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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT  
BY OAK TREE ENERGY, LLC, AGAINST  
NORTHWESTERN ENERGY FOR REFUSING  
TO ENTER INTO A PURCHASE POWER  
AGREEMENT

EL11-006

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Transcript of Proceedings  
March 21, 2012  
Volume I, Pages 1-295

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
CHRIS NELSON, CHAIRMAN  
KRISTIE FIEGEN, COMMISSIONER  
GARY HANSON, COMMISSIONER

COMMISSION STAFF  
John Smith  
Kara Semmler  
Ryan Soye  
Greg Rislov  
Chris Daugaard  
Brian Rounds  
Demaris Axthelm

APPEARANCES  
Michael Uda, Oak Tree  
Yvette LaFrentz, Oak Tree  
  
Sara Dannen, NorthWestern Energy  
Al Brogan, NorthWestern Energy

Reported By Cheri McComsey Wittler, RPR, CRR

1                   TRANSCRIPT OF PROCEEDINGS, held in the  
 2 above-entitled matter, at the South Dakota State  
 3 Capitol Building, Room 413, 500 East Capitol Avenue,  
 4 Pierre, South Dakota, on the 21st day of March, 2012,  
 5 commencing at 9 o'clock a.m.

6 = = = = =

7                                   I N D E X

8	OAK TREE WITNESSES	DIRECT	CROSS	RD	RC
9	J. Richard Lauckhart	38	61,87	129	135
	Michael Makens	136	143	178	--
10					
	N.W.E. WITNESSES	DIRECT	CROSS	RD	RC
11	Bleau LaFave	192	197,259	278	289
12	Dennis Wagner	300	305,366	357	363
	Steve Lewis	367	374,412	425	426
13	Richard Green	429	433	--	--
	Pam Bonrud	440	443	--	--
14					
	STAFF WITNESSES	DIRECT	CROSS	RD	RC
15	Brian Rounds	456	463,478	493	--
16					
	OAK TREE REBUTTAL	DIRECT	CROSS	RD	RC
17	J. Richard Lauckhart	500	509,516	--	--

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 20  
 21  
 22  
 23  
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 25

I N D E X

OAK TREE EXHIBIT NOS.	M	O	R
1 - Lauckhart Direct (Tabs 5&6 Conf.)	3	45	47
2 - Lauckhart Rebuttal	3	51	51
3 - Makens Rebuttal	3	137	138
4 - Meeting Minutes (Confidential)	3	455	455
5 - Meeting Minutes (Confidential)	3	455	455
6 - Meeting Minutes (Confidential)	3	455	455
7 - Meeting Minutes (Confidential)	3	455	455
8 - SD Peaking Project (Confidential)	3	455	455
9 - Not offered	--	--	--
10 - Not offered	--	--	--
11 - Not offered	327	--	--

N.W.E. EXHIBIT NOS.	M	O	R
1 - LaFave Direct and Rebuttal	3	194	195
2 - LaFave Responsive	3	196	196
3 - Green Direct and Rebuttal	3	432	432
4 - Wagner Direct and Rebuttal	3	302	302
5 - Wagner Responsive	3	303	303
6 - Lewis Direct and Rebuttal	3	371	371
7 - Lewis Responsive	3	372	372
8 - Bonrud Direct and Rebuttal	3	442	442
9 - Titan 1 PPA (Confidential)	299	299	299

STAFF EXHIBIT NOS.	M	O	R
1 - Rounds Direct and Rebuttal	3	457	457

(Oak Tree Exhibits 1 through 8 are marked)  
 (NorthWestern Exhibits 1 through 8 are marked)  
 (Staff Exhibit 1 is marked)

1           CHAIRMAN NELSON: We will begin the hearing in  
2 Docket EL11-006, In the matter of the Complaint by  
3 Oak Tree Energy, LLC against NorthWestern Energy for  
4 refusing to enter into a purchase power agreement.

5           The time is approximately 9 a.m. The date is  
6 March 21, 2012, and the location of the hearing is  
7 Room 413 of the State Capitol, Pierre, South Dakota.

8           I'm Chris Nelson, Chairman of the Commission.  
9 With me are Commissioners Kristie Fiegen and  
10 Gary Hanson.

11           I am presiding over this hearing. The hearing  
12 was noticed pursuant to the Commission's Order For and  
13 Notice of Hearing issued on February 28, 2012.

14           The issues at the hearing are, number one,  
15 whether and in what amounts NorthWestern Energy should be  
16 required, pursuant to 16 U.S.C. Section 824A-3 and  
17 18 CFR Sections 292.303 and 292.404, to pay Oak Tree over  
18 the life of the project for electricity made available to  
19 NorthWestern Energy from the project. The determination  
20 of this issue will require consideration of the avoided  
21 cost issues presented by 18 CFR Section 292.304,  
22 including but not limited to both avoided energy costs  
23 and avoided capacity costs.

24           Number two, whether Oak Tree is currently bound  
25 by a legally enforceable obligation, and, if so, when

1 that legally enforceable obligation commenced and what  
2 impact it has on the avoided cost calculation.

3 Number three, whether additional relief should  
4 be granted to Oak Tree as necessary for Oak Tree to  
5 obtain a purchase power agreement with NorthWestern  
6 Energy for electricity produced from the project on terms  
7 that are consistent with the requirements of PURPA and  
8 the South Dakota PUC PURPA Order and are as consistent as  
9 possible with respective position of the parties and with  
10 the interest of NorthWestern Energy's rate payers and the  
11 public interest.

12 Complainant, Oak Tree, has the burden of proof  
13 to demonstrate its right to relief as requested.

14 All parties have the right to be present and to  
15 be represented by an attorney. All persons testifying  
16 will be sworn in and subject to cross-examination by the  
17 parties. The Commission's final decision may be appealed  
18 by the parties to the State Circuit Court and the State  
19 Supreme Court.

20 John Smith, our esteemed general counsel, will  
21 act as Hearing Examiner and will conduct the hearing  
22 subject to the Commission's oversight. He may provide  
23 recommended rulings on procedural and evidentiary  
24 matters. The Commission may overrule its counsel's  
25 preliminary rulings throughout the hearing. If not

1 overruled, the preliminary rulings will become final  
2 rulings.

3 With that, I will now turn these proceedings  
4 over to Mr. Smith.

5 MR. SMITH: Thank you, Mr. Chairman.

6 Good morning, everyone. With that, we'll begin  
7 with appearances of the parties. And, Oak Tree as  
8 Complainant, we'll begin with you.

9 MR. UDA: Thank you, Mr. Smith. My name is  
10 Mike Uda. I'm an attorney from Helena, Montana, and I've  
11 been admitted especially for the purposes of this  
12 proceeding pro hac vice in South Dakota.

13 To my left is my South Dakota counsel,  
14 Yvette LaFrentz, and she's located in Dillon, Montana,  
15 and she is here representing Oak Tree as well.

16 MR. SMITH: NorthWestern.

17 MR. BROGAN: Thank you, Mr. Smith. Al Brogan,  
18 attorney, NorthWestern Energy. My business address is  
19 205 North Montana, Suite 208. I have been admitted also  
20 pro hac vice for this proceeding. And co-counsel today I  
21 will let introduce herself.

22 MS. DANNEN: Thank you. My name is Sara Dannen  
23 representing NorthWestern Energy. I am located in  
24 Sioux Falls, South Dakota. Thank you.

25 MR. SMITH: Staff.

1 MS. SEMMLER: This is Kara Semmler and Ryan Soye  
2 on behalf of Commission Staff.

3 MR. SMITH: Thank you. At this point then I  
4 think we'll turn to the matter at hand. Do any of the  
5 parties have anything in the -- any kind of preliminary  
6 matters that we need to hear before we get to direct  
7 testimony? Or opening statements. Excuse me.

8 Mr. Uda, anything?

9 MR. UDA: Nothing from Oak Tree.

10 MR. SMITH: NorthWestern?

11 MR. BROGAN: Nothing from NorthWestern.

12 MR. SMITH: Staff.

13 MS. SEMMLER: Nothing.

14 MR. SMITH: With that then, if the parties  
15 desire, we'll turn to opening statements beginning with  
16 Oak Tree.

17 And maybe I'll ask at the outset here, you know,  
18 you're not compelled to provide an opening statement, but  
19 you may. And, you know, as following along as best we  
20 can with civil procedure, if the other parties would  
21 prefer to reserve their opening statements until the  
22 beginning of your case, that's fine too.

23 MR. BROGAN: Mr. Smith, NorthWestern does  
24 reserve its opening statement until the beginning of its  
25 case.

1 MR. SMITH: Okay. Staff.

2 MS. SEMMLER: I'd like to take just a few  
3 minutes to frame the issues that we think will be before  
4 the Commission today. You know, our ultimate goal  
5 obviously is to come up with an avoided cost --  
6 NorthWestern's avoided cost by taking Oak Tree's  
7 production. I don't know that we're going to leave this  
8 proceeding, however, Commissioners, with an exact price  
9 determination.

10 We don't believe either party has properly  
11 determined NorthWestern's avoided cost. So,  
12 unfortunately, rather than making a recommendation to you  
13 regarding what we specifically believe that avoided cost  
14 to be, we hope to make a recommendation to you regarding  
15 what the model should look like and what its inputs  
16 should be.

17 And we still have some questions, and we're  
18 anxious to have them answered in the next few days. But  
19 without question we believe the following issues and  
20 questions must be answered by the Commission.

21 Issue one is time frame. The Commission will  
22 have to make a determination regarding the time frame.  
23 Now we're not disputing whether or not NorthWestern has  
24 an obligation to purchase but the time in which that  
25 obligation was created is disputed by the parties. And

1 the inputs into the avoided cost model will depend upon  
2 when the Commission believes that obligation was created.  
3 So we'll listen for facts such as whether good-faith  
4 negotiations took place. But, ultimately, this is a  
5 matter of law, and we look forward to the debate and  
6 briefing after the hearing.

7 The second issue the Commission must determine  
8 is the proper model itself. Now there's various ways to  
9 model, and you have two models in front of you. We don't  
10 necessarily think one model is right and one model is  
11 wrong, but we do believe the basics and the basis of  
12 NorthWestern's model more accurately reflects a  
13 South Dakota generating utility.

14 With that being said, your third issue and your  
15 third decision you're going to have to make are what the  
16 proper inputs should be. And although we believe the  
17 basis of NorthWestern's model maybe the most accurate, we  
18 don't necessarily believe its inputs are correct.

19 For example, we don't believe that either party  
20 has properly forecasted natural gas prices, while we do  
21 believe that a capacity element is necessary, and we do  
22 believe some external costs such as carbon should be  
23 considered in the model.

24 The final decision we think the Commission will  
25 have to make, again, is a legal one, and that is the

1 length through the term of this contract. And, again,  
2 we're anxious to debate this after the hearing.

3 So our concluding remarks to kick off the  
4 hearing, Commissioners, is that we really do hope to  
5 provide you with a roadmap of the decisions you'll need  
6 to make and the instruction you'll need to give to the  
7 parties to ultimately come up with the correct and proper  
8 avoided cost.

9 MR. SMITH: Thank you.

10 Mr. Uda, please proceed with your opening  
11 statement.

12 MR. UDA: Thank you, Mr. Smith.

13 Mr. Chairman, members of the Commission, it's  
14 good to be here today. It seems like we've been down a  
15 long road here. But it's good to be before you to be  
16 able to present our case, and I would like to thank the  
17 Commission and the Commission Staff and even NorthWestern  
18 for, I think, what is a pretty well developed record in  
19 my experience in these kinds of proceedings.

20 And that is not -- my experience in these  
21 proceedings is not inconsiderable. I think I've been  
22 doing this now for 21 years. So I think I can say with  
23 some confidence that there is a pretty well developed  
24 record here.

25 The first thing I want to talk about just

1 briefly is talk about the Oak Tree project a little bit.  
2 Because for those of you who are not familiar with it, I  
3 think it's interesting. And what the testimony you're  
4 going to hear is that Oak Tree is located in Clark,  
5 South Dakota. And it's essentially the vast majority of  
6 the proposed project is on land owned by the Makens  
7 family.

8           And that land, at least a portion of it, has  
9 been in the Makens family for 111 years. And it's an  
10 interesting aside, but the Makens have relatives who  
11 fought in the Civil War and one of whom fought with  
12 General Custer at the Battle of Little Big Horn and  
13 actually died there. So there's a long family history  
14 here of this family farm in South Dakota.

15           And the Makens are coming before you, you know,  
16 only reluctantly, as the evidence you'll hear is that we  
17 had an impasse in negotiations. There just wasn't going  
18 to be any movement, and we really didn't have anywhere  
19 else to go. At some point you just have to decide, to  
20 use a colloquialism, to fish or cut bait, and that's why  
21 we're here before you today.

22           I think Ms. Semmler basically identified the two  
23 main issues. But I want to frame those issues a bit for  
24 you. The Commission and NorthWestern both have  
25 obligations under PURPA. The obligation of the State

1 Commission is to implement PURPA. And federal courts and  
2 the Federal Energy Regulatory Commission have made that  
3 clear.

4 NorthWestern has an obligation to buy output  
5 from qualifying facilities. And the question, the first  
6 question, is this whole question of what are a QF's  
7 rights under PURPA?

8 If you read the Cedar Creek Wind decision from  
9 FERC, which just came out last November, I believe,  
10 regarding the decision of the Idaho Public Utilities  
11 Commission, they made it very clear that one of the  
12 reasons that PURPA was adopted in the first place back in  
13 1978 -- and you don't often hear this from the utility  
14 perspective -- was because of the refusal of the  
15 utilities to deal with independent generators.

16 It's not lost on me that the record in this case  
17 and the testimony here will show that this is really the  
18 first time this Commission has had to grapple with this  
19 issue in South Dakota. And the point that NorthWestern  
20 has made, which I agree, is this is an extremely  
21 important case. It sets a precedent for everybody who's  
22 going to come after it.

23 And so the manner -- and this is important, you  
24 know, regionally because a lot of these wind development  
25 companies -- this isn't true of Oak Tree, but a lot of

1 these wind development companies are regional. And  
2 they're voting with their dollars about where they decide  
3 they're going to make investment. And so the  
4 Commission's decision, as precedential, will be very  
5 important for them to decide where they're going to make  
6 their investment decisions.

7 I think the first thing I'd like to talk about  
8 after just discussing this general implementation  
9 obligation, as I mentioned, is this issue of what are a  
10 QF's rights under PURPA. And I'd like to quote just  
11 briefly from the Federal Regulations because I think it's  
12 really important to understand -- for the Commission to  
13 understand what its obligations are under PURPA and also  
14 the meaning of these terms.

15 18 CFR 292.304(d) states "Purchases as available  
16 or pursuant to a legally enforceable obligation." And it  
17 states "Each qualifying facility shall have the option  
18 either, (1), to provide energy as the qualifying facility  
19 determines such energy to be available for such purchases  
20 in which case the rates for such purposes shall be based  
21 on the purchasing utility's avoided cost calculated at  
22 the time of delivery.

23 "Or, (2), to provide energy or capacity pursuant  
24 to a legally enforceable obligation for the delivery of  
25 energy for capacity over a specified term, in which case

1 the rates for such purchases shall, at the option of the  
2 qualifying facility, exercise prior to the beginning of  
3 the specified term be based either, one, on the avoided  
4 cost calculated at the time of delivery, or, two, the  
5 avoided cost calculated at the time the obligation is  
6 incurred."

7 I would first direct the Commission's attention  
8 to noticing that nothing in this regulation says anything  
9 about the utility having the right to set the term for  
10 the agreement. And I think we all know that FERC knows  
11 how to use the term "utility" when it means utility.

12 In this case it's very clear that these are at  
13 the QF's option. It can either decide to build a  
14 facility and sell its output to any utility really at the  
15 time that the facility is ready to deliver and the  
16 avoided cost is calculated at that time, or, two, in the  
17 alternative, the utility -- excuse me. The QF can choose  
18 to sell pursuant to a legally enforceable obligation over  
19 a specified term. This is the QF's option.

20 If the utility chooses to sell over a specified  
21 term, it then has one of two options under the FERC  
22 regulations. The first is it can build its facility and  
23 just sell the power at the avoided cost at the time of  
24 delivery. Or it can set the rate calculated at the time  
25 the obligation is incurred over that specified term. The

1 language is really susceptible to no other reading.

2 Well, what does the term "legally enforceable  
3 obligation" mean? And you're going to hear -- the reason  
4 this is important is because you're going to hear, I  
5 think, facts and evidence, and it's going to call upon  
6 you to make a determination about, you know, it's been  
7 incurred, whether it hasn't been incurred. But FERC has  
8 specific guidance on this.

9 Again, most recently in the Cedar Creek Wind --  
10 and the citation to that is 137 FERC Paragraph 61, 006  
11 Docket ELL-59-00. And the quotation that I'm going to  
12 offer you is from page 13 and 14 of that decision.

13 "Thus, under our regulation, a QF has the option  
14 to commit itself to sell all or part of its electric  
15 output to an electric utility. While this may be done  
16 through a contract, if the electric utility refuses to  
17 sign a contract, the QF may seek state regulatory  
18 assistance to enforce the PURPA-imposed obligation on the  
19 electric utility to purchase from the QF and a  
20 noncontractual, but still legally enforceable obligation,  
21 will be created pursuant to the state's implementation of  
22 PURPA. Accordingly, these commitments result either in  
23 contract or noncontractual, but binding, legally  
24 enforceable obligations."

25 Oak Tree's testimony will be that it has done

1 everything in its power to commit itself to selling  
2 output to NorthWestern. It has signed an interconnection  
3 agreement. It has sent a signed power purchase agreement  
4 to NorthWestern at a rate that Oak Tree believes is  
5 consistent with NorthWestern's avoided cost.

6 Obviously, NorthWestern disagrees, but that's  
7 why you have a hearing. It does not affect the creation  
8 of a legally enforceable obligation.

9 Oak Tree has collected years of tower data. It  
10 has paid for a power curve analysis that has been  
11 reviewed by AWS Truewind, which is one of the nationally  
12 respected analysts who do this kind of work. It has  
13 prepared pro formas. It has conducted environmental  
14 studies. It has done everything it could possibly do.  
15 This project is as ripe as it could possibly be.

16 As I was discussing this matter the other day  
17 with Mr. Michael Makens, he was like, well, we've got  
18 bulldozers on-site. We've got backhoes. I mean, we're  
19 ready to go.

20 But the important point for this Commission is  
21 are you going to take the opportunity to acquire wind now  
22 when the production tax credits are set to expire at the  
23 end of 2012? Because if you acquire the wind later, it  
24 could cost you significantly more because those  
25 production tax credits reduce the overall cost to

1       construct the project and, thus, reduce the cost and,  
2       thus, create benefits for South Dakota rate payers.

3               What the testimony will also establish is that  
4       Oak Tree sent an offer to Northwest Energy on February 25  
5       to sell NorthWestern power at 54.40, escalated at 2 and a  
6       half percent annually. The levelized rate, I believe, is  
7       65.10 or 65.12, something like that, over the life of the  
8       contract. This is a 20-year commitment.

9               And at the point we had been negotiating -- as  
10       the evidence will show, we had been negotiating with  
11       NorthWestern since about June. There was -- I think to  
12       characterize the correspondence and communications,  
13       Oak Tree, I think it's fair to say, felt it was a  
14       one-sided conversation.

15              And we certainly understand that NorthWestern is  
16       doing its -- believes anyway that it's doing its part to  
17       protect its rate payers, and we respect that. But, on  
18       the other hand, you know, we can't force NorthWestern to  
19       sign an agreement, and that's why we're here.

20              Another issue I think that the Commission  
21       needs to understand clearly is what does it mean to say  
22       a QF may have its avoided costs calculated at the time  
23       the obligation is incurred as set forth in  
24       18 CFR 292.304(d)(2)(ii).

25              Well, we have guidance from FERC on that also in

1 the form of Order 69, which is Volume 45 No. 38 of the  
2 Federal Register at page 12,224 in 1980. And this is a  
3 quote.

4 "The Commission intends that the rates for  
5 purchases based, at the option of the qualifying  
6 facility, on either the avoided cost at the time of  
7 delivery or the avoided cost calculated at the time the  
8 obligation is incurred. This change enables a qualifying  
9 facility to establish a fixed contract price for its  
10 energy and capacity at the outset of its obligation or to  
11 receive the avoided cost determined at the time of  
12 delivery. A facility which enters into a long-term  
13 contract to provide energy or capacity to a utility may  
14 wish to receive a greater percentage of the total  
15 purchase price during the beginning of the obligation.  
16 For example, a level payment schedule from the utility to  
17 the qualifying facility may be used to match more closely  
18 the schedule of debt service from the facility. So long  
19 as the total payments over the duration of the contract  
20 term does not exceed the estimated avoided cost, nothing  
21 in these rules would prohibit a state-regulated authority  
22 or nonregulated electric utility from approving such  
23 agreement".

24 Another factor in your determination is that the  
25 regulations that FERC adopted to implement PURPA also

1 make it clear that one of the things that a utility can't  
2 do is discriminate against QFs in favor of its own  
3 projects.

4           And 18 CFR 292.304(a) states "Rates for  
5 purchases. One, rates for purchases shall, (1)(i), I  
6 guess, be just and reasonable to the electric consumer,  
7 the electric utility, and in the public interest and,  
8 (2), not discriminate against qualifying cogeneration and  
9 small power production facilities."

10           You'll hear testimony in this proceeding from  
11 both NorthWestern and from our witness, Oak Tree witness  
12 Richard Lauckhart that there is at least the potential  
13 for discrimination that has been taking place.

14           Although NorthWestern has made a point to say  
15 that Montana and South Dakota are so different that it's  
16 not an apt comparison, we believe the differences between  
17 what goes on on in Montana and South Dakota are -- there  
18 are differences, but we believe that these differences  
19 have been accounted for in the testimony that you will  
20 hear from Mr. Lauckhart.

21           However, in NorthWestern's recently completed  
22 Spion Kop proceeding D2011.5.41 before the Montana  
23 Public Service Commission, NorthWestern prepared what  
24 appears to be an avoided cost calculation to cost justify  
25 its decision to purchase the Spion Kop project, a

1 40 megawatt wind project in Montana, at roughly \$75 a  
2 megawatt hour. And this was the levelized price over  
3 25 years.

4 That's not the price that they obtained from the  
5 Montana Commission, but they had to make a justification  
6 that this was a preferable alternative to market.

7 But I think, more importantly, NorthWestern also  
8 testified to the many nonmonetary benefits of wind. One  
9 of those benefits is the idea that you hedge your fuel  
10 risk, that you're not dependent upon fossil fuels and the  
11 vagaries of acquiring those particular kinds of fuels  
12 over time. Because we know, for example, that natural  
13 gas is cheap today, but there are -- the market is always  
14 moving, and there are factors that will play into that.  
15 And that's one of the points that you'll hear from our  
16 expert witness, Mr. Lauckhart.

17 Another issue is -- and this is very clear, and  
18 we believe you will hear testimony and evidence to this  
19 effect -- that there is a very substantial likelihood  
20 that EPA regulations -- this isn't greenhouse gas  
21 regulations. EPA regulations enforcing toxics rules,  
22 Solid Waste Subtitle D, Clean Water Act Regulation of  
23 coal plants is going to either cost significant  
24 additional investment in pollution control technologies  
25 and waste disposal or these plants are going to be forced

1 to shut down.

2 After example that you can find yourself by  
3 looking, for example, at the Oregon PUC website is  
4 Portland General Electric's decision to close down the  
5 Boardman Coal Plant by 2020. And it's precisely because  
6 of the costs associated to making a significant  
7 additional investment to obtain the same megawatts of  
8 generation from their coal plant at Boardman.

9 And then you have this whole issue about  
10 greenhouse gases. And the testimony that NorthWestern  
11 provided before the Montana Public Service Commission  
12 said, hey, you know, a prudent regulator would take that  
13 issue into account. And we don't know where that's  
14 going, and we certainly don't know what the program will  
15 be.

16 We don't know if it's going to be cap and trade.  
17 We don't know if there will be a penalty for big  
18 emitters. We don't know if they'll really do anything.  
19 We know there's a risk. And there are many programs  
20 around the country. I believe South Dakota is an  
21 observer to the Midwest Accords on greenhouse gas  
22 emissions.

23 But these are issues that we feel that the  
24 testimony will require you to think about. Because I  
25 think they're important nonmonetary issues. I mean, they

1 do ultimately affect the price. I don't want to make it  
2 sound that that's not the case. But they're not, okay,  
3 here's a calculation, you know, of a -- we like to call  
4 it brown power resource. Really what it means is this is  
5 the cost of power absent the environmental attributes of  
6 the generating facility.

7 We also have a risk of potentially fuel  
8 switching. Right now the price -- you'll hear testimony  
9 the price of natural gas is relatively low for a couple  
10 of reasons.

11 But one of the main reasons is horizontal  
12 drilling of a shale bed. And what happens -- the  
13 testimony will establish -- is that this horizontal  
14 drilling will hit sweet spots in the shale. And the key  
15 factor here is that these horizontal sweet spots contain  
16 other materials other than just natural gas.

17 I think the phrase was almost gasoline, near  
18 gasoline, ethene, methane, butane, and this helps pay for  
19 the cost of this horizontal drilling through the shale  
20 beds, and you end up with this paying for much of the  
21 cost of drilling to acquire natural gas resources. But  
22 those sweet spots are not infinite.

23 Another issue you'll hear about is the issue of  
24 fracking and what it costs to treat the water from  
25 fracking. We used to think that perhaps the water

1 quality issues associated fracking natural gas might  
2 result in a shutdown. We think those are manageable now,  
3 but there are going to be costs in treating associated  
4 ground water associated with fracking. So, again,  
5 there's another environmental benefit associated with not  
6 relying on, for example, other resources other than  
7 alternative energy, which don't cause those kind of  
8 issues.

9           And another issue that I think having -- adding  
10 wind to your portfolio will help with is obviously  
11 South Dakota has a renewable objective. I think it's  
12 10 percent by 2015, if I'm not mistaken. I don't know  
13 how you get to there from here unless you acquire  
14 resources. And the question is should you acquire them  
15 now while I have production tax credits available or  
16 should you wait to see if you can meet the voluntary  
17 objective?

18           And another point is that, you know, there's  
19 this cost-effectiveness test that goes into whether  
20 NorthWestern's required to meet the objective. But  
21 that's essentially the same test as we have in Montana.  
22 The difference in Montana is if they don't, absent a  
23 waiver they can be penalized for not meeting the  
24 objective.

25           Here there is no penalty. But the point is this

1 is a public policy objective of the State of South Dakota  
2 to try to meet this 10 percent goal by 2015. Are you  
3 going to encourage that or not? That's a nonPURPA issue  
4 I understand, but it's also a public policy issue for the  
5 State of South Dakota.

6 So all of these factors are the same or very  
7 nearly the same in Montana as they are in South Dakota.  
8 The market for natural gas is a national market. It's  
9 true that NorthWestern's South Dakota system is in the  
10 Eastern Interconnect. It's true that Montana's system is  
11 on the Western Interconnect. But the fact is they're  
12 energized. Power moves between those locations. And  
13 these are all taken into account in the extensive  
14 259-page electric price forecast prepared by Black &  
15 Veatch for use by Mr. Lauckhart who's our expert witness  
16 in this proceeding.

17 And he will testify to that. This is an  
18 extensive project. It takes them three or four months to  
19 do. Which is why they only do it once or twice a year.  
20 And it's an off-the-shelf product. It is an expensive  
21 process. And they sell this off the shelf not only to  
22 utilities making decisions about investments but to banks  
23 deciding whether to finance millions of dollars of  
24 renewable generation projects. This is the way that  
25 these entities do their due diligence.

1           We wanted to make sure that we had a gold plated  
2 avoided cost forecast. What Mr. Lauckhart then did, as  
3 his testimony will show, is he took this and applied this  
4 to the hourly expected output from Oak Tree based on the  
5 power curve analysis and the hourly wind data generated  
6 by the Oak Tree project.

7           Now understand this is a fundamentals-based  
8 forecast. And the Commission will hear testimony about  
9 why this is important. A fundamentals-based forecast  
10 takes into account actual and potential factors that  
11 would affect the price of power, and this forecast was  
12 prepared specifically for South Dakota for NorthWestern's  
13 region.

