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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

In the Matter of the Petition)
of Union Electric Company d/b/a) File No. EF-2024-0021
Ameren Missouri for a Financing)
Order Authorizing the Issue of)
Securitized Utility Tariff Bonds)
for Energy Transition Costs)
related to Rush Island Energy)
Center)

TUESDAY, APRIL 16, 2024
9:00 a.m.

Governor Office Building
200 Madison Street
Jefferson City, MO 65101
and WebEx

VOLUME 4

JOHN T. CLARK, Presiding
SENIOR REGULATORY LAW JUDGE

KAYLA HAHN, Chair,
JASON R. HOLSMAN,
GLEN KOLKMEYER,
COMMISSIONERS

REPORTED BY:

Tracy Taylor, CCR No. 939

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1 The followings proceedings began at 9:01 a.m.:

2 JUDGE CLARK: Good morning. Today is
3 April 16th, 2024 and the current time is 9:01 a.m.
4 This proceeding is being held in Room 310 of the
5 Governor Office Building.

6 The Commission has set aside this time
7 for day two of the evidentiary hearing in, In the
8 Matter of the Petition of Union Electric Company doing
9 business as Ameren Missouri for a Finance Order
10 Authorizing the Issue of Securitized Utility Tariff
11 Bonds for Energy Transition Costs related to the Rush
12 Island Energy Center. And that is Case Number
13 EF-2024-0021.

14 My name's John Clark. I'm the Regulatory
15 Law Judge overseeing today's proceeding.

16 We have a different court reporter today,
17 so I'm going to ask that everybody, the first time
18 that they are speaking, identify themselves to the
19 court reporter, Ms. Taylor, if you haven't already
20 provided your information to her.

21 At this time, I'm going to ask counsel to
22 enter their appearances for the record, starting with
23 Ameren Missouri.

24 MR. LOWERY: Jim Lowery on behalf of
25 Ameren Missouri.

1 JUDGE CLARK: Thank you, Mr. Lowery.

2 MR. LONG: Nash Long, also for Ameren
3 Missouri.

4 JUDGE CLARK: Thank you, Mr. Long.

5 On behalf of the Staff of the Commission.

6 MS. MERS: Nicole Mers on behalf of the
7 Staff.

8 JUDGE CLARK: Thank you, Ms. Mers.

9 On behalf of the Office of the Public
10 Counsel.

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

14 JUDGE CLARK: Thank you, Mr. Williams.

15 Midwest Energy Consumers Group e-mailed
16 me this morning and asked to be excused from today's
17 hearing, and has agreed to waive cross of all
18 witnesses for today. I am going to grant that
19 request.

20 I do not see MI -- MIEC, Midwest --
21 Missouri Industrial Energy Consumers. They had also
22 asked the other day to be excused and that was
23 granted, so I'm not surprised not to see them today.
24 Same with Renew Missouri. Same with the Natural
25 Resources Defense Council. Same with AARP and

1 Consumer Council of Missouri. Sierra Club has also
2 asked to be excused, so what we have -- who we have
3 this morning is who we have.

4 Now, are there any preliminary matters
5 that the Commission needs to take up at this time?

6 MR. LOWERY: Just one, Your Honor.

7 Mr. Long is handling the questions of prudence related
8 to the NSR permitting issue, which is really sort of
9 the core part of Issue 3A. I'm handling the harm
10 issues related to that, and also on the other issue
11 about whether there would be harm or the
12 retire/retrofit decision.

13 I intend to just hold my cross on the
14 harm question on both of those until the same
15 witnesses take the stand on 3B so that we don't double
16 up and sort of have a more inefficient process, if
17 that's okay with you.

18 JUDGE CLARK: That is fine with me.
19 Thank you for letting me know, Mr. Lowery.

20 MR. LOWERY: Thank you.

21 JUDGE CLARK: Are there any other
22 preliminary matters the Commission needs to take up at
23 this time?

24 I hear and see none.

25 As you can see to my right, your left,

1 is Chair Kayla Hahn. Also currently on -- appearing
2 via WebEx or attending via WebEx are Commissioner
3 Kolkmeier and Commission Holsman. Mister -- or
4 Commissioner Holsman is on his way in, I know.
5 Commissioner --

6 COMMISSIONER KOLKMEYER: Good morning,
7 Judge. This is Commissioner Kolkmeier. Good morning.

8 JUDGE CLARK: Good morning. Thank you
9 very much, Commissioner Kolkmeier.

10 Commissioners will come and go throughout
11 the day and they may attend variously in person or
12 online.

13 Now, when we left off yesterday, we had
14 made it through the first two witnesses of Issue 3A,
15 which involves the -- whether or not Ameren Missouri
16 made reasonable and prudent decisions respecting
17 whether to obtain a New Source Review permit.

18 I believe we're still on Ameren Missouri
19 witnesses, so Ameren Missouri, you may call your next
20 witness.

21 MR. LONG: Thank you, Judge. Good
22 morning. Nash Long for Ameren Missouri. Ameren
23 Missouri calls Mr. Karl Moor.

24 JUDGE CLARK: Mr. Moor, would you please
25 come take the stand. And would you raise your right

1 hand to be sworn.

2 (Witness sworn.)

3 JUDGE CLARK: Thank you. Please be
4 seated.

5 Ameren.

6 KARL MOOR, being first duly sworn, testified as
7 follows:

8 DIRECT EXAMINATION BY MR. LONG:

9 Q. Please state your name, sir.

10 **A. Karl Moor, K-a-r-l M-o-o-r.**

11 Q. And are you the same Karl Moor who caused
12 to be prepared for filing in this docket direct and
13 surrebuttal testimony?

14 **A. Yes, I am.**

15 Q. Marked for identification as Exhibit 12-C
16 and 12-P as your direct testimony?

17 **A. Yes.**

18 Q. And marked for identification as
19 Exhibit 13, your surrebuttal testimony?

20 **A. Yes.**

21 Q. Do you have any corrections to any of
22 those exhibits?

23 **A. No corrections.**

24 Q. And if I posed the same questions to you
25 today, would your answers be the same?

1 **A. Yes.**

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

4 **A. Yes.**

5 MR. LONG: Your Honor, at this time I
6 would move Exhibits 12-C, 12-P and 13 into the record.

7 JUDGE CLARK: Are there any objections to
8 admitting the direct testimony of witness Karl Moor,
9 that is 12 and there is a confidential and public
10 version; and Exhibit 13, the surrebuttal testimony of
11 Karl Moor onto the hearing record? Are there any
12 objections?

13 I see none.

14 Those will be admitted onto the hearing
15 record.

16 (Exhibits 12-C, 12-P and 13 were received
17 into evidence.)

18 MR. LONG: At this time we would tender
19 the witness for cross.

20 JUDGE CLARK: Staff, Do you have any
21 cross-examination for this witness?

22 MS. MERS: Yes.

23 CROSS-EXAMINATION BY MS. MERS:

24 Q. Good morning.

25 **A. Good morning. How are you?**

1 Q. I'm good. How are you?

2 **A. Very good. Thanks.**

3 Q. On page 10 of your direct testimony, line
4 five through six, you mentioned in -- some of the
5 things you reviewed for this case was the declaration
6 of Steve Whitworth, the witness yesterday, in the
7 Ameren Missouri litigation in the US District Court.
8 Do you recall?

9 **A. Yes, I did.**

10 Q. And you attached a portion of a
11 declaration to your testimony as Schedule KRM-D2; is
12 that correct?

13 JUDGE CLARK: Ms. Mers, will you speak
14 more clearly into the microphone, please? We're
15 having a hard time hearing you.

16 MS. MERS: Okay. Is this better?

17 **THE WITNESS: Yes. The declaration of**
18 **Steve Whitworth for the summary judgment.**

19 BY MS. MERS:

20 Q. And does that have the attachments to his
21 declaration?

22 **A. Actually, I'm not sure if it does have**
23 **the attachments to the declaration.**

24 MS. MERS: If I can approach the
25 witness --

1 **THE WITNESS: Sure.**

2 MS. MERS: -- and also have -- well --

3 JUDGE CLARK: Yes, you may.

4 MS. MERS: Just trying to figure out the
5 best way to do this.

6 **THE WITNESS: Hey, don't do that. Here.**

7 MS. MERS: Sorry.

8 **THE WITNESS: Let -- let me do that,**
9 **please.**

10 MS. MERS: Thank you. Thank you very
11 much.

12 JUDGE CLARK: Thank you, Mr. Moor.

13 **THE WITNESS: Thank you.**

14 MS. MERS: Thank you so much.

15 **THE WITNESS: Yeah. Sorry about that. I**
16 **forgot to get one for myself.**

17 MR. WILLIAMS: I gave mine to Moor.

18 MS. MERS: Sorry.

19 (Exhibit 113 was marked for
20 identification.)

21 BY MS. MERS:

22 Q. And I'll give you a moment to look over,
23 but once you have, can you confirm that appears to be
24 the full declaration with the attachments as well?

25 **A. Part two of three, part two of two.**

1 **Actually I don't have part one of three. Part two of**
2 **two.**

3 Q. We're getting it to you. Sorry.

4 **A. Oh, thank you. Yes, I have all three of**
5 **them.**

6 MS. MERS: At this time I'd like to offer
7 those attachments as Exhibit -- I think we're at 113
8 for Staff. We separated them into three portions
9 because it's lengthy, but it seems easier to keep it
10 as one exhibit. But I'd defer to you, Judge.

11 JUDGE CLARK: No, that seems fine because
12 they're marked in parts. So I am fine as long as each
13 one identifies itself as part one or two or three of
14 three, which they appear to do. So if you want to
15 keep them as one exhibit, that's fine.

16 Are there any objections to admitting
17 Staff's Exhibit A1 onto the hearing record?

18 I hear and see no objections.

19 And this is not an exhibit included on
20 your exhibit list; is that correct?

21 MS. MERS: No, it is not.

22 MR. LOWERY: For clarity, Judge, it's
23 Exhibit 113 for purposes of this hearing; is that
24 right? That would be Staff's number.

25 JUDGE CLARK: That would be correct.

1 MR. LOWERY: Okay. Just wanted to make
2 sure I was keeping up. Thank you.

3 JUDGE CLARK: And I would like to stick
4 with our numbering system, so I will use 1A as the
5 descr- -- or A1 as the descriptor.

6 So any objections to admitting Staff
7 Exhibit 113 onto the hearing record?

8 I hear and see no objections. Staff
9 Exhibit 113 -- 113 is so admitted.

10 (Exhibit 113 was received into evidence.)

11 BY MS. MERS:

12 Q. Did the Judge rule that Ameren Missouri
13 violated their Title V permit, to your knowledge?

14 JUDGE CLARK: And you're speaking of the
15 District Court Judge, right?

16 MS. MERS: Yes.

17 **THE WITNESS: I don't recall.**

18 BY MS. MERS:

19 Q. Okay. You discussed the Missouri S-I-P
20 in your -- or SIP in your testimony and you noted it
21 as the 2006 Missouri SIP. Do you know -- do you base
22 that date on the date the EPA approved it or the date
23 that it was effective in Missouri?

24 **A. The date that it was effective in**
25 **Missouri.**

1 MS. MERS: Okay. I'd like to mark
2 another exhibit. Well, this one's a little tricky, so
3 we'll go with whatever the Court would like. But we
4 have an exhibit, but we also have a CSRs. So we could
5 take notice of the particular ones we're looking at or
6 we also have paper copies to admit as an actual
7 exhibit, whichever you all prefer.

8 JUDGE CLARK: I would -- I would prefer
9 to take official notice of Commission rules.

10 MS. MERS: They are not Commission rules.
11 They're another state agency's.

12 JUDGE CLARK: Okay. Then those will be
13 an exhibit.

14 MS. MERS: Okay.

15 BY MS. MERS:

16 Q. Do you recognize the thicker packet of
17 papers as the rules of the Department of Natural
18 Resources about air quality standards?

19 **A. I'm sorry. Which -- which exhibit?**

20 Q. We can mark that one as Exhibit 114. But
21 it's the one that (indicating) looks like that.

22 **A. Okay.**

23 (Exhibit 114 was marked for
24 identification.)

25 JUDGE CLARK: It says at the top: Rules

1 of Department of Natural Resources, Division 10.

2 **THE WITNESS: I'll take it as true, of**
3 **course.**

4 BY MS. MERS:

5 Q. Did you not get a copy?

6 **A. I'm searching through the ones that I**
7 **got, so I'm sorry.**

8 Q. Okay.

9 **A. Can you give it to me?**

10 MR. WILLIAMS: I think that's it.

11 **THE WITNESS: Thank you. Okay. I'm --**
12 **I'm there.**

13 BY MS. MERS:

14 Q. Okay. Does that appear to be a copy of
15 the rules of the Department of Natural Resources?

16 **A. It does -- it does appear to be.**

17 Q. Okay. And then the smaller set of papers
18 that at the top say Federal Register, Volume 71,
19 Number 123, do you have that?

20 **A. June -- June 27th, 2006, right? Yes.**

21 Q. And do you recognize that as a Notice of
22 Approval and Promulgation of the Missouri SIP plan?

23 **A. Yes. It appears to be that.**

24 Q. And we'll go ahead and mark that as
25 Exhibit 115.

1 (Exhibit 115 was marked for
2 identification.)

3 MS. MERS: And at this time, Staff would
4 author -- off -- offer both 114 and 115 into the
5 record.

6 JUDGE CLARK: Bear with me just a moment.
7 Are there any objections to admitting
8 Exhibit 114, the DNR rules; and Exhibit 115, the
9 federal SIP recognition on to the hearing record?

10 I hear none. Exhibit 114 and 115 are
11 admitted onto the hearing record.

12 (Exhibits 114 and 115 were received into
13 evidence.)

14 JUDGE CLARK: And you may continue your
15 questions.

16 MS. MERS: Sorry. We're also trying to
17 get our papers in order. So bear with us one second,
18 please.

19 BY MS. MERS:

20 Q. If you turn to -- let me see if I can
21 give you a page number -- page 21 in those Department
22 of Natural Resources rules, and look at the
23 Construction Permits Required portion.

24 **A. Yes, I'm looking at it and reading**
25 **through. Do you want a specific section?**

1 Q. If you follow that through to page 35,
2 that is a long rule. Can you tell us the date that's
3 listed there?

4 A. The date that's listed on the document or
5 in the rule? This is date --

6 Q. The --

7 A. I'm sorry.

8 Q. The last -- sorry. The last amended
9 date. So it would be the -- the last numbers in that
10 column of every time it was changed.

11 A. That would be on page 35?

12 Q. Yes.

13 A. Okay. It's a long list so let me -- give
14 me a second.

15 Q. It's -- take your time.

16 A. 2002, 2003, 2004 and then apparently this
17 is the 2004 version.

18 Q. Okay. Thank you.

19 A. Uh-huh.

20 Q. Have you read Judge Sippel's summary
21 judgment where the -- he discusses the Missouri SIP
22 date -- dated January 21st, 2016?

23 A. Yes, I have.

24 MS. MERS: Okay. If we can approach
25 again and mark another exhibit. I think we're at 116

1 now.

2 JUDGE CLARK: I thought we were at --
3 yes, 116.

4 (Exhibit 116 was marked for
5 identification.)

6 BY MS. MERS:

7 Q. I'll give you a chance to review to make
8 sure that you also recognize it as a copy of Judge
9 Sippel's summary judgment.

10 **A. Yes, I recognize it as so.**

11 Q. Do you recall Ameren contending that
12 Judge Sippel's judgment was dated after the project?

13 **A. Yes. Of course.**

14 Q. And the date on this?

15 **A. The date on the summary judgment?**

16 Q. Yes.

17 **A. 2016, I believe. I don't remember the
18 specific month or a day, but 2016.**

19 MS. MERS: I'll go ahead and offer
20 Exhibit 116 into the record.

21 JUDGE CLARK: Any objections to admitting
22 Exhibit 116 onto the hearing record? That is the
23 federal memorandum and order.

24 I see and hear no objections.

25 Exhibit 116 is admitted onto the hearing record.

1 (Exhibit 116 was received into evidence.)

2 BY MS. MERS:

3 Q. Are you generally familiar with the
4 proceedings that have been going on in the District
5 Court?

6 A. Yes, I -- I read the opinions. I kept up
7 with it somewhat at the time, so yes, I'm familiar.

8 MS. MERS: If I can approach and mark an
9 exhibit again.

10 JUDGE CLARK: Yes.

11 (Exhibit 117 was marked for
12 identification.)

13 BY MS. MERS:

14 Q. Do you recognize the item I've handed you
15 that's been marked as -- I think we're at 117?

16 A. Yes, I do.

17 Q. And is that a transcript of a hearing
18 that occurred March 28th in the District Court case?

19 A. Yes, it is.

20 Q. And in -- to your understanding, is it a
21 discussion of potential remedies and a path forward
22 for the case?

23 A. I wouldn't characterize it. I -- I don't
24 know enough about what he was doing in the proceeding.
25 I think there was some underlying things going on that

1 **I'm not familiar with.**

2 Q. That's fair.

3 MS. MERS: I'll go ahead and offer
4 Exhibit 117 into the record then as well.

5 JUDGE CLARK: Any exhibit -- objections
6 to Exhibit 117, the District Court transcript from
7 March 28th, 2024?

8 I see and hear no objections.

9 Exhibit 117 is admitted onto the hearing record.

10 (Exhibit 117 was received into evidence.)

11 BY MS. MERS:

12 Q. Thank you for your time and sorry for all
13 of the new reading material, but I have no further
14 questions.

15 **A. Okay. Thank you. I was ready.**

16 JUDGE CLARK: Did Staff have additional
17 questions?

18 MS. MERS: No, I had nothing further.

19 JUDGE CLARK: Any cross-examination from
20 the Office of the Public Counsel?

21 MR. WILLIAMS: I think just a few
22 questions. Thank you.

23 CROSS-EXAMINATION BY MR. WILLIAMS:

24 Q. Good morning, Mr. Moor.

25 **A. Good morning, sir.**

1 Q. Are you familiar with a process by which
2 an entity who is subject to the Clean Air Act
3 provisions can get -- I'll call it predeterminations
4 from the EPA before they undergo projects that
5 might -- that have Clean Air Act implications?

6 A. As with all things in the Clean Air Act,
7 it's complicated. First, if you have a program that
8 is delegated that the state has no control over, the
9 federal government has control over, you can go to EPA
10 and get an applicability determination. That's
11 happened once or twice.

12 With SIP-type programs, yes, you can get
13 applicability determinations. But the whole purpose
14 of New Source Review is to avoid that because
15 everybody recognized that these projects had to be
16 done for safety, reliability, to keep the fleet up and
17 running.

18 And so they didn't want people queuing up
19 with questions about routine repairs and maintenance.
20 And so it wasn't typical for utilities to seek such a
21 thing. We never sought such a thing. And we had
22 21,000 megawatts of coal and we never sought such a
23 thing.

24 Q. Well, let me ask a few questions to --

25 A. Sure.

1 Q. -- help clarify your -- your answer
2 there. When you talked about applicability
3 determinations, you were talking about getting
4 predeterminations from the EPA. And how was that
5 done? In other words, since the project hadn't been
6 accomplished yet --

7 A. Uh-huh.

8 Q. -- there would have to be something
9 presented to the EPA to get a determination. So how
10 would that be done?

11 A. Again, in my experience, we didn't do
12 that. We were -- and particularly --

13 Q. I'm just asking --

14 A. Yeah.

15 Q. -- about applicability determinations --

16 A. Applicability --

17 Q. -- at this time.

18 A. -- determinations --

19 JUDGE CLARK: Please don't talk over each
20 other.

21 THE WITNESS: I'm sorry. I apologize.

22 I'm having a little difficulty with the
23 question again because of the complexity. Typically,
24 if you have a SIP, you would go to the state regulator
25 if you had a question, which happened here in Missouri

1 a lot, and people did seek those. But typically
2 people did not go to EPA for an applicability
3 determination, and we didn't.

4 BY MR. WILLIAMS:

5 Q. And -- and what I'm asking is what is the
6 process for getting an applicability determination
7 from the EPA? Because at the time you're seeking it,
8 since it's a predetermination, you're not going to
9 have -- engage in the project yet.

10 So what would you -- what's the process
11 for getting an applicability determination and -- from
12 the EPA in terms of what -- what would you present and
13 what would you be expecting to get back?

14 A. I -- I honestly don't know, because we --
15 we never did it. I have no experience with it.

16 Q. Well, in your first answer regarding the
17 process, when you spoke of applicability
18 determinations, you were -- you were referring to
19 determinations by the EPA, not by the state lic- --
20 permitting agency?

21 A. Right. I think in Missouri they called
22 it an opinion. An opinion, I think they call it,
23 if -- if it were sought.

24 Q. No further questions. Thank you.

25 JUDGE CLARK: Thank you. Any questions

1 from the Commission? Thank you.

2 QUESTIONS BY JUDGE CLARK:

3 Q. I have a few questions for you,
4 Mr. Moor.

5 A. Yes, Judge.

6 Q. I've heard a number of times from a
7 number of witnesses during this hearing -- and what is
8 your -- let me -- let me back up just a second.

9 What is your familiarity with the
10 District Court cases that surround these scrubbers,
11 for lack of a better term?

12 A. Uh-huh. Very familiar. I think I
13 participated in, indirectly or as an observer, at
14 every critical NSR case really throughout the
15 history -- 16-year history of initiative.

16 I went to every Circuit Court argument.
17 I participated in most of the District Court cases.
18 And as a result, I'm very familiar with what the
19 Courts were holding in those cases, particularly on
20 issues like routine maintenance, repair and
21 replacement.

22 Q. What was your participation in the 2017
23 liability case?

24 A. None, other than as an observer.

25 Q. Would you -- you attended hearings in

1 that case?

2 **A. Not that case, I'm sorry. I actually**
3 **left Southern Company at that time in 2015 and -- and**
4 **moved on to other employment.**

5 Q. What about the 2019 remedy case?

6 **A. No. Wasn't there for that.**

7 Q. But you're familiar with these cases?

8 **A. Fami- -- oh, familiar with the NSR cases,**
9 **yes. The cases before -- from the period 1999 until**
10 **2015, I was responsible for all NSR litigation within**
11 **the Southern system, and we had four cases.**

12 Q. Now, I've -- I've heard from a number of
13 witnesses that the District Court made no ruling as to
14 the reasonableness and the prudence of -- of Ameren's
15 decision not to seek New Source Review permitting.

16 **A. Yeah.**

17 Q. And the implication has been there -- at
18 least the implication that I've gotten, is if the
19 Court had thought such a thing, it would have made
20 such a ruling. But that's not the case, is it?

21 **A. It is not the case. The reasonableness**
22 **factor that he looked at was only in connection with**
23 **the annual emissions question about whether or not**
24 **those were done prudently. With regard to routine --**
25 **not --**

1 Q. Excuse me. Will you say that again?

2 A. Not prudently. Excuse me. In fact, I
3 meant to specifically say that the Staff in this case
4 have said that there's been no determination of
5 prudence, it wasn't mentioned in the decision, and at
6 no point did the judge decide prudence.

7 He used the word "reasonable" one time.
8 And his use of that in that particular sentence that
9 has been called out repeatedly is the basis for the
10 claim that Ameren Missouri is imprudent. And I don't
11 believe that's the case. I -- I know NSR cases. That
12 was an NSR case. It wasn't a prudence case.

13 Q. Bear with me just a moment. In fact, I
14 believe in multiple times throughout most of your
15 testimony you said that -- that the District Court
16 didn't and couldn't make that decision. Would you
17 explain that?

18 A. In order to reach his decision, the judge
19 looked at a lot of cases, factors, and facts that came
20 after the decision making that was made in Ameren
21 Missouri in 2005 and -- between 2005 and 2010.

22 That after-the-fact examination of what
23 Ameren did and -- and -- and his decisions based upon
24 what others had shown was the basis for his decision.
25 Those facts, the case law, even the emissions

1 calculations were not available to Ameren in the
2 period 2005 to 2010. Those are -- those are later
3 derived. The Court made its decision, that's the law
4 and the District Court so decided.

5 But at no point I do see in that decision
6 or anywhere else any kind of an examination of whether
7 or not Ameren Missouri was making reasonable, prudent
8 decisions at the time it decided to -- to pursue the
9 projects.

10 Q. Would you explain to me why the District
11 Court couldn't make that decision?

12 A. For a variety of reasons, I think.
13 First, as I think the judge in the hearing transcript
14 that -- that was just submitted to us, I think he -- I
15 think the judge actually explained it to himself -- or
16 himself. Let me go to that, please.

17 Q. And are we talking about Exhibit 117, the
18 March 28th?

19 A. Yes. That's -- that's exactly it.

20 Q. What page do you want to refer to?

21 A. I think if we look at page -- I don't --
22 32.

23 Q. Thank you. Go ahead.

24 A. The Court said: What I'm going to ask
25 you to do is order a copy of today's transcript and

1 send that to the Public Service Commission for them to
2 evaluate it however they see fit, based upon their
3 standards and they'll make their own decision on that
4 basis.

5 I think the Court is showing appropriate
6 respect and deference to this Commission, to its
7 standards for prudence and for the evidentiary
8 requirements thereof.

9 Q. Now, I -- Witness Holmstead was taken out
10 of order on April 12th. Are you familiar with Witness
11 Holmstead's testimony?

12 A. Yes, I am.

13 Q. Now, Mr. Holmstead indicated that the
14 violation of the Clean Air Act was, in fact, a strict
15 liability; is that correct?

16 A. That is correct.

17 Q. So they're not looking at why the Clean
18 Air Act was violated?

19 A. Yes. And if I may, Ameren Missouri
20 actually raised the issue with the Court; what would
21 have been reasonable for us to know to make the
22 decision that EPA is now saying we should have made?
23 And the Court said that wasn't relevant.

24 What -- what -- your reasonableness was
25 not the issue. It was a question of whether or not

1 the statute, under strict liability standard, whether
2 you were liable or not. And in 2017, he found them
3 liable. But that's 2017, not 2005.

4 Q. Given that the District Court couldn't
5 make a decision beyond whether or not Ameren was
6 liable for violations of the Clean Air Act, why do you
7 suppose -- and I know you call it dicta -- or I
8 believe obiter dicta -- dicta; is that correct?

9 A. Jeff's a better lawyer, but I think he
10 used the right Latin term, yeah.

11 Q. Okay. Why do you suppose that the Judge
12 put in his order that -- that Ameren's decision to not
13 seek NSR permitting was unreasonable?

14 A. I'm uncertain. It may have been, again,
15 shorthand to describe the process by which strict
16 liability's defined. And, frankly, once you've
17 determined that's the law, then you're free to say
18 that they should have followed the law.

19 Q. Would you agree that given the -- the
20 strict liability standard and that the Court could
21 only rule on whether or not the -- Ameren had violated
22 the Clean Air Act, that the only place that the Court
23 could opine on Ameren's actions was not in the
24 findings?

25 A. The only -- Judge, I'm sorry. The -- I

1 think I got --

2 Q. If the Court could not find that Ameren
3 was unreasonable or imprudent, isn't the only place
4 the Court could discuss that within the dicta -- is in
5 dicta; is that correct?

6 A. Yeah. I -- I think that's the only way
7 he could do it. Because the evidentiary standard's
8 different, the basis of the evidence is different.
9 There's -- there's nothing in the same thing -- same
10 in a prudence case before this Commission and what the
11 District Court was doing in the Clean Air Act case.

12 Those were -- they're completely
13 unrelated in a sense, even though it all comes back to
14 permitting decisions made in 2005 to 2010 before we
15 knew what the District Court would rule.

16 Q. What do you think is the appropriate
17 weight the Commission should give to Judge Sippel's
18 dicta comments?

19 A. I think the District Court has offered
20 some opinions, which I'm sure the Commission will want
21 to regard. But the truth is, he's one Federal
22 District judge. Many other Federal District judges
23 found exactly contrary; Tennessee, Kentucky, Alabama,
24 Pennsylvania, North Carolina. Other district judges
25 found Ameren's behavior -- would have found, I

1 believe, Ameren's behavior to be completely
2 reasonable, in fact, lawful under the Clean Air Act.

3 Judge Sippel's opinion is reasonable, but
4 so are the opinions of these other Courts that would
5 have found that Ameren Missouri made the right
6 decisions on the permits.

7 Q. Now, you say in your surrebuttal
8 testimony that the District Court's liability decision
9 rested on case law, including the Court's own
10 interpretation of both the Missouri SIP and the
11 Federal PSD regulation issued after Ameren Missouri
12 made the permitting decisions and, therefore, was
13 obviously not available at the time.

14 What regulations did Judge Sippel base
15 his decision on that were not available at the time?

16 A. Actually, I'm blanking on what he would
17 have known regulatorily after the fact. There --
18 there were changes -- what was going on during this
19 process is -- also is, with all things with the Clean
20 Air Act, incredibly complicated.

21 Because from 1999 from the inception of
22 the -- of the enforcement at issue, we had a series of
23 NSR rulemakings over the next eight years that were
24 all aimed at the -- at -- at this enforcement
25 initiative and trying to get it under control. The

1 Judge was obviously aware of those.

2 Subsequently, things happened in those
3 regulations and some of them didn't move forward. And
4 as a result, he had the benefit of that knowledge that
5 Ameren did not.

6 Q. Now, yesterday Witness Whitworth -- did
7 you -- were you -- are you familiar with his
8 testimony?

9 A. Yes, I am.

10 Q. And I believe he was the Environmental
11 Services Department head of the Air Quality Control
12 Unit at the time; is that correct?

13 A. Yes.

14 Q. And he went through yesterday how Ameren
15 had followed the Missouri SIP; is that --

16 A. Yes.

17 Q. Now, the Missouri SIP, that is something
18 that is approved by the EPA; is that correct?

19 A. Yes.

20 Q. Now, when the EPA approved Missouri SIP,
21 it explained that provision Section 52.21 supersedes
22 state provisions for the purposes of the PSP program;
23 is that correct?

24 A. Supersedes, but I think they also stated
25 that it did not change what the State was doing. And

1 at no time did they -- until the -- until they brought
2 suit, no one challenged the Missouri SIP as being
3 wrong or anything else. They -- and Missouri
4 continued to implement the SIP in the same way they
5 had before the approval.

6 So EPA did not communicate to the State
7 of Missouri that things were different as a result of
8 the 2006 SIP approval. And as a result, things rocked
9 along as they were in the state of Missouri up until
10 the time, I assume, Judge Sippel issued his opinion.

11 Q. Thank you for clarifying those issues for
12 me. I have no further questions for you.

13 A. Thank you.

14 JUDGE CLARK: Is there any
15 cross-examination -- or I'm sorry, recross based upon
16 Bench questions from Commission Staff?

17 MS. MERS: Very, very briefly.

18 RECROSS-EXAMINATION BY MS. MERS:

19 Q. If this -- do you recall discussing the
20 District Court case with the Judge?

21 A. Me?

22 Q. Yes.

23 A. No, I -- I never did.

24 Q. With --

25 A. Oh.

1 Q. -- the Bench just now?

2 A. You mean -- yes, yes. Of course. I'm
3 sorry. I did re- --

4 Q. I thought it was a joke.

5 A. I played the Judge on television. I
6 apologize.

7 JUDGE CLARK: My next few questions are
8 going to be about your memory.

9 THE WITNESS: Yes.

10 BY MS. MERS:

11 Q. If the standard is strict liability,
12 would you agree that it would be reasonable to get an
13 MDNR no permit required letter?

14 A. It's strict liability, but the
15 interpretation of Missouri law, its existence and as
16 it was implemented and as Ameren Missouri had used it
17 for decades, was unchanged. There was no need to seek
18 any additional input. And, frankly, going to MDNR and
19 saying we're here to get approval for a project that
20 doesn't -- that you obviously don't believe would need
21 that, would be somewhat insensible.

22 Q. So you -- are you almost saying that it
23 would be unreasonable to seek --

24 A. The statute was clear, MDNR was clear,
25 the opinion rules -- opinion letters were clear. All

1 was the same as it was the day before they filed the
2 suit and the day after they filed the suit. Nothing
3 had changed in that period up until the time that
4 Judge Sippel issued his opinion.

5 Q. Okay. Thank you for clarifying. Do you
6 recall discussing with Judge Clark the various courts
7 around the country, how they had treated cases such as
8 this -- or similar to the Rush Island case?

9 A. Yes, I do.

10 Q. Do you -- is it your understanding that
11 the Rush Island case itself was appealed?

12 A. Yes, the Rush Island decision was
13 appealed.

14 Q. And so wouldn't that mean another Court
15 reviewed and affirmed accepting the Labadie portion as
16 reasonable?

17 A. Yes. The District Court affirmed the
18 opinion.

19 Q. All right. Thank you. I have no further
20 questions.

21 MR. WILLIAMS: I have a few.

22 THE WITNESS: Okay.

23 JUDGE CLARK: I apologize. I did not
24 catch that last bit.

25 MS. MERS: I have no further questions.

1 JUDGE CLARK: Thank you. Is there any
2 recross from the Public Counsel based upon Bench
3 questions?

4 MR. WILLIAMS: There is.

5 RECROSS-EXAMINATION BY MR. WILLIAMS:

6 Q. Mr. Moor, when you were responding to
7 Judge Clark, you talked about the '99 enforcement
8 initiative by the EPA and then you made a comment
9 of -- I believe with regard to New Source Rules --

10 A. Yes.

11 Q. -- violations. Then you used the phrase
12 "trying to get it under control." What did you mean
13 by "trying to get it under control"?

14 A. Now I'm going to speak as a former
15 regulator, not a former utility executive. It's --
16 it's an interesting dynamic within EMA. There are
17 really two parts of EPA. There's an Office of
18 Enforcement Compliance and Assurance, which reports up
19 to the administrator in a different way than the
20 Office of Air Policy, where I was the deputy
21 administrator for policy. Those two shops are
22 completely different.

23 In 2005, the number two at the EPA
24 stepped into the NSR cases and said: No more. We're
25 not filing any more cases that are not -- don't show

1 an hourly increase. In other words, we're going to do
2 what they do in Missouri. And the rest of us, who did
3 not have the benefit of Missouri law, said: Whew,
4 that's good news.

5 So the number two at EPA had to step in
6 and referee between OECA and the policy shop in order
7 to handle this -- or attempt to handle it.

8 Q. You said OECA. What is OECA?

9 A. Office of Enforcement Compliance and
10 Assurance. Which is the -- the group that hires DOJ
11 to bring the lawsuits.

12 Q. And the federal lawsuit regarding Rush
13 Island took place in 2010, 2011?

14 A. 2010, 2011.

15 Q. Was there a change in policy at the EPA
16 then?

17 A. If I could, because I've -- I've listened
18 to you over the last couple of days, and I -- I -- you
19 were talking about some things that really interested
20 me.

21 You remember, this initiative was
22 launched in November of 1999 at the tail end of the
23 Clinton administration. With the firm belief that the
24 Gore administration was going to take it over and
25 carry it forward. George Bush became president and

1 for the next eight years, the two sides of that house
2 did not agree on NSR.

3 The policy shop issued two sets of
4 regulations to try to deal with the emissions increase
5 issue, which I told you Mr. Peacock ruled on; and then
6 also better definition of the equipment replacement
7 rule, and promulgated those to the Federal Register.

8 OECA was leaking things to the press
9 about how unhappy they were with what the policy shop
10 was doing. And so the house was truly divided and it
11 never really came back together.

12 When the Obama administration came in,
13 all they did was go quiet on the enforcement
14 initiative, let OECA and the DOJ do what they want,
15 but then they -- they started pursuing policy changes,
16 CAIR, CSAPR, mercury. Those were all the initiatives
17 the Bush administration had tried and that the Obama
18 administration got across the line.

19 And those were fine with us. I mean,
20 they were in the Federal Register. We knew what they
21 were, we knew what they were after.

22 But with the NSR cases, look, we didn't
23 know what they wanted and what they were going to do
24 to us. And these weren't about individual units.
25 They were about getting system-wide settlements for

1 billions of dollars for the installation of controls
2 that nobody had ever mandated. And we thought that
3 was wrong. And from 1999 until 2015, we fought it as
4 hard as we could because we didn't think it was good
5 policy.

6 And I think what Ameren did to fight it
7 is good for you. I -- you -- you don't want to give a
8 federal lawyer a blank check to spend other people's
9 money, and that's what could have happened in this
10 case had Ameren not stood up and fought them.

11 And I really thought both of you should
12 be rooting on -- Ameren on for doing the right thing.
13 And you can't have this world where OECA can come in,
14 file an NOV and say, Install a scrubber. That's not a
15 fair world. That's not a good world and it isn't a
16 workable world.

17 So anyway, I apologize for going on.

18 Q. I think you've answered my question.
19 Thank you.

20 JUDGE CLARK: Thank you, Mr. Williams.
21 Any redirect from Ameren?

22 MR. LONG: Just a few -- just a few
23 questions, Your Honor.

24 REDIRECT EXAMINATION BY MR. LONG:

25 Q. Mr. Moor, you were asked by the lawyer

1 for Staff about whether the District Court's opinions
2 here, because they were affirmed, were reasonable
3 opinions. Do you remember that discussion with
4 Staff's lawyer?

5 **A. Yes, I do.**

6 Q. And you also talked about the other
7 Courts that were looking at New Source Review claims
8 around the country?

9 **A. Yes.**

10 Q. Were those other Court decisions
11 reasonable as well?

12 **A. Yes. Completely.**

13 Q. Why is that?

14 **A. I always start with it's complex, but**
15 **in -- in a good way in this instance. They were**
16 **reasonable because this is what everyone thought the**
17 **law was.**

18 **After the WEPCO decision, everyone felt**
19 **reassured that our routine maintenance projects at**
20 **these large facilities that cost multi-million dollars**
21 **to do and involve a lot of tubes, that all of that was**
22 **permissible. And we were assured during the Clean Air**
23 **Act Amendment and afterwards that those projects could**
24 **proceed and that we could keep our units up and**
25 **running.**

1 The Courts who looked at this had a
2 choice. They could go with a new enforcement theory
3 that was devised -- and when I say this, I have it in
4 deposition testimony -- in secret meetings at OECA to
5 develop an enforcement theory that could be used to
6 find universal liability at every utility unit in the
7 country.

8 In other words, as the Eleventh Circuit
9 said: Where was the cop on the beat? Where -- where
10 were they for 20 years when people were doing these
11 projects and they knew of it?

12 Well, they knew what the law was, but in
13 1999, they took a different approach and they launched
14 an enforcement initiative which was really a policy
15 initiative designed to get additional reductions.
16 That wasn't mandated by Congress, that wasn't noticed
17 in the Federal Register. The standards for which they
18 devise were never fleshed out and never to this day
19 published in the Federal Register.

20 And as a result, we have different
21 outcomes in different states governing utilities
22 differently. The judges who looked at it from
23 Tennessee -- I've mentioned them all before --
24 Tennessee, Pennsylvania, Alabama, Kentucky, all of
25 them looked at the same law and said: No, they told

1 them that they wouldn't do this to them, that they
2 could maintain these units, that they could keep
3 reliability up, and they could sustain their
4 generation portfolios and they weren't going to be
5 sued.

6 In 1999, that all changed. And as a
7 result, an industry that formerly had had a relatively
8 spotless history with regard to enforcement was told
9 that they had all violated the law. This was
10 dramatic.

11 And I believe that the judges in those
12 cases looked at this and said: No way, I'm not going
13 to let this go forward.

14 Other judges, a few, took the opposing
15 view and said what had been devised in the enforcement
16 initiative could move forward and, in fact, you know,
17 ruled -- ruled in their favor. But not all Courts --
18 not even most Courts ruled that way.

19 Q. So let me ask you a specific question.
20 You mentioned a court in Tennessee. Is that the case
21 that involved the Tennessee Valley Authority, the
22 public utility for the federal government?

23 A. Yes.

24 Q. Okay. And what was it about those
25 projects at issue at Tennessee Valley Authority's

1 plant that relates to the Rush Island projects?

2 A. They involved I believe super heaters and
3 economizers. They were high in cost. They were
4 relatively low in frequency at the unit, but they were
5 very common within the industry.

6 And when the Court looked at the question
7 of whether these projects were being done in the
8 industry, he concluded that they were, that this was
9 the way that people kept units up and reliable by
10 doing these kind of projects.

11 And TVA, the federal utility, provided
12 the basis for the defense of these cases around the
13 country by compiling a survey and putting it in the
14 Federal Register showing how often these projects were
15 being done across the industry.

16 And so when the Court ruled in TVA's
17 favor on all of the RMR questions and didn't even have
18 to reach the emissions increase question, he found the
19 way that, frankly, you know, I believe is, of course,
20 a right and good and just outcome, but other Courts
21 disagreed.

22 I think you can read that one opinion and
23 see in 2010 the reasonable Courts were doing
24 reasonable things with fairly clear law.

25 Q. Not sure that I understood everything you

1 said. Are you saying that the Tennessee Valley
2 Authority Court in Tennessee in 2010 looked at an
3 economizer replacement project for TVA?

4 **A. I believe so, yes.**

5 Q. And you said RMRR was the conclusion?

6 **A. Yeah.**

7 Q. What -- what exactly is that?

8 **A. Routine --**

9 MS. MERS: I'd like to object. I think
10 we've gotten a little far afield from just other
11 Courts finding being reasonable, to detailed case
12 discussion and propping up those comparisons to Rush
13 Island.

14 JUDGE CLARK: I'm going to overrule your
15 objection.

16 **THE WITNESS: Routine maintenance, repair**
17 **and replacement. I want to put an emphasis on that**
18 **word "replacement." Since the 1920's, boilers have to**
19 **have tubes replaced in order to operate efficiently,**
20 **safely and reliably.**

21 **The projects that were at issue in the**
22 **TVA case, much like the projects here at Ameren**
23 **Missouri, were designed to do just that. They weren't**
24 **designed to create new sources of pollution, which is**
25 **what the New Source Review was supposed to be aimed**

1 at.

2 And as a result, doing those projects,
3 those Courts found in the -- and the Tennessee Court
4 found that the replacement, even at large numbers,
5 large scale, hundreds of miles of tubing, that those
6 were routine in the industry and, as a result, they
7 were permissible under the law and under the PSC
8 program.

9 Q. You had a discussion with Judge Clark
10 about the information that was available to those at
11 Ameren Missouri at the time they were making their
12 permitting decisions. Do you recall that topic of
13 discussion?

14 A. Yes, I do.

15 Q. And I think there was a question posed
16 about whether the -- the regulations that were ruled
17 upon by Judge Sippel in 2016 or 2017 were -- were in
18 place at the time of the decisions being made by
19 Ameren Missouri on whether to get permits. Do you
20 recall that question?

21 A. Yes.

22 Q. What's your understanding of the time at
23 which the company was making its permitting decisions
24 that's relevant here?

25 A. A couple of things. I think the

1 regulations in Missouri had been and continue to be
2 consistent. So those were the regulations that Ameren
3 Missouri was looking to.

4 Ameren Missouri in 2005 was perfectly
5 aware of the Peacock letter saying we're not going to
6 pursue any more unless they increase our early
7 emissions. They were aware of that.

8 They were aware of EPA's efforts to more
9 clearly define routine maintenance, repair and
10 replacement in a way that would be consistent with
11 what Ameren Missouri viewed the law to be. And those
12 are the things that he was aware of, I believe.

13 Q. Was the interpretation of the regulations
14 that was rendered by the District Court in 2016 or '17
15 available and known to the Company at the time it was
16 making its permitting decisions in '05 through '09?

17 A. Are you speaking of the 1999 enforcement
18 initiative?

19 Q. No, I'm asking you about the
20 interpretation that the District Court applied --

21 A. Oh, no, no.

22 Q. -- to the Missouri SIP --

23 A. No, it --

24 Q. Let me get my question out, Mr. Moor.

25 A. Sorry. Sorry. I'm sorry, Nash --

1 **Mr. Long.**

2 Q. Was the interpretation that the District
3 Court applied to the SIP, that is the State
4 Implementation Plan, and the federal regulations
5 incorporated into that State Implementation Plan, was
6 the interpretation the Court adopted in its liability
7 decisions available and known to the Company at the
8 time it made its permitting decisions?

9 A. Absolutely not. The Missouri law was one
10 of the best laws in the country. We all wanted the
11 Missouri law. And if we'd had the Missouri law, we
12 could have fought even harder and longer perhaps.

13 They couldn't have known that because it
14 was an interpretation that said -- it basically said
15 you've got to read out of the Missouri regulations
16 modification. And as soon as you read that out,
17 you're left into a -- a world that nobody knew had
18 existed before then.

19 And even after those lawsuits were --
20 were brought, because Missouri was still enforcing
21 what we all knew to be the case, which is if you don't
22 create a new source of pollution, if you don't expand
23 the unit, then there's no basis for bringing these
24 lawsuits.

25 JUDGE CLARK: Mr. Long, would you clarify

1 for me the exact District Court decision that you've
2 been talking about with Mr. Moor?

3 MR. LONG: The District Court liability
4 decision in 2017.

5 JUDGE CLARK: Thank you.

6 BY MR. LONG:

7 Q. And with respect to the District Court's
8 summary judgment decision in 2016, which was marked as
9 an exhibit here and put up in front of you around the
10 discussion -- around the Missouri SIP, was the
11 District Court's interpretation rendered in that 2016
12 summary judgment decision on the Missouri SIP known to
13 the Company at the time it was making its permitting
14 decisions?

15 A. No. It -- it could not have been.

16 Q. You were also asked a question by Judge
17 Clark, and I may get the wording wrong, but there was
18 a discussion you had with him about dicta in the
19 District Court's remedy opinion.

20 And I think the import of the question --
21 and again, I may get the wording somewhat wrong -- is
22 you were asked about what weight the Commission should
23 give to that dicta. Do you recall that discussion?

24 A. Yes, I do.

25 Q. Okay. Do you have a view on whether

1 it's -- it's fair for that dicta to be treated as
2 dispositive against Ameren Missouri in this prudence
3 proceeding?

4 A. I'm going to express a strong opinion.
5 It would be a travesty if that were done here.

6 Q. Why?

7 A. Fair notice. Even the Supreme Court said
8 there's a question here about whether the utilities
9 knew this or how they could know it. The Supreme
10 Court said you could pursue it in the cases. And in
11 many instances we did and in some instances we
12 prevailed because EPA didn't provide notice.

13 Now, District Court having seen the
14 practice in Missouri, having known what Ameren was
15 doing, having known what other utilities were doing,
16 made a ruling about the SIP that fundamentally changed
17 the nature and direction of the SIP. That wasn't
18 knowable to Missouri, that wasn't knowable to Ameren.

19 To then say that the ultimate
20 determination with regard to PSD using the word
21 "reasonable" with regard to one portion of a
22 three-part test is the basis for finding Ameren
23 Missouri, after all these years, imprudent in its
24 behavior? That would be completely unlawful, in my
25 view as a lawyer.

1 And from a policy standpoint, completely
2 the wrong signal to send. You want Ameren Missouri
3 and others to stand up against this kind of thing when
4 it happens. Otherwise, you are subject to whoever can
5 get to a court and file an NOV and then demand
6 something of you. And that would be wrong. So I -- I
7 repeat my words. I think it would be a travesty to do
8 that in this case.

9 Q. No further questions.

10 JUDGE CLARK: May this witness be
11 excused?

12 Thank you for your testimony, Mr. Moor.
13 You may step down.

14 **THE WITNESS: Thank you, Judge.**

15 JUDGE CLARK: And you are excused.

16 As a quick clarification, I believe we
17 discussed yesterday -- or you had indicated in e-mail
18 that there were witnesses that were left off of the 3A
19 and 3B. And I believe at the time in regard to
20 Michels, while he had some -- while he had some 3A
21 questions, we were only -- you were only going to be
22 putting him on for 3B to answer questions about both
23 3B and 3A; is that correct?

24 MR. LOWERY: That's what we discussed,
25 Judge, and you indicate that was okay with you. And

1 then there was also Mr. Reed that we just completely
2 left off that needs to come up and is scheduled now.

3 JUDGE CLARK: And I knew that Mr. Reed
4 was coming up. I just wanted to -- and I'm not
5 changing anything. I just wanted to clarify that.

6 MR. LOWERY: That's correct. Thank you.

7 JUDGE CLARK: Please call your next
8 witness.

9 MR. LONG: Ameren Missouri calls Mr. John
10 Reed.

11 JUDGE CLARK: Mr. Reed, would you raise
12 your right hand to be sworn.

13 (Witness sworn.)

14 JUDGE CLARK: Okay. I'm going to ask
15 that you adjust the microphone so that it is close
16 enough to you that we can all hear you. Even though
17 you have a loud voice, I want -- I want our
18 Commissioners who are participating via WebEx to hear
19 you.

20 You may proceed, Ameren.

21 MR. LONG: Thank you, Judge.

22 JOHN REED, being first duly sworn, testified as
23 follows:

24 DIRECT EXAMINATION BY MR. LONG:

25 Q. Would you please state your name, sir?

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

2 Q. And are you the same John J. Reed who
3 caused to be prepared for filing in this docket direct
4 and surrebuttal testimony marked for identification as
5 Exhibits 23 and 24?

6 **A. Yes.**

7 Q. Do you have any corrections to either of
8 those two exhibits?

9 **A. I have one correction to Exhibit 24, the
10 surrebuttal testimony.**

11 Q. What is that?

12 **A. That correction appears at page six,
13 line 21. And the word "not," n-o-t, should be
14 inserted before the word "be" at the beginning of
15 line 21. So that the sentence reads: Put simply, the
16 facility almost certainly would not be retired in 2024
17 without the decisions and so forth.**

18 **That's the only correction.**

19 Q. Thank you. With those corrections, if I
20 pose the same questions to you today, would your
21 answers be the same?

22 **A. Yes, they would.**

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

25 **A. Yes, they are.**

1 MR. LONG: Your Honor, at this time
2 Ameren Missouri would move Exhibits 23 and 24 into the
3 record.

4 JUDGE CLARK: Any objections to Ameren
5 Missouri's Exhibits 23, the direct testimony of
6 Mr. Reed; and 24, the surrebuttal testimony of
7 Mr. Reed, onto the hearing record?

8 I hear and see no objections.
9 Exhibits 23 and 24 are admitted onto the hearing
10 record.

11 (Exhibits 23 and 24 were received into
12 evidence.)

13 MR. LONG: Your Honor, at this time
14 Ameren Missouri would tender the witness for cross.

15 JUDGE CLARK: Is there any
16 cross-examination from the Staff of the Commission?

17 MS. MERS: No -- no, thank you.

18 JUDGE CLARK: Is there any
19 cross-examination from the Office of the Public
20 Counsel?

21 MR. WILLIAMS: No, thank you.

22 JUDGE CLARK: Are there any Commission
23 questions for Mr. Reed?

24 I hear none. And I, likewise, Mr. Reed,
25 have no questions for you.

1 **THE WITNESS: Okay.**

2 JUDGE CLARK: Is there any reason that
3 this witness should not be excused?

4 Okay. Thank you for appearing today,
5 Mr. Reed. You may step down and you are excused.

6 **THE WITNESS: Thank you.**

7 JUDGE CLARK: With the exception of
8 Mr. Michels, who will be appearing on 3B, I'm assuming
9 that Ameren has no more witnesses for 3A?

10 MR. LONG: Correct.

11 JUDGE CLARK: Thank you.

12 Staff, you may call your first witness.

13 MS. MERS: Staff calls Claire Eubanks to
14 the stand.

15 JUDGE CLARK: Ms. Eubanks, would you
16 raise your right hand and be sworn?

17 (Witness sworn.)

18 JUDGE CLARK: Please be seated.

19 CLAIRE EUBANKS, being first duly sworn, testified as
20 follows:

21 DIRECT EXAMINATION BY MS. MERS:

22 Q. Can you please state and spell your name
23 for the record?

24 A. **Claire M. Eubanks, C-l-a-i-r-e M.**

25 **E-u-b-a-n-k-s.**

1 Q. And did you prepare or cause to be
2 prepared rebuttal testimony that's been marked as
3 Exhibit 102?

4 A. Yes.

5 Q. And surrebuttal testimony that's been
6 marked as Exhibit 103?

7 A. Yes.

8 Q. And do you have any corrections to that
9 testimony?

10 A. I do to my rebuttal testimony.

11 Q. Okay.

12 A. Starting on page four, line one should
13 read: The securitization statute in Section
14 393.1700.1 (7)(a).

15 And then on page five, line eight should
16 read: Rush Island plant.

17 Q. And are those your only two corrections?

18 A. Yes.

19 Q. And with those corrections, are these
20 answers true and accurate to the best of your
21 information, knowledge and belief?

22 A. Yes.

23 Q. And if I asked you those same questions
24 today with the corrections, would your answer --
25 answers be the same?

1 **A. Yes.**

2 MS. MERS: Ms. Eubanks will be appearing
3 again on another issue -- I think maybe two more
4 issues today; lucky her. So I'll hold off on entering
5 her exhibits into the record.

6 JUDGE CLARK: Thank you for remembering
7 that.

8 MS. MERS: And I will tender the witness
9 for cross.

10 JUDGE CLARK: Is there any
11 cross-examination from the Office of the Public
12 Counsel?

13 MR. WILLIAMS: No, thank you.

14 JUDGE CLARK: Any cross-examination from
15 Ameren Missouri?

16 MR. LONG: Yes, Your Honor. Thank you.

17 CROSS-EXAMINATION BY MR. LONG:

18 Q. Good morning, Ms. Eubanks. How are you?

19 **A. Good morning. I'm okay.**

20 Q. True or false, Ms. Eubanks: You cannot
21 definitively say that yes, the Company should have
22 gotten permits for the Rush Island projects?

23 **A. I cannot definitively say that, no.**

24 Q. And you have drawn no conclusions on the
25 question of why Ameren Missouri did not get NSR

1 permits for those projects?

2 **A. I think we've spent a lot of time**
3 **discussing the why in testimony and through Ameren's**
4 **witnesses. So my understanding is what they're**
5 **representing in this case is that they understood the**
6 **law to be different then what the EPA understood the**
7 **law to be.**

8 Q. And beyond that, are you drawing any
9 conclusions on your own as to why Ameren Missouri did
10 not get NSR permits for these projects?

11 **A. I don't believe I offer an opinion on**
12 **that in my rebuttal testimony, no.**

13 Q. So you're -- you're not disputing
14 Mr. Birk's testimony where he said that Ameren
15 Missouri intended to comply with the law here.

16 **A. I can't speak to what Ameren Missouri**
17 **intended to do.**

18 Q. You do agree there -- it was the case
19 that Ameren Missouri had a different understanding of
20 the legal requirements for permitting then that which
21 the District Court later held?

22 **A. I agree that that is Ameren Missouri's**
23 **position in this case.**

24 Q. Well, you also agree that in order for
25 the Commission to determine whether Ameren Missouri

1 made reasonable permitting decisions, the Commission
2 needs to know whether its understanding of the legal
3 requirements was reasonable?

4 **A. I think that question may help the**
5 **Commission in their fact-finding.**

6 Q. But you're not offering any opinions on
7 that question, are you?

8 **A. And what was the question again, just to**
9 **make sure I --**

10 Q. The question of whether Ameren Missouri's
11 understanding of the legal requirements was
12 reasonable.

13 **A. I have not offered an opinion on that in**
14 **particular, no.**

15 Q. Were you in the courtroom yesterday when
16 Judge Clark asked Mr. Whitworth about whether it was a
17 requirement under the Missouri regulations to do
18 calculations of emissions?

19 **A. I do recall that, yes.**

20 Q. Do you know whether the Missouri State
21 Implementation Plan required at the time there to be a
22 calculation to demonstrate the lack of potential
23 emissions increase?

24 **A. Whether it required it? I don't think I**
25 **can answer that question, no.**

1 Q. You understand that under the Missouri
2 State Implementation Plan at the time, potential
3 emissions are the emissions from the unit at the
4 maximum designed capacity?

5 **A. Assuming continuous operation, yes.**

6 Q. Correct. And you also understand that if
7 there's no increase in the maximum hourly designed
8 steam flow from the boiler, there would not be an
9 increase in potential emissions, correct?

10 **A. Under that scenario, yes.**

11 Q. And -- and that's a question you can
12 answer for us all here without having to do
13 calculations, right?

14 **A. Me personally? No, I don't think I can**
15 **answer that question.**

16 Q. Do you know whether the State -- that is,
17 the Department of Natural Resource -- was requiring
18 calculations as a matter of course in order to make
19 their determinations on permitting?

20 **A. So when the Department of Natural**
21 **Resources was reviewing no permit required letters,**
22 **they were looking specifically at each project.**
23 **Whether -- and to the extent of everything that they**
24 **were provided, I -- I can't speak to all of that.**

25 Q. Can you tell us whether they always

1 required calculations to be submitted in order to
2 issue those determinations?

3 **A. I can't answer that question.**

4 Q. You were here in the courtroom a few
5 minutes ago when Mr. Moor talked about what was going
6 on in other cases around the country at the time that
7 these permitting decisions were made for Rush Island.
8 Do you recall that?

9 **A. Yes.**

10 Q. Have you reviewed any of those other
11 decisions that were available to the Company at the
12 time it was making its permitting decisions?

13 **A. I don't recall reviewing any in
14 particular, no.**

15 Q. That's all the cross-examination
16 questions I have. Thank you.

17 JUDGE CLARK: Thank you. Are there any
18 Commission questions?

19 I have just a few.

20 (Voice on WebEx.)

21 JUDGE CLARK: None of those was my
22 question.

23 MR. LOWERY: Didn't even sound like you,
24 Judge.

25 QUESTIONS BY JUDGE CLARK:

1 Q. I believe it was said during opening that
2 there's about 17 million dollars difference between
3 Staff's position and Ameren's position. Without me
4 having to go in-camera, can you briefly give me an
5 explanation of what accounts for that 17 million and
6 what Staff is asking in regard to that?

7 A. So I think the 17 million that you're
8 referencing is what should be securitized. And that
9 is a question for Keith Majors.

10 Q. Is Staff asking for any amount to be
11 disallowed as a result of this proceeding?

12 A. Staff does not have a specific
13 disallowance related to the issue that we're
14 discussing right now. There are costs that are
15 excluded and -- and that witness is Keith Majors.

16 So Staff has offered that we have concern
17 about future harm related to the ongoing litigation
18 and potential for future remedies. We brought up
19 concerns about short-term capacity in -- in the short
20 term and we brought up concerns about the transmission
21 projects and the costs related to those.

22 So it is more of a concern for future
23 cases as opposed to, you know, asking the Commission
24 to find something in particular in this case. Now, we
25 did, you know, have some language about hold harmless.

1 **Happy to discuss that now or when that issue comes up.**

2 Q. I believe Chair Hahn has some questions
3 for you.

4 CHAIR HAHN: Thank you, Judge.

5 QUESTIONS BY CHAIR HAHN:

6 Q. Good morning, Ms. Eubanks.

7 **A. Good morning.**

8 Q. Just to clarify Staff's position, so
9 right now we're on Issue 3A and what you really just
10 mentioned was Issue 3B, which I do have questions
11 about --

12 **A. Yes.**

13 Q. -- but I'll hold those.

14 On Issue 3A, to clarify, it's Staff's
15 position that at the current time, you can't assess
16 prudence because you -- for the two factors of
17 prudence and harm, you really don't know the harm yet.
18 So it's my understanding that we're trying --
19 you're -- the Staff is trying to preserve that for a
20 future case; is that correct?

21 **A. That is correct.**

22 Q. Okay. Is that roughly the same position
23 as Issue 3B?

24 **A. Yes. So I think the -- all the costs**
25 **that we -- all the concerns that we identified as, you**

1 know, the -- the transmission upgrades --

2 Q. That are 3B?

3 A. Yes. And the -- the future harm related
4 to the remedy, any potential capacity shortfalls in
5 the short term, all those are future harm that we
6 don't know now.

7 I will say the transmission projects are
8 a little bit more known because they are nearer term.
9 They're just -- they're not -- Ameren Missouri is not
10 seeking recovery of those transmission projects in the
11 securitization case.

12 Q. Thank you, Ms. Eubanks.

13 A. You're welcome.

14 FURTHER QUESTIONS BY JUDGE CLARK:

15 Q. And I wasn't trying to get into 3B
16 issues. What I was trying to establish with Staff is
17 Staff is not asking for a prudence disallowance; is
18 that correct?

19 A. With relation to the NSR permitting
20 decisions, at this time we have not recommended a
21 disallowance, no.

22 Q. So the 17 million dollars is just a
23 difference in what costs should be included, correct?

24 A. I -- I have to defer that to Keith
25 Majors.

1 Q. Mr. Majors.

2 A. Yeah.

3 Q. Okay. Thank you very much. You remember
4 I was -- never mind. I have no more fur- -- no more
5 questions for you.

6 A. Okay.

7 JUDGE CLARK: Any recross based upon
8 Commission questions? Staff? I'm sorry, Public
9 Counsel?

10 MR. WILLIAMS: No, thank you.

11 JUDGE CLARK: Ameren Missouri?

12 MR. LONG: No, Your Honor.

13 JUDGE CLARK: Thank you, Ms. Eubanks.
14 You may step down. Oh, I'm sorry. I have -- I am
15 missing part of the process. My apology.

16 Ms. Mers, would you like to redirect?

17 MS. MERS: Yes, if you'll allow it.

18 JUDGE CLARK: There's no reason I
19 shouldn't.

20 REDIRECT EXAMINATION BY MS. MERS:

21 Q. Do you recall in your discussions with
22 the counsel from Ameren your understanding of the
23 District Court opinions?

24 A. Generally, yes.

25 Q. And you reviewed those District -- did

1 you review those District Court opinions?

2 **A. Yes. So I reviewed the -- it was kind of**
3 **split into a liability phase and a remedy phase. So I**
4 **reviewed both of those opinions and I've also reviewed**
5 **testimony from Ameren Missouri witnesses, pleadings**
6 **from both parties -- or the parties in the -- the**
7 **case. I've reviewed depositions, materials provided**
8 **in the context of discovery in this case and also in**
9 **the past rate case. So yes, I'm quite familiar with**
10 **the litigation.**

11 **Q. And in that testimony would you call that**
12 **expert testimony?**

13 **A. The testimony by Ameren witnesses and**
14 **experts?**

15 **Q. Just any of the witnesses that appeared.**
16 **Were there experts on behalf of any parties hired?**

17 **A. Yes. And there were also Ameren**
18 **Missouri, you know -- Ameren Missouri -- kind of what**
19 **we would call experts. I don't know if there's a**
20 **legal difference, but they were not necessarily all**
21 **hired experts.**

22 **Q. Could you explain how you weighed that**
23 **evidence from those experts to inform your**
24 **recommendation in this case?**

25 **A. Sure. So --**

1 MR. LONG: Your Honor, I'm going to
2 object to that. We did not get into the details of
3 what was presented to the Court or her analysis of
4 what was presented in the court record in my
5 cross-examination. I think this goes beyond the
6 scope.

7 JUDGE CLARK: Ms. -- does Staff have a
8 response?

9 MS. MERS: Yes. The line of questioning
10 between counsel for Ameren and Ms. Eubanks went down
11 the road of implying that she had no basis for her
12 conclusions. This is to refute those allegations;
13 that although she did not have the evidence herself,
14 she relied on expert evidence, like many do in this
15 field, to come to her conclusions about how this case
16 should be dealt with.

17 JUDGE CLARK: The objection's overruled.
18 I am going to caution you not to go into the content
19 of the -- of the Court -- of the Court decisions.

20 **THE WITNESS: Can you repeat your**
21 **question for me?**

22 BY MS. MERS:

23 Q. Just briefly and without getting into too
24 much detail, but can you explain how the expert
25 testimony and all those documents that you reviewed as

1 part of that District Court case you then used to come
2 to your opinion in this case?

3 **A. Sure. So I personally focused on Ameren**
4 **Missouri's witnesses and experts in the case and the**
5 **words of their depositions and transcripts and**
6 **materials that were from the time of the decision**
7 **making.**

8 You know, one of the things the -- you
9 know, without, I guess, trying to get into too much
10 detail, the -- the Court talked about what was
11 relevant to the decision makers or what the statements
12 of the decision makers were at the time, and so that
13 was really where I chose to focus my attention to.

14 Q. And that's not unusual in your field?

15 **A. I don't believe so, no.**

16 Q. Do you recall having a conversation with
17 counsel for Ameren of if Ameren was required to do
18 calculations as part of emissions testing or emissions
19 permitting?

20 **A. Yes, I do.**

21 Q. What is your understanding of the
22 emissions testing that Ameren did do?

23 **A. So my understanding was Ameren Missouri**
24 **does not have the calculations that were performed**
25 **before Unit One to, you know, provide to the**

1 Commission with, you know, their understanding at the
2 time other than, you know, obviously Steve Whitworth
3 provided testimony in this case. But as far as
4 looking at documents that Ameren Missouri authored at
5 that time, I think that's fairly limited. So there's
6 that.

7 And then for Unit Two, my understanding
8 is they didn't do, you know, emissions calculations,
9 per se, before Unit Two, but rather they did their
10 analysis of emissions under what the Court kind of
11 determined the law to be for Unit Two after the outage
12 had started.

13 So I don't know if that quite answers
14 your question.

15 Q. I think that -- that's helpful. I -- in
16 part of your conversation with counsel for Ameren, you
17 relied I believe on your experience as an engineer to
18 ask you if there was no increase in maximum output,
19 there would be no increase in emission. Do you recall
20 that?

21 A. That wasn't quite his question, but I --
22 I recall the one that you're asking about.

23 Q. Could you know if there's an increase in
24 output without calculating anything?

25 A. I don't -- I don't know that I can answer

1 your question.

2 Q. Okay. You also talked about what
3 Missouri -- Missouri Department of Natural Resources,
4 those calculations, what they required. Do you recall
5 that with still counsel for Ameren?

6 A. Yes, I do.

7 Q. Would calculations be an onerous thing to
8 do?

9 A. No. I mean, Ameren Missouri obviously
10 was able to do the calculations, you know, when they
11 did them. So -- now they didn't necess- -- the Court
12 maybe didn't necessarily rely on Ameren Missouri's
13 calculations, but it was information available to them
14 in the time of the projects, to my knowledge.

15 Q. Do you recall in your conversation with
16 Chairwoman Hahn you were discussing kind of Staff's
17 position in this case and why we don't have an actual
18 disallowance amount when it comes to the issues under
19 3A. Do you recall this?

20 A. I do.

21 Q. Is there information that you've seen
22 that is not firm, but would cause you concern?

23 A. Yes. So obviously we talked a little bit
24 about the transcript from the March 28th, 2024
25 hearing. So one of the reasons that Staff recommended

1 that we -- basically that we couldn't know all the
2 harm was because we knew from notices Ameren Missouri
3 was providing in the investigatory docket that there
4 was this potential for future remedies.

5 And this is related to the -- the Labadie
6 part of the decision was -- you know, I don't know the
7 right legal term, but, you know, that part of the
8 de- -- the remedy was kicked out, for lack of a better
9 word, sorry.

10 So the Court had asked the parties to
11 essentially come up with proposals. And one of the
12 proposals from the Department of Justice was related
13 to HEPA filters for St. Louis area residents. And so
14 that struck me as something that could be potentially
15 costly. We -- we know from the transcript now that
16 that's estimated to be, according to Department of
17 Justice, the 75 million dollars.

18 They also talked about batteries and
19 solar projects that could be a potential remedy. And
20 I think they quoted that to be about 200 million.

21 Q. All right. Thank you so much. I have no
22 further redirect for now.

23 JUDGE CLARK: What was that last number
24 you gave; 200?

25 THE WITNESS: 200 million.

1 JUDGE CLARK: Thank you. Thank you,
2 Ms. Eubanks. You may step down.

3 **THE WITNESS: Thank you.**

4 JUDGE CLARK: I would like to take about
5 a -- it is now 10:30. I would like to take about a
6 15-minute break. So if we can -- I will recess, we
7 will go off the record and if we could all come back
8 at 10:45.

9 (A recess was taken.)

10 JUDGE CLARK: Staff, you may call your
11 next witness.

12 MS. MERS: Staff calls Keith Majors to
13 the stand.

14 JUDGE CLARK: Mr. Majors, would you raise
15 your -- well, I'm going to remind you -- I'm going to
16 go ahead and swear you in since you last appeared
17 yesterday.

18 (Witness sworn.)

19 JUDGE CLARK: Please be seated.

20 Staff, go ahead.

21 MS. MERS: I believe I can just tender
22 you for cross because you've already gone through your
23 testimony and confirmed your corrections and whatnot,
24 if you had any. So I will tender this witness for
25 cross.

1 JUDGE CLARK: Any cross-examination for
2 the Office of Public Counsel?

3 MR. WILLIAMS: No, thank you at this
4 time.

5 JUDGE CLARK: Any cross-examination from
6 Ameren?

7 MR. LONG: Yes, Your Honor. Thank you.

8 KEITH MAJORS, being first duly sworn, testified as
9 follows:

10 CROSS-EXAMINATION BY MR. LONG:

11 Q. Good morning, Mr. Majors. How are you
12 today, sir?

13 A. **Good morning. I'm doing fine. Thank**
14 **you.**

15 Q. Mr. Majors, do you agree it's possible
16 for a utility to be found in violation of the Federal
17 PSD, Prevention of Significant Deterioration Program,
18 yet to have still acted reasonably at the time it made
19 its permitting decisions?

20 A. **Yes. As I said now in my dep- --**
21 **deposition, that -- that would be yes.**

22 Q. Now, you make your claim of imprudence
23 here based solely on those three Court opinions you
24 discuss in your testimony; is that correct?

25 A. **Also as you asked, yes, that's -- that's**

1 correct.

2 Q. And those three opinions, to be specific,
3 are the 2017 District Court liability decision, the
4 2019 District Court remedy decision, and the 2021
5 opinion by the Eighth Circuit affirming the District
6 Court?

7 A. Yes, that's correct. The -- the first
8 and the third document are attached to my rebuttal
9 testimony. And the -- unfortunately, the second
10 document is not, although Ms. Eubanks and myself quote
11 that order. So -- but I think that is also an
12 important document that the Commission should consider
13 when determining this issue.

14 Q. And it's that second document you just
15 referenced, the remedy decision from 2019, that refers
16 back to the liability decision of 2017, correct?

17 A. That's right. The -- the decisions were
18 split into two phases, the liability and the remedy
19 phase, but they're all part of the same litigation,
20 yes.

21 Q. And that remedy decision characterizes
22 what was found and held by the District Court in its
23 earlier liability decision from 2017, correct?

24 A. Among other things, yes.

25 Q. Would you agree, Mr. Majors, that the

1 best evidence of what the 2017 liability decision says
2 is that decision itself?

