

**ROCKY MOUNTAIN POWER**

**VS**

**MIDWAY CITY**

**Docket 20-035-03**

**PUBLIC**

**HEARING**

**April 20, 2020**

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UTAH UTILITY FACILITY REVIEW BOARD PUBLIC HEARING  
DOCKET 20-035-03

ROCKY MOUNTAIN POWER, PETITIONER  
VS. MIDWAY CITY, RESPONDENT

Taken on April 20, 2020 \* 9:00 a.m.

Volume I of III

Proceedings conducted via teleconference  
Day 1 of Hearing

Reported by: Tamra J. Berry, CSR, CCR, RPR

A P P E A R A N C E S

PUBLIC SERVICE COMMISSION:

THAD LEVAR, CHAIRMAN  
DAVID R. CLARK, BOARD MEMBER  
JORDAN A. WHITE, BOARD MEMBER  
TROY FITZGERALD, BOARD MEMBER  
GLENN J. WRIGHT, BOARD MEMBER

ROCKY MOUNTAIN POWER:

BRET REICH  
HEIDI GORDON

MIDWAY CITY:

CORBIN B. GORDON  
JOSHUA D. JEWKES

VALLEY-WIDE OPPOSITION TO LARGE TRANSMISSION LINES  
(V.O.L.T.):

MARK O. MORRIS  
ELIZABETH BRERETON

-oOo-

I N D E X

PAGE

OPENING STATEMENTS BY ROCKY MOUNTAIN.....	54
OPENING STATEMENTS BY MIDWAY CITY.....	60
OPENING STATEMENTS BY V.O.L.T.....	72

WITNESSES FOR ROCKY MOUNTAIN POWER:

JAKE BARKER:

PAGE

Direct Examination by Mr. Reich.....	78
Cross-Examination by Mr. Gordon.....	83
Cross-Examination by Mr. Reich (Cont.).....	124
Cross-Examination by Mr. Morris.....	128
Redirect Examination by Mr. Reich.....	136
Recross-Examination by Mr. Morris.....	138

BENJAMIN CLEGG:

Direct Examination by Mr. Reich.....	151
Cross-Examination by Mr. Gordon.....	153
Cross-Examination by Mr. Morris.....	182
Redirect Examination by Mr. Reich.....	221
Recross Examination by Mr. Gordon.....	227

P R O C E E D I N G S

CHAIRMAN THAD LEVAR: Good morning. We are on the record in Utah Utility Facility Review Board docket 20-035-03, Rocky Mountain, petitioner, versus Midway City, respondent. We've confirmed before the hearing started that all five board members are on the line.

So at this point I'll just make a few reminders. Since this is a telephonic hearing, there are a few things we need to be aware of. Please be cautious of talking over each other. Please identify yourself when speaking, and I can't remember if I did that once we went on the record. This is Thad LeVar.

But if you need to interrupt or make an objection, please identify yourself or any time you're going to speak indicate who you are. Please put your phone on mute when you're not speaking, and then just try to remember to unmute it when you need to speak.

And with that I think we'll go ahead to appearances and then deal with some preliminary matters and some of these filings we received late last week.

Do we have anyone on the line for Rocky

1 Mountain Power?

2 MR. REICH: Yes. This is Bret Reich with  
3 Rocky Mountain Power.

4 MS. GORDON: Heidi Gordon with Fabian  
5 VanCott for Rocky Mountain Power.

6 CHAIRMAN THAD LEVAR: Thank you.  
7 For Midway City?

8 MR. GORDON: Corbin Gordon and  
9 Joshua Jewkes for Midway City.

10 CHAIRMAN THAD LEVAR: Thank you.  
11 And for Valley-Wide Opposition to Large  
12 Transmission Lines.

13 MR. MORRIS: Good morning, Mark Morris and  
14 Elizabeth Brereton of Snell & Wilmer for V.O.L.T.

15 CHAIRMAN THAD LEVAR: Thank you.  
16 And, Ms. Berry, who's the court reporter,  
17 I'll just let you know if you need to interrupt us or  
18 ask anyone to repeat anything -- I know this is an  
19 unusual circumstance to be doing this all  
20 telephonically -- so please feel free if you're  
21 having trouble to let us know if we need to do  
22 anything differently. Thank you.

23 THE REPORTER: Thank you.

24 CHAIRMAN THAD LEVAR: So why don't we jump  
25 ahead into preliminary matters. As I've reviewed

1 some of the filings that came in late last week, I'll  
2 just kind of walk through it and make sure that no  
3 one sees anything differently than I do.

4 So we received a hearing brief from Rocky  
5 Mountain Power that also has a request for summary  
6 disposition. And so that request seems to be a  
7 matter that we should at least discuss before we  
8 start taking witnesses.

9 We have received from Midway City  
10 objections to various witness's written testimony,  
11 and it seems to me that we should address each of  
12 those as we move forward with each witness.

13 If anyone objects to moving forward that  
14 way -- well, any board member or party objects,  
15 please let me know. But it seems like we should deal  
16 with those one witness at a time.

17 We've received Midway City's trial  
18 memorandum. And as I read that, it looks like kind  
19 of a summary of arguments. But I don't read a motion  
20 or preliminary request into that. If I'm reading  
21 that incorrectly, please let me know.

22 And then we have Midway City's due process  
23 objections that includes a request that the board  
24 take all available measures to protect Midway City's  
25 due process. So I read that as somewhat of a

1 preliminary motion. So it seems to me we have a  
2 request for summary disposition and a due process  
3 request from Midway City we probably should address,  
4 at least discuss preliminarily and then some  
5 objections to several of Rocky Mountain Power's  
6 witnesses that we can address as those witnesses are  
7 called.

8 Does any party or board member have any  
9 concerns with moving forward in that manner? First  
10 I'll ask any board member if that is -- if any board  
11 member has any objection to moving forward that way,  
12 please let me know.

13 Yeah, I'm not hearing any.

14 Do any of the parties object to moving  
15 forward that way?

16 MR. MORRIS: Your Honor, this is Mark  
17 Morris for V.O.L.T. We have no objection to moving  
18 forward that way. I just wanted to note we filed  
19 objections to the testimony of Mr. LeFevre and Mr.  
20 Myers. We filed that about ten days ago I think.  
21 And so I just wanted to make sure the court had those  
22 in mind when those witnesses are called. But we're  
23 having to raise those objections as we go.

24 Also, we plan on filing a trial memorandum  
25 today. I inquired of the other parties if they had



1 any objection to our doing that today; they did not.  
2 And there was no motion in there. It's merely a  
3 memorandum of law to assist the board.

4 CHAIRMAN THAD LEVAR: Okay. Thank you.  
5 Just for clarification, I received that was filed  
6 late Friday V.O.L.T.'s joinder to Midway City's  
7 objections to the witnesses. I am not seeing in the  
8 docket a separate objection to witnesses that was  
9 filed by V.O.L.T. you say approximately ten days ago.  
10 I'm not seeing that document in our docket.

11 MR. MORRIS: I will look into that, your  
12 Honor, and try and get back to you.

13 MR. REICH: We have not received those  
14 objections either.

15 CHAIRMAN THAD LEVAR: Have you received  
16 the joinder to Midway City's objections? That wasn't  
17 distributed by the PSC staff until this morning.

18 MR. REICH: Yeah, we have received the  
19 joinder.

20 CHAIRMAN THAD LEVAR: All right. So I'm  
21 not seeing the other objection that you've  
22 referenced, Mr. Morris, online. But perhaps we  
23 can -- if that can be identified as we move forward  
24 today, we can do so.

25 Why don't we move next to Midway City's

1 due process objections. And let me just ask Mr.  
2 Gordon, if you want to clarify if you're making any  
3 preliminary request of the board. You know, these  
4 issues I think were also generally raised at the  
5 scheduling conference, and we understand you're  
6 interest in maintaining those objections. Are you  
7 asking the board to take any action with respect to  
8 those issues at this point in the proceeding?

9 MR. JEWKES: Chairman LeVar, let me just  
10 respond briefly. Primarily, no. This is primarily  
11 lodged to preserve our objections in the event of an  
12 appeal before this board.

13 However, we do think that some of the due  
14 process arguments are intertwined with the merits of  
15 our arguments and the evidence that will be  
16 presented, and we ask simply the board take that into  
17 consideration when evaluating the merits of the  
18 arguments.

19 So, for example, there are some concerns  
20 about our ability to respond to the substance of  
21 these bids that were prepared. We ask that the board  
22 do what it can to perhaps draw reasonable inferences  
23 or to protect our due process rights in any way it  
24 can find that is reasonable.

25 CHAIRMAN THAD LEVAR: Thank you for that

1 clarification, Mr. Jewkes. That is helpful.

2 Does any other party want to comment  
3 further on this particular document that was filed  
4 with the board, the due process objections from  
5 Midway City?

6 I'm not hearing any.

7 Do any board members have any questions  
8 for Midway City about this filing?

9 Okay. I'm not hearing any there either.  
10 So let's move then to Rocky Mountain Power's request  
11 for -- let me make sure I'm saying it right. Request  
12 for Summary Disposition.

13 Mr. Reich or Mr. Gordon, would you like to  
14 briefly discuss that request?

15 MR. REICH: Sure, thank you. That request  
16 is based on the conditional use permit issued by  
17 Midway City. Our position on that is that Midway  
18 City had some expressed conditions in the conditional  
19 use permit. Those expressed conditions included  
20 obtaining three bids from Rocky Mountain Power. As  
21 stated in our request, we submitted those bids to  
22 Midway City on March 26th of 2020. Midway City then  
23 had under the conditional use permit 15 days after  
24 the three bids were provided to select which  
25 construction option would meet its needs in terms of

1 costs and functions according to the conditional use  
2 permit. That date was on April 10th of 2020.

3 We reached out to Midway City after the  
4 deadline and asked for them to select an option.  
5 They did not.

6 In addition to selecting an option  
7 after -- 15 days after receiving the bids, Midway  
8 City also, pursuant to their own conditional use  
9 permit, were required to raise the funds sufficient  
10 to pay for the project for the undergrounding of the  
11 line.

12 They also were required, as stated in the  
13 conditional use permit, to obtain a vote by the  
14 Wasatch County Council to approve a location for the  
15 dip poles that would otherwise be alongside  
16 Highway 113 that's acceptable to Midway City because  
17 Rocky Mountain Power had previously obtained a  
18 conditional use permit from Wasatch County that did  
19 not include those dip poles or undergrounding of the  
20 line in Wasatch County.

21 Midway City failed to meet the conditions  
22 required in the conditional use permit. And as  
23 stated in the conditional use permit if they failed  
24 to meet those deadlines, then the conditional use  
25 permit states that the applicant "may proceed with

1 overhead construction with the following conditions."  
2 And then it identifies several conditions that must  
3 be met to move forward with the project with the  
4 overhead route.

5 Since Midway City never chose a  
6 construction option, they never responded to our  
7 request to obtain -- to select an option, and failed  
8 to meet the funding conditions that they imposed,  
9 it's our position that the -- that the conditional  
10 use permit as stated, the expressed conditions  
11 contained therein, they failed to meet those. And  
12 therefore under the conditional use permit, it's  
13 Rocky Mountain Power's position that they have the  
14 right now to proceed with the overhead project,  
15 subject to the conditions outlined in the conditional  
16 use permit.

17 CHAIRMAN THAD LEVAR: Thank you, Mr.  
18 Reich.

19 In a moment I'll give Midway City an  
20 opportunity to respond and also indicate the extent  
21 to which they agree or disagree with the factual  
22 issues that Rocky Mountain Power has proffered in  
23 connection with this.

24 But before I do that, let me see if any  
25 board member has any questions for Mr. Reich before

1 we do that. If any board member wants to ask  
2 questions right now, please jump in and let me know.

3 Okay. I'm not hearing any. I'll move to  
4 Midway City and again ask you if you any response to  
5 this and also specifically ask if you have a position  
6 on the factual issues that have been proffered by  
7 Rocky Mountain Power in connection with this request  
8 for summary disposition.

9 MR. GORDON: We do. This is Corbin Gordon  
10 on behalf of Midway City. So in order to get a  
11 directed verdict there would have to be no dispute of  
12 any fact before this board, and there are significant  
13 disputes of fact.

14 Under the conditional use permit, Rocky  
15 Mountain Power was required to provide us with three  
16 qualified bids. And we have been working -- as you  
17 saw in our trial memorandum, there are very distinct  
18 arguments that those bids are not qualified, that the  
19 specs included in the bids are not correct, and that  
20 several of the things that Rocky Mountain Power has  
21 put in the bid are not required nor necessary under  
22 the -- under the standards, the safety standards that  
23 are applicable to the industry.

24 So our position is we do not have any  
25 obligation to proceed forward to do any of the

1 additional requirements until we actually get  
2 qualified bids from Rocky Mountain Power. And the  
3 core of what you will hear today is much  
4 cross-examination that will establish that the bids  
5 as presented are not reliable and that we have not  
6 received those, and as such we can't proceed forward.  
7 I mean we need to get bids that are reliable so we  
8 actually know how much money we're supposed to --  
9 we're supposed to get or we're supposed to raise.

10 So there is a distinct dispute of fact,  
11 and that's in my opinion the core of what we're going  
12 to be arguing here over the next day or two,  
13 establishing that those bids are not reliable.

14 CHAIRMAN THAD LEVAR: Okay. Thank you.  
15 Let me go next to any board member. If any board  
16 member has any questions for Mr. Gordon at this time,  
17 please indicate that you have a question.

18 MR. JORDAN WHITE: Just one question along  
19 those same things, Mr. Jewkes [sic]. I guess I'm  
20 just kind of wondering what your thoughts are in  
21 terms of the context of the statute. When would  
22 Rocky Mountain Power have any kind of acceptance or  
23 recognition or even a dispute with respect to whether  
24 or not their bids are accepted or qualified? I guess  
25 why I'm asking that is because I looked at their

1 motion paper, and it looks like there was an e-mail  
2 indicating their -- their indication they provided  
3 qualified bids. But I see nothing in return, any  
4 disputes, any challenges, whatsoever from any of the  
5 other parties with respect to those bids. Can you  
6 help me understand?

7 MR. GORDON: Certainly. I mean we've been  
8 in -- I mean my thought on that was we all know that  
9 we're going to be in this hearing today, that we've  
10 already had a petition. And on our side we're asking  
11 that you as a board determine what the actual excess  
12 costs are going to be. And we received those bids  
13 just a little less than three weeks ago. So in my  
14 mind we had already lodged our objections, and  
15 everybody understood that we were going to be arguing  
16 about that in this hearing. So I did not think that  
17 we needed to raise objections. I thought we already  
18 had. And so that's my position on that is that we've  
19 done all of the work and you can see in all of the  
20 pleadings that it's very clear that we object to the  
21 form of these bids. But it did take us a little bit  
22 of time to work through with our experts to establish  
23 that, which once again comes back to due process.

24 So my obligation on that would be we've  
25 already lodged our objections; they're already



1 standing before this board.

2 MR. JORDAN WHITE: That's helpful. So  
3 just so I'm clear, it's your position that within the  
4 statute the board is to actually give their approval  
5 or blessing or what have you of whether the bids are  
6 qualified under the statute? Is that -- just so I'm  
7 clear on that.

8 MR. GORDON: Yes.

9 MR. JORDAN WHITE: Okay. Thank you.

10 MR. GORDON: As part of the responsibility  
11 to determine what the actual excess costs are, you  
12 need to establish what the actual costs to go  
13 underground are. And so that's going to be one of  
14 the primary things you're going to be looking at over  
15 the next couple of days.

16 MR. JORDAN WHITE: All right. Thank you.

17 CHAIRMAN THAD LEVAR: Thank you. For  
18 purposes of the transcript, I'll just note I think  
19 Mr. White addressed his question to Mr. Jewkes, but  
20 it was answered by Mr. Gordon. Am I correct about  
21 that, just to make sure the transcript was correct?

22 MR. GORDON: That is correct, yes. Mr.  
23 Gordon answered that.

24 CHAIRMAN THAD LEVAR: Thank you. Any  
25 other questions from board members for Midway City?

1                   Okay. I'm not hearing any. Why don't we  
2 go ahead and move to V.O.L.T., if they have any  
3 comments on this preliminary request from Rocky  
4 Mountain Power -- well, sorry, preliminary is the  
5 wrong word -- this request for summary disposition  
6 from Rocky Mountain Power.

7                   Does V.O.L.T. have anything they want to  
8 add to this?

9                   MR. MORRIS: Thank you, your Honor. Very  
10 little. We join in Midway's points opposing the  
11 motion. The point of this entire proceeding is to  
12 determine whether and how much Midway is going to  
13 have to come up with in terms of actual excess costs  
14 to implement a means of putting this line in, other  
15 than what Rocky Mountain Power proposes. But to get  
16 to those excess costs, you need -- the board needs to  
17 understand what the real numbers are for going  
18 overhead and what the real numbers are for going  
19 underground. And we respectfully submit that neither  
20 of those two numbers have been adequately calculated  
21 or presented by Rocky Mountain at this point. And so  
22 it is a legal and factual impossibility for Midway to  
23 know what it is supposed to do in order to exercise  
24 an option to have this line go underground.

25                  CHAIRMAN THAD LEVAR: Thank you,

1 Mr. Morris.

2 Does any board member have any questions  
3 for Mr. Morris at this point?

4 I'm not hearing any questions from board  
5 members. So why don't we go back to Rocky Mountain  
6 Power. This is your request for summary disposition.  
7 So why don't I give you a moment if you want to add  
8 anything final to your request before we discuss it  
9 as a board.

10 MR. REICH: Sure, thank you.

11 In the conditional use permit, the  
12 requirement called for -- it says "We require the  
13 applicant to provide three actual competitive  
14 construction bids prepared by qualified bonded and  
15 insured third parties in accordance with standard  
16 city policy to establish the actual costs of this  
17 construction."

18 And our position is that we have provided  
19 those bids. They meet those qualifications. They  
20 have to be competitive. We've testified through  
21 Darin Myers that we used our standard procurement and  
22 request for proposal process that Rocky Mountain  
23 Power uses. We secured those bids. We sent the RFP  
24 out to 18 different bidders, as Mr. Myers has stated  
25 in his opinion.

1           In addition, with respect to what Mr.  
2 Morris said, the conditional use permit actually has  
3 a true-up provision on page 18 that says "once  
4 construction is finished on the underground line, the  
5 actual costs will be trued up. And either the  
6 applicant shall refund the overpayment to the city,  
7 or the city shall pay the difference to the  
8 applicant."

9           So there is a true-up provision in the  
10 conditional use permit. So I'd certainly disagree  
11 that there is any requirement to obtain a definitive  
12 number on excess costs if there's a true-up provision  
13 in the conditional use permit. That could be  
14 trued-up at the end of the project.

15           So the only -- the only dispute or the  
16 only evidence that Midway City presented was not a  
17 bid. They did not go out and contain a construction  
18 bid. They contained an estimate. And as you know an  
19 estimate is a lot different than a bid. It's not  
20 binding. It's a high-level estimate of what the  
21 project could cost. So there is no -- there's no  
22 controverted evidence that shows that those three  
23 competitive bids are not exactly what they say they  
24 are.

25           Of course Midway City must disagree with

1 the price and say that they're too high. That  
2 doesn't mean that they're not valid or they weren't  
3 qualified and competitive as we followed our process.  
4 So we would dispute that there's any controverted  
5 evidence. There's no bid that was provided by either  
6 Midway City or V.O.L.T. that contradicted the bid  
7 submitted by Rocky Mountain Power. Thank you.

8 CHAIRMAN THAD LEVAR: Thank you,  
9 Mr. Reich.

10 Do any board members have any questions  
11 for Mr. Reich at this point?

12 I'm not hearing any questions from board  
13 members. So we'll move to board discussion of the  
14 request for summary disposition by Rocky Mountain  
15 Power. Does any board member want to begin that  
16 discussion?

17 MR. JORDAN WHITE: I guess I'll kick this  
18 off. I guess my initial concern is I'm not sure if  
19 I'm comfortable with the board getting into the  
20 business of questioning the qualified bids. I don't  
21 read that in the statute. It seems that Rocky  
22 Mountain Power has followed the typical practices.

23 The question of whether or not they're  
24 qualified to me seems to go beyond that typical term  
25 of art of qualification. It's almost like we're

1 asked to be looking towards it with a jaundiced eye  
2 beyond. You know, in other words, they've followed  
3 their practice. They've let it out to the  
4 competitive bidding to the 18 possible prospects.  
5 They've got back the bids.

6 Like I said I'm just thinking out loud  
7 here, but that's my concern. I'm not sure where this  
8 goes ultimately. Is it -- when will we ever get to a  
9 point we feel comfortable or, you know, what is our  
10 position to actually vet what it means to be a  
11 qualified bid. I guess that's my initial concern is  
12 where does this go ultimately both in this proceeding  
13 and beyond that. Where do we -- do we actually  
14 come to -- is a utility or other entity supposed to  
15 come before the board when they're actually doing do  
16 their RFP process so we can bless that. That's kind  
17 of my initial concern, and I'll just leave it at that  
18 for now.

19 CHAIRMAN THAD LEVAR: Thank you, Mr.  
20 White.

21 Any other board members or discussions or  
22 motions at this point?

23 MR. DAVID CLARK: I understand and  
24 appreciate Commissioner White's perspective. Mine is  
25 a little different. I think at least I want to -- in

1 my mind I entertain the possibility that the bids  
2 could be demonstrated to be flawed without the  
3 presentation of -- by the opponent of a competing  
4 bid. And I know we have representations in the file  
5 of testimony about the bidding process. But I'm  
6 inclined to want to have that testimony vetted so  
7 that we can hear cross-examination of the testimony  
8 to -- I'd like to assure myself that indeed the  
9 process is what it's been represented to be in the  
10 pre-filed testimony or whether or not there are any  
11 factual challenges to that that can be sustained  
12 through either cross-examination or the affirmative  
13 testimony of the witness for Midway City.

14 So in my mind although it might be a bit  
15 thin, I think there's a factual controversy here for  
16 us to examine.

17 CHAIRMAN THAD LEVAR: Thank you,  
18 Mr. Clark.

19 Any other comments or motions from board  
20 members?

21 I'll just give my thoughts to this point.  
22 To me there's at least -- there's at least enough of  
23 a factual dispute here and, you know, a relatively  
24 manageable amount of testimony that we have to go  
25 through that I'm not comfortable at this point voting

1 for summary disposition. Where it seems like we have  
2 enough facts in dispute that it makes sense to move  
3 through the witnesses and the testimony. That's  
4 where I am.

5 I'm ready to make a motion, unless any  
6 other board members want to discuss it further or  
7 anyone else wants to make any motion for action on  
8 the request.

9 MR. DAVID CLARK: Just so that you don't  
10 have to do all the work, Chair LeVar, I'll move that  
11 the motion be denied for summary adjudication of the  
12 permit.

13 CHAIRMAN THAD LEVAR: Does any board  
14 member want to second or discuss that motion for  
15 Mr. Clark?

16 MR. GLENN WRIGHT: I'll second the motion.

17 CHAIRMAN THAD LEVAR: Any further  
18 discussion of the motion?

19 MR. JORDAN WHITE: I intend to vote to  
20 deny the motion. But I just want to make clear in  
21 the balance and this context of the due process  
22 motion, et cetera, I agree that we should continue  
23 this discussion before we -- you know, explore some  
24 of these issues. But I do want to make it clear I  
25 am -- I guess I'm voicing a concern for future issues



1 that I don't believe it's the position of the board  
2 or within the statute to actually, you know, decide  
3 what that means to be a qualified bidder. Because if  
4 that were the case, it should have been done I think  
5 much earlier in the proceeding or somehow more  
6 descriptive in the statute.

7 With that being said, I would vote to deny  
8 it for the reasons expressed by Chair LeVar and  
9 member Clark.

10 CHAIRMAN THAD LEVAR: Thank you, Mr.  
11 White. We have a motion and a second. Any further  
12 discussion by the board members before we have the  
13 vote?

14 I'm not hearing any, so we'll go to voting  
15 on the motion.

16 Mr. Clark?

17 MR. DAVID CLARK: I vote yes on the motion  
18 to deny summary disposition.

19 CHAIRMAN THAD LEVAR: Mr. Fitzgerald?

20 MR. TROY FITZGERALD: I vote in favor of  
21 denial.

22 CHAIRMAN THAD LEVAR: I also vote in favor  
23 of denying the request for summary disposition.

24 Mr. White?

25 MR. JORDAN WHITE: I vote yes or in favor

1 of denying the motion.

2 CHAIRMAN THAD LEVAR: Thank you. Mr.  
3 Wright?

4 MR. GLENN WRIGHT: I vote to deny the  
5 motion.

6 CHAIRMAN THAD LEVAR: Thank you. So that  
7 motion passes by unanimous vote. We're denying the  
8 request for summary disposition.

9 And I think we're ready to go ahead to  
10 moving forward with the testimony. Does any party  
11 have anything else that they feel needs to be dealt  
12 with preliminarily before we move to Rocky Mountain  
13 Power calling their first witness?

14 MR. MORRIS: Your Honor, this is Mark  
15 Morris with V.O.L.T. I've looked through our  
16 filings, and it appears that the objections that I  
17 drafted many days ago were not filed. And so I plan  
18 on doing that immediately. They're on my system, and  
19 I thought they were there. So these are objections  
20 to Misterys LeFevre and Myers testifying. And as the  
21 board indicated, we can address the reasons for those  
22 objections at the time they're called. Thank you.

23 And I regret the oversight. We have a lot  
24 of stuff working from home, and it just slipped  
25 through the cracks.

1           CHAIRMAN THAD LEVAR: Thank you for that  
2 clarification. These are definitely unique times.  
3 But there will be opportunity to address the  
4 substance of our objections as they call each  
5 witness. So thank you for that clarification.

6           And in terms of schedule, let me just make  
7 it -- before we move to witnesses, let me make a  
8 comment on schedules. As we discussed in both of our  
9 previous hearings, some board members have other  
10 obligations going on. So today we have to conclude  
11 by 4:00 p.m. And if the hearing continues until  
12 Wednesday, we'll have to conclude by 4:00 p.m. on  
13 Wednesday also. Tuesday and Thursday look clear to  
14 go up until 5:00 p.m. if we need all of those days.  
15 But just so you know today we will need to finish by  
16 4:00.

17           And just to also let everyone know, we  
18 typically -- well, at least with public service  
19 commission hearings, we typically take a hearing  
20 break about every hour and a half or so. If anyone  
21 has any reason why they need to request a short  
22 recess other than that, including Ms. Berry, if you  
23 need to ask for a recess any more frequently than  
24 that, please jump in and do that. But otherwise I'll  
25 be watching the clock and trying to get us a short

1 break every hour and a half or so, and then of course  
2 a lunch break midday.

3 So with that I think we're ready to go to  
4 Mr. Reich or Mr. Gordon for Rocky Mountain Power's  
5 first witness.

6 MR. REICH: Thank you. The parties  
7 discussed the order of witnesses, and we had agreed  
8 that Midway City and V.O.L.T. would proceed first  
9 with cross-examination. They had identified the  
10 following six witnesses. Since we've already filed  
11 direct testimony on these witnesses, they had  
12 identified Jason Norlen as going first, then Benjamin  
13 Clegg, Darin Myers, Jake Barker, then Benjamin  
14 LeFevre and Craig Michaelis. So I think that Midway  
15 City and V.O.L.T. actually are going to start with  
16 the cross-examination.

17 CHAIRMAN THAD LEVAR: So let me just  
18 clarify. Are you going to put -- are you going to  
19 introduce their testimony first or they're going to  
20 be cross-examined before their testimony is  
21 introduced? I'd like a little clarification on the  
22 process we're talking about.

23 MR. REICH: Sure, we can go ahead and  
24 proffer the direct testimony of our witnesses.

25 CHAIRMAN THAD LEVAR: And then of course

1 we have some objections to those proffers that we  
2 will have to deal with one at a time I think.

3 So do you want to start with the first  
4 witness that you intend to proffer?

5 MR. REICH: Sure. It would be Jake  
6 Barker.

7 CHAIRMAN THAD LEVAR: Jake Barker first.

8 MR. REICH: Sure.

9 CHAIRMAN THAD LEVAR: Mr. Barker, are you  
10 on the line?

11 THE WITNESS: Yes, I'm on the line.

12 CHAIRMAN THAD LEVAR: Okay, thank you.

13 Your volume isn't great. If there's  
14 anything you can do to improve the volume quality,  
15 that would be good.

16 MR. REICH: He's just going to get a  
17 little closer to the speaker. He wasn't near the  
18 speaker. We're trying to stay somewhat apart in the  
19 conference room here.

20 CHAIRMAN THAD LEVAR: Oh, sure. Thank  
21 you.

22 THE WITNESS: This is Jake Barker. Can  
23 you hear me better?

24 CHAIRMAN THAD LEVAR: Yes, that's much  
25 better. Let me just start by swearing you in.

1 Do you swear to tell the truth?

2 THE WITNESS: Yes.

3  
4 JAKE BARKER,

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

7  
8 CHAIRMAN THAD LEVAR: Okay. And I am not  
9 seeing an objection to Mr. Barker from Midway. And  
10 from what you said, I don't think there's an  
11 objection from V.O.L.T. to this witness. Am I  
12 incorrect on that?

13 If there is any objection to this witness,  
14 please indicate at this point.

15 I'm not hearing any. So, Mr. Reich, you  
16 can go ahead with this witness.

17 MR. GORDON: Your Honor, this is Corbin  
18 Gordon from Midway. We would like to invoke the  
19 exclusionary rule.

20 CHAIRMAN THAD LEVAR: You'd like all  
21 witnesses -- are you asking for that with respect to  
22 all witnesses in this proceeding?

23 MR. GORDON: Yes.

24 CHAIRMAN THAD LEVAR: Does any board  
25 member have any question for Mr. Gordon with respect

1 to this request?

2 MR. GLENN WRIGHT: I have no idea what  
3 that rule is.

4 MR. GORDON: Let me explain. I apologize.  
5 It's common when we are in trial to invoke the  
6 exclusionary rule, which requires anyone who's going  
7 to testify be removed from the courtroom while others  
8 testify so that they're not influenced by the  
9 testimony that they hear. So we're just asking that  
10 anyone who intends on testifying be removed, and the  
11 only person that be allowed on the record and in the  
12 room would be the person testifying.

13 CHAIRMAN THAD LEVAR: Let me ask this  
14 question, Mr. Gordon. Just from a mechanics point of  
15 view, this is a public meeting, and it's being  
16 streamed. So anyone can listen to it. You know in a  
17 courtroom when I've been in courtrooms and the  
18 exclusionary rule is invoked, it's typically pretty  
19 simple to just exclude the witnesses from the room.

20 But is your request to discontinue  
21 streaming the proceeding also? Because we stream it  
22 as a courtesy. It's not a legal requirement that we  
23 stream because we keep a court reporter and a  
24 transcript. But are you asking that we turn off the  
25 stream?

1 MR. GORDON: No, I am not, absolutely not.  
2 I'm just asking that the witnesses be removed from  
3 the room. And then I mean I think you could order  
4 them not to listen to the stream until they testify.

5 CHAIRMAN THAD LEVAR: Any other board  
6 members have any questions for Mr. Gordon about this  
7 request?

8 MR. TROY FITZGERALD: I don't have any  
9 objection or questions regarding the request. It's  
10 just there's just no way for us to verify that it's  
11 happening. So it would just have to be the basis of  
12 representation from the parties.

13 CHAIRMAN THAD LEVAR: Thank you,  
14 Mr. Fitzgerald.

15 Any other board comments or questions for  
16 Mr. Gordon before we move to other parties?

17 MR. DAVID CLARK: I don't have any  
18 questions. I'd like to hear what the other parties  
19 have to say about the request though.

20 MR. JORDAN WHITE: My question I guess is  
21 I don't know that I'm opposed to it. I don't know if  
22 we've heard that before in the public service  
23 commission meetings. What's the reason for it or the  
24 rationale for that? It might help.

25 MR. GORDON: Would you like me to answer



1 that, Chairman LeVar?

2 CHAIRMAN THAD LEVAR: Yes, Mr. Gordon, if  
3 you'd respond to that question.

4 MR. GORDON: It just goes to the  
5 reliability of the testimony that you're going to  
6 receive. There will be different things that we will  
7 be asking -- the same things in some instances we  
8 will be asking different witnesses. And from a  
9 fairness standpoint, it's not fair that everyone sits  
10 and listens to everyone else's answers and  
11 potentially tries to coordinate.

12 So in trial this is a very common thing,  
13 where to protect the integrity of the process, we  
14 just bring in one witness at a time and they testify  
15 and then they leave and then the next person comes  
16 in. And that way there's no possibility of having  
17 testimony altered due to what they've already heard.

18 MR. JORDAN WHITE: Thank you.

19 CHAIRMAN THAD LEVAR: Any other questions  
20 or comments from board members before we move to  
21 Rocky Mountain Power?

22 MR. DAVID CLARK: So I guess I'm just  
23 wondering about the consistency of this request with  
24 any requirements under the Open and Public Meetings  
25 Act and its applicability to our proceeding.

1                   CHAIRMAN THAD LEVAR: Mr. Gordon, do you  
2 have any response to that question?

3                   MR. GORDON: Yeah. I mean this is -- so  
4 you sit in really a quasi judicial scenario here just  
5 like in a court. Courts are open to the public, but  
6 the judge does have the power to invoke this rule,  
7 which is common in trials, to exclude the witnesses.  
8 And once again it's just simply for the reliability  
9 of the process.

10                  So it wouldn't be in my opinion any  
11 violation. You are sitting in a quasi judicial role  
12 here; you're creating a record. And you certainly as  
13 a board have the power to say, yes, we're going to  
14 grant the exclusionary rule and take witnesses one at  
15 a time. That's a very common thing that judges do.

16                  CHAIRMAN THAD LEVAR: I have one follow-up  
17 question to Mr. Clark's question. You're not  
18 indicating that district courts in Utah are subject  
19 to the Open and Public Meetings Act; is that correct?

20                  MR. GORDON: No, I'm not. I don't think  
21 that that's -- that's an interesting question. But  
22 they are open to the public unless closed by a ruling  
23 of the court.

24                  CHAIRMAN THAD LEVAR: Maybe just one or  
25 two more follow-ups to that then. Would you view

1 this, excluding some witnesses from listening to the  
2 proceeding, as some form of closing the meeting under  
3 the Open and Public Meetings Act?

4 MR. GORDON: I don't think so. I mean  
5 once again your primary job as a board today is to  
6 make sure this is a fair process. And I don't think  
7 it's violating anybody's rights as far as wanting to  
8 listen in if they're giving testimony and you're  
9 concerned that it's going to make the testimony that  
10 you hear unreliable. And so I think your primary  
11 purpose today is to make sure that that occurs. And  
12 I think these witnesses fully expect and understand  
13 that they're coming in to give testimony. We're not  
14 excluding any of the public who is interested. But  
15 as a -- as party to we're going to be giving you  
16 information, I think you have the right to protect  
17 the process and the way that that is presented so  
18 that you can rely on it.

19 CHAIRMAN THAD LEVAR: Thank you, Mr.  
20 Gordon.

21 Any other questions from board members?

22 MR. JORDAN WHITE: Here's my question.  
23 I'm wondering if maybe this is, you know, a precursor  
24 to the response from Rocky Mountain Power. I'm  
25 wondering if it might just be something they would

1 consider doing voluntarily. My concern is under the  
2 Open Public Meetings Act, there's actual misdemeanor  
3 and potential criminal liability for board members  
4 for violating that act. So I'm a little bit  
5 concerned that we're out on the ledge about much  
6 backing other than just representations about Utah  
7 Administrative Law.

8 CHAIRMAN THAD LEVAR: I don't know if that  
9 was a question or not. Mr. White, did you want Mr.  
10 Gordon to respond to that?

11 MR. JORDAN WHITE: Well, I guess I'm  
12 asking before -- I'm asking that for Rocky Mountain  
13 Power. I know they're going to be responding to us  
14 in a second. But that may be something we might want  
15 to consider as a board or if they may be willing to  
16 do. In other words because really we're relying on  
17 their good faith and their willingness to do that. I  
18 mean whether we order it or they just voluntarily do  
19 that, either way.

20 I guess I'm trying to think of the most  
21 safe route. I'm not opposed to that request. I've  
22 never heard that before in one of -- at least in a  
23 commissioner proceeding. I recognize that's a common  
24 practice and a typical court practice. I guess I'm  
25 trying to walk the line between our obligations under

1 the Utah Open Public Meetings Act and the request  
2 for, you know, the due process underpinnings that  
3 Midway City is giving out I guess.

4 So again this may be a potential  
5 discussion point for the board and it may be a  
6 request for Rocky Mountain Power to consider, whether  
7 they would do that voluntarily or whether we need to  
8 order them.

9 CHAIRMAN THAD LEVAR: Okay. Thank you,  
10 Mr. White.

11 Any other comments or questions from board  
12 members before we move to Rocky Mountain Power, and  
13 then of course we'll move to V.O.L.T. next also.  
14 Because my understanding is this request applies to  
15 the witnesses from all three parties.

16 Any other questions or thoughts from board  
17 members before we move to the next party?

18 Okay. Mr. Reich or Ms. Gordon, do you  
19 have any comments on this request from Midway City?

20 MR. REICH: Yes, this is Mr. Reich, and we  
21 object to that request. We're not voluntarily going  
22 to agree to that for several reasons.

23 The first reason being that the parties in  
24 this proceeding have already filed direct testimony  
25 and rebuttal testimony. That testimony is a matter

1 of public record. Unlike a court proceeding where  
2 there's live witnesses that offer testimony live and  
3 not written testimony. So this is in many ways  
4 different than a courtroom proceeding.

5 And in fact under the Facility Review  
6 Board Act under section 54-14-104 under the rules and  
7 procedures, it says that "The board may, pursuant to  
8 title 63G of the Utah Administrative Rulemaking Act  
9 adapt rules governing proceedings under this chapter  
10 consistent with this chapter and title 63G chapter  
11 4."

12 So if you look at the chapter 4 of the  
13 Administrative Procedures Act, there are procedures  
14 for formal adjudicated proceedings such as this one,  
15 a hearing. This is not a trial; it's a hearing. So  
16 under that -- under the provisions in Utah Code  
17 63-G-4-206(1)(a), it says "The presiding officers  
18 shall regulate the course of the hearing to obtain  
19 full disclosure to relevant facts and to afford all  
20 the parties reasonable opportunity to present their  
21 positions."

22 So I think that this hearing is different  
23 in some ways than a courtroom proceeding. The rules  
24 of evidence are somewhat relaxed. In fact in this  
25 rule that we're referring to it says: The presiding

1 officer may not exclude evidence solely because it is  
2 hearsay. So that's another reason. There's no basis  
3 for invoking the exclusion.

4 The Exclusions Act we found in the Utah  
5 Rules of Evidence, Rule 615, and that rule says, "The  
6 parties request the court must order witnesses  
7 excluded so they cannot hear others' testimony. But  
8 this rule does not authorize excluding a person whose  
9 presence a party shows to be essential to presenting  
10 the party's claim or defense."

11 So it's Rocky Mountain Power's position  
12 that even under the rule it's not proper to be  
13 invoked, especially in this hearing that's difficult  
14 enough where we can't see the witnesses, where we  
15 can't -- it's difficult. We would like our witnesses  
16 to be present to hear the proceeding to make it  
17 comply with the APA, specifically obtaining full  
18 disclosure in front of this board. So we do object  
19 to it.

20 CHAIRMAN THAD LEVAR: Thank you,  
21 Mr. Reich.

22 Do any board members have any questions  
23 for him before we move to V.O.L.T.?

24 I'm not hearing any board members indicate  
25 they have any questions for Rocky Mountain Power. So

1 why don't we go to Mr. Morris or Ms. Brereton. Do  
2 you have any comments on this request for Midway  
3 City?

4 MR. MORRIS: Thank you. We join in  
5 Midway's motion to exclude. Responding most  
6 immediately to the points Mr. Reich made, it's true  
7 that there has been a lot of coordination among  
8 witnesses before now because they've had an  
9 opportunity to confer with counsel and they've all  
10 submitted their own written direct testimony in  
11 coordination with counsel. And so that concern under  
12 the exclusionary rule has now been on obviated. So I  
13 would submit that whatever public policy or reasons  
14 under open meetings for not excluding witnesses is  
15 largely obviated.

16 But I share Mr. Gordon's concern that if  
17 these witnesses are able to sit here and listen to  
18 questions that have not yet been presented to them in  
19 cross-examination, that there is a risk that  
20 testimony is going to change. A simple example is  
21 there might be four witnesses. If the first three  
22 testify that the light was red and the fourth one was  
23 going to testify it was green, that puts a lot of  
24 pressure on the fourth witness not to change the  
25 testimony and say instead, "Well, I guess it was red



1     instead of green."

2                 And so that's what we're trying to achieve  
3     here. I agree with Mr. Gordon that the board is  
4     going to get the cleanest and most reliable testimony  
5     by excluding witnesses.

6                 You know one way I've seen it done is  
7     simply to put all the witnesses under oath at the  
8     beginning, if they're available, and then the board  
9     could order them not to listen and simply to wait  
10    their turn to be called. I don't think that  
11    excluding five or six or seven from the world at  
12    large from the public being able to listen to these  
13    proceedings and observe them is going to be  
14    prejudiced by asking only five or six or seven people  
15    to wait their turn.

16                And, for example, as soon as Mr. Barker is  
17    done, he's welcome, once he's off the stand if you  
18    will, to participate and watch. And so the world of  
19    people not able to participate or not able to observe  
20    these proceedings is going to shrink as we go.

21                But I do share the concern that testimony  
22    could be modified in light of the cross-examination  
23    of early witnesses. The later witnesses are going to  
24    have an opportunity perhaps to reconsider what they  
25    were otherwise going to testify to.

1                   CHAIRMAN THAD LEVAR: Thank you,  
2                   Mr. Morris.

3                   Do any board members have questions for  
4                   Mr. Morris at this point?

5                   I'm not hearing any questions. Why don't  
6                   I circle back to Mr. Gordon for any final comments on  
7                   the motion before we move into board discussion.

8                   MR. GORDON: I just want to reiterate my  
9                   motion is based on fairness and reliability. I want  
10                  this process to be as fair as possible. I don't  
11                  think it's fair to allow Rocky Mountain Power's  
12                  witnesses to sit and listen to one another and  
13                  potentially coordinate. And so based on that I just  
14                  renew.

15                  I'm more than happy to abide by whatever  
16                  the board decides, but I do lodge that objection that  
17                  I don't think that's fair if that's the way you want  
18                  to proceed.

19                  CHAIRMAN THAD LEVAR: Let me ask you this  
20                  question, Mr. Gordon. As I'm looking at our legal  
21                  options and obviously not wanting to violate the Open  
22                  and Public Meetings Act, what would be your response  
23                  to a board action to request all witnesses not to  
24                  listen to the hearing until they're testifying?

25                  MR. GORDON: I'll take whatever I can get,

1 your Honor. And so if that's as far as you feel  
2 comfortable going, then we'll abide by that, and my  
3 hope would be they would respect the board's guidance  
4 there.

5 CHAIRMAN THAD LEVAR: Thank you, Mr.  
6 Gordon.

7 Any other questions from board members for  
8 Mr. Gordon at this point?

9 I'm not hearing any. So why don't we move  
10 to board discussion of the request by Midway City.

11 MR. JORDAN WHITE: If we were to entertain  
12 this request -- and I think I've got the right  
13 statute in front of us -- but do you have an opinion  
14 in terms of whether we would need to close this as a  
15 -- I guess that's what I'm grappling at. Typically  
16 in a commission proceeding it would be -- you know,  
17 we'd actually close a portion of the hearing if there  
18 are certain reasons, confidential matters,  
19 proprietary, et cetera. Is this something that we  
20 should discuss whether we would be required to at  
21 least close it? I guess the other option is just to  
22 make a request.

23 CHAIRMAN THAD LEVAR: Yeah, this is Thad  
24 LeVar, if you don't mind me commenting a little bit  
25 on your comment too.

1                   Just for clarification -- sorry, were you  
2 not finished, Mr. White?

3                   MR. JORDAN WHITE: No, that's actually a  
4 question. I want you to comment, if you wouldn't  
5 mind.

6                   CHAIRMAN THAD LEVAR: Oh, sure. Just for  
7 everyone's benefit, there is a statute in Title 54  
8 that allows -- that the public service commission  
9 frequently uses to close meetings, to close hearings  
10 outside of the Open and Public Meetings Act. But I  
11 don't see any basis for that statute in Title 54 that  
12 applies to the Utility Facility Review Board.

13 It's -- I don't have that statute that the Public  
14 Service Commission uses frequently. But I don't  
15 think there's any argument to be made that this  
16 statute applies to this board.

17                   So the short answer is while the Public  
18 Service Commission has some additional flexibility, I  
19 don't see that this board does outside of the Open  
20 and Public Meetings Act, which is why I asked the  
21 question about making the request. I'm not sure  
22 there's any basis under the purposes for closing a  
23 meeting in the Open Public Meetings Act to do this.

24                   I think asking some participants not to  
25 listen is -- or prohibiting some witnesses from

1 listening is some form of closing the hearing. On  
2 the other hand, I'll give my own view that I haven't  
3 heard anything in the responses from Rocky Mountain  
4 Power that gives me any indication that they would  
5 have prejudiced in any way having their witnesses  
6 excluded. I don't see any potential for prejudice to  
7 any party for having their witnesses excluded.

8 I'm just concerned about what we do and  
9 don't have legal authority to do. So that's where  
10 I'm sitting. As a matter of fairness I don't think  
11 it hurts any party to have the witnesses excluded.  
12 Since they all have read each other's testimony, I  
13 don't see any prejudice from not being able to listen  
14 to each other's cross-examination before they're  
15 cross-examined.

16 But I just have some concerns about our  
17 legal path to doing that. So those are my thoughts.

18 Do any other board members have comments  
19 or deliberation or discussion of this question?

20 MR. DAVID CLARK: I personally would want  
21 some authority for this board taking the action that  
22 we've been requested to take because of the routine  
23 practices of the board, this board, also even though  
24 it's met infrequently, and the applicability and Open  
25 and Public Meetings Act and how it relates to our

1 function and my questions about it without some firm  
2 authority for taking the action that we've been  
3 requested to take. I would -- I would not impose it.  
4 I think I don't have an objection to requesting that  
5 witnesses refrain from listening to their -- the  
6 other testimony being offered by their -- the  
7 witnesses who are aligned with them. But I wouldn't  
8 do any more than just request that.

9 CHAIRMAN THAD LEVAR: Thank you,  
10 Mr. Clark.

11 Any other board discussion or board  
12 motions?

13 MR. GLENN WRIGHT: I agree that the  
14 sentiment that exclusion of the witness goes against  
15 the purposes of the Open and Public Meetings Act, and  
16 I would not support that motion. I'm okay with the  
17 compromise of request.

18 CHAIRMAN THAD LEVAR: Thank you, Mr.  
19 Wright. And Mr. Fitzgerald, I think you were trying  
20 to make a comment also.

21 MR. TROY FITZGERALD: I guess just from  
22 the board's perspective just so I can stay clear on  
23 this, what set of rules are we even following here?

24 CHAIRMAN THAD LEVAR: If you're asking for  
25 thoughts from board members, I mean I think my short

1 answer to your question is the Administrative  
2 Procedures Act and the Open and Public Meetings Act  
3 are mandatory on this board. The way I view those  
4 two acts, the Rules of Civil Procedure are persuasive  
5 to this board but not mandatory. But the provisions  
6 of those two acts, as well as the Facility Review  
7 Board Act are the basis for our procedures. That's  
8 my view of it, if you're asking board members for  
9 their view.

10 MR. TROY FITZGERALD: Just if that's the  
11 general consensus, that's helpful for me to know  
12 which rules to consider.

13 MR. JORDAN WHITE: Yeah, I wanted to just  
14 add onto that. I see again it's similar to every  
15 other hearing that the Open and Public Meetings Act  
16 applies to. For example, you know, a city council  
17 meeting, a city planning commission meeting, a  
18 legislative session, it's similar to that. It's hard  
19 for me at times to not think through the lines of  
20 Title 54, but I recognize this is a separate board  
21 apart from that. So I think that Chair LeVar is  
22 correct in that those are the governing statutes, and  
23 we can utilize the Rules of Evidence and Civil  
24 Procedure as guides. But we're not like a district  
25 court. We're more like a planning commission or a

1 city council or something of that sort.

2 CHAIRMAN THAD LEVAR: To your question,  
3 Mr. Fitzgerald, I'll add one more personal opinion in  
4 that in the years I've been working on administrative  
5 law I think it's clear that the Open and Public  
6 Meetings Act was not written very well for  
7 adjudicative proceedings. It was written for  
8 legislative proceedings. And it's not a great fit  
9 for quasi judicial proceedings. But having said  
10 that, we said where we are and we have the law that  
11 we have in front of us, And so that's my personal  
12 view of it.

13 Any further board discussion or board  
14 actions?

15 I'm not hearing any, so I don't object to  
16 making a motion myself that we request the witnesses  
17 of all three parties to exclude themselves from  
18 listening to the hearing while other witnesses are  
19 testifying and being cross-examined.

20 If there's any discussion to that motion  
21 or a second to motion, we'll entertain that.

22 MR. REICH: Can I just ask what the basis  
23 of that motion is made under, what rule?

24 CHAIRMAN THAD LEVAR: I think that -- is  
25 that question directed to Mr. Gordon?



1                   MR. REICH: Yeah, or the board. Either  
2 one.

3                   MR. GORDON: So I would say that you were  
4 granted the power to make that motion under  
5 63(g)4-208, which specifically talks about the  
6 procedures for adjudicated proceedings and the orders  
7 that you may issue. Under section 4 it said, "This  
8 section does not preclude the presiding officer from  
9 issuing interim orders to," down in C, "otherwise  
10 provide for the fair and efficient conduct of the  
11 adjudicated proceeding."

12                   And under that position you're making a  
13 ruling for the fairness of this process and issuing  
14 an order based on your concern about fairness.

15                   CHAIRMAN THAD LEVAR: And I'll just  
16 explain my motion a little bit. I have concerns  
17 about our legal authority to order exclusions.  
18 However, I have not heard anything that leads me to  
19 believe any party or any witness would be prejudiced  
20 by excluding themselves from listening to the other  
21 cross-examination. I don't see how that's going to  
22 harm in an unfair way any witness's participation in  
23 the hearing to not have heard the cross-examination  
24 of other parties. So I do think it's a reasonable  
25 request. But as we've discussed, I have concerns

1 about the authority to order it rather than request  
2 it. So that's the motion that I've put in front of  
3 the board at this point.

4 So any further discussion? Mr. White?  
5 Oh, it's Mr. Fitzgerald. Go ahead.

6 MR. TROY FITZGERALD: Yeah, I was simply  
7 going to second that motion and state I've got a lot  
8 of experience with the Open and Public Meetings Act,  
9 and I agree with you I don't think that it's binding  
10 because it is open and public, people can listen.  
11 But it does go to a party's willingness to  
12 participate in the proceedings and do what they can  
13 to make it fair. So again I will second that motion.

14 CHAIRMAN THAD LEVAR: Thank you, Mr.  
15 Fitzgerald.

16 Any further discussion to the motion by  
17 any board member?

18 I'm not hearing any further comments. So  
19 why don't we move to voting.

20 Mr. Clark?

21 MR. DAVID CLARK: I vote yes.

22 CHAIRMAN THAD LEVAR: Mr. Fitzgerald?

23 MR. TROY FITZGERALD: I vote yes.

24 CHAIRMAN THAD LEVAR: Thank you. This is  
25 Thad LeVar, and I vote yes.

1 Mr. White?

2 MR. JORDAN WHITE: Yes.

3 CHAIRMAN THAD LEVAR: Mr. Wright?

4 MR. GLENN WRIGHT: Yes.

5 CHAIRMAN THAD LEVAR: Thank you. The  
6 motion passes. So this board has made the request of  
7 all three parties, Rocky Mountain Power, Midway City  
8 and V.O.L.T., to exclude your witnesses from  
9 listening to the testimony of other witnesses as this  
10 proceeding moves forward.

11 And with that I think -- I'm just trying  
12 to decide whether to take a short break now. I think  
13 we'll move ahead with Mr. Barker's testimony.

14 MR. GORDON: Commissioner LeVar, just one  
15 thing. For the purposes of the record, Midway City  
16 will honor that request.

17 CHAIRMAN THAD LEVAR: Thank you, Mr.  
18 Gordon.

19 Mr. Reich, do you want to go ahead and  
20 move forward with Mr. Barker? He's been sworn in,  
21 and I think it's back to you now.

