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AUDIO RECORDING
MISSOURI PUBLIC SERVICE COMMISSION
IN RE: THE PETITION OF EMPIRE DISTRICT ELECTRIC
COMPANY, ET AL.
CASE NOS. EO-2022-0040 & EO-2022-0193
JUNE 13, 2022
VOLUME 2

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

TRANSCRIBED BY: MELISSA LANE

1 JASON HOLSMAN: Commissioner Holsman is on.

2 UNIDENTIFIED MALE: Starting the meeting in
3 about two minutes.

4 JASON HOLSMAN: I'm sorry, I missed that.
5 Did you get that Commissioner Holsman is on?

6 UNIDENTIFIED MALE: Yes, we did.

7 JASON HOLSMAN: Okay. Thank you so much.
8 I'll be on mute.

9 JUDGE WOODRUFF: We'll be addressing that
10 before we move onto the opening statements anyway, so
11 that'll be fine. Will be fine.

12 UNIDENTIFIED MALE: As far as housekeeping
13 goes, with people and viewing rooms, I know normally
14 we got cell phones turned off, is it okay -- as long
15 as we keep them on silent, okay to use that to
16 communicate as needed with people outside of the room.

17 JUDGE WOODRUFF: That's fine with me.

18 UNIDENTIFIED MALE: Okay. Thank you,
19 Judge.

20 JUDGE WOODRUFF: All right. Brian, we just
21 clicked over, so. All right. Well, we'll go ahead
22 and get started then. This is the hearing in the
23 (inaudible) cases for Empire District Electric
24 Company, file number EO-2022-0040, and it's
25 consolidated for purposes of this hearing with

1 EO-2022-0193. Let's begin by taking entries of
2 appearance from the parties. Begin with Liberty.

3 DIANA CARTER: Diana Carter and Dean Cooper
4 for the Empire District Electric Company, doing
5 business as Liberty.

6 JUDGE WOODRUFF: Thank you. And for the
7 staff.

8 CURT STOKES: Curt Stokes on behalf of
9 staff.

10 JUDGE WOODRUFF: And for public counsel.

11 NATHAN WILLIAMS: Nathan Williams appearing
12 on behalf of the Office of Public Counsel and the
13 public.

14 JUDGE WOODRUFF: Thank you. And for MECG.

15 TIM OPITZ: Tim Opitz on behalf of the
16 Midwest Energy Consumers Group.

17 JUDGE WOODRUFF: And Renew Missouri.

18 ALICIA GREENWALD: Alicia Greenwald on
19 behalf of the Renew Missouri.

20 JUDGE WOODRUFF: Thank you. And I believe
21 that's all the parties. As you may have noticed and
22 as I announced in -- and noticed last week, we do not
23 have a court reporter in the room with us today.
24 Unfortunately, we were just unable to find someone
25 able to actually fulfill that duty today, so as an

1 alternative, we have redundant recording systems, and
2 the transcript will be the -- the record will be
3 transcribed by a professional court reporter off the
4 record that we are making today with the recording,
5 and we have both the screen is being recorded as well
6 as the -- the Webex, and we have a separate camera set
7 up here when we're in camera that will also be
8 recording it, so we should not have any problem with
9 getting a redundant record. Since we don't have a
10 court reporter here to handle the exhibits, if you do
11 have extra exhibits that you wish to offer that have
12 not been filed, just bring them up to me. I'll go
13 ahead and mark them; all right?

14 I also issued a notice in this case asking
15 people to wear masks, and I did that just to make sure
16 that we don't have a lot of viruses passed around
17 today that would disrupt the hearing later in the
18 week. I don't intend to use that -- I don't want the
19 requirement to wear a mask to disrupt -- disrupt the
20 hearing in any way. As I've indicated myself, when
21 you're speaking, you can go ahead and remove your mask
22 so that you're -- you speak more clearly, so.
23 Hopefully that won't cause any disruption, but I want
24 to make sure everybody stays healthy for the end of
25 the week.

1 Also going back to the idea that since we
2 don't have a court reporter and we're going to be
3 relying on the recordings, it would be very helpful
4 for the transcriptionist if we identify ourselves
5 when -- when you're speaking. Obviously, you don't
6 have to do that actually every time you're up at the
7 podium examining the witness, but if you wish to make
8 an objection, please identify yourself so that we are
9 clear as to who is speaking. And then we had a
10 pending motion that was filed by staff on Saturday, I
11 believe it was, for leave to file an out of time issue
12 and position statement. Empire or Liberty responded
13 with a statement of position as to that additional
14 issue. Anyone wish to be heard about that issue?
15 Mr. Williams?

16 NATHAN WILLIAMS: Thank you, Judge. Public
17 counsel's position is the same as staff's, and we have
18 no objection to that issue being added.

19 JUDGE WOODRUFF: Okay. Thank you. I don't
20 hear any other objection to the motion -- or
21 Mr. Opitz.

22 TIM OPITZ: I have no objection, Your
23 Honor. I just wanted to point out MECG, I believe,
24 filed our position on that issue.

25 JUDGE WOODRUFF: Yes. And I believe your

1 position is the same as the company's.

2 TIM OPITZ: I think MECG is more forceful
3 in support of the company's direct testimony. My
4 understanding is the company says their primary
5 concern is the issuance of the bonds, and I -- my
6 primary concern how those bonds are recovered from
7 customers.

8 JUDGE WOODRUFF: Okay. Thank you very
9 much. Anyone else want to be heard on that motion?
10 Then the motion will be granted and the additional
11 issue is added to the list.

12 Okay. Let's move on, then, to -- first of
13 all, let me identify which commissioners are on -- on
14 the Webex. I know Commissioner Holsman, you indicated
15 you were on? Mr. Holsman, are you still in? Were any
16 other commissioners on the line at this point.

17 GLEN KOLKMEYER: Commissioner Kolkmeier is
18 here.

19 JUDGE WOODRUFF: Thank you, sir. And
20 Chairman Silvey is to my left here in the hearing room
21 for the purposes of the record.

22 CHAIRMAN SILVEY: Judge, if I may?

23 JUDGE WOODRUFF: Yes, you may.

24 CHAIRMAN SILVEY: Thank you.

25 Commissioner Rupp called me yesterday to let me know

1 that he understands how important this hearing is and
2 to inform the parties that he's sorry that he will not
3 be physically participating very much this week
4 because his mother passed over the weekend, so he'll
5 be spending the next few days with his family
6 attending to that, but he does intend to read the
7 record and understands that as the first of its kind,
8 it is an important case. So with that, I would ask
9 that, that everyone keep Commissioner Rupp's family in
10 their prayers. Thank you, Judge.

11 JUDGE WOODRUFF: Thank you, sir.

12 MAIDA COLEMAN: Judge, Commissioner Coleman
13 is here.

14 JUDGE WOODRUFF: Thank you. All right.
15 Then let's go ahead and begin with opening statements.
16 Begin with Liberty.

17 DIANA CARTER: Thank you. Good morning. I
18 am Diana Carter. I am Liberty's in-house legal
19 counsel for Missouri and Kansas. Dean Cooper of
20 Brydon, Swearingen & England and I are here
21 representing the Empire District Electric Company
22 doing business as Liberty. I will do my best just to
23 say Liberty. I don't think we need to make the
24 distinction between Empire and Liberty in this case as
25 we do in some others.

1 Liberty will have ten witnesses appearing
2 in Jefferson City this week, and later in my opening,
3 I'll introduce the witnesses and outline the testimony
4 that will be presented, but since we're making history
5 here, as Chairman Silvey noted, this is the first
6 securitization hearing before the commission, so I'd
7 like to start with some discussion on what
8 securitization is, what the statute requires, and also
9 what it does not require.

10 There is the potential to save Liberty's
11 customers millions of dollars, but a financing order
12 in compliance with the securitization statute will be
13 required to make that happen. I have more to say in
14 my opening statement today than I normally do. Please
15 stop me and ask questions if -- if I'm losing you at
16 some point or you want to know what witness may be
17 able to follow-up on what I have to say because there
18 is quite a bit to -- to talk about more than we
19 normally would have in an opening.

20 Securitization is a financing mechanism, an
21 alternative to that customary utility financing, and
22 it creates two important benefits. First, it allows
23 certain expenses that Liberty has incurred on behalf
24 of its customers to be financed differently using low
25 cost bonds, reducing the amount of money that

1 customers have to pay, and second, securitization
2 helps to avoid rate shock, those sudden increases in
3 customer costs by stretching the repayment terms out
4 longer than would normally happen. Liberty is
5 certainly aware of the state of energy markets today
6 and that everyone is facing additional pressures from
7 inflation. We're looking for any way to help.

8 When utilized carefully and for the right
9 reasons, securitization represents a true win/win by
10 allowing the utility to recover the costs of providing
11 service in a way that minimizes that impact on
12 customers. We don't get a lot of those true win/win
13 situations, so we're really excited to be able to take
14 advantage of that here.

15 It's important to remember that the
16 securitization statute does not require utilities to
17 use this cost saving method of finance, but Liberty
18 wants to help save customer's money and is proud to be
19 the first of file under this new statute. You'll hear
20 some parties in this case argue that certain costs
21 should be disallowed, but not because of imprudence,
22 but simply for the sake of denying cost recovery, and
23 Brian, if you could open up the slides. Thank you.

24 You will see over this coming week that
25 Liberty has met all required elements for

1 securitization of the cost both related to Liberty's
2 retired coal plant, the Asbury coal plant, and also
3 last year's winter storm Uri. The company acted
4 prudently and properly related to storm Uri, and the
5 retirement of Asbury keeping stakeholders informed
6 every step of the way, and the other parties have not
7 demonstrated imprudence or lack of statutory
8 compliance in any way.

9 The commission should recognize that
10 Liberty has acted in the best interest of customers by
11 seeking securitization for these costs. The Missouri
12 legislature passed the securitization statute
13 intending for utilities to use it in precisely the
14 manner Liberty proposes here. One, to manage the
15 recovery of unforeseen expenses like with storm Uri
16 and two, to provide the financial flexibility to make
17 decisions that benefit customers as with the decision
18 to retire Asbury. This case is an opportunity for the
19 commission to recognize the benefits of this new
20 statute for utility customers, utilities, the public,
21 and our planet. Turning to the specifics of
22 Missouri's security -- securitization statute, it is
23 very detailed and prescriptive. It is not a small
24 piece of work here. The legislature has given us the
25 roadmap, and we need to stay on track and follow that

1 path that they've set for us. Looking first at the
2 definition related to Asbury's cost. These are the
3 energy transition costs. What jumps out first at me
4 and when you look at subpart A is that the retirement
5 of Asbury by Liberty when it was retired must be
6 deemed reasonable and prudent. This is clearly
7 demonstrated by all of the testimony in this case.

8 Now, I know the bench is very familiar with
9 the prudence standard looking to what was known at the
10 time decisions were made, but since this is our first
11 securitization proceeding and some parties disagree on
12 how Liberty's actions should be reviewed, we brought
13 in an expert on the topic. Liberty's first -- excuse
14 me -- witness today will be John Reed, and I encourage
15 you to ask him questions and discuss the proper
16 prudent standard with him. The testimony demonstrates
17 that the retirement of Asbury was reasonable. It had
18 simply become economically obsolete. I would like to
19 note here that Liberty obtained guidance from the
20 commission on acquiring the three wind farms in the
21 initial customer saving plan docket, and then also
22 obtain the certificates of convenience and necessity
23 for the wind farms, all with Asbury remaining open.
24 They were not conditioned on each other. Asbury was
25 in rates with all costs already found to have been

1 prudently incurred. If the commission adopts public
2 counsel's position in this case, you'll not only be
3 sending the message that utilities shouldn't seek
4 securitization, but you'll also be sending the clear
5 message that a Missouri utility should keep open a
6 coal plant no matter the economics and no matter the
7 environmental impact or else face the chance of being
8 denied recovery of costs already expended and already
9 deemed prudent.

10 I'd like to remind the commission of their
11 own words, not too long ago, Chairman Silvey and
12 Commissioner's Rupp and Coleman issued an order in
13 2019 regarding another utility saying that the
14 commission wanted to emphasize that they were not
15 wavering in its support of renewable energy and that
16 they were not wanting to dissuade Missouri utilities
17 from retiring economically inefficient coal
18 fire-generating plants. Liberty made the decision to
19 retire Asbury, because that was the reasonable and
20 prudent decision in the best interest of Liberty's
21 customers.

22 If maximizing shareholder profits were the
23 goal, as some have alleged, we would now have three
24 wind farms and Asbury, but the right decision was to
25 retire Asbury. There's no competent or persuasive

1 evidence that was anything other than reasonable and
2 prudent to retire Asbury in 2020. Once the commission
3 finds the retirement of Asbury was reasonable and
4 prudent, the listed items in the definition become
5 cost to be financed via securitization. These include
6 the unappreciated balance of Asbury, cost of
7 decommissioning and restoring the site and carrying
8 charges. Mr. Reed, our first witness today, also
9 testifies on carrying costs, and I'll address that
10 issue in just a minute. With subpart B, the Missouri
11 legislature made it clear that the financing mechanism
12 of securitization may be used now for plants retired
13 before the law took effect, such as Asbury.

14 Now, turning to winter storm Uri costs.
15 Storm Uri was extreme, abnormal, and the resulting
16 costs were extraordinary. Liberty's witnesses
17 describe in detail the events and the company's
18 actions that led to the company incurring these
19 extraordinary costs, and the testimony demonstrates
20 that the company's actions were reasonable and that
21 the storm costs were prudently incurred. Liberty's
22 last scheduled witness for today is John Olson.
23 Mr. Olson, his team of experts took a very in-depth
24 look at Storm Uri and Liberty's actions and provided
25 detail findings and conclusions. You'll also be able

1 to talk about fuel costs with Liberty's senior
2 director of energy strategy, Aaron Dole. He will be
3 testifying today as well. Because of that extreme
4 rate shock that could have occurred in the
5 unreasonable financial burden that would have been
6 placed on our customers, Liberty never sought to have
7 the Storm Uri cost flow through the FAC with recovery
8 over six months. Instead, Liberty proposed to have
9 the extraordinary costs deferred and the commission
10 authorized new FAC rates with those storm costs
11 excluded. When Liberty filed its last rate case, the
12 securitization statute was not yet law, but with those
13 storm costs having been excluded from the FAC, the
14 company proposed in the rate case to recover the storm
15 costs over 13 years and that, you know, would bear the
16 company's weighted average cost of capital, but then,
17 the securitization financing mechanism became a
18 possibility. Those costs of securitization will be
19 lower than the customary financing, thereby lowering
20 the costs for our company, because you're comparing
21 those low cost bonds with the company's weighted
22 average cost of capital.

23 Looking to the specific items included in
24 the definition of qualified extraordinary costs, we've
25 addressed prudence separately. And, so it's cost

1 incurred before on or after when the statute took
2 effect of an extraordinary nature which would cause
3 extreme customer rate impacts. All testifying parties
4 agree that the financing mechanism of securitization
5 should be used for the Storm Uri cost, so we have no
6 dispute of the majority of those elements.

7 The next one is such as but not limited to
8 those related to purchases of fuel or power. This
9 provision in the definition is noteworthy, because the
10 option of seeking securitization is the financing
11 mechanism is available for all extraordinary costs
12 from atypical weather events. There's nothing
13 specific about fuel and purchase power costs. The
14 legislature, obviously, was aware of Storm Uri and
15 made reference to and including fuel and purchase
16 power costs to make that clear, but it's for all
17 atypical weather events and the extraordinary
18 resulting costs. Other parties of the case proposed
19 disallowances from these storm costs, but without the
20 required showing of imprudence, staff, and public
21 counsel, in fact, admit that a primary proposed storm
22 cost disallowance has nothing to do with prudence
23 (sic). Instead, they look to the 95/5 sharing
24 mechanism of the FAC that applies in that mechanism
25 for fuel and purchase power costs above or below the

1 amount that's incorporated into base rates, and they
2 ask for that to apply here. This is obviously not an
3 FAC proceeding. The FAC statute authorizes sharing.
4 The securitization statute does not. There's also no
5 such sharing when you look at base rate fuel costs
6 because that would be unlawful absent a showing of
7 imprudence. The FAC statute specifically provides
8 that the commission may include an FAC tariff, and I,
9 quote, features designed to provide the electric
10 corporation with incentives to improve the efficiency
11 and cost effectiveness of its fuel and purchase power
12 procurement activities. There is no such language in
13 the securitization statute. This is likely because we
14 are dealing with extraordinary costs stemming from
15 anomalous weather events. There is no amount of
16 incentivizing that could have effectively led Liberty
17 to avoid the Storm Uri costs. The same would be true
18 for the Liberty tornado in 2011 or the ice storms,
19 again, where the utilities are allowed to recover
20 those extraordinary costs.

21 Liberty -- excuse me, Liberty's FAC tariff
22 including the 95 sharing cannot lawfully be used to
23 trump the securitization statute. The securitization
24 statute has nothing that allows for extraordinary fuel
25 and purchase power costs to be treated differently

1 from any other extraordinary costs stemming from a
2 weather event. The securitization statute is already
3 designed to save customers money.

4 Next in the definition we have inclusive of
5 carrying charges. Carrying charges is the --
6 specifically listed in both definitions, energy
7 transition costs and qualified extraordinary costs.
8 These are included within the definitions, the costs
9 that may be securitized. John Reed who will be before
10 you very soon provides evidence on the appropriate
11 regulatory standard for establishing the carrying
12 charge for the regulatory assets for both Asbury and
13 Winter Storm Uri. Mr. Reed and Liberty's remaining
14 witness today, Charlotte Emory, both address the
15 proper timing of the carrying cost. There's an issue
16 between the company and staff as to when those
17 carrying charges should begin.

18 Then the last item during anomalous weather
19 events, again, there is no dispute that securitization
20 should be used for Liberty's recovery of storm costs.
21 All parties are in agreement on that point. So first,
22 we determine the amount of costs that fall within the
23 definition of energy security costs, and those that
24 fall within the definition of qualified extraordinary
25 costs, and now we move onto the benefits test, the

1 comparison between securitization and traditional
2 financing. Staff and public counsel are asking this
3 commission to determine the amount of costs that
4 Liberty is seeking to securitize that would be
5 recovered through customary ratemaking. They appear
6 to be asking the commission to go through a
7 traditional cost of service ratemaking analysis, and
8 then compare this completely hypothetical outcome with
9 the cost of securitization. The commission would be
10 committing reversible error if it would -- were to
11 rely on that analysis for the benefit comparison
12 required by the statute and this is for both coal
13 plant retirements and weather events. The
14 securitization statute requires that the comparison of
15 the cost to customers that are estimated to result
16 from the issuance of security -- securitized utility
17 tariff funds, and then on the other side -- and it is
18 slightly different wording, but substantially the
19 same, the comparison is to the customary method of
20 financing.

21 Now, there is a requirement that the
22 benefits test be positive, and you cannot see that
23 there. I apologize. Everyone does have a paper copy,
24 and of course, you can take a look at the statute as
25 well. Only Liberty and staff have weighed in on the

1 benefits analysis and both testified that there are
2 significant benefits in the securitization dockets.
3 Using Liberty's values and calculations, we are
4 talking at more than 70 million in estimated benefits,
5 but I would note that the statute doesn't have a
6 floor. There's no required amount of benefits. The
7 statute just asks, are there benefits? Is that number
8 positive? And, again, everyone who has weighed in on
9 this issue agrees the benefits are positive, and
10 therefore, securitization should be used.

11 So, again, the statute is -- is
12 prescriptive. It is detailed, and there are many
13 provisions that have to be included in the
14 commission's financing order in order to make this --
15 this possible, in order to carry things through, and
16 the first ones are more on what I consider our
17 regulatory end, things that we normally deal with here
18 at the commission, and then there are a large number
19 of requirements in the financing order that go more to
20 the bond process, things that are going to happen
21 after the financing order is issued, and that will all
22 be addressed in a proposed financing order that the
23 company will be putting forward, and things that are
24 more technical in nature, but in terms of the
25 substance of what we're normally used to dealing with

1 here, what you're mainly looking at is just and
2 reasonable, the prudence determination and that
3 benefits are expected.

4 Based on the competent and substantial
5 evidence that is presented to the commission, a single
6 financing order should be issued to authorize Liberty
7 to finance approximately \$362.5 million. That breaks
8 down to approximately 140.7 million for Asbury and
9 221.6 for Storm Uri, and I believe everyone is in
10 agreement for a 13-year recovery period. Liberty has
11 demonstrated the reasonableness of its actions, the
12 prudence of the cost, and satisfaction of all
13 requirements of the securitization statute; thus,
14 satisfying the just and reasonable standard and the
15 public interest standard.

16 As noted, only Liberty and staff have
17 offered positions on the statutory -- excuse me,
18 statutorily required benefits comparison and both
19 testify that substantial benefits are expected. Even
20 when you figure in the cost of securitization, the
21 bond process, figuring all those costs in, there is
22 still the potential of saving customers many millions
23 of dollars if we go with securitization.

24 So our witnesses, there will be lots of
25 experts sitting before us this week, and I encourage

1 you to ask them questions. In addition to our Liberty
2 folks with the factual knowledge and the technical
3 expertise on utility operations and our traditional
4 outside utility experts like Mr. Reed, we brought in a
5 team that has done this many times before. When
6 you're the first at something, you want to make sure
7 you bring in people to help that have the experience.
8 Ms. Niehuas, Katrina Niehuas, is a head of corporate
9 asset back security finance group at Goldman Sachs
10 where she has served as an advisor underwriter in many
11 securitizations, and Liberty's securitization legal
12 counsel Hunton has been counseled to electric
13 utilities, underwriters, and financial advisors on
14 securitizations in ten states. Hunton has also
15 consulted on the drafting of several enabling
16 statutes. Adam O'Brian, our Hunton attorney, will be
17 with us in Jefferson City this week, has worked on
18 approximately 25 securitization transactions since
19 2010. We are set for five days of testimony. I would
20 just like to note that James Owen of Renew Missouri is
21 scheduled to bring up the rear. He's scheduled last
22 on Friday.

23 Renew Missouri has brought forward sound
24 policy arguments in this proceeding. We often hear
25 about how commission decisions do not technically

1 establish precedent, but your decisions here will send
2 a clear message. We're making history, implements
3 Missouri's new securitization statute, and we want to
4 make sure the correct message is sent.

5 The Liberty team is excited to be here this
6 week presenting a well thought out plan that meets all
7 of the requirements of the securitization statute.
8 There is the potential to save Liberty's customers
9 millions of dollars and a financing order
10 acknowledging the reasonable and prudent actions of
11 Liberty, and otherwise, in compliance with all of the
12 terms of the securitization statute will make that
13 happen for Liberty's customers, and we're really
14 excited to be a part of that. Thank you.

15 JUDGE WOODRUFF: Thank you. Mr. Chairman,
16 do you have any questions?

17 RYAN SILVEY: I do. Thank you, Judge.
18 Thank you. Do you think this is the appropriate venue
19 to discuss whether Asbury should have been retired in
20 the first place?

21 DIANA CARTER: Yes. Because -- sort of, I
22 guess I should say, Chairman Silvey, the statute does
23 require a finding that it was reasonable and prudent
24 to retire Asbury when it was retired, and we don't
25 have a commission finding on that yet. We've talked

1 about it. As I'm sure you recall, we've talked about
2 it in many proceedings, but we haven't actually had
3 that finding that it was reasonable and prudent for
4 Asbury to be retired, and that's a required part of
5 the statute. What's not appropriate is to go back and
6 look at the costs that were expended on Asbury when it
7 was operating, because those have all already been
8 determined to be prudent, and those costs are already
9 in rates -- were already in rates, so we can't go back
10 and look at that, but we do need the finding here on
11 the retirement.

12 RYAN SILVEY: Okay. And secondly, on your
13 position on the -- I think it was slide five, just
14 that the charges are expected to provide quantifiable
15 net present value benefits to retail customers. Is it
16 your position that there's no threshold on that beyond
17 just that it's positive?

18 DIANA CARTER: Correct.

19 RYAN SILVEY: So theoretically, one dollar
20 justifies securitization under the statute.

21 DIANA CARTER: Yes. Technically, yes.

22 However --

23 RYAN SILVEY: Saying you're asserting it'll
24 be millions of dollars.

25 DIANA CARTER: Yes.

1 RYAN SILVEY: As this is the first case, I
2 wanted to discuss that you don't believe there's a
3 threshold beyond it being a positive number.

4 DIANA CARTER: Yes. Positive when you take
5 everything into account which includes those financing
6 costs and all that's involved with scrutinizing, so
7 there's truly a benefit for customers.

8 RYAN SILVEY: Okay. But your position is
9 there's no leeway for the commission to decide whether
10 it's positive enough?

11 DIANA CARTER: The statute certainly
12 doesn't set a floor. Ultimately, however, it is on
13 the commission to determine that it is just and
14 reasonable for there to be a securitization charge.
15 So I believe you would have certainly some discretion
16 there on that just and reasonable determination.

17 RYAN SILVEY: Okay. Thank you. Thank you,
18 Judge.

19 JUDGE WOODRUFF: Thank you. Commissioner
20 Coleman, did you have any questions?

21 JASON HOLSMAN: Hey, Judge, this is
22 Commissioner Holsman, I wanted to let you know that I
23 am on (inaudible).

24 JUDGE WOODRUFF: All right. Thank you.
25 Mr. Kolkmeier, did you have any questions? Okay.

1 Thank you then.

2 DIANA CARTER: Thank you.

3 JUDGE WOODRUFF: And next opening statement
4 then is MECG.

5 TIM OPITZ: Good morning. May it please
6 the commission. My name is Tim Opitz, and I'm here
7 for the Midwest Energy Consumers Group, generally, I'm
8 looking out for commercial and industrial customers
9 who use a lot of power of high load factors and can
10 make a difference in the utilities resource needs
11 through curtailment during extreme events.

12 As a little bit of background before
13 getting into the issues here, I just want to say that
14 Empire recently had a rate increase. Took effect on
15 June 1st. Commission's order came out this April.
16 There were some findings of fact there that I want to
17 point out in that order. You included one that said
18 Empire's average industrial rate is in excess of
19 22 percent higher than the state regional and national
20 averages. You also summarized the recent history of
21 cost allocation from Empire's electric customers
22 saying in Empire's 2014 and 2016 cases, ER-2014-0351
23 and ER-2016-0023, the commission took steps to realign
24 class rates and address the residential subsidy.
25 However, in Empire's last rate case, ER-2019-0374, the

1 commission applied the rate adjustment equally across
2 the classes due to a lack of reliable data due to the
3 large number of estimated bills.

4 In your order this April, you decided that
5 the increase should be applied as an equal percentage
6 to each class saying that extenuating circumstances,
7 such as inflation, ongoing pandemic where
8 circumstances why you decided against bringing rates
9 and costs more into parity. Here, with the rate
10 design and cost allocation, there was a securitization
11 charge. I'm asking you not to make that imbalance for
12 severe with this charge.

13 On to the issues -- most of these issues 1
14 through 7 relate to the amounts, if any, to be
15 securitized and findings that the company needs in its
16 order. MECG supports approval of securitized utility
17 tariffs only to the extent there are quantifiable
18 present benefits to scrutinizing those costs, but we
19 have not yet taken a position on the amount of what
20 those values should be authorized at. One late issue
21 we have a position on is issue eight, and as you've
22 gathered that relates to the cost allocation and rate
23 design of this charge. The question is, how should
24 securitized tariff charges be initially allocated
25 among retail customer classes. MECG's position is

1 that the securitized costs should be allocated among
2 retail customer classes as proposed in the company's
3 direct testimony. Basically, the company didn't get
4 into it, so I'll summarize it for you briefly. The
5 company looked at the revenue targets by class from
6 the last rate case calculated that percentage compared
7 to the company's overall revenue requirement, and then
8 they took that percentage and applied it to their
9 annualized level of securitized cost, annual level of
10 securitized cost they want to recover here.

11 Now, I think that that's the appropriate
12 way to do it in this case, based on the evidence
13 that's been presented. The company also proposes
14 using an energy figure to recover those allocated
15 amounts, and I kind of want to make a distinction here
16 that the securitization statute talks about allocating
17 among the classes. So I like to think of that as the
18 cost allocation, and then there's the second issue of
19 the rate design, how those allocated costs will be
20 recovered from each class. The company has proposed
21 based on the energy charge; however, in their
22 testimony, their surrebuttal testimony, they say
23 they're open to additional input from parties, and the
24 tariffs themselves will be filed after the financing
25 order is issued, if you issue one, so I would say that

1 MECG prefers that the cost associated with Asbury be
2 recovered through a kilowatt demand basis from the
3 industrial -- industrial classes.

4 Since that amount was related to plant or
5 fixed cost, even if it is retired, you know, I think
6 that that's the cost that MECG typically refers be
7 recovered from a demand charge. The staff can say the
8 reason to retire Asbury was related when -- which the
9 company disputed this morning, but from MECG's
10 perspective those Asbury dollars were related to steel
11 in the ground that wasn't dependent on the customer's
12 usage.

13 On a separate issue for the Uri cost,
14 however, the commission decides to allocate that, when
15 it's designing the rates, I do recognize that the Uri
16 costs are very much fuel cost, related fuel cost, so
17 even though I prefer it to be collected through a
18 demand charge, I'm okay using a kilowatt hour charge
19 to collect the Uri cost once it's allocated
20 appropriately.

21 Lastly, I want to say that the company's
22 proposed method is consistent with the provisions of
23 the securitization statute, specifically
24 3931700.23-CH. That statute talks about -- basically,
25 it begins with the question that's the issue for issue

1 eight, how will the charges be allocated among retail
2 plus -- retail customer classes. When I read that,
3 that's in contrast with the staff's position to
4 collect it on a basis of energy sales for all classes.
5 To me, that's not an allocation among the classes.
6 It's treating everyone as the same class and no
7 allocation is taking place. Treating these
8 securitized changes charges, like the staff proposes
9 which is basically like an FAC charge, as I read their
10 testimony, is not what the statute says to do. It's
11 not based on determining the cost to provide the
12 service for that particular class, and it's a design
13 that is if adopted detrimental to industrial
14 customers.

15 I'll conclude by saying that when you
16 determine the cost to be securitized, the company's
17 allocation among these classes recovers the cost in a
18 way that does -- doesn't further penalize industrial
19 customers who continue to bear the disproportionate
20 share of costs as shown in the class cost of service
21 from the last rate case upon which the company's
22 design in its direct testimony is presented.

23 So I would ask the commission to adopt what
24 the company proposed in its direct testimony related
25 to cost allocation. Thank you for your attention, and

1 I'm happy to answer any questions.

2 JUDGE WOODRUFF: Mr. Chairman, did you have
3 any questions? Any questions from the commissioners?

4 JASON HOLSMAN: No questions, Judge. Thank
5 you.

6 JUDGE WOODRUFF: Thank you. Thank you,
7 Mr. Opitz.

8 All right. Opening for Renew Missouri.

9 ALICIA GREENWALD: Good morning. May it
10 please the commission. My name is Alicia Greenwald,
11 and I'm here today on behalf of Renew Missouri
12 advocates better known as Renew Missouri. Renew
13 Missouri is a nonprofit clean energy advocacy group
14 with a mission of transforming the state of Missouri
15 into a national leader in clean energy. Because of
16 this, our testimony in this case is limited to
17 discussing securitization as it relates to the closure
18 of the Asbury plant.

19 As a brief overview, Renew Missouri
20 believes that the facts in this case support a finding
21 that utilizing securitization to recover costs related
22 to the early retirement of Asbury is just, reasonable,
23 and in the public interest. It is our position that
24 denying Liberty's application based on the imprudence
25 of its resource planning investments in the Asbury

1 plant and investments when energy is improper as these
2 issues have been previously settled otherwise.

3 Finally, we believe that the commission has
4 broad discretion to make this finding, a power that is
5 separate from its generate making authority. To
6 provide some background, the company first introduced
7 the idea of retiring Asbury early in its customer
8 savings plan of 2018. Following this, Liberty filed
9 applications for and was granted a CCN to acquire
10 600 megawatts of wind resources. Then in 2019,
11 Liberty conducted its integrated resource plan
12 modeling. Through this, the company found that
13 retiring Asbury early would save customers a
14 significant amount of money. This was largely due to
15 the fact that the Asbury plant even after extensive
16 environmental upgrades would have had to undergo
17 another 20 million dollars worth of environmental
18 upgrades just to comply with the EPA's coal combustion
19 residuals rule.

20 In addition, in previous hearings, Liberty
21 witnesses have testified that Asbury had significant
22 nonfuel operations and maintenance costs that
23 overwhelms the plant's energy margins. As these
24 issues have all been previously resolved in other
25 dockets, Renew Missouri believes that the assertion of

1 imprudence here is insufficient to reject Liberty's
2 application despite what the Office of Public Counsel
3 asserts.

4 Turning now to the securitization statute,
5 this statute allows utilities a financial mechanism
6 for retiring electric-generating facilities prior to
7 the end of their useful lives and that is precisely
8 what Liberty is seeking to do with the early
9 retirement of the Asbury coal plant.

10 In fact, the scenario is exactly what the
11 Missouri legislature contemplated when it -- when it
12 passed the securitization statute with overwhelming
13 support. It is also worth noting that while this is
14 the first case of securitization being used for the
15 early retirement of a coal plant in Missouri, it has
16 been used around the country to facilitate the
17 transition away from costly and inefficient coal to
18 cheaper and cleaner renewable energy sources. In
19 passing the statute, the legislature also conferred
20 upon the commission broad discretion separate from
21 that of its general-making authority to make a finding
22 that the use of securitization is just, reasonable,
23 and in the public interest.

24 In previous cases, the commission has found
25 that there's a strong public interest in the

1 development of economical renewable energy sources
2 that provides safe, reliable, and affordable service
3 while improving the environment.

4 In the history leading up to this
5 application demonstrates that Liberty is committed to
6 furthering this public interest through shutting down
7 dirty and uneconomic coal plants and shifting to
8 cleaner, less costly energy sources.

9 As Renew Missouri's witness James Owens
10 testified in his pre-filed surrebuttal testimony, the
11 company's planning has demonstrated that it is
12 listening to customer demands and that it places a
13 value on an environmental responsibility. Two elements
14 that contributes to the basis of a finding that
15 Liberty's actions are in the public interest.

16 Finally, it is key to note that the
17 decisions the company's made leading up to this
18 application have been found by the commission to be
19 reasonable and prudent.

20 Taken together, Renew Missouri believes
21 that these investments in the future of Liberty's
22 customers support a finding that the use of
23 securitization to recover costs related to the closure
24 of Asbury are just, reasonable, and in the public
25 interest. Thank you, and I'm happy to answer any

1 questions.

2 JUDGE WOODRUFF: Any questions from the
3 commissioners?

4 RYAN SILVEY: Yeah. Thank you. On the
5 issue in the public interest, is it your position that
6 that goes beyond purely economical issues in rates?

7 ALICIA GREENWALD: Yes.

8 RYAN SILVEY: Okay. Thank you.

9 JUDGE WOODRUFF: Any questions from the
10 commissioners on the phone?

11 ALICIA GREENWALD: Thank you.

12 JUDGE WOODRUFF: Opening for staff?

13 CURT STOKES: Morning. May it please the
14 commission. My name is Curt Stokes, and I'm appearing
15 on behalf of staff for the Missouri Public Service
16 Commission this morning. I know everybody said it.
17 I'm going to say it, too. This is a first of its kind
18 securitization hearing before the Missouri Commission.
19 At its core Missouri securitization statute aims for
20 just and reasonable rates, and the commission has been
21 deciding just and reasonable rates for over a century,
22 so a great deal of the issues in this hearing are what
23 just and reasonable rates look like for Winter Storm
24 Uri costs and for retired Asbury plant. The
25 securitization statute is just another tool in the

1 commission's toolbox setting just and reasonable
2 rates.

3 In deciding whether and how to use this
4 tool, the securitization statute is aimed at answering
5 two fundamental questions. First, will
6 securitizations save ratepayers money in the long run
7 compared to traditional or customary ratemaking.
8 Second, if securitization will save ratepayers money,
9 how can the commission and the utility structure the
10 securitization to maximize those savings? The answers
11 to those two fundamental questions should drive the
12 answer to every other question before the commission
13 this week. For each issue we address this week, the
14 commission's decision should be guided on whether or
15 not the securitization saves ratepayers money. And
16 whether -- and whether and how it will maximize
17 savings to ratepayers.

18 Big picture as to the first issue staff
19 supports the commission authorizing Liberty to use
20 securitization to finance 262 million dollars. This
21 is the most just and reasonable sharing of Uri and
22 Asbury costs between Liberty and its ratepayers. To
23 arrive at whether and what amount the commission
24 should authorize to Liberty to securitize, the statute
25 generally follows three fundamental steps. First,

1 decide what Liberty would recover under traditional
2 ratemaking or customary ratemaking. That's issues two
3 and three. The second step asks, what are the
4 estimated upfront and ongoing financial costs -- and
5 financing costs associated with securitization?
6 That's issue four. The last step is putting it all
7 together, deciding what the quantifiable net present
8 value benefits of securitization versus traditional
9 customary ratemaking, and if so, I think you go
10 forward with securitization.

11 Now Chairman Silvey, you had a question
12 earlier about, you know, is a dollar enough for the
13 quantifiable net present value? Staff's position is
14 that, that could be, but there -- there are pros and
15 cons that the commission also should consider and to
16 the extent that they can be quantifiable, I think
17 staff's expert Mark Davis can maybe help us track down
18 the answers to some of these questions.

19 One consideration is variable interest
20 rates. So right now the -- the exact interest rate on
21 the bonds is not known. It's only an estimate and
22 that's what we're basing that quantifiable net present
23 value basis on, so you do want some buffer there to
24 know that -- you know, that the interest rate has to
25 be, you know, below what would be the traditional

1 recovery. Another one is, you know, under traditional
2 ratemaking over a period of 10, 13, 15 years, you
3 might have different weighted average cost of capital,
4 different costs of long-term debt, different interest
5 rates that apply, and those are also unknown. And, so
6 to the extent that securitization can provide the
7 benefit of locking a known interest rate at a given
8 time that that's a -- probably a quantifiable benefit
9 for ratepayers especially if you're in an environment
10 where you're expecting rising interest rates over the
11 next ten years or more.

12 The -- the tools to deal with that -- the
13 statute does require quantifiable, but on top of that,
14 the statutes and other commissions what they've
15 frequently done is required a certification from both
16 the utility and the underwriter certifying to the
17 commission that the interest rate achieved under the
18 securitization bond does achieve a quantifiable net
19 present value benefit and that way you know going in
20 and -- okay. We -- we found a quantifiable benefit
21 using the estimate and now using the actual, that
22 benefit is still there.

23 I think Liberty's testimony and staff's
24 testimony have both supported that certification
25 process to re-assure the commission that if we do go

1 forward that there will be a certification. There's
2 actual quantifiable benefits going forward.

3 The other, you know, area where the
4 commission's got a great deal of discretion is that
5 finding -- the very first requirement for the
6 commission's order that the issuance of securitization
7 is just and reasonable. And, you know, of course, the
8 Missouri Supreme Court has said that the commission
9 has a great deal of discretion in deciding what is
10 just and reasonable. So hopefully that answers your
11 question, and I think, you know, with expert testimony
12 from Mark Davis later we can flush that out a little
13 bit more.

14 Now, going to -- going to issue two, this
15 is -- this is what the just and reasonable amount that
16 Liberty would recover for Uri under traditional
17 ratemaking, and the answer that staff arrived at is
18 approximately 193 million. In the absence of
19 securitization, staff would recommend that Liberty be
20 permitted to defer some of extraordinary fuel and
21 purchase power costs outside of its fuel adjustment
22 clause or FAC. Staff would recommend recovery of
23 those amounts amortized over a ten-year period, and
24 the ten-year period is because of the shared magnitude
25 of those costs, the ten-year period helps to avoid

1 rate shock, and staff would approve carrying costs
2 based on Liberty's long-term debt rate.

3 And this is probably where I should clarify
4 now that staff is supporting the long-term debt rate.
5 At this point looking closer staff realized that the
6 short-term debt rate that staff arrived at of the
7 three and a half percent was based on an annualization
8 (sic) of what we thought was a monthly short-term debt
9 rate of 0.3 percent. Staff now understands that the
10 0.3 percent is actually Liberty's annual short-term
11 cost of debt, and frankly, 0.3 percent is just too low
12 of a debt to recover over ten years. It's just not
13 just and reasonable. So I think this goes to also the
14 other commission's order asking questions, question
15 4-C or D, staff -- staff is now landed on a 4.6
16 long-term cost of debt as an appropriate carrying cost
17 for additional ratemaking. Staff, however, does not
18 agree with the full amount of cost recovery for Uri
19 based on Liberty's filed position. The most important
20 adjustment was to preserve the 95/5 sharing mechanism
21 in Liberty's fuel adjustment clause.

