

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Application
of Rocky Mountain Power for
Modification of Contract Term of Docket No. 15-035-53
PURPA Power Purchase Agreements
With Qualifying Facilities

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HEARING PROCEEDINGS  
PRESIDING OFFICER THAD LAVAR  
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TAKEN AT: Public Service Commission
 Hearing Room 403
 160 East 300 South
 Salt Lake City, Utah

DATE: Thursday, November 12, 2015

TIME: 9:03 a.m.

REPORTED BY: Clark L. Edwards, Utah CSR #109221-7801

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1 A P P E A R A N C E S

2 THE HEARING OFFICER: THAD LAVAR
3 COMMISSIONER DAVID CLARK
4 COMMISSIONER JORDAN WHITE

4 FOR ROCKY MOUNTAIN POWER COMPANY:

5 YVONNE R. HOGLE, ESQ.
6 201 South Main Street, Suite 2400
7 Salt Lake City, Utah 84111

7 FOR DIVISION OF PUBLIC UTILITIES:

8 JUSTIN C. JETTER, ESQ.
9 ASSISTANT ATTORNEY GENERAL
10 160 East 300 South, Fifth Floor
11 Salt Lake City, Utah 84114

10 FOR OFFICE OF CONSUMER SERVICES:

11 ROBERT J. MOORE, ESQ.
12 ASSISTANT ATTORNEY GENERAL
13 160 East 300 South, 5th Floor
14 Salt Lake City, Utah 84114

14 FOR UTAH CLEAN ENERGY:

15 MEGHAN E. DUTTON, ESQ.
16 1124 East Tulane Circle
17 Sandy, Utah 84094

17 FOR ROCKY MOUNTAIN COALITION
18 FOR RENEWABLE ENERGY (RMCRE)
19 AND SUN EDISON:

19 GARY A. DODGE, ESQ.
20 HATCH, JAMES & DODGE, P.C.
21 10 West Broadway, Suite 400
22 Salt Lake City, Utah 84101

21 FOR RENEWABLE ENERGY COALITION:

22 ADAM S. LONG, ESQ.
23 SMITH HARTVIGSEN PLLC
24 175 South Main, Suite 300
25 Salt Lake City, Utah 84111

25 IRION A. SANGER (Oregon)

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A P P E A R A N C E S
(Continued)

FOR THE SIERRA CLUB:

TRAVIS RITCHIE, ESQ.
THE SIERRA CLUB
85 Second Street, Second Floor
San Francisco, California 94105

		Page 4
1	I N D E X	
2	WITNESSES AND EXAMINATIONS	Page
3	PAUL CLEMENTS	
4	DIRECT BY MS. HOGLE	10
	CROSS BY MR. MOORE	24
5	CROSS BY MS. DUTTON	40
	CROSS BY MR. RITCHIE	42
6	CROSS BY MR. DODGE	54
	CROSS BY MR. SANGER	92
7	REDIRECT BY MS. HOGLE	107
	COMMISSIONER CLARK	112
8		
9	CHARLES PETERSON	
	DIRECT BY MR. JETTER	115
10	CROSS BY MS. HOGLE	122
	CROSS BY MR. DODGE	123
11	CROSS BY MR. SANGER	151
12	JOHN LOWE	
13	DIRECT BY MR. SANGER	162
14	NATHAN RICH	
15	DIRECT BY MR. SANGER	167
	CROSS BY MR. JETTER	171
16	REDIRECT BY MR. SANGER	174
17	BELA VASTAG	
18	DIRECT BY MR. MOORE	176
	CROSS BY MS. HOGLE	180
19		
20	SARAH WRIGHT	
	DIRECT BY MS. DUTTON	183
21	CROSS BY MR. JETTER	190
	CROSS BY MS. HOGLE	196
22	REDIRECT BY MS. DUTTON	200
23		
24		
25		

1	I N D E X		
2	(Continued)		
3	WITNESS		Page
4	R. THOMAS BEACH		
5	DIRECT BY MR. RITCHIE		202
6	CROSS BY MR. JETTER		211
7	CROSS BY MS. HOGLE		215
8	REDIRECT BY MR. RITCHIE		224
9	RE CROSS BY MS. DUTTON		225
10	COMMISSIONER CLARK		227
11	KEVIN HIGGINS		
12	DIRECT BY MR. DODGE		230
13	BRYAN HARRIS		
14	DIRECT BY MR. DODGE		237
15	CROSS BY MR. JETTER		240
16	CROSS BY MS. HOGLE		250
17	COMMISSIONER CLARK		253
18	HANS ISERN		
19	DIRECT BY MR. DODGE		257
20	CROSS BY MR. JETTER		260
21	COMMISSIONER CLARK		268
22	COMMISSIONER WHITE		268
23			
24			
25			

E X H I B I T S				
1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
1	NUMBER	DESCRIPTION	MARK	ADMIT
2	RMP EXHIBIT-1	Direct, Rebuttal, and Surrebuttal Testimony of Paul Clements	11	11
3	RMP EXHIBIT-2	Energy Resource Procurement Act Excerpt	196	--
4	OSC EXHIBIT-1	Docket 15-305-70 Statement of Paul Clements	24	28
5	RMCRE Cross EXHIBIT-1	Docket No. 03-035-14 Excerpt	68	--
6	RMCRE Cross EXHIBIT-2	Utah Hedging Collaborative Report	75	84
7	DPU	Direct, Rebuttal, and Surrebuttal Testimony of Charles Peterson	115	116
8	RMCRE Cross EXHIBIT-3	Yieldco Articles	136	139
9	REC EXHIBIT-1	John Lowe Declaration Kevin Higgins' Testimony	153	160
10	REC	Testimony of John Lowe	163	163
11	REC	Rebuttal Testimony of Nathan Rich	167	168
12	OCS	Direct, Rebuttal, and Surrebuttal testimony of Bela Vastag	176	176
13	UCE EXHIBIT-1	Direct Testimony of Sarah Wright	184	185
14	UCE EXHIBIT-2	Surrebuttal Testimony of Sarah Wright	184	185
15	TSC	Direct Testimony and Exhibits, R. Thomas Beach	202	203
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

E X H I B I T S (Continued)				
1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
26	27	28	29	30
31	32	33	34	35
36	37	38	39	40
41	42	43	44	45
46	47	48	49	50
51	52	53	54	55
56	57	58	59	60
61	62	63	64	65
66	67	68	69	70
71	72	73	74	75
76	77	78	79	80
81	82	83	84	85
86	87	88	89	90
91	92	93	94	95
96	97	98	99	100

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

2 THE HEARING OFFICER: Good morning. We are
3 here in the matter of the Application of Rocky Mountain
4 Power for Modification of Contract Term of PURPA Power
5 Purchase Agreements with Qualifying Facilities.

6 This is Public Service Commission Docket Number
7 15-035-53. And why don't we start with appearances from
8 the utility.

9 MS. HOGLE: Good morning, commissioners,
10 parties and spectators. My name is Yvonne Hogle.
11 I am here on behalf of Rocky Mountain Power.
12 With me here today is Mr. Paul Clements. Thank you.

13 THE HEARING OFFICER: Okay. Thank you.
14 The Division?

15 MR. JETTER: Thank you. I'm Justin Jetter
16 with the Utah Attorney General's Office. I represent
17 the Utah Division of Public Utilities. And with me at
18 counsel table is Charles Peterson with the Utah Division
19 of Publicly Utilities.

20 MR. MOORE: Bob Moore representing the Office
21 of Consumer Services. With me is Bela Vastag, a utility
22 analyst at the Office of Consumer Services.

23 THE HEARING OFFICER: Okay. Thank you.

24 MS. DUTTON: Good morning. I'm Meghan Dutton
25 representing Utah Clean Energy. And with me is our

1 expert Sarah Wright.

2 THE HEARING OFFICER: Thank you.

3 MR. RITCHIE: Good morning commissioners.

4 Travis Ritchie representing the Sierra Club. And with me
5 in the audience is Tom Beach.

6 THE HEARING OFFICER: Thank you.

7 MR. DODGE: Thank you. I'm Gary Dodge on
8 behalf of the Rocky Mountain Coalition for Renewable
9 Energy.

10 THE HEARING OFFICER: Okay. Thank you.

11 MR. SANGER: Irion Sanger here on behalf of
12 Renewable Energy Coalition. We have two people here
13 today. One of them is here today, Nathan Rich,
14 and John Lowe will be joining us very shortly.

15 THE HEARING OFFICER: Okay.

16 Is that all for the appearances? No one else
17 in the room that wasn't able to fit at the tables?

18 MR. LONG: I'm Adam Long. I'm local counsel
19 for the Renewable Energy Coalition.

20 THE HEARING OFFICER: Okay.

21 MR. LONG: Mr. Sanger will be essentially the
22 face of it today.

23 THE HEARING OFFICER: Thank you. Anyone else?
24 Any other preliminary matters before we start? I'm not
25 seeing any. So, we'll turn to the utility.

1 MS. HOGLE: Thank you. The Company calls
2 Mr. Paul Clements.

3 THE HEARING OFFICER: Mr. Clements, do you
4 swear to tell the truth?

5 MR. CLEMENTS: I do.

6 THE HEARING OFFICER: Thank you.

7 PAUL CLEMENTS,
8 having first been duly sworn, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. HOGLE:

12 Q. Good morning, Mr. Clements.

13 A. Good morning.

14 Q. Can you please state and spell your name
15 for the record and your position?

16 A. Yes. My name is Paul Clements,
17 C-l-e-m-e-n-t-s. And I'm currently Director of
18 Commercial Services for Rocky Mountain Power.

19 Q. And can you provide a brief background for the
20 commissioners today?

21 A. Certainly. I've worked for PacifiCorp
22 for over close to 11 years at this point. Primary
23 responsibilities include negotiating qualifying facility
24 contracts and negotiating other wholesale energy supply
25 contracts in addition to negotiating large special

1 contracts with our large industrial customers.

2 (Direct, Rebuttal, Surrebuttal Testimony of
3 Paul Clements Identified).

4 BY MS. HOGLE:

5 Q. In that capacity, did you prepare direct
6 testimony with attached Exhibit-A, rebuttal testimony,
7 and surrebuttal testimony in support of the Company's
8 application in this case?

9 A. Yes, I did.

10 Q. And do you have any changes or edits to that
11 testimony?

12 A. I do not.

13 Q. So, if I were to ask you the questions in those
14 pieces of testimony again here today, would your answers
15 be the same?

16 A. They would.

17 MS. HOGLE: I move for the admission into the
18 record of the Company's, specifically Mr. Clements'
19 direct testimony in Exhibit-A, rebuttal testimony,
20 and surrebuttal testimony.

21 THE HEARING OFFICER: I'll ask any party to
22 indicate if you have an objection to that. And not
23 seeing any, that will be entered. Thank you.

24 (Direct, Rebuttal, Surrebuttal Testimony of
25 Paul Clements Admitted)

1 BY MS. HOGLE:

2 Q. Thank you. Mr. Clements, do you have a summary
3 that you would like to provide today?

4 A. I do.

5 Q. Please proceed.

6 A. Good morning. I'll try to keep my summary
7 brief while covering the important issues before us
8 today. So, the purpose of my testimony is to support
9 and to present the Company's application to modify the
10 maximum allowable contract term for qualifying facility
11 or QF contracts that the Company must enter into under
12 the Public Utility Regulatory Policies Act of 1978 also
13 known as PURPA.

14 The Company is seeking a modification to the
15 maximum contract term of QF contracts executed under both
16 Schedules 37 and 38.

17 Specifically, the Company is requesting the
18 maximum contract term for PURPA contracts be reduced from
19 the current 20 years to three years.

20 I'd like to talk a little bit about why this
21 change is needed at this time. You may be thinking as
22 many of us have that the Commission has already addressed
23 just about every QF issue under the sun in the various
24 dockets that we've had over the past several years.

25 And, in fact, the Commission addressed the

1 issue of a QF avoided cost or the price in Docket
2 03-035-14 and Docket 12-035-100.

3 I personally used to be of the opinion that
4 if the QF price is set correctly, then the contract term
5 does not matter.

6 However, my opinion changed on that matter.
7 When I further evaluated how QF contracts compared
8 to non-QF contracts that the Company enters into,
9 I determined that a 20-year QF contract term does not
10 meet the ratepayer indifference standard required by
11 PURPA because it exposes customers to risks that they
12 otherwise would not be exposed to absent the QF contract.

13 Let's talk a bit about the ratepayer
14 indifference standard.

15 So, the ratepayer indifference standard or the
16 avoided cost standard is intended to leave customers
17 economically indifferent to the source of the utility's
18 energy by ensuring that the cost to the utility of
19 purchasing from a QF does not exceed the cost the utility
20 would incur if it purchases from another source.

21 The 20-year contract term does not meet this
22 ratepayer indifference test for the following three
23 reasons. First, it is inconsistent with the Company's
24 hedging practices which were implemented after a careful
25 review by stakeholders through a recent collaborative.

1 Second, it is inconsistent with resource
2 acquisition policies and practices for non-PURPA energy
3 purchases.

4 And third, it is not aligned with the Company's
5 IRP or integrated resource plan, planning cycle, and
6 action plan.

7 This is a critical issue to protect customers.
8 At the time my testimony was prepared, PacifiCorp had
9 1,041 megawatts of existing PURPA contracts in Utah
10 and 2,253 megawatts of proposed QF contracts in Utah.

11 So, together, that's 3,294 megawatts of
12 existing and potential Utah QF contracts. PacifiCorp's
13 average Utah retail load in 2014 was 2,959 megawatts.

14 So, we have more existing and proposed,
15 at the time of the filing, more existing and proposed
16 QF contracts than the average Utah retail load.
17 We're talking about a lot of megawatts at stake.

18 Now let's talk about the dollar impact.

19 The expected system-wide costs or payments
20 to QFs over the next ten years just from the executed
21 QF contracts, so these are contracts that are already
22 signed, is \$2.9 billion.

23 So, that's \$2.9 billion in QF payments over the
24 next ten years. In 2015 alone, the projected payments
25 are 170.5 million and Utah's share of that is

1 \$73.3 million. So, Utah customers are projected
2 to pay \$73.3 million to QFs in 2015.

3 I highlight that to illustrate that QF
4 contracts are a major factor in customers' rates.

5 Now, let's talk a minute about the first point
6 which is the 20-year QF contract term is inconsistent
7 with the Company's hedging practice and policy.

8 The Company modified its hedging horizon for
9 natural gas and electricity trades and other commodities
10 as a result of a hedging collaborative and workshops
11 that were held in 2011 and 2012.

12 That collaborative convened as a result of
13 concerns expressed by the DPU, the Office, and various
14 other parties about some hedges the Company had entered
15 into. In its report on the collaborative, the DPU stated
16 the following in part:

17 "Because of relative market illiquidity
18 and potential inaccuracy of the forecasted demand
19 requirements, hedges should normally be limited
20 to 36 forward months."

21 PacifiCorp's current practice which was
22 implemented as a result of the hedging workshops is to
23 actively manage electricity and natural gas positions
24 that are 36 months out and nearer, meaning from today
25 out three years. What does that mean?

1 That means that the Company would not and
2 arguably could not under its existing policies enter
3 into a 20-year contract to purchase electricity from a
4 counterparty who is not a QF. Our policy prohibits it.

5 And we do not enter into 20-year contracts
6 to purchase natural gas. Again, the policy prohibits
7 it as a result of the hedging collaborative.

8 But the Company must enter into an unlimited
9 amount of 20-year fixed-price contracts with QF
10 counterparties. That is inconsistent with the hedging
11 practice and policy for non-QF contracts.

12 I'd like to throw out an example of how this
13 inconsistency is occurring in practice.

14 So, the Company cannot without extensive
15 stakeholder interest and review enter into a 20-year
16 hedge for natural gas at one of its power plants like
17 Lakeside. Under the avoided cost method, a QF may
18 displace or avoid the operation of that very same
19 gas plant, Lakeside, let's call it.

20 To calculate the avoided cost at Lakeside,
21 the Company utilizes its production dispatch model and
22 forecasts out the cost of gas for 20 years.

23 So, if you have a seven heat rate at Lakeside
24 and the cost of gas is \$3 per an MBTU, then the model
25 would say that the cost of production at Lakeside is

1 \$21 plus some variable O and M. So, seven heat rate
2 times a \$3 gas price. If the QF avoids Lakeside over the
3 entire 20 years, the QF would get a \$21 plus the variable
4 O and M, \$21 avoided cost price. If the QF executes that
5 20-year contract at that price, the Company is
6 effectively locking in the cost of gas for 20 years.

7 In theory, Lakeside would not be operated and
8 the Company would purchase the energy from the QF at that
9 \$21 price. If gas prices were to drop to \$2 per MMBTU,
10 without the QF, the Company would operate Lakeside at \$14
11 per megawatt hour and achieve that difference in price.

12 However, since a 20-year contract was signed
13 with the QF, the Company is locked into a gas price for
14 20 years. So, under a normal hedging policy and
15 practice, the Company would not hedge the price of gas
16 for 20 years.

17 However, under a QF contract, the Company
18 may be forced to do so. The 20-year QF contract term
19 therefore introduces the Company's customers to long-term
20 fixed-price risk that it otherwise would not occur.

21 Now, let's talk a little bit about what is
22 fixed-price risk and why does it matter.

23 The Company and its customers are not commodity
24 traders. The Company hedges to reduce or to eliminate
25 volatility in the near term.

1 The Company does not engage in speculative
2 trading. Speculative trading attempts to profit from
3 betting on the direction in which a market will move.
4 The longer the time horizon, the more likely your bet
5 will be wrong.

6 For example, you can probably forecast with
7 relative accuracy the price of gasoline for next month.
8 It will probably be \$2, \$2.20 per gallon. I think we
9 can feel somewhat confident about that.

10 However, if we were to try to predict today
11 what the price of gasoline will be 20 years from now,
12 our prediction will likely be materially wrong.
13 This concept represents fixed-price risk.

14 Here is an example of how the 20-year contract,
15 20-year QF contract has exposed customers to increased
16 fixed-price risk.

17 The Company currently has 1,991 megawatts of
18 nameplate capacity QF contracts. That was at the time I
19 prepared this filing. It's changed slightly since then.

20 Over the next ten years, the Company is under
21 contract to purchase 44.6 million megawatt hours under
22 these contracts. The average price for these contracts
23 is \$64.13 per megawatt hour.

24 The average forward price curve for
25 mid-Columbia, a major trading hub in the Northwest over

1 this same ten-year time period \$38.11 per megawatt hour.
2 That is a difference of \$26.02 per megawatt hour or that
3 equates to \$1.2 billion over this ten-year time period.

4 So, if you compare the price of the QF
5 contracts that we've entered into recently to the price
6 at Mid-Columbia over the next ten years, it's
7 \$1.2 billion out of the money.

8 Now, I acknowledge and completely agree that
9 that could just as easily be \$1.2 billion in the money.
10 The market could just as easily have moved in the
11 opposite direction.

12 I'm not concerned about placing a bet and being
13 right or wrong. The issue is fixed-price risk. And that
14 example illustrates that once you enter into a long-term
15 contract, you are automatically exposed to a considerable
16 amount of fixed-price risk. And our stakeholders made it
17 clear that we should manage that fixed-price risk by
18 limiting our contracts to 36 months or less in duration.

19 Briefly touching upon my second point, and that
20 is, QF contracts do not go through the same rigorous
21 acquisition process as non-QF contracts, when the Company
22 determines that it needs to enter into a long-term
23 contract, it's usually the result of a need identified
24 in the Integrated Resource Plan.

25 The Company then performs an extensive analysis

1 to compare the contemplated transaction to other
2 available transactions and it does an extensive review
3 of the credit terms, contract terms, and the needs
4 assessment of the Company.

5 Most importantly, the Company utilizes a
6 rigorous request for proposal or RFP process whenever
7 it acquires a long-term resource.

8 PURPA contracts do not go through that same
9 request for proposal process and the same rigorous review
10 process because the Company must execute the contract.

11 On to my last point, and that is that the
12 20-year QF contract term is inconsistent with IRP
13 timelines. So, some parties argue that my point that
14 we should look at our hedging policy as not relevant.
15 They argue that a QF contract is more like a Company
16 resource that we inquire through the IRP. It is not.

17 First of all, the Company does enter into a
18 long-term transaction unless there is a need identified
19 in the IRP. Now, the IRP goes out 20-plus years and it
20 acknowledges that the planning uncertainties grow as
21 you get further out in time.

22 It is for that reason that the IRP action plan
23 is focused only on the next two to four years.

24 So, the IRP says, here's what we expect you
25 will need over the next 20-plus years. But it says,

1 here's what you need to do over the next two to four
2 years. So, what does that mean?

3 Currently, the 2015 IRP has identified a need
4 for a natural gas plant in 2028. However, the IRP action
5 plan does not have the Company go out and acquire that
6 resource today because that resource is not needed for
7 another 13 years. The IRP action plan says, only take
8 action that's needed in the next two to four years.

9 Now, why is that important? Well, let's talk
10 about a real-world example. The 2013 IRP which was just
11 two years ago had a gas plant in 2024.

12 The 2013 IRP update which would have been a
13 year ago moved that gas plant out to 2027. That was a
14 result of changes in load and other factors in the IRP.

15 The 2015 IRP pushed that gas plan further out
16 to 2028. So, there we see that over a two-year time
17 period, the Company's resource need changed by four
18 years. Now, why does that matter to QF contracts?

19 Had the Company entered into a 20-year contract
20 with a QF based on the assumption that a resource was
21 needed in 2024, the Company would be locked in to paying
22 that capacity payment starting in 2024.

23 The Company wasn't planning to go out and build
24 that 2024 resource, but if it signed this QF contract,
25 it's now locked into paying that capacity payment.

1 That's a mismatch. Customers are exposed to
2 locking in costs in the future that they otherwise would
3 not be locked into under the current IRP action plan.

4 That mismatch does not meet the ratepayer
5 indifference standard that's required by PURPA.

6 The Company's proposal to limit QF contract
7 terms to three years is aligned with that two- to
8 four-year action plan.

9 Now, I'll touch briefly -- I'm very close to
10 being done. I'll touch briefly on a few of the comments
11 from the other parties in this docket.

12 Many of the intervenors carry common themes
13 in their responses to the Company's application.
14 Many parties suggest that we're trying to eliminate
15 the must-purchase obligation.

16 That's simply not true. My testimony is clear
17 that the must-purchase obligation remains. Many of these
18 parties suggest that a QF is not similar to a commodity
19 hedge but instead is more like a company resource.

20 However, it's clear that a 20-year QF contract
21 is a purchase of energy at a fixed price. That is a
22 commodity hedge. These parties suggest as I mentioned
23 that a QF contract is similar to a company resource.

24 But a company only acquires a resource if a
25 need is identified in the IRP and then the company goes

1 out and acquires just what is needed at the time it is
2 needed. Also, a company resource can be dispatched down.

3 So, if there is a more economic option,
4 it'll dispatch the unit down and take advantage of that
5 more economic option where a QF contract is a must-take
6 for the Company.

7 Lastly, some of the parties have suggested that
8 QFs are a good hedge because they can meet future
9 environmental compliance obligations.

10 Now, we don't know what those future
11 environmental obligations currently are. They are not
12 known and measurable. And more importantly, these
13 parties ignore the critical fact that the QF retains the
14 renewable energy credit or the environmental attribute
15 for their economic benefit.

16 Those RECs represent the very environmental
17 benefits or attributes that these parties are touting as
18 being beneficial to the Company. The Company doesn't
19 actually receive those.

20 In summary, no party has provided credible
21 evidence to refute the three key points made the Company
22 in this proceeding. First, the 20-year contract term
23 is inconsistent with the Company's hedging policy.

24 Second, the 20-year contract term is
25 inconsistent with the Company's resource acquisition

1 practice for non-PURPA energy purchases.

2 And lastly, that the 20-year contract term
3 is not aligned with the IRP action plan.

4 I continue to recommend that the Commission
5 implement the three-year contract term for all QF
6 contracts, again, both those executed under Schedule 37
7 and Schedule 38. And that concludes my summary.

8 MS. HOGLE: Thank you, Mr. Clements.
9 Mr. Clements is available for cross-examination.

10 THE HEARING OFFICER: Thank you.

11 Before I go to the Division and then to the
12 Office, I do want to briefly ask Ms. Dutton, Mr. Ritchie,
13 Mr. Dodge, and Mr. Sanger if, when we get to this point,
14 do the four of you have a preference in terms of order of
15 cross-examination or should I just go in the order that
16 you're seated?

17 (Discussion off the record)

18 THE HEARING OFFICER: Okay. Thank you.

19 Mr. Jetter?

20 MR. JETTER: Thank you. The Division has no
21 cross-examination questions for Mr. Clements.

22 THE HEARING OFFICER: Thank you. Mr. Moore.

23 (OSC Exhibit-1 Identified)

24 CROSS-EXAMINATION

25 BY MR. MOORE:

1 Q. The Office has just two areas of inquiry.

2 Mr. Clements, two days ago last Tuesday, you
3 participated in a hearing in Docket 15-305-70 concerning
4 an application for approval of a PPA which has some
5 overlap with this case; isn't that correct?

6 Factual overlap.

7 A. You'll have to expand on the overlap that
8 you're referring to.

9 Q. All right. I'll get to that.

10 During the hearing you submitted some comments
11 that you participated in preparing and adopted them
12 as your sworn testimony; wasn't that correct?

13 A. That's correct.

14 MR. MOORE: I have some copies of these
15 comments here. Can I pass them out the now?

16 THE HEARING OFFICER: Any other party, let me
17 know if you have an objection.

18 MS. HOGLE: The Company has an objection.
19 And the objection is that I believe whatever he's going
20 to be introducing is probably outside the scope of this
21 docket.

22 THE HEARING OFFICER: Mr. Moore?

23 MR. MOORE: I'll connect that up.

24 Mr. Clements spoke about -- one of the issues
25 in this docket is the threat of overwhelming QF contracts

1 in the future. The discussion in the hearing on Tuesday
2 touched upon that issue.

3 THE HEARING OFFICER: Have you distributed this
4 to the other parties?

5 MR. MOORE: I have not yet but I have them
6 right here.

7 THE HEARING OFFICER: Why don't you do that.
8 Why don't you distribute it to the other parties and
9 then we'll deal with the objection and see if anyone
10 else wants to weigh in.

11 (Document distribution by Mr. Moore)

12 THE HEARING OFFICER: Let me just ask,
13 Mr. Hogle, do you want to say anything else to your
14 objection after looking at that or are you familiar
15 enough with it to say anything you need to?

16 MS. HOGLE: I would like to add to the
17 objection that from Mr. Moore's response, he indicated
18 that it was -- I'm not sure he said it was relevant,
19 but he did indicate that the comments in the proceeding
20 two days ago had a bearing on the number of PPA contracts
21 that we were discussing in this case and the volume.
22 And I don't recall that being an issue in that case.

23 MR. MOORE: I would direct Ms. Hogle to
24 page four, the first full paragraph, and the first
25 two sentences.

1 THE HEARING OFFICER: Mr. Moore, I think
2 I'm going to let you go ahead with this line of
3 questioning and we'll see where it goes subject to
4 more specific objection as you move forward.
5 So, I think we'll just proceed that way.

6 BY MR. MOORE:

7 Q. Mr. Clements, you have a copy of these?

8 A. I do, yes.

9 Q. Could you please turn to page four?

10 A. Okay.

11 Q. The first two sentences in the first paragraph
12 three: "The Company routinely manages between ten and
13 22 negotiations at any given time. In the early and
14 mid 2015, the Company was managing 170 different QF
15 pricing requests and negotiation.

16 "The large increase is primarily attributable
17 to the solo projects attempting to execute a
18 contract in the time to allow them to build a
19 project by the end of 2016 in order to take
20 advantage of expiring federal investment tax
21 credit."

22 Is that still your testimony today?

23 A. Yes.

24 MR. MOORE: I would like to enter these
25 comments into evidence at this time?

1 THE HEARING OFFICER: And your motion is for
2 the entire document, not just the portion that was read?

3 MR. MOORE: Well, I have the entire document,
4 yes, but the portion as read is the only portion I'll be
5 inquiring into.

6 THE HEARING OFFICER: Okay.

7 Any objection to that motion?

8 MS. HOGLE: The Company renews its objection.
9 Thank you.

10 THE HEARING OFFICER: Any other party have any
11 position on that?

12 MR. DODGE: I believe you can take
13 administrative notice of testimony in the record before
14 you in another docket.

15 So, it could be admitted, but either way,
16 I think you have the right to rely on it and look at it.

17 THE HEARING OFFICER: Any other comments?

18 I think from a practical matter, the three of
19 us are pretty familiar with this other docket. I think
20 the prudent course is to allow this in and we'll take
21 appropriate administrative notice of it considering that
22 they are two separate dockets but we'll continue forward.
23 Thank you. Mr. Moore.

24 (OCS Exhibit-1 Admitted)

25 BY MR. MOORE:

1 **Q. Now, the 107 contract requests are only the**
2 **ones active in the last six months. There are more QF**
3 **contract requests than the 107 in the last two years**
4 **that's at issue in this case; isn't that correct?**

5 A. I wouldn't say that what's occurred over the
6 past two years is what's at issue in this case, but the
7 fact that there were 107 QF requests highlights the
8 concerns that the Company had and partially why it
9 made its application.

10 **Q. But there were more ...**

11 A. Maybe I can --

12 **Q. Well --**

13 A. -- help you out. So, 107 was just a snapshot
14 in time. They come and go over time.

15 **Q. Correct.**

16 A. You know, for example, when we made the filing
17 in this docket, there were 3700 megawatts of requests.
18 After we made this filing, that number grew to 42, 4300
19 megawatts of requests. Since then, it's dropped down to
20 probably 2400 megawatts of requests. So, it moves around
21 as projects come and go.

22 **Q. Right. So, there's been more requests in the**
23 **last two years where there's been -- in your testimony.**

24 **Didn't you testify that in the last two years**
25 **there's been a dramatic increase in QF requests?**

1 A. Yes. I can point you to that part of my
2 testimony if that would be helpful. But yeah.

3 **Q. That's fine.**

4 A. It's actually on page ten of my testimony.
5 In Utah alone, we've had 24 new QF projects totalling
6 897 megawatts that we have executed in the last two
7 years. And again, that compares to the 2900 megawatts
8 of average Utah load.

9 **Q. So, the 24 contracts that you signed in the**
10 **last two years is a considerably smaller amount than the**
11 **107 and more requests for contracts that you've**
12 **negotiated?**

13 A. That's correct. And again, that's a Utah
14 number, where the 107 was a system-wide number.

15 **Q. It's also true that assigning of a PPA is no**
16 **guarantee that the project will be built.**

17 **Applications can be withdrawn, in some cases**
18 **canceled; isn't that true?**

19 A. Yes. That occurs.

20 **Q. Of the 24 new contracts that were signed in**
21 **Utah, have any of them been canceled or withdrawn or**
22 **presently being disputed?**

23 A. I believe we have one small project that is
24 three megawatts or less that was terminated due to an
25 interconnection issue. But I believe that's the only

1 one.

2 Q. That's the only one of the 24?

3 A. That's correct.

4 Q. All right. In preparing your testimony for
5 this hearing, did you review the rebuttal testimony of
6 Mr. Peterson from the Department of Utilities?

7 A. Yes, I did.

8 Q. Do you have a copy of his rebuttal testimony?

9 A. I believe I do, yes.

10 Q. Could you turn to page seven of that rebuttal
11 testimony?

12 A. (Complying).

13 Q. On line 27, it states: "Developers are hoping
14 to take advantage of the ITC" -- that's the investment
15 tax credit, "will likely have need to sign the purchase
16 agreements in place before the Commission is likely
17 to issue a decision in this docket."

18 Is that a fair statement in your opinion?

19 A. Yes. I agree with that. The ITC in its
20 current form. It may be extended or modified but it's
21 set to be reduced at the end of 2016.

22 Q. That's right. And your testimony in the
23 other -- on Tuesday was that the large increase is
24 primarily attributable to -- so the project attempting
25 to be executed on contract in time to allow to build them

1 by the end of 2006 in order to take advantage of expiring
2 federal income tax credit; correct?

3 A. Yes, that's correct.

4 Q. Given the history that an overwhelming majority
5 of QF contract requests do not result in signed PPAs,
6 your testimony that a primary reason for dramatic
7 increase in contract requests to take advantage of
8 expiring federal tax credit and Mr. Peterson's testimony,
9 the opportunity to take advantage of the tax credits is
10 closing as we speak, isn't it extremely unlikely that a
11 significant number of the 40 outstanding contract
12 requests will result in projects being built?

13 A. Well, I'm not sure I can speculate on that.
14 We had a similar situation kind of in 2010, '11, and '12
15 with wind projects where we had a production tax credit
16 that was expiring.

17 And so, it seemed like the rush on wind QFs was
18 over. And then here came a lot of solar QFs.

19 And so, it's difficult to speculate on how many
20 QF requests we'll get in the near future as panel prices
21 change, different financing vehicles come about.

22 Q. If it's too speculative to determine that there
23 won't be that many contract requests in the future, isn't
24 it too speculative to suggest that there will be?

25 A. No. And it's not about a specific number.

1 And this is where I struggled a bit in preparing my
2 testimony and forming an opinion on this matter.

3 The issue of fixed-price risk obviously grows
4 with more megawatts. So, if you have one or two
5 contracts that come in with a 20-year contract term,
6 while there is some fixed-price risk for customers,
7 that fixed-price risk is not as significant as if you
8 have 2,000 megawatts of QF contracts that come in.

9 And I look at that as, you know, similar
10 to diversification of a stock portfolio or a retirement
11 portfolio. You may think natural gas stocks are quite
12 low today, which many of them are, and you would say,
13 I'm going to add some of those to my retirement
14 portfolio. And you would add them in a percentage that
15 is appropriate for your allocation.

16 You would not necessarily move your entire
17 portfolio to natural gas stocks.

18 Now, what's challenging is, I don't know what
19 the appropriate allocation is for QF contracts. Like
20 I said, one or two QF contracts, you know, a hundred
21 megawatts, perhaps, at a 20-year contract term,
22 that fixed-price risk is much smaller than a thousand
23 megawatts. So, there is some degree of variability
24 depending on the size or the amount of QF contracts
25 that come through the door.

1 Q. So, as you sit here today, you cannot speculate
2 to how many of the 40 outstanding contracts that are
3 presently being negotiated will be built?

4 A. Without knowing what the outcome of the ITC
5 would be, no. I would acknowledge that over the past two
6 years, we've signed contracts in the \$60 range and we
7 thought that was the lowest it could go, and a lot of our
8 developers said that's as low as it could go.

9 And then we signed some in the \$50 range and
10 had that same discussion. And then we signed a few
11 in the \$40 range. And so, every time I think that
12 we've hit the end, we move forward.

13 Q. I want to turn now to your testimony regarding
14 the ratepayer indifference standard. In several places
15 in your written testimony, you argue that the 20-year
16 contract term violates the ratepayer indifference
17 standard. And in your summary today, you've also made
18 that argument; isn't that true?

19 A. That's correct.

20 Q. On page nine and ten of your direct testimony,
21 you make the argument that a 20-year fixed-price contract
22 can be considered a subsidy to the QF in violation of the
23 ratepayer indifference standard.

24 Am I reading your testimony correct?

25 A. That is correct.

1 Q. But at no point do you attempt to quantify or
2 monetize the amount of the subsidy; do you?

3 A. No.

4 Q. Isn't it true for the last several years
5 the Company, the Division, and the Office have been
6 arguing for the Commission that an unquantifiable policy
7 consideration should not be taken into account in avoided
8 cost pricing cases involving the ratepayer indifference
9 standard?

10 A. Yes. When we're assigning costs and benefits.
11 And this would be considered a benefit in my opinion.
12 And if a QF is going to enjoy the benefit of a 20-year
13 contract term, arguably, they should get a reduction
14 in their price because of that but I don't know how to
15 quantify that.

16 Q. Well, the Company has taken the position in the
17 past few years that unquantifiable policy considerations
18 should not be taken into consideration in avoided cost
19 pricing cases involving the ratepayer indifference
20 standards; isn't that true?

21 A. Yeah, that's correct. And I believe this is a
22 benefit that cannot be quantified. So, it should not be
23 allowed.

24 Q. Can you identify any case from the Public
25 Service Commission or the Federal Energy Regulatory

1 Commission that apply to the ratepayer indifference
2 standard outside the context of avoided cost pricing?

3 A. I might need you to rephrase that or unpack it
4 a little bit.

5 Q. All right. I'm looking here at two
6 quasi-judicial bodies, the Utah Public Service Commission
7 and the Federal Energy Regulatory Commission. Do you
8 understand that?

9 A. Yeah.

10 Q. Those are the only two issues?

11 A. Judicial bodies.

12 Q. Right.

13 A. Not quasi.

14 Q. Can you in your experience point to any
15 decision or case or regulation from those two bodies
16 where the ratepayer indifference standard was applied
17 outside the context of specifically setting avoided cost
18 pricing?

19 A. Certainly. We've had -- first of all, there's
20 been other jurisdictions in which the Company operates
21 such as Idaho where the contract --

22 MR. MOORE: I'm going to object. That's
23 nonresponsive. I specifically asked about the Utah
24 Public Service Commission and Federal Regulatory
25 Commission.

1 MS. HOGLE: Mr. Clements, before you respond,
2 can I ask counsel to please allow the witness to finish
3 his testimony before he cuts him off?

4 THE HEARING OFFICER: Thank you.

5 And with respect to the objection, I think if
6 Mr. Clements wants to discuss Idaho a bit before he
7 answers the question, I think that's reasonable, and
8 I'll allow him to do that to an extent.

9 THE WITNESS: Yeah, because the Idaho is
10 relevant to FERC. So, I was getting to that point.

11 So, in Idaho, there were multiple rulings where
12 there were issues other than the contract price. One of
13 those was contract term. Some credit terms were also at
14 issue, and parties even took the Idaho Commission to the
15 FERC and the FERC said that the state Commission can
16 opine and determine those particular things.

17 In Utah in particular, we've had multiple
18 dockets that have addressed non-pricing issues, things
19 like credit terms, performance guarantees and other
20 contract terms that are significant but are not
21 associated with the price.

22 And so, it's my position and I think the case
23 law supports this, that the Commission has the ability
24 to implement the ratepayer indifference standard across
25 everything from price to contract terms to contract term

1 meaning duration.

2 BY MR. MOORE:

3 Q. In your prefiled testimony, you've cited
4 several cases, dockets both from this jurisdiction and
5 other jurisdictions, statutes, federal and state.

6 But I don't believe, and correct me if I'm
7 wrong, you cited to any case or precedent that applied
8 the ratepayer indifference standard outside the context
9 of the avoided cost pricing.

10 Could you correct me if I'm wrong?

11 A. Without performing a thorough review of each
12 of those, many of those cases had issues beyond just the
13 price. So, I'm not sure I would agree with that
14 generalization.

15 Q. Well, you prepared -- you made the argument
16 in your prefiled testimony, did you not, the ratepayer
17 indifference standard applies and you made the argument
18 here to terms outside the avoided cost pricing?

19 A. Yes.

20 Q. But you cannot cite to any case specifically
21 now with your testimony in front of you that stands for
22 that proposition. You can only say generally that some
23 of these cases might make it?

24 A. Well, in general, I would refer to the two
25 significant portions which would be Section 210 of PURPA

1 and Section 292 of the federal regulations which
2 encompass all of PURPA. I mean, we can take the time
3 if you want to go through each of those.

4 But it speaks specifically to the ratepayer
5 indifference standard or to the fact that the -- and I'll
6 quote from one of them if it would help. "The
7 incremental cost to an electric utility" --

8 "The incremental cost to an electric utility of
9 electric energy or capacity or both which, but for
10 the purchase from the qualifying facility or
11 qualifying facilities, such utility would generate
12 itself or purchase from another source."

13 And that's how they define avoided cost in
14 18 C.F.R. 292-101(b)(6).

15 **Q. That's exactly my point.**

16 **That's dealing specifically with avoided**
17 **costing pricing; isn't that correct?**

18 A. No. It doesn't specifically say avoided cost
19 pricing. There's more that encompass avoided cost than
20 just the price. I would refer you to the order in
21 03-035-14 or 12-035-100. Those are two orders from this
22 particular Commission that addressed many issues besides
23 just the price.

24 **Q. Avoided cost are a corollary of the federal**
25 **statute's incremental cost. Would you agree with that?**

1 A. I would say "avoided" and "incremental"
2 would be similar, yes.

3 **Q. Would they refer to the same thing?**

4 A. In practice, yes.

5 **Q. And isn't the ratepayer indifference standard**
6 **also a corollary to avoided cost?**

7 A. Yes.

8 **Q. And isn't that the only place that the**
9 **ratepayer indifference standards exist in cases from the**
10 **Utah Public Service Commission and the Federal Regulatory**
11 **Commission?**

12 MS. HOGLE: Objection. I believe that question
13 has been asked and answered several times.

14 THE WITNESS: Yeah. Oh. Sorry.

15 THE HEARING OFFICER: I tend to agree that it
16 has been.

17 MR. MOORE: We have no further questions.

18 THE HEARING OFFICER: Thank you. Ms. Dutton?

19 CROSS-EXAMINATION

20 BY MS. DUTTON:

21 **Q. Thank you. Mr. Clements, do QF sources provide**
22 **a capacity value?**

23 A. Yes. The capacity value was determined in
24 those two dockets I just referenced. So, that would be
25 03-035-14 and 12-035-100 the Commission determined the

1 capacity payment for QFs.

2 Q. And do commodity hedges provide the utility
3 with a capacity value?

4 A. Yes. Certain commodity hedges would.

5 Q. Could you explain that?

6 A. Certainly. When you purchase firm energy,
7 it comes with liquidated damages. And so, firm market
8 purchases do have some capacity value.

9 Q. Do you account for that in your IRP?

10 A. Yes. I believe some market purchases are
11 in the IRP.

12 Q. Are the ratepayer indifference standard and the
13 must-purchase obligation of PURPA applicable to
14 QF resources?

15 A. Yes. That's the very basis of PURPA.

16 Q. And is PURPA applicable to the commodity
17 hedges?

18 A. No. PURPA has no bearing on commodity hedges.

19 Q. Okay. Is it possible that at some point the
20 avoided cost price will be so low that it will be
21 uneconomical to build QF projects?

22 A. Again, I couldn't speculate on that because
23 every time I've tried to do that, I've been wrong.
24 So, I'm not going to guess on that one again.

25 Q. And did existing QF contracts contribute to the

1 decision in the recent IRP to push the next company
2 resource acquisition out to 2028?

3 A. I'm not entirely certain. They probably did
4 play a small role in that. The capacity contribution
5 of wind and solar which is the majority of the QFs that
6 we have received is not a hundred percent. And so, they
7 may have contributed to that but I'm not certain.

8 MS. DUTTON: Thank you. No further questions.

9 THE HEARING OFFICER: Thank you. Mr. Ritchie?

10 CROSS-EXAMINATION

11 BY MR. RITCHIE:

12 Q. Thank you, commissioners. Travis Ritchie with
13 the Sierra Club. Good morning Mr. Clements.

14 How are you?

15 A. Good morning.

16 Q. Mr. Clements, I'd like to start with a point
17 that you made in your summary and you also addressed
18 in your testimony. If I could turn you to page three
19 of your rebuttal testimony, please.

20 A. (Complying).

21 Q. And starting on line 46 after the semi colon
22 there, you state:

23 "A company resource can be dispatched and
24 backed down when more economical alternatives are
25 available passing through to customers the savings

1 from lower fuel and other operating costs because
2 the total cost of energy is not locked in for
3 20 years like it is in a QF contract."

4 Did I read that correctly?

5 A. That's correct.

6 Q. And is that the same point you were making in
7 your summary about distinguishing a company resource from
8 a QF contract?

9 A. That's one of the things that distinguishes it.

10 Q. And if I could also turn you to page twelve of
11 your rebuttal testimony, please, and directing you to
12 lines 246, you say:

13 "For example, if the marginal cost of a company
14 gas plant is \$40 per megawatt hour but another
15 alternative such as a short-term firm market
16 purchase costs only \$30 per megawatt hour,
17 the Company would dispatch down the gas plant
18 and buy from the market saving customers
19 \$10 per megawatt hour."

20 Did I read that correctly?

21 A. Yes.

22 Q. And does this example that you describe on
23 page twelve follow on the same point that I just read
24 on page three?

25 A. Yes, generally.

1 Q. Now, in this example here on page 12, you say
2 that the Company could back down the gas plant when the
3 marginal cost of the plant is higher than other
4 alternatives. And you specifically said marginal
5 for a reason; right?

6 A. Absolutely, yes.

7 Q. So, for a company-owned resource like a gas
8 plant or a coal plant, are there costs that ratepayers
9 are responsible for covering other than the marginal
10 costs?

11 A. Yes.

12 Q. And so, if you back down a plant --
13 Well, let me back up a little bit.

14 What are those costs that ratepayers would be
15 responsible for other than marginal costs?

16 A. Well, you primarily have capacity and energy
17 costs. I mean, if you want to go line by line, we can
18 do that. But with any generating resource, you typically
19 have a capacity cost and an energy cost. And the energy
20 cost would be your marginal cost which would include
21 fuel, variable O and M, chemicals, things of that nature.

22 And the point I was making here is with a
23 company resource, yes, you're capacity costs are fixed
24 and sunk if you want to call it that, but your marginal
25 costs or your energy costs could be dispatched in such

1 a manner that they are economic.

2 So, if there's another area where you can get
3 a cheaper marginal cost, you can dispatch down your unit
4 and acquire that. With a QF contract, when we calculate
5 the capacity and the energy cost, we lock that in for
6 20 years, and the QF sells to us over the course of the
7 20 years at that price.

8 And we don't have the ability to go to the QF
9 and say, we'll keep paying you the capacity but we've got
10 a cheaper energy alternative, so back down. We don't
11 have the ability to do that, and that was the point
12 I was making then.

13 **Q. And so, the ability that you have is that**
14 **customers see savings from reduced fuel and operating**
15 **costs; correct?**

16 A. That's correct, yes.

17 **Q. So, are you aware of any company-owned**
18 **resources that currently have operating long-term fuel**
19 **supply agreements that include minimum take privileges?**

20 A. I'm not aware of any but I'm not aware of all
21 of our long-term fuel agreements. So, I wouldn't ...

22 **Q. Were you familiar with the closure of the**
23 **Deer Creek Mine recently and the replacement coal supply**
24 **agreement?**

25 A. I'm aware of it but not the details of the coal

1 agreement.

2 Q. Would it surprise you to hear that the company
3 entered into a 15-year coal supply agreement?

4 A. No, it wouldn't surprise me. Coal agreements
5 are typically somewhat long term in nature.

6 Q. And based on your experience in the industry,
7 do fuel supply agreements often have minimum tank
8 provisions as well?

9 A. Gas do not, no. Coal often does, yes.

10 Q. And so, for a fuel provision like that, just
11 understanding how a minimum take provision works, if you
12 back down a plant, you still have to pay for some of that
13 fuel even if you don't use it; is that correct?

14 A. Again, it depends what your minimum tank
15 provisions are and if they require you to run a certain
16 capacity level. I'd have to look at the exact contract
17 on that.

18 Q. Fair enough. I'll move on from that.

19 A. Sure.

20 Q. So, I'd like to talk now about the kind of
21 other category of costs for a company-owned resource that
22 customers are on the hook for paying regardless of
23 whether the plant has backed down.

24 Isn't it true that ratepayers still have to pay
25 for the capital expenses at generating plants even if

1 those plants are backed down?

2 A. Yes, that's correct.

3 Q. So, when the Company is making a decision to
4 justify whether or not a capital expense and a generating
5 resource is prudent, the Company relies on the best
6 estimates it has available for things like
7 forward-looking fuel and power price forecasts to show
8 that the capital expenditures are the least-cost,
9 least-risk for the customer; is that correct?

10 A. Yes. And without rehashing that entire IRP
11 process again, that's typically done within the two-
12 to four-year action plan in the IRP and through that
13 competitive bid process I discussed earlier in my
14 summary.

15 Q. And now, if you have, let's say, a major
16 capital addition at an existing generating resource.

17 Does that go through a competitive bid process
18 like an RFP process comparing it to other generating
19 resources?

20 A. The IRP accounts for those major capital
21 improvements, and we'd have to talk about which ones
22 you're referring to exactly.

23 Q. Okay. I'll take an example.

24 Are you familiar with the proceeding that
25 occurred here a couple years ago discussing major capital

1 expenses at the Jim Bridger coal plant?

2 A. No. That's one I was not a part of.

3 Q. Are you aware of any of the proceedings that
4 the Company has pursued to get pre-approval for major
5 capital expenses at its generating facility?

6 A. Yes.

7 Q. And with regard to a large capital expenditure
8 at an existing facility, isn't it true that utilities
9 actions are generally judged based on the information
10 available to the company at the time that it made the
11 decision to spend the money?

12 A. Yes, after careful stakeholder review.
13 And that's a critical point that I've made and I feel
14 is very relevant here.

15 All of these major plant additions that you've
16 been talking about go through a rigorous review process.
17 And, in fact, some of these that you have discussed
18 actually came before the various commissions that we
19 have. The Company was required to justify their need.
20 The Company was required to justify the expense and a
21 lot of times got pre-approval before making that expense.

22 So, we went through a litigious process or
23 at least an evidentiary hearing before making those
24 expenditures. And my point in my testimony is, that's
25 very different than what occurs with a QF contract

1 where we may sign a \$200 million nominal-value
2 transaction that gets very little commission oversight
3 or review. We're forced to execute that agreement.

4 Q. I believe you gave the example during your
5 summary that QFs effectively require the Company to lock
6 in the price of gas for 20 years because the avoided cost
7 of that QF is based off of the then current price
8 forecast; isn't that correct?

9 A. That's correct.

10 Q. But isn't it true that that same concept
11 applies in those proceedings that you were talking about
12 about capital expenditures where the Company comes
13 forward to makes its case based on the long-term
14 forward-looking price forecast available to the
15 Company at the time that the decision is made?

16 A. That is correct with a major difference being
17 need and the needs assessment. If you look at the 2028
18 resource, we're not going to go out and acquire that
19 resource today because it's outside the IRP action plan.

20 And that was the point I was trying to make is
21 with the QF contract, we don't go through that rigorous
22 review process to make sure we have the need.

23 When we acquire these major plant additions,
24 when we build a new power plant, it's because a need has
25 been identified in the IRP, and that need shows up in

1 that two- to four-year action plan. And at that point
2 in time, we go out and acquire that resource. And that's
3 different again than the QF resource.

4 Q. So, setting aside the Company's determination
5 of its need for a minute, from the perspective of a
6 utility scales, let's take a solar QF project, if you
7 were in the shoes of that developer, isn't it true that
8 the decision to spend the capital on the project has
9 to be made up front?

10 A. Absolutely.

11 Q. And when the QF developer is considering
12 whether or not to build a project, they have to look
13 at the utilities current avoided costs to determine
14 whether or not their project pencils out at a given
15 price; is that correct?

16 A. That's correct.

17 Q. So, isn't it also correct that similar to a
18 utility's decision to deploy capital, the QF developer
19 should be provided with the same certainty that their
20 cost calculations will not be second guessed if price
21 forecasts and avoided cost calculations change three
22 years down the line?

23 A. And again, the difference there is the Company
24 only acquires those long-term resources when that need
25 is identified in the IRP. And I know you said you want

1 to set aside the need issue but the need issue is the
2 crux of the argument here and the need issue is why
3 it is, in my opinion, a violation of the ratepayer
4 indifference standard.

5 Q. So, I'd like to turn you to page five of your
6 rebuttal testimony right now, please, and on line 108.

7 Now, you state there -- are you there?

8 A. Yes. Go ahead.

9 Q. "Limiting the term of the contract to three
10 years simply means that the price Rocky Mountain
11 Power and its customers will be required to pay
12 to the QF will be subject to adjustment every
13 three years and will be more closely aligned
14 with the Company's current avoided costs."

15 Is that correct?

16 A. That's correct.

17 Q. For the capital expense projects that we were
18 talking about before where the Company has sought
19 pre-approval for major capital expenses, would the
20 Company accept a requirement to come back to the
21 Commission every three years to prove that the capital
22 expenditures were still the least-cost, least-risk option
23 under updated power and fuel price forecasts?

24 A. Again, it depends on what capital costs you're
25 referring to. The Company does have to come in and offer

1 evidence of prudence on any expense it makes.

2 Q. But isn't it true that the Company, the
3 original decision to deploy that capital is made based
4 off of the best information available to the Company at
5 the time that it made the decision to deploy the capital?

6 A. Yeah, that's correct.

7 Q. And so, would it be fair to ask the Company
8 to come back in? Let's say if a decision to deploy
9 capital was made in 2010 and price forecasts have
10 changed since then.

11 Would it be fair to bring the Company back in
12 today and say, you know what, if we rerun the numbers
13 from the case that you presented in 2010, would these new
14 numbers today -- that decision was wrong and it turns out
15 that was not the least-cost least-risk decision.
16 Would that be a fair thing to impose on the Company?

17 A. Well, from a capital standpoint, that doesn't
18 occur. From an energy or marginal-cost standpoint, that
19 does occur. The Company comes in in rate cases and
20 energy balancing account proceedings and all its marginal
21 costs, natural gas, chemicals, variable O and M are
22 subject to review at that point in time.

23 And again, that's the difference between a
24 QF contract and these company resources where the Company
25 does lock in the capital piece through the lowest-cost

1 least-risk needs assessment in the IRP.

2 And then the marginal costs are subject
3 to change over the life of that asset. That's not the
4 case for the QF contract. The capacity and the marginal
5 costs are locked in from day one.

6 **Q. But from the perspective of the QF as I think**
7 **we just discussed a little bit more, the QF is making a**
8 **decision of whether or not to pull the capital based**
9 **on the then current avoided costs of the Company which**
10 **dictates that pricing; isn't that correct?**

11 A. Well, it's hard to speculate what they base
12 their decision on. Some do not. I mean, that seems
13 to be very unique to renewable QFs who require
14 third-party financing to build the projects.

15 All of our combined heat and power projects,
16 so, these are entities that have generation behind their
17 meter like Tessoro, U.S. Magnesium, Kennecott, those
18 entities typically elect to one- to two-year contract
19 terms. And so, I don't know what they're basing their
20 analysis on, but they're not looking at a long-term
21 avoided cost as a justification for their project.

22 **Q. Isn't it true that a lot of those facilities**
23 **with cogeneration products, producing energy is not their**
24 **core business; correct?**

25 A. No. It wouldn't be their core business and

1 that's the very reason why they -- and this is a very
2 good point you bring up. That's why they don't enter
3 into these long-term fixed-price sales to the Company.

4 It's for the same reason the Company doesn't
5 want to enter into the long-term fixed-price purchases.
6 Those entities say, I have too much fixed-price risk.
7 I'm not agreeing to sell to you for 20 years at a fixed
8 price. I'm only agreeing to sell to you for one or
9 two years. They are on the other end of that fixed-price
10 risk.

11 MR. RITCHIE: Thank you, Mr. Clements. I have
12 no more questions.

13 THE HEARING OFFICER: Mr. Dodge?

14 CROSS-EXAMINATION

15 BY MR. DODGE:

16 Q. Thank you, Mr. Chairman.

17 Good morning, Mr. Clements.

18 A. Good morning.

19 Q. You've made pretty clear your legal or other
20 opinion that reducing the contract term to three years
21 doesn't violate PURPA.

22 You haven't cited any FERC cases that say that;
23 have you? You said the opposite but you found no FERC
24 cases or regulations that say you have to offer long
25 term. You've also offered nothing that says it is in

1 conformity with PURPA to restrict a PPA to three years;
2 have you?

3 A. I have said that it is consistent with the
4 ratepayer indifference standard which is really at the
5 heart of PURPA. And I can say that --

6 Q. Please answer my question which is:
7 Have you cited any case law or regulations
8 that say it is consistent with PURPA to offer a
9 three-year PPA to maximum?

10 A. Yes. Again, I'd refer to the sections that
11 I referred to earlier when the Office was providing their
12 cross-examination.

13 Q. So, turn to that and show me where it talks
14 about the length of the PPA.

15 A. It does not specifically talk about the length
16 of the PPA but it does talk about avoided cost leading
17 the ratepayer or customer in --

18 Q. I understand that. If you'll listen to the
19 question, we'll get through this a lot faster.

20 I said, have you cited any regulation or case
21 from PURPA or FERC or this Commission that says a
22 three-year term is consistent with PURPA?

23 The answer to that is no; is it not?

24 A. No. That's correct.

25 Q. Okay. That's all I wanted. It's clear that

1 your company dislikes the must-buy obligation of PURPA.

2 That's a fair statement; isn't it?

3 A. That's not a fair statement.

4 Q. One of the executives of Berkshire Hathaway
5 appeared before congress and asked that it be removed;
6 did he not?

7 MS. HOGLE: Objection. Outside the scope.

8 MR. DODGE: I don't think it's outside the
9 scope. If the Company's trying to eliminate the
10 must-purchase obligation and he's sitting here saying
11 that isn't their intent, I think it shows an
12 inconsistency.

13 THE HEARING OFFICER: I think I'm going to rule
14 that it's within the scope based on the previous answer
15 Mr. Clements gave to answer within his knowledge.

16 THE WITNESS: Yes. And without getting into
17 the details because I'm not knowledgeable of some of
18 those that are current at the federal level, yes,
19 there has been some work done there.

20 In fact, I was just reading this morning a
21 letter from Republican leadership to the FERC chairman
22 requesting they convene a technical conference to review
23 the applicability of PURPA now. So, I believe there are
24 some efforts going on at the federal level. I was
25 responding from a personal level.

1 BY MR. DODGE:

2 Q. No. I asked you, is it not true that
3 Berkshire Hathaway has taken the position that the
4 must-purchase obligation should be eliminated from PURPA?

5 A. I believe they have taken that position.

6 Q. Today at least that hasn't happened; has it?

7 A. It has not.

8 MR. DODGE: May I approach?

9 THE HEARING OFFICER: Yes.

10 BY MR. DODGE:

11 Q. Mr. Clements, I'm going to hand you -- I notice
12 in your testimony in all three rounds, although you
13 provide extensive opinions on what PURPA requires and
14 your interpretation of what PURPA is, et cetera, you
15 don't once reference the Utah section that deals directly
16 with PURPA. Is that a fair statement?

17 A. I don't believe I did reference it, no.

18 Q. Do you think it's relevant, should be relevant
19 to this Commission what Utah law mandates on this issue?

20 A. Sure.

21 Q. Let's look at that. Before you I have an
22 excerpt from Utah Code Annotated Section 54-12-1.
23 The bold in there is mine. It's not in the statute.

24 Am I reading it correctly midway down at
25 subparagraph one:

1 "It is desirable and necessary to encourage
2 independent energy producers to competitively
3 develop sources of electric energy not otherwise
4 available to Utah businesses," et cetera, "and to
5 remove unnecessary barriers to energy transactions
6 involving independent energy producers and
7 electrical corporations."

8 Did I read that correctly?

9 A. Yes.

10 Q. It goes on in subparagraph two:

11 "It is the policy of this state to encourage
12 the development of independent and qualifying power
13 production and cogeneration facilities ..."

14 Now, it's a fair statement, is it not, that
15 nowhere in the Company's presentation to this Commission
16 in its testimony was any effort made to demonstrate or
17 even claim that reducing the PPA to three years
18 is consistent with this Utah statute?

19 A. No. I did not reference this statute.

20 Q. You don't take the position, Mr. Clements,
21 do you, that a three-year PPA will allow companies to
22 continue to develop renewable energy, QFs, like the ones
23 that you have signed in the last two years.

24 You don't take the position that will continue;
25 do you?

1 A. Based on my experience, some may be able to
2 purchase it. Some may be able to continue to build
3 projects depending on what their financing options are.

4 **Q. And that experience wouldn't be with anyone**
5 **who's done a large QF project and financed it with a**
6 **short-term PPA; would it be?**

7 **It's based on your speculation?**

8 A. No. There have been multiple projects -- oh.
9 And you're speaking to renewable. There's one renewable
10 project that I'm aware of that built and completed
11 construction without a long-term PPA.