3 **A. Oh, for sure. I think the entire -- I**
4 **said it's 195 pages, but I don't think it's -- in**
5 **reality, it's only 189. So I think it's a very**
6 **important document, should be read in its entirety by**
7 **anyone who's determining what -- the outcome of the**
8 **issue before the Commission.**

9 Q. And that's why you called it, in your
10 rebuttal testimony referring to the liability decision
11 of 2017, the most important document relevant to this
12 issue of prudence?

13 **A. That's correct, yes.**

14 Q. And that is why you attached it, the 2017
15 liability decision, not the remedy decision of 2019 as
16 a schedule to your rebuttal testimony; is that
17 correct?

18 **A. I think, in hindsight, a more prudent**
19 **auditor would have attached both decisions to his or**
20 **her rebuttal testimony. But I did not attach the**
21 **remedy order to my testimony.**

22 Q. Let's talk about that liability decision.
23 You recognize that in finding the Company liable, the
24 District Court relied upon facts, data and case law
25 that came after the permitting decisions, correct?

1 **A. Not entirely.**

2 Q. You recognize they did cite and rely on,
3 in the 2017 liability decision, facts that were
4 developed after the permitting decision, right?

5 **A. In -- in part, yes.**

6 Q. Okay. And they also relied upon analyses
7 that were prepared after the permitting decision,
8 correct?

9 **A. The analyses themselves were prepared after**
10 **the permitting decisions themselves, yes.**

11 Q. And the Court also cited cases that came
12 down after the permitting decision. You know that to
13 be true, right?

14 **A. Some were before, some were after, but**
15 **yes.**

16 Q. Well, it certainly didn't limit his
17 decision making and finding the Company liable to what
18 was available at the time that the Company made its
19 permitting decisions, correct?

20 **A. I think case law cited was after the**
21 **Company made their permitting decisions.**

22 Q. One of the things that you talked about
23 in your deposition and in your testimony was the
24 reliance by the Court on the emission calculations by
25 a Mr. Koppe and a Dr. Sahu. Do you recall that?

1 **A. Yes, I do.**

2 Q. Okay. And you know that those were
3 presented by the EPA to the Court during the
4 litigation of the case, right?

5 **A. Yes, they were.**

6 Q. After the permitting decisions had been
7 made, correct?

8 **A. That's correct.**

9 Q. And the purpose of those calculations was
10 to quantify the emissions increase that should have
11 been expected by the Company, as you understand it?

12 **A. Yes.**

13 Q. And it was those calculations which
14 showed an increase of sulfur dioxide greater than
15 40 tons per year; is that right?

16 **A. Yes. Due to the improvements in 2007 and
17 2011, yes.**

18 Q. And you understand that was the standard
19 for liability, something that increases the sulfur
20 dioxide by more than 40 tons per year, right?

21 **A. Yes.**

22 Q. And the Court adopted the Koppe/Sahu
23 calculations because they had been confirmed by the
24 post-project data, right?

25 **A. It would be the -- yes.**

1 Q. And, in fact, the Court said that that
2 actual post-project data confirmed the Koppe/Sahu
3 calculations that the Court used as the basis for its
4 liability decision.

5 A. Yes.

6 Q. And so in this respect, the Court relied
7 upon information that was after the fact, correct?

8 A. Information that was also known by Ameren
9 as well before the fact, but.

10 Q. The emissions data is what I'm talking
11 about, sir. The data of actual emissions that came
12 after the project was not something the Company had
13 before it when it made its pre-project determination,
14 was it?

15 A. Right. That's half of the analysis. The
16 half -- the other half is what was done before the
17 project was commenced.

18 Q. And the Court also relied upon some
19 analyses by a fellow named Dr. Hausman or Mr. Hausman.
20 Do you recall that?

21 A. Yes, that's correct. He used the ProSym
22 model that -- as we've discussed prior, yes.

23 Q. And he -- he did those analyses using
24 that model also after the Company made its permitting
25 decisions, correct?

1 **A. That's correct.**

2 Q. Now, you're not contending that the
3 Company should have done those Hausman analyses at the
4 time that it was doing its permitting decisions,
5 right?

6 A. It certainly could have, but I'm not
7 saying they ultimately had to. The -- the more -- the
8 more core emissions calculation was the Koppe/Sahu
9 calculations of pre -- of predicted pre- and
10 post-project ana- -- emissions.

11 Q. I want to be clear on this, Mr. Majors.
12 Are you contending that those -- Dr. Hausman analyses
13 developed after the fact should have factored into the
14 Company's permitting decisions?

15 A. I'm not saying they should have. They
16 certainly could have. They had access to the ProSym
17 model. As long as it was data that was modeling the
18 improvements prior to the completion of the projects.

19 But they obviously would not have known
20 the actual emissions afterward, but they certainly
21 knew the availability increases and emissions
22 increases prior to the completion of the projects.
23 And so they -- they would have known those increases
24 prior to the completion of the projects.

25 Q. But you also understand that they were

1 applying a different legal standard; that is, looking
2 for whether potential emissions increased?

3 **A. I think it's the same -- the same**
4 **analyses that the EPA had been using, as the Court**
5 **noted, since '99.**

6 Q. Can you answer --

7 **A. 1999, I'm sorry.**

8 Q. Can you answer my question, sir? You
9 know as a fact, do you not, that the Company was
10 applying a test of whether the potential emissions
11 would increase in order to make their permitting
12 decisions?

13 **A. I think the problem was they didn't**
14 **analyze the potential emissions based on the**
15 **replacements. So they didn't do the analysis.**

16 Q. So you're not aware of what sort of
17 emissions evaluations they actually did before they
18 did the permits?

19 **A. Well, I think Mr. Whitworth testified**
20 **that they didn't analyze it in that regard because**
21 **they didn't believe that the RMRR, routine**
22 **maintenance, repair and replacement exclusion, they**
23 **believed that applied.**

24 **And the Court found that they were wrong**
25 **and so they didn't do any kind of emissions**

1 calculations. I think that's what Mr. Whitworth
2 testified. But certainly Mr. Whitworth's testimony
3 would be more accurate than my recall of that right
4 here.

5 Q. Fair enough. Do you have -- you have a
6 bunch of papers up there with you. Can I just ask
7 what you have and whether that includes any of your
8 schedules?

9 A. I can go through the entirety of the
10 documents in my possession at this time. One's a
11 legal pad with some notes. Document two is the
12 remedy -- in no particular order, the remedy opinion
13 order. Document three is the liability mem- --
14 liability memorandum opinion and order.

15 Q. Can I stop you right there? That's the
16 one I want to ask you about.

17 A. Sure.

18 Q. Just wanted to make sure you had it. And
19 that was marked as Schedule KM-R2 on your rebuttal
20 testimony?

21 A. That's correct.

22 Q. Can you turn to page 133 to 134 of that
23 Schedule KM-R2?

24 A. Yes, sir.

25 Q. And we looked at this at your deposition,

1 did we not?

2 **A. Yes, we did.**

3 Q. Okay. And you recognize on page 133 at
4 the bottom there's a heading that says Undisputed
5 Elements of Proof. Do you see that?

6 **A. I do.**

7 Q. And the discussion continues onto the top
8 of page 134. Do you see that?

9 **A. I do.**

10 Q. Okay. The Court is laying out what are
11 the elements of proof here on page 133 to 134 for
12 liability under the PSD provisions of the Clean Air
13 Act. You understand that?

14 **A. I do.**

15 Q. Okay. And the first element and the
16 first bullet says: Ameren is a person under the
17 applicable law and the owner and operator of the Rush
18 Island facility.

19 Do you see that?

20 **A. That's a correct reading, yes.**

21 Q. Goes onto give the citation, but I'll
22 skip that.

23 The second bullet of these elements of
24 proof is: Rush Island Units One and Two are each a
25 major emitting facility, a major stationary source,

1 and an electric steam generating unit under the
2 applicable PSD and Title V provisions.

3 Do you see that?

4 **A. Yes, that's the correct reading.**

5 Q. Goes onto give the citations, which I'll
6 skip.

7 The third of these elements listed here
8 is: EPA provided sufficient pre-filing notice of the
9 violations to Ameren and the state of Missouri and
10 provided notice of the filing of this case to the
11 State.

12 Do you see that?

13 **A. Yes, I do.**

14 Q. I'll skip the citations there.

15 The fourth element of proof is: At the
16 time of the projects, Rush Island was in an area
17 designated as attainment for SO₂, which is a shorthand
18 for sulfur dioxide, right?

19 **A. Yes, sir.**

20 Q. So that is the fourth element of proof
21 for the Clean Air Act violation. Is that your
22 understanding?

23 **A. That's what's written here, yes.**

24 Q. Okay. And so going back to the top of
25 this page, it says: The only disputed element of

1 proof is whether the projects were a major mod- --
2 were major modifications under the law.

3 Do you see that?

4 **A. Yes.**

5 Q. Okay. Now, you understood when the Court
6 laid this out, that this was a description of the
7 issues in the liability trial, do you not?

8 **A. I mean, that's what it appears on the**
9 **page, yes.**

10 Q. And you recognize that this test laid out
11 in the Court's opinion for elements of proof for Clean
12 Air Act liability is different from the test for
13 prudence that the Commission has to decide, do you
14 not?

15 **A. As I said in my deposition, I would agree**
16 **with that statement.**

17 Q. And you do not read -- the opinions that
18 you rely on for your opinion of imprudence, you don't
19 read any of those opinions to say that the Clean Air
20 Act issues that were up for trial were about
21 negligence, correct?

22 **A. That's correct.**

23 Q. And you've read these opinions; that is,
24 the 2017 liability opinion, the 2019 remedy opinion,
25 and the Court of Appeals opinion several times, have

1 you not?

2 **A. In their entirety.**

3 Q. How many times do you estimate you've
4 read them in their entirety?

5 **A. I think at my deposition I said three or
6 four. So I can correct that as now five.**

7 Q. And in your reading, did you see anything
8 where the District Court said that Ameren's legal
9 position or understanding was unreasonable?

10 **A. They found it -- they didn't say it was
11 reasonable or unreasonable.**

12 Q. You agree that the understanding of the
13 law that was applied by Ameren Missouri to making its
14 permitting decisions was consistent with a position of
15 MDNR; that is, the Department of Natural Resources, at
16 the time, do you not?

17 **A. I -- I think I would agree with that
18 given the -- I think I've read the deposition of a
19 Ms. Kyra -- Kira Moore from MDNR and that was their
20 understanding at the time, yes.**

21 Q. And their understanding at the time was
22 that only the potential emissions were increasing
23 would permitting apply, correct?

24 **A. I think she'd be -- I'm sorry. Ms. Moore
25 would be better adept at elucidating MDNR's position,**

1 **but I would not disagree with your statement.**

2 Q. Was that your takeaway from reading her
3 deposition?

4 A. Yes.

5 Q. And you agree that the District Court did
6 not evaluate whether the Company was prudent in any of
7 those three decisions you're relying on, correct?

8 A. I -- I agree with that, that prudence is
9 not listed, at least to my knowledge, in any of the
10 three documents.

11 Q. Has -- if the Commission agrees with
12 Ameren Missouri that the issue of prudence has not
13 been decided by the Courts, then you have no evidence
14 to offer suggesting imprudence, do you, sir?

15 A. Other than the three documents I've
16 referenced, no.

17 Q. Those three documents being the Court
18 opinions?

19 A. Well, those are the ones I reference. I
20 think there's been other documents that have been
21 included as -- I can't -- included as exhibits. And
22 so I think the Commission should consider those as
23 well. But the documents I evaluated when determining
24 my opinions were the three documents.

25 Q. And those are the three that you're

1 relying on for your position that the Company acted
2 imprudently?

3 **A. That's correct.**

4 Q. I have no further questions at this time.

5 JUDGE CLARK: Are there any Commission
6 questions?

7 I hear none.

8 QUESTIONS BY JUDGE CLARK:

9 Q. I have a few questions for you,
10 Mr. Majors. You were here when I asked Witness
11 Eubanks about the 17 million, correct?

12 **A. Oh, yes, sir.**

13 Q. And I had asked her, and that was the
14 inappropriate witness to ask, to give me a breakdown
15 of -- and it's not a disallowance, correct? It's just
16 a difference in what should be included in the
17 securitization; is that correct?

18 **A. There's what I would characterize as a**
19 **disallowance, but I can go through from my -- just**
20 **recollection on my -- on the line items if you --**

21 Q. Well, if you -- if you could. If you
22 would --

23 **A. Sure.**

24 Q. -- go through those 17 million preferably
25 without me having to go into camera, but if I have to,

1 I do.

2 **A. If you'll give me one moment to find my**
3 **testimony. Okay. Here.**

4 MR. LOWERY: Judge, I don't believe any
5 of the figures he's going to talk about that make up
6 the 17 million are confidential.

7 JUDGE CLARK: I didn't think so either,
8 but there's so many figures that are and that aren't
9 and -- and some of them I don't understand why they
10 are confidential and others I do, so.

11 MR. LOWERY: I just wanted to let you
12 know I didn't think there were in this case.

13 JUDGE CLARK: Thank you very much for
14 letting me know. I appreciate the information.

15 **THE WITNESS: So I'm referencing Schedule**
16 **KM-S1. This was -- would be the sole schedule**
17 **attached to my surrebuttal testimony.**

18 **If you would go to line four, Abandoned**
19 **Capital Projects, there's one abandoned capital**
20 **project, which would be the scrubber studies, which I**
21 **believe is a separate issue on a separate day. That's**
22 **approximately 9.3 million dollars of the difference.**
23 **There is a very slight difference -- and I'm --**

24 BY JUDGE CLARK:

25 **Q. Would you say that schedule again? Is**

1 that KM-S1?

2 A. Oh, I'm sorry. KM-S1. It's very similar
3 to KM-R4, but there were some updates in my
4 surrebuttal testimony. Right now I'm referencing
5 the -- right now the current corrected number is
6 KM-S1.

7 Q. And that's the one attached to your
8 surrebuttal?

9 A. Yes, sir.

10 Q. Because I'm looking at line four. It
11 says: Abandoned capital projects. And it's roughly
12 around four million?

13 A. Yes. The -- I think you asked about the
14 differences between Staff and Ameren.

15 Q. Gotcha.

16 A. Right. So that would be -- if I were to
17 look at Mr. Lansford's schedule, that would be
18 approximately 9.3 million dollars higher. So that
19 would be approximately 13.2 million, from my
20 recollection. But it's just one capital project.

21 Line seven would be slightly different.
22 I think I'm splitting hairs there, but that's a
23 fallout of the differences in CWIP, which would be
24 line four. Line ten would be -- I think you said
25 17 million. I think the remaining four would be the

1 water treatment and monitoring net present value.

2 So our recommendation in the case, those
3 should be treated as ongoing operation and maintenance
4 expenses so those would be excluded from the
5 securitization amount. I would not characterize that
6 as a disallowance. I would characterize item four as
7 more of a disallowance.

8 And then line 11 would be community
9 transition without getting -- no, I believe that was
10 not confidential, but there's --

11 Q. I believe I do know the -- the
12 confidential one you're discussing.

13 A. There is a confidential one. I won't
14 even say what it is because I believe the title's
15 confidential. That's not included. And then our
16 position on that is, again, that should be included in
17 whatever deferral calculation for -- as what's been
18 discussed as the deferral for the amount that's
19 currently in rates related to Rush Island. So that
20 would be included in that.

21 And then community transition I think was
22 about 2 million dollars. So I think that gets you
23 above 17, but there's probably some rounding in there.
24 But community transition, again, another issue for
25 another day.

1 **We consider those as charitable**
2 **donations. They're donations; they may not be to**
3 **charitable organizations, but they're certainly**
4 **donations that should be characterized as charitable**
5 **donations so they should not be included in the**
6 **securitized amounts.**

7 Q. Thank you. Would you reconcile for me --
8 I'm having a hard time understanding Staff's exact
9 position here. Because Witness Eubanks was on the
10 stand and asked if she had an opinion as to the
11 prudence of the -- the decision not to seek New Source
12 Review or permitting.

13 And I think in yours on page nine -- is
14 it page nine? Hold on just a moment. Yes, page nine
15 says: Yes, I agree with Mr. Seaver that the findings
16 in the United -- is that the one I wanted? Hold on
17 just a moment.

18 I had the right line: Yes, I agree with
19 Mr. Seaver that findings in the United States District
20 Court Memorandum Opinion and Order in the liability
21 phase support both Staff and OPC's contention that
22 Ameren Missouri's decisions were imprudent.

23 And since the 2000 -- since the liability
24 decision concerns the Ameren Missouri not seeking the
25 NSR PSD permitting, I'm just -- I'm having a hard time

1 reconciling what Staff's position is. Why -- why --
2 why is there a difference between these two Staff
3 witnesses on whether or not there was imprudence?

4 A. Well, I think I'll let Ms. Eubanks'
5 testimony speak for itself. My read of the three
6 documents is that the line of decision making and the
7 facts as found by the Court would lead me to believe
8 that it's -- it's just not -- those actions were not
9 prudent actions.

10 And so, I mean, I wouldn't -- I mean,
11 again, Ms. Eubanks is going to have her own opinion.
12 I don't think she said that they -- their actions were
13 absolutely prudent. But I take -- I take it as her
14 opinion that the -- their actions were not imprudent.
15 They were not prudent -- they were neither prudent nor
16 imprudent as determined by her.

17 And so I -- I think my overall opinion is
18 if you -- if you have trouble -- if the Commission
19 disputes that of what my opinion of these three
20 documents is, I would -- I would suggest the
21 Commission themselves read the documents and let them
22 speak for themselves.

23 And so I can certainly answer any more --
24 any other questions about that, but I think a fair
25 reading of either three opinions, I don't -- I would

1 dispute the word "travesty." I think that's a bit off
2 base, but -- and I can have my opinion on that as
3 well. I can elaborate on that.

4 But I would read all three documents in
5 their entirety and make your own conclusion. My
6 conclusion was that they were -- their actions weren't
7 reasonable or prudent.

8 Q. And your decision is based -- your
9 personal opinion is based on these -- is based on
10 these three decisions in isolation?

11 A. No. I -- well, I think -- I think the
12 liability and the remedy really, if you read what --
13 how those two decisions were split and decided, I
14 think they should really be read as one.

15 Again, a more prudent auditor would have
16 attached the second -- the remedy decision, but as
17 the -- as the Judge said on page three, I separated --
18 Judge Sippel: I separated the liability and remedies
19 phase of this case to more orderly conduct discovery
20 and presentation of arguments. In August and
21 September of 2016, the liability phase concluded with
22 a 12-day bench trial.

23 On January 23, 2017, I issued my
24 Memorandum Opinion and Order in the liability phase.
25 I found that Ameren violated the Clean Air Act

1 42 USC Section 7470 et sequitur by overhauling its
2 coal-fired boilers at Rush Island without obtaining
3 the required permits. And then it goes on and
4 describes the liability phase.

5 But I -- the remedy phase, while it
6 describes -- and again, that's disputed as what --
7 what the Judge said is disputed and what exactly it
8 means, I would read them as one.

9 But the li- -- the liability phase really
10 dissects what were the decisions at the time, what the
11 enforcement actions were at the -- and then -- and as
12 the Court said, it was starting in 1999, what the --
13 how -- how these projects were -- how the actual
14 projects, the physical projects were, how they were
15 not qualified as routine maintenance, repair and
16 replacement.

17 That they were -- all four of the
18 projects on Unit One were of different design from the
19 original specifications, and on Unit Two all three of
20 the projects were different -- were different
21 specifications. Again, I can go back and -- and
22 identify those sections for you, but they're all in
23 the order.

24 And I think that's -- I think I lost my
25 train of thought, but I hope I answered your question.

1 Q. I'm going to say you did not, but I think
2 that was more in the way I asked the question. The
3 information you provided -- I let you keep going
4 because it was very, very helpful to me.

5 But I guess my question is, is your -- is
6 your opinion of Ameren's prudence based on those three
7 decisions and not anything outside of those three
8 decisions? Or is it based on those three decisions
9 and X other things?

10 A. I think -- my -- my testimony was
11 premised on these three decisions. I don't think it
12 would be fair for -- for me to say that the Commission
13 should limit consideration to determine this issue on
14 just those three opinions.

15 I think there's been exhibits. I think
16 that the Commission should take all the evidence --
17 more is always more. So the Commission should take in
18 all -- all the evidence into account in this
19 proceeding to make a fair determination of whether or
20 not Ameren Missouri was prudent and reasonable in
21 their decision making.

22 Q. And I very much want to read all three
23 decisions and consider them. Again, I'm going to come
24 back to this. Do you know what Staff's -- I
25 understand what your position is and I understand that

1 Witness Eubanks may be in the undecided category or
2 not yet determined category. But I guess what I don't
3 understand again is, do you know what Staff's position
4 is?

5 A. Okay. So our position is that while --
6 our position is that Ameren was found to be
7 considering all -- the totality of the evidence,
8 imprudent in its decision making, that there's no
9 actual adjustment to be made currently to the Rush
10 Island amount to be securitized right now.

11 I think as Ms. Eubanks spoke on the
12 witness stand, that if you take into account the
13 future harm to ratepayers due to the ongoing remedy
14 discussions with the Court and decision with the
15 Court, I think that can certainly -- what the outcome
16 of -- of those proceedings could have financial
17 ramifications for Ameren -- for Ameren's ratepayers
18 should Ameren -- and I suspect they will -- ask for
19 the economic -- the -- whatever amounts and expenses
20 are being incurred due to the remedy, they're going to
21 ask -- the assumption is they would ask for the
22 recovery for that through some mechanism in rates.

23 And so while I know that the -- there's
24 been much conversation about are -- are we just
25 preserving this for some kind of future harm? Yes,

1 that's true. But this is now the second time that --
2 that there has been -- second round of testimony
3 filed.

4 I suspect -- I suspect that even if the
5 Commission finds them that they were not prudent, that
6 we're going to have a third round of testimony from
7 probably the same witnesses, and litigation from the
8 same attorneys about how should the economic damages
9 from the remedy portion of the trial, how should those
10 impact Ameren ratepayers.

11 So even if we -- the Commission decides
12 something here, I can almost guarantee this won't be
13 the last time I'll be here or they'll be here.

14 Q. Let's say the Commission agrees with your
15 opinion. Let's say that it does. In your mind, does
16 that present any impediment to securitization for this
17 plant?

18 A. No, because -- again, I'm not -- I'm not
19 an attorney, as the attorneys will point out. But the
20 question here is, is it prudent and reasonable to
21 retire the plant given the facts and circumstances
22 now?

23 So let's imagine that there is no NSR
24 litigation. Ameren Missouri wants to retire the plant
25 now. And so independent of the NSR litigation, they

1 want to -- they're determining should we scrub the
2 plant, should we install -- the potential to install
3 selective catalytic reduction equipment, should we
4 have the potential to incur more expenses for the EPA
5 water regulations?

6 I think the question is and -- and you
7 would go to Mr. Michels' testimony that the economic
8 for -- the economic test right now is that you -- the
9 right decision would be to close Rush Island and so
10 that's a prudent, reasonable decision.

11 Now, if you -- if you took away the fact
12 that you have to put on scrubbers, that's a different
13 question. But I think the question now is, is it
14 prudent and reasonable to close the plant now and
15 securitize it? I think the answer to that is yes.

16 And so while -- regardless of whether or
17 not you think -- the Commission thinks Staff's
18 approach or -- or position and recommendation in this
19 case is -- is right or wrong, if you say that Ameren
20 was perfectly prudent in their decision making, I
21 don't think that bears impact on -- at least in
22 Staff's position -- how much you securitize the
23 overall Rush Island plant.

24 I know Office of Public Counsel has a
25 different opinion on that and I'll let their witness

1 testify to that. But whether or not -- I think to
2 answer your question in a long-winded fashion, it
3 would not have an impact right now on whether or not
4 you securitize.

5 JUDGE CLARK: Any recross based on Bench
6 questions? Public Counsel?

7 MR. WILLIAMS: No, thank you.

8 JUDGE CLARK: Ameren?

9 MR. LONG: Just a few, Your Honor. Thank
10 you.

11 RECROSS-EXAMINATION BY MR. LONG:

12 Q. Mr. Majors, you had a discussion with the
13 Court about the three opinions that you rely on for
14 your opinion of imprudence in this case. Do you
15 recall that colloquy with Judge Clark?

16 A. Yes.

17 Q. Okay. And you do not read those opinions
18 as finding it was unreasonable for Ameren to look at
19 potential emissions as the permitting trigger, do you,
20 sir?

21 A. Can you repeat that one more time?

22 Q. You don't read any of those Court
23 opinions as holding that the Company was unreasonable
24 to consider a potential emissions increase under the
25 SIP as the trigger for permitting?

1 **A. I don't think they were found**
2 **unreasonable, but they were certainly found wrong. So**
3 **that's -- that's a fair distinction.**

4 Q. You had a discussion with Judge Clark
5 about reconciling Staff's position on whether the
6 Company was pru- -- prudent or not in its permitting
7 decisions. And I think you said something around
8 the -- you referenced the totality of the record in
9 the District Court. Do you recall that discussion
10 with the Judge?

11 **A. I do. And -- and that's certainly not --**
12 **the totality of the record in the District Court**
13 **certainly isn't in the record here, just the decisions**
14 **and some of the other documents. So that's a fair**
15 **distinction. But yes, I recall that.**

16 Q. And you also know that there are some
17 information that is presented here to the Commission
18 that was not presented to the District Court for its
19 decision, correct?

20 **A. Yes.**

21 Q. For example, Mr. Holmstead's opinion was
22 given to this Commission. That was not something the
23 District Court considered, right?

24 **A. That's my understanding. I believe there**
25 **was some kind of -- well, if you told me what the**

1 reason was, I wouldn't have a reason to dispute if
2 it -- assuming that it was the actual reason.

3 But to answer your question, it's my
4 understanding Mr. Holmstead's testimony was not -- was
5 rejected by the Court or did not make it into
6 evidence, along with Mr. Moor, as you've -- as you've
7 told me prior to.

8 Q. Well, to be clear, Mr. Moor didn't even
9 appear in the District Court, right? So --

10 A. Okay. I -- I stand corrected.

11 Q. So his testimony that's in the record was
12 not something that was before the District Court in
13 its decision making, right?

14 A. That's correct.

15 Q. Okay. And did you read anything in the
16 District Court decision making about how MDNR was
17 actually applying the Missouri SIP at the time that
18 these decisions were made by Ameren Missouri?

19 A. I think that the -- that's discussed by
20 the Court in the opinions, so I would go back to the
21 opinion on -- on how that was at the time.

22 Q. Do you recall any discussion at all or
23 analysis at all of the potential emissions trigger
24 that was actually applied by the State of Missouri?

25 A. I mean, I -- I know it's in the opinion,

1 but I couldn't give you a good answer right as I sit
2 here.

3 Q. And you understand that for sources in
4 Missouri, the relevant permitting authority for these
5 New Source Review permits is the MDNR?

6 A. Yes, that's correct.

7 Q. That's all I've got.

8 JUDGE CLARK: Any redirect from Staff?

9 MS. MERS: Yes.

10 REDIRECT EXAMINATION BY MS. MERS:

11 Q. I'm going to take you back to the
12 beginning. Do you recall when counsel for Ameren
13 asked if it was possible for a utility to be in
14 violation, but not be imprudent?

15 A. Yes.

16 Q. Would you have an opinion on if it's more
17 or less likely that a utility that is found in
18 violation was not acting prudently?

19 A. I think there's a high likelihood that
20 they were -- if they were found in violation, then
21 they would be acting imprudently. I -- I would agree
22 with that statement.

23 Q. You received -- on the first round of
24 cross and just recently on the -- the recross an
25 examination of what in the District Court opinions you

1 looked at, if you looked at anything outside those
2 District Court opinions. Do you recall those lines of
3 questions?

4 **A. Yes.**

5 Q. And you relied on things outside of just
6 the three Court opinions, correct?

7 MR. LONG: I'm going to object to that
8 leading question.

9 MS. MERS: I can rephrase.

10 JUDGE CLARK: Give it a try.

11 BY MS. MERS:

12 Q. What else did you rely on in that docket?

13 **A. Well, I certainly reviewed -- there was a**
14 **few summary judgment opinions from the Court, there**
15 **was certainly the slew of data request responses from**
16 **both the investigatory docket and the last rate case.**
17 **I did I think briefly take a look at the DNR rules,**
18 **whatever the reference was, just for my own**
19 **edification to understand the -- the -- whatever the**
20 **cite was.**

21 Q. And is that true for the District Court
22 docket as well? They don't call them doctors but that
23 you looked at?

24 **A. There were other various documents**
25 **certainly that I reviewed. I mean, I didn't cite**

1 anything else in my testimony other than the three
2 docu- -- documents. But I reviewed a lot of
3 documents, I think that's a fair statement.

4 Q. When you reviewed any of those documents
5 and expert testimony, did you feel that you needed to
6 redo any of it to come to your opinion in this case?

7 A. Did you say redo?

8 Q. Uh-huh. The work of the experts in the
9 District Court.

10 A. Oh. No. I mean, I -- I mean, that's --
11 that's a fair characterization. I didn't -- there was
12 no Majors/Eubanks emissions analysis or any kind of
13 rehash of -- of what the Court examined. So I think
14 in that regard, no. I mean, I didn't go out to Rush
15 Island myself and see the emissions equipment.

16 Q. Can you briefly explain why you didn't
17 feel the need to do that based on the review of the --
18 all of the documents basically?

19 A. Well, I -- I think if you read the
20 opinions as a whole, they give you pretty much all the
21 information you need to make -- I mean, I -- yes, the
22 opinions speak for themselves, but I think those who
23 have a modicum of experience, I mean, know that if you
24 didn't understand something in the documents, you
25 would research.

1 So -- so, for example, there's several
2 court cases that both pre and post the improvements,
3 one of them being there's an Ohio case that the Court
4 references and -- I mean, for sure there's no question
5 that I would have, in some cases, looked and read
6 those opinions separately, which would have formed and
7 put context into what the Court determined.

8 But those wouldn't have been documents in
9 most cases -- I didn't reference those in testimony,
10 but I mean, a reasonable person reading the documents
11 if there was -- there was a reference to a court case,
12 they would research the court case.

13 I mean, that's how you kind of dissect
14 witness testimony. If -- if there's something there
15 that a witness references, you would want to be
16 informed of -- of the facts they were relying on.

17 Q. Would you say that's unusual for auditors
18 to rely on evidence and conclusions from other experts
19 in the field?

20 A. Oh, we rely on -- well, I think we rely
21 and evaluate the expert opinions on other individuals
22 in the field. So, for example, it's routine every
23 rate case -- at least the ones that I've been involved
24 in -- we review the external audit work papers.

25 And so I know that has really nothing to

1 do with -- with what is here, but it's analogous to
2 you review other expert opinions so if the external
3 auditors have an unqualified opinion on the integrity
4 and accuracy of the books and records of the Company,
5 then that's -- gives us at least some level of
6 assurance that the books and records are being kept in
7 accordance to generally accepted accounting
8 principles.

9 And so that kind of example we -- we
10 would review, just like I reviewed all the testimony
11 filed by Ameren's experts in this case. I reviewed
12 the testimony of Office of Public Counsel's experts in
13 this case. So yes, we rely on expert testimony I
14 think is the answer to your question.

15 Q. Do you recall having a conversation about
16 the -- if data that was used in the District Court
17 opinion was pre- or post-project data?

18 A. Right. Yeah.

19 Q. What pre-project information did Ameren
20 have at that time that you considered when you were
21 coming up with your recommendation?

22 A. Well, I think -- I think the Court -- the
23 Court found that yes, the copies say who evaluation --
24 you would evaluate the performance and the emissions
25 rate of the -- of the improvements afterwards, yes.

1 But Ameren -- the whole reason for doing the
2 improvements was to increase the availability of the
3 boiler. And the components were redesigned to
4 increase the performance of the boiler because of the
5 switch from higher sulfur to coal to western coal.

6 And so the whole point of the
7 improvements was to increase the availability of the
8 units, which I think it's -- I think it's a good thing
9 that they improve the plant. I mean, you would want
10 more availability, you would want to squeeze every
11 last megawatt hour out of that unit, like you would
12 all base load power plants. I think that answered
13 your question.

14 Q. You were also asked by counsel for Ameren
15 if you thought any particular test should be used. Do
16 you recall that? If Ameren at the time should have
17 used any particular test?

18 A. Right.

19 Q. Would you -- do you have concerns about
20 the amount of testing?

21 A. Well, again, I go back to what the Court
22 said. The Court said that -- in at least two spots in
23 the order that the method that the EPA was using --
24 let's see here.

25 Ameren's testifying expert -- at page

1 three: Ameren's testifying expert conceded that the
2 method used by the United States ex- -- experts, which
3 showed that Ameren should have expected the project to
4 trigger PSD rules, hyphen, has been well known in the
5 industry since 1999.

6 On page 71: Another Ameren testifying
7 expert, Marc Chupka, conceded that the method used by
8 Mr. Koppe and Dr. Sahu for determining PSC emissions
9 increase has at least been well known in the industry
10 since the first enforcement cases were filed in 1999.
11 Mr. Koppe testified that he and Dr. Sahu had used the
12 same basic formula in this case as he and other
13 utilities have used for decades.

14 And so I relied on what the Court
15 determined in that case as -- it's in the finding of
16 fact. I guess it would be two facts out of the lot --
17 lots of findings of fact.

18 Q. Do you recall having a discussion about
19 your KM-R2 schedule?

20 A. Yes. I -- I have it here. I mean,
21 that's the District Court opinion, the liability.
22 Sure.

23 Q. And it was about page 134, the elements
24 that the District Court was looking at.

25 A. Right.

1 Q. And counsel for Ameren asked if that test
2 was different from the test at the Commission for
3 prudence. Do you recall that?

4 A. Yes.

5 Q. Can you briefly explain how the District
6 Court's test and resulting finding can inform a PSC
7 prudence determination?

8 A. Well, I think you can't just take this
9 test on page 134. I think that if you take the
10 totality of the facts that the Court considered of the
11 decision making leading up to the -- the decision
12 making of the PSC permitting, I -- I -- I don't
13 disagree, and I'm not an attorney, that the test was
14 strict liability.

15 Okay. Well, the Court found a lot of
16 facts through I think an 11-day bench trial for the
17 liability and -- and a week-long -- correct me if I'm
18 wrong, it's in the tes- -- it's in the order, for the
19 remedy phase. And so the Court found a lot of facts.

20 I think if you take those facts in
21 totality, that you have to conclude that it was
22 imprudent and unreasonable decision making. Which I
23 mean -- I see the irony this -- this -- now there's
24 really not -- there's no impact now, but the impact
25 comes when Ameren has to buy 75 million dollars worth

1 of HEPA filters, or 20 or 200 -- depending on if you
2 ask the EPA and the Department of Justice, 20 or 200
3 electric buses. I mean, that's where the economic
4 impact.

5 And like I said before, I can't imagine a
6 world where Ameren would not request some kind of rate
7 recovery of those amounts.

8 Q. Do you recall having a discussion with
9 the Bench about the differences between you and
10 Ms. Eubanks?

11 A. Yes.

12 Q. Are you familiar with her testimony in
13 this case?

14 A. I reviewed it and I've read it, yes.

15 Q. The deposition?

16 A. Which deposition? The one in the last
17 rate case or the current proceeding?

18 Q. The most recent.

19 A. Yes, I -- I think -- yes, I read it
20 through once. It was shorter than the last
21 deposition.

22 Q. Can you recall any opinions that were
23 within that document about if the actions or inactions
24 undertaken by Ameren Missouri were reasonable?

25 A. I think she -- I think she questioned --

1 and again, I'll let her -- I don't think her
2 deposition's in the record, but her testimony
3 certainly is. At least when it's admitted, if it's
4 admitted.

5 I think she took issue with -- she may
6 have said their decision making was unreasonable. I
7 don't think she went as -- so far as to say they were
8 imprudent. So I mean, I don't fault her for that.
9 Her testimony is what her testimony is.

10 Q. And finally, going back to the three
11 opinions, the District Court cases. You were asked on
12 recross about those opinions and if you -- if it was
13 just those three opinions that you premised your
14 opinion on. Do you remember --

15 A. Yes.

16 Q. -- counsel for Ameren asking you that?

17 A. Yes.

18 Q. Did you compare the evidence in those
19 three opinions with your experiences in this industry?

20 A. Oh, for sure. I mean, I think everything
21 that -- my experiences in the -- or in filing
22 testimony and reading and studying these issues over
23 the last 17 years would assist my understanding of the
24 three documents for sure.

25 Q. And then one last question. Do you

1 recall a conversation with counsel for Ameren about --
2 I believe Kyra Moore was brought up and MDNR's
3 understanding or what their belief of the emission
4 increase and permitting intersection?

5 A. Yes.

6 Q. Who's the highest authority for that
7 enforcement though?

8 A. Well, my understanding is it was
9 delegated by the EPA -- well, okay, by -- by --
10 probably first by Congress and then to the EPA and
11 then the -- the states would have State Implementation
12 Plans. I think the overall -- the overall enforcement
13 actions would have been at the EPA level, not
14 necessarily at the State of Missouri.

15 Now, I -- since there's 50 states that --
16 some of those states don't have State Implementation
17 Plans as has been noted in the record. And
18 sometimes -- and so those would have -- the EPA would
19 be -- that would have more of a direct link. But
20 ultimately how the EPA enforces the PSD and NSPS
21 rules, ultimately that enforcement is done by the EPA.
22 And so, yeah.

23 Q. Do you recall if at that time there's
24 anything that you can point to that the EPA may have
25 had a different interpretation than MDNR?

1 A. Well, I would go back to the method that
2 the EPA was enforcing. And I mean, I -- I don't
3 dispute any -- well, I dispute some of the testimony
4 by Mr. Moor, but yes, there was some changes in the
5 way -- in the enforcement and whatnot during the
6 switch in administration, whatnot.

7 But as the Court noted, that methodology,
8 one, was -- was at least visible to the -- to Ameren
9 since 19- -- well, visible to utilities since 1999.
10 And I think Ameren disputed in the liability phase
11 that -- yes, that the projects were viewed not by the
12 Judge, not as individual components, but as a project
13 on the whole.

14 If you go back to the opinion, the Judge
15 said -- and I'll let him speak for himself, that even
16 if he didn't include the projects and evaluate them as
17 a whole, even individually, they did not qualify as
18 routine maintenance, replacement -- repair and
19 replacement -- or replacement, repair. Take your
20 pick. I think that answered your question.

21 Q. It did, and I have no further questions.
22 Thank you.

23 JUDGE CLARK: I have a Commission
24 question for the witness.

25 COMMISSIONER KOLKMEYER: Thank you,

1 Judge.

2 QUESTIONS BY COMMISSIONER HOLSMAN:

3 Q. Good morning.

4 A. Good morning.

5 Q. You had mentioned in the prior --
6 previous discussion that you -- you thought that
7 squeezing every megawatt out of an asset was the
8 appropriate approach for prudence. Is that an
9 accurate rephrase of your position?

10 A. Well, I don't know that I would link that
11 to prudent. Well, I think that the -- for sure it
12 would be prudent to squeeze absolutely every megawatt
13 hour of an asset, especially if it's an asset like
14 Rush Island. I -- I don't think that's -- for sure
15 not specific to Rush Island.

16 I think every base load unit and really
17 every generating asset, you want -- the utilities
18 would want to squeeze every single megawatt hour
19 possible out of that asset. And so that's why you
20 have projects like the improvements at Rush Island.

21 And I can go here ad infinitum about
22 other utility projects that are designed to increase
23 reliability, increase availability as recent as the
24 last decade. I mean, you're making improvements to
25 plants like Wolf Creek, to ab-- squeeze every

1 available megawatt out of that unit. And so I think a
2 prudent utility would make those improvements.

3 And certainly I would say that the Staff
4 and, more importantly, the Commission has been
5 supportive of -- of those kind of improvements.

6 But on the other hand, when you make
7 improvements and environmental equipment additions,
8 those actually reduce the amount of megawatts coming
9 out of the plant.

10 But the -- again, Staff and the
11 Commission has been generally supportive of those
12 improvements, because they reduce the -- the --
13 certainly the liability and the risk of other
14 improvements and a violation being alleged by the EPA.
15 And you reduce the amount of SO2 and NOx allowances
16 that you have to purchase.

17 And there's the overall societal benefit
18 of cleaner air. So I mean, both -- both -- squeezing
19 as many megawatts as possible is -- is a -- is the
20 overall goal and a good goal.

21 Q. So did -- let me -- let me -- let me ask
22 then. The legislation that was recently passed that
23 we're, you know, evaluating now for securitization, do
24 you believe that that legislation provides retirement
25 as a prudent option?

1 A. Ye- -- yes. I think -- well, I think in
2 the -- in the prior -- for Asbury, that determination
3 was done --

4 Q. So -- so let me put it this way: Before
5 the legislation was passed, your position of we should
6 spend money on scrubbers because this asset won't
7 naturally retire until 2039, that would be a prudent
8 measure to make that asset essentially federally
9 appropriate for the new standards, right?

10 But now that we have a policy change that
11 the legislature has put forward offering a new way of
12 dealing with that asset, does that legislation change
13 the math on rather its good or beneficial for the
14 ratepayer if they can securitize the cost and take
15 that retirement into consideration versus spending the
16 money on scrubbers for an asset that will -- will run
17 a life of -- you know, to 2039?

18 A. I think it would change the -- the
19 economics, but I -- we're -- well, when it comes to
20 the three major utilities in the state, you're --
21 you're quickly running out of plants that you haven't
22 scrubbed. And the irony is that -- and not just
23 scrubbed. I mean, included -- or installed vast, huge
24 expensive, environmental equipment.

25 So -- and I think I drew this comparison

1 in my rebuttal testimony in the last case. If you
2 look at the other utilities in the state, which I
3 think the -- Ameren has -- has -- you've heard ad
4 infinitum about comparisons with what other utilities
5 have done, but let's focus on Missouri.

6 So if you look at the other side of the
7 state, all their major coal-fired units that are still
8 in operation have had what I would call the full
9 package of environmental improvements done to them.

10 You have FGD for sc- -- also known as
11 scrubbers on La Cygne I; La Cygne II; Hawthorn V,
12 which is a little bit different because it had a
13 boiler explosion in '99, was rebuilt in 2003. But
14 they made the investments -- the very expensive
15 investments and now they have that capacity throughout
16 the mid-2030's.

17 You have Iatan I, Iatan II. Of course,
18 Iatan II was built in 2010. It had to have the -- the
19 best achievable -- best environmental equipment
20 available at the time. But the improvements have
21 already been made to at least those five units and
22 I've only mentioned scrubbers. Selective catalytic
23 reduction to control NOx emissions, several of them
24 have cooling towers for the -- the water regulations.

25 But the point is that that side of the

1 state has -- has made those improvements at -- at a
2 huge cost and a huge cost to the ratepayers. But I
3 think in the long run, we can now -- at least that
4 side of the state can rely on those improvements well
5 into the 2030's while, let's say, society makes a --
6 an energy transition to less carbon.

7 On the other side of the state you have
8 Labadie, which has no -- other than the vintage
9 environmental equipment and some -- I believe some
10 mercury controls, which are far less expensive, but
11 they don't have, other than Sioux, the massive
12 environmental equipment and upgrades that have been
13 done on not only the other side of the state, but in
14 other plants in the region.

15 And I think that there's -- there's a
16 good reason why Ameren has the lowest rates in the
17 state. It's because they haven't made -- in part,
18 they haven't made these investments.

19 Yes, Evergy Metro, Evergy West, Empire or
20 Liberty, yes, they have higher rates, but -- and I'll
21 focus on Metro and West. But all their major coal
22 units are -- have -- have this equipment and they can
23 operate well into the 2030's.

24 And I would add even at the time that --
25 of -- that these improvements were made, even

1 utilities as small -- on its own Evergy West, formerly
2 GMO, formerly Aquila, even when they were having
3 financial difficulties, they still made the investment
4 on Sibley III.

5 And they also made investments under the
6 management of Evergy Metro to make those investments
7 at Iatan I and preserve those invaluable assets well
8 into the 2030's and, in fact, for Iatan II, through
9 2050 if the unit can operate --

10 Q. Well, let me ask --

11 A. -- until then.

12 Q. Let me follow up on then. I know it's
13 impossible to predict what the federal government will
14 do in the future or what the EPA will do or -- or who
15 even is going to reside in the executive office to --
16 to sort of lead that. But do you believe that the
17 environmental impacts made -- you talked about on the
18 eastern side of the state, that those costs have
19 already been borne by the -- the ratepayers.

20 Do you believe that with the trajectory
21 of federal policy, that they will actually be able to
22 operate at the, let's say, 2035 or 2040 that that --
23 that that reduction in emission is going to be enough
24 to satisfy those -- those environmental markers
25 that -- that the EPA is -- is striving for?

1 A. I think it really hinges on -- it's
2 certainly a huge unknown on what carbon sequestration,
3 what those impacts if -- if those come to fruition,
4 will have on the larger coal units.

5 There's also the Good Neighbor Rule,
6 which I believe just addresses the NOx emissions.
7 That's been taken care of on that -- on the western
8 half of the state. And so it really hinges on those
9 future regulations.

10 But -- but the -- for the most part now,
11 the -- the western side of the state has addressed the
12 current emissions regulations, not counting carbon.

13 Q. So no policy changes, they have the
14 environmental equipment necessary to continue
15 operating until 2050?

16 A. I -- I think -- and not getting into
17 specific units, which I think some of those are
18 confidential, but you have certainly the more vintage
19 units into the 2030's, but Iatan II was designed to --
20 its -- its retirement date is in the 2050's.

21 But keep in mind, Iatan II is the most --
22 at least in the state of Missouri, the most advanced
23 unit, the big -- the biggest unit, the cleanest unit,
24 the most efficient unit by far in terms of net heat
25 rate. And that unit is -- is designed well --

1 designed to go into 20 -- in the 2050's.

2 Q. And the rates reflect those advancements?

3 A. Oh, oh, absolutely. Not only do the
4 rates reflect those improvements, there was very
5 unique and special rate-making treatment in the 2005
6 time frame so -- to enable at that time KCPL and its
7 partners, Empire and now Liberty, and its par- -- and
8 at that time Aquila, to be able to invest in a
9 2 billion dollar power plant.

10 Not only invest in a 2 billion dollar
11 power plant, but to invest in over a half a billion
12 dollars of environmental equipment and improvements to
13 make -- to clean Iatan I.

14 And so the really pitch there was that
15 pre and post -- before you build Iatan II and do the
16 improvements to Iatan I and afterwards, you would have
17 fewer emissions of SO2 and NOx. With an entire --
18 entire additional unit, you would have fewer emissions
19 than you would -- did with Iatan I. And so that was
20 part of the pitch with the collaborative effort under
21 the regulatory plan in 2005.

22 So to answer your question, those were
23 billions -- millions -- several million -- hundreds of
24 millions of investments that -- that, yes, we paid for
25 and yes, those impact rates, for sure. But those

1 are -- I would call them clean, cleaner, clean coal
2 investments that will benefit ratepayers well into the
3 future.

4 Q. And to be clear, obviously Rush Island
5 would not qualify to continue operation without the
6 investment in the environmental improvement equipment?

7 A. I think that if you were going to -- I
8 think you could read Ameren's testimony, specifically
9 Mr. Michels, and say that even if we hadn't installed
10 the equipment in 2011, it would -- it would not be
11 better for customers.

12 Okay. But that completely ignores that
13 certainly the western side of the state -- that
14 implies that the western side of the state, they were
15 unreasonable in -- in installing that environmental
16 equipment in the same time frame.

17 I think that -- I'll be -- I'm more --
18 I'm more old school. I think that it's very important
19 to have clean base load units that we can rely on,
20 especially when you have extraordinary events like
21 winter storms.

22 When -- when -- if -- if you assume that
23 that kind of thing can happen on a going-forward
24 basis, do we really want to have 300 million dollar
25 expenses and have to either spread those over to

1 customers immediately or have to securitize those
2 because we've -- we're short on generation? I -- and
3 I'm going to speak for myself. I don't think that's a
4 great premise.

5 Q. So your -- your testimony today is that
6 you believe that it's better for the ratepayers to
7 spend the money on the environmental upgrades and
8 continue to operate Rush Island then it is to shutter
9 the -- the plant and securitize the costs?

10 A. No. At this time I don't think that
11 that's economic. I -- I think that the studies that
12 have done -- I'll let Ms. Eubanks answer that
13 question. That may be available to her -- for her to
14 answer that at a later time.

15 But I think the time now -- we're in
16 2024. You've got 15 years of life left in the unit.
17 The time to build these was perhaps decades before.
18 Now you have -- when -- when the western side of the
19 state built those -- built -- made those improvements,
20 cost of labor was much lower, cost of materials was
21 much lower. The -- the availability of that craft
22 labor and the -- the manufacturers were available to
23 install those -- install that equipment.

24 I can't say that for sure now at -- at --
25 in -- in the current time frame. I think if you

1 make -- if you read Ameren's testimony, and I think I
2 put it in mine, that 42 or 43 out of the scenarios
3 that the Company evaluated said that it's more
4 economic to retire Rush Island. And so in the time
5 now --

6 Q. Do you agree with those?

7 A. I -- I would agree -- I would agree with
8 that premise.

9 Q. That it's more economical for the
10 ratepayer to retire Rush Island, securitize the costs
11 and to move onto different generation?

12 A. Right now, yes.

13 Q. Right now.

14 A. Given -- given the fact that -- if you
15 didn't have to install scrubbers, then you would
16 have -- then the status quo is you operating the plant
17 until the EPA, as we all know, eventually goes after
18 you with a hatchet.

19 But status quo, I think you would operate
20 that plant as long as you can. And I would suspect
21 they would operate both Sioux and Labadie as long as
22 possible to -- again, you're squeezing the megawatts
23 out of assets that are -- barring some kind of large
24 base load unit, such as a nuclear unit, are -- are
25 both invaluable and irreplaceable.

1 Q. Okay. Thank you.

2 COMMISSIONER HOLSMAN: Thank you, Judge.

3 JUDGE CLARK: Thank you, Commissioner.

4 Any recross based upon Commissioner

5 questions? Public Counsel?

6 MR. WILLIAMS: Thank you. I do have a
7 few.

8 RECROSS-EXAMINATION BY MR. WILLIAMS:

9 Q. You mentioned in one of your answers that
10 Ameren Missouri had put scrubbers on at Sioux?

11 A. Yes.

12 Q. Do you know when that was -- when those
13 scrubbers were put on?

14 A. My recollection, in the 2011 time frame.
15 But I'm sure if I'm wrong, Ameren will correct me.
16 But I think it was in that time frame. My
17 recollection is they have a non-selective catalytic
18 reduction system, which would be some kind of re-agent
19 injection to ameliorate the NOx emissions. That -- I
20 don't believe those were installed the same time
21 frame.

22 Q. Does it have any emissions control for
23 SOx emissions?

24 A. Well, the -- so we're talking about
25 Sioux, and it's S-i-o-u-x. So you're talking about

1 **Sioux, two units. They both have wet scrubbers, FGD**
2 **Flue Gas Desulfurization, equipment. And so those**
3 **would be for SO2 emissions, sulfur dioxide.**

4 Q. And is Sioux -- you said it's two units.
5 Rush Island's also two units, correct?

6 A. Yes.

7 Q. Are they comparable in size, the units?

8 A. Now you're really testing my memory. I
9 think -- I think the Sioux units were vintage late
10 1960's. I'm going to say they're both between 500 and
11 750 megawatts. But again, I'm sure Mr. Lowery's going
12 to correct me -- correct my memory if I'm wrong.

13 Q. When you say both, are you talking about
14 the units at Sioux or relative to the units at Rush
15 Island or --

16 A. Sioux would be between 500 and 750.
17 You're -- kind of -- kind of the -- the boilerplate,
18 no pun intended, large coal-fired base load unit.

19 Q. And wasn't -- didn't Ameren Missouri
20 build Rush Island in the early/mid '70s?

21 A. Yes, that's correct.

22 Q. Do you know why Ameren Missouri put on
23 the emissions control equipment at Sioux?

24 A. Well, other than the obvious; to control
25 the emissions. They would have done an economic

1 analysis on is it -- is it more economic to keep
2 buying allowances, keep spending allowances or to
3 construct the scr- -- the scrubbers to control SO2.
4 So there would have been an economic analysis at the
5 time that that -- those decisions were made.

6 Q. It didn't involve the New Source Rule,
7 did it?

8 A. Not to my knowledge.

9 Q. And do you know approximately what it
10 cost for Ameren Missouri to put the emissions control
11 equipment on Sioux? I'll take a ballpark figure if
12 that's the best you can do.

13 A. Well, I know Mr. Lowery's going to
14 correct me if I'm very off. I'm going to say between
15 400 and 700 million. That's just based on a long
16 recollection. But for sure those final costs would
17 have been -- I don't have Ms. Tatro to correct my case
18 number here. Be 2011-0258, I believe. I've been two
19 for two on case numbers, so.

20 Q. So at least around 2011, Ameren Missouri
21 decided it was cost-effective to put emissions control
22 equipment on Sioux for a plant that's relatively
23 comparable to Rush Island?

24 A. Well, I would just correct one part of
25 that. The decision to install those would have been

1 probably three years prior. Again, Mr. Lowery's going
2 to correct me if I'm way off, but it's in that time
3 frame.

4 Q. You're talk -- you're making a
5 distinction about when a decision was made to put on
6 the emissions control equipment and when it was
7 actually installed? Is that --

8 A. Right.

9 Q. You're drawing the distinct- --

10 A. You're -- right. I think you had men- --
11 you just said that the decision was made in 2011.
12 That would have been because there is a very
13 lengthy -- lengthy process to engineering, procure,
14 construct those assets. So the decisions would have
15 been '08, '09, perhaps '07 time frame.

16 Q. Well, didn't Ameren Missouri say for Rush
17 Island that it started their planning -- or initial
18 decision to go forward with the improvements in 2007
19 and 2010 were initiated in 2005?

20 A. Yes.

21 Q. So that --

22 A. For --

23 Q. -- that kind of a time frame? Is that
24 what you're talking about?

25 A. Well, the -- the specific improvements

1 here, it's in the order -- I think the outage --
2 goodness, three or four months, but the actual outage
3 time was in the order. That was to complete the
4 construction.

5 I think if you're doing an SCR -- yes,
6 the actual construction may have been in a more
7 narrow -- I'm sure Ms. Eubanks could correct -- will
8 correct me if I'm wrong. That is a much more -- much
9 more complicated project to install two scrubbers
10 versus the improvements that were actually completed
11 in the 7/11 time frame in Rush Island. Those are two
12 separate projects.

13 Q. So you would expect that the time frame
14 for the advanced planning would have been three years
15 or more, given the time frame for the planning for
16 Rush Island? When I'm talk -- and I'm referring to
17 Sioux.

18 A. Right. Given -- I'm not an engineer, but
19 given my knowledge and experience with other projects,
20 there's a very long lead time with that equipment and
21 getting suppliers ready to -- and craft labor and all
22 the planning that goes into those improvements.
23 There's a very long lead time.

24 So again, I wouldn't -- I would say
25 that's an approximate date of when those decisions

1 would have had to have been made.

2 Q. And do you know if Ameren Missouri's
3 planning on retiring Sioux in the future?

4 A. I -- I'm sure I read a document. I
5 couldn't tell you right here a specific date. I know
6 they have a projected retirement date for Sioux,
7 Labadie and their other units, but as -- as I stand --
8 sit here, I don't know when.

9 Q. No further questions. Thank you.

10 JUDGE CLARK: Any recross from Ameren?

11 MR. LONG: Yes, Your Honor. Thank you.

12 Briefly.

13 RECROSS-EXAMINATION BY MR. LONG:

14 Q. Mr. Majors, at the beginning of this
15 segment of your testimony I think you had a question
16 from Commissioner Holsman about whether you thought
17 squeezing every megawatt out of an asset was
18 appropriate. Do you recall that at the beginning of
19 this discussion?

20 A. Yes.

21 Q. Okay. And in your response I think you
22 had talked about how other utilities were doing
23 projects to increase availability. Did I hear that
24 correctly?

25 A. Yes.

1 Q. Okay. Were those other utilities doing
2 projects that increased availability getting New
3 Source Review permits?

4 A. To my knowledge, no, but it could have
5 been that they were part of -- part of the argument
6 against not getting a New Source Review permit is that
7 you instr- -- install the best achievable -- best
8 achievable control technology for SO2 and NOx.

9 And so as part of the improvements to
10 Iatan I, there was improvements in the turbine to
11 gain -- I don't think it's confidential, but 15 to
12 20 megawatts. Similar to I think what's been
13 discussed, it's called a dense pack.

14 I don't know if it was a dense back on
15 the turbine, but there were turbine improvements to
16 squeeze, as I said, every -- every -- every stinking
17 megawatt hour out of the unit within reason without
18 causing damage or anything like that.

19 So to get back to your question, I don't
20 know for certain that they had to get a New Source
21 Review permit. I would suspect not because they had
22 already installed the control technology to control
23 those emissions.

24 Q. Okay. Were you aware of other utilities
25 doing availability improvement projects that did not

1 have the best available control technology for
2 emissions already installed?

3 **A. Yes. I think you discussed that. And I**
4 **discussed it in the rebuttal testimony in the last**
5 **case and you discussed it with Ms. Eubanks in her**
6 **deposition. Westar, Western Resources, now Evergy,**
7 **Kansas Central, they made improvements to the boiler**
8 **and I believe the turbine and so they were approached**
9 **by the EPA -- well, not approached.**

10 **I mean, they -- they were -- had a Notice**
11 **of Violation from the EPA and so --**

12 **Q. And was that because they didn't get a**
13 **permit before doing the projects?**

14 **A. That's correct, yes.**

15 **Q. Okay. Let me ask you, sir, you talked**
16 **about the controls at Evergy for sulfur dioxide and**
17 **other criteria pollutants in one of your responses to**
18 **the Commissioner's questions.**

19 **Would customers need to pay for the**
20 **pollution control equipment that was installed at**
21 **Evergy?**

22 **A. Oh, absolutely. It's in -- it's in rates**
23 **now and probably has -- has been in rates since -- at**
24 **least for Hawthorn V, since January 1 of 2007.**

25 **Q. Do you know whether Ameren Missouri at**

1 the time that it was making these permitting decisions
2 for Rush Island had sufficient sulfur dioxide
3 allowances that would have allowed it to continue to
4 operate the units without having to have customers pay
5 for scrubbers?

6 **A. That's my understanding, yes.**

7 Q. Do you know what -- I think you talked
8 about there being an economic analysis on whether it
9 was better to use allowances for sulfur dioxide
10 compliance as opposed to scrubber retrofit or sulfur
11 dioxide compliance?

12 **A. Yes.**

13 Q. And would you have expected there to have
14 been that type of economic analysis for the Evergy
15 units when they made these decisions about how to
16 comply with the sulfur dioxide regulations?

17 **A. Oh, absolutely.**

18 Q. So if the Company, that is, Ameren
19 Missouri, had sufficient sulfur dioxide allowances to
20 comply with the Clean Air Act requirements, you would
21 not have expected Ameren Missouri to install scrubbers
22 on the units if it was not otherwise required to do
23 so, correct?

24 **A. Even if you could survive with just**
25 **allowances, there's no question that utilities were**

1 installing controls for pollution eq- -- for pollution
2 equipment, like I've said. And it's not just in the
3 western side of Missouri.

4 But yes, the economic analysis could have
5 been that, yes, we can survive on just allowances.
6 But there's certainly other utilities with -- I'm
7 going to say similar units; your subcritical
8 coal-fired power -- power plants that are above, you
9 know, 500 megawatts that were installing the equipment
10 that's --

11 Q. And are you thinking about some of the
12 Evergy units in that answer?

13 A. Well, I would say not just Evergy. There
14 would be Westar, Empire. Again, my -- my immediate
15 knowledge as to those utilities in the state that are
16 most important.

17 Q. And Evergy, Westar, Empire, those units,
18 do they have controls for carbon dioxide, CO2?

19 A. No.

20 Q. Okay. So if the forthcoming EPA
21 regulations for carbon dioxide come out, could those
22 lead to the retirement of those Evergy, Westar, Empire
23 plants?

24 A. Absolutely.

25 Q. And could that result in early retirement

1 of those plants?

2 **A. Absolutely.**

3 Q. Going back to the questions about
4 allowances and comparing Ameren to Evergy, might
5 Ameren have had more allowances than Evergy at the
6 time that it was making the decisions whether to
7 comply with scrubbers or to comply with allowances?

8 **A. That could be the possibility and you --**
9 **you could purchase allowances. There -- there's a**
10 **market for those.**

11 Q. And if they had more allowances at Ameren
12 Missouri than Evergy had at the time, would it be
13 better for customers for them to have relied on those
14 allowances for sulfur dioxide compliance?

15 **A. Perhaps from the -- from an -- from a**
16 **rate perspective. I mean it's -- obviously the year's**
17 **2024 and your -- Ameren's going forward with less**
18 **pollution controls than -- than its -- its peers, so.**

19 Q. But the -- you agree that the economic
20 analysis could have shown that the right choice for
21 the consumers, the customers of Ameren Missouri might
22 have been to rely on the allowances?

23 **A. That's a fair -- fair statement.**

24 Q. That's all I've got. Thank you, sir.

25 JUDGE CLARK: Any redirect from Staff?

1 MS. MERS: Yes, and I hope it's
2 relatively brief.

3 REDIRECT EXAMINATION BY MS. MERS:

4 Q. You stirred up a lot of conversation with
5 your squeezing every megawatt comment. Do you recall
6 having that conversation with Commissioner Holsman?

7 A. Yes.

8 Q. How would you think context would matter
9 on -- if squeezing every megawatt hour is the prudent
10 action for a plant?

11 A. Well, certainly there's a limit, right?
12 There's -- just in the -- in the -- the jargon I think
13 has been, it's somewhere in the case, all -- all
14 valves open, full throttle, all the turbine valves
15 open.

16 I mean, you're talking about August 15th
17 when it's 95 in the shade and you want that unit --
18 there -- there -- you want to run the unit as with --
19 with the pulverizers and the -- feeding as much coal
20 as you want through the boiler, but you certainly
21 don't want to harm the unit or operate the unit in a
22 way that would permanently damage or -- or even
23 temporarily damage the unit.

24 And the same could be said when it's
25 negative 20 during Winter Storm Uri and you're wanting

1 maximum amount of -- of bang for your buck and maximum
2 amount of coal as possible going through the unit.

3 But certainly there's the potential for
4 the misuse of the -- of -- of -- of the equipment.

5 But a prudent plant operator would not push the unit
6 as far or farther than it could reasonably go.

7 Q. Could you list some items that would be
8 important context when determining if improvements to
9 help squeeze every megawatt hour should be added to a
10 plant or not?

11 A. Well, I think there's a misnomer. It was
12 certainly prudent for -- I don't think there was a
13 question of prudent. It was prudent for Ameren to
14 install that equipment, because your -- as -- there's
15 been a lot of testimony that you had availability
16 issues with the slide build-up and the boiler and the
17 air pre-heaters.

18 And so certainly -- and there's an
19 economic analysis to that, too. Right? So the -- the
20 engineering planners would have said, well, we're
21 going to have to spend 75 million dollars is -- our
22 75 million dollar investment for the two units, is
23 that going to pay off in dividends for added
24 off-system sales or -- or -- which is kind of a
25 archaic term, but additional sales or additional hours

1 that you can run that unit.

2 There's always going to be a cost/benefit
3 analysis of turbine improvements, boiler improvements.
4 Even an economic analysis like we've discussed with
5 Mr. Lowery and Mr. Long about the -- the pollution
6 equipment, installing that, which actually reduces the
7 amount of megawatt hour -- megawatt capacity unit
8 because you're increasing the what's called house
9 load, the auxiliary load to run.

10 When it comes to a scrubber, you've got
11 to run the ball mills, the recyclers, all the
12 incidental equipment that is installed with the
13 environmental controls. But there's always going to
14 be some kind of value added analysis on installing
15 equipment to, again, squeeze every megawatt out of the
16 unit.

17 Q. Would you have an opinion that if a
18 utility decided that there was value added to add
19 equipment to, again, squeeze every megawatt hour, but
20 doing it before or without proper testing and permits?

21 A. Could you -- could you say that one more
22 time?

23 Q. I can try. Would you have a
24 recommendation or an opinion on if a utility would
25 install, and perha- -- prudently, equipment that could

1 help increase efficiency or the squeezing every
2 megawatt hour, but without or before proper testing,
3 permitting and compliance?

4 A. Well, I think you would want to do that.
5 You would want to do that in concert with the economic
6 analysis. I mean, it would -- it would make no sense
7 if you're going to install the equipment, to have to
8 then shut down or retire the unit in short measure.

9 I -- I guess the -- the contra to that
10 would be -- and it's unfortunate, Empire installed the
11 equipment at Asbury and then not -- in short measure,
12 turned around and retired the unit. Certainly that
13 was the unfortunate case with Sibley III. The SCR was
14 completed in 2009 and it was, in my view,
15 unfortunately retired in 2019.

16 So I -- there's no point in making those
17 improvements and extending the life span of the unit
18 if you can't run the unit going forward, I guess is an
19 answer to your question.

20 Q. That's all I have. Thank you.

21 COMMISSIONER HOLSMAN: Judge, one
22 follow-up -- just real quick follow-up question. It
23 will take two seconds.

24 JUDGE CLARK: We have one more Bench
25 question -- I'm sorry, Commission question.

1 FURTHER QUESTIONS BY COMMISSIONER HOLSMAN:

2 Q. Just real briefly based on that last
3 inquiry. Does the -- you said as an example, Asbury
4 had -- or Liberty had installed some environmental
5 equipment and then retired the -- the unit shortly
6 thereafter.

7 Does these retired units retain any
8 recycled asset value that could be repurposed either
9 internally within the fleets that -- that are
10 currently existing in this -- in this state or other
11 states or in other countries that don't have the
12 environmentally restrictive polices in places?

13 And could -- could these assets be sold
14 to a country that doesn't have the same type of
15 environmental codes?

16 A. I think the potential is there. The real
17 value in these sites is the site itself, right? So
18 for your legacy coal plants, you've got rail -- always
19 have rail because you have to rail in the coal. And
20 you've got a clean source of -- and plentiful source
21 of water. So the sites themselves have value.

22 But to answer your question could they be
23 sold to countries abroad? One, these are very large
24 assets. They're difficult to move. The one example
25 that I can think of -- and this is really very -- very

1 small example. The turbine at Grant Avenue in
2 downtown Kansas City, I believe it ended up in South
3 America. But you're talking about probably a three,
4 four megawatt back brusher turbine that was circa the
5 '40s.

6 So certainly -- and I think you mentioned
7 maybe salvage value. Yes, there's going to be a
8 salvage value to the components of the plant itself.
9 They're made of a lot of metal and equipment and
10 copper and what have you.

11 Q. Is that value included in the numbers
12 that we're looking at, the 468 million to securitize?

13 A. I believe the salvage proceeds, and there
14 will be, are included in those numbers. And certainly
15 we would dispute -- if there weren't salvage proceeds,
16 we would absolutely have that as an offset to the net
17 book value or the cost. You -- you wouldn't want
18 to -- because they're scrap proceeds. I mean, there's
19 a -- an economic benefit to those that are sold --
20 sold to recyclers or what have you.

21 Q. Do you know if there's ever any effort to
22 find a market that could potentially recognize the
23 value of -- if you've got 15 years left in an engine
24 and you could find a buyer for that engine, then that
25 value is much greater than scrapping it.

1 A. Well, sure. I -- I think the potential
2 for your -- again, I'm not an engineer, but the
3 potential for very large coal-fired units, these --
4 the equipment is so massive, I think the potential
5 could be there for much smaller units; say, a gas
6 turbine or -- or something like that. And you can
7 all -- but you can take separate components as well
8 and there could be a potential market for those.

9 I know when La Cygne had its
10 environmental retrofits, there was some obsolete
11 inventory that was -- was marketed and sold. But I
12 think the overall proposition that you're asking, it's
13 pretty difficult. These -- these are -- these are
14 massive components and those are difficult to --
15 difficult to move.

16 Q. To repurpose.

17 A. Oh, sure. Now, the site itself has,
18 again, a lot of value. Because not only -- I
19 mentioned rail and water. You also have substations.
20 So you have access to the grid. My recollection is
21 there may be a -- there might be a very small solar
22 project at Montrose. That's just my recollection. It
23 could be wrong.

24 Q. Okay.

25 A. But certainly if there was solar -- a

1 **solar facility, it would have access to substation.**

2 Q. I'm going to -- I'm going to hold this
3 line of questioning for perhaps an Ameren witness that
4 could talk about -- maybe Michels on the capacity
5 side.

6 **A. Oh, sure.**

7 Q. All right. Thank you.

8 COMMISSIONER HOLSMAN: Thank you, Judge.

9 JUDGE CLARK: Any redirect from Public
10 Counsel -- I mean, sorry, recross.

11 MR. WILLIAMS: Yes, please.

12 RECROSS-EXAMINATION BY MR. WILLIAMS:

13 Q. Do you know if there's any market for
14 a -- let's say I think Rush Island, they're in the
15 neighborhood of 500, 600 megawatts per unit. Correct?

16 **A. I want to say more like 650 but --**

17 Q. Okay.

18 **A. -- sure, yeah.**

19 Q. Whatever they are.

20 **A. Oh, you're asking about a market?**

21 Q. Well, I haven't gotten to that yet.

22 **A. Oh, okay.**

23 Q. Do you know if there's any market for a
24 1970's vintage generating unit of in the neighborhood
25 of 600 megawatts, such as those at Rush Island?

1 A. I -- I think -- would it be possible to
2 dismantle the unit and rebuild it somewhere? There's
3 a possibility. I -- I think it would be so
4 economically unfeasible in terms of cost that you
5 would never -- you really wouldn't want to do that.
6 I -- I suppose if you had all the money in the world,
7 you could, but.

8 Q. Well, isn't the real value of that
9 unit -- or the Rush Island units tied to their
10 location and interconnection with the grid?

11 A. Oh, absolutely. The -- the sites
12 themselves -- doesn't matter if it's -- it's Sioux,
13 Labadie, those -- the site itself has the value. So
14 you've got transmission access, grid access, you've
15 got plentiful water hopefully, depends on Missouri
16 River. But -- and then you've got rail access.

17 So those are very important to have in
18 any kind of generating -- generating facility of -- of
19 that type.

20 Q. And wouldn't the maximum value from a
21 unit like that be for, say, an independent power
22 producer who just took it over on the site or someone
23 that had a demand for that kind of power production?
24 I don't know, data centers perhaps?