22 Now, Liberty just got up and said that it's
23 unlawful to not share that, but the lawfulness comes
24 from that just and reasonable requirement, and the
25 very first requirement the commission finds is that

1 the cost sharing has to be just and reasonable, and
2 since 2008, the commission has always found the 95/5
3 sharing mechanism is just and reasonable, and it's
4 necessary to ensure that Liberty's sufficiently
5 incentivized to make prudent and economic fuel and
6 purchase power decisions. Second, sharing of some
7 cost associated with natural disasters is consistent
8 with previous commission decisions involving natural
9 disasters. The just and reasonable standard allows
10 the commission to share this. The -- the requirement
11 that cost be extraordinary, that just gets Liberty
12 through the door. That's what allows them to qualify
13 it as an extraordinary cost. It doesn't mean that
14 they automatically get to recover that, and that's
15 supported by the Missouri Supreme Court decision in
16 2021 in Spire's rate case. There, the Missouri
17 Supreme Court firmly rejected the idea that utilities
18 are automatically entitled to recover all prudent
19 costs. The Missouri Supreme Court held that the
20 commission has great discretion in allowing or
21 disallowing costs based on that just and reasonable
22 standard whether or not those costs are prudent.

23 The last thing to keep in mind with that
24 95/5 sharing mechanism is you have to remember in case
25 ER-2021-0332, that's Liberty's FAC filing, when

1 Liberty first came to the commission asking to defer
2 Uri cost there was an issue. OPC raised an issue
3 about where you set the dividing line between what
4 costs are extraordinary and what were not and what was
5 going to flow the FAC and what was going to be
6 deferred. Staff does have OPC's filing and the
7 commission's order in that one as a -- available as a
8 demonstrative exhibit, if you are interested in seeing
9 it. The problem with Liberty's position is, if
10 Liberty is allowed to collect 100 percent of its -- of
11 its extraordinary costs from Uri, we're going to
12 create pre-verse incentives, and the next time that
13 there's an extraordinary event with extraordinary
14 costs, public counsel, other ratepayers may intervene
15 and try to push the -- the threshold for extraordinary
16 costs as high as possible to preserve that 95/5
17 sharing mechanism, and that really goes against the
18 purpose of the statute which is just -- again, it goes
19 back to the first fundamental question, is
20 securitization going to save ratepayers money? And,
21 you know, if ratepayers are in here saying, well,
22 preserve that 95 sharing mechanism, we've got to, you
23 know, raise that threshold on extraordinary expenses
24 that's going to create rate shock or create the risk
25 of rate shock, and frankly, it just puts ratepayers in

1 kind of a Hopson's choice where, you know, heads
2 Liberty wins, tails ratepayers lose, so that's really
3 the -- the just and reasonable reason to preserve that
4 95 sharing mechanism is to avoid this issue in the
5 future.

6 And it really is, you know, when you look
7 at all of the Uri costs, it's a \$10 million sharing of
8 costs, so we're -- where staff is asking ratepayers to
9 pay approximately 193 million and asking Liberty to
10 share only five percent of that or 10 million and that
11 is just and reasonable sharing. The second most
12 important adjustment to make for Uri costs is to
13 consider Liberty's higher than normal revenues Liberty
14 received during Uri.

15 Now, Liberty didn't address this in their
16 opening, but it is an important issue. This amount,
17 approximately 3 million, has to be considered together
18 with Liberty's higher than normal costs during --
19 during Uri, and it is authorized by the statute. The
20 securitization statute specifically requires just and
21 reasonable rates. Just and reasonable rates
22 requires -- always requires a comparison of looking at
23 costs and revenues together. That's what the
24 commission does in every rate case. And again,
25 whatever amount of savings and securitization,

1 whatever that might entail, ruling in staff's favor on
2 this issue ensures that securitization does not take
3 away that \$3 million in benefits that customers would
4 normally have benefitted from under customary
5 ratemaking. The third adjustment to make -- for Uri
6 cost is to consider that Liberty failed to properly
7 test and tune its Riverton 11 unit. For years,
8 Liberty's ratepayers have paid for Riverton based on
9 its status as a dual fuel unit capable of running on
10 fuel oil when natural gas supplies were interrupted.
11 Liberty listed Riverton 11 as a dual fuel winter
12 resource, both with Southwest Power Pool and with the
13 commission in its integrated resource plan or IRP.
14 Yet, in 2021, when Uri hit, Riverton had not been
15 properly tested to run on fuel oil since 2016. In
16 addition, Riverton was tuned to 70 degrees which is
17 not appropriate for a resource listed as a dual fuel
18 winter peaking resource. In the end, Riverton was
19 unable to start and run on fuel oil during Uri and
20 ratepayer -- and the commission -- the commission
21 staff is asking that the commission make a --
22 approximately a \$2 million adjustment to benefit
23 ratepayers based on that adjustment.

24 With regard to other issues, staff does not
25 recommend a disallowance based on Liberty's resource

1 planning and staff does agree that, you know, the
2 decision on whether it's reasonable to retire as
3 Asbury is properly before the commission, and we agree
4 with Liberty's analysis that the commission does have
5 to find that it's prudent in order to qualify as an
6 energy transition cost. The only difference the
7 commission -- the commission staff has with the Office
8 of Public Counsel has to do with income taxes. Staff
9 does not recommend an adjustment based on OPC witness
10 Mr. Riley's testimony at this time. The tax
11 consequences of Uri are not currently known, and the
12 exact amount of taxes that Liberty will be required to
13 pay on securitized utility tariff charges are also
14 unknown. And regardless of the commission's decision
15 on this tax issue, however, the tax consequences
16 should be accounted for in a future ratemaking
17 reconciliation process as required under Section
18 3931700.2 sub 3, sub C, sub K.

19 The last two issues to decide on Uri are
20 carrying costs and the appropriate discount rate to
21 use. Now, as I indicated earlier, staff has realized
22 that the appropriate carrying costs from the time that
23 Uri occurred until the time that the cost are
24 securitized should be 4.65 percent, that is based on
25 Liberty's long-term debt rate, and again, we don't

1 full -- we don't support a full weighted average cost
2 of capital carrying cost and that goes back to the
3 just and reasonable sharing of some expense between
4 ratepayers and Liberty for extraordinary costs, and
5 then when you're looking at the discount rate on -- on
6 Uri, staff does not disagree that the 6.77 is a useful
7 comparison tool, but the long-term debt rate of
8 4.65 percent is also helpful, and under most
9 reasonable assumptions, we can run through those
10 probably when Mr. Davis is testifying even to
11 long-term debt rate of 4.65 percent as a discount
12 rate. You're going to arrive at quantifiable net
13 present value benefits for ratepayers.

14 That moves us onto the next issue, and
15 again, we're talking about customary ratemaking,
16 traditional ratemaking, and what Asbury costs would
17 Liberty be allowed to recover under traditional
18 ratemaking. For this number, staff arrives at
19 \$69 million, give or take. In the absence of
20 securitization, staff would recommend a 13-year
21 recovery period as Liberty does. In Liberty's most
22 recent rate case, staff recommended no return on the
23 under appreciated Asbury amounts only return of;
24 however, on a net present value basis, the difference
25 between a return on and a return of is only

1 approximately \$1.8 million.

2 Moreover, to the extent that the commission
3 would approve a return on Asbury, the interest rates
4 on bonds would be expected to have a much lower rate
5 than the weighted average cost of capital return, both
6 in this most recent rate case, and in future generate
7 cases.

8 Staff recommendation is based on the
9 requirement that some sharing of plant that is
10 required earlier, and therefore, no longer used and
11 useful is just and reasonable, and the most
12 appropriate in setting just and reasonable rates.

13 Staff's net book value of the retired
14 Asbury plant is just over \$159 million. I believe
15 there was a commission question about how staff
16 arrived at that. The brief answer -- but we can have
17 Amanda McMillan (phonetic) testify more into detail on
18 this, is that staff agreed with Liberty's calculation
19 of the -- of the net -- net book value. The
20 difference is the value of that AAO regulatory
21 liability which staff calculates is approximately 76
22 million and staff urges and it emphasizes that it is
23 just and reasonable to allow Liberty to recover some
24 portion of the net book value, but that the regulatory
25 liability of 76 million which represents money that

1 ratepayers have already paid to Liberty for Asbury
2 costs, that also gets a -- a return on at the weighted
3 average cost of capital. Second, staff's biggest
4 adjustment is to correctly calculate the ADIT credit
5 and access ADIT credit due to customers under the
6 securitization statute. Witness, Charlotte Emory,
7 testifying for Liberty effectively discounts Liberty's
8 ADIT and access ADIT balances twice.

9 Now what ADIT represents is its accumulated
10 deferred income taxes, and this is money that
11 ratepayers for Liberty have already paid to Liberty
12 for taxes that Liberty has not yet incurred, and the
13 idea with ADIT is that the amounts that customers pay
14 early on or eventually returned as they -- as those
15 taxes are paid. What Liberty has done is ignored the
16 income -- income side of the equation. They've only
17 looked at the rate base side of the ADIT, and as a
18 result, what they -- what Liberty's position is really
19 telling ratepayers is, you know, acknowledging that
20 ratepayers were paid \$36 million to date for Asbury
21 costs and rather than returning that 36 million over a
22 certain -- over the next 13 years, as would normally
23 be done in ratemaking, Liberty only wants to return 5
24 million of that, and they -- they do that by
25 discounting it twice and ignoring the -- the income

1 side of the equation.

2 Now, the other difference that accounts for
3 staff's ADIT difference is staff's ADIT. We start at
4 22 million. The current value is 22 million, and the
5 net present value of that is 17 million, but even if
6 you agree with Liberty's ADIT calculation of 36
7 million, the net present value of that is 22 million.

8 So if you -- if you agree with Liberty on
9 the ADIT issue, on the ADIT balance of 36, we ask that
10 the net present value of that be 22 million. If you
11 agree with staff's ADIT level, we ask that the net
12 present value be 17 million. OPC Riley -- staff
13 disagrees that Mr. Riley has followed the statute and
14 disagrees that his -- his position on ADIT and nexus
15 ADIT are supportable by the record. We -- staff
16 disagrees -- we don't think that the clock stops on
17 deferred taxes once a plan is associated with that tax
18 is deferred, and that's because Asbury was included in
19 rates in the 2019 rate case and was included all the
20 way up until the end of May of this year. Third,
21 staff, initially, we don't -- we do not recommend that
22 Liberty be allowed to secure ties, asset retirement
23 bases for asbestos removal or coal combustion
24 residuals, also known as CCR impoundment.

25 Staff's position, however, would not

1 preclude Liberty from recovering those amounts once
2 they are actually known and knowable and memorable by
3 documentation. Staff witness Kim Boland will
4 testify -- I believe there were some documents that
5 Liberty witness Mr. Landoll provided in surrebuttal
6 testimony that could probably get Ms. Boland closer to
7 Liberty's asset retirement obligation calculation,
8 but, you know, for hearing purposes, you know, the
9 statute requires that Liberty support its case with
10 documentation and direct testimony filed with the case
11 and not in surrebuttal. The -- the statute does talk
12 about estimates, but where it asks for estimates, it
13 asks for estimates, and when it asks for, you know,
14 energy transition costs, it -- other than interest
15 rates, it's not asking for estimates for that.

16 Finally -- I'm sorry, not finally, fourth,
17 staff believes that decommissioning costs should be
18 set at \$1.3 million. Not Liberty's proposed 12.4
19 million. Staff's position is based on the note that
20 Liberty's projections failed to reflect any salvage
21 value that Liberty will receive from the demolished
22 Asbury asset. Fifth, staff believes the depression
23 expense should be based on an effective retirement
24 date of December 2019 and not March 2020, as proposed
25 by Liberty. The resulting depreciation rate expense is

1 \$24 million through April 2022. Staff witness Amanda
2 McMillan can testify about the reasons we believe
3 Asbury was retired in December 2019, but it's really
4 because Asbury stopped producing energy for customers
5 in December of 2019. They had no coal on hand in
6 January of 2020. They had no coal contracts for coal
7 in January 2020. Sixth, and finally, Liberty should
8 be allowed to recover \$2 million in carrying costs for
9 Asbury. Given the short period of time, the cost to
10 be applied -- and remember, Asbury was included in
11 rates all the way up through May of 2022. So when --
12 when Liberty is scrutinizing Asbury costs, the, you
13 know, so-called carrying costs were only calculating
14 June of 2022 through, you know, whenever they actually
15 get these bonds issued. Assuming that's
16 December 2022, that's only six months. That's why
17 staff believes that Liberty's long-term debt rate of
18 4.65 is more appropriate here than the full weighted
19 average cost of capital.

20 As to the remaining proposed adjustments to
21 Liberty, staff generally agrees with Liberty's filed
22 position and does not support many of the adjustments
23 proposed by the Office of Public Counsel.

24 Getting to the proposed discount rate to
25 arrive at a net present value of Asbury, staff agrees

1 that the weighted average cost of capital of
2 6.77 percent is appropriate. So in summary, staff
3 proposes customary or traditional ratemaking recovery
4 of \$262 million, 193 million for Uri, and \$69 million
5 for Asbury.

6 Okay. That gets us back -- that's --
7 that's traditional ratemaking. That's the first step
8 under the statute. The second step is to decide,
9 okay, can securitization, you know, beat that? Can
10 securitization beat traditional ratemaking? And to
11 figure out that, we have to figure out, okay, what are
12 the financing costs? And this is where Mr. Davis can
13 really testify Thursday about the benefits of the
14 combined offering. Many of the benefits of the
15 combined offering come from the -- the elimination of
16 redundant fees for experts, and you know, underwriters
17 and all those things.

18 I would encourage the commission. I think
19 I will also ask kind of, you know, up to date, you
20 know, what -- what are the costs that have been
21 incurred to date, and you know, has Liberty been
22 avoiding duplicative costs to date? You know, there
23 was some concern earlier in the summer with the
24 volatility of interest rates, that if we issued a
25 consolidated order that you might be foregoing the

1 opportunity to lock in a lower interest rate on some
2 non-contested issues, but seeing how we're in hearing
3 today on the full rate case, I think, you know, staff
4 agrees with Liberty. I think all the other parties --
5 you know, it really does make sense to do a
6 consolidated order and consolidated bond offering in
7 these cases, and staff does agree with Liberty that
8 even with the additional financing costs and other
9 transactional costs associated with financing through
10 securitization, the securitization does provide a
11 quantifiable net present value benefit to customers,
12 and based on staff's proposal of using a 4.65
13 discount -- 4.65 discount rate for Uri, and a
14 6.77 percent discount rate for Asbury, that there
15 would be roughly \$25 million in savings associated
16 with securitization of Uri and Asbury together. And
17 that's issue five. You know, that's putting
18 everything together.

19 You know, based on most reasonable
20 assumptions, there would be a quantifiable net present
21 value benefit and securitization is just and
22 reasonable. Taking that conclusion from issue five,
23 staff's conclusion on issue one, you know, how much
24 Liberty should securitize that flows, and the answer
25 is \$262 million, but I want to emphasize this.

1 \$262 million is the amounts that are just and
2 reasonable for Liberty to recover under any
3 circumstances because these are the just and
4 reasonable amounts to -- to allow recovery of outside
5 securitization.

6 They are also the just and reasonable
7 amounts under securitization. The purpose of
8 securitization, remember those two fundamental
9 questions. Will securitization provide a benefit to
10 customers? It -- the purpose of securitization is not
11 to allow the lower interest rates associated with
12 securitization bonds to allow a utility to fit in
13 recovery of cost or expense items that would not
14 otherwise be allowed or -- in addition to what the
15 commission would otherwise find just and reasonable.
16 Now, having answered that first fundamental question
17 in the statute, will securitization save customers
18 money? Let's move then to the next question. How can
19 the commission maximize those savings? This is issue
20 six and seven. Issue six asks whether the commission
21 should designate a commissioned staff member advised
22 by a financial advisor and what role should the
23 designated commissioned staff member and financial
24 advisor have?

25 First, staff believes the commission should

1 designate a commissioned staff member who -- to be
2 advised by a financial advisor. Doing so is
3 essential, one, because, again, this is the first of
4 its kind before the Missouri Public Service
5 Commission. And, so having a designated staff member
6 advised by financial advisor is really going to be key
7 to understanding and explaining and responding to that
8 issue of advice letter that will be coming down once
9 the bonds are issued, and evaluating all of the
10 assumptions, and all of the calculations that go in
11 that issue of advice letter is really going to be key
12 that there's a designated staff member and a financial
13 advisor who can advise the commission on that.

14 The second reason is that the presence of a
15 designated commissioned staff and financial advisor is
16 essential to protecting ratepayer interest under
17 Liberty's proposal, ratepayers aren't directly
18 protected even though ratepayers and Liberty will be
19 irrevocably responsible for all charges associated
20 with securitization. Without that same irrevocable
21 obligation, Liberty and all the other parties involved
22 with the bond issuance process just simply do not have
23 the same incentives to protect ratepayers that
24 ratepayers themselves have.

25 Now, for issue seven, what conditions

1 should the commission issue that are not in violation
2 of -- they're not inconsistent with the statute?
3 First, the commission should clarify that any
4 designated commissioned staff and financial advisor do
5 have the right to representation by legal counsel in
6 the process. This condition is not inconsistent with
7 securitization statute, because nothing in the
8 securitization statute prohibits staff or the
9 financial advisor from legal counsel, and the such
10 prohibited -- nor could a prohibition of legal counsel
11 be read into the statute, because the -- the ability
12 of any party to any commercial transaction to have a
13 lawyer is so presumed in the law that you would have
14 to have something explicitly saying somebody did not
15 have the right to an attorney before you could read it
16 into a statute.

17 The second condition, the commission should
18 clarify that it should have an active and specific
19 role in the issuance process and that involvement
20 should be aimed at avoiding the drastic and
21 catastrophic rejection that the issuance advice
22 letter. The commission should ask for regular
23 progress reports and update reports, weekly sometimes
24 even or maybe even more than weekly as necessary
25 depending on the speed that the bond issuance goes.

1 So using staff's designee and the financial advisor to
2 file those regular reports and keep the commission
3 updated on the status of that will be important.
4 Third, as Liberty also proposes the commission should
5 order both Liberty and its underwriters to certify to
6 the commission that the proposed securitization meets
7 the requirement that the bonds as structured do
8 provide quantifiable net present value benefits to
9 ratepayers and that the bonds are structured,
10 marketed, and priced to provide lowest securitized
11 security utility tariff charges consistent with
12 marketing conditions at the time the bonds are priced.

13 Fourth, and finally, for conditions, the
14 commission should order that staff and its financial
15 advisors as represented by legal counsel do be
16 involved in the selection of the underwriter and any
17 other member of this indicated group, and the idea
18 here is to get as broad a -- a -- and diverse input of
19 opinions and strategies as possible to really find the
20 optimum path for getting these bonds to market.

21 Issue eight -- and I apologize for -- this
22 was added so late on Friday evening after close of
23 business hours, but staff does propose that cost be
24 allocated on the basis of loss adjusted energy sales.
25 Staff witness Sarah Langley will be able to explain

1 how the -- that energy allocation is an allocation
2 among customer classes. I think we're going to
3 identify problems with Liberty's proposed allocation,
4 one which jumps to the top of my mind is that it
5 doesn't include EV customers, so there's -- under
6 Liberty's proposal, there's an entire customer class,
7 maybe more than one customer class, that has no
8 allocation whatsoever. And the energy allocator takes
9 care of that. Staff witness (inaudible) will also be
10 able to testify that the decision to retire Asbury
11 really is tied to the decision to bring in renewable
12 wind resources and to replace Asbury plant with the --
13 and, so the idea of tying the -- the burden of the
14 Asbury retirement costs to the benefits of the wind,
15 you really -- you're tying together the allocation of
16 the remaining costs with the allocation of the
17 benefits of -- of the retirement -- of Asbury and that
18 position is consistent with Renew Missouri who has
19 talked about, you know, the decisions of Liberty to
20 use wind instead of Asbury. It's consistent with
21 Liberty's initial filed position where they justify
22 the reasonableness of retiring Asbury based on the
23 economics of wind versus the economics of coal. It
24 really was, you know, based on Liberty's own filed
25 position, the reason they retired Asbury was that the

1 wind was going to be more efficient.

2 And, so that is the basis for staff's
3 allocation. Thank you for your time this morning, and
4 if you have any questions, I will do my best to answer
5 them or let you know who the witness is who probably
6 can.

7 JUDGE WOODRUFF: Thank you. Mr. Chairman.

8 RYAN SILVEY: Thank you. Thank you.

9 First, I appreciate you proactively addressing some of
10 my questions on the quantitative benefits, addressing
11 the issue of one order versus two orders. Staff's
12 position is that the preference would be for one
13 order?

14 CURT STOKES: Yes. Yes.

15 RYAN SILVEY: Is staff not concerned that
16 an appeal may delay or cause issues with the non
17 contested issues if they're all in one order?

18 CURT STOKES: Initially, we were. Our
19 witness Mark Davis, ran a few scenarios and kind of
20 showed, you know, if -- okay. If we did a
21 consolidated order and you delay the securitization of
22 some -- you know, something that was not up on appeal,
23 what does that look like? You still see a net present
24 value benefit even with a delay associated with one
25 piece or another and -- and because you do still have

1 the cost savings avoiding duplicative cost associated
2 with consolidation, even that delay is there that --
3 that's not to say there's no risk with a delay, you
4 know, if -- if interest rates became far more
5 volatile, for example, in the future that might risk
6 some things. So it's not risk free, but, you know, I
7 think in the balance, staff's current position based
8 on, you know, I think a conversation I had on Friday
9 that the market conditions now are still supportive of
10 a consolidated order.

11 RYAN SILVEY: Okay. Then does that staff
12 believe that the commission has a legal basis to
13 reject the securitization of Asbury as OPC suggests?

14 CURT STOKES: So a legal -- yeah. So the
15 energy transition costs, the retirement of Asbury does
16 have to be found just and reasonable and prudent by
17 the commission. Staff doesn't oppose Liberty's
18 evidence that the retirement of Asbury was prudent.
19 The basis for staff's adjustment to Asbury is the used
20 and useful standard and that is consistent with
21 staff's testimony, both in the rate case and here in
22 the securitization case, and you know, it's -- it --
23 you know, it's unfortunate that Uri happened, but it's
24 also -- it's a really strong illustration of why it's
25 just and reasonable to have some sharing of costs,

1 because when you look at when Uri hit, Liberty
2 ratepayers were paying for all of Asbury. They were
3 paying for Asbury as if it was there, and Asbury
4 wasn't there providing service during Uri. And, so
5 there really should be some sharing of costs under
6 that used and useful standard, so. That's the basis
7 for staff's adjustment, and that's -- it goes back to
8 the just and reasonable standard, and that's, you
9 know, what -- you know, that's the first finding that
10 the commission's order has to find under the
11 securitization statute is whatever the securitization
12 amounts there are that it is just and reasonable, and
13 that's the reasonable for staff's proposal.

14 RYAN SILVEY: Okay. Thank you. Thank you,
15 Judge.

16 JUDGE WOODRUFF: Thank you. Any questions
17 from commissioners on the phone?

18 JASON HOLSMAN: No questions, Judge. Thank
19 you.

20 JUDGE WOODRUFF: Commissioner Holsman. All
21 right.

22 CURT STOKES: Thank you.

23 JUDGE WOODRUFF: Thank you. Opening for
24 public counsel.

25 NATHAN WILLIAMS: May it please the

1 commission. My name is Nathan Williams, and I'm
2 representing the Office of the Public Counsel here
3 today.

4 The public counsel is not opposing
5 securitization, per se, and the commission should take
6 note that Liberty's actions toward Asbury and when it
7 occurred Uri costs preceded well the securitization
8 statute under which it's preceding here today. I want
9 to point out that Liberty based retiring Asbury and
10 replacing it with wind on its analysis projecting, an
11 expected benefit to retail customers of 93 million
12 over 20 years. Starting in 2017, over the course of
13 at least four cases, the Office of Public Counsel
14 consistently has disputed the validity of Liberty's
15 analysis, among other things for undervaluing the cost
16 impacts for the reliability of Asbury's reliability to
17 be dispatched to generate electricity at all times.

18 Between these two securitization cases
19 before you in this hearing today, Liberty is seeking
20 to immediately receive \$362 million in bond proceeds
21 to be paid for by its customers over 13 years plus
22 interest. You take 93 million and divide it by 20,
23 that's 4.65 million per year. If you take 362 million
24 and divide it by 13, that's 27.85 million per year.

25 In Liberty's most recent generate case, it

1 received a \$35.5 million increase, which it described
2 to be a 7.38 percent increase. These bonds in terms
3 of bill impacts will be on the same order of
4 magnitude, probably something like a 6 or 7 percent
5 increase, if you give Liberty everything it's asking
6 for.

7 Public counsel agrees with staff that
8 the -- what you measure against for deciding whether
9 or not securitization benefits customers is what would
10 Liberty recover otherwise and that would be in a rate
11 proceeding. While the commission cannot be arbitrary
12 and capricious, as in a generate case, it is within
13 the commission's discretion here to decide how much of
14 the 362 million Liberty is entitled to recover from
15 its Missouri retail customers or extraordinary storm
16 costs, and no longer use the use full strand
17 investment. The extraordinary storm costs being due
18 to Uri, and the investment being due to its retirement
19 of Asbury.

20 The Office of Public Counsel is not
21 claiming that Liberty's customers should not bear any
22 of the \$362 million in costs. It agrees Liberty is
23 entitled to recover 69.5 million of them, but that
24 Liberty has -- for extraordinary storm costs, but that
25 Liberty has over recovered for its investment in

1 Asbury by \$24.2 million, and that the commission,
2 thus, should disallow Liberty recovery of its 2015
3 environmental upgrades for its stranded investment in
4 Asbury.

5 As to storm Uri, Liberty's Missouri
6 customers should not be responsible for all of the
7 over \$193 million Liberty paid for electrical energy
8 in the SPP market during Storm Uri that is seeking to
9 securitize. Not only is Liberty compensated for this
10 risk of such events to the commission allowed on
11 equity, as public counsel witness Lena Manley
12 explains, if Liberty had continued to manage its
13 electrical resources artfully to reliably provide that
14 all times the electricity its customers demand, rather
15 than try to generate more revenues from energy sales
16 in the SPP markets than Liberty's cost to make those,
17 what she described as beat the market, then Liberty
18 would have had sufficiently reliable dispatchable
19 resources, resources such as the retired Asbury plant
20 that had coal on site, so that rather than
21 overexposing its customers to SPP market prices when
22 they skyrocket, those customers would be responsible
23 for Liberty's cost of obtaining energy from that
24 resource.

25 Based on Ms. Manley's analysis, the impact

1 of Liberty's imprudent resource planning on its Storm
2 Uri fuel and purchase power costs, \$67 million. As
3 public counsel witness John Robinett (phonetic) and
4 staff witness Jordan Hall, assert Liberty's customers
5 should not be responsible for costs Liberty could have
6 avoided had it prepared and run its Riverton 11 unit
7 during Storm Uri. Public counsel witness Lena Manley
8 and staff witness Brooke Mastrogenis (phonetic) which
9 her testimony is to be adopted by staff witness Brad
10 Fortson (phonetic) explain, Liberty's customers should
11 not be responsible for more than 95 percent of
12 Liberty's prudent fuel and purchase power costs during
13 storm Uri. As public counsel witness John Riley
14 explains, Liberty's Storm Uri cost should be offset by
15 its Storm Uri income tax deduction. Because Liberty's
16 Storm Uri and fuel purchase power costs are expenses,
17 public counsel disagree with -- disagrees with Liberty
18 that its carrying costs should be based on Liberty's
19 voided cost of capital. Instead, as public counsel
20 witness David Murray testifies, they should be based
21 on Luco's (phonetic) average short-term debt rate for
22 each month from February of 2021 through the date the
23 securitized bonds are issued.

24 Further, Liberty should not be rewarded
25 with a higher carrying cost rate for delaying its

1 application to securitize those costs. As to Asbury,
2 public counsel witness Lena Manley explains that
3 Liberty changed its resource planning from a focus on
4 its customers paying the lowest cost for reliable
5 energy to Liberty's cost of energy it sells into the
6 SPP market being on average lower than the SPP market
7 price, beating the market. The risk of following that
8 approach is demonstrated by Liberty's actual fuel and
9 purchase power cost for Storm Uri. And is a basis for
10 disallowing Liberty recovery of up to all of its
11 stranded investment in Asbury. Public counsel witness
12 Jeff Mark points out that the replacement generation
13 provisions of the securitization statute envision a
14 one-for-one replacement based on the unappreciated
15 investment in the replaced generation.

16 When Liberty retired Asbury, it had about
17 200 million in under appreciated investment in Asbury.
18 The investment in the wind farms with which Liberty
19 replaced Asbury is \$1.2 billion. That is a 6 to 1
20 replacement, not 1 to 1. Not only are Liberty's
21 customers now paying significantly more than rates for
22 less reliable wind supply side resources, Liberty is
23 seeking to recover its unappreciated investment in
24 Asbury when it is neither used nor useful. Dr. Mark
25 further explains that not only has Liberty shifted all

1 of the risk of the adequacy of its electrical energy
2 resources to its customers, it is still pursuing
3 recovery of its investment and air quality control
4 system in Asbury when it -- Liberty -- voluntarily
5 shut Asbury down after only realizing about five of
6 the 20 years of anticipated life of that investment,
7 Dr. Mark recommends that the commission not allow
8 Liberty to recover the net plant balance of its
9 investment in that air quality control system measured
10 as of January 1st of 2020.

11 As public counsel witness John Riley
12 explains, Liberty's Missouri retail customers have
13 more than fully compensated Liberty for itself
14 stranded investment in Asbury by how much they have
15 paid Liberty for Asbury in their electrical bills over
16 the past two and a half years since Liberty last ran
17 Asbury on December 12th of 29 (sic), a sum that
18 amounts to about \$24 million. I mean, overpaid by 24
19 million, pardon me. As public counsel witness John
20 Riley and David Murray assert Liberty has overstated
21 what carrying cost the commission would ascribe to its
22 unrecovered investment in Asbury when Asbury is no
23 longer used and useful, and Liberty voluntarily chose
24 to remove Asbury from service shortly after doubling
25 its investment in Asbury.

1 Moreover, Liberty could have realized any
2 recovery of its investment in Asbury, when rates --
3 the commission would give it as early as September of
4 16th of 2020, when rates from case number ER-2019-0374
5 took effect. Instead, Liberty -- Liberty successfully
6 advocated the commission not to decide the rate
7 impacts of it retiring Asbury in that case.

8 The Office of Public Counsel recommends
9 that you find there are no costs left to securitize
10 for Liberty's investment in Asbury and that no more
11 than 60 million of fuel and purchase power costs
12 should be securitized for Storm Uri.

13 As I indicated earlier, public counsel
14 agrees with staff that the measuring stick against
15 which you evaluate whether or not bond securitization
16 is beneficial over other recovery is what would happen
17 in a rate case on these issues, what the commission
18 would do, and the commission has broad discretion in
19 doing so. It's not necessarily limited to a
20 (inaudible) determination. Are there any questions?

21 RYAN SILVEY: Thank you for your opening.
22 I do have a question just to make sure I'm following,
23 and forgive me if I oversimplify your argument here.
24 So you agree that they -- that Liberty should be
25 entitled to recover for round numbers, \$69 million for

1 winter Storm Uri, but you're wanting to subtract 24
2 million for what you say they over recovered for
3 Asbury?

4 CURT STOKES: We put that out as a
5 position, yes.

6 RYAN SILVEY: Does the securitization
7 statute contemplate that type of an equation putting
8 one type of securitization against the other?

9 CURT STOKES: I don't know. I don't know
10 that it does. Also, put alternatives for dealing with
11 the over recovery, deal with it on future rate case or
12 in some other fashion.

13 RYAN SILVEY: Okay. And on the issue of
14 the environmental compliance costs.

15 CURT STOKES: The AQCS from 2015; is that
16 you're referring to?

17 RYAN SILVEY: I believe so. The cost that
18 they invested in Asbury before they retired it or
19 environmental compliance.

20 CURT STOKES: Well, they made many
21 investments in Asbury over time, but the most recent
22 one for environmental compliance was the large number
23 of dollars that basically doubled their unrecovered
24 investment was the AQCS in 2015.

25 RYAN SILVEY: So are you asserting that the

1 company surreptitiously inflated their stranded costs?

2 CURT STOKES: No. Our position is it's not
3 fair to customers to bear 100 percent of the costs,
4 and what the commission should disallow is what it --
5 Liberty had not recovered for the AQCS beyond the five
6 years that it actually was used and useful.

7 RYAN SILVEY: Is the commission required to
8 look at those costs based on available information at
9 the time that the costs were incurred?

10 CURT STOKES: We're not disputing the
11 amount of the cost. We're -- we're arguing what the
12 commission should do with them in terms of allowing
13 cost recovery. Basically, Liberty was going down the
14 route of maintaining that reliable dispatchable coal
15 plant, and then suddenly five years after -- well,
16 four or five years after it put it in service, it shut
17 it down.

18 Now you can look at it as tied to building
19 wind, you can look at it as independent, but the
20 bottom line is, it shut that coal plant down, and the
21 impact, my understanding, was about reducing
22 interconnection costs for one of the Missouri wind
23 farms by 20 to \$30 million. They could have kept
24 Asbury up and running and had it as a -- a reliable
25 resource.

1 I mean, one thing that makes it very
2 reliable is the fact that it has fuel on site. We saw
3 what happened with Storm Uri, both in Missouri and
4 Texas, with gas supply, and we saw what happened with
5 how much wind power was generated.

6 RYAN SILVEY: But you're not making a
7 prudence argument?

8 CURT STOKES: Our prudency argument is
9 their resource planning wasn't prudent, because it was
10 not -- Liberty was not focusing on keeping a good mix
11 of reliable resources. Now, Asbury would have been a
12 unit that fit that criteria, but there were other
13 things potentially that could have.

14 RYAN SILVEY: Was any of the Asbury
15 infrastructure used to connect --

16 CURT STOKES: Yes.

17 RYAN SILVEY: -- winds to their system?

18 CURT STOKES: Yes.

19 RYAN SILVEY: And should those costs be
20 allowed to be securitized?

21 CURT STOKES: They -- my understanding,
22 those costs were dealt with in the rate case. It was
23 not a retired plant. It was a use and useful plant is
24 my understanding, because it's being used as part of
25 one of the wind farms.

1 RYAN SILVEY: Okay. Thank you. Thank you,
2 Judge.

3 JUDGE WOODRUFF: Any questions from the
4 commissioners on the phone?

5 CURT STOKES: Thank you.

6 JUDGE WOODRUFF: That's all the openings
7 and about time to break for lunch. So we'll take a
8 break now. We'll come back at 1 o'clock.

9 All right. It just clicked over to 1
10 o'clock, so we're back from lunch, and we can go ahead
11 and get started again. We're ready for our first
12 witness, which I believe is John Reed.

13 DEAN COOPER: Yes, Your Honor. We would
14 call Mr. Reed.

15 JUDGE WOODRUFF: Mr. Reed, raise your right
16 hand. Do you solemnly swear or affirm that the
17 testimony you give in this matter is the truth, the
18 whole truth, and nothing but the truth?

19 THE WITNESS: I do.

20 JUDGE WOODRUFF: Thank you.

21 EXAMINATION

22 BY DEAN COOPER:

23 **Q. Please state your name.**

24 **A.** My name is John J. Reed.

25 **Q. By whom are you employed and in what**

1 **capacity?**

2 A. I am the chairman and chief executive
3 officer of Concentric Energy Advisors.

4 **Q. Are you appearing today on behalf of the**
5 **Empire District Electric Company which does business**
6 **as Liberty?**

7 A. Yes.

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

11 A. Yes, I have.

12 **Q. Is it your understanding that your**
13 **surrebuttal testimony has been marked as Exhibit 1 for**
14 **identification?**

15 A. Yes.

16 **Q. Do you have any changes that you would like**
17 **to make to that testimony at this time?**

18 A. I do not.

19 **Q. If I were to ask you the questions which**
20 **are contained in Exhibit 1 today, would your answers**
21 **be the same?**

22 A. Yes, they would.

23 **Q. Are those answers true and correct to the**
24 **best of your knowledge and belief?**

25 A. Yes, they are.

1 DEAN COOPER: Your Honor, at this time I
2 would offer Exhibit 1 into evidence and tender the
3 witness for cross examination.

4 JUDGE WOODRUFF: Okay. Exhibit 1 has been
5 offered. Any objections to its receipt?

6 CURT STOKES: Your Honor, may I voir dire
7 the witness very briefly?

8 JUDGE WOODRUFF: Yes, you may.

9 CURT STOKES: Okay.

10 JUDGE WOODRUFF: Let me -- first of all,
11 identify yourself for the record.

12 CURT STOKES: Oh, yes. Curt Stokes on
13 behalf of staff.

14 JUDGE WOODRUFF: Thank you.

15 EXAMINATION

16 BY CURT STOKES:

17 Q. Mr. Reed, are you a licensed attorney in
18 the state of Missouri?

19 A. No, I'm not.

20 Q. Are you a licensed attorney in any state?

21 A. No, I'm not.

22 CURT STOKES: Okay. Based on that, Your
23 Honor, staff has a limited objection to page 7, line 3
24 through page 8, line 2, page 21, line 1 through page
25 22, line 4, footnotes 20 and 21, page 9, line 14

1 through page 12, line 20, footnotes 1, 2, 3, and 4.
2 And page 11, line 1 through page 12, line 9. The
3 basis of the objection will be to the extent that that
4 testimony purports to establish the state of the law.
5 The witness's testimony is irrelevant and lacks
6 foundation, and it is a improper lay opinion as to the
7 state of the law. We do not have an objection only to
8 the extent that it forms the basis of Mr. Reed's
9 opinions, and it does not purport to state what the
10 law is in Missouri.

11 JUDGE WOODRUFF: Response.

12 DEAN COOPER: Your Honor, it's going to be
13 difficult to respond in a lot of specificity given
14 that that objection was just now raised and without
15 taking time, I guess, and go back and read those
16 provisions; however, the argument would certainly be
17 that section 490.065 in Missouri establishes
18 the admissibility of expert testimony, subsection 1
19 talks about the situation where there's no right to a
20 jury trial, which there is none in this case. And
21 says if scientific, technical or other specialized
22 knowledge will assist the trier of fact understanding
23 the evidence or to determine a fact in issue or
24 witness qualified as an expert by knowledge, skill,
25 expertise, training or education may testify thereto

1 in the form of an opinion or otherwise, testimony --
2 I'm going to kind of condense this is a little bit.
3 It's not objectionable, because it embraces an
4 ultimate decision to be decided by the trier of fact.
5 Regardless of Mr. Reed's position or status as an
6 attorney or not, we would argue that his 45 years of
7 experience in the industry, his testimony, and for the
8 ID of cases over the years to include, specifically
9 the prudent standard as an expert establishes his
10 qualifications to testify in this matter and to
11 testify to the matters that are included in his
12 surrebuttal testimony.

13 JUDGE WOODRUFF: All right. And just for
14 the record, the last speaker was Dean Cooper, attorney
15 for --

16 DEAN COOPER: I apologize.

17 JUDGE WOODRUFF: And it was Mr. Cooper who
18 was also asking the questions on direct. I'm going to
19 go ahead and overrule the objection. The -- the
20 testimony will be received for what it's worth, and
21 the commission will later decide how best to treat it.
22 Do you tender the witness?

23 DEAN COOPER: We do, Your Honor.

24 JUDGE WOODRUFF: I'm sorry. Did anyone
25 else have any objection? All right. Then Exhibit

1 Number 1 will be received. And for cross examination,
2 we will begin with Renew Missouri. MECG.

3 TIM OPITZ: No questions, Your Honor.

4 JUDGE WOODRUFF: Staff?

5 CURT STOKES: Yes, Your Honor. Curt Stokes
6 on behalf of staff.

7 EXAMINATION

8 BY CURT STOKES:

9 Q. Mr. Reed, you say you've appeared before
10 the Missouri Public Commission 32 times?

11 A. I think that's correct.

12 Q. If you could turn to Exhibit 1, page 2 of
13 your surrebuttal and confirm there you said 32 times.

14 A. Just a moment. Yes.

15 Q. 31 of those times you appeared on behalf of
16 a regulated utility?

17 A. I accept your count. I think that's about
18 right.

19 Q. How much are you being paid to testify in
20 this case?

21 A. My company will charge my normal hourly
22 rate. I think it is for this assignment about \$900 an
23 hour.

24 Q. Now, you state in your surrebuttal at page
25 7, that under traditional cost base ratemaking that a

1 utility is permitted to include prudently incurred
2 cost and the revenue requirement used to set its
3 rates; is that true?

4 A. Correct.

5 Q. We've already established you're not a
6 licensed attorney in the state of Missouri; correct?

7 A. We have.

8 Q. Are you familiar with the Missouri Supreme
9 Court?

10 A. I am.

11 Q. And you understand that Missouri Supreme
12 Court interprets the laws and sets binding precedent?

13 A. For the state of Missouri, yes.

14 CURT STOKES: Your Honor, permission to
15 approach the witness and the bench with premarked
16 Exhibit 109?

17 JUDGE WOODRUFF: Okay.

18 CURT STOKES: This is still Curt Stokes.

19 Q. (By Curt Stokes:) Mr. Reed, are you
20 familiar with -- you know what? I apologize. I meant
21 to approach with a different exhibit. Your Honor,
22 permission to approach the witness again?

23 JUDGE WOODRUFF: You may.

24 Q. (By Curt Stokes:) This document says Spire
25 Missouri, Inc., versus Public Service Commission on

1 **the top at page 225; correct?**

2 A. Correct.

3 **Q. Can you turn to page 233 of that document,**
4 **please?**

5 DEAN COOPER: Your Honor, this is Dean
6 Cooper for Liberty, and I guess this is directed to
7 Mr. Stokes. Is -- is this an exhibit, and if so, do
8 you have a copy for us?