22 MR. MORRIS: I'm sorry, Mr. Chairman.  
23 This is Mr. Morris. I too am going to send an e-mail  
24 now to the V.O.L.T. witnesses conveying the board's  
25 request and asking that they not listen in on the

1 proceedings.

2 And before we proceed, I would like to  
3 know if Rocky Mountain is going to comply with the  
4 request or not concerning its witnesses.

5 CHAIRMAN THAD LEVAR: Okay. Thank you,  
6 Mr. Morris. And I think you also just convinced me  
7 it's probably a good time for a hearing break just to  
8 allow parties to communicate with their witnesses.  
9 So I think we'll take a short break. But before that  
10 I will just go back to Rocky Mountain Power to see if  
11 Mr. Reich has any further comments he wants to make  
12 to the board at this point.

13 MR. REICH: No. Now would be a great time  
14 for a break.

15 CHAIRMAN THAD LEVAR: Okay. With that I  
16 think we will reconvene in approximately ten minutes.  
17 We'll be in recess for ten minutes. Thank you.

18 (Break taken from 10:05 to 10:16 a.m.)

19 CHAIRMAN THAD LEVAR: We are back on the  
20 record. I want to clarify one comment I made  
21 previously. As we were discussing this motion, I  
22 referred -- wait, it looks like our streaming isn't  
23 quite back on yet. So I'll wait a moment until it's  
24 back on.

25 (Short break.)

1                   CHAIRMAN THAD LEVAR: We're back on the  
2 record in Utility Facility Review Board Hearing on  
3 20-035-03. I want to clarify one comment I made as  
4 we were discussing the exclusionary request by Midway  
5 City. I referred to our streaming as a courtesy.  
6 And that is normally the case when we do not -- when  
7 we have an anchor location that is open to the  
8 public.

9                   But I realized during the break that since  
10 we do not have an anchor location and we're operating  
11 in the electronic meeting in accordance with Governor  
12 Herbert's executive order, that our streaming is not  
13 a courtesy. It is mandatory unless we wanted to have  
14 anyone from the public on the phone lines.

15                  So I should not have referred to the  
16 online stream as a courtesy. It is mandatory since  
17 we do not have an anchor location that's open to the  
18 public right now. So with that clarification of my  
19 previous comment, I think we're ready to move to  
20 Rocky Mountain Power representing the testimony of  
21 Mr. Barker.

22                  Mr. Barker has been sworn in. And are you  
23 on the line, Mr. Barker, still?

24                  THE WITNESS: Yes, I am.

25                  MR. GORDON: Commissioner LeVar. Can I

1 just address just a couple of housekeeping issues  
2 here before we proceed?

3 CHAIRMAN THAD LEVAR: Go ahead.

4 MR. GORDON: One, it was our intent to  
5 offer an opening statement that would outline the  
6 reasons that we're cross-examining and just kind of  
7 give the board the aid of what it is that we're  
8 trying to do. We would like the opportunity to do  
9 that. I'm not sure if the other parties intended on  
10 that, but we would like that opportunity before  
11 cross-examine begins.

12 CHAIRMAN THAD LEVAR: Thank you, Mr.  
13 Gordon.

14 I'll go next to Mr. Morris. Do you have  
15 any desire or thoughts on opening statements before  
16 we move into witnesses?

17 MR. MORRIS: Not knowing what the board's  
18 preference was, I haven't prepared a lengthy opening.  
19 I do have some initial thoughts that I wouldn't mind  
20 sharing just as a preview to help the board  
21 understand perhaps later why some of the questions  
22 we're asking in cross are coming up. So I think it  
23 might be helpful.

24 CHAIRMAN THAD LEVAR: Thank you.

25 Mr. Reich?

1           MR. REICH: We have no objection to  
2 opening statements.

3           CHAIRMAN THAD LEVAR: Would you want --  
4 since you were the original applicant in this docket,  
5 Mr. Reich, would you want to go first on any brief  
6 opening statement?

7           MR. REICH: Sure.

8           And you have a certain -- a certain time  
9 limit, or how much time would you like me to take on  
10 this?

11          CHAIRMAN THAD LEVAR: My hope is that we  
12 could move forward without having to establish time  
13 limits. But, you know, we're dealing with expert  
14 witnesses but also some issues of fact. We've all  
15 received and I think all board members have read the  
16 hearing briefs that have been submitted. So we're  
17 not -- none of us are coming into this cold. But I  
18 hope that gives some guidance. If there's a need to  
19 establish specific time limits, we could entertain  
20 that, but hopefully we could just move forward  
21 without being that specific.

22          MR. REICH: Okay. Well, then I will not  
23 repeat the -- our position we outlined in our hearing  
24 brief and just spend a brief minute on some of our  
25 responses to some of the things that were mentioned

1 in the other briefs. And I will not go back and  
2 repeat what we've already discussed about the bids  
3 and why we think that we have complied with the  
4 conditional use permit submitting the three qualified  
5 bids by bonded contractors.

6 The one concern that Rocky Mountain Power  
7 has throughout this entire process is the delay that  
8 continues to be the theme advanced by Midway City.  
9 As we stated in our testimony and -- in our direct  
10 testimony by Benjamin Clegg.

11 We met with the city on June 13, 2017 to  
12 explain this project. That was several years ago.  
13 At that time they did not have a city ordinance that  
14 required a conditional use permit for a transmission  
15 project.

16 In about that time we filed applications  
17 with Wasatch County on October 31st of 2017 and also  
18 with Heber City on November 2nd of 2017.

19 On December 14th of 2017, Midway City's  
20 mayor elect asked Wasatch County to delay its  
21 approval of the county's CUP until she could take  
22 office and assess Midway City's position.

23 In early 2018 Midway City discusses its  
24 desire to amend the city code to add an ordinance  
25 making transmission lines a conditional use, which



1 they did then a year later in January 2019 when  
2 Midway City passed a city ordinance requiring  
3 transmission lines must obtain approval -- and they  
4 passed a two-step process through both the Midway  
5 City Planning Commission and the city council. The  
6 reason I'm going over these dates, it's important to  
7 set I think the stage for the process that Rocky  
8 Mountain Power has gone through to obtain this  
9 conditional use permit for Midway City. It's not  
10 something that we're trying just to ram through the  
11 process. We've been talking to them for several  
12 years. As I stated, we started in as early as 2017.

13           So once the ordinance was passed, Rocky  
14 Mountain Power applied for a conditional use permit  
15 on April 2nd of 2019. That is over a year ago. So  
16 it's taken us a year to get to this point. On  
17 May 14th of 2019, the Midway City planning commission  
18 held a public hearing. They requested some  
19 information from Rocky Mountain Power, which was  
20 given to them in July of last year. On August 13th  
21 of 2019, the planning commission voted to recommend  
22 the project to the city council.

23           So once we made it through the first step,  
24 we then had to go through the Midway City council  
25 meetings. Even though that was approved by the

1 planning commission on August 13th, Midway City  
2 council didn't even hold a public hearing until  
3 October 15th where they took public comment.

4 This also goes to the, I think, due  
5 process argument that's been raised by Midway City.  
6 On November 14th and 16, Midway City held public open  
7 houses to allow its citizens to speak about the  
8 project. Then on November 19th, another public  
9 hearing where the city council received public  
10 comment. And on December 3rd another public hearing  
11 was held to discuss this project.

12 So the -- the conditional use permit was  
13 finally issued by Midway City on December 17th of  
14 2019. They approved the project and issued the  
15 conditional use permit that's now at issue in this  
16 proceeding. And so you can see it's been an  
17 extremely long process.

18 And I think there's -- I mean the fact  
19 that we're here today shows that there's some  
20 question towards the finality of the actual permit  
21 that they issued in 20 -- in December '17.

22 The real issue for Rocky Mountain Power is  
23 not whether it's overhead or underground. The real  
24 issue is which one is it and that we need to start  
25 going down that road.

1           And now Midway City has taken the  
2 position: Well, why don't we just wait until  
3 November; we can hold a bond hearing. And then we'll  
4 let you know, and then you can magically start  
5 construction the following spring.

6           As this board knows, we can't wait until  
7 November to acquire -- because we still have to  
8 acquire right-of-way, we've got to order raw  
9 materials. If they wait until November to make this  
10 decision, that process can't start until after the  
11 funding is approved and we have the go ahead from  
12 Midway City. So it makes it very difficult for Rocky  
13 Mountain Power to even make the following summer, if  
14 this project continues to be delayed by Midway City.

15           Both Wasatch County and Heber City have  
16 issued conditional use permits. We have those  
17 permits in hand. It's just Midway City that has  
18 continued to delay, and then now they continue to ask  
19 for delays during this process.

20           So since RMP and HL&P filed its joint CUP  
21 application on April 2nd, it took Midway City  
22 259 days to issue the existing conditional use  
23 permit. And it's been 384 days until today's  
24 hearing. So you know the concern that we have is  
25 that this process is broken. And the city has

1 continued to ask for delays, and we've worked  
2 extensively with them and provided the information.

3 So the testimony that we've provided shows  
4 that there are some issues that need to be addressed  
5 to make sure we have reliable, safe power to the  
6 residents and businesses in the Heber Valley area.

7 I think their witness even admitted that.  
8 He stated in his testimony that this work should be  
9 completed as soon as practical. I think the other  
10 position that they've taken is: Well, you've had  
11 this problem in the past, so you can continue to have  
12 it for another couple of years, which is nonsensical.  
13 I mean we need to get this issue addressed. We've  
14 been trying to do it for several years now.

15 And so we would ask this board to take  
16 action, to assist in either -- if it's overhead,  
17 great. If it's underground, great. We just need to  
18 know the direction and the parameters. So that's --  
19 that is our opening statement.

20 CHAIRMAN THAD LEVAR: Thank you,  
21 Mr. Reich.

22 Mr. Gordon or Mr. Jewkes, do you want to  
23 go ahead with your opening statement.

24 MR. GORDON: Mr. Gordon will make the  
25 opening statement. Thank you.

1           Members of the board, we appreciate your  
2 willingness to come and spend the days and hours  
3 needed to prepare for this. To begin I just want to  
4 state that this transmission line proposal has been  
5 one of the most difficult issues that Midway City has  
6 ever faced, and so it's important.

7           And as far as moving forward here, I want  
8 you to think for a few moments. Normally we would be  
9 together in a hearing, and you'd be able to see the  
10 amount of people, and we would have had many here in  
11 this hearing, and you would be able to sense and feel  
12 how important this is to our community.

13           To begin I want you to just -- I'm going  
14 to refer to Midway's Exhibits 15, 16 and 17. Those  
15 are pictures of Midway. We bring those up solely to  
16 kind of bring into focus why it is that we're so  
17 concerned. Midway City was established back in 1891.  
18 And since its inception, it's been recognized as a  
19 dream location for thousands of the people who live  
20 there or who one day hope to move there.

21           In 2017 it was named the best small city  
22 in Utah by a KSL poll, beating out 64 other  
23 communities. This wasn't by accident. Midway City  
24 is nestled in the northwestern part of the Heber  
25 Valley. It is surrounded by majestic mountains and

1 sits beneath the watchful eye of Timpanogos, which is  
2 one of the most beautiful scenic vistas in the entire  
3 world. It is surrounded by Wasatch Mountain State  
4 Park on the north, west, and south. Deer Creek  
5 Reservoir sits directly south. There are 3,500 acres  
6 of open farmland to the east, what we call the north  
7 fields. It is not hyperbole to say it is one of the  
8 most unique and beautiful places in the world. It is  
9 a home to Swiss Days, the Ice Castles and the  
10 Homestead Crater. And last year its citizens  
11 approved an open space bond that will preserve  
12 hundreds of acres of open space in the town.

13 For a moment I just want you to imagine  
14 that you own a home in Midway so that you can  
15 understand fully the impact this is going to have.  
16 You love your land and your neighborhood, and you  
17 feel it's a privilege to live in such a beautiful  
18 place. You recognize that your home was close to a  
19 46 kV line but have no concerns regarding the line  
20 because there is already a 138 kV line just a half  
21 mile away that is similar in size to the line in the  
22 front of your house.

23 Now, imagine how you feel when Heber Light  
24 & Power and Rocky Mountain Power puts in the first  
25 phase of the proposed transmission line along

1 Highway 40, and you realize that because this is a  
2 joint project with a double circuit on the poles, the  
3 joint project increases the size of infrastructure to  
4 proportions that more resemble the gates of Mordor  
5 than the peaceful and quiet shire that you're used  
6 to. The poles are distinctly industrial, making it  
7 clash against the agrarian backdrop all the more  
8 distinct.

9           So suddenly instead of living in the  
10 shadow of the everlasting hills, pun intended,  
11 homeowners are being told that they are going to live  
12 in the shadow of the everlasting power poles that are  
13 up to 100 feet tall and 8 feet in diameter, and many  
14 of the largest poles will be placed directly in front  
15 of people's homes. You can only imagine the proposal  
16 has been controversial from the start, with many  
17 Midway citizens feeling this is a life and death  
18 battle to preserve its community as a more rural and  
19 agrarian atmosphere.

20           While I recognize most communities do not  
21 have the political willpower to even consider burying  
22 a transmission line, Midway City is not most  
23 communities. It has already paid to have a survey  
24 done to determine the citizens' willingness to pass  
25 the bond to bury the line and the results come

1 back with -- the results came back with a 70 percent  
2 in favor.

3 So now thinking of your home in Midway, if  
4 you owned one, imagine knowing there was a very real  
5 possibility of passing a bond to bury the line which  
6 would minimize the effect of the line on your home  
7 and your community for centuries, not just decades  
8 but centuries to come, being told without basis and  
9 fact that Rocky Mountain Power must have the line in  
10 no later than the end of 2020 or rolling blackouts  
11 could occur.

12 Imagine knowing that these claims are  
13 either not true or greatly exaggerated and how  
14 frustrated you would be knowing that with a little  
15 more time the money could be obtained to bury the  
16 line.

17 That gives you the perspective of a vast  
18 majority of the citizens of Midway City, many of whom  
19 are listening to this proceeding and would be in  
20 attendance if not for the coronavirus. I invite you  
21 to periodically look at the pictures I've referred to  
22 as we proceed with this trial so that we do not lose  
23 perspective on why we are here.

24 Now, moving forward. As I speak this  
25 morning, I'm going to ask you to write a few things



1 down. Only because I want you to hold me accountable  
2 as this trial proceeds. I'm going to tell you what  
3 Midway City intends on showing over the next several  
4 days and the conclusions that follow once the  
5 evidence I will outline is heard.

6 As an overview, RMP and Heber Light &  
7 Power are proposing a double circuit 138 kV  
8 transmission line through Midway City. This means  
9 that there will be two separate lines, one for RMP  
10 and one for HL&P. The joint use of poles cannot be  
11 minimized because doubling the circuits has doubled  
12 the weight and stress on the poles, requiring them to  
13 be 40 to 50 feet higher and 2 to 4 feet thicker than  
14 the existing wooden poles and would replace current  
15 corner structures with hulking metal poles some  
16 100 feet tall and 8 feet in diameter.

17 This line runs through a peaceful rural  
18 residential neighborhood under the shadows of Mount  
19 Timpanogos, and some of the massive corner structures  
20 will literally be in some of our residents' front  
21 yards. Once installed, this line will have a  
22 permanent negative impact on this neighborhood for  
23 decades, if not centuries.

24 We understand that Rocky Mountain Power  
25 wants to run the lines overhead on the skyscraping

1 poles. This is the cheapest and easiest exclusion.  
2 Of course none of Rocky Mountain Power's employees  
3 live in this neighborhood, and I don't believe if any  
4 of them did they would be fine with staring at a  
5 100-foot transmission tower in their front yard.

6 The citizens who are going to be impacted  
7 by those tower and power lines are very concerned,  
8 which is understandable. Midway City and its  
9 residents want to bury the line and are willing to  
10 pay to bury the line but cannot get a straight answer  
11 regarding what the actual costs to bury will be. I  
12 will discuss with you the problems with the submitted  
13 bids here in a second.

14 Until Midway gets a straight answer, it  
15 cannot raise the money needed to bury the line, which  
16 will likely be a general obligation bond.

17 RMP insists that this line must be  
18 completed by the end of 2020 or the sky will fall.  
19 We will show that that is simply not true. No harm  
20 will come if the commencement date of the Midway City  
21 portion of this line is postponed for four or five  
22 months to give Midway the opportunity to bond.

23 The board has two jobs today. Number one,  
24 to determine what the actual excess costs are of  
25 going underground. And number two, what the

1 appropriate commencement date should be for Midway  
2 City's portion of the line.

3           Regarding the actual excess costs, Midway  
4 will show that Rocky Mountain Power has failed to  
5 provide it with reliable information needed to  
6 determine those actual excess costs. And because of  
7 this, Midway City's obligation to pay for those costs  
8 as established in the conditional use permit have yet  
9 to be triggered.

10           We will show the following through cross  
11 examination: Due to serious mistakes in the  
12 specifications given to the three approved  
13 contractors who bid to bury the line, the bids have  
14 come in anywhere from 3 to \$5 million high. The bids  
15 are not accurate, are not reliable, and cannot be  
16 acceptable by this board as reliable evidence needed  
17 to determine what the actual excess costs to bury the  
18 line are.

19           For example, in addition to being  
20 extremely high, the bid amounts themselves vary from  
21 12 million to 28 million for only one mile of the  
22 work.

23           Next we'll show that RMP has included  
24 several items in their bids that have no  
25 justification from a safety nor reliability

1 standpoint. First Rocky Mountain Power put forth  
2 specifications that required dual trenches to bury  
3 the separate 138 kV line. There is no safety  
4 standard that requires dual trenches and no  
5 justifiable reason to have two trenches, especially  
6 where it doubles the cost that RMP wants Midway and  
7 its taxpayers to pay.

8 Further, RMP specs require an extra  
9 conduit to be installed on each circuit. Midway does  
10 not disagree with the need for the empty conduit.  
11 Rocky Mountain Power also included the spec that a  
12 dead line be pulled through the circuit that will  
13 just sit there and possibly never be used. There is  
14 nothing in any industry standard that requires this  
15 extra expense, yet it increases the cable cost by  
16 one-third. The evidence will show that not only are  
17 the bids fatally defective due to mistakes, but Rocky  
18 Mountain Power is asking Midway City to install a  
19 Cadillac where a Honda would do the job.

20 Midway City's expert, who's been doing  
21 this for 50 years, will testify that the cost of the  
22 line without mistakes would be \$8.1 million. And if  
23 you take out the glamorous extras of dual trenches  
24 and extra conduit, the cost drops to just over 5  
25 million. When we are done showing you this evidence,

1 we will ask you to either adopt our expert's  
2 valuations of the underground costs or require Rocky  
3 Mountain Power to provide bids based on correct  
4 specifications and trimming the fat.

5           Once the actual costs to bury are  
6 established, the next step in the analysis is to  
7 establish what the actual costs of the easements  
8 needed for the line are. There is no question that  
9 easements will be required to be built -- be required  
10 to build the massive poles in the Midway residents'  
11 front yards. There's also little question that  
12 planting the poles and lines in front yards will  
13 negatively impact the value of the surrounding  
14 properties.

15           There is a dispute regarding what exactly  
16 it will cost to buy the easement and compensate  
17 landowners. Rocky Mountain Power has the burden to  
18 prove this, and it has estimated all of it at a mere  
19 \$20,000.

20           The board will hear from two competing  
21 experts, one from Rocky Mountain Power and one from  
22 Midway regarding the estimated value of the  
23 easements. I want to underline and highlight  
24 estimated because neither witnesses' testimony is  
25 going to be sufficient to meet the requirements of

1 the statute. The statute requires this board to  
2 determine the actual costs of the easements. The  
3 only way to do that is to either have Rocky Mountain  
4 Power buy them from the landowners or condemn. Until  
5 one of those two actions happen, there is no way for  
6 this board to determine what the actual costs of  
7 those easements are, which means it cannot determine  
8 what the actual excess cost to bury will be.

9 As part of its power to determine the  
10 appropriate commencement date on this line, we will  
11 ask this board to issue an order stating that the  
12 commencement of the line cannot commence until the  
13 easements for the line have actually been obtained.  
14 There is nothing in the statute that suggests that  
15 the actual costs of easements can be determined by  
16 estimate.

17 Once they are obtained, the actual costs  
18 of the easements will be established and can be  
19 submitted to the board so the actual excess costs can  
20 be determined. This board has the power to request  
21 information that was supposed to be submitted by  
22 Rocky Mountain Power but was not and also has the  
23 power to suspend the hearing until the information is  
24 provided. Once the missing information is provided  
25 by the -- provided to the board, it has 30 days to

1 issue a decision. We will ask the board to exercise  
2 this power requesting updated bids and the actual  
3 costs of easements before reconvening.

4 Next, regarding the appropriate  
5 commencement date, Midway City will show that Rocky  
6 Mountain Power's insistence that the line be finished  
7 by 2020 is contradicted by their own witnesses.  
8 Rocky Mountain Power claims that rolling blackouts  
9 will occur if the line isn't finished on the timeline  
10 they propose. We will show that Rocky Mountain  
11 Power's own studies establish there is no immediate  
12 risk to its customers if the line is delayed a few  
13 months to bond. The area is currently served by  
14 three different transmission lines. And Rocky  
15 Mountain Power's own experts will establish that the  
16 claimed threats of system failure, once analyzed, are  
17 so remote as to be non-factors.

18 The evidence will show that neither Heber  
19 Light & Power nor Rocky Mountain's system is  
20 currently exceeding acceptable loads and that neither  
21 will do so through the end of 2022.

22 Heber Light & Power's system only gets in  
23 trouble if it loses all of its generation and its  
24 north line at the same time, the likelihood of which  
25 is miniscule.

1 Rocky Mountain Power admits that if one of  
2 its transmission lines goes down, it could redirect  
3 power through the other lines to keep its systems at  
4 acceptable voltages.

5 So the risks Rocky Mountain Power is using  
6 to justify a commencement date for today is based on  
7 catastrophes that are remote and would be so  
8 devastating that none of its systems would survive  
9 regardless of whether this line is finished or not.

10 And finally, all of this is an academic  
11 exercise in the first place because Rocky Mountain  
12 Power has not obtained any of the needed easements to  
13 commence the line in any of the jurisdictions the  
14 line passes through. There are seven miles of  
15 easements that need to be obtained, and the  
16 conditional use permits in Wasatch County, Heber, and  
17 Midway all prohibit Rocky Mountain Power from  
18 commencing construction until the easements are  
19 obtained.

20 So the likelihood of this line even  
21 starting in 2020 is low and being finished in 2020 is  
22 almost an impossibility. Adding the delays that have  
23 come from Covid-19 and you have a situation where we  
24 are really fighting for nothing.

25 Midway wants time to pass a bond; it



1 should be allowed to do so. Rocky Mountain Power  
2 loses nothing by waiting for the bond. The evidence  
3 will show that the delay is justified and that the  
4 board should use its power to establish the  
5 appropriate commencement date for the Midway portion  
6 of the line to be in the spring of 2021. Not only  
7 because the line will still be in construction at  
8 that time but because there is no legitimate reason  
9 to justify while closing Midway City's chance to bury  
10 this line and to minimize its visual and health  
11 impact.

12 I appreciate that was a little long, but I  
13 wanted to make sure you understood where we're coming  
14 from. And we will outline -- that gives you an  
15 outline of what it is we will be cross-examining the  
16 witnesses on to establish. I appreciate your  
17 attention.

18 CHAIRMAN THAD LEVAR: Thank you for your  
19 statement, Mr. Gordon.

20 Mr. Morris or Ms. Brereton, do you have an  
21 opening statement for V.O.L.T.?

22 MR. MORRIS: We do.

23 Thank you, Chairman LeVar. Again, this is  
24 Mark Morris. Ms. Brereton and I have the privilege  
25 of representing a group of landowners and have

1 represented them for many months now, who from the  
2 beginning have had grave concerns about not just the  
3 aesthetic but the impact on their lives living around  
4 and under these proposed transmission lines.

5 To further explain, I mean these people  
6 are citizens of Midway, and vicariously I suppose Mr.  
7 Gordon is very ably, you know, representing their  
8 interest as citizens of Midway. But their concerns  
9 and their commitment to having this done in the right  
10 way are such that among themselves they have already  
11 raised privately \$600,000 to bury these lines. They  
12 have all collectively agreed that they'll not charge  
13 any fees or costs for Rocky Mountain to go  
14 underground and obtain whatever easements may be  
15 necessary to go underground.

16 On the other hand, they are committed to  
17 getting the value that Rocky Mountain Power will be  
18 taking away from their homes if these lines go  
19 overhead.

20 As Mr. Gordon ably expressed and Rocky  
21 Mountain must concede, Rocky Mountain does not have  
22 the easements and rights-of-way. And I think in Mr.  
23 Reich's opening statement he conceded that they still  
24 have to go and get rights-of-way in order to build  
25 merely this approximate mile-long line through

1 Midway. They have not done so. And the idea that  
2 they have budgeted 20 or 25 or \$27,000 for all of the  
3 easement acquisition they anticipate here is -- it's  
4 insupportable.

5 And candidly, people scratch their head as  
6 to what the motivation here is to suggest that. The  
7 evidence that we're going to present will show this  
8 is not the first time that Rocky Mountain has  
9 woefully underestimated the amount of money it is  
10 going to have to spend in order to obtain not only  
11 right-of-way, not only physical land, but also pay  
12 severance damages to landowners whose properties lie  
13 along this proposed route.

14 About six years ago Rocky Mountain  
15 proposed to build a substantial line through Tooele  
16 County to service the data center operated out at  
17 Fort Williams. They proposed in that case that  
18 \$70,000 was all that they would need to purchase what  
19 they needed to in order to run their towering lines  
20 through that land. Well, after the lawsuit and after  
21 a lot of proceedings, they ended up paying  
22 \$2.5 million, rather than \$70,000.

23 What we have heard heretofore from Rocky  
24 Mountain Power is, well, we'll true it up at the end.  
25 We'll figure it out at the end. And while it's not

1 up to us, it's up to a judge or a jury someday to  
2 decide what this is worth.

3 Well, that's not good enough for these  
4 particular citizens who belong to V.O.L.T. and who  
5 are living near Midway to after the fact try to get  
6 compensation and get into litigation with these  
7 people because the offers, if you split that \$27,000  
8 among the landowners near this line, would never be  
9 acceptable or accepted.

10 It is primarily Rocky Mountain's failure  
11 to properly account for the easements and  
12 rights-of-way and the severance damages that are  
13 coming from going overhead into its cost that we  
14 think is the primary failure and in failing to get to  
15 Midway appropriate standard costs to build this line.

16 Among the facts that are not disputed I  
17 don't think in this case but the board should  
18 nevertheless take into account is that Rocky Mountain  
19 does not have any recorded easements. Heber Light &  
20 Power does have a line going through here. But our  
21 investigation, and we've seen nothing to the  
22 contrary, shows the board that any easements or  
23 rights Heber Light & Power has that it may intend to  
24 confer or have agreed to confer to Rocky Mountain  
25 Power here are prescriptive in nature. And that no

1 landowner has voluntarily signed anything or recorded  
2 a document saying: I hereby give to Heber Light &  
3 Power X number of feet or an easement through my  
4 property.

5 But because the lines have been there so  
6 long, prescriptive rights have arisen. But under  
7 Utah law, prescriptive easements are limited to their  
8 original uses, and you can't expand them. And having  
9 a single-lane road through a property does not give  
10 you the right to build an eight-lane highway.

11 After the construction Heber Light & Power  
12 will continue to own and operate facilities in these  
13 easements to provide service to Midway City and  
14 residents. But this double circuit transmission line  
15 requires rights-of-way that I think Rocky Mountain  
16 concedes and its appraiser concedes and wrongly  
17 assumed would be 55 to 60 feet in width along the  
18 route. Those easements do not currently exist.

19 These citizens should not have to have this line go  
20 through, get built, and then look forward to months  
21 or years of litigation trying to get their money out.

22 They've come forth voluntarily. They've  
23 dug into their own pockets to do this. They're going  
24 to be digging into their pockets as taxpayers of  
25 Midway for a bond. And they have voluntarily been

1 willing to allow the line to underground and waive  
2 any claims that they might have to the easements that  
3 would be necessary for the underground transmission.

4 That collective will/should dissuade the  
5 board from allowing Rocky Mountain to go through on  
6 the basis of the -- I've search for a word that isn't  
7 going to offend everyone, but it's just flimsy. The  
8 bids and the way they've gone about trying to grossly  
9 overestimate the amount of money it's going to cost  
10 to bury a line for a mile, \$28 million, I just -- it  
11 boggles the mind that someone is seriously suggesting  
12 it's going to cost that much to go a mile  
13 underground. \$28 million.

14 The fact that they only got three out of  
15 18 -- three bids out of 18 people they purport to  
16 have sent this out to suggests that and implies of  
17 necessity that the conditions and restrictions that  
18 Rocky Mountain put into this RFP made it so  
19 unattractive that only three people were willing to  
20 bid. And those three jacked up the price horribly.

21 So for these reasons we ask the board  
22 to -- and I think at the hearing on our motion to  
23 intervene, we made clear that the relief we seek is  
24 the same relief that Midway is seeking.

25 And we're grateful that the board has

1 permitted V.O.L.T. to intervene here, to have its  
2 concerns aired and have it be given an opportunity to  
3 cross-examine and present evidence that show this  
4 needs to be a thoughtful and careful and fair  
5 process, which under the rubric that Rocky Mountain  
6 is suggesting now it would not be. We're grateful  
7 for your time and look forward to participating in  
8 these proceedings.

9 CHAIRMAN THAD LEVAR: Thank you,  
10 Mr. Morris.

11 I think with that, we're ready to go to  
12 Rocky Mountain Power's first witness, who you've  
13 indicated is Jake Barker, who has already been placed  
14 under oath.

15 And if he's on the line, Mr. Reich, you  
16 may go forward with presenting his testimony.

17 MR. REICH: Thank you.

18  
19 DIRECT EXAMINATION

20 BY MR. REICH:

21 Q. Mr. Barker, have you had an opportunity to  
22 review the direct testimony that was prepared and  
23 submitted under your name?

24 A. Yes, I have.

25 Q. And is it an accurate representation of

1 your testimony in this proceeding?

2 A. Yes.

3 Q. Do you have any updates or changes to make  
4 to that testimony?

5 A. No.

6 Q. In preparing that testimony, I know there  
7 were some documents that you relied on that have been  
8 produced in this proceeding. Let me refer you to a  
9 document that's entitled -- Bates numbered RMP 125.  
10 That document also has been identified as a  
11 confidential document.

12 Can you explain what this document  
13 represents?

14 A. Yes. So we build -- in planning, we build  
15 a model of the transmission system so that we can run  
16 contingency analysis, not necessarily wanting to  
17 experience those contingencies, and look at the  
18 metered values. So we build models to simulate those  
19 types of contingencies. And so this document goes  
20 over the worst case contingencies in the Heber Valley  
21 Area Transmission System and the results from  
22 those -- that model and studies.

23 Q. Okay. So on this document Bates numbered  
24 RMP 125, it refers to some different percentages and  
25 some adjustments and some other things. Did you rely



1 on this document to provide your direct testimony?

2 A. Yes, that's correct.

3 Q. Okay. Did you help in the preparation of  
4 this document?

5 A. The senior transmission planner for the  
6 Park City area prepared this document. I reviewed it  
7 and approved it.

8 Q. Okay. In your testimony you refer to a  
9 standard of the -- of Rocky Mountain Planning  
10 Standards for Transmission Voltage, require the  
11 voltage to remain above 90 percent of nominal  
12 voltage. Is that true?

13 A. Yes, during an outage.

14 Q. Okay. And is that identified in this  
15 exhibit, RMP 125?

16 A. It's shown in red. Anything that goes  
17 below 90 percent we show it in red. We didn't  
18 explicitly put the .9 on that document.

19 Q. Okay. Let me turn then to another  
20 document that you have -- or that has been produced  
21 in this proceeding, identified as RMP 128. Do you  
22 see that document?

23 A. Yes.

24 Q. And what does this document represent?

25 A. This is a one-line diagram of the

1 transmission system in the Heber Valley and greater  
2 Park City areas.

3 Q. Okay. And then there's documents  
4 identified as RMP 129 through 135. Are those  
5 documents that you are familiar with?

6 A. Yes.

7 Q. And what are these?

8 A. These are the loading values on  
9 transmission transformer in the area.

10 Q. Okay. And were these produced in this  
11 proceeding?

12 A. Yes. They come from a database that we  
13 keep up to date, and the actual documents were  
14 exported from that database.

15 Q. Okay. And then looking at RMP 136 through  
16 138, what are those documents?

17 A. So these are also a one-line diagram.  
18 This is a graphical representation of the model that  
19 we in planning run to simulate the contingencies.  
20 And it shows the voltages and power flow megawatts on  
21 transmission lines in the area under different  
22 contingency analysis.

23 Q. Okay. So did you use this -- did you rely  
24 on this information for your direct testimony?

25 A. Yes.

1           **Q.       Then finally on RMP 139, what does this**  
2 **document represent?**

3           A.       This is the outage history on the  
4 transmission lines in question over the last five  
5 years.

6           **Q.       Okay.**

7                   MR. REICH:   So we would then proffer  
8 Mr. Barker's testimony, direct testimony, along with  
9 those exhibits that he identified and provided a  
10 foundation for.

11                   CHAIRMAN THAD LEVAR:   Thank you.   If any  
12 party objects to that proffer, please indicate your  
13 objection.

14                   I'm not hearing any objections, so the  
15 motion is granted.

16                   Thank you.   You can go forward.

17                   MR. GORDON:   Okay.   So would that mean  
18 Midway City can now proceed with cross-examination,  
19 your Honor?

20                   CHAIRMAN THAD LEVAR:   Mr. Reich, do you  
21 have any questions for Mr. Barker before we move to  
22 cross-examination?

23                   MR. REICH:   I do not.

24                   CHAIRMAN THAD LEVAR:   Okay.   Then, yes,  
25 why don't we go ahead to Midway City next for any

1 questions for Mr. Barker.

2 MR. GORDON: Thank you.

3  
4 CROSS-EXAMINATION

5 BY MR. GORDON:

6 Q. Good morning, Mr. Barker.

7 A. Good morning.

8 Q. You are the director of transmission  
9 planning and power quality for Rocky Mountain Power,  
10 correct?

11 A. That's correct.

12 Q. And you are in charge of applying  
13 reliability standards to Rocky Mountain Power's  
14 system, correct?

15 A. That is not correct.

16 Q. So you're not the one that oversees the  
17 reliability standards for Rocky Mountain Power?

18 A. No, I do not.

19 Q. Okay.

20 A. That is a function of our main grid  
21 transmission planning department. I'm the director  
22 of what we call our sub-transmission department. We  
23 do support the main grid department in their  
24 reliability standards, but I am not over the  
25 submittal or study of those standards.

1           Q.       So I just want to make sure that I'm --  
2       who I'm talking to here. In your testimony, you  
3       indicated, "I am responsible for ensuring that Rocky  
4       Mountain customers receive safe, reliable, and  
5       efficient energy. I do this by applying the  
6       reliability standards to Rocky Mountain Power's  
7       transmission system and planning for necessary  
8       upgrades to the system to provide additional capacity  
9       and improve electric service reliability to meet  
10      power requirements."

11                    So the core of my question comes from  
12      that. Is that not accurate information in your  
13      testimony?

14           A.       That is accurate. As I stated, we do  
15      support our main grid department in their reliability  
16      assessments. And so part of our purview is to follow  
17      those standards. Your question was am I in charge of  
18      those standards, and I am not in charge of those  
19      standards.

20           Q.       Actually my question was: Are you in  
21      charge of applying those standards? And so is that  
22      part of your job is making sure that the Rocky  
23      Mountain Power system applied the appropriate  
24      reliability standards?

25           A.       Yes. That is part of our position, yeah.

1           Q.     Okay, very good. Were you involved in  
2     creating the specifications given to the parties who  
3     bid to bury the underground portion of the line?

4           A.     No.

5           Q.     Who was?

6           A.     That's a question for the other witnesses.

7           Q.     Well, if you know it, you need to answer  
8     my question. Who did it?

9           A.     I -- I do not know who in particular was  
10    in charge of putting those standards together.

11          Q.     Okay. Did you review them before they  
12    went out?

13          A.     No, I did not.

14          Q.     So your testimony today is that you really  
15    couldn't testify that those specifications are  
16    applying the appropriate reliability standards needed  
17    for Rocky Mountain Power's system, correct?

18          A.     Can you ask that question again? It  
19    wasn't clear.

20          Q.     Sure. I'm asking you if you didn't review  
21    those -- the specifications on the bids before they  
22    went out, then you couldn't testify today whether  
23    they appropriately applied the reliability standards  
24    that -- the reliability standards for Rocky Mountain  
25    Power's system, correct?

1           A.     I don't believe that's correct. The  
2 specifications are construction standards. In  
3 planning, my concern is that a 138 kV connection is  
4 made between Jordanelle and Midway substations. As  
5 long as that standard is met, then I don't need to  
6 review construction standards.

7           Q.     So -- but once again, I go back to you  
8 didn't review the specifications, correct?

9           A.     Correct.

10          Q.     So you don't know whether they meet the  
11 appropriate standards or not, correct?

12          A.     I know that the connection between  
13 Jordanelle and Midway will be made and --

14          Q.     Did you review the specifications in the  
15 bid? Just answer my question: Did you review the  
16 specifications in the bid?

17          A.     I did not review the specifications in the  
18 bid.

19          Q.     So you cannot testify as to what those  
20 specifications contain, correct?

21               MR. REICH: Objection. He's -- asked and  
22 answered. He's answered this several times. You're  
23 badgering him.

24               MR. GORDON: No. Well, he hasn't answered  
25 it yet. He keeps trying to explain around it. I

1 just need a simple yes/no answer to he never looked  
2 at the specifications.

3 MR. REICH: And he's given you that answer  
4 five times. He did not look at the specifications.

5 MR. GORDON: He never said that on the  
6 record. So if that's the testimony --

7 CHAIRMAN THAD LEVAR: I'm going to jump  
8 in, and I'm going to grant the objection on asked and  
9 answered. I think we do have that answer.

10 And typically with expert witnesses, I'm  
11 not inclined to limit them to yes or no answers if  
12 the expert is inclined to give further explanation.

13 MR. GORDON: That's fine. I just didn't  
14 feel like he answered the question. But I accept  
15 your ruling, and we'll move forward.

16 Q. (BY MR. GORDON) So, Mr. Barker, many of  
17 the questions that I have for you I expected to be  
18 about the specifications because I believe you were  
19 presented as the person that kind of oversees these  
20 things. I'm going to ask these questions, but I'm  
21 not sure you're going to be able to answer them.

22 The specifications required dual trenches  
23 for the buried line, correct?

24 A. As I understand it, yes.

25 Q. Okay. But there is nothing in safety or



1 reliability standards in your industry that required  
2 dual trenches, correct?

3 A. This is not applicable. The second -- the  
4 second trenches for Heber Light & Power's line, that  
5 line is not applicable to the reliability standards.

6 Q. Let me ask you a simple question. Is  
7 there anything in safety or reliability standards  
8 that says you cannot have two lines in the same  
9 trench?

10 A. Not that I'm aware of, no.

11 Q. Very good.

12 So the desire to have dual trenches is not  
13 based on safety standards or reliability standards,  
14 correct?

15 A. I can't address the -- I can't address  
16 safety standards because they're two different  
17 entities operating those two lines, and they would be  
18 in not just the trench but also in the same vault.  
19 And so there are some safety concerns that I wouldn't  
20 be able to address. That question is better for  
21 another expert.

22 Q. Is there a --

23 A. From the reliability standards standpoint  
24 there isn't a reason. But from the reliability  
25 standpoint there is adequate reason in my view.

1           Q.     Okay. So on the safety issue then you're  
2 saying you can't testify to that. There would be  
3 another witness that could. Who would I ask that  
4 question to?

5           A.     Ben Clegg or Darin Myers who are more  
6 familiar with the specifications that were provided.

7           Q.     Perfect, thank you. Okay.

8                   In the specifications there's also the  
9 requirement to not only provide an empty conduit for  
10 each circuit but to have a dead line pulled through  
11 that circuit, correct?

12           MR. REICH: Let me file an objection here.  
13 I'm not sure I understand this whole line of  
14 questioning.

15                   Mr. Barker is -- his direct testimony has  
16 to do with the purpose and need for this project.  
17 It's not construction specifications. He had no  
18 responsibility for constructing the project. His  
19 testimony -- your line of questioning is outside of  
20 the scope of his testimony, which is about the  
21 purpose and need of the project.

22           CHAIRMAN THAD LEVAR: Just to confirm,  
23 that was Mr. Reich who made the objection, correct?

24           MR. REICH: Correct, sorry. I did not  
25 identify.

1 CHAIRMAN THAD LEVAR: And so, Mr. Gordon,  
2 can you identify where in the direct testimony this  
3 issue is raised?

4 MR. GORDON: Yes. He -- they presented  
5 him as the person who was the transmission planning  
6 and power quality director for Rocky Mountain Power.  
7 He's the guy, right? And they've put him forward  
8 saying that he oversees the system needs and the  
9 reliability of this system. And so I have every  
10 right to question him and assumed he would be the  
11 only one that would have the capacity to testify as  
12 to the reliability questions regarding dual trenches  
13 and the reliability questions regarding pulling a  
14 dead line that won't be used in the specifications.  
15 If he's not the one, then I don't know who else is.  
16 And so maybe I'm -- maybe I misunderstood. But what  
17 they've set him forward as is the director of the  
18 transmission planning and power quality. He is  
19 completely the person that we should be asking these  
20 questions to.

21 CHAIRMAN THAD LEVAR: Mr. Reich, do you  
22 want to give any final comments on your objection?

23 MR. REICH: Sure. Under the purpose of  
24 testimony it says, "The purpose of my testimony is to  
25 discuss the purpose and needs for this project."

1           Then Mr. Barker outlined the reasons why  
2       this project needs to be put into service. His title  
3       is Director of Transmission and Planning. It doesn't  
4       mean it has anything to do with construction  
5       specification. I don't think there's anything in his  
6       title or in the purpose of the testimony that implies  
7       he's the guy to talk about construction  
8       specifications.

9           We've identified the project manager, Mr.  
10       Myers, who was responsible for the request for  
11       proposal for the bid specifications. We've provided  
12       his testimony. To say Mr. Barker is the only one who  
13       can testify about that is absurd. Mr. Barker is here  
14       to testify about the need for this project based on  
15       his direct testimony that we've provided.

16           MR. GORDON: In response to that, let me  
17       actually read his testimony into the record so we all  
18       get this straight.

19           "As the Director of Transmission Planning  
20       and Power Quality, I am responsible for ensuring that  
21       Rocky Mountain customers receive safe, reliable, and  
22       efficient energy. I do this by applying reliability  
23       standards to Rocky Mountain Power's transmission  
24       system and planning for necessary upgrades to the  
25       system to provide additional capacity and improve

1 electric service reliability to meet power  
2 requirements."

3 So am I being told that I can't ask him  
4 about questions regarding the safety, the  
5 reliability, or the efficiency of the specs that were  
6 put out for bid?

7 CHAIRMAN THAD LEVAR: Okay. Thank you. I  
8 think I understand the objection and the responses to  
9 them.

10 I'm going to speak to the other board  
11 members for just a moment, since this board doesn't  
12 meet very often. For the sake of the efficiency  
13 through the proceeding, I will try to as the chair of  
14 the board address objections like this as they come.  
15 If there's one that seems to me to rise to the level  
16 of needing full board discussion, I will do so. But  
17 please feel free if you feel like I'm erring on that  
18 line, if any of the board members if you feel like  
19 ruling on any objection should be brought to the full  
20 board rather than me moving them forward to keep the  
21 testimony moving, please do so.

22 So I think I'm going to rule on this one,  
23 but if any board members want to bring it to the  
24 board, I will give you that opportunity now and  
25 invite you any time in the future to jump in if you

1 want to bring the discussion to the full board.

2 Not hearing any from board members, I'm  
3 going to grant the objection as I'm going to outline  
4 it and my understanding of it. My understanding of  
5 Mr. Barker's testimony is that he's applying the  
6 reliability standard, but he is not the witness who  
7 has testified with respect to the bid specifications.  
8 And Mr. Gordon has identified which witness that is  
9 who has -- who can testify to the bid specifications.  
10 I don't see anything within the scope of the direct  
11 testimony of Mr. Barker that opens him up to  
12 questions about bid specifications. But again seems  
13 focused on the reliability standards of what live  
14 line would be needed to meet the need that's being  
15 identified.

16 So I'm going to affirm the objection. And  
17 so, Mr. Gordon, you may move forward with your  
18 questioning.

19 MR. GORDON: Thank you. Let me just look  
20 through real quick here so I get down to the part  
21 that you have not excluded. Let's see here.

22 **Q. (BY MR. GORDON) Okay. Mr. Barker, you**  
23 **state there are three lines that serve the Park City**  
24 **area. One up Parleys Canyon, one up Provo Canyon,**  
25 **and one out of Wyoming Silver Creek Line, correct?**

1           A.     Correct.

2           Q.     As it stands today with all three of these  
3 lines functioning, Rocky Mountain Power's system  
4 operates in accordance with the standards set by the  
5 American National Standards Institute, correct?

6           A.     Correct.

7           Q.     Your testimony is that if one of these  
8 lines go down, voltage will drop below 90 percent  
9 nominal voltage on the system, correct?

10          A.     That is correct. It is more -- it's more  
11 of an issue on the two lines, the one up Parleys  
12 Canyon and one up Provo Canyon. It's less of an  
13 impact --

14          Q.     Let's talk about those lines. How old is  
15 the Parleys Canyon line?

16          A.     I don't have that information.

17          Q.     Okay. From a reliability standpoint,  
18 wouldn't it be important to understand how old that  
19 line is to assess its reliability?

20          A.     Not necessarily.

21          Q.     So the age of the line doesn't really go  
22 into your analysis as far as reliability goes?

23          A.     As far as applying reliability standards,  
24 we do not look at -- we don't look at the number of  
25 outages affecting a line to assure that we align with

1 reliability standards. We only look at if the outage  
2 occurs, what is the extent of the issue that would  
3 occur because of that.

4 Q. So just to be clear, so when you're -- in  
5 your industry standards there's nothing that you look  
6 at that says a line that's 50 years old is any less  
7 or more reliable than a line that's been put in last  
8 year?

9 A. Well, I think we're mixing things up here.  
10 You're talking -- are you talking reliability, NERC  
11 reliability standards, that is true. We do not look  
12 at the age or the number of outages, which is what we  
13 are expressing here in -- in my testimony.

14 Now, if we are looking at reliability in  
15 general with the performance of a line, then, yes, we  
16 may take that into consideration.

17 Q. Okay. But in this instance you have not  
18 looked at how old the line is or you're not aware of  
19 how old the -- how old the Parleys Canyon line is,  
20 correct?

21 A. Yes, I am not aware of that.

22 Q. Okay. How many times has the Parleys  
23 Canyon line gone down?

24 A. I'm going to have to look at if that was  
25 provided in our outage data that -- the confidential



1 outage data that we provided. Just give me a moment  
2 to look at that.

3 **Q. Sure, that's fine.**

4 A. In what we provided, I'm counting 15 times  
5 that that line tripped offline over the last five  
6 years.

7 **Q. Over the last five years, okay. And when**  
8 **we have something that trips, what does that mean?**

9 A. I haven't differentiated between the two.  
10 That would require more analysis of this spreadsheet.  
11 But it can mean two things. One is a -- what we call  
12 a trip and a reclose where the fault that occurs  
13 along the line is an instantaneous fault such as a  
14 bird or a tree gets in the line or a lightning  
15 strike, something that's very temporary. Our line  
16 trips to clear that fault and then recloses and then  
17 stays in.

18 And then there's the second that is more  
19 of a permanent fault such as structure or a conductor  
20 issue where that stays as a permanent fault.

21 **Q. Okay. So just to kind of clarify here.**  
22 **So of the 15, some of those are going to be temporary**  
23 **ones that would just be like a temporary bump in the**  
24 **system, and it would be down for a few seconds and**  
25 **then come back up? Is that correct?**

1           A.     Yes, that's correct.

2           **Q.     And then the permanent ones, are you aware**  
3 **of how many of those are permanent outages?**

4           A.     Again I'd have to look through this.  If  
5 you can give me a minute, I can determine that.

6           **Q.     Yeah, if you want to look.**

7           A.     So in my quick review of this, I have  
8 identified five of the 15 instances that were longer  
9 than five minutes, which is where we typically draw  
10 the line for a sustained versus momentary outage.  
11 One of those was construction related.  So four of  
12 the 15 would be the more sustained faults.

13          **Q.     Okay.  Are you aware of those permanent**  
14 **outages, were any of them -- I mean what was the**  
15 **longest outage that was experienced?**

16                 MR. REICH:  Just so the record is clear,  
17 Mr. Barker is referring to the document RMP 139 that  
18 was produced in this proceeding.

19                 CHAIRMAN THAD LEVAR:  Thank you for that  
20 clarification.

21                 MR. TROY FITZGERALD:  Since we've been  
22 referring to exhibits, I've got V.O.L.T.'s and  
23 Midway's.  But I've looked through everything I've  
24 got, and I don't have access to Rocky Mountain's  
25 exhibit list.  If someone can let me know where that

1 is or where it may be locked in the system.

2 CHAIRMAN THAD LEVAR: This is Thad LeVar,  
3 I will go ahead and forward the e-mail I received  
4 with Rocky Mountain's exhibits. I will do that right  
5 now.

6 MR. TROY FITZGERALD: Thank you.

7 MR. GORDON: And, Commissioner Fitzgerald,  
8 if you need me to stop for a moment, just give me  
9 guidance. I just want to make sure you've got what  
10 you need in front of you as we proceed forward.

11 MR. TROY FITZGERALD: Let's move forward  
12 for now. If it gets to someplace where I'm hung up,  
13 I'll pipe up.

14 MR. GORDON: Sounds good. Thank you.

15 THE WITNESS: Just again in quick  
16 calculations, I'm showing about 15 hours was the  
17 longest.

18 Q. (BY MR. GORDON) Okay. So there was one  
19 outage for 15 hours. And other than that what -- I  
20 mean the ranges on these from five minutes to  
21 15 hours, is there a way to just let us know? I mean  
22 did they range from five minutes to a bunch that were  
23 two hours? What did we have?

24 A. One was about three. Two were about six.

25 Q. Okay. So two were six?

1           A.     The construction one was well over a week.

2           Q.     Okay. But that one was not -- that one  
3 you knew was coming, correct?

4           A.     Correct.

5           Q.     Okay, very good. In your experience have  
6 you ever -- have you ever known this line to go down  
7 for longer than 24 hours?

8           A.     No. I would have to go back and look at  
9 the history.

10          Q.     Okay.

11          A.     I know we're around the time of the  
12 Olympics, there was an issue with the helicopter in  
13 that line. I'm not sure what that -- that was a  
14 major outage, but I'm not sure of the time frame on  
15 that.

16          Q.     Okay, all right. Very good. Now let's  
17 move to the Provo line. How many times has the Provo  
18 line gone down?

19          A.     Four times.

20          Q.     And of those four, how many were  
21 temporary?

22          A.     Two.

23          Q.     And the other two, how long were they out?

24          A.     One was eight hours. One was  
25 approximately 37 hours.

1           Q.     37. On the 37-hour one, what happened?

2           A.     There was a mudslide in the canyon that  
3 took two structures out.

4           Q.     Okay, very good. Now, let's turn to the  
5 Wyoming line. How many times has it gone down?

6           A.     Eight times.

7           Q.     And of those eight, how many were  
8 temporary?

9           A.     Six of the eight.

10          Q.     And the two that were permanent, how long  
11 were they?

12          A.     About one-and-a-half hours and one hour.

13          Q.     Okay. Just a quick question going back to  
14 the Provo line. If the Provo line goes down, it  
15 primarily hurts Heber Light & Power, correct?

16          A.     That is where the issue was the worst,  
17 that's correct. But I don't think it's a correct  
18 statement to say it primarily affects Heber Light &  
19 Power.

20          Q.     Okay. But currently in the system there's  
21 no -- there's no transmission line that connects that  
22 Provo line over into Park City, correct?

23          A.     No, that's not correct. There's a 46 kV  
24 line that connects our Midway stub substation into  
25 the Park City area.

1           Q.     Okay. So if the Provo -- the Provo Canyon  
2 line goes down, you still have two lines serving the  
3 Park City area, correct?

4           A.     We have the two 138 kV lines that serve  
5 that area. Yes, that's correct.

6           Q.     And you can reroute those if the Provo one  
7 goes down to serve your clients over in Park City,  
8 correct?

