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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
Evidentiary Hearing  
September 10, 2012  
Jefferson City, Missouri  
Volume 2

In the Matter of the Empire )  
District Electric Company of )  
Joplin, Missouri for Authority to )  
File Tariffs Increasing Rates for ) File No. ER-2012-0345  
Electric Service Provided to )  
Customers in the Missouri Service )  
Area of the Company )

MICHAEL BUSHMANN, Presiding,  
REGULATORY LAW JUDGE.

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REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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

2 (WHEREUPON, the hearing began at 8:33 a.m.)

3 (EMPIRE EXHIBIT NOS. 1 THROUGH 6 AND STAFF  
4 EXHIBIT NOS. 1 THROUGH 8 WERE MARKED FOR IDENTIFICATION.)

5 JUDGE BUSHMANN: We're on the record. Good  
6 morning. Today is September 10th, 2012. The Commission  
7 has set this time for an evidentiary hearing in the matter  
8 of the Empire District Electric Company of Joplin,  
9 Missouri, tariffs increasing rates for electric service  
10 provided to customers in the Missouri service area of the  
11 company. That's File No. ER-2012-0345.

12 My name is Michael Bushmann. I'm the  
13 Regulatory Law Judge that's been assigned to this matter.  
14 Let's begin with counsel making their entries of  
15 appearance. For Empire District Electric Company?

16 MR. SWEARENGEN: Your Honor, let the record  
17 reflect James C. Swearngen and Diana Carter, Brydon,  
18 Swearngen & England. Our address is 312 East Capitol  
19 Avenue, Jefferson City, Missouri, and we are appearing on  
20 behalf of the Empire District Electric Company.

21 JUDGE BUSHMANN: Thank you. Staff of the  
22 Public Service Commission?

23 MS. KLIETHERMES: Thank you, Judge. Sarah  
24 Kliethermes and Kevin Thompson of and on behalf of the  
25 Staff.

1 JUDGE BUSHMANN: Office of the Public  
2 Counsel?

3 MR. MILLS: On behalf of the Office of the  
4 Public Counsel and the public, my name is Lewis Mills. My  
5 address is Post Office Box 2230, Jefferson City, Missouri  
6 65102.

7 JUDGE BUSHMANN: Midwest Energy Users  
8 Association?

9 MR. CONRAD: On behalf, Judge, of the MEUA,  
10 please let the record reflect the appearance of Stuart W.  
11 Conrad, Finnegan, Conrad & Peterson, 3100 Broadway,  
12 Suite 1209, Kansas City, Missouri, and I have supplied all  
13 that information to the court reporter.

14 JUDGE BUSHMANN: Thank you. And Midwest  
15 Energy Consumers Group?

16 MR. WOODSMALL: Thank you, your Honor.  
17 Appearing on behalf of the Midwest Energy Consumers Group,  
18 David Woodsmall.

19 JUDGE BUSHMANN: And Missouri Department of  
20 Natural Resources and Missouri Gas Energy have been  
21 excused from participation in this part of the hearing.  
22 Is there anyone else that I have missed as far as counsel?

23 (No response.)

24 JUDGE BUSHMANN: I'd like to advise people  
25 in the audience to please turn off your cell phones or

1 Blackberry devices as they can affect the video streaming  
2 that we are using today.

3 I don't see that there's any pending  
4 motions. Are there any other preliminary matters that we  
5 need to take up at this time?

6 MR. MILLS: Judge, I don't think there's  
7 anything pending right now, but I will tell you that, in  
8 lieu of an opening statement, I'm planning to renew my  
9 motion to reject the tariffs.

10 JUDGE BUSHMANN: I see that we have ten  
11 witnesses. We have two days scheduled. So there's plenty  
12 of time, I believe. And as far as exhibits, if you  
13 haven't already done so, could you please provide your  
14 exhibit list to the court reporter. Is there anybody that  
15 has not done that? Why don't we take care of the exhibits  
16 and have them brought up right now.

17 (MEUA EXHIBIT NO. 1 WAS MARKED FOR  
18 IDENTIFICATION.)

19 JUDGE BUSHMANN: Any other exhibits? Okay.  
20 Why don't we move along now to opening statements, and the  
21 first opening statement will be Empire.

22 MR. SWEARENGEN: Thank you, Judge. May it  
23 please the Commission? Jim Swearngen appearing on behalf  
24 of Empire.

25 The issue that's before the Commission

1 today is whether or not Empire's interim tariff, which is  
2 designed to generate approximately \$6.2 million, subject  
3 to refund, should be approved by the Commission.

4 By way of background, on July 6th of this  
5 year, Empire filed tariff sheets designed to increase its  
6 gross annual electric revenues by approximately  
7 \$30.7 million, exclusive of taxes and fees. Included with  
8 that filing were tariff sheets with schedules designed to  
9 implement on an interim basis 6.2 million of the  
10 \$30.7 million request.

11 Empire's request for interim rate relief  
12 was driven by the May 22nd, 2011 tornado experienced by  
13 the company and the city of Joplin. As the Commission is  
14 aware, that tornado severely impacted Empire's operations,  
15 including the destruction of a significant portion of the  
16 company's facilities in and around Joplin, Missouri.  
17 The tornado also resulted in the loss of thousands of  
18 Empire's customers.

19 These circumstances as well as the costs  
20 incurred by Empire with the tornado and the revenue losses  
21 that the company experienced as a result of the  
22 significantly lower number of customers it has served to  
23 create a situation that Empire believes can fairly be  
24 categorized as extraordinary, extreme and of an emergency  
25 nature.

1 Empire was able to respond to this  
2 emergency and to take the necessary steps to restore safe  
3 and reliable service to its customers. These efforts on  
4 the part of Empire, however, did not come without a cost.  
5 In fact, they came with considerable cost. Empire has  
6 expended and invested over \$27 million to replace the  
7 electric infrastructure that was destroyed by the tornado.  
8 And Empire has experienced and continues to experience a  
9 decline of revenue due to the loss of customers.

10 Now, while what I will call the restoration  
11 costs that Empire has expended are being deferred in  
12 accordance with an Accounting Authority Order issued by  
13 the Commission, these costs have yet to be reflected in  
14 Empire's rates, and the lower number of customers served  
15 on a going-forward basis is also not reflected in the  
16 company's rates.

17 The ongoing revenue requirement associated  
18 with this loss of customers and investment is \$6.2 million  
19 annually in terms of revenue requirement, and that's what  
20 the company's interim tariff is designed to recover, the  
21 costs associated with the tornado and the lower number of  
22 customers all on a going-forward basis.

23 Now, the Commission will recall at the time  
24 that Empire filed its interim tariff, it requested -- it  
25 also filed a motion requesting that the Commission not

1 suspend it but exercise its discretion and allow that  
2 tariff to take effect by operation of law 30 days after  
3 filing.

4 So at that time the interim tariff, at the  
5 time the interim tariff was filed, the status of this case  
6 was one of a non-contested case. That is to say under  
7 Section 393.140 subsection 11, no hearing on that tariff  
8 was required by law. The Commission had the authority to  
9 allow that tariff to take effect without suspension and  
10 without hearing on the proposed effective date, which was  
11 August 5, 2012.

12 The Commission, however, without  
13 specifically ruling on the motion, proceeded to suspend  
14 the tariff, and by order issued on July 23, 2012 stated  
15 that it would conduct an evidentiary hearing to allow  
16 Empire to present evidence to show that the company is  
17 entitled to an interim rate increase. Thereafter, a  
18 procedural schedule was established which has led to  
19 today's hearing.

20 I say all this in the way of background  
21 because as a consequence, what we think is now before the  
22 Commission in Empire's view is simply a rate case.  
23 Empire, as the moving party, has the burden of 393.150 to  
24 prove that its proposed rate, in this case its interim  
25 rate, is just and reasonable. That is the statutory



1 standard. We do not believe that the standard, as the  
2 other parties have maintained, is a financial emergency.

3 The Commission under Section 393.150 does  
4 not have discretion to grant a rate increase only in  
5 circumstances of a financial emergency. Again, the test  
6 is whether the rate is just and reasonable. And we submit  
7 that the proposed interim rate is just and reasonable for  
8 the following reasons:

9 First, it is designed to recover the two  
10 components of the ongoing revenue requirement associated  
11 with the May 2011 tornado. The interim rate will allow  
12 Empire to begin recovery of what I will call the  
13 restoration costs it has incurred and will end further  
14 deferral of those costs under the Accounting Authority  
15 Order. The interim rate will also reflect the lower  
16 number of customers that Empire now has on a going-forward  
17 basis, and together the revenue requirement associated  
18 with those two components is \$6.2 million per year.

19 Another important consideration in all of  
20 this is the fact that Empire is not earning its authorized  
21 rate of return. In those cases over the last ten years  
22 where the Commission has made findings concerning Empire's  
23 return on equity, the Commission has authorized return on  
24 equities of 11 percent in 2005, 10.9 percent in 2006, and  
25 10.8 percent in 2009. However, Empire's highest earned

1 return over the last ten years has only been 8.4 percent,  
2 and that occurred in 2006. Currently, the company is  
3 experiencing a return of 7.8 percent, which is clearly  
4 below what the Commission has authorized in recent cases  
5 and below every recommendation by any party in recent  
6 cases.

7 So Empire has costs it's not recovering, a  
8 decline in revenue due to a loss of customers, and it's  
9 not earning anywhere near its authorized return, and we  
10 believe that those facts demonstrate that the proposed  
11 rate is just and reasonable.

12 The interim request of \$6.2 million is a  
13 modest portion of the permanent request which totals  
14 30.7 million. The revenues collected under the tariff  
15 would be subject to refund, so Empire's customers are  
16 protected.

17 There are also potential benefits for  
18 Empire's customers if this relief is granted. Stopping  
19 the Accounting Authority Order deferral now means that  
20 fewer expenses will be deferred or added to capital,  
21 therefore reducing the assets involved. A smaller asset  
22 base means less to earn on and thus lower associated  
23 rates. So all else being equal, granting the interim  
24 request will reduce the permanent revenue requirement  
25 associated with the deferral, thus lowering the overall

1 cost to Empire's customers.

2 In summary, we take the position that what  
3 the Commission has in front of it is simply a rate case.  
4 The standard is whether or not those proposed rates are  
5 just and reasonable, and we submit they are, and  
6 accordingly respectfully request the Commission to  
7 authorize the interim increase. Thank you.

8 JUDGE BUSHMANN: Thank you, Mr. Swarengen.  
9 Opening statement for Staff.

10 MS. KLIETHERMES: Thank you, Judge. I have  
11 some slides that will be introduced later as Staff  
12 Exhibit 8, but I'll be referring to several of them  
13 through the opening. Would it be convenient to distribute  
14 them?

15 JUDGE BUSHMANN: Okay.

16 MS. KLIETHERMES: Good morning, Judge. I  
17 just heard Mr. Swarengen discussing just and reasonable.  
18 It seems like I usually remember a second phrase going  
19 with that, which is upon consideration of all relevant  
20 factors, and that's something we'll be discussing this  
21 morning.

22 Empire's interim request is about weather,  
23 and whether weather is good or bad is a matter of  
24 perspective. Joplin, Missouri has certainly seen its  
25 share of bad weather. Of course the Commission is aware

1 of the tornado that struck Joplin on May 22nd, 2011. In  
2 the immediate aftermath of that tornado, Empire lost  
3 approximately 20,000 customers initially, and 158 Joplin  
4 residents lost their lives.

5                   Following the tornado, after Empire had  
6 restored most of those customers, Joplin was again hit  
7 with weather. In that case it was very high summer  
8 temperatures. Now, I'd call that bad weather, and most  
9 people would, too, but for an electric company, bad hot  
10 weather is great business weather, and that's how rates  
11 work.

12                   This Commission sets rates by looking at  
13 how much it costs a utility to provide service for a  
14 normal year and how much electricity it expects the  
15 utility to sell in a normal year, and it's a given in this  
16 process that no year is a normal year. Some costs will be  
17 up, others down. Some revenues will be up, others down.  
18 Some days you'll sell more. Some days you'll sell less.  
19 And on average, regulation is premised that it will more  
20 or less all come out in the wash.

21                   Now, the slide I've put up -- now, this  
22 graph I've put up is the first graph on the Staff  
23 Exhibit 8 packet I've handed out. This is an update of  
24 the graph that Mr. Shawn Lange included in his rebuttal  
25 testimony, and it's updated for this past July, which at

1 the time we filed rebuttal testimony we didn't have that  
2 information from Empire yet.

3 But we're going to look at last summer's  
4 revenues, and so if we look at the blue line, that will  
5 show that normalized revenues that no one ever expects to  
6 occur. The red line shows what happened the year before  
7 the rate case -- I'm sorry, in 2010 to 2011, so that was a  
8 year before the tornado. And that green line shows what  
9 happened the year of the tornado, and the purple line  
10 shows what's been happening this year.

11 Now, as I look at this graph, I have a hard  
12 time even seeing that there are four lines there, much  
13 less making out which one's which, and that's because of  
14 how closely these are all stacked. But if you'll notice,  
15 the green line last August is above the blue line, and  
16 what that shows is that last summer, after the tornado,  
17 Empire still generated more revenue than what they would  
18 have in a normal year.

19 That's fine. No year is normal. But think  
20 about that for a minute. Even considering all those  
21 houses and businesses destroyed in the tornado, between  
22 last summer's heat and the extra FEMA trailers and hotel  
23 rooms used for the relief effort, Empire still came out  
24 ahead in revenues of what a normal year's weather  
25 conditions and a normal number of customers would be

1 expected to produce.

2                   Now let's look at this past winter's. This  
3 past winter was all in all pretty mild, and I'd call that  
4 good weather, but, of course, good warm weather in the  
5 winter is bad weather for an electric company. So Empire  
6 came up a little short of a normal year. And how short's  
7 a little short? That would be the gap you see on the  
8 chart between the blue line and the green line. That gap  
9 is how Empire calculated its interim request. The request  
10 is that gap plus capital component we'll discuss in a bit.  
11 And other than -- I'm sorry.

12                   Now, as you know, Empire claims it is  
13 entitled to an interim rate increase because of the  
14 tornado, but I think if you're going to talk about doing  
15 something like that, it's pretty important to look at  
16 whether Empire's coming up short on revenues is because of  
17 the tornado or because of something else, if it's, in  
18 fact, short of revenues at all.

19                   Now, for that -- this slide I put up is not  
20 included in the updated packet, but it is included in the  
21 appendix to Mr. Lange's rebuttal testimony, and what is in  
22 the packet is, of course, an updated version of this, and  
23 it ends up with a little bit too much information on it  
24 for me to make sense of what's happening, so I'm going  
25 back to the simpler version.

1                   But if you look at this graph, this shows  
2 the weather normalized revenue Empire has experienced.  
3 Well, what weather normalized revenue is, is it looks at  
4 how cold the winter was, how warm the summer was and how  
5 those days stack up on each other, and it figures out what  
6 the revenues would have been if there hadn't been that  
7 weather, if every day had been a typical day, as I  
8 understand it.

9                   Now, the gap you see on the chart between  
10 the blue line and the green line, that is how Empire  
11 calculated its interim -- I'm sorry.

12                   So if you want to look at how much of that  
13 gap had everything to do with typical deviations from  
14 normalized weather and nothing to do with the tornado,  
15 that would be the difference between the size of this gap  
16 on this weather normalized revenue slide and the size of  
17 the last gap we looked at on the Empire revenue slide.

18                   Now, any given year any utility could have  
19 gaps like this. If you think back to Staff's verified  
20 pleading, we initially filed recommending rejection of  
21 this interim request. We discussed how this case is even  
22 less meritorious than the Ameren case the Commission  
23 rejected a couple years ago, and that's because this case  
24 has everything to do with the effects of the mild winter  
25 and virtually nothing to do with the tornado.

1                   So if we go from this chart that just shows  
2 Empire's revenues to looking at Emp-- the last chart  
3 showing Empire's revenues to looking at Empire's weather  
4 normalized revenues, we can see that weather normalization  
5 wipes out just about all of the difference we saw on the  
6 last slide. It doesn't get it all, but it gets quite a  
7 bit.

8                   Let's take a second to think about what  
9 that means. Let's start with a premise I'd like to hope  
10 we can all agree on, that this Commission's job isn't to  
11 give extra cash to utilities that have experienced cool  
12 summers or warm winters or to take cash away from  
13 utilities for warm summers or cool winters.

14                   I don't think even Empire is asking the  
15 Commission to open that particular can of worms in this  
16 proceeding, but that is exactly the result if you set  
17 interim rates based on a revenue shortfall that was caused  
18 due to a warm winter.

19                   So going from the premise that Empire's  
20 only talking about needing an increase now to make up for  
21 money it's not making because customers are just plain  
22 gone, looking at this graph we can see there's virtually  
23 no money to be made up.

24                   Looking at how those lines stack up for the  
25 first half of this year, I'll be honest, I was surprised.



1 Intuitively you'd think that Empire would be out a decent  
2 amount of money through the loss of customers who lost  
3 their lives and homes, but looking at the normal  
4 weatherized revenues, that just didn't happen.

5                   So let's talk about those customers. And  
6 as truly callous as it feels to say, for purposes of this  
7 request, we do just have to think of those customers as a  
8 name on an electric bill, and I mean no disrespect to  
9 those who have lost their lives or homes or are in the  
10 process of rebuilding or are unable to rebuild, but that  
11 is simply the nature of revenues and billing determinants.  
12 This all is just numbers.

13                   Looking at this slide, we can see the  
14 shape. They're coming back. But let's look at a  
15 different slide to see the scale. You'll notice this one  
16 is set through 340,000, I believe -- or no. I'm sorry.  
17 140,000 is the bottom scale on this, and we zoomed in, if  
18 you will, so you can see the shape and see the customers  
19 are returning. And this is that same chart set to scale.

20                   As you can see, those lines are virtually  
21 stacked. The customers are coming back. That's good for  
22 Empire, but frankly, that is great for Joplin.

23                   Now, factors like that also make for some  
24 interesting billing determinant calculations, and those  
25 are great issues for a rate case. They're important

1 issues for Empire and their customers, but frankly,  
2 they're also just interesting issues as we try to figure  
3 out what a realistic normalized level of customers and  
4 sales and billing demands is in the general rate case, but  
5 they're not of a magnitude or nature that they should be  
6 addressed by interim rates, and they're not properly  
7 considered by Empire in its truncated interim rate  
8 request.

9 Well, as Mr. Swearingen said this morning,  
10 to Empire it's not just about the revenues, it's also  
11 about the costs. And while that's true, that's also a  
12 silly thing for Empire to point out because Empire  
13 probably shouldn't have brought up items like how much  
14 they've put into rate base because of the tornado because,  
15 as of today, it's Staff's understanding that they've  
16 received a net decrease in rate base since the last rate  
17 case.

18 Now, by the true-up cutoff date of the  
19 general rate case, Empire may end up with a net rate base  
20 increase, but just looking at where Empire is today,  
21 looking at all the poles and wires and transformers and  
22 other equipment it put in to rebuilding from the tornado,  
23 Empire still hasn't put in new more rate base than the  
24 amount of its existing rate base that has depreciated out  
25 since the last rate case. This is discussed in

1 Mr. Oligschlaeger's testimony.

2 That means that today Empire can be viewed  
3 as getting rate of return on more rate base than it has in  
4 service, and that it is getting depreciation expense on  
5 more rate base than it has in service. Staff's not  
6 looking to take away that extra rate of return in  
7 depreciation expense in an interim case, but it's an  
8 awfully silly point for Empire to have raised if you look  
9 at their true net situation.

10 To be perfectly clear, if we were going to  
11 do interim rates to address changes to Empire's rate base,  
12 we would be looking at an interim rate decrease. Staff  
13 isn't trying to diminish all of the poles and transformers  
14 and other plant Empire's put in or all the work that went  
15 into installing them, but just looking at the dollars  
16 invested, the net effect to Empire's rate base is still  
17 towards decreasing its rates, not increasing them. To be  
18 clear, Staff is not asking for that, but it's a point we  
19 want to make sure the Commission understands.

20 Now let's talk about the AAO. Empire also  
21 talked about how an interim rate increase will start the  
22 clock ticking on the AAO that the Commission issued for it  
23 last fall, and that's true, but it doesn't justify an  
24 interim rate increase. Right now, as we speak, Empire's  
25 financial books don't show a hit to its earnings from the

1 incremental operations and maintenance expense it incurred  
2 in tornado recovery. All those hours of overtime and  
3 hotel rooms and extra crews and trucks, not a penny of  
4 that has hit Empire's financial reports. The AAO the  
5 Commission gave Empire last fall did that. That's what  
6 AAOs are for. Frankly, Staff believes that was a great  
7 exercise of Commission discretion in awarding that AAO.

8 But Empire says that AAOs aren't cash, and  
9 that's also true. Empire says it had to cut its dividend  
10 because of the tornado, but Staff's testimony in this case  
11 and points to testimony in prior cases that really casts  
12 some doubt on Empire's theory there. Empire doesn't like  
13 to talk about the fact that it has since reinstated its  
14 dividend, and it doesn't like to talk about the fact that  
15 before the tornado it was a simple matter to conclude that  
16 its dividend payout was not sustainable and had not been  
17 for some time.

18 This leaves the Commission with an  
19 interesting problem. Even if the Commission wanted to  
20 allow an interim rate increase as consideration for the  
21 fact that Empire completely suspended its dividend for two  
22 quarters, how can the Commission possibly know how much of  
23 the suspension of the dividend was caused from the tornado  
24 and how much is from years and years of Empire paying out  
25 too much of a dividend?

1                   It has been noted by rating agencies now  
2 and in the past that when a utility company necessarily  
3 reduces its dividend, this improves the financial  
4 flexibility of the company, and the Commission has seen  
5 this with Great Plains Energy and with Ameren.

6                   Considering Empire received the additional  
7 amortizations to support its investment grade credit  
8 rating during the period of construction of Iatan 2 and  
9 Plum Point, would it not have made sense to reduce  
10 Empire's dividend at the same time that it asked  
11 ratepayers to pony up more cash to maintain its debt  
12 rating investment grade? If this had been done, Empire  
13 certainly would have had additional retained earnings that  
14 may have kept it from asking its bondholders for waivers  
15 of its retained earnings covenant.

16                   Is Empire using a tragic disaster to  
17 suggest that interim rates should be allowed as  
18 consideration for Empire's chronic denial of its  
19 mismanagement and of its dividend policy over the last 20  
20 years? I hope that. That's starts to look like a request  
21 to have the Commission set rates to support a dividend not  
22 reasonably supported by profit, and that starts to look  
23 like a request to have the Commission guarantee a defined  
24 level of profit.

25                   Is Empire asking the Commission guarantee a

1 defined level of profit against changes in revenues?

2 Well, that seems silly if you look at the increased  
3 revenues Empire's experiencing this summer with the  
4 excessive heat we've seen, and you can see that on this  
5 chart.

6 This summer is more bad weather to you or  
7 I, but understandably great weather for the impacts on the  
8 revenues of an electric company. So if Empire's looking  
9 for guaranteed profit against weather, then it must only  
10 be looking at when that weather decreases its profit, not  
11 when it increases it as it is this summer and as it did  
12 last summer.

13 Is Empire asking that the Commission  
14 guarantee a defined level of profit against changes in  
15 rate base? Well, that also seems silly if you look at the  
16 net decreases in rate bases Empire has experienced since  
17 last summer.

18 Is Empire asking that the Commission  
19 guarantee a defined level of profit against extra costs  
20 that it incurred in its efforts to recover from one of the  
21 most devastating natural disasters ever to hit Missouri or  
22 even the U.S.? Well, I don't think the Commission  
23 guaranteed a defined level of profit, but the Commission  
24 certainly did give Empire special accounting treatment to  
25 protect its earnings from a hit for those costs, exactly

1 as Staff urged them to do in the AAO proceeding.

2                   Maybe Empire will claim they're not asking  
3 the Commission to guarantee a defined level of profit at  
4 all. If that's the case, I really don't know what it is  
5 they're asking for in this proceeding because that's all  
6 Staff can find.

7                   According to Brad Beecher, Empire's  
8 witness, it has been over a year since the Joplin tornado,  
9 clearly an extraordinary event, and it is time for Empire  
10 to begin to recover financially. With all due respect to  
11 Mr. Beecher, and that's a great deal of respect in light  
12 of the fact that he lost his home to the tornado, is my  
13 understanding, regardless of any other finding in this  
14 case, the weather Empire -- I'm sorry -- the weather got  
15 Empire into this, and with this hot summer, it looks like  
16 the weather is getting them out.

17                   From the evidence in this case, thankfully,  
18 it looks as though financially Empire has little left to  
19 recover from. The numbers on this matter speak for  
20 themselves, and Staff's witnesses are available to make  
21 sure nothing gets lost in the translation.

22                   But Mr. Beecher's statement, while not  
23 meeting any sort of legal standard I know of or could even  
24 dream up, does get to a visceral sense that Empire and  
25 even Staff do have about this case. For an event as

1 significant as the Joplin tornado, with lives lost and the  
2 massive destruction, it really does feel like we ought to  
3 have to do something even in addition to granting them an  
4 AAO, but fortunately, now we don't. Last summer and fall  
5 Empire did face uncertainty, but it doesn't now.

6 I don't know if there ever was a time when  
7 it would have been appropriate to grant Empire interim  
8 relief, but it sure isn't now. Empire isn't facing a risk  
9 of not being able to provide safe and adequate service.  
10 Empire isn't even facing a risk of a risk of not being  
11 able to provide safe and adequate service, and that is a  
12 good thing in and of itself.

13 For the Commission to go beyond that and to  
14 give Empire the interim rates it has asked for, the  
15 Commission would be guaranteeing Empire a defined level of  
16 profit. That a utility isn't entitled to any profit at  
17 all much less a defined level of profit is something the  
18 courts of this state have spoken to time and time again,  
19 and that's discussed extensively in the initial pleading  
20 Staff filed in this case.

21 But thinking back to those graphs, it  
22 looked like there was some difference at least in a couple  
23 of months between what Empire earned and what we would  
24 have expected Empire to earn, even setting aside the warm  
25 weather. Even ignoring this winter when we had weather



1 that was good for us but bad for Empire's profits, it  
2 looked like Empire probably came up short. Frankly,  
3 that's a great issue for the general rate case. We'll get  
4 to work through weather normalizations, customer  
5 annualizations, days adjustments and other sorts of other  
6 interesting billing determinant issues that almost never  
7 get to see the light of the hearing room.

8 But those are issues that it takes time to  
9 analyze, and those are issues that Empire doesn't even try  
10 to analyze with its interim rate request. Let's make sure  
11 these important issues get the time and attention they  
12 deserve.

13 Getting back to the question of the  
14 applicable standard. Empire requests the Commission  
15 ignore the prior standard of looking at the utility's  
16 ability to provide safe and adequate service or  
17 significant risk of failing to provide safe and adequate  
18 service, referred to as the financial emergency and near  
19 emergency standards respectively.

20 Instead, Empire throws around a couple of  
21 new approaches. One is the rationale stated by  
22 Mr. Beecher that a very bad thing happened in Empire's  
23 service territory, so it would like more money from its  
24 customers sooner. I think I've already discussed the  
25 problems with that in this instance because it ignores the

1 very good things that have also happened to Empire's  
2 customers -- Empire's revenues in the meantime.

3           But looking beyond this case, Staff hopes  
4 the Commission would not seriously entertain adopting a  
5 standard that in other circumstances would amount to a  
6 natural disaster lottery. Remember, the revenue  
7 shortfalls Empire has experienced were almost entirely  
8 attributable to the mild winter, even by Empire's own  
9 analysis. Accepting an event, even one as extraordinary  
10 as the Joplin tornado, as a trigger for any revenue  
11 shortfall regardless of the cause would be a very  
12 shortsighted policy.

13           In its position statements, Empire suggests  
14 something along the lines of the standard the Commission  
15 has applied to Accounting Authority Orders, more or less  
16 looking at whether some extraordinary event has occurred.  
17 I think the Commission does that with AAOs, and it should  
18 keep that standard with AAOs.

19           And also, if as discussed by Mr. Swearngen  
20 for the first time this morning, if the standard is just  
21 and reasonable, then Staff is very concerned that Empire  
22 failed to mention the based on all relevant factors  
23 portion of that standard. There is no attempt by Empire's  
24 interim request to consider all relevant factors.

25           I would like to clarify one issue, and that

1 has to do with how I think I understand Empire determined  
2 the costs that it's asking to pass on as an interim rate  
3 increase. I do have a question as to how it made that  
4 request. As the Commission knows, there are two parts to  
5 a rate case, first coming up with a revenue requirement,  
6 and then coming up with how to collect it.

7                   What I think Empire is doing with the  
8 revenue piece of its request is saying that that is extra  
9 dollars it should be entitled to collect, the sort of  
10 thing you consider in the first half of a rate case, when  
11 really I think their theory is that these are dollars that  
12 it is not collecting, which is what you would address in  
13 the second half of a rate case.

14                   In other words, even under Empire's  
15 request, it's not that Empire's revenue requirement has  
16 supposedly increased by that revenue amount. It's that  
17 the billing units aren't matching what they were in the  
18 last rate case.

19                   Now, to be clear, Staff does not agree with  
20 Empire's analysis on the customer amount in kilowatt hour  
21 sales, but I want the Commission to understand that,  
22 regardless of the merits of that issue, Empire's testimony  
23 doesn't really characterize what they're alleging in an  
24 accurate way, and that complicates the discussion of that  
25 issue.

1                   This is a very important issue for the rate  
2 case and something Staff will be looking at because Staff  
3 always wants to make sure we get the billing determinants  
4 right regardless of the revenue requirement size. This is  
5 just another example of why we shouldn't deal with  
6 something quickly and sloppily in an interim rate request  
7 instead of getting it right in an actual rate case.

8                   A few final points I don't want to get lost  
9 in all this. The tornado was a tragedy for Joplin.  
10 Nothing I'm saying can adequately convey either my  
11 sympathy for what these folks have been through or my  
12 admiration for how they've recovered, and that does  
13 include several Empire employees. Empire did a great job.  
14 From what we've seen, theirs crews performed admirably in  
15 an environment that I don't think I could even function  
16 in.

17                   There's every indication that Empire  
18 coordinated and executed their efforts extremely well.  
19 They kept their customers and disaster relief personnel  
20 informed and up to date, and they got the situation safe  
21 and the power back on in a very impressive amount of time.

22                   Staff has concluded and provided evidence  
23 that interim rate relief is not only not warranted but  
24 it's also a bad idea, but that conclusion is in no way  
25 intended as a criticism of Empire's response to this

1 tornado and its commitment to provide its customers with  
2 safe and adequate service.

3 That said, the Commission needs to  
4 recognize that even though Empire ties this request to the  
5 tornado, this request boils down to the same sort of thing  
6 the Commission rejected a year or two ago for Ameren.  
7 Don't open the door to guaranteeing ROE. The law says you  
8 don't have to do it and it's a bad idea.

9 JUDGE BUSHMANN: Thank you. Mr. Mills, I  
10 believe you said you wanted to waive opening; is that  
11 correct?

12 MR. MILLS: Yes, your Honor. In lieu of an  
13 opening statement, I want to renew my motion to reject the  
14 tariffs. In the original motion filed when the tariffs  
15 were first filed, I pointed out that Empire had failed to  
16 allege much less even prove a prima facie case for interim  
17 rate relief.

18 Since that time we've had additional  
19 testimony, including the last word from Empire in their  
20 surrebuttal testimony of Empire witness Kelly Walters, and  
21 Empire is still yet to allege, much less prove, a prima  
22 facie case that interim relief is warranted. And so at  
23 this time I renew my motion to reject the tariffs.

24 JUDGE BUSHMANN: All right. Thank you. I  
25 won't be ruling on that now. I'll take it with the case.

1                   Opening for Missouri Energy Users  
2 Association.

3                   MR. CONRAD: I had some slides, too, but  
4 they didn't have anything to do with this case. They were  
5 pretty to look at. Had to do with trips.

6                   I do want to respond. I really didn't have  
7 that much prepared for this, but I did want to respond,  
8 and I will do so in a couple of points, to my colleague  
9 Mr. Swearngen's opening.