9 CURT STOKES: It's not an exhibit yet. I
10 think I can lay a foundation for it. It's -- it's
11 Spire, Inc., decision in 618 Southwest 3rd 225. It's
12 a 2021 Missouri Supreme Court decision.

13 JUDGE WOODRUFF: Do you have a copy you can
14 share with the other parties?

15 CURT STOKES: I think -- I thought I did,
16 Your Honor. Here.

17 JUDGE WOODRUFF: You can proceed when
18 you're ready.

19 **Q. (By Curt Stokes:) So you see in the top**
20 **right paragraph, do you see the phrase, implicit in**
21 **Spire's argument is an insertion that it is entitled**
22 **to recover all prudent expenditures and its rates.**
23 **This is not so. In setting rates the PSC has broad**
24 **discretion to include or exclude expenditures to**
25 **arrive at rates it deems to be, quote, just and**

1 **unreasonable, unquote, subject of course to judicial**
2 **review?**

3 A. I see that phrase, yes.

4 CURT STOKES: Your Honor, I'd like the
5 commission to take judicial notice of the decision in
6 Spire Missouri versus Public Service Commission,
7 citation 618 Southwest 3rd 225, MO banc, 2021.

8 JUDGE WOODRUFF: Is it necessary to take
9 judicial notice of a decision or is it something that
10 can be brought up in briefs?

11 CURT STOKES: No. I think it's important.
12 Mr. Reed set forth in his testimony which has been
13 admitted in the record. I think it's important to
14 make sure that testimony is not completely un rebutted
15 or uncontested, that utilities are automatically
16 entitled to recover prudent costs.

17 JUDGE WOODRUFF: Mr. Cooper.

18 DEAN COOPER: Yeah, Your Honor. This is
19 Dean Cooper. I don't think that taking judicial
20 notice of the existence of the case establishes a fact
21 other than or premise of law necessarily. It
22 establishes that these words have been said by the
23 court, and I think it's open to the parties, then, to
24 argue to the extent they desire as to what -- what
25 meaning that has for this particular case. So I guess

1 I -- I may have heard Mr. Stokes incorrectly, but
2 if -- I guess I -- a roundabout saying, I don't know
3 that it's necessary to take judicial notice of a
4 supreme court case.

5 JUDGE WOODRUFF: Does anyone else wish to
6 be heard? I'm inclined to take official notice of a
7 court decision. Certainly, the parties are entitled
8 to cite this in -- in their arguments. I don't see
9 that taking official notice of it adds anything to the
10 record of -- that the commission would make a decision
11 on, so I'll overrule -- I'll overrule your request for
12 official notice.

13 Q. (By Curt Stokes:) Mr. Reed, have you ever
14 worked on an air permit?

15 A. No, I don't believe so. I've been involved
16 in many applications that involve securing air
17 permits. I don't think I've been involved in
18 submitting an air permit to an environmental
19 regulator.

20 Q. Now, you also state at page 23 of your
21 surrebuttal that the commission to prove the inclusion
22 of the -- on amortized balance of storm costs from the
23 Joplin tornado in the company's rate base. Now, I'm
24 going to hand -- well, I've already handed you
25 Exhibit 109. Do you recognize that as the

1 **commission -- a portion of the commission's amended**
2 **report and order in file number ER-2019-0374?**

3 A. It appears to be.

4 Q. If you turn to page 154 of that decision,
5 and paragraph 423, the last sentence of that paragraph
6 says, Empire was allowed to deferred depreciation
7 expense and carrying costs associated with the tornado
8 capital expenditures; correct?

9 A. Yes. It begins by, of course, saying to
10 defer -- the commission authorized Empire to defer
11 incremental O&M expenses incurred for the repair,
12 restoration, and rebuild activities associated with
13 the May 22nd, 2011, tornado, and then continues to say
14 that Empire was also allowed to defer depreciation
15 expense and carrying costs.

16 Q. And paragraph 425 states that the AAO
17 permits Empire to occur carrying charge equal to its
18 AFUDC rate on its tornado capital additions during the
19 deferral period to offset the current return on its
20 tornado related capital additions; is that correct?

21 A. During the deferral period, that is up
22 until the amortization was set, including the
23 unamortized rate base.

24 Q. Correct. And you could agree that the
25 AFUDC rate is lower than the average rate of capital;

1 **correct?**

2 A. Yes. That's an inter measure. It adopted
3 a lower rate.

4 CURT STOKES: Okay. No further questions,
5 Your Honor.

6 JUDGE WOODRUFF: Did you wish to offer 109?

7 CURT STOKES: Would the commission -- yeah.
8 Admit Exhibit 109 and/or table official notice of the
9 commission's amended report and order in file number
10 ER 2019-0374.

11 JUDGE WOODRUFF: We'll take this as an
12 offer of the exhibit at this point. Any objection to
13 receiving Exhibit 109? Hearing no objections, it will
14 be received. Mr. Stokes, I believe this -- since this
15 is prenumbered, this has already been submitted into
16 the website.

17 CURT STOKES: That's correct, yes.

18 JUDGE WOODRUFF: Okay. Thank you. For
19 cross examination, then going over to public counsel.

20 NATHAN WILLIAMS: Thank you. Nathan
21 Williams for public counsel.

22 EXAMINATION

23 BY NATHAN WILLIAMS:

24 **Q. Mr. Reed, what participation have you had**
25 **in Liberty's resource planning?**

1 A. None directly. I've been involved in
2 their --

3 **Q. Thank you.**

4 A. -- rate cases, but not resource planning
5 directly.

6 NATHAN WILLIAMS: Judge, I ask that the
7 latter part of the response be stricken. My question
8 was limited to resource planning. Nothing to do with
9 rate cases, per se.

10 JUDGE WOODRUFF: I'll grant that.

11 NATHAN WILLIAMS: No further questions.
12 Thank you.

13 JUDGE WOODRUFF: All right. And we'll come
14 up for questions from the bench. Any commissioners on
15 the line wish to ask any questions?

16 RYAN SILVEY: None at this time. Thank
17 you.

18 JUDGE WOODRUFF: Thank you, Chairman. Then
19 no questions from the bench. So no need for recross.
20 Any redirect?

21 DEAN COOPER: Yes, Your Honor. Dean Cooper
22 for Liberty.

23 EXAMINATION

24 BY DEAN COOPER:

25 **Q. Let's start with that last -- last**

1 **statement that you were asked about your participation**
2 **of Liberty's resource planning by OPC counsel;**
3 **correct?**

4 A. Correct.

5 **Q. Have you been involved in prior Empire**
6 **District Electric Company, slash, Liberty cases?**

7 A. Yes.

8 NATHAN WILLIAMS: Judge, I'm going to
9 object to that. I -- the question was limited to
10 resources planning. He's going way beyond that.

11 JUDGE WOODRUFF: Response.

12 DEAN COOPER: Judge, I think it's
13 appropriate for redirect to allow the witness to
14 further explain his involvement with the company.

15 JUDGE WOODRUFF: I'll overrule the
16 objection.

17 **Q. (By Dean Cooper:) Mr. Reed, do you**
18 **remember the question?**

19 A. I do.

20 **Q. Okay. Would you go ahead and answer?**

21 A. Yes. I have been involved in rate cases
22 for Empire District Electric, including its most
23 recent electric case and most recent gas case.

24 **Q. Mr. Stokes asked you some questions in**
25 **regard to a Spire Missouri case; do you remember that?**

1 A. I do.

2 **Q. And in particular, that concerned PSC's**
3 **broad discretion in arriving at rates it deems to be**
4 **just and reasonable; correct?**

5 A. Correct.

6 **Q. In this case, does the securitization**
7 **statute have any definition of what is just and**
8 **reasonable in terms of what can be recovered?**

9 CURT STOKES: This is Curt Stokes for
10 staff. Object to the extent that it asks for a legal
11 opinion.

12 NATHAN WILLIAMS: This is Nathan Williams
13 for public counsel. I'll join in that objection.

14 JUDGE WOODRUFF: I'll overrule the
15 objections. You can answer?

16 THE WITNESS: I don't think the legislation
17 has any standard or any explanation of what
18 constitutes just and reasonable. The second part of
19 your question was, related to the type of expenses, as
20 I heard it, that can be recoverable. It certainly
21 does define the types of expenses both in terms of
22 extraordinary expenses and transition expenses that
23 can be recoverable.

24 **Q. (By Dean Cooper:) Now, when a commission**
25 **determines what is just and reasonable and to use the**

1 language, I guess, of the court case, is there also
2 implicit in that decision the question of whether the
3 company is going to recover a reasonable return on its
4 investment?

5 CURT STOKES: Curt Stokes for staff again
6 with an objection. We are really getting into legal
7 opinion now. Lack of foundation. We've already
8 established Mr. Reed is not a licensed attorney, and I
9 think he's just been asked to read whether or not the
10 Missouri Supreme Court implied a certain holding.

11 DEAN COOPER: No. This is Mr. Cooper for
12 Liberty. The question really has to do with what is
13 common for non-attorneys to testify to which is
14 appropriate rates of return, the implications of blue
15 field and -- and those sort of things that, again, are
16 commonly testified to by non-attorney witnesses before
17 this commission.

18 JUDGE WOODRUFF: I'll overrule the
19 objection.

20 DEAN COOPER: You need the question
21 restated or do you --

22 THE WITNESS: Can I have it again, please?

23 DEAN COOPER: Sure.

24 Q. (By Dean Cooper:) So in the case that was
25 put before you, there was a statement about the

1 commission's sort of flexibility, I guess, discretion
2 in arriving at what it might find to be a just and
3 reasonable rate. Are there -- and I think this is in
4 your testimony, in fact. Are there other principals
5 that are commonly addressed in rate cases that focus
6 on the utilities opportunity to recover a reasonable
7 return on its investment that figures in that decision
8 process for that commission?

9 A. Yes. Just and reasonable rates are
10 typically thought of as those that balance the
11 interest of consumers and investors and that provide
12 the utility with a reasonable opportunity to earn a
13 fair return on its investments after deducting its
14 operating costs, so it goes both to balance and to
15 providing a reasonable opportunity to earn the fair
16 return.

17 Q. The Spire case that was put in front of
18 you, were you familiar with that case?

19 A. Yes.

20 Q. Do you remember the subject matter that was
21 being discussed by the court in regard to the
22 provision or the portion that Mr. Stokes read?

23 A. Yes. That portion of the decision is
24 referring to the inclusion or exclusion of rate case,
25 expenses in the utilities cost of service or revenue

1 requirement.

2 **Q. And not capital investment, I suppose?**

3 A. And not capital investment or any operating
4 expense. It's an administrative expense.

5 DEAN COOPER: That's all the questions I
6 have, Your Honor.

7 JUDGE WOODRUFF: Thank you. And you can
8 step down.

9 THE WITNESS: Thank you.

10 JUDGE WOODRUFF: Next witness is Aaron
11 Dole?

12 DIANA CARTER: Yes.

13 Dean COOPER: Your Honor, I apologize.
14 Before you swear in Mr. Dole, Mr. Reed is not
15 scheduled to be on the stand any further this week.
16 We're asking whether he can be excused to -- to travel
17 back home, but understanding that he would be
18 available if it became necessary to appear by Webex
19 later in the week.

20 JUDGE WOODRUFF: You can be excused.

21 NATHAN WILLIAMS: Judge, this is Nathan
22 Williams. I respectively see there's a display --

23 (Silence in audio.)

24 JUDGE WOODRUFF: So the witness turned off
25 the -- the screen is what happened.

1 WITNESS: I minimized it. I
2 don't know what it was.

3 JUDGE WOODRUFF: Okay.

4 UNIDENTIFIED MALE: Someone's --

5 JUDGE WOODRUFF: Does that satisfy your
6 concerns, Mr. Williams?

7 NATHAN WILLIAMS: Yeah.

8 JUDGE WOODRUFF: Thank you. Okay. If you
9 can please raise your right hand? Do you solemnly
10 swear or affirm that the testimony you're about to
11 give in this matter is the truth, the whole truth, and
12 nothing but the truth?

13 THE WITNESS: I do.

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

16 DIANA CARTER: Thank you, Judge.

17 EXAMINATION

18 BY DIANA CARTER:

19 **Q. State your full (inaudible).**

20 A. My name is Aaron J. Doll.

21 **Q. How are you employed and (inaudible)?**

22 A. I'm employed by Liberty Utility Service
23 Corp. I'm the senior director of energy strategy for
24 the central region.

25 **Q. And does that include the Empire District**

1 **Electric Company?**

2 A. It does.

3 Q. (Inaudible) testimony (inaudible) three,
4 public and confidential, and four, public and
5 confidential?

6 A. Yes.

7 Q. Do you have any changes for that pre-filed
8 testimony?

9 A. No.

10 Q. If I asked you those same questions today,
11 would your answers be substantially the same?

12 A. Yes, they would.

13 Q. And are all of those answers true and
14 correct to the best of your information, knowledge,
15 and belief?

16 A. Yes, they are.

17 DIANA CARTER: I would move for the
18 admission of Exhibits 2, 3, and 4, all of those are
19 both public and confidential versions, and then tender
20 Mr. Dole for cross examination.

21 JUDGE WOODRUFF: All right. Exhibits 2, 3,
22 and 4 have been offered. Any objection to their
23 receipt? Hearing none, they will be received. Cross
24 examination, begin again with Renew Missouri.

25 ALICIA GREENWALD: Renew Missouri has no

1 questions. Thank you.

2 JUDGE WOODRUFF: Thank you. For MECG.

3 TIM OPITZ: No, thank you, Judge.

4 JUDGE WOODRUFF: For staff.

5 CURT STOKES: Curt Stokes for staff.

6 EXAMINATION

7 BY CURT STOKES:

8 **Q. Mr. Dole, in your direct testimony,**
9 **Exhibit 2, page 13, you say that Liberty retained a**
10 **third party Utilicast to conduct an independent review**
11 **of Liberty's fuel procurement, generation, operations,**
12 **transmission, and distribution, operations,**
13 **communications, and market operations during winter**
14 **Storm Uri; is that correct?**

15 A. That is correct.

16 **Q. And Liberty entered into a contract with**
17 **Utilicast; correct?**

18 A. That is correct.

19 **Q. And one of the consulting services**
20 **agreement dated September 24th of '21; is that**
21 **correct?**

22 A. I'd have to look at that document.

23 CURT STOKES: Okay. Permission to approach
24 the bench.

25 JUDGE WOODRUFF: You may.

1 (Silence in audio.)

2 Q. (By Curt Stokes:) This is a consulting
3 service agreement dated September 24th of '21; is that
4 correct?

5 A. That is correct.

6 Q. Does that refresh your recollection?

7 A. Yes. I just wasn't sure on the date.

8 Q. Okay. Now, that agreement requires at page
9 10, the consultant will share draft findings and
10 recommendations for each area with company team leads
11 prior to inclusion and file draft report; correct?

12 A. Which number was that?

13 Q. Page 10. It's very top -- it's very top.

14 A. That is correct.

15 Q. And under deliverables, paragraph 2, that
16 provides that the Utilicast will provide written
17 testimony from the Utilicast project lead with a
18 summary of the findings of the incident analysis
19 report for inclusion and the Missouri Public Service
20 Commission rate or securitization proceedings; is that
21 correct?

22 A. That is correct.

23 Q. And the rate for Utilicast is \$255 per hour
24 regardless of the consultants?

25 A. Where do you see that?

1 Q. Page 11, third paragraph down.

2 A. Yes, I believe it was a cap on the hour
3 with an hourly rate.

4 Q. And speaking of cap on the hours, the
5 company and Utilicast entered into an addendum number
6 1 on December 15th of 2021; correct?

7 A. Do you have that document?

8 CURT STOKES: Permission to approach the
9 bench and the witness Your Honor?

10 JUDGE WOODRUFF: Okay.

11 (Silence in audio.)

12 Q. (By Curt Stokes:) So I'll ask again. You
13 see this document titled consulting services agreement
14 addendum number 1; is that correct?

15 A. Yes, that's correct.

16 Q. And does that refresh your recollection
17 that was entered December 15th of '21?

18 A. That's correct.

19 Q. And you stated the original had a cap on
20 hours; correct?

21 A. That is correct.

22 Q. And paragraph 3 of this addendum, remove it
23 is total cap on consulting hours? Under the now
24 therefore clause on the first page?

25 A. You said paragraph 3?

1 Q. Or provision 3, yeah.

2 A. Yes, that's what the document says.

3 Q. That's referring to this case; correct?

4 A. Referring to the original document?

5 Q. The -- meaning the -- the hours worked for
6 this case, the securitization case.

7 A. I assume it's all consulting hours whether
8 it's report writing, the new material or -- or the
9 testimony.

10 Q. Now, you also say in your surrebuttal at
11 page 4 that March was the earliest possible retirement
12 date for Asbury per SPP guidelines; is that correct?

13 A. Which line?

14 Q. Lines 20 through 22.

15 A. My direct testimony.

16 Q. Oh, I'm sorry, your surrebuttal.

17 A. Can you repeat the question?

18 Q. Yeah. You say that March is the earliest
19 possible retirement date for Asbury per the SPP
20 guidelines?

21 A. That were in place at the time, yes.

22 Q. Okay. And the SPP guidelines are based on
23 when the utility notifies SPP of a potential closure;
24 correct?

25 A. That is correct.

1 Q. And was Liberty reminded of that protocol
2 of notifying SPP before retiring Asbury?

3 A. That is not correct.

4 Q. Okay. You agree that Asbury was last
5 generated power for customers in December of 2019?

6 A. That is correct.

7 Q. And beginning in January of 2020, there was
8 no usable coal at Asbury?

9 A. There was no usable coal on the ground. We
10 were still pursuing delivery of coal.

11 Q. Okay. But there was no actual contract in
12 place to provide coal to Asbury?

13 A. There was no long-term transportation
14 contract in place.

15 CURT STOKES: Okay. No further questions,
16 Your Honor.

17 JUDGE WOODRUFF: All right. Public
18 counsel.

19 NATHAN WILLIAMS: Thank you. Nathan
20 Williams.

21 EXAMINATION

22 BY NATHAN WILLIAMS:

23 Q. Good afternoon, Mr. Dole.

24 A. Good afternoon.

25 Q. Why did Liberty not continue to have

1 **arrangements to deliver coal to Asbury after**
2 **December 12th of 2019?**

3 A. So when -- when the company was evaluating
4 the retirement of Asbury, would have been in the fall
5 of '19, we were doing some simulated runs on how much
6 coal it would consume, based on our contracts, and the
7 company made the decision based on a sensitivity
8 analysis, using different capacity factors of when
9 the -- when the unit would run out of coal. The
10 company made the decision not to pursue additional
11 deliveries after that point as it looked like we would
12 run out of coal somewhere between November of '19, I
13 think all the way until June of 2020. And, so the
14 company did not want to pursue additional deliveries
15 of coal and risk stranding that asset on the ground.

16 **Q. And it ran out of coal in December 12th of**
17 **2019; correct?**

18 A. Usable coal.

19 **Q. Onsite coal; correct?**

20 A. Usable onsite coal.

21 **Q. Could not Liberty have diverted shipments**
22 **if it was going to have excess coal? Resold it?**

23 A. I don't know that we could have diverted
24 shipments on our rail line to somebody else. We did
25 pursue additional spot deliveries of coal, but we

1 never found an economic mix.

2 **Q. Why didn't you extend your long-term**
3 **contract for any period?**

4 A. Because the unit was, at that point, slated
5 to be retired March 1st, 2020.

6 **Q. How much did it cost for a train load of**
7 **coal to be delivered? How much was the coal cost?**

8 A. I don't know I can tell you that offhand.

9 **Q. Not even ballpark?**

10 A. Not with any certainty.

11 **Q. The coal that was burned at Asbury, any**
12 **different than coal that was burned at latan**
13 **or Plumb Point?**

14 A. There are some differences in -- in the
15 coal that's burned at Asbury. In particular, I
16 recommend you ask that question of Dr. Mashimba
17 (phonetic) or witness Shaen Rooney. They're
18 a lot more familiar with the actual specific
19 operations of Asbury.

20 **Q. Is your answer you don't know?**

21 A. I do not know.

22 **Q. Now your surrebuttal testimony you**
23 **testified to your opinion, I believe, at least,**
24 **Ms. Mantle is attempting to use an extreme weather**
25 **event after the fact to allege imprudence with regard**

1 **to resource planning?**

2 A. Can you tell me where, please?

3 **Q. Page 8.**

4 A. That is correct.

5 **Q. Do you know anything about what Ms. Manley**
6 **said in prior cases about Liberty's resource planning?**

7 A. In prior -- what kind of cases?

8 **Q. Rate cases, savings plan -- the customer**
9 **savings plan case, the CCN cases for the wind.**

10 A. I would be somewhat familiar, but it's been
11 a while since I read her testimony in those cases.

12 **Q. Well, then do you challenge Liberty's**
13 **resource planning in those cases?**

14 A. It's possible. Probable.

15 NATHAN WILLIAMS: No further questions.

16 Thank you.

17 JUDGE WOODRUFF: Questions from the bench?

18 Any of the commissioners have questions? All right.

19 I do have some questions.

20 THE WITNESS: Sure.

21 JUDGE WOODRUFF: In your answer to, I
22 believe, it was through public counsel's questions,
23 you made a point of referring to usable coal as
24 opposed to, I assume, unusable coal. What do you mean
25 by that?

1 THE WITNESS: There's a certain amount of
2 coal, especially sitting on a coal pile as long as
3 Asbury had that it gets mixed with the earth, and we
4 made a decision as a company when we started scraping
5 toward the bottom, and we were getting coal that was
6 not deemed usable or started to risk the unit, the
7 safety of the unit that we stopped. It doesn't mean
8 that there's 0 percent coal in the ground, it just
9 means that there's an amount that's considered kind of
10 base mat.

11 JUDGE WOODRUFF: That was going to be my
12 next follow-up. You talk about base mat, because
13 that's been an issue in this case also.

14 THE WITNESS: Correct.

15 JUDGE WOODRUFF: Okay. I have some other
16 questions, too. In Lena Mantle's rebuttal testimony
17 for public counsel, she stated that she was not aware
18 of the Liberty performing any -- she was not aware of
19 Liberty performing any analysis outside of cost in
20 your decision-making process to retire Asbury.

21 Now, outside of the comparative cost
22 scenarios presented in Liberty's 2019-IRP, can you
23 explain what other factors and perimeters were
24 reviewed in your decision-making process to retire
25 Asbury early? I can go over that again if you need me

1 to.

2 THE WITNESS: If you give me the page, you
3 said it was Lena Manley's rebuttal testimony?

4 JUDGE WOODRUFF: I do not have a page
5 number for that.

6 THE WITNESS: Okay. Could you repeat the
7 question then?

8 JUDGE WOODRUFF: Sure. In Ms. Manley's
9 rebuttal testimony she stated that she was not aware
10 of the Liberty -- of Liberty performing any analysis
11 outside of costs in your decision-making process to
12 retire Asbury. Outside of the comparative cost
13 scenarios presented in Liberty's 2019-IRP, can you
14 explain what other factors and perimeters were
15 reviewed in your decision-making process to retire
16 Asbury early?

17 THE WITNESS: Sure. Cost is a considerable
18 factor in the IRP. In fact, I think the language
19 of -- of the IRP statute says it needs to be the most
20 considerable factor, the PVRP, but other factors are
21 considered. So, for example, we have a resource
22 adequacy requirement with Southwest Power Pool and
23 that is to ensure there is enough resources to
24 adequately serve load at all times. And, so we make
25 sure that any plan that we push forward through our

1 analysis is meeting the criteria of the SPP resource
2 adequacy requirement.

3 JUDGE WOODRUFF: And did Liberty meet that
4 requirement?

5 THE WITNESS: We did.

6 JUDGE WOODRUFF: Do you want to explain
7 that?

8 THE WITNESS: That we met it?

9 JUDGE WOODRUFF: Yeah. Can you go into any
10 more detail about how --

11 THE WITNESS: Sure.

12 JUDGE WOODRUFF: -- what's involved with
13 that?

14 THE WITNESS: Sure. So the Southwest Power
15 Pool as the balancing authority and planning authority
16 determines what the resource adequacy requirement is.
17 It is kind of a confluence of state and RTO
18 guidelines, but they do have a -- a directive from
19 NERC to ensure that there's adequate resources to
20 serve load because of their status as a consolidated
21 balancing authority. So they do a very robust study
22 bi-annually called a loss of load expectation study,
23 LOLE study, and that does a series of analyses to
24 determine probability of units failures, extreme
25 weather, a whole host of other circumstances, and then

1 determines what is the criteria as far as a -- what
2 they call a planning reserve margin, an amount above
3 what the utility forecast it would need to serve its
4 peak load to be able to accommodate what they call
5 planning reserve margin. And, so that is done
6 bi-annually, published. Anybody that is a member of
7 SPP that serves load in SPP has to follow that. You
8 can't say fin off other utilities. You have to have
9 dedicated capacity to your load through your --
10 through your units or point-to-point service.

11 JUDGE WOODRUFF: Okay. Again, the issue
12 raised by Ms. Manley was that Liberty's replacement of
13 Asbury with wind was not appropriate since Asbury's
14 dispatchable well wind is not. How do you respond to
15 that -- to her?

16 THE WITNESS: I think that -- I think we're
17 kind of confusing a couple of issues. Yes, Asbury's a
18 dispatchable resource, if you look at it just based on
19 whether it's dispatchable or not. It is a
20 dispatchable resource. It was also a resource that
21 was struggling with economics. It had been struggling
22 for some time, and the company made decisions to try
23 to make it more attractive in the market. I think
24 witness Shawn Runey has testimony on record to that
25 fact. And, so you -- we look at the resources in a

1 variety of ways. The wind resources through the
2 planning models that were run by CRA in the 2018
3 generation, complete savings analysis, and the
4 2019-IRP showed that retiring Asbury and adding wind
5 was the most economical for the customers, and I
6 believe even in the generation complete savings
7 analysis filed in '18, they did include options of
8 keeping Asbury and keeping wind, but that did not get
9 selected.

10 JUDGE WOODRUFF: Okay. Now, are wind units
11 considered to be dispatchable?

12 THE WITNESS: They -- it depends on your
13 term. By SPP standards, they're considered
14 dispatchable. They have to be. They're called
15 dispatchable variable energy resources or diverse.
16 There is such a thing as in-diverse, but to the point
17 of whether you can dispatch them up, cannot, but you
18 can dispatch them down.

19 JUDGE WOODRUFF: Can you explain that to
20 me?

21 THE WITNESS: Sure. So you can't get more
22 wind than whatever the wind profile is at the time,
23 but if there is a reliability issue and you need to
24 push the wind down, you do have the ability to push
25 the wind down.

1 JUDGE WOODRUFF: Okay. So you can take
2 less power from those wind turbines and their maximum?

3 THE WITNESS: That is correct. And that is
4 a new rule by the Southwest Power Pool to ensure that
5 you have every wind farm even older, grandfathered
6 wind farms, have to all be considered dispatchable
7 variable energy resources.

8 JUDGE WOODRUFF: (Inaudible) downward.

9 THE WITNESS: Correct.

10 JUDGE WOODRUFF: Okay. Again, talking
11 about the wind units, what capacity were these units
12 first listed as resource adequacy?

13 THE WITNESS: It depends on which -- which
14 IRP or which analysis you're talking about. So the
15 way SPP does accreditation for wind resources which is
16 to say if you put in 150 megawatt nameplate resource,
17 you don't get 150 megawatts of credited capacity.

18 JUDGE WOODRUFF: How much would you get?

19 THE WITNESS: It depends. So you can -- if
20 you don't have a proxy wind farm or you don't have
21 three years of data or met tower data to be able to do
22 the -- the accreditation calculation that is in --
23 that was in place at the time, you can use a default
24 of 5 percent. You can use a proxy wind farm within, I
25 believe, it's 50 miles. You can also petition the

1 supply adequacy working group for another proxy wind
2 farm and -- and similar range or you can use met tower
3 data, and then you do accredited capacity calculation
4 that is a minimum of three years of your profile, and
5 you take a 60 percent confidence level, so you -- you
6 essentially grab your top 3 percent of peak times for
7 each season, and then you grab what the wind was
8 blowing at those times. You sort it high to low and
9 you grab the 60th percentile, and that's what your
10 accredited capacity is, so it does get very technical,
11 but it generally is somewhere in the 15 to 25,
12 30 percent range.

13 JUDGE WOODRUFF: Okay. Do you know what
14 these were rated at -- when they first came on line?

15 THE WITNESS: I know what they're rated
16 now. I don't know when -- when they first came on
17 line. It depended on the filing. We could have used
18 5 percent. For planning purposes, we probably used a
19 calculation of what the expectation would be,
20 somewhere around 15 percent.

21 JUDGE WOODRUFF: And what are they rated
22 now?

23 THE WITNESS: They're rated -- so SPP has
24 changed their methodologies again. It is a lot more
25 complex than the calculation I just told you. There

1 is now what they call an effective load carrying
2 capability, ELCC methodology, and it slates your wind
3 farms into tier one and tier two and tier three
4 capacity. So the wind farms we have rated right now
5 subject to check, I think, are somewhere around
6 30 percent rated capacity. It's -- it would be filed
7 in our SPP filing right now, so we can get that to the
8 commission, if need.

9 JUDGE WOODRUFF: Okay. Do you know when
10 that was --

11 THE WITNESS: The ELCC is for the -- I
12 believe it's for this coming summer.

13 JUDGE WOODRUFF: So for last summer would
14 have been something different?

15 THE WITNESS: Yes. But they still did
16 dry-runs, so you can get an assessment of what your
17 capacity would be. So we -- we can show it both ways.
18 And both ways it's larger than the 5 percent for
19 certain, and it's generally larger than the
20 15 percent.

21 JUDGE WOODRUFF: Okay. Do you know what
22 the ratings were at the time of winter storm Uri?

23 THE WITNESS: Of the rated capacity?

24 JUDGE WOODRUFF: Yes.

25 THE WITNESS: Those were in various stages

1 of construction, so I'm not sure what the capacity
2 would have been during that. So Neosha Ridge would
3 have been on line, and I believe Kingspoint and North
4 Fork were still in construction during that period,
5 but I believe they all produced energy that Neosha
6 Ridge produced most, because it was, I believe, fully
7 on line at that point in time.

8 JUDGE WOODRUFF: Okay. That's all the
9 questions I have then.

10 THE WITNESS: Okay.

11 JUDGE WOODRUFF: Any recross based on
12 questions from the bench beginning with Renew
13 Missouri? Or MECG?

14 TIM OPITZ: No, thank you, Your Honor.

15 JUDGE WOODRUFF: For staff?

16 CURT STOKES: Just very briefly, Your
17 Honor.

18 EXAMINATION

19 BY CURT STOKES:

20 **Q. Mr. Dole, earlier you referred to a NERC,**
21 **did you -- is that the North American Reliability**
22 **Corporation?**

23 A. Energy reliability.

24 **Q. Energy reliability?**

25 A. Yeah.

1 **Q. My bad. Apologies. You said that is a**
2 **corporation, but is that designated by like a federal**
3 **agency to --**

4 A. I believe it's designated by FERK
5 (phonetic).

6 **Q. Yeah. And does NERC impose those resource**
7 **adequacy requirements on SPP alone or does Liberty**
8 **also have some resource adequacy requirements?**

9 A. So -- so NERC requires any planning
10 coordinator or BA to have a resource adequacy
11 requirement. They are also -- and I believe they've
12 been on record acknowledging that states may have
13 different opinion, and resource adequacy generally
14 left to a state jurisdiction, if they can't be
15 collaborative. And, so the way SPP manages resource
16 adequacy is they do their technical studies, and they
17 run it through their regional state committee which is
18 a commissioner from each state of market participants
19 inside of SPP. If you don't have -- if you're not a
20 member of an ISO or an RTO, NERC requires you, I
21 believe, to have a 15 percent planning reserve margin
22 requirement. It is just a general rule.

23 **Q. You just said BA. Does that mean balancing**
24 **authority?**

25 A. Yes.

1 **Q. And is Liberty a balancing authority?**

2 A. We are not.

3 **Q. Who is the balancing authority?**

4 A. SPP is the balancing authority as of
5 March 1st, 2014.

6 CURT STOKES: Okay. Thank you.

7 JUDGE WOODRUFF: Mr. Stokes, did you have
8 anything?

9 CURT STOKES: Oh, no. No further
10 questions.

11 JUDGE WOODRUFF: Okay. Public counsel.

12 NATHAN WILLIAMS: Thank you. Nathan
13 Williams.

14 EXAMINATION

15 BY NATHAN WILLIAMS:

16 **Q. In response to one of the questions from**
17 **Mr. Woodruff, Judge Woodruff, you talked about the**
18 **wind farms operating at least partially during Storm**
19 **Uri. Were any of the revenues they generated, if they**
20 **did so, directly of benefit to Liberty customers?**
21 **Retail customers?**

22 A. We were not allowed to share revenue from
23 the wind farms, according to language in our FAC until
24 the wind farms were in rates. So none of that revenue
25 could have been shared.

1 **Q. Does needing the SPP requirements mean that**
2 **during some event like Storm Uri the energy will**
3 **actually be produced by the resources that are**
4 **underlie that meeting SPP requirement?**

5 A. I'm not sure. Can you restate the
6 question?

7 **Q. Does having resources meet the capacity**
8 **requirements, meaning the capacity will actually be**
9 **available when it's needed during some kind of an**
10 **event like Storm Uri?**

11 A. The analysis that SPP does to determine --

12 **Q. Yes or no, please.**

13 A. Their PRM -- okay. Does the -- does the --
14 I'm sorry, could you repeat the question one last
15 time?

16 **Q. Does meeting the SPP capacity requirements**
17 **mean that the capacity will actually, basically, be**
18 **available at any given point in time?**

19 A. It does not mean that it will be available
20 at any given point in time without stop.

21 NATHAN WILLIAMS: That's it for now. Thank
22 you, Judge.

23 JUDGE WOODRUFF: Redirect?

24 DIANA CARTER: No, thank you, Judge.

25 JUDGE WOODRUFF: Mr. Dole, you can step

1 down.

2 DIANA CARTER: And Mr. Dole is not
3 scheduled to take the stand later. May he be excused?

4 JUDGE WOODRUFF: He may be excused. And
5 Charlotte Emory, I believe.

6 DEAN COOPER: Yes. This is Dean Cooper.
7 We would call Charlotte Emory to the stand.

8 JUDGE WOODRUFF: Please raise your right
9 hand? Do you solemnly swear or affirm the testimony
10 you're about to give in this matter is the truth, the
11 whole truth, and nothing but the truth?

12 THE WITNESS: Yes.

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

15 DEAN COOPER: Thank you, Your Honor. Dean
16 Cooper again.

17 EXAMINATION

18 BY DEAN COOPER:

19 Q. Please state your name.

20 A. Charlotte Emory.

21 Q. And by whom are you employed, and in what
22 capacity?

23 A. I'm employed by the Liberty Utility Service
24 Corp as a senior director of rates and regulatory
25 affairs.

1 Q. Is that a new title since the filing of
2 your direct and surrebuttal testimony?

3 A. Yes.

4 Q. Okay. Have you caused to be prepared for
5 the purposes of this proceeding certain direct
6 testimony in case number EO-2022-0193 and surrebuttal
7 testimony in both cases in question and answer form?

8 A. Yes.

9 Q. Is it your understanding that your direct
10 and surrebuttal testimony has been marked as Exhibits
11 7 and 8 for identification?

12 A. Yes.

13 Q. Do you have any changes that you would like
14 to make to that testimony at this time?

15 A. No.

16 Q. Is it your understanding that pursuant to
17 the commission's order additional schedules to your
18 surrebuttal testimony that were identified as CTE-4 to
19 CTE-15 were filed with the commission on June 9th of
20 2022?

21 A. Yes.

22 Q. And would you consider those additional
23 schedules to be a part of your surrebuttal testimony?

24 A. Yes.

25 Q. As to some different pieces of testimony, I

1 understand you are adopting some testimony. Are you
2 adopting the direct testimony of Karen S. Hall, and
3 the direct testimony of Matthew (phonetic) which was
4 filed in case number EO-2022-0040?

5 A. Yes.

6 Q. Is it your understanding that Mr. Decorsy's
7 direct testimony has been marked as Exhibit 5 for
8 identification and Ms. Hall's direct testimony has
9 been marked as Exhibit 6 for identification?

10 A. Yes.

11 Q. Do you have any changes that you would like
12 to make to that testimony at this time?

13 A. No.

14 Q. If I were to ask you the substantive
15 questions which are contained in Exhibits 5, 6, 7, and
16 8 today, would your answers be the same?

17 A. Yes.

18 Q. Are those answers true and correct to the
19 best of your information, knowledge, and belief?

20 A. Yes.

21 DEAN COOPER: Your Honor, I would offer
22 Exhibits 5, 6, 7, and 8 in evidence and tender the
23 witness for cross examination.

24 NATHAN WILLIAMS: Judge, if I may?

25 JUDGE WOODRUFF: Yes.

1 NATHAN WILLIAMS: Because of the additional
2 schedules to the surrebuttal testimony, Exhibit 8 came
3 in so late, we have not had an opportunity to review
4 those, so I'd like to reserve an objection just so we
5 have an opportunity to look at them and make sure they
6 are work papers as they purport to be.

7 JUDGE WOODRUFF: Do we want to pull them
8 out as a separate exhibit? Would that aid in that
9 process?

10 NATHAN WILLIAMS: I don't think that's
11 necessary.

12 JUDGE WOODRUFF: Okay. Those were filed
13 last week, I believe; right?

14 DEAN COOPER: They were.

15 UNIDENTIFIED MALE: Yeah, Thursday, I think
16 Your Honor.

17 JUDGE WOODRUFF: They should have been --
18 it's my understanding they were provided to the
19 parties before that; is that correct?

20 NATHAN WILLIAMS: I don't know. That's
21 what I want to confirm that those are work papers as
22 they're --

23 JUDGE WOODRUFF: You're looking to
24 confirm --

25 NATHAN WILLIAMS: Right.

1 JUDGE WOODRUFF: -- they are what they say
2 they are.

3 NATHAN WILLIAMS: Yes. We haven't had a
4 time to review them to assure that's the fact --

5 JUDGE WOODRUFF: Okay. Would --

6 NATHAN WILLIAMS: -- for the case.

7 DEAN COOPER: Yeah, Your Honor. This is
8 Dean Cooper. I mean, it may make some sense to do it
9 what you were suggesting which is break them up into a
10 separate exhibit. I'm assuming that with that
11 separation, then we can go ahead and have Ms. Emory's
12 surrebuttal testimony minus CTE-4 to CTE-15, but admit
13 it in evidence today, and in that scenario, we'd only
14 be waiting on confirmation for the schedules.

15 NATHAN WILLIAMS: I don't care how you do
16 it, but I can see admitting the portions to which were
17 not asking to reserve objection to it which are the
18 additional schedules.

19 JUDGE WOODRUFF: Yeah.

20 NATHAN WILLIAMS: However you want to
21 handle it.

22 JUDGE WOODRUFF: And Mr. Williams, would
23 you be able to respond to the -- the extra exhibits by
24 the end of the -- of this hearing or --

25 NATHAN WILLIAMS: I certainly hope so. I

1 mean, it's not my intent to hold things up. We just
2 want to confirm that they are what they purport to be.

3 JUDGE WOODRUFF: That's fair. All right.
4 Let's go ahead and pull those exhibits out to make
5 them a separate exhibit. Your next number would be
6 number 21.

7 DEAN COOPER: In that case, Your Honor, I
8 would offer again Exhibits 5, 6, 7, and 8. I would
9 also offer Exhibit 21 understanding that the ruling on
10 21 may -- or will -- will come later.

11 JUDGE WOODRUFF: Okay. All right. At this
12 point, then, Exhibits 5, 6, 7 and 8 --

13 CURT STOKES: Your Honor, I just have a
14 quick request to voir dire the witness again?

15 JUDGE WOODRUFF: Okay. Go ahead.

16 CURT STOKES: Ms. Emory, are you a licensed
17 Missouri attorney?

18 THE WITNESS: No.

19 CURT STOKES: Okay. Your Honor,
20 based on that response, I would object to -- as
21 irrelevant and lack of foundation and witness lacks
22 the qualifications to provide a lay opinion to page
23 19, line 14 through page 20, line 9, that is
24 exhibit -- Exhibit 8 of Ms. Emory's surrebuttal.
25 There -- that portion purports to establish what the

1 legislative intent and some legal analysis of the
2 securitization statute. Pages 22, lines 12 through
3 17, purports to interpret what commission rules
4 require. Pages 23, lines 5 through 7 and 23 lines 21
5 through 24 purports to interpret a statute and what it
6 does and does not allow. And page 24, the full
7 sentence at lines 14 and 15 purports to also say what
8 that does not allow, and that's improper lay opinion
9 testimony about what the statute allows and does not
10 allow, and it's really -- it's also irrelevant.