9           A.     No rerouting would be necessary. I don't  
10 understand that question.

11          Q.     Maybe I'm just not using the correct term.  
12 I guess if the Provo City line or the Provo Canyon  
13 line goes down, you still have adequate capacity to  
14 serve all of your customers over in Summit County,  
15 correct?

16          A.     No, that's not correct.

17          Q.     Okay. Explain to me why it's not.

18          A.     Well, as we -- as we discussed in my  
19 testimony, the issue here is that the voltage in  
20 various locations in the Park City area and primarily  
21 in the Heber Valley area would go below our  
22 guideline, and we anticipate blackouts due to that  
23 low voltage throughout the Park City area initially.

24          Q.     So let me just -- let me just read this so  
25 that I make sure I understand it. So there was a

1 question in your written testimony that says, "If  
2 either the Hale-Midway or Cottonwood-Snyder 138 kV  
3 transmission lines experience an outage, couldn't the  
4 Rocky Mountain Power system operators switch the  
5 power to come from alternate sources?"

6 And you answered, "All available  
7 transmission sources are being utilized under this  
8 scenario. Switching by Rocky Mountain Power system  
9 operators would enable the restoration of all but  
10 42 megawatts of customer load, which would raise  
11 voltages above planning standard limits."

12 So based on that answer my understanding  
13 was that if the Provo line goes down, you would have  
14 sufficient serve -- to continue to serve through the  
15 other two lines and still meet your planning standard  
16 limits. Is that correct?

17 A. That's correct. What I mean by switching  
18 here is that we would be opening circuit breakers  
19 throughout the Park City area, taking that  
20 42 megawatts of power offline to enable that. So  
21 there would be what we would consider to be rolling  
22 blackouts to keep the loading to that 42 megawatt  
23 level.

24 Q. I see, okay. And that helps me understand  
25 what it was your testimony was there.

1           A.       So in context as well that -- what that  
2       42-megawatt level is, that's the entirety of the  
3       Heber Valley area that's pretty close to 42 megawatts  
4       plus some of the Park City area.

5           Q.       I'm trying to just make sense of what I  
6       just heard there. So let me just give some thought  
7       to that. I think I understand kind of what your  
8       answer is, and I appreciate your clarification on  
9       that. So let's move forward. The situation with the  
10      three lines in this area, how long have those three  
11      lines been serving this area?

12          A.       Well, this goes back to when those lines  
13      were constructed, and I'm not sure when the two --  
14      the Cottonwood and the -- the Cottonwood line and the  
15      Midway line up Parleys Canyon and up Provo Canyon,  
16      those have been in service for many years, decades.  
17      We somewhat recently finished the railroad to Park  
18      City line, and I'm not exactly sure of the year. It  
19      was 2016 or 2017.

20          Q.       So that one is new. The other two go  
21      back, I mean, 20, 30, 40 years or something like  
22      that, just to kind of give us a sense of how long  
23      they've been there?

24          A.       Yes.

25          Q.       Okay, thank you. In the amount of time



1     that these lines have been in place, how many times  
2     have there been blackouts in the area that these  
3     lines serve?

4             A.     For the five years that I have looked at  
5     the outage history in detail, we did not have any  
6     blackouts.

7             Q.     Okay. And to your knowledge prior to  
8     this, have there ever been situations where the  
9     system was damaged so bad that you had rolling  
10    blackouts in this area?

11            A.     Not to my knowledge. There have been  
12    outages to this area due to transmission issues but  
13    not the rolling blackouts that we're talking about.

14            Q.     Okay. Thank you. And from what I  
15    understand, the longest outage in any of these lines  
16    right now is 37 hours due to a mudslide, correct?

17            A.     Correct.

18            Q.     Do you know how many times there's been  
19    damage to Rocky Mountain Power's equipment due to the  
20    loss of the load or one of these lines going down?

21            A.     I'm not aware of any.

22            Q.     Okay. What are the --

23            A.     You said Rocky Mountain Power equipment,  
24    correct?

25            Q.     Yes, yes. Rocky Mountain Power equipment,

1     **yes.**

2             A.     Yeah. I'm not aware of any.

3             Q.     Okay. What is the longest any customer  
4     has been out of electrical service due to the loss of  
5     one of these transmission lines?

6             A.     I don't have that information.

7             Q.     Okay. Is it safe to say that that  
8     37 hours would probably be the longest that you're  
9     aware of?

10            A.     So just to clarify, no Rocky Mountain  
11    Power customers were out of power during that  
12    37 hours.

13            Q.     Okay. So have -- I guess that's my  
14    question. Of the ones we've already talked about on  
15    all three of these lines, has there ever been --  
16    what's the longest you're aware of that Rocky  
17    Mountain Power customers would have been out of  
18    power?

19            A.     Due to these outages, I don't show any  
20    Rocky Mountain Power customers being out of power due  
21    to these contingency outages that we're talking  
22    about.

23            Q.     Okay. So is it safe to say that the  
24    current system, based on at least the last five years  
25    and your knowledge, is pretty reliable, hasn't had a

1 lot of problems, correct?

2 A. That's correct.

3 Q. Okay. Can you tell me with -- well, how  
4 do I say this? How likely is it statistically that  
5 we're going to have an event on one of these lines if  
6 we extended building this new line until the spring  
7 of 2021, how likely is it that we would have an  
8 occurrence that would result in Rocky Mountain Power  
9 losing or customers not being able to receive power?

10 A. You're asking me to speculate on whether a  
11 catastrophic issue is going to occur in our lines  
12 either this year or next year, and I can't speculate  
13 on whether that is going to occur or what the  
14 probability of that is going to occur. What I can  
15 tell you is that the number of hours where we will  
16 have voltage issues if it does occur is increasing  
17 every year the longer that we wait.

18 Q. Fair enough, fair enough. And so short of  
19 a massive catastrophe that obviously none of us can  
20 predict, do you foresee in just the normal operation  
21 of these lines what the additional risk would be if  
22 the line does not go in until the spring of 2021?

23 A. Next year we're projecting 620 hours of  
24 risk over -- over the winter. And for the following  
25 year there would be an additional number of hours

1 added to that. And I think that the likelihood,  
2 given that we had a mudslide in 2017 that took out  
3 some structures, now if that had occurred a few weeks  
4 earlier during our peak then we would have had Rocky  
5 Mountain Power customers out of power. If there had  
6 been adverse weather conditions that precluded us  
7 from getting into the area, then that would have  
8 extended the outage. If it had occurred in an area  
9 where we needed helicopters to repair the line, which  
10 there are many areas in both of these canyons where  
11 that is needed, then we would be extending that  
12 37 hours by quite a bit. So to say that it's not  
13 likely or the -- it's not -- it's nearly nonexistent  
14 the probability of this occurring is just not  
15 accurate.

16 **Q. Okay. But isn't it fair to say that in**  
17 **the history of this line that you're aware of,**  
18 **there's been one catastrophic event that was called a**  
19 **mudslide, the catastrophic event, in the 20 or**  
20 **30 years that these lines have been operating?**

21 A. In the last five years that's correct.

22 **Q. Okay. And you're not aware of any others**  
23 **in the time frames before that?**

24 A. Other than the helicopter issue that I  
25 just mentioned, I'm not aware.

1           **Q.     Okay. Thank you. Midway City has been**  
2 **told repeatedly that the new line must be finished by**  
3 **the end of 2020. Is that coming from you?**

4           A.     We advocate getting this project done as  
5 quickly as possible to mitigate our risk of an outage  
6 occurring and affecting our customers in the Park  
7 City planning area. We've -- I've been personally  
8 working on this project since 2011, 2012. It's been  
9 in our budget since 2017 and been pushed back  
10 multiple times. So we are an advocate of getting  
11 this done as quickly as possible to mitigate that  
12 risk that we just -- that I just discussed.

13          **Q.     Certainly. And the risks that we are**  
14 **discussing has been in place, probably increasing**  
15 **annually, but it's been in place for many, many years**  
16 **prior to right now, correct?**

17          A.     Very minimally. I show that in 2011 we  
18 had very minimum risk, maybe a few hours a year. In  
19 2017 we completed what we call our Snyderville  
20 project, which substantially increased that, that  
21 risk and the number of hours and exposure. Which is  
22 why from a planning perspective we recommended that  
23 become a budget item in 2017.

24          **Q.     Okay. Let me just look through my**  
25 **questions here. So basically based on your testimony**

1 right now, and I understand you're looking out and  
2 you're trying to deal with potential problems, but  
3 really the threat that we're talking about here is  
4 based on what could happen to the line, correct? But  
5 statistically speaking it's probably pretty minor  
6 that something like that could happen in an  
7 additional five months given the history of the line,  
8 correct?

9 A. I can't -- like I said, I'm not going to  
10 speculate on whether the mudslide is going to take  
11 down our line. It has happened in the last three  
12 years, so I don't know what you mean by  
13 statistically. But in my view it's probable. In  
14 Rocky Mountain Power's view it's probable.

15 If that does occur and there are rolling  
16 blackouts in the area, it's Rocky Mountain Power that  
17 is going to be held accountable.

18 Q. Fair enough. What is the useful life of a  
19 transmission line once it's installed?

20 A. We don't have a -- I wouldn't say we have  
21 a specific time frame. We maintain our lines. We  
22 replace poles as needed. So useful life is as we can  
23 keep it maintained and running properly.

24 Q. Okay. Is it reasonable to assume that  
25 once this line goes in, it will be there for the

1 foreseeable future, meaning decades and even  
2 centuries?

3 A. Yes.

4 Q. And once the line goes in, Rocky Mountain  
5 Power wouldn't have any plans to ever remove it,  
6 correct?

7 A. Not unless we were requested to put it  
8 underground or relocate it, which often entities do.

9 Q. Okay. And so I guess the delay of four or  
10 five months, if that's what it takes to get a bond,  
11 would be really kind of a small percentage of the  
12 entire life of this line, correct?

13 A. Yep, that's fair.

14 Q. Okay. Just a couple more questions here.  
15 If complications occur within Heber Light & Power's  
16 system, those don't affect Rocky Mountain Power once  
17 the new line goes in, correct?

18 A. Sorry. Can you repeat the question?

19 Q. Sure. Let me explain it a little better.  
20 My understanding is once this interconnect happens,  
21 that Rocky Mountain would be able to wield power back  
22 and forth on its own line regardless of whether  
23 there's any complication within the Heber Light &  
24 Power system; is that correct?

25 A. Yes, that's correct.

1           Q.     Okay. So if there is a problem with the  
2 Heber Light & Power system, that will not interfere  
3 with Rocky Mountain Power's capacity to provide  
4 service to its customers over in Brighton, Deer  
5 Valley, and Park City, correct?

6           A.     Correct.

7           Q.     Okay. This I'm just going to ask, as I'm  
8 thinking this through it seems like if one of the  
9 lines go down is it fair to say, for example, if the  
10 Provo line goes down, the entity that would really  
11 face the biggest brunt would be Heber Light & Power,  
12 correct?

13          A.     No, I think it would be Rocky Mountain  
14 Power and its customers, one of which is Heber Light  
15 & Power.

16          Q.     But primarily that lineup serves Heber  
17 Light & Power, correct?

18          A.     Define primarily. It's of certain  
19 percentage, probably the majority of percentage of  
20 megawatts being served. But this is a system. It's  
21 all interconnected; it's all looped. The system  
22 itself, that's just one of the customers. The issue  
23 that we're talking about, it's a system issue. We  
24 don't just radial -- we call it a radial line that  
25 just serves them off of this line. It's all



1 interconnected, and they support each other.

2 Q. Okay. But there's not -- the loop has not  
3 been completed at this point, correct?

4 A. Well, like I said before, there is a 46 kV  
5 loop that allows the Midway transformer to stay  
6 energized if there is an issue on that line. It's  
7 just during certain numbers of the year that that  
8 line cannot support -- support the load, and so  
9 that's why we're proposing this loop through on the  
10 138 so that we have that support.

11 Q. Uh-huh (affirmative). All right. Is  
12 it -- I guess the point I'm trying to make here or  
13 trying to understand is if Heber Light & Power were  
14 willing to push this out and allow Midway City to  
15 bond, wouldn't they really be the entity that's  
16 taking the biggest risk if something goes down?

17 A. No, I don't believe that's the case. I  
18 think Rocky Mountain Power is taking the biggest  
19 risk. It's Rocky Mountain Power's customers. Heber  
20 Light & Power is one of those customers, and we have  
21 other customers in the Park City planning area that  
22 would be assuming that risk.

23 Q. Well, and let me understand that. Aren't  
24 the two lines coming over into the Park City area --  
25 and maybe I'm misunderstanding -- aren't those

1 sufficient to deal with the needs of Park City even  
2 if the Provo line went down?

3 A. As I discussed before, it's adequate for  
4 all but 42 -- well, the entire load minus the  
5 42 megawatts. And so 42 megawatts would be in a  
6 rolling blackout stage in the entire Park City area.  
7 As I understand, we would operate in that condition.

8 Q. Okay. That helps me understand. I  
9 appreciate the clarification there.

10 Let me see here if there's anything else.  
11 Well, I think that that's everything. Let me just  
12 look through. Give me just one second here.

13 So let me ask one other question here, and  
14 then we're almost done. When talk about in your  
15 testimony that there's up to 620 hours of exposure to  
16 the risk of inadequate voltage, what does that mean?

17 A. It means the voltage on any -- at any  
18 substation bus that we looked at would be less than  
19 the .90 per unit, which is 90 percent of normal  
20 voltage. So think of that in your house, it would be  
21 90 percent of your 120 volts.

22 Q. Okay.

23 A. That's just applied to the transmission  
24 side. It's not necessarily applicable on the  
25 customer side.

1           Q.     Okay. And so on those 620 hours of  
2 exposure, I'm trying to understand what that means.  
3 For example, as we go back and talk about the history  
4 of these lines where most of that exposure it sounds  
5 like would be temporary outages. And how do you  
6 calculate what exposure is?

7           A.     So there's a certain load level, and I  
8 believe we've identified that in some of our  
9 documents. That once the load level in the Park City  
10 planning area that includes Heber Valley, once the  
11 load level exceeds 175 megawatts then we have the  
12 risk of the voltage in the area going below .9. And  
13 so we just sum up the number of hours that we project  
14 the loading to be above 175 megawatts. And it varies  
15 I think in our -- in what we forecasted for this next  
16 summer -- or next winter's 217 megawatts.

17          Q.     Okay.

18          A.     So the load will vary between 175 and 217,  
19 but the number of hours it varies between there is  
20 620.

21          Q.     Okay. And on those hours of exposure to  
22 the risk, if it does drop below 90 percent, that  
23 doesn't mean that you're completely out of power,  
24 correct?

25          A.     For some customers that's not the case.

1 If the voltage drops below .9, it is likely that some  
2 of our customers' motor load would trip off to  
3 prevent damaging their equipment.

4 Q. And that would be like a Heber Light &  
5 Power customer, a transmission partner? Not a -- not  
6 an end-user, correct?

7 A. No, this would be any end-user.

8 Q. Okay. And how far -- I mean if it dips  
9 down to let's say 85 percent and then comes back up,  
10 I mean what impact does that have on the system?

11 MR. REICH: Just to clarify, which system  
12 are you referring to?

13 MR. GORDON: Well, I think the entire  
14 system. Not Heber Light & Power. Rocky Mountain  
15 Power's system.

16 THE WITNESS: Like I just previously  
17 stated, customers protect their load from low  
18 voltages in an ideal world. Sometimes they don't and  
19 equipment damage can occur. But if they are  
20 protecting their devices when the voltage goes below  
21 some of these levels that we're talking about, their  
22 load trips off, in particular their motor load and  
23 perhaps some of their electronics that's not designed  
24 to operate at those lower voltages.

25 Q. I see.

1           A.       So we would not have devices that opened  
2 up. But customer equipment would most likely start  
3 to trip itself offline to protect itself from the low  
4 volts.

5           Q.       I see. And how difficult is it to reset  
6 those once they trip off? Is it like the standard  
7 home, what do you call those, your breakers where it  
8 kicks it off and you go turn it back on and it comes  
9 back on?

10          A.       I'm not -- I'm not an expert on what  
11 customers' particular loads are going to do. My  
12 speculation is once the voltage recovers, then it  
13 would be able to restart. There may be a cooling off  
14 period before they could restart some of their  
15 motors.

16          Q.       Very good. And based on your current  
17 customers that you would be concerned about, what  
18 percentage do you think would not have the  
19 protections that we're talking about as far as their  
20 system automatically tripping off if this happens?

21          A.       Again that would be complete speculation  
22 on my part. I don't have a -- I don't have a  
23 reasonable response for that.

24          Q.       Okay. Is it an industry standard though  
25 when like homes are being built and these types of

1 facilities are being built that they have to meet a  
2 certain -- I mean they put in safety measures to  
3 protect against this?

4 A. That's a function of the equipment that's  
5 being operated, not necessarily the homes that are  
6 being constructed. I would say that most do have  
7 that protection.

8 MR. GORDON: I think that's all the  
9 questions that I had.

10 Oh, I'm sorry, go ahead. You can finish.

11 THE WITNESS: I was going to say the  
12 question here is the load is coming offline, not  
13 necessarily that the equipment will be damaged. And  
14 that was reflected in my testimony, the equipment may  
15 be damaged depending on the -- that would depend on  
16 what they have for protection.

17 MR. GORDON: That helps, that helps.

18 Okay. I think that's all the questions I  
19 have for this witness.

20 CHAIRMAN THAD LEVAR: Thank you. I think  
21 it will be appropriate for us to take a break now  
22 before we move to any questions from V.O.L.T. for  
23 this witness.

24 Before we take a break just so I can use  
25 my time during the break the best, Mr. Reich, you had

1 indicated earlier on -- you told us the order of  
2 witnesses. And I didn't get it jotted down as you  
3 were stating it. Can you repeat for us again the  
4 order in which you intend to call your witnesses  
5 after Mr. Barker?

6 MR. REICH: Yeah.

7 CHAIRMAN THAD LEVAR: If that's firm and  
8 not fluid. I mean if it's fluid, tell me. But if  
9 it's set it would be helpful to know.

10 MR. REICH: Yeah, we intend on calling Ben  
11 Clegg next and then Darin Myers.

12 CHAIRMAN THAD LEVAR: Okay, thank you.  
13 That's helpful to me.

14 I think what we'll do is just --

15 MR. DAVID CLARK: Chair LeVar --

16 CHAIRMAN THAD LEVAR: Who is speaking now?

17 MR. DAVID CLARK: Dave Clark.

18 If I could take just a second to express  
19 something I anticipate doing that might bear on  
20 counsel for Midway's cross-examination. I have --  
21 and I'm harkening back to the objection that was  
22 sustained regarding construction specifications. I  
23 was a little confused by the questions and answers at  
24 that stage. And I wanted to express my -- at least  
25 my feeling that I'm interested in knowing what -- to

1 what extent the construction specifications were  
2 influenced by reliability requirements or  
3 requirements to meet reliability standards, speaking  
4 in particular of the redundancy requirements that  
5 exist in the standards that are promulgated by the  
6 Western Electric Coordinating Council and North  
7 American Electrical Liability Corporation. And I  
8 think I got an understanding regarding the dual  
9 trenching and -- but the other -- at least the one  
10 other major expense item, the deadline requirement, I  
11 understand that that's -- well, I'm uncertain whether  
12 that's a construction specification or is it driven  
13 by a reliability standard. But if it is a  
14 reliability standard and if Mr. Barker is the witness  
15 to address that, I intend to ask him about it. But I  
16 didn't want to do that and then open an area of  
17 cross-examination that Midway's counsel may have felt  
18 precluded from addressing.

19 So that's the sort of issue that I wanted  
20 to present to you.

21 MR. GORDON: Commissioner, this is Corbin.  
22 As far as responding to that I did have a line of  
23 questions, and I assumed that Mr. Barker was the  
24 appropriate one to talk about that issue. And so I  
25 skipped those based on the ruling from the board.



1 But it sounds like Commissioner Clark was on the same  
2 page with me. I thought this was the appropriate  
3 witness to answer those questions.

4 MR. DAVID CLARK: If he's not, that's  
5 fine. But if he is, you know, again I didn't want to  
6 foreclose you from your opportunity.

7 CHAIRMAN THAD LEVAR: Okay. Anything  
8 else, Mr. Clark?

9 Okay. We'll be in recess until 1:00.

10 (Lunch from 11:57 a.m. to 1:00 p.m.)

11 CHAIRMAN THAD LEVAR: Before our lunch  
12 break we had preliminarily concluded the  
13 cross-examination by Midway City. And then one of  
14 the board members, Mr. Clark, raised the issue of  
15 revisiting the ruling on the objection by Rocky  
16 Mountain Power. The previous ruling was that  
17 questions regarding bid specifications were outside  
18 of the scope of Mr. Barker's testimony and were  
19 within the scope of Mr. Myers' testimony.

20 We had a request by a board member to  
21 revisit that ruling on the objection. So before we  
22 move on to V.O.L.T.'s cross-examination, I think it  
23 would be appropriate to address that issue with the  
24 board at this point. So I would ask if there's any  
25 board discussion to that issue.

1                   MR. JORDAN WHITE: Chair LeVar, I guess,  
2 you know, from my perspective, I am also  
3 interested -- let me take a step back. I think when  
4 we're talking about -- and this happens a lot in this  
5 business -- but we're talking about reliability in  
6 terms of the capital "R" reliability. That is a NERC  
7 standard, which is probably a little bit different at  
8 least from my perspective from what the witness was  
9 speaking to, which is power quality. Which are  
10 things like, you know, wave strengths, voltage  
11 stability, that kind of thing, how power quality  
12 actually works with respect to customers and the  
13 driving of crank shafts for ski resorts on lifts and  
14 things like that. I guess what I would suggest is if  
15 there is another witness that could speak to it, the  
16 actual reliability standards, the NERC federally  
17 delegated standards and that kind of world, I would  
18 be interested in hearing that at some point.

19                   But I guess the question is: Is it  
20 possible to maybe allow the other witnesses to be  
21 cross-examined and to address their issues, and then  
22 at the end of all of the witnesses if we still have  
23 not scratched that niche, in other words addressing  
24 how NERC standards flow into specifications for this  
25 line, then we could go back to this witness? I guess

1 what I'm trying to say is I'm not sure if we're going  
2 to get what we want out of that witness because I  
3 think he's already addressed power quality issues,  
4 but I could be wrong. But that's just a suggestion.

5 MR. DAVID CLARK: Let me just confirm. I  
6 think Mr. White has described what I'm trying to get  
7 to, and that is the extent of any relationship  
8 between reliability standards that Mr. Barker applies  
9 and the bid specifications. Is there linkage? In  
10 particular he's addressed the dual conduit or the  
11 dual trench bid requirements. I also had in mind the  
12 dead cable specification, and I'm wondering does that  
13 have any reliability underpinning, reliability  
14 standard underpinning.

15 MR. JORDAN WHITE: If that is the -- I  
16 thought that had been answered. If he has and there  
17 is a relationship, I would like to hear that also. I  
18 thought that that was answered. But if there is a  
19 direct relationship between those two, that would be  
20 helpful. And maybe I missed that, but I thought he  
21 had answered that already. But if that's the case,  
22 then perhaps that's a worthwhile question right now.

23 MR. REICH: Chairman, can I just add  
24 something that might clarify this and move it along?

25 CHAIRMAN THAD LEVAR: Yes. That would be

1 appropriate.

2 MR. REICH: So I think that Mr. Barker is  
3 able to testify about reliabilities as it relates to  
4 NERC and the relationship of reliability as it  
5 applies to bid specifications generally. My  
6 objection was really focused on these bid  
7 specifications as did they have some specific  
8 reliability standard? Because our bid specifications  
9 are based on engineering standards that our  
10 specification group creates for all of our projects.  
11 There's not some reliability standards for this  
12 project and some for a different project.

13 So we have no objection to Midway City  
14 asking him about reliability as it relates to NERC or  
15 the relationship of reliability to our bid standards  
16 generally speaking. We have no objection to that.

17 CHAIRMAN THAD LEVAR: So it seems like --  
18 is there any objection from the board just to  
19 returning to Midway City before we move on to  
20 V.O.L.T. to explore the issue a little bit further?

21 I'm not hearing any objection from board  
22 members, so I think we'll go forward that way.

23 So, Mr. Gordon, if you want to -- if you  
24 have any further questions on this topic that you  
25 would like to ask this witness, please go ahead.

1 MR. GORDON: Certainly. Thank you.

2 CHAIRMAN THAD LEVAR: I forgot to confirm  
3 that Mr. Barker was on the line. Are you on the  
4 line, Mr. Barker?

5 THE WITNESS: Yes, I'm still here.

6 CHAIRMAN THAD LEVAR: Okay. And you're  
7 still sworn in from the morning. Thank you.

8 MR. GORDON: Perfect.

9

10 CROSS-EXAMINATION (Continued)

11 BY MR. GORDON:

12 Q. Thank you. Okay. So, Mr. Barker, just a  
13 few more questions then. As I understand it, I'm not  
14 going to be referring to specific specifications but  
15 more generally. In this instance when you're burying  
16 a line, my understanding is it is common to put an  
17 extra conduit as part of the buried project; is that  
18 correct?

19 A. I can't speak to what's common in the  
20 industry. That would be more of an expert in our  
21 construction standards that would be able to talk to  
22 that.

23 Q. Well, is there -- is there a reliability  
24 aspect of putting in the extra conduit?

25 A. Yes, absolutely.

1           **Q.       And what would that be?**

2           A.       Well, the failure of an underground line  
3 can take several days to weeks to repair it,  
4 depending on what the issue is. We don't have the  
5 expertise to do -- in-house to do splices, and so  
6 that needs to be brought in from outside the state  
7 typically.

8                   There's other issues with pulling -- that  
9 can arise from pulling in the new cable. And so it  
10 is more reliable for us to have the conduit and cable  
11 in place so that we can energize that on a much  
12 quicker basis.

13           **Q.       Okay. Are you aware of any NERC standards**  
14 **that require a dead line to be pulled through**  
15 **conduit?**

16           A.       I'm not aware of any, no.

17           **Q.       Are you aware, has Rocky Mountain Power**  
18 **buried other 138 kV lines?**

19           A.       Yes.

20           **Q.       And were you involved in those projects**  
21 **enough to know what happened on them?**

22           A.       No, not from a -- not from a detailed  
23 construction standpoint.

24           **Q.       Do you know, is it your recommendation**  
25 **from a reliability standpoint, does Rocky Mountain**

1     **Power have a standard when they're putting these**  
2     **underground to leave the conduit open or to pull an**  
3     **extra line?**

4             A.     It's my understanding that we will be  
5     pulling the extra line.

6             **Q.     And does that come from you as the**  
7     **director from the power of quality and reliability?**

8             A.     No, as I said before, those standards are  
9     set up by our construction standards engineering  
10    group. Our planning department may provide input,  
11    but that is -- those construction standards are built  
12    by that department.

13            **Q.     So really the extent here is you're not**  
14    **aware of any NERC requirement that requires that to**  
15    **go through, correct?**

16            A.     Correct. But the underpinning of that  
17    requirement that we have is to mitigate the risk of  
18    the NERC requirements. So in this case if the -- the  
19    NERC requirement may say that we have N minus 1 or a  
20    single contingency outage that causes an issue that  
21    we need to plan for that. If that cable fails and  
22    it's out for two months during the winter while we're  
23    trying to repair it, then we're in the exact same  
24    condition we are in today and that we've been  
25    discussing.

1           **Q.**     Do you have any knowledge or understanding  
2 on how long it takes to pull a new line through if  
3 the cable were -- or if the conduit were empty?

4           A.     Are you saying if the conduit is empty to  
5 get the cable in?

6           **Q.**     **Yes.**

7           A.     Yeah. I don't have any specific details  
8 on what that would take. Like I said before if there  
9 are splices involved -- and within this case over a  
10 mile there would be splices involved -- I know we do  
11 not have in-house expertise. So that needs to be  
12 scheduled and flown in. And it does take time to  
13 perform those splices in addition.

14                   As I understand it some of the cable needs  
15 to be ordered. We do have some spare cable in our  
16 inventory, but that might be an issue too on the  
17 timing. We might have to bring in additional cable  
18 for that.

19                   So I don't know an exact time, but it  
20 isn't -- it isn't a couple of days. It's probably a  
21 couple of weeks at least.

22           **Q.**     Okay. And having the extra -- having that  
23 extra dead line sitting there, it doesn't alter in  
24 any way the reliability of the energized circuit,  
25 correct?



1           A.       Not that I'm aware of.

2           MR. GORDON:   Okay.   No further questions.

3           CHAIRMAN THAD LEVAR:   Okay.   Thank you,  
4   Mr. Gordon.

5           Mr. Morris or Ms. Brereton, do you have  
6   any cross-examination questions for Mr. Barker?

7           MR. MORRIS:   I do.   Thank you.

8  
9                           CROSS-EXAMINATION

10          BY MR. MORRIS:

11           Q.       Mr. Barker, good afternoon.   During the  
12   break did you have a chance to discuss your testimony  
13   with anyone, other than counsel?

14           A.       No.

15           Q.       I'm going to try hard not to replot ground  
16   that was already covered.   But what I understood you  
17   to tell Mr. Gordon is that although the three lines  
18   you and he discussed and the downtime for them being  
19   respectively I think eight for one, five for another,  
20   15 for another, in all of those cases no one ever  
21   lost power in their homes, right?

22           A.       This is referring to the outages that  
23   we've discussed?

24           Q.       Yes.

25           A.       To my knowledge, no.

1           Q.     Okay. So because Rocky Mountain has built  
2     redundancy into the system, you're able to switch  
3     over when a line goes out and maintain coverage for  
4     your end-users, correct?

5           A.     No, that's not correct. During certain  
6     times of the year and above certain loadings that is  
7     not correct, which is what this project is predicated  
8     upon.

9           Q.     Well, I'm not asking you to speculate  
10    about the future. But in the past you had -- I  
11    understand your testimony to be that that has not  
12    occurred, that you were -- that the situation arose  
13    where you were not able to switch and cover for a  
14    line going down, for example, the helicopter or a  
15    mudslide or whatever you referred to.

16          A.     It is my testimony that that situation has  
17    not occurred. However, it is my job as director of  
18    planning to plan for situations that can occur, which  
19    is what this -- again, what this project is all  
20    about. A catastrophic issue could cause rolling  
21    blackouts and serious issues in the Heber Valley and  
22    Park City areas.

23          Q.     It's fair to say that if a line is  
24    underground, it's less at risk from a helicopter  
25    hitting it and interrupting it, isn't it?

1           A.       Perhaps. But we still have overhead  
2 components such as the dip poles that are still in  
3 the exterior line of risk.

4           **Q.       Well --**

5           A.       But that line has -- let me clarify this  
6 though. That line as being undergrounded is not part  
7 of the line that causes the issue. The line that  
8 causes the issue that we're discussing is 100 percent  
9 overhead, and it is not being modified in any way as  
10 part of this project.

11          **Q.       So it sounds like you're saying that**  
12 **reliability really isn't a factor as far as this line**  
13 **goes. You're worried about bad things happening**  
14 **elsewhere, right?**

15          A.       This line is the solution to bad things  
16 happening elsewhere.

17          **Q.       But by this line, I'm only concerned with**  
18 **the mile or so going through Midway. If that line**  
19 **goes underground, at least that portion of the line**  
20 **is not going to be subject to many of the problems**  
21 **that you've described as being at risk on other parts**  
22 **of the line like mudslides, weather, helicopters,**  
23 **things like that; is that fair?**

24          A.       That's fair. My point is that it's  
25 irrelevant to the issue in the area.

1           Q.     Okay. You just mentioned you have buried  
2 transmission lines in the past. How long have you  
3 been in your job, Mr. Barker?

4           A.     I've been the director of area  
5 transmission and planning for two years.

6           Q.     And your total duration with Rocky  
7 Mountain Power is how long?

8           A.     17 and a half years.

9           Q.     Were you involved at all in the  
10 underground transmission line that was built along  
11 39th South from 9th East down to Main Street a few  
12 years ago?

13          A.     No, I was not.

14          Q.     Were you involved at all in the  
15 transmission line that was buried out in Draper from  
16 Dimple Dell Road down to about 10th East?

17          A.     No, I was not.

18          Q.     Are you aware of those lines?

19          A.     Yes, I'm aware of the lines.

20          Q.     Okay. Are you involved in regional  
21 transmission study planning at the Western  
22 Electricity Coordinating Council?

23          A.     We are involved -- my department is  
24 involved in a support role. Like I testified earlier  
25 our main grid transmission department takes the lead

1 role in that compliance effort.

2 Q. And so to what extent are you involved in  
3 PacifiCorp's transmission planning for its integrated  
4 resource plan?

5 A. Very little.

6 Q. Do you participate in system impact  
7 studies that are run for transmission service  
8 requests pursuant to Rocky Mountain's open access  
9 transmission tariff?

10 A. Yes. We are involved with those impact  
11 studies, depending on the voltage.

12 Q. So would you have the ability to tell us  
13 then what portion, if any, of construction costs of  
14 138 kV lines will be recovered by PacifiCorp through  
15 rates charged under its OATT?

16 A. I'm not in the position to talk about rate  
17 recovery.

18 Q. Do you know if any of the other witnesses  
19 coming on are going to be in a position to tell us  
20 what portion of the construction costs that Rocky  
21 Mountain is saying it will incur are going to be  
22 recovered elsewhere?

23 A. I'm not aware that these witnesses have  
24 that expertise.

25 Q. Can you tell me, Mr. Barker, is there any

1   portion of this Heber to Midway line that is  
2   considered a network upgrade?

3           A.     It depends on how you define network  
4   upgrade. We have a Rocky Mountain Power definition  
5   for that. We also have a definition of that under  
6   the OATT, the transmission service request that's  
7   being made by Heber Valley, and I would not be in a  
8   position to answer to either of those.

9           Q.     And so would you agree with me that Rocky  
10   Mountain would not be entitled to charge monies for  
11   construction or assign costs that are attributable to  
12   network upgrades under either definition?

13          A.     I don't know if I understand the question.

14          Q.     Well, please explain to the board the two  
15   definitions of network upgrades you just provided to  
16   me.

17          A.     Well, I just know there's the distinction  
18   between the two. I don't believe that I'm in a good  
19   enough position to define those for the board.

20          Q.     And you don't know, Mr. Barker, if -- what  
21   portion, if any, of any costs that Rocky Mountain  
22   would try to claim to be excess costs that Midway is  
23   going to have to come up with are due to a network  
24   upgrade rather than installing this line?

25          A.     Like I said, I'm not in a position that I

1 can -- I can tell you what I think. But I just don't  
2 think that I'm in that position to distinguish  
3 between network upgrade, and there are probably  
4 better witnesses for that discussion.

5 Q. Are any of those better witnesses in the  
6 queue that you're aware of?

7 A. Not that I'm aware of. I haven't seen  
8 network recovered or network upgrades in any of the  
9 direct testimony that we've submitted or in rebuttal,  
10 so I'm not sure.

11 Q. And that's the reason for my question.  
12 I'm not seeing it either. But I'm wondering if  
13 Midway is being expected to pay for a network  
14 upgrade. You don't know the answer to that?

15 A. Well, I don't believe that Midway would be  
16 expected to pay for a network upgrade.

17 Q. Well, I don't either. I would agree with  
18 you. But it doesn't sound like you or any of the  
19 other witnesses we're going to hear from can say  
20 unequivocally that among the costs being claimed by  
21 Rocky Mountain to build -- to go underground, for  
22 example, whether any of the lines called out by the  
23 specs and bid on by these contractors can be  
24 characterized as a network upgrade.

25 A. That's correct.

1 Q. All right. I'm looking at my notes here.

2 Oh, you're not going to have a dead line  
3 on the overhead towers, are you?

4 A. Can you clarify the question?

5 Q. Yes. Mr. Gordon was asking you about this  
6 extra conduit and a line pulled through and asking  
7 Midway to bear the expense of that, a line that isn't  
8 going to be energized, that's just going to be lying  
9 there for an emergency someday.

10 And my question is there is no such line  
11 contemplated currently if this goes overhead, is  
12 there? You're not going to be stringing dead lines  
13 on these towers if you go overhead, are you?

14 A. Yes, that's correct. That's related to  
15 the time to repair. Accessibility on the overhead,  
16 and the materials to do it are -- there are not time  
17 constraints.

18 Q. Would you agree with me that the  
19 likelihood of an underground line going bad is a lot  
20 lower than if it's exposed and in the air with birds  
21 and helicopters and weather?

22 A. Well, with underground lines it's a  
23 tradeoff. By and large I believe that we are  
24 agnostic between overhead and underground. The  
25 tradeoff is that there may be fewer instances on the



1 underground. But when they occur, they last much  
2 longer as opposed to the overhead where they're more  
3 frequent.

4 But again, as it relates to this issue,  
5 that line outage is not relevant to the issue at  
6 hand.

7 MR. MORRIS: All right. I think that's  
8 everything I have for you, Mr. Barker. Thank you.

9 CHAIRMAN THAD LEVAR: Thank you,  
10 Mr. Morris.

11 Mr. Reich, any redirect?

12 MR. REICH: Yes, thank you. Just a few.

13  
14 REDIRECT EXAMINATION

15 BY MR. REICH:

16 Q. Mr. Barker, in your direct testimony and  
17 in cross-examination, you mentioned you have some  
18 concerns about the outages of specifically two of  
19 these lines that go up to the Heber Valley area. Can  
20 you provide a little more detail about some of those  
21 concerns with respect to repairs or access?

22 A. Sure. I mean we can try to paint a worst  
23 case scenario, which I think is a reasonable thing to  
24 do in the position of planning that we are in.

25 And the 138 kV lines that run up those two

1 canyons are in very difficult terrain. The  
2 accessibility is very difficult. Especially in the  
3 winter there are issues with avalanche concerns.

4           So if we did have an issue with one of  
5 those lines where a section of the line or even a  
6 single structure had an issue, we would have  
7 difficulty getting personnel to that location, for  
8 one, just to perform any repairs. It's likely that  
9 we'd have to bring in helicopters that may need to be  
10 brought in from a regional or national basis. So  
11 there's time that we need to get those materials and  
12 equipment to the site.

13           I just can't reiterate enough I don't  
14 think that there is -- there's significant risk in  
15 these canyons for a prolonged outage if the right set  
16 of circumstances occur. Which is why we are, you  
17 know, are being very I guess strong-willed about  
18 getting this project done and trying to mitigate that  
19 risk.

20           **Q.       So based on your understanding of the**  
21 **Rocky Mountain Power transmission system, is this**  
22 **project necessary to permit Rocky Mountain Power to**  
23 **provide service to its customers in a safe, reliable,**  
24 **adequate, or efficient manner?**

25           **A.       Yes, absolutely.**

1 MR. REICH: I have no further questions.

2 CHAIRMAN THAD LEVAR: Thank you,

3 Mr. Reich.

4 Mr. Gordon, any recross?

5 MR. GORDON: No, your Honor.

6 CHAIRMAN THAD LEVAR: Thank you.

7 Mr. Morris, any recross?

8 MR. MORRIS: Just so I understand -- yes,  
9 just one question.

10  
11 RECROSS-EXAMINATION

12 BY MR. MORRIS:

13 Q. The things that you're trying to guard  
14 against and your particular concern about these two  
15 lines, neither of those issues are any more or less  
16 likely to occur in the next five months than ten  
17 years from now based on what you know, correct?

18 A. Again I'm not going to speculate on the  
19 probability of any natural event, something beyond  
20 our control occurring within the next five months or  
21 year. I'm -- I don't have that capability.

22 MR. MORRIS: That's all. Thank you.

23 CHAIRMAN THAD LEVAR: Thank you,

24 Mr. Morris.

25 Mr. Clark, do you have any questions for

1 Mr. Barker?

2 MR. DAVID CLARK: Yes, just a couple.

3 Mr. Barker, from your answers, am I  
4 correct in understanding that the reliability  
5 standards you applied are expressed in -- or  
6 expressed as electric system attributes rather than  
7 construction characteristics or construction  
8 criteria?

9 THE WITNESS: Yes. When we look at NERC  
10 reliability standards, we just look at outages as  
11 occurring on the lines as an entity with no other  
12 parameters like age or performance of the line. None  
13 of those things are taken into consideration for NERC  
14 reliability standards.

15 MR. DAVID CLARK: So when you identify an  
16 issue, as you've done in this case, then again I have  
17 the impression that you hand that off to another  
18 department that then applies -- from an electrical  
19 engineering perspective creates the solution for the  
20 issues that you've identified. Is that how the  
21 process works?

22 THE WITNESS: No, not necessarily. We in  
23 the planning group, we develop the scope of the  
24 project from a high level, and then it is passed to  
25 an engineering design group that would then apply our

1 construction standards and come up with an actual  
2 design of the line. So we're talking about this --  
3 the number of structures and how it's constructed.

4 MR. DAVID CLARK: Yeah. Well --

5 THE WITNESS: We specify the capacity that  
6 is needed and basically where it connects to.

7 MR. DAVID CLARK: Thank you for that  
8 clarification. Those are all the questions I have.

9 CHAIRMAN THAD LEVAR: Okay. Thank you,  
10 Mr. Clark.

11 Mr. Fitzgerald, do you have any questions  
12 for Mr. Barker?

13 MR. TROY FITZGERALD: I do not.

14 CHAIRMAN THAD LEVAR: Thank you.

15 Mr. White, do you have any questions?

16 MR. JORDAN WHITE: I have no questions,  
17 thank you.

18 CHAIRMAN THAD LEVAR: Okay. Mr. Wright,  
19 do you?

20 MR. WRIGHT: Yes, I do.

21 Last summer the public officials in Summit  
22 and Wasatch County both at county and city level both  
23 laid out a program called the Public Safety Power  
24 Shut Off Plan. And mostly it looked over the effect  
25 of the distribution systems in our jurisdictions, if

1 the power lines could be shut off under high wind or  
2 relative humidity conditions during the summer  
3 wildfire season. Do any of these three transmission  
4 lines, would any of those three be affected by that  
5 same program?

6 THE WITNESS: Yes, they are. I'm not  
7 positive on the Railroad Silver Creek line. But  
8 those other two are within those areas.

9 MR. GLENN WRIGHT: So under certain  
10 weather conditions both the Parleys Canyon and Provo  
11 Canyon lines --

12 THE REPORTER: I hate to interrupt here,  
13 but I'm having a hard time hearing you. This is the  
14 reporter. Not the witness, I'm having a harder time  
15 hearing the questions by Mr. Wright.

16 MR. GLENN WRIGHT: So my question concerns  
17 the power safety power shut off plan that was  
18 presented to counties and cities in the Wasatch back  
19 last summer and to what extent the transmission lines  
20 are they affected by that particular plan.

21 THE WITNESS: Yes, the Hale to Midway line  
22 and the Cottonwood to Snyderville line, up both  
23 canyons are affected by the PSTS.

24 MR. GLENN WRIGHT: Okay. Thank you.  
25 That's all of my questions.

1 CHAIRMAN THAD LEVAR: Thank you,  
2 Mr. Wright.

3 And, Mr. Barker, thank you for your  
4 testimony today.

5 THE WITNESS: Thank you.

6 CHAIRMAN THAD LEVAR: Mr. Reich, you  
7 intend to call Mr. Benjamin Clegg next; is that  
8 correct?

9 MR. REICH: Correct.

10 CHAIRMAN THAD LEVAR: Okay. Why don't we  
11 address Midway City's and V.O.L.T.'s objection to  
12 this witness now.

13 Why don't we go to Mr. Gordon or  
14 Mr. Jewkes first. We have the objection in writing  
15 on this one. If there is anything you want to add  
16 verbally before we consider this, why don't you go  
17 ahead and do so now.

18 MR. MORRIS: Hello? Excuse me, are you  
19 waiting for Rocky Mountain Power or for Midway City?

20 CHAIRMAN THAD LEVAR: This is LeVar. I  
21 asked Mr. Gordon or Jewkes if they wanted to provide  
22 any additional verbal comment on their objection to  
23 the testimony of Mr. Benjamin Clegg.

24 MR. REICH: It sounded like there was --  
25 maybe someone hit the off button instead of the mute

1 button, so I'm assuming they might be dialing back  
2 in. This is Bret Reich with Rocky Mountain Power.

3 CHAIRMAN THAD LEVAR: Okay. Thank you.  
4 Is anyone from Midway City on the call  
5 right now?

6 In that case, Mr. Reich, I suspect you are  
7 correct in what happened. So hopefully they'll dial  
8 back in.

9 MR. GORDON: I'm sorry we just -- I pushed  
10 the wrong button. Sorry, guys. We just -- Josh was  
11 here making a presentation, and we pushed the wrong  
12 button. Can you hear us now?

13 CHAIRMAN THAD LEVAR: I can hear you now.  
14 Thank you.

15 MR. GORDON: Okay. I apologize. I won't  
16 push that button again.

17 So did none of that come through?

18 CHAIRMAN THAD LEVAR: We have not heard  
19 anything from you on the objection to Mr. Clegg.

20 MR. JEWKES: All right, sorry. I just  
21 made the argument, and I guess we pushed the wrong  
22 button. I apologize. This is Mr. Jewkes, by the  
23 way, I'll be making the objection quickly.

24 Mr. Clegg, as we've read from his direct  
25 testimony, it looks like he's been offered to testify



1 regarding the conditional use permit application  
2 process, certain communications between Rocky  
3 Mountain Power and Midway City. Mr. Clegg was  
4 directly involved in that permit application process.  
5 He attended the hearings. He was there for the grant  
6 of the permit itself. We believe his testimony is  
7 irrelevant to any material issue in dispute.

8           There's no question that the conditional  
9 use permit was granted and all of the parties have  
10 proceeded under the CUP since then. So there may be  
11 disputes about the Rocky Mountain Power needed a  
12 separate line, as Mr. Barker talked about, and the  
13 actual excess cost of the line which will be talked  
14 about later. But testimony about the application  
15 process itself in communication with Midway City  
16 appear to be immaterial and quite frankly wasteful of  
17 everyone's time.

18           We'd just ask that Mr. Clegg's testimony  
19 either be excluded in its entirety -- we don't think  
20 he's a necessary witness here -- or that it be  
21 limited to issues that may be relevant.

22           CHAIRMAN THAD LEVAR: Thank you, Mr.  
23 Jewkes.

24           Mr. Morris or Ms. Brereton, do you have  
25 anything to add to the objection?

1 MR. MORRIS: We don't. We joined in the  
2 objection, but I have nothing further to add. Thank  
3 you.

4 CHAIRMAN THAD LEVAR: Thank you, Mr.  
5 Morris.

6 Mr. Reich, do you want to address this?

7 MR. REICH: Sure, thank you.

8 Yeah. The testimony of Mr. Clegg is being  
9 proffered as Mr. Clegg was the project manager of  
10 this. He personally attended the several public  
11 hearings and also nonpublic meetings with Midway  
12 City. During that process there was quite a bit of  
13 information that was provided to Midway City  
14 including information regarding right-of-way,  
15 regarding the cost, an estimate of an underground  
16 transmission line, a feasibility study. Many of the  
17 documents, many of the things Midway City has brought  
18 up, and Mr. Clegg has personal testimony about that  
19 information and those documents.

20 It also goes to this entire process that  
21 Rocky Mountain Power has had in pursuing this  
22 conditional use permit. And under administrative  
23 code 63-G-4-206, the purpose of this hearing is to  
24 obtain full disclosure of relevant facts and to  
25 afford all the parties reasonable opportunities to

1 present their positions.

2 Mr. Clegg is an important part of Rocky  
3 Mountain Power's position in applying for and  
4 receiving the conditional use permit, which is at  
5 issue in this case. So for that reason we would ask  
6 that the board deny this objection and allow  
7 Mr. Clegg to testify.

8 CHAIRMAN THAD LEVAR: Thank you,  
9 Mr. Reich.

10 I have failed to go to board members. So  
11 for both the comments by Mr. Jewkes and Mr. Morris is  
12 joining in that and Mr. Reich, do any board members  
13 have questions for any of the three of those with the  
14 understanding that I'll probably go back to Mr.  
15 Jewkes at the end if he has any final wrap-up.

16 But let me see if any board members have  
17 any questions for any of them, please jump in and ask  
18 them now.

19 I'm not hearing any questions from board  
20 members.

21 I do want to ask, Mr. Reich, I think you  
22 said in your statement just now that the testimony of  
23 Mr. Clegg is similar to issues raised by Midway City  
24 in this proceeding. Do you have any examples you  
25 could point to of that?

1 MR. REICH: Yeah. For example, I know  
2 that while Mr. Clegg was the project manager, there  
3 was an underground transmission cost feasibility  
4 study that was prepared and submitted to Midway City.  
5 Mr. Clegg has information about that cost feasibility  
6 study. He also has information about the information  
7 given to us by Midway City, how we responded to  
8 those, what was provided, some questions that were  
9 asked about the value of right-of-way easements and  
10 our valuation of those easements. So he has -- he  
11 can testify about those things.

12 CHAIRMAN THAD LEVAR: Thank you,  
13 Mr. Reich.

14 I'll just give one more moment if any  
15 board members have any questions.

16 And I'm not hearing any, so we'll go back  
17 to Mr. Jewkes. If you want to give any final  
18 comments on your motion. And I would especially ask  
19 whether you consider any of the testimony about the  
20 history of the application process to be prejudicial  
21 to Midway City at all.

22 MR. JEWKES: I think you've hit the nail  
23 on the head. I don't think it's prejudicial. I'm  
24 trying to avoid the waste of time and streamline  
25 these proceedings. And maybe you've already spent

1 too much time talking about it. I think the things  
2 that Mr. Reich just mentioned, Mr. Clegg may have  
3 knowledge about those things. But it's not in his  
4 direct testimony. I wouldn't object to him  
5 testifying about some of those things. What I don't  
6 want to do is spend a couple of hours talking about,  
7 you know, the first application and all the hearings.  
8 Mr. Clegg was there; I was there. He's a great guy.  
9 But none of that is relevant here. Not that it's  
10 prejudicial. It's just I think would be a waste of  
11 time. Because we all admit that the CUP was actually  
12 granted and it says what it says.

13 CHAIRMAN THAD LEVAR: Thank you,  
14 Mr. Jewkes.

15 Does any board member have any questions  
16 for him at this point?

17 I'm not hearing any board member  
18 questions.

19 I think on those objections to witnesses,  
20 I think all of these ought to be board decisions. So  
21 let me just ask if there's any board discussion or  
22 thoughts on the motion in front of us -- or, sorry,  
23 the objection.

24 I will just state my one thought as I've  
25 been listening to the discussion is I understand the

1 issues that are in dispute and I understand the point  
2 that perhaps the application process is not in  
3 dispute. However, as I listened to the first few  
4 minutes of Mr. Gordon's opening statement earlier  
5 today, it would be tough for me to say that that was  
6 relevant but that Mr. Clegg's testimony is not. That  
7 was my one impression.

8 Do any other board members have any other  
9 thoughts or comments?

10 MR. JORDAN WHITE: Yeah. I guess what I  
11 would say is along those same lines. You know in the  
12 spirit of due process and trying to -- I mean there  
13 may be some redundancy, and certainly I don't know if  
14 we need to retread all of the blow by blow of this  
15 U.P. process, unless it's relevant. But, you know, I  
16 don't see an issue with, you know, having him  
17 testify. Just again to the extent that we can be --  
18 avoid redundancy, that would be great. But if  
19 there's something new or novel or important or  
20 relevant, I think we should in the spirit of openness  
21 allow him to testify.

22 CHAIRMAN THAD LEVAR: Any other thoughts  
23 or comments or motions from the board?

24 MR. DAVID CLARK: I'll move to receive it  
25 in evidence. I think it is useful background. It

1 does certainly, I think, relate to some factual  
2 allegations included in the opening statements of  
3 Midway this morning. And so the process is an  
4 important context for our consideration I think. So  
5 that's why I move to receive it.

6 CHAIRMAN THAD LEVAR: Does anyone want to  
7 second the motion?

8 MR. JORDAN WHITE: I'll second it.

9 CHAIRMAN THAD LEVAR: Any further  
10 discussion?

11 Mr. Clark, how do you vote?

12 MR. DAVID CLARK: I vote in favor of  
13 receiving it.

14 CHAIRMAN THAD LEVAR: Thank you.

15 MR. DAVID CLARK: So I vote yes.

16 CHAIRMAN THAD LEVAR: Thank you.

17 Mr. Fitzgerald?

18 MR. TROY FITZGERALD: I vote yes.

19 CHAIRMAN THAD LEVAR: Mr. White?

20 MR. JORDAN WHITE: Yes.

21 CHAIRMAN THAD LEVAR: Mr. Wright?

22 MR. WRIGHT: Yes.

23 CHAIRMAN THAD LEVAR: And I forgot to do  
24 myself in alphabetical order; I've been trying to do  
25 it that way. But I vote yes also.

