

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of: The Application ) of Rocky Mountain Power for ) Authority to Increase its Retail ) Electric Utility Service Rates ) in Utah and for Approval of its ) Proposed Electric Service ) Schedules and Electric Service ) Regulations. )	Docket No: 10-035-124
<hr/> In the Matter of the Application ) of Rocky Mountain Power for ) Approval of its Proposed Energy ) Cost Adjustment Mechanism )	Docket No: 09-035-15
<hr/> In the Matter of the Application ) of the Utah Association of ) Energy Users for a Deferred ) Accounting Order Directing Rocky ) Mountain Power to Defer ) Incremental REC Revenue for ) Later Ratemaking Treatment )	Docket No: 10-035-14
<hr/> In the Matter of the Application of ) the Utah Industrial Energy Consumers ) for a Deferred Accounting Order ) Directing Rocky Mountain Power to ) Defer Incremental REC Revenue for ) Later Ratemaking Treatment )	Docket No: 11-035-46
<hr/> In the Matter of the Application of ) the Utah Office of Consumer Services ) for a Deferred Accounting Order ) Directing Rocky Mountain Power to ) Defer All Bonus Depreciation Allowed ) for 2010 Through 2011 by the Small ) Business Jobs Act as Amended )	Docket No: 11-035-47

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TRANSCRIPT OF HEARING PROCEEDINGS

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1 TAKEN AT: Public Service Commission  
2 160 East 300 South  
3 Salt Lake City, Utah  
4 DATE: August 3, 2011  
5 TIME: 8:02 a.m.  
6 REPORTED BY: Kelly L. Wilburn, CSR, RPR

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11 **Ric Campbell**  
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WITNESSES

For Rocky Mountain Power

DAVID L. TAYLOR Page  
Direct by Mr. Monson 21

-o0o-

For the Division of Public Utilities

ARTIE POWELL, Ph.D. Page  
Direct by Ms. Schmid 44

-o0o-

For the Office of Consumer Services

MICHELE BECK Page  
Statement by Ms. Beck 51

-o0o-

For the UAE

KEVIN C. HIGGINS Page  
Statement by Mr. Higgins 55

-o0o-

For US MAGNESIUM

ROGER J. SWENSON Page  
Direct by Mr. Dodge 59

-o0o-

For the Sierra Club

JEREMY FISHER, Ph.D. Page  
Direct by Ms. Smith 75

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1	<u>WITNESSES, CONTINUED</u>		
2	<u>For the Sierra Club</u>		
3	<u>WILLIAM STEINHURST, Ph.D.</u>	<u>Page</u>	
4	Direct by Ms. Smith	79	
5	-o0o-		
6	<u>For Rocky Mountain Power</u>		
7	<u>CATHY WOOLLUMS</u>	<u>Page</u>	
8	Direct by Mr. Moscon	83	
	Cross by Ms. Smith	88	
9	<u>CHAD TEPLY</u>	<u>Page</u>	
10	Direct by Mr. Moscon	104	
11	Cross by Ms. Smith	109	
12	<u>HOWARD ELLIS, Ph.D.</u>	<u>Page</u>	
13	Direct by Mr. Moscon	160	
	Cross by Ms. Smith	165	
14	<u>RICHARD SPROTT</u>	<u>Page</u>	
15	Direct by Mr. Moscon	178	
16	Cross by Ms. Smith	182	
17	-o0o-		
18	<u>EXHIBITS/ATTACHMENTS</u>		
19	<u>No.</u>	<u>Description</u>	<u>Page</u>
20	1	Rocky Mountain Power prefiled	14
21		testimony and exhibits (See Attachment No. 1)	
22	2	Division of Public Utilities prefiled	15
23		testimony and exhibits (See Attachment No. 2)	
24	3	Office of Consumer Services prefiled	16
25		testimony and exhibits (See Attachment No. 3)	

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EXHIBITS/ATTACHMENTS, CONTINUED

<u>No.</u>	<u>Description</u>	<u>Page</u>
4	UAE prefiled testimony and exhibits (See Attachment No. 4)	17
5	UIEC prefiled testimony and exhibits (See Attachment No. 5)	18
6	Mr. Swenson's prefiled testimony and exhibits (No attachment)	59
7	Dr. Fisher's prefiled testimony (No attachment)	77
8	Dr. Fisher's prefiled exhibits (No attachment)	79
9	Dr. Steinhurst's prefiled testimony and exhibits (No attachment)	81

-o0o-

(The previous exhibits and related testimony were prefiled and are part of the PSC record and filed with the Commission.)

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EXHIBITS/ATTACHMENTS, CONTINUED

<u>No.</u>	<u>Description</u>	<u>Page</u>
10	Exhibit No. SC-3, Testimony of Cathy S. Woollums, Senior Vice President and Chief Environmental Counsel MidAmerican Energy Holdings Company, Committee on Environmental and Public Works, United States Senate, June 15, 2011 (See Attachment No. 10)	104

-o0o-

1 AUGUST 3, 2011 8:02 A.M.

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

3 CHAIRMAN BOYER: Let's go on the record in  
4 various dockets: Dockets No. 10-035-124, Docket  
5 09-035-15, Docket 10-05-14 (sic), Docket 11-035-46,  
6 and Docket 11-035-47.

7 And Kelly, do you need me to read the  
8 captions on each of those cases? You have this?  
9 Okay, good.

10 Essentially we're here to hear testimony on  
11 the stipulation, to hear from the proponents of the  
12 stipulation and those objecting thereto. We had a  
13 brief conversation off the record on how we would  
14 proceed.

15 And we've determined to hear the proponents  
16 of the stipulation in a panel format, and then --  
17 we'll hear all of them. And we'll also hear from  
18 Mr. Swenson, who is a witness who's neither for nor  
19 agin the stipulation. Then we will allow cross  
20 examination, questions from the Commissioners, and  
21 then redirect.

22 We will then proceed to hear from the Sierra  
23 Club, who objects to the stipulation, first by hearing  
24 from their two witnesses in chief. And then we'll  
25 allow them to call the Rocky Mountain Power witnesses



1 they've identified.

2 We'll need to get all of the prefiled  
3 testimony into the record. We'll do that at the  
4 outset. We'll take appearances of course. We'll take  
5 a break about every hour and-a-half to give our good  
6 reporter here a break. And we'll go through the day.  
7 To the extent we need more time we'll commence again  
8 on -- tomorrow morning at 8:00 as well.

9 Okay. With that, let's enter appearances.  
10 And let's start with the -- Rocky Mountain Power  
11 first.

12 MR. MONSON: Gregory Monson and Matt Moscon  
13 for Rocky Mountain Power.

14 MS. HOLLY RACHEL SMITH: Good morning. My  
15 name is Holly Rachel Smith and I'm here to enter an  
16 appearance for Wal-Mart Stores, Inc. and Sam's West,  
17 Inc.

18 MR. KELLY: I'm Ryan Kelly, local counsel for  
19 Wal-Mart and Sam's West.

20 CHAIRMAN BOYER: I'm sorry, your last name  
21 again?

22 MR. KELLY: Kelly.

23 CHAIRMAN BOYER: Kelly?

24 MR. KELLY: First name Ryan, last name Kelly.

25 CHAIRMAN BOYER: Thank you. Mr. Dodge?

1 MR. DODGE: Gary Dodge on behalf of UAE. And  
2 also on behalf of US Mag.

3 CHAIRMAN BOYER: Mr. Reeder?

4 MR. REEDER: Good morning, I'm Robert Reeder.  
5 I am here this morning for a group of industrial  
6 customers whose names appear in this record and are  
7 identified as UIEC.

8 CHAIRMAN BOYER: Thank you. And a new face.

9 MS. BURTON-LEE: Dahnelle Burton-Lee,  
10 Assistant Attorney General, for the Division of Public  
11 Utilities. And I'd also like to enter the appearance  
12 of Patricia Schmid, who will be here later, who is  
13 also representing the Division this morning.

14 CHAIRMAN BOYER: Thank you. And welcome.  
15 Mr. Proctor?

16 MR. PROCTOR: Paul Proctor. And Ms. Beck  
17 will be the witness today For the Office of Consumer  
18 Services.

19 CHAIRMAN BOYER: Okay. And for the Sierra  
20 Club?

21 MS. SMITH: Gloria Smith for Sierra Club.

22 CHAIRMAN BOYER: Okay. Have I overlooked  
23 other counsel who appeared in this case or wish to be  
24 heard today?

25 MR. PLENK: Mr. Chairman, this is Bruce Plenk

1 on the telephone appearing on behalf of AARP.

2 THE REPORTER: I can't hear. Can --

3 CHAIRMAN BOYER: Okay. His name is Bruce  
4 Plenk, appearing for AARP.

5 Thank you, Mr. Plenk. You'll have to speak  
6 up, I guess, or we'll try to turn the volume up.

7 MR. PLENK: Okay.

8 CHAIRMAN BOYER: And you are with AARP?

9 MR. PLENK: Correct.

10 (Pause.)

11 CHAIRMAN BOYER: Mr. Plenk, we're trying to  
12 adjust the volume on the telecommunications device  
13 here.

14 MR. PLENK: Thank you.

15 CHAIRMAN BOYER: Okay, that's better. Thank  
16 you.

17 Okay. With that shall we proceed with the  
18 prefiled testimony, get that on the record, and then  
19 we'll start hearing from witnesses? Mr. Monson?

20 MR. MONSON: Yes, your Honor. One other  
21 thing. As we, we understand -- and of course Sierra  
22 Club will have an opportunity. But we understand they  
23 were actually gonna cross our witnesses and then make  
24 their witnesses available for cross if anyone had  
25 questions.

1 CHAIRMAN BOYER: Oh.

2 MR. MONSON: As opposed to presenting. But  
3 that's up to Ms. Smith, of course.

4 CHAIRMAN BOYER: Ms. Smith?

5 MS. SMITH: Sierra Club was going to put its  
6 witnesses on just to give a brief synopsis of their  
7 testimony, enter their testimony, and make them  
8 available for cross, and then go to the Company's  
9 witnesses. That's how we would prefer to proceed.

10 CHAIRMAN BOYER: Okay. And that's pretty  
11 much what I had said earlier, so we will do that.

12 MS. SMITH: Thank you.

13 CHAIRMAN BOYER: That does trigger one other  
14 thought that I had. And that is since -- Ms. Smith,  
15 since, at least in my memory, you haven't appeared  
16 before us, we have a rule on cross examination. It's  
17 R746-10 -- or 100-10(k), and just for the record I'll  
18 read that in there:

19 "Cross examination. The Commission  
20 may require written cross examination  
21 and may limit the time given parties to  
22 present evidence and cross examine  
23 witnesses."

24 I think we should have sufficient time, so  
25 that shouldn't be a problem. The second part,

1     however:

2                     "The presiding officer may exclude  
3             friendly cross examination. The  
4             Commission discourages and may prohibit  
5             parties from making their cases through  
6             cross examination."

7             And we'll be following that as we go forward.  
8     Okay. With that let's proceed to get the prefiled  
9     written testimony into the record. And we'll start  
10    with Mr. Monson. Or Mr. Moscon.

11             MR. MONSON: Yeah, I handed out a list of the  
12    testimony filed by Rocky Mountain Power in the general  
13    rate case and in the ECAM docket on rehearing. And  
14    those are the pieces of testimony. The revenue  
15    requirement and cost of capital testimony, actually I  
16    think the cost of capital testimony was already  
17    admitted, probably, pursuant to the stipulation to  
18    vacate that hearing.

19             But in any event, this is our testimony on  
20    everything but the cost of service issues and the test  
21    period issues. We've listed it on an exhibit, I can  
22    read through it, but I don't think we need to offer  
23    it.

24             CHAIRMAN BOYER: I don't think that's  
25    necessary.

1 Kelly, do you have a copy of the Rocky  
2 Mountain Power testimony list?

3 (A discussion was held with the reporter.)

4 CHAIRMAN BOYER: We'll be sure that you get a  
5 copy of that. All right.

6 Motion has been made to admit the prefiled  
7 written testimony of Rocky Mountain Power's witnesses.  
8 Is there any objection to the admission of that  
9 testimony?

10 Very well, it is admitted. And it's listed  
11 on a document entitled: "Testimony and Exhibits of  
12 Rocky Mountain Power to Be Admitted in Support of  
13 Settlement Stipulation."

14 (RMP testimony and exhibits were admitted.)

15 CHAIRMAN BOYER: Okay, let's go -- our  
16 traditional order is go to the DPU, then the Office,  
17 and then --

18 MS. BURTON-LEE: And we're ready to proceed.

19 CHAIRMAN BOYER: All right. Let's do that  
20 then. Ms. Burton-Lee.

21 MS. BURTON-LEE: I believe the parties were  
22 provided a list of the Division's exhibits in the  
23 revenue requirement. It's this document. And we  
24 would move to have those exhibits entered into the  
25 record as to the revenue requirement issues in this

1 matter.

2 CHAIRMAN BOYER: Thank you. So the motion  
3 has been made to admit into evidence the prefiled  
4 written testimony of the Division of Public Utilities.  
5 The various exhibits are listed on a document  
6 entitled: "Division of Public Utilities  
7 Docket No. 10-035-124, Revenue Requirement List of  
8 Exhibits."

9 Is there any objection to the admission of  
10 the DPU prefiled written testimony?

11 Okay, very well, that is admitted as well.

12 (DPU testimony and exhibits were admitted.)

13 CHAIRMAN BOYER: Mr. Proctor?

14 MR. PROCTOR: Mr. Chairman, the Office has  
15 provided the reporter with its exhibit list. Does the  
16 Commission wish also a copy?

17 CHAIRMAN BOYER: Yes, if you don't mind. You  
18 may approach.

19 MR. PROCTOR: Thank you. I apologize for not  
20 doing that earlier. Our witnesses and their exhibit  
21 is -- consisting of the testimony and attached  
22 exhibits is listed on that exhibit list. And we would  
23 move for the admission of each of those items.

24 CHAIRMAN BOYER: Thank you. The Office of  
25 Consumer Services exhibit list is listed on a document

1 entitled: "Exhibit List of the Utah Office of  
2 Consumer Services," listing various pieces of prefiled  
3 written testimony. Is there any objection to the  
4 admission of the Office prefiled testimony?

5 Very well. That testimony is admitted as  
6 well.

7 (OCS testimony and exhibits were admitted.)

8 CHAIRMAN BOYER: And now we'll go around the  
9 room. Ms. Smith, is it?

10 MS. HOLLY RACHEL SMITH: Mr. Chairman,  
11 Wal-Mart has no testimony to offer today, but thank  
12 you.

13 CHAIRMAN BOYER: Okay. Mr. Dodge?

14 MR. DODGE: Thank you Mr. Chairman. I'm  
15 assuming you don't need copies to the court reporter.  
16 Is what's in the file adequate of the testimony?

17 CHAIRMAN BOYER: Yes. Yes.

18 MR. DODGE: And I, unfortunately, only  
19 brought two copies. But I have one for you,  
20 Mr. Chairman, and one for the court reporter, if I may  
21 approach?

22 CHAIRMAN BOYER: You may.

23 MR. DODGE: These are UAE's exhibits in the  
24 revenue requirement phase that we'd like to offer in  
25 support of the settlement agreement.



1 CHAIRMAN BOYER: And US Mag. didn't have  
2 separate testimony?

3 MR. DODGE: It does, but I'm assuming that  
4 will be introduced when Mr. Swenson is here to  
5 testify.

6 CHAIRMAN BOYER: Very well, thank you.

7 There's been a motion to admit the prefiled  
8 written testimony of UAE, including the testimony of  
9 Messrs. Higgins, Gebhart, and Fishman, listed on a  
10 document entitled: "UAE Exhibits in Docket  
11 10-035-124." Any objection to the admission of the  
12 UAE testimony?

13 Okay, it is admitted.

14 (UAE testimony and exhibits were admitted.)

15 CHAIRMAN BOYER: Mr. Reeder, are you --

16 MR. REEDER: Mr. Chairman, we prefiled  
17 testimony on behalf of UIEC. And if I may, I want to  
18 give each of you a copy of that testimony and a copy  
19 to the court reporter. I've heretofore provided  
20 copies of it to the parties. And I would move its  
21 admission.

22 CHAIRMAN BOYER: Thank you.

23 Okay. We have a motion to admit the prefiled  
24 written testimony of the UIEC group listed on a  
25 document entitled: "UIEC Revenue Requirement Witness

1 Testimony," in this very same docket. Is there any  
2 objection to the admission of that testimony?

3 Okay, it is admitted.

4 (UIEC testimony and exhibits were admitted.)

5 CHAIRMAN BOYER: Mr. Plenk, do you have any  
6 testimony you wish to admit into the record?

7 MR. PLENK: I don't, Mr. Chairman. There's  
8 one minor housekeeping matter, and that is that AARP  
9 has joined in the stipulation. And yesterday filed  
10 with the Commission -- plus I faxed electronically --  
11 a signature page.

12 It's a minor housekeeping matter, but I  
13 wanted to make sure the record reflected that AARP was  
14 a signatory, is a signatory to the stipulation. We  
15 don't anticipate -- or plan to present any witnesses  
16 or exhibits, but I wanted to take care of that one  
17 minor detail.

18 CHAIRMAN BOYER: Thank you Mr. Plenk. And  
19 the record will note that.

20 And the Sierra Club then.

21 MS. SMITH: Thank you Mr. Chairman. We do  
22 have prefiled direct testimony from our two experts.  
23 We need to have that admitted separately because they  
24 have a couple of minor changes that they need to make  
25 to their testimony on the record. Then we'll give an

1 exhibit number and admit it that way.

2 CHAIRMAN BOYER: Very well, let's do that  
3 when you call then.

4 MS. SMITH: And then just a point of  
5 clarification. We do have a number of exhibits we  
6 have not -- we were working on this until fairly late  
7 last night going through our exhibit list. Can we  
8 create our list as we go along, give them numbers and  
9 have them admitted at that time?

10 CHAIRMAN BOYER: You can try. And we'll hear  
11 it, yes. That's, I mean, that's a good process. I'm  
12 not gonna pre-admit them until we've --

13 MS. SMITH: Exactly.

14 CHAIRMAN BOYER: -- heard what they are and  
15 give the parties an opportunity.

16 MS. SMITH: Thank you.

17 CHAIRMAN BOYER: Yes. No, that will be fine  
18 Ms. Smith, thank you.

19 Okay. Have I overlooked any of the prefiled  
20 testimony?

21 Good. All right, let's proceed now with the  
22 first witness who's going to speak in favor of the  
23 stipulation.

24 MR. MONSON: That would be Mr. Taylor from  
25 Rocky Mountain Power.

1 CHAIRMAN BOYER: Mr. Taylor, okay.

2 MR. MONSON: And Mr. Chairman, do you want  
3 the stipulation as an exhibit, or? I mean.

4 CHAIRMAN BOYER: I don't --

5 MR. MONSON: Everyone has it.

6 CHAIRMAN BOYER: Yeah, I don't think we need  
7 that. I mean, it is in the formal record. I don't  
8 think we need to admit that separately.

9 MR. MONSON: Did you want to swear --

10 CHAIRMAN BOYER: Yes.

11 MR. MONSON: Maybe swear all the witnesses  
12 who are going to testify this morning?

13 CHAIRMAN BOYER: Well, let's swear all the  
14 proponents at this point. Is Mr. Swenson in the  
15 audience? He's not in the courtroom today. Let's  
16 just, let's swear the proponents.

17 MR. MONSON: He's already been sworn, but I  
18 don't know if others have. Maybe they have.

19 CHAIRMAN BOYER: You have been sworn in the  
20 cost of service?

21 MR. TAYLOR: Actually test period.

22 CHAIRMAN BOYER: Test period. Test period.

23 MR. TAYLOR: I'll be happy to put my arm up  
24 again if you like.

25 CHAIRMAN BOYER: Let's swear the other

1 proponent witnesses at this time, then, excluding  
2 Mr. Taylor, if they are here.

3 Mr. Higgins, Dr. Powell, Ms. Beck, please  
4 raise your right hand.

5 (The witnesses were duly sworn.)

6 CHAIRMAN BOYER: Thank you. You may be  
7 seated.

8 You may proceed, Mr. Monson.

9 MR. MONSON: Thank you.

10 DAVID L. TAYLOR,

11 called as a witness, having been duly sworn,  
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MONSON:

15 Q. Please state your name and your position with  
16 Rocky Mountain Power.

17 A. My name is David L. Taylor. I'm employed by  
18 Rocky Mountain Power as the manager of regulatory  
19 affairs for the State of Utah. My business address is  
20 201 South Main, Salt Lake City, Utah, 84111.

21 Q. And what is the purpose of your testimony  
22 today, Mr. Taylor?

23 A. I will, as briefly as possible, review the  
24 history of events that led up to this stipulation and  
25 the key elements of the stipulation that's been

1 entered into by the ten signing parties. Those  
2 parties include Rocky Mountain Power, the Utah  
3 Division of Public Utilities, the Utah Office of  
4 Consumer Services, the UEA Intervention Group, Utah  
5 Industrial Energy Consumers, Kroger Company, Wal-Mart  
6 Stores, Inc. and Sam's West, Inc., International  
7 Brotherhood of Electrical Workers Local 57, the  
8 Federal Executive Agencies, and AARP.

9 I'll also confirm Rocky Mountain Power's  
10 support for the stipulation and give the Company's  
11 belief that the stipulation is in the public interest.

12 Q. What dockets are covered by this stipulation?

13 A. This stipulation covers five dockets. Those  
14 dockets were identified by Chairman Boyer as we began  
15 this proceeding today. And if approved by the  
16 Commission this stipulation resolves --

17 I guess this stipulation in conjunction with  
18 the cost of service stipulation that will be heard  
19 next week resolves the open issues in each of these  
20 dockets. With the exception of the activities of the  
21 EBA work group that is working on the procedural  
22 implementation and evaluation issues of the EBA.

23 Q. Can you please briefly recount the process  
24 and events that led up to the settlement stipulation?

25 A. Certainly. There is -- there's about 40

1 paragraphs of history in the stipulation. I certainly  
2 won't go through all of that. But let me just give  
3 you a few of the key dates and events that led up to  
4 this agreement that is being presented.

5 On January 24th of this year Rocky Mountain  
6 Power filed a general rate case requesting approval of  
7 a rate increase in the amount of \$232.4 million. On  
8 June 30th of this year the Company and intervening  
9 parties filed rebuttal testimony.

10 The Company's rebuttal case reduced its rate  
11 request to \$188.1 million based upon updates and  
12 corrections to its direct testimony, and the  
13 acceptance of certain adjustments proposed by the  
14 intervening parties.

15 On July 19th of this year the Company and  
16 intervening parties filed surrebuttal testimony.

17 Also, on July 14th of this year, the Company  
18 and certain intervening parties filed a stipulation on  
19 cost of service, rate spread, and rate design. And  
20 again, that stipulation will be heard next week.

21 Over the course of this case Rocky Mountain  
22 Power filed testimony of 24 witnesses. That included  
23 3,700 pages of testimony and exhibits in support of  
24 its request. Twelve intervening parties filed, at  
25 least by my count, 39 witnesses in this case -- the

1 testimony of 39 witnesses.

2 In addition to the 160 filing requirement  
3 responses that were included with our application, the  
4 Company has responded to over 3,300 data requests as  
5 intervening parties have prepared their responses to  
6 the Company's case.

7 I just point this out to show that prior to  
8 entering into the settlement discussions the Company's  
9 presented a substantial amount of evidence and  
10 discovery in this case. And the parties in this case  
11 have thoroughly reviewed, analyzed, and evaluated that  
12 evidence.

13 And from my experience this is the most  
14 complex case I've ever been involved in. I think  
15 probably the most thoroughly-reviewed case that I've  
16 been involved with.

17 I believe the parties have followed the  
18 Commission's instructions that you gave in the test  
19 period order where you encouraged them to conduct a  
20 rigorous examination of the forecast components,  
21 inputs, and assumptions in the case.

22 Over the last few weeks the parties have  
23 engaged in settlement discussions. All parties to the  
24 case were invited to participate in those discussions.  
25 And based upon those discussions the signing parties



1 have agreed to the terms and conditions that are set  
2 forth in the stipulation.

3 The signed stipulation was filed with the  
4 Commission on July 28th, with some parties submitting  
5 signature pages later than that date.

6 Now, while not all the parties in this case  
7 have signed the stipulation we're only aware of one  
8 party, the Sierra Club, that opposes the stipulation.  
9 And then also US Magnesium has filed a statement on  
10 certain aspects of the stipulation.

11 Q. Could you please describe the principal terms  
12 and conditions of the stipulation?

13 A. Certainly. I will go through those  
14 paragraphs one by one. I'm sure that the Commission  
15 has read the stipulation, so I'll try to be brief and  
16 not try to regurgitate it in its full text but just  
17 touch on the key elements of each of those.

18 And in doing that it's certainly not my  
19 intent to change any of the terms that are in the  
20 stipulation. And I trust that the other parties in  
21 this case will probably point out elements of the  
22 stipulation that are of particular importance to them.

23 If I have too little detail or too much  
24 detail I just trust the Commission will let me know as  
25 we go through this.

1           So beginning with the revenue requirement in  
2 the general rate case, starting on paragraph 42 of the  
3 stipulation. The Company's Utah revenue requirements  
4 and Utah customer rates will increase by \$117 million  
5 on September 21, 2011.

6           As shown in Table 1 of the stipulation, it  
7 shows the agreed adjustments to reduce the Company's  
8 revenue requirement that was filed in its rebuttal  
9 case. While some of the adjustments or categories of  
10 adjustments are specifically identified in that table,  
11 there is an \$11.3 million adjustment that's simply  
12 identified as "All Other."

13           As is typical with agreements and  
14 stipulations presented before this Commission, each  
15 party arrived at its determination that the  
16 \$117 million was a reasonable and fair revenue  
17 requirement in different ways and using different  
18 assumptions and different adjustments to get there.

19           Moving to paragraph 43. The \$117 million  
20 increase is allocated to customer classes and applied  
21 to customer rates consistent with the cost of service  
22 stipulation that will be presented next week. Shown  
23 in Table 2 of the stipulation and also in Exhibit A of  
24 the stipulation list how that rate spread will take  
25 place.

1 Paragraph 44 describes the cost of capital  
2 agreed to, the rate -- the return on equity of  
3 10 percent. And it reflects the Company's proposed  
4 cost -- or proposed capital structure, including  
5 51.9 percent equity, resulting in an overall rate of  
6 return of 7.94 percent. And the derivation of that is  
7 shown in Table 3.

8 Table 4 identifies the base net power cost at  
9 \$1.5 billion on a total company basis, or  
10 \$629.1 million on a Utah basis. And wheeling revenues  
11 of \$70.5 million on a total company basis, or  
12 \$30.5 million on a Utah-allocated basis.

13 Now, these are the amounts of the basis of  
14 in-rate levels of net power costs and wheeling  
15 revenues for the purpose of the EBA beginning on  
16 October 1, 2011. Consistent with the EBA order issued  
17 by this Commission, that amount is represented in a  
18 dollars-per-megawatt-hour by month. And that's shown  
19 in Table 4.

20 Exhibit B to the stipulation provides the  
21 detail and supporting calculations that were getting  
22 to that dollar-per-megawatt-hour number.

23 Going on to paragraph 46. This paragraph  
24 addresses issues related to Klamath. And with respect  
25 to the Klamath postponement adjustment that was shown

1 on the earlier table the parties agree that, for this  
2 case only, to postpone to a future proceeding  
3 considerations of the adjustments associated with the  
4 Klamath hydroelectric project and the Klamath  
5 hydroelectric settlement agreement.

6 The parties also agree that the relicensing  
7 and settlement costs will continue to be deferred.

8 Paragraph 47 discusses environmental control  
9 investments. The parties to the stipulation agree and  
10 recommend that the Commission make findings that the  
11 investments in the environmental control equipment  
12 included in the general rate case are prudent and used  
13 and useful for purposes of this general rate case and  
14 future cases.

15 Now, it's -- the Sierra Club is opposed to  
16 settlement of the stipulation, and by agreement with  
17 the Sierra Club the Company's made four witnesses  
18 available to be cross examined on those pollution  
19 control investments.

20 We'll provide -- we've made available  
21 Ms. Cathy Woollums, the senior vice president of  
22 environmental services for MEHC. She'll provide an  
23 overview of the national and associated state issues  
24 that support the Company's decision to invest in these  
25 environmental control equipment.

1 Chad Teply, vice president of resource  
2 development for the company, provides information  
3 supporting the prudence of capital investments in that  
4 pollution control equipment.

5 Dr. Howard Ellis will provide an independent  
6 third-party review and verification of the Company's  
7 environmental compliance and planning strategies.

8 And Mr. Richard Sprott, former executive  
9 director of the Department of Environmental Quality,  
10 provides testimony regarding the history and  
11 development of the Western Regional Haze Program and  
12 the specific application of that process to the  
13 Company.

14 Paragraph 48 deals with the FERC rate case  
15 that's currently pending. The result of that  
16 transmission case is that FERC -- it may result in a  
17 change to the Company's wheeling revenues.

18 The Company doesn't know at this time what  
19 level of new rates will be approved and the date that  
20 any rates will go into effect. Because of this, no  
21 additional revenues associated with that case are  
22 reflected in the agreed-upon revenue requirement.

23 As part of the EBA, third-party wheeling  
24 revenues flow through the EBA. And 70 percent of any  
25 difference between projected revenues and actual

1 revenues are adjusted through the EBA adjustments.

2 Because of that FERC rate case, in response  
3 to that and as part of this stipulation the Company's  
4 agreed that a hundred percent of new third-party  
5 revenues from the FERC transmission case that will go  
6 into effect through the end of this test period will  
7 flow through to customers. And that will be reflected  
8 in the 2013 annual EBA filing.

9 Paragraph 49 talks about the Populus-to-  
10 Terminal transmission project. And the contentions  
11 made by the intervening parties in the general rate  
12 case that the Populus-to-Terminal transmission line is  
13 not fully used and useful are resolved by this  
14 stipulation.

15 The parties agree and recommend that the  
16 Commission make findings that the Populus-to-Terminal  
17 transmission project is prudent and is currently used  
18 and useful.

19 Now, the parties are not precluded in future  
20 proceedings from challenging the Populus-to-Terminal  
21 transmission project on used and useful grounds, or  
22 that the costs or revenues requirements should be  
23 allocated differently.

24 Paragraph 50 states that no party is barred  
25 from participating in the Company's current FERC rate

1 case simply by virtue of entering into this  
2 stipulation.

3 Paragraph 51 deals with the canceled  
4 negotiations on the Apex Plant. And it states that  
5 the contentions made by the parties regarding the  
6 Company's decision to terminate negotiations to  
7 acquire the Apex Plant are resolved by this  
8 stipulation. And the parties agree to assert no  
9 future claims regarding that decision.

10 And paragraph 52 states that all other  
11 revenue requirement issues in the general rate case  
12 are resolved by this stipulation.

13 Moving on now to other issues. On the topic  
14 of hedging, paragraph 53 describes a collaborative  
15 process on hedging practices. The parties have agreed  
16 to hold a collaborative process to discuss appropriate  
17 changes to the Company's hedging practices and to  
18 better reflect customer risk tolerance and  
19 preferences.

20 The Company agrees to implement appropriate  
21 policy changes on an ongoing forward basis that result  
22 from the agreements of that collaborative process.  
23 Or, if the parties are unable to reach agreement on  
24 some issues, should the Commission choose to issue an  
25 order on those issues the Company agrees to abide by

1 that order as well.

2           Within six months of the approval of this  
3 stipulation the Division will, and other parties may,  
4 file informational reports with the Commission with a  
5 general explanation of the results of the  
6 collaborative process. The stipulation then lists the  
7 issues to be addressed in that process.

8           Paragraph 54 talks about the current hedge  
9 position of the Company. During settlement  
10 negotiations the Company reviewed with the parties its  
11 current natural gas hedging position for the period of  
12 August 2012 through July 2013.

13           That percentage is highly confidential so  
14 it's not listed in the stipulation, but the Company  
15 would be happy to provide to the Commission the same  
16 information that was shared with those parties during  
17 those discussions.

18           The parties agree that hedging transactions  
19 entered into before July 28, 2011 -- that's the date  
20 of this stipulation -- will not be challenged for  
21 prudence on the grounds that are specified in the  
22 stipulation.

23           Paragraph 55 states that if the Company finds  
24 itself with requests from other states that would give  
25 materially inconsistent hedging policies it would



1 attempt to resolve that conflict with the parties and  
2 with those other states.

3 Moving on to the issue of swaps in the EBA.  
4 Paragraph 56 states that the parties request that the  
5 Company modify the EBA order to remove the language  
6 excluding financial swap transactions from the EBA.

7 The parties agree that broker fees, premium,  
8 and settlement costs to financial hedge transactions,  
9 including swaps, may be included in the EBA. And then  
10 the paragraph lists a number of specified conditions  
11 around swaps in the EBA.

12 Parties also agree not to challenge the  
13 prudence of existing financial hedges into -- that are  
14 entered into prior to July 28, 2011, for the reasons  
15 specified in that paragraph. However, the parties  
16 reserve the right to challenge such transactions for  
17 reasons other than those identified.

18 The parties also agree to use the  
19 collaborative process to address the EBA  
20 implementation issues related to other costs of  
21 financial hedge transactions.

22 The next section talks about RFP process  
23 improvement. Paragraph 57 states that prior to the  
24 next RFP the Company will hold a stakeholder workshop  
25 to consider process improvements dealing with

1 opportunities that might be outside the defined  
2 parameters of an RFP, such as the Apex negotiations  
3 that were conducted during the last RFP.

4 Paragraph 58 states that prior to  
5 cancellation of negotiations with a bidder who's on  
6 the final short list of an RFP the Company will allow  
7 the DPU and an independent evaluator to review the  
8 Company's analysis leading to that decision. And if  
9 the DPU or the independent evaluator does not agree  
10 with the Company's decision, that issue will be  
11 presented to the Commission for resolution.

12 Moving on to a discussion on deferred net  
13 power costs. Paragraph 59 discusses the resolution of  
14 the deferred NP, net power cost. And in reaching a  
15 resolution of that deferral the parties took into  
16 consideration a number of issues. Included in those  
17 issues were litigation, financial, and other risks  
18 associated with three open dockets.

19 That's the deferred NPC account that was set  
20 up by PacifiCorp's motion, the deferred REC account  
21 and claims in the UIEC REC docket, and the deferral of  
22 bonus depreciation docket that was filed by the Office  
23 of Consumer Services.

24 Also it takes into account the parameters set  
25 forth in the EBA order, such as a 70/30 sharing of the

1 difference between the actual and projected net power  
2 costs. And the issue of moving to a rolled-in  
3 jurisdictional allocation.

4 As a result of those issues and  
5 considerations the parties agree that the Company  
6 should be allowed to recover \$60 million of the  
7 projected \$157 million deferred net power cost  
8 balance.

9 That's to be cover -- recovered over three  
10 years through a \$20 million annual surcharge that will  
11 commence collection on June 1, 2012. And that, that  
12 surcharge will not include a carrying charge.  
13 Surcharge will be allocated to rate schedules relying  
14 on the cost of service stipulation, which is also  
15 consistent with the EBA order.

16 And that just states that it's allocated in  
17 the same manner as the rate increase from the general  
18 rate case.

19 Paragraph 60 states that the surcharge will  
20 terminate when that \$60 million deferred balance has  
21 been collected from customers.

22 The next section deals with the REC balancing  
23 account and deferred REC revenues. Paragraph 61  
24 states that a balancing account should be established  
25 for REC revenues. That's known as the REC balancing

1 account. That account will track the difference  
2 between the REC revenues included in rates and actual  
3 REC revenues received by the Company.

4 A hundred percent of the difference between  
5 those numbers will either be credited or surcharged to  
6 Utah customers. And they will be allocated as  
7 specified in the cost of service stipulation. And  
8 that is generally on the -- factor 10 of the cost of  
9 service study, which is how generation plant is  
10 allocated, or unless otherwise ordered differently by  
11 this Commission.

12 The balance in that REC balancing account  
13 shall accrue interest at the Company's cost of debt  
14 approved in the most recent general rate case. Or  
15 that would be 5.71 percent from the current general  
16 rate case.

17 Paragraph 62 states that for the purpose of  
18 the REC balancing account REC revenues included in  
19 base rates beginning September 21st of 2011 are  
20 \$50.9 million on a Utah-allocated basis. And that  
21 level of REC revenues will be reset in future rate  
22 proceedings.

23 Paragraph 63 says that the timing of the  
24 annual REC true-up filings will be consistent with the  
25 timing of EBA filings.

1 Paragraph 64 talks about the initial balance  
2 in that account. It walks through the calculation of  
3 the initial \$33 million credit balance in that REC  
4 balancing account. As this is an estimate of the  
5 September 2011 balance, any true up of the initial  
6 balance will be captured and reflected in the 2012  
7 filing.

8 That initial balance will be credited to  
9 customers for a period extending from September 21,  
10 2011, through May 31, 2012. With interest that credit  
11 will amount to \$33.6 million over that time period.  
12 This amount will also be trued up at the end and  
13 reflected in a future REC balancing account  
14 adjustment.

15 The spread of this credit is consistent with  
16 the cost of service stipulation that's shown in  
17 Table 5 of the stipulation. And it's also shown in  
18 some greater detail in Exhibit A to the stipulation.

19 Paragraph 65 states that the issues raised by  
20 parties in the UAE REC docket and in this general rate  
21 case regarding a deferral of REC revenues that begin  
22 January -- or February 22, 2010, and the ratemaking  
23 treatment of that deferral are resolved by this  
24 stipulation.

25 Now, US Magnesium has filed a statement with

1 the Commission which raises certain questions  
2 concerning the REC balancing account and appropriate  
3 incentives for the Company to make REC sales.

4 Rocky Mountain Power believes that the  
5 stipulation adequately addresses these issues raised  
6 by US Magnesium, and let me briefly explain why.

7 The first question raised by US Magnesium is  
8 whether Rocky Mountain Power has sufficient incentive  
9 to aggressively pursue the maximum value for customers  
10 through sales of bundled renewable energy products.

11 Three parts to a response to that question.  
12 First, the Company requires resources to service  
13 customer load needs. As stated in the direct  
14 testimony and rebuttal testimony of Stefan Bird, the  
15 Company acquires resources, including renewable  
16 resources, primary to serve the growing needs of our  
17 customers.

18 It appears that the US Magnesium proposal is  
19 requesting the Company to switch from being an  
20 electricity service provider to being a REC broker on  
21 behalf of its customers.

22 Next, the Company has renewable portfolio  
23 standards requirements in several states so it cannot  
24 sell all of, all of its RECs or all of its renewable  
25 resource generation. These RECs are allocated to all

1 six states, but the allocation of RECs to California,  
2 Oregon, and Washington are primarily used to satisfy  
3 the renewable portfolio standards in those states.

4 Because Utah does not have an RPS Utah  
5 receives, you know, upwards of 60 percent of the  
6 revenue from the RECs that are actually available for  
7 sale.

8 Now, the Company has already -- we believe  
9 already aggressively pursues the maximum value for any  
10 RECs or renewable resources it has available for sale.  
11 As described in the direct and rebuttal testimony of  
12 Mr. Bird, we believe the Company's REC sales  
13 performance has been exceptional.

14 The Company has taken advantage of the  
15 tremendous opportunities that Mr. Swenson refers to in  
16 his testimony and that are referred to in your  
17 statement. Because of the Company's aggressive  
18 participation in RFPs in California and Nevada we've  
19 provided \$51 million of REC revenues to our customers  
20 in this rate case.

21 Developments in Western REC markets have  
22 greatly restricted the ability of the Company to make  
23 additional negotiated sales, such as those recently  
24 entered into, and have greatly reduced the prices for  
25 any potential sales.

1           Currently the market price for RECs, based on  
2 current broker quotes for the Company in 2011, is in  
3 the range of 4 to 7 dollars per megawatt hour.

4           But I also note that the Company has bid into  
5 three recently-released California RFPs. And if we're  
6 successful in winning those bids obviously those  
7 revenues will pass back to our customers at a hundred  
8 percent through this REC balancing account mechanism.

9           The other two questions raised by  
10 US Magnesium deal with whether the REC balancing  
11 includes the proceeds from the sale of both bundled  
12 and unbundled energy products, and if those products  
13 are properly valued.

14           Collectively, the REC balancing account and  
15 the EBA include the proceeds from the sale of both  
16 bundled and unbundled RECs. When the Company sells  
17 bundled RECs the revenue from that, for accounting  
18 purposes, is split between the sale of electricity and  
19 the sale of the renewable attributes associated with  
20 the generation of that electricity.

21           The sale of electricity is part of the net  
22 power cost, and that flows through the EBA. The  
23 revenue associated with the RECs or the renewable  
24 attributes will flow through the REC balancing  
25 account. So we believe that that's adequately



1 addressed those questions raised by US Magnesium.

2 Now, if the Commission has additional  
3 questions on this issue Mr. Bird is available by  
4 phone. He's dialed in to the phone, and we can make  
5 him available to address any additional questions that  
6 you might have on that issue.

7 Moving on to other issues. Paragraph 66  
8 addressed the UIEC REC deferral and the bonus  
9 depreciation deferral. It resolves both those issues  
10 in that docket, and they're resolved by this  
11 stipulation.

12 The paragraphs (sic) agree that the petitions  
13 in those dockets shall be dismissed with prejudice.

14 Paragraph 67 talks about the resolution of  
15 Rocky Mountain Power's net power cost deferral motion  
16 and the REC issues that are addressed in the Major  
17 Plant Addition II stipulation.

18 The ratemaking treatment of the Rocky  
19 Mountain Power deferral -- net power cost deferral  
20 account as addressed in our motion and the deferred  
21 REC account addressed in paragraphs 8 through 12 of  
22 the MPA II stipulation are resolved by this  
23 stipulation. And no further proceedings shall be held  
24 in conjunction with either account.

25 Moving on to the next general rate case.

1 Paragraph 68 states that the Company agrees it will  
2 not file its next general rate case prior to  
3 February 15, 2012.

4 Paragraph 69 deals with the test period in  
5 that case. The Company's next general rate case the  
6 Company will use, and the parties will not oppose the  
7 use of, a forecast test period that ends no later than  
8 15 months beyond the end of the month the rate case is  
9 filed, using a 13-month average rate case.

10 Paragraph 7 (sic) states that in that future  
11 case the Company agrees to update its forecast of rate  
12 base plant additions and its revenue requirement to  
13 reflect the most current information available to the  
14 Company at the time of its rebuttal filing.

15 The remaining paragraphs of the stipulation  
16 concern -- contain the general terms and conditions.  
17 These are associated with most stipulations presented  
18 before this Commission. They represent the  
19 obligations of the parties to the stipulation and to  
20 each other.

21 Let me point out just a couple of items from  
22 those general terms and conditions. As with most  
23 stipulations, this agreement was reached through  
24 negotiation and compromise.

25 While all of the signing parties agree that

1 the stipulated rate increase and the stipulated -- to  
2 the stipulated rate increase and the stipulated  
3 resolutions of the deferred accounting dockets, each  
4 party arrived at that determination in a different  
5 way, using different assumptions, different  
6 valuations, and different adjustments. Again, that's  
7 typical with many stipulations presented here.

8 Now, with that background, paragraph 71  
9 states that the parties agree that this stipulation as  
10 a whole is just and reasonable and results -- in  
11 result and it's in the public interest.

12 Paragraph 77 states that this stipulation is  
13 an integrated whole. That means the party to -- agree  
14 to this in its entirety, not to separate parts  
15 individually. And then it lays out the remedies if  
16 something other than that should be proposed by the  
17 Commission.

18 Q. Mr. Taylor, do you have any final comments on  
19 the stipulation?

20 A. Yes. Just finally, first I want to thank all  
21 of the parties for working together to reach this  
22 agreement. I believe this agreement works for all  
23 parties. Getting there took a lot of work from  
24 everybody involved. This -- just want you to know,  
25 this was not an easy resolution for the parties.

1 I restate the Company's support for the  
2 stipulation. It was negotiated in good faith by the  
3 parties to the stipulation. I believe the stipulation  
4 is in the public interest. And I recommend that the  
5 Commission approve the stipulation as it's filed. And  
6 that concludes my remarks, thank you.

7 CHAIRMAN BOYER: Okay. Thank you,  
8 Mr. Taylor.

9 Shall we turn now to the Division's witness.  
10 Dr. Powell?

11 MS. SCHMID: Please, first I need to  
12 apologize for being late.

13 ARTIE POWELL, Ph.D.,

14 called as a witness, having been duly sworn,  
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. SCHMID:

18 Q. Dr. Powell, could you please state your name,  
19 business address, and position for the record?

20 A. My name is Artie Powell. My business address  
21 is 160 East 300 South, Salt Lake City, Heber Wells  
22 Building. And I am the manager of the energy section  
23 for the Division of Public Utilities.

24 Q. As the manager of the energy section have you  
25 been involved on behalf of the Division in this

1 docket?

2 A. Yes, I have.

3 Q. Could you please provide some details of your  
4 involvement?

5 A. In addition to filing testimony on several  
6 topics or issues in the rate case on revenue  
7 requirement I have directed the testimony in all of  
8 the phases of the rate case for the Division and  
9 helped in terms of the day-to-day management. Luckily  
10 somebody else in the Division managed the case on a  
11 day-to-day basis for me. And for the Division.

12 I also participated in all of the settlement  
13 discussions, except for possibly one or two while I  
14 was on a short vacation. But I was briefed on those  
15 meetings and reviewed all the documents from those  
16 meetings, including the final settlement agreement or  
17 stipulation.

18 Q. Do you have a summary statement that you  
19 would like to present?

20 A. I do.

21 Q. Please proceed.

22 A. This statement is -- if I could just preface  
23 before I start my statement. I have written a  
24 statement out. I provided the Commission -- the  
25 Commissioners with a copy of that statement for their

1 convenience as I read through this.

2           It's -- the statement is a little bit longer  
3 than what I would normally do, but the issues I think  
4 are complex enough that I wanted to cover a few items  
5 in particular. I also wrote it out so I would avoid  
6 as much rambling as possible.

7           On behalf of the Division I would like to  
8 thank the Commission for this opportunity to offer  
9 some comments in support of the stipulation. The  
10 Division is satisfied that the stipulation, when taken  
11 as a whole, is just and reasonable in result and is in  
12 the public interest.

13           Since the Company has provided a detailed  
14 explanation of the stipulation I will not speak to  
15 every condition or term but will limit my remarks to  
16 those issues that are of particular importance to the  
17 Division.

18           First let me give some context for the  
19 Division's support of the stipulation. Starting from  
20 the Company's original request of approximately  
21 \$232 million, the Division made or adopted  
22 approximately \$127 million in adjustments, leading to  
23 our filed surrebuttal position of approximately  
24 \$105 million.

25           After adoption of many of the Division's as

1 well as other intervenors' adjustments, the Company's  
2 filed rebuttal position was approximately \$189  
3 million. In other words, the stipulation settlement  
4 of the rate case at 117 million is approximately  
5 11 percent above the Division's surrebuttal position  
6 in the case, but 38 percent below the Company's  
7 rebuttal position.

8           Therefore, the Division views the stipulation  
9 as a reasonable compromise of the many issues  
10 presented in this case and in the related dockets.

11           Now let me draw some attention to some  
12 specific terms or conditions in the stipulation. In  
13 its rebuttal testimony the Company adopted many of the  
14 Division's adjustments. However, there are several  
15 adjustments that the Company did not adopt as part of  
16 its rebuttal position, including the allowed return on  
17 equity capital, net power cost adjustments, O&M  
18 expense adjustments, and the removal of the  
19 accelerated depreciation and other related Klamath  
20 costs.

21           The settlement, however, offers additional  
22 adjustments in each of these areas. First, in the  
23 case of the return on equity the Company agrees to an  
24 allowed return of 10 percent, which was the Division's  
25 recommendation in this case.

1           Second, excluding swaps, the Division  
2 recommended approximately \$18 million in net power  
3 cost adjustments, which for the most part the Company  
4 did not accept. The stipulation, however, offers  
5 \$15 million in net power cost adjustments off of the  
6 Company's rebuttal position.

7           Third, the stipulation offers an O&M  
8 escalation adjustment of \$1.9 million, which is  
9 approximately equal to the adjustment recommended by  
10 the Division's consultant in this case.

11           Fourth, the stipulation also offers to remove  
12 incremental costs associated with the Klamath Dam or  
13 the KHSA agreement, which was more than what the  
14 Division recommended in the case.

15           In the Division's final filed position there  
16 are two adjustments, one each for swaps and Apex, that  
17 the Company did not adopt as part of its rebuttal  
18 position nor have they specified as dollar amounts in  
19 the stipulation. The stipulation does, however,  
20 address both of these issues with the procedures to  
21 move forward.

22           With regard to swaps, or hedging in general,  
23 the parties to the stipulation agree to work  
24 collaboratively to discuss appropriate changes to the  
25 Company's hedging practices. And the Company agrees



1 to make such changes coming from the collaborative  
2 process, or as ordered by the Commission.

3 Similarly, in advance of its next RFP the  
4 Company agrees to work with the Division and other  
5 interested parties to explore ways to improve the  
6 process in order to avoid future complications or  
7 controversy similar to those surrounding the Company's  
8 decision to terminate negotiations with the owners of  
9 the Apex Plant.

10 The Division considers both of these offers  
11 as positive steps in defining acceptable future  
12 processes for these issues. Additionally, the  
13 Division notes that the stipulation offers an  
14 additional all-other adjustment for \$11.3 million.

15 While the parties do not agree on what this  
16 adjustment represents, given the complexity of the  
17 swaps and the Apex issues the Division accepts this  
18 amount as a reasonable compromise of its position on  
19 these two issues.

20 The stipulation also offers a settlement of  
21 four outstanding deferred accounting dockets. Two on  
22 REC revenues, one for net power costs, and one for  
23 bonus depreciation, as described by Mr. Taylor  
24 earlier.

25 For settlement purposes the Company agrees to

1 refund certain REC revenues to ratepayers over the  
2 first nine months following the rate effective date in  
3 this case, and to collect certain deferred net power  
4 costs over a three-year period starting in June 2012.

5 Given the complexity and likely contentious  
6 litigation over these issues the Division believes the  
7 settlement, as presented in the stipulation, is a  
8 reasonable balance of ratepayer and shareholder  
9 interest.

10 In conclusion, the Division believes that the  
11 settlement of the rate case, as presented in the  
12 stipulation, is consistent with Division's filed  
13 surrebuttal position. The stipulation either adopts  
14 or aligns closely with many of the Division's rate  
15 case adjustments.

16 Additionally, the stipulation offers a  
17 settlement of several outstanding deferred accounting  
18 dockets. Given the complexity of the issues involved,  
19 the Division believes the stipulation offers a  
20 reasonable compromise on all of these issues.

21 Therefore, the Division finds that the  
22 stipulation is just and reasonable in result, and is  
23 in the public interest, and recommends the Commission  
24 adopt the stipulation in its entirety. And that would  
25 conclude my prepared remarks.

1 Q. Thank you.

2 CHAIRMAN BOYER: Thank you Dr. Powell.

3 Let's hear now from Ms. Beck and from the  
4 Office of Consumer Services. Mr. Proctor? Or  
5 Ms. Beck.

6 MR. PROCTOR: Ms. Beck.

7 MICHELE BECK,

8 called as a witness, having been duly sworn,  
9 was examined and testified as follows:

10 MS. BECK: Thank you Chairman. My name is  
11 Michele Beck, I'm the director of the Utah Office of  
12 Consumer Services, and I'm here to speak in support of  
13 the settlement.

14 The Office of Consumer Services carefully  
15 scrutinized the Company's request for a rate increase  
16 through its team of internal experts and outside  
17 consultants. A few hundred pages of prefiled  
18 testimony reflect our analysis and conclusions.

19 Consistent with this analysis the Office  
20 believes that the settlement presented to the  
21 Commission today will result in just and reasonable  
22 rates for the residential and small commercial  
23 customers whose interests we represent.

24 This settlement incorporates a 10.0 percent  
25 rate of return, the lowest allowed in recent history.

1 It is a reasonable resolution of the ratemaking  
2 treatment of four ongoing deferred accounting issues,  
3 in addition to the general rate case docket. And,  
4 importantly, the resolution also includes some ongoing  
5 process improvements that will protect small customers  
6 in years to come.

7 The Office would like to note a few specific  
8 provisions that are critical for arriving at just and  
9 reasonable rates. First, the Office would like to  
10 note the treatment of REC revenues. A significant  
11 portion of the monetary difference between the  
12 Office's surrebuttal position and the settled revenue  
13 requirement figure is attributable to different  
14 forecasts of REC revenues.

15 In lieu of additional adjustments beyond the  
16 Company's rebuttal case the parties have agreed to a  
17 tracker that will ensure that 100 percent of actual  
18 REC revenues are credited to customers.

19 The Office does not generally support  
20 trackers as a preferred ratemaking mechanism. It does  
21 not believe this tracker will need to remain in place  
22 long term. However, for the short term the Office  
23 believes this tracker is the only way to ensure that  
24 customers receive the full revenue stream from the  
25 resources they have paid for.

1 Further, the Office notes the importance of  
2 returning the balance in the current REC revenue  
3 deferred account as expeditiously as possible, which  
4 is also accomplished by this settlement.

5 Second, the Office is pleased that the  
6 settlement is establishing a collaborative process to  
7 make changes to the Company's hedging policies and  
8 practices to incorporate customer risk tolerance and  
9 preferences.

10 As the Commission is aware, the Office has  
11 advocated in this and other cases that this  
12 examination is necessary, especially with the  
13 implementation of an EBA. Moving towards hedging  
14 policies and practices that reflect customer and not  
15 just company preferences is long overdue, and one of  
16 the benefits of this settlement.

17 Finally, the Office notes that this revenue  
18 requirement figure is derived using rolled-in rates,  
19 consistent with the settlement presented separately in  
20 the MSP docket.

21 As the Office and other parties have  
22 previously argued, setting rates using the rolled-in  
23 allocation methodology is the only method by which  
24 just and reasonable rates can be achieved with an EBA  
25 in place. However, the Office notes that utilizing

1 rolled-in methodology is not an agreement to each cost  
2 component of each individual resource.

3 In this settlement the Company agreed to  
4 remove certain costs associated with the removal of  
5 the Klamath Dam, to be addressed in a future case.  
6 The Office will continue to oppose these costs being  
7 allocated to Utah customers. And strongly recommends  
8 to the Commission that all Klamath-related costs  
9 warrant careful scrutiny, preferably in a more focused  
10 context, not embedded within a general rate case.

11 In conclusion, the Office concurs that this  
12 settlement is just and reasonable in result and  
13 recommends Commission approval.

14 CHAIRMAN BOYER: Thank you Ms. Beck.

15 Now I guess Mr. Higgins wishes to make a  
16 statement, Mr. Dodge?

17 MR. DODGE: We'll let Mr. Higgins make a  
18 statement if that's all right. Thank you Chairman.

19 CHAIRMAN BOYER: Yeah, we'll let him do that  
20 then.

21 Mr. Higgins have you been sworn in this  
22 proceeding?

23 MR. HIGGINS: Yes I have, Mr. Chairman.

24 CHAIRMAN BOYER: You may proceed.

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KEVIN C. HIGGINS,

called as a witness, having been duly sworn,  
was examined and testified as follows:

MR. HIGGINS: Thank you. My name is Kevin C. Higgins. I'm a principal in the consulting firm Energy Strategies, and I'm here on behalf of UAE. UAE supports the settlement agreement in its entirety. I recommend it to you as being just and reasonable and in the public interest.

I would briefly like to comment on a handful of items that were of particular interest to UAE in this docket. And explain why we believe and why we support the settlement agreement as a complete package.

As the Commission is aware, UAE has been particularly active in addressing issues with respect to deferred renewable energy credits. There have -- there are two outstanding dockets before the Commission that speak to this issue: One which was initiated by UAE, and another which was initiated by the UIEC group.

This settlement agreement addresses, to UAE's satisfaction, the totality of the REC deferral issues raised in both of those dockets. In particular I would call your attention to paragraph 64 of the

1 settlement agreement, which provides what UAE believes  
2 is a full credit to customers for the deferred RECs  
3 that were incurred after February 22, 2010, through  
4 the end of calendar year 2010.

5 I would also call your attention to  
6 paragraph 59 of the settlement agreement, which  
7 provides for a recognition of a greatly-reduced net  
8 power cost deferral claim by Rocky Mountain Power.  
9 And UAE is of the view and I am of the view that fair  
10 consideration for the UIEC REC deferral claim is  
11 reflected in the final number that was negotiated by  
12 the parties to reach that \$60 million net power cost  
13 deferral.

14 I would also call your attention to  
15 paragraph 46 of the settlement agreement, which deals  
16 with the Klamath deferral issues. Of particular note  
17 in that paragraph, item (b) recognizes that the issues  
18 with respect to the costs of removal of Klamath will  
19 be postponed for another day.

20 What that means as a practical matter is that  
21 in rates in Utah going forward there will not be  
22 charges to Utah customers for costs of removal of the  
23 Klamath Dam at this time. And nor are those costs  
24 being deferred for later recovery for that particular  
25 item.



1           And that's in fact an issue of importance to  
2 UAE. And we believe it adds to the just and  
3 reasonableness of this package.

4           Finally let me conclude with a brief comment  
5 about UAE's testimony in this case with respect to the  
6 cost of environmental upgrades. Its -- the parties  
7 and I'm sure the Commission are well aware that this  
8 was an issue that UAE took a very hard look at and  
9 invested significant resources in examining.

10           And UAE has come to the conclusion that when  
11 all factors are considered in this settlement  
12 agreement, including the delay of any next filing by  
13 Rocky Mountain Power for a general rate case, that the  
14 package results in a fair resolution of the issue.

15           And with that, I will conclude my summary in  
16 support of the settlement agreement, thank you.

17           CHAIRMAN BOYER: Thank you Mr. Higgins.

18           I notice now that Mr. Swenson has joined us.  
19 And my understanding is that you neither support nor  
20 oppose the stipulation but wish to make a statement.

21           MR. SWENSON: That's correct, Mr. Chairman.

22           CHAIRMAN BOYER: Have you been sworn in this  
23 proceeding? You have not.

24           MR. SWENSON: I have not.

25           (Mr. Swenson was duly sworn.)

1           CHAIRMAN BOYER: Thank you, please be seated.  
2 Proceed.

3           MR. DODGE: Mr. Chairman, I'd like to start  
4 with requesting the introduction into evidence of the  
5 direct testimony of Roger J Swenson, which is marked  
6 as US Mag. Revenue Requirement 1.0. And attached to  
7 that are Exhibits 1. -- US Mag. Revenue Requirement  
8 1.1 and 1.2.

9           And then secondly the prefiled surrebuttal  
10 testimony of Mr. Swenson, marked as US Mag. Revenue  
11 Requirement 1.0SR.

12           I do have copies of that testimony for the  
13 reporter, which I'll provide at a break. I would move  
14 its admission.

15           CHAIRMAN BOYER: Thank you.

16           Are there any objections to the admission of  
17 Mr. Swenson's direct and surrebuttal testimony,  
18 together with exhibits?

19           MR. DODGE: Mr. Chairman, I actually got  
20 ahead of myself, probably. I didn't have him adopt it  
21 under oath. Would you like me to do that?

22           CHAIRMAN BOYER: Yeah, let's do that.  
23 Otherwise we'll adopt -- I mean we'll admit them as  
24 written.

25           MR. DODGE: Okay.

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ROGER J. SWENSON,

called as a witness, having been duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODGE:

Q. Is that your testimony here in this proceeding?

A. Yes, it is.

MR. DODGE: Now I'll move the admission.

CHAIRMAN BOYER: Very well, thank you.

Any objection to the admission of Mr. Higgins' direct and surrebuttal testimony, together with exhibits? Swenson, I'm sorry. Seeing none we'll admit them into evidence, then.

(Mr. Swenson's testimony and exhibits were admitted.)

CHAIRMAN BOYER: Thank you. You may proceed.

MR. DODGE: And then Mr. Swenson would like to make a brief summary of his testimony and a brief statement regarding the stipulation.

THE WITNESS: First let me make a statement concerning the stipulation. I'm not here to either oppose or support the stipulation as it stands. I have some questions in regard to the stipulation. And

1 I'll get into that in my summary in a little bit of  
2 detail.

3 In terms of summarizing the position of  
4 US Mag. in this docket, there were two important  
5 issues that I tried to bring forward to all the  
6 parties' attention. One of which is a difference in  
7 value between RECs, renewable energy certificates, a  
8 certificate that proves that a renewable megawatt hour  
9 of energy was produced from a specific technology that  
10 meets a resource procurement standard in a specific  
11 state. A certificate. Versus a bundled renewable  
12 energy sale.

13 And I hope I've driven home that point with  
14 the testimony. And I'm happy to deal with any  
15 questions in regard to that.

16 Also, an important consideration in my  
17 testimony was to encourage more of this renewable  
18 energy sale that helps reduce rates for all parties.  
19 Parties like US Magnesium, when they're faced with  
20 double-digit increases in costs in an environment  
21 where economics is having an impact on most every  
22 business, it's difficult.

23 And anything that we can do to encourage  
24 reducing those kinds of increases, that we all know is  
25 coming, is very important. I applaud PacifiCorp/Rocky

1 Mountain Power for what they've done. And I encourage  
2 them to do more of it.

3 I -- and let me just get into a few of the  
4 questions concerning my issues with regard to a REC  
5 tracking account. Again, I get caught up in a  
6 definition that I'm not sure I understand completely,  
7 which is a REC tracking account. What is the REC? Is  
8 the REC just the certificate value? Or is it somehow  
9 the bundled energy value less the imputed energy value  
10 from that resource?

11 And let me give you an example. And I'm glad  
12 I heard Mr. Taylor's explanation somewhat of how they  
13 intend to track this, but I'm still not clear what  
14 that would mean. And my example I think will  
15 illustrate that.

16 And I'm just gonna pull numbers out of the  
17 air, round numbers, so that we don't have to deal with  
18 any kind of confidentiality. Let's just for ease of  
19 calculation say RECs are worth \$10 in the marketplace.  
20 Let's say that a bundled renewable energy sale to a  
21 utility that has a requirement or a need for renewable  
22 energy will buy power, that renewable energy, for \$80.

23 So in that case I can't tell whether, if an  
24 \$80 sale was made, what would go into the REC tracking  
25 account. Is it the \$10, and the \$70 amount would go

1 into just the general energy balancing account  
2 tracker? Or do we take the \$80 sale minus the actual  
3 cost of replacing that energy, which might be \$30, and  
4 we have \$50 in value? What goes into the REC tracking  
5 account?

6 I think an important consideration in terms  
7 of how those different kinds of revenues are treated,  
8 in my mind, is this may suggest needing a new docket  
9 to really flush out what we're doing with these  
10 things. I think that concludes my summary.

11 CHAIRMAN BOYER: Thank you Mr. Swenson.

12 I think we have time now to begin cross  
13 examination before we take a break. Are you okay,  
14 Kelly? Okay.

15 MR. REEDER: If I might, for the record. If  
16 I could indicate that, subject to the representations  
17 of the Power Company in paragraph 3, the reservations  
18 in the stipulation, we support the stipulation and we  
19 urge the Commission to adopt it.