11 JUDGE WOODRUFF: This is all in Exhibit 8?

12 DEAN COOPER: This is Exhibit 8,
13 surrebuttal, yes.

14 JUDGE WOODRUFF: First of all, we'll go
15 ahead and admit 5, 6, and 7. Those were all without
16 objection. As to Exhibit 8, I'm going to overrule the
17 objection again. As Exhibit 21, I'll defer ruling on
18 that until later in the hearing after -- after the
19 parties have a chance to -- to confirm that it is what
20 it says it is. All right. And taking my role as
21 acting court reporter here, those exhibits were
22 submitted already into the commission's website.

23 UNIDENTIFIED MALE: They were, but we may
24 need to split out the -- the schedules that we've been
25 discussing into a separate exhibit and resubmit those,

1 Your Honor.

2 JUDGE WOODRUFF: If you would, please, to
3 the -- okay. Cross examination again, then we begin
4 with -- with Renew Missouri.

5 ALICIA GREENWALD: No questions, Your
6 Honor. Thank you.

7 JUDGE WOODRUFF: MEGG.

8 TIM OPITZ: Yes, Judge. May I cross from
9 my seat?

10 JUDGE WOODRUFF: You may.

11 TIM OPITZ: Tim Opitz, MEGG.

12 EXAMINATION

13 BY TIM OPITZ:

14 Q. Good afternoon, Ms. Emory.

15 A. Good afternoon.

16 Q. On direct, you noted that you didn't have
17 any corrections to your testimony, and your adopted
18 testimony. When you filed your testimony, that was in
19 March of 2022; is that correct?

20 A. I -- are you referring to --

21 Q. Your direct testimony, I'm sorry?

22 A. In Asbury.

23 Q. In the Asbury case?

24 A. Yeah.

25 Q. And the Uri case, you're adopting the

1 **direct testimony of Ms. Hall; correct?**

2 A. Correct.

3 **Q. And the date that she filed that testimony**
4 **was in January of 2022?**

5 A. Yes.

6 **Q. And at the -- at those -- each of those**
7 **testimonies includes the cost allocation method the**
8 **company put forward for each asset; correct?**

9 A. Yes.

10 **Q. And I believe it's table CTE-5 in your**
11 **direct, the Emory direct, and it's just table 5 in**
12 **Hall's direct, do you have those with you?**

13 A. Let me check. Just a moment.

14 **Q. Okay.**

15 A. But I think I do. Yes. I have the table
16 CTE-5 in my direct, and I also have the table 5 of
17 Karen Hall's testimony.

18 **Q. And you understand from the rebuttal**
19 **testimony of -- of Sarah Langley and from the opening**
20 **statement of staff today that one complaint about**
21 **those tables is that it reflects customer classes that**
22 **are not current customer classes?**

23 A. Yes. I understood that there was a
24 statement made that the EV was not included.

25 **Q. Okay. And these customer classes, are they**

1 the classes that are now in existence with the rates
2 that have gone into effect on June 1st?

3 A. We're referring to the EV tariffs. We did
4 file some EV tariffs that took -- but they don't
5 actually become effective until, I believe, October
6 of -- October 15th.

7 Q. Were you a participant in the recent rate
8 case?

9 A. Yes.

10 Q. As a part of that rate case, some of the
11 customer classes changed; is that correct?

12 A. Yes.

13 Q. And at the time you -- you or Ms. -- at the
14 time you filed your testimony in the Asbury case,
15 those were the customer classes at the time; correct?

16 A. Yes. There was consolidations in the -- in
17 the other cases, yes.

18 Q. And, so they -- so your testimony in that
19 would need to be updated to reflect the current
20 classes, if we were going to allocate it, based on
21 your method; correct?

22 A. The method in our direct, yes.

23 Q. The method in your direct. And in your
24 surrebuttal testimony, you state you have acknowledged
25 the criticism of the staff and the public counsel and

1 you're willing to continue working?

2 A. Uh-huh.

3 Q. To address those, I think, you call it rate
4 design issues; correct?

5 A. Correct.

6 Q. And would you agree that the cost
7 allocation is a little different than rate design?

8 A. Yes, I would agree.

9 Q. So if -- if we were to adopt a consistent
10 methodology for the cost allocation as you did in your
11 direct, we would need to determine the revenues to be
12 recovered from each of the new classes; correct?

13 A. I believe so, yes.

14 Q. Okay. And the way to -- what you did in
15 your testimony was you looked at the revenues
16 allocated to each class, determine the percentage of
17 overall revenues in the company's revenue requirement;
18 correct?

19 A. I believe so.

20 Q. That -- from that, you developed a
21 percentage and to determine the percentage of the
22 annual securitization amount, you took -- the total
23 annual bond requirement and applied that percentage
24 for each class; correct?

25 A. Correct.

1 Q. So these figures in your direct testimony
2 and in the direct testimony of Witness Hall would need
3 to be updated to show accurate percentages, if you
4 were to use your methodology proposed in direct; is
5 that correct?

6 A. Yes, I believe so.

7 Q. And we would also need to add the EV rate;
8 is that correct?

9 A. I'm not sure I can speak to the EV.

10 Q. Okay. In the additional schedules that you
11 filed or were filed on your behalf last week, did any
12 of those contain updated tables that might reflect
13 what the percentage would be if the rate classes were
14 updated?

15 A. Subject to check, I do not believe they
16 did.

17 Q. In your surrebuttal, you recognize the
18 criticisms from staff and OPC and acknowledge the
19 willingness to work towards resolving them. Were
20 there any other issues that stood out in your mind
21 that the staff raised that would need to be corrected
22 other than the rate classifications?

23 A. Recall any other items sticking out to me,
24 no.

25 Q. Would you agree that within the context of

1 a rate case, the first step to developing proposed
2 rates is to establish the overall revenue requirement?

3 A. Yes.

4 Q. And then would you agree that the next step
5 is to allocate those costs among the various customers
6 classes?

7 A. Yes.

8 Q. And typically, in a rate case, when you're
9 allocating cost among classes, it will result in a
10 different rate for each customer class?

11 A. That is my understanding.

12 Q. And that closely follows what you proposed
13 in your direct testimony here, that method; correct?

14 A. Correct.

15 Q. The company chose to after it did its cost
16 allocation, you offer, I guess, a rate design that's
17 based on a kilowatt charge for each class; correct?

18 A. Yes.

19 Q. If you used a demand kilowatt charge to
20 recover the allocated amounts, could that be done by
21 individual classes?

22 A. I am not a class cost of service expert, so
23 I'm not for sure I can answer that. I went and
24 utilized the class cost of service and rate design
25 that was proposed by our witness in the rate case.

1 Q. And that was Mr. Lyons?

2 A. Correct.

3 Q. And was that attached to any testimony in
4 this case that class cost of service or was it simply
5 referenced within the testimony that you filed?

6 A. It is just referenced.

7 Q. Okay. And I believe you, in response to
8 a -- it may have been in your surrebuttal, it may have
9 been a data request, the company agreed to use the
10 updated class cost of service from Mr. Lyons'
11 surrebuttal in that rate case?

12 A. Do you happen to have reference of which
13 testimony that was in or DR response?

14 Q. I do have the DRs here. I think it was DR
15 number 50 from staff. I don't have a printout, I'm
16 sorry, but I can read it. So the -- the respondent
17 was Karen Hall. And, so the question was, referred to
18 Karen Hall's testimony is Liberty's intent to update
19 the calculations therein to reflect Mr. Lyons
20 surrebuttal class cost of service in case
21 ER-2021-0312, and the class usage values agreed upon
22 in that case by the parties in the January 28th, 2022,
23 nonunanimous partial stipulation agreement, and the
24 response provided by Ms. Hall was, yes, subject to,
25 and in accordance with the order from the commission

1 in ER-2021-0312?

2 A. Okay.

3 Q. So if we were to apply the company's
4 proposed method, you would agree that those should be
5 updated to reflect that -- that class cost of service
6 update?

7 DEAN COOPER: Objection. Compound
8 question.

9 JUDGE WOODRUFF: I'll sustain that, if you
10 could --

11 TIM OPITZ: Yep.

12 JUDGE WOODRUFF: -- clarify your question a
13 bit.

14 TIM OPITZ: I'll withdraw.

15 Q. (By Tim Opitz:) Ms. Emory, if the Asbury
16 plant were not retired, and it was still on line, some
17 of those costs associated with it would be recovered
18 through a demand charge; is that correct?

19 DEAN COOPER: Objection. Calls for
20 speculation as to what would actually be ordered.

21 JUDGE WOODRUFF: Rephrase your question.

22 TIM OPITZ: Sure.

23 Q. (By Tim Opitz:) Ms. Emory, Liberty,
24 Empire, currently has generation units built into its
25 rates; correct?

1 A. Yes.

2 Q. And in its current rates, the value of
3 those plants is at least, in part, recovered through a
4 demand charge?

5 A. My understanding from certain customers.

6 Q. Depending on the customer class; correct?

7 JUDGE WOODRUFF: You need to answer
8 verbally, not just shaking your head.

9 THE WITNESS: Oh. Yes.

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

11 JUDGE WOODRUFF: For staff.

12 EXAMINATION

13 BY CURT STOKES:

14 Q. Ms. Emory, I think you testified earlier
15 you're not a class cost of service expert; is that
16 correct?

17 A. Yes.

18 Q. Now, when -- page 19 of your surrebuttal,
19 you discuss legislative intent; correct?

20 A. Direct me to which specific line on 19.

21 Q. Page 19, line 14 through page 20, line 9.

22 A. State your question, sorry.

23 Q. You state -- you discuss legislative
24 intent; correct?

25 UNIDENTIFIED MALE: I would object to the

1 question. It assumes, I guess, something I'm not
2 seeing in the testimony. Ms. Emory -- the cited
3 sections, I think, she talks about what she
4 believes -- what she believes is unlikely.

5 CURT STOKES: Let me clarify the question,
6 Your Honor. I think maybe I can --

7 JUDGE WOODRUFF: All right.

8 Q. (By Curt Stokes:) You stated at page --
9 (Silence in audio.)

10 Q. (By Curt Stokes:) There you go. You
11 state -- page 19, line 18, you state first, if the
12 Missouri legislature intended for a debt only rate to
13 be applied or if it intended for the commission to
14 impute some estimate of actual costs to finance
15 certain expenses based on the assumption that such
16 financing would be on a debt only basis, it meaning
17 you're referring to the Missouri legislature, when you
18 say it?

19 A. Referring to the statute.

20 Q. Certainly would have indicated as much,
21 that's what you state; correct? Are you aware that
22 the Missouri Supreme Court has precedent that
23 legislative intent is dictated by the plain language
24 statutes? So you didn't have any basis for what you
25 believe the Missouri legislature intended because you

1 didn't have -- you weren't aware that Missouri courts
2 interpret legislative intent based on the language of
3 the statute themselves?

4 A. My words were on my plain reading.

5 Q. Now, you also -- are you also aware that
6 Missouri Supreme Court has precedent that statutes are
7 to be interpreted in harmony with one another? So you
8 weren't aware of that precedent when you were deciding
9 what statutes allow or what they don't allow?

10 A. No.

11 Q. Okay. In your net present value
12 calculation, in your direct testimony and -- at page
13 10, you do not consider what recovery of a 95/5
14 sharing mechanism under the FAC would show; correct?

15 A. Cite the page again.

16 Q. Page 10.

17 A. Of my direct?

18 Q. Of your direct in the 193 case which is
19 Exhibit 7.

20 A. On page 10?

21 Q. And, so in your net present value
22 calculation, you don't consider what recovery of 95/5
23 sharing under the FAC would show?

24 DEAN COOPER: This is Dean Cooper from
25 Liberty. I'm not -- I guess I'm not following the

1 reference to page 10 of Ms. Emory's testimony in 0193.

2 CURT STOKES: Oh, I'm sorry, it would not
3 be at 193. I believe it's -- I apologize. It's
4 Exhibit 8, it's your surrebuttal. Page 10.
5 Apologies.

6 THE WITNESS: Okay. I'm on page ten.

7 **Q. (By Curt Stokes:) Okay. So that table,**
8 **table CTE-2, that does not reflect a 95/5 sharing?**

9 A. Correct.

10 **Q. Would you agree with staff's calculation**
11 **that if the commission did order 95/5 sharing that it**
12 **would be approximately 10 million?**

13 A. That would be 10 million, sorry?

14 **Q. The difference in recovery.**

15 A. Just want to make sure I answer your
16 question. Are you asking if the 221,646, that's in my
17 table would be reduced by 10 million? Balance?

18 **Q. The securitization balance of 175.**

19 A. Oh. I'm sorry. I was looking at the wrong
20 table all together. Say the question again.

21 **Q. Yeah. So if -- would you agree with**
22 **staff's calculation that if the commission did order a**
23 **95/5 sharing that the securitization balance of 175**
24 **million would be lowered by approximately 10 million?**

25 A. I believe that's accurate.

1 Q. Okay. Now, you say in your surrebuttal in
2 that case at page 16, that the company will pay taxes
3 on the proceeds from the issuance of the
4 securitization bonds; is that correct?

5 A. What row on page 16?

6 Q. Rows 11 through 12. So when you say
7 when -- the company will pay taxes on the proceeds,
8 you don't mean that the proceeds from the bond
9 issuance; correct?

10 A. It is my understanding that it's based on
11 the -- the payments received from the customers that
12 we would pay taxes on.

13 Q. And that would be the payments that the
14 ratepayers pay over time through the securitization
15 charges; correct?

16 A. Yes.

17 Q. Okay. So -- so once -- once the special
18 purpose entity sells the bonds and Liberty gets --
19 gets the proceeds from those bonds, it doesn't pay
20 taxes immediately on that immediate hundred million,
21 200 million plus --

22 A. That's what I understand.

23 Q. Okay. Do you have a copy or an Excel copy
24 of your work papers?

25 A. I do.

1 Q. Of your NPV work paper?

2 A. Uh-huh.

3 Q. Would you be able to open that up?

4 A. Yep. Give me just a moment.

5 Q. No problem.

6 A. Did you want me to pull up the actual NVP
7 calculation or the ADIT calculation.

8 Q. The NVP calculation of ADIT?

9 A. Okay.

10 JUDGE WOODRUFF: Mr. Stokes, while the
11 witness is pulling that up, let me ask a clarifying
12 question. This -- this spreadsheet she's pulling up,
13 is this what was marked as Exhibit 21?

14 CURT STOKES: Yes.

15 JUDGE WOODRUFF: Okay. Thank you.

16 THE WITNESS: I have it pulled up.

17 Q. (By Curt Stokes:) Okay. Now, on page 14
18 of your surrebuttal, you discuss how to calculate the
19 NVP, net present value, of ADIT; correct?

20 A. Starting on line 10.

21 Q. And beginning on line 15, you say -- said
22 another way, the annual cash inflows are equal to the
23 amounts collected from customers, open parens, ADIT
24 times ROR; is that correct?

25 A. Correct.

1 Q. And ROR, is that rate of return?

2 A. Yes.

3 Q. Okay. Now, if you go to your work paper,
4 at cell D-13, that states securitization yield;
5 correct?

6 A. Correct.

7 Q. It does not state rate of return?

8 A. Correct.

9 Q. And the securitization yield you have in
10 there is 2.47; correct?

11 A. Correct.

12 Q. And 2.47 percent, can you agree is not a
13 current accurately -- not a current accurate estimate
14 for bond yields anymore?

15 A. Would have to ask Katrina on that.

16 Q. Okay. Can you do me a favor and in cell
17 D-15, can you type in the number 4 percent? And does
18 that move the net present value in cell E-30 to
19 7.7 million?

20 A. Roughly, yes.

21 Q. Now, rate of return is not the same as a
22 bond yield; correct?

23 A. I believe that's accurate.

24 Q. And when Liberty refers to its rate of
25 return in other parts of this case, it's referring to

1 at 6.77 percent weighted average cost of capital;
2 correct?

3 A. Correct.

4 Q. Can you type 6.77 percent in cell D-15?
5 Does that move the net present value calculated in
6 cell E-30 close to 13 million?

7 A. 12.9, yes.

8 Q. Okay. One last question. Earlier
9 Mr. Opitz asked you about tiering up class level --
10 class level revenue requirements; do you recall that?

11 A. Yes.

12 Q. I know that you've already testified you're
13 not a class cost of service expert, but would you be
14 able to explain step by step how to true up class
15 level revenue requirements that are allocated for
16 classes as you recommend in your direct testimony?

17 A. (Inaudible) here today.

18 CURT STOKES: No further questions, Your
19 Honor.

20 JUDGE WOODRUFF: Public counsel.

21 NATHAN WILLIAMS: Thank you. Nathan
22 Williams.

23 EXAMINATION

24 BY NATHAN WILLIAMS:

25 Q. Good afternoon, Ms. Emory.

1 A. Good afternoon.

2 Q. In your testimony, you refer to estimated
3 decommissioning and estimated ROR cost -- ROR -- let
4 me try it again. ARO cost; do you not?

5 A. In the Asbury, yes.

6 Q. And what is ARO stand for?

7 A. Asset retirement obligations.

8 Q. What are those?

9 A. Those are essentially future costs that
10 will have to be satisfied in the future.

11 Q. Did you participate in estimating either
12 the decommissioning costs or the ARO costs?

13 A. No.

14 NATHAN WILLIAMS: Thank you. No further
15 questions.

16 JUDGE WOODRUFF: All right. Any questions
17 from the commissioners on the -- on line? All right.
18 I do have some questions. First of all, when you were
19 being questioned by MECG, I believe you used the term
20 of EV rate. What is an EV rate?

21 THE WITNESS: That's the electric vehicle
22 rate.

23 JUDGE WOODRUFF: Okay. And is that a rate
24 that was just created in the last rate case?

25 THE WITNESS: It -- there was a separate

1 proceeding for it, but it was resolved through the
2 rate case.

3 JUDGE WOODRUFF: Okay. Thank you. Now,
4 Liberty's proposing to use weighted average cost of
5 capital of 6.77 percent; is that correct throughout
6 this case?

7 THE WITNESS: Yes.

8 JUDGE WOODRUFF: Okay. And I believe that
9 was -- that's the weighted average cost of capital
10 approved in Liberty's last rate case, the
11 ER-2019-0374; is that right?

12 THE WITNESS: Correct.

13 JUDGE WOODRUFF: Now, Liberty recently
14 completed a rate case. The rates went into effect
15 just two weeks ago.

16 THE WITNESS: Correct.

17 JUDGE WOODRUFF: Was there an approved
18 weighted rate cost of capital in that case?

19 THE WITNESS: No.

20 JUDGE WOODRUFF: And do you know why not?

21 THE WITNESS: It was a silent settlement
22 term.

23 JUDGE WOODRUFF: It was part of a black box
24 settlement?

25 THE WITNESS: Correct.

1 JUDGE WOODRUFF: Okay. Is there any more
2 recent data what a weighted average cost of capital
3 would be now rather than what it was in that earlier
4 rate case?

5 THE WITNESS: I'm not aware of any.

6 JUDGE WOODRUFF: Now, in your surrebuttal
7 testimony, schedule CTE-3, and schedule CTE-3, Storm
8 Uri, that's Storm Uri's calculations. You use
9 securing costs of 2.47 percent for securitization and
10 6.77 percent with -- for the weighted average cost of
11 capital that we were just talking about. They seem to
12 be from different time periods in that the
13 6.77 percent was from -- from the 2019 case, and the
14 2.47 percent was based on situation, I believe, in
15 January. Or from when the direct testimony was filed.
16 Is there any problem with conducting an NPV comparison
17 using costs from different time periods like that?
18 And is there a way of getting around that?

19 THE WITNESS: Not exactly sure. I'm sure
20 each party -- I know everybody can put their own
21 amounts in there, and I feel like some of the parties
22 have used different rates.

23 JUDGE WOODRUFF: Which is what staff just
24 did.

25 THE WITNESS: Yes. Yeah.

1 JUDGE WOODRUFF: Okay.

2 THE WITNESS: Yeah. So you can use
3 different rates, but I'm not sure that it -- I think
4 it gets you a different result, of course, because
5 it's a different input, but not aware of --

6 JUDGE WOODRUFF: Okay. And the inputs can
7 still be changing throughout the process; right?

8 THE WITNESS: Correct.

9 JUDGE WOODRUFF: Okay. I want to talk a
10 little bit about the fuel adjustment clause. It's my
11 understanding that Liberty is not attempting to
12 recover winter Storm Uri's costs through FAC; correct?

13 THE WITNESS: Correct.

14 JUDGE WOODRUFF: Okay. If the company
15 would have sought recovery of Wind Storm Uri fuel
16 costs above those contained current rates through FAC,
17 instead of pursuing securitization or an EO, what
18 percentage of those costs would the company have been
19 allowed to recover?

20 THE WITNESS: I'd have to say it wasn't
21 eligible to go through the FAC. The -- there is a
22 rule that guides the FAC, and it says that if there
23 was a cost that's deemed extraordinary, you can flow
24 that through the FAC.

25 JUDGE WOODRUFF: Okay. At what dollar

1 amount or percentage of company revenues do FAC costs
2 become extraordinary, and how is that amount
3 determined?

4 THE WITNESS: Well, I'm sure that's subject
5 to various opinions. The company during the -- when
6 we actually filed our fuel clause, immediately right
7 after Storm Uri, because our fuel clause filing was
8 due on April 1st, Storm Uri occurred in February, we
9 took the approach that anything above what the
10 commission had approved for rate, base rates, would be
11 deemed extraordinary.

12 JUDGE WOODRUFF: Who made that decision?

13 THE WITNESS: It was brought forth in our
14 testimony, the company's testimony, and ultimately,
15 that's the decision that allowed the -- the amount to
16 be put into the FAC or in this case excluded from the
17 FAC.

18 JUDGE WOODRUFF: You're talking about the
19 testimony that was filed in the FAC case?

20 THE WITNESS: Correct.

21 JUDGE WOODRUFF: Okay. Now, talking about
22 the tariff, in reference to your surrebuttal testimony
23 on page 39, regarding a recommendation for parties to
24 collaborate and agree on a form -- or to the financing
25 order being issued, what timeline and process is

1 Liberty proposing for negotiating that tariff?

2 THE WITNESS: It's my understanding that
3 the tariff itself doesn't necessarily need to be in
4 effect. It just needs to be in effect before we start
5 collecting the bonds, so I believe the allocation
6 needs to be contained within the financing order, so
7 I -- I would be envisioning the timeframe between when
8 the commission issues the order on financing and the
9 timeframe of when we need to start collecting that.

10 JUDGE WOODRUFF: So it would be after this
11 decision --

12 THE WITNESS: Correct.

13 JUDGE WOODRUFF: -- that's coming out of
14 this case? Okay. Has the parties gotten back to you
15 about that?

16 THE WITNESS: I have not heard anything.

17 JUDGE WOODRUFF: And if they were not able
18 to settle this -- through this informal process, how
19 would they -- how would you proceed to bring it to the
20 commission for decision?

21 THE WITNESS: This is the first time doing
22 this, so I'm not -- I'm not exactly sure of the
23 process that would need to take place there.

24 JUDGE WOODRUFF: Okay. There was -- in Kim
25 Boland's rebuttal testimony, there was an issue raised

1 about interest rate on capital sub accounts. This was
2 not listed as an issue in the list of issues. Do you
3 know if that was resolved somehow?

4 THE WITNESS: We were fine with staff's
5 recommendation on that.

6 JUDGE WOODRUFF: Okay. All right. That's
7 all the questions I have. Recross based on questions
8 from the bench, then Renew Missouri? MCEG? Staff?

9 CURT STOKES: Very briefly. Curt Stokes
10 for staff.

11 EXAMINATION

12 BY CURT STOKES:

13 Q. Would legal costs be recoverable through an
14 FAC clause?

15 A. I believe so.

16 Q. Would you agree that OPC challenged the
17 level that Liberty identified as extraordinary in case
18 ER-2021-0322, Liberty's FAC filing?

19 A. I recall an alternative being presented by
20 OPC, but ultimately, the rates -- or the amount that
21 was removed from the FAC was allowed to take effect.

22 Q. Right. And that was -- Liberty didn't get
23 to decide on its own without an order from the
24 commission what qualified as extraordinary; correct?

25 A. Correct.

1 **Q. Now, would you agree that Liberty would be**
2 **incentivized to -- if it wants to recover 100 percent**
3 **of fuel and purchase power costs during extreme event**
4 **to set the threshold for what qualifies as**
5 **extraordinary as low as possible?**

6 A. Can you rephrase that?

7 **Q. Yeah. So would you agree that Liberty**
8 **would be incentivized if an extreme weather event**
9 **occurs to set the threshold or what qualifies as**
10 **extraordinary at a very low level in order to qualify**
11 **for 100 percent recovery?**

12 A. I would agree with that.

13 **Q. Then why did it do it here?**

14 A. We made the best estimate of trying to
15 estimate what those costs were.

16 **Q. Why did you oppose FAC's higher level**
17 **threshold for extraordinary costs?**

18 A. Just like their estimate was -- it was an
19 estimate.

20 **Q. Would you agree that in the future**
21 **ratepayers would be incentivized to set the threshold**
22 **for what qualifies as extraordinary as high as**
23 **possible to avoid having to pay 100 percent of those**
24 **extraordinary costs?**

25 A. Not for sure customers -- say the question

1 again.

2 **Q. Would you agree that ratepayers in the**
3 **future would be incentivized to advocate for a higher**
4 **threshold for what qualifies as extraordinary in order**
5 **to avoid paying 100 percent of extraordinary costs?**

6 A. I think there's a lot of factors that come
7 into that.

8 **Q. Would one of those factors be savings under**
9 **the securitization statute?**

10 A. Define savings underneath the
11 securitization statute.

12 **Q. Yeah. So interest rates being lower under**
13 **the securitization statute, then carries cost under**
14 **the FAC or long-term carrying cost under an AAO?**

15 A. I would imagine a customer would be better
16 served by a lower interest rate, yes.

17 **Q. Uh-huh. So you say -- the -- being better**
18 **served by lower interest rate would be offset, though,**
19 **by recovering 100 percent of those fuel and purchase**
20 **power costs instead of sharing in 95 percent of those**
21 **fuel and purchase power costs?**

22 A. That -- the cost that was incurred by the
23 company during the extraordinary event was prudently
24 incurred by the company. We paid those costs on
25 behalf of our customers, and we have made every

1 attempt to save customers as much as we possibly can
2 in regards to that event.

3 **Q. Are you aware that in previous cases**
4 **different parties have advocated for a sharing**
5 **mechanism other than 95 percent for fuel and purchase**
6 **costs?**

7 A. Yes, I'm aware.

8 **Q. Has the commission ever found a percentage**
9 **other than 95 percent just and reasonable?**

10 A. That -- I'm unaware of that.

11 CURT STOKES: No further questions.

12 JUDGE WOODRUFF: Public counsel.

13 NATHAN WILLIAMS: Thank you. Nathan
14 Williams for public counsel.

15 EXAMINATION

16 BY NATHAN WILLIAMS:

17 **Q. Did not Liberty in the FAC case for the**
18 **accumulation period that includes February of 2021,**
19 **which is the period when Storm Uri occurred set the**
20 **amount to be collected based on a -- an FAC charge**
21 **being zero?**

22 A. The FAC rate that was allowed to take
23 effect did have a zero -- was at zero.

24 **Q. And that's what Liberty proposed; is it**
25 **not?**

1 A. Liberty proposed it, and the commission
2 approved it.

3 **Q. And all that rate did was say what amounts**
4 **were considered to be -- that the amounts that were**
5 **going to be collected were not extraordinary; correct?**

6 A. Say that again, please.

7 **Q. The only thing that the commission**
8 **approving that rate indicates is that the commission**
9 **agreed that the amounts to be collected under that**
10 **rate were not extraordinary; correct?**

11 A. What the commission approved was an amount
12 that the company did not allow to flow through the
13 FAC.

14 NATHAN WILLIAMS: I think I made my point.
15 Thank you.

16 JUDGE WOODRUFF: Okay. Any redirect?

17 DEAN COOPER: Thank you, Your Honor. Dean
18 Cooper for Liberty.

19 EXAMINATION

20 BY DEAN COOPER:

21 **Q. While we're on the subject of the 95/5**
22 **sharing here, you were asked by staff counsel about**
23 **whether your -- I think it was your NPV calculation**
24 **included a 95/5 sharing provision; do you remember**
25 **that?**

1 A. Yes.

2 Q. And I believe you said it did not?

3 A. Correct.

4 Q. And does -- to your knowledge, does the
5 securitization statute mention any sort of sharing?

6 A. No.

7 Q. You were also asked about -- again, here in
8 the last couple sets of question -- questions, in your
9 opinion, if fuel and purchase costs are extraordinary,
10 does the FAC rule remit them to be recovered through
11 the FAC?

12 A. No.

13 CURT STOKES: Your Honor, the witness
14 answered before I could object, but I would object and
15 move to strike as calling for a legal conclusion.

16 JUDGE WOODRUFF: Overruled.

17 Q. (By Nathan Williams:) Now, in terms of the
18 process of the FAC, it's true, I suppose, that the
19 company makes a proposal when it files its FAC;
20 correct?

21 A. Correct.

22 Q. And other parties have the opportunity to
23 review the company's proposal?

24 A. Yes.

25 Q. And I think it's been mentioned here that,

1 in fact, in your last FAC, perhaps, one party took a
2 different view of that; correct?

3 A. Not -- in the FAC filing directly following
4 the storm event, yes.

5 Q. Okay. But in the end, whose decision is
6 it, what flows through the FAC?

7 A. The commission.

8 Q. And I think it relates also to some
9 questions you got from Mr. Stokes about what the
10 company's incentivized to do in regard to where it
11 views not extraordinary and extraordinary to -- to
12 land. Again, ultimately, is it -- is it Liberty's
13 decision where that line is drawn?

14 A. No.

15 Q. And in terms of incentive, is it true that
16 the recovery period under the FAC is -- is extremely
17 short?

18 A. Yes.

19 Q. How short?

20 A. Six months.

21 Q. So if one were to think about the recovery
22 of 193 million over a six-month period, would that be
23 a pretty extreme impact for your -- impact for your --

24 A. Yes.

25 Q. Would that also figure into the company's

1 **decision as to what proposes in terms of where the**
2 **line between not extraordinary and extraordinary would**
3 **be drawn?**

4 A. It did.

5 DEAN COOPER: Sorry, Your Honor. Give me
6 just a moment. I'll check my notes here. No further
7 questions, Your Honor.

8 JUDGE WOODRUFF: Thank you. You can step
9 down.

10 THE WITNESS: Thank you.

11 JUDGE WOODRUFF: We're due for a break.
12 We'll come back at 3 o'clock.

13 Before we go to the next witness, I do have
14 one thing I wanted to bring up with staff. I wanted
15 to give you warning of a question that we're intending
16 to ask tomorrow. It's about the Asbury AOO regulatory
17 liability, about the value of the liability, your
18 position (inaudible) 75.8 million, and we intend to
19 ask some questions tomorrow to try to find the basis
20 for that, so just to be forewarned.

21 All right. Next witness, then, is John
22 Olson.

23 DIANA CARTER: Thanks, Judge. We would
24 call John Olson to the stand.

25 JUDGE WOODRUFF: Thank you. Raise your

1 right hand. Do you solemnly swear or affirm that the
2 testimony you're about to give in this matter is the
3 truth, the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

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

7 EXAMINATION

8 BY DIANA CARTER:

9 Q. Please state your full name.

10 A. John Olson.

11 Q. By whom are you employed and in what
12 capacity?

13 A. I'm a consultant for Utilicast.

14 Q. And what do you do as a consultant for
15 Utilicast?

16 A. We do a variety of things. We do a lot of
17 work for utilities in evaluating their operations and
18 helping them out with things with their transmission
19 service distribution services.

20 Q. And did you prepare and file testimony on
21 behalf of Liberty in this case?

22 A. I did.

23 Q. And was your testimony pre-filed and marked
24 as Exhibit 9 public and 9 confidential?

25 A. It is.

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

2 A. I do not.

3 Q. If I asked you those same questions today,
4 would your answers be substantially the same?

5 A. They would.

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

8 A. They are.

9 DIANA CARTER: I would move for the
10 admission of exhibits 9, public and confidential, and
11 tender the Wilson -- excuse me, the witness for cross
12 examination.

13 JUDGE WOODRUFF: All right. Exhibits 9-P
14 and C have been offered. Any objection to their
15 receipt? Hearing none, they will be received. For
16 cross examination, beginning with Renew Missouri.

17 ALICIA GREENWALD: No questions, Your
18 Honor. Thank you.

19 JUDGE WOODRUFF: MECG.

20 TIM OPITZ: No, thank you, Judge.

21 JUDGE WOODRUFF: For staff.

22 CURT STOKES: Thank you. Curt Stokes for
23 staff.

24 EXAMINATION

25 BY CURT STOKES:

1 **Q. Mr. Olson, Utilicast entered into a**
2 **contract with Liberty utilities for this case;**
3 **correct?**

4 A. We entered into for reviewing their
5 operations, yes.

6 **Q. And --**

7 **(Silence in audio.)**

8 **Q. (By Curt Stokes:) The original consulting**
9 **services agreement, page 10, one of -- one of the**
10 **provisions is that the consultant will share draft**
11 **findings and recommendations for each area with**
12 **company team leads prior to inclusion and final draft**
13 **report; is that correct?**

14 A. That sounds correct. I don't have the
15 agreement from you, so I'll have to go by memory.

16 **Q. Okay.**

17 A. If I question it, I'll have you provide
18 them for me.

19 CURT STOKES: Okay. Permission to approach
20 the bench and the witness?

21 JUDGE WOODRUFF: You may.

22 **Q. (By Curt Stokes:) I've handed you a**
23 **document with the title consulting service agreement**
24 **addendum number one at the top; does that refresh your**
25 **recollection?**

1 A. For the addendum, yes.

2 Q. Okay. Now, the top of page 3, you agree
3 that the contract says, consultant will share draft
4 findings and recommendations for each area with
5 company team leads prior to inclusion and final draft
6 report; is that correct?

7 A. Yes, it does.

8 Q. And deliverable one is the incident
9 analysis report you just mentioned?

10 A. Incident analysis report, so.

11 Q. Yeah. So a draft of the detailed analysis
12 report to be provided for --

13 A. Yes.

14 Q. -- by company management?

15 A. Yes.

16 Q. Okay. Deliverable to was written testimony
17 and provide written testimony from the Utilicast
18 project lead with a summary of the findings of the
19 incident analysis report for inclusion in the Missouri
20 Public Service Commission rate or securitization
21 proceedings?

22 A. Yes.

23 CURT STOKES: Okay. No further questions,
24 Your Honor.

25 JUDGE WOODRUFF: Public counsel? All

1 right. Any questions from the commissioners online?
2 Okay. I do have some questions. The first question
3 is about the Utilicast report submitted in schedule
4 JO-3 of your direct testimony. On the second
5 paragraph, third sentence states -- well, it goes into
6 the discussion about the Empire working with the
7 Kansas Department of Health and Environment to obtain
8 a (inaudible) waiver. My question is, can you explain
9 what test fire means in that context and under what
10 conditions the test fire for Riverton 10 and 11?

11 THE WITNESS: I'm trying to -- I'm sorry, I
12 missed the page. I was stumbling around here.

13 JUDGE WOODRUFF: Page 20. Page 20 of the
14 Utilicast report. It's scheduled JO-3 of your direct.

15 THE WITNESS: Okay.

16 JUDGE WOODRUFF: Second paragraph, third
17 sentence. It's talking about the test fire.

18 THE WITNESS: Yes. So for -- for our --
19 our evaluation, the test fire would be that the unit
20 could be demonstrated to at least fire or have
21 combustion in it and be ready to run. Wouldn't
22 necessarily sync to the grid, but it would have the
23 fuel source going through it, spinning the (inaudible)
24 and having it ready to be synced to the grid and
25 possibly pick upload.

1 JUDGE WOODRUFF: Okay. Now, these two
2 units would normally operate on gas; correct?

3 THE WITNESS: That's our understanding,
4 yes.

5 JUDGE WOODRUFF: And would they -- were
6 they, in fact, running on gas? Before the gas supply
7 was interrupted?

8 THE WITNESS: I -- I'm trying to remember.
9 I think Riverton 10 was. I'd have to go back and look
10 at some of the analysis for 10 and 11, but Riverton 10
11 did have an issue that took it offline during the time
12 period.

13 JUDGE WOODRUFF: Yeah, I understand that.

14 THE WITNESS: But I think they were both
15 operational prior to -- if gas was available, I think
16 both of them would have been operational, but that may
17 be a better question for the -- the renew witnesses.

18 JUDGE WOODRUFF: And I think I've also seen
19 the term it was not tuned for low temperatures. Can
20 you tell me what -- what is meant by tuning in that
21 context?

22 THE WITNESS: It would be similar to like
23 your car. Trying to calibrate the -- well, at least
24 have the old -- the carburetors; right? On cars and
25 stuff, that we would tune those. So if you were on

1 natural gas, it does use a different set of combustion
2 process, and it would (inaudible) fuel and that's
3 about as technical as I can get for you.

4 JUDGE WOODRUFF: Okay.

5 THE WITNESS: But tuning would be where you
6 would ensure that that would have dependable
7 operations through all ranges on that particular type
8 of fuel source.

9 JUDGE WOODRUFF: Okay. Now, I've seen some
10 context -- it's talking about fuel oil, and you just
11 mentioned diesel. Which is it?

12 THE WITNESS: Both. It's the same.

13 JUDGE WOODRUFF: Okay. Fuel oil is diesel.

14 THE WITNESS: Yeah. It's a specific grade
15 of diesel.

16 JUDGE WOODRUFF: Okay. Now, is it possible
17 to tune for low temperatures when the temperatures are
18 not low?

19 THE WITNESS: No.

20 JUDGE WOODRUFF: So the only way you can
21 tune for below zero temperatures are when the
22 temperatures are below zero?

23 THE WITNESS: That would be my
24 understanding, yes.

25 JUDGE WOODRUFF: Okay. Can you tell me

1 which month Riverton 10 was tested in 2021 and
2 Riverton 11 in 2016?

3 THE WITNESS: I don't know if we've covered
4 2021 --

5 JUDGE WOODRUFF: I'm sorry, I misspoke.
6 The unit 10 was successfully test fire on fuel oil in
7 2020, and unit 11 was last successful test fire was in
8 2016. So it would be 2020 and 2016.

9 THE WITNESS: Okay. Those dates sound
10 correct.

11 JUDGE WOODRUFF: Do you know which months
12 they were tested?

13 THE WITNESS: I do not.

14 JUDGE WOODRUFF: I believe that's all the
15 questions I have. Any recross based on those
16 questions from the bench? I don't see any basis.
17 Moving forward. Any redirect?

18 DIANA CARTER: Yes. Thanks, Judge. I
19 would also just note most of those questions you asked
20 if you want to ask them of Dr. Mashimba tomorrow, that
21 will be his area --

22 JUDGE WOODRUFF: Okay. Thank you very
23 much.

24 DIANA CARTER: -- of expertise. Thank you.

25 EXAMINATION

1 BY DIANA CARTER:

2 Q. So Mr. Olson, you were asked about your
3 contract with Liberty consulting services agreement.
4 Do you still have that with you?

5 A. The addendum, I do, yes.

6 DIANA CARTER: May I approach, Judge?

7 JUDGE WOODRUFF: You may.

8 Q. (By Diana Carter:) You were asked about
9 the deliverables on the consulting services agreement;
10 do you remember those questions?

11 A. I do.

12 Q. Those deliverables apply to a scope of
13 services; is that correct?

14 A. That is correct.

15 Q. And what was the scope of services? What
16 were you to do?

17 A. We were to review the operations of the
18 utility -- utility during the Winter Storm Uri events.

19 Q. Were you specifically asked only to find
20 things in favor of the company? For example, as a
21 testifying witness for you to identify only those
22 things that the company did well?

23 A. No. I actually say we were probably even
24 challenged to find things more so that the company
25 wasn't doing well. That was one of the first requests

1 that came to me was, we wanted a thorough review of
2 the company's operations, finding out what we do good,
3 and what we don't do good, and where we can improve
4 based on the industry experts that we have at
5 Utilicast and their experience with others.

6 **Q. You were asked about one specific**
7 **requirement in the consulting agreement that a draft**
8 **be provided to Liberty. What was your understanding**
9 **of why a draft would be provided?**

10 A. We were -- we were willing to provide the
11 draft to Liberty to ensure that the data that we were
12 reviewing because it was a lot of -- of previous filed
13 testimony, and then also some interviews that we were
14 doing that we were capturing that information
15 correctly and presenting it correctly, so that we
16 didn't have a -- just a misstep, if you will, in how
17 we prepared the documents or how it was put together,
18 so I -- I liked that approach to make sure both
19 parties understood what the document was saying.

20 DIANA CARTER: Thank you. That's all I
21 have, Judge.

22 JUDGE WOODRUFF: And you may step down,
23 Mr. Olson.

24 DIANA CARTER: And Mr. Olson traveled in.
25 May he be finally excused?

1 JUDGE WOODRUFF: He may be excused as well.

2 DIANA CARTER: Thank you.

3 JUDGE WOODRUFF: Have safe travels.

4 Actually, takes care of the witnesses for today and
5 we -- I believe we had Mr. Runey was to be available
6 if we had time. It looks like we have time.