25 A. Okay. Are you assuming that you keep

1 Rush Island intact?

2 Q. Yes. Somebody else just takes it over.

3 A. Oh. Well, I -- the -- I guess where I
4 could -- the comparison maybe -- and it's really not a
5 comparison. The only other example I could think of
6 is believe there's a nuclear unit in the Midwest that
7 a third party purchased in the hope of restarting it
8 and rehabbing it. I -- that's probably a lost cause.

9 I -- I would imagine you could if --
10 again, if you had a lot of -- a lot of money lying
11 around. The problem is -- I mean, can you run the
12 unit without -- without installing the environmental
13 equipment? I mean, that would be the question.

14 And so you're talking about if you had --
15 I'm sure you could cut a deal with Ameren if they
16 didn't have to dismantle the unit. Of course, that
17 would be up to them. But you'd have to have a billion
18 and a half lying around to install the environmental
19 equipment.

20 And so I can't imagine -- I'm not going
21 to say it's impossible. I would imagine it's -- it's
22 wholly economically infeasible.

23 Q. It didn't happen with Asbury, did it?

24 A. No. Not to my recollection. Asbury was
25 dismantled. And I think Montrose was dismantled. It

1 just depends on -- on what your end goal is. If you
2 want to leave it more or less intact when you -- of
3 course, you can take out the -- the money's in the
4 copper or the metal, but if -- if you leave it intact
5 or you want to brownfield the site, that's really
6 where the money comes in on dismantling the unit.

7 Q. Thank you. No further questions.

8 JUDGE CLARK: Any recross from Ameren?

9 MR. LONG: No, Your Honor.

10 JUDGE CLARK: Any redirect from Staff?

11 MS. MERS: No. No, thank you.

12 JUDGE CLARK: It is now 12:27. I think
13 it's an appropriate time to take a lunch break. So
14 why don't we all come back at one o'clock.

15 (A recess was taken.)

16 JUDGE CLARK: Okay. We're back from the
17 lunch break, so let's begin with our next witness.

18 OPC -- or I'm sorry, Public Counsel, you may call your
19 next witness.

20 MR. WILLIAMS: Public counsel calls
21 Jordan Seaver.

22 JUDGE CLARK: Mr. Seaver, will you raise
23 your right hand to be sworn?

24 (Witness sworn.)

25 JUDGE CLARK: Please be seated.

1 JORDAN SEAVER, being first duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION BY MR. WILLIAMS:

4 Q. What is your name?

5 A. **Jordan Seaver, J-o-r-d-a-n S-e-a-v-e-r.**

6 Q. By whom are you employed and in what
7 capacity?

8 A. **The Office of Public Counsel as a policy
9 analyst.**

10 Q. Did you prepare rebuttal testimony that's
11 marked for identification as Exhibit 204 for purposes
12 of this hearing?

13 A. **I did.**

14 Q. And would you have any corrections to
15 that testimony for it to be your testimony here today?

16 A. **I do.**

17 Q. And I should say, or changes as well?

18 A. **Yes.**

19 Q. And what are those revisions you would
20 have?

21 A. **So there are a handful. Starting on page
22 six -- and this is the highly confidential version. I
23 don't know if the page numbers differ from public or
24 confidential, but --**

25 Q. They should not.

1 **A. Okay.**

2 Q. Is any of the information you're about to
3 modify confidential or highly confidential, because
4 there are three versions?

5 **A. I don't -- I don't believe so.**

6 Q. Okay. If you'd go forward then.

7 **A. So the first one on page six at line
8 four, it should read, Yes, comma, I believe that and
9 then insert "the Company."**

10 **The second, again on page six, line 25:**
11 **The Company and "has" should be changed to "had,"**
12 **h-a-d. Same line, 25, the third word from last is**
13 **"would" should be changed to "could."**

14 **And then line 26 at the end of that**
15 **sentence that resumes on line 26, started on line 25,**
16 **I have a footnote insert: Due to a filed Stipulation**
17 **and Agreement in Case EA-2023-0286 -- and I don't**
18 **believe that this is confidential, but I will look to**
19 **anyone. It's about the solar facilities and the**
20 **Stipulation and Agreement.**

21 **MR. LOWERY:** As long as you're not going
22 to reveal what the cost of an individual facility
23 was --

24 **THE WITNESS: No.**

25 **MR. LOWERY:** -- then I don't think

1 there's an issue.

2 **THE WITNESS: No.**

3 MR. WILLIAMS: Do you want to look at it
4 first?

5 MR. LOWERY: Maybe I should. Just to --
6 can't unring the bell, right? Thank you.

7 **THE WITNESS: It's right at the bottom**
8 **there.**

9 MR. LOWERY: No.

10 **THE WITNESS: Okay.**

11 MR. LOWERY: Nothing confidential.

12 JUDGE CLARK: Thank you for providing
13 your assistance.

14 **THE WITNESS: So to resume, I believe I**
15 **left off with, Removes the Cass, C-a-s-s, County solar**
16 **facility, comma, the immediate cost of the solar**
17 **facilities will differ from costs used in my**
18 **calculation, period.**

19 BY MR. WILLIAMS:

20 Q. Are those all the revisions you have for
21 that -- for Exhibit 204 to be your testimony here
22 today?

23 **A. No, there are four more.**

24 Q. Okay. What is the next one?

25 **A. On page seven, line four, after the**

1 highly confidential information, there's a comma, and
2 then it says "and." And it should be changed to
3 "costs may" and then it says "be higher." And that
4 should be stricken and changed to "differ." Then --

5 MR. LOWERY: I apologize. Can you -- can
6 you maybe state that one more time?

7 THE WITNESS: Yeah.

8 MR. LOWERY: I wasn't quite tracking.

9 THE WITNESS: So I'll read the sentence
10 and then I'll read the changes. I'll read that part
11 of the sentence: And it co- -- it may be higher once
12 the CCN is. It should read: And costs may differ
13 once the CCN is.

14 And then page seven, line eight the last
15 word is "witnesses" and it should have an apostrophe
16 to denote possession.

17 And then the last one, same page seven,
18 line 18. It says: If retiring Rush Island early with
19 continuing to operated Rush for Island. For should
20 just be removed. And those are all the changes.

21 Q. With those revisions you've just
22 provided, is -- with those revisions to Exhibit 204
23 that you just provided, is Exhibit 204 your testimony
24 here today?

25 A. It is.

1 MR. WILLIAMS: I offer Exhibit 204.

2 JUDGE CLARK: Anybody object to admitting
3 Exhibit 204, the rebuttal testimony of Jordan Seaver,
4 onto the hearing record?

5 I see and hear no objections.

6 Exhibit 204 is admitted onto the hearing record.

7 (Exhibit 204 was received into evidence.)

8 MR. WILLIAMS: I tender the witness for
9 examination.

10 JUDGE CLARK: Is there any
11 cross-examination from Commission Staff?

12 MS. MERS: Just very, very briefly.

13 CROSS-EXAMINATION BY MS. MERS:

14 Q. Have you been here for the testimony this
15 morning and yesterday from the Company witnesses?

16 A. Yes.

17 Q. And do you recall Ameren's Missouri's
18 statements that many court cases found the not going
19 out and getting a permit to be reasonable?

20 A. Yes. That was earlier this -- today,
21 yeah.

22 Q. You point and discuss the WEPCO case in
23 your testimony, correct?

24 A. Yes, I do.

25 Q. Are there other examples of cases like

1 that? And just for the brevity of time, if we wanted
2 to learn more about them, where could we look?

3 **A. There are. They're not included in my**
4 **testimony. I learned about them after writing my**
5 **testimony. But there is an exhibit entered already as**
6 **Exhibit -- let me get this right -- 200, which**
7 **discusses the Dense Pack Project of Detroit Edison**
8 **Power Company. And then there is also the case of**
9 **Coyote station. I believe it was the Otter Tail Power**
10 **Company is a similar case.**

11 **And then there are cases referred to that**
12 **I don't know specifically so I can't provide you the**
13 **names or anything, that were given -- or that were**
14 **mentioned in the -- give me one second -- the 2002 New**
15 **Source Review Report to the president by the EPA. And**
16 **the cases mentioned are in comments by UARG, U-A-R-G,**
17 **and other comments from other intervenors, but that's**
18 **the one that I remember specifically.**

19 **Q. And just to clarify for the record, is**
20 **the UR -- UARG that you refer to in that document the**
21 **same one that Ameren has been referring to in some of**
22 **their conversations about the Air Control Group?**

23 **A. Yes. Yesterday Mr. Whitworth mentioned**
24 **the UARG and its -- its activities.**

25 **Q. Okay. Thank you. I have nothing**

1 further.

2 JUDGE CLARK: Any cross-examination from
3 Ameren Missouri?

4 MR. LONG: Yes, Your Honor. Thank you.

5 CROSS-EXAMINATION BY MR. LONG:

6 Q. Mr. Seaver, you are not an engineer, are
7 you, sir?

8 A. **I am not.**

9 Q. Have you ever been called upon to decide
10 when some Clean Air Act requirements would apply to a
11 facility?

12 A. **I have not.**

13 Q. Your degree is in philosophy?

14 A. **Both, yes.**

15 Q. True or false, sir: When you filed with
16 this Commission your rebuttal testimony in this case
17 claiming that Ameren was imprudent for violating the
18 PSD rules, you had no understanding of what those
19 rules were, did you?

20 A. **Prior to this case, no.**

21 Q. You'd never been asked to testify on
22 whether an electric utility had acted prudently,
23 correct?

24 A. **No, I had not.**

25 Q. Those cases that you just mentioned in

1 discussion in passing with Ms. Mers, counsel for the
2 Staff, did any of those involve application of the
3 Missouri State Implementation Plan?

4 **A. The two that I specifically mention do**
5 **not.**

6 Q. Did any?

7 **A. I don't know about any in the comments**
8 **from UARG, because like I said, I don't know the**
9 **specific cases of those. They're just insinuated,**
10 **mentioned.**

11 Q. No further questions. Thank you.

12 JUDGE CLARK: Any Commission questions?
13 I hear none.

14 QUESTIONS BY JUDGE CLARK:

15 Q. And I have -- let me ask -- let me ask
16 this: Is -- Public Counsel is asking for a prudence
17 disall- -- or disallowance because of prudence; is
18 that correct?

19 **A. That is correct.**

20 Q. But that relates more to the harm issue,
21 correct?

22 **A. It is -- I wouldn't call it the harm**
23 **issue. I would say it's 3B that it relates to in my**
24 **testimony. But I do tie the 3B to 3A simply because**
25 **3B would not have occurred if it were not for the 3A**

1 issue. And so in discussing both, I'd say it relates
2 to both, although the calculation comes from
3 information solely related to 3B.

4 Q. Okay. I'll hold my questions my
5 substantive questions for 3B.

6 JUDGE CLARK: However, I'll go ahead and
7 ask the parties, are there -- is there any recross
8 based upon -- okay. I see none. And I'm assuming no
9 redirect either.

10 MR. WILLIAMS: Correct.

11 JUDGE CLARK: All right. Thank you,
12 Mr. Seaver. You can step down.

13 Okay. We are going to now begin
14 Issue 3B, which is were Ameren's decisions regarding
15 whether to continue to operate Rush Island instead of
16 retiring or retrofitting it with Flue Gas
17 Desulphurization equipment reasonable and prudent? If
18 the decisions were not reasonable and prudent, were
19 customers harmed; and if so, in what amount?

20 The first witness is Mr. Michels. Would
21 you raise your right hand to be sworn? Didn't have to
22 stand up, but that's okay.

23 (Witness sworn.)

24 JUDGE CLARK: Thank you. Please be
25 seated.

1 Ameren?

2 MATTHEW MICHELS, being first duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION BY MR. LOWERY:

5 Q Mr. Michels, did you cause to be prepared
6 for filing in this docket direct testimony that has
7 both the confidential and public version, surrebuttal
8 testimony also with confidential and public, and
9 sur-surrebuttal testimony?

10 A. Yes.

11 Q. Do you have any corrections to that
12 testimony?

13 A. No.

14 Q. If I were to pose the questions that are
15 in that testimony to you today, would your answers be
16 the same today?

17 A. Yes.

18 Q. And are those answers true and correct,
19 to the best of your knowledge?

20 A. Yes, they are.

21 MR. LOWERY: With that, Your Honor,
22 Mr. Michels is actually back on Issue 5, so I won't
23 move any of these in at this time, but I will tender
24 the witness for cross.

25 JUDGE CLARK: Thank you, Mr. Lowery. Any

1 cross-examination from the Commission Staff?

2 MS. MERS: Yes, hopefully very brief.

3 CROSS-EXAMINATION BY MS. MERS:

4 Q. Historically, does peak load for Ameren
5 Missouri occur in the summer?

6 **A. Historically, yes.**

7 MS. MERS: If I can approach the witness.

8 JUDGE CLARK: You may.

9 MS. MERS: And can we mark this as
10 Exhibit -- I think we're at 118?

11 JUDGE CLARK: Yes.

12 (Exhibit 118 was marked for
13 identification.)

14 BY MS. MERS:

15 Q. Have you had a chance to review the
16 document I've provided you?

17 **A. Yes.**

18 Q. Do you recognize this as the Capacity
19 Position Work Paper from Ameren's 2020 IRP?

20 **A. I recognize it as a Capacity Position
21 Work Paper, although I'm not sure which one.**

22 Q. And work papers like this are usually
23 provided with the IRPs, correct?

24 **A. That's correct.**

25 Q. Do you see that there's a listing of the

1 plans on that first page of the work paper?

2 **A. Yes.**

3 Q. And is plan 19 one of the plans that
4 contemplates Rush Island being retired?

5 **A. Yes.**

6 Q. And what year is that contemplating
7 retirement in?

8 **A. 2024.**

9 Q. Then if you can turn the page -- and I
10 apologize for, you know, making you have to read this,
11 but can you see a Required Capacity row under part D?

12 **A. I'm not sure that I can.**

13 Q. Should be the --

14 **A. I -- I -- I do see the line.**

15 Q. Okay. Can you -- if you'll go to the
16 years 2020 through 2040, what's the lowest number in
17 that row?

18 **A. You said through 2040?**

19 Q. Yes.

20 **A. If I'm reading it correctly, it's 7,339.**

21 Q. And what year was that occurring in?

22 **A. 2040.**

23 Q. Okay. And would those values represent
24 Ameren Missouri's best expectations at the time of the
25 2020 IRP for its load and planning margins?

1 **A. Yes.**

2 MS. MERS: At this time I'd like to go
3 ahead and enter Exhibit 118 into the record.

4 JUDGE CLARK: Any objections to admitting
5 Exhibit 118, the IRP Capacity Work Paper?

6 MR. LOWERY: No objection.

7 JUDGE CLARK: I hear no objections.
8 Exhibit 118 is admitted onto the hearing record.

9 (Exhibit 118 was received into evidence.)

10 MS. MERS: And if I can approach one last
11 time.

12 JUDGE CLARK: Please go ahead.

13 MS. MERS: And if we could mark this as
14 Exhibit 119.

15 JUDGE CLARK: Okay. Would you identify
16 it for me?

17 MS. MERS: It is the -- Reliability
18 Requirements is probably the easiest title.

19 JUDGE CLARK: Thank you.

20 (Exhibit 119 was marked for
21 identification.)

22 BY MS. MERS:

23 Q. Have you had a chance to look over
24 Exhibit 119?

25 **A. Yes.**

1 Q. And is this a work paper that supports
2 the values that you have in Table 2 of page 19 on your
3 surrebuttal testimony?

4 A. That's correct.

5 MS. MERS: At this time Staff would like
6 to move for this work paper to be entered into the
7 record.

8 JUDGE CLARK: Any objections to admitting
9 Exhibit 119, the Reliability Requirements, onto the
10 hearing record?

11 I hear none. Exhibit 119 is admitted
12 onto the hearing record.

13 (Exhibit 119 was received into evidence.)

14 MS. MERS: That's all I have. Thank you
15 very much.

16 JUDGE CLARK: Thank you.

17 Any cross-examination by the Office of
18 the Public Counsel?

19 MR. WILLIAMS: Just briefly.

20 CROSS-EXAMINATION BY MR. WILLIAMS:

21 Q. Mr. Michels, do you know what it would
22 have cost approximately for Ameren Missouri to have
23 installed scrubbers at Rush Island, both units, in
24 about 2010?

25 A. We included some assumptions for that in

1 the analysis that I did for my surrebuttal testimony.

2 Might be best if I refresh my memory before I answer.

3 Q. Certainly.

4 A. So for the base analysis I did, which
5 assumed installation in 2012, I used 954 million
6 dollars.

7 Q. What are you referring to for that?

8 A. I'm looking at page 40 of my surrebuttal
9 testimony, line 11.

10 Q. Thank you. No further questions at this
11 time.

12 JUDGE CLARK: Before I ask if there are
13 any Commission questions, can the parties provide me
14 with a little bit of clarity in regard to the issue?
15 It says: Were Ameren's Missouri's decisions regarding
16 whether to continue to operate Rush Island instead of
17 retiring or retrofitting it with gas desulphurization
18 equipment reasonable and prudent?

19 Is this -- is this more of a general
20 question regarding these retirement questions or is
21 this a specific point in time, like in 2021 when it
22 made that decision?

23 MR. WILLIAMS: Judge, I think that came
24 from you Public Counsel and prudence is an ongoing
25 activity. It's not a point in time, although --

1 JUDGE CLARK: But you'll agree that
2 decisions are generally a point in time? There is a
3 point at which a decision is made.

4 MR. WILLIAMS: Yes. But I'm saying that
5 it's a continuum of decisions.

6 JUDGE CLARK: Fair enough. Proceed.

7 All right. Are there any Commission
8 questions? Chair Hahn, please go ahead.

9 CHAIR HAHN: Thank you, Judge.

10 QUESTIONS BY CHAIR HAHN:

11 Q. Good afternoon.

12 A. **Good afternoon.**

13 Q. After reviewing your testimony, I just
14 had a few questions. One is because I'm not a
15 technical person. I'm hoping you can explain some
16 calculations to me.

17 In your testimony you note that the long
18 run cost to customers in the present value it -- of
19 revenue requirement is noted as PVRR. Can you further
20 explain PVRR and how it's calculated?

21 A. **Sure. So what we look at is for a**
22 **particular option or portfolio. All of the -- all of**
23 **the costs that would be included in the revenue**
24 **requirement used to calculate customer rates. And so**
25 **we look at those for each year of a period, say,**

1 30 years and then we use the weighted average cost of
2 capital to discount those back to today's dollars or
3 another year's dollars.

4 Q. Thank you. The question as -- I thought
5 I understood the question before us in 3B before I got
6 the response of the continuum from Public Counsel, but
7 I'm going to approach this issue as also making it a
8 Company approaching this decision at a point in time
9 and -- because I think that's what the statute
10 requires.

11 So I'm going to ask you some questions
12 kind of relating to your testimony as far as retrofit
13 or retire.

14 A. Okay.

15 Q. You do some analysis of your 2020 IRP and
16 you also note in your testimony how that has changed.
17 But first I was hoping you could talk me through your
18 2020 IRP and the assumptions you made at that time.
19 So if you wouldn't mind recapping that from your
20 testimony?

21 A. Sure. Chair Hahn, you're -- you're
22 talking about the retirement versus retrofit analysis
23 based on the 2020 IRP; is that correct?

24 Q. Yes. Thank you.

25 A. Okay. So that -- that reflected

1 obviously all of the assumptions that we had included
2 in our 2020 IRP. So things like natural gas prices,
3 carbon prices, coal prices, costs for different
4 resource types; wind, solar, et cetera.

5 And then we looked at -- excuse me. We
6 looked at a case where we retire the unit in 2024 --
7 or the units. And for that, we just simply cease
8 operating the plant, so no going-forward cost impacts.
9 And then in the other case, we assume that we retrofit
10 it with the scrubber technology also in 2024.

11 And so that includes the cost of the
12 scrubber and then the continued operation and
13 maintenance expense through 2039, which was the
14 previously determined retirement date.

15 And so we're capturing then all of the
16 costs and market revenue impacts of those two
17 different cases for comparison to say, okay, this is
18 going to be the impact on customers year by year and
19 then present valuing that back to today to see what's
20 the overall impact on customers over that time.

21 Q. Uh-huh. From my recollection, the PVRR
22 in your analysis was higher in three of the
23 48 combinations for scrubbers versus retiring the
24 asset. So according to your economics, it was more
25 economical to retire the plant based upon your

1 analysis; is that correct?

2 **A. That's correct.**

3 Q. Can you -- how recently did you conduct
4 that analysis for the -- was that just in 2020 or have
5 you repeated that analysis since this -- since that
6 time?

7 **A. Yes. So I -- I did repeat the analysis**
8 **using assumptions from our recently filed 2023 IRP.**
9 **And I included the results of that in my surrebuttal**
10 **testimony.**

11 Q. Can you talk about some of the changes
12 since the 2020 IRP, specifically as it relates to MISO
13 with resource adequacy concerns? Certainly I noted in
14 your testimony they're significantly different now
15 than they were then. Can you talk a little bit about
16 that?

17 **A. Sure. So when we did the 2020 IRP, the**
18 **resource adequacy construct in MISO was focused on**
19 **summer peak. And so they would do a study every year,**
20 **an LOLE study, or Loss of Load Expectation study, to**
21 **determine -- determine what the planning reserve**
22 **margin requirement would be that would be applied then**
23 **to the Company's summer peak load for determining what**
24 **the resource need was.**

25 **In -- in 2021, MISO applied to FERC -- I**

1 think it was November of 2021 to change to a seasonal
2 construct, seeing that there was more of an appetite
3 for looking at reliability season by season, in part
4 because there were different impacts on different
5 kinds of units across the year, particularly on
6 gas-fired units and the availability of fuel during
7 the winter.

8 And so they applied to FERC for that.
9 They did provide some very preliminary figures as to
10 what that would look like for our system in terms of
11 the unit accreditations or how much capacity we would
12 expect to get from units during different seasons.
13 And so, you know, that's something that we looked at
14 at the time we made the decision.

15 Subsequent to that, we spent more time
16 and -- and -- and put in a good deal of effort to try
17 and estimate what that construct would look like going
18 out into the future, because we had to update our
19 Preferred Resource Plan following the decision to
20 retire Rush Island. So we included that in our
21 updated preferred plan that we filed in 2022.

22 And then FERC approved MISO's seasonal
23 resource adequacy construct in August of that year.
24 So this was after the decision, after the plant was
25 updated. And only at the end of that year did we get

1 really solid numbers from MISO with respect to unit
2 accreditations, what the planning reserve margin
3 requirement was going to be all by the four different
4 seasons to use then in our 2023 IRP.

5 And I included a table, which you've
6 probably seen, that -- that lays out how some of those
7 things changed.

8 Q. I see a Figure 5 on page 18 of your
9 surrebuttal testimony. Is that what you're referring
10 to? A chart or table?

11 A. No. I -- I'm thinking of a table that
12 indicates what the changes to our long-term and
13 expected capacity need would be. Just give me a
14 moment. I'll find it. Maybe it's earlier in my
15 testimony than I thought it was.

16 It's Table 1 on page 17. You were only a
17 page off. I missed it. So, you know, this -- this
18 table kind of summarizes the changes that happened
19 between when we filed our Notice of Change in
20 Preferred Plan in 2022 and what we ultimately included
21 in our 2023 IRP based on the good information that we
22 finally got at the end of 2022 from MISO.

23 Most of the changes are related to
24 changes in unit accreditation, changes in the planning
25 reserve margin which went way up, and then also a

1 change in the way that we did our peak load
2 forecasting for winter.

3 Q. And you noted at the bottom of that page
4 that the Company expects to be in a net short position
5 during years 2025 to 2027. Can you talk through --
6 can you describe to me the action -- if -- if the
7 Commission were to move forward with securitizing this
8 plant as requested by the Company, how do you
9 anticipate to make up the net short position over that
10 time frame?

11 A. So, you know, since we're in MISO, we
12 have the ability to purchase capacity from other
13 entities within MISO. We've historically used a --
14 what we've called a billed threshold of 300 megawatts
15 that says until you're 300 megawatts short, we won't
16 assume that we're adding any resources to meet that.

17 So in these instances, all these
18 shortfalls are below that threshold. So historically
19 we would not plan to build for that.

20 In the intervening time, we have seen,
21 you know, some of the severe weather events that have
22 become more common. And so it appears that there's a
23 need for even greater resource capacity in order to
24 meet those needs above and beyond what MISO suggests
25 through its resource adequacy process.

1 And so we have been adding capability to
2 simple-cycle combustion turbine units to be able to
3 use oil fuel in the winter whenever there's no gas
4 available. We've done that at a couple of different
5 sites. We're also planning to do that at another one
6 of our sites at Audrain.

7 And -- and then another important thing
8 for meeting those resource requirements is the
9 continuation of our Energy Efficiency and Demand
10 Response Programs under MEEIA.

11 So all of those kind of work together,
12 along with the renewable resources that we're planning
13 to add, which provide mostly energy, but do provide
14 some capacity benefit as well. All of those work
15 together to help meet those customer needs in the --
16 in the short-term and the long-term.

17 Q. I hear a lot here in the capital city
18 about economic development projects and the need for
19 additional capacity to bring projects to our state.
20 And not any projects. Projects that can provide --
21 that are dispatchable.

22 And so can you speak to adding specific
23 resources in place? Or how would retiring Rush Island
24 potentially impact the ability to be a competitor for
25 economic development projects?

1 A. So I -- I don't know how retirement of
2 Rush Island would affect things. Certain -- if we had
3 the capacity, we would have perhaps more ability to
4 meet some of those needs, at least for a short term
5 until -- you know, unless and until there was a major
6 expense that did flow out of some of the regulations
7 that might be considered in the future.

8 So, you know, that might stretch things a
9 little bit. Am I understanding your question
10 correctly?

11 Q. Yeah. Do you -- in your forecast, do
12 you -- I'm sure you do -- take into account
13 anticipated load growth as a result of economic
14 development projects?

15 A. We do, although it's become increasingly
16 a challenge to estimate where that's going to go with
17 some of the things that we're seeing across the
18 country with respect to data centers and -- and other
19 such loads.

20 Q. Can you give me an example of average
21 economic development project size from 2020 to
22 current? I think of your -- the utility on the west
23 side and how that has changed, but I'm wondering if
24 you can provide the same?

25 A. Yeah. And -- and this is something that

1 has kind of evolved in the last year, I would say.
2 But, you know, just a couple or three years ago, we
3 were looking at average economic development project
4 size as probably in the tens of megawatts. Now we're
5 looking at potential projects in the hundreds of
6 megawatts, to even a gigawatt or more range.

7 Q. Can you speak to Rush Island's operation?
8 For example, planned outages, scheduled outages, how
9 much it's actually producing for MISO currently, and
10 maybe what its operational pattern has been over the
11 last year or two?

12 A. Sure. It's been very limited since
13 September of 2022. We've been operating under what's
14 called an SSR agreement or System Support -- System
15 Support Resource agreement with MISO.

16 There are some very specific and very
17 complicated triggers for that that I'm not intimately
18 familiar with, but they include looking at things like
19 whether other units in the region are in operation.
20 They also look at temperature triggers to determine
21 whether Rush Island will operate.

22 And as a result, Rush Island has operated
23 far below what its historical production has been for
24 the last few years.

25 Q. Okay. Can you give me any, you know,

1 da- -- you know, hard data or, you know, examples of
2 how it had been operating versus how --

3 **A. Sure.**

4 Q. -- in the past two years it --

5 **A. Sure. Annual production from Rush Island**
6 **previously was eight or nine million megawatts hours a**
7 **year. That's for both units together. And now it's a**
8 **million megawatt hours or less per year operating**
9 **under the SSR agreement.**

10 Q. That's really helpful, so thank you.
11 Let's see if I have any more questions. I don't have
12 any.

13 **A. Okay.**

14 Q. Thank you.

15 JUDGE CLARK: Any further Commission
16 questions?

17 COMMISSIONER HOLSMAN: Yes.

18 JUDGE CLARK: Commissioner Holsman,
19 please go ahead.

20 COMMISSIONER HOLSMAN: Thank you.

21 QUESTIONS BY COMMISSIONER HOLSMAN:

22 Q. Good afternoon.

23 **A. Afternoon.**

24 Q. You said that MISO -- on their capacity
25 projections, that if you're under 300 megawatts,

1 you're going to buy it from somebody else and not
2 trigger a requirement to build. Is that accurate?

3 **A. That's accurate.**

4 Q. What capacity do you see in terms of
5 demand response? Like how much -- if -- if you were
6 an aggressive demand response, what kind of -- how
7 many megawatts do you think could be generated in
8 savings from -- from that effort?

9 **A. Yeah. I believe our latest potential
10 study put that in the 4- to 500 megawatt range.**

11 Q. Okay. So fairly significant?

12 **A. Yes.**

13 Q. What about same question with distributed
14 energy resources. How much capacity do you think you
15 could gain with an aggressive distributed resource
16 campaign?

17 **A. So we do include some assumptions in our
18 load forecasting with respect to distributed energy
19 resources. And I believe the middle scenario has us
20 getting to something like 600 megawatts by 2040.**

21 **And then on top of that, in the same
22 demand-side potential study where we look at energy
23 efficiency and demand response, they also look at some
24 distributed energy resource potential as part of a
25 program. To date, that potential has come in very**

1 **small relative to the other programs.**

2 Q. Okay. But, you know, if -- if this plant
3 is -- has a natural life of 2039, then by that date,
4 you could potentially see a gigawatt in savings,
5 slash, production from the demand response and
6 distributed energy --

7 **A. Certainly.**

8 Q. -- potentially?

9 Okay. You heard me talk a little bit
10 earlier with Mr. Majors about the retired asset
11 value --

12 **A. Yes.**

13 Q. -- what -- is first -- my first question
14 is, is that figured into the amount you're trying to
15 securitize? Have you already placed a value on either
16 scrapping or re- -- repurposing any of the existing
17 assets?

18 **A. Generally for -- for assets of an age
19 similar to Rush Island, we assume that the scrap value
20 is on the same order as the cost of dismantling. So
21 roughly no net benefit from that.**

22 Q. Okay. What about the site itself? Do
23 you have any value attached to what you'll do -- do
24 you have a plan for what you're going to do with the
25 site in the future?

1 **A. Yeah. In our 2023 IRP we talk about the**
2 **potential for locating storage resources at the site,**
3 **battery storage resources.**

4 Q. Do you have a -- a capacity on what you
5 could potentially do there?

6 **A. Oh, I'd say potentially 200 megawatts. I**
7 **don't know if we could fit 400 there, but it's a**
8 **couple hundred megawatts.**

9 Q. A couple hundred megawatts.

10 **A. Yeah.**

11 Q. So -- so essentially -- and what kind of
12 time frame are we talking about? How long would it
13 take to transition from, you know, what's there today
14 to storage being dispatchable?

15 **A. Yeah, I -- I don't know that level of**
16 **detail. I can tell you that our 2023 preferred plan**
17 **includes battery storage in 2029.**

18 Q. 2029, okay.

19 **A. Yes.**

20 Q. So essentially within five years if you
21 add 200 megawatts of storage there, you could
22 potentially firm up either a wind asset or a solar
23 asset and make that more base load distributable?

24 **A. Certainly. We've included the storage**
25 **assets, the demand response resources in our IRP**

1 preferred plan right alongside the wind and solar
2 additions that we're -- we're reflecting.

3 Q. Do we know what MISO -- how MISO would
4 count that in terms of capacity for -- you know, for
5 your requirement?

6 A. The battery storage?

7 Q. Yeah.

8 A. Right now we're assuming a capacity
9 credit I believe of 95 percent of the rated output --

10 Q. Okay.

11 A. -- so a 200 megawatt battery would be
12 190 megawatts of capacity credit.

13 Q. Would that delta out from the generation
14 source or would it be in addition to? Like let's
15 say -- let's say you were having wind and the wind was
16 200 megawatts. Would then you net out that or would
17 it be in addition to that -- that nameplate capacity?

18 A. It could potentially be additive at a
19 given moment in time --

20 Q. Right.

21 A. -- where -- where you may have stored
22 some solar energy during a time and then you're
23 releasing from the battery at the same time the solar
24 is generated. That's a possibility.

25 Q. Okay. And my last question is, you know,

1 we talked earlier just about the -- from a macro
2 perspective. I just want to hear for -- for the
3 record. It's your -- your testimony that it is in the
4 best interest of the ratepayers to decommission this
5 and retire this coal plant, securitize the amount that
6 would otherwise be depreciable and that is a -- that
7 is a more prudent measure than if you were to spend
8 the money on the environmental upgrades and operate
9 the -- operate it for another 15 years?

10 **A. That's correct.**

11 Q. All right. Thank you.

12 COMMISSIONER HOLSMAN: Thank you, Judge.

13 JUDGE CLARK: Thank you, Commissioner
14 Holsman. Are there any other Commission questions?

15 I hear none. At this point I'm going to
16 ask if there's any recross? I'm also -- Mr. Coffman,
17 I just noticed you're here from AARP and Consumer
18 Council of Missouri. Did you have any
19 cross-examination or recross?

20 MR. COFFMAN: I do not, Your Honor. No
21 questions.

22 JUDGE CLARK: Any recross from the
23 Commission Staff based upon questions from the
24 Commission?

25 MS. MERS: A few.

1 RECCROSS-EXAMINATION BY MS. MERS:

2 Q. Do you recall talking with Chair Hahn
3 about NPVRR?

4 A. Yes.

5 Q. Does NPVRR assume perfect rate-making?

6 A. I don't know that it assumes any
7 rate-making. It's -- it's the revenue requirement,
8 how it's recovered that I think is another matter.

9 Q. If you don't build in the rate cases
10 where items are collected or returned to customers,
11 can that impact how the revenue requi- -- that NPVRR
12 figure would work?

13 A. I think what you'd end up with instead of
14 revenue requirement is present value of revenue.

15 Q. Are you aware that MISO -- do you recall
16 discussing the seasonal construct with -- were you
17 aware that MISO began discussing the seasonal contract
18 prior to 2020?

19 A. Yes.

20 Q. And is it your understanding the 2020
21 filing was actually proof of concept, which was the
22 culmination of previous discussions?

23 A. Which filing?

24 Q. The 2020 announcement or -- 2021. I am
25 so sorry. 2021.

1 **A. Can I ask you to repeat the full question**
2 **and give me the context?**

3 Q. So the 2021 discussions, do you recall
4 that they were kicked off by the 2020 proof of concept
5 filing?

6 **A. Yes.**

7 Q. Okay. You also had discussion with the
8 Bench about the IRP and triggers for build thresholds.
9 Do you recall that?

10 **A. Yes.**

11 Q. Before the 2023 IRP, when was the last
12 IRP that Ameren was close to the build threshold on?

13 **A. Well, it might be helpful to explain what**
14 **the build threshold is. It's -- it's a trigger that**
15 **we use for adding resources in the different**
16 **alternative plans that we evaluate as part of an IRP**
17 **analysis. So it -- it -- it's used to develop**
18 **alternative resource plans. I'm not -- I'm not sure**
19 **that you would say we're close to it or not.**

20 Q. Okay. Thank you for that clarification.
21 You had a discussion with the Bench about how many
22 hours Rush -- Rush Island was operating prior to
23 the -- oh, God, I'm not going to think of the acronym
24 this late -- SSR and before. Do you recall that?

25 **A. Yes.**

1 Q. Do you know how many hours Rush Island
2 was operating before the 2007 project?

3 **A. No, I don't.**

4 Q. Okay. I have no further questions then.
5 Thank you.

6 JUDGE CLARK: Any recross from Public
7 Counsel?

8 MR. WILLIAMS: Yes, thank you.

9 RECROSS-EXAMINATION BY MR. WILLIAMS:

10 Q. Mr. Michels, do you recall in one of your
11 responses you talked about converting some units to
12 burn oil as well as natural gas?

13 **A. Yes, although it's not a conversion.**
14 **It's a -- it's a -- an addition.**

15 Q. Well, it changes the capability of the
16 unit for what fuels it can burn, correct?

17 **A. Correct. We -- we're adding the**
18 **capability to fire with oil on units that can and will**
19 **continue to burn gas.**

20 Q. And when did you start doing that
21 conversion to be able to burn oil as well as gas?

22 **A. I'm trying to recall. I think it was**
23 **2022.**

24 Q. And how many megawatts of capacity are we
25 talking about for the units that have been converted?

1 A. Oh.

2 Q. And if you want to go by unit by unit,
3 that's fine.

4 A. Yeah. I -- I don't -- don't know that I
5 can recall specifics, but I'll say total of a couple
6 hundred megawatts.

7 Q. And what kind of sizes are these units if
8 the total is 200 megawatts?

9 A. So --

10 Q. Roughly?

11 A. So this is an addition of capacity in the
12 winter specifically, because that's when oil firing
13 helps with the capacity. So it's not the full
14 capacity of the units. It's -- it's just allowing us
15 to run them at other times when we might not be able
16 to run them on gas.

17 So these -- these are the units at
18 Kinmundy and Peno Creek. And I don't recall right
19 now -- I guess I've got a capacity chart in front of
20 me, don't I? If I can read it.

21 So for Pinckneyville, we're showing total
22 capacity on this chart of 316 megawatts, although I'm
23 not sure what -- what season that I'm looking at here.
24 I guess this was 2020, so it would be summer. So that
25 was 316. And then Kinmundy is 438. Those -- those

1 are summer ratings from this chart.

2 Q. So it's Kinmundy and you said
3 Pinckneyville?

4 A. I'm sorry. I erred --

5 Q. I thought it was Peno Creek?

6 A. It was Peno Creek, you're right. Peno
7 Creek is 192.

8 Q. So it's more like a little over
9 600 megawatts?

10 A. What's a little over 600 megawatts?

11 Q. The total, 438 and 191. And I understand
12 it's --

13 A. Yeah.

14 Q. -- it's a capability in winter as opposed
15 to --

16 A. Right.

17 Q. -- roughly.

18 A. Right. Yeah. So -- so summer between
19 the two, I -- I think you probably did the math right.
20 Six hundred sounds right.

21 Q. Roughly?

22 A. Sure.

23 Q. Where is Peno Creek located?

24 A. It's in Missouri.

25 Q. And Kinmundy?

1 **A. It's in Illinois.**

2 Q. Is Illinois implementing a restriction on
3 CO2 emissions?

4 **A. Yes, through CEJA.**

5 Q. When is that to take effect?

6 **A. It already has taken effect.**

7 Q. So how does that impact the Kinmundy
8 plant then?

9 **A. It -- it does restrict its hours. The**
10 **addition of the oil-fired capability there was**
11 **relatively inexpensive, I think a couple million**
12 **dollars. So -- so adding that capability improves the**
13 **value in the winter season when we might run into**
14 **things like another Winter Storm Elliott, for**
15 **instance.**

16 Q. Do you know what impact adding a battery
17 at Rush Island would have on local property taxes
18 revenues?

19 **A. No, I don't.**

20 Q. No further questions. Thank you.

21 JUDGE CLARK: I believe Chair Hahn has a
22 few more questions.

23 FURTHER QUESTIONS BY CHAIR HAHN:

24 Q. In your testimony you talk at length
25 about the 2020 IRP. And in summary, you also then

1 say -- well, you know, I'm summarizing here: Staff
2 didn't raise any serious concerns with the IRP at the
3 time. Is that a fair statement?

4 **A. That's fair.**

5 Q. Staff now -- and Ameren may have some
6 capacity issues from the numbers, but we may not know
7 the outcome of the -- of those, you know, capacity
8 shortfalls during the pendency of this case. You
9 know, the lights may never go out.

10 Is it your position that the Commission
11 would have to make a decision on the economics of the
12 case re- -- you know, retrofit or retire and that that
13 was pru- -- you know, the prudence -- making a
14 decision on prudence based upon that and then not --
15 us just not knowing the harm of the potential capacity
16 of shortfalls moving forward?

17 **A. Yeah, I'm not an attorney, of course.**

18 **But my understanding is that the securitization**
19 **statute requires that the decision to retire be**
20 **prudent, but doesn't address any decisions that might**
21 **have led to that.**

22 Q. Yeah. No further questions.

23 JUDGE CLARK: Mr. Coffman?

24 MR. COFFMAN: No questions, Your Honor.

25 JUDGE CLARK: Commission Staff?

1 MS. MERS: No, thank you.

2 JUDGE CLARK: Public Counsel?

3 MR. WILLIAMS: Briefly.

4 FURTHER RECROSS-EXAMINATION BY MR. WILLIAMS:

5 Q. Following up on what Chair Hahn just
6 asked you about, couldn't Ameren Missouri have -- or
7 didn't Ameren Missouri make decisions about whether or
8 not to put on scrubbers at least starting from the
9 point whenever the EPA began its enforcement action at
10 Rush Island?

11 A. I -- I'm trying to think of how to frame
12 your question in my mind. So you're asking me what
13 we -- I guess continuously, in effect, we were
14 deciding not to put scrubbers on because we weren't
15 deciding to put scrubbers on.

16 Q. Thank you.

17 JUDGE CLARK: Any Ameren redirect as to
18 either of Commission questions and recross?

19 MR. LOWERY: Yes, Your Honor. Thank you.

20 REDIRECT EXAMINATION BY MR. LOWERY:

21 Q. I'm probably going to jump around here a
22 little bit, Mr. Michels, because the questioning sort
23 of jumped around. But I will start with Mr. Williams'
24 last question.

25 You said that Ameren Missouri, of course,

1 was deciding not to put on scrubbers, you know, when
2 it -- when it didn't decide to put them on, it was
3 deciding not to put them on --

4 **A. Right.**

5 Q. -- I think was the basic point, right?

6 **A. Right.**

7 Q. In making those decisions, which I assume
8 would have taken place just as a part of resource
9 planning on sort of an ongoing basis, certainly a
10 periodic basis, right?

11 **A. Sure.**

12 Q. Am I correct to assume that analyses were
13 being done of the ec- -- well, of two things. Let me
14 break it down. Analyses were being done of the
15 environmental requirements that existed, right?

16 **A. Correct.**

17 Q. And analyses were being done of various
18 alternatives for complying with those environmental
19 requirements, right?

20 **A. Correct.**

21 Q. And is it true that, again, at least on a
22 periodic basis, every three years, maybe more often,
23 the Company actually analyzed the impact on customers
24 of spending the money on scrubbers and O and M on
25 scrubbers, et cetera, versus complying in an

1 alternative way?

2 **A. I -- I don't know that we were always**
3 **looking at scrubbers specifically as an option simply**
4 **because that may not have been required by the**
5 **regulations that we were evaluating. But to the**
6 **extent it did, yes, there would -- would have been**
7 **economic analysis saying this -- you know, weighing**
8 **this option, for instance, against low sulfur coal.**

9 **Q. If -- if an environmental regulation**
10 **existed and scrubbers were a potential way to comply**
11 **with it, is it correct or incorrect that the Company**
12 **would have been analyzing, Should we comply with it by**
13 **spending money on scrubbers or should we comply with**
14 **it in another fashion?**

15 **A. Definitely.**

16 **Q. The Chair asked you some questions here**
17 **toward the end about Ameren Missouri's position on the**
18 **need to decide sort of the economics of the retrofit**
19 **versus retire decision. Do you remember that?**

20 **A. Yes.**

21 **Q. You've cond- -- you've prepared two**
22 **analyses that are in your testimonies in this case of**
23 **that question, right?**

24 **A. Yes. Of -- of the decision to retire in**
25 **2024 and then also the decision not to scrub in 2012.**

1 Q. Well, I was -- I was and that's -- that's
2 a -- the last one you mentioned is a different
3 analysis about, you know, what would have happened in
4 an alternative universe --

5 **A. Correct.**

6 Q. -- if -- if the Company had made a
7 different decision on the NSR permits and then
8 scrubbed the plant back then.

9 But you've also looked at should the --
10 what did the economics tell Ameren Missouri about
11 whether it should retrofit or retire once it lost the
12 District Court case in August of 2021? You looked at
13 that back in 2021 and you looked at it again recently
14 and filed analyses in this case, right?

15 **A. Correct. And -- and most recently what**
16 **we found was that we would save upwards of a billion**
17 **dollars. I think there was one case that was slightly**
18 **below a billion dollars benefit from retiring rather**
19 **than retrofitting with scrubbers, but most of the**
20 **cases were over a billion dollars.**

21 Q. So -- so when you -- when you actually --
22 and you made the decision in December of 2021 and you
23 had one analysis then that said in 45 of 48 cases,
24 retiring was better for customers, right?

25 **A. Correct.**

1 Q. But when you looked at it again under
2 essentially current conditions, what we know now about
3 the MISO seasonal construct and other things that have
4 happened, the conclusion became even more clear. Is
5 that fair to say?

6 **A. Yeah, that's fair.**

7 Q. Does -- does that suggest -- you know,
8 obviously with Rush Island off the system, that
9 capacity's not available anymore, right?

10 **A. It soon won't be.**

11 Q. And -- and -- and if there's a need for
12 capacity going forward, Rush Island can't provide it
13 so something will have to, right?

14 **A. Correct.**

15 Q. What does the fact that the Net Present
16 Value of Revenue Requirement is shown to be much lower
17 in the retire case versus the retrofit case, what, if
18 anything, does that tell you about the more economic
19 source of the capacity that the Company would need in
20 the future? Is it Rush Island or is it something
21 else?

22 **A. It's something else. And specifically**
23 **it's mostly gas-fired resources along with energy**
24 **efficiency demand response and renewable resources.**

25 Q. Is that principally because the only way

1 to keep Rush Island open would be to spend hundreds of
2 million of dollars or whatever it ends up being on
3 scrubbers and that would impact the price of that
4 capacity; is that right?

5 **A. That would be the only way, and**
6 **absolutely it would.**

7 Q. You were asked questions by Mr. Williams
8 about the addition of oil burning capability in the
9 winter to certain units. Do you remember that?

10 **A. Yes.**

11 Q. And -- and you looked at a cap- -- you
12 looked at a -- I guess it's an accreditation chart. I
13 guess that came out of Exhibit 118; is that right?

14 **A. Yes.**

15 Q. And you said those were summer ratings?

16 **A. Correct.**

17 Q. Are the winter ratings -- and I know you
18 probably don't remember what they were at this time
19 and they could be different now, right? This is 2020,
20 the accreditation changes. But are the winter ratings
21 different than the summer ratings?

22 **A. They are. They're --**

23 Q. Higher or lower?

24 **A. -- generally lower.**

25 Q. Generally lower. Ms. Mers asked you some

1 questions based on Chair Hahn's questions about Net
2 Present Value of Revenue Requirement analyses. Did --
3 do you remember that?

4 **A. Yes.**

5 Q. And a question about perfect rate-making,
6 do you remember that?

7 **A. Yes.**

8 Q. And you said it doesn't assume any
9 rate-making at all. Do you remember that?

10 **A. Correct.**

11 Q. Can you elab- -- can you just explain
12 maybe in layperson's terms --

13 **A. Sure.**

14 Q. -- why it doesn't and -- and why that
15 makes sense that it doesn't?

16 **A. Sure. So when we're comparing options**
17 **which might be, you know, limited in -- in this**
18 **instance like to scrubbing Rush Island versus**
19 **continuing to operate it or an entire portfolio, which**
20 **would also be implicated by that same analysis, what**
21 **we're looking for is the long-run cost that the**
22 **utility would seek to recover from customers through**
23 **rates.**

24 **And so the revenue requirement itself is**
25 **that cost. What happens with rates in the intervening**

1 time is going to be a matter of individual rate
2 proceedings and -- and allowed returns, et cetera,
3 et cetera. And so what we're really after is what's
4 the long-run cost to customers of these different
5 options.

6 The Integrated Resource Planning rules
7 that the Commission adopted most recently in 2011
8 specifies that Net Present Value of Revenue
9 Requirements are to be the primary criterion for
10 selecting a resource plan. We've -- we've been using
11 that all along, along with some other criteria, but
12 NPVRR is -- is the primary one.

13 And so that really, to me, is the best
14 way to assess the cost differentials between two
15 different options because there's going to be
16 different timing, there's going to be, you know,
17 resource differences, all of those things.

18 And to try to capture what the
19 appropriate rate-making treatment is going to be in
20 advance for a 20-year plan is sort of a fool's errand.

21 Q. Well, and as you indicated, the -- the
22 Commission's IRP rules are telling you not to do that;
23 isn't that right?

24 A. That's correct.

25 Q. What -- what you're trying to do is

1 you're trying to make the best decision for something
2 that's probably going to be around for 30 or 40 or
3 50 years. And, you know, there -- if you pick gas
4 plant versus a coal plant, there's going to be
5 rate-making different -- I mean, the rate --
6 presumably you put them at the same time, the
7 rate-making treatment is going to be probably the same
8 as you go forward, but you're taking that variable
9 out, right, basically?

10 **A. That's right.**

11 Q. You were asked questions by Ms. Mers
12 about MISO discussing -- I guess having come signed --
13 some kind of proof of concept paper or announcement or
14 something in 2020 about the seasonal construct, right?

15 **A. Yes.**

16 Q. Did the proof of concept, whatever it
17 was, did it -- did it provide the Company with unit
18 accreditation values or planning reserve margins or
19 any figures that would actually allow it to figure out
20 what its capacity position would be in the various
21 season?

22 **A. No. We only got very preliminary**
23 **information until the end of 2022 prior to the 2023/24**
24 **planning resource option.**

25 Q. Now, if I remember correctly, the

1 seasonal construct was not assumed to be in place when
2 you did the 2020 -- either the December 2021 retire
3 versus retrofit analysis; is that right?

4 **A. Could you repeat the question, please?**

5 Q. Was the seasonal -- was the -- was the
6 conceptual seasonal construct that MISO was -- was
7 talking about in late 2021, was that accounted for in
8 the December 2021 retirement versus retrofit analysis?

9 **A. In the analysis itself proper, no, but it
10 is something that we looked at at the time, given the
11 very preliminary information that we had gotten from
12 MISO, which -- which is on this other schedule.**

13 Q. And when you looked at it, I guess you
14 must have looked at it conceptually mostly because you
15 didn't actually have a construct in place. When you
16 looked at it conceptually, did it suggest that it
17 would have changed your decision?

18 **A. No. No, it -- it didn't. And, you know,
19 some -- something in particular about these -- these
20 numbers, when -- when MISO was thinking about this
21 concept in 2020 and 2021, they were drastically
22 changing the way unit accreditations were calculated.
23 And along with that, drastically changing the way
24 planning reserve margin requirements were calculated.**

25 **And based on information and**

1 conversations with MISO at the time in 2021, say
2 August, September time frame, our understanding was
3 that because of the way that they were planning to do
4 the unit accreditations, that there would be little or
5 no planning reserve margin requirement added to the
6 load.

7 Q. Did you have any information -- did you
8 have information at that time that was -- was
9 suggesting to you that if Rush Island was retired in
10 2024, that the Company was going to be in a capacity
11 shortage position starting in 2025?

12 A. Yeah. That's -- that's -- that's the
13 table in -- in my testimony that's supported by the
14 exhibit that was distributed. And that showed that --
15 let me put the glasses back on. That showed that
16 in -- in none of the four seasons would we see a
17 shortfall.

18 Q. If I'm looking at Exhibit 118 and I look
19 at -- this is -- this is hard to read, but I think I
20 can make it out -- 2025 and I look at the Capacity
21 Position row down there toward the bottom of that
22 page. Are you -- are you seeing what I'm seeing?

23 A. Is it Capacity Balance?

24 Q. Capacity position after all adjustments.
25 Is that the right one to be looking at? Or am I --

1 should be looking -- or -- what -- what does -- let me
2 ask it this way: Does this Exhibit 118 tell you what
3 the predicted capacity position of the plan that you
4 looked at in the 2020 IRP that had Rush Island going
5 away in 2024, does this Exhibit 118 tell you what the
6 expected capacity position was in 2025 and so on?

7 **A. Yes.**

8 Q. And what should we be looking at to find
9 that?

10 **A. It would be the -- if I'm looking at the**
11 **right one, the capacity -- well, no, that's not right.**

12 Q. Is it the Capacity Position after Res
13 Compliance row?

14 **A. This is really hard to read.**

15 MR. LOWERY: Your Honor, if I can
16 approach, maybe get an exhibit marked? I --

17 **THE WITNESS: I see it now, yes.**

18 BY MR. LOWERY:

19 Q. Can you see it?

20 **A. Yes.**

21 Q. So do you remember my last question?

22 **A. Could you repeat it?**

23 Q. Should we be looking at the Capacity
24 Position after Res Compliance row?

25 **A. I believe so, yes.**

1 Q. And what was the -- with Rush Island gone
2 in 2024, according to the planning done in the 2020
3 IRP, what was the expected capacity position?

4 A. In 2025 after --

5 Q. Yeah.

6 A. -- it's gone?

7 Q. Yeah.

8 A. Looks like positive 561 megawatts, so the
9 excess capacity.

10 Q. And then that stays sort of flat and
11 grows a little and it's up to about a thousand
12 megawatts by 2029, 2030, right?

13 A. That's right.

14 Q. Now, you didn't explicitly -- as I
15 recall, you didn't explicitly take the seasonal
16 construct into account, while you said you considered
17 it when you did the December 2021 retirement versus
18 retrofit analysis. But you did attempt to take it
19 into account explicitly when you -- when the Company
20 filed the change in Preferred Resource Plan in June of
21 2022?

22 A. That's correct.

23 Q. And when you did that -- and that, of
24 course, assumed a Rush Island retirement in 2024?

25 A. That's right.

1 Q. When you did that, did that planning
2 analysis suggest a shortage of capacity in 2025?

3 A. I don't believe it did. And I think
4 there's a figure in my surrebuttal testimony that
5 shows that. Yes, it's Figure 4 on page 16 of my
6 surrebuttal testimony. And it showed a capacity
7 excess of -- I believe that says 24 megawatts.

8 Q. And there might have been -- if I recall,
9 there might have been some small capacity shortages in
10 a couple years after that; is that right?

11 A. That's correct. Nothing beyond the
12 300 megawatt built threshold.

13 Q. And -- and you talked about that, I
14 think, with the Chair as well, or with somebody. And
15 if you -- am I correct to understand if you don't see
16 a capacity need that's beyond the build threshold,
17 what that's telling you is you wouldn't do anything
18 different about capacity in your planning, right?

19 A. That's correct. For meeting the resource
20 adequacy standard of MISO, that's correct.

21 Q. The Chair asked you some questions about
22 economic development projects. Do you recall that?

23 A. Yes.

24 Q. We talked a minute ago about what your
25 analysis is suggesting, and that is your retire versus

1 retrofit analysis, in terms of what would be the most
2 economic -- what capacity would be most economic to
3 serve such load; would it be Rush Island or would it
4 be something else. And you said it would be something
5 else because you'd have to scrub Rush Island, right?
6 Is that right?

7 **A. That's right.**

8 Q. Is that also true about these economic
9 development projects that may come along?

10 **A. It's true for any loads that we would**
11 **see.**

12 Q. What -- what's cheapest to serve is sort
13 of agnostic to what the load is?

14 **A. Yes.**

15 Q. Do you remember when the Company lost the
16 NSR case once and for all?

17 **A. Yes. It was -- I think the decision came**
18 **out in August of 2021, as I recall.**

19 Q. And absent a change to the order, what
20 was -- what obligation was the Company under once that
21 order became final?

22 **A. We would have to pursue the remedy, which**
23 **was to build a scrubber at Rush Island. I don't**
24 **remember exactly how long we were given to do that. I**
25 **believe it was about four and a half years.**

1 Q. So till 2025 or perhaps --

2 A. **Yeah. Early to mid 2025, I believe.**

3 Q. Do you have an opinion about how long it
4 would take to --

5 A. **Cor- -- let me correct that. I think it
6 was 2026.**

7 Q. Do you have an opinion about how long it
8 would take to build a scrubber?

9 A. **It would take about that long is my
10 understanding.**

11 Q. And the Company did -- the Company was
12 under order to build it. Didn't end up building it.
13 Does that mean that the Company had asked the Judge's
14 permission to -- to make a different decision?

15 A. **Yes.**

16 Q. Could the Company have waited two or
17 three or four years to ask the Judge to do that, given
18 that it was going to take that long to build it and it
19 only had that long to build it?

20 A. **I don't see how that could have been
21 done.**

22 Q. Those are all the questions I have.

23 MR. LOWERY: Thank you, Your Honor.

24 JUDGE CLARK: Mr. Michels, you may step
25 down.

1 **THE WITNESS: Thank you.**

2 JUDGE CLARK: I believe the next witness
3 is Staff's.

4 MS. MERS: Staff calls Ms. Eubanks back
5 to the stand.

6 JUDGE CLARK: Ms. Eubanks, I'll remind
7 you you're still under oath.

8 **THE WITNESS: Understood.**

9 MS. MERS: I think we can go ahead and
10 tender Ms. Eubanks for cross then.

11 JUDGE CLARK: Any cross-examination by
12 the Office of the Public Counsel?

13 MR. WILLIAMS: No, thank you.

14 JUDGE CLARK: Any cross-examination on
15 the 3B issue by Ameren Missouri?

16 MR. LOWERY: Yes, Your Honor. Just a
17 little bit, I think.

18 CLAIRE EUBANKS, having been previously sworn,
19 testified as follows:

20 CROSS-EXAMINATION BY MR. LOWERY:

21 Q Good after Mis- -- noon, Ms. Eubanks.
22 How are you today?

23 A. **I'm good. A little warm.**

24 Q. It is a little warm in here.

25 You discuss some transition upgrade

1 projects at page 23 of your rebuttal testimony, do you
2 not?

3 **A. Let me get there.**

4 JUDGE CLARK: As a matter of
5 housekeeping, it is a little warm in here and I'm not
6 going to require anyone to wear a jacket who doesn't
7 want to, if it would be easier.

8 **THE WITNESS: Appreciate it.**

9 **So yes, I talk about the Rush Island**
10 **reliability projects in my testimony.**

11 BY MR. LOWERY:

12 Q. Which are transmission upgrade projects
13 that are necessary, because Rush Island's retiring, to
14 keep the grid reliable essentially, right?

15 **A. They are related to the Rush Island**
16 **project or retirement and they are transmission**
17 **projects, yes.**

18 Q. Those costs have not been included or
19 even sought for inclusion in a revenue requirement in
20 an Ameren Missouri rate case, correct?

21 **A. That's correct.**

22 Q. Once they are done, presumably Ameren
23 Missouri will file a rate case. And if they fall
24 within the test period and the true-up period, Ameren
25 Missouri will then include them in its rate base and

1 ask that its rate be set to reflect those costs. You
2 would expect that, right?

3 **A. I would.**

4 Q. That hasn't happened yet?

5 **A. It has not happened yet.**

6 Q. And when that happens, assuming it does,
7 the Commission will have the opportunity to review the
8 projects and their cost in a future -- in that future
9 case, right?

10 **A. That's correct.**

11 Q. And you even agree that it would be
12 appropriate for the Commission to decide questions
13 about those transmission projects in a future case,
14 right? In a future rate case?

15 **A. Yes, I do.**

16 Q. You also agree that those costs are not
17 included in the energy transition costs or any other
18 cost that the Company seeks to securitize in this
19 case, right?

20 **A. Ameren Missouri has not sought to include
21 that in the securitization case, that's correct.**

22 Q. Which means whatever those costs end up
23 being, they won't or can't affect the amount of the
24 securitization bonds Ameren Missouri is asking to
25 issue, can they?

1 **A. I don't know whether they can or not, but**
2 **it was not proposed by Ameren Missouri to be included.**

3 Q. You also discuss in your testimony the
4 possibility of future capacity costs that Ameren
5 Missouri right incur under your hypothesis because
6 Rush Island's no longer around, right?

7 **A. It -- initial return, yes.**

8 Q. No evidence is presented in this case
9 that establishes that Ameren Missouri customers to
10 date have actually incurred any higher rates based
11 upon a claim about capacity that it might have to buy
12 in the future, has it?

13 **A. Right. So the -- the figures I provided**
14 **in my testimony are estimated values that are**
15 **potential future harm, from my view.**

16 Q. But obviously potential future harm,
17 potential future capacity costs haven't been reflected
18 in rates today, have they?

19 **A. I agree.**

20 Q. With respect to any mitigation remedies
21 that arise out of the District Court case, the Federal
22 District Court case, there's been quite a bit of
23 discussion about mitigation remedies in this case,
24 right? You remember that?

25 **A. We've talked about the -- the potential**

1 **for future remedy from the NSR litigation, yes.**

2 Q. It's also true that there's no evidence
3 in this case that customer rates have, to date, been
4 impacted by any future remedies out of the District
5 Court; isn't that right?

6 A. Evidence in this case? I -- I'm not
7 aware of -- of there being an impact to current rates
8 based on the NSR litigation.

9 Q. I mean, it's impossible for there to have
10 been any impact on current rates since Judge Sippel
11 hasn't actually ordered any future remedies yet,
12 right?

13 A. Yes, the -- the future remedies are
14 future. I think I was clear in my rebuttal testimony
15 about that.

16 Q. You agreed with me previously that the
17 question of whether something is well documented is
18 different than the question of whether the decision
19 itself was a good or bad decision; isn't that fair?

20 A. I think documentation goes to the
21 question of reasonableness, but I do recall that
22 question from my deposition.

23 Q. And you agreed with me that they are
24 different, are they not?

25 A. Yes. I do think they are different

1 **questions.**

2 Q. Had Ameren Missouri decided -- made a
3 different decision on the NSR permits and then the
4 plant got scrubbed and it's not retiring, the plant
5 might not have lived to 2039; isn't that right?

6 **A. It's possible.**

7 Q. You're aware, for example, that there
8 are -- there's a Good Neighbor Rule that's been
9 proposed by EPA?

10 **A. I am aware of that, yes.**

11 Q. And there's a separate Greenhouse Gas
12 Rule that's been proposed by EPA?

13 **A. I am aware of that, yes.**

14 Q. And I'm not asking you to agree that
15 those rules would or would not have led to an economic
16 decision later to retire Rush Island, but there was
17 certainly -- there certainly exists a risk that those
18 proposed regulations or some other environmental
19 regulation could, before 2039, put Ameren Missouri, or
20 other utilities for that matter, in the position of
21 having to decide should I spend a lot of money to
22 comply with those regulations or should I retire
23 instead, right?

24 **A. So I think in Ameren Missouri's Motion to**
25 **Modify their remedy ruling, they mentioned four things**

1 that were changing from the 2019 remedy order. And
2 that was natural gas prices were increasing, carbon
3 price assumptions, social and environmental justice
4 governance kind of policies, and of course, the
5 securitization statute.

6 So those are the -- the four things that
7 Ameren Missouri told the Court kind of change that led
8 to their decision in 2021. So to the extent that
9 Ameren Missouri considered those, you know, I will say
10 the -- the 2020 IRP is really -- you know, that --
11 that decision is -- I think my understanding is based
12 on a difference between the 2017 IRP and the 2020 IRP
13 more so than the retrofit retirement analysis
14 Mr. Michels performed.

15 Q. Thank you. Those are all -- all the
16 questions I have.

17 JUDGE CLARK: Any Commission questions?

18 I hear none.

19 QUESTIONS BY JUDGE CLARK:

20 Q. In your rebuttal testimony you list three
21 concerns that Staff has.

22 A. Yes.

23 Q. And those would be the DOJ, Department of
24 Justice, is seeking additional remedies other than
25 just the retirement of Rush Island. And I believe

1 that you had also thrown out some DOJ numbers. But
2 that would be related to a -- remedy numbers that the
3 Department of Justice might request of the Judge,
4 correct?

5 **A. That is my understanding, is those**
6 **numbers reflect what the DOC has requested. I think**
7 **the -- my understanding from reading the transcript,**
8 **and then also I -- I asked in a data request for, you**
9 **know, Ameren Missouri's motion -- well, there was some**
10 **kind of pleadings made in the case that I had asked**
11 **for.**

12 **And so yes, my understanding is the --**
13 **the parties are kind of instructed to -- or were**
14 **instructed to come to some sort of resolution or make**
15 **a proposal that would kind of be acceptable to all.**
16 **And I mean, that doesn't sound like they're there yet,**
17 **so.**

18 **Q. And they -- they may never get there,**
19 **correct?**

20 **A. Sure.**

21 **Q. It may -- it may end up with the Judge**
22 **just picking a number?**

23 **A. That's right.**

24 **Q. And at this time you have no idea what**
25 **that number's going to be; is that correct?**

1 **A. That's right. The 275 million is just**
2 **based off of what's in that transcript.**

3 Q. So that both hasn't occurred yet and is
4 not quantifiable at this point?

5 **A. I agree with that, yes.**

6 Q. Now, your second concern is Ameren
7 Missouri's 2023 IRP suggests that it will be short on
8 capacity for MISO resource adequacy purposes; is that
9 correct?

10 **A. That's correct.**

11 Q. But again, that's in the future, correct?

12 **A. It -- so it is in the future, but Staff's**
13 **position in this case, my position is Ameren**
14 **Missouri -- and you heard Mr. Michels talk about it --**
15 **they understood that the seasonal construct was**
16 **changing when they made the decision to retire Rush**
17 **Island.**

18 So we're bringing it up because we know a
19 little bit about that decision making and that they
20 had some understanding that that seasonal construct
21 was changing, and it is a future potential harm that
22 may arise or it may not.

23 Q. So at this point, no harm has occurred?

24 **A. That's correct.**

25 Q. And is that quantifiable yet?

1 A. It's estimated, but no, it's not -- I
2 mean, it's estimated that those are the values that I
3 provided in my testimony.

4 Q. And the third concern is the Rush Island
5 reliability project that's not securitized; is that
6 correct?

7 A. That's correct.

8 Q. They're not asking?

9 A. They're not asking to securitize it in
10 this case, correct.

11 Q. And what's the potential harm there?

12 A. So from my perspective, Mr. Michels did
13 an analysis in his direct testimony. He based it on
14 some break-even costs and even some scenarios about
15 what's the expectation for how Rush Island would be
16 operating as an SSR.

17 Because when -- when that analysis was
18 done in 2021, it was before Ameren had made the
19 retirement decision and before MISO kind of indicated
20 that Rush Island would potentially need to be
21 classified in this as an SSR.

22 Which, you know, I -- I think there was
23 some discussion in opening statements about why Staff
24 opened its investigatory docket. And it was related
25 to the SSR designation, not related to the retirement

1 decision. I want to make that pretty clear. Sorry.

2 I maybe lost track of your -- your question in my
3 answering.

4 Q. I -- I was asking you to explain the harm
5 as it might occur.

6 A. Sure. So at the time of my rebuttal
7 testimony, I was looking at what Mr. Michels provided
8 in his direct testimony, which was based on that 2021
9 analysis.

10 You know, I think as we've talked about,
11 there's a couple of scenarios where the -- the
12 retrofit decision is maybe -- looks a little bit more
13 favorable in the 2020 scenario, right? Or 2021
14 analysis.

15 And he did some looks at the -- the
16 transmission break-even analysis and those scenarios
17 about what was expected from potential operation of
18 Rush Island in the short-term as an SSR.

19 And, you know, obviously we also knew
20 that there was potential future remedies from the
21 Court that we don't know not included into his -- his
22 break-even analysis. And then we knew that the
23 seasonal construct was changing and wasn't taken into
24 account.

25 So when you look at all of those, I think

1 it calls into question, you know, that break-even
2 analysis and whether, you know, the increase of costs
3 that we -- we saw in the transmission projects from
4 what we previously knew them to be, I think all of
5 that in culmination is really what -- what that's
6 about.

7 Q. And as of this point, that is also not
8 quantifiable, correct?

9 A. I think we have a pretty good idea of
10 what the current estimates are, just as clear as some
11 of the costs that are being securitized in this case.

12 Q. So you believe that one's a little firmer
13 than the others?

14 A. I do believe it's a little firmer than
15 the others.

16 Q. Okay. This -- this, as frequently has
17 been said, is kind of a two-step process. And this --
18 this question indeed, 3B, kind of implies that when
19 it -- you know, it -- the first question is was their
20 choice to retire as opposed to install scrubbers
21 prudent. And obviously if the Commission decides that
22 it wasn't, then they don't get to securitize the
23 retirement of Rush Island, right?

24 A. That's correct.

25 Q. And you've indicated that these go into a

1 future proceeding and I assume it would maybe be a
2 rate case proceeding. But where are we talking about?
3 I mean, how far down the road? At what point does
4 this become quantifiable?

5 **A. So the reliability projects I would**
6 **expect that we would see in the next Ameren rate case,**
7 **or at the very latest the next one after that, one**
8 **single reliability project. I think it's -- it's**
9 **under one project number. Make that clear.**

10 **And the capacity shortfall -- you know,**
11 **potential capacity shortfall in the short-term, I**
12 **think I highlighted the years '25, '26, '27 so that's**
13 **a little bit further out. And then obviously the**
14 **Court remedy, you know, no -- I don't think anyone**
15 **can -- can know.**

16 **Q. I'd like to kind of go the other scenario**
17 **for a second.**

18 **A. Sure.**

19 **Q. If the Commission determines that the**
20 **decision to close the plant was prudent, is the**
21 **second -- what happens to the second part of this**
22 **analysis then?**

23 **A. You mean the future harm that Staff has**
24 **identified as concerns?**

25 **Q. Correct.**

1 A. So I think what Staff's recommendation
2 is, that the Commission should make a decision on
3 whether the retirement by October 15th, 2025 -- I
4 think that's the correct date -- is reasonable and
5 prudent.

6 And from my perspective as an engineer, I
7 can't imagine that it would be a good idea to say now,
8 you know, ignore that Court order that we do have now.
9 And -- and I understand this is predicated on Ameren
10 Missouri's decision making.

11 You know, they -- they made the decision
12 in 2021, they reevaluated things in 2022. They, you
13 know, asked the Court for a date certain in August of
14 2023. That -- you know, to me, the decision on the
15 retirement kind of evolved over that time period.

16 But ultimately I can't imagine that it
17 would be a good idea now to say, you know, the
18 retirement is not -- not reasonable. And that's my --
19 my perspective.

20 Q. And maybe I didn't understand your --
21 your answer. Maybe I didn't ask the question. It
22 sounded like you said if -- if the Commission
23 determines that the retirement was prudent and the
24 harm goes to a future proceeding, then the Commission
25 would need to make another prudency decision regarding

1 an October date; is that --

2 A. I -- no, I think that the question before
3 the Commission now is Ameren's Missouri- -- is Ameren
4 Missouri's decision to retire the Rush Island plant --

5 Q. I see the disconnect. All right. The
6 disconnect, it's in my question.

7 A. Okay.

8 Q. Okay. If -- if the Commission were to
9 determine that the retirement decision over installing
10 the scrubbers was prudent and they were allowed to
11 securitize and this harm goes to some sort of future
12 proceeding, what we -- what are we determining on
13 there if -- if -- if the prudence of the plant has
14 already been determined? I mean, what -- what do
15 we -- what do you do with the harm?