12 **Q. And you're talking about one you referenced**
13 **in a data request in Wyoming?**

14 **Is that the one you're talking about?**

15 A. Yes.

16 **Q. And it's 19 megawatts?**

17 A. I believe it's actually 17 and a half.

18 **Q. 17 and a half megawatts. And are you aware**
19 **there was actually no financing involved in that, it was**
20 **completely company -- it's on a greenfield site of an**
21 **industrial customer; is it not?**

22 A. Yeah. I'm sure the term wasn't free. I'm sure
23 there was some financing. They didn't require
24 third-party financing.

25 **Q. Did you know that there was outside financing?**

1 A. No. Like I said, obviously there was some
2 financing. Whether it was outside or inside, I don't
3 know.

4 **Q. Well, when I say financing, I'm talking about**
5 **going to the market to get it as opposed to using**
6 **internal capital. Are you aware that there was no**
7 **outside financing involved in that?**

8 MS. HOGLE: Objection. I believe he's answered
9 that question.

10 BY MR. DODGE:

11 **Q. Did he say he was not aware? If so, I'd just**
12 **like to know the answer. I didn't hear it.**

13 A. I don't know. The money came from somewhere.
14 And whether it was internal financing that then required
15 external financing, I don't know, but the project was
16 built with a shorter PPA.

17 **Q. And in Wyoming, 20-year PPAs are now allowed;**
18 **right?**

19 A. Yes. They were allowed --

20 **Q. So, for some reason, a five-year PPA was**
21 **negotiated, built by a company potentially with no**
22 **outside financing for reasons you may not even fully**
23 **understand or be free to disclose; right?**

24 A. Well, I know the reason. The reason was,
25 they didn't like how low the price was and they didn't

1 want to be locked into that price for 20 years.

2 That's why they chose short term.

3 Q. So, that's the totality of your experience that
4 says maybe some companies can continue to develop large
5 renewable projects with a short term?

6 MS. HOGLE: Objection. Argumentative.

7 BY MR. DODGE:

8 Q. Isn't the totality of your experience --
9 You said based on your experience you think
10 maybe some can and you gave me one example. That's the
11 totality of your experience with large renewable energy
12 development projects being able potentially to be
13 developed with terms of less than 20 years?

14 A. Correct. I would agree that it will become
15 much more difficult for these entities to obtain
16 financing based on my inexperience. I'm not denying
17 that.

18 Q. Why don't you just admit it will stop it
19 completely?

20 A. Because I don't know if it will stop it
21 completely.

22 Q. But if it does, that's okay with you?

23 MS. HOGLE: Objection. Argumentative.

24 BY MR. DODGE:

25 Q. Is it okay with you? Is that the goal?

1 **Are you trying to hit a pause button here and**
2 **say, look, we don't like PURPA, let's pause?**

3 A. Let me answer your first question. If you're
4 asking me personally or me as representing the Company,
5 I'll provide the same answer to you.

6 We are indifferent. The Company has never
7 received a disallowance for a QF contract. When we sign
8 these QF contracts, they go into net power costs and we
9 get full recovery.

10 This proceeding will not impact the Company's
11 earnings or the Company's bottom line in any way.
12 This isn't about the Company versus QFs. This is about
13 maintaining the ratepayer indifference standard.

14 And so, I'm not okay with it. I'm not okay
15 with it. I'm ambivalent. I've sat in this particular
16 chair, sometimes that one, sometimes arguing for QFs,
17 sometimes arguing against QFs, but always trying to do
18 what's fair.

19 So, I'm a bit agnostic to the point of whether
20 they get built or not. And I don't mean that in a
21 cold-hearted way. I just say, I try to administer PURPA
22 in a fair manner for both the QF and the customer.
23 That's what the Company's trying to do.

24 **Q. And it's touching that you're looking out for**
25 **the customers. You recognize the only two customer reps**

1 in this room oppose your attempt to change the term.

2 You understand that; don't you?

3 A. I don't know which two customer reps --

4 Q. The Office is statutorily obligated to look out
5 for the interests of residential and small business
6 customers; right? UAE is a member of our coalition
7 and it opposes it.

8 Is there any customer representative that you
9 know of here supporting your approach?

10 A. No. They don't typically do that. Quite
11 honestly, I was surprised at the Office's position.
12 With some of the risks that they raised in their
13 testimony, I was surprised at the position they took.

14 Q. Maybe they know how to read a statute and
15 understand what Utah law requires in terms of encouraging
16 the development of independent power production that
17 perhaps you lack. Do you think that --

18 MS. HOGLE: Objection. Argumentative.

19 THE HEARING OFFICER: I'll sustain that
20 objection.

21 MR. DODGE: Mr. Clements --

22 May I approach again, Mr. Chairman?

23 THE HEARING OFFICER: Yes.

24 (RMCRE Cross Exhibit-1 Identified)

25 BY MR. DODGE:

1 Q. Mr. Clements, you also I think fail in your
2 testimony to spend any time with the most recent Utah
3 Public Service Commission ruling on the issue of the term
4 of PPAs. You referenced it this morning in a different
5 context but I'm going to hand you -- and I haven't marked
6 this or the last one, Mr. Chairman, because you can
7 clearly take administrative notice of it. I don't feel
8 the need to get it introduced into the record, although
9 I'm happy to if it would it be useful.

10 I'll represent that this is an excerpt from the
11 Commission's order in Docket 03-035-14.

12 You referenced that this morning, although in
13 your testimony I think, if at all, it was in response to
14 others. You didn't go into a discussion of what the
15 Commission and even the Company decided in this 03
16 docket. And it's the last time the Commission ever
17 looked at the length of QF PPAs; is it not?

18 A. I believe that was the last time, yeah.

19 Q. If you look at on page 28 of this, it says,
20 "CONTRACT ISSUES, Contract Term." Right?

21 And it starts with, "PacifiCorp testifies" --
22 and I'll skip down a little bit:

23 "... the 20-year term represents an appropriate
24 balance between a term that allows the QF to secure
25 financing and limiting the risks that accompany

1 long range price forecasting ..."

2 Did I read that correctly?

3 A. That's correct.

4 Q. And if you turn to page 29 at the bottom
5 of that section before the section that begins,
6 "Levelization," the Commission order says:

7 "We find reasonable and accept the parties'
8 common position providing for a standard term limit
9 of 20 years for QF contracts with the allowance for
10 parties to petition the Commission for longer
11 terms."

12 So, the Commission was even willing to accept
13 potentially longer terms under circumstances if someone
14 could demonstrate the appropriateness of it; right?

15 A. That's correct.

16 Q. So, if that was a governing concern the last
17 time this Commission looked at it, don't you think the
18 ability of QF developers to obtain financing is still
19 a relevant consideration?

20 A. Well, I don't see in the order where they
21 specifically said that they were making that finding
22 based on the need to obtain financing.

23 Q. Were you in that docket?

24 A. Yes, I was at the tail end.

25 Q. And do you recall there was testimony from UAE

1 among others saying you need a long-term contract in
2 order for it to be financeable, we support QFs?

3 And that was the whole discussion in the
4 settlement, was it not, does it have to be 30 years
5 versus 35 years versus 20 to be financeable. Was that
6 not the whole issue in that part of the docket?

7 MS. HOGLE: Mr. Clements, if you cannot
8 remember, you don't have to answer that. That's ten
9 years ago or longer.

10 THE HEARING OFFICER: Is that an objection?

11 MS. HOGLE: Objection. Yes.

12 BY MR. DODGE:

13 Q. Well, let's see if he does remember.

14 Do you remember?

15 A. Well, I wouldn't -- you would probably need to
16 talk about what occurred during the settlement meeting
17 which I think is how you phrased that. This was the
18 issue during settlement.

19 Q. No. In the testimony I said. Did we not file
20 testimony to that effect, the parties not?

21 A. I believe you did, yes.

22 Q. And the parties ultimately settled on 20 with
23 the option to extend it to 35 with a filing with the
24 Commission in large part as the Company testified to try
25 and balance the long-term price risk against the need

1 of QF developers to have access to financing.

2 And my question is, is that not still a
3 relevant consideration if it was in the Company's own
4 testimony in the 03 docket?

5 A. The Company's testimony did not speak to
6 financing in that particular docket. And the Company's
7 testimony in support of the 20-year term at that point
8 in time was a compromise to other parties' desire for
9 a 35-year contract term.

10 And again, as I mentioned in my testimony, and
11 that's what you're failing to recognize or acknowledge,
12 that things have changed since this original docket
13 kicked off in 2003.

14 Q. I understand that and I'm going to cut you off
15 and ask the chairman's permission to do so. I know you
16 want to give a speech. I'm just going at, is it not
17 still a relevant consideration?

18 We know your testimony that you believe
19 circumstances have changed. I'm not asking about that.

20 Is it not still a relevant consideration?

21 A. Do you mean --

22 Q. The ability --

23 A. -- whether it can be financed --

24 Q. -- to obtain --

25 A. -- or not?

1 **Q. -- financing for QF projects in order to**
2 **encourage the development of such projects.**

3 A. Again, that was your testimony at that point in
4 time that it was relevant. I don't see in the Commission
5 order where the Commission determined that was relevant
6 and it wasn't the Company's position at that time that
7 being able to finance a project is relevant. And again,
8 it's not the Company's position at this point in time
9 that being able to finance is relevant.

10 **Q. Let me read from the -- and I guess I will ask**
11 **that this be marked because maybe we need to have it in**
12 **the record, we know what we're referencing. So, I'll ask**
13 **that this be marked as Coalition Cross Exhibit-1?**

14 THE HEARING OFFICER: If any party objects
15 to that, please indicate. Not seeing any, it will be
16 marked.

17 (RMCRE Cross Exhibit-1 marked)

18 BY MR. DODGE:

19 **Q. I'm going to read once again, Mr. Clements:**
20 **"PacifiCorp testifies, contracts for the**
21 **required purchase of power from QFs should be**
22 **limited to a term of 20 years ..."**

23 It says:

24 **"... the longer the term, the greater the risk**
25 **to the Company and ratepayers of incurring an**

1 uneconomic power purchase agreement; semi colon
2 the 20-year term represents an appropriate balance
3 between a term that allows the QF to secure
4 financing and limiting the risk that accompany
5 long range power price forecasting ..."

6 That is a reference to the Company's position
7 in that docket. So, the Company did take a position
8 in that one, did it not, that balancing those two issues,
9 long-term risk and the ability to obtain financing was
10 an appropriate consideration?

11 MS. HOGLE: Objection. Asked and answered.

12 BY MR. DODGE:

13 Q. Well, he answered it wrong. I think I'm
14 allowed to explore. He said the Company didn't take a
15 position. And I just read you that I believe they did
16 take a position; did they not?

17 A. Yes. And the position was taken -- oh.

18 THE HEARING OFFICER: Well, yeah. I think I'll
19 allow one more brief answer from Mr. Clements but then
20 ask the cross-examination to move on.

21 BY MR. DODGE:

22 Q. Okay.

23 A. Yeah. At that point in time, the Company was
24 assessing a 35-year contract term and determined that
25 20 years was appropriate or something it could support

1 at that point in time.

2 Q. Mr. Clements, you discuss in great detail
3 ratepayer risk. And again, it's touching that you care
4 about it. Ratepayers have a risk of variable price
5 options, too; do they not?

6 A. You'll have to expand on that question.

7 Q. Is there no risk when ratepayers are left open
8 to variable price or market price options as opposed to
9 fixed price?

10 A. Yes. There is some risk. That's why you hedge
11 to avoid that risk.

12 Q. Well, that's one way you hedge. Another way
13 you hedge that is you build resources when you determine
14 that that's the most cost-effective option; right?

15 A. That's correct.

16 Q. Another way that the Company has done for many
17 many years is enter into long-term PPAs; has it not?

18 A. Historically, yes. Over the past ten-plus
19 years it has not.

20 Q. It still has some long-term power purchase
21 agreements; does it not?

22 A. I believe it does have a small amount.
23 The Company is prohibited by policy implemented as a
24 result of the hedging collaborative from doing that
25 today.

1 MR. DODGE: We'll get to that. That's not a
2 true statement, but we will get to that in a minute.

3 MS. HOGLE: Mr. Dodge, objection.

4 Can you please let Mr. Clements finish his
5 testimony before you cut him off?

6 MR. DODGE: Is that a request or are you asking
7 the Commission to rule --

8 MS. HOGLE: I'm asking you on a professional
9 level to please let my witness answer the question before
10 you cut him off.

11 THE HEARING OFFICER: And I think we're on
12 Mr. Clements' answer right now.

13 THE WITNESS: I think I may have been done.

14 BY MR. DODGE:

15 Q. I think you were probably done. The risk,
16 the fixed-price risk, meaning once you've tied into an
17 agreement, a contract, you no longer have the right to go
18 try and get market resources if they're lower. You no
19 longer have the risk of higher prices; right?

20 That same risk is faced with any long-term
21 company resource; correct?

22 A. Any long-term fixed-price contract or
23 obligation carries that risk, yes.

24 Q. And so, you, for example, try and illustrate
25 the prices of some PPAs entered into a few years ago

1 in the last few years to what the current strip is.

2 First of all, the strip isn't guaranteed.

3 That's a projection; right?

4 A. That's correct.

5 Q. You can't go buy that ten-year strip today for
6 that price?

7 A. You potentially could.

8 Q. An electric strip?

9 A. Possibly.

10 Q. Possibly?

11 A. Yes.

12 Q. Not many customers are out there taking the
13 other side of that risk; are they?

14 A. That was my exact point earlier, that long-term
15 electricity contracts are not entered into anymore.

16 Q. But you could make the similar analogy. You
17 use numbers in the range of 60 some-odd dollars for the
18 QFs and 40 some-odd dollars for this strip that isn't
19 tied down. What was the comparable cost of the last
20 resource the Company built?

21 Let's go to the Lakeside two project.

22 If you looked at the 2015 price per megawatt
23 hour of that, would we not be in the \$80 range?

24 A. I don't have information in front of me.

25 Q. Would that surprise you if it's in the \$80

1 range?

2 A. 80 would surprise me, yes.

3 Q. What would not surprise you?

4 A. 40, 50. We'd have to look at that price but
5 again, I don't speculate.

6 Q. You think all-in costs, including the fixed
7 costs of the Lakeside two power plant in 2015 is \$40
8 a megawatt hour?

9 A. Oh, including capital?

10 Q. I'm talking the all-in cost.

11 A. Again, I don't have those numbers in front of
12 me. So, I couldn't speculate on that.

13 Q. \$80 there wouldn't surprise you; would it?

14 A. Again, I don't have the numbers. So, I don't
15 want to speculate on that.

16 Q. So, if you wanted to show ratepayer risk,
17 you could say, well, that was a decision we made looking
18 at the exact same metrics shows we're \$40 out of the
19 money on the other side with a Company resource; right?

20 A. Correct. And again, in my summary today,
21 I said -- I agreed with that very very point, that it
22 could just as easily be \$1.2 billion in the money.
23 It's not a matter of betting right or wrong. It's the
24 fact that you're making a long-term bet that you
25 otherwise would not.

1 Q. But you do make that bet in other contexts?

2 A. I would say it's not a bet in that context.

3 And again, that gets back to the IRP. You have an
4 identified need that's gone through a rigorous review
5 process that goes through a request for proposal process.
6 You get exactly what you want, how much you want at the
7 time you want.

8 Q. I understand that's --

9 A. And that's something that's of a material
10 difference.

11 Q. I understand that's your testimony. We'll talk
12 about the IRP in just a moment.

13 You claim that the hedging policy now prohibits
14 you from entering into long-term power purchase
15 agreements; is that correct?

16 Is that your view of the hedging policy?

17 A. No. The hedging policy prohibits traders from
18 doing that without stakeholder review. So, long-term
19 contracts can be entered into but they require additional
20 review.

21 Q. Mr. Clements, were you a member of that hedging
22 collaborative?

23 A. No, I was not.

24 Q. I was. Would it surprise you or would it be
25 inconsistent with your view that long-term PPAs for

1 electric power purchase agreements were never even
2 discussed in that collaborative?

3 A. That would surprise me.

4 Q. Would it surprise you that in the Exhibit-A to
5 that collaborative that shows the policy, the principles
6 and the general guidelines adopted by the participants
7 is never mentioned? Would that surprise you?

8 A. It would.

9 MR. DODGE: Let me hand you that exhibit.

10 May I approach, Mr. Chairman?

11 THE HEARING OFFICER: Yes.

12 (RMCRE Cross Exhibit-2 Identified)

13 BY MR. DODGE:

14 Q. What I'm going to hand you is Exhibit-A.
15 I chose not to copy the entire hedging report because
16 it's somewhat voluminous, but I did copy the Exhibit-A
17 which was the document that was negotiated I'll represent
18 by the parties to that hedging collaborative and that
19 formed the basis for the stipulation to the Commission
20 to adopt these new hedging policies.

21 Is that consistent with your understanding
22 of what went on in the hedging collaborative?

23 A. Again, I wasn't actively involved in it, no.

24 Q. So, I turn your attention and I'd invite you to
25 read this. You weren't a participant in it and maybe you

1 have a different view of it than I do, but review this as
2 much as you want. I'll point out a few specific parts.

3 For example, in the paragraph one, it talks
4 about PacifiCorp's expertise, blah, blah, blah. And at
5 the end it talks about, "... related to natural gas
6 procurement, energy balancing, and hedging."

7 First of all, would it surprise you to learn
8 that this whole collaborative came about because of
9 complaints about natural gas hedging, short-term
10 financial natural gas hedges the Company was making out
11 four and five years for more than a hundred percent
12 of its natural gas needs?

13 A. I'm not sure about all those facts you just
14 listed, but I know it came about because of the natural
15 gas hedges.

16 Q. Let me turn your attention down to paragraph
17 seven of that in the, "Principles."

18 "Voluntarily pre-approval procedures under Utah
19 Code Section 54-17-402 may be used for long-term
20 commitments that fall outside of the suggested
21 guidelines."

22 Did I read that correctly?

23 A. Yeah.

24 Q. So, you accept that part of the hedging
25 collaborative procedure was, if you're going to talk

1 long-term commitments --

2 Now, this doesn't say PPAs, but even if it
3 included that, it contemplated that that would be dealt
4 with outside of the hedging guidelines; did it not?

5 A. Yes. And I referenced that in my testimony.

6 Q. And then we go down to paragraph nine of
7 "Principles."

8 "All commonly used, available and effective
9 physical products and financial instruments may be
10 utilized in Energy Planning and Procurement as
11 appropriate."

12 It specifically contemplates continuing to use
13 all commonly-available physical and financial products
14 including a PPA; would it not?

15 A. It doesn't prohibit the use of a PPA, no.

16 Q. Well, in fact, it says they should continue
17 to be used as appropriate; does it not?

18 A. Yes, "as appropriate" is pretty significant
19 there.

20 Q. And then under "General Guidelines" -- but
21 you're trying to claim that this hedging policy precludes
22 you or is inconsistent with what you're doing.

23 And I'm saying, in here, show me where that
24 inconsistency shows up in the Exhibit-A that the parties
25 agreed to in that hedging collaborative.

1 A. Well, in, "General Guidelines" number one at
2 the bottom of page 14:

3 "The forecast total requirement for natural gas
4 and electricity should not be fully hedged."

5 **Q. "Fully hedged" because the Company was 100**
6 **percent, more than 100 percent hedging its natural gas**
7 **requirements at the time. "Fully hedged." No one here**
8 **is talking about fully hedging anything; are we?**

9 A. Well, I don't know if you were testifying to
10 that. I mean --

11 **Q. Are you?**

12 A. You're speaking to things that occurred during
13 the negotiation of this document.

14 **Q. No. I'm reading what's in the exhibit that**
15 **went before the Commission.**

16 A. Yes. And it says:

17 "The forecast total requirement for natural gas
18 and electricity should not be fully hedged."

19 **Q. "Fully hedged."**

20 A. Yes. And the point I made earlier -- and that
21 was my exact point and my exact concern with the PURPA
22 obligation. There's nothing stopping us. We can have
23 10,000 megawatts of QFs come through the door and we
24 would have to execute each one of those contracts.

25 **Q. Let's get back to the Exhibit-A. The next**

1 sentence illustrates what the first sentence is talking
2 about: "A reasonable percentage of the natural gas
3 requirements should remain open to short-term market
4 price exposure and allow for operational
5 flexibility. The percentage of natural gas
6 requirement is as follows:"

7 Now, that's blacked out because that's a
8 confidential part of this document.

9 That's talking about fully hedging natural gas
10 and keeping some of it open; correct?

11 A. That's correct.

12 Q. It goes on in paragraph two that:

13 "PacifiCorp should use Fundamental and
14 technical analyses with consideration of the
15 Company's risk management metrics, to determine
16 timing and volume of electricity hedges."

17 There we're talking about financial hedges;
18 are we not?

19 A. I don't read it that way.

20 Q. You weren't in the collaborative; were you?

21 A. No. As I read the plain language of that,
22 it says: "... Fundamental and technical analyses with
23 consideration of the Company's risk management
24 metrics to determine the timing and volume of
25 electricity hedges."

1 Q. And "hedges" as described in this document is
2 talking about the financial instruments the Company was
3 using to hedge natural gas and electricity purchases.

4 A. And I don't see a material difference between
5 a financial hedge and a physical hedge when it comes to
6 fixed-price risk. The only difference is deliverability.

7 Q. I understand that's your view. My point is,
8 you're trying to claim this document somehow requires the
9 position you're talking here in this case.

10 And I'm trying to find out where in this
11 document it does it because I was part of that
12 collaborative and I completely disagree. So --

13 MS. HOGLE: Objection. Assumes facts not in
14 evidence.

15 MR. DODGE: I'll tell you what, I'll withdraw
16 it.

17 THE HEARING OFFICER: Make sure we're not
18 crossing the line of you providing testimony on what
19 happened unless you're going to do that later.

20 BY MR. DODGE:

21 Q. Thank you, Mr. Chairman. I will do that.
22 Paragraph five: "Proposals for long-term natural gas
23 supplies, transportation, storage and price hedges
24 should be solicited and evaluated as part of an
25 Energy Planning and Procurement process,

1 particularly in an environment of favorable
2 Fundamentals."

3 Right? Now, that's natural gas, but I read
4 that correctly; did I not?

5 A. That's correct.

6 Q. "The 36-month guideline for financial hedges,"
7 financial hedges, "and the suggested annual
8 percentage guidelines should not limit opportunities
9 for longer term hedges, supply commitments, or
10 storage contracts in a price environment
11 advantageous to natural gas consumers as determined
12 by Fundamental analyses."

13 So again, that's natural gas. It contemplated
14 longer term acquisition when financial conditions
15 contemplated it; did it not?

16 A. Yes. And one of those actually occurred.

17 Q. My point comes back to, you tried to use this
18 hedging collaborative -- I understand if you're saying,
19 the principles as you read them of this hedging
20 collaborative you were not involved in somehow supports
21 your position. But it's not a fair statement; is it,
22 Mr. Clements, to claim that this requires a shortening
23 of the PPA term before this Commission?

24 MS. HOGLE: Objection. Asked and answered.

25 MR. DODGE: Well, if his answer was --

1 MS. HOGLE: Several times. Asked and answered.

2 THE WITNESS: I'll answer it.

3 THE HEARING OFFICER: I think there's a
4 discreet part of the question that's unique that I'll
5 allow an answer to.

6 THE WITNESS: I'd like to answer that because
7 several times you've said what my opinion is. You've
8 never let me actually say what my opinion is.

9 This document -- so, the hedging collaborative
10 was around the fact, it got its basis around the fact
11 that the Company put on some multi-year gas hedges that
12 were in the money and then went out of the money.

13 And the parties were concerned about the fact
14 that there were these long-term hedges that were put in
15 place and the impact that had on customer rates.

16 The document, yes. The plain language of the
17 document, one, applies to natural gas primarily; two,
18 says, if you want to do something long term which is
19 beyond 36 months, it needs to go through a fundamental
20 analysis and a long-term review process.

21 Those principles are consistent with the
22 Company's application in this matter where we are
23 requesting that if a contract locks in a price for
24 20 years, it requires additional fundamental analysis
25 and stakeholder review before being executed.

1 That is my position, that the fundamental
2 principles behind the hedging collaborative say that
3 if you're going to put on a long-term fixed-price bet,
4 it needs additional review. That's my testimony.

5 BY MR. DODGE:

6 **Q. And does the avoided cost pricing at which**
7 **QF contracts are executed not get significant review**
8 **before this Commission?**

9 A. Again, the methodology does. The price itself
10 does not.

11 **Q. The price that comes out of the methodology;**
12 **right?**

13 A. Yes.

14 **Q. The methodology determines the price and in**
15 **light of changing information over time; correct?**

16 A. That's correct.

17 MR. DODGE: Thank you.

18 THE HEARING OFFICER: Mr. Dodge, if I
19 could just -- I think it might be a good time to take a
20 short break unless you just have a little bit to do.
21 But it seems like you have a couple more topics you're
22 going to address.

23 MR. DODGE: A couple more. It won't be
24 significantly longer but I'm happy to take a break.

25 THE HEARING OFFICER: Why don't we recess for

1 ten minutes. Thank you.

2 (Recess taken from 10:36 a.m. to 10:47 a.m.)

3 THE HEARING OFFICER: Okay. It looks like we
4 have all counsels present.

5 Mr. Clements, you're still under oath and we'll
6 continue with Mr. Dodge's cross-examination.

7 MR. DODGE: Thank you, Mr. Chairman, for that
8 break, and as a result of it, I'll be much shorter.
9 I just have a couple more issues to address with
10 Mr. Clements, but first I'd like to move the admission
11 of Cross-Examination Exhibit-2, the hedging --

12 THE HEARING OFFICER: I'll ask any party to
13 state their objection if they have one. I'm not hearing
14 any. So, it'll be admitted. Thank you.

15 (RMCRE Cross Exhibit-2 Admitted)

16 BY MR. DODGE:

17 Q. Mr. Clements, you discussed the IRP several
18 times. I just want to ask you a few questions about your
19 understanding of the IRP.

20 Is it a true statement that long-term QF PPAs
21 at avoided cost prices are not among the resource options
22 that the IRP chooses?

23 A. Yes. That would not be a resource that it
24 could select.

25 Q. Long-term arrangements maybe but they're set

1 at cost and not at the utility's presumption of cost and
2 not based on avoided cost pricing; correct?

3 A. Yes. Arguably, if the avoided cost reflects
4 the IRP avoided cost for resource, then those should be
5 the same in principle, yeah.

6 Q. Secondly, although you talked about the two- to
7 four-year action plan and in your view, the inconsistency
8 with 20-year PPAs with that, it is true, is it not, that
9 the IRP process, A, uses a 20-year planning horizon and,
10 B, based on that 20-year planning horizon results in
11 decisions that may be a 40- or 50-year resource
12 commitment?

13 A. Yes, that's correct. It tells you what you
14 should do over the next 20 years.

15 However, it doesn't have you do anything until
16 you get within two to four years of when you actually
17 need that. But then when you do something, yes,
18 it often results in a 40- to 50-year asset life.

19 Q. And then let's talk just a minute about what
20 it says as the need. The 2015 IRP, does it not identify
21 roughly a thousand megawatt, talking capacity now, need
22 or shortage between projected resources and projected
23 demands or loads throughout most of that 20-year planning
24 horizon?

25 A. Yeah. I'm not sure I can confirm the thousand

1 megawatt number. There are quite a few front-office
2 transactions for the summer peak period.

3 Q. And so, the summer peak period, you get
4 short -- these transactions are under a year in the IRP;
5 correct? They assume contracts of under a year?

6 A. Yes. They assume you'll be able to go out
7 and acquire those in one-year increments, yes.

8 Q. So, isn't it a fair statement that under your
9 current IRP, there is a demonstrated need both for energy
10 and capacity above the Company's committed resources in
11 every of the 20 years but that the IRP has selected as
12 the least-cost resource, for the most part, demand-side
13 management and front-office market transactions,
14 short-term less-than-a-year market transactions?

15 A. Yes. And the primary reason for that is it's
16 selected primarily Q3 or summertime peak market
17 purchases. So, that's when we have that deficiency
18 and it says go out and get market purchases just for that
19 time period. So, that's a very unique product.

20 Q. Had the cost benefit analysis that the Company
21 engages in in the IRP said with that -- and I'm just
22 using thousand as a round number. Maybe it's 800.
23 Maybe it's 11 some years, but had it said, in order to
24 meet that peak demand need -- and again, I'm talking
25 demand as opposed to energy, we're going to build another

1 Lakeside three if there were such a creature in the works
2 or something like that. If that had been the lower-cost
3 assumption, damn the market resources, it would have
4 picked that for now; correct?

5 A. Yes. It would have.

6 Q. And when you do avoided cost pricing, you look
7 at what your long-term projected energy and, if it defers
8 something down the road, demand savings will be and that
9 gets incorporated into the avoided cost pricing; correct?

10 A. Yes. It looks at your long-term capacity need
11 and a forecasted long-term energy need; that's correct.

12 Q. And today, when you send out indicative pricing
13 today based on the current queue and your current
14 assumptions in the grid model, you're down in the \$30 per
15 megawatt hour range; correct?

16 A. Sorry. I'll need you to repeat that or
17 rephrase that.

18 Q. The most recent QF indicative pricing request
19 that you personally have responded to, that's been within
20 the last few months; correct?

21 A. Yes.

22 Q. And the indicative pricing, without getting
23 specific, the levelized 20-year pricing is in the \$30
24 per megawatt hour range; correct?

25 A. 30 to 40 depending on the project of course.

1 That's solar you're talking about. Other projects might
2 be higher.

3 **Q. I am talking solar. Thank you. And that**
4 **represents primarily the displacement of front-office**
5 **transactions over that 20-year planning horizon; correct?**

6 A. Correct. It displaces some front-office
7 transactions. Why the IRP didn't select a solar project
8 instead of those front-office transactions is because you
9 have to take the solar year round and not just during the
10 summer on peak period.

11 And the reason I'm well versed in that is
12 because I personally have looked at the front-office
13 transactions and the IRP and I said, is there a way for
14 us to build more renewables instead of having all these
15 market purchases. And it's not economic to do so.
16 So, that's why I'm fairly well versed in that one.

17 **Q. And in those hours, the hours where you're**
18 **taking the energy when you don't need the capacity --**

19 **You still need the energy; correct? It's not**
20 **forcing you to take energy you can't use?**

21 A. Well, you can always use the energy.
22 It's just, what are you avoiding and what are your costs
23 to do that.

24 **Q. And in the current grid model when you do**
25 **indicative pricing, primarily the energy that's being**

1 displaced, the assumption of energy is the front-office
2 transactions out through that 20-year term; correct?
3 I'm talking --

4 A. Again, the front-office transactions cover
5 those on-peak summer periods and not the entire year.
6 And I will -- if I can have one correction to one of the
7 things I agreed with you earlier.

8 There will be times in the future where there
9 will be energy that we cannot use and there are quite a
10 few studies that have talked about how there may be some
11 hours with the proliferation of solar that's coming on,
12 there may be some hours where you have some negative
13 energy pricing but we don't see that now.

14 Q. And if that were forecast, that would reduce
15 the avoided cost pricing. In other words, the pricing
16 takes that into consideration; does it not?

17 A. Yes. The model does take that into account.

18 Q. And when you say you looked at a solar project,
19 this would be a Company-sponsored project where all the
20 costs go in. You take the energy, et cetera; right?

21 A. Yes.

22 Q. That's a utility model. But with a QF model
23 where you're determining that long-term avoided-cost
24 pricing, it takes into consideration that energy in the
25 middle of the night in the shoulder months maybe almost

1 zero --

2 A. Absolutely.

3 Q. -- or very very low?

4 A. Yes.

5 Q. And that's all they're being paid for?

6 A. Yes.

7 Q. One last question. You comment that Mr. --
8 in your surrebuttal. You don't need to turn to it unless
9 you'd like to and I'll give you the cite.

10 You commented in your view Mr. Harris and
11 Mr. Isern who are Coalition witnesses, other than their
12 own opinions, they haven't provided any evidence that the
13 three-year term would stop all renewable development.

14 Is that a fair characterization of what you
15 testified to?

16 A. Correct.

17 Q. It's on lines 42 to 46 of your surrebuttal.

18 A. Yeah, that's correct.

19 Q. A, asking Mr. Harris and Mr. Isern to provide
20 evidence other than their own opinions that it would stop
21 development is asking them to approve a negative; right?
22 That it cannot be financed with a three-year term.
23 They said in their opinions it can be.

24 You're saying, other than their opinions, they
25 haven't provided evidence. That would be asking them

1 to prove a negative; would it not?

2 A. Yeah. It's difficult to prove a negative as we
3 witnessed when you asked me to prove that PURPA doesn't
4 say a three-year contract term. So, yes, it's very
5 difficult to prove a negative.

6 Q. You understand, do you not, that Rocky Mountain
7 has the burden of proof in this docket?

8 A. Yes.

9 Q. And you accept that part of that burden is to
10 show that its proposal is consistent with all aspects
11 of Utah law, not just the ratepayer indifference standard
12 but also the policy to encourage the development of these
13 resources. You accept that; do you not?

14 A. I do, yes.

15 MR. DODGE: Thank you. No further questions.

16 THE HEARING OFFICER: Thank you. Before I go
17 to Mr. Sanger, to make sure we have the record clarified,
18 I want to ask Mr. Dodge earlier in his
19 cross-examination, were you making an appearance
20 on behalf of UAE?

21 MR. DODGE: No. I don't remember, honestly,
22 if UAE intervened separately. If so, then I guess I'm
23 appearing for them as a member of the Coalition. And so,
24 they're a member of the Coalition and they support the
25 Coalition testimony.

1 THE HEARING OFFICER: Oh, okay. That clarifies
2 it.

3 MR. DODGE: That was the point I meant to make,
4 and I apologize if I said it in a different way.

5 THE HEARING OFFICER: Thank you. Mr. Sanger.

6 CROSS-EXAMINATION

7 BY MR. SANGER:

8 Q. Thank you. Good afternoon.

9 A. Good afternoon.

10 Q. Or actually, good morning.

11 A. Good morning.

12 Q. I won't be quite as much fire and brimstone
13 as Mr. Dodge, but I'd like to move forward a little bit.
14 I wanted to ask you a couple of questions on the
15 testimony you gave a little bit earlier.

16 You said that the Company or that you are
17 agnostic regarding the purchase of QF power;
18 is that correct?

19 A. That's correct, yes.

20 Q. And is that the Company's view, that they're
21 agnostic on the purchase of QF power as well?

22 A. Yes. We try to implement the Commission orders
23 and make recommendations to the Commission that would
24 leave us in that position.

25 Again, we're balancing customers and the

1 ratepayer indifference standard and the rights that QFs
2 have under PURPA and state law.

3 **Q. And you get to recover all your costs of QF**
4 **contracts and your power cost to adjustment mechanisms**
5 **or rate cases or whatever; is that correct?**

6 A. Well, we have the opportunity to recover all of
7 our costs in some circumstances, a portion of our costs
8 in other circumstances. And without elaborating on that
9 too much, due to the sharing bands in the energy
10 balancing account, there are some QF costs that go
11 unrecovered. So, maybe we're not agnostic.

12 **Q. So, that means that you've moved from the**
13 **agnostic to the slightly opposed category?**

14 A. No. I guess I should revise my earlier
15 testimony where I said it doesn't impact our bottom line.
16 But the energy balancing account is short term in nature,
17 and so, most of those contracts would fall within that
18 anyway. And so, our proposal would not affect the
19 financial impact to the Company. And that's not our
20 objective here.

21 **Q. Okay. So, does the Company earn a return on**
22 **its QF contracts?**

23 A. It does not unless it owns it which the Company
24 currently does not own a QF contract at the PacifiCorp
25 level.

1 Q. Okay. And if the Company built a similar
2 biomass or solar or wind or any other sort of QF project
3 or any other renewable project, would the company earn
4 a return on that investment?

5 A. Presumably, yes, if we had the opportunity to.

6 Q. So, if the Company builds its own resources
7 rather than purchase QF power, there's a different impact
8 on the Company?

9 A. From an earning standpoint, yes.

10 Q. So, is Berkshire Hathaway, they're not
11 indifferent to whether the Company purchases QF power
12 or builds its own power?

13 A. Again, at the Berkshire level, they may have
14 a different opinion, but at the PacifiCorp level, we're
15 simply trying to balance customer interests and rights
16 of QFs.

17 Q. But the Company's shareholders aren't
18 indifferent?

19 A. Well, PacifiCorp doesn't have any plans to
20 develop QFs within its service territory to own and
21 operate them.

22 Q. But you have plans at some point to own and
23 operate renewable projects or at least nonrenewable
24 projects at some point?

25 A. Well, they are in the Integrated Source Plan

1 but when we go out and acquire those, it's through a
2 request for proposal process and --

3 **Q. Well, I know we've gone through the process.**
4 **Right now I'm just trying to get to the point about**
5 **whether your shareholders are indifferent to whether you**
6 **purchase QF power or you build a resource yourself.**

7 MS. HOGLE: Mr. Clements, I would advise you
8 to only answer that question if you know for a fact that
9 that's true or not.

10 THE WITNESS: Well, trying to finish my earlier
11 answer, when we go out and acquire renewable resources,
12 we do so through an RFP. And sometimes the Company does
13 submit its own project, but the RFP selects the
14 lowest-cost least-risk project. And in many of our wind
15 RFPs, that turned out to be a power purchase agreement.

16 So, there's no -- in the Company's procurement
17 process, there's no additional desire or credit given to
18 a company project over a PPA.

19 BY MR. SANGER:

20 **Q. But if the Company acquires a renewable**
21 **project, then it can earn a return on that project if it**
22 **builds it or purchase it for its own self?**

23 A. Yes.

24 **Q. And you said the Company always does an RFP for**
25 **its wind purchases?**

1 A. Typically, yes. I mean, there is statute in
2 Utah and in Oregon that requires us to do so if the
3 project's of a certain size.

4 **Q. And has the Company always done that?**

5 A. I would say that's the typical practice, yes.
6 It's unusual for the Company to go out and acquire a
7 project without that RFP. In the last several years,
8 there were some times the Company built projects that
9 were economically sensitive from a timing standpoint.

10 **Q. And did the Company do that for its**
11 **Rolling Hills project, did it have an RFP?**

12 A. I believe that was one of those instances where
13 it was an economic timely opportunity.

14 **Q. And by "economic timely opportunity," are you**
15 **aware that the Oregon Commission disallowed the Rolling**
16 **Hills and rates because they concluded it was not**
17 **economic?**

18 A. I'm not certain of the exact reason.
19 That's not my understanding.

20 **Q. Did the Oregon Commission disallow**
21 **Rolling Hills rates?**

22 A. I'm not certain of the details around that.
23 I believe they did on a portion of it.

24 **Q. Okay. I'd like to move on to how Schedule 37**
25 **works. Can you just give a brief one-minute overview**

1 **of how Schedule 37 prices are set?**

2 A. So, Schedule 37 prices are set in a similar
3 manner to Schedule 38 where there is a production
4 dispatch model run and there's an avoided capacity
5 determination. The difference between Schedule 37 and
6 Schedule 38 is Schedule 37, the calculation's performed
7 once and prices are set in the tariff and there's a cap
8 on the tariff at 25 cumulative megawatts for that tariff
9 and then any QF contract can be entered into under that
10 tariff at that pricing.

11 **Q. And isn't there a difference between resource**
12 **sufficiency and resource deficiency in Schedule 37?**

13 A. I don't believe so.

14 **Q. And how are capacity payments paid in**
15 **Schedule 37?**

16 A. They could be paid levelized over the term of
17 the agreement or unlevelized.

18 **Q. Does the time of the Company's next resource,**
19 **thermal resource acquisition, have any impact on capacity**
20 **payments?**

21 A. The timing would, yes.

22 **Q. So, how does that work?**

23 A. I believe in 37 now, it's calculated in a
24 similar manner to 38, but we've had so many 37 dockets
25 recently, I'd have to check on that one.

1 Q. So, wasn't there a recent proceeding here at
2 the Utah Public Service Commission where certain capacity
3 payments were removed during the early years out of
4 Schedule 37?

5 A. Yes. There's no longer a simple cycle capacity
6 payment during the sufficiency period.

7 Q. Okay. So, what is the sufficiency period?

8 MS. HOGLE: Objection. I've allowed Mr. Sanger
9 to ask these questions, but I think it's getting a little
10 beyond the scope of the proceeding and Mr. Clements'
11 knowledge with respect to that particular proceeding.
12 And so, I'm wondering how much longer Mr. Sanger is going
13 to question or go beyond this line of questioning.

14 THE HEARING OFFICER: Mr. Sanger, would you
15 like to address the objection?

16 MR. SANGER: Yes. So, this is an issue that
17 my witness John Lowe addressed, the resource
18 efficiency/deficiency determination. I assume
19 Mr. Clements read that testimony.

20 Did you, Mr. Clements?

21 A. Yes.

22 MR. SANGER: And his rebuttal testimony does
23 not respond to Mr. Lowe on this point. So, I wanted to
24 inquire. I'm laying the foundation for my questions.
25 I wanted to inquire about how those prices are determined

1 and how the three-year contract term impacts that
2 determination.

3 THE HEARING OFFICER: Okay. And so, you know,
4 I think we need to, as a general rule, limit
5 cross-examination to issues that Mr. Clements addressed
6 or doesn't address in his rebuttal or surrebuttal.
7 I think there is some relevance of the manner in which
8 Schedule 37 pricing is calculated, but that may be more
9 appropriate to deal with with your witness if
10 Mr. Clements did not address that in his testimony.

11 BY MR. SANGER:

12 Q. Okay. So, I will abbreviate things and try to
13 move on. So, Mr. Clements you had proposed three-year
14 contract terms in this case; is that correct?

15 A. That's correct.

16 Q. So, during those three years, would a QF be
17 paid capacity payments based on a peaking resource?

18 A. It's possible depending on when they requested
19 pricing and whether there was a peaking resource included
20 in the Integrated Resource Plan.

21 Q. So, in the current IRP, is there a peaking
22 resource included in the resource sufficiency period?

23 A. No. There's no deferrable resource included
24 until 2028.

25 Q. Okay. So, there's nothing until 2028?

1 A. Yes.

2 Q. So, if a QF entered into a 20-year contract,
3 how many years out does 20 years ago?

4 A. From today?

5 Q. Yeah.

6 A. 20.

7 Q. What's that?

8 A. 20.

9 Q. And what year does that get us to?
10 Simple math here.

11 A. 2035.

12 Q. Okay. So, if a QF entered into a 20-year
13 contract, they would be paid some resources based on the
14 costs of a net, a new thermal resource acquisition
15 starting in 2027 or 2028?

16 A. That's correct, yes.

17 Q. And if a QF entered into a three-year contract,
18 they would not?

19 A. Under the current preferred portfolio, yes,
20 correct.

21 Q. So, in the past, has the portfolio included
22 a peaking resource, say, between a four- to seven-year
23 period out?

24 A. I'm not sure the preferred portfolio has ever
25 had a peaking resource in it, but there have been gas

1 plants that have been three to four years out.

2 Q. Okay.

3 A. In fact, back in the 2010, '11, '12 IRPs, we
4 had gas plants stacked up in '14, '15, '16, '18.
5 There was a whole line of combined central gas plants
6 that were to be built that subsequently were deferred
7 and not built.

8 Q. And those were three, four, five years out?

9 A. At the time, yes.

10 Q. So, if the QF had entered into -- if you had
11 three-year pricing in effect or three-year contract terms
12 in effect at that point and the QF entered into a
13 three-year contract, they would not be paid based on the
14 thermal resource because that's three to four years out.

15 The contract only goes three years?

16 A. Correct.

17 Q. So, if that QF renewed its contract in three
18 years and the next thermal resource acquisition was out
19 again another three years, they again would not be paid
20 rates based on the thermal resource acquisition?

21 A. Yes, that's correct. That's a concern that I
22 considered as well, that if you only have a three-year
23 contract term, you're never going to catch up to the
24 resource deficiency period because the Company will go
25 out and acquire that resource when it needs it.

1 And I would agree with that issue. I would
2 agree that Mr. Peterson's proposal somewhat addresses
3 that issue with how he calculated the capacity payment
4 for five years.

5 **Q. Thank you. I appreciate you agreeing to that**
6 **issue. Now, that cuts off the rest of my questions on**
7 **that point. Have you read the testimony, the rebuttal**
8 **testimony of Nathan Rich on behalf of the Renewable**
9 **Energy Coalition, REC?**

10 (Recess taken)

11 THE HEARING OFFICER: Okay. We're back on the
12 record. We'll continue with Mr. Sanger.

13 BY MR. SANGER:

14 **Q. Thank you. I think my last question was**
15 **whether you read the rebuttal testimony of Nathan Rich**
16 **on behalf of Renewable Energy Coalition; correct?**

17 A. Yes.

18 **Q. And does his company or his district sell power**
19 **to PacifiCorp? Do they have a current contract with the**
20 **company?**

21 A. I believe they do. I'm not as familiar with
22 our smaller QF contracts but I believe they do.

23 **Q. So, in his testimony he describes his project.**
24 **He describes it as a 300 kilowatt project. So, you're**
25 **not familiar with that contract? You don't remember it?**

1 A. No. I'm familiar with this project, though.

2 Q. Okay. Do you remember in his testimony where
3 he talked about needing or entering into an 11-year PPA?

4 A. Yes, I recall that.

5 Q. And is this project a wind or solar project?

6 A. No, it's not.

7 Q. Now, can you refer to your rebuttal testimony
8 on page 21? In this rebuttal testimony, you discuss the
9 difference between small and large QFs and you discuss
10 the Company's concern, the Company's more concerned with
11 larger QF contracts. Is that still the case?

12 A. Yes, that's correct.

13 Q. So, what's the difference in your mind between
14 small and large QF contracts? Why do you have a lower
15 concern for the smaller contracts?

16 A. The primary difference is that -- so, the
17 smaller contracts, if we're calling small less than three
18 megawatts, the smaller contracts are subject to Schedule
19 37. And that particular tariff has a cumulative
20 25-megawatt cap in the tariff.

21 And the Company files that tariff once per
22 year, typically. And so, under that tariff, the Company
23 will receive no more than 25 megawatts worth of projects
24 each year. And if there are requests exceed that amount,
25 then the Company would need to file another tariff.

1 And i'm getting to the answer here.
2 The primary concern with fixed-price risk is magnitude.
3 And so, 25 megawatts worth of QFs do carry some
4 fixed-price risk with a 20-year contract but that
5 magnitude is reasonable.

6 Two thousand megawatts of fixed-price risk
7 perhaps is not reasonable. And that goes back to my
8 earlier comments where I'm not sure what that number
9 would be but the 25-megawatt cap in Schedule 37
10 significantly decreases the fixed-price risk for those
11 types of QFs.

12 **Q. And that's even more so for a 300-kilowatt**
13 **project?**

14 A. Yes. That would be much less than the 25
15 megawatts. So, that risk would be further diminished.

16 **Q. And moving on to your testimony at the bottom**
17 **of the page 21, you talk about, you do not agree with the**
18 **recommendation that capacity payments would apply to**
19 **existing QFs even if the Company does not have a forecast**
20 **capacity need during the three-year term.**

21 And you then state that there's no guarantee
22 that a QF will sell power to the Company at the
23 expiration of any contract term.

24 **And that is your testimony; correct?**

25 A. That's correct.

1 Q. Now, are you aware that in the Integrated
2 Resource Plan that the Company plans on small QFs
3 renewing their contracts?

4 A. Yes. I believe that has been the practice.
5 I'm not sure if it continues to be the practice.

6 Q. And at least historically, the Company has for
7 the entire 20-year planning horizon assumed that the
8 small QFs will continually renew their contracts?

9 A. I believe that's correct.

10 Q. So, in, say, 2027 or 2028, the Company is
11 counting on a small QF being there and selling power
12 to it in the IRP for the entire 20-year horizon which
13 we determined would be out to year 2035?

14 A. Yes. If that's the treatment, then yes,
15 it would. And again, the magnitude plays a pretty
16 material role in that as the small QFs all added up
17 equate to a fairly small amount of megawatts.

18 Q. And you participated in the Idaho Public
19 Utilities Commission proceeding in which the Company
20 also requested a three-year contract term?

21 A. Yes, I did.

22 Q. And did the Idaho Public Utilities Commission
23 treat small base-load QFs differently than wind and solar
24 QFs?

25 A. They did. They call it published-rate

1 contracts as opposed to small or Schedule 37. That's
2 their distinction. But the published rate which are the
3 small projects which I believe are ten average megawatts
4 and below for hydro and base load and a hundred kilowatts
5 and below for wind and solar, those projects continue to
6 receive 20-year contract terms while the non-published
7 rates which would be anything above that were limited to
8 a two-year contract term.

9 **Q. And did the small projects also, are they also**
10 **entitled to capacity payments in their contract renewals?**

11 A. Currently that's the methodology in Idaho, yes.

12 **Q. And the resolution of that proceeding where**
13 **small QFs obtained 20-year contracts instead of the**
14 **shortened contract term, would that sort of distinction**
15 **between small and large QFs, would that be a reasonable**
16 **resolution? I know that's not the Company's position**
17 **but is that within the zone of reasonableness that the**
18 **Company could accept?**

19 A. Yes. I would agree that's reasonable in that
20 the primary concern that the Company has in this docket
21 is protecting customers from fixed-price risk.

22 And fixed-price risk really rose with the
23 magnitude of megawatts. And with the small projects
24 being limited to 25 megawatts cumulative for each year,
25 that risk is much smaller.

1 MR. SANGER: No further questions.

2 THE HEARING OFFICER: Thank you. Ms. Hogle,
3 any redirect?

4 REDIRECT EXAMINATION

5 BY MS. HOGLE:

6 Q. I just have a few. Thank you. Mr. Clements,
7 Mr. Ritchie in earlier cross-examination asked you about
8 the Company's forecast used to justify the acquisition
9 of capital additions. Do you recall that discussion?

10 A. I do, yes.

11 Q. So, when the Company purchases fuel for those
12 capital additions, does the Company execute long-term
13 contracts or does the Company execute short-term
14 contracts?

15 A. For the natural gas plants, typically the
16 contracts are short term in nature within the 36-month
17 hedging horizon that I spoke of unless there is a
18 specific economic opportunity that's well vetted before
19 all stakeholders which occurred. The Company did go out
20 and acquire some ten-year fixed-price gas at a very small
21 volume.

22 But typically the gas plants are not hedged
23 beyond the 36-month time period. There are some coal
24 contracts that go longer in nature which is the nature
25 of most coal supply agreements. But for gas, no.

1 **Q. And in cross-examination, you were also asked**
2 **whether you could quote a decision where a court or**
3 **commission limited a QF term and found that this does not**
4 **violate PURPA. Do you recall that line of questioning?**

5 A. I do.

6 **Q. Is it your understanding that on**
7 **reconsideration, the Idaho Commission just very recently**
8 **affirmed its earlier order that PURPA in its implementing**
9 **regulations do not require a specific number of years or**
10 **establish a certain time period for PURPA contracts?**

11 A. Yes. The Idaho decision which was upheld on
12 reconsideration by the Idaho Commission, they made it
13 clear that the Commission did have the legal right to
14 set the contract term.

15 **Q. And do you recall another decision in the**
16 **country where that was found to be the case?**

17 A. Yes. I couldn't recall it previously and
18 didn't want to get the details wrong, but there was an
19 excellent wind case or a case involving Exelon Wind in
20 Texas where the 5th Circuit upheld a Texas Commission
21 decision which allowed the local utility there to limit
22 the contract term for firm sales.

23 **Q. Okay. Mr. Clements, you were also asked about**
24 **your position on the hedging guidelines and what ensued**
25 **as a result of the hedging collaborative.**

1 **Do you recall that line of questioning?**

2 A. Yes. Very much.

3 **Q. Do you know what the Company's current risk**
4 **management and training policy is with respect to**
5 **contract term?**

6 A. Yes. So, the traders who manage our position
7 on a daily basis are limited to 36 months for natural gas
8 and electricity hedges, and they cannot exceed that
9 amount without upper management approval or on the case
10 of natural gas, there's additional requirements.

11 **Q. And why did the Company limit the term for**
12 **those hedges?**

13 A. So, the Company had a similar term, it was
14 slightly longer, I believe 48 months, but they limited it
15 to 36 months primarily, again, in response to the hedging
16 collaborative. And without getting into the weeds of
17 that discussion again, it was primarily in response to
18 stakeholders saying, we don't want you, Company, to take
19 long-term fixed-price positions because that introduces
20 price risk that we don't want customers to bear.

21 And I know there are a lot of details that
22 Mr. Dodge and I discussed in that particular
23 collaborative, but that policy was put in place in
24 response to that stakeholder desire to limit the
25 fixed-price exposure to customers.

1 Q. Okay. In cross-examination, you were also
2 asked about the ratepayer indifference standard and
3 Utah's policy to encourage the development of small
4 power production.

5 Do you recall that line of questioning?

6 A. I do.

7 Q. Is it your understanding that the must-purchase
8 obligation and the exemption of QFs from federal and most
9 states, most federal and most state laws and regulations
10 are built-in provisions within PURPA that serve to
11 encourage the development of small power production?

12 A. Yes. And that's where the Commission has the
13 ability to implement PURPA in a manner it sees fit and it
14 strikes a balance between encouraging the development
15 which is consistent with Utah statute and protecting
16 customers which is consistent with PURPA legislation
17 that requires ratepayer indifference. And sometimes
18 that requires a policy decision.

19 And an example of that is the ownership of
20 renewable energy credits. I believe in the order in the
21 12-035-100 docket, the Commission actually referenced
22 that portion of code -- I may be wrong but that's my
23 recollection -- as one of the reasons why the RECs
24 should stay with the QF.

25 And so, the Commission can determine what's

1 fair within its purview. And in my opinion, it's not
2 fair to customers to saddle them with a limitless amount
3 of fixed-price risk. And I believe that would be
4 consistent with Utah statute and with PURPA.

5 **Q. One last question, Mr. Clements.**

6 **Would you agree with me that another policy**
7 **of the state of Utah is to have a target amount of**
8 **qualifying electricity?**

9 A. A target amount of renewable electricity?

10 **Q. Yes.**

11 A. Yes. A renewable portfolio goal I guess you
12 would call it. RPG. I don't know what the official term
13 is.

14 **Q. And would you agree with me that that goal,**
15 **pursuant to Utah statute and that the statute indicates**
16 **expressly that it should be met or it's a goal provided**
17 **that the renewable energy is cost effective?**

18 A. Yes. There is the customer protection that
19 that energy needs to be cost effective. And it also
20 highlights the issue I raised earlier where, I'm not sure
21 that a QF would meet that requirement because we do not
22 get the renewable energy credit.

23 And again, we don't know all the details about
24 how that's going to work out with the Utah clean power
25 act and some of the other environmental issues coming

1 down the road, but not getting the environmental
2 attribute from QFs will certainly be an issue.

3 MS. HOGLE: Thank you.

4 THE HEARING OFFICER: Any recross from the
5 Division, Mr. Jetter?

6 MR. JETTER: No. Thank you.

7 THE HEARING OFFICER: Mr. Moore?

8 MR. MOORE: No.

9 THE HEARING OFFICER: Ms. Dutton?

10 MS. DUTTON: No.

11 THE HEARING OFFICER: Mr. Ritchie?

12 MR. RITCHIE: No.

13 THE HEARING OFFICER: Mr. Dodge?

14 MR. DODGE: No.

15 THE HEARING OFFICER: Could we have somebody
16 close that door in the back?

17 (Brief break)

18 THE HEARING OFFICER: Mr. Sanger?

19 MR. SANGER: No.

20 THE HEARING OFFICER: Thank you, Mr. Clements.
21 You're excused. Oh, yes. Sorry. Commissioner White?

22 COMMISSIONER WHITE: None for me, Chair Lavar.

23 THE HEARING OFFICER: Okay.

24 Commissioner Clark?

25 EXAMINATION

1 BY COMMISSIONER CLARK:

2 Q. I want to take you back to your conversation
3 with Mr. Sanger about IRP planning and QFs with
4 short-term contracts. And I'd like you to, rather than
5 look historically to look prospectively, assuming that
6 the application is granted and that the maximum term
7 is adjusted to three years.

8 Has the Company determined how it would address
9 the capacity related to QF projects under these
10 short-term contracts from an IRP perspective, how it
11 would address them in its planning?

12 A. In terms of whether the Company would assume
13 they would continue?

14 Q. Well, I think that's probably the fundamental
15 question, yes.

16 A. I think we would have to evaluate that on a
17 project-by-project basis. Some projects have shown an
18 inclination to sell to other parties while some projects
19 have made it clear that they have no other market
20 alternatives. So, we would have to look at that and
21 determine what's most appropriate in that scenario.

22 Q. Do you see any system reliability issues
23 related to this scenario from a planning perspective
24 going forward?

25 A. I do. And without rehashing what ground we've

1 covered in the 12-035-100 docket, we allow this partial
2 displacement method where we say that a solar or a wind
3 project can partially displace the gas plant in 2028.

4 If we have enough QF projects come on, wind and
5 solar let's say, arguably, you could displace that entire
6 resource on paper through the method. Yet, I'm not sure
7 that three or four thousand megawatts worth of wind and
8 solar are going to provide the capacity products that we
9 would get from that from that gas plant such as operating
10 reservations, load following services, voltage control,
11 some of those things that might be required.

12 And so, from a reliability standpoint, yes,
13 I do have concerns about replacing some of the base-load
14 dispatchable units with non base-load intermittent
15 resources, yes. I apologize for the lengthy answer
16 there.

17 COMMISSIONER CLARK: That's all my questions.
18 Those are all my questions.

19 THE HEARING OFFICER: Thank you. And I don't
20 have anymore. So, thank you, Mr. Clements.

21 THE WITNESS: You're welcome.

22 THE HEARING OFFICER: Ms. Hogle?

23 MS. HOGLE: The Company rests.

24 THE HEARING OFFICER: Thank you. Mr. Jetter?

25 MR. JETTER: Thank you. The Division would

1 like to call Charles Peterson as its witness.

2 THE HEARING OFFICER: Mr. Peterson, do you
3 swear to tell the truth?

4 THE WITNESS: Yes.

5 THE HEARING OFFICER: Thank you.

6 CHARLES PETERSON,
7 having first been duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. JETTER:

11 Q. Good morning, Mr. Peterson. Would you please
12 state your name and occupation for the record today?

13 A. Yes. Charles E. Peterson, P-e-t-e-r-s-o-n.
14 And I'm a technical consultant for the Division of
15 public Utilities.

16 (DPU Direct, Rebuttal, and Surrebuttal
17 Testimony of Charles Peterson Identified)

18 BY MR. JETTER:

19 Q. Thank you. And in the course of your
20 employment with the Division of Public Utilities,
21 have you had the opportunity to review the application
22 filed by the Company and after doing so, have you created
23 or caused to be created and filed with the Commission
24 direct, rebuttal, and surrebuttal testimony in this
25 docket?

1 A. Yes, I have.

2 Q. Are there any corrections that you would like
3 to make in any of those?

4 A. None that I'm aware of.

5 Q. And if you were asked the same questions today
6 that are contained in those three prefiled testimony
7 documents, would your answers be the same?

8 A. Yes.

9 MR. JETTER: Thank you. With that,
10 the Division would move for the admission of Charles
11 Peterson's direct, rebuttal, and surrebuttal testimony
12 into the record in this hearing.

13 THE HEARING OFFICER: If any party objects to
14 that, please indicate. Hearing no objection, that will
15 be entered. Thank you.

16 (DPU Direct, Rebuttal, and Surrebuttal
17 Testimony of Charles Peterson Admitted)

18 BY MR. JETTER:

19 Q. Thank you. Mr. Peterson, have you prepared a
20 brief summarization of the position of the Division
21 of Public Utilities in this matter?

22 A. Yes, I have.

23 Q. Please go ahead.

24 A. I think it's still morning. So, good morning
25 commissioners. The Division generally supports

1 PacificCorp's request to reduce the maximum contract term
2 for QF power purchase agreements.

3 As noted by Mr. Clements, the Company has
4 experienced an extraordinary increase in QF applications
5 in the last couple of years, something that was not
6 foreseen by anyone a few years ago.

7 The problem is the potential to lock in
8 substantial amounts of intermittent, nondispatchable
9 resources at long-term prices while at the same time
10 holding dispatchable resources as backup. The long-term
11 prices create risk to ratepayers, something that you've
12 heard a lot about so far.

13 As a way to mitigate the problems that could
14 arise as a substantial portion of the QFs get built
15 including likely higher prices to ratepayers, PacificCorp
16 is proposing reducing the maximum QF contract term from
17 20 to three years.

