22	27:21,22,25	framework	getting 29:5	62:16
feels 23:12	28:9,17 29:8	62:20	give 6:17,18,20	Governor 3:6
48:12	29:19,23 30:5	frankly 33:7	7:1,2 9:1 11:5	3:14 9:5
felt 18:5	30:14 45:5	47:4	24:11 25:7	gradually
figure 14:7	51:1,4 52:22	friendly 33:5	35:19 43:22	24:15
44:23	flat 13:23 28:9	front 50:20	49:17 53:21	great 41:21
file 2:10 8:1,7,9	flavor 45:23	full 15:15 65:11	61:15	46:2 54:20
19:24 37:18	flexibility 23:5	fully 17:2 25:8	given 13:10	greater 4:7 5:6
40:12 46:11	27:6 38:10	25:16 26:9	23:6 31:6	8:3 26:3
49:16	39:6,10,12	39:14	36:13,13 46:4	32:15 37:17
filed 7:16 20:9	48:8 54:12	fully-develop...	56:25 65:14	42:3
20:9 48:2	59:2	25:14	gives 38:10	greatest 42:23
filing 11:9 14:5	flexible 15:1	function 60:8	57:5 59:14	45:25
16:20 18:22	36:14 51:25	60:12	giving 22:14	grid 39:16
34:11,11	52:1	further 18:17	glad 20:3 23:15	ground 32:25
40:10,10,18	flow 50:14	30:17 37:4	GMA 12:25	33:4
filings 12:22	51:11	53:19 59:8	13:1	group 29:22
23:20 46:3	fluid 47:20	64:5	GMO 39:4	58:22
filling 53:12	focus 38:21	future 11:21	go 8:18,21 9:3	growth 38:22
final 54:23	58:22	38:2,11 39:10	10:8 13:22	guess 14:7
finally 32:13	focused 21:20	39:15,17	16:25 17:4	16:21 18:14
financial 21:15	59:6	57:20	35:7 37:3,6	19:10 20:11
29:1 35:20	focuses 59:12		43:12 61:7	22:17 24:4
find 9:16 24:9	focusing 59:17	G	64:2	45:15,19,20
25:22 62:15	folks 45:2	G 6:2	goal 36:11	51:21,24
finding 40:9	follow 54:16	gas 28:1,12	goals 16:7	55:17
fine 53:25	59:4	29:11,15,16	goes 6:25 59:5	guidance 22:18
63:23	followed 55:17	32:16,19 33:2	going 6:5,7,9	31:16,17
fingerprints	following 12:6	general 11:12	6:23,24 7:6	57:16,19 62:5
52:6	23:12	11:14 15:12	16:4 25:17	62:5,6
firm 65:6	follows 58:9	20:13 21:4	26:25 27:8,9	guided 21:12
first 6:4 9:18	force 27:5	46:25 53:18	27:11,12	guiding 21:24
10:5 20:13	forced 38:25	60:25 62:4	28:11 29:10	
22:12 33:20	forcing 39:2	generally 15:6	32:17 34:10	H

hand 36:17 41:6	home 27:9,10	38:23 49:23	incur 51:14	interested 6:11
handled 48:4	Honor 8:6,12	50:23 51:3,6	independent	6:18 11:17
handout 8:20	49:11	52:8 62:18	40:10	interesting
54:25	hope 9:2	imposed 33:3	indicate 33:14	55:12
hands 46:14	hopefully 8:21	impossible 50:9	33:17 39:21	internationally
happen 61:6	hopes 9:2	incentive 29:7	40:8	51:21
happens 57:11	hour 63:17	35:22	indicated 37:23	interpretation
happy 39:20	hundred-watt	incentives	49:3 60:23	11:21 42:21
45:16	32:24	21:16,18,22	indicates 36:15	interpreted
hear 32:6	hypothetical	22:10 29:16	indicating 6:15	31:3
hearing 6:8	45:20 47:7	35:20,23	50:19	invasion 56:7
42:17 51:19	55:12 58:4,12	36:18 59:10	individual	Investigation
55:2	59:21	incentivise	20:21 25:24	2:10
hearings 61:12	<hr/> I <hr/>	28:22	individuals	investment 9:6
heat 29:13 32:5	idea 15:23	incentivises	27:1	9:8
32:10,15,18	24:20 26:7	28:18	industrial 4:12	investments
32:19,21,22	28:16,17 35:8	incentivising	50:24	9:7
32:24,25 33:5	49:4 54:20,21	28:24 36:17	industrials	islands 25:1
heater 29:12	63:7	inclining 13:25	63:13	issue 9:22
heaters 29:17	ideas 16:22	24:4,10	inefficiency	52:10
help 16:18 32:4	56:10	include 9:21	29:24	issued 32:13
32:9 35:5,6	illogical 42:20	12:12 15:17	information	issues 17:1
57:20	imagination	16:19 18:2,6	6:11 41:7	38:11 50:2,17
helping 21:16	63:8	18:11 23:2	infrastructure	51:8 58:19
35:24 59:10	imagine 42:12	included 11:3	9:9	61:10 62:1
Hernandez 3:4	immediate 50:2	16:11,15	infringements	items 62:23
7:11,11 8:20	impact 52:9	17:16 21:6	49:9	iterations
8:23,25 12:21	impacts 22:10	22:23 23:3	initial 7:2	14:24
12:25 13:3,7	implement	30:22,23	31:15 59:6	<hr/> J <hr/>
13:16 14:10	24:1 35:20	31:13 55:15	input 15:15	JAMES 4:2,8
14:13,20 15:2	38:20 45:8	includes 44:21	57:18	JARRET 13:14
15:10 16:8,24	implemented	57:12 58:8	instance 22:3	Jarrett 6:13