20 CHAIRMAN BOYER: Okay. Thank you Mr. Reeder.  
21 Ms. Smith?

22 MS. HOLLY RACHEL SMITH: If I may, I just  
23 wanted to state for the record that Wal-Mart is a  
24 signatory to the stipulation, and ask that you approve  
25 the stipulation.

1 CHAIRMAN BOYER: Thank you.

2 MS. HOLLY RACHEL SMITH: Thank you.

3 CHAIRMAN BOYER: Okay. With that, are there  
4 parties who wish to cross examine the proponent  
5 witnesses we've just heard from?

6 MR. MONSON: Mr. Chairman --

7 MR. PLENK: Mr. Chairman, this is Bruce Plenk  
8 on the telephone. I don't wish to do any cross  
9 examination but I did want to request permission,  
10 Mr. Chairman, to be excused for the remainder of the  
11 hearing due to a prior conflict.

12 CHAIRMAN BOYER: Yes, you may.

13 MR. PLENK: Thank you Mr. Chairman.

14 CHAIRMAN BOYER: Thank you for appearing by  
15 phone.

16 Mr. Monson, you --

17 MR. MONSON: Yes, Mr. Chairman. In our  
18 discussions with the Sierra Club we had indicated that  
19 our witnesses would be available in essence for them  
20 to ask questions that Mr. Taylor probably wouldn't be  
21 prepared to answer regarding the environmental.

22 So we viewed their cross of our witnesses as  
23 being an extension of the cross of Mr. Taylor. But I  
24 just bring that up. It's -- obviously the Commission  
25 can decide how it wishes to proceed.

1           CHAIRMAN BOYER: Well, I think Ms. Smith has  
2 identified four Company witnesses that she wishes to  
3 cross examine.

4           MR. MONSON: Right.

5           CHAIRMAN BOYER: So let's just proceed with  
6 the proponents and Mr. Swenson's testimony at this  
7 point in time. And it appears that no one wishes to  
8 cross examine, so let's see if the Commissioners have  
9 questions and then we'll allow redirect if any.

10           Commissioner Allen?

11           COMMISSIONER ALLEN: Thank you, Mr. Chair. I  
12 have -- thank you. There's only two choices here. I  
13 can't get it right the first time.

14           I just have one question that came about as a  
15 result of this summary testimony, particularly  
16 applying to paragraph 58. And we're talking about  
17 basically what the RFP protocol should look like in  
18 the future if someone cancels a negotiation.

19           The representation in the stipulation seems  
20 to indicate to me that the emphasis there has largely  
21 been resolved in terms of notifying other parties if  
22 there's a cancellation. But in listening to  
23 Dr. Powell's testimony I kind of heard that any  
24 negotiations that would be terminated on acquisitions  
25 are -- need to be still dealt with in future RFP



1 meetings or definitions.

2 So could the parties just clarify kind of  
3 where that's at for my purposes here?

4 MR. TAYLOR: Well, first off I think there's  
5 two, there's two elements here. First, the Company  
6 agrees to have a workshop with, with the parties, in  
7 advance of issuing the next RFP, to talk about the  
8 process of actually issuing the RFP. And particularly  
9 the process of dealing with some unique things that  
10 might fall off the normal set of procedures.

11 By specifically related to the cancellation,  
12 I mean, what we've agreed is that, you know, we'll  
13 notify them and allow them to review our analyses  
14 prior to that cancellation. And if the DPU or the  
15 independent evaluator does not agree with our decision  
16 to cancel, that issue will be presented before the  
17 Commission for resolution.

18 CHAIRMAN BOYER: Dr. Powell, do you have  
19 anything to add to that?

20 DR. POWELL: No, I -- maybe just a small  
21 comment. And that's where the issue arose over the  
22 Apex Plant, as far as I think the Commission is aware  
23 of, is that the Company did some analysis over a  
24 weekend and decided that they would terminate  
25 negotiations with the owners of that plant. But they

1 had not reviewed that analysis with the independent  
2 evaluator or the, or the Division, and we were unaware  
3 until after the decision was made.

4 And so that's the issue that we're trying to  
5 resolve here, is how do we avoid that type of  
6 controversy so we don't have to be back here after the  
7 next RFP.

8 COMMISSIONER ALLEN: So then to follow up.  
9 If the work group determines that there should be some  
10 major changes to the protocol, especially concerning  
11 how much the Commission should be inserted into the  
12 process, would you foresee that coming to us for a  
13 sign off before you change that protocol or before you  
14 move forward? After the workgroup --

15 MR. POWELL: I, I had assumed so, since -- I  
16 don't anticipate that there will be a major change to  
17 the protocol. I think it would be just a better  
18 understanding between the Company and the Division on  
19 how to -- the RFP should unfold.

20 And that evaluation should be taken -- should  
21 be done. But certainly all of that would be presented  
22 when the Company files its RFP with the Commission for  
23 approval.

24 COMMISSIONER ALLEN: Does the Company share  
25 that view?

1 MR. TAYLOR: I would concur with that.

2 COMMISSIONER ALLEN: Okay. Thank you very  
3 much.

4 CHAIRMAN BOYER: Commissioner Campbell?

5 COMMISSIONER CAMPBELL: I just have a couple  
6 questions related to the mechanics of the net power  
7 cost calculation. And you were very explicit that you  
8 intended to change, or you intend the Commission to  
9 modify its order as it relates to the hedging.

10 There are a couple other, either intentional  
11 or unintentional changes, I think, to the EBA  
12 calculation that I just wanted to pursue and  
13 understand with you. And maybe the best way to do  
14 that is going to Exhibit B of the stipulation.

15 In the Commission's order on the EBA, I guess  
16 for -- if we're looking at column H. The Commission,  
17 I believe in that order, decided that we would use  
18 Utah retail sales from actual billing records because  
19 loads were difficult to calculate on a monthly basis.

20 Yet in this stipulation you've used, I think,  
21 loads from Mr. McDougal's testimony instead of sales  
22 from Mr. Paice's testimony. And my question is, was  
23 that intentional? And if so, why?

24 MR. TAYLOR: The reason why is, in getting to  
25 both the projected allocation of net power costs and

1 the actual net power costs, um. We don't have power  
2 costs by state, we only have total company power  
3 costs. So you need to get there.

4 And the process of making that allocation is  
5 based upon those loads at input. And so that's why  
6 they're used here. Clearly by the time they get to  
7 customers they're gonna be reflected at retail rate  
8 levels.

9 But that's the reason for the change, is I  
10 think that's a necessary step in the process to make  
11 the allocation.

12 COMMISSIONER CAMPBELL: So explain to me, if  
13 that's the first step, is there a second step where  
14 you will use retail sales?

15 MR. TAYLOR: Well, yes. You get to, you get  
16 to the total allocation for the state, and then you  
17 allocate that back to rate classes based upon the rate  
18 spread of the last general rate case order from the  
19 Commission.

20 Then they are applied, you know, on a retail  
21 basis, to both power and energy charges in the rate  
22 schedule. So that's the process to which they're  
23 applied back at retail kilowatt hour sales levels.

24 COMMISSIONER CAMPBELL: Is that -- do you  
25 have a similar explanation for the scaler? How you

1 intend to use a Utah scaler as it relates -- I  
2 understand the scaler as it relates to this  
3 allocation, but in your footnote you talk about using  
4 the same scaler for actual.

5 MR. TAYLOR: Yeah. The scaler is a direct  
6 response to the Commission's direction in its EBA  
7 order that, rather than just calculate a dollar per  
8 megawatt hour on a total system basis and apply that  
9 to Utah kilowatt hour sales, is that we take into  
10 account allocations to Utah based on demand and energy  
11 allocation components.

12 However, we don't calculate those particular  
13 allocation factors monthly, and the EBA operates  
14 monthly. So what we've done is we've taken the, the  
15 net power cost that's been determined in total for the  
16 Company and agreed-upon net power allocated cost in  
17 the State of Utah.

18 And then we've developed what that is in  
19 total, and then we know what the dollar per megawatt  
20 hour is on a system basis. And we had to make some  
21 adjustment to get that so that it produced, on a  
22 dollar-per-megawatt-hour basis, the Utah numbers.

23 And so that scaler is really the process by  
24 which you go from strictly a dollar per megawatt hour  
25 to Utah's allocated share of those numbers translated

1 to a dollar per megawatt hour.

2 And what we have agreed to is the scaler  
3 that's determined to establish the allocation in base  
4 rates is also the scaler that will be applied to the  
5 monthly dollar-per-megawatt-hour calculation in the  
6 total Company EBA to translate to the Utah dollar per  
7 megawatt hour.

8 COMMISSIONER CAMPBELL: Thank you.

9 CHAIRMAN BOYER: I just have a couple of  
10 questions, addressed to no one in particular. There  
11 are a couple of references in the stipulation to  
12 the -- using the rolled-in method of calculating net  
13 power costs. And Ms. Beck also mentioned it this  
14 morning.

15 Are the calculations on Exhibit B rolled-in  
16 calculations? It doesn't explicitly say so, but I  
17 think implicitly they are.

18 MR. TAYLOR: Well, net power costs by  
19 themselves are already rolled in. The differences  
20 between rolled in and other allocation methods were  
21 outside of net power costs. And so my answer to that  
22 is yes, they are rolled-in values.

23 CHAIRMAN BOYER: And my other question  
24 relates to the inclusion of swaps in the EBA. And  
25 maybe I'm wrong on this, I'm -- because I'm not an

1 economist. But is it conceivable that the Company  
2 could hedge, you know, a hundred percent and avoid the  
3 70/30 sharing of unanticipated increased net power  
4 costs?

5 MR. TAYLOR: Well, I'm clearly not the net  
6 power cost expert, but I will just recall what I've  
7 heard Mr. Bird and Mr. Duvall share before many times.  
8 Is even if the Company was a hundred percent hedged  
9 there's still variability in net power costs because  
10 you have volume differences based upon customer  
11 consumption and generation output of your resources  
12 that also create volatility.

13 So even if those specific inputs were hedged  
14 a hundred percent there would still be variability in  
15 net power costs. So the 70/30 sharing would still  
16 come into play.

17 CHAIRMAN BOYER: Okay. And I also --

18 MR. TAYLOR: Please don't ask me to go into  
19 any more detail than that.

20 CHAIRMAN BOYER: I hate to ask questions  
21 which I don't know the answer. I'm already treading  
22 on thin water here.

23 But maybe for the other parties, am I correct  
24 in assuming that the other parties have some comfort  
25 in avoiding sort of an end run around that sharing

1 mechanism we put in the EBA through the collaborative  
2 process set forth in paragraph 53? Is that -- am I  
3 wrong?

4 MR. POWELL: Yes. And I would just add to  
5 what Mr. Taylor just said is that the forecast is  
6 always gonna be wrong anyway. And so even if they're  
7 a hundred percent hedged there's still gonna be some  
8 variability.

9 CHAIRMAN BOYER: They won't know what to  
10 hedge?

11 MR. POWELL: Right.

12 CHAIRMAN BOYER: Okay.

13 MR HIGGINS: Mr. Chairman, I would add to  
14 that on behalf of UEA, we do believe that the  
15 collaborative to address hedging issues is a critical  
16 component of the settlement agreement.

17 And I believe, at least, you know, based on  
18 some of the preliminary discussions the parties had in  
19 that regard that, you know, there's a -- the issue of  
20 how much hedging should occur, what the parameters  
21 should be, there's, there's a good chance that that  
22 collaborative process will speak effectively to that  
23 issue and the question that you've raised.

24 CHAIRMAN BOYER: Thank you Mr. Higgins.

25 MR. REEDER: There are two issues in play.



1 One issue is what costs associated with financial  
2 filings should go into the EBA. We've tried to  
3 constrain that here by calling the settlement costs in  
4 the stipulation.

5 How the hedging behaves outside of those  
6 costs that go into the EBA is subject to the  
7 collaborative. Stay tuned, we'll be back to you with  
8 more on that.

9 CHAIRMAN BOYER: Thank you.

10 MS. BECK: Mr. Chairman?

11 CHAIRMAN BOYER: Yes Ms. Beck?

12 MS. BECK: Can I respond to that as well?

13 CHAIRMAN BOYER: You may indeed.

14 MS. BECK: So the Office agrees that the  
15 collaborative will, we hope, get to a resolution of  
16 these issues so that it is more reflective of customer  
17 preferences and tolerances.

18 And we also, I think one of the other reasons  
19 why we're recommending to you to make that change to  
20 the EBA is that I'm not certain that keeping the  
21 hedging -- the swap costs out of the EBA was in fact  
22 preventing that kind of over-hedge.

23 So -- instead it created some unintended  
24 consequences, in my view. So we're still very  
25 concerned about an overly high level of hedging, but

1 we wanted to remedy something that probably wasn't a  
2 remedy and then move forward to find a remedy.

3 CHAIRMAN BOYER: Good. Thank you for those  
4 explanations.

5 Is there a desire to conduct any redirect  
6 examination of the proponent witnesses?

7 Apparently not. It's been an hour  
8 and-a-half, why don't we take a 15-minute recess and  
9 then we'll begin with the Sierra Club issues. Thank  
10 you.

11 (A recess was taken from 9:25 to 9:47 a.m.)

12 CHAIRMAN BOYER: We've come down to the point  
13 where we're going to hear from the Sierra Club, who  
14 opposes portions of the stipulation. So we talked  
15 earlier this morning about you putting on your  
16 witnesses first and then doing the cross examination  
17 of the Rocky Mountain Power witnesses. Is that okay.

18 MS. SMITH: Yes.

19 CHAIRMAN BOYER: All right. Shall we -- and  
20 you have two witnesses?

21 MS. SMITH: We have two witnesses.

22 CHAIRMAN BOYER: Shall we swear them both at  
23 this moment then?

24 MS. SMITH: (Moves head up and down.)

25 (The witnesses were duly sworn.)

1 CHAIRMAN BOYER: Thank you. Please be  
2 seated. You may proceed, Ms. Smith.

3 MS. SMITH: We'll like to start with  
4 Dr. Fisher. Dr. Jeremy Fisher.

5 JEREMY FISHER, Ph.D.,  
6 called as a witness, having been duly sworn,  
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. SMITH:

10 Q. Mr. Fisher, can you please state your name  
11 and title for the record?

12 A. Dr. Jeremy Fisher. Sorry. Dr. Jeremy  
13 Fisher. A scientist at Synapse Energy Economics.

14 Q. And did you prepare prefiled direct testimony  
15 in this matter for the Sierra Club?

16 A. I did.

17 Q. Do you have any changes to your prefiled  
18 testimony?

19 A. I do. I have two small corrections.

20 Q. Would you please review those -- make those  
21 changes for the record here?

22 A. I will. The first correction is on page 8.  
23 And I understand that different versions of these as  
24 they're printed may have different line numbers, so  
25 we'll do the best we can.

1           On my copy at least it's on line 8, with the  
2 paragraph that starts: "Indeed, the Company's  
3 willingness to install." And the term "significantly  
4 in advance," please replace that with, "without fully  
5 taking into account." Such that the sentence reads:

6           "Indeed, the Company's willingness  
7 to install costly environmental upgrades  
8 without fully taking into account  
9 regulatory requirements or either fin --  
10 or even finalized rules appears to  
11 represent," *etcetera*.

12           The second correction occurs on my page 43.  
13 On line 25. In the paragraph starting: "In  
14 Exhibit SCJF-9." And between the terms "show" and  
15 "expected" please insert the term "reasonably." Such  
16 that the sentence reads:

17           "In Exhibit SCJF-9 I show reasonably  
18 expected capital investments of  
19 PacifiCorp coal plants discussed in this  
20 testimony."

21           That is the extent of my corrections.

22           Q.    And with those corrections do you adopt your  
23 testimony?

24           A.    I do.

25           MS. SMITH: We would like to move that in as

1 Sierra Club Exhibit No. 1.

2 CHAIRMAN BOYER: Are there any objections to  
3 the admission of Dr. Fisher's prefiled written  
4 testimony?

5 MR. MOSCON: No objection by the power  
6 company.

7 CHAIRMAN BOYER: Is it is admitted then.  
8 (Dr. Fisher's testimony was admitted.)

9 MS. SMITH: Thank you very much.

10 Q. And Dr. Fisher, would you give us a brief  
11 summary of your testimony?

12 A. Absolutely. In very brief, the purpose of my  
13 testimony is to review the evidence that the Company  
14 looked at, the required retrofits, in an economic  
15 fashion. And review the purpose of those retrofits,  
16 as well as the other potential factors which could  
17 impact the economics of the coal fleet, and the coal  
18 plants in particular.

19 So I conclude that the Company historically,  
20 and for the purposes of this rate case, fail to show  
21 that plants being retrofit would remain economic after  
22 accounting for the cost of those retrofits.

23 I also concluded that the Company failed to  
24 analyze any non-emission controls options, such as  
25 re-powering, or replacement, or market purchases,

1 which could have met those emissions requirements more  
2 cost effectively than the retrofit they enhance today.

3 I also stipulate that the Company knew about  
4 the emerging environmental retrofits that are now  
5 being proposed and promulgated by the EPA. And that  
6 they failed to analyze the cost efficiency of the  
7 plant under consideration, given both the cost of the  
8 current retrofits as well as those additional costs  
9 that are upcoming.

10 And throughout the entirety of this they  
11 failed to inform the Commission and other stakeholders  
12 that they were aware of those costs, and that those  
13 costs would impose additional economic considerations  
14 on their plant.

15 And in doing so, we oppose the stipulation.  
16 And I'd recommend that the Commission disallow those  
17 costs until the Company further shows that those  
18 plants in fact remain economic relative to all other  
19 reasonable options.

20 Q. Thank you Dr. Fisher.

21 MS. SMITH: And I've neglected to move  
22 Dr. Fisher's exhibits to his prefiled testimony into  
23 the record.

24 CHAIRMAN BOYER: Yeah. Are there any  
25 objections to the admission of the exhibits to

1 Dr. Fisher's testimony?

2 There are none, so they are admitted as well.

3 (The Exhibits to Dr. Fisher's testimony were  
4 admitted.)

5 MS. SMITH: Thank you Dr. Fisher.

6 And I'd like to move to Dr. William  
7 Steinhurst.

8 WILLIAM STEINHURST, Ph.D.,  
9 called as a witness, having been duly sworn,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SMITH:

13 Q. Did you prepare prefiled testimony for the  
14 Sierra Club in this matter?

15 A. Yes, I did.

16 Q. Do you have any changes to your testimony?

17 A. Yes. I have three changes.

18 Q. Would you please note those for the record?

19 A. Two of them are on my page 9. The first is  
20 in the paragraph beginning: "With respect to  
21 prudence." On my line 6 I have the phrase "to  
22 completely revamp." The change is to delete the word  
23 "completely."

24 In the same paragraph, in the last sentence,  
25 the change is to delete the word "redundant," and the

1 comma following that word.

2 The third change is on my page 14. In the  
3 paragraph beginning: "In some regards." In the  
4 second sentence the word "is" should be changed to the  
5 word "was."

6 Those are my changes.

7 Q. Thank you Dr. Steinhurst. And would you  
8 please give us a brief synopsis of your testimony?

9 A. At the time the decisions were made by the  
10 Company to carry out the environmental upgrades --  
11 referred to in our testimony as the current case  
12 retrofits -- the Company knew or should have known of  
13 additional emerging regulatory requirements. And did  
14 not take those into account in the economic analyses  
15 underlying its management decision.

16 Secondly, in the economic analyses underlying  
17 those decisions to invest in the environmental  
18 upgrades the Company did not take into account all of  
19 the appropriate alternatives and give them proper  
20 consideration.

21 Both of those failures are acts of  
22 imprudence; therefore, the costs of those investments  
23 plus additional costs caused by those investments, as  
24 described in my testimony, should be disallowed.

25 And the stipulation that we have before us



1 today -- or that you have before you today does not do  
2 that and should be rejected.

3 Q. Thank you.

4 MS. SMITH: I would like to move  
5 Dr. Steinhurst's testimony into the record, along with  
6 his exhibits.

7 CHAIRMAN BOYER: Are there any objections to  
8 the admission of Dr. Steinhurst's testimony and  
9 exhibits?

10 Seeing none, they are admitted.

11 (Dr. Steinhurst's testimony and exhibits were  
12 admitted.)

13 MS. SMITH: These witnesses are available for  
14 cross examination.

15 CHAIRMAN BOYER: Thank you Ms. Smith. Let's  
16 begin, Mr. Moscon for the Company?

17 MR. MOSCON: The Company has no cross of the  
18 witnesses.

19 CHAIRMAN BOYER: Okay. Mr. Proctor has left.  
20 Ms. Schmid has left.

21 MS. SCHMID: No.

22 CHAIRMAN BOYER: Oh, there she is over there.  
23 Have you questions, Ms. Schmid?

24 MS. SCHMID: The Division has no questions.

25 CHAIRMAN BOYER: Mr. Dodge?

1 MR. DODGE: No questions.

2 CHAIRMAN BOYER: I passed up the other  
3 Ms. Smith.

4 MS. HOLLY RACHEL SMITH: No questions, but  
5 thank you.

6 CHAIRMAN BOYER: Does anyone wish to cross  
7 examine these two witnesses?

8 Commissioner Allen, have you any questions?  
9 Commissioner Campbell? Nor do I.

10 Well, thank you very much both of you.

11 So now we'll turn to the Company witnesses  
12 you wish to cross examine. And which order would you  
13 like to proceed?

14 MS. SMITH: I think we'd like to begin with  
15 Ms. Woollums. We have a few questions for her. We  
16 have a few more -- little lengthier number of  
17 questions for Mr. Teply. And then Mr. Sprott or  
18 Ellis, either one. Whatever is more convenient for  
19 them.

20 CHAIRMAN BOYER: All right, let's begin,  
21 then, with Ms. Woollums.

22 MR. MOSCON: Mr. Chairman, while she's  
23 approaching the stand if I might make a suggestion for  
24 the benefit of the Commission and the parties present.

25 Even though the testimony of all the

1 individuals being crossed is already admitted into the  
2 record, for just background of what area of expertise  
3 each witness has maybe I ought to ask them to give a  
4 synopsis of their prefiled testimony. Just to provide  
5 a framework for each witness.

6 CHAIRMAN BOYER: Yeah, I think that would be  
7 appropriate. Let's swear in Ms. Woollums first,  
8 however.

9 (Ms. Woollums was duly sworn.)

10 CHAIRMAN BOYER: Thank you, please be seated.  
11 Let's begin, then, with Mr. Moscon.

12 THE REPORTER: (Asked Mr. Moscon to please  
13 speak up.)

14 CATHY WOOLLUMS,

15 called as a witness, having been duly sworn,  
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MOSCON:

19 Q. Ms. Woollums, would you please state your  
20 full name and business address for the record?

21 A. Yes, Cathy Woollums, W-o-o-l-l-u-m-s. My  
22 business address is 106 East Second Street, Davenport,  
23 Iowa.

24 Q. And have you previously testified before the  
25 Utah Public Service Commission?

1           A.    No, I have not.

2           Q.    In that regard, then, would you give us a  
3 very brief summary of your educational and  
4 professional background?

5           A.    Certainly. I received a Bachelor's Degree in  
6 Political Science from Winona State University,  
7 followed by a law degree at Drake University Law  
8 School.

9                   I then went into the private practice of law  
10 for a couple of years. Joined what now is MidAmerican  
11 Energy Holdings Company in 1991. And have served in  
12 various capacities with MidAmerican, starting in the  
13 legal department, up to today where I serve as the  
14 senior vice president of environmental services and  
15 chief environmental counsel.

16          Q.    And Ms. Woollums, you prepared rebuttal  
17 testimony in this matter that's previously been  
18 admitted. Could you provide a summary of that  
19 testimony, with particular respect to how it would  
20 support the stipulated settlement?

21          A.    Certainly. My testimony supports the  
22 stipulated settlement by providing the underlying  
23 environmental regulatory and legal obligations imposed  
24 upon Rocky Mountain Power that were the basis for the  
25 Company's emission reduction projects. And described

1 those projects that will position the Company to meet  
2 additional environmental requirements imposed on the  
3 facilities by state and federal environmental  
4 agencies.

5 In summary, Rocky Mountain Power was required  
6 to make investments in reductions in sulfur dioxide  
7 and nitrogen oxide to comply with federal regional  
8 haze rules, as implemented by the States of Utah and  
9 Wyoming through their state implementation plans, and  
10 permits that are issued in that regard that are  
11 applicable to the generating facilities.

12 The Company was required to begin making  
13 those emission reductions promptly in order to ensure  
14 that the sulfur dioxide milestones were met in both  
15 2013 and 2018. As demonstrated in the chart in my  
16 Exhibit 2R, the Company had by far the largest  
17 emission profile in the region, and -- much less the  
18 State of Utah, certainly, both in terms of total  
19 emissions and overall emissions rates. As a result,  
20 the Company did not make sulfur dioxide emissions.

21 Every other company operating emitting plants  
22 in the region covered by that regional haze proposal  
23 would have to reduce their emissions to zero for the  
24 State of Utah to meet the EPA milestones. Obviously  
25 that was not a tenable position for either the

1 Company, or the State of Utah, or the Commission, I  
2 might add, to conclude.

3 In undertaking these emission reduction  
4 projects the Company has proceeded in a timely manner  
5 that ensures compliance with the regulatory deadlines  
6 while minimizing system impacts and maximize -- or  
7 optimizing existing outage schedules, therefore also  
8 reducing the need for replacement power.

9 At the same time, the Company's staged  
10 efforts to install emission controls have demonstrated  
11 its intention to improve air quality in a way that has  
12 thus far avoided any enforcement and third-party  
13 litigation that would force more emission reductions  
14 more quickly.

15 These emission reduction projects have also  
16 positioned the Company well to meet pending regulatory  
17 initiatives, such as the utility hazardous air  
18 pollutant maximum achievable control technology, or  
19 MACT standards.

20 My testimony also provides information on  
21 other environmental requirements that are imminent, or  
22 expected to impact the Company's generating  
23 facilities, and how those issues are taken into  
24 consideration by the Company in its generation  
25 planning efforts.

1           Our planning process is informed by the  
2 Company's participation in the environmental processes  
3 at the state and federal levels and results in the  
4 development of the most likely regulatory scenario,  
5 that then is implemented through our ten-year planning  
6 process.

7           Given the size of the Company's coal fleet  
8 generating -- coal-fueled generating fleet, waiting  
9 until all the regulations are final to implement a  
10 compliance strategy places the Company at significant  
11 risk of non-compliance, forces the Company to compete  
12 with others for labor and equipment in very tight  
13 markets, which tends to increase costs for the  
14 Company, and therefore would be likely to increase  
15 costs to customers.

16           It's my professional opinion that the Company  
17 has proceeded with the environmental projects at issue  
18 in this case that are cost effective, have been  
19 prudently incurred, and are in the best interest of  
20 customers. That concludes my summary.

21           MR. MOSCON: Thank you. Ms. Woollums is  
22 available for cross examination.

23           CHAIRMAN BOYER: Okay. Thank you  
24 Ms. Woollums.

25           Ms. Smith, why don't you proceed with your

1 cross examination?

2 CROSS EXAMINATION

3 BY MS. SMITH:

4 Q. Thank you Ms. Woollums, I just have a few  
5 questions for you. In your rebuttal testimony you  
6 described how the Company makes its decisions on  
7 investing in environmental control projects at the six  
8 power plants -- coal-fired power plants at issue in  
9 this case; is that correct?

10 A. Yes.

11 Q. And just so -- just to be clear. The need to  
12 invest in these -- in pollution controls is largely  
13 driven by these new and emerging rules that you were  
14 referring to just a second ago?

15 A. The need to invest in the controls at issue  
16 in this case were driven by the regional haze  
17 requirements. Those requirements have been in place  
18 basically since 1999.

19 Q. And then can I sort of give you a list of  
20 emerging rules, and let me know if those are part of  
21 the calculations the Company is utilizing in its  
22 planning?

23 You mentioned the utility MACT rule; is that  
24 correct?

25 A. Yes, I did.



1 Q. Cooling water intake structure? Will that  
2 be -- future will be affecting your coal fleet?

3 A. Can you elaborate on what your question is?

4 Q. Absolutely.

5 MS. SMITH: I would like to introduce senate  
6 testimony that Ms. Woollums gave on June 15th to  
7 the -- a committee to the United States Senate where  
8 she discussed these rules and the impact they would  
9 have on Rocky Mountain Power.

10 And so I have a few questions surrounding  
11 that testimony. Would that be okay?

12 MR. MOSCON: Mr. Chairman, we would object.  
13 And I probably make it a longer objection now because  
14 I anticipate more of these. As the Commission may  
15 have noted, the Sierra Club witnesses filed only  
16 direct testimony, no rebuttal or surrebuttal.

17 If the Sierra Club believed that there were  
18 documents that would rebut the positions taken by  
19 Company witnesses, pursuant to the Commission's order  
20 of February 23, 2011, they should have filed, as  
21 appropriate, rebuttal or surrebuttal testimony,  
22 including as exhibits thereto the documents that they  
23 thought were counter to or explanative of the  
24 positions taken by the Company.

25 The documents that the Sierra Club is

1 intending to introduce now have not been provided to  
2 the Company prior to this point in time, were not part  
3 of the prefiled case. And I think it goes towards the  
4 point that the Chairman made earlier about trying to  
5 make your case through cross examination rather than  
6 putting it on through direct testimony that the  
7 Company would have a chance to look at and comment on  
8 in surrebuttal.

9 So we would object to the introduction of  
10 that testimony or cross examination on that point.

11 CHAIRMAN BOYER: What is the purpose of the  
12 senate testimony?

13 MS. SMITH: The purpose of the senate  
14 testimony -- it's somewhat consistent with her  
15 rebuttal testimony, but she goes into more detail  
16 about the emerging rules that I just discussed.

17 And she definitely goes into a little more  
18 detail -- that was not in her rebuttal testimony --  
19 about the future compliance costs that the Company may  
20 well be facing as a result of the regional haze rule  
21 and the, the emerging rules that I just discussed.

22 So there's just more information about those  
23 two -- the two lines of questions that I have for  
24 Ms. Woollums in the senate testimony. And I really  
25 just have a few questions about it. And one of them

1 was just to sort of clarify the rules that I just went  
2 through. And then some of the additional costs that  
3 the Company will be facing as a result of regional  
4 haze and those rules.

5 CHAIRMAN BOYER: So it's not going to  
6 credibility. You're not trying to show that she's  
7 inconsistent in the --

8 MS. SMITH: Absolutely not.

9 CHAIRMAN BOYER: We'll overrule and let you  
10 go forward for a little while and see how it goes.

11 MS. SMITH: Thank you. We have copies for  
12 everybody in case anybody in the room. This will be  
13 Sierra Club Exhibit No. 2.

14 Q. (By Ms. Smith) Would you like a copy of your  
15 testimony, Ms. Woollums?

16 A. Yes, I would.

17 MS. SMITH: Sorry about that, it's Exhibit  
18 No. 3.

19 Q. (By Ms. Smith) I would direct your attention  
20 to your senate testimony, pages 8 through 15. And  
21 that is where you, on behalf of the Company, went  
22 through and just described the rules that I just  
23 pointed out to you.

24 Ms. Woollums, would you agree that the cost  
25 of complying with these regulations for these specific

1 pollutants could be significant forward going for the  
2 Company?

3 A. Depending on what the final rules are.

4 Q. So I'd like to direct your attention  
5 primarily to page 2 of your testimony. Concerning the  
6 Company's fossil fuel units, you testified to the  
7 senate on some specific costs.

8 Rather than me have you read that I can just  
9 sort of do a synopsis and you can tell me if I'm  
10 correct or not. Total costs -- which include capital,  
11 and O&M, and other costs -- from 2005 through 2023 are  
12 expected to exceed 4.2 billion by 2023.

13 And then when annual O&M costs have been  
14 re -- and then eventually, annual O&M costs will reach  
15 360 million; is that correct?

16 A. Well, that's not exactly the way the text  
17 reads.

18 Q. Would you like to clarify?

19 A. Well, I think the document speaks for itself.

20 Q. And then also according to your senate  
21 testimony, PacifiCorp will have spent 1.2 billion in  
22 capital dollars between 2005 and 2010; is that  
23 correct?

24 A. That is correct. And I believe that's  
25 consistent with the Company's testimony that came from

1 Mr. Chad Teply.

2 Q. I agree. And then also staying with that  
3 same page, total costs for all projects that have been  
4 committed will exceed 2.7 billion by the end of 2022?

5 A. That's not how it reads.

6 Q. Could you clarify, please?

7 A. It says:

8 "We estimate that total capital  
9 expenditures will exceed \$2.7 billion by  
10 the end of 2022."

11 Q. And then staying -- actually, I'd like to  
12 direct your attention to page 10? The first full  
13 paragraph of that page. It starts with  
14 "Unfortunately."

15 There's been recent discussions between Utah  
16 and Wyoming DEQs with EPA Region 8. And there's a  
17 concern that Region 8 may require an additional five  
18 SCR units in the State of Wyoming and an additional  
19 four in Utah as a result of its final action on these  
20 two states' regional haze rules.

21 Which would constitute an additional nine  
22 SCRs within a five-year time period, potentially  
23 requiring a full 14 SCRs by 2017, with an additional  
24 1.7 billion to 2 billion in cost; is that correct?

25 A. Once again, that is not how the document

1 reads. And if you're asking me if you've read it  
2 correctly, the answer is no. If you have a question,  
3 I'd be happy to answer that.

4 Q. Sure. Is that statement inaccurate?

5 MR. MOSCON: Could we get some clarification,  
6 Mr. Chairman?

7 CHAIRMAN BOYER: Are you talking about her  
8 statement, or your characterization of her statement?

9 MS. SMITH: Absolutely.

10 Q. (By Ms. Smith) Is it your understanding that  
11 a final regional haze rule may require the Company to  
12 put on nine additional SCRs, given your conversations  
13 with the agencies?

14 A. Repeat the question, please.

15 Q. Given your recent conversations with state  
16 and federal agencies, is it -- does -- is it your  
17 understanding that a final EPA -- final EPA rules for  
18 regional haze in the two states, Utah and Wyoming, may  
19 result in additional nine SCR units on your coal  
20 fleet?

21 A. No. And I don't believe that any final  
22 determination has been weighed. The states,  
23 particularly the State of Wyoming, has continued to be  
24 in negotiations with EPA. And we -- it is pure  
25 speculation to conclude, basically, that the Company

1 will be required to install all those additional SCRs.

2 Q. So that was just speculation on your part in  
3 the testimony?

4 A. No, it was not speculation on my part in the  
5 testimony. It was a possibility. I think the  
6 probability is unlikely.

7 Q. So this is a zero risk?

8 A. What is a zero risk?

9 Q. That they -- there may not be the nine  
10 additional SCRs?

11 A. Nothing is zero risk. However, I think it is  
12 unlikely that the EPA will require an additional nine  
13 SCRs.

14 Q. So is the risk greater than zero?

15 A. I believe I testified that the risk -- there  
16 is no zero risk. So yes, one would logically conclude  
17 that the risk is greater than zero.

18 Q. Thank you. Your testimony goes on -- and  
19 again, continuing with the senate testimony on page 3  
20 now.

21 MR. MOSCON: Before we go further,  
22 Mr. Chairman, could I ask for a point of  
23 clarification? The Company objects to what appears to  
24 be an ongoing speech of paraphrasing of testimony to  
25 get into the record, without really a question.

1           If there are specific questions about a topic  
2 that this document clarifies I'd like to ask for the  
3 Sierra Club to be directed to ask the question, rather  
4 than just reading into the record the Sierra Club's  
5 interpretation of the document.

6           CHAIRMAN BOYER: I think that's a legitimate  
7 point, Ms. Smith.

8           MS. SMITH: My point is I want to ask the,  
9 the witness whether or not some of these numbers that  
10 we're talking about could potentially be a significant  
11 risk to the ratepayers. I mean, that's where I'm  
12 headed here.

13           CHAIRMAN BOYER: I understand that. And I  
14 think you can do that without restating or  
15 re-characterizing her testimony.

16           Q. (By Ms. Smith) So given the significant  
17 expenditures that we have talked about here and the  
18 new and -- the regional haze and new and emerging  
19 rules coming out of EPA, is it true that your company  
20 utilizes a process to determine whether or not to make  
21 these investments in environmental controls?

22           A. Yes.

23           Q. And then as a result of that process the  
24 Company must review various compliance options; is  
25 that correct?



1 A. Yes.

2 Q. And according to page 18 of your rebuttal  
3 testimony you named a number of factors the Company  
4 relies on in, in its planning process and in reviewing  
5 compliance options?

6 A. Yes.

7 Q. Among those are system impacts, correct?

8 A. Yes.

9 Q. Reliability?

10 A. Yes.

11 Q. Capital costs?

12 A. Yes.

13 Q. Operating and maintenance costs?

14 A. Yes.

15 Q. The life of the controls themselves?

16 A. Yes.

17 Q. The life of a unit?

18 A. Correct.

19 Q. Cost of replacement generation?

20 A. Yes.

21 Q. And alternative generation?

22 A. No. It says: "And other factors."

23 Q. Are there any other factors you'd like to  
24 add?

25 A. It depends on what other regulations are on

1 the horizon from the Environmental Protection Agency  
2 and how the state adopts those regulations.

3 Q. And then you named a couple of other factors  
4 in your senate testimony on page 6. Those were future  
5 natural gas crisis, construction costs for renewable  
6 energy, and transmission costs. Is that correct?

7 A. If you'll give me a moment to read page 6.

8 Q. Absolutely.

9 A. Yes.

10 Q. Did you want to add any factors --

11 A. Not at this time.

12 Q. -- to that? Thank you. So should a federal  
13 regulation require that Rocky Mountain Power install  
14 pollution controls at one of the Company's coal-fired  
15 plants, would the Company conduct a compliance  
16 analysis based on the factors that we just talked  
17 about?

18 MR. MOSCON: I think we should have some  
19 clarification. Are we talking about what's in the  
20 direct testimony, what was referred to just now in the  
21 senate testimony? I'm not sure I know what the  
22 factors are. I doubt the witness does.

23 MS. SMITH: We just went through a number of  
24 factors that were in her testimony -- both senate and  
25 state -- senate and the rebuttal testimony here --

1 where Ms. Woollums said that these are the factors the  
2 Company considers when reviewing compliance options  
3 for pollution control at its power plants.

4 So I'm trying to confirm whether or not  
5 that's what the Company indeed does. And if they did  
6 that in this case here.

7 THE WITNESS: And --

8 CHAIRMAN BOYER: You may answer that.

9 THE WITNESS: Backing up. I, I will tell you  
10 that at the time that these investment decisions were  
11 made none of these regulations were on the horizon.

12 So if your question relates to these emerging  
13 regulations that you've tried to reference, at that  
14 time not all of those regulations were contemplated.  
15 Nor were they factored into the consideration in these  
16 investments.

17 Q. (By Ms. Smith) Fair enough. Let's, let's  
18 just narrow this down to the regional haze rules and  
19 your -- and the Company's compliance with regional  
20 haze. Did the Company consider those factors when  
21 reviewing alternatives options -- compliance options,  
22 alternative analyzes?

23 A. Which factors?

24 Q. Do you want me to read them again?

25 A. Well, I, I believe that --

1 Q. They were in your testimony.

2 A. -- your question is a little vague.

3 Q. Okay. When the Company made decisions  
4 regarding upgrading, retrofitting the coal -- the  
5 units at issue in this case, did you engage in  
6 analysis that considered these factors?

7 A. The Company did engage in analysis that  
8 considered some, perhaps not all, of those factors.  
9 But again, based on the timing within which those  
10 decisions were made and what information was  
11 available, we would assess the appropriate dynamics at  
12 that point in time.

13 Q. Do you agree that an alternative analysis  
14 based on the factors we just talked about should be a  
15 component of prudent investment planning?

16 MR. MOSCON: Objection. I'm not sure we're  
17 all on the same page of what an alternative analysis  
18 is. So irrespective of how the witness answers we may  
19 not all have the same understanding.

20 CHAIRMAN BOYER: Why don't you restate that  
21 question, Ms. Smith? I think you want to ask did they  
22 consider alternatives.

23 MS. SMITH: Well, one of the factors is  
24 alternative generation and renewables. That's another  
25 factor.

1 MR. MOSCON: And on that --

2 CHAIRMAN BOYER: Well, I see cost of  
3 replacement generation. I don't see alternatives  
4 listed there.

5 MR. MOSCON: The witness clarified and said  
6 other factors, not --

7 Q. (By Ms. Smith) Just as a general proposition  
8 do you agree that -- and I think we understand what --  
9 do you -- back up.

10 Do you understand what an alternatives  
11 analysis is?

12 A. It depends on what context you're talking  
13 about. Alternatives to installing a scrubber?

14 Q. Or alternatives to, to -- for that generation  
15 itself. Replacement generation, re-powering, those  
16 types of alternatives.

17 A. So what is the question?

18 Q. Do you agree that an alternatives analysis  
19 based on the factors that we went through should be a  
20 component of prudent investment planning? That's my  
21 question.

22 A. As a general proposition you should look at  
23 as many factors as you can.

24 Q. Did the Company look at those factors in its  
25 IRP plan in 2008? In its Integrated Resource Planning

1 document in 2008?

2 A. I don't have that document with me, and I  
3 cannot tell you specifically what the Company looked  
4 at in its 2008 IRP.

5 Q. Are there any other processes other than the  
6 IRP that analyzes the compliance factors that we  
7 discussed?

8 A. We have internal processes that we conduct on  
9 an ongoing basis based on a variety of factors,  
10 including what the emerging regulations are.

11 Q. Is it your understanding that the Company's  
12 Integrated Resource Planning does do those sorts of  
13 compliance analyses based on the factors that we  
14 discuss?

15 A. Do you have a specific reference as to which  
16 IRP?

17 Q. 2008.

18 A. Again, I, I don't have that document here. I  
19 have not read that document for a number of years.  
20 And I cannot answer any specific questions.

21 MR. MOSCON: To the extent this line of  
22 questions is gonna continue I'd like to point out  
23 that, first, it exceeds the scope of the witness's  
24 prefiled testimony wherein she does not describe the  
25 IRP process.

1           And again, the IRP itself has not been made  
2           an exhibit to this. And I don't think we've  
3           established any foundation that she was involved in  
4           that process to belabor the line of questioning.

5           CHAIRMAN BOYER: Yeah. We'll sustain that  
6           objection.

7           MS. SMITH: I have no further questions.  
8           Thank you.

9           CHAIRMAN BOYER: Do any other parties wish to  
10          examine Ms. Woollums?

11          Do you have any redirect? This is a little  
12          unusual, but I think it was appropriate to set the  
13          context and explain her position and qualifications.  
14          Any redirect?

15          MR. MOSCON: No, thank you.

16          CHAIRMAN BOYER: Thank you, Ms. Woollums, you  
17          may be excused.

18          And now Ms. Smith you wish to speak with?

19          MS. SMITH: Mr. Teply.

20          CHAIRMAN BOYER: Mr. -- okay.

21          Ms. Smith, did you want to move admission of  
22          your exhibit, this senate testimony?

23          MS. SMITH: Please. Can we move Sierra Club  
24          No. 4 into the record?

25          CHAIRMAN BOYER: Are there any objections to

1 the admission of Exhibit 4? Sierra Club Exhibit 4?

2 MR. MOSCON: I'll restate the same objection  
3 we had, which is if it is intended to rebut the  
4 position of any of the parties or witnesses it should  
5 have been filed as part of the rebuttal or surrebuttal  
6 case.

7 And is, I think, in contravention of  
8 Rule 70 -- 746-100 that talks about trying to make  
9 your case through -- affirmatively being made through  
10 cross examination. So we would object.

11 CHAIRMAN BOYER: Okay. We'll admit it but  
12 give it appropriate weight. Thank you.

13 (Exhibit No. SC-3 was admitted.)

14 (Mr. Teply was duly sworn.)

15 CHAIRMAN BOYER: Thank you. Please be  
16 seated.

17 Shall we follow that same procedure,  
18 Mr. Moscon?

19 MR. MOSCON: I think that's a good idea.

20 CHAD TEPLY,

21 called as a witness, having been duly sworn,  
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MOSCON:

25 Q. Mr. Teply, would you please state your full



1 name and business address for the Commission?

2 A. Sure. Chad Teply. I work for PacifiCorp  
3 Energy as the vice president resource development and  
4 construction.

5 CHAIRMAN BOYER: Would you spell your name  
6 for the record, please?

7 THE WITNESS: Sure. Last name is spelled  
8 T-e-p-l-y. My business address is 1407 West North  
9 Temple, Salt Lake City, 84116.

10 Q. (By Mr. Moscon) And Mr. Teply, have you  
11 previously testified before this Public Service  
12 Commission?

13 A. No, I have not.

14 Q. Would you provide a very brief description of  
15 your educational and professional background?

16 A. Sure. I have a Bachelor of Science in  
17 Mechanical Engineering. I have been employed with the  
18 MidAmerican Energy Company Holdings Company platform  
19 since 1999 in various roles and responsibilities  
20 across our Iowa utility, our Iowa gas pipe -- or our  
21 Nebraska Gas Pipeline Company, and PacifiCorp Energy.

22 Q. Now Mr. Teply, you prepared prefiled  
23 testimony that's been submitted in this matter?

24 A. I did.

25 Q. And that was both direct, rebuttal, and

1 surrebuttal; is that correct?

2 A. That is correct.

3 Q. Could you provide the Commission and the  
4 parties a summary of the combined content of that  
5 testimony with respect to how it would support the  
6 stipulated settlement in this matter?

7 A. I will. My direct testimony, rebuttal  
8 testimony, and surrebuttal testimony have been  
9 prepared and submitted in this case to provide  
10 information supporting the prudence of the Company's  
11 environmental and major generation projects.

12 My testimony is relevant to establishing that  
13 the settlement stipulation, particularly as it  
14 pertains to the Company's pollution control  
15 investments, is just and reasonable and in the  
16 public's best interest.

17 This case includes costs associated with  
18 major pollution control projects affecting 9 of the 26  
19 of the -- 9 of 26 of the Company's wholly-owned or  
20 jointly-owned coal-fired generation units.

21 In assessing whether and when to proceed with  
22 pollution control investments the Company has  
23 considered cost effectiveness of reasonable options.  
24 And the Company has provided testimony regarding the  
25 cost of retrofitting operating coal-fueled generation

1 with emissions control equipment versus market  
2 purchase powers -- market power purchases, replacement  
3 of that generation with natural-gas-fired  
4 combined-cycle facilities, or re-powering of the coal  
5 fueled units to natural gas as a fuel source.

6 In each case the cost effectiveness of the  
7 Company's pollution control investments has been  
8 demonstrated. The least cost, lowest risk outcome for  
9 our Utah customers is to retrofit and coal -- retrofit  
10 the coal-fueled units included in this case with  
11 pollution control equipment to allow ongoing energy  
12 production at a reasonable cost.

13 Converting these plants to natural gas or  
14 accelerating retirement of these plants in order to  
15 replace them with new plants costs the Company and its  
16 customers significantly more.

17 My testimony demonstrates that Sierra Club's  
18 witnesses, Dr. Steinhurst and Dr. Fisher, have taken a  
19 generalized view of potential impacts of emerging  
20 environmental regulations without any real certainty  
21 regarding agency or legislative action. And without  
22 detailed evaluation of the Company's individual  
23 installations, or a review of the Company's specific  
24 integrated resource planning constraints and  
25 obligations to cost effectively serve customer energy

1 needs.

2           The Company has developed and executed its  
3 pollution control projects with a focus on maintaining  
4 a reasonable balance between protecting the interests  
5 of customers, our obligation to serve, and maintaining  
6 environmental compliance in the face of an uncertain  
7 regulatory environment.

8           The Company's projects are required to comply  
9 with existing regional haze rules, regional SO<sub>2</sub>  
10 milestone and backstop trading programs, national  
11 ambient air quality standards, and new source review  
12 requirements.

13           The projects are also required to comply with  
14 standalone requirements in state implementation plans,  
15 BART permits, and construction permits enforceable by  
16 the laws of the respective states.

17           The Company's major pollution control  
18 projects are often multi-year efforts, from  
19 conceptualization through permitting, contract award,  
20 and execution. The projects have been prudently  
21 managed to meet compliance deadlines and emission  
22 reduction milestones. And have been effectively  
23 integrated into planned maintenance outage cycles.

24           The Company prudently performs due diligence  
25 to identify, quantify, and include forward-looking

1 environmental compliance requirements in its business  
2 planning processes and associated filings.

3 Strategic asset planning will continue to be  
4 vetted in accordance with the established requirements  
5 via the Company's integrated resource planning  
6 process, depreciable life studies, and other business  
7 planning processes.

8 The Company understands that the major  
9 pollution control investments included in this case  
10 and in its overall environmental compliance program  
11 are significant. And appreciates the opportunity to  
12 present testimony to this Commission supporting the  
13 prudence of those investments.

14 MR. MOSCON: Thank you.

15 Mr. Teply is available for cross examination.

16 CHAIRMAN BOYER: Okay. Thank you Mr. Teply.

17 Ms. Smith, you may cross examine.

18 CROSS EXAMINATION

19 BY MS. SMITH:

20 Q. Thank you Mr. Teply. Did you just state that  
21 the Company had historically performed analysis  
22 evaluating the cost effectiveness of the past -- of  
23 the plant against natural gas, market purchases,  
24 *etcetera*?

25 A. Yes. I think if you take a look at the

1 exhibits that I've submitted with my testimony? Those  
2 include comparisons to replacement with natural gas as  
3 one role. And also re -- a comparison of the cost of  
4 the environmental investments against market power  
5 purchases.

6 Q. Great. We'll get into that a little bit more  
7 further on. Just to get us started, in your -- on  
8 your -- on line -- rebuttal lines 633 through 636 of  
9 your testimony? I'm not sure if the lines match up.  
10 Do you have your rebuttal testimony with you?

11 A. I do, but I doubt our lines are matching up  
12 there.

13 Q. Yeah. This question has to do with whether  
14 or not the Company agreed that it presented sufficient  
15 information for the Commission to be able to evaluate  
16 the prudence of the capital investments in the  
17 pollution control equipment at issue here. And your  
18 response was on those lines. Are you able to find  
19 that?

20 A. Could you provide me the reference there,  
21 please?

22 Q. Absolutely. Your response was:

23 "The Company has provided the  
24 Commission and parties with thorough and  
25 responsive information regarding the

1           prudence of its pollution control  
2           investments."

3           Correct?

4       A.    On -- are you on line 634?

5       Q.    I am.

6       A.    That looks to be correct.

7       Q.    Does our testimony line up?

8       A.    I think so. So far. For that question.

9       Q.    And then I want to direct you to the first  
10       page of your rebuttal testimony, lines 13 through 15.

11       A.    Which -- sorry, one more time.

12       Q.    The first -- page 1, lines 13 through 15.

13       A.    Rebuttal?

14       Q.    Rebuttal. I think I'm going to stick with  
15       your rebuttal exclusively.

16       A.    Oh, okay. Thirteen through 15?

17       Q.    Yes. Starting with the sentence,  
18       "Furthermore." Could you read that?

19       A.    Read the sentence?

20       Q.    Yes.

21       A.    "Furthermore, maintaining the ability  
22       to operate our coal-fueled units by  
23       retrofitting them with current-  
24       technology emissions control equipment  
25       represents the least-cost option for our

1 customers."

2 Q. Thank you. And I just want to ask you a few  
3 questions on how the Company drew the conclusion that  
4 these retrofits were, in fact, the least cost options  
5 for your customers.

6 A. Okay.

7 Q. Did the Company conduct compliance planning  
8 as a component of the retrofit decision-making process  
9 for the regional haze compliance?

10 A. The, the regional haze program's been  
11 evaluated over several years through the company's  
12 negotiations with the states. I'm not sure if that's  
13 your question, but.

14 Q. Have you done compliance planning as a  
15 component of all that evaluation?

16 A. We've evaluated cost of compliance, yes.

17 Q. And then if you would turn to rebuttal  
18 lines 195 through 200? That's on page 9.

19 The question goes to factors the Company  
20 focuses on with respect to compliance with  
21 environmental regulations, correct?

22 A. Uh-huh.

23 Q. And then starting on line 197 there's a  
24 number of factors there that you specify. Among those  
25 the selection of appropriate control technology. And



1 then alternate compliance options, such as market  
2 purchase -- market purchases of replacement power, and  
3 converting facilities to natural gas, and then the  
4 procurement of replacement generation; is that  
5 correct?

6 A. That's the statement, yes.

7 Q. And did I leave any compliance alternatives  
8 out?

9 A. I think those are appropriate. That's what  
10 the testimony says.

11 Q. Thank you. I'd like to go over the Company's  
12 timeline for the final date that the Company committed  
13 to constructing the SO<sub>2</sub> retrofit project, the  
14 scrubbers. Would that be okay?

15 A. At which facility?

16 Q. For simplicity's sake I think we should focus  
17 on Naughton 1 and 2. Would that be all right?

18 A. Naughton 1 and 2? That's fine.

19 Q. Do you agree the EPA issued its final  
20 guidelines on its BART determination in 2005?

21 A. I don't have a copy of a document in front of  
22 me to confirm that.

23 Q. Is that consistent with your recollection?

24 A. One more time?

25 Q. In 2005 EPA issued its final guidelines on

1 its BART determinations for Wyoming and Utah?

2 A. 2005 doesn't sound correct.

3 Q. Do you want to clarify?

4 A. Well, I just --

5 Q. Okay.

6 A. I don't have the documents in front of me.

7 Q. Fair enough.

8 A. It doesn't sound to be correct.

9 Q. We can -- subject to check we can submit --

10 A. On a unit-specific basis, is that?

11 Q. Statewide.

12 A. Oh. Well, I thought we were talking about a  
13 specific unit in this rate case.

14 Q. We're getting there. That's my next  
15 question. I just wanted to --

16 A. I'm not familiar with the state's --

17 Q. In 2000 and --

18 A. -- regulations in 2005.

19 Q. Sorry. In 2000 and -- what year did the  
20 Company start working on its BART program for the  
21 States of Wyoming and Utah, if you know?

22 A. Oh, the negotiations. As Cathy -- as  
23 Ms. Woollums had mentioned earlier, the regulations  
24 were established in 1999. Discussions with various  
25 permitting agencies, *etcetera*, would have commenced

1 then and carry through today.

2 Q. Thank you. I'd like to ask you some  
3 questions about the Company's December 2007 regional  
4 haze analysis that you provided to the State of  
5 Wyoming for Naughton 1 and 2.

6 MR. MOSCON: If that's an exhibit could you  
7 direct us which exhibit we're talking about?

8 MS. SMITH: That will be...

9 MR. MOSCON: Is it an exhibit to Mr. Teply's  
10 testimony?

11 MS. SMITH: I don't think so. I, you know,  
12 there was so much back and forth. And I didn't know  
13 what was going to be entered into the record, given  
14 the stipulation, and what wasn't. So we've provided  
15 all these documents.

16 I'm not sure -- again, I'm not sure which  
17 were parts of the stipulation and which aren't. And  
18 there was -- because there's other parties that did  
19 not stipulate. So in an abundance of caution we're  
20 providing these documents.

21 MR. MOSCON: And I guess, for the Commission,  
22 I'll renew an objection. I think there's already been  
23 some leniency shown to the Sierra Club. That if they  
24 intend to either make an affirmative case through  
25 cross by introducing documents that were not part of

1 anyone's prefiled testimony, that could have been  
2 filed as a rebuttal document to testimony that the  
3 Sierra Club could have filed and chose not to file,  
4 then we will object to introduction of it or cross  
5 examination of Company witnesses on these documents  
6 that we're kind of being ambushed with here at the  
7 hearing.

8 MS. SMITH: I can clarify the purpose of this  
9 document. We intend to just -- to construct a  
10 timeline from the time the Company first started  
11 working on its BART retrofit efforts and then to  
12 today.

13 So I'm not going to cross him on any  
14 specificity in the document. You know, decisions  
15 made, anything like that.

16 CHAIRMAN BOYER: But did Mr. Teply testify to  
17 that in any of his testimony? In his prefiled  
18 testimony?

19 MS. SMITH: That the, the...

20 CHAIRMAN BOYER: When they started complying  
21 with EPA regulations in '99, and so on and so forth.  
22 I don't recall reading that myself.

23 MS. SMITH: My first question is just to ask  
24 him whether or not the Company started working on its  
25 regional haze program in 2007, based on a document

1 that they submitted to the State of Wyoming for  
2 Naughton 1 and 2.

3 CHAIRMAN BOYER: But again, was that  
4 presented in the case in chief? I am trying to be --

5 MS. SMITH: I understand.

6 CHAIRMAN BOYER: -- lenient and patient here.

7 MS. SMITH: I understand, Mr. Chairman.

8 CHAIRMAN BOYER: But we, you know, I don't  
9 want to spend four or five weeks here trying to prove  
10 up a case through cross examination if we can avoid  
11 it.

12 MS. SMITH: I can simply ask him the question  
13 of whether or not in 2007 the Company submitted a  
14 regional haze analysis to the State of Wyoming for  
15 Naughton 1 and 2.

16 CHAIRMAN BOYER: Okay, we'll let you ask that  
17 question.

18 THE WITNESS: Do you have a copy of the  
19 document I could take a look at?

20 MS. SMITH: Yes.

21 THE WITNESS: Is this just two copies of the  
22 same document?

23 MR. SPEIR: Unit 1 and Unit 2.

24 THE WITNESS: Oh, okay.

25 CHAIRMAN BOYER: Mr. Teply, if you want

1 Counsel to take a peek at that feel free to take a  
2 moment.

3 Or you may approach, Mr. Moscon.

4 MS. SMITH: Mr. Chairman, just for ease we  
5 asked to have this board here just so that we could  
6 actually draw the timeline 2005, 2007, 2008, and then  
7 2009, just so we can get an idea of the Company's  
8 decision-making process. Would that be okay?

9 CHAIRMAN BOYER: It's fine to use the chart.  
10 Let's, let's see what we're gonna do with this  
11 document first.

12 MR. MOSCON: I was gonna say, I know you're  
13 probably tired of hearing me say this. Again, if a  
14 timeline rebuts the Company's position it should have  
15 been established in rebuttal testimony. If she has a  
16 specific question for the witness based on the scope  
17 of his prefiled testimony for cross examination,  
18 that's proper.

19 But again, I think she continues to try and  
20 make a case in chief through cross examination and  
21 leading the witness through an affirmative case.

22 MS. SMITH: My problem is if -- we would be  
23 here even longer if I just let the witness sort of dig  
24 around and try to read the question -- the provision  
25 in the testimony that I have a question about. Or

1 else I can just point it out and sort of read it  
2 himself. Read it for them into the record. So, you  
3 know, however you want to proceed.

4 I'm certainly not trying to bring a case in  
5 chief here. We have some questions about the timeline  
6 that we've discussed at length in -- throughout this  
7 proceeding, and in both Dr. Steinhurst's and  
8 Dr. Fisher's testimony. When decisions were made.

9 MR. MOSCON: And in response -- and I'll let  
10 the Commission decide. I would simply state, if, as  
11 represented, we're just talking about timelines in the  
12 testimony record? We don't need all these other  
13 documents. Again, I think it goes beyond the scope of  
14 what's been testified to.

15 CHAIRMAN BOYER: I think we're gonna sustain  
16 this objection, Ms. Smith. But you can certainly ask  
17 this witness if he knows when they made certain  
18 decisions and when the analysis began and so on.

19 MS. SMITH: Right, and -- absolutely. And I  
20 understand. The reason I'm providing the document is  
21 just to ref -- you know, to show that we have the  
22 document, to refresh his recollection, and to help  
23 establish the timeline.

24 I'm certainly not gonna cross him on  
25 decisions made in the regional haze rule back in 2007.

1 That's not the point.

2 CHAIRMAN BOYER: Well, why don't you take the  
3 direct approach first and ask him.

4 Q. (By Ms. Smith) Did the Company produce an  
5 analysis in December of 2007 to the State of Wyoming  
6 with respect to regional haze compliance?

7 A. So am I answering on the basis of what I have  
8 in front of me?

9 CHAIRMAN BOYER: She's asking for your  
10 personal knowledge.

11 MR. MOSCON: If you know.

12 THE WITNESS: It appears so.

13 Q. (By Ms. Smith) Do you recognize the document  
14 in front of you?

15 A. I have seen these documents before, yes.

16 Q. Do you know that within the Company's  
17 analysis that it found that scrubbers would be BART  
18 for purposes of the regional haze rule? And I can  
19 direct you to page 5-6.

20 A. Which document are you in?

21 Q. The same.

22 A. There's two.

23 Q. The Wyoming document. The Naughton 1.

24 A. Five dash six? I'm on that page.

25 Q. Right. So you -- the Company -- on page 5-6



1 it states that the Company adopted scenario one,  
2 correct?

3 A. You know, without having -- I'm not sure what  
4 scenario one is, but that's -- the text on the  
5 document says: "Confirm the selection of scenario  
6 one." I'd have to review the document to make sure --

7 Q. And then dash 4.7 talks about what scenario  
8 one is?

9 A. Where are you? I'm sorry, one more time.

10 Q. Four dash seven on Naughton 1. Same  
11 document.

12 MR. MOSCON: While the witness is reading  
13 that I'd like to just enter my objection to this line  
14 of questioning, which is -- I suppose the objection is  
15 misstates. The document that we're looking at was  
16 actually prepared by CH2M Hill for PacifiCorp. And  
17 the question is always repeated, This is you, the  
18 Company, made this conclusion.

19 I just want to clarify this is not a -- this  
20 is a CH2M Hill document, not a PacifiCorp document.

21 CHAIRMAN BOYER: Thank you for that  
22 clarification.

23 MS. SMITH: Mr. Chairman, the Company has the  
24 responsibility of providing the witnesses that can  
25 answer these questions. It's not up to me to, you

1 know, figure out which witness we should call.

2 This is the witness that testified to the  
3 timelines, and the compliance, and regional haze rule.  
4 Again, compliance --

5 CHAIRMAN BOYER: I understand. And a very  
6 direct approach would be to get his testimony out and  
7 then ask him specifically about the timeline he  
8 testified to in his -- that would be appropriate cross  
9 examination.

10 MS. SMITH: To clarify, what we want -- where  
11 I'm going with this --

12 CHAIRMAN BOYER: And you -- and by the way,  
13 you identified the four witnesses. We didn't restrict  
14 you in any fashion.

15 MS. SMITH: Mr. Teply was made available for  
16 environmental compliance.

17 Where we're going -- and certainly I'm not  
18 trying to hide the ball on where we're going with  
19 this. We're trying to construct the timeline of all  
20 the different incremental decisions that the Company  
21 made from the beginning of understanding that it had  
22 to comply with regional BART --

23 CHAIRMAN BOYER: What I'm suggesting is you  
24 go to his testimony and find those provisions in his  
25 testimony where he testified as to those timelines,

1 and then ask him questions about them.