10                  As Staff counsel eloquently points out, the  
11 game seems to have shifted, the target seems to have  
12 shifted a little bit. And essentially what I heard  
13 Mr. Swearngen say is his client utility is not earning  
14 what his client utility would like, and, therefore, we're  
15 here today asking for earlier implementation of rates.

16                  Now, there are two old cases. I think they  
17 both date back to the '50s, Hope Natural Gas versus  
18 Federal Power Commission and Bluefield Waterworks. Those  
19 two cases were U.S. Supreme Court cases. They're  
20 frequently cited by the ROE witnesses. But as I read  
21 them, there is not a guarantee. A public utility is  
22 entitled to an opportunity to earn a rate of return that  
23 is commensurate with other enterprises in the same or  
24 similar areas. That opportunity comes through management.

25                  Now, I hadn't intended to pick up

1 Mr. Beecher's testimony, but I did as a result of  
2 something that Mr. Swarengen said, and although this  
3 hasn't been admitted as an exhibit yet, when the time  
4 comes, on page 9 and at the top of page 10, Mr. Beecher  
5 refers to Empire's retained earnings as being \$4.1 million  
6 as of 3/31/2011, which was ahead of the tornado, and  
7 dividends of 13.3 million had been declared.

8 Now, it's been a long time, perhaps too  
9 long, since I took a basic accounting class, but my vague  
10 recollection is that one pays dividends out of retained  
11 earnings. Now, if retained earnings are \$4.1 million and  
12 you've declared dividends of 13.3, something -- something  
13 doesn't work there. I think Staff counsel may have made  
14 reference to that.

15 Empire has not shown a need under the  
16 emergency standard. The emergency standard, as I  
17 understand it, has to do with the utility's inability to  
18 provide safe and adequate service. Mr. Swarengen this  
19 morning acknowledges that they did provide safe and  
20 adequate service. So almost out of the box he has ruled  
21 himself out of the emergency standard.

22 And I think in recognition of that, he  
23 attaches himself and his client utility to not the  
24 emergency standard but, as I mentioned, some kind of our  
25 earnings fell short. We didn't earn what we wanted to.

1 Well, again, there is no guarantee in this business.

2                   They seem to be saying, we had some costs  
3 from the tornado. I join Staff counsel in saying that the  
4 tornado was clearly a tragedy not only for Joplin but that  
5 entire area down there, and I think the last numbers that  
6 I saw was just a little bit south of 150 people lost their  
7 lives, and some 800 or 900 had injuries all the way from  
8 minor to pretty serious. One of the major large users,  
9 St. John's Hospital, was severely damaged such that it had  
10 to shut down and bring in alternative means of providing  
11 medical care.

12                   But Empire came in within two months of the  
13 tornado and asked for Accounting Authority Order relief,  
14 and after there was some jostling about the profit that  
15 they wanted to make, they received that relief in the form  
16 of an AAO which this Commission approved and which ahead  
17 of that Empire and all of the other parties that chose to  
18 be involved in this case agreed. So that was a done deal.

19                   I believe the Commission's order says  
20 something about requiring the parties to comply with the  
21 terms of the Stipulation & Agreement. Well, what we  
22 really have here, then, insofar as the AAO is concerned is  
23 we have what I used to call a retrade. I didn't like the  
24 deal that I made. I made the deal. I don't -- I don't  
25 acknowledge or I don't disavow that deal that I made, but



1 I just don't like it, and so now I want to retrade it.

2 Well, Empire kind of has a history of doing  
3 that. They did it one other time with an IEC. They tried  
4 to implement an IEC when they weren't entitled to by an  
5 agreement, and the Commission said nope, you have to live  
6 by the agreement that you made. Now, if you didn't want  
7 to make those agreements, if an AAO wasn't satisfactory,  
8 then why did you sign it? So that will be the -- I think  
9 that's -- that's going to be a question.

10 Staff counsel makes reference to the  
11 restored dividend. Staff counsel did not make reference  
12 to but I think the evidence is going to show they restored  
13 incentive compensation to employees.

14 Let me touch very briefly on what I think  
15 is the significant concern here from our perspective.  
16 There is an old statement, Judge, in the law that says  
17 hard cases make bad law. This is without question a hard  
18 case. Empire performed admirably. You've heard Staff  
19 counsel deal with that. The Joplin community was severely  
20 damaged by that EF5 tornado, Extended Fujita Scale.  
21 That's the highest, I guess, that it gets.

22 And that has evoked a lot of sympathy. The  
23 Joplin Globe, usually a strong critic of Empire, seemed to  
24 be supportive of them this time. There is a lot of  
25 sympathy. My concern and my client's concern is that that

1 sympathy not extend to the point that Empire is allowed to  
2 capitalize and to profit from a tragedy to the community  
3 that they serve.

4 JUDGE BUSHMANN: Thank you. Opening for  
5 Missouri Energy Consumers Group?

6 MR. WOODSMALL: Good morning. To begin,  
7 it's important to realize that none of the parties here  
8 are trying to minimize the significance of the tornado  
9 that struck Joplin in May of 2011. Under any definition,  
10 this was a monumental disaster for the people of Joplin.  
11 Additionally, no one is attempting to minimize the efforts  
12 made by Empire in getting the electricity restored to  
13 Joplin following that tornado.

14 That said, the Staff and the customer  
15 groups here today differ from Empire in what the  
16 regulatory response to the tornado should be. Shortly  
17 after the tornado, Empire filed a request for an  
18 Accounting Authority Order designed to protect its  
19 earnings from the incremental cost of cleanup and repairs  
20 of the tornado.

21 On November 15th, 2011, a unanimous  
22 stipulation was executed by which the parties recommended  
23 that the Commission grant this request for an AAO.  
24 Dissatisfied with the relief offered by the AAO, Empire  
25 now asks that the Commission give it interim rate relief.

1                   How has the Commission typically determined  
2 interim rate requests? In a 1975 case involving Missouri  
3 Public Service, now part of KCPL GMO, the Commission  
4 enunciated its emergency standard. As the Commission  
5 stated, therefore, it is incumbent upon the company to  
6 demonstrate conclusively that an emergency does exist.  
7 The company must show that it needs additional funds  
8 immediately, that the need cannot be postponed, and that  
9 no other all alternatives exist to meet the need but rate  
10 relief.

11                   The Commission's emergency/near emergency  
12 standard has been repeatedly adopted by the Commission  
13 since that '75 case. In cases involving gas, electric,  
14 water and sewer companies, the Commission has applied the  
15 emergency/near emergency standard articulated by the  
16 Commission in the Missouri Public Service Company case.

17                   Recently, in 2010, the Commission  
18 considered the interim rate request of Ameren Missouri.  
19 In that case, the Commission couched the emergency  
20 standard in terms of extraordinary circumstances. You can  
21 see a quote from that case here. In that case, the  
22 Commission noted that Ameren continued to have a solid and  
23 stable investment grade credit rating. Furthermore, the  
24 Commission found that Ameren was still providing safe and  
25 adequate service. As such, the Commission denied Ameren's

1 request for interim rate relief.

2 In this case, Empire does not claim that it  
3 is facing an emergency. The evidence shows that Empire  
4 has a stable investment grade credit rating. Empire  
5 continues to provide safe and adequate service. There is  
6 no evidence that Empire's unable an access the capital  
7 markets. Instead, Empire simply points to two financial  
8 considerations to justify its request for interim rate  
9 relief.

10 First, Mr. Beecher states that the tornado  
11 caused a direct reduction in revenues. Remember that  
12 term, revenues. Second, Empire claims that because of the  
13 tornado, its retained earnings balance dropped to the  
14 point that Empire was required to suspend its quarterly  
15 dividend. As you will see, both of Empire's reasons are  
16 either misleading or not a result of the tornado.

17 It is interesting that Empire justifies its  
18 interim rate request on the basis of reduced revenues.  
19 There is no questioning that Empire may have seen some  
20 revenues be lost as a result of the tornado. Customers  
21 left. Those revenues were lost. But reduced revenues are  
22 a red herring. What is of primary importance to any  
23 company is earnings. You'll see here, while revenues may  
24 have been down slightly, Empire's earnings in 2011 hit  
25 record levels. Empire realized these record earnings

1 despite the tornado.

2                   Second, Empire justifies its interim rate  
3 request because of its low retained earnings balance and  
4 the subsequent need to suspend its quarterly dividend.

5 The evidence will show, however, that Empire's retained  
6 earnings balance was not a result of the tornado.

7 Historically Empire's paid out dividends that exceeded its  
8 earnings. As you can see here, over time the earnings per  
9 share very often were less than the dividends per share.  
10 You see that here, the dividends being the straight line  
11 and earnings very often coming short of dividends.

12                   When you don't have sufficient earnings to  
13 make dividends to your shareholders, those dividends must  
14 come out of retained earnings balance. Since Empire's  
15 dividend management policy repeatedly resulted in  
16 dividends exceeding earnings, Empire's retained earnings  
17 balance has been in a free fall for over a decade, and you  
18 can see that here. Since 2000 it has fallen almost  
19 90 percent. Graphically, you can see that free fall.  
20 Suddenly in 2011, with the record earnings and the  
21 suspension of the dividend, the retained earnings balance  
22 is back up.

23                   Ultimately you will conclude that Empire's  
24 financial justification for the interim rate request is  
25 misplaced. First, despite the reduced earnings, Empire's

1 realized record -- Empire realized record earnings in  
2 2011.

3 Second, Empire's need to suspend its  
4 dividend was not a result of the tornado. Rather, the  
5 need to suspend the dividend was a result of Empire's  
6 historic dividend policy that called for dividends that  
7 exceeded annual earnings.

8 Not only do Empire's financial reasons not  
9 support interim rate relief, the evidence indicates that  
10 customers have already taken steps to shield Empire's  
11 earnings from the detrimental financial effects of  
12 rebuilding after the tornado. As Staff witness  
13 Oligschlaeger points out, shortly following the tornado,  
14 Empire filed an application for an AAO. In November,  
15 Empire, Staff and customer representatives executed a  
16 stipulation asking the Commission grant the AAO.

17 What does the AAO provide? As provided in  
18 the stipulated AAO, Empire was permitted to defer the  
19 increased O&M costs associated with rebuilding after the  
20 tornado. By deferring these costs for later recovery from  
21 ratepayers, Empire did not see a decrease in earnings from  
22 these costs. Those costs weren't immediately booked  
23 against revenues. So they were -- they shielded the  
24 earnings from the detrimental effect of those costs.

25 Furthermore, the stipulated AAO permitted

1 Empire to defer any depreciation expense associated with  
2 capital projects resulting from the tornado. Again, by  
3 deferring this depreciation expense as well as  
4 capitalizing the carrying costs, Empire was shielded from  
5 a reduction in earnings resulting from the tornado.

6 In review, Empire had record earnings in  
7 2011. Empire received an AAO to shield these earnings  
8 from the detrimental effect of increased O&M costs as well  
9 as depreciation resulting from capital projects.

10 What then is this interim request about?

11 It is clear that Empire's interim increase request is  
12 designed to provide Empire with revenues that it believes  
13 were lost due to the customer loss resulting from the  
14 tornado. In essence, Empire believes that current  
15 customers, customers that paid their cost of service,  
16 customers that paid rates that led to record earnings,  
17 should pay even more to account for the revenues that were  
18 lost by other customers departing the Empire system.  
19 Those lost customers are no longer available for Empire to  
20 bill, so Empire wants to bill the customers who have paid  
21 all along.

22 The Commission has been very clear in  
23 recent years in response to requests for recoveries of  
24 lost revenues. In response to the same tornado, MGE, the  
25 gas utility in Joplin, sought an Accounting Authority

1 Order. In that AAO request, MGE sought to recover lost  
2 revenues. In January of this year, the Commission ruled  
3 on MGE's AAO request. In that order the Commission  
4 stated, ungenerated revenue never has existed, never does  
5 exist and never will exist. Revenue not generated from  
6 service not provided represents no exchange of value.  
7 There is neither revenue nor cost to record in the current  
8 period nor any in other. To issue an AAO for ungenerated  
9 revenue would create a phantom loss and an under-earned  
10 windfall for the company. Therefore, the Commission will  
11 deny the AAO as to ungenerated revenue.

12                   Seemingly, Empire once agreed with this  
13 position. In its AAO request filed in response to the  
14 Tornado, Empire initially sought to include lost revenues.  
15 Facing opposition from Staff and customer representatives,  
16 Empire dropped its request for lost revenues.

17                   Now, after once dropping that request,  
18 Empire is attempting to backdoor the same request through  
19 its pending request for interim rate relief. Certainly  
20 Empire's request does not meet the emergency/near  
21 emergency standard.

22                   Furthermore, Empire's request does not  
23 constitute extraordinary circumstances as set forth in the  
24 Ameren case. Given the lack of merit in Empire's request,  
25 MECG asks that the Commission consider the increased rate



1 case expenses incurred by Empire's request. In recent  
2 years, the Commission has seen rate case expenses spiral  
3 rapidly upward and out of control. Interim rate increase  
4 requests when the utility has realized record earnings  
5 certainly are not warranted. Yet until the Commission  
6 makes adjustment to rate case expense, utilities will  
7 continue to bring these type of cases to the Commission.

8 The consumer advocates in this case have  
9 been incredibly prejudiced as a result of defending  
10 against Empire's result. At the same time that we have  
11 had to process and defend against Empire's request, we  
12 have also been required to file testimony and prepare for  
13 hearings in the Ameren, KCP&L and GMO cases. In fact,  
14 these customers representatives, as Mr. Mills can attest  
15 to, will have to file their initial brief in this case two  
16 days before the Ameren hearings start.

17 Certainly the customer representatives'  
18 resources could be better devoted to that Ameren case.  
19 We're still -- those representatives are scheduled to file  
20 their Reply Briefs in this case while the Ameren hearings  
21 are going on. This interim rate request should have never  
22 been made, and MECG asks that the Commission reduce  
23 Empire's rate case expense for the cost associated with  
24 this request. Thank you.

25 JUDGE BUSHMANN: Thank you, Mr. Woodsmall.

1 I think we're ready for witness testimony. Would Empire  
2 like to call its first witness?

3 MR. SWEARENGEN: Sure. We'll call  
4 Mr. Beecher.

5 (Witness sworn.)

6 JUDGE BUSHMANN: You may be seated. You  
7 may proceed.

8 MR. SWEARENGEN: Thank you.

9 BRAD P. BEECHER testified as follows:

10 DIRECT EXAMINATION BY MR. SWEARENGEN:

11 Q. Would you state your name for the record,  
12 please.

13 A. Brad P. Beecher.

14 Q. By whom are you employed?

15 A. The Empire District Electric Company.

16 Q. And what is your position with Empire?

17 A. I am president and CEO.

18 Q. Did you cause to be prepared for purposes  
19 of this proceeding certain direct testimony in question  
20 and answer form?

21 A. I did.

22 Q. And do you have a copy of that testimony  
23 with you this morning?

24 A. I do.

25 Q. And is it your understanding it has been

1 marked for purposes of identification as Exhibit 1?

2 A. Yes.

3 Q. Are there any changes or corrections that  
4 you need to make with respect to that testimony?

5 A. I have one change.

6 Q. And where would that be?

7 A. On page 14, line No. 8, the year 2013  
8 should read 2012.

9 Q. So on page 14, line 8, 2013 should be 2012;  
10 is that correct?

11 A. That's correct.

12 Q. Are there any other changes that need to be  
13 made with regard to your testimony?

14 A. No, sir.

15 Q. Are the answers contained therein true and  
16 correct to the best of your knowledge, information and  
17 belief?

18 A. Yes, sir.

19 MR. SWEARENGEN: With that, your Honor, I  
20 would offer into evidence Exhibit 1 and tender Mr. Beecher  
21 for cross-examination.

22 JUDGE BUSHMANN: Empire Exhibit No. 1 has  
23 been offered. Are there any objections?

24 MR. WOODSMALL: Your Honor, not so much an  
25 objection but a clarification. It's my understanding that

1 for all of Empire's witnesses, the same testimony will be  
2 offered not only for the interim increase but for the  
3 permanent increase. I just want to make sure that we are  
4 only accepting this testimony for purposes of the interim  
5 increase and this in no way constitute acceptance into the  
6 record when we consider the permanent rate increase.

7 JUDGE BUSHMANN: Well, the testimony, the  
8 entire thing has been offered, that would go into the  
9 record, but it could be subject to the parties' right to  
10 cross-examine witnesses for other issues unrelated to the  
11 interim rate increase.

12 MR. WOODSMALL: And the right to object to  
13 those parts of the testimony?

14 JUDGE BUSHMANN: I will ask that if we have  
15 a hearing for the general rate increase, that Empire also  
16 offer the same exhibit into the record at that time so we  
17 make sure that we have a clear record we have two separate  
18 hearings going on.

19 MR. SWEARENGEN: We would be glad to do  
20 that, your Honor, although I would -- we do expect that  
21 the testimony that we've identified as appropriate for the  
22 interim case be accepted into evidence in connection with  
23 this proceeding.

24 JUDGE BUSHMANN: So subject to that,  
25 Mr. Woodsmall, would you have any objection?

1 MR. WOODSMALL: No. Thank you.

2 JUDGE BUSHMANN: Anybody else want to make  
3 any objection?

4 MR. CONRAD: Well, your Honor, counsel's  
5 statement goes as far as it goes, but he indicated it was  
6 for this proceeding, and this proceeding has not been  
7 designated as a separate case.

8 JUDGE BUSHMANN: That's correct.

9 MR. CONRAD: So it is in -- in that sense,  
10 I'm raising the same question I guess that Mr. Woodsmall  
11 did, is how are we going to distinguish that? Is this  
12 like ER-2012-0345I or something else?

13 JUDGE BUSHMANN: It's one case.

14 MR. CONRAD: So if it goes in for one case,  
15 then there is no --

16 MR. SWEARENGEN: We have no objection if  
17 they want to ask questions about it later on in the  
18 permanent case if we have a hearing on it. We don't have  
19 any problem with that.

20 MR. CONRAD: Would counsel then have  
21 objection -- I don't know that this is going to happen,  
22 Mr. Swearngen, but would counsel then have an objection  
23 or a timeliness objection if somebody wanted to move to  
24 strike something in the context of the permanent case?

25 MR. SWEARENGEN: Well, I think it needs to

1 go into the record one time, and that's today. So if  
2 anyone has any questions to Mr. Beecher about this  
3 testimony, they need to ask him now with regard to you  
4 ruling on the admissibility of it. What I offered is, if  
5 they want to come back later on in the permanent case at  
6 the hearing, if we have one, and ask him questions again  
7 about that testimony, we would have no objection. But we  
8 need to make a record today to support our request, and  
9 that's his testimony.

10 JUDGE BUSHMANN: Ms. Kliethermes?

11 MS. KLIETHERMES: I admittedly had not  
12 thought this through before, but could we perhaps use  
13 something like a motion to exclude as opposed to a -- in  
14 the general -- if hypothetically there is a party who  
15 wishes to move to strike or move to reject the admission  
16 in the general rate case, could we instead consider that  
17 an exclusion from consideration in the general rate case?

18 JUDGE BUSHMANN: I'm not sure I understand  
19 how that would work.

20 MS. KLIETHERMES: I'm not sure I do either.

21 MR. SWEARENGEN: We just have one case,  
22 your Honor. We're going to make a record in one  
23 proceeding, and the interim is part of that. My offer  
24 simply is we need to get it into the record today. They  
25 inquire. If they want to inquire further when we get to

1 the permanent case, that's fine, but we need to make a  
2 record today in connection with the interim.

3 MR. MILLS: If I may, I believe that the  
4 Commission's intending to make two decisions in this case;  
5 is that correct?

6 JUDGE BUSHMANN: That's my understanding.

7 MR. MILLS: If there's going to be a  
8 decision based -- if there's going to be a Report and  
9 Order that goes to the merits of the interim rate request,  
10 that will be based on the evidentiary record established  
11 here today. Then later the Commission will begin a new  
12 evidentiary record to decide the permanent case, and at  
13 that point all of this evidence will have to be offered  
14 again and objections as to the relevance of that  
15 proceeding will be meritorious or not, but they won't be  
16 precluded by the Commission having made an evidentiary  
17 record for the purposes of making a decision on the  
18 interim rate request.

19 So it's my position that it will be a new  
20 record and that we will have the ability to make  
21 objections as we see fit at that time to the testimony  
22 which will be again offered with respect to the  
23 evidentiary record that will support the decision on  
24 permanent rates.

25 MR. WOODSMALL: That's acceptable to me.

1 MR. CONRAD: I think I would agree with  
2 Mr. Mills' characterization of it. I would go one step  
3 further and state that it is my recollection, and I  
4 haven't -- as Staff counsel alluded, I haven't gone  
5 through and tried to push a pencil through all that, but  
6 it is my recollection, Judge, that in the past when Empire  
7 has filed, and it has frequently done so, interim rate  
8 requests, they have been assigned a separate case number  
9 and proceedings went forward on the matter in that. Now,  
10 this is -- this is a little different, but I think  
11 Mr. Mills makes a good point.

12 JUDGE BUSHMANN: My understanding based on  
13 case law is this is a single proceeding and it's a single  
14 case. We're having two separate hearings on different  
15 issues. The exhibit has not been -- portions of the  
16 exhibit have not been designated just for this case.

17 MR. CONRAD: Well, maybe your reading of  
18 the law is different than mine, but my recollection is the  
19 courts have said that an interim rate case is an ancillary  
20 proceeding to a major -- to a full rate case and cannot  
21 exist on its own.

22 JUDGE BUSHMANN: That's correct. But this  
23 exhibit has been offered without any designation of  
24 particular lines or pages. So the exhibit's being offered  
25 into evidence as it is, and the Commission will consider



1 the portions that are relevant to it in making its  
2 decision about the interim rate issue.

3 MR. WOODSMALL: Well, if that's the  
4 direction we're heading, then, I'd move to strike starting  
5 on page 13, line 6, section entitled resource planning  
6 decisions, continuing through page 14, line 19, resource  
7 planning decisions, near as I can tell are irrelevant to  
8 any decision on interim rate relief.

9 JUDGE BUSHMANN: Can you give me those page  
10 numbers again?

11 MR. WOODSMALL: Page 13, line 6 to page 14,  
12 line 19. I don't deny it will have relevance to the  
13 permanent rate increase, by it's irrelevant to the current  
14 portion that we're here to hear.

15 JUDGE BUSHMANN: Well, it's complicated  
16 because I don't want to make a decision -- it might be  
17 relevant to other issues in this case in total.

18 MR. WOODSMALL: And that's a dilemma. If  
19 you accept it now, you are making a decision that may  
20 affect later.

21 JUDGE BUSHMANN: That's correct.

22 MR. WOODSMALL: I'm asking you not to make  
23 that decision. Just accept it for purposes of what we're  
24 here for and let -- as Mr. Mills said, let them offer it  
25 again for the purpose of the permanent rate increase

1 later.

2 JUDGE BUSHMANN: What I don't want to do is  
3 to go through and try and exclude anything that's  
4 unrelated to the interim rate increase for each witness'  
5 testimony.

6 MR. WOODSMALL: And I'm not trying to  
7 either. I'm trying to exclude anything that is irrelevant  
8 to the interim rate increase.

9 MR. SWEARENGEN: Your Honor, I heard this  
10 morning people say we need to consider all relevant  
11 factors. Of course, that's the basis of this testimony.  
12 It goes to that particular issue, and that's for the  
13 Commission to decide. That's not for the lawyers to  
14 decide what's relevant or what is not relevant.

15 MR. WOODSMALL: It's not for the lawyers to  
16 decide? It's certainly for the lawyers to object to.

17 MR. SWEARENGEN: That's fine.

18 MR. WOODSMALL: If we -- if he wants to  
19 concede that we're going to judge this by all relevant  
20 factors, then the fact that they're not bringing in  
21 payroll, ROE, issues like that means that we're not  
22 considering all relevant factors, and I would agree with  
23 Mr. Mills, we need to cut this short.

24 MR. SWEARENGEN: We are considering all  
25 relevant factors, Mr. Woodsmall, as to written testimony.

1 MR. WOODSMALL: ROE isn't one of the issues  
2 that's being addressed today, so it can't be an all  
3 relevant factor consideration.

4 I think the easy way is, as Mr. Mills said,  
5 we have two different records, one for the interim  
6 increase --

7 JUDGE BUSHMANN: As I said, in a general  
8 rate increase hearing, on those particular issues, I am  
9 going to ask that Empire offer this exhibit and all  
10 witnesses' exhibits again so that for the transcript and  
11 make it clear for the record in case any portion of this  
12 might go up on appeal, that there's a clear record that  
13 there -- that that exhibit was admitted. It may be  
14 unnecessary to do that, but for clarification purposes, I  
15 think that would be wise.

16 MR. WOODSMALL: And will I be able to  
17 object at that time?

18 JUDGE BUSHMANN: You can object -- you can  
19 question witnesses.

20 MR. WOODSMALL: Will I be able to object to  
21 the testimony at that time, or is this my one chance to  
22 object to the testimony?

23 JUDGE BUSHMANN: This is your chance to  
24 object.

25 MR. WOODSMALL: Okay. Then I -- again,

1 given what we're here for, interim rate relief, I object  
2 on the basis of relevance to page 13, line 6 through  
3 page 14, line 19, all dealing with resource planning  
4 decisions.

5 JUDGE BUSHMANN: I'm going to overrule that  
6 objection because I think it might be relevant to other  
7 things in this case other than the interim rate increase.

8 MR. WOODSMALL: But we're not here for that  
9 today.

10 JUDGE BUSHMANN: And the Commission can  
11 make its decisions about which portions of the transcript,  
12 which portions of testimony it thinks might be relevant to  
13 this issue, and I --

14 MR. WOODSMALL: Which issue?

15 JUDGE BUSHMANN: Interim rate increase.

16 MR. CONRAD: Judge, I think I might be  
17 heard, I think on that. We had filed by Empire a  
18 designation of interim rate request testimony, and I  
19 believe this was filed in EFIS. I don't have the EFIS  
20 citation.

21 JUDGE BUSHMANN: Yes, it was.

22 MR. CONRAD: And that designated direct  
23 testimony of Mr. Beecher, Mr. Walters, Keith, direct  
24 testimony of Sager, and then portions of Joan Land's  
25 testimony, but it is -- that's signed by Ms. Carter, and

1 that's pretty much what Empire has said is the interim  
2 rate request testimony. So arguments to me about  
3 something else you want to get into relevant factors,  
4 Mr. Woodsmall point out ROE, payroll, none of those things  
5 are here, and those -- that's by Empire's own designation.

6 I think, Judge, maybe I've been at this too  
7 long, but I think what's happening here is we're trying  
8 to, in effect, try two cases at once, and that's -- that's  
9 why I agreed, I think, with Mr. Mills' suggestion. He's  
10 been at this a while, too. I appreciate the fact that you  
11 want to make it simple, but I also think that you have to  
12 recognize that you can't have it both ways. You cannot  
13 have a hearing that is limited to issues in the interim  
14 case and then somehow reach over and take that in when you  
15 go to the permanent case.

16 You agreed with me that this proceeding is  
17 ancillary to, and it needs to be so treated, not -- not  
18 waiving objections. The right to cross, that's fine. But  
19 as Mr. Woodsmall points out, there may be stuff in here in  
20 these other witnesses' testimony that's objectionable with  
21 respect to the major case. And that's -- that's not how  
22 this works. I appreciate that you want to make it simple  
23 and get these evidentiary questions out of the way and  
24 throw it all to the Commission, but, unfortunately,  
25 counsel's argument about the Commission, sure, they get to

1 make the decision and they'll make it, as Mr. Mills points  
2 out, to the issues. At least that seems to be what's  
3 being set up. But counsel need to have, and it becomes a  
4 matter of due process, that we need to have the ability to  
5 deal with what it is we're dealing with today, which is  
6 the interim case, and tomorrow -- that's when this was  
7 set, and that's what this was -- this was set about.

8 And, you know, you just really cannot have  
9 it both ways, Judge. With all respect, I think --

10 JUDGE BUSHMANN: Mr. Swearengen?

11 MR. MILLS: Before you have --

12 MR. SWEARENGEN: We have designated the  
13 testimony in the pleading that Mr. Conrad referred to as  
14 the testimony that we intended to offer and hoped to have  
15 received into evidence to support our interim rate  
16 request.

17 JUDGE BUSHMANN: And you have designated it  
18 as interim rate testimony. You designated the entire  
19 exhibit. Would you be willing to allow counsel to object  
20 to this when it's reintroduced at a later hearing, to  
21 object to based on issues related to the general case?

22 MR. SWEARENGEN: You know, that -- the  
23 concern I have with that is, is that, as I understand it,  
24 this is -- this is a part of -- the interim is part of the  
25 permanent case, and there's going to be one record made.

1 So I don't know how you can admit it at this point and  
2 then reject it later on. I don't know how the  
3 Commission's going to do that. I don't have any problem  
4 if they want to make a bunch of objections and the  
5 Commission consider them and take them, but I think we  
6 need to move ahead with the hearing and that's what I  
7 would ask.

8 MR. CONRAD: Judge, I agree we need to move  
9 ahead with the hearing. I think what this is indicating  
10 is that somebody didn't think this whole process through  
11 very well.

12 JUDGE BUSHMANN: Any other comments?

13 MR. MILLS: Yes, Judge. One of the issues  
14 that we have here is that although -- take, for example,  
15 Scott Keith's testimony. He's got a table of contents  
16 with a dozen things on it, only one of which is interim  
17 rate relief, which comes out to be about 2 pages out of  
18 30. So we won't have any evidence in this record in this  
19 portion of the proceeding that counters any of his other  
20 testimony, but yet we're going to admit some of this, and,  
21 in fact, it covers issues that most of us really haven't  
22 reviewed as to whether or not they're objectionable at  
23 this point.

24 So, you know, to require us at this point  
25 to go through the testimony, figure out what might be

1 objectionable with respect to, you know, rate design, for  
2 example, in the permanent case or SPP transmission costs  
3 with respect to the permanent case, I certainly was not  
4 prepared to do that this morning. I did not believe that  
5 that testimony was going to be offered or our objections  
6 were going to be required to be made today or forever  
7 waived.

8                   But if that's going to be your ruling, then  
9 I'm going to have to request a recess for a fairly  
10 significant amount of time to be able to look through this  
11 testimony for the purposes of determining whether or not  
12 there's things that are objectionable with respect to the  
13 permanent rate case.

14                   JUDGE BUSHMANN: Well, I think what I'd  
15 like to do, then, is to -- the exhibits were offered for  
16 purposes of the issues relating to the interim rate  
17 increase. So I think what I would like to do, based on  
18 what I hear, nobody has any objection to entering that  
19 exhibit into the record for purposes of consideration of  
20 the interim rate increase. Am I correct about that?

21                   MS. KLIETHERMES: A point of clarification,  
22 Judge. As Mr. Mills indicated, would that also include  
23 other sections of that testimony that are not related to  
24 the interim rate increase?

25                   JUDGE BUSHMANN: Well, again, I can't speak



1 for the Commissioners as to what they might consider  
2 relevant to the interim rate increase. So it's hard for  
3 me to say right now which portions would be excluded. The  
4 company has not designated specific portions of the  
5 exhibit or the testimony for other purposes. They've said  
6 it was all related to the interim rate increase.

7 So I think that I would like to admit  
8 the -- admit the exhibit into the record for the purposes  
9 only of the interim rate increase request, subject to  
10 counsel's opportunity to cross-examine the witness at the  
11 general rate increase, cross-examine that witness relating  
12 to those other issues. What I'm trying to do is separate  
13 the issues here so that counsel can cross-examine today on  
14 the issues related to the interim rate increase, they can  
15 cross-examine later on issues related to general rate  
16 increase, and admit them for that purpose.

17 Now, if counsel want to object to portions  
18 of the testimony that relate to the general rate increase,  
19 I think I would allow that.