7 DIANA CARTER: And he is available.

8 JUDGE WOODRUFF: Okay.

9 DIANA CARTER: So we will call Shawn Runey
10 to the stand.

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

16 THE WITNESS: Yes, sir.

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

19 EXAMINATION

20 BY DIANA CARTER:

21 Q. If you'll please state your full name.

22 A. Yeah. My name is Shawn T. Runey.

23 Q. And whom are you employed and in what
24 capacity?

25 A. I'm employed by Liberty Utility Service

1 Corp as the senior manager of strategic project for
2 Liberty, central region.

3 Q. And does that include the Empire District
4 Electric Company?

5 A. Yes, it does.

6 Q. Did you prepare and have pre-filed in these
7 dockets certain testimony in question and answer form?

8 A. Yes.

9 Q. And have those been marked Exhibits 11 and
10 12?

11 A. Yes.

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

13 A. No, I do not.

14 Q. If I asked you those same questions today,
15 would your answers be substantially the same?

16 A. Yes, they would.

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

19 A. Yes.

20 DIANA CARTER: I would move for the
21 admission of Exhibits 11 and 12, and tender the
22 witness for cross examination.

23 JUDGE WOODRUFF: 11 and 12 have been
24 offered. Any objections to their receipt? Hearing
25 none, they will be received. And for cross

1 examination, again, we begin with Renew Missouri.

2 MECG? And for staff.

3 CURT STOKES: Curt Stokes for staff. I
4 have no questions.

5 JUDGE WOODRUFF: Okay. Public counsel.
6 All right. I do have some questions. Let me first
7 ask, if there's any questions from the commissioners
8 online? All right. For my questions then, why did
9 Liberty discontinue self-commitment of Asbury?

10 THE WITNESS: As I stated in my testimony,
11 give me just a moment. So in the past Asbury was
12 self-committed to satisfy conditions of our coal
13 transportation contracts which required us to receive
14 a certain amount of deliveries on an annual basis;
15 however, the practice of self-committing large units
16 especially in conditions under which they're not
17 economical is to, basically, force out less costly
18 generation that would have, otherwise, been
19 dispatched, thereby raising the cost of energy for all
20 consumers.

21 JUDGE WOODRUFF: What's the impact on the
22 (inaudible) company? Does the company lose money also
23 if they're self-committing?

24 THE WITNESS: That opportunity does exist,
25 yes.

1 JUDGE WOODRUFF: Opportunity to lose money
2 you mean?

3 THE WITNESS: Correct. Yes.

4 JUDGE WOODRUFF: Okay. So if customers --
5 if your ratepayers are losing money, you're losing
6 money as well; is that --

7 THE WITNESS: Generally, it's when, you
8 know, the market prices don't support our cost of
9 generation so we're, you know, taking a price that's
10 below our cost to create the generation.

11 JUDGE WOODRUFF: Okay. I think I
12 understand how that works, but could you explain that
13 for me?

14 THE WITNESS: I mean, yeah, for example, if
15 our -- you know, cost to generate a megawatt hour of
16 electricity is, you know, \$32 and the market price at
17 our location at that time is \$27, we -- you know, we
18 lose \$5 on every megawatt hour generated.

19 JUDGE WOODRUFF: So you might be generating
20 electricity at a cost -- selling it for less than what
21 you cost to generate it.

22 THE WITNESS: Exactly.

23 JUDGE WOODRUFF: Which costs you money as
24 well as the ratepayers. Okay. In your testimony on
25 page 4, lines 5 through 7 of your direct testimony,

1 you stated this practice, and it would be
2 self-commitment, have the potential to increase
3 customer costs if Asbury self-commitment displayed
4 other lower cost generation data actually increased
5 customer costs. Or do you know?

6 THE WITNESS: I would not be the correct
7 witness to answer that.

8 JUDGE WOODRUFF: Who would be?

9 THE WITNESS: Somebody like Witness Dole.

10 JUDGE WOODRUFF: Okay. Was a cost benefit
11 analysis conducted to assess the impact of continuing
12 with self-generation or discontinuing self-generation?

13 THE WITNESS: I'm not aware of any cost
14 benefit analysis that was done looking at the risks
15 associated with continuing self-commitment of Asbury.

16 JUDGE WOODRUFF: Okay. Again, on page 4 of
17 your testimony, you stated after discontinuing
18 self-commitment of Asbury, the units annual capacity
19 factor began to decline as the markets select units,
20 better heat rates or lower fuel costs, shorter start
21 duration, shorter minimum downtimes and faster ramp
22 rates. Now given that Asbury was not operating as
23 base load would not the declining annual capacity
24 factor be expected?

25 THE WITNESS: Sorry. Could you repeat

1 that, please? I'm not sure I --

2 JUDGE WOODRUFF: I'll try.

3 THE WITNESS: -- caught it.

4 JUDGE WOODRUFF: Since Asbury was not
5 operating as base load, would the declining annual
6 capacity factor be expected?

7 THE WITNESS: That's certainly a former
8 base load of coal plant that was no longer operating
9 as base load, yeah, would certainly have a lower
10 capacity factor.

11 JUDGE WOODRUFF: Okay. And how does
12 Asbury's discontinuance of self-commitment impact its
13 marketability relative to heat rates, fuel costs,
14 start durations, and ramp rates?

15 THE WITNESS: Right. So when you
16 self-commit a unit, you kind of put all those
17 characteristics of a generating unit that influence
18 how it plays in the market, and you just set those
19 aside, and you just say, we're going to generate. So
20 when we stop doing that and we say that we are going
21 to go strictly on market signals, then we have to
22 compete with other units. You know, if a unit has a
23 lower heat rate, you know, all things being equal,
24 it's going to be more efficient at generating
25 electricity, and it's going to -- it's going to win

1 out in a market situation. You know, some of the
2 things about, you know, minimum downtimes, minimum
3 commitment times, make a unit less agile in the
4 market. So you might commit to the market in a
5 condition where the unit can make money, and then be
6 required to stay on for a longer period of time
7 through your -- through your minimum commitment time,
8 and maybe those conditions that were supportive of
9 your operations in the beginning don't exist towards
10 the end of your run. So generally units with, you
11 know, better heat rates and units that are more agile
12 in today's marketplace they just play better.

13 JUDGE WOODRUFF: Now, let me clarify
14 something. Just make sure that I correctly understand
15 the -- the self-commitment process.

16 THE WITNESS: Uh-huh.

17 JUDGE WOODRUFF: When you self-commit
18 something, your coal fire unit -- for example, you're
19 saying we're going to run this no matter what, and
20 we're going to take whatever the market price would
21 be.

22 THE WITNESS: That's correct.

23 JUDGE WOODRUFF: So -- and that's why the
24 market price might be lower than what your actual cost
25 to generate electricity is.

1 THE WITNESS: That's correct.

2 JUDGE WOODRUFF: I have to write this all
3 into an order, so I just want to make sure I have it
4 right. Okay. Did Asbury's self-commitment
5 discontinuance make it less cost effective?

6 THE WITNESS: I would say that, yes,
7 generally, it's lower -- it's lower generation
8 volumes, you know, because you do have a large fixed
9 cost component at the Asbury plant associated with --
10 you know, one thing you have at a solid fuel plant is
11 a large staff. You know, those costs have fewer units
12 of production to be spread over. And, so, yes, the
13 unit does become, you know, less cost effective on a
14 per unit basis.

15 JUDGE WOODRUFF: Just, in general, what
16 kind of units would be more cost effective under those
17 kinds of situations?

18 THE WITNESS: Well, I mean, renewable
19 energy not having, you know, a fuel cost component.
20 Obviously, we have a number of natural gas units that,
21 you know, from an employee count standpoint, you know,
22 our -- you know, they don't have that higher fixed
23 cost burden. You know, natural gas has in recent
24 years been a cheaper fuel on -- on per unit of heat
25 input than coal was, then on top of that, you take,

1 you, know a coal unit with a heat rate between 10 and
2 11,000 BTUs per kilowatt hour, and you put it against
3 a combined cycle unit that has, you know, 7,800, BTU
4 per kilowatt hours heat rate, you know, just all those
5 conditions are just in favor of those other units with
6 respect to coal.

7 JUDGE WOODRUFF: Now, comparing to just
8 coal units, how competitive was Asbury with other coal
9 fire units?

10 THE WITNESS: It was -- it was actually the
11 least efficient coal unit in Empire's fleet.

12 JUDGE WOODRUFF: How many other coal fire
13 units are in Empire's fleets?

14 THE WITNESS: We have -- we are part owners
15 of three other coal units. So the I-10 units one and
16 two up in Kansas City area, and then Plumb Point down
17 in Arkansas. All those facilities are newer than
18 Asbury. There's some economies of scale with those
19 plants being much larger. Asbury being only 200
20 megawatts, and each of those being over 600, so, you
21 know, three times the size, in the case of I-10, you
22 have -- you know, I talked about employee count. You
23 have the same group of employees operating two units,
24 so there's some efficiency there. So there's just a
25 lot of -- a lot of savings opportunity for larger coal

1 units that just aren't there anymore for smaller coal
2 unit of Asbury's age.

3 JUDGE WOODRUFF: What about comparison to
4 other coal units, if they're not owned by Empire
5 but -- or in SPP?

6 THE WITNESS: Not familiar with the heat
7 rates of, you know, every single unit in the SPP,
8 but --

9 JUDGE WOODRUFF: Is that something that's
10 confidential, that you wouldn't even necessary --

11 THE WITNESS: No. No. I think there's
12 heat rate data that's been filed in my testimony, but
13 what I would say is, you know, consistent with my last
14 statement that based on its age and its, you know,
15 relatively small size, that it would be -- in my
16 opinion, it would be among the lower ranks in terms of
17 coal plant heat rate efficiency in -- in the SPP.

18 JUDGE WOODRUFF: Okay. You rate efficiency
19 as the basis for -- for (inaudible) into SPP.

20 THE WITNESS: It's a factor. I mean,
21 the -- you know, your heat rate is your conversion
22 factor, right, for fuel to electric energy, so, you
23 know, it plays a factor in what your fuel cost is in
24 per unit of production.

25 JUDGE WOODRUFF: Uh-huh. Okay. That's all

1 the questions I have then. Any recross based on those
2 questions from the bench? Public counsel?

3 NATHAN WILLIAMS: Thank you, Judge. Nathan
4 Williams.

5 EXAMINATION

6 BY NATHAN WILLIAMS:

7 Q. Mr. Runey, you recall questions asking you
8 about self-commitment and Asbury and the impacts on
9 Empire?

10 A. Yes, I recall.

11 Q. Are those impacts to Liberty and Liberty's
12 customers the same?

13 A. In what respect.

14 Q. Aren't Liberty's shareholders insulated by
15 the fuel and purchase -- fuel adjustment clause?

16 A. There is a -- a cost sharing in the -- in
17 the fuel adjustment mechanism, yes.

18 Q. So if Asbury were less efficient in terms
19 of it was a higher cost than marketed it at some point
20 in time, shareholders would -- let's make it be
21 insulated for a 95 percent of that; correct?

22 A. Correct.

23 Q. The efficiency or the difference between
24 market and cost to generate varies over time
25 throughout the year; correct?

1 A. Yeah. That's correct.

2 Q. So what might be costly on a window less
3 than a year period of time might be cost effective
4 over an annual period?

5 A. I would agree theoretically, yeah, that's
6 possible.

7 Q. And you agree that Asbury had value for its
8 reliability as a resource of energy?

9 A. Yes. Asbury had some values in energy
10 resource.

11 Q. Well, with having onsite fuel, was it more
12 reliable for having energy than, say, a wind resource?

13 A. There are -- yes. There are certainly
14 reliability benefits to having a coal stock or fuel
15 stockpile on site.

16 Q. That's my point. Thank you.

17 JUDGE WOODRUFF: Redirect?

18 DIANA CARTER: Yes. Thank you, Judge.

19 EXAMINATION

20 BY DIANA CARTER:

21 Q. You pointed to Aaron Dole as the person who
22 would be most knowledgeable on the self-commitment
23 issues; is that correct?

24 A. Yes.

25 Q. Are you familiar that the commission had a

1 docket open to investigate the self-commitment issues?

2 A. Yes. I was aware of that.

3 Q. And did Empire participate in that docket?

4 A. I do not know that.

5 Q. The negative financial impact that you were
6 asked about by Judge Woodruff and Mr. Williams, am I
7 correct that the financial impact would be smaller to
8 the company because of the FAC, but more significant
9 on the customer than, the potential negative impact --

10 A. Yes.

11 Q. -- of self-committing?

12 A. Yes.

13 Q. And did the company take steps to minimize
14 that impact on customers?

15 A. Well, we -- we ended the practice of
16 self-commitment that took -- you know, I think it's in
17 my testimony we went through the efforts of, you know,
18 renegotiating coal contracts and coal transportation
19 contracts to make sure that we could operate in a way
20 that, you know, our customers were -- we were seeing
21 positive economic benefits from Asbury when it
22 operated and that those flowed to our customers.

23 Q. You said on your testimony, I believe, in
24 response to a question from Judge Woodruff that other
25 facilities besides Asbury just play better. What do

1 **you mean by that?**

2 A. Yeah. I mean, it's a competitive
3 marketplace. There are a number of unit
4 characteristics that influence how a unit performs in
5 the market, which units, you know, maybe get committed
6 more often, maybe -- maybe they have better margins,
7 but generally, what we've seen is, you know, the --
8 the classic base load coal unit, just -- it doesn't --
9 it doesn't work the same way it used to. Markets are
10 different. I mean, this is -- this is really a
11 marketplace for -- for more agile units.

12 **Q. And does continuing to operate a plant that**
13 **doesn't play well, does that lead to higher customer**
14 **costs?**

15 A. It certainly can. And, you know, we did
16 take measures that are also detailed in my testimony,
17 boiler tuning which helped us unlock, you know, some
18 faster ramp rates on the turbine. We really took a
19 close look at what we needed to do with start-up and
20 shut-down procedures so that we could reduce our
21 minimum commitment time so that we could reduce our
22 minimum downtime to try and make that unit, you
23 know -- it would enable us to operate in more than
24 just the conditions that we used to operate under, you
25 know, during significant portions of the year. We

1 could -- there was still times we could operate the
2 way we used to, more of a base load type. You know,
3 back in the mid-2010s, you know, we used to have very
4 long continuous generation runs that Asbury would run
5 200 days, you know. Your continuous runs were much,
6 much shorter, kind of post 2017. You know, I think
7 maybe, you know, 45 days, something like that, and
8 then rather than have the unit sit idle, in those
9 months where that type of operation was not supported,
10 you know, we took the measures we took, you know, new
11 standard operating procedures and training for
12 operators, boiler tuning, all those things to unlock
13 some of the agility that was available in that unit.

14 **Q. Ultimately, though, the decision was still**
15 **then made to retire Asbury?**

16 A. Yeah. That's correct. I mean, despite our
17 efforts, you know, the units capacity factor continued
18 to decline, we did have a record number of starts in
19 the last few years of operation, so we did have some
20 success with the measures we took, but ultimately, you
21 know, those measures were not enough to return Asbury
22 to economic viability.

23 DIANA CARTER: Thank you. That's all I
24 have.

25 JUDGE WOODRUFF: All right. And then

1 Mr. Runey, you can step down.

2 DIANA CARTER: And Mr. Dole is here, if you
3 want to ask him the questions on self-commitment.

4 JUDGE WOODRUFF: Not necessary.

5 DIANA CARTER: Thank you.

6 JUDGE WOODRUFF: Okay. I believe that's
7 the last witness, then, for today. We'll resume at
8 8:30 tomorrow. Anything anybody else wants to bring
9 up while we -- before we adjourn? We're adjourned
10 until tomorrow.

11 (Audio ended.)

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AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

A				
AAO 57:20	acknowledged 131:24	addressed 25:25 30:22	132:9	133:25 134:4
92:16 153:14	acknowledging 33:10 58:19	98:5	adopted 40:13	136:4 140:10
Aaron 25:2	119:12	addressing 13:9	75:9 93:2	140:21 143:12
99:10 100:20	acquire 42:9	69:9,10	129:17	149:24 151:16
180:21	acquiring 22:20	adds 91:9	adopting 124:1	152:1,7,12,20
ability 66:11	acted 21:3,10	adequacy 77:1	124:2 129:25	153:2 162:2
114:24 185:14	acting 128:21	111:22 112:2,16	adopts 23:1	180:5,7
able 14:25 19:17	actions 22:12	115:12 116:1	advantage 20:14	agreed 57:18
20:13 24:25	24:18,20,24	119:7,8,10,13	advice 65:8,11	135:9,21 155:9
67:25 68:10	31:11 33:10	119:16	66:21	agreement 28:21 31:10
113:4 115:21	44:15 72:6	adequate 112:19	advise 65:13	102:20 103:3
126:23 142:3	active 66:18	adequately 111:24	advised 64:21	103:8 104:13
144:14 150:17	activities 27:12	ADIT 58:4,5,8,8	65:2,6	135:23 161:9
abnormal 24:15	92:12	58:9,13,17	advisor 32:10	161:15,23
above-mentio... 185:7	actual 48:21	59:3,3,6,9,9,11	64:22,24	167:3,9 168:7
absence 49:18	49:2 76:8	59:14,15 142:7	65:2,6,13,15	agrees 30:9
56:19	106:11 108:18	142:8,19,23	66:4,9 67:1	61:21,25 63:4
absent 27:6	138:14 142:6	adjourn 184:9	advisors 32:13	73:7,22 78:14
accept 87:17	175:24	adjourned 184:9	67:15 83:3	ahead 13:21
access 58:5,8	Adam 32:16	adjusted 67:24	advocacy 41:13	15:13,21 18:15
accommodate 113:4	add 133:7	adjustment 37:1	advocate 153:3	82:10 86:19
account 35:5	added 16:18	49:21 50:20	advocated 78:6	95:20 126:11
accounted 55:16	17:11 67:22	50:21 53:12	154:4	127:4,15
accounts 59:2	addendum 104:5,14,22	54:5,22,23	advocates 41:12	128:15
151:1	161:24 162:1	55:9 58:4	affairs 122:25	aid 125:8
accreditation 115:15,22	167:5	70:19 71:7	affirm 82:16	aimed 46:4
accredited 116:3,10	adding 114:4	148:10 179:15	100:10 122:9	66:20
accumulated 58:9	addition 32:1	179:17	159:1 169:13	aims 45:19
accumulation 154:18	42:20 54:16	adjustments 61:20,22	affordable 44:2	air 77:3,9 91:14
accurate 133:3	64:14	administrative 99:4	afternoon 106:23,24	91:16,18
140:25 143:13	additional 16:13	admissibility 85:18	129:14,15	AL 12:8
143:23 185:12	17:10 20:6	admission 101:18 160:10	144:25 145:1	Alicia 14:18,18
accurately 143:13	38:23 50:17	170:21	AFUDC 92:18	41:9,10 45:7,11
achieve 48:18	63:8 107:10,14	admit 26:21	92:25	101:25 129:5
achieved 48:17	107:25 123:17	93:8 126:12	age 178:2,14	160:17
acknowledge 133:18	123:22 125:1	128:15	agency 119:3	allege 108:25
	126:18 133:10	admitted 90:13	agile 175:3,11	alleged 23:23
	additions 92:18	126:16	182:11	allocate 39:14
	92:20	adopt 40:23	agility 183:13	131:20 134:5
	address 24:9		ago 23:11 146:15	allocated 37:24
	28:14 36:24		agree 26:4	38:1,14,19
	46:13 53:15		50:18 55:1,3	39:19 40:1
	132:3		59:6,8,11 63:7	67:24 132:16
			78:24 92:24	134:20 144:15
			106:4 132:6,8	allocating 38:16
				134:9

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

allocation 36:21 37:10,22 38:18 40:5,7 40:17,25 68:1 68:1,3,8,15,16 69:3 130:7 132:7,10 134:16 150:5	55:12 80:11 110:1,9 113:2 132:22 149:1,2 149:15 151:20 154:20 155:11 171:14	96:15 108:20 109:21 123:7 134:23 137:7 140:15 170:7 173:7	38:8 61:10 132:23 138:13	argue 20:20 86:6 90:24
allocator 68:8	amounts 37:14 38:15 49:23 56:23 58:13 60:1 64:1,4,7 71:12 77:18 134:20 142:23 147:21 155:3,4 155:9	answered 64:16 156:14	applies 26:24 apply 27:2 48:5 136:3 167:12	arguing 80:11
allow 57:23 64:4,11,12 77:7 95:13 128:6,8 128:10 139:9,9 155:12	analyses 112:23 analysis 29:7,11 30:1 55:4 72:10,15 74:25 103:18 107:8 110:19 111:10 112:1 114:3,7 115:14 121:11 128:1 162:9,10,11,19 164:10 173:11 173:14	answering 46:4 answers 46:10 47:18 49:10 83:20,23 101:11,13 124:16,18 160:4,6 170:15 170:17	appreciate 69:9 appreciated 56:23 76:17 approach 76:8 88:15,21,22 102:23 104:8 149:9 161:19 167:6 168:18	argument 78:23 81:7,8 85:16 89:21
allowed 27:19 52:10 56:17 59:22 61:8 64:14 74:10 81:20 92:6,14 120:22 148:19 149:15 151:21 154:22	and/or 12:17 93:8	anticipated 77:6	appropriate 28:10 33:18 34:5 38:11 50:16 54:17 55:20,22 57:12 61:18 62:2 95:13 97:14 113:13	arguments 32:24 91:8
allowing 20:10 51:20 80:12	announced 14:22	anybody 113:6 184:8	appropriately 39:20	Arkansas 177:17
allows 19:22 27:24 43:5 51:9,12 128:9	annual 38:9 50:10 132:22 132:23 142:22 171:14 173:18 173:23 174:5 180:4	anymore 143:14 178:1	approval 37:16 approve 50:1 57:3	ARO 145:4,6,12
alternative 15:1 19:21 151:19	annualization 50:7	AOO 158:16	approved 146:10,17 149:10 155:2 155:11	arrangements 107:1
alternatives 79:10	annualized 38:9	Apologies 119:1 140:5	approval 37:16 approve 50:1 57:3	arrive 46:23 56:12 61:25 89:25
Amanda 57:17 61:1	announced 14:22	apologize 29:23 67:21 86:16 88:20 99:13 140:3	approval 37:16 approve 50:1 57:3	arrives 56:18
amended 92:1 93:9	annualized 38:9	appeal 69:16 69:22	approval 37:16 approve 50:1 57:3	arriving 96:3 98:2
American 118:21	announced 14:22	appear 29:5 99:18	approval 37:16 approve 50:1 57:3	artfully 74:13
amortization 92:22	announced 14:22	appearance 14:2	approval 37:16 approve 50:1 57:3	asbestos 59:23
amortized 49:23 91:22	announced 14:22	appeared 87:9 87:15	approval 37:16 approve 50:1 57:3	Asbury 21:2,5 21:18 22:5,17 22:23,24 23:19,24,25 24:2,3,6,13 28:12 31:8 33:19,24 34:4 34:6 39:1,8,10 41:18,22,25 42:7,13,15,21 43:9 44:24 45:24 46:22 55:3 56:16,23 57:3,14 58:1 58:20 59:18 60:22 61:3,4 61:9,10,12,25 62:5 63:14,16 68:10,12,14,17 68:20,22,25 70:13,15,18,19 71:2,3,3 72:6 72:9 73:19 74:1,4,19 76:1 76:11,16,17,19
amount 19:25 27:1,15 28:22 29:3 30:6 37:19 39:4 42:14 46:23 49:15 50:18 53:16,25	announced 14:22	appearing 14:11 19:1 45:14 83:4	approval 37:16 approve 50:1 57:3	
	announced 14:22	appears 92:3	approval 37:16 approve 50:1 57:3	
	announced 14:22	application 41:24 43:2 44:5,18 76:1	approval 37:16 approve 50:1 57:3	
	announced 14:22	applications 42:9 91:16	approval 37:16 approve 50:1 57:3	
	announced 14:22	applied 37:1,5	approval 37:16 approve 50:1 57:3	

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

76:24 77:4,5 77:14,15,17,22 77:22,24,25 78:2,7,10 79:3 79:18,21 80:24 81:11,14 105:12,19 106:2,4,8,12 107:1,4 108:11 108:15,19 110:3,20,25 111:12,16 113:13 114:4,8 129:22 129:23 131:14 136:15 145:5 158:16 171:9,11 173:3,15,18,22 174:4 176:9 177:8,18,19 179:8,18 180:7 180:9 181:21 181:25 183:4 183:15,21 Asbury's 22:2 72:16 113:13,17 174:12 176:4 178:2 ascribe 77:21 aside 174:19 asked 95:1,24 97:9 101:10 144:9 155:22 156:7 160:3 166:19 167:2,8 167:19 168:6 170:14 181:6 185:6 asking 15:14 29:2,6 37:11 50:14 52:1 53:8,9 54:21 60:15 73:5 86:18 99:16 126:17 140:16 179:7 asks 30:7 47:3 60:12,13,13	64:20 96:10 assert 75:4 77:20 asserting 34:23 79:25 assertion 42:25 asserts 43:3 assess 173:11 assessment 117:16 asset 32:9 59:22 60:7 60:22 107:15 130:8 145:7 assets 28:12 assignment 87:22 assist 85:22 associated 39:1 47:5 51:7 59:17 63:9,15 64:11 65:19 69:24 70:1 92:7,12 136:17 173:15 176:9 assume 105:7 109:24 assumes 138:1 assuming 61:15 126:10 assumption 138:15 assumptions 56:9 63:20 65:10 assure 126:4 attached 135:3 attempt 154:1 attempting 108:24 148:11 attending 18:6 attention 40:25 attorney 32:16 66:15 84:17 84:20 86:6,14 88:6 97:8 127:17	attractive 113:23 atypical 26:12 26:17 audio 12:5 99:23 103:1 104:11 138:9 161:7 184:11 authority 42:5 43:21 112:15,15 112:21 119:24 120:1,3,4 authorize 31:6 46:24 authorized 25:10 37:20 53:19 92:10 authorizes 27:3 authorizing 46:19 automatically 51:14,18 90:15 available 26:11 52:7 80:8 99:18 121:9,18 121:19 164:15 169:5,7 183:13 average 25:16 25:22 36:18 48:3 56:1 57:5 58:3 61:19 62:1 75:21 76:6 92:25 144:1 146:4,9 147:2,10 averages 36:20 avoid 20:2 27:17 49:25 53:4 152:23 153:5 avoided 75:6 avoiding 62:22 66:20 70:1 aware 20:5 26:14 110:17,18 111:9 138:21 139:1,5,8	147:5 148:5 154:3,7 173:13 181:2 <hr/> B B 24:10 BA 119:10,23 back 16:1 32:9 34:5,9 52:19 56:2 62:6 71:7 82:8,10 85:15 99:17 150:14 158:12 164:9 183:3 background 36:12 42:6 bad 119:1 balance 24:6 59:9 70:7 77:8 91:22 98:10,14 140:17,18,23 balances 58:8 balancing 112:15,21 119:23 120:1,3 120:4 ballpark 108:9 banc 90:7 base 27:1,5 58:17 87:25 91:23 92:23 110:10,12 149:10 173:23 174:5,8,9 182:8 183:2 based 31:4 38:12,21 40:11 41:24 50:2,7 50:19 51:21 54:8,23,25 55:9,24 57:8 60:19,23 63:12,19 68:22,24 70:7 72:9 74:25 75:18,20	76:14 80:8 84:22 105:22 107:6,7 113:18 118:11 127:20 131:20 134:17 138:15 139:2 141:10 147:14 151:7 154:20 166:15 168:4 178:14 179:1 bases 59:23 basically 38:3 39:24 40:9 79:23 80:13 121:17 171:17 basing 47:22 basis 39:2 40:4 44:14 47:23 56:24 67:24 69:2 70:12,19 71:6 76:9 85:3 85:8 138:16 138:24 158:19 166:16 171:14 176:14 178:19 bear 25:15 40:19 73:21 80:3 beat 62:9,10 74:17 beating 76:7 began 173:19 beginning 106:7 118:12 142:21 160:16 175:9 begins 39:25 92:9 behalf 14:8,12 14:15,19 19:23 41:11 45:15 83:4 84:13 87:6,15 133:11 153:25 159:21 belief 83:24 101:15 124:19 160:7 170:18
---	---	---	---	--

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

<p>believe 14:20 16:11,23,25 31:9 35:2,15 42:3 57:14 60:4 61:2 70:12 79:17 82:12 91:15 93:14 104:2 108:23 109:22 114:6 115:25 117:12 118:3,5 118:6 119:4,11 119:21 122:5 125:13 130:10 131:5 132:13,19 133:6,15 135:7 138:25 140:3 140:25 143:23 145:19 146:8 147:14 150:5 151:15 156:2 166:14 169:5 181:23 184:6</p> <p>believes 41:20 42:25 44:20 60:17,22 61:17 64:25 138:4,4</p> <p>bench 22:8 88:15 94:14,19 102:24 104:9 109:17 118:12 151:8 161:20 166:16 179:2</p> <p>beneficial 78:16</p> <p>benefit 21:17 29:11 35:7 48:7,8,19,20 48:22 54:22 63:11,21 64:9 69:24 72:11 120:20 173:10 173:14</p> <p>benefits 19:22 21:19 28:25 29:22 30:1,2 30:4,6,7,9 31:3,18,19</p>	<p>34:15 37:18 47:8 49:2 54:3 56:13 62:13,14 67:8 68:14,17 69:10 73:9 180:14 181:21</p> <p>benefitted 54:4</p> <p>best 18:22 21:10 23:20 69:4 83:24 86:21 101:14 124:19 152:14 160:7 170:18 185:13</p> <p>better 41:12 153:15,17 164:17 173:20 175:11,12 181:25 182:6</p> <p>beyond 34:16 35:3 45:6 80:5 95:10</p> <p>bi-annually 112:22 113:6</p> <p>Big 46:18</p> <p>biggest 58:3</p> <p>bill 73:3</p> <p>billion 76:19</p> <p>bills 37:3 77:15</p> <p>binding 88:12</p> <p>bit 19:18 36:12 49:13 86:2 136:13 148:10</p> <p>black 146:23</p> <p>blowing 116:8</p> <p>blue 97:14</p> <p>boiler 182:17 183:12</p> <p>Boland 60:3,6</p> <p>Boland's 150:25</p> <p>bond 30:20 31:21 48:18 63:6 65:22 66:25 72:20 78:15 132:23 141:8 143:14</p>	<p>143:22</p> <p>bonds 17:5,6 19:25 25:21 47:21 57:4 61:15 64:12 65:9 67:7,9,12 67:20 73:2 75:23 141:4,18 141:19 150:5</p> <p>book 57:13,19 57:24</p> <p>bottom 80:20 110:5</p> <p>box 146:23</p> <p>Brad 75:9</p> <p>break 82:7,8 126:9 158:11</p> <p>breaks 31:7</p> <p>Brian 13:20 20:23</p> <p>brief 41:19 57:16</p> <p>briefly 38:4 84:7 118:16 151:9</p> <p>briefs 90:10</p> <p>bring 15:12 32:7 32:21 68:11 150:19 158:14 184:8</p> <p>bringing 37:8</p> <p>broad 42:4 43:20 67:18 78:18 89:23 96:3</p> <p>Brooke 75:8</p> <p>brought 22:12 32:4,23 90:10 149:13</p> <p>Brydon 18:20</p> <p>BTU 177:3</p> <p>BTUs 177:2</p> <p>buffer 47:23</p> <p>building 80:18</p> <p>built 136:24</p> <p>burden 25:5 68:13 176:23</p> <p>burned 108:11</p>	<p>108:12,15</p> <p>business 14:5 18:22 67:23 83:5</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 55:18 160:14</p> <p>calculate 58:4 142:18</p> <p>calculated 38:6 144:5</p> <p>calculates 57:21</p> <p>calculating 61:13</p> <p>calculation 57:18 59:6 60:7 115:22 116:3,19,25 139:12,22 140:10,22 142:7,7,8 155:23</p> <p>calculations 30:3 65:10 135:19 147:8</p> <p>calibrate 164:23</p> <p>call 82:14 113:2 113:4 117:1 122:7 132:3 158:24 169:9</p> <p>called 17:25 112:22 114:14</p> <p>calling 156:15</p> <p>Calls 136:19</p> <p>camera 15:6,7</p> <p>cap 104:2,4,19 104:23</p> <p>capability 117:2</p> <p>capable 54:9</p> <p>capacity 83:1 107:8 113:9 115:11,17 116:3 116:10 117:4,6 117:17,23 118:1 121:7,8,16,17</p>	<p>122:22 159:12 169:24 173:18 173:23 174:6 174:10 183:17</p> <p>capital 25:16,22 48:3 56:2 57:5 58:3 61:19 62:1 75:19 92:8,18 92:20,25 99:2,3 144:1 146:5,9,18 147:2,11 151:1</p> <p>capricious 73:12</p> <p>capturing 168:14</p> <p>car 164:23</p> <p>carburetors 164:24</p> <p>care 68:9 126:15 169:4</p> <p>carefully 20:8</p> <p>carries 153:13</p> <p>carry 30:15</p> <p>carrying 24:7,9 28:5,5,11,15,17 50:1,16 55:20 55:22 56:2 61:8,13 75:18 75:25 77:21 92:7,15,17 117:1 153:14</p> <p>cars 164:24</p> <p>Carter 14:3,3 18:17,18 33:21 34:18,21,25 35:4,11 36:2 99:12 100:16 100:18 101:17 121:24 122:2 158:23 159:8 160:9 166:18 166:24 167:1,6 167:8 168:20 168:24 169:2 169:7,9,20</p>
---	---	---	---	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

170:20 180:18 180:20 183:23 184:2,5 case 12:9 15:14 18:8,24 20:20 21:18 22:7 23:2 25:11,14 26:18 35:1 36:25 38:6,12 40:21 41:16,20 43:14 51:16,24 53:24 56:22 57:6 59:19 60:9,10 63:3 70:21,22 72:25 73:12 78:4,7,17 79:11 81:22 85:20 87:20 90:20 90:25 91:4 95:23,23,25 96:6 97:1,24 98:17,18,24 105:3,6,6 109:9 110:13 123:6 124:4 126:6 127:7 129:23,25 131:8,10,14 134:1,8,25 135:4,11,20,22 139:18 141:2 143:25 145:24 146:2,6,10,14 146:18 147:4 147:13 149:16 149:19 150:14 151:17 154:17 159:21 161:2 177:21 185:8 cases 13:23 36:22 43:24 57:7 63:7 72:13,18 86:8 94:4,9 95:6 95:21 98:5 109:6,7,8,9,11	109:13 123:7 131:17 154:3 cash 142:22 catastrophic 66:21 caught 174:3 cause 15:23 26:2 69:16 caused 83:8 123:4 CCN 42:9 109:9 CCR 59:24 185:19 cell 13:14 143:4 143:16,18 144:4,6 central 100:24 170:2 century 45:21 certain 19:23 20:20 58:22 83:9 97:10 110:1 117:19 123:5 137:5 138:15 170:7 171:14 certainly 20:5 35:11,15 85:16 91:7 96:20 126:25 138:20 174:7,9 180:13 182:15 certainty 108:10 CERTIFICATE 185:1 certificates 22:22 certification 48:15,24 49:1 Certified 185:3 185:4 certify 67:5 185:6,11 certifying 48:16 chairman 17:20 17:22,24 19:5 23:11 33:15,22	41:2 47:11 69:7 83:2 94:18 challenge 109:12 challenged 151:16 167:24 chance 23:7 128:19 changed 76:3 116:24 131:11 changes 40:8 83:16 101:7 123:13 124:11 160:1 170:12 changing 148:7 characteristics 174:17 182:4 charge 28:12 35:14 37:11,12 37:23 38:21 39:7,18,18 40:9 87:21 92:17 134:17 134:19 136:18 137:4 154:20 charges 24:8 28:5,5,17 34:14 37:24 40:1,8 55:13 65:19 67:11 141:15 Charlotte 28:14 58:6 122:5,7 122:20 cheaper 43:18 176:24 check 117:5 130:13 133:15 158:6 chief 83:2 choice 53:1 chose 77:23 134:15 circumstances 37:6,8 64:3 112:25 citation 90:7	cite 91:8 139:15 cited 138:2 City 19:2 32:17 177:16 claiming 73:21 clarify 50:3 66:3,18 136:12 138:5 175:13 clarifying 142:11 class 36:24 37:6 38:5,20 40:6,12,20 68:6,7 132:16 132:24 134:10 134:17,22,24 135:4,10,20,21 136:5 137:6,15 144:9,10,13,14 classes 37:2,25 38:2,17 39:3 40:2,4,5,17 68:2 130:21 130:22,25 131:1,11,15,20 132:12 133:13 134:6,9,21 144:16 classic 182:8 classifications 133:22 clause 49:22 50:21 104:24 148:10 149:6,7 151:14 179:15 clean 41:13,15 cleaner 43:18 44:8 clear 16:9 23:4 24:11 26:16 33:2 clearly 15:22 22:6 clicked 13:21 82:9 clock 59:16 close 67:22 144:6 182:19	closely 134:12 closer 50:5 60:6 closure 41:17 44:23 105:23 coal 21:2,2 23:6 23:17 29:12 42:18 43:9,15 43:17 44:7 59:23 61:5,6 61:6 68:23 74:20 80:14 80:20 106:8,9 106:10,12 107:1,6,9,12,15 107:16,18,19 107:20,22,25 108:7,7,11,12 108:15 109:23 109:24 110:2,2 110:5,8 171:12 174:8 175:18 176:25 177:1,6 177:8,8,11,12 177:15,25 178:1,4,17 180:14 181:18 181:18 182:8 Coleman 18:12 18:12 23:12 35:20 collaborate 149:24 collaborative 119:15 collect 39:19 40:4 52:10 collected 39:17 142:23 154:20 155:5,9 collecting 150:5 150:9 combined 62:14,15 177:3 combustion 42:18 59:23 163:21 165:1
---	--	--	---	--

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

<p>come 62:15 82:8 94:13 127:10 153:6 158:12 comes 50:23 coming 20:24 65:8 117:12 150:13 commercial 36:8 66:12 commission 12:6 19:6 21:9 21:19 22:20 23:1,10,14 24:2 25:9 27:8 29:3,6,9 30:18 31:5 32:25 33:25 35:9,13 36:6 36:23 37:1 39:14 40:23 41:10 42:3 43:20,24 44:18 45:14,16 45:18,20 46:9 46:12,19,23 47:15 48:17,25 49:8 50:25 51:2,8,10,20 52:1 53:24 54:13,20,20 54:21 55:3,4,7 55:7 57:2,15 62:18 64:15,19 64:20,25 65:5,13 66:1,3 66:17,22 67:2 67:4,6,14 70:12,17 72:1,5 73:11 74:1,10 77:7,21 78:3,6 78:17,18 80:4 80:7,12 86:21 87:10 88:25 90:5,6 91:10 91:21 92:1,10 93:7 96:24</p>	<p>97:17 98:8 103:20 117:8 123:19 128:3 135:25 138:13 140:11,22 149:10 150:8 150:20 151:24 154:8 155:1,7 155:8,11 157:7 162:20 180:25 commission's 30:14 36:15 46:1,14 49:4,6 50:14 52:7 55:14 71:10 73:13 92:1 93:9 98:1 123:17 128:22 commissioned 64:21,23 65:1 65:15 66:4 commissioner 13:1,5 17:14,17 17:25 18:9,12 35:19,22 71:20 119:18 Commissione... 23:12 commissioners 17:13,16 41:3 45:3,10 71:17 82:4 94:14 109:18 145:17 163:1 171:7 commissions 48:14 commit 175:4 commitment 175:3,7 182:21 committed 44:5 182:5 committee 119:17 committing 29:10 common 97:13 commonly</p>	<p>97:16 98:5 communicate 13:16 communicati... 102:13 company 12:8 13:24 14:4 17:4 18:21 21:3 24:18 25:14 25:20 28:16 30:23 37:15 38:3,5,13,20 39:9 40:24 42:6,12 80:1 83:5 87:21 95:6,14 97:3 101:1 103:10 104:5 107:3,7 107:10,14 110:4 113:22 130:8 134:15 135:9 141:2,7 148:14 148:18 149:1,5 153:23,24 155:12 156:19 161:12 162:5,14 167:20,22,24 170:4 171:22 171:22 181:8,13 company's 17:1 17:3 24:17,20 25:16,21 38:2 38:7 39:21 40:16,21 44:11 44:17 91:23 132:17 136:3 149:14 156:23 157:10,25 168:2 comparative 110:21 111:12 compare 29:8 compared 38:6 46:7 comparing 25:20 177:7 comparison</p>	<p>29:1,11,14,19 31:18 53:22 56:7 147:16 178:3 compensated 74:9 77:13 compete 174:22 competent 23:25 31:4 competitive 177:8 182:2 complaint 130:20 complete 114:3 114:6 completed 146:14 completely 29:8 90:14 complex 116:25 compliance 19:12 21:8 33:11 79:14,19 79:22 comply 42:18 component 176:9,19 Compound 136:7 Concentric 83:3 concern 17:5,6 62:23 concerned 69:15 96:2 concerns 100:6 conclude 40:15 conclusion 63:22,23 156:15 conclusions 24:25 condense 86:2 condition 66:6 66:17 175:5 conditioned</p>	<p>22:24 conditions 65:25 67:12 67:13 70:9 163:10 171:12 171:16 175:8 177:5 182:24 conduct 102:10 conducted 42:11 173:11 conducting 147:16 conferred 43:19 confidence 116:5 confidential 101:4,5,19 159:24 160:10 178:10 confirm 87:13 125:21,24 127:2 128:19 confirmation 126:14 confluence 112:17 confusing 113:17 connect 81:15 cons 47:15 consequences 55:11,15 consider 30:16 47:15 53:13 54:6 123:22 139:13,22 considerable 111:17,20 consideration 47:19 considered 12:20 53:17 110:9 111:21 114:11,13 115:6 155:4 consistent 39:22 51:7 67:11 68:18,20</p>
---	--	--	---	--