2 Q. (By Ms. Smith) To your knowledge -- sorry.  
3 Are you still looking at the document for what -- my  
4 question regarding --

5 A. Just trying to digest what I have in front of  
6 me.

7 Q. You've not seen this document before?

8 A. I've seen it, but I haven't reviewed it in  
9 detail.

10 Q. So the pending question is, did the Company  
11 find in that analysis that scrubbers, FGD units, would  
12 be BART?

13 A. It appears from this paragraph that it has.  
14 I obviously haven't read the whole document to see if  
15 there's any alternate conclusions reached.

16 Q. Thank you. And then to your recollection, in  
17 March of 2008 did Rocky Mountain Power submit a permit  
18 application for those scrubbers to the State of  
19 Wyoming?

20 A. I would say that we would have submitted a  
21 permit application in that general time frame. But I  
22 don't know that it would have been for these scrubbers  
23 as proposed here. I think this is talking about dry  
24 scrubber technology, I believe. And our course of  
25 action on Naughton is a wet scrubber.

1           So I'm not sure -- there's obviously  
2 additional exercises that were completed between the  
3 time that we reviewed this and what we would have  
4 submitted them from a permit application perspective.

5           Q.    Fair enough.  We have a copy of the air  
6 permit application for Naughton 1 and 2 that the  
7 Company submitted on March 7th of 2008.

8           And then my next question is, to your  
9 recollection did the State of Wyoming issue permits  
10 for both Naughton 1 and 2 for the scrubbers?  Again,  
11 the date is May 20, 2009.

12          A.    Construction permits or --

13          Q.    Yes.

14          A.    -- BART permits?

15          Q.    BART permits.

16          A.    I don't -- I'm not -- I'd have to look at  
17 the -- I believe -- I don't believe there were BART  
18 permits issued for Naughton with respect to the  
19 scrubbers on Units 1 and 2.

20          Q.    I retract.  Restate.  Construction permits.

21          A.    Yes, we would have received construction  
22 permits.  I'd have to validate the date.  I'm not  
23 exactly sure.

24          Q.    And then to the best of your recollection did  
25 the Company actually begin construction on May 5,

1 2009, to install the scrubbers for Naughton 1 and 2?

2 A. I would -- there again, I'd have to review a  
3 contract to see when we released the contractor to  
4 begin work.

5 Q. So given the timeline between 2005 and then  
6 the rough commencement of construction on  
7 approximately May 5, 2009, can you identify the date  
8 on which the Company considered itself fully obligated  
9 to install scrubbers on Naughton 1 and 2?

10 A. When you release a contractor to work you  
11 would be obligated from a commitment of dollars  
12 perspective. In '09.

13 Q. That would be the -- roughly May 5, 2009, the  
14 start of construction?

15 A. Subject to check on the date. I'm not sure  
16 of the date.

17 Q. We have that document if you're interested.  
18 Thank you.

19 I'd like you to turn your attention to Sierra  
20 Club Data Request 2.3. Do you have a copy of that?

21 A. Okay.

22 Q. The data request says:

23 "Please provide all documents  
24 prepared by or under the control of the  
25 Company that discuss the necessity and

1           prudence of the environmental retrofits,  
2           including alternative energy resources  
3           considered or rejected."

4           A.     Thank you.

5           MR. MOSCON: By the way, before we get too  
6 far into this I'll simply request that we have some  
7 foundation laid as to, you know, obviously this is not  
8 part of this witness's testimony. I do not know if  
9 this witness was or was not the responding party for  
10 the data request, so. Because we're a little bit  
11 beyond scope I need to get that foundation laid.

12           CHAIRMAN BOYER: I do think that would be  
13 appropriate to ask some foundational questions. Ask  
14 if Mr. Teply was involved in preparing these  
15 responses. If he knows about them.

16           Q.     (By Ms Smith) Have you had an opportunity to  
17 review this, Mr. Teply?

18           A.     Yeah, I just read the response, yes.

19           Q.     Do you -- did you have any knowledge of  
20 response?

21           A.     Yes.

22           Q.     Okay. Can you read the response, please?

23           A.     Yes.

24                     "The Company objects to this request  
25           because it is overly broad and unduly

1           burdensome. Notwithstanding this  
2           objection, the information pertaining to  
3           the referenced projects is included in  
4           Confidential Attachment Sierra Club 2.3.

5                     "The Company's Integrated Resource  
6           Plan filings also include discussions  
7           pertaining to the Company's evaluation  
8           of generation resource alternatives.  
9           The Company's Integrated Resource Plan  
10          filings are available in the public  
11          domain.

12                     "Other documents potentially  
13          responsive to this request are subject  
14          to the attorney/client privilege.  
15          Confidential information is provided  
16          subject to the terms and conditions of  
17          the protective agreement in this  
18          proceeding."

19          Q.    Thank you. I have a couple questions about  
20          this response. The Company identified the 2008 IRP  
21          and internal documents as responsive to this question,  
22          correct?

23          A.    No. We just mention that the Company's  
24          integrated resource plan filings also include  
25          discussions. We didn't reference 2008.

1 Q. Keeping the timeline in mind that we just  
2 discussed that the Company considered itself fully  
3 committed to the scrubber projects at Naughton 1 and 2  
4 as of commencement of construction May 5, 2009, I'd  
5 like to ask you if the Company performed alternate  
6 compliance options in the 2008 IRP.

7 And again, those alternate compliance options  
8 are the ones we talked about a few minutes ago on  
9 rebuttal lines 195 and 200.

10 A. Not as part of the I -- it wasn't performed  
11 as part of the IRP. But the exhibits that we've  
12 submitted as part of my testimony, surrebuttal  
13 testimony specifically, with respect to the PDRR runs,  
14 the data runs, with respect to market power purchases  
15 versus installing new controls on Naughton 1 and 2,  
16 those were completed in '08.

17 Q. Can you specifically identify the documents  
18 that you're referring to?

19 A. I would say your -- my Exhibit CAT-4R would  
20 be an example of the work done in '08.

21 Q. What's the title of that document?

22 A. "CAI Capital Projects Study."

23 Q. Thank you. Anything else?

24 A. No.

25 Q. I actually have a couple of questions about



1 that document. It's -- I need to introduce -- I think  
2 that, that confidential document is part of your  
3 rebuttal testimony? The April 22, 2009, APR for the  
4 Naughton 1 and 2 scrubbers?

5 MR. MOSCON: Mr. Chair, if I might just  
6 procedurally. This is -- Exhibit 4R is an exhibit to  
7 Mr. Teply's testimony, so we have no objection about  
8 cross examination on that document. But it is marked  
9 as a confidential document.

10 I'm not sure where the line of questioning is  
11 going, but as far as streaming and whatever goes I  
12 just need to note we're about to have cross  
13 examination on confidential information.

14 CHAIRMAN BOYER: Right. So be mindful of  
15 that, Ms. Smith.

16 MS. SMITH: Absolutely.

17 Q. (By Ms. Smith) Section 4 of Confidential  
18 Exhibit 4R, I'd like to direct your attention to that.  
19 It's entitled: "Alternatives Considered."

20 A. Which document are you talking about?

21 Q. It's the April 22, 2009, APR for Naughton 1  
22 and 2 for the scrubber projects.

23 A. Oh, can you provide me -- I don't have a copy  
24 of that document here.

25 Q. We have that for you.

1 MR. MOSCON: Okay, I think now we're not  
2 clear, because what we were looking at was his  
3 Exhibit 4R and you're now talking about something  
4 else. Are we now talking about a document that is not  
5 an exhibit to the testimony?

6 MS. SMITH: I'm talking about the APRs.

7 THE WITNESS: Right, the -- I don't have APRs  
8 in my exhibits, I'm sorry.

9 MR. MOSCON: Again, I'll renew the objection  
10 of going beyond the scope, *etcetera, etcetera*, that we  
11 previously lodged.

12 CHAIRMAN BOYER: Yeah, I'm gonna sustain that  
13 objection.

14 MS. SMITH: My, my question just went to  
15 whether or not there was -- a quick question about the  
16 alternatives analysis in that document. My line of  
17 questioning was going along the different compliance  
18 options that the Company had reviewed in making its  
19 decision.

20 And I just simply wanted to know if those --  
21 if as a component of that alternative analysis the  
22 Company looked at those things. Mr. Teply testified  
23 that the Company does indeed look at --

24 CHAIRMAN BOYER: Yeah, I think it's a fair  
25 question to ask whether they con -- whether you

1 considered that. If you know. Considered that  
2 alternative.

3 THE WITNESS: Okay. Can I see the APR that  
4 you're referring to, please?

5 MS. SMITH: Absolutely.

6 Q. (By Ms. Smith) And again, that is section 4.

7 A. Okay.

8 Q. Is it correct to say that that -- the  
9 alternatives specified there simply include different  
10 forms of emission control technologies?

11 A. Yes. We had already completed the net  
12 power -- or the PDRR evaluation for the project with  
13 respect to market power purchases or replacement  
14 energy. Those were not viable. As demonstrated in  
15 the exhibit in my testimony.

16 So the focus of the APRs was truly to  
17 demonstrate that we had thoroughly vetted the  
18 appropriate technology to apply for compliance.

19 Q. So aside from the 2008 APRs, and then I think  
20 we've dis -- you've established it's a CAI, are there  
21 any other documents that you prepared prior to the  
22 start of construction that would have been responsive  
23 to the data request we just talked about?

24 A. Those would have been the primary decision-  
25 making tools that we've just referred to.

1 Q. The CAI?

2 A. The evaluation of the -- to invest in the  
3 environmental pollution control equipment versus  
4 market power purchases. Which we felt was the most  
5 conservative approach. And that was, and that was --  
6 those data points are captured in the CAI exhibit.

7 And then the APR that you just put in front  
8 of me has a -- there's a tremendous amount of  
9 background data to the APR, obviously. This is a  
10 summary after having completed your technology reviews  
11 of the various technologies.

12 Q. So prior to the -- this April 22, 2009, APR  
13 the Company had already done a PVRRD analysis for the  
14 Naughton 1 and 2 projects?

15 A. Yes.

16 Q. Okay, thank you. I have a couple of  
17 questions on the comprehensive air initiative. It's  
18 also known as the CAI PVRRD. The Company prepared  
19 this document in May 2 of 2011; is that correct?

20 A. This is -- this document's had several rounds  
21 of development. It's obviously data that the Company  
22 maintains. We did prepare this. I don't know the  
23 exact date of the preparation for the exhibit that we  
24 put forth here.

25 We regularly update this set of data because

1 it includes, obviously, forward-looking capital costs  
2 that sync to our business plans. So the exact date of  
3 a development of a version of this CAI reference I  
4 couldn't speak to.

5 Q. So the document that I'm referring to was a  
6 data response to the Department of Public Utilities'  
7 24.13. And that was rebuttal -- it was also rebuttal  
8 testimony in the Wyoming proceeding. Are you familiar  
9 with that document?

10 A. Could I see it?

11 Q. We have a copy of it.

12 MR. MOSCON: I need to, again, just ask to  
13 clarify. There's a PVRR, which is attached as  
14 Exhibit 4R to Mr. Teply's testimony. Are we talk --  
15 and it is a CAI capital project study. Is that the  
16 exhibit we're referring to?

17 MS. SMITH: We have a copy of that document.  
18 Because we understand that this potentially has a  
19 different version. We have the version that was  
20 provided in discovery to DPU, and that's in response  
21 to Request 24.13.

22 CHAIRMAN BOYER: Is the witness clear as to  
23 what exhibit we're talking about?

24 THE WITNESS: As soon as I take a look and  
25 clarify.

1 Q. (By Ms. Smith) Mr. Teply, you said a moment  
2 ago that this -- the document that we're talking about  
3 right now, the CAI PVRRD, has various versions. And  
4 that there perhaps was a 2008/2009 version; is that  
5 correct?

6 A. The data that we've used -- obviously these  
7 documents are produced via discovery and other things.  
8 There's a data -- the data that we've actually  
9 produced for Sierra Club that supports these PVRR  
10 curves is in existence. And is obviously packaged to  
11 support the appropriate data requests.

12 Q. Is there a 2008 or 2009 version?

13 A. There is a -- I would have to check exact  
14 dates as to when we formatted the information this  
15 way. The data definitely existed in 2008. We may  
16 have called it an NPV versus PVRRD. I just don't know  
17 the packaging. Depending on what we would have been  
18 using the information for.

19 Q. And so why didn't you provide that as  
20 responsive to Sierra Club Data Request 2.3?

21 A. Because the PVRR information that we did  
22 provide was the latest information that we thought was  
23 pertinent to the case.

24 Q. So since the question Data Request 2.3 asks:  
25 For all documents under control of the Company that

1 discuss the necessity and prudence of the above  
2 environment -- of the environmental retrofits. But  
3 the 2008 and 2009 document would not have been  
4 responsive to that request; is that correct?

5 A. Well, we started with -- our first response  
6 was:

7 "The Company objects to this request  
8 because it's overly broad and unduly  
9 burdensome."

10 Notwithstanding this objection we provided  
11 the information that we did provide.

12 Q. So to produce any earlier versions of that  
13 document would have been unduly burdensome?

14 A. That was the response to the data request.

15 Q. When you provided the study before you did  
16 you also include the work papers which support the  
17 analysis inside?

18 A. I'm sure we would have supplied work papers.  
19 I don't see the -- where did you come up with the  
20 date? I'm sorry. Just not -- wanting to track back  
21 to your question on May.

22 Q. From the data response for DPU 24.13.

23 A. Oh. That that was the date of the data  
24 response?

25 Q. Yes.

1           A.    Oh.  That wouldn't have nec -- okay.  Yeah,  
2   that -- I can't really refute that.

3           Q.    But that's the document you provided?

4           A.    Sure.

5           MR. MOSCON:  I just need to make an  
6   interjection for the record.  I think we're having  
7   some confusion for the record as to what we're talking  
8   about.

9                    The CAI capital project study that is the  
10   response to 24.13 is different than the yellow  
11   document that's been put in front of the witness,  
12   which is further different from the Exhibit 4R.  And I  
13   think we're just having questions treating them all as  
14   one and the same.  And I just am pointing out there's  
15   gonna be an unclear record on that.

16           MS. SMITH:  The document says May 2011 on the  
17   front.

18           THE WITNESS:  Which one?

19           MS. SMITH:  The DPU response.

20           MR. MOSCON:  But that is not the document the  
21   witness has.

22           THE WITNESS:  Yeah.  The date of the --  
23   you're looking at this document?

24           MS. SMITH:  May I approach?

25           CHAIRMAN BOYER:  Yeah.  I mean, the record is



1 not going to be able to track this and that and the  
2 other and which. Let's make sure we're on the same  
3 page.

4 MS. SMITH: I have the document that is  
5 before the witness in my hand. It has a date of  
6 May 2011.

7 CHAIRMAN BOYER: And what is it? Is that the  
8 exhibit to his testimony?

9 MS. SMITH: No, it's not. This is a response  
10 to the Department of Public --

11 CHAIRMAN BOYER: The data request response?

12 MS. SMITH: Yes, 24.13.

13 MS. HOLLY RACHEL SMITH: Is it possible for  
14 counsel to get copies of whatever we're looking at?

15 MS. SMITH: Absolutely.

16 MR. MOSCON: I think the confusion comes  
17 because the document that is being passed around is  
18 different than the 24.13, so. The 24.13 visually  
19 says: "2008-2009 CAI" on it. The document being  
20 passed around simply says "CAI Capital Project Study,"  
21 without a date.

22 And I think Counsel is questioning off this  
23 document but the assistant is passing around a  
24 different document. That's why I think we're having  
25 confusion. If that helps.

1 CHAIRMAN BOYER: That, that helps.

2 Q. (By Ms. Smith) Mr. Teply, would you agree  
3 for all intents and purposes these documents have been  
4 the same?

5 A. I'm really confused. I'm -- I've got --

6 Q. The 24.13 and this document.

7 A. The 24.13.

8 Q. The DPU 24.13 that you provided as a data --  
9 this?

10 A. Right. If you would just --

11 Q. It doesn't have the front cover on it.  
12 That's the only difference.

13 A. I'm not -- this document? I don't know.  
14 This doesn't have -- it's not the same thing you're  
15 holding. So I'm trying to be responsive but I don't  
16 know what you're asking me for.

17 Q. I'm holding the document --

18 CHAIRMAN BOYER: Well let's, you know, let's  
19 back up. Why don't we use the document that is  
20 attached to Mr. Teply's testimony.

21 MS. SMITH: Absolutely.

22 CHAIRMAN BOYER: And I'm not sure which  
23 one -- it doesn't appear that the one on yellow paper  
24 is that document. I mean, that document appears to be  
25 a one-page document from here on the bench. Maybe

1 there are attachments to it.

2 MR. MOSCON: It is multiple pages.

3 CHAIRMAN BOYER: All right, multiple pages.

4 MR. MOSCON: It's different than the 24.13.

5 But I agree that Mr. Chairman's suggestion of  
6 referring to the witness's own exhibits is the best  
7 way to proceed.

8 CHAIRMAN BOYER: Okay. Now let's take a  
9 moment and see if Ms. Smith can dig that particular  
10 document out. And then let's make sure that Mr. Teply  
11 has that very same document. And then we can maybe  
12 make some hay here.

13 And while you're looking, Ms. Smith, let me  
14 check with our esteemed reporter. Are you okay to go  
15 a little longer? I'm thinking of maybe going until  
16 about 11:30 and then taking a break at that point.

17 THE COURT REPORTER: Okay.

18 CHAIRMAN BOYER: Okay.

19 Q. (By Ms. Smith) Mr. Teply, would -- is  
20 Exhibit 4R, was that roughly prepared in 2011?

21 A. The exhibit would have been prepared in  
22 support of this case. The data behind it was  
23 obviously in existence well before that.

24 Q. But the document was prepared in 2011?

25 A. For this exhibit? Is that what you're asking

1 me?

2 Q. I'm not certain why you prepared a document  
3 called "CAI Capital Project Study." I'm just asking  
4 you if the document was prepared --

5 A. Oh, okay, no. The exhibit was prepared for  
6 the case, yes. The document was in existence prior to  
7 that time. But let me clarify. The document has two  
8 cover -- three cover pages of a summary of what its  
9 intent is, a list of assumptions, a list of major  
10 future CAI projects, and then it goes into tables.

11 The tables -- we have tables for other  
12 projects not contemplated in this case, I think. I'm  
13 not sure that we have all of our facilities covered.  
14 That would be my only question I'd need to verify.  
15 But the data -- the overall CAI project study was  
16 completed earlier than 2011.

17 Q. And just so I can get a clean record here,  
18 when you provided this study as part of your  
19 testimony --

20 A. Uh-huh.

21 Q. -- did you also include the work papers that  
22 support this analysis?

23 A. Yes. They were -- I believe they were  
24 submitted under a Sierra Club data request.

25 Q. Are you aware of whether those work papers

1 contained all of the information to replicate the  
2 results in the analysis?

3 A. I would think they did. I didn't review that  
4 specific response, but I would think they did.

5 Q. Did you include market prices expected to be  
6 received at the plant?

7 A. I don't know if we would have provided  
8 forward price -- forward market price information. We  
9 may have noted that as highly confidential subject to  
10 review in the office.

11 Q. And then would you describe the purpose of  
12 this analysis?

13 A. Yes. The purpose of this analysis -- and as  
14 I mentioned, this has been -- this was developed much  
15 earlier than, obviously, than 2011.

16 The purpose of this analysis was to compare  
17 the major capital investments in our CAI program  
18 against what we used as a very conservative approach  
19 against market purchases. Assuming that you could go  
20 either to the market for the megawatts that were  
21 displaced if you did not comply and needed to take  
22 these units offline throughout the duration of the  
23 remaining depreciable life.

24 So it's not a realistic -- it's highly  
25 conservative. The reality would be, if you took these

1 megawatts out of service, you would then have to add  
2 the value of replacing those megawatts with new  
3 facilities. Most likely gas facilities. Which we  
4 testified to are much more expensive than the current  
5 investments in the current facility.

6 So this is a very conservative. The  
7 economics actually improve if you consider how we've  
8 replaced this lost generation.

9 Q. Okay. So I'm gonna ask you a few questions  
10 about the NPVRR.

11 A. Uh-huh.

12 Q. And just for purposes of this discussion can  
13 we just call it the NPV?

14 A. Sure.

15 Q. Do I understand correctly then that this  
16 study compares the NPV of replacing the plant with  
17 market purchases against the continued use of the  
18 plant if the plant were to be replaced in any given  
19 year?

20 A. That, that's the intent of the study. Just  
21 comparing to market purchases.

22 Q. And then --

23 A. Including --

24 Q. Sorry.

25 A. Including, as you noted here, as we're

1 looking at the exhibit, we included an \$8 per ton CO<sub>2</sub>  
2 forward price adjustment in the study as well. Based  
3 on the business plan at that time.

4 Q. And so the purpose of this study is to  
5 evaluate the cost efficacy of maintaining these units  
6 with new capital expenditures such as those requested  
7 in this case, correct?

8 A. Yes, this -- and if you look at page 3 of the  
9 study, the study includes capital -- a forward price  
10 curve for capital -- or I'm sorry. A forward price  
11 forecast for capital investments through the end of  
12 the depreciable life. Operating expenses accordingly.

13 And then it included these various CAI  
14 projects in its forward-looking capital costs as well.  
15 And then compared those. Basically ran the model to  
16 compare that level of investment in the given asset  
17 against a presumed market power purchase throughout  
18 that entire life.

19 Obviously that wouldn't be the reality of the  
20 approach that we'd be taking, but it was -- it gives  
21 you the narrowest band of benefit.

22 Q. So generally speaking, an NPV differential  
23 above zero would suggest that a plant is better off  
24 being maintained and operated through the year, while  
25 a negative value suggests that the plant has not been

1 able to recoup its losses to that year; is that  
2 correct?

3 A. In a given year that would be an assessment  
4 that could be made. There again you would be basing  
5 that against a market power purchase price.

6 Q. So if a plant were to be retired when it had  
7 a negative NPV this would represent a net loss by the  
8 plant; is that correct?

9 A. The other piece that -- if you were going to  
10 pick a year of retirement to truly, to truly get a  
11 good look at this evaluation, you would also then have  
12 to apply the additional cost of building the  
13 replacement power.

14 That's not included in this study. This is a  
15 very simplistic study. It's called right out in the  
16 front, a macro analysis of the economics. So it's --  
17 because you're allowed in this study to basically pick  
18 a year, we didn't layer on the additional benefit to  
19 not having to have had to replace the power.

20 Q. Just focussing on the study, though. If  
21 you --

22 A. I'll focus on the graphic as presented,  
23 that's fine.

24 Q. So in order to not have a loss at a given  
25 plant the plant would have to remain operational, at



1 least until it was able to recoup its expenses,  
2 presuming that it can do so; is that correct?

3 A. To not have a loss, from a syst -- from a  
4 customer impact perspective, like, it's not that  
5 simple. From a what does this graphic present, it  
6 presents PVRR versus market purchase power. It does  
7 not contemplate other resources that would have to be  
8 added to the system. So you can't truly say this is a  
9 full-blown evaluation of that question.

10 Q. So if I could turn your attention to the  
11 first of the studies presented in your rebuttal  
12 testimony. The 2008 assumptions?

13 A. Okay. That's 4R, I believe.

14 Q. Did the assumption in this study, except for  
15 the Dave Johnston units, represent the Company's  
16 assumptions at the end of 2008?

17 A. Are you looking at page 2 of 9?

18 Q. Yeah, let me just pull this up. We've given  
19 all our copies away. Yes. I think so, right?

20 Yes.

21 A. Could you repeat the question, please?

22 Q. Do the assumptions in this study, except for  
23 the Dave Johnston units, represent the Company's  
24 assumptions at the end of 2008?

25 A. Yes. We used the -- that would be correct.

1 We used the -- I believe that's correct. We used the  
2 12/31/2008 forward price curve. That would be also  
3 the same price curve that would have been utilized for  
4 our integrative resource planning and other business  
5 planning processes.

6 And it appears that we -- all of the  
7 references here align with assumptions at that time  
8 frame.

9 Q. And would it be fair to say that these  
10 assumptions are fairly similar to the start of  
11 construction of Naughton 1 and 2 in the middle of  
12 2009?

13 A. It would have been a year earlier, but. It  
14 would have been the beginning of -- well, I'm sorry.  
15 Yeah, they would be the end of -- roughly the end of  
16 '08. In this, in this review.

17 Q. So would it be fair to say that the  
18 assumptions are fairly similar?

19 A. It would be. I think when we actually  
20 evaluated Naughton 1 and 2 we used -- we would have  
21 used probably the end of '07 data. Because we were --  
22 Naughton 1 and 2 was in the queue earlier. But this  
23 is relatively representative of what we would have  
24 seen.

25 Q. Would you please turn to page 4 of that

1 study?

2 A. Uh-huh. The first graphic, I assume?

3 Q. Yes. And they depict the cumulative  
4 incremental PVRRD for Naughton Units 1, 2, and 3?

5 A. Uh-huh.

6 Q. Does this chart show the annual NPV of  
7 replacing versus maintaining these Naughton units  
8 through 2029?

9 A. Not of replacing, no.

10 Q. Can you explain?

11 A. As I previously discussed, this, this chart  
12 simply looks at the cost of the -- the PVRR of  
13 replacing the controls on the unit, operating that  
14 unit, versus simply taking that unit off line in any  
15 given year and buying the power.

16 It doesn't contemplate, if you do decide to  
17 take that unit off line in any given year, what you  
18 would replace it with. Purchasing and/or building a  
19 new combined-cycle facility, some other generation  
20 resource.

21 So the curve here is very simplistic. It  
22 would -- the benefit would actually increase obviously  
23 from a -- if you invest and you avoid that accelerated  
24 replacement cost for the lost megawatts. That we  
25 demonstrated in our other testimony as being more

1 expensive.

2           This does not talk about replacement power.  
3 This simply talks about merchant power -- market power  
4 purchases.

5           Q.    So does the chart show the annual NPV of  
6 replacing with market purchases versus maintaining  
7 these units?

8           A.    It does, assuming that would become a  
9 reality.

10          Q.    And can you tell me the date at which  
11 Naughton Units 1 and 2 start showing a positive NPV  
12 according to this study?

13          A.    With the level of investment that we've  
14 forecasted through the end of the study, through the  
15 end of the depreciable life of 2029, we look like we  
16 cross zero I'm gonna say roughly 2023/2024 on those  
17 two units.

18          Q.    So it's reasonable to say that according to  
19 this study these units are not able to recover their  
20 cost until the roughly 2023/2024 time frame?

21          A.    Against market power purchases.

22          Q.    Does this study assume that the Naughton 1  
23 and 2 units will maintain approximately 80 to 95 -- 80  
24 to 90 percent capacity factor through the 2029 time  
25 frame?

1           A.    I would have to look at the data set that was  
2 provided via discovery to validate that.

3           Q.    That was in response to Sierra Club Discovery  
4 Response 4.1 on July 27th of this year?

5           A.    Yeah.  I would, I would assume that we have  
6 modeled this -- I -- actually all of these assumptions  
7 are that you would -- depending on where you're at in  
8 the curve, obviously.  But we've modeled them all to  
9 the end of depreciable life.  And we would have used  
10 forecasted capacity factors in the system, as we would  
11 use in our IRP.

12          Q.    So is it correct that these plants would take  
13 longer to recover their costs if they had a lower than  
14 80 to 95 percent capacity factor or availability  
15 through 2029?

16          A.    There would be a lot of drivers.  Obviously  
17 we've -- obviously you've made assumptions with  
18 respect to forward price curves, fuel prices,  
19 *etcetera*.  So there would be a lot of variables.  I  
20 don't know that we could just put one in a box and say  
21 that would be the result.

22          Q.    Suppose hypothetically Naughton Units 1 and 2  
23 are not able to maintain the 80 to 90 percent capacity  
24 factor.  Would that postpone the crossover date at  
25 which Naughton 1 and 2 units are able to recoup their

1 losses?

2 A. One more time, sorry.

3 Q. So suppose hypothetically the two units are  
4 not able to maintain that same capacity factor, 80 to  
5 90 percent, would that postpone the crossover date at  
6 which the Naughton 1 and 2 units are able to recoup  
7 those losses?

8 A. If that was the only parameter you were  
9 looking at in this study, I would expect the curve to  
10 shift. I don't know that there would be any reason to  
11 believe that that would change today. We've used our  
12 forward price curves, our forward capacity factors,  
13 *etcetera*, to generate the models that we use in our  
14 system planning.

15 Q. But, you know, in fact a low enough capacity  
16 factor could mean that Naughton Units 1 and 2 may  
17 never recoup their losses. These are older units.

18 A. In theory, yes.

19 Q. And wouldn't that, by definition, be a  
20 stranded cost?

21 A. If that condition that you've just proposed  
22 became a reality, that could be a stranded cost.

23 Q. Did this study that we're talking about right  
24 now assume that there will be any other additional  
25 environmental expenditures at Naughton Units 1 and 2

1 through 2029?

2 A. When we ran the 2008 data obviously that data  
3 set would not have included costs for mercury MACT  
4 coal combustion byproducts proposals that were not yet  
5 proposed.

6 Q. Or any environmental expenditures?

7 A. Oh, yes. They have all -- as -- if you see  
8 page 3, we have all of our scrubbers, all of the  
9 baghouses. We did make some assumptions with respect  
10 to SCR on units that we thought would be appropriate  
11 for that technology. Obviously haven't committed to  
12 those other than the units in Wyoming.

13 So they do include -- the investments for  
14 environmental include equipment. That you're asking  
15 about.

16 Q. It's not your testimony that those are not  
17 just BART exclusively?

18 A. These -- it's not my testimony that they're  
19 BART exclusively, no.

20 Q. Well, when you look at page 3 it talks about  
21 BART compliance?

22 A. Uh-huh.

23 Q. In that, the pollutants addressed, it doesn't  
24 talk about mercury or any of the others. It talks  
25 about --

1           A.     Actually, page 3 says:

2                     "Baghouses and scrubber  
3                     installations also reuse mercury  
4                     emissions and support anticipated HAPs  
5                     MACT compliance as a co-benefit."

6           Q.     So those are the -- these two are the only  
7           environmental costs that you were assuming at that  
8           time? Not some of the others we've talked about?  
9           Water intake.

10          A.     Well, if there were unknown rules we would  
11          not have included them in the data set.

12          Q.     Did the Company perform any sensitivity on  
13          this specific study, such as looking at different fuel  
14          prices, CO<sub>2</sub> prices, or different capacity factors?

15          A.     Not in the '08 data set. But obviously if  
16          you look at my next exhibit, which is the 2011 data  
17          set, we did use CO<sub>2</sub> price sensitivity.

18          Q.     And how would the outcome of this study  
19          change if the units required additional capital  
20          expenditures?

21          A.     Um --

22                     MR. MOSCON: To this whole thing I'm just  
23                     gonna object to the vagueness of questions. When you  
24                     say change the capital expenditures, I mean, by one  
25                     dollar or a billion? I mean, it's a very vague



1 question. But to the extent it can be answered,  
2 answer.

3 THE WITNESS: Obviously capital costs played  
4 into the results of the study. Higher the capital  
5 costs you, you would shift the curves. Obviously  
6 we've also talked about the price -- the impact of  
7 market pricing, capacity factors, those types of  
8 things that are also subject to change.

9 Q. (By Ms. Smith) And would you expect the  
10 relative NPV of any other plant in this case to  
11 decrease if additional capital expenditures are  
12 required?

13 MR. MOSCON: Same objection.

14 THE WITNESS: I would, I would just say the  
15 curves will react the same way, regardless of what  
16 unit you're looking at. The model is taking just data  
17 sets for individual units and truly just modeling that  
18 information. So they'll respond accordingly. In  
19 general terms like that they would respond similarly.

20 Q. (By Ms. Smith) Thank you. In Company  
21 testimony Ms. Woollums described how the Company makes  
22 decisions on investing in environmental controls at  
23 the six coal-fired plants at issue in this case. Just  
24 to be clear, the need to invest in these pollution  
25 controls is largely driven by the -- by BART and in

1 the new and emerging rules, correct?

2 A. Fundamentally the investments were predicated  
3 on BART compliance. Regional haze compliance, I  
4 should say.

5 Q. Primarily. And then would you agree -- I'm  
6 gonna give you a list of the rules just so we can get  
7 these on the record. Would you agree that the  
8 following rules would apply to the Company fleet-wide?  
9 First is an EPA approved BART.

10 MR. MOSCON: Could we have -- well. As it  
11 becomes applicable, maybe a date. If these are  
12 anticipated regulations, past regulations, and then do  
13 they apply to the Company. I assume we're talking  
14 about today's date.

15 MS. SMITH: These are proposed rules and  
16 rules that the Company has mentioned that the Company  
17 will be facing compliance challenges with. And again,  
18 that's why I direct you to Ms. Woollums' congressional  
19 testimony, because she described each of those rules  
20 in her senate testimony.

21 MR. MOSCON: So I guess my objection is, if  
22 we intend to cross examine the witness and say is the  
23 Company bound by these rules that are proposed but not  
24 yet existent, I'll object on grounds that it is  
25 speculative and the witness really can't answer.

1 CHAIRMAN BOYER: Yeah. I think, Ms. Smith,  
2 you're gonna have to go one by one these --

3 MS. SMITH: Fine.

4 CHAIRMAN BOYER: -- existing rules versus  
5 proposed rules, emerging rules, and so on.

6 Q. (By Ms. Smith) Would you agree that the  
7 Company will have to comply with a final EPA approved  
8 BART determination to meet regional haze requirements?

9 A. The Company will need to comply with regional  
10 haze SIPs that the EPA is currently reviewing for Utah  
11 and Wyoming.

12 Q. And then will the Company have to -- do you  
13 anticipate the Company will comply fleet-wide with the  
14 utility hazardous air pollutants, the so-called MACT?

15 A. When that rule becomes final the Company will  
16 be required to comply with those rules.

17 Q. And then proposed steam electric effluent  
18 guidelines, would those apply to the PacifiCorp fleet?

19 A. To my knowledge there's actually no proposed  
20 rules there yet. The EPA has proposed a rulemaking  
21 process. So there again, I would assume we would be  
22 compliant should there become rules there.

23 Q. And then the proposed coal combustion  
24 residuals? The so-called CCRs?

25 A. There again, if there are federal mandates

1 and federal regulations, we would be subject to  
2 comply. And they're not final yet.

3 Q. And then proposals on MACTs?

4 A. Yes, same situation.

5 Q. Did the Company consider any of these  
6 additional costs in its 2008 NPV analysis?

7 A. No. As we talked about before, coal  
8 combustion byproducts rules were proposed at that  
9 time. HAPs MACT wasn't proposed at that time. So in  
10 the 2008 analysis, effluent guidelines weren't  
11 proposed at that time. In the 2008 analysis there  
12 would have been nothing to analyze.

13 Q. So the answer is no?

14 A. No.

15 Q. Would you agree that the cost of complying  
16 with these regulations for these specific points we  
17 just talked about could be significant to the Company?

18 MR. MOSCON: Again, I'm gonna object that it  
19 calls for speculation. The line of questioning is, is  
20 it going to be a significant expense for the Company  
21 to comply with a bunch of rules that in some cases  
22 haven't even been proposed yet, much less enacted yet.  
23 And I don't know how the witness can give a meaningful  
24 answer to that.

25 CHAIRMAN BOYER: I think, Ms. Smith, you can

1 ask a hypothetical question. You could probably just  
2 ask one question to cover all of these rules and say,  
3 If rules come into effect and the Company has to  
4 comply, will they impose cost on the company?  
5 Something like that.

6 MS. SMITH: Right.

7 Q. (By Ms. Smith) Would you agree that the cost  
8 of complying with these regulations once they become  
9 final could be significant for the Company fleet-wide?

10 A. Yes, including all of our generating assets.  
11 They're all subject to complying. Whether coal, gas,  
12 wind, otherwise.

13 Q. And then just a point of clarification. Are  
14 you familiar with Mr. Ellis's rebuttal testimony?

15 A. I'm familiar, yes.

16 Q. Are you aware that Mr. Ellis testified that  
17 the Company included the potential cost of compliance  
18 with air toxics, MACT, and the coal combustion  
19 byproducts in its analysis?

20 A. Couple of clarifications there. Obviously  
21 with respect to HAPs MACT, as that rule became better  
22 known, the understanding was that scrubber technology,  
23 baghouse technology, *etcetera*, would support  
24 compliance.

25 So Mr. Ellis's -- or Dr. Ellis's reference

1 may be with respect to the fact that we were building  
2 scrubbers, baghouses, *etcetera*. I'm not sure. You  
3 can ask him.

4 With respect to coal combustion byproducts  
5 regulations, obviously until those were proposed we  
6 haven't incorporated those into our evaluation at this  
7 point.

8 Q. And --

9 A. We -- one -- I would say that we are carrying  
10 some Title D proxy costs in our business plans going  
11 forward, so we have begun that assessment. Not for  
12 purposes of this case.

13 MS. SMITH: Thank you very much.

14 THE WITNESS: Thank you.

15 CHAIRMAN BOYER: Thank you Ms. Smith. I  
16 think we'll take a lunch break at this point in time.

17 Now, Ms. Smith doesn't care particularly  
18 about the order of the next two witnesses she wishes  
19 for cross examination, so maybe during the lunch break  
20 you can figure out what's most appropriate.

21 Is the anticipation you could complete your  
22 cross examination today so that we can talk about  
23 logistics and see if people have travel issues or  
24 anything like that?

25 MS. SMITH: How long will the lunch hour be?

1 CHAIRMAN BOYER: An hour and-a-half.

2 MS. SMITH: My cross of Mr. Ellis is fairly  
3 brief. And just a little bit longer for Mr. Sprott,  
4 so.

5 CHAIRMAN BOYER: Well, I'm not gonna restrict  
6 you. I'm just, you know, in case people have travel  
7 issues or travel arrangements to make, we can.

8 MS. SMITH: And I have no preference which of  
9 the -- which goes first, Mr. Sprott or Mr. Ellis.

10 CHAIRMAN BOYER: Okay, good. All right, we  
11 will take a recess then for an hour and-a-half. We  
12 will come back at 1:00. Thank you.

13 (A luncheon recess was taken from  
14 11:30 a.m. to 1:03 p.m.)

15 CHAIRMAN BOYER: Two items of business. We  
16 had a side bar before we went on the record and  
17 Mr. Moscon doesn't have any redirect for Mr. Teply, so  
18 he'll be excused at this point.

19 And then we received a call from Karen White,  
20 counsel for the Federal Executive Agencies, who just  
21 wanted the record to reflect that they have signed the  
22 stipulation, they support it, and they apologize for  
23 not being able to attend today.

24 So that takes us to the next witness. And  
25 who did we decide would go first, Mr. Moscon?

1 MR. MOSCON: Dr. Howard Ellis.

2 CHAIRMAN BOYER: Dr. Ellis.

3 (Dr. Ellis was duly witness.)

4 CHAIRMAN BOYER: Thank you. Please be  
5 seated.

6 HOWARD ELLIS, Ph.D.,

7 called as a witness, having been duly sworn,  
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MOSCON:

11 Q. Dr. Ellis, would you please state and spell  
12 your name and give your business address for the  
13 record?

14 A. My name is Howard Ellis. H-o-w-a-r-d,  
15 E-l-l-i-s. And my business address is 155 Route 46  
16 West in Wayne, New Jersey.

17 Q. And Dr. Ellis, have you previously testified  
18 before this Commission?

19 A. No, I have not.

20 Q. Would you please give a brief description of  
21 your educational and professional history?

22 A. Sure. I received my Bachelor of Science in  
23 Electrical Engineering from the Massachusetts  
24 Institute of Technology. I went on to receive a  
25 Masters in Business Administration from the Harvard



1 Graduate School of Business Administration.

2 And stayed at Harvard for an additional three  
3 years to do a doctoral dissertation in the field of  
4 decision theory. The theory of how to make complex  
5 decisions under certainty. And the subject of my  
6 dissertation was: How can the City of New York decide  
7 what air pollution control programs to undertake.

8 When I finished the doctoral research in  
9 1970, the EPA had just been formed. The first Clean  
10 Air Act had just been passed. I went into private  
11 consulting practice as an air pollution consultant.  
12 One of the first in that particular new specialized  
13 field. Founded Enviroplan in 1972. And for 39 years  
14 we have been doing air pollution consulting.

15 Our work is for both state and local  
16 government agencies, seven of them. We work -- have  
17 worked for and some we're still working for on work  
18 relating to air pollution permitting, air monitoring,  
19 some BART analysis reviews, air quality modeling, that  
20 kind of stuff.

21 And the rest of the work is for industry. A  
22 lot for the electric power industry on assessing the  
23 air quality impact of their facilities.

24 Q. And Dr. Ellis, you caused to be filed some  
25 rebuttal testimony in this matter; is that correct?

1 A. Yes, that is correct.

2 Q. And I'll note that there was an errata  
3 exhibit filed after your original testimony was filed.

4 I wonder if you could provide for the  
5 Commission a summary of your prefiled testimony as it  
6 relates to or supports this stipulated settlement  
7 agreement?

8 A. Yes. I was retained by Rocky Mountain Power  
9 Company to conduct an independent review of their air  
10 pollution control investment decisions relating to  
11 this proceeding. And the overall conclusion of my  
12 testimony is that these decisions were, in fact,  
13 prudent.

14 These conclusions in my prefiled testimony  
15 that support the stipulated settlement in this case  
16 are as follows:

17 Number one, I believe that a hundred percent  
18 of the air pollution control investments that are the  
19 subject of this proceeding were necessary to comply  
20 with existing regulations in the Utah and Wyoming  
21 state implementation plans.

22 And were necessary to comply with the  
23 approval orders issued by the Utah Division of Air  
24 Quality and the existing permit conditions in the best  
25 available retrofit technology, BART, permits issued by

1 the Wyoming Department of Environmental Quality.

2 Doctors Fisher and Steinhurst's conclusions  
3 that the Company should have waited for more finality  
4 in federal rules simply ignores these existing and  
5 enforceable state mandates.

6 Number two, Rocky Mountain Power's pollution  
7 control investments also appear to me to be prudent,  
8 and reasonably calculated in scope and timing to  
9 comply with anticipated regulations by providing the  
10 flexibility to address these future regulations cost  
11 effectively when they and the resulting emission  
12 limits become known and must be complied with.

13 And just to illustrate this point, Rocky  
14 Mountain Power chose to install baghouses instead of  
15 upgrading existing electrostatic precipitators to  
16 comply with Utah/Wyoming required particulate emission  
17 limits for six of their electric generating units.

18 And this demonstrates the Company was forward  
19 looking at emerging mercury limitation rules with  
20 selecting its pollution control methods, since it  
21 comitted them to comply with the mercury requirements  
22 of the upcoming proposed utility MACT.

23 Therefore, contrary to the opinions of  
24 Doctors Fisher and Steinhurst, the Company acted, in  
25 my judgment, very prudently, as it took steps to

1 ensure compliance with existing regulations that were  
2 reasonably calculated to provide the critical  
3 flexibility to comply with these emerging new  
4 regulations as well.

5 And finally, number three, if Rocky Mountain  
6 Power did not make these investments to comply with  
7 the requirements and deadlines in the applicable SIPs  
8 and permits, the Company likely would be subject to  
9 enforcement actions by the Utah Division of Air  
10 Quality, Wyoming Department of Environmental Quality,  
11 the EPA, and even legal actions by private citizens or  
12 groups such as the Sierra Club requiring the Company  
13 to meet the applicable SIP and permit requirements.

14 Such enforcement actions potentially could  
15 result in substantial penalties and/or orders to shut  
16 down the units until required controls are, in fact,  
17 installed.

18 I find it very ironic that Sierra Club's  
19 complaining about the Company complying with  
20 environmental regulations, yet the Sierra Club may  
21 well choose to sue the Company if the Company chose  
22 not to comply with these regulations. Thank you.

23 MR. MOSCON: Dr. Ellis is available for cross  
24 examination.

25 CHAIRMAN BOYER: Thank you Dr. Ellis.

1 Ms. Smith?

2 CROSS EXAMINATION

3 BY MS. SMITH:

4 Q. Thank you Dr. Ellis. I'm gonna ask you a few  
5 questions about prudent planning if that's okay?

6 A. Sure.

7 Q. Your analysis included whether the Company  
8 should have factored in compliance costs for emerging  
9 air pollution regulations as a component of its  
10 planning process; is that correct?

11 A. That's correct.

12 Q. I'd like to refer you to page 12 of your  
13 testimony. And hopefully those -- it's lines 186  
14 through 189, if our printouts are compatible.

15 A. Well, they may or may not be. But if you can  
16 sort of read the question and the paragraph.

17 Q. Absolutely. May I direct you to the first  
18 full paragraph, at least on my page. The paragraph  
19 starts with: "What would be imprudent"? Do you see  
20 that paragraph? I can tell you what question it's in  
21 response to.

22 A. Yeah, please -- identify the question,  
23 please.

24 Q. The questioning begins with some questions  
25 that they responded to with Mr. Gebhart's testimony.

1 And then the question itself just says: "How do you  
2 respond to that testimony?" And I believe it had to  
3 do with Mr. Gebhart.

4 A. Yes, I, I've located it. And under that  
5 question, which paragraph?

6 Q. So if you could just read --

7 A. I found it, yes.

8 Q. Yes.

9 A. It's line 169, page 12, of my version of it.  
10 But that's okay.

11 Q. Thank you. If you could just read: "What  
12 would be imprudent." Just that whole sentence there?

13 A. "What would be imprudent, in my  
14 opinion, is to guess what future  
15 regulation permit conditions will be  
16 despite these large uncertainties and  
17 then use this information to make  
18 investment decisions now that do not  
19 need to, and should not, be made until  
20 there is considerably more certainty  
21 about these costs."

22 Q. Do you agree that planning is a necessary  
23 component, though, to making investment decisions?

24 A. Planning is a very necessary component to  
25 making investment decisions.

1 Q. Do you agree that planning should be used  
2 prior to making an investment decision?

3 A. Planning should be used prior to making an  
4 investment decision.

5 Q. Is planning a form or component of risk  
6 assessment?

7 A. Planning is a multi-disciplinary approach  
8 that may or may not include risk assessment, but could  
9 be part of it, yes.

10 Q. Do you agree that if a risk is neither  
11 identified nor quantified that it cannot be addressed  
12 in risk assessment or planning?

13 A. No, I don't agree with that as a certainty.  
14 What I believe the question you're asking is, to make  
15 the best decisions, how do you address the uncertainty  
16 of future regulations? Is that the question you're  
17 asking?

18 Q. My question is, in order to do a risk  
19 assessment the risks themselves need to be identified  
20 to the best of the Company's ability and identified?

21 A. In talking about the techniques of risk  
22 assessment I don't want to confuse it with the  
23 cardinal issue in making -- doing the decision  
24 analysis, which is deciding what alternatives to  
25 consider and evaluating the impact of each of these

1 alternatives.

2 Q. Do you know whether the Company, prior to  
3 investing in the pollution control technologies we're  
4 talking about here, identified the risk of future  
5 regulations when it determined the best outcome for  
6 their coal fleet?

7 A. I'm referring to the testimony of Chad Teply.  
8 And the testimony I read with Chad Teply that there  
9 was consideration of those future emerging regulations  
10 for which there was enough degree of uncertainty as to  
11 knowing the direction they were going and what they  
12 would be to consider that in the process of making  
13 decisions.

14 Q. Right. But you reviewed the -- you reviewed  
15 these investments as well, right?

16 A. I did not go through a detailed review of the  
17 investments. I read over the testimony of Chad Teply.  
18 I've read over the testimony of other parties, as  
19 stated in my testimony. But I did not carry out a  
20 review of the individual investments that were carried  
21 out. That was more the process that I was involved in  
22 reviewing.

23 Q. But wasn't it your testimony that the  
24 Company's environmental retrofits were prudent?

25 A. That's correct. And I -- because I thought



1 the process was a prudent process.

2 Q. Do you know whether the Company, prior to  
3 investing in these pollution controls, quantified the  
4 risk of future regulations when determining the best  
5 outcome for their generation fleet?

6 A. I do not believe that they sought to include,  
7 in the decision analysis to decide what investments to  
8 make, quantification of the uncertainty in these  
9 emerging regulations. These future regulations.

10 And there are -- were good reasons for that,  
11 which I believe made their process quite prudent.  
12 Would you like me to tell you the good reasons?

13 Q. No. If you --

14 A. All right. I, I think there were very good  
15 reasons why. Because there's vast uncertainty, so  
16 uncertain that it would be impossible to include it in  
17 a rigorous analysis.

18 Q. Yeah. I guess what I'm looking for is just  
19 an actual concrete analysis of those, of those  
20 investments, rather than the process.

21 A. The -- as stated in my testimony, there was a  
22 good idea about what future regulations were going to  
23 be issued. But where the vast uncertainty is, is  
24 knowing what is the impact of those regulations on the  
25 Rocky Mountain Power plants. Making it meaningless to

1 try to do this kind of an analysis.

2 Q. But do you agree that if the Company's coal  
3 units ultimately require further pollution controls  
4 above and beyond the regional haze retrofit that we're  
5 talking about now, that those costs will be borne by  
6 ratepayers?

7 A. In principle. I, I am not an expert in the  
8 rate-setting process in the State of Utah, but I would  
9 expect that that would be the case.

10 Q. I'd like to turn your attention to roughly  
11 page 15 of your rebuttal testimony, my line 260. And  
12 we'll get there together.

13 A. Just if you can give me the question that  
14 precedes the line 260?

15 Q. Yes. "Do you have similar concerns with the  
16 direct testimony of Dr. Fisher in this matter?"

17 A. I have it.

18 Q. And the second full paragraph begins with:  
19 "I believe it is virtually certain." Could you just  
20 read that sentence?

21 A. "I believe it is virtually certain  
22 that there will be future regulations  
23 further regulating electric power plant  
24 emissions of SO<sub>2</sub>, NO<sub>2</sub>, pollutants that  
25 are precursors to ozone and fine

1 particulate formation, which are SO<sub>2</sub>,  
2 NO<sub>2</sub>, and volatile organic carbons,  
3 hazardous air pollutants, and greenhouse  
4 gases including carbon dioxide.

5 "However, it is very uncertain  
6 exactly what future emission reductions  
7 will be required for each of these  
8 pollutants from each of the Rocky  
9 Mountain Power plants.

10 "In view of this uncertainty, the  
11 most prudent steps that Rocky Mountain  
12 Power can take now are the ones it has  
13 taken:

14 "Making air pollution control  
15 investments to satisfy existing state  
16 air pollution permit requirements, and  
17 incorporate these investments the  
18 engineering flexibility to accommodate  
19 future emission reductions without  
20 committing today to make unnecessary  
21 investments based purely on the  
22 speculation of what these future  
23 regulations will require or when they  
24 will require compliance."

25 Q. Thank you. In your expert opinion does the

1 certainty of future regulations qualify as a high risk  
2 or a low risk?

3 MR. MOSCON: Could we get clarification, risk  
4 of what?

5 Q. (By Ms. Smith) The risk of high  
6 environmental compliance costs. So given that  
7 there's -- you're certain there will be future  
8 regulations, and we've heard testimony today that  
9 those -- constant compliance could be significant, I'm  
10 asking if the cost of future regulation, could you  
11 qualify that, in your expert opinion, as high risk or  
12 low risk, given the certainty, the virtual certainty?

13 MR. MOSCON: And I guess what I would object  
14 and say that this witness has stated he did not  
15 undertake an analysis of cost, and I think would lack  
16 the foundation to talk directly about cost. I suppose  
17 if the Commission wants him to speak generally he  
18 could, you know, offer a generalized opinion. But he  
19 has not been retained to examine costs.

20 CHAIRMAN BOYER: Well, overruled. We'll let  
21 him take a stab at answering that, if you know.

22 THE WITNESS: Okay. I would say that the  
23 certainty of future regulations leads to a highly  
24 uncertain risk of costs -- future costs being incurred  
25 by Rocky Mountain Power Company.

1           And the reason for this is what I said before  
2 in this testimony: The regulation is just the  
3 starting point. The second part is translating  
4 regulations into what are the air pollution emission  
5 limits that will be required of each plant to comply  
6 with these regulations.

7           And for some of these regulations it may be  
8 no further controls at all, and others it may be more  
9 controls. So it is very uncertain. It's not certain  
10 what the required emission limits will be.

11         Q.    Do you agree future regulations will impose  
12 additional costs on coal plants?

13         A.    Future regulations conceptually, you know,  
14 are likely to impose additional controls. A question  
15 of are they small and nominal or are they very large  
16 and substantial is what is subject to such a vast  
17 amount of uncertainty, until you get to the stage of  
18 establishing emission limits and permits with these  
19 requirements.

20         Q.    I guess the place is -- I'm starting from the  
21 presumption that -- when Ms. Woollums and Mr. Teply  
22 both have testimony that say that these costs could be  
23 substantial.

24                So, you know, I'm not talking about just some  
25 minor, minor regulations. We're not here for -- to

1 talk about just minor costs. I'm talking about what's  
2 the potentially significant cost of complying with  
3 some of these regulations we've talked about today?

4 MR. MOSCON: And to the extent that misstates  
5 testimony, I'll object. But again, the witness can  
6 answer. I still believe it calls for speculation.

7 Go ahead if you can.

8 THE WITNESS: If I may just give you two  
9 examples? The Regional Greenhouse Gas Initiative in  
10 the Northeast for controlling carbon dioxide  
11 emissions? When it was first proposed there were  
12 costs of \$20, \$30 a ton for CO<sub>2</sub>. I think at the last  
13 auction it was less than \$2 a ton.

14 In 1990 the SO<sub>2</sub> Cap and Trade Program that  
15 was adopted under the Clean Air Act there were  
16 possible costs of -- you know, vast costs. And become  
17 almost no cost at all to trade for an allowance for  
18 SO<sub>2</sub>.

19 It is very uncertain what these regulations  
20 are gonna translate into in terms of actual costs.

21 Q. (By Ms. Smith) If the Company fails to plan  
22 for these virtually certain probabilities, regardless  
23 of their high or low cost, should the risk of these  
24 costs materializing be borne by the ratepayers or the  
25 Company?

1           A.    I think the greater risk is if the wrong  
2 decision is made on investment in controls by  
3 considering a vastly uncertain outcome of what these  
4 future regulations will bring. That's far greater  
5 risk, you know, than the risk of incurring these  
6 costs.

7           Q.    Could I ask you to answer the question?

8           A.    Could you repeat the question again, please?

9           Q.    Sure. If the Company fails to plan for these  
10 virtually-certain probabilities should the risk of  
11 these costs, when they materialize, be borne by the  
12 ratepayers or the Company?

13          A.    I am not an expert in ratemaking in the State  
14 of Utah. And I think it's inappropriate of me to try  
15 to answer that, because I'm not claiming to have any  
16 expertise in that area.

17          Q.    I just have one final question. There's been  
18 some confusion about the utility MACT and whether or  
19 not the Company complied with that.

20                You stated that the Company installed  
21 baghouses for mercury, but Mr. Teply just testified  
22 that the Company could not have known about the  
23 mercury HAPs MACT requirements. So why did the  
24 Company choose baghouses if they were not able to  
25 anticipate MACT reductions?

1 MR. MOSCON: Objection to the point that --  
2 or to the extent it misstates the testimony of  
3 Mr. Teply.

4 But you can answer based on your  
5 understanding.

6 THE WITNESS: I, I could -- would you please  
7 repeat the question?

8 Q. (By Ms. Smith) Earlier when Mr. Teply was  
9 before us he stated that the Company could not have  
10 known about the mercury and the HAPs requirements. So  
11 my question is -- you stated the Company installed  
12 baghouses just in order to comply with MACT.

13 My question is, why did they choose the  
14 baghouses, then, if they were, if they were not able  
15 to anticipate MACT reductions?

16 A. I am not in the position to answer that  
17 question. I think Chad Teply is the expert witness  
18 who can do that. What I said in my testimony was that  
19 the decision to install baghouses and the other  
20 decisions that were made with these pollution control  
21 investments were to do two things:

22 Comply with existing regulations. And  
23 provide flexibility to have the ability to comply with  
24 future regulations, whatever they are, in the most  
25 cost-effective way in the future.



1           It wasn't necessarily to comply with things  
2 that we don't know about. It was to provide that  
3 flexibility.

4           MS. SMITH: Thank you very much. I  
5 appreciate your time.

6           THE WITNESS: Thank you.

7           CHAIRMAN BOYER: Thank you Ms. Smith.

8           Does anyone else wish to cross examine  
9 Dr. Ellis?

10          Redirect, Mr. Moscon?

11          MR. MOSCON: No redirect.

12          CHAIRMAN BOYER: Okay. Well, thank you so  
13 much, Dr. Ellis. You are excused.

14          THE WITNESS: Thank you.

15          CHAIRMAN BOYER: I guess that brings us now  
16 to Mr. Sprott. Is that correct, Ms. Smith?

17          MS. SMITH: Yes. Thank you.

18          CHAIRMAN BOYER: Mr. Sprott, would you please  
19 raise your right hand and be sworn?

20          (Mr. Sprott was duly sworn.)

21          CHAIRMAN BOYER: Thank you, please be seated.  
22 Mr. Moscon?

23                         RICHARD SPROTT,  
24           called as a witness, having been duly sworn,  
25           was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. MOSCON:

Q. Good afternoon, Mr. Sprott. Would you please state your name, spelling your last name for the record?

A. I'm Richard Sprott, S-p-r-o-t-t.

Q. And Mr. Sprott, have you previously testified before this Commission?

A. No, I have not.

Q. In that case would you please provide a very brief summary of your educational and professional history?

A. Yes. I received a Bachelor of Arts degree in Chemistry from Grinnell College in Grinnell, Iowa. Received a Master's of Environmental Management from Duke University.

I served as a career Air Force officer for 21 years as an aircraft maintenance officer. My final assignment was at Hill Air Force Base, where I was responsible for environmental compliance for the entire industrial complex.

From 1994 till 2008 I worked in the Department of Environment Quality, beginning as a permit writer. And my last assignment was executive director of the department under Governor John

1 Huntsman.

2           During that time I worked extensively  
3 permitting and managing various affairs that were  
4 involved with the utility industry in the energy  
5 sector.

6           Q.    And Mr. Sprott, you filed rebuttal testimony  
7 in this matter on behalf of Rocky Mountain Power?

8           A.    Yes, I did.

9           Q.    And if I'm correct you had an errata filing  
10 sometime after your initial rebuttal was filed; is  
11 that correct?

12          A.    That's correct.

13          Q.    Could you provide a summary for the  
14 Commission of your prefiled testimony, describing how  
15 it supports the stipulated settlement?

16          A.    Yes. PacifiCorp asked me to testify about  
17 the environmental regulations that applied to the  
18 Company during this period involving units that are  
19 involved with this controversy. My testimony made  
20 four main points, and also addressed some of the  
21 direct testimony of intervenors.

22                My first point was that the PacifiCorp  
23 actions were not premature. PacifiCorp had to install  
24 controls for sulfur dioxide to meet the sulfur dioxide  
25 milestone program in the Utah Regional Haze SIP.

1 Which was not an option.

2           Secondly, PacifiCorp's Hunter and Huntington  
3 units are only 47 miles from national parks in Utah,  
4 so they certainly have a visibility impact. There was  
5 no way that I or the state would not insist on  
6 controlling the sulfur dioxide emissions from those  
7 units.

8           Third, PacifiCorp was actually required to  
9 install controls that were better than best-available  
10 retrofit technology, in accordance with state and  
11 federal regulations. This was because of the 309  
12 program for regional haze that Utah chose to adopt  
13 along with Wyoming.

14           The selection of the 309 program, which is a  
15 flexible market-based program that Governor Leavitt  
16 was -- had a hand in creating, was a decision by the  
17 State. It was not the choice of the Company. It was  
18 a decision by the States of Utah and Wyoming in this  
19 case.

20           And finally, the PacifiCorp projects also  
21 were necessary to meet coming mercury emission limits  
22 that were enacted by the State of Utah. These  
23 emission limits go into effect in December of 2012, so  
24 the Company has to install controls for mercury well  
25 in advance of that.

1           As you probably know, that the citizens of  
2 the State of Utah became very alarmed a number of  
3 years ago about mercury contamination of our fish and  
4 waterfowl, and therefore state regulators were very  
5 concerned about these issues.

6           Finally regarding intervenor testimony. With  
7 respect to Dr. Fisher's testimony, I testified that it  
8 was incorrect that PacifiCorp could wait for EPA to  
9 approve Utah rules that the state set.

10           And its permits are enforceable by the State  
11 immediately upon enactment. And that if PacifiCorp had  
12 not acted when it did, then they would have been  
13 subject to enforcement action.

14           Secondly, it's incorrect to state that state  
15 and federal regional haze rules are not final. As  
16 been testified to earlier, the first regional haze  
17 rule, Section 308 and 309, were finalized in 1999,  
18 with changes later in 2005 and 2006.

19           The States of Wyoming and Utah finalized  
20 state implementation plans on regional haze in 2003.  
21 And each state has updated those plans in 2008 and  
22 2011. All those plans are enforceable when they are  
23 passed by the state. I think that concludes my  
24 summary.

25           Q.    Thank you.

1 MR. MONSON: Mr. Sprott is available for  
2 cross examination.

3 CHAIRMAN BOYER: Thank you Mr. Sprott.  
4 Ms. Smith?

5 MS. SMITH: Yes, thank you.

6 CROSS EXAMINATION

7 BY MS. SMITH:

8 Q. Thank you very much, Mr. Sprott. I have some  
9 questions about most of what you said following  
10 timelines and enforceability. Beginning on page 7 of  
11 your testimony, your rebuttal testimony, roughly lines  
12 144 to 147?

13 A. Yes.

14 Q. Is it your testimony that the Company was  
15 under a clear legal obligation to comply with the 2006  
16 federal regional haze rule revisions?

17 If you like, we -- can you just read your  
18 testimony, beginning with: "A 2006 federal regional  
19 haze rule revision"? Just that first sentence.

20 MR. MOSCON: Are you talking about line 140?

21 MS. SMITH: One forty-four. I'm sorry.

22 Q. (By Ms. Smith) It's a response to the  
23 question:

24 "Why were PacifiCorp's pollution  
25 control projects mandatory rather than

1 voluntary?"

2 A. Oh, okay.

3 Q. It's just that first sentence.

4 A. Okay.

5 "A 2006 federal regional haze rule  
6 revision mandated emission limits for  
7 all BART-eligible units, so PacifiCorp  
8 had a clear legal obligation to reduce  
9 SO<sub>2</sub> emissions to ensure the milestones  
10 were met. The emission limits are in  
11 the SIPs and permits for both Utah and  
12 Wyoming."

13 Q. And just to be clear, the 2006 federal  
14 regional haze rule revision is Section 309, correct?

15 A. Actually, the changes were in both  
16 Section 308 and 309. And this particular requirement  
17 is in Section 308, but it is referenced back to -- or  
18 I should say Section 309, that Utah operates under,  
19 references this specific passage.

20 So it became incumbent on Utah and BART-  
21 eligible units -- which Hunter 1 and 2 and  
22 Huntington 1 and 2 are in Utah -- to have enforceable  
23 emission limits fairly soon after that October 13,  
24 2006, date when that rule was effective.

25 Q. So then -- you then go on to state:

1           "PacifiCorp had a clear legal  
2           obligation to reduce SO<sub>2</sub> emissions to  
3           ensure milestones were met."