20 MS. KLIETHERMES: Judge, if I could make a  
21 clarification for the record.

22 JUDGE BUSHMANN: Yes.

23 MS. KLIETHERMES: I would just note that  
24 Staff did not attempt in its rebuttal testimony to rebut  
25 any issues not related to the interim rate relief under

1 the standards that were discussed in Empire's initial and  
2 supplemental filing. I think that Mr. Swearngen's  
3 mention today of just and reasonable rates is the first I  
4 can recall hearing of that as it relates to the interim  
5 rate relief request, and thus we have not attempted to  
6 address all relevant factors in our rebuttal of their  
7 interim rate relief request.

8 JUDGE BUSHMANN: Okay. So just to make  
9 sure that we're all clear, any exhibits that are offered  
10 today for the purposes of consideration of the interim  
11 rate request would be offered for those purposes only,  
12 subject to counsel's ability, at a later, in another  
13 hearing related to the general rate increase, to  
14 cross-examine the same witness about the general rate  
15 increase issues and, if necessary, to object to testimony  
16 related to the general rate increase.

17 We'll separate the two issues related to  
18 the issues -- I'm sorry. We'll separate the two hearings  
19 relating to the issues involved, and that way counsel are  
20 going to have a chance to bring those issues with the  
21 general increase up at a later time.

22 So with that all being said --

23 MR. SWEARENGEN: That's perfectly agreeable  
24 to the company. I guess the one comment I would like to  
25 make, I'm kind of surprised to hear counsel for the Staff

1 say that the first time she's heard us mention just and  
2 reasonable rates was this morning when that statement  
3 appears at least three times in our statement of position  
4 on the issues to be heard.

5 JUDGE BUSHMANN: So --

6 MS. KLIETHERMES: I'll take counsel's word  
7 for that. I have no reason to doubt it.

8 JUDGE BUSHMANN: Empire District Exhibit  
9 No. 1 will be received into the record subject to the  
10 conditions that I've described, and when I -- if I admit  
11 anything, any of these exhibits into the record relating  
12 to testimony today, those -- there will be a continuing  
13 condition that those are all going to be subject to other  
14 counsel, other parties' opportunity at a later time.

15 (EMPIRE EXHIBIT NO. 1 WAS RECEIVED INTO  
16 EVIDENCE.)

17 JUDGE BUSHMANN: Mr. Beecher, we kept you  
18 waiting. I think we're ready to go ahead with any  
19 cross-examination, and first cross-examination would be  
20 Missouri Energy Consumers Group.

21 MR. WOODSMALL: No questions, your Honor.

22 JUDGE BUSHMANN: Missouri Energy Users  
23 Association?

24 MR. CONRAD: I do have a few, your Honor.  
25 Would you mind very much if I proceeded from here because

1 I've got some exhibits to do?

2 JUDGE BUSHMANN: That's quite all right.

3 CROSS-EXAMINATION BY MR. CONRAD:

4 Q. Good morning, Mr. Beecher.

5 A. Good morning, Mr. Conrad.

6 Q. I'm going to show you a couple of exhibits  
7 here, and we'll go forward with them, I hope.

8 MR. CONRAD: Judge, these are the -- these  
9 are what I would called forensic exhibits, so I did not  
10 include these on the list of prepared testimony, but I  
11 would presume we would just take the next number.

12 JUDGE BUSHMANN: Fine.

13 MR. CONRAD: So this would be Exhibit 2.

14 (MEUA EXHIBIT NO. 2 WAS MARKED FOR  
15 IDENTIFICATION.)

16 BY MR. CONRAD:

17 Q. Mr. Beecher, let me direct your attention,  
18 please, to the document that I've handed you that for the  
19 purposes of identification has been marked as MEUA 2. Do  
20 you have that before you, sir?

21 A. Yes, sir.

22 Q. Do you recognize that document?

23 A. It appears to be the application for our  
24 AAO proceeding.

25 Q. By whom is it signed, sir?

1 A. Mr. Jim Swearngen.

2 Q. His signature appears on page 7; am I  
3 correct?

4 A. That's correct.

5 Q. Now, insofar as you're aware, this was  
6 filed in June of 2011, I believe June 6th, although the  
7 document itself doesn't seem to bear a date.

8 A. I don't know the exact date, but the  
9 affidavits are signed on June the 6th of 2011.

10 Q. And you anticipated my next question, but  
11 let me finish with the Swearngen endorsement on page 7.  
12 That was at a period of time that you were CEO of Empire,  
13 correct?

14 A. Correct.

15 Q. Was Mr. Swearngen authorized to sign that  
16 document on your behalf?

17 A. Yes, he was.

18 Q. Okay. Look at the last page, and you made  
19 reference to an affidavit signed by -- it appears to be  
20 signed by Kelly Walters?

21 A. Yes.

22 Q. And dated June 6th; am I correct?

23 A. Yes.

24 Q. Do you know Kelly Walters?

25 A. Yes, I do.

1 Q. Do you know her well enough to know that  
2 that is her signature or not?

3 A. I believe it to be.

4 Q. Was she authorized to sign that affidavit  
5 on behalf of Empire?

6 A. Yes, she was.

7 Q. Now, the material that has been marked for  
8 identification as Exhibit 2, as MEUA Exhibit 2, includes a  
9 list of appendices. I believe that's on page 10.

10 A. I found page 10.

11 Q. And that refers to two attachments,  
12 Appendix 1 and Appendix 2, and both of those are there;  
13 am I correct?

14 A. Yes, they are.

15 MR. CONRAD: Your Honor, I would at this  
16 time move admission of MEUA Exhibit 2, both on the  
17 foundation of the witness' testimony and also on the basis  
18 that this is a record that has been filed with the  
19 Commission. Although it does not bear a case number, I  
20 believe it is -- somebody may want to check me on this,  
21 but I believe it is EU-2011-0387.

22 JUDGE BUSHMANN: MEUA Exhibit 2 has been  
23 offered. Are there any objections?

24 (No response.)

25 JUDGE BUSHMANN: Hearing none, it will be

1 received into the record.

2 (MEUA EXHIBIT NO. 2 WAS RECEIVED INTO  
3 EVIDENCE.)

4 MR. CONRAD: Your Honor, I have another  
5 exhibit, please. This would be MEUA 3.

6 (MEUA EXHIBIT NO. 3 WAS MARKED FOR  
7 IDENTIFICATION.)

8 BY MR. CONRAD:

9 Q. Mr. Beecher, what has been laid before you  
10 and marked as MEUA Exhibit 3 for purposes of  
11 identification, please take a look at that document and  
12 then I will ask you in a moment if you are able to  
13 identify that document?

14 A. I have reviewed briefly the document.

15 Q. Do you recognize it, sir?

16 A. Yes, I do.

17 Q. And could you identify it for the benefit  
18 of the record, please?

19 A. It's entitled Order Approving and  
20 Incorporating Unanimous Stipulation & Agreement. It's for  
21 File No. EU-2011-0387.

22 Q. Now, the first few pages of that, I believe  
23 through and inclusive page 5, are material that has been  
24 prepared by the Commission; am I correct?

25 A. That is the Commission order itself and not

1 the appendix.

2 Q. And if you looked at page 5, correct me if  
3 I am wrong, but it makes reference to a copy of the  
4 Stipulation & Agreement is attached to this order as  
5 Appendix A. Did I read that correct?

6 A. You did.

7 Q. And is that Stipulation & Agreement then  
8 attached to the document that I have handed you?

9 A. It appears to be.

10 Q. Do you have any reason to believe at this  
11 time that that is not the Stipulation & Agreement that the  
12 Commission approved?

13 A. No.

14 Q. Let me direct your attention, sir, to the  
15 page that is numbered as page 4 of that stipulation, and  
16 instead of actual manual signatures, there appear to be  
17 electronic signatures there, one for the Empire District  
18 Company. Do you see that?

19 A. Yes, sir.

20 Q. And is that the electronic signature of  
21 Mr. Swearngen?

22 A. I assume it to be.

23 Q. And is he your attorney?

24 A. He is.

25 Q. Was he authorized to sign that document on



1 **behalf of Empire?**

2 A. He was.

3 MR. CONRAD: Your Honor, I would move  
4 admission of what we have previously marked as MEUA  
5 Exhibit 3, both on the basis of the witness' testimony  
6 here live and also because it is a filed record from the  
7 Commission.

8 JUDGE BUSHMANN: Any objections?

9 (No response.)

10 JUDGE BUSHMANN: MEUA Exhibit 3 is received  
11 into the record.

12 (MEUA EXHIBIT NO. 3 WAS RECEIVED INTO  
13 EVIDENCE.)

14 MR. CONRAD: Your Honor, I have one --  
15 another exhibit, which would be MEUA 4.

16 (MEUA EXHIBIT NO. 4 WAS MARKED FOR  
17 IDENTIFICATION.)

18 BY MR. CONRAD:

19 Q. Mr. Beecher, I have placed before you or  
20 caused to be placed before you what has been marked for  
21 identification purposes as MEUA Exhibit 4. Do you have  
22 that document, sir?

23 A. I do.

24 Q. And can you identify that document for us?

25 A. It's entitled Notice of Withdrawal, and

1 it's in Case No. EU-2011-0387.

2 Q. And, Mr. Beecher, are there at least two,  
3 two separate signature blocks on that document and do they  
4 bear the signature of Mr. James C. Swarengen?

5 A. Yes, they do.

6 Q. He is your attorney, correct?

7 A. He still is.

8 Q. And he is -- was at the time this was filed  
9 authorized to sign and file that on behalf of Empire  
10 District?

11 A. He was.

12 Q. Do you have any reason to believe that  
13 that's an incorrect portrayal of that document?

14 A. I do not.

15 MR. CONRAD: Your Honor, I would move  
16 admission of MEUA Exhibit 4 on the basis of the witness'  
17 testimony and also that this, too, is a document filed  
18 with the Commission.

19 JUDGE BUSHMANN: Any objections?

20 (No response.)

21 JUDGE BUSHMANN: MEUA Exhibit 4 is received  
22 into the record.

23 (MEUA EXHIBIT NO. 4 WAS RECEIVED INTO  
24 EVIDENCE.)

25 BY MR. CONRAD:

1 Q. Now, Mr. Beecher, is it true that Empire  
2 received an Accounting Authority Order which allowed it to  
3 defer operation and maintenance expenses associated with  
4 the tornado?

5 A. The Accounting Authority Order speaks for  
6 itself, but that is one of the components that it allows.

7 Q. And that's the document that we have  
8 previously identified to you as what's now been marked and  
9 admitted as MEUA Exhibit 3; is that correct?

10 A. That's correct.

11 Q. Did that AAO also allow Empire to defer  
12 depreciation expenses associated with plant additions  
13 resulting from the tornado?

14 A. It did.

15 Q. Now, let me refer you, sir, to your direct  
16 testimony, page 9, and I draw your attention really to the  
17 answer that is referred to, I think it begins on line 16  
18 and I want to ask you to look at line 18, the reduction --  
19 and I'll read, the reduction in revenue and increase in  
20 costs due to the tornado together have reduced Empire's  
21 earnings levels and cannot be reflected in rates until the  
22 Commission authorizes new rates for Empire. Did I read  
23 that correctly, sir?

24 A. You did.

25 Q. Now, in light of the AAOs, which are --

1 actually the AAO, only one, do you still believe that  
2 increases in costs due to the tornado have reduced  
3 Empire's earnings level?

4 A. All direct costs associated with the  
5 tornado that we could identify have been deferred. I  
6 can't say, for instance, if we had to borrow more money,  
7 if that increased our interest expense, but it sure could  
8 have.

9 Q. Would you agree with me that the earnings  
10 are protected through the Accounting Authority Order?

11 A. Recovery -- or the expenses associated with  
12 the O&M and the capital additions are protected.

13 Q. Now, moving ahead, sir, on page 13 of your  
14 direct testimony, you discuss additions at the Riverton  
15 and Asbury plants associated with the compliance plan  
16 resulting from new air quality rules issued by the  
17 Environmental Protection Agency?

18 A. The answer starting on line 20, sir?

19 Q. Uh-huh.

20 A. Yes.

21 Q. Now, did the Environmental Protection  
22 Agency, that's the bunch in Washington; is that right?

23 A. The EPA is a federal agency.

24 Q. I mean, they're broken up into regions, but  
25 the main office is still in DC?

1           A.       They're a federal agency headquartered in  
2 Washington, D.C.

3           **Q.       Now, did the tornado that struck in May of**  
4 **2011 reach Washington?**

5           A.       No, sir.

6           **Q.       So the rules that you're referring to**  
7 **really are not directly related to the tornado; is that**  
8 **correct?**

9           A.       The rules themselves are not. Our ability  
10 to finance those future additions is directly related to  
11 our financial health and, hence, related to this case.

12          **Q.       Now, those are the new air quality rules,**  
13 **sometimes referred to as CSAPR; am I correct?**

14          A.       I'm mostly referring to the mercury MACT or  
15 maximum achievable control technology regulations.

16          **Q.       The broader encompassing references is what**  
17 **sometimes I've heard this -- I never can figure out how**  
18 **they got CSAPR out of that, but is it CSAPR generally that**  
19 **we're talking about?**

20          A.       No, not really. There are mercury MACT  
21 legislation and regulations that go directly towards the  
22 regulation of mercury. There is the CSAPR or CSAPR as you  
23 refer to that relate to SOX or NOX or sulphur dioxide and  
24 nitrogen oxides, and those were a replacement for the  
25 Clean Air Interstate Rule or CAIR rules that were put in

1 place back in the 2006 or '07 time frame, to my  
2 recollection.

3 **Q. Have you finished?**

4 A. I have.

5 **Q. Now, you testified a moment ago that the  
6 tornado did not have effect in Washington, D.C., but it  
7 did have some effect, as you assert, on your ability to  
8 finance for compliance; am I correct?**

9 A. I said the tornado did not hit Washington,  
10 D.C. There clearly was action in Washington, D.C. as a  
11 result of the tornado as community development block grant  
12 money was allocated to Joplin.

13 **Q. Did you ask the Environmental Protection  
14 Agency for any kind of an extension of the compliance  
15 timetable under your compliance plan?**

16 A. We did not.

17 **Q. Do you contemplate an extension of that  
18 timetable?**

19 A. We do not anticipate asking for an  
20 extension of that timetable.

21 **Q. So I take it that you are still planning to  
22 make those additions?**

23 A. We are still planning to make the addition  
24 at our Asbury facility, which would include a scrubber and  
25 baghouse.

1           **Q.       Were there other additions beside the**  
2 **Asbury?**

3           A.       There were no other additions directly  
4 associated with mercury MACT. The retirement of Riverton,  
5 its transition to gas is also an impact but is not a new  
6 project.

7           **Q.       Mr. Beecher, I believe Mr. Woodsmall put up**  
8 **on the screen what has been regarded generally as the**  
9 **Commission's emergency standard for interim relief. Do**  
10 **you recall that? I'm not going to ask you whether you**  
11 **agree with it or not. Just asking if you recall it.**

12          A.       I saw Mr. Woodsmall put up slides in his  
13 opening position statement. I can't say that I reviewed  
14 or read them all.

15          **Q.       Is Empire in a position of a financial**  
16 **emergency?**

17          A.       Clearly I believe we had a financial  
18 situation on May 22nd. Today, if the standard is, in  
19 fact, you can't make payroll tomorrow, I am not concerned  
20 that we're not going to make payroll tomorrow. We need to  
21 manage this business with a long-term view, and over the  
22 course of time, you know, it's hard to look at one  
23 snapshot today, but if the standard is I can't make  
24 payroll tomorrow, then I am not in an emergency.

25          **Q.       If the standard, Mr. Beecher, were related**

1 to Empire's ability to provide safe and adequate service  
2 in its service territory, is Empire presently, not on  
3 May 22 of 2011, but on, I believe, September the 10th of  
4 2012, are you unable, you being Empire, is Empire unable  
5 to meet its obligations of safe and adequate service in  
6 the service areas to which it is assigned?

7 A. I believe as of September 10th we are able  
8 to provide safe and adequate service.

9 MR. CONRAD: Your Honor, I believe that is  
10 all that I have for Mr. Beecher with respect to the  
11 interim matter which I understand is before us today. I  
12 might have more with respect to more general things when  
13 we get to the major rate case, but I won't intend to go  
14 into that right now. Thank you.

15 JUDGE BUSHMANN: Thank you. Cross by  
16 Public Counsel?

17 MR. MILLS: No questions at this time.

18 JUDGE BUSHMANN: Cross-examination by  
19 Staff?

20 MS. KLIETHERMES: Thank you, Judge.

21 CROSS-EXAMINATION BY MS. KLIETHERMES:

22 Q. Good morning, Mr. Beecher.

23 A. Good morning.

24 Q. Do you have a copy of your rebuttal  
25 testimony with you?



1 A. I didn't file rebuttal testimony.

2 Q. I'm sorry. Your direct testimony.

3 A. I do.

4 Q. Could you turn to page 11?

5 A. I'm there.

6 Q. Looking at lines 13 to 15, do you state,  
7 given Empire's bond indenture covenant, the company did  
8 not believe it could absorb the lost revenues from the  
9 tornado without taking action? Did I read that correctly?

10 A. You did.

11 Q. Assuming a continued dividend of \$1.28, how  
12 long could Empire have absorbed the lost revenues before  
13 violating the retained earnings covenant?

14 A. Could you restate that question?

15 Q. Assuming a continued dividend of \$1.28, how  
16 long do you believe Empire could have absorbed the lost  
17 revenues before violating the retained earnings covenant?

18 A. As of today or as of the date of the  
19 tornado?

20 Q. As of the date.

21 A. Assuming the tornado did occur?

22 Q. Did not occur.

23 A. Assuming the tornado did not occur?

24 Q. Yes.

25 A. How long could it -- one more time. I'm

1 sorry about all the qualifications, but this is a precise  
2 answer for a precise question.

3 **Q. I was trying to make a short question and**  
4 **realize the errors of my ways.**

5 A. Okay.

6 **Q. Assuming a continued dividend of \$1.28, at**  
7 **the time of the tornado but if the tornado had not**  
8 **occurred, how long could Empire have absorbed the lost**  
9 **revenues before violating the retained earnings covenant?**  
10 **I'm sorry. Assuming the tornado had occurred.**

11 A. Clearly the date that we suspended the  
12 dividend, as we looked out at the disaster, we didn't know  
13 how long customers were going to be out of service or how  
14 much revenue was going to be impacted, what our expenses  
15 were going to be. We didn't know what Commission approval  
16 was going to be. As somebody brought up earlier, our  
17 retained earnings at the end of March of 2011 were  
18 4.1 million. We had declared a 13 not only million dollar  
19 dividend, which in essence took us to negative 9 million  
20 retained earnings at the time the storm hit. That is a  
21 pretty typical seasonal dip, and our mortgage indenture  
22 allowed us to get to negative 10.75 million, with a couple  
23 adjustments that are described in my testimony.

24 We believed if we could earn the Commission  
25 authorized rate of return or something approaching that,

1 that our earnings should support that, and we had a longer  
2 term plan to grow out of our retained earnings situation.

3 Q. Let me -- I think this next question may be  
4 highly confidential. Let me confer with counsel. I've  
5 been advised this is not highly confidential.

6 I understand that you did not receive your  
7 normal bonus for 2011; is that correct?

8 A. That is correct.

9 Q. And was that related to the decision to  
10 suspend the dividend?

11 A. Yes, it was.

12 Q. Did you receive a special incentive payment  
13 for 2011?

14 A. The board of directors' compensation  
15 committee decided to give an arbitrary, or discretionary I  
16 guess is the word they used, award to the officer group  
17 which was much smaller than the typical cash incentive  
18 deferred -- cash incentive, performance stock and  
19 restricted stock.

20 Q. When you say much smaller, what was the  
21 amount and what would have the amount been that was  
22 suspended?

23 A. The amount was \$250,000 for the officer  
24 group. It would have been, and I don't know the exact  
25 number, but roughly a little bit more than double that.

1 MS. KLIETHERMES: That's all I have for you  
2 for now on this interim matter, Mr. Beecher, and thank  
3 you. You've been very cooperative this morning during the  
4 long discussion that preceded your examination.

5 THE WITNESS: Thank you, ma'am.

6 JUDGE BUSHMANN: No questions from the  
7 bunch, so there will be no recross. Redirect?

8 MR. SWEARENGEN: No redirect, your Honor.  
9 Thank you.

10 JUDGE BUSHMANN: Mr. Beecher, you may step  
11 down. Thank you.

12 It appears that this might be a good time  
13 to take a break. So why don't we recess and then start  
14 again at 10:45.

15 (A BREAK WAS TAKEN.)

16 JUDGE BUSHMANN: All right. Why don't we  
17 get started again. Mr. Swearngen, do you want to call  
18 your next witness?

19 MR. SWEARENGEN: Yes. Thank you, your  
20 Honor. Call Kelly Walters, please.

21 JUDGE BUSHMANN: Ms. Walters, can you raise  
22 your right hand?

23 (Witness sworn.)

24 JUDGE BUSHMANN: Please be seated. You may  
25 proceed.

1 MR. SWEARENGEN: Thank you.

2 KELLY WALTERS testified as follows:

3 DIRECT EXAMINATION BY MR. SWEARENGEN:

4 Q. Would you state your name for the record,  
5 please.

6 A. Kelly S. Walters.

7 Q. By whom are you employed and in what  
8 capacity?

9 A. The Empire District Electric Company, and  
10 I'm vice president and chief operating officer on the  
11 electric side.

12 Q. Did you cause to be prepared for this  
13 proceeding certain direct testimony and certain  
14 surrebuttal testimony in question and answer form?

15 A. Yes.

16 Q. And do you have a copy of those testimonies  
17 with you this morning?

18 A. I do.

19 Q. Is it your understanding that your direct  
20 testimony has been marked for purposes of identification  
21 as Exhibit 2?

22 A. Yes.

23 Q. And your interim surrebuttal testimony has  
24 been marked for purposes of identification as Exhibit 3,  
25 correct?

1 A. Yes.

2 Q. Are there any changes that you need to make  
3 with regard to your direct testimony, Exhibit 2?

4 A. Yes. I have one correction.

5 Q. And where would that be?

6 A. It is on page 8, line 1 and 2. It is my  
7 understanding that the Missouri American Water case was  
8 withdrawn, and so we need to strike Missouri American  
9 Water Company, open paren, Case No. W-2012-0198, close  
10 paren.

11 Q. Okay. Thank you. Are there any other  
12 changes that you wish to make with regard to your direct  
13 testimony?

14 A. No.

15 Q. With respect to your interim surrebuttal  
16 testimony, are there any corrections or changes that you  
17 wish to make with regard to that?

18 A. No.

19 Q. Thank you. If I asked you the questions  
20 contained in Exhibits 2 and 3, would your answers under  
21 oath today be substantially the same?

22 A. Yes, they would.

23 Q. And they would be true and correct to the  
24 best of your knowledge, information and belief?

25 A. Yes.

1 MR. SWEARENGEN: With that, your Honor, I  
2 would offer into evidence Exhibits 2 and 3 and tender the  
3 witness for cross-examination.

4 JUDGE BUSHMANN: Empire Exhibits 2 and 3  
5 have been offered subject to the conditions that we  
6 discussed earlier for witness testimony. Does anybody  
7 have any objections?

8 MR. CONRAD: Judge, you'll have to sort  
9 this one out, but referring again to this designation of  
10 interim rate request testimony, the only thing that has  
11 been designated for this witness was her direct testimony,  
12 which as I understand is marked as Exhibit 2. There is no  
13 reference to any other testimony from this witness. So I  
14 don't know. There was no amendment of which I'm aware  
15 that was filed to this designation. So there you have it.  
16 I guess I would object then to the admission at this time  
17 of exhibit that has been identified as 3.

18 MR. SWEARENGEN: Your Honor, I think we  
19 complied with the Commission's order by designating the  
20 direct testimony at the time that that was in existence,  
21 and obviously the schedule called for surrebuttal  
22 testimony which we have filed. I think Mr. Conrad's  
23 objection is not well taken.

24 JUDGE BUSHMANN: I'll overrule the  
25 objection. Any other objections?

1 (No response.)

2 JUDGE BUSHMANN: Hearing none, then  
3 Empire's Exhibits 2 and 3 are received into the record  
4 subject to the conditions we discussed earlier.

5 (EMPIRE EXHIBIT NOS. 2 AND 3 WERE RECEIVED  
6 INTO EVIDENCE.)

7 JUDGE BUSHMANN: Cross-examination by  
8 Missouri Energy Consumers Group?

9 MR. WOODSMALL: No questions.

10 JUDGE BUSHMANN: Cross-examination by  
11 Missouri Energy Users Association?

12 MR. CONRAD: I do have a couple, your  
13 Honor.

14 CROSS-EXAMINATION BY MR. CONRAD:

15 Q. Good morning, Ms. Walters.

16 A. Good morning, Mr. Conrad.

17 Q. I noticed that your undergraduate work was  
18 at Pittsburgh?

19 A. Yes.

20 Q. Gorilla?

21 A. Yes, sir.

22 Q. Did you enjoy the chicken there?

23 A. Chicken Annie's or Chicken Mary's?

24 Q. My understanding is they're both merged now  
25 and are both north of town.



1           A.       I couldn't tell you. I went recently and  
2 they were not merged at that time.

3           **Q.       There's a Pitchers or Pilchers?**

4           A.       Pickler's.

5           **Q.       Pickler's, yeah. It's south there.**

6           A.       Yes. Very good chicken.

7           **Q.       I'm glad you found somewhere to eat in**  
8 **Pittsburgh other than chicken places because we had some**  
9 **difficulty with that.**

10                    You had listed on page 4, Ms. Walters, of I  
11 believe it's Exhibit 2, the tornado as a driver for this  
12 and identified 6.2 million; am I correct?

13           A.       Yes.

14           **Q.       Does that 6.2 million include any**  
15 **recognition of accumulated deferred income tax or**  
16 **accumulated depreciation?**

17           A.       I can't tell you if that was included in  
18 the components or not.

19           **Q.       Are accumulated deferred income taxes and**  
20 **accumulated depreciation routinely used as offsets to**  
21 **plant in service?**

22           A.       Yes.

23           **Q.       As of what date did you -- did Empire**  
24 **rather determine that the number of customers returning to**  
25 **service had leveled off?**

1 A. I'm sorry. Could you repeat that?

2 Q. I'll try to. As of what date did Empire  
3 determine that the number of customers returning to  
4 service had leveled off?

5 A. We have seen them level off around April,  
6 March of this year. And if I might, Mr. Conrad, I want to  
7 go back. I was looking at the table on the 6.2 on the  
8 permanent case. That does relate to the interim 6.2,  
9 which does not include ADIT or accumulated deferred tax,  
10 or accumulated depreciation. Excuse me.

11 Q. Thank you for that correction.

12 A. You're welcome.

13 MR. CONRAD: Your Honor, I have another  
14 exhibit to mark, please. This would be MEUA -- MEUA 5, if  
15 I'm following the same numbering scheme.

16 (MEUA EXHIBIT NO. 5 WAS MARKED FOR  
17 IDENTIFICATION.)

18 BY MR. CONRAD:

19 Q. Ms. Walters, I have laid before you what  
20 has been marked for identification as MEUA Exhibit 5. Do  
21 you have that document before you?

22 A. I do.

23 Q. Do you recognize that document?

24 A. Yes.

25 Q. Would you identify that document for me,

1 **please?**

2 A. It is a Notice of Intended Case Filing for  
3 the Empire District Electric Company.

4 Q. Customarily that or something akin to it is  
5 filed ahead of a permanent or some other kind of rate  
6 increase filing; am I correct?

7 A. That's correct.

8 Q. Now, is that on page 2 signed by  
9 Mr. Swearngen?

10 A. It is.

11 Q. And as far as you know, he was authorized  
12 to make that signature and make that filing on behalf of  
13 Empire?

14 A. Yes.

15 Q. Any reason that you have to believe that  
16 this is not an accurate copy of that Notice of Intended  
17 Case Filing?

18 A. I have no reason to believe it's not  
19 accurate.

20 MR. CONRAD: Your Honor, on the basis of  
21 the witness' statement, as well as the fact that this is a  
22 filed record actually in this, I think in this case, I  
23 would ask that it be admitted or taken official notice of.

24 JUDGE BUSHMANN: Any objections?

25 (No response.)

1 JUDGE BUSHMANN: MEUA Exhibit 5 will be  
2 received into the record.

3 (MEUA EXHIBIT NO. 5 WAS RECEIVED INTO  
4 EVIDENCE.)

5 BY MR. CONRAD:

6 Q. Ms. Walters, before we leave what has been  
7 marked as Exhibit 5, let me ask you to turn to the very  
8 top of the second page, and am I reading correctly there  
9 the filing -- I guess it might begin actually on the  
10 bottom of the first page, but would address all factors  
11 concerning the rates for electric service to be charged by  
12 Empire, including rate base, expenses, rate of return,  
13 rate design and specific tariff language. Did I read the  
14 last part of that correctly?

15 A. Yes.

16 Q. Now, does your interim case address all of  
17 those factors that are mentioned?

18 A. I believe the interim case is a part of our  
19 permanent rate case filing. The permanent case does  
20 address all relevant factors, and I believe that the  
21 interim is a tool that a company has and an option to  
22 request that, and the Commission has the authority to  
23 approve as a part of the permanent rate case.

24 Q. Let me ask the question again to be clear  
25 that you heard it. Does your interim case address all of

1 **those factors referenced on page 2 of MEUA Exhibit 5?**

2 A. The interim number does not include all  
3 those. It does include for just and reasonable rates.

4 **Q. When was the decision made to upgrade your**  
5 **accounting and resource management system?**

6 A. We have been working on that project on and  
7 off for several years.

8 **Q. Did your decision to upgrade that**  
9 **accounting and resource management system go forward**  
10 **before or after the tornado?**

11 A. It had been worked on for four years. We  
12 were in the middle of it at the time the tornado hit. We  
13 continued to work on it mainly because we have aging  
14 infrastructure and a system that is no longer supported by  
15 a vendor.

16 **Q. Could the implementation of those systems**  
17 **been postponed for six months to a year if necessary?**

18 A. Over the course of the four years, there  
19 have been many times it has been postponed due to  
20 financial situations, and at that point in time, to be  
21 honest, Mr. Conrad, it was pretty much all hands on deck  
22 for the tornado. I can't tell you if there was a lot of  
23 work going on. I don't believe there was. There is a lot  
24 of work going on on that project today.

25 **Q. I appreciate your answer to the question**

1 that I didn't ask, but let me try again with the question  
2 that I was trying to ask. Maybe I didn't do it very well.  
3 Could the implementation of those systems been postponed  
4 for six months to a year?

5 A. It's my belief we can't postpone those any  
6 longer. We have an aging infrastructure and a system that  
7 is no longer supported for our accounting system, and the  
8 risk would be too high.

9 Q. Did you consider any postponement as a  
10 result of the tornado?

11 A. I'm -- I repeat, I don't -- there have been  
12 many postponements of that system because of financial  
13 conditions, and I can't say specifically what happened  
14 May 22nd with that system.

15 Q. When was the last plant addition made that  
16 was covered by the Accounting Authority Order?

17 A. We continue to make plant additions.

18 MR. CONRAD: Another exhibit, your Honor.  
19 I believe this would be MEUA 6.

20 (MEUA EXHIBIT NO. 6 WAS MARKED FOR  
21 IDENTIFICATION.)

22 BY MR. CONRAD:

23 Q. Ms. Walters, I have placed before you what  
24 has been marked for identification as MEUA Exhibit 6. Do  
25 you have that document, ma'am?

1 A. I do.

2 Q. Could you identify that document for us?

3 A. It is Data Request No. 120 and the  
4 associated response.

5 Q. And that is a response that, at least if  
6 I'm looking at it, was provided by you?

7 A. Yes.

8 Q. Is it true and correct to the best of your  
9 knowledge, information and belief?

10 A. Yes.

11 MR. CONRAD: Your Honor, we would move  
12 admission of MEUA Exhibit 6.

13 JUDGE BUSHMANN: Are there any objections?

14 (No response.)

15 JUDGE BUSHMANN: MEUA Exhibit 6 is received  
16 into the record.

17 (MEUA EXHIBIT NO. 6 WAS RECEIVED INTO  
18 EVIDENCE.)