16 A. Well, I think Staff would argue that --
17 ideally the order will be written in a way that Staff
18 can argue what it needs to argue in a future case.

19 Q. Can you clarify that?

20 A. Yeah. I mean, I think if -- I think if
21 you answer the question is it reasonable and prudent
22 for Ameren Missouri to retire Rush Island by
23 October 15th, 2024 -- or 20 -- yes, 2024, is that
24 reasonable and prudent based on the evidence in this
25 case, I think you can answer that question. And I

1 think that preserves concerns about future harm to a
2 future rate case.

3 So, obviously I'm not an attorney and --
4 and you all are much more versed in writing orders,
5 so.

6 Q. Okay. Thank you. Chair Hahn would like
7 to ask a question.

8 A. Sure.

9 QUESTIONS BY CHAIR HAHN:

10 Q. Afternoon, Claire.

11 A. Good afternoon.

12 Q. As we were discussing, prudence is
13 related to this retirement and also capacity issues.
14 You have also in your surrebuttal testimony, you talk
15 about the four solar CCNs, the three that were just
16 granted and the fourth that's ca- -- that's
17 conditional.

18 Can you talk about why that's in your
19 rebuttal -- your surrebuttal testimony?

20 A. Yeah. The reason is because OPC proposed
21 a disallowance using the solar CCNs as part of their
22 component of their disallowance.

23 Q. And they -- help me, from your
24 perspective, understand their math. It's the cost of
25 the three plants minus the scrubber? Tell -- tell

1 me -- talk me through that.

2 **A.** **I haven't seen work papers from**
3 **Mr. Seaver. They may have come in and I just didn't**
4 **get a chance to look at them. I'm not sure. And I**
5 **missed some of his corrections to his testimony.**

6 **Q.** **And is that be- -- so is OPC arguing -- I**
7 **guess I'm -- I'm not totally following the**
8 **relationship between the securitization and the solar**
9 **CCNs.**

10 **A.** **From Staff's perspective, you know, we**
11 **entered into a settlement with Ameren Missouri about**
12 **the solar CCNs. So that is -- you know, we've**
13 **recommended the Commission approve the three and the**
14 **fourth be conditional. I mean, I think -- I ca- -- I**
15 **really can't speak to Mr. Seaver's analysis.**

16 **Q.** **I'll ask him. But since it was in your**
17 **sur, I thought I would ask you.**

18 **A.** **Yeah, I -- I was trying to point out that**
19 **we didn't totally agree or understand or follow it,**
20 **just for clarification purposes.**

21 **Q.** **Thank you.**

22 **A.** **Sure.**

23 **Q.** **Thank you.**

24 **JUDGE CLARK:** **Any questions from OPC**
25 **based on Bench questions or Commission questions?**

1 MR. WILLIAMS: No, thank you.

2 JUDGE CLARK: Any questions from Ameren
3 based on questions from the Commission or Bench?

4 RECROSS-EXAMINATION BY MR. LOWERY:

5 Q. I think just one line of inquiry. It way
6 only be one question or two or three, but I don't
7 think it's very many.

8 The Judge was asking you essentially if
9 the Commission decides that the retirement was
10 reasonable and prudent and securitizes -- and I'm just
11 going to -- I'm just going to round to 500 million;
12 Company's a little more, you're a little bit less --

13 **A. Sure.**

14 Q. -- at this point, you know, what happens
15 in the future? And I think what he's trying to ask
16 is, does -- does -- does that have an impact on later
17 arguments about whether the NSR permitting decisions
18 were or were not prudent. Is that -- is that how you
19 understood it?

20 **A. Or -- or any of the planning decisions.**

21 Q. Or any of the planning decisions. And I
22 think -- I think your answer, and you'll correct me if
23 I'm wrong. I think your answer is you don't see that
24 it really has an impact because those are different
25 decisions. And if those different decisions were

1 later found to be imprudent in a rate case and you
2 established harm in that rate case, then the
3 Commission would have the authority to -- to impose a
4 remedy; is that right?

5 **A. Yes.**

6 Q. And -- and this has been a point that I
7 think has been a little unclear since yesterday
8 morning, so I'm -- I'm going to ask you questions to
9 maybe try to clear it up.

10 **A. Okay.**

11 Q. Isn't the reason that that's the case is
12 that the dollars to be securitized, assuming they are,
13 assuming the Commission says yes, retire versus
14 retrofit was the right decision, those dollars reflect
15 investments that have been made in the Rush Island
16 plant. I mean, we can put aside the decommissioning
17 costs and some minor ones --

18 **A. Sure.**

19 Q. -- but at least the plant balance. You
20 know, those costs, probably 460 or 70 million of the
21 500, they reflect investments that have been made in
22 Rush Island, I mean, maybe as far back as the '70s, I
23 don't know. But -- but all in the past that were
24 necessary to build it, keep it running, operate it,
25 et cetera. And those costs have nothing to do with

1 any of these decisions we're talking about; isn't that
2 right?

3 **A. Well, to the extent there's any cost**
4 **related to the outages still in rates, I mean,**
5 **technically there is some cost there, but --**

6 Q. Okay. But you're -- you're not -- you're
7 not claiming that the Company was imprudent for
8 incurring the costs of the outages in 2007 -- you
9 know, to doing the projects. You may be -- may be
10 claiming or -- you actually aren't at this point, but
11 somebody may claim that not getting permits was
12 imprudent --

13 **A. Well --**

14 Q. -- but nobody's -- nobody's raised a
15 claim, to my knowledge, that says you shouldn't have,
16 you know, fixed the boiler component, you shouldn't
17 have replaced those components from a, you know,
18 operational reliability availability standpoint.

19 Nobody's made that allegation, right?

20 **A. Okay. To clarify -- because I think the**
21 **Judge was asking Mr. Majors about my position. My**
22 **position is there were things that Ameren did that**
23 **were reasonable, but there are things that they did or**
24 **did not do that were unreasonable. We didn't**
25 **calculate a harm for that because it is not known yet.**

1 And so while Mr. Majors was talking about
2 imprudence, I think there was maybe a little
3 inconsistency between Staff on what we think is
4 imprudent versus unreasonable. And I think that went
5 to some of the -- the Judge's questions the other days
6 about -- about reasonableness and prudence.

7 Q. But the Staff is not challenging the
8 prudence of the costs incurred in the past to build or
9 maintain or to re- -- you know, replace components or
10 whatever. The Staff is not challenging the prudence
11 of incurring those costs, is it?

12 A. Those projects were done for
13 availability -- regaining availability and improving
14 efficiency and were needed for Rush Island to have
15 operated in the past, you know, almost 20 years.

16 Q. Well, those projects and all the other
17 investment, whatever it is that's still on the books,
18 was done to basically build and operate Rush Island
19 over the last several decades, right?

20 That un- -- that undepreciated plant
21 balance was incurred, it's been through rate cases,
22 there's been no prudence challenge to those past costs
23 at 460 or 70 million dollars.

24 A. Well --

25 Q. As far as you know, it was prudently

1 incurred, wasn't it?

2 **A. They were included in rates -- or**
3 **included -- it is the remaining net book value of the**
4 **Rush Island facility.**

5 Q. You don't have any memory of there being
6 any even -- any proposed prudence disallowances about
7 Rush Island costs, at least in the 10 or 15 years
8 you've been at the Commission -- Rush Island projects,
9 has there?

10 **A. I don't recall any specifically, no.**

11 Q. Okay. Thank you.

12 JUDGE CLARK: Any redirect from Staff?

13 REDIRECT EXAMINATION BY MS. MERS:

14 Q. Good afternoon.

15 **A. Good afternoon.**

16 Q. Do you recall talking with counsel for
17 Ameren about the transmission cost upgrades?

18 **A. Yes, I do.**

19 Q. Okay. Do we -- and we're trying to stay
20 out of numbers because that's confidential.

21 **A. Out of numbers.**

22 Q. Do we have any range of transmission
23 cost?

24 **A. Well, so I think that number is fairly**
25 **firm and --**

1 MR. LOWERY: Just --

2 THE WITNESS: I won't say the number.

3 MR. LOWERY: Okay. Thank you.

4 THE WITNESS: Yes, I know. I will not.

5 You know, Ameren counsel represented that it was out
6 to bid or maybe -- and that is the reason that is
7 confidential. So, you know, I think we'll have a
8 better idea, you know, maybe at some point in time.

9 BY MS. MERS:

10 Q. Do we know if there was a range of
11 transmission costs that Ameren used when it was doing
12 its NVPRR calculations?

13 A. There is a range. I'm hoping you could
14 point me to my testimony on that, but maybe not.

15 Q. I -- just to save time, I think it's
16 the -- the existence of those numbers versus what
17 those numbers are might be impactful --

18 A. Okay. Yes.

19 Q. -- at this time.

20 A. So in past IRPs, yes, there was a range
21 with some level of uncertainty around the -- the, you
22 know, transmission projects.

23 Q. But that calculation, to your
24 understanding, is how they determined if retiring or
25 retrofitting was the better decision?

1 A. Well, there's -- there's two different
2 uncertainties I talk about in my testimony, so.

3 Q. Okay.

4 A. In past IRPs -- and Mr. Michels has
5 several attachments to his testimony. And it's -- you
6 know, kind of points out the transmission upgrade
7 costs and various IRPs, you know. And -- and those
8 dollar values range, but the uncertainty --
9 uncertainty -- uncertainty discussion in my testimony
10 is related to what was assumed in the 2020 IRP.

11 I don't know if that helps or if you have
12 more questions about that.

13 Q. Let's see if I can get at it this way.
14 How could an order in this case hold customers
15 harmless even if we don't have firm numbers, but based
16 on the information we already have?

17 A. So they use the *** --

18 JUDGE CLARK: Can you strike that from
19 the record, please?

20 **THE WITNESS: Can we strike that? Sorry.**

21 BY MS. MERS:

22 Q. We need a buzzer.

23 A. Yes. They -- they used a value.

24 JUDGE CLARK: Hold on just a second. Go
25 off the record.

1 (Off the record.)

2 JUDGE CLARK: Let's go back on the record
3 and go ahead.

4 THE WITNESS: Okay. So there -- there is
5 a value that was assumed in the break-even analysis
6 and that number is known, to answer your question.

7 BY MS. MERS:

8 Q. And how can that be used to help hold
9 harm -- customers harmless in the future?

10 A. You know, I -- I think the Commission
11 could order in this case something about that
12 potentially.

13 Q. Do you recall discussing with counsel for
14 Ameren about the difference between something being
15 well documented versus being a good or bad decision
16 and how those are different?

17 A. I do.

18 Q. How can well documented impact how
19 regulators determine if a decision was good or bad?

20 A. Yeah. I think we talked a lot about --
21 well, Mr. Majors, I think, a little bit and other
22 witnesses talked about, you know, whether Ameren
23 Missouri could have sought a permit applicability
24 determination from DNR or EPA, I think is OPC's kind
25 of position.

1 **And the reality is had they done that, we**
2 **would have documentation to, you know, support their**
3 **position. But we don't have that in this case, so.**

4 Q. Do you recall discussing with the Bench
5 the three concerns you laid out in your rebuttal, but
6 the fact that no actual harm has occurred -- no firm
7 harm has occurred with those yet?

8 **A. I do recall that discussion, yes.**

9 Q. And one of those was capacity.

10 **A. Yes.**

11 Q. What is your understanding of how
12 timelines work for plant additions?

13 **A. I guess, which plant additions?**

14 Q. Generating plants would probably be the
15 easiest.

16 **A. Are -- are you talking about IRP planning**
17 **or are you talking about the length of time it takes**
18 **from an engineering perspective to develop and execute**
19 **a project?**

20 Q. Yes.

21 **A. I would need to know which project.**

22 Q. Maybe I'll try to shortcut it. Could a
23 future capacity shortfall require present planning in
24 your experience?

25 **A. Yeah, it -- I mean, what -- what the**

1 shortfall potentially is related to is winter
2 capacity. And so that type of project does take time
3 to develop and execute.

4 Now, Mr. Michels talked about being able
5 to get capacity from the planning -- planning option,
6 so there is that too. I mean, it's not like --
7 Staff's not trying to raise red flags and say there's
8 this crisis. That's -- that's not what we're
9 highlighting here.

10 Q. In regards to the -- in the -- that
11 discussion you were having with the Judge and the
12 utility of a hold-harmless provision or -- or what
13 impact it can have now versus in the future when those
14 actual actions come in and are asked to be included in
15 rates.

16 Do you believe that a hold-harmless
17 provision could -- has any help in actually
18 quantifying the harm for future cases?

19 MR. LOWERY: Judge, I'm -- Judge, I'm
20 going to object. And if my memory's faulty, I'm sure
21 you'll tell me. I don't actually as- -- remember you
22 asking anything about the hold-harmless proposal. You
23 did ask about possible harms related to transmission,
24 but not about the hold-harmless provision.

25 And I also think Ms. Mers is asking

1 essentially Ms. Eubanks to state a legal conclusion
2 about, you know, what you can or cannot do. So I
3 think it's beyond the scope of the questions and I
4 also think it's calling for a legal conclusion.

5 JUDGE CLARK: Would you please restate
6 your question for me?

7 MS. MERS: I'm going to try.

8 BY MS. MERS:

9 Q. Can a hold-harmless provision help
10 quantify the actual harm for later cases?

11 JUDGE CLARK: I'm going to overrule the
12 objection.

13 You can answer.

14 **THE WITNESS: Yes, it's a number we know**
15 **they used in their analysis in this case, you know,**
16 **and to be clear, the first analysis in direct**
17 **testimony in this case.**

18 **And yeah, it's a -- it's a number that is**
19 **known and was used in the analysis to support the**
20 **decision and that's really the basis for it. And**
21 **it -- it would help in the future to track costs**
22 **either above or below, so.**

23 BY MS. MERS:

24 Q. I think this is all I have for you then.
25 There was some discussion towards the end with both

1 the Judge and Ameren Missouri about how imprudence in
2 one decision can interplay with a -- not finding
3 imprudence in another decision. Do you recall that?

4 **A. I do.**

5 Q. Okay. Do you distinguish between if
6 Ameren Missouri's decision making in total was
7 reasonable versus if -- at the culmination of these
8 events, if retiring was a better decision than
9 installing scrubbers on Rush Island?

10 **A. I do think those are two different**
11 **questions, yes.**

12 Q. And do you believe that you can find one
13 to be reasonable and the other to be not reasonable?

14 **A. Yes.**

15 Q. And at this time are there any other
16 actions available to Ameren other than retiring or
17 installing the scrubbers?

18 MR. LOWERY: Objection, that does call
19 for a legal conclusion given that we're under a
20 Federal District Court order to unclose the plant.

21 JUDGE CLARK: State your question one
22 more time, please. I mean, I know I -- I just want to
23 hear exactly how it's worded.

24 MS. MERS: I believe it was something
25 like other than retiring or installing the scrubbers,

1 are there any other actions available to Ameren
2 Missouri?

3 MR. LOWERY: I'll object to that question
4 as being irrelevant. Actions available to Ameren
5 Missouri to do what?

6 MS. MERS: How to treat and handle the
7 plant going forward.

8 MR. LOWERY: Judge, the problem with the
9 question is it requires Ms. Eubanks to decide
10 whether -- whether Ameren Missouri, under the Clean
11 Air Act and under the Judge's order, can disregard or
12 somehow change -- somehow do something different with
13 the plant having been ordered to close it.

14 I don't understand why this witness has
15 anything to assist the Commission on that issue.

16 JUDGE CLARK: I don't know if I agree
17 with you as to that, but I don't -- I do agree with
18 you as to I don't know without asking the Court for
19 another -- if you decide you want to put on the
20 scrubbers, asking for leave of the Court to put on the
21 scrubbers or to modify the -- the judgment again. So
22 I -- I -- or maybe take up the plant and fleet
23 country, but.

24 So I -- I do agree that -- that -- that
25 whatever answer would -- I'll -- I'll sustain the

1 objection, but not for the reason given.

2 MS. MERS: All right. That's all I have,
3 but thank you.

4 JUDGE CLARK: Is Ms. Eubanks appearing on
5 other -- well, I think -- I think her stuff is already
6 marked.

7 MS. MERS: I think she is back for
8 Issue 5.

9 JUDGE CLARK: Yes. Thank you. I forgot
10 about that.

11 **THE WITNESS: Yes. My testimony's --**

12 JUDGE CLARK: Ms. Eubanks, you may step
13 down.

14 **THE WITNESS: Okay. Thank you.**

15 JUDGE CLARK: Staff, you may call your
16 next witness.

17 MS. MERS: Staff calls Shawn Lange to the
18 stand.

19 JUDGE CLARK: And after Mr. Lange, I
20 anticipate taking a short break.

21 Mr. Lange, would you raise your right
22 hand to be sworn.

23 (Witness sworn.)

24 JUDGE CLARK: Please sit down.

25 Go ahead, Staff.

1 SHAWN LANGE, being first duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION BY MS. MERS:

4 Q. Can you please state and spell your name
5 for the record?

6 A. My name is Shawn, S-h-a-w-n, E. Lange,
7 L-a-n-g-e.

8 Q. And did you prepare or cause to be
9 prepared testimony in this case that has been marked
10 as Exhibit 108, rebuttal testimony; and Exhibit 109,
11 the surrebuttal testimony?

12 A. Yes.

13 Q. And do you have any corrections to that
14 testimony?

15 A. Not that I'm aware.

16 Q. And is that -- the information contained
17 within true and accurate, to the best of your
18 knowledge and belief?

19 A. Yes.

20 Q. And if I asked you those questions today,
21 would your answers be the same?

22 A. Yes.

23 MS. MERS: At this time we can mark
24 Exhibit 108 and 109, but Mr. Lange will be back up for
25 Issue 5 so we will hold off on offering it, and offer

1 Mr. Lange for cross.

2 (Exhibits 108 and 109 were marked for
3 identification.)

4 JUDGE CLARK: Any cross-examination from
5 Public Counsel?

6 MR. WILLIAMS: No, thank you.

7 JUDGE CLARK: Any cross-examination from
8 Ameren?

9 MR. LOWERY: No questions, Judge.

10 JUDGE CLARK: Any Commission questions?
11 Hearing none, I have no questions for
12 you, Mr. Lange, so you may step down.

13 **THE WITNESS: Thank you.**

14 JUDGE CLARK: Staff, you may call your
15 next witness.

16 MS. MERS: Staff calls Brad Fortson to
17 the stand.

18 (Witness sworn.)

19 JUDGE CLARK: Please be seated.

20 BRAD FORTSON, being first duly sworn, testified as
21 follows:

22 DIRECT EXAMINATION BY MS. MERS:

23 Q. Can you please state and spell your name
24 for the record?

25 **A. Brad, B-r-a-d, J., Fortson,**

1 **F-o-r-t-s-o-n.**

2 Q. And did you prepare or cause to be
3 prepared rebuttal testimony marked as Exhibit 104 and
4 corrected rebuttal testimony marked as Exhibit 105 in
5 this case?

6 **A. Yes.**

7 Q. And do you have any further corrections
8 to that testimony?

9 **A. Not to my knowledge.**

10 Q. And is the information contained within
11 true and accurate, to the best of your knowledge and
12 belief?

13 **A. Yes.**

14 Q. And if I asked you the same questions
15 today, would your answers be the same?

16 **A. They would.**

17 MS. MERS: I believe Mr. Fortson also
18 goes up for Issue 5 again, so I will hold off on
19 offering his, but we will tender Mr. Fortson for
20 cross.

21 JUDGE CLARK: Thank you.

22 And I -- I decided not to recess simply
23 because Mr. Lange was so short. I may at this
24 point -- because we only have Mr. Seaver left on this
25 issue, I may go ahead and try and push through before

1 we take a break.

2 Any cross-examination from the Office of
3 the Public Counsel?

4 MR. WILLIAMS: No, thank you.

5 JUDGE CLARK: Any cross-examination from
6 Ameren Missouri?

7 MR. LOWERY: No. No, thank you, Judge.

8 JUDGE CLARK: Any questions from the
9 Commission?

10 I have no questions for you, Mr. Fortson,
11 so you may step down.

12 And the last issue as to this witness
13 [sic] is OPC's or Public Counsel's.

14 MR. WILLIAMS: Public Counsel calls
15 Mr. Seaver to the stand.

16 JUDGE CLARK: I'll remind you,
17 Mr. Seaver, that you're still under oath.

18 **THE WITNESS: Understood.**

19 MR. WILLIAMS: I believe I jumped the gun
20 with him a little bit in his -- well, I don't know.
21 Did I offer your testimony yet?

22 **THE WITNESS: I believe so.**

23 JUDGE CLARK: I believe you did actually.
24 It's already been admitted over objection. And the --
25 the corrections have been noted.

1 MR. WILLIAMS: Okay. I thought I'd
2 offered it, but I hadn't noted it properly in my
3 recordkeeping. So since testimony's already in
4 evidence, I offer Mr. Seaver for examination.

5 JUDGE CLARK: Any cross-examination by
6 the Commission Staff?

7 MS. MERS: No, thank you.

8 JUDGE CLARK: Any cross-examination by
9 Ameren Missouri?

10 MR. LOWERY: No questions, Judge.

11 JUDGE CLARK: Any questions from the
12 Commission?

13 JORDAN SEAVER, having been sworn, testified as
14 follows:

15 QUESTIONS BY JUDGE CLARK:

16 Q. We may need to go into camera for -- for
17 some of my questions. I've just got a few and I'm
18 going to try and keep it short. And you tell me,
19 Mr. Seaver, if we need to go into -- if we need to go
20 into camera -- in-camera.

21 A. Okay.

22 Q. Now, Public Counsel's office is
23 recommending a disallowance of some kind for prudence;
24 is that correct?

25 A. That is correct.

1 Q. And what is that disallowance for?

2 A. So that disallowance is recommended in my
3 testimony as a way to reduce the amount of
4 securitization. So if you choose to go ahead with
5 sec- -- if the Commission chooses to go ahead with
6 securitization, the Office of Public Counsel is not
7 recommending -- in my testimony, I'm not recommending
8 that you don't securitize it.

9 And I understand that in order to
10 securitize it, you'd have to determine that the
11 decision to retire is prudent, but I think that there
12 are issues related to -- again, as Mr. Williams
13 pointed out, the continuum from the beginning of this
14 with the decision not to get applicability
15 determination or pursue NSR permits from the EPA up to
16 the decision that's now under consideration.

17 And it is a way to reduce the cost of
18 securitization for customers. I think that answers
19 the question.

20 Q. And what -- what -- what's the imprudent
21 decision that Public Counsel is -- is seeking?

22 A. So in my opinion, and this is in my
23 testimony because I believe with the position
24 statement, OPC does take a position on this. So let
25 me just walk you through how I got to this, right?

1 So I don't see how the Company can
2 distinguish between the decision to retire Rush Island
3 and securitize and the upcoming additions of solar and
4 wind and batteries and gas. And that also goes along
5 with its decisions to -- to retire and presumably
6 securitize other plants as well; coal plants.

7 So my figure of the disallowance was
8 based on an actual figure of something that I
9 considered to be a replacement for part of Rush Island
10 at the time. It was actually presented by the
11 Company. It wasn't just, oh, well, it will be a
12 thousand megawatts of wind right here, right, or in
13 this time period.

14 I could have done something different. I
15 could have said, well, let's see. What would it take
16 to replace Rush Island with renewables? And, of
17 course, if you replace a coal plant with renewables,
18 you need some kind of back-up for dispatch.

19 Because even if you can run -- even if
20 you get -- let's say for an entire week you get all of
21 your peak and all of your base load from renewables
22 because you got a bunch of wind and you got a bunch of
23 solar and it's an advantageous week, right? Then what
24 about the next week? You need back-up for it as well.

25 So you have to consider not just whatever

1 Mr. Michels considered, 1,200 megawatts of
2 combined-cycle, 800 megawatts of simple-cycle. You
3 have to consider the other things as well, because --
4 well, I'm getting a little ahead of myself.

5 So I could have gone much further and
6 said maybe that's 3.6 billion. Maybe just looking at
7 the placement for Rush Island from the period of 2025
8 up to the period when we saw in Exhibit 1 -- let's
9 see, Staff Exhibit 118 when that capacity balance
10 changes in 2025 and then we only see it climb back up
11 to what it was before around 2030, well, the Company's
12 planning on putting in 1,800 megawatts of solar,
13 1,000 megawatts of wind, 400 megawatts of batteries
14 and some gas as well.

15 Well, that's a lot of money, right? And
16 I didn't take all of that and then subtract my
17 calculation of the scrubbers, which was based on an
18 average from various estimates that I had in front of
19 me and then take that amount and subtract that from
20 securitization. That would have given you a positive
21 and it would have been no securitization because there
22 would be nothing left.

23 But that is, in essence, why I
24 recommended a disallowance of something and why I used
25 the four solars. So even -- like I said, in my

1 testimony, I made corrections because the one is not
2 considered anymore. But it's not like those
3 150 megawatts from that plant are not going to be at
4 some point added. So I still feel that the four is a
5 good way to calculate this.

6 Q. So would it be fair to say that basically
7 you came up with a fairly wide range and you picked
8 what you felt was most reasonable within that range?

9 A. Yeah, that's a good way to put it. I
10 think it's just a zone of reasonableness, you know.
11 And I think it's a low amount to disallow, in my
12 opinion. Small amount, I should say.

13 Q. Okay. I have no more questions.

14 JUDGE CLARK: Any recross based upon my
15 questions? Commission Staff?

16 MS. MERS: I think very briefly.

17 RECROSS-EXAMINATION BY MS. MERS:

18 Q. In your discussion with the Judge, you
19 discussed how you viewed Ameren's capacity position
20 work papers to come to your recommendation on what to
21 remove and what seemed fair. Is that an accurate
22 summary or --

23 A. I didn't use these work papers to come to
24 that. I just was referring to them right now as a,
25 you know, way to -- a tool to visualize what I was

1 **doing.**

2 Q. Nothing further. Thank you.

3 JUDGE CLARK: Any recross from Ameren
4 Missouri --

5 MR. LOWERY: Just --

6 JUDGE CLARK: -- or in this case,
7 questions based on Bench questions?

8 MR. LOWERY: Thank you.

9 RECROSS-EXAMINATION BY MR. LOWERY:

10 Q. Mr. Seaver, no costs associated with the
11 four solar facilities, or the three if you prefer,
12 since you sort of amended your testimony here today.
13 No costs associated with those solar plants are in
14 rates today, correct?

15 **A. That's correct.**

16 Q. They haven't even been proposed -- the
17 cost of those plants hasn't even been proposed for
18 inclusion in rates yet, has it?

19 **A. No. I mean, it's assumed that it will
20 be, but yeah, no, it hasn't been proposed.**

21 Q. The 500 million dollars the Company seeks
22 to securitize in this case, none of that 500 million
23 dollars consists of any expenditures on the solar
24 plants or any other future addition; batteries, gas,
25 anything else. Right?

1 **A. That's correct.**

2 MR. LOWERY: That's all the questions I
3 have, Judge.

4 JUDGE CLARK: Thank you.

5 Any redirect from Public Counsel?

6 MR. WILLIAMS: Thank you, no.

7 JUDGE CLARK: You may step down,
8 Mr. Seaver.

9 **THE WITNESS: Thank you.**

10 JUDGE CLARK: It is now 3:08. Why don't
11 we come back at 3:20. And we'll go off the record in
12 recess.

13 (A recess was taken.)

14 JUDGE CLARK: All right. We are starting
15 Issue 4, which is Amount to Finance, and that is an
16 **A and a B. A is: What amount of abandoned Rush**
17 **Island's capital project costs should be financed**
18 **using securitized utility tariff bonds?**

19 **And B is: Should Staff's proposed**
20 **exclusions of the costs of the abandoned Rush Island**
21 **scrubber study be adopted?**

22 **Is there any reason that we can't keep**
23 **the witnesses on the stand for both A and B at once?**

24 MR. LOWERY: There isn't. And -- and
25 just a point of clarification. Mr. Birk won't know

1 anything about A, and I think the parties know that.
2 I just wanted you to know that, Judge. But
3 Mr. Lansford will know about A from that standpoint.
4 And I think the other witnesses -- Mr. Majors is
5 probably A and Mr. -- Mr. Payne is probably B for OPC,
6 just to orient you.

7 JUDGE CLARK: Thank you. I may just ask
8 them when they get up to clarify just so that
9 everybody understands.

10 MR. LOWERY: Judge, would it -- would it
11 be -- I don't think there are any other Commissioners
12 on, and I don't see any here, although maybe the Chair
13 is coming back. Would it be helpful at all for a
14 brief mini opening to orient you to the -- to some of
15 these -- to this issue, particularly the studies
16 issue?

17 Or if you don't find it helpful, I don't
18 have to say anything, but I could sort of set the
19 stage in a mini opening, if it would be helpful to
20 you.

21 JUDGE CLARK: I believe that I'd said
22 that any party that wants to do a mini opening on
23 issues may. So you certainly may do a mini opening on
24 this. And it might be very helpful to me.

25 MR. LOWERY: Would you like me to just go

1 ahead and briefly do that and -- before we take
2 Mr. Birk or --

3 JUDGE CLARK: Yes. I assumed you were.

4 MR. LOWERY: Okay. Thank you. In the
5 2009 to 2011 time frame, the Company engaged two
6 engineering firms, Black and Veatch and Shaw, to
7 conduct capital projects involving preliminary Rush
8 Island site-specific studies relating to the
9 possibility of installing scrubbers at Rush Island.

10 The reason that the studies were done is
11 because the then proposed Clean -- Clean Air Transport
12 Rule, I believe, and Mercury and Air Toxics Rule, two
13 EPA rules, as we understood the proposal at that time,
14 were going to require all of our units to be scrubbed
15 over the next several years.

16 As it turned out, the final rules came
17 out less stringent than they had been proposed. And
18 because of that and because of a large emissions
19 allowance bank that Ameren Missouri had and because we
20 were able to keep looking for alternatives and we
21 found one, that is to burn ultra-low sulfur coal, we
22 didn't have the engineering firms, you know,
23 completely finalize their reports and so on.

24 And we -- we did stop the projects and
25 didn't -- didn't proceed with scrubbers. And Mr. Birk

1 can discuss that in more detail.

2 Because of the possibility that EPA could
3 have issued additional rules at any time after that
4 2009/2010 time frame and that could have meant that
5 using the ultra-low sulfur coal or using allowance
6 wasn't feasible anymore and wasn't economic anymore,
7 we didn't abandon the projects.

8 These are CWIP projects you remember,
9 Judge, brought from Liberty. They had some CWIP
10 projects as well for some environmental CWIP projects,
11 as a matter of fact, and they abandoned those. And
12 the Commission did securitize those projects in that
13 case.

14 But we didn't -- we -- we didn't -- we --
15 we didn't abandon the projects, you know, from a --
16 from an accounting perspective, which is actually
17 going to happen when the plant closes, because it was
18 possible that -- that we might need to add scrubbers.

19 It was undis- -- it's undisputed, I
20 think -- I don't think anybody's alleging that the
21 projects were not taken in good -- undertaken
22 prudently or in good faith. It's undisputed that
23 they're site-specific to Rush Island.

24 Staff speculates that they may no longer
25 be used -- useful, but on that basis alone, they say

1 they shouldn't be securitized, but the evidence will
2 show -- and I think Mr. Birk can certainly address
3 this for you that, in fact, they do have usefulness.

4 And regardless, I don't even think that's
5 the test, in any event. But -- but Mr. Birk can
6 discuss why we believe they are useful. So thank you
7 very much.

8 JUDGE CLARK: All right. Thank you.

9 Mr. Birk, you were here yesterday, but
10 I'm going to ahead and swear you again.

11 (Witness sworn.)

12 JUDGE CLARK: Thank you.

13 MR. LOWERY: Mr. -- Judge, this is the
14 last time Mr. Birk appears. Should I just go ahead at
15 this point and move his testimony into the record?
16 Because I don't think that's been done.

17 JUDGE CLARK: Go ahead, Mr. Lowery.

18 MR. LOWERY: I'd offer Exhibits 6 and 7,
19 the direct and surrebuttal testimonies respectively of
20 Mark Birk, into the record.

21 JUDGE CLARK: Are there any objections to
22 admitting Exhibit 6, the direct testimony of Mark
23 Birk; and Exhibit 7, the surrebuttal testimony of Mark
24 Birk onto the hearing record?

25 I hear and see no objections.

1 Exhibit 6 and 7 are so admitted onto the hearing
2 record.

3 (Exhibits 6 and 7 were received into
4 evidence.)

5 MR. LOWERY: Company tenders Mr. Birk for
6 cross.

7 JUDGE CLARK: Any cross-examination from
8 Commission Staff?

9 MS. MERS: No, thank you.

10 JUDGE CLARK: Any cross-examination from
11 the Office of Public Counsel?

12 MR. WILLIAMS: No questions at this time.
13 Thank you.

14 JUDGE CLARK: Any Commission questions?

15 MARK BIRK, being first duly sworn, testified as
16 follows:

17 QUESTIONS BY JUDGE CLARK:

18 Q. Well, I'm going to take the bait. Since
19 Mr. Lowery said that you would be explaining -- be
20 able to explain to me why this abandoned study is used
21 and useful, I would like to know.

22 A. So as Mr. Lowery indicated, in 2008,
23 we -- we hired basically Black and Veatch and Shaw to
24 do essentially parallel studies for us. And the
25 reason we did that was because we recognized that

1 the -- that the CAIR -- essentially the CAIR rules and
2 some other potential rules that were coming down the
3 pike may require us to put scrubbers on all of our --
4 all of our plants. And we knew that based upon how
5 the rules were being laid out, that the time frames
6 would be tight.

7 So one of the things that -- that we
8 benefited by was actually having both of these firms
9 come in, look at the specific site at Rush Island,
10 actually lay out detailed plans of where the scrubbers
11 would be located all the way down to the specific
12 equipment we would use.

13 Now, recognize while this was going on,
14 we were also in the middle of constructing the Sioux
15 scrubber, so we were learning things from that. We
16 were incorporating it in.

17 And -- and ultimately what -- what was
18 developed allowed us to have essentially a full spec
19 that we could go out on the street with to an EPC, an
20 Engineer Procure Construct, contractor and -- and
21 build a scrubber.

22 Now, you know, I know in -- in some of
23 the testimony it indicated that, well, that really
24 didn't give you any head start. But the reality is,
25 this study started in 2008 and we got the detailed

1 information. Shaw's information came in -- really the
2 final in 2011. So it took us a couple years to -- to
3 work through all the details associated with
4 installing the -- the scrubber at Rush Island.

5 And -- and we had the studies to a point
6 where in -- in the very near-term we could go out on
7 the street and say, Okay, here is the plan. The --
8 the Black and Veatch study was -- was almost 1,400
9 pages. The Shaw study was about 4,000 documents, all
10 the way down to physical layouts and drawings,
11 specific equipment specs. It was -- it was very
12 detailed.

13 I -- I've gone through -- I haven't gone
14 through all 4,000 documents, but I've gone through the
15 study and I've gone through both of them. And from an
16 engineering perspective, they -- they were ready to
17 go.

18 And so we believe that what it would do
19 would allow us to shorten the time frame as much as
20 possible from the time let's say a rule was finalized
21 to the time we had to have the scrubbers on -- on the
22 plant.

23 So that's the reason -- that's the reason
24 that we believe that -- that they were beneficial.
25 And it's the reason that -- that we believe it would

1 have helped us comply with the potential rules that
2 were coming down the pike.

3 This is -- this is not unlike other
4 studies that we do and other ways that we look at
5 things for other types of equipment that we -- that we
6 put on our generating plants.

7 Q. Okay. I know you mentioned that -- I
8 know you mentioned the Sioux plant. Was this -- was
9 this study commissioned for all of the coal-fired
10 plants or was this study commissioned specifically for
11 the Rush Island?

12 A. It -- it was -- it was commissioned
13 specifically for Rush Island. One of the things
14 that -- that we recognized with Rush Island, Rush
15 Island and Labadie are pretty similar plants.

16 So we recognized as -- as we worked
17 through the spec and the detail design for Rush
18 Island, we would also potentially get some benefit if
19 Labadie -- if Labadie needed to put scrubbers in.

20 They're both -- they're both basically
21 have 600 megawatt tangential-fired units. The site
22 layout's a little different, but essentially ideally
23 if we would have had to have put scrubbers on all six
24 units, two at Rush and four at Labadie, we would have
25 attempted to use the same -- the same equipment

1 because we want to share it between plants. That is
2 the least cost way to do it. So you'd want to share
3 spares, you'd want to make sure that you could design
4 it similar.

5 Q. If you had to put on scrubbers at a
6 different plant, would you have to commission a new
7 study?

8 A. If we -- if we look -- if we looked at
9 Labadie and said we need to put scrubbers on at
10 Labadie, we would pick up some of the information
11 that's in this Rush study and we would -- we would use
12 it as a starter.

13 It's not going to be exactly the same
14 because the physical layout could be a little
15 different. But a lot of the equipment and a lot of
16 the specifications on let's say sulfur removal and
17 things like that would be -- would be the same.

18 I'm sure the technology that we picked
19 would have been the same because we had -- we had
20 chosen a wet scrubber technology already for Rush
21 Island in these studies and we had laid out how we
22 were going to provide all the electrical and
23 everything. So a lot of that, you know, could --
24 could potentially be used at Labadie.

25 Q. And not to split hairs. I understand the

1 concept of could be useful to Ameren in the future,
2 but I don't see how that makes it used and useful now.

3 **A. Well, I believe that in -- in doing this**
4 **analysis, it was used and useful for Rush Island. We**
5 **-- you know, we used -- we used the estimated cost of**
6 **the scrubbers that we got out of this study to**
7 **determine, you know, whether we made the retirement**
8 **decision or not.**

9 **We -- we had confidence because of the**
10 **analysis that was done that we knew roughly how long**
11 **it would take to construct the scrubber and how much**
12 **it would cost.**

13 **Q. Then why -- why is it an abandoned**
14 **project?**

15 **A. It -- it turns out being an abandoned**
16 **project because we never actually built the scrubbers.**

17 **Q. Was the Black and Veatch study the basis**
18 **for the economic analysis that was performed**
19 **determining that it was more beneficial for Ameren's**
20 **ratepayers to retire the plant then to install the**
21 **scrubbers?**

22 **A. Yes. I believe it was the basis.**

23 **Q. It -- it was the only economic basis?**

24 **A. I don't know that I can say that, Judge,**
25 **but it was -- from an engineering perspective, the --**

1 the information that was provided to Matt Michels
2 had -- had come out of that earlier analysis of -- of
3 what we believed it would cost to -- to put scrubbers
4 on at Rush Island.

5 Q. But just to clarify, the -- the study is
6 not associated with any plant that was ever in service
7 with the completed scrubbers?

8 A. That is correct.

9 Q. Thank you.

10 A. You're welcome.

11 JUDGE CLARK: Any Commission questions?
12 I hear none -- oh, I'm sorry. I jumped the gun.

13 CHAIR HAHN: Took me a minute to think,
14 Judge. Apologies.

15 QUESTIONS BY CHAIR HAHN:

16 Q. Good afternoon, Mr. Birk.

17 A. Good afternoon.

18 Q. Just following on Judge Clark's question,
19 you said that the Black and Veatch studies were part
20 at least of the rationale of the economic basis for
21 not installing the scrubbers, but instead retiring the
22 plant --

23 A. Yes, Commissioner.

24 Q. -- right?

25 A. Yes, that's correct.

1 Q. You also said that the studies may have
2 not been able to be used exactly to install the
3 scrubbers, but they would have been useful if you had
4 chosen to install the scrubbers because it would have
5 saved time; is that correct?

6 A. That is -- well, that is correct.

7 Q. Okay.

8 A. That is correct.

9 Q. Would that time savings also have
10 translated into dollar savings should you have chosen
11 to install the scrubbers? For example, if you had
12 commissioned another study to actually -- or another
13 engineer -- actual project engineers, would it have
14 saved them, you know, time and money in that
15 estimation?

16 A. Absolutely. Because you would have had
17 to go through and basically do all of that. Like I
18 said, the studies themselves started in '08 and it
19 took almost two years to do that. And you -- you have
20 to do them before you can install the projects because
21 you can't even bid the work out until you do that.

22 Q. I'm going to go a little out of order
23 today, because I was listening online last night when
24 you testified --

25 A. Uh-huh.

1 Q. -- but I don't like asking questions
2 virtually. I find it difficult.

3 **A. That's okay.**

4 Q. So I am going to ask -- going to go back
5 to the last issue a little bit.

6 You know, you mentioned in your testimony
7 last night that the issue that you thought was before
8 the Commission was whether or not the decision -- the
9 decision not to pursue an NSR permit was reasonable
10 and prudent. And that's the decision you thought
11 Commission had to make; is that right?

12 **A. That is correct.**

13 Q. According to that interpretation, do you
14 also think the Commission has -- do you think that,
15 from your view, has to lead into a decision that
16 the -- that retirement -- the decision is reasonable
17 and prudent to retire or abandon? Do you think we
18 have to make your -- the decision that you suggested
19 last night to lead into the second one? Or do you
20 think they can be --

21 **A. They're --**

22 Q. -- mutually exclusive?

23 **A. -- they're two separate -- they're**
24 **mutually accept- -- exclusive. They're two separate**
25 **decisions.**

1 Q. Okay. Just wanted to clarify that
2 because I -- I --

3 A. Uh-huh.

4 Q. -- previously discussed with your counsel
5 I think on day one -- day two or something --

6 A. Uh-huh.

7 Q. -- just distinguishing those.

8 A. **Yeah, they're two separate.**

9 Q. Okay. Also going to now change subjects
10 to something else. Earlier today I discussed with
11 Matt Michels concerns over resource adequacy
12 generally.

13 A. Uh-huh.

14 Q. How is Ameren generally planning for
15 resource adequacy concerns if you have -- if you're
16 going to hit a capacity shortfall in 2025 of
17 300 megawatts?

18 A. So -- so what we're doing -- you know,
19 basically, Commissioner, we're look -- we use our
20 integrated resource planning process to do that. We
21 do recognize that the MISO has gone to a seasonal
22 construct. And -- and we also recognize that like --
23 like a lot of the -- of the rest of the United States,
24 there's a lot of renewables being added.

25 And one of the things and -- that we've

1 done with the last IRP and we will do with the
2 subsequent IRPs is we're looking at -- at the resource
3 needs much more granularly. And by that I mean
4 it's -- it's hour-by-hour, day-by-day.

5 Because we recognized a few years ago
6 that -- especially when we got into some of the winter
7 issues with Uri and things like that, that -- that you
8 can't just look at the summer anymore. You have to
9 look at 24/7/365.

10 And so when we look at it that way, we
11 recognized that -- that as we integrated more
12 renewables on the system, we needed more dispatchable
13 generation. And so going forward, that is one of the
14 things we're going to focus on.

15 I think -- I think when you look at our
16 coal fleet in general -- and this is one of the things
17 that -- you know, that utilities have to deal with is
18 you can't -- you can't look at it without assuming
19 there's going to be additional regulation in the
20 future on those plants.

21 And I think you also have to look at --
22 I've -- I've worked -- I started in nuclear, but I --
23 I spent most of time in the coal plant so I understand
24 it.

25 As they get older, they're going to have

1 to retire. It's -- you can't keep -- Meramec was
2 almost 70 years old when we retired it. What you
3 start to worry about, you can -- you can replace some
4 components in there, in the -- but you can't replace
5 everything. And so it starts to become a reliability
6 and a safety risk.

7 So as we look at our system, we -- we are
8 really trying to figure out how to continue to meet
9 the capacity and energy needs of our customers, along
10 with having the right mix of dispatchable and
11 renewable.

12 It's -- it's not easy. Because not only
13 are we -- are we seeing more pressure on some of our
14 existing resources, but -- but we're also seeing
15 lately more and more load. I mean, we're -- we're
16 starting to see interest from data centers and other
17 areas. And I would expect in the future that we're
18 going to have to do more frequent IRPs.

19 Some of it could be because -- because we
20 have a unit retiring like Rush Island was doing, but
21 some of it could be that we're picking up additional
22 demand and load in chunks. In the past, you know, we
23 could look at our load growth and it would be
24 somewhere between 1 to 1.5 percent. It followed the
25 GDP. You could almost bank on it.

1 And then when energy efficiency came in
2 and LEDs and everything, it went away from that and it
3 kind of flattened. And what we're seeing now is the
4 loss of some of the base load generation, but the
5 additional -- of load, but now it's chunks. I mean,
6 when data centers come in, it's not five or ten
7 megawatts. It's -- it could be 200, 250, it could be
8 500 or more. And those are -- when our peak load in
9 the summer is 7,800 megawatts, those are big chunks.

10 So I think to answer your question, the
11 way we're going to have to do it is we're going to
12 have to, more frequently, update our Integrated
13 Resource Plan and we're going to have to be able to
14 ensure we have enough dispatchable resources and
15 enough total resources on the system.

16 You know, I think what we found is it's
17 not out there easily to get in the marketplace. I
18 think we've seen that from MISO. And so the other
19 thing we did in -- in addition to looking at the IRP
20 more granularly is we recognized in order to ensure
21 that -- that we could keep the lights on, we're going
22 to have -- we're going to have to build this stuff
23 ourselves.

24 Q. That's interesting. When I asked
25 Mr. Michels, you know, how do you plan to make up the

1 shortfall? The answer -- and I'm summarizing -- was,
2 Buy it.

3 **A. Yeah.**

4 Q. But that's a problem because there's
5 nowhere to buy.

6 **A. It's not always there.**

7 Q. Not always there.

8 **A. It's not always there.**

9 Q. Which is also a concern.

10 **A. Uh-huh.**

11 Q. So just want to make sure that we're, you
12 know, taking these things into account as -- as we
13 make these decisions, so.

14 **A. Yeah. The -- because, you know, from an**
15 **engineering perspective and an operating perspective,**
16 **the last thing we ever want to happen is the lights to**
17 **go out, period.**

18 **We know from talking to our customers**
19 **that the two most important things to them are**
20 **reliability and affordability. So we're constantly**
21 **trying to balance that. But generally if you don't**
22 **have the reliability there, the affordability is**
23 **probably less important.**

24 **So we have to make sure, first and**
25 **foremost, we can ensure that we have reliable**

1 electricity. And that's what -- that's what we're --
2 that's what we're planning to do.

3 Q. Well, thank you, Mr. Birk.

4 CHAIR HAHN: Appreciate the Judge's
5 indulgence in letting me cross issues. Thank you.

6 JUDGE CLARK: Thank you, Chair.

7 Any redirect based upon Commission
8 questions from AARP or Consumer Council of Missouri?

9 MR. COFFMAN: No thanks, Your Honor.

10 JUDGE CLARK: Any -- any redirect from
11 the Commission -- or I'm sorry, recross from the
12 Commission Staff based upon Commission questions?

13 RECROSS-EXAMINATION BY MS. MERS:

14 Q. Just very briefly and just for my own
15 clarification. When you were discussing with the
16 Bench the applicability of the studies to the --

17 A. Uh-huh.

18 Q. -- different plants, I thought at one
19 point I heard you say Sioux and then I thought I heard
20 you at one point say Labadie.

21 A. Let -- let me clarify that for you.

22 Q. Okay, thank you.

23 A. Yeah, I'm sorry.

24 Q. No, that's okay.

25 A. That was -- that was probably my fault.

1 So at the time that we were doing the -- the study for
2 Rush Island, we were in the middle of constructing the
3 Sioux scrubber.

4 So as we -- as we were building that,
5 we -- we were learning things through that
6 construction, maybe -- maybe mater- -- things around
7 materials, things around layout and that, that we
8 incorporated into the Rush Island plant.

9 So the study had nothing to do with
10 Sioux. Sioux was -- Sioux was already underway from a
11 construction perspective. And -- and the reason that
12 I -- that I said it would -- you know, some of the
13 parts would be applicable -- could be applicable to
14 Labadie is because Rush and Labadie are -- the units
15 themselves are fairly identical.

16 They're both -- they're both -- they're
17 all 600 megawatt units. They -- some of the parts are
18 even interchangeable, so that's why.

19 Q. Okay. Thank you for that. And then one
20 other clarification. Do you recall discussing how you
21 and Matt Michels used the cost of that -- the -- the
22 cost of the scrubbers that came from the study --

23 A. Uh-huh.

24 Q. -- to do your NVPRR calculations?

25 A. The -- the -- the calculations that Matt

1 **Michels did on retirement; is that correct?**

2 Q. Yes. And if -- if you don't know this,
3 this is okay. But do you recall, did those
4 calculations include the cost of that study?

5 **A. I do not -- I do not know that.**

6 Q. Okay.

7 **A. I'm sorry.**

8 Q. Thank you very much though.

9 **A. Okay.**

10 JUDGE CLARK: Any recross -- any recross
11 from the Office of Public Counsel?

12 MR. WILLIAMS: Yes. Thank you.

13 RECROSS-EXAMINATION BY MR. WILLIAMS:

14 Q. Good afternoon, Mr. Birk. How are you
15 doing?

16 **A. Good afternoon.**

17 Q. You said, as I understand it, that the
18 work that was being done on scrubbers at Sioux
19 informed the study for putting scrubbers on Rush
20 Island; is that correct?

21 **A. Yes.**

22 Q. Are Sioux and Rush Island, I guess I'll
23 use the word sister plants, like you indicated Rush
24 Island and Labadie are?

25 **A. They are not sister plants. But -- but**

1 the type of scrubbers that we were -- we were
2 installing at the Sioux and the type of scrubber we
3 were going to install at Rush Island was a wet
4 scrubber.

5 So we -- we were taking learnings from
6 that. Learnings how we -- how we fed the power
7 through, things like that we were using. So they --
8 they weren't app- -- complete apples to apples, but
9 they were close in a lot of regards.

10 Q. So when you say sister plant, are you
11 saying they're essentially identical or --

12 A. Are you talking about Labadie and Rush
13 Island now?

14 Q. Well, you used the term "sister plant" so
15 yes, it would be -- your description was --

16 A. Yes.

17 Q. -- Labadie and Rush Island.

18 A. Yes. So -- so -- so Labadie -- Labadie
19 was built -- so there's four units at Labadie. They
20 were built in 1970 through 1973. They were combustion
21 engineering, T-fired, which means they're tangential
22 from the walls. And -- and Rush Island was built
23 in -- in '75 and '76. And they're also combustion
24 engineering T-fired units.

25 So yeah, when you look at them from an

1 industry perspective, they all -- they each have six
2 coal mills per unit, they each use similar boiler feed
3 pump. There's a whole lot of similar things that the
4 units have.

5 So calling -- I think calling them sister
6 units -- not completely identical, because one of the
7 things I think that we found was as Labadie was
8 constructed, there was some shortcomings. The
9 furnaces may not be -- been big enough so they made
10 them a little bigger at Rush Island.

11 There were some other things that they
12 found that they improved as they built Rush Island.
13 But essentially -- essentially very similar.

14 Q. When was Sioux originally built?

15 A. It was built in 1966.

16 Q. And why was -- why did you first put
17 scrubbers on at Sioux?

18 A. The -- the scrubbers were installed at
19 Sioux first because Sioux is a cyclone-fired unit,
20 different -- different than Labadie and Rush Island.
21 And in order to get the full capability out of Sioux,
22 we could not use a complete blend of low-sulfur coal.
23 So we had to -- even to today, we have to mix some
24 high sulfur with low sulfur.

25 So essentially, Sioux was our -- was our

1 dirtiest plant from an SO2 perspective. And we
2 recognized that at some point we would probably
3 have -- potentially have scrubbers throughout the
4 system. So since Sioux was our -- our dirtiest plant,
5 we felt we'd put it on their first. We had to comply
6 from a system perspective and cleaned up the one that
7 emitted the most sulfur first.

8 Q. And then you said you had a cost estimate
9 for scrubbers at Rush Island from the 2008 study and
10 information about how long it would take to build the
11 scrubbers at Rush Island from that study?

12 A. Yes, sir.

13 Q. What was the cost estimate?

14 A. If I recall -- and it's -- it probably
15 doesn't have all the loaded cost and everything in it,
16 but it was -- it was around 720 million dollars.

17 Q. So be kind of a preliminary estimate?

18 A. It was a preliminary estimate. And
19 again, that was -- that was based upon -- I think if I
20 remember correctly, starting scrubbers -- completing
21 one of the units in 2015 and the other one in 2016.
22 Again, to comply with the potential CAIR and CSAPR
23 requirements that we saw coming down the pike.

24 Q. And when did you get that estimate?

25 A. It would have been -- it would have been

1 done when the studies -- when the studies were --

2 Q. 2008 or --

3 A. The studies were started in '08 and
4 completed in '10 and '11, so been in that time frame.

5 Q. And then you got some questions about
6 resource adequacy. And I keep hearing the utilities
7 talking about the capacity requirements that the RTOs
8 and ISOs impose on them. Are those capacity
9 requirements necessarily sufficient for the utility's
10 load itself?

11 A. We -- so -- so MISO, when they went to
12 the seasonal construct, they actually -- when you say
13 capacity requirements, it's -- you -- you have to --
14 you have to provide enough generation to supply your
15 demand plus a reserve margin.

16 And so what the -- in the MISO
17 construct -- and I'm not an expert on this, but in the
18 MISO construct, by season that reserve margin can
19 vary. So what -- what the RTOs have started doing,
20 which -- which I think is actually a good -- a good
21 process is when you get into the winter, when you --
22 you may not have the same level of, let's say, solar
23 assets available. They -- they very well -- they may
24 make you carry a higher reserve margin than you would
25 in the summer.

1 So prior to this seasonal construct, for
2 instance, we had to carry -- be able to meet our
3 demand plus -- plus about -- I think it was 12 or
4 13 percent in addition to that in the summer. And
5 that accounted for the variability in units and things
6 that may happen.

7 I think it's actually going to --
8 seasonally now it's changing so we have to -- we have
9 to accommodate essentially every season.

10 Q. Well, isn't a utility better off if it's
11 long than if it's short on capacity?

12 A. I would -- I would say from -- from an
13 operating perspective, it -- you -- yeah, you would be
14 better off having -- having more generation than --
15 than less.

16 Q. Callaway was down during Storm Uri, was
17 it not?

18 A. I'd have to go back and look. But I
19 believe -- it was -- it was down during one of the
20 cold spells with -- with the generate -- the generator
21 issue that we had.

22 Q. And Ameren Missouri was still long enough
23 that it didn't have to deep deeply -- or reach deeply
24 into the energy market, correct?

25 A. I believe that was correct, but I think

1 we were -- I think we were close. We were close.

2 Q. You weren't like Liberty and Evergy West?

3 A. I -- I can't speak to them. I will say
4 that, you know, one of the things that we have seen
5 over the last several years is that our winter peak is
6 getting much closer to our summer peak than it had
7 been in the past.

8 And so in the past you may have seen, for
9 instance, let's say a summer peak of 7,800 megawatts
10 and in the winter it may have been in the -- in the
11 mid sixes, somewhere in there. I think over some of
12 those times you were talking about, we actually were
13 into the low seven's in the winter.

14 So some utilities are actually seeing it
15 get much, much closer. And we are seeing it get
16 closer over time.

17 Q. Now, you talked about now getting chunky
18 load. Wasn't Noranda a pretty good chunk of load?

19 A. It's definitely a chunk of load, that's
20 correct. It's 500 megawatts, if I recall.

21 Q. And when was it Ameren started serving
22 Noranda?

23 A. I don't -- I don't recall the exact year
24 it did.

25 Q. Approximately?

1 A. It would have probably been in the --
2 probably in the early 2000's, somewhere in around
3 there.

4 Q. So you have had some experience with
5 chunky load?

6 A. Well, when you say "chunky load," Noranda
7 itself was -- and by -- by "chunky load," I meant it
8 was being -- it's being added in large chunks and
9 that's what Noranda was. But Noranda itself was --
10 it's -- just like data centers, it -- it had a
11 capacity factor that was pretty -- pretty high. It
12 was probably 95 percent.

13 Q. And when you say "capacity factor," you
14 mean it was using the same amount of electricity --

15 A. Yeah. Pretty much --

16 Q. -- 24/7?

17 A. -- 24/7, that's right. That's right. So
18 yeah, it was.

19 Q. Thank you. No further questions.

20 A. You're welcome.

21 JUDGE CLARK: Any redirect from Ameren?

22 MR. LOWERY: A little bit, Your Honor.

23 REDIRECT EXAMINATION BY MR. LOWERY:

24 Q Mr. Birk, Mr. Williams asked you -- I
25 think he asked you why was Sioux scrubbed. And I

1 think you explained it was the dirtiest plant and you
2 had system-wide SO2 targets you need to meet, right?

3 **A. That's correct.**

4 Q. Can you -- can you explain why the
5 Company was able to avoid scrubbing the other units?

6 **A. Yes. The -- the reason that we were able**
7 **to -- to avoid scrubbing the other units is as the --**
8 **as the CAIR and CSAPR -- as the rules were finalized**
9 **and the market went to one that -- that also had a --**
10 **an SO2 credit bank, one of the things that we**
11 **recognized is that we could burn, especially in -- at**
12 **Rush and Labadie, ultra low-sulfur coal and use that**
13 **with our allowance bank.**

14 **And we had a pretty -- pretty good**
15 **allowance bank because we had switched to low-sulfur**
16 **coals in -- in the mid-'90s on these units. And --**
17 **and ultimately we could do that and comply with the**
18 **requirements with the regulations without having to**
19 **scrub the units. And -- and we believe that in doing**
20 **that, it was -- it was -- it was definitely to the**
21 **benefit of our customers.**

22 Q. There was some -- there -- there were --
23 an issue was raised earlier in the hearing, and I
24 think there was were questions from the Bench. And --
25 and it relates to this question about why -- you know,

1 why -- why you didn't have to scrub the other plants.
2 It seems like Evergy, for example, had to scrub all
3 their plants.

4 Was there something different about the
5 coal or the allowance banks or something that --
6 between Ameren and Evergy that might have explained
7 that difference?

8 A. Yeah. I believe -- I believe that we had
9 a larger allowance bank. And I think that was
10 because, you know, when -- when Ameren -- or it was a
11 time when Union Electric switched over to lower sulfur
12 coals. We -- we were one of the early ones in the
13 industry to do that.

14 And because of that, I think it -- it
15 allowed us to -- to have a larger bank and -- and
16 we -- we utilized it.

17 Q. So if Ameren Missouri had had
18 significantly less allowances, it might not have been
19 able to avoid the scrubbers, right?

20 A. That's exactly right. We may have made a
21 different decision, but -- but we recognized that --
22 that -- that the cost of -- of installing the
23 scrubbers and then the cost of operating the
24 scrubbers. Because they're -- there's also an O and M
25 component that goes with it that for us we -- we could

1 purchase the ultra low-sulfur coal and it was -- it
2 was beneficial.

3 I believe, if I recall, we even came down
4 and we -- we -- we actually talked to the Staff about
5 kind of our -- our compliance plan around the ultra
6 low-sulfur coal.

7 Q. Mr. Williams asked -- he also asked you
8 about the Black and Veatch and Shaw studies and -- and
9 the cost estimates. And -- and I think this -- this
10 is probably clear if you think about it, but you said
11 they -- they were assuming installation in 2015 and
12 2016, right?

13 A. That's correct.

14 Q. Does that mean that the -- the
15 720 million figure you mentioned was probably in 2014
16 or '15 or '16 dollars?

17 A. Oh, absolutely. Yeah. And it would have
18 had to have been -- and I realize that when -- when we
19 talked to the Court and when we went through the NSR,
20 that the cost was higher than that. But that -- it
21 would have been escalated.

22 Q. Judge Clark asked you some questions
23 about used and usefulness. Do you remember that?

24 A. Yes, I do.

25 Q. Am I correct that any time you have a

1 CWIP project that did not result in a project and it
2 gets abandoned, that CWIP project never became used
3 and useful, right?

4 **A. That is correct.**

5 Q. There's some CWIP projects in this case
6 that nobody's opposing securitization of; isn't that
7 right?

8 **A. That's correct.**

9 Q. And -- and again, they're -- they --
10 they -- they couldn't be used and useful either
11 because they never came to fruition, right?

12 **A. That's correct.**

13 MR. LOWERY: That's all the questions I
14 have, Judge. Thank you.

15 JUDGE CLARK: Thank you. You may call
16 your next witness.

17 MR. LOWERY: Call Mitch Lansford back to
18 the stand.

19 JUDGE CLARK: And Mr. Lansford is here
20 for 4A; is that correct?

21 MR. LOWERY: Yes. I don't think he knows
22 a whole lot about the scrubber studies.

23 (Witness sworn.)

24 JUDGE CLARK: Please be seated.

25 MR. LOWERY: And this is not the last he

1 appears so I'm not going to offer his testimony at
2 this time. And I tender him for cross.

3 JUDGE CLARK: Any cross-examination
4 from -- AARP is no longer in the room. Any
5 cross-examination from the Commission Staff?

6 MS. MERS: No, thank you.

7 JUDGE CLARK: Any cross-examination from
8 the Office of Public Counsel?

9 MR. WILLIAMS: Thank you, no.

10 JUDGE CLARK: Any questions from the
11 Bench --

12 CHAIR HAHN: Yes.

13 JUDGE CLARK: -- or from the Commission?
14 I'm sorry.

15 CHAIR HAHN: Yes.

16 JUDGE CLARK: Go ahead.

17 MITCHELL LANSFORD, being first duly sworn, testified
18 as follows:

19 QUESTIONS BY CHAIR HAHN:

20 Q. Good afternoon, Mr. Lansford.

21 **A. Good afternoon.**

22 Q. I've been trying to locate -- and I'm
23 sure it's in all this testimony; I've had Staff
24 looking as well -- the value of the scrubber studies.
25 And I assume that it is in the difference between

1 the -- is that -- unless it's confidential. I don't
2 assume that it is, but --

3 JUDGE CLARK: I don't think it's that.
4 It's that we're taking A and B together.

5 CHAIR HAHN: He's on B. He's on both.

6 JUDGE CLARK: Is he?

7 CHAIR HAHN: Yeah.

8 JUDGE CLARK: Can you answer that
9 question?

10 **THE WITNESS: I can answer that question,**
11 **yes.**

12 JUDGE CLARK: I apologize.

13 BY CHAIR HAHN:

14 Q. That's okay. I'm just trying to locate
15 the difference between the value of the scrubber
16 studies and the difference in Staff and Ameren's
17 position on this issue.

18 A. Yes, I can help -- help clarify that.
19 I'm just going to turn to one of my schedules here.
20 If I look at Schedule MJL-S5 from my surrebuttal
21 testimony, line four references abandoned capital
22 projects and totals 12.9 million dollars.

23 And if you compared that to Mr. Majors
24 similar schedule, I don't -- I don't know the exact
25 reference. On that same line four, he would have

1 3.9 million dollars under the abandoned capital
2 projects line. The difference between those two
3 amounts is 9,032,646 dollars. And that's the value of
4 the scrubber study we're talking about.

5 Q. Thank you.

6 JUDGE CLARK: Are there any other Ben- --
7 or any other Commission questions?

8 COMMISSIONER HOLSMAN: Yes.

9 JUDGE CLARK: Commissioner Holsman,
10 please go ahead.

11 COMMISSIONER HOLSMAN: Thank you.

12 QUESTIONS BY COMMISSIONER HOLSMAN:

13 Q. That scrubber study, when did that occur?

14 A. I'm sorry, Commissioner Holsman, I -- I
15 don't have a lot of knowledge around the -- the study
16 itself. Mr. Birk had some of that knowledge.

17 Q. Are we talking about a single -- a single
18 study?

19 A. We are. A single study as it relates to
20 Rush Island.

21 Q. And I -- my understanding is that, you
22 know, this study is one of the ways that we can
23 discern rather investing in the scrubbers was going to
24 be in the best interest of the ratepayers versus
25 retiring the coal plant. Is that accurate, that the

1 study is -- helps us get there?

2 JUDGE CLARK: Commissioner Holsman, would
3 you like me to recall Witness Birk? I believe he's
4 the witness for that.

5 COMMISSIONER HOLSMAN: Just -- I'm asking
6 from a -- from a high-level perspective. I don't know
7 that -- maybe. Not yet.

8 JUDGE CLARK: Okay.

9 COMMISSIONER HOLSMAN: Let's see -- let's
10 see what --

11 JUDGE CLARK: Let me know.

12 BY COMMISSIONER HOLSMAN:

13 Q. Would you -- would you agree that the
14 study is one of the ways that we can discern the
15 difference in value for the ratepayer between
16 installing the scrubbers or retiring the coal plant?

17 A. I think -- you know, and especially as I
18 listened to some of the testimony from earlier today,
19 that -- that that's -- that study helps us understand
20 what's necessary to scrub the Rush Island plant, both
21 units there, and does help inform the analysis that --
22 that Mr. Michels performed, you know, that got to
23 the -- or helped us decide whether or not to scrub the
24 plant or -- or --

25 Q. Okay. And the study cost nine million

1 dollars?

2 **A. It does. It did.**

3 Q. Absent the study, would we have the data
4 necessary to make an informed decision about which
5 direction is in the best interest of the ratepayers?

6 **A. I'm sorry. I don't really know whether**
7 **we would have the information that Matt Michels would**
8 **need to perform the analysis or not. I mean, I guess**
9 **I do know that the headroom that -- that existed in a**
10 **lot of the -- in a lot of the scenarios that he**
11 **evaluated had tremendous headroom, but...**

12 Q. Thank you.

13 COMMISSIONER HOLSMAN: Judge, if you
14 could recall -- recall Birk for just -- to answer this
15 one question, I would appreciate it.

16 JUDGE CLARK: Absolutely. Mr. Lansford,
17 will you step down? And at this time I would like to
18 recall Mr. Birk. I'll remind you you're still under
19 oath.

20 **THE WITNESS: Okay.**

21 JUDGE CLARK: Go ahead, Commissioner.

22 COMMISSIONER HOLSMAN: Thank you.

23 MARK BIRK, having been recalled and previously sworn,
24 testified as follows:

25 QUESTIONS BY COMMISSIONER HOLSMAN:

1 Q. My apologies for having to ask you back
2 up here.

3 A. No problem.

4 Q. So you might have heard my question.
5 I'll repeat it. For starters, we're talking about one
6 study with the expense of nine million dollars to
7 determine the value of the scrubbers for Ameren
8 Missouri; is that correct?

9 A. It was -- we called it a study, but we
10 actually commissioned two separate engineering firms
11 and --

12 Q. Okay.

13 A. -- they did it. And the reason we did
14 that is because we wanted to get cost and schedule
15 certainty.

16 Q. Was that nine million split equally
17 between the two firms?

18 A. I don't know -- I don't know that.
19 Because we just had it in a work order. But it was --
20 I would tell you from the output of both firms, it was
21 probably pretty close.

22 Q. Okay.

23 A. Because it was pretty detailed, both
24 firms on what they provided.

25 Q. Would we be in a position to accurately

1 predict what was in the best interest of the
2 ratepayers without the reports?

3 **A. In my opinion, no, because it -- it -- we**
4 **went through -- it took two years to get to a point**
5 **where we had schedule certainty and cost certainty.**
6 **And so we based -- we based future decisions and**
7 **escalations off the numbers that came out of that**
8 **study.**

9 Q. Do you think Ameren's position would be
10 different if those reports had come back and said that
11 it's economically feasible to install the scrubbers
12 and extend the life of the plant?

13 **A. Well, the -- what the studies did was**
14 **they just determined the total cost of what the**
15 **scrubbers would be and how much time it would take to**
16 **construct them. And then so Matt Michels took that**
17 **information and really the engineers developed that**
18 **and put it into his analysis. So it was -- the cost**
19 **was the basis for his analysis --**

20 Q. Okay.

21 **A. -- from a scrubber perspective.**

22 Q. Okay. Thank you. Thank you.

23 COMMISSIONER HOLSMAN: Judge, did -- I
24 apologize. Did we already hear from Staff on 3B -- or
25 4B? We have not? Mr. Majors?

1 JUDGE CLARK: No, Commissioner, we have
2 not.

3 COMMISSIONER HOLSMAN: Okay. Thank you.
4 That's all the questions I have. Thank you.

5 JUDGE CLARK: Just a second. There's due
6 process concerns.

7 **THE WITNESS: Sorry.**

8 JUDGE CLARK: Any redirect from the
9 Commission Staff?

10 MS. MERS: I'm sorry, but I have just
11 one.

12 JUDGE CLARK: You don't have to apologize
13 for that.

14 FURTHER RECROSS-EXAMINATION BY MS. MERS:

15 Q. So the studies were completed in 2011; is
16 that correct?

17 **A. That's correct.**

18 Q. So --

19 **A. '10 and '11.**

20 Q. '10 and '11. If Ameren wanted to
21 evaluate on closing Rush Island versus retrofitting,
22 if we can imagine the Court cases don't play a part in
23 it; just that decision in an IRP. They had that
24 information in -- starting in at least 2011; is that
25 right then?

1 **A. That would have been correct.**

2 Q. Okay.

3 **A. Yes.**

4 Q. Thank you very much for clarifying. I
5 appreciate it.

6 JUDGE CLARK: Any recross from the Office
7 of Public Counsel?

8 MR. WILLIAMS: Yes, I do have a few.

9 FURTHER RECROSS-EXAMINATION BY MR. WILLIAMS:

10 Q. When did Ameren Missouri put -- or --
11 yeah. When did Ameren Missouri put scrubbers on
12 Sioux?

13 **A. Oh, the scrubbers were completed in 2010,**
14 **I believe.**

15 Q. And we had a discussion earlier about
16 what occurred at Sioux informed the studies that were
17 done for Rush Island, correct?

18 **A. Informed some of the -- some of the**
19 **equipment analysis.**

20 Q. And how much did it cost to put the
21 scrubbers on at Sioux?

22 **A. From what I can recall, it was -- it was**
23 **somewhere -- it was around maybe six -- I'm going off**
24 **the top of my head here, okay? But it was around 600,**
25 **620, somewhere in there.**

1 Q. 620 bucks?

2 A. No, no, no, no. No, no, no. I think it
3 was around 6 -- 600 million to 620 million, somewhere
4 in there.

5 Q. So from your testimony -- well, how much
6 different were the scrubbers at Sioux versus scrubbers
7 at Rush Island or Labadie?

8 A. Yeah, so that's -- that's a great
9 question. Sioux is a -- is a 500 megawatt unit, Rush
10 Island is a 600 megawatt unit. There -- there were
11 some differences. We -- we had to replace the fans at
12 Sioux because we didn't have enough air capability.