1 So do we have Mr. Clegg on the telephone?

2 THE WITNESS: Yes, sir, I'm sorry.

3 CHAIRMAN THAD LEVAR: Okay. Mr. Clegg, do  
4 you swear to tell the truth?

5 THE WITNESS: Yes.

6

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

10

11 CHAIRMAN THAD LEVAR: Okay. Mr. Reich or  
12 Mr. Gordon, go ahead.

13 MR. REICH: Thank you.

14

15 DIRECT EXAMINATION

16 BY MR. REICH:

17 Q. Mr. Clegg, have you reviewed the direct  
18 testimony prepared on your behalf for this  
19 proceeding?

20 A. Yes, I have.

21 Q. As well as the rebuttal testimony?

22 A. Yes, I have.

23 Q. And are those statements an accurate  
24 reflection of your testimony at this time?

25 A. Yes.



1           Q.     And do you need to make any changes or  
2 additions to it?

3           A.     I did not note any.

4           Q.     Okay. Let me just ask you one question  
5 also. On page 9 of your direct testimony, there's a  
6 statement that before the project can move forward,  
7 Rocky Mountain Power needs a clear decision and  
8 upfront payment for any excess costs.

9                     In your opinion why is it necessary that  
10 this project proceed at this time and not be delayed?

11          A.     As the board is likely well aware, it  
12 takes a whole a lot of time. It takes years to  
13 develop a project. In fact, I've been working on  
14 this project for multiple years, and it was in some  
15 form before that. The issue we have is that it seems  
16 like everybody wants to be last in this case. We  
17 need an actionable decision now so that we can go out  
18 and acquire these rights-of-way, so we can continue  
19 with the design, so we can order long lead materials,  
20 so we can, you know, get the ball in motion to get  
21 this entire project complete for this needed -- for  
22 the reliability and capacity project.

23                     Continuing to delay this, you know, any --  
24 any delay will just delay when this project will  
25 ultimately be done.

1           MR. REICH: With that then I'd like to  
2 proffer the direct and the rebuttal testimony of  
3 Benjamin Clegg.

4           CHAIRMAN THAD LEVAR: Thank you. Noting  
5 that I assume Midway City and V.O.L.T. both maintain  
6 their objections that we discussed a few minutes ago,  
7 is there anything else anyone wants to add before we  
8 consider this motion?

9           I'm not hearing any, so the motion is  
10 granted consistent with the board decision a few  
11 moments ago. Thank you.

12           Anything further, Mr. Reich?

13           MR. REICH: Nothing further.

14           CHAIRMAN THAD LEVAR: Thank you.

15           Mr. Gordon, do you have any questions for  
16 Mr. Clegg?

17           MR. GORDON: Yes, thank you.

18  
19           CROSS-EXAMINATION

20 BY MR. GORDON:

21           **Q. Good afternoon, Mr. Clegg. The first**  
22 **question, did you listen to Jake Barker's testimony?**

23           A. I did not. Pursuant to the board's  
24 request, I exited the room.

25           **Q. Thank you. The first question: As a**

1 manager of this project can the transmission line, if  
2 installed above ground, be finished by the end of  
3 2020 at this point?

4 A. I would find that highly unlikely for  
5 above ground or below ground by the end of this  
6 calendar year.

7 Q. Okay. Have there been project delays that  
8 you've experienced due to the coronavirus?

9 A. I'm unaware of any specific days thus far  
10 due to the Coronavirus.

11 Q. If some of the bids there was discussion  
12 about the cable coming from overseas, I believe,  
13 Korea. Are you aware of any disruption in the  
14 ability or capacity to get the cable?

15 A. Typically we would receive the -- the  
16 utility would receive some level of force majeure  
17 letters and active contract with a release against  
18 it. We have no active contract, and we have no  
19 release against it. This actually kind of speaks to  
20 the need to move forward because we have to have  
21 contracts in place to receive specific notification  
22 in a force majeure situation like the one that you're  
23 walking down right now.

24 Q. Has this process before the Utility  
25 Facility Review Board delayed the commencement of the

1 **project?**

2 A. I would say that the -- no. What's  
3 delayed the project is us trying to follow the  
4 conditions of this decision in November -- or excuse  
5 me, in December. I understand the utilities  
6 proffered the information for the underground bids,  
7 and we don't have a decision one way or another.

8 As I testified during the conditional use  
9 permit process, we needed to move forward as of the  
10 last quarter of last year in order to make sure that  
11 we were done by the end of 2020. We've lost time.

12 I don't know if it would be -- I wouldn't  
13 say it's because of this particular board review more  
14 than not having clear direction about what it is that  
15 we have been approved to build.

16 **Q. Okay. Is it fair to say based on that**  
17 **testimony to say that right now if the goal was to**  
18 **finish by the end of 2020, we're probably at least**  
19 **maybe, what, three to six months beyond 2020 to**  
20 **finish this line now?**

21 A. Yes, I think that that would be fair to  
22 say.

23 **Q. Okay. Has RMP or Heber Light & Power**  
24 **obtained immediate easements to install the line?**

25 A. Heber Light & Power had existing

1 easements, prescriptive easements along this route  
2 and has for decades now. And part of our agreement  
3 with Heber Light & Power is at the completion of this  
4 project those would be apportioned. We have, as we  
5 testified during the conditional permit use process,  
6 we have acknowledged that there are some width  
7 deficiencies to upsize the voltage to 138 kV. Those  
8 specific additional easements have not been acquired,  
9 and we plan to acquire those once we have a specific  
10 actionable decision.

11 **Q. Where is Rocky Mountain Power obtaining**  
12 **easements of the portions for the lines that were**  
13 **approved above ground in Wasatch County and Heber**  
14 **City?**

15 A. I -- so they have started that process. I  
16 am not in the position right now to speak to the  
17 exact specific details of that.

18 **Q. Okay. But to your knowledge they don't**  
19 **have those easements yet, correct?**

20 A. I understand that not every easement has  
21 been acquired, correct.

22 **Q. Okay. As the project manager, how long do**  
23 **you think it will take to obtain the easements**  
24 **through Wasatch County and Heber City?**

25 A. That's a good question. In my experience

1 the two things that are really really hard to pin  
2 down on how long they'll take is easements and  
3 conditional use permits, and they can take anywhere  
4 from a few weeks to several months or as we see here,  
5 you know, years they get done. So it really depends  
6 on the level of concern about a specific project,  
7 other friction issues. We may have to even use  
8 condemnation or some form of eminent domain. Ideally  
9 we don't have to walk down that road that far. But  
10 yeah, it can take months or years depending on the  
11 specifics of the project.

12 **Q. Have you been involved in the condemnation**  
13 **process in past projects?**

14 A. Yes.

15 **Q. And in your experience, how long does it**  
16 **take if you need to condemn and go all the way**  
17 **through, what has your experience been in the length**  
18 **it takes to get there?**

19 A. What would you define as the starting  
20 point?

21 **Q. Well, when you file the lawsuit.**

22 A. So typically, as you probably are very  
23 well aware, there's an ombudsman in the state that is  
24 set aside to make sure that in the events of these  
25 types of proceedings the parties are treated fairly.

1 So if we're starting at that point, the assumption  
2 would have been that we would have already contacted  
3 these landowners, provided them information about  
4 their rights under that act, and we'd reach the point  
5 where we couldn't resolve it outside of the  
6 condemnation procedure.

7 Typically it's a matter of months before  
8 we could get a granting of occupancy. The case may  
9 continue for much time after that, even potentially  
10 you know months or years. However access to the  
11 property itself to be able to construct the needed  
12 facilities is usually only months out, rather than  
13 years.

14 **Q. So is it fair to say normal process would**  
15 **be anywhere from maybe six to eight months to get to**  
16 **a point if you've gone through with the ombudsman and**  
17 **filed the lawsuit and finally got an order where you**  
18 **can possess the property; is that kind of a fair**  
19 **guesstimate of how long that would take?**

20 **A.** My experience has been it takes less time  
21 than that. It's more in the two to three-month  
22 range. And you know, I think one of the critical  
23 points here is that we have to know what it is that  
24 we're going to build. We have to know specifically  
25 what and where so that we can go and acquire those

1 easements.

2 Q. If this board chooses to impose a  
3 commencement date on the Midway City, just the Midway  
4 City portion of the line into the spring of 2021,  
5 what impact would it have on the rest of the project?

6 A. It would not be possible to tie the 138 kV  
7 line between Midway substation and Jordanelle  
8 substation as I outlined in my direct testimony,  
9 which would deprive the project of the needed  
10 reliability component.

11 Q. So during the time that you're building  
12 this line, the line is not going to be energized  
13 until it's complete, correct?

14 A. Until the entire -- until the entire line  
15 is connected between Jordanelle substation and Midway  
16 substation.

17 Q. Uh-huh (affirmative). So that means that  
18 the portion of the line could be constructed in  
19 theory in 2020 and the remaining portion in 2021,  
20 correct?

21 A. Yes. A portion of the line could be  
22 constructed at a later date, but you wouldn't derive  
23 the benefit of the portion that you started to  
24 construct. It needs to all be done, but...

25 Q. So I guess the question is if that were



1 the scenario, none of Rocky Mountain Power's clients  
2 would be without power if this were to occur where we  
3 had to push it over into 2021, assuming that none of  
4 the other 138 kV lines go out, correct?

5 A. Could you restate the question? I don't  
6 know that I'm following you.

7 Q. Sure, sure. So if -- how do I state this  
8 better?

9 While you're building this line, whether  
10 it's energized by the end of 2020 or energized at  
11 some point in 2021, right now your clients are not  
12 relying on this line, correct?

13 A. Correct. It's not in service yet. Yeah.

14 Q. Right. So if it takes a little bit longer  
15 to build the line, none of your clients are going to  
16 be without power, correct?

17 A. I don't know. I testified to this at the  
18 CUP hearings as well. You know, I'm not the  
19 transmission planner. Although, you know, in my role  
20 as project manager I work with all of the various  
21 engineers and all of the various disciplines on the  
22 projects, and I'm familiar with the purpose and need.  
23 You know, if there is specific events on the system,  
24 it could deprive individuals, groups, even all of  
25 Heber Light & Power loads from power depending on the

1 severity of the event.

2 Q. Right.

3 A. It may or may not.

4 Q. Right. So assuming that none of the 138  
5 kV lines go out, there would be no negative  
6 consequences to the system if it took a little bit  
7 longer to build this, correct?

8 A. The negative -- I guess assuming in that  
9 extremely narrow, you know, criteria that you  
10 outlined, that's true.

11 However, delaying the project does -- does  
12 deprive all of the other adjacent substations of the  
13 reliability in case there were an outage. And a  
14 really weird way to ask is -- it's boxing it in  
15 extremely tight.

16 Q. I'm just trying to establish that this  
17 line if it takes a little longer to build, your  
18 clients are not going to be without power, correct?  
19 That's all I'm asking.

20 A. You're asking a question regarding load,  
21 and the system isn't operated as a load-only concern.  
22 There are reliability components with that.  
23 Especially on 138 kV lines that are, you know,  
24 regional transmission in nature, you can't have that  
25 much load hanging out on the, well, you know we'll

1 hope there's no outages.

2 **Q. But that's what you're doing currently,**  
3 **right?**

4 A. Your question is if everything is perfect,  
5 will it still be able to serve all the load? My  
6 understanding is yes. However, that's not the  
7 criteria that the area planners and transmission  
8 planners and system operators have to operate in.  
9 That is a false condition for a question.

10 **Q. Well, I disagree. But I think your answer**  
11 **is, no, you won't have anybody without power if this**  
12 **gets pushed a little longer, correct?**

13 A. Provided that there are no system  
14 interruptions on any of the 138 kV lines feeding the  
15 Park City region, that is my understanding.

16 **Q. So if you were to start this project**  
17 **tomorrow and let's say it goes above ground, how long**  
18 **does it take to finish it?**

19 A. As we had discussed earlier in this cross,  
20 the two things that are hardest to pin down are  
21 easement acquisition and conditional use permits from  
22 a schedule perspective. We would -- we would target  
23 having it done by springtime next year, 2021. That  
24 would likely be the outcome based off of getting an  
25 answer right now.

1           Q.     Okay. So given that that's the best case  
2 scenario, is there a scenario where Midway City could  
3 seek to pass a bond in November and have the money  
4 for the excess costs in February and not interfere  
5 with Rocky Mountain Power's critical path on the  
6 project?

7           A.     So in that scenario what activities would  
8 we be able to do between now and Midway City  
9 proffering those funds?

10          Q.     So it's my understanding that you've  
11 already got conditional use permits granted through  
12 Wasatch County and Heber for approximately 6.3, I  
13 believe, miles of line, correct?

14          A.     That we already have conditional use  
15 permits? Yes, we already have that.

16          Q.     Yes. So what I'm saying is: Is there any  
17 reason why you couldn't install that line now and  
18 install the Midway portion in the spring of 2021?

19          A.     Again, what activities in Midway do you  
20 expect that we would be able to do between now and  
21 November?

22          Q.     No, I'm asking the questions. So I just  
23 need you to answer my question.

24          A.     Well, I need to understand the extent of  
25 what the question is. I'm not trying to --

1           Q.     Okay. Let me explain it again. Let me  
2 explain it again. You have a granted conditional use  
3 permit to put this -- portions of this transmission  
4 line above ground in Wasatch County and in Heber  
5 City, correct?

6           A.     Yes.

7           Q.     And the only thing that's stopping you  
8 from proceeding or commencing in those jurisdictions  
9 is you still need to get the easements, correct?

10          A.     We are still working on easements, but  
11 we're doing design. We're ordering materials. We're  
12 ordering conductors; we're ordering steel poles.

13          Q.     And how long do you think it's going to  
14 take you to get all of your ordering and materials  
15 here so that you could actually start installing the  
16 line?

17          A.     At least fall time this year end. It will  
18 be fall time frame this year.

19          Q.     Okay. So we're now pushing it to the  
20 fall. And then once those get here, how long will it  
21 take you -- let's assume everything now is here --  
22 how long will it take you to build just the Wasatch  
23 County and the Heber City portion of the line?

24          A.     It will be a couple of months. It will  
25 depend a little bit on what Heber Light & Power

1 system outage constraints are to some extent. But it  
2 won't take more than a couple of months to complete  
3 that work.

4 **Q. Okay. Is it a realistic expectation that**  
5 **you would be done with that portion of the line**  
6 **before spring of 2021?**

7 A. Yeah. It would be -- in this scenario  
8 that you've outlined, it would be designed. It would  
9 be -- all but the long wind material would be  
10 acquired, and it would be complete by that time  
11 frame. And that's why I asked the question. You  
12 asked what would happen if we don't tell you to move  
13 ahead and provide funds to move ahead until November.  
14 The problem is that the line will be done everywhere  
15 else, and then we'll be an entire year,  
16 approximately, from November before we'll be able to  
17 tie it through. We can't even start on these same  
18 activities we're working on everywhere else. It will  
19 produce a --

20 **Q. So let me ask that question. If Midway**  
21 **City passes a bond, it will be in November of this**  
22 **coming year. And so you would know by November from**  
23 **a design standpoint what you would need to do to move**  
24 **forward. How long it will take you to do the design**  
25 **work and to order the necessary infrastructure and**

1 get that here so you can install the line  
2 underground?

3 A. It will be another year from that date.

4 Q. Why would it be another year?

5 A. In order to -- I'll just take steel poles  
6 for example. And this is something I also explained  
7 at the conditional use permit hearing.

8 Once you know exactly what it is that  
9 you're building, the transmission engineer will take  
10 exactly what it is from a spatial perspective and  
11 create the free body diagram of pole loads on a pole.  
12 They send those out to specific manufacturers, and  
13 there's a bid process. That takes a couple of months  
14 to get done.

15 And then after that's done, bids are sent  
16 back. Those bids are reviewed, validated that they  
17 meet the standards. And then, you know, a qualifying  
18 bidder is chosen, and then it goes into fabrication.

19 Fabrication, depending on what's going on,  
20 I've seen anywhere from on the low end of 20 weeks  
21 once an order is placed to have steel poles there to  
22 as long as -- I think 46 weeks is the longest I've  
23 seen. So, you know, from start to finish you're  
24 somewhere in the eight, nine, ten months from when  
25 you say go to the point when I can have a steel pole

1     there.

2                 So just going back specifically to, you  
3     know, why does it take that long? Well, if I don't  
4     have funds and don't know this is exactly what it is  
5     we're doing, we can't start that design. So I can't  
6     go out and get the specific bids for those dead-end  
7     poles. The same thing happens with the other parts  
8     and pieces of the work.

9                 **Q.     And that was the next question I had. Is**  
10     **there any difference between -- I mean in the**  
11     **underground scenario we're only doing four poles**  
12     **versus many more in the above ground. Does that cut**  
13     **your time when you're only ordering that many?**

14                **A.     Is your question does it take less time**  
15     **for underground because there's fewer steel poles?**  
16     **Is that --**

17                **Q.     Yeah. My question is if you go above**  
18     **ground, you've got it to do, from my understanding,**  
19     **more engineering. You've got more steel poles, more**  
20     **soil analysis, that kind of stuff. My question is**  
21     **will the time be reduced --**

22                **A.     No.**

23                **Q.     -- because you only have to do four poles?**

24                **A.     I wouldn't think it would be materially**  
25     **reduced. If you go the underground option, you would**



1 spend -- the conductor will have to be manufactured  
2 and sent to the site. You have to open up the road.  
3 You have to build it. You're going to be a similar  
4 time frame. While the geotechnical studies that are  
5 going to have to be done, you know, they differ  
6 slightly, but either scenario requires those studies.  
7 I don't know that it's accurate to say that there's  
8 less engineering required. There may be less steel  
9 poles specifically. But you know you still have all  
10 of your standard design tasks; you're just designing  
11 something else.

12 **Q. Okay. Is there any reason why**  
13 **construction cannot start on the north end and come**  
14 **Midway City's direction so that Midway City's portion**  
15 **can be installed last?**

16 A. Well, I'll answer that in two parts. One,  
17 we've already -- that is currently the plan. We are  
18 moving forward acquiring easements; we're moving  
19 forward ordering steel poles, finalizing our  
20 engineering for that. And if we do not have a design  
21 by the time -- for Midway specifically by the time we  
22 have a clear and actionable direction on what it is  
23 exactly we're doing here, we will go out to bid.

24 However, one negative with that is that  
25 we're going to be yoked, saddled with a load and

1 deload costs for a contractor if they have to, you  
2 know, show up and complete something and then the  
3 design finishes for some other section we've got to  
4 get them back there to the site to finish up.

5 **Q. And what do you assume, I mean in your**  
6 **experience, the remobilization cost would be if they**  
7 **had to come back in the Spring of 2021 and finish it**  
8 **up?**

9 A. It depends on the contractor that wins the  
10 job. Some of them are closer than others. It can  
11 range anywhere from the low tens of thousands to even  
12 \$100,000. I would expect, you know, something  
13 towards the lower end to that, lower to mid range of  
14 that in a scenario like this.

15 **Q. Okay. How much does weather affect the**  
16 **critical path?**

17 A. For construction specifically, for  
18 construction activities specifically?

19 **Q. Yes. Yeah, I guess my question -- let me**  
20 **be more specific. What weather conditions would stop**  
21 **construction on a transmission line?**

22 A. We're able to -- in the event of a  
23 specific, you know, incident, we're typically able to  
24 respond to restore power at any time of year.  
25 However, typically we would try to construct, you

1 know, not at the top of a mountain range, for  
2 example, in the middle of winter, but we can. It  
3 really depends on other externalities like what's the  
4 driver behind the project, how critical is the need?  
5 Are people without power? All of those things go  
6 into it. So there are means and methods and  
7 techniques to construct any time of year.

8           You know this project is predominately on  
9 a valley floor. I would expect we'd be able to  
10 construct really at any time. You're going to have  
11 to deal with some frozen ground issues and some other  
12 things like that, which would not be necessarily  
13 preferred.

14           The other thing that is considered  
15 along -- along construction windows that is not  
16 necessarily dealing with frozen ground is system  
17 operation. And if it is a summer peaking or winter  
18 peaking area or, you know, there's other drivers on  
19 the system, you may or may not want to be doing and  
20 taking lines out to do specific portions of work.

21           So there's -- it's a -- I'm not going to  
22 give you just like this is the acid test for every  
23 scenario.

24           **Q.       Yeah, I know. But that's helpful to just**  
25 **kind of understand.**

1                   Is it common, I mean -- I'm guessing you  
2 normally try to plan your project so that you're not  
3 building through the winter; is that correct?

4           A.     Yeah. We would normally try -- yeah. And  
5 so we would identify these sorts of constraint at the  
6 beginning of project planning, and then we would plan  
7 around those as efficiently as we could. You know if  
8 there's other external things that would influence it  
9 and we still have to have it done by a specific time,  
10 we might make adjustments.

11                   But, yes, typically it's going to cost a  
12 little bit more to construct in the winter. And so  
13 we would avoid constructing in the winter. It's also  
14 a peak load season. You know, even if it's not the  
15 control, it's usually a higher load time depending on  
16 the area, so you would typically avoid doing those  
17 types of activities during peaks in the system of  
18 operations.

19           Q.     Okay. In the scenario that I've asked you  
20 about before where you begin construction right now  
21 and start moving it forward, would the plan include  
22 having to continue through the winter to get it  
23 finished?

24           A.     Yeah, I think we would have to be able to  
25 identify exactly when we could start. We'd have to

1 identify what the constraints are that Heber Light &  
2 Power system operations is going to be dealing with  
3 and then we'd map that out. Depending on their  
4 loading, there very likely could be times when we  
5 couldn't have a certain section of the line out. But  
6 we might be able to plan around constructing other  
7 facilities at the same time. It just depends on when  
8 we can get everything here and ready to start.

9 Q. Okay. So assuming -- I mean it sounds to  
10 me like -- it sounds like probably December, January,  
11 February would probably be the worst months that you  
12 would be trying to install a transmission line,  
13 correct?

14 A. It can be. You know in the north -- you  
15 know, if we're talking specifically about this  
16 project, we might target to do specific tasks during  
17 those months as well. They in the North Fields  
18 area -- we're not even talking about this permit at  
19 this point. But say in the North Fields area, say  
20 you're crossing a wetland, you can sometimes access  
21 the property when the ground is frozen and do less  
22 damage. So there may be some targeted activities we  
23 would do, but we would typically try to avoid that.

24 Q. Okay. Let me look through here. As far  
25 as the bidding goes, just a couple of quick

1     **questions. Isn't it true that it's fundamental to**  
2     **get an accurate bid that you need to have the correct**  
3     **length of line that you're laying?**

4             A.     You're saying for the bidders to verify  
5     the line length?

6             Q.     No. I'm saying isn't -- it seems  
7     **fundamental that in order to get an accurate bid, the**  
8     **line lengths in the specifications have to be**  
9     **accurate, correct?**

10            A.     So, yeah, we would typically expect our  
11    contractors to verify specific lengths based off of  
12    the information provided in the document, the bid  
13    document. It would be critical to have accurate  
14    information. I'd say that the typical process that  
15    I've experienced at Rocky Mountain Power that I've  
16    been involved with is you create a specification, bid  
17    documents, and they have certain lengths in there,  
18    and then the bidders verify the lengths. And it is a  
19    fixed fee, a fixed cost bid that is given. It's not  
20    really an estimate.

21                    I would say it's probably, you know, from  
22    how work is typically done with Rocky Mountain Power  
23    anyway, it's probably more important that an estimate  
24    have an accurate length than the bid. The bidders  
25    are provided the route. The bidders are provided

1 where things start and stop, and they're expected to  
2 do their own take-off. In fact typically -- and I'm  
3 not familiar with this particular bid event and that  
4 level of detail -- but typically there's even a  
5 statement in the bid documents that says something to  
6 that effect.

7 **Q. Okay. Were you involved in creating any**  
8 **of the specifications for the bids to go underground?**

9 A. I was very high level involved with some  
10 of the discussions. I was not involved in the  
11 day-to-day components of that.

12 **Q. Okay.**

13 A. I'm generally aware of PacifiCorp's  
14 standards. I'm generally aware of what happened on  
15 this project as well.

16 **Q. Okay. Were you involved in the decision**  
17 **to include in the specifications dual trenches to go**  
18 **underground?**

19 A. Yes. I had understood that dual trenches  
20 were included as part of Rocky Mountain Power's  
21 standard.

22 **Q. And do you know if there's any safety**  
23 **standard or reliability standard that that's tied to?**

24 A. Yeah. The -- IEEE puts out NESC, and it's  
25 refreshed every five years. The last version was

1 published in 2017. And just if I give a little bit  
2 of background, you know, the bid document was  
3 prepared based on Rocky Mountain Power's standards  
4 and standard specifications. And those standards are  
5 largely based off of the NESC as well as best  
6 practices in the industry, et cetera.

7 My understanding is -- so RMP's standard  
8 has a separate conduit duct bank system. And my  
9 understanding is -- so again I am not the person who  
10 wrote the standard; the standards department did.  
11 This was published years ago before this project was  
12 even discussed at Midway. They just applied that  
13 standard to it.

14 But section 32 of the NESC 2017 320-A-1-A  
15 "Conduit systems should be subject to the least  
16 disturbance practical. Conduit systems extending  
17 parallel to other subsurface structures" -- and  
18 that's any sort of structure -- "should not be  
19 located directly over or under subsurface structures.  
20 If this is not practical, the rule on separation as  
21 stated in Rule 320(b) should be followed."

22 It continues later on in that section, the  
23 same section. So this is the 320-B-1 general. "The  
24 radial separation between a conduit system and other  
25 underground structures could be as large as necessary



1 to permit maintenance of either of the conduit system  
2 or the underground structures while limiting the  
3 likelihood of damage to the other. These separations  
4 should be determined by the parties involved."

5 Later on in NESC; this is section 352-E,  
6 it says, "Supply cables shall not be installed in the  
7 same duct bank with communication cables unless all  
8 of the cables are operated and maintained by the same  
9 utility."

10 For that reason, it's my understanding  
11 that the standard is written the way that it is. We  
12 are separate utilities; we need to have separate duct  
13 banks. If we do not have a separation between two  
14 duct bank systems and something happened where either  
15 system needed to be maintained as it says in part B,  
16 "radial separation between conduit system and other  
17 underground structures should be as large as  
18 necessary to permit maintenance of either the conduit  
19 system or underground structures while limiting the  
20 likelihood of damage to the other."

21 Without that separation, I personally do  
22 not see how that would be possible.

23 **Q. Have you provided any of that information**  
24 **in your direct testimony?**

25 A. No.

1           **Q.**     Let me just give a couple of thoughts  
2 here. So basically just so I understand, you're  
3 saying that the NESC standards require separate  
4 trenches; is that correct? And is that for a  
5 facility or --

6           A.     That would be my interpretation.

7                     Sorry. Go ahead.

8           **Q.**     So that's -- so let's take one step back.  
9 Your interpretation of those standards is that it is  
10 required to have separate trenches, correct?

11          A.     I don't know how you would meet subpart --  
12 or the part B-1. How would you maintain one conduit  
13 system while -- without having some sort of radial  
14 separation? Yeah, that's my interpretation. I  
15 would --

16          **Q.**     And --

17          A.     -- again point to the fact I didn't write  
18 RMP's standard. As you've pointed out, I am not an  
19 engineer. But the plain language of the code would  
20 seem to indicate to me that we need that separation.  
21 And that is why it's RMP's standard is that it's what  
22 the NESC requires.

23          **Q.**     And have you ever seen scenarios where  
24 RMP's standards exceed the standards that are  
25 established in the NESC?

1           A.       Yeah, I -- or maybe there's different  
2 drivers behind it. You know, there's some standards  
3 that are influenced by APLIC to protect avian and  
4 other migratory birds. So it's part of the Bald and  
5 Golden Eagle Act and then part of the Migratory Bird  
6 Act compliance. NESC is not necessarily driving  
7 that, but the standards are driven based off of  
8 varying codes. So, yeah, I guess NESC wouldn't  
9 require that. But RMP does follow APLIC, which most  
10 utilities -- or many utilities any way do as well.  
11 That's part of best practices.

12           **Q.       Okay. I believe in the first part that**  
13 **you read to me, you stated that the goal of going**  
14 **underground is to have the least disturbance**  
15 **possible, correct?**

16           A.       No. It said -- and maybe I misunderstood  
17 what you just said. What it reads specifically is  
18 that "Conduit systems should be subject to the least  
19 disturbance practical." So I interpret that language  
20 to say if you're going to put a conduit system in, it  
21 needs to be designed in such a way to limit  
22 disturbance at a later date. So you know that's an  
23 additional argument I would say to have a separation.  
24 I mean if there even is an argument here. It's RMP's  
25 standard, and that's what the NESC has said.

1           **Q.       Okay. So based on -- so your testimony is**  
2 **you've reviewed the NESC standards. You're not an**  
3 **engineer. You have interpreted them. But to your**  
4 **knowledge -- well, first, this isn't necessarily your**  
5 **field of expertise, correct?**

6           A.       I've been in the industry for over a  
7 decade. I -- this is -- you know, I'm the project  
8 manager over projects from the design end to the  
9 construction and then turning it over to the  
10 operations end. So I wouldn't say that this is my  
11 subject of expertise.

12           **Q.       Does Rocky Mountain Power depend upon you**  
13 **to do the NESC analysis?**

14           A.       As I mentioned earlier, they have a  
15 standards department. The standards department reads  
16 and interprets the various codes, including the NESC,  
17 when creating the standards. Those standards were  
18 applied in creating the bid specification.

19           **Q.       Okay. And in your experiences there, you**  
20 **don't know whether these standards are directed at**  
21 **safety, correct?**

22           A.       The NESC -- and if I -- and I don't have  
23 that information directly available to me right now.  
24 But I believe in the preamble to the NESC that it  
25 states that that is the purpose of the NESC is

1 safety.

2           There are other standards that are looked  
3 at I alluded to APLIC. It's I guess safety for  
4 birds. But it's not necessarily for human safety.  
5 There are various standards that the standards group  
6 looks at. You know, there's other --

7           **Q. But I'm asking specifically regarding this**  
8 **idea that there has to be dual trenches, based on**  
9 **what I'm hearing from you there's nothing that you're**  
10 **aware of that says that this is a safety standard,**  
11 **correct?**

12           A. It is in the -- it is in the NESC, which  
13 is the safety standard that we have to follow. So I  
14 would say, yes, it is a safety thing. That's why  
15 it's in the code.

16           MR. GORDON: Fair enough. I don't think  
17 I've got any other questions for this witness at this  
18 point.

19           CHAIRMAN THAD LEVAR: Okay. Thank you,  
20 Mr. Gordon.

21           I think what we'll do is we'll take a  
22 break until 2:40, and then we'll return. As I  
23 indicated this morning, we do have to finish by 4:00  
24 today. So we'll break until about 2:40, and then we  
25 will move to any cross-examination of Mr. Clegg by

1 V.O.L.T.

2 So we'll be in recess for a few minutes.

3 (Break taken from 2:28 to 2:40 p.m.)

4 CHAIRMAN THAD LEVAR: We're back in  
5 Utility Facility Review Board Docket 20-035-03. At  
6 this point I think we'll go to Mr. Morris or  
7 Ms. Brereton, if you have any cross-examination  
8 questions for Mr. Clegg.

9 MR. MORRIS: Thank you. This is Mr.  
10 Morris.

11 One request I'd like to make before I  
12 start my questions, Mr. Clegg was referencing some  
13 written material during his testimony that hasn't  
14 been provided yet. And I wanted to ask could counsel  
15 for Rocky Mountain provide an e-mail out to board and  
16 counsel this NESC 1-B language that he was reading  
17 from, as well as the Rocky Mountain Power standard  
18 that he referred to?

19 CHAIRMAN THAD LEVAR: Mr. Reich, do you  
20 have any objection to that request by Mr. Morris?

21 MR. REICH: Yeah. My one concern, and I  
22 can maybe look into this a little bit more, the NESC  
23 code, like some codes, you have to actually purchase  
24 that. There's some copyright protections. And so I  
25 just want to make sure we're not going outside -- I

1 don't have no -- I don't have obviously any concerns  
2 sharing it. But I want to make sure we're in  
3 compliance with any kind of a licensing agreement or  
4 anything that we have on that.

5 CHAIRMAN THAD LEVAR: Mr. Morris, is it  
6 acceptable to you if we revisit this the first thing  
7 in the morning and with the ability to recall Mr.  
8 Clegg if necessary?

9 MR. MORRIS: It is. I'm just concerned  
10 about things being read into the record that none of  
11 us have in front of us, so...

12 CHAIRMAN THAD LEVAR: Okay. But it's  
13 acceptable to you if we address this issue at the  
14 beginning of the hearing tomorrow again and see if we  
15 have a resolution?

16 MR. MORRIS: Yes, please. That's fine.

17 CHAIRMAN THAD LEVAR: Okay. Would you  
18 like to go ahead with any questions you have for  
19 Mr. Clegg?

20 MR. MORRIS: Yes. Thank you.

21  
22 CROSS-EXAMINATION

23 BY MR. MORRIS:

24 Q. Good afternoon, Mr. Clegg. My name is  
25 Mark Morris. I represent V.O.L.T. in this

1 proceeding.

2 You were the lead project manager on this  
3 project from 2015 to 2019?

4 A. Yes.

5 Q. Why did you cease being the project  
6 manager?

7 A. I had a contract with the utility. The  
8 contract ran for a specific period of time. They're  
9 transitioning away from that contract mechanism, and  
10 so I've -- I'm in a transition phase at this point.

11 Q. Okay. So are you currently employed by or  
12 contracted with Rocky Mountain for anything?

13 A. The company I work for -- I've been a  
14 consultant working on projects for the utility for  
15 the last five or six years. At one point I was a  
16 full-time employee, and I left for a couple years and  
17 then came back as a consultant. The company I work  
18 for as a contract with Rocky Mountain Power, and that  
19 contract is still active at this point.

20 Q. Okay, thank you. Do you have your direct  
21 testimony, your written testimony in front of you?

22 A. Yes.

23 Q. On page 2, lines 25 and 26, could you go  
24 to that for us?

25 A. The copy I have has every page listed as



1 9.

2 Q. You know, so did mine. This is the --  
3 this is the second page of testimony.

4 A. Okay.

5 Q. And so at lines 24, 25, and 26, you say,  
6 "Due to various changes in technology standards and  
7 best practices, the physical difference between a 46  
8 kV transmission facility and a 138 kV transmission  
9 facility built to the current standard is nominal."

10 Do you see that?

11 A. Yep, I did.

12 Q. First -- and I'm not an electrical  
13 engineer. You described the 46 kV as a transmission  
14 facility. Is that -- I've heard these referred to as  
15 distribution lines, rather than transmission. Is  
16 there any art to this?

17 A. In the State of Utah -- in the State of  
18 Utah distribution voltages have historically been 4  
19 kV. And then they changed those to a 12 and a half  
20 kV nominal voltage. There are, I think, maybe some  
21 interpretations to say that some of the higher  
22 voltages, you know, 25 kV or something like that  
23 would be, but I'm a little bit of a little bit of 4  
24 kV in the State of Utah, and the rest of it is 12 kV  
25 as distribution.

1           Once you get into the 46 kV, you're  
2           historically then been dealing with regional  
3           transmission lines. And just as 4 kV was superceded  
4           by 12 kV, 46 kV is being superceded by 138 kV. And a  
5           lot of that is driven by the fact that the parts and  
6           pieces that you use with the current standards are  
7           nominally the same. They're pretty much -- they're  
8           very similar.

9           **Q.       And I wanted to ask you about the word**  
10          **nominal. Is that a word that you use in your**  
11          **parlance, or did Rocky Mountain's lawyers suggest**  
12          **that word to you?**

13          A.       That was my parlance.

14          **Q.       Okay. Could I ask you to look at V.O.L.T.**  
15          **Exhibit Number 3? Do you have that in front of you?**

16          A.       I'm getting there. Bear with me. Yeah.  
17          I have it in front of me.

18          **Q.       Okay. You're familiar with Highway 40,**  
19          **aren't you --**

20          A.       Yeah.

21          **Q.       -- in Heber?**

22          A.       I am.

23          **Q.       And there are two pictures in Exhibit 3.**  
24          **One is -- it looks like it's along Highway 40. Do**  
25          **you see that?**

1           A.     Yes, I do. I'm familiar with that stretch  
2 there.

3           Q.     Okay. And is there a word that you  
4 insiders use to describe the pole that appears in the  
5 left-hand picture in that exhibit?

6           A.     That's a dead-end angle pole.

7           Q.     A dead-end angle pole. All right.

8           A.     That's what I would call it.

9           Q.     Okay. And then there's a picture on the  
10 right. You're familiar with the route through Midway  
11 that --

12          A.     Yeah, that looks like it's on Stringtown  
13 Road, turning onto 970.

14                 MR. MORRIS: Okay. At this point I'd  
15 offer Exhibit 3.

16                 CHAIRMAN THAD LEVAR: If any party objects  
17 to that motion, please indicate your objection to me.

18                 MR. REICH: Yeah. What's the foundation?  
19 Who took these pictures?

20                 MR. MORRIS: It doesn't matter --

21                 CHAIRMAN THAD LEVAR: Is that Mr. Reich?

22                 MR. MORRIS: I'm sorry.

23                 CHAIRMAN THAD LEVAR: I just wanted to  
24 identify, is that Mr. Reich who asked the question?

25                 MR. REICH: Yeah, sorry.

1 CHAIRMAN THAD LEVAR: Okay, thank you. Go  
2 ahead, Mr. Morris.

3 MR. MORRIS: Who took them is irrelevant,  
4 Mr. Chairman. The witness has confirmed that he's  
5 familiar with both scenes depicted in these  
6 photographs.

7 MR. REICH: We have no objection.

8 CHAIRMAN THAD LEVAR: Okay, thank you.

9 Any other objection from anyone?

10 The motion is granted. Thank you.

11 MR. MORRIS: Thank you.

12 Q. (BY MR. MORRIS) Mr. Clegg, would you look  
13 at these two pictures and tell me if you believe the  
14 physical difference between these poles is nominal?

15 A. Yeah, so the language in my testimony is  
16 talking about the design differences between a 46 kV  
17 line to today's standard and a 138 kV to the today's  
18 standards. The photograph on the right that you have  
19 listed as the existing HL&P local transmission line  
20 45 feet tall, if constructed today would not meet  
21 NESC. And so it's -- you know, it's not something  
22 that could be constructed today.

23 Q. So you're not suggesting that the change  
24 that Rocky Mountain would create along this line, if  
25 it goes overhead, is a nominal change, would you?

1           A.       Well, what does the pole on the left --  
2 I'm familiar with the pole. But what does the pole  
3 on the left have to do with the pole on the right?

4           **Q.       Well, Mr. Clegg, are you testifying that**  
5 **this pole on the left doesn't figure anywhere into**  
6 **the line proposed to go into Midway?**

7           A.       We provided a rendering that included, if  
8 I recall correctly, the angle structures that go  
9 through Midway City. They don't have the two lowest  
10 distribution data arms on it, which would have  
11 reduced the pole height to some certain extent, and  
12 it also would have reduced the diameter.

13          **Q.       Do you remember my question, Mr. Clegg?**

14          A.       If the difference between the one on the  
15 left is nominal to the one on the right?

16          **Q.       My question is -- forget these pictures --**  
17 **are you testifying that the change between what**  
18 **exists now and what Rocky Mountain proposes to**  
19 **install overhead is nominal?**

20          A.       Yes.

21          **Q.       So you don't think going from 45 to**  
22 **100 feet in pole height is any big deal? That's a**  
23 **nominal change?**

24          A.       We have to read the lines to the existing  
25 standards to operate at the voltages that -- a 46 kV

1 line rebuilt to today's standard to 138 kV line, the  
2 difference is nominal, yeah.

3 **Q. I'm not sure that answered my question.**  
4 **Are you testifying that going from 45 to 100 feet is**  
5 **nominal, as you define nominal?**

6 A. I don't -- I guess I don't know how to  
7 answer the question on just what a 45-foot specific  
8 structure versus a 100-foot specific structure looks  
9 like. A voltage increase could produce something  
10 that would be nominal. I suppose there are scenarios  
11 where it could not be.

12 In the conditional use permit application,  
13 we specifically mapped out what the pole heights  
14 would be. And if I recall correctly through Midway,  
15 the tallest pole was 88 feet. And many of them were  
16 closer to 75 feet.

17 **Q. Let me have you look now at V.O.L.T.**  
18 **Exhibit 12.**

19 A. Okay.

20 **Q. Have you seen that document before?**

21 A. Yes, I have.

22 **Q. Would you tell the board what it is,**  
23 **please.**

24 A. This document was prepared as part and  
25 submitted to Midway City during the planning

1 commission hearings as part of the conditional use  
2 permit process in Midway City. There were three  
3 separate versions created: Option A, option B, and  
4 option C. Options A and C was for a shorter span  
5 overhead and an underground and what the impact would  
6 be as far as additional easement width required.

7 What we're looking at is option B, and the  
8 pole placement compared to the existing poles as well  
9 as what the additional easement overhang would be by  
10 upsizing the voltage from 46 kV to 138.

11 MR. MORRIS: I'd offer Exhibit V.O.L.T.  
12 12.

13 CHAIRMAN THAD LEVAR: If anyone objects to  
14 the motion, please indicate your objection.

15 I'm not hearing any objection, so the  
16 motion is granted.

17 Q. (BY MR. MORRIS) Mr. Clegg, at the top of  
18 the page it says: For the existing 46 kV line, the  
19 existing easement is 27 feet from the centerline.

20 A. I see that.

21 Q. That means the width of the easement is  
22 54 feet as it exists now?

23 A. No. What that means is if you do the math  
24 after blow out, that you would need 27 feet from the  
25 centerline to safely operate and maintain that

1 transmission line.

2 Q. So you're not claiming that Heber Light &  
3 Power or Rocky Mountain has any existing easements  
4 through Midway that are 54 feet wide, are you, today?

5 A. I'm not -- can you restate the question?

6 Q. You're not claiming that Heber Light &  
7 Power or Rocky Mountain Power for that matter have  
8 any existing easements along this proposed route  
9 through Midway where the width of the easement is  
10 54 feet.

11 A. I kind of feel like you're asking me to  
12 draw a legal conclusion on this, and I'm probably not  
13 the best person to ask that specific question.

14 Q. Well, let me ask it this --

15 A. Rocky Mountain Power --

16 Q. -- way --

17 A. Go ahead.

18 Q. So the answer is you don't know?

19 A. The answer is that I believe -- so you're  
20 asking me if I can take a legal position, you know,  
21 and I deferred to counsel on those.

22 As we've looked at this project, Heber  
23 Light & Power has a prescriptive right, in addition  
24 the common area within that subdivision to the south  
25 of the transmission line has provisions for public



1 utilities.

2 Q. Well, Mr. Clegg, I'm sorry to interrupt.  
3 But right after you told us you're not a lawyer,  
4 you're going on to tell us all about easements and  
5 common areas that exist. And if you're going to  
6 claim you know this stuff, that's fine, then I'll ask  
7 you questions about it. But if you don't know and  
8 you're going to say you're not a lawyer, I would ask  
9 you not to go on and volunteer information that is  
10 not responsive to my question.

11 So are you qualified to tell the board  
12 about existing easements and the easements that are  
13 necessary to build the line that Rocky Mountain  
14 proposes to build?

15 A. I am familiar with the transmission route.  
16 I am familiar with the discussions that I've had with  
17 our counsel regarding our legal position on what the  
18 easements are or what easements are there. I am not  
19 an attorney. I'm certainly not an easement expert  
20 attorney.

21 Q. Okay. And right now --

22 A. I am familiar with the route. We did the  
23 calculations to make sure that that legal position  
24 is --

25 Q. Mr. Clegg, there's no question pending.

1           A.     Okay.

2           **Q.     You're sitting in a room with Rocky**  
3 **Mountain's counsel now, aren't you?**

4           A.     Yeah.

5           **Q.     So on this chart, V.O.L.T. Exhibit 12,**  
6 **someone said "the existing 46 kV right-of-way is**  
7 **27 feet from the centerline."**

8                   Do you see where I'm reading from?

9           A.     Yes, yes.

10          **Q.     Okay. Do you know who's responsible for**  
11 **that language?**

12          A.     Yes.

13          **Q.     Who?**

14          A.     We had our transmission engineer run  
15 calculations for the 46 kV line pursuant to current  
16 standards and what easement width would be required  
17 for that, and we did the same thing for a 138 kV  
18 line, and that's where those two figures came from.

19          **Q.     Okay. So it's the transmission engineers,**  
20 **is that what you said?**

21          A.     Yeah, the transmission engineers did the  
22 calculation for the width. And then we provided that  
23 information to a surveyor and slotted the poles  
24 accordingly.

25          **Q.     So tell me if you know the answer to this**

1 question: Does Rocky Mountain claim that there are  
2 existing rights-of-way that are 54 feet long or wide  
3 running through Midway today?

4 A. Yeah.

5 Q. You know the answer to that question?

6 A. Yes.

7 Q. Okay. And what is the answer?

8 A. The answer is yes. The prescriptive right  
9 extends 27 feet from the existing centerline to the  
10 south today.

11 Q. And that's information that you have been  
12 providing to other witnesses in this case. For  
13 example, the appraiser that he should assume there  
14 are existing rights-of-way that are 54 feet wide  
15 running all the way through Midway, correct?

16 MR. REICH: I'm going to object to that  
17 question. That assumes facts not in evidence.  
18 There's no evidence that Mr. Ben here supplied that  
19 information to the appraiser. So I'd ask --

20 CHAIRMAN THAD LEVAR: Mr. Morris, do you  
21 want to respond to the question?

22 MR. MORRIS: Well, yes. I think Mr. Clegg  
23 could have given me that answer, rather than having  
24 his attorney suggest it. The question was does he  
25 know if anyone has provided that information to

1 appraisers. And he can say "I don't know," without  
2 the attorney telling us all he doesn't know.

3 MR. REICH: That wasn't the question. The  
4 question was -- the question was that Mr. Clegg  
5 provided that. So you're -- I have no objection to  
6 that question.

7 MR. MORRIS: Okay.

8 Mr. Chairman, let me withdraw my  
9 questions, and I'll ask a new one.

10 CHAIRMAN THAD LEVAR: Okay. I'll refrain  
11 from ruling on the objection in that case.

12 MR. MORRIS: Thank you.

13 Q. (BY MR. MORRIS) Mr. Clegg, do you know  
14 whether or not the appraiser Rocky Mountain has hired  
15 to give opinions in this case was provided an  
16 assumption that the right-of-way for the existing  
17 lines running through Midway is 54 feet?

18 A. I don't know.

19 Q. Okay. Have you read Mr. LeFevre's direct  
20 testimony?

21 A. I -- I skimmed through the majority of the  
22 document. I don't recall that specifically if I've  
23 read his testimony in.

24 Q. Okay. Did you read the report that he  
25 attached to his direct testimony?

1           A.     I can refer to it.

2           Q.     No, that's not my question. Have you read  
3 it?

4           A.     I don't -- I did -- I did read it. I  
5 don't recall specifically all of the details on it.

6           Q.     Okay. Looking back at V.O.L.T.  
7 Exhibit 12, it appears that Rocky Mountain is  
8 suggesting the only additional widening of an  
9 easement that is going to be necessary to install  
10 this option B is just adding another 2 feet from the  
11 centerline from existing rights-of-way. Do you read  
12 that the same way that I do, Mr. Clegg?

13          A.     Yes.

14          Q.     Let me have you look at another picture.  
15 If you'll look at V.O.L.T. number 6. Let me know  
16 when you have that in front of you.

17          A.     I have it in front of me.

18          Q.     Okay. I'm going to represent to you that  
19 this is a portion of the existing line in Midway and  
20 ask if this is at all familiar to you. Have you seen  
21 this before?

22          A.     I don't know for sure exactly where I'm  
23 looking to be honest.

24          Q.     Well, let me ask a hypothetical. If the  
25 power line that you see in this picture is part of

1 the existing Heber Light & Power power line running  
2 through Midway, would you agree with me that there is  
3 not an existing right-of-way that runs 27 feet on  
4 either side of that power line?

5 A. I would not necessarily agree with that  
6 statement.

7 Q. Why not?

8 A. Because the existing -- existence of a  
9 power line does not preclude any other facilities  
10 being within that easement area. You can have other  
11 things there that -- as long as the other use doesn't  
12 preclude the safe operation of the transmission line,  
13 they could both be there in the same location.

14 Q. Is it okay with Rocky Mountain for trees  
15 to get as close to these lines as the picture  
16 depicts?

17 A. Typically they would -- they would try to  
18 do more consistent vegetation management than that.

19 However, I'm not familiar with Heber Light  
20 & Power's vegetation management schedule and  
21 practices.

22 Q. All right. Let's switch gears here and go  
23 back to the historical process that you testified to  
24 in your direct.

25 You've testified that Rocky Mountain and

1 Heber Light & Power were working together to reduce  
2 impacts on Midway with this line. Do you agree with  
3 that?

4 A. Midway and the rest of the region, yes.

5 Q. Okay. And would you agree that the impact  
6 on Midway would be less with an underground line than  
7 going overhead?

8 A. I don't -- I can see how there are some  
9 people who would probably feel that way. There might  
10 be others who feel differently. I don't -- I don't  
11 know that I can say definitively that one is less  
12 impactful than another.

13 Q. Have you personally spoken to any  
14 landowners along the route that you were managing  
15 for -- between 2015 and 2019?

16 A. I've spoken with a handful of landowners.  
17 I don't know that I've had specific easement  
18 discussions with anybody in Midway.

19 Q. Did any of those landowners tell you that  
20 they welcomed these overhead lines and taller poles  
21 and wider poles coming into the neighborhoods?

22 A. Occasionally I've had some people who live  
23 adjacent to a line say that having a line higher  
24 doesn't -- it affects them less than an existing line  
25 because they're not looking at the conductors.

1                   Specifically in Midway I don't recall  
2                   having anybody say that to me. And there's -- as you  
3                   well are aware, there's still a lot of discussion  
4                   about an underground line and a preference for that.

5                   **Q.       Okay. If the city of Midway and its**  
6                   **citizens collectively were to tell you that the**  
7                   **impact on Midway would be reduced consistent with the**  
8                   **goals you've described Rocky Mountain and Heber Light**  
9                   **& Power is having, you wouldn't argue with that,**  
10                  **would you?**

11                  **A.       They're welcome to have their opinion, and**  
12                  **I don't think that Rocky Mountain Power per the**  
13                  **statute has any right to have a concern about whether**  
14                  **it's overhead or underground. I don't think that**  
15                  **that's been at issue at all in any of this. It's**  
16                  **really been getting a clear and decisive decision and**  
17                  **who's going to pay.**

18                  **Q.       And we'll get to that last part of your**  
19                  **direct testimony at the end here.**

20                         **Let's talk about earlier on I think you**  
21                         **told Mr. Gordon that the project design was not yet**  
22                         **complete. Is that right?**

23                  **A.       In Midway City specifically, or where are**  
24                  **you referring?**

25                  **Q.       Well, let's start there.**



1           A.       Yeah, so preliminary engineering  
2 activities have been completed. That's how we were  
3 able to produce the documents that were submitted  
4 with the conditional use permit.

5                    Until we have something that's clear and  
6 decisive as far as what exactly we're going to be  
7 doing and where exactly we're going to be doing that,  
8 we can't proceed any further on engineering tasks  
9 through that -- through the city.

10                   In other areas of the project, as I have  
11 said in my testimony, there's portions of OPGW that  
12 are part of this project that have already been  
13 installed north of Jordanelle as well as coming up  
14 Provo Canyon. And design is moving forward in other  
15 parts where we -- of the transmission line where we  
16 have permits in hand. And then there's work along  
17 Highway 40 that's complete.

18           **Q.       At least for the Midway portion the**  
19 **project design is not complete, correct?**

20           A.       Correct. We need something actionable  
21 from a decision perspective to move further along  
22 that road.

23           **Q.       And you haven't ordered -- or to your**  
24 **knowledge Rocky Mountain hasn't ordered any materials**  
25 **yet for the Midway portion, has it?**

1           A.     I'm unaware of any materials ordered for  
2 the Midway portion.

3           Q.     What do the words radial separation mean  
4 to you, Mr. Clegg?

5           A.     Can you provide the context?

6           Q.     Your testimony about a half hour ago.

7           A.     Is this from the NESC?

8           Q.     Those are the words I heard you use a few  
9 times, "radial separation."

10          A.     I would say horizontal separation.  
11 Because earlier in that -- I would say that, you  
12 know, it means separation laterally, you know, with  
13 some distance apart.

14          Q.     Now, why are you inserting the word  
15 horizontal and lateral when the section you read from  
16 says radial?