17:9,11,13,19	9:21 10:16	including 13:8	62:10	12:18,19 13:1
17:23 18:12	27:21	15:23 39:7	instances 26:11	13:4,8,12
18:19 19:7,16	implementing	income 27:12	Institute 13:19	14:6,12,15,22
19:20 44:12	25:17	27:14	intend 46:25	15:8,25 16:21
45:9 53:24	implication	inconsistent	47:1,2,5,5	17:8 19:10,19
54:1 55:7	13:5	22:22	intended 42:1	19:22 22:25
Hey 46:1	implications	inconvenience	intending	23:17,18
high 50:25	17:3 54:4,12	38:21	48:11	26:15,17
highest 52:13	54:17,19	incorporated	intent 11:5,6	27:19 28:2,16
high-load 51:5	implied 62:20	12:1 49:15	54:14	29:21 30:16
historically	import 11:1	increase 20:17	interconnecti...	34:22 35:15
58:17,25	important	20:18 39:8	25:2	35:16 36:10
history 51:7	10:12 11:11	increases 28:8	interest 26:10	36:25 40:2,3
holding 46:14	16:25 17:2	incremental	27:16 38:19	40:7,23 41:9
		22:13	38:20 57:4	

TRANSCRIPT OF PROCEEDINGS 5/7/2013

42:6 43:13	60:1 61:15	31:21 32:2,12	leads 42:19	20:11 21:11
45:18,19	62:25 63:2	32:21 36:10	legal 3:5 46:15	23:22 41:18
47:10 48:16	64:3,6,8	36:15,19	legislature 9:5	55:18,18
48:17,24,25	judgment	39:15 40:7	11:5 42:1	lives 63:18
49:8 51:17,18	63:16,19	42:8 43:24	56:23	LLP 4:3,14
53:2,7,18,19	July 8:8 48:2	44:5 46:9	legislature's	7:20 41:14
55:12 60:2	justification	50:5,11,17	57:19	load 25:2 51:3
63:1	24:21	51:4,10,13,20	Leneers 5:4	52:17,18,20
Jarrett's 58:4	justify 41:4	52:4,5,16	53:11,12,16	lock 43:6
58:12 59:20		55:1,23 56:1	64:7	long 16:7 49:19
Jefferson 1:9	K	56:12 60:21	let's 7:15 8:18	52:16
2:8,21 3:8,16	Kansas 4:7 5:5	60:22,23 61:1	14:3 19:23	longer 24:24
3:23 4:10,24	8:3 37:16	61:5 62:4,19	21:13 33:10	longstanding
65:15	KCPL 15:12	known 54:13	37:14 41:11	41:24
Jennifer 3:4	37:14 40:13	56:13	45:20 46:8	look 11:17
7:11	41:23 47:17	kumbaya 46:14	level 23:1 43:23	13:17 23:7
jennifer.hern...	52:6,12 58:15	K.C 6:15	48:6	32:8 38:10
3:9	KCPL/GMO		Lewis 3:13 4:3	44:16 49:20
jfisherpc@a...	37:25	L	7:13,20 41:14	55:17,20 57:7
4:11	KCP&L 4:7	L 2:14	lewis.mills@...	58:24 60:4
Jim 7:20 8:2	5:6 8:3 12:24	Laneers 7:23	3:18	61:21 63:21
37:15 41:13	37:17 39:4	7:23	light 4:7 5:5	looked 12:13
job 57:14	keep 27:10,10	language 10:4	8:3 32:24	19:17 22:16
jogging 17:21	35:10 50:4,10	10:6 11:5	37:16 54:9	56:14 58:17
jotted 42:7	Kenney 6:14	12:4 19:24	limit 34:10	looking 10:19
Judge 2:14 6:3	kilowatt 52:13	20:10,12 21:2	39:6 54:2,15	18:17 21:13
7:12,15,19,22	63:17	21:12 23:6,10	limited 27:11	29:22 31:12
7:25 8:2,5,10	kind 3:12 7:14	23:13 31:2	27:14 34:1	42:11 51:10
8:15,16,18,22	15:25 19:25	33:17 38:7	limiting 34:3,6	51:12 57:2
8:24 12:18	20:1,3,6,6	40:8,10 43:13	58:7,13 63:8	looks 10:22
17:12,14,22	23:18,19 24:9	43:14 44:3,4	limits 34:13,14	52:17
18:8,16 19:3	26:16,20	44:5 58:5,8	line 31:22 42:7	losers 26:25
19:8,23 20:1	27:24 28:2,5	languages	54:5	losses 29:1
20:4 23:17	28:23 30:2,17	38:12	list 15:18 19:21	lot 11:2,16
30:19 31:8,18	30:20 31:1,12	large 15:18	21:5 34:23	15:16 23:5
32:1,17 33:8	31:20 32:6,20	27:13 55:23	39:18 58:10	24:15 27:7
33:10 35:15	33:8,9 39:22	61:19 63:16	63:5	30:6 31:3
37:1,12,14,15	55:9 59:6,6	63:25 64:1	listed 13:19	32:20 44:6
40:2 41:11	59:13 60:23	largely 25:3	14:5 21:9	51:22 60:15
45:18 47:11	61:2,15,17	law 2:14 3:13	33:16 37:7	61:10
47:13 48:16	63:11	3:21 4:3,8,13	61:23	lots 38:10
49:3,6,10,13	know 7:7 12:22	4:21,22 10:25	listing 45:21	Louis 4:16
51:17 53:10	15:6 19:10,16	11:2,16,21	58:22	love 32:1
53:14,17,20	19:20 22:2	20:24 31:24	Litigation 2:20	lower 22:14
53:21,25 55:5	26:10,18	40:20	65:6	24:12 52:15
55:8 58:1,15	27:12,24 28:2	lead 38:4	little 6:6 9:1	52:16
58:16 59:3	28:6 30:5	leader 51:20	17:21 19:12	Lowery 4:2