18 For reasons set forth in my direct testimony,
19 the Division is suggesting a modification of the
20 Company's proposal to a five-year term but also to allow
21 a QF to receive capacity contribution payments over the
22 five-year term as based upon the present value of the
23 capacity over 20 years similarly to the way it's done
24 now.

25 Every five years the pricing would be updated

1 including the capacity payments. Other parties in this
2 docket have uniformly opposed making any change to the
3 status quo. However, in my opinion, none have proposed
4 an alternative solution to the potential problems faced
5 by the Company other than to suggest that low avoided
6 cost pricing would eventually discourage developers.

7 The prediction of what that low avoided cost
8 price level is by one intervenor expert witness has
9 already failed. Generally, the opponents of a change
10 make three arguments.

11 One, PacificCorp and Utah generally needs all
12 the renewable generation resources it can get to mitigate
13 various environmental concerns and the federal and state
14 laws set a policy to support renewable resource
15 development.

16 Two. Renewable resources are substantially
17 just like Company-acquired resources in that the use of
18 avoided cost pricing and the Company's IRP to determine
19 the next deferrable resource makes it irrelevant whether
20 the resource is acquired today or in 2028 or later.

21 And three, reducing the maximum contract term
22 will make it nearly impossible for QF developers to
23 obtain financing, thereby reducing QF developments
24 in Utah to essentially zero.

25 The Division does not believe that federal and

1 state policies contemplated the occurrence of
2 unrestrained limitless development of renewable
3 resources. You can get too much of even a good thing,
4 and the Division is concerned that we may be heading down
5 that road. Proponents of the Company's proposal strain
6 to show that QF development is just like Company-acquired
7 resources. They emphasize some similarities but largely
8 ignore or downplay the differences.

9 For example, the Company has to pay power when
10 the QF generates it no matter whether or not the power
11 is needed on that day and hour and whether the cost is
12 economic.

13 Company-acquired resources aside from the
14 Company's own renewable resources can generally be
15 dispatched when it is needed or when it is economic
16 to do so.

17 As I've indicated in my testimony, the Division
18 believes that the financing issue is overstated; that is,
19 there are possibilities for financing if a developer
20 wants to pursue them.

21 Of course a developer cannot be forced to
22 pursue alternative financing or do anything at all if it
23 doesn't want to. The Division does recognize that the
24 20-year term is a benefit to developers and that reducing
25 that benefit will likely reduce development.

1 In Docket Number 03-035-14, PacificCorp witness
2 Bruce Griswold supported the 20-year contract term limit
3 versus a request for 35 years as, quote:

4 "... an appropriate balance between a term that
5 allows the QF to secure financing and limiting the
6 risks that accompany long range power price
7 forecasting."

8 The Division believes that it may be time to
9 reevaluate whether this balance between benefiting QF
10 developers with 20-year contracts and the risks assumed
11 by ratepayers that Mr. Griswold testified to ten years
12 ago is still intact.

13 The Division's position can be questioned
14 regarding a couple of other issues.

15 First, the Division has in the past not opposed
16 longer contract terms in an effort to be supportive of
17 the relatively few renewable QF projects that have come
18 through and focused on assuring that the contract pricing
19 appropriately reflected avoided costs and the methodology
20 that was approved by the Commission and, to a lesser
21 extent, other contract terms that seem to affect whether
22 or not ratepayers can rely on the projects being built
23 in a timely fashion.

24 Second, the Division suggested an alternative
25 to a term of five years but with a capacity payment based

1 upon a 20-year forecast as is done today has been
2 criticized for contradicting the ratepayer indifference
3 standard since the developer could be paid for a capacity
4 payment as if it were going to be in place for 20 years
5 but then opt out after as few as five years.

6 This part of the Division's proposal is not
7 consistent strictly speaking with ratepayer indifference.

8 However, if the Commission orders a reduction
9 in the contract term, then ratepayers would still be
10 better off generally.

11 And under that condition, the Division believes
12 that it is appropriate to give some additional
13 encouragement to renewable developers beyond the must-buy
14 requirement of PURPA which also is a benefit to
15 developers.

16 At this time, the Division believes that the
17 risk of a QF developer opting out after five or 10 years
18 is small based upon the fact that the developer has
19 chosen the QF route to begin with as the best option
20 available to it. But of course the future will likely
21 be different than anyone of us expects.

22 And that concludes my statement.

23 MR. JETTER: I have no further questions for
24 Mr. Peterson. He's available for the parties to
25 cross-examine.

1 THE HEARING OFFICER: Okay. Thank you.

2 Ms. Hogle, do you have any cross-examination?

3 CROSS-EXAMINATION

4 BY MS. HOGLE:

5 Q. Just a couple. Mr. Peterson, you were in the
6 room when Mr. Dodge was asking Mr. Clements about his
7 recollection of the scope of the hedging collaborative
8 workshops. Do you recall that?

9 A. Yes.

10 Q. Did you participate in those hedging
11 collaboratives?

12 A. Yes.

13 Q. Can you tell us what your recollection was with
14 respect to the scope of the hedging collaboratives?

15 A. My recollection is is that the intention of the
16 hedging collaborative was to limit the Company to
17 36-month contracts. And these also included not only
18 financial contracts; swaps, typically, but also the
19 physical commodity contracts.

20 And in fact, I've also participated in the
21 Division's review and audit of the Company's annual
22 energy balancing account filings, and the Division's
23 audit is consistent with the view I just stated.

24 We look at the physical as well as the
25 financial transactions that the Company entered into

1 and we attempt to verify that they are consistent not
2 only with the 36-month term limit but also with the
3 percentages that the collaborative restricted the
4 company to over that 36 months.

5 **Q. So, there's no distinction between gas and the**
6 **electricity hedging contracts; is that correct?**

7 A. In the Division's view and in the way that
8 we have applied it to the energy balancing account,
9 the answer is no.

10 MS. HOGLE: Thank you.

11 THE HEARING OFFICER: Is that all?

12 MS. HOGLE: Yes.

13 THE HEARING OFFICER: Mr. Moore?

14 MR. MOORE: The Office has no questions.

15 Thank you.

16 THE HEARING OFFICER: Ms. Dutton?

17 MS. DUTTON: Utah Clean Energy has no
18 questions.

19 THE HEARING OFFICER: Mr. Ritchie?

20 MR. RITCHIE: No questions. Thank you.

21 THE HEARING OFFICER: Mr. Dodge?

22 MR. DODGE: Sorry. I do have some.

23 THE WITNESS: I'm not surprised.

24 CROSS-EXAMINATION

25 BY MR. DODGE:

1 Q. Mr. Peterson, first I'd like to clarify your
2 testimony. It is not your testimony here that reasonable
3 financing terms are available to a developer of a
4 renewable energy project with a five-year PPA;
5 is that correct?

6 A. It is correct, but I cannot specifically
7 identify that those terms are available.

8 Q. In fact, in response to a data request from the
9 Coalition, you said we were mischaracterizing your
10 testimony because it's not your position, you haven't
11 taken the position whether reasonable financing would be
12 available on a five-year term; correct?

13 A. That's correct. Specifically, I answered that
14 we think that the financing world has changed from where
15 it was ten years ago when the Commission previously
16 reviewed this issue.

17 Q. Right. And I'd like to go through that with
18 you briefly, but first of all, you also complained that
19 there's been no hard evidence that there's not available
20 financing. You said that in your testimony;
21 is that right?

22 A. I did say that but I also have subsequently
23 provided examples where such short-term contracts or
24 shorter term than 20-year contracts have been entered
25 into.

1 Q. And we'll talk about that in a minute.

2 You understand that asking intervenors to
3 provide hard evidence that financing is available or that
4 financing would not be available with a short-term PPA
5 is asking them to prove, A, a negative and, B,
6 a situation they haven't faced before.

7 Do you understand those two things?

8 A. Well, in the sense that I'm asking them to
9 approve a negative, it may be difficult for them to do
10 so, although I can conceive of a scenario in which they
11 might be able to demonstrate it with a high probability.
12 But then the alternative is is to show that they have
13 been financing less than 20 years.

14 Q. And we'll talk about that.

15 You also understand that the proponents of the
16 change to a policy have the burden of proof.

17 You understand that, too; do you not?

18 A. Yes.

19 Q. You said you believe that there is some
20 evidence that perhaps financing might be available to
21 short-term PPAs. And I want to go through each of your
22 examples and let's talk about it.

23 But let me start by saying, let's say that
24 you were persuaded that there will be zero QF renewable
25 projects done in Utah for so long as there were a three-

1 or a five-year term. Let's pretend as a hypothetical.

2 A. So, that's the sole reason that there would not
3 be --

4 Q. Because of the term.

5 A. Okay.

6 Q. Because of the three- or five-year term,
7 the projects that are now being developed wouldn't have
8 been developed and the projects that might come forward
9 in the future won't be.

10 Let's assume that as a fact, recognizing we
11 don't have that evidence one way or the other.

12 If that were the case, would your view be that
13 the Company's proposal or the Division's proposal to
14 limit the term would be consistent with Utah statute that
15 states the state policy to encourage the development
16 of these types of projects?

17 A. I think that the Division or the Company's
18 burden of proof would be higher to show that it was still
19 consistent if -- solely because of the reduction in turn,
20 there would be exactly zero development made or that it
21 would even be possible for zero development to be made
22 or more than zero development. I think that would be
23 concerning, yes.

24 Q. You complain that there's no hard evidence.
25 But I'd like to talk for a minute about the evidence that

1 is in the record. First of all, you've seen evidence in
2 the record that 20-year PPAs for QFs is the industry
3 standard throughout the country.

4 You've seen that testimony?

5 A. I believe I have seen that stated. I don't
6 dispute that that would be the common contract language.

7 Q. We know from experience in Utah that a 20-year
8 PPA, at least in the last two years, has been sufficient
9 to encourage the development of renewable projects and
10 get projects financed and constructed; correct?

11 A. All the QFs that I have -- contracts that
12 I have reviewed are 20-year contracts.

13 Q. And so, that is working. We know that 20 years
14 is working ing to encourage it. But there's no evidence,
15 is there -- well, I'm not going to ask that question
16 because we're going to go through that now.

17 You accept that -- you're not a financing
18 expert, is that right, of renewable energy projects?

19 A. I have not worked in that arena of financing
20 renewable energy projects.

21 Q. And you accept that every witness in this
22 docket who can claim to be an expert in actual financing
23 renewable projects has said they won't be able to get
24 them developed if the term is reduced to three or five
25 years. You're aware of that testimony; right?

1 A. Well, I'm aware, yes.

2 Q. Okay. Now, you've indicated several times
3 in your testimony here -- excuse me, in your prefiled
4 testimony and in your summary that you think there's some
5 evidence that the financing situation might be changing
6 for renewable projects; right?

7 A. Yes.

8 Q. I'd like to walk through that evidence that you
9 cited and talk about whether that does provide any
10 support for the notion that short-term PPAs are
11 financeable for renewable projects.

12 First of all, you reference the concept of
13 yieldco; correct?

14 A. Yes.

15 Q. Do you understand that yieldcos are an
16 alternate form of sponsor equity in a project as opposed
17 to either tax equity or debt?

18 A. I understand that there are various flavors of
19 yieldcos and but, basically, the developer can sell his
20 project into a yieldco possibly making a profit on the
21 sale and then receive dividends back out from the
22 yieldco.

23 Q. I guess, let me ask my question more directly.

24 Do you understand that an entity that uses a
25 yieldco to help finance a project typically also has to

1 obtain debt from more traditional debt sources?

2 A. Yes. I understand that there is debt and
3 equity involved in both the developing company or
4 sponsoring company and in the yieldco.

5 Q. So, when you point to the fact that the yieldco
6 may be a new financing option, you understand that a
7 developer has to come up with a combination of debt and
8 equity to make the project work, that will make the
9 project work; correct?

10 A. Presumably, yes.

11 Q. You also understand, do you not, that an
12 investor or a lender would view a PPA with five years
13 as having greater risk than a PPA with 20 years fixed
14 prices?

15 A. Generally, yes.

16 Q. And with increased risk, investors or lenders
17 expect higher rates; do they not?

18 A. That would be the traditional financial theory.

19 Q. You specifically referenced one of the
20 participants in the Coalition that I represent,
21 SunEdison, and their use of yieldcos.

22 And you reference to the fact that they were
23 going to maintain a portfolio of projects for a certain
24 period of time and then potentially drop it into a
25 yieldco; right?

1 A. Yes.

2 Q. You understood, did you not, that the average
3 remaining length of term for all of those PPAs that were
4 involved in that particular transaction was 18 years?

5 A. Yes. That's what the news release said.

6 Q. And that was remaining years presumably at the
7 time the PPAs were entered -- did you understand these
8 PPAs were entered into by a utility and they were being
9 purchased from them?

10 A. Yes. I understood that. And the 18 years is a
11 weighted average. So, there would have been contracts or
12 projects there that would have had presumably more or
13 less than the 18 years.

14 Q. Left; correct?

15 A. Left.

16 Q. You don't know whether every one of them, when
17 initially financed and built, was a 20-year or a 25 or
18 some other number? What you know is what's left at the
19 time of the transaction according to the report was
20 18 years; right?

21 A. That's correct.

22 Q. And you pointed out that Sun Edison's CEO or
23 CFO, I forgot which, had indicated that maybe those would
24 be held within the Company for up to seven years and at
25 some point perhaps dropped into a yieldco; is that right?

1 A. It was the CEO as I understand it, to make that
2 clarification. Yes. The Company Sun Edison has created
3 yet another vehicle which contained a warehouse to hold
4 the purchase of these assets and the financing is
5 provided over a seven-year term. I think JP Morgan was
6 the funder of that financing.

7 And the intention certainly is is to drop those
8 projects into the yieldco as the yieldco is able to
9 purchase the amount of the warehouse. That's my
10 understanding of what's going on there.

11 **Q. But didn't you suggest that because they could**
12 **be held as long as seven years in that warehouse before**
13 **being dropped into the yieldco, meaning that there would**
14 **be a weighted average of 11 years left of that time,**
15 **that that somehow demonstrated that financing an**
16 **11-year PPA might be possible?**

17 A. Yes. And I'd be happy to explain my thinking
18 about that. What that demonstrates is is that a yieldco,
19 when it receives a project, is not requiring that the
20 project already have or have a 20 years remaining which
21 also suggests to me that there is no magic number that
22 the yieldco has to have a 20-year contract when it first
23 acquires the project or even an 11-year contract when it
24 first acquires it.

25 The idea is is that the yieldco acquires a

1 project with the remaining contract that may be just a
2 remaining but it can be as low as 11 years or, depending
3 on what the original contract term distribution was,
4 it could be under ten years.

5 Q. But you understand, do you not -- let's pretend
6 for a moment, another hypothetical, that each of those
7 projects that you're referencing was a 20-year PPA.
8 Now it's sold with 18 years left, and then you're saying
9 maybe with 11 years left it's dropped into a different
10 yieldco financing mechanism.

11 You understand that the investment at year one
12 for a 20-year PPA -- I'm going to make up a number,
13 it may have been \$100 million. Two years later the
14 remaining investment that has to be recovered might be
15 lower than that, 18 -- you know I said a 100 million.
16 \$90 million. Let's just pretend.

17 Seven years later when there's only 11 years
18 left, the remaining investment might only be \$50 million;
19 right? In other words, the amount that the investor
20 is putting at risk is going to change as the project
21 depreciates and that investment is already recovered;
22 correct?

23 A. Well, that depends on -- you're making a lot of
24 assumptions there. But the value -- I'll go this far
25 with you. The value of the project will be different

1 for a -- if it has a 20-year PPA than if it has an
2 11-year PPA, but my point is is that the yieldco and its
3 investors -- and the yieldco has a separate set of
4 investors who financed it -- are willing to take in
5 projects, apparently, with contract terms that are
6 potentially much less than the 20 years that you're
7 proposing.

8 Q. But the risk is also half as much or almost
9 half as much 11 years in. The remaining amount to be
10 collected is reduced significantly. The risk is reduced
11 significantly, and these are already constructed projects
12 that presumably required 18 or 20 years to get financed
13 and built in the first place; right?

14 A. Well, presumably, but you've said the risk is
15 reduced. So, that would make the value higher again
16 under typical finance theory.

17 Q. But what we're dealing with is the
18 encouragement of the development of a QF resource.
19 Nothing about the fact that a depreciated resource
20 already built eleven, seven or eight years or nine years
21 into its life might be financeable or might be traded to
22 someone for the remaining risk, for the remaining life.

23 Nothing about that speaks to what it takes to
24 get it built in the first place; does it?

25 A. I think that it does. I think that it shows

1 that the yieldco as a financing vehicle for the
2 sponsoring developer may be willing to accept, say,
3 a ten-year contract as part of its portfolio.

4 Q. You've seen testimony, have you not, in this
5 docket that the average PPA length of yieldco is at
6 least, that Mr. Isern knows about, 15 to 20 years and
7 that's about what the average yieldco PPA remaining life
8 is? Do you remember reading that testimony?

9 A. Not specifically, but if you want to represent
10 that that's what he said, then I won't dispute that.

11 Q. He can speak to that, but the point I'm trying
12 to get to, and you seem to be resisting me -- maybe we
13 need to go through some of this -- is that yieldcos are
14 viewed as a means to provide a different kind of equity
15 for long-term PPAs that are already there for investors
16 who want to invest in them.

17 You haven't shown any testimony or any
18 evidence, have you, that a yieldco was willing to invest
19 in a short-term PPA from the get-go as opposed to buying
20 a depreciated set of assets years into the development
21 or into the development?

22 A. Well, yieldco's are relatively new and how they
23 may evolve into the future is anyone's guess at this
24 point. My point in bringing up the subject of yieldcos
25 is that they are a new animal that did not exist ten

1 years ago when the Commission last reviewed this issue
2 of term contract term limits. And that a yieldco might
3 in the future as part of its overall portfolio support
4 a contract that has five or 10 years on it is something
5 that I can at least conceive of.

6 Q. As someone who's never done it; right?

7 You could conceive of it, but you don't have
8 any experience that would suggest that's true; do you?

9 A. Well, to the extent that there is evidence
10 available to this relatively new animal, I think I
11 presented evidence that yieldcos are not locked into
12 making 20-year contracts.

13 Q. Do you accept the notion that yieldcos are
14 premised upon the fact that there are long-term PPAs with
15 creditworthy utilities backing the return and therefore
16 they can be sold to these yieldcos, these individual
17 investors who buy into the yieldco at perceived low risk
18 and relatively low rates at least right now?

19 Is that consistent with what you understand of
20 yieldcos?

21 A. Well, I think that's consistent with what some
22 yieldcos are aiming at, but I've read also where there's
23 been complaints already in the media where yieldcos have
24 taken in projects that maybe are not what -- or maybe not
25 the quality that have been expected.

1 Q. And indeed, if they started taking in five-year
2 PPA projects, there would probably be a lot of
3 complaining about lack of long-term stability and
4 high risk; right?

5 A. Well, it would depend on what portion of the
6 portfolio it was.

7 MR. DODGE: May I approach?

8 THE HEARING OFFICER: Yes.

9 BY MR. DODGE:

10 Q. I'd like to hand you -- and I have all of them
11 if you'd like to look at them.

12 Mr. Peterson, in your testimony, you provided
13 web sites, links to web sites for five or six articles
14 describing this new yieldco entity; correct?

15 A. Yes, I did.

16 Q. This new yieldco concept?

17 A. Right, in order to provide some background
18 information.

19 Q. And I trust you read through those articles?

20 A. Yes.

21 (RMCRE Cross Exhibit-3 Identified)

22 BY MR. DODGE:

23 Q. And I have the entire articles here if you'd
24 like to see them in context. What I've done in this that
25 I'd ask to be marked Coalition Cross Exhibit-3 I believe,

1 what I've done is highlighted certain paragraphs from
2 several of those articles. And I'd like to see if you
3 understood this as you talked about yieldcos.

4 And I turn to the first one which was in this
5 Social CSP Today. And in the highlighted part, I'd like
6 to read it and you tell me if this is consistent with
7 your understanding.

8 "Yieldcos are essentially publicly-traded
9 holding companies which bundle assets that produce
10 a steady and predictable flow of income, such as
11 energy plants, that have long-term distribution
12 agreements."

13 Did I read that correctly?

14 A. Yes.

15 Q. The next highlighted part:

16 "While they can face many uncertainties during
17 bidding, permitting and development, once they are
18 connected to the grid their cash flows are low-risk,
19 because they typically generate a steady income from
20 20 or 25-year PPAs or tariffs, once in operation."

21 Now, is that consistent with your understanding
22 that yieldcos are viewed as low risk because they have
23 long-term PPAs?

24 A. I would agree that that's what the statement
25 says.

1 Q. And again, these are what you cited in your
2 testimony to explain what yieldcos are; right?

3 A. Right.

4 Q. If you'll turn to the next highlighted part,
5 this is a Bloomberg article, the highlighted part. And I
6 will read it.

7 "In thinking about how to value yieldcos,
8 it is vital to understand that they are, at the
9 end of the day, portfolios of projects. Any yieldco
10 valuation has to start with a valuation of its
11 underlying projects, and any premium over that value
12 needs to be carefully justified.

13 "Most wind and solar projects have a life of
14 20 to 25 years. Revenues over the first 15 or so
15 years are often underpinned by feed-in tariffs,
16 power purchase agreements, or long-term green
17 certificate sales arrangements."

18 Again, consistent with the notion that why
19 yieldcos have become popular is because they have
20 long-term sustainable power purchase agreements; right?

21 A. Right. I'll just point out that this does
22 not -- this says revenues over the first 15 years or so.
23 So, again, it's a break from the 20 years.

24 Q. So, 15 years, they're saying at least 15 has a
25 guaranteed amount but it doesn't say anything about five

1 years; does it?

2 A. No.

3 Q. And we don't want to read all of these, but
4 I'd invite you to look at the highlighted parts where
5 they talk about the risks of yieldcos are when they drop
6 off the end of the PPAs. There's one here under UBS that
7 talks about a contract tenor of ten to 20 years.
8 They talk about significant expiration risk.

9 I guess my point is, isn't it inconsistent with
10 the whole concept of yieldcos as you understand them
11 based on your review of these articles that putting into
12 them short-term PPAs with high risk when the goal here is
13 long-term low-risk assets that investors can invest in
14 without as a high of a return expectation as another
15 equity investor might expect?

16 A. I would agree that the goal is to put in as
17 least risky assets as they can find and that a five-year
18 contract term is less risky or is, excuse me, is more
19 risky than a 20-year contract term.

20 MR. DODGE: Thank you. I'd move the admission
21 of Cross Exhibit-3.

22 THE HEARING OFFICER: If any party objects to
23 that, please indicate. It will be admitted. Thank you.

24 (RMCRE Cross Exhibit-3 Admitted)

25 BY MR. DODGE:

1 Q. One of the other pieces of evidence you
2 referred to, Mr. Peterson, for the notion that financing
3 might be changing is balance sheet financing, the
4 possibility that a company might just choose to take
5 a project on its own balance sheet.

6 What if Rocky Mountain Power came in here and
7 said, we'd like to finance a hundred percent of our next
8 power plant with equity, would you object? Let me add,
9 with the equity return that they are offering.

10 A. With the equity return that they are
11 authorized? No, I don't think the regulatory -- I think
12 there would be objections to that and I would object to a
13 hundred percent, the equity financing as being imprudent
14 in the sense that it was not minimizing costs.

15 Q. And that's because equity is much more
16 expensive. Most people expect more return when their
17 equity's at risk than a debt lender who's first in line
18 to be paid back; correct?

19 A. That's generally correct, yes.

20 Q. And so, it would be imprudent for a utility to
21 finance a hundred percent of its investment with equity.

22 Would it not also be imprudent for a public
23 company or a privately-held company that has
24 shareholders, stakeholders, to not leverage its equity
25 in the manner you're suggesting by using balance sheet

1 financing? In other words, it would be the exact same
2 concept and would be using high-priced equity that
3 would not allow the return that the Company's expect
4 from thereafter.

5 A. Well, a balance sheet financing to me means
6 using both debt and equity components. So, I would
7 expect even a Sun Edison or a similar publicly-traded
8 company or a privately-held company would use a mixture
9 of debt and equity in any financing they would do.

10 Q. So, it gets back to, then, what do the debt and
11 equity markets expect in terms of financing this kind of
12 project; correct?

13 A. Yes.

14 Q. You also reference a few short-term PPAs and
15 I'd just like to make sure we're communicating correctly.
16 When you try and give examples of some PPAs that maybe
17 have been financed with shorter terms, you reference the
18 one in the testimony of the renewable energy Coalition
19 that you say has a 11-year contract; right?

20 A. Yes.

21 Q. You understand from the testimony here this
22 morning and your reading of the testimony of Mr. Rich
23 that that's a municipal solid waste combustion facility;
24 right?

25 A. Yes.

1 Q. And it was built in 1987 nearly 30 years ago?

2 A. Yes.

3 Q. And municipalities have different financing
4 options than do private companies?

5 A. I pointed that out in my testimony.

6 Q. So, it doesn't go to show that a company trying
7 to develop a renewable energy project can finance an
8 eleven-year contract but it shows us one that's built
9 and that's 30 years depreciated might be willing to sign
10 an 11-year contract; correct?

11 A. Well, I think that it goes to the issue that we
12 are dealing with or talking about QF contracts generally
13 and not specifically about whether a private developer
14 can come in and develop an 80-megawatt QF project.
15 So, to me, the financing available to a municipality
16 or some other not-for-profit company can be completely
17 different than what SunEdison requirements are.

18 Q. Exactly. But it doesn't support the notion
19 than an 11-year PPA can be financed by projects that are
20 just now being constructed as opposed to one that's been
21 depreciated for 30 years, correct, this example, because
22 you used it --

23 A. I think I would accept that, but it doesn't
24 support the idea that a new greenfield project would be
25 11 years.

1 Q. You also referenced three projects in
2 Washington that the Company referenced in a data
3 response; correct?

4 A. Yes.

5 Q. You understand those are all under two-megawatt
6 projects?

7 A. I understood that they were what we call small
8 QFs, yes.

9 Q. And none was wind or solar?

10 A. I'm not familiar with what they were. We just
11 asked them about QF projects. Again, the issue is not
12 necessarily what type of technology is being used.

13 Q. Would you accept subject to check that DPU data
14 request 3.2 said how many renewable projects counted
15 under 3.2(a) above are wind or solar QF projects?

16 A. Okay.

17 Q. And the answer was none.

18 So, the three projects they referenced in A,
19 none of them is wind or solar.

20 A. Okay. I had forgotten that little tidbit.

21 Q. And so, you don't know who did those projects,
22 how they were developed, how they were financed, why they
23 were financeable with a five-year PPA.

24 You didn't investigate any of that; correct?

25 A. No. It didn't seem to be relevant.

1 **Q. So, it doesn't really support the notion that a**
2 **project, if the goal is to encourage the development of**
3 **renewable projects in Utah, that three nonrenewable small**
4 **QF projects in Washington that somehow got built would**
5 **suggest that other projects in Utah could be built with**
6 **just five-year PPAs; does it?**

7 A. Well, I think the original impetus to ask me
8 that question about Washington was that we learned that
9 Washington had already had a five-year limit on
10 contracts. So --

11 **Q. On which contracts?**

12 A. On the QF contracts.

13 **Q. On which QF contracts? Under two megawatts?**

14 A. Well, the under two megawatt but --

15 **Q. They don't on large projects; do they?**

16 A. I don't know what the Washington law is there,
17 but on small QFs, they are limited to five years, and
18 that seems to me to be the relevant point here.
19 So, those projects, whatever they are, biomass or
20 whatever, were developed under a five-year contract.

21 **Q. But it's also relevant, is it not, that**
22 **Washington doesn't limit larger QFs to five years?**

23 A. Well, the point is is that it gets back to this
24 issue of whether something is financeable or not as a QF
25 for a term that's less than 20 years. And the answer is

1 yes. There are possibilities to finance projects whether
2 they are two megawatts or 80 megawatts or whatever.
3 They are possibilities --

4 Q. And they may all be municipal waste projects.
5 You don't know; correct?

6 A. Well, if that's what they are --

7 Q. I don't know. I'm asking you, do you know?

8 A. Well, I don't know. And to me it's irrelevant.

9 Q. You also reference, you said you did a quick
10 Internet search and came up with a First Solar project
11 in California that had 11 years on the PPA; right?

12 A. I said 11 --

13 Q. Or ten years?

14 A. Ten years.

15 Q. Did you also read in the article that you cite
16 that, in addition to a ten-year PPA with Roseville, the
17 municipality, that the owner of that also had a backup
18 PPA with Pacific Gas and Electric?

19 A. I remember reading something to that effect.

20 Q. Do you think that backup PPA would also go into
21 a financing entity's willingness to consider financing
22 that project? Do you know if that PPA, for example,
23 is a 20-year contract?

24 A. I don't know.

25 Q. Or a ten-year at the end of the ten years?

1 Without knowing that, you can't really cite it
2 as an example of something that can be financed with just
3 the 10-year PPA; can you?

4 A. Well, I think it shows that there was a
5 ten-year contract that was entered into and at the end
6 of the ten years, it's up in the air what would happen
7 after that. So, there is a risk to any developer or
8 whoever was financing that that the subsequent contract
9 might not be available.

10 Q. But this article said there is a backup
11 contract. I'll read it and I'll give it to you if you
12 like. "First Solar has an additional PPA for
13 lost Hills' output with Pacific Gas and Electric
14 which goes into effect in 2019."

15 They have a backup contract with an
16 investor-owned utility. You don't know the length of it.
17 Neither do I. But it doesn't support the notion that
18 that ten-year contract with a municipality was sufficient
19 in and of itself to get this financed; does it?

20 A. Well, it may not have been sufficient in and of
21 itself, but there's still a risk about the 2019 contract.

22 Q. So, I guess my point is, you reference other
23 financing projects but you have not been able to point
24 to one greenfield renewable project that has been
25 financed with a short-term PPA despite whatever research

1 you've done; right?

2 You haven't shown us that there's even one?

3 A. Well, I think the Washington PPAs.

4 Q. Well, and you know nothing about them. You
5 know don't know if they're greenfield, brown field,
6 municipal?

7 A. Well, my understanding is is they would have
8 had to have been developed under the five-year term,
9 under the five-year contract.

10 Q. Mr. Peterson, you say that you're concerned
11 about ratepayer risk and you said in your testimony that
12 you assume there will likely be higher prices as a result
13 of these QFs. Is that really your testimony?

14 A. The testimony is is that if we get this mass
15 of QFs that are potential, that that would likely raise
16 prices to ratepayers because the Company would have to
17 maintain its existing fleet, essentially, intact to
18 supply backup power and so on when the wind doesn't blow
19 or the sun doesn't shine. And yet we'd have to pay the
20 contractual amounts of the PPAs. That's when its
21 potential for ratepayers to pay higher prices.

22 Q. You use the word "likely." It's equally likely
23 the price will be below what the then available price is;
24 is it not?

25 A. Well, if gas prices continue to plunge, I guess

1 it could be lower, but if you assume that they stay the
2 same, again, it's the idea that the Company's going to
3 have to maintain a certain amount of its existing fleet
4 as backup to, you know, an additional 2,000 or 3,000
5 megawatts of solar or PPAs.

6 **Q. That's factored into the price, the avoided**
7 **cost pricing.**

8 A. Well, we can get into that if you'd like,
9 but I'm saying, if that were to occur, there's going to
10 be reliability issues that Mr. Clements testified to and
11 I think there's potentially higher prices alternately to
12 ratepayers because of the intermittency and the fact that
13 you have to support, now essentially have to support two
14 electric generation systems, the QF generation system
15 and the backup system.

16 Again, this is all under the assumption that
17 all of this two or 3,000 megawatts gets built.

18 **Q. And do you believe that's going to happen?**

19 A. I don't personally think it's going to happen.

20 **Q. You heard what QF prices are today, in the 30s**
21 **you said or maybe 40s?**

22 A. I think in the low 40s or upper 30s is correct.

23 **Q. So, you're representing ratepayer interests**
24 **here in your concern, and you ask me as a ratepayer,**
25 **would you rather take a \$30 fixed 20-year resource for**

1 energy with no fuel-price risk and no environmental risk
2 or go on the short-term market for that same amount of
3 energy for the next 20 years, what do you think my
4 reaction would be?

5 A. Well, I know what your reaction would be.

6 Q. And I'm here representing ratepayers who have
7 the same reaction among others. I mean, does that
8 surprise you that the ratepayer advocates here are saying
9 these are good deals if we can get them?

10 A. Well, I think it's more complicated than you're
11 making it sound because, again, if you're going to get
12 3,000 megawatts of generation at \$30 a megawatt hour,
13 to follow on your hypothetical, you still have --
14 the ratepayers are still going to have to pay for
15 substantially all of the system that the Company
16 currently has. And it may turn out that that will
17 increase the price to ratepayers.

18 I don't know that for a fact but it seems like
19 a good possibility under my hypothetical.

20 Q. Does it not seem just as likely that the
21 opposite will be true, that gas prices will go up,
22 and so, by displacing market purchases at this 30 to
23 \$40 range, you're saving money?

24 Does that not seem as likely as the other?

25 A. Well, we're talking about risk. And risk has

1 to do with the variability of prices, not whether they're
2 higher or lower. And the longer term -- the longer you
3 go out, the greater the risk in terms of price
4 volatility.

5 **Q. I understand that. I was addressing your**
6 **statement that prices would likely be higher but let's**
7 **move on.**

8 A. And I think I explained what I intended with
9 that statement.

10 MR. DODGE: Let's move on.

11 THE HEARING OFFICER: Mr. Dodge?

12 MR. DODGE: Yes.

13 THE HEARING OFFICER: I might suggest this
14 might be a good time for a break.

15 MR. DODGE: I'm down to one last couple of
16 questions if you would indulge me for just a minute.

17 THE HEARING OFFICER: Sure.

18 MR. DODGE: But I'm happy to break if you'd
19 rather.

20 THE HEARING OFFICER: If you have one or two
21 questions, then it's probably best to keep going.

22 MR. DODGE: It's the last area.

23 THE HEARING OFFICER: Okay.

24 BY MR. DODGE:

25 **Q. Mr. Peterson, you testified at some length**

1 about the Idaho order that reduced PPA terms to two
2 years; right?

3 A. I think I wrote a paragraph in my direct.

4 Q. And I assume you viewed that as relevant to the
5 Commission, let's see what the Idaho Commission did?

6 A. Yes.

7 Q. Did you also review the Oregon staff testimony
8 on this exact same issue where PacifiCorp is asking to
9 reduce the PPA term in Oregon?

10 A. No.

11 Q. Are you aware they opposed the reduction for
12 basically all the same reasons that my Coalition is
13 opposing it?

14 A. Well, since I didn't read it, again, I'm not
15 aware of it.

16 MR. DODGE: Thank you. No further questions.

17 THE HEARING OFFICER: Okay. Thank you.

18 Why don't we recess until 1:30 by that clock.

19 Thank you.

20 (Lunch recess 12:25 p.m. to 1:35 p.m.)

21 THE HEARING OFFICER: Okay. I think we're back
22 on. Mr. Peterson, you're still under oath. And I think
23 we're ready to move to Mr. Sanger; correct?

24 CROSS-EXAMINATION

25 BY MR. SANGER:

1 Q. Good afternoon, Mr. Peterson.

2 A. Hello.

3 Q. I'm not intimidating. I'm not Mr. Dodge.

4 I wanted to ask you some questions about your earlier
5 testimony about the Washington QFs.

6 So, can you refresh for all of us what your
7 testimony was on those?

8 A. Essentially, the testimony is is that I asked
9 data requests of the Company regarding Washington QFs.
10 They responded that they have three contracts.

11 My understanding is, at least for small QFs,
12 Washington has a five-year term limit on contracts and
13 the Company responded that they have three PPAs that are
14 within that five-year limit.

15 Q. And did you investigate when those PPAs were
16 built or constructed?

17 A. No, I didn't.

18 MR. SANGER: May I approach the witness?

19 THE HEARING OFFICER: Yes.

20 MR. SANGER:

21 BY MR. SANGER:

22 Q. (Document distribution) So, my client is the
23 Renewable Energy Coalition who is a party in this
24 proceeding; correct?

25 A. That's my understanding.

1 (REC Exhibit-1 Identified)

2 BY MR. SANGER:

3 Q. So, the Renewable Energy Coalition submitted
4 testimony in a Washington avoided cost case earlier this
5 year. And two of the Coalition members or one of the
6 coalition's members is Yakima Tieton Irrigation District
7 described on page two of the Declaration of John Lowe
8 which is page five in terms of page numbers, in terms of
9 numbers of actual pages, but it's page two of 13,
10 the Declaration of John Lowe.

11 And I've highlighted in the middle of the
12 sentence there that Yakima Tieton is a Coalition member
13 and they sell their power to PacifiCorp from two
14 one-and-a-half megawatt hydroelectric projects and these
15 facilities have been operating since 1986.

16 Do you have any reason to contradict that?

17 A. No.

18 Q. If you could turn to the next page of this.
19 And it's page three of the Declaration of John Lowe.
20 And there's a sentence in paragraph seven which states
21 that: "The Deruyter Dairy methane facility is the only
22 Washington QF that has been built in and currently
23 selling power to PacifiCorp since 1990."

24 Did you inquire into when this project was
25 constructed or built?

1 A. So, you're looking at paragraph seven?

2 Q. Yeah. Paragraph seven, the third sentence.

3 It's talking about the third QF project that's in

4 Washington.

5 A. Okay.

6 Q. The dairy methane facility, it was constructed

7 in 1990?

8 A. Well, in answer to your question which I
9 believe was, did I inquire into that? The answer is no.

10 Q. Okay. Are you aware that the Washington
11 Commission adopted five-year contract terms sometime
12 after 1990?

13 A. I'm not familiar when they adopted that.

14 Q. So, you're not aware that there have been no
15 Washington QFs that have been built recently under the
16 five-year contract term?

17 A. I'm not aware one way or the other.

18 Q. Okay. And are you aware that the four
19 operating megawatts of Washington QFs represents less
20 than 0.3 percent of PacifiCorp's total megawatts of QFs
21 on its system?

22 A. I see that's what it says there, but otherwise,
23 I'm not aware of that.

24 Q. Okay. So, in terms of pointing to contracts
25 or QFs that might be able to operate under a five-year

1 contract, these projects may not be ones that would
2 support your assertion that QFs can operate under
3 five-year contracts or be financed under five-year
4 contracts?

5 A. Well, obviously they're operating under
6 five-year contracts. The question of whether they can be
7 constructed or not, I don't have an opinion about these
8 particular contracts. I merely asked a data request of
9 PacifiCorp and reported what the response was.

10 Q. Right. But you used that information in the
11 portion of your testimony supporting the view that
12 projects can obtain financing in order to develop
13 with five-year contract terms; correct?

14 A. I think that's a fair characterization.
15 It was to obtain evidence of five-year contracts. And
16 I knew that PacifiCorp or that Washington, rather, had
17 this limitation. And PacifiCorp represented that they
18 had projects that were operating under those terms.

19 Q. But you did not investigate as to whether those
20 projects were constructed with five-year contracts,
21 only that they could continue to operate under
22 five-year contracts?

23 A. As I said earlier, I did not investigate
24 further.

25 Q. Okay. Thank you. Can you please refer to your

1 **direct testimony on page twelve?**

2 A. Unfortunately, during the break ...

3 Which page?

4 **Q. Page twelve. Sorry about that.**

5 A. Okay. I have page twelve.

6 **Q. So, in the first full Q and A in the first full**
7 **paragraph, there's the last sentence there. It reads --**
8 **well, could you read that last sentence that starts with**
9 **the word, "Similarly"?**

10 A. "Similarly, QF developments funded by
11 municipalities will probably not be affected since
12 they are doing QF projects presumably as a matter of
13 the municipalities' public policy and without profit
14 motive."

15 **Q. Have you been able to identify any Utah**
16 **municipalities or other nonprofits that have been able**
17 **or I guess any municipalities or nonprofits that have**
18 **been able to develop under five-year contract terms?**

19 A. I haven't specifically investigated that.
20 So, the answer is no.

21 **Q. Did you inquire to potential municipalities**
22 **that might want to the develop QF projects as to whether**
23 **they can obtain financing?**

24 A. I did not specifically investigate that.

25 **Q. Are you aware that Mr. Nathan Rich who is a**

1 Coalition member submitted testimony on behalf of Wasatch
2 Integrated Waste Management?

3 A. I've seen his testimony, yes.

4 Q. And that's a waste management entity that's a
5 nonprofit; correct?

6 A. That would be my understanding.

7 Q. And are you aware that he testified that his
8 waste management service district would need to obtain
9 financing and that under short-term contracts they could
10 not obtain financing to develop the QF project?

11 A. Well, you'd have to show me specifically.
12 I remember him saying something to that effect.

13 Q. Do you have any information to contradict
14 Mr. Rich's testimony?

15 A. No.

16 MR. SANGER: Okay. I have no further
17 questions.

18 THE HEARING OFFICER: Thank you.

19 Mr. Jetter, any redirect?

20 MR. SANGER: Your Honor?

21 THE HEARING OFFICER: Yes.

22 MR. SANGER: Can I move for the admission
23 of the exhibit that I crossed Mr. Peterson on?

24 THE HEARING OFFICER: Sure. If any party
25 objects to that, please indicate.

1 MR. JETTER: I would just raise an objection
2 that if it's entered to establish the facts that are
3 referenced therein because we have no -- I have no
4 knowledge of whether those facts are accurate or not.
5 I've never seen this document before.

6 And so, I'm troubled by entering this into the
7 record in its entirety especially for anything that might
8 be in there that I don't believe most of the parties here
9 have had an opportunity to vet in any way.

10 THE HEARING OFFICER: Mr. Sanger, do you have
11 any response to that concern?

12 MR. SANGER: Yes, your Honor. Mr. Peterson
13 directly testified on this issue. This is a
14 publicly-available document in another jurisdiction.

15 If necessary, Mr. John Lowe who submitted this
16 testimony is in the chamber today and he's scheduled to
17 testify. I could have him verify the truth and
18 authenticity of this document as well.

19 THE HEARING OFFICER: Does any other party have
20 any comment on this motion?

21 MR. JETTER: What I'd like to ask, maybe a
22 question if this is the case. Mine also came with
23 testimony of Higgins attached to the back.

24 MR. SANGER: We can remove the last part,
25 the testimony of Mr. Higgins if that's a concern.

1 MR. JETTER: I think it would be appropriate
2 to do that also if there's no other reason to enter that
3 into the record.

4 THE HEARING OFFICER: Mr. Jetter, you're still
5 maintaining your objection to the entry of Mr. Lowe's
6 testimony?

7 MR. JETTER: I think at this point, yes,
8 without some authenticity or authentication of it.

9 THE HEARING OFFICER: Okay. Let me ask you,
10 Mr. Sanger. We have Mr. Peterson's testimony on the
11 record with respect to this issue, but you still would
12 like to enter the entire testimony into evidence?

13 MR. SANGER: I would like to enter the portions
14 that I cross-examined Mr. Peterson on. I'm happy to
15 reduce the length of it so that the whole document does
16 not come into the record, but the portions that he --
17 I cross-examined him on, I would like to have that
18 in the record.

19 THE HEARING OFFICER: So, you're speaking of
20 just that -- well, paragraph four and paragraph seven?

21 MR. SANGER: Well, I would move for the
22 admission of up to page four because the rest of those
23 paragraphs in that section add light to that information.
24 But starting on page four, there's a new section.

25 So, I would move for the admission of the first

1 four pages of the declaration.

2 THE HEARING OFFICER: Okay. I think we'll
3 allow this to be admitted. And again, we recognize that
4 it doesn't have the same weight as other testimony.
5 It's from a separate docket. And we also have
6 Mr. Peterson's testimony on the stand that pretty much
7 establishes his position on the issues in these.
8 So we'll allow that. Thank you.

9 (REC Exhibit-1 Admitted)

10 MR. SANGER: Thank you.

11 THE HEARING OFFICER: Anything else,
12 Mr. Sanger?

13 MR. SANGER: No, your Honor. Thank you.

14 THE HEARING OFFICER: Back to Mr. Jetter for
15 redirect.

16 MR. JETTER: I have no redirect for
17 Mr. Peterson. He's available for questions from the
18 Commission.

19 THE HEARING OFFICER: Okay.

20 Commissioner White?

21 COMMISSIONER WHITE: I have no questions,
22 Chair.

23 THE HEARING OFFICER: Commissioner Clark?

24 COMMISSIONER CLARK: No questions.

25 THE HEARING OFFICER: And I have none.

1 Thank you.

2 MR. PETERSON: Thank you.

3 THE HEARING OFFICER: Mr. Jetter?

4 MR. JETTER: Thank you. Charles Peterson
5 is the Division's only witness. And that is I guess the
6 conclusion of our evidence we are going to present today.
7 Thank you.

8 THE HEARING OFFICER: Okay. Thank you.
9 And I think at this point Mr. Sanger had contacted our
10 office with a witness availability issue.

11 So, why don't I let you address that at this
12 point and see where we should go with that.

13 MR. SANGER: Thank you. I have two witnesses,
14 Mr. John Lowe and Mr. Nathan Rich. I contacted the
15 Commission about the availability of Mr. John Lowe, that
16 I would strongly prefer to have him on the witness stand
17 today. Mr. Nathan Rich has subsequently informed me that
18 he has scheduling issues and would also like to get on
19 the stand today.

20 So, I would like to at some point schedule time
21 so that we can have them testify potentially the first
22 of the intervenors so we can get them on the stand today.

23 THE HEARING OFFICER: Okay.

24 Does anyone have any comments or concerns
25 with that request? And it probably doesn't matter

1 whether we go before or after the Office. The Office
2 and the remaining intervenors all have similar positions.

3 Would there be any rejection to going to those
4 two first and then moving on with the Office?

5 MR. JETTER: No.

6 MR. MOORE: No objection.

7 THE HEARING OFFICER: Any other objection?

8 Why don't we go that way. So, Mr. Sanger, why don't you
9 go ahead with your first witness.

10 MR. SANGER: Thank you very much. I call
11 Mr. John Lowe to the witness stand.

12 THE HEARING OFFICER: Mr. Lowe, do you swear to
13 tell the truth?

14 THE WITNESS: I do.

15 JOHN LOWE,

16 having first been duly sworn, was

17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SANGER:

20 Q. Mr. Lowe, did you prepare or have prepared on
21 your behalf testimony of Mr. John Lowe on behalf of the
22 Renewable Energy Coalition?

23 A. Yes.

24 Q. Do you have any corrections at this time to
25 your testimony?

1 A. No.

2 **Q. If you were asked the same questions today,**
3 **would your answers be the same?**

4 A. Yes, they would.

5 MR. SANGER: I respectfully move for the
6 admission of the testimony of Mr. John Lowe.

7 THE HEARING OFFICER: If any party objects,
8 please indicate. Seeing none, they will be entered.

9 (REC Testimony of John Lowe Admitted)

10 BY MR. SANGER:

11 **Q. Mr. Lowe, do you have a short statement**
12 **prepared?**

13 A. A few comments. I don't know that it's much
14 of a preparation. First of all, let me tell everyone
15 of the Commission what REC is.

16 We are a Coalition of renewable energy projects
17 which are all base load in nature and all small, less
18 than ten megawatts except one which is 32 megawatts in
19 size. And except for two projects which is the biomass
20 project I just mentioned which is in Oregon and Nathan
21 Rich's Wasatch project here in Utah, all of the other
22 projects which are close to 50 in the Northwest states;
23 Oregon, Idaho, Washington, Utah, Montana and Wyoming,
24 about 50 projects are included. So, I think about 48
25 of those are hydroelectric projects.

1 The other thing about these projects is that
2 they are all existing projects unlike a lot of the
3 conversation that takes place is in the context of new
4 projects. The coalition's main interest, not exclusive,
5 but main interest is in protecting the interests and
6 balancing the interests of these existing projects
7 in that they would require new power purchase agreements
8 or replacement agreements, whatever you want to refer to
9 them as, interconnection agreements, so forth, as the
10 projects mature and continue on.

11 And in addition to that, these projects will
12 likely require additional capital to make improvements,
13 repairs, replacements, efficiency changes,
14 interconnection redos, et cetera, et cetera.

15 So, our concern is with these types of projects
16 and that fact that they will in fact need contracts that
17 are in excess of three years in order to meet their needs
18 similar to new projects.

19 The other concern that we have in this
20 proceeding has to do with the capacity issue. And we're
21 very concerned about existing projects that have been
22 paid capacity and typically treated as part of the
23 resource stack and the utility's IRP may not get capacity
24 payments. And if the sufficiency period is always in
25 excess of the contract term, it's highly improbable they

1 would get capacity payments under the concepts that are
2 going forward. So, we're very concerned about that.

3 And the last thing I would mention is regarding
4 some of the points that were discussed in the state of
5 Washington because one of the projects that was being
6 discussed as a member of the Coalition in the form of
7 Yakima Tieton Irrigation District.

8 And in my former role at 26 years dealing with
9 PURPA issues for PacifiCorp, I have a long and deep
10 history with that particular entity, those two projects
11 as well as the third project that was referred to in the
12 previous conversation were projects that were all built
13 under long-term contracts that existed and were allowable
14 in the state of Washington.

15 That was subsequently replaced by the five-year
16 contract term. And so, these projects are under
17 short-term contracts, but in no way were they ever
18 built or financed under short-term contracts.

19 I think that's really all I have to say to
20 summarize our testimony and position.

21 THE HEARING OFFICER: Okay. Thank you.

22 Anything further, Mr. Sanger, of this witness?

23 MR. SANGER: No. Thank you.

24 THE HEARING OFFICER: Ms. Dutton, any
25 cross-examination?

1 MS. DUTTON: No. Thank you.

2 THE HEARING OFFICER: Thank you. Mr. Ritchie?

3 MR. RITCHIE: No cross.

4 THE HEARING OFFICER: Mr. Dodge?

5 MR. DODGE: No. Thank you.

6 THE HEARING OFFICER: Mr. Moore?

7 MR. MOORE: No. Thank you.

8 THE HEARING OFFICER: Mr. Jetter?

9 MR. JETTER: I have no questions. Thank you.

10 THE HEARING OFFICER: Thank you. Ms. Hogle?

11 MS. HOGLE: I have no questions.

12 THE HEARING OFFICER: Okay. Thank you,

13 Mr. Lowe. Commissioner White, do you have any questions?

14 COMMISSIONER WHITE: I have no questions.

15 Thanks.

16 THE HEARING OFFICER: Commissioner Clark?

17 COMMISSIONER CLARK: It's unanimous.

18 THE HEARING OFFICER: Mr. Sanger?

19 MR. SANGER: I would call to the witness stand

20 Mr. Nathan Rich.

21 THE HEARING OFFICER: Mr. Rich, do you swear to

22 tell the truth?

23 THE WITNESS: I do.

24 (REC Rebuttal Testimony of Nathan Rich

25 Identified)

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NATHAN RICH,

having first been duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MR. SANGER:

Q. Mr. Rich, did you prepare or have prepared on
your behalf rebuttal testimony of Mr. Nathan Rich on
behalf of the Renewable Energy Coalition?

A. I did.

Q. Do you have any corrections to that testimony
at this time?

A. No.

Q. If I asked you the same questions here today,
would your answers be the same?

A. Yes, they would.

MR. SANGER: I respectfully move for the
admission of Mr. Nathan Rich.

THE HEARING OFFICER: If any party objects,
please indicate. Seeing no indication, it will be
entered. Thank you.

(REC Rebuttal Testimony of Nathan Rich
Admitted)

MR. SANGER: I tender Mr. Rich for
cross-examination. And I believe he has a short
statement to start the process.

1 THE HEARING OFFICER: Okay. We'll start with
2 the statement.

3 MR. RICH: Thank you. I appreciate the
4 opportunity to be heard by the Commission. You have my
5 testimony. I won't spend a great deal of time going back
6 over that. But I think it's important and I understand
7 the concern that 2,000 megawatts of new QF power would
8 cause a problem to the Company.

9 But I think we need to be careful about
10 unintended consequences and I think our projects speak
11 directly to that. We have two projects just to clarify
12 a little bit some of the earlier testimony.

13 When our facility was built -- and it's a
14 municipal waste combustion facility. So, we generate --
15 primarily our business is to generate renewable steam
16 which we sell to Hill Air Force Base and they use that
17 generally as heating on the other side of the base.

18 So, as part of the construction of the
19 facility, it was constructed with 1.6 megawatt
20 back-pressure turbine.

21 So, we take the high-pressure steam down
22 through our turbine. The turbine is there to operate the
23 facility. It was put there to operate the facility.

24 We made an interconnection to the utility
25 in the 1993 time frame. And that was our original power

1 purchase agreement was actually an open ended
2 year-to-year agreement.

3 We were approached by PacifiCorp two or three
4 years ago and they were cleaning up their old contracts.
5 They wanted to enter into a new contract. Hence, our
6 current 11-year power purchase agreement. The reason
7 that that's an 11-year agreement is because that matches
8 the timeframe of our current contract with Hill Air Force
9 Base for the sale of steam. So, we didn't want to firm
10 up our power beyond that.

11 And to put this into perspective, we sell
12 between five and \$6 million worth of steam to Hill Air
13 Force Base in a year, and we're currently generating
14 revenues of 30 to \$40,000 on our power purchase agreement
15 with PacifiCorp. So, it was really not the driving
16 factor. And that turbine is there to power the facility.

17 The second project, and this is really why
18 I felt it was important to be heard on the issue, Hill
19 Air Force Base uses 100 percent of our steam during the
20 winter months. So, in the summer months --

21 And we generate typically about 100,000 pounds
22 per hour of steam. In the summer months, they are not
23 able to use our full load and we've looked a number of
24 times at adding additional generation capacity to capture
25 that unused summer steam. And we've been through several

1 engineering cycles on that project.

2 Most recently, in fact, PacifiCorp just
3 completed the first part of an interconnection study to
4 help us understand our interconnection cost for that
5 program. It's about a \$10 million project. It's not
6 something that we currently have equity on hand to
7 finance. We're old school. We would finance that
8 project typically through a revenue bond.

9 So, right now we're trying to understand
10 whether that project actually has economic viability,
11 but without the ability to contract at least for the
12 period that might represent a simple payback on the
13 project is not something, number one, that I believe
14 we would be able to receive favorable terms on financing.

15 And beyond that, it wouldn't be something that
16 I would probably be able to convince our board that would
17 make good sense if we couldn't find the financing
18 at least to cover us during the payback period in that
19 project.

20 So, you have my testimony. And if there's
21 anything additional you'd like to add, that would be
22 great. Thank you.

23 MR. SANGER: I have nothing further.

24 THE HEARING OFFICER: Okay.

25 Ms. Dutton, any questions?

1 MS. DUTTON: No. Thank you.

2 THE HEARING OFFICER: Thank you. Mr. Ritchie?

3 MR. RITCHIE: No. Thank you.

4 THE HEARING OFFICER: Mr. Dodge?

5 MR. DODGE: No.

6 THE HEARING OFFICER: Mr. Moore?

7 MR. MOORE: No.

8 THE HEARING OFFICER: Mr. Jetter?

9 CROSS-EXAMINATION

10 BY MR. JETTER:

11 Q. I do have a few questions. Good afternoon.

12 In your brief statement that you've just
13 discussed, did I understand you correctly that the
14 current project that you have, the first one, was built
15 and financed with year-to-year contracts with
16 Rocky Mountain Power?

17 A. It was built and financed as part of a \$54
18 million bond issue in 1987 because that turbine is part
19 of the physical operation of the plant.

20 The primary reason for the 1.6 megawatt turbine
21 is to power the plant. Frankly, selling the power to
22 Rocky Mountain Power is an afterthought and that
23 interconnection was added seven years later.

24 So, we're generating 1.6 megawatts and we're
25 selling, it's up and down, but typically three to 400

1 kilowatts is all that we're selling to PacifiCorp.

2 So, the contract is to help us continue with
3 the ongoing maintenance and operation of the facility.

4 **Q. Okay. And with respect to the current**
5 **facility, the term of the contract was immaterial**
6 **to whether it was built or not; is that correct?**

7 A. Absolutely because the project is a municipal
8 waste incinerator selling steam to Hill Air Force Base,
9 and the term of the contract with Hill Air Force Base
10 as the major power off-take of the project was critical
11 and that was also an open-ended contract with
12 Hill Air Force Base at the time.

13 So, that's the contract that -- it's hard to
14 draw the parallel between our small electric contract and
15 the real power purchase agreement that built the facility
16 is the sale of steam to Hill Air Force Base.

17 **Q. Thank you. With respect to the second project,**
18 **the desire to add an additional turbine is my**
19 **understanding; is that correct?**

20 A. That's correct.

21 **Q. What is the payback period for that?**

22 A. Well, it depends on the power off-taker and how
23 much they're willing to pay for the power. Using current
24 Schedule 37 -- and in -- the project actually would
25 deliver about five and a half megawatts of power to the

1 grid. So, Schedule 37 doesn't strictly apply.

2 But using Schedule 37 as a best case,
3 the project is about a \$10 million project. And because
4 the power is seasonal -- and that's one thing that makes
5 it hard. The steam is worth much more than the
6 electricity. So, in the winter we sell steam and then
7 in the shoulder months, we would start to ramp all the
8 electricity and then its base load power through the
9 summer season. The current simple payback on that
10 scenario selling to PacifiCorp under Schedule 37 is
11 about 24 years.

12 **Q. And so, your testimony earlier, even in a**
13 **20-year term, you don't think that you could finance that**
14 **or convince your board because you wouldn't have a**
15 **contract, then, throughout that period?**

16 A. Oh, I think a 20, with the possibility of a
17 20-year agreement would give me hope that we could work
18 toward finding a power off-taker or having actual
19 conversations which would be required contract
20 negotiations under Schedule 38.

21 But it's a tough project, absolutely.
22 But a three-year contract slams the door.

23 **Q. Okay. But a three-year contract on your first**
24 **project wouldn't have mattered. That would have actually**
25 **been three times as long as your --**

1 bond issue for the original facility which included
2 the generation capacity that's currently on line.

3 MR. SANGER: No further questions.

4 THE HEARING OFFICER: Thank you. Any recross?
5 If anyone wants recross, let me know.

6 (No response) Okay. Thank you. Mr. Sanger, anything
7 else? Oh, I'm sorry. I forgot.

8 Commissioner White, do you have any questions?

9 COMMISSIONER WHITE: I have no questions.
10 Thank you, Chair.

11 THE HEARING OFFICER: Mr. Clark?

12 COMMISSIONER CLARK: I don't have any.

13 THE HEARING OFFICER: I don't have any either.
14 Thank you.

15 MR. SANGER: Your Honor, may I excuse Mr. Rich
16 and Mr. Lowe for the rest of the hearing or at least from
17 participation tomorrow?

18 THE HEARING OFFICER: Is there any objection
19 from any party? (No response). Certainly. Thank you.

20 MR. SANGER: Thank you.

21 THE HEARING OFFICER: Anything else from you,
22 Mr. Sanger?

23 MR. SANGER: No, your Honor. Thank you.

24 THE HEARING OFFICER: Okay. Thank you.
25 Mr. Moore?

1 MR. JETTER: The Office calls Bella Vastag.

2 THE HEARING OFFICER: Do you swear to tell the
3 truth?

4 THE WITNESS: Yes, I do.

5 THE HEARING OFFICER: Thank you.

6 BELA VASTAG,

7 having first been duly sworn, was

8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MOORE:

11 Q. Could you state and spell your name and
12 occupation for the record?

13 A. Yes. My name is Bela, B-e-l-a, Vastag,
14 V-a-s-t-a-g. I'm a utility analyst employed by the
15 Office of Consumer Services.

16 Q. Have you reviewed the Company's application
17 in this case?

18 A. Yes, I have.

19 (Direct, Rebuttal, and Surrebuttal Testimony of
20 Bela Vastag Identified)

21 BY MR. MOORE:

22 Q. Have you prepared direct, rebuttal, and
23 surrebuttal testimony?

24 A. Yes.

25 Q. Do you have any corrections to that testimony?

1 A. No corrections.

2 Q. If I were to examine you and ask you the
3 questions in your testimony, would your answers be the
4 same?

5 A. Yes.

6 MR. MOORE: The Office would move for admission
7 of his testimony.

8 THE HEARING OFFICER: If any party objects,
9 please indicate. Seeing none, thank you. It'll be
10 entered.

11 (Direct, Rebuttal, and Surrebuttal Testimony of
12 Bela Vastag Admitted)

13 BY MR. MOORE:

14 Q. Have you prepared a statement summarizing your
15 testimony?

16 A. Yes. I have a brief statement.

17 Good afternoon. Federal and state laws have
18 been enacted to encourage the development of small power
19 producers such as qualifying facilities or QFs.