19 MR. CONRAD: Your Honor, I have one more,  
20 which would be MEUA 7.

21 (MEUA EXHIBIT NO. 7 WAS MARKED FOR  
22 IDENTIFICATION.)

23 BY MR. CONRAD:

24 Q. Ms. Walters, I have caused to be laid  
25 before you what has been marked for identification as MEUA

1 **Exhibit 7. Do you have that document before you?**

2 A. I do.

3 **Q. Could you identify that document for us,**  
4 **please?**

5 A. It's Data Request No. 121.

6 **Q. And who is the author of that data request?**

7 A. I provided the response. It also  
8 references the proxy statement, which is not attached.

9 **Q. Would you agree with me that the Staff**  
10 **was -- Staff person was the author of the request and that**  
11 **you are the author of the response?**

12 A. Yes, I would agree.

13 **Q. Is that a correct portrayal of the response**  
14 **that you made?**

15 A. I believe so.

16 **Q. And the response that you gave was**  
17 **complete, correct, to the best of your knowledge,**  
18 **information and belief at the time?**

19 A. Yes.

20 MR. CONRAD: Your Honor, I would move  
21 admission of MEUA Exhibit 7.

22 JUDGE BUSHMANN: Are there any objections?

23 (No response.)

24 JUDGE BUSHMANN: Hearing none, MEUA

25 Exhibit 7 is received into the record.



1 (MEUA EXHIBIT NO. 7 WAS RECEIVED INTO  
2 EVIDENCE.)

3 BY MR. CONRAD:

4 Q. And Ms. Walters, are you familiar with what  
5 has been sometimes referred to here as the Commission's  
6 emergency standard?

7 A. I'm familiar with the term, yes.

8 Q. And would you agree with me that that  
9 relates to the inability of a company to provide, to  
10 continue to provide safe and adequate service unless  
11 interim relief is granted?

12 A. Is that your definition? I'm sorry. I  
13 don't have any legal background to answer that.

14 Q. I understand. And I'm sorry. I didn't  
15 intend to ask you a legal question. Let me just ask this.  
16 Today is the 10th of September of 2012, right?

17 A. That's correct.

18 Q. Is Empire today in a financial emergency?

19 A. I think I would need clarification on your  
20 definition of financial emergency. I do think it can be  
21 defined different for different people.

22 Q. Okay. Let me be more specific. Is the  
23 nature or the status of Empire District Electric Company  
24 with respect to its finances such that it is today unable  
25 to provide safe and adequate service in its service

1 **territory?**

2 A. I believe we are providing safe and  
3 adequate service.

4 Q. Do you have any reason to believe that if  
5 interim relief is not granted by this Commission, that  
6 Empire would be unable to continue to provide safe and  
7 adequate service in its service territory?

8 A. With what I know today, I believe we will  
9 provide safe and reliable service.

10 MR. CONRAD: Your Honor, I believe that is  
11 all we have for this witness, subject to your earlier  
12 rulings with respect to the permanent case.

13 JUDGE BUSHMANN: Cross-examination by  
14 Public Counsel?

15 MR. MILLS: Yes, just a few.

16 CROSS-EXAMINATION BY MR. MILLS:

17 Q. Ms. Walters, do you have your surrebuttal  
18 testimony there with you?

19 A. I do. Let me find it here. Okay.

20 Q. On page 5, in the middle of the page  
21 beginning at line 10, you refer to Staff witness  
22 Oligschlaeger's discussion of ADIT, and Mr. Conrad asked  
23 you briefly about this. Do you see that question?

24 A. I do.

25 Q. Have you quantified the impact that

1 would -- let me back up and rephrase that.

2 Have you quantified what your interim  
3 request would be were you to include ADIT as Mr. Rackers  
4 and Mr. Oligschlaeger recommend?

5 A. I have not looked at all the components of  
6 ADIT.

7 Q. And a similar question with respect to  
8 depreciation reserve. Have you quantified the effects on  
9 your interim rate request were the Commission to agree  
10 with Mr. Rackers and Mr. Oligschlaeger on depreciation  
11 reserve?

12 A. I think as the testimony says, it's  
13 approximately 68,000.

14 Q. And is that the same number that those two  
15 witnesses have proposed?

16 A. Witnesses? I'm sorry. Can you restate?

17 Q. Did Mr. Rackers and Mr. Oligschlaeger when  
18 they discussed depreciation reserve, did they propose the  
19 same number?

20 A. I don't know.

21 Q. Okay. Then going back to ADIT, is there  
22 information in the record for which you are aware or  
23 within the prefiled testimony that would allow the  
24 Commission to calculate the effects of including ADIT if  
25 the Commission were to agree with those witnesses that it

1 **should be included?**

2 A. There is information on ADIT. I don't  
3 believe there is information on all the components,  
4 specific components related to that.

5 Q. **Now, the question that begins on the bottom**  
6 **of page 6 of your surrebuttal testimony and continues on**  
7 **to page 7, the question is, do you agree with Staff**  
8 **witness Oligschlaeger's statement at page 16 of his**  
9 **interim rebuttal testimony that Empire has recovered all**  
10 **of its costs since the tornado? And your answer is no.**  
11 **What specific costs have you not recovered?**

12 A. Well, at this point we're not recovering  
13 costs. We're deferring costs, as well as there are two  
14 components here. There's the cost and the lost margin.  
15 As far as the --

16 Q. **My question is solely related to cost.**

17 A. We are not recovering the costs. We are  
18 deferring the costs.

19 Q. **Assuming that the Commission approves**  
20 **recovery of the deferred costs, are there any costs that**  
21 **you will not have recovered?**

22 A. No. As Mr. Beecher said, the only thing  
23 would be the costs that are not included, such as if  
24 additional financing is necessary and interest associated  
25 with some of those components.

1 Q. And was additional financing necessary?

2 A. You know, with the short-term debt and our  
3 line of credit, there's always gives and takes. I can't  
4 speak specifically to that.

5 Q. So our answer is you don't know?

6 A. That's correct.

7 Q. Now, with respect to the questions that  
8 Mr. Conrad asked you about an emergency, would you -- as  
9 of September 10th, 2012, would you tell investors or  
10 prospective investors that Empire is in an emergency  
11 situation right now?

12 A. I would not say we're in an emergency  
13 financial situation right now.

14 MR. MILLS: Thank you. That's all I have.

15 JUDGE BUSHMANN: Cross-examination by  
16 Staff?

17 MS. KLIETHERMES: Thank you, Judge.

18 CROSS-EXAMINATION BY MS. KLIETHERMES:

19 Q. Good morning, Ms. Walters.

20 A. Good morning.

21 Q. Do you believe that Empire should have  
22 dividend payout ratio commensurate with its peer group?

23 A. We established the dividend saying that it  
24 was our goal to maintain that ratio standard, yes.

25 Q. When did Empire adopt that belief?

1           A.       When we reinstated the dividend, we tried  
2 to reinstate at a level we felt would maintain that, and  
3 that was our position at that point in time.

4           **Q.       So prior to the tornado, was it Empire's**  
5 **intent to have a dividend payout ratio commensurate with**  
6 **its peer group?**

7           A.       Not to your knowledge.

8           **Q.       I understand you did not receive your**  
9 **normal bonus for 2011; is that correct?**

10          A.       You know I will disagree as far as the term  
11 bonus.

12          **Q.       Noted. I notice you did -- I understand**  
13 **that you did not receive the incentive compensation**  
14 **payments you would have expected for 2011; is that**  
15 **correct?**

16          A.       That's correct. Our pay is based on three  
17 components with cash incentive and stock and restricted  
18 stock as a piece of that.

19          **Q.       Did you receive a special incentive**  
20 **payment?**

21          A.       We received a discretionary award, yes.

22          **Q.       And what was the amount of that award?**

23          A.       I'm embarrassed to say I don't remember.

24          **Q.       Would you expect it to have been 250,000?**

25          A.       For me?

1 Q. Clearly not.

2 (Laughter.)

3 A. I missed something.

4 Q. I'm not sure how that will get transcribed  
5 but I look forward to reading it. I guess just to follow  
6 up on that, have you tried the chicken sandwich at the  
7 cafe here on the third floor?

8 A. I will. Duly noted.

9 MS. KLIETHERMES: That's all I have, thank  
10 you, Judge, at this time for the interim rate request.

11 JUDGE BUSHMANN: No questions from the  
12 bench. No recross. Any redirect?

13 MR. SWEARENGEN: I do have one or two, your  
14 Honor.

15 REDIRECT EXAMINATION BY MR. SWEARENGEN:

16 Q. Ms. Walters, I think it was Mr. Conrad was  
17 asking you about what items Empire had taken into account  
18 or considered with regard to cost of service and the  
19 interim request. Do you remember his questions along  
20 those lines?

21 A. I do.

22 Q. Are all elements of Empire's --

23 MR. CONRAD: Your Honor, I'll have to  
24 object to that because that's not the question that I  
25 asked. It might burden the reporter to bring it back, but

1 my reference was specifically to the case -- intended case  
2 filing notice and covered no more than that, and that was  
3 a statement that was encompassed in that document. I  
4 asked nothing about what Empire had considered. I asked  
5 specifically about the case intention notice.

6 MR. SWEARENGEN: Let me rephrase the  
7 question.

8 JUDGE BUSHMANN: Rephrase.

9 BY MR. SWEARENGEN:

10 Q. Looking at that Notice of Intended Case  
11 Filing that Mr. Conrad referred to, it's indicated at the  
12 top of the second page that all factors concerning rates  
13 for electric service to be charged by Empire including  
14 rate base, expenses, rate of return, rate design and  
15 specific tariff language will be covered, is that your  
16 recollection of his question?

17 A. Yes.

18 Q. And my question to you is, are all elements  
19 of Empire's cost of service encompassed in the company's  
20 rate of return?

21 A. Absolutely.

22 Q. And what is the last publicly announced  
23 rate of return for Empire? Do you know?

24 A. June 30, it was 7.8 percent.

25 Q. June 30 of 2012?



1 A. Yes.

2 MR. SWEARENGEN: Thank you. That's all I  
3 have.

4 JUDGE BUSHMANN: Ms. Walters, that  
5 concludes your testimony. You may step down. Thank you.  
6 Call your next witness.

7 MR. SWEARENGEN: Call Mr. Sager.

8 JUDGE BUSHMANN: Mr. Sager, raise your  
9 right hand.

10 (Witness sworn.)

11 JUDGE BUSHMANN: Please sit down. You may  
12 proceed.

13 MR. SWEARENGEN: Thank you.

14 ROBERT SAGER testified as follows:

15 DIRECT EXAMINATION BY MR. SWEARENGEN:

16 Q. Would you state your name for the  
17 record, please.

18 A. Robert W. Sager.

19 Q. And by whom are you employed and in what  
20 capacity?

21 A. The Empire District Electric Company. I am  
22 the controller, assistant secretary and assistant  
23 treasurer.

24 Q. Have you caused to be prepared for purposes  
25 of this proceeding certain direct testimony in question

1 and answer form?

2 A. Yes.

3 Q. And do you have a copy of that testimony  
4 with you this morning?

5 A. I do.

6 Q. And is it your understanding that that  
7 testimony has been marked as Exhibit 4?

8 A. Yes.

9 Q. Are there any changes or corrections that  
10 you wish to make with regard to that direct testimony?

11 A. No.

12 Q. So if I asked you the questions that are  
13 contained therein, would your answers under oath today be  
14 substantially the same?

15 A. That's correct.

16 Q. And they are true and correct to the best  
17 of your knowledge, information and belief?

18 A. Yes.

19 MR. SWEARENGEN: With that, your Honor, I  
20 would offer into evidence Exhibit 4 and tender the  
21 witness.

22 JUDGE BUSHMANN: Empire Exhibit 4 has been  
23 offered, subject to the conditions that we discussed  
24 earlier. Are there any objections?

25 (No response.)

1 JUDGE BUSHMANN: Hearing none, that will be  
2 received into the record.

3 (EMPIRE EXHIBIT NO. 4 WAS RECEIVED INTO  
4 EVIDENCE.)

5 JUDGE BUSHMANN: Cross-examination by  
6 Missouri Energy Consumers Group?

7 MR. WOODSMALL: Yes, your Honor, very  
8 briefly. May I approach the witness?

9 JUDGE BUSHMANN: You may.

10 CROSS-EXAMINATION BY MR. WOODSMALL:

11 Q. I'm handing you a document. I'm not going  
12 to ask to have it marked. Can you identify that document  
13 for me, please?

14 A. It's a June 30 of 2011 Form 10Q filed with  
15 the Securities and Exchange Commission.

16 Q. I believe on the last page it was signed by  
17 you; is that correct?

18 A. That's correct.

19 Q. Turning to page 7 of 67, do you see a  
20 column for -- a column for electric revenues for that  
21 quarter?

22 A. Yes, I do.

23 Q. Can you tell me what the electric revenues  
24 were for Empire for the second quarter of 2011?

25 A. Electric revenues ended for the quarter of

1 June 30, 2012 were \$119,903,000.

2 **Q. Can you tell me what the electric revenues**  
3 **were for the same period in 2010?**

4 A. It's noted as \$106,249,000.

5 MR. WOODSMALL: Thank you. No further  
6 questions.

7 JUDGE BUSHMANN: Cross-examination by  
8 Missouri Energy Users Association?

9 MR. CONRAD: Very briefly, your Honor.

10 CROSS-EXAMINATION BY MR. CONRAD:

11 **Q. Mr. Sager, Mr. Woodsmall showed you an SEC**  
12 **document. To your knowledge, is there an authentication**  
13 **or verification requirement that is associated with those**  
14 **filings?**

15 A. In what capacity?

16 **Q. Such that you go to jail if the statements**  
17 **in it are not true?**

18 A. Okay. Yes.

19 **Q. You agree that you would go to jail if the**  
20 **statements are not true?**

21 A. That would be the problem, yes.

22 MR. CONRAD: Thank you, your Honor.

23 JUDGE BUSHMANN: Cross-examination by  
24 Public Counsel?

25 MR. MILLS: No questions.

1 JUDGE BUSHMANN: Cross-examination by  
2 Staff?

3 MR. THOMPSON: No questions. Thank you,  
4 Judge.

5 JUDGE BUSHMANN: No questions from the  
6 bench. No recross. Any redirect?

7 MR. SWEARENGEN: No redirect.

8 JUDGE BUSHMANN: Mr. Sager, you may step  
9 down. Next witness.

10 MR. SWEARENGEN: Scott Keith, I believe.

11 JUDGE BUSHMANN: Raise your right hand.

12 (Witness sworn.)

13 JUDGE BUSHMANN: Please be seated. You may  
14 proceed.

15 SCOTT KEITH testified as follows:

16 DIRECT EXAMINATION BY MR. SWEARENGEN:

17 Q. Would you state your name for the record,  
18 please.

19 A. Scott Keith.

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

22 A. I'm employed by the Empire District  
23 Electric Company as director of planning and regulatory.

24 Q. And did you cause to be prepared for  
25 purposes of this proceeding certain direct testimony in

1 question and answer form?

2 A. Yes, I did.

3 Q. Do you have a copy of that testimony with  
4 you this morning?

5 A. Yes, I do.

6 Q. Is it your understanding it has been marked  
7 for identification as Exhibit 5?

8 A. Yes.

9 Q. Are there any changes that you wish to make  
10 with regard to that testimony?

11 A. No.

12 Q. If I asked you the questions that are  
13 contained therein, would your answers be substantially the  
14 same?

15 A. Yes, they would.

16 Q. And are they -- would they be true and  
17 correct to the best of your knowledge, information and  
18 belief?

19 A. Yes.

20 MR. SWEARENGEN: With that, your Honor, I  
21 would offer into evidence Exhibit 5 and tender the  
22 witness.

23 JUDGE BUSHMANN: Any objections to that  
24 exhibit being admitted?

25 MR. CONRAD: Subject to your earlier

1 ruling.

2 JUDGE BUSHMANN: Subject to those  
3 conditions, it will be received into the record.

4 (EMPIRE EXHIBIT NO. 5 WAS RECEIVED INTO  
5 EVIDENCE.)

6 JUDGE BUSHMANN: Cross-examination by  
7 Missouri Energy Consumers Group?

8 MR. WOODSMALL: Yes, your Honor, very  
9 briefly. Mark an exhibit. I believe this is MECG 1.

10 (MECG EXHIBIT NO. 1 WAS MARKED FOR  
11 IDENTIFICATION.)

12 CROSS-EXAMINATION BY MR. WOODSMALL:

13 Q. Ask you, sir, do you recognize this  
14 document?

15 A. Yes. I believe it's a data request that  
16 MECG-- or CG filed on Empire in this case.

17 Q. If you look at the last page, you were  
18 responsible at least in part for responding to that data  
19 request; is that correct?

20 A. That's correct.

21 MR. WOODSMALL: Move for the admission of  
22 MECG 1, your Honor.

23 JUDGE BUSHMANN: Any objections?

24 (No response.)

25 JUDGE BUSHMANN: Hearing none, MECG Exhibit

1 No. 1 will be received into the record.

2 (MECG EXHIBIT NO. 1 WAS RECEIVED INTO  
3 EVIDENCE.)

4 MR. WOODSMALL: No further questions.

5 JUDGE BUSHMANN: Cross-examination by  
6 Public Counsel?

7 MR. MILLS: No questions.

8 JUDGE BUSHMANN: Cross-examination by  
9 Staff?

10 MS. KLIETHERMES: Judge, no questions on  
11 the interim relief request. I would note again, although  
12 this is true with all the witnesses, Mr. Keith in  
13 particular has quite a bit of testimony that has to do  
14 with what Staff perceived as the general rate increase  
15 request as opposed to the interim relief request, and we  
16 did not attempt at this point in time to rebut that  
17 information. We would not want the Commission to be under  
18 the misimpression that we agree with everything else in  
19 his testimony.

20 JUDGE BUSHMANN: Yes, Mr. Conrad?

21 MR. CONRAD: Well, usually we get a chance  
22 to cross, but --

23 JUDGE BUSHMANN: I'm sorry, sir.

24 MR. CONRAD: That's okay. I'll make it  
25 easy for you. Subject to our ability to cross Mr. Keith



1 on other matters pertaining to the permanent case, we have  
2 no questions.

3 JUDGE BUSHMANN: Thank you. No questions  
4 from the Bench or recross. Any redirect?

5 MR. SWEARENGEN: No redirect.

6 JUDGE BUSHMANN: Mr. Keith, you may step  
7 down, sir.

8 THE WITNESS: Thank you.

9 MR. SWEARENGEN: Joan Land is our last  
10 witness.

11 (Witness sworn.)

12 JUDGE BUSHMANN: You may sit down. Go  
13 ahead.

14 JOAN LAND testified as follows:

15 DIRECT EXAMINATION BY MR. SWEARENGEN:

16 Q. Would you state your name for the record,  
17 please.

18 A. Joan E. Land.

19 Q. By whom are you employed?

20 A. The Empire District Electric Company.

21 Q. What is your position with Empire?

22 A. Regulatory analysis.

23 Q. Have you caused to be prepared for purposes  
24 of this proceeding certain direct testimony?

25 A. Yes.

1 Q. And do you have a copy of that testimony  
2 with you this morning?

3 A. I do.

4 Q. As I understand, it's been marked for  
5 purposes of identification as Exhibit 6. Is that your  
6 understanding?

7 A. Yes.

8 Q. If you would look at that testimony, it  
9 consists of pages -- it's got a cover sheet, a table of  
10 contents, page 1, page 9, and page 10; is that correct?

11 A. Correct.

12 Q. And that is the portion of your direct  
13 testimony in this case that has been designated as  
14 appropriate for the interim portion of the proceeding; is  
15 that right?

16 A. Correct.

17 Q. Are there any changes that you need to make  
18 with respect to what's been marked as Exhibit 6?

19 A. No changes.

20 Q. If I asked you the questions that are  
21 contained in there, would your answers be substantially  
22 the same this morning?

23 A. Yes.

24 Q. And would those answers be true and correct  
25 to the best of your knowledge, information and belief?

1           A.       Yes.

2                   MR. SWEARENGEN: Thank you. With that,  
3 your Honor, I would offer into evidence Exhibit 6 and  
4 tender the witness.

5                   JUDGE BUSHMANN: Are there any objections  
6 to Exhibit 6? And I assume, Mr. Swearngen, that you're  
7 referring to the specific pages and lines that were put on  
8 your designation of interim rate request testimony?

9                   MR. SWEARENGEN: That's correct, your  
10 Honor.

11                   JUDGE BUSHMANN: Any objections to those  
12 specific portions of testimony being received?

13                   MR. CONRAD: So designated, we have none.

14                   JUDGE BUSHMANN: Then Empire Exhibit No. 6,  
15 page 1, lines 1 through 15, page 9, line 15, page 10,  
16 line 10 will be received into the record.

17                   (EMPIRE EXHIBIT NO. 6 WAS RECEIVED INTO  
18 EVIDENCE.)

19                   JUDGE BUSHMANN: Mr. Conrad, do you have  
20 any cross-examination?

21                   MR. CONRAD: Subject to your earlier  
22 ruling, your Honor, we do not have questions of this  
23 witness on this issue.

24                   JUDGE BUSHMANN: Any cross-examination by  
25 Missouri Energy Users Association?

1 MR. WOODSMALL: You got it switched around,  
2 but I don't have any questions either.

3 JUDGE BUSHMANN: The names are too close.  
4 Any cross by Public Counsel?

5 MR. MILLS: No questions.

6 JUDGE BUSHMANN: Staff?

7 MS. KLIETHERMES: No questions, Judge.  
8 Thank you.

9 JUDGE BUSHMANN: No Bench questions, no  
10 recross. Any redirect?

11 MR. SWEARENGEN: No redirect.

12 JUDGE BUSHMANN: All right. Ms. Land,  
13 you're finished. Thank you.

14 MR. CONRAD: Your Honor, just to suggest  
15 maybe we go off the record for two or three minutes and  
16 let counsel discuss how to handle the rest of the  
17 witnesses.

18 JUDGE BUSHMANN: Why don't we take a  
19 five-minute recess.

20 (A BREAK WAS TAKEN.)

21 JUDGE BUSHMANN: Mr. Conrad, you wanted to  
22 say something?

23 MR. CONRAD: I think while we were off the  
24 record, what the parties have agreed to do is just bring  
25 everyone else's testimony in as premarked without

1 objection and without any cross, and that's -- that was my  
2 understanding.

3 MS. CARTER: And subject to those same  
4 conditions as earlier.

5 MR. CONRAD: Yes.

6 JUDGE BUSHMANN: So the parties wish to  
7 admit the testimony that has been filed for the remaining  
8 witnesses. I have that as being Staff witnesses Mantle,  
9 Atkinson, Lange, Oligschlaeger, and then Missouri Energy  
10 Users Association witness Steven Rackers; is that correct?  
11 And parties want to, without objection, admit that  
12 testimony?

13 MS. KLIETHERMES: Yes, Judge, with one,  
14 possibly two caveats. I neglected to mention -- I don't  
15 know if this changes the parties' positions on what we  
16 just discussed -- Staff does have a correction in Shana  
17 Atkinson's testimony where she -- on page 3, line 16, she  
18 stated Empire only had sufficient EPS to support that DPS  
19 in 12 of those 18 years. That number should be corrected  
20 to say DPS in 6 of those 18 years.

21 And I believe Mr. Oligschlaeger has a  
22 typographical error on page 8, line 24. In reference to a  
23 prior case number, he refers to ER-81-29. That number  
24 should be ER-81-229.

25 And then also Mr. Lange has updated his

1 charts that were included in his attachment to his  
2 testimony, and those have been provided as Staff  
3 Exhibit 8. And then as a point of clarification, in Staff  
4 Exhibit 1, Staff would be offering those portions of that  
5 document that were specified in the affidavits attached to  
6 that document, as opposed to the rest, which is simply  
7 legal argument.

8 JUDGE BUSHMANN: So in addition to the  
9 testimony, you're saying there is an additional Staff  
10 exhibit?

11 MS. KLIETHERMES: There are two additional  
12 exhibit numbers, as are indicated on the exhibit list.

13 JUDGE BUSHMANN: Okay. I don't have a copy  
14 of that.

15 MS. KLIETHERMES: I'm sorry. I'll bring  
16 mine up to you. That's Exhibit No. 1, the Staff's  
17 response in opposition to Empire's interim rate request.  
18 We filed that as a verified pleading, and there are four  
19 affidavits attached to that pleading that specify pages  
20 that witnesses have verified and affixed affidavits with  
21 relation to. And there's also Staff Exhibit 8, which is  
22 what I distributed this morning, it is the updated  
23 schedule to Mr. Lange's testimony, and I'll bring you my  
24 copy.

25 JUDGE BUSHMANN: And are parties also

1 willing to waive cross-examination of these witnesses?

2 MS. CARTER: Yes.

3 MR. CONRAD: Yes.

4 MR. WOODSMALL: Yes.

5 MR. MILLS: Yes.

6 JUDGE BUSHMANN: In that case, hearing no  
7 objections to this, then Staff Exhibits 1 through 8 will  
8 be received into the record.

9 (STAFF EXHIBIT NOS. 1 THROUGH 8 WERE  
10 RECEIVED INTO EVIDENCE.)

11 JUDGE BUSHMANN: And Mr. Conrad,  
12 Mr. Rackers' rebuttal would be MEUA Exhibit 1; am I  
13 correct?

14 MR. CONRAD: That is correct. I would  
15 call, as did Staff counsel, not anticipating what we were  
16 going to do here, we did have one correction that we would  
17 cite the parties to. It is on page 3, line 16, the phrase  
18 over a five-year period should instead have said over a  
19 ten-year period.

20 And with that change, we would offer MEUA 1  
21 pursuant to the parties' agreement and your Honor's  
22 ruling.

23 JUDGE BUSHMANN: Does that change anybody's  
24 opinion with that correction?

25 (No response.)

1 JUDGE BUSHMANN: Then MEUA Exhibit No. 1  
2 will be received into the record.

3 (MEUA EXHIBIT NO. 1 WAS RECEIVED INTO  
4 EVIDENCE.)

5 JUDGE BUSHMANN: Parties are waiving  
6 cross-examination. So I don't think that there's any  
7 further matters that we need to take up at this time.  
8 Transcripts should be available on September 13th. Briefs  
9 are due on September 20th. Reply briefs are due on  
10 October 1st. And I believe all the exhibits have now been  
11 entered into the record. Anything else that we need to  
12 discuss before we adjourn?

13 (No response.)

14 JUDGE BUSHMANN: Being none, then this case  
15 is now adjourned. Thank you.

16 (WHEREUPON, the hearing concluded at  
17 11:33 a.m.)

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1	I N D E X	
	Opening Statement by Mr. Swearngen	23
2	Opening Statement by Ms. Kliethermes	29
3	Opening Statement by Mr. Mills	47
4	Opening Statement by Mr. Conrad	48
5	Opening Statement by Mr. Woodsmall	52
6	EMPIRE'S EVIDENCE:	
7	BRAD BEECHER	
8	Direct Examination by Mr. Swearngen	60
9	Cross-Examination by Mr. Conrad	78
10	Cross-Examination by Ms. Kliethermes	90
11	KELLY WALTERS	
12	Direct Examination by Mr. Swearngen	94
13	Cross-Examination by Mr. Conrad	98
14	Cross-Examination by Mr. Mills	108
15	Cross-Examination by Ms. Kliethermes	111
16	Redirect Examination by Mr. Swearngen	113
17	ROBERT SAGER	
18	Direct Examination by Mr. Swearngen	115
19	Cross-Examination by Mr. Woodsmall	117
20	Cross-Examination by Mr. Conrad	118
21	SCOTT KEITH	
22	Direct Examination by Mr. Swearngen	119
23	Cross-Examination by Mr. Woodsmall	121
24	JOAN LAND	
25	Direct Examination by Mr. Swearngen	123

EVIDENTIARY HEARING 9/10/2012

		MARKED	RECEIVED
1	EMPIRE'S EXHIBITS INDEX		
2	EXHIBIT NO. 1		
	Direct Testimony of Brad P. Beecher	21	77
3	EXHIBIT NO. 2		
	Direct Testimony of Kelly S. Walters	21	98
4	EXHIBIT NO. 3		
	Interim Surrebuttal Testimony of		
5	Kelly S. Walters	21	98
	EXHIBIT NO. 4		
6	Direct Testimony of Robert W. Sager	21	117
	EXHIBIT NO. 5		
7	Direct Testimony of W. Scott Keith	21	121
	EXHIBIT NO. 6		
8	Direct Testimony of Joan E. Land	21	125
9	MEUA'S EXHIBITS INDEX		
	EXHIBIT NO. 1		
10	Rebuttal Testimony of Stephen M.		
	Rackers	23	130
11	EXHIBIT NO. 2		
	Application for Accounting Authority		
12	Order	78	81
13	EXHIBIT NO. 3		
14	Order Approving and Incorporating		
15	Unanimous Stipulation and Agreement,		
16	Case No. EU-2011-0387	81	83
17	EXHIBIT NO. 4		
18	Notice of Withdrawal, Case No.		
19	EU-2011-0387	83	84
20	EXHIBIT NO. 5		
21	Notice of Intended Case Filing	100	102
22	EXHIBIT NO. 6		
23	Data Request 0120	104	105
24	EXHIBIT NO. 7		
25	Data Request 121	105	107

1	MECG'S EXHIBITS INDEX		
	EXHIBIT NO. 1		
2	MECG's First Data Requests to Empire District Electric Company	121	122
3	STATE'S EXHIBITS INDEX		
4	EXHIBIT NO. 1		
	Staff's Response in Opposition to		
5	Empire's Interim Rate Request	21	129
	EXHIBIT NO. 2HC		
6	Interim Rebuttal Testimony of Shana		
7	Atkinson, Highly Confidential	21	129
8	EXHIBIT NO. 3		
9	Interim Rebuttal Testimony of Shana		
10	Atkinson	21	129
11	EXHIBIT NO. 4		
12	Interim Rebuttal Testimony of Shawn E.		
13	Lange	21	129
14	EXHIBIT NO. 5HC		
15	Interim Rebuttal Testimony of Lena M.		
16	Mantle, Highly Confidential	21	129
17	EXHIBIT NO. 6		
18	Interim Rebuttal Testimony of Lena M.		
19	Mantle	21	129
20	EXHIBIT NO. 7		
21	Interim Rebuttal Testimony of Mark L.		
22	Oligschlaeger	21	129
23	EXHIBIT NO. 8		
24	Updated Charts from Shawn Lange's		
25	Testimony	21	129

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C E R T I F I C A T E

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF COLE )

I, Kellene K. Feddersen, Certified  
Shorthand Reporter with the firm of Midwest Litigation  
Services, do hereby certify that I was personally present  
at the proceedings had in the above-entitled cause at the  
time and place set forth in the caption sheet thereof;  
that I then and there took down in Stenotype the  
proceedings had; and that the foregoing is a full, true  
and correct transcript of such Stenotype notes so made at  
such time and place.

Given at my office in the City of  
Jefferson, County of Cole, State of Missouri.