17          A.     Because other parts of the same code  
18 indicate that they can't be above or below.

19          Q.     Could you give us those citations so that  
20 when I ultimately get this I can look at that myself?

21          A.     Yeah. That's the first part that I read.  
22 It's 320-A-1-A. And it says "Conduit systems should  
23 be subject to the least disturbance as practical.  
24 Conduit systems extending parallel to other  
25 subsurface structures should not be located directly

1 over or under other subsurface structures. It is not  
2 practical. The rule of separation as stated in 320-B  
3 should be followed."

4 Then 320-B says "Radial separation between  
5 a conduit system and other underground structures  
6 should be as large as necessary to permit maintenance  
7 of either the conduit system or the underground  
8 structures while limiting the likelihood of damage to  
9 the other. These separations should be determined by  
10 the parties involved."

11 **Q. Okay. So those separations have not been**  
12 **determined by the parties involved yet, have they?**

13 A. I don't know that I can answer that. I  
14 wasn't involved with those discussions.

15 **Q. And in your mind is there a difference**  
16 **between digging a trench that's 2 feet wide and**  
17 **digging two trenches that are 1 foot wide and spaced**  
18 **a bit apart?**

19 A. Yeah, I think that there would be. I  
20 don't necessarily believe that that's what you would  
21 do in this case. I think you would open one trench,  
22 and then you would provide a separation between duct  
23 banks that you formed in that one larger trench.

24 **Q. So right now Rocky Mountain doesn't know**  
25 **how far apart the two trenches that it wants the**

1 **contractors to dig would be?**

2 A. Are you asking me that? I don't know the  
3 answer to that question.

4 **Q. Yes, I am asking. And you don't know?**

5 A. I don't know the answer to that question,  
6 no.

7 **Q. Okay. And is it your testimony that you**  
8 **can't dig one trench and just put one conduit on one**  
9 **side and one conduit on the other and achieve a**  
10 **lateral separation that the parties could agree on?**

11 A. I think that you'd have to determine a  
12 specific distance based off of the depth of those  
13 facilities and how they interface with other  
14 underground obstacles, say water lines or sewer  
15 lines, et cetera. You have to consider all of those  
16 things. Depending upon the circumstances, you may or  
17 may not be able to open up one large trench and then  
18 form two duct bank systems on either side of the  
19 trench with some separation between the two duct  
20 banks.

21 **Q. By the same token you don't know how hard**  
22 **or how difficult it would be to dig two different**  
23 **trenches going through the same ground for the same**  
24 **reasons, right?**

25 A. Yeah. You would have some of the -- I

1 think you'd have much of the same issues, and you  
2 might have some additional issues as well. But  
3 somewhat similar issues.

4 Q. I mean in your experience it might even be  
5 harder and more expensive to go with two trenches  
6 rather than one that's just a little wider?

7 A. It really just depends on what underground  
8 structures there are. I mean I suppose there's  
9 scenarios where it could. There's scenarios where it  
10 could be more difficult. It really just is are you  
11 talking about an additional roadway that you're going  
12 to have to repair now. Are you talking about maybe  
13 you can miss some underground structures by  
14 separating them. I think it really just depends on  
15 the specific circumstances.

16 Q. Okay. I think that's fair. You said you  
17 were involved in the bidding or soliciting bids for  
18 the underground portion at a high level. Is that --  
19 did I recall that right?

20 A. At a relatively high level. I generally  
21 am aware of activities that were going on. I wasn't  
22 involved in the details of it, no.

23 Q. Okay. Do you know if either of the bid --  
24 any of the bidders, any of the 18 purported people  
25 that were asked to bid were invited to make a

1 recommendation as to whether they would go with one  
2 or two trenches?

3 A. I can't speak to that. I don't know.

4 Q. Okay. So on the real page 9 of your  
5 direct testimony -- I know they're all marked 9 --  
6 but this is the real one, the ninth page.

7 A. Okay.

8 Q. Are you there?

9 A. Does it say Summary of Testimony?

10 Q. Yes.

11 A. Okay, yes.

12 Q. Right at the bottom lines 30 and 31 you  
13 say "Before the project can move forward, Rocky  
14 Mountain Power needs a clear decision and upfront  
15 payment for any excess costs."

16 Do you see that?

17 A. I do.

18 Q. How do you calculate excess costs?

19 A. The standard cost, the difference between  
20 what -- I mean, I'm not using the legal language of  
21 that. The difference between what a jurisdictional  
22 entity requests us to do or conditions us to do and  
23 whatever our standard cost is.

24 Q. And the standard cost against which you  
25 want Midway to weigh the excess costs included an

1     **estimate of around 25 to \$27,000 to obtain easements**  
2     **and rights of way. Do you recall that?**

3           A.     Yeah. I believe through the permitting  
4     process one was provided and then it was updated. We  
5     provided one initially based off of RMP's internal  
6     estimates based off of three different groupings of  
7     property uses, and it produced ranges as you've  
8     described.

9                     And then later we had an appraiser do a  
10    similar task. It wasn't -- and we applied the same  
11    square footage impact for new easements, and it  
12    varied a little bit. But it was within \$5,000. So  
13    it was like you say, in the 28 to \$30,000 range.

14           **Q.     And can you tell the board whether**  
15    **standard cost as you've described it should or should**  
16    **not include the money Rocky Mountain is going to have**  
17    **to spend to pay landowners for additional wider**  
18    **easements and severance damages?**

19                     MR. REICH: This is Bret Reich; I object  
20    to the question. It calls for a legal conclusion and  
21    an interpretation of the statute. The definition of  
22    excess costs is defined in the statute, and I think  
23    it's calling for a legal conclusion.

24                     CHAIRMAN THAD LEVAR: Mr. Morris, do you  
25    want to respond to the objection?

1 MR. MORRIS: Your Honor, this witness used  
2 the word "excess costs" in his testimony, and he's  
3 told us he understands what standard costs are. I'm  
4 just asking him if that's consistent with his  
5 understanding to include easement severance damages  
6 rights-of-way with standard costs.

7 MR. REICH: And his testimony is that the  
8 excess costs should be paid. It's not that what  
9 those excess costs do and don't include.

10 CHAIRMAN THAD LEVAR: Mr. Morris, if you  
11 could give me a little more guidance on did he open  
12 the door on defining excess costs or referring to  
13 excess costs?

14 MR. MORRIS: Well, the summary of his  
15 testimony was this is what Rocky Mountain Power  
16 needs. They need a clear decision, and they want  
17 upfront payment for excess costs. And I'm asking him  
18 if he knows how Midway is supposed to calculate  
19 excess costs.

20 CHAIRMAN THAD LEVAR: I'm going to  
21 overrule the objection on the basis that I think  
22 Mr. Clegg has probably discussed the issue enough to  
23 open the door to it. With the recognition this is  
24 ultimately a decision for the board to make. So one  
25 witness's opinion of it has limited value to the



1 board. But I think I'm not going to grant the  
2 objection at this time. I'll allow Mr. Clegg to  
3 answer the question.

4 MR. MORRIS: I'll ask it again just for  
5 clarity.

6 Q. (BY MR. MORRIS) Standard costs include  
7 right-of-way and easement costs, don't they?

8 A. That's my understanding.

9 Q. And today Rocky Mountain doesn't know what  
10 its standard cost is, does it?

11 A. We have estimates of what the standard  
12 costs would be to construct an overhead line and  
13 acquire those easements.

14 Q. Mr. Clegg, were you with Rocky Mountain  
15 Power in 2014?

16 A. I was consulting with them at some point  
17 in 2014.

18 Q. Did you have any involvement in the  
19 project out in Tooele County involving SITLA?

20 MR. REICH: I object to the extent this is  
21 irrelevant to the proceeding before us.

22 CHAIRMAN THAD LEVAR: Mr. Morris, do you  
23 want to respond to the objection?

24 MR. MORRIS: You know, if he says no to  
25 that question, I'll agree we can move on. But if he

1 says yes, I'm happy to lay more foundation.

2 MR. REICH: What relevance does the Tooele  
3 project have to do with the Midway City project?

4 MR. MORRIS: The Tooele project is an  
5 example of where Rocky Mountain Power has come in  
6 with an extremely unrealistic lowball estimate as to  
7 what the standard cost is going to be in building a  
8 transmission line that turned out to be just wildly  
9 inadequate. And the relevance is Rocky Mountain is  
10 engaged in the same process here of suggesting Midway  
11 is going to have to write a check for multi millions  
12 of dollars because its standard cost is at "X," and  
13 the evidence that we're putting on here shows it's X  
14 times 3,000, or 35 rather, a 3,500 percent  
15 difference. But that's the relevance, Mr. Chairman.

16 MR. REICH: And then I'm also going to  
17 object on foundation. I mean there's no testimony or  
18 evidence that the same process was used to estimate  
19 the right-of-way in the Tooele project as was used in  
20 this project.

21 MR. MORRIS: And I'm not offering it for  
22 the same process being used. It's just a fact in  
23 both cases that an easement number has come in  
24 that -- in both cases. And one, the Tooele example  
25 demonstrates Rocky Mountain's -- you know, whether

1 it's a process, whether it's a tactic, whether it's a  
2 strategy or just a bad habit. They suggest that  
3 easement costs at the beginning are really, really  
4 low, and that's not the case. And they're using it  
5 here to suggest that Midway has a greater economic  
6 burden than it should bear.

7 CHAIRMAN THAD LEVAR: Okay. Mr. Morris,  
8 I'm going to overrule the objection with relevance  
9 grounds. And with respect to foundation I'm going to  
10 give you a few questions to see if you can establish  
11 the necessary foundation with this witness.

12 MR. MORRIS: Thank you.

13 Q. (BY MR. MORRIS) Mr. Clegg, did you have  
14 any involvement in the SITLA -- or the transmission  
15 line that went through Tooele County on SITLA  
16 property back in the 2012, '13, '14 time frame?

17 A. I did not.

18 Q. Okay. Let's move on.

19 You've testified in answering some of  
20 Mr. Gordon's questions about the length of time that  
21 it takes in order to go through the process of  
22 getting -- using the ombudsman and hopefully  
23 negotiating and hopefully avoiding having to file a  
24 condemnation action. And you thought that the  
25 process in your experience on a good day goes two to

1     **three days? Do you remember that?**

2           A.     You're saying specifically on a  
3     condemnation proceeding or specifically on what  
4     component of that? Design?

5           **Q.     No. Let's limit it to obtaining easements**  
6     **from landowners.**

7           A.     It's all project specific. We have  
8     obtained them in as little as weeks, and it's also  
9     taken much much longer than that.

10          **Q.     Anywhere along the way here have you**  
11     **gained an understanding that if this line goes**  
12     **underground you won't need to negotiate with any**  
13     **landowners, that they'll provide easements allowing**  
14     **for underground lines without charging money?**

15          A.     There's been statements made at public  
16     hearings that some people have a desire to donate  
17     whatever easements that would be needed for an  
18     underground line. I'm not aware of anything, I  
19     guess, of substance saying, you know, this is exactly  
20     how many or this is all or even that we have any of  
21     them to say, you know, here it is. I'm not aware of  
22     that. But I understand that there's some sentiment  
23     that there are some people who would quote/unquote  
24     donate an easement for an underground line.

25          **Q.     The answer is, yes, you have heard**

1 something to that effect?

2 A. I heard "all" in your question, and I  
3 didn't hear that all costs ever would be avoided by  
4 that. But I heard some people say that they had some  
5 desire to do that.

6 Q. Fair enough. It would speed the process  
7 up for Rocky Mountain tremendously if it did not have  
8 to haggle and fight and eventually go to condemnation  
9 to obtain easements and rights-of-way, wouldn't it?

10 A. You're saying if someone just handed us a  
11 bunch of easements and we could move forward without  
12 preparing having to go get them?

13 Q. Precisely.

14 A. Yeah, that could save time.

15 Q. I'm just checking off some things on my  
16 notes here. Bear with me for a minute.

17 This is sort of out of order, but I recall  
18 you testifying in response to Mr. Gordon's questions  
19 that one of the goals here is to avoid service  
20 interruptions if one of the three lines coming into  
21 Heber Valley goes down. Do you recall that?

22 A. Yes, generally.

23 Q. Would you agree with me that in the last  
24 five years, even though there have been occasions  
25 when one of the lines has gone down, there have been

1 no service interruptions to customers that you're  
2 aware of?

3 A. I'm not in a position to say whether that  
4 statement is or is not true. I'd have to go and ask  
5 people to produce information on that.

6 Q. Okay.

7 A. I can't speak to that.

8 Q. Fair enough. So when you were testifying  
9 earlier that you were trying to avoid service  
10 interruptions if one of the lines goes down, you  
11 don't know if service interruptions would really  
12 occur if one of the lines were to go down?

13 A. No, I -- my statements during the public  
14 hearings as well as here has been informed on various  
15 discussions with area engineers and planners. The  
16 specific question that you asked was: Are you aware  
17 of anything in the last five years if anybody  
18 specifically was dropped off. I don't know that.  
19 That's way too specific.

20 The question that I answered earlier was,  
21 you know, what's the purpose of this project? What's  
22 one of the main benefits? And one of the main  
23 benefits is there's exposure to this system at  
24 certain times that if -- you know, if we have an  
25 outage under certain conditions, there would be major

1 consequences to that. And I --

2 Q. And --

3 A. Go ahead.

4 Q. Well, even if you build this big line that  
5 is the subject of this, I mean there are still  
6 circumstances that could occur that would interrupt  
7 service to end-users, right?

8 A. I suppose that there are issues in the  
9 Park City load area that, you know, that could happen  
10 or that could result in outages.

11 However, it's my understanding as well  
12 that from a 138 kV transmission perspective we'll get  
13 back to being able to survive losing one of those  
14 lines and still being able to carry the load from an  
15 area transmission perspective.

16 But again, you know, there may be other  
17 circumstances or maybe you'd lose two lines and then  
18 something happens. I think you've got other people  
19 you can ask those questions to besides me from a  
20 system perspective.

21 MR. MORRIS: Now, Mr. Chairman, I want to  
22 turn now to Mr. Clegg's rebuttal testimony.

23 Although Mr. Webber, whom he rebuts,  
24 hasn't yet testified. I'm happy to do whatever the  
25 board prefers to do. I could -- I could tackle his

1 rebuttal to Mr. Webber now, or if he's available it  
2 might make more sense to tackle it after Mr. Webber  
3 has testified. But I'm happy to proceed either way.

4 CHAIRMAN THAD LEVAR: I think it's more  
5 efficient to proceed while we have this witness on  
6 the stand. If there's a need to recall witnesses as  
7 we go forward, we can discuss those. And I think  
8 that's an issue we can go forward with. But I think  
9 it's probably more efficient to go ahead with the  
10 questioning at this point.

11 MR. MORRIS: Okay. I'm happy to do that.

12 Q. (BY MR. MORRIS) So, Mr. Clegg, do you  
13 understand who Mr. Jerry Webber is?

14 A. Yes.

15 Q. Who do you understand him to be?

16 A. I understand he produced certain  
17 appraisals for various personnel that I guess  
18 V.O.L.T. represents and compiled some of that  
19 information and then presented his testimony. He's  
20 an appraiser in Heber Valley.

21 Q. And you're not an appraiser, are you,  
22 Mr. Clegg?

23 A. I am not.

24 Q. Could you explain to the board what  
25 qualifies you to rebut the testimony of an expert



1     **appraiser?**

2           A.     I rebutted specifics within Mr. Webber's  
3     testimony that he offered, and there appeared to be  
4     some specific errors as well as inclusion of people  
5     that are not along the route where I'm familiar with  
6     the route and I'm familiar with what areas require  
7     overhang easements. I was in a position to clarify  
8     those errors.

9           Q.     Now, you've made a point of telling us  
10    that you're not a lawyer. But are you now saying you  
11    are qualified to opine to this board what areas need  
12    easements and which do not?

13           MR. REICH: Objection, that was not his  
14    testimony. That misstates his testimony.

15           MR. MORRIS: Then I'm sorry I got it  
16    wrong.

17           MR. REICH: His testimony was that he was  
18    aware of the location of the route and how it --  
19    whether or not it touched or impacted the properties.

20           MR. MORRIS: I thought he used the word --

21           CHAIRMAN THAD LEVAR: Yeah, I'm going to  
22    sustain that objection. But if you want to rephrase  
23    the question, you may do so.

24           Q.     (BY MR. MORRIS) Okay. So I asked you  
25    what qualified you to rebut the testimony of an

1 expert appraiser. And for example on page 1 of your  
2 rebuttal testimony, lines 13 to 16, you felt  
3 compelled to bring up the fact that the same property  
4 was mentioned twice or described twice. Do you see  
5 that, parcels 10 and 82?

6 A. Yeah.

7 Q. Did you read all of Mr. Webber's  
8 testimony?

9 A. I thought I did.

10 Q. Did you see on page 5 of his testimony  
11 that he noted the same thing that you did?

12 A. I did not.

13 Q. Well, do you have his direct testimony in  
14 front of you?

15 A. I can -- I can get to it. His  
16 calculations did not include both of --

17 Q. Mr. Clegg, we're not talking about  
18 calculations yet. I'm just asking you to go to page  
19 5.

20 A. I am at page 5.

21 Q. Go to lines 98 and 99.

22 A. I see that.

23 Q. Do you see where Mr. Webber made the same  
24 observation that you did, that two of the parcels  
25 were the same one?

1           A.     I see that.

2           Q.     Okay. So you missed that when you went  
3 through his direct testimony the first time?

4           A.     It appears that I did.

5           Q.     On page 1 of your rebuttal testimony -- so  
6 we're back on your rebuttal now -- at line 20. Well,  
7 let's see, I think we've already covered that. Hold  
8 on.

9                   Have you read the direct testimony of  
10 Ron Lowrey?

11          A.     I don't recall reading that one.

12                 MR. REICH: Mr. Morris, I'm not that sure  
13 we have seen the filing of Mr. Lowrey. Has that been  
14 filed in this proceeding?

15                 MR. MORRIS: I thought Mr. Lowrey's  
16 testimony was filed along with Bangt Jonsson's. I  
17 sure hope it was.

18                 MR. REICH: You're correct. You're  
19 correct. We did find it. Thank you.

20          Q.     (BY MR. MORRIS) So Mr. Clegg --

21          A.     I don't recall reading that, no.

22          Q.     All right. I might be done. Let me check  
23 one thing here.

24                   Getting back to the last thing that you  
25 said in your direct testimony, that you want a clear

1 decision and you want payment of upfront money. You  
2 understand that the upfront money would not be due to  
3 be paid until after your project designs and material  
4 orders were complete? You understand that?

5 MR. REICH: I'm going to object to the  
6 extent that calls for a legal conclusion. I think  
7 the timing of when payment is made is contained in  
8 the statute, and I think it actually contradicts what  
9 you just said. And I think that calls for a legal  
10 conclusion.

11 CHAIRMAN THAD LEVAR: Mr. Morris, can you  
12 respond to the objection?

13 MR. MORRIS: Yeah, I'm happy to withdraw  
14 the question and ask another one.

15 CHAIRMAN THAD LEVAR: Okay. Why don't you  
16 go ahead that way.

17 Q. (BY MR. MORRIS) Do you have an  
18 understanding today as to when this upfront payment  
19 that you said Rocky Mountain so desperately wants  
20 would be due?

21 MR. REICH: Objection. His testimony did  
22 not say that Rocky Mountain Power so desperately  
23 wants the excess upfront payment.

24 CHAIRMAN THAD LEVAR: Mr. Morris, could  
25 you rephrase a little bit more?

1 MR. MORRIS: Yes.

2 Q. (BY MR. MORRIS) Do you know, Mr. Clegg,  
3 when the upfront payment that you say in your  
4 testimony is what Rocky Mountain wants in addition to  
5 a clear decision, when that payment would have to be  
6 made?

7 MR. REICH: Again objection. Calls for a  
8 legal conclusion and interpretation of the statute.

9 CHAIRMAN THAD LEVAR: I think I'm going to  
10 have to sustain that objection. That is a legal  
11 issue that's outlined in statute.

12 MR. MORRIS: All right.

13 Q. (BY MR. MORRIS) The last question then is  
14 it's a fact that as of today, for this portion of the  
15 line the project design is not complete and the  
16 materials have not been ordered, correct?

17 A. For the Midway portion of the project,  
18 that's true. As I outlined earlier in my -- or in  
19 this cross, that other portions are complete or have  
20 started.

21 MR. MORRIS: I think that's all the  
22 questions I have. Thank you, Mr. Clegg.

23 THE WITNESS: Thank you.

24 CHAIRMAN THAD LEVAR: Thank you, Mr.  
25 Morris.

1           Mr. Reich, let me ask you this question.  
2       We go to you for redirect next, but know that we do  
3       have to finish by 4:00 at the latest. We have one  
4       board member with a hard commitment where we have to  
5       close by 4:00. So do you want to do some redirect  
6       now, or would you rather us simply adjourn and begin  
7       with this first thing in the morning?

8           MR. REICH: I think I can get it done in  
9       the time we have left.

10          CHAIRMAN THAD LEVAR: Okay. Why don't we  
11       go ahead with the redirect then.

12          MR. REICH: Okay.

13  
14                   REDIRECT EXAMINATION

15       BY MR. REICH:

16           **Q. First let me get back to your rebuttal**  
17       **testimony you were just asked about, Mr. Clegg.**

18                   **Was your rebuttal testimony on page 1 with**  
19       **respect to the calculations that were made by**  
20       **Mr. Webber?**

21           A. Yeah. Specifically I was referring to  
22       Mr. Webber having not removed or having included both  
23       10 and 82 in the calculations that was attached  
24       specific there.

25           **Q. And then also you were asked earlier about**

1 the project schedule by Midway City, and I think they  
2 asked you what the impact would be or why not delay  
3 this until November of 2020 when they could get a  
4 bond -- vote on a bond and then have that bond funded  
5 in February of 2021. What are your concerns, if any,  
6 of proceeding with that type of schedule?

7 A. It would put us in the same situation that  
8 we're in right now for the 2020, 2021 load season.  
9 If we couldn't start on the design and material  
10 acquisition until that point, we would -- we would  
11 not be able to complete the project by winter load  
12 2021, and it would very likely roll into the next  
13 spring.

14 Q. And do you understand when the peak period  
15 is in this area in the Park City --

16 A. Yeah, my understanding is the -- and I  
17 just alluded to that.

18 My understanding is the peak load is in  
19 the winter. They have a summer peak as well. But  
20 regionally it peaks in the winter, and that's when  
21 the most exposure to the system occurs which is  
22 exactly why waiting until springtime next year to be  
23 able to start on these other activities would put the  
24 system at risk for yet another winter.

25 Q. Okay. Let me shift gears now to --

1     there's a couple of statements in Midway City's trial  
2     memorandum that I wanted to ask you about.

3             With respect to the bids, Midway City  
4     takes the position that the bids are so outrageously  
5     high and so far apart when bidding the same work that  
6     it destroys all credibility. Tell me a little bit  
7     about your background with respect to these type of  
8     construction projects. How many years have you been  
9     doing this?

10            A.     I've been doing projects for 16 years.  
11     I've been doing utility projects for the last  
12     11 years, specifically for electric utilities. In  
13     that scope I take a project and I'm involved with a  
14     project from the concept from when there's a -- you  
15     know of the purpose and need is determined and it  
16     goes out and it receives some level of funding and  
17     involved with siting discussions as well as any  
18     permitting both state and legal, so any federal  
19     permits, oversee the design, and then go out -- go  
20     out to bid and then oversee construction. Once it's  
21     done, it's handed over to operations, and then they  
22     operate that. So it's really the entire development  
23     and construction of these projects.

24            Q.     In your former experience have you had an  
25     opportunity to review bids on these type of



1 **construction projects?**

2 A. Scores of times, yes.

3 **Q. And is it standard for you to receive bids**  
4 **that are not the same or they have some disparity?**

5 MR. MORRIS: Mr. Chairman, I need to  
6 object for two grounds here. One, he's leading his  
7 own witness. And number two, this is beyond anything  
8 that's been brought up before, disparities in bids.

9 CHAIRMAN THAD LEVAR: Mr. Reich, can you  
10 identify this issue was raised in cross-examination  
11 of this -- of Mr. Clegg?

12 MR. REICH: No, it was not raised in  
13 cross-examination. But it has been raised by Midway  
14 City in their trial brief, so I'm just responding to  
15 that.

16 CHAIRMAN THAD LEVAR: I think I'm going to  
17 sustain the objection for this witness. I think  
18 either with a different witness of Rocky Mountain or  
19 in cross-examination of a Midway witness would be a  
20 more appropriate place for this question where it  
21 hasn't been raised in the cross-examination of this  
22 witness yet.

23 MR. REICH: Okay.

24 **Q. (BY MR. REICH) In a similar part of the**  
25 **Midway City brief they talk about -- Midway City**

1 talks about a 2018 estimate to bury the entire line  
2 of 70 miles for \$32.16 million. During the  
3 conditional use permit application in front of Midway  
4 City, are you aware of a study that was conducted  
5 with respect to the costs of burying the line?

6 A. Yeah. A study was originally conducted at  
7 the request of Wasatch County as part of their  
8 permitting process. And the project team for various  
9 reasons, one of which was that there was some concern  
10 about potentially the county or others questioning  
11 the estimate itself, we went to a third-party --  
12 Heber Light & Power did the heavy lifting for that.  
13 Lower Valley up in Wyoming had just done a project  
14 and had discussions with them.

15 Jason Norlen reached out to a company out  
16 of Colorado, I believe, named NEI, and they produced  
17 an underground estimate. It included the entire  
18 length of the line through the -- through county,  
19 cities, all of it as well as various subsets of that.  
20 So various start and finish points if certain  
21 portions were elected to go underground. It was --  
22 the nature, and I believe it's mapped out in the  
23 executive summary, the nature is really just to  
24 estimate costs. And if I actually read from it, "The  
25 report focuses on costs but provides a short

1 description of other considerations. Estimated costs  
2 have been provided by various entities and have been  
3 compiled to determine the cost per segment based on  
4 the segment map provided by Heber Light & Power. The  
5 purpose of the study is to provide an estimated cost  
6 within 30 percent of the actual value. It's meant to  
7 be a cost feasibility analysis. It is not intended  
8 to be a ready-for-construction design estimate."

9 That's from the executive summary.

10 **Q. And during the bid application process and**  
11 **in the conditional use permit, is it your**  
12 **understanding did Midway City accept this study that**  
13 **was conducted as the estimate of what it would cost**  
14 **to underground the line?**

15 A. I --

16 MR. MORRIS: Mr. Chairman, again, excuse  
17 me. I wish Mr. Reich wouldn't lead his own witness.  
18 I object.

19 CHAIRMAN THAD LEVAR: Mr. Reich, do you  
20 want to respond to the objection based on the leading  
21 question?

22 MR. REICH: Sure. I'm just asking him for  
23 his understanding of what -- of how Midway City, if  
24 they accepted this study in the conditional use  
25 permit.

1 CHAIRMAN THAD LEVAR: Yeah, I'm going to  
2 rule -- I'm going to rule that's not unnecessarily  
3 inappropriately leading, and I'll allow him to answer  
4 the question.

5 THE WITNESS: Yeah. My understanding is  
6 that they rejected the estimated cost. That's how we  
7 ended up going out to bid to get actual bids from  
8 others because they did not accept the estimated  
9 costs provided by us at that time.

10 MR. REICH: Okay. I have no further  
11 questions.

12 CHAIRMAN THAD LEVAR: Thank you,  
13 Mr. Reich.

14 I'll go to Mr. Gordon or Mr. Jewkes for  
15 any recross but reminding you again we have about ten  
16 minutes left before we have the hard stop. So if you  
17 don't think you can complete any recross based on the  
18 redirect in that period of time, we probably should  
19 adjourn until tomorrow. So let me know --

20 MR. GORDON: We'll be done with that, yes.  
21 Just a couple of follow-up questions here.

22  
23 RECROSS-EXAMINATION

24 BY MR. GORDON:

25 Q. Mr. Clegg, in the executive summary just

1 right underneath that in the NEI -- in the NEI cost  
2 estimate feasibility study, it establishes that the  
3 estimate for the Midway line was 6.83 million,  
4 correct?

5 A. Let me look at that. I want to make sure  
6 that I consider that entire length.

7 Q. That would be line number 8, correct?  
8 1.3 miles?

9 A. Yeah, I'm looking at that. Yeah, I  
10 believe it actually exits Midway and heads to the  
11 north end of the county for a portion of that. But  
12 it does cross Midway in section 8 as well.

13 Q. And then down below from Highway 40 to  
14 Midway the estimate was 32.16 million, correct?

15 A. That's what NEI's estimate came to, yes.

16 Q. And the highest bid that came in from the  
17 bidders was 28 million just for section 8, correct?

18 A. I'd have to go back and refer to that. I  
19 know one is an estimate and one is a bid. I'm not  
20 prepared to answer that question specifically.

21 Q. Okay. Just two more questions. So the  
22 NECS standards that you quoted today were not in  
23 either your direct or rebuttal testimony, correct?

24 A. Correct.

25 Q. So just kind of regarding your omniscience

1 here of kind of understanding what we would ask, what  
2 made you bring the code with you today?

3 A. Just I --

4 CHAIRMAN THAD LEVAR: Sorry. There hasn't  
5 been an objection, but I think the question was a  
6 little pejorative. If you wouldn't mind restating in  
7 a less pejorative way.

8 MR. GORDON: I apologize. I wasn't trying  
9 to be pejorative. So if that was taken that way, I  
10 apologize.

11 Q. (BY MR. GORDON) I was just surprised by  
12 the detail of something that was outside of the scope  
13 of what you had originally testified to. So what  
14 made you bring the code with you today?

15 A. I'd understood there were some questions  
16 regarding a common trench or a common -- actually,  
17 more specifically a common duct bank system. And so  
18 prior to starting this morning, I had some  
19 discussions with the transmission engineer at Rocky  
20 Mountain Power and found this specific location where  
21 that information is called out. It was really just  
22 because I'd understood there was some concern  
23 regarding a shared duct bank system, and I wanted to  
24 be prepared to answer it if it came up.

25 MR. GORDON: Fair enough. No further

1 questions.

2 CHAIRMAN THAD LEVAR: Thank you.

3 Mr. Morris, do you have any redirect you  
4 feel you could do now, or would you rather hold it  
5 for first thing in the morning?

6 MR. MORRIS: I don't have any questions.  
7 I'm just hopeful that this language and code section  
8 can be delivered to us before the morning, if that's  
9 possible.

10 CHAIRMAN THAD LEVAR: Okay, thank you.  
11 You do have our commitment to address that issue at  
12 the beginning of the hearing tomorrow.

13 Let me go to then board members. Do you  
14 have any questions that we could address in the next  
15 few minutes, or do any of you have questions that  
16 you'd like to hold and address with this witness in  
17 the morning? If any board members have questions for  
18 the witness, please jump in and let me know what kind  
19 of questions you have.

20 MR. DAVID CLARK: I'm going to tell you  
21 that I have no questions.

22 CHAIRMAN THAD LEVAR: Thank you, Mr.  
23 Clark.

24 If any other board members have questions  
25 for Mr. Clegg, please indicate that.

1 I'm not hearing any questions. I do think  
2 we probably should have Mr. Clegg available in the  
3 morning as we deal with the code issue and whether  
4 that can be provided to anyone. So we may need to  
5 have him available to answer any brief questions  
6 about that.

7 But other than that, Mr. Clegg, thank you  
8 for your testimony today.

9 THE WITNESS: Thank you.

10 CHAIRMAN THAD LEVAR: And we will be in  
11 recess until 9:00 a.m. tomorrow. Our first order of  
12 business will be dealing with these codes, and then  
13 Rocky Mountain Power has indicated their next witness  
14 is Darin Myers. And we have an objection to that  
15 witness, so we will need to deal with that right off  
16 the bat as well tomorrow morning.

17 So we will reconvene at 9:00 a.m.  
18 tomorrow. Thank you.

19 MR. MORRIS: Mr. Chairman, is the dial in  
20 information the same tomorrow as it was for today?

21 CHAIRMAN THAD LEVAR: Yeah, it will be the  
22 same all week. We just -- hopefully not distribute  
23 it too widely. The audio file was pretty good today  
24 without a lot of extra people on the line. And I was  
25 following the streaming, and the streaming seemed to



1 be working well all day as well. So residents who  
2 were interested have been able to listen without  
3 having to burden the dial in number. So that's a  
4 long answer to a short question. The short answer is  
5 yes.

6 MR. MORRIS: Thank you.

7 CHAIRMAN THAD LEVAR: Okay. We're in  
8 recess. Thank you.

9 (Concluded at 3:55 p.m.)

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<b>\$</b>	<b>120</b> 113:21	<b>2</b>
<b>\$100,000</b> 169:12	<b>125</b> 79:9,24 80:15	<b>2</b> 64:13 183:23 196:10 202:16
<b>\$2.5</b> 74:22	<b>128</b> 80:21	<b>20</b> 57:21 74:2 103:21 107:19 166:20 218:6
<b>\$20,000</b> 68:19	<b>129</b> 81:4	<b>20-035-03</b> 4:5 52:3 181:5
<b>\$27,000</b> 74:2 75:7 206:1	<b>13</b> 55:11 210:16 217:2	<b>2011</b> 108:8,17
<b>\$28</b> 77:10,13	<b>135</b> 81:4	<b>2012</b> 108:8 210:16
<b>\$30,000</b> 206:13	<b>136</b> 81:15	<b>2014</b> 208:15,17
<b>\$32.16</b> 225:2	<b>138</b> 61:20 64:7 67:3 81:16 86:3 101:4 102:2 112:10 125:18 132:14 136:25 156:7 159:6 160:4 161:4,23 162:14 184:8 185:4 187:17 189:1 190:10 193:17 214:12	<b>2015</b> 183:3 198:15
<b>\$5</b> 66:14	<b>139</b> 82:1 97:17	<b>2016</b> 103:19
<b>\$5,000</b> 206:12	<b>13th</b> 56:20 57:1	<b>2017</b> 55:11,17,18,19 56:12 60:21 103:19 107:2 108:9,19,23 175:1, 14
<b>\$600,000</b> 73:11	<b>14</b> 210:16	<b>2018</b> 55:23 225:1
<b>\$70,000</b> 74:18,22	<b>14th</b> 55:19 56:17 57:6	<b>2019</b> 56:1,15,17,21 57:14 183:3 198:15
<b>\$8.1</b> 67:22	<b>15</b> 10:23 11:7 60:14 96:4, 22 97:8,12 98:16,19,21 128:20	<b>2020</b> 10:22 11:2 63:10 65:18 70:7 71:21 108:3 154:3 155:11,18,19 159:19 160:10 222:3,8
<b>1</b>	<b>15th</b> 57:3	<b>2021</b> 72:6 106:7,22 159:4,19 160:3,11 162:23 163:18 165:6 169:7 222:5,8,12
<b>1</b> 126:19 202:17 217:1 218:5 221:18	<b>16</b> 57:6 60:14 217:2 223:10	<b>2022</b> 70:21
<b>1-B</b> 181:16	<b>17</b> 57:21 60:14 131:8	<b>217</b> 114:16,18
<b>10</b> 217:5 221:23	<b>175</b> 114:11,14,18	<b>24</b> 99:7 184:5
<b>100</b> 62:13 64:16 130:8 188:22 189:4	<b>17th</b> 57:13	<b>25</b> 74:2 183:23 184:5,22 206:1
<b>100-foot</b> 65:5 189:8	<b>18</b> 18:24 19:3 21:4 77:15 204:24	<b>259</b> 58:22
<b>10:05</b> 51:18	<b>1891</b> 60:17	<b>26</b> 183:23 184:5
<b>10:16</b> 51:18	<b>19th</b> 57:8	<b>26th</b> 10:22
<b>10th</b> 11:2 131:16	<b>1:00</b> 120:9,10	
<b>11</b> 223:12		
<b>113</b> 11:16		
<b>11:57</b> 120:10		
<b>12</b> 66:21 184:19,24 185:4 189:18 190:12 193:5 196:7		

<b>27</b> 190:19,24 193:7 194:9 197:3	<b>40</b> 62:1 64:13 103:21 185:18,24 200:17	<b>63-g-4-206(1)(a)</b> 37:17
<b>28</b> 66:21 206:13	<b>42</b> 102:10,20,22 103:3 113:4,5	<b>63G</b> 37:8,10
<b>2:28</b> 181:3	<b>42-megawatt</b> 103:2	<b>64</b> 60:22
<b>2:40</b> 180:22,24 181:3	<b>45</b> 187:20 188:21 189:4	<hr/>
<b>2nd</b> 55:18 56:15 58:21	<b>45-foot</b> 189:7	<b>7</b>
<hr/>	<b>46</b> 61:19 100:23 112:4 166:22 184:7,13 185:1,4 187:16 188:25 190:10,18 193:6,15	<hr/>
<b>3</b>	<b>4:00</b> 26:11,12,16 180:23 221:3,5	<b>70</b> 63:1 225:2
<hr/>	<hr/>	<b>75</b> 189:16
<b>3</b> 66:14 185:15,23 186:15	<b>5</b>	<hr/>
<b>3,000</b> 209:14	<b>5</b> 67:24 217:10,19,20	<b>8</b>
<b>3,500</b> 61:5 209:14	<b>50</b> 64:13 67:21 95:6	<hr/>
<b>30</b> 69:25 103:21 107:20 205:12 226:6	<b>54</b> 43:7,11 46:20 190:22 191:4,10 194:2,14 195:17	<b>8</b> 62:13 64:16
<b>31</b> 205:12	<b>54-14-104</b> 37:6	<b>82</b> 217:5 221:23
<b>31st</b> 55:17	<b>55</b> 76:17	<b>85</b> 115:9
<b>32</b> 175:14	<b>5:00</b> 26:14	<b>88</b> 189:15
<b>320(b)</b> 175:21	<hr/>	<hr/>
<b>320-A-1-A</b> 175:14 201:22	<b>6</b>	<b>9</b>
<b>320-B</b> 202:2,4	<b>6</b> 196:15	<hr/>
<b>320-B-1</b> 175:23	<b>6.3</b> 163:12	<b>9</b> 80:18 114:12 115:1 152:5 184:1 205:4,5
<b>35</b> 209:14	<b>60</b> 76:17	<b>90</b> 80:11,17 94:8 113:19, 21 114:22
<b>352-E</b> 176:5	<b>615</b> 38:5	<b>970</b> 186:13
<b>37</b> 99:25 100:1 104:16 105:8,12 107:12	<b>620</b> 106:23 113:15 114:1, 20	<b>98</b> 217:21
<b>37-hour</b> 100:1	<b>63(g)4-208</b> 48:5	<b>99</b> 217:21
<b>384</b> 58:23	<b>63-G-4-206</b> 145:23	<b>9th</b> 131:11
<b>39th</b> 131:11		<hr/>
<b>3rd</b> 57:10		<b>A</b>
<hr/>		<hr/>
<b>4</b>		<b>a.m.</b> 51:18 120:10
<hr/>		<b>abide</b> 41:15 42:2
<b>4</b> 37:11,12 48:7 64:13 184:18,23 185:3		<b>ability</b> 9:20 132:12 154:14 182:7
		<b>ably</b> 73:7,20
		<b>absolutely</b> 31:1 124:25 137:25

<b>absurd</b> 91:13	44:25 45:15 46:2,7,15	<b>addressed</b> 16:19 59:4,13
<b>academic</b> 71:10	47:6 49:8 158:4 178:5,6	122:3,10
<b>accept</b> 87:14 226:12	<b>action</b> 9:7 23:7 41:23	<b>addressing</b> 119:18
227:8	44:21 45:2 59:16 210:24	121:23
<b>acceptable</b> 11:16 66:16	<b>actionable</b> 152:17	<b>adequate</b> 88:25 101:13
70:20 71:4 75:9 182:6,13	156:10 168:22 200:20	113:3 137:24
<b>acceptance</b> 14:22	<b>actions</b> 47:14 69:5	<b>adequately</b> 17:20
<b>accepted</b> 14:24 75:9	<b>active</b> 154:17,18 183:19	<b>adjacent</b> 161:12 198:23
226:24	<b>activities</b> 163:7,19	<b>adjourn</b> 221:6 227:19
<b>access</b> 97:24 132:8	165:18 169:18 171:17	<b>adjudicated</b> 37:14 48:6,
136:21 158:10 172:20	172:22 200:2 204:21	11
<b>accessibility</b> 135:15	222:23	<b>adjudication</b> 23:11
137:2	<b>acts</b> 46:4,6	<b>adjudicative</b> 47:7
<b>accident</b> 60:23	<b>actual</b> 15:11 16:11,12	<b>adjustments</b> 79:25
<b>accordance</b> 18:15 52:11	17:13 18:13,16 19:5 35:2	171:10
94:4	57:20 65:11,24 66:3,6,17	<b>administrative</b> 35:7 37:8,
<b>account</b> 75:11,18	68:5,7 69:2,6,8,15,17,19	13 46:1 47:4 145:22
<b>accountable</b> 64:1 109:17	70:2 81:13 121:16 140:1	<b>admit</b> 148:11
<b>accurate</b> 66:15 78:25	144:13 226:6 227:7	<b>admits</b> 71:1
84:12,14 107:15 151:23	<b>adapt</b> 37:9	<b>admitted</b> 59:7
168:7 173:2,7,9,13,24	<b>add</b> 17:8 18:7 46:14 47:3	<b>adopt</b> 68:1
<b>achieve</b> 40:2 203:9	55:24 122:23 142:15	<b>advanced</b> 55:8
<b>acid</b> 170:22	144:25 145:2 153:7	<b>adverse</b> 107:6
<b>acknowledged</b> 156:6	<b>added</b> 107:1	<b>advocate</b> 108:4,10
<b>acquire</b> 58:7,8 152:18	<b>adding</b> 71:22 196:10	<b>aesthetic</b> 73:3
156:9 158:25 208:13	<b>addition</b> 11:6 19:1 66:19	<b>affect</b> 110:16 169:15
<b>acquired</b> 156:8,21	127:13 191:23 220:4	<b>affected</b> 141:4,20,23
165:10	<b>additional</b> 14:1 43:18	<b>affecting</b> 94:25 108:6
<b>acquiring</b> 168:18	84:8 91:25 106:21,25	<b>affects</b> 100:18 198:24
<b>acquisition</b> 74:3 162:21	109:7 127:17 142:22	<b>affirm</b> 93:16
222:10	156:8 178:23 190:6,9	<b>affirmative</b> 22:12 112:11
<b>acres</b> 61:5,12	196:8 204:2,11 206:17	159:17
<b>act</b> 32:25 33:19 34:3	<b>additions</b> 152:2	<b>afford</b> 37:19 145:25
35:2,4 36:1 37:6,8,13	<b>address</b> 6:11 7:3,6 25:21	
38:4 41:22 43:10,20,23	26:3 53:1 88:15,20 92:14	
	119:15 120:23 121:21	
	142:11 145:6 182:13	

<b>afternoon</b> 128:11 153:21 182:24	<b>amend</b> 55:24	189:12 225:3 226:10
<b>age</b> 94:21 95:12 139:12	<b>American</b> 94:5 119:7	<b>applications</b> 55:16
<b>agnostic</b> 135:24	<b>amount</b> 22:24 60:10 74:9 77:9 103:25	<b>applied</b> 56:14 84:23 85:23 113:23 139:5 175:12 179:18 206:10
<b>agrarian</b> 62:7,19	<b>amounts</b> 66:20	<b>applies</b> 36:14 43:12,16 46:16 122:8 123:5 139:18
<b>agree</b> 12:21 23:22 36:22 40:3 45:13 49:9 133:9 134:17 135:18 197:2,5 198:2,5 203:10 208:25 212:23	<b>analysis</b> 68:6 79:16 81:22 94:22 96:10 167:20 179:13 226:7	<b>apply</b> 139:25
<b>agreed</b> 27:7 73:12 75:24	<b>analyzed</b> 70:16	<b>applying</b> 83:12 84:5,21 85:16 91:22 93:5 94:23 146:3
<b>agreement</b> 156:2 182:3	<b>anchor</b> 52:7,10,17	<b>apportioned</b> 156:4
<b>ahead</b> 4:21 5:25 17:2 25:9 27:23 29:16 49:5 50:13,19 53:3 58:11 59:23 82:25 98:3 117:10 123:25 142:17 151:12 165:13 177:7 182:18 187:2 191:17 214:3 215:9 219:16 221:11	<b>angle</b> 186:6,7 188:8	<b>appraisals</b> 215:17
<b>aid</b> 53:7	<b>annually</b> 108:15	<b>appraiser</b> 76:16 194:13, 19 195:14 206:9 215:20, 21 216:1 217:1
<b>air</b> 135:20	<b>answering</b> 210:19	<b>appraisers</b> 195:1
<b>aired</b> 78:2	<b>answers</b> 32:10 87:11 118:23 139:3	<b>appropriately</b> 85:23
<b>align</b> 94:25	<b>anticipate</b> 74:3 101:22 118:19	<b>approval</b> 16:4 55:21 56:3
<b>aligned</b> 45:7	<b>anybody's</b> 34:7	<b>approve</b> 11:14
<b>allegations</b> 150:2	<b>APA</b> 38:17	<b>approved</b> 56:25 57:14 58:11 61:11 66:12 80:7 155:15 156:13
<b>allowed</b> 30:11 72:1	<b>APLIC</b> 178:3,9 180:3	<b>approximate</b> 73:25
<b>allowing</b> 77:5 211:13	<b>apologize</b> 30:4 143:15, 22	<b>approximately</b> 8:9 51:16 99:25 163:12 165:16
<b>alluded</b> 180:3 222:17	<b>appeal</b> 9:12	<b>April</b> 11:2 56:15 58:21
<b>alongside</b> 11:15	<b>appearances</b> 4:22	<b>area</b> 59:6 70:13 79:21 80:6 81:9,21 93:24 100:25 101:3,5,20,21,23 102:19 103:3,4,10,11 104:2,10,12 107:7,8 108:7 109:16 112:21,24 113:6 114:10,12 119:16 130:25 131:4 136:19 162:7 170:18 171:16
<b>alphabetical</b> 150:24	<b>appeared</b> 216:3	
<b>alter</b> 127:23	<b>appears</b> 25:16 186:4 196:7 218:4	
<b>altered</b> 32:17	<b>applicability</b> 32:25 44:24	
<b>alternate</b> 102:5	<b>applicable</b> 13:23 88:3,5 113:24	
	<b>applicant</b> 11:25 18:13 19:6,8 54:4	
	<b>application</b> 58:21 144:1, 4,14 147:20 148:7 149:2	

172:18,19 191:24 197:10 213:15 214:9,15 222:15	<b>attended</b> 144:5 145:10	116:8,9 118:21 121:3,25 141:18 143:1,8 146:14 147:16 166:16 167:2 169:4,7 177:8 181:4 183:17 196:6 197:23 210:16 214:13 218:6,24 221:16
<b>areas</b> 81:2 107:10 129:22 141:8 192:5 200:10 216:6,11	<b>attention</b> 72:17	<b>backdrop</b> 62:7
<b>argue</b> 199:9	<b>attorney</b> 192:19,20 194:24 195:2	<b>background</b> 149:25 175:2 223:7
<b>arguing</b> 14:12 15:15	<b>attributable</b> 133:11	<b>backing</b> 35:6
<b>argument</b> 43:15 57:5 143:21 178:23,24	<b>attributes</b> 139:6	<b>bad</b> 104:9 130:13,15 135:19 210:2
<b>arguments</b> 6:19 9:14,15, 18 13:18	<b>August</b> 56:20 57:1	<b>badgering</b> 86:23
<b>arise</b> 125:9	<b>authority</b> 44:9,21 45:2 48:17 49:1	<b>balance</b> 23:21
<b>arisen</b> 76:6	<b>authorize</b> 38:8	<b>Bald</b> 178:4
<b>arms</b> 188:10	<b>automatically</b> 116:20	<b>ball</b> 152:20
<b>arose</b> 129:12	<b>avalanche</b> 137:3	<b>Bangt</b> 218:16
<b>art</b> 20:25 184:16	<b>avian</b> 178:3	<b>bank</b> 175:8 176:7,14 203:18
<b>aspect</b> 124:24	<b>avoid</b> 147:24 149:18 171:13,16 172:23 212:19 213:9	<b>banks</b> 176:13 202:23 203:20
<b>assess</b> 55:22 94:19	<b>avoided</b> 212:3	<b>Barker</b> 27:13 28:6,7,9,22 29:4,9 40:16 50:20 52:21,22,23 78:13,21 82:21 83:1,6 87:16 89:15 91:1,12,13 93:11,22 97:17 118:5 119:14,23 122:8 123:2 124:3,4,12 128:6,11 131:3 132:25 133:20 136:8,16 139:1,3 140:12 142:3 144:12
<b>assessments</b> 84:16	<b>avoiding</b> 210:23	<b>Barker's</b> 50:13 82:8 93:5 120:18 153:22
<b>assign</b> 133:11	<b>aware</b> 4:11 88:10 95:18, 21 97:2,13 104:21 105:2, 9,16 107:17,22,25 125:13,16,17 126:14 128:1 131:18,19 132:23 134:6,7 152:11 154:13 157:23 174:13,14 180:10 199:3 204:21 211:18,21 213:2,16 216:18 225:4	<b>based</b> 10:16 41:9,13 48:14 68:3 71:6 88:13 91:14 102:12 105:24 108:25 109:4 116:16
<b>assist</b> 8:3 59:16	<hr/> <b>B</b> <hr/>	
<b>assume</b> 109:24 153:5 164:21 169:5 194:13	<b>B-1</b> 177:12	
<b>assumed</b> 76:17 90:10 119:23	<b>back</b> 8:12 15:23 18:5 21:5 41:6 50:21 51:10, 19,23,24 52:1 55:1 60:17 63:1 86:7 96:25 99:8 100:13 103:12,21 108:9 110:21 114:3 115:9	
<b>assumes</b> 194:17		
<b>assuming</b> 112:22 143:1 160:3 161:4,8 172:9		
<b>assumption</b> 158:1 195:16		
<b>assure</b> 22:8 94:25		
<b>atmosphere</b> 62:19		
<b>attached</b> 195:25 221:23		
<b>attendance</b> 63:20		

119:25 123:9 137:20 138:17 155:16 162:24 173:11 175:3,5 178:7 179:1 180:8 203:12 206:5,6 226:3,20 227:17	168:23 173:2,7,12,16,19, 24 174:3,5 175:2 179:18 204:23,25 223:20 226:10 227:7	<b>blessing</b> 16:5
<b>basically</b> 108:25 140:6 177:2	<b>bidder</b> 24:3 166:18	<b>blow</b> 149:14 190:24
<b>basis</b> 31:11 38:2 43:11, 22 46:7 47:22 63:8 77:6 125:12 137:10 207:21	<b>bidders</b> 18:24 173:4,18, 24,25 204:24	<b>board</b> 4:5,7 6:14,23 7:8, 10 8:3 9:3,7,12,16,21 10:4,7 12:25 13:1,12 14:15 15:11 16:1,4,25 17:16 18:2,4,9 20:10,12, 13,15,19 21:15,21 22:19 23:6,13 24:1,12 25:21 26:9 29:24 31:5,15 32:20 33:13 34:5,21 35:3,15 36:5,11,16 37:6,7 38:18, 22,24 40:3,8 41:3,7,16, 23 42:7,10 43:12,16,19 44:18,21,23 45:11,25 46:3,5,7,8,20 47:13 48:1 49:3,17 50:6 51:12 52:2 53:7,20 54:15 58:6 59:15 60:1 65:23 66:16 68:20 69:1,6,11,19,20,25 70:1 72:4 75:17,22 77:5,21,25 92:10,11,14,16,18,20,23, 24 93:1,2 119:25 120:14, 20,24,25 123:18,21 133:14,19 146:6,10,12, 16,19 147:15 148:15,17, 20,21 149:8,23 152:11 153:10 154:25 155:13 159:2 181:5,15 189:22 192:11 206:14 207:24 208:1 214:25 215:24 216:11 221:4
<b>Bates</b> 79:9,23	<b>bidding</b> 22:5 172:25 204:17 223:5	<b>board's</b> 42:3 45:22 50:24 53:17 153:23
<b>battle</b> 62:18	<b>biding</b> 21:4	<b>body</b> 166:11
<b>bear</b> 118:19 135:7 185:16 210:6 212:16	<b>bids</b> 9:21 10:20,21,24 11:7 13:16,18,19 14:2,4, 7,13,24 15:3,5,12,21 16:5 18:14,19,23 19:23 20:20 21:5 22:1 55:2,5 65:13 66:13,14,24 67:17 68:3 70:2 77:8,15 85:21 154:11 155:6 166:15,16 167:6 174:8 204:17 223:3,4,25 224:3,8 227:7	<b>boggles</b> 77:11
<b>beating</b> 60:22	<b>big</b> 188:22 214:4	<b>bond</b> 58:3 61:11 62:25 63:5 65:16,22 70:13 71:25 72:2 76:25 110:10 112:15 163:3 165:21 222:4
<b>beautiful</b> 61:2,8,17	<b>biggest</b> 111:11 112:16, 18	
<b>begin</b> 20:15 60:3,13 171:20 221:6	<b>binding</b> 19:20 49:9	
<b>beginning</b> 40:8 73:2 171:6 182:14 210:3	<b>bird</b> 96:14 178:5	
<b>begins</b> 53:11	<b>birds</b> 135:20 178:4 180:4	
<b>behalf</b> 13:10 151:18	<b>bit</b> 15:21 22:14 35:4 42:24 48:16 107:12 121:7 123:20 145:12 160:14 161:6 164:25 171:12 175:1 181:22 184:23 202:18 206:12 219:25 223:6	
<b>belong</b> 75:4	<b>blackout</b> 113:6	
<b>Ben</b> 89:5 118:10 194:18	<b>blackouts</b> 63:10 70:8 101:22 102:22 104:2,6, 10,13 109:16 129:21	
<b>beneath</b> 61:1	<b>bless</b> 21:16	
<b>benefit</b> 43:7 159:23		
<b>benefits</b> 213:22,23		
<b>Benjamin</b> 27:12,13 55:10 142:7,23 151:7 153:3		
<b>Berry</b> 5:16 26:22		
<b>bid</b> 13:21 19:17,18,19 20:5,6 21:11 22:4 66:13, 20 77:20 85:3 86:15,16, 18 91:11 92:6 93:7,9,12 120:17 122:9,11 123:5,6, 8,15 134:23 166:13		