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

70:20 132:9 178:13 consistently 72:14 consolidated 13:25 62:25 63:6,6 69:21 70:10 112:20 consolidation 70:2 consolidations 131:16 constitute 185:12 constitutes 96:18 construction 118:1,4 consultant 103:9 159:13 159:14 161:10 162:3 consultants 103:24 consulted 32:15 consulting 102:19 103:2 104:13,23 105:7 161:8,23 167:3,9 168:7 consume 107:6 consumers 14:16 36:7 98:11 171:20 contain 133:12 contained 83:20 124:15 148:16 150:6 contemplate 79:7 contemplated 43:11 contested 69:17 context 133:25 163:9 164:21 165:10 continue 40:19	106:25 132:1 continued 74:12 183:17 continues 92:13 continuing 173:11,15 182:12 continuous 183:4,5 contract 102:16 106:11,14 108:3 161:2 162:3 167:3 contracts 61:6 107:6 171:13 181:18,19 contrast 40:3 contributes 44:14 control 77:3,9 convenience 22:22 conversation 70:8 conversion 178:21 Cooper 14:3 18:19 82:13,22 84:1 85:12 86:14,16,17,23 89:5,6 90:17 90:18,19 94:21 94:21,24 95:12,17 96:24 97:11,11 97:20,23,24 99:5,13 122:6 122:6,15,16,18 124:21 125:14 126:7,8 127:7 128:12 136:7 136:19 139:24 139:24 155:17 155:18,20 158:5 coordinator 119:10	copy 29:23 89:8,13 141:23 141:23 core 45:19 Corp 100:23 122:24 170:1 corporate 32:8 corporation 27:10 118:22 119:2 correct 33:4 34:18 83:23 87:11 88:4,6 89:1,2 92:8 92:20,24 93:1 93:17 95:3,4 96:4,5 101:14 102:14,15,17,18 102:21 103:4,5 103:11,14,21,22 104:6,14,15,18 104:20,21 105:3,12,24 105:25 106:3 106:6 107:17 107:19 109:4 110:14 115:3,9 124:18 125:19 129:19 130:1,2 130:8 131:11,15 131:21 132:4,5 132:12,18,24 132:25 133:5 133:8 134:13 134:14,17 135:2 136:18 136:25 137:6 137:16,19,24 138:21 139:14 140:9 141:4,9 141:15 142:19 142:24,25 143:5,6,8,10,11 143:22 144:2 144:3 146:5,12 146:16,25 148:8,12,13	149:20 150:12 151:24,25 155:5,10 156:3 156:20,21 157:2 160:6 161:3,13,14 162:6 164:2 166:10 167:13 167:14 170:17 172:3 173:6 175:22 176:1 179:21,22,25 180:1,23 181:7 183:16 corrected 133:21 corrections 129:17 correctly 58:4 168:15,15 175:14 cost 19:25 20:17,22 21:1 22:2 24:5,6 25:7,16,21,22 25:25 26:5 26:22 27:11 28:15 29:7,9 29:15 31:12,20 36:21 37:10 37:22 38:9,10 38:18 39:1,5,6 39:13,16,16,19 40:11,16,17,20 40:25 48:3 50:11,16,16,18 51:1,7,11,13 52:2 54:6 55:6,23 56:1 56:2 57:5 58:3 61:9,19 62:1 64:13 67:23 70:1,1 72:15 74:16,23 75:14,19,25 76:4,5,9 77:21 79:17 80:11,13	87:25 88:2 98:25 108:6,7 110:19,21 111:12 111:17 130:7 132:6,10 134:9 134:15,22,24 135:4,10,20 136:5 137:15 144:1,13 145:3 145:4 146:4,9 146:18 147:2 147:10 148:23 153:13,14,22 171:19 172:8,10 172:15,20,21 173:4,10,13 175:24 176:5 176:9,13,16,19 176:23 178:23 179:16,19,24 180:3 costly 43:17 44:8 171:17 180:2 costs 20:3,10 20:20 21:11 22:3,25 23:8 24:9,14,16,19 24:21 25:1,9 25:10,13,15,18 25:20,24 26:11,13,16,18 26:19,25 27:5 27:14,17,20 27:25 28:1,7,7 28:8,20,22 28:23,25 29:3 31:21 34:6,8 35:6 37:9,18 38:1 38:19 39:16 40:20 41:21 42:22 44:23 45:24 46:22 47:4,5 48:4 49:21,25 50:1 51:19,21,22
---	--	---	---	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

52:4,11,14,16 53:7,8,12,18 53:23 55:20 55:22 56:4,16 58:2,21 60:14 60:17 61:8,12 61:13 62:12,20 62:22 63:8,9 68:14,16 70:15 70:25 71:5 72:7 73:16,17 73:22,24 75:2 75:5,12,16,18 76:1 78:9,11 79:14 80:1,3,8 80:9,22 81:19 81:22 90:16 91:22 92:7,15 98:14 111:11 134:5 136:17 138:14 145:9 145:12,12 147:9,17 148:12,16,18 149:1 151:13 152:3,15,17,24 153:5,20,21 153:24 154:6 156:9 172:23 173:3,5,20 174:13 176:11 182:14 counsel 14:10 14:12 18:19 26:21 29:2 32:12 43:2 52:14 55:8 61:23 66:5,9 66:10 67:15 71:24 72:2,4 72:13 73:7,20 74:11 75:3,7,13 75:17,19 76:2 76:11 77:11,19 78:8,13 93:19 93:21 95:2 96:13 106:18	110:17 120:11 131:25 144:20 154:12,14 155:22 162:25 171:5 179:2 counsel's 16:17 23:2 109:22 counseled 32:12 count 87:17 176:21 177:22 country 43:16 couple 113:17 156:8 course 29:24 49:7 72:12 90:1 92:9 148:4 court 14:23 15:3 15:10 16:2 49:8 51:15,17 51:19 88:9,12 89:12 90:23 91:4,7 97:1,10 98:21 128:21 138:22 139:6 185:3,8 courts 139:1 covered 166:3 CRA 114:2 create 52:12,24 52:24 172:10 created 145:24 creates 19:22 credit 58:4,5 credited 115:17 criteria 81:12 112:1 113:1 criticism 131:25 criticisms 133:18 cross 84:3 87:1 93:19 101:20 101:23 124:23 129:3,8 160:11 160:16 170:22 170:25	CSR 185:19 CTE-15 123:19 126:12 CTE-2 140:8 CTE-3 147:7,7 CTE-4 123:18 126:12 CTE-5 130:10,16 current 59:4 70:7 92:19 130:22 131:19 137:2 143:13 143:13 148:16 currently 55:11 136:24 Curt 14:8,8 45:13,14 69:14 69:18 70:14 71:22 79:4,9 79:15,20 80:2 80:10 81:8,16 81:18,21 82:5 84:6,9,12,12 84:16,22 87:5 87:5,8 88:14 88:18,18,19,24 89:9,15,19 90:4,11 91:13 93:4,7,17 96:9 96:9 97:5,5 102:5,5,7,23 103:2 104:8,12 106:15 118:16 118:19 120:6,9 127:13,16,19 137:13 138:5,8 138:10 140:2,7 142:14,17 144:18 151:9,9 151:12 154:11 156:13 160:22 160:22,25 161:8,19,22 162:23 171:3,3 curtailment 36:11 customary 19:21	25:19 29:5,19 46:7 47:2,9 54:4 56:15 62:3 customer 20:3 22:21 26:3 37:25 38:2 40:2 42:7 44:12 68:2,6,7 109:8 130:21 130:22,25 131:11,15 134:10 137:6 153:15 173:3,5 181:9 182:13 customer's 20:18 39:11 customers 17:7 19:11,24 20:1 20:12 21:10,17 21:20 23:21 25:6 28:3 29:15 31:22 33:8,13 34:15 35:7 36:8,21 40:14,19 42:13 44:22 54:3 58:5,13 61:4 63:11 64:10,17 68:5 72:11,21 73:9,15,21 74:6,14,21,22 75:4,10 76:4 76:21 77:2,12 80:3 106:5 114:5 120:20 120:21 134:5 137:5 141:11 142:23 152:25 153:25 154:1 172:4 179:12 181:14,20,22 cycle 177:3	D-15 143:17 144:4 data 37:2 115:21 115:21 116:3 135:9 147:2 168:11 173:4 178:12 date 58:20 60:24 62:19 62:21,22 75:22 103:7 105:12,19 130:3 185:24 dated 102:20 103:3 dates 166:9 David 75:20 77:20 Davis 47:17 49:12 56:10 62:12 69:19 days 18:5 32:19 183:5,7 deal 30:17 45:22 48:12 49:4,9 79:11 dealing 27:14 30:25 79:10 dealt 81:22 Dean 14:3 18:19 82:13,22 84:1 85:12 86:14,16 86:23 89:5,5 90:18,19 94:21 94:21,24 95:12,17 96:24 97:11 97:20,23,24 99:5,13 122:6 122:6,15,15,18 124:21 125:14 126:7,8 127:7 128:12 136:7 136:19 139:24 139:24 155:17 155:17,20 158:5
--	---	---	---	--

D

D 50:15
D-13 143:4

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

debt 48:4 50:2 50:4,6,8,11,12 50:16 55:25 56:7,11 61:17 75:21 138:12 138:16	declining 173:23 174:5	delivery 106:10	designated 64:23 65:5,12 65:15 66:4 119:2,4	158:23 159:8 160:9 166:18 166:24 167:1,6 167:8 168:20 168:24 169:2 169:7,9,20 170:20 180:18 180:20 183:23 184:2,5
December 60:24 61:3,5 61:16 77:17 104:6,17 106:5 107:2,16	Decorsy's 124:6	demand 39:2,7 39:18 74:14 134:19 136:18 137:4	designed 27:9 28:3	desire 90:24
decide 35:9 47:1 55:19 62:8 73:13 78:6 86:21 151:23	dedicated 113:9	demonstrated 60:21	desinee 67:1	despite 43:2 183:16
decided 37:4,8 86:4	deducting 98:13	demonstrates 22:16 24:19 44:5	designing 39:15	dictated 138:23
decides 39:14	deduction 75:15	demonstrative 52:8	desire 90:24	diesel 165:11,13 165:15
deciding 45:21 46:3 47:7 49:9 73:8 139:8	deemed 22:6 23:9 110:6 148:23 149:11	denied 23:8	despite 43:2 183:16	difference 36:10 55:6 56:24 57:20 59:2,3 140:14 179:23
decision 21:17 23:18,20,24 46:14 51:15 55:2,14 68:10 68:11 86:4 89:11,12 90:5 90:9 91:7,10 92:4 97:2 98:7,23 107:7 107:10 110:4 149:12,15 150:11,20 157:5,13 158:1 183:14	default 115:23	denying 20:22 41:24	detailed 21:23 30:12 162:11 182:16	dictated 138:23
decision-mak... 110:20,24 111:11,15	defer 49:20 52:1 92:10,10 92:14 128:17	Department 163:7	determination 31:2 35:16 78:20	differences 108:14
decisions 21:17 22:10 32:25 33:1 44:17 51:6,8 68:19 113:22	deferral 92:19 92:21	dependable 165:6	determine 28:22 29:3 35:13 40:16 85:23 112:24 121:11 132:11,16 132:21	different 29:18 48:3,4,4 88:21 107:8 108:12 117:14 119:13 123:25 132:7 134:10 147:12 147:17,22 148:3,4,5 154:4 157:2 165:1 182:10
decline 173:19 183:18	deferred 25:9 52:6 58:10 59:17,18 92:6	depended 116:17	determined 34:8 149:3	differently 19:24 27:25
	define 96:21 153:10	dependent 39:11	determines 96:25 112:16 113:1	difficult 85:13
	definition 22:2 24:4 25:24 26:9 28:4,23 28:24 96:7	depending 66:25 137:6	determining 40:11	dire 84:6 127:14
	definitions 28:6 28:8	depends 114:12 115:13,19	detrimental 40:13	direct 17:3 38:3 40:22,24 60:10 86:18 102:8 105:15 123:2,5,9 124:2,3,7,8 129:16,21 130:1,11,11,12 130:16 131:22 131:23 132:11 133:1,2,4 134:13 137:20 139:12,17,18 144:16 147:15
	degrees 54:16	deprecation 60:25 92:6	developed 132:20	
	delay 69:16,21 69:24 70:2,3	depreciation 92:14	developing 134:1	
	delaying 75:25	depression 60:22	development 44:1	
	deliver 107:1	describe 24:17	Diana 14:3,3 18:17,18 33:21 34:18,21,25 35:4,11 36:2 99:12 100:16 100:18 101:17 121:24 122:2	
	deliverable 162:8,16	described 73:1 74:17		
	deliverables 103:15 167:9 167:12	design 37:10,23 38:19 40:12 40:22 132:4,7 134:16,24		
	delivered 108:7	designate 64:21 65:1		
	deliveries 107:11 107:14,25 171:14			

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

163:4,14 172:25 directed 89:6 directive 112:18 directly 65:17 94:1,5 120:20 157:3 director 25:2 100:23 122:24 dirty 44:7 disagree 22:11 56:6 75:17 disagrees 59:13 59:14,16 75:17 disallow 74:2 80:4 disallowance 26:22 54:25 disallowances 26:19 disallowed 20:21 disallowing 51:21 76:10 disasters 51:7,9 discontinuance 174:12 176:5 discontinue 171:9 discontinuing 173:12,17 discount 55:20 56:5,11 61:24 63:13,13,14 discounting 58:25 discounts 58:7 discretion 35:15 42:4 43:20 49:4,9 51:20 73:13 78:18 89:24 96:3 98:1 discuss 22:15 33:19 35:2 137:19,23 142:18	discussed 98:21 discussing 41:17 128:25 discussion 19:7 163:6 dispatch 114:17 114:18 dispatchable 74:18 80:14 113:14,18,19,20 114:11,14,15 115:6 dispatched 72:17 171:19 display 99:22 displayed 173:3 disproportion... 40:19 dispute 26:6 28:19 disputed 39:9 72:14 disputing 80:10 disrupt 15:17,19 15:19 disruption 15:23 dissuade 23:16 distinction 18:24 38:15 distribution 102:12 159:19 District 12:7 13:23 14:4 18:21 83:5 95:6,22 100:25 170:3 diverse 67:18 114:15 diverted 107:21 107:23 divide 72:22,24 dividing 52:3 docket 22:21 181:1,3 dockets 30:2	42:25 170:7 document 88:24 89:3 102:22 104:7 104:13 105:2,4 161:23 168:19 documentation 60:3,10 documents 60:4 168:17 doing 14:4 18:22 65:2 78:19 107:5 150:21 167:25 168:14 174:20 Dole 25:2 99:11 99:14 101:20 102:8 106:23 118:20 121:25 122:2 173:9 180:21 184:2 Doll 100:20 dollar 34:19 47:12 148:25 dollars 19:11 31:23 33:9 34:24 39:10 42:17 46:20 79:23 door 51:12 doubled 79:23 doubling 77:24 downtime 182:22 downtimes 173:21 175:2 downward 115:8 Dr 76:24 77:7 108:16 135:13 135:14 166:20 draft 103:9,11 161:10,12 162:3,5,11 168:7,9,11 drafting 32:15 drastic 66:20	drawn 157:13 158:3 drive 46:11 DRs 135:14 dry-runs 117:16 dual 54:9,11,17 due 12:14 37:2 37:2 42:14 58:5 73:17,18 149:8 158:11 duplicative 62:22 70:1 duration 173:21 durations 174:14 duty 14:25 <hr/> E <hr/> E-30 143:18 144:6 earlier 47:12 55:21 57:10 62:23 78:13 118:20 137:14 144:8 147:3 earliest 105:11 105:18 early 41:22 42:7 42:13 43:8,15 58:14 78:3 110:25 111:16 earn 98:12,15 earth 110:3 economic 51:5 108:1 181:21 183:22 economical 44:1 45:6 114:5 171:17 economically 22:18 23:17 economics 23:6 68:23,23 113:21 economies 177:18 education	85:25 effect 24:13 26:2 36:14 78:5 131:2 146:14 150:4,4 151:21 154:23 effective 60:23 117:1 131:5 176:5,13,16 180:3 effectively 27:16 58:7 effectiveness 27:11 efficiency 27:10 177:24 178:17 178:18 179:23 efficient 69:1 174:24 177:11 179:18 efforts 181:17 183:17 eight 37:21 40:1 67:21 either 145:11 ELCC 117:2,11 electric 12:7 13:23 14:4 18:21 27:9 32:12 36:21 83:5 95:6,22 95:23 101:1 145:21 170:4 178:22 electric-gene... 43:6 electrical 74:7 74:13 77:1,15 electricity 72:17 74:14 172:16 172:20 174:25 175:25 elements 20:25 26:6 44:13 eligible 148:21 elimination 62:15
---	---	---	--	--

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

embraces 86:3	38:14,21 40:4	EO-2022-0193	37:3 47:4	106:21 118:18
Emery 122:20	41:13,15 42:1	12:9 14:1 123:6	145:2,3	120:14 122:17
Emory 28:14	42:23 43:18	EPA's 42:18	estimates 60:12	124:23 129:3
58:6 122:5,7	44:1,8 55:6	equal 37:5	60:12,13,15	129:12 137:12
127:16 129:14	60:14 61:4	92:17 142:22	estimating	144:23 151:11
130:11 136:15	67:24 68:1,8	174:23	145:11	154:15 155:19
136:23 137:14	70:15 74:7,15	equally 37:1	ET 12:8	159:7 160:12
138:2 144:25	74:23 76:5,5	equation 58:16	EV 68:5 130:24	160:16,24
Emory's 126:11	77:1 83:3	59:1 79:7	131:3,4 133:7,9	166:25 169:19
127:24 140:1	100:23 114:15	equity 74:11	145:20,20	170:22 171:1
emphasize	115:7 118:5,23	ER 93:10	evaluate 78:15	179:5 180:19
23:14 63:25	118:24 121:2	ER-2014-0351	evaluating 65:9	examining 16:7
emphasizes	171:19 176:19	36:22	107:3 159:17	example 70:5
57:22	178:22 180:8	ER-2016-0023	evaluation	111:21 167:20
Empire 12:7	180:9,12	36:23	163:19	172:14 175:18
13:23 14:4	England 18:20	ER-2019-0374	evening 67:22	Excel 141:23
16:12 18:21,24	ensure 51:4	36:25 78:4	event 28:2	excess 36:18
36:14 83:5	111:23 112:19	92:2 146:11	52:13 108:25	107:22
92:6,10,14,17	115:4 165:6	ER-2021-0312	121:2,10 152:3	excited 20:13
95:5,22	168:11	135:21 136:1	152:8 153:23	33:5,14
100:25 136:24	ensures 54:2	ER-2021-0322	154:2 157:4	exclude 89:24
163:6 170:3	entail 54:1	151:18	events 24:17	excluded 25:11
178:4 179:9	entered 102:16	ER-2021-0332	26:12,17 27:15	25:13 149:16
181:3	104:5,17 161:1	51:25	28:19 29:13	exclusion
Empire's 36:18	161:4	error 29:10	36:11 74:10	98:24
36:21,22,25	entire 68:6	especially 48:9	167:18	excuse 22:13
177:11,13	entitled 51:18	110:2 171:16	eventually	27:21 31:17
employed	73:14,23	essential 65:3	58:14	160:11
82:25 100:21	78:25 89:21	65:16	everybody	excused 99:16
100:22 122:21	90:16 91:7	essentially	15:24 45:16	99:20 122:3,4
122:23 159:11	entity 141:18	116:6 145:9	147:20	168:25 169:1
169:23,25	entries 14:1	establish 33:1	evidence 24:1	executive 83:2
employee	environment	85:4 127:25	28:10 31:5	exhibit 52:8
176:21 177:22	44:3 48:9	134:2	38:12 70:18	83:13,20 84:2
employees	163:7	established	84:2 85:23	84:4 86:25
177:23	environmental	88:5 97:8	124:22 126:13	87:12 88:16,21
enable 182:23	23:7 42:16,17	establishes	exact 47:20	89:7,9 91:25
enabling 32:15	44:13 74:3	85:17 86:9	55:12	93:8,12,13
encourage	79:14,19,22	90:20,22	exactly 43:10	102:9 124:7,9
22:14 31:25	91:18	establishing	147:19 150:22	125:2,8 126:10
62:18	envision 76:13	28:11	172:22	127:5,9,24,24
ended 181:15	envisioning	estimate 47:21	examination	128:11,12,16,17
184:11	150:7	48:21 138:14	82:21 84:3,15	128:25 139:19
energy 14:16	EO 148:17	143:13 152:14	87:1,7 93:19	140:4 142:13
20:5 22:3	EO-2022-0040	152:15,18,19	93:22 94:23	159:24
23:15 25:2	12:9 13:24	estimated	100:17 101:20	exhibits 15:10,11
28:6,23 36:7	124:4	29:15 30:4	101:24 102:6	101:18,21

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

123:10 124:15 124:22 126:23 127:4,8,12 128:21 160:10 160:13 170:9 170:21 exist 171:24 175:9 existence 90:20 131:1 expectation 112:22 116:19 expected 31:3 31:19 34:14 57:4 72:11 173:24 174:6 expecting 48:10 expended 23:8 34:6 expenditures 89:22,24 92:8 expense 56:3 60:23,25 64:13 92:7,15 99:4,4 expenses 19:23 21:15 52:23 75:16 92:11 96:19,21,22 96:22 98:25 138:15 experience 32:7 86:7 168:5 expert 22:13 47:17 49:11 85:18,24 86:9 134:22 137:15 144:13 expertise 32:3 85:25 166:24 experts 24:23 31:25 32:4 62:16 168:4 explain 67:25 75:10 95:14	110:23 111:14 112:6 114:19 144:14 163:8 172:12 explaining 65:7 explains 74:12 75:14 76:2,25 77:12 explanation 96:17 explicitly 66:14 extend 108:2 extensive 42:15 extent 37:17 47:16 48:6 57:2 85:3,8 90:24 96:10 extenuating 37:6 extra 15:11 126:23 extraordinary 24:16,19 25:9 25:24 26:2,11 26:17 27:14 27:20,24 28:1 28:7,24 49:20 51:11,13 52:4,11 52:13,13,15,23 56:4 73:15,17 73:24 96:22 148:23 149:2 149:11 151:17 151:24 152:5 152:10,17,22 152:24 153:4 153:5,23 155:5,10 156:9 157:11,11 158:2 158:2 extreme 24:15 25:3 26:3 36:11 108:24 112:24 152:3,8 157:23 extremely 157:16	F	98:15 127:3 fall 28:22,24 107:4 familiar 22:8 88:8,20 98:18 108:18 109:10 178:6 180:25 family 18:5,9 far 13:12 70:4 113:1 farm 115:5,20 115:24 116:2 farms 22:20,23 23:24 76:18 80:23 81:25 115:6 117:3,4 120:18,23,24 fashion 79:12 faster 173:21 182:18 favor 54:1 143:16 167:20 177:5 features 27:9 February 75:22 149:8 154:18 federal 119:2 feel 147:21 fees 62:16 FERK 119:4 fewer 176:11 field 97:15 Fifth 60:22 figure 31:20 38:14 62:11,11 157:25 figures 98:7 133:1 figuring 31:21 file 13:24 16:11 20:19 67:2 92:2 93:9 103:11 131:4 159:20 filed 15:12 16:10 16:24 25:11 38:24 42:8	50:19 60:10 61:21 68:21,24 114:7 117:6 123:19 124:4 125:12 129:18 130:3 131:14 133:11,11 135:5 147:15 149:6 149:19 168:12 178:12 files 156:19 filing 51:25 52:6 116:17 117:7 123:1 149:7 151:18 157:3 fin 113:8 final 161:12 162:5 finally 42:3 44:16 60:16,16 61:7 67:13 168:25 finance 20:17 31:7 32:9 46:20 138:14 financed 19:24 24:5 financial 21:16 25:5 32:13 43:5 47:4 64:22,23 65:2,6,12,15 66:4,9 67:1,14 181:5,7 financing 19:11 19:20,21 24:11 25:17,19 26:4 26:10 29:2,20 30:14,19,21,22 31:6 33:9 35:5 38:24 47:5 62:12 63:8,9 138:16 149:24 150:6,8 find 14:24 55:5 64:15 67:19
--	---	----------	--	--

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

71:10 78:9 98:2 158:19 167:19,24 finding 33:23 33:25 34:3,10 41:20 42:4 43:21 44:14 44:22 49:5 71:9 168:2 findings 24:25 36:16 37:15 103:9,18 161:11 162:4,18 finds 24:3 50:25 fine 13:11,11,17 151:4 fire 163:9,10,17 163:19,20 166:6,7 175:18 177:9,12 fire-generating 23:18 firmly 51:17 first 17:12 18:7 19:5,22 20:19 22:1,3,10,13 24:8 28:21 30:16 32:6 33:20 35:1 42:6 43:14 45:17 46:5,18 46:25 49:5 50:25 52:1,19 62:7 64:16,25 65:3 66:3 69:9 71:9 82:11 84:10 104:24 115:12 116:14,16 128:14 134:1 138:11 145:18 150:21 163:2 167:25 171:6 fit 64:12 81:12 five 32:19 34:13 53:10 63:17	63:22 77:5 80:5,15,16 fixed 39:5 176:8 176:22 fleet 177:11 fleets 177:13 flexibility 21:16 98:1 floor 30:6 35:12 flow 25:7 52:5 148:23 155:12 flowed 181:22 flows 63:24 157:6 flush 49:12 focus 76:3 98:5 focusing 81:10 folks 32:2 follow 21:25 113:7 follow-up 19:17 110:12 followed 59:13 following 42:8 76:7 78:22 139:25 157:3 follows 46:25 134:12 footnotes 84:25 85:1 force 171:17 forceful 17:2 forecast 113:3 foregoing 62:25 185:11 forewarned 158:20 forgive 78:23 Fork 118:4 form 83:10 86:1 123:7 149:24 170:7 former 174:7 forms 85:8 forth 90:12 149:13 Fortson 75:10	forward 30:23 32:23 47:10 49:1,2 111:25 130:8 166:17 found 22:25 42:12 43:24 44:18 48:20 51:2 70:16 108:1 154:8 foundation 85:6 89:10 97:7 127:21 four 47:6 72:13 80:16 101:4 fourth 60:16 67:13 frankly 50:11 52:25 free 70:6 frequently 48:15 Friday 32:22 67:22 70:8 front 98:17 fuel 25:1 26:8 26:13,15,25 27:5,11,24 39:16,16 49:20,21 50:21 51:5 54:9,10,11,15 54:17,19 75:2 75:12,16 76:8 78:11 81:2 102:11 148:10 148:15 149:6,7 152:3 153:19 153:21 154:5 156:9 163:23 165:2,8,10,13 166:6 173:20 174:13 176:10 176:19,24 178:22,23 179:15,15,17 180:11,14 fulfill 14:25	full 50:18 56:1,1 61:18 63:3 73:16 100:19 128:6 159:9 169:21 fully 77:13 118:6 fundamental 46:5,11,25 52:19 64:8,16 funds 29:17 further 40:18 75:24 76:25 93:4 94:11 95:14 99:15 106:15 109:15 120:9 144:18 145:14 154:11 158:6 162:23 185:11 furthering 44:6 future 44:21 53:5 55:16 57:6 70:5 79:11 145:9,10 152:20 153:3	179:24 generated 81:5 106:5 120:19 172:18 generating 172:19 174:17 174:24 generation 76:12,15 102:11 114:3,6 136:24 171:18 172:9,10 173:4 176:7 183:4 getting 15:9 36:13 61:24 67:20 97:6 110:5 147:18 give 56:19 73:5 78:3 82:17 100:11 111:2 122:10 142:4 158:5,15 159:2 169:13 171:11 given 21:24 48:7 61:9 85:13 121:18 121:20 173:22 GLEN 17:17 go 13:21 15:12,21 18:15 29:6 30:19 31:23 34:5,9 47:9 48:25 65:10 82:10 85:15 86:19 95:20 110:25 112:9 126:11 127:4,15 128:14 138:10 143:3 148:21 158:13 161:15 164:9 174:21 goal 23:23 goes 13:13 45:6 50:13 52:17,18 56:2 66:25 71:7 98:14 163:5
--	---	---	--	--

G

gas 54:10 81:4
95:23 164:2,6
164:6,15 165:1
176:20,23
gathered 37:22
general 119:22
176:15
general-maki...
43:21
generally 36:7
46:25 61:21
116:11 117:19
119:13 172:7
175:10 176:7
182:7
generate 42:5
57:6 72:17,25
73:12 74:15
172:15,21
174:19 175:25

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

<p>going 16:1,2 30:20 45:17 48:19 49:2,14 49:14 52:5,5 52:11,20,24 56:12 65:6,11 68:2 69:1 80:13 85:12 86:2,18 91:24 93:19 95:8,10 97:3 107:22 110:11 128:16 131:20 155:5 163:23 174:19 174:20,24,25 174:25 175:19 175:20 Goldman 32:9 good 18:17 36:5 41:9 81:10 106:23,24 129:14,15 144:25 145:1 168:2,3 gotten 150:14 grab 116:6,7,9 grade 165:14 grandfathered 115:5 grant 94:10 granted 17:10 42:9 great 45:22 49:4,9 51:20 Greenwald 14:18,18 41:9 41:10 45:7,11 101:25 129:5 160:17 grid 163:22,24 ground 39:11 106:9 107:15 110:8 group 14:16 32:9 36:7 41:13 67:17 116:1 177:23</p>	<p>guess 33:22 85:15 89:6 90:25 91:2 97:1 98:1 134:16 138:1 139:25 guidance 22:19 guided 46:14 guidelines 105:12,20,22 112:18 guides 148:22</p> <hr/> <p style="text-align: center;">H</p> <p>half 50:7 77:16 Hall 75:4 124:2 130:1 133:2 135:17,24 Hall's 124:8 130:12,17 135:18 hand 61:5 82:16 91:24 100:9 122:9 159:1 169:12 handed 91:24 161:22 handle 15:10 126:21 happen 19:13 20:4 30:20 33:13 78:16 135:12 happened 70:23 81:3,4 99:25 happy 41:1 44:25 harmony 139:7 he'll 18:4 head 32:8 137:8 heads 53:1 Health 163:7 healthy 15:24 hear 16:20 20:19 32:24 heard 16:14 17:9</p>	<p>91:1,6 96:20 150:16 hearing 13:22 13:25 15:17,20 17:20 18:1 19:6 45:18,22 60:8 63:2 72:19 93:13 101:23 126:24 128:18 160:15 170:24 hearings 42:20 heat 173:20 174:13,23 175:11 176:24 177:1,4 178:6 178:12,17,21 held 51:19 185:8 help 20:7,18 32:7 47:17 helped 182:17 helpful 16:3 56:8 helping 159:18 helps 20:2 49:25 Hey 35:21 high 36:9 52:16 116:8 152:22 higher 36:19 53:13,18 75:25 152:16 153:3 176:22 179:19 182:13 history 19:4 33:2 36:20 44:4 hit 54:14 71:1 hold 127:1 holding 97:10 Holsman 13:1,1 13:4,5,7 17:14 17:15 35:21,22 41:4 71:18,20 home 99:17 Honor 16:23 82:13 84:1,6 84:23 85:12</p>	<p>86:23 87:3,5 88:14,21 89:5 89:16 90:4,18 93:5 94:21 99:6,13 104:9 106:16 118:14 118:17 122:15 124:21 125:16 126:7 127:7,13 127:19 129:1,6 138:6 144:19 155:17 156:13 158:5,7 160:18 162:24 hope 126:25 hopefully 15:23 49:10 Hopson's 53:1 host 112:25 hour 39:18 87:23 103:23 104:2 172:15 172:18 177:2 hourly 87:21 104:3 hours 67:23 104:4,20,23 105:5,7 177:4 housekeeping 13:12 hundred 141:20 Hunton 32:12,14 32:16 hypothetical 29:8</p> <hr/> <p style="text-align: center;">I</p> <p>I-10 177:15,21 ice 27:18 ID 86:8 idea 16:1 42:7 51:17 58:13 67:17 68:13 identification 83:14 123:11 124:8,9 identified</p>	<p>123:18 151:17 identify 16:4,8 17:13 68:3 84:11 167:21 idle 183:8 ignored 58:15 ignoring 58:25 Illinois 185:5 illustration 70:24 imagine 153:15 imbalance 37:11 immediate 141:20 immediately 72:20 141:20 149:6 impact 20:11 23:7 74:25 80:21 157:23 157:23 171:21 173:11 174:12 181:5,7,9,14 impacts 26:3 72:16 73:3 78:7 179:8,11 implements 33:2 implications 97:14 implicit 89:20 97:2 implied 97:10 important 18:1,8 19:22 20:15 50:19 53:12,16 67:3 90:11,13 impose 119:6 impoundment 59:24 improper 42:1 85:6 128:8 improve 27:10 168:3 improving 44:3 imprudence 20:21 21:7</p>
--	--	--	---	--

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

26:20 27:7 41:24 43:1 108:25 imprudent 75:1 impute 138:14 in-depth 24:23 in-diverse 114:16 in-house 18:18 inaudible 12:15 13:23 35:23 68:9 78:20 100:19,21 101:3,3 115:8 144:17 158:18 163:8,23 165:2 171:22 178:19 185:14 incentive 157:15 incentives 27:10 52:12 65:23 incentivized 51:5 152:2,8 152:21 153:3 157:10 incentivizing 27:16 incident 103:18 162:8,10,19 inclined 91:6 include 12:15,16 24:5 27:8 68:5 86:8 88:1 89:24 100:25 114:7 170:3 185:14 included 25:23 28:8 30:13 36:17 59:18,19 61:10 86:11 130:24 155:24 includes 35:5 130:7 154:18 including 26:15 27:22 92:22 95:22	inclusion 91:21 98:24 103:11 103:19 161:12 162:5,19 inclusive 28:4 income 55:8 58:10,16,16,25 75:15 inconsistent 66:2,6 incorporated 27:1 incorrectly 91:1 increase 36:14 37:5 73:1,2,5 173:2 increased 173:4 increases 20:2 incremental 92:11 incurred 19:23 23:1 24:21 26:1 58:12 62:21 80:9 88:1 92:11 153:22,24 incurring 24:18 independent 80:19 102:10 indicated 15:20 17:14 55:21 67:17 78:13 138:20 indicates 155:8 individual 134:21 industrial 36:8 36:18 39:3,3 40:13,18 industry 86:7 168:4 inefficient 23:17 43:17 inflated 80:1 inflation 20:7 37:7 inflows 142:22	influence 174:17 182:4 inform 18:2 informal 150:18 information 80:8 101:14 124:19 160:7 168:14 170:18 informed 21:5 infrastructure 81:15 initial 22:21 68:21 initially 37:24 59:21 69:18 input 38:23 67:18 148:5 176:25 inputs 148:6 inquire 100:15 122:14 159:6 169:18 insertion 89:21 inside 119:19 insufficient 43:1 insulated 179:14 179:21 integrated 42:11 54:13 intend 15:18 18:6 158:18 intended 138:12 138:13,25 intending 21:13 158:15 intent 127:1 128:1 135:18 137:19,24 138:23 139:2 inter 93:2 interconnecti... 80:22 interest 21:10 23:20 31:15 41:23 43:23 43:25 44:6,15 44:25 45:5	47:19,20,24 48:4,7,10,17 57:3 60:14 62:24 63:1 64:11 65:16 70:4 72:22 98:11 151:1 153:12,16,18 interested 52:8 interpret 128:3 128:5 139:2 interpreted 139:7 interprets 88:12 interrupted 54:10 164:7 intervene 52:14 interviews 168:13 introduce 19:3 introduced 42:6 invested 79:18 investigate 181:1 investment 73:17,18,25 74:3 76:11,15 76:17,18,23 77:3,6,9,14,22 77:25 78:2,10 79:24 97:4 98:7 99:2,3 investments 41:25 42:1 44:21 79:21 98:13 investors 98:11 involve 91:16 involved 35:6 65:21 67:16 91:15,17 94:1 95:5,21 112:12 involvement 66:19 95:14 involving 51:8 IRP 54:13 111:18 111:19 115:14	irrelevant 85:5 127:21 128:10 irrevocable 65:20 irrevocably 65:19 ISO 119:20 issuance 17:5 29:16 49:6 65:22 66:19 66:21,25 141:3 141:9 issue 16:11,14,14 16:18,24 17:11 24:10 28:15 30:9 37:20,21 38:18,25 39:13,25,25 45:5 46:13,18 47:6 49:14 52:2,2 53:4 53:16 54:2 55:15 56:14 59:9 63:17,22 63:23 64:19 64:20 65:8,11 65:25 66:1 67:21 69:11 79:13 85:23 110:13 113:11 114:23 150:25 151:2 164:11 issued 15:14 23:12 30:21 31:6 38:25 61:15 62:24 65:9 75:23 149:25 issues 36:13 37:13,13 42:2 42:24 45:6 45:22 47:2 54:24 55:19 63:2 69:16,17 78:17 113:17 132:4 133:20 150:8 151:2
--	--	---	--	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

180:23 181:1	86:24 87:4	158:11,23,25	Katrina 32:8	108:20,21
it'll 34:23	88:17,23	159:5 160:13	143:15	109:5 116:13
item 28:18	89:13,17 90:8	160:19,20,21	keep 13:15 18:9	116:15,16 117:9
items 24:4	90:17 91:5	161:21 162:25	23:5 51:23	117:21 125:20
25:23 64:13	93:6,11,18	163:13,16 164:1	67:2	144:12 146:20
133:23	94:6,10,13,18	164:5,13,18	keeping 21:5	147:20 151:3
	95:8,11,12,15	165:4,9,13,16	81:10 114:8,8	166:3,11 172:8
J	96:14 97:18	165:20,25	kept 80:23	172:9,15,16,17
J 82:24 100:20	99:7,10,20,21	166:5,11,14,18	key 44:16 65:6	173:5 174:22
185:3,19	99:24 100:3,5	166:22 167:6	65:11	174:23 175:1,2
James 32:20	100:8,14,16	167:7 168:21	kilowatt 39:2,18	175:11 176:8,10
44:9	101:21 102:2,3	168:22 169:1,3	134:17,19	176:11,13,19,21
January 61:6,7	102:4,25	169:8,11,17	177:2,4	176:21,22,23
77:10 106:7	104:10 106:17	170:23 171:5	Kim 60:3	177:1,3,4,21,22
130:4 135:22	109:17,21	171:21 172:1,4	150:24	178:7,13,14,21
147:15	110:11,15 111:4	172:11,19,23	kind 18:7 38:15	178:23 181:4
JASON 13:1,4,7	111:8 112:3,6,9	173:8,10,16	45:17 53:1	181:16,17,20
35:21 41:4	112:12 113:11	174:2,4,11	62:19 65:4	182:5,7,15,17
71:18	114:10,19 115:1	175:13,17,23	69:19 86:2	182:23,25
Jeff 76:12	115:8,10,18	176:2,15 177:7	109:7 110:9	183:2,3,5,6,7
Jefferson 19:2	116:13,21 117:9	177:12 178:3,9	112:17 113:17	183:10,10,17,21
32:17	117:13,21,24	178:18,25	121:9 174:16	knowable 60:2
JO-3 163:4,14	118:8,11,15	179:3 180:17	176:16 183:6	knowledge
John 22:14	120:7,11,17	180:18 181:6	kinds 176:17	32:2 83:24
24:22 28:9	121:22,23,24	181:24 183:25	Kingspoint	85:22,24
75:3,13 77:11	121:25 122:4,8	184:4,6	118:3	101:14 124:19
77:19 82:12	122:13 124:24	judicial 90:1,5,9	know 13:13 17:14	156:4 160:7
82:24 158:21	124:25 125:7	90:19 91:3	17:25 19:16	170:18
158:24 159:10	125:12,17,23	jumps 22:3	22:8 25:15	knowledgeable
join 96:13	126:1,5,19,22	68:4	35:22 39:5	180:22
Joplin 91:23	127:3,11,15	June 12:10	45:16 47:12	known 22:9
Jordan 75:4	128:11,14 129:2	36:15 61:14	47:24,24,25	41:12 47:21
Judge 13:9,17	129:7,8,10	107:13 123:19	48:1,19 49:3,7	48:7 55:11
13:19,20 14:6	136:9,12,21	131:2	49:11 52:21,23	59:24 60:2
14:10,14,17,20	137:7,11 138:7	jurisdiction	53:1,6 55:1	Kolkmeyer 17:17
16:16,19,25	142:10,15	119:14	58:19 60:8,8	17:17 35:25
17:8,19,22,23	144:20 145:16	jury 85:20	60:13 61:13,14	
18:10,11,12,14	145:23 146:3	justifies 34:20	62:9,16,19,20	L
33:15,17 35:18	146:8,13,17,20	justify 68:21	62:21,22 63:3	lack 21:7 37:2
35:19,21,24	146:23 147:1,6		63:5,17,19,23	97:7 127:21
36:3 41:2,4,6	147:23 148:1,6	K	68:19,24 69:5	lacks 85:5
45:2,9,12 69:7	148:9,14,25	K 55:18	69:20,22	127:21
71:15,16,18,20	149:12,18,21	Kansas 18:19	70:4,6,8,22	land 157:12
71:23 82:2,3,6	150:10,13,17	163:7 177:16	70:23 71:9,9	landed 50:15
82:15,20 84:4	150:24 151:6	Karen 124:2	79:9,9 88:20	Landoll 60:5
84:8,10,14	154:12 155:16	130:17 135:17	91:2 100:2	Lane 12:23
85:11 86:13,17	156:16 158:8	135:18	107:23 108:8	185:3,19