7:20,20 41:13 41:13 45:20 47:10,12 59:4 60:14 lowery@smit... 4:6 low-load 51:5	30:14,24 38:16 41:21 51:2 meant 60:25 MECG 4:19 8:13 mechanisms 13:20 MEEIA 9:6,17 9:20 10:11 11:25 12:1,22 14:14 16:20 17:5 20:25 28:21 31:25 34:1,2,11,13 35:19 36:22 36:23 39:22 39:23,23 40:10 42:1 43:21 48:9,12 54:5,5,6 55:17 59:9 MEEIA's 54:9 meet 38:8 meeting 49:15 meets 16:7 36:3 memory 12:24 mention 62:4 mentioned 44:12 50:21 61:2 mentions 59:13 messy 29:18 meters 39:16 methods 30:3,4 30:22,24 31:18,22 MGE 28:1 Midwest 2:20 65:6 MIEC 5:8 8:6,8 47:14 63:2 MIEC's 47:15 50:2 million 14:23 Mills 3:13 7:13 minimum 16:3	minutes 6:18 mislead 19:5 MISO 25:14,14 Missouri 1:1,9 2:1,8,19 3:3,5 4:2,7,12 5:6 7:19,21,23 8:3 9:4,5,15 10:22 20:6 24:16 25:13 27:23 31:16 37:17 41:14 50:11 51:7 52:11 62:21 65:2,15 Missouri's 9:7 MO 2:21 3:8,16 3:23 4:5,10 4:16,24 modification 9:24 12:9,15 13:6,11,15 14:8,9,16 16:2,16 17:3 19:13 20:14 22:19 23:3 30:23 33:19 34:17,21 36:2 38:1 40:9,13 43:10,17,22 44:11 45:11 54:6 55:15 57:12 modifications 2:11 10:13 11:24 12:6,11 13:2,23 15:4 15:16,24 16:6 16:18 17:15 18:3,15 21:3 21:6,8,25 23:23 31:5,9 31:23 33:15 34:5,8,15,24 37:7 38:3 44:14 54:13 56:20,24 57:3	61:23 money 35:6 month 18:17 months 16:3,4 42:17 52:14 morning 6:3 20:8 41:13 42:7 47:15 Morris 2:14 5:8 8:7 Morris 49:7 move 19:23 22:8 33:10 37:14 41:12 47:13 movement 56:8 moving 47:23 MRDC 5:4 7:22,24 53:11 53:12 64:6 MS.BAKER 7:13 muni 59:24 municipal 63:5	18:13,13 25:19 33:16 35:7 36:6 37:4,5 38:24 43:16,22 44:1 48:18 51:11 54:8 needed 15:20 40:22 41:4 needs 16:7 18:25 23:12 33:18,24 34:18,20 63:9 neighboring 25:3 never 25:24 28:5 56:18 new 10:5 16:13 35:5,5,8 45:23,23 56:9 56:10 non-gas 28:10 North 4:15 note 9:15 49:19 58:17 noted 50:23 notes 49:16 65:12 novel 56:17 NRRI 13:18 30:11 nth 61:13 number 51:8 52:21 numbers 14:24
M M 4:8 Madison 3:7,15 4:9 maintain 43:8 59:1 major 56:7,9 56:10 making 10:8 54:3 63:5 management 43:17 mandate 59:16 mandates 38:8 mandatory 26:18,19,24 manner 20:22 21:17,21 margin 28:13 marginal 52:19 mark 55:5 market 25:15 25:15,19 markets 24:23 25:12,14,17 61:3 materials 21:11 Matter 2:10 matters 14:4 37:24 mean 11:10 14:15 27:7 40:24 45:14 46:13,15 60:16 meaning 10:20 10:25 11:7,19 means 11:2 13:11 22:2	M M 4:8 Madison 3:7,15 4:9 maintain 43:8 59:1 major 56:7,9 56:10 making 10:8 54:3 63:5 management 43:17 mandate 59:16 mandates 38:8 mandatory 26:18,19,24 manner 20:22 21:17,21 margin 28:13 marginal 52:19 mark 55:5 market 25:15 25:15,19 markets 24:23 25:12,14,17 61:3 materials 21:11 Matter 2:10 matters 14:4 37:24 mean 11:10 14:15 27:7 40:24 45:14 46:13,15 60:16 meaning 10:20 10:25 11:7,19 means 11:2 13:11 22:2	minutes 6:18 mislead 19:5 MISO 25:14,14 Missouri 1:1,9 2:1,8,19 3:3,5 4:2,7,12 5:6 7:19,21,23 8:3 9:4,5,15 10:22 20:6 24:16 25:13 27:23 31:16 37:17 41:14 50:11 51:7 52:11 62:21 65:2,15 Missouri's 9:7 MO 2:21 3:8,16 3:23 4:5,10 4:16,24 modification 9:24 12:9,15 13:6,11,15 14:8,9,16 16:2,16 17:3 19:13 20:14 22:19 23:3 30:23 33:19 34:17,21 36:2 38:1 40:9,13 43:10,17,22 44:11 45:11 54:6 55:15 57:12 modifications 2:11 10:13 11:24 12:6,11 13:2,23 15:4 15:16,24 16:6 16:18 17:15 18:3,15 21:3 21:6,8,25 23:23 31:5,9 31:23 33:15 34:5,8,15,24 37:7 38:3 44:14 54:13 56:20,24 57:3	61:23 money 35:6 month 18:17 months 16:3,4 42:17 52:14 morning 6:3 20:8 41:13 42:7 47:15 Morris 2:14 5:8 8:7 Morris 49:7 move 19:23 22:8 33:10 37:14 41:12 47:13 movement 56:8 moving 47:23 MRDC 5:4 7:22,24 53:11 53:12 64:6 MS.BAKER 7:13 muni 59:24 municipal 63:5	18:13,13 25:19 33:16 35:7 36:6 37:4,5 38:24 43:16,22 44:1 48:18 51:11 54:8 needed 15:20 40:22 41:4 needs 16:7 18:25 23:12 33:18,24 34:18,20 63:9 neighboring 25:3 never 25:24 28:5 56:18 new 10:5 16:13 35:5,5,8 45:23,23 56:9 56:10 non-gas 28:10 North 4:15 note 9:15 49:19 58:17 noted 50:23 notes 49:16 65:12 novel 56:17 NRRI 13:18 30:11 nth 61:13 number 51:8 52:21 numbers 14:24