13 At Rush, the design was far enough along
14 that we felt we could just replace the motors, put
15 bigger wheels on the fans, which was -- so there was
16 some nuances and differences. But Rush was a bigger
17 unit and so it -- you would expect it would cost a
18 little more to put it on then -- then what it cost at
19 Sioux, which it did.

20 Q. So the -- the Sioux cost of 600 to
21 620 million was in '22 -- 2010 dollars, right?

22 A. That's correct.

23 Q. And the estimates you had of -- what was
24 it, 700 or 720 million --

25 A. Uh-huh.

1 Q. -- for Rush Island were 2015-ish --

2 A. Well, they would have been --

3 Q. -- dollars?

4 A. -- they would -- I mean, the studies
5 would have been completed in -- in 2010 and '11. And
6 then they would have, you know, escalated. They --
7 they had built up -- from I recall -- and it -- I'm
8 not -- I didn't read through the details, but study
9 built up to cost through the construction period.

10 And so it would have been escalated
11 throughout that construction period. So 2015 -- it
12 would have started in -- construction in 2011 and
13 ended in 2015.

14 Q. Well, I under- -- okay. I understand
15 there would have been a construction period over a --
16 over time. But the all-in cost by the time you got
17 done at 2015 was -- roughly was estimated to be --

18 A. Uh-huh.

19 Q. -- in the neighborhood of 700 to
20 720 million?

21 A. About 720, uh-huh.

22 Q. And you would expect, I guess, similar
23 types of escalation if you were to push the numbers
24 out to, say, 2021 or 2022?

25 A. I'm not -- I'm an engineer, not a finance

1 expert.

2 Q. Well, have you ever seen costs go down
3 with time?

4 A. No. No, they do not. So it would -- it
5 would have been escalated. It would have been
6 escalated for sure.

7 Q. And I'm not asking you to quantify --

8 A. No, it would have been escalated, so
9 yeah.

10 Q. Thank you.

11 A. You're welcome.

12 Q. No further questions.

13 JUDGE CLARK: Any Ameren redirect?

14 MR. LOWERY: No, thank you, Your Honor.

15 JUDGE CLARK: Mr. Birk, I appreciate you
16 sticking around to be able to answer these questions.

17 **THE WITNESS: No problem.**

18 JUDGE CLARK: And you may step down.

19 **THE WITNESS: Thank you.**

20 JUDGE CLARK: Mr. Lansford, if you will
21 come back up, we will continue your testimony. I'll
22 remind you again that you are still under oath as
23 well.

24 And bear with me just a moment while I
25 find where I was.

1 MITCHELL LANSFORD, having been recalled and previously
2 sworn, testified as follows:

3 QUESTIONS BY JUDGE CLARK:

4 Q. Would you explain to me briefly the tax
5 concern that was brought up by one of the other
6 parties and why you don't believe it's applicable in
7 this instance in regard to abandoned capital projects?

8 And to refresh your memory, I believe it
9 involved the construction work in progress and you
10 were talking about a dollar in/dollar out essentially.

11 A. Yeah. Sorry. Sorry, Judge. I just had
12 to get to the right reference point here. You know,
13 as we think about income taxes, we think about, you
14 know, taxable income, we think about -- we think about
15 the net, you know, revenues less our expenses.

16 And if we think about abandoned capital
17 projects, if we recover those costs, we get revenues
18 equal to that recovery and we have costs equal to the
19 costs. Our costs will equal our revenues.

20 Contribution to -- to taxable income is zero as a
21 result and, therefore, there is zero income tax
22 consequences resulting from the net of those two
23 numbers equaling, of course, zero.

24 Q. I think I -- I -- I probably should have
25 asked -- the more articulate question I probably

1 should have asked is, it has been proposed that these
2 abandoned capital projects don't belong here and
3 shouldn't be recovered, and maybe should be recovered
4 elsewhere instead of being securitized.

5 Are there additional costs with
6 securitization that would not be involved with
7 handling these costs through, say, a rate case?

8 A. I guess I'd have to understand how the
9 Commission might -- you know, might order or find, you
10 know, that we would recover those costs in -- in said
11 future rate case.

12 Q. I see what you're saying. Okay. Why
13 don't you just explain to me then what costs -- what
14 additional costs will be incurred through
15 securitization by securitizing these costs outside the
16 costs of the abandoned capital projects themselves?

17 A. Yeah. As -- as we think about, you know,
18 any energy transition cost, you know, in --
19 contemplated in this case, and it's Ameren Missouri's
20 view that an abandoned capital project retired as a
21 result -- or, you know, abandoned as a result of
22 retiring, the Rush Island facility would meet that
23 definition.

24 We -- we'd securitize those energy
25 transition costs and incur -- incur the -- the

1 **interest charges or the interest costs associated with**
2 **that -- that financing.**

3 Q. Bear with me just a moment.

4 Are you -- are you familiar with
5 Mr. Payne's rebuttal testimony?

6 **A. Yes. Certainly. I do not have it in**
7 **front of me though.**

8 Q. I have no further questions.

9 JUDGE CLARK: Any recross from the
10 Commission Staff based upon --

11 MS. MERS: No, thank you.

12 JUDGE CLARK: Public Counsel?

13 MR. WILLIAMS: No questions at this time.
14 Thank you.

15 JUDGE CLARK: Redirect?

16 MR. LOWERY: Just a little, Your Honor.

17 REDIRECT EXAMINATION BY MR. LOWERY:

18 Q. Mr. Lansford, the Judge was asking you
19 about costs associated with including the abandoned
20 CWIP projects in the securitization amount. He
21 basically said it would be the interest rate on the
22 bonds, right?

23 **A. Correct.**

24 Q. If the CWIP projects were recovered in a
25 rate case and, let's say, amortized over a period of

1 years and included in rate base, there would be a
2 financing cost associated with that as well, right?

3 **A. That's correct.**

4 Q. What would be the interest rate relative
5 the interest rate of the expected interest rate on the
6 securitization bonds?

7 **A. The same as any other rate base
8 inclusion; the Company's weighted average cost of
9 capital including income taxes.**

10 Q. Which is higher?

11 **A. Which is higher.**

12 MR. LOWERY: Thank you, Judge. That's
13 all I have.

14 FURTHER QUESTIONS BY JUDGE CLARK:

15 Q. Actually, I am going to ask one more
16 question. And I don't think you need Mr. Payne's
17 testimony to answer this, but I am looking at the
18 chart. And you do you remember there was a chart
19 included in his, in regard to work orders that were
20 still ongoing. And I'm going to ask you -- I think --
21 you're not going to need this chart. I can see you
22 kind of wincing like you might.

23 **A. Okay.**

24 Q. It looks like, at least in regard to one
25 of these, it says: Preliminary engineering and design

1 costs for possible construction of Flue Gas
2 Desulfurization Scrubber System, Units One and Two, at
3 Everygy Center. And it says: First charge month is
4 June 2008 and the last charge is July of 2021 and with
5 a 67.41 percent completion.

6 That seems like an awfully long time to
7 kind a work order open. Why is that? Why would a
8 work order be kept open so long? I mean, that's a
9 little over a decade.

10 A. Yeah, I don't know the specifics of -- of
11 that, Judge. But that is the scrubber study that
12 Mr. Birk and -- and others were talking about. I
13 could only speculate I guess as to -- to why we might
14 keep it open.

15 I mean, obviously -- you know, obviously
16 we were -- there was question as to whether or not we
17 would -- we would scrub the facility, you know, all
18 the way up to, you know, 2021 and perhaps even beyond.
19 So I guess that doesn't strike me as odd that that was
20 open while we were continuing to evaluate whether we
21 would scrub the Rush Island facility.

22 Q. Do you know why it says that it's -- that
23 it -- why -- do you know why that the project is
24 deemed only 67.41 percent complete?

25 A. Yeah. I had a -- you know, I'm aware of

1 a data request that related to that. We -- we really
2 didn't have a good way to estimate. The data request
3 was: Please estimate how -- how -- the percent
4 complete of each of these projects. And we don't
5 really have a method for doing that.

6 So in responding to that data request, we
7 were very clear that we were taking the -- the costs
8 that had been incurred to date and dividing them by
9 the total approved cost associated with that work
10 order.

11 Now, if that really reflects -- you know,
12 I don't know that that really truly reflects the
13 progress, you know, or -- you know, or how close the
14 study itself is to completion. Some of those work
15 orders couldn't even -- could have even contained
16 additional work beyond the studies.

17 I did hear Mr. Birk say that the studies
18 were near complete or virtually complete. I don't --
19 I don't know exactly what -- how he characterized
20 that, but --

21 Q. So that 67 percent is really just how
22 much of it -- of the approved budget it used up?

23 A. That's exactly right.

24 Q. Okay. Thank you. I have no further
25 questions.

1 JUDGE CLARK: Any recross from Commission
2 Staff?

3 MS. MERS: Just one.

4 FURTHER RECROSS-EXAMINATION BY MS. MERS:

5 Q. In the study that you guys were just
6 talking about, you referenced recalling Mr. Birk
7 talking about it as well. Do you recall him stating
8 that the last deliverable for that study was in 2011?

9 A. I do.

10 Q. Okay. Thank you. Nothing further.

11 JUDGE CLARK: Public Counsel?

12 MR. WILLIAMS: Thank you, no.

13 JUDGE CLARK: Any redirect from Ameren?

14 MR. LOWERY: No redirect.

15 JUDGE CLARK: Okay. Mr. Lansford, you
16 may step down again.

17 I believe the next witness is Staff's; is
18 that correct?

19 MS. MERS: Yes. Staff calls Keith Majors
20 to the stand.

21 JUDGE CLARK: Mr. Majors, I'll remind you
22 you're still under oath.

23 **THE WITNESS: Thank you.**

24 MS. MERS: And I will tender Mr. Majors
25 for cross. He has plenty of appearances over the next

1 few days, so it's not time quite yet to enter his
2 testimony in.

3 JUDGE CLARK: Any cross-examination from
4 the Office of the Public Counsel?

5 MR. WILLIAMS: Not at this time. Thank
6 you.

7 JUDGE CLARK: Any cross-examination from
8 Ameren Missouri?

9 MR. LOWERY: No, thank you.

10 JUDGE CLARK: Any Bench questions?

11 COMMISSIONER HOLSMAN: Yes, Judge.

12 JUDGE CLARK: Go ahead, Commissioner
13 Holsman.

14 COMMISSIONER HOLSMAN: Thank you.

15 KEITH MAJORS, having been previously sworn, testified
16 as follows:

17 QUESTIONS BY COMMISSIONER HOLSMAN:

18 Q. You heard my exchange previously on the
19 issue of the costs associated with the scrubber
20 reports. First off, do you believe that nine million
21 is a historically appropriate number for a report like
22 this? Get -- we -- we heard testimony that it was
23 actually two separate companies that did the analysis
24 and -- and provided information, approximately equal
25 amounts of effort.

1 A. Right. And I -- and I think -- so that
2 would be the establishment of a work order. That work
3 order could have accepted several other different
4 types of charges, like internal labor, other
5 third-party costs that would have been charged to that
6 work order. I don't necessarily have a breakdown
7 of -- of the nine million.

8 So I guess to answer your question, I --
9 I don't know that I really have a basis of comparison
10 for other like-kind studies -- engineering studies of
11 a potential scrubber system. So I -- I really
12 wouldn't have a basis of comparison to say is four and
13 a half million per study an accurate number.

14 Q. Do you agree that those reports in the
15 analysis feedback they provided give us an accurate
16 view of what those scrubbers would have cost the
17 ratepayers had they been installed?

18 A. I -- I think I would. Yes, they would.
19 I think Ameren had had -- and I mentioned this in my
20 surrebuttal that to evaluate the readiness of Ameren
21 in the remedy phase, they had engaged another
22 engineering firm, which is kind of the big three in --
23 what I would call the big three in the utility
24 landscape, Sargent and Lundy, to evaluate whether or
25 not -- what the time frame of the scrubbers completion

1 would be should the Court order that.

2 In that report, which is attached to
3 Mr. Seavers' rebuttal testimony, it's -- it was
4 completed by a Mr. Ken Snell that -- he was engaged by
5 Ameren to evaluate the scrubber timeline at the time
6 of the remedy phase, and so he discusses his view of
7 what the actual cost would be.

8 So in terms of the timeline and -- and
9 the accuracy of just the cost information, that might
10 be. That study which was done in the -- in the
11 context of the Court remedy phase might have more
12 updated numbers than the figures from eleven and eight
13 that were -- that were the nine million dollars.

14 I guess what I'm getting at is I'm going
15 to make -- I wouldn't be surprised if Ameren relied on
16 those -- that information as well since it's another
17 expert they hired to determine the cost estimates.

18 Q. Do you think absent the report for
19 nine million dollars, we would have a clearer picture
20 of what's in the best interest of the ratepayers?

21 A. Well, those studies are over ten years
22 old. So obviously the -- the cost information would
23 have had to have been updated. So whatever was given
24 to Mr. Michels for -- for the modeling wouldn't solely
25 rely on that -- that old data. So just --

1 Q. We talked about, you know, prudence being
2 an ongoing thing. But at the point in time that the
3 reports were initiated, do you believe that they were
4 in the best interest of the ratepayers to have that
5 data at that time?

6 A. Oh, sure. I'm -- we're not challenging,
7 I'm not challenging, Staff's not challenging prudence
8 of obtaining those studies and then charging to --
9 them to the project at the time they were incurred.

10 I -- I think the question is, is it
11 appropriate to charge -- well, one, their expert --
12 Ameren's expert in the remedy phase said that the
13 studies wouldn't necessarily save any time. That
14 whatever owner's engineer you'd have to engage would
15 have to evaluate what was actually done in the
16 studies.

17 I mean, I'm not -- I'm not going to say
18 that there's no value there, but certainly the value
19 came under question under Ameren's own expert that
20 evaluated those studies. And so I would question
21 the -- the relevance and the appropriateness to -- to
22 securitize those costs.

23 And I guess if I may, to -- to
24 Mr. Lansford's point, I think you asked him, there's
25 really no other way in my mind to recover those

1 studies other than through securitization. If you
2 just carried those through to the rate case, I think
3 my argument would be they're not used and useful,
4 they're never used and useful.

5 And certainly I can't -- I can't think of
6 an -- of an example where you would put -- in that --
7 in that case, they would be abandoned costs.

8 Q. So -- so you're saying that since they
9 were completed in 2011, they were never brought
10 forward to be rate based in a rate case because they
11 would have been disallowed because they were not used
12 and useful?

13 A. I think right now they would have been
14 disallowed because they're not used and useful. If
15 you -- if you built the scrubbers, I -- I think we
16 would -- we would probably evaluate them -- we would
17 evaluate them -- I don't know how we would treat them
18 because you'd have to re- -- you'd have redo that
19 information.

20 Q. What we do know is that they were not
21 brought forward -- they have not been included in any
22 rate base to date, correct?

23 A. That's correct. It's -- they're --
24 they're not in rate base. They're in construction
25 work in progress. The only avenue right now to

1 recover those, other than setting up an amortization
2 in a future rate case, is through the securitization.

3 And, you know, I -- I think -- well,
4 the -- the Commission did authorize from CWIP amounts
5 for -- in the securitization case for -- for Empire, I
6 mean, just to be clear.

7 Q. Uh-huh.

8 A. But you know, I think these are different
9 because there's -- there's somewhat of a cosmic irony
10 for including costs for scrubber studies that that's
11 kind of the reason why we're here is because you --
12 you didn't get the proper permitting, you didn't
13 complete the scrubbers, you -- you were never really
14 going to complete the scrubbers going forward.

15 Let's say that they prevailed on the NSR
16 litigation. There was no certain plans to install
17 those scrubbers. I -- I think the opposite is true
18 for the other CW -- CWIP line items. Those are in I
19 believe Mr. Payne's rebuttal testimony, but they're in
20 a data request as well.

21 I think that's the separation. That's --
22 that's the real difference in my mind.

23 Q. Could an argument be made then that the
24 two reports save the ratepayers money by instructing
25 Ameren that it wasn't cost effective to move forward

1 with scrubbers; thus, leading us to this place where
2 we are securitizing 15 years of depreciation?

3 A. I -- that -- that's not an unfair
4 statement. They -- they assisted them -- they would
5 have had to assist them -- and I'm not going to
6 dispute Mr. Birk's testimony that they did use those
7 in the economic analysis.

8 Q. Tell me a little bit about the nine -- or
9 the 3.9 million that Staff is recommending in this --
10 this 4A. What -- what do you attribute that -- why --
11 why are you agreeing to that? What -- what does that
12 represent?

13 A. So I mean, I think it would be fair if --
14 if -- if there were -- if there was no evidence that
15 they were not going to complete these projects, I
16 think -- I -- I think it's fair to include -- and
17 barring any -- any legal argument, which I know that
18 I'm not an attorney for -- for the CWIP argument on
19 whether or not it can be recovered.

20 But barring that, I think there was --
21 there was a reasonable view that those were ongoing
22 projects that they -- they would have installed,
23 they -- they ceased completion of those projects.

24 So in that regard, they did save
25 ratepayers money because they stopped the projects and

1 they -- and they did not complete them because they
2 knew they were going to retire the plant. And so I
3 think -- I think that's a fair argument why you would
4 include them in securitization.

5 Q. Does Staff have a record of when they
6 were informed that this plant was going to be retired?
7 Do we know what year that was?

8 A. I think that's probably a question for
9 Ms. Eubanks. I think we have been notified -- they
10 made a filing before the Court in '21 that they -- as
11 opposed to installing the scrubbers, that they
12 intended on closing the unit and they gave that option
13 to the -- to the Judge. And so I believe it would
14 have been in '21.

15 On whether or not they -- when they
16 informed Staff, that -- that could have been in a --
17 in a somewhat earlier IRP meeting, but it really
18 hinged on -- the decision was -- was related to the
19 litigation.

20 Q. Okay. One final question. You know,
21 oftentimes Commission decisions signal potential
22 future behavior. And -- and certainly we can look at
23 Asbury as -- as -- you know, to the past for some of
24 the things that we decided in there as -- as a bit of
25 a -- you know, a marker.

1 Do you believe that disallowing the
2 report, the nine millions dollars in the report, would
3 encourage or discourage future retirements?

4 A. I thought you might ask me that question.
5 I don't know that it would really encourage or
6 discourage future retirements.

7 Certainly this isn't -- this isn't an
8 isolated event that you have a abandoned costs. First
9 of all comes to mind, I think there's 100 million
10 dollars of Callaway II costs that were written off in
11 the '80s. There was the combined operating license
12 cost, I believe those were -- those were also written
13 off when Ameren was seeking a second unit in the last
14 couple decades at -- at Callaway.

15 And so I really wouldn't view this as an
16 isolated event and I don't know that it would
17 particularly -- I mean, maybe Mr. Birk would have --
18 well, I know Mr. Birk would have a different answer,
19 but I don't think it would encourage or discourage in
20 terms of retirements, which is --

21 Q. So based on that response, are you
22 assuming that the nine million for the reports are
23 still on the books, that that could potentially be,
24 you know, a tax liability?

25 A. Well, they're -- they're certainly on the

1 books on construction work in progress. In terms of
2 tax --

3 Q. Well, you said that -- you know, you
4 gave examples of when other amounts were written off.
5 I assume when you -- when you say written off, you're
6 talking about, you know, deducting it from your --
7 your tax --

8 A. I think there might be a tax deduction
9 there, but --

10 Q. -- tax benefit?

11 A. -- mine was -- comment was more written
12 off as in it's no longer an asset --

13 Q. I see.

14 A. -- on the books --

15 Q. I see.

16 A. -- and records.

17 Q. Okay. Not -- Not literal. You're saying
18 they -- they let it go. It's not necessarily a tax
19 deduction?

20 A. Right. I'm not commenting on abandoned
21 plant. It would just be this is no longer one of
22 seven CWIP. You cannot -- you can no longer -- if
23 you're never going to capitalize it, it's never going
24 to come to fruition --

25 Q. Right.

1 **A. -- then you're going to have to write it**
2 **off at some point.**

3 Q. Okay. All right. Thank you very much.

4 COMMISSIONER HOLSMAN: Thank you, Judge.

5 JUDGE CLARK: Thank you, Commissioner.

6 Any other Commission questions?

7 I hear none. I have a few questions for
8 you.

9 QUESTIONS BY JUDGE CLARK:

10 Q. Now you're here on both Issues A and B;
11 is that correct?

12 **A. Yes, sir.**

13 Q. Okay. That's what I thought. Now, the
14 scrubber study out of the abandoned capital
15 projects -- and let me pull up -- that was the only
16 item on that chart that I had questioned Mr. Lansford
17 about that is in Manzell Payne's testimony. You're
18 familiar with that chart?

19 **A. I -- I am, yes. I have a -- I think it**
20 **has the same information, but it's a facsimile of that**
21 **chart right here. I don't have Mr. Payne's testimony,**
22 **but I have more of a detailed accounting of -- of**
23 **the -- more of a detailed description of the items.**

24 Q. Okay. Well, you picked -- you picked one
25 item off of that chart and said that you disagreed

1 with -- you -- you agreed with OPC, or with Public
2 Counsel, that that item should be removed, correct?

3 **A. Right.**

4 Q. And I'm going to come back to that in
5 just a second. I want to talk about the other
6 abandoned capital projects for a second and just ask
7 you to explain what's the rationale for having
8 customers pay through securitization for projects that
9 were never completed? I mean, they didn't -- it
10 doesn't appear that the customers -- or that the
11 ratepayers would have received a benefit.

12 **A. I -- I think had the pro- -- had the**
13 **projects -- there's no evidence that the -- that I can**
14 **see that the projects -- at least not the scrubber**
15 **studies. The other projects had a reasonable**
16 **probability of being completed because they were --**
17 **they were actively charging costs to those projects.**

18 **So I think the rationale will be that the**
19 **Company did ultimately save ratepayers money because**
20 **they stopped the projects. Let's say -- well, let --**
21 **let's say that you're going to close the plant**
22 **October 15th and they made a decision January 1 to**
23 **stop charges to these projects and abandon them.**

24 **If they had decided -- if they had not**
25 **made that decision and they had included charges**

1 through, let's say, June 30th of this year, that would
2 have ultimately increased the net book value that
3 would have -- that they would have been asking
4 ratepayers to pay for through securitization, the --
5 the additional charges to complete the project.

6 So, for example, I'm looking at Rush
7 Island Unit Two, warm-up guns and igniters. So -- and
8 that's -- at that time -- at the time it was
9 abandoned, it was 427 million -- 427,000 dollars.

10 So let's assume that you would have had
11 another 200,000 dollars of charges for, in my example,
12 the first six months of 2024. Well, those would have
13 been retired October 15th. So you would have been
14 charging ratepayers an extra, in my example,
15 200,000 dollars that they -- since they made this --
16 this decision, they would not have been having to pay
17 for. And so it's -- it's a cost-saving measure in
18 that regard.

19 Q. Let's move onto -- a second to the
20 scrubber study. Thank you for answering that for me,
21 by the way.

22 You indicated you would not include the
23 scrubber study and you provided a couple of rationales
24 for that. And one is that it was a preliminary
25 engineering and design cost for something that I guess

1 never occurred; is that correct?

2 **A. Right. And really never projected to in**
3 **the near time frame.**

4 Q. And also, because you said how useful
5 could a 13-year-old study be; is that correct?

6 **A. Right.**

7 Q. You -- you were in the court -- or you
8 were in the courtroom when Mr. Birk was testifying; is
9 that correct?

10 **A. That's correct.**

11 Q. And Mr. Birk was explaining the potential
12 future utility of this study. Did Mr. Birk's
13 testimony change your mind in regard to aspects of
14 this study?

15 **A. Well, I'm not going to dispute -- I**
16 **respect Mr. Birk and he's an engineer and I'm not**
17 **going to dispute -- I respect his opinion on studies.**
18 **I guess no, it didn't particularly change my mind.**

19 **And too, I would go back to Ameren's**
20 **expert who you have an expert study that's -- you have**
21 **an expert making a study about studies is kind of odd.**
22 **But his study -- the expert's study said that those**
23 **studies, the nine million dollars, wouldn't**
24 **substantially reduce the time of constructing**
25 **scrubbers and that, as I said before, the owner's**

1 engineer would have to -- I don't know to the extent
2 they would have to recomplete the entire study.

3 But certainly I would -- I wouldn't be
4 surprised if -- if it was an owner's engineer that
5 wasn't Black and Veatch and Shaw, that they would want
6 to spend significant amounts of money doing their --
7 completing their own studies of the -- of the
8 engineering and preliminary engineering of the -- of
9 the scrubbers.

10 So I think in that regard, I would
11 question -- yes, they're four thousand pages and a
12 thousand pages, give or take. But I would question
13 whether or not an owner's engineer would -- wouldn't
14 have to redo substantial amounts, if not all that
15 work.

16 And I think that conclusion is the -- is
17 similar to the conclusions of Ameren's study on the
18 studies.

19 Q. Thank you. Any recross from Public
20 Counsel based on Commission or Bench questions?

21 MR. WILLIAMS: Thank you, no.

22 JUDGE CLARK: Any recross from Ameren
23 Missouri based upon Commission or Bench questions?

24 MR. LOWERY: Yes, Your Honor. Thank you.

25 RECROSS-EXAMINATION BY MR. LOWERY:

1 Q I think in response to Commissioner
2 Holsman's questions talking about the -- you know, the
3 timing of when these studies were done and -- and
4 maybe their utility in terms of helping understand
5 what the cost of installing scrubbers might be, all
6 those questions. You remember that?

7 A. Yes, I do.

8 Q. Isn't it true that any time after these
9 studies were done in 2010-ish time frame, whenever
10 they were finished or whenever the projects were
11 stopped, any time thereafter, say, over the next five
12 or ten years, EPA could have imposed different or new
13 regulations that might have changed the Company's
14 option or at least the economics of the Company's
15 options for controlling SO2 at its units?

16 A. Sure. I -- I don't dispute that.

17 Q. And -- and had that happened, could have
18 happened in 2012 or '13 or '14 or '15, et cetera,
19 right?

20 A. That's right.

21 Q. And had that happened -- so you --
22 because I think you said something along the lines
23 of -- and I'm not trying to misstate your testimony,
24 it's my memory, that those scrubbers were never going
25 to be built, those studies were never going to be

1 used. And that's not true necessarily, is it?

2 **A. I think in the near-term -- in the**
3 **near-term they wouldn't have. I mean, of course,**
4 **there's always the possibility that those are going to**
5 **be -- sure, you -- you would absolutely use tho- --**
6 **you would utilize the studies, but I -- with the**
7 **caveat that your -- your new owner's engineer would**
8 **probably want to redo those studies.**

9 Q. Well -- well, let's -- let's -- let's --
10 let's talk about that some more, because I -- I don't
11 think the answer you gave is actually reality. You
12 said not in the near term. What if in -- I'll give
13 you a hypothetical. You're an expert witness, so I
14 can ask you a hypothetical question.

15 **A. Sure.**

16 Q. What if in 2012 or 2013, EPA had changed
17 the rules in a way that Ameren Missouri was unable to
18 meet the SO2 emissions limits that it had to meet
19 under those new rules by using SO2 allowances and
20 ultra low-sulfur coal and the only option it had,
21 practically speaking, was to scrub the plant. You
22 have those facts in mind?

23 **A. Yes.**

24 Q. And the Company at that time, I -- I
25 think you would agree, would look at the situation and

1 would probably do a Net Present Value Revenue
2 Requirement analysis, like Chair -- Commissioner
3 Hol- -- Holsman has been talking about and would make
4 a decision based on those economics, right?

5 **A. Yes.**

6 Q. And it might also depend on, at that
7 time, what are the expectations for energy prices and
8 what are the expectations for O and M. And all of
9 those various variables would have been taken into
10 account, right?

11 **A. Well, I think those -- you'd update the**
12 **variables, but sure, right.**

13 Q. So you don't know what the answer would
14 have been necessarily at that time had the EPA changed
15 the rules and had the -- the -- the option of
16 scrubbing been on the table, you don't know whether or
17 not those studies would have turned into an actual
18 scrubber -- scrubber or not, do you?

19 **A. No.**

20 Q. That could have happened any time between
21 2010 and 2020, '21, right?

22 **A. Sure. Right.**

23 Q. Did you hear Mr. Lab -- Mr. Labadie --
24 Mr. Birk discuss the fact that the Labadie plant, its
25 units, are -- I think Mr. Williams -- maybe Mr. Birk's

1 the one that used the term, but called them sister
2 plants. Did you hear that discussion?

3 **A. Yes.**

4 Q. And what he meant by that was they're
5 basically the same generators and a lot of the same
6 components. There's some differences, but they're
7 very similar.

8 So that -- let's say that they never had
9 to scrub Rush Island, but even in the future from
10 today, or even in that period 2010 to 2020, that again
11 EPA changed the rules or something happened such that
12 a question about scrubbing Labadie came up, Mr. Birk
13 indicated that these studies would have been useful
14 for that question, didn't he?

15 **A. Well, then you would want to capitalize**
16 **those studies at Labadie for that scrubber project.**
17 **So I mean, you want both the nine million dollars now**
18 **or the nine million dollars in the future?**

19 Q. You also sort of premised your
20 question -- the Judge was asking you about -- I don't
21 know. You had a discussion about the Black -- or the
22 owner's engineer and I think you mentioned it just a
23 minute ago as well.

24 How do you know that the owner's engineer
25 for -- had a Rush Island scrubber project actually

1 come to fruition at some point -- and I -- I think you
2 said this earlier. Black and Veatch and Shaw are sort
3 of two of the big -- the big -- the big guns, so to
4 speak. I don't think that's the term you used, but I
5 think that's what you meant in this industry, right?

6 **A. Well, yeah. I -- I'm sure Burns and Mac**
7 **would want in on the business too.**

8 Q. Sure.

9 **A. Sure.**

10 Q. Sure. But since Black and Veatch and
11 Shaw had already done the studies, how do you know
12 that Black and Veatch or Shaw wouldn't have been
13 chosen as the owner's engineer if a scrubber project
14 actually came to fruition?

15 **A. Well, I -- I don't know that. I -- I am**
16 **relatively convinced that they would want to redo the**
17 **studies and at least update the numbers and -- and**
18 **appropriately charge you for that.**

19 Q. That may be so, but isn't it also
20 certainly possible that the time that they would need
21 and the engineering costs that they would have to
22 incur to review their own work and perhaps update or
23 review it would have been less than if you were
24 starting from scratch? Isn't that certainly likely?

25 **A. There -- there's a potential for that,**

1 **sure. I'll -- I'll agree with that.**

2 MR. LOWERY: Thank you, Judge. Those are
3 all my questions.

4 JUDGE CLARK: Any redirect from Staff?

5 MS. MERS: Yes. And I hope it's
6 relatively brief.

7 REDIRECT EXAMINATION BY MS. MERS:

8 Q. Do you recall in the questions you had
9 from the Bench, you had a discussion with Commissioner
10 Holsman about if including or not including the
11 studies would encourage future retirements. Do you
12 recall this?

13 A. Yes.

14 Q. How big of an incentive do you think the
15 securitization statute provides in encouraging
16 retirements?

17 A. I -- you know, I'm not a utility so I
18 couldn't give you really utility perspective. I think
19 it's a -- it's -- it's a tool, it's a valuable tool
20 certainly.

21 Our analysis and the Company's analysis
22 shows that in the long run -- and this is a unique
23 circumstance -- circumstance because you have to
24 cl- -- close the plant.

25 I think in the long run, it's -- it's a

1 better value proposition for customers to finance it
2 at a long-term debt rate as opposed to weighted
3 average cost of capital. Maybe with all the
4 difficulty that -- well, perceived difficulty that
5 Ameren has had in this case, maybe they won't want to
6 do a securitization case in the future. I -- I don't
7 know.

8 But I -- I think part of the incentive is
9 that you -- they get the money up front, the half a
10 billion dollars in this case. So I mean, there's --
11 and they can reinvest that and earn a rate of return
12 on that, which they appropriately should.

13 So I -- I don't know that it necessarily
14 reduces their incentive, because every -- again, these
15 are special circumstances. Obviously you didn't have
16 a nine million dollar -- well, at least they -- I'm
17 not aware of, you didn't have a nine million dollar
18 chunk of money at Meramec that was included in rates
19 or -- or -- and it wasn't securitized.

20 I don't know of any other examples where
21 a retirement occurred that you had such a large chunk
22 like that in CWIP. So I don't know that it's -- it's
23 a great impediment or incentive in that regard.

24 Q. Just to clarify, are you saying that
25 nine million out of the amount being securitized in

1 this case is a big chunk?

2 **A.** Well, I think it's -- it's a large chunk
3 compared to the rest of -- of CWIP. When it -- when
4 you compare it to the overall -- let's see,
5 nine million divided by 500 -- no. There's an on
6 button here. Let's see.

7 Five million would be 1 percent, ten
8 would be two. So under 2 percent of the total
9 securitization. I mean, with -- 500 million is a nice
10 round number, so.

11 **Q.** And the perks of getting that 98 percent
12 up front don't you think outweigh the -- or would you
13 have an opinion on if that would outweigh the
14 2 percent that maybe you miss out on every now and
15 again because of a CWIP project?

16 **A.** I am sure that the Company would disagree
17 with me that -- but that would -- I mean, they're
18 getting 9 -- 98 percent of their ask. I mean, I --
19 that's a lot more than they usually get in the rate
20 case ask, that's for sure so.

21 **Q.** When you were discussing the CWIP
22 projects, do you recall discussing with the Judge the
23 types of projects that you did include in this case
24 versus the one study that you did not include?

25 **A.** Yes.

1 Q. Do you recall if any of those other
2 projects were related to different regulations than
3 the study in -- that you did kick?

4 A. Right. The one -- the second largest
5 project was related to requirements under the Clean
6 Water Act. So that -- that's certainly ongoing. You
7 know, I don't know whether or not those projects would
8 have been completed.

9 I -- I think a lot of that is the intake
10 and the outflow of the -- of water from whatever body
11 of water Rush Island is -- is adjacent to, either
12 Missouri River or the Mississippi. I'm not sure of my
13 geography there. But -- but that was related to
14 another environmental improvement.

15 Q. Do you recall discussing with the
16 Bench -- I think the quote that was picked out of
17 yours was the how useful could a 13-year-old study be.
18 Do you recall that?

19 A. Right. I think that was out of my
20 rebuttal testimony.

21 Q. And there was discussion of Mr. Birk's
22 testimony today about the study being used in other
23 cases or in the future. Do you recall that?

24 A. Yes.

25 Q. Do you know if Ameren is planning on

1 building any scrubbers soon?

2 **A. Not that I'm aware of.**

3 Q. And finally, you had a conversation with
4 counsel for Ameren about if the EPA had, in the
5 years -- if in the years in between while that study
6 was being completed and after it was concluded, if
7 they had gone back and changed the rules that -- that
8 did require scrubbers. If, you know, at that point
9 then, would we have found value in the study or if it
10 would have been useful. Do you recall that?

11 **A. Yes.**

12 Q. If we followed that analogy through and
13 Ameren Missouri built the scrubbers, would this
14 discussion be moot?

15 **A. Well, I -- I mean -- okay.**

16 Q. Would the project be abandoned in that
17 situation?

18 **A. Well, no. I mean, I wouldn't want -- I
19 certainly wouldn't want ratepayers to have to pay
20 twice if -- if you're going to use -- if you're going
21 to use the study for a potential Labadie scrubber
22 project, then I suppose there would be nothing to
23 capitalize.**

24 **Because if you securitize the amount now,
25 then you've received your nine million dollars, so**

1 there would be no basis that you would capitalize to
2 that account.

3 I mean, I suppose if -- if there's -- if
4 there's a -- if the thought is that you -- those
5 studies have a value and if they -- if they do,
6 then -- if you're going -- if your -- if the potential
7 is to use those at a future time for the Labadie
8 plant, I mean, I don't know that we would be -- I'm
9 not their external auditor, but I don't know that we
10 would be necessarily opposed to the prospect of those
11 studies remaining in construction work in progress.

12 I mean, that would be a discussion they
13 would have to have with their external auditor. But I
14 mean, again, I don't dispute Mr. Birk's testimony that
15 those have the potential of being useful for some kind
16 of future Labadie construction project.

17 Q. But a project you're not aware of?

18 A. Right. No.

19 Q. All right. That's all I have. Thank
20 you.

21 JUDGE CLARK: Thank you. Thank you,
22 Mr. Majors. You may step down.

23 I believe the next witness is Public
24 Counsel's.

25 MR. WILLIAMS: Thank you. Public Counsel

1 calls Manzell Payne to the stand.

2 (Witness sworn.)

3 JUDGE CLARK: Please be seated.

4 MANZELL PAYNE, being first duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION BY MR. WILLIAMS:

7 Q. What is your name?

8 A. **Manzell, M-a-n-z-e-l-l, Payne, P-a-y-n-e.**

9 Q. By whom are you employed and in what
10 capacity?

11 A. **I'm employed with the Office of Public
12 Counsel as a utility regulatory auditor.**

13 Q. Did you prepare written rebuttal
14 testimony that's been marked for identification in
15 this proceeding as Exhibit 205?

16 A. **Yes.**

17 Q. Do you have any changes to that testimony
18 for it to be your testimony here today?

19 A. **Not at this time.**

20 MR. WILLIAMS: Mr. Payne's going to
21 testify as to other issues later so I will not offer
22 his testimony at this time, but I will tender him for
23 examination.

24 JUDGE CLARK: Any cross-examination by
25 the Commission Staff?

1 MS. MERS: No, thank you.

2 JUDGE CLARK: Any cross-examination by
3 Ameren Missouri?

4 MR. LOWERY: No thank you, Judge.

5 JUDGE CLARK: Any commission questions?

6 COMMISSIONER HOLSMAN: Yes, Judge.

7 JUDGE CLARK: Commissioner Holsman, go
8 ahead.

9 QUESTIONS BY COMMISSIONER HOLSMAN:

10 Q. Good afternoon.

11 **A. Good afternoon.**

12 Q. Thank you for being here today. Says
13 OPC's position on this is capital projects should be
14 addressed in Ameren's next rate case where the
15 relevancy and prudence should be assessed. Does that
16 mean that you're not saying that at this juncture it
17 should be disallowed?

18 **A. That the --**

19 Q. If you're suggesting that the -- if
20 you're suggesting that the scrubber study be evaluated
21 in the next rate case, that's not a position that
22 you're taking that should be disallowed today then,
23 correct? You're saying evaluate it in the future?

24 **A. Yes, yes.**

25 Q. Okay. Do you -- do you know why -- is

1 there a reason why this hasn't been asked to be in
2 rate case before this? Like why -- why hasn't Ameren
3 brought these two studies into a rate case to ask
4 them -- after 2021, we've had a rate case since then.

5 They knew that they were going to not
6 proceed with scrubbers at least by that point. If
7 they were going to bring in a rate case, why
8 wouldn't -- why didn't they bring it into a rate
9 case -- or why do you believe that it wasn't brought
10 into a rate case before a future rate case?

11 **A. I certainly can't talk for the Company as
12 to why they did not bring it in. But I could give a
13 little bit of my own opinion on this.**

14 Q. Yeah, I just want some conjecture.

15 **A. I think with securitization there's --
16 there's the incentive of the bond interest on top of
17 this amount. So if the Company is able to get this
18 amount through securitization, they get the interest
19 on the -- they get the interest back on that amount.
20 That is a part of that 500 million.**

21 **If they take it into a rate case, as in
22 when Ameren did this back in 1977 with abandoned
23 projects in with a case then, their -- they got their
24 money back on those abandoned projects, but there was
25 no return on those abandoned projects. So they got**

1 **what they invested.**

2 Q. If this -- if these report costs were
3 brought in a rate case, knowing what you know, do you
4 believe the OPC would take a position on rather it
5 would dis- -- recommend to disallow?

6 **A. As of what I know right now, there -- I**
7 **could see a disallowance on the nine million of the**
8 **total CWIP for that scrubber study.**

9 Q. Okay. Thank you.

10 COMMISSIONER HOLSMAN: Thank you, Judge.

11 JUDGE CLARK: Thank you Commissioner
12 Holsman.

13 QUESTIONS BY JUDGE CLARK:

14 Q. Mr. Payne, I have a few questions for
15 you. I understand -- I understand from Public
16 Counsel's perspective the idea of not wanting to pay
17 bond interest on this over a term of years for these
18 items.

19 What I have a hard time understanding is
20 how you decouple these items from the decision to
21 retire Rush Island. Because it seems to me that but
22 for the retirement of Rush Island, all of these
23 projects would still be ongoing. And now that Rush
24 Island is retired, you certainly don't want them to
25 finish any of these projects on a plant that is no

1 longer going to be around.

2 So I'm kind of -- it -- it appears to --
3 I guess I don't understand the logic of decoupling it
4 from the plant retirement decision when it seems so
5 closely tied to it. And it doesn't -- I mean, you're
6 not -- you're not asking that those be removed because
7 the retirement's improved, correct?

8 **A. That's correct.**

9 Q. Then -- then why decouple them from the
10 plant retirement decision since they're all plant
11 specific?

12 **A. I think that is in -- I think I am taking**
13 **it apart from the securitization due to the fact that**
14 **if it is in the next rate case, it can get amortized**
15 **over a shorter period, be more beneficial to**
16 **ratepayers who are not paying for the amount of these**
17 **projects and then also the bond interest on top of**
18 **that.**

19 **At that point, though, when it's being**
20 **amortized in a rate case, say three or five years --**
21 **five years is what happened in 1977 on Rush Island's**
22 **abandoned projects then. There was no return on that**
23 **and they had -- they got their -- they got their money**
24 **for those investments and it was more economical and**
25 **beneficial to ratepayers because they were paying over**

1 a shorter time and it was off -- it was out of the way
2 shorter.

3 Q. So it is purely an economic decision
4 about the ratepayers paying less?

5 A. Yes.

6 Q. Do you believe the Company is harmed in
7 any way by moving these costs to a rate case as
8 opposed to securitizing them?

9 A. No.

10 Q. Obviously they're not going to recover --
11 if they're recovered through securitization, the
12 Company gets the money, you know, the second the bonds
13 are issued.

14 And if there's a rate case that it's
15 deferred to, there's obviously the time between now
16 and -- or when the bond would be issued and there's
17 the time -- you know, the distance to the rate case
18 and then through the rate case. And then the -- the
19 amortization on top of that as the money comes in not
20 all at once, but partially.

21 So do you believe the -- the Company is
22 harmed by moving those to a rate case?

23 A. I do not believe that they are harmed.

24 And I think that because they -- they're still getting
25 paid that amount. It's just with CWIP when it is

1 construction work in progress, they are not getting
2 paid for those items right now. They are -- costs are
3 capitalized, they're not expensed at this time.

4 Once they are finished, that's when it is
5 put into rate base and that's how you get your cost of
6 service and rate design for these items. And that's
7 where they're getting paid for with it when it's
8 finished.

9 And I don't believe that they are harmed
10 right now because they're essentially -- I'd say
11 they're not getting harmed right now. They're going
12 to get paid up front with the bond -- or with the
13 securitization bond, plus interest on top of that for
14 15 years.

15 I just think it is economical for the
16 other side where the ratepayer is having some benefit
17 to paying back the Company on this amount, but through
18 an amortization of three to five years -- I said five
19 years in my testimony -- and there's no return on that
20 amount. And it's -- the Company's still getting paid
21 back for that.

22 Q. Is the underlying logic that including
23 those -- including them as completed projects holds a
24 ratepayer benefit as opposed to abandoned projects
25 where the benefit is more speculative to the

1 ratepayers, if any?

2 **A. I'm not sure I really follow the first**
3 **question there.**

4 Q. I mean, if it's -- if -- if -- if -- if
5 by definition a capital project is abandoned, do the
6 ratepayers receive the benefit of the project? And
7 I'm not a technical person. I could absolutely be
8 wrong on this.

9 **A. I'm -- I'm not sure -- okay. Will you**
10 **ask -- will you say that again one more time? I'm**
11 **sorry.**

12 Q. I might be able to. Is the logic there
13 that if the project -- or if these abandoned capital
14 projects are carried to fruition, if they're no longer
15 abandoned but are completed projects, the logic of
16 including them in -- in rate base and all of that is
17 because the customers have received a benefit from
18 those projects being completed?

19 **A. Yes. I -- I -- I think I agree with**
20 **that, yeah. If they're carried through fruition, that**
21 **there is a benefit. Because I would hope that the**
22 **Company didn't do these projects and not want to have**
23 **some type of benefit to the customer -- or I guess try**
24 **to harm the customer by doing these projects.**

25 **But I -- I think right now I do not**

1 question the prudence or the Company's reason on these
2 projects. I just don't think that they should be here
3 in securitization and they should recover these in the
4 rate -- the next -- the future rate case.

5 Q. Thank you.

6 COMMISSIONER HOLSMAN: I have a
7 follow-up.

8 JUDGE CLARK: Commissioner Holsman.

9 FURTHER QUESTIONS BY COMMISSIONER HOLSMAN:

10 Q. The concept of securitization is a
11 relatively new one. How many other cases outside of
12 Asbury have you had a chance to review or study
13 nation-wide?

14 A. Not many. For construction work in
15 progress, I tried to find some others around the
16 country and it was harder for me to do so. I don't
17 really think I recall a specific case where I did see
18 it.

19 Q. You may not be the right witness to
20 answer this question. I'm going to ask you anyways to
21 see if maybe we can get to an answer.

22 I was listening to the Judge's inquiry
23 and it kind of made me think. Are you aware of any
24 Commissions in the country who dealt with
25 securitization that have put conditions on the bonding

1 that would require the interest of a certain portion
2 of the amount to be returned to ratepayers?

3 **A. I am not aware of that. And I -- I'm not**
4 **sure I can even answer that from my knowledge. Sorry.**

5 Q. And I don't know -- I don't know from a
6 statutory standpoint the feasibility of it, but it
7 would seem to me that that would be an interesting
8 question to pose, if someone did have the -- the
9 background to answer it.

10 If a portion of the bonding could be
11 identified or earmarked for the interest of that
12 portion to be returned to ratepayers in some form of
13 in a future rate case.

14 **A. Yeah.**

15 Q. If that -- if that interest could be
16 booked for a future rate case.

17 **A. Yeah. I -- I do not have the expertise**
18 **on that.**

19 Q. Okay.

20 **A. Sorry.**

21 COMMISSIONER HOLSMAN: Thank you, Judge.

22 JUDGE CLARK: Thank you, Commissioner.

23 Any recross based on Commission or Bench
24 questions?

25 MS. MERS: No, thank you.

1 JUDGE CLARK: Ameren Missouri?

2 MR. LOWERY: Maybe just a couple.

3 RECROSS-EXAMINATION BY MR. LOWERY:

4 Q. How are you, Mr. Payne?

5 A. **I'm doing all right. Been a little sick**
6 **the past few days, so I'm trying to hang in.**

7 Q. Hope you feel better.

8 Commissioner Holsman asked a question
9 about why the Company hadn't -- I guess since 2021
10 when it made the retirement decision, why it hadn't
11 sought recovery these costs in a rate review. You
12 remember that?

13 A. **I -- yes, I do.**

14 Q. Do you know from an accounting
15 perspective when the projects are considered to be
16 abandoned, for example, under Generally Accepted
17 Accounting Principles?

18 A. **Not off the top of my head.**

19 Q. Might it be that the projects aren't
20 considered abandoned until -- until the retirement of
21 the plant has actually been determined exactly when
22 it's going to happen and -- and that there's a
23 mechanism for that to happen, do you know?

24 A. **I do not know off the top of my head at**
25 **this point.**

1 Q. If -- if these costs were included in
2 rates in a rate case over a shorter amortization
3 period, won't the Net Present Value of Revenue
4 Requirement impact on customers be greater than if
5 they are recovered over a longer period of time at a
6 AAA bond interest rate?

7 **A. I'd have to see the net present value**
8 **calculation on that.**

9 Q. But you understand what I'm saying,
10 right? If you -- if you spread the nine million over
11 15, whatever that math is, that's X amount per year
12 and then you've got this AAA bond interest rate.

13 But if you spread it over three or four
14 or five years, the rate impact is going to be greater.
15 And if the rate impact is greater in those earlier
16 years when you do a net present value calculator --
17 calculation, the cost in the early years count a lot
18 more on that NPV than the cost in later years, right,
19 because of discounting?

20 **A. I think I follow that, yes.**

21 Q. You agree with that, right? That's the
22 way --

23 **A. I think so, yes.**

24 Q. That's all the questions I have.

25 JUDGE CLARK: Any redirect from Public

1 Counsel?

2 MR. WILLIAMS: Thank you.

3 REDIRECT EXAMINATION BY MR. WILLIAMS:

4 Q. Let's start with the present value
5 revenue requirement discussion you just had with
6 Mr. Lowery.

7 A. Uh-huh.

8 Q. Would the total cost to customers be --
9 how would the total cost to customers be -- well, let
10 me start this way.

11 He focused on the impact on the present
12 value revenue requirement. What happens in terms of
13 the total amount that customers would pay in the
14 scenario he gave with a relatively short amortization
15 period versus a long securitization recovery period?

16 A. Can you restate that? I'm not --

17 Q. What I'm trying to get at is if customers
18 are paying, even if it's a lower rate over a longer
19 period of time, will they end up paying more or less
20 than if they're paying -- over the full period than if
21 they're, instead, paying more over a shorter period of
22 time?

23 A. I think they'd --

24 Q. Assume the same original principal
25 amount.

1 **A. I think I'm getting lost on the beginning**
2 **of the question.**

3 Q. Okay. Let's assume we're recovering
4 \$100.

5 **A. Yes.**

6 Q. And we have two avenues to do it. One is
7 through a securitization over 15 years with a lower
8 interest rate. Then the other option, which is a
9 little bit higher interest rate, but over three to
10 five years. You understand that?

11 **A. Yeah. Yes.**

12 Q. Okay. How would the total amounts
13 compare, assuming the rate differential between the
14 long-term payment, the 15-year payment, and the
15 shorter term is not huge; let's say it's 1 or
16 2 percent.

17 **A. I'd say they'd pay less in the shorter**
18 **term.**

19 Q. And then you answered some questions
20 where -- well, let's go to how the bond works.
21 Whenever the bonds are issued, who gets the proceeds?

22 **A. Ameren Missouri.**

23 Q. And Ameren Missouri's going to get some
24 cost for servicing those bonds over the time, right?

25 **A. Yes.**

1 Q. And customers are going to pay charges
2 that cover both the principal and interest amount on
3 those bonds, will they not?

4 A. Yeah.

5 MR. LOWERY: Judge, I think I'm
6 going to -- I've let this go on for quite a while, but
7 he's just completely leading the witness. And this is
8 redirect, not cross-examination so I object on that
9 basis.

10 MR. WILLIAMS: That's a -- an objection
11 based on form, not substa- -- it's a technical rule of
12 evidence. Leading's perfectly admi- -- permissible in
13 proceedings such as this.

14 JUDGE CLARK: Response?

15 MR. LOWERY: Well, he hasn't cited any
16 law that says that and that -- that this is a
17 technical rule of evidence as opposed to fundamental
18 rule of evidence. And I certainly have had -- and
19 if -- and against me have had in this -- in this room
20 many times that objection sustained.

21 So I -- I'm not taking Mr. Williams' word
22 for it that that's a technical rule of evidence.

23 JUDGE CLARK: And I don't know off the
24 top of my head if it is. I do know that the
25 Commission is not bound by the technical rules of

1 evidence.

2 MR. WILLIAMS: I may have misstated.
3 It's not -- it's a technical rule of evidence, not a
4 fundamental rule of evidence.

5 JUDGE CLARK: Why don't we just, from
6 this point on, not lead?

7 MR. WILLIAMS: Okay.

8 BY MR. WILLIAMS:

9 Q. In some of your answers you indicated
10 that the utility would, as I understood it, get not
11 only the bond principal amount -- the proceeds of the
12 bonds, but interest on the bonds. If you did so, was
13 that an error?

14 A. Do you know when I said that exactly?
15 I'm trying to --

16 Q. I think it was in response to some
17 questions from Commissioner Holsman as well as Judge
18 Clark.

19 A. Okay. And then will you restate that
20 question again?

21 Q. If Ameren Missouri issues bonds, will it
22 get interest on those bonds as well, to your
23 understanding?

24 A. Yes. To my understanding, they'll get...

25 Q. Okay. Thank you.

1 **A. Yes, I -- yeah.**

2 JUDGE CLARK: Mr. Payne, you may step
3 down. Thank you.

4 All right. We are -- we are currently
5 one issue away from being caught up. It would be my
6 desire to go ahead and see how far we can get into
7 Issue 5. Just because looking at tomorrow's schedule,
8 while the singular issues may be slightly smaller,
9 they -- they do cover -- they are -- they are
10 numerous. So with that in mind, I'd like to go ahead.

11 Ms. Taylor, do you need a break?

12 THE COURT REPORTER: Yes.

13 JUDGE CLARK: I knew it was about time.
14 I was going to try and get by without one, but why
15 don't we all take about ten minutes. It's 5:19, let's
16 call it 5:20. Let's be back at 5:30 and we will start
17 with Issue 5.

18 (A recess was taken.)

19 JUDGE CLARK: As I indicated off the
20 record, it's now 5:30. It's my intention to go to
21 six o'clock and see how many witnesses we can get in
22 in that time frame. It may be one, it may be more.

23 With that, I believe the only -- the only
24 parties with witnesses on Issue 5 are Staff and Ameren
25 Missouri. So Staff, you may call your witness.

1 MS. MERS: Staff calls Claire Eubanks to
2 the stand.

3 JUDGE CLARK: Ms. Eubanks, I'll remind
4 you you're still under oath.

5 **THE WITNESS: Understood.**

6 MS. MERS: This is Ms. Eubanks' last
7 appearance. So I would go ahead and offer her
8 testimony -- her rebuttal testimony that is
9 Exhibit 102, and the surrebuttal testimony that is
10 Exhibit 103.

11 JUDGE CLARK: Now, these -- were these --
12 I believe some of these were -- were contained in the
13 Motion to Strike; is that correct?

14 MR. LOWERY: That's correct, Judge.

15 MS. MERS: Yes.

16 JUDGE CLARK: Okay. So --

17 MR. LOWERY: So I'm assuming -- yeah, I'm
18 assuming it's provisional on that one.

19 JUDGE CLARK: -- it will be -- if we're
20 going to do it, it will be a provisional admission
21 subject to the Commission ruling on those Motions to
22 Strike.

23 MR. LOWERY: And Judge, we did not have
24 an objection to the rebuttal or Motion to Strike on
25 the rebuttal, but we did have specific portions on the

1 rebuttal, yeah, just for Ms. Eubanks.

2 JUDGE CLARK: Thank you for clarifying
3 that.

4 Okay. So we are looking at Exhibit 102?

5 MS. MERS: Yes.

6 JUDGE CLARK: And 103?

7 MS. MERS: Yes.

8 JUDGE CLARK: Is that it?

9 MS. MERS: That is it.

10 JUDGE CLARK: Are there any objections to
11 admitting Exhibit 102, the rebuttal testimony of
12 Claire Eubanks onto the hearing record?

13 MR. LOWERY: No objection.

14 JUDGE CLARK: Exhibit 102 is admitted
15 onto the hearing record.

16 (Exhibit 102 was received into evidence.)

17 JUDGE CLARK: Any objections to
18 provisionally admitting Exhibit 103, the surrebuttal
19 testimony of Claire Eubanks onto the record subject to
20 the Commission ruling on the outstanding Motions to
21 Strike that are being taken with this case?

22 MR. LOWERY: No objection.

23 JUDGE CLARK: Exhibit 103 is
24 provisionally admitted.

25 (Exhibit 103 was provisionally received

1 into evidence.)

2 MS. MERS: I will tender the witness for
3 cross.

4 JUDGE CLARK: Any cross-examination from
5 the Office of the Public Counsel?

6 MR. WILLIAMS: Thank you, no.

7 JUDGE CLARK: Any cross-examination from
8 Ameren Missouri?

9 MR. LOWERY: No, Judge.

10 JUDGE CLARK: I have some questions.

11 CLAIRE EUBANKS, having been previously sworn,
12 testified as follows:

13 QUESTIONS BY JUDGE CLARK:

14 Q. And the first one is I don't understand
15 this issue at all. I don't understand -- I don't
16 understand why it's here. I -- it's not clear to me
17 what Staff's specific issue is as it relates to the
18 timing of the 2007 and '19 Court orders.

19 I feel like we've already discussed the
20 harm -- I feel like we've already discussed harm from
21 the closure so I'm not sure why we're discussing harm
22 from the failure to -- to seek permitting. So I'm
23 hoping that you can explain that to me.

24 **A. So I guess if I could request a co- --**
25 **request a copy of the issues list or position**

1 statement because --

2 MS. MERS: I have the issues list, not
3 the position statements with me. But if I can
4 approach?

5 JUDGE CLARK: Please.

6 MS. MERS: Actually, Mr. Fortson has the
7 position statement, so --

8 BY JUDGE CLARK:

9 Q. Again, I guess I would just like to know
10 what this issue is about.

11 A. Okay. So my understanding based on what
12 Staff put in its position statement and the issue is
13 really more about the planning for the outcome of the
14 litigation as opposed to the kind of phrasing of the
15 issues in thr- -- I think it was two -- or one and
16 three maybe -- or three, I guess. So I think Staff's
17 position is similar.

18 A lot of the language in the position
19 statement -- I believe quite a bit of it is from
20 Mr. Fortson's testimony and then parts of it are from
21 my testimony that we previously talked about, because
22 the -- the future harm is similar and we've already
23 discussed it under other issues.

24 Q. When -- you when -- what do you mean
25 similar and what -- what is it and where have we

1 discussed it?

2 A. So from my perspective, the -- the
3 planning for the outcome, the future harm is, you
4 know, obviously the -- the potential remedy that could
5 be ordered by the Court, the seasonal construct
6 changes that led to shortfall in capacity and Ameren's
7 planning for those or really the lack of planning for
8 those. And then the transmission projects that we
9 discussed earlier today.

10 So we still have all the same concerns
11 under either issue. It's just I think we included,
12 based on the question, a little bit more of
13 Mr. Fortson's --

14 Q. I guess -- I guess based on -- from a
15 causation angle, wouldn't it be -- wouldn't most of
16 the harms that you meant, actually the causation be
17 the closing of the plant and not the -- the -- the
18 failure to plan for a negative outcome?

19 I mean, because the failure for -- to
20 plan for the negative outcome just means you've got
21 the negative outcome coming, which in this case,
22 forced them to make some hard choices.

23 A. So, but those hard choices were
24 reasonably, to a certain extent at least, in my
25 opinion, known and -- many, many years since -- I

1 mean, the -- I mean, the Court first ruled on at least
2 Ameren Missouri's understanding of the law in 2016, if
3 I recall correctly. And then the liability decision
4 was in 2017, the remedy in 2019, then obviously the
5 Appellate Court decision in 2021.

6 So I think from Staff's perspective,
7 it's -- they kind of went down a path and never seemed
8 to want to move away from it.

9 Q. And I get that. But isn't the -- I mean
10 if the plant doesn't close, none of those harms occur.
11 And so all of those harms are related to the
12 retirement of the plant, correct? What -- what harms
13 are produced just from the failure of -- to seek an
14 S -- NS -- New Source Review? That's just easier for
15 me than getting the letters wrong.

16 A. So I think the harm is similar under
17 both -- or -- or is the same under both questions.

18 Q. So both issues caused this harm?

19 A. I mean, I think the only other
20 difference -- well, I'm sorry. So planning for NSR
21 outcome, you know, I don't know that Ameren Missouri
22 could have -- the -- I guess the only thing I'm not
23 sure about, I guess, is the -- the future remedies
24 ordered by the Court.

25 Q. Okay. Can you explain this issue and how

1 it relates to the timing of the various court order --
2 District Court orders?

3 **A. I think --**

4 Q. Because that seems to be the context
5 you're tying them to.

6 **A. I think it's more about the planning
7 around the litigation's outcome, whether that be IRP
8 planning or just planning for the eventual retirement.**

9 Q. And is this issue the issue that you
10 believe most relates to Staff's hold-harmless
11 provision?

12 **A. Not necessarily, no. I mean, that's
13 where it ended up in the issues list obviously.**

14 Q. So that -- so -- I -- I interrupted you.
15 I apologize.

16 **A. No, no, no. That --**

17 Q. Go ahead.

18 **A. That's okay. It just -- you know, the
19 issues list is what it is. I can't really speak to
20 how the questions are phrased or why they are where
21 they are. But Staff has three concerns and we've
22 talked about them all already under all the other
23 issues.**

24 Q. Okay. And don't be taken aback. I'm
25 just -- like I said, I'm just trying to sort this out.

1 **A. No, no. I understand.**

2 Q. I'm not -- I'm not saying you guys picked
3 the wrong issue. I'm not saying anything -- I'm
4 really honestly just trying to understand.

5 **A. Yes. Yes.**

6 Q. Because I'm having some -- some
7 difficulty with it. So it -- let me ask this
8 question: Could "A" of this issue have fit just as
9 easily on the plant retirement prudence issue? Or was
10 there a reason it needs to be tied to this issue or it
11 is? Is there a reason it's with this issue and not
12 with that one?

13 **A. I think Staff made -- you know, Staff**
14 **discussed planning for the NSR outcome in its**
15 **testimony. So I -- I suppose it was carved out as a**
16 **separate issue. For some reason, I just -- I think it**
17 **fits under the other one, but I just -- I don't know**
18 **the reasoning behind.**

19 Q. Okay.

20 JUDGE CLARK: Can we go ahead and go
21 in-camera because I'm going to ask about some
22 confidential numbers. And if there's anybody in the
23 courtroom who is not an employee of the Commission, is
24 not with one of the parties, or is otherwise not
25 authorized to hear this information, please step out

1 while we're in-camera.

2 **A cursory glance, it appears that the**
3 **people that are in here are all entitled to hear this**
4 **information.**

5 (REPORTER'S NOTE: At this time, an
6 in-camera session was held and is contained in
7 Volume 5, pages 344 through 347.)

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1 JUDGE CLARK: Okay. We are out of
2 in-camera.

3 CLAIRE EUBANKS, testifying:

4 BY JUDGE CLARK:

5 Q. Is there -- how -- how does Staff see
6 this -- if the Commission were to grant Staff's
7 request on this and -- and hold harmless above a
8 certain amount, how does -- how does Staff perceive
9 that fitting into a financing order?

10 A. I think that is probably best suited for
11 Staff counsel. I -- I would guess that -- I mean, I
12 guess if it was a CCN case, the Commission can grant
13 conditions. So if it's similar to that, you know,
14 that -- that would be how it would work, I suppose.

15 Q. And the condition -- I mean the statute
16 here specifically authorizes the Commission to
17 establish conditions.

18 A. Yeah. But I -- it wouldn't be related to
19 the securitized amount in the order, I don't think. I
20 don't think that was the intention. It would just be
21 a separate condition.

22 Q. And I guess that's what I'm grappling
23 with.

24 JUDGE CLARK: Any recross based upon
25 Bench questions from Public Counsel?

1 MR. WILLIAMS: Thank you, no.

2 JUDGE CLARK: Any recross based on Bench
3 questions from Ameren Missouri?

4 MR. LOWERY: One or two, I think, Judge.

5 RECROSS-EXAMINATION BY MR. LOWERY:

6 Q. Ms. Eubanks, the Judge asked you more or
7 less is this Staff's issue, right? He asked you that
8 question?

9 A. **I think he would like to know whose issue**
10 **it was, yes.**

11 Q. And the answer to the question is that
12 you raised -- on page 125 of your rebuttal testimony,
13 you raised an alleged lack of planning about a
14 near-term retirement of Rush Island and -- and how
15 that might relate to transmission upgrades.

16 And Mr. Fortson filed an entire piece of
17 testimony that claimed that Ameren Missouri hadn't
18 planned, as -- as I think Staff thinks it should have,
19 for a possible NSR loss, right? That's the genesis of
20 this issue, correct?

21 A. **Yes. It's just we've also talked about**
22 **all these issues all day today.**

23 Q. No, I understand that. I understand
24 perhaps it could have been folded into. But if -- if
25 that -- if your testimony on that page hadn't been

1 filed and Mr. Fortson hadn't filed his testimony, we
2 probably wouldn't have a separate planning issue on
3 the issues list; isn't that fair?

4 **A. I think that's fair, yes.**

5 Q. Okay. Thank you.

6 JUDGE CLARK: Any redirect from
7 Commission Staff?

8 MS. MERS: Yes. Hopefully very briefly.

9 REDIRECT EXAMINATION BY MS. MERS:

10 Q. You had some questions from the Bench
11 about, you know, essentially why does this matter.
12 Why -- why does the timing of when Ameren's planning
13 on how to handle the outcome of the court case matter.

14 Do you believe that planning for a
15 negative outcome would impact current and future
16 plans?

17 **A. Yes.**

18 Q. And how does timing and planning impact
19 costs?

20 **A. Well, I think we heard from one of**
21 **Ameren's witnesses earlier today that costs are**
22 **generally always going up.**

23 Q. And do you think planning for a likely
24 negative outcome could cause a utility to invest
25 differently?

1 **A. Yes. Based on what was known at the**
2 **moment in time, yeah.**

3 Q. I'm going to try to redirect on some of
4 the in-camera stuff, but just avoid the numbers if we
5 can, okay?

6 **A. I will try.**

7 Q. You discussed a break-even point. Do you
8 recall that, with the Judge?

9 **A. Yes.**

10 Q. When you say break-even, do you mean if
11 the transmission costs are less than that number that
12 we won't say -- or higher -- sorry, higher than that
13 number that we won't say, that retrofitting may look
14 more economical?

15 **A. So we -- we talked about the scenarios.**
16 **I think a lot of people threw around the 43, 48 -- I**
17 **can't remember exactly -- scenarios. So in -- not in**
18 **all of them is it a concern. It's really more evident**
19 **in a, you know, no carbon future or lower carbon**
20 **future.**

21 **And depending on how much Rush Island**
22 **would have operated in the, you know, couple years as**
23 **an SSR or, you know, assuming that would have had more**
24 **generation, which it did not.**

25 **So I don't know if I'm answering your**

1 question exactly, but when I discussed earlier with
2 the Judge about, you know, when you think about, yeah,
3 we're talking about the transmission costs, but
4 there's also short-term capacity potentially and the
5 future litigation costs. That -- that also makes it
6 look a little less desirable.

7 Now, that's based on the analysis in
8 direct testimony. Mr. Michels presented additional
9 analysis in, I don't know, surrebuttal and there's
10 like four different analyses now I think, so.

11 Q. Do you recall when that figure that was
12 in his direct testimony was developed originally?

13 A. Oh, so -- I believe it was the 2020 IRP
14 potentially, if I recall correctly.

15 Q. Okay. We'll try to now move on from
16 potentially sticky questions that might have in-camera
17 in them.

18 You were asked a question about the
19 Judge -- from the Judge about how the financing order
20 would address the capping transmission costs. Do you
21 recall that?

22 A. Yes, I do.

23 Q. Are those transmission costs securitized
24 costs?

25 A. Ameren Missouri did not include them as

1 **securitized costs in this case, no.**

2 Q. So the -- is it your understanding they
3 would not be in a financing order?

4 A. **That is my understanding, yes.**

5 Q. And --

6 A. **So the -- the re- -- I guess if I may,**
7 **the reason we're talking about it is Ameren Missouri**
8 **presented discussion about the projects and included**
9 **the break-even analysis in its direct testimony.**

10 Q. I'm going to see if I can hopefully help
11 maybe clarify a bit of the hesitation, because I'm
12 thinking we're talking past each other when it comes
13 to the list of issues.

14 Are you separating the testimony that
15 discusses those issues from the process of how the
16 issue was written and put on that list and in what
17 order?

18 A. **I mean, I recognize -- as I discussed**
19 **with Mr. Lowery, I discussed issues with planning and**
20 **Mr. Fortson discussed issues with planning. You know,**
21 **we support our testimony. I don't want to speak for**
22 **Mr. Fortson, but I support my testimony. So Staff has**
23 **concerns and I think they're valid.**

24 Q. But I guess could you say some of your
25 hesitation is that out of the collaborative process to

1 make this issue list, you weren't necessarily -- or
2 anybody, you know, was the one to say, Hold-harmless
3 goes here versus here versus here?

4 **A. Oh, yes. I mean, I provided input to**
5 **Staff counsel's office, but I -- the final version**
6 **is -- you know, I don't know how it got developed**
7 **necessarily.**

8 Q. Okay. That's all I have. Thank you.

9 JUDGE CLARK: This is not a question.
10 This is just a comment from me. I understand that
11 putting the issues list together for the Commission is
12 a very difficult and onerous task. And so I wasn't in
13 any way trying to demean that. I certainly appreciate
14 all the hard work that all the parties do in putting
15 that list together. So I don't want anybody to think
16 that this is about that.

17 I'm just trying to organize and separate
18 in my head what goes where and understand where the --
19 I'm going to call it failure to plan issue, how that
20 fits in with the rest of the securitization case.

21 As I indicated before off the record, it
22 appears that we're going to be -- they need to shut
23 down the network for a few hours. So with that in
24 mind, I'm going to -- you may step down, Ms. Eubanks.

25 **THE WITNESS: Thank you.**

1 JUDGE CLARK: And I am going to adjourn
2 for the day. Go off the record and we will take up
3 again tomorrow at 9:00 a.m.

4 (Whereupon, the hearing was adjourned
5 until April 17, 2024 at 9:00 a.m.)