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

<p>Langley 67:25 130:19 language 27:12 97:1 111:18 120:23 138:23 139:2 large 30:18 37:3 79:22 171:15 176:8,11 largely 42:14 larger 117:18,19 177:19,25 Lastly 39:21 latan 108:12 late 37:20 67:22 125:3 law 24:13 25:12 66:13 85:4,7 85:10 90:21 lawfully 27:22 lawfulness 50:23 laws 88:12 lawyer 66:13 lay 85:6 89:10 127:22 128:8 lead 103:17 162:18 182:13 leader 41:15 leading 44:4,17 leads 103:10 161:12 162:5 leave 16:11 led 24:18 27:16 leeway 35:9 left 17:20 78:9 119:14 legal 18:18 32:11 66:5,9,10 67:15 70:12,14 96:10 97:6 128:1 151:13 156:15 legislation 96:16 legislative 128:1 137:19,23</p>	<p>138:23 139:2 legislature 21:12,24 24:11 26:14 43:11,19 138:12,17,25 Lena 74:11 75:7 76:2 110:16 111:3 let's 14:1 17:12 18:15 64:18 94:25 127:4 179:20 letter 65:8,11 66:22 level 38:9,9 59:11 116:5 144:9,10,15 151:17 152:10 152:16 liability 57:21 57:25 158:17 158:17 Liberty 14:2,5 16:12 18:16,22 18:23,24 19:1 19:23 20:4,17 20:25 21:10,14 22:5,19 23:18 25:6,8,11 27:16,18,21 29:4,25 31:6 31:10,16 32:1 33:5,11 42:8,11 42:20 43:8 44:5 46:19,22 46:24 47:1 49:16,19 50:22 51:11 52:1,10 53:2,9 53:13,15 54:6 54:11 55:12 56:4,17,21 57:23 58:1,7,11 58:11,12,15,23 59:8,22 60:1 60:5,9,21,25 61:7,12,21</p>	<p>62:21 63:4,7 63:24 64:2 65:18,21 67:4 67:5 68:19 71:1 72:9,19 73:5,10,14,22 73:24,25 74:2 74:7,9,12,17 75:5,17,24 76:3,10,16,18 76:22,25 77:4 77:8,13,15,16 77:20,23 78:1 78:5,5,24 80:5,13 81:10 83:6 89:6 94:22 95:6 97:12 100:22 102:9,16 106:1 106:25 107:21 110:18,19 111:10 111:10 112:3 119:7 120:1,20 122:23 136:23 139:25 141:18 143:24 146:13 148:11 150:1 151:17,22 152:1 152:7 154:17 154:24 155:1 155:18 159:21 161:2 167:3 168:8,11 169:25 170:2 171:9 179:11 Liberty's 18:18 19:10 21:1 22:12,13 23:20 24:16 24:21,24 25:1 27:21 28:13 28:20 30:3 32:11 33:8,13 41:24 43:1 44:15,21 48:23 50:2,10 50:19,21 51:4</p>	<p>51:25 52:9 53:13,18 54:8 54:25 55:4 55:25 56:21 57:18 58:7,18 59:6 60:7,18 60:20 61:17,21 65:17 68:3,6 68:21,24 70:17 72:6,14 72:25 73:21 74:5,16,23 75:1,4,10,12,14 75:15,18 76:5 76:8,20 77:12 78:10 93:25 95:2 102:11 109:6,12 110:22 111:13 113:12 135:18 146:4,10 151:18 157:12 179:11 179:14 licensed 84:17 84:20 88:6 97:8 127:16 life 77:6 liked 168:18 limited 26:7 41:16 78:19 84:23 94:8 95:9 line 17:16 52:3 80:20 84:23 84:24,24,25 84:25 85:1,2 85:2 94:15 105:13 107:24 116:14,17 118:3 118:7 127:23 127:23 136:16 137:20,21,21 138:11 142:20 142:21 145:17 157:13 158:2 lines 105:14 128:2,4,4,7</p>	<p>172:25 list 17:11 151:2 listed 24:4 28:6 54:11,17 115:12 151:2 listening 44:12 little 36:12 49:12 86:2 132:7 148:10 lives 43:7 load 36:9 108:6 111:24 112:20 112:22 113:4,7 113:9 117:1 173:23 174:5,8 174:9 182:8 183:2 location 172:17 lock 63:1 locking 48:7 LOLE 112:23 long 13:14 23:11 46:6 110:2 183:4 long-term 48:4 50:2,4,16 55:25 56:7,11 61:17 106:13 108:2 153:14 longer 20:4 57:10 73:16 77:23 174:8 175:6 look 22:4 24:24 26:23 27:5 29:24 34:6,10 45:23 53:6 69:23 71:1 80:8,18,19 102:22 113:18 113:25 125:5 164:9 182:19 looked 38:5 58:17 107:11 132:15 looking 20:7 22:1,9 25:23</p>
---	---	--	---	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

31:1 36:8 50:5 53:22 56:5 125:23 140:19 173:14 looks 169:6 lose 53:2 171:22 172:1,18 losing 19:15 172:5,5 loss 67:24 112:22 lot 15:16 20:12 36:9 85:13 108:18 116:24 153:6 159:16 168:12 177:25 177:25 lots 31:24 low 19:24 25:21 50:11 116:8 152:5,10 164:19 165:17 165:18 lower 25:19 57:4 63:1 64:11 76:6 92:25 93:3 153:12,16,18 173:4,20 174:9 174:23 175:24 176:7,7 178:16 lowered 140:24 lowering 25:19 lowest 67:10 76:4 Luco's 75:21 lunch 82:7,10 Lyons 135:1,19 Lyons' 135:10	42:22 majority 26:6 making 15:4 19:4 33:2 42:5 81:6 MALE 13:2,6,12 13:18 100:4 125:15 128:23 137:25 manage 21:14 74:12 management 162:14 manager 170:1 manages 119:15 Manley 74:11 75:7 76:2 109:5 113:12 Manley's 74:25 111:3,8 manner 21:14 Mantle 108:24 Mantle's 110:16 March 60:24 105:11,18 108:5 120:5 129:19 margin 113:2,5 119:21 margins 42:23 182:6 mark 15:13 47:17 49:12 69:19 76:12,24 77:7 marked 83:13 123:10 124:7,9 142:13 159:23 170:9 market 67:20 70:9 74:8,17 74:21 76:6,6,7 102:13 113:23 119:18 172:8,16 174:18,21 175:1 175:4,4,20,24 179:24 182:5 marketability	174:13 marketed 67:10 179:19 marketing 67:12 marketplace 175:12 182:3,11 markets 20:5 74:16 173:19 182:9 Mashimba 108:16 166:20 mask 15:19,21 masks 15:15 Mastrogenis 75:8 mat 110:10,12 material 105:8 matter 23:6,6 82:17 86:10 98:20 100:11 122:10 159:2 169:14 175:19 matters 86:11 Matthew 124:3 maximize 46:10 46:16 64:19 maximizing 23:22 maximum 115:2 McMillan 57:17 61:2 mean 51:13 77:18 81:1 109:24 110:7 119:23 121:1,17 121:19 126:8 127:1 141:8 172:2,14 176:18 178:20 182:1,2,10 183:16 meaning 90:25 105:5 121:8 138:16 means 110:9 163:9	meant 88:20 164:20 measure 73:8 93:2 measured 77:9 measures 182:16 183:10 183:20,21 measuring 78:14 MECG 14:14 16:23 17:2 36:4 37:16 39:1,6 87:2 102:2 118:13 129:7,11 145:19 151:8 160:19 171:2 MECG's 37:25 39:9 mechanism 19:20 24:11 25:17 26:4,11 26:24,24 43:5 50:20 51:3,24 52:17,22 53:4 139:14 154:5 179:17 media 12:14 meet 112:3 121:7 meeting 13:2 112:1 121:4,16 meets 33:6 67:6 megawatt 115:16 172:15 172:18 megawatts 42:10 115:17 177:20 Melissa 12:23 185:3,19 member 64:21 64:23 65:1,5 65:12 67:17 113:6 119:20 memorable	60:2 memory 161:15 mention 156:5 mentioned 156:25 162:9 165:11 message 23:3 23:5 33:2,4 met 20:25 112:8 115:21 116:2 method 20:17 29:19 39:22 130:7 131:21 131:22,23 134:13 136:4 methodologies 116:24 methodology 117:2 132:10 133:4 microphone 185:9,15 mid-2010s 183:3 Midwest 14:16 36:7 miles 115:25 million 30:4 31:7,8 42:17 46:20 49:18 53:7,9,10,17 54:3,22 56:19 57:1,14,22,25 58:20,21,24 59:4,4,5,7,7 59:10,12 60:18 60:19 61:1,8 62:4,4,4 63:15 63:25 64:1 72:11,20,22 72:23,23,24 73:1,14,22,23 74:1,7 75:2 76:17 77:18,19 78:11,25 79:2 80:23 140:12 140:13,17,24
<hr/> M <hr/>				
magnitude 49:24 73:4 MAIDA 18:12 maintaining 80:14 maintenance				

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

140:24 141:20 141:21 143:19 144:6 157:22 158:18 millions 19:11 31:22 33:9 34:24 mind 51:23 68:4 133:20 minimize 181:13 minimized 100:1 minimizes 20:11 minimum 116:4 173:21 175:2,2 175:7 182:21 182:22 minus 126:12 minute 24:10 minutes 13:3 misidentified 185:15 misinterpreted 12:17 missed 13:4 163:12 mission 41:14 Missouri 12:6 14:17,19 18:19 21:11 23:5,16 24:10 32:20 32:23 41:8,11 41:12,13,14,19 42:25 43:11,15 44:20 45:15 45:18,19 49:8 51:15,16,19 65:4 68:18 73:15 74:5 77:12 80:22 81:3 84:18 85:10,17 87:2 87:10 88:6,8 88:11,13,25 89:12 90:6 95:25 97:10 101:24,25 103:19 118:13	127:17 129:4 138:12,17,22 138:25 139:1,6 151:8 160:16 162:19 171:1 185:4 Missouri's 21:22 33:3 44:9 misspoke 166:5 misstep 168:16 mix 81:10 108:1 mixed 110:3 MO 90:7 modeling 42:12 models 114:2 moment 87:14 130:13 142:4 158:6 171:11 money 19:25 20:18 28:3 42:14 46:6,8 46:15 52:20 57:25 58:10 64:18 171:22 172:1,5,6,23 175:5 month 75:22 166:1 monthly 50:8 months 25:8 61:16 157:20 166:11 183:9 morning 18:17 36:5 39:9 41:9 45:13,16 69:3 mother 18:4 motion 16:10,20 17:9,10 move 13:10 17:12 28:25 64:18 101:17 143:18 144:5 156:15 160:9 170:20 moves 56:14	Moving 166:17 Murray 75:20 77:20 mute 13:8 <hr/> N name 36:6 41:10 45:14 72:1 82:23,24 100:20 122:19 159:9 169:21 169:22 nameplate 115:16 Nathan 14:11,11 16:16 71:25 72:1 93:20,20 93:23 94:6,11 95:8 96:12,12 99:21,21 100:7 106:19,19,22 109:15 120:12 120:12,15 121:21 124:24 125:1,10,20,25 126:3,6,15,20 126:25 144:21 144:21,24 145:14 154:13 154:13,16 155:14 156:17 179:3,3,6 national 36:19 41:15 natural 51:7,8 54:10 165:1 176:20,23 nature 26:2 30:24 necessarily 78:19 90:21 150:3 163:22 necessary 51:4 66:24 90:8 91:3 99:18 125:11 178:10 184:4	necessity 22:22 need 18:23 21:25 34:10 94:19 97:20 110:25 113:3 114:23 117:8 128:24 131:19 132:11 133:2,7 133:21 137:7 150:3,9,23 needed 13:16 121:9 182:19 needing 121:1 needs 36:10 37:15 111:19 150:4,6 negative 181:5 181:9 negotiating 150:1 neither 76:24 Neosha 118:2,5 NERC 112:19 118:20 119:6,9 119:20 net 34:15 47:7 47:13,22 48:18 56:12 56:24 57:13 57:19,19,24 59:5,7,10,11 61:25 63:11,20 67:8 69:23 77:8 139:11,21 142:19 143:18 144:5 never 25:6 108:1 new 20:19 21:19 25:10 33:3 105:8 115:4 123:1 132:12 183:10 newer 177:17 nexus 59:14 Niehuas 32:8,8	non 69:16 non-attorney 97:16 non-attorneys 97:13 non-contested 63:2 nonfuel 42:22 nonprofit 41:13 nonunanimous 135:23 normal 53:13,18 87:21 normally 13:13 19:14,19 20:4 30:17,25 54:4 58:22 164:2 North 118:3,21 NOS 12:9 note 22:19 30:5 32:20 44:16 60:19 72:6 166:19 noted 19:5 31:16 129:16 notes 158:6 noteworthy 26:9 notice 15:14 90:5,9,20 91:3,6,9,12 93:8 noticed 14:21 14:22 notifies 105:23 notifying 106:2 noting 43:13 November 107:12 NPV 142:1 147:16 155:23 number 13:24 30:7,18 35:3 37:3 56:18 78:4 79:22 87:1 92:2 93:9 103:12 104:5
---	---	---	--	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

104:14 111:5 123:6 124:4 127:5,6 135:15 143:17 161:24 176:20 182:3 183:18 numbers 78:25 NVP 142:6,8,19	occurred 25:4 55:23 72:7 149:8 154:19 occurs 152:9 October 131:5,6 offer 15:11 84:2 93:6,12 124:21 127:8,9 134:16 offered 31:17 84:5 101:22 160:14 170:24 offering 62:14 62:15 63:6 offhand 108:8 Office 14:12 43:2 55:7 61:23 72:2,13 73:20 78:8 officer 83:3 official 91:6,9,12 93:8 offline 164:11 offset 75:14 92:19 153:18 Oh 84:12 105:16 120:9 137:9 140:2,19 oil 54:10,15,19 165:10,13 166:6 okay 13:7,14,15 13:18 16:19 17:8,12 34:12 35:8,17,25 39:18 45:8 48:20 62:6,9 62:11 69:20 70:11 71:14 79:13 82:1 84:4,9,22 88:17 93:4,18 95:20 100:3,8 102:23 103:8 104:10 105:22 106:4,11,15 110:15 111:6 113:11 114:10	115:1,10 116:13 117:9,21 118:8 118:10 120:6,11 121:13 123:4 125:12 126:5 127:11,15,19 129:3 130:14 130:25 132:14 133:10 135:7 136:2 139:11 140:6,7 141:1 141:17,23 142:9,15,17 143:3,16 144:8 145:23 146:3 146:8 147:1 148:1,6,9,14 148:25 149:21 150:14,24 151:6 155:16 157:5 161:16,19 162:2,16,23 163:2,15 164:1 165:4,9,13,16 165:25 166:9 166:22 169:8 171:5 172:4,11 172:24 173:10 173:16 174:11 176:4 178:18 178:25 184:6 old 164:24 older 115:5 Olson 24:22,23 158:22,24 159:10 161:1 167:2 168:23 168:24 once 24:2 39:19 59:17 60:1 65:8 141:17,17 one-for-one 76:14 ones 30:16 ongoing 37:7 47:4	online 163:1 171:8 onsite 107:19 107:20 180:11 OPC 52:2 55:9 59:12 70:13 95:2 133:18 151:16,20 OPC's 52:6 open 20:23 22:23 23:5 38:23 90:23 142:3,23 181:1 185:9,15 opening 13:10 18:15 19:2,14 19:19 36:3 41:8 45:12 53:16 71:23 78:21 130:19 openings 82:6 operate 164:2 181:19 182:12 182:23,24 183:1 operated 181:22 operating 34:7 98:14 99:3 120:18 173:22 174:5,8 177:23 183:11 operation 183:9 183:19 operational 164:15,16 operations 32:3 42:22 102:11 102:12,13 108:19 159:17 161:5 165:7 167:17 168:2 175:9 operators 183:12 opinion 85:6 86:1 96:11	97:7 108:23 119:13 127:22 128:8 156:9 178:16 opinions 67:19 85:9 149:5 Opitz 14:15,15 16:21,22 17:2 36:5,6 41:7 87:3 102:3 118:14 129:8,11 129:11,13 136:11,14,15,22 136:23 137:10 144:9 160:20 opportunity 21:18 63:1 98:6,12,15 125:3,5 156:22 171:24 172:1 177:25 oppose 70:17 152:16 opposed 109:24 opposing 72:4 optimum 67:20 option 26:10 options 114:7 order 19:11 23:12 30:14,14 30:15,19,21,22 31:6 33:9 36:15,17 37:4 37:16 38:25 49:6 50:14 52:7 55:5 62:25 63:6 67:5,14 69:11 69:13,17,21 70:10 71:10 73:3 92:2 93:9 123:17 135:25 140:11 140:22 149:25 150:6,8 151:23 152:10 153:4
---	---	---	---	--

O

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

176:3	137:18,21,21	108:15 165:7	143:17 144:1,4	phone 45:10
ordered 136:20	138:8,11 139:12	parties 14:2,21	146:5 147:9,10	71:17 82:4
orders 69:11	139:15,16,20	18:2 20:20	147:13,14	phones 13:14
original 104:19	140:1,4,6 141:2	21:6 22:11	152:2,11,23	phonetic 57:17
105:4 161:8	141:5 142:17	26:3,18 28:21	153:5,19,20	75:3,8,10,21
outcome 29:8	149:23 161:9	38:23 63:4	154:5,9 179:21	108:17 119:5
outline 19:3	162:2 163:12	65:21 89:14	percentage	124:3
outside 13:16	163:13,13	90:23 91:7	37:5 38:6,8	phrase 89:20
32:4 49:21	172:25 173:16	125:19 128:19	132:16,21,21	90:3
64:4 110:19,21	pages 128:2,4	135:22 147:21	132:23 133:13	physically 18:3
111:11,12	185:11	149:23 150:14	148:18 149:1	pick 163:25
overall 38:7	paid 54:8 58:1	154:4 156:22	154:8	picture 46:18
132:17 134:2	58:11,15,20	168:19	percentages	piece 21:24
overexposing	72:21 74:7	parts 143:25	133:3	69:25
74:21	77:15 87:19	party 66:12	percentile 116:9	pieces 123:25
overpaid 77:18	153:24	102:10 147:20	performing	pile 110:2
overrule 86:19	pandemic 37:7	157:1	110:18,19 111:10	place 33:20
91:11,11 95:15	paper 29:23	passed 15:16	performs 182:4	40:7 105:21
96:14 97:18	142:1 143:3	18:4 21:12	perimeters	106:12,14
128:16	papers 125:6,21	43:12	110:23 111:14	115:23 150:23
Overruled	141:24	passing 43:19	period 31:10	placed 25:6
156:16	paragraph	path 22:1 67:20	48:2 49:23,24	places 44:12
oversimplify	89:20 92:5,5	pay 20:1 53:9	49:25 56:21	plain 138:23
78:23	92:16 103:15	55:13 58:13	61:9 92:19,21	139:4
overstated	104:1,22,25	141:2,7,12,14	108:3 118:4	plan 22:21 33:6
77:20	163:5,16	141:19 152:23	154:18,19	42:8,11 54:13
overview 41:19	pardon 77:19	paying 71:2,3	157:16,22	59:17 109:8,9
overwhelming	parens 142:23	76:4,21 153:5	164:12 175:6	111:25
43:12	parity 37:9	payments 141:11	180:3,4	planet 21:21
overwhelms	part 33:14 34:4	141:13	periods 147:12	planning 41:25
42:23	81:24 94:7	peak 113:4 116:6	147:17	44:11 55:1 75:1
Owen 32:20	96:18 123:23	peaking 54:18	permission	76:3 81:9
Owens 44:9	131:10 137:3	penalize 40:18	88:14,22	93:25 94:4,8
owned 178:4	146:23 177:14	pending 16:10	102:23 104:8	95:2,10 109:1
owners 177:14	partial 135:23	people 13:13,16	161:19	109:6,13
	partially 120:18	15:15 32:7	permit 91:14,18	112:15 113:2,5
	participant 131:7	percent 36:19	permits 91:17	114:2 116:18
	participants	50:7,9,10,11	92:17	119:9,21
	119:18	52:10 53:10	permitted	plant 21:2,2
	participate	55:24 56:8,11	49:20 88:1	23:6 29:13
	145:11 181:3	62:2 63:14	person 180:21	39:4 41:18
	participating	73:2,4 75:11	perspective	42:1,15 43:9
	18:3	80:3 110:8	39:10	43:15 45:24
	participation	115:24 116:5,6	persuasive	57:9,14 68:12
	93:24 95:1	116:12,18,20	23:25	74:19 77:8
	particular 40:12	117:6,18,20	petition 12:7	80:15,20
	90:25 96:2	119:21 143:12	115:25	81:23,23
P				
page 84:23,24				
84:24,24,25				
85:1,2,2 87:12				
87:24 89:1,3				
91:20 92:4				
102:9 103:8,13				
104:1,24				
105:11 109:3				
111:2,4 127:22				
127:23 128:6				

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

136:16 174:8 176:9,10 178:17 182:12 plant's 42:23 plants 23:18 24:12 44:7 137:3 177:19 play 175:12 181:25 182:13 plays 174:18 178:23 please 16:8 19:14 36:5 41:10 45:13 71:25 82:23 89:4 97:22 100:9 109:2 121:12 122:8 122:19 129:2 155:6 159:9 169:12,21 174:1 Plumb 108:13 177:16 plus 40:2 72:21 141:21 podium 16:7 point 16:23 17:16 19:16 28:21 36:17 50:5 72:9 93:12 107:11 108:4,13 109:23 114:16 118:7 121:18,20 127:12 155:14 177:16 179:19 180:16 point-to-point 113:10 pointed 180:21 points 76:12 policy 32:24 Pool 54:12 111:22 112:15 115:4 portion 57:24 92:1 98:22,23	127:25 portions 12:14 12:16 126:16 182:25 position 16:12 16:13,17,24 17:1 23:2 34:13,16 35:8 37:19,21,25 40:3 41:23 45:5 47:13 50:19 52:9 58:18 59:14 59:25 60:19 61:22 68:18,21 68:25 69:12 70:7 79:5 80:2 86:5 158:18 positions 31:17 positive 29:22 30:8,9 34:17 35:3,4,10 181:21 possibility 25:18 possible 30:15 52:16 67:19 105:11,19 109:14 152:5 152:23 165:16 180:6 possibly 154:1 163:25 post 183:6 potential 19:10 31:22 33:8 105:23 173:2 181:9 potentially 81:13 power 26:8,13 26:16,25 27:11 27:25 36:9 42:4 49:21 51:6 54:12 75:2,12,16 76:9 78:11	81:5 106:5 111:22 112:14 115:2,4 152:3 153:20,21 practice 171:15 173:1 181:15 prayers 18:10 pre-filed 44:10 101:7 159:23 170:6 pre-verse 52:12 preceded 72:7 precedent 33:1 88:12 138:22 139:6,8 preceding 72:8 precisely 21:13 43:7 preclude 60:1 prefer 39:17 preference 69:12 prefers 39:1 premarked 88:15 premise 90:21 prenumbered 93:15 prepare 159:20 170:6 185:6 prepared 75:6 83:8 123:4 168:17 prescriptive 21:23 30:12 presence 65:14 present 12:18 34:15 37:18 47:7,13,22 48:19 56:13 56:24 59:5,7 59:10,12 61:25 63:11,20 67:8 69:23 139:11 139:21 142:19 143:18 144:5 185:9	presented 19:4 31:5 38:13 40:22 110:22 111:13 151:19 presenting 33:6 168:15 preserve 50:20 52:16,22 53:3 preserving 185:10 pressures 20:6 presumed 66:13 pretty 157:23 previous 42:20 43:24 51:8 154:3 168:12 previously 42:2 42:24 price 76:7 172:9 172:16 175:20 175:24 priced 67:10,12 prices 74:21 172:8 primary 17:4,6 26:21 principals 98:4 printout 135:15 prior 43:6 95:5 103:11 109:6,7 161:12 162:5 164:15 PRM 121:13 proactively 69:9 probability 112:24 Probable 109:14 probably 48:8 50:3 56:10 60:6 69:5 73:4 116:18 167:23 problem 15:8 52:9 142:5 147:16	problems 68:3 procedures 182:20 183:11 proceed 89:17 150:19 proceeding 22:11 27:3 32:24 73:11 83:9 123:5 146:1 proceedings 34:2 103:20 162:21 185:7,8 185:13 proceeds 72:20 141:3,7 141:8,19 process 30:20 31:21 48:25 55:17 65:22 66:6,19 98:8 110:20,24 111:11,15 125:9 148:7 149:25 150:18,23 156:18 165:2 175:15 procurement 27:12 102:11 produced 118:5 118:6 121:3 producing 61:4 production 176:12 178:24 professional 15:3 185:5 profile 114:22 116:4 profits 23:22 progress 66:23 prohibited 66:10 prohibition 66:10 prohibits 66:8 project 103:17 162:18 170:1
---	--	---	--	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

<p>projecting 72:10</p> <p>projections 60:20</p> <p>proper 22:15 28:15</p> <p>properly 21:4 54:6,15 55:3</p> <p>proposal 63:12 65:17 68:6 71:13 156:19 156:23</p> <p>propose 67:23</p> <p>proposed 25:8 25:14 26:18,21 30:22 38:2 38:20 39:22 40:24 60:18 60:24 61:20 61:23,24 67:6 68:3 133:4 134:1,12,25 136:4 154:24 155:1</p> <p>proposes 21:14 38:13 40:8 62:3 67:4 158:1</p> <p>proposing 146:4 150:1</p> <p>pros 47:14</p> <p>protect 65:23</p> <p>protected 65:18</p> <p>protecting 65:16</p> <p>protocol 106:1</p> <p>proud 20:18</p> <p>prove 91:21</p> <p>provide 21:16 27:9 34:14 40:11 42:6 48:6 63:10 64:9 67:8,10 74:13 98:11 103:16 106:12 127:22 161:17 162:17 168:10</p>	<p>provided 24:24 60:5 125:18 135:24 162:12 168:8,9</p> <p>provides 27:7 28:10 44:2 103:16</p> <p>providing 20:10 71:4 98:15</p> <p>provision 26:9 98:22 105:1 155:24</p> <p>provisions 30:13 39:22 76:13 85:16 161:10</p> <p>proxy 115:20,24 116:1</p> <p>prudence 22:9 25:25 31:2,12 81:7</p> <p>prudency 26:22 81:8</p> <p>prudent 22:6,16 23:9,20 24:2 24:4 33:10,23 34:3,8 44:19 51:5,18,22 55:5 70:16,18 75:12 81:9 86:9 89:22 90:16</p> <p>prudently 21:4 23:1 24:21 88:1 153:23</p> <p>PSC 89:23</p> <p>PSC's 96:2</p> <p>public 12:6 14:10,12,13 16:16 21:20 23:1 26:20 29:2 31:15 41:23 43:2,23 43:25 44:6,15 44:24 45:5,15 52:14 55:8 61:23 65:4</p>	<p>71:24 72:2,4 72:13 73:7,20 74:11 75:3,7,13 75:17,19 76:2 76:11 77:11,19 78:8,13 87:10 88:25 90:6 93:19,21 96:13 101:4,4,19 103:19 106:17 109:22 110:17 120:11 131:25 144:20 154:12 154:14 159:24 160:10 162:20 162:25 171:5 179:2</p> <p>published 113:6</p> <p>pull 125:7 127:4 142:6</p> <p>pulled 142:16</p> <p>pulling 142:11,12</p> <p>purchase 26:13 26:15,25 27:11 27:25 49:21 51:6 75:2,12 75:16 76:9 78:11 152:3 153:19,21 154:5 156:9 179:15</p> <p>purchases 26:8</p> <p>purely 45:6</p> <p>purport 85:9 125:6 127:2</p> <p>purports 85:4 127:25 128:3 128:5,7</p> <p>purpose 52:18 64:7,10 141:18</p> <p>purposes 13:25 17:21 60:8 83:9 116:18 123:5</p> <p>pursuant 123:16</p> <p>pursue 107:10 107:14,25</p>	<p>pursuing 77:2 106:10 148:17</p> <p>push 52:15 111:25 114:24 114:24</p> <p>put 79:4,10 80:16 97:25 98:17 115:16 130:8 147:20 149:16 168:17 174:16 177:2</p> <p>puts 52:25</p> <p>putting 30:23 47:6 63:17 79:7</p> <p>PVRR 111:20</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualifications 86:10 127:22</p> <p>qualified 25:24 28:7,24 85:24 151:24</p> <p>qualifies 152:4 152:9,22 153:4</p> <p>qualify 51:12 55:5 152:10</p> <p>quality 12:14 77:3,9</p> <p>quantifiable 34:14 37:17 47:7,13,16,22 48:8,13,18,20 49:2 56:12 63:11,20 67:8</p> <p>quantitative 69:10</p> <p>question 37:23 39:25 46:12 47:11 49:11 50:14 52:19 57:15 64:16,18 78:22 83:10 94:7 95:9,18 96:19 97:2,12 97:20 105:17</p>	<p>108:16 111:7 121:6,14 123:7 135:17 136:8 136:12,21 137:22 138:1,5 140:16,20 142:12 144:8 152:25 156:8 158:15 161:17 163:2,8 164:17 170:7 181:24</p> <p>questioned 145:19</p> <p>questions 19:15 22:15 32:1 33:16 35:20 35:25 41:1,3,3 41:4 45:1,2,9 46:5,11 47:18 50:14 64:9 69:4,10 71:16 71:18 78:20 82:3 83:19 86:18 87:3 93:4 94:11,14 94:15,19 95:24 99:5 101:10 102:1 106:15 109:15 109:17,18,19 109:22 110:16 118:9,12 120:10,16 124:15 129:5 144:18 145:15 145:16,18 151:7 151:7 154:11 156:8 157:9 158:7,19 160:3 160:17 162:23 163:1,2 166:15 166:16,19 167:10 170:14 171:4,6,7,8 179:1,2,7 184:3</p> <p>quick 127:14</p> <p>quite 19:18</p>
---	--	--	---	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

quote 27:9 89:25	131:7,10 132:3 132:7 133:7,13 133:22 134:1,8 134:10,16,24 134:25 135:11 138:12 143:1,7 143:21,24 145:20,20,22 145:23,24 146:2,10,14,18 147:4 149:10 151:1 153:16,18 154:22 155:3 155:8,10 162:20 174:23 177:1,4 178:12 178:17,18,21	46:2 47:20 48:5,10 53:21 53:21 57:3,12 59:19 60:15 61:11 62:24 64:11 70:4 76:21 78:2,4 88:3 89:22 89:23,25 96:3 97:14 98:9 120:24 122:24 131:1 134:2 136:25 137:2 146:14 147:22 148:3 148:16 149:10 151:20 153:12 173:20,22 174:13,14 175:11 178:7 182:18	rear 32:21 reason 39:8 53:3 65:14 68:25 reasonable 22:6,17 23:19 24:1,3,20 31:2 31:14 33:10,23 34:3 35:14,16 41:22 43:22 44:19,24 45:20,21,23 46:1,21 49:7 49:10,15 50:13 50:24 51:1,3,9 51:21 53:3,11 53:21,21 55:2 56:3,9 57:11 57:12,23 63:19,22 64:2 64:4,6,15 70:16,25 71:8 71:12,13 96:4 96:8,18,25 97:3 98:3,6,9 98:12,15 154:9	receiving 93:13 recognize 21:9 21:19 39:15 91:25 133:17 recollection 103:6 104:16 161:25 recommend 49:19,22 54:25 55:9 56:20 59:21 108:16 144:16 recommenda... 57:8 149:23 151:5 recommenda... 103:10 161:11 162:4 recommended 56:22 recommends 77:7 78:8 reconciliation 55:17 record 15:2,4,9 17:21 18:7 59:15 84:11 86:14 90:13 91:10 113:24 119:12 183:18 185:10 recorded 12:14 15:5 recording 12:5 12:19 15:1,4,8 185:16 recordings 16:3 recover 20:10 25:14 27:19 38:10,14 41:21 44:23 47:1 49:16 50:12 51:14,18 56:17 57:23 61:8 64:2 73:10,14 73:23 76:23 77:8 78:25
R				
rail 107:24 raise 52:23 82:15 100:9 122:8 158:25 169:12 raised 52:2 85:14 113:12 133:21 150:25 raising 171:19 ramp 173:21 174:14 182:18 ran 69:19 77:16 107:16 range 116:2,12 ranges 165:7 ranks 178:16 rate 20:2 25:4 25:11,14 26:3 27:5 36:14,18 36:25 37:1,9 37:22 38:6,19 40:21 47:20 47:24 48:7,17 50:1,2,4,6,9 51:16 52:24 52:25 53:24 55:20,25 56:5,7,11,12 56:22 57:4,6 58:17 59:19 60:25 61:17 61:24 63:1,3 63:13,14 70:21 73:10 75:21 75:25 78:6,17 79:11 81:22 87:22 91:23 92:18,23,25 92:25 93:3 94:4,9 95:21 98:3,5,24 103:20,23 104:3 109:8	rated 116:14,15 116:21,23 117:4 117:6,23 ratemaking 29:5,7 46:7 47:2,2,9 48:2 49:17 50:17 54:5 55:16 56:15,16,18 58:23 62:3,7 62:10 87:25 ratepayer 54:20 65:16 ratepayers 46:6 46:8,15,17,22 48:9 52:14,20 52:21,25 53:2 53:8 54:8,23 56:4,13 58:1,11 58:19,20 65:17,18,23 65:24 67:9 71:2 141:14 152:21 153:2 172:5,24 rates 22:25 25:10 27:1 34:9,9 36:24 37:8 39:15 45:6,20,21,23	read 18:6 40:2 40:9 66:11,15 85:15 97:9 98:22 109:11 135:16 reading 139:4 ready 82:11 89:18 163:21 163:24 realign 36:23 realized 50:5 55:21 78:1 realizing 77:5 really 20:13 33:13 52:17 53:2,6 58:18 61:3 62:13 63:5 65:6,11 67:19 68:11,15 68:24 70:24 71:5 97:6,12 128:10 182:10 182:18	reasonablene... 31:11 68:22 reasons 20:9 61:2 rebuild 92:12 rebuttal 110:16 111:3,9 130:18 150:25 recall 34:1 133:23 144:10 151:19 179:7,10 receipt 84:5 101:23 160:15 170:24 receive 60:21 72:20 171:13 received 53:14 73:1 86:20 87:1 93:14 101:23 141:11 160:15 170:25	

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

89:22 90:16 97:3 98:6 134:20 148:12 148:19 152:2 recoverable 96:20,23 151:13 recovered 17:6 29:5 38:20 39:2,7 73:25 79:2 80:5 96:8 132:12 136:17 137:3 156:10 recovering 60:1 153:19 recovers 40:17 recovery 20:22 21:15 23:8 25:7 28:20 31:10 48:1 49:22 50:18 56:21 62:3 64:4,13 74:2 76:10 77:3 78:2,16 79:11 80:13 139:13 139:22 140:14 148:15 152:11 157:16,21 recross 94:19 118:11 151:7 166:15 179:1 redirect 94:20 95:13 121:23 155:16 166:17 180:17 reduce 182:20 182:21 reduced 140:17 reducing 19:25 80:21 redundant 15:1 15:9 62:16 Reed 22:14 24:8 28:9,13 32:4 82:12,14	82:15,24 84:17 87:9 88:19 90:12 91:13 93:24 95:17 97:8 99:14 Reed's 85:8 86:5 refer 145:2 reference 26:15 135:12 140:1 149:22 referenced 135:5,6 referred 118:20 135:17 referring 79:16 98:24 105:3,4 109:23 129:20 131:3 138:17,19 143:25 refers 39:6 143:24 reflect 60:20 131:19 133:12 135:19 136:5 140:8 reflects 130:21 refresh 103:6 104:16 161:24 regard 54:24 95:25 98:21 108:25 157:10 regarding 23:13 149:23 regardless 55:14 86:5 103:24 regards 154:2 region 100:24 170:2 regional 36:19 119:17 Registered 185:5 regular 66:22 67:2	regulated 87:16 regulator 91:19 regulatory 28:11 28:12 30:17 57:20,24 122:24 158:16 reject 43:1 70:13 rejected 51:17 rejection 66:21 relate 37:14 related 21:1,4 22:2 26:8 39:4,8,10,16 40:24 41:21 44:23 92:20 96:19 relates 37:22 41:17 157:8 relative 174:13 relatively 178:15 reliability 72:16 72:16 114:23 118:21,23,24 180:8,14 reliable 37:2 44:2 74:18 76:4,22 80:14 80:24 81:2,11 180:12 reliably 74:13 rely 29:11 relying 16:3 remaining 22:23 28:13 61:20 68:16 remember 20:15 51:24 61:10 64:8 95:18,25 98:20 155:24 164:8 167:10 remind 23:10 reminded 106:1 remit 156:10 removal 59:23 remove 15:21	77:24 104:22 removed 151:21 renegotiating 181:18 renew 14:17,19 32:20,23 41:8 41:11,12,12,19 42:25 44:9 44:20 68:18 87:2 101:24 101:25 118:12 129:4 151:8 160:16 164:17 171:1 renewable 23:15 43:18 44:1 68:11 176:18 repair 92:11 repayment 20:3 repeat 105:17 111:6 121:14 173:25 rephrase 136:21 152:6 replace 68:12 replaced 76:15 76:19 replacement 76:12,14,20 113:12 replacing 72:10 report 92:2 93:9 103:11,19 105:8 161:13 162:6,9,10,12 162:19 163:3 163:14 reporter 14:23 15:3,10 16:2 128:21 185:1,4 185:4,5,9 reports 66:23 66:23 67:2 representation 66:5	represented 67:15 representing 18:21 72:2 represents 20:9 57:25 58:9 reproduction 185:12 request 91:11 127:14 135:9 requests 167:25 require 19:9 20:16 33:23 48:13 128:4 required 19:13 20:25 26:20 29:12 30:6 31:18 34:4 48:15 55:12,17 57:10 80:7 171:13 175:6 requirement 15:19 29:21 38:7 49:5 50:24,25 51:10 57:9 67:7 88:2 99:1 111:22 112:2,4 112:16 119:11 119:22 121:4 132:17,23 134:2 168:7 requirements 30:19 31:13 33:7 119:7,8 121:1,8,16 144:10,15 requires 19:8 29:14 53:20 53:22,22 60:9 103:8 119:9,20 reserve 113:2,5 119:21 125:4 126:17
---	---	---	---	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

residential 36:24	181:24	73:18 105:11,19	86:25 87:18	route 80:14
residuals 42:19	responsibility 44:13	107:4 145:7	89:20 94:13	row 141:5
59:24	responsible 65:19 74:6,22	retirements 29:13	100:9 101:21	Rows 141:6
Resold 107:22	75:5,11	retiring 23:17	106:17 109:18	RPR 185:19
resolved 42:24	restate 121:5	42:7,13 43:6	117:4,7 122:8	RTO 112:17
146:1 151:3	restated 97:21	68:22 72:9	125:13,25	119:20
resolving 133:19	restoration 92:12	78:7 106:2	127:3,11	rule 42:19 115:4
resource 36:10	restoring 24:7	114:4	128:20 138:7	119:22 148:22
41:25 42:11	resubmit 128:25	return 56:22,23	145:16,17	156:10
54:12,13,17,18	result 29:15	56:25,25 57:3	146:11 148:7	rules 128:3
54:25 74:24	58:18 134:9	57:5 58:2,23	149:6 151:6,22	ruling 54:1
75:1 76:3	148:4	92:19 97:3,14	158:21 159:1	127:9 128:17
80:25 81:9	resulting 24:15	98:7,13,16	160:13 163:1	run 46:6 54:15
93:25 94:4,8	26:18 60:25	143:1,7,21,25	164:24 169:12	54:19 56:9
95:2 109:1,6	resume 184:7	183:21	171:6,8 174:15	75:6 107:9,12
109:13 111:21	retail 34:15	returned 58:14	176:4 178:22	114:2 119:17
112:1,16 113:18	37:25 38:2	returning 58:21	183:25	163:21 175:10
113:20,20	40:1,2 72:11	revenue 38:5,7	Riley 59:12,13	175:19 183:4
115:12,16 119:6	73:15 77:12	88:2 98:25	75:13 77:11,20	Runey 113:24
119:8,10,13,15	120:21	120:22,24	Riley's 55:10	169:5,9,11,22
180:8,10,12	retained 102:9	132:17 134:2	rising 48:10	179:7 184:1
resources	23:19,25 24:2	144:10,15	risk 52:24 70:3	running 54:9
42:10 68:12	33:24 39:8	revenues 53:13	70:5,6 74:10	80:24 164:6
74:13,19,19	55:2 68:10	53:23 74:15	76:7 77:1	runs 107:5
76:22 77:2	110:20,24	120:19 132:11	107:15 110:6	183:4,5
81:11 95:10	111:12,15	132:15,17 149:1	risks 173:14	Rupp 17:25
111:23 112:19	183:15	reversible 29:10	Riverton 54:7,8	23:12
113:25 114:1,15	retired 21:2	review 90:2	54:11,14,16,18	Rupp's 18:9
115:7,15 121:3	22:5 24:12	102:10 125:3	75:6 163:10	RYAN 33:17
121:7	33:19,24 34:4	126:4 156:23	164:9,10 166:1	34:12,19,23
respect 177:6	39:5 45:24	167:17 168:1	166:2	35:1,8,17 45:4
179:13	57:13 61:3	reviewed 22:12	roadmap 21:25	45:8 69:8,15
respectively	68:25 74:19	110:24 111:15	Robinett 75:3	70:11 71:14
99:22	76:16 79:18	reviewing 161:4	robust 112:21	78:21 79:6,13
respond 85:13	81:23 108:5	168:12	role 64:22	79:17,25 80:7
113:14 126:23	136:16	rewarded 75:24	66:19 128:20	81:6,14,17,19
responded	retirement 21:5	Ridge 118:2,6	room 13:16	82:1 94:16
16:12	22:4,17 24:3	right 13:20,21	14:23 17:20	
respondent	34:11 41:22	15:13 18:14	rooms 13:13	S
135:16	43:9,15 59:22	20:8 23:24	Rooney 108:17	S 124:2
responding	60:7,23 68:14	35:24 41:8	ROR 142:24	Sachs 32:9
65:7	68:17 70:15,18	47:20 66:5,15	143:1 145:3,3	safe 44:2 169:3
response 85:11		71:21 82:9,15	roughly 63:15	safety 110:7
94:7 95:11		85:19 86:13	143:20	sake 20:22
120:16 127:20			round 78:25	sales 40:4
135:7,13,24			roundabout 91:2	67:24 74:15
				salvage 60:20