\_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR

**EVIDENTIARY HEARING 9/10/2012**

<b>A</b>	103:7,16 131:11	<b>adequately</b> 45:10	<b>affixed</b> 127:20	51:1 84:2 91:22
<b>AAO</b> 36:20,22 37:4,7 40:1 41:4 49:16,22 50:7 51:23,24 55:14,16,17 55:18,25 56:7 57:1,3,8,11 57:13 77:24 84:11 85:1	<b>accumulated</b> 98:15,16,19 98:20 99:9,10	<b>ADIT</b> 99:9 107:22 108:3 108:6,21,24 109:2	<b>aftermath</b> 29:2 <b>agencies</b> 38:1 <b>agency</b> 85:17 85:22,23 86:1 87:14	<b>allows</b> 84:6 <b>alluded</b> 65:4 <b>alternative</b> 49:10
<b>AAOs</b> 37:6,8 43:17,18 84:25	<b>accurate</b> 44:24 100:16,19	<b>adjourn</b> 129:12	<b>aging</b> 102:13 103:6	<b>alternatives</b> 52:9
<b>ability</b> 42:16 64:20 71:4 75:12 86:9 87:7 89:1 121:25	<b>achievable</b> 86:15	<b>adjourned</b> 129:15	<b>ago</b> 32:23 46:6 87:5	<b>amendment</b> 96:14
<b>able</b> 24:1 41:9 41:11 68:16 68:20 73:10 80:12 89:7	<b>acknowledge</b> 49:25	<b>adjustment</b> 58:6	<b>agree</b> 33:10 44:19 65:1 67:22 72:8 85:9 88:11 105:9,12 106:8 108:9 108:25 109:7 117:19 121:18	<b>Ameren</b> 32:22 38:5 46:6 52:18,22,24 57:24 58:13 58:16,18,20
<b>above-entitled</b> 133:8	<b>acknowledges</b> 48:19	<b>adjustments</b> 42:5 91:23	<b>agreed</b> 49:18 57:12 70:9,16 125:24	<b>Ameren's</b> 52:25
<b>Absolutely</b> 113:21	<b>action</b> 87:10 90:9	<b>admirably</b> 45:14 50:18	<b>agreement</b> 49:21 50:5,6 80:20 81:4,7 81:11 128:21 131:15	<b>American</b> 95:7 95:8
<b>absorb</b> 90:8	<b>actual</b> 45:7 81:16	<b>admiration</b> 45:12	<b>agreements</b> 50:7	<b>amortizations</b> 38:7
<b>absorbed</b> 90:12 90:16 91:8	<b>added</b> 27:20	<b>admissibility</b> 63:4	<b>ahead</b> 30:24 48:6 49:16 72:6,9 76:18 85:13 100:5 122:13	<b>amount</b> 34:2 35:24 43:5 44:16,20 45:21 73:10 92:21,21,23 111:22
<b>accept</b> 66:19,23	<b>addition</b> 41:3 87:23 103:15 127:8	<b>admission</b> 63:15 79:16 82:4 83:16 96:16 104:12 105:21 120:21	<b>air</b> 85:16 86:12 86:25	<b>analyze</b> 42:9,10 <b>ancillary</b> 65:19 70:17
<b>acceptable</b> 64:25	<b>additional</b> 38:6 38:13 46:18 52:7 109:24 110:1 127:9 127:11	<b>admitted</b> 48:3 68:13 84:9 100:23 119:24	<b>akin</b> 100:4	<b>Annie's</b> 97:23
<b>acceptance</b> 61:5	<b>address</b> 20:18 21:5 36:11 44:12 75:6 101:10,16,20 101:25	<b>admittedly</b> 63:11	<b>allege</b> 46:16,21 <b>alleging</b> 44:23 <b>allocated</b> 87:12 <b>allow</b> 25:1,9,15 26:11 37:20 71:19 74:19 84:11 108:23	<b>announced</b> 113:22
<b>accepted</b> 61:22	<b>addressed</b> 35:6 68:2	<b>adopt</b> 110:25	<b>allowed</b> 38:17	<b>annual</b> 23:6 55:7
<b>accepting</b> 43:9 61:4	<b>adequate</b> 41:9 41:11 42:16 42:17 46:2 48:18,20 52:25 53:5 89:1,5,8 106:10,25 107:3,7	<b>adopted</b> 52:12		<b>annualizations</b> 42:5
<b>access</b> 53:6		<b>adopting</b> 43:4		<b>annually</b> 24:19
<b>account</b> 56:17 112:17		<b>advise</b> 21:24		<b>answer</b> 59:20 84:17 85:18 91:2 94:14 102:25 106:13 109:10 110:5 115:1 119:1
<b>accounting</b> 24:12 26:14 27:19 39:24 43:15 48:9 49:13 51:18 56:25 84:2,5 85:10 102:5,9		<b>advised</b> 92:5		
		<b>advocates</b> 58:8		
		<b>affect</b> 22:1 66:20		
		<b>affidavit</b> 78:19 79:4		
		<b>affidavits</b> 78:9 127:5,19,20		

<p><b>answers</b> 60:15 95:20 115:13 119:13 123:21,24 <b>anticipate</b> 87:19 <b>anticipated</b> 78:10 <b>anticipating</b> 128:15 <b>anybody</b> 22:14 62:2 96:6 <b>anybody's</b> 128:23 <b>appeal</b> 68:12 <b>appear</b> 81:16 <b>appearance</b> 20:15 21:10 <b>APPEARAN...</b> 19:1 <b>appearing</b> 20:19 21:17 22:23 <b>appears</b> 76:3 77:23 78:2,19 81:9 93:12 <b>appendices</b> 79:9 <b>appendix</b> 31:21 79:12,12 81:1 81:5 <b>applicable</b> 42:14 <b>application</b> 55:14 77:23 131:11 <b>applied</b> 43:15 52:14 <b>appreciate</b> 70:10,22 102:25 <b>approach</b> 116:8 <b>approaches</b> 42:21 <b>approaching</b> 91:25</p>	<p><b>appropriate</b> 41:7 61:21 123:14 <b>approval</b> 91:15 <b>approve</b> 101:23 <b>approved</b> 23:3 49:16 81:12 <b>approves</b> 109:19 <b>Approving</b> 80:19 131:14 <b>approximately</b> 23:2,6 29:3 108:13 <b>April</b> 99:5 <b>arbitrary</b> 92:15 <b>area</b> 18:18 20:10 49:5 <b>areas</b> 47:24 89:6 <b>argument</b> 70:25 127:7 <b>arguments</b> 70:2 <b>articulated</b> 52:15 <b>Asbury</b> 85:15 87:24 88:2 <b>aside</b> 41:24 <b>asked</b> 38:10 41:14 49:13 95:19 107:22 110:8 112:25 113:4,4 115:12 119:12 123:20 <b>asking</b> 33:14 36:18 38:14 38:25 39:13 39:18 40:2,5 44:2 47:15 55:16 66:22 87:19 88:11 112:17 <b>asks</b> 51:25 57:25 58:22</p>	<p><b>assert</b> 87:7 <b>asset</b> 27:21 <b>assets</b> 27:21 <b>assigned</b> 20:13 65:8 89:6 <b>assistant</b> 114:22,22 <b>associated</b> 24:17,21 26:10,17 27:22,25 55:19 56:1 58:23 84:3,12 85:4,11,15 88:4 104:4 109:24 117:13 <b>Association</b> 19:10 21:8 47:2 76:23 97:11 117:8 124:25 126:10 <b>assume</b> 81:22 124:6 <b>Assuming</b> 90:11,15,21 90:23 91:6,10 109:19 <b>Atkinson</b> 126:9 132:7,10 <b>Atkinson's</b> 126:17 <b>attached</b> 81:4,8 105:8 127:5 127:19 <b>attaches</b> 48:23 <b>attachment</b> 127:1 <b>attachments</b> 79:11 <b>attempt</b> 43:23 74:24 121:16 <b>attempted</b> 75:5 <b>attempting</b> 51:11 57:18 <b>attention</b> 42:11</p>	<p>77:17 81:14 84:16 <b>attest</b> 58:14 <b>attorney</b> 19:2,2 19:7,11 81:23 83:6 <b>attributable</b> 43:8 <b>audience</b> 21:25 <b>August</b> 25:11 30:15 <b>authentication</b> 117:12 <b>author</b> 105:6 105:10,11 <b>authority</b> 18:14 24:12 25:8 26:14 27:19 43:15 49:13 51:18 56:25 84:2,5 85:10 101:22 103:16 131:11 <b>authorize</b> 28:7 <b>authorized</b> 26:20,23 27:4 27:9 78:15 79:4 81:25 83:9 91:25 100:11 <b>authorizes</b> 84:22 <b>available</b> 40:20 56:19 129:8 <b>Avenue</b> 20:19 <b>average</b> 29:19 <b>award</b> 92:16 111:21,22 <b>awarding</b> 37:7 <b>aware</b> 23:14 28:25 78:5 96:14 108:22 <b>awfully</b> 36:8 <b>a.m</b> 20:2 129:17</p>	<p style="text-align: center;"><b>B</b></p> <p><b>back</b> 31:25 32:19 34:14 34:21 41:21 42:13 45:21 47:17 54:22 63:5 87:1 99:7 108:1,21 112:25 <b>backdoor</b> 57:18 <b>background</b> 23:4 25:20 106:13 <b>bad</b> 28:23,25 29:8,9 31:5 39:6 42:1,22 45:24 46:8 50:17 <b>baghouse</b> 87:25 <b>balance</b> 53:13 54:3,6,14,17 54:21 <b>base</b> 27:22 35:14,16,19 35:23,24 36:3 36:5,11,16 39:15 101:12 113:14 <b>based</b> 33:17 43:22 64:8,10 65:12 71:21 73:17 111:16 <b>bases</b> 39:16 <b>basic</b> 48:9 <b>basis</b> 23:9 24:15,22 26:17 53:18 67:11 69:2 79:17 82:5 83:16 100:20 <b>bear</b> 78:7 79:19 83:4 <b>Beecher</b> 40:7 40:11 42:22 48:4 53:10</p>
--	---	---	--	--

59:4,9,13	116:16	<b>borrow</b> 85:6	66:15,21 67:2	<b>cafe</b> 112:7
60:20 63:2	118:10 120:9	<b>bottom</b> 34:17	68:7,18,23	<b>CAIR</b> 86:25
69:23 76:17	120:15	101:10 109:5	69:5,10,15,21	<b>calculate</b>
77:4,17 80:9	126:21	<b>box</b> 19:4,15,20	71:10,17	108:24
82:19 83:2	129:10	21:5 48:20	72:12 73:14	<b>calculated</b> 31:9
84:1 88:7,25	<b>believed</b> 91:24	<b>Brad</b> 40:7 59:9	73:25 74:22	32:11
89:10,22 93:2	<b>believes</b> 23:23	59:13 130:7	75:8 76:5,8	<b>calculations</b>
93:10 109:22	37:6 56:12,14	131:2	76:17,22 77:2	34:24
130:7 131:2	<b>bench</b> 112:12	<b>break</b> 93:13,15	77:12 79:22	<b>call</b> 24:10
<b>Beecher's</b>	118:6 122:4	125:20	79:25 82:8,10	26:12 29:8
40:22 48:1	125:9	<b>brief</b> 58:15	83:19,21	31:3 49:23
<b>began</b> 20:2	<b>benefit</b> 80:17	<b>briefly</b> 50:14	89:15,18 93:6	59:2,3 93:17
<b>beginning</b>	<b>benefits</b> 27:17	80:14 107:23	93:10,16,21	93:20 114:6,7
107:21	<b>best</b> 60:16	116:8 117:9	93:24 96:4,24	128:15
<b>begins</b> 84:17	95:24 104:8	120:9	97:2,7,10	<b>called</b> 55:6
109:5	105:17	<b>briefs</b> 58:20	100:24 101:1	77:9 96:21
<b>behalf</b> 20:20,24	115:16	129:8,9	104:13,15	<b>callous</b> 34:6
21:3,9,17	119:17	<b>bring</b> 49:10	105:22,24	<b>capacity</b> 94:8
22:23 78:16	123:25	58:7 75:20	107:13	114:20
79:5 82:1	<b>better</b> 58:18	112:25	110:15	117:15
83:9 100:12	<b>beyond</b> 41:13	125:24	112:11 113:8	118:21
<b>belief</b> 60:17	43:3	127:15,23	114:4,8,11	<b>capital</b> 27:20
95:24 103:5	<b>bill</b> 34:8 56:20	<b>bringing</b> 67:20	115:22 116:1	31:10 53:6
104:9 105:18	56:20	<b>broader</b> 86:16	116:5,9 117:7	56:2,9 85:12
110:25	<b>billing</b> 34:11,24	<b>Broadway</b> 19:8	117:23 118:1	<b>capitalize</b> 51:2
115:17	35:4 42:6	21:11	118:5,8,11,13	<b>capitalizing</b>
119:18	44:17 45:3	<b>broken</b> 85:24	119:23 120:2	56:4
123:25	<b>bit</b> 31:10,23	<b>brought</b> 22:16	120:6,23,25	<b>Capitol</b> 19:3
<b>believe</b> 22:12	33:7 47:12	35:13 91:16	121:5,8,20,23	20:18
26:1 27:10	49:6 92:25	<b>Brydon</b> 19:3	122:3,6,12	<b>caption</b> 133:9
34:16 46:10	121:13	20:17	124:5,11,14	<b>care</b> 22:15
49:19 64:3	<b>Blackberry</b>	<b>bunch</b> 72:4	124:19,24	49:11
69:19 73:4	22:1	85:22 93:7	125:3,6,9,12	<b>carrying</b> 56:4
78:6 79:3,9	<b>block</b> 87:11	<b>burden</b> 25:23	125:18,21	<b>Carter</b> 19:2
79:20,21	<b>blocks</b> 83:3	112:25	126:6 127:8	20:17 69:25
80:22 81:10	<b>blue</b> 30:4,15	<b>Bushmann</b>	127:13,25	126:3 128:2
83:12 85:1	31:8 32:10	18:22 20:5,12	128:6,11,23	<b>case</b> 25:5,6,22
88:7,17 89:3	<b>Bluefield</b> 47:18	20:21 21:1,7	129:1,5,14	25:24 28:3
89:7,9 90:8	<b>board</b> 92:14	21:14,19,24	<b>business</b> 29:10	29:7 30:7
90:16 98:11	<b>boils</b> 46:5	22:10,19 28:8	49:1 88:21	32:21,22,23
100:15,18	<b>bond</b> 90:7	28:15 46:9,24	<b>businesses</b>	34:25 35:4,17
101:18,20	<b>bondholders</b>	51:4 58:25	30:21	35:19,25 36:7
102:23	38:14	59:6 60:22		37:10 40:4,14
103:19	<b>bonus</b> 92:7	61:7,14,24		40:17,25
105:15 107:2	111:9,11	62:2,8,13	<b>C</b>	41:20 42:3
107:4,8,10	<b>booked</b> 55:22	63:10,18 64:6	<b>C</b> 19:2,2 20:1	43:3 44:5,10
109:3 110:21	<b>books</b> 36:25	65:12,22 66:9	20:17 83:4	44:13,18 45:2
			133:1,1	

EVIDENTIARY HEARING 9/10/2012

45:7 46:16,22 46:25 47:4 49:18 50:18 52:2,13,16,19 52:21,21 53:2 57:24 58:1,2 58:6,8,15,18 58:20,23 61:22 62:7,13 62:14,18,24 63:5,16,17,21 64:1,4,12 65:8,13,14,16 65:19,20 66:17 68:11 69:7 70:14,15 70:21 71:6,21 71:25 73:2,3 73:13 79:19 83:1 86:11 89:13 95:7,9 99:8 100:2,17 100:22 101:16,18,19 101:19,23,25 107:12 113:1 113:1,5,10 120:16 122:1 123:13 126:23 128:6 129:14 131:16,18,21 <b>cases</b> 26:21 27:4,6 37:11 47:16,19,19 50:17 52:13 58:7,13 70:8 <b>cash</b> 33:11,12 37:8 38:11 92:17,18 111:17 <b>casts</b> 37:11 <b>categorized</b> 23:24 <b>cause</b> 43:11 59:18 94:12 118:24 133:8	<b>caused</b> 33:17 37:23 53:11 82:20 104:24 114:24 122:23 <b>caveats</b> 126:14 <b>CCR</b> 19:24 133:20 <b>cell</b> 21:25 <b>Center</b> 19:8 <b>CEO</b> 59:17 78:12 <b>certain</b> 59:19 94:13,13 114:25 118:25 122:24 <b>certainly</b> 28:24 38:13 39:24 57:19 58:5,17 67:16 73:3 <b>Certified</b> 133:5 <b>certify</b> 133:7 <b>CG</b> 120:16 <b>chance</b> 68:21 68:23 75:20 121:21 <b>change</b> 60:5 128:20,23 <b>changes</b> 36:11 39:1,14 60:3 60:12 95:2,12 95:16 115:9 119:9 123:17 123:19 126:15 <b>characterizat...</b> 65:2 <b>characterize</b> 44:23 <b>charged</b> 101:11 113:13 <b>chart</b> 31:8 32:9 33:1,2 34:19 39:5 <b>charts</b> 127:1 132:24	<b>check</b> 79:20 <b>chicken</b> 97:22 97:23,23 98:6 98:8 112:6 <b>chief</b> 19:19 94:10 <b>chose</b> 49:17 <b>chronic</b> 38:18 <b>circumstances</b> 23:19 26:5 43:5 52:20 57:23 <b>citation</b> 69:20 <b>cite</b> 128:17 <b>cited</b> 47:20 <b>city</b> 18:8 19:4,9 19:12,16,21 20:19 21:5,12 23:13 133:14 <b>claim</b> 40:2 53:2 <b>claims</b> 31:12 53:12 <b>clarification</b> 60:25 68:14 73:21 74:21 106:19 127:3 <b>clarify</b> 43:25 <b>class</b> 48:9 <b>Clean</b> 86:25 <b>cleanup</b> 51:19 <b>clear</b> 36:10,18 44:19 56:11 56:22 61:17 68:11,12 75:9 101:24 <b>clearly</b> 27:3 40:9 49:4 87:10 88:17 91:11 112:1 <b>client</b> 47:13,14 48:23 <b>client's</b> 50:25 <b>clock</b> 36:22 <b>close</b> 95:9 125:3 <b>closely</b> 30:14 <b>cold</b> 32:4	<b>Cole</b> 133:4,15 <b>colleague</b> 47:8 <b>collect</b> 44:6,9 <b>collected</b> 27:14 <b>collecting</b> 44:12 <b>column</b> 116:20 116:20 <b>come</b> 24:4 29:20 54:14 63:5 <b>comes</b> 47:24 48:4 72:17 <b>coming</b> 31:16 34:14,21 44:5 44:6 54:11 <b>commensurate</b> 47:23 110:22 111:5 <b>comment</b> 75:24 <b>comments</b> 72:12 <b>Commission</b> 18:2 19:20,23 20:6,22 22:23 22:25 23:3,13 24:13,23,25 25:8,12,22 26:3,22,23 27:4 28:3,6 28:25 29:12 32:22 33:15 36:19,22 37:5 37:7,18,19,22 38:4,21,23,25 39:13,18,22 39:23 40:3 41:13,15 42:14 43:4,14 43:17 44:4,21 46:3,6 47:18 49:16 50:5 51:23,25 52:1 52:3,4,12,14 52:16,17,19 52:22,24,25 55:16 56:22	57:2,3,10,25 58:2,5,7,22 64:11,16 65:25 67:13 69:10 70:24 70:25 72:5 79:19 80:24 80:25 81:12 82:7 83:18 84:22 91:15 91:24 101:22 107:5 108:9 108:24,25 109:19 116:15 121:17 <b>Commissione...</b> 74:1 <b>Commission's</b> 33:10 49:19 52:11 64:4 72:3 88:9 96:19 106:5 <b>commitment</b> 46:1 <b>committee</b> 92:15 <b>community</b> 50:19 51:2 87:11 <b>companies</b> 52:14 <b>company</b> 18:13 18:18 19:6 20:8,11,15,20 23:13,21 25:16 27:2 29:9 31:5 38:2,4 39:8 52:5,7,16 53:23 57:10 59:15 74:4 75:24 81:18 90:7 94:9 95:9 100:3 101:21 106:9 106:23
--	---	--	---	--



114:21	<b>conclusively</b>	130:4,9,13,20	103:17	120:19,20
118:23	52:6	<b>Conrad's</b> 96:22	106:10 107:6	123:10,11,16
122:20 132:2	<b>condition</b>	<b>consequence</b>	<b>continued</b>	123:24 124:9
<b>company's</b>	76:13	25:21	52:22 90:11	126:10
23:16 24:16	<b>conditions</b>	<b>consider</b> 43:24	90:15 91:6	128:13,14
24:20 113:19	30:25 76:10	44:10 57:25	102:13	133:12
<b>compensation</b>	96:5 97:4	61:6 63:16	<b>continues</b> 24:8	<b>corrected</b>
50:13 92:14	103:13	65:25 67:10	53:5 109:6	126:19
111:13	115:23 120:3	72:5 74:1	<b>continuing</b>	<b>correction</b> 95:4
<b>complete</b>	126:4	103:9	66:6 76:12	99:11 126:16
105:17	<b>conduct</b> 25:15	<b>considerable</b>	<b>control</b> 58:3	128:16,24
<b>completely</b>	<b>confer</b> 92:4	24:5	86:15	<b>corrections</b>
37:21	<b>confidential</b>	<b>consideration</b>	<b>controller</b>	60:3 95:16
<b>compliance</b>	92:4,5 132:7	26:19 28:19	114:22	115:9
85:15 87:8,14	132:16	37:20 38:18	<b>convenient</b>	<b>correctly</b> 84:23
87:15	<b>connection</b>	63:17 68:3	28:13	90:9 101:8,14
<b>complicated</b>	61:22 64:2	73:19 75:10	<b>convey</b> 45:10	<b>cost</b> 24:4,5 28:1
66:15	<b>Conrad</b> 19:7,7	<b>considerations</b>	<b>cool</b> 33:11,13	51:19 56:15
<b>complicates</b>	21:9,11,11	53:8	<b>cooperative</b>	57:7 58:23
44:24	47:3 62:4,9	<b>considered</b>	93:3	109:14,16
<b>complied</b> 96:19	62:14,20 65:1	35:7 52:18	<b>coordinated</b>	112:18
<b>comply</b> 49:20	65:17 69:16	112:18 113:4	45:18	113:19
<b>component</b>	69:22 71:13	<b>considering</b>	<b>copy</b> 59:22	<b>costs</b> 23:19
31:10	72:8 76:24	30:20 38:6	81:3 89:24	24:11,13,21
<b>components</b>	77:3,5,8,13	67:22,24	94:16 100:16	26:13,14 27:7
26:10,18 84:6	77:16 79:15	<b>consists</b> 123:9	115:3 119:3	29:13,16
98:18 108:5	80:4,8 82:3	<b>constitute</b>	123:1 127:13	35:11 39:19
109:3,4,14,25	82:14,18	57:23 61:5	127:24	39:25 44:2
111:17	83:15,25 89:9	<b>construction</b>	<b>correct</b> 46:11	49:2 55:19,20
<b>concede</b> 67:19	96:8 97:12,14	38:8	60:10,11,16	55:22,22,24
<b>concern</b> 50:15	97:16 99:6,13	<b>consumer</b> 58:8	62:8 64:5	56:4,8 73:2
50:25,25	99:18 100:20	<b>Consumers</b>	65:22 66:21	84:20 85:2,4
71:23	101:5 102:21	19:13 21:15	73:20 78:3,4	109:10,11,13
<b>concerned</b>	103:18,22	21:17 51:5	78:13,14,22	109:13,17,18
43:21 49:22	104:11,19,23	76:20 97:8	79:13 80:24	109:20,20,23
88:19	105:20 106:3	116:6 120:7	81:2,5 83:6	<b>couched</b> 52:19
<b>concerning</b>	107:10,22	<b>contained</b>	84:9,10 86:8	<b>counsel</b> 19:14
26:22 101:11	110:8 112:16	60:15 95:20	86:13 87:8	19:15,17,19
113:12	112:23	115:13	92:7,8 94:25	19:19 20:14
<b>conclude</b> 37:15	113:11 117:9	119:13	95:23 98:12	21:2,4,22
54:23	117:10,22	123:21	100:6,7 104:8	47:10 48:13
<b>concluded</b>	119:25	<b>contemplate</b>	105:13,17	49:3 50:10,11
45:22 129:16	121:20,21,24	87:17	106:17 110:6	50:19 62:20
<b>concludes</b>	124:13,19,21	<b>contents</b> 72:15	111:9,15,16	62:22 65:4
114:5	125:14,21,23	123:10	115:15,16	71:3,19 74:13
<b>conclusion</b>	126:5 128:3	<b>context</b> 62:24	116:17,18	74:17 75:19
45:24	128:11,14	<b>continue</b> 58:7	119:17	75:25 76:14

89:16 92:4 107:14 117:24 121:6 125:4,16 128:15 <b>counsel's</b> 62:4 70:25 74:10 75:12 76:6 <b>counters</b> 72:19 <b>County</b> 133:4 133:15 <b>couple</b> 32:23 41:22 42:20 47:8 77:6 91:22 97:12 <b>course</b> 28:25 31:4,22 67:11 88:22 102:18 <b>court</b> 19:12 21:13 22:14 47:19 <b>courts</b> 41:18 65:19 <b>covenant</b> 38:15 90:7,13,17 91:9 <b>cover</b> 123:9 <b>covered</b> 103:16 113:2,15 <b>covers</b> 72:21 <b>create</b> 23:23 57:9 <b>credit</b> 38:7 52:23 53:4 110:3 <b>crews</b> 37:3 45:14 <b>critic</b> 50:23 <b>criticism</b> 45:25 <b>cross</b> 70:18 89:15 121:22 121:25 125:4 126:1 <b>cross-examin...</b> 60:21 76:19 76:19 77:3 89:18,21 96:3	97:7,10,14 107:13,16 110:15,18 116:5,10 117:7,10,23 118:1 120:6 120:12 121:5 121:8 124:20 124:24 128:1 129:6 130:9 130:10,13,14 130:15,19,20 130:23 <b>cross-examine</b> 61:10 74:10 74:11,13,15 75:14 <b>CSAPR</b> 86:13 86:18,18,22 86:22 <b>CSR</b> 19:24 133:20 <b>current</b> 56:14 57:7 66:13 <b>Currently</b> 27:2 <b>Customarily</b> 100:4 <b>customer</b> 42:4 44:20 51:14 55:15 56:13 57:15 58:17 <b>customers</b> 18:17 20:10 23:18,22 24:3 24:9,14,18,22 26:16 27:8,15 27:18 28:1 29:3,6 30:25 33:21 34:2,5 34:7,18,21 35:1,3 42:24 43:2 45:19 46:1 53:20 55:10 56:15 56:15,16,18 56:19,20 58:14 91:13	98:24 99:3 <b>cut</b> 37:9 67:23 <b>cutoff</b> 35:18 <hr/> <b>D</b> <hr/> <b>D</b> 20:1 130:1 <b>damaged</b> 49:9 50:20 <b>data</b> 104:3 105:5,6 120:15,18 131:23,25 132:2 <b>date</b> 25:10 35:18 45:20 47:17 78:7,8 90:18,20 91:11 98:23 99:2 <b>dated</b> 78:22 <b>David</b> 19:11 21:18 <b>day</b> 32:7,7 <b>days</b> 22:11 25:2 29:18,18 32:5 42:5 58:16 <b>DC</b> 85:25 <b>dcarter@bry...</b> 19:5 <b>deal</b> 40:11 45:5 49:18,24,24 49:25 50:19 71:5 <b>dealing</b> 69:3 71:5 <b>debt</b> 38:11 110:2 <b>decade</b> 54:17 <b>decent</b> 34:1 <b>decide</b> 64:12 67:13,14,16 <b>decided</b> 92:15 <b>decision</b> 64:8 64:17,23 66:2 66:8,16,19,23 71:1 92:9 102:4,8	<b>decisions</b> 64:4 66:6,7 69:4 69:11 <b>deck</b> 102:21 <b>declared</b> 48:7 48:12 91:18 <b>decline</b> 24:9 27:8 <b>decrease</b> 35:16 36:12 55:21 <b>decreases</b> 39:10,16 <b>decreasing</b> 36:17 <b>defend</b> 58:11 <b>defending</b> 58:9 <b>defer</b> 55:18 56:1 84:3,11 <b>deferral</b> 26:14 27:19,25 <b>deferred</b> 24:11 27:20 85:5 92:18 98:15 98:19 99:9 109:20 <b>deferring</b> 55:20 56:3 109:13 109:18 <b>defined</b> 38:23 39:1,14,19,23 40:3 41:15,17 106:21 <b>definition</b> 51:9 106:12,20 <b>demands</b> 35:4 <b>demonstrate</b> 27:10 52:6 <b>denial</b> 38:18 <b>denied</b> 52:25 <b>deny</b> 57:11 66:12 <b>departing</b> 56:18 <b>Department</b> 21:19 <b>depreciated</b> 35:24	<b>depreciation</b> 36:4,7 56:1,3 56:9 84:12 98:16,20 99:10 108:8 108:10,18 <b>described</b> 76:10 91:23 <b>deserve</b> 42:12 <b>design</b> 73:1 101:13 113:14 <b>designated</b> 62:7 65:16 69:22 71:12 71:17,18 74:4 96:11 123:13 124:13 <b>designating</b> 96:19 <b>designation</b> 65:23 69:18 70:5 96:9,15 124:8 <b>designed</b> 23:2,5 23:8 24:20 26:9 51:18 56:12 <b>despite</b> 54:1,25 <b>destroyed</b> 24:7 30:21 <b>destruction</b> 23:15 41:2 <b>determinant</b> 34:24 42:6 <b>determinants</b> 34:11 45:3 <b>determine</b> 98:24 99:3 <b>determined</b> 44:1 52:1 <b>determining</b> 73:11 <b>detrimental</b> 55:11,24 56:8 <b>devastating</b> 39:21
---	--	---	---	--

<b>development</b> 87:11	<b>disasters</b> 39:21	90:11,15 91:6	<b>Duly</b> 112:8	<b>effects</b> 32:24
<b>deviations</b> 32:13	<b>disavow</b> 49:25	91:12,19	<b>D.C</b> 86:2 87:6	55:11 108:8
<b>devices</b> 22:1	<b>discretion</b> 25:1	92:10 110:22	87:10,10	108:24
<b>devoted</b> 58:18	26:4 37:7	110:23 111:1		<b>effort</b> 30:23
<b>Diana</b> 19:2	<b>discretionary</b>	111:5	<b>E</b>	<b>efforts</b> 24:3
20:17	92:15 111:21	<b>dividends</b> 48:7	<b>E</b> 20:1,1 122:18	39:20 45:18
<b>differ</b> 51:15	<b>discuss</b> 31:10	48:10,12 54:7	130:1 131:8	51:11
<b>difference</b>	85:14 125:16	54:9,10,11,13	132:12 133:1	<b>EFIS</b> 69:19,19
32:15 33:5	129:12	54:13,16 55:6	133:1	<b>EF5</b> 50:20
41:22	<b>discussed</b>	<b>document</b>	<b>earlier</b> 47:15	<b>either</b> 45:10
<b>different</b> 34:15	32:21 35:25	77:18,22 78:7	91:16 96:6	53:16 63:20
65:10,14,18	41:19 42:24	78:16 80:11	97:4 107:11	67:7 125:2
68:5 106:21	43:19 75:1	80:13,14 81:8	115:24	<b>electric</b> 18:13
106:21	96:6 97:4	81:25 82:22	119:25	18:16 19:6
<b>difficulty</b> 98:9	108:18	82:24 83:3,13	124:21 126:4	20:8,9,15,20
<b>dilemma</b> 66:18	115:23	83:17 84:7	<b>earn</b> 27:22	23:6 24:7
<b>diminish</b> 36:13	126:16	99:21,23,25	41:24 47:22	29:9 31:5
<b>dioxide</b> 86:23	<b>discussing</b>	103:25 104:2	48:25 91:24	34:8 39:8
<b>dip</b> 91:21	28:17,20	105:1,3 113:3	<b>earned</b> 26:25	52:13 59:15
<b>direct</b> 53:11	<b>discussion</b>	116:11,12	41:23	94:9,11 100:3
59:10,19	44:24 93:4	117:12	<b>earning</b> 26:20	101:11
69:22,23	107:22	120:14 127:5	27:9 47:13	106:23
77:17 81:14	<b>disrespect</b> 34:8	127:6	<b>earnings</b> 36:25	113:13
84:15 85:4,14	<b>Dissatisfied</b>	<b>doing</b> 31:14	38:13,15	114:21
90:2 94:3,13	51:24	44:7 50:2	39:25 48:5,11	116:20,23,25
94:19 95:3,12	<b>distinguish</b>	<b>dollar</b> 91:18	48:11,25	117:2 118:23
96:11,20	62:11	<b>dollars</b> 36:15	51:19 53:13	122:20 132:2
114:15,25	<b>distribute</b>	44:9,11	53:23,24,25	<b>electricity</b>
115:10	28:13	<b>door</b> 46:7	54:3,6,8,8,11	29:14 51:12
118:16,25	<b>distributed</b>	<b>double</b> 92:25	54:12,14,16	<b>electronic</b>
122:15,24	127:22	<b>doubt</b> 37:12	54:16,20,21	81:17,20
123:12 130:8	<b>District</b> 18:13	76:7	54:25 55:1,7	<b>elements</b>
130:12,18,22	19:6 20:8,15	<b>dozen</b> 72:16	55:11,21,24	112:22
130:25 131:2	20:20 59:15	<b>DPS</b> 126:18,20	56:5,6,7,16	113:18
131:3,6,7,8	76:8 81:17	<b>draw</b> 84:16	58:4 84:21	<b>eloquently</b>
<b>direction</b> 66:4	83:10 94:9	<b>dream</b> 40:24	85:3,9 90:13	47:10
<b>directly</b> 86:7	100:3 106:23	<b>driven</b> 23:12	90:17 91:9,17	<b>else's</b> 125:25
86:10,21 88:3	114:21	<b>driver</b> 98:11	91:20 92:1,2	<b>embarrassed</b>
<b>director</b> 118:23	118:22	<b>dropped</b> 53:13	<b>East</b> 19:3 20:18	111:23
<b>directors</b> 92:14	122:20 132:2	57:16	<b>easy</b> 68:4	<b>emergency</b>
<b>disagree</b>	<b>dividend</b> 37:9	<b>dropping</b> 57:17	121:25	23:24 24:2
111:10	37:14,16,21	<b>due</b> 24:9 27:8	<b>eat</b> 98:7	26:2,5 42:18
<b>disaster</b> 38:16	37:23,25 38:3	33:18 40:10	<b>effect</b> 25:2,9	42:19 48:16
43:6 45:19	38:10,19,21	56:13 71:4	36:16 55:24	48:16,21,24
51:10 91:12	50:11 53:15	84:20 85:2	56:8 70:8	52:4,6,11,15
	54:4,15,21	102:19 129:9	87:6,7	52:19 53:3
	55:4,5,6	129:9	<b>effective</b> 25:10	57:21 88:9,16