14           And so, for example, one of the things that the  
15 fundamentals forecast does is say what are the risks of  
16 all of those things I talked about earlier happening?  
17 What's the risk of a national RPS standard? What's the  
18 risk that we're going to have greenhouse gas legislation,  
19 and how do you account for that? How do you turn that  
20 into an effect on forecasts? What's the location of the  
21 gas supplies? Where are the pipelines? How is this  
22 going to flow over time? What's the risk of coal plant  
23 retirement?

24           In the Black & Veatch forecast they estimate  
25 60,000 megawatts of coal plants are going to retire by

1 2020. You're in the Eastern Interconnect. I believe 52  
2 or 55,000 of those coal plants are going to retire in the  
3 Eastern Interconnect. This will have a substantial  
4 effect on prices in South Dakota. You are not in an  
5 island.

6 Another important point about this forecast is  
7 they take into account these issues like fracking, cost  
8 of water treatment, and the substantial risk that as coal  
9 generation becomes more expensive people start fuel  
10 switching. They start saying, well, natural gas is now  
11 the way to go. Natural gas prices are relatively cheap.  
12 Let's build gas.

13 And when that happens everybody starts chasing  
14 the same hydrocarbons. The same hydrocarbons that  
15 consumers will use to heat their homes will be sought  
16 after by utilities and others who will use it to generate  
17 electricity.

18 So these are all important facts to consider  
19 when you compare the electric price forecast and the  
20 avoided cost analysis prepared by Mr. Lauckhart with that  
21 prepared by NorthWestern's expert witness, Mr. Lewis.

22 Now keep in mind that Montana, when NorthWestern  
23 was doing the Spion Kop proceeding, they did this avoided  
24 cost analysis. We'll have testimony about that, how it  
25 was done, the methodology as identified, and they

1 produced this \$75 roughly number.

2 In this proceeding they told you it's \$35. Less  
3 than half. Now how did they get that number? Well,  
4 you're going to hear testimony about this. And it's  
5 really interesting to contrast and compare what was done  
6 by the two sides here.

7 On the one hand we have this 259 page  
8 fundamentals-based report from Black & Veatch. On the  
9 other side we have Mr. Lewis's testimony. And  
10 Mr. Lewis's testimony will be essentially this is what he  
11 did.

12 Well, first he used the five-year forecast,  
13 which, you know, we don't really have an issue with. I  
14 mean, it's pretty close to the Energy Administration's  
15 five-year forecast. It's real close. You know, you can  
16 see the chart, and it kind of goes pretty similar. We  
17 don't really have a problem with that.

18 The testimony will show the problem is that  
19 after five years he assumed no increase in real natural  
20 gas prices for the next 15 years. And that's based on a  
21 snapshot in time. He's assuming that all of these things  
22 won't come to pass, that people won't switch to natural  
23 gas, that fracking will continue without cost, that the  
24 sweet spots and horizontal shale drilling won't all be  
25 fully exploited. He didn't take any of those factors

1 into account. There's a very simple calculation.

2 So having done that -- and I should mention, by  
3 the way, this was a methodology that was offered by  
4 NorthWestern in our last avoided cost rate case, which  
5 was D2010.7.77. The Commission basically said  
6 NorthWestern has not adequately explained why they didn't  
7 account for a real increase in natural gas prices over  
8 this forecast period. We're not going to use that. They  
9 used the EIA forecast because that's what EIA does.

10 So after he came up with his natural gas price  
11 he did this very simple they call it a market heat rate  
12 calculation. And based on 2011, not trended, not taken  
13 into account differences over time, he said, okay, in  
14 2011 what is the market heat rate? And then multiplied  
15 that by this relationship between spot electricity prices  
16 and spot natural gas prices. That's essentially all he  
17 did.

18 It's not a complicated calculation. It's very  
19 simple. Unfortunately, I believe its simplicity is  
20 bought at the expense of accuracy. It's very important  
21 to get this right. And when you're using a  
22 nonfundamentals-based forecast that does not take into  
23 account things in the environment that we know are  
24 changing. And by "environment" I'm not talking about,  
25 you know, grass and water and air. I'm talking about the

1 environment for natural gas and electric generation.

2 So this issue of how avoided cost is going to be  
3 calculated by this Commission is extremely important.  
4 And, you know, we believe that the avoided cost is higher  
5 actually than the proposal we made to NorthWestern. As I  
6 mentioned, and I should reemphasize, and this is what the  
7 testimony will show.

8 Black & Veatch prepared this forecast in  
9 November of 2011. As I mentioned, it takes them three or  
10 four months to put this thing together. This is an  
11 enormous document. And it takes into account experts  
12 from a variety of disciplines who all put their input  
13 into this. And Black & Veatch, as you know, is a big  
14 outfit. I think it has like 10,000 employees. And they  
15 all come together to put together this off-the-shelf  
16 product.

17 And so in February of 2011 when we sent our LEO  
18 letter to NorthWestern this is the off-the-shelf forecast  
19 that was available. So rather than trying to reinvent  
20 the wheel -- and there are companies who do this.  
21 They'll develop a specific avoided cost forecast just  
22 for -- or price forecast just for you, but it's  
23 enormously expensive for one party to pay for it. So  
24 they have this off-the-shelf product. There are others  
25 who do it too.

1           But Black & Veatch has this off-the-shelf  
2 product. And they take every hour for the next 20 years  
3 and they start dispatching generation and replacing  
4 inefficient units and retiring units and looking at where  
5 natural gas is flowing and they come up with these hourly  
6 dispatch rates. This is what on this hour and this  
7 year -- this is the price that you can expect you'll have  
8 to pay.

9           It's an enormous undertaking. It's complicated,  
10 yes. But it's necessary because you have to see, for  
11 example, things like, okay, well, we think these coal  
12 plants are going to retire. What's going to replace it?  
13 Where is it going to come from? How are people going to  
14 import or export power? All of these things are taken  
15 into account in this model. It's a very sophisticated  
16 model.

17           So after Mr. Lauckhart did his analysis and  
18 applied this to Oak Tree on those same hours he came up  
19 with a brown price over 20 years, levelized at 79 I  
20 believe it was 92 per megawatt hour for brown costs,  
21 which meant under that circumstance the renewable energy  
22 credits would flow to the facility because the brown  
23 power price.

24           And in various proceedings NorthWestern's valued  
25 those at \$7.50. I really don't know and I don't know

1 that anybody for sure knows what those are worth today.  
2 But I think that's ballpark.

3 And for a renewable energy project what would it  
4 cost NorthWestern to build its own project in  
5 South Dakota over a 20-year term? He came up with a  
6 green avoided cost of \$70 and I think it was 19 cents a  
7 megawatt hour, but the utility would -- under that  
8 scenario would keep the green tags because they're buying  
9 a renewable resource. And the green tags are valuable,  
10 as you know, because the green tags allow you to show  
11 that you have met your renewable objectives.

12 But, anyway, that's not what -- as you've heard,  
13 and this is the testimony, that's not what Oak Tree  
14 offered to NorthWestern. Oak Tree made a determination  
15 that -- and was hoping that it would just be oh, yeah.  
16 Okay. That's fine. It's less. So we offered 54.40  
17 escalated 2 and a half percent annually levelized to \$65.  
18 So it was an attempt on our part to get NorthWestern to  
19 say yes.

20 Now I want to make this point because this is --  
21 the testimony is going to have to clear this up because,  
22 you know, I really don't know for sure what  
23 NorthWestern's position is. We had to file a Motion To  
24 Compel in front of this Commission to get avoided cost  
25 data that NorthWestern is already required to provide

1 every -- at least every two years by 292.302 18 CFR.  
2 And, you know, it's five years of energy data. It's  
3 10 years of capacity additions and capacity data.

4 But NorthWestern at that time we specifically  
5 asked, well, where's your 20-year avoided cost forecast?  
6 And they said, well, we think it's too unreliable. I  
7 think the testimony is going to show here that in Montana  
8 they did exactly that when it was their own project  
9 because they needed to cost justify to the Commission why  
10 this Spion Kop project was less expensive than market  
11 alternatives.

12 But here they sort of said, well, we have this  
13 electric price forecast. I think I've already explained  
14 that the testimony is going to show that that is a very  
15 simple and I think ultimately fatally flawed approach in  
16 calculating this kind of very sophisticated  
17 calculation.

18 The reason that issue is important to us is  
19 because at this point Mr. Lauckhart has the only avoided  
20 cost forecast in this proceeding. I believe it's a very  
21 good avoided cost forecast. In fact, I believe in my  
22 21 years of doing this it may be the most exhaustive,  
23 thorough avoided cost forecast that I've experienced. It  
24 has no obvious defects.

25 I think you will hear criticism from

1 NorthWestern that, well, why did you choose to use the  
2 gas prices here instead of then? And, you know, it's  
3 true. Gas prices fell after Mr. Lauckhart prepared his  
4 avoided cost analysis. But he was relying in February  
5 2011 on Black & Veatch's forecast in November of 2010.

6 And, as I mentioned, it takes three or four  
7 months to do this. Is it does not make sense to try to  
8 attempt to redo an entire avoided cost forecast on a  
9 specific date. And by February, the testimony will show,  
10 Mr. Lauckhart was convinced that things had not changed  
11 significantly enough that it would have made a  
12 significant difference in the calculation. But that was  
13 the best information that he had at the time. And it was  
14 a reasonable approach to it.

15 We'll have testimony on other subjects as well.  
16 One of them is NorthWestern's need for capacity. When we  
17 approached them I think the period of June 2010 really up  
18 until the time we filed this Complaint that the refrain  
19 that we continually heard from NorthWestern was we don't  
20 have any need for capacity.

21 We have now through discovery obtained documents  
22 that show very clearly that they need capacity and that  
23 the Oak Tree project could have displaced some of that  
24 capacity if only they had signed an agreement with us.  
25 And instead they made other decisions, other resource

1 decisions, and that that decision was not to buy from  
2 Oak Tree but to do other things.

3 And, you know, we believe that that was a  
4 mistake. Not just from the standpoint of Oak Tree but  
5 from the standpoint of utility planning, from the  
6 standpoint of doing what's best for the customers.

7 For example, we believe the evidence in this  
8 hearing is going to show that the capacity costs for the  
9 resources that NorthWestern otherwise acquired were  
10 actually higher than the capacity costs of acquiring  
11 Oak Tree for the same period.

12 There's a substantial benefit to wind. Firstly,  
13 as I mentioned, there's the resource diversification  
14 issue. Second, there's a hedge against fuel risk.  
15 Third, there's this whole issue of environmental  
16 regulation creating a fairly significant bump and  
17 increase in costs of generating coal. Fourth, that,  
18 again, there's this whole issue about greenhouse gas.  
19 And whether you think it should be passed or whether you  
20 think it won't be passed, the fact remains it's a factor  
21 because it's something that's still being discussed.

22 I think the fifth issue is this whole issue of,  
23 you know, what's Congress going to do about renewable  
24 portfolio standards? Are they going to continue to let  
25 the states do this hodgepodge, or are they going to do

1 something different?

2 This is all contained in this report, 259 page  
3 report from Black & Veatch. They examined all of these  
4 different issues in some detail. And they quantify it.

5 So there are other issues in the case, I mean,  
6 and you'll hear testimony about those. But the two  
7 issues really did we create a legally enforceable  
8 obligation? Did we do everything we really were required  
9 to do to have the utility say, yeah, we'll buy your  
10 output? And the second issue is, well, what should be  
11 the price?

12 There's a dispute on those issues. I understand  
13 that. But we don't think at the end of the day you're  
14 going to look at that and say, okay, it should be \$35.  
15 We think our offer was very reasonable. We think with  
16 what we know about the cost to generate wind, we think  
17 with what we know, and we know very specifically about  
18 the actual avoided cost in South Dakota, this is cheaper  
19 than the alternatives. It's very similar to the  
20 determination that NorthWestern asked the Montana  
21 Commission to make with respect to Spion Kop.

22 So in closing, I think we have a great project  
23 that will greatly benefit the rate payers of  
24 South Dakota. And we also believe it will help the  
25 utility for the same reasons that NorthWestern testified

1 in the Spion Kop proceeding that their project would  
2 benefit Montana rate payers. It will help the utility  
3 too.

4 I mean, part of this whole process, part of this  
5 whole utility planning process, should be to figure out  
6 how to diversify your risk, how to make sure you don't  
7 get caught with all of your eggs in one basket.

8 It should be to plan for the future, to prevent  
9 against unforeseen circumstances. And we believe that  
10 this is a really good project to provide benefits and  
11 hedge against those kinds of risks, and we would ask that  
12 you find as of February 25, 2011, that we incurred a  
13 legally enforceable obligation and that 54.40 for this  
14 project for 20 years at 2 and a half percent is an  
15 eminently reasonable rate and below NorthWestern's  
16 avoided cost.

17 The last remark I want to make has to do with  
18 this whole issue of good-faith versus bad-faith  
19 negotiation. One thing that you will note is that the  
20 regulations don't say anybody has to negotiate. In  
21 South Dakota in 1982 you all said, hey, the only way for  
22 a project like Oak Tree, a qualifying facility to get a  
23 contract if you're above 100 kilowatt design, is for the  
24 utility and the qualifying facility to negotiate.

25 And there are a number of states, Oregon and

1 Mississippi too that I can think of off the top of my  
2 head, that specifically put in the tariffs, the utility,  
3 that you have an obligation to negotiate in good faith.

4 I will leave it to you to decide whether there  
5 was good-faith negotiation. But negotiation can't be a  
6 one-way street. We certainly had no reason to want to  
7 bring this matter before the Commission. We just want to  
8 build a project. We're not here to set public policy  
9 unless we have to. We're just in the business of trying  
10 to build our project and sell its output. And in this  
11 case the only real alternative for Oak Tree was  
12 NorthWestern.

13 So we're here today. The very last thing, and I  
14 promise this is the very last thing, we need a decision  
15 right away. You know, our planning horizon is right now  
16 if we can get an order by the middle of April, that would  
17 help a great deal. I know that's a really short time  
18 frame, but we've got to be fully constructed by the end  
19 of 2012 if we're going to deliver.

20 And this was the point that NorthWestern made in  
21 no uncertain terms before the Montana Commission. You  
22 can buy it now and get the benefits of the production tax  
23 credit, or you can buy it later and let those benefits go  
24 by the wayside. And those benefits benefit both, in this  
25 case, primarily NorthWestern's rate payers.



1 El Macero, California 95618.

2 Q. And by whom are you employed?

3 A. I am self-employed at this point.

4 Q. Okay. And, Mr. Lauckhart, did you cause to be filed  
5 in this proceeding direct prefiled testimony?

6 A. Yes.

7 Q. Okay. And if I were to ask you the same questions  
8 today, would your answers to those questions still be the  
9 same?

10 A. Yes.

11 Q. Do you have any additions or corrections to make to  
12 your testimony?

13 A. Not at this time.

14 MR. UDA: I would tender the witness for  
15 cross-examination.

16 MR. SMITH: Do you want to cite the exhibit  
17 number and offer that exhibit at this point in time?

18 That's something I didn't bring up, but I  
19 haven't heard a mention about stipulation of the parties  
20 to admission or anything.

21 Has that occurred?

22 MR. UDA: I didn't know that we were supposed to  
23 do that. I apologize, Mr. Smith. I'm not entirely  
24 familiar with your procedures.

25 MR. SMITH: Right. I mean, you can do it any

1 time. I'm just going to tell you typically people then  
2 would offer based on your foundation that you've just  
3 done and --

4 MR. UDA: Well, this is -- his direct prefiled  
5 testimony has been identified as Oak Tree 1, and I would  
6 move its admission.

7 MR. SMITH: Is there objection?

8 MR. BROGAN: Mr. Smith, with respect to his  
9 actual direct testimony as opposed to the exhibits  
10 attached to it, there is no objection.

11 At this point NorthWestern would want to reserve  
12 a right to object to what are identified as  
13 Mr. Lauckhart's Exhibits 3, 4, 5, and 6 on the grounds of  
14 foundation.

15 MR. SMITH: Thank you. So noted. And we'll  
16 await that.

17 And perhaps that's something, Mr. Uda, you can  
18 address in some detail if you'd like as you proceed here.

19 Oh. Staff, any objection?

20 MS. SEMMLER: No.

21 MR. UDA: Can I just go ahead and address this  
22 now if I might, Mr. Smith?

23 MR. SMITH: Please.

24 Q. (BY MR. UDA) Mr. Lauckhart, with respect to  
25 Exhibit 3, can you please explain the genesis of this

1 document and how it was created and who it was created  
2 by?

3 A. Exhibit 3 is what I've called the summary and brown  
4 value avoided -- well, let's see. Exhibit 3 is the  
5 summary and brown value avoided costs. So this is -- so  
6 the culmination of my work of how I created the avoided  
7 cost and details of that calculation. So, you know, my  
8 whole testimony builds up to creating this exhibit to  
9 calculate the avoided cost.

10 Q. And where do the input numbers come from, from this  
11 particular document?

12 A. Well, there are two primary sources for the input  
13 numbers. One is the Black & Veatch Fall 2010 what we  
14 call the energy market perspective, which is a 25-year  
15 hourly forecast of power prices across the whole Midwest,  
16 including a special zone for South Dakota.

17 And then, in addition, I took the hourly wind output  
18 that comes from the Oak Tree folks and applied the hourly  
19 wind output to the hourly prices to create the avoided  
20 cost.

21 Q. So could you explain for the Commission what these  
22 numbers are that appear in this exhibit, for example,  
23 starting on page 1?

24 A. We start with a calculation that shows for each  
25 month -- actually I don't have that right in front of me.

1 Do you have something I could -- you could show me?

2 Q. You don't have Exhibit 3?

3 A. I don't have it right in front of me.

4 Thank you. So, for example, you can see -- this is  
5 a spreadsheet so we now have a printout of a spreadsheet,  
6 which is always a little bit difficult.

7 But you can see that, for example, in 2012, month  
8 one, there's a number there. Well, that's -- that is  
9 our -- this is all in 2010 dollars. This particular top  
10 of this Exhibit 3 Section that goes from 2012 to 2031 and  
11 this page only shows months January through July because  
12 that's all I could print here. You can see --

13 All of these numbers are in 2010 dollars for  
14 starters. So I would -- because our basic forecast is  
15 done in 2010 dollars, and then after the fact we add  
16 inflation. If a client thinks they know what the general  
17 inflation they want to use, we'll use that. If they want  
18 us to provide our forecasted general inflation, we've  
19 been using 2 and a half percent recently as our  
20 forecasted general inflation.

21 So we would take -- for 2012 and 2010 dollars we  
22 would multiply in January our January hourly prices times  
23 the January expected hourly production from the Oak Tree  
24 Wind Plant. And we get a number on this sheet. So I do  
25 that for all the years all at once. And then down below

1 you can see that we've converted that to nominal by  
2 applying a 2 and a half percent general inflation rate.

3 Q. And so, for example, Mr. Lauckhart, on the second  
4 page in which the spreadsheet printed, which is actually  
5 the third page, you have months August through December;  
6 is that correct?

7 A. Yes. That picks up the other months.

8 Q. And then the total amount of revenue based on your  
9 calculation is calculated in the right-hand side of that  
10 page adjacent to December?

11 A. Yes. And so far in this spreadsheet we've only  
12 calculated the energy avoided cost. This is just energy  
13 numbers. There's no capacity numbers in this yet.

14 Q. Okay.

15 A. And then if you go farther along -- I'm used to  
16 looking at this in the real spreadsheet instead of this  
17 kind of paper. But let's find out what page we can go  
18 to.

19 If you go to actually the very last page of this  
20 exhibit, this is where the capacity value comes in. And  
21 we've said that the 19.5 megawatt Oak Tree Wind Plant  
22 will not get to count 19.5 megawatts towards meeting the  
23 peak. We've said that we believe it will count about 20  
24 percent of its name plate toward meeting the peak. So  
25 that's 3 megawatts. You can see it on that page. And

1 then we said, well, what do we think that capacity is  
2 worth in South Dakota as we go out over time?

3 Well, to tell you the truth, right now South Dakota  
4 is kind of overbuilt. And because of that, capacity  
5 prices are depressed. And we made an estimate that the  
6 capacity price would be \$17 a kilowatt year.

7 And I think if you flip back, you will find I think  
8 that first number is in 2013. We could check, but right  
9 here I can't see that. But I think that's 2013.

10 And we can see that we think -- the Black & Veatch  
11 forecast is that's going to be depressed for a  
12 considerable amount of time. So we valued, you know, the  
13 17,000 kilowatt year times the 3.9 megawatts to get the  
14 capacity value.

15 Q. Mr. Lauckhart, let me just ask a question.

16 A. Okay.

17 Q. So these are not paginated, but I believe four pages  
18 from the end you have a table that says Oak Tree  
19 Generation; is that correct?

20 A. Yes. The Oak Tree Generation shows up.

21 Q. And how is that created?

22 A. That data came from Oak Tree, and it was based on  
23 the met tower data that they had collected and their  
24 consultant who converted that wind into generation based  
25 on the power curve of the turbines they planned to build.

1 Q. So the inputs, if I'm understanding correctly, came  
2 in the form of the Black & Veatch Electric Price Forecast  
3 and, in addition to that, the hourly wind data that you  
4 obtained from Oak Tree; is that correct?

5 A. That's correct.

6 Q. Okay. And your calculations were -- these were  
7 prepared by you for this proceeding?

8 A. Yes.

9 MR. UDA: I would submit that it should be  
10 admitted as part of Oak Tree Exhibit 1.

11 MR. SMITH: Objection? Do you want to state  
12 your objection now, Mr. Brogan?

13 MR. BROGAN: Mr. Smith, I will renew our  
14 objection based on foundation for two parts. I'm not  
15 quibbling with the calculations that Mr. Lauckhart  
16 performed.

17 I'm quibbling with the foundation for, one, the  
18 Black & Veatch report. We have not had any evidence that  
19 Mr. Lauckhart was involved in the preparation of that  
20 report, that he can tell us the assumptions that were  
21 involved, that he supervised it, that he can testify with  
22 respect to it.

23 Secondly, he has just said that the wind data  
24 came from Oak Tree. At this point we have not had any  
25 foundation for those Oak Tree wind production

1 calculations.

2 MR. UDA: Mr. Smith, maybe I could clear this up  
3 with a couple of questions to Mr. Lauckhart.

4 MR. SMITH: Please.

5 Q. (BY MR. UDA) Mr. Lauckhart, were you employed by  
6 Black & Veatch at the time the 2010 forecast was  
7 prepared?

8 A. Yes, I was.

9 Q. Were you involved in preparing that study?

10 A. Yes, I was.

11 Q. Are you adequately familiar with that report to  
12 testify as to how it was created and the methodology that  
13 was used by it?

14 A. Yes, I am.

15 Q. With respect to the met tower data, did you  
16 personally examine the met tower data?

17 A. Well, I looked at the met tower data. I didn't  
18 create the met tower data.

19 Q. Okay. And was the met tower data provided to you by  
20 someone at Oak Tree?

21 A. Yes, it was.

22 Q. Okay. Did you discuss the met tower data with  
23 someone at Oak Tree?

24 A. Yes, I did.

25 Q. And where did they obtain the met tower data?

1 A. They got it from their consultant, I think  
2 AWS Truewind. You know, I think that was the name of the  
3 consultant. But they're a well-known consultant in this  
4 business.

5 Q. Did you have any reason to suspect that there was  
6 anything defective about the data provided to you by  
7 AWS Truewind?

8 A. I did not. I was a little bit surprised how high a  
9 capacity factor they were getting. I questioned that,  
10 and they pointed me to actually another wind project up  
11 the road that was getting very similar capacity factor.  
12 And that alleviated my concerns.

13 Q. Okay. And did you rely on AWS Truewind because of  
14 your understanding of their experience in the industry?

15 A. Yes.

16 MR. UDA: I would submit again that I believe  
17 that this exhibit should be admitted.

18 MR. SMITH: The objection is overruled, and the  
19 exhibit is admitted.

20 Q. (BY MR. UDA) Let's proceed to No. 4.

21 Mr. Lauckhart, do you have Exhibit No. 4 in front of you?  
22 I believe it's --

23 A. Yes, I do. Yes, I do.

24 Q. Could you explain for the Commission where you  
25 obtained this information and how you created this

1 particular exhibit?

2 A. Yes. If you look at the very top of the exhibit on  
3 the first page it says Stauffer format. Stauffer is  
4 Mark Stauffer. He's an employee of NorthWestern Energy.  
5 He actually developed this format and provided this  
6 calculation in a proceeding in Montana.

7 What I did was used his exact same calculation but  
8 substituted a couple of numbers. One was the cost of a  
9 wind turbine, and one was the wind capacity factor. I  
10 believe those are the only changes I made and redid his  
11 calculation to create this number, which was what I have  
12 felt was indicative of what it would cost NorthWestern to  
13 build a wind plant in South Dakota.

14 You know, the fact that we have a 44.8 percent  
15 capacity factor on this table when he didn't have that in  
16 Montana is indicative of the fact that your wind resource  
17 in South Dakota is better than it is Montana. So I felt  
18 I needed to take that into account.

19 And then the capital cost was just updated because  
20 we believe, you know, capital cost of wind turbines have  
21 been changing since Mr. Stauffer did this originally.

22 Q. Okay. And in what proceedings did Mr. Stauffer use  
23 these calculations?

24 A. You know, it was one of the avoided cost proceedings  
25 in Montana.

1 Q. Was it D2008.12.146?

2 A. I would accept that subject to check.

3 Q. What about D2010.7.77?

4 A. I would accept that, subject to check also.

5 Q. And so Mr. Stauffer has testified in this  
6 methodology several times before the Montana Public  
7 Service Commission?

8 A. Yes.

9 Q. You were essentially using his formula but just  
10 adjusting a couple of factors based on your experience  
11 both in reviewing the data from AWS Truewind and your  
12 experience at Black & Veatch in making determinations  
13 with respect to what the installed cost of turbines is?

14 A. That's correct.

15 MR. UDA: I would move for admission of this  
16 particular Exhibit 4.

17 MR. SMITH: Thank you.

18 Mr. Brogan.

19 MR. BROGAN: Mr. Smith, I think we can cut  
20 through some of this if you would just grant me a  
21 continuing objection to these, and we can go forward.

22 MR. SMITH: Okay. Thank you. Why don't we just  
23 do that. And your objection is noted. And with that --  
24 is that with respect to all of them?

25 MR. BROGAN: Yes.

1           MR. SMITH: I'm going to admit then the -- what  
2 is it? OT Exhibit 1, including all of its associated  
3 exhibits.

4           MR. UDA: Thank you, Mr. Smith. My  
5 understanding is at this point that -- Mr. Smith, I don't  
6 know. Is it your preference that we move to offer his  
7 rebuttal testimony at this point?

8           My understanding is that you wanted a summary  
9 prior to cross-examination of his testimony. And I  
10 didn't know how exactly you wanted to do that.

11          MR. SMITH: It's up to you, but I would  
12 probably -- why don't you lay the foundation, and let's  
13 also take on rebuttal at this point. And that way when  
14 he offers his summary he can cover it, the totality of  
15 it.

16          How is that?

17          MR. UDA: That's fine.

18 Q.    (BY MR. UDA) Mr. Lauckhart, did you prepare  
19 prefiled rebuttal testimony also in this proceeding?

20 A.    Yes, I did.

21 Q.    And if I were to ask you those same questions today,  
22 would your answers be the same?

23 A.    Yes, they would.

24 Q.    Do you have any additions or corrections to make to  
25 your testimony?

1 A. Not at this time.

2 MR. UDA: And at this point I would like to move  
3 for the admission of the entirety of Mr. Lauckhart's  
4 rebuttal testimony, including exhibits.

5 MR. SMITH: Any objection --

6 MR. UDA: Exhibit 2.

7 MR. SMITH: Pardon me?

8 MR. UDA: I'm sorry. As Oak Tree Exhibit 2.

9 MR. BROGAN: Mr. Smith, NorthWestern would like  
10 to enter a continuing objection -- and I understand that  
11 the Commission's already ruled on a Motion To Strike, but  
12 a continuing objection in an abundance of caution on  
13 Exhibit No. 2, the Guldseth prefiled testimony in  
14 MPSC Docket D2011.5.41.

15 Mr. Guldseth's not available for  
16 cross-examination, not available here. We think it is  
17 improper for that to be part of the record. But, again,  
18 just a continuing objection.

19 MR. SMITH: Thank you.

20 Staff.

21 MS. SEMMLER: No objection.

22 MR. SMITH: Okay. As Mr. Brogan noted, the  
23 Commission has already ruled on that, and I'm not going  
24 to overrule the decision of the Commission here. And so  
25 the Oak Tree Exhibit 2 is admitted, including its

1 associated exhibits.