4           Is it your testimony that the federal  
5           regional haze rule, as revised in 2006, created an  
6           obligation for PacifiCorp to install the emission  
7           controls at issue in this proceeding?

8           A.   Ultimately it did, and that's why I filed the  
9           errata to the following question. Because I traced  
10          the origin of the requirements in the Utah SIP through  
11          the federal rules back to this requirement in the 2006  
12          rule change that actually required the sources. And  
13          for the states to ensure that the sources had permits  
14          or other enforceable mechanisms to meet at least BART,  
15          and like I said, in this case better-than-BART  
16          emission limits.

17          And those emission limits are what were  
18          established in our 2008 SIP, as well as pollution  
19          control permits that were issued shortly after that  
20          for PacifiCorp units.

21          Q.   But just to clarify, isn't it true that the  
22          regional haze rule only compels state action?

23          A.   I wouldn't agree with that, no.

24          Q.   Section 309 of the regional haze rule itself  
25          does not contain any emission limits, correct?



1           A.     Section 309 requires states to have milestone  
2 programs that are quantitative and enforceable. And  
3 what the, the practical ramifications for that is we  
4 then put those emissions limits in the SIP. And we  
5 also make them enforceable through permits, which  
6 require PacifiCorp to submit applications to obtain  
7 those permits for their units. Which is the process  
8 that we followed.

9           Q.     My question is, Section 309 of the regional  
10 haze rule does not contain any emission limits in  
11 itself, correct?

12          A.     It does not contain emission limits. What it  
13 does contain --

14          Q.     Thank you.

15          A.     -- is the requirement to establish emission  
16 limits for BART-eligible units through  
17 Section 308(2)(e.)

18          Q.     The emission limits are in the SIPs and  
19 permits in both state and -- in both Wyoming and Utah,  
20 correct? That's according to your testimony. You  
21 state that the emission limits are in the SIPs and  
22 permits in both Utah and Wyoming?

23          A.     I'm not sure that -- I may have been in error  
24 as far as the SIP in Wyoming having emission limits.  
25 I know it is in Utah. But in both states there are

1 federally-enforceable permits that also have those  
2 limits.

3 Q. Wouldn't it be more accurate to say that the  
4 SIP creates a legal obligation to reduce SO<sub>2</sub>?

5 A. More accurate than what?

6 Q. Than the testimony that's -- when you said  
7 that there -- the emission limits are -- there's  
8 already enforceable emission limits.

9 A. I wouldn't agree with that, no.

10 Q. Did the SIPs simply create an obligation by  
11 the state to reduce SO<sub>2</sub>?

12 A. That's not correct.

13 Q. And when does PacifiCorp have to meet the  
14 emission limits that you're referring to in your  
15 testimony?

16 A. The federal rule requires a set of milestones  
17 that are enforceable each year. They have to be  
18 continuous and steady progress towards the ultimate  
19 reduction goal in 2018.

20 So as Ms. Woollums testified earlier,  
21 PacifiCorp has the vast majority of SO<sub>2</sub> emissions in  
22 our region, and so therefore they had to act far  
23 enough in advance to ensure that those milestones were  
24 met each year along the way.

25 Q. I have a question for you about the 2011 Utah

1 Regional Haze SIP. Can I, can I provide you a copy of  
2 the SIP? It's just one little provision. I can -- or  
3 else I can just read it to you.

4 A. What, was that in my testimony?

5 Q. No.

6 MR. MOSCON: I'm gonna just, again, restate  
7 the ongoing objection of trying to cross examine  
8 witnesses on exhibits that were not included in any  
9 rebuttal or surrebuttal of the Sierra Club, and to  
10 which there's no foundation or no copy been provided.

11 CHAIRMAN BOYER: Sustained.

12 Q. (By Ms. Smith) Mr. Sprott, isn't it true  
13 that, according to the Utah Regional Haze SIP,  
14 pursuant to 51.308(e)(1)(c)(iv), each source subject  
15 to BART is required to install and operate BART no  
16 later than five years after approval of the  
17 implementation plan?

18 A. What -- are you quoting from the SIP?

19 Q. Yes. This is the 2011 Utah Regional Haze  
20 SIP, on page 25.

21 A. I think that's out of context, because the  
22 Utah program is one of the SO<sub>2</sub> milestones of  
23 continuous reductions. That is the ultimate  
24 environmental results and outcome that we require.

25 And so the real enforceable mechanism and the

1 way to achieve those milestones is through the  
2 emission limits that are in the SIP itself. And the  
3 same emission limits are also carried over in these  
4 permits that those four PacifiCorp emission units  
5 have.

6 So the requirement that you're reading from  
7 right now is the general requirement for regional haze  
8 SIPs. But the way the Utah SIP operates is a little  
9 different from that.

10 Q. The SIP says:

11 "Pursuant to the federal rule, each  
12 source subject to BART is required to  
13 install and operate BART no later than  
14 five years after approval of this state  
15 implementation plan by EPA."

16 MR. MOSCON: I just want to again interject  
17 that I thought I had a sustained objection that we'll  
18 not be cross examining the witness on this exhibit,  
19 but.

20 CHAIRMAN BOYER: Well, let's let him answer  
21 this if he can.

22 THE WITNESS: Again, that's taken out of  
23 context, because it would be impossible for us to  
24 achieve the actual requirements that we're bound to  
25 with the EPA under Section 309 if we didn't require

1 action until EPA approved the SIP.

2 Our SIP was created in 2003. EPA is yet to  
3 approve it. So if we allowed -- if we didn't take any  
4 action, just like many of our other SIPs, until EPA  
5 approved them, the pollution levels in this valley,  
6 along with regional haze, would be untenable.

7 So we take action on our SIPs when we do it.  
8 And I -- without looking at the full context of the  
9 quote that Ms. Smith is using here, it's clearly out  
10 of context.

11 Q. It's the only language on the page. It's not  
12 a quote out of context. It's a full standalone  
13 statement in the 2011 Utah SIP.

14 A. You don't understand how the 309 SIP works.  
15 I mean, that's just -- I'm sorry that -- that's my  
16 response. Because the milestone program for SO<sub>2</sub>  
17 reductions is clearly laid out in the SIP what the  
18 milestones are, what the sources have to have as  
19 emission limits. So I don't know how else to respond.

20 Q. Turning to page 10 of your testimony,  
21 starting at line 197?

22 A. I think we have different line numbers so  
23 help me out on this one.

24 Q. Okay, sorry. I couldn't recall if we did or  
25 not.

1 A. Yeah.

2 Q. This is in response to a question:

3 "So states with Section 309 SIPs  
4 must ensure milestones are met to comply  
5 with federal regulations?"

6 And you've covered this to a certain extent.

7 A. I'm with you.

8 Q. Okay. So beginning with: "EPA required  
9 federally enforceable emission limits," actually would  
10 you just read the rest of that question? Beginning  
11 with: "EPA required federally enforceable emission  
12 limits"?

13 A. Yes.

14 "EPA required federally enforceable  
15 emission limits for all BART-eligible  
16 sources [308(e)(2)(i)(B)] that were part  
17 of an alternative program like those in  
18 Utah and Wyoming.

19 "That meant that PacifiCorp and  
20 others had to get permits with better-  
21 than-BART emission limits and the states  
22 had to put the permits (sic) in the  
23 regional haze SIPs."

24 Q. So just let's take this one step at a time.  
25 You state that EPA required federally-enforceable

1 emission limits for all BART-eligible sources,  
2 correct?

3 A. That's correct.

4 Q. Isn't it more accurate to say that EPA  
5 required state SIPs to include emission limits that  
6 were federally enforceable?

7 A. I would have to -- I don't believe that's  
8 correct. I would have to refer to the, the actual  
9 CFR, which I don't have in front of me.

10 Q. We may have a copy of that.

11 We have a copy of 53.309. My question is --

12 A. In looking -- if I can respond I might be  
13 able to clear up -- clear that up. My opinion is it  
14 doesn't specify either way. A federally -- it simply  
15 says a federally enforceable -- or a -- the actual  
16 language says that:

17 "Each BART-eligible source in the  
18 state must be subject to the  
19 requirements -- that it must be subject  
20 to the requirements of the alternative  
21 program" -- which in our case is a 309  
22 milestone program for SO<sub>2</sub> -- "have a  
23 federally-enforceable emissions  
24 limitation determined by the state and  
25 approved by EPA as meeting BART."

1           So a federally-enforceable permit limit in  
2 Utah can be in a new source review form permit, an  
3 operating permit, or the SIP. All are federally  
4 enforceable.

5           Q.     Understood. But again, the Utah SIP says  
6 that sources -- each source subject to BART is only  
7 required to install and operate no later than five  
8 years after the approval. And we don't have a final  
9 approved rule yet by EPA.

10          A.     Again, that is taken out of context. The,  
11 the essence, the core of the 309 SIP in Utah is the  
12 SO<sub>2</sub> milestone program, which cannot be successful if  
13 that passage that you're lifting out of the context of  
14 the SIP were followed to the letter.

15                 That is simply language that's generally  
16 applicable to BART programs, especially for 308 SIPs.  
17 That's, that language is really intended for a 308  
18 SIP, not a 309 SIP.

19          Q.     Next in that -- in your quote it said -- you  
20 said that that meant that PacifiCorp and others had to  
21 get permits with better-than-BART emission limits,  
22 correct?

23          A.     That's correct.

24          Q.     But isn't it true that the regional haze rule  
25 did not mean that PacifiCorp had to get permits with



1 better-than-BART emission limits, it meant that states  
2 relying on Section 309, such as Utah, had to draft  
3 SIPs that included better-than-BART limits, correct?

4 A. No. It's actually both. Because the SIP  
5 itself does have to provide better reasonable progress  
6 than source by source BART. But in order to  
7 accomplish that, since there are only four BART-  
8 eligible sources in the state, each of which is  
9 required by -- as we've seen, by federal regulation to  
10 have the emission limits? Each of those sources has  
11 to have an emission limit that itself is better than  
12 BART.

13 And for SO<sub>2</sub> the BART limit is .15 pounds per  
14 million BTU. And we set it at .12, so therefore we  
15 met the requirement.

16 Q. But as of today the better-than-BART limits  
17 in the SIP haven't actually been approved by EPA,  
18 correct?

19 A. Doesn't make any difference. They're  
20 enforceable in the State of Utah.

21 Q. But at this time all we know is that Utah  
22 believes that it has drafted a SIP that includes  
23 better than BART, but we won't know that until EPA  
24 approves, correct?

25 A. That's not correct. It's the law of the land

1 in Utah according to Utah statutes and environmental  
2 regulations.

3 Q. So when you say, on lines 609 and 610, "the  
4 SIPs are enforceable," do you, do you stipulate that  
5 you've said that the SIPs are enforceable? I can  
6 direct you to that.

7 A. Please do.

8 Q. Yes. Okay, let's see. Okay. The question  
9 is:

10 "When do PacifiCorp's BART-eligible  
11 SO<sub>2</sub> sources in Utah and Wyoming have to  
12 comply with SIPs and other state rules?"

13 A. I have it.

14 Q. Maybe line 580?

15 A. It's line 624 in mine.

16 Q. I give up. Can you read beginning with:  
17 "The SIPs are enforceable"?

18 A. Yes.

19 "The SIPs are enforceable as soon as  
20 they are approved by the state air  
21 quality regulatory authority and the  
22 rulemaking procedural requirements are  
23 met. In Utah that would be the Air  
24 Quality Board and the SIP is enforceable  
25 under Utah law once published in the

1 state rules bulletin.

2 "Permits (Approval Orders and  
3 Operating Permits) are enforceable when  
4 the Executive Secretary of the Air  
5 Quality Board signs them. The same  
6 person also serves in the capacity of  
7 Director of the Division of Air Quality.

8 "Accordingly, PacifiCorp must  
9 install controls in accordance with the  
10 updated schedule in the April 2011  
11 regional haze SIP and their Approval  
12 Orders."

13 Q. So it is your testimony that the SIP is  
14 enforceable before it's approved by EPA?

15 A. Absolutely.

16 Q. But it's not enforceable under the Clean Air  
17 Act, correct? The federal Clean Air Act. It would  
18 have to be under state law?

19 A. The SIP is enforceable under state law. And  
20 the permits are federally enforceable as soon as  
21 they're approved. They are not approved by EPA, but  
22 our permit program is federally approved. So those  
23 permits are enforceable by the state, by the federal  
24 government, and by citizens.

25 Q. Is it your testimony that the -- that

1 PacifiCorp had to install the BART controls, or the  
2 better than BART, immediately upon publication of the  
3 SIP?

4 A. No. The SIP contains timelines in which were  
5 negotiated with the Company to ensure that the  
6 controls were installed in appropriate time frames to  
7 meet these SO<sub>2</sub> milestones we've been talking about.

8 Q. And so where -- please point to me where it  
9 is either in the SIP or federal law that stated when  
10 it was that the Company needed to apply for its BART  
11 permits?

12 A. I don't have a copy of the SIP in front of  
13 me. But contained in the 2008 SIP and the 2011 SIP  
14 there are emission limits. There's a table that gives  
15 emission limits for those four BART-eligible units, as  
16 well as the date that those controls must be installed  
17 and they have to meet those emission limits. In the  
18 2011 SIP the dates were adjusted slightly, but there  
19 are compliance dates in both SIPs.

20 MS. SMITH: Mr. Chairman, I'm looking at the  
21 page he's referring to and there are no dates. I've  
22 got 12 copies of the SIP here in front of me. It's --  
23 we're only talking about the one page, page 25.

24 And I completely agree with you that there  
25 are the emission -- the better-than- BART emission

1 limits, and then the emission limits that the permits  
2 reflect for SO<sub>2</sub>. And then -- but I'm not seeing any  
3 dates in this SIP.

4 MR. MOSCON: And again, I would say if that's  
5 their position, what a wonderful topic for some  
6 rebuttal or surrebuttal testimony for one of their  
7 witnesses to have filed and included the appropriate  
8 exhibit that they think is appropriate.

9 We continue to cross examine witnesses and  
10 try and make a case directly, when there's been no  
11 prefiled testimony on that point.

12 MS. SMITH: Mr. Chairman, this is a really  
13 tricky issue for us because -- I am assuming that  
14 Mr. Sprott's not a lawyer. But this does take, you  
15 know, a legal analysis to sit down and figure out what  
16 the different state and federal rules. I certainly  
17 don't have economists and engineers who are able to  
18 testify on the inner workings.

19 He -- clearly Mr. Sprott is in a unique  
20 position to testify on these matters. Very few are.  
21 As a lawyer I'm able to sit down and put these pieces  
22 together under the Clean Air Act. But it's almost --  
23 it's virtually possible to find an expert witness to  
24 testify on this matter.

25 THE WITNESS: Perhaps I can clarify this. I

1 may be mistaken with respect to the dates being in the  
2 SIP, but if you'll refer to the permits for those  
3 units I'm sure that they're in the permits. Which are  
4 federally enforceable.

5 Q. (By Ms. Smith) But it was -- the Company  
6 chose to go out and seek those permits. There was  
7 nothing -- there was no deadline when they had to  
8 apply for those permits?

9 A. No, that's, that's misleading because the  
10 obligation, as I described in my testimony, starts  
11 with the milestone and the milestone schedules. In  
12 2006 we had the federal rule that required these four  
13 sources, these four units, PacifiCorp units, to have  
14 emission limits.

15 That was in 2006. So they were clearly on a  
16 timeline in which they had to submit applications that  
17 we, we would then review and determine what permit  
18 limits would have to be established to achieve the  
19 milestones.

20 So -- and, and if they had failed to act we  
21 could have compelled them to do so.

22 Q. I wanted to ask you some questions about the  
23 so-called "SIP gap" that you referred to in your  
24 testimony. Can you explain what the SIP gap is?

25 A. "SIP gap" is a term of art that refers to the

1 gap enforceability between a time that any state in  
2 the country that operates under a state implementation  
3 plan program -- and most do -- finalizes and makes  
4 legal the state implementation plan for air quality in  
5 their state and when EPA takes final action on it.

6 The -- it's not -- some SIPs are approved  
7 fairly quickly. The Clean Air Act has an 18-month  
8 window in which EPA is required to act. They  
9 frequently fail to meet that window. And so sometimes  
10 it takes years for them to take final action.

11 And there's a lot of reasons for that. Some  
12 things are complicated. A lot of negotiation goes on  
13 back and forth between state regulators and EPA  
14 regulators. And changes may be made in the meantime.  
15 But obviously the goal is to have the enforceability  
16 requirements at the federal level and the state level  
17 correspond.

18 So it's a well-recognized ongoing problem,  
19 and creates legal issues for everybody involved. But  
20 does that answer your question?

21 Q. Yes. That's a good description of the SIP  
22 gap. So Mr. Sprott, is it true that it was the SIP  
23 gap that required the Company to comply with the SIP  
24 under state law before EPA approves the final BART; is  
25 that correct?

1           A.     That -- no, that's not the way I would  
2 describe it. PacifiCorp had to comply with state law,  
3 no matter -- even if EPA had approved the SIP the next  
4 day, the actions that were necessary by PacifiCorp  
5 would have been the same. They still are not off the  
6 hook with the state, no matter what EPA does.

7           Q.     Are you aware that there really is not a SIP  
8 gap problem in the State of Utah? I think we all  
9 agree that there is a 2011 regional haze rule. And  
10 I'd like to reference you to two recent consent  
11 decrees between the Department of Justice and EPA and  
12 plaintiffs.

13                   Both states have agreed -- EPA has agreed to  
14 act on the state SIPs by October of 2011. 2012,  
15 excuse me.

16           A.     Well --

17           Q.     Are you aware of that?

18           A.     Yes, but there's still a SIP gap because they  
19 haven't yet acted. That's only in response to a  
20 lawsuit. I think WildEarth Guardians, if I'm not  
21 mistaken?

22           Q.     That's correct.

23           A.     And -- in fact, I would have liked to have  
24 sued EPA myself to get them to act, because it's very  
25 frustrating. But there still remains a SIP gap until



1 they take final action. So -- and, and this is, this  
2 is very standard.

3 In fact, the State of California really went  
4 to war with Region 10 of the EPA because they had so  
5 many SIP actions and were so far behind it became  
6 untenable. And they finally spent a lot of time  
7 trying to whittle that backlog down.

8 But every -- I think every state in every  
9 region in the United States has a SIP gap of one  
10 degree or another.

11 Q. I want to ask you about your testimony  
12 regarding the Company would have been subject to fines  
13 had it not sought and implemented its permits. And I  
14 will give you the question that responds to:

15 "Dr. Fisher suggests at the top of  
16 page 27 that PacifiCorp should have  
17 waited until EPA approved the state  
18 rules" --

19 A. Excuse me, what part of my testimony are you  
20 reading from?

21 Q. I'm reading the question. So that --

22 A. For what, what page? Want to give me a page  
23 at least?

24 Q. Might be 31. Approximately 652?

25 A. Okay. Read me the question again.

1 Q. Okay. All right. Well, what I'm trying to  
2 direct you to is the -- your testimony that any action  
3 to not comply with state BART would have put the  
4 Company at risk of being subject to a \$10,000-per-day  
5 fine for each violation of state rules?

6 MR. MOSCON: Line 664 on your copy.

7 THE WITNESS: Okay, I'm with you now.

8 Q. (By Ms. Smith) Just to clarify, these  
9 \$10,000-per-day state violations, are these under  
10 state or federal law?

11 A. That's a state law, and that's for civil  
12 action.

13 Q. How can Utah impose a \$10,000-a-day fine when  
14 the SIP doesn't require installation of BART until  
15 five years after EPA approves the SIP?

16 A. Again, that's not an actual -- accurate  
17 reflection of what the SIP actually does. The SIP  
18 requires adherence to the milestones. And so as it  
19 turns out, the question that's being asked is not a  
20 practical one because we've never had an issue. In  
21 working with PacifiCorp from well before this time  
22 frame they clearly understood what their obligations  
23 were.

24 But if they had been recalcitrant and refused  
25 to submit permit applications that would have allowed

1 us to meet our milestones, then the executive  
2 secretary could have issued an order or asked the  
3 board to issue an order to compel PacifiCorp to  
4 apply -- to submit a permit application which would  
5 contain emission limits that would meet the milestone  
6 in SIP requirements.

7 Q. I have some questions for you about better  
8 than BART. You also testified that the Company was  
9 required to meet more stringent standards, *i.e.* better  
10 than BART; is that correct?

11 A. That's correct.

12 Q. Reading from your testimony:

13 "Each affected company must  
14 determine what controls meet the better-  
15 than-BART criteria of the state  
16 regulators and best fits company needs."

17 A. Help me find the spot.

18 Q. It's --

19 A. Not that I don't doubt what you're telling  
20 me.

21 Q. Absolutely. I'm roughly page 20, lines 427.

22 A. What is the question that I'm responding to  
23 there?

24 Q. The question I believe had to deal with  
25 Mr. Gebhart. Whether Mr. Gebhart accurately

1 characterized Utah and Wyoming 309 programs.

2 A. Right, okay.

3 Q. And -- let's see, is that right?

4 A. There's two or three paragraphs in that  
5 response.

6 Q. Right. So I was just -- you were describing,  
7 um. It's the furthermore question -- furthermore  
8 paragraph:

9 "Each affected company must  
10 determine what controls meet the better-  
11 than-BART criteria of the state  
12 regulators and best fits the Company  
13 needs."

14 Is that correct?

15 A. Well, I can't find the quotation, but  
16 conceptually that sounds appropriate.

17 Q. Fair enough. I'll leave that one alone.

18 A. Okay.

19 Q. My question is, at this point better than --  
20 a better-than-BART determination has not been  
21 confirmed by EPA because the SIP has not yet been  
22 approved, correct?

23 A. No. First of all, the 309 program, the  
24 better-than-BART criteria in Utah, we used the  
25 presumptive emissions limit that EPA established

1 themselves as what BART was. And then what we did was  
2 insist that the Company have an emissions limit that's  
3 below that.

4 We figured that would be the least  
5 controversial, the most acceptable to EPA, and so  
6 forth. EPA does not -- in a 309 program you don't  
7 really go through this BART analysis like a 308. The  
8 process you do go through is to establish what is  
9 going to be better than BART.

10 Wyoming went through a, what they call a  
11 five-factor analysis, which I'm sure you all read  
12 about in the testimony. Utah did it a little  
13 differently. In each case we both came out with  
14 emission limits and permits that exceeded or were more  
15 stringent than whatever we determined was BART for a  
16 given source.

17 So that was the way we went about it. And  
18 EPA approves a SIP, not -- there aren't BART  
19 determinations *per se* in a 309 program. It's very  
20 different.

21 Q. Is it your testimony that EPA cannot reject  
22 the SIP and the emission limits for SO<sub>2</sub> that the state  
23 has adopted?

24 A. No, that's not my testimony.

25 Q. Thank you. In fact, EPA could reject the

1 Utah SIP if EPA determines that in fact the  
2 alternative plan that you've been describing would not  
3 necessarily result in better-than-BART emission  
4 limits; isn't that correct?

5 A. That is their responsibility to do that. And  
6 that's what the state's been working with EPA -- one  
7 of the things has been working with EPA for a number  
8 of years to resolve.

9 And in discussing this with the air director  
10 and staff at the Utah Division of Air Quality they  
11 seem to think they're pretty close to agreement. So  
12 hopefully it'll be approved within the time frame  
13 we've indicated.

14 Q. So -- but if it's -- isn't it true,  
15 Mr. Sprott, that we won't know what better than BART  
16 is until EPA approves the SIP? The Utah SIP?

17 A. Utah has already made a determination of what  
18 better than BART is that's legally enforceable. So  
19 there is that -- there is a legally-enforceable  
20 better-than-BART determination on the books today.

21 It may be that EPA could make that more  
22 stringent or, or agree with it. Those are  
23 possibilities. But it doesn't eliminate the fact that  
24 PacifiCorp has a legal compliance obligation to adhere  
25 to what our determination was at the state at the

1 time.

2 Q. Thank you. And you, you talked about the  
3 presumptive BART limits in Utah, and -- which we'll  
4 talk about. You correctly quoted those for Hunter and  
5 Huntington. The SO<sub>2</sub> presumptive BART is .15 MMBTU,  
6 and for NO<sub>x</sub> .28.

7 Utah has done better than that. The SO<sub>2</sub>  
8 rates -- which I assume you're -- this is what you're  
9 calling better than BART -- are .12, NO<sub>x</sub> .26; is that  
10 correct?

11 A. Yes, that's correct.

12 Q. So Utah permitted rates are better than BART?  
13 Just close the circle here.

14 A. Yes, ma'am.

15 Q. Are you familiar with several recent EPA BART  
16 determinations in New Mexico and Oklahoma?

17 A. I'm familiar with them, yes. I'm not sure I  
18 can testify on every last detail or question you might  
19 ask me.

20 Q. Fair enough. Are you aware that EPA proposed  
21 an emission limit of .05 pounds-per-million BTU for  
22 the San Juan generating station?

23 MR. MOSCON: Beyond the scope of testimony.

24 CHAIRMAN BOYER: Sustained.

25 Q. (By Ms. Smith) And are you aware that

1 Oklahoma, for its SO<sub>2</sub> emission limits, are only .06  
2 MMBTU for six of the Oklahoma units?

3 MR. MOSCON: Same objection.

4 CHAIRMAN BOYER: Sustained.

5 Q. (By Ms. Smith) Taking these emission limits  
6 as speculative if you want, these limits are well  
7 below the PacifiCorp better-than-BART limits, correct?

8 MR. MOSCON: Well, again, same objection  
9 that --

10 MS. SMITH: We have the documents here that  
11 we can show you. These are very recent proposed rules  
12 in this region. New Mexico and the State of Oklahoma  
13 have proposed FIPs, federal implementation plans.  
14 They overrule the state SIPs.

15 And those limits are just about half of what  
16 Mr. Sprott is testifying will be better than BART in  
17 the State of Utah.

18 MR. MOSCON: And --

19 CHAIRMAN BOYER: Unfortunately they, you  
20 know, it's a little late in the game to be submitting  
21 this. This probably should have been submitted with  
22 the surrebuttal testimony.

23 Q. (By Ms. Smith) Is there a risk that EPA  
24 could disapprove the Utah and Wyoming SIPs?

25 A. This sounds like the question you posed to



1 Ms. Woollums earlier. Yes, there is some risk. And  
2 I'm not gonna speculate on what it -- how much over  
3 zero it might be.

4 Q. Fair enough.

5 A. Okay.

6 Q. Is there a risk EPA may finalize those SIPs  
7 with SO<sub>2</sub> and NO<sub>x</sub> limits well below the current Utah and  
8 Wyoming better-than-BART limits?

9 A. No, I don't think it would be well below.  
10 One of the things -- getting back to your earlier  
11 question -- is that each unit is -- the technology is  
12 considered on its own. And New Mexico -- at the time  
13 I believe New Mexico was -- had gone to 308. And  
14 Oklahoma is a 308 state. And Mexico is back in the  
15 309 fold now.

16 Q. Yep.

17 A. But again, that process is very different.  
18 So EPA was evaluating specific state BART  
19 determinations. And in Utah and Wyoming the  
20 evaluation is whether, collectively, our programs are  
21 better than the milestone.

22 So it's a very different kind of process, and  
23 I think allows a lot more flexibility that -- I think  
24 we'll be successful. My personal opinion is that the  
25 SIP will be approved with these limits.

1 Q. If EPA emission limits for say NO<sub>x</sub> are  
2 similar to the recent proposal that I just discussed  
3 is it feasible the Company may be required to install  
4 additional control technology, such as more SCR units?

5 MR. MOSCON: Objection. There's been no  
6 foundation that Mr. Sprott's an engineer that would  
7 talk about what kind of pollution control limitations  
8 the current controls are able to limit their control  
9 to.

10 CHAIRMAN BOYER: Why don't you try again,  
11 Ms. Smith.

12 Q. (By Ms. Smith) If EPA emission limits for  
13 NO<sub>x</sub> were below this better than BART that the state  
14 has adopted, is it feasible the Company may be  
15 required to install additional control technologies  
16 such as SCR?

17 A. Your, your question is a little confusing.  
18 You asked me is it feasible that they can install it.  
19 And yes, it's feasible. Which is one of the things  
20 that Doctor --

21 Q. May be required, sorry. Is it feasible the  
22 Company may be required to install additional control  
23 technologies if the NO<sub>x</sub> -- the ultimate final EPA NO<sub>x</sub>  
24 emission rates are less than the state-approved better  
25 than BART?

1 MR. MOSCON: And that goes to my objection.  
2 I don't think we've established that this witness  
3 knows the particulate level or the emission level that  
4 the current pollution control devices can filter down  
5 to to be able to answer that question.

6 CHAIRMAN BOYER: Well, let's see if he can  
7 answer that.

8 THE WITNESS: That actually was gonna be my  
9 response. Because it's possible, depending upon what  
10 the actual emission limit was, that the current  
11 equipment could be fine tuned or designed, altered, or  
12 operated in such a way that you could achieve a lower  
13 emission limit. That's not unusual.

14 But I -- as Counsel said, I'm not an  
15 engineer, so I don't know at what point that might  
16 happen.

17 Q. (By Ms. Smith) Do permits issued by the  
18 State of Utah require the installation of a particular  
19 technology, or a requirement that sources meet certain  
20 emission limits?

21 A. Generally Utah favors performance over a  
22 definition of how -- what the solution is. So the  
23 first thing we establish is the emission limit itself.  
24 But the permit, the ultimate permit that's issued does  
25 contain a description of the equipment the Company is

1 going to install, and so on and so forth. But the  
2 first quantity to be determined is the emission limit,  
3 not the equipment.

4 Q. And in your position as an air regulator are  
5 emission controls the only mechanism to achieve  
6 emission limits?

7 A. Are you referring to post-combustion emission  
8 controls?

9 Q. For meeting emission levels can a source  
10 comply by opting for fuel switching, retirement, or  
11 repowering to meet those objectives?

12 A. It would depend upon what the emission limit  
13 would be what the appropriate selection might be.

14 Q. I'm asking if those are options. Does the  
15 State of Utah require only emission controls as  
16 opposed to those other options? Those other options  
17 are available to sources?

18 A. As I indicated, we don't dictate the  
19 technology that's required to meet the emission limit.

20 MS. SMITH: Thank you for your time,  
21 Mr. Sprott, I have no further questions.

22 THE WITNESS: Thank you.

23 CHAIRMAN BOYER: Do any of the other parties  
24 have cross examination for Mr. Sprott?

25 Okay, the Commissioners don't either.

1 Any redirect, Mr. Moscon?

2 MR. MOSCON: No redirect.

3 CHAIRMAN BOYER: Okay, thank you.

4 And thank you, Ms. Smith.

5 I think that concludes this portion of the  
6 case, in any event. Well, let me, let me summarize  
7 where I think we are at this point. Now, we've heard  
8 the testimony for and against the approval of the  
9 stipulation.

10 On Monday next, on the 8th, we will hear the  
11 stipulation on cost of service and rate design in the  
12 morning, and then in the afternoon at 5:00 we'll hear  
13 from public witnesses on both stipulations. And then  
14 that will conclude the proceedings in this case. Am I  
15 wrong on any of that?

16 Okay. Well, thank you all for your  
17 attendance and your participation.

18 Mr. Sprott, you're excused.

19 THE WITNESS: Thank you very much.

20 CHAIRMAN BOYER: And we'll see you Monday  
21 morning. Some of you.

22 (The hearing was concluded at 2:13 p.m.)

23

24

25

C E R T I F I C A T E

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE        )

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 213, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

SIGNED ON THIS 13th DAY OF August, 2011.

Kelly L. Wilburn, CSR, RPR  
Utah CSR No. 109582-7801

<b>\$</b>	<p><b>1.2</b> [2] - 58:8, 92:21  <b>1.5</b> [1] - 27:9  <b>1.7</b> [1] - 93:24  <b>1.9</b> [1] - 48:8  <b>1.O</b> [1] - 58:6  <b>1.OSR</b> [1] - 58:11  <b>10</b> [4] - 27:3, 36:8, 47:24, 201:4  <b>10,000-a-day</b> [1] - 202:13  <b>10,000-per-day</b> [2] - 202:4, 202:9  <b>10-035-124</b> [3] - 8:4, 15:7, 17:11  <b>10-05-14</b> [1] - 8:5  <b>10.O</b> [1] - 51:24  <b>100</b> [1] - 52:17  <b>100-10(k)</b> [1] - 12:17  <b>106</b> [1] - 83:22  <b>11</b> [1] - 47:5  <b>11-035-46</b> [1] - 8:5  <b>11-035-47</b> [1] - 8:6  <b>11.3</b> [2] - 26:11, 49:14  <b>117</b> [1] - 47:4  <b>11:30</b> [2] - 139:16, 159:14  <b>12</b> [6] - 41:21, 165:12, 166:9, 193:14, 196:22, 207:9  <b>12/31/2008</b> [1] - 146:2  <b>13</b> [3] - 111:10, 111:12, 183:23  <b>13-month</b> [1] - 42:9  <b>14</b> [2] - 80:2, 93:23  <b>140</b> [1] - 182:20  <b>1407</b> [1] - 105:8  <b>144</b> [1] - 182:12  <b>147</b> [1] - 182:12  <b>14th</b> [1] - 23:17  <b>15</b> [9] - 42:3, 42:8, 91:20, 111:10, 111:12, 111:16, 170:11, 193:13, 207:5  <b>15-minute</b> [1] - 74:8  <b>155</b> [1] - 160:15  <b>15th</b> [1] - 89:6  <b>160</b> [2] - 24:2, 44:21  <b>169</b> [1] - 166:9  <b>18</b> [1] - 97:2  <b>18-month</b> [1] - 199:7  <b>186</b> [1] - 165:13  <b>188.1</b> [1] - 23:11  <b>189</b> [1] - 165:14  <b>195</b> [2] - 112:18, 128:9  <b>197</b> [2] - 112:23, 189:21  <b>1970</b> [1] - 161:9  <b>1972</b> [1] - 161:13</p>	<p><b>1990</b> [1] - 174:14  <b>1991</b> [1] - 84:11  <b>1994</b> [1] - 178:22  <b>1999</b> [4] - 88:18, 105:19, 114:24, 181:17  <b>19th</b> [1] - 23:15  <b>1:00</b> [1] - 159:12  <b>1:03</b> [1] - 159:14</p>	<p>151:2, 156:6, 156:10, 156:11, 178:22, 181:21, 184:18, 196:13  <b>2008-2009</b> [1] - 137:19  <b>2008/2009</b> [1] - 134:4  <b>2009</b> [12] - 118:7, 124:11, 125:1, 125:7, 125:13, 128:4, 129:3, 129:21, 132:12, 134:12, 135:3, 146:12  <b>201</b> [1] - 21:20  <b>2010</b> [4] - 37:22, 56:3, 56:4, 92:22  <b>2011</b> [27] - 8:1, 26:5, 27:16, 32:19, 33:14, 36:19, 37:5, 37:10, 40:2, 89:20, 132:19, 136:16, 137:6, 139:20, 139:24, 140:16, 141:15, 152:16, 181:22, 186:25, 187:19, 189:13, 195:10, 196:13, 196:18, 200:9, 200:14  <b>2012</b> [8] - 32:12, 35:11, 37:6, 37:10, 42:3, 50:4, 180:23, 200:14  <b>2013</b> [3] - 30:8, 32:12, 85:15  <b>2017</b> [1] - 93:23  <b>2018</b> [2] - 85:15, 186:19  <b>2022</b> [2] - 93:4, 93:10  <b>2023</b> [2] - 92:11, 92:12  <b>2023/2024</b> [2] - 148:16, 148:20  <b>2029</b> [5] - 147:8, 148:15, 148:24, 149:15, 151:1  <b>21</b> [3] - 26:5, 37:9, 178:18  <b>21st</b> [1] - 36:19  <b>22</b> [5] - 37:22, 56:3, 129:3, 129:21, 132:12  <b>23</b> [1] - 89:20  <b>232.4</b> [1] - 23:7  <b>24</b> [1] - 23:22  <b>24.13</b> [1] - 133:7, 133:21, 135:22, 136:10, 137:12, 137:18, 138:6, 138:7, 138:8, 139:4  <b>24th</b> [1] - 23:5  <b>25</b> [3] - 76:13, 187:20, 196:23  <b>26</b> [3] - 106:18,</p>	<p>106:19, 207:9  <b>260</b> [2] - 170:11, 170:14  <b>27</b> [1] - 201:16  <b>27th</b> [1] - 149:4  <b>28</b> [3] - 32:19, 33:14, 207:6  <b>28th</b> [1] - 25:4  <b>2:13</b> [1] - 213:22  <b>2R</b> [1] - 85:16</p>
<b>2</b>	<p><b>2</b> [32] - 93:24, 113:17, 113:18, 115:5, 117:2, 117:15, 117:23, 124:6, 124:10, 124:19, 125:1, 125:9, 128:3, 128:15, 129:4, 129:22, 132:14, 132:19, 146:11, 146:20, 146:22, 147:4, 148:11, 148:23, 149:22, 149:25, 150:6, 150:16, 150:25, 174:13, 183:21, 183:22  <b>2.3</b> [4] - 125:20, 127:4, 134:20, 134:24  <b>2.7</b> [2] - 93:4, 93:9  <b>20</b> [2] - 124:11, 203:21  <b>200</b> [2] - 112:18, 128:9  <b>2000</b> [2] - 114:17, 114:19  <b>2003</b> [2] - 181:20, 189:2  <b>2005</b> [9] - 92:11, 92:22, 113:20, 113:25, 114:2, 114:18, 118:6, 125:5, 181:18  <b>2006</b> [10] - 181:18, 182:15, 182:18, 183:5, 183:13, 183:24, 184:5, 184:11, 198:12, 198:15  <b>2007</b> [6] - 115:3, 116:25, 117:13, 118:6, 119:25, 120:5  <b>2008</b> [25] - 101:25, 102:1, 102:4, 102:17, 118:6, 123:17, 124:7, 127:20, 127:25, 128:6, 131:19, 134:12, 134:15, 135:3, 145:12, 145:16, 145:24,</p>	<p><b>2</b></p>	<p><b>3</b></p>	
<b>3</b>	<p><b>3</b> [3] - 8:1, 62:17, 147:4  <b>3,300</b> [1] - 24:4  <b>3,700</b> [1] - 23:23  <b>30.5</b> [1] - 27:12  <b>300</b> [1] - 44:21  <b>308</b> [8] - 181:17, 183:16, 183:17, 192:16, 192:17, 205:7, 209:13, 209:14  <b>308(2)(e)</b> [1] - 185:17  <b>308(e)(2)(i)(B)</b> [1] - 190:16  <b>309</b> [21] - 180:11, 180:14, 181:17, 183:14, 183:16, 183:18, 184:24, 185:1, 185:9, 188:25, 189:14, 190:3, 191:21, 192:11, 192:18, 193:2, 204:1, 204:23, 205:6, 205:19, 209:15  <b>30th</b> [1] - 23:8  <b>31</b> [2] - 37:10, 201:24  <b>33.6</b> [1] - 37:11  <b>360</b> [1] - 92:15  <b>38</b> [1] - 47:6  <b>39</b> [3] - 23:25, 24:1, 161:13</p>	<p><b>3</b></p>	<p><b>4</b></p>	
<b>0</b>	<p><b>05</b> [1] - 207:21  <b>06</b> [1] - 208:1  <b>09-035-15</b> [1] - 8:5</p>	<p><b>0</b></p>	<p><b>0</b></p>	
<b>1</b>	<p><b>1</b> [34] - 27:16, 35:11, 58:7, 113:17, 113:18, 115:5, 117:2, 117:15, 117:23, 120:23, 121:10, 124:6, 124:10, 124:19, 125:1, 125:9, 128:3, 128:15, 129:4, 129:21, 132:14, 146:11, 146:20, 146:22, 147:4, 148:11, 148:22, 149:22, 149:25, 150:6, 150:16, 150:25, 183:21, 183:22  <b>1.1</b> [1] - 58:8</p>	<p><b>1</b></p>	<p><b>1</b></p>	

<p><b>49</b> [1] - 30:9 <b>4R</b> [7] - 129:6, 129:18, 130:3, 133:14, 136:12, 139:20, 145:13</p>	<p><b>70.5</b> [1] - 27:11 <b>70/30</b> [3] - 34:25, 71:3, 71:15 <b>71</b> [1] - 43:8 <b>746-100</b> [1] - 104:8 <b>77</b> [1] - 43:12 <b>7th</b> [1] - 124:7</p>	<p><b>absolutely</b> [1] - 119:19 <b>abundance</b> [1] - 115:19 <b>accelerated</b> [2] - 47:19, 147:23 <b>accelerating</b> [1] - 107:14 <b>accept</b> [1] - 48:4 <b>acceptable</b> [2] - 49:11, 205:5 <b>acceptance</b> [1] - 23:13 <b>accepts</b> [1] - 49:17 <b>accommodate</b> [1] - 171:18 <b>accomplish</b> [1] - 193:7 <b>accomplished</b> [1] - 53:4 <b>accordance</b> [3] - 109:4, 180:10, 195:9 <b>according</b> [7] - 92:20, 97:2, 148:12, 148:18, 185:20, 187:13, 194:1 <b>accordingly</b> [2] - 143:12, 153:18 <b>Accordingly</b> [1] - 195:8 <b>account</b> [17] - 34:19, 34:20, 34:24, 36:1, 37:2, 41:20, 41:21, 41:24, 61:5, 61:7, 61:25, 62:5, 69:10, 76:5, 76:8, 80:14, 80:18 <b>accounting</b> [6] - 40:17, 43:3, 49:21, 50:17, 52:2, 77:22 <b>accrue</b> [1] - 36:13 <b>accurate</b> [4] - 186:3, 186:5, 191:4, 202:16 <b>accurately</b> [1] - 203:25 <b>achievable</b> [1] - 86:18 <b>achieve</b> [5] - 188:1, 188:24, 198:18, 211:12, 212:5 <b>achieved</b> [1] - 53:24 <b>acquire</b> [1] - 31:7 <b>acquires</b> [1] - 38:15 <b>acquisitions</b> [1] - 64:24 <b>Act</b> [6] - 161:10, 174:15, 195:17, 197:22, 199:7 <b>act</b> [5] - 186:22, 198:20, 199:8, 200:14, 200:24</p>	<p><b>acted</b> [3] - 163:24, 181:12, 200:19 <b>action</b> [13] - 93:19, 107:21, 123:25, 181:13, 184:22, 189:1, 189:4, 189:7, 199:5, 199:10, 201:1, 202:2, 202:12 <b>actions</b> [6] - 164:9, 164:11, 164:14, 179:23, 200:4, 201:5 <b>active</b> [1] - 55:16 <b>activities</b> [1] - 22:20 <b>acts</b> [1] - 80:21 <b>actual</b> [15] - 29:25, 35:1, 36:2, 52:17, 62:2, 67:18, 68:1, 69:4, 169:19, 174:20, 188:24, 191:8, 191:15, 202:16, 211:10 <b>add</b> [7] - 65:19, 72:4, 72:13, 86:2, 97:24, 98:10, 142:1 <b>added</b> [1] - 145:8 <b>addition</b> [3] - 24:2, 45:5, 52:3 <b>additional</b> [35] - 29:21, 39:23, 41:2, 41:5, 47:21, 49:14, 52:15, 78:8, 78:13, 80:13, 80:23, 85:2, 91:2, 93:17, 93:18, 93:21, 93:23, 94:12, 94:19, 95:1, 95:10, 95:12, 124:2, 144:12, 144:18, 150:24, 152:19, 153:11, 156:6, 161:2, 173:12, 173:14, 210:4, 210:15, 210:22 <b>Additionally</b> [2] - 49:12, 50:16 <b>additions</b> [1] - 42:12 <b>address</b> [15] - 21:19, 33:19, 41:5, 44:19, 44:20, 48:20, 72:15, 83:20, 83:22, 105:1, 105:8, 160:12, 160:15, 163:10, 167:15 <b>addressed</b> [11] - 32:7, 41:1, 41:8, 41:16, 41:20, 41:21, 54:5, 70:10, 151:23, 167:11, 179:20 <b>addresses</b> [3] - 27:24, 38:5, 55:22 <b>addressing</b> [1] - 55:16 <b>adds</b> [1] - 57:2 <b>adequate</b> [1] - 16:16</p>	<p><b>adequately</b> [2] - 38:5, 40:25 <b>adhere</b> [1] - 206:24 <b>adherence</b> [1] - 202:18 <b>adjust</b> [1] - 11:12 <b>adjusted</b> [2] - 30:1, 196:18 <b>adjustment</b> [9] - 26:11, 27:25, 37:14, 48:8, 48:9, 49:14, 49:16, 69:21, 143:2 <b>adjustments</b> [20] - 23:13, 26:7, 26:9, 26:10, 26:18, 28:3, 30:1, 43:6, 46:22, 47:1, 47:14, 47:15, 47:17, 47:18, 47:22, 48:3, 48:5, 48:16, 50:15, 52:15 <b>Administration</b> [2] - 160:25, 161:1 <b>admission</b> [16] - 14:8, 15:9, 15:23, 16:4, 17:11, 17:21, 18:2, 58:14, 58:16, 59:9, 59:11, 77:3, 78:25, 81:8, 103:21, 104:1 <b>admit</b> [11] - 14:6, 15:3, 17:7, 17:23, 18:6, 19:1, 19:12, 20:8, 58:23, 59:14, 104:11 <b>admitted</b> [23] - 13:17, 14:10, 14:14, 15:11, 15:12, 16:5, 16:7, 17:13, 17:14, 18:3, 18:4, 18:23, 19:9, 59:17, 77:7, 77:8, 79:2, 79:4, 81:10, 81:12, 83:1, 84:18, 104:13 <b>Admitted</b> [1] - 14:12 <b>adopt</b> [8] - 47:15, 48:17, 50:24, 58:20, 58:23, 62:19, 76:22, 180:12 <b>adopted</b> [6] - 46:21, 47:13, 121:1, 174:15, 205:23, 210:14 <b>adoption</b> [1] - 46:25 <b>adopts</b> [2] - 50:13, 98:2 <b>advance</b> [5] - 49:3, 65:7, 76:4, 180:25, 186:23 <b>advantage</b> [1] - 39:14 <b>advocated</b> [1] - 53:11</p>
<p><b>5</b></p>	<p><b>8</b></p>			
<p><b>5</b> [4] - 124:25, 125:7, 125:13, 128:4 <b>5-6</b> [2] - 120:19, 120:25 <b>5.71</b> [1] - 36:15 <b>50</b> [1] - 30:24 <b>50.9</b> [1] - 36:20 <b>51</b> [1] - 31:3 <b>51.308(e)(1)(c)(iv)</b> [1] - 187:14 <b>51.9</b> [1] - 27:5 <b>52</b> [1] - 31:10 <b>53</b> [2] - 31:14, 72:2 <b>53.309</b> [1] - 191:11 <b>54</b> [1] - 32:8 <b>55</b> [1] - 32:23 <b>56</b> [1] - 33:4 <b>57</b> [2] - 22:7, 33:23 <b>58</b> [2] - 34:4, 64:16 <b>580</b> [1] - 194:14 <b>59</b> [2] - 34:13, 56:6 <b>5:00</b> [1] - 213:12</p>	<p><b>8</b> [6] - 41:21, 76:1, 91:20, 93:16, 93:17, 143:1 <b>80</b> [5] - 148:23, 149:14, 149:23, 150:4 <b>84111</b> [1] - 21:20 <b>84116</b> [1] - 105:9 <b>8:00</b> [1] - 9:8 <b>8:02</b> [1] - 8:1 <b>8th</b> [1] - 213:10</p>			
<p><b>6</b></p>	<p><b>9</b></p>			
<p><b>6</b> [1] - 79:21 <b>60</b> [2] - 35:19, 39:5 <b>609</b> [1] - 194:3 <b>61</b> [1] - 35:23 <b>610</b> [1] - 194:3 <b>62</b> [1] - 36:17 <b>624</b> [1] - 194:15 <b>629.1</b> [1] - 27:10 <b>63</b> [1] - 36:23 <b>633</b> [1] - 110:8 <b>634</b> [1] - 111:4 <b>636</b> [1] - 110:8 <b>64</b> [2] - 37:1, 55:25 <b>65</b> [1] - 37:19 <b>652</b> [1] - 201:24 <b>66</b> [1] - 41:7 <b>664</b> [1] - 202:6 <b>67</b> [1] - 41:14 <b>68</b> [1] - 42:1 <b>69</b> [1] - 42:4</p>	<p><b>9</b> [3] - 106:18, 106:19, 145:17 <b>90</b> [3] - 148:24, 149:23, 150:5 <b>95</b> [2] - 148:23, 149:14 <b>9:25</b> [1] - 74:11 <b>9:47</b> [1] - 74:11</p>			
<p><b>7</b></p>	<p><b>A</b></p>			
<p><b>7</b> [2] - 40:3, 42:10 <b>7.94</b> [1] - 27:6 <b>70</b> [2] - 29:24, 104:8</p>	<p><b>A.M</b> [1] - 8:1 <b>a.m</b> [2] - 74:11, 159:14 <b>AARP</b> [6] - 11:1, 11:4, 11:8, 18:8, 18:13, 22:8 <b>abide</b> [1] - 31:25 <b>ability</b> [4] - 39:22, 111:21, 167:20, 176:23 <b>able</b> [18] - 110:15, 110:18, 137:1, 144:1, 145:1, 148:19, 149:23, 149:25, 150:4, 150:6, 159:23, 175:24, 176:14, 191:13, 197:17, 197:21, 210:8, 211:5 <b>Absolutely</b> [13] - 77:12, 89:4, 91:8, 94:9, 98:8, 110:22, 129:16, 131:5, 137:15, 138:21, 165:17, 195:15, 203:21</p>			



<p><b>affairs</b> [2] - 21:19, 179:3</p> <p><b>affected</b> [2] - 203:13, 204:9</p> <p><b>affecting</b> [2] - 89:2, 106:18</p> <p><b>affirmatively</b> [1] - 104:9</p> <p><b>afternoon</b> [2] - 178:3, 213:12</p> <p><b>agencies</b> [5] - 85:4, 94:13, 94:16, 114:25, 161:16</p> <p><b>Agency</b> [1] - 98:1</p> <p><b>agency</b> [1] - 107:21</p> <p><b>aggressive</b> [1] - 39:17</p> <p><b>aggressively</b> [2] - 38:9, 39:9</p> <p><b>agin</b> [1] - 8:19</p> <p><b>ago</b> [4] - 88:14, 128:8, 134:2, 181:3</p> <p><b>agree</b> [42] - 28:1, 28:6, 28:9, 30:15, 31:8, 32:18, 33:7, 33:12, 33:18, 34:9, 35:5, 41:12, 42:25, 43:9, 43:13, 48:23, 49:15, 65:15, 91:24, 93:2, 100:13, 101:8, 101:18, 113:19, 138:2, 139:5, 154:5, 154:7, 155:6, 156:15, 157:7, 166:22, 167:1, 167:10, 167:13, 170:2, 173:11, 184:23, 186:9, 196:24, 200:9, 206:22</p> <p><b>agreed</b> [14] - 25:1, 26:7, 27:2, 29:22, 30:4, 31:15, 52:16, 54:3, 65:12, 69:16, 70:2, 110:14, 200:13</p> <p><b>agreed-upon</b> [2] - 29:22, 69:16</p> <p><b>agreement</b> [10] - 23:4, 28:16, 31:23, 42:23, 43:22, 48:13, 54:1, 127:17, 206:11</p> <p><b>agreements</b> [2] - 26:13, 31:22</p> <p><b>agrees</b> [10] - 31:20, 31:25, 42:1, 42:11, 47:23, 48:25, 49:4, 49:25, 65:6, 73:14</p> <p><b>ahead</b> [2] - 58:20, 174:7</p> <p><b>air</b> [25] - 61:17, 86:11, 86:17, 108:11, 124:5, 155:14, 157:18, 161:7,</p>	<p>161:11, 161:14, 161:18, 161:19, 161:23, 162:9, 162:18, 165:9, 171:3, 171:14, 171:16, 173:4, 194:20, 199:4, 206:9, 212:4</p> <p><b>Air</b> [12] - 161:10, 162:23, 164:9, 174:15, 194:23, 195:4, 195:7, 195:16, 195:17, 197:22, 199:7, 206:10</p> <p><b>Air Force</b> [2] - 178:17, 178:19</p> <p><b>aircraft</b> [1] - 178:18</p> <p><b>alarmed</b> [1] - 181:2</p> <p><b>align</b> [1] - 146:7</p> <p><b>aligns</b> [1] - 50:14</p> <p><b>all-other</b> [1] - 49:14</p> <p><b>allocate</b> [1] - 68:17</p> <p><b>allocated</b> [12] - 26:20, 27:12, 30:23, 35:13, 35:16, 36:6, 36:10, 36:20, 38:25, 54:7, 69:16, 69:25</p> <p><b>allocation</b> [12] - 35:3, 39:1, 53:23, 67:25, 68:4, 68:11, 68:16, 69:3, 69:11, 69:13, 70:3, 70:20</p> <p><b>allocations</b> [1] - 69:10</p> <p><b>allow</b> [6] - 8:19, 8:25, 34:6, 64:9, 65:13, 107:11</p> <p><b>allowance</b> [1] - 174:17</p> <p><b>allowed</b> [7] - 35:6, 47:16, 47:24, 51:25, 144:17, 189:3, 202:25</p> <p><b>allows</b> [1] - 209:23</p> <p><b>almost</b> [2] - 174:17, 197:22</p> <p><b>alone</b> [1] - 204:17</p> <p><b>altered</b> [1] - 211:11</p> <p><b>alternate</b> [4] - 113:1, 123:15, 128:5, 128:7</p> <p><b>alternative</b> [11] - 97:21, 99:22, 100:13, 100:17, 100:24, 126:2, 130:21, 131:2, 190:17, 191:20, 206:2</p> <p><b>alternatives</b> [14] - 80:19, 99:21, 100:22, 101:3, 101:10, 101:14, 101:16, 101:18, 113:7, 127:8, 130:16, 131:9, 167:24, 168:1</p> <p><b>Alternatives</b> [2] -</p>	<p>101:13, 129:19</p> <p><b>ambient</b> [1] - 108:11</p> <p><b>ambushed</b> [1] - 116:6</p> <p><b>amount</b> [9] - 23:7, 24:9, 27:17, 37:11, 37:12, 49:18, 61:25, 132:8, 173:17</p> <p><b>amounts</b> [2] - 27:13, 48:18</p> <p><b>analyses</b> [4] - 65:13, 80:14, 80:16, 102:13</p> <p><b>analysis</b> [44] - 34:8, 51:18, 51:19, 65:23, 66:1, 98:16, 100:6, 100:7, 100:13, 100:17, 101:11, 101:18, 109:21, 115:4, 117:14, 119:18, 120:5, 120:17, 123:11, 130:16, 130:21, 132:13, 135:17, 140:22, 141:2, 141:12, 141:13, 141:16, 144:16, 156:6, 156:10, 156:11, 157:19, 161:19, 165:7, 167:24, 169:7, 169:17, 169:19, 170:1, 172:15, 197:15, 205:7, 205:11</p> <p><b>analyze</b> [3] - 77:24, 78:6, 156:12</p> <p><b>analyzed</b> [1] - 24:11</p> <p><b>analyzes</b> [2] - 99:22, 102:6</p> <p><b>and-a-half</b> [4] - 9:5, 74:8, 159:1, 159:11</p> <p><b>annual</b> [7] - 30:8, 35:10, 36:24, 92:13, 92:14, 147:6, 148:5</p> <p><b>answer</b> [21] - 63:21, 70:21, 71:21, 94:2, 94:3, 99:8, 102:20, 121:25, 153:2, 154:25, 156:13, 156:24, 174:6, 175:7, 175:15, 176:4, 176:16, 188:20, 199:20, 211:5, 211:7</p> <p><b>answered</b> [1] - 153:1</p> <p><b>answering</b> [2] - 120:7, 172:21</p> <p><b>answers</b> [1] - 100:18</p> <p><b>anticipate</b> [6] - 18:15, 66:16, 89:14, 155:13, 175:25, 176:15</p> <p><b>anticipated</b> [3] - 152:4, 154:12, 163:9</p>	<p><b>anticipation</b> [1] - 158:21</p> <p><b>anyway</b> [1] - 72:6</p> <p><b>Apex</b> [3] - 34:2, 48:16, 49:17</p> <p><b>Apex Plant</b> [4] - 31:4, 31:7, 49:9, 65:22</p> <p><b>apologize</b> [3] - 15:19, 44:12, 159:22</p> <p><b>appear</b> [3] - 10:6, 138:23, 163:7</p> <p><b>appearance</b> [2] - 9:16, 10:11</p> <p><b>appearances</b> [2] - 9:4, 9:9</p> <p><b>appeared</b> [2] - 10:23, 12:15</p> <p><b>appearing</b> [3] - 11:1, 11:4, 63:14</p> <p><b>applaud</b> [1] - 60:25</p> <p><b>applicable</b> [5] - 85:11, 154:11, 164:7, 164:13, 192:16</p> <p><b>application</b> [7] - 24:3, 29:12, 123:18, 123:21, 124:4, 124:6, 203:4</p> <p><b>applications</b> [3] - 185:6, 198:16, 202:25</p> <p><b>applied</b> [5] - 26:20, 68:20, 68:23, 70:4, 179:17</p> <p><b>apply</b> [9] - 69:8, 131:18, 144:12, 154:8, 154:13, 155:18, 196:10, 198:8, 203:4</p> <p><b>applying</b> [1] - 64:16</p> <p><b>appreciate</b> [1] - 177:5</p> <p><b>appreciates</b> [1] - 109:11</p> <p><b>approach</b> [10] - 15:18, 16:21, 118:3, 120:3, 122:6, 132:5, 136:24, 141:18, 143:20, 167:7</p> <p><b>approaching</b> [1] - 82:23</p> <p><b>appropriate</b> [23] - 31:16, 31:20, 38:2, 48:24, 80:19, 83:7, 89:21, 100:11, 103:12, 104:12, 112:25, 113:9, 122:8, 126:13, 131:18, 134:11, 151:10, 158:20, 196:6, 197:7, 197:8, 204:16, 212:13</p> <p><b>approval</b> [9] - 23:6,</p>	<p>32:2, 54:13, 66:23, 162:23, 187:16, 188:14, 192:8, 213:8</p> <p><b>Approval</b> [2] - 195:2, 195:11</p> <p><b>approve</b> [4] - 44:5, 62:24, 181:9, 189:3</p> <p><b>approved</b> [22] - 22:15, 29:19, 36:14, 154:9, 155:7, 189:1, 189:5, 191:25, 192:9, 193:17, 194:20, 195:14, 195:21, 195:22, 199:6, 200:3, 201:17, 204:22, 206:12, 209:25, 210:24</p> <p><b>approves</b> [5] - 193:24, 199:24, 202:15, 205:18, 206:16</p> <p><b>APR</b> [6] - 129:3, 129:21, 131:3, 132:7, 132:9, 132:12</p> <p><b>April</b> [4] - 129:3, 129:21, 132:12, 195:10</p> <p><b>APRs</b> [4] - 130:6, 130:7, 131:16, 131:19</p> <p><b>area</b> [2] - 83:2, 175:16</p> <p><b>areas</b> [1] - 47:22</p> <p><b>argued</b> [1] - 53:22</p> <p><b>arm</b> [1] - 20:23</p> <p><b>arose</b> [1] - 65:21</p> <p><b>arrangements</b> [1] - 159:7</p> <p><b>arrived</b> [2] - 26:15, 43:4</p> <p><b>arriving</b> [1] - 52:8</p> <p><b>art</b> [1] - 198:25</p> <p><b>ARTIE</b> [1] - 44:13</p> <p><b>Artie</b> [1] - 44:20</p> <p><b>Arts</b> [1] - 178:13</p> <p><b>aside</b> [1] - 131:19</p> <p><b>aspects</b> [1] - 25:10</p> <p><b>assert</b> [1] - 31:8</p> <p><b>assess</b> [1] - 100:11</p> <p><b>assessing</b> [2] - 106:21, 161:22</p> <p><b>assessment</b> [7] - 144:3, 158:11, 167:6, 167:8, 167:12, 167:19, 167:22</p> <p><b>asset</b> [2] - 109:3, 143:16</p> <p><b>assets</b> [1] - 157:10</p> <p><b>assignment</b> [2] - 178:19, 178:24</p> <p><b>Assistant</b> [1] - 10:10</p> <p><b>assistant</b> [1] -</p>
---	---	---	--	--