			N N 3:1 4:1 5:1 6:2 name 34:20 35:2,12 37:15 narrow 14:25 national 13:19 30:1,3,8,8,9 nationally 51:21 natural 32:16 32:19 33:2 nature 8:17 39:2 necessarily 28:18 40:19 46:15 necessary 9:20 10:17 23:1 41:7 43:9 need 12:1 15:21 16:9,13	O O 6:2 objects 46:10 obviously 37:6 56:25 occasionally 62:7 occur 29:1 occurred 23:7 56:7,18 60:3 occurs 24:12

offer 26:22 29:15 offered 55:2 offering 28:19 office 3:6,11,14 4:22 20:6 41:20 65:14 Oh 13:1 okay 7:15 8:22 13:1,4,12,14 14:6,12 17:8 17:20 18:12 19:19,22 20:1 26:15 27:19 30:16 32:1 36:25,25 37:12 40:6 48:17,25 53:17,24 64:3 older 24:22 ones 31:14 59:15 one-sentence 48:18 ongoing 30:3 onsite 35:21 OPC 59:12 OPC's 42:4 59:14,21 open 10:12 31:12 opened 9:12 10:9 operate 24:25 operating 10:10 49:22 52:6 Operations 4:7 5:6 8:4 37:17 opinion 18:20 34:1 46:24 51:25 59:14 opportunity 51:16 57:6,17 62:15 oppose 39:4 opposed 61:10	optimal 30:7 option 17:24 options 15:19 16:10 18:4 56:5,15,15,16 order 35:2 43:21 44:1 ordinary 10:24 11:7 organizations 30:10,13 organized 24:23 25:12 ought 64:2 outage 25:4 outside 56:9 overall 12:14 20:17,23 overarching 36:11 overview 6:19 23:14 <hr/> P P 3:1,1 4:1,1 5:1,1 6:2 Pamela 2:19 65:5,19 papers 30:12 paradigm 61:4 part 9:18 13:21 16:16 20:23 21:20 28:13 36:1 49:25 50:1 56:19 62:12,12,15 62:23 partake 63:7 partially-dev... 25:15 particular 17:15 22:18 23:2 33:2,15 34:7,21 37:3 47:19 58:9 61:12 63:9 particularly	26:5 parties 10:17 31:5,7 41:5 46:1,20 57:11 57:13,22 62:6 62:8,13 63:8 parts 47:23 party 8:19 46:11 pass 49:21 passed 9:5 pay 28:11,13 63:17 peak 24:12 peculiar 10:25 pending 39:24 people 26:6 27:11 29:9 30:6 31:6 32:7,15 33:7 48:6 56:14 percent 20:17 20:18 performed 23:9 permit 22:1 permitted 21:8 21:9 57:13 personally 65:7 perspective 22:3 31:1 32:9 49:18,22 49:23 50:15 51:20,24 56:21 pervasive 29:7 ph 5:4 44:13 phase 37:19 phased 24:15 phrases 10:23 10:25 piece 22:18 32:7 place 10:7 17:7 31:15 45:7 65:9,13 placed 16:14	plain 10:19,24 11:7 plan 16:19 planning 25:22 plans 10:11 plants 26:6 please 8:24 35:12 podium 8:23 20:2 point 11:11 17:16 18:9 19:14 22:20 32:11 38:23 45:15 60:3 61:19 pointed 34:22 points 12:3 41:17 45:14 50:23 61:18 policies 11:18 32:13 58:20 policy 9:7 11:20,23,25 17:5 27:17,17 35:18 43:4 44:25 51:24 54:6,9 57:1 57:18,24 59:8 63:19 poor 57:14 portfolio 56:5 portion 27:13 28:10 posed 55:12 posited 47:8 position 16:8 35:3 37:2 40:13 45:21 47:4,15 positions 47:16 positive 61:3 possibilities 35:11 possibility 55:13 possible 10:9	11:6 31:8 35:1 52:1,3 potential 10:13 33:15 potentially 31:13 power 4:7 5:5 8:3 26:6 37:16 practical 42:19 preferred 63:15 prejudice 49:2 61:8 prepared 53:13 prescribe 42:2 prescriptive 15:1 16:23 52:22 60:5 prescriptives 52:10 present 5:3 65:7 presentation 12:21 17:10 30:18 44:13 44:17 presentations 19:18 30:12 31:6 presented 7:4 55:14 57:21 presenter 13:22 presenting 18:4 Presiding 2:14 pretty 23:14 25:14 33:2 56:22 previously 55:16 price 22:12,15 24:11 25:7,19 28:7 pricing 14:2 38:13,17 49:24
--	---	--	---	---

primary 11:4	34:7	3:3,6,11,11	quick 63:11	44:11,14,18
principle 11:3	promulgation	3:14 7:12	quickly 55:11	44:19,21,21
11:13 21:24	33:21	19:23 20:7	quite 19:18	45:1,6,11,22
22:22	propelling 8:19	23:10 24:20	64:9	45:23,23 46:1
principles 56:3	proportional	27:16 30:21	quote 50:3	46:1 47:18,20
prior 9:24	14:1	39:5 41:20		47:21,24 48:3
12:14 46:3	proposal 20:24	55:8 57:1,3	R	48:9,14,21
probably 6:5	33:11 35:10	57:18,24	R 3:1 4:1 5:1	50:6,7,9,12
19:11 41:17	36:13,14 38:5	61:22	6:2 65:1	50:14,18,20
42:9 45:2	42:3,4,12	pump 33:5	radical 38:20	51:7,9 52:2,5
46:22	59:21,22	pumps 32:25	raised 61:18	52:7,11,18,23
problem 42:3	proposals 15:5	pure 45:3,4,5,6	RAP 30:11	54:6,7,7,13
55:3	15:14 39:9	purpose 28:21	rate 2:10 9:24	54:17,19