2 MR. UDA: Thank you, Mr. Smith.

3 Q. (BY MR. UDA) At this time, Mr. Lauckhart, would you  
4 like to do hopefully a brief summary of your direct  
5 prefiled testimony in a not too loud fashion?

6 A. I don't know. This is the first time I've actually  
7 filed prefiled testimony and then asked to summarize it.

8 As you know, I cover a lot of topics in my direct  
9 and rebuttal testimony. So I'm going to try to summarize  
10 it fairly quickly, but I want to hit as many of those  
11 topics as I can. So I'll move forward with that.

12 I initially testified that Oak Tree had created an  
13 LEO on February 25, 2011, with the submission of their  
14 letter and the contract associated with it. I testified  
15 that they -- the LEO price that they inserted in that was  
16 \$54.4 a megawatt hour escalated at 2 and a half percent a  
17 year and that levelizes out at \$65.1 a megawatt hour.

18 I testified that the \$65.1 per megawatt hour was, in  
19 my view, less than the avoided cost for NorthWestern and  
20 that I had calculated a brown value avoided cost of  
21 \$78.9 a megawatt hour and a green value avoided cost of  
22 \$70.8 a megawatt hour.

23 The difference is green. There are recs there. And  
24 they go to the utility. If it's a brown value avoided  
25 cost, the seller, in this case Oak Tree, keeps the recs

1 and can market it to anybody.

2 I testified that NorthWestern had not prepared a  
3 long-term avoided cost. I testified that the  
4 South Dakota Commission had not established a long-term  
5 avoided cost and, therefore, to get an avoided cost I had  
6 to prepare one myself. And I've done this many times in  
7 my career.

8 I testify that in order to get the green value  
9 avoided cost I used the Stauffer methodology, which we  
10 discussed.

11 I testified to get the brown value avoided cost I  
12 used the market price approach. You will hear later  
13 today that there are five typical approaches, and I used  
14 one of those, the market value approach. And when I did  
15 that I testified that I found the market value from a  
16 forecast that my company had prepared in November of  
17 2010. And I testify about that approach.

18 And, in fact, I put a 259 page Exhibit 5 to that  
19 testimony that goes through in a huge amount of detail  
20 the efforts that went into building that, the assumptions  
21 we made, the approach we took, the trade-offs we were  
22 considering, and how we came up with that forecast.

23 I point out that the forecast is used by a large  
24 number of clients. This was not a forecast that we  
25 prepared at the request of Oak Tree. And it wasn't --

1 clearly it is a huge effort to prepare. It costs us  
2 about \$500,000 a year to prepare this forecast. We sell  
3 it to clients for about \$15,000. You have to have a lot  
4 of clients if it's costing you \$500,000 and you're  
5 selling it at 15,000.

6 So we could not really bias this to my particular  
7 client because we needed to have it available to a lot of  
8 people. We point out it's a nonconflicted view. It's  
9 one we prepare independently without any client input.

10 And when we get done, we use that forecast in a lot  
11 of things. Banks use our forecast and due diligence  
12 analysis on lending hundreds of millions of dollars on  
13 various power projects.

14 I concluded in my direct testimony that the \$65 is  
15 less than an independent look at the avoided cost of  
16 NorthWestern Energy.

17 Then, you know, after receiving NorthWestern's  
18 testimony I filed rebuttal. And the first thing I  
19 pointed out was that Oak Tree [sic], their testimony here  
20 had stated that they don't need any new capacity, and yet  
21 we learned that they were telling their board they did  
22 need new capacity. Even after construction of the  
23 Aberdeen plant, two months after we filed our LEO, they  
24 told their board that the Aberdeen plant by itself would  
25 not be sufficient to cover the --

1 MR. SMITH: Excuse me a minute, Mr. Lauckhart.  
2 Are we treading into confidential material at this point?

3 MR. UDA: I think that the board minutes -- I  
4 always get this backwards. Board meeting minutes are  
5 confidential. So perhaps if he's going to expound  
6 further on that, there needs to be -- anybody who's not  
7 signed the nondisclosure agreement needs to be absent  
8 from the room.

9 MR. SMITH: Mr. Brogan, is this a sensitive  
10 enough issue to warrant in-camera? It's up to you. If  
11 it is, we're going to honor it.

12 MR. BROGAN: I apologize. I should be used to  
13 looking for the light to be on after years at the  
14 Commission. I'm looking for blue lights as opposed to  
15 green lights, and I'm still forgetting.

16 Mr. Smith, as long as we keep the discussion at  
17 a very high-level summary, which is, I think, where we're  
18 at still so far, NorthWestern would not request that we  
19 go to a nonpublic in-camera. I think it's important for  
20 us to be public as much as possible.

21 MR. SMITH: Thank you. And would you -- could  
22 you please then, Mr. Brogan -- you've got to step in and  
23 let me know if we're crossing that line, if you would.  
24 Thank you.

25 And we do appreciate that. Because we would

1 like this to be as public as absolutely possible. Thank  
2 you very much.

3 A. So I testified that two months after we filed our  
4 LEO letter -- Oak Tree, I should say -- that NorthWestern  
5 was telling their board that even with the Aberdeen plant  
6 they would be short in 2013, the summer of 2013,  
7 somewhere between 5 megawatts and 35 megawatts of  
8 capacity and they would have to do something in addition  
9 to meet that by the summer of 2013.

10 I pointed out in my rebuttal that in -- when  
11 NorthWestern testified in Montana they talked about  
12 the -- they had completely a different approach to,  
13 number one, how they calculated avoided cost, and, number  
14 two, the noneconomic value that they thought wind plants  
15 brought that they couldn't quantify but they thought  
16 should be very important in a decision of whether you  
17 would decide to move forward with the wind plant or not.  
18 They made all of those discussions in Montana, and none  
19 of that is here in this proceeding in their testimony.

20 In Montana, as Mr. Uda has already said, they made a  
21 big issue that you really needed to get these wind plants  
22 on by the end of 2012 because the production tax credit  
23 is a material reduction in the cost of wind to rate  
24 payers. And while they made a big point of that there,  
25 in this case they seem saying don't do anything, don't

1 get any wind on by 2012. In other words, you know, so  
2 it's for South Dakota, just pass on the tax credit  
3 benefit to customers.

4 I testified that Mr. Lewis's testimony -- that he  
5 did not appear to be experienced in this area. You know,  
6 he and his firm -- his firm is small. He -- I know  
7 Mr. Lewis. He used to work for me at Puget Sound Power &  
8 Light. And I've known what he's done. And I was a  
9 little surprised that he put testimony of long-term gas  
10 price forecast and electricity price forecast forth.

11 I point out that -- the difference between his  
12 simplified approach as described by Mr. Uda and the  
13 comprehensive approach that we take to doing this.

14 I also testified about this issue of planning  
15 reserves. There's been this very surprising event to me  
16 where NorthWestern claims that while they used to think  
17 they needed a 15 percent planning reserve margin, now  
18 they only need 7.1 percent. And, well, what was the  
19 basis for that?

20 Well, we used to have a reserve sharing agreement  
21 that we participated in. Well, that's gone. And I said,  
22 well, that's why we went to 7.1. Well, that sounds  
23 counterintuitive. If you don't have people agreeing to  
24 help you when you have problems -- and they could have a  
25 problem with a 106 megawatt -- their Big Stone coal plant

1 tripping off line on a heavy load day. It used to be  
2 they had an agreement people would step up and help them.  
3 They longer had that agreement.

4 And it's counterintuitive that that would then allow  
5 to reduce your planning reserve target to 7.1 percent  
6 from 15 percent.

7 I testified that they seem to be basing this  
8 7.1 percent on a study that said WAPA has very flexible  
9 hydro resources so you don't need to carry as much.  
10 Well, WAPA has no obligation to provide their energy to  
11 NorthWestern. WAPA has other concerns.

12 If NorthWestern gets into a problem because they  
13 decided for whatever reason not to carry as much reserve,  
14 it's very suspect in my mind to just assume that WAPA's  
15 going to support them.

16 Now I actually did talk to some people at WAPA, and  
17 they said we will try to do something for them. We'll  
18 try to get power if they need it. We will charge them  
19 whatever it takes. And if you lose a coal plant, major  
20 coal plant over here, prices are going to go up.

21 WAPA, if they can find power, they will get it and  
22 charge it to them. If they can't find power, WAPA  
23 already has the right to curtail 10 percent of the load  
24 on the NorthWestern system without any liability for  
25 doing so. Contractual right to do that.

1           And I can tell you this: When you curtail loads  
2 that's newspaper headline stuff. And that's people stuck  
3 in elevators. People on a hot day can't get air  
4 conditioning. That, in my mind, is not a good place to  
5 put the utility in.

6           And another thing I was surprised to find out is  
7 usually these discussions happen with the Commission  
8 before they make these decisions, and there's no evidence  
9 to me that they talked to you about decisions to reduce  
10 their planning reserve margin from 15 percent to  
11 7.1 percent.

12           I talk a little bit about the -- this issue of was  
13 Oak Tree not negotiating in good faith? And I point out  
14 that if Oak Tree is being offered \$20 a megawatt hour  
15 every time they talk to NorthWestern and NorthWestern  
16 knows you cannot build a wind plant at \$20 a megawatt  
17 hour, that who's negotiating in bad faith?

18           You know, my mother always told me, you know, if  
19 both people are fighting, you know, both people are  
20 probably -- probably is the fault of both people. So,  
21 you know, I can't say whose fault it was we didn't reach  
22 an agreement. But the -- just bottom line here is they  
23 couldn't reach an agreement. And, in my view, it didn't  
24 make any sense for Oak Tree to continue to ask them,  
25 well, would you be willing to go above \$20 only to be

1 told no.

2 Finally -- and I'm sorry. This is a long summary.  
3 Finally, I observe this. As you can see from my 259 page  
4 Exhibit 5 -- I love that 259 page -- you can see from  
5 that exhibit this country -- you know, if you look at the  
6 big picture, get away from all the details, look for the  
7 big picture, this country is moving towards a cleaner and  
8 more sustainable renewable generation supply. We're  
9 heading that direction.

10 All these things I talk about in this slide that  
11 describe all the issues that are driving us there. And  
12 when you do an analysis of this wind project for  
13 South Dakota customers you need to take into account  
14 that's the movement of the industry.

15 The avoided cost forecast should acknowledge that  
16 and take that into account. The nonquantifiable issues  
17 that you should be thinking about should acknowledge that  
18 and take that into account.

19 In my view the Montana Commission did that, both in  
20 the avoided cost and the determination that maybe \$75 was  
21 a reasonable market assessment over the next 20 years.  
22 And also in their decision that there are a lot of  
23 uncertainties here but there are hedging reasons for  
24 doing renewables.

25 And when they did that they concluded that Spion Kop

1 would be a good thing for customers in Montana. And I'm  
2 saying if you take all this stuff into account, you will  
3 reach the same conclusion here.

4 And I also point out that there are some differences  
5 between Montana and South Dakota, but in my calculations  
6 I've taken them into account.

7 MR. UDA: Mr. Smith, at this time I would tender  
8 Mr. Lauckhart for cross-examination.

9 MR. SMITH: I'm going to ask Cheri. Maybe we're  
10 at midway through the morning if maybe it's time to take  
11 a 15-minute recess, let you freshen up. The rest of us  
12 also maybe take care of some business.

13 So for now we're going to be in recess until  
14 about a quarter to 11:00.

15 (A short recess is taken)

16 MR. SMITH: We'll resume the hearing following a  
17 brief recess in Docket EL11-006, Oak Tree versus  
18 NorthWestern. And we were at the point of commencing  
19 cross-examination of Witness Lauckhart.

20 Mr. Brogan, please proceed with your  
21 cross-examination.

22 MR. BROGAN: Mr. Smith, thank you.

23 CROSS-EXAMINATION

24 BY MR. BROGAN:

25 Q. Good morning, Mr. Lauckhart.

1 A. Good morning.

2 Q. In your direct testimony this morning, not the  
3 prefiled direct testimony, you indicated that you are  
4 self-employed at that time; is that correct?

5 A. That's correct.

6 Q. Are you speaking for Black & Veatch during those  
7 proceedings?

8 A. I'm not employed by Black & Veatch at this time. So  
9 I can't speak for them.

10 Q. By whom have you been retained to provide testimony  
11 and to appear at this hearing?

12 A. Oak Tree Energy.

13 Q. And what is your compensation for preparing  
14 testimony and appearing at this hearing?

15 A. \$100 an hour.

16 Q. Mr. Lauckhart, when did you prepare your direct  
17 testimony in this docket?

18 A. I believe it was -- my direct testimony was  
19 December. My Affidavit was in February.

20 Q. And I noticed that you did not sign your direct  
21 testimony. Why is that?

22 A. I don't recall being asked to sign my direct  
23 testimony.

24 Q. Is it correct that on page 3 you state "FERC allowed  
25 the QF to establish a legally enforceable obligation by

1 offering its power to the utility at a rate that does not  
2 exceed its avoided cost"?

3 A. Could you just point me to wherever you are now?

4 Yes. I see that on page 3 of my direct testimony.

5 Q. Are you aware that FERC has ruled that it is up to  
6 the states, not FERC, to determine when an LEO is created  
7 pursuant to state law?

8 A. You know, I'm not fully aware of that.

9 Q. Are you aware at that federal courts have upheld  
10 state-imposed restrictions on creating an LEO that  
11 require more of the mere offering of power by a QF?

12 A. I'm not familiar with that, no.

13 Q. Is it correct that on page 4 you state "Oak Tree is  
14 first and foremost interested in selling its power at a  
15 price that allows the wind project to be financed, built,  
16 and operated over its expected lifespan"?

17 A. Yes.

18 Q. Does this first and foremost interest consider the  
19 interest of NorthWestern's South Dakota consumers?

20 A. I would say yes. I believe if they felt it wasn't  
21 in the best interest of consumers, that if it was -- cost  
22 higher than would be appropriate for consumers, they  
23 wouldn't be spending their money pursuing this project.

24 Q. Mr. Lauckhart, in that answer who did you mean by  
25 "they"?

1 A. Oak Tree. That's why their offer -- I was  
2 suggesting that they could -- in my view the avoided cost  
3 was higher than what they were offering, and they could  
4 put the offer higher because they're entitled to an  
5 avoided cost.

6 What they said is, well, you know, there's some  
7 dispute about avoided cost. We think this is all we need  
8 so why would we -- we don't necessarily need to make  
9 more.

10 Q. Is it correct that in your testimony on page 4 and 5  
11 you describe how you calculated NorthWestern's avoided  
12 cost by what you call the brown method?

13 A. Yes. I started discussing the brown method at the  
14 bottom of page 4, yeah.

15 Q. And is it correct that this method involves  
16 multiplying the estimated output of the Oak Tree project  
17 by Black & Veatch's forecast spot market prices for the  
18 same period?

19 A. Yes. This is an hourly -- it's an hourly  
20 calculation for the forecast period.

21 Q. And are these the calculations that are shown on  
22 your Exhibit 3?

23 A. Yes. We were talking about that earlier. Those are  
24 the calculations.

25 Q. Your attorney went into this somewhat, but I'd like

1 to go into it a little further. What was your  
2 involvement in preparing the Black & Veatch midwestern  
3 estimate?

4 A. Well, there's in my view a long answer to that  
5 question.

6 Q. Is there a short answer, and, if so, can you give us  
7 that one?

8 A. Well, I don't know that a short answer would do it  
9 justice. So I'll start with the long answer, and you can  
10 stop me if you think I'm getting too far.

11 I joined Black & Veatch in 2007. I had been doing  
12 these kinds of forecasts since 2000 for a company  
13 originally called Henwood, and then they got sold to  
14 Global Energy. I continued to do that. They got sold to  
15 Ventyx. And then in 2008, I believe it was, Black &  
16 Veatch wanted to do a similar off-the-shelf product.

17 And they were looking for expertise that was already  
18 doing that. They would do these things on a custom basis  
19 prior to that, but they were looking for some expertise  
20 to do sort of regular off-the-shelf product analysis.  
21 And they hired myself and some of my colleagues to come  
22 over to start this practice.

23 The methodology used is the same in all the regions  
24 that we'd study. So we have decided at Black & Veatch we  
25 would look at five different regions. Because, you know,

1 big cats read lots of stuff. We broke it into five  
2 different regions. And I was involved specifically in  
3 identifying how you go about doing a standard  
4 off-the-cuff project, how you would organize the  
5 organization to get the right people involved, the timing  
6 you would do to get that done, the kind of document you  
7 put out for clients.

8 So with that sort of overview, then it became the  
9 fact that I was really a western expert for a long time  
10 but I got -- had been involved in other parts of the  
11 region, including the Midwest in other engagements that  
12 were custom engagements, not necessarily price  
13 forecasting.

14 So I was asked to sort of take a look at what they  
15 were doing in the Midwest studies to make sure I thought  
16 they made sense, do a little quality control. Those were  
17 the kind of activities. We had regular phone calls with  
18 the whole team in which we talked about how it was done  
19 and because we had this experience, the people who ran  
20 the models for the Midwest -- I didn't run any models  
21 myself. I don't run models. I haven't run models since  
22 1980.

23 But I was asked to oversee what they were doing.  
24 Talked to their modelers, look at their output. Confirm  
25 it generally made sense. Show them how they could

1 test -- sort of back test to make sure that they were  
2 getting reasonable results.

3 Q. Just to go into that in a little more detail, did  
4 you gather the actual data that they use?

5 A. Well, if you look at my Exhibit 5, you can see that  
6 the data gathering activity was a huge activity. We  
7 reached out to our Texas gas experts to gather the data  
8 for the gas price forecast. We looked at -- we'd reach  
9 out to our environmental experts to gather data on coal  
10 plants, what -- emissions control existing coal plants  
11 have, what they might be required to put on.

12 So I didn't gather the data myself. But we have a  
13 team that met regularly, talked about the data that was  
14 needed, who would be gathering it, how we would collect  
15 it, the timing it had to be done, those kinds of things.

16 Q. Did you individually decide on the assumptions to be  
17 used in preparing the Midwest energy market perspective?

18 A. No. The assumptions were a product of a broader  
19 group who discussed the various assumptions and how what  
20 we would settle on as our sources of data.

21 Q. Would you look at your Exhibit 3 in the tab that is  
22 entitled Rich underbar Sanity Check Worksheet.

23 A. I'm familiar with that in the spreadsheet. I'm not  
24 familiar with where that's located in this package. Can  
25 you point to me where that is?

1 Q. I don't have that package.

2 A. Okay. I have that.

3 Q. Looking at what on the spreadsheet is labeled as  
4 Column C -- or, excuse me. Column D, Constant 2010  
5 Dollars, Spot Average Dollars Per Megawatt?

6 A. Per Megawatt Hour?

7 Q. Per Megawatt Hour.

8 A. That's the third column on this sheet I'm looking  
9 at, I'm thinking.

10 Q. And it begins in year 2012 at 32.73?

11 A. Yes.

12 Q. And goes to 2031 a value of \$90.13 per megawatt  
13 hour?

14 A. Yes.

15 Q. Is it correct that that reflects nearly a  
16 175 percent increase in the real cost of electric energy  
17 per megawatt hour in a 20-year period?

18 A. I would accept that, subject to check.

19 Q. Do you know how much NorthWestern Energy's  
20 electricity prices in South Dakota have changed in real  
21 terms over the past 20 years?

22 A. In real terms over the past 20 years? I haven't  
23 done that calculation, no.

24 Q. Do you know when NorthWestern's last electric rate  
25 case in South Dakota was held?

1 A. No.

2 Q. With respect to the projected output of the Oak Tree  
3 Wind Project, I believe you testified that you looked at  
4 the wind data; is that correct?

5 A. Well, I didn't look at the met tower data itself.  
6 They had a consultant who took the met tower data and  
7 then ran it through an analysis of that the turbine  
8 generators would put out if that wind blew on them. And  
9 I looked at their output of the wind turbine generators  
10 that was estimated by their consultant.

11 Q. So do you know the time that met towers were  
12 installed?

13 A. Not exactly. It's my understanding they've been  
14 there a considerable amount of time or they have a  
15 considerable amount of data. You could ask the next  
16 witness that. Michael Makens.

17 Q. Do you know if the met towers were on the site or  
18 just close to it?

19 A. I believe they've been on the site for quite a  
20 while, but you can ask Mr. Makens that question.

21 Q. In calculating your version of NorthWestern's  
22 avoided cost, which you said was multiplying the  
23 projected output by the Black & Veatch projected price,  
24 did you assume that Oak Tree would have the same hourly  
25 production pattern in each year for the 20 years?

1 A. Yes.

2 Q. Are you aware that NorthWestern does not purchase  
3 power in over 50 percent of the hours during a year?

4 A. You know, I have testimony in my rebuttal that talks  
5 about -- I did get hourly. I asked for and got from  
6 NorthWestern their hourly loads for the last I believe it  
7 was three years and the output of their plants hourly for  
8 the last three years.

9 And I compared them, and it was generally that in  
10 the heavy load hours they purchased power and in the  
11 light load hours they were selling power. That was my  
12 observation.

13 MR. BROGAN: Mr. Smith, I'm going to ask that  
14 the witness's answer to that question be stricken. It  
15 was not responsive to the question that I asked, which  
16 was very specifically as to whether or not Mr. Lauckhart  
17 was aware of a fact.

18 MR. SMITH: I'll sustain the objection and  
19 strike the testimony.

20 Mr. Uda, you can pursue that if you wish on  
21 redirect.

22 MR. UDA: Thank you.

23 Q. (BY MR. BROGAN) In your calculation did you make  
24 any adjustment for the hours in which NorthWestern is not  
25 purchasing power in the spot market?

1 A. Well, the adjustment I made was if they are  
2 currently selling it an hour and this wind would bring  
3 some more power in that hour, that they would be able to  
4 sell that wind at the market price. That was my  
5 calculation.

6 Q. What cost can NorthWestern avoid by purchasing the  
7 output from Oak Tree in an hour in which NorthWestern  
8 would not purchase spot power?

9 A. That's an interesting question, and it's kind of  
10 avoidance of an opportunity cost. There are some  
11 semantics there that I think we can rise above by just  
12 saying this. We're supposed to be holding customers  
13 in -- different so the customers aren't having to pay  
14 additional amounts than they would if they didn't have  
15 the wind.

16 If the wind is at a time when they don't really need  
17 it, it can be sold and have value, and the customers are  
18 not incurring any additional cost. It's the exact same  
19 calculation that NorthWestern did in the Montana when  
20 they were evaluating the Spion Kop project.

21 Q. Mr. Lauckhart, if the market price is below what  
22 Black & Veatch has estimated it to be, or more  
23 importantly, below the price that NorthWestern would be  
24 paying Oak Tree, are customers being held harmless?

25 A. Could you go over that again.

1 Q. Let me see if I can make it simpler. If we were in  
2 the first year of a contract and NorthWestern was paying  
3 Oak Tree 54.40 for its output and selling it into the  
4 market at 23.40, are NorthWestern's customers going to be  
5 held harmless?

6 A. Not if the sale was only for one year. But if the  
7 sale is for 20 years, of course -- well, we think in the  
8 out years they're going to be paying them \$54 and  
9 avoiding \$90.

10 And as Mr. Uda said, in the FERC Order clearly a  
11 utility -- Commission has the authority to say we're  
12 looking at the long-term benefit to customers here. And  
13 just because the first year isn't pencilling out doesn't  
14 mean it's not appropriate to set an avoided cost that  
15 would let the project to be built.

16 Just like in Montana when NorthWestern built the  
17 Spion Kop project and it's going to cost them well over  
18 the spot market price for power in the first year, it  
19 still is a good decision for customers.

20 Q. Mr. Lauckhart, is it correct that on page 9 of your  
21 testimony you state "Therefore, NorthWestern must be  
22 selling spot power in light load hours and buying spot  
23 power in heavy load hours"?

24 A. Yes. That's what the data indicates.

25 Q. What do you mean by light load hours?

1 A. Very interesting question. In the industry there's  
2 a couple definitions of light load hours. I was talking  
3 sort of generally about nighttime when loads are down as  
4 opposed to daytime the loads are up. What exact hours  
5 are considered light load and heavy load is really  
6 dependent on what you're talking about.

7 Oftentimes we will say -- oftentimes we will say the  
8 heavy load hours are the hours from 6:00 in the morning  
9 to 10:00 at night, Monday through Friday. All the other  
10 hours are light load. But, you know, that's kind of an  
11 interesting but not very useful definition except for if  
12 you're doing futures and options.

13 Q. Are you aware that one of the days that you chose as  
14 representative of NorthWestern's system, August 11, 2010,  
15 was NorthWestern's absolute highest peak load day up to  
16 that time?

17 A. Yes. I specifically was looking for that high load  
18 day. I had data for four years, and I wasn't able to put  
19 in this document hourly data for four years. So I was  
20 trying to bookend it by looking at a heavy load day, the  
21 highest load day, and a light load day, the lightest load  
22 day. So that's what I chose.

23 Q. And doesn't your data show that even on this  
24 ultimate peak day NorthWestern did not purchase power  
25 during eight hours of the day?

1 A. I'll accept that subject to check.

2 Q. Are you aware that the second day you chose,  
3 September 25, 2010, was a Saturday?

4 A. I don't know it was a Saturday. I know it was a  
5 light load day.

6 Q. Are you aware that a base load resource was shut  
7 down for maintenance on that day?

8 A. It was not operating. I knew that.

9 Q. Isn't it correct that even with Coyote not  
10 producing, NorthWestern did not purchase power during  
11 nine hours of the day?

12 A. I will accept that, subject to check.

13 Q. Would you also agree that if Coyote had been  
14 operating at the same level as it was on August 11, 2010,  
15 NorthWestern would not have purchased power during any  
16 hours on September 25, 2010?

17 A. That's possible. You know, we could do the math.  
18 Everybody could do the math right here. By the way, I  
19 don't know that this thing wasn't shut down because of  
20 forced outage. I have no indication of that. As far as  
21 I know, they were shutting it down because of the light  
22 load day, because they decided to uncommit it.

23 Q. Mr. Lauckhart, that last statement that began, "as  
24 far as I know," do you have any facts to support that  
25 statement?

1 A. No. We don't know. We have no facts why that plant  
2 was not running on that day.

3 Q. If you'll bear with me for just a moment,  
4 Mr. Lauckhart, I am bringing up your rebuttal testimony.

5 A. Okay. I'll bring it up also.

6 Q. Do you have it?

7 A. I do.

8 Q. Is it correct that on page 3 of your rebuttal  
9 testimony you state "While NorthWestern testifies in this  
10 proceeding that the avoided cost of a wind plant would  
11 appear to be about 35.85 per megawatt hour, NorthWestern  
12 has simultaneously testified before the Montana PSC that  
13 the value of a wind plant in Montana is 75.52. There is  
14 no legitimate reason for such a large difference in the  
15 value of wind between South Dakota and Montana"?

16 A. What page are you on?

17 Q. 3.

18 MR. SMITH: Might you be looking at the  
19 confidential version, Mr. Lauckhart? Because that's  
20 where the redaction is.

21 THE WITNESS: Oh. Okay.

22 Q. And actually, Mr. Lauckhart, I would ask you to look  
23 at page 2.

24 A. You know, I recall that general statement. I just  
25 wanted to look at it to see if those were the exact

1 words. But I'm not finding it.

2 Q. Mr. Lauckhart, do you have the confidential version?

3 A. I have the confidential version, yes.

4 Q. Would you look at page 2, beginning at line 26 and  
5 see if that helps?

6 A. Okay. Page 2 of the confidential version. I see  
7 it. Yes. That's what I said. Thank you.

8 Q. Would you agree that a utility's avoided cost  
9 depends upon the cost of the specific power generation or  
10 power purchase that can be avoided?

11 A. In general I would agree with that, yes.

12 Q. Mr. Lauckhart, why do you say "in general"?

13 A. Well, in this case, as Mr. LaFave testifies, there  
14 are really five different ways to approach calculating  
15 avoided cost. So if one utility has no need and another  
16 has need and the one that has need is thinking, well, I'm  
17 going to build this resource and this other one says I  
18 don't even have a need so I'm not going to build that  
19 resource -- so in general the concept is the same, but as  
20 you start looking at utilities there might be some  
21 differences.

22 In this case in both we're trying to -- in both  
23 Montana and South Dakota we're using the market price as  
24 the proxy for the avoided cost.