<p>137:23 <b>associated</b> [12] - 28:3, 28:23, 29:21, 34:18, 40:19, 40:23, 42:17, 48:12, 54:4, 73:1, 106:17, 109:2 <b>assume</b> [7] - 147:2, 148:22, 149:5, 150:24, 154:13, 155:21, 207:8 <b>assumed</b> [1] - 66:15 <b>Assuming</b> [1] - 141:19 <b>assuming</b> [6] - 16:15, 17:3, 71:24, 148:8, 152:7, 197:13 <b>assumption</b> [1] - 145:14 <b>assumptions</b> [14] - 24:21, 26:18, 43:5, 140:9, 145:12, 145:16, 145:22, 145:24, 146:7, 146:10, 146:18, 149:6, 149:17, 151:9 <b>attached</b> [4] - 15:21, 58:6, 133:13, 138:20 <b>Attachment</b> [1] - 127:4 <b>attachments</b> [1] - 139:1 <b>attempt</b> [1] - 33:1 <b>attend</b> [1] - 159:23 <b>attendance</b> [1] - 213:17 <b>attention</b> [12] - 47:11, 55:25, 56:5, 56:14, 60:6, 91:19, 92:4, 93:12, 125:19, 129:18, 145:10, 170:10 <b>Attorney General</b> [1] - 10:10 <b>attorney/client</b> [1] - 127:14 <b>attributable</b> [1] - 52:13 <b>attributes</b> [2] - 40:19, 40:24 <b>auction</b> [1] - 174:13 <b>audience</b> [1] - 20:15 <b>August</b> [1] - 32:12 <b>AUGUST</b> [1] - 8:1 <b>authority</b> [1] - 194:21 <b>availability</b> [1] - 149:14 <b>available</b> [21] - 11:24, 12:8, 28:18, 28:20, 39:6, 39:10, 41:3, 41:5, 42:13,</p>	<p>63:19, 81:13, 87:22, 100:11, 109:15, 122:15, 127:10, 162:25, 164:23, 180:9, 182:1, 212:17 <b>average</b> [1] - 42:9 <b>avoid</b> [6] - 46:5, 49:6, 66:5, 71:2, 117:10, 147:23 <b>avoided</b> [1] - 86:12 <b>avoiding</b> [1] - 71:25 <b>award</b> [1] - 108:19 <b>aware</b> [12] - 25:7, 53:10, 55:15, 57:7, 65:22, 78:12, 140:25, 157:16, 200:7, 200:17, 207:20, 207:25</p> <p style="text-align: center;"><b>B</b></p> <p><b>Bachelor</b> [3] - 105:16, 160:22, 178:13 <b>Bachelor's</b> [1] - 84:5 <b>background</b> [5] - 43:8, 83:2, 84:4, 105:15, 132:9 <b>Backing</b> [1] - 99:9 <b>backlog</b> [1] - 201:7 <b>backstop</b> [1] - 108:10 <b>baghouse</b> [1] - 157:23 <b>baghouses</b> [8] - 151:9, 158:2, 163:14, 175:21, 175:24, 176:12, 176:14, 176:19 <b>Baghouses</b> [1] - 152:2 <b>balance</b> [11] - 35:8, 35:20, 36:12, 37:1, 37:3, 37:5, 37:6, 37:8, 50:8, 53:2, 108:4 <b>balancing</b> [1] - 40:10 <b>balancing account</b> [11] - 35:22, 35:24, 35:25, 36:12, 36:18, 37:4, 37:13, 38:2, 40:8, 40:14, 40:24 <b>ball</b> [1] - 122:18 <b>band</b> [1] - 143:21 <b>bar</b> [1] - 159:16 <b>barred</b> [1] - 30:24 <b>BART</b> [80] - 108:15, 113:20, 114:1, 114:20, 116:11, 120:17, 122:22, 123:12, 124:14, 124:15, 124:17,</p>	<p>151:17, 151:19, 151:21, 153:25, 154:3, 154:9, 155:8, 161:19, 162:25, 183:7, 183:20, 184:14, 184:15, 185:16, 187:15, 188:12, 188:13, 190:15, 190:21, 191:1, 191:17, 191:25, 192:6, 192:16, 192:21, 193:1, 193:3, 193:6, 193:7, 193:12, 193:13, 193:16, 193:23, 194:10, 196:1, 196:2, 196:10, 196:15, 196:25, 199:24, 202:3, 202:14, 203:8, 203:10, 203:15, 204:11, 204:20, 204:24, 205:1, 205:7, 205:9, 205:15, 205:18, 206:3, 206:15, 206:18, 206:20, 207:3, 207:5, 207:9, 207:12, 207:15, 208:7, 208:16, 209:8, 209:18, 210:13, 210:25 <b>BART-eligible</b> [7] - 183:7, 185:16, 190:15, 191:1, 191:17, 194:10, 196:15 <b>base</b> [3] - 27:8, 36:19, 70:3 <b>Base</b> [1] - 178:19 <b>Based</b> [1] - 143:2 <b>based</b> [19] - 23:11, 24:25, 40:1, 68:5, 68:17, 69:10, 71:10, 72:17, 98:16, 100:9, 100:14, 101:19, 102:9, 102:13, 116:25, 118:16, 171:21, 176:4, 180:15 <b>basing</b> [1] - 144:4 <b>basis</b> [17] - 27:9, 27:10, 27:11, 27:12, 27:13, 31:21, 36:20, 45:11, 67:19, 68:21, 69:8, 69:20, 69:22, 84:24, 102:9, 114:10, 120:7 <b>be..</b> [1] - 115:8 <b>became</b> [5] - 150:22, 157:21, 181:2, 183:20, 201:5 <b>BECK</b> [4] - 51:10,</p>	<p>73:10, 73:12, 73:14 <b>Beck</b> [8] - 10:16, 21:3, 51:3, 51:5, 51:6, 54:14, 70:13, 73:11 <b>become</b> [5] - 148:8, 155:22, 157:8, 163:12, 174:16 <b>becomes</b> [2] - 154:11, 155:15 <b>began</b> [2] - 22:14, 119:18 <b>begin</b> [10] - 37:21, 62:12, 74:9, 81:16, 82:14, 82:20, 83:11, 85:12, 124:25, 125:4 <b>Beginning</b> [2] - 182:10, 190:10 <b>beginning</b> [11] - 26:1, 27:15, 36:19, 79:20, 80:3, 122:21, 146:14, 178:23, 182:18, 190:8, 194:16 <b>begins</b> [2] - 165:24, 170:18 <b>begun</b> [1] - 158:11 <b>behalf</b> [11] - 10:1, 10:2, 11:1, 17:17, 38:21, 44:25, 46:7, 55:6, 72:14, 91:21, 179:7 <b>behaves</b> [1] - 73:5 <b>behind</b> [2] - 139:22, 201:5 <b>belabor</b> [1] - 103:4 <b>belief</b> [1] - 22:11 <b>believes</b> [8] - 38:4, 50:6, 50:10, 50:19, 51:20, 52:23, 56:1, 193:22 <b>below</b> [6] - 47:6, 205:3, 208:7, 209:7, 209:9, 210:13 <b>bench</b> [1] - 138:25 <b>benefit</b> [5] - 82:24, 143:21, 144:18, 147:22, 152:5 <b>benefits</b> [1] - 53:16 <b>best</b> [14] - 67:13, 75:25, 87:19, 106:16, 124:24, 139:6, 162:24, 167:15, 167:20, 168:5, 169:4, 180:9, 203:16, 204:12 <b>best-available</b> [1] - 180:9 <b>better</b> [38] - 11:15, 31:18, 66:17, 143:23, 157:21, 180:9, 184:15, 190:20, 192:21, 193:1, 193:3, 193:5, 193:11,</p>	<p>193:16, 193:23, 196:2, 196:25, 203:7, 203:9, 203:14, 204:10, 204:19, 204:20, 204:24, 205:9, 206:3, 206:15, 206:18, 206:20, 207:7, 207:9, 207:12, 208:7, 208:16, 209:8, 209:21, 210:13, 210:24 <b>better-than</b> [1] - 196:25 <b>better-than-BART</b> [11] - 184:15, 192:21, 193:1, 193:3, 193:16, 204:20, 204:24, 206:3, 206:20, 208:7, 209:8 <b>between</b> [18] - 29:25, 35:1, 36:2, 36:4, 40:18, 52:11, 60:7, 66:18, 70:20, 76:14, 92:22, 93:15, 108:4, 124:2, 125:5, 199:1, 199:13, 200:11 <b>beyond</b> [6] - 42:8, 52:15, 119:13, 126:11, 130:10, 170:4 <b>Beyond</b> [1] - 207:23 <b>bid</b> [1] - 40:4 <b>bidder</b> [1] - 34:5 <b>bids</b> [1] - 40:6 <b>billing</b> [1] - 67:18 <b>billion</b> [8] - 27:9, 92:12, 92:21, 93:4, 93:9, 93:24, 152:25 <b>Bird</b> [3] - 39:12, 41:3, 71:7 <b>bit</b> [5] - 46:2, 60:1, 110:6, 126:10, 159:3 <b>blown</b> [1] - 145:9 <b>board</b> [2] - 118:5, 203:3 <b>Board</b> [2] - 194:24, 195:5 <b>bonus</b> [3] - 34:22, 41:8, 49:23 <b>books</b> [1] - 206:20 <b>borne</b> [3] - 170:5, 174:24, 175:11 <b>bound</b> [2] - 154:23, 188:24 <b>box</b> [1] - 149:20 <b>break</b> [7] - 9:5, 9:6, 58:13, 62:13, 139:16, 158:16, 158:19 <b>brief</b> [14] - 8:13, 12:6, 25:15, 57:4, 59:20, 77:10, 77:12, 80:8, 84:3, 105:14,</p>
--	--	--	---	---

<p>159:3, 160:20, 178:11 <b>briefed</b> [1] - 45:14 <b>briefly</b> [4] - 21:23, 22:23, 38:6, 55:10 <b>bring</b> [4] - 60:5, 63:24, 119:4, 175:4 <b>brings</b> [1] - 177:15 <b>broad</b> [2] - 126:25, 135:8 <b>broker</b> [3] - 33:7, 38:20, 40:2 <b>Brotherhood</b> [1] - 22:7 <b>brought</b> [1] - 16:19 <b>Bruce Plenk</b> [3] - 10:25, 11:3, 63:7 <b>BTU</b> [2] - 193:14, 207:21 <b>Building</b> [1] - 44:22 <b>building</b> [3] - 144:12, 147:18, 158:1 <b>bulletin</b> [1] - 195:1 <b>bunch</b> [1] - 156:21 <b>bundled</b> [7] - 38:10, 40:11, 40:16, 40:17, 60:11, 61:9, 61:20 <b>burdensome</b> [3] - 127:1, 135:9, 135:13 <b>BURTON</b> [3] - 10:9, 14:18, 14:21 <b>Burton</b> [2] - 10:9, 14:20 <b>BURTON-LEE</b> [3] - 10:9, 14:18, 14:21 <b>Burton-Lee</b> [2] - 10:9, 14:20 <b>business</b> [17] - 21:19, 44:19, 44:20, 60:22, 83:20, 83:22, 105:1, 105:8, 109:1, 109:6, 133:2, 143:3, 146:4, 158:10, 159:15, 160:12, 160:15 <b>Business</b> [2] - 160:25, 161:1 <b>buy</b> [1] - 61:22 <b>buying</b> [1] - 147:15 <b>BY</b> [13] - 21:14, 44:17, 59:5, 75:9, 79:12, 83:18, 88:3, 104:24, 109:19, 160:10, 165:3, 178:2, 182:7 <b>byproducts</b> [4] - 151:4, 156:8, 157:19, 158:4</p>	<p>131:20, 132:1, 132:6, 132:18, 133:3, 133:15, 134:3, 136:9, 137:19, 137:20, 140:3, 140:10, 140:15, 141:17, 143:13 <b>calculate</b> [3] - 67:19, 69:7, 69:12 <b>calculated</b> [2] - 163:8, 164:2 <b>calculating</b> [1] - 70:12 <b>calculation</b> [5] - 37:2, 61:19, 67:7, 67:12, 70:5 <b>calculations</b> [4] - 27:21, 70:15, 70:16, 88:21 <b>calendar year</b> [1] - 56:4 <b>California</b> [4] - 39:1, 39:18, 40:5, 201:3 <b>cancel</b> [1] - 65:16 <b>canceled</b> [1] - 31:3 <b>cancellation</b> [4] - 34:5, 64:22, 65:11, 65:14 <b>cancel</b> [1] - 64:18 <b>cannot</b> [6] - 38:23, 102:3, 102:20, 167:11, 192:12, 205:21 <b>Cap</b> [1] - 174:14 <b>capacities</b> [1] - 84:12 <b>capacity</b> [10] - 148:24, 149:10, 149:14, 149:23, 150:4, 150:12, 150:15, 152:14, 153:7, 195:6 <b>Capital</b> [4] - 97:11, 128:22, 137:20, 140:3 <b>capital</b> [25] - 13:15, 13:16, 27:1, 27:4, 29:3, 47:17, 76:18, 92:10, 92:22, 93:8, 110:16, 133:1, 133:15, 136:9, 141:17, 143:6, 143:9, 143:10, 143:11, 143:14, 152:19, 152:24, 153:3, 153:4, 153:11 <b>captions</b> [1] - 8:8 <b>captured</b> [2] - 37:6, 132:6 <b>carbon dioxide</b> [2] - 171:4, 174:10 <b>carbons</b> [1] - 171:2</p>	<p><b>cardinal</b> [1] - 167:23 <b>care</b> [2] - 18:16, 158:17 <b>career</b> [1] - 178:17 <b>careful</b> [1] - 54:9 <b>carefully</b> [1] - 51:14 <b>carried</b> [2] - 168:20, 188:3 <b>carry</b> [3] - 80:10, 115:1, 168:19 <b>carrying</b> [2] - 35:12, 158:9 <b>case</b> [73] - 10:23, 23:10, 23:21, 23:25, 24:6, 24:10, 24:14, 24:15, 24:21, 24:24, 25:6, 25:21, 26:9, 28:2, 29:16, 29:21, 30:5, 42:5, 42:11, 45:10, 47:6, 47:10, 47:23, 47:25, 48:10, 48:14, 50:3, 52:16, 54:5, 57:5, 61:23, 80:11, 87:18, 88:9, 88:16, 90:3, 90:5, 91:12, 99:6, 100:5, 104:6, 104:9, 106:9, 106:17, 107:6, 107:10, 109:9, 115:24, 117:4, 117:10, 118:20, 118:21, 119:4, 134:23, 139:22, 140:6, 140:12, 143:7, 153:10, 153:23, 158:12, 159:6, 162:15, 170:9, 178:10, 180:19, 184:15, 191:21, 197:10, 205:13, 213:6, 213:14 <b>cases</b> [5] - 8:8, 13:5, 28:14, 53:11, 156:21 <b>CAT-4R</b> [1] - 128:19 <b>categories</b> [1] - 26:9 <b>Cathy</b> [1] - 114:22 <b>Cathy Woollums</b> [3] - 28:21, 83:14, 83:21 <b>caught</b> [1] - 61:5 <b>caused</b> [2] - 80:23, 161:24 <b>caution</b> [1] - 115:19 <b>CCRs</b> [1] - 155:24 <b>certain</b> [18] - 23:13, 23:18, 25:10, 38:1, 50:1, 50:3, 54:4, 73:20, 119:17, 140:2, 170:19, 170:21, 172:7, 173:9, 174:22, 175:10, 190:6, 211:19 <b>Certainly</b> [4] - 22:25,</p>	<p>25:13, 84:5, 84:21 <b>certainly</b> [10] - 23:1, 25:18, 66:21, 85:18, 119:4, 119:16, 119:24, 122:17, 180:4, 197:16 <b>certainty</b> [8] - 107:20, 161:5, 166:20, 167:13, 172:1, 172:12, 172:23 <b>certificate</b> [3] - 60:8, 60:11, 61:8 <b>certificates</b> [1] - 60:7 <b>CFR</b> [1] - 191:9 <b>CH2M Hill</b> [2] - 121:16, 121:20 <b>Chad Teply</b> [8] - 29:1, 93:1, 104:20, 105:2, 168:7, 168:8, 168:17, 176:17 <b>Chair</b> [2] - 64:11, 129:5 <b>Chairman</b> [31] - 10:25, 15:14, 16:10, 16:14, 16:20, 17:16, 18:7, 18:21, 20:2, 51:10, 54:18, 54:23, 57:21, 58:3, 58:19, 63:6, 63:7, 63:10, 63:13, 63:17, 72:13, 73:10, 82:22, 89:12, 94:6, 95:22, 117:7, 118:4, 121:23, 196:20, 197:12 <b>Chairman Boyer</b> [175] - 8:3, 9:20, 9:23, 9:25, 10:3, 10:8, 10:14, 10:19, 10:22, 11:3, 11:8, 11:11, 11:15, 12:1, 12:4, 12:10, 12:13, 13:24, 14:4, 14:15, 14:19, 15:2, 15:13, 15:17, 15:24, 16:8, 16:13, 16:17, 16:22, 17:1, 17:6, 17:15, 17:22, 18:5, 18:18, 19:2, 19:10, 19:14, 19:17, 20:1, 20:4, 20:6, 20:10, 20:13, 20:19, 20:22, 20:25, 21:6, 22:14, 44:7, 51:2, 54:14, 54:19, 54:24, 57:17, 57:22, 58:1, 58:15, 58:22, 59:10, 59:18, 62:11, 62:20, 63:1, 63:3, 63:12, 63:14, 64:1, 64:5, 65:18, 67:4, 70:9, 70:23, 71:17, 71:20, 72:9, 72:12, 72:24, 73:9, 73:11, 73:13,</p>	<p>74:3, 74:12, 74:19, 74:22, 75:1, 77:2, 77:7, 78:24, 81:7, 81:15, 81:19, 81:22, 81:25, 82:2, 82:6, 82:20, 83:6, 83:10, 87:23, 90:11, 91:5, 91:9, 94:7, 96:6, 96:13, 99:8, 100:20, 101:2, 103:5, 103:9, 103:16, 103:20, 103:25, 104:11, 104:15, 105:5, 109:16, 116:16, 116:20, 117:3, 117:6, 117:8, 117:16, 117:25, 118:9, 119:15, 120:2, 120:9, 121:21, 122:5, 122:12, 122:23, 126:12, 129:14, 130:12, 130:24, 133:22, 136:25, 137:7, 137:11, 138:1, 138:18, 138:22, 139:3, 139:8, 139:18, 155:1, 155:4, 156:25, 158:15, 159:1, 159:5, 159:10, 159:15, 160:2, 160:4, 164:25, 172:20, 177:7, 177:12, 177:15, 177:18, 177:21, 182:3, 187:11, 188:20, 207:24, 208:4, 208:19, 210:10, 211:6, 212:23, 213:3, 213:20 <b>Chairman's</b> [1] - 139:5 <b>challenge</b> [2] - 33:12, 33:16 <b>challenged</b> [1] - 32:20 <b>challenges</b> [1] - 154:17 <b>challenging</b> [1] - 30:20 <b>chance</b> [2] - 72:21, 90:7 <b>change</b> [15] - 25:19, 29:17, 66:13, 66:16, 67:8, 68:9, 73:19, 79:22, 79:25, 80:2, 150:11, 152:19, 152:24, 153:8, 184:12 <b>changed</b> [1] - 80:4 <b>changes</b> [16] - 18:24, 31:17, 31:21, 48:24, 49:1, 53:7, 66:10, 67:11, 75:17, 75:21, 79:16, 79:17, 80:6,</p>
<p><b>C</b></p>				
<p><b>CAI</b> [16] - 128:22,</p>				

<p>181:18, 183:15, 199:14 <b>characterization</b> [1] - 94:8 <b>characterized</b> [1] - 204:1 <b>characterizing</b> [1] - 96:15 <b>charge</b> [1] - 35:12 <b>charges</b> [2] - 56:22, 68:21 <b>chart</b> [5] - 85:15, 118:9, 147:6, 147:11, 148:5 <b>check</b> [4] - 114:9, 125:15, 134:13, 139:14 <b>Chemistry</b> [1] - 178:14 <b>chief</b> [5] - 8:24, 84:15, 117:4, 118:20, 119:5 <b>choice</b> [1] - 180:17 <b>choices</b> [1] - 64:12 <b>choose</b> [4] - 31:24, 164:21, 175:24, 176:13 <b>chose</b> [5] - 116:3, 163:14, 164:21, 180:12, 198:6 <b>circle</b> [1] - 207:13 <b>citizens</b> [3] - 164:11, 181:1, 195:24 <b>City</b> [1] - 161:6 <b>civil</b> [1] - 202:11 <b>claim</b> [2] - 56:8, 56:10 <b>claiming</b> [1] - 175:15 <b>claims</b> [2] - 31:9, 34:21 <b>clarification</b> [7] - 19:5, 94:5, 95:23, 98:19, 121:22, 157:13, 172:3 <b>clarifications</b> [1] - 157:20 <b>clarified</b> [1] - 101:5 <b>clarifies</b> [1] - 96:2 <b>clarify</b> [14] - 65:2, 91:1, 92:18, 93:6, 114:3, 116:8, 121:19, 122:10, 133:13, 133:25, 140:7, 184:21, 197:25, 202:8 <b>classes</b> [2] - 26:20, 68:17 <b>Clean</b> [6] - 161:9, 174:15, 195:16, 195:17, 197:22, 199:7 <b>clean</b> [1] - 140:17 <b>clear</b> [11] - 61:13,</p>	<p>88:11, 130:2, 133:22, 153:24, 182:15, 183:8, 183:13, 184:1, 191:13 <b>Clearly</b> [1] - 68:6 <b>clearly</b> [6] - 71:5, 189:9, 189:17, 197:19, 198:15, 202:22 <b>close</b> [2] - 206:11, 207:13 <b>closely</b> [1] - 50:14 <b>Club</b> [33] - 8:23, 10:20, 10:21, 11:22, 12:5, 18:20, 25:8, 28:15, 28:17, 63:18, 74:9, 74:13, 75:15, 77:1, 79:14, 89:15, 89:17, 89:25, 91:13, 96:3, 103:23, 104:1, 115:23, 116:3, 125:20, 127:4, 134:9, 134:20, 140:24, 149:3, 164:12, 164:20, 187:9 <b>Club's</b> [3] - 96:4, 107:17, 164:18 <b>co</b> [1] - 152:5 <b>co-benefit</b> [1] - 152:5 <b>CO2</b> [4] - 143:1, 152:14, 152:17, 174:12 <b>coal</b> [26] - 76:19, 77:17, 87:7, 87:8, 88:8, 89:2, 94:19, 98:14, 100:4, 106:20, 106:25, 107:4, 107:9, 107:10, 111:22, 151:4, 153:23, 155:23, 156:7, 157:11, 157:18, 158:4, 168:6, 170:2, 173:12 <b>coal-fired</b> [4] - 88:8, 98:14, 106:20, 153:23 <b>coal-fueled</b> [4] - 87:8, 106:25, 107:10, 111:22 <b>collaborative</b> [12] - 31:14, 31:16, 31:22, 32:6, 33:19, 49:1, 53:6, 72:1, 72:15, 72:22, 73:7, 73:15 <b>collaboratively</b> [1] - 48:24 <b>collect</b> [1] - 50:3 <b>collected</b> [1] - 35:21 <b>collection</b> [1] - 35:11 <b>collectively</b> [1] - 209:20 <b>Collectively</b> [1] - 40:14</p>	<p><b>College</b> [1] - 178:14 <b>column</b> [1] - 67:16 <b>combined</b> [3] - 106:4, 107:4, 147:19 <b>combined-cycle</b> [2] - 107:4, 147:19 <b>combustion</b> [6] - 151:4, 155:23, 156:8, 157:18, 158:4, 212:7 <b>comfort</b> [1] - 71:24 <b>coming</b> [5] - 49:1, 60:25, 66:12, 96:19, 180:21 <b>comitted</b> [1] - 163:21 <b>comma</b> [1] - 80:1 <b>commence</b> [2] - 9:7, 35:11 <b>commenced</b> [1] - 114:25 <b>commencement</b> [2] - 125:6, 128:4 <b>comment</b> [4] - 55:10, 57:4, 65:21, 90:7 <b>comments</b> [2] - 43:18, 46:9 <b>commercial</b> [1] - 51:22 <b>Commission</b> [59] - 12:19, 13:4, 15:16, 18:10, 22:16, 25:4, 25:14, 25:24, 26:14, 27:17, 28:10, 30:16, 31:24, 32:4, 32:15, 34:11, 36:11, 38:1, 41:2, 42:18, 43:17, 44:5, 45:24, 46:8, 49:2, 50:23, 51:21, 53:10, 54:8, 54:13, 55:15, 55:19, 57:7, 62:19, 63:24, 65:17, 65:22, 66:11, 66:22, 67:8, 67:16, 68:19, 78:11, 78:16, 82:24, 86:1, 89:14, 105:1, 106:3, 109:12, 110:15, 110:24, 115:21, 119:10, 160:18, 162:5, 172:17, 178:8, 179:14 <b>Commission's</b> [4] - 24:18, 67:15, 69:6, 89:19 <b>Commissioner</b> <b>Allen</b> [6] - 64:10, 64:11, 66:8, 66:24, 67:2, 82:8 <b>Commissioner</b> <b>Campbell</b> [6] - 67:4, 67:5, 68:12, 68:24, 70:8, 82:9 <b>Commissioners</b> [4] -</p>	<p>8:20, 45:25, 64:8, 212:25 <b>commitment</b> [1] - 125:11 <b>committed</b> [4] - 93:4, 113:12, 128:3, 151:11 <b>committee</b> [1] - 89:7 <b>committing</b> [1] - 171:20 <b>company</b> [11] - 27:9, 27:11, 29:2, 53:15, 68:2, 85:21, 96:19, 157:4, 203:13, 203:16, 204:9 <b>Company</b> [202] - 23:8, 23:15, 23:17, 24:4, 29:13, 29:18, 31:20, 31:25, 32:9, 32:10, 32:14, 32:23, 33:5, 33:24, 34:6, 35:5, 36:3, 38:3, 38:12, 38:15, 38:19, 38:22, 39:8, 39:14, 39:22, 40:2, 40:4, 40:16, 42:1, 42:6, 42:11, 42:14, 46:13, 47:13, 47:15, 47:23, 48:3, 48:17, 48:25, 49:4, 49:25, 54:3, 64:2, 65:5, 65:23, 66:18, 66:22, 66:24, 69:16, 70:6, 71:1, 71:8, 77:13, 77:19, 77:23, 78:3, 78:17, 80:10, 80:12, 80:18, 81:16, 81:17, 82:11, 84:11, 85:1, 85:12, 85:16, 85:20, 86:1, 86:4, 86:16, 86:24, 87:10, 87:11, 87:14, 87:16, 88:6, 88:21, 89:19, 89:24, 90:2, 90:7, 90:19, 91:3, 91:21, 92:2, 94:11, 94:25, 95:23, 96:24, 97:3, 98:15, 99:2, 99:5, 99:20, 100:3, 100:7, 101:24, 102:3, 105:18, 105:21, 106:22, 106:24, 107:15, 108:2, 108:24, 109:8, 109:21, 110:14, 110:23, 112:3, 112:7, 112:19, 113:12, 114:20, 116:5, 116:10, 116:24, 117:13, 120:4, 120:25, 121:1, 121:18, 121:23, 122:20, 123:10, 124:7, 124:25, 125:8,</p>	<p>125:25, 126:24, 127:20, 128:2, 128:5, 130:18, 130:22, 130:23, 132:13, 132:18, 132:21, 134:25, 135:7, 152:12, 153:20, 153:21, 154:8, 154:13, 154:16, 154:23, 155:7, 155:9, 155:12, 155:13, 155:15, 156:5, 156:17, 156:20, 157:3, 157:9, 157:17, 162:9, 163:3, 163:18, 163:24, 164:8, 164:12, 164:19, 164:21, 165:7, 168:2, 169:2, 172:25, 174:21, 174:25, 175:9, 175:12, 175:19, 175:20, 175:22, 175:24, 176:9, 176:11, 179:18, 180:17, 180:24, 182:14, 196:5, 196:10, 198:5, 199:23, 201:12, 202:4, 203:8, 204:12, 205:2, 210:3, 210:14, 210:22, 211:25 <b>Company's</b> [67] - 12:8, 22:10, 23:10, 24:6, 24:8, 26:3, 26:7, 27:3, 28:17, 28:24, 29:6, 29:17, 30:3, 30:25, 31:6, 31:17, 34:8, 34:10, 36:13, 39:12, 39:17, 42:5, 44:1, 46:20, 47:1, 47:6, 48:6, 48:25, 49:7, 51:15, 52:16, 53:7, 76:2, 76:6, 84:25, 86:9, 86:22, 87:2, 87:7, 92:6, 92:25, 98:14, 99:19, 102:11, 106:10, 106:14, 106:19, 107:7, 107:22, 107:23, 108:8, 108:17, 109:5, 113:11, 115:3, 118:7, 118:14, 120:16, 127:5, 127:7, 127:9, 127:23, 145:15, 145:23, 167:20, 168:24, 170:2 <b>company's</b> [1] - 112:11 <b>compare</b> [2] - 141:16, 143:16 <b>compared</b> [1] -</p>
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<p>143:15 <b>compares</b> [1] - 142:16 <b>comparing</b> [1] - 142:21 <b>comparison</b> [1] - 110:3 <b>comparisons</b> [1] - 110:2 <b>compatible</b> [1] - 165:14 <b>compel</b> [1] - 203:3 <b>compelled</b> [1] - 198:21 <b>compels</b> [1] - 184:22 <b>compete</b> [1] - 87:11 <b>complaining</b> [1] - 164:19 <b>complete</b> [2] - 55:13, 158:21 <b>completed</b> [5] - 124:2, 128:16, 131:11, 132:10, 140:16 <b>completely</b> [4] - 61:6, 79:22, 79:23, 196:24 <b>complex</b> [4] - 24:14, 46:4, 161:4, 178:21 <b>complexity</b> [3] - 49:16, 50:5, 50:18 <b>compliance</b> [47] - 29:7, 86:5, 87:10, 87:11, 90:19, 96:24, 97:5, 98:15, 99:2, 99:19, 99:21, 102:6, 102:13, 108:6, 108:21, 109:1, 109:10, 112:7, 112:9, 112:14, 112:16, 112:20, 113:1, 113:7, 120:6, 122:3, 122:4, 122:16, 128:6, 128:7, 130:17, 131:18, 151:21, 152:5, 154:3, 154:17, 157:17, 157:24, 164:1, 165:8, 171:24, 172:6, 172:9, 178:20, 196:19, 206:24 <b>compliant</b> [1] - 155:22 <b>complicated</b> [1] - 199:12 <b>complications</b> [1] - 49:6 <b>complied</b> [2] - 163:12, 175:19 <b>Comply</b> [1] - 176:22 <b>comply</b> [31] - 85:7, 108:8, 108:13,</p>	<p>122:22, 141:21, 155:7, 155:9, 155:13, 155:16, 156:2, 156:21, 157:4, 162:19, 162:22, 163:9, 163:16, 163:21, 164:3, 164:6, 164:22, 173:5, 176:12, 176:23, 177:1, 182:15, 190:4, 194:12, 199:23, 200:2, 202:3, 212:10 <b>complying</b> [7] - 91:25, 116:20, 156:15, 157:8, 157:11, 164:19, 174:2 <b>component</b> [11] - 54:2, 72:16, 100:15, 101:20, 112:8, 112:15, 130:21, 165:9, 166:23, 166:24, 167:5 <b>components</b> [2] - 24:20, 69:11 <b>comprehensive air initiative</b> [1] - 132:17 <b>compromise</b> [4] - 42:24, 47:9, 49:18, 50:20 <b>con</b> [1] - 130:25 <b>conceivable</b> [1] - 71:1 <b>conceptualization</b> [1] - 108:19 <b>conceptually</b> [2] - 173:13, 204:16 <b>concern</b> [2] - 42:16, 93:17 <b>concerned</b> [2] - 73:25, 181:5 <b>Concerning</b> [1] - 92:5 <b>concerning</b> [4] - 38:2, 59:23, 61:4, 66:10 <b>concerns</b> [1] - 170:15 <b>conclude</b> [8] - 50:25, 57:4, 57:15, 77:19, 86:2, 94:25, 95:16, 213:14 <b>concluded</b> [2] - 77:23, 213:22 <b>concludes</b> [5] - 44:6, 62:10, 87:20, 181:23, 213:5 <b>conclusion</b> [6] - 50:10, 54:11, 57:10, 112:3, 121:18, 162:11 <b>conclusions</b> [4] - 51:18, 123:15,</p>	<p>162:14, 163:2 <b>concrete</b> [1] - 169:19 <b>concur</b> [1] - 67:1 <b>concurs</b> [1] - 54:11 <b>condition</b> [2] - 46:15, 150:21 <b>conditions</b> [9] - 25:1, 25:12, 33:10, 42:16, 42:22, 47:12, 127:16, 162:24, 166:15 <b>conduct</b> [6] - 24:19, 74:5, 98:15, 102:8, 112:7, 162:9 <b>conducted</b> [1] - 34:3 <b>Confidential</b> [3] - 127:4, 127:15, 129:17 <b>confidential</b> [3] - 129:2, 129:9, 129:13 <b>confidentiality</b> [1] - 61:18 <b>confirm</b> [3] - 22:9, 99:4, 113:22 <b>Confirm</b> [1] - 121:5 <b>confirmed</b> [1] - 204:21 <b>conflict</b> [2] - 33:1, 63:11 <b>confuse</b> [1] - 167:22 <b>confused</b> [1] - 138:5 <b>confusing</b> [1] - 210:17 <b>confusion</b> [4] - 136:7, 137:16, 137:25, 175:18 <b>congressional</b> [1] - 154:18 <b>conjunction</b> [2] - 22:17, 41:24 <b>consent</b> [1] - 200:10 <b>consequences</b> [1] - 73:24 <b>conservative</b> [4] - 132:5, 141:18, 141:25, 142:6 <b>consider</b> [7] - 33:25, 99:20, 100:22, 142:7, 156:5, 167:25, 168:12 <b>considerably</b> [1] - 166:20 <b>consideration</b> [9] - 34:16, 56:10, 60:16, 62:6, 78:7, 80:20, 86:24, 99:15, 168:9 <b>considerations</b> [3] - 28:3, 35:5, 78:13 <b>considered</b> [9] - 57:11, 100:6, 100:8, 106:23, 125:8, 126:3, 128:2, 131:1, 209:12 <b>Considered</b> [2] - 129:19, 131:1</p>	<p><b>considering</b> [1] - 175:3 <b>considers</b> [2] - 49:10, 99:2 <b>consistent</b> [9] - 26:21, 35:15, 36:24, 37:15, 50:12, 53:19, 90:14, 92:25, 113:23 <b>Consistent</b> [2] - 27:16, 51:19 <b>consisting</b> [1] - 15:21 <b>constant</b> [1] - 172:9 <b>constitute</b> [1] - 93:21 <b>constrain</b> [1] - 73:3 <b>constraints</b> [1] - 107:24 <b>construct</b> [2] - 116:9, 122:19 <b>constructing</b> [1] - 113:13 <b>Construction</b> [2] - 124:12, 124:20 <b>construction</b> [10] - 98:5, 105:4, 108:15, 124:21, 124:25, 125:6, 125:14, 128:4, 131:22, 146:11 <b>consultant</b> [2] - 48:10, 161:11 <b>consultants</b> [1] - 51:17 <b>consulting</b> [3] - 55:5, 161:11, 161:14 <b>Consumers</b> [1] - 22:5 <b>consumption</b> [1] - 71:11 <b>contain</b> [7] - 42:16, 184:25, 185:10, 185:12, 185:13, 203:5, 211:25 <b>contained</b> [2] - 141:1, 196:13 <b>contains</b> [1] - 196:4 <b>contamination</b> [1] - 181:3 <b>contemplate</b> [2] - 145:7, 147:16 <b>contemplated</b> [2] - 99:14, 140:12 <b>content</b> [1] - 106:4 <b>contentions</b> [2] - 30:10, 31:5 <b>contentious</b> [1] - 50:5 <b>context</b> [11] - 46:18, 54:10, 101:12, 103:13, 187:21, 188:23, 189:8, 189:10, 189:12,</p>	<p>192:10, 192:13 <b>continue</b> [5] - 28:7, 54:6, 102:22, 109:3, 197:9 <b>continued</b> [2] - 94:23, 142:17 <b>continues</b> [1] - 118:19 <b>continuing</b> [1] - 95:19 <b>continuous</b> [2] - 186:18, 187:23 <b>contract</b> [2] - 108:19, 125:3 <b>contractor</b> [2] - 125:3, 125:10 <b>contrary</b> [1] - 163:23 <b>contravention</b> [1] - 104:7 <b>control</b> [37] - 28:8, 28:11, 28:19, 28:25, 86:18, 88:7, 99:3, 106:14, 106:18, 106:22, 107:1, 107:7, 108:3, 108:17, 109:9, 111:1, 111:24, 112:25, 125:24, 131:10, 134:25, 161:7, 162:10, 162:18, 163:7, 163:20, 168:3, 171:14, 176:20, 182:25, 184:19, 210:4, 210:7, 210:8, 210:15, 210:22, 211:4 <b>controlling</b> [2] - 174:10, 180:6 <b>controls</b> [32] - 77:24, 86:10, 88:12, 88:15, 96:21, 97:15, 98:14, 128:15, 147:13, 153:22, 153:25, 164:16, 169:3, 170:3, 173:8, 173:9, 173:14, 175:2, 179:24, 180:9, 180:24, 184:7, 195:9, 196:1, 196:6, 196:16, 203:14, 204:10, 210:8, 212:5, 212:8, 212:15 <b>controversial</b> [1] - 205:5 <b>controversy</b> [3] - 49:7, 66:6, 179:19 <b>convenience</b> [1] - 46:1 <b>convenient</b> [1] - 82:18 <b>conversation</b> [1] - 8:13 <b>conversations</b> [2] - 94:12, 94:15</p>
---	--	---	---	--

<p><b>converting</b> [1] - 113:3 <b>Converting</b> [1] - 107:13 <b>Cooling</b> [1] - 89:1 <b>copies</b> [9] - 16:15, 16:19, 17:20, 58:12, 91:11, 117:21, 137:14, 145:19, 196:22 <b>copy</b> [21] - 14:1, 14:5, 15:16, 17:18, 45:25, 76:1, 91:14, 113:21, 117:18, 124:5, 125:20, 129:23, 133:11, 133:17, 187:1, 187:10, 191:10, 191:11, 196:12, 202:6 <b>core</b> [1] - 192:11 <b>Correct</b> [3] - 11:9, 97:18, 111:3 <b>correct</b> [67] - 57:21, 71:23, 88:9, 88:24, 92:10, 92:15, 92:23, 92:24, 93:24, 96:25, 97:7, 98:6, 106:1, 106:2, 111:6, 112:21, 113:5, 114:2, 114:8, 121:2, 127:22, 131:8, 132:19, 134:5, 135:4, 143:7, 144:2, 144:8, 145:2, 145:25, 146:1, 149:12, 154:1, 161:25, 162:1, 165:10, 165:11, 168:25, 177:16, 179:9, 179:11, 179:12, 183:14, 184:25, 185:11, 185:20, 186:12, 191:2, 191:3, 191:8, 192:22, 192:23, 193:3, 193:18, 193:24, 193:25, 195:17, 199:25, 200:22, 203:10, 203:11, 204:14, 204:22, 206:4, 207:10, 207:11, 208:7 <b>correction</b> [2] - 75:22, 76:12 <b>corrections</b> [4] - 23:12, 75:19, 76:21, 76:22 <b>correctly</b> [3] - 94:2, 142:15, 207:4 <b>correspond</b> [1] - 199:17 <b>cost</b> [71] - 13:15, 13:16, 13:20, 20:20, 22:18, 23:19, 26:21,</p>	<p>27:1, 27:4, 27:8, 34:14, 35:7, 35:14, 36:7, 36:8, 36:13, 37:16, 40:22, 41:15, 41:19, 47:17, 48:3, 48:5, 54:1, 56:8, 56:12, 57:6, 62:3, 67:7, 69:15, 69:16, 71:6, 77:22, 78:2, 78:6, 78:7, 87:18, 91:24, 93:24, 101:2, 106:23, 106:25, 107:6, 107:8, 107:12, 107:25, 109:22, 110:3, 111:25, 112:4, 112:16, 143:5, 144:12, 147:12, 147:24, 148:20, 150:20, 150:22, 156:15, 157:4, 157:7, 157:17, 163:10, 172:10, 172:15, 172:16, 174:2, 174:17, 174:23, 176:25, 213:11 <b>Cost</b> [1] - 97:19 <b>cost-effective</b> [1] - 176:25 <b>costly</b> [1] - 76:7 <b>costs</b> [67] - 28:7, 30:22, 33:8, 33:20, 47:20, 48:12, 54:4, 54:6, 54:8, 56:18, 56:22, 56:23, 60:20, 68:2, 68:3, 73:1, 73:3, 73:6, 73:21, 78:8, 78:12, 78:13, 78:17, 80:22, 80:23, 87:13, 87:15, 90:19, 91:2, 92:7, 92:10, 92:11, 92:13, 92:14, 93:3, 97:11, 97:13, 98:5, 98:6, 106:17, 107:15, 133:1, 143:14, 149:13, 151:3, 152:7, 153:3, 153:5, 156:6, 158:10, 165:8, 166:21, 170:5, 172:6, 172:19, 172:24, 173:12, 173:22, 174:1, 174:12, 174:16, 174:20, 174:24, 175:6, 175:11 <b>Counsel</b> [3] - 118:1, 137:22, 211:14 <b>counsel</b> [5] - 9:18, 10:23, 84:15, 137:14, 159:20 <b>count</b> [1] - 23:25 <b>counter</b> [1] - 89:23 <b>country</b> [1] - 199:2 <b>couple</b> [11] - 18:24,</p>	<p>42:21, 67:5, 67:10, 70:9, 70:11, 84:10, 98:3, 127:19, 128:25, 132:16 <b>Couple</b> [1] - 157:20 <b>course</b> [5] - 9:4, 11:21, 12:3, 23:21, 123:24 <b>courtroom</b> [1] - 20:15 <b>cover</b> [6] - 35:9, 46:4, 138:11, 140:8, 157:2 <b>covered</b> [4] - 22:12, 85:22, 140:13, 190:6 <b>covers</b> [1] - 22:13 <b>create</b> [3] - 19:8, 71:12, 186:10 <b>created</b> [3] - 73:23, 184:5, 189:2 <b>creates</b> [2] - 186:4, 199:19 <b>creating</b> [1] - 180:16 <b>credibility</b> [1] - 91:6 <b>credit</b> [4] - 37:3, 37:10, 37:15, 56:2 <b>credited</b> [3] - 36:5, 37:8, 52:18 <b>credits</b> [1] - 55:17 <b>crisis</b> [1] - 98:5 <b>criteria</b> [3] - 203:15, 204:11, 204:24 <b>critical</b> [3] - 52:8, 72:15, 164:2 <b>cross</b> [24] - 11:23, 11:24, 12:8, 12:22, 28:18, 63:4, 63:22, 63:23, 64:3, 64:8, 81:17, 82:6, 82:12, 109:17, 115:25, 116:13, 119:24, 148:16, 154:22, 159:2, 177:8, 187:7, 188:18, 197:9 <b>cross examination</b> [32] - 8:19, 12:16, 12:19, 12:20, 13:3, 13:6, 62:12, 63:8, 74:16, 81:14, 87:22, 88:1, 88:2, 90:5, 90:10, 104:10, 109:15, 109:18, 116:4, 117:10, 118:17, 118:20, 122:8, 129:8, 129:12, 158:19, 158:22, 164:23, 165:2, 182:2, 182:6, 212:24 <b>crossed</b> [1] - 83:1 <b>crossover</b> [2] - 149:24, 150:5</p>	<p><b>cumulative</b> [1] - 147:3 <b>current</b> [16] - 30:25, 32:8, 32:11, 36:15, 40:2, 42:13, 53:2, 78:8, 80:11, 111:23, 142:4, 142:5, 209:7, 210:8, 211:4, 211:10 <b>curve</b> [6] - 143:10, 146:2, 146:3, 147:21, 149:8, 150:9 <b>curves</b> [5] - 134:10, 149:18, 150:12, 153:5, 153:15 <b>customer</b> [10] - 26:4, 26:20, 26:21, 31:18, 38:13, 53:8, 53:14, 71:10, 73:16, 107:25 <b>customer impact</b> [1] - 145:4 <b>customers</b> [25] - 10:6, 30:7, 35:21, 36:6, 37:9, 38:9, 38:17, 38:21, 39:19, 40:7, 51:23, 52:5, 52:18, 52:24, 54:7, 56:2, 56:22, 68:7, 87:15, 87:20, 107:9, 107:16, 108:5, 112:1, 112:5 <b>cycle</b> [2] - 107:4, 147:19 <b>cycles</b> [1] - 108:23</p> <p style="text-align: center;"><b>D</b></p> <p><b>Dahnelle</b> [1] - 10:9 <b>dash</b> [3] - 120:24, 121:7, 121:10 <b>data</b> [23] - 128:14, 132:6, 132:9, 132:21, 132:25, 133:6, 134:6, 134:8, 134:15, 135:22, 135:23, 138:8, 139:22, 140:15, 146:21, 149:1, 151:2, 152:11, 152:15, 152:16, 153:16 <b>Data request</b> [9] - 125:20, 125:22, 126:10, 131:23, 134:20, 134:24, 135:14, 137:11, 140:24 <b>data requests</b> [2] - 24:4, 134:11 <b>date</b> [24] - 25:5, 29:19, 32:19, 50:2, 113:12, 124:11, 124:22, 125:7,</p>	<p>125:15, 125:16, 132:23, 133:2, 135:20, 135:23, 136:22, 137:5, 137:21, 148:10, 149:24, 150:5, 154:11, 154:14, 183:24, 196:16 <b>dates</b> [7] - 23:3, 134:14, 196:18, 196:19, 196:21, 197:3, 198:1 <b>Dave Johnston</b> [2] - 145:15, 145:23 <b>Davenport</b> [1] - 83:22 <b>David L. Taylor</b> [2] - 21:10, 21:17 <b>day-to-day</b> [2] - 45:9, 45:11 <b>deadline</b> [1] - 198:7 <b>deadlines</b> [3] - 86:5, 108:21, 164:7 <b>deal</b> [4] - 40:10, 60:14, 61:17, 203:24 <b>dealing</b> [2] - 33:25, 65:9 <b>deals</b> [5] - 29:14, 31:3, 35:22, 42:4, 56:15 <b>dealt</b> [1] - 64:25 <b>debt</b> [1] - 36:13 <b>December</b> [3] - 115:3, 120:5, 180:23 <b>decide</b> [6] - 63:25, 119:10, 147:16, 159:25, 161:6, 169:7 <b>decided</b> [2] - 65:24, 67:17 <b>deciding</b> [1] - 167:24 <b>decision</b> [22] - 28:24, 31:6, 31:9, 34:8, 34:10, 49:8, 65:15, 66:3, 80:15, 112:8, 118:8, 130:19, 131:24, 161:4, 167:2, 167:4, 167:23, 169:7, 175:2, 176:19, 180:16, 180:18 <b>decision-making</b> [2] - 112:8, 118:8 <b>decisions</b> [21] - 80:9, 80:17, 88:6, 99:10, 100:3, 100:10, 116:14, 119:8, 119:18, 119:25, 122:20, 153:22, 161:5, 162:10, 162:12, 166:18, 166:23, 166:25, 167:15, 168:13, 176:20</p>
--	--	---	---	--

<p><b>decrease</b> [1] - 153:11</p> <p><b>decrees</b> [1] - 200:11</p> <p><b>deferral</b> [14] - 34:15, 34:21, 37:21, 37:23, 41:8, 41:9, 41:15, 41:19, 55:23, 56:8, 56:10, 56:13, 56:16</p> <p><b>deferred</b> [17] - 28:7, 34:12, 34:14, 34:19, 34:20, 35:7, 35:20, 35:23, 41:20, 43:3, 49:21, 50:3, 50:17, 52:2, 55:17, 56:2, 56:24</p> <p><b>deferred account</b> [1] - 53:3</p> <p><b>defined</b> [1] - 34:1</p> <p><b>defining</b> [1] - 49:11</p> <p><b>definitely</b> [2] - 90:17, 134:15</p> <p><b>definition</b> [3] - 61:6, 150:19, 211:22</p> <p><b>definitions</b> [1] - 65:1</p> <p><b>Degree</b> [1] - 84:5</p> <p><b>degree</b> [4] - 84:7, 168:10, 178:13, 201:10</p> <p><b>delay</b> [1] - 57:12</p> <p><b>delete</b> [2] - 79:22, 79:25</p> <p><b>demand</b> [1] - 69:10</p> <p><b>demonstrate</b> [1] - 131:17</p> <p><b>demonstrated</b> [5] - 85:15, 86:10, 107:8, 131:14, 147:25</p> <p><b>demonstrates</b> [2] - 107:17, 163:18</p> <p><b>Department</b> [7] - 29:9, 133:6, 137:10, 163:1, 164:10, 178:23, 200:11</p> <p><b>department</b> [2] - 84:13, 178:25</p> <p><b>depict</b> [1] - 147:3</p> <p><b>depreciable</b> [5] - 109:6, 141:23, 143:12, 148:15, 149:9</p> <p><b>depreciation</b> [4] - 34:22, 41:9, 47:19, 49:23</p> <p><b>DEQs</b> [1] - 93:16</p> <p><b>derivation</b> [1] - 27:6</p> <p><b>derived</b> [1] - 53:18</p> <p><b>describe</b> [4] - 25:11, 102:24, 141:11, 200:2</p> <p><b>described</b> [9] - 39:11, 49:23, 80:24, 84:25, 88:6, 91:22, 153:21, 154:19,</p>	<p>198:10</p> <p><b>describes</b> [2] - 27:1, 31:14</p> <p><b>describing</b> [3] - 179:14, 204:6, 206:2</p> <p><b>description</b> [4] - 105:14, 160:20, 199:21, 211:25</p> <p><b>designed</b> [1] - 211:11</p> <p><b>desire</b> [1] - 74:5</p> <p><b>despite</b> [1] - 166:16</p> <p><b>detail</b> [11] - 18:17, 25:23, 25:24, 27:21, 37:18, 60:2, 71:19, 90:15, 90:18, 123:9, 207:18</p> <p><b>detailed</b> [3] - 46:13, 107:22, 168:16</p> <p><b>details</b> [1] - 45:3</p> <p><b>determination</b> [9] - 26:15, 43:4, 94:22, 113:20, 155:8, 204:20, 206:17, 206:20, 206:25</p> <p><b>determinations</b> [4] - 114:1, 205:19, 207:16, 209:19</p> <p><b>determine</b> [4] - 96:20, 198:17, 203:14, 204:10</p> <p><b>determined</b> [7] - 8:15, 69:15, 70:3, 168:5, 191:24, 205:15, 212:2</p> <p><b>determines</b> [2] - 66:9, 206:1</p> <p><b>determining</b> [1] - 169:4</p> <p><b>developed</b> [3] - 69:18, 108:2, 141:14</p> <p><b>development</b> [6] - 29:2, 29:11, 87:4, 105:3, 132:21, 133:3</p> <p><b>Developments</b> [1] - 39:21</p> <p><b>device</b> [1] - 11:12</p> <p><b>devices</b> [1] - 211:4</p> <p><b>dialed</b> [1] - 41:4</p> <p><b>dictate</b> [1] - 212:18</p> <p><b>difference</b> [8] - 29:25, 35:1, 36:1, 36:4, 52:11, 60:6, 138:12, 193:19</p> <p><b>differences</b> [2] - 70:19, 71:10</p> <p><b>different</b> [28] - 26:17, 26:18, 43:4, 43:5, 43:6, 52:13, 62:7, 75:23, 75:24, 122:20, 130:17, 131:9,</p>	<p>133:19, 136:10, 136:12, 137:18, 137:24, 139:4, 152:13, 152:14, 188:9, 189:22, 197:16, 205:20, 209:17, 209:22</p> <p><b>differential</b> [1] - 143:22</p> <p><b>differently</b> [3] - 30:23, 36:10, 205:13</p> <p><b>difficult</b> [2] - 60:22, 67:19</p> <p><b>dig</b> [2] - 118:23, 139:9</p> <p><b>digest</b> [1] - 123:5</p> <p><b>digit</b> [1] - 60:20</p> <p><b>diligence</b> [1] - 108:24</p> <p><b>dioxide</b> [6] - 85:6, 85:14, 85:20, 179:24, 180:6</p> <p><b>direct</b> [29] - 18:22, 23:12, 38:13, 39:11, 58:5, 58:17, 59:12, 69:5, 75:14, 89:16, 90:6, 91:19, 92:4, 93:12, 98:20, 105:25, 106:7, 111:9, 115:7, 120:3, 120:19, 122:6, 129:18, 154:18, 165:17, 170:16, 179:21, 194:6, 202:2</p> <p><b>DIRECT EXAMINATION</b> [9] - 21:13, 44:16, 59:4, 75:8, 79:11, 83:17, 104:23, 160:9, 178:1</p> <p><b>directed</b> [2] - 45:7, 96:3</p> <p><b>direction</b> [2] - 69:6, 168:11</p> <p><b>directly</b> [2] - 172:16, 197:10</p> <p><b>Director</b> [1] - 195:7</p> <p><b>director</b> [4] - 29:9, 51:11, 178:25, 206:9</p> <p><b>dis</b> [1] - 131:20</p> <p><b>disallow</b> [1] - 78:16</p> <p><b>disallowed</b> [1] - 80:24</p> <p><b>disapprove</b> [1] - 208:24</p> <p><b>disciplinary</b> [1] - 167:7</p> <p><b>discourages</b> [1] - 13:4</p> <p><b>discovery</b> [4] - 24:10, 133:20, 134:7, 149:2</p> <p><b>Discovery</b> [1] - 149:3</p>	<p><b>discuss</b> [5] - 31:16, 48:24, 102:14, 125:25, 135:1</p> <p><b>discussed</b> [9] - 76:19, 89:8, 90:16, 90:21, 102:7, 119:6, 128:2, 147:11, 210:2</p> <p><b>discusses</b> [2] - 28:8, 34:13</p> <p><b>discussing</b> [1] - 206:9</p> <p><b>discussion</b> [3] - 14:3, 34:12, 142:12</p> <p><b>Discussions</b> [1] - 114:24</p> <p><b>discussions</b> [11] - 24:8, 24:23, 24:24, 24:25, 32:17, 45:13, 63:18, 72:18, 93:15, 127:6, 127:25</p> <p><b>dismissed</b> [1] - 41:13</p> <p><b>displaced</b> [1] - 141:21</p> <p><b>dissertation</b> [2] - 161:3, 161:6</p> <p><b>Division</b> [28] - 10:13, 32:3, 44:25, 45:8, 45:10, 45:11, 46:7, 46:10, 46:17, 46:21, 47:8, 48:1, 48:14, 49:4, 49:10, 49:13, 49:17, 50:6, 50:10, 50:19, 50:21, 66:2, 66:18, 81:24, 162:23, 164:9, 195:7, 206:10</p> <p><b>Division of Public Utilities</b> [5] - 10:10, 15:4, 15:6, 22:3, 44:23</p> <p><b>Division's</b> [11] - 14:22, 44:9, 46:19, 46:25, 47:5, 47:14, 47:24, 48:10, 48:15, 50:12, 50:14</p> <p><b>Docket</b> [6] - 8:4, 8:5, 8:6, 15:7, 17:10</p> <p><b>docket</b> [12] - 13:13, 18:1, 34:21, 34:22, 37:20, 41:10, 45:1, 52:3, 53:20, 55:12, 60:4, 62:8</p> <p><b>dockets</b> [13] - 8:4, 22:12, 22:13, 22:14, 22:20, 34:18, 41:13, 43:3, 47:10, 49:21, 50:18, 55:18, 55:24</p> <p><b>Dockets</b> [1] - 8:4</p> <p><b>Doctor</b> [1] - 210:20</p> <p><b>doctoral</b> [2] - 161:3, 161:8</p>	<p><b>Doctors</b> [2] - 163:2, 163:24</p> <p><b>document</b> [77] - 14:11, 14:23, 15:5, 15:25, 17:10, 17:25, 92:19, 93:25, 96:2, 96:5, 102:1, 102:2, 102:18, 102:19, 113:21, 116:2, 116:9, 116:14, 116:25, 117:19, 117:22, 118:11, 119:20, 119:22, 120:13, 120:20, 120:23, 121:5, 121:6, 121:11, 121:15, 121:20, 123:3, 123:7, 123:14, 125:17, 128:21, 129:1, 129:2, 129:8, 129:9, 129:20, 129:24, 130:4, 130:16, 132:19, 133:5, 133:9, 133:17, 134:2, 135:3, 135:13, 136:3, 136:11, 136:16, 136:20, 136:23, 137:4, 137:17, 137:19, 137:23, 137:24, 138:6, 138:13, 138:17, 138:19, 138:24, 138:25, 139:10, 139:11, 139:24, 140:2, 140:4, 140:6, 140:7</p> <p><b>document's</b> [1] - 132:20</p> <p><b>documents</b> [20] - 45:15, 89:18, 89:22, 89:25, 114:6, 115:15, 115:20, 115:25, 116:5, 119:13, 120:15, 125:23, 127:12, 127:21, 128:17, 131:21, 134:7, 134:25, 138:3, 208:10</p> <p><b>Dodge</b> [4] - 9:25, 16:13, 54:16, 81:25</p> <p><b>DODGE</b> [13] - 10:1, 16:14, 16:18, 16:23, 17:3, 54:17, 58:3, 58:19, 58:25, 59:5, 59:9, 59:19, 82:1</p> <p><b>dollar</b> [10] - 27:22, 48:18, 69:7, 69:19, 69:22, 69:24, 70:1, 70:5, 70:6, 152:25</p> <p><b>dollar-per-megawatt-hour</b> [3] - 27:22, 69:22, 70:5</p> <p><b>dollars</b> [4] - 27:18,</p>
--	--	---	---	---

<p>40:3, 92:22, 125:11  <b>dollars-per-megawatt-hour</b> [1] - 27:18  <b>domain</b> [1] - 127:11  <b>done</b> [7] - 61:1, 66:21, 69:14, 112:14, 128:20, 132:13, 207:7  <b>double</b> [1] - 60:20  <b>double-digit</b> [1] - 60:20  <b>doubt</b> [3] - 98:22, 110:11, 203:19  <b>down</b> [8] - 74:12, 74:24, 99:18, 164:16, 197:15, 197:21, 201:7, 211:4  <b>DPU</b> [10] - 14:16, 15:10, 15:12, 34:7, 34:9, 65:14, 133:20, 135:22, 136:19, 138:8  <b>DR</b> [1] - 65:20  <b>draft</b> [1] - 193:2  <b>drafted</b> [1] - 193:22  <b>Drake</b> [1] - 84:7  <b>draw</b> [2] - 47:11, 118:6  <b>drew</b> [1] - 112:3  <b>driven</b> [4] - 60:13, 88:13, 88:16, 153:25  <b>drivers</b> [1] - 149:16  <b>dry</b> [1] - 123:23  <b>due</b> [2] - 63:11, 108:24  <b>Duke</b> [1] - 178:16  <b>duly</b> [18] - 21:5, 21:11, 44:14, 51:8, 55:2, 57:25, 59:2, 74:25, 75:6, 79:9, 83:9, 83:15, 104:14, 104:21, 160:3, 160:7, 177:20, 177:24  <b>duration</b> [1] - 141:22  <b>During</b> [2] - 32:9, 179:2  <b>during</b> [4] - 32:16, 34:3, 158:19, 179:18  <b>Duvall</b> [1] - 71:7  <b>dynamics</b> [1] - 100:11</p>	<p>29:23, 29:24, 30:1, 30:8, 33:3, 33:5, 33:6, 33:9, 33:11, 33:19, 34:25, 35:15, 36:25, 40:15, 40:22, 53:13, 53:24, 67:11, 67:15, 69:6, 69:13, 70:6, 70:24, 72:1, 73:2, 73:6, 73:20, 73:21  <b>ECAM</b> [1] - 13:13  <b>economic</b> [6] - 77:14, 77:21, 78:13, 78:18, 80:14, 80:16  <b>Economics</b> [1] - 75:13  <b>economics</b> [4] - 60:21, 77:17, 142:7, 144:16  <b>economist</b> [1] - 71:1  <b>economists</b> [1] - 197:17  <b>educational</b> [4] - 84:3, 105:15, 160:21, 178:11  <b>effect</b> [4] - 29:20, 30:6, 157:3, 180:23  <b>effective</b> [4] - 50:2, 87:18, 176:25, 183:24  <b>effectively</b> [5] - 72:22, 78:2, 107:25, 108:22, 163:11  <b>effectiveness</b> [3] - 106:23, 107:6, 109:22  <b>efficacy</b> [1] - 143:5  <b>efficiency</b> [1] - 78:6  <b>effluent</b> [2] - 155:17, 156:10  <b>efforts</b> [4] - 86:10, 86:25, 108:18, 116:11  <b>either</b> [13] - 36:5, 41:24, 50:13, 59:23, 67:10, 76:9, 82:18, 85:25, 115:24, 141:20, 191:14, 196:9, 212:25  <b>elaborate</b> [1] - 89:3  <b>electric</b> [4] - 155:17, 161:22, 163:17, 170:23  <b>Electrical</b> [2] - 22:7, 160:23  <b>electricity</b> [4] - 38:20, 40:18, 40:20, 40:21  <b>electronically</b> [1] - 18:10  <b>electrostatic</b> [1] - 163:15  <b>elements</b> [4] - 21:25, 25:17, 25:21, 65:5  <b>eligible</b> [9] - 183:7,</p>	<p>183:21, 185:16, 190:15, 191:1, 191:17, 193:8, 194:10, 196:15  <b>eliminate</b> [1] - 206:23  <b>Ellis</b> [14] - 82:18, 157:16, 159:2, 159:9, 160:2, 160:3, 160:11, 160:17, 161:24, 164:23, 164:25, 165:4, 177:9, 177:13  <b>Ellis's</b> [3] - 157:14, 157:25  <b>embedded</b> [1] - 54:10  <b>emerging</b> [17] - 78:4, 80:13, 88:13, 88:20, 90:16, 90:21, 96:18, 99:12, 102:10, 107:19, 154:1, 155:5, 163:19, 164:3, 165:8, 168:9, 169:9  <b>emission</b> [79] - 77:24, 84:25, 85:13, 85:17, 86:3, 86:10, 86:13, 86:15, 108:21, 131:10, 163:11, 163:16, 171:6, 171:19, 173:4, 173:10, 173:18, 180:21, 180:23, 183:6, 183:10, 183:23, 184:6, 184:16, 184:17, 184:25, 185:10, 185:12, 185:15, 185:18, 185:21, 185:24, 186:7, 186:8, 186:14, 188:2, 188:3, 188:4, 189:19, 190:9, 190:11, 190:15, 190:21, 191:1, 191:5, 192:21, 193:1, 193:10, 193:11, 196:14, 196:15, 196:17, 196:25, 197:1, 198:14, 203:5, 205:14, 205:22, 206:3, 207:21, 208:1, 208:5, 210:1, 210:12, 210:24, 211:3, 211:10, 211:13, 211:20, 211:23, 212:2, 212:5, 212:6, 212:7, 212:9, 212:12, 212:15, 212:19  <b>emissions</b> [18] - 78:1, 85:19, 85:20, 85:23, 107:1, 111:24, 152:4, 170:24, 174:11, 180:6, 183:9,</p>	<p>184:2, 185:4, 186:21, 191:23, 204:25, 205:2  <b>emitting</b> [1] - 85:21  <b>emphasis</b> [1] - 64:20  <b>employed</b> [2] - 21:17, 105:17  <b>enacted</b> [2] - 156:22, 180:22  <b>enaction</b> [1] - 181:11  <b>encourage</b> [3] - 60:17, 60:23, 61:1  <b>encouraged</b> [1] - 24:19  <b>end</b> [16] - 30:6, 37:12, 42:8, 56:4, 71:25, 93:4, 93:10, 143:11, 145:16, 145:24, 146:15, 146:21, 148:14, 148:15, 149:9  <b>ends</b> [1] - 42:7  <b>energy</b> [23] - 38:10, 40:12, 44:22, 44:24, 55:17, 60:7, 60:9, 60:12, 60:18, 61:9, 61:20, 61:22, 62:3, 68:21, 69:10, 98:6, 107:11, 107:25, 126:2, 131:14, 179:4  <b>Energy</b> [6] - 22:5, 55:6, 75:13, 105:3, 105:18, 105:21  <b>energy balancing account</b> [1] - 62:1  <b>enforceability</b> [3] - 182:10, 199:1, 199:15  <b>enforceable</b> [36] - 108:15, 163:5, 181:10, 181:22, 183:22, 184:14, 185:2, 185:5, 186:1, 186:8, 186:17, 187:25, 190:9, 190:11, 190:14, 190:25, 191:6, 191:15, 191:23, 192:1, 192:4, 193:20, 194:4, 194:5, 194:17, 194:19, 194:24, 195:3, 195:14, 195:16, 195:19, 195:20, 195:23, 198:4, 206:18, 206:19  <b>enforcement</b> [4] - 86:12, 164:9, 164:14, 181:13  <b>engage</b> [2] - 100:5, 100:7  <b>engaged</b> [1] - 24:23  <b>engineer</b> [2] - 210:6, 211:15</p>	<p><b>Engineering</b> [2] - 105:17, 160:23  <b>engineering</b> [1] - 171:18  <b>engineers</b> [1] - 197:17  <b>enhance</b> [1] - 78:2  <b>ensure</b> [10] - 52:17, 52:23, 85:13, 164:1, 183:9, 184:3, 184:13, 186:23, 190:4, 196:5  <b>ensures</b> [1] - 86:5  <b>enter</b> [5] - 9:9, 9:15, 10:11, 12:7, 121:13  <b>entered</b> [6] - 14:24, 22:1, 32:19, 33:14, 39:24, 115:13  <b>entering</b> [2] - 24:8, 31:1  <b>entire</b> [2] - 143:18, 178:21  <b>entirety</b> [4] - 43:14, 50:24, 55:7, 78:10  <b>entitled</b> [6] - 14:11, 15:6, 16:1, 17:10, 17:25, 129:19  <b>Environment</b> [1] - 178:23  <b>environment</b> [3] - 60:20, 108:7, 135:2  <b>Environmental</b> [5] - 29:9, 98:1, 163:1, 164:10, 178:15  <b>environmental</b> [44] - 28:8, 28:11, 28:22, 28:25, 29:7, 57:6, 63:21, 76:7, 78:4, 80:10, 80:17, 84:14, 84:15, 84:23, 85:2, 85:3, 86:21, 87:2, 87:17, 88:7, 96:21, 106:11, 107:20, 108:6, 109:1, 109:10, 110:4, 112:21, 122:16, 126:1, 132:3, 135:2, 150:25, 151:6, 151:14, 152:7, 153:22, 164:20, 168:24, 172:6, 178:20, 179:17, 187:24, 194:1  <b>Enviroplan</b> [1] - 161:13  <b>EPA</b> [66] - 78:5, 85:24, 93:16, 94:17, 94:24, 95:12, 96:19, 113:19, 113:25, 116:21, 154:9, 155:7, 155:10, 155:20, 161:9, 164:11, 181:8, 188:15, 188:25, 189:1, 189:2, 189:4,</p>
<b>E</b>				
<p><b>E-I-I-i-s</b> [1] - 160:15  <b>ease</b> [2] - 61:18, 118:4  <b>East</b> [2] - 44:21, 83:22  <b>easy</b> [1] - 43:25  <b>EBA</b> [32] - 22:21, 22:22, 27:15, 27:16,</p>				