problems 60:5	propose 10:7	35:19 36:16	11:24 12:6,11	55:13,15,21
Procedural 1:8	12:8 15:11,15	purposes 16:7	12:14,23,24	55:25 56:2,4
2:7	16:12 18:17	25:4	13:2,5,10,15	56:7,9,11,17
Procedure	18:22 23:20	pursuant 57:13	13:22 14:1,3	56:20,23 57:2
11:19	23:25 37:10	57:19	14:7,8,16,16	57:7,9,12
proceeding 6:7	39:6,10 40:11	put 15:13,20	14:18,19 15:4	58:9,14,18,19
21:4 23:8	43:22 58:7,10	32:15 35:3	15:9,16,23	58:22 59:14
37:18,19	60:19,19	39:19 40:4	16:2,2,5,6,9	59:24 60:9,13
40:16	proposed 9:13	47:1,2,5,9,25	16:13,15,17	60:24 61:4,11
proceedings	12:2,4 16:13	50:17 54:21	16:19,24,25	61:12,13,19
1:6 2:6 39:13	20:10 21:2,12	58:13 60:12	17:1,3,7 18:1	61:22 62:2
39:13 65:8,10	23:10 31:19	putting 18:24	18:3,15 19:12	63:5,6,9,22
process 37:6	34:10 38:12	22:20 52:10	20:14,16,18	rated 52:19
42:9 50:12,15	42:25 56:15	P.C 3:22 4:9	20:19,20,21	Ratemaking
54:16 62:16	58:5	P.O 3:7,15,23	21:1,3,4,6,7	16:3
processes 50:4	proposes 10:5	4:4	21:25 22:19	ratepayers
produce 38:17	16:1 42:13		22:21,21 23:2	41:3
38:17	proposing 6:19	Q	23:23,23,25	rates 13:23,25
product 57:22	34:5 37:7	question 6:4	24:10,14 27:5	13:25 14:1,2
production	41:4,5	17:12 26:7,14	28:1,9,10,13	14:2,17 21:1
38:22	pros 30:4	32:18 37:1	28:17 29:8	24:2,4,5,18
profit 49:22	prove 46:19	40:4 42:14,16	31:4,22,24	24:21 25:6
programs 9:11	provide 20:12	43:13 45:19	33:15,18,24	26:3,18,19,25
10:11 12:9	28:22 38:15	54:25 55:18	34:4,8,11,15	27:17,21,22
17:4 28:20,20	43:14 57:18	61:7	34:16,23 36:2	29:23 31:23
28:22 29:25	57:18 62:4,5	questions 6:12	37:7,23,25	32:2,4,8
35:21,23,25	62:6	6:15,21,22	38:3,11,25	33:25 36:11
38:15,15,25	provided 55:1	7:2 8:17	39:7,8,11,12	45:8 50:24,25
51:22	57:16	12:16 17:9	39:13,14 40:9	51:11,13
prohibit 60:10	provides 10:23	19:4 22:25	40:12,15,16	52:12 55:23
promulgate	provision	23:15 30:17	40:19 41:24	55:25 60:7,10
10:2 16:5,6	62:17	30:19 35:17	42:18,23 43:2	60:11 63:12
37:3 45:21	prudent 9:10	39:21 45:16	43:10,16,21	63:15,16
promulgated	public 1:3 2:3	53:18	43:22 44:11	read 24:2,2

TRANSCRIPT OF PROCEEDINGS 5/7/2013

33:13,16 36:23 46:7 58:6,12 readily 29:19 reading 15:21 reads 9:24 real 14:2 61:4 really 14:6,19 23:4,11 25:19 25:24 26:9 27:4,7,16 35:9,18 40:22 41:3 42:15 47:18,25 48:19 51:3 55:25 56:3,10 56:18 57:8 60:9,12,24 62:21 63:24 reason 36:8 46:21 64:1 reasonable 9:9 33:25 36:12 39:11 reasons 32:3 receive 22:13 62:7 recognize 43:15 50:24 recommenda... 17:18 18:10 recommenda... 17:15 18:21 61:22 recommended 48:1 record 55:4,6 64:12 recovered 14:11 recovering 20:15 22:5 recovery 2:11 9:9,25 12:7 13:24 14:4 22:8 28:14 34:17 35:21	59:9 refer 11:8 reference 30:9 39:21 62:8 referred 63:12 reflected 14:14 55:3,6 59:9 regard 33:21 regarding 33:24 34:3,14 56:20 regardless 64:1 regional 25:18 25:23 regulation 24:22 regulatory 2:14 12:4 13:19 58:20 rehearing 46:11 relates 21:3 relationship 20:19 relative 32:16 relevant 24:24 58:18 reliability 25:3 reliable 38:18 reluctant 60:19 rely 23:12 remain 51:25 remarks 23:15 55:10 59:6 remember 24:2 remove 28:25 30:14 repetitive 41:16 REPORTED 2:18 Reporter 20:5 35:12 65:6 Reporter's 7:8 representing 37:16 41:14 reputable	13:17 request 40:8 require 31:23 43:20 46:24 48:9 required 40:11 requirement 20:17 44:20 44:22,25 50:8 requires 43:4 46:23 requiring 48:13 Research 13:19 residential 14:17 22:4,5 50:25 51:2 60:25 61:25 63:14 resistance 32:22 resources 25:1 25:4 26:12 38:1 respect 22:17 43:7 respectfully 15:2 respects 47:16 respond 7:2,3 55:11 61:16 responding 29:15 response 26:13 28:20 38:15 55:19 responsive 53:22 restate 36:8 restated 36:6 result 27:1 42:20 results 50:22 retired 63:18 return 14:3 revenue 20:17 44:19,22,25	50:8 revenues 47:22 review 10:16 40:21 57:6 reviewed 10:14 reviewing 10:4 rhetorical 