25 Q. Mr. Lauckhart, just for clarification, in this case

1 Oak Tree is using the market as the proxy for avoided  
2 cost; is that correct?

3 A. That's correct. I guess maybe you're saying  
4 NorthWestern doesn't have one.

5 Q. Are you familiar with NorthWestern's resource  
6 portfolio on Montana?

7 A. Yes.

8 Q. Does NorthWestern have significant low cost base  
9 load generation available to serve its load in Montana?

10 A. Well, NorthWestern has some coal plants. If I  
11 recall, they still have a little bit of hydro. And  
12 they've got some gas plants. And they have a market all  
13 available to them.

14 Q. Mr. Lauckhart, let's explore some of the things you  
15 just said. First off, do you know how big NorthWestern's  
16 load is in Montana?

17 A. You know, I recall it's around -- there's a  
18 balancing authority load, and then there's a utility  
19 load. I'm believing the utility load is around 1,100 or  
20 1,200 megawatts peak, I think.

21 Q. How big is the coal plant that NorthWestern has in  
22 Montana?

23 A. Well, NorthWestern owns a piece of the coal plants,  
24 and then they purchase from whoever owns a big share of  
25 the coal strip plant. So a bunch of additional coal. I

1 can't really say off the top of my head how much -- you  
2 know, I'm thinking it's in the 400 megawatt level  
3 approximately total.

4 Q. That NorthWestern owns?

5 A. No. I'm saying is available to them to meet their  
6 load.

7 Q. Mr. Lauckhart, I'm trying to ask you about  
8 NorthWestern's owned resources in Montana in their  
9 portfolio that you just said you were familiar with.

10 A. Uh-huh. Okay. So they have coal. Some of it's  
11 purchase power. Some of it's owned.

12 Q. And do you know how much coal they own?

13 A. I'm thinking that's in the neighborhood of 100. You  
14 know, I can't -- you know, if you have a number, I'd  
15 accept that subject to check.

16 Q. Would you accept that NorthWestern's share of Coal  
17 Strip 4 is approximately 222 megawatts?

18 A. I'd accept that, subject to check.

19 Q. And relative to the load, what type of a percentage  
20 is that?

21 A. Well, if their loads's 1,100, I think it's a little  
22 less than 20 percent.

23 Q. And is that coal in Montana a low cost resource?

24 A. Variable cost of the coal is low, yes.

25 Q. Are the fixed costs high of that particular

1 resource? Do you know?

2 A. High is in the mind of the beholder. When Puget  
3 owned a share of a coal strip we thought it was high.

4 Q. You indicated you thought NorthWestern had some  
5 hydro, owned some hydro in Montana?

6 A. You know, my recollection is they still have some  
7 hydro at Montana, yes.

8 Q. Can you identify any Montana hydro project that  
9 NorthWestern owns?

10 A. I can't come up with a name here off the top of my  
11 head.

12 Q. Are you aware of NorthWestern is purchasing market  
13 power during all hours in Montana?

14 A. Every hour for the last four years?

15 Q. Yes.

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

17 Q. Are you familiar with NorthWestern's resource  
18 portfolio in South Dakota?

19 A. Yes.

20 Q. Are you aware that NorthWestern has over  
21 200 megawatts of low cost base load generation available  
22 to serve its load in South Dakota?

23 A. Well, I'm thinking of the 106 megawatts, the  
24 Big Stone Coal Plant. There's a 55 megawatt plant, I  
25 can't remember the name of it, of coal. That would be

1 base load. Not sure what would make up the other base  
2 load, but there might be some.

3 Q. Are you aware that NorthWestern's average hourly  
4 load in South Dakota is less than 200 megawatts?

5 A. Average hourly load? I would accept that subject to  
6 check.

7 Q. Are you aware that FERC has held that avoided cost  
8 must be determined based on the lowest cost resource  
9 actually available to meet a utility's needs?

10 A. I'm quite familiar with what FERC allows and  
11 requires. I don't remember those exact words, no.

12 Q. Turning to page 8 of your testimony, rebuttal?

13 A. Is this the confidential version?

14 Q. Yes.

15 A. Okay.

16 Q. There's a question that is at the very bottom of  
17 page 8 in line 33 and then an answer that appears in  
18 lines 1 and 2 on page 9.

19 Is it correct that as part of your answer you state  
20 "These RPS targets in Montana are essentially the same as  
21 the RPS targets in South Dakota"?

22 A. Yeah. And what I'm referring to is what would  
23 happen if you don't meet them, that the -- in either case  
24 you -- in most cases are not going to be penalized.

25 Q. Are you aware that the RPS in Montana is mandatory?

1 A. It depends on how you define "mandatory." I'm aware  
2 that they're supposed to try to meet them. If they don't  
3 meet them and they can demonstrate the reason they didn't  
4 meet them, because it would have cost more than other  
5 alternatives they couldn't find in the market, then there  
6 would be no penalty.

7 Q. Are you aware of any docket before the Montana  
8 Public Service Commission in which a utility or a  
9 competitive electricity supplier did not meet that  
10 particular year's renewable portfolio standard  
11 requirements and the Commission did not assert a  
12 penalty?

13 A. I don't believe the docket addressed that. But in  
14 the Spion Kop proceeding there was clearly testimony from  
15 NorthWestern that if they didn't meet it, they would  
16 request a waiver from the penalties.

17 Q. Are you aware that the Montana PSC imposed a penalty  
18 of \$69,400 on ConocoPhillips for failure to comply with  
19 the 5 percent requirement in 2009?

20 A. No, I'm not.

21 Q. Are you aware that the Montana PSC imposed a \$99,120  
22 penalty on the City of Great Falls, subsidiary electric  
23 city power for failure to meet the RPS in 2010?

24 A. No.

25 Q. Are you aware that there are no provisions for

1 penalties for failure to comply with the South Dakota  
2 renewable portfolio objective?

3 A. That's my understanding, yes.

4 Q. Mr. Lauckhart, I want to be very careful that I  
5 don't step into areas of confidential information with  
6 respect to Black & Veatch's product and processes. And  
7 so let me ask this first.

8 Is the identity of the companies that prepare  
9 fundamental-based gas models confidential?

10 A. No.

11 Q. Is the identity of the company that Black & Veatch  
12 uses confidential?

13 A. No.

14 Q. Is it correct that on page 15 of your testimony --  
15 again, confidential version -- you identified GPCM, NEMS,  
16 and NARG as models that are used?

17 A. Yes. I listed the companies there that -- I've  
18 listed a sampling of entities there who do  
19 fundamental-based gas price forecasting and the models  
20 they use. Clearly there are a lot more. I don't know  
21 all of them.

22 Q. In line 39 of that page through 2 of the next page  
23 is it correct that you stated "And as the MPSC has  
24 indicated, NorthWestern would have found that the Lewis  
25 forecast is on the low end of a range of legitimate gas

1 price forecasts"?

2 A. Yes. I say that. Yes.

3 Q. Where does the GPCM model fit within the range of  
4 what you call legitimate gas price forecasts?

5 A. Well, the GPCM model is just that: A model. People  
6 have to put input data into the model. So you can  
7 license the model from somebody who has a very good grip  
8 on how the model, gas, demand, supply, transmission,  
9 pipeline constraints -- you can license the model.

10 But then the question is, well, where do you get the  
11 data? Where do you get the supply curve data for the  
12 sources of gas to put into that model? Where do you get  
13 the demand for gas and the locations for that demand to  
14 put into that model, including residential demands,  
15 industrial demands, demands by power plants. Where do  
16 you get that information?

17 There's a little bit of a question about the  
18 pipeline. Do you have a full -- from the vendor do you  
19 have a full database of the pipelines? And typically you  
20 don't. So the different people who get the model may  
21 modify it as we do to improve on the gas pipeline  
22 modeling. And then you run the model. So with the same  
23 model people can come up with different gas prices.

24 Q. Isn't it true that Mr. Lewis's estimate is within  
25 the range of what you consider to be legitimate? On the

1 low end but within it?

2 A. Okay. So if you're asking me if we have a base  
3 forecast and a high and a low, I would say that he would  
4 be in the range of the low. We wouldn't make economic  
5 decisions based on the low, but he would be in the range  
6 of the low.

7 Just like the Montana Power Commission -- Montana  
8 Public Service Commission found that his stuff was on the  
9 range of the low end of the range from others.

10 Q. Is it correct that you assert the EIA and that the  
11 Northwest Power Conservation Council both assume real in  
12 prices in the prices of natural gas from 2012 to 2031?

13 A. In their base forecasts, yes.

14 Q. On what days basis do they make such an assumption?

15 A. EIA and the Northwestern Power Planning Council.

16 Q. Yes.

17 A. Well, for EIA they run the NEMS model, National  
18 Energy Modeling System, a huge fundamental-based model.  
19 And it's a very complicated model. They actually have a  
20 consultant full time to help them run it.

21 But they're doing the same thing we're doing with  
22 GPCM. They're sticking in fundamental demand,  
23 fundamental supply, pipeline constraints. It's a  
24 different model but similar. And when they run those  
25 models they get these results. They publish them.

1           So I'm pointing out, well, when you see their  
2 published data as the Montana Public Service Commission  
3 acknowledged they have real increases in the price of  
4 natural gas.

5           If you go to -- let's talk about the Northwest Power  
6 Planning Council. They don't really run the model. They  
7 have a committee of what they think are gas experts.  
8 This is people who are knowledgeable about the gas  
9 business in the northwest.

10           It was notable to me that Mr. Lewis was not on that  
11 committee. That committee they bring -- they don't  
12 really run a model. But many of the members subscribe to  
13 these kind of models, and they do a Delphi kind of  
14 technique to say, well, what do you think it's going to  
15 be? What do we think it's going to be? Well, I've got  
16 some knowledge and I've got some knowledge, and they come  
17 up with a number.

18           And we can see in their midpoint forecast that they  
19 put out in August of 2011 one month for Steve Lewis did  
20 that they had real increases in their gas price  
21 forecast.

22 Q.    Are you aware that in the annual energy outlook for  
23 2011 EIA does not have an assumption of increasing real  
24 natural gas prices?

25 A.    No, I'm not.

1 Q. You testified that you were surprised that  
2 NorthWestern would calculate its reserve margin without  
3 consulting with its South Dakota regulators; is that  
4 correct?

5 A. I think the testimony was a drop from 15 percent  
6 planning reserve margin target to 7.1 percent without  
7 consulting with the Commission and without having any  
8 reserve sharing agreement I thought was inappropriate.

9 Q. Do you know of any utility in South Dakota that's  
10 consulted with the Commission about changing its reserve  
11 margin?

12 A. I don't know of any utility in South Dakota that's  
13 using a 7.1 percent planning reserve margin.

14 Q. Mr. Lauckhart, I didn't ask you if you knew of any  
15 utility that was using a 7.1 percent planning margin. I  
16 asked you if you knew of any utility that had consulted  
17 with the Commission about changing its planning reserve  
18 margin.

19 A. No. And I don't know -- I don't really know that  
20 any utility actually changed their planning reserve  
21 margin. So the answer is I don't know.

22 Q. Mr. Lauckhart, did you read a Loss Of Load  
23 Expectation Study prepared by MISO for the WAPA Basin  
24 Heartland system?

25 A. Yes, I did.

1 Q. Do you recall whether there is language in that  
2 study that indicates the utilities referenced may rely on  
3 it in setting their reserve margin?

4 A. You know, I don't recall that language. There are  
5 other things in that report that I found interesting.

6 MR. BROGAN: Mr. Smith, I have no further  
7 questions for Mr. Lauckhart.

8 MR. SMITH: Thank you. Are we doing okay,  
9 Cheri?

10 THE COURT REPORTER: Yes.

11 MR. SMITH: Staff, are you ready for your  
12 cross-examination?

13 Please proceed.

14 CROSS-EXAMINATION

15 BY MR. SOYE:

16 Q. Mr. Lauckhart, as you may have guessed, the issues  
17 are what they are in this case and, therefore,  
18 NorthWestern has touched on nearly everything that we  
19 would have asked also. And so this is going to be very  
20 brief.

21 I just wanted to clarify you stated that the avoided  
22 cost calculations you made were based on the Fall 2010  
23 Black & Veatch Energy Market Perspective?

24 A. Yes.

25 Q. And that this market perspective is released twice a

1 year?

2 A. We update it twice a year. We found -- we've found  
3 that in the industry most people think that's refreshed  
4 soon enough. You know, two days after we've released  
5 nobody's suggesting you change it, you know. The month  
6 and a half nobody's suggesting you change it.

7 Occasionally, something large happens when we would  
8 change it before six months was up. But in this case we  
9 didn't see that in February of 2011.

10 Q. So technically there is -- aside from redoing the  
11 entire market perspective, there is a more current market  
12 perspective available that could be applied to the met  
13 tower data gathered from the Oak Tree Wind Project?

14 A. Well, we put out a new EMP in February, spring, and  
15 we just released -- well, we recently released our fall  
16 one this year, and we're just beginning -- and I say  
17 "we." I'm not really an employee, but I'm under contract  
18 with them to help them on some of this. We just began  
19 the process to do the spring one for this year.

20 Q. In your avoided cost calculations you included an  
21 emissions cost component beginning in 2016; correct?

22 A. That's correct.

23 Q. Mr. Lewis in his testimony provided NorthWestern and  
24 you with a carbon emissions cost projection of \$5 a ton  
25 in 2015, \$10 a ton in 2020, and 15 a ton in 2025. Do you

1 agree with this? Do you have any objections to this  
2 level of cost?

3 A. Well, this was my -- a question we had to him was  
4 how did he come up with his number? Because we make a  
5 significant effort on ours. Our forecast really is built  
6 around the Waxman-Markey Bill that was passed by the  
7 House of Representatives a couple of years ago.

8 And our belief is that will probably be close to  
9 what gets passed if ever anything gets passed by  
10 Congress. And we think it probably will be. Although  
11 now we're thinking it's going to be delayed so  
12 implementation will be after 2016.

13 Suffice it to say, we do a considerable amount of  
14 work showing, well, what is the cap and what are the ways  
15 to meet the cap and go through the math, supply and  
16 demand, of figuring out how you're going do that -- this  
17 is what cap and trade is all about -- and what we think a  
18 market clearing price will be that allows us to meet the  
19 cap.

20 So we asked Mr. Lewis on the data graphs how do you  
21 do your forecast? And he said I consult with my other  
22 two members at my company, and we just decide.

23 MR. SOYE: Thank you. No further questions.

24 MR. SMITH: Commissioners, advisors, any  
25 questions of Mr. Lauckhart?

1 Chairman Nelson.

2 CHAIRMAN NELSON: Thank you. Several questions  
3 in no particular order. But I think I heard you say in  
4 your testimony today that you felt this Commission needed  
5 to take into account nonquantifiable issues as we  
6 developed the avoided cost number.

7 How do you take nonquantifiable issues and use  
8 those to come up with a number?

9 THE WITNESS: Very similar to the way the  
10 Montana Commission did it. They acknowledged there's  
11 some uncertainty in the avoided cost. So rather than  
12 deciding based on some sort of arbitrary that this is the  
13 exact avoided cost, they will start with, well, what's  
14 kind of a reasonable range of avoided cost? And then how  
15 does this project compare to that reasonable range?  
16 Isn't reasonable range close to it?

17 And then are there other factors I should be  
18 considering if I should decide it would be a good idea  
19 for the customers of South Dakota to have this plant.  
20 And the kind of things we talked about, and I list them  
21 here in my testimony, are the nonquantify things that you  
22 can't really quantify. Value of diversity, you know,  
23 hedges against various bad things happening.

24 You can take those into account. You can say  
25 this is kind of a tough call because, you know, there's

1 kind of an uncertain range here. But in the overall big  
2 picture do I think this is good for the customers? And  
3 if the answer is yes if you think those nonquantifiable  
4 things weigh towards yes, yes. That's how you take it  
5 into account.

6 CHAIRMAN NELSON: So what I hear you saying is  
7 you feel that we should or we can nudge the numbers  
8 based on some of these nonquantifiable issues; is that  
9 correct?

10 THE WITNESS: I don't know about nudging the  
11 numbers. I don't know what you mean by when you say  
12 nudge the numbers. But I would say that you can --

13 CHAIRMAN NELSON: Move the avoided cost number  
14 up or down based on nonquantifiable issues.

15 THE WITNESS: Yeah. So here's the way I would  
16 characterize that. You have a range of reasonable  
17 avoided cost that you could say, you know, this could be  
18 here. We've got a lot of uncertainty. It could be in  
19 this range.

20 And if -- if the price being needed to build the  
21 project is close to that range but and you say, well,  
22 maybe it doesn't quite make it on the low range, might  
23 make it on the high range, I don't really know where that  
24 is, I will use these other things to decide that I would  
25 either go ahead or not.

1           CHAIRMAN NELSON: Can you expound a little  
2 bit -- you testified a little bit about this issue of  
3 whether NorthWestern did or did not need capacity.

4           Can you expound on how the answer to that  
5 question ultimately impacts the avoided cost number?

6           THE WITNESS: Yes. So let me know if I'm  
7 stepping over the confidential line here.

8           But assuming you need some capacity, I assume  
9 they needed some capacity and that they could get  
10 4 megawatts or 3.9 megawatts from the Oak Tree project.

11           So then I had to say, well, in addition to the  
12 energy avoided cost -- we talked about how we do this  
13 hourly thing -- there's some capacity that they can  
14 avoid. And so I said, well, what is that capacity worth?  
15 Same thing. What's the cost of capacity going forward?

16           I estimated that in this area it would be \$17 a  
17 kilowatt year. So I multiplied \$17 a kilowatt times  
18 3,009 kilowatts, 3.9 megawatts, and came up with, well,  
19 here's a dollar amount for capacity avoided costs. And I  
20 added to that to the energy avoided cost when I come up  
21 with the total avoided cost.

22           CHAIRMAN NELSON: Thank you. And if you could  
23 clarify something for me. And I believe this is a  
24 statement that I believe Mr. Uda made, but maybe you can  
25 clarify it for me. Talking about the Black & Veatch

1 report is off-the-shelf product.

2 But I think there's also a reference to it  
3 contained numbers that would be specific for NorthWestern  
4 Energy South Dakota territory.

5 Can you help me understand that?

6 THE WITNESS: Yeah. And if you have -- do you  
7 have Exhibit 5 that we can turn to here?

8 CHAIRMAN NELSON: Certainly.

9 THE WITNESS: Actually if you turn to page 149.  
10 These numbers in the gray you can't read them. 149. If  
11 you turn to page 149, it should be -- there should be  
12 what I call a bubble, a bubble graphic.

13 And when we do forecasts of the Eastern  
14 Interconnect we break it into zones, and the bubbles are  
15 indicating the zones that we look at. And each of these  
16 zones we put hourly loads for 25 years. We locate the  
17 generation in there, show what the generation variable  
18 cost is, and then we say actually you can move power from  
19 one zone to another, indicated by the lines.

20 And then we say -- and then we actually put a  
21 number on there, how much power you can move. And then  
22 we also put on there the cost of wheeling and losses to  
23 move that power.

24 So then we dispatch all of the resources in this  
25 whole area against the loads to figure out in each zone

1 what's going to be on the margin on this hour. And so  
2 you might be -- but so we're talking about -- we're  
3 focusing on this specific bubble that shows up on the  
4 border of North Dakota and South Dakota.

5 I used the prices we created at that spot. Even  
6 though we're running the whole interconnect, we're  
7 also -- we're creating hourly prices at each of these  
8 spots. That's what he was referring to.

9 CHAIRMAN NELSON: Okay. Thank you. And I think  
10 the last question. In Mr. Lewis's prefiled testimony he  
11 makes the case that, you know, Black & Veatch had a  
12 forecast for 2011, and the 2011 actuals were  
13 significantly different than that and, therefore, the  
14 Black & Veatch forecast perhaps doesn't have the  
15 credibility that you're lending it. Why should we give  
16 it credibility given that they were that far off even in  
17 the first year?

18 THE WITNESS: Okay. So that's a good question.  
19 We get that kind of questions from banks.

20 Actually if you turn to -- I'll have two  
21 responses to that. If you turn to page 145 in this deck.  
22 In 145 we show actual gas prices from 2002 up until the  
23 time we started this forecast. And then we're showing  
24 our gas price forecast, EIA's gas price forecast, and the  
25 NYMEX strip at that time, just to show some

1 comparisons.

2 Well, if you look at the historical actuals it's  
3 like who's able to forecast that? Nobody forecasts that.  
4 The future strip doesn't forecast that. It's all over  
5 the place.

6 Now the question is is it all over the place  
7 because the fundamentals are changing so fast, or are  
8 there other things going on?

9 And there's an interesting -- when the Northwest  
10 Power Planning Council updated their gas price forecast  
11 in 2010 they put some language to this issue which I  
12 quote a lot these days because I think it's -- it's very  
13 insightful.

14 They state --

15 MR. BROGAN: Mr. Smith, excuse me for  
16 interrupting. But could we have the witness identify  
17 exactly what he's referring to and reading from?

18 MR. SMITH: Yes, sir. Would you do so, please,  
19 Mr. Lauckhart.

20 THE WITNESS: Yes. This is the Northwest Power  
21 & Conservation Council's Update to the Council Forecasted  
22 Fuel Prices dated August 10, 2011.

23 And they stated "It is often difficult to  
24 distinguish short-term variations in fuel prices which  
25 are expected from significant long-term changes that can

1 be expected to fundamentally alter the whole range of  
2 future expectations."

3 So you say, well, you know, if everything's  
4 normal, we think gas prices are going to do this. Well,  
5 so that may be a good forecast if everything is normal.  
6 But, as we know, man, you have an extreme cold event, you  
7 know, prices strike up. And then, oh, for quite a while  
8 we don't have any -- we don't even have any cold, and  
9 we've got an oversupply. Prices drop way down.

10 So you need to distinguish between, well, what  
11 is causing these things to change. And I will say this  
12 summer there were some things that happened primarily in  
13 the fact that we didn't have a big demand for gas. We  
14 had -- we resulted in storage levels that are extremely  
15 high, driving prices down.

16 Those were weather-related events that nobody  
17 can forecast. And we didn't forecast. And as the  
18 council says, you've got to distinguish those kind of  
19 variations from fundamental changes.

20 CHAIRMAN NELSON: Thank you.

21 MR. BROGAN: Mr. Smith. Excuse me, Commissioner  
22 Nelson. I'm troubled by this reading of something that's  
23 not in the record. I would like to lodge an objection  
24 against it.

25 MR. SMITH: Mr. Uda, do you have a response?

1           MR. UDA: Well, I mean, Northwest Power Planning  
2 Council's documents are published by a Government agency  
3 and published on their website available to everyone. I  
4 think he was trying to provide and put in context his  
5 answer, and I don't really see why it's an objectionable  
6 document to read from.

7           MR. SMITH: I think I'm going to overrule it on  
8 the basis that to me at least you used that statement  
9 because you just found it something that reflected your  
10 own views and not as an authoritative document regarding  
11 any facts in this case. So I'm overruling it.

12          CHAIRMAN NELSON: No further questions.

13          MR. SMITH: Other commissioner questions?  
14 Commissioner Fiegen.

15          COMMISSIONER FIEGEN: Is it my understanding  
16 that -- and why did you do this if it's correct, is that  
17 you used only spot market energy prices when you worked  
18 on your avoided costs for brown energy?

19          THE WITNESS: It was both energy and capacity.  
20 And it's what Mr. LaFave calls a market based approach to  
21 determining avoided cost.

22          COMMISSIONER FIEGEN: And I know you've been  
23 asked this before, but I just have to ask it as a  
24 Commissioner too.

25                 You know, you looked at heavy loads and light

1 loads, but you chose the very heaviest day. I still --  
2 and you tried to explain it, but could you explain it one  
3 more time? Because I can't imagine why you would pick --  
4 and it says in your testimony, you know, I picked a heavy  
5 day. But you picked the heaviest day.

6 THE WITNESS: Okay. So let's distinguish what  
7 I did from calculating my avoided cost when I did  
8 8,760 hours a day for 20 years. I did every hour for  
9 20 years when I did my avoided cost calculation.

10 All I was doing in this piece of my testimony  
11 that you're referring to that I was asked about is just  
12 trying to demonstrate that they are in the market. And  
13 rather than looking at every single day, I just gave a  
14 couple of example days.

15 COMMISSIONER FIEGEN: And my last question is on  
16 carbon costs. You have it in your avoided costs. We  
17 don't believe NorthWestern Energy maybe has that. What  
18 would the difference in the avoided costs between -- what  
19 do you believe the difference would be between the  
20 avoided cost on just the carbon cost?

21 THE WITNESS: Well, actually I was handed, you  
22 know, this -- in my Exhibit 3 I have a tab called --  
23 which is -- what was that called?

24 MR. BROGAN: Sanity Check.

25 THE WITNESS: Sanity Check. Thank you. Which

1 I decided, you know, I would put that in my exhibit in  
2 case anybody was interested.

3 And in here I actually did some calculation --  
4 rough calculations what ours would have been without the  
5 carbon cost. Now I didn't have this run our complete  
6 model system, but I did some rough calculations.

7 And you can see those numbers in that exhibit if  
8 you want to see how much I'm roughly estimating ours  
9 would go off. I completely took out the carbon. You  
10 know, I don't think it's prudent to make these decisions  
11 on something that will never be carbon, but I can give  
12 you these numbers if there wasn't carbon.

13 COMMISSIONER FIEGEN: Okay. Thank you.

14 MR. SMITH: Other commissioner questions?

15 Commissioner Hanson.

16 COMMISSIONER HANSON: Thank you, Mr. Smith.

17 Good morning, Mr. Lauckhart.

18 THE WITNESS: Good morning.

19 COMMISSIONER HANSON: I've appreciated your  
20 testimony. I have some I'm not sure whether to phrase  
21 them as pertinent or impertinent questions. I'm trying  
22 to --

23 THE WITNESS: I'll try not to make impertinent  
24 answers.

25 COMMISSIONER HANSON: Trying to come up with a

1 better adjective there, but questions whether you may or  
2 may not be proper for you to be answering.

3 Do you have an opinion, do you believe it is  
4 within the purview of the South Dakota Commission to  
5 decide the criteria for establishing an LEO?

6 THE WITNESS: Well, of course, I'm not an  
7 attorney so what I say is based on that background.

8 It's my understanding that some states have  
9 established criteria. Others have just defaulted to  
10 the -- sort of the limits that the federals do. I think  
11 the states can maybe do that within certain constraints  
12 and some -- it's my understanding some have. And others  
13 have just followed to the federal.

14 COMMISSIONER HANSON: Thank you. And if I pause  
15 a moment, that means I'm taking notes. I appreciate your  
16 answer.

17 You stated that one of the factors for avoided  
18 cost would be unquantifiable issues I believe you said.  
19 Would that include factors such as politics? What's  
20 taking place in the Federal Government? More  
21 specifically, with the EPA?

22 THE WITNESS: That's a scary one right there.  
23 Politics is a scary word. But what's taking place in the  
24 Federal Government, those kind of things I think you  
25 should. You know, what is likely to occur, what can be

1 occurring, going forward.

2 Now I've actually -- my forecast -- of course,  
3 as you look at my, you know, slide deck we talk about  
4 some of the things that are being discussed, and we say  
5 in our view this is going to happen to cause this thing  
6 to happen. That's part of our forecast.

7 And so in that way that has, in fact, been  
8 quantified. But there are other things that we can't  
9 quantify that easily. And so but some of those are from  
10 the Federal Government. You know, I would agree you can  
11 take those into account.

12 COMMISSIONER HANSON: As challenging as it is  
13 for you to answer that question, wouldn't it be a greater  
14 risk and concern if you were running a utility and you  
15 were basing your decision on a building capacity on  
16 unknown political decisions, undecided political  
17 decisions?

18 THE WITNESS: Well, I got to say you're going to  
19 have to make a decision on building capacity in the face  
20 of uncertainty. That's a reality. You're making that  
21 decision in the face of uncertainty. And you have to  
22 figure out how I'm going to deal with that uncertainty.

23 COMMISSIONER HANSON: So would you not -- if you  
24 and I can place our feet in the shoes of operator of a  
25 utility, would you not want to base that decision as

1 safely as you could?

2 THE WITNESS: You would. The question is what  
3 is safe? So, for example, if you decide, well, there's  
4 no legislation now on greenhouse gases, there's no  
5 restriction on carbon, is it safest to build something  
6 that puts out a lot of carbon because you think it's  
7 cheaper, or is it safest to think, yeah, but it's coming  
8 down the road? In all likelihood, I'm going to have  
9 that. Should you base your decision on whatever  
10 probability you think that thing will happen?