<p>190:8, 190:11, 190:14, 190:25, 191:4, 191:25, 192:9, 193:17, 193:23, 195:14, 195:21, 199:5, 199:8, 199:13, 199:24, 200:3, 200:6, 200:11, 200:13, 200:24, 201:4, 201:17, 202:15, 204:21, 204:25, 205:5, 205:6, 205:18, 205:21, 205:25, 206:1, 206:6, 206:7, 206:16, 206:21, 207:15, 207:20, 208:23, 209:6, 209:18, 210:1, 210:12, 210:23</p> <p><b>equal</b> [1] - 48:9</p> <p><b>equipment</b> [9] - 28:11, 28:25, 87:12, 107:1, 111:24, 151:14, 211:11, 211:25, 212:3</p> <p><b>equity</b> [4] - 27:2, 27:5, 47:17, 47:23</p> <p><b>errata</b> [3] - 162:2, 179:9, 184:9</p> <p><b>error</b> [1] - 185:23</p> <p><b>escalation</b> [1] - 48:8</p> <p><b>especially</b> [3] - 53:12, 66:10, 192:16</p> <p><b>essence</b> [2] - 63:19, 192:11</p> <p><b>Essentially</b> [1] - 8:10</p> <p><b>establish</b> [5] - 70:3, 119:23, 185:15, 205:8, 211:23</p> <p><b>established</b> [10] - 35:24, 103:3, 109:4, 114:24, 118:15, 131:20, 184:18, 198:18, 204:25, 211:2</p> <p><b>establishing</b> [3] - 53:6, 106:12, 173:18</p> <p><b>esteemed</b> [1] - 139:14</p> <p><b>estimate</b> [2] - 37:4, 93:8</p> <p><b>etcetera</b> [9] - 76:11, 109:24, 114:25, 130:10, 149:19, 150:13, 157:23, 158:2</p> <p><b>evaluate</b> [2] - 110:15, 143:5</p> <p><b>evaluated</b> [4] - 24:11, 112:11, 112:16, 146:20</p> <p><b>evaluating</b> [3] - 109:22, 167:25, 209:18</p>	<p><b>evaluation</b> [11] - 22:22, 66:20, 107:22, 112:15, 127:7, 131:12, 132:2, 144:11, 145:9, 158:6, 209:20</p> <p><b>evaluator</b> [4] - 34:7, 34:9, 65:15, 66:2</p> <p><b>event</b> [2] - 13:19, 213:6</p> <p><b>events</b> [3] - 21:24, 22:24, 23:3</p> <p><b>eventually</b> [1] - 92:14</p> <p><b>evidence</b> [7] - 12:22, 15:3, 24:9, 24:12, 58:4, 59:14, 77:13</p> <p><b>exact</b> [3] - 132:23, 133:2, 134:13</p> <p><b>exactly</b> [3] - 92:16, 124:23, 171:6</p> <p><b>Exactly</b> [1] - 19:13</p> <p><b>examination</b> [2] - 24:20, 53:12</p> <p><b>examine</b> [13] - 12:22, 63:4, 64:3, 64:8, 82:7, 82:12, 103:10, 109:17, 154:22, 172:19, 177:8, 187:7, 197:9</p> <p><b>examined</b> [12] - 21:12, 28:18, 44:15, 51:9, 55:3, 59:3, 75:7, 79:10, 83:16, 104:22, 160:8, 177:25</p> <p><b>examining</b> [2] - 57:9, 188:18</p> <p><b>example</b> [3] - 61:11, 61:14, 128:20</p> <p><b>examples</b> [1] - 174:9</p> <p><b>exceed</b> [3] - 92:12, 93:4, 93:9</p> <p><b>exceeded</b> [1] - 205:14</p> <p><b>exceeds</b> [1] - 102:23</p> <p><b>except</b> [3] - 45:13, 145:14, 145:22</p> <p><b>exception</b> [1] - 22:20</p> <p><b>exceptional</b> [1] - 39:13</p> <p><b>exclude</b> [1] - 13:2</p> <p><b>excluding</b> [3] - 21:1, 33:6, 48:1</p> <p><b>exclusively</b> [3] - 111:15, 151:17, 151:19</p> <p><b>Excuse</b> [1] - 201:19</p> <p><b>excuse</b> [1] - 200:15</p> <p><b>excused</b> [5] - 63:10, 103:17, 159:18, 177:13, 213:18</p>	<p><b>executed</b> [1] - 108:2</p> <p><b>execution</b> [1] - 108:20</p> <p><b>Executive</b> [1] - 195:4</p> <p><b>executive</b> [3] - 29:8, 178:24, 203:1</p> <p><b>exercises</b> [1] - 124:2</p> <p><b>Exhibit</b> [17] - 16:1, 26:23, 27:20, 37:18, 67:14, 70:15, 76:14, 76:17, 85:16, 104:13, 128:19, 129:6, 129:18, 130:3, 133:14, 136:12, 139:20</p> <p><b>exhibit</b> [29] - 13:21, 15:15, 15:20, 15:22, 15:25, 19:1, 19:7, 20:3, 103:2, 103:22, 115:6, 115:7, 115:9, 129:6, 130:5, 131:15, 132:6, 132:23, 133:16, 133:23, 137:8, 139:21, 139:25, 140:5, 143:1, 152:16, 162:3, 188:18, 197:8</p> <p><b>Exhibit 4</b> [2] - 104:1</p> <p><b>Exhibit No. 1</b> [1] - 77:1</p> <p><b>Exhibit No. 2</b> [1] - 91:13</p> <p><b>Exhibit No. 3</b> [1] - 91:17</p> <p><b>Exhibits</b> [5] - 14:11, 15:8, 17:10, 58:7, 79:3</p> <p><b>exhibits</b> [27] - 14:14, 14:22, 14:24, 15:5, 15:12, 15:22, 16:7, 16:23, 17:14, 18:4, 18:16, 19:5, 23:23, 58:18, 59:13, 59:16, 78:22, 78:25, 81:6, 81:9, 81:11, 89:22, 110:1, 128:11, 130:8, 139:6, 187:8</p> <p><b>existed</b> [1] - 134:15</p> <p><b>existence</b> [3] - 134:10, 139:23, 140:6</p> <p><b>existent</b> [1] - 154:24</p> <p><b>existing</b> [11] - 33:13, 86:7, 108:9, 155:4, 162:20, 162:24, 163:4, 163:15, 164:1, 171:15, 176:22</p> <p><b>expect</b> [3] - 150:9, 153:9, 170:9</p> <p><b>expected</b> [5] - 76:15, 76:18, 86:22, 92:12, 141:5</p>	<p><b>expeditiously</b> [1] - 53:3</p> <p><b>expenditures</b> [8] - 93:9, 96:17, 143:6, 150:25, 151:6, 152:20, 152:24, 153:11</p> <p><b>expense</b> [2] - 47:18, 156:20</p> <p><b>expenses</b> [2] - 143:12, 145:1</p> <p><b>expensive</b> [2] - 142:4, 148:1</p> <p><b>experience</b> [1] - 24:13</p> <p><b>expert</b> [7] - 71:6, 170:7, 171:25, 172:11, 175:13, 176:17, 197:23</p> <p><b>expertise</b> [2] - 83:2, 175:16</p> <p><b>experts</b> [2] - 18:22, 51:16</p> <p><b>explain</b> [6] - 38:6, 55:12, 68:12, 103:13, 147:10, 198:24</p> <p><b>explanation</b> [4] - 32:5, 46:14, 61:12, 68:25</p> <p><b>explanations</b> [1] - 74:4</p> <p><b>explanative</b> [1] - 89:23</p> <p><b>explicit</b> [1] - 67:7</p> <p><b>explicitly</b> [1] - 70:16</p> <p><b>explore</b> [1] - 49:5</p> <p><b>extending</b> [1] - 37:9</p> <p><b>extension</b> [1] - 63:23</p> <p><b>extensively</b> [1] - 179:2</p> <p><b>extent</b> [7] - 9:7, 76:21, 102:21, 153:1, 174:4, 176:2, 190:6</p>	<p>205:25, 206:1, 206:23</p> <p><b>factor</b> [8] - 36:8, 100:25, 148:24, 149:14, 149:24, 150:4, 150:16, 205:11</p> <p><b>factored</b> [2] - 99:15, 165:8</p> <p><b>factors</b> [31] - 57:11, 69:13, 77:16, 97:3, 97:22, 97:23, 98:3, 98:10, 98:16, 98:22, 98:24, 99:1, 99:20, 99:23, 100:6, 100:8, 100:14, 100:23, 101:6, 101:19, 101:23, 101:24, 102:6, 102:9, 102:13, 112:19, 112:24, 149:10, 150:12, 152:14, 153:7</p> <p><b>fail</b> [2] - 77:20, 199:9</p> <p><b>failed</b> [4] - 77:23, 78:6, 78:11, 198:20</p> <p><b>fails</b> [2] - 174:21, 175:9</p> <p><b>failures</b> [1] - 80:21</p> <p><b>fair</b> [6] - 26:16, 56:9, 57:14, 130:24, 146:9, 146:17</p> <p><b>Fair</b> [6] - 99:17, 114:7, 124:5, 204:17, 207:20, 209:4</p> <p><b>fairly</b> [6] - 19:6, 146:10, 146:18, 159:2, 183:23, 199:7</p> <p><b>fall</b> [1] - 65:10</p> <p><b>familiar</b> [6] - 114:16, 133:8, 157:14, 157:15, 207:15, 207:17</p> <p><b>far</b> [10] - 65:22, 85:16, 86:12, 111:8, 126:6, 129:11, 175:4, 185:24, 186:22, 201:5</p> <p><b>fashion</b> [2] - 77:15, 122:14</p> <p><b>favor</b> [1] - 19:22</p> <p><b>favours</b> [1] - 211:21</p> <p><b>faxed</b> [1] - 18:10</p> <p><b>feasible</b> [5] - 210:3, 210:14, 210:18, 210:19, 210:21</p> <p><b>February</b> [4] - 37:22, 42:3, 56:3, 89:20</p> <p><b>federal</b> [19] - 85:3, 85:7, 87:3, 94:16, 98:12, 155:25, 156:1, 163:4, 180:11, 181:15, 184:11, 190:5, 193:9, 195:17, 196:9, 197:16,</p>
---	---	---	---	---

<p>199:16, 202:10, 208:13 <b>Federal Executive Agencies</b> [2] - 22:8, 159:20 <b>federal government</b> [1] - 195:23 <b>federal regional haze rule</b> [5] - 182:16, 182:18, 183:5, 183:13, 184:4 <b>federal rule</b> [3] - 186:16, 188:11, 198:12 <b>federally</b> [14] - 186:1, 190:9, 190:11, 190:14, 190:25, 191:6, 191:14, 191:15, 191:23, 192:1, 192:3, 195:20, 195:22, 198:4 <b>federally-enforceable</b> [4] - 186:1, 190:25, 191:23, 192:1 <b>fees</b> [1] - 33:7 <b>felt</b> [1] - 132:4 <b>FERC</b> [5] - 29:14, 29:16, 30:2, 30:5, 30:25 <b>few</b> [16] - 23:3, 24:22, 46:4, 51:17, 52:7, 61:3, 82:15, 82:16, 88:4, 89:10, 90:25, 112:2, 128:8, 142:9, 165:4, 197:20 <b>FGD</b> [1] - 123:11 <b>field</b> [2] - 161:3, 161:13 <b>figure</b> [5] - 52:13, 53:18, 122:1, 158:20, 197:15 <b>figured</b> [1] - 205:4 <b>file</b> [4] - 16:16, 32:4, 42:2, 116:3 <b>filed</b> [31] - 13:12, 18:9, 23:6, 23:9, 23:16, 23:18, 23:22, 23:24, 25:3, 25:9, 26:8, 34:22, 37:25, 42:9, 44:5, 46:23, 47:2, 48:15, 50:12, 89:15, 89:20, 104:5, 116:2, 116:3, 161:24, 162:3, 179:6, 179:10, 184:8, 197:7 <b>files</b> [1] - 66:22 <b>filing</b> [7] - 24:2, 30:8, 37:7, 42:14, 45:5, 57:12, 179:9</p>	<p><b>filings</b> [7] - 36:24, 36:25, 73:2, 109:2, 127:6, 127:10, 127:24 <b>filter</b> [1] - 211:4 <b>fin</b> [1] - 76:9 <b>final</b> [28] - 34:6, 43:18, 45:16, 48:15, 56:11, 87:9, 92:3, 93:19, 94:11, 94:17, 94:21, 113:12, 113:19, 113:25, 155:7, 155:15, 156:2, 157:9, 175:17, 178:18, 181:15, 192:8, 199:5, 199:10, 199:24, 201:1, 210:23 <b>finality</b> [1] - 163:3 <b>finalize</b> [1] - 209:6 <b>finalized</b> [3] - 76:10, 181:17, 181:19 <b>finalizes</b> [1] - 199:3 <b>finally</b> [4] - 43:20, 164:5, 180:20, 201:6 <b>Finally</b> [3] - 53:17, 57:4, 181:6 <b>financial</b> [6] - 33:6, 33:8, 33:13, 33:21, 34:17, 73:1 <b>findings</b> [2] - 28:10, 30:16 <b>Fine</b> [1] - 155:3 <b>fine</b> [8] - 19:17, 113:18, 118:9, 144:23, 170:25, 202:5, 202:13, 211:11 <b>finer</b> [1] - 201:12 <b>finished</b> [1] - 161:8 <b>FIPs</b> [1] - 208:13 <b>ired</b> [5] - 88:8, 98:14, 106:20, 107:3, 153:23 <b>firm</b> [1] - 55:5 <b>First</b> [9] - 9:24, 38:12, 46:18, 47:22, 52:9, 59:22, 65:5, 154:9, 204:23 <b>first</b> [37] - 8:23, 9:11, 19:22, 38:7, 43:20, 44:11, 50:2, 64:13, 65:4, 68:13, 74:16, 75:22, 79:19, 83:7, 93:12, 102:23, 111:9, 111:12, 116:10, 116:23, 118:11, 120:3, 135:5, 145:11, 147:2, 159:9, 159:25, 161:9, 161:12, 165:17, 174:11, 179:22, 181:16, 182:19, 183:3, 211:23, 212:2</p>	<p><b>fish</b> [1] - 181:3 <b>Fisher</b> [10] - 75:4, 75:10, 77:10, 78:20, 79:5, 107:18, 163:2, 163:24, 170:16, 201:15 <b>Fisher's</b> [7] - 77:3, 77:8, 78:22, 79:1, 79:3, 119:8, 181:7 <b>Fishman</b> [1] - 17:9 <b>fits</b> [2] - 203:16, 204:12 <b>Five</b> [1] - 120:24 <b>five</b> [9] - 22:13, 93:17, 93:22, 117:9, 187:16, 188:14, 192:7, 202:15, 205:11 <b>five-factor</b> [1] - 205:11 <b>five-year</b> [1] - 93:22 <b>fleet</b> [11] - 77:17, 87:7, 87:8, 89:2, 94:20, 154:8, 155:13, 155:18, 157:9, 168:6, 169:5 <b>fleet-wide</b> [3] - 154:8, 155:13, 157:9 <b>flexibility</b> [6] - 163:10, 164:3, 171:18, 176:23, 177:3, 209:23 <b>flexible</b> [1] - 180:15 <b>flow</b> [3] - 29:24, 30:7, 40:24 <b>flows</b> [1] - 40:22 <b>flush</b> [1] - 62:9 <b>focus</b> [4] - 108:3, 113:16, 131:16, 144:22 <b>focused</b> [1] - 54:9 <b>focuses</b> [1] - 112:20 <b>focussing</b> [1] - 144:20 <b>fold</b> [1] - 209:15 <b>follow</b> [2] - 66:8, 104:17 <b>followed</b> [4] - 24:17, 84:7, 185:8, 192:14 <b>following</b> [6] - 13:7, 50:2, 80:1, 154:8, 182:9, 184:9 <b>follows</b> [12] - 21:12, 44:15, 51:9, 55:3, 59:3, 75:7, 79:10, 83:16, 104:22, 160:8, 162:16, 177:25 <b>footnote</b> [1] - 69:3 <b>force</b> [1] - 86:13 <b>forces</b> [1] - 87:11 <b>forecast</b> [5] - 24:20, 42:7, 42:11, 72:5,</p>	<p>143:11 <b>forecasted</b> [2] - 148:14, 149:10 <b>forecasts</b> [1] - 52:14 <b>foresee</b> [1] - 66:12 <b>form</b> [2] - 167:5, 192:2 <b>formal</b> [1] - 20:7 <b>format</b> [1] - 8:16 <b>formation</b> [1] - 171:1 <b>formatted</b> [1] - 134:14 <b>formed</b> [1] - 161:9 <b>former</b> [1] - 29:8 <b>forms</b> [1] - 131:10 <b>forth</b> [9] - 25:2, 34:25, 72:2, 115:12, 116:21, 132:24, 199:13, 205:6, 212:1 <b>forty</b> [1] - 182:21 <b>forty-four</b> [1] - 182:21 <b>forward</b> [23] - 13:7, 31:21, 48:21, 56:21, 60:5, 66:14, 74:2, 91:10, 92:1, 108:25, 133:1, 141:8, 143:2, 143:9, 143:10, 143:14, 146:2, 149:18, 150:12, 158:11, 163:18 <b>forward-looking</b> [3] - 108:25, 133:1, 143:14 <b>fossil</b> [1] - 92:6 <b>foundation</b> [6] - 103:3, 126:7, 126:11, 172:16, 187:10, 210:6 <b>foundational</b> [1] - 126:13 <b>Founded</b> [1] - 161:13 <b>four</b> [14] - 28:17, 49:21, 52:2, 64:2, 93:19, 117:9, 122:13, 179:20, 182:21, 188:4, 193:7, 196:15, 198:12, 198:13 <b>Four</b> [1] - 121:10 <b>Fourth</b> [1] - 48:11 <b>frame</b> [6] - 123:21, 146:8, 148:20, 148:25, 202:22, 206:12 <b>frames</b> [1] - 196:6 <b>framework</b> [1] - 83:5 <b>free</b> [1] - 118:1 <b>frequently</b> [1] - 199:9 <b>friendly</b> [1] - 13:3 <b>front</b> [13] - 113:21, 114:6, 120:8, 120:14, 123:5, 132:7, 136:11,</p>	<p>136:17, 138:11, 144:16, 191:9, 196:12, 196:22 <b>frustrating</b> [1] - 200:25 <b>fuel</b> [5] - 92:6, 107:5, 149:18, 152:13, 212:10 <b>fuelled</b> [5] - 87:8, 106:25, 107:5, 107:10, 111:22 <b>full</b> [12] - 25:16, 52:24, 56:2, 83:20, 93:12, 93:23, 104:25, 145:9, 165:18, 170:18, 189:8, 189:12 <b>full-blown</b> [1] - 145:9 <b>fully</b> [5] - 30:13, 76:4, 76:8, 125:8, 128:2 <b>Fundamentally</b> [1] - 154:2 <b>Furthermore</b> [2] - 111:18, 111:21 <b>furthermore</b> [2] - 204:7 <b>future</b> [37] - 28:2, 28:14, 30:19, 31:9, 36:21, 37:13, 42:10, 49:6, 49:11, 54:5, 64:18, 64:25, 89:2, 90:19, 98:4, 140:10, 163:10, 166:14, 167:16, 168:4, 168:9, 169:4, 169:9, 169:22, 170:22, 171:6, 171:19, 171:22, 172:1, 172:7, 172:10, 172:23, 172:24, 173:11, 175:4, 176:24, 176:25 <b>Future</b> [1] - 173:13</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>game</b> [1] - 208:20 <b>gap</b> [10] - 198:23, 198:24, 198:25, 199:1, 199:22, 199:23, 200:8, 200:18, 200:25, 201:9 <b>Gary Dodge</b> [1] - 10:1 <b>gas</b> [4] - 105:20, 107:3, 142:3, 157:11 <b>Gas</b> [2] - 105:21, 174:9 <b>gases</b> [1] - 171:4 <b>Gebhart</b> [4] - 17:9, 166:3, 203:25 <b>Gebhart's</b> [1] -</p>
--	--	---	--	--

<p>165:25  <b>general</b> [10] - 32:5, 42:16, 42:22, 48:22, 62:1, 101:7, 101:22, 123:21, 153:19, 188:7  <b>general rate case</b> [17] - 13:12, 23:6, 26:2, 28:12, 28:13, 30:11, 31:11, 35:17, 36:14, 36:15, 37:20, 41:25, 42:2, 42:5, 52:3, 54:10, 57:13  <b>general rate case order</b> [1] - 68:18  <b>generalized</b> [2] - 107:19, 172:18  <b>generally</b> [5] - 36:8, 52:19, 143:22, 172:17, 192:15  <b>Generally</b> [1] - 211:21  <b>generate</b> [1] - 150:13  <b>generating</b> [7] - 85:11, 86:22, 87:8, 157:10, 163:17, 207:22  <b>generation</b> [20] - 36:9, 38:25, 40:20, 71:11, 86:24, 97:19, 97:21, 100:24, 101:3, 101:14, 101:15, 106:11, 106:20, 106:25, 107:3, 113:4, 127:8, 142:8, 147:19, 169:5  <b>Given</b> [4] - 50:5, 50:18, 87:7, 94:15  <b>given</b> [17] - 12:21, 49:16, 78:7, 94:12, 96:16, 115:13, 125:5, 142:18, 143:16, 144:3, 144:24, 145:18, 147:15, 147:17, 172:6, 172:12, 205:16  <b>glad</b> [1] - 61:11  <b>Gloria</b> [1] - 10:21  <b>goal</b> [2] - 186:19, 199:15  <b>gonna</b> [25] - 11:23, 19:12, 61:16, 68:7, 72:6, 72:7, 102:22, 118:10, 118:12, 119:15, 119:24, 130:12, 136:15, 142:9, 148:16, 152:23, 154:6, 155:2, 156:18, 159:5, 165:4, 174:20, 187:6, 209:2, 211:8  <b>good faith</b> [1] - 44:2  <b>government</b> [1] -</p>	<p>161:16  <b>Governor</b> [2] - 178:25, 180:15  <b>Graduate</b> [1] - 161:1  <b>graphic</b> [3] - 144:22, 145:5, 147:2  <b>Great</b> [1] - 110:6  <b>greater</b> [5] - 37:18, 95:14, 95:17, 175:1, 175:4  <b>greatly</b> [3] - 39:22, 39:24, 56:7  <b>greatly-reduced</b> [1] - 56:7  <b>Greenhouse</b> [1] - 174:9  <b>greenhouse</b> [1] - 171:3  <b>Gregory Monson</b> [1] - 9:12  <b>Grinnell</b> [2] - 178:14  <b>grounds</b> [3] - 30:21, 32:21, 154:24  <b>Group</b> [1] - 22:4  <b>group</b> [5] - 10:5, 17:24, 22:21, 55:21, 66:9  <b>groups</b> [1] - 164:12  <b>growing</b> [1] - 38:16  <b>Guardians</b> [1] - 200:20  <b>guess</b> [11] - 11:6, 22:17, 54:15, 67:15, 115:21, 154:21, 166:14, 169:18, 172:13, 173:20, 177:15  <b>guidelines</b> [4] - 113:20, 113:25, 155:18, 156:10</p> <p style="text-align: center;"><b>H</b></p> <p><b>half</b> [5] - 9:5, 74:8, 159:1, 159:11, 208:15  <b>hand</b> [4] - 21:4, 137:5, 177:19, 180:16  <b>handed</b> [1] - 13:11  <b>handful</b> [1] - 55:10  <b>happy</b> [4] - 20:23, 32:15, 60:14, 94:3  <b>HAPs</b> [1] - 176:10  <b>HAPs MACT</b> [4] - 152:4, 156:9, 157:21, 175:23  <b>hard</b> [1] - 57:8  <b>Harvard</b> [2] - 160:25, 161:2  <b>hate</b> [1] - 71:20  <b>hay</b> [1] - 139:12  <b>hazardous</b> [3] -</p>	<p>86:17, 155:14, 171:3  <b>Haze</b> [1] - 29:11  <b>haze</b> [27] - 85:8, 85:22, 88:16, 91:4, 93:20, 94:18, 96:18, 99:18, 99:20, 108:9, 112:9, 112:10, 115:4, 116:25, 117:14, 120:6, 154:3, 155:8, 155:10, 170:4, 180:12, 181:15, 181:20, 188:7, 189:6, 190:23, 195:11  <b>head</b> [1] - 74:24  <b>headed</b> [1] - 96:12  <b>hear</b> [12] - 8:10, 8:11, 8:15, 8:17, 8:22, 11:2, 19:10, 51:3, 74:13, 213:10, 213:12  <b>heard</b> [10] - 10:24, 19:14, 22:18, 23:20, 61:12, 63:5, 64:23, 71:7, 172:8, 213:7  <b>hearing</b> [7] - 8:23, 11:19, 13:18, 63:11, 116:7, 118:13, 213:22  <b>Heber Wells</b> [1] - 44:21  <b>hedge</b> [6] - 32:8, 33:8, 33:21, 71:2, 72:10, 73:22  <b>hedged</b> [3] - 71:8, 71:13, 72:7  <b>hedges</b> [1] - 33:13  <b>hedging</b> [16] - 31:14, 31:15, 31:17, 32:11, 32:18, 32:25, 48:22, 48:25, 53:7, 53:13, 67:9, 72:15, 72:20, 73:5, 73:21, 73:25  <b>held</b> [2] - 14:3, 41:23  <b>help</b> [2] - 119:22, 189:23  <b>Help</b> [1] - 203:17  <b>helped</b> [1] - 45:9  <b>helps</b> [3] - 60:18, 137:25, 138:1  <b>heretofore</b> [1] - 17:19  <b>hide</b> [1] - 122:18  <b>HIGGINS</b> [3] - 54:23, 55:4, 72:13  <b>Higgins</b> [7] - 17:9, 21:3, 54:15, 54:17, 54:21, 57:17, 72:24  <b>Higgins'</b> [1] - 59:12  <b>high</b> [5] - 73:25, 172:1, 172:5, 172:11, 174:23  <b>Higher</b> [1] - 153:4  <b>highly</b> [2] - 141:24,</p>	<p>172:23  <b>highly confidential</b> [2] - 32:13, 141:9  <b>Hill</b> [1] - 178:19  <b>himself</b> [1] - 119:2  <b>historically</b> [2] - 77:19, 109:21  <b>history</b> [6] - 21:24, 23:1, 29:10, 51:25, 160:21, 178:12  <b>hold</b> [2] - 31:16, 33:24  <b>holding</b> [2] - 138:15, 138:17  <b>Holdings</b> [1] - 105:18  <b>Holly Rachel Smith</b> [7] - 9:14, 9:15, 16:10, 62:22, 63:2, 82:4, 137:13  <b>home</b> [1] - 60:13  <b>hook</b> [1] - 200:6  <b>hope</b> [2] - 60:13, 73:15  <b>hopefully</b> [2] - 165:13, 206:12  <b>horizon</b> [2] - 98:1, 99:11  <b>hour</b> [16] - 9:5, 27:18, 27:22, 40:3, 60:8, 69:8, 69:20, 69:22, 69:24, 70:1, 70:5, 70:7, 74:7, 158:25, 159:1, 159:11  <b>housekeeping</b> [2] - 18:8, 18:12  <b>HOWARD</b> [1] - 160:14  <b>Howard Ellis</b> [4] - 29:5, 160:1, 160:6, 160:14  <b>hundred</b> [9] - 30:4, 36:4, 40:7, 51:17, 71:2, 71:8, 71:14, 72:7, 162:17  <b>Hunter</b> [3] - 180:2, 183:21, 207:4  <b>Huntington</b> [3] - 180:2, 183:22, 207:5  <b>Huntsman</b> [1] - 179:1  <b>hydroelectric</b> [2] - 28:4, 28:5  <b>hypothetical</b> [1] - 157:1  <b>hypothetically</b> [2] - 149:22, 150:3</p> <p style="text-align: center;"><b>I</b></p> <p><b>i.e</b> [1] - 203:9</p>	<p><b>idea</b> [3] - 104:19, 118:7, 169:22  <b>identified</b> [13] - 9:1, 10:7, 22:14, 26:10, 26:12, 33:17, 64:2, 122:13, 127:20, 167:11, 167:19, 167:20, 168:4  <b>identifies</b> [1] - 27:8  <b>identify</b> [4] - 108:25, 125:7, 128:17, 165:22  <b>ignores</b> [1] - 163:4  <b>II</b> [1] - 41:17  <b>illustrate</b> [2] - 61:15, 163:13  <b>immediately</b> [2] - 181:11, 196:2  <b>imminent</b> [1] - 86:21  <b>impact</b> [9] - 60:21, 77:17, 86:22, 89:8, 153:6, 161:23, 167:25, 169:24, 180:4  <b>impacts</b> [3] - 86:6, 97:7, 107:19  <b>implement</b> [2] - 31:20, 87:9  <b>implementation</b> [12] - 22:22, 33:20, 53:13, 85:9, 108:14, 162:21, 181:20, 187:17, 188:15, 199:2, 199:4, 208:13  <b>implemented</b> [3] - 85:8, 87:5, 201:13  <b>implicitly</b> [1] - 70:17  <b>importance</b> [4] - 25:22, 46:16, 53:1, 57:1  <b>important</b> [4] - 60:4, 60:16, 60:25, 62:6  <b>importantly</b> [1] - 52:4  <b>impose</b> [5] - 78:13, 157:4, 173:11, 173:14, 202:13  <b>imposed</b> [2] - 84:23, 85:2  <b>impossible</b> [2] - 169:16, 188:23  <b>improve</b> [3] - 49:5, 86:11, 142:7  <b>improvement</b> [1] - 33:23  <b>improvements</b> [2] - 33:25, 52:5  <b>imprudence</b> [1] - 80:22  <b>imprudent</b> [3] - 165:19, 166:12, 166:13  <b>imputed</b> [1] - 61:9</p>
---	--	--	---	--

<p><b>in-rate</b> [1] - 27:14 <b>inaccurate</b> [1] - 94:4 <b>inappropriate</b> [1] - 175:14 <b>Inc</b> [4] - 9:16, 9:17, 22:6 <b>incentive</b> [1] - 38:8 <b>incentives</b> [1] - 38:3 <b>include</b> [18] - 22:2, 35:12, 40:15, 92:10, 108:25, 110:2, 127:6, 127:24, 131:9, 135:16, 140:21, 141:5, 151:13, 151:14, 167:8, 169:6, 169:16, 191:5 <b>included</b> [19] - 23:22, 24:3, 28:12, 33:9, 36:2, 36:18, 107:10, 109:9, 127:3, 143:1, 143:13, 144:14, 151:3, 152:11, 157:17, 165:7, 187:8, 193:3, 197:7 <b>Included</b> [1] - 34:16 <b>includes</b> [6] - 40:11, 52:4, 106:17, 133:1, 143:9, 193:22 <b>Including</b> [2] - 142:23, 142:25 <b>including</b> [12] - 17:8, 27:4, 33:9, 38:15, 45:16, 47:16, 57:12, 89:22, 102:10, 126:2, 157:10, 171:4 <b>inclusion</b> [1] - 70:24 <b>inconsistent</b> [2] - 32:25, 91:7 <b>incorporate</b> [2] - 53:8, 171:17 <b>incorporated</b> [1] - 158:6 <b>incorporates</b> [1] - 51:24 <b>incorrect</b> [2] - 181:8, 181:14 <b>increase</b> [5] - 26:4, 26:20, 87:13, 87:14, 147:22 <b>increased</b> [1] - 71:3 <b>increases</b> [2] - 60:20, 60:24 <b>incremental</b> [3] - 48:12, 122:20, 147:4 <b>incumbent</b> [1] - 183:20 <b>incurred</b> [3] - 56:3, 87:19, 172:24 <b>incurring</b> [1] - 175:5 <b>indeed</b> [3] - 73:13,</p>	<p>99:5, 130:23 <b>Indeed</b> [2] - 76:2, 76:6 <b>independent</b> [6] - 29:5, 34:7, 34:9, 65:15, 66:1, 162:9 <b>indicate</b> [2] - 62:16, 64:20 <b>indicated</b> [3] - 63:18, 206:13, 212:18 <b>individual</b> [4] - 54:2, 107:22, 153:17, 168:20 <b>individually</b> [1] - 43:15 <b>individuals</b> [1] - 83:1 <b>industrial</b> [2] - 10:5, 178:21 <b>Industrial</b> [1] - 22:5 <b>industry</b> [3] - 161:21, 161:22, 179:4 <b>inform</b> [1] - 78:11 <b>information</b> [21] - 29:2, 32:16, 42:13, 86:20, 90:22, 100:10, 106:10, 110:15, 110:25, 127:2, 127:15, 129:13, 134:14, 134:18, 134:21, 134:22, 135:11, 141:1, 141:8, 153:18, 166:17 <b>informational</b> [1] - 32:4 <b>informed</b> [1] - 87:1 <b>initial</b> [5] - 37:1, 37:3, 37:5, 37:8, 179:10 <b>initiated</b> [2] - 55:20 <b>Initiative</b> [1] - 174:9 <b>initiatives</b> [1] - 86:17 <b>inner</b> [1] - 197:18 <b>input</b> [1] - 68:5 <b>inputs</b> [2] - 24:21, 71:13 <b>insert</b> [1] - 76:15 <b>inserted</b> [1] - 66:11 <b>inside</b> [1] - 135:17 <b>insist</b> [2] - 180:5, 205:2 <b>install</b> [23] - 76:3, 76:7, 86:10, 95:1, 98:13, 125:1, 125:9, 163:14, 176:19, 179:23, 180:9, 180:24, 184:6, 187:15, 188:13, 192:7, 195:9, 196:1, 210:3, 210:15, 210:18, 210:22, 212:1 <b>installation</b> [2] -</p>	<p>202:14, 211:18 <b>installations</b> [2] - 107:23, 152:3 <b>installed</b> [5] - 164:17, 175:20, 176:11, 196:6, 196:16 <b>installing</b> [2] - 101:13, 128:15 <b>instead</b> [3] - 67:21, 73:23, 163:14 <b>Institute</b> [1] - 160:24 <b>instructions</b> [1] - 24:18 <b>intake</b> [2] - 89:1, 152:9 <b>Integrated</b> [4] - 101:25, 102:12, 127:5, 127:9 <b>integrated</b> [5] - 43:13, 107:24, 108:23, 109:5, 127:24 <b>integrative</b> [1] - 146:4 <b>intend</b> [6] - 61:13, 67:8, 69:1, 115:24, 116:9, 154:22 <b>intended</b> [3] - 67:8, 104:3, 192:17 <b>intending</b> [1] - 90:1 <b>intent</b> [3] - 25:19, 140:9, 142:20 <b>intention</b> [1] - 86:11 <b>intentional</b> [2] - 67:10, 67:23 <b>intents</b> [1] - 138:3 <b>interest</b> [6] - 36:13, 37:10, 50:9, 55:11, 87:19, 106:16 <b>interested</b> [2] - 49:5, 125:17 <b>interests</b> [2] - 51:23, 108:4 <b>interject</b> [1] - 188:16 <b>interjection</b> [1] - 136:6 <b>internal</b> [3] - 51:16, 102:8, 127:21 <b>International</b> [1] - 22:6 <b>interpretation</b> [1] - 96:5 <b>intervening</b> [7] - 23:8, 23:14, 23:16, 23:18, 23:24, 24:5, 30:11 <b>intervenor</b> [1] - 181:6 <b>intervenor</b> [1] - 179:21 <b>intervenor</b>' [1] - 47:1</p>	<p><b>Intervention</b> [1] - 22:4 <b>introduce</b> [3] - 89:5, 90:1, 129:1 <b>introduced</b> [1] - 17:4 <b>introducing</b> [1] - 115:25 <b>introduction</b> [3] - 58:4, 90:9, 116:4 <b>invest</b> [7] - 28:24, 80:17, 88:12, 88:15, 132:2, 147:23, 153:24 <b>invested</b> [1] - 57:9 <b>investing</b> [4] - 88:7, 153:22, 168:3, 169:3 <b>investment</b> [12] - 99:10, 100:15, 101:20, 143:16, 148:13, 162:10, 166:18, 166:23, 166:25, 167:2, 167:4, 175:2 <b>investments</b> [35] - 28:9, 28:11, 28:19, 29:3, 76:18, 80:22, 80:23, 85:6, 96:21, 99:16, 106:15, 106:22, 107:7, 109:9, 109:13, 110:4, 110:16, 111:2, 141:17, 142:5, 143:11, 151:13, 154:2, 162:18, 163:7, 164:6, 168:15, 168:17, 168:20, 169:7, 169:20, 171:15, 171:17, 171:21, 176:21 <b>invited</b> [1] - 24:24 <b>involved</b> [11] - 24:14, 24:16, 43:24, 44:25, 50:18, 103:3, 126:14, 168:21, 179:4, 179:19, 199:19 <b>involvement</b> [1] - 45:4 <b>involving</b> [1] - 179:18 <b>Iowa</b> [4] - 83:23, 105:20, 178:14 <b>ironic</b> [1] - 164:18 <b>IRP</b> [10] - 101:25, 102:4, 102:6, 102:16, 102:25, 103:1, 127:20, 128:6, 128:11, 149:11 <b>irrespective</b> [1] - 100:18 <b>issue</b> [28] - 31:24, 33:3, 34:10, 35:2, 41:3, 41:6, 55:19, 57:1, 57:8, 57:14,</p>	<p>65:16, 65:21, 66:4, 72:19, 72:23, 73:1, 87:17, 88:8, 88:15, 100:5, 110:17, 124:9, 153:23, 167:23, 184:7, 197:13, 202:20, 203:3 <b>issued</b> [12] - 27:16, 85:10, 113:19, 113:25, 124:18, 162:23, 162:25, 169:23, 184:19, 203:2, 211:17, 211:24 <b>issues</b> [48] - 13:20, 13:21, 14:25, 22:19, 22:22, 27:24, 28:23, 31:11, 31:13, 31:24, 31:25, 32:7, 33:20, 34:16, 34:17, 35:4, 37:19, 38:5, 41:7, 41:9, 41:16, 45:6, 46:3, 46:16, 47:9, 48:20, 49:12, 49:17, 49:19, 50:6, 50:18, 50:20, 52:2, 55:16, 55:23, 55:16, 56:17, 60:5, 61:4, 72:15, 72:25, 73:16, 74:9, 86:23, 158:23, 159:7, 181:5, 199:19 <b>issuing</b> [2] - 65:7, 65:8 <b>it'll</b> [1] - 206:12 <b>item</b> [2] - 56:17, 56:25 <b>items</b> [5] - 15:23, 42:21, 46:4, 55:11, 159:15 <b>itself</b> [13] - 32:24, 92:19, 101:15, 103:1, 125:8, 128:2, 166:1, 184:24, 185:11, 188:2, 193:5, 193:11, 211:23</p> <p style="text-align: center;"><b>J</b></p> <p><b>January</b> [2] - 23:5, 37:22 <b>Jeremy Fisher</b> [4] - 75:4, 75:5, 75:12 <b>Jersey</b> [1] - 160:16 <b>John</b> [1] - 178:25 <b>Joined</b> [1] - 84:10 <b>joined</b> [2] - 18:9, 57:18 <b>jointly</b> [1] - 106:20 <b>jointly-owned</b> [1] - 106:20 <b>judgment</b> [1] - 163:25</p>
---	---	---	--	---

<p><b>July</b> [7] - 23:15, 23:17, 25:4, 32:12, 32:19, 33:14, 149:4  <b>June</b> [4] - 23:8, 35:11, 50:4, 89:6  <b>jurisdictional</b> [1] - 35:3  <b>Justice</b> [1] - 200:11</p>	<p><b>land</b> [1] - 193:25  <b>language</b> [5] - 33:5, 189:11, 191:16, 192:15, 192:17  <b>large</b> [2] - 166:16, 173:15  <b>largely</b> [3] - 64:20, 88:12, 153:25  <b>largest</b> [1] - 85:16  <b>Last</b> [1] - 105:7  <b>last</b> [11] - 9:20, 9:24, 19:7, 24:22, 34:3, 68:18, 79:24, 174:12, 178:4, 178:24, 207:18  <b>late</b> [3] - 19:6, 44:12, 208:20  <b>latest</b> [1] - 134:22  <b>law</b> [11] - 84:7, 84:9, 193:25, 194:25, 195:18, 195:19, 196:9, 199:24, 200:2, 202:10, 202:11  <b>Law</b> [1] - 84:7  <b>laws</b> [1] - 108:16  <b>lawsuit</b> [1] - 200:20  <b>lawyer</b> [2] - 197:14, 197:21  <b>layer</b> [1] - 144:18  <b>lays</b> [1] - 43:15  <b>leading</b> [3] - 34:8, 46:22, 118:21  <b>leads</b> [1] - 172:23  <b>least</b> [12] - 12:15, 23:25, 72:17, 76:1, 107:8, 111:25, 112:4, 145:1, 165:18, 184:14, 201:23, 205:4  <b>least-cost</b> [1] - 111:25  <b>leave</b> [2] - 113:7, 204:17  <b>Leavitt</b> [1] - 180:15  <b>led</b> [3] - 21:24, 22:24, 23:3  <b>LEE</b> [3] - 10:9, 14:18, 14:21  <b>Lee</b> [2] - 10:9, 14:20  <b>left</b> [2] - 81:19, 81:20  <b>legal</b> [11] - 84:13, 84:23, 164:11, 182:15, 183:8, 184:1, 186:4, 197:15, 199:4, 199:19, 206:24  <b>legally</b> [2] - 206:18, 206:19  <b>legally-enforceable</b> [1] - 206:19  <b>legislative</b> [1] - 107:21  <b>legitimate</b> [1] - 96:6  <b>length</b> [1] - 119:6</p>	<p><b>lengthier</b> [1] - 82:16  <b>leniency</b> [1] - 115:23  <b>lenient</b> [1] - 117:6  <b>less</b> [5] - 61:9, 85:17, 156:22, 174:13, 210:24  <b>letter</b> [1] - 192:14  <b>level</b> [9] - 29:19, 36:21, 73:25, 143:16, 148:13, 199:16, 211:3  <b>levels</b> [6] - 27:14, 68:8, 68:23, 87:3, 189:5, 212:9  <b>lieu</b> [1] - 52:15  <b>life</b> [8] - 97:15, 97:17, 109:6, 141:23, 143:12, 143:18, 148:15, 149:9  <b>lifting</b> [1] - 192:13  <b>likely</b> [6] - 50:5, 87:4, 87:14, 142:3, 164:8, 173:14  <b>limit</b> [15] - 12:21, 46:15, 192:1, 193:11, 193:13, 204:25, 205:2, 207:21, 210:8, 211:10, 211:13, 211:23, 212:2, 212:12, 212:19  <b>limitation</b> [2] - 163:19, 191:24  <b>limitations</b> [1] - 210:7  <b>limits</b> [62] - 163:12, 163:17, 173:5, 173:10, 173:18, 180:21, 180:23, 183:6, 183:10, 183:23, 184:16, 184:17, 184:25, 185:4, 185:10, 185:12, 185:16, 185:18, 185:21, 185:24, 186:2, 186:7, 186:8, 186:14, 188:2, 188:3, 189:19, 190:9, 190:12, 190:15, 190:21, 191:1, 191:5, 192:21, 193:1, 193:3, 193:10, 193:16, 196:14, 196:15, 196:17, 197:1, 198:14, 198:18, 203:5, 205:14, 205:22, 206:4, 207:3, 208:1, 208:5, 208:6, 208:7, 208:15, 209:7, 209:8, 209:25, 210:1, 210:12, 211:20, 212:6  <b>line</b> [24] - 75:24, 76:1, 76:13, 79:21, 102:21, 103:4, 110:8,</p>	<p>111:4, 111:7, 112:23, 121:13, 129:10, 130:16, 147:14, 147:17, 156:19, 166:9, 170:11, 170:14, 182:20, 189:21, 189:22, 194:14, 194:15  <b>Line</b> [1] - 202:6  <b>lines</b> [13] - 90:23, 110:8, 110:9, 110:11, 110:18, 111:10, 111:12, 112:18, 128:9, 165:13, 182:11, 194:3, 203:21  <b>list</b> [14] - 13:11, 14:2, 14:22, 15:15, 15:22, 15:25, 19:7, 19:8, 26:24, 34:6, 88:19, 140:9, 154:6  <b>List</b> [2] - 15:7, 16:1  <b>listed</b> [9] - 13:21, 14:10, 15:5, 15:22, 15:25, 17:9, 17:24, 32:14, 101:4  <b>listening</b> [1] - 64:22  <b>listing</b> [1] - 16:2  <b>lists</b> [2] - 32:6, 33:10  <b>litigation</b> [3] - 34:17, 50:6, 86:13  <b>load</b> [1] - 38:13  <b>loads</b> [3] - 67:19, 67:21, 68:5  <b>local</b> [2] - 9:18, 161:15  <b>Local</b> [1] - 22:7  <b>located</b> [1] - 166:4  <b>lodged</b> [1] - 130:11  <b>logically</b> [1] - 95:16  <b>logistics</b> [1] - 158:23  <b>look</b> [16] - 57:8, 64:17, 90:7, 101:22, 101:24, 109:25, 117:19, 124:16, 130:23, 133:24, 143:8, 144:11, 148:15, 149:1, 151:20, 152:16  <b>looked</b> [3] - 77:14, 102:3, 130:22  <b>looking</b> [20] - 67:16, 108:25, 121:15, 123:3, 130:2, 133:1, 136:23, 137:14, 139:13, 143:1, 143:14, 145:17, 150:9, 152:13, 153:16, 163:19, 169:18, 189:8, 191:12, 196:20  <b>looks</b> [2] - 111:6,</p>	<p>147:12  <b>loss</b> [3] - 144:7, 144:24, 145:3  <b>losses</b> [4] - 144:1, 150:1, 150:7, 150:17  <b>lost</b> [2] - 142:8, 147:24  <b>low</b> [4] - 150:15, 172:2, 172:12, 174:23  <b>lower</b> [2] - 149:13, 211:12  <b>lowest</b> [2] - 51:25, 107:8  <b>Luckily</b> [1] - 45:9  <b>lunch</b> [3] - 158:16, 158:19, 158:25  <b>luncheon</b> [1] - 159:13</p>
<b>K</b>				
<p><b>Karen White</b> [1] - 159:19  <b>Keeping</b> [1] - 128:1  <b>keeping</b> [1] - 73:20  <b>KELLY</b> [3] - 9:18, 9:22, 9:24  <b>Kelly</b> [7] - 8:7, 9:18, 9:22, 9:23, 9:24, 14:1, 62:14  <b>Kevin C. Higgins</b> [2] - 55:1, 55:4  <b>key</b> [3] - 21:25, 23:3, 25:17  <b>KHSA</b> [1] - 48:13  <b>kilowatt hour</b> [2] - 68:23, 69:9  <b>kind</b> [9] - 61:18, 64:23, 65:2, 73:22, 116:6, 161:20, 170:1, 209:22, 210:7  <b>kinds</b> [2] - 60:24, 62:7  <b>Klamath</b> [8] - 27:24, 27:25, 28:4, 47:19, 54:8, 56:16, 56:18  <b>Klamath Dam</b> [3] - 48:12, 54:5, 56:23  <b>Klamath-related</b> [1] - 54:8  <b>knowing</b> [2] - 168:11, 169:24  <b>knowledge</b> [4] - 120:10, 123:2, 126:19, 155:19  <b>known</b> [7] - 35:25, 80:12, 132:18, 157:22, 163:12, 175:22, 176:10  <b>knows</b> [3] - 119:17, 126:15, 211:3  <b>Kroger Company</b> [1] - 22:5</p>	<p><b>land</b> [1] - 193:25  <b>language</b> [5] - 33:5, 189:11, 191:16, 192:15, 192:17  <b>large</b> [2] - 166:16, 173:15  <b>largely</b> [3] - 64:20, 88:12, 153:25  <b>largest</b> [1] - 85:16  <b>Last</b> [1] - 105:7  <b>last</b> [11] - 9:20, 9:24, 19:7, 24:22, 34:3, 68:18, 79:24, 174:12, 178:4, 178:24, 207:18  <b>late</b> [3] - 19:6, 44:12, 208:20  <b>latest</b> [1] - 134:22  <b>law</b> [11] - 84:7, 84:9, 193:25, 194:25, 195:18, 195:19, 196:9, 199:24, 200:2, 202:10, 202:11  <b>Law</b> [1] - 84:7  <b>laws</b> [1] - 108:16  <b>lawsuit</b> [1] - 200:20  <b>lawyer</b> [2] - 197:14, 197:21  <b>layer</b> [1] - 144:18  <b>lays</b> [1] - 43:15  <b>leading</b> [3] - 34:8, 46:22, 118:21  <b>leads</b> [1] - 172:23  <b>least</b> [12] - 12:15, 23:25, 72:17, 76:1, 107:8, 111:25, 112:4, 145:1, 165:18, 184:14, 201:23, 205:4  <b>least-cost</b> [1] - 111:25  <b>leave</b> [2] - 113:7, 204:17  <b>Leavitt</b> [1] - 180:15  <b>led</b> [3] - 21:24, 22:24, 23:3  <b>LEE</b> [3] - 10:9, 14:18, 14:21  <b>Lee</b> [2] - 10:9, 14:20  <b>left</b> [2] - 81:19, 81:20  <b>legal</b> [11] - 84:13, 84:23, 164:11, 182:15, 183:8, 184:1, 186:4, 197:15, 199:4, 199:19, 206:24  <b>legally</b> [2] - 206:18, 206:19  <b>legally-enforceable</b> [1] - 206:19  <b>legislative</b> [1] - 107:21  <b>legitimate</b> [1] - 96:6  <b>length</b> [1] - 119:6</p>	<p><b>lengthier</b> [1] - 82:16  <b>leniency</b> [1] - 115:23  <b>lenient</b> [1] - 117:6  <b>less</b> [5] - 61:9, 85:17, 156:22, 174:13, 210:24  <b>letter</b> [1] - 192:14  <b>level</b> [9] - 29:19, 36:21, 73:25, 143:16, 148:13, 199:16, 211:3  <b>levels</b> [6] - 27:14, 68:8, 68:23, 87:3, 189:5, 212:9  <b>lieu</b> [1] - 52:15  <b>life</b> [8] - 97:15, 97:17, 109:6, 141:23, 143:12, 143:18, 148:15, 149:9  <b>lifting</b> [1] - 192:13  <b>likely</b> [6] - 50:5, 87:4, 87:14, 142:3, 164:8, 173:14  <b>limit</b> [15] - 12:21, 46:15, 192:1, 193:11, 193:13, 204:25, 205:2, 207:21, 210:8, 211:10, 211:13, 211:23, 212:2, 212:12, 212:19  <b>limitation</b> [2] - 163:19, 191:24  <b>limitations</b> [1] - 210:7  <b>limits</b> [62] - 163:12, 163:17, 173:5, 173:10, 173:18, 180:21, 180:23, 183:6, 183:10, 183:23, 184:16, 184:17, 184:25, 185:4, 185:10, 185:12, 185:16, 185:18, 185:21, 185:24, 186:2, 186:7, 186:8, 186:14, 188:2, 188:3, 189:19, 190:9, 190:12, 190:15, 190:21, 191:1, 191:5, 192:21, 193:1, 193:3, 193:10, 193:16, 196:14, 196:15, 196:17, 197:1, 198:14, 198:18, 203:5, 205:14, 205:22, 206:4, 207:3, 208:1, 208:5, 208:6, 208:7, 208:15, 209:7, 209:8, 209:25, 210:1, 210:12, 211:20, 212:6  <b>line</b> [24] - 75:24, 76:1, 76:13, 79:21, 102:21, 103:4, 110:8,</p>	<p>111:4, 111:7, 112:23, 121:13, 129:10, 130:16, 147:14, 147:17, 156:19, 166:9, 170:11, 170:14, 182:20, 189:21, 189:22, 194:14, 194:15  <b>Line</b> [1] - 202:6  <b>lines</b> [13] - 90:23, 110:8, 110:9, 110:11, 110:18, 111:10, 111:12, 112:18, 128:9, 165:13, 182:11, 194:3, 203:21  <b>list</b> [14] - 13:11, 14:2, 14:22, 15:15, 15:22, 15:25, 19:7, 19:8, 26:24, 34:6, 88:19, 140:9, 154:6  <b>List</b> [2] - 15:7, 16:1  <b>listed</b> [9] - 13:21, 14:10, 15:5, 15:22, 15:25, 17:9, 17:24, 32:14, 101:4  <b>listening</b> [1] - 64:22  <b>listing</b> [1] - 16:2  <b>lists</b> [2] - 32:6, 33:10  <b>litigation</b> [3] - 34:17, 50:6, 86:13  <b>load</b> [1] - 38:13  <b>loads</b> [3] - 67:19, 67:21, 68:5  <b>local</b> [2] - 9:18, 161:15  <b>Local</b> [1] - 22:7  <b>located</b> [1] - 166:4  <b>lodged</b> [1] - 130:11  <b>logically</b> [1] - 95:16  <b>logistics</b> [1] - 158:23  <b>look</b> [16] - 57:8, 64:17, 90:7, 101:22, 101:24, 109:25, 117:19, 124:16, 130:23, 133:24, 143:8, 144:11, 148:15, 149:1, 151:20, 152:16  <b>looked</b> [3] - 77:14, 102:3, 130:22  <b>looking</b> [20] - 67:16, 108:25, 121:15, 123:3, 130:2, 133:1, 136:23, 137:14, 139:13, 143:1, 143:14, 145:17, 150:9, 152:13, 153:16, 163:19, 169:18, 189:8, 191:12, 196:20  <b>looks</b> [2] - 111:6,</p>	<p>147:12  <b>loss</b> [3] - 144:7, 144:24, 145:3  <b>losses</b> [4] - 144:1, 150:1, 150:7, 150:17  <b>lost</b> [2] - 142:8, 147:24  <b>low</b> [4] - 150:15, 172:2, 172:12, 174:23  <b>lower</b> [2] - 149:13, 211:12  <b>lowest</b> [2] - 51:25, 107:8  <b>Luckily</b> [1] - 45:9  <b>lunch</b> [3] - 158:16, 158:19, 158:25  <b>luncheon</b> [1] - 159:13</p>
<b>L</b>				<b>M</b>
<p><b>labor</b> [1] - 87:12  <b>lack</b> [1] - 172:15  <b>laid</b> [3] - 126:7, 126:11, 189:17</p>				<p><b>ma'am</b> [1] - 207:14  <b>macro</b> [1] - 144:16  <b>MACT</b> [10] - 86:19, 88:23, 151:3, 155:14, 157:18, 163:22, 175:18, 175:25, 176:12, 176:15  <b>MACTs</b> [1] - 156:3  <b>main</b> [1] - 179:20  <b>Main</b> [1] - 21:20  <b>maintain</b> [3] - 148:23, 149:23, 150:4  <b>maintained</b> [1] - 143:24  <b>maintaining</b> [6] - 108:3, 108:5, 111:21, 143:5, 147:7, 148:6  <b>maintains</b> [1] - 132:22  <b>maintenance</b> [3] - 97:13, 108:23, 178:18  <b>major</b> [8] - 66:10, 66:16, 106:11, 106:18, 108:17, 109:8, 140:9, 141:17  <b>Major Plant Addition</b> [1] - 41:16  <b>majority</b> [1] - 186:21  <b>managed</b> [2] - 45:10, 108:21  <b>Management</b> [1] - 178:15  <b>management</b> [2] - 45:9, 80:15  <b>manager</b> [3] - 21:18, 44:22, 44:24  <b>managing</b> [1] - 179:3  <b>mandated</b> [1] - 183:6  <b>mandates</b> [2] - 155:25, 163:5</p>

<p><b>mandatory</b> [1] - 182:25 <b>manner</b> [2] - 35:17, 86:4 <b>March</b> [2] - 123:17, 124:7 <b>marked</b> [3] - 58:5, 58:10, 129:8 <b>market</b> [25] - 40:1, 77:25, 107:1, 107:2, 109:23, 110:4, 113:1, 113:2, 128:14, 131:13, 132:4, 141:5, 141:8, 141:19, 141:20, 142:17, 142:21, 143:17, 144:5, 145:6, 148:3, 148:6, 148:21, 153:7, 180:15 <b>market-based</b> [1] - 180:15 <b>marketplace</b> [1] - 61:19 <b>markets</b> [2] - 39:21, 87:13 <b>Mart</b> [5] - 9:16, 9:19, 16:11, 22:5, 62:23 <b>Massachusetts</b> [1] - 160:23 <b>Master's</b> [1] - 178:15 <b>Masters</b> [1] - 160:25 <b>match</b> [1] - 110:9 <b>matching</b> [1] - 110:11 <b>materialize</b> [1] - 175:11 <b>materializing</b> [1] - 174:24 <b>materially</b> [1] - 32:25 <b>Matt Moscon</b> [1] - 9:12 <b>matter</b> [15] - 15:1, 18:8, 18:12, 56:20, 75:15, 79:14, 84:17, 105:23, 106:6, 161:25, 170:16, 179:7, 197:24, 200:3, 200:6 <b>matters</b> [1] - 197:20 <b>maximize</b> [1] - 86:6 <b>maximum</b> [3] - 38:9, 39:9, 86:18 <b>McDougal's</b> [1] - 67:21 <b>mean</b> [14] - 19:11, 20:3, 20:7, 58:23, 61:14, 65:12, 96:11, 136:25, 138:24, 150:16, 152:24, 152:25, 189:15, 192:25</p>	<p><b>meaningful</b> [1] - 156:23 <b>meaningless</b> [1] - 169:25 <b>means</b> [2] - 43:13, 56:20 <b>meant</b> [3] - 190:19, 192:20, 193:1 <b>meantime</b> [1] - 199:14 <b>Mechanical</b> [1] - 105:17 <b>mechanics</b> [1] - 67:6 <b>mechanism</b> [5] - 40:8, 52:20, 72:1, 187:25, 212:5 <b>mechanisms</b> [1] - 184:14 <b>meet</b> [21] - 85:1, 85:24, 86:16, 108:21, 155:8, 164:13, 179:24, 180:21, 184:14, 186:13, 196:7, 196:17, 199:9, 203:1, 203:5, 203:9, 203:14, 204:10, 211:19, 212:11, 212:19 <b>meeting</b> [2] - 191:25, 212:9 <b>meetings</b> [3] - 45:15, 45:16, 65:1 <b>meets</b> [1] - 60:10 <b>megawatt</b> [11] - 27:18, 27:22, 40:3, 60:8, 69:8, 69:19, 69:22, 69:24, 70:1, 70:5, 70:7 <b>megawatts</b> [4] - 141:20, 142:1, 142:2, 147:24 <b>MEHC</b> [1] - 28:22 <b>memory</b> [1] - 12:15 <b>mention</b> [1] - 127:23 <b>mentioned</b> [5] - 70:13, 88:23, 114:23, 141:14, 154:16 <b>merchant</b> [1] - 148:3 <b>mercury</b> [11] - 151:3, 151:24, 152:3, 163:19, 163:21, 175:21, 175:23, 176:10, 180:21, 180:24, 181:3 <b>Messrs</b> [1] - 17:9 <b>met</b> [8] - 78:1, 85:14, 183:10, 184:3, 186:24, 190:4, 193:15, 194:23 <b>method</b> [2] - 53:23, 70:12</p>	<p><b>methodology</b> [2] - 53:23, 54:1 <b>methods</b> [2] - 70:20, 163:20 <b>Mexico</b> [5] - 207:16, 208:12, 209:12, 209:13, 209:14 <b>Michele Beck</b> [2] - 51:7, 51:11 <b>MidAmerican</b> [2] - 84:12, 105:18 <b>MidAmerican Energy Holdings</b> [1] - 84:10 <b>middle</b> [1] - 146:11 <b>might</b> [13] - 34:1, 41:6, 62:3, 62:15, 65:10, 82:23, 86:2, 129:5, 191:12, 207:18, 209:3, 211:15, 212:13 <b>Might</b> [1] - 201:24 <b>miles</b> [1] - 180:3 <b>milestone</b> [10] - 108:10, 179:25, 185:1, 189:16, 191:22, 192:12, 198:11, 203:5, 209:21 <b>milestones</b> [15] - 85:14, 85:24, 108:22, 183:9, 184:3, 186:16, 186:23, 187:22, 188:1, 189:18, 190:4, 196:7, 198:19, 202:18, 203:1 <b>million</b> [30] - 23:7, 23:11, 26:4, 26:11, 26:16, 26:19, 27:10, 27:11, 27:12, 35:6, 35:7, 35:10, 35:20, 36:20, 37:3, 37:11, 39:19, 46:21, 46:22, 46:24, 47:3, 47:4, 48:2, 48:5, 48:8, 49:14, 56:12, 92:15, 193:14, 207:21 <b>mind</b> [3] - 15:17, 62:8, 128:1 <b>mindful</b> [1] - 129:14 <b>mine</b> [1] - 194:15 <b>minimizing</b> [1] - 86:6 <b>minor</b> [7] - 18:8, 18:12, 18:17, 18:24, 173:25, 174:1 <b>minus</b> [1] - 62:2 <b>minutes</b> [1] - 128:8 <b>misleading</b> [1] - 198:9 <b>misstates</b> [3] - 121:15, 174:4, 176:2 <b>mistaken</b> [2] - 198:1,</p>	<p>200:21 <b>MMBTU</b> [2] - 207:5, 208:2 <b>model</b> [2] - 143:15, 153:16 <b>modeled</b> [2] - 149:6, 149:8 <b>modeling</b> [2] - 153:17, 161:19 <b>models</b> [1] - 150:13 <b>modify</b> [2] - 33:5, 67:9 <b>moment</b> [5] - 74:23, 98:7, 118:2, 134:1, 139:9 <b>Monday</b> [2] - 213:10, 213:20 <b>monetary</b> [1] - 52:11 <b>monitoring</b> [1] - 161:18 <b>Monson</b> [4] - 11:19, 13:10, 21:8, 63:16 <b>MONSON</b> [16] - 9:12, 11:20, 12:2, 13:11, 19:24, 20:2, 20:5, 20:9, 20:11, 20:17, 21:9, 21:14, 63:6, 63:17, 64:4, 182:1 <b>month</b> [2] - 27:18, 42:8 <b>monthly</b> [4] - 67:19, 69:13, 69:14, 70:5 <b>months</b> [3] - 32:2, 42:8, 50:2 <b>morning</b> [10] - 9:8, 9:14, 10:4, 10:5, 10:13, 20:12, 70:14, 74:15, 213:12, 213:21 <b>Moscon</b> [12] - 13:10, 81:16, 83:11, 83:12, 104:18, 105:10, 118:3, 159:17, 159:25, 177:10, 177:22, 213:1 <b>MOSCON</b> [6] - 77:5, 81:17, 82:22, 83:18, 87:21, 89:12, 94:5, 95:21, 98:18, 100:16, 101:1, 101:5, 102:21, 103:15, 104:2, 104:19, 104:24, 109:14, 115:6, 115:9, 115:21, 118:12, 119:9, 120:11, 121:12, 126:5, 129:5, 130:1, 130:9, 133:12, 136:5, 136:20, 137:16, 139:2, 139:4, 152:22, 153:13, 154:10, 154:21, 156:18, 160:1, 160:10, 164:23,</p>	<p>172:3, 172:13, 174:4, 176:1, 177:11, 178:2, 182:20, 187:6, 188:16, 197:4, 202:6, 207:23, 208:3, 208:8, 208:18, 210:5, 211:1, 213:2 <b>Most</b> [1] - 142:3 <b>most</b> [16] - 24:13, 24:15, 36:14, 42:13, 42:17, 42:22, 48:3, 60:21, 87:4, 132:4, 158:20, 171:11, 176:24, 182:9, 199:3, 205:5 <b>Motion</b> [1] - 14:6 <b>motion</b> [6] - 15:2, 17:7, 17:23, 34:20, 41:15, 41:20 <b>Mountain</b> [1] - 61:1 <b>move</b> [14] - 14:24, 15:23, 17:20, 48:21, 58:13, 59:9, 66:14, 74:2, 76:25, 78:21, 79:6, 81:4, 103:21, 103:23 <b>Moves</b> [1] - 74:24 <b>moving</b> [1] - 35:2 <b>Moving</b> [7] - 26:19, 31:13, 33:3, 34:12, 41:7, 41:25, 53:13 <b>MPA II</b> [1] - 41:22 <b>MSP</b> [1] - 53:20 <b>multi</b> [2] - 108:18, 167:7 <b>multi-disciplinary</b> [1] - 167:7 <b>multi-year</b> [1] - 108:18 <b>multiple</b> [2] - 139:2, 139:3 <b>must</b> [9] - 96:24, 163:12, 190:4, 191:18, 191:19, 195:8, 196:16, 203:13, 204:9</p>
				<b>N</b>
				<p><b>name</b> [20] - 9:15, 9:20, 9:24, 11:3, 21:15, 21:17, 44:18, 44:20, 51:10, 55:4, 75:10, 83:20, 105:1, 105:5, 105:7, 160:12, 160:14, 178:4 <b>named</b> [2] - 97:3, 98:3 <b>names</b> [1] - 10:6 <b>narrow</b> [1] - 99:18 <b>narrowest</b> [1] -</p>