61:7 rid 29:3,5 52:25 riders 14:4 right 7:12 8:10 14:22 15:10 15:19 17:22 19:8 29:21 31:20 33:23 36:10 37:3 41:9 44:9 53:2,17,21 64:8 risk 60:17,17 60:18 rocket 56:1 room 6:5 34:23 45:2 48:6 RTOs 25:13 61:3 rule 10:2,5,7,15 11:4,12,15,22 12:2,12,16 14:25 15:13 15:22,24 16:5 16:11,14,16 16:17,23 17:16 18:7,11 18:17,22,24 20:10 21:7,10 22:18,20,23 23:4,10,20 30:23,24 31:11,15 33:16,17,22 34:6,6,9,18 34:20 35:2,4 36:2,6,7,9,15 36:22 37:3,8 37:9 39:4,19 42:11 43:1,20	45:21 46:4,6 46:18,18 47:21,25 48:2 48:13,14,15 48:19 52:1,10 52:22 53:1 54:18,22 56:19 57:5,13 58:12 59:12 62:9,10,11,14 62:17 rulemaking 6:8 9:18,22 11:12 16:10 17:6 35:7 37:5 42:9 50:5 55:16 57:17 rules 9:13,14 9:21 10:9,12 11:18 12:9 15:18 31:19 36:22 39:23 39:24 60:5 62:4,19,23 run 25:13 Rush 5:5 8:16 13:13 rushed 57:8 Ryan 3:12 7:14 19:25 20:6 ryan.kind@d... 3:17 R&L 50:8 <hr/> S S 2:19 3:1 4:1 5:1 6:2 65:5 65:19 safe 33:25 save 35:6 49:21 49:21 savings 38:18 49:21 saying 18:16 46:3,14 52:23 says 10:14,15 21:15 23:24
--	---	---	---	--

TRANSCRIPT OF PROCEEDINGS 5/7/2013

34:15 37:9	serving 25:2	situation 25:5	spot 40:5	10:14 11:16
47:4 48:3,19	set 11:23 21:10	six 16:4	spreadsheets	12:14 13:17
scheduled 6:10	21:23 22:22	six-month 42:9	44:6	15:21 21:13
Schmidt 44:13	28:9 31:15	size 62:20	ss 65:3	21:24 22:23
44:17 45:10	33:24 35:11	slightly 33:12	St 4:16	31:17 33:17
Schmidt's	48:9 62:19	small 15:4	Staff 3:3 7:10	33:19 34:2,2
44:16	65:9	55:24 60:25	8:19 9:2 10:5	34:12 36:6,7
science 56:1	settled 20:25	61:24,25	10:11,22 11:8	36:8,23 37:9
scope 36:13	31:24	smaller 27:6	17:2 18:8,10	39:22 42:1
se 60:11	settlement 46:5	smallest 27:18	18:13,25	43:4,15 46:23
seasonal 14:2	46:8,19 55:14	smart 39:16,16	22:19 44:18	46:24 54:5
second 59:13	56:17 57:11	Smith 4:3 7:20	46:22 53:23	55:17 56:23
59:14,15	57:14,22	41:14	54:1,14 59:22	statutes 10:23
section 10:8,22	62:12,13,16	society's 26:10	Staff's 11:8	11:17
11:15 21:13	settlements	solution 48:6	12:3 13:14	statutory 11:4
23:22	57:21 62:8,9	63:8	14:9 42:3,12	23:6,13 31:2
see 6:13,24	62:23	somebody	45:21 58:5	38:8
7:15,25 14:3	seven 42:17	31:19 45:24	stakeholder	stay 29:10
21:13 26:20	sheet 65:9	sorry 10:15	15:15	53:25
30:7 33:14	sheets 31:4	21:5	stakeholders	Stenotype
41:25 50:16	show 62:13	sort 18:10	6:11 7:4	65:10,12
57:10 61:9	showing 40:12	20:11 22:16	stand 36:24	step 20:11
seeing 29:14	side 14:14	23:1 24:22	standards 36:3	46:17
seen 30:12	35:25 36:1	25:1 28:21	standing 36:5	steps 44:22
sees 41:25	49:25 50:17	29:18 30:2	standpoint	Steve 5:9 8:14
sense 10:24	signal 22:12,15	46:14 51:21	15:7	49:14
25:6 26:11	24:11 25:8,19	52:5 57:1	start 7:4 51:10	stipulated 46:4
32:14 43:3	signed 9:5	62:19,19	started 8:18	stipulation
45:4 52:24,24	significant	sorts 51:1	9:2 19:11	46:2,10
sensitivity 26:3	33:21 51:9	source 32:25	Starting 1:18	stipulations
sent 15:17	similar 40:11	33:4	6:1	62:6
sentence 9:17	47:18	sources 13:17	state 1:1 2:1	Store 5:9
9:19,22,23	simple 22:3	South 4:4	3:5 11:13,25	Stores 49:14
10:19,20,22	23:21 35:10	SPC 25:14,15	24:3,8 41:19	straight 13:24
11:9 21:20	48:14,25 49:2	speaker 13:21	50:11 65:2,15	17:23 19:1
33:13 34:2,12	50:4	speaks 58:5	stated 47:21	27:21,22,25
separate 16:10	simplicity 49:1	specific 8:17	60:6	28:8,17,17
25:1 34:11	simplistic	14:1 20:10	statement	29:8,19,23
service 1:3 2:3	33:13	21:2 30:8	11:14 21:14	30:5,14 45:5
3:3,6,14	simply 20:20	37:7 38:5,5	31:21 38:9	Street 3:7,15
33:25 40:24	34:15 42:19	39:7 48:1	53:15	4:4
44:24 51:8,13	48:2	57:3 61:22	statements 7:2	stress 49:25
61:4	single 52:25	62:10,14,17	states 11:18	strict 44:24
Services 2:20	63:16	63:8,21	16:17 24:16	structure 58:19
65:6	sir 17:13 51:18	specifics 34:25	24:16	structures 14:1
service-type	63:4	spend 27:13	statewide 11:18	38:13 39:1,8