88:24 106:6 106:18,20 110:8,10,12 <b>emergency/n...</b> 52:11,15 57:20 <b>Emp</b> 33:2 <b>Empire</b> 18:12 19:6 20:3,8 20:15,20 22:21,24 23:5 23:20,23 24:1 24:4,5,8,11 24:24 25:16 25:23 26:12 26:16,20 27:7 29:2,5 30:2 30:17,23 31:5 31:9,12 32:2 32:10,17 33:14 34:1,22 35:1,7,10,12 35:12,19,20 35:23 36:2,8 36:20 37:5,8 37:9,12,21,24 38:6,12,16,25 39:13,16,18 39:24 40:2,9 40:14,15,18 40:24 41:5,7 41:8,10,14,15 41:23,24 42:2 42:9,14,20 43:7,13,21 44:1,7 45:13 45:13,17 46:4 46:15,19,20 46:21 48:15 49:12,17 50:2 50:18,23 51:1 51:12,15,17 51:24 53:2,3 53:4,7,12,14 53:17,19,25 54:2 55:1,14 55:15,18,21	56:1,4,6,7,12 56:14,18,19 56:20 57:12 57:14,16,18 59:1,15,16 60:22 61:15 65:6 68:9 69:17 70:1 76:8,15 78:12 79:5 81:17 82:1 83:9 84:1,11,22 88:15 89:2,4 89:4 90:12,16 91:8 94:9 96:4 97:5 98:23 99:2 100:3,13 101:12 106:18,23 107:6 109:9 110:10,21,25 112:17 113:4 113:13,23 114:21 115:22 116:3 116:24 118:22 120:4 120:16 122:20,21 124:14,17 126:18 132:2 <b>Empire's</b> 23:1 23:11,14,18 24:14 25:22 26:22,25 27:15,18 28:1 28:22 31:16 33:2,3,3,19 36:11,14,16 36:24 37:4,12 38:10,18 39:3 39:8 40:7 42:1,22 43:1 43:2,8,23 44:14,15,20 44:22 45:25	48:5 53:6,15 53:24 54:5,7 54:14,16,23 54:25 55:3,5 55:8,10 56:11 57:20,22,24 58:1,10,11,23 61:1 70:5 75:1 84:20 85:3 89:1 90:7 97:3 111:4 112:22 113:19 127:17 130:6 131:1 132:5 <b>employed</b> 59:14 94:7 114:19 118:20,22 122:19 <b>employees</b> 45:13 50:13 <b>encompassed</b> 113:3,19 <b>encompassing</b> 86:16 <b>ended</b> 116:25 <b>endorsement</b> 78:11 <b>ends</b> 31:23 <b>Energy</b> 19:10 19:13 21:7,15 21:17,20 38:5 47:1 51:5 76:20,22 97:8 97:11 116:6 117:8 120:7 124:25 126:9 <b>England</b> 19:3 20:18 <b>enjoy</b> 97:22 <b>entered</b> 129:11 <b>entering</b> 73:18 <b>enterprises</b> 47:23 <b>entertain</b> 43:4 <b>entire</b> 49:5	61:8 71:18 <b>entirely</b> 43:7 <b>entitled</b> 25:17 31:13 41:16 44:9 47:22 50:4 66:5 80:19 82:25 <b>entries</b> 20:14 <b>enunciated</b> 52:4 <b>environment</b> 45:15 <b>Environmental</b> 85:17,21 87:13 <b>EPA</b> 85:23 <b>EPS</b> 126:18 <b>equal</b> 27:23 <b>equipment</b> 35:22 <b>equities</b> 26:24 <b>equity</b> 26:23 <b>error</b> 126:22 <b>errors</b> 91:4 <b>ER-2012-0345</b> 18:15 20:11 <b>ER-2012-0345I</b> 62:12 <b>ER-81-229</b> 126:24 <b>ER-81-29</b> 126:23 <b>essence</b> 56:14 91:19 <b>essentially</b> 47:12 <b>established</b> 25:18 64:10 110:23 <b>EU-2011-0387</b> 79:21 80:21 83:1 131:16 131:19 <b>event</b> 40:9,25 43:9,16 <b>evidence</b> 25:16 40:17 45:22	50:12 53:3,6 54:5 55:9 60:20 61:22 64:13 65:25 71:15 72:18 76:16 80:3 82:13 83:24 96:2 97:6 101:4 104:18 106:2 115:20 116:4 119:21 120:5 121:3 124:3,18 128:10 129:4 130:6 <b>evidentiary</b> 18:6 20:7 25:15 64:10 64:12,16,23 70:23 <b>evoked</b> 50:22 <b>exact</b> 78:8 92:24 <b>exactly</b> 33:16 39:25 <b>examination</b> 59:10 93:4 94:3 112:15 114:15 118:16 122:15 130:8 130:12,16,18 130:22,25 <b>example</b> 45:5 72:14 73:2 <b>exceeded</b> 54:7 55:7 <b>exceeding</b> 54:16 <b>excessive</b> 39:4 <b>exchange</b> 57:6 116:15 <b>exclude</b> 63:13 67:3,7 <b>excluded</b> 74:3 <b>exclusion</b> 63:17 <b>exclusive</b> 23:7
--	--	---	---	--

<b>Excuse</b> 99:10	132:4,5,8,11	<b>extensively</b>	106:7	<b>finance</b> 86:10
<b>excused</b> 21:21	132:14,17,20	41:19	<b>far</b> 21:22 22:12	87:8
<b>executed</b> 45:18	132:23	<b>extra</b> 30:22	62:5 100:11	<b>finances</b>
51:22 55:15	<b>exhibits</b> 22:12	33:11 36:6	109:15	106:24
<b>exercise</b> 25:1	22:15,19	37:3 39:19	111:10	<b>financial</b> 26:2,5
37:7	68:10 73:15	44:8	<b>Feddersen</b>	36:25 37:4
<b>exhibit</b> 20:3,4	75:9 76:11	<b>extraordinary</b>	19:24 133:5	38:3 42:18
22:14,17	77:1,6,9	23:24 40:9	133:20	53:7 54:24
28:12 29:23	95:20 96:2,4	43:9,16 52:20	<b>federal</b> 47:18	55:8,11 86:11
48:3 60:1,20	97:3 128:7	57:23	85:23 86:1	88:15,17
60:22 61:16	129:10 131:1	<b>extreme</b> 23:24	<b>feel</b> 41:2	102:20
65:15,16,23	131:9 132:1,3	<b>extremely</b>	<b>feels</b> 34:6	103:12
68:9,13 71:19	<b>exhibit's</b> 65:24	45:18	<b>fees</b> 23:7	106:18,20
73:19 74:5,8	<b>exist</b> 52:6,9		<b>fell</b> 48:25	110:13
76:8,15 77:13	57:5,5 65:21	<b>F</b>	<b>felt</b> 111:2	<b>financially</b>
77:14 79:8,8	<b>existed</b> 57:4	<b>F</b> 133:1	<b>FEMA</b> 30:22	40:10,18
79:16,22 80:2	<b>existence</b> 96:20	<b>face</b> 41:5	<b>fewer</b> 27:20	<b>financing</b>
80:5,6,10	<b>existing</b> 35:24	<b>facie</b> 46:16,22	<b>figure</b> 35:2	109:24 110:1
82:5,10,12,15	<b>expect</b> 61:20	<b>facilities</b> 23:16	72:25 86:17	<b>find</b> 40:6
82:16,21	111:24	<b>facility</b> 87:24	<b>figures</b> 32:5	107:19
83:16,21,23	<b>expected</b> 31:1	<b>facing</b> 41:8,10	<b>file</b> 18:15,15	<b>finding</b> 40:13
84:9 94:21,24	41:24 111:14	53:3 57:15	20:11 58:12	<b>findings</b> 26:22
95:3 96:12,17	<b>expects</b> 29:14	<b>fact</b> 24:5 26:20	58:15,19	<b>fine</b> 30:19 64:1
97:5 98:11	30:5	31:18 37:13	80:21 83:9	67:17 70:18
99:14,16,20	<b>expended</b> 24:6	37:14,21	90:1	77:12
101:1,3,7	24:11	40:12 58:13	<b>filed</b> 23:5 24:24	<b>finish</b> 78:11
102:1 103:18	<b>expense</b> 36:4,7	67:20 70:10	24:25 25:5	<b>finished</b> 87:3
103:20,24	37:1 56:1,3	72:21 88:19	30:1 32:20	125:13
104:12,15,17	58:6,23 85:7	100:21	41:20 46:14	<b>Finnegan</b> 19:7
104:21 105:1	<b>expenses</b> 27:20	<b>factor</b> 68:3	46:15 51:17	21:11
105:21,25	58:1,2 84:3	<b>factors</b> 28:20	55:14 57:13	<b>firm</b> 133:6
106:1 115:7	84:12 85:11	34:23 43:22	65:7 69:17,19	<b>first</b> 22:21 26:9
115:20,22	91:14 101:12	43:24 67:11	78:6 79:18	29:22 33:25
116:3 119:7	113:14	67:20,22,25	82:6 83:8,17	43:20 44:5,10
119:21,24	<b>experience</b>	70:3 75:6	96:15,22	46:15 53:10
120:4,9,10,25	24:8	101:10,17,20	100:5,22	54:25 59:2
121:2 123:5	<b>experienced</b>	102:1 113:12	116:14	75:3 76:1,19
123:18 124:3	23:12,21 24:8	<b>facts</b> 27:10	120:16 126:7	80:22 101:10
124:6,14,17	32:2 33:11	<b>failed</b> 43:22	127:18	132:2
127:3,4,10,12	39:16 43:7	46:15	<b>filing</b> 23:8 25:3	<b>fit</b> 64:21
127:12,16,21	<b>experiencing</b>	<b>failing</b> 42:17	75:2 100:2,6	<b>five-minute</b>
128:9,12	27:3 39:3	<b>fairly</b> 23:23	100:12,17	125:19
129:1,3 131:2	<b>extend</b> 51:1	73:9	101:9,19	<b>five-year</b>
131:3,4,5,6,7	<b>Extended</b>	<b>fall</b> 36:23 37:5	113:2,11	128:18
131:9,11,13	50:20	41:4 54:17,19	131:21	<b>flexibility</b> 38:4
131:17,20,22	<b>extension</b> 87:14	<b>fallen</b> 54:18	<b>filings</b> 117:14	<b>floor</b> 112:7
131:24 132:1	87:17,20	<b>familiar</b> 106:4	<b>final</b> 45:8	<b>folks</b> 45:11

<b>follow</b> 112:5	<b>Furthermore</b>	72:25 76:18	<b>granted</b> 27:18	116:11
<b>following</b> 26:8	52:23 55:25	77:7 86:21	106:11 107:5	<b>handle</b> 125:16
29:5 51:13	57:22	89:13 99:7	<b>granting</b> 27:23	<b>hands</b> 102:21
55:13 99:15	<b>future</b> 86:10	102:9 117:16	41:3	<b>happen</b> 34:4
<b>follows</b> 59:9		117:19	<b>graph</b> 29:22,22	62:21
94:2 114:14	<b>G</b>	122:12	29:24 30:11	<b>happened</b> 30:6
118:15	<b>G</b> 20:1	125:15	32:1 33:22	30:9 42:22
122:14	<b>game</b> 47:11	<b>goal</b> 110:24	<b>Graphically</b>	43:1 103:13
<b>foregoing</b>	<b>gap</b> 31:7,8,10	<b>goes</b> 62:5,5,14	54:19	<b>happening</b>
133:11	32:9,13,15,17	64:9 67:12	<b>graphs</b> 41:21	30:10 31:24
<b>forensic</b> 77:9	<b>gaps</b> 32:19	<b>going</b> 28:18	<b>great</b> 29:10	70:7
<b>forever</b> 73:6	<b>gas</b> 21:20 47:17	30:3 31:14,24	34:22,25 37:6	<b>hard</b> 30:11
<b>form</b> 49:15	52:13 56:25	33:19 36:10	38:5 39:7	50:17,17 74:2
59:20 94:14	88:5	50:9,12 58:21	40:11 42:3	88:22
115:1 116:14	<b>general</b> 35:4,19	61:18 62:11	45:13	<b>heading</b> 66:4
119:1	42:3 61:15	62:21 63:22	<b>green</b> 30:8,15	<b>headquartered</b>
<b>forth</b> 57:23	63:14,16,17	64:7,8 67:19	31:8 32:10	86:1
133:9	68:7 71:21	68:9 69:5	<b>gross</b> 23:6	<b>health</b> 86:11
<b>fortunately</b>	74:11,15,18	71:25 72:3,20	<b>group</b> 19:13	<b>hear</b> 66:14
41:4	75:13,14,16	73:5,6,8,9	21:15,17 51:5	73:18 75:25
<b>forward</b> 65:9	75:21 89:12	75:20 76:13	76:20 92:16	<b>heard</b> 28:17
77:7 102:9	121:14	77:6 88:10,20	92:24 97:8	47:12 50:18
112:5	<b>generally</b> 86:18	91:13,14,15	110:22 111:6	67:9 69:17
<b>found</b> 52:24	88:8	91:16 102:23	116:6 120:7	76:1,4 86:17
79:10 98:7	<b>generate</b> 23:2	102:24	<b>groups</b> 51:15	101:25
<b>foundation</b>	<b>generated</b>	108:21	<b>grow</b> 92:2	<b>hearing</b> 18:6
79:17	30:17 57:5	116:11	<b>guarantee</b>	20:2,7 21:21
<b>four</b> 30:12	<b>getting</b> 36:3,4	128:16	38:23,25	25:7,10,15,19
102:11,18	40:16 42:13	<b>going-forward</b>	39:14,19 40:3	42:7 61:15
127:18	45:7 51:12	24:15,22	47:21 49:1	62:18 63:6
<b>frame</b> 87:1	<b>give</b> 33:11	26:16	<b>guaranteed</b>	68:8 70:13
<b>frankly</b> 34:22	39:24 41:14	<b>good</b> 20:5	39:9,23	71:20 72:6,9
35:1 37:6	51:25 66:9	28:16,23 31:4	<b>guaranteeing</b>	75:4,13 79:25
42:2	92:15	31:4 34:21	41:15 46:7	97:2 105:24
<b>free</b> 54:17,19	<b>given</b> 29:15	41:12 42:1	<b>guess</b> 50:21	116:1 120:25
<b>frequently</b>	32:18 57:24	43:1 51:6	62:10 75:24	128:6 129:16
47:20 65:7	69:1 90:7	65:11 77:4,5	92:16 96:16	<b>hearings</b> 58:13
<b>front</b> 28:3	133:14	89:22,23	101:9 112:5	58:16,20
<b>Fujita</b> 50:20	<b>gives</b> 110:3	93:12 97:15		61:18 65:14
<b>full</b> 65:20	<b>glad</b> 61:19 98:7	97:16 98:6	<b>H</b>	75:18
133:11	<b>Globe</b> 50:23	110:19,20	<b>half</b> 33:25	<b>heat</b> 30:22 39:4
<b>function</b> 45:15	<b>GMO</b> 52:3	<b>Gorilla</b> 97:20	44:10,13	<b>herring</b> 53:22
<b>funds</b> 52:7	58:13	<b>grade</b> 38:7,12	<b>hand</b> 93:22	<b>high</b> 29:7 103:8
<b>further</b> 26:13	<b>go</b> 33:1 41:13	52:23 53:4	114:9 118:11	<b>highest</b> 26:25
63:25 65:3	61:8 63:1	<b>grant</b> 26:4 41:7	<b>handed</b> 29:23	50:21
117:5 121:4	65:2 67:3	51:23 55:16	77:18 81:8	<b>highly</b> 92:4,5
129:7	68:12 70:15	87:11	<b>handing</b>	132:7,16

<b>historic</b> 55:6	<b>hypothetically</b> 63:14	45:1 51:7	75:21 84:19	32:20 57:14
<b>Historically</b> 54:7	<hr/> <b>I</b> <hr/>	<b>impressive</b> 45:21	100:6 121:14	<b>injuries</b> 49:7
<b>history</b> 50:2	<b>Iatan</b> 38:8	<b>improves</b> 38:3	<b>increased</b> 39:2	<b>inquire</b> 63:25 63:25
<b>hit</b> 29:6 36:25 37:4 39:21,25 53:24 87:9 91:20 102:12	<b>idea</b> 45:24 46:8	<b>inability</b> 48:17 106:9	44:16 55:19 56:8 57:25 85:7	<b>insofar</b> 49:22 78:5
<b>home</b> 40:12	<b>identification</b> 20:4 22:18 60:1 77:15,19 79:8 80:7,11 82:17,21 94:20,24 99:17,20 103:21,24 104:22,25 119:7 120:11 123:5	<b>incentive</b> 50:13 92:12,17,18 111:13,17,19	<b>increases</b> 39:11 85:2	<b>installing</b> 36:15
<b>homes</b> 34:3,9	79:8 80:7,11	<b>include</b> 45:13 57:14 73:22 77:10 87:24 98:14 99:9 102:2,3 108:3	<b>increasing</b> 18:15 20:9 36:17	<b>instance</b> 42:25 85:6
<b>honest</b> 33:25 102:21	82:17,21 94:20,24 99:17,20 103:21,24 104:22,25 119:7 120:11 123:5	<b>included</b> 23:7 29:24 31:20 31:20 98:17 109:1,23 127:1	<b>incredibly</b> 58:9	<b>intend</b> 89:13 106:15
<b>Honor</b> 20:16 21:16 46:12 60:19,24 61:20 62:4 63:22 67:9 76:21,24 79:15 80:4 82:3,14 83:15 89:9 93:8,20 96:1,18 97:13 99:13 100:20 103:18 104:11,19 105:20 107:10 112:14,23 115:19 116:7 117:9,22 119:20 120:8 120:22 124:3 124:10,22 125:14	<b>identified</b> 61:21 84:8 96:17 98:12	<b>includes</b> 79:8	<b>incremental</b> 37:1 51:19	<b>intended</b> 45:25 47:25 71:14 100:2,16 113:1,10 131:21
<b>Honor's</b> 128:21	<b>identify</b> 80:13 80:17 82:24 85:5 99:25 104:2 105:3 116:12	<b>including</b> 23:15 46:19 101:12 108:24 113:13	<b>incumbent</b> 52:5	<b>intending</b> 64:4
<b>hope</b> 33:9 38:20 47:17 77:7	<b>IEC</b> 50:3,4	<b>inclusive</b> 80:23	<b>incurred</b> 23:20 26:13 37:1 39:20 58:1	<b>intent</b> 111:5
<b>hoped</b> 71:14	<b>ignore</b> 42:15	<b>income</b> 98:15 98:19	<b>indenture</b> 90:7 91:21	<b>intention</b> 113:5
<b>hopes</b> 43:3	<b>ignores</b> 42:25	<b>Incorporating</b> 80:20 131:14	<b>INDEX</b> 131:1,9 132:1,3	<b>interest</b> 85:7 109:24
<b>Hospital</b> 49:9	<b>ignoring</b> 41:25	<b>incorrect</b> 83:13	<b>indicated</b> 62:5 73:22 113:11 127:12	<b>interesting</b> 34:24 35:2 37:19 42:6 53:17
<b>hot</b> 29:9 40:15	<b>immediate</b> 29:2	<b>increase</b> 23:5 25:17 26:4 28:7 31:13 33:20 35:20 36:21,24 37:20 44:3 56:11 58:3 61:2,3,5,6,11 61:15 66:13 66:25 67:4,8 68:6,8 69:7 69:15 73:17 73:20,24 74:2 74:6,9,11,14 74:16,18 75:13,15,16	<b>indication</b> 45:17	<b>interim</b> 23:1,9 23:11 24:20 24:24 25:4,5 25:17,24 26:7 26:11,15 27:12,23 28:7 28:22 31:9,13 32:11,21 33:17 35:6,7 36:7,11,12,21 36:24 37:20 38:17 41:7,14 42:10 43:24 44:2 45:6,23 46:16,22 51:25 52:2,18 53:1,8,18 54:2,24 55:9 56:10,11 57:19 58:3,21 61:2,4,11,22 63:23 64:2,9
<b>hotel</b> 30:22 37:3	<b>immediately</b> 52:8 55:22	<b>incorrect</b> 83:13	<b>information</b> 21:13 30:2 31:23 60:16 95:24 104:9 105:18 108:22 109:2 109:3 115:17 119:17 121:17 123:25	
<b>hour</b> 44:20	<b>impact</b> 88:5 107:25	<b>incorrect</b> 83:13	<b>informed</b> 45:20	
<b>hours</b> 37:2	<b>impacted</b> 23:14 91:14	<b>incorrect</b> 83:13	<b>infrastructure</b> 24:7 102:14 103:6	
<b>houses</b> 30:21	<b>impacts</b> 39:7	<b>incorrect</b> 83:13	<b>initial</b> 41:19 58:15 75:1	
	<b>implement</b> 23:9 50:4	<b>incorrect</b> 83:13	<b>initially</b> 29:3	
	<b>implementati...</b> 47:15 102:16 103:3	<b>incorrect</b> 83:13		
	<b>importance</b> 53:22	<b>incorrect</b> 83:13		
	<b>important</b> 26:19 31:15 34:25 42:11	<b>incorrect</b> 83:13		

64:18 65:7,19 66:2,8 67:4,8 68:5 69:1,7 69:15,18 70:1 70:13 71:6,15 71:18,24 72:16 73:16 73:20,24 74:2 74:6,9,14,25 75:4,7,10 88:9 89:11 93:2 94:23 95:15 96:10 99:8 101:16 101:18,21,25 102:2 106:11 107:5 108:2,9 109:9 112:10 112:19 121:11,15 123:14 124:8 127:17 131:4 132:5,6,9,12 132:15,18,21	69:14 124:23 <b>issued</b> 24:12 25:14 36:22 85:16 <b>issues</b> 34:25 35:1,2 42:6,8 42:9,11 61:10 65:15 66:17 67:21 68:1,8 70:13 71:2,21 72:13,21 73:16 74:12 74:13,14,15 74:25 75:15 75:17,18,19 75:20 76:4 <b>items</b> 35:13 112:17	20:5,13,21,23 21:1,7,9,14 21:19,24 22:6 22:10,19,22 28:8,10,15,16 46:9,24 50:16 51:4 58:25 59:6 60:22 61:7,14,24 62:2,8,13 63:10,18 64:6 65:6,12,22 66:9,15,21 67:2,19 68:7 68:18,23 69:5 69:10,15,16 69:21 70:6 71:9,10,17 72:8,12,13 73:14,22,25 74:20,22 75:8 76:5,8,17,22 77:2,8,12 79:22,25 82:8 82:10 83:19 83:21 89:15 89:18,20 93:6 93:10,16,21 93:24 96:4,8 96:24 97:2,7 97:10 100:24 101:1 104:13 104:15 105:22,24 107:13 110:15,17 112:10,11 113:8 114:4,8 114:11 115:22 116:1 116:5,9 117:7 117:23 118:1 118:4,5,8,11 118:13 119:23 120:2 120:6,23,25 121:5,8,10,20	121:23 122:3 122:6,12 124:5,11,14 124:19,24 125:3,6,7,9 125:12,18,21 126:6,13 127:8,13,25 128:6,11,23 129:1,5,14 <b>July</b> 23:4 25:14 29:25 <b>June</b> 78:6,6,9 78:22 113:24 113:25 116:14 117:1 <b>justification</b> 54:24 <b>justifies</b> 53:17 54:2 <b>justify</b> 36:23 53:8	20:24 <b>kilowatt</b> 44:20 <b>kind</b> 48:24 50:2 75:25 87:14 100:5 <b>Kliethermes</b> 19:19 20:23 20:24 28:10 28:16 63:10 63:11,20 73:21 74:20 74:23 76:6 89:20,21 93:1 110:17,18 112:9 121:10 125:7 126:13 127:11,15 130:2,10,15 <b>know</b> 31:12 37:22 40:4,23 41:6 62:21 71:8,22 72:1 72:2,24 73:1 78:8,24 79:1 79:1 88:22 91:12,15 92:24 96:14 100:11 107:8 108:20 110:2 110:5 111:10 113:23 126:15 <b>knowledge</b> 60:16 95:24 104:9 105:17 111:7 115:17 117:12 119:17 123:25 <b>knows</b> 44:4
<b>Interstate</b> 86:25 <b>introduced</b> 28:11 <b>Intuitively</b> 34:1 <b>invested</b> 24:6 36:16 <b>investment</b> 24:18 38:7,12 52:23 53:4 <b>investors</b> 110:9 110:10 <b>involved</b> 27:21 49:18 75:19 <b>involving</b> 52:2 52:13 <b>irrelevant</b> 66:7 66:13 67:7 <b>issue</b> 22:25 42:3 43:25 44:22,25 45:1 57:8 66:2 67:12 69:13	<hr/> <b>J</b> <hr/> <b>jail</b> 117:16,19 <b>James</b> 19:2 20:17 83:4 <b>January</b> 57:2 <b>Jefferson</b> 18:8 19:4,12,16,21 20:19 21:5 133:15 <b>Jim</b> 22:23 78:1 <b>Joan</b> 69:24 122:9,14,18 130:24 131:8 <b>job</b> 33:10 45:13 <b>John's</b> 49:9 <b>join</b> 49:3 <b>Joplin</b> 18:14 20:8 23:13,16 28:24 29:1,3 29:6 34:22 40:8 41:1 43:10 45:9 49:4 50:19,23 51:9,10,13 56:25 87:12 <b>jostling</b> 49:14 <b>JR</b> 19:14 <b>judge</b> 18:23	121:23 122:3 122:6,12 124:5,11,14 124:19,24 125:3,6,7,9 125:12,18,21 126:6,13 127:8,13,25 128:6,11,23 129:1,5,14 <b>July</b> 23:4 25:14 29:25 <b>June</b> 78:6,6,9 78:22 113:24 113:25 116:14 117:1 <b>justification</b> 54:24 <b>justifies</b> 53:17 54:2 <b>justify</b> 36:23 53:8	<hr/> <b>K</b> <hr/> <b>K</b> 19:24 133:5 133:20 <b>Kansas</b> 19:9 21:12 <b>KCPL</b> 52:3 <b>KCP&amp;L</b> 58:13 <b>keep</b> 43:18 <b>Keith</b> 69:23 118:10,15,19 121:12,25 122:6 130:21 131:7 <b>Keith's</b> 72:15 <b>Kellene</b> 19:24 133:5,20 <b>Kelly</b> 46:20 78:20,24 93:20 94:2,6 130:11 131:3 131:5 <b>kept</b> 38:14 45:19 76:17 <b>Kevin</b> 19:19	<hr/> <b>L</b> <hr/> <b>L</b> 132:21 <b>lack</b> 57:24 <b>laid</b> 80:9 99:19 104:24 <b>Land</b> 122:9,14



122:18	<b>lieu</b> 22:8 46:12	39:2,15 47:5	86:20 88:4	<b>matching</b> 44:17
125:12	<b>light</b> 40:11 42:7	73:10 78:18	<b>Madison</b> 19:16	<b>material</b> 79:7
130:24 131:8	84:25	80:11 84:18	19:21	80:23
<b>Land's</b> 69:24	<b>limited</b> 70:13	88:22 112:5	<b>magnitude</b>	<b>matter</b> 18:12
<b>Lange</b> 29:24	<b>line</b> 30:4,6,8,9	120:17 123:8	35:5	20:7,13 28:23
126:9,25	30:15,15 31:8	<b>looked</b> 32:17	<b>main</b> 85:25	37:15 40:19
132:13	31:8 32:10,10	41:22 42:2	<b>maintain</b> 38:11	65:9 71:4
<b>Lange's</b> 31:21	54:10 60:7,9	81:2 91:12	110:24 111:2	89:11 93:2
127:23	66:5,6,11,12	108:5	<b>maintained</b>	<b>matters</b> 22:4
132:24	69:2,3 84:17	<b>looking</b> 29:12	26:2	122:1 129:7
<b>language</b>	84:18 85:18	33:2,3,22,24	<b>maintenance</b>	<b>maximum</b>
101:13	95:6 107:21	34:3,13 35:20	37:1 84:3	86:15
113:15	110:3 124:15	35:21 36:6,12	<b>major</b> 49:8	<b>ma'am</b> 93:5
<b>large</b> 49:8	124:16	36:15 39:8,10	65:20 70:21	103:25
<b>Laughter</b> 112:2	126:17,22	42:15 43:3,16	89:13	<b>mean</b> 34:8
<b>law</b> 18:23 19:2	128:17	45:2 90:6	<b>making</b> 20:14	85:24
19:2,7,11	<b>lines</b> 30:12	99:7 104:6	30:13 33:21	<b>means</b> 27:19,22
20:13 25:2,8	33:24 34:20	113:10	64:17 66:1,19	33:9 36:2
46:7 50:16,17	43:14 65:24	<b>looks</b> 32:3	<b>manage</b> 88:21	49:10 67:21
65:13,18	90:6 112:20	40:15,18	<b>management</b>	<b>MECG</b> 57:25
<b>lawyers</b> 67:13	124:7,15	<b>loss</b> 23:17 24:9	47:24 54:15	58:22 120:9
67:15,16	<b>list</b> 22:14 77:10	24:18 27:8	102:5,9	120:10,22,25
<b>leave</b> 101:6	79:9 127:12	34:2 56:13	<b>Mantle</b> 126:8	121:2
<b>leaves</b> 37:18	<b>listed</b> 98:10	57:9	132:16,19	<b>MECG's</b> 132:1
<b>led</b> 25:18 56:16	<b>Litigation</b>	<b>losses</b> 23:20	<b>manual</b> 81:16	132:2
<b>left</b> 40:18 53:21	19:25 133:6	<b>lost</b> 29:2,4 34:2	<b>March</b> 91:17	<b>medical</b> 49:11
<b>legal</b> 40:23	<b>little</b> 31:6,7,23	34:9 40:12,21	99:6	<b>meet</b> 52:9
106:13,15	40:18 47:12	41:1 45:8	<b>margin</b> 109:14	57:20 89:5
127:7	49:6 65:10	49:6 53:20,21	<b>mark</b> 99:14	<b>meeting</b> 40:23
<b>legislation</b>	92:25	56:13,18,19	120:9 132:21	<b>MEGC</b> 120:16
86:21	<b>live</b> 50:5 82:6	56:24 57:1,14	<b>marked</b> 20:4	<b>mention</b> 43:22
<b>Lena</b> 132:15,18	<b>lives</b> 29:4 34:3	57:16 90:8,12	22:17 60:1	75:3 76:1
<b>let's</b> 20:14 31:2	34:9 41:1	90:16 91:8	77:14,19 79:7	126:14
33:8,9 34:5	49:7	109:14	80:6,10 82:4	<b>mentioned</b>
34:14 36:20	<b>long</b> 48:8,9	<b>lot</b> 50:22,24	82:16,20 84:8	48:24 101:17
42:10	70:7 90:12,16	102:22,23	94:20,24	<b>mercury</b> 86:14
<b>level</b> 35:3 38:24	90:25 91:8,13	<b>lottery</b> 43:6	96:12 99:16	86:20,22 88:4
39:1,14,19,23	93:4	<b>low</b> 54:3	99:20 101:7	<b>merged</b> 97:24
40:3 41:15,17	<b>longer</b> 56:19	<b>lower</b> 23:22	103:20,24	98:2
85:3 99:5	92:1 102:14	24:14,21	104:21,25	<b>merit</b> 57:24
111:2	103:6,7	26:15 27:22	115:7 116:12	<b>meritorious</b>
<b>leveled</b> 98:25	<b>long-term</b>	<b>lowering</b> 27:25	119:6 120:10	32:22 64:15
99:4	88:21		123:4,18	<b>merits</b> 44:22
<b>levels</b> 53:25	<b>look</b> 30:3,4,11	<b>M</b>	131:1	64:9
84:21	31:2,15 32:1	<b>M</b> 131:10	<b>markets</b> 53:7	<b>MEUA</b> 21:9
<b>Lewis</b> 19:14	32:12 34:14	132:15,18	<b>Mary's</b> 97:23	22:17 77:14
21:4	36:8 38:20,22	<b>MACT</b> 86:14	<b>massive</b> 41:2	77:19 79:8,16