20 The Company proposes in this docket to limit
21 the maximum contract length for a QF's power purchase
22 agreement or PPA to three years.

23 The Office believes that this would be an
24 unnecessary barrier against QFs and would discourage the
25 development of these small power producers contrary

1 to the intent of laws to promote their development.

2 Therefore, the Office opposes the Company's
3 request and recommends that the maximum PPA contract
4 length remain at 20 years.

5 The Office also opposes some parties' proposals
6 that the calculation of the compensation for capacity
7 value in a QF contract be based on a longer term than the
8 term of the PPA.

9 If this method was adopted and such a PPA was
10 not renewed at the end of its term, then ratepayers would
11 have paid for capacity that was never delivered which
12 would violate the PURPA standard of ratepayer
13 indifference. The Commission should reject a capacity
14 value calculation that goes beyond the term of a
15 QF's PPA.

16 The Office does agree with some of the concerns
17 that the Company and the Division have raised with
18 acquiring a large amount of power from QFs.

19 These concerns include, A, resource acquisition
20 being done outside of the Company's system-wide
21 Integrated Resource Plan or IRP evaluation and planning
22 process;

23 B, an increased risk to ratepayers with
24 carrying large amounts of long-term fixed-price contracts
25 for power. The direction of power prices in the future

1 is uncertain. And unlike a company-owned resource,
2 QFs cannot be economically dispatched to take advantage
3 of periods when low-priced market purchases of power are
4 available.

5 The office believes that the best remedy
6 for these concerns is the use in QF PPAs of avoided cost
7 pricing that is properly modeled, accurately calculated,
8 and timely updated. We request that the Commission
9 always insist on continual diligence and rigor in
10 establishing avoided cost prices under Schedule 37
11 and Schedule 38. And that concludes my statement.

12 THE HEARING OFFICER: Anything else, Mr. Moore?

13 MR. JETTER: No, sir.

14 THE HEARING OFFICER: Okay. Thank you.

15 Ms. Dutton, any cross-examination?

16 MS. DUTTON: No. Thank you.

17 THE HEARING OFFICER: Mr. Ritchie?

18 MR. RITCHIE: No cross.

19 THE HEARING OFFICER: Mr. Dodge?

20 MR. DODGE: No. I have no questions. Thanks.

21 THE HEARING OFFICER: Thank you. Mr. Sanger?

22 MR. SANGER: No questions.

23 THE HEARING OFFICER: Mr. Jetter?

24 MR. JETTER: I have no questions.

25 THE HEARING OFFICER: Ms. Hogle?

1 MS. HOGLE: A few.

2 THE HEARING OFFICER: Thank you.

3 CROSS-EXAMINATION

4 BY MS. HOGLE:

5 Q. Good afternoon, Mr. Vastag.

6 A. Good afternoon.

7 Q. To your knowledge, was the OCS a participant
8 in the hedging collaboratives?

9 A. To my knowledge, yes.

10 Q. And is it your understanding and, more
11 importantly, the OCS's understanding that the principles
12 and guidelines that were entered into the record as
13 I believe Cross Exhibit-2 for the Coalition applied
14 to both gas and electricity hedges?

15 A. I was not involved in that docket. So, I'm not
16 sure if that's correct.

17 Q. Okay. But as a representative of the OCS,
18 is it true that the OCS supports the principles and
19 guidelines that resulted from that hedging collaborative?

20 A. Yes. It's safe to say we were supportive of
21 the results.

22 Q. Okay. Did you read Mr. Higgins' and Ms. Ferk's
23 testimony in this case?

24 A. Yes.

25 Q. And would you agree with me that both of them

1 being a 20-year PPA, a QF PPA has a risk mitigation or
2 reduction of potential 111(d) requirements?

3 A. I would agree with that, yes.

4 Q. Okay. You participated in the avoided cost
5 Docket Number 12-035-100 where the current avoided cost
6 methodology was approved; is that correct?

7 A. That's correct.

8 Q. And one of the issues in that case was whether
9 the RECs would stay with the developer or with the
10 Company in the PPA transaction; right?

11 A. Yes.

12 Q. And do you recall what the Commission's
13 decision was on that issue in that case?

14 A. Yes, I do.

15 Q. So, you would agree with me that the Commission
16 decided that the RECs would be retained by the QF absent
17 an expressed negotiation for additional compensation
18 for those RECs; is that correct?

19 A. That's correct.

20 Q. And so, would you also agree with me that a
21 20-year PPA under current law would not, in fact,
22 mitigate any potential 111(d) requirements for the
23 Company?

24 A. That is uncertain whether or not the REC issue
25 would affect compliance but it is an issue.

1 Q. Okay. I'd like you to turn to your direct
2 testimony if you will, please, specifically page three.
3 And actually, I believe that you said this in your
4 summary. So, at line A-1 you state that it is extremely
5 important that avoided cost modeling be rigorously and
6 maintained and updated; is that correct?

7 A. Correct. Uh-huh (affirmative).

8 Q. And you would agree with me that current
9 avoided cost prices reflect current or near term
10 conditions?

11 A. Well, they're calculated using current data --

12 Q. Okay.

13 A. -- but they reflect a 20-year time period.

14 Q. Okay. So, would you agree with me that it's
15 much easier to forecast prices two to three years out
16 as compared to 20 years out?

17 A. It's probably easier to do a shorter term
18 forecast.

19 Q. Okay. And so, isn't it true that all long-run
20 estimates, no matter how rigorous of avoided costs will
21 be prone to forecast inaccuracies?

22 A. Yes. And I admitted in my surrebuttal that
23 forecast error is an issue, but there are other issues
24 with inaccurate avoided cost calculations, not just
25 forecasting of future prices.

1 MS. HOGLE: Okay. Thank you. That's all

2 I have.

3 THE HEARING OFFICER: Mr. Moore, any redirect?

4 MR. MOORE: No redirect, sir.

5 THE HEARING OFFICER: Okay. Thank you.

6 Commissioner White?

7 COMMISSIONER WHITE: No questions. Thank you.

8 THE HEARING OFFICER: Commissioner Clark?

9 COMMISSIONER CLARK: Thank you. I have no
10 questions.

11 THE HEARING OFFICER: I have none. Thank you,
12 Mr. Vastag. Anything further, Mr. Moore?

13 MR. MOORE: Nothing further.

14 THE HEARING OFFICER: We'll go to Ms. Dutton
15 next.

16 MS. DUTTON: Thank you. Utah Clean Energy
17 calls Ms. Sarah Wright.

18 THE HEARING OFFICER: Do you swear to tell the
19 truth?

20 THE WITNESS: I do. Good afternoon and thank
21 you.

22 SARAH WRIGHT,

23 having first been duly sworn, was

24 examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MS. DUTTON:

2 **Q. Please state your name, position, and business**
3 **address for the record.**

4 A. My name is Sarah Wright and my business is
5 Utah Clean Energy. We're a nonprofit incorporation.
6 And the address is 1014 Second Avenue, Salt Lake City,
7 Utah 84103.

8 **Q. Have you reviewed the Company's application**
9 **in this case?**

10 A. Yes, I have.

11 (UCE Exhibit-1 and Exhibit-2 Identified)

12 BY MS. DUTTON:

13 **Q. And did you submit direct and surrebuttal**
14 **testimony in this docket marked as UCE Exhibits 1 and 2?**

15 A. Yes, I did.

16 **Q. Do you have any changes or corrections to make**
17 **to your written testimony?**

18 A. No, I don't.

19 **Q. If I asked you the same questions today as are**
20 **set forth in your written testimony, would your answers**
21 **be the same?**

22 A. Yes, they would.

23 MS. DUTTON: Thank you. Utah Clean Energy
24 moves to enter Ms. Wright's direct and surrebuttal
25 testimony into the record.

1 THE HEARING OFFICER: Okay. If anyone objects,
2 please indicate. Seeing none, that will be entered.
3 Thank you.

4 (UCE Exhibit-1 and Exhibit-2 Admitted)

5 BY MS. DUTTON:

6 Q. Did you prepare a summary of your written
7 testimony to share with the Commission today?

8 A. Yes, I did.

9 Q. Please proceed.

10 A. As most of you know, Utah Clean Energy strives
11 to create safer, more efficient, cleaner, and a smarter
12 energy future. And the Public Utility Regulatory Policy
13 Act, PURPA, is an important mechanism for influencing
14 renewable energy development in Utah and diversification
15 of our energy supply.

16 It is in the best interest of ratepayers to
17 safeguard the proper implementation of PURPA.

18 Rocky Mountain Power's proposal to reduce the
19 contract term to three years undermines PURPA and the
20 state policy by effectively making these projects
21 extremely expensive, extremely difficult, if not
22 possible to finance.

23 It would ensure that projects will not be built
24 and it would therefore allow the utility to circumvent
25 PURPA and prevent ratepayers from benefiting from

1 QF resources.

2 In the Company's testimony, they incorrectly
3 compared QFs to hedging practices. Renewable QF projects
4 are clearly not economic hedges and it is incorrect to
5 apply the Company's hedging and trading practices to
6 QF projects. QF projects are steel in the ground
7 resources that provide a capacity value to the system
8 and this value is significant.

9 In contrast, hedging projects do not provide
10 the ratepayers with a long-term capacity value.

11 And finally, further -- not finally, but
12 finally for this section, a QF project is not a commodity
13 hedge just because it provides incidental but significant
14 risk mitigating benefits to ratepayers.

15 So, now we move to risk and protection from
16 risk. Of course we know and it's been discussed quite a
17 bit today that there is always risk associated with all
18 resource decisions including short-term decisions.

19 And FERC contemplated that prices would go up
20 and down and that this reality would be borne both ways.
21 The presence of risk does not alleviate the Utah Public
22 Service Commission of its duty to implement the policies
23 and requirements of PURPA and Utah statute which states
24 that it is the policy of this state to encourage the
25 development of independent and qualifying power

1 production and cogeneration facilities to produce a
2 diverse array of economical and permanently sustainable
3 resources in an environmentally acceptable manner.

4 QF projects do provide ratepayers with
5 additional value by protecting ratepayers over the
6 20-year contract for risk associated with fuel
7 volatility, unanticipated O and M costs, environmental
8 cost, and environmental compliance cost. And I'm happy
9 to address some of the issues around the clean power
10 plan.

11 Regardless of REC ownership, these projects
12 will reduce the Company's emissions. And in the long
13 run, the lower emissions that we have, especially if the
14 state chooses to go with a mass-based profile, it will
15 help with compliance. The exact mechanisms of how the
16 clean power plan will operate we don't know yet or how
17 Utah will implement it.

18 But there are benefits to reduced carbon
19 emissions, risk-mitigating benefits regardless of whether
20 you own the RECs. And you have, as I understand, at
21 least for about 300 megawatts of the projects negotiated
22 ownership of the RECs.

23 On contrast, company-owned resources and market
24 purchases do not provide the protection from these risks.

25 In fact, the Company has an energy cost

1 adjustment mechanism that they can use to recoup costs
2 if the future unfolds in a way that's different when they
3 planned their resources. They can recoup costs for
4 planned O and M expenses and other environmental
5 upgrades.

6 QF procurement is definitely aligned with the
7 Company's Integrated Resource Plan. Because the PDRR
8 avoided cost pricing method is directly tied to the
9 resources that are identified in the company's least-cost
10 least-risk portfolio and the type and timing of those
11 resources identified in their least-cost least-risk
12 portfolio, to the extent the capacity is not needed until
13 a date into the future or if there are a number of QFs
14 ahead of this resource in the queue, the pricing is
15 reduced. The avoided cost pricing method is an iterative
16 and dynamic tool that was approved by the Commission to
17 align with the IRP and to meet the ratepayer indifference
18 standard.

19 The final point I'd like to make is that the
20 20-year contract term allows viable QF projects to secure
21 financing. And this pricing method, the avoided cost
22 pricing method, is what ensures the ratepayer
23 indifference standard is protected and only viable
24 projects that meet the ratepayer indifference standard
25 will be built.

1 The Commission approved avoided cost method
2 is the mechanism that the Commission approved to ensure
3 that rates are just and reasonable to ratepayers and
4 nondiscriminatory to QFs consistent to the requirements
5 of the PURPA and state statute.

6 Both those requirements are equally important.
7 The pricing method was built on the assumption of a QF
8 that the QF may contract for 20 years.

9 The Commission's role based on PURPA and state
10 policy is to encourage the development of QF resources
11 while ensuring rates are just and reasonable to
12 ratepayers and nondiscriminatory to QFs.

13 The current QF avoided cost method with a
14 20-year contract will do just that. While a change to a
15 three-year contract would circumvent the intent of PURPA
16 and state statute and deny ratepayers the benefits of
17 QFs. I recommend that the Public Service Commission
18 deny the Company's application to reduce the contract
19 term. Thank you.

20 THE HEARING OFFICER: Anything else,
21 Ms. Dutton?

22 MS. DUTTON: No. Ms. Wright is available for
23 cross-examination.

24 THE HEARING OFFICER: Thank you.

25 Mr. Ritchie, any questions?

1 MR. RITCHIE: No questions. Thank you.

2 THE HEARING OFFICER: Mr. Dodge?

3 MR. DODGE: No questions.

4 THE HEARING OFFICER: Mr. Sanger?

5 MR. SANGER: No questions.

6 THE HEARING OFFICER: Mr. Moore?

7 MR. MOORE: No questions. Thank you.

8 THE HEARING OFFICER: Mr. Jetter?

9 CROSS-EXAMINATION

10 BY MR. JETTER:

11 Q. I do have a few questions.

12 A. Hello, Mr. Jetter.

13 Q. Good afternoon, Ms. Wright. You testified
14 I believe both in direct and in your surrebuttal
15 testimony that shortening the term of these contracts
16 would make them difficult, if not impossible to finance;
17 is that correct?

18 A. Yes.

19 Q. And the reason for that, is it correct,
20 that the lenders, the market providing the financing,
21 is unwilling to take the risk of variation in price
22 into the future; is that correct?

23 A. They are unwilling to take the risk to build a
24 project that doesn't have a long-term off-taker.

25 Q. And do you believe that shortening the term

1 of the contract changes the obligation to purchase that
2 energy in periods into the future?

3 A. So, I guess maybe I will amend my first answer
4 that it's the off-taker and it's the price. They have
5 to know that that project is financeable and that they
6 are going to recoup enough through sales to finance and
7 pay for the project.

8 Q. Okay. And you testified that you believe that
9 the current future projections have significantly greater
10 risk. And let me clarify this. Current future forecasts
11 for energy prices you think have greater upside risk.

12 And by that, I mean it's more likely than not
13 they will be higher than we predict rather than lower
14 than we predict; is that correct?

15 A. I tried to clarify that in my surrebuttal.
16 I talked a lot about asymmetrical risk. So, you can
17 think of -- so, today prices are about \$3 or whatever
18 they are a megawatt hour, I mean, \$30 a megawatt hour.

19 And so, and most of that is fuel cost, and that
20 price is bound by zero but it's actually bound by more
21 than that because you have to develop those risk.

22 So, those prices, it's asymmetrical.
23 The magnitude that we can go lower is much smaller than
24 the magnitude that we can go higher.

25 Any of us that were here in the year 2000 know

1 that prices could be much higher. Plus, there are many
2 environmental regs coming down. So, yes, the magnitude
3 of risk is more, the magnitude that they can go up is
4 much greater than what's bound by zero.

5 **Q. Okay. And so, it would seem financially**
6 **foolish, then, to enter into a long-term contract today**
7 **when you have greater potential for higher energy prices**
8 **in the future; is that correct?**

9 A. No, because you have to -- you have to be able
10 to build those and finance those projects. If you're a
11 financier, you're not someone that plays in the energy
12 markets. You want to know that you have a project that
13 is financeable and that that is a locked in -- you know,
14 that that project is going to go.

15 **Q. And so, you would say, then, that the contract**
16 **for the 20 years removing the risk of market fluctuations**
17 **and energy prices has a significant value.**

18 **In fact, that value is so high that a project**
19 **cannot be completed without it; is that correct?**

20 A. Well, it depends on what you mean by value.
21 It has a value to ratepayers, too because if we can lock
22 in that price. The higher the risk, the higher the
23 financing cost. And when you're dealing with a very
24 capital-intensive project, those projects would then
25 be much more expensive and then they would not be built

1 to the benefit of ratepayers.

2 Q. And so, is it correct, then, that your
3 testimony is that the risk has such a high cost I guess
4 on the flip side of that, the risk has such a high cost
5 that no lenders will lend on these projects?

6 A. Well, I think that the developers should speak
7 more to that, but from seminars and research that I've
8 done that -- well, just think about if you bought a house
9 and the cost of financing.

10 If you had a very bad credit rating, it would
11 cost you a lot more to finance that house over the term
12 of the house over the 30-year mortgage than it would if
13 you were, you know, an A-plus credit rating.

14 So, just, the higher the risk, the higher the
15 cost to finance that project which makes them more
16 expensive, which puts them out of the money for PURPA
17 which circumvents PURPA.

18 Q. Okay. Let me use that analogy. If you have
19 very bad credit -- and I believe your analogy is,
20 in that, probably intermittent nature of these resources
21 and the variability of market prices, you would probably
22 seek a cosigner maybe with better credit; is that
23 accurate?

24 A. I'm talking about the difference in pricing of
25 financing. So, these projects, it's not that they're

1 variable that's a problem. It's the fact that they need
2 a long -- you know, you're buying 20 years of fuel up
3 front when you build one of these projects. So, you need
4 long-term financing.

5 **Q. And you compared it to a person with bad**
6 **credit; is that right?**

7 A. No. I compared that with the risk is higher
8 because you don't have a 20-year contract, then your
9 interest rates and your finance costs will be higher.

10 **Q. But if you could find somebody to take that**
11 **risk for you, so, to guarantee those payments for 20**
12 **years, then you can get the financing; is that correct?**

13 A. Meaning if you have an off-taker for your
14 project?

15 **Q. If you have any source of guaranteed funding**
16 **for your project.**

17 A. I think these questions would probably be best
18 asked to the renewable energy developers. But what I'm
19 saying is that the financiers, to give you good credit
20 that keeps the cost down so these projects can be built
21 within avoided cost pricing to the benefit ratepayers,
22 especially, I mean you've heard UAE talk about how these
23 projects are beneficial, you need low-cost financing.
24 You need a long-term power purchase agreement.

25 **Q. Okay. And so, the long-term financing is**

1 conditioned upon the long-term -- excuse me.

2 The low-cost financing would be in your
3 testimony conditioned upon long-term power purchase
4 agreements?

5 A. That's my understanding from talking to
6 developers.

7 Q. Okay. And that reduction in the cost of
8 financing is due to somewhat other than the developer
9 taking that risk, removing the risk that you're worried
10 about in year-to-year or short-term contracts?

11 A. I think we're mixing different types of risks.
12 The risk that I talk about with the asymmetrical risk
13 in the project has to do with what's going to happen to
14 ratepayers in the future.

15 And the risks that we're talking about
16 regarding financing is the risk associated with investing
17 millions of dollars in a project and being able to, as a
18 financier, having the assurance that you will get paid
19 back.

20 Q. And that's what I think I'm looking at here
21 is the risk of the insurance you'd be paid back.

22 You need to put that risk on some other party
23 in order to have these projects achieve low-cost
24 financing; is that correct?

25 A. If you're trying to say that customers are

1 bearing them? I mean, I'm not sure what you're getting
2 at because they're two different types of risk, and if a
3 long-term power purchase agreement, if it's your position
4 that that's a risk at these low prices, then yes.

5 MR. JETTER: Thank you. I have no further
6 questions. Thank you, Ms. Wright.

7 THE WITNESS: Thank you, Mr. Jetter.

8 THE HEARING OFFICER: Thank you. Ms. Hogle?

9 CROSS-EXAMINATION

10 BY MS. HOGLE:

11 Q. I have a few. Good afternoon.

12 A. Good afternoon, Ms. Hogle.

13 Q. Would you agree with me that some states have
14 RPS requirements?

15 A. Yes.

16 Q. And that Utah has a renewable energy target for
17 qualifying facilities?

18 A. It's actually a requirement, but the way that
19 this document was written, it allows RECs from 1995 to
20 qualify. It says that they're cost effective, we need to
21 do it, but you guys have already complied because of the
22 way that the statute was influenced when it was passed.

23 MS. HOGLE: Okay. May I approach the witness?

24 THE HEARING OFFICER: Yes.

25 (RMP Exhibit-2 Identified)

1 BY MS. HOGLE:

2 Q. Okay. And you've already mentioned the cost
3 effectiveness. So, can you read for me 54-17-602(a)
4 where it starts, "Cost-effectiveness" under subsection
5 one, it is determined?

6 A. Wait. 54-17-602(a), (1)(a)?

7 Q. 54-17-602(2)(a) --

8 A. Oh, (2)(a). "Cost-effectiveness under
9 Subsection (1) for other than a cooperative
10 association is determined in comparison to other
11 viable resource options using the criteria provided
12 by Subsection 54-17-201(2)(c)(ii)."

13 Do you want to let people know what I'm reading from?

14 Q. Well, I believe that I just mentioned --

15 A. Okay. So, this is Utah state statute?

16 Q. Yes. Utah state statute. So, if you flip
17 to the next page that I handed to you?

18 A. Certainly.

19 Q. Can you read 54-17-201(2)(c)?

20 A. "In ruling on the request for approval of
21 a solicitation process, the commission shall
22 determine whether the solicitation process:" --

23 Q. And then can you skip to little numeral two?

24 A. "shall provide an opportunity for public
25 comment."

1 **Q. "is in the public interest taking into**
2 **consideration:"**

3 A. Wait. I read the wrong two? I did read the
4 wrong two.

5 **Q. Yes.**

6 A. "is in the public interest taking into
7 consideration: (A), whether it will most likely
8 result in the acquisition, production and delivery
9 of electricity at the lowest reasonable cost to the
10 retail customers of an affected electrical utility
11 located in this state;"

12 **Q. Continue.**

13 A. "long-term and short-term impacts; (C) risk,
14 (D) reliability; (E) financial impacts on the
15 affected electrical utility; and (F), other factors
16 determined by the commission to be relevant."

17 **Q. Thank you. Okay. Can you now please go back**
18 **to 54-17-602(3)(b). Can you start reading?**

19 A. Wait, wait, wait. 602(3)?

20 **Q. 602(3)(b).**

21 A. Oh. I thought you said E.

22 **Q. "This section does not require ..."**

23 A. Oh, three.

24 **Q. (3)(b). Excuse me.**

25 A. "This section does not require an electrical

1 corporation to: (b) enter into any additional
2 electrical sales commitment or any other arrangement
3 for the sale or other disposition of electricity
4 that is not already, or would not be, entered into
5 by the electrical corporation."

6 Q. "or"

7 A. "or (c) acquire qualifying electricity in
8 excess of its adjusted retail electric sales."

9 Q. Okay. Thank you. So, is it a fair
10 characterization of your testimony that avoided cost
11 prices are very low right now?

12 A. Yes.

13 Q. Okay. And you would agree with me, would you
14 not, that the Commission's decision in this case is not
15 a short-term decision?

16 A. Yes.

17 Q. And that you have testified that avoided costs
18 are, with your clarification today, more likely to go up
19 and down from this point?

20 A. The magnitude.

21 Q. Okay. And so, you would agree with me that
22 higher avoided cost pricing will make PPAs more
23 attractive?

24 A. Yes, if all things are equal, if the extension
25 of the ITC. There are a number of factors.

1 **Q. And the higher avoided cost pricing for**
2 **20 years will make them even more attractive?**

3 A. Yes.

4 MS. HOGLE: Okay. I have no further questions.
5 Thank you.

6 THE HEARING OFFICER: Thank you.

7 Ms. Dutton, any redirect?

8 REDIRECT EXAMINATION

9 BY MS. DUTTON:

10 **Q. Yes, please. Just a couple.**

11 **Does the fact that or the possibility that**
12 **avoided cost prices could go up alleviate the Commission**
13 **of its duty to implement PURPA?**

14 A. No, it doesn't. And it also doesn't mean that
15 they wouldn't be in the best interest of ratepayers.

16 **Q. And in your analogy, you used two mortgages.**
17 **You were comparing a bad credit rating to an inability**
18 **to secure long-term financing; is that correct?**

19 A. Yes, or to -- trying to finance something
20 without a long-term purchase commitment.

21 **Q. Yes. And one last question. Why is it a good**
22 **idea to enter into QF contracts now?**

23 A. You know, there are number of reasons. One is
24 because, and I think it was brought up by the Office,
25 is that renewable projects, solar projects in particular

1 with the investment tax credit, these prices are likely
2 as low as they're going to be for a while. 30 percent
3 reduction in cost to Utah ratepayers for these projects
4 from the investment tax credit.

5 MS. DUTTON: Thank you.

6 THE HEARING OFFICER: Thank you. Does any
7 party desire recross? Seeing none, Commissioner White?

8 COMMISSIONER WHITE: I have no questions.
9 Thank you.

10 THE HEARING OFFICER: Commissioner Clark?

11 COMMISSIONER CLARK: No questions. Thank you.

12 THE HEARING OFFICER: Thank you. I don't have
13 any. Thank you, Ms. Wright.

14 THE WITNESS: Thank you.

15 Anything further, Ms. Dutton?

16 MS. DUTTON: No. Thank you.

17 THE HEARING OFFICER: Okay. Mr. Ritchie?

18 MR. RITCHIE: Sierra Club calls Mr. Thomas
19 Beach, please.

20 THE HEARING OFFICER: Mr. Beach, do you swear
21 to tell the truth?

22 THE WITNESS: I do.

23 THE HEARING OFFICER: Thank you.

24 R. THOMAS BEACH,

25 having first been duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RITCHIE:

4 Q. Can you make sure your microphone is on,
5 please?

6 A. It is.

7 Q. And can you please state your name and business
8 address for the record?

9 A. My name is first initial R. Thomas Beach.
10 Business address, 2560 9th Street, Suite 213-A, Berkeley,
11 California 94710.

12 Q. And what is that business?

13 A. I have an energy consulting firm Crossborder
14 Energy.

15 (Direct Testimony and Exhibits of
16 R. Thomas Beach Identified)

17 BY MR. RITCHIE:

18 Q. And did you prepare direct testimony and the
19 accompanying exhibits on behalf of Sierra Club in this
20 proceeding?

21 A. Yes, I did.

22 Q. And do you have any corrections to that
23 testimony here today?

24 A. Yes. I just have one minor correction on
25 footnote -- on page 45 of testimony, footnote 60.

1 That footnote refers to footnote 29 above and the
2 accurate reference is to footnote 43 above.

3 And then the one other correction is that in
4 two places, first on page six, line 111 and again on
5 Page ten in footnote eight, I reference California's
6 increase in its renewable portfolio standard to 50
7 percent by 2030. And in those locations, I say that the
8 legislature had passed that increase and the governor was
9 expected to sign it.

10 I just wanted to update the testimony that
11 he actually did sign it.

12 **Q. Thank you, Mr. Beach. And with those**
13 **corrections, is the testimony true and correct to the**
14 **best of your knowledge?**

15 A. Yes, it is.

16 **Q. And if asked those same questions today,**
17 **would your answers be the same?**

18 A. Yes, they would.

19 MR. RITCHIE: Commissioners, with your leave,
20 I'd like to move into the record the direct testimony
21 and accompanying exhibits of Thomas Beach.

22 THE HEARING OFFICER: Does any party object
23 to that motion? Okay. The motion's granted. Thank you.

24 (Direct Testimony and Exhibits of
25 R. Thomas Beach Admitted)

1 BY MR. RITCHIE:

2 Q. And, Mr. Beach, have you prepared a summary of
3 your testimony here today?

4 A. Yes, I have.

5 Q. Please provide that summary?

6 A. Thank you very much. My name is Tom Beach and
7 I appreciate the opportunity to address the Commission
8 on behalf of the Sierra Club today.

9 The Sierra Club is here today to ask the
10 Commission to keep Utah open for business. And by that,
11 I mean open for the business of developing new clean
12 energy infrastructure in Utah for the benefit of
13 Utah ratepayers and the environment in Utah.

14 Rocky Mountain Power has asked the Commission
15 to reduce from 20 years to three years the maximum term
16 of power purchase contracts with new renewable generation
17 QFs developed in its service territory under PURPA. The
18 Sierra Club opposes Rocky Mountain Power's application.

19 The utility is essentially asking the
20 Commission to interfere with the functioning of a market
21 that was expressly designed to counter the monopoly power
22 of the utility. Your role as commissioners of course
23 is to regulate the utility so that it doesn't exert that
24 power.

25 I started my career 35 years ago in the early

1 1980s on the staff of the California Public Utilities
2 Commission where I worked on the initial implementation
3 of PURPA shortly after its passage by congress.

4 Since then, I have observed and I provide
5 examples in my testimony from Idaho, North Carolina
6 and California as well as from Utah that historically
7 renewable QFs have not been developed successfully
8 where only short-term contracts are available.

9 If you look on the PacifiCorp system, their
10 operating renewable QF contracts that obviously have been
11 successfully developed, the average contract length
12 is 19.7 years.

13 It's clear to me that the intent of the
14 utility's request in this case is to make it impossible
15 to finance additional renewable projects in its service
16 territory. Capital-intensive solar and wind projects
17 simply cannot be developed successfully with three-year
18 contracts, and there's no history of them being able
19 to be developed on that basis.

20 The Rocky Mountain Power proposal is clearly
21 an effort to relieve the utility of its must-purchase
22 obligation under PURPA.

23 The utility says that it would still be
24 required to purchase QF power under three-year contracts,
25 but there really is no must-purchase obligation if

1 there's nothing to purchase because projects cannot
2 obtain financing to be built.

3 This step to reduce the contract term is of
4 questionable legality under PURPA whose purpose is to
5 encourage the development of qualifying renewable
6 generation that can be developed at the utility's
7 avoided cost.

8 If Rocky Mountain Power does not want to
9 comply with its PURPA obligations, then there are
10 well-established ways under federal law, Section 210 and
11 PURPA, for the utility to replace its traditional PURPA
12 obligation and for the state of Utah to assume greater
13 control of over utility procurement of renewable
14 generation in the state.

15 Many other states have followed this course.
16 And their procurement of renewable generation is now
17 under RFPs and under the same type of process that
18 Rocky Mountain Power now uses to procure other types
19 of resources.

20 However, pursuing 210(m) of PURPA may require
21 other changes in the energy markets in Utah that
22 Rocky Mountain Power does not seem interested in.

23 So, we are left with the utilities still being
24 under a traditional PURPA obligation, the traditional
25 PURPA must-purchase obligation.

1 So, now I'd like to talk a little bit about the
2 ratepayer indifference issue. Prices in PURPA contracts
3 are set based on the utility's avoided cost; that is, on
4 the cost the utilities would incur for the same amount
5 of power if it did not purchase the QF generation.

6 As a result, the utility's ratepayers will be
7 indifferent on a forecast basis to the purchase of the
8 additional solar or wind generation.

9 Rocky Mountain Power claims that this is too
10 risky. However, it's no riskier than when a utility
11 makes a long-term commitment to a new generating plant
12 that the ratepayers will pay for through the rate base.

13 When the utility makes such a proposal, whether
14 that plant is cost effective is decided using the same
15 types of long-term forecasts that the Commission uses to
16 set avoided cost prices for QFs using the same type of
17 information developed in Integrated Resource Plans.

18 QF pricing is not like short-term hedging
19 of energy commodities such as natural gas, oil, or
20 short-term market power and should not be subject to the
21 Commission's short-term hedging programs and policies for
22 such commodities.

23 Renewable QFs are new steel in the ground
24 generation projects. And no one builds those new
25 generation projects on the basis of three-year contracts.

1 The Sierra Club believes that the QF market
2 that the Commission has established in Utah is working
3 exactly the way you designed it. There's simply no
4 present crisis with an oversupply of renewable QFs
5 in Utah such that the Commission needs to shorten
6 the contract term that will no longer encourage
7 the development of solar and wind QFs in Utah.

8 The Commission's method for setting avoided
9 cost prices provides the utility with the ability to
10 update its forward price curb for avoided costs in order
11 to reflect changing loads and resources, changing natural
12 gas prices, and changes in the need for generation.

13 As Rocky Mountain Power adds more renewable
14 QF generation, its avoided cost prices drop as this
15 generation replaces progressively less expensive power.

16 And this could be seen in the declining
17 indicative prices that Rocky Mountain Power has provided
18 to solar projects in its pricing queue.

19 These indicative prices, when compared on an
20 apples-to-apples basis with the lowest public power
21 purchase agreement prices for solar in the Western U.S.
22 show that it's likely that none of the solar QFs in
23 Rocky Mountain Power's queue are likely to be
24 successfully developed at the indicative prices.

25 And even for those projects that have that in

1 the contract, time is running out for those projects
2 to be developed before the end of 2016 when there's
3 the stepdown of the federal investment tax credit.

4 So, in short, there's no crisis. The market
5 is working correctly and will be self limiting.

6 Finally, even if there are a few more QFs
7 developed before the ITC stepdown, this fixed-price
8 renewable generation offers significant benefits to
9 Rocky Mountain Power's ratepayers. And these benefits
10 are not included in the avoided cost price that the
11 utility will pay for the power.

12 And Sierra Club's not suggesting that these
13 additional benefits be included in the price. We're not
14 proposing to change the Commission's avoided cost pricing
15 methodology, but the existence of these additional
16 benefits means that if you can buy additional solar
17 and wind generation at these prices, it's going to be
18 a good deal for the ratepayers of Utah.

19 First of all, there is -- the utility does
20 have the ability to negotiate for the RECs associated
21 with this generation. In some instances, not all, they
22 have procured the RECs associated with QF generation, and
23 that's a direct and quantifiable benefit to ratepayers.

24 The second benefit to ratepayers is avoiding
25 price spikes. We've seen in 2000, 2001 with the

1 California energy crisis, we've seen natural gas price
2 spikes in 2005 and 2007. Fixed-price generation provides
3 protection for customers against such run-ups in prices.

4 By bringing on more generation in the West that
5 has zero marginal costs, it lowers the price of -- lowers
6 the market prices generally across the whole market. And
7 since Rocky Mountain Power is short on power, these lower
8 market prices are an additional benefit to customers.

9 And finally, there is an economic development
10 benefit for Utah. These potential solar and wind
11 projects represent investment of potentially hundreds
12 of millions of dollars in clean energy infrastructure
13 in the state of Utah over the next several years.

14 Even if only a fraction of them are developed,
15 they would provide Utah with economic benefits associated
16 with the construction of modern clean energy facilities.

17 If these projects are not built in Utah, they
18 could be developed in one of the surrounding states
19 that also are rich in renewable resources.

20 So, in conclusion, I ask again if Utah's open
21 for this business or is going to hang out a closed sign
22 similar to the unfortunate recent decision in Idaho
23 to shorten its QF contract term.

24 Many states in the West are rich in renewable
25 resources and developers have options to take their

1 business elsewhere. And so, the Sierra Club looks
2 forward to how the Commission answers this question.

3 Thank you very much for your attention.

4 MR. RITCHIE: Thank you, Mr. Beach. Mr. Beach
5 is available for cross-examination.

6 THE HEARING OFFICER: Thank you. Ms. Dutton?

7 MS. DUTTON: No. Thank you.

8 THE HEARING OFFICER: Mr. Dodge?

9 MR. DODGE: No questions.

10 THE HEARING OFFICER: Mr. Sanger?

11 MR. SANGER: No questions.

12 THE HEARING OFFICER: Thank you. Mr. Moore?

13 MR. MOORE: No questions.

14 THE HEARING OFFICER: Mr. Jetter?

15 CROSS-EXAMINATION

16 BY MR. JETTER:

17 Q. I do have a few questions. Good afternoon.
18 These are probably similar to what I asked Ms. Wright.

19 Do you recognize or do you agree or maybe a
20 better question would be that a 20-year contract reduces
21 the risk of the income stream upon which financing for
22 these projects is based?

23 A. Yes.

24 Q. And do you agree that there is any value to the
25 reduction of that risk in income variation over the term

1 of that income stream?

2 A. A value to who?

3 Q. In this case, I suppose it would be, there's
4 a value in that reduction in risk to the lenders on these
5 projects?

6 A. Yes. Generally, lenders on a renewable energy
7 project are only willing to take certain risks. And
8 generally they're not willing to take the price risk of
9 fluctuating market prices for a new energy facility
10 that is going to have a useful life of 20 to 25 years.

11 There are a lot of risks on these projects.
12 There are development risks. There are construction
13 risks. There are operating risks. There's environmental
14 risks. And developers are only willing to take a certain
15 amount of risk. And one of the risks that it's clear
16 from the market for these projects that they're not
17 willing to take is the risk of price fluctuations.

18 Q. Thank you. And so, the 20-year contract
19 at risk, those prices are ultimately passed through to
20 consumers and so that risk would also then be passed
21 on to customers of the utility; is that correct?

22 A. Yes. And that's no different than when the
23 utility builds any kind of plant. It's based on -- whose
24 economics are based on a long-term forecast of what fuel
25 prices and market prices are going to be in their service

1 territory. Customers take that risk all the time and the
2 Commission is here in part to make sure that those risks
3 of evaluated fairly.

4 Q. Are you familiar with how Utah calculates its
5 QF pricing?

6 A. I'm familiar in general terms.

7 Q. Okay. Do you know in the QF pricing
8 calculation if there is anywhere in that formula where
9 we include the value of this risk?

10 A. The value of this risk to who?

11 Q. To the customers or to the -- either way.

12 A. Well, I'm not aware that it's included either
13 in QF pricing or in the way that you would evaluate a
14 utility-owned resource.

15 Q. Okay. And so, if we're estimating our best
16 guess of a 20-year future avoided cost rate and we want
17 to keep consumers in a position where they are
18 indifferent to these contracts, are they really
19 indifferent if we are placing the price risk upon
20 the customers when we're calculating it without any
21 evaluation of that price risk being placed on the
22 customers?

23 A. Well, I think you need to -- there certainly
24 is -- you know, there is a price risk there. Market
25 prices can be higher or lower than what is forecasted

1 in the model used to set the avoided cost prices.

2 You have to evaluate whether that risk is
3 worthwhile given, you know, some of the other benefits
4 that ratepayers gain from these resources which I think
5 are significant in terms of the fact that it's new clean
6 energy infrastructure, that's it's going to drive down
7 market prices generally, that it can help with future
8 carbon compliance, and that it's economic development
9 for the state of Utah.

10 If you think that those benefits are worth this
11 risk, then I think you would say, let's keep our pricing
12 methodology in place and if more of these resources show
13 up, that'll be a good thing.

14 **Q. Thank you. I would just like to address one**
15 **other issue. I believe you covered it briefly in your**
16 **opening statement, but you had testified in your direct**
17 **testimony that it was your understanding I think at the**
18 **time you had written that that in Utah the utility owned**
19 **the RECs for these projects?**

20 **A. I don't think so. I think I testified that the**
21 **utility had acquired some RECs associated with some**
22 **contracts. We did discovery on this and they provided,**
23 **you know, an amount of RECs that they had procured from**
24 **QFs in Utah. So, it was my understanding that they**
25 **didn't get RECs associated with all of their QF contracts**

1 but that they had negotiated the acquisition of some.

2 MR. JETTER: Okay. That's what I would like
3 to clarify. I have no further questions. Thank you.

4 THE WITNESS: Thank you.

5 THE HEARING OFFICER: Thank you. I think
6 it might be a good time for a short break before your
7 cross-examination. Why don't we break until about 3:10.
8 We're in recess.

9 (Recess taken 3:00 p.m. to 3:10 p.m.)

10 THE HEARING OFFICER: Okay. Thank you.
11 Mr. Beach, you're still under oath. Ms. Hogle?

12 CROSS-EXAMINATION

13 BY MS. HOGLE:

14 Q. Good afternoon, Mr. Beach.

15 A. Good afternoon.

16 Q. My name is Yvonne Hogle. I don't think we have
17 met formally. I'm in-house counsel for Rocky Mountain
18 Power.

19 A. Nice to meet you.

20 Q. Nice to meet you.

21 You worked for the California Public Utilities
22 Commission in the '80s; is that correct?

23 A. That's correct.

24 Q. And you mentioned that you started your career
25 there working on the initial implementation of PURPA;

1 correct?

2 A. Yes.

3 Q. And so, you dealt directly with issues like
4 avoided costs; is that correct?

5 A. Yes.

6 Q. Okay. And so, when you first started, PURPA
7 had just been enacted in 1978; is that correct?

8 A. Yes.

9 Q. Would you agree with me that PURPA was
10 instrumental in opening up wholesale power markets
11 by, one, including the must-buy obligation in its
12 provisions?

13 A. Yes. I generally agree with that. It opened
14 up the generation market to a lot of new actors other
15 than the utilities who had not been able to participate
16 in that market previously.

17 Q. Well, independent power producers just
18 multiplied in the '80s and into the '90s and into the
19 2000s; is that right?

20 A. Yes.

21 Q. Okay. I'd like you to turn to page 14 of your
22 direct testimony.

23 A. Okay.

24 Q. So, on line 270, you state that California
25 offered 20- to 30-year PURPA contracts in the 1980s with

1 renewable QFs provided fixed energy and capacity prices
2 for up to the initial 10 years of the contract and fixed
3 capacity prices for the full contract term; right?

4 A. Yes.

5 Q. And when you say, "prices," do you mean
6 payments?

7 A. No. I mean prices. You only get -- if you're
8 a QF, you only get paid if you actually produce the
9 power. So, the energy and capacity prices were fixed.

10 Q. Okay. So, when they did enter into these
11 contracts, assuming they offered the power, they would
12 get these payments; is that correct?

13 A. They would get those prices used to calculate
14 their payments, yes.

15 Q. Okay. And so, are these what are known as
16 standard-offer rates? Could these be part of what you're
17 talking about here?

18 A. Yes. Those -- well, that's what the
19 contracts -- they were called standard offer contracts.

20 Q. And so, is it fair to say that these energy
21 payments were established at a time of high oil and
22 natural gas prices and forecasts that assumed the price
23 of these fuels would increase significantly?

24 Do you recall from the 1980s?

25 A. Yes. That is what happened. In 1986 the price

1 of oil went down. So, for a number of years those prices
2 were above what you would consider market prices.

3 **Q. And am I correct that the California PUC placed**
4 **no limit on these rates initially when they started**
5 **offering them; is that correct?**

6 A. Are you talking about no limits on the number
7 of QFs that could be developed?

8 **Q. The number and volume of contracts.**

9 A. Yes. There were no limits at that time.
10 I would say that when the program started, California
11 was in a dire straight in terms of electric generating
12 capacity. The state desperately needed electric
13 generation. And, basically, QFs were the only
14 alternative. It was impossible to develop coal plants
15 in California because of air quality issues.

16 The utilities were having great difficulty
17 developing nuclear plants. It was actually prohibited to
18 burn natural gas in power plants at that time.
19 So, literally, the state's only option to meet a critical
20 shortage of electric generating capacity was QFs.

21 **Q. Okay. And then, but on line 275, you note that**
22 **the development of these rates ceased when the long-term**
23 **contracts were suspended in the late 1980s;**
24 **is that correct?**

25 A. Yes.

1 **Q. So, do you know the year when these SO,**
2 **standard offer rates were first offered in California?**

3 A. I believe they were started in 1983.

4 **Q. And do you know approximately when they were**
5 **suspended?**

6 A. Well, they were suspended over a period of
7 time. I think in the '85 to '87 timeframe was when they
8 were suspended. There were a number of different
9 contracts and they were suspended at different times.

10 **Q. And do you know why they were suspended?**

11 A. At that time that there was a concern with the
12 drop in oil prices in 1986 and there was a concern with
13 an oversupply of QF capacity.

14 **Q. So, they were widely successful?**

15 A. They were successful, yes.

16 **Q. Beyond regulators' expectations?**

17 A. Yes. And I think that was a learning
18 experience. And I will say that although those prices
19 were above market for a number of years, those projects
20 ended up being an incredibly economic resource for the
21 state during the 2000-2001 California energy crisis.

22 And the renewable QFs that were developed
23 in the 1980s are today the least-cost source of renewable
24 generation for California because many of those projects
25 are still generating, you know, 30 years after they were

1 developed. So, they have been recontracted and those
2 contracts are among the least cost source of renewable
3 generation today in California.

4 So, yeah, those contracts were above market
5 for a number of years but you need to look at the
6 economics over the full life cycle of those projects.
7 And I think over their full life cycle, they were a
8 good deal for their ratepayers.

9 **Q. Do you feel what the California utility's**
10 **reactions were to the offering and the continuation**
11 **of the standard offer rates while they were valid?**

12 A. They complained a lot.

13 **Q. Okay. Isn't it true that they filed comments**
14 **with FERC complaining, as you put it, that these and**
15 **other standard offers have forced them to purchase**
16 **too much capacity at too high of prices?**

17 A. Yes, they did complain. I think if you examine
18 what their alternatives were, their alternatives would
19 have been building more nuclear plants. And if you look
20 at what they actually paid for the nuclear plants that
21 they actually built, the QF program was a much better
22 deal.

23 **Q. Is it fair to say that California retail**
24 **customers in the '90s and maybe into the early 2000s**
25 **were paying a lot more for their electricity in part**

1 **due to these above-market rate PPAs?**

2 A. Well, again, you know, hindsight's always
3 20-20. And, yes, there was a period of time in the late
4 '80s into the '90s where ratepayers in California paid
5 above what they would have paid if -- for example, if
6 they had not entered into those contracts and had waited
7 for gas supplies to rebound and then they'd build gas
8 plants. But again, you know, hindsight's always 20-20.

9 And then it turned out that when we went
10 through the California energy crisis in 2000, 2001,
11 those fixed-prices resources turned out to be a
12 very good deal for those years for ratepayers.

13 So, again, you have to look at it over the
14 entire history of those projects.

15 **Q. But for probably 20 years, California suspended**
16 **long-term QF PPA contracts, is that correct, as a result**
17 **of these standard-offer contracts?**

18 A. California did not offer -- in terms of
19 renewable contracts, they did not offer long-term
20 contracts to renewable QFs until they started the RPS
21 program in 2003.

22 MS. HOGLE: Okay.

23 May I approach the witness, Your Honor?

24 THE HEARING OFFICER: Yes.

25 BY MS. HOGLE:

1 Q. So, this, Mr. Beach, is a background
2 information from Southern Cal Edison's web site
3 on Qualifying Facilities Background.

4 Do you have any reason to dispute that what I
5 just handed you is just that? If you look at the bottom
6 of the address, the web site address, you can clearly see
7 that it is from Southern Cal Edison's web site.

8 A. Yes. I see that.

9 Q. Can you please read for me the highlighted
10 paragraphs?

11 A. "The California Public Utilities Commission
12 decided to encourage QF development further
13 by establishing generous 'Standard Offer' power
14 purchase contracts that utilities were required
15 to accept from QFs.

16 "The CPUC also based avoided cost on the cost
17 of owning and operating a natural gas-fired power
18 plant, which, at the time, was the most costly
19 of fossil fuel plants to run."

20 "In 1983, the bottom fell out of international
21 energy prices and the cost of oil and gas dropped
22 precipitously, but the lucrative terms of the
23 Standard Offer contracts did not change, producing
24 a 'gold rush' of new applicants.

25 "In response, the CPUC began to phase out the

1 Standard Offer program. By 1986, the CPUC had
2 suspended the availability of new power purchase
3 contracts for QF projects larger than 100 kW."

4 MS. HOGLE: At this time, Your Honor, I would
5 like to move for the admission of Rocky Mountain Power
6 Cross Exhibit-1 into the record.

7 THE HEARING OFFICER: If anybody party objects,
8 please indicate.

9 MR. RITCHIE: Mr. Chairman, I do object based
10 on what Ms. Hogle intends to introduce by this.
11 Mr. Beach has read that statement. She's not asked him
12 to adopt that statement and I think she can fairly ask
13 questions about the statement read into the record.

14 But I don't think we have any foundational
15 evidence or any support to authenticate this document
16 or to prove up this piece, this document as evidence.

17 He's welcome to answer questions about it,
18 but the document itself, I don't think it's necessary
19 to go into evidence at this time.

20 THE HEARING OFFICER: Okay. Thank you.

21 Ms. Hogle, do you have any response to that?

22 MS. HOGLE: Sure. I believe I established
23 foundation already. I asked him if he believed that
24 I received or that I printed this off of the Southern
25 Cal Edison web site.

1 And it goes directly to his testimony wherein
2 he testifies about these very same 20, 30-year PURPA
3 contracts in the 1980s. And he was an employee of the
4 California Public Utilities Commission.

5 So, I think it presents a full picture of his
6 testimony that is not included in his testimony of the
7 conditions and circumstances in California with QF
8 contracts in the 1980s.

9 THE HEARING OFFICER: Given that this is
10 basically a statement of a California utility that's not
11 a party to this, I think I'm going to grant the objection
12 to the motion to enter it but allow questions about the
13 statements and ask the witness whether he agrees with
14 them. But I don't think I see an evidentiary biases
15 for putting this into evidence.

16 MS. HOGLE: Okay.

17 THE HEARING OFFICER: Thank you.

18 MS. HOGLE: I have no further questions.

19 Thank you.

20 THE HEARING OFFICER: Thank you.

21 Any redirect? Mr. Ritchie?

22 REDIRECT EXAMINATION

23 BY MR. RITCHIE:

24 **Q. Yes. Thank you.**

25 **Mr. Beach, Mr. Jetter of the Division asked you**

1 a couple questions about ratepayers assuming the risks
2 of long-term contracts.

3 Do you remember that line of questioning?

4 A. Yes, I do.

5 Q. What about short-term contracts? If the
6 Commission was to adopt three-year or five-year contracts
7 that have been proposed today, would ratepayers be
8 assuming any risks from those contracts?

9 A. Yes, they would. They would assume the market
10 pricing risk under those contracts because, you know,
11 market prices can fluctuate and they are very low today,
12 but we certainly have seen episodes in the past and I'm
13 sure we will see episodes in the future where market
14 prices are going to be much higher than they are today.

15 So, under a short-term contract, ratepayers
16 bear the risk of those kinds of market price
17 fluctuations. And, you know, if you live by the market,
18 you die by the market I guess is the way to put it.

19 MR. RITCHIE: I have no further questions
20 at this time. Thank you.

21 THE HEARING OFFICER: Okay. Thank you.

22 Any desire for any recross from any party?

23 MS. DUTTON: Can I ask a recross question?

24 THE HEARING OFFICER: Sure.

25 RE-CROSS-EXAMINATION

1 BY MS. DUTTON:

2 Q. It's based on the document that Ms. Hogle asked
3 the witness to read.

4 In the second paragraph, the highlighted
5 section, could you read the first sentence again?

6 A. "In 1983, the bottom fell out of international
7 energy prices and the cost of oil and gas dropped
8 precipitously, but the lucrative terms of the
9 Standard Offer contracts did not change, producing
10 a 'gold rush' of new applicants."

11 Q. And under Utah's avoided cost method,
12 would that ever be the case in Utah that the prices
13 would not change?

14 A. Well, my understanding in Utah is that the
15 utility is able to update its avoided cost prices as
16 natural gas prices and forward electric market curves
17 change.

18 Q. And so, would you agree that the terms of the
19 contracts would change in Utah to adjust the avoided cost
20 price for QF projects?

21 A. Yes. So, a QF that's developed this year might
22 not get the same price as a QF developed next year or the
23 year after that.

24 MS. DUTTON: Okay. Thank you.

25 THE HEARING OFFICER: Commissioner White,

1 any questions for the witness?

2 COMMISSIONER WHITE: No questions. Thank you.

3 THE HEARING OFFICER: Thank you.

4 Commissioner Clark?

5 EXAMINATION

6 BY COMMISSIONER CLARK:

7 Q. A couple of questions about this subject we've
8 been discussing here.

9 First, the two paragraphs that you read into
10 the record, do you disagree in any essential way with
11 what's represented here as a description of the
12 historical events of this period?

13 A. Well, I actually do disagree with some of the
14 dates. For example, the bottom fell out of international
15 energy prices in 1986, not 1983. And, you know, I guess
16 I would quibble with some of the adjectives that the
17 utility used here.

18 But, you know, otherwise, you know, generally,
19 I think that what is described here is pretty consistent
20 with what I described in my earlier testimony.

21 You know, I think that we've learned a lot
22 since then in terms of updating avoided cost prices on a
23 regular basis so they keep track with the market.
24 We've also learned a lot about procuring resources.

25 So, you know, utilities often have the ability

1 to negotiate with QFs to some extent, and so, certainly
2 this experience has not been repeated in California
3 nor in any other state.

4 And as I earlier testified, I think in the
5 final analysis, what California got out of what was
6 admittedly a flawed initial process was a set of
7 resources that over the last 30 years has stood
8 the test of time.

9 **Q. Did the standard-offer contracts specify a**
10 **price or a formula for deriving a price?**

11 A. The standard-offer contracts that were
12 applicable to renewable QFs, they had ten years of fixed
13 prices similar to what contracts in Utah have today.

14 But they were up to 30-year contracts but the
15 price was only fixed for the first ten years except for
16 the capacity price. The capacity price was fixed for the
17 full 30 years. The energy price was fixed for the first
18 ten years, and then after that first ten years of the
19 contract, the energy was priced back at the market
20 prices.

21 So, in terms of the energy component of those
22 projects, they were really only above market for the
23 first ten years. And because oil prices didn't crash
24 until '86, some of those projects, they were probably
25 at market for a number of -- for the first several years

1 of those projects.

2 Q. How was PURPA administered, then, during the
3 time period following the suspension of the
4 standard-offer contracts?

5 A. Well, following the suspension, there were
6 shorter term contracts available, you know. They were
7 one-year contracts, basically, at avoided energy and
8 capacity prices.

9 Initially, they did have longer term contracts
10 with fixed-capacity prices available but not fixed-energy
11 prices. And then they went to just -- for a period of
12 time in the '90s, the only thing that was available was
13 a one-year contract at short-run prices. And then
14 California launched into its deregulation experiment
15 which did not work out.

16 COMMISSIONER CLARK: Thank you. That's all
17 my questions.

18 THE HEARING OFFICER: Thank you. And I don't
19 have any. Thank you. Anything else, Mr. Ritchie?

20 MR. RITCHIE: No. Thank you, commissioners.

21 THE HEARING OFFICER: Thank you. We'll turn
22 to Mr. Dodge.

23 MR. DODGE: Thank you, Mr. Chairman.

24 The Rocky Mountain Coalition for Renewable Energy would
25 like to call Kevin Higgins.

1 THE HEARING OFFICER: Mr. Higgins, do you swear
2 to tell the truth?

3 THE WITNESS: Yes, I do.

4 THE HEARING OFFICER: Thank you.

5 KEVIN HIGGINS,
6 having first been duly sworn, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. DODGE:

10 Q. Would you please explain who you are and on
11 whose behalf you are testifying?

12 A. My name is Kevin Higgins. I'm here on behalf
13 of the Rocky Mountain Coalition for Renewable Energy.
14 (RMCRE Exhibit 1.0 and Exhibit 1.0SR
15 Identified)

16 BY MR. DODGE:

17 Q. And did you cause in this docket to be prepared
18 and filed direct testimony and surrebuttal testimony?

19 A. Yes, I did.

20 Q. And do you have any corrections to any of that
21 testimony?

22 A. I do not.

23 Q. And does that testimony represent your sworn
24 testimony here today?

25 A. Yes, it does.

1 MR. DODGE: I'd move the admission of
2 Coalition Exhibit 1.0 and 1.0SR.

3 THE HEARING OFFICER: If any party objects to
4 that motion, please let me know. Seeing none, the motion
5 is granted. Thank you.

6 (RMCRE Exhibit 1.0 and Exhibit 1.0SR Admitted)

7 BY MR. DODGE:

8 Q. Thank you. Mr. Higgins, could you provide a
9 summary of your testimony?

10 A. Yes, I will. Thank you. Good afternoon
11 commissioners. While we're waxing nostalgic a little bit
12 about PURPA, maybe you'll indulge me and allow me to
13 point out that my very first experience as a witness
14 was in 1984 on behalf of the State of Utah Energy Office
15 before this Commission when the state of Utah was
16 attempting to implement PURPA for the very first time.

17 And so, I now find myself 31 years later here
18 testifying before this Commission on essentially the same
19 topic. And I will volunteer that if I show up 31 years
20 from now to discuss this topic, someone should encourage
21 me to get a hobby. But you can look for me on public
22 witness day in 2046.

23 Now, in my opinion, the Company's proposal to
24 reduce the maximum term for fixed-price contracts for QFs
25 from 20 years to three years is not reasonable nor is it

1 in the public interest and the proposal should be
2 rejected by the Commission.

3 I believe that the Commission's current
4 approach to contract terms is reasonable and it provides
5 an appropriate framework for encouraging QF development
6 while protecting customer interests.

7 The Company is asking the Commission to abandon
8 its long-established policy of reasonably encouraging QF
9 development by ensuring the availability of the long-term
10 power purchase contracts at avoided costs. In its place,
11 the Company seeks adoption of a new policy that is
12 clearly designed to hinder further QF development
13 in Utah.

14 In supporting it's argument, the Company relies
15 on inept comparisons to hedging and utility planning
16 criteria while ignoring the obvious fact that the Company
17 is compensated for its own resources in a fundamentally
18 different and far more favorable manner than QFs are.

19 Take, for example, the unfavorable comparison
20 of long-term QF contracts to hedging practices. In my
21 view, this is an apples-to-oranges comparison.

22 Hedging contracts are simply an instrument
23 in pricing the Company's fuel supply and market
24 purchases, whereas the Company's generation assets that
25 are served by the fuel hedges are in fact long-term

1 obligations for which customers are bound for decades.

2 So, while the Company enjoys a long-term
3 revenue security of earning returns from its assets in
4 rate base, the Schedule 37 or 38 contract is the sole
5 means by which a QF is compensated for its power.

6 The more apt comparison is not between the
7 Company's hedging practices and long-term QF contracts
8 but it is between long-term QF contracts and the
9 Company's recovery of its generation investments
10 in the rate base. In this comparison, the obligations
11 of customers are longer term and more open ended when it
12 comes to paying for utility-owned plant in contrast with
13 QF contracts because utility generation assets are
14 subject to ongoing environmental risks that are commonly
15 addressed through environmental upgrades which customers
16 are routinely required to fund pursuant to general rate
17 case decisions.

18 You know, in the last three general rate cases
19 in Utah, the Company has requested and been granted
20 approval for hundreds of millions of dollars of
21 additional rate base for environmental upgrades.

22 Customers are also at risk for future
23 accelerated depreciation of utility generation assets
24 to the extent that plant lives are shortened in response
25 to environmental pressures. So, there are considerable

1 risks today for customers under the acquisition of power
2 from utility-owned assets.

3 Mr. Clements argues that PURPA contracts do not
4 go through the same extensive IRP process to determine if
5 they are needed. In making this argument, Mr. Clements
6 overlooks the fact that the pricing methodology adopted
7 in Utah by this Commission relies upon the Company's IRP
8 least-cost plan. And QF prices are tied directly to that
9 least-cost IRP plan. This is how ratepayer indifference
10 is accomplished.

11 When Mr. Clements discusses the IRP and its
12 relationship to QF pricing, he limits his discussion to
13 the next planned thermal resource.

14 He neglects to point out that the IRP calls
15 for the purchase of around one million megawatt hours per
16 year in front-office transactions from 2016 to 2024.

17 And it is those anticipated purchases that a
18 long-term PPA with a QF would primarily be displacing,
19 and it is the displacement of those anticipated purchases
20 that drives the pricing in QF contracts in Utah today.

21 In fact, the indicative price posted in
22 Appendix B of the Company's Q2 filing with this
23 Commission indicates a long-term 20-year price including
24 capacity of \$33.12 per megawatt hour. That's for 100
25 megawatts of displacement with an 85 percent capacity

1 factor.

2 So, with prices like those, it is difficult to
3 understand the great alarm that is being expressed with
4 regard to customer interests in protecting ratepayers.

5 Finally, the proposed change by the Company
6 is likely to quash QF development in Utah at a time when
7 implementation of the EPA's clean power plants is
8 creating significant uncertainty with respect to the
9 Company's long-term resource plan.