<p>143:21 <b>national</b> [3] - 28:23, 108:10, 180:3 <b>natural</b> [1] - 107:3 <b>natural gas</b> [7] - 32:11, 98:5, 107:5, 107:13, 109:23, 110:2, 113:3 <b>natural-gas-fired</b> [1] - 107:3 <b>Naughton</b> [30] - 113:17, 113:18, 115:5, 117:2, 117:15, 120:23, 121:10, 123:25, 124:6, 124:10, 124:18, 125:1, 125:9, 128:3, 128:15, 129:4, 129:21, 132:14, 146:11, 146:20, 146:22, 147:4, 147:7, 148:11, 148:22, 149:22, 149:25, 150:6, 150:16, 150:25 <b>Nebraska</b> [1] - 105:21 <b>nec</b> [1] - 136:1 <b>necessarily</b> [2] - 177:1, 206:3 <b>necessary</b> [9] - 13:25, 53:12, 68:10, 162:19, 162:22, 166:22, 166:24, 180:21, 200:4 <b>necessity</b> [2] - 125:25, 135:1 <b>need</b> [28] - 8:7, 9:2, 9:7, 13:22, 16:15, 18:23, 18:24, 20:6, 20:8, 44:11, 52:21, 61:21, 64:25, 68:3, 86:8, 88:11, 88:15, 119:12, 126:11, 129:1, 129:12, 133:12, 136:5, 140:14, 153:24, 155:9, 166:19, 167:19 <b>needed</b> [2] - 141:21, 196:10 <b>needing</b> [1] - 62:8 <b>needs</b> [5] - 38:13, 38:16, 108:1, 203:16, 204:13 <b>negative</b> [2] - 143:25, 144:7 <b>neglected</b> [1] - 78:21 <b>negotiated</b> [4] - 39:23, 44:2, 56:11, 196:5 <b>negotiation</b> [3] - 42:24, 64:18, 199:12 <b>negotiations</b> [11] -</p>	<p>31:4, 31:6, 32:10, 34:2, 34:5, 49:8, 64:24, 65:25, 94:24, 112:12, 114:22 <b>net</b> [17] - 27:8, 34:14, 35:7, 40:21, 41:15, 41:19, 47:17, 48:2, 48:5, 56:7, 56:12, 67:6, 69:15, 69:16, 71:5, 131:11, 144:7 <b>net power costs</b> [13] - 27:14, 34:12, 35:1, 49:22, 50:3, 67:25, 68:1, 70:12, 70:18, 70:21, 71:3, 71:9, 71:15 <b>Nevada</b> [1] - 39:18 <b>never</b> [2] - 150:17, 202:20 <b>new</b> [17] - 10:8, 29:19, 30:4, 62:8, 88:13, 96:18, 107:15, 108:11, 128:15, 142:2, 143:6, 147:19, 154:1, 161:12, 164:3, 192:2 <b>New</b> [5] - 160:16, 207:16, 208:12, 209:12, 209:13 <b>New York</b> [1] - 161:6 <b>next</b> [20] - 22:19, 23:20, 26:22, 33:22, 33:24, 35:22, 41:25, 42:2, 42:5, 49:3, 57:12, 65:7, 66:7, 114:14, 124:8, 152:16, 158:18, 159:24, 200:3, 213:10 <b>Next</b> [2] - 38:22, 192:19 <b>night</b> [1] - 19:7 <b>nine</b> [6] - 50:2, 93:21, 94:12, 94:19, 95:9, 95:12 <b>nitrogen</b> [1] - 85:7 <b>No. 4</b> [1] - 103:24 <b>NO2</b> [2] - 170:24, 171:2 <b>nominal</b> [1] - 173:15 <b>non</b> [2] - 77:24, 87:11 <b>non-compliance</b> [1] - 87:11 <b>non-emission</b> [1] - 77:24 <b>none</b> [4] - 59:14, 79:2, 81:10, 99:11 <b>normal</b> [1] - 65:10 <b>normally</b> [1] - 46:3 <b>North</b> [1] - 105:8 <b>Northeast</b> [1] -</p>	<p>174:10 <b>note</b> [8] - 18:19, 40:4, 52:7, 52:10, 56:16, 79:18, 129:12, 162:2 <b>noted</b> [3] - 89:15, 141:9, 142:25 <b>notes</b> [4] - 49:13, 53:1, 53:17, 53:25 <b>Nothing</b> [1] - 95:11 <b>nothing</b> [2] - 156:12, 198:7 <b>notice</b> [1] - 57:18 <b>notify</b> [1] - 65:13 <b>notifying</b> [1] - 64:21 <b>Notwithstanding</b> [2] - 127:1, 135:10 <b>NOx</b> [7] - 207:6, 207:9, 209:7, 210:1, 210:13, 210:23 <b>NP</b> [1] - 34:14 <b>NPC</b> [1] - 34:19 <b>NPV</b> [10] - 134:16, 142:13, 142:16, 143:22, 144:7, 147:6, 148:5, 148:11, 153:10, 156:6 <b>NPVRR</b> [1] - 142:10 <b>Number</b> [2] - 162:17, 163:6 <b>number</b> [14] - 19:1, 19:5, 27:22, 33:10, 34:16, 56:11, 82:16, 97:3, 98:23, 102:19, 112:24, 164:5, 181:2, 206:7 <b>numbers</b> [9] - 19:8, 36:5, 61:16, 61:17, 69:22, 69:25, 75:24, 96:9, 189:22</p>	<p>130:13, 135:10, 153:13, 154:21, 187:7, 188:17, 208:3, 208:8, 211:1 <b>objections</b> [5] - 58:16, 77:2, 78:25, 81:7, 103:25 <b>objectives</b> [1] - 212:11 <b>objects</b> [4] - 8:23, 95:23, 126:24, 135:7 <b>obligated</b> [2] - 125:8, 125:11 <b>obligation</b> [9] - 108:5, 182:15, 183:8, 184:2, 184:6, 186:4, 186:10, 198:10, 206:24 <b>obligations</b> [4] - 42:19, 84:23, 107:25, 202:22 <b>obtain</b> [1] - 185:6 <b>Obviously</b> [7] - 85:24, 143:19, 149:16, 151:11, 153:3, 153:5, 157:20 <b>obviously</b> [19] - 40:6, 63:24, 123:14, 124:1, 126:7, 132:9, 132:21, 133:1, 134:6, 134:10, 139:23, 141:15, 147:22, 149:8, 149:17, 151:2, 152:15, 158:5, 199:15 <b>occur</b> [1] - 72:20 <b>occurs</b> [1] - 76:12 <b>OCS</b> [1] - 16:7 <b>October</b> [3] - 27:16, 183:23, 200:14 <b>offer</b> [5] - 13:22, 16:11, 16:24, 46:8, 172:18 <b>offers</b> [9] - 47:21, 48:4, 48:7, 48:11, 49:10, 49:13, 49:20, 50:16, 50:19 <b>office</b> [1] - 141:10 <b>Office</b> [17] - 14:16, 15:14, 16:4, 51:19, 52:7, 52:9, 52:19, 52:22, 53:1, 53:5, 53:10, 53:17, 53:21, 53:25, 54:6, 54:11, 73:14 <b>Office of Consumer Services</b> [5] - 10:17, 15:24, 34:22, 51:4, 51:14 <b>Office's</b> [1] - 52:12 <b>officer</b> [2] - 178:17, 178:18</p>	<p><b>offline</b> [1] - 141:22 <b>often</b> [1] - 108:18 <b>Oklahoma</b> [5] - 207:16, 208:1, 208:2, 208:12, 209:14 <b>older</b> [1] - 150:17 <b>Once</b> [1] - 93:25 <b>once</b> [2] - 157:8, 194:25 <b>One</b> [9] - 11:20, 55:19, 60:6, 73:1, 113:24, 150:2, 161:12, 182:21, 209:10 <b>one</b> [53] - 12:13, 16:19, 16:20, 18:8, 18:16, 25:7, 25:14, 45:13, 48:16, 49:22, 53:15, 64:7, 64:14, 70:10, 73:18, 82:18, 90:25, 95:16, 98:14, 100:23, 110:3, 111:11, 121:1, 121:4, 121:6, 121:8, 121:9, 136:14, 136:18, 138:23, 138:25, 149:20, 152:24, 155:2, 157:2, 158:9, 162:17, 175:17, 187:2, 187:22, 189:23, 190:24, 196:23, 197:6, 201:9, 202:20, 204:17, 206:6, 210:19 <b>one-page</b> [1] - 138:25 <b>ones</b> [2] - 128:8, 171:12 <b>ongoing</b> [8] - 31:21, 52:2, 52:4, 95:24, 102:9, 107:11, 187:7, 199:18 <b>open</b> [2] - 22:19, 34:18 <b>operate</b> [4] - 111:22, 187:15, 188:13, 192:7 <b>operated</b> [2] - 143:24, 211:12 <b>operates</b> [4] - 69:13, 183:18, 188:8, 199:2 <b>Operating</b> [3] - 97:13, 143:12, 195:3 <b>operating</b> [4] - 85:21, 106:25, 147:13, 192:3 <b>operational</b> [1] - 144:25 <b>opinion</b> [7] - 87:16, 166:14, 171:25, 172:11, 172:18, 191:13, 209:24</p>
		<p style="text-align: center;"><b>O</b></p>		
		<p><b>O&amp;M</b> [5] - 47:17, 48:7, 92:11, 92:13, 92:14 <b>oath</b> [1] - 58:21 <b>object</b> [9] - 89:12, 90:9, 104:10, 116:4, 152:23, 154:24, 156:18, 172:13, 174:5 <b>objecting</b> [1] - 8:12 <b>Object</b> [3] - 100:16, 176:1, 210:5 <b>objection</b> [26] - 14:8, 15:9, 16:3, 17:11, 18:2, 59:11, 77:5, 89:13, 103:6, 104:2, 115:22, 119:16, 121:13, 121:14, 127:2, 129:7, 130:9,</p>		

<p><b>opinions</b> [1] - 163:23  <b>opportunities</b> [2] - 34:1, 39:15  <b>opportunity</b> [5] - 11:22, 19:15, 46:8, 109:11, 126:16  <b>oppose</b> [5] - 42:6, 54:6, 57:20, 59:24, 78:15  <b>opposed</b> [3] - 12:2, 28:15, 212:16  <b>opposes</b> [2] - 25:8, 74:14  <b>optimizing</b> [1] - 86:7  <b>opting</b> [1] - 212:10  <b>option</b> [2] - 111:25, 180:1  <b>options</b> [16] - 77:24, 78:19, 96:24, 97:5, 99:2, 99:21, 106:23, 112:4, 113:1, 128:6, 128:7, 130:18, 212:14, 212:16  <b>order</b> [24] - 14:16, 24:19, 27:16, 31:25, 32:1, 33:5, 34:25, 35:15, 49:6, 67:9, 67:15, 67:17, 69:7, 82:12, 85:13, 89:19, 107:14, 144:24, 158:18, 167:18, 176:12, 193:6, 203:2, 203:3  <b>ordered</b> [2] - 36:10, 49:2  <b>Orders</b> [2] - 195:2, 195:12  <b>orders</b> [2] - 162:23, 164:15  <b>Oregon</b> [1] - 39:2  <b>organic</b> [1] - 171:2  <b>origin</b> [1] - 184:10  <b>original</b> [2] - 46:20, 162:3  <b>otherwise</b> [2] - 36:10, 157:12  <b>Otherwise</b> [1] - 58:23  <b>ought</b> [1] - 83:3  <b>outage</b> [2] - 86:7, 108:23  <b>outcome</b> [6] - 107:8, 152:18, 168:5, 169:5, 175:3, 187:24  <b>output</b> [1] - 71:11  <b>outset</b> [1] - 9:4  <b>outside</b> [4] - 34:1, 51:16, 70:21, 73:5  <b>outstanding</b> [3] - 49:21, 50:17, 55:18  <b>over-hedge</b> [1] -</p>	<p>73:22  <b>overall</b> [5] - 27:5, 85:19, 109:10, 140:15, 162:11  <b>overdue</b> [1] - 53:15  <b>overlooked</b> [2] - 10:22, 19:19  <b>overly</b> [3] - 73:25, 126:25, 135:8  <b>overrule</b> [2] - 91:9, 208:14  <b>overruled</b> [1] - 172:20  <b>overview</b> [1] - 28:23  <b>own</b> [2] - 139:6, 209:12  <b>owned</b> [2] - 106:19, 106:20  <b>owners</b> [2] - 49:8, 65:25  <b>oxide</b> [1] - 85:7  <b>ozone</b> [1] - 170:25</p>	<p>166:9, 170:11, 187:20, 189:11, 196:21, 196:23, 201:16, 201:22, 203:21  <b>page 1</b> [1] - 111:12  <b>page 10</b> [2] - 93:12, 189:20  <b>page 2</b> [2] - 92:5, 145:17  <b>page 3</b> [5] - 95:19, 143:8, 151:8, 151:20, 152:1  <b>page 4</b> [1] - 146:25  <b>page 6</b> [2] - 98:4, 98:7  <b>page 7</b> [1] - 182:10  <b>page 8</b> [1] - 75:22  <b>page 9</b> [2] - 79:19, 112:18  <b>pages</b> [7] - 23:23, 25:5, 51:17, 91:20, 139:2, 139:3, 140:8  <b>Paice's</b> [1] - 67:22  <b>paid</b> [1] - 52:25  <b>panel</b> [1] - 8:16  <b>paper</b> [1] - 138:23  <b>papers</b> [4] - 135:16, 140:21, 140:25  <b>paragraph</b> [30] - 26:2, 26:19, 27:23, 31:10, 31:14, 33:10, 33:15, 43:8, 55:25, 56:6, 56:15, 56:17, 62:17, 64:16, 72:2, 76:2, 76:13, 79:20, 79:24, 80:3, 93:13, 123:13, 165:16, 165:18, 165:20, 166:5, 170:18, 204:8  <b>Paragraph</b> [24] - 27:1, 28:8, 29:14, 30:9, 30:24, 31:3, 32:8, 32:23, 33:4, 33:23, 34:4, 34:13, 35:19, 35:23, 36:17, 36:23, 37:1, 37:19, 41:7, 41:14, 42:1, 42:4, 42:10, 43:12  <b>paragraphs</b> [6] - 23:1, 25:14, 41:12, 41:21, 42:15, 204:4  <b>parameter</b> [1] - 150:8  <b>parameters</b> [3] - 34:2, 34:24, 72:20  <b>paraphrasing</b> [1] - 95:24  <b>parks</b> [1] - 180:3  <b>part</b> [23] - 12:25, 29:23, 30:3, 40:21,</p>	<p>47:15, 48:3, 48:17, 88:20, 90:2, 95:2, 95:4, 104:5, 115:25, 126:8, 128:10, 128:11, 128:12, 129:2, 140:18, 167:9, 173:3, 190:16, 201:19  <b>participate</b> [1] - 24:24  <b>participated</b> [1] - 45:12  <b>participating</b> [1] - 30:25  <b>participation</b> [3] - 39:18, 87:2, 213:17  <b>particular</b> [15] - 25:22, 46:5, 46:16, 55:11, 55:24, 56:16, 56:24, 69:12, 70:10, 77:18, 84:19, 139:9, 161:12, 183:16, 211:18  <b>particularly</b> [6] - 55:16, 64:15, 65:8, 94:23, 106:13, 158:17  <b>particulate</b> [3] - 163:16, 171:1, 211:3  <b>Parties</b> [2] - 33:12, 60:19  <b>parties</b> [74] - 12:21, 13:5, 14:21, 17:20, 19:15, 22:1, 22:2, 23:9, 23:14, 23:16, 23:18, 23:24, 24:5, 24:10, 24:17, 24:22, 24:23, 24:25, 25:4, 25:6, 25:20, 28:1, 28:6, 28:9, 30:11, 30:15, 30:19, 31:5, 31:8, 31:15, 31:23, 32:3, 32:10, 32:16, 32:18, 33:1, 33:4, 33:7, 33:15, 33:18, 34:15, 35:5, 37:20, 42:6, 42:19, 42:25, 43:9, 43:21, 43:23, 43:25, 44:3, 48:23, 49:5, 49:15, 52:16, 53:21, 56:12, 57:6, 60:18, 63:4, 64:21, 65:2, 65:6, 71:23, 71:24, 72:18, 82:24, 103:9, 104:4, 106:4, 110:24, 115:18, 168:18, 212:23  <b>parties!</b> [1] - 60:6  <b>parts</b> [3] - 38:11, 43:14, 115:17  <b>party</b> [10] - 25:8, 26:15, 29:6, 29:23, 30:4, 30:24, 43:4, 43:13, 86:12, 126:9</p>	<p><b>pass</b> [1] - 40:7  <b>passage</b> [2] - 183:19, 192:13  <b>passed</b> [5] - 82:2, 137:17, 137:20, 161:10, 181:23  <b>passing</b> [1] - 137:23  <b>past</b> [2] - 109:22, 154:12  <b>patient</b> [1] - 117:6  <b>Patricia Schmid</b> [1] - 10:12  <b>Paul Proctor</b> [1] - 10:16  <b>Pause</b> [1] - 11:10  <b>PDRR</b> [2] - 128:13, 131:12  <b>peek</b> [1] - 118:1  <b>penalties</b> [1] - 164:15  <b>pending</b> [3] - 29:15, 86:16, 123:10  <b>people</b> [2] - 158:23, 159:6  <b>per</b> [14] - 27:18, 27:22, 40:3, 69:7, 69:19, 69:22, 69:24, 70:1, 70:5, 70:6, 143:1, 193:13, 205:19, 207:21  <b>percent</b> [23] - 27:3, 27:5, 27:6, 29:24, 30:4, 36:4, 36:15, 39:5, 40:8, 47:5, 47:6, 47:24, 51:24, 52:17, 71:2, 71:8, 71:14, 72:7, 148:24, 149:14, 149:23, 150:5, 162:17  <b>percentage</b> [1] - 32:13  <b>perform</b> [1] - 152:12  <b>performance</b> [2] - 39:13, 211:21  <b>performed</b> [3] - 109:21, 128:5, 128:10  <b>performs</b> [1] - 108:24  <b>perhaps</b> [2] - 100:8, 134:4  <b>Perhaps</b> [1] - 197:25  <b>period</b> [4] - 32:11, 37:9, 50:4, 179:18  <b>permission</b> [1] - 63:9  <b>permit</b> [18] - 123:17, 123:21, 124:4, 124:6, 162:24, 164:13, 166:15, 171:16, 178:24, 192:1, 192:2, 192:3, 195:22, 198:17, 202:25, 203:4, 211:24</p>
	<p><b>P</b></p>			
	<p><b>p.m</b> [2] - 159:14, 213:22  <b>PacifiCorp</b> [35] - 76:19, 92:21, 105:2, 105:21, 121:16, 121:20, 155:18, 179:16, 179:22, 179:23, 180:8, 180:20, 181:8, 181:11, 183:7, 184:1, 184:6, 184:20, 185:6, 186:13, 186:21, 188:4, 190:19, 192:20, 192:25, 195:8, 196:1, 198:13, 200:2, 200:4, 201:16, 202:21, 203:3, 206:24, 208:7  <b>PacifiCorp's</b> [4] - 34:20, 180:2, 182:24, 194:10  <b>PacifiCorp/Rocky</b> [1] - 60:25  <b>package</b> [3] - 55:14, 57:3, 57:14  <b>packaged</b> [1] - 134:10  <b>packaging</b> [1] - 134:17  <b>page</b> [26] - 18:11, 76:12, 80:2, 93:3, 93:13, 97:2, 100:17, 111:10, 120:19, 120:24, 120:25, 137:3, 138:25, 165:12, 165:18,</p>			



<p><b>permits</b> [38] - 85:10, 108:15, 124:9, 124:12, 124:14, 124:15, 124:18, 124:20, 124:22, 162:25, 164:8, 173:18, 181:10, 183:11, 184:13, 184:19, 185:5, 185:7, 185:19, 185:22, 186:1, 188:4, 190:20, 190:22, 192:21, 192:25, 195:20, 195:23, 196:11, 197:1, 198:2, 198:3, 198:6, 198:8, 201:13, 205:14, 211:17</p> <p><b>Permits</b> [2] - 195:2, 195:3</p> <p><b>permitted</b> [1] - 207:12</p> <p><b>permitting</b> [4] - 108:19, 114:25, 161:18, 179:3</p> <p><b>person</b> [1] - 195:6</p> <p><b>personal</b> [2] - 120:10, 209:24</p> <p><b>perspective</b> [3] - 124:4, 125:12, 145:4</p> <p><b>pertaining</b> [2] - 127:2, 127:7</p> <p><b>pertains</b> [1] - 106:14</p> <p><b>pertinent</b> [1] - 134:23</p> <p><b>petitions</b> [1] - 41:12</p> <p><b>Ph.D</b> [4] - 44:13, 75:5, 79:8, 160:6</p> <p><b>phase</b> [1] - 16:24</p> <p><b>phases</b> [1] - 45:8</p> <p><b>phone</b> [3] - 41:4, 63:15</p> <p><b>phrase</b> [1] - 79:21</p> <p><b>pick</b> [2] - 144:10, 144:17</p> <p><b>piece</b> [1] - 144:9</p> <p><b>pieces</b> [3] - 13:14, 16:2, 197:21</p> <p><b>pipe</b> [1] - 105:20</p> <p><b>Pipeline</b> [1] - 105:21</p> <p><b>place</b> [5] - 26:25, 52:21, 53:25, 88:17, 173:20</p> <p><b>places</b> [1] - 87:10</p> <p><b>plaintiffs</b> [1] - 200:12</p> <p><b>Plan</b> [2] - 127:6, 127:9</p> <p><b>plan</b> [11] - 18:15, 101:25, 127:24, 143:3, 174:21, 175:9, 187:17, 188:15, 199:3, 199:4, 206:2</p>	<p><b>planned</b> [1] - 108:23</p> <p><b>planning</b> [24] - 29:7, 86:25, 87:1, 87:5, 88:22, 97:4, 100:15, 101:20, 107:24, 109:2, 109:3, 109:5, 109:7, 112:7, 112:14, 146:4, 146:5, 150:14, 165:5, 165:10, 166:22, 167:1, 167:5, 167:12</p> <p><b>Planning</b> [5] - 101:25, 102:12, 166:24, 167:3, 167:7</p> <p><b>plans</b> [9] - 85:9, 108:14, 133:2, 158:10, 162:21, 181:20, 181:21, 181:22, 208:13</p> <p><b>plant</b> [19] - 36:9, 42:12, 65:25, 78:7, 78:14, 109:23, 141:6, 142:16, 142:18, 143:23, 143:25, 144:6, 144:8, 144:25, 153:10, 170:23, 173:5</p> <p><b>plants</b> [17] - 76:19, 77:18, 77:21, 78:18, 85:21, 88:8, 98:15, 99:3, 107:13, 107:14, 107:15, 149:12, 153:23, 169:25, 171:9, 173:12</p> <p><b>platform</b> [1] - 105:18</p> <p><b>play</b> [2] - 71:16, 72:25</p> <p><b>played</b> [1] - 153:3</p> <p><b>pleased</b> [1] - 53:5</p> <p><b>PLENK</b> [7] - 10:25, 11:7, 11:9, 11:14, 18:7, 63:7, 63:13</p> <p><b>Plenk</b> [4] - 11:5, 11:11, 18:5, 18:18</p> <p><b>plus</b> [2] - 18:10, 80:23</p> <p><b>point</b> [32] - 19:4, 20:14, 24:7, 25:21, 42:21, 60:13, 64:7, 74:12, 90:2, 90:4, 90:10, 95:22, 96:7, 96:8, 100:12, 102:22, 119:1, 120:1, 139:16, 157:13, 158:7, 158:16, 159:18, 163:13, 173:3, 176:1, 179:22, 196:8, 197:11, 204:19, 211:15, 213:7</p> <p><b>pointed</b> [1] - 91:23</p> <p><b>pointing</b> [1] - 136:14</p> <p><b>points</b> [3] - 132:6, 156:16, 179:20</p>	<p><b>policies</b> [3] - 32:25, 53:7, 53:14</p> <p><b>policy</b> [1] - 31:21</p> <p><b>Political</b> [1] - 84:6</p> <p><b>pollutant</b> [1] - 86:18</p> <p><b>pollutants</b> [6] - 92:1, 151:23, 155:14, 170:24, 171:3, 171:8</p> <p><b>pollution</b> [34] - 28:18, 88:12, 98:14, 99:3, 106:14, 106:18, 106:22, 107:7, 108:3, 108:17, 109:9, 111:1, 153:24, 161:7, 161:11, 161:14, 161:18, 162:10, 162:18, 163:6, 163:20, 165:9, 168:3, 169:3, 170:3, 171:14, 171:16, 173:4, 176:20, 182:24, 184:18, 189:5, 210:7, 211:4</p> <p><b>pollution control equipment</b> [4] - 29:4, 107:11, 110:17, 132:3</p> <p><b>Populus</b> [4] - 30:9, 30:12, 30:16, 30:20</p> <p><b>Populus-to</b></p> <p><b>Terminal</b> [3] - 30:12, 30:16, 30:20</p> <p><b>portfolio</b> [2] - 38:22, 39:3</p> <p><b>portion</b> [2] - 52:11, 213:5</p> <p><b>portions</b> [1] - 74:14</p> <p><b>posed</b> [1] - 208:25</p> <p><b>position</b> [25] - 21:15, 32:9, 32:11, 44:19, 46:23, 47:2, 47:5, 47:7, 47:16, 48:6, 48:15, 48:18, 49:18, 50:13, 52:12, 60:3, 85:1, 85:25, 103:13, 104:4, 118:14, 176:16, 197:5, 197:20, 212:4</p> <p><b>positioned</b> [1] - 86:16</p> <p><b>positions</b> [2] - 89:18, 89:24</p> <p><b>positive</b> [2] - 49:11, 148:11</p> <p><b>possibilities</b> [1] - 206:23</p> <p><b>possibility</b> [1] - 95:5</p> <p><b>possible</b> [7] - 21:23, 46:6, 53:3, 137:13, 174:16, 197:23, 211:9</p> <p><b>possibly</b> [1] - 45:13</p>	<p><b>post</b> [1] - 212:7</p> <p><b>post-combustion</b> [1] - 212:7</p> <p><b>postpone</b> [3] - 28:2, 149:24, 150:5</p> <p><b>postponed</b> [1] - 56:19</p> <p><b>postponement</b> [1] - 27:25</p> <p><b>potential</b> [4] - 39:25, 77:16, 107:19, 157:17</p> <p><b>potentially</b> [6] - 93:22, 96:10, 127:12, 133:18, 164:14, 174:2</p> <p><b>pounds</b> [2] - 193:13, 207:21</p> <p><b>pounds-per-million</b> [1] - 207:21</p> <p><b>Powell</b> [6] - 21:3, 44:10, 44:18, 44:20, 51:2, 65:18</p> <p><b>POWELL</b> [5] - 44:13, 65:20, 66:15, 72:4, 72:11</p> <p><b>Powell's</b> [1] - 64:23</p> <p><b>Power</b> [1] - 61:1</p> <p><b>power</b> [42] - 27:8, 34:14, 35:7, 40:22, 41:15, 41:19, 47:17, 48:2, 48:5, 56:8, 56:12, 61:22, 67:6, 68:1, 68:2, 68:21, 69:15, 69:16, 71:6, 86:8, 88:8, 99:3, 107:2, 110:4, 113:2, 128:14, 131:12, 131:13, 132:4, 143:17, 144:5, 144:13, 144:19, 145:6, 147:15, 148:2, 148:3, 148:21, 161:22, 170:23</p> <p><b>Power company</b> [2] - 62:17, 77:5</p> <p><b>Power's</b> [4] - 14:7, 22:9, 41:15, 163:6</p> <p><b>powering</b> [3] - 77:25, 101:15, 107:4</p> <p><b>powers</b> [1] - 107:2</p> <p><b>practical</b> [3] - 56:20, 185:3, 202:20</p> <p><b>practice</b> [2] - 84:9, 161:11</p> <p><b>practices</b> [5] - 31:15, 31:17, 48:25, 53:8, 53:14</p> <p><b>pre</b> [1] - 19:12</p> <p><b>pre-admit</b> [1] - 19:12</p> <p><b>precedes</b> [1] - 170:14</p> <p><b>precipitators</b> [1] -</p>	<p>163:15</p> <p><b>precluded</b> [1] - 30:19</p> <p><b>precursors</b> [1] - 170:25</p> <p><b>predicated</b> [1] - 154:2</p> <p><b>preface</b> [1] - 45:22</p> <p><b>prefer</b> [1] - 12:9</p> <p><b>preferably</b> [1] - 54:9</p> <p><b>preference</b> [1] - 159:8</p> <p><b>preferences</b> [4] - 31:19, 53:9, 53:15, 73:17</p> <p><b>preferred</b> [1] - 52:20</p> <p><b>prefiled</b> [3] - 9:2, 11:18, 13:8, 14:6, 15:3, 15:10, 16:2, 16:4, 17:7, 17:16, 17:23, 18:22, 19:19, 51:17, 58:9, 75:14, 75:17, 77:3, 78:22, 79:13, 83:4, 90:3, 102:24, 105:22, 116:1, 116:17, 118:17, 162:5, 162:14, 179:14, 197:11</p> <p><b>preliminary</b> [1] - 72:18</p> <p><b>premature</b> [1] - 179:23</p> <p><b>premium</b> [1] - 33:7</p> <p><b>preparation</b> [1] - 132:23</p> <p><b>prepare</b> [3] - 75:14, 79:13, 132:22</p> <p><b>prepared</b> [16] - 24:5, 50:25, 63:21, 84:16, 105:22, 106:9, 121:16, 125:24, 131:21, 132:18, 139:20, 139:21, 139:24, 140:2, 140:4, 140:5</p> <p><b>preparing</b> [1] - 126:14</p> <p><b>present</b> [6] - 12:22, 18:15, 45:19, 82:24, 109:12, 145:5</p> <p><b>presented</b> [18] - 23:4, 24:9, 26:14, 26:22, 34:11, 42:17, 43:7, 47:10, 50:7, 50:11, 51:20, 53:19, 65:16, 66:21, 110:14, 117:4, 144:22, 145:11</p> <p><b>presenting</b> [1] - 12:2</p> <p><b>presents</b> [1] - 145:6</p> <p><b>president</b> [4] - 28:21, 29:1, 84:14, 105:3</p>
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<p><b>presiding officer</b> [1] - 13:2 <b>presumed</b> [1] - 143:17 <b>presuming</b> [1] - 145:2 <b>presumption</b> [1] - 173:21 <b>presumptive</b> [3] - 204:25, 207:3, 207:5 <b>pretty</b> [2] - 12:10, 206:11 <b>preventing</b> [1] - 73:22 <b>previously</b> [8] - 53:22, 83:24, 84:17, 105:11, 130:11, 147:11, 160:17, 178:7 <b>price</b> [13] - 40:1, 141:8, 143:2, 143:9, 143:10, 144:5, 146:2, 146:3, 149:18, 150:12, 152:17, 153:6 <b>prices</b> [5] - 39:24, 141:5, 149:18, 152:14 <b>pricing</b> [1] - 153:7 <b>primarily</b> [2] - 39:2, 92:5 <b>Primarily</b> [1] - 154:5 <b>primary</b> [2] - 38:16, 131:24 <b>principal</b> [2] - 25:11, 55:5 <b>principle</b> [1] - 170:7 <b>printed</b> [1] - 75:24 <b>printouts</b> [1] - 165:14 <b>private</b> [3] - 84:9, 161:10, 164:11 <b>privilege</b> [1] - 127:14 <b>probabilities</b> [2] - 174:22, 175:10 <b>probability</b> [1] - 95:6 <b>problem</b> [4] - 12:25, 118:22, 199:18, 200:8 <b>procedural</b> [2] - 22:21, 194:22 <b>procedurally</b> [1] - 129:6 <b>procedure</b> [1] - 104:17 <b>procedures</b> [2] - 48:20, 65:10 <b>Proceed</b> [1] - 58:2 <b>proceed</b> [19] - 8:14, 8:22, 11:17, 12:9, 13:8, 14:18, 19:21, 21:8, 45:21, 54:24, 59:18, 63:25, 64:5, 75:2, 82:13, 87:25, 106:21, 119:3, 139:7</p>	<p><b>proceeded</b> [2] - 86:4, 87:17 <b>proceeding</b> [11] - 22:15, 28:2, 54:22, 57:23, 59:7, 119:7, 127:18, 133:8, 162:11, 162:19, 184:7 <b>proceedings</b> [4] - 30:20, 36:22, 41:23, 213:14 <b>proceeds</b> [2] - 40:11, 40:15 <b>process</b> [47] - 19:11, 22:23, 29:12, 31:15, 31:16, 31:22, 32:6, 32:7, 33:19, 33:22, 33:25, 49:2, 49:6, 52:5, 53:6, 65:8, 65:9, 66:12, 68:4, 68:10, 68:22, 69:23, 72:2, 72:22, 87:1, 87:6, 96:20, 96:23, 97:4, 102:25, 103:4, 109:6, 112:8, 118:8, 155:21, 165:10, 168:12, 168:21, 169:1, 169:11, 169:20, 170:8, 185:7, 205:8, 209:17, 209:22 <b>processes</b> [7] - 49:12, 87:2, 102:5, 102:8, 109:2, 109:7, 146:5 <b>Proctor</b> [4] - 10:15, 15:13, 51:4, 81:19 <b>PROCTOR</b> [4] - 10:16, 15:14, 15:19, 51:6 <b>procurement</b> [2] - 60:10, 113:4 <b>produce</b> [2] - 120:4, 135:12 <b>produced</b> [4] - 60:9, 69:21, 134:7, 134:9 <b>production</b> [1] - 107:12 <b>products</b> [3] - 38:10, 40:12 <b>professional</b> [5] - 84:4, 87:16, 105:15, 160:21, 178:11 <b>profile</b> [1] - 85:17 <b>program</b> [19] - 109:10, 114:20, 116:25, 141:17, 179:25, 180:12, 180:14, 180:15, 187:22, 189:16, 190:17, 191:21, 191:22, 192:12, 195:22, 199:3, 204:23, 205:6, 205:19</p>	<p><b>Program</b> [2] - 29:11, 174:14 <b>program's</b> [1] - 112:10 <b>programs</b> [6] - 108:10, 161:7, 185:2, 192:16, 204:1, 209:20 <b>progress</b> [2] - 186:18, 193:5 <b>prohibit</b> [1] - 13:4 <b>Project</b> [2] - 137:20, 140:3 <b>project</b> [9] - 28:4, 30:10, 30:17, 30:21, 113:13, 131:12, 133:15, 136:9, 140:15 <b>projected</b> [4] - 29:25, 35:1, 35:7, 67:25 <b>Projects</b> [1] - 128:22 <b>projects</b> [23] - 84:25, 85:1, 86:4, 86:15, 87:17, 88:7, 93:3, 106:11, 106:18, 108:3, 108:8, 108:13, 108:18, 108:20, 127:3, 128:3, 129:22, 132:14, 140:10, 140:12, 143:14, 180:20, 182:25 <b>promptly</b> [1] - 85:13 <b>promulgated</b> [1] - 78:5 <b>proper</b> [2] - 80:19, 118:18 <b>properly</b> [1] - 40:13 <b>proponent</b> [3] - 21:1, 63:4, 74:6 <b>proponents</b> [5] - 8:11, 8:15, 20:14, 20:16, 64:6 <b>proposal</b> [3] - 38:18, 85:22, 210:2 <b>proposals</b> [2] - 151:4, 156:3 <b>proposed</b> [25] - 23:13, 27:3, 27:4, 43:16, 78:5, 123:23, 150:21, 151:5, 154:15, 154:23, 155:5, 155:17, 155:19, 155:20, 155:23, 156:8, 156:9, 156:11, 156:22, 158:5, 163:22, 174:11, 207:20, 208:11, 208:13 <b>proposition</b> [2] - 101:7, 101:22 <b>protect</b> [1] - 52:5 <b>protecting</b> [1] - 108:4</p>	<p><b>Protection</b> [1] - 98:1 <b>protective</b> [1] - 127:17 <b>protocol</b> [4] - 64:17, 66:10, 66:13, 66:17 <b>prove</b> [1] - 117:9 <b>proves</b> [1] - 60:8 <b>provide</b> [25] - 28:20, 28:22, 29:5, 32:15, 45:3, 58:13, 83:4, 84:18, 105:14, 106:3, 106:9, 110:20, 125:23, 129:23, 134:19, 134:22, 135:11, 162:4, 164:2, 176:23, 177:2, 178:10, 179:13, 187:1, 193:5 <b>provided</b> [21] - 14:22, 15:15, 17:19, 39:19, 45:24, 46:13, 90:1, 106:24, 110:23, 115:4, 115:14, 127:15, 133:20, 135:10, 135:15, 136:3, 138:8, 140:18, 141:7, 149:2, 187:10 <b>provider</b> [1] - 38:20 <b>provides</b> [6] - 27:20, 29:2, 29:10, 56:1, 56:7, 86:20 <b>providing</b> [5] - 84:22, 115:20, 119:20, 121:24, 163:9 <b>provision</b> [2] - 118:24, 187:2 <b>provisions</b> [2] - 52:8, 122:24 <b>proxy</b> [1] - 158:10 <b>prudence</b> [10] - 29:3, 32:21, 33:13, 79:21, 106:10, 109:13, 110:16, 111:1, 126:1, 135:1 <b>prudent</b> [11] - 28:12, 30:17, 100:15, 101:20, 162:13, 163:7, 165:5, 168:24, 169:1, 169:11, 171:11 <b>prudently</b> [4] - 87:19, 108:20, 108:24, 163:25 <b>Public</b> [2] - 133:6, 137:10 <b>public</b> [2] - 127:10, 213:13 <b>public interest</b> [6] - 22:11, 43:11, 44:4, 46:12, 50:23, 55:9 <b>Public Service Commission</b> [2] -</p>	<p>83:25, 105:11 <b>public's</b> [1] - 106:16 <b>publication</b> [1] - 196:2 <b>published</b> [1] - 194:25 <b>pull</b> [2] - 61:16, 145:18 <b>purchase</b> [5] - 107:2, 113:2, 143:17, 144:5, 145:6 <b>purchases</b> [14] - 77:25, 107:2, 109:23, 110:5, 113:2, 128:14, 131:13, 132:4, 141:19, 142:17, 142:21, 148:4, 148:6, 148:21 <b>Purchasing</b> [1] - 147:18 <b>pure</b> [1] - 94:24 <b>purely</b> [1] - 171:21 <b>purpose</b> [12] - 21:21, 27:15, 36:17, 77:12, 77:15, 90:11, 90:13, 116:8, 141:11, 141:13, 141:16, 143:4 <b>purposes</b> [9] - 28:13, 40:18, 49:25, 65:3, 77:20, 120:18, 138:3, 142:12, 158:12 <b>Pursuant</b> [1] - 188:11 <b>pursuant</b> [3] - 13:17, 89:19, 187:14 <b>pursue</b> [2] - 38:9, 67:12 <b>pursues</b> [1] - 39:9 <b>put</b> [12] - 12:5, 20:23, 72:1, 94:12, 132:7, 132:24, 136:11, 149:20, 185:4, 190:22, 197:21, 202:3 <b>putting</b> [2] - 74:15, 90:6 <b>PVRR</b> [5] - 133:13, 134:9, 134:21, 145:6, 147:12 <b>PVRRD</b> [5] - 132:13, 132:18, 134:3, 134:16, 147:4</p>
<b>Q</b>				
<b>qualifications</b> [1] - 103:13 <b>qualify</b> [2] - 172:1, 172:11 <b>quality</b> [6] - 86:11, 108:11, 161:19, 161:23, 194:21, 199:4				

<p><b>Quality</b> [10] - 29:9, 162:24, 163:1, 164:10, 178:23, 194:24, 195:5, 195:7, 206:10</p> <p><b>quantification</b> [1] - 169:8</p> <p><b>quantified</b> [2] - 167:11, 169:3</p> <p><b>quantify</b> [1] - 108:25</p> <p><b>quantitative</b> [1] - 185:2</p> <p><b>quantity</b> [1] - 212:2</p> <p><b>questioning</b> [7] - 103:4, 121:14, 129:10, 130:17, 137:22, 156:19, 165:24</p> <p><b>questions</b> [48] - 8:20, 11:25, 38:1, 40:9, 41:1, 41:3, 41:5, 59:25, 60:15, 61:4, 63:20, 64:9, 67:6, 70:10, 71:20, 81:23, 81:24, 82:1, 82:4, 82:8, 82:15, 82:17, 88:5, 89:10, 90:23, 90:25, 96:1, 102:20, 102:22, 103:7, 112:3, 115:3, 119:5, 121:25, 123:1, 126:13, 127:19, 128:25, 132:17, 136:13, 142:9, 152:23, 165:5, 165:24, 182:9, 198:22, 203:7, 212:21</p> <p><b>queue</b> [1] - 146:22</p> <p><b>quick</b> [1] - 130:15</p> <p><b>quickly</b> [2] - 86:14, 199:7</p> <p><b>quite</b> [1] - 169:11</p> <p><b>quotation</b> [1] - 204:15</p> <p><b>quote</b> [3] - 189:9, 189:12, 192:19</p> <p><b>quoted</b> [1] - 207:4</p> <p><b>quotes</b> [1] - 40:2</p> <p><b>quoting</b> [1] - 187:18</p>	<p><b>ran</b> [2] - 143:15, 151:2</p> <p><b>range</b> [1] - 40:3</p> <p><b>rate</b> [15] - 23:10, 23:19, 26:24, 27:2, 27:5, 27:14, 35:13, 36:21, 50:2, 51:25, 68:7, 68:17, 68:21, 170:8</p> <p><b>rate base</b> [1] - 42:11</p> <p><b>rate case</b> [13] - 29:14, 30:2, 30:25, 39:20, 42:8, 42:9, 45:6, 45:8, 47:4, 50:11, 50:14, 77:20, 114:13</p> <p><b>rate design</b> [2] - 23:19, 213:11</p> <p><b>rate increase</b> [5] - 23:7, 35:17, 43:1, 43:2, 51:15</p> <p><b>rate-setting</b> [1] - 170:8</p> <p><b>ratemaking</b> [5] - 37:22, 41:18, 52:1, 52:20, 175:13</p> <p><b>ratepayer</b> [1] - 50:8</p> <p><b>ratepayers</b> [5] - 50:1, 96:11, 170:6, 174:24, 175:12</p> <p><b>rates</b> [18] - 26:4, 26:21, 29:19, 29:20, 36:2, 36:19, 51:22, 52:9, 53:18, 53:22, 53:24, 56:21, 60:18, 70:4, 85:19, 207:8, 207:12, 210:24</p> <p><b>Rather</b> [1] - 92:8</p> <p><b>rather</b> [5] - 69:7, 90:5, 96:3, 169:20, 182:25</p> <p><b>re</b> [6] - 77:25, 92:14, 96:15, 101:15, 107:4, 110:3</p> <p><b>re-characterizing</b> [1] - 96:15</p> <p><b>re-powering</b> [3] - 77:25, 101:15, 107:4</p> <p><b>reach</b> [4] - 31:23, 43:21, 56:12, 92:14</p> <p><b>reached</b> [2] - 42:23, 123:15</p> <p><b>reaching</b> [1] - 34:14</p> <p><b>react</b> [1] - 153:15</p> <p><b>read</b> [28] - 8:7, 12:18, 13:22, 25:15, 46:1, 92:8, 94:1, 98:7, 99:24, 102:19, 111:18, 118:24, 119:1, 123:14, 126:18, 126:22,</p>	<p>165:16, 166:6, 166:11, 168:8, 168:17, 168:18, 170:20, 182:17, 187:3, 190:10, 194:16, 205:11</p> <p><b>Read</b> [3] - 111:19, 119:2, 201:25</p> <p><b>reading</b> [6] - 96:4, 116:22, 121:12, 188:6, 201:20, 201:21</p> <p><b>Reading</b> [1] - 203:12</p> <p><b>reads</b> [5] - 76:5, 76:16, 92:17, 93:5, 94:1</p> <p><b>ready</b> [1] - 14:18</p> <p><b>real</b> [2] - 107:20, 187:25</p> <p><b>realistic</b> [1] - 141:24</p> <p><b>reality</b> [4] - 141:25, 143:19, 148:9, 150:22</p> <p><b>really</b> [12] - 62:9, 69:23, 90:24, 95:25, 136:2, 138:5, 154:25, 192:17, 197:12, 200:7, 201:3, 205:7</p> <p><b>reason</b> [5] - 67:24, 68:9, 119:20, 150:10, 173:1</p> <p><b>reasonable</b> [21] - 26:16, 43:10, 46:11, 47:9, 49:18, 50:8, 50:20, 50:22, 51:21, 52:1, 52:9, 53:24, 54:12, 55:8, 78:19, 106:15, 106:23, 107:12, 108:4, 148:18, 193:5</p> <p><b>reasonableness</b> [1] - 57:3</p> <p><b>reasonably</b> [4] - 76:15, 76:17, 163:8, 164:2</p> <p><b>reasons</b> [7] - 33:14, 33:17, 73:18, 169:10, 169:12, 169:15, 199:11</p> <p><b>rebut</b> [2] - 89:18, 104:3</p> <p><b>rebutts</b> [1] - 118:14</p> <p><b>rebuttal</b> [44] - 23:9, 23:10, 26:8, 38:14, 39:11, 42:14, 47:2, 47:7, 47:13, 47:16, 48:6, 48:17, 52:16, 84:16, 88:5, 89:16, 89:21, 90:15, 90:18, 97:2, 98:25, 104:5, 105:25, 106:7, 110:8, 110:10, 111:10, 111:15, 112:17, 116:2, 118:15, 128:9,</p>	<p>129:3, 133:7, 145:11, 157:14, 161:25, 170:11, 179:6, 179:10, 182:11, 187:9, 197:6</p> <p><b>Rebuttal</b> [2] - 111:13, 111:14</p> <p><b>REC</b> [44] - 34:20, 34:21, 35:22, 35:23, 35:25, 36:2, 36:3, 36:12, 36:18, 36:21, 36:24, 37:3, 37:13, 37:20, 37:21, 38:2, 38:3, 38:20, 39:12, 39:19, 39:21, 40:8, 40:10, 40:14, 40:24, 41:8, 41:16, 41:21, 49:22, 50:1, 52:10, 52:14, 52:18, 53:2, 55:23, 56:10, 61:4, 61:7, 61:8, 61:24, 62:4</p> <p><b>recalcitrant</b> [1] - 202:24</p> <p><b>receive</b> [2] - 52:24, 160:24</p> <p><b>Received</b> [1] - 178:15</p> <p><b>received</b> [7] - 36:3, 84:5, 124:21, 141:6, 159:19, 160:22, 178:13</p> <p><b>receives</b> [1] - 39:5</p> <p><b>recent</b> [8] - 36:14, 51:25, 93:15, 94:15, 200:10, 207:15, 208:11, 210:2</p> <p><b>recently</b> [2] - 39:23, 40:5</p> <p><b>recently-released</b> [1] - 40:5</p> <p><b>recess</b> [4] - 74:8, 74:11, 159:11, 159:13</p> <p><b>recognition</b> [1] - 56:7</p> <p><b>recognize</b> [1] - 120:13</p> <p><b>recognized</b> [1] - 199:18</p> <p><b>recognizes</b> [1] - 56:17</p> <p><b>recollection</b> [5] - 113:23, 119:22, 123:16, 124:9, 124:24</p> <p><b>recommend</b> [5] - 28:10, 30:15, 44:4, 55:8, 78:16</p> <p><b>recommendation</b> [1] - 47:25</p> <p><b>recommended</b> [3] - 48:2, 48:9, 48:14</p>	<p><b>recommending</b> [1] - 73:19</p> <p><b>recommends</b> [3] - 50:23, 54:7, 54:13</p> <p><b>record</b> [40] - 8:3, 8:13, 9:3, 10:6, 11:18, 12:17, 13:9, 14:25, 18:6, 18:13, 18:19, 18:25, 20:7, 44:19, 62:15, 62:23, 75:11, 75:21, 78:23, 79:18, 81:5, 83:2, 83:20, 95:25, 96:4, 103:24, 105:6, 115:13, 119:2, 119:12, 136:6, 136:7, 136:15, 136:25, 140:17, 154:7, 159:16, 159:21, 160:13, 178:5</p> <p><b>records</b> [1] - 67:18</p> <p><b>recount</b> [1] - 22:23</p> <p><b>recoup</b> [5] - 144:1, 145:1, 149:25, 150:6, 150:17</p> <p><b>recover</b> [3] - 35:6, 148:19, 149:13</p> <p><b>recovered</b> [1] - 35:9</p> <p><b>recovery</b> [1] - 56:24</p> <p><b>RECs</b> [12] - 38:24, 38:25, 39:1, 39:6, 39:10, 40:1, 40:16, 40:17, 40:23, 56:2, 60:7, 61:19</p> <p><b>redirect</b> [8] - 8:21, 64:9, 103:11, 103:14, 159:17, 177:11, 213:1, 213:2</p> <p><b>Redirect</b> [1] - 177:10</p> <p><b>redirect</b></p> <p><b>examination</b> [1] - 74:5</p> <p><b>reduce</b> [7] - 26:7, 60:18, 85:23, 183:8, 184:2, 186:4, 186:11</p> <p><b>reduced</b> [3] - 23:10, 39:24, 56:7</p> <p><b>reducing</b> [2] - 60:24, 86:8</p> <p><b>reduction</b> [5] - 84:25, 86:3, 86:15, 108:22, 186:19</p> <p><b>reductions</b> [9] - 85:6, 85:13, 86:13, 171:6, 171:19, 175:25, 176:15, 187:23, 189:17</p> <p><b>redundant</b> [1] - 79:25</p> <p><b>Reeder</b> [3] - 10:3, 17:15, 62:20</p> <p><b>REEDER</b> [4] - 10:4, 17:16, 62:15, 72:25</p>
<p><b>R</b></p>				
<p><b>R746-10</b> [1] - 12:17</p> <p><b>raise</b> [2] - 21:4, 177:19</p> <p><b>raised</b> [7] - 37:19, 38:5, 38:7, 40:9, 41:1, 55:24, 72:23</p> <p><b>raises</b> [1] - 38:1</p> <p><b>rambling</b> [1] - 46:6</p> <p><b>ramifications</b> [1] - 185:3</p>				

<p><b>ref</b> [1] - 119:21 <b>refer</b> [3] - 165:12, 191:8, 198:2 <b>reference</b> [7] - 99:13, 102:15, 110:20, 127:25, 133:3, 157:25, 200:10 <b>referenced</b> [2] - 127:3, 183:17 <b>references</b> [3] - 70:11, 146:7, 183:19 <b>referred</b> [5] - 39:16, 80:11, 98:20, 131:25, 198:23 <b>referring</b> [10] - 88:14, 128:18, 131:4, 133:5, 133:16, 139:6, 168:7, 186:14, 196:21, 212:7 <b>refers</b> [2] - 39:15, 198:25 <b>reflect</b> [6] - 31:18, 42:13, 51:18, 53:14, 159:21, 197:2 <b>reflected</b> [7] - 18:13, 29:22, 30:7, 37:6, 37:13, 56:11, 68:7 <b>reflection</b> [1] - 202:17 <b>reflective</b> [1] - 73:16 <b>reflects</b> [1] - 27:3 <b>refresh</b> [1] - 119:22 <b>refund</b> [1] - 50:1 <b>refused</b> [1] - 202:24 <b>refute</b> [1] - 136:2 <b>regard</b> [7] - 48:22, 59:25, 60:15, 61:4, 72:19, 84:2, 85:10 <b>regarding</b> [13] - 29:10, 31:5, 31:9, 37:21, 59:21, 63:21, 100:4, 106:24, 107:21, 110:25, 123:4, 181:6, 201:12 <b>regardless</b> [2] - 153:15, 174:22 <b>regards</b> [1] - 80:3 <b>region</b> [5] - 85:17, 85:22, 186:22, 201:9, 208:12 <b>Region</b> [3] - 93:16, 93:17, 201:4 <b>Regional</b> [3] - 29:11, 154:3, 174:9 <b>regional</b> [28] - 85:7, 85:22, 88:16, 91:3, 93:20, 94:18, 96:18, 99:18, 99:19, 108:9, 112:9, 112:10, 115:3, 116:25, 117:14, 120:6, 122:22, 155:8, 155:9, 170:4, 180:12,</p>	<p>181:15, 181:20, 188:7, 189:6, 190:23, 195:11 <b>regional haze rule</b> [1] - 90:20, 94:11, 119:25, 120:18, 122:3, 181:16, 184:22, 184:24, 185:9, 192:24, 200:9 <b>regularly</b> [1] - 132:25 <b>regulating</b> [1] - 170:23 <b>regulation</b> [5] - 98:13, 166:15, 172:10, 173:2, 193:9 <b>regulations</b> [55] - 87:9, 91:25, 97:25, 98:2, 99:11, 99:13, 99:14, 102:10, 107:20, 112:21, 114:18, 114:23, 116:21, 154:12, 156:1, 156:16, 157:8, 158:5, 162:20, 163:9, 163:10, 164:1, 164:4, 164:20, 164:22, 165:9, 167:16, 168:5, 168:9, 169:4, 169:9, 169:22, 169:24, 170:22, 171:23, 172:1, 172:8, 172:23, 173:4, 173:6, 173:7, 173:11, 173:13, 173:25, 174:3, 174:19, 175:4, 176:22, 176:24, 179:17, 180:11, 190:5, 194:2 <b>regulator</b> [1] - 212:4 <b>regulators</b> [5] - 181:4, 199:13, 199:14, 203:16, 204:12 <b>regulatory</b> [9] - 21:18, 76:9, 80:13, 84:23, 86:5, 86:16, 87:4, 108:7, 194:21 <b>regurgitate</b> [1] - 25:16 <b>rehearing</b> [1] - 13:13 <b>reject</b> [2] - 205:21, 205:25 <b>rejected</b> [2] - 81:2, 126:3 <b>related</b> [7] - 27:24, 33:20, 47:10, 47:19, 54:8, 65:11, 67:6 <b>relates</b> [6] - 67:9, 69:1, 69:2, 70:24, 99:12, 162:6 <b>relating</b> [2] - 161:18, 162:10</p>	<p><b>relative</b> [2] - 78:18, 153:10 <b>relatively</b> [1] - 146:23 <b>release</b> [1] - 125:10 <b>released</b> [2] - 40:5, 125:3 <b>relevant</b> [1] - 106:12 <b>Reliability</b> [1] - 97:9 <b>relicensing</b> [1] - 28:6 <b>relies</b> [1] - 97:4 <b>relying</b> [2] - 35:13, 193:2 <b>remain</b> [4] - 52:21, 77:21, 78:18, 144:25 <b>remainder</b> [1] - 63:10 <b>remaining</b> [2] - 42:15, 141:23 <b>remains</b> [1] - 200:25 <b>remarks</b> [3] - 44:6, 46:15, 50:25 <b>remedies</b> [1] - 43:15 <b>remedy</b> [3] - 74:1, 74:2 <b>removal</b> [4] - 47:18, 54:4, 56:18, 56:22 <b>remove</b> [3] - 33:5, 48:11, 54:4 <b>renew</b> [2] - 115:22, 130:9 <b>renewable</b> [17] - 38:10, 38:15, 38:22, 38:24, 39:3, 39:10, 40:19, 40:23, 55:17, 60:7, 60:8, 60:11, 60:17, 61:20, 61:21, 61:22, 98:5 <b>renewables</b> [1] - 100:24 <b>Repeat</b> [1] - 94:14 <b>repeat</b> [3] - 145:21, 175:8, 176:7 <b>repeated</b> [1] - 121:17 <b>replace</b> [4] - 76:4, 107:15, 144:19, 147:18 <b>replaced</b> [2] - 142:8, 142:18 <b>replacement</b> [12] - 77:25, 86:8, 97:19, 101:3, 107:2, 110:2, 113:2, 113:4, 131:13, 144:13, 147:24, 148:2 <b>Replacement</b> [1] - 101:15 <b>replacing</b> [7] - 62:3, 142:2, 142:16, 147:7, 147:9, 147:13, 148:6 <b>replicate</b> [1] - 141:1 <b>REPORTER</b> [3] -</p>	<p>11:2, 83:12, 139:17 <b>reporter</b> [8] - 9:6, 14:3, 15:15, 16:15, 16:20, 17:19, 58:13, 139:14 <b>reports</b> [1] - 32:4 <b>repowering</b> [1] - 212:11 <b>represent</b> [6] - 42:18, 51:23, 76:11, 144:7, 145:15, 145:23 <b>representation</b> [1] - 64:19 <b>representations</b> [1] - 62:16 <b>representative</b> [1] - 146:23 <b>represented</b> [2] - 27:17, 119:11 <b>representing</b> [1] - 10:13 <b>represents</b> [2] - 49:16, 111:25 <b>Request</b> [1] - 133:21 <b>request</b> [11] - 23:11, 23:24, 33:4, 46:20, 51:15, 63:9, 126:6, 126:24, 127:13, 135:4, 135:7 <b>requested</b> [1] - 143:6 <b>requesting</b> [3] - 23:6, 38:19, 58:4 <b>requests</b> [1] - 32:24 <b>require</b> [14] - 12:20, 93:17, 94:11, 95:12, 98:13, 170:3, 171:23, 171:24, 185:6, 187:24, 188:25, 202:14, 211:18, 212:15 <b>required</b> [34] - 77:14, 85:5, 85:12, 95:1, 108:8, 108:13, 152:19, 153:12, 155:16, 163:16, 164:16, 171:7, 173:5, 173:10, 180:8, 184:12, 187:15, 188:12, 190:8, 190:11, 190:14, 190:25, 191:5, 192:7, 193:9, 198:12, 199:8, 199:23, 203:9, 210:3, 210:15, 210:21, 210:22, 212:19 <b>requirement</b> [22] - 13:15, 14:23, 14:25, 16:24, 24:2, 26:1, 26:8, 26:17, 29:22, 31:11, 42:12, 45:7, 52:13, 53:18, 61:21, 183:16, 184:11,</p>	<p>185:15, 188:6, 188:7, 193:15, 211:19 <b>Requirement</b> [5] - 15:7, 17:25, 58:6, 58:7, 58:11 <b>requirements</b> [29] - 26:3, 30:22, 38:23, 76:9, 78:1, 80:13, 85:2, 86:21, 88:17, 108:12, 108:14, 109:1, 109:4, 155:8, 163:21, 164:7, 164:13, 171:16, 173:19, 175:23, 176:10, 184:10, 188:24, 191:19, 191:20, 194:22, 199:16, 203:6 <b>requires</b> [4] - 38:12, 185:1, 186:16, 202:18 <b>requiring</b> [2] - 93:23, 164:12 <b>research</b> [1] - 161:8 <b>reservations</b> [1] - 62:17 <b>reserve</b> [1] - 33:16 <b>reset</b> [1] - 36:21 <b>residential</b> [1] - 51:22 <b>residuals</b> [1] - 155:24 <b>resolution</b> [10] - 34:11, 34:13, 34:15, 41:14, 43:25, 52:1, 52:4, 57:14, 65:17, 73:15 <b>resolutions</b> [1] - 43:3 <b>resolve</b> [3] - 33:1, 66:5, 206:8 <b>resolved</b> [7] - 30:13, 31:7, 31:12, 37:23, 41:10, 41:22, 64:21 <b>resolves</b> [3] - 22:16, 22:19, 41:9 <b>Resource</b> [4] - 101:25, 102:12, 127:5, 127:9 <b>resource</b> [12] - 29:1, 38:25, 54:2, 60:10, 61:10, 105:3, 107:24, 109:5, 127:8, 127:24, 146:4, 147:20 <b>resources</b> [9] - 38:12, 38:15, 38:16, 39:10, 52:25, 57:9, 71:11, 126:2, 145:7 <b>respect</b> [20] - 27:24, 55:16, 56:18, 57:5, 79:20, 84:19, 106:5, 112:20, 120:6, 124:18, 128:13,</p>
--	---	---	--	--