EVIDENTIARY HEARING 9/10/2012

79:22 80:2,5 80:6,10 82:4 82:10,12,15 82:16,21 83:16,21,23 84:9 99:14,14 99:16,20 101:1,3 102:1 103:19,20,24 104:12,15,17 104:20,21,25 105:21,24 106:1 128:12 128:20 129:1 129:3 <b>MEUA'S</b> 131:9 <b>MGE</b> 56:24 57:1 <b>MGE's</b> 57:3 <b>Michael</b> 18:22 20:12 <b>middle</b> 102:12 107:20 <b>Midwest</b> 19:10 19:25 21:7,14 21:17 133:6 <b>mild</b> 31:3 32:24 43:8 <b>million</b> 23:2,7,9 23:10 24:6,18 26:18 27:12 27:14 48:5,7 48:11 91:18 91:18,19,22 98:12,14 <b>Mills</b> 19:14 21:3,4 22:6 46:9,12 58:14 64:3,7 65:2 65:11 66:24 67:23 68:4 70:9 71:1,11 72:13 73:22 89:17 107:15 107:16 110:14 117:25 121:7	125:5 128:5 130:3,14 <b>mind</b> 76:25 <b>mine</b> 65:18 127:16 <b>minimize</b> 51:8 51:11 <b>minor</b> 49:8 <b>minute</b> 30:20 <b>minutes</b> 125:15 <b>misimpression</b> 121:18 <b>misleading</b> 53:16 <b>mismanagem...</b> 38:19 <b>misplaced</b> 54:25 <b>missed</b> 21:22 112:3 <b>Missouri</b> 18:1 18:8,14,17 19:13,20,22 20:9,10,19 21:5,12,19,20 23:16 28:24 39:21 47:1 51:5 52:2,16 52:18 76:20 76:22 95:7,8 97:8,11 116:6 117:8 120:7 124:25 126:9 133:2,15 <b>MO</b> 19:4,9,12 19:16,21 <b>modest</b> 27:13 <b>moment</b> 80:12 87:5 <b>money</b> 33:21 33:23 34:2 42:23 85:6 87:12 <b>months</b> 41:23 49:12 102:17 103:4 <b>monumental</b>	51:10 <b>morning</b> 20:6 28:16,21 35:9 43:20 48:19 51:6 59:23 67:10 73:4 76:2 77:4,5 89:22,23 93:3 94:17 97:15 97:16 110:19 110:20 115:4 119:4 123:2 123:22 127:22 <b>mortgage</b> 91:21 <b>motion</b> 22:9 24:25 25:13 46:13,14,23 63:13 <b>motions</b> 22:4 <b>move</b> 22:20 62:23 63:15 63:15 66:4 72:6,8 79:16 82:3 83:15 104:11 105:20 120:21 <b>moving</b> 25:23 85:13 <hr/> <b>N</b> N 20:1 130:1 <b>name</b> 20:12 21:4 34:8 59:11 94:4 114:16 118:17 122:16 <b>names</b> 125:3 <b>natural</b> 21:20 39:21 43:6 47:17 <b>nature</b> 23:25 34:11 35:5 106:23	<b>near</b> 27:9 42:18 66:7 <b>necessarily</b> 38:2 <b>necessary</b> 24:2 75:15 102:17 109:24 110:1 <b>need</b> 22:5 48:15 52:8,9 54:4 55:3,5 60:4,12 63:3 63:8,24 64:1 67:10,23 71:3 71:4 72:6,8 88:20 95:2,8 106:19 123:17 129:7 129:11 <b>needing</b> 33:20 <b>needs</b> 46:3 52:7 62:25 70:17 <b>negative</b> 91:19 91:22 <b>neglected</b> 126:14 <b>neither</b> 57:7 <b>net</b> 35:16,19 36:9,16 39:16 <b>never</b> 42:6 57:4 57:4,5 58:21 86:17 <b>new</b> 35:23 42:21 64:11 64:19 84:22 85:16 86:12 88:5 <b>nitrogen</b> 86:24 <b>non-contested</b> 25:6 <b>nope</b> 50:5 <b>normal</b> 29:14 29:15,16 30:18,19,24 30:25 31:6 34:3 92:7 111:9 <b>normalization</b>	33:4 <b>normalizations</b> 42:4 <b>normalized</b> 30:5 32:2,3 32:14,16 33:4 35:3 <b>north</b> 97:25 <b>NOS</b> 20:3,4 97:5 128:9 <b>note</b> 74:23 121:11 <b>noted</b> 38:1 52:22 111:12 112:8 117:4 <b>notes</b> 133:12 <b>notice</b> 30:14 34:15 82:25 100:2,16,23 111:12 113:2 113:5,10 131:18,21 <b>noticed</b> 97:17 <b>November</b> 51:21 55:14 <b>NOX</b> 86:23 <b>number</b> 23:22 24:14,21 26:16 30:25 65:8 77:11 79:19 92:25 98:24 99:3 102:2 108:14 108:19 126:19,23,23 <b>numbered</b> 81:15 <b>numbering</b> 99:15 <b>numbers</b> 34:12 40:19 49:5 66:10 127:12 <hr/> <b>O</b> O 20:1 <b>oath</b> 95:21 115:13
---	--	--	---	--

<p><b>object</b> 61:12 67:16 68:17 68:18,20,22 68:24 69:1 71:19,21 74:17 75:15 96:16 112:24 <b>objection</b> 60:25 61:25 62:3,16 62:21,22,23 63:7 69:6 73:18 96:23 96:25 126:1 126:11 <b>objectionable</b> 70:20 72:22 73:1,12 <b>objections</b> 60:23 64:14 64:21 70:18 72:4 73:5 79:23 82:8 83:19 96:7,25 100:24 104:13 105:22 115:24 119:23 120:23 124:5 124:11 128:7 <b>obligations</b> 89:5 <b>obviously</b> 96:21 <b>occur</b> 30:6 90:21,22,23 <b>occurred</b> 27:2 43:16 91:8,10 <b>October</b> 129:10 <b>offer</b> 60:20 61:16 63:23 66:24 68:9 71:14 96:2 115:20 119:21 124:3 128:20 <b>offered</b> 51:24</p>	<p>60:23 61:2,8 63:4 64:13,22 65:23,24 73:5 73:15 75:9,11 79:23 96:5 115:23 <b>offering</b> 127:4 <b>office</b> 19:15,17 21:1,3,5 85:25 133:14 <b>officer</b> 19:8 92:16,23 94:10 <b>official</b> 100:23 <b>offsets</b> 98:20 <b>okay</b> 22:19 28:15 68:25 75:8 78:18 91:5 95:11 106:22 107:19 108:21 117:18 121:24 127:13 <b>old</b> 47:16 50:16 <b>Oligschlaeger</b> 55:13 108:4 108:10,17 126:9,21 132:22 <b>Oligschlaege...</b> 36:1 107:22 109:8 <b>once</b> 57:12,17 70:8 <b>one's</b> 30:13 <b>ongoing</b> 24:17 26:10 <b>open</b> 33:15 46:7 95:9 <b>opening</b> 22:8 22:20,21 28:9 28:13 46:10 46:13 47:1,9 51:4 88:13 130:1,2,3,4,5</p>	<p><b>operating</b> 94:10 <b>operation</b> 25:2 84:3 <b>operations</b> 23:14 37:1 <b>opinion</b> 128:24 <b>opportunity</b> 47:22,24 74:10 76:14 <b>opposed</b> 63:13 121:15 127:6 <b>opposition</b> 57:15 127:17 132:4 <b>option</b> 101:21 <b>order</b> 24:12 25:14 26:15 27:19 49:13 49:19 51:18 57:1,3 64:9 80:19,25 81:4 84:2,5 85:10 96:19 103:16 131:12,14 <b>Orders</b> 43:15 <b>original</b> 46:14 <b>ought</b> 41:2 <b>overall</b> 27:25 <b>overrule</b> 69:5 96:24 <b>overtime</b> 37:2 <b>oxides</b> 86:24 <b>O&amp;M</b> 55:19 56:8 85:12</p>	<p>81:2,15,15 84:16 85:13 90:4 95:6 98:10 100:8 101:8,10 102:1 107:20 107:20 109:6 109:7,8 113:12 116:16,19 120:17 123:10,10,10 124:15,15,15 126:17,22 128:17 <b>pages</b> 65:24 72:17 80:22 123:9 124:7 127:19 <b>paid</b> 54:7 56:15 56:16,20 <b>paren</b> 95:9,10 <b>part</b> 21:21 24:4 52:3 63:23 71:24,24 101:14,18,23 120:18 <b>participation</b> 21:21 <b>particular</b> 33:15 65:24 67:12 68:8 121:13 <b>parties</b> 26:2 49:17,20 51:7 51:22 61:9 76:14 125:24 126:6,11,15 127:25 128:17,21 129:5 <b>parts</b> 44:4 61:13 <b>party</b> 25:23 27:5 63:14 <b>pass</b> 44:2 <b>pay</b> 56:17</p>	<p>111:16 <b>paying</b> 37:24 <b>payment</b> 92:12 111:20 <b>payments</b> 111:14 <b>payout</b> 37:16 110:22 111:5 <b>payroll</b> 67:21 70:4 88:19,20 88:24 <b>pays</b> 48:10 <b>peer</b> 110:22 111:6 <b>pencil</b> 65:5 <b>pending</b> 22:3,7 57:19 <b>Penntower</b> 19:8 <b>penny</b> 37:3 <b>people</b> 21:24 29:9 49:6 51:10 67:10 106:21 <b>perceived</b> 121:14 <b>percent</b> 26:24 26:24,25 27:1 27:3 54:19 113:24 <b>perfectly</b> 36:10 75:23 <b>performance</b> 92:18 <b>performed</b> 45:14 50:18 <b>period</b> 38:8 57:8 78:12 117:3 128:18 128:19 <b>permanent</b> 27:13,24 61:3 61:6 62:18,24 63:5 64:1,12 64:24 66:13 66:25 70:15 71:25 73:2,3</p>
---	--	---	---	--

**P**

**P** 20:1 59:9,13  
131:2  
**packet** 29:23  
31:20,22  
**page** 48:4,4  
60:7,9 66:5,6  
66:9,11,11  
69:2,3 78:2  
78:11,18 79:9  
79:10 80:23

73:13 99:8 100:5 101:19 101:19,23 107:12 122:1 <b>permitted</b> 55:18,25 <b>person</b> 105:10 <b>personally</b> 133:7 <b>personnel</b> 45:19 <b>perspective</b> 28:24 50:15 <b>pertaining</b> 122:1 <b>Peterson</b> 19:7 21:11 <b>phantom</b> 57:9 <b>phones</b> 21:25 <b>phrase</b> 28:18 128:17 <b>pick</b> 47:25 <b>Pickler's</b> 98:4,5 <b>piece</b> 44:8 111:18 <b>Pilchers</b> 98:3 <b>Pitchers</b> 98:3 <b>Pittsburgh</b> 97:18 98:8 <b>place</b> 87:1 133:9,13 <b>placed</b> 82:19 82:20 103:23 <b>places</b> 98:8 <b>plain</b> 33:21 <b>Plains</b> 38:5 <b>plan</b> 85:15 87:15 92:2 <b>planning</b> 22:8 66:5,7 69:3 87:21,23 118:23 <b>plant</b> 36:14 84:12 98:21 103:15,17 <b>plants</b> 85:15 <b>pleading</b> 32:20	41:19 71:13 127:18,19 <b>please</b> 21:10,25 22:13,23 59:12 77:18 80:5,11,18 93:20,24 94:5 99:14 100:1 105:4 114:11 114:17 116:13 118:13,18 122:17 <b>plenty</b> 22:11 <b>Plum</b> 38:9 <b>plus</b> 31:10 <b>point</b> 35:12 36:8,18 38:9 51:1 53:14 64:13 65:11 70:4 72:1,23 72:24 73:21 102:20 109:12 111:3 121:16 127:3 <b>pointed</b> 46:15 <b>points</b> 37:11 45:8 47:8,10 53:7 55:13 70:19 71:1 <b>poles</b> 35:21 36:13 <b>policy</b> 38:19 43:12 54:15 55:6 <b>pony</b> 38:11 <b>portion</b> 23:15 27:13 43:23 66:14 68:11 72:19 123:12 123:14 <b>portions</b> 65:15 66:1 69:11,12 69:24 74:3,4 74:17 124:12 127:4 <b>portrayal</b>	83:13 105:13 <b>position</b> 28:2 43:13 57:13 59:16 64:19 76:3 88:13,15 111:3 122:21 <b>positions</b> 126:15 <b>possibly</b> 37:22 126:14 <b>Post</b> 21:5 <b>postpone</b> 103:5 <b>postponed</b> 52:8 102:17,19 103:3 <b>postponement</b> 103:9 <b>postponements</b> 103:12 <b>potential</b> 27:17 <b>power</b> 45:21 47:18 <b>preceded</b> 93:4 <b>precise</b> 91:1,2 <b>precluded</b> 64:16 <b>prefiled</b> 108:23 <b>prejudiced</b> 58:9 <b>preliminary</b> 22:4 <b>premarked</b> 125:25 <b>premise</b> 33:9 33:19 <b>premised</b> 29:19 <b>prepare</b> 58:12 <b>prepared</b> 47:7 59:18 73:4 77:10 80:24 94:12 114:24 118:24 122:23 <b>present</b> 25:16 133:7 <b>presently</b> 89:2 <b>president</b> 59:17	94:10 <b>Presiding</b> 18:22 <b>presume</b> 77:11 <b>pretty</b> 31:3,15 47:5 49:8 70:1 91:21 102:21 <b>previously</b> 82:4 84:8 <b>prima</b> 46:16,21 <b>primary</b> 53:22 <b>prior</b> 37:11 42:15 111:4 126:23 <b>probably</b> 35:13 42:2 <b>problem</b> 37:19 62:19 72:3 117:21 <b>problems</b> 42:25 <b>procedural</b> 25:18 <b>proceed</b> 59:7 93:25 114:12 118:14 <b>proceeded</b> 25:13 76:25 <b>proceeding</b> 33:16 40:1,5 59:19 61:23 62:6,6 63:23 64:15 65:13 65:20 70:16 72:19 77:24 94:13 114:25 118:25 122:24 123:14 <b>proceedings</b> 18:5 65:9 133:8,11 <b>process</b> 29:16 34:10 58:11 71:4 72:10 <b>produce</b> 31:1 <b>profit</b> 38:22,24	39:1,9,10,14 39:19,23 40:3 41:16,16,17 49:14 51:2 <b>profits</b> 42:1 <b>project</b> 88:6 102:6,24 <b>projects</b> 56:2,9 <b>properly</b> 35:6 <b>propose</b> 108:18 <b>proposed</b> 25:10 25:24 26:7 27:10 28:4 108:15 <b>prospective</b> 110:10 <b>protect</b> 39:25 51:18 <b>protected</b> 27:16 85:10 85:12 <b>Protection</b> 85:17,21 87:13 <b>prove</b> 25:24 46:16,21 <b>provide</b> 22:13 29:13 41:9,11 42:16,17 46:1 48:18,19 53:5 55:17 56:12 89:1,8 106:9 106:10,25 107:6,9 <b>provided</b> 18:16 20:10 45:22 55:17 57:6 104:6 105:7 127:2 <b>providing</b> 49:10 52:24 107:2 <b>proxy</b> 105:8 <b>public</b> 18:2 19:14,15,17 19:18,20,22 20:22 21:1,4
---	--	--	--	---

21:4 47:21 52:3,16 89:16 107:14 117:24 121:6 125:4 <b>publicly</b> 113:22 <b>purple</b> 30:9 <b>purpose</b> 66:25 74:16 <b>purposes</b> 34:6 59:18 60:1 61:4 64:17 66:23 68:14 73:11,16,19 74:5,8 75:10 75:11 77:19 80:10 82:21 94:20,24 114:24 118:25 122:23 123:5 <b>pursuant</b> 128:21 <b>push</b> 65:5 <b>put</b> 29:21,22 31:19 35:14 35:22,23 36:14 86:25 88:7,12 124:7 <b>P.C</b> 19:3 <b>P.O</b> 19:4,15,20	59:19 62:10 68:19 78:10 90:14 91:2,3 92:3 94:14 101:24 102:25 103:1 106:15 107:23 108:7 109:5,7,16 112:24 113:7 113:16,18 114:25 119:1 <b>questioning</b> 53:19 <b>questions</b> 62:17 63:2,6 70:23 76:21 89:17 93:6 95:19 97:9 110:7 112:11 112:19 115:12 117:6 117:25 118:3 118:5 119:12 121:4,7,10 122:2,3 123:20 124:22 125:2 125:5,7,9 <b>quickly</b> 45:6 <b>quite</b> 33:6 77:2 121:13 <b>quote</b> 52:21	<b>rate</b> 23:11 25:17,22,24 25:25 26:4,6 26:7,11,15,21 27:11 28:3 30:7 31:13 34:25 35:4,7 35:14,16,16 35:19,19,23 35:24,25 36:3 36:3,5,6,11 36:12,16,21 36:24 37:20 39:15,16 42:3 42:10 44:2,5 44:10,13,18 45:1,6,7,23 46:17 47:22 51:25 52:2,9 52:18 53:1,8 53:18 54:2,24 55:9 57:19,25 58:2,3,6,21 58:23 61:6,11 61:15 63:16 63:17 64:9,18 65:7,19,20 66:2,8,13,25 67:4,8 68:8 69:1,7,15,18 70:2 71:15,18 72:17 73:1,13 73:16,20,24 74:2,6,9,11 74:14,15,18 74:25 75:5,7 75:11,13,14 75:16 89:13 91:25 96:10 100:5 101:12 101:12,13,19 101:23 108:9 112:10 113:14,14,14 113:20,23 121:14 124:8 127:17 132:5	<b>ratepayers</b> 38:11 55:21 <b>rates</b> 18:15 20:9 24:14,16 27:23 28:4 29:10,12 33:17 35:6 36:11,17 38:17,21 41:14 47:15 56:16 64:24 75:3 76:2 84:21,22 101:11 102:3 113:12 <b>rating</b> 38:1,8 38:12 52:23 53:4 <b>ratio</b> 110:22,24 111:5 <b>rationale</b> 42:21 <b>reach</b> 70:14 86:4 <b>read</b> 47:20 60:8 81:5 84:19,22 88:14 90:9 101:13 <b>reading</b> 65:17 101:8 112:5 <b>ready</b> 59:1 76:18 <b>realistic</b> 35:3 <b>realize</b> 51:7 91:4 <b>realized</b> 53:25 55:1,1 58:4 <b>really</b> 37:11 40:4 41:2 44:11,23 47:6 49:22 71:8 72:21 84:16 86:7,20 <b>reason</b> 76:7 81:10 83:12 100:15,18 107:4 <b>reasonable</b>	25:25 26:6,7 27:11 28:5,17 43:21 75:3 76:2 102:3 <b>reasonably</b> 38:22 <b>reasons</b> 26:8 53:15 55:8 <b>rebuild</b> 34:10 <b>rebuilding</b> 34:10 35:22 55:12,19 <b>rebut</b> 74:24 121:16 <b>rebuttal</b> 29:24 30:1 31:21 74:24 75:6 89:24 90:1 109:9 128:12 131:10 132:6 132:9,12,15 132:18,21 <b>recall</b> 24:23 75:4 88:10,11 <b>receive</b> 92:6,12 111:8,13,19 <b>received</b> 35:16 38:6 49:15 56:7 71:15 76:9,15 80:1 80:2 82:10,12 83:21,23 84:2 97:3,5 101:2 101:3 104:15 104:17 105:25 106:1 111:21 116:2 116:3 120:3,4 121:1,2 124:12,16,17 128:8,10 129:2,3 131:1 <b>recess</b> 73:9 93:13 125:19 <b>recognition</b> 48:22 98:15 <b>recognize</b> 46:4
<b>Q</b> <b>qualifications</b> 91:1 <b>quality</b> 85:16 86:12 <b>quantified</b> 107:25 108:2 108:8 <b>quarter</b> 116:21 116:24,25 <b>quarterly</b> 53:14 54:4 <b>quarters</b> 37:22 <b>question</b> 42:13 44:3 50:9,17	<b>R</b> <b>R</b> 19:14 20:1 133:1 <b>Rackers</b> 108:3 108:10,17 126:10 128:12 131:10 <b>raise</b> 93:21 114:8 118:11 <b>raised</b> 36:8 <b>raising</b> 62:10 <b>rapidly</b> 58:3			

70:12 77:22	<b>recovered</b>	86:6,14 96:9	109:4,16	113:6,8
80:15 99:23	45:12 109:9	124:7	<b>relates</b> 75:4	<b>replace</b> 24:6
120:13	109:11,21	<b>refers</b> 48:5	106:9	<b>replacement</b>
<b>recollection</b>	<b>recoveries</b>	79:11 126:23	<b>relating</b> 73:16	86:24
48:10 65:3,6	56:23	<b>reflect</b> 20:17	74:11 75:19	<b>Reply</b> 58:20
65:18 87:2	<b>recovering</b>	21:10 26:15	76:11	129:9
113:16	27:7 109:12	<b>reflected</b> 24:13	<b>relation</b> 127:21	<b>Report</b> 64:8
<b>recommend</b>	109:17	24:15 84:21	<b>relevance</b>	<b>REPORTED</b>
108:4	<b>recovery</b> 26:12	<b>refund</b> 23:3	64:14 66:12	19:24
<b>recommenda...</b>	37:2 55:20	27:15	69:2	<b>reporter</b> 21:13
27:5	85:11 109:20	<b>regard</b> 60:13	<b>relevant</b> 28:19	22:14 112:25
<b>recommended</b>	<b>recross</b> 93:7	63:3 95:3,12	43:22,24 66:1	133:6
51:22	112:12 118:6	95:17 112:18	66:17 67:10	<b>reports</b> 37:4
<b>recommending</b>	122:4 125:10	115:10	67:14,14,19	<b>representativ...</b>
32:20	<b>red</b> 30:6 53:22	119:10	67:22,25 68:3	55:15 57:15
<b>record</b> 20:5,16	<b>redirect</b> 93:7,8	<b>regarded</b> 88:8	69:6,12 70:3	58:14,17,19
21:10 53:25	112:12,15	<b>regardless</b>	74:2 75:6	<b>represents</b> 57:6
53:25 54:20	118:6,7 122:4	40:13 43:11	101:20	<b>request</b> 23:10
55:1,1 56:6	122:5 125:10	44:22 45:4	<b>reliable</b> 24:3	23:11 27:12
56:16 57:7	125:11	<b>regions</b> 85:24	107:9	27:13,24 28:6
58:4 59:11	130:16	<b>regulation</b>	<b>relief</b> 23:11	28:22 31:9,9
61:6,9,16,17	<b>reduce</b> 27:24	29:19 86:22	27:18 30:23	32:21 34:7
63:1,8,22,24	38:9 58:22	<b>regulations</b>	41:8 45:19,23	35:8 38:20,23
64:2,10,12,17	<b>reduced</b> 53:18	86:15,21	46:17,22	42:10 43:24
64:20,23	53:21 54:25	<b>regulatory</b>	49:13,15	44:4,8,15
68:11,12	84:20 85:2	18:23 20:13	51:24,25	45:6 46:4,5
71:25 72:18	<b>reduces</b> 38:3	51:16 118:23	52:10 53:1,9	51:17,23
73:19 74:8,21	<b>reducing</b> 27:21	122:22	55:9 57:19	52:18 53:1,8
76:9,11 79:18	<b>reduction</b>	<b>reinstate</b> 111:2	66:8 69:1	53:18 54:3,24
80:1,18 82:6	53:11 56:5	<b>reinstated</b>	72:17 74:25	56:10,11 57:1
82:11 83:22	84:18,19	37:13 111:1	75:5,7 88:9	57:3,13,16,17
94:4 97:3	<b>refer</b> 84:15	<b>reintroduced</b>	106:11 107:5	57:18,19,20
100:22 101:2	86:23 107:21	71:20	121:11,15	57:22,24 58:1
104:16	<b>reference</b> 48:14	<b>reject</b> 22:9	<b>remaining</b>	58:11,21,24
105:25	50:10,11	46:13,23	126:7	63:8 64:9,18
108:22	78:19 81:3	63:15 72:2	<b>remember</b>	69:18 70:2
114:17 116:2	96:13 113:1	<b>rejected</b> 32:23	28:18 43:6	71:16 73:9
118:17 120:3	126:22	46:6	53:11 111:23	74:9 75:5,7
121:1 122:16	<b>referenced</b>	<b>rejection</b> 32:20	112:19	75:11 96:10
124:16	102:1	<b>relate</b> 74:18	<b>renew</b> 22:8	101:22 104:3
125:15,24	<b>references</b>	86:23 99:8	46:13,23	105:5,6,10
128:8 129:2	86:16 105:8	<b>related</b> 71:21	<b>repairs</b> 51:19	108:3,9
129:11	<b>referred</b> 42:18	73:23 74:6,14	<b>repeat</b> 99:1	112:10,19
<b>records</b> 68:5	71:13 84:17	74:15,25	103:11	120:15,19
<b>recover</b> 24:20	86:13 106:5	75:13,16,17	<b>repeatedly</b>	121:11,15,15
26:9 39:20	113:11	86:7,10,11	52:12 54:15	124:8 127:17
40:10,19 57:1	<b>referring</b> 28:12	88:25 92:9	<b>rephrase</b> 108:1	131:23,25

132:5 <b>requested</b> 24:24 <b>requesting</b> 24:25 <b>requests</b> 42:14 52:2 56:23 58:4 65:8 132:2 <b>require</b> 72:24 <b>required</b> 25:8 53:14 58:12 73:6 <b>requirement</b> 24:17,19 26:10,17 27:24 44:5,15 45:4 117:13 <b>requiring</b> 49:20 <b>reserve</b> 108:8 108:11,18 <b>residents</b> 29:4 <b>resource</b> 66:5,6 69:3 102:5,9 <b>resources</b> 21:20 58:18 <b>respect</b> 40:10 40:11 60:4 64:22 70:21 71:9 73:1,3 73:12 89:10 89:12 95:15 106:24 107:12 108:7 110:7 123:18 <b>respectfully</b> 28:6 <b>respectively</b> 42:19 <b>respond</b> 24:1 47:6,7 <b>responding</b> 120:18 <b>response</b> 21:23 45:25 51:16 56:23,24	57:13 79:24 82:9 83:20 97:1 100:25 104:4,5,14 105:7,11,13 105:16,23 115:25 120:24 127:17 128:25 129:13 132:4 <b>responsible</b> 120:18 <b>rest</b> 125:16 127:6 <b>restate</b> 90:14 108:16 <b>restoration</b> 24:10 26:13 <b>restore</b> 24:2 <b>restored</b> 29:6 50:11,12 51:12 <b>restricted</b> 92:19 111:17 <b>result</b> 23:21 33:16 48:1 53:16,20 54:6 55:4,5 58:9 58:10 87:11 103:10 <b>resulted</b> 23:17 54:15 <b>resulting</b> 56:2 56:5,9,13 84:13 85:16 <b>retained</b> 38:13 38:15 48:5,10 48:11 53:13 54:3,5,14,16 54:21 90:13 90:17 91:9,17 91:20 92:2 <b>retirement</b> 88:4 <b>retrade</b> 49:23 50:1	<b>return</b> 26:21 26:23,23 27:1 27:3,9 36:3,6 47:22 91:25 101:12 113:14,20,23 <b>returning</b> 34:19 98:24 99:3 <b>revenue</b> 23:20 24:9,17,19 26:10,17 27:8 27:24 30:17 32:2,3,16,17 33:17 43:6,10 44:5,8,15,16 45:4 57:4,5,7 57:9,11 84:19 91:14 <b>revenues</b> 23:6 27:14 29:17 30:4,5,24 31:16,18 32:6 33:2,3,4 34:4 34:11 35:10 39:1,3,8 43:2 53:11,12,18 53:20,21,21 53:23 55:23 56:12,17,24 57:2,14,16 90:8,12,17 91:9 116:20 116:23,25 117:2 <b>review</b> 56:6 <b>reviewed</b> 72:22 80:14 88:13 <b>right</b> 22:7,16 36:24 45:4,7 46:24 61:9,12 70:18 74:3 77:2 85:22 89:14 93:16 93:22 106:16 110:11,13 114:9 118:11	123:15 125:12 <b>risk</b> 41:8,10,10 42:17 103:8 <b>Riverton</b> 85:14 88:4 <b>Robert</b> 114:14 114:18 130:17 131:6 <b>ROE</b> 46:7 47:20 67:21 68:1 70:4 <b>room</b> 42:7 <b>rooms</b> 30:23 37:3 <b>roughly</b> 92:25 <b>routinely</b> 98:20 <b>RPR</b> 19:24 133:20 <b>Rule</b> 86:25 <b>ruled</b> 48:20 57:2 <b>rules</b> 85:16 86:6,9,12,25 <b>ruling</b> 25:13 46:25 63:4 73:8 120:1 124:22 128:22 <b>rulings</b> 107:12	44:21 <b>sandwich</b> 112:6 <b>Sarah</b> 19:19 20:23 <b>satisfactory</b> 50:7 <b>saw</b> 33:5 49:6 88:12 <b>saying</b> 44:8 45:10 49:2,3 110:23 127:9 <b>says</b> 37:8,9 46:7 49:19 50:16 108:12 <b>scale</b> 34:15,17 34:19 50:20 <b>schedule</b> 25:18 96:21 127:23 <b>scheduled</b> 22:11 58:19 <b>schedules</b> 23:8 <b>scheme</b> 99:15 <b>Scott</b> 72:15 118:10,15,19 130:21 131:7 <b>screen</b> 88:8 <b>scrubber</b> 87:24 <b>seasonal</b> 91:21 <b>seated</b> 59:6 93:24 118:13 <b>SEC</b> 117:11 <b>second</b> 28:18 33:8 44:13 53:12 54:2 55:3 101:8 113:12 116:24 <b>secretary</b> 114:22 <b>section</b> 25:7 26:3 66:5 <b>sections</b> 73:23 <b>Securities</b> 116:15 <b>see</b> 22:3,10 31:7 32:9
---	--	---	--	---