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1	INDEX	
2	ISSUE 3	
3	AMEREN EVIDENCE	
4	KARL MOOR	
	Direct Examination by Mr. Long	7
5	Cross-Examination by Ms. Mers	8
	Cross-Examination by Mr. Williams	19
6	Questions by Judge Clark	23
	Recross-Examination by Ms. Mers	32
7	Recross-Examination by Mr. Williams	35
	Redirect Examination by Mr. Long	38
8		
	JOHN REED	
9	Direct Examination by Mr. Long	50
10	STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION EVIDENCE	
11		
	CLAIRE EUBANKS	
12	Direct Examination by Ms. Mers	53
	Cross-Examination by Mr. Long	55
13	Questions by Judge Clark	59
	Questions by Chair Hahn	61
14	Further Questions by Judge Clark	62
	Redirect Examination by Ms. Mers	63
15		
	KEITH MAJORS	
16	Cross-Examination by Mr. Long	71
	Questions by Judge Clark	85
17	Recross-Examination by Mr. Long	97
	Redirect Examination by Ms. Mers	100
18	Questions by Commissioner Holsman	112
	Recross-Examination by Mr. Williams	123
19	Recross-Examination by Mr. Long	128
	Redirect Examination by Ms. Mers	134
20	Further Questions by Commissioner Holsman	138
	Recross-Examination by Mr. Williams	141
21		
	OFFICE OF THE PUBLIC COUNSEL EVIDENCE	
22		
	JORDAN SEAVER	
23	Direct Examination by Mr. Williams	145
	Cross-Examination by Ms. Mers	149
24	Cross-Examination by Mr. Long	151
	Questions by Judge Clark	152
25		

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

AMEREN EVIDENCE

MATTHEW MICHELS

Direct Examination by Mr. Lowery	154
Cross-Examination by Ms. Mers	155
Cross-Examination by Mr. Williams	158
Questions by Chair Hahn	160
Questions by Commissioner Holsman	170
Recross-Examination by Ms. Mers	176
Recross-Examination by Mr. Williams	178
Further Questions by Chair Hahn	181
Further Recross-Examination by Mr. Williams	183
Redirect Examination by Mr. Lowery	183

STAFF OF THE MISSOURI PUBLIC
SERVICE COMMISSION EVIDENCE

CLAIRE EUBANKS

Cross-Examination by Mr. Lowery	199
Questions by Judge Clark	205
Questions by Chair Hahn	214
Recross-Examination by Mr. Lowery	216
Redirect Examination by Ms. Mers	220

SHAWN LANGE

Direct Examination by Ms. Mers	230
--------------------------------	-----

BRAD FORTSON

Direct Examination by Ms. Mers	231
--------------------------------	-----

OFFICE OF THE PUBLIC COUNSEL EVIDENCE

JORDAN SEAVER

Questions by Judge Clark	234
Recross-Examination by Ms. Mers	238
Recross-Examination by Mr. Lowery	239

ISSUE 4

Opening Statement by Mr. Lowery	242
---------------------------------	-----

AMEREN EVIDENCE

MARK BIRK

Questions by Judge Clark	245
Questions by Chair Hahn	251
Recross-Examination by Ms. Mers	259
Recross-Examination by Mr. Williams	261
Redirect Examination by Mr. Lowery	268

1	MITCHELL LANSFORD	
	Questions by Chair Hahn	273
2	Questions by Commissioner Holsman	275
3	MARK BIRK (RECALLED)	
	Questions by Commissioner Holsman	277
4	Further Recross-Examination by Ms. Mers	280
	Further Recross-Examination by Mr. Williams	281
5		
	MITCHELL LANSFORD (RECALLED)	
6	Questions by Judge Clark	285
	Redirect Examination by Mr. Lowery	287
7	Further Questions by Judge Clark	288
	Further Recross-Examination by Ms. Mers	291
8		
	STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION EVIDENCE	
9		
10	KEITH MAJORS	
	Questions by Commissioner Holsman	292
11	Questions by Judge Clark	302
	Recross-Examination by Mr. Lowery	306
12	Redirect Examination by Ms. Mers	312
13		
	OFFICE OF THE PUBLIC COUNSEL EVIDENCE	
14	MANZELL PAYNE	
	Direct Examination by Mr. Williams	318
15	Questions by Commissioner Holsman	319
	Questions by Judge Clark	321
16	Further Questions by Commissioner Holsman	326
	Recross-Examination by Mr. Lowery	328
17	Redirect Examination by Mr. Williams	330
18		
	ISSUE 5	
19		
	STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION EVIDENCE	
20		
	CLAIRE EUBANKS	
21	Questions by Judge Clark	337
	Questions by Judge Clark (In-Camera)	344
22	Recross-Examination by Mr. Lowery	349
	Redirect Examination by Ms. Mers	350
23		
24		
25		

	EXHIBIT INDEX	MARKED	REC'D
1			
2	AMEREN:		
3	Exhibit 6		
4	Direct Testimony of Mark Birk		245
5	Exhibit 7		
6	Surrebuttal Testimony of Mark Birk		245
7	Exhibit 12-P		
8	Direct Testimony of Karl Moor, Public		8
9	Exhibit 12-C		
10	Direct Testimony of Karl Moor, Confidential		8
11	Exhibit 13		
12	Surrebuttal Testimony of Karl Moor		8
13	Exhibit 23		
14	Direct Testimony of John Reed		52
15	Exhibit 24		
16	Surrebuttal Testimony of John Reed		52
17	STAFF:		
18	Exhibit 102		
19	Rebuttal Testimony of Claire Eubanks		336
20	Exhibit 103 (provisionally admitted)		
21	Surrebuttal Testimony of Claire Eubanks		336
22	Exhibit 108		
23	Rebuttal Testimony of Shawn Lange	231	
24	Exhibit 109		
25	Surrebuttal Testimony of Shawn Lange	231	
26	Exhibit 113		
27	Three-part Declaration	10	12
28	Exhibit 114		
29	DNR rules	13	15
30	Exhibit 115		
31	Federal SIP Recognition	15	15
32	Exhibit 116		
33	Federal Memorandum and Order	17	18

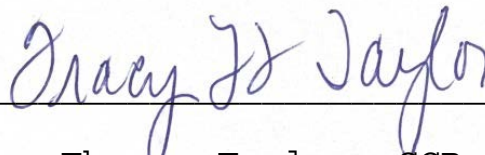
1
2
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5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

	MARKED	REC'D
Exhibit 117 District Court transcript dated 3/28/24	18	19
Exhibit 118 Capacity Position Work Paper	155	157
Exhibit 119 Reliability Requirements	157	158
OPC:		
Exhibit 204 Rebuttal Testimony of Jordan Seaver		149

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Tracy Thorpe Taylor, CCR, RPR

\$	108 230:10,24 231:2 359:17	125 349:12	16 196:5 271:16
\$100 331:4	109 230:10,24 231:2 359:19	128 356:19	16-year 23:15
(10:30 70:5	12:27 144:12	160 357:4
(7)(a) 54:14	10:45 70:8	12th 27:10	16th 3:3
0	11 88:8 159:9 265:4 280:19,20 283:5	13 7:19 8:6,10,16 266:4 307:18 359:9,22	17 45:14 60:2,5,7 62:22 85:11,24 86:6 87:25 88:23 109:23 165:16 355:5
05 45:16	11-day 107:16	13-year-old 305:5 315:17	170 357:4
07 126:15	112 356:18	13.2 87:19	176 357:5
08 126:15 252:18 265:3	113 10:19 11:7,23 12:7,9,10 359:20	133 79:22 80:3,11	178 357:5
09 45:16 126:15	114 13:20,23 15:4, 8,10,12 359:22	134 79:22 80:8,11 106:23 107:9 356:19	18 148:18 165:8 360:2
1	115 14:25 15:1,4, 8,10,12 359:23	138 356:20	181 357:6
1 130:24 165:16 237:8 256:24 303:22 314:7 331:15	116 16:25 17:3,4, 20,22,25 18:1 359:25	14 307:18	183 357:6,7
1,000 237:13	117 18:11,15 19:4, 6,9,10 26:17 360:1	141 356:20	189 73:5
1,200 237:1	118 155:10,12 157:3,5,8,9 188:13 193:18 194:2,5 237:9 360:3	145 356:23	19 156:3 158:2 337:18 356:5 360:2
1,400 247:8	119 157:14,20,24 158:9,11,13 360:4	149 356:23 360:7	19- 111:9
1,800 237:12	12 8:9 266:3 359:21	15 121:16 129:11 139:23 175:9 220:7 271:16 298:2 307:18 324:14 329:11 331:7 359:22,24	190 174:12
1.5 256:24	12-C 7:15 8:6,16 359:7	15-minute 70:6	191 180:11
10 9:3 14:1 220:7 265:4 280:19,20 359:21	12-day 91:22	15-year 331:14	192 180:7
100 300:9 356:17	12-P 7:16 8:6,16 359:6	150 238:3	1920's 43:18
102 54:3 335:9 336:4,11,14,16 359:14	12.9 274:22	151 356:24	195 73:4
103 54:6 335:10 336:6,18,23,25 359:16	123 14:19 356:18	152 356:24	1960's 124:10
104 232:3		154 357:2	1966 263:15
105 232:4		155 357:3 360:3	1970 262:20
		157 360:3,5	1970's 141:24
		158 357:3 360:5	1973 262:20
		15th 134:16 212:3 213:23 303:22 304:13	1977 320:22 322:21
			199 357:10
			1999 24:9 30:21 36:22 38:3 40:13

41:6 45:17 78:7 92:12 106:5,10 111:9 1A 12:4	2010 25:21 26:2 29:14 36:13,14 42:23 43:2 115:18 126:19 158:24 281:13 282:21 283:5 309:21 310:10	168:21 176:18,20, 24 177:4 179:24 181:25 188:19 191:14 192:2,21 194:4 195:2 205:10,12 209:13 222:10 309:21 310:10 352:13	2027 166:5 2029 173:17,18 195:12 2030 195:12 237:11 2030's 116:5,23 117:8 118:19 2035 117:22 2039 114:7,17 162:13 172:3 204:5,19 204 145:11 147:21 148:22,23 149:1, 3,6,7 360:7 2040 117:22 156:16,18,22 171:20 205 318:15 357:10 2050 117:9 118:15 2050's 118:20 119:1 21 15:21 51:13,15 299:10,14 309:21 21,000 20:22 214 357:11 216 357:11 21st 16:22 22 282:21 220 357:12 23 51:5 52:2,5,9, 11 91:23 200:1 356:6 359:10 230 357:13 231 357:15 359:18,19 234 357:17 238 357:18
2	2010-ish 307:9 2011 36:13,14 75:17 120:10 123:14 125:20 126:11 190:7 242:5 247:2 280:15,24 283:12 291:8 296:9 2011-0258 125:18 2012 159:5 185:25 307:18 308:16 2013 308:16 2014 271:15 2015 24:3,10 38:3 264:21 271:11 283:11,13,17 2015-ish 283:1 2016 16:22 17:17, 18 44:17 45:14 47:8,11 91:21 264:21 271:12 340:2 2017 23:22 28:2,3 44:17 47:4 72:3, 16,23 73:1,11,14 74:3 82:24 91:23 205:12 340:4 2019 24:5 72:4,15 73:15 82:24 137:15 205:1 340:4 2020 155:19 156:16,25 161:15, 18,23 162:2 163:4,12,17	2021 72:4 159:21 163:25 164:1 176:24,25 177:3 186:12,13,22 192:2,7,8,21 193:1 195:17 197:18 205:8 208:18 209:8,13 212:12 283:24 289:4,18 320:4 328:9 340:5 2022 164:21 165:20,22 169:13 178:23 191:23 195:21 212:12 283:24 2023 163:8 165:4, 21 173:1,16 177:11 207:7 212:14 2023/24 191:23 2024 3:3 19:7 51:16 68:24 121:16 133:17 156:8 162:6,10 185:25 193:10 194:5 195:2,24 213:23 304:12 355:5 2025 166:5 193:11,20 194:6 195:4 196:2 198:1,2 212:3 237:7,10 254:16 2026 198:6	
2 88:22 119:9,10 158:2 314:8,14 331:16 20 40:10 108:1,2 119:1 129:12 134:25 213:23 219:15 20-year 190:20 200 69:20,24,25 108:1,2 150:6 173:6,21 174:11, 16 179:8 257:7 200,000 304:11,15 2000 89:23 2000's 268:2 2002 16:16 150:14 2003 16:16 115:13 2004 16:16,17 2005 25:21 26:2 28:3 29:14 35:23 45:4 119:5,21 126:19 2006 12:21 14:20 32:8 2007 75:16 126:18 130:24 178:2 218:8 337:18 2008 245:22 246:25 264:9 265:2 289:4 2009 137:14 242:5 2009/2010 243:4			

239 357:18	3.9 275:1 298:9	23 53:8 61:10,23	132:9 141:15
24 51:5,9 52:2,6,9, 11 196:7 359:12	3/28/24 360:2	62:2,15 152:23, 24,25 153:3,5,14	171:10 216:11
24/7 268:16,17	30 161:1 191:2	161:5 199:15	217:21 239:21,22
24/7/365 255:9	300 120:24	210:18 279:24	257:8 267:20
242 357:20	166:14,15 170:25		282:9 314:5,9
245 357:23 359:3, 5	196:12 254:17	4	320:20
25 146:10,12,15 211:12	302 358:11		52 359:11,12
250 257:7	306 358:11	4 196:5 240:15	52.21 31:21
251 357:23	30th 304:1	357:19	53 356:12
259 357:24	310 3:4	4,000 247:9,14	55 356:12
26 146:14,15 211:12	312 358:12	4- 171:10	561 195:8
261 357:24	316 179:22,25	40 75:15,20 159:8	59 356:13
268 357:25	318 358:14	191:2	5:19 334:15
27 211:12	319 358:15	400 125:15 173:7	5:20 334:16
273 358:1	32 26:22 356:6	237:13	5:30 334:16,20
275 207:1 358:2	321 358:15	40s 139:5	
277 358:3	326 358:16	42 92:1 122:2	6
27th 14:20	328 358:16	427 304:9	6 244:18,22 245:1, 3 282:3 359:3
280 358:4	330 358:17	427,000 304:9	600 141:15,25
281 358:4	336 359:15,16	43 122:2 351:16	171:20 180:9,10
285 358:6	337 358:21	45 186:23	248:21 260:17
287 358:6	344 343:7 358:21	460 217:20 219:23	281:24 282:3,10, 20
288 358:7	347 343:7	468 139:12	61 356:13
28th 18:18 19:7 26:18 68:24	349 358:22	48 162:23 186:23	62 356:14
291 358:7	35 16:1,11 356:7	351:16	620 281:25 282:1, 3,21
292 358:10	350 358:22	4A 272:20 298:10	63 356:14
3	38 356:7	4B 279:25	650 141:16
	393.1700.1 54:14	5	67 290:21
	3:08 240:10	5 154:22 165:8	67.41 289:5,24
	3:20 240:11	229:8 230:25	
	3A 5:9 6:14 49:18, 20,23 53:9 61:9, 14 68:19 152:24, 25	232:18 334:7,17, 24 343:7 358:18	7
	3B 5:15 49:19,22,	50 110:15 191:3	7 244:18,23 245:1, 3 356:4 359:4
3 356:2		356:9	7,339 156:20
3.6 237:6		500 124:10,16	

7,800 257:9 267:9	9:00 355:3,5	325:7	achievable 115:19 129:7,8
7/11 127:11	9:01 3:1,3	accept- 253:24	acronym 177:23
70 217:20 219:23 256:2	<hr/> A <hr/>	acceptable 206:15	Act 20:2,5,6 27:14, 18 28:6,22 29:11 30:2,20 39:23 80:13 81:21 82:12,20 91:25 131:20 151:10 228:11 315:6
700 125:15 282:24 283:19	a.m. 3:1,3 355:3,5	accepted 104:7 293:3 328:16	acted 71:18 85:1 151:22
70s 124:20 217:22	A1 11:17 12:5	accepting 34:15	acting 100:18,21
71 14:18 106:6 356:16	AAA 329:6,12	access 77:16 140:20 141:1 142:14,16	action 134:10 166:6 183:9 361:10,14
720 264:16 271:15 282:24 283:20,21	AARP 4:25 175:17 259:8 273:4	accommodate 266:9	actions 28:23 90:8,9,12,14 91:6 92:11 108:23 110:13 225:14 227:16 228:1,4
7470 92:1	ab-- 112:25	accomplished 21:6	actively 303:17
75 69:17 107:25 135:21,22 262:23	aback 341:24	accordance 104:7	activities 150:24
750 124:11,16	abandon 243:7,15 253:17 303:23	account 93:18 94:12 168:12 195:16,19 209:24 258:12 309:10 317:2	activity 159:25
76 262:23	abandoned 86:18, 19 87:11 240:16, 20 243:11 245:20 250:13,15 272:2 274:21 275:1 285:7,16 286:2, 16,20,21 287:19 296:7 300:8 301:20 302:14 303:6 304:9 316:16 320:22,24, 25 322:22 324:24 325:5,13,15 328:16,20	accounted 192:7 266:5	actual 13:6 68:17 76:2,11 77:20 92:13 94:9 99:2 127:2,6 224:6 225:14 226:10 236:8 252:13 294:7 309:17
<hr/> 8 <hr/>	ability 166:12 167:24 168:3 361:7	accounting 104:7 243:16 302:22 328:14,17	ad 112:21 115:3
8 356:5 359:6,8,9	abroad 138:23	accounts 60:5	add 116:24 136:18 167:13 173:21 243:18
800 237:2	absent 197:19 277:3 294:18	accreditation 165:24 188:12,20 191:18	added 135:9,23 136:14,18 193:5 238:4 254:24 268:8
80s 300:11	absolutely 46:9 90:13 112:12 119:3 130:22 131:17 132:24 133:2 139:16 142:11 188:6 252:16 271:17 277:16 308:5	accreditations 164:11 165:2 192:22 193:4	adding 166:16 167:1,22 177:15
85 356:16		accuracy 104:4 294:9	
<hr/> 9 <hr/>		accurate 54:20 79:3 112:9 171:2, 3 230:17 232:11 238:21 275:25 293:13,15	
9 314:18		accurately 278:25	
9,032,646 275:3			
9.3 86:22 87:18			
939 361:3			
95 134:17 174:9 268:12			
954 159:5			
97 356:17			
98 314:11,18			
99 35:7 78:5 115:13			

178:17 181:12,16 addition 174:14, 17 178:14 179:11 181:10 188:8 239:24 257:19 266:4 additional 19:16 33:18 40:15 119:18 135:25 167:19 205:24 243:3 255:19 256:21 257:5 286:5,14 290:16 304:5 352:8 additions 113:7 174:2 224:12,13 236:3 additive 174:18 address 182:20 244:2 352:20 addressed 118:11 319:14 addresses 118:6 adept 83:25 adequacy 163:13, 18 164:23 166:25 196:20 207:8 254:11,15 265:6 adjacent 315:11 adjourn 355:1 adjourned 355:4 adjust 50:15 adjustment 94:9 adjustments 193:24 admi- 332:12 administration 36:23,24 37:12, 17,18 111:6	administrator 35:19,21 admission 335:20 admit 13:6 admitted 8:14 12:9 15:11 17:25 19:9 52:9 109:3,4 149:6 157:8 158:11 233:24 245:1 336:14,24 359:16 admitting 8:8 11:16 12:6 15:7 17:21 149:2 157:4 158:8 244:22 336:11,18 adopted 46:6 75:22 190:7 240:21 advance 190:20 advanced 118:22 127:14 advancements 119:2 advantageous 236:23 affect 168:2 201:23 affirmed 34:15,17 39:2 affirming 72:5 affordability 258:20,22 afield 43:10 after-the-fact 25:22 afternoon 160:11, 12 170:22,23 214:10,11 220:14, 15 251:16,17 261:14,16 273:20,	21 319:10,11 afterward 77:20 age 172:18 agency 22:20 agency's 13:11 aggressive 171:6, 15 agnostic 197:13 agree 28:19 33:12 37:2 56:18,22,24 71:15 72:25 82:15 83:12,17 84:5,8 89:15,18 100:21 122:6,7 133:19 160:1 201:11,16 202:19 204:14 207:5 215:19 228:16,17,24 276:13 293:14 308:25 312:1 325:19 329:21 agreed 4:17 203:16,23 303:1 agreeing 298:11 agreement 146:17,20 169:14, 15 170:9 agrees 84:11 95:14 ahead 14:24 17:19 19:3 26:23 70:16, 20 153:6 157:3,12 160:8 170:19 199:9 223:3 229:25 232:25 235:4,5 237:4 242:1 244:10,14, 17 273:16 275:10 277:21 292:12 319:8 334:6,10 335:7 341:17 342:20	aimed 30:24 43:25 air 13:18 20:2,5,6 27:14,18 28:6,22 29:11 30:2,20 31:11 35:20 39:22 80:12 81:21 82:12,19 91:25 113:18 131:20 135:17 150:22 151:10 228:11 242:11,12 282:12 Alabama 29:23 40:24 all-in 283:16 allegation 218:19 allegations 65:12 alleged 113:14 349:13 alleging 243:20 allowance 242:19 243:5 269:13,15 270:5,9 allowances 113:15 125:2 131:3,9,19,25 132:5 133:4,5,7,9, 11,14,22 270:18 308:19 allowed 131:3 190:2 213:10 246:18 270:15 allowing 179:14 alongside 174:1 alternative 177:16,18 185:1 186:4 alternatives 184:18 242:20 ameliorate 123:19 amended 16:8 239:12
--	---	--	---

<p>Amendment 39:23</p> <p>Ameren 3:9,23,25 4:2 6:15,18,19,22 7:5 9:7 12:12 17:11 25:10,20,23 26:1,7 27:19 28:5, 21 29:2 30:5,11 31:5,14 33:16 38:6,10,12,21 43:22 44:11,19 45:2,4,11 48:2,14, 18,22 49:2 50:9, 20 52:2,4,14 53:9 55:15,25 56:9,14, 16,19,22,25 57:10 62:9 63:11,22 64:5,13,17,18 65:10 66:3,17,22, 23 67:4,16 68:5,9, 12 69:2 71:6 76:8 80:16 81:9 83:13 84:12 87:14 89:22,24 91:25 93:20 94:6,17,18 95:10,24 96:19 97:8,18 99:18 100:12 104:19 105:1,14,16 106:3,6 107:1,25 108:6,24 109:16 110:1 111:8,10 115:3 116:16 123:10,15 124:19, 22 125:10,20 126:16 128:2,10 130:25 131:18,21 133:4,5,11,21 135:13 141:3 143:15 144:8 150:21 151:3,17 154:1 155:4 156:24 158:22 177:12 182:5 183:6,7,17,25 185:17 186:10 199:15 200:20,22, 24 201:20,24</p>	<p>202:2,4,9 204:2, 19,24 205:7,9 206:9 207:6,13 208:18 211:6 212:9 213:3,22 215:11 216:2 218:22 220:17 221:5,11 223:14, 22 227:1,6,16 228:1,4,10 231:8 233:6 234:9 239:3 242:19 250:1 254:14 266:22 267:21 268:21 270:6,10,17 278:7 280:20 281:10,11 284:13 286:19 291:13 292:8 293:19,20 294:5, 15 297:25 300:13 306:22 308:17 313:5 315:25 316:4,13 319:3 320:2,22 328:1 331:22,23 333:21 334:24 337:8 340:2,21 349:3,17 352:25 353:7 356:3 357:1,21 359:2</p> <p>Ameren's 24:14 28:12,23 29:25 30:1 56:3 60:3 83:8 93:6 94:17 104:11 105:25 106:1 120:8 122:1 133:17 149:17 153:14 155:19 159:15 213:3 238:19 250:19 274:16 279:9 295:12,19 305:19 306:17 319:14 339:6 350:12,21</p> <p>America 139:3</p>	<p>amortization 297:1 323:19 324:18 329:2 330:14</p> <p>amortized 287:25 322:14,20</p> <p>amount 60:10 68:18 88:5,18 94:10 105:20 113:8,15 135:1,2 136:7 153:19 172:14 175:5 201:23 235:3 237:19 238:11,12 240:15,16 268:14 287:20 313:25 316:24 320:17,18, 19 322:16 323:25 324:17,20 327:2 329:11 330:13,25 332:2 333:11 348:8,19</p> <p>amounts 89:6 94:19 108:7 275:3 292:25 297:4 301:4 306:6,14 331:12</p> <p>ana- 77:10</p> <p>analogous 104:1</p> <p>analogy 316:12</p> <p>analyses 74:6,9 76:19,23 77:3,12 78:4 184:12,14,17 185:22 186:14 189:2 352:10</p> <p>analysis 65:3 67:10 76:15 78:15 99:23 102:12 125:1,4 131:8,14 132:4 133:20 135:19 136:3,4,14 137:6 159:1,4 161:15,22 162:22 163:1,4,5,7</p>	<p>177:17 185:7 186:3,23 189:20 192:3,8,9 195:18 196:2,25 197:1 205:13 208:13,17 209:9,14,16,22 210:2 211:22 215:15 223:5 226:15,16,19 250:4,10,18 251:2 276:21 277:8 279:18,19 281:19 292:23 293:15 298:7 309:2 312:21 352:7,9 353:9</p> <p>analyst 145:9</p> <p>analyze 78:14,20</p> <p>analyzed 184:23</p> <p>analyzing 185:12</p> <p>angle 339:15</p> <p>announcement 176:24 191:13</p> <p>annual 24:23 170:5</p> <p>answering 209:3 304:20 351:25</p> <p>answers 7:25 8:2 51:21,23 54:20,25 67:13 123:9 154:15,18 230:21 232:15 235:18 333:9</p> <p>anticipate 166:9 229:20</p> <p>anticipated 168:13</p> <p>anybody's 243:20</p> <p>anymore 187:9 238:2 243:6 255:8</p> <p>apologies 251:14</p>
--	---	--	---

278:1	163:22,25 164:8	argument 23:16 129:5 296:3 297:23 298:17,18 299:3	222:10 223:5 239:19 242:3
apologize 21:21 33:6 34:23 38:17 148:5 156:10 274:12 279:24 280:12 341:15	apply 83:23 151:10	arguments 91:20 216:17	assumes 176:6
apology 63:15	applying 78:1,10 99:17	arise 202:21 207:22	assuming 53:8 58:5 99:2 142:25 153:8 174:8 201:6 217:12,13 255:18 271:11 300:22 331:13 335:17,18 351:23
apostrophe 148:15	approach 9:24 16:24 18:8 40:13 96:18 112:8 155:7 157:10 161:7 194:16 338:4	articulate 285:25	assumption 94:21
app- 262:8	approached 130:8,9	as- 225:21	assumptions 158:25 161:18 162:1 163:8 171:17 205:3
apparently 16:16	approaching 161:8	Asbury 114:2 137:11 138:3 143:23,24 299:23 326:12	assurance 35:18 36:10 104:6
appealed 34:11,13	appropriately 311:18 313:12	aspects 305:13	assured 39:22
Appeals 82:25	appropriateness 295:21	assess 61:15 190:14	attach 73:20
appearance 335:7	approval 14:22 32:5,8 33:19	assessed 319:15	attached 9:10 72:8 73:14,19 86:17 87:7 91:16 172:23 294:2
appearances 3:22 291:25	approve 215:13	asset 112:7,13,17, 19 114:6,8,12,16 128:17 138:8 162:24 172:10 173:22,23 301:12	attachments 9:20, 23 10:24 11:7 222:5
appeared 64:15 70:16	approved 12:22 31:18,20 164:22 290:9,22	assets 117:7 122:23 126:14 138:13,24 172:17, 18 173:25 265:23	attainment 81:17
appearing 4:11 6:1 53:4,8 55:2 229:4 361:5	approximate 127:25	assist 109:23 228:15 298:5	attempt 36:7 195:18
appears 10:23 14:23 51:12 82:8 166:22 244:14 273:1 322:2 343:2 354:22	approximately 86:22 87:18,19 125:9 158:22 267:25 292:24	assistance 147:13	attempted 248:25
Appellate 340:5	April 3:3 27:10 355:5	assisted 298:4	attend 6:11
appetite 164:2	Aquila 117:2 119:8	assume 32:10 120:22 162:9 166:16 172:19 176:5 184:7,12 189:8 211:1 273:25 274:2 301:5 304:10 330:24 331:3	attended 23:25
apples 262:8	archaic 135:25	assumed 159:5 192:1 195:24	attending 6:2
applicability 20:10,13 21:2,15, 16 22:2,6,11,17 223:23 235:14 259:16	area 69:13 81:16		attention 66:13
applicable 80:17 81:2 260:13 285:6	areas 256:17		attorney 95:19 107:13 182:17 214:3 298:18 361:12
application 152:2	argue 213:16,18		attorneys 95:8,19
applied 45:20 46:3 78:23 83:13 99:24	arguing 215:6		

attribute 298:10	aware 31:1 45:5,7, 8,12 78:16 129:24 176:15,17 203:7 204:7,10,13 230:15 289:25 313:17 316:2 317:17 326:23 327:3	bang 135:1	69:1 102:18 191:9 219:18 238:6 245:23 248:20 252:17 254:19 287:21 310:5
audit 103:24		bank 242:19 256:25 269:10,13, 15 270:9,15	basis 25:9,24 27:4 29:8 42:12 46:23 48:22 65:11 76:3 120:24 184:9,10, 22 226:20 243:25 250:17,22,23 251:20 279:19 293:9,12 317:1 332:9
auditor 73:19 91:15 317:9,13 318:12		banks 270:5	
auditors 103:17 104:3		barring 122:23 298:17,20	
Audrain 167:6		base 12:21 30:14 91:2 105:12 112:16 120:19 122:24 124:18 159:4 173:23 200:25 236:21 257:4 288:1,7 296:22,24 324:5 325:16	batteries 69:18 236:4 237:13 239:24
August 91:20 134:16 164:23 186:12 193:2 197:18 212:13	B	based 25:23 27:2 32:15 35:2 63:7 71:23 78:14 91:8, 9 93:6,8 97:5 102:17 123:4 125:15 138:2 153:8 161:23 162:25 165:21 175:23 182:14 189:1 192:25 202:10 203:8 205:11 207:2 208:13 209:8 213:24 215:25 216:3 222:15 236:8 237:17 238:14 239:7 246:4 259:7,12 264:19 279:6 287:10 296:10 300:21 306:20,23 309:4 327:23 332:11 338:11 339:12,14 348:24 349:2 351:1 352:7	battery 173:3,17 174:6,11,23 181:16
author 15:4	B-R-A-D 231:25		be- 215:6
authored 67:4	back 22:13 23:8 29:13 37:11 70:7 72:16 81:24 92:21 93:24 99:20 100:11 105:21 109:10 111:1,14 129:14,19 133:3 139:4 144:14,16 154:22 161:2 162:19 186:8,13 193:15 199:4 217:22 223:2 229:7 230:24 237:10 240:11 241:13 253:4 266:18 272:17 278:1 279:10 284:21 303:4 305:19 316:7 320:19,22,24 324:17,21 334:16		bear 15:6,17 25:13 284:24 287:3
authority 41:21 43:2 100:4 110:6 217:3	back-up 236:18,24		bears 96:21
Authority's 41:25	background 327:9		beat 40:9
authorize 297:4	bad 203:19 223:15,19		began 3:1 176:17 183:9
authorized 342:25	bait 245:18		begin 144:17 153:13
authorizes 348:16	balance 193:23 217:19 219:21 237:9 258:21		beginning 51:14 100:12 128:14,18 235:13 331:1
Authorizing 3:10	ball 136:11		behalf 3:24 4:5,6, 9,12 64:16
auxiliary 136:9	ballpark 125:11		behavior 29:25 30:1 48:24 299:22
availability 77:21 105:2,7,10 112:23 121:21 128:23 129:2,25 135:15 164:6 218:18 219:13		basic 106:12 184:5	belief 8:3 36:23 51:24 54:21 110:3 230:18 232:12
avenue 139:1 296:25		basically 46:14	believed 78:23 251:3
avenues 331:6			
average 161:1 168:20 169:3 237:18 288:8 313:3			
avoid 20:14 269:5, 7 270:19 351:4			

bell 147:6	Birk 240:25 242:2, 25 244:2,5,9,14, 20,23,24 245:5,15 251:16 259:3 261:14 268:24 275:16 276:3 277:14,18,23 284:15 289:12 290:17 291:6 300:17,18 305:8, 11,16 309:24 310:12 357:22 358:3 359:3,5	boilerplate 124:17	183:3 238:16 242:1 259:14 285:4 350:8
belong 286:2		boilers 43:18 92:2	
Ben- 275:6		bond 320:16 321:17 322:17 323:16 324:12,13 329:6,12 331:20 333:11	bring 36:11 167:19 320:7,8,12
bench 32:16 33:1 35:2 91:22 97:5 107:16 108:9 137:24 177:8,21 215:25 216:3 224:4 239:7 259:16 269:24 273:11 292:10 306:20,23 312:9 315:16 327:23 348:25 349:2 350:10	Birk's 56:14 298:6 305:12 309:25 315:21 317:14	bonding 326:25 327:10	bringing 46:23 207:18
beneficial 114:13 247:24 250:19 271:2 322:15,25	bit 34:24 62:8 68:23 91:1 115:12 159:14 163:15 168:9 172:9 183:22 199:17 202:22 207:19 209:12 211:13 216:12 223:21 233:20 253:5 268:22 298:8 299:24 320:13 331:9 338:19 339:12 353:11	bonds 3:11 201:24 240:18 287:22 288:6 323:12 331:21,24 332:3 333:12,21,22	brought 32:1 46:20 60:18,20 110:2 243:9 285:5 296:9,21 320:3,9 321:3
benefit 31:4 36:3 113:17 120:2 139:19 167:14 172:21 186:18 248:18 269:21 301:10 303:11 324:16,24,25 325:6,17,21,23		book 139:17 220:3 304:2	brownfield 144:5
benefited 246:8		booked 327:16	brusher 139:4
bid 221:6 252:21	Black 242:6 245:23 247:8 250:17 251:19 271:8 306:5 310:21 311:2,10, 12	books 104:4,6 219:17 300:23 301:1,14	buck 135:1
big 118:23 257:9 263:9 293:22,23 311:3 312:14 314:1	blank 38:8	borne 117:19	bucks 282:1
bigger 263:10 282:15,16	blanking 30:16	bottom 80:4 147:7 166:3 193:21	budget 290:22
biggest 118:23	blend 263:22	bound 332:25	build 119:15 121:17 124:20 166:19 171:2 176:9 177:8,12,14 196:16 197:23 198:8,12,18,19 217:24 219:8,18 246:21 257:22 264:10
billed 166:14	body 315:10	Brad 231:16,20,25 357:14	build-up 135:16
billion 119:9,10,11 143:17 186:16,18, 20 237:6 313:10	boiler 58:8 105:3,4 115:13 130:7 134:20 135:16 136:3 218:16 263:2	break 70:6 144:13, 17 184:14 229:20 233:1 334:11	building 3:5 198:12 260:4 316:1
billions 38:1 119:23		break-even 208:14 209:16,22 210:1 223:5 351:7,10 353:9	built 115:18 121:19 196:12 250:16 262:19,20, 22 263:12,14,15 283:7,9 296:15 307:25 316:13
		breakdown 85:14 293:6	bullet 80:16,23
		brevity 150:1	bunch 79:6 236:22
		briefly 32:17 60:4 65:23 101:17 102:16 107:5 128:12 138:2 149:12 158:19	burn 178:12,16, 19,21 242:21 269:11

burning 188:8	22:22 28:7 50:7	13,14,19,22	266:2
Burns 311:6	53:12 64:11,19	182:6,7,15	carved 342:15
buses 108:3	70:10 101:22	187:12,19 188:4	case 3:12 9:5
Bush 36:25 37:17	115:8 120:1	191:20 193:10,20,	18:18,22 23:14,23
business 3:9	144:18 152:22	23,24 194:3,6,11,	24:1,2,5,20,21
311:7	227:18 229:15	12,23 195:3,9	25:3,11,12,25
button 314:6	231:14 272:15,17	196:2,6,9,16,18	29:10,11 30:9
buy 107:25 171:1	293:23 334:16,25	197:2 202:4,11,17	32:20 34:8,11
202:11 258:2,5	354:19	207:8 211:10,11	38:10 41:20
buyer 139:24	Callaway 266:16	214:13 224:9,23	43:11,22 46:21
buying 125:2	300:10,14	225:2,5 237:9	49:8 56:5,18,23
buzzer 222:22	called 22:21 25:9	238:19 254:16	60:24 61:20 62:11
	73:9 129:13 136:8	256:9 265:7,8,13	64:7,8,9,24 65:15
	151:9 166:14	266:11 268:11,13	66:1,2,4 67:3
	169:14 278:9	318:10 339:6	68:17 73:24 74:20
	310:1	352:4 360:3	75:4 81:10 86:12
	calling 226:4	capacity's 187:9	88:2 91:19 96:19
	263:5	capital 86:19	97:14 101:16
C	calls 6:23 50:9	87:11,20 161:2	102:6 103:3,11,
C-A-S-S 147:15	53:13 70:12	167:17 240:17	12,23 104:11,13
C-L-A-I-R-E 53:24	144:20 199:4	242:7 274:21	106:12,15 108:13,
ca- 214:16 215:14	210:1 229:17	275:1 285:7,16	17 115:1 125:17,
CAIR 37:16 246:1	231:16 233:14	286:2,16,20 288:9	19 130:5 134:13
264:22 269:8	291:19 318:1	302:14 303:6	137:13 146:17
calculate 160:24	335:1	313:3 319:13	149:22 150:8,10
218:25 238:5	camera 85:25	325:5,13	151:16,20 162:6,9
calculated 160:20	234:16,20	capitalize 301:23	182:8,12 185:22
192:22,24	campaign 171:16	310:15 316:23	186:12,14,17
calculating 67:24	cap- 188:11	317:1	187:17 197:16
calculation 57:22	capability 167:1	capitalized 324:3	200:20,23 201:9,
77:8 88:17 147:18	178:15,18 180:14	capping 352:20	13,14,19,21
153:2 221:23	181:10,12 188:8	capture 190:18	202:8,21,22,23
237:17 329:8,17	263:21 282:12	capturing 162:15	203:3,6 206:10
calculations 26:1	capacity 58:4	carbon 116:6	207:13 208:10
57:18 58:13,18	60:19 62:4 115:15	118:2,12 132:18,	210:11 211:2,6
59:1 66:18,24	136:7 141:4 145:7	21 162:3 205:2	213:18,25 214:2
67:8 68:4,7,10,13	155:18,20 156:11	351:19	217:1,2,11 222:14
74:24 75:9,13,23	157:5 164:11	care 118:7	223:11 224:3
76:3 77:9 79:1	165:13 166:12,23	Carolina 29:24	226:15,17 230:9
160:16 221:12	167:14,19 168:3	carried 296:2	232:5 239:6,22
260:24,25 261:4	170:24 171:4,14	325:14,20	243:13 272:5
calculator 329:16	173:4 174:4,8,12,	carry 36:25 265:24	286:7,11,19
call 6:19 20:3	17 178:24 179:11,		287:25 296:2,7,10

3,4,7,9,10,21,23 321:3 322:14,20 323:7,14,17,18,22 326:4,17 327:13, 16 329:2 336:21 339:21 348:12 350:13 353:1 354:20	ceased 298:23 CEJA 181:4 Center 3:12 289:3 centers 142:24 168:18 256:16 257:6 268:10 Central 130:7 certainty 278:15 279:5 CERTIFICATE 361:1 certify 361:4 cetera 162:4 184:25 190:2,3 217:25 307:18 Chair 6:1 61:2,4,5 160:8,9,10 161:21 176:2 181:21,23 183:5 185:16 189:1 196:14,21 214:6,9 241:12 251:13,15 259:4,6 273:12,15,19 274:5,7,13 309:2 356:13 357:4,6, 11,23 358:1 Chairwoman 68:16 challenge 168:16 219:22 challenged 32:2 challenging 219:7,10 295:6,7 chance 17:7 155:15 157:23 215:4 326:12 change 31:25 36:15 114:10,12, 18 164:1 165:19 166:1 195:20 197:19 205:7	228:12 254:9 305:13,18 changed 16:10 34:3 41:6 48:16 146:11,13 148:2,4 161:16 165:7 168:23 192:17 307:13 308:16 309:14 310:11 316:7 changing 50:5 192:22,23 205:1 207:16,21 209:23 266:8 characterization 102:11 characterize 18:23 85:18 88:5, 6 characterized 89:4 290:19 characterizes 72:21 charge 289:3,4 295:11 311:18 charged 293:5 charges 287:1 293:4 303:23,25 304:5,11 332:1 charging 295:8 303:17 304:14 charitable 89:1,3, 4 chart 165:10 179:19,22 180:1 188:12 288:18,21 302:16,18,21,25 cheapest 197:12 check 38:8 choice 40:2 133:20 210:20	choices 339:22,23 choose 235:4 chooses 235:5 chose 66:13 chosen 249:20 252:4,10 311:13 chunk 267:18,19 313:18,21 314:1,2 chunks 256:22 257:5,9 268:8 chunky 267:17 268:5,6,7 Chupka 106:7 circa 139:4 Circuit 23:16 40:8 72:5 circumstance 312:23 circumstances 95:21 313:15 citation 80:21 citations 81:5,14 cite 74:2 101:20, 25 cited 74:11,20 332:15 city 139:2 167:17 cl- 312:24 claim 25:10 71:22 202:11 218:11,15 claimed 349:17 claiming 151:17 218:7,10 claims 39:7 Claire 53:13,19,24 199:18 214:10 335:1 336:12,19 337:11 348:3
--	---	---	---

<p>356:11 357:9 358:20 359:15,16 clarification 49:16 177:20 215:20 240:25 259:15 260:20 clarify 21:1 46:25 50:5 61:8,14 150:19 213:19 218:20 241:8 251:5 254:1 259:21 274:18 313:24 353:11 clarifying 32:11 34:5 281:4 336:2 clarity 11:22 159:14 Clark 3:2,14 4:1,4, 8,14 5:18,21 6:8, 24 7:3 8:7,20 9:13 10:3,12 11:11,25 12:3,14 13:8,12, 25 15:6,14 17:2, 21 18:10 19:5,16, 19 21:19 22:25 23:2 32:14 33:7 34:6,23 35:1,7 38:20 43:14 44:9 46:25 47:5,17 49:10,15 50:3,7, 11,14 52:4,15,18, 22 53:2,7,11,15, 18 55:6,10,14 57:16 59:17,21,25 62:14 63:7,11,13, 18 65:7,17 69:23 70:1,4,10,14,19 71:1,5 85:5,8 86:7,13,24 97:5,8, 15 98:4 100:8 101:10 111:23 123:3 128:10 133:25 137:24 141:9 144:8,10, 12,16,22,25</p>	<p>147:12 149:2,10 151:2 152:12,14 153:6,11,24 154:25 155:8,11 157:4,7,12,15,19 158:8,16 159:12 160:1,6 170:15,18 175:13,22 178:6 181:21 182:23,25 183:2,17 198:24 199:2,6,11,14 200:4 205:17,19 215:24 216:2 220:12 222:18,24 223:2 226:5,11 227:21 228:16 229:4,9,12,15,19, 24 231:4,7,10,14, 19 232:21 233:5, 8,16,23 234:5,8, 11,15 238:14 239:3,6 240:4,7, 10,14 241:7,21 242:3 244:8,12, 17,21 245:7,10, 14,17 251:11 259:6,10 261:10 268:21 271:22 272:15,19,24 273:3,7,10,13,16 274:3,6,8,12 275:6,9 276:2,8, 11 277:16,21 280:1,5,8,12 281:6 284:13,15, 18,20 285:3 287:9,12,15 288:14 291:1,11, 13,15,21 292:3,7, 10,12 302:5,9 306:22 312:4 317:21 318:3,24 319:2,5,7 321:11, 13 326:8 327:22 328:1 329:25 332:14,23 333:5, 18 334:2,13,19</p>	<p>335:3,11,16,19 336:2,6,8,10,14, 17,23 337:4,7,10, 13 338:5,8 342:20 348:1,4,24 349:2 350:6 354:9 355:1 356:6,13,14,16,24 357:10,17,23 358:6,7,11,15,21 Clark's 251:18 classified 208:21 clean 20:2,5,6 27:14,17 28:6,22 29:11 30:2,19 39:22 80:12 81:21 82:11,19 91:25 119:13 120:1,19 131:20 138:20 151:10 228:10 242:11 315:5 cleaned 264:6 cleaner 113:18 120:1 cleanest 118:23 clear 33:24,25 42:24 77:11 99:8 120:4 187:4 203:14 209:1 210:10 211:9 217:9 226:16 271:10 290:7 297:6 337:16 clearer 294:19 climb 237:10 Clinton 36:23 close 50:15 96:9, 14 177:12,19 211:20 228:13 262:9 267:1 278:21 290:13 303:21 312:24 340:10</p>	<p>closely 322:5 closer 267:6,15,16 closes 243:17 closing 280:21 299:12 339:17 closure 337:21 Club 5:1 co- 148:11 337:24 CO2 132:18 181:3 coal 20:22 105:5 116:21 118:4 120:1 134:19 135:2 138:18,19 162:3 175:5 185:8 191:4 236:6,17 242:21 243:5 255:16,23 263:2, 22 269:12 270:5 271:1,6 275:25 276:16 308:20 coal-fired 92:2 115:7 124:18 132:8 140:3 248:9 coals 269:16 270:12 codes 138:15 Coffman 175:16, 20 182:23,24 259:9 cold 266:20 collaborative 119:20 353:25 collected 176:10 colloquy 97:15 column 16:10 combinations 162:23 combined 300:11</p>
--	---	---	--

<p>combined-cycle 237:2</p> <p>combustion 167:2 262:20,23</p> <p>comma 146:8 147:16 148:1</p> <p>commenced 76:17</p> <p>comment 35:8 134:5 301:11 354:10</p> <p>commenting 301:20</p> <p>comments 29:18 150:16,17 152:7</p> <p>commission 3:6 4:5 5:5,22 6:3 13:9,10 23:1 27:1, 6 29:10,17,20 32:16 47:22 52:16,22 56:25 57:1,5 59:18 60:23 63:8 67:1 72:12 73:8 82:13 84:11,22 85:5 90:18,21 93:12, 16,17 95:5,11,14 96:17 98:17,22 107:2 111:23 113:4,11 137:25 149:11 151:16 152:12 155:1 159:13 160:7 166:7 170:15 175:14,23,24 182:10,25 183:18 190:7 201:7,12 205:17 210:21 211:19 212:2,22, 24 213:3,8 215:13,25 216:3,9 217:3,13 220:8 223:10 228:15 231:10 233:9</p>	<p>234:6,12 235:5 238:15 243:12 245:8,14 249:6 251:11 253:8,11, 14 259:7,11,12 273:5,13 275:7 280:9 286:9 287:10 291:1 297:4 299:21 302:6 306:20,23 318:25 319:5 327:23 332:25 335:21 336:20 342:23 348:6,12, 16 350:7 354:11 356:10 357:8 358:9,19</p> <p>Commission's 190:22</p> <p>commissioned 248:9,10,12 252:12 278:10</p> <p>Commissioner 6:2,4,5,6,7,9 111:25 112:2 123:2,3,4 128:16 134:6 137:21 138:1 141:8 170:17,18,20,21 175:12,13 251:23 254:19 275:8,9, 11,12,14 276:2,5, 9,12 277:13,21, 22,25 279:23 280:1,3 292:11, 12,14,17 302:4,5 307:1 309:2 312:9 319:6,7,9 321:10, 11 326:6,8,9 327:21,22 328:8 333:17 356:18,20 357:4 358:2,3,10, 15,16</p> <p>Commissioner's 130:18</p>	<p>Commissioners 6:10 50:18 241:11</p> <p>Commissions 326:24</p> <p>common 42:5 166:22</p> <p>communicate 32:6</p> <p>community 88:8, 21,24</p> <p>companies 292:23</p> <p>company 3:8 24:3 44:23 45:15 46:7 47:13 55:21 59:11 73:23 74:17,18,21 75:11 76:12,24 77:3 78:9 84:6 85:1 97:23 98:6 104:4 122:3 131:18 146:9,11 149:15 150:8,10 161:8 166:4,8 184:23 185:11 186:6 187:19 191:17 193:10 195:19 197:15,20 198:11,13,16 201:18 218:7 236:1,11 239:21 242:5 245:5 269:5 303:19 308:24 314:16 320:11,17 323:6,12,21 324:17 325:22 328:9</p> <p>Company's 77:14 163:23 216:12 237:11 288:8 307:13,14 312:21 324:20 326:1</p> <p>comparable 124:7 125:23</p> <p>compare 109:18</p>	<p>314:4 331:13</p> <p>compared 274:23 314:3</p> <p>comparing 133:4 189:16</p> <p>comparison 114:25 143:4,5 162:17 293:9,12</p> <p>comparisons 43:12 115:4</p> <p>competitor 167:24</p> <p>compiling 42:13</p> <p>complete 127:3 262:8 263:22 289:24 290:4,18 297:13,14 298:15 299:1 304:5</p> <p>completed 127:10 137:14 251:7 265:4 280:15 281:13 283:5 294:4 296:9 303:9,16 315:8 316:6 324:23 325:15,18</p> <p>completely 29:12 30:1 35:22 39:12 48:24 49:1 50:1 120:12 242:23 263:6 332:7</p> <p>completing 264:20 306:7</p> <p>completion 77:18, 22,24 289:5 290:14 293:25 298:23</p> <p>complex 39:14</p> <p>complexity 21:23</p> <p>compliance 35:18 36:9 131:10,11 133:14 137:3</p>
---	---	--	--

194:13,24 271:5	concluded 42:8 91:21 316:6	considered 98:23 104:20 107:10 168:7 195:16 205:9 236:9 237:1 238:2 328:15,20	contemplating 156:6
complicated 20:7 30:20 127:9 169:17	conclusion 43:5 91:5,6 187:4 226:1,4 227:19 306:16	consistent 45:2, 10 83:14	contending 17:11 77:2,12
comply 56:15 131:16,20 133:7 185:10,12,13 204:22 248:1 264:5,22 269:17	conclusions 55:24 56:9 65:12, 15 103:18 306:17	consists 239:23	content 65:18
complying 184:18,25	cond- 185:21	constantly 258:20	contention 89:21
component 214:22 218:16 270:25	condition 348:15, 21	construct 125:3 126:14 163:18 164:2,17,23 176:16 187:3 191:14 192:1,6,15 195:16 207:15,20 209:23 246:20 250:11 254:22 265:12,17,18 266:1 279:16 339:5	context 64:8 103:7 134:8 135:8 177:2 294:11 341:4
components 105:3 111:12 139:8 140:7,14 218:17 219:9 256:4 310:6	conditional 214:17 215:14	constructed 263:8	continuation 167:9
conceded 106:1,7	conditions 187:2 326:25 348:13,17	constructing 246:14 260:2 305:24	continue 15:14 45:1 118:14 120:5 121:8 131:3 153:15 159:16 178:19 256:8 284:21
concept 176:21 177:4 191:13,16 192:21 250:1 326:10	conduct 91:19 163:3 242:7	construction 15:23 127:4,6 260:6,11 283:9, 11,12,15 285:9 289:1 296:24 301:1 317:11,16 324:1 326:14	continued 32:4 162:12
conceptual 192:6	confidence 250:9	Consumer 5:1 175:17 259:8	continues 80:7
conceptually 192:14,16	confidential 8:9 86:6,10 88:10,12, 13,15 118:18 129:11 145:22,24 146:3,18 147:11 148:1 154:7,8 220:20 221:7 274:1 342:22 359:8	consumers 4:15, 21 133:21	continuing 148:19 189:19 289:20
concern 60:16,22 68:22 207:6 208:4 258:9 285:5 351:18	confirm 10:23	contained 230:16 232:10 290:15 335:12 343:6	continuous 58:5
concerns 60:19, 20 61:25 89:24 105:19 163:13 182:2 205:21 211:24 214:1 224:5 254:11,15 280:6 339:10 341:21 353:23	confirmed 70:23 75:23 76:2	contemplated 286:19	continuously 183:13
concepts 60:19, 20 61:25 89:24 105:19 163:13 182:2 205:21 211:24 214:1 224:5 254:11,15 280:6 339:10 341:21 353:23	Congress 40:16 110:10	contemplates 156:4	continuum 160:5 161:6 235:13
concert 137:5	conjecture 320:14		contra 137:9
conclude 107:21	connection 24:22		contract 176:17
	consequences 285:22		contractor 246:20
	consideration 93:13 114:15 235:16		contrary 29:23
			Contribution 285:20
			control 20:8,9 30:25 31:11 35:12,13 115:23 123:22 124:23,24 125:3,10,21 126:6 129:8,22 130:1,20 150:22

<p>controlling 307:15</p> <p>controls 38:1 116:10 130:16 132:1,18 133:18 136:13</p> <p>conversation 66:16 67:16 68:15 94:24 104:15 110:1 134:4,6 316:3</p> <p>conversations 150:22 193:1</p> <p>conversion 178:13,21</p> <p>converted 178:25</p> <p>converting 178:11</p> <p>convinced 311:16</p> <p>cooling 115:24</p> <p>cop 40:9</p> <p>copies 13:6 104:23</p> <p>copper 139:10 144:4</p> <p>copy 14:5,14 17:8 26:25 337:25</p> <p>Cor- 198:5</p> <p>core 5:9 77:8</p> <p>correct 8:2 9:12 11:20,25 27:15,16 28:8 29:5 31:12, 18,23 49:23 50:6 51:23 53:10 58:6, 9 61:20,21 62:18, 23 71:24 72:1,7, 16,23 73:13,17,25 74:8,19 75:7,8 76:7,21,25 77:1 79:21 80:20 81:4 82:21,22 83:6,23 84:7 85:3,11,15, 17 98:19 99:14</p>	<p>100:6 101:6 107:17 123:15 124:5,12,21 125:14,17,24 126:2 127:7,8 130:14 131:23 141:15 149:23 151:23 152:18,19, 21 153:10 154:18 155:23,24 158:4 161:23 163:1,2 175:10 178:16,17 184:12,16,20 185:11 186:5,15, 25 187:14 188:16 189:10 190:24 195:22 196:11,15, 19,20 198:5 200:20,21 201:10, 21 206:4,19,25 207:9,10,11,24 208:6,7,10 210:8, 24 211:25 212:4 216:22 234:24,25 239:14,15 240:1 251:8,25 252:5,6, 8 253:12 261:1,20 266:24,25 267:20 269:3 271:13,25 272:4,8,12,20 278:8 280:16,17 281:1,17 282:22 287:23 288:3 291:18 296:22,23 302:11 303:2 305:1,5,9,10 319:23 322:7,8 335:13,14 340:12 349:20</p> <p>corrected 87:5 99:10 232:4</p> <p>correction 51:9, 12,18</p> <p>corrections 7:21, 23 51:7,19 54:8, 17,19,24 70:23</p>	<p>145:14 154:11 215:5 230:13 232:7 233:25 238:1</p> <p>correctly 128:24 156:20 168:10 191:25 264:20 340:3 352:14</p> <p>cosmic 297:9</p> <p>cost 39:20 42:3 114:14 116:2 121:20 125:10 139:17 142:4 146:22 147:16 158:22 160:18 161:1 162:8,11 172:20 189:21,25 190:4,14 201:8,18 214:24 218:3,5 220:17,23 235:17 239:17 249:2 250:5,12 251:3 260:21,22 261:4 264:8,13,15 270:22,23 271:9, 20 276:25 278:14 279:5,14,18 281:20 282:17,18, 20 283:9,16 286:18 288:2,8 290:9 293:16 294:7,9,17,22 297:25 300:12 304:25 307:5 313:3 324:5 329:17,18 330:8,9 331:24</p> <p>cost-effective 125:21</p> <p>cost-saving 304:17</p> <p>cost/benefit 136:2</p> <p>costly 69:15</p>	<p>costs 3:11 60:14, 21 61:24 62:23 117:18 121:9 122:10 125:16 147:17 148:3,12 160:23 162:3,16 200:18 201:1,16, 17,22 202:4,17 208:14 210:2,11 217:17,20,25 218:8 219:8,11,22 220:7 221:11 222:7 226:21 239:10,13 240:17, 20 284:2 285:17, 18,19 286:5,7,10, 13,14,15,16,25 287:1,19 289:1 290:7 292:19 293:5 295:22 296:7 297:10 300:8,10 303:17 311:21 321:2 323:7 324:2 328:11 329:1 350:19,21 351:11 352:3,5,20,23,24 353:1</p> <p>Council 4:25 5:1 175:18 259:8</p> <p>counsel 3:21 4:10, 12 19:20 35:2 52:20 55:12 63:9, 22 65:10 66:17 67:16 68:5 71:2 96:24 97:6 100:12 105:14 107:1 109:16 110:1 123:5 141:10 144:18,20 145:8 152:1,16 158:18 159:24 161:6 178:7 183:2 199:12 220:16 221:5 223:13 231:5 233:3,14</p>
---	--	--	--

235:6,21 240:5 245:11 254:4 261:11 273:8 281:7 287:12 291:11 292:4 303:2 306:20 316:4 317:25 318:12 330:1 337:5 348:11,25 356:21 357:16 358:13 361:9,12 counsel's 104:12 233:13 234:22 317:24 321:16 354:5 count 174:4 329:17 counting 118:12 countries 138:11, 23 country 34:7 39:8 40:7 42:13 46:10 59:6 138:14 168:18 228:23 326:16,24 County 147:15 couple 36:18 44:25 167:4 169:2 173:8,9 179:5 181:11 196:10 209:11 247:2 300:14 304:23 328:2 351:22 court 3:16,19 9:7 12:15 13:3 18:5, 18 19:6 23:10,16, 17 24:13,19 25:15 26:3,4,11,24 27:5, 20,23 28:4,20,22 29:2,4,11,15,19 32:20 34:14,17 39:10 41:20 42:6, 16 43:2 44:3 45:14,20 46:3,6	47:1,3 48:7,10,13 49:5 56:21 63:23 64:1 65:3,4,19 66:1,10 67:10 68:11 69:10 71:23 72:3,4,6,22 73:24 74:11,24 75:3,22 76:1,3,6,18 78:4, 24 80:10 82:5,25 83:8 84:5,17 89:20 90:7 92:12 94:14,15 97:13,22 98:9,12,18,23 99:5,9,12,16,20 100:25 101:2,6, 14,21 102:9,13 103:2,3,7,11,12 104:16,22,23 105:21,22 106:14, 21,24 107:10,15, 19 109:11 111:7 149:18 186:12 202:21,22 203:5 205:7 209:21 211:14 212:8,13 227:20 228:18,20 271:19 280:22 294:1,11 299:10 305:7 334:12 337:18 339:5 340:1,5,24 341:1, 2 350:13 360:2 Court's 30:8,9 39:1 47:7,11,19 82:11 107:6 courtroom 57:15 59:4 305:8 342:23 courts 23:19 30:4 34:6 39:7 40:1 41:17,18 42:20,23 43:11 44:3 84:13 cover 332:2 334:9 Coyote 150:9 craft 121:21 127:21	create 43:24 46:22 credit 174:9,12 269:10 Creek 112:25 179:18 180:5,6,7, 23 crisis 225:8 criteria 130:17 190:11 criterion 190:9 critical 23:14 cross 4:17 5:13 8:19 52:14 55:9 70:22,25 100:24 154:24 199:10 231:1 232:20 245:6 259:5 273:2 291:25 337:3 cross-examination 8:21,23 19:19,23 32:15 52:16,19 55:11,14,17 59:15 65:5 71:1,5,10 149:11,13 151:2,5 155:1,3 158:17,20 175:19 199:11,14, 20 231:4,7 233:2, 5 234:5,8 245:7, 10 273:3,5,7 292:3,7 318:24 319:2 332:8 337:4,7 356:5,12, 16,23,24 357:3,10 CSAPR 37:16 264:22 269:8 CSRS 13:4 culmination 176:22 210:5 227:7 current 3:3 61:15 87:5 108:17 118:12 121:25	168:22 187:2 203:7,10 210:10 350:15 cursorry 343:2 customer 160:24 167:15 203:3 325:23,24 customers 120:11 121:1 130:19 131:4 133:13,21 153:19 160:18 162:18,20 176:10 184:23 186:24 189:22 190:4 202:9 222:14 223:9 235:18 256:9 258:18 269:21 303:8,10 313:1 325:17 329:4 330:8,9,13, 17 332:1 cut 143:15 CW 297:18 CWIP 87:23 243:8, 9,10 272:1,2,5 287:20,24 297:4, 18 298:18 301:22 313:22 314:3,15, 21 321:8 323:25 cyclone-fired 263:19 Cygne 115:11 140:9 <hr/> D <hr/> da- 170:1 damage 129:18 134:22,23 damages 95:8 data 73:24 75:24 76:2,10,11 77:17
--	---	--	---

101:15 104:16,17 142:24 168:18 170:1 206:8 256:16 257:6 268:10 277:3 290:1,2,6 294:25 295:5 297:20 date 12:22,24 16:2,4,5,9,22 17:14,15 118:20 127:25 128:5,6 162:14 171:25 172:3 202:10 203:3 212:4,13 213:1 290:8 296:22 dated 16:22 17:12 360:2 day 3:7 4:22 6:11 17:18 34:1,2 40:18 86:21 88:25 254:5 349:22 355:2 day-by-day 255:4 days 36:18 219:5 292:1 328:6 de- 69:8 deal 37:4 143:15 164:16 255:17 dealing 114:12 dealt 65:16 326:24 debt 313:2 decade 112:24 289:9 decades 33:17 106:13 121:17 219:19 300:14 December 186:22 192:2,8 195:17 decide 25:6 82:13 151:9 184:2	185:18 201:12 204:21 228:9,19 276:23 decided 26:4,8 84:13 91:13 125:21 136:18 204:2 232:22 299:24 303:24 decides 95:11 210:21 216:9 deciding 183:14, 15 184:1,3 decision 5:12 24:15 25:5,16,18, 20,24 26:3,5,11 27:3,22 28:5,12 30:8,15 34:12 39:18 47:1,4,8,12 66:6,11,12 69:6 72:3,4,15,16,21, 23 73:1,2,10,15, 22 74:3,4,7,12,17 76:4 89:11,24 90:6 91:8,16 93:21 94:8,14 96:9,10,20 98:19 99:13,16 107:11, 22 109:6 125:25 126:5,11,18 159:22 160:3 161:8 164:14,19, 24 182:11,14,19 185:19,24,25 186:7,22 191:1 192:17 197:17 198:14 203:18,19 204:3,16 205:8,11 207:16,19 208:19 209:1,12 211:20 212:2,10,11,14,25 213:4,9 217:14 221:25 223:15,19 226:20 227:2,3,6, 8 235:11,14,16,21 236:2 250:8 253:8,9,10,15,16,	18 270:21 277:4 280:23 299:18 303:22,25 304:16 309:4 321:20 322:4,10 323:3 328:10 340:3,5 decisions 6:16 25:23 26:8 29:14 30:6,12 39:10 44:12,18,23 45:16 46:7,8 47:14 51:17 57:1 59:7, 11,12 62:20 65:19 71:19 72:17 73:19,25 74:10, 19,21 75:6 76:25 77:4,14 78:12 83:14 84:7 89:22 91:10,13 92:10 93:7,8,11,23 98:7, 13 99:18 125:5 126:14 127:25 131:1,15 133:6 153:14,18 159:15 160:2,5 182:20 183:7 184:7 216:17,20,21,25 218:1 236:5 253:25 258:13 279:6 299:21 declaration 9:5, 11,17,21,23 10:24 359:21 decommission 175:4 decommissioning 217:16 decouple 321:20 322:9 decoupling 322:3 deducting 301:6 deduction 301:8, 19	deemed 289:24 deep 266:23 deeply 266:23 defense 4:25 42:12 defer 11:10 62:24 deference 27:6 deferral 88:17,18 deferred 323:15 define 45:9 defined 28:16 definition 37:6 286:23 325:5 definitively 55:21, 23 degree 151:13 delegated 20:8 110:9 deliverable 291:8 delta 174:13 demand 49:5 142:23 167:9 171:5,6,23 172:5 173:25 187:24 256:22 265:15 266:3 demand-side 171:22 demean 354:13 demonstrate 57:22 denote 148:16 dense 129:13,14 150:7 dep- 71:20 Department 13:17 14:1,15 15:21 31:11 58:17,20
--	---	---	--

68:3 69:12,16 83:15 108:2 205:23 206:3	119:1	determining 72:13 73:7 84:23 96:1 106:8 135:8 163:23 213:12 250:19	difficult 138:24 140:13,14,15 253:2 354:12
depend 309:6	desirable 352:6	Detroit 150:7	difficulties 117:3
depending 108:1 351:21	Desulfurization 124:2 289:2	develop 40:5 177:17 224:18 225:3	difficulty 21:22 313:4 342:7
depends 142:15 144:1	desulphurization 153:17 159:17	developed 74:4 77:13 246:18 279:17 352:12 354:6	dioxide 75:14,20 81:18 124:3 130:16 131:2,9, 11,16,19 132:18, 21 133:14
deposition 40:4 71:21 74:23 79:25 82:15 83:5,18 84:3 108:15,16,21 130:6 203:22	detail 65:24 66:10 173:16 243:1 248:17	development 167:18,25 168:14, 21 169:3 196:22 197:9	direct 7:8,12,16 8:8 9:3 50:24 51:3 52:5 53:21 110:19 145:3 154:4,6 208:13 209:8 226:16 230:3 231:22 244:19,22 318:6 352:8,12 353:9 356:4,9,12, 23 357:2,13,15 358:14 359:3,6,8, 11
deposition's 109:2	detailed 43:11 246:10,25 247:12 278:23 302:22,23	devise 40:18	direction 48:17 277:5 361:8
depositions 64:7 66:5	details 65:2 247:3 283:8	devised 40:3 41:15	dirtyest 264:1,4 269:1
depreciable 175:6	Deterioration 71:17	dicta 28:7,8 29:4, 5,18 47:18,23 48:1	dis- 321:5
depreciation 298:2	determination 20:10 21:9 22:3,6, 11 25:4 48:20 76:13 93:19 107:7 114:2 223:24 235:15	differ 145:23 147:17 148:4,12	disagree 84:1 107:13 314:16
deputy 35:20	determinations 20:13 21:3,15,18 22:18,19 58:19 59:2	difference 60:2 62:23 64:20 85:16 86:22,23 90:2 205:12 223:14 270:7 273:25 274:15,16 275:2 276:15 297:22 340:20	disagreed 42:21 302:25
derived 26:3	determine 56:25 93:13 163:21 169:20 213:9 223:19 235:10 250:7 278:7 294:17	differences 87:14, 23 108:9 190:17 282:11,16 310:6	disallow 152:17 238:11 321:5
descr- 12:5	determined 28:17 67:11 90:16 94:2 103:7 106:15 162:14 213:14 221:24 279:14 328:21	differential 331:13	disallowance 60:13 62:17,21 68:18 85:15,19 88:6,7 152:17 214:21,22 234:23 235:1,2 236:7 237:24 321:7
describe 28:15 166:6	determines 211:19 212:23	differentials 190:14	
describes 92:4,6		differently 40:22 350:25	
description 82:6 262:15 302:23			
descriptor 12:5			
design 92:18 248:17 249:3 282:13 288:25 304:25 324:6			
designated 81:17			
designation 208:25			
designed 40:15 43:23,24 58:4,7 112:22 118:19,25			

disallowances 220:6	315:15 337:21	dissects 92:10	DOC 206:6
disallowed 60:11 296:11,14 319:17, 22	discussion 18:21 39:3 43:12 44:9, 13 47:10,18,23 80:7 97:12 98:4,9 99:22 106:18 108:8 112:6 128:19 152:1 177:7,21 202:23 208:23 222:9 224:8 225:11 226:25 238:18 281:15 310:2,21 312:9 315:21 316:14 317:12 330:5 353:8	distance 323:17	docket 7:12 51:3 69:3 101:12,16,22 154:6 208:24
disallowing 300:1		distinct- 126:9	doctors 101:22
discern 275:23 276:14		distinction 98:3, 15 126:5	docu- 102:2
disconnect 213:5, 6		distinguish 227:5 236:2	document 16:4 72:8,10,12,14 73:6,11 79:11,13 108:23 128:4 150:20 155:16
discount 161:2		distinguishing 254:7	documentation 203:20 224:2
discounting 329:19		distributable 173:23	documented 203:17 223:15,18
discourage 300:3, 6,19	discussions 63:21 94:14 176:22 177:3	distributed 171:13,15,18,24 172:6 193:14	documented 203:17 223:15,18
discovery 64:8 91:19	dismantle 142:2 143:16	district 9:7 12:15 18:4,18 19:6 23:10,17 24:13 25:15 26:4,10 28:4 29:11,15,19, 22,24 30:8 32:20 34:17 39:1 45:14, 20 46:2 47:1,3,7, 11,19 48:13 56:21 63:23,25 64:1 66:1 72:3,4,5,22 73:24 83:8 84:5 89:19 98:9,12,18, 23 99:9,12,16 100:25 101:2,21 102:9 104:16 106:21,24 107:5 109:11 186:12 202:21,22 203:4 227:20 341:2 360:2	documents 65:25 67:4 79:10 84:10, 15,17,20,23,24 90:6,20,21 91:4 98:14 101:24 102:2,3,4,18,24 103:8,10 109:24 247:9,14
discuss 29:4 61:1 71:24 149:22 199:25 202:3 243:1 244:6 309:24	dismantling 144:6 172:20	dismantled 143:25	DOJ 36:10 37:14 205:23 206:1
discussed 12:19 49:17,24 76:22 88:18 99:19 129:13 130:3,4,5 136:4 238:19 254:4,10 337:19, 20 338:23 339:1,9 342:14 351:7 352:1 353:18,19, 20	dispatch 236:18	dismantling 144:6 172:20	dollar 119:9,10 120:24 135:22 222:8 252:10 285:10 313:16,17
discusses 16:21 150:7 294:6 353:15	dispatchable 167:21 173:14 255:12 256:10 257:14	dispositive 48:2	dollars 38:1 39:20 60:2 62:22 69:17 86:22 87:18 88:22 107:25 119:12 135:21 159:6 161:2,3 181:12 186:17,18,20 188:2 217:12,14 219:23 239:21,23 264:16 271:16 274:22 275:1,3 277:1 278:6 282:21 283:3 294:13,19 300:2,
discussing 32:19 34:6 56:3 60:14 68:16 88:12 153:1 176:16,17 191:12 214:12 223:13 224:4 259:15 260:20 314:21,22	dispute 91:1 99:1 111:3 139:15 298:6 305:15,17 307:16 317:14	disputed 81:25 92:6,7 111:10	
	disputes 90:19	disputing 56:13	
	disregard 228:11	dissect 103:13	
		divided 37:10 314:5	
		dividends 135:23	
		dividing 290:8	
		Division 14:1	
		DNR 15:8 101:17 223:24 359:22	