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

Sarah 67:25 130:19	schedules 123:17,23	41:17,21 43:4 43:12,14,22	91:8 99:22 103:25 104:13	43:20 125:8 126:10 127:5
satisfaction 31:12	125:2 126:14 126:18 128:24	44:23 45:18 45:19,25 46:4	126:16 166:16 seeing 52:8	128:25 145:25 separately
satisfied 145:10	133:10	46:8,10,15,20 47:5,8,10 48:6	63:2 138:2 181:20	25:25 separation
satisfy 100:5 171:12	scientific 85:21 scope 167:12,15	48:18 49:6,19 52:20 53:20	seek 23:3 seeking 21:11	126:11 September
satisfying 31:14	scraping 110:4 screen 15:5	53:25 54:2 56:20 58:6	26:10 29:4 43:8 72:19	78:3 102:20 103:3
Saturday 16:10	99:25 scrutinizing	62:9,10 63:10 63:10,16,21	74:8 76:23 seen 164:18	series 112:23 serve 111:24
save 19:10 20:18 28:3	35:6 37:18 61:12	64:5,7,8,9,10 64:12,17	165:9 182:7 select 173:19	served 32:10 153:16,18
33:8 42:13 46:6,8 52:20	se 72:5 94:9 season 116:7	65:20 66:7,8 67:6 69:21	selected 114:9 selection 67:16	serves 113:7 service 12:6
64:17 154:1 saves 46:15	seat 129:9 second 20:1	70:13,22 71:11 71:11 72:5,7,18	self-commit 174:16 175:17	20:11 29:7 40:12,20 44:2
saving 20:17 22:21 31:22	38:18 46:8 47:3 51:6	73:9 76:13 78:15 79:6,8	self-commitm... 171:9 173:2,3	45:15 65:4 71:4 77:24
savings 42:8 46:10,17	53:11 58:3 62:8 65:14	96:6 103:20 105:6 128:2	173:15,18 174:12 175:15	80:16 88:25 90:6 98:25
53:25 63:15 64:19 70:1	66:17 96:18 163:4,16	132:22 140:18 140:23 141:4	176:4 179:8 180:22 181:1	100:22 103:3 103:19 113:10
109:8,9 114:3 114:6 153:8,10	secondly 34:12 section 55:17	141:14 143:4,9 147:9 148:17	181:16 184:3 self-committed	122:23 134:22 134:24 135:4
177:25 saw 81:2,4	85:17 sections 138:3	153:9,11,13 156:5 162:20	171:12 self-committing	135:10,20 136:5 137:15
saying 23:13 34:23 36:22	185:14 secure 59:22	securitizations 32:11,14 46:6	171:15,23 181:11	144:13 159:19 161:23 162:20
37:6 40:15 52:21 66:14	securing 91:16 147:9	securitize 29:4 46:24 63:24	self-generation 173:12,12	169:25 services 102:19
91:2 92:9 168:19 175:19	securitization 19:6,8,12,20	74:9 76:1 78:9 securitized	selling 172:20 sells 76:5 141:18	104:13 159:19 161:9 167:3,9
says 17:4 40:10 85:21 88:24	20:1,9,16 21:1 21:11,12,22	28:9 29:16 37:15,16,24	send 33:1 sending 23:3,4	167:13,15 set 15:6 22:1
92:6 105:2 111:19 128:20	22:11 23:4 24:5,12 25:12	38:1,9,10 40:8 40:16 55:13	senior 25:1 100:23 122:24	32:19 35:12 52:3 60:18
148:22 162:3 scale 177:18	25:17,18 26:4 26:10 27:4,13	55:24 67:10 75:23 78:12	170:1 sense 63:5	88:2 90:12 92:22 152:4,9
scenario 43:10 126:13	27:23,23 28:2 28:19 29:1,9	81:20 security 21:22	126:8 sensitivity 107:7	152:21 154:19 165:1 174:18
scenarios 69:19 110:22 111:13	29:14 30:2,10 31:13,20,23	28:23 29:16 32:9 67:11	sent 33:4 sentence 92:5	sets 88:12 156:8
schedule 147:7 147:7 163:3	32:11,18 33:3,7 33:12 34:20	see 20:24 29:22 69:23	128:7 163:5,17 separate 15:6	setting 46:1 57:12 89:23
scheduled 24:22 32:21	35:14 37:10 38:16 39:23	89:19,20 90:3	39:13 42:5	

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

<p>settle 150:18 settled 42:2 settlement 146:21,24 seven 64:20 65:25 severe 37:12 Shaen 108:17 shaking 137:8 share 40:20 50:23 51:10 53:10 89:14 103:9 120:22 161:10 162:3 shared 49:24 120:25 shareholder 23:22 shareholders 179:14,20 sharing 26:23 27:3,5,22 46:21 50:20 51:1,3,6,24 52:17,22 53:4 53:7,11 56:3 57:9 70:25 71:5 139:14,23 140:8,11,23 153:20 154:4 155:22,24 156:5 179:16 Shawn 113:24 169:9,22 shifted 76:25 shifting 44:7 shipments 107:21,24 shock 20:2 25:4 50:1 52:24,25 short 61:9 157:17,19 short-term 50:6 50:8,10 75:21 shorter 173:20 173:21 183:6</p>	<p>Shorthand 185:4 shortly 77:24 show 117:17 133:3 139:14 139:23 showed 69:20 114:4 showing 26:20 27:6 shown 40:20 shut 77:5 80:16 80:20 shut-down 182:20 shutting 44:6 sic 26:23 50:8 77:17 side 29:17 58:16,17 59:1 76:22 signals 174:21 significant 30:2 42:14,21 181:8 182:25 significantly 76:21 Silence 99:23 103:1 104:11 138:9 161:7 silent 13:15 146:21 Silvey 17:20,22 17:24 19:5 23:11 33:17,22 34:12,19,23 35:1,8,17 45:4 45:8 47:11 69:8,15 70:11 71:14 78:21 79:6,13,17,25 80:7 81:6,14,17 81:19 82:1 94:16 similar 116:2 164:22 simply 20:22</p>	<p>22:18 65:22 135:4 simulated 107:5 single 31:5 178:7 sir 17:19 18:11 169:16 sit 183:8 site 24:7 74:20 81:2 180:15 sitting 31:25 110:2 situation 85:19 147:14 175:1 situations 20:13 176:17 six 25:8 61:16 64:20,20 157:20 six-month 157:22 Sixth 61:7 size 177:21 178:15 skill 85:24 skyrocket 74:22 slash 95:6 slated 108:4 slates 117:2 slide 34:13 slides 20:23 slightly 29:18 small 21:23 178:15 smaller 178:1 181:7 so-called 61:13 solemnly 82:16 100:9 122:9 159:1 169:12 solid 176:10 somebody 66:14 107:24 173:9 Someone's 100:4</p>	<p>somewhat 109:10 soon 28:10 sorry 13:4 18:2 60:16 86:24 105:16 121:14 129:21 135:16 137:22 140:2 140:13,19 158:5 163:11 166:5 173:25 sort 33:21 97:15 98:1 116:8 156:5 sought 25:6 148:15 sound 32:23 166:9 sounds 161:14 source 163:23 165:8 sources 43:18 44:1,8 Southwest 54:12 89:11 90:7 111:22 112:14 115:4 speak 15:22 133:9 speaker 86:14 speakers 12:17 185:15 speaking 15:21 16:5,9 104:4 special 141:17 specialized 85:21 specific 25:23 26:13 66:18 108:18 137:20 165:14 168:6 specifically 27:7 28:6 39:23 53:20 86:8 167:19 specificity 85:13</p>	<p>specifics 21:21 speculation 136:20 speed 66:25 spending 18:5 spinning 163:23 Spire 88:24 89:11 90:6 95:25 98:17 Spire's 51:16 89:21 split 128:24 spot 107:25 SPP 74:8,16,21 76:6,6 105:12 105:19,22,23 106:2 112:1 113:7,7 114:13 115:15 116:23 117:7 119:7,15 119:19 120:4 121:1,4,11,16 178:5,7,17,19 spread 176:12 spreadsheet 142:12 staff 14:7,9 16:10 26:20 28:16 29:2,25 31:16 39:7 40:8 45:12,15 46:18 49:17,19 49:22 50:1,4 50:5,6,9,15,15 50:17 52:6 53:8 54:21,24 55:1,7,8,21 56:6,18,20,22 57:8,15,18,21 57:22 59:12 59:15,21 60:3 60:17,22 61:1 61:17,21,25 62:2 63:3,7 64:21,23,25 65:1,5,12,15 66:4,8 67:14</p>
---	--	---	---	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

67:23,25 68:9 69:15 70:11,17 73:7 75:4,8,9 78:14 84:13,23 87:4,6 96:10 97:5 102:4,5 118:15 130:20 131:25 133:18 133:21 135:15 137:11 147:23 151:8,10 155:22 158:14 160:21,23 171:2,3 176:11 staff's 16:17 40:3 47:13,17 48:23 54:1 57:13 58:3 59:3,3,11,25 60:19 63:12 63:23 67:1 69:2,11 70:7 70:19,21 71:7 71:13 140:10 140:22 151:4 stages 117:25 stakeholders 21:5 stand 99:15 122:3,7 145:6 158:24 169:10 standard 22:9 22:16 28:11 31:14,15 51:9 51:22 70:20 71:6,8 86:9 96:17 183:11 standards 114:13 standpoint 176:21 start 19:7 54:19 59:3 94:25 150:4,9 173:20 174:14 start-up 182:19 started 13:22	82:11 110:4,6 Starting 13:2 72:12 142:20 starts 183:18 state 20:5 36:19 41:14 82:23 84:18 84:20 85:4,7 85:9 87:24 88:6,13 91:20 100:19 112:17 119:14,17,18 122:19 131:24 137:22,23 138:11,11,21 143:7 159:9 169:21 stated 104:19 110:17 111:9 138:8 171:10 173:1,17 statement 16:12 16:13 19:14 36:3 95:1 97:25 130:20 130:24 178:14 statements 13:10 18:15 states 32:14 92:16 119:12 143:4 163:5 status 54:9 67:3 86:5 112:20 statute 19:8,12 20:16,19 21:12 21:20,22 25:12 26:1 27:3,4,7,13,23 27:24 28:2 29:12,14,24 30:5,7,11 31:13 33:3,7,12,22 34:5,20 35:11 38:16 39:23 39:24 40:10 43:4,5,12,19	45:19,25 46:4 46:24 48:13 52:18 53:19 53:20 58:6 59:13 60:9,11 62:8 64:17 66:2,7,8,11,16 71:11 72:8 76:13 79:7 96:7 111:19 128:2,5,9 138:19 139:3 153:9,11,13 156:5 statutes 32:16 48:14 138:24 139:6,9 statutorily 31:18 statutory 21:7 31:17 stay 21:25 175:6 stays 15:24 steel 39:10 stemming 27:14 28:1 step 21:6 47:3,6 62:7,8 99:8 121:25 134:1,4 144:14,14 158:8 168:22 184:1 steps 36:23 46:25 181:13 stick 78:14 sticking 133:23 stipulation 135:23 stock 180:14 stockpile 180:15 Stokes 14:8,8 45:13,14 69:14 69:18 70:14 71:22 79:4,9 79:15,20 80:2 80:10 81:8,16 81:18,21 82:5 84:6,9,12,12	84:16,22 87:5 87:5,8 88:14 88:18,18,19,24 89:7,9,15,19 90:4,11 91:1,13 93:4,7,14,17 95:24 96:9,9 97:5,5 98:22 102:5,5,7,23 103:2 104:8,12 106:15 118:16 118:19 120:6,7 120:9 127:13 127:16,19 137:13 138:5,8 138:10 140:2,7 142:10,14,17 144:18 151:9,9 151:12 154:11 156:13 157:9 160:22,22,25 161:8,19,22 162:23 171:3,3 stood 133:20 stop 19:15 121:20 174:20 stopped 61:4 110:7 stops 59:16 storm 21:3,4,15 24:14,15,21,24 25:7,10,13,14 26:5,14,19,21 27:17 28:13 28:20 31:9 45:23 73:15,17 73:24 74:5,8 75:1,7,13,14,15 75:16 76:9 78:12 79:1 81:3 91:22 102:14 117:22 120:18 121:2 121:10 147:7,8 148:12,15 149:7,8 154:19 157:4 167:18	storms 27:18 strand 73:16 stranded 74:3 76:11 77:14 80:1 stranding 107:15 strategic 170:1 strategies 67:19 strategy 25:2 100:23 stretching 20:3 stricken 94:7 strictly 174:21 strike 156:15 strong 43:25 70:24 structure 46:9 structured 67:7 67:9 struggling 113:21,21 studies 119:16 study 112:21,22 112:23 stuff 164:25 stumbling 163:12 sub 55:18,18,18 151:1 subject 90:1 98:20 117:5 133:15 135:24 149:4 155:21 submitted 93:15 128:22 163:3 submitting 91:18 subpart 22:4 24:10 subsection 85:18 subsidy 36:24 substance 30:25 substantial 31:4
--	--	--	---	--

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

<p>31:19 substantially 29:18 101:11 160:4 170:15 substantive 124:14 subtract 79:1 success 183:20 successful 166:7 successfully 78:5 166:6 sudden 20:2 suddenly 80:15 sufficiently 51:4 74:18 suggesting 126:9 suggests 70:13 sum 77:17 summarize 38:4 summarized 36:20 summary 62:2 103:18 162:18 summer 62:23 117:12,13 supplies 54:10 supply 76:22 81:4 116:1 164:6 support 17:3 23:15 41:20 43:13 44:22 56:1 60:9 61:22 172:8 supportable 59:15 supported 48:24 51:15 183:9 supporting 50:4 supportive 70:9 175:8 supports 37:16</p>	<p>46:19 suppose 99:2 156:18 supreme 49:8 51:15,17,19 88:8,11 89:12 91:4 97:10 138:22 139:6 sure 15:15,24 32:6 33:4 34:1 78:22 90:14 97:23 103:7 109:20 111:8,17 111:25 112:11,14 114:21 118:1 121:5 125:5 133:9 134:23 136:22 140:15 147:19,19 148:3 149:4 150:22 152:25 168:18 174:1 175:14 176:3 181:19 surrebuttal 38:22 44:10 60:5,11 83:9 83:13 86:12 87:13,24 91:21 105:10,16 108:22 123:2 123:6,10,18,23 125:2 126:12 127:24 128:13 131:24 133:17 135:8,11,20 137:18 140:4 141:1 142:18 147:6 149:22 surreptitiously 80:1 sustain 136:9 swear 82:16 99:14 100:10 122:9 159:1 169:12 Swearengen</p>	<p>18:20 sync 163:22 synced 163:24 system 77:4,9 81:17 185:9 systems 15:1</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 169:22 table 93:8 130:10,11,15,16 140:7,8,17,20 tables 130:21 133:12 tails 53:2 take 20:13 29:24 35:4 54:2 56:19 72:5,22,23 82:7 90:5,8 91:3,6 93:11 115:1 116:5 122:3 150:23 151:21 154:22 175:20 176:25 181:13 182:16 taken 37:19 44:20 takes 68:8 169:4 talk 19:18 25:1 60:11 110:12 148:9 talked 33:25 34:1 68:19 120:17 177:22 talking 30:4 56:15 115:10 115:14 147:11 149:18,21 163:17 165:10 talks 38:16 39:24 85:19 138:3 targets 38:5 tariff 27:8,21 29:17 37:24</p>	<p>55:13 67:11 149:22 150:1,3 tariffs 37:17 38:24 131:3,4 tax 55:10,15,15 59:17 75:15 taxes 55:8,12 58:10,12,15 59:17 141:2,7 141:12,20 team 24:23 32:5 33:5 103:10 161:12 162:5 technical 30:24 32:2 85:21 116:10 119:16 165:3 technically 32:25 34:21 tell 108:8 109:2 164:20 165:25 telling 58:19 temperatures 164:19 165:17 165:17,21,22 ten 19:1 32:14 48:11 50:12 140:6 ten-year 49:23 49:24,25 tender 84:2 86:22 101:19 124:22 160:11 170:21 term 114:13 145:19 146:22 164:19 terms 20:3 30:24 33:12 73:2 80:12 96:8,21 156:17 157:15 158:1 178:16 179:18 test 28:25 29:22 54:7 163:9,10,17,19</p>	<p>166:6,7 tested 54:15 166:1,12 testified 30:1 42:21 44:10 97:16 108:23 137:14 144:12 testifies 24:9 75:20 testify 31:19 57:17 60:4 61:2 62:13 68:10 85:25 86:10,11 87:19 97:13 testifying 25:3 26:3 56:10 58:7 167:21 testimonies 130:7 testimony 17:3 19:3 22:7,16 24:19 32:19 38:3,22,22 40:10,22,24 41:16 44:10 48:23,24 49:11 55:10 60:6,10 70:21 75:9 82:17 83:10,13,17 85:4,5,18 86:1 86:7,12,20 90:12,14 98:4 100:10 101:3,8 102:8 103:17 105:9,15 108:22 109:11 110:16 111:3,9 113:24 122:9 123:2,6,7,10 123:14,18,23 123:25 124:1,2 124:3,7,8,12 125:2 126:12 128:9 129:17 129:18,18,21</p>
---	--	--	--	---

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

130:1,3,17,19	145:14 146:3	153:6 155:14	105:21 113:22	89:1,19 103:13
131:14,18,24	154:13 155:15	155:23 156:25	114:22 115:23	103:13 116:6
132:15 133:1,2	155:17 158:8	157:8,21 164:9	117:22 118:7	161:24 162:2
134:13 135:3,5	158:10,25	164:14,15,18	121:15,18,20	176:25
135:13,18	159:5 160:18	172:11 178:11	123:14 124:12	topic 22:13
138:2 139:12	160:20,22	181:16 183:6	126:4 131:13,14	tornado 27:18
140:1 144:16	166:22,24	third 54:5	131:15 141:14	91:23 92:7,13
145:2 147:7,15	168:20 169:2	59:20 67:4	147:12,17	92:18,20
149:14,14,19	169:17 179:3	102:10 104:1	150:21 164:11	total 104:23
149:22 150:25	180:16,18	163:5,16	169:6,6 172:17	132:22
159:2,20,23	183:23 184:5	thorough 168:1	175:6,7 179:20	tower 115:21
160:1 162:16,17	Thanks 158:23	thought 33:6	179:24 180:3	116:2
163:4 168:13	166:18	50:8 89:15	182:21	track 21:25
169:13 170:7	theoretically	98:10	timeframe	47:17
170:12 171:10	34:19 180:5	three 22:20	150:7,9	traditional 29:1
172:24,25	thereto 85:25	23:23 46:25	timeline 149:25	29:7 32:3
173:17 178:12	thing 51:23 81:1	47:3 50:7	times 32:5	46:7 47:1,8,25
181:17,23	114:16 155:7	101:3 115:21	72:17 74:14	48:1 49:16
182:16	158:14 176:10	116:4 117:3	87:10,13,15	56:16,17 62:3
Texas 81:4	things 30:15,17	177:15,21	111:24 116:6,8	62:7,10 87:25
thank 13:7,18	30:20,23	threshold 34:16	142:24 175:3	train 108:6
14:6,14,20	62:17 70:6	35:3 52:15,23	177:21 183:1	training 85:25
16:16,19 17:8	72:15 81:13	152:4,9,17,21	timing 28:15	183:11
17:19,24 18:10	97:15 127:1	153:4	title 123:1 161:23	transaction
18:11,14,17	159:16,18	Thursday 62:13	titled 104:13	66:12
20:23 33:14	167:20,22,24	125:15	today 14:23,25	transactional
33:15,17,18	174:23 175:2	tied 68:11 80:18	15:4,17 19:14	63:9
35:17,17,19,24	183:12	tier 117:3,3,3	20:5 22:14	transactions
36:1,2 40:25	think 17:2 18:23	tiering 144:9	24:8,22 25:3	32:18
41:4,6,6 44:25	33:18 34:13	ties 59:22	28:14 41:11	transcribed
45:4,8,11 69:3	38:11,17 39:5	Tim 14:15,15	63:3 72:3,8,19	12:15,23 15:3
69:7,8,8 71:14	47:9,16 48:23	16:22 17:2	83:4,20 101:10	185:13
71:14,16,18,22	49:11 50:13	36:5,6 87:3	124:16 126:13	transcriber
71:23 78:21	59:16 62:18	102:3 118:14	130:20 144:17	12:18
82:1,1,5,20	63:3,4 68:2	129:8,11,11,13	160:3 169:4	transcript 12:16
84:14 93:18	70:7,8 87:11,17	136:11,14,15,22	170:14 184:7	12:19 15:2
93:20 94:3,12	87:22 89:10	136:23 137:10	today's 175:12	185:7
94:16,18 99:7	89:15 90:11,13	160:20	told 116:25	transcriptionist
99:9 100:8,14	90:19,23 91:17	time 12:18 16:6	tomorrow	16:4
100:16 102:1,2	95:12 96:16	16:11 22:10	158:16,19	transforming
102:3 106:19	97:9 98:3	48:8 52:12	166:20 184:8	41:14
109:16 118:14	107:13 111:18	55:10,22,23	184:10	transition 22:3
120:6,12	113:16,16,23	61:9 67:12	tool 45:25 46:4	28:7 43:17
121:21,24	117:5 125:10,15	69:3 79:21	56:7	55:6 60:14
122:13,15	130:15 132:3	80:9 82:7	toolbox 46:1	70:15 96:22
129:6 137:10	135:14 137:14	83:17 84:1	tools 48:12	transmission
142:15 144:21	138:3,6 148:3	85:15 94:16	top 48:13 68:4	102:12 159:18

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

transportation 106:13 171:13 181:18	24:14 43:4	understanding 17:4 65:7 80:21 81:21,24 83:12 85:22 99:17 123:9,16 124:6 125:18 127:9 134:11 137:5 141:10 148:11 150:2 164:3 165:24 168:8	units 112:24 113:10 114:10 115:11,11 136:24 164:2 171:15 173:18 173:19 174:22 175:10,11 176:11 176:16,20 177:5,8,9,13,15 177:15,23 178:1,4 182:5 182:11 183:17	54:5,14,19 55:11,19,23 56:6 62:4 63:13,16 70:23 71:1,4 72:7 73:18 74:5,8 75:2,7 75:13,14,15,16 76:9 78:12 79:1 81:3 102:14 117:22 120:19 121:2 121:10 129:25 147:8 148:15 149:7,8 154:19 167:18
travel 99:16	twice 58:8,25	understands 18:1,7 50:9	unknown 48:5 55:14	167:18
traveled 168:24	two 13:3 19:22	understood 130:23 168:19	unlawful 27:6 50:23	Uri's 147:8
travels 169:3	21:16 44:13	undervaluing 72:15	unlock 182:17 183:12	148:12
treat 86:21	46:5,11 47:2	underwriter 32:10 48:16 67:16	unquote 90:1	usable 106:8,9 107:18,20 109:23 110:6
treated 27:25	49:14 55:19	underwriters 32:13 62:16 67:5	unreasonable 25:5 90:1	usage 39:12 135:21
treating 40:6,7	64:8 69:11	uneconomic 44:7	unrebutted 90:14	use 13:15 15:18 20:17 21:13 36:9 43:22 44:22 46:3,19 55:21 68:20 73:16,16 81:23 96:25 108:24 115:23,24 116:2 133:4 135:9 146:4 147:8 148:2 165:1
trial 85:20	72:18 77:16	unforeseen 21:15	unrecovered 77:22 79:23	useful 43:7 56:6 57:11 70:20 71:6 76:24 77:23 80:6 81:23
trier 85:22 86:4	117:3 146:15	unfortunate 70:23	unusable 109:24	Utilicast 102:10 102:17 103:16 103:17,23 104:5 159:13 159:15 161:1 162:17 163:3 163:14 168:5
true 20:9,12	164:1 177:16	Unfortunately 14:24	update 66:23 135:18 136:6	
27:17 83:23	177:23	unidentified 12:17 13:2,6,12 13:18 100:4 125:15 128:23 137:25	updated 67:3 131:19 133:3,12 133:14 135:10 136:5	
88:3 101:13	tying 68:13,15	unit 54:7,9 75:6 81:12 107:9 108:4 110:6,7 163:19 166:6,7 174:16,17,22 175:3,5,18 176:13,14,24 177:1,3,11 178:2,7,24 182:3,4,8,22 183:8,13	upfront 47:4 upgrades 42:16 42:18 74:3	
124:18 144:14	type 79:7,8		upload 163:25	
156:18 157:15	96:19 143:17		urges 57:22	
160:6 170:17	144:4 165:7		Uri 21:3,4,15 24:14,15,24 25:7 26:5,14 27:17 28:13 31:9 39:13,15 39:19 45:24 46:21 49:16 50:18 52:2,11 53:7,12,14,19	
185:12	183:2,9			
truly 35:7	types 96:21			
trump 27:23	typically 39:6 98:10 134:8			
truth 82:17,18,18	U			
100:11,11,12	Uh-huh 132:2			
122:10,11,11	142:2 153:17			
159:3,3,3	175:16 178:25			
169:14,14,15	ultimate 86:4			
try 52:15 74:15	ultimately 35:12			
113:22 145:4	149:14 151:20			
158:19 174:2	157:12 183:14			
182:22	183:20			
trying 152:14	unable 12:15 14:24 54:19			
163:11 164:8	unamortized 92:23			
164:23	unappreciated 24:6 76:14,23			
tune 54:7	unaware 154:10			
164:25 165:17	uncontested 90:15			
165:21	undergo 42:16			
tuned 54:16	underlie 121:4			
164:19	underneath 153:10			
tuning 164:20	understand 88:11 124:1 130:18 141:22 164:13 172:12 175:14			
165:5 182:17				
183:12				
turbine 182:18				
turbines 115:2				
turn 87:12 89:3				
92:4				
turned 13:14				
99:24				
turning 21:21				

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

<p>utilities 20:16 21:13,20 23:3 23:16 27:19 32:13 36:10 43:5 51:17 90:15 98:6,25 113:8 159:17 161:2 utility 19:21 20:10 21:20 23:5,13 29:16 32:3,4 37:16 46:9 48:16 55:13 64:12 67:11 87:16 88:1 98:12 100:22 105:23 113:3 122:23 167:18,18 169:25 utilized 20:8 134:24 utilizing 41:21 185:9</p> <hr/> <p style="text-align: center;">V</p> <p>validity 72:14 value 34:15 44:13 47:8,13 47:23 48:19 56:13,24 57:13,19,20 57:24 59:4,5 59:7,10,12 60:21 61:25 63:11,21 67:8 69:24 137:2 139:11,21 142:19 143:18 144:5 158:17 180:7 values 30:3 37:20 135:21 180:9 variable 47:19 114:15 115:7 varies 179:24</p>	<p>variety 114:1 159:16 various 117:25 134:5 149:5 vehicle 145:21 venue 33:18 verbally 137:8 verbatim 12:20 versions 101:19 versus 47:8 68:23 69:11 88:25 90:6 viability 183:22 view 157:2 viewing 13:13 views 157:11 violation 66:1 viruses 15:16 voided 75:19 voir 84:6 127:14 volatile 70:5 volatility 62:24 VOLUME 12:11 volumes 176:8 voluntarily 77:4 77:23</p> <hr/> <p style="text-align: center;">W</p> <p>waiting 126:14 waiver 163:8 want 15:18,23 17:9 19:16 32:6 33:3 36:13,16 38:10 38:15 39:21 47:23 63:25 72:8 107:14 112:6 125:7,21 126:20 127:2 140:15 142:6 148:9 166:20 176:3 184:3 wanted 16:23 23:14 35:2,22 158:14,14 168:1 wanting 23:16 79:1</p>	<p>wants 20:18 58:23 152:2 184:8 warning 158:15 wasn't 39:11 71:4 81:9 103:7 148:20 167:25 wavering 23:15 way 15:20 20:7 20:11 21:6,8 38:12 40:18 48:19 59:20 61:11 95:10 107:13 115:15 119:15 132:14 142:22 147:18 165:20 181:19 182:9 183:2 ways 114:1 117:17 117:18 we'll 13:9,21 82:7,8 93:11 94:13 128:14 158:12 184:7 we're 15:7 16:2 19:4 20:7,13 30:25 33:2,13 47:22 52:11 53:8 56:15 63:2 68:2 80:10,11,11 82:10,11 99:16 113:16 131:3 155:21 158:11 158:15 172:9 174:19 175:19 175:20 184:9 we've 25:24 33:25 34:1 52:22 88:5 97:7 128:24 166:3 182:7 wear 15:15,19 weather 26:12 26:17 27:15 28:2,18 29:13</p>	<p>108:24 112:25 152:8 Webex 15:6 17:14 99:18 website 93:16 128:22 week 14:22 15:18,25 18:3 19:2 20:24 31:25 32:17 33:6 46:13,13 99:15,19 125:13 133:11 weekend 18:4 weekly 66:23 66:24 weeks 146:15 weighed 29:25 30:8 weighted 25:16 25:21 48:3 56:1 57:5 58:2 61:18 62:1 144:1 146:4,9,18 147:2,10 went 134:23 146:14 181:17 weren't 139:1,8 whatsoever 68:8 Williams 14:11,11 16:15,16 71:25 72:1 93:20,21 93:23 94:6,11 95:8 96:12,12 99:21,22 100:6,7 106:19 106:20,22 109:15 120:12 120:13,15 121:21 124:24 125:1,10,20,25 126:3,6,15,20 126:22,25 144:21,22,24 145:14 154:13</p>	<p>154:14,16 155:14 156:17 179:3,4,6 181:6 willing 132:1 168:10 willingness 133:19 Wilson 160:11 win 174:25 win/win 20:9,12 wind 22:20,23 23:24 42:10 68:12,14,20 68:23 69:1 72:10 76:18 76:22 80:19 80:22 81:5,25 109:9 113:13,14 114:1,4,8,10,22 114:22,24,25 115:2,5,6,11,15 115:20,24 116:1,7 117:2,4 120:18,23,24 148:15 180:12 window 180:2 winds 81:17 wins 53:2 winter 21:3 24:14 28:13 45:23 54:11,18 79:1 102:13 117:22 148:12 167:18 wish 15:11 16:7 16:14 91:5 93:6 94:15 withdraw 136:14 witness 16:7 19:16 22:14 24:8,22 28:14 44:9 55:9 58:6 60:3,5 61:1 67:25 68:9 69:5,19 74:11 75:3,4,7</p>
--	--	--	--	--

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

75:8,9,13,20 76:2,11 77:11 77:19 82:12,19 84:3,7 85:24 86:22 88:15 88:22 95:13 96:16 97:22 99:9,10,24 100:1,13 104:9 108:17 109:20 110:1,14 111:2,6 111:17 112:5,8 112:11,14 113:16 113:24 114:12 114:21 115:3,9 115:13,19 116:15,23 117:11,15,23,25 118:10 122:12 124:23 127:14 127:18,21 133:2 134:25 137:9 140:6 142:11,16 145:21,25 146:7,12,16,19 146:21,25 147:5,19,25 148:2,8,13,20 149:4,13,20 150:2,12,16,21 151:4 156:13 158:10,13,21 159:4 160:11 161:20 163:11 163:15,18 164:3,8,14,22 165:5,12,14,19 165:23 166:3 166:9,13 167:21 169:16 170:22 171:10 171:24 172:3,7 172:14,22 173:6,7,9,9,13 173:25 174:3,7 174:15 175:16	175:22 176:1,6 176:18 177:10 177:14 178:6,11 178:20 184:7 witness's 85:5 witnesses 19:1,3 24:16 31:24 42:21 97:16 164:17 169:4 Woodruff 13:9 13:17,20 14:6 14:10,14,17,20 16:19,25 17:8 17:19,23 18:11 18:14 33:15 35:19,24 36:3 41:2,6 45:2,9 45:12 69:7 71:16,20,23 82:3,6,15,20 84:4,8,10,14 85:11 86:13,17 86:24 87:4 88:17,23 89:13,17 90:8 90:17 91:5 93:6,11,18 94:10,13,18 95:11,15 96:14 97:18 99:7,10 99:20,24 100:3,5,8,14 101:21 102:2,4 102:25 104:10 106:17 109:17 109:21 110:11 110:15 111:4,8 112:3,6,9,12 113:11 114:10,19 115:1,8,10,18 116:13,21 117:9 117:13,21,24 118:8,11,15 120:7,11,17,17 121:23,25 122:4,8,13 124:25 125:7	125:12,17,23 126:1,5,19,22 127:3,11,15 128:11,14 129:2 129:7,10 136:9 136:12,21 137:7,11 138:7 142:10,15 144:20 145:16 145:23 146:3 146:8,13,17,20 146:23 147:1,6 147:23 148:1,6 148:9,14,25 149:12,18,21 150:10,13,17 150:24 151:6 154:12 155:16 156:16 158:8 158:11,25 159:5 160:13 160:19,21 161:21 162:25 163:13,16 164:1 164:5,13,18 165:4,9,13,16 165:20,25 166:5,11,14,22 167:7 168:22 169:1,3,8,11,17 170:23 171:5 171:21 172:1,4 172:11,19,23 173:8,10,16 174:2,4,11 175:13,17,23 176:2,15 177:7 177:12 178:3,9 178:18,25 180:17 181:6 181:24 183:25 184:4,6 wording 29:18 words 12:17 23:11 90:22 139:4 work 21:24	125:6,21 133:19 141:24 142:1 143:3 159:17 182:9 worked 32:17 91:14 105:5 working 116:1 132:1 163:6 works 172:12 worth 42:17 43:13 86:20 wouldn't 163:21 178:10 write 176:2 writing 105:8 written 103:16 162:16,17 wrong 140:19	115:21 116:4 176:24 183:19 Yep 136:11 142:4 yesterday 17:25 yield 143:4,9,22 yields 143:14
			Z	
				zero 154:21,23 154:23 165:21 165:22
			O	
				O 110:8 O.3 50:9,10,11 O193 140:1
			1	
				1 37:13 76:19,20 76:20 82:8,9 83:13,20 84:2 84:4,24 85:1,2 85:18 87:1,12 104:6,14 1.2 76:19 1.3 60:18 1.8 57:1 10 48:2 53:7,10 103:9,13 139:13,16,20 140:1,4,12,13 140:17,24 142:20 161:9 163:10 164:9 164:10,10 166:1,6 177:1 100 52:10 80:3 152:2,11,23 153:5,19 109 88:16 91:25 93:6,8,13 11 54:7,11 75:6 85:2 104:1 141:6 163:10 164:10 166:2,7 170:9,21,23 11,000 177:2

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

12 85:1,2 128:2 141:6 170:10,21 170:23 12.4 60:18 12.9 144:7 12th 77:17 107:2 107:16 13 12:10 25:15 48:2 58:22 72:21,24 102:9 144:6 13-year 31:10 56:20 14 84:25 127:23 128:7 137:21 142:17 140.7 31:8 15 48:2 116:11 116:20 117:20 119:21 128:7 142:21 150 115:16,17 154 92:4 159 57:14 15th 104:6,17 131:6 16 141:2,5 16th 78:4 17 59:5,12 128:3 175 140:18,23 18 114:7 138:11 19 107:5,12 127:23 137:18 137:20,21 138:11 193 49:18 53:9 62:4 74:7 139:18 140:3 157:22 1st 36:15 77:10 108:5 120:5 131:2 149:8	101:18,21 102:9 103:15 2.47 143:10,12 147:9,14 20 42:17 72:12 72:22 77:6 80:23 84:25 85:1 105:14 127:23 137:21 163:13,13 200 76:17 141:21 177:19 183:5 2008 51:2 2010 32:19 2011 27:18 92:13 2014 36:22 120:5 2015 74:2 79:15 79:24 2016 36:22 54:15 166:2,8 166:8 2017 72:12 183:6 2018 42:8 114:2 2019 23:13 42:10 59:19 60:24 61:3,5 106:5 107:2,17 147:13 2019-0374 93:10 2019-IRP 110:22 111:13 114:4 2020 24:2 60:24 61:6,7 77:10 78:4 106:7 107:13 108:5 166:7,8 2021 51:16 54:14 75:22 89:12 90:7 104:6 154:18 166:1,4 2022 12:10 61:1 61:11,14,16	123:20 129:19 130:4 135:22 21 84:24,25 102:20 103:3 104:17 127:6,9 127:10 128:4 128:17 142:13 22 36:19 59:4,4 59:7,10 84:25 105:14 128:2 221,646 140:16 221.6 31:9 225 89:1,11 90:7 22nd 92:13 23 91:20 128:4 128:4 233 89:3 24 61:1 77:18,18 79:1 128:5,6 24.2 74:1 24th 102:20 103:3 25 32:18 63:15 116:11 255 103:23 262 46:20 62:4 63:25 64:1 27 172:17 27.85 72:24 28th 135:22 29 77:17	362 72:20,23 73:14,22 362.5 31:7 39 149:23 3931700.2 55:18 3931700.23... 39:24 3rd 89:11 90:7	600 42:10 177:20 60th 116:9 618 89:11 90:7 67 75:2 69 56:19 62:4 78:25 69.5 73:23
<hr/> 2 <hr/>		<hr/> 3 <hr/>	<hr/> 4 <hr/>	<hr/> 7 <hr/>
2 12:11 54:22 61:8 84:24 85:1 87:12		3 53:17 54:3 55:18 84:23 85:1 101:18,21 104:22,25 105:1 116:6 158:12 162:2 30 80:23 116:12 117:6 31 87:15 32 87:10,13 172:16 35.5 73:1 36 58:20,21 59:6,9	4 84:25 85:1 101:18,22 105:11 143:17 172:25 173:16 4-C 50:15 4.6 50:15 4.65 55:24 56:8,11 61:18 63:12,13 72:23 423 92:5 425 92:16 45 86:6 183:7 490.065 85:17	7 37:14 73:4 84:23 87:25 123:11 124:15 124:22 127:8 127:12 128:4 128:15 139:19 172:25 7,800 177:3 7.38 73:2 7.7 143:19 70 30:4 54:16 75.8 158:18 76 57:21,25
		<hr/> 5 <hr/>	<hr/> 6 <hr/>	<hr/> 8 <hr/>
		5 58:23 115:24 116:18 117:18 124:7,15,22 127:8,12 128:4 128:15 130:11 130:16 172:18 172:25 50 115:25 135:15	6 73:4 76:19 124:9,15,22 127:8,12 128:15 6.77 56:6 62:2 63:14 144:1,4 146:5 147:10 147:13 60 78:11 116:5	8 84:24 109:3 123:11 124:16 124:22 125:2 127:8,12,24 128:11,12,16 140:4 8:30 184:8
				<hr/> 9 <hr/>
				9 84:25 85:2 127:23 137:21 159:24,24 160:10 9-P 160:13 900 87:22 93 72:11,22 95 27:22 52:22 53:4 75:11 153:20 154:5 154:9 179:21 95/5 26:23 50:20 51:2,24

AUDIO TRANSCRIPTION, VOLUME 2 6/13/2022

52:16 139:13
139:22 140:8
140:11,23
155:21,24
9th 123:19