**S**

**S** 20:1 94:6  
131:3,5  
**safe** 24:2 41:9  
41:11 42:16  
42:17 45:20  
46:2 48:18,19  
52:24 53:5  
89:1,5,8  
106:10,25  
107:2,6,9  
**Sager** 69:24  
114:7,8,14,18  
117:11 118:8  
130:17 131:6  
**sales** 35:4

33:4,22 34:13 34:15,18,18 34:20 39:4 42:7 52:21 53:15,23 54:8 54:10,18,19 55:21 64:21 81:18 107:23 116:19 <b>seeing</b> 30:12 <b>Seemingly</b> 57:12 <b>seen</b> 28:24 38:4 39:4 45:14 53:19 58:2 99:5 <b>sell</b> 29:15,18,18 <b>Senior</b> 19:19 <b>sense</b> 31:24 38:9 40:24 62:9 <b>separate</b> 61:17 62:7 65:8,14 74:12 75:17 75:18 83:3 <b>September</b> 18:7 20:6 89:3,7 106:16 110:9 129:8,9 <b>serious</b> 49:8 <b>seriously</b> 43:4 <b>serve</b> 51:3 <b>served</b> 23:22 24:14 <b>service</b> 18:2,16 18:17 19:20 19:23 20:9,10 20:22 24:3 29:13 36:4,5 41:9,11 42:16 42:18,23 46:2 48:18,20 52:3 52:16,25 53:5 56:15 57:6 89:1,2,5,6,8 91:13 98:21 98:25 99:4	101:11 106:10,25,25 107:3,7,7,9 112:18 113:13,19 <b>Services</b> 19:25 133:7 <b>set</b> 20:7 33:16 34:16,19 38:21 57:23 71:3,7,7 133:9 <b>sets</b> 29:12 <b>setting</b> 41:24 <b>severely</b> 23:14 49:9 50:19 <b>sewer</b> 52:14 <b>Shana</b> 126:16 132:6,9 <b>shape</b> 34:14,18 <b>share</b> 28:25 54:9,9 <b>shareholders</b> 54:13 <b>Shawn</b> 29:24 132:12,24 <b>sheet</b> 123:9 133:9 <b>sheets</b> 23:5,8 <b>shield</b> 55:10 56:7 <b>shielded</b> 55:23 56:4 <b>shifted</b> 47:11 47:12 <b>short</b> 31:6,7,16 31:18 42:2 48:25 54:11 67:23 91:3 <b>shortfall</b> 33:17 43:11 <b>shortfalls</b> 43:7 <b>Shorthand</b> 133:6 <b>shortly</b> 51:16 55:13 <b>shortsighted</b>	43:12 <b>short's</b> 31:6 <b>short-term</b> 110:2 <b>show</b> 25:16 30:5 36:25 50:12 52:7 54:5 77:6 <b>showed</b> 117:11 <b>showing</b> 33:3 <b>shown</b> 48:15 <b>shows</b> 30:6,8 30:10,16 32:1 33:1 53:3 <b>shut</b> 49:10 <b>side</b> 94:11 <b>sign</b> 50:8 78:15 79:4 81:25 83:9 <b>signature</b> 78:2 79:2 81:20 83:3,4 100:12 <b>signatures</b> 81:16,17 <b>signed</b> 69:25 77:25 78:9,19 78:20 100:8 116:16 <b>significance</b> 51:8 <b>significant</b> 23:15 41:1 42:17 50:15 73:10 <b>significantly</b> 23:22 <b>silly</b> 35:12 36:8 39:2,15 <b>similar</b> 47:24 108:7 <b>simple</b> 37:15 70:11,22 <b>simpler</b> 31:25 <b>simply</b> 25:22 28:3 34:11 53:7 63:24 127:6	<b>single</b> 65:13,13 <b>sir</b> 60:14,18 77:20,21,25 80:15 81:14 81:19 82:22 84:15,23 85:13,18 86:5 97:21 120:13 121:23 122:7 <b>sit</b> 114:11 122:12 <b>situation</b> 23:23 36:9 45:20 88:18 92:2 110:11,13 <b>situations</b> 102:20 <b>six</b> 102:17 103:4 <b>size</b> 32:15,16 45:4 <b>slide</b> 29:21 31:19 32:16 32:17 33:6 34:13,15 <b>slides</b> 28:11 47:3 88:12 <b>slightly</b> 53:24 <b>sloppily</b> 45:6 <b>smaller</b> 27:21 92:17,20 <b>snapshot</b> 88:23 <b>solely</b> 109:16 <b>solid</b> 52:22 <b>somebody</b> 62:23 72:10 79:20 91:16 <b>sooner</b> 42:24 <b>sorry</b> 30:7 31:11 32:11 34:16 40:14 75:18 90:2 91:1,10 99:1 106:12,14 108:16 121:23 127:15	<b>sort</b> 40:23 44:9 46:5 96:8 <b>sorts</b> 42:5 <b>sought</b> 56:25 57:1,14 <b>south</b> 49:6 98:5 <b>SOX</b> 86:23 <b>speak</b> 36:24 40:19 73:25 110:4 <b>speaks</b> 84:5 <b>special</b> 39:24 92:12 111:19 <b>specific</b> 74:4 101:13 106:22 109:4 109:11 113:15 124:7 124:12 <b>specifically</b> 25:13 103:13 110:4 113:1,5 <b>specified</b> 127:5 <b>specify</b> 127:19 <b>spiral</b> 58:2 <b>spoken</b> 41:18 <b>SPP</b> 73:2 ss 133:3 <b>St</b> 49:9 <b>stable</b> 52:23 53:4 <b>stack</b> 32:5 33:24 <b>stacked</b> 30:14 34:21 <b>Staff</b> 19:19,22 20:3,21,25 28:9,11 29:22 36:12,18 37:6 40:1,6,25 41:20 43:3,21 44:19 45:2,2 45:22 47:10 48:13 49:3 50:10,11,18 51:14 55:12 55:15 57:15
--	--	--	--	--



EVIDENTIARY HEARING 9/10/2012

65:4 74:24	50:16 62:5	<b>stuff</b> 70:19	126:18	71:12,22
75:25 89:19	76:2,3 88:13	<b>subject</b> 23:2	<b>supported</b>	75:23 78:1,11
105:9,10	100:21 105:8	27:15 61:9,24	38:22 102:14	78:15 81:21
107:21 109:7	109:8 113:3	74:9 75:12	103:7	83:4 93:8,17
110:16 118:2	130:1,2,3,4,5	76:9,13 96:5	<b>supportive</b>	93:19 94:1,3
121:9,14	<b>statements</b>	97:4 107:11	50:24	96:1,18 100:9
125:6 126:8	22:20 43:13	115:23	<b>supposedly</b>	112:13,15
126:16 127:2	117:16,20	119:25 120:2	44:16	113:6,9 114:2
127:3,4,9,21	<b>states</b> 53:10	121:25	<b>Supreme</b> 47:19	114:7,13,15
128:7,9,15	<b>STATE'S</b>	124:21 126:3	<b>sure</b> 36:19	115:19 118:7
<b>Staff's</b> 32:19	132:3	<b>submit</b> 26:6	40:21 41:8	118:10,16
35:15 36:5	<b>status</b> 25:5	28:5	42:10 45:3	119:20 122:5
37:10 40:20	106:23	<b>subsection</b> 25:7	59:3 61:3,17	122:9,15
127:16 132:4	<b>statutory</b> 25:25	<b>subsequent</b>	63:18,20	124:2,6,9
<b>standard</b> 26:1	<b>Stenotype</b>	54:4	70:25 75:9	125:11 130:1
26:1 28:4	133:10,12	<b>substantially</b>	85:7 112:4	130:8,12,16
40:23 42:14	<b>step</b> 65:2 93:10	95:21 115:14	<b>surprised</b>	130:18,22,25
42:15 43:5,14	114:5 118:8	119:13	33:25 75:25	<b>Swearengen's</b>
43:18,20,23	122:6	123:21	<b>surrebuttal</b>	47:9 75:2
48:16,16,21	<b>Stephen</b> 131:10	<b>Suddenly</b>	46:20 94:14	<b>switched</b> 125:1
48:24 52:4,12	<b>steps</b> 24:2	54:20	94:23 95:15	<b>sworn</b> 59:5
52:15,20	55:10	<b>sufficient</b> 54:12	96:21 107:17	93:23 114:10
57:21 88:9,18	<b>Steven</b> 126:10	126:18	109:6 131:4	118:12
88:23,25	<b>stipulated</b>	<b>suggest</b> 38:17	<b>suspend</b> 25:1	122:11
106:6 110:24	55:18,25	125:14	25:13 53:14	<b>sympathy</b>
<b>standards</b>	<b>stipulation</b>	<b>suggestion</b> 70:9	54:4 55:3,5	45:11 50:22
42:19 75:1	49:21 51:22	<b>suggests</b> 43:13	92:10	50:25 51:1
<b>start</b> 33:9	55:16 80:20	<b>Suite</b> 19:8,16	<b>suspended</b>	<b>system</b> 56:18
36:21 58:16	81:4,7,11,15	21:12	37:21 91:11	102:5,9,14
93:13	131:15	<b>sulphur</b> 86:23	92:22	103:6,7,12,14
<b>started</b> 93:17	<b>stock</b> 92:18,19	<b>summary</b> 28:2	<b>suspension</b>	<b>systems</b> 102:16
<b>starting</b> 66:4	111:17,18	<b>summer</b> 29:7	25:9 37:23	103:3
85:18	<b>Stopping</b> 27:18	30:16 32:4	54:21	
<b>starts</b> 38:20,22	<b>storm</b> 91:20	39:3,6,11,12	<b>sustainable</b>	<b>T</b>
<b>state</b> 18:1	<b>straight</b> 54:10	39:17 40:15	37:16	<b>T</b> 133:1,1
41:18 59:11	<b>streaming</b> 22:1	41:4	<b>Swearengen</b>	<b>table</b> 72:15
65:3 90:6	<b>Street</b> 19:16,21	<b>summers</b> 33:12	19:2,3 20:16	99:7 123:9
94:4 114:16	<b>strike</b> 62:24	33:13	20:17,18	<b>take</b> 22:5,15
118:17	63:15 66:4	<b>summer's</b> 30:3	22:22,23 28:8	24:2 25:2,9
122:16 133:2	95:8	30:22	28:17 35:9	28:2 33:8,12
133:15	<b>strong</b> 50:23	<b>supplemental</b>	43:19 47:13	36:6 46:25
<b>stated</b> 25:14	<b>struck</b> 29:1	75:2	48:2,18 59:3	70:14 72:5,14
42:21 52:5	51:9 86:3	<b>supplied</b> 21:12	59:8,10 60:19	76:6 77:11
57:4 126:18	<b>Stuart</b> 19:7	<b>support</b> 38:7	61:19 62:16	80:11 87:21
<b>statement</b> 22:8	21:10	38:21 55:9	62:22,25	93:13 125:18
22:21 28:9	<b>stucon@fcpl...</b>	63:8 64:23	63:21 67:9,17	129:7
40:22 46:13	19:10	71:15 92:1	67:24 71:10	<b>taken</b> 55:10

93:15 96:23	<b>testified</b> 59:9	124:8,12	44:1,7,11	68:17,21
100:23	87:5 94:2	125:25 126:7	45:15 47:16	73:10 75:21
112:17	114:14	126:12,17	48:13,22 49:5	76:1,14 78:12
125:20	118:15	127:2,9,23	50:8,12,14	79:16 81:11
<b>takes</b> 42:8	122:14	131:2,3,4,6,7	59:1 62:25	83:8 87:1
110:3	<b>testimonies</b>	131:8,10	65:1,10 68:4	88:22 89:17
<b>talk</b> 31:14 34:5	94:16	132:6,9,12,15	68:15 69:6,16	90:25 91:7,20
36:20 37:13	<b>testimony</b>	132:18,21,25	69:17 70:6,7	93:12 96:16
37:14	29:25 30:1	<b>thank</b> 20:21,23	70:9,11 71:9	96:20 98:2
<b>talked</b> 36:21	31:21 36:1	21:14,16	72:5,9,10	102:12,20
<b>talking</b> 33:20	37:10,11	22:22 28:7,8	73:14,17 74:7	105:18 111:3
86:19	44:22 46:19	28:10 46:9,24	74:19 75:2	112:10
<b>target</b> 47:11	46:20 48:1	51:4 58:24,25	76:18 84:17	121:16 129:7
<b>tariff</b> 23:1,5,8	58:12 59:1,19	59:8 62:1	92:3 96:18,22	133:9,13
24:20,24 25:2	59:22 60:4,13	89:14,15,20	100:22	<b>timeliness</b>
25:4,5,7,9,14	61:1,4,7,13	93:2,5,9,11	106:19,20	62:23
27:14 101:13	61:21 63:3,7	93:19 94:1	108:12	<b>times</b> 76:3
113:15	63:9 64:21	95:11,19	112:16	102:19
<b>tariffs</b> 18:15	67:5,11,25	99:11 110:14	125:23 129:6	<b>timetable</b> 87:15
20:9 22:9	68:21,22	110:17 112:9	<b>thinking</b> 41:21	87:18,20
46:14,14,23	69:12,18,23	114:2,5,13	<b>thinks</b> 69:12	<b>today</b> 20:6 22:2
<b>tax</b> 98:15 99:9	69:24,25 70:2	117:5,22	<b>third</b> 112:7	23:1 35:15,20
<b>taxes</b> 23:7	70:20 71:13	118:3 122:3,8	<b>Thompson</b>	36:2 47:15
98:19	71:14,18	124:2 125:8	19:19 20:24	51:15 63:1,8
<b>technology</b>	72:15,20,25	125:13	118:3	63:24 64:2,11
86:15	73:5,11,23	129:15	<b>thought</b> 63:12	68:2 69:9
<b>tell</b> 22:7 66:7	74:5,18,24	<b>thankfully</b>	<b>thousands</b>	71:5 73:6
98:1,17	75:15 76:12	40:17	23:17	74:13 75:3,10
102:22 110:9	77:10 79:17	<b>theirs</b> 45:14	<b>three</b> 76:3	76:12 88:18
116:23 117:2	82:5 83:17	<b>theory</b> 37:12	111:16	88:23 89:11
<b>temperatures</b>	84:16 85:14	44:11	125:15	90:18 95:21
29:8	89:25 90:1,2	<b>thereof</b> 133:9	<b>throw</b> 70:24	102:24
<b>ten</b> 22:10 26:21	91:23 94:13	<b>thing</b> 35:12	<b>throws</b> 42:20	106:16,18,24
27:1	94:14,20,23	41:12 42:22	<b>ticking</b> 36:22	107:8 115:13
<b>tender</b> 60:20	95:3,13,16	44:10 46:5	<b>ties</b> 46:4	<b>today's</b> 25:19
96:2 115:20	96:6,10,11,13	61:8 96:10	<b>time</b> 20:7 22:5	<b>tomorrow</b> 71:6
119:21 124:4	96:20,22	109:22	22:12 24:23	88:19,20,24
<b>ten-year</b>	107:18	<b>things</b> 43:1	25:4,5 30:1	<b>tool</b> 101:21
128:19	108:12,23	69:7 70:4	30:12 37:17	<b>top</b> 48:4 101:8
<b>term</b> 53:12	109:6,9 114:5	72:16 73:12	38:10 40:9	113:12
92:2 106:7	114:25 115:3	89:12	41:6,18,18	<b>tornado</b> 23:12
111:10	115:7,10	<b>think</b> 22:6	42:8,11 43:20	23:14,17,20
<b>terms</b> 24:19	118:25 119:3	25:21 30:19	45:21 46:18	24:7,21 26:11
49:21 52:20	119:10	31:14 32:19	46:23 48:3,8	29:1,2,5 30:8
<b>territory</b> 42:23	121:13,19	33:8,14 34:1	50:3,24 54:8	30:9,16,21
89:2 107:1,7	122:24 123:1	34:7 39:22	58:10 61:16	31:14,17
<b>test</b> 26:5	123:8,13	42:24 43:17	63:1 64:21	32:14,25

35:14,22 37:2 37:10,15,23 40:8,12 41:1 43:10 45:9 46:1,5 48:6 49:3,4,13 50:20 51:8,13 51:16,17,20 53:10,13,16 53:20 54:1,6 55:4,12,13,20 56:2,5,14,24 57:14 84:4,13 84:20 85:2,5 86:3,7 87:6,9 87:11 90:9,19 90:21,23 91:7 91:7,10 98:11 102:10,12,22 103:10 109:10 111:4 <b>total</b> 66:17 <b>totals</b> 27:13 <b>touch</b> 50:14 <b>town</b> 97:25 <b>tragedy</b> 45:9 49:4 51:2 <b>tragic</b> 38:16 <b>trailers</b> 30:22 <b>transcribed</b> 112:4 <b>transcript</b> 18:5 68:10 69:11 133:12 <b>Transcripts</b> 129:8 <b>transformers</b> 35:21 36:13 <b>transition</b> 88:5 <b>translation</b> 40:21 <b>transmission</b> 73:2 <b>treasurer</b> 114:23 <b>treated</b> 70:17 <b>treatment</b>	39:24 <b>tried</b> 50:3 65:5 111:1 112:6 <b>trigger</b> 43:10 <b>trips</b> 47:5 <b>trucks</b> 37:3 <b>true</b> 35:11 36:9 36:23 37:9 60:15 84:1 95:23 104:8 115:16 117:17,20 119:16 121:12 123:24 133:11 <b>true-up</b> 35:18 <b>truly</b> 34:6 <b>truncated</b> 35:7 <b>try</b> 35:2 42:9 67:3 70:8 99:2 103:1 <b>trying</b> 36:13 51:8 67:6,7 70:7 74:12 91:3 103:2 <b>turn</b> 21:25 90:4 101:7 <b>Turning</b> 116:19 <b>two</b> 22:11 26:9 26:18 37:21 44:4 46:6 47:16,19 49:12 53:7 58:15 61:17 64:4 65:14 68:5 70:8 75:17,18 79:11 83:2,3 108:14 109:13 112:13 125:15 126:14 127:11 <b>type</b> 58:7	<b>typical</b> 32:7,13 91:21 92:17 <b>typically</b> 52:1 <b>typographical</b> 126:22 <hr/> <b>U</b> <hr/> <b>Uh-huh</b> 85:19 <b>Ultimately</b> 54:23 <b>unable</b> 34:10 53:6 89:4,4 106:24 107:6 <b>unanimous</b> 51:21 80:20 131:15 <b>uncertainty</b> 41:5 <b>undergraduate</b> 97:17 <b>understand</b> 32:8 44:1,21 48:17 63:18 71:23 89:11 92:6 96:12 106:14 111:8 111:12 123:4 <b>understanda...</b> 39:7 <b>understanding</b> 35:15 40:13 59:25 60:25 64:6 65:12 94:19 95:7 97:24 115:6 119:6 123:6 126:2 <b>understands</b> 36:19 <b>under-earned</b> 57:9 <b>unfortunately</b> 70:24 <b>ungenerated</b> 57:4,8,11 <b>units</b> 44:17 <b>unnecessary</b>	68:14 <b>unrelated</b> 61:10 67:4 <b>update</b> 29:23 <b>updated</b> 29:25 31:20,22 126:25 127:22 132:24 <b>upgrade</b> 102:4 102:8 <b>upward</b> 58:3 <b>urged</b> 40:1 <b>use</b> 63:12 <b>users</b> 19:10 21:7 47:1 49:8 76:22 97:11 117:8 124:25 126:10 <b>usually</b> 28:18 50:23 121:21 <b>utilities</b> 33:11 33:13 58:6 <b>utility</b> 29:13,15 32:18 38:2 41:16 47:13 47:14,21 48:23 56:25 58:4 <b>utility's</b> 42:15 48:17 <b>U.S</b> 39:22 47:19 <hr/> <b>V</b> <hr/> <b>vague</b> 48:9 <b>value</b> 57:6 <b>vendor</b> 102:15 <b>verification</b> 117:13 <b>verified</b> 32:19 127:18,20 <b>version</b> 31:22 31:25 <b>versus</b> 47:17 <b>vice</b> 94:10	<b>video</b> 22:1 <b>view</b> 25:22 88:21 <b>viewed</b> 36:2 <b>violating</b> 90:13 90:17 91:9 <b>virtually</b> 32:25 33:22 34:20 <b>visceral</b> 40:24 <b>Volume</b> 18:9 <hr/> <b>W</b> <hr/> <b>W</b> 21:10 114:18 131:6 131:7 <b>waiting</b> 76:18 <b>waive</b> 46:10 128:1 <b>waived</b> 73:7 <b>waivers</b> 38:14 <b>waiving</b> 70:18 129:5 <b>Walters</b> 46:20 69:23 78:20 78:24 93:20 93:21 94:2,6 97:15 98:10 99:19 101:6 103:23 104:24 106:4 107:17 110:19 112:16 114:4 130:11 131:3 131:5 <b>want</b> 32:12 36:19 44:21 45:8 46:13 47:6,7 50:1,6 61:3 62:2,17 63:5,25 66:16 67:2 70:3,11 70:22 72:4 74:17 79:20 84:18 93:17 99:6 121:17 126:11
--	--	---	--	---

<b>wanted</b> 37:19 46:10 48:25 49:15 62:23 125:21	59:3 75:17,18 77:7	107:11,21 109:8 114:6 114:10 115:21 116:8 118:9,12 119:22 122:8 122:10,11 124:4,23 126:10	<b>worms</b> 33:15 <b>written</b> 67:25 <b>wrong</b> 81:3 <b>W-2012-0198</b> 95:9	<b>07</b> 87:1
<b>wants</b> 45:3 56:20 67:18	<b>we're</b> 20:5 30:3 47:14 58:19 59:1 63:22 65:14 66:4,14 66:23 67:19 67:21 69:1,8 70:7 71:5 72:20 75:9	<b>witnesses</b> 22:11 40:20 47:20 61:1,10 68:10 68:19 70:20 108:15,16,25 121:12 125:17 126:8 126:8 127:20 128:1	<hr/> <b>X</b> <hr/> <b>X</b> 130:1 <hr/> <b>Y</b> <hr/> <b>yeah</b> 98:5 <b>year</b> 23:5 26:18 29:14,15,16 29:16 30:6,8 30:9,10,18,19 31:6 32:18 33:25 40:8 46:6 57:2 60:7 99:6 102:17 103:4	<hr/> <b>1</b> <hr/> <b>1</b> 20:3,4 22:17 60:1,20,22 76:9,15 79:12 95:6 120:9,10 120:22 121:1 121:2 123:10 124:15,15 127:4,16 128:7,9,12,20 129:1,3 131:2 131:9 132:1,4
<b>warm</b> 31:4 32:4 33:12,13 33:18 41:24	109:13 110:12	<b>Woodsmall</b> 19:11 21:16 21:18 51:6 58:25 60:24 61:12,25 62:1 62:10 64:25 66:3,11,18,22 67:6,15,18,25 68:1,16,20,25 69:8,14 70:4 70:19 76:21 88:7,12 97:9 116:7,10 117:5,11 120:8,12,21 121:4 125:1 128:4 130:5 130:19,23	<hr/> <b>Y</b> <hr/> <b>year's</b> 30:24 <hr/> <b>Z</b> <hr/> <b>zoomed</b> 34:17 <hr/> <b>\$</b> <hr/> <b>\$1.28</b> 90:11,15 91:6 <b>\$106,249,000</b> 117:4 <b>\$119,903,000</b> 117:1 <b>\$250,000</b> 92:23 <b>\$27</b> 24:6 <b>\$30.7</b> 23:7,10 <b>\$4.1</b> 48:5,11 <b>\$6.2</b> 23:2 24:18 26:18 27:12	<b>1st</b> 129:10 <b>10</b> 18:7 48:4 79:9,10 107:21 123:10 124:15,16 <b>10Q</b> 116:14 <b>10th</b> 20:6 89:3 89:7 106:16 110:9 <b>10.75</b> 91:22 <b>10.8</b> 26:25 <b>10.9</b> 26:24 <b>10:45</b> 93:14 <b>100</b> 131:21 <b>102</b> 131:21 <b>104</b> 131:23 <b>105</b> 131:23,25 <b>107</b> 131:25 <b>108</b> 130:14 <b>11</b> 25:7 26:24 90:4 <b>11:33</b> 129:17 <b>111</b> 130:15 <b>113</b> 130:16 <b>115</b> 130:18 <b>117</b> 130:19 131:6 <b>118</b> 130:20 <b>119</b> 130:22 <b>12</b> 126:19 <b>120</b> 104:3 <b>1209</b> 19:8
<b>warranted</b> 45:23 46:22 58:5	110:12	<b>word</b> 46:19 76:6 92:16	<hr/> <b>0</b> <hr/> <b>0120</b> 131:23	
<b>wash</b> 29:20	<b>we've</b> 39:4 45:14 46:18 61:21	<b>words</b> 44:14		
<b>Washington</b> 85:22 86:2,4 87:6,9,10	<b>willing</b> 71:19 128:1	<b>work</b> 29:11 36:14 42:4 48:13 63:19 97:17 102:13 102:23,24		
<b>wasn't</b> 50:7	<b>windfall</b> 57:10	<b>worked</b> 102:11		
<b>water</b> 52:14 95:7,9	<b>Winston</b> 19:12	<b>working</b> 102:6		
<b>Waterworks</b> 47:18	<b>winter</b> 31:3,5 32:4,24 33:18 41:25 43:8	<b>works</b> 70:22		
<b>way</b> 23:4 25:20 44:24 45:24 49:7 61:5 68:4 70:23 75:19	<b>winters</b> 33:12 33:13			
<b>ways</b> 70:12 71:9 91:4	<b>winter's</b> 31:2			
<b>weather</b> 28:22 28:23,25 29:7 29:8,10,10 30:24 31:4,4 31:5 32:2,3,7 32:14,16 33:3 33:4 39:6,7,9 39:10 40:14 40:14,16 41:25,25 42:4	<b>wipes</b> 33:5 <b>wires</b> 35:21 <b>wise</b> 68:15 <b>wish</b> 95:12,17 115:10 119:9 126:6			
<b>weatherized</b> 34:4	<b>wishes</b> 63:15			
<b>welcome</b> 99:12	<b>Withdrawal</b> 82:25 131:18			
<b>went</b> 36:14 65:9 98:1	<b>withdrawn</b> 95:8			
<b>weren't</b> 50:4 55:22	<b>witness</b> 40:8 46:20 55:12 59:1,2,5 67:4 74:10,11 75:14 79:17 82:5 83:16 93:5,18,23 96:3,6,11,13 100:21			
<b>we'll</b> 28:20 31:10 42:3				

EVIDENTIARY HEARING 9/10/2012

21:12	<b>200</b> 19:16,21	126:17	19:17	128:7,9
<b>121</b> 105:5	<b>2000</b> 54:18	128:17 131:4	<b>573)797-0005</b>	132:23
130:23 131:7	<b>2005</b> 26:24	131:13 132:8	19:13	<b>8.4</b> 27:1
131:25 132:2	<b>2006</b> 26:24	<b>3/31/2011</b> 48:6	<hr/>	<b>8:33</b> 20:2
<b>122</b> 132:2	27:2 87:1	<b>30</b> 25:2 72:18	<b>6</b>	<b>800</b> 49:7
<b>123</b> 130:25	<b>2009</b> 26:25	113:24,25	<b>6</b> 20:3 66:5,11	<b>807</b> 19:12
<b>125</b> 131:8	<b>2010</b> 30:7	116:14 117:1	69:2 103:19	<b>81</b> 131:12,16
<b>129</b> 132:5,7,10	52:17 117:3	<b>30.7</b> 27:14	103:20,24	<b>816)753-1122</b>
132:13,16,19	<b>2011</b> 23:12	<b>3100</b> 19:8	104:12,15,17	19:9
132:22,25	26:11 29:1	21:11	109:6 123:5	<b>83</b> 131:16,19
<b>13</b> 66:5,11 69:2	30:7 51:9,21	<b>312</b> 19:3 20:18	123:18 124:3	<b>84</b> 131:19
85:13 90:6	53:24 54:20	<b>340,000</b> 34:16	124:6,14,17	<hr/>
91:18	55:2 56:7	<b>360</b> 19:20	126:20 131:7	<b>9</b>
<b>13th</b> 129:8	78:6,9 86:4	<b>393.140</b> 25:7	131:22	<b>9</b> 48:4 84:16
<b>13.3</b> 48:7,12	89:3 91:17	<b>393.150</b> 25:23	132:17	91:19 123:10
<b>130</b> 131:10	92:7,13 111:9	26:3	<b>6th</b> 23:4 78:6,9	124:15
<b>14</b> 60:7,9 66:6	111:14	<hr/>	78:22	<b>90</b> 54:19
66:11 69:3	116:14,24	<b>4</b>	<b>6.2</b> 23:9 98:12	130:10
<b>140,000</b> 34:17	<b>2012</b> 18:7 20:6	<b>4</b> 81:15 82:15	98:14 99:7,8	<b>900</b> 49:7
<b>15</b> 90:6 124:15	25:11,14 60:8	82:16,21	<b>60</b> 130:8	<b>94</b> 130:12
124:15	60:9 89:4	83:16,21,23	<b>64111</b> 19:9	<b>98</b> 130:13
<b>15th</b> 51:21	106:16 110:9	98:10 115:7	<b>650</b> 19:16	131:3,5
<b>150</b> 49:6	113:25 117:1	115:20,22	<b>65101</b> 19:12	
<b>158</b> 29:3	<b>2013</b> 60:7,9	116:3 131:5	<b>65102</b> 19:4,16	
<b>16</b> 84:17 109:8	<b>209</b> 19:8	131:17	19:21 21:6	
126:17	<b>21</b> 131:2,3,5,6,7	132:11	<b>67</b> 116:19	
128:17	131:8 132:5,7	<b>4.1</b> 91:18	<b>68,000</b> 108:13	
<b>18</b> 84:18	132:10,13,16	<b>456</b> 19:4	<hr/>	
126:19,20	132:19,22,25	<b>47</b> 130:3	<b>7</b>	
<b>19</b> 66:6,12 69:3	<b>22</b> 89:3	<b>48</b> 130:4	<b>7</b> 78:2,11	
<b>1975</b> 52:2	<b>22nd</b> 23:12	<hr/>	104:20,21	
<hr/>	29:1 88:18	<b>5</b>	105:1,21,25	
<b>2</b>	103:14	<b>5</b> 25:11 80:23	106:1 109:7	
<b>2</b> 18:9 38:8	<b>2230</b> 19:15	81:2 99:14,16	116:19	
72:17 77:13	21:5	99:20 101:1,3	131:24	
77:14,19 79:8	<b>23</b> 25:14 130:1	101:7 102:1	132:20	
79:8,12,16,22	131:10	107:20 119:7	<b>7.8</b> 27:3 113:24	
80:2 94:21	<b>24</b> 126:22	119:21 120:4	<b>75</b> 52:13	
95:3,6,20	<b>250,000</b> 111:24	131:6,20	<b>77</b> 131:2	
96:2,4,12	<b>29</b> 130:2	<b>5HC</b> 132:14	<b>78</b> 130:9	
97:3,5 98:11	<hr/>	<b>50s</b> 47:17	131:12	
100:8 102:1	<b>3</b>	<b>52</b> 130:5	<hr/>	
131:3,11	<b>3</b> 80:5,6,10	<b>573)635-7166</b>	<b>8</b>	
<b>2HC</b> 132:5	82:5,10,12	19:5	<b>8</b> 20:4 28:12	
<b>20</b> 38:19 85:18	84:9 94:24	<b>573)751-3234</b>	29:23 60:7,9	
<b>20th</b> 129:9	95:20 96:2,4	19:22	95:6 126:22	
<b>20,000</b> 29:3	96:17 97:3,5	<b>573)751-4857</b>	127:3,21	