10 304:9,11,15 305:23 310:17,18 313:10 316:25 donations 89:2,4, 5 double 5:15 downtown 139:2 dramatic 41:10 drastically 192:21, 23 drawing 56:8 126:9 drawings 247:10 drawn 55:24 drew 114:25 due 75:16 94:13, 20 146:16 280:5 322:13 duly 7:6 50:22 53:19 71:8 145:1 154:2 230:1 231:20 245:15 273:17 318:4 361:5 dynamic 35:16	311:2 329:15 339:9 350:21 352:1 early 45:6 132:25 148:18 198:2 268:2 270:12 329:17 early/mid 124:20 earmarked 327:11 earn 313:11 easier 11:9 200:7 340:14 easiest 157:18 224:15 easily 257:17 342:9 eastern 117:18 easy 256:12 ec- 184:13 economic 94:19 95:8 96:7,8 108:3 121:11 122:4 124:25 125:1,4 131:8,14 132:4 133:19 135:19 136:4 137:5 139:19 167:18,25 168:13,21 169:3 185:7 187:18 196:22 197:2,8 204:15 243:6 250:18,23 251:20 298:7 323:3 economical 122:9 162:25 322:24 324:15 351:14 economically 142:4 143:22 279:11 economics 114:19 162:24 182:11	185:18 186:10 307:14 309:4 economizer 43:3 economizers 42:3 edification 101:19 Edison 150:7 EF-2024-0021 3:13 effect 181:5,6 183:13 effective 12:23,24 297:25 efficiency 137:1 167:9 171:23 187:24 219:14 257:1 efficient 118:24 efficiently 43:19 effort 119:20 139:21 164:16 171:8 292:25 efforts 45:8 Eighth 72:5 elab- 189:11 elaborate 91:3 electric 3:8 81:1 108:3 151:22 270:11 electrical 249:22 electricity 259:1 268:14 element 80:15 81:15,20,25 elements 80:5,11, 23 81:7 82:11 106:23 eleven 294:12 Eleventh 40:8	Elliott 181:14 elucidating 83:25 EMA 35:16 emission 67:19 74:24 110:3 117:23 emissions 24:23 25:25 37:4 42:18 45:7 57:18,23 58:3,9 66:18,22 67:8,10 75:10 76:10,11 77:8,10, 20,21 78:2,10,14, 17,25 83:22 97:19,24 99:23 102:12,15 104:24 106:8 115:23 118:6,12 119:17, 18 123:19,22,23 124:3,23,25 125:10,21 126:6 129:23 130:2 181:3 242:18 308:18 emitted 264:7 emitting 80:25 emphasis 43:17 Empire 116:19 119:7 132:14,17, 22 137:10 297:5 employed 145:6 318:9,11 361:9,12 employee 342:23 361:12 employment 24:4 enable 119:6 encourage 300:3, 5,19 312:11 encouraging 312:15 end 36:22 144:1
<hr/> E <hr/>			
e-mail 49:17 e-mailed 4:15 E-U-B-A-N-K-S 53:25 EA-2023-0286 146:17 earlier 72:23 149:20 165:14 172:10 175:1 251:2 254:10 269:23 276:18 281:15 299:17			

146:14 164:25 165:22 176:13 185:17 191:23 198:12 201:22 206:21 226:25 330:19 ended 139:2 283:13 341:13 ends 188:2 energy 3:11,12 4:15,21 116:6 167:9,13 171:14, 18,22,24 172:6 174:22 187:23 201:17 256:9 257:1 266:24 286:18,24 309:7 enforcement 30:22,24 35:7,18 36:9 37:13 40:2,5, 14 41:8,15 45:17 92:11 106:10 110:7,12,21 111:5 183:9 enforces 110:20 enforcing 46:20 111:2 engage 22:9 295:14 engaged 242:5 293:21 294:4 engine 139:23,24 engineer 67:17 127:18 140:2 151:6 212:6 246:20 252:13 283:25 295:14 305:16 306:1,4,13 308:7 310:22,24 311:13 engineering 126:13 135:20 224:18 242:6,22	247:16 250:25 258:15 262:21,24 278:10 288:25 293:10,22 304:25 306:8 311:21 engineers 252:13 279:17 ensure 257:14,20 258:25 enter 3:22 157:3 292:1 entered 150:5 158:6 215:11 entering 55:4 entire 73:3 119:17, 18 189:19 236:20 306:2 349:16 entirety 73:6 79:9 83:2,4 91:5 entities 166:13 entitled 343:3 entity 20:2 environmental 31:10 113:7 114:24 115:9,19 116:9,12 117:17, 24 118:14 119:12 120:6,15 121:7 136:13 138:4,15 140:10 143:12,18 175:8 184:15,18 185:9 204:18 205:3 243:10 315:14 environmentally 138:12 EPA 12:22 20:4,9 21:4,9 22:2,7,12, 19 27:22 31:18,20 32:6 35:8,17,23 36:5,15 48:12 56:6 75:3 78:4	81:8 96:4 105:23 108:2 110:9,10, 13,18,20,21,24 111:2 113:14 117:14,25 122:17 130:9,11 132:20 150:15 183:9 204:9,12 223:24 235:15 242:13 243:2 307:12 308:16 309:14 310:11 316:4 EPA's 45:8 EPC 246:19 eq- 132:1 equal 285:18,19 292:24 equaling 285:23 equally 278:16 equipment 37:6 96:3 102:15 113:7 114:24 115:19 116:9,12,22 118:14 119:12 120:6,10,16 121:23 124:2,23 125:11,22 126:6 127:20 130:20 132:2,9 135:4,14 136:6,12,15,19,25 137:7,11 138:5 139:9 140:4 143:13,19 153:17 159:18 246:12 247:11 248:5,25 249:15 281:19 errand 190:20 erred 180:4 error 333:13 escalated 271:21 283:6,10 284:5,6, 8	escalation 283:23 escalations 279:7 essence 237:23 essentially 69:11 114:8 173:11,20 187:2 200:14 216:8 226:1 245:24 246:1,18 248:22 262:11 263:13,25 266:9 285:10 324:10 350:11 establish 62:16 348:17 established 217:2 establishes 202:9 establishment 293:2 estimate 83:3 164:17 168:16 264:8,13,17,18,24 290:2,3 estimated 69:16 202:14 208:1,2 250:5 283:17 estimates 210:10 237:18 271:9 282:23 294:17 estimation 252:15 Eubanks 53:13, 15,19,24 55:2,18, 20 61:6 62:12 63:13 65:10 70:2 72:10 85:11 89:9 90:11 94:1,11 108:10 121:12 127:7 130:5 199:4,6,10,18,21 226:1 228:9 229:4,12 299:9 335:1,3 336:1,12, 19 337:11 348:3
---	--	--	--

349:6 354:24 356:11 357:9 358:20 359:15,16 Eubanks' 90:4 335:6 evaluate 27:2 84:6 103:21 104:24 111:16 177:16 280:21 289:20 293:20,24 294:5 295:15 296:16,17 319:23 evaluated 84:23 122:3 277:11 295:20 319:20 evaluating 113:23 185:5 evaluation 104:23 evaluations 78:17 event 244:5 300:8, 16 events 120:20 166:21 227:8 eventual 341:8 eventually 122:17 Evergy 116:19 117:1,6 130:6,16, 21 131:14 132:12, 13,17,22 133:4,5, 12 267:2 270:2,6 289:3 evidence 8:17 12:10 15:13 18:1 19:10 29:8 52:12 64:23 65:13,14 73:1 84:13 93:16, 18 94:7 99:6 103:18 109:18 149:7 157:9 158:13 202:8 203:2,6 213:24 234:4 244:1 245:4	298:14 303:13 332:12,17,18,22 333:1,3,4 336:16 337:1 356:3,10,21 357:1,8,16,21 358:9,13,19 evident 351:18 evidentiary 3:7 27:7 29:7 evolved 169:1 212:15 ex- 106:2 exact 47:1 89:8 267:23 274:24 examination 7:8 25:22 26:6 38:24 50:24 53:21 63:20 100:10,25 134:3 145:3 149:9 154:4 183:20 220:13 230:3 231:22 234:4 268:23 287:17 312:7 318:6,23 330:3 350:9 356:4,7,9, 12,14,17,19,23 357:2,7,12,13,15, 25 358:6,12,14, 17,22 examined 102:13 examples 149:25 170:1 301:4 313:20 exception 53:7 excess 195:9 196:7 exchange 292:18 excluded 60:15 88:4 exclusion 78:22 exclusions 240:20	exclusive 253:22, 24 excuse 25:1,2 162:5 excused 4:16,22 5:2 49:11,15 53:3, 5 execute 224:18 225:3 executive 35:15 117:15 exhibit 7:15,19 8:10 10:19 11:7, 10,15,17,19,20,23 12:7,9,10 13:2,4, 7,13,19,20,23 14:25 15:1,8,10 16:25 17:4,20,22, 25 18:1,9,11 19:4, 5,6,9,10 26:17 47:9 51:9 54:3,6 145:11 147:21 148:22,23 149:1, 3,6,7 150:5,6 155:10,12 157:3, 5,8,9,14,20,24 158:9,11,13 188:13 193:14,18 194:2,5,16 230:10,24 232:3,4 237:8,9 244:22,23 245:1 318:15 335:9,10 336:4, 11,14,16,18,23,25 359:1,3,4,6,7,9, 10,12,14,16,17, 19,20,22,23,25 360:1,3,4,7 exhibits 7:22 8:6, 16 15:12 51:5,8 52:2,5,9,11 55:5 84:21 93:15 231:2 244:18 245:3 existed 46:18	184:15 185:10 277:9 existence 33:15 221:16 existing 138:10 172:16 256:14 exists 204:17 expand 46:22 expect 127:13 164:12 201:2 211:6 256:17 282:17 283:22 expectation 163:20 208:15 expectations 156:24 309:7,8 expected 75:11 106:3 131:13,21 165:13 194:6 195:3 209:17 288:5 expecting 22:13 expects 166:4 expenditures 239:23 expense 162:13 168:6 278:6 expensed 324:3 expenses 88:4 94:19 96:4 120:25 285:15 expensive 114:24 115:14 116:10 experience 21:11 22:15 67:17 102:23 127:19 224:24 268:4 experiences 109:19,21
--	--	---	---

expert 64:12 65:14,24 102:5 103:21 104:2,13 105:25 106:1,7 265:17 284:1 294:17 295:11,12, 19 305:20,21 308:13	extraordinary 120:20	93:12,19 98:3,14 102:3,11 133:23 160:6 182:3,4 187:5,6 203:19 238:6,21 298:13, 16 299:3 350:3,4	71:16 117:13,21 202:21 227:20 359:24
expert's 305:22			federally 114:8
expertise 327:17	F		feed 263:2
experts 64:14,16, 19,21,23 66:4 102:8 103:18 104:11,12 106:2	F-O-R-T-S-O-N 232:1	fairly 42:24 67:5 171:11 220:24 238:7 260:15	feedback 293:15
explain 25:17 26:10 64:22 65:24 102:16 107:5 160:15,20 177:13 189:11 209:4 245:20 269:4 285:4 286:13 303:7 337:23 340:25	facilities 39:20 146:19 147:17 239:11	faith 243:22	feeding 134:19
explained 26:15 31:21 269:1 270:6	facility 51:16 80:18,25 141:1 142:18 146:22 147:16 151:11 220:4 286:22 289:17,21	fall 200:23	feel 102:5,17 238:4 328:7 337:19,20
explaining 245:19 305:11	facsimile 302:20	fallout 87:23	fellow 76:19
explanation 60:5	fact 25:2,13 27:14 30:2,17 41:16 76:1,7,9 77:13 78:9 96:11 106:16,17 117:8 122:14 187:15 224:6 243:11 244:3 309:24 322:13	false 55:20 151:15	felt 39:18 238:8 264:5 282:14
explicitly 195:14, 15,19	fact-finding 57:5	Fami- 24:8	FERC 163:25 164:8,22
explosion 115:13	factor 24:22 268:11,13	familiar 18:3,7 19:1 20:1 23:12, 18 24:7,8 27:10 31:7 64:9 108:12 169:18 287:4 302:18	fewer 119:17,18
express 48:4	factored 77:13	familiarity 23:9	FGD 115:10 124:1
extend 279:12	factors 25:19 61:16	fans 282:11,15	field 65:15 66:14 103:19,22
extending 137:17	facts 25:19,25 73:24 74:3 90:7 95:21 103:16 106:16 107:10,16, 19,20 308:22	farther 135:6	fight 38:6
extent 58:23 185:6 205:8 218:3 306:1 339:24	failure 337:22 339:18,19 340:13 354:19	fashion 97:2 185:14	figure 10:4 125:11 165:8 176:12 191:19 196:4,5 236:7,8 256:8 271:15 352:11
external 103:24 104:2 317:9,13	fair 19:2 38:15 48:1,7 79:5 90:24	fault 109:8 259:25	figured 172:14
extra 304:14		faulty 225:20	figures 86:5,8 164:9 191:19 202:13 294:12
		favor 41:17 42:17	file 38:14 49:5 200:23
		favorable 209:13	filed 34:1,2 95:3 104:11 106:10 146:16 151:15 163:8 164:21 165:19 186:14 195:20 349:16 350:1
		feasibility 327:6	filing 7:12 35:25 51:3 81:10 109:21
		feasible 243:6 279:11	
		fed 262:6	
		federal 14:18 15:9 17:23 20:9 29:21, 22 30:11 36:12 37:7,20 38:8 40:17,19 41:22 42:11,14 46:4	

154:6 176:21,23 177:5 299:10 filters 69:13 108:1 final 125:16 197:21 242:16 247:2 299:20 354:5 finalize 242:23 finalized 247:20 269:8 finally 109:10 165:22 316:3 finance 3:9 240:15 283:25 313:1 financed 240:17 financial 94:16 117:3 financially 361:13 financing 287:2 288:2 348:9 352:19 353:3 find 29:2 40:6 60:24 86:2 139:22,24 165:14 194:8 227:12 241:17 253:2 284:25 286:9 326:15 finding 43:11 48:22 73:23 74:17 97:18 106:15 107:6 227:2 findings 28:24 89:15,19 106:17 finds 95:5 fine 5:18 11:11,12, 15 37:19 71:13 179:3 finish 321:25 finished 307:10	324:4,8 fire 178:18 firing 179:12 firm 36:23 68:22 173:22 220:25 222:15 224:6 293:22 firmer 210:12,14 firms 242:6,22 246:8 278:10,17, 20,24 fit 27:2 173:7 342:8 fits 342:17 354:20 fitting 348:9 fixed 218:16 flags 225:7 flat 195:10 flattened 257:3 fleet 20:16 228:22 255:16 fleets 138:9 fleshed 40:18 flow 58:8 168:6 Flue 124:2 153:16 289:1 focus 66:13 115:5 116:21 255:14 focused 66:3 163:18 330:11 folded 349:24 follow 16:1 117:12 215:19 325:2 329:20 follow-up 137:22 326:7 followings 3:1	fool's 190:20 footnote 146:16 forced 339:22 forecast 168:11 forecasting 166:2 171:18 foregoing 361:5 foremost 258:25 forgot 10:16 229:9 form 327:12 332:11 formed 103:6 formula 106:12 forthcoming 132:20 Fortson 231:16, 20,25 232:17,19 233:10 338:6 349:16 350:1 353:20,22 357:14 Fortson's 338:20 339:13 forward 18:21 31:3 36:25 41:13, 16 114:11 126:18 133:17 137:18 146:6 166:7 182:16 187:12 191:8 228:7 255:13 296:10,21 297:14,25 fought 38:3,10 46:12 found 28:2 29:23, 25 30:5 42:18 44:3,4 71:16 72:22 78:24 83:10 90:7 91:25 94:6 98:1,2 100:17,20 104:23 107:15,19 149:18 186:16	217:1 242:21 257:16 263:7,12 316:9 fourth 81:15,20 214:16 215:14 frame 119:6 120:16 121:25 123:14,16,21 126:3,15,23 127:11,13,15 166:10 173:12 183:11 193:2 242:5 243:4 247:19 265:4 293:25 305:3 307:9 334:22 frames 246:5 frankly 28:16 33:18 42:19 free 28:17 frequency 42:4 frequent 256:18 frequently 210:16 257:12 front 47:9 179:19 237:18 287:7 313:9 314:12 324:12 fruition 118:3 272:11 301:24 311:1,14 325:14, 20 fuel 164:6 167:3 fuels 178:16 full 10:24 115:8 134:14 177:1 179:13 246:18 263:21 330:20 fundamental 332:17 333:4 fundamentally
--	--	---	--

48:16
fur- 63:4
furnaces 263:9
future 60:17,18,22
 61:20 62:3,5 69:4
 94:13,25 117:14
 118:9 120:3 128:3
 164:18 168:7
 172:25 187:20
 201:8,13,14
 202:4,12,15,16,17
 203:1,4,11,13,14
 207:11,12,21
 209:20 211:1,23
 212:24 213:11,18
 214:1,2 216:15
 223:9 224:23
 225:13,18 226:21
 239:24 250:1
 255:20 256:17
 279:6 286:11
 297:2 299:22
 300:3,6 305:12
 310:9,18 312:11
 313:6 315:23
 317:7,16 319:23
 320:10 326:4
 327:13,16 338:22
 339:3 340:23
 350:15 351:19,20
 352:5

G

gain 129:11
 171:15
gas 124:2 140:5
 153:16 159:17
 162:2 167:3
 178:12,19,21
 179:16 191:3
 204:11 205:2
 236:4 237:14
 239:24 289:1

gas-fired 164:6
 187:23
gave 10:17 69:24
 299:12 301:4
 308:11 330:14
GDP 256:25
general 159:19
 255:16
generally 18:3
 63:24 104:7
 113:11 160:2
 172:18 188:24,25
 254:12,14 258:21
 328:16 350:22
generate 266:20
generated 171:7
 174:24
generating 81:1
 112:17 141:24
 142:18 224:14
 248:6
generation 41:4
 121:2 122:11
 174:13 255:13
 257:4 265:14
 266:14 351:24
generator 266:20
generators 310:5
genesis 349:19
geography 315:13
George 36:25
get all 236:20
gigawatt 169:6
 172:4
give 10:22 14:9
 15:21 16:13 17:7
 29:17 38:7 47:23
 60:4 80:21 81:5
 85:14 86:2 100:1
 101:10 102:20
 150:14 165:13

168:20 169:25
 177:2 246:24
 293:15 306:12
 308:12 312:18
 320:12
glance 343:2
glasses 193:15
GMO 117:2
goal 113:20 144:1
God 177:23
going-forward
 120:23 162:8
good 3:2 6:6,7,8,
 21 8:24,25 9:1,2
 19:24,25 36:4
 38:4,7,15 39:15
 42:20 55:18,19
 61:6,7 71:11,13
 100:1 105:8
 112:3,4 113:20
 114:13 116:16
 118:5 160:11,12
 164:16 165:21
 170:22 199:21,23
 203:19 204:8
 210:9 212:7,17
 214:11 220:14,15
 223:15,19 238:5,9
 243:21,22 251:16,
 17 261:14,16
 265:20 267:18
 269:14 273:20,21
 290:2 319:10,11
goodness 127:2
Gore 36:24
Gotcha 87:15
governance 205:4
governing 40:21
government 20:9
 41:22 117:13
Governor 3:5

grant 4:18 139:1
 348:6,12
granted 4:23
 214:16
granularly 255:3
 257:20
grappling 348:22
great 121:4 282:8
 313:23
greater 75:14
 139:25 166:23
 329:4,14,15
Greenhouse
 204:11
grid 140:20
 142:10,14 200:14
group 4:15 36:10
 150:22
grows 195:11
growth 168:13
 256:23
guarantee 95:12
guess 66:9 93:5
 94:2 106:16
 137:9,18 143:3
 179:19,24 183:13
 188:12,13 191:12
 192:13 215:7
 224:13 261:22
 277:8 283:22
 286:8 289:13,19
 293:8 294:14
 295:23 304:25
 305:18 322:3
 325:23 328:9
 337:24 338:9,16
 339:14 340:22,23
 348:11,12,22
 353:6,24
gun 233:19 251:12
guns 304:7 311:3

guys 291:5 342:2	Happy 61:1	hear 5:24 11:18 12:8 15:10 17:24 19:8 50:16,18 52:8,24 85:7 128:23 149:5 152:13 157:7 158:11 167:17 175:2,15 205:18 227:23 244:25 251:12 279:24 290:17 302:7 309:23 310:2 342:25 343:3	HEPA 69:13 108:1
H	hard 9:15 38:4 89:8,25 170:1 193:19 194:14 321:19 339:22,23 354:14	heard 23:6 24:12 115:3 172:9 207:14 259:19 278:4 292:18,22 350:20	hesitation 353:11, 25
h-a-d 146:12	harder 46:12 326:16	hearing 3:7 4:17 8:11,14 9:15 11:17,23 12:7 15:9,11 17:22,25 18:17 19:9 23:7 26:13 52:7,9 68:25 145:12 149:4,6 157:8 158:10,12 231:11 244:24 245:1 265:6 269:23 336:12,15 355:4	Hey 10:6
Hahn 6:1 61:2,4,5 68:16 160:8,9,10 161:21 176:2 181:21,23 183:5 214:6,9 251:13,15 259:4 273:12,15, 19 274:5,7,13 356:13 357:4,6, 11,23 358:1	harm 5:9,11,14 60:17 61:17 62:3, 5 69:2 94:13,25 134:21 152:20,22 182:15 202:15,16 207:21,23 208:11 209:4 211:23 212:24 213:11,15 214:1 217:2 218:25 223:9 224:6,7 225:18 226:10 325:24 337:20,21 338:22 339:3 340:16,18	heard 23:6 24:12 115:3 172:9 207:14 259:19 278:4 292:18,22 350:20	high 42:3 100:19 263:24 268:11
Hahn's 189:1	harmed 153:19 323:6,22,23 324:9,11	hearings 23:25	high-level 276:6
hairs 87:22 249:25	harmless 60:25 222:15 223:9 348:7	heat 118:24	higher 87:18 105:5 116:20 148:3,11 162:22 188:23 202:10 265:24 271:20 288:10,11 331:9 351:12
half 76:15,16 118:8 119:11 143:18 197:25 293:13 313:9	harms 225:23 339:16 340:10,11, 12	heaters 42:2	highest 110:6
hand 7:1 50:12 53:16 113:6 144:23 153:21 229:22	hatchet 122:18	held 3:4 56:21 72:22 343:6	highlighted 211:12
handed 18:14	Hausman 76:19 77:3,12	helped 248:1 276:23	highlighting 225:9
handful 145:21	Hawthorn 115:11 130:24	helpful 67:15 93:4 170:10 177:13 241:13,17,19,24	highly 145:22 146:3 148:1
handle 36:7 228:6 350:13	head 31:11 246:24 281:24 328:18,24 332:24 354:18	helping 307:4	hindsight 73:18
handling 5:7,9 286:7	heading 80:4	helps 179:13 222:11 276:1,19	hinged 299:18
hang 328:6	headroom 277:9, 11		hinges 118:1,8
happen 120:23 143:23 243:17 258:16 266:6 328:22,23			hired 64:16,21 245:23 294:17
happened 20:11 21:25 31:2 38:9 165:18 186:3 187:4 201:4,5 307:17,18,21 309:20 310:11 322:21			hires 36:10

hold-harmless 225:12,16,22,24 226:9 341:10 354:2	hope 92:25 134:1 143:7 312:5 325:21 328:7	321:16	impacts 117:17 118:3 162:8,16 164:4
holding 23:19 97:23	hoping 160:15 161:17 221:13 337:23	ideally 213:17 248:22	impediment 95:16 313:23
holds 324:23	hour 105:11 112:13,18 129:17 134:9 135:9 136:7,19 137:2	identical 260:15 262:11 263:6	implement 32:4
Holmstead 27:9, 13	hour-by-hour 255:4	identification 7:15,18 10:20 13:24 15:2 17:5 18:12 51:4 145:11 155:13 157:21 231:3 318:14	Implementation 46:4,5 57:21 58:2 110:11,16 152:3
Holmstead's 27:11 98:21 99:4	hourly 36:1 58:7	identified 61:25 211:24 327:11	implemented 33:16
Holsman 6:3,4 112:2 123:2 128:16 134:6 137:21 138:1 141:8 170:17,18, 20,21 175:12,14 275:8,9,11,12,14 276:2,5,9,12 277:13,22,25 279:23 280:3 292:11,13,14,17 302:4 309:3 312:10 319:6,7,9 321:10,12 326:6, 8,9 327:21 328:8 333:17 356:18,20 357:4 358:2,3,10, 15,16	hours 135:25 170:6,8 177:22 178:1 181:9 354:23	identifies 11:13	implementing 181:2
Holsman's 307:2	house 37:1,10 136:8	identify 3:18 92:22 157:15	implicated 189:20
honestly 22:14 342:4	housekeeping 200:5	igniters 304:7	implication 24:17, 18
Honor 5:6 8:5 38:23 52:1,13 55:16 63:12 65:1 71:7 97:9 128:11 144:9 151:4 154:21 175:20 182:24 183:19 194:15 198:23 199:16 259:9 268:22 284:14 287:16 306:24	huge 114:23 116:2 118:2 331:15	ignore 212:8	implications 20:5
	hundred 173:8,9 179:6 180:20	ignores 120:12	implies 120:14 210:18
	hundreds 44:5 119:23 169:5 188:1	II 115:11,17,18 117:8 118:19,21 119:15 300:10	implying 65:11
	hyphen 106:4	III 117:4 137:13	import 47:20
	hypothesis 202:5	Illinois 181:1,2	important 72:12 73:6,11 120:18 132:16 135:8 142:17 167:7 258:19,23
	hypothetical 308:13,14	imagine 95:23 108:5 143:9,20,21 212:7,16 280:22	importantly 113:4
	I	immediately 121:1	impose 217:3 265:8
	latan 115:17,18 117:7,8 118:19,21 119:13,15,16,19 129:10	impact 95:10 96:21 97:3 107:24 108:4 119:25 162:18,20 167:24 176:11 181:7,16 184:23 188:3 203:7,10 216:16, 24 223:18 225:13 329:4,14,15 330:11 350:15,18	imposed 307:12
	idea 206:24 210:9 212:7,17 221:8	impacted 203:4	impossible 117:13 143:21 203:9
		impactful 221:17	improve 105:9
			improved 263:12 322:7
			improvement 120:6 129:25 315:14

improvements 75:16 77:18 103:2 104:25 105:2,7 112:20,24 113:2, 5,7,12,14 115:9, 20 116:1,4,25 119:4,12,16 121:19 126:18,25 127:10,22 129:9, 10,15 130:7 135:8 136:3 137:17	200:25 201:20 261:4 298:16 299:4 304:22 314:23,24 352:25	137:1 210:2	inexpensive 181:11
improves 181:12	included 11:19 62:23 84:21 85:16 88:15,16,20 89:5 114:23 139:11,14 150:3 158:25 160:23 162:1 163:9 164:20 165:5,20 173:24 200:18 201:17 202:2 209:21 220:2,3 225:14 288:1,19 296:21 303:25 313:18 329:1 339:11 353:8	increased 78:2 129:2 304:2	infeasible 143:22
improving 219:13	includes 79:7 162:11 173:17	increases 75:19 77:21,22,23	infinitum 112:21 115:4
imprudence 71:22 82:18 84:14 90:3 97:14 219:2 227:1,3	including 30:9 287:19 288:9 297:10 312:10 324:22,23 325:16	increasing 83:22 136:8 205:2	inform 64:23 107:6 276:21
imprudent 25:10 29:3 48:23 89:22 90:14,16 94:8 100:14 107:22 109:8 151:17 217:1 218:7,12 219:4 235:20	inclusion 200:19 239:18 288:8	increasingly 168:15	information 3:20 44:10 54:21 68:13,21 76:7,8 86:14 93:3 98:17 102:21 104:19 146:2 148:1 153:3 165:21 191:23 192:11,25 193:7,8 222:16 230:16 232:10 247:1 249:10 251:1 264:10 277:7 279:17 280:24 292:24 294:9,16, 22 296:19 302:20 342:25 343:4
imprudently 85:2 100:21	income 285:13,14, 20,21 288:9	incredibly 30:20	informed 103:16 261:19 277:4 281:16,18 299:6, 16
in-camera 60:4 234:20 342:21 343:1,6 348:2 351:4 352:16 358:21	inconsistency 219:3	incur 96:4 202:5 286:25 311:22	initial 126:17 202:7
in/dollar 285:10	incorporated 46:5 260:8	incurred 94:20 202:10 219:8,21 220:1 286:14 290:8 295:9	initiated 126:19 295:3
inactions 108:23	incorporating 246:16	incurring 218:8 219:11	initiative 23:15 30:25 35:8 36:21 37:14 40:14,15 41:16 45:18
inappropriate 85:14	incorrect 185:11	independent 95:25 142:21	initiatives 37:16
incentive 312:14 313:8,14,23 320:16	increase 36:1 37:4 42:18 45:6 57:23 58:7,9 67:18,19, 23 75:10,14 78:11 97:24 105:2,4,7 106:9 110:4 112:22,23 128:23	INDEX 356:1 359:1	injection 123:19
inception 30:21		indicating 13:21	input 33:18 354:4
incidental 136:12		indirectly 23:13	inquiry 138:3 216:5 326:22
include 111:16 169:18 171:17		individual 37:24 111:12 146:22 190:1	insensible 33:21
		individually 111:17	
		individuals 103:21	
		indulgence 259:5	
		Industrial 4:21	
		industry 41:7 42:5,8,15 44:6 106:5,9 109:19 263:1 270:13 311:5	
		inefficient 5:16	

insert 146:9,16	intake 315:9	intervening 166:20 189:25	255:1 257:19 280:23 299:17 341:7 352:13
inserted 51:14	integrated 190:6 254:20 255:11 257:12	intervenors 150:17	IRPS 155:23 221:20 222:4,7 255:2 256:18
insinuated 152:9	integrity 104:3	intimately 169:17	irrelevant 228:4
install 38:14 96:2 121:23 122:15 125:25 127:9 129:7 131:21 135:14 136:25 137:7 143:18 210:20 250:20 252:2,4,11,20 262:3 279:11 297:16	intend 5:13	invaluable 117:7 122:25	irreplaceable 122:25
installation 38:1 159:5 271:11	intended 56:15,17 124:18 299:12	inventory 140:11	Island 3:12 34:8, 11,12 36:13 42:1 43:13 54:16 55:22 59:7 80:18,24 81:16 88:19 92:2 94:10 96:9,23 102:15 112:14,15, 20 120:4 121:8 122:4,10 124:15, 20 125:23 126:17 127:11,16 131:2 141:14,25 142:9 143:1 148:18,19 153:15 156:4 158:23 159:16 164:20 167:23 168:2 169:21,22 170:5 172:19 177:22 178:1 181:17 183:10 187:8,12,20 188:1 189:18 193:9 194:4 195:1,24 197:3,5,23 200:9, 15 204:16 205:25 207:17 208:4,15, 20 209:18 210:23 213:4,22 217:15, 22 219:14,18 220:4,7,8 227:9 236:2,9,16 237:7 240:20 242:8,9 243:23 246:9 247:4 248:11,13, 14,15,18 249:21 250:4 251:4 256:20 260:2,8
installed 114:23 120:9 123:20 126:7 129:22 130:2,20 136:12 137:10 138:4 158:23 263:18 293:17 298:22	intention 334:20 348:20	invest 119:8,10,11 350:24	
installing 120:15 132:1,9 136:6,14 143:12 213:9 227:9,17,25 242:9 247:4 251:21 262:2 270:22 276:16 299:11 307:5	interchangeable 260:18	invested 321:1	
instance 39:15 181:15 185:8 189:18 266:2 267:9 285:7	interconnection 142:10	investigatory 69:3 101:16 208:24	
instances 48:11 166:17	interest 175:4 256:16 275:24 277:5 279:1 287:1,21 288:4,5 294:20 295:4 320:16,18,19 321:17 322:17 324:13 327:1,11, 15 329:6,12 331:8,9 332:2 333:12,22	investing 275:23	
instr- 129:7	interested 36:19 361:14	investment 117:3 120:6 135:22 219:17	
instructed 206:13, 14	interesting 35:16 257:24 327:7	investments 115:14,15 116:18 117:5,6 119:24 120:2 217:15,21 322:24	
instructing 297:24	internal 293:4	involve 39:21 125:6 152:2	
intact 143:1 144:2, 4	internally 138:9	involved 41:21 42:2 103:23 285:9 286:6	
	interplay 227:2	involves 6:15	
	interpretation 30:10 33:15 45:13,20 46:2,6, 14 47:11 110:25 253:13	involving 242:7	
	interrupted 341:14	irony 107:23 114:22 297:9	
	intersection 110:4	IRP 155:19 156:25 157:5 161:15,18, 23 162:2 163:8, 12,17 165:4,21 173:1,25 177:8, 11,12,16 181:25 182:2 190:22 194:4 195:3 205:10,12 207:7 222:10 224:16	

261:20,22,24
 262:3,13,17,22
 263:10,12,20
 264:9,11 275:20
 276:20 280:21
 281:17 282:7,10
 283:1 286:22
 289:21 304:7
 310:9,25 315:11
 321:21,22,24
 349:14 351:21

Island's 124:5
 169:7 200:13
 202:6 240:17
 322:21

isolated 300:8,16

isolation 91:10

ISOS 265:8

issue 3:10 5:8,9,
 10 6:14 27:20,25
 30:22 37:5 41:25
 43:21 55:3 59:2
 60:13 61:1,9,10,
 14,23 72:13 73:8,
 12 84:12 86:21
 88:24 93:13 109:5
 147:1 152:20,23
 153:1,14 154:22
 159:14 161:7
 199:15 201:25
 228:15 229:8
 230:25 232:18,25
 233:12 240:15
 241:15,16 253:5,7
 266:21 269:23
 274:17 292:19
 334:5,7,17,24
 337:15,17 338:10,
 12 339:11 340:25
 341:9 342:3,8,9,
 10,11,16 349:7,9,
 20 350:2 353:16
 354:1,19 356:2
 357:19 358:18

issued 30:11
 32:10 34:4 37:3
 91:23 243:3
 323:13,16 331:21

issues 5:10 23:20
 32:11 55:4 62:16
 68:18 82:7,20
 109:22 135:16
 182:6 214:13
 235:12 241:23
 255:7 259:5
 302:10 318:21
 333:21 334:8
 337:25 338:2,15,
 23 340:18 341:13,
 19,23 349:22
 350:3 353:13,15,
 19,20 354:11

item 18:14 88:6
 302:16,25 303:2

items 85:20 135:7
 176:10 297:18
 302:23 321:18,20
 324:2,6

J

J-O-R-D-A-N

145:5

jacket 200:6**January** 16:2291:23 130:24
303:22**jargon** 134:12**Jeff's** 28:9**Jim** 3:24**John** 3:14 50:9,2251:1,2 356:8
359:11,12**joke** 33:4**Jordan** 144:21

145:1,5 149:3

234:13 356:22
 357:17 360:7

judge 3:2,15 4:1,4,
 8,14 5:18,21 6:7,
 8,21,24 7:3 8:7,20
 9:13 10:3,12
 11:10,11,22,25
 12:3,12,14,15
 13:8,12,25 15:6,
 14 16:20 17:2,8,
 12,21 18:10 19:5,
 16,19 21:19 22:25
 23:2,5 25:6,18
 26:13,15 28:11,25
 29:17,22 30:3,14
 31:1 32:10,14,20
 33:5,7 34:4,6,23
 35:1,7 38:20
 43:14 44:9,17
 46:25 47:5,16
 49:10,14,15,25
 50:3,7,11,14,21
 52:4,15,18,22
 53:2,7,11,15,18
 55:6,10,14 57:16
 59:17,21,24,25
 61:4 62:14 63:7,
 11,13,18 65:7,17
 69:23 70:1,4,10,
 14,19 71:1,5 85:5,
 8 86:4,7,13,24
 91:17,18 92:7
 97:5,8,15 98:4,10
 100:8 101:10
 111:12,14,23
 112:1 123:2,3
 128:10 133:25
 137:21,24 141:8,9
 144:8,10,12,16,
 22,25 147:12
 149:2,10 151:2
 152:12,14 153:6,
 11,24 154:25
 155:8,11 157:4,7,
 12,15,19 158:8,16
 159:12,23 160:1,
 6,9 170:15,18

175:12,13,22
 178:6 181:21
 182:23,25 183:2,
 17 198:17,24
 199:2,6,11,14
 200:4 203:10
 205:17,19 206:3,
 21 215:24 216:2,8
 218:21 220:12
 222:18,24 223:2
 225:11,19 226:5,
 11 227:1,21
 228:8,16 229:4,9,
 12,15,19,24
 231:4,7,9,10,14,
 19 232:21 233:5,
 7,8,16,23 234:5,8,
 10,11,15 238:14,
 18 239:3,6 240:3,
 4,7,10,14 241:2,7,
 10,21 242:3 243:9
 244:8,12,13,17,21
 245:7,10,14,17
 250:24 251:11,14,
 18 259:6,10
 261:10 268:21
 271:22 272:14,15,
 19,24 273:3,7,10,
 13,16 274:3,6,8,
 12 275:6,9 276:2,
 8,11 277:13,16,21
 279:23 280:1,5,8,
 12 281:6 284:13,
 15,18,20 285:3,11
 287:9,12,15,18
 288:12,14 289:11
 291:1,11,13,15,21
 292:3,7,10,11,12
 299:13 302:4,5,9
 306:22 310:20
 312:2,4 314:22
 317:21 318:3,24
 319:2,4,5,6,7
 321:10,11,13
 326:8 327:21,22
 328:1 329:25
 332:5,14,23

333:5,17 334:2,
13,19 335:3,11,
14,16,19,23
336:2,6,8,10,14,
17,23 337:4,7,9,
10,13 338:5,8
342:20 348:1,4,24
349:2,4,6 350:6
351:8 352:2,19
354:9 355:1
356:6,13,14,16,24
357:10,17,23
358:6,7,11,15,21

Judge's 198:13
219:5 228:11
259:4 326:22

judges 29:22,24
40:22 41:11,14

judgment 9:18
16:21 17:9,12,15
47:8,12 101:14
228:21

July 289:4

jump 183:21

jumped 183:23
233:19 251:12

junction 319:16

June 14:20 195:20
289:4 304:1

justice 69:12,17
108:2 205:3,24
206:3

K

K-A-R-L 7:10

Kansas 130:7
139:2

Karl 6:23 7:6,10,
11 8:8,11 356:4
359:6,8,9

Kayla 6:1

KCPL 119:6

keeping 12:2

Keith 60:9,15
62:24 70:12 71:8
291:19 292:15
356:15 358:10

Ken 294:4

Kentucky 29:23
40:24

kick 315:3

kicked 69:8 177:4

kind 26:6 42:10
49:3 64:2,18
67:10 68:16 78:25
94:25 98:25
102:12 103:13
104:9 108:6 113:5
120:23 122:23
123:18 124:17
126:23 135:24
136:14 142:18,23
161:12 165:18
167:11 169:1
171:6 173:11
179:7 191:13
205:4,7 206:10,
13,15 208:19
210:17,18 211:16
212:15 222:6
223:24 234:23
236:18 257:3
264:17 271:5
288:22 289:7
293:22 297:11
305:21 317:15
322:2 326:23
338:14 340:7

kinds 164:5

Kinmundy 179:18,
25 180:2,25 181:7

Kira 83:19

KM-R2 79:19,23
106:19

KM-R4 87:3

KM-S1 86:16 87:1,
2,6

knew 29:15 37:20,
21 40:11,12
46:17,21 48:9
50:3 69:2 77:21
209:19,22 210:4
246:4 250:10
299:2 320:5
334:13

knowable 48:18

knowing 182:15
321:3

knowledge 8:3
12:13 31:4 51:24
54:21 68:14 84:9
125:8 127:19
129:4 132:15
154:19 218:15
230:18 232:9,11
275:15,16 327:4

Kolkmeyer 6:3,6,
7,9 111:25

Koppe 74:25
106:8,11

Koppe/sahu 75:22
76:2 77:8

KRM-D2 9:11

Kyra 83:19 110:2

L

L-A-N-G-E 230:7

La 115:11 140:9

Lab 309:23

Labadie 34:15
69:5 116:8 122:21
128:7 142:13

248:15,19,24
249:9,10,24
259:20 260:14
261:24 262:12,17,
18,19 263:7,20
269:12 282:7
309:23,24 310:12,
16 316:21 317:7,
16

labor 121:20,22
127:21 293:4

lack 23:11 57:22
69:8 339:7 349:13

laid 82:6,10 224:5
246:5 249:21

landscape 293:24

Lange 229:17,19,
21 230:1,6,24
231:1,12 232:23
357:13 359:18,19

language 60:25
338:18

Lansford 241:3
272:17,19 273:17,
20 277:16 284:20
285:1 287:18
291:15 302:16
358:1,5

Lansford's 87:17
295:24

large 39:20 44:4,5
122:23 124:18
138:23 140:3
242:18 268:8
313:21 314:2

larger 118:4
270:9,15

largest 315:4

late 124:9 177:24
192:7

latest 171:9 211:7

Latin 28:10	learned 150:4	64:3 72:3,16,18, 23 73:1,10,15,22 74:3 75:19 76:4 79:13,14 80:12 82:7,12,24 89:20, 23 91:12,18,21,24 92:4,9 106:21 107:14,17 111:10 113:13 300:24 340:3	84:9
launched 36:22 40:13	learning 246:15 260:5	liability's 28:16	listened 36:17 276:18
law 3:15 25:25 26:3 28:17,18 30:9 33:15 36:3 39:17 40:12,25 41:9 42:24 44:7 45:11 46:9,11 56:6,7,15 67:11 73:24 74:20 80:17 82:2 83:13 332:16 340:2	learnings 262:5,6	liable 28:2,3,6 73:23 74:17	listening 252:23 326:22
lawful 30:2	leave 144:2,4 228:20	Liberty 116:20 119:7 138:4 243:9 267:2	listing 155:25
laws 46:10	led 182:21 204:15 205:7 339:6	lic- 22:19	literal 301:17
lawsuit 36:12	LEDS 257:2	license 300:11	litigation 9:7 24:10 60:17 64:10 72:19 75:4 95:7, 24,25 203:1,8 297:16 299:19 338:14 352:5
lawsuits 36:11 46:19,24	left 5:25 6:13 24:3 46:17 49:18 50:2 121:16 139:23 147:15 232:24 237:22	life 114:17 121:16 137:17 172:3 279:12	litigation's 341:7
lawyer 28:9 38:8, 25 39:4 48:25	legacy 138:18	lights 182:9 257:21 258:16	lived 204:5
lay 246:10	legal 56:20 57:2, 11 64:20 69:7 78:1 79:11 83:8 226:1,4 227:19 298:17	like-kind 293:10	load 105:12 112:16 120:19 122:24 124:18 136:9 155:4 156:25 163:20,23 166:1 168:13 171:18 173:23 193:6 197:3,13 236:21 256:15,22, 23 257:4,5,8 265:10 267:18,19 268:5,6,7
laying 80:10	legislation 113:22, 24 114:5,12	likelihood 100:19	loaded 264:15
layout 249:14 260:7	legislature 114:11	likewise 52:24	loads 168:19 197:10
layout's 248:22	length 181:24 224:17	limit 74:16 134:11	local 181:17
layouts 247:10	lengthy 11:9 126:13	limited 67:5 169:12 189:17	locate 273:22 274:14
layperson's 189:12	letter 33:13 45:5	limits 93:13 308:18	located 180:23 246:11
lays 165:6	letters 33:25 58:21 340:15	lines 101:2 307:22	locating 173:2
lead 90:7 117:16 127:20,23 132:22 253:15,19 333:6	letting 5:19 86:14 259:5	link 110:19 112:10	location 142:10
leading 101:8 107:11 298:1 332:7	level 104:5 110:13 173:15 221:21 265:22	list 11:20 16:13 135:7 205:20 337:25 338:2 341:13,19 350:3 353:13,16 354:1, 11,15	logic 322:3 324:22 325:12,15
Leading's 332:12	li- 92:9	listed 16:3,4 81:7	LOLE 163:20
leaking 37:8	liability 23:23 27:15 28:1,20 30:8 33:11,14 40:6 46:6 47:3		
learn 150:2			

long 4:2,4 5:7 6:21,22 7:8 8:5,18 11:12 16:2,13 38:22,24 46:1,25 47:3,6 50:9,21,24 52:1,13 53:10 55:16,17 63:12 65:1 71:7,10 77:17 97:9,11 101:7 116:3 122:20,21 125:15 127:20,23 128:11, 13 136:5 144:9 146:21 151:4,5 160:17 173:12 197:24 198:3,7,9, 18,19 250:10 264:10 266:11,22 289:6,8 312:22,25 330:15 356:4,7,9, 12,16,17,19,24	186:11 197:15 209:2 331:1 lot 22:1 25:19 39:21 56:2 102:2 106:16 107:15,19 134:4 135:15 139:9 140:18 143:10 167:17 204:21 223:20 237:15 249:15,23 254:23,24 262:9 263:3 272:22 275:15 277:10 310:5 314:19 315:9 329:17 338:18 351:16 lots 106:17 loud 50:17 Louis 69:13 low 42:4 185:8 238:11 263:24 267:13 low-sulfur 263:22 269:12,15 271:1,6 308:20 lower 121:20,21 187:16 188:23,24, 25 270:11 330:18 331:7 351:19 Lowery 3:24 4:1 5:6,19,20 11:22 12:1 49:24 50:6 59:23 86:4,11 136:5 146:21,25 147:5,9,11 148:5, 8 154:4,21,25 157:6 183:19,20 194:15,18 198:23 199:16,20 200:11 216:4 221:1,3 225:19 227:18 228:3,8 231:9 233:7 234:10 239:5,8,9 240:2,	24 241:10,25 242:4 244:13,17, 18 245:5,19,22 268:22,23 272:13, 17,21,25 284:14 287:16,17 288:12 291:14 292:9 306:24,25 312:2 319:4 328:2,3 330:6 332:5,15 335:14,17,23 336:13,22 337:9 349:4,5 353:19 357:2,7,10,11,18, 20,25 358:6,11, 16,22 Lowery's 124:11 125:13 126:1 lowest 116:16 156:16 lucky 55:4 lunch 144:13,17 Lundy 293:24 lying 143:10,18 <hr/> M <hr/> M-A-N-Z-E-L-L 318:8 M-O-O-R 7:10 Mac 311:6 macro 175:1 made 6:14,16 24:13,19 25:20 26:3 27:22 29:14 30:5,12 35:8 44:18 46:8 48:16 57:1 59:7 71:18 74:18,21 75:7 76:13,24 94:9 99:18 115:14,21 116:1,17,18,25 117:3,5,17 121:19	125:5 126:5,11 128:1 130:7 131:15 139:9 159:22 160:3 161:18 164:14 186:6,22 204:2 206:10 207:16 208:18 212:11 217:15,21 218:19 238:1 250:7 263:9 270:20 297:23 299:10 303:22,25 304:15 326:23 328:10 342:13 maintain 41:2 219:9 maintenance 20:19 23:20 39:19 43:16 45:9 78:22 88:3 92:15 111:18 162:13 major 80:25 82:1,2 114:20 115:7 116:21 168:5 Majors 60:9,15 62:25 63:1 70:12, 14 71:8,11,15 72:25 77:11 85:10 97:12 128:14 172:10 218:21 219:1 223:21 241:4 274:23 279:25 291:19,21, 24 292:15 317:22 356:15 358:10 Majors/eubanks 102:12 make 12:1 17:7 25:16 26:11 27:3, 21 28:5 57:9 58:18 71:22 78:11 79:18 86:5 91:5 93:19 99:5 102:21 113:2,6 114:8 117:6 119:13
---	---	---	--

122:1 137:6 166:9 173:23 182:11 183:7 191:1 193:20 198:14 206:14 209:1 211:9 212:2,25 249:3 253:11,18 257:25 258:11,13, 24 265:24 277:4 294:15 309:3 339:22 354:1	24 margins 156:25 191:18 mark 13:1,20 14:24 16:25 18:8 155:9 157:13 230:23 244:20,22, 23 245:15 277:23 357:22 358:3 359:3,5 marked 7:15,18 10:19 11:12 13:23 15:1 17:4 18:11, 15 47:8 51:4 54:2, 6 79:19 145:11 155:12 157:20 194:16 229:6 230:9 231:2 232:3,4 318:14 359:1 360:1 marker 299:25 markers 117:24 market 133:10 139:22 140:8 141:13,20,23 162:16 266:24 269:9 marketed 140:11 marketplace 257:17 massive 116:11 140:4,14 mater- 260:6 material 19:13 materials 64:7 66:6 121:20 260:7 math 114:13 180:19 214:24 329:11 Matt 251:1 254:11 260:21,25 277:7	279:16 matter 3:8 58:18 134:8 142:12 176:8 190:1 200:4 204:20 243:11 350:11,13 361:5, 10 matters 5:4,22 MATTHEW 154:2 357:2 maximum 58:4,7 67:18 135:1 142:20 MDNR 33:13,18,24 83:15,19 99:16 100:5 110:25 MDNR's 83:25 110:2 means 92:8 201:22 262:21 339:20 meant 25:3 243:4 268:7 310:4 311:5 339:16 measure 114:8 137:8,11 175:7 304:17 mechanism 94:22 328:23 MEEIA 167:10 meet 166:16,24 167:15 168:4 256:8 266:2 269:2 286:22 308:18 meeting 167:8 196:19 299:17 meetings 40:4 megawatt 105:11 112:7,12,18 113:1 128:17 129:17 134:5,9 135:9	136:7,15,19 137:2 139:4 170:8 171:10 174:11 196:12 248:21 260:17 282:9,10 megawatts 20:22 113:8,19 122:22 124:11 129:12 132:9 141:15,25 166:14,15 169:4,6 170:6,25 171:7,20 173:6,8,9,21 174:12,16 178:24 179:6,8,22 180:9, 10 195:8,12 196:7 236:12 237:1,2, 12,13 238:3 254:17 257:7,9 267:9,20 mem- 79:13 memorandum 17:23 79:14 89:20 91:24 memory 33:8 124:8,12 159:2 220:5 285:8 307:24 memory's 225:20 men- 126:10 mention 152:4 mentioned 9:4 25:5 40:23 41:20 61:10 112:5 115:22 123:9 139:6 140:19 150:14,16,23 151:25 152:10 186:2 204:25 248:7,8 253:6 271:15 293:19 310:22 Meramec 256:1 313:18
---	---	--	---

mercury 37:16

116:10 242:12

Mers 4:6,8 8:22,23

9:13,16,19,24

10:2,4,7,10,14,18,

21 11:6,21 12:11,

16,18 13:1,10,14,

15 14:4,13 15:3,

16,19 16:24 17:6,

19 18:2,8,13 19:3,

11,18 32:17,18

33:10 34:25 43:9

52:17 53:13,21

55:2,8 63:16,17,

20 65:9,22 70:12,

21 100:9,10

101:9,11 134:1,3

144:11 149:12,13

152:1 155:2,3,7,9,

14 157:2,10,13,

17,22 158:5,14

175:25 176:1

183:1 188:25

191:11 199:4,9

220:13 221:9

222:21 223:7

225:25 226:7,8,23

227:24 228:6

229:2,7,17 230:3,

23 231:16,22

232:17 234:7

238:16,17 245:9

259:13 273:6

280:10,14 287:11

291:3,4,19,24

312:5,7 319:1

327:25 335:1,6,15

336:5,7,9 337:2

338:2,6 350:8,9

356:5,6,12,14,17,

19,23 357:3,5,12,

13,15,18,24

358:4,7,12,22

metal 139:9 144:4**method** 105:23

106:2,7 111:1

290:5

methodology

111:7

Metro 116:19,21

117:6

MI 4:20**Michels** 49:20

53:8 120:9 141:4

153:20 154:2,5,22

158:21 178:10

183:22 198:24

205:14 207:14

208:12 209:7

222:4 225:4 237:1

251:1 254:11

257:25 260:21

261:1 276:22

277:7 279:16

294:24 352:8

357:2

Michels' 96:7**microphone** 9:14

50:15

mid 198:2 267:11**mid-'90s** 269:16**mid-2030's** 115:16**middle** 171:19

246:14 260:2

Midwest 4:15,20

143:6

MIEC 4:20**miles** 44:5**million** 60:2,5,7

62:22 69:17,20,25

85:11,24 86:6,22

87:12,18,19,25

88:22 107:25

119:23 120:24

125:15 135:21,22

139:12 159:5

170:6,8 181:11

188:2 207:1

216:11 217:20

219:23 239:21,22

264:16 271:15

274:22 275:1

276:25 278:6,16

282:3,21,24

283:20 292:20

293:7,13 294:13,

19 298:9 300:9,22

304:9 305:23

310:17,18 313:16,

17,25 314:5,7,9

316:25 320:20

321:7 329:10

millions 119:23,24

300:2

mills 136:11 263:2**mind** 63:4 95:15

118:21 161:19

183:12 295:25

297:22 300:9

305:13,18 308:22

334:10 354:24

mine 10:17 122:2

301:11

mini 241:14,19,22,

23

minor 217:17**minus** 214:25**minute** 196:24

251:13 310:23

minutes 59:5

334:15

Mis- 199:21**misnomer** 135:11**MISO** 163:12,18,

25 165:1,22

166:11,13,24

169:9,15 170:24

174:3 176:15,17

187:3 191:12

192:6,12,20 193:1

196:20 207:8

208:19 254:21

257:18 265:11,16,

18

MISO's 164:22**missed** 165:17

215:5

missing 63:15**Mississippi**

315:12

Missour- 213:3**Missouri** 3:9,23,25

4:3,21,24 5:1

6:15,18,19,22,23

9:7 12:12,19,21,

23,25 14:22 16:21

21:25 22:21

25:10,21 26:7

27:19 30:5,10,11

31:15,17,20 32:2,

3,7,9 33:15,16

36:2,3 43:23

44:11,19 45:1,3,4,

11,22 46:9,11,15,

20 47:10,12 48:2,

14,18,23 49:2

50:9 52:2,14

55:15,25 56:9,15,

16,19,25 57:17,20

58:1 62:9 63:11

64:5,18 66:23

67:4 68:3,9 69:2

81:9 83:13 84:12

89:24 93:20 95:24

99:17,18,24 100:4

108:24 110:14

115:5 118:22

123:10 124:19,22

125:10,20 126:16

130:25 131:19,21

132:3 133:12,21

142:15 151:3

152:3 155:5

158:22 175:18

180:24 183:6,7,25 186:10 199:15 200:20,23,25 201:20,24 202:2, 5,9 204:2,19 205:7,9 207:14 213:22 215:11 223:23 227:1 228:2,5,10 233:6 234:9 239:4 242:19 259:8 266:22 270:17 278:8 281:10,11 292:8 306:23 308:17 315:12 316:13 319:3 328:1 331:22 333:21 334:25 337:8 340:21 349:3,17 352:25 353:7 356:10 357:8 358:8,19 361:4	MJL-S5 274:20 mod- 82:1 model 76:22,24 77:17 modeling 77:17 294:24 modicum 102:23 modification 46:16 modifications 82:2 modify 146:3 204:25 228:21 moment 10:22 15:6 25:13 86:2 89:14,17 165:14 174:19 284:24 287:3 351:2 money 38:9 114:6, 16 121:7 142:6 143:10 144:6 175:8 184:24 185:13 204:21 237:15 252:14 297:24 298:25 303:19 306:6 313:9,18 320:24 322:23 323:12,19 money's 144:3 monitoring 88:1 month 17:18 289:3 months 127:2 304:12 Montrose 140:22 143:25 Moor 6:23,24 7:6, 10,11 8:8,11 10:12,17 19:24 23:4 35:6 38:25 45:24 47:2 49:12	59:5 99:6,8 111:4 356:4 359:6,8,9 Moore 83:19,24 110:2 moot 316:14 morning 3:2 4:16 5:3 6:6,7,8,22 8:24,25 19:24,25 55:18,19 61:6,7 71:11,13 112:3,4 149:15 217:8 motion 204:24 206:9 335:13,24 Motions 335:21 336:20 motors 282:14 move 8:6 31:3 41:16 52:2 122:11 138:24 140:15 154:23 158:6 166:7 244:15 297:25 304:19 340:8 352:15 moved 24:4 moving 182:16 323:7,22 multi-million 39:20 multiple 25:14 mutually 253:22, 24	narrow 127:7 Nash 4:2 6:22 45:25 Nathan 4:11 nation-wide 326:13 natural 4:24 13:17 14:1,15 15:22 58:17,20 68:3 83:15 162:2 172:3 178:12 205:2 naturally 114:7 nature 48:17 near-term 247:6 308:2,3 349:14 nearer 62:8 necess- 68:11 necessarily 64:20 68:12 110:14 265:9 293:6 295:13 301:18 308:1 309:14 313:13 317:10 341:12 354:1,7 needed 102:5 219:14 248:19 255:12 negative 134:25 339:18,20,21 350:15,24 negligence 82:21 Neighbor 118:5 204:8 neighborhood 141:15,24 283:19 net 88:1 118:24 139:16 166:4,9 172:21 174:16 187:15 189:1 190:8 220:3 285:15,22 304:2
Missouri's 52:5 56:22 57:10 66:4 68:12 89:22 128:2 149:17 156:24 159:15 185:17 204:24 206:9 207:7 212:10 213:4 227:6 286:19 331:23 340:2 misstate 307:23 misstated 333:2 Mister 6:3 misuse 135:4 Mitch 272:17 MITCHELL 273:17 285:1 358:1,5 mitigation 202:20, 23 mix 256:10 263:23	money 38:9 114:6, 16 121:7 142:6 143:10 144:6 175:8 184:24 185:13 204:21 237:15 252:14 297:24 298:25 303:19 306:6 313:9,18 320:24 322:23 323:12,19 money's 144:3 monitoring 88:1 month 17:18 289:3 months 127:2 304:12 Montrose 140:22 143:25 Moor 6:23,24 7:6, 10,11 8:8,11 10:12,17 19:24 23:4 35:6 38:25 45:24 47:2 49:12	59:5 99:6,8 111:4 356:4 359:6,8,9 Moore 83:19,24 110:2 moot 316:14 morning 3:2 4:16 5:3 6:6,7,8,22 8:24,25 19:24,25 55:18,19 61:6,7 71:11,13 112:3,4 149:15 217:8 motion 204:24 206:9 335:13,24 Motions 335:21 336:20 motors 282:14 move 8:6 31:3 41:16 52:2 122:11 138:24 140:15 154:23 158:6 166:7 244:15 297:25 304:19 340:8 352:15 moved 24:4 moving 182:16 323:7,22 multi-million 39:20 multiple 25:14 mutually 253:22, 24	narrow 127:7 Nash 4:2 6:22 45:25 Nathan 4:11 nation-wide 326:13 natural 4:24 13:17 14:1,15 15:22 58:17,20 68:3 83:15 162:2 172:3 178:12 205:2 naturally 114:7 nature 48:17 near-term 247:6 308:2,3 349:14 nearer 62:8 necess- 68:11 necessarily 64:20 68:12 110:14 265:9 293:6 295:13 301:18 308:1 309:14 313:13 317:10 341:12 354:1,7 needed 102:5 219:14 248:19 255:12 negative 134:25 339:18,20,21 350:15,24 negligence 82:21 Neighbor 118:5 204:8 neighborhood 141:15,24 283:19 net 88:1 118:24 139:16 166:4,9 172:21 174:16 187:15 189:1 190:8 220:3 285:15,22 304:2
		<hr/> N <hr/>	
		n-o-t 51:13 name's 3:14 named 76:19 nameplate 174:17 names 150:13	

309:1 329:3,7,16	NPV 329:18	numerous 334:10	occurring 156:21
network 354:23	NPVRR 176:3,5 190:12	NVPRR 176:11 221:12 260:24	October 212:3 213:1,23 303:22 304:13
news 36:4	NS 340:14		odd 289:19 305:21
nice 314:9	NSPS 110:20	O	OECA 36:6,8 37:8, 14 38:13 40:4
Nicole 4:6	NSR 5:8 23:14 24:8,10 25:11,12 28:13 30:23 35:24 37:2,22 55:25 56:10 62:19 89:25 95:23,25 186:7 197:16 203:1,8 204:3 216:17 235:15 253:9 271:19 297:15 340:20 342:14 349:19	oath 199:7 233:17 277:19 284:22 291:22 335:4	off-system 135:24
night 252:23 253:7,19	nuances 282:16	Obama 37:12,17	offer 11:6 15:4 17:19 19:3 56:11 84:14 149:1 230:25 233:21 234:4 244:18 273:1 318:21 335:7
nobody's 218:14, 19 272:6	nuclear 122:24 143:6 255:22	obiter 28:8	offered 29:19 57:13 60:16 234:2
non-selective 123:17	number 3:12 11:24 14:19 15:21 23:6,7 24:12 35:23 36:5 69:23 87:5 125:18 156:16 206:22 211:9 220:24 221:2 223:6 226:14,18 292:21 293:13 314:10 351:11,13	object 43:9 65:2 101:7 149:2 225:20 228:3 332:8	offering 57:6 114:11 230:25 232:19
noon 199:21	number's 206:25	objection 43:15 157:6 226:12 227:18 229:1 233:24 332:10,20 335:24 336:13,22	office 3:5 4:9,12 19:20 35:17,20 36:9 52:19 55:11 71:2 96:24 104:12 117:15 145:8 158:17 199:12 233:2 234:22 235:6 245:11 261:11 273:8 281:6 292:4 318:11 337:5 354:5 356:21 357:16 358:13
Noranda 267:18, 22 268:6,9	numbering 12:4	objection's 65:17	official 13:9
North 29:24	numbers 16:9 44:4 125:19 139:11,14 145:23 165:1 182:6 192:20 206:1,2,6 220:20,21 221:16, 17 222:15 279:7 283:23 285:23 294:12 311:17 342:22 351:4	objections 8:7,12 11:16,18 12:6,8 15:7 17:21,24 19:5,8 52:4,8 149:5 157:4,7 158:8 244:21,25 336:10,17	offset 139:16
note 160:17 161:16 343:5		obligation 197:20	oftentimes 299:21
noted 12:20 78:5 110:17 111:7 160:19 163:13 166:3 233:25 234:2		observer 23:13,24	Ohio 103:3
notes 79:11		obsolete 140:10	oil 167:3 178:12, 18,21 179:12 188:8
notice 13:5,9 14:21 48:7,12 81:8,10 130:10 165:19		obtain 6:17	oil-fired 181:10
noticed 40:16 175:17		obtaining 92:2 295:8	
notices 69:2		obvious 124:24	
notified 299:9		occur 155:5 209:5 275:13 340:10	
NOV 38:14 49:5		occurred 18:18 152:25 207:3,23 224:6,7 281:16 305:1 313:21	
November 36:22 164:1			
NOX 113:15 115:23 118:6 119:17 123:19 129:8			

older 255:25	300:11	313:2 317:10	89:3
one's 13:2 79:10 210:12	operation 58:5 88:3 115:8 120:5 162:12 169:7,19 209:17	323:8 324:24 332:17 338:14	organize 354:17
onerous 68:7 354:12	operational 169:10 218:18	opposing 41:14 272:6	orient 241:6,14
ongoing 60:17 88:3 94:13 159:24 184:9 288:20 295:2 298:21 315:6 321:23	operator 80:17 135:5	opposite 297:17	original 92:19 330:24
online 6:12 252:23	opine 28:23	option 113:25 160:22 185:3,8 191:24 225:5 299:12 307:14 308:20 309:15 331:8	originally 263:14 352:12
OPC 144:18 214:20 215:6,24 235:24 241:5 303:1 321:4 360:6	opinion 22:22 30:3 32:10 33:25 34:4,18 42:22 47:19 48:4 56:11 57:13 66:2 72:5 79:12,14 82:11, 18,24,25 89:10,20 90:11,14,17,19 91:2,9,24 93:6 95:15 96:25 97:14 98:21 99:21,25 100:16 102:6 104:3,17 106:21 109:14 111:14 136:17,24 198:3,7 235:22 238:12 279:3 305:17 314:13 320:13 339:25	options 189:16 190:5,15 307:15	Otter 150:9
OPC's 89:21 223:24 233:13 319:13	opinions 18:6 29:20 30:4 39:1,3 57:6 63:23 64:1,4 71:23 72:2 82:17, 19,23 84:18,24 90:25 93:14 97:13,17,23 99:20 100:25 101:2,6,14 102:20,22 103:6, 21 104:2 108:22 109:11,12,13,19	order 3:9 15:17 17:23 25:18 26:25 27:10 28:12 36:6 43:19 56:24 58:18 59:1 72:11 73:21 78:11 79:12,13,14 89:20 91:24 92:23 105:23 107:18 127:1,3 166:23 172:20 197:19,21 198:12 205:1 212:8 213:17 222:14 223:11 227:20 228:11 235:9 252:22 257:20 263:21 278:19 286:9 289:7,8 290:10 293:2,3,6 294:1 341:1 348:9,19 352:19 353:3,17	outage 67:11 127:1,2
open 134:14,15 188:1 289:7,8,14, 20	opened 208:24	ordered 203:11 228:13 339:5 340:24	outages 169:8 218:4,8
opening 60:1 208:23 241:14,19, 22,23 357:20	operate 43:19 116:23 117:9,22 121:8 122:19,21 131:4 134:21 153:15 159:16 169:21 175:8,9 189:19 217:24 219:18	orderly 91:19	outcome 42:20 73:7 94:15 182:7 338:13 339:3,18, 20,21 340:21 341:7 342:14 350:13,15,24 361:14
operated 148:19 169:22 219:15 351:22	operating 118:15 122:16 162:8 169:13 170:2,8 177:22 178:2 208:16 258:15 266:13 270:23	orders 214:4 288:19 290:15 337:18 341:2	outcomes 40:21
	opportunity 201:7	organizations	outflow 315:10
	opposed 60:23 131:10 180:14 210:20 299:11		output 67:18,24 174:9 278:20
			outstanding 336:20
			outweigh 314:12, 13
			overhauling 92:1
			overrule 43:14 226:11
			overruled 65:17
			overseeing 3:15
			owner 80:17
			owner's 295:14 305:25 306:4,13 308:7 310:22,24 311:13

P			
P-A-Y-N-E 318:8	participation 23:22	peak 155:4 163:19,23 166:1 236:21 257:8 267:5,6,9	periodic 184:10, 22
pack 129:13 150:7	parties 64:6,16 69:10 153:7 159:13 206:13 241:1 285:6 334:24 342:24 354:14 361:10,13	peers 133:18	perks 314:11
package 115:9	partners 119:7	pendency 182:8	permanently 134:22
packet 13:16	parts 11:12 35:17 260:13,17 338:20	Pennsylvania 29:24 40:24	permissible 39:22 44:7 332:12
pad 79:11	party 143:7 241:22	Peno 179:18 180:5,6,23	permission 198:14
pages 73:4 247:9 306:11,12 343:7	passed 113:22 114:5	people 20:18 22:1, 2 40:10 42:9 343:3 351:16	permit 6:17 12:13 33:13 58:21 129:6,21 130:13 149:19 223:23 253:9
paid 119:24 323:25 324:2,7, 12,20	passing 152:1	people's 38:8	permits 15:23 30:6 44:19 55:22 56:1,10 78:18 92:3 100:5 129:3 136:20 186:7 204:3 218:11 235:15
paper 13:6 155:19, 21 156:1 157:5 158:1,6 191:13 360:3	past 64:9 170:4 217:23 219:8,15, 22 221:20 222:4 256:22 267:7,8 299:23 328:6 353:12	perceive 348:8	permitting 5:8 22:20 24:15 28:13 29:14 30:12 44:12,23 45:16 46:8 47:13 56:20 57:1 58:19 59:7, 12 62:19 66:19 71:19 73:25 74:4, 7,10,12,19,21 75:6 76:24 77:4, 14 78:11 83:14,23 89:12,25 97:19,25 98:6 100:4 107:12 110:4 131:1 137:3 216:17 297:12 337:22
papers 13:17 14:17 15:17 79:6 103:24 155:22 215:2 238:20,23	path 18:21 340:7	perceived 313:4	person 6:11 80:16 103:10 160:15 325:7
par- 119:7	pattern 169:10	percent 174:9 256:24 266:4 268:12 289:5,24 290:3,21 314:7,8, 11,14,18 331:16	personal 91:9
parallel 245:24	pay 130:19 131:4 135:23 303:8 304:4,16 316:19 321:16 330:13 331:17 332:1	perfect 176:5 189:5	personally 58:14 66:3
part 5:9 10:25 11:1,13 63:15 66:1,18 67:16 69:6,7 72:19 74:5 116:17 118:10 119:20 125:24 129:5,9 148:10 156:11 164:3 171:24 177:16 184:8 211:21 214:21 236:9 251:19 280:22 313:8 320:20	paying 322:16,25 323:4 324:17 330:18,19,20,21	perfectly 45:4 96:20 332:12	
partially 323:20	payment 331:14	perform 277:8	
participated 23:13,17	Payne 241:5 318:1,4,8 321:14 328:4 334:2 358:14	performance 104:24 105:4	
participating 50:18	Payne's 287:5 288:16 297:19 302:17,21 318:20	performed 66:24 205:14 250:18 276:22	
	Peacock 37:5 45:5	perha- 136:25	
		period 24:9 26:2 34:3 147:18 160:25 200:24 212:15 236:13 237:7,8 258:17 283:9,11,15 287:25 310:10 322:15 329:3,5 330:15,19,20,21	

perspective 133:16 175:2 208:12 212:6,19 214:24 215:10 224:18 243:16 247:16 250:25 258:15 260:11 263:1 264:1,6 266:13 276:6 279:21 312:18 321:16 328:15 339:2 340:6	place 28:22 29:3 36:13 44:18 167:23 184:8 192:1,15 298:1	122:16,20 125:22 134:10 135:5,10 139:8 162:8,25 164:24 166:8 172:2 175:5 181:8 186:8 191:4 204:4 211:20 213:4,13 217:16,19 219:20 224:12,13 227:20 228:7,13,22 236:17 238:3 243:17 247:22 248:8 249:6 250:20 251:6,22 255:23 260:8 262:10,14 264:1,4 269:1 275:25 276:16,20,24 279:12 299:2,6 301:21 303:21 308:21 309:24 312:24 317:8 321:25 322:4,10 328:21 339:17 340:10,12 342:9	95:19 105:6 110:24 115:25 137:16 149:22 159:21,25 160:2,3 161:8 175:15 183:9 184:5 207:4,23 210:7 211:3 215:18 216:14 217:6 218:10 221:8,14 232:24 238:4 240:25 244:15 247:5 259:19,20 264:2 279:4 285:12 295:2,24 302:2 311:1 316:8 320:6 322:19 328:25 333:6 351:7
Petition 3:8	placement 237:7		pointed 235:13
phase 64:3 72:19 89:21 91:19,21,24 92:4,5,9 107:19 111:10 293:21 294:6,11 295:12	places 138:12		points 222:6
phases 72:18	plan 14:22 46:4,5 57:21 58:2 119:21 152:3 156:3 164:19,21 165:20 166:19 172:24 173:16 174:1 190:10,20 194:3 195:20 247:7 257:13,25 271:5 339:18,20 354:19		polices 138:12
philosophy 151:13	planned 169:8 349:18		policies 205:4
phrase 35:11	planners 135:20		policy 35:20,21 36:6,15 37:3,9,15 38:5 40:14 49:1 114:10 117:21 118:13 145:8
phrased 341:20	planning 126:17 127:14,15,22 128:3 156:25 163:21 165:2,24 167:5,12 184:9 190:6 191:18,24 192:24 193:3,5 195:2 196:1,18 216:20,21 224:16, 23 225:5 237:12 254:14,20 259:2 315:25 338:13 339:3,7 340:20 341:6,8 342:14 349:13 350:2,12, 14,18,23 353:19, 20	plants 105:12 112:25 114:21 116:14 132:8,23 133:1 138:18 214:25 224:14 236:6 239:13,17, 24 246:4 248:6, 10,15 249:1 255:20 259:18 261:23,25 270:1,3 310:2	pollutants 130:17
phrasing 338:14	plans 110:12,17 156:1,3 177:16,18 246:10 297:16 350:16	play 280:22	pollution 43:24 46:22 130:20 132:1 133:18 136:5
physical 92:14 247:10 249:14	plant 42:1 54:16 95:17,21,24 96:2, 14,23 105:9 113:9 119:9,11 121:9	played 33:5	portfolio 160:22 189:19
pick 111:20 191:3 249:10		pleadings 64:5 206:10	portfolios 41:4
picked 238:7 249:18 302:24 315:16 342:2		plentiful 138:20 142:15	portion 9:10 15:23 34:15 48:21 95:9 327:1,10,12
picking 206:22 256:21		plenty 291:25	portions 11:8 335:25
picture 294:19		point 25:6 26:5	pose 51:20 154:14
piece 349:16			
pike 246:3 248:2 264:23			
Pinckneyville 179:21 180:3			
pitch 119:14,20			