10 It strikes me as unwise to be signaling to QFs,
11 particularly in light of their various renewable, zero
12 emitting and combined heat and power attributes that
13 their power is of little long-term value and consequently
14 discouraging their development at a time when new
15 environmental regulations are placing long-term resource
16 planning in a state of flux.

17 This seems particularly unwise when we
18 understand that the development of renewable
19 zero-emitting and combined heat and power resources,
20 each of which has a nexus to QF generation, is encouraged
21 by the clean power plan as a means of gaining compliance.

22 In countering my argument, the Company points
23 out that it's the QF, not Rocky Mountain Power, that owns
24 the renewable energy certificates.

25 But this does not refute my argument. If the

1 state of Utah, in complying with the clean power plan
2 adopts a rate-based plan, then the availability of
3 additional renewable energy in the state creates a
4 marketplace from which renewable energy can be purchased
5 or the credits or the certificates could be purchased for
6 compliance. So, it's a supply-and-demand situation.

7 Yes, the Company doesn't own the RECs or most
8 of the RECs that the QFs provide, but renewable QFs will
9 provide a ready supply of RECs that will be available for
10 sale for compliance.

11 On the other hand, if Utah adopts a mass-based
12 plan to comply with the clean power plan, then the simple
13 displacement of the Company's thermal generation with
14 renewable energy will help the Company comply.

15 So, that concludes my summary. Thank you.

16 MR. DODGE: Mr. Higgins is available for cross.

17 THE HEARING OFFICER: Okay. Thank you.

18 Ms. Dutton, anything from you?

19 MS. DUTTON: No. No questions.

20 THE HEARING OFFICER: Mr. Ritchie?

21 MR. RITCHIE: No questions. Thank you.

22 THE HEARING OFFICER: Thank you. Mr. Moore?

23 MR. MOORE: No questions.

24 THE HEARING OFFICER: Mr. Jetter?

25 MR. JETTER: I have no questions. Thank you.

1 THE HEARING OFFICER: Okay. Thank you.

2 Ms. Hogle?

3 MS. HOGLE: I have no questions.

4 THE HEARING OFFICER: Okay.

5 Commissioner White?

6 COMMISSIONER WHITE: I have no questions.

7 Thanks.

8 THE HEARING OFFICER: Commissioner Clark?

9 COMMISSIONER CLARK: No questions. Thank you.

10 THE HEARING OFFICER: I have none. Thank you,
11 Mr. Higgins.

12 THE WITNESS: Thank you.

13 MR. DODGE: Mr. Chairman, the Coalition would
14 also like to call Mr. Bryan Harris.

15 THE HEARING OFFICER: Mr. Harris, do you swear
16 to tell the truth?

17 THE WITNESS: Yes.

18 BRYAN HARRIS,

19 having first been duly sworn, was

20 examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DODGE:

23 **Q. Mr. Harris, could you tell us who you are and**
24 **for whom you work and on whose behalf you're testifying?**

25 **A. My name is Bryan Harris. I am a project**

1 development manager for SunEdison and I am testifying
2 on their behalf.

3 **Q. And on behalf of the Rocky Mountain Coalition;**
4 **is that correct?**

5 A. Yes, that's correct.

6 (RMCRE Exhibits 2.0R, 2.0SR, and 2.0
7 Identified)

8 BY MR. DODGE:

9 **Q. Thank you. And under your direction,**
10 **Mr. Harris, what was direct testimony and rebuttal**
11 **testimony and surrebuttal testimony filed on your behalf?**

12 A. Yes.

13 **Q. And does that testimony represent your**
14 **testimony here today?**

15 A. Yes, it does.

16 MR. DODGE: I'd move the admission of Coalition
17 Exhibits 2.0R, 2.0SR, and 2.0.

18 THE HEARING OFFICER: Okay. If any party
19 objects to the motion, please let me know. I'm not
20 seeing any. So, the motion's granted.

21 (RMCRE Exhibits 2.0R, 2.0SR, and 2.0 Admitted)

22 BY MR. DODGE:

23 **Q. Mr. Harris, do you have a summary of your**
24 **testimony in this docket?**

25 A. Yes. I have a few comments I'd like to provide

1 to the Commission to start out. SunEdison is a large
2 independent power producer working to develop, build,
3 and operate renewable energy projects around the world.

4 We are also very active in developing and
5 constructing renewable energy projects in Utah.
6 We've been working on quite a few projects in Utah
7 over the last several years.

8 Currently, we have 22 QF power contracts
9 in place with Rocky Mountain Power. All of those
10 projects are either constructed or in construction.

11 Those projects are all located in Beaver County
12 and in Iron County in southern Utah. I believe nine
13 of the projects are completed with the remaining ones
14 in construction. Those projects are currently employing
15 about 800 construction workers in southern Utah.

16 The projects are an economic boon to southern
17 Utah. They will pay a significant amount of property
18 taxes over the life of the project as well as about 25
19 full-time operations jobs. I bring that up just to point
20 out that these projects are providing a significant
21 impact, a positive impact to the state of Utah to the
22 counties where they are.

23 In addition, I believe the projects are great,
24 are a great asset for the ratepayers in Utah.
25 They provide a long-term contracted amount which

1 provides -- well, the projects are contracted and
2 they have a steady rate for the ratepayers.

3 The main reason why I'm testifying today is to
4 provide some information that if those projects were not
5 open to having a 20-year contract, 20-year term in the
6 contract, if it was a three-year term, those projects
7 would not be built or would not be under construction
8 today. And moving forward, if the Commission changes the
9 term to three years, we will not be able to build future
10 projects in the state of Utah. And that's really the
11 crux of my testimony today and my opening statement.

12 MR. DODGE: Thank you. Mr. Harris is available
13 for cross-examination.

14 THE HEARING OFFICER: Thank you.

15 Ms. Dutton, anything?

16 MS. DUTTON: No. No questions.

17 THE HEARING OFFICER: Thank you. Mr. Ritchie?

18 MR. RITCHIE: No questions.

19 THE HEARING OFFICER: Mr. Sanger?

20 MR. SANGER: No questions.

21 THE HEARING OFFICER: Mr. Moore?

22 MR. MOORE: No questions.

23 THE HEARING OFFICER: Mr. Jetter?

24 CROSS-EXAMINATION

25 BY MR. JETTER:

1 Q. Yes. Mr. Chairman, I do have a few questions.

2 Good afternoon. I'm Justin Jetter and I represent the
3 Utah Division of Public Utilities.

4 You're an expert in financing qualifying
5 facility projects; is that correct?

6 A. I'm an expert in developing solar and wind
7 projects. And a critical part of that is the financing,
8 although I would say that Sun Edison has a very
9 sophisticated finance team that are the true experts
10 in project finance. I work closely with them.

11 Q. You know enough about it to know that, at least
12 in your testimony, you testified that shortening the
13 contract term would make it impossible to finance these
14 projects; isn't that correct?

15 A. Shortening the term to three years or
16 five years, yes.

17 Q. Okay. And that's because the variability is a
18 risk that investors are unwilling to take; isn't that
19 correct?

20 A. Yes.

21 Q. And that's based on two factors, is that right,
22 that if you were in an environment where you had higher
23 avoided cost rates, you could potentially have a shorter
24 contract term; is that accurate?

25 A. By shorter, you mean how many years?

1 Q. Yes.

2 A. Yes, that's correct. That's correct. It would
3 need to be significantly higher in order to meet a
4 three-year or a five-year contract term. I don't know
5 how many times higher it would need to be but several
6 fold higher I would imagine.

7 Q. And so, is it accurate that the decision to
8 finance these is based both on a rate of return of the
9 project as well as the risk involved?

10 A. Could you clarify that a little bit?
11 I don't quite understand your question.

12 Q. Whether or not your financing department is
13 able to seek and secure financing for QF projects is both
14 based on the rate of return on the project that you're
15 offering to those investors as well as the risk that is
16 involved?

17 A. I would say those are two of the factors.
18 There are additional factors as well.

19 Q. Okay. Thank you. And a number of witnesses
20 today have compared QF projects to steel in the ground
21 resources as opposed to fuel price hedging.

22 Do you know what the stockmarket price will be
23 in 2035 on August 5th?

24 A. No.

25 Q. I don't know either. But is it possible that

1 if the Company has, let's say, a gas resource and the
2 cost of running that gas resource is higher than the
3 market price on that day, the Company could essentially
4 shut off that gas resource and buy market purchases?

5 A. I presume.

6 Q. And in the alternative, if the market is
7 considerably lower or at all lower than the cost of
8 running that resource and there's excess capacity,
9 the Company could run that resource at its capacity and
10 sell the additional into the market; is that correct?

11 A. I presume that that's correct as well. I would
12 add that, you know, with a gas plant, obviously there's
13 more uncertainty what's going to happen 20 years from now
14 than with a solar project that has contracted terms for
15 20 years. I think both the ratepayer and the developer
16 have certainty they know that price is going to much more
17 than the gas plant.

18 Q. Okay. But the Company does have the
19 opportunity in the future to choose at what rate it's
20 going to run that gas plant and that would be based on
21 optimizing its economics with whatever the current market
22 prices are.

23 Is that correct to the best of your knowledge?

24 A. So, I guess, so, could you clarify that a
25 little bit more as well? So, you're asking me,

1 if the Company -- in 20 years if the Company will be
2 able to run their natural gas plant or not?

3 Q. I'm just asking that if the Company owns the
4 gas plant, would it not have the ability in 20 years,
5 whatever the market conditions are, to choose to run it
6 in an optimal economic fashion, whether that be full
7 output, no output or somewhere in between?

8 A. Well, I guess I have a hard time answering that
9 question, but I guess it's hard to predict whether it
10 would be able to run it economically or not because who
11 knows what the price of natural gas is going to be in
12 20 years.

13 Q. Okay. But I guess if the gas price in 20 years
14 is too high to run economically, they could shut that
15 plant off and not produce any 20:52:30 hadn't proves any
16 energy?

17 A. I would assume that would be the case.

18 Q. Okay.

19 A. And with a renewable energy project that's
20 contracted for 20 years, they wouldn't even need to worry
21 about that because they know what the price is today
22 20 years in the future.

23 Q. Twenty years into the future, they are also
24 locked into purchasing every kilowatt hour that comes out
25 of that renewable project whether that's economic or not?

1 A. Right, but there is a huge benefit to the
2 ratepayers to know what that certainty is in the future
3 to date whether it's in the money or out of the money,
4 correct. But they do know what that is.

5 **Q. Okay. I'm not saying the risk is the risk that**
6 **your investors are unwilling to take; is that correct?**

7 A. I would say that the certainty that comes with
8 that is required for our investors, whether that's debt
9 or equity, but the same benefit is also enjoyed by the
10 ratepayers.

11 **Q. And so, that's -- you're saying that that's a**
12 **risk that your investors are unwilling to take but that**
13 **that same risk is a benefit to ratepayers; is that**
14 **correct?**

15 A. That the certainty of knowing what the price
16 is going to be paid and received is a benefit to both
17 parties in my opinion.

18 **Q. And how would that differ from the certainty**
19 **in price of, say, a natural gas purchase in 20 years?**

20 **Would that not also be a benefit to the natural**
21 **gas producer and the Company under that same reasoning?**

22 A. I think it would if there was a contracted
23 price for that natural gas in 20 years, presuming that
24 it was a low price today.

25 **Q. Okay. Thank you.**

1 A. And not taking into account the environmental
2 risk and other things that go along with that.

3 Q. Thank you. It's really been compared today,
4 and I'm asking you because you're more knowledgeable
5 about the development side, it's been said that the
6 Company and ultimately these costs generally passed to
7 ratepayers are making similar long-term hedges when they
8 construct a new generation facility; is that correct?

9 A. It would seem so to me, yes.

10 Q. And it's also been argued that the Company does
11 so with limited risk because it seeks a pre-approval here
12 and --

13 A. Correct.

14 Q. -- and it recovers those through its rate base
15 through the period in which that plant is still being
16 used; isn't that correct? And because of the lower risk,
17 would you expect that a rate of return on that would be
18 commensurately lower?

19 A. Which risk are you talking about?

20 Q. So, Company-owned generation facilities.

21 A. Okay.

22 Q. Because of their reduced risk, would it be a
23 fair assumption that their rate of return on that, then,
24 is lower because they are more assured of the return that
25 they'll get on that?

1 A. Their rate of return is lower than what?

2 Q. Well, that was my next question. What rate of
3 return is SunEdison requiring to build these projects?
4 What's the return on equity on it?

5 MR. DODGE: I'm going to object to that
6 specific question. I'm pretty sure that's considered
7 confidential and proprietary and not something that could
8 be disclosed in public.

9 THE WITNESS: That is correct.

10 MR. DODGE: Nor do I think it's relevant.

11 MR. JETTER: I think it's directly relevant.
12 If you're going to compare, which has been done multiple
13 times by certain parties today, if we're going to compare
14 Company-owned resources in the long-term hedges and risk
15 involved with those, I think the rate of return on those
16 is important to evaluate whether financing those projects
17 is in fact similar to financing long-term QF projects.

18 MR. DODGE: And that could have been asked in
19 discovery and appropriate protections taken. It was not
20 done. It can be disclosed publicly. If you're going
21 to insist upon clearing the room and trying to get an
22 answer, we'd have to go call the general counsel and see
23 whether he's allowed to testify.

24 This could have been anticipated in advance.
25 That's very highly proprietary confidential information

1 to any developer or any company. It's not something
2 they disclose.

3 MR. JETTER: Would you be able to answer
4 whether it's higher than ten percent?

5 MR. DODGE: I don't know that, but if you're
6 going to ask, the Company's return is over 15 percent
7 before tax. So, let's get apples and apples and not
8 oranges. But I don't know if he can even answer that.
9 I really do not know that.

10 THE WITNESS: I can't answer that.

11 MS. HOGLE: Your Honor, excuse me. I'm sorry.

12 THE HEARING OFFICER: Yes.

13 MS. HOGLE: I think I heard Mr. Dodge testify
14 that the Company's return was 15 percent. I'd like that
15 stricken from the record. That may or may not be
16 confidential or what have you, but I think that needs
17 to be stricken from the record.

18 MR. DODGE: It isn't testimony. It's just my
19 statement. So, whether you strike it or not, it's
20 irrelevant. Take 9.8 and gross it up by tax because it's
21 15 point something, but if she doesn't trust my math --

22 THE HEARING OFFICER: Okay. Well, I think the
23 record should reflect that that was a statement not under
24 oath and not by a witness. And I think that covers it.

25 Back to Mr. Jetter. I guess I'll ask you,

1 are you making a motion to close the hearing and take
2 some time to deal with answering this question?

3 BY MR. JETTER:

4 Q. I'll withdraw the question. I'm not sure the
5 value of that would be persuasive in the outcome of this
6 necessarily. So, I'll withdraw the question, but I would
7 like to ask kind of a corollary question with that.

8 If you're getting a guaranteed fixed-price
9 payment for every kilowatt hour you deliver over the
10 course of 20 years, is it accurate to say that, at least
11 within that period, that your risk involved in that
12 project is as low as the Company's risk in one of its
13 resources?

14 A. I would say no, it is not. And I am not an
15 expert in utility finance, but my understanding is,
16 their rate of return is guaranteed. I don't know
17 if that's accurate or not, but I know that our rate
18 of return is not guaranteed.

19 There's lots of factors that go into that.
20 If you build a wind farm and you miscalculated how much
21 the wind blows, you can end up with a much lower return
22 and there's no way to inflate that return. It's going
23 to be what it is. So, I would say our risk is not
24 comparable with a utility, with the Company.

25 Q. Would you say that that probably varies with

1 the type of resource that you're using? So, for example,
2 would you say that solar is significantly lower risk?

3 A. It could be. Solar resource is generally more
4 consistent than a wind source. So, it could be, but if a
5 certain developer was not sophisticated enough to
6 understand that, then they could take a lot of risk
7 upon themselves.

8 Q. Thank you. You said that currently your
9 projects employ about 800 construction workers;
10 is that correct?

11 A. That is correct.

12 Q. And there would be about 25 ongoing full-time
13 employees?

14 A. Yes.

15 Q. Do you know if that's more or less than there
16 would be had that same generation come from another
17 source like a natural gas plant?

18 A. I do not know on the construction side of that.
19 I would imagine that on the operation side it's less but
20 I do not know. For a coal plant it would be less.
21 I don't know about a natural gas plant.

22 MR. JETTER: Okay. Thank you. Those are all
23 of my questions.

24 THE HEARING OFFICER: Thank you. Ms. Hogle?

25 CROSS-EXAMINATION

1 BY MS. HOGLE:

2 Q. Just a few questions. Were you in the room
3 when Mr. Beach testified that current avoided cost prices
4 are about \$30 per megawatt hour?

5 A. I was.

6 Q. Would it surprise you to know that the 20-year
7 levelized price of some of SunEdison's contracts is
8 around \$100 per megawatt hour?

9 A. It would not.

10 Q. Okay. On cross-examination you testified that
11 it was a benefit for customers to have fixed-price
12 contracts because they know what it costs for 20 years
13 let's say; is that correct?

14 A. That is correct.

15 Q. How is that a benefit for ratepayers if current
16 market prices stay for 30 years -- for the 20 years,
17 how would that be a benefit?

18 A. At the time -- so, SunEdison has signed 22
19 power purchase agreements. And first of all, maybe I
20 should back up a little bit. So, the power purchase
21 contracts that you're referring to are the Schedule 37
22 power contracts; correct?

23 Q. Correct.

24 A. Okay. So, those contracts make up a small
25 portion of SunEdison's portfolio of megawatts, probably

1 around 20 megawatts. And so, those higher priced power
2 purchase contracts were executed under a former avoided
3 cost methodology which took into account a significant
4 capacity cost, capacity payment which would be counted
5 for about half of the energy of payments and the other
6 half was energy payments. So, the total of the project.
7 So, probably about 20 megawatts is what you're referring
8 to. The larger contracts, and I would say 95 percent of
9 contracts that SunEdison has signed is significantly
10 lower than that, less than half of that in general terms.

11 So, I would say that the majority of our
12 contracts are significantly beneficial to ratepayers.
13 The first contracts that we signed were developed under
14 avoided cost methodology, they give a lot more benefit to
15 capacity and because solar projects do generate during
16 the day, they do receive a significant capacity payment.

17 And I think that whole argument and discussion
18 that was discussed in one of the dockets whether that was
19 fair or not. And I think since that was -- since the
20 capacity payment was removed from the avoided cost
21 methodology, I think it was determined that that
22 did not benefit the ratepayers.

23 So, I would concede that on those approximately
24 20 megawatts, it probably wasn't a good deal for the
25 ratepayers, but I would say that the system is working

1 because after we sign those contracts, then that issue
2 is brought before this Commission and they were able
3 to remove that at their discretion.

4 And so, I believe that the current avoided cost
5 methodology is very beneficial to ratepayers.
6 Hence, the \$33 that you mentioned earlier.

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

9 THE HEARING OFFICER: Thank you. Any redirect?

10 MR. DODGE: No. I have none. Thanks.

11 THE HEARING OFFICER: And Commissioner Clark?

12 EXAMINATION

13 BY COMMISSIONER CLARK:

14 Q. Good afternoon, Mr. Harris. Thanks for being
15 here. I have some questions for you about the projects
16 that you refer to early in your direct testimony.

17 Were they all constructed on the strength
18 and financed on the strength of purchase power agreements
19 that the Commission approved?

20 A. Yes -- no, they were not. So, the Schedule 38
21 projects were. The Schedule 37 projects did not need
22 approval from the Commission.

23 Q. And as to the Schedule 38 projects, a number of
24 those aren't yet completed if I'm correct; is that right?

25 A. None of the Schedule 38 projects are completed.

1 **Q. And what's the completion date that you're**
2 **contemplating, the operations date for those?**

3 A. They will be completed between June and
4 September of 2016.

5 **Q. Do you have experience in seeking financing**
6 **for these sorts of projects that involves a stream**
7 **of payments that's different than 20 years?**

8 A. I do not.

9 **Q. Do you know whether your company does?**

10 A. Yes. I believe they do.

11 **Q. And do you have any knowledge of the Company's**
12 **experience in seeking financing?**

13 A. I have general knowledge but not details.
14 But we do develop projects in different markets
15 in different parts of the country and --

16 **Q. And can you put boundaries on the financing**
17 **arrangements that you're familiar with, the high side**
18 **and the low side in relation to the duration of the**
19 **payment streams or the pricing, the periods of time**
20 **over which the pricing is fixed?**

21 A. Yeah. So, generally, there are some parts
22 of the country where some markets that are more liquid
23 than Utah or the terms are less than 20 years.

24 However, there are hedging instruments
25 available in those markets that are used in order to

1 contract out the power for a longer term. And I don't
2 understand the nuances of how that works because
3 I haven't worked with them specifically.

4 But if you're in a liquid market and you can
5 hedge that out further, then that creates the certainty
6 that banks and investors need if that makes sense.

7 **Q. And when you say, "less," how much less?**

8 A. I believe 15 years in some of those markets.
9 However, the caveat is at the end of the 15 years, the
10 projects are still located in a liquid market where they
11 can readily sell the power from those projects.

12 **Q. In those arrangements or any others that you're**
13 **aware of -- well, before I ask that, actually, what's the**
14 **high side, in other words --**

15 A. The longest term --

16 **Q. Right. Right.**

17 A. We've done 25 years and I believe there are
18 some 30-year power purchase contracts. And obviously,
19 from a developer, the longer the better. The cost of
20 capital goes down with the longer terms and hence the
21 lower price of the PPAs that we can enter into.

22 **Q. In any of these arrangements that you're aware**
23 **of, is there a provision for adjusting either the energy**
24 **or the capacity payment before the expiration of the**
25 **term?**

1 A. I really don't know the answer to that.

2 I presume that there may be, but I really don't know
3 the answer to that.

4 **Q. Regarding your testimony that PacifiCorp's**
5 **proposal would -- I don't want to mischaracterize it, but**
6 **would either halt or significantly retard the development**
7 **of QF projects, do you have a sense of where the tipping**
8 **point is between three years and 20 years?**

9 A. You know, that's a good question and obviously
10 we've thought about that. And we don't have a good
11 answer to that. We know that we can finance a 20-year
12 project or a 20-year contract term.

13 Could we contract a 19-year? I would think we
14 probably could. But where that starts stops, I don't
15 know. But what I do know is that the shorter term, the
16 more difficult it becomes and the higher our cost of
17 capital becomes and it makes projects less financially
18 viable overall because the cost of capital increases
19 because there's more risk introduced.

20 COMMISSIONER CLARK: That's all. Those were
21 all my questions. Thank you, Mr. Harris.

22 THE HEARING OFFICER: Commissioner White?

23 COMMISSIONER WHITE: I have no questions.

24 Thanks.

25 THE HEARING OFFICER: I don't have any.

1 Thank you. Mr. Dodge?

2 MR. DODGE: As a final witness, the Coalition
3 would like to call Hans Isern.

4 THE HEARING OFFICER: Mr. Isern, do you swear
5 to tell the truth?

6 THE WITNESS: I do.

7 THE HEARING OFFICER: Thank you.

8 HANS ISERN,

9 having first been duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. DODGE:

13 Q. Would you please state for the record who you
14 are, for whom you work, and on whose behalf you're
15 testifying?

16 A. Yes. My name is Hans Isern. It's spelled
17 H-a-n-s. And the last name is I-s-e-r-n.

18 I am the senior vice president of origination
19 for sPower. sPower is a Utah-based IPP.

20 Q. I apologize, Mr. Isern. I've been calling you
21 Isern. You were too nice to correct me before.

22 A. That's fine. Everybody does.

23 (RMCRE Exhibit 3, 3.0R, and 3.0SR Identified)

24 BY MR. DODGE:

25 Q. Mr. Isern, did you cause to be developed and

1 **filed in this docket direct testimony, rebuttal**
2 **testimony, and surrebuttal testimony under your name?**

3 A. Yes.

4 **Q. And do you adopt that testimony here as your**
5 **testimony in this proceeding?**

6 A. I do.

7 MR. DODGE: Mr. Chairman, I'd move the
8 admission of Coalition Exhibits 3, 3.0R and 3.0SR?

9 THE HEARING OFFICER: If any party objects to
10 the motion, please let me know. Seeing no objections,
11 the motion's granted.

12 (RMCRE Exhibits 3, 3.0R, and 3.0SR Admitted)

13 BY MR. DODGE:

14 **Q. Mr. Isern, would you provide a summary of your**
15 **testimony?**

16 A. Absolutely. sPower believes that the current
17 20-year PPA term is proper and should remain in place.
18 Anything less we believe will be a major blow to utility
19 scale renewable development.

20 We further believe that capital and jobs
21 will leave Utah based on any decision of that sort.
22 And pricing under three-year PPA terms very well might
23 be higher than pricing under longer PPA terms due to the
24 risks involved and the requirement for capital providers
25 such as ourselves to invest in projects.

1 Essentially, for three-year and five-year
2 terms, we very likely just won't do. We'll move our
3 development efforts and dollars to another state for,
4 you know, terms and the kind of, call it the 15- to
5 20-year range, it would be very difficult for us to do
6 and would severely impact our ability to arrange for
7 low-cost financing.

8 We have discussed this both with our own board
9 and investment committees as well as our tax, equity,
10 and debt providers. And everyone had the same reaction
11 that we did. One of the items that I don't think has
12 been covered well thus far is the categorization of
13 risks. And our opinion, the benefits of a long-term
14 QF pricing are two ways.

15 It does benefit developers who need long-term
16 price certainty for power sales, but we also believe that
17 it benefits ratepayers who likely intend to be in the
18 Utah market purchasing energy for long periods of time
19 who would like to not be exposed to risks of long-term
20 purchases.

21 Furthermore, we think that the QF program is
22 working very well as of today as evidenced by the PPA
23 rates going from over \$60 down to 60 to 50 to 40 to 30.
24 That's what should happen in competitive markets, and we
25 view that as a success, not as a reason for concern.

1 We also believe that 20 years is the current
2 industry standard. It is the standard for reasons.
3 That is the usual finance tenor of debt that gets put
4 on the projects. And I have found it interesting that,
5 you know, Rocky Mountain Power might consider entering
6 into a 15-year coal supply provision because that is
7 standard for coal. Our standard is 20 years.

8 So, we would ask not to have our standards
9 significantly changed as well. I think that concludes my
10 summary.

11 MR. DODGE: Thank you. Mr. Isern is available
12 for cross-examination.

13 THE HEARING OFFICER: Thank you.

14 Ms. Dutton, anything?

15 MS. DUTTON: No questions.

16 THE HEARING OFFICER: Mr. Ritchie?

17 MR. RITCHIE: No questions.

18 THE HEARING OFFICER: Mr. Sanger?

19 MR. SANGER: No questions. Thank you.

20 THE HEARING OFFICER: Mr. Moore?

21 MR. MOORE: No questions.

22 THE HEARING OFFICER: Mr. Jetter?

23 CROSS-EXAMINATION

24 BY MR. JETTER:

25 **Q. I do have a few questions. Good afternoon.**

1 Thank you for being here.

2 Is it correct that a big part of your job
3 in evaluating the way in which you finance a project
4 is evaluating the risk involved with that project?

5 A. Absolutely.

6 Q. And is it also -- generally, your testimony
7 has been that, I believe you had said that you might be
8 able to finance a 15- to 20-year project and then you
9 generally only finance 20-year or longer projects;
10 is that correct?

11 A. That's correct. We have financed 15-year
12 projects in states and markets where there are other
13 incentives. For example, in North Carolina, there was
14 a large state tax credit that provided additional revenue
15 to offset the fact that it is a shorter term PPA.

16 We've seen the same in certain Northeast states
17 such as Massachusetts which have very high prices.
18 Essentially, what that leads to is front loading of the
19 revenues. So, we've been comfortable in certain
20 circumstances with shorter term PPAs, once again,
21 in the 15-year time range when there are other
22 significant revenue streams to help keep investors cool.

23 Q. Okay. And so, really, that's just based
24 on a higher rate of return for that investment;
25 is that correct?

1 A. Not necessarily. Think about the percentage
2 of revenue that is contractually guaranteed.

3 Q. Okay. And the more percentage that's
4 guaranteed, the more likely you are to lend on it;
5 is that correct?

6 A. Yes. Not exactly lend but provide capital.

7 Q. Okay. And in that formula, do you compare --
8 essentially, you would make money by having a variation
9 or a difference between the cost of the capital to your
10 company and then the rate at which you seek return on
11 that capital when you lend it to one of these projects?

12 A. Somewhat, yes. We're an equity provider. So,
13 we would provide cash equity into the projects and then
14 earn a return over time. Usually most of that return
15 comes from revenues under a long-term PPA.

16 Q. Okay. And would you say, then, that the
17 ability to provide financing for a project, then,
18 is dynamic? It changes with cost of capital in the
19 market or other resources? It's not a fixed number
20 that's always going to be the same?

21 A. Well, I suppose that the ability to provide
22 capital or the availability of capital does change from
23 year to year. That said, in my experience and in the
24 past multiple years of having renewable projects
25 financed, no one has been doing three- to five-year PPAs.

1 And the industry standard has been 20.

2 We've seen a lot of 25-year PPAs as well.

3 Q. I'd like you to change to a slightly different
4 line of questioning here just briefly.

5 You had mentioned that you think that the Utah
6 QF pricing mechanism, our method of calculating the price
7 has been working appropriately because as each additional
8 resource is added to the queue, the price is lower.
9 Eventually that would presumably I guess reach zero.

10 Is that ...

11 A. I don't know about reaching zero but having
12 your marginal costs decrease with increasing supply
13 is consistent with my understanding of the intent.

14 Q. Okay. And so, you could have a perfectly
15 working-well market where you have a lot of QF
16 applications and a lot of QFs being built;
17 is that correct?

18 A. Yes.

19 Q. And you could also have a perfectly
20 working-well market where there are no QF applications
21 and none being built; is that correct?

22 A. Well, I don't think that would be a QF market,
23 then. If there's no participants, I don't see how you
24 would have the existence of a market.

25 Q. Well, isn't it your testimony that as the

1 **prices being paid decrease that your supply would**
2 **decrease?**

3 A. Yes. So, efficiently or effectively, you have
4 a dynamic mechanism to ensure that the most economically
5 viable projects get built and those that are not
6 economically viable, they would not accept the QF price
7 and would exit the queue.

8 Q. Okay. And At some point, you would reach a
9 point where there is not another economically viable
10 project; is that correct?

11 A. Not necessarily because conditions will change
12 so that you might reach that point where you don't see
13 anything for a year or two years.

14 But, you know, as there are fluctuations and
15 panel prices and other costs, as there are fluctuations
16 in natural gas prices, you might see it become more
17 viable to once again develop under the QF program.

18 Q. Thank you. And so, following up on that,
19 it would be fair to say, then, that it's certainly
20 possible, then, to have a multi-year period with no
21 QFs being built and it would still qualify in your
22 opinion as a market that's working well?

23 A. I don't know if I would say it's working well
24 if you have multiple years where no QF projects are being
25 built. It might be working well if you have low volume

1 for a couple of years, but without any specifics of the
2 example, it's hard for me to opine.

3 **Q. Let's just assume everything stays equal,**
4 **energy prices stay equal and each QF in the queue**
5 **displaces a reduced value and so each QF subsequently**
6 **receives a lower value.**

7 **In an efficient market, would you not expect**
8 **that you would reach a point where there are no more**
9 **efficient projects to be built and that would be the**
10 **optimum number of QFs?**

11 **A. I suppose, theoretically, if PacifiCorp is --**
12 **other supply stays statistic and their load stays static,**
13 **you know, and a lot of -- I think you said if all else**
14 **stays equal, then, yes, they would expect for there to be**
15 **a set number of QF projects developed unless, you know,**
16 **developers can somehow create more economically**
17 **attractive projects over time, but assuming that they**
18 **can't, then, yes, there would be a point where you would**
19 **fill up the abilities of QFs to provide a benefit**
20 **to ratepayers and to obtain contracts.**

21 **Q. Thank you. And so, wouldn't that ultimately**
22 **reach the conclusion that the number of QFs being built**
23 **in a particular period is not necessarily indicative**
24 **of whether the market is working correctly?**

25 **A. Well, I don't know if your example is really**

1 realistic because it assumes a lot of things that we
2 don't see in practice.

3 In my opinion, a working QF market would see
4 contracts being signed at declining marginal prices.
5 Now, that might take time to get there. I don't think
6 anyone would expect, you know, your QF program to develop
7 overnight. I don't think anyone would expect it would,
8 you know, fill up in a number of months.

9 But there would be period as projects are
10 developed and development cycles can range from I guess
11 six to 48 months depending on the size of the project.

12 And during that time, you would start seeing
13 the marginal price decreasing as more and more projects
14 are brought on line, all else being equal.

15 **Q. And let's say hypothetically you are in an**
16 **environment where you have a 30 percent tax credit and**
17 **that tax credit ends.**

18 A. Yes.

19 **Q. And in an efficient market, would you expect**
20 **that you would reach every QF or nearly every QF that**
21 **could be developed economically taking into account**
22 **the 30 percent tax credit. Once that tax credit ends,**
23 **would you expect to see the need for QFs?**

24 A. I think that it would take some time. I think
25 that the ITC expiration at the end of '16 would

1 definitely hit the pause button on QF CODs.

2 Q. And whether there are new QFs built in the
3 subsequent years, would you say that that may or may not
4 be a reflection -- may not be I guess a reflection of
5 whether the market is working well or whether it's not
6 working well?

7 A. Well, the ITC would be an external factor that
8 would effect the economic viability of the project.
9 So, we're not asking for, you know, higher avoided cost
10 pricing because the ITC is expiring. We're asking for
11 the PPA terms to remain unchanged at 20 years.

12 Q. And do you think -- I guess -- let's ask a
13 slightly different question.

14 At the current avoided cost rates, without the
15 tax credit, is it likely that you would finance a 20-year
16 project based on the costs that you're seeing today for
17 those projects as well as the avoided cost rate of,
18 let's say, \$40 a megawatt hour?

19 A. I think that would be difficult and we would
20 need to see significant movement in EPC costs that would
21 be essentially construction and then your equipment
22 costs.

23 MR. JETTER: Okay. Thank you. That's all the
24 questions that I have. Thank you.

25 THE HEARING OFFICER: Thank you, Mr. Jetter.

1 Ms. Hogle?

2 MS. HOGLE: I have no questions.

3 THE HEARING OFFICER: No questions? Okay.

4 Mr. Dodge, any redirect?

5 MR. DODGE: No. Thank you.

6 THE HEARING OFFICER: Okay. Thank you.

7 Commissioner Clark?

8 EXAMINATION

9 BY COMMISSIONER CLARK:

10 Q. Mr. Isern, in the descriptions that you've
11 given us of the kinds of arrangements, PPA arrangements
12 that are acceptable to the Company in terms of
13 development, do any of those or have any of those
14 involved some form of adjustment or adjustability either
15 to the energy component or the capacity component?

16 A. No, none that I can think of. Everything is
17 under a fixed-price contract. There may be escalation
18 built into the pricing but it's still fixed from day one
19 and then, you know, each year your contract price may
20 vary but it is a fixed price from the day you sign
21 through the delivery term of the PPA.

22 COMMISSIONER CLARK: Thank you. That's my only
23 question.

24 THE HEARING OFFICER: Commissioner White?

25 EXAMINATION

1 BY COMMISSIONER WHITE:

2 Q. With respect to the ITC eligibility,
3 I understand from the testimony given today that it's
4 set to expire at the end of this year.

5 For eligibility purposes, does a QF have
6 to reach the commercial operations day or is it a certain
7 amount of construction or capital spent to be eligible
8 for that ITC?

9 A. Yeah. I might have misspoken. The ITC
10 deadline would be to have a project in service by the
11 end of 2016. If you are not in service and delivering
12 energy and receiving revenue, then you would not qualify
13 for the ITC.

14 There is some discussion about amending that
15 to have started construction language where developers
16 and financiers can invest a certain amount of money and
17 start work on a site to qualify it, but as of today,
18 the projects must be in service and delivering energy
19 and receiving revenue as of December 31st, 2016.

20 COMMISSIONER WHITE: I have no further
21 questions.

22 THE HEARING OFFICER: Okay. Thank you.
23 I don't have any. Thank you, Mr. Isern.

24 MR. ISERN: Thank you.

25 THE HEARING OFFICER: Mr. Dodge, anything

1 further from you?

2 MR. DODGE: That's all. Thank you.

3 THE HEARING OFFICER: Okay. Does any party
4 have anything else before we adjourn?

5 MR. RITCHIE: Mr. Chairman?

6 THE HEARING OFFICER: Mr. Ritchie, yes.

7 MR. RITCHIE: I did want to ask about whether
8 a briefing schedule would be available here. I would say
9 from Sierra Club's standpoint, I think it could be
10 helpful in this case.

11 In particular, I think there was some issues
12 addressed about the legality of some of the proposals
13 under PURPA. And if that gets into some pretty
14 complicated legal questions, that we would like to brief.

15 THE HEARING OFFICER: Okay. So, we have a
16 request from the Sierra Club for legal briefing.

17 Let me ask all the parties to comment on that.
18 Why don't we start with the applicant.

19 MS. HOGLE: I would leave it up to the
20 Commission. If the Sierra Club is going to brief, the
21 Company would then want the opportunity to do so as well.

22 THE HEARING OFFICER: Okay. And, Mr. Jetter?

23 MR. JETTER: I think from the Division's
24 perspective, we're probably a little indifferent. We're
25 happy to do it if the Commission thinks it's of value.

1 I guess that's probably my response. Thanks.

2 THE HEARING OFFICER: Okay. And, you know
3 what, to save time, why don't I go back and say,
4 do you have thoughts on timing or length?

5 Why don't we go back to Mr. Ritchie.
6 And I'll still get around to everybody, but I wanted
7 to get those two issues out of the way.

8 MR. RITCHIE: The immediate thing that comes
9 to mind for me is Thanksgiving. That's why I would maybe
10 say the week sometime after Thanksgiving.

11 THE HEARING OFFICER: Okay. Ms. Hogle?

12 MS. HOGLE: So, that would mean next week and
13 then Thanksgiving week and then they would be due the
14 week after Thanksgiving. Is that --

15 MR. RITCHIE: I would normally say two weeks
16 but two weeks puts us right there in that Thanksgiving
17 holiday. So, I would say, you know, go to the following
18 week.

19 MS. HOGLE: And I think that would be
20 appropriate, and I would add that it would be one round
21 submitted by everybody at the same time.

22 As far as length, I'm not sure. I think there
23 should be a limit. Again, I think I would leave it up to
24 the Commission to determine.

25 THE HEARING OFFICER: We stop reading after the

1 limit. Thank you. Mr. Jetter?

2 MR. JETTER: That's a reasonable schedule for
3 us. I don't think anyone would need a lot of pages to
4 cover it. So, whatever page limit the other parties
5 or the Commission would like.

6 THE HEARING OFFICER: Okay. Thank you.

7 Mr. Moore?

8 MR. MOORE: The Office would be would be happy
9 to go along with the Division's recommendation.

10 THE HEARING OFFICER: Okay. Thank you.

11 Ms. Dutton?

12 MS. DUTTON: I think that if the Commission
13 feels it's necessary, then we would definitely comply
14 and submit a brief.

15 THE HEARING OFFICER: Mr. Dodge?

16 MR. DODGE: Yeah. I think maybe the
17 Commission's sort of practice is if someone feels it
18 would be useful unless the Commission feels otherwise
19 that that's been accommodated. And I encourage you to do
20 that. I guess I might suggest one additional as a
21 personal item. And that is, it would be work better
22 for me if we went into the following week, the 11th of
23 December or something like that. Kind of splitting the
24 holidays.

25 THE HEARING OFFICER: Okay. Thank you.

1 Mr. Sanger?

2 MR. SANGER: If other parties believe that
3 briefs are necessary, then we would support that.
4 We're not asking for briefing, but if other parties
5 believe it's necessary, we would support that.

6 As late as possible for the briefs given the
7 holidays. So, whatever the Commission wants but the
8 later the better for us.

9 THE HEARING OFFICER: Okay. Should we
10 deliberate just for a moment or two and chat? Why don't
11 we take a recess until about, I'm going to say 4:40.

12 Thank you.

13 (Recess taken from 4:36 p.m. to 4:40 p.m.)

14 THE HEARING OFFICER: Okay. We're back on the
15 record to address the issue of legal briefing.

16 Any party who desires to express to us their
17 position on legal issues with respect to interpretation
18 of federal or state PURPA may do so by Wednesday,
19 December 9th within a 10-page limit. And we will
20 consider anything submitted by that date before we
21 finalize our order. Anything further from anyone?

22 (Discussion off the record)

23 THE HEARING OFFICER: The witnesses, if you
24 have your summary in writing, the court reporter would
25 appreciate having a copy of that if you have it here

1 with you. And seeing nothing further from anybody --
2 oh, sorry.

3 MR. SANGER: Your Honor, I would just like to
4 ask the question so I understand. You said the legal
5 issues on the interpretation of PURPA. Do I read that
6 as the legal brief should be limited to only those legal
7 issues or whether it would be broader than that?

8 THE HEARING OFFICER: Well, I think the request
9 was for legal briefing, not for necessarily closing
10 statements or something to that effect.

11 Since it wasn't a brief that the Commission
12 asked for, it was something requested by the parties,
13 I was, I think, just trying to be helpful in my
14 explanation, but I don't think we're limiting it to any
15 legal issues. I think any legal issue that any party
16 wants to address is not off the table.

17 MR. SANGER: Okay. I wanted to give you
18 whatever you want. Okay. Thank you.

19 THE HEARING OFFICER: And seeing nothing
20 further, we are adjourned. Thank you.

21 (Proceedings concluded at or about 4:42 p.m.)
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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, CLARK L. EDWARDS, a Certified Shorthand Reporter and Notary Republic in and for the State of Utah, residing at West Jordan, 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, 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.



Clark L. Edwards, CSR
Utah License No. 109221-7801

Exhibits	\$3 16:24 17:2 191:17	199:7	100,000 169:21	15- 259:4 261:8
EXHIBIT-OREC1 6:14 153:1 160:9	\$30 43:16 87:14,23 148:25 149:12 191:18 251:4	(D) 198:14 (E) 198:14 (F) 198:15	1014 184:6 107 29:1,3,7,13 30:11,14 108 51:6 10:36 84:2 10:47 84:2	15-035-53 8:7 15-305-70 25:3 15-year 46:3 260:6 261:11, 21
EXHIBIT-00RMP 6:5 196:25	\$33 253:6 \$33.12 234:24	<hr/> 0 <hr/> 0 17:1,4 44:21 52:21	11 10:22 32:14 86:23 101:3 131:14 132:2, 9,17 133:9 142:25 145:11, 12	16 101:4 266:25
EXHIBIT-CROS1 6:8 63:24 68:13,17 223:6	\$38.11 19:1 \$40 34:11 43:14 73:7,18 149:23 267:18	0.3 154:20 03 64:15 67:4	11-year 103:3 131:16,23 133:2 141:19 142:10,19 169:6,7	17 59:17,18 170 27:14 170.5 14:25
EXHIBIT-CROS2 6:9 75:12 84:15 180:13	\$40,000 169:14 \$50 34:9 132:18	03-035-14 13:2 39:21 40:25 64:11 120:1	11-year 103:3 131:16,23 133:2 141:19 142:10,19 169:6,7	18 39:14 101:4 130:4,10,13,20 132:8,15 133:12
EXHIBIT-CROS3 6:13 136:21,25 139:21,24	\$54 171:17 \$6 169:12 \$60 34:6 259:23	<hr/> 1 <hr/> 1 184:14	111 203:4 111(d) 181:2, 22	19 59:16 19-year 256:13
\$	\$64.13 18:23 \$73.3 15:1,2 \$80 72:23,25 73:13 \$90 132:16	1,041 14:9 1,991 18:17 1.0 230:14 231:2,6 1.0SR 230:14 231:2,6 1.6 168:19 171:20,24	11th 272:22 12 32:14 44:1 101:3 12-035-100 13:2 39:21 40:25 110:21 114:1 181:5 12:25 151:20	19.7 205:12 1978 12:12 216:7 1980s 205:1 216:25 217:24 218:23 219:23 224:3,8 1983 219:3 222:20 226:6 227:15
\$1.2 19:3,7,9 73:22	\$64.13 18:23 \$73.3 15:1,2 \$80 72:23,25 73:13 \$90 132:16	10 121:17 135:4 217:2	12 32:14 44:1 101:3 12-035-100 13:2 39:21 40:25 110:21 114:1 181:5 12:25 151:20	1984 231:14 1986 153:15 217:25 219:12 223:1 227:15
\$10 43:19 170:5 173:3	\$90 132:16 <hr/> (1.6 168:19 171:20,24	12-035-100 13:2 39:21 40:25 110:21 114:1 181:5 12:25 151:20	1987 142:1 171:18
\$100 132:13 251:8	(1) 197:9 (1)(a) 197:6 (2)(a) 197:8 (3)(b) 198:24 (A) 198:7 (b) 199:1 (c) 198:13	10 121:17 135:4 217:2	13 21:7 153:9 14 78:2 101:4 216:21 15 101:4 134:6 138:14,22,24 248:6,14,21 255:8,9	1990 153:23 154:7,12
\$14 17:10	(1) 197:9 (1)(a) 197:6 (2)(a) 197:8 (3)(b) 198:24 (A) 198:7 (b) 199:1 (c) 198:13	10,000 78:23 10-page 273:19 10-year 146:3	15 101:4 134:6 138:14,22,24 248:6,14,21 255:8,9	
\$2 17:9 18:8	(1) 197:9 (1)(a) 197:6 (2)(a) 197:8 (3)(b) 198:24 (A) 198:7 (b) 199:1 (c) 198:13	100 78:5,6 132:15 169:19 223:3 234:24		
\$2.20 18:8	(1) 197:9 (1)(a) 197:6 (2)(a) 197:8 (3)(b) 198:24 (A) 198:7 (b) 199:1 (c) 198:13			
\$2.9 14:22,23	(1) 197:9 (1)(a) 197:6 (2)(a) 197:8 (3)(b) 198:24 (A) 198:7 (b) 199:1 (c) 198:13			
\$200 49:1	(1) 197:9 (1)(a) 197:6 (2)(a) 197:8 (3)(b) 198:24 (A) 198:7 (b) 199:1 (c) 198:13			
\$21 17:1,3,4,9	(1) 197:9 (1)(a) 197:6 (2)(a) 197:8 (3)(b) 198:24 (A) 198:7 (b) 199:1 (c) 198:13			
\$26.02 19:2	(1) 197:9 (1)(a) 197:6 (2)(a) 197:8 (3)(b) 198:24 (A) 198:7 (b) 199:1 (c) 198:13			

<p>1993 168:25</p> <p>1995 196:19</p> <p>1:30 151:18</p> <p>1:35 151:20</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 184:14</p> <p>2,000 33:8 148:4 168:7</p> <p>2,253 14:10</p> <p>2,959 14:13</p> <p>2.0 238:6,17,21</p> <p>2.0R 238:6,17, 21</p> <p>2.0SR 238:6, 17,21</p> <p>20 12:19 16:22 17:3,6,14,16 18:11 43:3 45:6,7 49:6 54:7 61:1,13 65:9 66:5,22 68:22 69:25 82:24 85:14 86:11 100:3,6, 8 117:17,23 121:4 125:13 127:13 129:13 131:20 133:6, 12 134:6 137:20 138:14, 23 139:7 144:25 149:3 173:16 174:24 178:4 182:16 189:8 192:16 194:2,11 200:2 204:15 212:10</p>	<p>221:15 224:2 231:25 243:13, 15 244:1,4,12, 13,20,22 245:19,23 249:10 251:12, 16 252:1,7,24 254:7,23 256:8 260:1,7 263:1 267:11</p> <p>20- 216:25</p> <p>20-20 221:3,8</p> <p>20-plus 20:19, 25</p> <p>20-year 13:9, 21 15:6 16:3,5, 9,15 17:5,12, 18 18:14,15 20:12 21:19 22:20 23:22,24 24:2 33:5,21 34:15,21 35:12 60:17 64:23 67:7 69:2 85:8, 9,10,23 87:23 88:5 89:2 100:2,12 104:4 105:7,12 106:6,13 119:24 120:2, 10 121:1 124:24 127:2, 7,12 130:17 131:22 132:7, 12 133:1 135:12 139:19 145:23 148:25 173:13,17 181:1,21 182:13 187:6 188:20 189:14 194:8 211:20 212:18 213:16</p>	<p>234:23 240:5 251:6 256:11, 12 258:17 259:5 261:8,9 267:15</p> <p>2000 191:25 209:25 221:10</p> <p>2000-2001 219:21</p> <p>2000s 216:19 220:24</p> <p>2001 209:25 221:10</p> <p>2003 67:13 221:21</p> <p>2005 210:2</p> <p>2006 32:1</p> <p>2007 210:2</p> <p>2010 32:14 52:9,13 101:3</p> <p>2011 15:11</p> <p>2012 15:11</p> <p>2013 21:10,12</p> <p>2014 14:13</p> <p>2015 14:24 15:2 21:3,15 27:14 72:22 73:7 85:20</p> <p>2016 27:19 31:21 209:2 234:16 254:4 269:11,19</p> <p>2019 146:14,21</p> <p>2024 21:11,21, 22,24 234:16</p>	<p>2027 21:13 100:15 105:10</p> <p>2028 21:4,16 42:2 49:17 99:24,25 100:15 105:10 114:3 118:20</p> <p>2030 203:7</p> <p>2035 100:11 105:13 242:23</p> <p>2046 231:22</p> <p>20:52:30 244:15</p> <p>21 103:8 104:17</p> <p>210 38:25 206:10</p> <p>210(m) 206:20</p> <p>213-A 202:10</p> <p>22 27:13 239:8 251:18</p> <p>24 30:5,9,20 31:2 173:11</p> <p>2400 29:20</p> <p>246 43:12</p> <p>25 97:8 103:23 104:3,14 106:24 130:17 138:14 212:10 239:18 250:12 255:17</p> <p>25-megawatt 103:20 104:9</p> <p>25-year 137:20 174:25 263:2</p> <p>2560 202:10</p>	<p>26 165:8</p> <p>27 31:13</p> <p>270 216:24</p> <p>275 218:21</p> <p>28 64:19</p> <p>29 65:4 203:1</p> <p>2900 30:7</p> <p>292 39:1</p> <p>292-101(b)(6) 39:14</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 257:23 258:8, 12</p> <p>3,000 148:4,17 149:12</p> <p>3,294 14:11</p> <p>3.0R 257:23 258:8,12</p> <p>3.0SR 257:23 258:8,12</p> <p>3.2 143:14</p> <p>3.2(a) 143:15</p> <p>30 66:4 87:25 142:1,9,21 149:22 169:14 201:2 219:25 228:7,17 251:16 259:23 266:16,22</p> <p>30-year 193:12 216:25 224:2 228:14 255:18</p> <p>300 102:24 187:21</p>
--	---	--	---	---

300-kilowatt 104:12	87:25 259:23	197:3,6	9th 202:10 273:19	acceptable 187:3 268:12
30s 148:20,22	40- 85:11,18	5th 108:20 242:23	<hr/> A <hr/>	access 67:1
31 231:17,19	400 171:25	<hr/> 6 <hr/>	A-1 182:4	accommodated 272:19
31st 269:19	40s 148:21,22	60 72:17 202:25 259:23	A-plus 193:13	accompany 64:25 69:4 120:6
32 163:18	42 29:18 90:17	602(3) 198:19	a.m. 84:2	accompanying 202:19 203:21
35 66:5,23 120:3 204:25	43 203:2	602(3)(b) 198:20	abandon 232:7	accomplished 234:10
35-year 67:9 69:24	4300 29:18	<hr/> 8 <hr/>	abbreviate 99:12	account 35:7 41:9 52:20 89:17 93:10,16 122:22 123:8 246:1 252:3 266:21
36 15:20,24 19:18 82:19 109:7,15 123:4	44.6 18:21	80 73:2 145:2	abilities 265:19	accounts 47:20
36-month 81:6 107:16,23 122:17 123:2	45 202:25	80-megawatt 142:14	ability 37:23 45:8,11,13 65:18 67:22 69:9 110:13 170:11 208:9 209:20 227:25 244:4 259:6 262:17,21	accuracy 18:7
37 12:16 24:6 96:24 97:1,2,5, 6,12,15,23,24 98:4 99:8 103:19 104:9 106:1 172:24 173:1,2,10 179:10 233:4 251:21 253:21	46 42:21 90:17	800 86:22 239:15 250:9	above-market 221:1	accurate 158:4 193:23 203:2 241:24 242:7 249:10,17
3700 29:17	48 109:14 163:24 266:11	80s 215:22 216:18 221:4	absent 13:12 181:16	accurately 179:7
38 12:16 24:7 97:3,6,24 173:20 179:11 233:4 253:20, 23,25	4:36 273:13	84103 184:7	absolutely 44:6 50:10 90:2 172:7 173:21 258:16 261:5	achieve 17:11 195:23
3:00 215:9	4:40 273:11,13	85 219:7 234:25	accelerated 233:23	acknowledge 19:8 34:5 67:11
3:10 215:7,9	<hr/> 5 <hr/>	86 228:24	accept 51:20 65:7,12 76:24 91:9,13 106:18 127:17,21 134:2 135:13 142:23 143:13 222:15 264:6	acknowledges 20:20
<hr/> 4 <hr/>	50 73:4 163:22, 24 203:6 259:23	87 219:7	9.8 248:20	acquire 21:5 45:4 49:18,23 50:2 86:7 95:1, 11 96:6 101:25
40 32:11 34:2 72:18 73:4	50-year 85:11, 18	897 30:6	<hr/> 9 <hr/>	
	54-12-1 57:22	90s 216:18 220:24 221:4 229:12		
	54-17-201(2)(c) 197:19	94710 202:11		
	54-17-201(2)(c)(ii) 197:12	95 252:8		
	54-17-402 76:19			
	54-17-602(2)(a) 197:7			
	54-17-602(3)(b) 198:18			
	54-17-602(a)			

<p>107:20 199:7 acquired 118:20 214:21 acquires 20:7 22:24 23:1 50:24 95:20 131:23,24,25 acquiring 178:18 acquisition 14:2 19:21 23:25 42:2 81:14 97:19 100:14 101:18, 20 107:8 178:19 198:8 215:1 234:1 act 12:12 111:25 185:13 action 14:6 20:22 21:4,7,8 22:3,8 24:3 47:12 49:19 50:1 85:7 actions 48:9 active 29:2 239:4 actively 15:23 75:23 actors 216:14 actual 127:22 153:9 173:18 Adam 9:18 add 26:16 33:13,14 140:8 159:23 170:21 172:18 243:12 271:20</p>	<p>added 105:16 171:23 263:8 adding 169:24 addition 10:25 47:16 145:16 164:11 239:23 additional 74:19 82:24 83:4 95:17 109:10 121:12 146:12 148:4 164:12 169:24 170:21 172:18 181:17 187:5 199:1 205:15 207:8 209:13, 15,16 210:8 233:21 236:3 242:18 243:10 261:14 263:7 272:20 additions 48:15 49:23 107:9,12 address 83:22 84:9 98:15 99:6,10 113:8, 11 161:11 184:3,6 187:9 202:8,10 204:7 214:14 222:6 273:15 addressed 12:22,25 37:18 39:22 42:17 98:17 99:5 233:15 270:12 addresses 102:2 addressing 150:5</p>	<p>adds 208:13 adjectives 227:16 adjourn 270:4 adjust 226:19 adjustability 268:14 adjusted 113:7 199:8 adjusting 255:23 adjustment 51:12 93:4 188:1 268:14 administer 62:21 administered 229:2 administrative 28:13,21 64:7 admission 11:17 84:10 116:10 139:20 157:22 159:22, 25 163:6 167:17 177:6 223:5 231:1 238:16 258:8 admit 61:18 admitted 11:25 28:15,24 84:14,15 116:17 139:23, 24 160:3,9 163:9 167:22 177:12 182:22 185:4 203:25 231:6 238:21</p>	<p>258:12 admittedly 228:6 adopt 75:20 223:12 225:6 258:4 adopted 25:11 75:6 154:11,13 178:9 234:6 adoption 232:11 adopts 236:2, 11 advance 247:24 advantage 23:4 27:20 31:14 32:1,7,9 179:2 advantageous 81:11 advise 95:7 advocates 149:8 affect 93:18 120:21 181:25 affected 156:11 198:10, 15 affirmative 182:7 affirmed 108:8 afternoon 92:8,9 152:1 171:11 177:17 180:5,6 183:20 190:13 196:11,</p>	<p>12 211:17 215:14,15 231:10 241:2 253:14 260:25 afterthought 171:22 agnostic 62:19 92:17,21 93:11,13 agree 19:8 31:19 38:13 39:25 40:15 61:14 102:1,2 104:17 106:19 111:6,14 137:24 139:16 178:16 180:25 181:3,15,20 182:8,14 196:13 199:13, 21 211:19,24 216:9,13 226:18 agreed 73:21 77:25 89:7 agreeing 54:7, 8 102:5 agreement 45:24 46:1,3 49:3 69:1 71:17 95:15 97:17 169:1,2, 6,7,14 172:15 173:17 177:22 194:24 196:3 208:21 agreements 8:5 31:16 45:19,21 46:4, 7 70:21 74:15 75:1 107:25 117:2 137:12</p>
--	--	--	--	---

138:16,20 164:7,8,9 195:4 251:19 253:18	118:4 119:22 120:24 125:12 218:14 243:6	57:22	applicability 56:23	approval 25:4 109:9 197:20 233:20 253:22
agrees 224:13	alternatives 42:24 44:4 113:20 220:18	annual 81:7 122:21	applicable 41:13,16 228:12	approve 90:21 125:9
ahead 27:2 51:8 116:23 162:9 188:14	ambivalent 62:15	answering 244:8 249:2	applicant 270:18	approved 120:20 181:6 188:16 189:1,2 253:19
aiming 135:22	amend 191:3	answers 11:14 37:7 116:7 163:3 167:14 177:3 184:20 203:17 211:2	applicants 222:24 226:10	approximately 219:4 252:23
air 146:6 168:16 169:8, 12,19 172:8,9, 12,16 174:2 218:15	amending 269:14	anticipated 234:17,19 247:24	application 8:3 11:8 12:9 22:13 25:4 29:9 82:22 113:6 115:21 176:16 184:8 189:18 204:18	apt 233:6
alarm 235:3	amount 16:9 19:16 30:10 33:24 35:2 70:22 103:24 105:17 109:9 111:2,7,9 131:9 132:19 133:9 138:25 148:3 149:2 178:18 207:4 212:15 214:23 239:17,25 269:7,16	anymore 72:15 114:20	applications 30:17 117:4 263:16,20	area 45:2 150:22
align 188:17	amounts 117:8 147:20 178:24	anyone's 134:23	applied 36:16 38:7 123:8 180:13	areas 25:1
aligned 14:4 22:7 24:3 51:13 188:6	analogy 72:16 193:18,19 200:16	apologize 92:4 114:15 257:20	applies 38:17 49:11 82:17	arena 127:19
all-in 73:6,10	analyses 79:14,22 81:12	apparently 133:5	apply 36:1 104:18 173:1 186:5	arguably 16:2 35:13 85:3 114:5
alleviate 186:21 200:12	analysis 19:25 53:20 82:20,24 86:20 228:5	appearance 91:19	approach 57:8 63:9,22 75:10 136:7 152:18 196:23 221:23 232:4	argue 20:13,15 34:15
allocation 33:15,19	analyst 8:22 176:14	appearances 8:7 9:16	applies 38:17 49:11 82:17	argued 246:10
allowable 12:10 165:13	animal 134:25 135:10	appeared 56:5	approach 57:8 63:9,22 75:10 136:7 152:18 196:23 221:23 232:4	argues 234:3
allowance 65:9	Annotated	appearing 91:23	applied 36:16 38:7 123:8 180:13	arguing 35:6 62:16,17
allowed 35:23 60:17,19 69:14 98:8 108:21 247:23		Appendix 234:22	applies 38:17 49:11 82:17	argument 34:18,21 38:15,17 51:2 232:14 234:5 235:22,25 252:17
alternate 128:16		apples 248:7	applies 38:17 49:11 82:17	Argumentative 61:6,23 63:18
alternately 148:11		apples-to- apples 208:20	applies 38:17 49:11 82:17	arguments 118:10
alternative 43:15 45:10		apples-to- oranges 232:21	applied 36:16 38:7 123:8 180:13	arise 117:14