**bonded** 18:14 55:5  
**bottom** 205:12  
**boxing** 161:14  
**break** 26:20 27:1,2 50:12  
 51:7,9,14,18,25 52:9  
 117:21,24,25 120:12  
 128:12 180:22,24 181:3  
**breakers** 102:18 116:7  
**Brereton** 5:14 39:1  
 72:20,24 128:5 144:24  
 181:7  
**Bret** 5:2 143:2 206:19  
**briefly** 9:10 10:14  
**briefs** 54:16 55:1  
**Brighton** 111:4  
**bring** 32:14 60:15,16  
 92:23 93:1 127:17 137:9  
 217:3  
**broken** 58:25  
**brought** 92:19 125:6  
 137:10 145:17 224:8  
**brunt** 111:11  
**budget** 108:9,23  
**budgeted** 74:2  
**build** 68:10 73:24 74:15  
 75:15 76:10 79:14,18  
 134:21 155:15 158:24  
 160:15 161:7,17 164:22  
 168:3 192:13,14 214:4  
**building** 106:6 159:11  
 160:9 166:9 171:3 209:7  
**built** 68:9 76:20 116:25  
 117:1 126:11 129:1  
 131:10 184:9  
**bump** 96:23

**bunch** 98:22 212:11  
**burden** 68:17 210:6  
**buried** 87:23 124:17  
 125:18 131:1,15  
**bury** 62:25 63:5,15 65:9,  
 10,11,15 66:13,17 67:2  
 68:5 69:8 72:9 73:11  
 77:10 85:3 225:1  
**burying** 62:21 124:15  
 225:5  
**bus** 113:18  
**business** 20:20 121:5  
**businesses** 59:6  
**button** 142:25 143:1,10,  
 12,16,22  
**buy** 68:16 69:4

## C

**cable** 67:15 122:12  
 125:9,10 126:21 127:3,5,  
 14,15,17 154:12,14  
**cables** 176:6,7,8  
**Cadillac** 67:19  
**calculate** 114:6 205:18  
 207:18  
**calculated** 17:20  
**calculation** 193:22  
**calculations** 98:16  
 192:23 193:15 217:16,18  
 221:19,23  
**calendar** 154:6  
**call** 26:4 61:6 83:22  
 96:11 108:19 111:24  
 116:7 118:4 142:7 143:4  
 186:8

**called** 7:7,22 18:12 25:22  
 29:5 40:10 107:18  
 134:22 140:23 151:8  
**calling** 25:13 118:10  
 206:23  
**calls** 206:20 219:6,9  
 220:7  
**candidly** 74:5  
**canyon** 93:24 94:12,15  
 95:19,23 100:2 101:1,12  
 103:15 141:10,11 200:14  
**canyons** 107:10 137:1,  
 15 141:23  
**capability** 138:21  
**capacity** 84:8 90:11  
 91:25 101:13 111:3  
 140:5 152:22 154:14  
**capital** 121:6  
**careful** 78:4  
**carry** 214:14  
**case** 24:4 52:6 74:17  
 75:17 79:20 112:17  
 114:25 122:21 126:18  
 127:9 136:23 139:16  
 143:6 146:5 152:16  
 158:8 161:13 163:1  
 194:12 195:11,15 202:21  
 210:4  
**cases** 128:20 209:23,24  
**Castles** 61:9  
**catastrophe** 106:19  
**catastrophes** 71:7  
**catastrophic** 106:11  
 107:18,19 129:20  
**cautious** 4:12  
**cease** 183:5

<b>center</b> 74:16	220:9,24 221:10 224:5,9, 16 226:16,19 227:1,12	76:19 199:6
<b>centerline</b> 190:19,25 193:7 194:9 196:11	<b>challenges</b> 15:4 22:11	<b>citizens'</b> 62:24
<b>centuries</b> 63:7,8 64:23 110:2	<b>chance</b> 72:9 128:12	<b>city</b> 4:6 5:7,9 6:9 7:3 10:5,8,17,18,22 11:3,8, 16,21 12:5,19 13:4,10 16:25 18:16 19:6,7,16,25 20:6 22:13 27:8,15 36:3, 19 39:3 42:10 46:16,17 47:1 50:7,15 52:5 55:8, 11,13,18,23,24 56:2,5,9, 17,22,24 57:1,5,6,9,13 58:1,12,14,15,17,21,25 60:5,17,21,23 62:22 63:18 64:3,8 65:8,20 67:18 70:5 76:13 80:6 81:2 82:18,25 93:23 100:22,25 101:3,7,12,20, 23 102:19 103:4,18 108:1,7 111:5 112:14,21, 24 113:1,6 114:9 120:13 123:13,19 129:22 140:22 142:19 143:4 144:3,15 145:12,13,17 146:23 147:4,7,21 153:5 156:14, 24 159:3,4 162:15 163:2, 8 164:5,23 165:21 188:9 189:25 190:2 199:5,23 200:9 209:3 214:9 222:1, 15 223:3 224:14,25 225:4 226:12,23
<b>cetera</b> 23:22 42:19 175:6 203:15	<b>change</b> 39:20,24 187:23, 25 188:17,23	<b>City's</b> 6:17,22,24 8:6,16, 25 55:19,22 66:2,7 67:20 72:9 142:11 168:14 223:1
<b>chair</b> 23:10 24:8 46:21 92:13 118:15 121:1	<b>changed</b> 184:19	<b>Civil</b> 46:4,23
<b>Chairman</b> 4:3 5:6,10,15, 24 8:4,15,20 9:9,25 12:17 14:14 16:17,24 17:25 20:8 21:19 22:17 23:13,17 24:10,19,22 25:2,6 26:1 27:17,25 28:7,9,12,20,24 29:8,20, 24 30:13 31:5,13 32:1,2, 19 33:1,16,24 34:19 35:8 36:9 38:20 41:1,19 42:5, 23 43:6 45:9,18,24 47:2, 24 48:15 49:14,22,24 50:3,5,17,22 51:5,15,19 52:1 53:3,12,24 54:3,11 59:20 72:18,23 78:9 82:11,20,24 87:7 89:22 90:1,21 92:7 97:19 98:2 117:20 118:7,12,16 120:7,11 122:23,25 123:17 124:2,6 128:3 136:9 138:2,6,23 140:9, 14,18 142:1,6,10,20 143:3,13,18 144:22 145:4 146:8 147:12 148:13 149:22 150:6,9, 14,16,19,21,23 151:3,11 153:4,14 180:19 181:4, 19 182:5,12,17 186:16, 21,23 187:1,4,8 190:13 194:20 195:8,10 206:24 207:10,20 208:22 209:15 210:7 214:21 215:4 216:21 219:11,15,24	<b>chapter</b> 37:9,10,12	<b>claim</b> 38:10 133:22 192:6 194:1
	<b>characteristics</b> 139:7	<b>claimed</b> 70:16 134:20
	<b>characterized</b> 134:24	<b>claiming</b> 191:2,6
	<b>charge</b> 73:12 83:12 84:17,18,21 85:10 133:10	<b>claims</b> 63:12 70:8 77:2
	<b>charged</b> 132:15	
	<b>charging</b> 211:14	
	<b>chart</b> 193:5	
	<b>cheapest</b> 65:1	
	<b>check</b> 209:11 218:22	
	<b>checking</b> 212:15	
	<b>chooses</b> 159:2	
	<b>chose</b> 12:5	
	<b>chosen</b> 166:18	
	<b>circle</b> 41:6	
	<b>circuit</b> 62:2 64:7 67:9,12 76:14 89:10,11 102:18 127:24	
	<b>circuits</b> 64:11	
	<b>circumstance</b> 5:19	
	<b>circumstances</b> 137:16 203:16 204:15 214:6,17	
	<b>citations</b> 201:19	
	<b>cities</b> 141:18 225:19	
	<b>citizens</b> 57:7 61:10 62:17 63:18 65:6 73:6,8 75:4	

**clarification** 8:5 10:1  
26:2,5 27:21 43:1 52:18  
97:20 103:8 113:9 140:8

**clarify** 9:2 27:18 51:20  
52:3 96:21 105:10  
115:11 122:24 130:5  
135:4 216:7

**clarity** 208:5

**Clark** 21:23 22:18 23:9,  
15 24:9,16,17 31:17  
32:22 44:20 45:10 49:20,  
21 118:15,17 120:1,4,8,  
14 122:5 138:25 139:2,  
15 140:4,7,10 149:24  
150:11,12,15

**Clark's** 33:17

**clash** 62:7

**cleanest** 40:4

**clear** 15:20 16:3,7 23:20,  
24 26:13 45:22 47:5  
77:23 85:19 95:4 96:16  
97:16 152:7 155:14  
168:22 199:16 200:5  
205:14 207:16 218:25  
220:5

**Clegg** 27:13 55:10 89:5  
118:11 142:7,23 143:19,  
24 144:3 145:8,9,18  
146:2,7,23 147:2,5  
148:2,8 151:1,3,7,17  
153:3,16,21 180:25  
181:8,12 182:8,19,24  
187:12 188:4,13 190:17  
192:2,25 194:22 195:4,  
13 196:12 201:4 207:22  
208:2,14 210:13 215:12,  
22 217:17 218:20 220:2,  
22 221:17 224:11 227:25

**Clegg's** 144:18 149:6  
214:22

**clients** 101:7 160:1,11,15  
161:18

**clock** 26:25

**close** 42:14,17,21 43:9  
61:18 103:3 197:15  
221:5

**closed** 33:22

**closer** 28:17 169:10  
189:16

**closing** 34:2 43:22 44:1  
72:9

**code** 37:16 55:24 145:23  
177:19 180:15 181:23  
201:17

**codes** 178:8 179:16  
181:23

**cold** 54:17

**collective** 77:4

**collectively** 73:12 199:6

**Colorado** 225:16

**comfortable** 20:19 21:9  
22:25 42:2

**commence** 69:12 71:13

**commencement** 65:20  
66:1 69:10,12 70:5 71:6  
72:5 154:25 159:3

**commencing** 71:18  
164:8

**comment** 10:2 26:8  
42:25 43:4 45:20 51:20  
52:3,19 57:3,10 142:22

**commenting** 42:24

**comments** 17:3 22:19  
31:15 32:20 36:11,19  
39:2 41:6 44:18 49:18  
51:11 90:22 146:11

147:18 149:9,23

**commission** 26:19 31:23  
42:16 43:8,14,18 46:17,  
25 56:5,17,21 57:1 190:1

**commissioner** 21:24  
35:23 50:14 52:25 98:7  
119:21 120:1

**commitment** 73:9 221:4

**committed** 73:16

**common** 30:5 32:12  
33:7,15 35:23 124:16,19  
171:1 191:24 192:5

**communicate** 51:8

**communication** 144:15  
176:7

**communications** 144:2

**communities** 60:23  
62:20,23

**community** 60:12 62:18  
63:7

**company** 183:13,17  
225:15

**compared** 190:8

**compelled** 217:3

**compensate** 68:16

**compensation** 75:6

**competing** 22:3 68:20

**competitive** 18:13,20  
19:23 20:3 21:4

**compiled** 215:18 226:3

**complete** 116:21 152:21  
159:13 165:2,10 169:2  
199:22 200:17,19 219:4  
220:15,19 222:11 227:17

**completed** 59:9 65:18  
108:19 112:3 200:2

<b>completely</b> 90:19 114:23	<b>conclusions</b> 64:4	<b>confidential</b> 42:18 79:11 95:25
<b>completion</b> 156:3	<b>condemn</b> 69:4 157:16	<b>confirm</b> 89:22 122:5 124:2
<b>compliance</b> 132:1 178:6 182:3	<b>condemnation</b> 157:8,12 158:6 210:24 211:3 212:8	<b>confirmed</b> 4:6 187:4
<b>complication</b> 110:23	<b>condition</b> 113:7 126:24 162:9	<b>confused</b> 118:23
<b>complications</b> 110:15	<b>conditional</b> 10:16,18,23 11:1,8,13,18,22,23,24 12:9,12,15 13:14 18:11 19:2,10,13 55:4,14,25 56:9,14 57:12,15 58:16, 22 66:8 71:16 144:1,8 145:22 146:4 155:8 156:5 157:3 162:21 163:11,14 164:2 166:7 189:12 190:1 200:4 225:3 226:11,24	<b>connected</b> 159:15
<b>complied</b> 55:3		<b>connection</b> 12:23 13:7 86:3,12
<b>comply</b> 38:17 51:3		<b>connects</b> 100:21,24 140:6
<b>component</b> 159:10 211:4		<b>consensus</b> 46:11
<b>components</b> 130:2 161:22 174:11		<b>consequences</b> 161:6 214:1
<b>compromise</b> 45:17		<b>consideration</b> 9:17 95:16 139:13 150:4
<b>concede</b> 73:21		<b>considerations</b> 226:1
<b>conceded</b> 73:23		<b>considered</b> 133:2 170:14
<b>concedes</b> 76:16		<b>consistency</b> 32:23
<b>concept</b> 223:14	<b>conditions</b> 10:18,19 11:21 12:1,2,8,10,15 77:17 107:6 141:2,10 155:4 169:20 205:22 213:25	<b>consistent</b> 37:10 153:10 197:18 199:7 207:4
<b>concern</b> 20:18 21:7,11, 17 23:25 35:1 39:11,16 40:21 48:14 55:6 58:24 86:3 138:14 157:6 161:21 181:21 199:13 225:9	<b>conduct</b> 48:10	<b>constraint</b> 171:5
<b>concerned</b> 34:9 35:5 44:8 60:17 65:7 116:17 130:17 182:9	<b>conducted</b> 225:4,6 226:13	<b>constraints</b> 135:17 165:1 172:1
<b>concerns</b> 7:9 9:19 44:16 48:16,25 61:19 73:2,8 78:2 88:19 136:18,21 137:3 141:16 182:1 222:5	<b>conductor</b> 96:19 168:1	<b>construct</b> 158:11 159:24 169:25 170:7,10 171:12 208:12
<b>conclude</b> 26:10,12	<b>conductors</b> 164:12 198:25	<b>constructed</b> 103:13 117:6 140:3 159:18,22 187:20,22
<b>concluded</b> 120:12	<b>conduit</b> 67:9,10,24 89:9 122:10 124:17,24 125:10,15 126:2 127:3,4 135:6 175:8,15,16,24 176:1,16,18 177:12 178:18,20 201:22,24 202:5,7 203:8,9	<b>constructing</b> 89:18 171:13 172:6
<b>conclusion</b> 191:12 206:20,23 219:6,10 220:8	<b>confer</b> 39:9 75:24	<b>construction</b> 10:25 12:1, 6 18:14,17 19:4,17 58:5 71:18 72:7 76:11 86:2,6 89:17 91:4,7 97:11 99:1
	<b>conference</b> 9:5 28:19	

118:22 119:1,12 124:21  
125:23 126:9,11 132:13,  
20 133:11 139:7 140:1  
168:13 169:17,18,21  
170:15 171:20 179:9  
223:8,20,23 224:1

**consultant** 183:14,17

**consulting** 208:16

**contacted** 158:2

**contained** 12:11 19:18  
219:7

**contemplated** 135:11

**context** 14:21 23:21  
103:1 150:4 201:5

**contingencies** 79:17,19,  
20 81:19

**contingency** 79:16 81:22  
105:21 126:20

**continue** 23:22 58:18  
59:11 76:12 102:14  
152:18 158:9 171:22

**continued** 58:18 59:1  
124:10

**continues** 26:11 55:8  
58:14 175:22

**Continuing** 152:23

**contract** 154:17,18  
183:7,8,9,18,19

**contracted** 183:12

**contractor** 169:1,9

**contractors** 55:5 66:13  
134:23 173:11 203:1

**contracts** 154:21

**contradicted** 20:6 70:7

**contradicts** 219:8

**contrary** 75:22

**control** 138:20 171:15

**controversial** 62:16

**controversy** 22:15

**controverted** 19:22 20:4

**conveying** 50:24

**convinced** 51:6

**cooling** 116:13

**coordinate** 32:11 41:13

**Coordinating** 119:6  
131:22

**coordination** 39:7,11

**copy** 183:25

**copyright** 181:24

**Corbin** 5:8 13:9 29:17  
119:21

**core** 14:3,11 84:11

**corner** 64:15,19

**coronavirus** 63:20  
154:8,10

**Corporation** 119:7

**correct** 13:19 16:20,21,  
22 33:19 46:22 68:3 80:2  
83:10,11,14,15 85:17,25  
86:1,8,9,11,20 87:23  
88:2,14 89:11,23,24  
93:25 94:1,5,6,9,10  
95:20 96:25 97:1 99:3,4  
100:15,17,22,23 101:3,5,  
8,11,15,16 102:16,17  
104:16,17,24 106:1,2  
107:21 108:16 109:4,8  
110:6,12,17,24,25 111:5,  
6,12,17 112:3 114:24  
115:6 124:18 126:15,16  
127:25 129:4,5,7 134:25

135:14 138:17 139:4  
142:8,9 143:7 156:19,21  
159:13,20 160:4,12,13,  
16 161:7,18 162:12  
163:13 164:5,9 171:3  
172:13 173:2,9 177:4,10  
178:15 179:5,21 180:11  
194:15 200:19,20  
218:18,19 220:16

**correctly** 188:8 189:14

**cost** 19:21 67:6,15,21,24  
68:16 69:8 75:13 77:9,12  
144:13 145:15 147:3,5  
169:6 171:11 173:19  
205:19,23,24 206:15  
208:10 209:7,12 226:3,5,  
7,13 227:6

**costs** 11:1 15:12 16:11,  
12 17:13,16 18:16 19:5,  
12 65:11,24 66:3,6,7,17  
68:2,5,7 69:2,6,15,17,19  
70:3 73:13 75:15 132:13,  
20 133:11,21,22 134:20  
152:8 163:4 169:1  
205:15,18,25 206:22  
207:2,3,6,8,9,12,13,17,  
19 208:6,7,12 210:3  
212:3 225:5,24,25 226:1  
227:9

**Cottonwood** 103:14  
141:22

**Cottonwood-snyder**  
102:2

**council** 11:14 46:16 47:1  
56:5,22,24 57:2,9 119:6  
131:22

**counsel** 39:9,11 118:20  
119:17 128:13 181:14,16  
191:21 192:17 193:3

**counties** 141:18

<b>counting</b> 96:4	<b>credibility</b> 223:6	<b>customers'</b> 115:2 116:11
<b>county</b> 11:14,18,20 55:17,20 58:15 71:16 74:16 101:14 140:22 156:13,24 163:12 164:4, 23 208:19 210:15 225:7, 10,18	<b>Creek</b> 61:4 93:25 141:7	<b>cut</b> 167:12
<b>county's</b> 55:21	<b>criminal</b> 35:3	
<b>couple</b> 16:15 53:1 59:12 110:14 127:20,21 139:2 148:6 164:24 165:2 166:13 172:25 177:1 183:16 223:1 227:21	<b>criteria</b> 139:8 161:9 162:7	<hr/> <b>D</b> <hr/>
<b>court</b> 5:16 7:21 30:23 33:5,23 35:24 37:1 38:6 46:25	<b>critical</b> 158:22 163:5 169:16 170:4 173:13	<b>damage</b> 104:19 115:19 172:22 176:3,20 202:8
<b>courtesy</b> 30:22 52:5,13, 16	<b>cross</b> 53:22 66:10 162:19 220:19	<b>damaged</b> 104:9 117:13, 15
<b>courtroom</b> 30:7,17 37:4, 23	<b>cross-examination</b> 14:4 22:7,12 27:9,16 39:19 40:22 44:14 48:21,23 82:18,22 83:4 118:20 119:17 120:13,22 124:10 128:6,9 136:17 153:19 180:25 181:7 182:22 224:10,13,19,21	<b>damages</b> 74:12 75:12 206:18 207:5
<b>courtrooms</b> 30:17	<b>cross-examine</b> 53:11 78:3	<b>damaging</b> 115:3
<b>courts</b> 33:5,18	<b>cross-examined</b> 27:20 44:15 47:19 121:21	<b>Darin</b> 18:21 27:13 89:5 118:11
<b>cover</b> 129:13	<b>cross-examining</b> 53:6 72:15	<b>data</b> 74:16 95:25 96:1 188:10
<b>coverage</b> 129:3	<b>crossing</b> 172:20	<b>database</b> 81:12,14
<b>covered</b> 128:16 218:7	<b>CUP</b> 55:21 58:20 144:10 148:11 160:18	<b>date</b> 11:2 65:20 66:1 69:10 70:5 71:6 72:5 81:13 159:3,22 166:3 178:22
<b>Covid-19</b> 71:23	<b>current</b> 64:14 105:24 116:16 184:9 185:6 193:15	<b>dates</b> 56:6
<b>cracks</b> 25:25	<b>customer</b> 102:10 105:3 113:25 115:5 116:2	<b>Dave</b> 118:17
<b>Craig</b> 27:14	<b>customers</b> 70:12 84:4 91:21 101:14 105:11,17, 20 106:9 107:5 108:6 111:4,14,22 112:19,20, 21 114:25 115:17 116:17 121:12 137:23 213:1	<b>DAVID</b> 21:23 23:9 24:17 31:17 32:22 44:20 49:21 118:15,17 120:4 122:5 139:2,15 140:4,7 149:24 150:12,15
<b>crank</b> 121:13		<b>day</b> 14:12 60:20 210:25
<b>Crater</b> 61:10		<b>day-to-day</b> 174:11
<b>create</b> 166:11 173:16 187:24		<b>days</b> 7:20 8:9 10:23 11:7 16:15 25:17 26:14 58:22, 23 60:2 61:9 64:4 69:25 125:3 127:20 154:9 211:1
<b>created</b> 190:3		<b>dead</b> 67:12 89:10 90:14 122:12 125:14 127:23
<b>creates</b> 123:10 139:19		
<b>creating</b> 33:12 85:2 174:7 179:17,18		

135:2,12	206:21	<b>depicted</b> 187:5
<b>dead-end</b> 167:6 186:6,7	<b>definitions</b> 133:15	<b>depicts</b> 197:16
<b>deadline</b> 11:4 119:10	<b>definitive</b> 19:11	<b>deprive</b> 159:9 160:24 161:12
<b>deadlines</b> 11:24	<b>definitively</b> 198:11	<b>depth</b> 203:12
<b>deal</b> 4:22 6:15 28:2 109:2 113:1 170:11 188:22	<b>delay</b> 55:7,20 58:18 72:3 110:9 152:23,24 222:2	<b>derive</b> 159:22
<b>dealing</b> 54:13 170:16 172:2 185:2	<b>delayed</b> 58:14 70:12 152:10 154:25 155:3	<b>describe</b> 186:4
<b>dealt</b> 25:11	<b>delaying</b> 161:11	<b>description</b> 226:1
<b>death</b> 62:17	<b>delays</b> 58:19 59:1 71:22 154:7	<b>descriptive</b> 24:6
<b>decade</b> 179:7	<b>delegated</b> 121:17	<b>design</b> 139:25 140:2 152:19 164:11 165:23,24 167:5 168:10,20 169:3 179:8 187:16 199:21 200:14,19 211:4 220:15 222:9 223:19 226:8
<b>decades</b> 63:7 64:23 103:16 110:1 156:2	<b>deliberation</b> 44:19	<b>designed</b> 115:23 165:8 178:21
<b>December</b> 55:19 57:10, 13,21 155:5 172:10	<b>Dell</b> 131:16	<b>designing</b> 168:10
<b>decide</b> 24:2 50:12 75:2	<b>deload</b> 169:1	<b>designs</b> 219:3
<b>decides</b> 41:16	<b>demonstrated</b> 22:2	<b>desire</b> 53:15 55:24 88:12 211:16 212:5
<b>decision</b> 58:10 70:1 152:7,17 153:10 155:4,7 156:10 174:16 199:16 200:21 205:14 207:16,24 219:1 220:5	<b>demonstrates</b> 209:25	<b>desperately</b> 219:19,22
<b>decisions</b> 148:20	<b>denial</b> 24:21	<b>destroys</b> 223:6
<b>decisive</b> 199:16 200:6	<b>denied</b> 23:11	<b>detail</b> 104:5 136:20 174:4
<b>Deer</b> 61:4 111:4	<b>deny</b> 23:20 24:7,18 25:4 146:6	<b>detailed</b> 125:22
<b>defective</b> 67:17	<b>denying</b> 24:23 25:1,7	<b>details</b> 127:7 156:17 196:5 204:22
<b>defense</b> 38:10	<b>department</b> 83:21,22,23 84:15 126:10,12 131:23, 25 139:18 175:10 179:15	<b>determine</b> 15:11 16:11 17:12 62:24 65:24 66:6, 17 69:2,6,7,9 97:5 203:11 226:3
<b>deferred</b> 191:21	<b>depend</b> 117:15 164:25 179:12	<b>determined</b> 69:15,20 176:4 202:9,12 223:15
<b>deficiencies</b> 156:7	<b>depending</b> 117:15 125:4 132:11 157:10 160:25 166:19 171:15 172:3 203:16	<b>devastating</b> 71:8
<b>define</b> 111:18 133:3,19 157:19 189:5	<b>depends</b> 133:3 157:5 169:9 170:3 172:7 204:7, 14	<b>develop</b> 139:23 152:13
<b>defined</b> 206:22		
<b>defining</b> 207:12		
<b>definition</b> 133:4,5,12		

**development** 223:22  
**devices** 115:20 116:1  
**diagram** 80:25 81:17  
 166:11  
**dial** 143:7  
**dialing** 143:1  
**diameter** 62:13 64:16  
 188:12  
**differ** 168:5  
**difference** 19:7 167:10  
 184:7 187:14 188:14  
 189:2 202:15 205:19,21  
 209:15  
**differences** 187:16  
**differentiated** 96:9  
**differently** 5:22 6:3  
 198:10  
**difficult** 38:13,15 58:12  
 60:5 116:5 137:1,2  
 203:22 204:10  
**difficulty** 137:7  
**dig** 203:1,8,22  
**digging** 76:24 202:16,17  
**Dimple** 131:16  
**dip** 11:15,19 130:2  
**dips** 115:8  
**direct** 27:11,24 36:24  
 39:10 55:9 78:19,22 80:1  
 81:24 82:8 89:15 90:2  
 91:15 93:10 122:19  
 134:9 136:16 143:24  
 148:4 151:15,17 152:5  
 153:2 159:8 176:24  
 183:20 195:19,25 197:24  
 199:19 205:5 217:13  
 218:3,9,25

**directed** 13:11 47:25  
 179:20  
**direction** 59:18 155:14  
 168:14,22  
**directly** 61:5 62:14 144:4  
 175:19 179:23 201:25  
**director** 83:8,21 90:6,17  
 91:3,19 126:7 129:17  
 131:4  
**disagree** 12:21 19:10,25  
 67:10 162:10  
**disciplines** 160:21  
**disclosure** 37:19 38:18  
 145:24  
**discontinue** 30:20  
**discuss** 6:7 7:4 10:14  
 18:8 23:6,14 42:20 57:11  
 65:12 90:25 128:12  
 215:7  
**discussed** 26:8 27:7  
 48:25 55:2 101:18  
 108:12 113:3 128:18,23  
 153:6 162:19 175:12  
 207:22  
**discusses** 55:23  
**discussing** 51:21 52:4  
 108:14 126:25 130:8  
**discussion** 20:13,16  
 23:18,23 24:12 36:5 41:7  
 42:10 44:19 45:11 47:13,  
 20 49:4,16 92:16 93:1  
 120:25 134:4 148:21,25  
 150:10 154:11 199:3  
**discussions** 21:21  
 174:10 192:16 198:18  
 202:14 213:15 223:17  
 225:14  
**disparities** 224:8

**disparity** 224:4  
**disposition** 6:6 7:2 10:12  
 13:8 17:5 18:6 20:14  
 23:1 24:18,23 25:8  
**dispute** 13:11 14:10,23  
 19:15 20:4 22:23 23:2  
 68:15 144:7 149:1,3  
**disputed** 75:16  
**disputes** 13:13 15:4  
 144:11  
**disruption** 154:13  
**dissuade** 77:4  
**distance** 201:13 203:12  
**distinct** 13:17 14:10 62:8  
**distinction** 133:17  
**distinctly** 62:6  
**distinguish** 134:2  
**distributed** 8:17  
**distribution** 140:25  
 184:15,18,25 188:10  
**district** 33:18 46:24  
**disturbance** 175:16  
 178:14,19,22 201:23  
**docket** 4:5 8:8,10 54:4  
 181:5  
**document** 8:10 10:3 76:2  
 79:9,10,11,12,19,23  
 80:1,4,6,18,20,22,24  
 82:2 97:17 173:12,13  
 175:2 189:20,24 195:22  
**documents** 79:7 81:3,5,  
 13,16 114:9 145:17,19  
 173:17 174:5 200:3  
**dollars** 209:12  
**domain** 157:8



**donate** 211:16,24  
**door** 207:12,23  
**double** 62:2 64:7 76:14  
**doubled** 64:11  
**doubles** 67:6  
**doubling** 64:11  
**down** 48:9 57:25 64:1  
 71:2 93:20 94:8 95:23  
 96:24 99:6,18 100:5,14  
 101:2,7,13 102:13  
 104:20 109:11 111:9,10  
 112:16 113:2 115:9  
 118:2 129:14 131:11,16  
 154:23 157:2,9 162:20  
 212:21,25 213:10,12  
**downtime** 128:18  
**drafted** 25:17  
**Draper** 131:15  
**draw** 9:22 97:9 191:12  
**dream** 60:19  
**driven** 119:12 178:7  
 185:5  
**driver** 170:4  
**drivers** 170:18 178:2  
**driving** 121:13 178:6  
**drop** 94:8 114:22  
**dropped** 213:18  
**drops** 67:24 115:1  
**dual** 67:2,4,23 87:22  
 88:2,12 90:12 119:8  
 122:10,11 174:17,19  
 180:8  
**duct** 175:8 176:7,12,14  
 202:22 203:18,19  
**due** 6:22,25 7:2 9:1,13,23

10:4 15:23 23:21 32:17  
 36:2 57:4 66:11 67:17  
 101:22 104:12,16,19  
 105:4,19,20 133:23  
 149:12 154:8,10 184:6  
 219:2,20

**dug** 76:23

**duly** 29:5 151:8

**duration** 131:6

---

## E

---

**e-mail** 15:1 50:23 98:3  
 181:15

**Eagle** 178:5

**earlier** 24:5 107:4 118:1  
 131:24 149:4 162:19  
 179:14 199:20 201:11  
 213:9,20 220:18 221:25

**early** 40:23 55:23 56:12

**easement** 68:16 74:3  
 76:3 156:20 162:21  
 190:6,9,19,21 191:9  
 192:19 193:16 196:9  
 197:10 198:17 207:5  
 208:7 209:23 210:3  
 211:24

**easements** 68:7,9,23  
 69:2,7,13,15,18 70:3  
 71:12,15,18 73:14,22  
 75:11,19,22 76:7,13,18  
 77:2 147:9,10 155:24  
 156:1,8,12,19,23 157:2  
 159:1 164:9,10 168:18  
 191:3,8 192:4,12,18  
 206:1,11,18 208:13  
 211:5,13,17 212:9,11  
 216:7,12

**easiest** 65:1

**east** 61:6 131:11,16

**economic** 210:5

**effect** 63:6 140:24 174:6  
 212:1

**efficiency** 92:5,12

**efficient** 48:10 84:5  
 91:22 137:24 215:5,9

**efficiently** 171:7

**effort** 132:1

**eight-lane** 76:10

**elect** 55:20

**elected** 225:21

**electric** 84:9 92:1 119:6  
 139:6 223:12

**electrical** 105:4 119:7  
 139:18 184:12

**Electricity** 131:22

**electronic** 52:11

**electronics** 115:23

**Elizabeth** 5:14

**else's** 32:10

**emergency** 135:9

**eminent** 157:8

**employed** 183:11

**employee** 183:16

**employees** 65:2

**empty** 67:10 89:9 127:3,  
 4

**enable** 102:9,20

**end** 19:14 63:10 65:18  
 70:21 74:24,25 108:3  
 121:22 146:15 154:2,5  
 155:11,18 160:10 164:17  
 166:20 168:13 169:13

179:8,10 199:19  
**end-user** 115:6,7  
**end-users** 129:4 214:7  
**ended** 74:21 227:7  
**energize** 125:11  
**energized** 112:6 127:24  
 135:8 159:12 160:10  
**energy** 84:5 91:22  
**engaged** 209:10  
**engineer** 166:9 177:19  
 179:3 184:13 193:14  
**engineering** 123:9 126:9  
 139:19,25 167:19 168:8,  
 20 200:1,8  
**engineers** 160:21  
 193:19,21 213:15  
**ensuring** 84:3 91:20  
**entertain** 22:1 42:11  
 47:21 54:19  
**entire** 17:11 55:7 61:2  
 110:12 113:4,6 115:13  
 145:20 152:21 159:14  
 165:15 223:22 225:1,17  
**entirety** 103:2 144:19  
**entities** 88:17 110:8  
 226:2  
**entitled** 79:9 133:10  
**entity** 21:14 111:10  
 112:15 139:11 205:22  
**equipment** 104:19,23,25  
 115:3,19 116:2 117:4,13,  
 14 137:12  
**erring** 92:17  
**errors** 216:4,8  
**essential** 38:9

**establish** 14:4 15:22  
 16:12 18:16 54:12,19  
 68:7 70:11,15 72:4,16  
 161:16 210:10  
**established** 60:17 66:8  
 68:6 69:18 177:25  
**establishing** 14:13  
**estimate** 19:18,19,20  
 69:16 145:15 173:20,23  
 206:1 209:6,18 225:1,11,  
 17,24 226:8,13  
**estimated** 68:18,22,24  
 226:1,5 227:6,8  
**estimates** 206:6 208:11  
**evaluating** 9:17  
**event** 9:11 106:5 107:18,  
 19 138:19 161:1 169:22  
 174:3  
**events** 157:24 160:23  
**eventually** 212:8  
**everlasting** 62:10,12  
**everyone's** 43:7 144:17  
**evidence** 9:15 19:16,22  
 20:5 37:24 38:1,5 46:23  
 64:5 66:16 67:16,25  
 70:18 72:2 74:7 78:3  
 149:25 194:17,18  
 209:13,18  
**exact** 126:23 127:19  
 156:17  
**exaggerated** 63:13  
**examination** 66:11 78:19  
 136:14 151:15 221:14  
**examine** 22:16  
**examined** 29:6 151:9  
**examples** 146:24

**exceed** 177:24  
**exceeding** 70:20  
**exceeds** 114:11  
**excess** 15:11 16:11  
 17:13,16 19:12 65:24  
 66:3,6,17 69:8,19 133:22  
 144:13 152:8 163:4  
 205:15,18,25 206:22  
 207:2,8,9,12,13,17,19  
 219:23  
**exclude** 30:19 33:7 38:1  
 39:5 47:17 50:8  
**excluded** 38:7 44:6,7,11  
 93:21 144:19  
**excluding** 34:1,14 38:8  
 39:14 40:5,11 48:20  
**exclusion** 38:3 45:14  
 65:1  
**exclusionary** 29:19 30:6,  
 18 33:14 39:12 52:4  
**exclusions** 38:4 48:17  
**excuse** 142:18 155:4  
 226:16  
**executive** 52:12 225:23  
 226:9 227:25  
**exercise** 17:23 70:1  
 71:11  
**exhibit** 80:15 97:25  
 185:15,23 186:5,15  
 189:18 190:11 193:5  
 196:7  
**exhibits** 60:14 82:9  
 97:22 98:4  
**exist** 76:18 119:5 192:5  
**existence** 197:8  
**existing** 58:22 64:14  
 155:25 187:19 188:24

190:8,18,19 191:3,8 192:12 193:6 194:2,9,14 195:16 196:11,19 197:1, 3,8 198:24	<b>explanation</b> 87:12	
<b>exists</b> 188:18 190:22	<b>explicitly</b> 80:18	<b>F</b>
<b>exited</b> 153:24	<b>explore</b> 23:23 123:20	<b>Fabian</b> 5:4
<b>expand</b> 76:8	<b>exported</b> 81:14	<b>fabrication</b> 166:18,19
<b>expect</b> 34:12 163:20 169:12 170:9 173:10	<b>exposed</b> 135:20	<b>face</b> 111:11
<b>expectation</b> 165:4	<b>exposure</b> 108:21 113:15 114:2,4,6,21 213:23 222:21	<b>faced</b> 60:6
<b>expected</b> 87:17 134:13, 16 174:1	<b>express</b> 118:18,24	<b>facilities</b> 76:12 117:1 158:12 172:7 197:9 203:13
<b>expense</b> 67:15 119:10 135:7	<b>expressed</b> 10:18,19 12:10 24:8 73:20 139:5,6	<b>facility</b> 4:4 37:5 43:12 46:6 52:2 154:25 177:5 181:5 184:8,9,14
<b>expensive</b> 204:5	<b>expressing</b> 95:13	<b>fact</b> 13:12,13 14:10 37:5, 24 54:14 57:18 63:9 75:5 77:14 152:13 174:2 177:17 185:5 209:22 217:3 220:14
<b>experience</b> 49:8 79:17 99:5 102:3 156:25 157:15,17 158:20 169:6 204:4 210:25 223:24	<b>extended</b> 106:6 107:8	<b>factor</b> 130:12
<b>experienced</b> 97:15 154:8 173:15	<b>extending</b> 107:11 175:16 201:24	<b>facts</b> 23:2 37:19 75:16 145:24 194:17
<b>experiences</b> 179:19	<b>extends</b> 194:9	<b>factual</b> 12:21 13:6 17:22 22:11,15,23 150:1
<b>expert</b> 54:13 67:20 87:10,12 88:21 116:10 124:20 192:19 215:25 217:1	<b>extensively</b> 59:2	<b>failed</b> 11:21,23 12:7,11 66:4 146:10
<b>expert's</b> 68:1	<b>extent</b> 12:20 95:2 119:1 122:7 126:13 132:2 141:19 149:17 163:24 165:1 188:11 208:20 219:6	<b>failing</b> 75:14
<b>expertise</b> 125:5 127:11 132:24 179:5,11	<b>exterior</b> 130:3	<b>fails</b> 126:21
<b>experts</b> 15:22 68:21 70:15	<b>external</b> 171:8	<b>failure</b> 70:16 75:10,14 125:2
<b>explain</b> 30:4 48:16 55:12 73:5 79:12 86:25 101:17 110:19 133:14 164:1,2 215:24	<b>externalities</b> 170:3	<b>fair</b> 32:9 34:6 41:10,11, 17 48:10 49:13 78:4 106:18 107:16 109:18 110:13 111:9 129:23 130:23,24 155:16,21 158:14,18 180:16 204:16 212:6 213:8
<b>explained</b> 166:6	<b>extra</b> 67:8,15,24 124:17, 24 126:3,5 127:22,23 135:6	<b>fairly</b> 157:25
	<b>extras</b> 67:23	
	<b>extremely</b> 57:17 66:20 161:9,15 209:6	
	<b>eye</b> 21:1 61:1	

<b>fairness</b> 32:9 41:9 44:10 48:13,14	202:16,17	<b>fit</b> 47:8
<b>faith</b> 35:17	<b>felt</b> 119:17 217:2	<b>Fitzgerald</b> 24:19,20 31:8, 14 45:19,21 46:10 47:3 49:5,6,15,22,23 97:21 98:6,7,11 140:11,13 150:17,18
<b>fall</b> 65:18 164:17,18,20	<b>fewer</b> 135:25 167:15	<b>fixed</b> 173:19
<b>false</b> 162:9	<b>field</b> 179:5	<b>flawed</b> 22:2
<b>familiar</b> 81:5 89:6 160:22 174:3 185:18 186:1,10 187:5 188:2 192:15,16, 22 196:20 197:19 216:5, 6	<b>fields</b> 61:7 172:17,19	<b>flexibility</b> 43:18
<b>farmland</b> 61:6	<b>fight</b> 212:8	<b>flimsy</b> 77:7
<b>fat</b> 68:4	<b>fighting</b> 71:24	<b>floor</b> 170:9
<b>fatally</b> 67:17	<b>figure</b> 74:25 188:5	<b>flow</b> 81:20 121:24
<b>fault</b> 96:12,13,16,19,20	<b>figures</b> 193:18	<b>flown</b> 127:12
<b>faults</b> 97:12	<b>file</b> 22:4 89:12 157:21 210:23	<b>fluid</b> 118:8
<b>favor</b> 24:20,22,25 63:2 150:12	<b>filed</b> 7:18,20 8:5,9 10:3 25:17 27:10 36:24 55:16 58:20 158:17 218:14,16	<b>focus</b> 60:16
<b>feasibility</b> 145:16 147:3, 5 226:7	<b>filing</b> 7:24 10:8 218:13	<b>focused</b> 93:13 123:6
<b>February</b> 163:4 172:11 222:5	<b>filings</b> 4:23 6:1 25:16	<b>focuses</b> 225:25
<b>federal</b> 223:18	<b>final</b> 18:8 41:6 90:22 146:15 147:17	<b>follow</b> 64:4 84:16 155:3 178:9 180:13
<b>federally</b> 121:16	<b>finality</b> 57:20	<b>follow-up</b> 33:16 227:21
<b>fee</b> 173:19	<b>finalizing</b> 168:19	<b>follow-ups</b> 33:25
<b>feeding</b> 162:14	<b>finally</b> 57:13 71:10 82:1 158:17	<b>footage</b> 206:11
<b>feel</b> 5:20 21:9 25:11 42:1 60:11 61:17,23 87:14 92:17,18 191:11 198:9, 10	<b>find</b> 9:24 154:4 218:19	<b>force</b> 154:16,22
<b>feeling</b> 62:17 118:25	<b>fine</b> 65:4 87:13 96:3 120:5 182:16 192:6	<b>forecasted</b> 114:15
<b>fees</b> 73:13	<b>finish</b> 26:15 117:10 155:18,20 162:18 166:23 169:4,7 180:23 221:3 225:20	<b>foreclose</b> 120:6
<b>feet</b> 62:13 64:13,16 76:3, 17 187:20 188:22 189:4, 15,16 190:19,22,24 191:4,10 193:7 194:2,9, 14 195:17 196:10 197:3	<b>finished</b> 19:4 43:2 70:6,9 71:9,21 103:17 108:2 154:2 171:23	<b>foresee</b> 106:20
	<b>finishes</b> 169:3	<b>foreseeable</b> 110:1
	<b>firm</b> 45:1 118:7	<b>forget</b> 188:16
		<b>forgot</b> 124:2 150:23
		<b>form</b> 15:21 34:2 44:1 152:15 157:8 203:18
		<b>formal</b> 37:14
		<b>formed</b> 202:23

**Fort** 74:17  
**forward** 6:12,13 7:9,11, 15,18 8:23 12:3 13:25 14:6 25:10 50:10,20 54:12,20 60:7 63:24 76:20 78:7,16 82:16 87:15 90:7,17 92:20 93:17 98:3,10,11 103:9 123:22 152:6 154:20 155:9 165:24 168:18,19 171:21 200:14 205:13 212:11 215:7,8  
**found** 38:4  
**foundation** 82:10 186:18 209:1,17 210:9,11  
**fourth** 39:22,24  
**frame** 99:14 109:21 164:18 165:11 168:4 210:16  
**frames** 107:23  
**frankly** 144:16  
**free** 5:20 92:17 166:11  
**frequent** 136:3  
**frequently** 26:23 43:9,14  
**friction** 157:7  
**Friday** 8:6  
**front** 38:18 42:13 47:11 49:2 61:22 62:14 64:20 65:5 68:11,12 98:10 148:22 182:11 183:21 185:15,17 196:16,17 217:14 225:3  
**frozen** 170:11,16 172:21  
**frustrated** 63:14  
**full** 37:19 38:17 92:16,19 93:1 145:24

**full-time** 183:16  
**fully** 34:12 61:15  
**function** 45:1 83:20 117:4  
**functioning** 94:3  
**functions** 11:1  
**fundamental** 173:1,7  
**funded** 222:4  
**funding** 12:8 58:11 223:16  
**funds** 11:9 163:9 165:13 167:4  
**future** 23:25 92:25 110:1 129:10

---

**G**

---

**gained** 211:11  
**gates** 62:4  
**gears** 197:22 222:25  
**general** 46:11 65:16 95:15 175:23  
**generally** 9:4 123:5,16 124:15 174:13,14 204:20 212:22  
**generation** 70:23  
**geotechnical** 168:4  
**get all** 164:14  
**give** 12:19 16:4 18:7 22:21 34:13 44:2 53:7 65:22 76:2,9 87:12 90:22 92:24 96:1 97:5 98:8 103:6,22 113:12 147:14, 17 170:22 175:1 177:1 195:15 201:19 207:11 210:10

**giving** 34:8,15 36:3  
**glamorous** 67:23  
**GLENN** 23:16 25:4 30:2 45:13 50:4 141:9,16,24  
**goal** 155:17 178:13  
**goals** 199:8 212:19  
**Golden** 178:5  
**good** 4:3 5:13 28:15 35:17 51:7 75:3 83:6,7 85:1 88:11 98:14 99:5,16 100:4 116:16 128:11 133:18 153:21 156:25 182:24 210:25  
**Gordon** 5:4,8 9:2 10:13 13:9 14:16 15:7 16:8,10, 20,22,23 27:4 29:17,18, 23,25 30:4,14 31:1,6,16, 25 32:2,4 33:1,3,20 34:4, 20 35:10 36:18 40:3 41:6,8,20,25 42:6,8 47:25 48:3 50:14,18 52:25 53:4,13 59:22,24 72:19 73:7,20 82:17 83:2,5 86:24 87:5,13,16 90:1,4 91:16 93:8,17,19, 22 98:7,14,18 115:13 117:8,17 119:21 123:23 124:1,8,11 128:2,4,17 135:5 138:4,5 142:13,21 143:9,15 151:12 153:15, 17,20 180:16,20 199:21 227:14,20,24  
**Gordon's** 39:16 149:4 210:20 212:18  
**governing** 37:9 46:22  
**Governor** 52:11  
**grant** 33:14 87:8 93:3 144:5 208:1

**granted** 48:4 82:15 144:9  
148:12 153:10 163:11  
164:2 187:10 190:16

**granting** 158:8

**graphical** 81:18

**grappling** 42:15

**grateful** 77:25 78:6

**grave** 73:2

**great** 28:13 47:8 51:13  
59:17 148:8 149:18

**greater** 81:1 210:5

**greatly** 63:13

**green** 39:23 40:1

**grid** 83:20,23 84:15  
131:25

**grossly** 77:8

**ground** 128:15 154:2,5  
156:13 162:17 164:4  
167:12,18 170:11,16  
172:21 203:23

**grounds** 210:9 224:6

**group** 72:25 123:10  
126:10 139:23,25 180:5

**groupings** 206:6

**groups** 160:24

**guard** 138:13

**guess** 14:19,24 20:17,18  
21:11 23:25 31:20 32:22  
35:11,20,24 36:3 39:25  
42:15,21 45:21 101:12  
105:13 110:9 112:12  
121:1,14,19,25 137:17  
143:21 149:10 159:25  
161:8 169:19 178:8  
180:3 189:6 211:19  
215:17

**guessing** 171:1

**guesstimate** 158:19

**guidance** 42:3 54:18  
98:9 207:11

**guideline** 101:22

**guides** 46:24

**guy** 90:7 91:7 148:8

**guys** 143:10

## H

**habit** 210:2

**haggle** 212:8

**Hale** 141:21

**Hale-midway** 102:2

**half** 26:20 27:1 61:20  
131:8 184:19 201:6

**hand** 44:2 58:17 73:16  
136:6 139:17 200:16

**handed** 212:10 223:21

**handful** 198:16

**hanging** 161:25

**happen** 69:5 109:4,6  
165:12 214:9

**happened** 100:1 109:11  
125:21 143:7 174:14  
176:14

**happening** 31:11 130:13,  
16

**happy** 41:15 209:1  
214:24 215:3,11 219:13

**hard** 46:18 128:15  
141:13 157:1 203:21  
221:4 227:16

**harder** 141:14 204:5

**hardest** 162:20

**harkening** 118:21

**harm** 48:22 65:19

**hate** 141:12

**head** 74:5 147:23

**health** 72:10

**hear** 14:3 22:7 28:23  
30:9 31:18 34:10 38:7,16  
68:20 122:17 134:19  
143:12,13 212:3

**heard** 31:22 32:17 35:22  
44:3 48:18,23 64:5 74:23  
103:6 143:18 184:14  
201:8 211:25 212:2,4

**hearing** 4:7,10 6:4 7:13  
10:6,9 13:3 15:9,16 17:1  
18:4 20:12 24:14 26:11,  
19 29:15 37:15,18,22  
38:13,24 41:5,24 42:9,17  
44:1 46:15 47:15,18  
48:23 49:18 51:7 52:2  
54:16,23 56:18 57:2,9,10  
58:3,24 60:9,11 69:23  
77:22 82:14 93:2 121:18  
123:21 141:13,15 145:23  
146:19 147:16 148:17  
153:9 166:7 180:9  
182:14 190:15

**hearings** 26:9,19 43:9  
144:5 145:11 148:7  
160:18 190:1 211:16  
213:14

**hearsay** 38:2

**heavy** 225:12

**Heber** 55:18 58:15 59:6  
60:24 61:23 64:6 70:18,  
22 71:16 75:19,23 76:2,  
11 79:20 81:1 88:4  
100:15,18 101:21 103:3

110:15,23 111:2,11,14,  
16 112:13,19 114:10  
115:4,14 129:21 133:1,7  
136:19 155:23,25 156:3,  
13,24 160:25 163:12  
164:4,23,25 172:1  
185:21 191:2,6,22 197:1,  
19 198:1 199:8 212:21  
215:20 225:12 226:4

**Heidi** 5:4

**height** 188:11,22

**heights** 189:13

**held** 56:18 57:6,11  
109:17

**helicopter** 99:12 107:24  
129:14,24

**helicopters** 107:9 130:22  
135:21 137:9

**helpful** 10:1 16:2 46:11  
53:23 118:9,13 122:20  
170:24

**helps** 102:24 113:8  
117:17

**Herbert's** 52:12

**heretofore** 74:23

**high** 20:1 66:14,20  
139:24 141:1 174:9  
204:18,20 223:5

**high-level** 19:20

**higher** 64:13 171:15  
184:21 198:23

**highlight** 68:23

**highly** 154:4

**highway** 11:16 62:1  
76:10 185:18,24 200:17

**hills** 62:10

**hired** 195:14

**historical** 197:23

**historically** 184:18 185:2

**history** 82:3 99:9 104:5  
107:17 109:7 114:3  
147:20

**hit** 142:25 147:22

**hitting** 129:25

**HL&P** 58:20 64:10  
187:19

**hold** 57:2 58:3 64:1  
218:7

**home** 25:24 61:9,14,18  
63:3,6 116:7

**homeowners** 62:11

**homes** 62:15 73:18  
116:25 117:5 128:21

**Homestead** 61:10

**Honda** 67:19

**honest** 196:23

**honor** 7:16 8:12 17:9  
25:14 29:17 42:1 50:16  
82:19 138:5 207:1

**hope** 42:3 54:11,18  
60:20 162:1 218:17

**horizontal** 201:10,15

**horribly** 77:20

**hour** 26:20 27:1 100:12  
201:6

**hours** 60:2 98:16,19,21,  
23 99:7,24,25 100:12  
104:16 105:8,12 106:15,  
23,25 107:12 108:18,21  
113:15 114:1,13,19,21  
148:6