11 And I think most people will say, as they did --  
12 as NorthWestern recommended to the Montana Commission and  
13 the Montana Commission agreed, this isn't a known. But  
14 we believe that you need to take it into account because  
15 of where this country is on that issue.

16 COMMISSIONER HANSON: Thank you. Would you have  
17 an opinion on what determines an LEO?

18 THE WITNESS: I would have an opinion, but I'm  
19 not a lawyer.

20 COMMISSIONER HANSON: All right. As an expert  
21 witness, what is your opinion as to what is -- what is a  
22 final determination of what should be the final  
23 determination of an LEO?

24 THE WITNESS: Yeah. And I would just clarify  
25 this. A contract that is signed by both parties is an

1 LEO. What we're talking about is a nonsigned contract.  
2 And it can -- can a utility be required to comply with  
3 that contract if they didn't sign it? So we call that a  
4 noncontractual LEO.

5 So in that instance -- it was clear Congress and  
6 FERC actually was well-aware that utilities did not like  
7 the concept of QFs and avoided costs. They just didn't  
8 like it. They want to build their own resource. They  
9 want to have rate base. They want to have return on  
10 equity. They want to have, you know, that kind of growth  
11 in their rate base.

12 FERC knew that utilities have that in their  
13 mind. And they said but the whole idea here is we want  
14 you utilities to be willing to buy from preferred types  
15 of utilities, qualifying facilities. We want you to sign  
16 a power purchase agreement so those things can be built  
17 because we think it's good, you know, for society, rate  
18 payers, and other things if it's done right.

19 So they said, you know, if a utility is not  
20 willing to sign things that it seems to be a price based  
21 on avoided cost for the term that the qualifying facility  
22 wants it -- and, of course, they pointed out the  
23 qualifying facility got to pick the term because they  
24 need to have financing, and it's usually over the life of  
25 their plan or something like that -- that the utility can

1 be forced to do that.

2 And, in my view, if a plant has done a lot of  
3 work, they've demonstrated they can build their plant,  
4 they're ready to go, and the utility says I'm not  
5 interested, \$20 is all I'll pay you, and they think they  
6 should be paying you something closer -- a long-term  
7 avoided cost, not a short-term avoided cost, the LEO is  
8 established at that point. But, of course, they have to  
9 confirm that with regulators.

10 COMMISSIONER HANSON: So an LEO is established  
11 when a contract, signed contract, with all the  
12 specificities is sent to the utility by the company that  
13 wishes to build the capacity. Correct?

14 THE WITNESS: Yeah. As long as -- and there's  
15 an interesting question here. Is it LEO -- let's say  
16 they say this is the contract. These are the terms.  
17 This is the price. I want you to start honoring this.

18 And if the utility says no, they have a dispute.  
19 Then it comes here. But that is the date.

20 COMMISSIONER HANSON: Is it established at that  
21 date of receipt by the utility, or is it established when  
22 the Commission makes its ruling?

23 Let's assume that the Commission makes a ruling  
24 for a price that's different than what's submitted by the  
25 party.

1           THE WITNESS: So I think -- obviously in most  
2 cases nobody's going to start building until there's a  
3 confirmation; right? Nobody's going to lend money on  
4 something that's still uncertain.

5           But the concept being that if the Commission  
6 agrees with the QF that it had provided a price that was  
7 in -- and I will say less than or equal to the avoided  
8 cost and that the contract provisions are reasonable  
9 months, it really is effective really at the date the LEO  
10 was sent.

11           Now if the Commission comes back and says  
12 everything's okay except the price of \$20, well, it's  
13 kind of a moot point because the QF can't honor the  
14 contract and will not; right? No court is going to force  
15 them to do it at that point.

16           COMMISSIONER HANSON: Thank you. Mr. Uda stated  
17 in his opening remarks -- and forgive me. I don't have  
18 this exact -- none of the information here that I'm going  
19 to be using is exactly as it was stated.

20           However, I believe he was referring to the  
21 requirements by PURPA for establishing an LEO. And one  
22 of the requisites, the decisions by the Commission, began  
23 that it must be just and reasonable to rate payers.  
24 Should that also then be included in the LEO definition?  
25 Would you agree?

1 THE WITNESS: Well, that goes to -- yeah. It  
2 goes to really primarily the price. And, of course, what  
3 Congress has said and FERC has, you know, promulgated is,  
4 you know, as long as it's equal or less than avoided  
5 cost, the price is reasonable to rate payers.

6 COMMISSIONER HANSON: So if the offer from the  
7 QF was to establish a higher cost to the rate payer than  
8 what the actual avoided cost is, then there could not be  
9 a LEO established, could there?

10 THE WITNESS: Yeah. So, you know, there are  
11 some interesting nuances here.

12 Let's say that the -- let's say -- let's say for  
13 a hypothetical Oak Tree came and said we want \$200 a  
14 megawatt hour, and they say that's an LEO. He's going to  
15 come to me and say, well, I can't testify that that's  
16 lower than avoided cost. I mean, I look at my numbers,  
17 and that looks like it's above the avoided cost.

18 But if they come here anyway and you guys say,  
19 you know, I don't think that's -- that's a cost that  
20 works, I don't know if there's an LEO established, but  
21 you're going to say I'm not going to have them do it at  
22 that price. At which point if they can't do it at a  
23 lower price, you know, they're gone; right? So that's  
24 how that would work.

25 You know, if, alternatively, they come in here

1 and give a price that seems to be reasonably within the  
2 range of avoided cost and you just say, you know, there's  
3 a range -- really on the low end is \$20 and I'm going to  
4 only approve this at \$20, you know, I think you've  
5 essentially said we don't want that wind project.

6 COMMISSIONER HANSON: Mr. Uda also stated that  
7 it does not make sense to redo an entire forecast.  
8 However, isn't it a much simpler task to change just one  
9 of the inputs such as natural gas and redo it? Should I  
10 not be using much simpler when I --

11 THE WITNESS: Yeah. You can make a minor change  
12 to the gas price forecast and rerun the models and make  
13 it good. The question is what would be the basis for us  
14 making that minor change in the gas price forecast? Is  
15 there a legitimate reason to make that change or not?  
16 And is it even material?

17 You know, I will say this. When I say 79.92,  
18 you know, that's putting a little more accuracy on it  
19 than -- you know, we got a little bit of range around  
20 79.92 ourselves. So if there becomes to be a bigger  
21 change, this is the issue.

22 Well, does that mean the gas plants are going to  
23 be running more? Are they going to be just replacing  
24 coal, having come down so much so that now coal will shut  
25 down and gas will run? That happens in this country.

1           If that's the case, well, we got more demand for  
2 gas than we had in the last forecast. Oh. Then do I  
3 need to rerun any gas model to say, well, I got more  
4 demand for gas. Now what does that do with the price?

5           There's an iterative thing here. When you start  
6 making bigger changes it starts to be iterative. Tiny  
7 little changes you can do.

8           COMMISSIONER HANSON: You began answering that  
9 question to an extent of by saying why -- and I'm  
10 paraphrasing again -- why would we want to do that?

11           Gas prices are extremely volatile, historically  
12 at least, and may not be so volatile in the future. At  
13 least we thought they wouldn't be because of the great  
14 findings of gas that is recoverable.

15           However, now we're hearing that there's a lot  
16 less drilling that's taking place to recover that gas  
17 because the price is so low that it's not worth going  
18 after to recover. So gas prices continue to be volatile.  
19 And that's why I'm curious.

20           Mr. Uda also stated in his opening remarks -- he  
21 was very highly complimentary towards you saying that  
22 this was one of the most exhaustive analysis that he's  
23 seen, have great experience and in his 21 years I believe  
24 it was of his experience that this is one of the best  
25 ones that he's seen.

1           So I'm curious from that perspective what  
2 factors you looked at in analyzing it from fluctuations  
3 of natural gas. You looked at a levelized cost over  
4 20 years. I certainly -- certainly there are other  
5 variables that one would look at, and the price of gas I  
6 would think -- if CO2, which is certainly a variable,  
7 certainly an unknown variable, that you'd probably look  
8 at natural gas changes as well.

9           Did you look at pricing your product in  
10 relationship to bearing prices of natural gas?

11           THE WITNESS: Yeah. So we can do this. I mean,  
12 we have our gas model; right?

13           COMMISSIONER HANSON: Did you do that, though?

14           THE WITNESS: Yeah. And so in this forecast we  
15 say, look, we're going to do a forecast where we assume  
16 everything's normal. But it's very -- you know, if you  
17 want to say, well, what if next year it's really cold and  
18 the gas demand that we had assumed under normal  
19 conditions is much lower than they're actually going to  
20 be? So we can actually stick in significantly higher gas  
21 demand. We can look at historically what might happen.

22           For example, when we have extreme cold weather  
23 in the northeast how much additional gas demand is there  
24 when that happens? We can put that in the model. We can  
25 run the model, and I will tell you this: Gas prices will

1 jump up quite a bit.

2           Conversely, we can put in, well, what if they  
3 have a really, really warm winter, kind of like we did  
4 this year in the most of this country? Well, the gas we  
5 had normal isn't going to be there so it's going to be a  
6 lot lower. But we can run that again. We can get a  
7 range of prices.

8           But for a purpose like this where we're saying  
9 we just want to know where the baseline is going to be,  
10 you know, it's not -- it's, well, how are you going to  
11 deal with all these other uncertainties? That's what we  
12 talk about the nonquantifiable things that, well, wind  
13 can hedge against all of those uncertainties. We're just  
14 talking about here kind of what the base is.

15           COMMISSIONER HANSON: Avoided cost is a tough  
16 animal, isn't it?

17           THE WITNESS: No question.

18           COMMISSIONER HANSON: That's why we get  
19 100 bucks an hour to testify on it.

20           COMMISSIONER FIEGEN: We do?

21           COMMISSIONER HANSON: Well, we don't. Could the  
22 Oak Tree project increase NorthWestern Energy's risk in  
23 any way?

24           THE WITNESS: Well, it could increase risks. It  
25 could decrease risks. The things we talked about are the

1 nonquantifiable things are the things that could decrease  
2 risk.

3           You could say it increases risk, and if it turns  
4 out you bought the wind plant and gas prices went through  
5 the floor, there was no renewable standard that you ever  
6 to meet, you know, now you spent more money than -- your  
7 rates are going to be higher than they would have been if  
8 you would have just had that fun outcome and you hadn't  
9 built it.

10           What we're sighing here is, well, yeah, but we  
11 don't think that's the outcome that's going to happen.  
12 It might happen. We think the outcome's going to be  
13 different on the base load basis. And on the volatility  
14 stuff we're talking about these things can also provide a  
15 hedge.

16           COMMISSIONER HANSON: Thank you. Mr. -- you  
17 didn't know you were testifying this much, did you?  
18 Mr. Uda stated in his closing remarks, and again I'm  
19 paraphrasing, that when he was talking about time is of  
20 the essence here and they need to move ahead that he was  
21 referring to the production tax credit when he referred  
22 to the benefits of the PTC are primarily going to benefit  
23 the NorthWestern Energy rate payers, how would the rate  
24 payers be benefiting from the PTC? Isn't that going to  
25 the owners of Oak Tree?

1 THE WITNESS: But Oak Tree has factored that in  
2 as a credit revenue or whatever they will get if they can  
3 get this done by 2012. And they said we can offer this  
4 price if we get those credits. Well, when those credits  
5 go away we can't offer this price.

6 Just like NorthWestern said in Montana, well, we  
7 can build this and charge the rate payers this amount if  
8 we get it built so we can get the tax credits. But if we  
9 can't get the tax credits, we're going to have to --  
10 because we're later than that, we're going to have to  
11 raise what we put in our rate base for Montana  
12 customers.

13 COMMISSIONER HANSON: Is that one to one? If  
14 it's 2.1 cents, is it 2.1 cents it's going to increase  
15 the cost --

16 THE WITNESS: Yes. That's pretty much -- that's  
17 pretty much 2.1 cents. So out of a 6 cent resource  
18 2.1 cents -- well, I will say this. It's not quite one  
19 to one because the 2.1 cents is only for the first  
20 10 years of operation. So if you amortize that over  
21 20 years I think I say it's equivalent to like 1.4 cents.

22 COMMISSIONER HANSON: So the PTC does go to the  
23 owners of Oak Tree. It's not going to NorthWestern.  
24 It's certainly not going then to their rate payers. It's  
25 only on the theory that if they -- if NorthWestern Energy

1 did not receive this capacity resource now and was forced  
2 to at a later date, that that later date price would be  
3 higher than what it is present.

4 THE WITNESS: Yeah. So the PTC's will go to  
5 Oak Tree, which raises the issue do they have an ability  
6 to absorb -- you know, there's another thing here called  
7 bonus depreciation. That's another factor that ends at  
8 the end of this year.

9 And do they have the ability to use that bonus  
10 depreciation? Do they need a tax equity investor or  
11 whatever?

12 But the point is they have factored that into  
13 their price. They get it, but they factored it in to a  
14 lowered price. And they can only do that, you know --  
15 they can only make that work out if this plant is  
16 operable by the end of this year.

17 COMMISSIONER HANSON: Thank you. I agree with  
18 you on your comments that reliability is extremely  
19 important, and we certainly do not want our citizens to  
20 be trapped in elevators or have air conditioning go out  
21 on the hottest days or, for that matter, furnaces go out  
22 on the coldest of days. So reliability is extremely  
23 important.

24 How does a nondispatchable, intermittent, or  
25 variable resource such as Oak Tree's fulfill that need

1 for reliability?

2 THE WITNESS: Yeah. So the way we account for  
3 that in the industry -- MISO does this. Everybody does  
4 this -- is to say, you know, we're not going to count  
5 that 19.5 megawatts as available to meet the peak. We're  
6 not going to count 19.5.

7 Now the next question is, well, do I count zero?  
8 Do I count it at zero? And different -- people say,  
9 well, only if the data shows it should be zero. And  
10 there's a couple ways to address whether the data shows  
11 it should be zero.

12 One would be to do a fairly elaborate effective  
13 load carrying capability study. We've done those for  
14 people to try to factor these things in. And those  
15 ranges from, you know, 8 percent to 20 percent.

16 But other people have said, well, really we just  
17 want to look at what are they doing historically on the  
18 peak hours? And this is kind of MISO's move to this.  
19 What are they doing historically on the peak hours  
20 recently, and they based it on that.

21 So in this case we -- and often that comes up to  
22 be in the neighborhood of 20 percent. And I think  
23 Mr. Wagner or one of the NorthWestern people actually  
24 talks about that in his testimony.

25 But you account for that uncertainty and

1 reliability by discounting the name plate for the  
2 purposes of reliability calculations, and in this case  
3 I'm assuming they would only count 20 percent.

4 COMMISSIONER HANSON: I don't mean to be  
5 testifying here. I've been in MISO's establishments and  
6 control centers in St. Paul and in Indiana, and there  
7 have been times when -- and I've looked at their  
8 statistics over the years. I'm a member of their  
9 OMS Board of Directors for a period of time.

10 And when I look at the capacity, the generation  
11 in relationship to capacity -- and I've been there when  
12 they had -- they had thousands of megawatts of capacity  
13 when they've only had 8 megawatts turning of wind.  
14 Reliability is extremely important here.

15 So when you in your testimony state that  
16 NorthWestern will avoid having to build 19.5 megawatts,  
17 they really won't be able to avoid that, will they?

18 THE WITNESS: No. I said they would avoid  
19 building 3.9 megawatts of capacity. I said the wind has  
20 energy value on every hour that it's blowing, and we've  
21 estimated what that value is. That's the energy value.  
22 But on the capacity I said they will be able avoid  
23 building 3.9 megawatts of capacity.

24 COMMISSIONER HANSON: Perhaps I misunderstood  
25 your written testimony then. On page 5 your answer

1 states that in part that your method, your green value  
2 method, assumes that NorthWestern Energy will avoid  
3 building its own 19.5 megawatt wind plant if it purchases  
4 the Oak Tree project output for a 20-year period.

5 THE WITNESS: Yes. So don't confuse my brown  
6 value avoided cost, what's the market value of this stuff  
7 when you compare this to the market. That's where I only  
8 use 3.9 megawatts of stuff.

9 On the green value I said, well, let's assume  
10 that NorthWestern wants to meet its regional goals or for  
11 whatever reason it decides it wants to build its own wind  
12 plant. Well, I'm saying, well, but a 19.5 megawatt wind  
13 plant they're going to build their own.

14 In the green value avoided cost they say, well,  
15 they can avoid building that one because they're going to  
16 get this one from Oak Tree. In both cases it's a  
17 19.5 megawatt wind plant. In both cases whether they  
18 owned it or they owned it, it's only going to count 3.9  
19 megawatts towards capacity.

20 But I was saying in that alternative approach to  
21 determining the avoided cost is, well, what if we just  
22 allow NorthWestern to avoid building their own wind  
23 because they're -- for whatever reason they were thinking  
24 they wanted to build a wind plant to meet renewable  
25 targets, for they thought it was a good idea to build

1 wind, whatever.

2 I just said as an alternative to using the  
3 market to determine what the avoided cost is, what if  
4 they just wanted to build their own wind plant. And now  
5 we're going to calculate avoided cost a completely  
6 different way. What is it going to cost them to build  
7 wind? They can avoid. So they can avoid building that  
8 19.5 megawatt wind plant because they bought the  
9 19.5 megawatt Oak Tree Wind Plant output.

10 COMMISSIONER HANSON: In your written testimony  
11 you state that NorthWestern Energy purchases when it's  
12 short on electricity and sells when it's long, and there  
13 was some discussion that you had with NorthWestern's  
14 attorney on that.

15 So, in your opinion, does NorthWestern Energy  
16 need this new capacity?

17 THE WITNESS: I'm saying it has value. They can  
18 avoid costs if they have this. If it's less than avoided  
19 cost, I would say they need it.

20 COMMISSIONER HANSON: Are you aware if any of  
21 the energy that NorthWestern Energy purchases when it's  
22 short is renewable energy?

23 THE WITNESS: It's my understanding they just  
24 buy it in the market.

25 COMMISSIONER HANSON: So you're not aware of if

1 any is --

2 THE WITNESS: I don't believe they're getting  
3 any renewable energy credit value from any of that stuff  
4 they buy in the market.

5 COMMISSIONER HANSON: One last question. Who  
6 bears the cost of curtailed electricity from -- if  
7 Oak Tree were selling generation to NorthWestern Energy  
8 and there was a requirement for them to purchase it?

9 THE WITNESS: What would be the purpose of the  
10 curtailment?

11 COMMISSIONER HANSON: Curtailment is that it's  
12 not needed. Not needed. They can't -- they're running  
13 a -- during a period where they don't need electricity.  
14 They can't shut down coal plants. It's impractical.

15 THE WITNESS: There's no market -- there's no  
16 huge market -- there's no market buddy that wants to buy  
17 that at any price in the market?

18 COMMISSIONER HANSON: Well, you can sell it into  
19 MISO somehow, but there's been a lot of curtailed  
20 electricity in Minnesota. And so the question is if  
21 there is curtailed electricity from this particular  
22 project, who would bear the cost of it?

23 THE WITNESS: Well, that's really a contractual  
24 matter. And in my view the contractual language will be  
25 a function of what was the purpose of the curtailment.

1 And, as you know, there are some interesting issues  
2 before FERC on that very issue.

3 But our analysis here shows -- there's not a  
4 single hour in our analysis when the spot prices goes  
5 negative. So there's always some value. Now what  
6 we're -- well, our analysis shows that there are hours  
7 when they're going to be light, but there's always --  
8 when their load -- they don't need the power, but there's  
9 going to be a price in the market --

10 Our fundamental analysis says except for extreme  
11 events, there's going to be value to the power. It might  
12 be low some hours, and we value it low on those hours.  
13 But we don't -- if you look down our 176,000 hours, we  
14 don't show any hours when prices go negative. But there  
15 could be some abnormal events when prices might go  
16 negative. Those are these, you know, variations from  
17 normal events that can occur.

18 COMMISSIONER HANSON: Thank you for your  
19 answers, Mr. Lauckhart. Appreciate it.

20 Thank you, Mr. Smith.

21 MR. SMITH: Greg, do you have questions?

22 MR. RISLOV: Just a couple. Hello. I'm  
23 Greg Rislov, commissioner advisor. I just have a couple  
24 of questions.

25 I'm looking at 147, page 147 on Exhibit 5, your

1 market simulation apology. And I don't know if I have  
2 any specific questions on that alone.

3 THE WITNESS: You're on page 147?

4 MR. RISLOV: I'm on 147.

5 THE WITNESS: Says Section 4 on the top of it?

6 MR. RISLOV: I'm just looking at the map, so to  
7 speak. Your apology. It really isn't important. 147 of  
8 Exhibit 5.

9 THE WITNESS: Mine is 149.

10 MR. RISLOV: Sorry.

11 THE WITNESS: Okay. So okay.

12 MR. RISLOV: What is the granularity of -- I  
13 assume you have NorthWestern in the WAPA control area.  
14 What granularity does your model have with regard to the  
15 different entities within that control area?

16 THE WITNESS: Well, we have to assign a  
17 utility -- every utility in the Eastern Interconnect has  
18 to be assigned to one of these zones, I'll call it. So  
19 when we create, for example, the hourly load in that  
20 zone, we will say, well, for whatever reason we think the  
21 utilities are there we're going to take the utilities'  
22 hourly load forecast and stick it in there.

23 And we take all the utilities in that zone, and  
24 we add together their hourly loads to get the hourly load  
25 that we think needs to be served in that zone.

1           MR. RISLOV: So that's interesting. You look at  
2 all the utilities in that zone. Yet when you look at  
3 NorthWestern independently, are you assigning it that  
4 zone cost, if I could call it that, or are you looking at  
5 what numbers you developed specifically for that utility  
6 when compiling the model?

7           THE WITNESS: So the concept here is -- and we  
8 believe this represents reality -- is the utilities in  
9 that zone can buy and sell power between them pretty much  
10 unrestricted by transmission limitations. So  
11 NorthWestern can move power to Basin and back and forth  
12 without any material transmission congestion.

13           So what price we assign to that zone -- let's  
14 say we come up with \$50 a megawatt hour is the price on  
15 an hour -- Basin could buy and sell at that price.  
16 NorthWestern could buy and sell at that price.

17           MR. RISLOV: So what you're telling me, I take  
18 it then, is whatever that market price would be, so to  
19 speak, among those utilities would determine what you  
20 would call avoided cost at that point?

21           You wouldn't look at the individual utility's  
22 circumstances or the generation portfolio or their size,  
23 necessarily?

24           THE WITNESS: Well, in the five different ways  
25 you can calculate avoided cost, one being market based,

1 in the market-based approach to determining avoided cost,  
2 that's the assumption.

3 MR. RISLOV: Okay. Getting back to that topic  
4 of market based, there's an incredible amount of wind  
5 potential in North and South Dakota, as I'm sure you  
6 understand. And there's been a lot of development within  
7 North and South Dakota specifically within the MISO area  
8 for obvious reasons.

9 Did you look at bilateral transactions of a  
10 longer term when establishing a market of any sort? Was  
11 that considered other than just going on what I call the  
12 zone market price?

13 THE WITNESS: So the way we model this and the  
14 way we believe it works in reality is this: You might  
15 have a power purchase agreement between Entity A was sold  
16 to Entity B, but that doesn't change the fundamentals of  
17 the variable cost of the supply and the fundamentals of  
18 the variable cost of the supply will determine if that  
19 plant is dispatched or not dispatched from one hour to  
20 the next.

21 So the spot market analysis is an analysis that  
22 shows what is the market clearing price. And every  
23 resource is -- we're assuming is bidding into this market  
24 at its variable cost.

25 Now there might be a bilateral transmission from

1 point A to point B in somebody's method of hedging, but  
2 this thing is going to be dispatched based on its  
3 variable cost.

4 MR. RISLOV: And I'm not talking about  
5 short-term transactions. I'm talking about in lieu of  
6 let's say using the quality facility route. Couldn't one  
7 look at whatever the market for long-term bilateral  
8 contracts for utilities wishing to gain energy from say,  
9 let's say, a 50 megawatt wind farm or 100 megawatt wind  
10 farm. Did you look at any of that within the Dakotas?

11 THE WITNESS: I think -- what I think you're --  
12 let me just see if I can characterize what you're asking  
13 me.

14 MR. RISLOV: And maybe I can make it clear.  
15 What you're talking about is a market, I believe what I  
16 would call short-term extending that out. But I'm  
17 talking about a series of Oak Trees just going in  
18 bilaterally, selling that -- devoting that power over the  
19 life of the facility to the different utilities. There  
20 is a market for that in the Dakotas.

21 THE WITNESS: Yeah. So certainly there's a lot  
22 of projects that people are trying to develop and trying  
23 to find a market. One way some states have implemented  
24 PURPA -- and I actually testified about this for PG&E at  
25 one point but -- is to set this avoided cost based on

1 competitive solicitations.

2           So a state can choose to say in our state we're  
3 going to set avoided cost based on competitive  
4 solicitations. Now you can only do that if you can  
5 conduct competitive solicitations on a fairly frequent  
6 basis, and you don't go out and really decide to build  
7 something on your own without a competitive  
8 solicitation.

9           So some states do that. And it's one way to do  
10 a deal with I think what you're suggesting. You know,  
11 you haven't set that up in the State of South Dakota at  
12 this point. You could in the future probably if you, you  
13 know got into that issue.

14           But I didn't do it that way. I did it based on  
15 the market-based approach because we don't have  
16 competitive solicitations here.

17           MR. RISLOV: One last question. There's been a  
18 lot of talk about Montana in this docket, although  
19 certainly we're South Dakota, we're not Montana, and I  
20 guess my question to you would be you talk about  
21 adjusting for South Dakota.

22           And, specifically, how would you adjust for a  
23 state that doesn't have -- we're talking about a utility  
24 without retail wheeling. We're talking about a utility  
25 that's vertically integrated. We're talking about a much

1 smaller utility. We're talking about renewable goals  
2 rather than renewable standards.

3 I guess I can take your word for you adjusted  
4 it, and I'm not saying there wasn't an adjustment of  
5 sorts. But to me these adjustments are somewhat of a  
6 black box as far as again looking at the granularity of  
7 the number that you've sponsored.

8 And I'm just curious what process you went  
9 through when making that adjustment. Was it a  
10 broad-based adjustment that you would make at PJM and  
11 MISO and SPP, or was it specifically designed for  
12 South Dakota and specifically for NorthWestern  
13 South Dakota?

14 THE WITNESS: So a couple of things. There's at  
15 least three adjustments here. The first adjustment is  
16 I'm using the price -- this bubble here, called a WAPA  
17 bubble I think, but this price, this bubble on the  
18 South Dakota-North Dakota border here. I'm not using the  
19 price I've got for Montana. I've got a different price  
20 for Montana. It just happens to be not that much  
21 different for a number of reasons.

22 But the point is I'm using the fundamental  
23 analysis that drives the market here in South Dakota. So  
24 that's the first thing. I'm not doing to for Montana.  
25 I'm going it for South Dakota.

1           The second thing is the capacity price that  
2 we've talked about here is driven by the supply and  
3 demand or capacity in this region. Not Montana region.  
4 In this region.

5           The third thing is in your -- in South Dakota  
6 you -- actually your NorthWestern is in the WAPA  
7 balancing authority. The WAPA balancing authority really  
8 provides regulating reserves for wind people at  
9 essentially what I'm going to call a socialized cost.  
10 They have a very good ability to provide regulating  
11 reserves and you get that advantage here.

12           In Montana they have their own -- NorthWestern  
13 has their own balancing authority. They've stated that  
14 it's really hard to do it. They think it cost them about  
15 \$15 a megawatt hour. So in that instance we put that  
16 cost on top of their wind because that's what they need.  
17 If they're going to do the wind, we don't need do it  
18 here. So those are at least three fundamental  
19 differences we're using in the calculation.

20           But really when we're talking about Montana and  
21 South Dakota we're talking about theories. I mean, does  
22 it make sense in Montana to assume there's going to be  
23 some greenhouse legislation coming down the road but not  
24 in South Dakota? Federal greenhouse legislation isn't  
25 going to apply to Montana if it doesn't apply to

1 South Dakota. Those are the kinds of things I'm saying  
2 there needs to be some consistency in those kinds of  
3 thinking.

4 MR. RISLOV: Thank you.

5 MR. SMITH: Any other commissioner questions?

6 I have just one question, I think. And this is  
7 a simple one, I think, is does the model that you used in  
8 assumptions, does that incorporate some cost adjustment  
9 on the market for the deluge of EPA regulations that are  
10 going to kick in to effect?