<p>arrange 259:6</p> <p>arrangement 174:22 199:2</p> <p>arrangements 84:25 138:17 254:17 255:12, 22 268:11</p> <p>array 187:2</p> <p>article 138:5 145:15 146:10</p> <p>articles 136:13,19,23 137:2 139:11</p> <p>aspects 91:10</p> <p>assertion 155:2</p> <p>assessing 69:24</p> <p>assessment 20:4 49:17 53:1</p> <p>asset 53:3 85:18 239:24</p> <p>assets 131:4 134:20 137:9 139:13,17 232:24 233:3, 13,23 234:2</p> <p>assigning 30:15 35:10</p> <p>association 197:10</p> <p>assume 86:5,6 98:18 113:12 126:10 147:12 148:1 151:4 206:12 225:9 244:17 265:3</p>	<p>assumed 105:7 120:10 217:22</p> <p>assumes 80:13 266:1</p> <p>assuming 113:5 217:11 225:1,8 265:17</p> <p>assumption 21:20 87:3 89:1 148:16 189:7 246:23</p> <p>assumptions 87:14 132:24</p> <p>assurance 195:18</p> <p>assured 246:24</p> <p>assuring 120:18</p> <p>asymmetrical 191:16,22 195:12</p> <p>attached 11:6 158:23</p> <p>attempt 35:1 63:1 123:1</p> <p>attempting 27:17 31:24 231:16</p> <p>attempts 18:2</p> <p>attention 75:24 76:16 211:3</p> <p>Attorney 8:16</p> <p>attractive 199:23 200:2 265:17</p>	<p>attributable 27:16 31:24</p> <p>attribute 23:14 112:2</p> <p>attributes 23:17 235:12</p> <p>audience 9:5</p> <p>audit 122:21, 23</p> <p>August 242:23</p> <p>authenticate 223:15</p> <p>authentication 159:8</p> <p>authenticity 158:18 159:8</p> <p>authorized 140:11</p> <p>automatically 19:15</p> <p>availability 161:10,15 223:2 232:9 236:2 262:22</p> <p>Avenue 184:6</p> <p>average 14:13, 16 18:22,24 30:8 106:3 130:2,11 131:14 134:5,7 205:11</p> <p>avoid 16:18 70:11</p> <p>avoided 13:1, 16 16:17,20 17:4 35:7,18 36:2,17 38:9,</p>	<p>18 39:13,16, 18,19,24 40:1, 6 41:20 49:6 50:13,21 51:14 53:9,21 55:16 83:6 84:21 85:2,3,4 87:6,9 89:15 97:4 118:5,7,18 120:19 148:6 153:4 179:6,10 181:4,5 182:5, 9,20,24 188:8, 15,21 189:1,13 194:21 199:10, 17,22 200:1,12 206:7 207:3,16 208:8,10,14 209:10,14 213:16 214:1 216:4 222:16 226:11,15,19 227:22 229:7 232:10 241:23 251:3 252:2, 14,20 253:4 267:9,14,17</p> <p>avoided-cost 89:23</p> <p>avoiding 88:22 209:24</p> <p>avoids 17:2</p> <p>aware 45:17, 20,25 48:3 59:10,18 60:6, 11 96:15 105:1 116:4 127:25 128:1 151:11, 15 154:10,14, 17,18,23 156:25 157:7 213:12 255:13, 22</p>	<hr/> <p style="text-align: center;">B</p> <hr/> <p>B-e-l-a 176:13</p> <p>back 44:2,12, 13 45:10 46:12 51:20 52:8,11 74:3 78:25 81:17 101:3 102:11 104:7 112:16 113:2 128:21 140:18 141:10 144:23 151:21 158:23 160:14 168:5 195:19,21 198:17 228:19 248:25 251:20 271:3,5 273:14</p> <p>back-pressure 168:20</p> <p>backed 42:24 46:23 47:1</p> <p>background 10:19 136:17 222:1,3</p> <p>backing 135:15</p> <p>backup 117:10 145:17,20 146:10,15 147:18 148:4, 15</p> <p>bad 193:10,19 194:5 200:17</p> <p>balance 64:24 66:25 69:2 94:15 110:14 120:4,9 140:3, 5,25 141:5</p>
---	--	--	--	--

<p>balancing 52:20 69:8 76:6 92:25 93:10,16 122:22 123:8 164:6</p> <p>bands 93:9</p> <p>banks 255:6</p> <p>barrier 177:24</p> <p>barriers 58:5</p> <p>base 53:11 106:4 163:17 168:16,17 169:9,13,19 172:8,9,12,16 173:8 174:2 207:12 233:4, 10,21 246:14</p> <p>base-load 105:23 114:13, 14</p> <p>based 21:20 46:6 48:9 49:7, 13 52:3 53:8 56:14 59:1,7 61:9,16 65:22 85:2,10 87:13 99:17 100:13 101:13,20 117:22 120:25 121:18 139:11 178:7 189:9 207:3 211:22 212:23,24 222:16 223:9 226:2 241:21 242:8,14 243:20 258:21 261:23 267:16</p> <p>basically 128:19 151:12</p>	<p>218:13 224:10 229:7</p> <p>basing 53:19</p> <p>basis 41:15 75:19 82:10 109:7 113:17 205:19 207:7, 25 208:20 227:23</p> <p>Beach 9:5 201:19,20,24 202:9,16 203:12,21,25 204:2,6 211:4 215:11,14 222:1 223:11 224:25 251:3</p> <p>bear 109:20 225:16</p> <p>bearing 26:20 41:18 196:1</p> <p>Beaver 239:11</p> <p>began 222:25</p> <p>begin 121:19</p> <p>begins 65:5</p> <p>behalf 8:11 9:8,11 91:20 102:8,16 157:1 162:21 167:7,8 202:19 204:8 230:11,12 231:14 237:24 238:2,3,11 257:14</p> <p>Bela 8:21 176:6,13,20 177:12</p> <p>believed 223:23</p>	<p>believes 119:18 120:8 121:11,16 177:23 179:5 208:1 258:16</p> <p>Bella 176:1</p> <p>beneficial 23:18 194:23 252:12 253:5</p> <p>benefit 23:15 35:11,12,22 86:20 119:24, 25 121:14 193:1 194:21 204:12 209:23, 24 210:8,10 245:1,9,13,16, 20 251:11,15, 17 252:14,22 259:15 265:19</p> <p>benefiting 120:9 185:25</p> <p>benefits 23:17 35:10 186:14 187:18,19 189:16 209:8, 9,13,16 210:15 214:3,10 259:13,17</p> <p>Berkeley 202:10</p> <p>Berkshire 56:4 57:3 94:10,13</p> <p>bet 18:4 19:12 73:24 74:1,2 83:3</p> <p>betting 18:3 73:23</p> <p>biases 224:14</p>	<p>bid 47:13,17</p> <p>bidding 137:17</p> <p>big 261:2</p> <p>billion 14:22, 23 19:3,7,9 73:22</p> <p>biomass 94:2 144:19 163:19</p> <p>bit 12:20 13:13 17:21 33:1 36:4 37:6 44:13 53:7 62:19 64:22 83:20 92:13,15 168:12 186:17 207:1 231:11 242:10 243:25 251:20</p> <p>blacked 79:7</p> <p>blah 76:4</p> <p>Bloomberg 138:5</p> <p>blow 147:18 258:18</p> <p>blows 249:21</p> <p>board 170:16 173:14 259:8</p> <p>Bob 8:20</p> <p>bodies 36:6, 11,15</p> <p>bold 57:23</p> <p>bond 170:8 171:18 174:24 175:1</p> <p>boon 239:16</p> <p>borne 186:20</p>	<p>bottom 62:11 65:4 78:2 93:15 104:16 222:5,20 226:6 227:14</p> <p>bought 193:8</p> <p>bound 191:20 192:4 233:1</p> <p>boundaries 254:16</p> <p>break 83:20,24 84:8 112:17 138:23 150:14, 18 156:2 215:6,7</p> <p>Bridger 48:1</p> <p>briefing 270:8, 16 273:4,15</p> <p>briefly 19:19 22:9,10 24:12 124:18 214:15 263:4</p> <p>briefs 273:3,6</p> <p>brimstone 92:12</p> <p>bring 52:11 54:2 239:19</p> <p>bringing 134:24 210:4</p> <p>brought 200:24 253:2 266:14</p> <p>brown 147:5</p> <p>Bruce 120:2</p> <p>Bryan 237:14, 18,25</p>
---	--	---	--	--

<p>build 21:23 27:18 31:25 41:21 49:24 50:12 53:14 59:2 70:13 86:25 88:14 95:6 190:23 192:10 194:3 221:7 239:2 240:9 247:3 249:20</p> <p>building 220:19</p> <p>builds 94:6,12 95:22 207:24 212:23</p> <p>built 30:16 32:12 34:3 59:10 60:16,21 62:20 72:20 94:1 96:8 101:6,7 117:14 120:22 130:17 133:13,20,24 142:1,8 144:4, 5 148:17 152:16 153:22, 25 154:15 165:12,18 168:13 171:14, 17 172:6,15 174:16 185:23 188:25 189:7 192:25 194:20 206:2 210:17 220:21 240:7 263:16,21 264:5,21,25 265:9,22 267:2 268:18</p> <p>built-in 110:10</p> <p>bundle 137:9</p>	<p>burden 91:7,9 125:16 126:18</p> <p>burn 218:18</p> <p>business 53:24,25 63:5 168:15 184:2,4 202:7,10,12 204:10,11 210:21 211:1</p> <p>businesses 58:4</p> <p>button 62:1 267:1</p> <p>buy 43:18 72:5 135:17 209:16 243:4</p> <p>buying 134:19 194:2</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C-l-e-m-e-n-t-s 10:17</p> <p>C.F.R. 39:14</p> <p>Cal 222:2,7 223:25</p> <p>calculate 16:20 45:4 217:13</p> <p>calculated 97:23 99:8 102:3 179:7 182:11</p> <p>calculates 213:4</p> <p>calculating 213:20 263:6</p> <p>calculation 178:6,14 213:8</p>	<p>calculation's 97:6</p> <p>calculations 50:20,21 182:24</p> <p>California 145:11 202:11 205:1,6 210:1 215:21 216:24 218:3,10,15 219:2,21,24 220:3,9,23 221:4,10,15,18 222:11 224:4, 7,10 228:2,5 229:14</p> <p>California's 203:5</p> <p>call 16:19 44:24 105:25 111:12 115:1 143:7 162:10 166:19 229:25 237:14 247:22 257:3 259:4</p> <p>called 217:19</p> <p>calling 103:17 257:20</p> <p>calls 10:1 176:1 183:17 201:18 234:14</p> <p>canceled 30:18,21</p> <p>cap 97:7 103:20 104:9</p> <p>capacity 11:5 18:18 21:22,25 39:9 40:22,23 41:1,3,8 42:4 44:16,19,23</p>	<p>45:5,9 46:16 53:4 85:21 86:10 87:10 88:18 97:4,14, 19 98:2,5 99:17 102:3 104:18,20 106:10 113:9 114:8 117:21, 23 118:1 120:25 121:3 164:20,22,23 165:1 169:24 175:2 178:6, 11,13 186:7,10 188:12 217:1, 3,9 218:12,20 219:13 220:16 228:16 229:8 234:24,25 243:8,9 252:4, 15,16,20 255:24 268:15</p> <p>capital 46:25 47:4,8,16,20, 25 48:5,7 49:12 50:8,18 51:17,19,21,24 52:3,5,9,17,25 53:8 60:6 73:9 107:9,12 164:12 255:20 256:17,18 258:20,24 262:6,9,11,18, 22 269:7</p> <p>capital- intensive 192:24 205:16</p> <p>capture 169:24</p> <p>carbon 187:18 214:8</p>	<p>care 70:3</p> <p>career 204:25 215:24</p> <p>careful 13:24 48:12 168:9</p> <p>carefully 138:12</p> <p>Carolina 205:5 261:13</p> <p>carries 71:23</p> <p>carry 22:12 104:3</p> <p>carrying 178:24</p> <p>case 11:8 25:5 26:21,22 29:4, 6 35:24 36:15 37:22 38:7,20 49:13 52:13 53:4 55:7,20 80:9 99:14 103:11 108:16, 19 109:9 126:12 153:4 158:22 173:2 176:17 180:23 181:8,13 184:9 199:14 205:14 212:3 226:12 233:17 244:17 270:10</p> <p>cases 30:17 35:8,19 38:4, 12,23 40:9 52:19 54:22,24 93:5 233:18</p> <p>cash 137:18 262:13</p> <p>catch 101:23</p>
---	---	--	---	--

categorization 259:12	chamber 158:16	chosen 121:19 237:8,9 253:11,13 256:20 268:7, 9,22	234:3,5,11
category 46:21 93:13	change 12:21 32:21 50:21 53:3 63:1 118:2,9 125:16 132:20 189:14 209:14 222:23 226:9,13,17,19 235:5 262:22 263:3 264:11	Circuit 108:20	Clements' 11:18 71:12 98:10
caused 115:23	changed 13:6 18:19 21:17 52:10 67:12,19 124:14 260:9	circumstances 65:13 67:19 93:7,8 224:7 261:20	client 152:22
caveat 255:9	changing 83:15 128:5 140:3 208:11	circumvent 185:24 189:15	clock 151:18
ceased 218:22	characterization 90:14 155:14 199:10	circumvents 193:17	close 10:22 22:9 112:16 163:22 249:1
central 101:5	Charles 8:18 115:1,6,13,17 116:10,17 161:4	cite 38:20 90:9 145:15 146:1	closed 210:21
CEO 130:22 131:1	chat 273:10	cited 38:3,7 54:22 55:7,20 128:9 138:1	closely 51:13 241:10
certainty 50:19 243:16 245:2, 7,15,18 255:5 259:16	cheaper 45:3, 10	City 184:6	closing 32:10
certificate 138:17	check 97:25 143:13	claim 58:17 74:13 77:21 80:8 81:22 127:22	closure 45:22
certificates 235:24 236:5	chemicals 44:21 52:21	claims 207:9	Club 9:4 42:13 201:18 202:19 204:8,9,18 208:1 211:1 270:16,20
cetera 57:14 58:4 89:20 164:14	choose 140:4 243:19 244:5	clarification 131:2 199:18	Club's 209:12 270:9
CFO 130:23	chooses 84:22 187:14	clarified 91:17	coal 44:8 45:23,25 46:3, 4,9 48:1 107:23,25 218:14 250:20 260:6,7
chair 62:16 112:22 160:22 175:10	chose 61:2 75:15	clarifies 92:1	coalition 9:8, 12,19 63:6 68:13 90:11 91:23,24,25 102:9,16 124:9 129:20 136:25 141:18 151:12 152:23 153:3, 5,12 157:1 162:22 163:16 165:6 167:8 180:13 229:24
chairman 54:16 56:21 63:22 64:6 75:10 80:21 84:7 223:9 229:23 237:13 241:1 258:7 270:5		clarify 124:1 168:11 174:15 191:10,15 215:3 242:10 243:24	
chairman's 67:15		Clark 112:24 113:1 114:17 160:23,24 166:16,17 175:11,12 183:8,9 201:10,11 227:4,6 229:16	
challenging 33:18			

<p>230:13 231:2 237:13 238:3, 16 257:2 258:8</p> <p>coalition's 153:6 164:4</p> <p>code 57:22 76:19 110:22</p> <p>CODS 267:1</p> <p>cogeneration 53:23 58:13 187:1</p> <p>cold-hearted 62:21</p> <p>collaborative 13:25 15:10, 12,15 16:7 70:24 74:22 75:2,5,18,22 76:8,25 77:25 79:20 80:12 81:18,20 82:9 83:2 108:25 109:16,23 122:7,16 123:3 180:19</p> <p>collaboratives 122:11,14 180:8</p> <p>collected 133:10</p> <p>colon 42:21 69:1</p> <p>combination 129:7</p> <p>combined 53:15 101:5 235:12,19</p> <p>combustion 141:23 168:14</p>	<p>comfortable 261:19</p> <p>commensurate ly 246:18</p> <p>comment 90:7 158:20 197:25 270:17</p> <p>commented 90:10</p> <p>comments 22:10 25:10,15 26:19 27:25 28:17 104:8 161:24 163:13 220:13 238:25</p> <p>commercial 10:18 269:6</p> <p>commission 8:6 12:22,25 24:4 31:16 35:6,25 36:1,6, 7,24,25 37:14, 15,23 39:22 40:10,11,25 49:2 51:21 55:21 57:19 58:15 64:3,15, 16 65:6,10,12, 17 66:24 68:4, 5 71:7 75:19 78:15 81:23 83:8 92:22,23 96:15,20 98:2 105:19,22 108:3,7,12,13, 20 110:12,21, 25 115:23 120:20 121:8 124:15 135:1 151:5 154:11 160:18 161:15 163:15 168:4</p>	<p>178:13 179:8 181:15 185:7 186:22 188:16 189:1,2,17 197:21 198:16 200:12 204:7, 10,14,20 205:2 207:15 208:2,5 211:2 213:2 215:22 222:11 224:4 225:6 231:15,18 232:2,7 234:7, 23 239:1 240:8 253:2,19,22 270:20,25 271:24 272:5, 12,18 273:7</p> <p>Commission's 64:11 181:12 189:9 199:14 207:21 208:8 209:14 232:3 272:17</p> <p>Commissioner 112:21,22,24 113:1 114:17 160:20,21,23, 24 166:13,14, 16,17 175:8,9, 12 183:6,7,8,9 201:7,8,10,11 226:25 227:2, 4,6 229:16 237:5,6,8,9 253:11,13 256:20,22,23 268:7,9,22,24 269:1,20</p> <p>commissioners 8:9 9:3 10:20 42:12 116:25 203:19 204:22 229:20 231:11</p>	<p>commissions 48:18</p> <p>commitment 85:12 199:2 200:20 207:11</p> <p>commitments 76:20 77:1 81:9</p> <p>committed 86:10</p> <p>committees 259:9</p> <p>commodities 15:9 207:19,22</p> <p>commodity 17:23 22:18,22 41:2,4,16,18 122:19 186:12</p> <p>common 22:12 65:8 127:6</p> <p>commonly 77:8 233:14</p> <p>commonly- available 77:13</p> <p>communicatin g 141:15</p> <p>companies 58:21 61:4 137:9 142:4</p> <p>company 10:1 12:11,14,17 13:8 15:8,14 16:1,8,14,21 17:5,8,10,13, 15,17,23,24 18:1,17,20 19:21,25 20:4, 5,10,15,17 21:5,19,21,23</p>	<p>22:19,23,24,25 23:2,6,18,21 25:18 27:12,14 28:8 29:8 35:5, 16 36:20 42:1, 23 43:7,13,17 44:2,23 46:2 47:3,5 48:4,10, 19,20 49:5,12, 15 50:23 51:18,20,25 52:2,4,7,11,16, 19,24 53:9 54:3,4 56:1 59:20 60:21 62:4,6,12 64:15 66:24 68:25 69:7,14, 23 70:16,23 71:21 72:20 73:19 76:10 78:5 80:2 82:11 86:20 92:16 93:19, 21,23 94:1,3,6, 8,11 95:12,18, 20,24 96:4,6,8, 10 101:24 102:18,20 103:21,22,25 104:19,22 105:2,6,10,19 106:18,20 107:11,12,13, 19 109:11,13, 18 113:8,12 114:23 115:22 117:3 118:5 119:9 122:16, 25 123:4 129:3,4 130:24 131:2 140:4,23 141:8 142:6,16 143:2 147:16 149:15 152:9,</p>
---	--	--	--	---

<p>13 168:8 177:20 178:17 181:10,23 187:25 232:7, 11,14,16 233:2,19 235:5,22 236:7,14 243:1,3,9,18 244:1,3 245:21 246:6,10 248:1 249:24 254:9 262:10 268:12 270:21</p> <p>company's 11:7,18 12:9 13:23 14:4 15:7 17:19 21:17 22:6,13 23:23,25 50:4 51:14 56:9 58:15 62:10, 11,23 67:3,5,6 68:6,8 69:6 79:15,23 82:22 86:10 92:20 94:17 95:16 97:18 103:10 106:16 107:8 109:3 117:20 118:18 119:5, 14 122:21 126:13,17 141:3 148:2 176:16 178:2, 20 184:8 186:2,5 187:12 188:7,9 189:18 231:23 232:23, 24 233:7,9 234:7,22 235:9 236:13 248:6, 14 249:12 254:11</p>	<p>Company- acquired 118:17 119:6, 13</p> <p>company- owned 44:7 45:17 46:21 179:1 187:23 246:20 247:14</p> <p>Company- sponsored 89:19</p> <p>comparable 72:19 249:24</p> <p>compare 19:4 20:1 247:12,13 262:7</p> <p>compared 13:7 182:16 186:3 194:5,7 208:19 242:20 246:3</p> <p>compares 30:7</p> <p>comparing 47:18 200:17</p> <p>comparison 197:10 232:19, 21 233:6,10</p> <p>comparisons 232:15</p> <p>compensated 232:17 233:5</p> <p>compensation 178:6 181:17</p> <p>competitive 47:13,17 259:24</p> <p>competitively 58:2</p>	<p>complain 126:24 220:17</p> <p>complained 124:18 220:12</p> <p>complaining 136:3 220:14</p> <p>complaints 76:9 135:23</p> <p>completed 59:10 170:3 192:19 239:13 253:24,25 254:3</p> <p>completely 19:8 59:20 61:19,21 80:12 142:16</p> <p>completion 254:1</p> <p>compliance 23:9 181:25 187:8,15 214:8 235:21 236:6, 10</p> <p>complicated 149:10 270:14</p> <p>complied 196:21</p> <p>comply 206:9 236:12,14 272:13</p> <p>complying 31:12 42:20 236:1</p> <p>component 228:21 268:15</p> <p>components 141:6</p>	<p>compromise 67:8</p> <p>concede 252:23</p> <p>conceive 125:10 135:5,7</p> <p>concept 18:13 49:10 128:12 136:16 139:10 141:2</p> <p>concepts 165:1</p> <p>concern 65:16 78:21 101:21 103:10,15 104:2 106:20 148:24 158:11, 25 164:15,19 168:7 219:11, 12 259:25</p> <p>concerned 19:12 82:13 103:10 119:4 147:10 164:21 165:2</p> <p>concerns 15:13 29:8 114:13 118:13 161:24 178:16, 19 179:6</p> <p>concluded 96:16</p> <p>concludes 24:7 121:22 179:11 236:15 260:9</p> <p>conclusion 161:6 210:20 265:22</p>	<p>condition 121:11</p> <p>conditioned 195:1,3</p> <p>conditions 81:14 182:10 224:7 244:5 264:11</p> <p>conference 56:22</p> <p>confident 18:9</p> <p>confidential 79:8 247:7,25 248:16</p> <p>confirm 85:25</p> <p>conformity 55:1</p> <p>congress 56:5 205:3</p> <p>connect 25:23</p> <p>connected 137:18</p> <p>consequences 168:10</p> <p>considerable 19:15 233:25</p> <p>considerably 30:10 243:7</p> <p>consideration 35:7,18 65:19 67:3,17,20 69:10 79:14,23 89:16,24 198:2,7</p> <p>considerations 35:17</p>
---	---	--	--	---

<p>considered 34:22 35:11 101:22 247:6</p> <p>consistent 55:3,8,22 58:18 75:21 82:21 91:10 110:15,16 111:4 121:7 122:23 123:1 126:14,19 135:19,21 137:6,21 138:18 189:4 227:19 250:4 263:13</p> <p>construct 246:8</p> <p>constructed 127:10 133:11 142:20 152:16 153:25 154:6 155:7,20 168:19 239:10 253:17</p> <p>constructing 239:5</p> <p>construction 59:11 168:18 210:16 212:12 239:10,14,15 240:7 250:9,18 267:21 269:7, 15</p> <p>consultant 115:14</p> <p>consulting 202:13</p> <p>Consumer 8:21,22 176:15</p>	<p>consumers 81:11 212:20 213:17</p> <p>contacted 161:9,14</p> <p>contained 116:6 131:3</p> <p>contemplated 20:1 77:3 81:13,15 119:1 186:19</p> <p>contemplates 77:12</p> <p>contemplating 254:2</p> <p>context 36:2, 17 38:8 64:5 74:2 136:24 164:3</p> <p>contexts 74:1</p> <p>continual 179:9</p> <p>continually 105:8</p> <p>continuation 220:10</p> <p>continue 24:4 28:22 58:22,24 59:2 61:4 77:16 84:6 102:12 106:5 113:13 147:25 155:21 164:10 172:2 198:12</p> <p>continues 105:5</p> <p>continuing 77:12</p>	<p>contract 8:4 12:10,15,18 13:4,9,12,21 15:6 16:3 17:5, 12,17,18 18:14,15,21 19:15,23 20:3, 10,12,15 21:19,24 22:6, 20,23 23:5,22, 24 24:2,5 27:18 29:1,3 31:25 32:5,7, 11,23 33:5,21 34:16,21 35:13 36:21 37:12, 13,20,25 43:3, 8 45:4 46:16 48:25 49:21 51:9 52:24 53:4,18 54:20 62:7 64:20 66:1 67:9 69:24 71:17,22 82:23 91:4 93:24 97:9 99:1,14 100:2, 13,17 101:11, 13,15,17,23 102:19,25 104:4,23 105:20 106:6, 8,10,14 108:14,22 109:5 117:1,16 118:21 120:2, 16,18,21 121:9 127:6 131:22, 23 132:1,3 133:5 134:3 135:2,4 139:7, 18,19 141:19 142:8,10 144:20 145:23 146:5,8,11,15,</p>	<p>18,21 147:9 154:11,16 155:1,13 156:18 164:25 165:16 169:5,8 170:11 172:2, 5,9,11,13,14 173:15,19,22, 23 174:3 177:21 178:3,7 185:19 187:6 188:20 189:8, 14,15,18 191:1 192:6,15 194:8 205:11 206:3 208:6 209:1 210:23 211:20 212:18 217:2,3 225:15 228:19 229:13 232:4 233:4 240:5,6 241:13,24 242:4 255:1 256:12,13 268:17,19</p> <p>contracted 239:25 240:1 243:14 244:20 245:22</p> <p>contracts 10:24,25 11:1 12:11,15,18 13:7,8 14:9,10, 12,16,21 15:4 16:5,9,11 18:18,22 19:5, 18,20,21 20:8 21:18 24:6 25:25 26:20 30:9,11,20 33:5,8,19,20, 24 34:2,6 41:25 62:8 65:9 68:20</p>	<p>72:15 74:19 78:24 81:10 83:7 86:5 93:4, 17,22 102:22 103:11,14,15, 17,18 105:3,8 106:1,13 107:13,14,16, 24 108:10 113:4,10 120:10 122:17, 18,19 123:6 124:23,24 127:11,12 130:11 135:12 142:12 144:10, 11,12,13 152:10,12 154:24 155:3, 4,6,8,15,20,22 157:9 164:16 165:13,17,18 169:4 171:15 178:24 190:15 195:10 200:22 204:16 205:8, 10,18,24 207:2,25 213:18 214:22, 25 216:25 217:11,19 218:8,23 219:9 220:2,4 221:6, 16,17,19,20 222:14,23 223:3 224:3,8 225:2,5,6,8,10 226:9,19 228:9,11,13,14 229:4,6,7,9 231:24 232:10, 20,22 233:7,8, 13 234:3,20 239:8 251:7, 12,21,22,24</p>
--	--	---	---	---

252:2,8,9,12, 13 253:1 255:18 265:20 266:4 contractual 147:20 contractually 262:2 contradict 153:16 157:13 contradicting 121:2 contrary 177:25 contrast 186:9 187:23 233:12 contribute 41:25 contributed 42:7 contribution 42:4 117:21 control 114:10 206:13 convene 56:22 convened 15:12 conversation 113:2 164:3 165:12 conversations 173:19 convince 170:16 173:14 cool 261:22 cooperative	197:9 copies 25:14 copy 27:7 31:8 75:15,16 273:25 core 53:24,25 corollary 39:24 40:6 249:7 corporation 199:1,5 corporations 58:7 correct 25:5, 12,13 29:4,15 30:13 31:3 32:2,3 34:19, 24,25 35:21 38:6,10 39:17 43:5 45:15,16 46:13 47:2,9 49:8,9,16 50:15,16,17 51:15,16 52:6 53:10,24 55:24 61:14 65:3,15 70:15 71:21 72:4 73:20 74:15 79:10,11 81:5 83:15,16 85:2,13 86:5 87:4,9,11,15, 20,24 88:5,6, 19 89:2 90:16, 18 92:18,19 93:5 99:14,15 100:16,20 101:16,21 102:16 103:12 104:24,25 105:9 123:6 124:5,6,12,13 127:10 128:13	129:9 130:14, 21 132:22 136:14 140:18, 19 141:12 142:10,21 143:3,24 145:5 148:22 151:23 152:24 155:13 157:5 172:6, 19,20 174:20 180:16 181:6, 7,18,19 182:6, 7 190:17,19,22 191:14 192:8, 19 193:2 194:12 195:24 200:18 203:13 212:21 215:22, 23 216:1,4,7 217:12 218:3, 5,24 221:16 238:4,5 241:5, 14,19 242:2 243:10,11,23 245:4,6,14 246:8,13,16 247:9 250:10, 11 251:13,14, 22,23 253:24 257:21 261:2, 10,11,25 262:5 263:17,21 264:10 correction 89:6 202:24 203:3 corrections 116:2 162:24 167:10 176:25 177:1 184:16 202:22 203:13 230:20 correctly 13:4 43:4,20 57:24	58:8 65:2 76:22 81:4 137:13 141:15 171:13 209:5 265:24 cosigner 193:22 cost 13:1,16, 18,19 16:17, 20,22,24,25 17:4,6 35:8,18 36:2,17 38:9, 18 39:7,8,13, 18,19,24,25 40:6 41:20 43:2,13 44:3, 19,20 45:3,5 49:6 50:20,21 53:21 55:16 72:19 73:10 83:6 84:21 85:1,2,3,4 86:20 87:6,9 89:15 93:4 111:17,19 118:6,7,18 119:11 148:7 153:4 170:4 179:6,10 181:4,5 182:5, 9,24 187:8,25 188:8,15,21 189:1,13 191:19 192:23 193:3,4,9,11, 15 194:20,21 195:7 196:20 197:2 198:9 199:10,22 200:1,12 201:3 206:7 207:3,4, 14,16 208:9,14 209:10,14 213:16 214:1	220:2 222:16, 21 226:7,11, 15,19 227:22 241:23 243:2,7 251:3 252:3,4, 14,20 253:4 255:19 256:16, 18 262:9,18 267:9,14,17 cost-effective 70:14 Cost-effectiveness 197:4,8 costing 39:17 costly 222:18 costs 14:19 22:2 35:10 43:1,16 44:8, 10,14,15,17, 23,25 45:15 46:21 50:13 51:14,24 52:21 53:2,5,9 62:8 73:6,7 88:22 89:20 93:3,7, 10 100:14 120:19 140:14 182:20 187:7 188:1,3 194:9 199:17 208:10 210:5 216:4 232:10 246:6 251:12 263:12 264:15 267:16, 20,22 counsel 8:18 9:18 37:2 215:17 247:22 counsels 84:4 counted
---	---	---	--	---

<p>143:14 252:4 counter 204:21 countering 235:22 counterparties 16:10 counterparty 16:4 counties 239:22 counting 105:11 country 108:16 127:3 254:15, 22 County 239:11, 12 couple 47:25 83:21,23 84:9 92:14 117:5 120:14 122:5 150:15 200:10 225:1 227:7 265:1 court 108:2 273:24 cover 89:4 170:18 272:4 covered 114:1 214:15 259:12 covering 12:7 44:9 covers 248:24 CPUC 222:16, 25 223:1 crash 228:23</p>	<p>create 117:11 185:11 265:16 created 115:22,23 131:2 creates 236:3 255:5 creating 235:8 creature 87:1 credible 23:20 credit 20:3 23:14 27:21 31:15 32:2,8, 15 37:13,19 95:17 111:22 193:10,13,19, 22 194:6,19 200:17 201:1,4 209:3 261:14 266:16,17,22 267:15 credits 32:9 110:20 236:5 creditworthy 135:15 Creek 45:23 crisis 208:4 209:4 210:1 219:21 221:10 criteria 197:11 232:16 critical 14:7 23:13 48:13 172:10 218:19 241:7 criticized 121:2</p>	<p>cross 63:24 68:13,17 75:12 84:15 136:21, 25 139:21,24 166:3 179:18 180:13 223:6 236:16 cross- examination 24:9,15,21,24 40:19 42:10 54:14 55:12 69:20 84:6,11 91:19 92:6 99:5 107:7 108:1 110:1 122:2,3 123:24 151:24 165:25 167:24 171:9 179:15 180:3 189:23 190:9 196:9 211:5,15 215:7,12 240:13,24 250:25 251:10 260:12,23 cross-examine 121:25 cross- examined 159:14,17 Crossborder 202:13 crossed 157:23 crossing 80:18 crux 51:2 240:11 CSP 137:5 cumulative</p>	<p>97:8 103:19 106:24 curb 208:10 current 12:19 15:21 22:3 31:20 49:7 50:13 51:14 53:9 56:18 72:1 86:9 87:13 88:24 99:21 100:19 102:19 109:3 169:6,8 171:14 172:4,23 173:9 181:5,21 182:8,9,11 189:13 191:9, 10 232:3 243:21 251:3, 15 253:4 258:16 260:1 267:14 curve 18:24 curves 226:16 customer 47:9 55:17 59:21 62:22,25 63:3, 8 82:15 94:15 111:18 232:6 235:4 customers 11:1 13:11,16 14:7 15:1 17:19,23 18:15 22:1 33:6 42:25 43:18 45:14 46:22 51:11 62:25 63:6 72:12 92:25 106:21 109:20,25 110:16 111:2</p>	<p>195:25 198:10 210:3,8 212:21 213:1,11,20,22 220:24 233:1, 11,15,22 234:1 251:11 customers' 15:4 cut 67:14 71:5, 10 cuts 37:3 102:6 cycle 14:5 98:5 220:6,7 cycles 170:1 266:10</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily 109:7 dairy 153:21 154:6 damages 41:7 damn 87:3 data 59:13 124:8 143:2,13 152:9 155:8 182:11 date 188:13 245:3 254:1,2 273:20 dates 227:14 day 53:5 119:11 138:9 231:22 243:3 252:16 268:18, 20 269:6 days 25:2 26:20</p>
---	--	---	---	---

deadline 269:10	declaration 153:7,10,19 160:1	86:24,25 87:8	228:10	234:4 271:24
deal 26:9 99:9 168:5 209:18 220:8,22 221:12 249:2 252:24	declining 208:16 266:4	demand-side 86:12	Deruyter 153:21	determined 13:9 40:23,25 68:5 69:24 81:11 98:25 105:13 113:8 197:5,10 198:16 252:21
dealing 39:16 133:17 142:12 165:8 192:23	decrease 263:12 264:1,2	demands 85:23	describe 43:22	
deals 57:15 149:9	decreases 104:10	demonstrate 58:16 65:14 125:11	describes 102:23,24	
dealt 77:3 216:3	decreasing 266:13	demonstrated 86:9 131:15	describing 136:14	determines 19:22 83:14
debt 128:17 129:1,2,7 140:17 141:6, 9,10 245:8 259:10 260:3	deep 165:9	demonstrates 131:18	description 227:11	determining 89:23
decades 233:1	Deer 45:23	deny 189:16,18	descriptions 268:10	develop 58:3, 22 61:4 94:20 142:7,14 155:12 156:18, 22 157:10 191:21 218:14 239:2 254:14 264:17 266:6
December 269:19 272:23 273:19	deferrable 99:23 118:19	denying 61:16	designed 174:16 204:21 208:3 232:12	
decided 64:15 181:16 207:14 222:12	deferred 101:6	department 31:6 242:12	desirable 58:1	
decision 31:17 36:15 42:1 47:3 48:11 49:15 50:8,18 52:3,5,8,14,15 53:8,12 73:17 108:2,11,15,21 110:18 181:13 199:14,15 210:22 242:7 258:21	defers 87:7	depend 136:5	desire 67:8 95:17 109:24 172:18 201:7 225:22	developed 61:13 126:7,8 127:24 143:22 144:20 147:8 204:17 205:7, 11,17,19 206:6 207:17 208:24 209:2,7 210:14,18 218:7 219:22 220:1 226:21, 22 252:13 257:25 265:15 266:10,21
decisions 85:11 186:18 233:17	deficiency 86:17 97:12 101:24	depending 33:24 59:3 87:25 99:18 132:2 266:11	desires 273:16	developer 50:7,11,18 119:19,21 121:3,17,18 124:3 128:19 129:7 134:2 142:13 146:7 181:9 195:8
	define 39:13	depends 46:14 51:24 132:23 172:22 192:20	desperately 218:12	
	degree 33:23	deploy 50:18 52:3,5,8	detail 70:2	
	deliberate 273:10	depreciated 133:19 134:20 142:9,21	details 45:25 56:17 96:22 108:18 109:21 111:23 254:13	
	deliver 172:25 249:9	depreciates 132:21	determination 50:4 97:5 98:18 99:2	
	deliverability 80:6	depreciation 233:23	determine 32:22 37:16 50:13 70:13 79:15,24 110:25 113:21 118:18 197:22	
	delivered 178:11	deregulation 229:14		
	delivering 269:11,18	deriving		
	delivery 198:8 268:21			
	demand 15:18			

<p>243:15 248:1 250:5 255:19</p> <p>developers 31:13 34:8 65:18 67:1 118:6,22 119:24 120:10 121:13,15 193:6 194:18 195:6 210:25 212:14 259:15 265:16 269:15</p> <p>developing 129:3 204:11 218:17 239:4 241:6</p> <p>development 58:12 61:12 63:16 68:2 90:13,21 91:12 110:3,11,14 118:15 119:2, 6,25 126:15, 20,21,22 127:9 133:18 134:20, 21 137:17 144:2 177:18, 25 178:1 185:14 186:25 189:10 206:5 208:7 210:9 212:12 214:8 218:22 222:12 232:5,9,12 235:6,14,18 238:1 246:5 256:6 258:19 259:3 266:10 268:13</p> <p>developments 118:23 156:10</p> <p>dictates 53:10</p>	<p>die 225:18</p> <p>differ 245:18</p> <p>difference 17:11 19:2 49:16 50:23 52:23 74:10 80:4,6 97:5,11 103:9,13,16 193:24 262:9</p> <p>differences 119:8</p> <p>differently 105:23</p> <p>difficult 32:19 61:15 91:2,5 125:9 185:21 190:16 235:2 256:16 259:5 267:19</p> <p>difficulty 218:16</p> <p>diligence 179:9</p> <p>diminished 104:15</p> <p>dire 218:11</p> <p>direct 10:10 11:2,5,19,24 26:23 34:20 115:9,16,24 116:11,16 117:18 151:3 156:1 162:18 167:4 176:9, 19,22 177:11 182:1 183:25 184:13,24 190:14 202:2, 15,18 203:20, 24 209:23</p>	<p>214:16 216:22 230:8,18 237:21 238:10 253:16 257:11 258:1</p> <p>directing 43:11</p> <p>direction 18:3 19:11 178:25 238:9</p> <p>directly 57:15 128:23 158:13 168:11 188:8 216:3 224:1 234:8 247:11</p> <p>Director 10:17</p> <p>disagree 80:12 227:10,13</p> <p>disallow 96:20</p> <p>disallowance 62:7</p> <p>disallowed 96:15</p> <p>disclose 60:23 248:2</p> <p>disclosed 247:8,20</p> <p>discourage 118:6 177:24</p> <p>discouraging 235:14</p> <p>discovery 214:22 247:19</p> <p>discreet 82:4</p> <p>discretion 253:3</p> <p>discuss 37:6 70:2 103:8,9</p>	<p>231:20</p> <p>discussed 47:13 48:17 53:7 75:2 84:17 109:22 165:4,6 171:13 186:16 252:18 259:8</p> <p>discusses 234:11</p> <p>discussing 26:21 47:25 227:8</p> <p>discussion 24:17 26:1 34:10 64:14 66:3 107:9 109:17 234:12 252:17 269:14 273:22</p> <p>dislikes 56:1</p> <p>dispatch 16:21 23:4 43:17 45:3 97:4</p> <p>dispatchable 114:14 117:10</p> <p>dispatched 23:2 42:23 44:25 119:15 179:2</p> <p>displace 16:18 114:3,5</p> <p>displaced 89:1</p> <p>displacement 88:4 114:2 234:19,25 236:13</p> <p>displaces 88:6 265:5</p>	<p>displacing 149:22 234:18</p> <p>disposition 199:3</p> <p>dispute 127:6 134:10 222:4</p> <p>disputed 30:22</p> <p>distinction 106:2,14 123:5</p> <p>distinguishes 43:9</p> <p>distinguishing 43:7</p> <p>distribute 26:8</p> <p>distributed 26:3</p> <p>distribution 26:11 132:3 137:11 152:22</p> <p>district 102:18 153:6 157:8 165:7</p> <p>diverse 187:2</p> <p>diversification 33:10 185:14</p> <p>dividends 128:21</p> <p>Division 8:14, 17,18 24:11,20 35:5 112:5 114:25 115:14, 20 116:10,20, 25 117:19 118:25 119:4, 17,23 120:8, 15,24 121:11, 16 126:17 178:17 224:25</p>
---	---	---	---	---

241:3	60:10 61:7,24	DPU 15:13,15	211:6,7 225:23	88:15 96:13,
Division's	63:21,25 66:12	115:16 116:16	226:1,24	14,17 107:18
120:13 121:6	68:18 69:12,21	143:13	236:18,19	119:12,15
122:21,22	71:1,3,6,14	dramatic 29:25	240:15,16	170:10 186:4
123:7 126:13	75:9,13 80:15,	32:6	260:14,15	210:9,15 214:8
161:5 270:23	20 81:25 83:5,	draw 172:14	272:11,12	219:20 239:16
272:9	17,18,23 84:7,	drive 214:6	duty 186:22	244:6,25 267:8
docket 8:6	16 91:15,18,21	drives 234:20	200:13	economical
13:1,2 22:11	92:3,13 109:22	driving 169:15	dynamic	42:24 187:2
25:3,21,25	112:13,14	drop 17:9	188:16 262:18	economically
28:14,19 29:17	122:6 123:21,	129:24 131:7	264:4	13:17 96:9
31:17 64:11,16	22,25 136:7,9,	139:5 208:14	<hr/> E <hr/>	179:2 244:10,
65:23 66:6	22 139:20,25	219:12	earlier 47:13	14 264:4,6,9
67:4,6,12 69:7	150:10,11,12,	dropped 29:19	55:11 72:14	265:16 266:21
91:7 106:20	15,18,22,24	130:25 131:13	78:20 89:7	economics
110:21 114:1	151:16 152:3	132:9 222:21	91:18 92:15	212:24 220:6
115:25 118:2	166:4,5 171:4,	226:7	93:14 95:10	243:21
120:1 127:22	5 179:19,20	due 30:24 93:9	104:8 107:7	Edison 131:2
134:5 160:5	190:2,3 211:8,	195:8 221:1	108:8 111:20	141:7 223:25
177:20 180:15	9 229:22,23	258:23 271:13	152:4 153:4	241:8
181:5 184:14	230:9,16	duly 10:8 115:7	155:23 168:12	Edison's
230:17 238:24	231:1,7 236:16	162:16 167:2	173:12 227:20	130:22 222:2,7
258:1	237:13,22	176:7 183:23	228:4 253:6	edits 11:10
dockets 12:24	238:8,16,22	201:25 230:6	early 27:13	effect 66:20
28:22 37:18	240:12 247:5,	237:19 257:9	98:3 204:25	101:11,12
38:4 40:24	10,18 248:5,	duration 19:18	220:24 253:16	145:19 146:14
97:24 252:18	13,18 253:10	38:1 254:18	earn 93:21	157:12 267:8
document	257:1,2,12,24	Dutton 8:24	94:3 95:21	effective 77:8
26:11 28:2,3	258:7,13	24:12 40:18,20	262:14	111:17,19
75:17 78:13	260:11 268:4,5	42:8 112:9,10	earning 94:9	196:20 207:14
79:8 80:1,8,11	269:25 270:2	123:16,17	233:3	effectively
82:9,16,17	272:15,16	165:24 166:1	earnings 62:11	17:6 49:5
152:22 158:5,	Dodge's 84:6	170:25 171:1	easier 182:15,	185:20 264:3
14,18 159:15	dollar 14:18	179:15,16	17	effectiveness
196:19 223:15,	dollars 72:17,	183:14,16	economic	197:3
16,18 226:2	18 195:17	184:1,12,23	23:3,5,15 45:1	efficiency
documents	210:12 233:20	185:5 189:21,	earn 93:21	164:13
116:7	259:3	22 200:7,9	94:3 95:21	efficiency/
Dodge 9:7	door 33:25	201:5,15,16	262:14	deficiency
24:13 28:12	78:23 112:16	duration 19:18	early 27:13	
54:13,15 56:8	173:22	38:1 254:18	98:3 204:25	
57:1,8,10	downplay	Dutton 8:24	220:24 253:16	
	119:8	24:12 40:18,20		

<p>98:18</p> <p>efficient 185:11 265:7,9 266:19</p> <p>efficiently 264:3</p> <p>effort 58:16 120:16 205:21</p> <p>efforts 56:24 259:3</p> <p>elaborating 93:8</p> <p>elect 53:18</p> <p>electric 39:7,8, 9 58:3 72:8 75:1 145:18 146:13 148:14 172:14 199:8 218:11,12,20 226:16</p> <p>electrical 58:7 174:3 198:10, 15,25 199:2,5</p> <p>electricity 15:9,23 16:3 72:15 78:4,18 79:16,25 80:3 109:8 111:8,9 123:6 173:6,8 174:17 180:14 198:9 199:3,7 220:25</p> <p>eleven 133:20</p> <p>eleven-year 142:8</p> <p>eligibility 269:2,5</p> <p>eligible 269:7</p>	<p>eliminate 17:24 22:14 56:9</p> <p>eliminated 57:4</p> <p>emissions 187:12,13,19</p> <p>emitting 235:12</p> <p>emphasize 119:7</p> <p>employ 250:9</p> <p>employed 176:14</p> <p>employee 224:3</p> <p>employees 250:13</p> <p>employing 239:14</p> <p>employment 115:20</p> <p>enacted 177:18 216:7</p> <p>encompass 39:2,19</p> <p>encourage 58:1,11 68:2 91:12 110:3,11 126:15 127:9, 14 144:2 177:18 186:24 189:10 206:5 208:6 222:12 231:20 272:19</p> <p>encouraged 235:20</p>	<p>encouragemen t 121:13 133:18</p> <p>encouraging 63:15 110:14 232:5,8</p> <p>end 27:19 31:21 32:1 34:12 54:9 65:24 76:5 138:9 139:6 145:25 146:5 178:10 209:2 249:21 255:9 266:25 269:4, 11</p> <p>ended 169:1 219:20 233:11</p> <p>ends 266:17,22</p> <p>energy 8:25 9:9,12,19 10:24 13:18 14:2 17:8 22:21 23:14 24:1 35:25 36:7 39:9 41:6 43:2 44:16,19, 25 45:5,10 52:18,20 53:23 58:2,3,5,6,22 61:11 76:6 77:10 80:25 86:9,25 87:7, 11 88:18,19, 20,21,25 89:1, 9,13,20,24 93:9,16 102:9, 16 110:20 111:17,19,22 122:22 123:8, 17 124:4 127:18,20 137:11 141:18 142:7 149:1,3</p>	<p>152:23 153:3 162:22 163:16 167:8 174:1,24 183:16 184:5, 23 185:10,12, 14,15 187:25 191:2,11 192:7,11,17 194:18 196:16 202:13,14 204:12 206:21 207:19 210:1, 12,16 212:6,9 214:6 217:1,9, 20 219:21 221:10 222:21 226:7 227:15 228:17,19,21 229:7,24 230:13 231:14 235:24 236:3, 4,14 239:3,5 244:16,19 252:5,6 255:23 259:18 265:4 268:15 269:12, 18</p> <p>engage 18:1</p> <p>engages 86:21</p> <p>engineering 170:1</p> <p>enjoy 35:12</p> <p>enjoyed 245:9</p> <p>enjoys 233:2</p> <p>ensued 108:24</p> <p>ensure 185:23 189:2 264:4</p> <p>ensures 188:22</p> <p>ensuring 13:18</p>	<p>189:11 232:9</p> <p>enter 12:11 16:2,5,8,15 19:14,22 20:17 27:24 54:2,5 70:17 159:2, 12,13 169:5 184:24 192:6 199:1 200:22 217:10 224:12 255:21</p> <p>entered 11:23 15:14 19:5 21:19 46:3 71:25 72:15 74:19 97:9 100:2,12,17 101:10,12 116:15 122:25 124:24 130:7,8 146:5 158:2 163:8 167:20 177:10 180:12 185:2 199:4 221:6</p> <p>entering 74:14 103:3 158:6 260:5</p> <p>enters 13:8</p> <p>entire 17:3 28:2,3 33:16 47:10 75:15 89:5 105:7,12 114:5 136:23 159:12 221:14</p> <p>entirety 158:7</p> <p>entities 53:16, 18 54:6 61:15</p> <p>entitled 106:10</p> <p>entity 128:24</p>
---	---	---	--	--

<p>136:14 157:4 165:10</p> <p>entity's 145:21</p> <p>entry 159:5</p> <p>environment 81:1,10 204:13 241:22 266:16</p> <p>environmental 23:9,11,14,16 111:25 112:1 118:13 149:1 187:7,8 188:4 192:2 212:13 233:14,15,21, 25 235:15 246:1</p> <p>environmentally 187:3</p> <p>EPA'S 235:7</p> <p>EPC 267:20</p> <p>episodes 225:12,13</p> <p>equal 199:24 265:3,4,14 266:14</p> <p>equally 147:22 189:6</p> <p>equate 105:17</p> <p>equates 19:3</p> <p>equipment 267:21</p> <p>equity 128:16, 17 129:3,8 134:14 139:15 140:8,9,10,13, 15,21,24 141:2,6,9,11 170:6 245:9</p>	<p>247:4 259:9 262:12,13</p> <p>equity's 140:17</p> <p>error 182:23</p> <p>escalation 268:17</p> <p>essential 227:10</p> <p>essentially 9:21 118:24 137:8 147:17 148:13 152:8 204:19 231:18 243:3 259:1 261:18 262:8 267:21</p> <p>establish 108:10 158:2</p> <p>established 208:2 217:21 223:22</p> <p>establishes 160:7</p> <p>establishing 179:10 222:13</p> <p>estimates 47:6 182:20</p> <p>estimating 213:15</p> <p>evaluate 113:16 213:13 214:2 247:16</p> <p>evaluated 13:7 80:24 213:3</p> <p>evaluating 261:3,4</p>	<p>evaluation 178:21 213:21</p> <p>events 227:12</p> <p>eventually 118:6 263:9</p> <p>evidence 23:21 27:25 52:1 80:14 90:12, 20,25 124:19 125:3,20 126:11,24,25 127:1,14 128:5,8 134:18 135:9,11 140:1 155:15 159:12 161:6 223:15, 16,19 224:15</p> <p>evidenced 259:22</p> <p>evidentiary 48:23 224:14</p> <p>evolve 134:23</p> <p>exact 46:16 72:14 73:18 78:21 96:18 141:1 151:8 187:15</p> <p>EXAMINATION 10:10 107:4 112:25 115:9 162:18 167:4 174:12 176:9 183:25 200:8 202:2 224:22 227:5 230:8 237:21 253:12 257:11 268:8, 25</p> <p>examine 177:2 220:17</p>	<p>examined 10:9 115:8 162:17 167:3 176:8 183:24 202:1 230:7 237:20 257:10</p> <p>examples 124:23 125:22 141:16 205:5</p> <p>exceed 13:19 103:24 109:8</p> <p>excellent 108:19</p> <p>excerpt 57:22 64:10</p> <p>excess 164:17, 25 199:8 243:8</p> <p>exclusive 164:4</p> <p>excuse 128:3 139:18 175:15 195:1 198:24 248:11</p> <p>excused 112:21</p> <p>execute 20:10 27:17 49:3 78:24 107:12, 13</p> <p>executed 12:15 14:20 24:6 30:6 31:25 82:25 83:7 252:2</p> <p>executes 17:4</p> <p>executives 56:4</p> <p>Exelon 108:19</p>	<p>exemption 110:8</p> <p>exert 204:23</p> <p>exhibit 75:9 78:14 157:23 230:14 231:2,6 257:23</p> <p>Exhibit-1 24:23 28:24 63:24 68:13,17 153:1 160:9 184:11 185:4 223:6</p> <p>Exhibit-2 75:12 84:11,15 180:13 184:11 185:4 196:25</p> <p>Exhibit-3 136:21,25 139:21,24</p> <p>Exhibit-a 11:6, 19 75:4,14,16 77:24 78:25</p> <p>exhibits 184:14 202:15, 19 203:21,24 238:6,17,21 258:8,12</p> <p>exist 40:9 134:25</p> <p>existed 165:13</p> <p>existence 209:15 263:24</p> <p>existing 14:9, 12,14,15 16:2 41:25 47:16 48:8 104:19 147:17 148:3 164:2,6,21 174:15</p>
---	--	---	--	---

exit 264:7	262:23	111:16 204:21	23 169:16	57:16 58:14
expand 25:7 70:6	experienced 117:4	extend 66:23	172:3,5,15	62:18,22 81:21
expect 20:24 129:17 139:15 140:16 141:3, 7,11 246:17 265:7,14 266:6,7,19,23	experiment 229:14	extended 31:20	174:5,16,24	86:8 90:14
expectation 139:14	expert 9:1 118:8 127:18, 22 241:4,6 249:15	extension 199:24	175:1 212:9	111:1,2 155:14
expectations 219:16	expertise 76:4	extensive 16:14 19:25 20:2 57:13 234:4	241:5 246:8	199:9 217:20 220:23 246:23 252:19 264:19
expected 14:19 135:25 203:9	experts 241:9	extent 37:8 120:21 135:9 188:12 228:1 233:24	fact 12:25 23:13 29:7 39:5 48:17 56:20 73:24 77:16 82:10,13 95:8 101:3 121:18 122:20 124:8 126:10 129:5,22 133:19 135:14 148:12 149:18 164:16 170:2 174:3 181:21 187:25 192:18 194:1 200:11 214:5 232:16, 25 234:6,21 247:17 261:15	fairly 88:16 105:17 213:3 223:12
expects 121:21	expiration 104:23 139:8 255:24 266:25	external 60:15 267:7	fall 76:20 93:17	familiar 26:14 28:19 45:22 47:24 102:21, 25 103:1 143:10 154:13 213:4,6 254:17
expenditure 48:7	expire 269:4	extraordinary 117:4	farm 249:20	fashion 120:23 244:6
expenditures 47:8 48:24 49:12 51:22	expiring 27:20 32:1,8,16 267:10	extremely 32:10 182:4 185:21	factor 15:4 169:16 235:1 267:7	faster 55:19
expense 47:4 48:20,21 51:17 52:1	explain 41:5 131:17 138:2 230:10	F	factored 148:6	favorable 81:1 170:14 232:18
expenses 46:25 48:1,5 51:19 188:4	explained 150:8	face 9:22 137:16	factors 21:14 198:15 199:25 241:21 242:17, 18 249:19	federal 27:20 32:2,8 35:25 36:7,24 38:5 39:1,24 40:10 56:18,24 110:8,9 118:13,25 177:17 206:10 209:3 273:18
expensive 140:16 185:21 192:25 193:16 208:15	explore 69:14	faced 71:20 118:4 125:6	facts 76:13 80:13 158:2,4	feed-in 138:15
experience 36:14 46:6 59:1,4 61:3,8, 9,11 127:7 135:8 219:18 228:2 231:13 254:5,12	exposed 13:12 18:15 19:15 22:1 259:19	facilities 8:5 39:11 53:22 58:13 153:15 177:19 187:1 196:17 210:16 222:3 246:20	Factual 25:6	feel 18:9 48:13 64:7 220:9
	exposes 13:11	facility 10:23 12:10 39:10 48:5,8 141:23 153:21 154:6 168:13,14,19,	fail 64:1	feels 272:13, 17,18
	exposure 79:4 109:25		failed 118:9	fell 222:20 226:6 227:14
	express 273:16		failing 67:11	
	expressed 15:13 181:17 235:3		fair 31:18 46:18 52:7,11, 16 56:2,3	
	expressly			

felt 169:18	267:15	128:5 129:6	147:8,9	fleet 147:17 148:3
FERC 37:10,15 54:22,23 55:21 56:21 186:19 220:14	financeable 66:2,5 128:11 133:21 143:23 144:24 191:5 192:13	131:4,6,15 132:10 134:1 140:2,3,13 141:1,5,9,11 142:3,15 145:21 146:8, 23 155:12	152:12,14 154:11,16,25 155:3,6,13,15, 20,22 156:18 165:15 225:6 242:4 259:1 262:25	flexibility 79:5
Ferk's 180:22	financed 59:5 67:23 90:22 127:10 130:17 133:4,12 141:17 142:19 143:22 146:2, 19,25 155:3 165:18 171:15, 17 174:21,25 253:18 261:11 262:25	156:23 157:9, 10 170:14,17 174:22 188:21 190:20 192:23 193:9,25 194:4,12,23,25 195:2,8,16,24 200:18 206:2 211:21 241:4,7 242:12,13 247:16,17 254:5,12,16 259:7 262:17	fixed 22:21 44:23 54:7 70:9 73:6 129:13 148:25 217:1,2,9 228:12,15,16, 17 254:20 262:19 268:18, 20	flip 193:4 197:16
field 147:5	financial 76:10 77:9,13 79:17 80:2,5 81:6,7, 14 93:19 122:18,25 129:18 198:14	find 65:7 80:10 139:17 170:17 194:10 231:17	fixed-capacity 229:10	flow 137:10
file 66:19 103:25	financially 192:5 256:17	finding 65:21 173:18	fixed-energy 229:10	flows 137:18
filed 115:22,23 220:13 230:18 238:11 258:1	financier 192:11 195:18	fine 30:3 257:22	fixed-price 16:9 17:20,22 18:13,16 19:13,16,17 33:3,6,7,22 34:21 54:3,5,6, 9 71:16,22 80:6 83:3 104:2,4,6,10 106:21,22 107:20 109:19, 25 111:3 178:24 209:7 210:2 231:24 249:8 251:11 268:17	fluctuate 225:11
files 103:21	financiers 194:19 269:16	finish 37:2 71:4 95:10	fixed-prices 221:11	fluctuating 212:9
filing 14:15 18:19 29:16,18 66:23 234:22	financing 32:21 53:14 59:3,19,23,24, 25 60:2,4,7,14, 15,22 61:16 64:25 65:18,22 67:1,6 68:1 69:4,9 118:23 119:18,19,22 120:5 124:3, 11,14,20 125:3,4,13,20 127:17,19,22	fire 92:12	fixed-capacity 229:10	fluctuations 192:16 212:17 225:17 264:14, 15
filings 122:22		firm 41:6,7 43:15 108:22 169:9 202:13	fixed-price 229:10	flux 235:16
fill 265:19 266:8		fit 9:17 110:13	fixed-price 16:9 17:20,22 18:13,16 19:13,16,17 33:3,6,7,22 34:21 54:3,5,6, 9 71:16,22 80:6 83:3 104:2,4,6,10 106:21,22 107:20 109:19, 25 111:3 178:24 209:7 210:2 231:24 249:8 251:11 268:17	focused 20:23 120:18
final 188:19 228:5 257:2		five-year 60:20 117:20,22 124:4,12 126:1,6 136:1 139:17 143:23 144:6,9,20	fixed-price 221:11	fold 242:6
finalize 273:21			fixed-price 221:11	follow 43:23 149:13
finally 186:11, 12 209:6 210:9 235:5			fixed-prices 221:11	foolish 192:6
finance 68:7,9 128:25 133:16 140:7,21 142:7 145:1 170:7 173:13 185:22 190:16 191:6 192:10 193:11, 15 194:9 200:19 205:15 241:9,10,13 242:8 249:15 256:11 260:3 261:3,8,9			fixed-prices 221:11	footnote 202:25 203:1, 2,5