**house** 61:22 113:20

**housekeeping** 53:1

**houses** 57:7

**hulking** 64:15

**human** 180:4

**humidity** 141:2

**hundreds** 61:12

**hung** 98:12

**hurts** 44:11 100:15

**hyperbole** 61:7

**hypothetical** 196:24

---

## I

---

**Ice** 61:9

**idea** 30:2 74:1 180:8

**ideal** 115:18

**Ideally** 157:8

**identified** 8:23 27:9,12  
79:10 80:14,21 81:4 82:9  
91:9 93:8,15 97:8 114:8  
139:20

**identifies** 12:2

**identify** 4:12,16 89:25  
90:2 139:15 171:5,25  
172:1 186:24 224:10

**IEEE** 174:24

**imagine** 61:13,23 62:15  
63:4,12

**immaterial** 144:16

**immediately** 25:18 39:6

**impact** 61:15 64:22  
68:13 72:11 73:3 94:13  
115:10 132:6,10 159:5  
190:5 198:5 199:7

206:11 222:2	<b>incorrectly</b> 6:21	<b>inserting</b> 201:14
<b>impacted</b> 65:6 216:19	<b>increase</b> 189:9	<b>insiders</b> 186:4
<b>impactful</b> 198:12	<b>increased</b> 108:20	<b>insistence</b> 70:6
<b>impacts</b> 198:2	<b>increases</b> 62:3 67:15	<b>insists</b> 65:17
<b>implement</b> 17:14	<b>increasing</b> 106:16 108:14	<b>install</b> 67:18 155:24 163:17,18 166:1 172:12 188:19 196:9
<b>implies</b> 77:16 91:6	<b>incur</b> 132:21	<b>installed</b> 64:21 67:9 109:19 154:2 168:15 176:6 200:13
<b>important</b> 56:6 60:6,12 94:18 146:2 149:19 150:4 173:23	<b>indicating</b> 15:2 33:18	<b>installing</b> 133:24 164:15
<b>impose</b> 45:3 159:2	<b>indication</b> 15:2 44:4	<b>instance</b> 95:17 124:15
<b>imposed</b> 12:8	<b>individuals</b> 160:24	<b>instances</b> 32:7 97:8 135:25
<b>impossibility</b> 17:22 71:22	<b>industrial</b> 62:6	<b>instantaneous</b> 96:13
<b>impression</b> 139:17 149:7	<b>industry</b> 13:23 67:14 88:1 95:5 116:24 124:20 175:6 179:6	<b>Institute</b> 94:5
<b>improve</b> 28:14 84:9 91:25	<b>inferences</b> 9:22	<b>insupportable</b> 74:4
<b>in-house</b> 125:5 127:11	<b>influence</b> 171:8	<b>insured</b> 18:15
<b>inadequate</b> 113:16 209:9	<b>influenced</b> 30:8 119:2 178:3	<b>integrated</b> 132:3
<b>inappropriately</b> 227:3	<b>information</b> 34:16 56:19 59:2 66:5 69:21,23,24 81:24 84:12 94:16 105:6 145:13,14,19 147:5,6 155:6 158:3 173:12,14 176:23 179:23 192:9 193:23 194:11,19,25 213:5 215:19	<b>integrity</b> 32:13
<b>inception</b> 60:18	<b>informed</b> 213:14	<b>intend</b> 23:19 28:4 75:23 118:4,10 119:15 142:7
<b>incident</b> 169:23	<b>infrastructure</b> 62:3 165:25	<b>intended</b> 53:9 62:10 226:7
<b>inclined</b> 22:6 87:11,12	<b>infrequently</b> 44:24	<b>intends</b> 30:10 64:3
<b>include</b> 11:19 171:21 174:17 206:16 207:5,9 208:6 217:16	<b>initial</b> 20:18 21:11,17 53:19	<b>intent</b> 53:4
<b>included</b> 10:19 13:19 66:23 67:11 150:2 174:20 188:7 205:25 221:22 225:17	<b>initially</b> 101:23 206:5	<b>interconnect</b> 110:20
<b>includes</b> 6:23 114:10	<b>input</b> 126:10	<b>interconnected</b> 111:21 112:1
<b>including</b> 26:22 145:14 179:16	<b>inquired</b> 7:25	<b>interest</b> 9:6 73:8
<b>inclusion</b> 216:4		<b>interested</b> 34:14 118:25 121:3,18
<b>incorrect</b> 29:12		<b>interesting</b> 33:21
		<b>interface</b> 203:13



<b>interfere</b> 111:2 163:4	<b>irrelevant</b> 130:25 144:7 187:3 208:21	<b>Jewkes</b> 5:9 9:9 10:1 14:19 16:19 59:22 142:14,21 143:20,22 144:23 146:11,15 147:17,22 148:14 227:14
<b>interim</b> 48:9	<b>issue</b> 48:7 57:15,22,24 58:22 59:13 69:11 70:1 89:1 90:3 94:11 95:2 96:20 99:12 100:16 101:19 106:11 107:24 111:22,23 112:6 119:19, 24 120:14,23,25 123:20 125:4 126:20 127:16 129:20 130:7,8,25 136:4, 5 137:4,6 139:16 144:7 146:5 149:16 152:15 182:13 199:15 207:22 215:8 220:11 224:10	<b>job</b> 34:5 67:19 84:22 129:17 131:3 169:10
<b>internal</b> 206:5		<b>jobs</b> 65:23
<b>interpret</b> 178:19		<b>join</b> 17:10 39:4
<b>interpretation</b> 177:6,9,14 206:21 220:8		<b>joinder</b> 8:6,16,19
<b>interpretations</b> 184:21		<b>joined</b> 145:1
<b>interpreted</b> 179:3		<b>joining</b> 146:12
<b>interprets</b> 179:16		<b>joint</b> 58:20 62:2,3 64:10
<b>interrupt</b> 4:15 5:17 141:12 192:2 214:6	<b>issued</b> 10:16 57:13,14,21 58:16	<b>Jonsson's</b> 218:16
<b>interrupting</b> 129:25	<b>issues</b> 9:4,8 12:22 13:6 23:24,25 53:1 54:14 59:4 60:5 104:12 106:16 121:21 122:3 125:8 129:21 137:3 138:15 139:20 144:21 146:23 149:1 157:7 170:11 204:1,2,3 214:8	<b>JORDAN</b> 14:18 16:2,9,16 20:17 23:19 24:25 31:20 32:18 34:22 35:11 42:11 43:3 46:13 50:2 121:1 122:15 140:16 149:10 150:8,20
<b>interruptions</b> 162:14 212:20 213:1,10,11		<b>Jordanelle</b> 86:4,13 159:7,15 200:13
<b>intertwined</b> 9:14		<b>Josh</b> 143:10
<b>intervene</b> 77:23 78:1	<b>issuing</b> 48:9,13	<b>Joshua</b> 5:9
<b>introduce</b> 27:19	<b>item</b> 108:23 119:10	<b>jotted</b> 118:2
<b>introduced</b> 27:21	<b>items</b> 66:24	<b>judge</b> 33:6 75:1
<b>inventory</b> 127:16		<b>judges</b> 33:15
<b>investigation</b> 75:21		<b>judicial</b> 33:4,11 47:9
<b>invite</b> 63:20 92:25		<b>July</b> 56:20
<b>invited</b> 204:25		<b>jump</b> 5:24 13:2 26:24 87:7 92:25 146:17
<b>invoke</b> 29:18 30:5 33:6		<b>June</b> 55:11
<b>invoked</b> 30:18 38:13		<b>jurisdictional</b> 205:21
<b>invoking</b> 38:3		<b>jurisdictions</b> 71:13 140:25 164:8
<b>involved</b> 85:1 125:20 127:9,10 131:9,14,20,23, 24 132:2,10 144:4 157:12 173:16 174:7,9, 10,16 176:4 202:10,12, 14 204:17,22 223:13,17	<b>jacked</b> 77:20	
<b>involvement</b> 208:18 210:14	<b>Jake</b> 27:13 28:5,7,22 29:4 78:13 153:22	
<b>involving</b> 208:19	<b>January</b> 56:1 172:10	
	<b>Jason</b> 27:12 225:15	
	<b>jaundiced</b> 21:1	
	<b>Jerry</b> 215:13	

**J**

<b>jury</b> 75:1	<b>land</b> 61:16 74:11,20	<b>Lefevre's</b> 195:19
<b>justifiable</b> 67:5	<b>landowner</b> 76:1	<b>left</b> 183:16 188:1,3,5,15 221:9 227:16
<b>justification</b> 66:25	<b>landowners</b> 68:17 69:4 72:25 74:12 75:8 158:3 198:14,16,19 206:17 211:6,13	<b>left-hand</b> 186:5
<b>justified</b> 72:3	<b>language</b> 177:19 178:19 181:16 187:15 193:11 205:20	<b>legal</b> 17:22 30:22 41:20 44:9,17 48:17 191:12,20 192:17,23 205:20 206:20,23 219:6,9 220:8, 10 223:18
<b>justify</b> 71:6 72:9		
<hr/> <b>K</b> <hr/>		
<b>kick</b> 20:17	<b>large</b> 5:11 40:12 135:23 175:25 176:17 202:6 203:17	<b>legislative</b> 46:18 47:8
<b>kicks</b> 116:8	<b>largely</b> 39:15 175:5	<b>legitimate</b> 72:8
<b>kind</b> 6:2,18 14:20,22 21:16 53:6 60:16 87:19 96:21 103:7,22 110:11 121:11,17 154:19 158:18 167:20 170:25 182:3 191:11	<b>larger</b> 202:23	<b>length</b> 157:17 173:3,5,24 210:20 225:18
<b>knew</b> 99:3	<b>largest</b> 62:14	<b>lengths</b> 173:8,11,17,18
<b>knowing</b> 53:17 63:4,12, 14 118:25	<b>late</b> 4:23 6:1 8:6	<b>lengthy</b> 53:18
<b>knowledge</b> 104:7,11 105:25 127:1 128:25 148:3 156:18 179:4 200:24	<b>lateral</b> 201:15 203:10	<b>letters</b> 154:17
<b>Korea</b> 154:13	<b>laterally</b> 201:12	<b>Levar</b> 4:3,14 5:6,10,15, 24 8:4,15,20 9:9,25 12:17 14:14 16:17,24 17:25 20:8 21:19 22:17 23:10,13,17 24:8,10,19, 22 25:2,6 26:1 27:17,25 28:7,9,12,20,24 29:8,20, 24 30:13 31:5,13 32:1,2, 19 33:1,16,24 34:19 35:8 36:9 38:20 41:1,19 42:5, 23,24 43:6 45:9,18,24 46:21 47:2,24 48:15 49:14,22,24,25 50:3,5, 14,17 51:5,15,19 52:1,25 53:3,12,24 54:3,11 59:20 72:18,23 78:9 82:11,20, 24 87:7 89:22 90:1,21 92:7 97:19 98:2 117:20 118:7,12,15,16 120:7,11 121:1 122:25 123:17 124:2,6 128:3 136:9 138:2,6,23 140:9,14,18 142:1,6,10,20 143:3,13, 18 144:22 145:4 146:8
<b>KSL</b> 60:22	<b>latest</b> 221:3	
<b>kv</b> 61:19,20 64:7 67:3 86:3 100:23 101:4 102:2 112:4 125:18 132:14 136:25 156:7 159:6 160:4 161:5,23 162:14 184:8,13,19,20,22,24 185:1,3,4 187:16,17 188:25 189:1 190:10,18 193:6,15,17 214:12	<b>law</b> 8:3 35:7 47:5,10 76:7	
	<b>lawsuit</b> 74:20 157:21 158:17	
	<b>lawyer</b> 192:3,8 216:10	
	<b>lawyers</b> 185:11	
	<b>lay</b> 209:1	
	<b>laying</b> 173:3	
	<b>lead</b> 131:25 152:19 183:2 226:17	
	<b>leading</b> 224:6 226:20 227:3	
	<b>leads</b> 48:18	
	<b>leave</b> 21:17 32:15 126:2	
	<b>ledge</b> 35:5	
	<b>Lefevre</b> 7:19 25:20 27:14	
<hr/> <b>L</b> <hr/>		
<b>laid</b> 140:23		

147:12 148:13 149:22  
150:6,9,14,16,19,21,23  
151:3,11 153:4,14  
180:19 181:4,19 182:5,  
12,17 186:16,21,23  
187:1,8 190:13 194:20  
195:10 206:24 207:10,20  
208:22 210:7 215:4  
216:21 219:11,15,24  
220:9,24 221:10 224:9,  
16 226:19 227:1,12

**level** 92:15 102:23 103:2  
114:7,9,11 139:24  
140:22 154:16 157:6  
174:4,9 204:18,20  
223:16

**levels** 115:21

**liability** 35:3 119:7

**licensing** 182:3

**lie** 74:12

**life** 62:17 109:18,22  
110:12

**lifting** 225:12

**lifts** 121:13

**light** 39:22 40:22 61:23  
64:6 70:19,22 75:19,23  
76:2,11 88:4 100:15,18  
110:15,23 111:2,11,14,  
17 112:13,20 115:4,14  
155:23,25 156:3 160:25  
164:25 172:1 191:2,6,23  
197:1,19 198:1 199:8  
225:12 226:4

**lightning** 96:14

**likelihood** 70:24 71:20  
107:1 135:19 176:3,20  
202:8

**limit** 54:9 87:11 178:21  
211:5

**limited** 76:7 144:21  
207:25

**limiting** 176:2,19 202:8

**limits** 54:13,19 102:11,16

**lines** 5:12 46:19 52:14  
55:25 56:3 64:9,25 65:7  
68:12 70:14 71:2,3 73:4,  
11,18 74:19 76:5 81:21  
82:4 88:8,17 93:23 94:3,  
8,11,14 101:2,4 102:3,15  
103:10,11,12 104:1,3,15,  
20 105:5,15 106:5,11,21  
107:20 109:21 111:9  
112:24 114:4 125:18  
128:17 131:2,18,19  
132:14 134:22 135:12,22  
136:19,25 137:5 138:15  
139:11 141:1,4,11,19  
149:11 156:12 160:4  
161:5,23 162:14 170:20  
183:23 184:5,15 185:3  
188:24 195:17 197:15  
198:20 203:14,15 205:12  
211:14 212:20,25  
213:10,12 214:14,17  
217:2,21

**lineup** 111:16

**linkage** 122:9

**list** 97:25

**listed** 183:25 187:19

**listen** 30:16 31:4 34:8  
39:17 40:9,12 41:12,24  
43:25 44:13 49:10 50:25  
153:22

**listened** 149:3

**listening** 34:1 44:1 45:5  
47:18 48:20 50:9 63:19  
148:25

**listens** 32:10

**literally** 64:20

**litigation** 75:6 76:21

**live** 37:2 60:19 61:17  
62:11 65:3 93:13 198:22

**lives** 73:3

**living** 62:9 73:3 75:5

**load** 102:10 104:20 112:8  
113:4 114:7,9,11,18  
115:2,17,22 117:12  
161:20,25 162:5 168:25  
171:14,15 214:9,14  
222:8,11,18

**load-only** 161:21

**loading** 81:8 102:22  
114:14 172:4

**loadings** 129:6

**loads** 70:20 116:11  
160:25 166:11

**local** 187:19

**located** 175:19 201:25

**location** 11:14 52:7,10,  
17 60:19 137:7 197:13  
216:18

**locations** 101:20

**locked** 98:1

**lodge** 41:16

**lodged** 9:11 15:14,25

**long** 57:17 72:12 76:6  
86:5 99:23 100:10  
103:10,22 127:2 131:2,7  
152:19 156:22 157:2,15  
158:19 162:17 164:13,  
20,22 165:9,24 166:22  
167:3 194:2 197:11

**longer** 97:8 99:7 106:17  
136:2 160:14 161:7,17

162:12 211:9		143:11,23
<b>longest</b> 97:15 98:17	<b>M</b>	<b>manageable</b> 22:24
104:15 105:3,8,16	<b>made</b> 39:6 43:15 47:23	<b>management</b> 197:18,20
166:22	50:6 51:20 52:3 56:23	<b>manager</b> 91:9 145:9
<b>looked</b> 14:25 25:15 87:1	77:18,23 86:4,13 89:23	147:2 154:1 156:22
95:18 97:23 104:4	133:7 143:21 211:15	160:20 179:8 183:2,6
113:18 140:24 180:2	216:9 217:23 219:7	<b>managing</b> 198:14
191:22	220:6 221:19	<b>mandatory</b> 46:3,5 52:13,16
<b>loop</b> 112:2,5,9	<b>magically</b> 58:4	<b>manner</b> 7:9 137:24
<b>looped</b> 111:21	<b>main</b> 83:20,23 84:15	<b>manufactured</b> 168:1
<b>lose</b> 63:22 214:17	131:11,25 213:22	<b>manufacturers</b> 166:12
<b>loses</b> 70:23 72:2	<b>maintain</b> 109:21 129:3	<b>map</b> 172:3 226:4
<b>losing</b> 106:9 214:13	153:5 177:12 190:25	<b>mapped</b> 189:13 225:22
<b>loss</b> 104:20 105:4	<b>maintained</b> 109:23	<b>March</b> 10:22
<b>lost</b> 128:21 155:11	176:8,15	<b>Mark</b> 5:13 7:16 25:14
<b>lot</b> 19:19 25:23 39:7,23	<b>maintaining</b> 9:6	72:24 182:25
49:7 74:21 106:1 121:4	<b>maintenance</b> 176:1,18	<b>marked</b> 205:5
135:19 152:12 185:5	202:6	<b>massive</b> 64:19 68:10
199:3	<b>majestic</b> 60:25	106:19
<b>loud</b> 21:6	<b>majeure</b> 154:16,22	<b>material</b> 144:7 165:9
<b>love</b> 61:16	<b>major</b> 99:14 119:10	181:13 219:3 222:9
<b>low</b> 71:21 101:23 115:17	213:25	<b>materially</b> 167:24
116:3 166:20 169:11	<b>majority</b> 63:18 111:19	<b>materials</b> 58:9 135:16
210:4	195:21	137:11 152:19 164:11,14
<b>lowball</b> 209:6	<b>make</b> 4:9,15 6:2 7:21	200:24 201:1 220:16
<b>lower</b> 115:24 135:20	10:11 16:21 23:5,7,20,24	<b>math</b> 190:23
169:13 225:13	26:6,7 34:6,9,11 38:16	<b>matter</b> 6:7 36:25 44:10
<b>lowest</b> 188:9	42:22 45:20 48:4 49:13	158:7 186:20 191:7
<b>Lowrey</b> 218:10,13	51:11 58:9,13 59:5,24	<b>matters</b> 4:23 5:25 42:18
<b>Lowrey's</b> 218:15	72:13 79:3 84:1 98:9	<b>mayor</b> 55:20
<b>lunch</b> 27:2 120:10,11	101:25 103:5 112:12	<b>meaning</b> 110:1
<b>lying</b> 135:8	152:1 155:10 157:24	<b>means</b> 17:14 21:10 24:3
	171:10 181:11,25 182:2	64:8 69:7 113:17 114:2
	192:23 204:25 207:24	
	215:2	
	<b>makes</b> 23:2 58:12	
	<b>making</b> 9:2 43:21 47:16	
	48:12 55:25 62:6 84:22	

159:17 170:6 190:21,23 201:12	<b>mentioned</b> 54:25 107:25 131:1 136:17 148:2 179:14 217:4	8,18,19 165:20 168:14, 21 175:12 186:10 188:6, 9 189:14,25 190:2 191:4, 9 194:3,15 195:17 196:19 197:2 198:2,4,6, 18 199:1,5,7,23 200:18, 25 201:2 205:25 207:18 209:3,10 210:5 220:17 222:1 223:1,3 224:13,19, 25 225:3 226:12,23
<b>meant</b> 226:6	<b>mere</b> 68:18	<b>Midway's</b> 17:10 39:5 60:14 97:23 118:20 119:17
<b>measures</b> 6:24 117:2	<b>merits</b> 9:14,17	<b>migratory</b> 178:4,5
<b>mechanics</b> 30:14	<b>met</b> 12:3 44:24 55:11 86:5	<b>mile</b> 61:21 66:21 77:10, 12 127:10 130:18
<b>mechanism</b> 183:9	<b>metal</b> 64:15	<b>mile-long</b> 73:25
<b>meet</b> 10:25 11:21,24 12:8,11 18:19 68:25 84:9 86:10 92:1,12 93:14 102:15 117:1 119:3 166:17 177:11 187:20	<b>metered</b> 79:18	<b>miles</b> 71:14 163:13 225:2
<b>meeting</b> 30:15 34:2 43:23 46:17 52:11	<b>methods</b> 170:6	<b>million</b> 66:14,21 67:22, 25 74:22 77:10,13 225:2
<b>meetings</b> 31:23 32:24 33:19 34:3 35:2 36:1 39:14 41:22 43:9,10,20, 23 44:25 45:15 46:2,15 47:6 49:8 56:25 145:11	<b>Michaelis</b> 27:14	<b>millions</b> 209:11
<b>megawatt</b> 102:22	<b>mid</b> 169:13	<b>mind</b> 7:22 15:14 22:1,14 42:24 43:5 53:19 77:11 122:11 202:15
<b>megawatts</b> 81:20 102:10,20 103:3 111:20 113:5 114:11,14,16	<b>midday</b> 27:2	<b>mine</b> 21:24 184:2
<b>member</b> 6:14 7:8,10,11 12:25 14:15,16 18:2 20:15 23:14 24:9 29:25 49:17 120:20 148:15,17 221:4	<b>middle</b> 170:2	<b>minimally</b> 108:17
<b>members</b> 4:8 10:7 16:25 18:5 20:10,13 21:21 22:20 23:6 24:12 26:9 31:6 32:20 34:21 35:3 36:12,17 38:22,24 41:3 42:7 44:18 45:25 46:8 54:15 60:1 92:11,18,23 93:2 120:14 123:22 146:10,12,16,20 147:15 149:8	<b>Midway</b> 4:6 5:7,9 6:9,17, 22,24 7:3 8:6,16,25 10:5, 8,17,22 11:3,7,16,21 12:5,19 13:4,10 16:25 17:12,22 19:16,25 20:6 22:13 27:8,14 29:9,18 36:3,19 39:2 42:10 50:7, 15 52:4 55:8,19,22,23 56:2,4,9,17,24 57:1,5,6, 13 58:1,12,14,17,21 60:5,15,17,23 61:14 62:17,22 63:3,18 64:3,8 65:8,14,20,22 66:1,3,7 67:6,9,18,20 68:10,22 70:5 71:17,25 72:5,9 73:6,8 74:1 75:5,15 76:13,25 77:24 82:18,25 86:4,13 100:24 103:15 108:1 112:5,14 120:13 123:13,19 130:18 133:1, 22 134:13,15 135:7 141:21 142:11,19 143:4 144:3,15 145:11,13,17 146:23 147:4,7,21 150:3 153:5 159:3,7,15 163:2,	<b>minimize</b> 63:6 72:10
<b>memorandum</b> 6:18 7:24 8:3 13:17 223:2		<b>minimized</b> 64:11
		<b>minimum</b> 108:18
		<b>miniscule</b> 70:25
		<b>minor</b> 109:5
		<b>minus</b> 113:4 126:19
		<b>minute</b> 54:24 97:5 212:16
		<b>minutes</b> 51:16,17 97:9 98:20,22 149:4 153:6

181:2 227:16	180:23 182:7 221:7	27:4 32:21 34:24 35:12
<b>misdemeanor</b> 35:2	<b>Morris</b> 5:13 7:16,17 8:11,	36:6,12 38:11,25 41:11
<b>missed</b> 122:20 218:2	22 17:9 18:1,3 19:2	44:3 50:7 51:3,10 52:20
<b>missing</b> 69:24	25:14,15 39:1,4 41:2,4	55:6 56:8,14,19 57:22
<b>misstates</b> 216:14	50:22,23 51:6 53:14,17	58:13 61:3,24 63:9 64:24
<b>mistakes</b> 66:11 67:17,22	72:20,22,24 78:10 128:5,	65:2 66:4 67:1,11,18
<b>Misters</b> 25:20	7,10 136:7,10 138:7,8,	68:3,17,21 69:3,22 70:6,
<b>misunderstanding</b>	12,22,24 142:18 144:24	8,10,15 71:1,5,11,17
112:25	145:1,5 146:11 181:6,9,	72:1 73:13,17,21 74:8,
<b>misunderstood</b> 90:16	10,20 182:5,9,16,20,23,	14,24 75:18,24 76:15
178:16	25 186:14,20,22 187:2,3,	77:5,18 78:5,12 80:9
<b>mitigate</b> 108:5,11 126:17	11,12 190:11,17 194:20,	83:9,13,17 84:4,6,23
137:18	22 195:7,12,13 206:24	85:17,24 90:6 91:21,23
<b>mixing</b> 95:9	207:1,10,14 208:4,6,22,	94:3 102:4,8 104:19,23,
<b>model</b> 79:15,22 81:18	24 209:4,21 210:7,12,13	25 105:10,17,20 106:8
<b>models</b> 79:18	214:21 215:11,12	107:5 109:14,16 110:4,
<b>modified</b> 40:22 130:9	216:15,20,24 218:12,15,	16,21 111:3,13 112:18,
<b>moment</b> 12:19 18:7	20 219:11,13,17,24	19 115:14 120:16
51:23 61:13 92:11 96:1	220:1,2,12,13,21,25	125:17,25 129:1 131:7
98:8 147:14	224:5 226:16	132:21 133:4,10,21
<b>momentary</b> 97:10	<b>motion</b> 6:19 7:1 8:2 15:1	134:21 137:21,22 142:19
<b>moments</b> 60:8 153:11	17:11 23:5,7,11,14,16,	143:2 144:3,11 145:21
<b>money</b> 14:8 63:15 65:15	18,20,22 24:11,15,17	146:3 152:7 156:11
74:9 76:21 77:9 163:3	25:1,5,7 39:5 41:7,9	160:1 163:5 170:1
206:16 211:14 219:1,2	45:16 47:16,20,21,23	173:15,22 174:20 175:3
<b>monies</b> 133:10	48:4,16 49:2,7,13,16	179:12 181:15,17
<b>months</b> 65:22 70:13 73:1	50:6 51:21 77:22 82:15	183:12,18 187:24 188:18
76:20 109:7 110:10	147:18 148:22 150:7	191:3,7,15 192:13 194:1
126:22 138:16,20 155:19	152:20 153:8,9 186:17	195:14 196:7 197:14,25
157:4,10 158:7,10,12,15	187:10 190:14,16	199:8,12 200:24 202:24
164:24 165:2 166:13,24	<b>motions</b> 21:22 22:19	205:14 206:16 207:15
172:11,17	45:12 149:23	208:9,14 209:5,9 212:7
<b>Mordor</b> 62:4	<b>motivation</b> 74:6	219:19,22 220:4 224:18
<b>morning</b> 4:3 5:13 8:17	<b>motor</b> 115:2,22	<b>Mountain's</b> 70:19 75:10
63:25 83:6,7 124:7 150:3	<b>motors</b> 116:15	97:24 98:4 132:8 185:11
	<b>Mount</b> 64:18	193:3 209:25
	<b>mountain</b> 4:5 5:1,3,5 6:5	<b>mountains</b> 60:25
	7:5 10:10,20 11:17	<b>move</b> 6:12 8:23,25 10:10
	12:13,22 13:7,15,20	12:3 13:3 17:2 20:13
	14:2,22 17:4,6,15,21	23:2,10 25:12 26:7 31:16
	18:5,22 20:7,14,22 25:12	32:20 36:12,13,17 38:23
		41:7 42:9 49:19 50:13,20
		52:19 53:16 54:12,20

60:20 82:21 87:15 93:17  
98:11 99:17 103:9  
117:22 120:22 122:24  
123:19 149:24 150:5  
152:6 154:20 155:9  
165:12,13,23 180:25  
200:21 205:13 208:25  
210:18 212:11

**moves** 50:10

**moving** 6:13 7:9,11,14,  
17 25:10 60:7 63:24  
92:20,21 168:18 171:21  
200:14

**mudslide** 100:2 104:16  
107:2,19 109:10 129:15

**mudslides** 130:22

**multi** 209:11

**multiple** 108:10 152:14

**mute** 4:18 142:25

**Myers** 7:20 18:21,24  
25:20 27:13 89:5 91:10  
118:11

**Myers'** 120:19

---

## N

---

**nail** 147:22

**named** 60:21 225:16

**narrow** 161:9

**national** 94:5 137:10

**natural** 138:19

**nature** 75:25 161:24  
225:22,23

**necessarily** 79:16 94:20  
113:24 117:5,13 139:22  
170:12,16 178:6 179:4  
180:4 197:5 202:20

**necessity** 77:17

**needed** 15:17 60:3 65:15  
66:5,16 68:8 71:12 74:19  
85:16 93:14 107:9,11  
109:22 140:6 144:11  
152:21 155:9 158:11  
159:9 176:15 211:17

**needing** 92:16

**negative** 64:22 161:5,8  
168:24

**negatively** 68:13

**negotiate** 211:12

**negotiating** 210:23

**NEI** 225:16

**neighborhood** 61:16  
64:18,22 65:3

**neighborhoods** 198:21

**NERC** 95:10 121:6,16,24  
123:4,14 125:13 126:14,  
18,19 139:9,13

**NESC** 174:24 175:5,14  
176:5 177:3,22,25 178:6,  
8,25 179:2,13,16,22,24,  
25 180:12 181:16,22  
187:21 201:7

**nestled** 60:24

**network** 133:2,3,12,15,  
23 134:3,8,13,16,24

**niche** 121:23

**ninth** 205:6

**nominal** 80:11 94:9  
184:9,20 185:10 187:14,  
25 188:15,19,23 189:2,5,  
10

**nominally** 185:7

**non-factors** 70:17

**nonexistent** 107:13

**nonpublic** 145:11

**nonsensical** 59:12

**Norlen** 27:12 225:15

**normal** 106:20 113:19  
158:14

**north** 61:4,6 70:24 119:6  
168:13 172:14,17,19  
200:13

**northwestern** 60:24

**note** 7:18 16:18 152:3

**noted** 217:11

**notes** 135:1 212:16

**notification** 154:21

**Noting** 153:4

**November** 55:18 57:6,8  
58:3,7,9 155:4 163:3,21  
165:13,16,21,22 222:3

**number** 19:12 65:23,25  
76:3 94:24 95:12 106:15,  
25 108:21 114:13,19  
140:3 185:15 196:15  
209:23 224:7

**numbered** 79:9,23

**numbers** 17:17,18,20  
112:7

---

## O

---

**oath** 40:7 78:14

**OATT** 132:15 133:6

**object** 7:14 15:20 36:21  
38:18 47:15 148:4  
194:16 206:19 208:20  
209:17 219:5 224:6  
226:18

**objection** 4:16 7:11,17  
8:1,8,21 29:9,11,13 31:9  
41:16 45:4 54:1 82:13  
86:21 87:8 89:12,23  
90:22 92:8,19 93:3,16  
118:21 120:15,21 123:6,  
13,16,18,21 142:11,14,  
22 143:19,23 144:25  
145:2 146:6 148:23  
181:20 186:17 187:7,9  
190:14,15 195:5,11  
206:25 207:21 208:2,23  
210:8 216:13,22 219:12,  
21 220:7,10 224:17  
226:20

**objections** 6:10,23 7:5,  
19,23 8:7,14,16 9:1,6,11  
10:4 15:14,17,25 25:16,  
19,22 26:4 28:1 82:14  
92:14 148:19 153:6

**objects** 6:13,14 82:12  
186:16 190:13

**obligation** 13:25 15:24  
65:16 66:7

**obligations** 26:10 35:25

**observation** 217:24

**observe** 40:13,19

**obstacles** 203:14

**obtain** 11:13 12:7 19:11  
37:18 56:3,8 73:14 74:10  
145:24 156:23 206:1  
212:9

**obtained** 11:17 63:15  
69:13,17 71:12,15,19  
155:24 211:8

**obtaining** 10:20 38:17  
156:11 211:5

**obviated** 39:12,15

**Occasionally** 198:22

**occasions** 212:24

**occupancy** 158:8

**occur** 63:11 70:9 95:3  
106:11,13,14,16 109:15  
110:15 115:19 129:18  
136:1 137:16 138:16  
160:2 213:12 214:6

**occurred** 107:3,8 129:12,  
17

**occurrence** 106:8

**occurring** 107:14 108:6  
138:20 139:11

**occurs** 34:11 95:2 96:12  
222:21

**October** 55:17 57:3

**offend** 77:7

**offer** 37:2 53:5 186:15  
190:11

**offered** 45:6 143:25  
216:3

**offering** 209:21

**offers** 75:7

**office** 55:22

**officer** 38:1 48:8

**officers** 37:17

**officials** 140:21

**offline** 96:5 102:20 116:3  
117:12

**Olympics** 99:12

**ombudsman** 157:23  
158:16 210:22

**one-and-a-half** 100:12

**one-line** 80:25 81:17

**one-third** 67:16

**online** 8:22 52:16

**open** 32:24 33:5,19,22  
34:3 35:2 36:1 39:14  
41:21 43:10,19,23 44:24  
45:15 46:2,15 47:5 49:8,  
10 52:7,17 57:6 61:6,11,  
12 119:16 126:2 132:8  
168:2 202:21 203:17  
207:11,23

**opened** 116:1

**opening** 53:5,15,18 54:2,  
6 59:19,23,25 72:21  
73:23 102:18 149:4  
150:2

**openness** 149:20

**opens** 93:11

**operate** 76:12 113:7  
115:24 162:8 188:25  
190:25 223:22

**operated** 74:16 117:5  
161:21 176:8

**operates** 94:4

**operating** 52:10 88:17  
107:20

**operation** 106:20 170:17  
197:12

**operations** 171:18 172:2  
179:10 223:21

**operators** 102:4,9 162:8

**OPGW** 200:11

**opine** 216:11

**opinion** 14:11 18:25  
33:10 42:13 47:3 152:9  
199:11 207:25

**opinions** 195:15



**opponent** 22:3  
**opportunities** 145:25  
**opportunity** 12:20 26:3  
 37:20 39:9 40:24 53:8,10  
 65:22 78:2,21 92:24  
 120:6 223:25  
**opposed** 31:21 35:21  
 136:2  
**opposing** 17:10  
**Opposition** 5:11  
**option** 10:25 11:4,6 12:6,  
 7 17:24 42:21 167:25  
 190:3,4,7 196:10  
**options** 41:21 190:4  
**order** 13:10 17:23 27:7  
 31:3 35:18 36:8 38:6  
 40:9 48:14,17 49:1 52:12  
 58:8 69:11 73:24 74:10,  
 19 118:1,4 150:24  
 152:19 155:10 158:17  
 165:25 166:5,21 173:7  
 210:21 212:17  
**ordered** 127:15 200:23,  
 24 201:1 220:16  
**ordering** 164:11,12,14  
 167:13 168:19  
**orders** 48:6,9 219:4  
**ordinance** 55:13,24 56:2,  
 13  
**original** 54:4 76:8  
**originally** 225:6  
**other's** 44:12,14  
**others'** 38:7  
**outage** 80:13 82:3 95:1,  
 25 96:1 97:10,15 98:19  
 99:14 102:3 104:5,15  
 107:8 108:5 126:20

136:5 137:15 161:13  
 165:1 213:25  
**outages** 94:25 95:12  
 97:3,14 104:12 105:19,  
 21 114:5 128:22 136:18  
 139:10 162:1 214:10  
**outcome** 162:24  
**outline** 53:5 64:5 72:14,  
 15 93:3  
**outlined** 12:15 54:23  
 91:1 159:8 161:10 165:8  
 220:11,18  
**outrageously** 223:4  
**overestimate** 77:9  
**overhang** 190:9 216:7  
**overhead** 12:1,4,14  
 17:18 57:23 59:16 64:25  
 73:19 75:13 130:1,9  
 135:3,11,13,15,24 136:2  
 187:25 188:19 190:5  
 198:7,20 199:14 208:12

**overpayment** 19:6  
**overrule** 207:21 210:8  
**oversee** 223:19,20  
**oversees** 83:16 87:19  
 90:8 154:12  
**oversight** 25:23  
**overview** 64:6  
**owned** 63:4

---

**P**

---

**p.m.** 26:11,12,14 120:10  
 181:3  
**Pacificorp** 132:14  
**Pacificorp's** 132:3  
 174:13

**paid** 62:23 207:8 219:3  
**paint** 136:22  
**paper** 15:1  
**parallel** 175:17 201:24  
**parameters** 59:18 139:12  
**parcels** 217:5,24  
**Park** 61:4 80:6 81:2  
 93:23 100:22,25 101:3,7,  
 20,23 102:19 103:4,17  
 108:6 111:5 112:21,24  
 113:1,6 114:9 129:22  
 162:15 214:9 222:15  
**parlance** 185:11,13  
**Parleys** 93:24 94:11,15  
 95:19,22 103:15 141:10  
**part** 16:10 60:24 69:9  
 84:16,22,25 93:20  
 116:22 124:17 130:6,10  
 146:2 156:2 174:20  
 176:15 177:12 178:4,5,  
 11,12 189:24 190:1  
 196:25 199:18 200:12  
 201:21 224:24 225:7  
**participants** 43:24  
**participate** 40:18,19  
 49:12 132:6  
**participating** 78:7  
**participation** 48:22  
**parties** 7:14,25 15:5  
 18:15 27:6 31:12,16,18  
 36:15,23 37:20 38:6  
 47:17 48:24 50:7 51:8  
 53:9 85:2 144:9 145:25  
 157:25 176:4 202:10,12  
 203:10  
**partner** 115:5  
**parts** 130:21 167:7

168:16 185:5 200:15 201:17	226:6	<b>perspective</b> 21:24 45:22 63:17,23 108:22 121:2,8 139:19 162:22 166:10 200:21 214:12,15,20
<b>party</b> 6:14 7:8 10:2 25:10 34:15 36:17 38:9 44:7,11 48:19 82:12 186:16	<b>percentage</b> 110:11 111:19 116:18	<b>persuasive</b> 46:4
<b>party's</b> 38:10 49:11	<b>percentages</b> 79:24	<b>petition</b> 15:10
<b>pass</b> 62:24 71:25 163:3	<b>perfect</b> 89:7 124:8 162:4	<b>petitioner</b> 4:5
<b>passed</b> 56:2,4,13 139:24	<b>perform</b> 127:13 137:8	<b>phase</b> 61:25 183:10
<b>passes</b> 25:7 50:6 71:14 165:21	<b>performance</b> 95:15 139:12	<b>phone</b> 4:18 52:14
<b>passing</b> 63:5	<b>period</b> 116:14 183:8 222:14 227:18	<b>photograph</b> 187:18
<b>past</b> 59:11 129:10 131:2 157:13	<b>periodically</b> 63:21	<b>photographs</b> 187:6
<b>path</b> 44:17 163:5 169:16	<b>permanent</b> 64:22 96:19, 20 97:2,3,13 100:10	<b>physical</b> 74:11 184:7 187:14
<b>pay</b> 11:10 19:7 65:10 66:7 67:7 74:11 134:13, 16 199:17 206:17	<b>permit</b> 10:16,19,23 11:2, 9,13,18,22,23,25 12:10, 12,16 13:14 18:11 19:2, 10,13 23:12 55:4,14 56:9,14 57:12,15,20 58:23 66:8 137:22 144:1, 4,6,9 145:22 146:4 155:9 156:5 164:3 166:7 172:18 176:1,18 189:12 190:2 200:4 202:6 225:3 226:11,25	<b>picture</b> 186:5,9 196:14, 25 197:15
<b>paying</b> 74:21	<b>permits</b> 58:16,17 71:16 157:3 162:21 163:11,15 200:16 223:19	<b>pictures</b> 60:15 63:21 185:23 186:19 187:13 188:16
<b>payment</b> 152:8 205:15 207:17 219:1,7,18,23 220:3,5	<b>permitted</b> 78:1	<b>pieces</b> 167:8 185:6
<b>peaceful</b> 62:5 64:17	<b>permitting</b> 206:3 223:18 225:8	<b>pin</b> 157:1 162:20
<b>peak</b> 107:4 171:14 222:14,18,19	<b>person</b> 30:11,12 32:15 38:8 87:19 90:5,19 175:9 191:13	<b>pipe</b> 98:13
<b>peaking</b> 170:17,18	<b>personal</b> 47:3,11 145:18	<b>place</b> 61:18 71:11 104:1 108:14,15 125:11 154:21 224:20
<b>peaks</b> 171:17 222:20	<b>personally</b> 44:20 108:7 145:10 176:21 198:13	<b>placement</b> 190:8
<b>pending</b> 192:25	<b>personnel</b> 137:7 215:17	<b>places</b> 61:8
<b>people</b> 40:14,19 49:10 60:10,19 73:5 74:5 75:7 77:15,19 170:5 198:9,22 204:24 211:16,23 212:4 213:5 214:18 216:4		<b>plain</b> 177:19
<b>people's</b> 62:15		<b>plan</b> 7:24 25:17 126:21 129:18 132:4 140:24 141:17,20 156:9 168:17 171:2,6,21 172:6
<b>percent</b> 63:1 80:11,17 94:8 113:19,21 114:22 115:9 130:8 209:14		<b>planner</b> 80:5 160:19
		<b>planners</b> 162:7,8 213:15
		<b>planning</b> 46:17,25 56:5, 17,21 57:1 79:14 80:9

81:19 83:9,21 84:7 86:3  
90:5,18 91:3,19,24  
102:11,15 108:7,22  
112:21 114:10 126:10  
129:18 131:5,21 132:3  
136:24 139:23 171:6  
189:25

**plans** 110:5

**planting** 68:12

**pleadings** 15:20

**pockets** 76:23,24

**point** 4:9 9:8 17:11,21  
18:3 20:11 21:9,22  
22:21,25 29:14 30:14  
36:5 41:4 42:8 49:3  
51:12 56:16 112:3,12  
120:24 121:18 130:24  
146:25 148:16 149:1  
154:3 157:20 158:1,4,16  
160:11 166:25 172:19  
177:17 180:18 181:6  
183:10,15,19 186:14  
208:16 215:10 216:9  
222:10

**pointed** 177:18

**points** 17:10 39:6 158:23  
225:20

**pole** 166:11,25 186:4,6,7  
188:1,2,3,5,11,22  
189:13,15 190:8

**poles** 11:15,19 62:2,6,12,  
14 64:10,12,14,15 65:1  
68:10,12 109:22 130:2  
164:12 166:5,21 167:7,  
11,15,19,23 168:9,19  
187:14 190:8 193:23  
198:20,21

**policy** 18:16 39:13

**political** 62:21

**poll** 60:22

**portion** 42:17 65:21 66:2  
72:5 85:3 130:19 132:13,  
20 133:1,21 159:4,18,19,  
21,23 163:18 164:23  
165:5 168:14 196:19  
200:18,25 201:2 204:18  
220:14,17

**portions** 156:12 164:3  
170:20 200:11 220:19  
225:21

**position** 10:17 12:9,13  
13:5,24 15:18 16:3 18:18  
21:10 24:1 38:11 48:12  
54:23 55:22 58:2 59:10  
84:25 132:16,19 133:8,  
19,25 134:2 136:24  
146:3 156:16 191:20  
192:17,23 213:3 216:7  
223:4

**positions** 37:21 146:1

**positive** 141:7

**possess** 158:18

**possibility** 22:1 32:16  
63:5

**possibly** 67:13

**postponed** 65:21

**potential** 35:3 36:4 44:6  
109:2

**potentially** 32:11 41:13  
158:9 225:10

**power** 5:1,3,5 6:5 10:20  
11:17 12:22 13:7,15,20  
14:2,22 17:4,6,15 18:6,  
23 20:7,15,22 25:13  
32:21 33:6,13 34:24  
35:13 36:6,12 38:25 44:4  
48:4 50:7 51:10 52:20  
55:6 56:8,14,19 57:22

58:13 59:5 61:24 62:12  
63:9 64:7,24 65:7 66:4  
67:1,11,18 68:3,17,21  
69:4,9,20,22,23 70:2,8,  
19 71:1,3,5,12,17 72:1,4  
73:17 74:24 75:20,23,25  
76:3,11 81:20 83:9,17  
84:10,23 90:6,18 91:20  
92:1 100:15,19 102:4,5,  
8,20 104:23,25 105:11,  
17,18,20 106:8,9 107:5  
109:16 110:5,16,21,24  
111:2,11,14,15,17  
112:13,18,20 114:23  
115:5,14 120:16 121:9,  
11 122:3 125:17 126:1,7  
128:21 131:7 133:4  
137:21,22 140:23 141:1,  
17 142:19 143:2 144:3,  
11 145:21 152:7 155:23,  
25 156:3,11 160:2,16,25  
161:18 162:11 164:25  
169:24 170:5 172:2  
173:15,22 179:12 181:17  
183:18 191:3,7,15,23  
196:25 197:1,4,9 198:1  
199:9,12 205:14 207:15  
208:15 209:5 219:22  
225:12 226:4

**Power's** 7:5 10:10 12:13  
27:4 38:11 41:11 65:2  
70:6,11,15,22 78:12  
83:13 84:6 85:17,25 88:4  
91:23 94:3 104:19  
109:14 110:15 111:3  
112:19 115:15 146:3  
160:1 163:5 174:20  
175:3 197:20

**practical** 59:9 175:16,20  
178:19 201:23 202:2

**practice** 21:3 35:24

**practices** 20:22 44:23

175:6 178:11 184:7 197:21	<b>presentation</b> 22:3 143:11	<b>procedure</b> 46:4,24 158:6
<b>pre-filed</b> 22:10	<b>presented</b> 9:16 14:5 17:21 19:16 34:17 39:18 87:19 90:4 141:18 215:19	<b>procedures</b> 37:7,13 46:2,7 48:6
<b>preamble</b> 179:24		<b>proceed</b> 11:25 12:14 13:25 14:6 27:8 41:18 51:2 53:2 63:22 82:18 98:10 152:10 200:8 215:3,5
<b>Precisely</b> 212:13	<b>presenting</b> 38:9 78:16	<b>proceeded</b> 144:10
<b>preclude</b> 48:8 197:9,12	<b>preserve</b> 9:11 61:11 62:18	<b>proceeding</b> 9:8 17:11 21:12 24:5 29:22 30:21 32:25 34:2 35:23 36:24 37:1,4,23 38:16 42:16 48:11 50:10 57:16 63:19 79:1,8 80:21 81:11 92:13 97:18 146:24 151:19 164:8 183:1 208:21 211:3 218:14 222:6
<b>precluded</b> 107:6 119:18	<b>presiding</b> 37:17,25 48:8	<b>proceedings</b> 37:9,14 40:13,20 47:7,8,9 48:6 49:12 51:1 74:21 78:8 147:25 157:25
<b>precursor</b> 34:23	<b>pressure</b> 39:24	<b>proceeds</b> 64:2
<b>predicated</b> 129:7	<b>pretty</b> 30:18 103:3 105:25 109:5 185:7	<b>process</b> 6:22,25 7:2 9:1, 14,23 10:4 15:23 18:22 20:3 21:16 22:5,9 23:21 27:22 32:13 33:9 34:6,17 36:2 41:10 48:13 55:7 56:4,7,11 57:5,17 58:10, 19,25 78:5 139:21 144:2, 4,15 145:12,20 147:20 149:2,12,15 150:3 154:24 155:9 156:5,15 157:13 158:14 166:13 173:14 190:2 197:23 206:4 209:10,18,22 210:1,21,25 212:6 225:8 226:10
<b>predict</b> 106:20	<b>prevent</b> 115:3	<b>procurement</b> 18:21
<b>predominately</b> 170:8	<b>preview</b> 53:20	<b>produce</b> 165:19 189:9
<b>preference</b> 53:18 199:4	<b>previous</b> 26:9 52:19 120:16	
<b>preferred</b> 170:13	<b>previously</b> 11:17 51:21 115:16	
<b>prefers</b> 214:25	<b>price</b> 20:1 77:20	
<b>prejudice</b> 44:6,13	<b>primarily</b> 9:10 75:10 100:15,18 101:20 111:16,18	
<b>prejudiced</b> 40:14 44:5 48:19	<b>primary</b> 16:14 34:5,10 75:14	
<b>prejudicial</b> 147:20,23 148:10	<b>prior</b> 104:7 108:16	
<b>preliminarily</b> 7:4 25:12 120:12	<b>privately</b> 73:11	
<b>preliminary</b> 4:22 5:25 6:20 7:1 9:3 17:3,4 200:1	<b>privilege</b> 61:17 72:24	
<b>preparation</b> 80:3	<b>probability</b> 106:14 107:14 138:19	
<b>prepare</b> 60:3	<b>probable</b> 109:13,14	
<b>prepared</b> 9:21 18:14 53:18 78:22 80:6 147:4 151:18 175:3 189:24	<b>problem</b> 59:11 111:1 165:14	
<b>preparing</b> 79:6 212:12	<b>problems</b> 65:12 106:1 109:2 130:20	
<b>prescriptive</b> 75:25 76:6,7 156:1 191:23 194:8		
<b>presence</b> 38:9		
<b>present</b> 37:20 38:16 74:7 78:3 119:20 146:1		

200:3 213:5  
**produced** 79:8 80:20  
81:10 97:18 206:7  
215:16 225:16  
**proffer** 27:24 28:4 82:7,  
12 153:2  
**proffered** 12:22 13:6  
145:9 155:6  
**proffering** 163:9  
**proffers** 28:1  
**program** 140:23 141:5  
**prohibit** 71:17  
**prohibiting** 43:25  
**project** 11:10 12:3,14  
19:14,21 55:12,15 56:22  
57:8,11,14 58:14 62:2,3  
89:16,18,21 90:25 91:2,  
9,14 108:4,8,20 114:13  
123:12 124:17 129:7,19  
130:10 137:18,22 139:24  
145:9 147:2 152:6,10,13,  
14,21,22,24 154:1,7  
155:1,3 156:4,22 157:6,  
11 159:5,9 160:20  
161:11 162:16 163:6  
170:4,8 171:2,6 172:16  
174:15 175:11 179:7  
183:2,3,5 191:22 199:21  
200:10,12,19 205:13  
208:19 209:3,4,19,20  
211:7 213:21 219:3  
220:15,17 222:1,11  
223:13,14 225:8,13  
**projecting** 106:23  
**projects** 123:10 125:20  
157:13 160:22 179:8  
183:14 223:8,10,11,23  
224:1

**prolonged** 137:15  
**promulgated** 119:5  
**proper** 38:12  
**properly** 75:11 109:23  
**properties** 68:14 74:12  
216:19  
**property** 76:4,9 158:11,  
18 172:21 206:7 210:16  
217:3  
**proportions** 62:4  
**proposal** 18:22 60:4  
62:15 91:11  
**propose** 70:10  
**proposed** 61:25 73:4  
74:13,15,17 188:6 191:8  
**proposes** 17:15 188:18  
192:14  
**proposing** 64:7 112:9  
**proprietary** 42:19  
**prospects** 21:4  
**protect** 6:24 9:23 32:13  
34:16 115:17 116:3  
117:3 178:3  
**protecting** 115:20  
**protection** 117:7,16  
**protections** 116:19  
181:24  
**prove** 68:18  
**provide** 13:15 18:13  
48:10 66:5 68:3 76:13  
80:1 84:8 89:9 91:25  
111:3 126:10 136:20  
137:23 142:21 165:13  
181:15 201:5 202:22  
211:13 226:5

**provided** 10:24 15:2  
18:18 20:5 59:2,3 69:24,  
25 82:9 89:6 91:11,15  
95:25 96:1,4 133:15  
145:13 147:8 158:3  
162:13 173:12,25 176:23  
181:14 188:7 193:22  
194:25 195:5,15 206:4,5  
226:2,4 227:9  
**providing** 194:12  
**provision** 19:3,9,12  
**provisions** 37:16 46:5  
191:25  
**Provo** 93:24 94:12 99:17  
100:14,22 101:1,6,12  
102:13 103:15 111:10  
113:2 141:10 200:14  
**PSC** 8:17  
**PSTS** 141:23  
**public** 26:18 30:15 31:22  
32:24 33:5,19,22 34:3,14  
35:2 36:1 37:1 39:13  
40:12 41:22 43:8,10,13,  
17,20,23 44:25 45:15  
46:2,15 47:5 49:8,10  
52:8,14,18 56:18 57:2,3,  
6,8,9,10 140:21,23  
145:10 191:25 211:15  
213:13  
**published** 175:1,11  
**pull** 126:2 127:2  
**pulled** 67:12 89:10  
125:14 135:6  
**pulling** 90:13 125:8,9  
126:5  
**pun** 62:10  
**purchase** 74:18 181:23  
**purport** 77:15