11 THE WITNESS: Yes. We have a whole section in  
12 here about existing, proposed, and prospective emissions  
13 by EPA, separate and apart from greenhouse. And how we  
14 assessed what plant would -- what decisions would be made  
15 by plant owners in our view -- this is where Mr. Uda said  
16 we assume based on that detailed analysis we think  
17 60,000 megawatts of coal is going to be retiring now  
18 between now and 2020 so we've actually retired it in this  
19 model run.

20 And then we said, well, gee. You're losing  
21 capacity. You're going to have to replace it with  
22 something mostly gas. Now we've also assumed some  
23 renewables will be built in various areas, and we've put  
24 those things in. And so then on top of that we have an  
25 assessment what about greenhouse gas? It's even more

1 uncertain, as we all know. But what do we think might  
2 happen there? All of those things are factored into our  
3 base view of where this market is going.

4 MR. SMITH: Thank you. That I think concludes  
5 then Commissioner questions and. Then we'll turn to  
6 redirect. But it is now late for a lunch. I guess it  
7 isn't for you Montana folks, but it is for the rest of  
8 us.

9 What do you think, Commissioners? Usually we do  
10 like a little over an hour for lunch so people can get  
11 somewhere and get back and all of that. What do you  
12 think?

13 What are the parties -- any opinions? Is just a  
14 straight hour enough? Maybe if we leave now and what if  
15 we took until a quarter to 2:00? Would that -- slightly  
16 over an hour?

17 MR. UDA: That would be fine.

18 MR. SMITH: Is that okay?

19 Okay. We'll be in recess until a quarter to  
20 2:00. Thank you.

21 (A lunch recess is taken)

22 MR. SMITH: Good afternoon. We'll call the  
23 hearing back in session on Docket EL11-006, Oak Tree  
24 versus NorthWestern. And we were at the conclusion of  
25 cross-examination and Commissioner questions of witness

1 Lauckhart.

2 Mr. Uda, please proceed with your redirect.

3 MR. UDA: Thank you, Mr. Smith.

4 REDIRECT EXAMINATION

5 BY MR. UDA:

6 Q. Mr. Lauckhart, I want to ask you a few questions  
7 about Mr. Brogan's examination of you. Specifically, he  
8 asked you on page 3 about this whole legally enforceable  
9 obligation issue. And I think you've established you're  
10 not a legal expert.

11 But my question for you is are you aware whether  
12 FERC has a role to play in whether or not the states  
13 properly implement PURPA regulations, including LEO  
14 obligations?

15 A. Well, it's my understanding that FERC sets some  
16 guidelines on what can be used to determine if an LEO has  
17 been established. There's some flexibility in there for  
18 states to provide additional guidelines as long as they  
19 don't violate the FERC guidelines.

20 Q. Okay. Thank you. Mr. Brogan also led you through  
21 your Exhibit 3, I believe Column C, although I can't  
22 really read my own handwriting. It has to do with your  
23 calculation of rates to be paid to Oak Tree over the  
24 20-year term commencing in 2012 and constant \$2,010?

25 A. Yes.

1 Q. And are you there?

2 A. Yes.

3 Q. And Mr. Brogan asked you and you agreed subject to  
4 check that that's 175 percent increase. I want to ask  
5 you first is that a valid way of looking at those  
6 numbers?

7 A. Well, I don't know if it's valid or not, but there  
8 are some observations we should make here. First of all,  
9 they essentially double between 2012 and 2016. These are  
10 wholesale power rates, not retail rates.

11 Wholesale spot market power rates are doubling here  
12 between 2012 and 2016. That's primarily caused by an  
13 expectation in the market not only our forecast but in  
14 the futures market that Steve Lewis used that gas prices  
15 are now exceedingly low, for whatever reason we talked  
16 about, and that is going to revert by 2016.

17 So you can see wholesale prices will move at gas  
18 prices, and it's the fact that gas prices are exceedingly  
19 low right now -- if you looked at my chart on where gas  
20 prices have historically been, they're exceedingly low  
21 right now. And people don't think that's going to  
22 last -- you know, by 2016 that's going to go way up.

23 So a lot of this increase is caused simply by the  
24 world's expectation, our expectation, the future market's  
25 expectations. Those gas prices are going to go back up.

1 So the majority of that or a lot of that is caused by  
2 that.

3 The balance is, of course, our view that things are  
4 going to get tighter. And when we say \$90 seems to be  
5 exceedingly high, it was not that long ago that \$90 was  
6 the going prices in these markets. So this shouldn't be  
7 viewed as an extreme case.

8 Q. So I want to ask you another question about your  
9 calculations in this case. And you were asked questions  
10 about respect to how you deal with a situation where on  
11 any given hour NorthWestern is long on resources and if  
12 it buys output from a qualifying facility, in this case  
13 Oak Tree, that NorthWestern might have to sell it at less  
14 than what it's buying at.

15 And my question is does your long-term forecast take  
16 this into account?

17 A. Yes. I mean, if you look at our hourly prices that  
18 we have, 176,000 of them between now and 2031, there are  
19 many hours when we think the spot market prices is below  
20 \$54. And we're saying, you know, it only has -- whatever  
21 that value is, \$20 or whatever it is on that hour, we're  
22 only giving it, the Oak Tree project, that value on that  
23 hour. But, of course, there are other hours when the  
24 price is well above \$54, and we've taken all of that into  
25 account when we come up with the avoided costs that I

1 produced here called my brown value avoided cost.

2 Q. Mr. Brogan asked you -- I believe it's on your  
3 rebuttal testimony, page 9. This has to do with your  
4 opinion about the South Dakota Renewable Energy Objective  
5 versus the Montana Renewable Portfolio Standard. And he  
6 asked you if you were aware that there had been utilities  
7 that had been cited for violating those standards.

8 My first question is do you know anything about  
9 those situations?

10 A. No. I don't know why they were cited. I don't know  
11 if they came in and asked for a variation and didn't get  
12 it. I don't know anything about it.

13 Q. Okay. But would it change your opinion that the two  
14 laws that are essentially the same in effect that if the  
15 utility can make the demonstration that it needs a  
16 waiver, that it doesn't have to be fined?

17 A. That's my view. And I think NorthWestern is more  
18 sophisticated than some of those organizations that got  
19 fined. And they will definitely go in and ask for a  
20 waiver if they think they didn't meet it because it  
21 wasn't cost-effective.

22 Q. Okay. Mr. Brogan asked you a question with respect  
23 to Mr. Lewis's gas price forecast and asked you isn't  
24 indeed this in the low end of your natural gas price  
25 forecast. Do you recall those questions?

1 A. Yes.

2 Q. Okay. With respect to Mr. Lewis's gas price  
3 forecast being in the low end, would you make resource  
4 planning decisions based on a low end forecast?

5 A. No. No more than I would make resource planning  
6 decisions based on the high forecast. We bookend these  
7 things because there's uncertainty, but you don't go to  
8 the extreme end and say I'm going to make my decision  
9 based on this.

10 Why would you do it on the low end versus the high  
11 end if that was your approach? That's why we used the  
12 midrange.

13 Q. Chairman Nelson asked you a question about these  
14 nonquantifiable issues that you've mentioned in your  
15 testimony that are separate and apart from the  
16 consideration of the actual avoided cost calculation.  
17 And I believe you indicated that in your view that that  
18 would be something that should be taken into account.

19 Could you explain that further?

20 A. Yes. I guess I will. As I was talking to  
21 Commissioner Nelson about -- there's some uncertainty in  
22 these avoided cost forecasts. We all understand that.  
23 Forecasting 20 years of power costs has a lot of  
24 uncertainty.

25 We've done our best. We think we have a good

1 baseline view of what that forecast will be. But as we  
2 all know, reasonable people can come up with different  
3 numbers.

4 So there's some uncertainty you're going to have to  
5 deal with. You won't know with 100 percent certainty  
6 what the right avoided cost forecast is. But so that's  
7 where these other things would come into account is,  
8 well, you know, it's kind of marginal maybe in here, but  
9 do these other things weigh towards a decision that maybe  
10 we can go with a midlevel here or some level that will  
11 allow the project to move forward.

12 Because your decision is really going to be is this  
13 project going to move forward or not.

14 Q. Commissioner Hanson asked you a question about the  
15 risks posed by entering into a power purchase agreement  
16 with Oak Tree. And I believe your answer was there's  
17 risks on both sides of that.

18 Do you believe in your professional judgment that  
19 Oak Tree poses substantial risk to NorthWestern given its  
20 size and other dimensions?

21 A. No. I really believe that Oak Tree is a lower risk  
22 than not doing Oak Tree for all the reasons we talked  
23 about this country is moving this direction. People are  
24 wanting more renewables or clean resources. People are  
25 saying, you know, ultimately you're going to have to do

1 it if you don't do it voluntarily. I think the fact that  
2 the PTC is still available, if you're done this year, is  
3 an important factor to move this forward this year.

4 MR. UDA: No further questions.

5 MR. SMITH: Thank you. With that, unless a  
6 party has an objection, I think you may step down and  
7 you're excused.

8 Maybe I'll ask, Mr. Brogan, were there any  
9 follow-up cross you would have in Commissioner questions?  
10 That's it.

11 MR. BROGAN: Mr. Smith, to make sure I  
12 understand, you're saying that there cannot be any  
13 recross based on redirect?

14 MR. SMITH: Well, possibly. Because we have  
15 the -- I mean, we're relatively liberal here. If you  
16 have recross --

17 MR. BROGAN: I have one question.

18 MR. SMITH: Okay. But most of his redirect  
19 anyway was directed at Commissioner questions. So fire  
20 away.

21 RE CROSS-EXAMINATION

22 BY MR. BROGAN:

23 Q. Mr. Lauckhart, you indicated that you thought the  
24 majority of the doubling of wholesale prices between 2012  
25 and 2016 was due to an increase in gas prices. What was

1 the level of gas prices in 2010 when you performed this  
2 analysis?

3 A. I don't recall off the top of my head here.

4 MR. BROGAN: No further questions.

5 MR. SMITH: Commissioner Nelson, anything?

6 Okay. You may step down. Unless you have -- do  
7 you have a follow-up redirect?

8 MR. UDA: No. Thank you.

9 MR. SMITH: Please step down then.

10 Mr. Uda, then you can call your next witness.

11 MR. UDA: I would call to the stand

12 Michael Makens.

13 (The witness is sworn by the court reporter)

14 DIRECT EXAMINATION

15 BY MR. UDA:

16 Q. Good afternoon, Mr. Makens.

17 A. Good afternoon.

18 Q. Would you please state your full name for the  
19 record.

20 A. Michael Daniel Makens.

21 Q. And what is your business address?

22 A. 42563 168th Street, Clark, South Dakota 57225.

23 Q. And by whom are you presently employed?

24 A. Oak Tree Energy.

25 Q. And did you cause in this proceeding to be filed

1 rebuttal testimony?

2 A. Yes.

3 Q. Okay. And have you had an opportunity to review  
4 that testimony?

5 A. Yes, I have.

6 Q. And if I were to ask you the same questions today  
7 that appear in your rebuttal testimony, would your  
8 answers be the same today?

9 A. Yes.

10 Q. Do you have any additions or corrections to make to  
11 your testimony?

12 A. Not at this time.

13 MR. UDA: At this point I would move for the  
14 admission of what will be labeled Oak Tree Exhibit 3.

15 MR. SMITH: Any objection? We're understanding,  
16 right, that this is the testimony subject to the  
17 Commission action?

18 MR. UDA: I'm not sure I understand.

19 MS. LAFRENTZ: Yes.

20 MR. SMITH: The Commission took just a couple of  
21 things, and those were observations on I'm thinking it  
22 was cost of litigation. Remember?

23 MR. UDA: Oh, yeah. This is the redacted  
24 version.

25 MR. SMITH: With that understanding, we'll

1 proceed then.

2 Is there any objection from NorthWestern?

3 MR. BROGAN: No objection.

4 MR. SMITH: Staff?

5 MS. SEMMLER: No.

6 MR. SMITH: Oak Tree Exhibit 3 is admitted.

7 Q. (BY MR. UDA) Mr. Makens, for the benefit of  
8 parties and Staff and the Commission, would you please  
9 summarize your testimony for them?

10 A. Yes. In response to the question who am I employed  
11 for, Oak Tree Energy, Oak Tree Energy is a family  
12 business. And my family, the Makens family, we've been  
13 in Clark for 111 years and as farmers farming land that  
14 we own.

15 So it moved into this wind farm business looking to  
16 harvest a new crop. And we've evaluated the resource on  
17 our farm several years ago, beginning in 2005 with the  
18 virtual wind study that said we have a first class wind  
19 on the site. And we've hired consultants and attorneys  
20 to bring in some expertise on the issue since we're a  
21 South Dakota family going at this.

22 So there was a fatal flaw analysis performed. We've  
23 been found to have no fatal flaw in the Clark Wind Farm  
24 Oak Tree Energy Project. Environmental studies have been  
25 performed bearing no issues. We put up two

1 meteorological towers installed years ago to measure wind  
2 data. And they continue to record information, wind  
3 data, that's documented every 10 seconds. It's a  
4 detailed analysis, and we've hired consultants to analyze  
5 the data, perform reports on the data, and then to submit  
6 it to a third party analyst to perform it to see how it  
7 affects wind turbines in certain areas.

8         Those have all been documented and analyzed by  
9 reputable firms. We've installed a 40 kilowatt wind  
10 turbine generator to provide renewable energy to a local  
11 business in Clark back in 2008. We have power curve  
12 analysis financial models made for the proposed wind farm  
13 in this hearing.

14         We have property control in form for the project  
15 site. We have sized the project to coincide with  
16 existing infrastructure and power lines and the capacity  
17 on those lines in the local area. And this small project  
18 allows a community incorporation to approach this power  
19 generation in the area of having a small local product to  
20 sell to residents and businesses in the area.

21         We've gained local support, present and past mayors,  
22 county commissioners people in the area, neighbors, and  
23 local residents. And after looking at all of this we've  
24 evaluated to move forward with financing this wind  
25 project in the development phase.

1           And we've evaluated options to market the power  
2 extensively looking at every option out there, whether  
3 selling on the open market, selling to different RTOs and  
4 the best available option is to sell locally to  
5 NorthWestern.

6           And Oak Tree has completed all interconnection  
7 process with NorthWestern. We have a signed  
8 interconnection agreement. We invested a lot of money  
9 through the whole process, and we believe the Clark Wind  
10 Farm is a win/win for all parties involved.

11           And we've made numerous attempts to negotiate a  
12 power purchase agreement with NorthWestern. Again, after  
13 exploring every other option. And these have been verbal  
14 discussions, telephonic conversations, e-mails, written  
15 letters, which are detailed and in my testimony and the  
16 exhibits.

17           And the goal is to reach a PPA with NorthWestern  
18 that's financeable to build a wind farm and beneficial to  
19 all the parties involved and keeping costs as low as  
20 possible to see this project realized.

21           The responses from NorthWestern Energy to Oak Tree  
22 Energy's negotiation initiatives showed no interest from  
23 NorthWestern in building or purchasing the power from the  
24 wind farm. NorthWestern repeatedly came back at a rate  
25 around \$23, short-term available rate, which is well

1 below the financeable figure to build a wind farm.

2 NorthWestern claimed they had no need for any  
3 additional capacity, which has been debated today, and  
4 they've stated that they have no obligation to purchase  
5 the power, despite federal PURPA law and despite  
6 South Dakota's current renewable court folio objective.

7 So through repeated correspondence for almost the  
8 last two years, we haven't been able to come to a  
9 compromise. Oak Tree has moved down numerous times in  
10 our figures sending draft PPAs to sign to NorthWestern,  
11 but NorthWestern's always stayed in the same position.

12 So being a small family farm not able to get  
13 anywhere -- leeway from the large utility we look to the  
14 only viable option we thought, which was to bring it to  
15 the Public Utilities Commission.

16 And even before so, we even probed to see if that  
17 was the right way to go about things. Everything we've  
18 done through the whole process we've made sure we've had  
19 expert counsel talking with the right people, going  
20 through the proper process. So that's why we're here  
21 today.

22 After much discernment we thought mediation was the  
23 only way to resolve this issue. So we're exercising our  
24 right to seek fair, good-faith negotiations coming to a  
25 fair price and see this project realized. It's ready to

1 go, and we're in a spot where time is of the essence.

2 The ITC 30 percent rebate grant already expired at  
3 the end of last year. PTC is about to expire. So to  
4 keep costs at a minimum, we need to have this project  
5 commissioned by December 31, 2012, which means it needs  
6 to be built a month before that and construction,  
7 erection, everything done prior to that. So time is of  
8 the essence.

9 We've studied, you know, according to federal PURPA  
10 law a QF's energy generator is allowed an avoidable cost  
11 rate. And we've sought to negotiate with NorthWestern at  
12 what we believe a fair price, even lower than what we've  
13 calculated to be the avoided cost.

14 Offering a 20-year PPA to NorthWestern, Oak Tree  
15 offered this with a starting price of \$54.40 per megawatt  
16 with a 2 and a half percent annual escalator for this  
17 wind generation project with a 19 and a half megawatt  
18 name plate size. This offer's below NorthWestern's  
19 avoided cost calculations by Black & Veatch represented  
20 by Richard Lauckhart with the two scenarios that he came  
21 up with of around the 78.90 figure with the brown power  
22 where the renewable energy credits would stay with the  
23 project and the figure for the green power of \$70.10  
24 where the green tags would transfer to the utility.

25 We believe the Clark Wind Farm was designed in such

1 a way that is good for all parties involved, good for the  
2 utility, good for locals, good for the state, good  
3 South Dakota, and its citizens.

4 MR. UDA: At this point I would tender  
5 Mr. Makens for cross-examination.

6 MR. SMITH: Mr. Brogan, is it you?

7 MR. BROGAN: It is I.

8 CROSS-EXAMINATION

9 BY MR. BROGAN:

10 Q. Good afternoon, Mr. Makens.

11 A. Good afternoon.

12 Q. I have several questions about your prefiled  
13 testimony, but before I get to that, I have a few about  
14 the statements that you just recently made in your  
15 summary that I'm not sure that I had found in your  
16 prefiled testimony.

17 First, from my angle it appeared that you were  
18 reading something. Is that correct?

19 A. I have one page here with a couple extra that I  
20 printed up as a guide to myself, yes.

21 Q. And you indicated in your testimony that you have  
22 installed a 40 kilowatt wind turbine, and you're selling  
23 power to a local business; is that correct?

24 A. I bring that up today to give a perspective on what  
25 Oak Tree Energy is and who we are and what we're -- what

1 our history is and experience.

2 Q. Is Oak Tree registered to do business in the State  
3 of South Dakota?

4 A. Yes, we are.

5 Q. You say in your testimony that you're one of the  
6 owners of Oak Tree. How much of it do you own?

7 A. Well, it's a family business, sir, and my immediate  
8 family is the only owners in Oak Tree, which entails all  
9 the land, the farm, and our family businesses.

10 Q. Does Oak Tree Energy own the family farm?

11 A. No.

12 Q. Okay. On page 3 of your testimony in lines 15  
13 through 16 you refer to a letter from Ms. Sara Dannen; is  
14 that correct?

15 A. Yes.

16 Q. And that's been included in your testimony as  
17 Exhibit 1. Is that also correct?

18 A. That's what it states here, yes.

19 Q. Would you please refer to that exhibit for a moment.

20 A. I'm there.

21 Q. On the second page of Ms. Dannen's letter, the  
22 second full paragraph on that page that begins "As for,"  
23 do you see that paragraph?

24 A. Yes.

25 Q. Would you read that paragraph, please.

1 A. Sure.

2 Q. Out loud?

3 A. Yep. "As for your request to see data as to how  
4 avoided costs are computed in South Dakota, we file a  
5 quarterly report with South Dakota PUC that details our  
6 fuel adjustment rates and purchase power costs. These  
7 are filed under confidential treatment with the PUC.  
8 NorthWestern Energy is willing to share these filings  
9 with you once you sign a confidentiality agreement.

10 "Attached for your review is a confidentiality  
11 agreement as Attachment B. If you find the enclosed  
12 agreement acceptable, please sign and return to me at the  
13 address contained on our letterhead. Once I receive the  
14 signed confidentiality agreement we will provide you with  
15 the PUC quarterly filings containing the information you  
16 requested."

17 Q. Did you execute that confidentiality agreement?

18 A. We did.

19 Q. And did you send it to Sara Dannen?

20 A. According to my recollection, it was sent to  
21 NorthWestern.

22 Q. Can you tell me what date you sent that to  
23 NorthWestern?

24 A. I don't know off the top of my head.

25 Q. Can you tell me who at NorthWestern you sent it to?

1 A. I can't recall. This letter was entitled to  
2 Mr. Matney, one of our consultants. So there's  
3 correspondence between NorthWestern's team and Oak Tree  
4 Energy's team that I can't recall all the correspondence  
5 at this time.

6 But I know that there was a confidentiality  
7 agreement in place.

8 Q. When you say you know there's a confidentiality  
9 agreement in place, are you referring to a  
10 confidentiality agreement, one, pursuant to this letter,  
11 or, two, pursuant to discovery in this case?

12 A. I know that there was a confidentiality agreement  
13 put in place sometime during the information exchange  
14 with NorthWestern and Oak Tree that both parties agreed  
15 to to share information openly that it was considered  
16 confidential.

17 Q. But you don't recall ever sending one with respect  
18 to this particular letter?

19 A. Again, as I stated, it's Mr. Matney and Ms. Dannen's  
20 correspondence here. I wasn't personally involved in  
21 that exchange. I reviewed the correspondence and recall  
22 a confidentiality agreement in place.

23 Q. Would you consider executing of a -- or the  
24 execution of a confidentiality agreement to obtain a  
25 quarterly report that details fuel adjustment rates and

1 purchase power costs to be a major decision regarding  
2 Oak Tree?

3 A. A major decision? Yeah. It's part of the process  
4 of information exchange between the two companies.

5 Q. And it's your testimony that you've been directly  
6 and personally involved in all major decisions, isn't  
7 that correct?

8 A. Yes.

9 Q. But you don't recall whether this one was done?

10 A. I do recall. I don't have the date off the top of  
11 my head, but I recall a correspondence of --

12 Q. Do you have a copy of it?

13 A. Not on me.

14 Q. Continuing with your testimony on line 21 -- on  
15 page 3, line 21, you say that "Oak Tree's representatives  
16 attempted to discuss the need for a PPA with NorthWestern  
17 numerous times informally via telephone."

18 Is that correct?

19 A. Getting there right now. Yes.

20 Q. Who on behalf of Oak Tree attempted to discuss the  
21 need for a PPA?

22 A. Numerous people. A few to mention, Claud Matney,  
23 as we just pointed out in the last exhibit,  
24 Mr. Michael Uda, to name a few.

25 Q. Well, could you please name all so we can have a

1 complete record, Mr. Makens?

2 A. Well, I know myself and Bill Makens and  
3 Andrew Matney would be three other names.

4 Q. Who at NorthWestern did you specifically speak to?

5 A. There was conversations with -- during  
6 interconnection agreements about how to go about the  
7 process. And I recall on the phone on a telephonic  
8 conference with Dennis Wagner, on the phone with  
9 Mr. Don -- I forget his last name at the time. And  
10 through that interconnection process I know I was  
11 personally involved in some conversations.

12 Q. And those discussions with respect to the  
13 interconnection process, those were -- were those  
14 separate from discussions with respect to a power  
15 purchase agreement?

16 A. Yes.

17 Q. Were you personally involved in any conversations  
18 with respect to a power purchase agreement?

19 A. Yes.

20 Q. And who were you -- who was that discussion with or  
21 those discussions with?

22 A. With Mr. -- I forget his last name at the time.  
23 Mr. Don -- out of the Butte office. It was a while ago.  
24 I forget his last name at the time. But a lot of those  
25 conversations dealt with the personnel to deal with, how

1 to go about the process, the explanation of the  
2 separation of interconnection versus power supply  
3 procurement.

4 Q. Did you ever become aware that the person you needed  
5 to speak to with respect to a power purchase agreement  
6 was Mr. Bleau LaFave?

7 A. Yes.

8 Q. Did you ever have a telephonic conversation with  
9 him?

10 A. Not personally.

11 Q. From your answer I infer that you mean someone else  
12 did. Did someone else have a conversation with  
13 Mr. LaFave?

14 A. According to my recollection, yes.

15 Q. And who was that?

16 A. Mr. Claud Matney.

17 Q. Did you individually ever initiate a conversation  
18 with NorthWestern with Mr. LaFave?

19 A. No. It was a team effort, and we were advised to do  
20 it all in writing, formal correspondence.

21 Q. Who advised you to do that?

22 A. Both NorthWestern and our own attorney just so that  
23 there's a record and written report.

24 Q. In your summary of your testimony you indicated that  
25 you had sent draft PPAs to NorthWestern moving down and I

1     assume -- and please correct me if my assumption is  
2     wrong -- that that means moving down in price.

3             What PPAs other than the one sent in January of 2011  
4     did Oak Tree send to NorthWestern?

5     A.    I recall one being sent prior to that that had a  
6     higher PPA rate in the range around a levelized \$69  
7     somewhere range.  And then we moved that down to the  
8     current rate, which is in my testimony of the levelized  
9     around \$65 rate starting at the 54.40.  So there was a  
10    move.

11    Q.    Do you recall when that was sent?

12    A.    Not off the top of my head.  There's been so much  
13    correspondence that I've took.

14    Q.    Do you have a copy of it with you?

15    A.    Not with me.  It wasn't in this attachment, I don't  
16    believe.

17    Q.    On line 7 is it correct to state that -- or excuse  
18    me.  On page 7, line 15 through 17, is it correct to  
19    state that your testimony is "We just want to be able to  
20    finish our project and sell its wind power at a fair  
21    market rate that makes the project financially viable"?

22    A.    Can you repeat what page you're on?

23    Q.    Page 7 beginning on line 15 the sentence starts, and  
24    it ends on line 17.

25    A.    That's what I stated there.

1 Q. What rate makes the project financially viable?

2 A. The rate that is documented here is 54.40 after all  
3 of our analysis and investment into the proper look at  
4 this whole project. That's the -- we believe a  
5 competitive price, fair price, below avoided costs for  
6 NorthWestern, and a price that makes it viable to build  
7 the project.

8 Q. Is that the lowest price that makes it viable?

9 A. That's where we're at. Of course, you can crunch  
10 numbers any way you want. To our best experted look at  
11 all the numbers that's where we came up.

12 Q. On page 8 of your testimony in lines 25 through 26  
13 you say "Ultimately we found there was no viable  
14 alternative." Is that correct?

15 A. That's what it states.

16 Q. Well, are those your words?

17 A. Yes.

18 Q. What do you mean by "viable"?

19 A. Cost effective, practical. You know, in this light  
20 variable -- we're talking about exploring other options  
21 of negotiating with NorthWestern and also exploring other  
22 options of marketing the power. And both of those  
23 concluded that NorthWestern is the only viable option.  
24 Going to MISO, going west, they're just not financially  
25 viable with all transmission charges and everything.

1           And negotiating with NorthWestern wasn't leading to  
2 any fruitful efforts. So the sentence that is -- you  
3 came in halfway through there with we wanted to explore  
4 all available options. The first part is the last thing  
5 we wanted to do was litigate against NorthWestern. We  
6 wanted to work out a negotiation, which wasn't happening,  
7 so we brought it to the PUC.

8 Q.   Who did you investigate as possible purchasers of  
9 your -- of Oak Tree's output besides NorthWestern?

10 A.   Several. I mean, you name them. Several.

11 Q.   Mr. Makens. I'm sorry. I can't testify. I can't  
12 name them. You're the one that I think was involved in  
13 the negotiations or the research. So I'm asking you who  
14 did you actually contact?

15 A.   We contacted several companies, MISO, PJM, looking  
16 west, looking open market with analysts that would help  
17 through administrative power market on the open market,  
18 instantaneous sale.

19           We looked at everything available in the  
20 marketplace. And the only viable option was NorthWestern  
21 because they had capacity on their line they were right  
22 there. It's a small project, drop in the bucket. No  
23 adverse side effects on their transmission, and they need  
24 capacity. That's who we came up with.

25 Q.   Is it correct that from July 30, 2010, the date you

1 reference on line 10 of page 8, and January 25 of 2011,  
2 the date you reference in line 1 of page 9, that you did  
3 not have any contact with NorthWestern with respect to  
4 selling the output of Oak Tree during those several  
5 months?