<p>104:19 107:8 121:1 182:15, 18,21,23 207:7 212:24</p> <p>forecasted 15:18 87:11 213:25</p> <p>forecasting 65:1 69:5 120:7 182:25</p> <p>forecasts 16:22 47:7 50:21 51:23 52:9 191:10 207:15 217:22</p> <p>foreseen 117:6</p> <p>forgot 130:23 175:7</p> <p>forgotten 143:20</p> <p>form 31:20 128:16 165:6 268:14</p> <p>formally 215:17</p> <p>formed 75:19</p> <p>forming 33:2</p> <p>formula 213:8 228:10 262:7</p> <p>forward 15:20 18:24 27:4 28:22 34:12 49:13 92:13 113:24 126:8 165:2 208:10 211:2 226:16 240:8</p>	<p>forward- looking 47:7 49:14</p> <p>fossil 222:19</p> <p>found 54:23 108:3,16 260:4</p> <p>foundation 98:24 223:23</p> <p>foundational 223:14</p> <p>four- 100:22</p> <p>four-year 22:8 47:12 50:1 85:7</p> <p>fraction 210:14</p> <p>frame 168:25</p> <p>framework 232:5</p> <p>Frankly 171:21</p> <p>free 59:22 60:23</p> <p>front 38:21 50:9 72:24 73:11 194:3 261:18</p> <p>front-office 86:1,13 88:4,6, 8,12 89:1,4 234:16</p> <p>fuel 43:1 44:21 45:14,18,21 46:7,10,13 47:7 51:23 107:11 187:6 191:19 194:2 212:24 222:19 232:23,25 242:21</p>	<p>fuel-price 149:1</p> <p>fuels 217:23</p> <p>full 26:24 62:9 156:6 169:23 217:3 220:6,7 224:5 228:17 244:6</p> <p>full-time 239:19 250:12</p> <p>fully 60:22 78:4,5,7,8,18, 19 79:9</p> <p>functioning 204:20</p> <p>fund 233:16</p> <p>fundamental 79:13,22 81:12 82:19,24 83:1 113:14</p> <p>fundamentally 232:17</p> <p>Fundamentals 81:2</p> <p>funded 156:10</p> <p>funder 131:6</p> <p>funding 194:15</p> <p>future 22:2 23:8,10 26:1 32:20,23 89:8 121:20 126:9 134:23 135:3 178:25 182:25 185:12 188:2, 13 190:22 191:2,9,10 192:8 195:14 213:16 214:7</p>	<p>225:13 233:22 240:9 243:19 244:22,23 245:2</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gain 214:4</p> <p>gaining 235:21</p> <p>gallon 18:8</p> <p>Gary 9:7</p> <p>gas 15:9,23 16:6,16,19,22, 24 17:2,6,9,13, 15 21:4,11,13, 15 33:11,17 43:14,17 44:2, 7 46:9 49:6 52:21 76:5,9, 10,12,15 78:3, 6,17 79:2,5,9 80:3,22 81:3, 11,13 82:11,17 100:25 101:4,5 107:15,20,22, 25 109:7,10 114:3,9 123:5 145:18 146:13 147:25 149:21 180:14 207:19 208:12 210:1 217:22 218:18 221:7 222:21 226:7,16 243:1,2,4,12, 17,20 244:2,4, 11,13 245:19, 21,23 250:17, 21 264:16</p> <p>gas-fired 222:17</p>	<p>gasoline 18:7, 11</p> <p>gave 49:4 56:15 61:10 92:15</p> <p>general 38:24 75:6 77:20 78:1 99:4 213:6 233:16, 18 247:22 252:10 254:13</p> <p>General's 8:16</p> <p>generalization 38:14</p> <p>generally 38:22 43:25 48:9 116:25 118:9,11 119:14 121:10 129:15 140:19 142:12 168:17 210:6 212:6,8 214:7 216:13 227:18 246:6 250:3 254:21 261:6,9</p> <p>generate 39:11 137:19 168:14, 15 169:21 252:15</p> <p>generates 119:10</p> <p>generating 44:18 46:25 47:4,16,18 48:5 169:13 171:24 207:11 218:11,20 219:25</p> <p>generation</p>
---	--	--	---	--

53:16 118:12 148:14 149:12 169:24 175:2 204:16 206:6, 14,16 207:5,8, 24,25 208:12, 14,15 209:8, 17,21,22 210:2,4 216:14 218:13 219:24 220:3 232:24 233:9,13,23 235:20 236:13 246:8,20 250:16 generous 222:13 get-go 134:19 give 67:16 90:9 96:25 121:12 141:16 146:11 173:17 194:19 252:14 goal 61:25 111:11,14,16 139:12,16 144:2 gold 222:24 226:10 good 8:2,9,24 9:3 10:12,13 12:6 23:8 42:13,15 54:2, 17,18 83:19 92:8,9,10,11 115:11 116:24 119:3 149:9,19 150:14 152:1 170:17 171:11 177:17 180:5,6 183:20 190:13 194:19 196:11,	12 200:21 209:18 211:17 214:13 215:6, 14,15 220:8 221:12 231:10 241:2 252:24 253:14 256:9, 10 260:25 governing 65:16 governor 203:8 grant 224:11 granted 113:6 203:23 231:5 233:19 238:20 258:11 great 70:2 168:5 170:22 218:16 235:3 239:23,24 greater 68:24 129:13 150:3 191:9,11 192:4,7 206:12 green 138:16 greenfield 59:20 142:24 146:24 147:5 grew 29:18 grid 87:14 88:24 137:18 173:1 Griswold 120:2,11 gross 248:20 ground 113:25 186:6 207:23	242:20 grow 20:20 grows 33:3 guarantee 30:16 104:21 194:11 guaranteed 72:2 138:25 194:15 249:8, 16,18 262:2,4 guarantees 37:19 guess 41:24 68:10 91:22 93:14 111:11 128:23 134:23 139:9 146:22 147:25 156:17 161:5 191:3 193:3 213:16 225:18 227:15 243:24 244:8, 9,13 248:25 263:9 266:10 267:4,12 271:1 272:20 guessed 50:20 guideline 81:6 guidelines 75:6 76:21 77:4,20 78:1 81:8 108:24 180:12,19 guys 196:21 <hr/> <p style="text-align: center;">H</p> <hr/> H-a-n-s 257:17 half 59:17,18	133:8,9 172:25 252:5,6,10 halt 256:6 hand 57:11 64:5 75:9,14 136:10 170:6 236:11 handed 197:17 222:5 hang 210:21 Hans 257:3,8, 16 happen 146:6 148:18,19 195:13 243:13 259:24 happened 57:6 80:19 217:25 happy 64:9 83:24 131:17 150:18 159:14 187:8 270:25 272:8 hard 53:11 124:19 125:3 126:24 172:13 173:5 244:8,9 265:2 Harris 90:10,19 237:14,15,18, 23,25 238:10, 23 240:12 253:14 256:21 Hathaway 56:4 57:3 94:10 heading 119:4 hear 46:2 60:12	heard 117:12 148:20 168:4 169:18 194:22 248:13 hearing 8:2,13, 23 9:2,6,10,15, 20,23 10:3,6 11:21 24:10, 18,22 25:3,10, 16,22 26:1,3,7, 12 27:1 28:1,6, 10,17 31:5 37:4 40:15,18 42:9 48:23 54:13 56:13 57:9 63:19,23 66:10 68:14 69:18 71:11 75:11 80:17 82:3 83:18,25 84:3,12,13 91:16 92:1,5 98:14 99:3 102:11 107:2 112:4,7,9,11, 13,15,18,20,23 114:19,22,24 115:2,5 116:12,13,14 122:1 123:11, 13,16,19,21 136:8 139:22 150:11,13,17, 20,23 151:17, 21 152:19 157:18,21,24 158:10,19 159:4,9,19 160:2,11,14, 19,23,25 161:3,8,23 162:7,12 163:7 165:21,24 166:2,4,6,8,10, 12,16,18,21
---	---	---	--	---

167:18 168:1 170:24 171:2, 4,6,8 174:8,10 175:4,11,13, 16,18,21,24 176:2,5 177:8 179:12,14,17, 19,21,23,25 180:2 183:3,5, 8,11,14,18 185:1 189:20, 24 190:2,4,6,8 196:8,24 200:6 201:6,10,12, 17,20,23 203:22 211:6, 8,10,12,14 215:5,10 221:24 223:7, 20 224:9,17,20 225:21,24 226:25 227:3 229:18,21 230:1,4 231:3 236:17,20,22, 24 237:1,4,8, 10,15 238:18 240:14,17,19, 21,23 248:12, 22 249:1 250:24 253:9, 11 256:22,25 257:4,7 258:9 260:13,16,18, 20,22 267:25 268:3,6,24 269:22,25 270:3,6,15,22 271:2,11,25 272:6,10,15,25 273:9,14,23	19 heating 168:17 hedge 16:16 17:15 22:19,22 23:8 70:10,12, 13 80:3,5 186:13 255:5 hedged 78:4,5, 7,18,19 107:22 hedges 15:14, 19 17:24 41:2, 4,17,18 76:10, 15 79:16,17,25 80:1,23 81:6,7, 9 82:11,14 109:8,12 180:14 186:4 232:25 246:7 247:14 hedging 13:24 15:7,8,10,22 16:7,10 17:14 20:14 23:23 70:24 74:13, 16,17,21 75:15,18,20,22 76:6,9,24 77:4, 21,25 78:6,8 79:9 81:18,19 82:9 83:2 84:11 107:17 108:24,25 109:15 122:7, 10,14,16 123:6 180:8,19 186:3,5,9 207:18,21 232:15,20,22 233:7 242:21 254:24 held 15:11 130:24 131:12	helpful 30:2 270:10 Higgins 158:23,25 229:25 230:1, 5,12 231:8 236:16 237:11 Higgins' 180:22 high 125:11 136:4 139:12, 14 192:18 193:3,4 217:21 220:16 244:14 254:17 255:14 261:17 high-pressure 168:21 high-priced 141:2 higher 44:3 71:19 88:2 117:15 126:18 129:17 133:15 147:12,21 148:11 150:2,6 191:13,24 192:1,7,22 193:14 194:7,9 199:22 200:1 213:25 225:14 241:22 242:3, 5,6 243:2 248:4 252:1 256:16 258:23 261:24 267:9 highlight 15:3 highlighted 137:1,5,15 138:4,5 139:4 153:11 222:9	226:4 highlights 29:7 111:20 highly 164:25 247:25 Hill 168:16 169:8,12,18 172:8,9,12,16 174:2 Hills 96:11,16, 21 Hills' 146:13 hinder 232:12 hindsight's 221:2,8 historical 227:12 historically 70:18 105:6 113:5 205:6 history 32:4 165:10 205:18 221:14 hit 34:12 62:1 267:1 hobby 231:21 Hogle 8:9,10 10:1,11 11:4, 17 12:1 24:8 25:18 26:13, 16,23 28:8 37:1 40:12 56:7 60:8 61:6, 23 63:18 66:7, 11 69:11 71:3, 8 80:13 81:24 82:1 95:7 98:8 107:2,5 112:3	114:22,23 122:2,4 123:10,12 166:10,11 174:8,9 179:25 180:1,4 183:1 196:8,10,12,23 197:1 200:4 215:11,13,16 221:22,25 223:4,10,21,22 224:16,18 226:2 237:2,3 248:11,13 250:24 251:1 253:7 268:1,2 270:19 271:11, 12,19 hold 131:3 holding 117:10 137:9 holiday 271:17 holidays 272:24 273:7 honestly 63:11 91:21 Honor 157:20 158:12 160:13 174:14 175:15, 23 221:23 223:4 248:11 hook 46:22 hope 173:17 hoping 31:13 horizon 15:8 18:4 85:9,10, 24 88:5 105:7, 12 107:17 hour 17:11
--	---	---	---	--

18:23 19:1,2 43:14,16,19 72:23 73:8 87:15,24 119:11 149:12 169:22 191:18 234:24 244:24 249:9 251:4,8 267:18	163:23 205:5 210:22 idea 131:25 142:24 148:2 200:22 identified 11:3 19:23 20:18 21:3 22:25 24:23 49:25 50:25 63:24 74:4 75:12 115:17 136:21 153:1 166:25 176:20 184:11 188:9,11 196:25 202:16 230:15 238:7 257:23 identify 35:24 85:20 124:7 156:15 ignore 23:13 119:8 ignoring 232:16 illiquidity 15:17 illustrate 15:3 71:24 illustrates 19:14 79:1 imagine 242:6 250:19 immaterial 172:5 impact 14:18 62:10 82:15 93:15,19 94:7 97:19 239:21	259:6 impacts 99:1 198:13,14 impetus 144:7 implement 24:5 37:24 92:22 110:13 186:22 187:17 200:13 231:16 implementatio n 185:17 205:2 215:25 235:7 implemented 13:24 15:22 70:23 implementing 108:8 important 12:7 21:9 168:6 169:18 182:5 185:13 189:6 247:16 importantly 20:5 23:12 180:11 impose 52:16 impossible 118:22 190:16 205:14 218:14 241:13 improbable 164:25 improvements 47:21 164:12 imprudent 140:13,20,22 in-house 215:17	inability 200:17 inaccuracies 182:21 inaccuracy 15:18 inaccurate 182:24 incentives 261:13 incidental 186:13 incinerator 172:8 inclination 113:18 include 10:23 44:20 45:19 178:19 213:9 included 77:3 99:19,22,23 100:21 122:17 163:24 175:1 209:10,13 213:12 224:6 including 73:6, 9 77:14 117:15 118:1 186:18 216:11 234:23 income 32:2 137:10,19 211:21,25 212:1 inconsistency 16:13 56:12 77:24 85:7 inconsistent 13:23 14:1	15:6 16:10 20:12 23:23,25 74:25 77:22 139:9 incorporated 87:9 incorporation 184:5 incorrect 186:4 incorrectly 186:2 increase 27:16 29:25 31:23 32:7 117:4 149:17 203:6,8 217:23 increased 18:15 129:16 178:23 increases 256:18 increasing 263:12 incredibly 219:20 incremental 39:7,8,25 40:1 increments 86:7 incur 13:20 207:4 incurring 68:25 independent 58:2,6,12 63:16 186:25 216:17 239:2
<hr/> I <hr/>				
I-s-e-r-n 257:17				
Idaho 36:21 37:6,9,11,14 105:18,22 106:11 108:7, 11,12 151:1,5				

indication 167:19	196:22	instruments 77:9 80:2 254:24	235:4	investigate 143:24 152:15 155:19,23 156:24
indicative 87:12,18,22 88:25 208:17, 19,24 234:21 265:23	influencing 185:13	insurance 195:21	interfere 204:20	investigated 156:19
indifference 13:10,14,15,22 22:5 34:14,16, 23 35:8,19 36:1,16 37:24 38:8,17 39:5 40:5,9 41:12 51:4 55:4 62:13 91:11 93:1 110:2,17 121:2,7 178:13 188:17,23,24 207:2 234:9	information 48:9 52:4 72:24 83:15 136:18 155:10 157:13 159:23 207:17 222:2 240:4 247:25	intact 120:12 147:17	intermittency 148:12	investing 195:16
indifferent 13:17 62:6 94:11,18 95:5 207:7 213:18, 19 270:24	informed 161:17	integrated 14:5 19:24 94:25 99:20 105:1 157:2 178:21 188:7 207:17	intermittent 114:14 117:8 193:20	investment 27:20 31:14 94:4 132:11, 14,18,21 140:21 201:1,4 209:3 210:11 259:9 261:24
individual 135:16	infrastructure 204:12 210:12 214:6	intend 259:17	internal 60:6, 14	international 222:20 226:6 227:14
indulge 150:16 231:12	ing 127:14	intended 13:16 150:8	Internet 145:10	interpretation 57:14 273:17
industrial 11:1 59:21	initial 202:9 205:2 215:25 217:2 228:6	intends 223:10	intervened 91:22	investments 233:9
industry 46:6 127:2 260:2 263:1	initially 130:17 218:4 229:9	intent 56:11 178:1 189:15 205:13 263:13	intervenor 118:8	investor 129:12 132:19 139:15
inept 232:15	inquire 20:16 98:24,25 153:24 154:9 156:21	intention 122:15 131:7 174:17	intervenors 22:12 125:2 161:22 162:2	investor-owned 146:16
inexperience 61:16	inquiring 28:5	interconnectio n 30:25 164:9, 14 168:24 170:3,4 171:23 174:4	intimidating 152:3	investors 129:16 133:3,4 134:15 135:17 139:13 241:18 242:15 245:6, 8,12 255:6 261:22
inflate 249:22	inquiry 25:1	interest 16:15 164:4,5 185:16 194:9 198:1,6 200:15 232:1	introduce 223:10	invite 75:24 139:4
influenced	inside 60:2	interested 206:22	introduced 64:8 256:19	involved 59:19 60:7 75:23 81:20 129:3 130:4 180:15 242:9,16 247:15 249:11 258:24 261:4 268:14
	insist 179:9 247:21	interesting 260:4	introduces 17:19 109:19	involves 254:6
	instances 96:12 209:21	interests 63:5 94:15 148:23 164:5,6 232:6	introducing 25:20	
	instrument 232:22		invest 134:16, 18 139:13 258:25 269:16	
	instrumental 216:10			

<p>involving 35:8, 19 58:6 108:19</p> <p>IPP 257:19</p> <p>Irion 9:11</p> <p>Iron 239:12</p> <p>IRP 14:5 20:12, 16,19,22,24 21:3,4,7,10,12, 14,15 22:3,25 24:3 41:9,11 42:1 47:10,12, 20 49:19,25 50:25 53:1 74:3,12 84:17, 19,22 85:4,9, 20 86:4,9,11, 21 88:7,13 99:21 105:12 113:3,10 118:18 164:23 178:21 188:17 234:4,7,9,11, 14</p> <p>IRPS 101:3</p> <p>irrelevant 118:19 145:8 248:20</p> <p>Irritation 153:6 165:7</p> <p>Isern 90:11,19 134:6 257:3,4, 8,16,20,21,25 258:14 260:11 268:10 269:23, 24</p> <p>issue 12:23 13:1 14:7 19:13 26:2,22 29:4,6 30:25 31:17 33:3</p>	<p>37:14 51:1,2 57:19 64:3 66:6,18 98:16 102:1,3,6 111:20 112:2 119:18 124:16 135:1 142:11 143:11 144:24 151:8 158:13 159:11 161:10 164:20 169:18 171:18 174:24 175:1 181:13, 24,25 182:23 207:2 214:15 253:1 273:15</p> <p>issues 12:7 25:24 36:10 37:12,18 38:12 39:22 64:20 69:8 84:9 99:5 111:25 113:22 120:14 148:10 160:7 161:18 165:9 181:8 182:23 187:9 216:3 218:15 270:11 271:7 273:17</p> <p>ITC 31:14,19 34:4 199:25 209:7 266:25 267:7,10 269:2,8,9,13</p> <p>item 272:21</p> <p>items 259:11</p> <p>iterative 188:15</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>Jetter 8:15</p>	<p>24:19,20 112:5,6 114:24,25 115:10,18 116:9,18 121:23 157:19 158:1,21 159:1,4,7 160:14,16 161:3,4 162:5 166:8,9 171:8, 10 174:6 176:1 179:13,23,24 190:8,10,12 196:5,7 211:14,16 215:2 224:25 236:24,25 240:23,25 241:2 247:11 248:3,25 249:3 250:22 260:22, 24 267:23,25 270:22,23 272:1,2</p> <p>Jim 48:1</p> <p>job 261:2</p> <p>jobs 239:19 258:20</p> <p>John 9:14 98:17 153:7, 10,19 158:15 161:14,15 162:11,15,21 163:6,9</p> <p>joining 9:14</p> <p>JP 131:5</p> <p>judged 48:9</p> <p>Judicial 36:11</p> <p>June 254:3</p>	<p>jurisdiction 38:4 158:14</p> <p>jurisdictions 36:20 38:5</p> <p>justification 53:21</p> <p>justified 138:12</p> <p>justify 47:4 48:19,20 107:8</p> <p>Justin 8:15 241:2</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keeping 79:10</p> <p>Kennecott 53:17</p> <p>Kevin 229:25 230:5,12</p> <p>key 23:21</p> <p>kicked 67:13</p> <p>kilowatt 102:24 244:24 249:9</p> <p>kilowatts 106:4 172:1</p> <p>kind 32:14 46:20 134:14 141:11 212:23 249:7 259:4 272:23</p> <p>kinds 225:16 268:11</p> <p>knew 155:16</p> <p>knowing 34:4 146:1 245:15</p>	<p>knowledge 56:15 98:11 158:4 180:7,9 203:14 243:23 254:11,13</p> <p>knowledgeable 56:17 246:4</p> <p>kw 223:3</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lack 63:17 136:3</p> <p>Lake 184:6</p> <p>Lakeside 16:17,19,20, 23,25 17:2,7, 10 72:21 73:7 87:1</p> <p>language 79:21 82:16 127:6 269:15</p> <p>large 10:25 11:1 27:16 31:23 48:7 59:5 61:4,11 66:24 103:9,14 106:15 144:15 178:18,24 239:1 261:14</p> <p>largely 119:7</p> <p>larger 103:11 144:22 223:3 252:8</p> <p>lastly 23:7 24:2</p> <p>late 218:23 221:3 273:6</p> <p>launched 229:14</p>
---	---	--	---	--

Lavar 112:22	legality 206:4 270:12	134:7 138:13 212:10 220:6,7 239:18	literally 218:19	long-established 232:8
law 37:23 55:7 57:19 63:15 91:11 93:2 144:16 181:21 206:10	legislation 110:16	light 83:15 159:23 235:11	litigious 48:22	long-run 182:19
laws 110:9 118:14 177:17 178:1	legislature 203:8	limit 22:6 65:8 81:8 99:4 108:21 109:11, 24 120:2 122:16 123:2 126:14 144:9, 22 152:12,14 177:20 218:4 271:23 272:1,4 273:19	live 225:17	long-term 17:19 19:14,22 20:7,18 45:18, 21 49:13 50:24 53:20 54:3,5 59:11 66:1,25 69:9 70:17,20 71:20,22 72:14 73:24 74:14, 18,25 76:19 77:1 80:22 82:14,20 83:3 84:20,25 87:7, 10,11 89:23 107:12 109:19 117:9,10 134:15 135:14 136:3 137:11, 23 138:16,20 139:13 165:13 178:24 186:10 190:24 192:6 194:4,24,25 195:1,3 196:3 198:13 200:18, 20 207:11,15 212:24 218:22 221:16,19 225:2 232:9, 20,25 233:2,7, 8 234:18,23 235:9,13,15 239:25 246:7 247:14,17 259:13,15,19 262:15
laying 98:24	lend 193:5 262:4,6,11	limitation 155:17	loads 85:23 208:11	
leadership 56:21	lender 129:12 140:17	limited 15:19 68:22 106:7,24 108:3 109:7,14 144:17 246:11	loading 261:18	
leading 55:16	lenders 129:16 190:20 193:5 212:4,6	limiting 19:18 51:9 64:25 69:4 120:5 209:5	loads 85:23 208:11	
leads 261:18	length 55:14, 15 64:17 130:3 134:5 146:16 150:25 159:15 177:21 178:4 205:11 271:4, 22	limits 135:2 218:6,9 234:12	local 9:18 108:21	
learn 76:7	lengthy 114:15	links 43:12 90:17	located 198:11 239:11 255:10	
learned 144:8 227:21,24	less-than-a-year 86:14	liquid 254:22 255:4,10	locations 203:7	
learning 219:17	lesser 120:20	liquidated 41:7	lock 45:5 49:5 52:25 117:7 192:21	
least-cost 47:8 51:22 52:15 86:12 188:9,11 219:23 234:8,9	letter 56:21	listed 76:14	locked 17:13 21:21,25 22:3 43:2 53:5 61:1 135:11 192:13 244:24	
least-risk 47:9 51:22 52:15 53:1 95:14 188:10,11	level 46:16 56:18,24,25 71:9 93:25 94:13,14 118:8	listen 55:18	locking 17:6 22:2	
leave 13:16 92:24 203:19 258:21 270:19 271:23	Levelization 65:6		locks 82:23	
left 70:7 130:14,15,18 131:14 132:8, 9,18 206:23	levelized 87:23 97:16 251:7		long 9:18,21 46:5 54:24 65:1 69:5 82:18 120:6 125:25 131:12 165:9 173:25 187:12 194:2 259:18	
legal 54:19 108:13 270:14, 16 273:15,17	leverage 140:24		longer 18:4 65:10,13 66:9 68:24 71:17,19	

81:9,14 83:24 98:5,12 107:24 109:14 120:16 150:2 178:7 208:6 229:9 233:11 255:1, 19,20 258:23 261:9 longest 255:15 looked 64:17 65:17 72:22 88:12 89:18 169:23 lost 146:13 lot 14:17 32:18 34:7 48:21 53:22 55:19 109:21 117:12 132:23 136:2 164:2 191:16 193:11 212:11 216:14 220:12, 25 227:21,24 250:6 252:14 263:2,15,16 265:13 266:1 272:3 lots 249:19 low 33:12 34:8 41:20 60:25 90:3 118:5,7 132:2 135:17, 18 137:22 148:22 196:4 199:11 201:2 225:11 245:24 249:12 254:18 264:25 low-cost 194:23 195:2, 23 259:7	low-priced 179:3 low-risk 137:18 139:13 Lowe 9:14 98:17,23 153:7,10,19 158:15 161:14, 15 162:11,12, 15,20,21 163:6,9,11 166:13 175:16 Lowe's 159:5 lower 43:1 71:18 103:14 132:15 148:1 150:2 187:13 191:13,23 210:7 213:25 243:7 246:16, 18,24 247:1 249:21 250:2 252:10 255:21 263:8 265:6 lower-cost 87:2 lowers 210:5 lowest 34:7 198:9 208:20 lowest-cost 52:25 95:14 lucrative 222:22 226:8 lunch 151:20 <hr/> M <hr/> made 19:16 23:21 29:9,16,	18 34:17 38:15,17 42:17 48:10,13 49:15 50:9 52:3,5,9 54:19 58:16 73:17 78:20 108:12 113:19 126:20,21 168:24 174:4 magic 131:21 Magnesium 53:17 magnitude 104:2,5 105:15 106:23 191:23, 24 192:2,3 199:20 main 164:4,5 240:3 maintain 129:23 147:17 148:3 maintained 182:6 maintaining 62:13 159:5 maintenance 172:3 major 15:4 18:25 47:15, 20,25 48:4,15 49:16,23 51:19 172:10 258:18 majority 32:4 42:5 252:11 make 34:21 38:23 49:20,22 72:16 74:1 80:17 91:17	92:3,23 116:3 118:10,22 129:8 131:1 132:12 133:15 141:15 164:12 170:17 184:16 188:19 190:16 199:22 200:2 202:4 205:14 213:2 241:13 251:24 262:8 makes 49:13 52:1 118:19 173:4 193:15 207:11,13 255:6 256:17 making 43:6 44:22 45:12 47:3 48:21,23 53:7 65:21 73:24 76:10 91:19 118:2 128:20 132:23 135:12 149:11 185:20 234:5 246:7 249:1 manage 15:23 19:17 109:6 management 79:15,23 86:13 109:4,9 157:2, 4,8 manager 238:1 manages 27:12 managing 27:14 mandates 57:19 manner 45:1	62:22 97:3,24 99:7 110:13 140:25 187:3 232:18 marginal 43:13 44:3,4,9,15,20, 24 45:3 52:20 53:2,4 210:5 263:12 266:4, 13 marginal-cost 52:18 marked 64:5 68:11,13,16,17 136:25 184:14 market 15:17 18:3 19:10 41:7,10 43:15, 18 60:5 70:8 71:18 79:3 86:13,14,16,18 87:3 88:15 113:19 149:2, 22 179:3 187:23 190:20 192:16 193:21 204:20 207:20 208:1 209:4 210:6,8 212:9, 16,25 213:24 214:7 216:14, 16 218:2 219:19 220:4 225:9,11,13, 16,17,18 226:16 227:23 228:19,22,25 232:23 243:3, 4,6,10,21 244:5 251:16 255:4,10 259:18 262:19 263:15,20,22,
---	---	--	---	--

24 264:22 265:7,24 266:3,19 267:5	118:21 177:21 178:3 204:15 231:24	251:4,8 267:18	114:2,6 178:9 188:8,15,21,22 189:1,7,13 208:8 226:11 263:6	minimum 45:19 46:7,11, 14
marketplace 236:4	MBTU 16:24	megawatts 14:9,10,11,13, 17 18:17 29:17,19,20 30:6,7,24 33:4, 8,21,23 59:16, 18 78:23 97:8 103:18,23 104:3,6,15 105:17 106:3, 23,24 114:7 144:13 145:2 148:5,17 149:12 154:19, 20 163:18 168:7 171:24 172:25 187:21 234:25 251:25 252:1,7,24	methodology 83:9,11,14 106:11 120:19 181:6 209:15 214:12 234:6 252:3,14,21 253:5	minor 202:24
markets 141:11 192:12 206:21 216:10 254:14,22,25 255:8 259:24 261:12	meaning 15:24 38:1 71:16 131:13 194:13	Meghan 8:24	metrics 73:18 79:15,24	minute 15:5 50:5 71:2 85:19 125:1 126:25 150:16
mass 147:14	means 16:1 51:10 93:12 134:14 141:5 209:16 233:5 235:21	member 63:6 74:21 91:23,24 153:12 157:1 165:6	microphone 202:4	minutes 84:1
mass-based 187:14 236:11	meant 92:3	members 153:5,6	mid 27:14	miscalculated 249:20
Massachusetts 261:17	measurable 23:12	mention 165:3	mid-columbia 18:25 19:6	mischaracteriz e 256:5
matches 169:7	mechanism 132:10 185:13 188:1 189:2 263:6 264:4	mentioned 22:22 67:10 75:7 163:20 197:2,14 215:24 253:6 263:5	midway 57:24	mischaracterizi ng 124:9
material 74:9 80:4 105:16	mechanisms 93:4 187:15	met 111:16 215:17	million 14:25 15:1,2 18:21 49:1 132:13, 15,16,18 169:12 170:5 171:18 173:3 234:15	mismatch 22:1,4
materially 18:12	media 135:23	meter 53:17	mind 103:13 271:9	misspoken 269:9
math 100:10 248:21	meet 13:10,21 22:4 23:8 86:24 111:21 164:17 188:17, 24 215:19,20 218:19 242:3	methane 153:21 154:6	mine 45:23 57:23 158:22	mitigate 117:13 118:12 181:22
matter 8:3 13:5,6 17:22 21:18 28:18 33:2 73:23 82:22 116:21 119:10 156:12 161:25 182:20	meeting 66:16	method 16:17	millions 195:17 210:12 233:20	mitigating 186:14
mattered 173:24	megawatt 17:11 18:21,23 19:1,2 43:14, 16,19 72:22 73:8 85:21 86:1 87:15,24 144:14 149:12 153:14 168:19 171:20 191:18 234:15,24		mind 103:13 271:9	mitigation 181:1
matters 9:24			minimizing 140:14	mixing 195:11
mature 164:10				mixture 141:8
maximum 12:10,15,18 55:9 113:6 117:1,16				MMBTU 17:9
				model 16:21, 24 87:14 88:24 89:17,22 97:4 214:1
				modeled 179:7
				modeling 182:5

modern 210:16	176:10,21 177:6,13	208:13,17,23 209:9 210:7	municipalities 142:3 156:11, 16,17,21	23 250:17,21 264:16
modification 8:4 12:14 117:19	179:12 183:3, 4,12,13 190:6, 7 211:12,13	215:17 223:5 229:24 230:13 235:23 238:3 239:9 260:5	municipalities' 156:13	nature 44:21 46:5 93:16 107:16,24 163:17 193:20
modified 15:8 31:20	236:22,23 240:21,22 260:20,21 272:7,8	move 11:17 18:3 27:4 33:16 34:12 46:18 69:20 84:10 92:13 96:24 99:13 116:10 139:20 150:7,10 151:23 157:22 159:21,25 163:5 167:16 177:6 186:15 203:20 223:5 231:1 238:16 258:7 259:2	municipality 142:15 145:17 146:18	nearer 15:24
modify 12:9	Moore's 26:17		must-buy 56:1 121:13 216:11	necessarily 33:16 143:12 249:6 262:1 264:11 265:23
moment 74:12 132:6 273:10	Morgan 131:5		must-purchase 22:15,17 41:13 56:10 57:4 110:7 205:21, 25 206:25	needed 12:21 21:6,8,21 23:1, 2 119:11,15 188:12 218:12 234:5
monetize 35:2	morning 8:2,9, 24 9:3 10:12, 13 12:6 42:13, 15 54:17,18 56:20 64:4,12 92:10,11 115:11 116:24 141:22		must-take 23:5	needing 103:3
money 19:7,9 48:11 60:13 73:19,22 82:12 149:23 193:16 245:3 262:8 269:16	mortgage 193:12	moved 19:10 21:13 93:12	N	negative 89:12 90:21 91:1,2,5 125:5,9
monopoly 204:21	mortgages 200:16	movement 267:20	nameplate 18:18	neglects 234:14
Montana 163:23	motion 28:1,7 158:20 203:23 224:12 231:4 238:19 249:1 258:10	moves 29:20 184:24	Nathan 9:13 102:8,15 156:25 161:14, 17 163:20 166:20,24 167:1,7,17,21	negotiate 209:20 228:1
month 18:7	motion's 203:23 238:20 258:11	moving 104:16 162:4 240:8	natural 15:9,23 16:6,16 21:4 33:11,17 52:21 76:5,9,10,12, 14 78:3,6,17 79:2,5,9 80:3, 22 81:3,11,13 82:17 107:15 109:7,10 207:19 208:11 210:1 217:22 218:18 222:17 226:16 244:2, 11 245:19,20,	negotiated 30:12 34:3 60:21 75:17 187:21 215:1
months 15:20, 24 19:18 29:2 82:19 87:20 89:25 109:7, 14,15 123:4 169:20,22 173:7 266:8,11	motive 156:14	multi-year 82:11 264:20		negotiating 10:23,24,25
Moore 8:20 24:22,25 25:14,22,23 26:5,11,23 27:1,6,24 28:3, 23,25 36:22 38:2 40:17 112:7,8 123:13,14 162:6 166:6,7 171:6,7 175:25	Mountain 8:3, 11 9:8 10:18 51:10 91:6 140:6 171:16, 22 185:18 204:14,18 205:20 206:8, 18,22 207:9	multiple 37:11, 17 59:8 247:12 262:24 264:24		negotiation 27:15 78:13 181:17
		multiplied 216:18		negotiations 27:13 173:20
		municipal 141:23 145:4 147:6 168:14 172:7		net 62:8 100:14
				news 130:5

nexus 235:20	not-for-profit 142:16	248:24	233:1,10	54:24 55:8
nice 215:19,20 257:21	note 218:21	object 36:22 140:8,12 203:22 223:9 247:5	observed 205:4	217:19 219:2 220:11 221:18, 19 222:13,23 223:1 226:9
night 89:25	noted 117:3	objection 11:22 25:17, 18,19 26:9,14, 17 27:4 28:7,8 37:5 40:12 56:7 60:8 61:6, 23 63:18,20 66:10,11 69:11 71:3 80:13 81:24 84:13 98:8,15 116:14 158:1 159:5 162:6,7 175:18 224:11	obtain 61:15 65:18,22 67:24 69:9 118:23 129:1 155:12, 15 156:23 157:8,10 206:2 265:20	offered 54:25 216:25 217:11 219:2
nominal-value 49:1	notice 28:13, 21 57:11 64:7	objections 140:12 258:10	obtained 106:13	offering 140:9 218:5 220:10 242:15
non-pricing 37:18	notion 128:10 135:13 138:18 140:2 142:18 144:1 146:17	objective 93:20	obvious 232:16	offers 209:8 220:15
non-published 106:6	nuances 255:2	objects 68:14 116:13 139:22 157:25 163:7 167:18 177:8 185:1 223:7 231:3 238:19 258:9	occupation 115:12 176:12	office 8:16,20, 22 15:13 24:12 25:1 35:5 55:11 63:4 123:14 161:10 162:1,4 176:1, 15 177:6,23 178:2,5,16 179:5 200:24 231:14 272:8
non-purpa 14:2 24:1	nuclear 218:17 220:19,20	obligated 63:4	occur 17:20 52:18,19 148:9	Office's 63:11
non-qf 13:8 16:11 19:21	number 8:6 26:20 29:18 30:14 32:11,25 78:1 86:1,22 104:8 108:9 120:1 130:18 131:21 132:12 169:23 170:13 181:5 188:13 199:25 200:23 218:1,6,8 219:8,19 220:5 228:25 242:19 253:23 262:19 265:10,15,22 266:8	obligation 22:15,17 41:13 56:1,10 57:4 71:23 78:22 110:8 191:1 205:22,25 206:12,24,25 216:11	occurred 29:5 47:25 66:16 78:12 81:16 107:19	OFFICER 8:2, 13,23 9:2,6,10, 15,20,23 10:3, 6 11:21 24:10, 18,22 25:16,22 26:3,7,12 27:1 28:1,6,10,17 37:4 40:15,18 42:9 54:13 56:13 57:9 63:19,23 66:10 68:14 69:18 71:11 75:11 80:17 82:3 83:18,25 84:3, 12 91:16 92:1, 5 98:14 99:3 102:11 107:2
non-discriminat ory 189:4,12	numbers 52:12,14 72:17 73:11,14 153:8,9	obligations 23:9,11 206:9	occurrence 119:1	
non-dispatchab le 117:8	numeral 197:23		occurring 16:13	
nonprofit 157:5 184:5	<hr/> O <hr/>		occurs 30:19 48:25	
nonprofits 156:16,17			OCS 28:24 180:7,17,18	
nonrenewable 94:23 144:3			OCS'S 180:11	
nonresponsive 36:23			off-take 172:10	
normal 17:14			off-taker 172:22 173:18 190:24 191:4 194:13	
North 205:5 261:13			offer 51:25	
Northeast 261:16				
Northwest 18:25 163:22				
nostalgic 231:11				
	oath 84:5 151:22 215:11			

112:4,7,9,11, 13,15,18,20,23 114:19,22,24 115:2,5 116:13 122:1 123:11, 13,16,19,21 136:8 139:22 150:11,13,17, 20,23 151:17, 21 152:19 157:18,21,24 158:10,19 159:4,9,19 160:2,11,14, 19,23,25 161:3,8,23 162:7,12 163:7 165:21,24 166:2,4,6,8,10, 12,16,18,21 167:18 168:1 170:24 171:2, 4,6,8 174:8,10 175:4,11,13, 18,21,24 176:2,5 177:8 179:12,14,17, 19,21,23,25 180:2 183:3,5, 8,11,14,18 185:1 189:20, 24 190:2,4,6,8 196:8,24 200:6 201:6,10,12, 17,20,23 203:22 211:6, 8,10,12,14 215:5,10 221:24 223:7, 20 224:9,17,20 225:21,24 226:25 227:3 229:18,21 230:1,4 231:3 236:17,20,22,	24 237:1,4,8, 10,15 238:18 240:14,17,19, 21,23 248:12, 22 250:24 253:9,11 256:22,25 257:4,7 258:9 260:13,16,18, 20,22 267:25 268:3,6,24 269:22,25 270:3,6,15,22 271:2,11,25 272:6,10,15,25 273:9,14,23 official 111:12 offset 261:15 oil 207:19 217:21 218:1 219:12 222:21 226:7 228:23 on-peak 89:5 one- 53:18 one-and-a-half 153:14 one-minute 96:25 one-year 86:7 229:7,13 ongoing 172:3 233:14 250:12 open 70:7 79:3,10 169:1 204:10,11 210:20 233:11 240:5 open-ended 172:11	opened 216:13 opening 214:16 216:10 240:11 operate 17:10 94:21,23 154:25 155:2, 21 168:22,23 187:16 239:3 operated 17:7 operates 36:20 operating 43:1 45:14,18 114:9 153:15 154:19 155:5,18 205:10 212:13 222:17 operation 16:18 137:20 171:19 172:3 250:19 operational 79:4 operations 239:19 254:2 269:6 opine 37:16 265:2 opinion 13:3,6 31:18 33:2 35:11 51:3 54:20 82:7,8 94:14 111:1 118:3 155:7 231:23 245:17 259:13 264:22 266:3 opinions 57:13 90:12,20,23,24	opponents 118:9 opportunities 81:8 opportunity 32:9 93:6 94:5 96:13,14 107:18 115:21 158:9 168:4 197:24 204:7 243:19 270:21 oppose 63:1 opposed 60:5 70:8 86:25 93:13 106:1 118:2 120:15 128:16 134:19 142:20 151:11 242:21 opposes 63:7 178:2,5 204:18 opposing 151:13 opposite 19:11 54:23 149:21 opt 121:5 optimal 244:6 optimizing 243:21 optimum 265:10 opting 121:17 option 23:3,5 51:22 66:23 70:14 121:19 129:6 218:19 options 59:3 70:5,8 84:21	142:4 197:11 210:25 oranges 248:8 order 24:14,15 27:19 32:1 39:20 64:11 65:6,20 66:2 68:1,5 86:23 108:8 110:20 136:17 151:1 155:12 164:17 195:23 208:10 242:3 254:25 273:21 orders 39:21 92:22 121:8 Oregon 96:2, 15,20 151:7,9 163:20,23 original 52:3 67:12 132:3 144:7 168:25 174:23 175:1 origination 257:18 OSC 24:23 outcome 34:4 249:5 output 146:13 244:7 outstanding 32:11 34:2 overlap 25:5,6, 7 overlooks 234:6 overnight 266:7
---	--	--	--	--

oversight 49:2	155:9,16,17	135:3 137:5,15	party 11:21	220:25 233:12
overstated 119:18	165:9 169:3,15	138:4,5 158:24	23:20 25:16	payment
oversupply 208:4 219:13	170:2 172:1	164:22 168:18	28:10 68:14	21:22,25 41:1
overview 96:25	173:10 205:9	170:3 171:17,	84:12 116:13	98:6 102:3
overwhelming 25:25 32:4	265:11	18 213:2	139:22 152:23	120:25 121:4
owned 214:18	Pacificcorp's	217:16 220:25	157:24 158:19	249:9 252:4,
owner 145:17	14:12 15:21	241:7 261:2	163:7 167:18	16,20 254:19
ownership 110:19 187:11, 22	76:4 154:20	partial 114:1	175:19 177:8	255:24
owning 222:17	256:4	partially 29:8	195:22 201:7	payments
owns 93:23	pages 153:9	114:3	203:22 223:7	14:19,23,24
235:23 244:3	160:1 272:3	participant	224:11 225:22	97:14,20 98:3
	paid 90:5	75:25 180:7	231:3 238:18	99:17 104:18
	97:14,16 99:17	participants	258:9 270:3	106:10 117:21
	100:13 101:13,	75:6 129:20	273:16	118:1 164:24
	19 121:3	263:23	pass 25:15	165:1 194:11
	140:18 164:22	participate	passage 205:3	217:6,12,14,21
	178:11 195:18,	122:10 216:15	passed 196:22	252:5,6 254:7
	21 217:8	participated	203:8 212:19,	PDRR 188:7
	220:20 221:4,5	25:3,11 105:18	20 246:6	peak 86:2,3,16
	245:16 264:1	122:20 181:4	passing 42:25	88:10
	panel 32:20	participation	past 12:24 29:6	peaking 99:17,
	264:15	175:17	34:5 35:17	19,21 100:22,
P	paper 114:6	parties 8:10	70:18 100:21	25
	paragraph	15:14 20:13	120:15 225:12	peek 86:24
P-e-t-e-r-s-o-n 115:13	26:24 27:11	22:11,14,18,22	262:24	pencils 50:14
p.m. 151:20	76:3,16 77:6	23:7,13,17	Paul 8:12 10:2,	people 9:12
215:9 273:13	79:12 80:22	26:4,8 37:14	7,16 11:3,25	140:16 197:13
Pacific 145:18	151:3 153:20	65:10 66:20,22	pause 62:1,2	perceived
146:13	154:1,2 156:7	75:18 77:24	267:1	135:17
Pacificcorp	159:20 226:4	82:13 113:18	pay 15:2 46:12,	percent 42:6
117:15 118:11	paragraphs	118:1 121:24	24 51:11 119:9	76:11 78:6
120:1	137:1 159:23	158:8 245:17	147:19,21	140:7,13,21
Pacificcorp's 117:1	222:10 227:9	247:13 270:17	149:14 172:23	154:20 169:19
Pacificcorp	parallel 172:14	272:4 273:2,4	191:7 207:12	201:2 203:7
10:21 14:8	part 15:16 30:1	parties' 65:7	209:11 239:17	234:25 248:4,
64:21 68:20	48:2 66:6,24	67:8 178:5	payback	6,14 252:8
79:13 93:24	76:24 79:8	parts 76:2	170:12,18	266:16,22
94:14,19	80:11,24 82:4	139:4 254:15,	172:21 173:9	percentage
102:19 151:8	86:12 91:9	21	paying 21:21,	33:14 79:2,5
153:13,23	121:6 134:3		25 45:9 46:22	

81:8 262:1,3	272:21	223:16	21:4,11,13	95:4 98:23
percentages 123:3	personally 13:3 62:4 87:19 88:12 148:19	pieces 11:14 140:1	43:14,17 44:2, 3,8,12 46:12, 23 48:1,15 49:23,24 73:7 114:3,9 140:8 171:19,21 207:11,14 212:23 222:18 233:12,24 243:12,17,20 244:2,4,15 246:15 250:17, 20,21	101:12 102:7 129:5 130:25 133:2 134:11, 24 138:21 139:9 144:18, 23 146:22,23 159:7 161:9, 12,20 188:19 199:19 231:13 234:14 239:19 248:21 256:8 264:8,9,12 265:8,18
perfectly 263:14,19	perspective 50:5 53:6 113:10,23 169:11 270:24	place 31:16 40:8 82:15 109:23 121:4 133:13,24 164:3 214:12 232:10 239:9 258:17	plants 16:16 46:25 47:1 101:1,4,5 107:15,22 137:11 218:14, 17,18 220:19, 20 221:8 222:19 235:7	pointed 130:22 142:5
performance 37:19	persuaded 125:24	places 34:14 203:4	play 42:4	pointing 154:24
performed 97:6	persuasive 249:5	placing 19:12 213:19 235:15	plays 105:15 192:11	points 23:21 165:4 235:22
performing 38:11	Peterson 8:18 31:6 115:1,2,6, 11,13,17 116:17,19 121:24 122:5 124:1 136:12 140:2 147:10 150:25 151:22 152:1 157:23 158:12 159:14 160:17 161:2,4	plain 79:21 82:16	plunge 147:25	policies 12:12 14:2 16:2 75:20 119:1 186:22 207:21
performs 19:25	Peterson's 32:8 102:2 116:11 159:10 160:6	plan 14:5,6 19:24 20:22 21:5,7,15 22:3, 8 24:3 47:12 49:19 50:1 85:7 94:25 99:20 105:2 178:21 187:10, 16 188:7 234:8,9 235:9, 21 236:1,2,12	point 10:22 15:5 19:19 20:11,13 24:13 30:1 35:1 36:14 37:10 39:15 41:19 42:16 43:6,23 44:22 45:11 48:13,24 49:20 50:1 52:22 54:2 62:19 67:7 68:3,8 69:23 70:1 72:14 73:21 76:2 78:20,21 80:7 81:17 92:3 94:22,24	policy 15:7 16:4,6,11 17:14 20:14 23:23 35:6,17 58:11 70:23 74:13,16,17 75:5 77:21 91:12 109:4,23 110:3,18 111:6 118:14 125:16 126:15 156:13 185:12,20 186:24 189:10 232:8,11
period 19:1,3 21:17 86:2,3, 19 88:10 98:6, 7 99:22 100:23 101:24 107:23 108:10 129:24 164:24 170:12, 18 172:21 173:15 182:13 219:6 221:3 227:12 229:3, 11 246:15 249:11 264:20 265:23 266:9	petition 65:10	planned 188:3, 4 234:13	popular 138:19	portfolio 33:10,11,14,17 100:19,21,24
periods 89:5 179:3 191:2 254:19 259:18	phase 222:25	planning 14:5 20:20 21:23 77:10 80:25 85:9,10,23 88:5 105:7 113:3,11,23 178:21 232:15 235:16		
permanently 187:2	phrased 66:17	plans 94:19,22 105:2 207:17		
permission 67:15	physical 77:9, 13 80:5 122:19,24 171:19	plant 16:19		
permitting 137:17	picked 87:4			
person 194:5	picture 224:5			
personal 56:25	piece 52:25			

<p>111:11 129:23 134:3 135:3 136:6 188:10, 12 203:6 251:25</p> <p>portfolios 138:9</p> <p>portion 28:2,4 93:7 96:23 110:22 117:14 136:5 155:11 251:25</p> <p>portions 38:25 159:13,16</p> <p>position 10:15 28:11 35:16 37:22 57:3,5 58:20,24 63:11,13 65:8 68:6,8 69:6,7, 15,16,17 80:9 81:21 83:1 92:24 106:16 108:24 109:6 116:20 120:13 124:10,11 160:7 165:20 184:2 196:3 213:17 273:17</p> <p>positions 15:23 109:19 162:2</p> <p>positive 239:21</p> <p>possibilities 119:19 145:1,3</p> <p>possibility 140:4 149:19 173:16 200:11</p> <p>possibly 72:9,</p>	<p>10 128:20</p> <p>posted 234:21</p> <p>potential 14:12 15:18 117:7 118:4 147:15, 21 156:21 181:2,22 192:7 210:10</p> <p>potentially 60:21 61:12 65:13 72:7 129:24 133:6 148:11 161:21 210:11 241:23</p> <p>pounds 169:21</p> <p>power 8:4,11 10:18 16:16 47:7 49:24 51:11,23 53:15 58:12 62:8 63:16 68:21 69:1,5 70:20 73:7 74:14 75:1 92:17,21 93:4 94:7,11, 12 95:6,15 102:18 104:22 105:11 110:4, 11 111:24 117:2 119:9,10 120:6 138:16, 20 140:6,8 147:18 153:13, 23 164:7 168:7,25 169:6,10,14,16 171:16,21,22 172:10,15,22, 23,25 173:4,8, 18 177:18,21, 25 178:18,25 179:3 186:25 187:9,16</p>	<p>194:24 195:3 196:3 204:14, 16,21,24 205:20,24 206:8,18,22 207:5,9,20 208:13,15,17, 20 209:11 210:7 215:18 216:10,17 217:9,11 218:18 222:13, 17 223:2,5 232:10 233:5 234:1 235:7, 12,13,19,21,23 236:1,12 239:2,8,9 251:19,20,22 252:1 253:18 255:1,11,18 259:16 260:5</p> <p>Power's 185:18 204:18 208:23 209:9</p> <p>PPA 25:4 26:20 30:15 55:1,9, 14,16 58:17,21 59:6,11 60:16, 20 77:14,15 81:23 95:18 103:3 124:4 125:4 127:8 129:12,13 131:16 132:7, 12 133:1,2 134:5,7,19 136:2 142:19 143:23 145:11, 16,18,20,22 146:3,12,25 151:1,9 177:22 178:3,8,9,15 181:1,10,21</p>	<p>221:16 234:18 258:17,22,23 259:22 261:15 262:15 267:11 268:11,21</p> <p>PPAS 32:5 60:17 64:4,17 70:17 71:25 74:25 77:2 84:20 85:8 125:21 127:2 128:10 130:3, 7,8 134:15 135:14 137:20, 23 139:6,12 141:14,16 144:6 147:3,20 148:5 152:13, 15 179:6 199:22 221:1 255:21 261:20 262:25 263:2</p> <p>practical 28:18</p> <p>practice 15:7, 21 16:11,13 17:15 24:1 40:4 96:5 105:4,5 266:2 272:17</p> <p>practices 13:24 14:2 186:3,5 232:20 233:7</p> <p>pre-approval 48:4,21 51:19 76:18 246:11</p> <p>precedent 38:7</p> <p>precipitously 222:22 226:8</p> <p>precludes 77:21</p>	<p>predict 18:10 191:13,14 244:9</p> <p>predictable 137:10</p> <p>prediction 18:12 118:7</p> <p>prefer 161:16</p> <p>preference 24:14</p> <p>preferred 100:19,24</p> <p>prefiled 38:3, 16 116:6 128:3</p> <p>preliminary 9:24</p> <p>premised 135:14</p> <p>premium 138:11</p> <p>preparation 163:14</p> <p>prepare 11:5 162:20 167:6 185:6 202:18</p> <p>prepared 14:8 18:19 38:15 116:19 162:20 163:12 167:6 176:22 177:14 204:2 230:17</p> <p>preparing 25:11 31:4 33:1</p> <p>presence 186:21</p> <p>present 12:9</p>
--	--	--	---	---

84:4 117:22 161:6 208:4 presentation 58:15 presented 52:13 135:11 presently 30:22 34:3 presents 224:5 president 257:18 pressures 233:25 presume 243:5,11 256:2 presuming 245:23 presumption 85:1 pretend 126:1 132:5,16 pretty 28:19 54:19 77:18 105:15 160:6 227:19 247:6 270:13 prevent 185:25 previous 56:14 165:12 previously 108:17 124:15 216:16 price 13:1,4 17:2,4,5,9,11, 13,15 18:7,11, 22,24 19:4,5 22:21 35:14	37:12,21,25 38:13 39:20,23 41:20 45:7 47:7 49:6,7,14 50:15,20 51:10,23 52:9 54:8 60:25 61:1 65:1 66:25 69:5 70:4,8,9 72:6, 22 73:4 79:4 80:23 81:10 82:23 83:9,11, 14 109:20 118:8 120:6 147:23 148:6 149:17 150:3 190:21 191:4, 20 192:22 208:10 209:10, 13,25 210:1,5 212:8,17 213:19,21,24 217:22,25 225:16 226:20, 22 228:10,15, 16,17 234:21, 23 242:21,22 243:3,16 244:11,13,21 245:15,19,23, 24 251:7 255:21 259:16 263:6,8 264:6 266:13 268:19, 20 priced 228:19 252:1 prices 17:9 32:20 71:19,25 84:21 97:1,2,7 98:25 117:9, 11,15 129:14 147:12,16,21,	25 148:11,20 149:21 150:1,6 178:25 179:10 182:9,15,25 186:19 191:11, 17,22 192:1,7, 17 193:21 196:4 199:11 200:12 201:1 207:2,16 208:9,12,14, 17,19,21,24 209:17 210:3, 6,8 212:9,19, 25 213:25 214:1,7 217:1, 3,5,7,9,13,22 218:1,2 219:12,18 220:16 222:21 225:11,14 226:7,12,15,16 227:15,22 228:13,20,23 229:8,10,11,13 234:8 235:2 243:22 251:3, 16 261:17 264:1,15,16 265:4 266:4 pricing 27:15 35:8,19 36:2, 18 38:9,18 39:17,19 53:10 83:6 85:2 87:6, 9,12,18,22,23 88:25 89:13, 15,24 97:10 99:8,19 101:11 117:25 118:6, 18 120:18 148:7 179:7 188:8,14,15, 21,22 189:7 193:24 194:21	199:22 200:1 207:18 208:18 209:14 213:5, 7,13 214:11 225:10 232:23 234:6,12,20 254:19,20 258:22,23 259:14 263:6 267:10 268:18 primarily 27:16 31:24 44:16 82:17 86:16 88:4,25 109:15,17 168:15 234:18 primary 10:22 32:6 86:15 103:16 104:2 106:20 171:20 principle 85:5 principles 75:5 76:17 77:7 81:19 82:21 83:2 180:11,18 printed 223:24 private 142:4, 13 privately-held 140:23 141:8 privileges 45:19 probability 125:11 problem 117:7 168:8 194:1 problems 117:13 118:4 procedure	76:25 procedures 76:18 proceed 12:5 27:5 185:9 proceeding 23:22 26:19 47:24 62:10 98:1,10,11 105:19 106:12 152:24 164:20 202:20 258:5 proceedings 48:3 49:11 52:20 process 19:21 20:6,9,10 47:11,13,17,18 48:16,22 49:22 74:5 80:25 82:20 85:9 95:2,3,17 167:25 178:22 197:21,22 206:17 228:6 234:4 procure 206:18 procured 209:22 214:23 procurement 76:6 77:10 80:25 95:16 188:6 206:13, 16 procuring 227:24 produce 137:9 187:1 217:8 244:15
---	---	---	---	---

producer 239:2 245:21	50:6,8,12,14 53:21 59:5,10 60:15 68:7	project-by-project 113:17	187:4,11,21 188:20,24 192:10,24	proper 185:17 258:17
producers 58:2,6 177:19, 25 216:17	72:21 87:25 88:7 89:18,19 94:2,3 95:13, 14,18,21 96:7, 11 102:23,24 103:1,5 104:13 114:3 124:4 128:16,20,25 129:8,9	projected 14:24 15:1 85:22 87:7	193:5,25 194:3,20,23 195:23 200:25 201:3 205:15, 16 206:1 207:24,25 208:18,25 209:1 210:11, 17 211:22	properly 179:7
producing 53:23 222:23 226:9	131:19,20,23 132:1,20,25 140:5 141:12 142:7,14,24 144:2 145:10, 22 146:24 153:24 154:3 157:10 163:20, 21 165:11 169:17 170:1, 5,8,10,13,19 171:14 172:7, 10,17,24 173:3,21,24 174:1,2,15,16 186:12 190:24 191:5,7 192:12,14,18, 24 193:15 194:14,16 195:13,17 212:7 237:25 239:18 241:10 242:9,14 243:14 244:19, 25 249:12 252:6 256:12 261:3,4,8 262:17 264:10 266:11 267:8, 16 269:10	projection 72:3	214:19 219:19, 24 220:6 221:14 223:3 226:20 228:22, 24 229:1 239:3,5,6,10, 11,13,14,16, 20,23 240:1,4, 6,10 241:5,7, 14 242:13,20 247:3,16,17 250:9 252:15 253:15,21,23, 25 254:6,14 255:10,11 256:7,17 258:25 260:4 261:9,12 262:11,13,24 264:5,24 265:9,15,17 266:9,13 267:17 269:18	property 239:17
product 86:19	product's 96:3	projections 191:9	270:12	proponents 119:5 125:15
production 16:21,25 32:15 58:13 63:16 97:3 110:4,11 187:1 198:8		projects 27:17 29:21 30:5 32:12,15 41:21 51:17 53:14,15 59:3,8 61:5,12 68:1,2 88:1 94:23,24 96:8 103:23 106:3, 5,9,23 113:9, 17,18 114:4 120:17,22 125:25 126:7, 8,16 127:9,10, 18,20,23 128:6,11 129:23 130:12 131:8 132:7 133:5,11 135:24 136:2 138:9,11,13 142:19 143:1, 6,11,14,15,18, 21 144:3,4,5, 15,19 145:1,4 146:23 153:14 155:1,12,18,20 156:12,22 163:16,19,22, 24,25 164:1,2, 4,6,10,11,15, 18,21 165:5, 10,12,16 168:10,11 185:20,23 186:3,6,9	209:1 210:11, 17 211:22 212:5,11,16 214:19 219:19, 24 220:6 221:14 223:3 226:20 228:22, 24 229:1 239:3,5,6,10, 11,13,14,16, 20,23 240:1,4, 6,10 241:5,7, 14 242:13,20 247:3,16,17 250:9 252:15 253:15,21,23, 25 254:6,14 255:10,11 256:7,17 258:25 260:4 261:9,12 262:11,13,24 264:5,24 265:9,15,17 266:9,13 267:17 269:18	proposal 20:6, 9 22:6 74:5 91:10 93:18 95:2 102:2 117:20 119:5 121:6 126:13 185:18 205:20 207:13 231:23 232:1 256:5
products 53:23 77:9,13 114:8			270:12	proposals 80:22 178:5 270:12
professional 71:8				proposed 14:10,14,15 99:13 118:3 225:7 235:5
profile 187:14				proposes 177:20
profit 18:2 128:20 156:13				proposing 117:16 133:7 209:14
program 170:5 218:10 220:21 221:21 223:1 259:21 264:17 266:6				proposition 38:22
programs 207:21				proprietary 247:7,25
progressively 208:15				prospectively 113:5
prohibit 77:15				protect 14:7
prohibited 70:23 218:17				protected 188:23
prohibits 16:4, 6 74:13,17				
project 27:19 30:16,23 31:24				