60:25	sitting 53:24	spoke 62:2	statute 9:18	39:14 58:23

TRANSCRIPT OF PROCEEDINGS 5/7/2013

63:10	24:11,13	33:12 44:8	33:8 35:16	31:24 32:6,11
studied 15:12	29:11	52:15,23	36:25 37:12	32:11 36:23
18:2,6,24	summertime	talk 23:22	37:13,15 40:3	38:23 39:18
19:13,14,17	29:10	50:25 51:1	41:9,11 47:10	40:16,21 41:6
30:25 31:10	supply 9:8	59:23 62:10	47:11,12	41:19,22 42:2
34:21 48:21	support 11:25	62:18	49:10,15	42:8 43:4,10
54:18 58:9	23:10 40:17	talked 45:14	51:15,17,18	43:14,25 44:1
studies 29:22	41:7	50:5 63:11	53:7,10,16	44:3,3,4,4,7,8
29:22 30:8,9	supported	talking 44:12	55:7 57:25	44:12 45:2,11
study 15:6 16:6	11:24 53:4	44:14 45:3	58:1 59:25	45:13,13,15
18:14,18,25	supporting	62:2	61:17 62:25	46:16,16,21
22:25 23:1,3	22:20	talks 21:21	63:1,4 64:7,8	46:22 47:16
23:9,11 28:5	supports 28:14	61:19	Thanks 53:20	47:18,24 48:5
30:1,10 34:18	suppose 40:18	tariff 38:5 40:9	theory 28:6	51:15 52:11
34:20,25 37:4	46:9	40:18	thereof 10:2	54:1,8,23
37:4,11 40:12	supposed 25:16	technical 8:17	12:16 65:9	55:19 56:22
40:14,14,19	35:19 36:16	10:24 11:1	thick 43:24	57:3 58:10
40:24,24 41:3	Supreme 39:25	15:7	thing 22:24	60:4,5,24
41:21 43:9,15	sure 19:7 20:3	tell 7:9 9:19	25:10 26:1	61:18,20
43:16,19,23	25:20 51:12	18:23 20:4	29:11 38:13	62:18 63:6,7
43:23 44:5	54:3 57:20	46:23 49:13	39:19 41:19	63:19,24 64:1
54:21 57:2	surely 61:11	telling 18:19	44:9,10 45:25	thinking 52:4
61:10,11,13	surprised	tells 28:7	51:2,2 61:2	thinks 57:24
studying 10:1	56:16	temporarily	62:3	third 11:11
12:5,15 18:8	surprises 56:13	43:20	things 7:4 10:3	45:7 46:11
Sub 59:7	suspended	ten 6:18 32:12	12:20 15:5,11	thirty 29:9
Subsection	40:18	tended 24:25	19:1 22:16	thought 8:25
21:14 38:9	sustains 21:17	tends 22:9	27:20 28:15	31:14 39:18
subsidies 51:9	21:21	terms 14:20	30:10 34:18	42:23 44:10
substantially	swear 6:24	15:3 16:24	35:22 39:16	45:24
56:6	Swearengen	18:3,21 21:7	41:15 43:19	thousands
succinct 23:20	3:22 7:18	25:17 26:25	44:15 45:14	56:14
succinctly 60:7	35:13	50:2 54:6	49:19 51:1,22	three 12:3
sufficient 23:9	swearing 6:8	55:20 57:2	52:21 54:8	44:22 52:6,7
sufficiently	switch 29:12	58:5	59:7,11 60:19	59:7,11
30:25 31:10	switching 27:2	terribly 62:21	61:8	tie 34:7
suggest 48:14	system 28:14	testified 44:18	think 10:3 14:4	Tim 5:5 8:16
suggested		testifies 41:1	15:3,15,22	time 1:18 6:1
19:24 30:22	T	testimony 6:9	16:17 18:13	9:20 10:13,16
38:7 39:5	T 65:1,1	40:17	18:21 19:1	10:18 12:17
44:16 45:10	table 58:13	testimony's	21:6,9,23	14:1,2 17:6
45:10 54:18	take 23:15	42:16	22:21,24 23:4	17:19 24:12
suggesting 37:8	26:22 43:5	thank 8:10,12	25:10 26:2,7	25:11 26:18
suggests 44:5	45:7 52:8,21	12:21 17:9,20	26:13 27:4,15	26:18,24 27:3
Suite 2:21 3:6	57:7	19:22 23:18	27:24 28:24	27:17 32:11
4:9,15	taken 10:23	23:19,19	29:14,19	35:4,7 41:17
summer 24:5	takes 16:3	26:15 30:17	30:11 31:9,16	42:7 46:14

51:16 52:15	24:23 25:5,18	unnamed 11:22	V	14:25 16:8
52:16 57:10	27:2,5 34:21	unspecified	value 9:7	18:9,20 19:5
65:8,12	62:1,20	11:22	values 20:21	20:1,11 27:8
timely 35:21	types 13:20,22	unusual 62:9	variable 13:24	27:10,20
59:9,11	17:5 18:15	62:21	17:23 19:1	40:21 41:2,6
timing 34:13	23:25 28:22	updating 59:11	22:6,9,20,21	47:6,7 49:1,6
today 6:6 7:5	31:4 32:20	upheld 9:15	27:21,22,25	49:24,25
8:14 9:1	33:15 34:8,14	39:23	28:9,17 29:8	50:16 53:14
24:24 38:2,3	52:2 57:6	urge 11:16 43:5	29:19,23 30:5	54:11,12,16
39:18,19 43:6	typically 30:10	43:8 59:1	30:14 45:5	58:21 60:3
43:19 49:15	42:10	usage 22:13	52:22	61:8,15 63:21
59:16 61:14	U	24:12 27:7	variation 35:1	wanted 23:21
64:9	uh 14:25 21:13	28:10,12	variations	25:7 42:22
tool 32:9	22:9 24:7	52:20	27:22	49:17 55:11
toolbox 43:6,6	33:5	use 12:6 14:2	varies 47:22	63:4
43:7	Uh-huh 26:16	21:16,18,22	various 13:22	wanting 29:15