6 A. Can you rephrase your question?

7 Q. Mr. Makens, is it correct that on page 8, line 10  
8 you describe a letter from Mr. LaFave dated July 30,  
9 2010?

10 A. Yes. And then you said the second date on the next  
11 page.

12 Q. Was January 25, 2011?

13 A. This testimony is -- there's a lot of correspondence  
14 that went on, and this testimony has taken highlights of  
15 that correspondence. So I can't recall off the top of my  
16 head the e-mails or the letters going back and forth in  
17 complete and utter full report. But in the summary of  
18 this testimony there's viewpoints here, the key elements  
19 of the correspondence.

20 Q. Other than the conversations with respect to  
21 interconnection, were there any contacts that you can  
22 specifically recall at this time between July 30 of 2010  
23 and January 25 of 2011 directed towards selling your  
24 output from the Oak Tree project to NorthWestern Energy?

25 A. Off the top of my head and without looking at all

1 the correspondence, I can't come up with a specific  
2 instance that you're referring to.

3 Q. On page 9 in lines 6 through 20 you refer to a PPA  
4 that was sent to NorthWestern; is that correct?

5 A. Yes.

6 Q. Are you familiar with that PPA?

7 A. Yes.

8 Q. And are you familiar with the terms in the PPA?

9 A. Yes.

10 Q. Did the PPA that you're referring to here include  
11 any mechanical availability guarantees for the  
12 availability of the turbines?

13 A. I don't have the full PPA in front of me right now.  
14 It's a 90-plus page document or something. It's, you  
15 know, a legal contract. So without that in front of me  
16 right now, I can't get into accurate detail.

17 Q. Is it also correct that you would not recall whether  
18 or not there were any provisions for delay damages?

19 A. I'd have to look at the PPA to answer your questions  
20 accurately.

21 Q. Mr. Makens, I'm asking you what you recall right  
22 now, not what's in -- you know, I'm just trying to make  
23 sure that I understand what you recall.

24 A. I know the PPA that was drafted was drafted with  
25 legal expertise and was sent to NorthWestern for review

1 and that it was a good, solid, standard type PPA.

2 Q. On page 10 of your testimony in a question on line 7  
3 you were asked "Did NorthWestern respond to the proposed  
4 PPA or offer to negotiate further?" And on line 9 you  
5 state "No." And then you quoted NorthWestern's response.

6 Is that correct?

7 A. Yes. The no refers to NorthWestern negotiating  
8 further.

9 Q. And lines 13 through 17 you quote NorthWestern as  
10 having said in response "NorthWestern would be interested  
11 in any discussions that would add renewable resources to  
12 our portfolio that are priced at or below the established  
13 avoided cost but also monetarily recognizing current  
14 status of the energy and capacity requirements of the  
15 portfolio."

16 Why is that not an offer to negotiate further in  
17 your opinion?

18 A. Because that price around the \$23 was just claimed  
19 by NorthWestern as avoided cost when everyone knows it's  
20 not a financially viable price to build a wind farm at,  
21 even though wind farms are being put up all over the  
22 place, it wasn't a -- it wasn't a move towards  
23 negotiation. It was a repeated every time we sent an  
24 effort to negotiate we got the same response from  
25 NorthWestern, that same price in the same wordage.

1 Q. And line 22 on that same page you state  
2 "NorthWestern consistently has taken the position that it  
3 did not agree with our position on its avoided cost."

4 Is that a correct reading of your testimony?

5 A. Yes.

6 Q. Did Oak Tree consistently take the position that it  
7 did not agree with NorthWestern's position on  
8 NorthWestern's avoided cost?

9 A. We believe it to be low.

10 Q. And that's been consistent all the way through; is  
11 that correct?

12 A. When you look at the \$23 -- it was a spot market  
13 price. It's not a -- it's not a calculated 20-year term  
14 price. So you're comparing apples to oranges.

15 Q. If this Commission determines that NorthWestern  
16 Energy's avoided cost is below the rate you offered, the  
17 54.40 plus 2.5 percent escalation, what will Oak Tree do?

18 A. We'll have to evaluate if that's financially viable.  
19 If we can build it, we will. But we know the number  
20 that's the target there that makes things work, which is  
21 the 54.40 range.

22 Q. On page 12 in lines 21 through 32 you indicated that  
23 you were looking -- and this is a characterization so if  
24 it's an incorrect characterization, please correct, but  
25 that you were looking for an indication as to whether

1 NorthWestern intended to accept Oak Tree's offer or  
2 intended to negotiate to produce a mutually satisfactory  
3 arrangement for both parties.

4 Is that a correct characterization?

5 A. Yes.

6 Q. Do you realize that sometimes the economics of  
7 situations are such that there is no mutually  
8 satisfactory arrangement?

9 MR. UDA: I'm going to object. At this point  
10 there's no foundation whatsoever for counsel's question.

11 MR. SMITH: Overruled.

12 A. Sure. There's always times that things won't be a  
13 smart investment. But looking at -- looking at  
14 existing -- looking at the reality of the situation here,  
15 the prices, that we didn't think NorthWestern had a true  
16 appropriation of long-term avoided cost at that \$23 mark  
17 figure.

18 And we knew they had just signed in to a PPA with  
19 another wind farm about the same size recently. So it  
20 looked like things were -- it looked like things were  
21 there for NorthWestern to invest in such a project  
22 because they just did.

23 Q. Mr. Makens, I'm a little troubled by the logic there  
24 so I need to get it explained to me. If you go out and  
25 buy a car, does that mean you're ready to buy another one

1 right away?

2 A. Depends on what the needs are.

3 Q. Okay.

4 A. We saw still a need for capacity and a need to meet  
5 a renewable portfolio objective, even though a wind farm  
6 it just -- the PPA had just been bought by NorthWestern.  
7 Those two needs have been met. So maybe another car was  
8 needed in that family.

9 Q. I'd like to talk a little bit about the Oak Tree  
10 project that you've described I think very well. And you  
11 indicated that there had been met towers up for several  
12 years.

13 How long have the met towers been up?

14 A. I think we're going close to three years now. So  
15 the summer of 2009.

16 Q. Summer of -- and how high are they?

17 A. They're just below 200 feet. 60 meters.

18 Q. And do you know how your expert converted the wind  
19 data from 60 meters to wind data at 80 meters, the hub  
20 height that you proposed?

21 A. Yes. Generally speaking. I'm not a wind analyst by  
22 career. But they take the data. It's sent with the  
23 cellular internet signal via e-mail every 10 seconds.  
24 And there's multiple anemometers, which are the cups that  
25 record wind speed. There's multiple wind vanes on each

1 tower. There's two locations. So every 10 seconds it's  
2 getting multiple reads.

3 It can read the difference between the elevations  
4 that come up with a relationship and they graph it out to  
5 certain hub heights so they can apply it to certain tower  
6 sizes and certain generators.

7 Q. So they extrapolate the wind speeds at lower levels  
8 and based on the different wind speeds at various lower  
9 levels to a higher level. Is that what you're saying?

10 A. Yeah. Extrapolation.

11 Q. You indicated that, I believe, that Oak Tree has  
12 done everything with respect to this project up to this  
13 date; is that correct?

14 A. To our knowledge, yes, we have.

15 Q. Do you have FAA approval of the turbines?

16 A. We've looked at sites, and we have FAA's blessing on  
17 it. It's ready to go when we get the okay. And when we  
18 get into micro siting that's when they move to final  
19 approval.

20 Q. So you -- based on what you just said you haven't  
21 done micro siting yet?

22 A. Well, we have. But without a PPA assigned,  
23 everything's -- everything's how it is. It's like once a  
24 PPA is signed, you have allocated financing where you can  
25 get into even further depth detail on exactly where. But

1 we have studies with power curves on specific GPS  
2 coordinated best positions of wind turbines. So the  
3 micro siting has been done to the degree that it can  
4 right now.

5 Q. You indicated that you have a signed interconnection  
6 agreement. Is that a small generator interconnection  
7 agreement?

8 A. Yes.

9 Q. I believe the acronym for it is generally SGIA; is  
10 that correct?

11 A. Yes.

12 Q. Does that SGIA have milestones in it?

13 A. Yes.

14 Q. Has Oak Tree met all of the milestones in that SGIA?

15 A. We have. We've -- there's an issue in signing the  
16 interconnection agreement before having the PPA signed,  
17 and the hearing in order about financing the  
18 interconnection payment to the completion of the project  
19 and there's correspondence that said we could have a  
20 letter of credit submitted to NorthWestern and it would  
21 be after final approval with the PUC. And we have such a  
22 period of time until the end of the year to nullify the  
23 interconnection agreement if this project is never going  
24 to be built.

25 So we put that correspondence in place as security

1 that NorthWestern wouldn't try charging us for  
2 interconnection agreements for a project that wasn't  
3 going to come to fruition.

4 Q. Mr. Makens, under the SGIA was there a requirement  
5 that Oak Tree make a deposit on March 15?

6 MR. UDA: I'm going to object. I think the  
7 language of the SGIA speaks for itself. And, you know,  
8 we've been down a lot of this road lately with asking the  
9 witness questions about documents that are not in front  
10 of him. So that's the basis for my objection.

11 MR. SMITH: Okay. I'll sustain that.

12 Q. (BY MR. BROGAN) Has Oak Tree received from  
13 NorthWestern's transmission group, which is totally  
14 separate from its supply group, a notice of termination  
15 of the SGIA?

16 A. Notice of termination? No. What we did receive,  
17 which was in contrast to the correspondence that we had  
18 with Autumn Muller of the transmission group, that said  
19 we can wait until after the PUC hearing to see if the  
20 project's going to happen or not before giving deposits.

21 Despite her correspondence guaranteeing us those  
22 positions, there was a letter that said the deposit  
23 wasn't received. And obviously because the PPA hasn't  
24 been signed and the project hasn't been a go ahead yet --  
25 and it said we have 60 days to comply. So there's no

1 notice of termination. It was a reminder that the  
2 deposit hasn't been received and there's 60 days to make  
3 that right.

4 Q. And did it say what would happen if the deposit was  
5 not made within 60 days?

6 A. Again, I don't have the document in front of me.

7 Q. Okay.

8 A. Speaking in general terms here. Those 60 days  
9 haven't happened yet so we hope this proceeding will  
10 direct where this wind farm's headed and everything will  
11 be straightened out in the interconnection.

12 MR. BROGAN: Mr. Smith, I have no further  
13 questions.

14 MR. SMITH: Thank you.

15 Staff.

16 MR. SOYE: Thank you, Mr. Smith, but Mr. Brogan  
17 this time has touched on all issues Staff intended to  
18 address and more. That certainly speaks to Mr. Brogan's  
19 thoroughness and hopefully Staff's ability to spot the  
20 issue.

21 Despite being a lawyer and loving to talk in  
22 these situations, no questions.

23 MR. SMITH: I'm amazed.

24 Commissioner questions.

25 CHAIRMAN NELSON: I have just a couple.

1           You indicated that your legal counsel  
2 recommended that all communication be done in writing; is  
3 that correct, with NorthWestern?

4           THE WITNESS: Yes. There were verbal -- you  
5 know, through the whole process of things there were  
6 verbal exchanges talking to -- we're new at this. We're  
7 a small family farm dealing with a big utility. Who do  
8 we need to talk to? Where do we need to go? Who's the  
9 right person that's got decision power?

10           So it came to Mr. Bleau LaFave, and then it  
11 became a formal exchange of letters so that's how it  
12 evolved.

13           CHAIRMAN NELSON: As you were answering  
14 Mr. Brogan's questions there were several times you  
15 referred to e-mails that might have gone back and forth.  
16 You referred to an earlier purchase power agreement, and  
17 it seems it appears that some of those things that you  
18 referred to are not attachments in your testimony.

19           So I'm understanding, we don't have everything  
20 in front of us that was exchanged between you and  
21 NorthWestern; is that correct?

22           THE WITNESS: There's a slough of  
23 correspondence. So if there's anything that's needed for  
24 the Commission's clarification, we're open. I know every  
25 aspect of this discovery wasn't touched. It's

1 incorporating a lot of issues in this hearing. So if  
2 there's anything that was missed, you know, we can assist  
3 in that, we'll get it to you.

4 CHAIRMAN NELSON: Thank you. On the issue of  
5 the met towers I thought I heard Mr. Lauckhart say that  
6 the met tower data that he was dealing with from Oak Tree  
7 covered a whole number of years. And yet I heard you  
8 testify that the met towers went up in the summer of  
9 2009, which tells me he couldn't have had more than maybe  
10 12 months worth of data.

11 Can you help me understand exactly how much data  
12 he had to work with?

13 THE WITNESS: Sure. I believe 2009 is when they  
14 went in. There's a lot going on here so let's look at  
15 2009. In the industry standard 12 months, a year's worth  
16 of met data is sufficient. That's financeable. That's  
17 wind industry general terms. One year is plenty.

18 A lot of projects used to be financed off of six  
19 months of met data. Now they're able to take that raw  
20 data, and there's also virtual data, which is from every  
21 airport, every weather station, history of 80 years,  
22 different hub heights. They cross-reference all of this  
23 data.

24 So one year of raw data is more than enough to  
25 cross-reference with a history of meteorological data

1 that's available publicly and which some companies like  
2 Database TruePower specialize at. We also had another  
3 outfit, National Wind, who was involved in the recording  
4 of the data and the reports.

5 So we had two outfits looking at this data,  
6 compiling it together. So it's accurate data. So plus  
7 two met towers. So right there you've got two years  
8 worth of data in one year's time.

9 CHAIRMAN NELSON: So can you tell me with  
10 definity how many months worth of data Mr. Lauckhart was  
11 actually working with in his projections.

12 THE WITNESS: Well, if he did it at the end of  
13 2010, as you say, and we put them up in the summer of  
14 2009, it's over a year's worth of data.

15 CHAIRMAN NELSON: Thank you. No further  
16 questions.

17 MR. SMITH: Other Commissioner questions?  
18 Commissioner Fiegen.

19 COMMISSIONER FIEGEN: I had the same question as  
20 Commissioner Nelson. It looked like July to January we  
21 don't have any information. Am I understanding that you  
22 said there is written information that you contacted  
23 NorthWestern during that time frame; we just do not have  
24 it?

25 THE WITNESS: I recall a lot of e-mail

1 correspondence going on that I'm not always personally  
2 involved in. We have consultants like Mr. Matney  
3 involved. He lives in Montana. He deals with  
4 NorthWestern on a neighborly basis.

5           So there's a lot of informal verbal  
6 communications. There's e-mail correspondence. And  
7 there's also the transmission side and interconnection  
8 side of things. So if we're not talking with  
9 NorthWestern Power Supply here, you know, we're busy  
10 working on meeting every milestone throughout the whole  
11 interconnection process. So it's been a lot of pieces of  
12 the puzzle going straight lines at the same time with  
13 correspondence.

14           COMMISSIONER FIEGEN: You talked about visiting  
15 with a Don gentleman from NorthWestern out of Butte.  
16 And you really asked him it sounded like for names and  
17 et cetera. But you did not take the opportunity to call  
18 Bleau LaFave on questions about negotiating face to  
19 face?

20           THE WITNESS: Well, he works in Montana. As  
21 you've heard NorthWestern say, they're adamant that  
22 their Montana and South Dakota business operations are  
23 two separate entities. So he out of -- out of, you know,  
24 his either knowledge of the business in South Dakota he  
25 directed us to work with the Sioux Falls office,

1 South Dakota. It was -- you know, everyone will tell you  
2 a different place, a different direction.

3 COMMISSIONER FIEGEN: So what you decided  
4 through your attorneys is to do all of that in writing  
5 and not face to face?

6 THE WITNESS: Yeah. When we realized that  
7 NorthWestern was giving us the same avoided cost  
8 short-term rate, that 20, \$23 range, it seemed like we  
9 were up against trying to move an elephant. You know, so  
10 we needed to document everything.

11 Yes, you know, we offered -- we offered  
12 everything we could to them. We said, you know, are you  
13 interested in equity of the project? We're open to  
14 negotiating. We're open to everything. We want to see  
15 this project being built.

16 And this bringing it to a public hearing is the  
17 last resort for us. We wanted to negotiate over the  
18 table with NorthWestern on good terms, good faith with  
19 everybody involved that made a good, viable project.

20 COMMISSIONER FIEGEN: Thank you.

21 MR. SMITH: Questions, Commissioner Hanson?

22 COMMISSIONER HANSON: Thank you, Mr. Smith.

23 Good afternoon, Mr. Makens.

24 THE WITNESS: Good afternoon.

25 COMMISSIONER HANSON: You were here this entire

1 morning and listened to all the questions and answers  
2 that took place at that time. Rather than my running  
3 through all the questions that I asked or at least some  
4 of them that I asked previously, which I'm not going to  
5 do, I would just ask you do you have any comments that  
6 you'd like to make on any of that discussion that took  
7 place?

8 I'm sure there were things that were popping  
9 through your head that you wanted to say during that  
10 time. Do you recall any of them?

11 THE WITNESS: Yeah. Well, some we're getting  
12 into nitty-gritty detail, and, you know, who said what  
13 and this and small -- but just trying to look at the big  
14 picture of things is where my mind kept going.

15 You know, let's not forget to look at the big  
16 picture, you know. Small family farm, small wind farm,  
17 good for South Dakota, fair price, you know, at that  
18 avoided cost rate. Under it, according to our  
19 calculations.

20 You know, let's make sure it's a win/win for  
21 everybody. And that's our goal as Oak Tree and the  
22 Makens family. You know, we're not out to, you know,  
23 raise rates or make it -- you know, put a burden on a  
24 utility. We know there's a win/win for everybody.

25 There's wind farms going up all over the place

1 and in places that don't have as great a wind resource  
2 and on lines that don't have as much capacity available.  
3 So let's just look at the big picture.

4 Can this be done? Yes, we think it can. Can it  
5 be a win/win for all parties involved? Yes. We believe  
6 it can. We know it can. And so that was going on in my  
7 mind all morning.

8 COMMISSIONER HANSON: You're aware that in some  
9 of those cases that you're talking about other capacity  
10 and other states there are other incentives? For  
11 instance, in Minnesota, Minnesota offered a variety of  
12 incentives that South Dakota does not offer. I just  
13 offer that as part of the discussion here for you to chew  
14 on.

15 THE WITNESS: In terms of property taxes or  
16 something you're referring to?

17 COMMISSIONER HANSON: Certainly. When you were  
18 saying that there's wind farms going up all over the  
19 place there are different incentives throughout the  
20 country in different states and such so --

21 THE WITNESS: Right. And South Dakota is one  
22 of the toughest states in the region. If you look at  
23 North Dakota policy, Iowa policy, Minnesota policy,  
24 South Dakota generally has higher taxes. But that burden  
25 is beared on the developer, and we're willing to accept

1 the cost and still deliver it at a competitive, fair  
2 price.

3 COMMISSIONER HANSON: When NorthWestern -- you  
4 state that NorthWestern never varied from its original  
5 offer to you. Do you remember when the very first time  
6 they offered that to you?

7 THE WITNESS: Off the top of my head I think it  
8 was the summer of 2010 or so.

9 COMMISSIONER HANSON: Early summer, late summer?

10 THE WITNESS: There's been so much repetition in  
11 the correspondence. I know that --

12 COMMISSIONER HANSON: How many times were you --  
13 could we say, figuratively speaking, that you're at the  
14 table with NorthWestern either face to face or in written  
15 correspondence or having an attorney really working on  
16 the meat of this issue discussing the issues?

17 THE WITNESS: Numerous times. I mean,  
18 everything's documented here. At least, you know,  
19 there's close to 10 or so exchanges back and forth.  
20 And, you know, there's also e-mails and speaking to so  
21 and so.

22 COMMISSIONER HANSON: E-mails aren't really so  
23 much of a meat. I'm just interested when you really feel  
24 that you were actually in a negotiating posture with  
25 them.

1 THE WITNESS: Well, then it's, you know, who's  
2 the decision-maker. We even tried to contact the CEO and  
3 were steered towards Mr. Bleau LaFave and, you know,  
4 before that it was the letter with Ms. Dannen.

5 And so there was -- there's several exchanges  
6 with Mr. Bleau LaFave back and forth with essentially the  
7 same response every time from NorthWestern.

8 COMMISSIONER HANSON: You said you contacted  
9 MISO and PGM for potential PPA or --

10 THE WITNESS: We did. We talked to WAPA as  
11 well. Even before the interconnection process we met  
12 with WAPA. We went with NorthWestern. We met with  
13 Basin. We met with East River. We've exhausted all  
14 options in this project.

15 And every time it turned out the best road is  
16 the one that we've been going down, which is to  
17 interconnect to NorthWestern to sell to NorthWestern.  
18 And then since negotiations didn't turn out with a  
19 fruitful effort, it's to now bring it to the PUC.

20 COMMISSIONER HANSON: Did you happen to chat  
21 with Otter Tail?

22 THE WITNESS: We did.

23 COMMISSIONER HANSON: And Xcel?

24 THE WITNESS: We did.

25 COMMISSIONER HANSON: Mid Dakota?

1 THE WITNESS: Mid Dakota. We looked at that  
2 too. I didn't personally look at that one.

3 COMMISSIONER HANSON: PGM is a ways away.

4 THE WITNESS: It is. We talked to Tennessee  
5 Valley Authority. We looked all over the place. We  
6 talked to Rainbow in North Dakota that's an outfit that  
7 just markets power for people. We were looking at trying  
8 to do -- all right. It's tough to finance it, but what  
9 if we just build a project and hook up and sell the  
10 power? Not have a PPA. We tried looking at everything.

11 COMMISSIONER HANSON: Just out of curiosity, we  
12 were talking -- you were discussing the number of months  
13 or the amount of data that is necessary in working  
14 through these. In working with a financial institution  
15 how many months of information do they want?

16 THE WITNESS: They look for the 12 months of  
17 overall wind data. Now they used to get 6 months. Now  
18 they're looking at 12 months.

19 COMMISSIONER HANSON: Well, it used to be two  
20 years or three years early on they were looking at so  
21 very lengthy information.

22 Thank you, Mr. Smith. Thank you.

23 THE WITNESS: Thank you.

24 MR. SMITH: Additional Commissioner questions?

25 Commissioner Fiegen.

1           COMMISSIONER FIEGEN: You were asked a lot about  
2 your price of 54.40, how you came up with that, and you  
3 talked about it being viable to your operation. If you  
4 can answer this question, I'd appreciate it.

5           Like what type of rate of return would  
6 project on an investment that you received 54.40 plus a  
7 2.5 percent increase annually over the time?

8           THE WITNESS: 9 and a half comes to my mind. We  
9 looked at a lot of different models, you know, different  
10 turbines, different capacity factors, different PPA  
11 rates. You look at different --

12           But under these terms that we're talking here,  
13 the 54.40 and the 20 year and 2 and a half and the GE  
14 1 and a half megawatt return, I recall 9 and a half  
15 percent. Which isn't outrageous.

16           COMMISSIONER FIEGEN: And that's with the  
17 production credits that are still in place?

18           THE WITNESS: Yes. So you take those away and  
19 it's not going to be financially viable investment.

20           COMMISSIONER FIEGEN: Thank you.

21           MR. SMITH: Mr. Rislov.

22           MR. RISLOV: Good afternoon. I just have one  
23 question. Why weren't the other entities within WAPA and  
24 WAPA itself considered viable?

25           THE WITNESS: Well, we spoke with the REA, and

1 they're under a whole different system. And they're in  
2 the -- they're in the process of building their own wind  
3 farm down by Crow Lake. So they weren't interested. And  
4 they claimed to not be under PURPA law acceptability as  
5 well. So it was just, you know, we spoke with them. It  
6 didn't lead anywhere. And we looked at all --

7 MR. RISLOV: Excuse me. That would be Basin,  
8 the big producer you're talking about?

9 THE WITNESS: Yeah. Yeah.

10 MR. RISLOV: WAPA itself wasn't interested  
11 either? I mean, didn't anybody ever shoot you a price  
12 rather than, let's say, NorthWestern?

13 THE WITNESS: We heard a few prices, you know,  
14 but then you've got to take into consideration  
15 transmission costs, delivery costs, you know,  
16 interconnect costs from WAPA to MISO. Whatever. You  
17 know, there's -- there's a lot of different things to  
18 take into consideration there too. I don't recall  
19 hearing a price straight from WAPA but --

20 MR. RISLOV: Excuse me for interrupting there.  
21 I guess I'm trying to get a definition of viable. Is it,  
22 you know, specifically within the WAPA system are we  
23 talking about price being the major input of whether or  
24 not something was viable?

25 THE WITNESS: Well, for this project what I

1 mean -- when I'm talking financially viable, I mean, is  
2 there going to be enough income in the project's life for  
3 it to pay for itself. If not, there's no point in  
4 building the thing.

5 MR. RISLOV: But I guess that's my question.  
6 When you talk about being viable are you talking  
7 primarily about financial? It doesn't have to do with  
8 operational characteristics, per se. We're talking about  
9 financial viability?

10 THE WITNESS: Right. Well, it's a given that  
11 operational this thing is going to be excellent. You  
12 know, it's near the Day County Wind Farm, which has been  
13 tallied as the number one most sufficient onshore wind  
14 farm in the world and we're right down the road.

15 I mean, it's a world class wind resource that's  
16 undebatable. I'm talking about, you know, getting the  
17 return on the investment for the project to see if it  
18 pans out. Because if it's not going to make a cent over  
19 20 years, what's the point for anyone to invest in it.

20 MR. RISLOV: Thank you.

21 MR. SMITH: Any other Commissioner questions?

22 I have just one quick one, a follow up to the  
23 exchange on the interconnection agreement that you had.

24 In the letter that's appended to your testimony  
25 there is a tier 4 interconnection agreement form that I

1 think is the standard form under the Commission's rules.

2 Would that be the agreement that was executed by  
3 Oak Tree and NorthWestern?

4 THE WITNESS: Where are you referring to,  
5 Mr. Smith?

6 MR. SMITH: Well, at least I have it -- I have  
7 it -- it's not filled out. It's got some blanks filled  
8 in. It's on a May 21 letter. I think it's actually  
9 Exhibit 1 to your testimony, your rebuttal testimony.  
10 There's no exhibit marking on it. But I think in your  
11 testimony it's referenced.

12 And, again, I'm just asking out of curiosity as  
13 to whether that particular standard tier 4 agreement is  
14 the one that was executed. At least I believe that  
15 appears to be the standard approval form there.

16 THE WITNESS: It seems generally, yes. To  
17 answer your question, it seems a fraction of it. I  
18 recall that the agreement that we actually signed was  
19 probably three times as thick and had some changes.

20 MR. SMITH: Okay. Thank you. So no is the  
21 answer. This one wasn't signed as is?

22 THE WITNESS: Right.

23 MR. SMITH: Okay. Thank you.

24 Mr. Uda, are you ready to proceed with redirect,  
25 or would you rather take a break for a little while?

1 MR. UDA: I'll take that as a hint that you want  
2 me to take a break right now.

3 MR. SMITH: No. I don't care. I don't care.  
4 Are you okay, Cheri?

5 (A short recess is taken)

6 MR. SMITH: The hearing is reconvened in  
7 EL11-006. Oak Tree versus NorthWestern. And we have  
8 Mr. Makens on the stand. And I thought we had concluded  
9 Commissioner questions, but I've been advised that  
10 Commissioner Fiegen may have a couple more questions she  
11 would like to ask.

12 So Commissioner Fiegen.

13 COMMISSIONER FIEGEN: That's because I was  
14 outside walking in this beautiful weather, and I was  
15 feeling like, oh, man. I'm back on the farm again.

16 I had a question about -- I kind of forgot it's  
17 a corporation instead of like the old family farm that I  
18 grew up on. So do your corporate board board members get  
19 salaries, and are the family members salaried employees  
20 of Oak Tree?

21 THE WITNESS: No.

22 COMMISSIONER FIEGEN: Thank you.

23 THE WITNESS: We formed an LLC just as a legal  
24 entity to protect ourselves and separate this business  
25 from all our farming and every other operations.

1 COMMISSIONER FIEGEN: Thank you.

2 MR. SMITH: Is that it then for Commissioner  
3 questions?

4 Okay. Mr. Uda, please proceed with your  
5 redirect.

6 REDIRECT EXAMINATION

7 BY MR. UDA:

8 Q. Good afternoon, Mr. Makens.

9 A. Good afternoon.

10 Q. So the first thing I want to ask you about is I  
11 think NorthWestern and the Commission both are sort of  
12 interested in there's this gap. I apologize. This gap  
13 in communication.