<p>protecting 106:21 110:15 164:5 187:5 232:6 235:4</p> <p>protection 111:18 186:15 187:24 210:3</p> <p>protections 247:19</p> <p>prove 51:21 91:1,2,3,5 125:5 223:16</p> <p>proves 244:15</p> <p>provide 10:19 12:3 40:21 41:2 57:13 62:5 90:19 114:8 125:3 128:9 134:14 136:17 186:7,9 187:4,24 197:24 204:5 205:4 210:15 231:8 236:8,9 238:25 239:25 240:4 258:14 262:6,13,17,21 265:19</p> <p>provided 23:20 50:19 90:12,25 111:16 124:23 131:5 136:12 197:11 208:17 214:22 217:1 261:14</p> <p>provider 262:12</p> <p>providers 258:24 259:10</p> <p>providing</p>	<p>55:11 65:8 80:18 190:20 239:20</p> <p>provision 46:10,11 255:23 260:6</p> <p>provisions 46:8,15 110:10 216:12</p> <p>prudence 52:1</p> <p>prudent 28:20 47:5</p> <p>public 8:6,17 12:12 35:24 36:6,24 40:10 64:3 98:2 105:18,22 115:15,20 116:21 140:22 156:13 185:12 186:21 189:17 197:24 198:1,6 205:1 208:20 215:21 222:11 224:4 231:21 232:1 241:3 247:8</p> <p>publicly 8:19 247:20</p> <p>publicly-available 158:14</p> <p>publicly-traded 137:8 141:7</p> <p>published 106:2</p> <p>published-rate 105:25</p> <p>PUC 218:3</p>	<p>pull 53:8</p> <p>purchase 8:5 16:3,6 17:8 18:21 22:21 31:15 39:10,12 41:6 43:16 59:2 68:21 69:1 70:20 74:14 75:1 92:17,21 94:7 95:6,15,22 117:2 131:4,9 138:16,20 164:7 169:1,6, 14 172:15 177:21 191:1 194:24 195:3 196:3 200:20 204:16 205:24 206:1 207:5,7 208:21 220:15 222:14 223:2 232:10 234:15 245:19 251:19, 20 252:2 253:18 255:18</p> <p>purchased 130:9 236:4,5</p> <p>purchases 13:20 14:3 24:1 41:8,10 54:5 80:3 86:17,18 88:15 94:11 95:25 107:11 149:22 179:3 187:24 232:24 234:17, 19 243:4 259:20</p> <p>purchasing 13:19 244:24 259:18</p>	<p>PURPA 8:4 12:13,18 13:11 14:9 20:8 22:5 38:25 39:2 41:13,15,16,18 54:21 55:1,5,8, 21,22 56:1,23 57:4,13,14,16 62:2,21 78:21 91:3 93:2 108:4,8,10 110:10,13,16 111:4 121:14 165:9 178:12 185:13,17,19, 25 186:23 189:5,9,15 193:16,17 200:13 204:17 205:3,22 206:4,9,11,20, 24,25 207:2 215:25 216:6, 9,25 224:2 229:2 231:12, 16 234:3 270:13 273:18</p> <p>purpose 12:8 206:4</p> <p>purposes 269:5</p> <p>pursuant 111:15 233:16</p> <p>pursue 119:20, 22</p> <p>pursued 48:4</p> <p>pursuing 206:20</p> <p>purview 111:1</p> <p>push 42:1</p>	<p>pushed 21:15</p> <p>put 82:11,14 83:3 109:23 139:16 168:23 169:11 195:22 220:14 225:18 254:16 260:3</p> <p>puts 193:16 271:16</p> <p>putting 132:20 139:11 224:15</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>Q2 234:22</p> <p>Q3 86:16</p> <p>QF 12:11,15,23 13:1,4,7,9,12, 19 14:10,12, 16,21,23 15:3, 6 16:4,9,17 17:2,3,4,8,10, 13,17,18 18:15,18 19:4, 20 20:12,15 21:18,20,24 22:6,18,20,23 23:5,13 24:5 25:25 27:14 29:2,7,25 30:5 32:5,20 33:8, 19,20,24 34:22 35:12 40:21 41:14,21,25 43:3,8 45:4,6,8 48:25 49:7,21 50:3,6,11,18 51:12 52:24 53:4,6,7 59:5 62:7,8,22 64:17,24 65:9, 18 67:1 68:1</p>
---	---	---	--	--

69:3 83:7	239:8 242:13, 20 247:17	263:16 264:21 265:10,19,22 266:23 267:2	249:2,4,6,7 256:9 267:13 268:23	21,23,25 237:3,6,9 240:16,18,20, 22 241:1 250:23 251:2 253:7,15 256:21,23 260:15,17,19, 21,25 267:24 268:2,3 269:21 270:14
84:20 87:18	256:7 259:14, 21 263:6,15, 20,22 264:6, 17,24 265:4,5, 15 266:3,6,20 267:1 269:5	qualify 196:20 264:21 269:12, 17	questionable 206:4	275:7,15 286:21,23 290:15,17,19, 21,25 267:24 268:2,3 269:21 270:14
89:22 92:17,21	QF'S 177:21 178:15	qualifying 8:5 10:23 12:10 39:10,11 58:12 111:8 174:16 177:19 186:25 196:17 199:7 206:5 222:3 241:4	questioned 120:13	queue 87:13 188:14 208:18, 23 263:8 264:7 265:4
93:3,10,22,24	QFS 14:20 15:2 23:8 32:17,18 41:1 42:5 49:5 53:13 58:22 62:12,16,17 66:2 68:21 72:18 78:23 93:1 94:16,20 103:9 104:3, 11,19 105:2,8, 16,23,24 106:13,15 110:8 112:2 113:3 117:14 127:2,11 143:8 144:17,22 147:13,15 152:5,9,11 154:15,19,20, 25 155:2 177:19,24 178:18 179:2 186:3 188:13 189:4,12,17 204:17 205:7 207:16,23 208:4,7,22 209:6 214:24 217:1 218:7, 13,20 219:22 221:20 222:15 228:1,12 231:24 232:18 235:10 236:8	quality 135:25 218:15	questioning 27:3 98:13 108:4 109:1 110:5 225:3 263:4	quibble 227:16
94:2,7,11 95:6		quantifiable 209:23	questions 11:13 24:21 40:17 42:8 54:12 84:18 91:15 92:14 98:9,24 102:6 107:1 114:17, 18 116:5 121:23 123:14, 18,20 150:16, 21 151:16 152:4 157:17 160:17,21,24 163:2 166:9, 11,13,14 167:13 170:25 171:11 174:6,9 175:3,8,9 177:3 179:20, 22,24 183:7,10 184:19 189:25 190:1,3,5,7,11 194:17 196:6 200:4 201:8,11 203:16 211:9, 11,13,17 215:3 223:13,17 224:12,18 225:1,19 227:1,2,7 229:17 236:19,	quick 145:9
97:9 99:16		quantified 35:22		quo 118:3
100:2,12,17		quantify 35:1, 15		quote 39:6 108:2 120:3
101:10,12,17		quash 235:6		
102:22 103:11, 14 104:22		quasi 36:13		<hr/> R <hr/>
105:11 108:3		quasi-judicial 36:6		raise 147:15 158:1
110:24 111:21		question 37:7 40:12 55:6,19 60:9 62:3 67:2 70:6 71:9 82:4 90:7 95:8 98:13 102:14 111:5 113:15 127:15 128:23 144:8 154:8 155:6 158:22 174:14 200:21 211:2,20 225:23 242:11 244:9 247:2,6		raised 63:12 111:20 178:17
113:9 114:4				ramp 173:7
117:2,4,16,21				range 34:6,9, 11 65:1 69:5 72:17,23 73:1 87:15,24 120:6 149:23 259:5 261:21 266:10
118:22,23				rate 16:23 17:1 52:19 93:5 106:2 207:12 213:16 221:1 233:4,10,16, 18,21 240:2
119:6,10				
120:5,9,17				
121:17,19				
125:24 133:18				
142:12,14				
143:11,15				
144:4,12,13,24				
148:14,20				
153:22 154:3				
156:10,12,22				
157:10 168:7				
178:7 179:6				
181:1,16				
186:1,3,6,12				
187:4 188:6,20				
189:7,8,10,13				
200:22 205:10, 24 207:5,18				
208:1,14				
209:22 210:23				
213:5,7,13				
214:25 217:8				
219:13 220:21				
221:16 222:12				
223:3 224:7				
226:20,21,22				
232:5,8,12,20				
233:5,7,8,13				
234:8,12,18,20				
235:6,20,23				

<p>242:8,14 243:19 246:14, 17,23 247:1,2, 15 249:16,17 261:24 262:10 267:17</p> <p>rate-based 236:2</p> <p>ratepayer 13:10,13,15,22 22:4 34:14,16, 23 35:8,19 36:1,16 37:24 38:8,16 39:4 40:5,9 41:12 51:3 55:4,17 62:13 70:3 73:16 91:11 93:1 110:2,17 121:2,7 147:11 148:23,24 149:8 178:12 188:17,22,24 207:2 234:9 243:15</p> <p>ratepayers 44:8,14 46:24 68:25 70:4,7 117:11,15 120:11,22 121:9 147:16, 21 148:12 149:6,14,17 178:10,23 185:16,25 186:10,14 187:4,5 189:3, 12,16 192:21 193:1 194:21 195:14 200:15 201:3 204:13 207:6,12 209:9,18,23,24 214:4 220:8</p>	<p>221:4,12 225:1,7,15 235:4 239:24 240:2 245:2, 10,13 246:7 251:15 252:12, 22,25 253:5 259:17 265:20</p> <p>rates 15:4 82:15 96:16,21 101:20 106:7 129:17 135:18 189:3,11 194:9 217:16 218:4, 22 219:2 220:11 241:23 259:23 267:14</p> <p>rating 193:10, 13 200:17</p> <p>reach 263:9 264:8,12 265:8,22 266:20 269:6</p> <p>reaching 263:11</p> <p>reaction 149:4, 5,7 259:10</p> <p>reactions 220:10</p> <p>read 28:2,4 43:4,20,23 58:8 63:14 65:2 68:10,19 69:15 75:25 76:22 79:19,21 81:3,19 98:19 102:7,15 135:22 136:19 137:6,13 138:6 139:3 145:15 146:11 151:14 156:8 180:22</p>	<p>197:3,19 198:3 222:9 223:11, 13 226:3,5 227:9</p> <p>readily 255:11</p> <p>reading 34:24 56:20 57:24 78:14 134:8 141:22 145:19 197:13 198:18 271:25</p> <p>reads 156:7</p> <p>ready 151:23 236:9</p> <p>real 172:15</p> <p>real-world 21:10</p> <p>realistic 266:1</p> <p>reality 186:20</p> <p>reason 20:22 32:6 44:5 54:1, 4 60:20,24 86:15 88:11 96:18 126:2 153:16 159:2 169:6 171:20 174:17 190:19 222:4 240:3 259:25</p> <p>reasonable 37:7 65:7 79:2 104:5,7 106:15,19 124:2,11 189:3,11 198:9 231:25 232:4 272:2</p> <p>reasonableness 106:17</p>	<p>reasoning 245:21</p> <p>reasons 13:23 60:22 110:23 117:18 151:12 200:23 260:2</p> <p>rebound 221:7</p> <p>rebuttal 11:2,6, 19,24 31:5,8, 10 42:19 43:11 51:6 98:22 99:6 102:7,15 103:7,8 115:16,24 116:11,16 166:24 167:7, 21 176:19,22 177:11 238:10 258:1</p> <p>REC 102:9 153:1 160:9 163:9,15 166:24 167:21 181:24 187:11</p> <p>recall 26:22 65:25 103:4 107:9 108:4, 15,17 109:1 110:5 122:8 181:12 217:24</p> <p>receive 23:19 103:23 106:6 117:21 128:21 170:14 252:16</p> <p>received 42:6 62:7 223:24 245:16</p> <p>receives 131:19 265:6</p> <p>receiving</p>	<p>269:12,19</p> <p>recent 13:25 42:1 64:2 87:18 98:1 210:22</p> <p>recently 19:5 45:23 97:25 108:7 154:15 170:2</p> <p>recess 83:25 84:2 102:10 151:18,20 215:8,9 273:11,13</p> <p>recognize 62:25 67:11 119:23 160:3 211:19</p> <p>recognizing 126:10</p> <p>recollection 110:23 122:7, 13,15</p> <p>recommend 24:4 189:17</p> <p>recommendati on 104:18 272:9</p> <p>recommendati ons 92:23</p> <p>recommends 178:3</p> <p>reconsideratio n 108:7,12</p> <p>recontracted 220:1</p> <p>record 10:15 11:18 24:17</p>
---	---	---	---	--

<p>28:13 64:8 68:12 91:17 102:12 115:12 116:12 127:1,2 158:7 159:3, 11,16,18 176:12 180:12 184:3,25 202:8 203:20 223:6, 13 227:10 248:15,17,23 257:13 273:15, 22</p> <p>recoup 188:1,3 191:6</p> <p>recover 93:3,6</p> <p>recovered 132:14,21</p> <p>recovers 246:14</p> <p>recovery 62:9 233:9</p> <p>recross 112:4 175:4,5 201:7 225:22,23</p> <p>RECROSS- EXAMINATION 225:25</p> <p>RECS 23:16 110:23 181:9, 16,18 187:20, 22 196:19 209:20,22 214:19,21,23, 25 236:7,8,9</p> <p>redirect 107:3, 4 157:19 160:15,16 174:10,12 183:3,4 200:7,</p>	<p>8 224:21,22 253:9 268:4</p> <p>redos 164:14</p> <p>reduce 17:24 89:14 117:1 119:25 151:9 159:15 185:18 187:12 189:18 204:15 206:3 231:24</p> <p>reduced 12:18 31:21 45:14 127:24 133:10, 15 151:1 187:18 188:15 246:22 265:5</p> <p>reduces 211:20</p> <p>reducing 54:20 58:17 117:16 118:21,23 119:24</p> <p>reduction 35:13 121:8 126:19 151:11 181:2 195:7 201:3 211:25 212:4</p> <p>reevaluate 120:9</p> <p>refer 38:24 39:20 40:3 55:10 103:7 155:25 164:8 253:16</p> <p>reference 57:15,17 58:19 69:6 128:12 129:22 141:14, 17 145:9</p>	<p>146:22 203:2,5</p> <p>referenced 40:24 59:12 64:4,12 77:5 110:21 129:19 143:1,2,18 158:3</p> <p>referencing 68:12 132:7</p> <p>referred 55:11 140:2 165:11</p> <p>referring 25:8 47:22 51:25 251:21 252:7</p> <p>refers 203:1</p> <p>reflect 182:9, 13 208:11 248:23</p> <p>reflected 120:19</p> <p>reflection 267:4</p> <p>reflects 85:3</p> <p>refresh 152:6</p> <p>refute 23:21 235:25</p> <p>regard 48:7 235:4</p> <p>regs 192:2</p> <p>regular 227:23</p> <p>regulate 204:23</p> <p>regulation 36:15 55:20</p> <p>regulations 39:1 54:24</p>	<p>55:7 108:9 110:9 235:15</p> <p>regulators' 219:16</p> <p>regulatory 12:12 35:25 36:7,24 40:10 140:11 185:12</p> <p>rehashing 47:10 113:25</p> <p>reject 178:13</p> <p>rejected 232:2</p> <p>rejection 162:3</p> <p>related 76:5 113:9,23</p> <p>relation 254:18</p> <p>relationship 234:12</p> <p>relative 15:17 18:7</p> <p>release 130:5</p> <p>relevance 99:7</p> <p>relevant 20:14 26:18 37:10 48:14 57:18 65:19 67:3,17, 20 68:4,5,7,9 143:25 144:18, 21 151:4 198:16 247:10, 11</p> <p>reliability 113:22 114:12 148:10 198:14</p> <p>relies 47:5 232:14 234:7</p>	<p>relieve 205:21</p> <p>rely 28:16 120:22</p> <p>remain 79:3 178:4 258:17 267:11</p> <p>remaining 130:3,6 131:20 132:1,2,14,18 133:9,22 134:7 162:2 239:13</p> <p>remains 22:17</p> <p>remedy 179:5</p> <p>remember 66:8,13,14 91:21 102:25 103:2 134:8 145:19 157:12 225:3</p> <p>remove 58:5 158:24 253:3</p> <p>removed 56:5 98:3 252:20</p> <p>removing 192:16 195:9</p> <p>renew 105:8</p> <p>renewable 9:8, 12,19 23:14 53:13 58:22 59:9 61:5,11 90:13 94:3,23 95:11,20 102:8,16 110:20 111:9, 11,17,22 118:12,14,16 119:2,14 120:17 121:13 124:4 125:24</p>
--	--	---	--	---

127:9,18,20,23 128:6,11 141:18 142:7 143:14 144:3 146:24 152:23 153:3 162:22 163:16 167:8 168:15 185:14 186:3 194:18 196:16 200:25 203:6 204:16 205:7,10,15 206:5,13,16 207:23 208:4, 13 209:8 210:19,24 212:6 217:1 219:22,23 220:2 221:19, 20 228:12 229:24 230:13 235:11,18,24 236:3,4,8,14 239:3,5 244:19,25 258:19 262:24	replace 206:11 replaced 165:15 replacement 45:23 164:8 replacements 164:13 replaces 208:15 replacing 114:13 report 15:15 75:15 130:19 reported 155:9 reporter 273:24 represent 8:16 23:16 64:10 75:17 129:20 134:9 170:12 210:11 230:23 238:13 241:2 representative 63:8 180:17 represented 155:17 227:11 representing 8:20,25 9:4 62:4 148:23 149:6 represents 18:13 64:23 69:2 88:4 154:19 reps 62:25 63:3 Republican	56:21 request 20:6,9 59:13 71:6 74:5 87:18 95:2 117:1 120:3 124:8 143:14 155:8 161:25 178:3 179:8 197:20 205:14 270:16 requested 99:18 105:20 233:19 requesting 12:17 56:22 82:23 requests 27:15 29:1,3,7,17,19, 20,22,25 30:11 32:5,7,12,20, 23 103:24 152:9 require 46:15 49:5 53:13 59:23 74:19 108:9 164:7,12 198:22,25 206:20 required 13:10 22:5 48:19,20 51:11 60:14 68:21 114:11 133:12 173:19 205:24 222:14 233:16 245:8 requirement 51:20 78:3,17 79:6 111:21 121:14 196:18 258:24 requirements	15:19 78:7 79:3 109:10 142:17 181:2, 22 186:23 189:4,6 196:14 requires 57:13 63:15 80:8 81:22 82:24 96:2 110:17,18 requiring 131:19 247:3 rerun 52:12 research 146:25 193:7 reservations 114:10 residential 63:5 resisting 134:12 resolution 106:12,16 resource 14:1, 5 19:24 20:7, 16 21:6,17,20, 24 22:19,23,24 23:2,25 42:2, 23 43:7 44:7, 18,23 46:21 47:5,16 49:18, 19 50:2,3 71:21 72:20 73:19 84:21,23 85:4,11 86:12 95:6 97:11,12, 18,19 98:17 99:17,19,20, 22,23 100:14, 22,25 101:14, 18,20,24,25	105:2 114:6 118:14,19,20 133:18,19 148:25 164:23 178:19,21 179:1 186:18 188:7,14 197:11 207:17 213:14 219:20 234:13 235:9, 15 243:1,2,4,8, 9 250:1,3 263:8 resources 41:14 45:18 47:19 50:24 52:24 70:13 71:18 85:22 86:10 87:3 91:13 94:6 95:11 100:13 114:15 117:9, 10 118:12,16, 17 119:3,7,13, 14 186:1,7 187:3,23 188:3,9,11 189:10 193:20 206:19 208:11 210:19,25 214:4,12 221:11 227:24 228:7 232:17 235:19 242:21 247:14 249:13 262:19 respect 37:5 98:11 109:4 122:14 159:11 172:4,17 235:8 269:2 273:17 respectfully 163:5 167:16
---	---	---	---	--

respond 37:1 98:23	retail 14:13,16 198:10 199:8 220:23	124:16 127:12 135:1 176:16 184:8	10,15 106:21, 22,25 109:3,20 111:3 117:11 121:17 129:13, 16 132:20 133:8,10,14,22 135:17 136:4 137:22 139:8, 12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	12,13,14,15 213:2 225:1,8 233:14 234:1 258:24 259:13, 19
responded 87:19 152:10, 13	retained 181:16	revise 93:14	16 132:20 133:8,10,14,22 135:17 136:4 137:22 139:8, 12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	risky 139:17, 18,19 207:10
responding 56:25	retains 23:13	RFP 20:6 47:18 95:12,13,24 96:7,11	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
response 26:17 64:13 109:15,17,24 124:8 143:3 155:9 158:11 175:6,19 222:25 223:21 233:24 271:1	retard 256:6	RFPS 95:15 206:17	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	Ritchie 9:3,4 24:12 42:9,11, 12 54:11 107:7 112:11,12 123:19,20 166:2,3 171:2, 3 179:17,18 189:25 190:1 201:17,18 202:3,17 203:19 204:1 211:4 223:9 224:21,23 225:19 229:19, 20 236:20,21 240:17,18 260:16,17 270:5,6,7 271:5,8,15
responses 22:13	retirement 33:10,13	rich 9:13 102:8,15 141:22 156:25 161:14,17 166:20,21,24 167:1,6,7,17, 21,23 168:3 175:15 210:19, 24	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
responsibilities 10:23	return 93:21 94:4 95:21 135:15 139:14 140:9,10,16 141:3 242:8,14 246:17,23,24 247:1,3,4,15 248:6,14 249:16,18,21, 22 261:24 262:10,14	Rich's 157:14 163:21	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
responsible 44:9,15	returns 233:3	rights 93:1 94:15	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
rest 102:6 159:22 175:16	revenue 170:8 233:3 261:14, 22 262:2 269:12,19	rigor 179:9	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
restrict 55:1	revenues 138:14,22 169:14 261:19 262:15	rigorous 19:20 20:6,9 48:16 49:21 74:4 182:20	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
restricted 123:3	review 13:25 16:15 20:2,9 31:5 38:11 48:12,16 49:3, 22 52:22 56:22 74:4,18,20 76:1 82:20,25 83:4,7 115:21 122:21 139:11 151:7	rigorously 182:5	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
rests 114:23	reviewed	risk 17:20,22 18:13,16 19:13,16,17 33:3,6,7,22 54:6,10 66:25 68:24 69:4,9 70:3,4,7,10,11 71:15,16,19, 20,23 72:13 73:16 79:15,23 80:6 104:2,4,6,	12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
result 15:10, 12,22 16:7 19:23 21:14 32:5,12 70:24 84:8 108:25 147:12 198:8 207:6 221:16			12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
resulted 180:19			12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	
results 85:10, 18 180:21			12 140:17 146:7,21 147:11 149:1, 25 150:3 178:23 181:1 186:14,15,16, 17,21 187:6 190:21,23 191:10,11,16, 21 192:3,16,22 193:3,4,14 194:7,11 195:9,12,16, 21,22 196:2,4 198:13 211:21, 25 212:4,8,15, 17,19,20 213:1,9,10,19, 21,24 214:2,11 225:10,16 233:22 241:18 242:9,15 245:5,12,13 246:2,11,16, 19,22 247:14 249:11,12,23 250:2,6 256:19 261:4	

<p>18,22 207:9 208:13,17,23 209:9 210:7 215:17 223:5 229:24 230:13 235:23 238:3 239:9 260:5</p> <p>role 42:4 105:16 165:8 189:9 204:22</p> <p>Rolling 96:11, 15,21</p> <p>room 9:17 63:1 122:6 247:21 251:2</p> <p>rose 106:22</p> <p>Roseville 145:16</p> <p>roughly 85:21</p> <p>round 86:22 88:9 271:20</p> <p>rounds 57:12</p> <p>route 121:19</p> <p>routinely 27:12 233:16</p> <p>RPG 111:12</p> <p>RPS 196:14 221:20</p> <p>rule 56:13 71:7 99:4</p> <p>ruling 64:3 197:20</p> <p>rulings 37:11</p> <p>run 46:15 97:4 187:13 222:19 243:9,20 244:2,5,10,14</p>	<p>run-ups 210:3</p> <p>running 209:1 243:2,8</p> <p>rush 32:17 222:24 226:10</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>saddle 111:2</p> <p>safe 180:20</p> <p>safeguard 185:17</p> <p>safer 185:11</p> <p>sale 128:21 169:9 172:16 199:3 236:10</p> <p>sales 54:3 108:22 138:17 191:6 199:2,8 259:16</p> <p>Salt 184:6</p> <p>Sanger 9:11,21 24:13 91:17 92:5,7 95:19 98:8,12,14,16, 22 99:11 102:12,13 107:1 112:18, 19 113:3 151:23,25 152:18,20,21 153:2 157:16, 20,22 158:10, 12,24 159:10, 13,21 160:10, 12,13 161:9,13 162:8,10,19 163:5,10 165:22,23 166:18,19</p>	<p>167:5,16,23 170:23 174:11, 13 175:3,6,15, 20,22,23 179:21,22 190:4,5 211:10,11 240:19,20 260:18,19 273:1,2</p> <p>Sarah 9:1 183:17,22 184:4</p> <p>sat 62:15</p> <p>save 271:3</p> <p>saving 43:18 149:23</p> <p>savings 42:25 45:14 87:8</p> <p>scale 258:19</p> <p>scales 50:6</p> <p>scenario 113:21,23 125:10 173:10</p> <p>schedule 24:6, 7 96:24 97:1,2, 3,5,6,12,15 98:4 99:8 103:18 104:9 106:1 161:20 172:24 173:1, 2,10,20 179:10,11 233:4 251:21 253:20,21,23, 25 270:8 272:2</p> <p>scheduled 158:16</p> <p>Schedules</p>	<p>12:16</p> <p>scheduling 161:18</p> <p>school 170:7</p> <p>scope 25:20 56:7,9,14 98:10 122:7,14</p> <p>search 145:10</p> <p>season 173:9</p> <p>seasonal 173:4</p> <p>seated 24:16</p> <p>section 38:25 39:1 57:15,22 65:5 76:19 159:23,24 186:12 198:22, 25 206:10 226:5</p> <p>sections 55:10</p> <p>secure 64:24 69:3 120:5 188:20 200:18 242:13</p> <p>security 233:3</p> <p>seek 193:22 242:13 262:10</p> <p>seeking 12:14 254:5,12</p> <p>seeks 232:11 246:11</p> <p>sees 110:13</p> <p>select 84:24 88:7</p> <p>selected 86:11, 16</p>	<p>selects 95:13</p> <p>sell 54:7,8 102:18 104:22 113:18 128:19 153:13 168:16 169:11 173:6 174:17 243:10 255:11</p> <p>selling 105:11 153:23 171:21, 25 172:1,8 173:10 174:2, 18</p> <p>sells 45:6</p> <p>semi 42:21 69:1</p> <p>seminars 193:7</p> <p>send 87:12</p> <p>senior 257:18</p> <p>sense 125:8 140:14 170:17 255:6 256:7</p> <p>sensitive 96:9</p> <p>sentence 79:1 153:12,20 154:2 156:7,8 226:5</p> <p>sentences 26:25 27:11</p> <p>separate 28:22 133:3 160:5</p> <p>separately 91:22</p> <p>September 254:4</p> <p>serve 110:10</p>
---	--	---	--	--

served 232:25	shoes 50:7	205:3	30:9,20 32:5 34:6,9,10 58:23 251:18 252:9,13 266:4	sir 179:13 183:4
service 8:6 35:25 36:6,24 40:10 64:3 94:20 98:2 157:8 186:22 189:17 204:17 205:15 212:25 269:10,11,18	short 61:2,5 83:20 86:4 93:16 107:16 163:11 167:24 209:4 210:7 215:6	shoulder 89:25 173:7	significant 32:11 33:7 37:20 38:25 77:18 83:7 139:8 186:8,13 192:17 209:8 214:5 235:8 239:17,20 252:3,16 261:22 267:20	sit 34:1
services 8:21, 22 10:18 114:10 176:15	short-run 229:13	show 47:7 55:13 73:16 77:23 91:10 119:6 125:12 126:18 142:6 157:11 208:22 214:12 231:19	significantly 83:24 104:10 133:10,11 191:9 217:23 242:3 250:2 252:9,12 256:6 260:9	site 59:20 222:2,6,7 223:25 269:17
set 13:4 31:21 51:1 84:25 97:1,2,7 108:14 117:18 118:14 133:3 134:20 184:20 207:3,16 214:1 228:6 265:15 269:4	short-term 43:15 59:6 76:9 79:3 86:14 107:13 113:4,10 124:23 125:4, 21 128:10 134:19 139:12 141:14 146:25 149:2 157:9 165:17,18 186:18 195:10 198:13 199:15 205:8 207:18, 20,21 225:5,15	shown 113:17 134:17 147:2	similar 22:18, 23 32:14 33:9 40:2 50:17 72:16 94:1 97:2,24 109:13 141:7 162:2 164:18 210:22 211:18 228:13 246:7 247:17	sites 136:13
setting 36:17 50:4 208:8	shortage 85:22 218:20	shows 49:25 56:11 73:18 75:5 77:24 133:25 142:8 146:4	similarities 119:7	sitting 56:10
settled 66:22	shorten 208:5 210:23	shut 243:4 244:14	similarity 117:23 156:9, 10	situation 32:14 125:6 128:5 236:6
settlement 66:4,16,18	shortened 106:14 233:24	side 72:13 73:19 168:17 193:4 246:5 250:18,19 254:17,18 255:14	small 30:23 42:4 63:5 70:22 103:9, 14,17 105:2,8, 11,16,17,23 106:1,3,9,13, 15,23 107:20 110:3,11 121:18 143:7 144:3,17 152:11 163:17 172:14 177:18, 25 251:24	size 33:24 96:3 163:19 266:11
seven-year 100:22 131:5	shortening 81:22 190:15, 25 241:12,15	Sierra 9:4 42:13 201:18 202:19 204:8, 9,18 208:1 209:12 211:1 270:9,16,20	slams 173:22	skip 64:22 197:23
severely 259:6	shorter 60:16 84:8 124:24 141:17 182:17 229:6 241:23, 25 256:15 261:15,20	sign 31:15 49:1 62:7 142:9 203:9,11 210:21 253:1 268:20	slightly 18:19 93:13 109:14 263:3 267:13	slam 173:22
share 14:25 185:7	shortly 9:14	signaling 235:10	snapshot	slightly 18:19 93:13 109:14 263:3 267:13
shareholders 94:17 95:5 140:24		signed 14:22 17:12 21:24		small 30:23 42:4 63:5 70:22 103:9, 14,17 105:2,8, 11,16,17,23 106:1,3,9,13, 15,23 107:20 110:3,11 121:18 143:7 144:3,17 152:11 163:17 172:14 177:18, 25 251:24
sharing 93:9				smaller 30:10 33:22 102:22 103:15,17,18 106:25 191:23
sheet 140:3,5, 25 141:5				smarter 185:11
shine 147:19				snapshot

29:13	sound 149:11	41:22 53:11 73:5,12,15	74:18 82:25 109:24	168:1 173:7 174:18 198:18 239:1 266:12 269:17 270:18
Social 137:5	source 13:17, 20 39:12 94:25 194:15 219:23 220:2 250:4,17	speculation 59:7	stakeholders 13:25 19:16 107:19 109:18 140:24	started 136:1 204:25 215:24 216:6 218:4,10 219:3 221:20 269:15
solar 32:18 42:5 50:6 88:1, 3,7,9 89:11,18 94:2 103:5 105:23 106:5 114:2,5,8 138:13 143:9, 15,19 145:10 146:12 148:5 200:25 205:16 207:8 208:7, 18,21,22 209:16 210:10 241:6 243:14 250:2,3 252:15	sources 40:21 58:3 129:1	speculative 18:1,2 32:22, 24	stand 160:6 161:16,19,22 162:11 166:19	starting 21:22 42:21 100:15 159:24
sold 132:8 135:16 174:18	southern 222:2,7 223:24 239:12,15,16	speech 67:16	standard 13:10,14,15,16 22:5 34:14,17, 23 35:9 36:2, 16 37:24 38:8, 17 39:5 40:5 41:12 51:4 55:4 62:13 65:8 91:11 93:1 110:2 121:3 127:3 178:12 188:18, 23,24 203:6 217:19 219:2 220:11,15 222:13,23 223:1 226:9 260:2,7 263:1	starts 64:21 156:8 197:4 256:14
sole 126:2 233:4	speak 32:10 67:5 134:11 168:10 193:6	spell 10:14 176:11	state 10:14 37:15 38:5 42:22 51:7 58:11 84:13 93:2 104:21 110:9 111:7 115:12 118:13 119:1 126:15 165:4,14 176:11 177:17 182:4 184:2 185:20 186:24 187:14 189:5, 9,16 197:15,16 198:11 202:7 206:12,14 210:13 214:9 216:24 218:12 219:21 228:3 231:14,15 235:16 236:1,3 239:21 240:10 257:13 259:3 261:14 273:18	state's 218:19
solely 126:19	speaking 59:9 78:12 121:7 159:19	spelled 257:16	standpoint 52:17,18 94:9 96:9 114:12 270:9	stated 15:15 122:23 127:5
solicitation 197:21,22	speaks 39:4 133:23	spend 48:11 50:8 64:2 168:5	stand-offer 217:16 221:17 228:9,11 229:4	
solicited 80:24	special 10:25	spent 269:7	standards 35:20 40:9 260:8	
solid 141:23	specific 27:4 32:25 76:2 87:23 107:18 108:9 247:6	spikes 209:25 210:2	standpoint 52:17,18 94:9 96:9 114:12 270:9	
solo 27:17	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	splitting 272:23	standards 35:20 40:9 260:8	
solution 118:4	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	spoke 25:24 107:17	standpoint 52:17,18 94:9 96:9 114:12 270:9	
some-odd 72:17,18	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	sponsor 128:16	standpoint 52:17,18 94:9 96:9 114:12 270:9	
sophisticated 241:9 250:5	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	sponsoring 129:4 134:2	standpoint 52:17,18 94:9 96:9 114:12 270:9	
sort 94:2 106:14 258:21 272:17	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	spower 257:19 258:16	standpoint 52:17,18 94:9 96:9 114:12 270:9	
sorts 254:6	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	stability 136:3	standpoint 52:17,18 94:9 96:9 114:12 270:9	
sought 51:18	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	stack 164:23	standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	stacked 101:4	standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	staff 151:7 205:1	standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	stake 14:17	standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3	stakeholder 16:15 48:12	standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9 96:9 114:12 270:9	
	specifically 11:18 12:17 36:17,23 38:20 39:4,16,18 44:4 55:15 65:21 77:12 124:6,13 129:19 134:9 142:13 156:19, 24 157:11 182:2 255:3		standpoint 52:17,18 94:9	

<p>statement 31:18 56:2,3 57:16 58:14 71:2 81:21 84:20 86:8 121:22 137:24 150:6,9 163:11 167:25 168:2 171:12 177:14, 16 179:11 214:16 223:11, 12,13 224:10 240:11 248:19, 23</p> <p>statements 224:13</p> <p>states 31:13 110:9 126:15 153:20 163:22 186:23 196:13 206:15 210:18, 24 261:12,16</p> <p>static 265:12</p> <p>statistic 265:12</p> <p>status 118:3</p> <p>statute 57:23 58:18,19 63:14 96:1 110:15 111:4,15 126:14 186:23 189:5,16 196:22 197:15, 16</p> <p>statute's 39:25</p> <p>statutes 38:5</p> <p>statutorily 63:4</p> <p>stay 110:24 148:1 181:9 251:16 265:4</p>	<p>stays 265:3,12, 14</p> <p>steady 137:10, 19 240:2</p> <p>steam 168:15, 21 169:9,12, 19,22,25 172:8,16 173:5,6 174:2</p> <p>steel 186:6 207:23 242:20</p> <p>step 206:3</p> <p>stepdown 209:3,7</p> <p>stipulation 75:19</p> <p>stock 33:10</p> <p>stockmarket 242:22</p> <p>stocks 33:11, 17</p> <p>stood 228:7</p> <p>stop 61:18,20 90:13,20 271:25</p> <p>stopping 78:22</p> <p>stops 256:14</p> <p>storage 80:23 81:10</p> <p>straight 218:11</p> <p>strain 119:5</p> <p>stream 211:21 212:1 254:6</p> <p>streams 254:19 261:22</p>	<p>Street 202:10</p> <p>strength 253:17,18</p> <p>stricken 248:15,17</p> <p>strictly 121:7 173:1</p> <p>strike 248:19</p> <p>strikes 110:14 235:10</p> <p>strip 72:1,2,5, 8,18</p> <p>strives 185:10</p> <p>strongly 161:16</p> <p>struggled 33:1</p> <p>studies 89:10</p> <p>study 170:3</p> <p>subject 27:3 51:12 52:22 53:2 103:18 134:24 143:13 207:20 227:7 233:14</p> <p>submit 95:13 184:13 272:14</p> <p>submitted 25:10 153:3 157:1 158:15 271:21 273:20</p> <p>subparagraph 57:25 58:10</p> <p>subsection 197:4,9,12</p> <p>subsequent 146:8 267:3</p>	<p>subsequently 101:6 124:22 161:17 165:15 265:5</p> <p>subsidy 34:22 35:2</p> <p>substantial 117:8,14</p> <p>substantially 118:16 149:15</p> <p>success 259:25</p> <p>successful 219:14,15</p> <p>successfully 205:7,11,17 208:24</p> <p>sufficiency 97:12 98:6,7 99:22 164:24</p> <p>sufficient 127:8 146:18, 20</p> <p>suggest 22:14, 18,22 32:24 118:5 131:11 135:8 144:5 150:13 272:20</p> <p>suggested 23:7 76:20 81:7 120:24</p> <p>suggesting 117:19 140:25 209:12</p> <p>suggests 131:21</p> <p>Suite 202:10</p>	<p>summarization 116:20</p> <p>summarize 165:20</p> <p>summarizing 177:14</p> <p>summary 12:2, 6 23:20 24:7 34:17 42:17 43:7 47:14 49:5 73:20 128:4 182:4 185:6 204:2,5 231:9 236:15 238:23 258:14 260:10 273:24</p> <p>summer 86:2,3 88:10 89:5 169:20,22,25 173:9</p> <p>summertime 86:16</p> <p>sun 12:23 130:22 131:2 141:7 147:19 241:8</p> <p>Sunedison 129:21 142:17 238:1 239:1 247:3 251:18 252:9</p> <p>Sunedison's 251:7,25</p> <p>sunk 44:24</p> <p>supplies 80:23 221:7</p> <p>supply 10:24 45:19,23 46:3, 7 81:9 107:25</p>
--	--	--	---	---

<p>147:18 185:15 232:23 236:9 260:6 263:12 264:1 265:12</p> <p>supply-and-demand 236:6</p> <p>support 11:7 12:8 66:2 67:7 69:25 91:24 118:14 128:10 135:3 142:18, 24 144:1 146:17 148:13 155:2 223:15 273:3,5</p> <p>supported 120:2</p> <p>supporting 63:9 155:11 232:14</p> <p>supportive 120:16 180:20</p> <p>supports 37:23 81:20 116:25 180:18</p> <p>suppose 212:3 262:21 265:11</p> <p>surprise 46:2,4 72:25 73:2,3, 13 74:24 75:3, 4,7 76:7 149:8 251:6</p> <p>surprised 63:11,13 123:23</p> <p>surrebuttal 11:2,7,20,24 90:8,17 99:6 115:16,24 116:11,16</p>	<p>176:19,23 177:11 182:22 184:13,24 190:14 191:15 230:18 238:11 258:2</p> <p>surrounding 210:18</p> <p>suspended 218:23 219:5, 6,8,9,10 221:15 223:2</p> <p>suspension 229:3,5</p> <p>sustain 63:19</p> <p>sustainable 138:20 187:2</p> <p>swaps 122:18</p> <p>swear 10:4 115:3 162:12 166:21 176:2 183:18 201:20 230:1 237:15 257:4</p> <p>sworn 10:8 25:12 115:7 162:16 167:2 176:7 183:23 201:25 230:6, 23 237:19 257:9</p> <p>system 113:22 148:14,15 149:15 154:21 186:7 205:9 252:25</p> <p>system-wide 14:19 30:14 178:20</p>	<p>systems 148:14</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 8:18</p> <p>tables 9:17</p> <p>tail 65:24</p> <p>takes 89:16,24 133:23 164:3</p> <p>taking 72:12 88:18 136:1 195:9 198:1,6 246:1 266:21</p> <p>talk 12:20 13:13 14:18 15:5 17:21 21:9 46:20 47:21 55:15,16 66:16 74:11 76:25 85:19 104:17 125:1, 14,22 126:25 128:9 139:5,8 194:22 195:12 207:1</p> <p>talked 85:6 89:10 103:3 137:3 191:16</p> <p>talking 14:17 48:16 49:11 51:18 59:12,14 60:4 73:10 78:8 79:1,9,17 80:2,9 85:21 86:24 88:1,3 89:3 142:12 149:25 154:3 193:24 195:5, 15 217:17 218:6 246:19</p>	<p>talks 55:13 76:3,5 139:7</p> <p>tank 46:7,14</p> <p>target 111:7,9 196:16</p> <p>tariff 97:7,8,10 103:19,20,21, 22,25</p> <p>tariffs 137:20 138:15</p> <p>tax 27:20 31:15 32:2,8,9,15 128:17 201:1,4 209:3 248:7,20 259:9 261:14 266:16,17,22 267:15</p> <p>taxes 239:18</p> <p>team 241:9</p> <p>technical 56:22 79:14,22 115:14</p> <p>technology 143:12</p> <p>tells 85:13</p> <p>ten 14:20,24 18:20 19:6 27:12 30:4 34:20 66:8 84:1 106:3 120:11 124:15 132:4 134:25 139:7 145:13, 14,25 146:6 163:18 203:5 228:12,15,18, 23 248:4</p> <p>ten-plus 70:18</p>	<p>ten-year 19:1,3 72:5 107:20 134:3 145:16, 25 146:5,18</p> <p>tend 40:15</p> <p>tender 167:23</p> <p>tenor 139:7 260:3</p> <p>term 8:4 12:10, 15,18 13:4,9, 21 15:6 17:18, 25 20:12 23:22,24 24:2, 5 33:5,21 34:16 35:13 37:13,25 46:5 51:9 54:20,25 55:22 59:22 61:2,5 63:1 64:3,20,23,24 65:8 67:7,9 68:22,24 69:2, 3,24 81:9,14, 23 82:18 89:2 90:13,22 91:4 93:16 97:16 99:1 101:23 104:20,23 105:20 106:8, 14 107:16 108:3,14,22 109:5,11,13 111:12 113:6 117:1,16,20,22 118:21 119:24 120:2,4,25 121:9 123:2 124:12,24 126:1,4,6,14 127:24 130:3 131:5 132:3 135:2 139:18, 19 144:25</p>
---	---	---	--	---

147:8 150:2 151:9 152:12 154:16 164:25 165:16 172:5,9 173:13 178:7, 8,10,14 182:9, 17 185:19 188:20 189:19 190:15,25 193:11 204:15 206:3 208:6 210:23 211:25 217:3 229:6,9 231:24 233:11 240:5,6,9 241:13,15,24 242:4 255:1, 15,25 256:12, 15 258:17 261:15,20 268:21	258:22,23 259:2,4 267:11 268:12 territory 94:20 204:17 205:16 213:1 Tessoro 53:17 test 13:22 228:8 testified 10:9 66:24 90:15 115:8 120:11 148:10 150:25 157:7 158:13 162:17 167:3 176:8 183:24 190:13 191:8 199:17 202:1 214:16,20 228:4 230:7 237:20 241:12 251:3,10 257:10 testifies 64:21 68:20 224:2 testify 29:24 158:17 161:21 247:23 248:13 testifying 78:9 230:11 231:18 237:24 238:1 240:3 257:15 testimony 11:2,6,7,11,14, 19,20,24 12:8 14:8 22:16 25:12 27:22 28:13 29:23 30:2,4 31:4,5, 8,11,22 32:6,8 33:2 34:13,15,	20,24 37:3 38:3,16,21 42:18,19 43:11 48:24 51:6 57:12 58:16 63:13 64:2,13 65:25 66:19,20 67:4,5,7,10,18 68:3 71:5 74:11 77:5 80:18 83:4 91:25 92:15 93:15 98:19,22 99:10 102:7,8, 15,23 103:2,7, 8 104:16,24 115:17,24 116:6,11,17 117:18 119:17 124:2,10,20 127:4,25 128:3,4 134:4, 8,17 136:12 138:2 141:18, 21,22 142:5 147:11,13,14 151:7 152:5,7, 8 153:4 155:11 156:1 157:1,3, 14 158:16,23, 25 159:6,10,12 160:4,6 162:21,25 163:6,9 165:20 166:24 167:7, 10,21 168:5,12 170:20 173:12 176:19,23,25 177:3,7,11,15 180:23 182:2 184:14,17,20, 25 185:7 186:2 190:15 193:3 195:3 199:10 202:15,18,23,	25 203:10,13, 20,24 204:3 205:5 214:17 216:22 224:1,6 227:20 230:18, 21,23,24 231:9 238:10,11,13, 14,24 240:11 241:12 248:18 253:16 256:4 258:1,2,4,5,15 261:6 263:25 269:3 Texas 108:20 Thanksgiving 271:9,10,13, 14,16 that'll 214:13 themes 22:12 theoretically 265:11 theory 17:7 129:18 133:16 thermal 97:19 100:14 101:14, 18,20 234:13 236:13 thing 40:3 52:16 119:3 164:1 165:3 173:4 214:13 229:12 271:8 things 37:16, 18 43:9 44:21 47:6 67:12 78:12 89:7 99:12 114:11 125:7 199:24 246:2 266:1 thinking 12:21	131:17 138:7 thinks 270:25 third-party 53:14 59:24 Thomas 201:18,24 202:9,16 203:21,25 thought 34:7 198:21 256:10 thoughts 271:4 thousand 33:22 85:21,25 86:22 104:6 114:7 threat 25:25 three- 125:25 126:6 262:25 three-year 24:5 55:9,22 58:21 90:13,22 91:4 99:1,13 100:17 101:11,13,22 104:20 105:20 173:22,23 174:22 189:15 205:17,24 207:25 225:6 240:6 242:4 258:22 259:1 throw 16:12 tidbit 143:20 tied 71:16 72:19 188:8 234:8 Tieton 153:6, 12 165:7
---	---	--	---	---

<p>time 12:21 14:8,15 18:4, 18 19:1,3 20:21 21:16 23:1 27:13,18, 25 29:14 31:25 34:11 39:2 41:23 48:10 49:15 50:2 52:5,22 64:2, 16,18 65:17 67:8 68:4,6,8 69:23 70:1 74:7 78:7 83:15,19 86:19 97:18 101:9 107:23 108:10 117:9 120:8 121:16 129:24 130:7,19 131:14 150:14 161:20 162:24 167:11 168:5, 25 172:12 182:13 209:1 213:1 214:18 215:6 217:21 218:9,18 219:7,11 221:3 222:18 223:4, 19 225:20 228:8 229:3,12 231:16 235:6, 14 244:8 249:2 251:18 254:19 259:18 261:21 262:14 265:17 266:5,12,24 271:3,21</p> <p>timeframe 169:8 219:7</p> <p>timelines 20:13</p>	<p>timely 96:13,14 120:23 179:8</p> <p>times 17:2 40:13 48:21 82:1,7 84:18 89:8 96:8 128:2 169:24 173:25 174:25 219:9 242:5 247:13</p> <p>timing 79:16, 24 96:9 97:21 188:10 271:4</p> <p>tipping 256:7</p> <p>today 8:12 9:13,22 10:20 11:14 12:3,8 15:24 18:10 21:6 27:22 33:12 34:1,17 49:19 52:12,14 57:6 70:25 72:5 73:20 87:12,13 100:4 115:12 116:5 118:20 121:1 137:5 148:20 158:16 161:6, 17,19,22 163:2 167:13 184:19 185:7 186:17 191:17 192:6 199:18 202:23 203:16 204:3, 8,9 219:23 220:3 225:7, 11,14 228:13 230:24 234:1, 20 238:14 240:3,8,11 242:20 244:21 245:24 246:3 247:13 259:22</p>	<p>267:16 269:3, 17</p> <p>Tom 9:5 204:6</p> <p>tomorrow 175:17</p> <p>tool 188:16</p> <p>topic 231:19, 20</p> <p>topics 83:21</p> <p>total 43:2 78:3, 17 154:20 252:6</p> <p>totality 61:3,8, 11</p> <p>totalling 30:5</p> <p>touch 22:9,10</p> <p>touched 26:2</p> <p>touching 19:19 62:24 70:3</p> <p>tough 173:21</p> <p>touting 23:17</p> <p>track 227:23</p> <p>traded 133:21</p> <p>traders 17:24 74:17 109:6</p> <p>trades 15:9</p> <p>trading 18:2,25 186:5</p> <p>traditional 129:1,18 206:11,24</p> <p>training 109:4</p> <p>transaction 20:1,18 49:2</p>	<p>130:4,19 181:10</p> <p>transactions 20:2 58:5 86:2, 4,13,14 88:5,7, 8,13 89:2,4 122:25 234:16</p> <p>transportation 80:23</p> <p>Travis 9:4 42:12</p> <p>treat 105:23</p> <p>treated 164:22</p> <p>treatment 105:14</p> <p>troubled 158:6</p> <p>true 22:16 30:15,18 34:18 35:4,20 46:24 48:8 49:10 50:7 52:2 53:22 57:2 71:2 84:20 85:8 95:9 135:8 149:21 180:18 182:19 203:13 220:13 241:9</p> <p>trust 136:19 248:21</p> <p>truth 10:4 115:3 158:17 162:13 166:22 176:3 183:19 201:21 230:2 237:16 257:5</p> <p>Tuesday 25:2 26:1 31:23</p> <p>turbine 168:20,</p>	<p>22 169:16 171:18,20 172:18</p> <p>turn 9:25 27:9 31:10 34:13 42:18 43:10 51:5 55:13 65:4 75:24 76:16 90:8 126:19 137:4 138:4 149:16 153:18 182:1 216:21 229:21</p> <p>turned 95:15 221:9,11</p> <p>turns 52:14</p> <p>twelve 43:10, 23 156:1,4,5</p> <p>Twenty 244:23</p> <p>two- 22:7 47:11 50:1 85:6</p> <p>two-megawatt 143:5</p> <p>two-year 21:16 53:18 106:8</p> <p>type 143:12 188:10 206:17 207:16 250:1</p> <p>types 104:11 126:16 164:15 195:11 196:2 206:18 207:15</p> <p>typical 96:5 133:16</p> <p>typically 44:18 46:5 47:11 53:18 63:10 96:1 103:22 107:15,22</p>
---	---	---	--	---

122:18 128:25 137:19 164:22 169:21 170:8 171:25	understand 36:8 55:18 60:23 63:2,15 67:14 74:8,11 80:7 81:18 91:6 125:2,7, 15,17 128:15, 18,24 129:2,6, 11 130:7 131:1 132:5,11 135:19 138:8 139:10 141:21 143:5 150:5 168:6 170:4,9 171:13 187:20 235:3,18 242:11 250:6 255:2 269:3	uniformly 118:2 unintended 168:10 unique 53:13 82:4 86:19 unit 23:4 45:3 units 114:14 unleveled 97:17 unlike 164:2 179:1 unlimited 16:8 unnecessary 58:5 177:24 unpack 36:3 unquantifiable 35:6,17 unrecovered 93:11 unrestrained 119:2 unused 169:25 unusual 96:6 unwilling 190:21,23 241:18 245:6, 12 unwise 235:10, 17 update 21:12 203:10 208:10 226:15 updated 51:23 117:25 179:8 182:6	updating 227:22 upgrades 188:5 233:15, 21 upheld 108:11, 20 upper 109:9 148:22 upside 191:11 usual 260:3 Utah 8:16,17, 18,25 14:9,10, 12,13,16 15:1 30:5,8,13,21 36:6,23 37:17 40:10 57:15, 19,22 58:4,18 63:15 64:2 76:18 91:11 96:2 98:2 110:15 111:4, 7,15,24 118:11,24 123:17 125:25 126:14 127:7 144:3,5 156:15 163:21,23 183:16 184:5, 7,23 185:10,14 186:21,23 187:17 196:16 197:15,16 201:3 204:10, 12,13 205:6 206:12,21 208:2,5,7 209:18 210:10, 13,15,17 213:4 214:9,18,24 226:12,14,19 228:13 231:14, 15 232:13 233:19 234:7, 20 235:6 236:1,11 239:5,6,12,15, 17,21,24 240:10 241:3 254:23 258:21 259:18 263:5 Utah's 14:25 110:3 210:20 226:11 Utah-based 257:19 utilities 8:17, 19 31:6 48:8 50:13 105:19, 22 115:15,20 116:21 135:15 205:1 206:23 207:4 215:21 216:15 218:16 222:11,14 224:4 227:25 241:3 utility 8:8,21 9:25 12:12 13:18,19 39:7, 8,11 41:2 50:6 89:22 108:21 130:8 140:20 146:16 168:24 174:4 176:14 185:12,24 198:10,15 204:19,22,23 205:21,23 206:11,13 207:10,13 208:9 209:11, 19 212:21,23 214:18,21 224:10 226:15
U	understanding 46:11 75:21 84:19 96:19 108:6 110:7 131:10 137:7, 21 147:7 152:11,25 157:6 172:19 180:10,11 195:5 214:17, 24 226:14 249:15 263:13 understood 130:2,10 137:3 143:7 uneconomic 69:1 uneconomical 41:21 unfavorable 232:19 unfolds 188:2 unfortunate 210:22		
U.S. 53:17 208:21 UAE 63:6 65:25 91:20,22 194:22 UBS 139:6 UCE 184:11,14 185:4 Uh-huh 182:7 ultimately 66:22 212:19 246:6 265:21 unanimous 166:17 unanticipated 187:7 uncertain 179:1 181:24 uncertainties 20:20 137:16 uncertainty 235:8 243:13 unchanged 267:11 underlying 138:11 undermines 185:19 underpinned 138:15			

227:17 232:15 233:13,23 249:15,24 258:18 utility's 13:17 50:18 85:1 164:23 205:14 206:6 207:3,6 220:9 utility-owned 213:14 233:12 234:2 utilized 77:10 utilizes 16:21 20:5 <hr/> <p style="text-align: center;">V</p> <hr/> V-a-s-t-a-g 176:14 valid 220:11 valuation 138:10 variability 33:23 150:1 193:21 241:17 variable 17:1,3 44:21 52:21 70:4,8 194:1 variation 190:21 211:25 262:8 varies 249:25 vary 268:20 Vastag 8:21 176:1,6,13,20 177:12 180:5 183:12	vehicle 131:3 134:1 vehicles 32:21 verify 123:1 158:17 versed 88:11, 16 versus 62:12 66:5 120:3 vet 158:9 vetted 107:18 viability 170:10 267:8 viable 188:20, 23 197:11 256:18 264:5, 6,9,17 vice 257:18 view 74:16,25 76:1 80:7 85:7 90:10 92:20 122:23 123:7 126:12 129:12 155:11 232:21 259:25 viewed 134:14 137:22 151:4 violate 54:21 108:4 178:12 violates 34:16 violation 34:22 51:3 vital 138:8 volatility 17:25 150:4 187:7 voltage 114:10	volume 26:21 79:16,24 107:21 218:8 264:25 voluminous 75:16 Voluntarily 76:18 volunteer 231:19 <hr/> <p style="text-align: center;">W</p> <hr/> wait 197:6 198:3,19 waited 221:6 walk 128:8 wanted 55:25 73:16 92:14 98:23,25 152:4 169:5 203:10 271:6 warehouse 131:3,9,12 Wasatch 157:1 163:21 Washington 143:2 144:4,8, 9,16,22 147:3 152:5,9,12 153:4,22 154:4,10,15,19 155:16 163:23 165:5,14 waste 141:23 145:4 157:2,4, 8 168:14 172:8 174:1,24 waxing 231:11	ways 186:20 206:10 259:14 web 136:13 222:2,6,7 223:25 Wednesday 273:18 weeds 109:16 week 271:10, 12,13,14,18 272:22 weeks 271:15, 16 weigh 26:10 weight 160:4 weighted 130:11 131:14 well- established 206:10 West 210:4,24 Western 208:21 White 112:21, 22 160:20,21 166:13,14 175:8,9 183:6, 7 201:7,8 226:25 227:2 237:5,6 256:22,23 268:24 269:1, 20 wholesale 10:24 216:10 widely 219:14 willingness	145:21 wind 32:15,17 42:5 94:2 95:14,25 103:5 105:23 106:5 108:19 114:2, 4,7 138:13 143:9,15,19 147:18 205:16 207:8 208:7 209:17 210:10 241:6 249:20, 21 250:4 winter 169:20 173:6 withdraw 80:15 249:4,6 withdrawn 30:17,21 witnessed 91:3 witnesses 90:11 161:13 242:19 273:23 wondering 98:12 word 147:22 156:9 words 89:15 132:19 141:1 255:14 work 56:19 97:22 111:24 129:8,9 173:17 229:15 237:24 241:10 257:14 269:17 272:21 worked 10:21 127:19 205:2 215:21 255:3
--	--	---	--	---

<p>workers 239:15 250:9</p> <p>working 127:13,14 208:2 209:5 215:25 239:2,6 252:25 259:22 263:7 264:22, 23,25 265:24 266:3 267:5,6</p> <p>working-well 263:15,20</p> <p>works 46:11 87:1 96:25 255:2</p> <p>workshops 15:10,22 122:8</p> <p>world 124:14 239:3</p> <p>worried 195:9</p> <p>worry 244:20</p> <p>worth 103:23 104:3 114:7 169:12 173:5 214:10</p> <p>worthwhile 214:3</p> <p>Wright 9:1 183:17,22 184:4 189:22 190:13 196:6 201:13 211:18</p> <p>Wright's 184:24</p> <p>writing 273:24</p> <p>written 34:15 184:17,20 185:6 196:19</p>	<p>214:18</p> <p>wrong 18:5,12 19:13 38:7,10 41:23 52:14 69:13 73:23 108:18 110:22 198:3,4</p> <p>wrote 151:3</p> <p>Wyoming 59:13 60:17 163:23</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Yakima 153:6, 12 165:7</p> <p>year 21:13 86:4,5 88:9 89:5 100:9 103:22,24 105:13 106:24 132:11 153:5 169:13 191:25 219:1 226:21, 22,23 234:16 262:23 264:13 268:19 269:4</p> <p>year-to-year 169:2 171:15 195:10</p> <p>years 10:22 12:19,24 14:20,24 15:25 16:22 17:3,6, 14,16 18:11,20 19:6 20:19,23, 25 21:2,7,8,11, 18 22:7 29:3,6, 23,24 30:7,10 34:6 35:4,17 43:3 45:6,7 47:25 49:6</p>	<p>50:22 51:10, 13,21 54:7,9, 20 55:1 58:17, 23 61:1,13 65:9 66:4,5,9 68:22 69:25 70:17,19 71:25 72:1 76:11 82:24 85:14,16 86:11,23 96:7 98:3 99:16 100:3 101:1,8, 14,15,18,19 102:4 108:9 113:7 117:5,6, 17,23,25 120:3,11,25 121:4,5,17 124:15 125:13 127:8,13,25 129:12,13 130:4,6,10,13, 20,24 131:12, 14,20 132:2,4, 8,9,13,17 133:6,9,12,20 134:6,20 135:1,4 138:14,15,22, 23,24 139:1,7 142:1,9,21,25 144:17,22,25 145:11,13,14, 25 146:6 149:3 151:2 164:17 165:8 169:4 171:23 173:11 174:5,19 177:22 178:4 182:15,16 185:19 189:8 192:16 194:2, 12 200:2 204:15,25 205:12 210:13</p>	<p>212:10 217:2 218:1 219:19, 25 220:5 221:12,15 228:7,12,15, 17,18,23,25 231:17,19,25 239:7 240:9 241:15,16,25 243:13,15 244:1,4,12,13, 20,22,23 245:19,23 249:10 251:12, 16 254:7,23 255:8,9,17 256:8 260:1,7 262:24 264:13, 24 265:1 267:3,11</p> <p>yieldco 128:13, 20,22,25 129:4,5,25 130:25 131:8, 13,18,22,25 132:10 133:2,3 134:1,5,7,18 135:2,17 136:14,16 138:9</p> <p>yieldco's 134:22</p> <p>yieldcos 128:15,19 129:21 134:13, 24 135:11,13, 16,20,22,23 137:3,8,22 138:2,7,19 139:5,10</p> <p>Yvonne 8:10 215:16</p>	<hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero-emitting 235:19</p> <p>zone 106:17</p>
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