<p>128:14, 131:13, 149:18, 151:9, 157:21, 158:1, 158:4, 181:7, 198:1 <b>respective</b> [1] - 108:16 <b>respond</b> [6] - 73:12, 153:18, 153:19, 166:2, 189:19, 191:12 <b>responded</b> [2] - 24:4, 165:25 <b>responding</b> [2] - 126:9, 203:22 <b>responds</b> [1] - 201:14 <b>response</b> [29] - 30:2, 38:11, 69:6, 110:18, 110:22, 119:9, 126:18, 126:20, 126:22, 127:20, 133:6, 133:20, 135:5, 135:14, 135:22, 135:24, 136:10, 136:19, 137:9, 137:11, 141:4, 149:3, 165:21, 182:22, 189:16, 190:2, 200:19, 204:5, 211:9 <b>Response</b> [1] - 149:4 <b>responses</b> [3] - 24:3, 24:5, 126:15 <b>responsibilities</b> [1] - 105:19 <b>responsibility</b> [2] - 121:24, 206:5 <b>responsible</b> [1] - 178:20 <b>responsive</b> [7] - 110:25, 127:13, 127:21, 131:22, 134:20, 135:4, 138:15 <b>rest</b> [2] - 161:21, 190:10 <b>Restate</b> [1] - 124:20 <b>restate</b> [4] - 44:1, 100:20, 104:2, 187:6 <b>restating</b> [1] - 96:14 <b>restrict</b> [2] - 122:13, 159:5 <b>restricted</b> [1] - 39:22 <b>result</b> [19] - 29:15, 29:16, 31:21, 35:4, 43:11, 46:11, 50:22, 51:21, 54:12, 64:15, 85:19, 90:20, 91:3, 93:19, 94:19, 96:23, 149:21, 164:15, 206:3 <b>resulting</b> [2] - 27:5, 163:11 <b>results</b> [7] - 32:5, 43:10, 57:14, 87:3,</p>	<p>141:2, 153:4, 187:24 <b>retail</b> [5] - 67:18, 68:7, 68:14, 68:20, 68:23 <b>retained</b> [2] - 162:8, 172:19 <b>retired</b> [1] - 144:6 <b>retirement</b> [3] - 107:14, 144:10, 212:10 <b>retract</b> [1] - 124:20 <b>retrofit</b> [10] - 77:21, 78:2, 107:9, 112:8, 113:13, 116:11, 162:25, 170:4, 180:10 <b>retrofits</b> [10] - 77:14, 77:15, 77:22, 78:4, 78:8, 80:12, 112:4, 126:1, 135:2, 168:24 <b>retrofitting</b> [3] - 100:4, 106:25, 111:23 <b>return</b> [6] - 27:2, 27:6, 47:16, 47:23, 47:24, 51:25 <b>returning</b> [1] - 53:2 <b>reuse</b> [1] - 152:3 <b>revamp</b> [1] - 79:22 <b>revenue</b> [19] - 13:14, 14:23, 14:25, 16:24, 26:1, 26:3, 26:8, 26:16, 29:22, 31:11, 39:6, 40:17, 40:23, 42:12, 45:6, 52:12, 52:24, 53:2, 53:17 <b>Revenue</b> [5] - 15:7, 17:25, 58:6, 58:7, 58:10 <b>revenues</b> [24] - 27:10, 27:15, 29:17, 29:21, 29:24, 29:25, 30:1, 30:5, 30:22, 35:23, 35:25, 36:2, 36:3, 36:18, 36:21, 37:21, 39:19, 40:7, 49:22, 50:1, 52:10, 52:14, 52:18, 62:7 <b>review</b> [21] - 21:23, 29:6, 34:7, 65:13, 75:20, 77:13, 77:15, 96:24, 107:23, 108:11, 121:6, 125:2, 126:17, 141:3, 141:10, 146:16, 162:9, 168:16, 168:20, 192:2, 198:17 <b>reviewed</b> [10] - 24:11, 24:15, 32:10, 45:15, 66:1, 123:8, 124:3, 130:18, 168:14 <b>reviewing</b> [5] - 97:4, 99:2, 99:21, 155:10, 168:22</p>	<p><b>reviews</b> [2] - 132:10, 161:19 <b>revised</b> [1] - 184:5 <b>revision</b> [3] - 182:19, 183:6, 183:14 <b>revisions</b> [1] - 182:16 <b>RFP</b> [13] - 33:22, 33:24, 34:2, 34:3, 34:6, 49:3, 64:17, 64:25, 65:7, 65:8, 66:7, 66:19, 66:22 <b>RFPs</b> [2] - 39:18, 40:5 <b>Richard Sprott</b> [3] - 29:8, 177:23, 178:6 <b>rigorous</b> [2] - 24:20, 169:17 <b>risk</b> [36] - 31:18, 53:8, 87:11, 95:7, 95:8, 95:11, 95:14, 95:15, 95:16, 95:17, 96:11, 107:8, 167:5, 167:8, 167:10, 167:12, 167:18, 167:21, 168:4, 169:4, 172:1, 172:2, 172:3, 172:5, 172:11, 172:12, 172:24, 174:23, 175:1, 175:5, 175:10, 202:4, 208:23, 209:1, 209:6 <b>risks</b> [2] - 34:17, 167:19 <b>RMP</b> [1] - 14:14 <b>Robert Reeder</b> [1] - 10:4 <b>Rocky Mountain</b> [4] - 14:7, 22:9, 41:15, 163:6 <b>Rocky Mountain</b> <b>Power</b> [31] - 8:25, 9:10, 9:13, 13:12, 14:1, 14:12, 19:25, 21:16, 21:18, 22:2, 23:5, 23:21, 38:4, 38:8, 41:18, 56:8, 57:13, 74:17, 84:24, 85:5, 89:9, 98:13, 123:17, 162:8, 163:13, 164:5, 169:25, 171:8, 171:11, 172:25, 179:7 <b>Roger</b> [1] - 58:5 <b>ROGER</b> [1] - 59:1 <b>role</b> [1] - 110:3 <b>roles</b> [1] - 105:19 <b>rolled</b> [7] - 35:2, 53:18, 53:22, 54:1, 70:12, 70:15, 70:22 <b>rolled in</b> [2] - 70:19,</p>	<p>70:20 <b>rolled-in</b> [7] - 35:2, 53:18, 53:22, 54:1, 70:12, 70:15, 70:22 <b>room</b> [2] - 16:9, 91:12 <b>rough</b> [1] - 125:6 <b>roughly</b> [8] - 125:13, 139:20, 146:15, 148:16, 148:20, 170:10, 182:11, 203:21 <b>round</b> [1] - 61:17 <b>rounds</b> [1] - 132:20 <b>Route</b> [1] - 160:15 <b>RPS</b> [1] - 39:4 <b>rule</b> [7] - 12:16, 88:23, 155:15, 157:21, 183:24, 184:12, 192:9 <b>Rule</b> [1] - 104:8 <b>rulemaking</b> [2] - 155:20, 194:22 <b>rules</b> [45] - 76:10, 85:8, 88:13, 88:20, 89:8, 90:16, 90:21, 91:1, 91:4, 91:22, 92:3, 93:20, 94:17, 96:19, 99:18, 108:9, 152:10, 154:1, 154:6, 154:8, 154:15, 154:16, 154:19, 154:23, 155:4, 155:5, 155:16, 155:20, 155:22, 156:8, 156:21, 157:2, 157:3, 163:4, 163:19, 181:9, 181:15, 184:11, 194:12, 195:1, 197:16, 201:18, 202:5, 208:11 <b>run</b> [1] - 71:25 <b>runs</b> [2] - 128:13, 128:14 <b>Ryan</b> [2] - 9:18, 9:24</p>	<p><b>Salt Lake City Utah</b> [1] - 21:20 <b>Sam's</b> [3] - 9:16, 9:19, 22:6 <b>San Juan</b> [1] - 207:22 <b>satisfaction</b> [1] - 55:23 <b>satisfied</b> [1] - 46:10 <b>satisfy</b> [2] - 39:2, 171:15 <b>SC-3</b> [1] - 104:13 <b>scaler</b> [8] - 68:25, 69:1, 69:2, 69:4, 69:5, 69:23, 70:2, 70:4 <b>scenario</b> [5] - 87:4, 121:1, 121:4, 121:5, 121:7 <b>schedule</b> [2] - 68:22, 195:10 <b>schedules</b> [3] - 35:13, 86:7, 198:11 <b>Schmid</b> [2] - 81:20, 81:23 <b>SCHMID</b> [4] - 44:11, 44:17, 81:21, 81:24 <b>School</b> [2] - 84:8, 161:1 <b>Science</b> [3] - 84:6, 105:16, 160:22 <b>scientist</b> [1] - 75:13 <b>SCJF-9</b> [2] - 76:14, 76:17 <b>scope</b> [7] - 102:23, 118:16, 119:13, 126:11, 130:10, 163:8, 207:23 <b>SCR</b> [5] - 93:18, 94:19, 151:10, 210:4, 210:16 <b>SCRs</b> [6] - 93:22, 93:23, 94:12, 95:1, 95:10, 95:13 <b>scrubber</b> [7] - 101:13, 123:24, 123:25, 128:3, 129:22, 152:2, 157:22 <b>scrubbers</b> [12] - 113:14, 120:17, 123:11, 123:18, 123:22, 124:10, 124:19, 125:1, 125:9, 129:4, 151:8, 158:2 <b>scrutinized</b> [1] - 51:15 <b>scrutiny</b> [1] - 54:9 <b>se</b> [1] - 205:19 <b>seated</b> [7] - 21:7, 58:1, 75:2, 83:10, 104:16, 160:5, 177:21 <b>Second</b> [3] - 48:1,</p>
		<b>S</b>		
		<b>S-p-r-o-t-t</b> [1] - 178:6		
		<b>sake</b> [1] - 113:16		
		<b>sale</b> [12] - 39:7, 39:10, 40:11, 40:15, 40:18, 40:19, 40:21, 60:12, 60:18, 61:20, 61:24, 62:2 <b>sales</b> [10] - 38:3, 38:10, 39:12, 39:23, 39:25, 67:18, 67:21, 68:14, 68:23, 69:9 <b>Salt Lake City</b> [1] - 105:9		

<p>53:5, 83:22 <b>second</b> [7] - 12:25, 68:13, 76:12, 80:4, 88:14, 170:18, 173:3 <b>Secondly</b> [3] - 80:16, 180:2, 181:14 <b>secondly</b> [1] - 58:9 <b>secretary</b> [1] - 203:2 <b>Secretary</b> [1] - 195:4 <b>Section</b> [13] - 129:17, 181:17, 183:14, 183:16, 183:17, 183:18, 184:24, 185:1, 185:9, 185:17, 188:25, 190:3, 193:2 <b>section</b> [5] - 33:22, 35:22, 44:22, 44:24, 131:6 <b>sector</b> [1] - 179:5 <b>see</b> [18] - 64:8, 91:10, 101:2, 101:3, 118:10, 123:14, 125:3, 131:3, 133:10, 135:19, 139:9, 151:7, 158:23, 165:19, 194:8, 204:3, 211:6, 213:20 <b>Seeing</b> [2] - 59:14, 81:10 <b>seeing</b> [1] - 197:2 <b>seek</b> [1] - 198:6 <b>seem</b> [1] - 206:11 <b>selecting</b> [1] - 163:20 <b>selection</b> [4] - 112:25, 121:5, 180:14, 212:13 <b>sell</b> [1] - 38:24 <b>sells</b> [1] - 40:16 <b>senate</b> [14] - 89:5, 90:12, 90:13, 90:24, 91:20, 92:7, 92:20, 95:19, 98:4, 98:21, 98:24, 98:25, 103:22, 154:20 <b>Senate</b> [1] - 89:7 <b>senior</b> [2] - 28:21, 84:14 <b>sensitivity</b> [2] - 152:12, 152:17 <b>sentence</b> [10] - 76:5, 76:16, 79:24, 80:4, 111:17, 111:19, 166:12, 170:20, 182:19, 183:3 <b>separate</b> [2] - 17:2, 43:14 <b>separately</b> [3] - 18:23, 20:8, 53:19 <b>September</b> [4] -</p>	<p>26:5, 36:19, 37:5, 37:9 <b>serve</b> [4] - 38:16, 84:13, 107:25, 108:5 <b>served</b> [2] - 84:11, 178:17 <b>serves</b> [1] - 195:6 <b>service</b> [13] - 13:20, 20:20, 22:18, 23:19, 26:21, 35:14, 36:7, 36:9, 37:16, 38:12, 38:20, 142:1, 213:11 <b>services</b> [2] - 28:22, 84:14 <b>set</b> [15] - 25:1, 34:19, 34:24, 65:10, 72:2, 103:12, 132:25, 149:1, 151:3, 152:11, 152:15, 152:17, 181:9, 186:16, 193:14 <b>sets</b> [1] - 153:17 <b>setting</b> [2] - 53:22, 170:8 <b>settled</b> [1] - 52:12 <b>settlement</b> [31] - 22:24, 24:8, 24:23, 28:7, 28:16, 32:9, 33:8, 45:12, 47:3, 47:21, 49:20, 49:25, 50:7, 50:11, 50:17, 51:13, 51:20, 51:24, 53:4, 53:6, 53:16, 53:19, 54:3, 54:12, 73:3, 84:20, 84:22, 106:6, 106:13, 162:15, 179:15 <b>Settlement</b> [1] - 14:13 <b>settlement agreement</b> [13] - 16:25, 28:5, 45:16, 55:7, 55:13, 55:22, 56:1, 56:6, 56:15, 57:11, 57:16, 72:16, 162:6 <b>seven</b> [2] - 121:10, 161:16 <b>several</b> [7] - 38:23, 45:5, 47:14, 50:17, 112:11, 132:20, 207:15 <b>Shall</b> [4] - 44:9, 74:19, 74:22, 104:17 <b>shall</b> [4] - 11:17, 36:13, 41:13, 41:23 <b>share</b> [3] - 66:24, 69:25, 71:7 <b>shared</b> [1] - 32:16 <b>shareholder</b> [1] - 50:8 <b>sharing</b> [4] - 34:25,</p>	<p>71:3, 71:15, 71:25 <b>shift</b> [2] - 150:10, 153:5 <b>short</b> [3] - 34:6, 45:14, 52:22 <b>shortly</b> [1] - 184:19 <b>show</b> [9] - 24:7, 76:14, 76:17, 77:20, 91:6, 119:21, 147:6, 148:5, 208:11 <b>showing</b> [1] - 148:11 <b>shown</b> [7] - 26:6, 27:7, 27:18, 27:25, 37:16, 37:17, 115:23 <b>Shown</b> [1] - 26:22 <b>shows</b> [2] - 26:7, 78:17 <b>shut</b> [1] - 164:15 <b>sic</b> [4] - 8:5, 41:12, 42:10, 190:22 <b>side</b> [1] - 159:16 <b>Sierra</b> [36] - 8:22, 10:19, 10:21, 11:21, 12:5, 18:20, 25:8, 28:15, 28:17, 63:18, 74:9, 74:13, 75:15, 77:1, 79:14, 89:15, 89:17, 89:25, 91:13, 96:3, 96:4, 103:23, 104:1, 107:17, 115:23, 116:3, 125:19, 127:4, 134:9, 134:20, 140:24, 149:3, 164:12, 164:18, 164:20, 187:9 <b>sign</b> [1] - 66:13 <b>signatory</b> [3] - 18:14, 62:24 <b>signature</b> [2] - 18:11, 25:5 <b>signed</b> [3] - 25:3, 25:7, 159:21 <b>significant</b> [12] - 52:10, 57:9, 87:10, 92:1, 96:10, 96:16, 109:11, 156:17, 156:20, 157:9, 172:9, 174:2 <b>significantly</b> [2] - 76:3, 107:16 <b>signing</b> [3] - 22:1, 24:25, 42:25 <b>signs</b> [1] - 195:5 <b>similar</b> [6] - 49:7, 68:25, 146:10, 146:18, 170:15, 210:2 <b>similarly</b> [1] - 153:19 <b>Similarly</b> [1] - 49:3 <b>simple</b> [1] - 145:5 <b>simplicity's</b> [1] - 113:16</p>	<p><b>simplistic</b> [2] - 144:15, 147:21 <b>simply</b> [15] - 26:11, 31:1, 117:12, 119:10, 126:6, 130:20, 131:9, 137:20, 147:12, 147:14, 148:3, 163:4, 186:10, 191:14, 192:15 <b>SIP</b> [63] - 164:13, 184:10, 184:18, 185:4, 185:24, 186:4, 187:2, 187:18, 188:2, 188:8, 188:10, 189:1, 189:2, 189:13, 189:14, 189:17, 192:3, 192:5, 192:11, 192:14, 192:18, 193:4, 193:17, 193:22, 194:24, 195:11, 195:13, 195:19, 196:3, 196:4, 196:9, 196:12, 196:13, 196:18, 196:22, 197:3, 198:2, 198:23, 198:24, 198:25, 199:21, 199:22, 199:23, 200:3, 200:7, 200:18, 200:25, 201:5, 201:9, 202:14, 202:15, 202:17, 203:6, 204:21, 205:18, 205:22, 206:1, 206:16, 209:25 <b>SIPs</b> [25] - 155:10, 164:7, 183:11, 185:18, 185:21, 186:10, 188:8, 189:4, 189:7, 190:3, 190:23, 191:5, 192:16, 193:3, 194:4, 194:5, 194:12, 194:17, 194:19, 196:19, 199:6, 200:14, 208:14, 208:24, 209:6 <b>sit</b> [2] - 197:15, 197:21 <b>situation</b> [1] - 156:4 <b>six</b> [7] - 32:2, 39:1, 88:7, 120:24, 153:23, 163:17, 208:2 <b>size</b> [1] - 87:7 <b>slightly</b> [1] - 196:18 <b>small</b> [5] - 51:22, 52:5, 65:20, 75:19, 173:15 <b>SMITH</b> [79] - 10:21, 12:5, 12:12, 18:21, 19:4, 19:13, 19:16, 74:18, 74:21, 74:24, 75:3, 75:9, 76:25,</p>	<p>77:9, 78:21, 79:5, 79:12, 81:4, 81:13, 82:14, 88:3, 89:5, 90:13, 91:8, 91:11, 91:17, 94:9, 96:8, 98:23, 100:23, 103:7, 103:19, 103:23, 109:19, 115:8, 115:11, 116:8, 116:19, 116:23, 117:5, 117:7, 117:12, 117:20, 118:4, 118:22, 119:19, 121:23, 122:10, 122:15, 129:16, 130:6, 130:14, 131:5, 133:17, 136:16, 136:19, 136:24, 137:4, 137:9, 137:12, 137:15, 138:21, 154:15, 155:3, 157:6, 158:13, 158:25, 159:2, 159:8, 165:3, 177:4, 177:17, 182:5, 182:7, 182:21, 196:20, 197:12, 208:10, 212:20 <b>Smith</b> [63] - 10:21, 12:3, 12:4, 12:14, 16:9, 19:18, 62:21, 64:1, 75:2, 81:15, 82:3, 87:25, 91:14, 91:19, 94:10, 96:7, 96:16, 99:17, 100:21, 101:7, 103:18, 103:21, 109:17, 119:16, 120:4, 120:13, 123:2, 126:16, 129:15, 129:17, 131:6, 134:1, 138:2, 139:9, 139:13, 139:19, 153:9, 153:20, 155:1, 155:6, 156:25, 157:7, 158:15, 158:17, 165:1, 172:5, 174:21, 176:8, 177:7, 177:16, 182:4, 182:22, 187:12, 189:9, 198:5, 202:8, 207:25, 208:5, 208:23, 210:11, 210:12, 211:17, 213:4 <b>so-called</b> [3] - 155:14, 155:24, 198:23 <b>SO2</b> [24] - 108:9, 113:13, 170:24, 171:1, 174:14, 174:18, 183:9, 184:2, 186:4, 186:11, 186:21, 187:22, 189:16, 191:22,</p>
---	--	---	---	---

<p>192:12, 193:13, 194:11, 196:7, 197:2, 205:22, 207:5, 207:7, 208:1, 209:7 <b>solution</b> [1] - 211:22 <b>someone</b> [1] - 64:18 <b>sometime</b> [1] - 179:10 <b>sometimes</b> [1] - 199:9 <b>somewhat</b> [2] - 61:12, 90:14 <b>soon</b> [4] - 133:24, 183:23, 194:19, 195:20 <b>Sorry</b> [4] - 75:12, 91:17, 114:19, 142:24 <b>sorry</b> [14] - 9:20, 59:13, 111:11, 121:9, 123:2, 130:8, 135:20, 143:10, 146:14, 150:2, 182:21, 189:15, 189:24, 210:21 <b>sort</b> [7] - 71:25, 88:19, 91:1, 92:9, 118:23, 119:1, 165:16 <b>sorts</b> [1] - 102:12 <b>sought</b> [2] - 169:6, 201:13 <b>sound</b> [2] - 114:2, 114:8 <b>sounds</b> [2] - 204:16, 208:25 <b>source</b> [11] - 107:5, 108:11, 187:14, 188:12, 191:17, 192:2, 192:6, 193:6, 205:16, 212:9 <b>sources</b> [12] - 184:12, 184:13, 189:18, 190:16, 191:1, 192:6, 193:8, 193:10, 194:11, 198:13, 211:19, 212:17 <b>South</b> [1] - 21:20 <b>South Salt Lake City</b> [1] - 44:21 <b>speaking</b> [1] - 143:22 <b>speaks</b> [1] - 92:19 <b>specialized</b> [1] - 161:12 <b>specific</b> [20] - 29:12, 47:12, 52:7, 60:9, 60:10, 71:13, 91:25, 92:7, 96:1, 102:15, 102:20, 107:23, 114:10, 114:13, 118:16, 141:4,</p>	<p>152:13, 156:16, 183:19, 209:18 <b>specifically</b> [6] - 26:10, 65:11, 102:3, 122:7, 128:13, 128:17 <b>specificity</b> [1] - 116:14 <b>specified</b> [6] - 32:21, 33:10, 33:15, 36:7, 48:18, 131:9 <b>specify</b> [2] - 112:24, 191:14 <b>speculate</b> [1] - 209:2 <b>speculation</b> [6] - 94:25, 95:2, 95:4, 156:19, 171:22, 174:6 <b>speculative</b> [2] - 154:25, 208:6 <b>speech</b> [1] - 95:24 <b>SPEIR</b> [1] - 117:23 <b>spell</b> [2] - 105:5, 160:11 <b>spelled</b> [1] - 105:7 <b>spelling</b> [1] - 178:4 <b>spend</b> [1] - 117:9 <b>spent</b> [2] - 92:21, 201:6 <b>split</b> [1] - 40:18 <b>spot</b> [1] - 203:17 <b>spread</b> [4] - 23:19, 26:24, 37:15, 68:18 <b>Sprott</b> [20] - 82:17, 159:3, 159:9, 177:16, 177:18, 177:20, 178:3, 178:7, 179:6, 182:1, 182:3, 182:8, 187:12, 197:19, 199:22, 206:15, 208:16, 212:21, 212:24, 213:18 <b>Sprott's</b> [2] - 197:14, 210:6 <b>stab</b> [1] - 172:21 <b>staff</b> [1] - 206:10 <b>stage</b> [1] - 173:17 <b>staged</b> [1] - 86:9 <b>stakeholder</b> [1] - 33:24 <b>stakeholders</b> [1] - 78:11 <b>stand</b> [1] - 82:23 <b>standalone</b> [2] - 108:14, 189:12 <b>standard</b> [2] - 60:10, 201:2 <b>standards</b> [5] - 38:23, 39:3, 86:19, 108:11, 203:9 <b>stands</b> [1] - 59:24 <b>start</b> [11] - 9:10, 11:19, 13:9, 45:23,</p>	<p>58:3, 75:3, 114:20, 125:14, 131:22, 146:10, 148:11 <b>started</b> [5] - 110:7, 116:10, 116:20, 116:24, 135:5 <b>starting</b> [8] - 26:2, 50:4, 76:13, 84:12, 112:23, 173:3, 173:20, 189:21 <b>Starting</b> [2] - 46:19, 111:17 <b>starts</b> [4] - 76:2, 93:13, 165:19, 198:10 <b>State</b> [5] - 84:6, 180:17, 181:10, 201:3, 208:12 <b>state</b> [78] - 21:15, 28:23, 44:18, 60:11, 62:23, 68:2, 68:16, 75:10, 83:19, 85:3, 85:9, 87:3, 94:15, 98:2, 98:25, 104:25, 108:14, 109:20, 119:10, 160:11, 161:15, 162:21, 163:5, 171:15, 178:4, 180:5, 180:10, 181:4, 181:9, 181:14, 181:20, 181:21, 181:23, 183:25, 184:22, 185:19, 185:21, 186:11, 188:14, 190:25, 191:5, 191:18, 191:24, 193:8, 194:12, 194:20, 195:1, 195:18, 195:19, 195:23, 197:16, 199:1, 199:2, 199:4, 199:5, 199:13, 199:16, 199:24, 200:2, 200:6, 200:14, 201:8, 201:17, 202:3, 202:5, 202:9, 202:10, 202:11, 203:15, 204:11, 205:22, 206:25, 208:14, 209:14, 209:18, 210:13, 210:24 <b>State of Utah</b> [14] - 21:19, 69:17, 85:18, 85:24, 86:1, 170:8, 175:13, 180:22, 181:2, 193:20, 200:8, 208:17, 211:18, 212:15 <b>State of Wyoming</b> [8] - 93:18, 94:23, 115:4, 117:1, 117:14, 120:5, 123:18, 124:9 <b>state's</b> [2] - 114:16,</p>	<p>206:6 <b>state-approved</b> [1] - 210:24 <b>statement</b> [19] - 25:9, 37:25, 39:17, 45:18, 45:22, 45:23, 45:24, 45:25, 46:2, 54:16, 54:18, 57:20, 59:21, 59:22, 94:4, 94:8, 113:6, 189:13 <b>States</b> [6] - 85:8, 89:7, 114:21, 180:18, 181:19, 201:9 <b>states</b> [33] - 30:24, 31:4, 31:10, 32:23, 32:24, 33:2, 33:4, 33:23, 34:4, 35:16, 35:19, 35:24, 36:17, 37:19, 38:23, 39:1, 39:3, 42:1, 42:10, 43:9, 43:12, 94:18, 94:22, 108:16, 112:12, 121:1, 184:13, 185:1, 185:25, 190:3, 190:21, 193:1, 200:13 <b>states'</b> [1] - 93:20 <b>Statewide</b> [1] - 114:11 <b>station</b> [1] - 207:22 <b>statutes</b> [1] - 194:1 <b>Stay</b> [1] - 73:7 <b>stayed</b> [1] - 161:2 <b>staying</b> [2] - 93:2, 93:11 <b>steady</b> [1] - 186:18 <b>steam</b> [1] - 155:17 <b>Stefan Bird</b> [1] - 38:14 <b>Steinhurst</b> [3] - 80:7, 107:18, 163:24 <b>Steinhurst's</b> [5] - 81:5, 81:8, 81:11, 119:7, 163:2 <b>step</b> [4] - 68:10, 68:13, 190:24 <b>steps</b> [3] - 49:11, 163:25, 171:11 <b>stick</b> [1] - 111:14 <b>still</b> [13] - 61:13, 64:25, 71:9, 71:14, 71:15, 72:7, 73:24, 123:3, 161:17, 174:6, 200:5, 200:18, 200:25 <b>stipulate</b> [3] - 78:3, 115:19, 194:4 <b>stipulated</b> [10] - 43:1, 43:2, 84:20, 84:22, 106:6, 162:6, 162:15, 179:15 <b>stipulation</b> [116] -</p>	<p>8:11, 8:12, 8:16, 8:19, 8:23, 13:17, 18:9, 18:14, 19:23, 20:3, 21:24, 21:25, 22:10, 22:11, 22:12, 22:13, 22:16, 22:17, 22:18, 22:24, 23:1, 23:18, 23:20, 25:2, 25:3, 25:7, 25:8, 25:10, 25:12, 25:15, 25:20, 25:22, 26:3, 26:6, 26:22, 26:23, 26:24, 27:20, 28:9, 28:16, 30:3, 30:14, 31:2, 31:8, 31:12, 32:3, 32:6, 32:14, 32:20, 32:22, 35:14, 36:7, 37:16, 37:17, 37:18, 37:24, 38:5, 41:11, 41:17, 41:22, 41:23, 42:15, 42:19, 43:9, 43:12, 43:19, 44:2, 44:3, 44:5, 45:17, 46:9, 46:10, 46:14, 46:19, 47:3, 47:8, 47:12, 48:4, 48:7, 48:11, 48:19, 48:23, 49:13, 49:20, 50:7, 50:12, 50:13, 50:16, 50:19, 50:22, 50:24, 57:20, 59:21, 59:23, 59:24, 59:25, 62:18, 62:24, 62:25, 64:19, 67:14, 67:20, 70:11, 73:4, 74:14, 78:15, 80:25, 106:13, 115:14, 115:17, 159:22, 213:9, 213:11 <b>Stipulation</b> [1] - 14:13 <b>stipulations</b> [5] - 26:14, 42:17, 42:23, 43:7, 213:13 <b>Stores</b> [2] - 9:16, 22:6 <b>stranded</b> [2] - 150:20, 150:22 <b>Strategic</b> [1] - 109:3 <b>Strategies</b> [1] - 55:6 <b>strategies</b> [1] - 29:7 <b>strategy</b> [1] - 87:10 <b>stream</b> [1] - 52:24 <b>streaming</b> [1] - 129:11 <b>Street</b> [1] - 83:22 <b>strictly</b> [1] - 69:24 <b>stringent</b> [3] - 203:9, 205:15, 206:22 <b>strongly</b> [1] - 54:7 <b>structure</b> [2] - 27:4, 89:1 <b>studies</b> [2] - 109:6,</p>
--	---	---	---	--

<p>145:11 <b>study</b> [28] - 36:9, 133:15, 135:15, 136:9, 140:15, 140:18, 142:16, 142:20, 143:2, 143:4, 143:9, 144:14, 144:15, 144:17, 144:20, 145:14, 145:22, 147:1, 148:12, 148:14, 148:19, 148:22, 150:9, 150:23, 152:13, 152:18, 153:4 <b>Study</b> [3] - 128:22, 137:20, 140:3 <b>stuff</b> [1] - 161:20 <b>subject</b> [21] - 62:16, 73:6, 114:9, 127:13, 127:16, 141:9, 153:8, 156:1, 157:11, 161:5, 162:19, 164:8, 173:16, 181:13, 187:14, 188:12, 191:18, 191:19, 192:6, 201:12, 202:4 <b>Subject</b> [1] - 125:15 <b>submit</b> [6] - 114:9, 123:17, 185:6, 198:16, 202:25, 203:4 <b>submitted</b> [11] - 105:23, 106:9, 110:1, 117:1, 117:13, 123:20, 124:4, 124:7, 128:12, 140:24, 208:21 <b>submitting</b> [2] - 25:4, 208:20 <b>substantial</b> [4] - 24:9, 164:15, 173:16, 173:23 <b>successful</b> [3] - 40:6, 192:12, 209:24 <b>sue</b> [1] - 164:21 <b>sued</b> [1] - 200:24 <b>sufficient</b> [3] - 12:24, 38:8, 110:14 <b>suggest</b> [2] - 62:8, 143:23 <b>suggesting</b> [1] - 122:23 <b>suggestion</b> [2] - 82:23, 139:5 <b>suggests</b> [2] - 143:25, 201:15 <b>sulfur</b> [6] - 85:6, 85:14, 85:20, 179:24, 180:6 <b>summarize</b> [1] - 213:6 <b>summarizing</b> [1] -</p>	<p>60:3 <b>summary</b> [18] - 45:18, 57:15, 59:20, 60:1, 62:10, 64:15, 77:11, 84:3, 84:18, 85:5, 87:20, 106:4, 132:10, 140:8, 162:5, 178:11, 179:13, 181:24 <b>supplied</b> [1] - 135:18 <b>Support</b> [1] - 14:12 <b>support</b> [24] - 16:25, 22:10, 23:23, 28:24, 44:1, 46:9, 46:19, 51:12, 52:19, 55:13, 57:16, 57:19, 59:24, 62:18, 84:20, 106:5, 134:11, 135:16, 139:22, 140:22, 152:4, 157:23, 159:22, 162:15 <b>supporting</b> [4] - 27:21, 29:3, 106:10, 109:12 <b>supports</b> [5] - 55:7, 84:21, 134:9, 162:6, 179:15 <b>Suppose</b> [1] - 149:22 <b>suppose</b> [3] - 121:14, 150:3, 172:16 <b>surcharge</b> [3] - 35:10, 35:12, 35:19 <b>Surcharge</b> [1] - 35:13 <b>surcharged</b> [1] - 36:5 <b>surrebuttal</b> [18] - 23:16, 46:23, 47:5, 50:13, 52:12, 58:9, 58:17, 59:12, 89:16, 89:21, 90:8, 104:5, 106:1, 106:8, 128:12, 187:9, 197:6, 208:22 <b>surrounding</b> [2] - 49:7, 89:10 <b>sustain</b> [3] - 103:5, 119:15, 130:12 <b>Sustained</b> [3] - 187:11, 207:24, 208:4 <b>sustained</b> [1] - 188:17 <b>swap</b> [2] - 33:6, 73:21 <b>swaps</b> [8] - 33:3, 33:9, 33:11, 48:1, 48:16, 48:22, 49:17, 70:24 <b>swear</b> [7] - 20:9, 20:11, 20:13, 20:16, 20:25, 74:22, 83:7 <b>SWENSON</b> [3] -</p>	<p>57:21, 57:24, 59:1 <b>Swenson</b> [11] - 8:18, 17:4, 20:14, 39:15, 57:18, 57:25, 58:5, 58:10, 59:13, 59:19, 62:11 <b>Swenson's</b> [3] - 58:17, 59:16, 64:6 <b>switch</b> [1] - 38:19 <b>switching</b> [1] - 212:10 <b>sworn</b> [22] - 20:17, 20:19, 21:5, 21:11, 44:14, 51:8, 54:21, 55:2, 57:22, 57:25, 59:2, 74:25, 75:6, 79:9, 83:9, 83:15, 104:14, 104:21, 160:7, 177:19, 177:20, 177:24 <b>Synapse</b> [1] - 75:13 <b>sync</b> [1] - 133:2 <b>synopsis</b> [4] - 12:6, 80:8, 83:4, 92:9 <b>syst</b> [1] - 145:3 <b>system</b> [7] - 69:8, 69:20, 86:6, 97:7, 145:8, 149:10, 150:14</p> <p style="text-align: center;"><b>T</b></p> <p><b>T-e-p-l-y</b> [1] - 105:8 <b>table</b> [3] - 26:10, 28:1, 196:14 <b>Table 1</b> [1] - 26:6 <b>Table 2</b> [1] - 26:23 <b>Table 3</b> [1] - 27:7 <b>Table 4</b> [2] - 27:8, 27:19 <b>Table 5</b> [1] - 37:17 <b>tables</b> [3] - 140:10, 140:11 <b>talks</b> [10] - 30:9, 32:8, 33:22, 37:1, 41:14, 104:8, 121:7, 148:3, 151:20, 151:24 <b>Taylor</b> [10] - 19:24, 20:1, 21:2, 21:22, 43:18, 44:8, 49:23, 63:20, 63:23, 72:5 <b>TAYLOR</b> [10] - 20:21, 20:23, 65:4, 67:1, 67:24, 68:15, 69:5, 70:18, 71:5, 71:18 <b>Taylor's</b> [1] - 61:12 <b>team</b> [1] - 51:16 <b>techniques</b> [1] - 167:21 <b>technologies</b> [5] - 131:10, 132:11, 168:3, 210:15, 210:23</p>	<p><b>technology</b> [16] - 60:9, 86:18, 111:24, 112:25, 123:24, 131:18, 132:10, 151:11, 157:22, 157:23, 162:25, 180:10, 209:11, 210:4, 211:19, 212:19 <b>Technology</b> [1] - 160:24 <b>telecommunication</b> <b>s</b> [1] - 11:12 <b>telephone</b> [2] - 11:1, 63:8 <b>Temple</b> [1] - 105:9 <b>ten</b> [2] - 22:1, 87:5 <b>ten-year</b> [1] - 87:5 <b>tenable</b> [1] - 85:25 <b>tends</b> [1] - 87:13 <b>Teply</b> [24] - 82:17, 103:19, 104:14, 104:25, 105:10, 105:22, 109:15, 109:16, 109:20, 116:16, 117:25, 122:15, 126:14, 126:17, 130:22, 134:1, 138:2, 139:10, 139:19, 159:17, 173:21, 175:21, 176:3, 176:8 <b>Teply's</b> [4] - 115:9, 129:7, 133:14, 138:20 <b>term</b> [6] - 46:15, 52:22, 76:3, 76:15, 198:25 <b>Terminal</b> [4] - 30:10, 30:12, 30:16, 30:20 <b>terminate</b> [4] - 31:6, 35:20, 49:8, 65:24 <b>terminated</b> [1] - 64:24 <b>terms</b> [15] - 25:1, 25:11, 25:19, 42:16, 42:22, 45:9, 47:12, 60:3, 62:6, 64:21, 76:14, 85:18, 127:16, 153:19, 174:20 <b>test period</b> [8] - 13:20, 20:21, 20:22, 24:18, 30:6, 42:4, 42:7 <b>testified</b> [29] - 21:12, 44:15, 51:9, 55:3, 59:3, 75:7, 79:10, 83:16, 83:24, 92:6, 95:15, 104:22, 105:11, 119:14, 122:2, 122:8, 122:25, 130:22, 142:4, 157:16, 160:8, 160:17, 175:21,</p>	<p>177:25, 178:7, 181:7, 181:16, 186:20, 203:8 <b>testify</b> [8] - 17:5, 20:12, 116:16, 179:16, 197:18, 197:20, 197:24, 207:18 <b>testifying</b> [1] - 208:16 <b>Testimony</b> [2] - 14:11, 18:1 <b>testimony</b> [231] - 8:10, 9:3, 11:18, 12:7, 13:9, 13:12, 13:14, 13:15, 13:16, 13:19, 14:2, 14:7, 14:9, 14:14, 15:4, 15:10, 15:12, 15:21, 16:3, 16:4, 16:5, 16:7, 16:11, 16:16, 17:2, 17:8, 17:12, 17:14, 17:17, 17:18, 17:24, 18:2, 18:4, 18:6, 18:22, 18:25, 19:20, 21:21, 23:9, 23:12, 23:16, 23:22, 23:23, 24:1, 29:10, 38:14, 39:11, 39:16, 45:5, 45:7, 47:13, 51:18, 57:5, 58:5, 58:10, 58:12, 58:17, 59:6, 59:12, 59:16, 59:20, 60:14, 60:17, 64:6, 64:15, 64:23, 67:21, 67:22, 75:14, 75:18, 76:20, 76:23, 77:4, 77:8, 77:11, 77:13, 78:22, 79:1, 79:3, 79:13, 79:16, 80:8, 80:11, 80:24, 81:5, 81:8, 81:11, 82:25, 83:4, 84:17, 84:19, 84:21, 86:20, 88:5, 89:6, 89:11, 89:16, 89:21, 90:6, 90:10, 90:12, 90:14, 90:15, 90:18, 90:24, 91:15, 91:20, 92:5, 92:21, 92:25, 95:3, 95:5, 95:18, 95:19, 95:24, 96:15, 97:3, 98:4, 98:20, 98:21, 98:24, 98:25, 100:1, 102:24, 103:22, 105:23, 106:5, 106:7, 106:8, 106:12, 106:24, 107:17, 109:12, 110:1, 110:9, 110:10, 111:7, 111:10, 113:10, 115:10, 116:1, 116:2, 116:17, 116:18, 118:15,</p>
--	---	--	--	---



<p>118:17, 118:25, 119:8, 119:12, 122:6, 122:24, 122:25, 126:8, 128:12, 128:13, 129:3, 129:7, 130:5, 131:15, 133:8, 133:14, 137:8, 138:20, 140:19, 145:12, 147:25, 151:16, 151:18, 153:21, 154:19, 154:20, 157:14, 161:25, 162:3, 162:5, 162:12, 162:14, 165:13, 165:25, 166:2, 168:7, 168:8, 168:17, 168:18, 168:19, 168:23, 169:21, 170:11, 170:16, 172:8, 173:2, 173:22, 174:5, 176:2, 176:18, 179:6, 179:14, 179:19, 179:21, 181:6, 181:7, 182:11, 182:14, 182:18, 184:4, 185:20, 186:6, 186:15, 187:4, 189:20, 195:13, 195:25, 197:6, 197:11, 198:10, 198:24, 201:11, 201:19, 202:2, 203:12, 205:12, 205:21, 205:24, 207:23, 208:22, 213:8 <b>text</b> [3] - 25:16, 92:16, 121:4 <b>than-BART</b> [3] - 190:21, 203:15, 204:11 <b>THE</b> [2] - 11:2, 83:12 <b>the Chairman</b> [1] - 90:4 <b>the court</b> [4] - 16:15, 16:20, 17:19, 139:17 <b>the witness</b> [46] - 10:17, 59:22, 96:9, 98:22, 99:7, 99:9, 100:18, 101:5, 105:7, 117:18, 117:21, 117:24, 118:16, 118:21, 118:23, 120:12, 121:12, 122:2, 130:7, 131:3, 133:22, 133:24, 136:11, 136:18, 136:20, 136:22, 137:5, 153:3, 153:14, 154:22, 154:25, 156:23, 158:14, 172:22, 174:5, 174:8,</p>	<p>176:6, 177:6, 177:14, 188:18, 188:22, 197:25, 202:7, 211:8, 212:22, 213:19 <b>the.</b> [1] - 116:19 <b>themselves</b> [4] - 70:19, 97:15, 167:19, 205:1 <b>theory</b> [3] - 150:18, 161:4 <b>therefore</b> [6] - 80:22, 86:7, 87:14, 181:4, 186:22, 193:14 <b>Therefore</b> [3] - 47:8, 50:21, 163:23 <b>thereto</b> [2] - 8:12, 89:22 <b>they've</b> [2] - 9:1, 61:1 <b>thin</b> [1] - 71:22 <b>thinking</b> [1] - 139:15 <b>Third</b> [2] - 48:7, 180:8 <b>third</b> [5] - 29:6, 29:23, 30:4, 80:2, 86:12 <b>third-party</b> [4] - 29:6, 29:23, 30:4, 86:12 <b>Thirteen</b> [1] - 111:16 <b>thorough</b> [1] - 110:24 <b>thoroughly</b> [3] - 24:11, 24:15, 131:17 <b>thoroughly-</b> <b>reviewed</b> [1] - 24:15 <b>Three</b> [1] - 38:11 <b>three</b> [9] - 34:18, 35:9, 40:5, 50:4, 79:17, 140:8, 161:2, 164:5, 204:4 <b>three-year</b> [1] - 50:4 <b>throughout</b> [4] - 78:10, 119:6, 141:22, 143:17 <b>tight</b> [1] - 87:12 <b>time period</b> [2] - 37:11, 93:22 <b>timeline</b> [11] - 113:12, 116:10, 118:6, 118:14, 119:5, 119:23, 122:7, 122:19, 125:5, 128:1, 198:16 <b>timelines</b> [5] - 119:11, 122:3, 122:25, 182:10, 196:4 <b>timely</b> [1] - 86:4 <b>timing</b> [4] - 36:23, 36:25, 100:9, 163:8 <b>tired</b> [1] - 118:13 <b>title</b> [2] - 75:11, 128:21</p>	<p><b>Title</b> [1] - 158:10 <b>today</b> [21] - 10:17, 10:24, 16:11, 20:15, 21:22, 22:15, 51:21, 78:2, 81:1, 84:13, 115:1, 116:12, 150:11, 158:22, 159:23, 171:20, 172:8, 174:3, 193:16, 206:20 <b>today's</b> [1] - 154:14 <b>together</b> [5] - 43:21, 58:18, 59:13, 170:12, 197:22 <b>tolerance</b> [2] - 31:18, 53:8 <b>tolerances</b> [1] - 73:17 <b>tomorrow</b> [1] - 9:8 <b>ton</b> [3] - 143:1, 174:12, 174:13 <b>took</b> [5] - 34:15, 43:23, 57:8, 141:25, 163:25 <b>tools</b> [1] - 131:25 <b>top</b> [1] - 201:15 <b>topic</b> [3] - 31:13, 96:1, 197:5 <b>topics</b> [1] - 45:6 <b>Total</b> [1] - 92:10 <b>total</b> [11] - 27:9, 27:11, 68:2, 68:16, 69:8, 69:15, 69:19, 70:6, 85:18, 93:3, 93:8 <b>totality</b> [1] - 55:23 <b>touch</b> [1] - 25:17 <b>towards</b> [3] - 53:13, 90:3, 186:18 <b>toxics</b> [1] - 157:18 <b>traced</b> [1] - 184:9 <b>track</b> [4] - 36:1, 61:13, 135:20, 137:1 <b>tracker</b> [4] - 52:17, 52:21, 52:23, 62:2 <b>trackers</b> [1] - 52:20 <b>tracking</b> [4] - 61:5, 61:7, 61:24, 62:4 <b>Trade</b> [1] - 174:14 <b>trade</b> [1] - 174:17 <b>trading</b> [1] - 108:10 <b>traditional</b> [1] - 14:16 <b>transactions</b> [5] - 32:18, 33:6, 33:8, 33:16, 33:21 <b>translate</b> [2] - 70:6, 174:20 <b>translated</b> [1] - 69:25 <b>translating</b> [1] - 173:3</p>	<p><b>transmission</b> [6] - 29:16, 30:5, 30:10, 30:17, 30:21, 98:6 <b>transmission line</b> [1] - 30:12 <b>travel</b> [3] - 158:23, 159:6, 159:7 <b>treading</b> [1] - 71:21 <b>treated</b> [1] - 62:7 <b>treating</b> [1] - 136:13 <b>treatment</b> [4] - 37:23, 41:18, 52:2, 52:10 <b>tremendous</b> [2] - 39:15, 132:8 <b>tricky</b> [1] - 197:13 <b>tried</b> [3] - 60:5, 73:2, 99:13 <b>trigger</b> [1] - 12:13 <b>true</b> [7] - 36:24, 96:19, 184:21, 187:12, 192:24, 199:22, 206:14 <b>true up</b> [1] - 37:5 <b>true-up</b> [1] - 36:24 <b>trued</b> [1] - 37:12 <b>truly</b> [5] - 131:16, 144:10, 145:8, 153:17 <b>trust</b> [2] - 25:20, 25:24 <b>try</b> [10] - 11:6, 19:10, 25:15, 25:16, 118:19, 118:24, 170:1, 175:14, 197:10, 210:10 <b>trying</b> [16] - 11:11, 66:4, 90:4, 91:6, 99:4, 104:8, 117:4, 117:9, 119:4, 122:18, 122:19, 123:5, 138:15, 187:7, 201:7, 202:1 <b>tuned</b> [2] - 73:7, 211:11 <b>turn</b> [8] - 11:6, 44:9, 82:11, 112:17, 125:19, 145:10, 146:25, 170:10 <b>Turning</b> [1] - 189:20 <b>turns</b> [1] - 202:19 <b>Twelve</b> [1] - 23:24 <b>two</b> [33] - 8:24, 16:19, 18:22, 40:9, 45:13, 48:16, 49:19, 55:18, 60:4, 64:12, 65:5, 72:25, 74:20, 74:21, 75:19, 82:7, 90:23, 93:20, 94:18, 117:21, 120:22, 140:7, 148:17, 150:3, 152:6, 158:18, 163:6,</p>	<p>174:8, 176:21, 200:10, 204:4 <b>Two</b> [3] - 49:21, 79:19, 159:15 <b>type</b> [1] - 66:5 <b>types</b> [2] - 101:16, 153:7 <b>typical</b> [2] - 26:13, 43:7</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>UAE</b> [16] - 10:1, 17:8, 17:10, 17:12, 17:14, 37:20, 55:6, 55:11, 55:15, 55:20, 56:1, 56:9, 57:2, 57:8, 57:10 <b>UAE's</b> [3] - 16:23, 55:22, 57:5 <b>UEA</b> [2] - 22:4, 72:14 <b>UIEC</b> [9] - 10:7, 17:17, 17:24, 17:25, 18:4, 34:21, 41:8, 55:21, 56:10 <b>ultimate</b> [4] - 186:18, 187:23, 210:23, 211:24 <b>ultimately</b> [1] - 170:3 <b>Ultimately</b> [1] - 184:8 <b>unable</b> [1] - 31:23 <b>unanticipated</b> [1] - 71:3 <b>unaware</b> [1] - 66:2 <b>unbundled</b> [2] - 40:12, 40:16 <b>uncertain</b> [7] - 108:6, 169:16, 171:5, 172:24, 173:9, 174:19, 175:3 <b>uncertainties</b> [1] - 166:16 <b>uncertainty</b> [7] - 167:15, 168:10, 169:8, 169:15, 169:23, 171:10, 173:17 <b>unclear</b> [1] - 136:15 <b>under</b> [20] - 58:21, 78:7, 125:24, 134:25, 140:24, 161:5, 166:4, 174:15, 178:25, 182:15, 183:18, 188:25, 194:25, 195:16, 195:18, 195:19, 197:22, 199:2, 199:24, 202:9 <b>underlying</b> [3] - 80:15, 80:16, 84:22 <b>understood</b> [1] - 202:22</p>
--	--	---	---	---

<p><b>Understood</b> [1] - 192:5 <b>undertake</b> [2] - 161:7, 172:15 <b>undertaking</b> [1] - 86:3 <b>unduly</b> [3] - 126:25, 135:8, 135:13 <b>unfold</b> [1] - 66:19 <b>Unfortunately</b> [2] - 93:14, 208:19 <b>unfortunately</b> [1] - 16:18 <b>unintended</b> [1] - 73:23 <b>unintentional</b> [1] - 67:11 <b>unique</b> [2] - 65:9, 197:19 <b>unit</b> [9] - 97:17, 114:10, 114:13, 147:13, 147:14, 147:17, 153:16, 209:11 <b>Unit</b> [2] - 117:23 <b>unit-specific</b> [1] - 114:10 <b>United</b> [2] - 89:7, 201:9 <b>Units</b> [6] - 124:19, 147:4, 148:11, 149:22, 150:16, 150:25 <b>units</b> [44] - 92:6, 93:18, 94:19, 100:5, 106:20, 107:5, 107:10, 111:22, 123:11, 141:22, 143:5, 145:15, 145:23, 147:7, 148:7, 148:17, 148:19, 148:23, 149:25, 150:3, 150:6, 150:17, 151:10, 151:12, 152:19, 153:17, 163:17, 164:16, 170:3, 179:18, 180:3, 180:7, 183:7, 183:21, 184:20, 185:7, 185:16, 188:4, 196:15, 198:3, 198:13, 208:2, 210:4 <b>University</b> [3] - 84:6, 84:7, 178:16 <b>unknown</b> [1] - 152:10 <b>unless</b> [1] - 36:10 <b>unlikely</b> [2] - 95:6, 95:12 <b>unnecessary</b> [1] - 171:20</p>	<p><b>untenable</b> [2] - 189:6, 201:6 <b>unusual</b> [2] - 103:12, 211:13 <b>up</b> [30] - 11:6, 12:3, 20:23, 21:24, 22:24, 23:3, 34:20, 36:24, 37:12, 61:5, 63:24, 66:8, 74:24, 82:2, 83:13, 84:13, 99:9, 101:9, 110:9, 110:11, 111:7, 117:10, 121:25, 135:19, 138:19, 145:18, 191:13, 194:16 <b>upcoming</b> [2] - 78:9, 163:22 <b>update</b> [2] - 42:11, 132:25 <b>updated</b> [2] - 181:21, 195:10 <b>updates</b> [1] - 23:11 <b>upgrades</b> [4] - 57:6, 76:7, 80:10, 80:18 <b>upgrading</b> [2] - 100:4, 163:15 <b>upwards</b> [1] - 39:5 <b>urge</b> [1] - 62:19 <b>US Mag</b> [6] - 10:2, 17:1, 58:6, 58:7, 58:10, 60:4 <b>US Magnesium</b> [8] - 25:9, 37:25, 38:6, 38:7, 38:18, 40:10, 41:1, 60:19 <b>useful</b> [4] - 28:13, 30:13, 30:18, 30:21 <b>Utah</b> [73] - 22:2, 22:4, 26:3, 26:4, 27:10, 27:12, 36:6, 36:20, 39:4, 54:7, 56:21, 56:22, 67:18, 69:1, 69:9, 69:10, 69:22, 70:6, 83:25, 85:8, 93:15, 93:19, 94:18, 107:9, 114:1, 114:21, 155:10, 162:20, 162:23, 164:9, 180:3, 180:12, 180:18, 181:9, 181:19, 183:11, 183:18, 183:20, 183:22, 184:10, 185:19, 185:22, 185:25, 187:22, 188:8, 189:13, 190:18, 192:2, 192:5, 192:11, 193:2, 193:21, 194:1, 194:11, 194:23, 194:25, 202:13, 204:1, 204:24,</p>	<p>205:12, 206:1, 206:10, 206:16, 206:17, 207:3, 207:7, 207:12, 208:24, 209:7, 209:19, 211:21 <b>Utah Office of Consumer Services</b> [3] - 16:1, 22:3, 51:11 <b>Utah Regional Haze SIP</b> [4] - 179:25, 186:25, 187:13, 187:19 <b>Utah's</b> [1] - 69:25 <b>Utah-allocated</b> [2] - 27:12, 36:20 <b>Utah/Wyoming</b> [1] - 163:16 <b>Utilities'</b> [1] - 133:6 <b>utility</b> [8] - 61:21, 86:17, 88:23, 105:20, 155:14, 163:22, 175:18, 179:4 <b>utilized</b> [1] - 146:3 <b>utilizes</b> [1] - 96:20 <b>utilizing</b> [2] - 53:25, 88:21</p>	<p>133:19, 134:4, 134:12, 166:9 <b>versions</b> [3] - 75:23, 134:3, 135:12 <b>Versus</b> [1] - 60:11 <b>versus</b> [9] - 107:1, 128:15, 132:3, 134:16, 145:6, 147:7, 147:14, 148:6, 155:4 <b>vetted</b> [2] - 109:4, 131:17 <b>via</b> [3] - 109:5, 134:7, 149:2 <b>viable</b> [1] - 131:14 <b>vice</b> [4] - 28:21, 29:1, 84:14, 105:3 <b>view</b> [6] - 56:9, 66:25, 73:24, 107:19, 171:10 <b>viewed</b> [1] - 63:22 <b>views</b> [1] - 47:8 <b>violation</b> [1] - 202:5 <b>violations</b> [1] - 202:9 <b>virtual</b> [1] - 172:12 <b>virtually</b> [5] - 170:19, 170:21, 174:22, 175:10, 197:23 <b>virtually-certain</b> [1] - 175:10 <b>virtue</b> [1] - 31:1 <b>visibility</b> [1] - 180:4 <b>visually</b> [1] - 137:18 <b>volatile</b> [1] - 171:2 <b>volatility</b> [1] - 71:12 <b>volume</b> [3] - 11:6, 11:12, 71:10 <b>voluntary</b> [1] - 183:1</p>	<p><b>waterfowl</b> [1] - 181:4 <b>Wayne</b> [1] - 160:16 <b>ways</b> [2] - 26:17, 49:5 <b>week</b> [3] - 22:19, 23:20, 26:22 <b>weekend</b> [1] - 65:24 <b>weeks</b> [2] - 24:22, 117:9 <b>weighed</b> [1] - 94:22 <b>weight</b> [1] - 104:12 <b>welcome</b> [1] - 10:14 <b>well-recognized</b> [1] - 199:18 <b>West</b> [5] - 9:16, 9:19, 22:6, 105:8, 160:16 <b>Western</b> [2] - 29:11, 39:21 <b>wet</b> [1] - 123:25 <b>wheeling</b> [4] - 27:10, 27:14, 29:17, 29:23 <b>wherein</b> [1] - 102:24 <b>whittle</b> [1] - 201:7 <b>whole</b> [6] - 43:10, 43:13, 46:11, 123:14, 152:22, 166:12 <b>wholly</b> [1] - 106:19 <b>wholly-owned</b> [1] - 106:19 <b>wide</b> [3] - 154:8, 155:13, 157:9 <b>WildEarth</b> [1] - 200:20 <b>William Steinhurst</b> [2] - 79:6, 79:8 <b>willingness</b> [2] - 76:3, 76:6 <b>wind</b> [1] - 157:12 <b>window</b> [2] - 199:8, 199:9 <b>winning</b> [1] - 40:6 <b>Winona</b> [1] - 84:6 <b>wish</b> [11] - 10:23, 15:16, 18:6, 57:20, 63:4, 63:8, 82:6, 82:12, 103:9, 103:18, 177:8 <b>wishes</b> [5] - 54:15, 63:25, 64:2, 64:7, 158:18 <b>with prejudice</b> [1] - 41:13 <b>Witness</b> [1] - 17:25 <b>witness</b> [25] - 8:18, 19:22, 21:11, 44:9, 44:14, 51:8, 55:2, 59:2, 75:6, 79:9, 83:3, 83:5, 83:15, 104:21, 119:17, 122:1, 126:9, 159:24, 160:3, 160:7, 172:14, 176:17,</p>
		<p><b>V</b></p>		
		<p><b>vacate</b> [1] - 13:18 <b>vacation</b> [1] - 45:14 <b>vague</b> [2] - 100:2, 152:25 <b>vagueness</b> [1] - 152:23 <b>validate</b> [2] - 124:22, 149:2 <b>valley</b> [1] - 189:5 <b>valuations</b> [1] - 43:6 <b>value</b> [9] - 38:9, 39:9, 60:7, 61:8, 61:9, 62:4, 142:2, 143:25 <b>valued</b> [1] - 40:13 <b>values</b> [1] - 70:22 <b>variability</b> [3] - 71:9, 71:14, 72:8 <b>variables</b> [1] - 149:19 <b>variety</b> [1] - 102:9 <b>various</b> [11] - 8:4, 15:5, 16:2, 84:12, 96:24, 105:19, 114:24, 132:11, 134:3, 143:13, 179:3 <b>vast</b> [5] - 169:15, 169:23, 173:16, 174:16, 186:21 <b>vastly</b> [1] - 175:3 <b>verification</b> [1] - 29:6 <b>verify</b> [1] - 140:14 <b>version</b> [6] - 133:3,</p>		<p><b>W</b></p>
			<p><b>W-o-o-l-u-m-s</b> [1] - 83:21 <b>wait</b> [1] - 181:8 <b>waited</b> [2] - 163:3, 201:17 <b>waiting</b> [1] - 87:8 <b>Wal</b> [5] - 9:16, 9:19, 16:11, 22:5, 62:23 <b>Wal-Mart</b> [5] - 9:16, 9:19, 16:11, 22:5, 62:23 <b>walks</b> [1] - 37:2 <b>wants</b> [1] - 172:17 <b>war</b> [1] - 201:4 <b>warrant</b> [1] - 54:9 <b>Washington</b> [1] - 39:2 <b>Water</b> [1] - 152:9 <b>water</b> [2] - 71:22, 89:1</p>	

177:24, 197:23, 211:2 <b>witness's</b> [3] - 102:23, 126:8, 139:6 <b>witnesses</b> [44] - 8:24, 8:25, 11:19, 11:23, 11:24, 12:6, 12:9, 12:23, 14:7, 15:20, 18:15, 20:11, 21:1, 21:5, 23:22, 23:25, 24:1, 28:17, 63:5, 63:19, 63:22, 64:2, 74:6, 74:16, 74:17, 74:20, 74:21, 74:25, 81:13, 81:18, 82:7, 82:11, 89:15, 89:19, 104:4, 107:18, 116:5, 121:24, 122:13, 158:18, 187:8, 197:7, 197:9, 213:13 <b>wonder</b> [1] - 162:4 <b>wonderful</b> [1] - 197:5 <b>Woollums</b> [21] - 82:15, 82:21, 83:7, 83:9, 83:19, 84:16, 87:21, 87:24, 88:4, 89:6, 90:24, 91:15, 91:24, 99:1, 103:10, 103:16, 114:23, 153:21, 173:21, 186:20, 209:1 <b>Woollums'</b> [1] - 154:18 <b>word</b> [5] - 79:22, 79:25, 80:1, 80:4, 80:5 <b>words</b> [1] - 47:3 <b>Workers</b> [1] - 22:7 <b>workgroup</b> [1] - 66:14 <b>workings</b> [1] - 197:18 <b>works</b> [2] - 43:22, 189:14 <b>workshop</b> [2] - 33:24, 65:6 <b>worth</b> [1] - 61:19 <b>writer</b> [1] - 178:24 <b>written</b> [11] - 12:20, 13:9, 14:7, 15:4, 15:10, 16:3, 17:8, 17:24, 45:23, 58:24, 77:3 <b>wrote</b> [1] - 46:5 <b>Wyoming</b> [26] - 85:9, 93:16, 94:18, 114:1, 114:21, 120:23, 133:8, 151:12, 155:11, 162:20, 163:1, 164:10, 180:13, 180:18, 181:19, 183:12,	185:19, 185:22, 185:24, 190:18, 194:11, 204:1, 205:10, 208:24, 209:8, 209:19  <b>Y</b>  <b>year</b> [21] - 23:5, 23:8, 23:15, 23:17, 50:4, 87:5, 93:22, 108:18, 114:19, 142:19, 143:24, 144:1, 144:3, 144:10, 144:18, 146:13, 147:15, 147:17, 149:4, 186:17, 186:24 <b>years</b> [15] - 35:10, 52:6, 84:10, 102:19, 112:11, 161:3, 161:13, 178:18, 181:3, 187:16, 188:14, 192:8, 199:10, 202:15, 206:8 <b>yellow</b> [2] - 136:10, 138:23 <b>yesterday</b> [1] - 18:9 <b>your Honor</b> [1] - 11:20  <b>Z</b>  <b>zero</b> [10] - 85:23, 95:7, 95:8, 95:11, 95:14, 95:16, 95:17, 143:23, 148:16, 209:3
--	---