327:8	17,25 207:21	preferably 85:24	pretty 102:20
posed 7:24 44:15	208:11 209:17,20	preferred 164:19,	140:13 209:1
position 56:23	211:11 246:2	21 165:20 173:16	210:9 248:15
60:3 61:8,15,22	248:1 264:22	174:1 195:20	267:18 268:11,15
68:17 83:9,14,25	293:11 299:21	preliminary 5:4,22	269:14 278:21,23
85:1 88:16 89:9	305:11 311:25	164:9 191:22	prevailed 48:12
90:1 93:25 94:3,5,	316:21 317:6,15	192:11 242:7	297:15
6 96:18,22 98:5	339:4	264:17,18 288:25	Prevention 71:17
112:9 114:5	potentially 69:14	304:24 306:8	previous 112:6
155:19,20 166:4,9	139:22 167:24	premise 121:4	176:22
182:10 185:17	172:4,8 173:5,6,	122:8	previously 162:14
191:20 193:11,21,	22 174:18 208:20	premised 93:11	170:6 199:18
24 194:3,6,12,24	223:12 225:1	109:13 310:19	203:16 210:4
195:3 204:20	248:18 249:24	prepare 54:1	254:4 277:23
207:13 218:21,22	264:3 300:23	145:10 230:8	285:1 292:15,18
223:25 224:3	352:4,14,16	232:2 318:13	337:11 338:21
235:23,24 238:19	power 105:12	prepared 7:12	price 188:3 205:3
274:17 278:25	119:9,11 132:8	51:3 54:2 74:7,9	prices 162:2,3
279:9 319:13,21	142:21,23 150:8,9	154:5 185:21	205:2 309:7
321:4 337:25	262:6	230:9 232:3	primary 190:9,12
338:3,7,12,17,18	practically 308:21	present 22:12	principal 330:24
360:3	practice 48:14	88:1 95:16 160:18	332:2 333:11
positive 195:8	pre 77:9 103:2	162:19 176:14	principally 187:25
237:20	119:15	187:15 189:2	principles 104:8
possession 79:10	pre- 77:9 104:17	190:8 224:23	328:17
148:16	pre-filing 81:8	309:1 329:3,7,16	prior 76:22 77:18,
possibility 133:8	pre-heaters	330:4,11	22,24 99:7 112:5
142:3 174:24	135:17	presentation	114:2 126:1
202:4 242:9 243:2	pre-project 76:13	91:20	151:20 176:18
308:4	104:19	presented 21:9	177:22 191:23
post 103:2 119:15	predetermination	65:3,4 75:3 98:17,	266:1
post-project 75:24	22:8	18 202:8 236:10	pro- 303:12
76:2 77:10 104:17	predeterminations	352:8 353:8	probability 303:16
potential 18:21	20:3 21:4	preserve 61:19	problem 78:13
57:22 58:2,9	predicated 212:9	117:7	143:11 228:8
60:18 62:4 69:4,	predict 117:13	preserves 214:1	258:4 278:3
19 78:2,10,14	279:1	preserving 94:25	284:17
83:22 96:2,4	predicted 77:9	president 36:25	proceed 39:24
97:19,24 99:23	194:3	150:15	50:20 160:6
135:3 138:16	prefer 13:7,8	press 37:8	242:25 320:6
140:1,3,4,8 169:5	239:11	pressure 256:13	
171:9,22,24,25			
173:2 182:15			
185:10 202:15,16,			

proceeding 3:4,15 18:24 48:3 60:11 93:19 108:17 211:1,2 212:24 213:12 318:15	178:2 200:16 208:5 211:8,9 224:19,21 225:2 240:17 250:14,16 252:13 272:1,2 286:20 289:23 295:9 304:5 310:16,25 311:13 314:15 315:5 316:16,22 317:16, 17 325:5,6,13	320:23,24,25 321:23,25 322:17, 22 324:23,24 325:14,15,18,22, 24 326:2 328:15, 19 339:8 353:8	42:11 58:24 64:7 67:3 81:8,10 93:3 148:22,23 155:16, 23 202:13 208:3 209:7 251:1 278:24 292:24 293:15 304:23 354:4
proceedings 3:1 18:4 94:16 190:2 332:13	295:9 304:5 310:16,25 311:13 314:15 315:5 316:16,22 317:16, 17 325:5,6,13	promulgated 37:7	providing 69:3 147:12
proceeds 139:13, 15,18 331:21 333:11	projected 128:6 305:2	Promulgation 14:22	provision 31:21 225:12,17,24 226:9 341:11
process 5:16 20:1 22:6,10,17 28:15 30:19 63:15 126:13 166:25 210:17 254:20 265:21 280:6 353:15,25	projections 170:25	proof 80:5,11,24 81:15,20 82:1,11 176:21 177:4 191:13,16	provisional 335:18,20
procure 126:13 246:20	projects 20:4,15 26:9 39:19,23 40:11 41:25 42:1, 7,10,14 43:21,22 44:2 55:22 56:1, 10 60:21 62:7,10 68:14 69:19 77:18,22,24 81:16 82:1 86:19 87:11 92:13,14,18,20 111:11,16 112:20, 22 127:12,19 128:23 129:2,25 130:13 167:18,19, 20,25 168:14 169:5 196:22 197:9 200:1,10, 12,17 201:8,13 210:3 211:5 218:9 219:12,16 220:8 221:22 242:7,24 243:7,8,10,12,15, 21 252:20 272:5 274:22 275:2 285:7,17 286:2,16 287:20,24 290:4 298:15,22,23,25 302:15 303:6,8, 13,14,15,17,20,23 307:10 314:22,23 315:2,7 319:13	proper 136:20 137:2 192:9 297:12	provisionally 336:18,24,25 359:16
produced 340:13	properly 234:2	property 181:17	provisions 20:3 31:22 80:12 81:2
producer 142:22	proposal 206:15 225:22 242:13	proposals 69:11, 12	pru- 98:6 182:13
producing 169:9	proposed 202:2 204:9,12,18 214:20 220:6 239:16,17,20 240:19 242:11,17 286:1	proposition 140:12 313:1	prudence 5:7 24:14 29:10 48:2 61:16,17 62:17 73:12 82:13 84:8, 12 89:11 93:6 107:3,7 152:16,17 182:13 219:8,10, 22 220:6 234:23 295:7 342:9
production 142:23 169:23 170:5 172:5	propping 43:12	prospect 317:10	prudency 25:5,6, 12 27:7 112:8 159:24 182:14 212:25 213:13 214:12 219:6 295:1 319:15 326:1
program 20:7 31:22 44:8 71:17 171:25	Prosym 76:21 77:16	provide 48:12 66:25 150:12 159:13 164:9 167:13,20 168:24 187:12 191:17 249:22 265:14	prudent 6:16 26:7 73:18 84:6 90:9, 13,15 91:7,15 93:20 95:5,20 96:10,14,20 98:6 112:11,12 113:2,
programs 20:12 167:10 172:1	provided 3:20		
progress 285:9 290:13 296:25 301:1 317:11 324:1 326:15			
project 17:12 21:5 22:9 33:19 43:3 58:22 76:12,17 86:20 87:20 106:3 111:12 127:9 140:22 150:7 168:21 169:3			

25 114:7 134:9 135:5,12,13 153:17,18 159:18 175:7 182:20 210:21 211:20 212:5,23 213:10, 21,24 216:10,18 235:11 253:10,17	pull 302:15	261:19 354:11,14	203:17,18,21,22 209:2 210:1,18,19 212:21 213:2,6, 21,25 214:7 216:6 223:6 226:6 227:21 228:3,9 235:19 251:18 257:10 269:25 274:9,10 277:15 278:4 282:9 285:25 288:16 289:16 293:8 295:10,19,20 299:8,20 300:4 306:11,12 308:14 310:12,14,20 325:3 326:1,20 327:8 328:8 331:2 333:20 339:12 342:8 349:8,11 352:1,18 354:9
prudently 24:24 25:2 100:18 136:25 151:22 219:25 243:22	pulverizers 134:19	PVRR 160:19,20 162:21	
PSC 44:7 106:8 107:6,12	pump 263:3		
PSD 30:11 48:20 71:17 80:12 81:2 89:25 106:4 110:20 151:18	pun 124:18	Q	
PSP 31:22	purchase 113:16 133:9 166:12 271:1	qualified 92:15	
public 4:9,12,13 8:9 19:20 27:1 35:2 41:22 52:19 55:11 63:8 71:2 96:24 97:6 104:12 123:5 141:9 144:18,20 145:8, 23 152:16 154:7,8 158:18 159:24 161:6 178:6 183:2 199:12 231:5 233:3,13,14 234:22 235:6,21 240:5 245:11 261:11 273:8 281:7 287:12 291:11 292:4 303:1 306:19 317:23,25 318:11 321:15 329:25 337:5 348:25 356:10,21 357:8, 16 358:8,13,19 359:6	purpose 20:13 75:9	qualify 111:17 120:5	
	purposes 11:23 31:22 145:11 207:8 215:20	quality 13:18 31:11	
	pursue 26:8 45:6 48:10 197:22 235:15 253:9	quantifiable 207:4,25 210:8 211:4	
	pursuing 37:15	quantify 75:10 226:10 284:7	
	push 135:5 232:25 283:23	quantifying 225:18	
	put 28:12 43:17 47:9 51:15 96:12 103:7 114:4,11 122:2 123:10,13 124:22 125:10,21 126:5 164:16 171:10 183:8,14, 15 184:1,2,3 191:6 193:15 204:19 217:16 228:19,20 238:9 246:3 248:6,19,23 249:5,9 251:3 263:16 264:5 279:18 281:10,11, 20 282:14,18 296:6 324:5 326:25 338:12 353:16	question 5:14 21:23,25 24:23 27:25 38:18 41:19 42:6,18 44:15,20 45:24 47:16,20 48:8 55:25 57:4,7, 8,10,25 58:11,15 59:3,22 60:9 65:21 67:14,21 68:1 78:8 92:25 93:2,5 95:20 96:6, 13 97:2 99:3 101:8 103:4 104:14 105:13 109:25 111:20,24 119:22 121:13 128:15 129:19 131:25 135:13 137:19,22,25 138:22 143:13 159:20 161:4,5 168:9 171:13 172:13 174:25 177:1 183:12,24 185:23 189:5 192:4 194:21	questioned 108:25 302:16
published 40:19	putting 42:13 49:22 237:12		questioning 65:9 141:3 183:22
			questions 5:7 7:24 15:15 19:14, 17,22 20:19,24 22:24,25 23:2,3 32:12,16 33:7 34:20,25 35:3 38:23 42:17 49:9, 21,22 51:20 52:23,25 54:23 59:16,18,25 61:2, 5,10 62:14 63:5,8 85:4,6,8,9 90:24 97:6 101:3 111:21 112:2 123:5 128:9 130:18 133:3 138:1 144:7 152:11,12,14 153:4,5 154:14 159:10,13,20 160:8,10,14 161:11 170:11,16,

21 175:14,21,23
 178:4 181:20,22,
 23 182:22,24
 183:18 185:16
 188:7 189:1
 191:11 196:21
 198:22 201:12
 204:1 205:16,17,
 19 214:9 215:24,
 25 216:2,3 217:8
 219:5 222:12
 226:3 227:11
 230:20 231:9,10,
 11 232:14 233:8,
 10 234:10,11,15,
 17 238:13,15
 239:7 240:2
 245:12,14,17
 251:11,15 253:1
 259:8,12 265:5
 268:19 269:24
 271:22 272:13
 273:10,19 275:7,
 12 277:25 280:4
 284:12,16 285:3
 287:8,13 288:14
 290:25 292:10,17
 302:6,7,9 306:20,
 23 307:2,6 312:3,
 8 319:5,9 321:13,
 14 326:9 327:24
 329:24 331:19
 333:17 337:10,13
 340:17 341:20
 348:25 349:3
 350:10 352:16
 356:6,13,14,16,
 18,20,24 357:4,6,
 10,11,17,23
 358:1,2,3,6,7,10,
 11,15,16,21

queuing 20:18

quick 49:16
 137:22

quickly 114:21

quiet 37:13

quo 122:16,19

quote 72:10
 315:16

quoted 69:20

R

rail 138:18,19
 140:19 142:16

raise 6:25 50:11
 53:16 70:14
 144:22 153:21
 182:2 225:7
 229:21

raised 27:20
 218:14 269:23
 349:12,13

ramifications
 94:17

range 169:6
 171:10 220:22
 221:10,13,20
 222:8 238:7,8

rate 64:9 101:16
 103:23 104:25
 108:6,17 118:25
 133:16 176:9
 190:1 191:5
 200:20,23,25
 201:1,14 211:2,6
 214:2 217:1,2
 219:21 286:7,11
 287:21,25 288:1,
 4,5,7 296:2,10,22,
 24 297:2 313:2,11
 314:19 319:14,21
 320:2,3,4,7,8,10,
 21 321:3 322:14,
 20 323:7,14,17,
 18,22 324:5,6
 325:16 326:4
 327:13,16 328:11
 329:2,6,12,14,15

330:18 331:8,9,13

rate-making 119:5
 176:5,7 189:5,9
 190:19 191:5,7

rated 174:9

ratepayer 114:14
 122:10 276:15
 324:16,24

ratepayers 94:13,
 17 95:10 116:2
 117:19 120:2
 121:6 175:4
 250:20 275:24
 277:5 279:2
 293:17 294:20
 295:4 297:24
 298:25 303:11,19
 304:4,14 316:19
 322:16,25 323:4
 325:1,6 327:2,12

rates 88:19 94:22
 116:16,20 119:2,
 4,25 130:22,23
 160:24 189:23,25
 202:10,18 203:3,
 7,10 218:4 220:2
 225:15 239:14,18
 313:18 329:2

ratings 180:1
 188:15,17,20,21

rationale 251:20
 303:7,18

rationales 304:23

re- 33:3 172:16
 182:12 219:9
 296:18 353:6

re-agent 123:18

reach 25:18 42:18
 266:23

read 16:20 18:6
 42:22 46:15,16
 54:13,16 73:6

82:17,19,23 83:4,
 18 90:5,21 91:4,
 12,14 92:8 93:22
 97:17,22 99:15
 102:19 103:5
 108:14,19 120:8
 122:1 128:4 146:8
 148:9,10,12
 156:10 179:20
 193:19 194:14
 283:8

readiness 293:20

reading 15:24
 19:13 80:20 81:4
 83:7 84:2 90:25
 103:10 109:22
 156:20 206:7

reads 51:15

ready 19:15
 127:21 247:16

real 137:22 138:2,
 16 142:8 297:22

reality 73:5 224:1
 246:24 308:11

realize 271:18

reason 53:2 63:18
 99:1,2 105:1
 116:16 129:17
 214:20 217:11
 221:6 229:1
 240:22 242:10
 245:25 247:23,25
 260:11 269:6
 278:13 297:11
 320:1 326:1
 342:10,11,16
 353:7

reasonable 6:16
 25:7 26:7 27:21
 30:2,3 33:12
 34:16 39:2,11,16
 42:23,24 43:11
 48:21 57:1,3,12

<p>83:11 91:7 93:20 95:20 96:10,14 103:10 108:24 149:19 153:17,18 159:18 212:4,18 213:21,24 216:10 218:23 227:7,13 238:8 253:9,16 298:21 303:15</p> <p>reasonableness 24:14,21 27:24 203:21 219:6 238:10</p> <p>reasoning 342:18</p> <p>reasons 26:12 68:25</p> <p>reassured 39:19</p> <p>rebuild 142:2</p> <p>rebuilt 115:13</p> <p>rebuttal 54:2,10 56:12 72:8 73:10, 16,20 79:19 115:1 130:4 145:10 149:3 151:16 200:1 203:14 205:20 209:6 214:19 224:5 230:10 232:3,4 287:5 294:3 297:19 315:20 318:13 335:8,24, 25 336:1,11 349:12 359:15,18 360:7</p> <p>REC'D 359:1 360:1</p> <p>recall 9:8 12:17 17:11 32:19 34:6 44:12,20 47:23 57:19 59:8,13 63:21 66:16 67:19,22 68:4,15, 19 74:25 76:20</p>	<p>79:3 97:15 98:9, 15 99:22 100:12 101:2 104:15 105:16 106:18 107:3 108:8,22 110:1,23 128:18 134:5 149:17 176:2,15 177:3,9, 24 178:10,22 179:5,18 195:15 196:8,22 197:18 203:21 220:10,16 223:13 224:4,8 227:3 260:20 261:3 264:14 267:20,23 271:3 276:3 277:14,18 281:22 283:7 291:7 312:8,12 314:22 315:1,15, 18,23 316:10 326:17 340:3 351:8 352:11,14, 21</p> <p>recalled 277:23 285:1 358:3,5</p> <p>recalling 291:6</p> <p>recapping 161:19</p> <p>receive 325:6</p> <p>received 8:16 12:10 15:12 18:1 19:10 52:11 100:23 149:7 157:9 158:13 245:3 303:11 316:25 325:17 336:16,25</p> <p>recent 108:18 112:23</p> <p>recently 100:24 113:22 163:3,8 186:13,15 190:7</p> <p>recess 70:6,9 144:15 232:22</p>	<p>240:12,13 334:18</p> <p>recognition 15:9 359:24</p> <p>recognize 13:16 14:21 17:8,10 18:14 73:23 74:2 80:3 82:10 139:22 155:18,20 246:13 254:21,22 353:18</p> <p>recognized 20:15 245:25 248:14,16 255:5,11 257:20 264:2 269:11 270:21</p> <p>recollection 85:20 87:20 123:14,17 125:16 140:20,22 143:24 162:21</p> <p>recommend 321:5</p> <p>recommendation 64:24 88:2 96:18 104:21 136:24 212:1 238:20</p> <p>recommended 62:20 68:25 215:13 235:2 237:24</p> <p>recommending 234:23 235:7 298:9</p> <p>recomplete 306:2</p> <p>reconcile 89:7</p> <p>reconciling 90:1 98:5</p> <p>record 3:22 8:6, 11,15 11:17 12:7 15:5,9,11 17:20, 22,25 19:4,9 52:3, 7,10 53:23 55:5 65:4 70:7 98:8,12, 13 99:11 109:2 110:17 149:4,6</p>	<p>150:19 157:3,8 158:7,10,12 175:3 222:19,25 223:1,2 230:5 231:24 240:11 244:15,20, 24 245:2 299:5 334:20 336:12,15, 19 354:21 355:2</p> <p>recordkeeping 234:3</p> <p>records 104:4,6 301:16</p> <p>recover 189:22 285:17 286:10 295:25 297:1 323:10 326:3</p> <p>recovered 176:8 286:3 287:24 298:19 323:11 329:5</p> <p>recovering 331:3</p> <p>recovery 62:10 94:22 108:7 285:18 328:11 330:15</p> <p>recross 32:15 35:2 63:7 97:5 100:24 109:12 123:4 128:10 141:10 144:8 153:7 175:16,19, 22 178:6 183:18 238:14 239:3 259:11 261:10 281:6 287:9 291:1 306:19,22 327:23 348:24 349:2</p> <p>Recross- examination 32:18 35:5 97:11 123:8 128:13 141:12 176:1 178:9 183:4 216:4 238:17 239:9</p>
--	---	--	---

259:13 261:13 280:14 281:9 291:4 306:25 328:3 349:5 356:6,7,17,18,19, 20 357:5,6,11,18, 24 358:4,7,11,16, 22 recycled 138:8 recyclers 136:11 139:20 red 225:7 redesigned 105:3 redirect 38:21,24 63:16,20 69:22 100:8,10 133:25 134:3 141:9 144:10 153:9 183:17,20 220:12, 13 240:5 259:7,10 268:21,23 280:8 284:13 287:15,17 291:13,14 312:4,7 329:25 330:3 332:8 350:6,9 351:3 356:7,14, 17,19 357:7,12,25 358:6,12,17,22 redo 102:6,7 296:18 306:14 308:8 311:16 reduce 113:8,12, 15 235:3,17 305:24 reduced 361:8 reduces 136:6 313:14 reduction 96:3 115:23 117:23 123:18 reductions 40:15 Reed 50:1,3,10,11,	22 51:1,2 52:6,7, 23,24 53:5 356:8 359:11,12 reevaluated 212:12 refer 26:20 150:20 referee 36:6 reference 84:19 101:18 103:9,11 274:25 285:12 referenced 72:15 84:16 98:8 291:6 references 103:4, 15 274:21 referencing 60:8 86:15 87:4 referred 150:11 referring 22:18 73:10 127:16 150:21 159:7 165:9 238:24 refers 72:15 reflect 119:2,4 201:1 206:6 217:14,21 reflected 161:25 202:17 reflecting 174:2 reflects 290:11,12 refresh 159:2 285:8 refute 65:12 regaining 219:13 regard 24:24 29:21 35:9 41:8 48:20,21 49:19 60:6 78:20 102:14 159:14 285:7 288:19,24 298:24 304:18 305:13	306:10 313:23 region 116:14 169:19 Register 14:18 37:7,20 40:17,19 42:14 regulation 30:11 185:9 204:19 255:19 regulations 30:14 31:3 37:4 44:16 45:1,2,13 46:4,15 57:17 96:5 115:24 118:9,12 131:16 132:21 168:6 185:5 204:18,22 269:18 307:13 315:2 regulator 21:24 35:15 regulatorily 30:17 regulators 223:19 regulatory 3:14 119:21 318:12 rehabbing 143:8 rehash 102:13 reinvest 313:11 rejected 99:5 relate 349:15 related 3:11 5:7,10 60:13,17,21 62:3 69:5,12 88:19 153:3 165:23 200:15 206:2 208:24,25 214:13 218:4 222:10 225:1,23 235:12 290:1 299:18 315:2,5,13 340:11 348:18 361:9 relates 42:1	152:20,23 153:1 163:12 269:25 275:19 337:17 341:1,10 relating 161:12 242:8 relation 62:19 relationship 215:8 relative 124:14 172:1 288:4 361:11 releasing 174:23 relevance 295:21 relevancy 319:15 relevant 27:23 44:24 66:11 73:11 100:4 reliability 20:16 41:3 112:23 157:17 158:9 164:3 200:10 208:5 211:5,8 218:18 256:5 258:20,22 360:5 reliable 42:9 200:14 258:25 reliably 43:20 reliance 74:24 relied 65:14 67:17 73:24 74:6 76:6, 18 101:5 106:14 133:13 294:15 rely 68:12 74:2 82:18 97:13 101:12 103:18,20 104:13 116:4 120:19 133:22 294:25 relying 84:7 85:1 103:16
---	--	--	--

remaining 87:25 220:3 317:11	Renew 4:24	300:22	requires 161:10 182:19 228:9
remedies 18:21 60:18 69:4 91:18 202:20,23 203:4, 11,13 205:24 209:20 340:23	renewable 167:12 187:24 256:11	represent 156:23 298:12	requiring 58:17
remedy 24:5 47:19 62:4 64:3 69:8,19 72:4,15,18,21 73:15,21 79:12 82:24 91:12,16 92:5 94:13,20 95:9 107:19 197:22 203:1 204:25 205:1 206:2 211:14 217:4 293:21 294:6,11 295:12 339:4 340:4	renewables 236:16,17,21 254:24 255:12	represented 221:5	Res 194:12,24
remember 17:17 36:21 39:3 63:3 109:14 150:18 185:19 188:9,18 189:3,6,9 191:25 194:21 197:15,24 202:24 225:21 243:8 264:20 271:23 288:18 307:6 328:12 351:17	repair 23:20 43:16 45:9 78:22 92:15 111:18,19	representing 56:5	research 102:25 103:12
remembering 55:6	repairs 20:19	repurpose 140:16	reserve 163:21 165:2,25 191:18 192:24 193:5 265:15,18,24
remind 70:15 199:6 233:16 277:18 284:22 291:21 335:3	repeat 49:7 65:20 97:21 163:7 177:1 192:4 194:22 278:5	repurposed 138:8	reside 117:15
removal 249:16	repeated 163:5	repurposing 172:16	residents 69:13
remove 238:21	repeatedly 25:9	request 4:19 101:15 108:6 206:3,8 290:1,2,6 297:20 337:24,25 348:7	resolution 206:14
removed 148:20 303:2 322:6	rephrase 101:9 112:9	requested 166:8 206:6	resource 58:17 162:4 163:13,18, 24 164:19,23 166:23,25 167:8 169:15 171:15,24 177:18 184:8 190:6,10,17 191:24 195:20 196:19 207:8 254:11,15,20 255:2 257:13 265:6
Removes 147:15	replace 219:9 236:16,17 256:3,4 282:11,14	requi- 176:11	resources 4:25 13:18 14:1,15 15:22 58:21 68:3 83:15 130:6 166:16 167:12,23 171:14,19 173:2, 3,25 177:15 187:23,24 256:14 257:14,15
rendered 45:14 47:11	replaced 43:19 218:17	require 200:6 224:23 242:14 246:3 316:8 327:1	respect 27:6 47:7 76:6 165:1 168:18 171:18 202:20 305:16,17
	replacement 23:21 37:6 43:3, 17,18 44:4 45:10 78:22 92:16 111:18,19 236:9	required 15:23 33:13 57:21,24 58:21 59:1 66:17 68:4 92:3 131:22 156:11 185:4	respecting 6:16
	replacements 78:15	requirement 57:17 160:19,24 163:22 165:3 171:2 174:5 176:7,14 187:16 189:2,24 193:5 200:19 309:2 329:4 330:5,12	responding 35:6 290:6
	report 150:15 292:21 294:2,18 300:2 321:2	requirements 27:8 56:20 57:3,11 131:20 151:10 157:18 158:9 167:8 184:15,19 190:9 192:24 264:23 265:7,9,13 269:18 315:5 360:5	
	reporter 3:16,19 334:12 361:1		
	REPORTER'S 343:5		
	reports 35:18 242:23 279:2,10 292:20 293:14 295:3 297:24		

<p>response 65:8 128:21 161:6 167:10 171:5,6,23 172:5 173:25 187:24 300:21 307:1 332:14 333:16</p> <p>responses 101:15 130:17 178:11</p> <p>responsible 24:10</p> <p>rest 36:2 254:23 314:3 354:20</p> <p>restarting 143:7</p> <p>restate 226:5 330:16 333:19</p> <p>rested 30:9</p> <p>restrict 181:9</p> <p>restriction 181:2</p> <p>restrictive 138:12</p> <p>result 23:18 31:4 32:7,8 40:20 41:7 44:2,6 60:11 132:25 168:13 169:22 272:1 285:21 286:21</p> <p>resulting 107:6 285:22</p> <p>results 163:9</p> <p>resume 147:14</p> <p>resumes 146:15</p> <p>retain 138:7</p> <p>retire 95:21,24 114:7 122:4,10 137:8 161:13 162:6,25 164:20 175:5 182:12,19 185:19,24 186:11 187:17 192:2 196:25 204:16,22 207:16 210:20 213:4,22 217:13</p>	<p>235:11 236:2,5 250:20 253:17 256:1 299:2 321:21</p> <p>retire/retrofit 5:12</p> <p>retired 51:16 137:12,15 138:5,7 156:4 172:10 193:9 256:2 286:20 299:6 304:13 321:24</p> <p>retirement 113:24 114:15 118:20 128:6 132:22,25 156:7 159:20 161:22 162:14 168:1 192:8 195:17,24 200:16 205:13,25 208:19, 25 210:23 212:3, 15,18,23 213:9 214:13 216:9 250:7 253:16 261:1 313:21 321:22 322:4,10 328:10,20 340:12 341:8 342:9 349:14</p> <p>retirement's 322:7</p> <p>retirements 300:3, 6,20 312:11,16</p> <p>retiring 128:3 148:18 153:16 159:17 162:23 167:23 186:18,24 200:13 204:4 221:24 227:8,16, 25 251:21 256:20 275:25 276:16 286:22</p> <p>retrofit 131:10 161:12,22 162:9 182:12 185:18 186:11 187:17</p>	<p>192:3,8 195:18 197:1 205:13 209:12 217:14</p> <p>retrofits 140:10</p> <p>retrofitting 153:16 159:17 186:19 221:25 280:21 351:13</p> <p>return 202:7 313:11 320:25 322:22 324:19</p> <p>returned 176:10 327:2,12</p> <p>returns 190:2</p> <p>reveal 146:22</p> <p>revenue 160:19,23 162:16 176:7,11, 14 187:16 189:2, 24 190:8 200:19 309:1 329:3 330:5,12</p> <p>revenues 181:18 285:15,17,19</p> <p>review 6:17 17:7 20:14 24:15 39:7 43:25 64:1 89:12 100:5 102:17 103:24 104:2,10 129:3,6,21 150:15 155:15 201:7 311:22,23 326:12 328:11 340:14</p> <p>reviewed 9:5 34:15 59:10 63:25 64:2,4,7 65:25 101:13,25 102:2,4 104:10,11 108:14</p> <p>reviewing 58:21 59:13 160:13</p> <p>revisions 145:19 147:20 148:21,22</p>	<p>risk 113:13 204:17 256:6</p> <p>River 142:16 315:12</p> <p>RMR 42:17</p> <p>RMRR 43:5 78:21</p> <p>road 65:11 211:3</p> <p>rocked 32:8</p> <p>room 3:4 273:4 332:19</p> <p>rooting 38:12</p> <p>roughly 61:22 87:11 172:21 179:10 180:17,21 250:10 283:17</p> <p>round 95:2,6 100:23 216:11 314:10</p> <p>rounding 88:23</p> <p>routine 20:19 23:20 24:24 39:19 43:8,16 44:6 45:9 78:21 92:15 103:22 111:18</p> <p>row 156:11,17 193:21 194:13,24</p> <p>RPR 361:17</p> <p>RTOS 265:7,19</p> <p>rule 12:12 16:2,5 28:21 29:15 37:7 118:5 125:6 204:8,12 242:12 247:20 332:11,17, 18,22 333:3,4</p> <p>ruled 37:5 41:17, 18 42:16 44:16 340:1</p> <p>rulemakings 30:23</p>
---	---	--	--

rules 13:9,10,17,
25 14:15 15:8,22
33:25 35:9 101:17
106:4 110:21
151:18,19 190:6,
22 204:15 242:13,
16 243:3 246:1,2,
5 248:1 269:8
308:17,19 309:15
310:11 316:7
332:25 359:22

ruling 24:13,20
48:16 204:25
335:21 336:20

run 114:16 116:3
134:18 136:1,9,11
137:18 143:11
160:18 179:15,16
181:13 236:19
312:22,25

running 20:17
39:25 114:21
217:24

Rush 3:11 34:8,
11,12 36:12 42:1
43:12 54:16 55:22
59:7 80:17,24
81:16 88:19 92:2
94:9 96:9,23
102:14 112:14,15,
20 120:4 121:8
122:4,10 124:5,
14,20 125:23
126:16 127:11,16
131:2 141:14,25
142:9 143:1
148:18,19 153:15
156:4 158:23
159:16 164:20
167:23 168:2
169:7,21,22 170:5
172:19 177:22
178:1 181:17
183:10 187:8,12,
20 188:1 189:18
193:9 194:4

195:1,24 197:3,5,
23 200:9,13,15
202:6 204:16
205:25 207:16
208:4,15,20
209:18 210:23
213:4,22 217:15,
22 219:14,18
220:4,7,8 227:9
236:2,9,16 237:7
240:16,20 242:7,9
243:23 246:9
247:4 248:11,13,
14,17,24 249:11,
20 250:4 251:4
256:20 260:2,8,14
261:19,22,23
262:3,12,17,22
263:10,12,20
264:9,11 269:12
275:20 276:20
280:21 281:17
282:7,9,13,16
283:1 286:22
289:21 304:6
310:9,25 315:11
321:21,22,23
322:21 349:14
351:21

S

S-E-A-V-E-R 145:5

S-H-A-W-N 230:6

S-I-O-U-X 123:25

S-I-P 12:19

safely 43:20

safety 20:16 256:6

Sahu 74:25 106:8,
11

sales 135:24,25

salvage 139:7,8,
13,15

Sargent 293:24

satisfy 117:24

save 186:16
221:15 295:13
297:24 298:24
303:19

saved 252:5,14

savings 171:8
172:4 252:9,10

sc- 115:10

scale 44:5

scenario 58:10
171:19 209:13
211:16 330:14

scenarios 122:2
208:14 209:11,16
277:10 351:15,17

schedule 9:11
73:16 79:19,23
86:15,16,25 87:17
106:19 192:12
274:20,24 278:14
279:5 334:7

scheduled 50:2
169:8

schedules 79:8
274:19

school 120:18

scope 65:6 226:3

SCR 127:5 137:13

scr- 125:3

scrap 139:18
172:19

scrapping 139:25
172:16

scratch 311:24

scrub 96:1 185:25
197:5 269:19
270:1,2 276:20,23

289:17,21 308:21
310:9

scrubbed 114:22,
23 186:8 204:4
242:14 268:25

scrubber 38:14
86:20 131:10
136:10 162:10,12
197:23 198:8
214:25 240:21
246:15,21 247:4
249:20 250:11
260:3 262:2,4
272:22 273:24
274:15 275:4,13
279:21 289:2,11
292:19 293:11
294:5 297:10
302:14 303:14
304:20,23 309:18
310:16,25 311:13
316:21 319:20
321:8

scrubbers 23:10
96:12 114:6,16
115:11,22 122:15
123:10,13 124:1
125:3 127:9
131:5,21 133:7
158:23 162:23
183:8,14,15
184:1,24,25
185:3,10,13
186:19 188:3
210:20 213:10
227:9,17,25
228:20,21 237:17
242:9,25 243:18
246:3,10 247:21
248:19,23 249:5,9
250:6,16,21
251:3,7,21 252:3,
4,11 260:22
261:18,19 262:1
263:17,18 264:3,
9,11,20 270:19,

23,24 275:23 276:16 278:7 279:11,15 281:11, 13,21 282:6 293:16,25 296:15 297:13,14,17 298:1 299:11 305:25 306:9 307:5,24 316:1,8, 13 320:6 scrubbing 189:18 269:5,7 309:16 310:12 searching 14:6 season 164:3 179:23 181:13 191:21 265:18 266:9 seasonal 164:1,22 176:16,17 187:3 191:14 192:1,5,6 195:15 207:15,20 209:23 254:21 265:12 266:1 339:5 seasonally 266:8 seasons 164:12 165:4 193:16 seated 7:4 53:18 70:19 144:25 153:25 231:19 272:24 318:3 Seaver 89:15,19 144:21,22 145:1,5 149:3 151:6 153:12 215:3 232:24 233:15,17 234:4,13,19 239:10 240:8 356:22 357:17 360:7 Seaver's 215:15 Seavers' 294:3	sec- 235:5 seconds 137:23 secret 40:4 section 15:25 31:21 54:13 92:1 sections 92:22 securitization 54:13 62:11 85:17 88:5 95:16 113:23 182:18 201:21,24 205:5 215:8 235:4,6,18 237:20,21 272:6 286:6,15 287:20 288:6 296:1 297:2,5 299:4 303:8 304:4 312:15 313:6 314:9 320:15,18 322:13 323:11 324:13 326:3,10, 25 330:15 331:7 354:20 securitize 96:15, 22 97:4 114:14 121:1,9 122:10 139:12 172:15 175:5 201:18 208:9 210:22 213:11 235:8,10 236:3,6 239:22 243:12 286:24 295:22 316:24 securitized 3:10 60:8 89:6 94:10 208:5 210:11 217:12 240:18 244:1 286:4 313:19,25 348:19 352:23 353:1 securitizes 216:10 securitizing 166:7 286:15 298:2	323:8 seek 20:20 22:1 24:15 28:13 33:17,23 89:11 189:22 337:22 340:13 seeking 22:7 62:10 89:24 205:24 235:21 300:13 seeks 201:18 239:21 segment 128:15 selecting 190:10 selective 96:3 115:22 send 27:1 49:2 sense 29:13 137:6 189:15 sentence 25:8 51:15 146:15 148:9,11 separate 86:21 127:12 140:7 204:11 253:23,24 254:8 278:10 292:23 342:16 348:21 350:2 354:17 separated 11:8 91:17,18 separately 103:6 separating 353:14 separation 297:21 September 91:21 169:13 193:2 sequestration 118:2 sequitur 92:1	series 30:22 serve 197:3,12 service 27:1 251:6 324:6 356:10 357:8 358:9,19 Services 31:11 servicing 331:24 serving 267:21 session 343:6 set 3:6 14:17 201:1 241:18 sets 37:3 setting 297:1 settlement 215:11 settlements 37:25 seven's 267:13 severe 166:21 shade 134:17 share 249:1,2 Shaw 242:6 245:23 247:9 271:8 306:5 311:2,11,12 Shaw's 247:1 Shawn 229:17 230:1,6 357:13 359:18,19 she'd 83:24 shop 36:6 37:3,9 shops 35:21 short 60:19 62:5 121:2 137:8,11 166:4,9,15 168:4 207:7 229:20 232:23 234:18 266:11 330:14 short-term 60:19 167:16 209:18
--	---	--	--

211:11 352:4	118:11 120:13,14	SIP 12:20,21 14:22	slash 172:5
shortage 193:11	121:18 132:3	15:9 16:21 21:24	slew 101:15
196:2	141:5 168:23	30:10 31:15,17,20	slide 135:16
shortages 196:9	324:16	32:2,4,8 45:22	slight 86:23
shortcomings	sides 37:1	46:3 47:10,12	slightly 87:21
263:8	Sierra 5:1	48:16,17 97:25	186:17 334:8
shortcut 224:22	signal 49:2 299:21	99:17 359:24	small 117:1 139:1
shorten 247:19	signed 191:12	SIP-TYPE 20:12	140:21 172:1
shorter 108:20	significant 71:17	Sippel 30:14 32:10	196:9 238:12
322:15 323:1,2	171:11 306:6	34:4 44:17 91:18	smaller 14:17
329:2 330:21	significantly	203:10	140:5 334:8
331:15,17	163:14 270:18	Sippel's 16:20	Snell 294:4
shortfall 193:17	similar 34:8 87:2	17:9,12 29:17	SO2 81:17 113:15
211:10,11 224:23	129:12 132:7	30:3	119:17 124:3
225:1 254:16	150:10 172:19	sir 7:9 19:25 50:25	125:3 129:8 264:1
258:1 339:6	248:15 249:4	71:12 76:11 78:8	269:2,10 307:15
shortfalls 62:4	263:2,3,13 274:24	79:24 81:19 84:14	308:18,19
166:18 182:8,16	283:22 306:17	85:12 87:9 97:20	social 205:3
shorthand 28:15	310:7 338:17,22,	130:15 133:24	societal 113:17
81:17	25 340:16 348:13	151:7,15 264:12	society 116:5
shortly 138:5	simple-cycle	302:12	solar 69:19
show 35:25 244:2	167:2 237:2	sister 261:23,25	140:21,25 141:1
showed 75:14	simply 51:15	262:10,14 263:5	146:19 147:15,16
106:3 193:14,15	152:24 162:7	310:1	162:4 173:22
196:6	185:3 232:22	sit 100:1 128:8	174:1,22,23
showing 27:5	single 112:18	229:24	214:15,21 215:8,
42:14 179:21	211:8 275:17,19	site 138:17 140:17	12 236:3,23
shown 25:24	singular 334:8	142:13,22 144:5	237:12 239:11,13,
133:20 187:16	Sioux 116:11	172:22,25 173:2	23 265:22
shows 196:5	122:21 123:10,25	246:9 248:21	solars 237:25
312:22	124:1,4,9,14,16,	site-specific 242:8	sold 138:13,23
shut 137:8 354:22	23 125:11,22	243:23	139:19,20 140:11
shutter 121:8	127:17 128:3,6	sites 138:17,21	sole 86:16
Sibley 117:4	142:12 246:14	142:11 167:5,6	solely 71:23 153:3
137:13	248:8 259:19	situation 308:25	294:24
sic 233:13	260:3,10 261:18,	316:17	solid 165:1
sick 328:5	22 262:2 263:14,	sizes 267:11	sort 5:8,16 78:16
side 115:6,25	17,19,21,25 264:4	size 124:7 168:21	117:16 183:22
116:4,7,13 117:18	268:25 281:12,16,	169:4	184:9 185:18
	21 282:6,9,12,19,	sizes 179:7	190:20 195:10
	20	skip 80:22 81:6,14	

197:12 206:14 213:11 239:12 241:18 310:19 311:2 341:25 sought 20:21,22 22:23 200:19 201:20 223:23 328:11 sound 59:23 206:16 sounded 212:22 sounds 180:20 source 6:17 20:14 24:15 35:9 39:7 43:25 46:22 80:25 89:11 100:5 125:6 129:3,6,20 138:20 150:15 174:14 187:19 340:14 sources 43:24 100:3 South 139:2 Southern 24:3,11 SOX 123:23 span 137:17 spares 249:3 speak 9:13 35:14 56:16 58:24 90:5, 22 102:22 111:15 121:3 167:22 169:7 215:15 267:3 311:4 341:19 353:21 speaking 3:18 12:14 45:17 308:21 spec 246:18 248:17 special 119:5 313:15	specific 15:25 17:18 41:19 60:12 72:2 112:15 118:17 126:25 128:5 152:9 159:21 167:22 169:16 246:9,11 247:11 322:11 326:17 335:25 337:17 specifically 25:3 58:22 120:8 150:12,18 152:4 163:12 179:12 185:3 187:22 220:10 248:10,13 348:16 specifications 92:19,21 249:16 specifics 179:5 289:10 specifies 190:8 specs 247:11 speculate 289:13 speculates 243:24 speculative 324:25 spell 53:22 230:4 231:23 spells 266:20 spend 38:8 114:6 121:7 135:21 175:7 188:1 204:21 306:6 spending 114:15 125:2 184:24 185:13 spent 56:2 164:15 255:23 split 64:3 72:18 91:13 249:25	278:16 splitting 87:22 spoke 22:17 94:11 spotless 41:8 spots 105:22 spread 120:25 329:10,13 squeeze 105:10 112:12,18,25 129:16 135:9 136:15,19 squeezing 112:7 113:18 122:22 128:17 134:5,9 137:1 SSR 169:14 170:9 177:24 208:16,21, 25 209:18 351:23 St 69:13 Staff 4:5,7 8:20 11:8 12:6,8 15:3 19:16 25:3 32:16 39:1 52:16 53:12, 13 60:6,10,12,16 61:19 62:16,17 63:8 65:7 68:25 70:10,12,20 87:14 89:21 90:2 100:8 113:3,10 133:25 144:10 149:11 152:2 155:1 158:5 175:23 182:1,5,25 199:4 205:21 208:23 211:23 213:16,17 219:3, 7,10 220:12 229:15,17,25 231:14,16 234:6 237:9 238:15 243:24 245:8 259:12 271:4 273:5,23 274:16 279:24 280:9	287:10 291:2,19 298:9 299:5,16 312:4 318:25 334:24,25 335:1 338:12 341:21 342:13 348:5,8,11 349:18 350:7 353:22 354:5 356:10 357:8 358:8,19 359:13 Staff's 11:17,24 39:4 60:3 61:8,14 68:16 89:8 90:1 93:24 94:3 96:17, 22 98:5 199:3 207:12 212:1 215:10 225:7 240:19 291:17 295:7 337:17 338:16 340:6 341:10 348:6 349:7 stage 241:19 stand 5:15 6:25 49:3 53:14 70:13 89:10 94:12 99:10 128:7 153:22 199:5 229:18 231:17 233:15 240:23 272:18 291:20 318:1 335:2 standard 28:1,20 33:11 75:18 78:1 196:20 standard's 29:7 standards 13:18 27:3,7 40:17 114:9 standpoint 49:1 218:18 241:3 327:6 start 39:14 178:20 183:23 246:24
--	---	---	--

256:3 330:4,10 334:16 started 37:15 67:12 126:17 146:15 246:25 252:18 255:22 265:3,19 267:21 283:12 starter 249:12 starters 278:5 starting 3:22 54:12 92:12 145:21 183:8 193:11 240:14 256:16 264:20 280:24 311:24 starts 256:5 state 7:9 13:11 20:8 21:24 22:19 31:22,25 32:6,9 46:3,5 50:25 53:22 57:20 58:2, 16 81:9,11 99:24 110:11,14,16 114:20 115:2,7 116:1,4,7,13,17 117:18 118:8,11, 22 120:13,14 121:19 132:15 138:10 148:6 152:3 167:19 226:1 227:21 230:4 231:23 361:4 stated 31:24 statement 82:16 84:1 100:22 102:3 133:23 182:3 235:24 298:4 338:1,7,12,19 357:20 statements 66:11 149:18 208:23	338:3 states 40:21 89:19 106:2 110:11,15, 16 138:11 254:23 stating 291:7 station 150:9 stationary 80:25 status 122:16,19 statute 28:1 33:24 54:13 161:9 182:19 205:5 312:15 348:15 statutory 327:6 stay 220:19 stays 195:10 steam 58:8 81:1 step 36:5 49:13 53:5 63:14 70:2 153:12 198:24 229:12 231:12 233:11 240:7 277:17 284:18 291:16 317:22 334:2 342:25 354:24 stepped 35:24 Steve 9:6,18 67:2 stick 12:3 sticking 284:16 sticky 352:16 stinking 129:16 Stipulation 146:16,20 stirred 134:4 stood 38:10 stop 79:15 242:24 303:23 stopped 298:25	303:20 307:11 storage 173:2,3, 14,17,21,24 174:6 stored 174:21 Storm 134:25 181:14 266:16 storms 120:21 street 246:19 247:7 stretch 168:8 stricken 148:4 strict 27:14 28:1, 15,20 33:11,14 107:14 strike 222:18,20 289:19 335:13,22, 24 336:21 stringent 242:17 striving 117:25 strong 48:4 struck 69:14 studies 86:20 121:11 241:15 242:8,10 245:24 247:5 248:4 249:21 251:19 252:1,18 259:16 265:1,3 271:8 272:22 273:24 274:16 279:13 280:15 281:16 283:4 290:16,17 293:10 294:21 295:8,13,16,20 296:1 297:10 303:15 305:17,21, 23 306:7,18 307:3,9,25 308:6, 8 309:17 310:13, 16 311:11,17 312:11 317:5,11	320:3 study 163:19,20 171:10,22 240:21 245:20 246:25 247:8,9,15 248:9, 10 249:7,11 250:6,17 251:5 252:12 260:1,9,22 261:4,19 264:9,11 275:4,13,15,18, 19,22 276:1,14, 19,25 277:3 278:6,9 279:8 283:8 289:11 290:14 291:5,8 293:13 294:10 302:14 304:20,23 305:5,12,14,20, 21,22 306:2,17 314:24 315:3,17, 22 316:5,9,21 319:20 321:8 326:12 studying 109:22 stuff 229:5 257:22 351:4 subcritical 132:7 subject 20:2 49:4 335:21 336:19 subjects 254:9 submitted 26:14 59:1 subsequent 164:15 255:2 Subsequently 31:2 substa- 332:11 substantial 306:14 substantially 305:24
--	--	--	--

substantive 153:5	267:6,9	suspect 94:18 95:4 122:20 129:21	takeaway 84:2
substation 141:1	super 42:2	sustain 41:3 228:25	takes 143:2 224:17
substations 140:19	supersedes 31:21,24	sustained 332:20	taking 191:8 229:20 258:12 262:5 274:4 290:7 319:22 322:12 332:21
subtract 237:16, 19	suppliers 127:21	swear 70:16 244:10	talk 21:19 73:22 86:5 126:4 127:16 141:4 161:17 163:11,15 166:5 172:9 173:1 181:24 200:9 207:14 214:14,18 215:1 222:2 303:5 308:10 320:11
sued 41:5	supply 265:14	switch 105:5 111:6	talked 21:2 35:7 39:6 59:5 66:10 68:2,23 69:18 74:22 117:17 128:22 130:15 131:7 175:1 178:11 196:13,24 202:25 209:10 223:20,22 225:4 267:17 271:4,19 295:1 338:21 341:22 349:21 351:15
sufficient 81:8 131:2,19 265:9	support 89:21 169:14,15 224:2 226:19 353:21,22	switched 269:15 270:11	talking 21:3 26:17 36:19 47:2 76:10 123:24,25 124:13 126:24 134:16 139:3 143:14 161:22 173:12 176:2 178:25 192:7 211:2 218:1 219:1 220:16 224:16,17 258:18 262:12 265:7 267:12 275:4,17 278:5 285:10 289:12 291:6,7 301:6 307:2 309:3
suggest 90:20 187:7 192:16 196:2	supported 193:13	sworn 7:1,2,6 50:12,13,22 53:16,17,19 70:18 71:8 144:23,24 145:1 153:21,23 154:2 199:18 229:22,23 230:1 231:18,20 234:13 244:11 245:15 272:23 273:17 277:23 285:2 292:15 318:2,4 337:11 361:6	
suggested 253:18	supportive 113:5, 11	system 12:4 24:11 123:18 164:10 169:14 187:8 255:12 256:7 257:15 264:4,6 289:2 293:11	
suggesting 84:14 193:9 196:25 319:19,20	supports 158:1	system-wide 37:25 269:2	
suggests 166:24 207:7	suppose 28:7,11 142:6 316:22 317:3 342:15 348:14	<hr/>	
suit 32:2 34:2	supposed 43:25	T	
suited 348:10	Supreme 48:7,9	<hr/>	
sulfur 75:14,19 81:18 105:5 124:3 130:16 131:2,9, 10,16,19 133:14 185:8 242:21 243:5 249:16 263:24 264:7 270:11	sur 215:17	T-FIRED 262:21, 24	
summarizes 165:18	sur-surrebuttal 154:9	table 158:2 165:5, 10,11,16,18 193:13 309:16	
summarizing 182:1 258:1	surprised 4:23 294:15 306:4	tail 36:22 150:9	
summary 9:18 16:20 17:9,15 47:8,12 101:14 181:25 238:22	surrebuttal 7:13, 19 8:10 30:7 51:4, 10 52:6 54:5 86:17 87:4,8 154:7 158:3 159:1,8 163:9 165:9 196:4,6 214:14,19 230:11 244:19,23 274:20 293:20 335:9 336:18 352:9 359:5,9,12,16,19		
summer 155:5 163:19,23 179:24 180:1,18 188:15, 21 255:8 257:9 265:25 266:4	surround 23:10		
	survey 42:13		
	survive 131:24 132:5		

352:3 353:7,12	tenders 245:5	11 12:20 25:15	315:20,22 317:14
tangential 262:21	Tennessee 29:23	27:11 30:8 31:8	318:14,17,18,22
tangential-fired	40:23,24 41:20,	40:4 49:12 51:4,	324:19 335:8,9
248:21	21,25 43:1,2 44:3	10 52:5,6 54:2,5,	336:11,19 338:20,
targets 269:2	tens 169:4	9,10 56:3,12,14	21 342:15 349:12,
tariff 3:10 240:18	term 23:11 28:10	64:5,11,12,13	17,25 350:1
task 354:12	60:20 62:5,8 69:7	65:25 67:3 70:23	352:8,12 353:9,
Tatro 125:17	135:25 168:4	71:24 72:9 73:10,	14,21,22 359:3,5,
tax 285:4,21	262:14 308:12	16,20,21 74:23	6,8,9,11,12,15,16,
300:24 301:2,7,8,	310:1 311:4	79:2,20 86:3,17	18,19 360:7
10,18	321:17 331:15,18	87:4 90:5 93:10	361:5,6
taxable 285:14,20	terms 22:12	95:2,6 96:7 99:4,	testimony's
taxes 181:17	118:24 142:4	11 102:1,5 103:9,	229:11 234:3
285:13 288:9	164:10 171:4	14 104:10,12,13	testing 66:18,22
Taylor 3:19 334:11	174:4 189:12	108:12 109:2,9,22	105:20 124:8
361:3,17	197:1 294:8	111:3 115:1 120:8	136:20 137:2
technical 160:15	300:20 301:1	121:5 122:1	themselves 74:9
325:7 332:11,17,	307:4 330:12	128:15 130:4	theory 40:2,5
22,25 333:3	tes- 107:18	135:15 145:10,15	thereof 27:8
technically 218:5	test 48:22 78:10	147:21 148:23	thereto 361:13
technology 129:8,	82:10,12 96:8	149:3,14,23	thicker 13:16
22 130:1 162:10	105:15,17 107:1,	150:4,5 151:16	thing 20:21,23
249:18,20	2,6,9,13 200:24	152:24 154:6,8,9,	24:19 29:9 38:12
television 33:5	244:5	12,15 158:3	49:3 68:7 105:8
telling 190:22	testified 7:6 50:22	159:1,9 160:13,17	120:23 167:7
196:17	53:19 71:8 78:19	161:12,16,20	257:19 258:16
temperature	79:2 106:11 145:1	163:10,14 165:9,	295:2 340:22
169:20	154:2 199:19	15 175:3 181:24	things 9:5 18:25
temporarily	230:1 231:20	193:13 196:4,6	20:6 30:19 31:2
134:23	234:13 245:15	200:1,10 202:3,14	32:7,8 36:19 37:8
ten 87:24 257:6	252:24 273:17	203:14 205:20	42:24 44:25 45:12
294:21 307:12	277:24 285:2	208:3,13 209:7,8	66:8 72:24 74:22
314:7 334:15	292:15 318:4	214:14,19 215:5	93:9 101:5 162:2
tender 8:18 52:14	337:12	221:14 222:2,5,9	165:7 168:2,8,17
55:8 70:21,24	testify 97:1 151:21	226:17 230:9,10,	169:18 181:14
149:8 154:23	318:21	11,14 232:3,4,8	184:13 187:3
199:10 232:19	testifying 105:25	233:21 235:3,7,23	190:17 204:25
273:2 291:24	106:1,6 305:8	238:1 239:12	205:6 212:12
318:22 337:2	348:3	244:15,22,23	218:22,23 237:3
	testimonies	246:23 253:6	246:7,15 248:5,13
	185:22 244:19	273:1,23 274:21	249:17 254:25
	testimony 7:13,	276:18 282:5	255:7,14,16
	16,19 8:8,10 9:3,	284:21 287:5	258:12,19 260:5,
		288:17 292:2,22	
		294:3 297:19	
		298:6 302:17,21	
		305:13 307:23	

6,7 262:7 263:3,7, 11 266:5 267:4 269:10 299:24 thinking 132:11 165:11 192:20 353:12 thinks 96:17 349:18 third-party 293:5 tho- 308:5 Thorpe 361:3,17 thought 17:2 24:19 33:4 38:2, 11 39:16 92:25 105:15 112:6 128:16 161:4 165:15 180:5 215:17 234:1 253:7,10 259:18, 19 300:4 302:13 317:4 thousand 195:11 236:12 306:11,12 thr- 338:15 three-part 48:22 359:21 threshold 166:14, 18 177:12,14 196:12,16 thresholds 177:8 threw 351:16 throttle 134:14 thrown 206:1 tie 152:24 tied 142:9 322:5 342:10 tight 246:6 till 198:1 time 3:3,6,17,21	5:5,23 8:5,18 9:15 11:6 15:3 16:10, 15 18:7 19:12 21:17 22:7 24:3 25:7 26:8 30:13, 15 31:12 32:1,10 34:3 44:11,18,22 45:15 46:8 47:13 49:19 52:1,13 56:2 57:21 58:2 59:6,12 61:15 62:20 66:6,12 67:2,5 68:14 71:4, 18 74:18 77:4 79:10 81:16 83:16,20,21 85:4 89:8,25 92:10 95:1,13 97:21 99:17,21 104:20 105:16 110:23 115:20 116:24 119:6,8 120:16 121:10,14,15,17, 25 122:4 123:14, 16,20 125:5 126:2,15,23 127:3,11,13,15, 20,23 131:1 133:6,12 136:22 144:13 148:6 150:1 154:23 156:24 157:2,11 158:5 159:11,21, 25 160:2 161:8,18 162:20 163:6 164:14,15 166:10, 20 173:12 174:19, 22,23 182:3 188:18 190:1 191:6 192:10 193:1,2,8 206:24 209:6 212:15 221:8,15,19 224:17 225:2 227:15,22 230:23 236:10,13 242:5, 13 243:3,4 244:14	245:12 246:5 247:19,20,21 252:5,9,14 255:23 260:1 265:4 267:16 270:11 271:25 273:2 277:17 279:15 283:16 284:3 287:13 289:6 292:1,5 293:25 294:5 295:2,5,9, 13 304:8 305:3,24 307:8,9,11 308:24 309:7,14,20 311:20 317:7 318:19,22 321:19 323:1,15,17 324:3 325:10 329:5 330:19,22 331:24 334:13,22 343:5 351:2 timeline 294:5,8 timelines 224:12 times 23:6 25:14 82:25 83:3 179:15 267:12 332:20 timing 190:16 307:3 337:18 341:1 350:12,18 title 12:13 81:2 157:18 title's 88:14 today 3:2,16 4:18, 23 7:25 51:20 53:4 54:24 55:4 71:12 121:5 145:15 147:22 148:24 149:20 154:15,16 162:19 173:13 199:22 202:18 230:20 232:15 239:12,14 252:23 254:10 263:23 276:18	310:10 315:22 318:18 319:12,22 339:9 349:22 350:21 today's 3:15 4:16 26:25 161:2 told 37:5 40:25 41:8 98:25 99:7 205:7 tomorrow 355:3 tomorrow's 334:7 tons 75:15,20 tool 238:25 312:19 top 13:25 14:18 80:7 81:24 171:21 281:24 320:16 322:17 323:19 324:13 328:18,24 332:24 topic 44:12 total 179:5,8,21 180:11 227:6 257:15 279:14 290:9 314:8 321:8 330:8,9,13 331:12 totality 94:7 98:8, 12 107:10,21 totally 215:7,19 totals 274:22 towers 115:24 Toxics 242:12 track 209:2 226:21 tracking 148:8 Tracy 361:3,17 train 92:25 trajectory 117:20 transcript 18:17 19:6 26:13,25 68:24 69:15 206:7
--	---	---	---

207:2 360:2	203:2 230:17	162:21 252:25	249:25 255:23
transcripts 66:5	232:11 297:17	254:3,6,13 258:10	261:17 276:19
transition 3:11	307:8 308:1	259:17 260:23	283:14 286:8
88:9,21,24 116:6	true-up 200:24	282:25 283:18,21	307:4 321:15
173:13 199:25	truth 29:21	297:7 330:7	322:3 329:9
201:17 286:18,25	tubes 39:21 43:19	ultimate 48:19	331:10 337:14,15,
translated 252:10	tubing 44:5	ultimately 77:7	16 342:1,4 349:23
transmission	turbine 129:10,15	110:20,21 165:20	354:10,18
60:20 62:1,7,10	130:8 134:14	212:16 246:17	understanding
142:14 200:12,16	136:3 139:1,4	269:17 303:19	18:20 34:10 44:22
201:13 209:16	140:6 167:2	304:2	56:4,19 57:2,11
210:3 220:17,22	turn 15:20 79:22	ultra 269:12 271:1,	61:18 63:22
221:11,22 222:6	156:9 274:19	5 308:20	66:21,23 67:1,7
225:23 339:8	turned 137:12	ultra-low 242:21	81:22 83:9,12,20,
349:15 351:11	242:16 309:17	243:5	21 89:8 98:24
352:3,20,23	turns 250:15	un- 219:20	99:4 109:23
Transport 242:11	TVA 42:11 43:3,22	unable 308:17	110:3,8 131:6
travesty 48:5 49:7	TVA's 42:16	uncertain 28:14	151:18 168:9
91:1	two-step 210:17	uncertainties	176:20 182:18
treat 228:6 296:17	tying 341:5	222:2	193:2 198:10
treated 34:7 48:1	type 131:14	uncertainty	205:11 206:5,7,12
88:3	138:14 142:19	221:21 222:8,9	207:20 221:24
treatment 88:1	225:2 262:1,2	unchanged 33:17	224:11 275:21
119:5 190:19	325:23	unclear 217:7	321:19 333:23,24
191:7	types 162:4 248:5	unclose 227:20	338:11 340:2
tremendous	283:23 293:4	undecided 94:1	353:2,4
277:11	314:23	undepreciated	understands
trial 82:7,20 91:22	typewriting 361:8	219:20	241:9
95:9 107:16	typical 20:20	under- 283:14	understood 42:25
tricky 13:2	typically 21:23	undergo 20:4	56:5,6 82:5 161:5
trigger 97:19,25	22:1	underlying 18:25	199:8 207:15
99:23 106:4 171:2	<hr/>	324:22	216:19 233:18
177:14	U	understand 58:1,6	242:13 333:10
triggers 169:17,20	U-A-R-G 150:16	75:11,18 77:25	335:5
177:8	UARG 150:16,20,	80:13 86:9 93:25	undertaken
trouble 90:18	24 152:8	94:3 100:3 101:19	108:24 243:21
true 8:2 14:2 51:23	uh-huh 16:19 21:7	102:24 180:11	underway 260:10
54:20 55:20 74:13	23:12 102:8	196:15 212:9,20	undis- 243:19
95:1 101:21		214:24 215:19	undisputed 80:4
151:15 154:18		228:14 235:9	243:19,22
184:21 197:8,10			unfair 298:3
			unfeasible 142:4
			unfortunate

137:10,13	242:14 248:21,24	USC 92:1	variables 309:9,12
unhappy 37:9	260:14,17 262:19,	usefulness 244:3	variety 26:12
Union 3:8 270:11	24 263:4,6 264:21	271:23	variously 6:11
unique 119:5	266:5 269:5,7,16,	utilities 20:20	vary 265:19
312:22	19 276:21 289:2	40:21 48:8,15	vast 114:23
unit 31:12 40:6	307:15 309:25	106:13 111:9	Veatch 242:6
42:4 46:23 58:3	universal 40:6	112:17 114:20	245:23 247:8
66:25 67:7,9,11	universe 186:4	115:2,4 117:1	250:17 251:19
81:1 92:18,19	unknown 118:2	128:22 129:1,24	271:8 306:5
105:11 112:16	unlawful 48:24	131:25 132:6,15	311:2,10,12
113:1 117:9	unlike 248:3	204:20 255:17	versed 214:4
118:23,24,25	unqualified 104:3	265:6 267:14	version 8:10 16:17
119:18 121:16	unreasonable	utility 3:10 35:15	145:22 154:7
122:24 124:18	28:13 29:3 33:23	40:6 41:22 42:11	354:5
129:17 134:17,18,	83:9,11 97:18,23	71:16 100:13,17	versions 146:4
21,23 135:2,5	98:2 107:22 109:6	112:22 113:2	versus 114:15
136:1,7,16 137:8,	120:15 218:24	136:18,24 151:22	127:10 161:22
12,17,18 138:5	219:4	168:22 189:22	162:23 170:2
141:15,24 142:2,	unrelated 29:13	225:12 240:18	184:25 185:19
9,21 143:6,12,16	unring 147:6	266:10 293:23	187:17 189:18
144:6 162:6	unusual 66:14	305:12 307:4	191:4 192:3,8
164:11 165:1,24	103:17	312:17,18 318:12	195:17 196:25
178:16 179:2	upcoming 236:3	333:10 350:24	217:13 219:4
191:17 192:22	update 164:18	utility's 265:9	221:16 223:15
193:4 256:20	257:12 309:11	utilize 308:6	225:13 227:7
263:2,19 282:9,	311:17,22	utilized 270:16	275:24 280:21
10,17 299:12	updated 164:21,	<hr/> V <hr/>	282:6 314:24
300:13 304:7	25 294:12,23	valid 353:23	330:15 354:3
United 89:16,19	updates 87:3	Valley 41:21,25	view 41:15 47:25
106:2 254:23	upgrade 199:25	43:1	48:25 137:14
units 37:24 39:24	200:12 222:6	valuable 312:19	202:15 253:15
41:2 42:9 80:24	upgrades 62:1	values 156:23	286:20 293:16
105:8 115:7,21	116:12 121:7	158:2 191:18	294:6 298:21
116:22 118:4,17,	175:8 220:17	202:14 208:2	300:15
19 120:19 124:1,	349:15	222:8	viewed 45:11
4,5,7,9,14 128:7	upwards 186:16	valuing 162:19	111:11 238:19
131:4,15,22	UR 150:20	valves 134:14	vintage 116:8
132:7,12,17	Uri 134:25 255:7	variability 266:5	118:18 124:9
135:22 138:7	266:16	variable 191:8	141:24
140:3,5 142:9			violated 12:13
158:23 162:7			27:18 28:21 41:9
164:5,6,12 167:2			91:25
169:19 170:7			
178:11,18,25			
179:7,14,17 188:9			

violating 151:17**violation** 27:1471:16 81:21
100:14,18,20
113:14 130:11**violations** 28:6

35:11 81:9

virtually 253:2

290:18

visible 111:8,9**visualize** 238:25**voice** 50:17 59:20**Volume** 14:18

343:7

W

waited 198:16**waive** 4:17**walk** 235:25**walls** 262:22**wanted** 12:1 37:2346:10 50:4,5
79:18 86:11 89:16
150:1 241:2 254:1
278:14 280:20**wanting** 134:25

321:16

warm 199:23,24

200:5

warm-up 304:7**water** 88:1 96:5115:24 138:21
140:19 142:15
315:6,10,11**ways** 248:4 275:22

276:14

wear 200:6**weather** 166:21**Webex** 6:2 50:18

59:20

week 236:20,23,24**week-long** 107:17**weighed** 64:22**weighing** 185:7**weight** 29:17

47:22

weighted 161:1

288:8 313:2

WEPCO 39:18

149:22

west 116:19,21117:1 168:22
267:2**Westar** 130:6

132:14,17,22

western 105:5118:7,11 120:13,
14 121:18 130:6
132:3**wet** 124:1 249:20

262:3

whatnot 70:23

111:5,6

wheels 282:15**Whew** 36:3**whichever** 13:7**Whitworth** 9:6,1831:6 57:16 67:2
78:19 79:1 150:23**Whitworth's** 79:2**wholly** 143:22**wide** 238:7**Williams** 4:11,1410:17 14:10
19:21,23 22:4
34:21 35:4,5
38:20 52:21 55:13

63:10 71:3 97:7

123:6,8 141:11,12

144:20 145:3

147:3,19 149:1,8

153:10 158:19,20

159:23 160:4

178:8,9 183:3,4

188:7 199:13

216:1 231:6

233:4,14,19 234:1

235:12 240:6

245:12 261:12,13

268:24 271:7

273:9 281:8,9

287:13 291:12

292:5 306:21

309:25 317:25

318:6,20 330:2,3

332:10 333:2,7,8

337:6 349:1

356:5,7,18,20,23

357:3,5,6,24

358:4,14,17

Williams' 183:23

332:21

wincing 288:22**wind** 162:4 173:22174:1,15 236:4,
12,22 237:13**winter** 120:21

134:25 164:7

166:2 167:3

179:12 180:14

181:13,14 188:9,

17,20 225:1 255:6

265:21 267:5,10,

13

witnesses 4:18

5:15 6:14,19 23:7

24:13 49:18 53:9

56:4 64:5,13,15

66:4 90:3 95:7

148:15 149:15

223:22 240:23

241:4 334:21,24

350:21 361:6

Wolf 112:25**wondering** 168:23**word** 25:7 43:1848:20 51:13,14
69:9 91:1 146:12
148:15 261:23
332:21**worded** 227:23**wording** 47:17,21**words** 21:5 36:1

40:8 49:7 66:5

work 102:8 103:24155:19,21,22
156:1 157:5
158:1,6 167:11,14
176:12 215:2
224:12 238:20,23
247:3 252:21
261:18 278:19
285:9 288:19
289:7,8 290:9,14,
16 293:2,6 296:25
301:1 306:15
311:22 317:11
324:1 326:14
348:14 354:14
360:3**workable** 38:16**worked** 248:16

255:22

works 331:20**world** 38:13,15,16

46:17 108:6 142:6

worry 256:3**worth** 107:25**write** 302:1**writing** 150:4

214:4

written 81:23

213:17 300:10,12

301:4,5,11 318:13
353:16

wrong 32:3 38:3
47:17,21 49:2,6
78:24 96:19 98:2
107:18 123:15
124:12 127:8
140:23 216:23
325:8 340:15
342:3

Y

Ye- 114:1

year 75:15,20
156:6,21 160:25
162:18 163:19
164:5,23,25
169:1,11 170:7,8
267:23 299:7
304:1 329:11

year's 133:16
161:3

years 30:23 37:1
40:10 48:23
109:23 121:16
126:1 127:14
139:23 156:16
161:1 166:5
169:2,24 170:4
173:20 175:9
184:22 191:3
196:10 197:25
198:17 211:12
219:15 220:7
242:15 247:2
252:19 255:5
256:2 267:5 279:4
288:1 294:21
298:2 307:12
316:5 321:17
322:20,21 324:14,
18,19 329:14,16,
17,18 331:7,10
339:25 351:22

yesterday 6:13 9:6
31:6,14 49:17
57:15 70:17
149:15 150:23
217:7 244:9

Z

zone 238:10