tools 43:5,7	ultimately 18:9	22:10,15 26:2	48:9,21 60:15	wants 50:7
top 50:10	38:4	26:18,19,24	versa 24:6	wasn't 17:19
touched 42:6	um 9:4 10:14	27:3,17 28:12	version 60:18	41:3
42:20	10:19 13:16	29:18 30:13	versus 26:18	watching 6:14
to-date 39:24	15:2,11 17:19	32:4,10 33:20	38:24 43:13	water 29:12,12
traditional 9:8	17:19 21:5,7	33:20 35:24	vett 56:15	29:16
transaction	21:12,12,13	35:24 54:22	vice 24:5	way 6:10 14:11
62:11	21:14,25	59:10 63:25	view 24:20	14:13 22:17
transcript 1:6	22:10,14,16	63:25 64:1	47:25	25:11 29:3
2:6 65:12	22:17,24	uses 33:19	viewed 17:25	34:13,13 35:5
transfer 39:25	23:21 24:1,9	usually 24:12	violates 53:1	47:17 54:2
transparent	24:13,14,18	utilities 21:22	virtually 14:19	55:19
61:3	29:2,6 41:5	24:13,18,24	Volume 1:10	ways 49:20
tried 12:13	43:12 45:13	24:25 25:3,22	voluntary	WD74676 9:16
true 16:24	46:21 54:6,23	29:15 31:16	26:18,19,20	weird 50:21
65:11	uncertainties	32:10 35:20	Vuylsteke 4:12	welcome 6:4
Truman 2:20	60:15	37:9 49:20	8:5,6,6 47:13	17:11 33:9
try 6:10 25:20	uncertainty	51:8,14 59:10	47:15 48:24	West 2:20
29:3 41:16	60:17	60:18 62:5	49:5	Western 39:23
45:17 61:14	understand	utility 12:7	W	we'll 6:20,24
63:6	15:9 23:21	14:13 21:15	W 5:9	49:20 55:5
trying 14:7	54:17	21:18 24:22	waive 62:14	we're 6:5,7,9
28:25 54:2,3	understanding	25:6,25 26:21	waiving 62:16	7:6 16:22
tweak 14:17,17	37:2 48:18	26:23 27:14	Walmart 5:9	18:4 19:2
two 19:11,12	understood	27:25 29:5	8:14 49:14	31:12 33:13
22:4 30:13	11:1 54:14,20	34:25 35:1	51:20 60:6	34:3,12 36:16
34:18 49:7	unintended	38:6 40:8	64:4	37:8 40:9
54:10	48:11	42:13 50:7	Walmart's	48:5
two-fold 35:19	unique 6:6 24:7	58:7,10 63:9	51:19	we've 9:1 19:16
type 20:22	unit 28:12,12	utilize 25:8,20	want 7:5,7 10:7	21:2 22:16
23:11 24:9,13		26:9		23:3 48:21

52:6 61:23 wholehearted... 43:18 wholesale 24:23 25:19 wide 37:23 William 6:14 winners 26:25 Winston 4:23 winter 24:5,19 25:21 wintertime 25:9 32:4 wise 63:24 witnesses 6:8 6:23 wondered 36:12 WOODRUFF 2:14 6:3 7:12 7:15,19,22,25 8:5,10,15,18 8:22,24 12:18 17:12,14,22 18:8,16 19:3 19:8,23 20:1 20:4 23:17 30:19 31:8,18 32:1,17 33:8 33:10 35:15 37:1,12,14 40:2 41:11 45:18 47:11 47:13 48:16 49:3,6,10,13 51:17 53:10 53:14,17,21 53:25 55:5,8 58:1,15 59:3 60:1 61:15 62:25 63:2 64:3,6,8 Woodsmall 4:20,22 8:11 8:12,13 49:10 49:11 word 33:19	words 10:21,23 10:24 11:7,9 12:14 58:8 work 31:3 57:21 60:21 worked 55:21 works 44:3,4 workshop 18:14 19:11 19:13 23:8 wouldn't 15:2 28:23 37:4 40:19 41:2 47:8 50:16 56:18 58:21 written 7:16 8:1 30:21 33:11 37:18 37:21 49:16 56:2 <hr/> Y <hr/> Yeah 12:19 28:23 31:20 55:9 year 25:16 44:13 years 10:14,15 19:11,12 24:14 26:2 32:12 55:22 56:6 <hr/> Z <hr/> zero 28:10 zone 33:3 <hr/> # <hr/> #200 4:4 #426 65:19 <hr/> 1 <hr/> 1 1:10 55:5 1.090 10:22 10 20:17,18 24:14 26:2 10:00 1:18 6:1 101 4:9	11 16:3 11:30 64:12 111 4:4 12 52:14 1990s 56:8 <hr/> 2 <hr/> 2 21:14 59:7 20 24:14 26:2 20.093 9:13 20.094 9:14 200 3:7,15 2000s 61:4 2009 9:4,11 2010 9:11 2011 9:14 44:18 2013 1:8 2:7 207 2:21 211 4:15 22nd 8:8 48:2 2230 3:15 240-20.094 12:10 240-20.095 10:6 240-3.163 9:13 240-3.164 12:10 25 55:22 <hr/> 3 <hr/> 3rd 8:9 3.164 9:13 30 9:14 303-8770 4:17 312 3:22 314 4:17 3432 2:20 360 3:7 3600 4:15 393.1075 38:9 393.1075.3 21:14 59:7 393.1075.5 9:17 9:23	<hr/> 4 <hr/> 4 9:13 12:9,10 400 4:9 426 2:19 443-3141 4:5 456 3:23 <hr/> 5 <hr/> 5 38:9 50-page 44:5 536 11:17 536.010 11:15 536.050 11:15 573 2:22 3:8,16 3:24 4:5,10 4:25 <hr/> 6 <hr/> 6y5205 4:5 63102 4:16 635-7166 3:24 636-6758 4:10 636-7551 2:22 65101 4:10,24 65102 3:16,23 65102-0360 3:8 65109 2:21 <hr/> 7 <hr/> 7 1:8 2:7 751-5565 3:16 751-8706 3:8 797-0005 4:25 <hr/> 8 <hr/> 800 3:6 807 4:23 <hr/> 9 <hr/> 9th 4:4 918 4:4
--	---	---	---