**purported** 204:24  
**purpose** 34:11 89:16,21  
 90:23,24,25 91:6 145:23  
 160:22 179:25 213:21  
 223:15 226:5  
**purposes** 16:18 43:22  
 45:15 50:15  
**pursuant** 11:8 37:7 132:8  
 153:23 193:15  
**pursuing** 145:21  
**purview** 84:16  
**push** 112:14 143:16  
 160:3  
**pushed** 108:9 143:9,11,  
 21 162:12  
**pushing** 164:19  
**put** 4:18 13:21 27:18  
 40:7 49:2 67:1 77:18  
 80:18 90:7 91:2 92:6  
 95:7 110:7 117:2 124:16  
 164:3 178:20 203:8  
 222:7,23  
**puts** 39:23 61:24 174:24  
**putting** 17:14 85:10  
 124:24 126:1 209:13

## Q

**qualification** 20:25  
**qualifications** 18:19  
**qualified** 13:16,18 14:2,  
 24 15:3 16:6 18:14 20:3,  
 20,24 21:11 24:3 55:4  
 192:11 216:11,25  
**qualifies** 215:25  
**qualifying** 166:17

**quality** 28:14 83:9 90:6,  
 18 91:20 121:9,11 122:3  
 126:7

**quarter** 155:10

**quasi** 33:4,11 47:9

**question** 14:17,18 16:19  
 20:23 29:25 30:14 31:20  
 32:3 33:2,17,21 34:22  
 35:9 41:20 43:4,21 44:19  
 46:1 47:2,25 57:20 68:8,  
 11 82:4 84:11,17,20  
 85:6,8,18 86:15 87:14  
 88:6,20 89:4 90:10  
 100:13 101:10 102:1  
 105:14 110:18 113:13  
 117:12 121:19 122:22  
 133:13 134:11 135:4,10  
 138:9 141:16 144:8  
 152:4 153:22,25 156:25  
 159:25 160:5 161:20  
 162:4,9 163:23,25  
 165:11,20 167:9,14,17,  
 20 169:19 186:24  
 188:13,16 189:3,7 191:5,  
 13 192:10,25 194:1,5,17,  
 21,24 195:3,4,6 196:2  
 203:3,5 206:20 208:3,25  
 212:2 213:16,20 216:23  
 219:14 220:13 221:1  
 224:20 226:21 227:4

**questioning** 20:20 89:14,  
 19 93:18 215:10 225:10

**questions** 10:7 12:25  
 13:2 14:16 16:25 18:2,4  
 20:10,12 31:6,9,15,18  
 32:19 34:21 36:11,16  
 38:22,25 39:18 41:3,5  
 42:7 45:1 53:21 82:21  
 83:1 87:17,20 90:12,13,  
 20 92:4 93:12 108:25  
 110:14 117:9,18,22  
 118:23 119:23 120:3,17

123:24 124:13 128:2,6  
 138:1,25 140:8,11,15,16  
 141:15,25 146:13,17,19  
 147:8,15 148:15,18  
 153:15 163:22 173:1  
 180:17 181:8,12 182:18  
 192:7 195:9 210:10,20  
 212:18 214:19 220:22  
 227:11,21

**queue** 134:6

**quick** 93:20 97:7 98:15  
 100:13 172:25

**quicker** 125:12

**quickly** 108:5,11 143:23

**quiet** 62:5

**quote/unquote** 211:23

## R

**radial** 111:24 175:24  
 176:16 177:13 201:3,9,  
 16 202:4

**railroad** 103:17 141:7

**raise** 7:23 11:9 14:9  
 15:17 65:15 102:10

**raised** 9:4 57:5 73:11  
 90:3 120:14 146:23  
 224:10,12,13,21

**ram** 56:10

**ran** 183:8

**range** 98:22 158:22  
 169:11,13 170:1 206:13

**ranges** 98:20 206:7

**rate** 132:16

**rates** 132:15

**rationale** 31:24

<b>raw</b> 58:8	151:21 153:2 214:22	52:2 87:6 91:17 97:16
<b>reach</b> 158:4	215:1 217:2 218:5,6	182:10
<b>reached</b> 11:3 225:15	221:16,18	<b>recorded</b> 75:19 76:1
<b>read</b> 6:18,19,25 20:21	<b>rebutted</b> 216:2	<b>recovered</b> 132:14,22
44:12 54:15 91:17	<b>recall</b> 182:7 188:8 189:14	134:8
101:24 143:24 178:13	195:22 196:5 199:1	<b>recovers</b> 116:12
182:10 188:24 195:19,	204:19 206:2 212:17,21	<b>recovery</b> 132:17
23,24 196:2,4,11 201:15,	215:6 218:11,21	<b>recross</b> 138:4,7 227:15,
21 217:7 218:9 225:24	<b>receive</b> 32:6 84:4 91:21	17
<b>reading</b> 6:20 181:16	106:9 149:24 150:5	<b>RECROSS-</b>
193:8 218:11,21	154:15,16,21 224:3	<b>EXAMINATION</b> 138:11
<b>reads</b> 178:17 179:15	<b>received</b> 4:23 6:4,9,17	227:23
<b>ready</b> 23:5 25:9 27:3	8:5,13,15,18 14:6 15:12	<b>red</b> 39:22,25 80:16,17
52:19 78:11 172:8	54:15 57:9 98:3	<b>redirect</b> 71:2 136:11,14
<b>ready-for-construction</b>	<b>receives</b> 223:16	221:2,5,11,14 227:18
226:8	<b>receiving</b> 11:7 146:4	<b>reduce</b> 198:1
<b>real</b> 17:17,18 57:22,23	150:13	<b>reduced</b> 167:21,25
63:4 93:20 205:4,6	<b>recently</b> 103:17	188:11,12 199:7
<b>realistic</b> 165:4	<b>recess</b> 26:22,23 51:17	<b>redundancy</b> 119:4 129:2
<b>realize</b> 62:1	120:9 181:2	149:13,18
<b>realized</b> 52:9	<b>reclose</b> 96:12	<b>refer</b> 60:14 79:8 80:8
<b>reason</b> 26:21 31:23	<b>recloses</b> 96:16	196:1
36:23 38:2 56:6 67:5	<b>recognition</b> 14:23	<b>referenced</b> 8:22
72:8 88:24,25 134:11	207:23	<b>referencing</b> 181:12
146:5 163:17 168:12	<b>recognize</b> 35:23 46:20	<b>referred</b> 51:22 52:5,15
176:10	61:18 62:20	63:21 129:15 181:18
<b>reasonable</b> 9:22,24	<b>recognized</b> 60:18	184:14
37:20 48:24 109:24	<b>recommend</b> 56:21	<b>referring</b> 37:25 97:17,22
116:23 136:23 145:25	<b>recommendation</b> 125:24	115:12 124:14 128:22
<b>reasons</b> 24:8 25:21	205:1	199:24 207:12 221:21
36:22 39:13 42:18 53:6	<b>recommended</b> 108:22	<b>refers</b> 79:24
77:21 91:1 203:24 225:9	<b>reconsider</b> 40:24	<b>reflected</b> 117:14
<b>rebuilt</b> 189:1	<b>reconvene</b> 51:16	<b>reflection</b> 151:24
<b>rebut</b> 215:25 216:25	<b>reconvening</b> 70:3	<b>refrain</b> 45:5 195:10
<b>rebutts</b> 214:23	<b>record</b> 4:4,14 30:11	<b>refreshed</b> 174:25
<b>rebuttal</b> 36:25 134:9	33:12 37:1 50:15 51:20	

<b>refund</b> 19:6	<b>relationship</b> 122:7,17,19 123:4,15	<b>reminders</b> 4:10
<b>region</b> 162:15 198:4	<b>relative</b> 141:2	<b>reminding</b> 227:15
<b>regional</b> 131:20 137:10 161:24 185:2	<b>relaxed</b> 37:24	<b>remobilization</b> 169:6
<b>regionally</b> 222:20	<b>release</b> 154:17,19	<b>remote</b> 70:17 71:7
<b>regret</b> 25:23	<b>relevance</b> 209:2,9,15 210:8	<b>remove</b> 110:5
<b>regulate</b> 37:18	<b>relevant</b> 37:19 136:5 144:21 145:24 148:9 149:6,15,20	<b>removed</b> 30:7,10 31:2 221:22
<b>Reich</b> 5:2 8:13,18 10:13, 15 12:18,25 18:10 20:9, 11 27:4,6,23 28:5,8,16 29:15 36:18,20 38:21 39:6 47:22 48:1 50:19 51:11,13 53:25 54:1,5,7, 22 59:21 78:15,17,20 82:7,20,23 86:21 87:3 89:12,23,24 90:21,23 97:16 115:11 117:25 118:6,10 122:23 123:2 136:11,12,15 138:1,3 142:6,9,24 143:2,6 145:6,7 146:9,12,21 147:1,13 148:2 151:11, 13,16 153:1,12,13 181:19,21 186:18,21,24, 25 187:7 194:16 195:3 206:19 207:7 208:20 209:2,16 216:13,17 218:12,18 219:5,21 220:7 221:1,8,12,15 224:9,12,23,24 226:17, 19,22 227:10,13	<b>reliabilities</b> 123:3	<b>rendering</b> 188:7
	<b>reliability</b> 32:5 33:8 41:9 66:25 83:13,17,24 84:6, 9,15,24 85:16,23,24 88:1,5,7,13,23,24 90:9, 12,13 91:22 92:1,5 93:6, 13 94:17,19,22,23 95:1, 10,11,14 119:2,3,13,14 121:5,6,16 122:8,13 123:4,8,11,14,15 124:23 125:25 126:7 127:24 130:12 139:4,10,14 152:22 159:10 161:13,22 174:23	<b>renew</b> 41:14
	<b>reliable</b> 14:5,7,13 40:4 59:5 66:5,15,16 84:4 91:21 95:7 105:25 125:10 137:23	<b>repair</b> 107:9 125:3 126:23 135:15 204:12
<b>Reich's</b> 73:23	<b>relied</b> 79:7	<b>repairs</b> 136:21 137:8
<b>reiterate</b> 41:8 137:13	<b>relief</b> 77:23,24	<b>repeat</b> 5:18 54:23 55:2 110:18 118:3
<b>rejected</b> 227:6	<b>relocate</b> 110:8	<b>repeatedly</b> 108:2
<b>relate</b> 150:1	<b>rely</b> 34:18 79:25 81:23	<b>rephrase</b> 216:22 219:25
<b>related</b> 97:11 135:14	<b>relying</b> 35:16 160:12	<b>replace</b> 64:14 109:22
<b>relates</b> 44:25 123:3,14 136:4	<b>remain</b> 80:11	<b>replow</b> 128:15
	<b>remaining</b> 159:19	<b>report</b> 195:24 225:25
	<b>remember</b> 4:13,19 13:1 188:13 211:1	<b>reporter</b> 5:16,23 30:23 141:12,14
		<b>represent</b> 80:24 82:2 182:25 196:18
		<b>representation</b> 31:12 78:25 81:18
		<b>representations</b> 22:4 35:6
		<b>represented</b> 22:9 73:1
		<b>representing</b> 52:20 72:25 73:7
		<b>represents</b> 79:13 215:18
		<b>request</b> 6:5,6,20,23 7:2,3 9:3 10:10,11,14,15,21 12:7 13:7 17:3,5 18:6,8,



22 20:14 23:8 24:23 25:8  
26:21 30:1,20 31:7,9,19  
32:23 35:21 36:1,6,14,  
19,21 38:6 39:2 41:23  
42:10,12,22 43:21 45:8,  
17 47:16 48:25 49:1  
50:6,16,25 51:4 52:4  
69:20 91:10 120:20  
133:6 153:24 181:11,20  
225:7

**requested** 44:22 45:3  
56:18 110:7

**requesting** 45:4 70:2

**requests** 132:8 205:22

**require** 18:12 67:8 68:2  
80:10 96:10 125:14  
177:3 178:9 216:6

**required** 11:9,12,22  
13:15,21 42:20 55:14  
67:2 68:9 87:22 88:1  
168:8 177:10 190:6  
193:16

**requirement** 18:12 19:11  
30:22 89:9 119:10  
126:14,17,19

**requirements** 14:1 32:24  
68:25 84:10 92:2 119:2,  
3,4 122:11 126:18

**requires** 30:6 67:4,14  
69:1 76:15 126:14 168:6  
177:22

**requiring** 56:2 64:12

**reroute** 101:6

**rerouting** 101:9

**resemble** 62:4

**Reservoir** 61:5

**reset** 116:5

**residential** 64:18

**residents** 59:6 65:9  
76:14

**residents'** 64:20 68:10

**resolution** 182:15

**resolve** 158:5

**resorts** 121:13

**resource** 132:4

**respect** 9:7 14:23 15:5  
19:1 29:21,25 42:3 93:7  
121:12 136:21 210:9  
221:19 223:3,7 225:5

**respectfully** 17:19

**respond** 9:10,20 12:20  
32:3 35:10 169:24  
194:21 206:25 208:23  
219:12 226:20

**responded** 12:6 147:7

**respondent** 4:6

**responding** 35:13 39:5  
119:22 224:14

**response** 13:4 33:2  
34:24 41:22 91:16  
116:23 212:18

**responses** 44:3 54:25  
92:8

**responsibility** 16:10  
89:18

**responsible** 84:3 91:10,  
20 193:10

**responsive** 192:10

**rest** 159:5 184:24 198:4

**restart** 116:13,14

**restate** 160:5 191:5

**restoration** 102:9

**restore** 169:24

**restrictions** 77:17

**result** 106:8 214:10

**results** 62:25 63:1 79:21

**retread** 149:14

**return** 15:3 180:22

**returning** 123:19

**review** 4:4 37:5 43:12  
46:6 52:2 78:22 85:11,20  
86:6,8,14,15,17 97:7  
154:25 155:13 181:5  
223:25

**reviewed** 5:25 80:6  
151:17 166:16 179:2

**revisit** 120:21 182:6

**revisiting** 120:15

**RFP** 18:23 21:16 77:18

**right-of-way** 58:8 74:11  
145:14 147:9 193:6  
195:16 197:3 208:7  
209:19

**rights** 9:23 34:7 75:23  
76:6 158:4 206:2

**rights-of-way** 73:22,24  
75:12 76:15 152:18  
194:2,14 196:11 207:6  
212:9

**rise** 92:15

**risk** 39:19 70:12 106:21,  
24 108:5,12,18,21  
112:16,19,22 113:16  
114:12,22 126:17 129:24  
130:3,21 137:14,19  
222:24

**risks** 71:5 108:13

**RMP** 58:20 64:6,9 65:17

66:23 67:6,8 79:9,24  
80:15,21 81:4,15 82:1  
97:17 155:23 178:9  
**RMP's** 175:7 177:18,21,  
24 178:24 206:5  
**road** 57:25 76:9 131:16  
157:9 168:2 186:13  
200:22  
**roadway** 204:11  
**Rocky** 4:5,25 5:3,5 6:4  
7:5 10:10,20 11:17  
12:13,22 13:7,14,20  
14:2,22 17:3,6,15,21  
18:5,22 20:7,14,21 25:12  
27:4 32:21 34:24 35:12  
36:6,12 38:11,25 41:11  
44:3 50:7 51:3,10 52:20  
55:6 56:7,13,19 57:22  
58:12 61:24 63:9 64:24  
65:2 66:4 67:1,11,17  
68:2,17,21 69:3,22 70:5,  
8,10,14,19 71:1,5,11,17  
72:1 73:13,17,20,21  
74:8,14,23 75:10,18,24  
76:15 77:5,18 78:5,12  
80:9 83:9,13,17 84:3,6,  
22 85:17,24 90:6 91:21,  
23 94:3 97:24 98:4  
102:4,8 104:19,23,25  
105:10,16,20 106:8  
107:4 109:14,16 110:4,  
16,21 111:3,13 112:18,  
19 115:14 120:15  
125:17,25 129:1 131:6  
132:8,20 133:4,9,21  
134:21 137:21,22 142:19  
143:2 144:2,11 145:21  
146:2 152:7 156:11  
160:1 163:5 173:15,22  
174:20 175:3 179:12  
181:15,17 183:12,18  
185:11 187:24 188:18

191:3,7,15 192:13 193:2  
194:1 195:14 196:7  
197:14,25 199:8,12  
200:24 202:24 205:13  
206:16 207:15 208:9,14  
209:5,9,25 212:7 219:19,  
22 220:4 224:18  
**role** 33:11 131:24 132:1  
160:19  
**roll** 222:12  
**rolling** 63:10 70:8 102:21  
104:9,13 109:15 113:6  
129:20  
**Ron** 218:10  
**room** 28:19 30:12,19  
31:3 153:24 193:2  
**route** 12:4 35:21 74:13  
76:18 156:1 173:25  
186:10 191:8 192:15,22  
198:14 216:5,6,18  
**routine** 44:22  
**rubric** 78:5  
**rule** 29:19 30:3,6,18  
33:6,14 37:25 38:5,8,12  
39:12 47:23 92:22  
175:20,21 202:2 227:2  
**Rulemaking** 37:8  
**rules** 37:6,9,23 38:5  
45:23 46:4,12,23  
**ruling** 33:22 48:13 87:15  
92:19 119:25 120:15,16,  
21 195:11  
**run** 64:25 74:19 79:15  
81:19 132:7 136:25  
193:14  
**running** 109:23 194:3,15  
195:17 197:1

**runs** 64:17 197:3  
**rural** 62:18 64:17

---

## S

---

**saddled** 168:25  
**safe** 35:21 59:5 84:4  
91:21 105:7,23 137:23  
197:12  
**safely** 190:25  
**safety** 13:22 66:25 67:3  
87:25 88:7,13,16,19 89:1  
92:4 117:2 140:23  
141:17 174:22 179:21  
180:1,3,4,10,13,14  
**sake** 92:12  
**save** 212:14  
**scenario** 33:4 102:8  
136:23 160:1 163:2,7  
165:7 167:11 168:6  
169:14 170:23 171:19  
**scenarios** 177:23 189:10  
204:9  
**scenes** 187:5  
**scenic** 61:2  
**schedule** 26:6 162:22  
197:20 222:1,6  
**scheduled** 127:12  
**schedules** 26:8  
**scheduling** 9:5  
**scope** 89:20 93:10  
120:18,19 139:23 223:13  
**Scores** 224:2  
**scratch** 74:5  
**scratched** 121:23

<b>search</b> 77:6	<b>service</b> 26:18 31:22 43:8, 14,18 74:16 76:13 84:9 91:2 92:1 103:16 105:4 111:4 132:7 133:6 137:23 160:13 212:19 213:1,9,11 214:7	<b>shrink</b> 40:20
<b>season</b> 141:3 171:14 222:8	<b>serving</b> 101:2 103:11	<b>shut</b> 140:24 141:1,17
<b>seconds</b> 96:24	<b>session</b> 46:18	<b>sic</b> 14:19
<b>section</b> 37:6 48:7,8 137:5 169:3 172:5 175:14,22,23 176:5 201:15	<b>set</b> 45:23 56:7 90:17 94:4 118:9 126:9 137:15 157:24	<b>side</b> 15:10 113:24,25 197:4 203:9,18
<b>secured</b> 18:23	<b>severance</b> 74:12 75:12 206:18 207:5	<b>signed</b> 76:1
<b>seek</b> 77:23 163:3	<b>severity</b> 161:1	<b>significant</b> 13:12 137:14
<b>seeking</b> 77:24	<b>sewer</b> 203:14	<b>Silver</b> 93:25 141:7
<b>sees</b> 6:3	<b>shadow</b> 62:10,12	<b>similar</b> 46:14,18 61:21 146:23 168:3 185:8 204:3 206:10 224:24
<b>segment</b> 226:3,4	<b>shadows</b> 64:18	<b>simple</b> 30:19 39:20 87:1 88:6
<b>select</b> 10:24 11:4 12:7	<b>shafts</b> 121:13	<b>simply</b> 9:16 33:8 40:7,9 49:6 65:19 221:6
<b>selecting</b> 11:6	<b>share</b> 39:16 40:21	<b>simulate</b> 79:18 81:19
<b>send</b> 50:23 166:12	<b>sharing</b> 53:20 182:2	<b>single</b> 126:20 137:6
<b>senior</b> 80:5	<b>shift</b> 222:25	<b>single-lane</b> 76:9
<b>sense</b> 23:2 60:11 103:5, 22 215:2	<b>shire</b> 62:5	<b>sir</b> 151:2
<b>sentiment</b> 45:14 211:22	<b>short</b> 26:21,25 43:17 45:25 50:12 51:9,25 106:18 225:25	<b>sit</b> 33:4 39:17 41:12 67:13
<b>separate</b> 8:8 46:20 64:9 67:3 144:12 175:8 176:12 177:3,10 190:3	<b>shorter</b> 190:4	<b>site</b> 137:12 168:2 169:4
<b>separating</b> 204:14	<b>show</b> 65:19 66:4,10,23 67:16 70:5,10,18 72:3 74:7 78:3 80:17 105:19 108:17 169:2	<b>siting</b> 223:17
<b>separation</b> 175:20,24 176:13,16,21 177:14,20 178:23 201:3,9,10,12 202:2,4,22 203:10,19	<b>showing</b> 64:3 67:25 98:16	<b>SITLA</b> 208:19 210:14,15
<b>separations</b> 176:3 202:9, 11	<b>shown</b> 80:16	<b>sits</b> 32:9 61:1,5
<b>serve</b> 93:23 101:4,7,14 102:14 104:3 162:5	<b>shows</b> 19:22 38:9 57:19 59:3 75:22 81:20 209:13	<b>sitting</b> 33:11 44:10 127:23 193:2
<b>served</b> 70:13 111:20		<b>situation</b> 71:23 103:9 129:12,16 154:22 222:7
<b>serves</b> 111:16,25		<b>situations</b> 104:8 129:18
		<b>size</b> 61:21 62:3
		<b>ski</b> 121:13
		<b>skimmed</b> 195:21

<b>skipped</b> 119:25	156:16 205:3 213:7	109:10 129:9 138:18
<b>sky</b> 65:18	<b>speaker</b> 28:17,18	<b>speculation</b> 116:12,21
<b>skyscraping</b> 64:25	<b>speaking</b> 4:13,18 109:5 118:16 119:3 121:9 123:16	<b>speed</b> 212:6
<b>slightly</b> 168:6	<b>speaks</b> 154:19	<b>spend</b> 54:24 60:2 74:10 148:6 168:1 206:17
<b>slipped</b> 25:24	<b>spec</b> 67:11	<b>spent</b> 147:25
<b>slotted</b> 193:23	<b>specific</b> 54:19,21 109:21 123:7 124:14 127:7 154:9,21 156:8,9,17 157:6 160:23 166:12 167:6 169:20,23 170:20 171:9 172:16 173:11 183:8 189:7,8 191:13 198:17 203:12 204:15 211:7 213:16,19 216:4 221:24	<b>spirit</b> 149:12,20
<b>small</b> 60:21 110:11	<b>specifically</b> 13:5 38:17 48:5 136:18 158:24 167:2 168:9,21 169:17, 18 172:15 178:17 180:7 189:13 195:22 196:5 199:1,23 211:2,3 213:18 221:21 223:12	<b>splices</b> 125:5 127:9,10, 13
<b>Snell</b> 5:14	<b>specification</b> 91:5 119:12 122:12 123:10 173:16 179:18	<b>split</b> 75:7
<b>Snyderville</b> 108:19 141:22	<b>specifications</b> 66:12 67:2 68:4 85:2,15,21 86:2,8,14,16,17,20 87:2, 4,18,22 89:6,8,17 90:14 91:8,11 93:7,9,12 118:22 119:1 120:17 121:24 122:9 123:5,7,8 124:14 173:8 174:8,17 175:4	<b>spoken</b> 198:13,16
<b>soil</b> 167:20	<b>specifics</b> 157:11 216:2	<b>spreadsheet</b> 96:10
<b>solely</b> 38:1 60:15	<b>specs</b> 13:19 67:8 92:5 134:23	<b>spring</b> 58:5 72:6 106:6, 22 159:4 163:18 165:6 169:7 222:13
<b>soliciting</b> 204:17	<b>speculate</b> 106:10,12	<b>springtime</b> 162:23 222:22
<b>solution</b> 130:15 139:19		<b>square</b> 206:11
<b>someday</b> 75:1 135:9		<b>stability</b> 121:11
<b>someplace</b> 98:12		<b>staff</b> 8:17
<b>sort</b> 47:1 119:19 175:18 177:13 212:17		<b>stage</b> 56:7 113:6 118:24
<b>sorts</b> 171:5		<b>stand</b> 40:17 215:6
<b>sound</b> 134:18		<b>standard</b> 18:15,21 67:4, 14 75:15 80:9 86:5 93:6 102:11,15 116:6,24 119:13,14 121:7 122:14 123:8 126:1 168:10 174:21,23 175:4,7,10,13 176:11 177:18,21 178:25 180:10,13 181:17 184:9 187:17 189:1 205:19,23, 24 206:15 207:3,6 208:6, 10,11 209:7,12 224:3
<b>sounded</b> 142:24		<b>standards</b> 13:22 80:10 83:13,17,24,25 84:6,17, 18,19,21,24 85:10,16,23,
<b>sounds</b> 98:14 114:4 120:1 130:11 172:9,10		
<b>sources</b> 102:5,7		
<b>south</b> 61:4,5 131:11 191:24 194:10		
<b>space</b> 61:11,12		
<b>spaced</b> 202:17		
<b>span</b> 190:4		
<b>spare</b> 127:15		
<b>spatial</b> 166:10		
<b>speak</b> 4:17,20 57:7 63:24 92:10 121:15 124:19		

24 86:2,6,11 88:1,5,7,13,  
16,23 91:23 93:13 94:4,  
5,23 95:1,5,11 119:3,5  
121:16,17,24 122:8  
123:9,11,15 124:21  
125:13 126:8,9,11 139:5,  
10,14 140:1 166:17  
174:14 175:3,4,10 177:3,  
9,24 178:2,7 179:2,15,  
17,20 180:2,5 184:6  
185:6 187:18 188:25  
193:16

**standing** 16:1

**standpoint** 32:9 67:1  
88:23,25 94:17 125:23,  
25 165:23

**stands** 94:2

**staring** 65:4

**start** 6:8 27:15 28:3,25  
57:24 58:4,10 62:16  
116:2 162:16 164:15  
165:17 166:23 167:5  
168:13 171:21,25 172:8  
174:1 181:12 199:25  
222:9,23 225:20

**started** 4:7 56:12 156:15  
159:23 220:20

**starting** 71:21 157:19  
158:1

**state** 49:7 60:4 61:3  
93:23 125:6 148:24  
157:23 160:7 184:17,24  
223:18

**stated** 10:21 11:12,23  
12:10 18:24 55:9 56:12  
59:8 84:14 115:17  
175:21 178:13 202:2

**statement** 53:5 54:6  
59:19,23,25 72:19,21  
73:23 100:18 146:22

149:4 152:6 174:5 197:6  
213:4

**statements** 53:15 54:2  
150:2 151:23 211:15  
213:13 223:1

**states** 11:25 179:25

**stating** 69:11 118:3

**statistically** 106:4 109:5,  
13

**statute** 14:21 16:4,6  
20:21 24:2,6 42:13 43:7,  
11,13,16 69:1,14 199:13  
206:21,22 219:8 220:8,  
11

**statutes** 46:22

**stay** 28:18 45:22 112:5

**stays** 96:17,20

**steel** 164:12 166:5,21,25  
167:15,19 168:8,19

**step** 56:23 68:6 121:3  
177:8

**stop** 98:8 169:20 174:1  
227:16

**stopping** 164:7

**straight** 65:10,14 91:18

**strategy** 210:2

**stream** 30:21,23,25 31:4  
52:16

**streamed** 30:16

**streaming** 30:21 51:22  
52:5,12

**streamline** 147:24

**Street** 131:11

**strengths** 121:10

**stress** 64:12

**stretch** 186:1

**strike** 96:15

**stringing** 135:12

**Stringtown** 186:12

**strong-willed** 137:17

**structure** 96:19 137:6  
175:18 189:8

**structures** 64:15,19  
100:3 107:3 140:3  
175:17,19,25 176:2,17,  
19 188:8 201:25 202:1,5,  
8 204:8,13

**stub** 100:24

**studies** 70:11 79:22  
132:7,11 168:4,6

**study** 83:25 131:21  
145:16 147:4,6 225:4,6  
226:5,12,24

**stuff** 25:24 167:20 192:6

**sub-transmission** 83:22

**subdivision** 191:24

**subject** 12:15 33:18  
130:20 175:15 178:18  
179:11 201:23 214:5

**submit** 17:19 39:13

**submittal** 83:25

**submitted** 10:21 20:7  
39:10 54:16 65:12 69:19,  
21 78:23 134:9 147:4  
189:25 200:3

**submitting** 55:4

**subpart** 177:11

**subsets** 225:19

**substance** 9:20 26:4  
211:19

<b>substantial</b> 74:15	<b>surrounded</b> 60:25 61:3	
<b>substantially</b> 108:20	<b>surrounding</b> 68:13	<b>T</b>
<b>substation</b> 100:24 113:18 159:7,8,15,16	<b>survey</b> 62:23	<b>tackle</b> 214:25 215:2
<b>substations</b> 86:4 161:12	<b>surveyor</b> 193:23	<b>tactic</b> 210:1
<b>subsurface</b> 175:17,19 201:25 202:1	<b>survive</b> 71:8 214:13	<b>take-off</b> 174:2
<b>suddenly</b> 62:9	<b>suspect</b> 143:6	<b>takes</b> 110:10 127:2 131:25 152:12 157:18 158:20 160:14 161:17 166:13 210:21 223:4
<b>sufficient</b> 11:9 68:25 102:14 113:1	<b>suspend</b> 69:23	<b>taking</b> 6:8 44:21 45:2 73:18 102:19 112:16,18 170:20
<b>suggest</b> 74:6 121:14 185:11 194:24 210:2,5	<b>sustain</b> 216:22 220:10 224:17	<b>talk</b> 91:7 94:14 113:14 114:3 119:24 124:21 132:16 199:20 224:25
<b>suggesting</b> 77:11 78:6 187:23 196:8 209:10	<b>sustained</b> 22:11 97:10, 12 118:22	<b>talked</b> 105:14 144:12,13
<b>suggestion</b> 122:4	<b>swear</b> 29:1 151:4	<b>talking</b> 4:12 27:22 56:11 84:2 95:10 104:13 105:21 109:3 111:23 115:21 116:19 121:4,5 140:2 148:1,6 172:15,18 187:16 204:11,12 217:17
<b>suggests</b> 69:14 77:16	<b>swearing</b> 28:25	<b>talks</b> 48:5 225:1
<b>sum</b> 114:13	<b>Swiss</b> 61:9	<b>tall</b> 62:13 64:16 187:20
<b>summary</b> 6:5,19 7:2 10:12 13:8 17:5 18:6 20:14 23:1,11 24:18,23 25:8 205:9 207:14 225:23 226:9 227:25	<b>switch</b> 102:4 129:2,13 197:22	<b>taller</b> 198:20
<b>summer</b> 58:13 114:16 140:21 141:2,19 170:17 222:19	<b>switching</b> 102:8,17	<b>tallest</b> 189:15
<b>Summit</b> 101:14 140:21	<b>sworn</b> 29:5 50:20 52:22 124:7 151:8	<b>target</b> 162:22 172:16
<b>superceded</b> 185:3,4	<b>system</b> 25:18 70:16,19, 22 79:15,21 81:1 83:14 84:7,8,23 85:17,25 90:8, 9 91:24,25 94:3,9 96:24 98:1 100:20 102:4,8 104:9 105:24 110:16,24 111:2,20,21,23 115:10, 11,14,15 116:20 129:2 132:6 137:21 139:6 160:23 161:6,21 162:8, 13 165:1 170:16,19 171:17 172:2 175:8,24 176:1,15,16,19 177:13 178:20 202:5,7 213:23 214:20 222:21,24	<b>targeted</b> 172:22
<b>supplied</b> 194:18	<b>systems</b> 71:3,8 140:25 175:15,16 176:14 178:18 201:22,24 203:18	<b>tariff</b> 132:9
<b>Supply</b> 176:6		<b>task</b> 206:10
<b>support</b> 45:16 83:23 84:15 112:1,8,10 131:24		<b>tasks</b> 168:10 172:16 200:8
<b>suppose</b> 73:6 189:10 204:8 214:8		<b>taxpayers</b> 67:7 76:24
<b>supposed</b> 14:8,9 17:23 21:14 69:21 207:18		<b>team</b> 225:8
		<b>techniques</b> 170:7

<b>technology</b> 184:6	87:6 89:15,19,20 90:2,24	150:6,9,14,16,19,21,23
<b>telephone</b> 151:1	91:6,12,15,17 92:21	151:3,11 153:4,14
<b>telephonic</b> 4:10	93:5,11 94:7 95:13	180:19 181:4,19 182:5,
<b>telephonically</b> 5:20	101:19 102:1,25 108:25	12,17 186:16,21,23
<b>telling</b> 195:2 216:9	113:15 117:14 120:18,19	187:1,8 190:13 194:20
<b>temporary</b> 96:15,22,23	128:12 129:11,16 134:9	195:10 206:24 207:10,20
99:21 100:8 114:5	136:16 142:4,23 143:25	208:22 210:7 215:4
<b>ten</b> 7:20 8:9 51:16,17	144:6,14,18 145:8,18	216:21 219:11,15,24
138:16 166:24 227:15	146:22 147:19 148:4	220:9,24 221:10 224:9,
<b>tens</b> 169:11	149:6 151:18,21,24	16 226:19 227:1,12
<b>term</b> 20:24 101:11	152:5 153:2,22 155:17	<b>theme</b> 55:8
<b>terms</b> 10:25 14:21 17:13	159:8 176:24 179:1	<b>theory</b> 159:19
26:6 42:14 121:6	181:13 183:21 184:3	<b>thicker</b> 64:13
<b>terrain</b> 137:1	187:15 195:20,23,25	<b>thin</b> 22:15
<b>test</b> 170:22	199:19 200:11 201:6	<b>thing</b> 32:12 33:15 50:15
<b>testified</b> 18:20 29:6 93:7	203:7 205:5,9 207:2,7,15	121:11 136:23 164:7
131:24 151:9 155:8	209:17 214:22 215:19,25	167:7 170:14 180:14
156:5 160:17 197:23,25	216:3,14,17,25 217:2,8,	182:6 193:17 217:11
210:19 214:24 215:3	10,13 218:3,5,9,16,25	218:23,24 221:7
<b>testify</b> 30:7,8 31:4 32:14	219:21 220:4 221:17,18	<b>things</b> 4:11 13:20 14:19
39:22,23 40:25 67:21	<b>Thad</b> 4:3,14 5:6,10,15,24	16:14 32:6,7 54:25 63:25
85:15,22 86:19 89:2	8:4,15,20 9:25 12:17	79:25 87:20 95:9 96:11
90:11 91:13,14 93:9	14:14 16:17,24 17:25	121:10,14 130:13,15,23
123:3 143:25 146:7	20:8 21:19 22:17 23:13,	138:13 139:13 145:17
147:11 149:17,21	17 24:10,19,22 25:2,6	147:11 148:1,3,5 157:1
<b>testifying</b> 25:20 30:10,12	26:1 27:17,25 28:7,9,12,	162:20 170:5,12 171:8
41:24 47:19 148:5 188:4,	20,24 29:8,20,24 30:13	174:1 182:10 197:11
17 189:4 212:18 213:8	31:5,13 32:2,19 33:1,16,	203:16 212:15
<b>testimony</b> 6:10 7:19	24 34:19 35:8 36:9 38:20	<b>thinking</b> 21:6 63:3 111:8
22:5,6,7,10,13,24 23:3	41:1,19 42:5,23 43:6	<b>third-party</b> 225:11
25:10 27:11,19,20,24	45:9,18,24 47:2,24 48:15	<b>thought</b> 15:8,17 25:19
30:9 32:5,17 34:8,9,13	49:14,22,24,25 50:3,5,17	103:6 120:2 122:16,18,
36:24,25 37:2,3 38:7	51:5,15,19 52:1 53:3,12,	20 148:24 210:24 216:20
39:10,20,25 40:4,21	24 54:3,11 59:20 72:18	217:9 218:15
44:12 45:6 50:9,13 52:20	78:9 82:11,20,24 87:7	<b>thoughtful</b> 78:4
55:9,10 59:3,8 68:24	89:22 90:1,21 92:7 97:19	<b>thoughts</b> 14:20 22:21
78:16,22 79:1,4,6 80:1,8	98:2 117:20 118:7,12,16	36:16 44:17 45:25 53:15,
81:24 82:8 84:2,13 85:14	120:7,11 122:25 123:17	19 148:22 149:9,22
	124:2,6 128:3 136:9	177:1
	138:2,6,23 140:9,14,18	
	142:1,6,10,20 143:3,13,	
	18 144:22 145:4 146:8	
	147:12 148:13 149:22	

<b>thousands</b> 60:19 169:11	22 94:2 126:24 142:4	7 104:12 105:5 109:19
<b>threat</b> 109:3	149:5 180:24 187:20,22	113:23 115:5 131:2,5,10,
<b>threats</b> 70:16	191:4 194:3,10 208:9	15,21,25 132:3,7,9 133:6
<b>three-month</b> 158:21	219:18 220:14	137:21 141:3,19 145:16
<b>Thursday</b> 26:13	<b>today's</b> 58:23 187:17	147:3 154:1 160:19
<b>tie</b> 159:6 165:17	189:1	161:24 162:7 164:3
<b>tied</b> 174:23	<b>token</b> 203:21	166:9 169:21 172:12
<b>tight</b> 161:15	<b>told</b> 62:11 63:8 92:3	184:8,13,15 185:3
<b>time</b> 4:16 6:16 14:16	108:2 118:1 192:3	187:19 191:1,25 192:15
15:22 25:22 28:2 32:14	199:21 207:3	193:14,19,21 197:12
33:15 51:7,13 54:8,9,12,	<b>tomorrow</b> 162:17 182:14	200:15 209:8 210:14
19 55:13,16 63:15 70:24	227:19	214:12,15
71:25 72:8 74:8 78:7	<b>Tooele</b> 74:15 208:19	<b>treated</b> 157:25
92:25 99:11,14 103:25	209:2,4,19,24 210:15	<b>tree</b> 96:14
107:23 109:21 117:25	<b>top</b> 170:1 190:17	<b>trees</b> 197:14
127:12,19 135:15,16	<b>topic</b> 123:24	<b>tremendously</b> 212:7
137:11 141:13,14 144:17	<b>total</b> 131:6	<b>trench</b> 88:9,18 122:11
147:24 148:1,11 151:24	<b>touched</b> 216:19	202:16,21,23 203:8,17,
152:10,12 155:11 158:9,	<b>tough</b> 149:5	19
20 159:11 164:17,18	<b>tower</b> 65:5,7	<b>trenches</b> 67:2,4,5,23
165:10 167:13,14,21	<b>towering</b> 74:19	87:22 88:2,4,12 90:12
168:4,21 169:24 170:7,	<b>towers</b> 135:3,13	174:17,19 177:4,10
10 171:9,15 172:7 183:8	<b>town</b> 61:12	180:8 202:17,25 203:23
208:2 210:16,20 212:14	<b>tradeoff</b> 135:23,25	204:5 205:2
218:3 221:9 227:9,18	<b>transcript</b> 16:18,21	<b>trenching</b> 119:9
<b>timeline</b> 70:9	30:24	<b>trial</b> 6:17 7:24 13:17 30:5
<b>times</b> 26:2 46:19 86:22	<b>transformer</b> 81:9 112:5	32:12 37:15 63:22 64:2
87:4 95:22 96:4 99:17,19	<b>transition</b> 183:10	223:1 224:14
100:5,6 104:1,18 108:10	<b>transitioning</b> 183:9	<b>trials</b> 33:7
129:6 172:4 201:9	<b>transmission</b> 5:12 55:14,	<b>triggered</b> 66:9
209:14 213:24 224:2	25 56:3 60:4 61:25 62:22	<b>trimming</b> 68:4
<b>timing</b> 127:17 219:7	64:8 65:5 70:14 71:2	<b>trip</b> 96:12 115:2 116:3,6
<b>Timpanogos</b> 61:1 64:19	73:4 76:14 77:3 79:15,21	<b>tripped</b> 96:5
<b>title</b> 37:8,10 43:7,11	80:5,10 81:1,9,21 82:4	<b>tripping</b> 116:20
46:20 91:2,6	83:8,21 84:7 90:5,18	<b>trips</b> 96:8,16 115:22
<b>today</b> 7:25 8:1,24 14:3	91:3,19,23 100:21 102:3,	<b>trouble</b> 5:21 70:23
15:9 26:10,15 34:5,11		
57:19 65:23 71:6 85:14,		



**TROY** 24:20 31:8 45:21  
46:10 49:6,23 97:21  
98:6,11 140:13 150:18

**true** 39:6 63:13 65:19  
74:24 80:12 95:11  
161:10 173:1 213:4  
220:18

**true-up** 19:3,9,12

**trued** 19:5

**trued-up** 19:14

**truth** 29:1 151:4

**Tuesday** 26:13

**turn** 30:24 40:10,15  
80:19 100:4 116:8  
214:22

**turned** 209:8

**turning** 179:9 186:13

**two-step** 56:4

**type** 222:6 223:7,25

**types** 79:19 116:25  
157:25 171:17

**typical** 20:22,24 35:24  
173:14

**typically** 26:18,19 30:18  
42:15 87:10 97:9 125:7  
154:15 157:22 158:7  
169:23,25 171:11,16  
172:23 173:10,22 174:2,  
4 197:17

## U

**U.P.** 149:15

**Uh-huh** 112:11 159:17

**ultimately** 21:8,12  
152:25 201:20 207:24

**unanimous** 25:7

**unattractive** 77:19

**unaware** 154:9 201:1

**uncertain** 119:11

**underestimated** 74:9

**underground** 16:13  
17:19,24 19:4 57:23  
59:17 65:25 68:2 73:14,  
15 77:1,3,13 85:3 110:8  
125:2 126:2 129:24  
130:19 131:10 134:21  
135:19,22,24 136:1  
145:15 147:3 155:6  
166:2 167:11,15,25  
174:8,18 175:25 176:2,  
17,19 178:14 190:5  
198:6 199:4,14 202:5,7  
203:14 204:7,13,18  
211:12,14,18,24 225:17,  
21 226:14

**undergrounded** 130:6

**undergrounding** 11:10,  
19

**underline** 68:23

**underpinning** 122:13,14  
126:16

**underpinnings** 36:2

**understand** 9:5 15:6  
17:17 21:23 34:12 53:21  
61:15 64:24 87:24 89:13  
92:8 94:18 101:10,25  
102:24 103:7 104:15  
109:1 112:13,23 113:7,8  
114:2 119:11 124:13  
127:14 129:11 133:13  
138:8 148:25 149:1  
155:5 156:20 163:24  
170:25 177:2 211:22  
215:13,15,16 219:2,4

222:14

**understandable** 65:8

**understanding** 36:14  
93:4 102:12 110:20  
119:8 124:16 126:4  
127:1 137:20 139:4  
146:14 162:6,15 163:10  
167:18 175:7,9 176:10  
207:5 208:8 211:11  
214:11 219:18 222:16,18  
226:12,23 227:5

**understands** 207:3

**understood** 15:15 72:13  
128:16 174:19

**unequivocally** 134:20

**unfair** 48:22

**unique** 26:2 61:8

**unit** 113:19

**Unlike** 37:1

**unmute** 4:19

**unnecessarily** 227:2

**unrealistic** 209:6

**unreliable** 34:10

**unusual** 5:19

**up** 17:13 19:5 26:14  
53:22 60:15 62:13 74:21,  
24 75:1 77:20 81:13  
93:11,24 94:11,12 95:9  
96:25 98:12,13 103:15  
113:15 114:13 115:9  
116:2 126:9 133:23  
136:19,25 140:1 141:22  
145:18 168:2 169:2,4,8  
200:13 203:17 212:7  
217:3 224:8 225:13  
227:7

**updated** 70:2 206:4

**updates** 79:3  
**upfront** 152:8 205:14  
 207:17 219:1,2,18,23  
 220:3  
**upgrade** 133:2,4,24  
 134:3,14,16,24  
**upgrades** 84:8 91:24  
 133:12,15 134:8  
**upsized** 156:7  
**upsizing** 190:10  
**Utah** 4:4 33:18 35:6 36:1  
 37:8,16 38:4 60:22 76:7  
 184:17,18,24  
**utilities** 155:5 176:12  
 178:10 192:1 223:12  
**utility** 4:4 21:14 43:12  
 52:2 154:16,24 176:9  
 181:5 183:7,14 223:11  
**utilize** 46:23  
**utilized** 102:7

---

## V

---

**V.O.L.T.** 5:14 7:17 8:9  
 17:2,7 20:6 25:15 27:8,  
 15 29:11 36:13 38:23  
 50:8,24 72:21 75:4 78:1  
 117:22 123:20 153:5  
 181:1 182:25 185:14  
 189:17 190:11 193:5  
 196:6,15 215:18  
**V.o.l.t.'s** 8:6 97:22  
 120:22 142:11  
**valid** 20:2  
**validated** 166:16  
**valley** 59:6 60:25 79:20  
 81:1 101:21 103:3 111:5  
 114:10 129:21 133:7

136:19 170:9 212:21  
 215:20 225:13  
**Valley-wide** 5:11  
**valuation** 147:10  
**valuations** 68:2  
**values** 79:18 81:8  
**Vancott** 5:5  
**varied** 206:12  
**varies** 114:14,19  
**vary** 66:20 114:18  
**varying** 178:8  
**vast** 63:17  
**vault** 88:18  
**vegetation** 197:18,20  
**verbal** 142:22  
**verbally** 142:16  
**verdict** 13:11  
**verify** 31:10 173:4,11,18  
**version** 174:25  
**versions** 190:3

**versus** 4:6 97:10 167:12  
 189:8  
**vet** 21:10  
**vetted** 22:6  
**vicariously** 73:6  
**view** 30:15 33:25 44:2  
 46:3,8,9 47:12 88:25  
 109:13,14  
**violate** 41:21  
**violating** 34:7 35:4  
**violation** 33:11  
**vistas** 61:2

**visual** 72:10  
**voicing** 23:25  
**voltage** 80:10,11,12  
 94:8,9 101:19,23 106:16  
 113:16,17,20 114:12  
 115:1,20 116:12 121:10  
 132:11 156:7 184:20  
 189:9 190:10  
**voltages** 71:4 81:20  
 102:11 115:18,24  
 184:18,22 188:25  
**volts** 113:21 116:4  
**volume** 28:13,14  
**voluntarily** 35:1,18 36:7,  
 21 76:1,22,25  
**volunteer** 192:9  
**vote** 11:13 23:19 24:7,13,  
 17,20,22,25 25:4,7  
 49:21,23,25 150:11,12,  
 15,18,25 222:4  
**voted** 56:21  
**voting** 22:25 24:14 49:19

---

## W

---

**wait** 40:9,15 51:22,23  
 58:2,6,9 106:17  
**waiting** 72:2 142:19  
 222:22  
**waive** 77:1  
**walk** 6:2 35:25 157:9  
**walking** 154:23  
**wanted** 7:18,21 46:13  
 52:13 72:13 118:24  
 119:19 142:21 181:14  
 185:9 186:23 223:2

<b>wanting</b> 34:7 41:21 79:16	20:17 21:20 23:19 24:11, 24,25 31:20 32:18 34:22 35:9,11 36:10 42:11 43:2,3 46:13 49:4 50:1,2 121:1 122:6,15 140:15, 16 149:10 150:8,19,20	24 29:21,22 30:19 31:2 32:8 33:7,14 34:1,12 36:15 37:2 38:6,14,15 39:8,14,17,21 40:5,7,23 41:12,23 43:25 44:5,7,11 45:5,7 47:16,18 50:8,9, 24 51:4,8 53:16 54:14 70:7 72:16 85:6 87:10 118:2,4 121:20,22 132:18,23 134:4,5,19 148:19 194:12 215:6
<b>Wasatch</b> 11:14,18,20 55:17,20 58:15 61:3 71:16 140:22 141:18 156:13,24 163:12 164:4, 22 225:7	<b>White's</b> 21:24	<b>witnesses'</b> 68:24
<b>waste</b> 147:24 148:10	<b>wide</b> 191:4 194:2,14 202:16,17	<b>woefully</b> 74:9
<b>wasteful</b> 144:16	<b>widening</b> 196:8	<b>wondering</b> 14:20 32:23 34:23,25 122:12 134:12
<b>watch</b> 40:18	<b>wider</b> 198:21 204:6 206:17	<b>wooden</b> 64:14
<b>watchful</b> 61:1	<b>width</b> 76:17 156:6 190:6, 21 191:9 193:16,22	<b>word</b> 17:5 77:6 185:9,10, 12 186:3 201:14 207:2 216:20
<b>watching</b> 26:25	<b>wield</b> 110:21	<b>words</b> 21:2 35:16 121:23 201:3,8
<b>water</b> 203:14	<b>wildfire</b> 141:3	<b>work</b> 15:19,22 23:10 59:8 66:22 160:20 165:3,25 167:8 170:20 173:22 183:13,17 200:16 223:5
<b>wave</b> 121:10	<b>wildly</b> 209:8	<b>worked</b> 59:1
<b>ways</b> 37:3,23	<b>will/should</b> 77:4	<b>working</b> 13:16 25:24 47:4 108:8 152:13 164:10 165:18 183:14 198:1
<b>weather</b> 107:6 130:22 135:21 141:10 169:15,20	<b>Williams</b> 74:17	<b>works</b> 121:12 139:21
<b>Webber</b> 214:23 215:1,2, 13 217:23 221:20,22	<b>willingness</b> 35:17 49:11 60:2 62:24	<b>world</b> 40:11,18 61:3,8 115:18 121:17
<b>Webber's</b> 216:2 217:7	<b>willpower</b> 62:21	<b>worried</b> 130:13
<b>Wednesday</b> 26:12,13	<b>Wilmer</b> 5:14	<b>worst</b> 79:20 100:16 136:22 172:11
<b>week</b> 4:24 6:1 99:1	<b>wind</b> 141:1 165:9	<b>worth</b> 75:2
<b>weeks</b> 15:13 107:3 125:3 127:21 157:4 166:20,22 211:8	<b>windows</b> 170:15	
<b>weigh</b> 205:25	<b>wins</b> 169:9	
<b>weight</b> 64:12	<b>winter</b> 106:24 126:22 137:3 170:2,17 171:3,12, 13,22 222:11,19,20,24	
<b>weird</b> 161:14	<b>winter's</b> 114:16	
<b>welcomed</b> 198:20	<b>withdraw</b> 195:8 219:13	
<b>west</b> 61:4	<b>witness's</b> 6:10 48:22 207:25	
<b>Western</b> 119:6 131:21	<b>witnesses</b> 6:8 7:6,22 8:7, 8 23:3 26:7 27:7,10,11,	
<b>wetland</b> 172:20		
<b>whatsoever</b> 15:4		
<b>White</b> 14:18 16:2,9,16,19		

**worthwhile** 122:22 223:8,10,12  
**wrap-up** 146:15 **yes/no** 87:1  
**Wright** 23:16 25:3,4 30:2 **yoked** 168:25  
45:13,19 50:3,4 140:18,  
20 141:9,15,16,24 142:2  
150:21,22  
**write** 63:25 177:17  
209:11  
**writing** 142:14  
**written** 6:10 37:3 39:10  
47:6,7 102:1 176:11  
181:13 183:21  
**wrong** 17:5 122:4  
143:10,11,21 216:16  
**wrongly** 76:16  
**wrote** 175:10  
**Wyoming** 93:25 100:5  
225:13

---

**Y**

---

**yard** 65:5  
**yards** 64:21 68:11,12  
**year** 56:1,15,16,20 61:10  
95:8 103:18 106:12,17,  
23,25 108:18 112:7  
129:6 138:21 154:6  
155:10 162:23 164:17,18  
165:15,22 166:3,4  
169:24 170:7 222:22  
**years** 47:4 55:12 56:12  
59:12,14 67:21 74:14  
76:21 82:5 95:6 96:6,7  
103:16,21 104:4 105:24  
107:20,21 108:15 109:12  
131:5,8,12 138:17  
152:12,14 157:5,10  
158:10,13 174:25 175:11  
183:15,16 212:24 213:17