14 It appears in the correspondence I think the last  
15 letter is July or August of 2010. And then there's  
16 really nothing until the end of February. And I think  
17 you've testified, you said, well, there were informal  
18 discussions, maybe some e-mails, things like that.

19 Was anything else going on during that period of  
20 time?

21 A. Yes.

22 Q. And what was that?

23 A. We -- well, right up until that time we had already  
24 had an exchange with NorthWestern and received the same  
25 response on many occasions. So we again hit the

1 exploratory market mode, and we looked at all other  
2 options.

3 You know, we had done so before even  
4 interconnecting, going through that process with  
5 NorthWestern. But we looked again at market  
6 opportunities of where to sell the power, of, you know,  
7 have we really, you know, gouged every aspect of where we  
8 can sell the power?

9 So we looked into MISO again. You know, we met with  
10 different utilities seeing if we could sell the power,  
11 seeing if it would work. You know, also you've got to  
12 consider transmission delivery charges when you're  
13 shipping power to remote areas. And through different  
14 interconnects.

15 So with all that in mind, you know, we spent months  
16 looking again at is this the only way. And we weighed  
17 heavily, you know -- it was obvious NorthWestern wasn't  
18 willing to negotiate. We were weighing heavily should we  
19 go down the road of going to the PUC and bringing a  
20 Complaint before the PUC.

21 So we took a hard look discerning those two areas of  
22 market the power, exploration, and, you know, last resort  
23 go to the PUC.

24 Q. So in your exhibits I wanted to refer you to Exhibit  
25 No. 8, which appears to be a letter from me to Mr. LaFave

1 on January 25, 2010. Can you locate that letter?

2 A. Yes.

3 Q. Do you need a chance to review it?

4 A. Got it.

5 Q. Okay. So in this period this appears to be the  
6 first communication. I actually believe the record will  
7 reflect this is actually sent January 25 of 2011 instead  
8 of January 2010. My bad.

9 But do you recall during this period did you make  
10 any attempts informally to communicate with NorthWestern  
11 and say, hey, can we sell you our output?

12 A. Yes. Yeah.

13 Q. Do you recall when that took place?

14 A. I know that around this time there was phone  
15 conversations between Mr. Matney, Mr. Bleau LaFave, and  
16 other parties involved on the telephonic conference. I  
17 know there was -- we verbally offered to NorthWestern  
18 as well, even willing to work out an equity arrangement  
19 in the project and not trying to force them to buy  
20 100 percent and not own any. If there's any interest, if  
21 they want some equity, we're open to figuring that out.

22 In our belief, we've tried to negotiate in every  
23 possible way and bring it -- bring it to a fruitful  
24 effort.

25 Q. And were those efforts that you made prior to

1 sending this letter of January 25, 2011, which has been  
2 marked as Exhibit 8 to your prefiled rebuttal testimony,  
3 were those efforts successful?

4 A. With NorthWestern, no.

5 Q. I want to refer you back again to your questions  
6 about why you believe NorthWestern wasn't really  
7 negotiating. And I wanted to refer you back to a letter  
8 from Mr. LaFave dated July 15, 2010 which is Exhibit 5 to  
9 your prefiled rebuttal testimony and refer you to the  
10 last paragraph in this letter.

11 Are you there?

12 A. Yes.

13 Q. Okay. It's the second sentence. Could you please  
14 read that for the Commission?

15 A. The second sentence of the letter?

16 Q. Yes. The second sentence of the last paragraph of  
17 Exhibit 5.

18 A. "The filed avoided cost rate mentioned above is the  
19 allowable rate for qualifying facilities."

20 Q. Please read the next sentence.

21 A. "NorthWestern would be interested in any  
22 discussions that would add cost-effective renewable  
23 resources to our portfolio that would maintain or reduce  
24 the cost to our customers."

25 Q. Okay. What did you understand this to mean?

1 A. Well, this allowable rate was around the \$23 figure,  
2 was the only number we had ever heard from NorthWestern.  
3 So it meant you got to be at or below \$23 for  
4 NorthWestern to consider.

5 Q. Okay.

6 A. And I recall another letter where they even make  
7 that more clear.

8 Q. Let's skip to that letter, if we can. If I can  
9 locate it.

10 Please turn to Exhibit No. 9 of your prefiled  
11 rebuttal testimony. And if I'm not mistaken, this is  
12 dated February 2, 2011; is that correct? Have you  
13 located it?

14 A. Yeah.

15 Q. Okay. So this was some months after the letter in  
16 July of 2010; correct?

17 A. Yes.

18 Q. Could you please read for the Commission the first  
19 sentence through I think -- the first -- the second full  
20 sentence and the third full sentence of that letter.

21 A. Of the last paragraph again?

22 Q. Yes.

23 A. "The filed avoided cost rate mentioned above is the  
24 allowed rate for qualifying facilities. NorthWestern  
25 would be interested in any discussions that would add

1 renewable resources to our portfolio that are priced at  
2 or below the established avoided cost but also monetarily  
3 recognizing current status of energy and capacity  
4 requirements of that portfolio. Your offer does not meet  
5 these criteria, and NorthWestern Energy via this response  
6 rejects your offer."

7 Q. Okay. Now what did you understand this letter to  
8 mean?

9 A. It was the final, hey, we've told you this same  
10 thing in these words and this one -- again, they state,  
11 you know, you've got to meet the 23 -- the \$20 range per  
12 megawatt price or beat it or otherwise go away, you know.  
13 Your offer does not meet these criteria, and we reject  
14 it.

15 So it was obvious that there was no move towards  
16 negotiation from NorthWestern towards -- I mean, there's  
17 a big difference between 20 and 79, you know. And we  
18 were sitting at 54, which is closer to the middle of  
19 those two numbers.

20 And looking at 79 we knew was the middle of the  
21 ground avoided cost. So there was a big -- a big gap  
22 there that we had moved down to, but NorthWestern had  
23 never come up and in writing said they wouldn't. We  
24 could try to meet their number or go elsewhere.

25 Q. Do you know whether you or anyone else on the

1 Oak Tree team, as you've described it, met with  
2 Frank Bennett at NorthWestern in Montana?

3 A. We did. I was there and Claud Matney was there and  
4 Bill Makens was there.

5 Q. And what was discussed at that meeting?

6 A. Well, I remember hearing about the QF rate in  
7 Montana, for one thing, which was \$69.21, thereabouts.  
8 And that's the avoided cost set in the neighbor state.

9 Q. Do you recall anything else about that meeting?

10 A. That NorthWestern needed capacity. And yeah. Off  
11 the top of my head those are two of the main points.  
12 That was a long time ago. I can't --

13 Q. Well, to clarify are you saying that Mr. Bennett was  
14 saying they needed capacity in South Dakota or Montana?

15 A. In South Dakota. And -- yeah. He said they needed  
16 capacity both places. But --

17 Q. I want to ask you a question. You made reference to  
18 your efforts to try to figure out what the appropriate  
19 approach to NorthWestern was. And you mentioned another  
20 wind project. What wind project were you referring to?

21 A. To Titan 1. Titan 1 Wind Farm by Ree Heights,  
22 South Dakota.

23 Q. And I want to refer you to a July 2, 2010, letter  
24 from me to Dennis Wagner and Jeff Decker of NorthWestern  
25 Energy.

1 A. Is there an exhibit number?

2 Q. Yeah. I'm sorry. Exhibit 2. It's dated July 2,  
3 2010.

4 A. Okay.

5 Q. Would you please review paragraph 2 of that letter.

6 A. Read out loud, you mean?

7 Q. No. Just review it.

8 A. Just review it.

9 Q. I just want to ask you a question about it.

10 Earlier under questioning from I believe the  
11 Commission, perhaps Mr. Brogan as well, you made  
12 reference to having sent more than one power purchase  
13 agreement to NorthWestern. Was that correct?

14 A. What I meant was power purchase parameters. You  
15 know, the rate of -- a different rate, a different price  
16 that we were negotiating, which is this 69.2 figure I was  
17 referring to.

18 Q. So you made NorthWestern an offer at 69.21. You did  
19 not send them a power purchase agreement?

20 A. Right.

21 Q. I just wanted to clarify that. I wanted to ask you  
22 a question just briefly about the interconnection  
23 process. Up until the time you got this I don't know  
24 what you'd call it, notice of default letter from  
25 NorthWestern, had Oak Tree been current on all its bills

1 with NorthWestern?

2 A. Yes.

3 Q. In your opinion, what is the reason that you got  
4 defaulted?

5 A. Well, I think -- I don't think it was any  
6 coincidence that it happened right before this hearing.  
7 You know, we signed the interconnection with the  
8 stipulation that we'd get some kind of settlement on the  
9 PUC, and then we'd move forward if there was a project on  
10 the payment of interconnection. Because it wasn't deemed  
11 yet that the project was going to be viable. You know,  
12 that's dependent on signing a viable -- a PPA that could  
13 finance the project and the project would be built.

14 So I recall correspondence with Autumn Muller that  
15 said we wouldn't have to pay the deposit. We could pay  
16 it later after it's all sorted out. And, you know, some  
17 kind of letter of credit could be given to them in the  
18 future that we're good for the money.

19 And so to get the notice of default was a surprise.  
20 It wasn't in alignment with conversations we had. And --

21 Q. I want to ask you this question. You know,  
22 irrespective of who bargained in bad faith, who bargained  
23 in good faith, leaving all that aside, the fact is you  
24 were at an impasse with NorthWestern as far as  
25 negotiations; correct?

1 A. Yes.

2 Q. Okay. And as NorthWestern, in your opinion, was the  
3 only viable alternative, in order to develop your project  
4 you had to do something; correct?

5 A. Yes.

6 Q. Okay. And what did you choose to do?

7 A. We've looked at every possible option, and what we  
8 chose to do now is to bring it to the PUC in hopes to  
9 mediate and resolve the issue of the nonnegotiation of a  
10 proper PPA rate.

11 MR. UDA: Thank you. No more questions.

12 MR. SMITH: Thank you. Any recross from  
13 NorthWestern?

14 MR. BROGAN: No, Mr. Smith.

15 MR. SMITH: Staff?

16 MR. SOYE: No. Thank you.

17 MR. SMITH: Any final Commissioner questions?

18 I think you can step down, Mr. Makens.

19 THE WITNESS: Thank you.

20 MR. SMITH: Thank you very much.

21 Mr. Uda, you may proceed.

22 MR. UDA: At this point, Mr. Smith, we have no  
23 further witnesses, and we close our affirmative case.

24 MR. SMITH: Thank you. Mr. Brogan, are you set  
25 to proceed, or do you need a short break to get

1 organized?

2 MR. BROGAN: Mr. Smith, thank you for the offer  
3 for a break. I'm not sure that that would be enough for  
4 me to get organized. And we've all been here a long  
5 time. I'd like to make a short opening statement.

6 MR. SMITH: Please.

7 MR. BROGAN: And I will try to keep it short.

8 MR. SMITH: Okay.

9 MR. BROGAN: I'd like to step back a minute and  
10 be sure that we all have the situation that we're dealing  
11 with fully in mind.

12 In South Dakota, NorthWestern is a utility that  
13 generates approximately 97 percent of the power it  
14 uses -- or the electrical energy it uses to serve load  
15 with its base load facilities.

16 At least 58 percent of the hours of the day --  
17 or of the year, I should say -- NorthWestern is not  
18 purchasing power from any entity other than the Titan  
19 Wind Farm, which has been referenced.

20 That's important because one of the major, if  
21 not the major issue in this docket is what is  
22 NorthWestern Energy's avoided cost? NorthWestern Energy  
23 will offer testimony that shows it uses a method that is  
24 appropriate for the type of utility it is. That it is  
25 appropriate for a utility that's only intermittently

1 buying power in the market and that for most of the time  
2 the only expense it could avoid by buying from a QF or  
3 anybody else is possibly the variable cost of those base  
4 load generations.

5           NorthWestern has calculated this avoided cost on  
6 a consistent manner for a long time with one exception,  
7 one mistake that NorthWestern has now become aware of and  
8 has fixed. NorthWestern used as the basis of its avoided  
9 cost filings its average cost for all of its facilities  
10 and power purchases as opposed to its highest base load  
11 generation cost. Now it's using the highest.

12           And NorthWestern has proposed a method in this  
13 docket that accurately reflects the incremental costs  
14 that NorthWestern would incur by either generating power  
15 itself or purchasing power elsewhere but for the purchase  
16 from the proposed Oak Tree project.

17           A second issue in this docket is the issue of a  
18 legally enforceable obligation or, as we have referred to  
19 it, LEO. That issue has bearing in this docket only to  
20 the extent that NorthWestern's avoided cost would be  
21 different if calculated on some day other than the day  
22 that it calculated it.

23           Oak Tree asserts that it incurred an LEO on  
24 February 25 of 2011. If that's correct, then the avoided  
25 cost at their option would be -- could be calculated as

1 of that date. I think the evidence in this docket from  
2 NorthWestern's witnesses will show that had NorthWestern  
3 calculated its avoided cost as of that date, it would  
4 have been lower than the avoided cost calculated as of  
5 the date that it did so.

6 Running around within the LEO issue are a couple  
7 of what I would call sub issues. One of them is the  
8 whole issue of negotiations and good faith and who did  
9 what and who said what, who wrote what, and when.  
10 Certainly there is going to be considerable contradictory  
11 evidence on this matter.

12 And from NorthWestern Energy's supply side, not  
13 its transmission side, which is totally separate as  
14 required by FERC rules, from its supply side Oak Tree  
15 disappeared for nearly six months from June 30 of 2010 --  
16 excuse me. July 30 of 2010 to January 25 of 2011 when it  
17 sent the PPA.

18 A second sub issue related to the LEO is the  
19 issue of the length of term of an LEO obligation or a  
20 contract. And Mr. Uda earlier quoted FERC regulation  
21 18 CFR Section 292.304(d). I would like to quote it  
22 again to point out an important distinction in the  
23 language from NorthWestern's interpretation of that rule  
24 and Mr. Uda's.

25 It's titled Purchases As Available Or Pursuant

1 To A Legally Enforceable Obligation. "Each qualifying  
2 facility shall have the option either: (1), to provide  
3 energy as the qualifying facility determines such energy  
4 to be available for such purchases, in which case the  
5 rates for such purchases shall be based on the purchasing  
6 utility's avoided cost calculated at the time of  
7 delivery. Or, (2) to provide energy or capacity pursuant  
8 to a legally enforceable obligation for the delivery of  
9 energy or capacity over a specified term, in which case  
10 the rates for such purchases shall at the option of the  
11 qualifying facility exercised at the beginning of the  
12 specified term, be based on either, (i), the avoided cost  
13 calculated at the time of delivery or, (ii), the avoided  
14 cost calculated at the time the obligation is incurred."

15 Mr. Uda in his opening statement said this  
16 Section gives the QF rights, and it gives the QF the  
17 right to specify the term, not the utility. NorthWestern  
18 does not find any language in there that says at the term  
19 specified by the QF. It just says by the specified -- it  
20 says the specified term.

21 That term can be determined by the Commission.  
22 I'm not asserting that it can be determined by the  
23 utility. I'm asserting that it can be determined by  
24 you.

25 I could comment further and elaborate further

1 and discuss further the evidence that you will hear and  
2 the testimony that you will hear from NorthWestern  
3 Energy's witnesses. However, I believe that you've all  
4 read the prefiled testimony. You don't need me to  
5 comment on it and tell you what it says, and we'll have  
6 the opportunity to hear it discussed more fully in this  
7 hearing.

8 So with that, I would close the opening  
9 statement with a request that the Commission find that  
10 NorthWestern has correctly calculated its avoided cost  
11 and order NorthWestern to pay no more than that cost to  
12 any QF that seeks a power purchase agreement with it.

13 MR. SMITH: Thank you, Mr. Brogan. Would you  
14 call your first witness, please.

15 Or Ms. Dannen.

16 MS. DANNEN: Thank you, Mr. Smith. NorthWestern  
17 would like to call Mr. Bleau LaFave to the stand.

18 (The witness is sworn by the court reporter)

19 DIRECT EXAMINATION

20 BY MS. DANNEN:

21 Q. Good afternoon, Mr. LaFave. Could you please state  
22 your name for the record.

23 A. Sure. My name is Bleau J. LaFave.

24 Q. What is your current business address?

25 A. 3010 West 69th Street, Sioux Falls, South Dakota.

1 Q. And are you currently an employee of NorthWestern  
2 Energy?

3 A. I am.

4 Q. And for the background of the Commission and  
5 participants here, can you briefly give a little  
6 history -- a little job history about your experiences at  
7 NorthWestern?

8 A. My job history is summarized in the question on  
9 page 1 of my testimony. I started out as an area  
10 engineer for NorthWestern, project engineer. I moved  
11 through several different areas within NorthWestern to  
12 include management, administration, the director of the  
13 maintenance for South Dakota electric -- natural gas and  
14 electricity for both South Dakota and Nebraska.

15 I have held various administrative jobs, including  
16 fleet, planning, facilities, and I am currently  
17 employed -- or currently serving as a supply director for  
18 NorthWestern.

19 Q. Thank you. Do you have in front of you what's been  
20 marked as NorthWestern Exhibit No. 1?

21 A. I do.

22 Q. And is that a true and correct copy of your prefiled  
23 testimony?

24 A. It is.

25 Q. You will notice some of your prefiled testimony has

1     been stricken. Do you understand that that stricken  
2     testimony was in accordance with the Prehearing Motion  
3     Commission Order?

4     A. I do.

5     Q. Do you have any additions or corrections that you  
6     would like to make to that testimony at this time?

7     A. I do. On page 1, line 9, my current position is  
8     director of long-term resources. On page 2, line 7  
9     insert the word "overview" after the word "an." And then  
10    on page 6, line 26 change the year from, I believe,  
11    2010 -- let me find it. On line 26, change the year from  
12    2011 to 2010.

13    Q. Anything else, Mr. LaFave?

14    A. No. That would be it.

15    Q. And if we were to ask you the same questions that  
16    are asked of you in your prefiled testimony today into  
17    the record, would your answers -- subject to the  
18    corrections that you just made, would they be the same?

19    A. Yes, they would.

20           MS. DANNEN: At this time NorthWestern would  
21    like to move NorthWestern's Exhibit 1 into the record.

22           MR. SMITH: Any objection from Oak Tree?

23           MR. UDA: No objection.

24           MR. SMITH: Staff?

25           MS. SEMMLER: No.

1 MR. SMITH: NorthWestern Exhibit 1 is admitted  
2 with those corrections.

3 MS. DANNEN: Thank you.

4 Q. (BY MS. DANNEN) Mr. LaFave, did you submit  
5 responsive testimony in this matter?

6 A. Yes, I did.

7 Q. Do you have what's been marked as NorthWestern  
8 Exhibit 2 in front of you?

9 A. I do.

10 Q. Is that a true and correct copy of your responsive  
11 testimony filed in this matter?

12 A. Yes, it is.

13 Q. Again, you will notice some of your responsive  
14 testimony has been stricken. Do you understand that that  
15 testimony was stricken in accordance with the Commission  
16 Prehearing Motion order?

17 A. Yes, I do.

18 Q. Finally, do you have any additions or corrections  
19 you'd like to make to the responsive testimony?

20 A. No, I do not.

21 Q. And if we were to ask you those same questions today  
22 that were asked in the responsive testimony into the  
23 record today, would your answers be the same?

24 A. Yes, they would.

25 MS. DANNEN: At this time NorthWestern would

1 like to move for the admission of Exhibit 2, NorthWestern  
2 Exhibit 2.

3 MR. SMITH: Any objection from Oak Tree?

4 MR. UDA: No objection.

5 MR. SMITH: Staff?

6 MS. SEMMLER: No.

7 MR. SMITH: NorthWestern 2 is admitted as in  
8 accordance with the corrections you made based on the  
9 Commission's Order.

10 MS. DANNEN: Thank you, Mr. Smith.

11 Q. (BY MS. DANNEN) Finally, before turning you over  
12 for cross-examination, can you briefly give the  
13 Commission a summary of your testimony?

14 A. Sure. Breaking down -- my summary of my testimony  
15 is somewhat broken down on page 2. I first start off  
16 with discussing the policy framework, that NorthWestern  
17 much purchase QF capacity and energy at or below  
18 NorthWestern's avoided cost. Rates shall be just and  
19 reasonable with the customers being indifferent to other  
20 resources.

21 And then move into the Oak Tree communications, all  
22 of the communications between Oak Tree and myself. There  
23 are -- consisting of four letters in June and July, 2010,  
24 one letter in January, one letter in February, and one  
25 letter in March.



1 Q. Okay. I've actually seen a former baseball player  
2 named -- it looks like LaFave but he pronounced it  
3 LaFay.

4 A. There are both.

5 Q. The first I thing I want to ask you about, and this  
6 is a more general question, did NorthWestern as of April  
7 of 2011 need capacity for their summer months of 2013?

8 A. Yes.

9 Q. Okay. And as of that date did NorthWestern on I  
10 believe it was April 25 or 26 of 2011 enter into a  
11 contract with Basin Electric to serve that summer need?

12 A. Subject to check, but, yes, they did.

13 Q. Okay. And would you also agree with me subject to  
14 check that you were at least aware at that point that  
15 Oak Tree was attempting to sell the output from its  
16 facility to NorthWestern?

17 A. Yes.

18 Q. Okay. And if you don't know, that's fine. Maybe  
19 another witness can tell us. Do you know what the charge  
20 per kilowatt month was for the Basin contract to serve in  
21 those summer months of 2013?

22 A. I would not be able to recall, but Mr. Wagner should  
23 be able to answer that question.

24 Q. And if you don't know again, please say so, but  
25 would you agree with me subject to check it was \$5 per

1 kilowatt month?

2 A. Subject to check.

3 Q. And would you also agree with me subject to check  
4 the testimony in this proceeding and that came from  
5 Mr. Lauckhart is that Oak Tree was offering to sell  
6 3.9 megawatts of capacity at \$17 a kilowatt year? Again,  
7 subject to check.

8 A. I'm trying to go through my correspondence with  
9 Mr. Lauckhart in my mind, and I do not remember a value  
10 given to NorthWestern for capacity during negotiation.

11 Q. Do you have any reason to think that's not  
12 accurate?

13 A. I have no basis.

14 Q. Okay. Would you please look at Exhibit 3 to  
15 Mr. Lauckhart's testimony.

16 A. Where would Exhibit 3 to Mr. Lauckhart's testimony  
17 be?

18 Q. It's Exhibit 3 to your direct -- would you please  
19 turn to the last page of that exhibit.

20 A. Okay.

21 Q. Would you agree with me that Mr. Lauckhart's  
22 calculations used a figure of \$17 a kilowatt year for  
23 calculating capacity costs in his calculation?

24 A. Yes.

25 MR. UDA: And I'm hoping that I'm not treading

1 on confidentiality, but I do need to ask him some  
2 questions about the -- and I hope I get this right --  
3 board meeting minutes from May of 2008. And I don't know  
4 if I should just ask him the question without referring  
5 to the document in order to avoid a confidentiality  
6 issue?

7 I would take advice from colleagues at  
8 NorthWestern on this issue.

9 MS. DANNEN: Well, respectfully as illustrated  
10 this morning to the extent they're general questions, I  
11 think NorthWestern would like to keep the proceeding as  
12 public as possible, but to the extent they're specific to  
13 the minutes and the actual documents, I guess we'd prefer  
14 to keep those and have those remain confidential.

15 MR. UDA: Okay. I don't know how long this will  
16 take. And I don't know exactly what they mean by  
17 specificity. I am going to ask them questions about  
18 statements made at the meeting. So I'm concerned that  
19 I'm going to be stepping over the line.

20 MR. SMITH: Does that cross the line,  
21 Ms. Dannen?

22 MS. DANNEN: I believe so, but can I ask one  
23 question of Mr. LaFave?

24 Mr. LaFave, can you answer any questions with  
25 specificity about statements made in the board meeting

1 minutes that were submitted by NorthWestern Energy?

2 THE WITNESS: I cannot.

3 MR. UDA: Well, I don't know which witness this  
4 is appropriate for, I mean, but I assume it's -- you  
5 know, I don't know, but I was assuming Mr. LaFave was  
6 your policy witness so was familiar with policy decisions  
7 made by NorthWestern.

8 If he's not the right witness, I will save these  
9 questions for someone else.

10 MS. DANNEN: Well, Mr. LaFave is a general  
11 overview witness. Stating to some policy concerns or  
12 capacity issues have been more in depth handled by  
13 Mr. Wagner.

14 MR. UDA: Would it be appropriate to refer these  
15 questions to Mr. Wagner?

16 MS. DANNEN: I believe so, yes.

17 MR. UDA: Was Mr. Wagner present during those  
18 meetings? Do you know?

19 MS. DANNEN: You'll have to ask Mr. Wagner.

20 MR. UDA: Could I just try it this way? Could I  
21 just ask him if he knows the answer to these questions,  
22 and if he doesn't know you can refer him to Mr. Wagner?

23 MS. DANNEN: Yes. But to the extent you're  
24 going to reference certain statements in the documents,  
25 NorthWestern would ask that we keep those documents

1 confidential.

2 MR. UDA: Let me just try it this way. I'll try  
3 to be as general as I can be, and if I cross the line,  
4 please let me know.

5 MS. DANNEN: Thank you.

6 Q. (BY MR. UDA) You do know there was a board meeting  
7 in May of 2008; correct?

8 A. Correct.

9 Q. Okay. And at that meeting there was a decision by  
10 the NorthWestern board to pursue two 45 megawatt gas  
11 turbines for Aberdeen and Mitchell; is that correct?

12 MS. DANNEN: Excuse me. The specificity with  
13 which what Mr. Lauckhart is referring to is the  
14 statements in the document, NorthWestern again would  
15 prefer to keep the confidentiality of those documents and  
16 would request that they be treated as such.

17 MR. SMITH: Okay. Would you like, Mr. Uda, for  
18 us to go in-camera for this portion?

19 MR. UDA: Well, I think I need to find some  
20 witness from NorthWestern who can testify to this. So I  
21 guess we have to. I don't know if there's anybody here  
22 who hasn't signed a nondisclosure agreement.

23 MR. SMITH: I do not know because I don't know  
24 who has signed. Is there anybody in the room now -- I  
25 will just state that there's one member of our Staff in

1 the back, and he's covered. If these documents are  
2 confidential, then our people are automatically covered  
3 via our confidentiality rules because they're part of the  
4 Commission.

5 So is there anybody?

6 MS. SEMMLER: I don't think so. I think it's  
7 just the web.

8 MR. SMITH: Right. We would have to turn off  
9 the web link, and I think that's it. Because you all  
10 know who's signed out there; right? I do not.

11 MS. DANNEN: We don't recall -- subject to check  
12 and we'd need a couple of minutes to check, but I don't  
13 recall seeing one from Mr. Makens.

14 MR. UDA: Which Mr. Makens are you referring to?

15 MS. DANNEN: Either one of them.

16 MR. UDA: We thought since they were parties  
17 they didn't have to specifically sign themselves, that we  
18 were signing as their representatives.

19 MR. SMITH: Yeah. I was going to ask the same  
20 question. With respect to persons -- I don't know  
21 exactly what you've signed. Is there like a -- is there  
22 an NDA that is meant to be a party wide NDA?

23 I just don't know what you have. A  
24 nondisclosure agreement or protective order? I haven't  
25 seen it. I don't think I've seen it. So I don't know.

1           MR. UDA: Well, all I can say is that  
2 Ms. LaFrentz, who I trust implicitly, has informed me  
3 that they were party wide NDAs.

4           MS. LAFRENTZ: The NDA that we signed was  
5 provided by the PUC Staff.

6           MR. SMITH: Okay. And are all of -- is it  
7 Mr. Wattne [sic] and Mr. -- both Makenses, are they all  
8 then sufficiently affiliated with Oak Tree to be covered  
9 by that NDA, in your opinion?

10          MR. UDA: Well, I think both the Makenses  
11 definitely are. Mr. Matney is a consultant to the  
12 project. And I'm not as familiar with these  
13 confidentiality rules as I am with the Montana rules,  
14 which are very specific that only basically outside  
15 experts and attorneys can see confidential information.  
16 So I don't know how the Commission normally treats that.

17          MR. SMITH: We treat it as with respect to NDA  
18 based confidentiality with respect to the terms of the  
19 agreement. And I don't know what those say so I just  
20 need your help on that.

21          Mr. Soye.

22          MR. SOYE: Thank you, Mr. Smith.

23          Staff did provide at least one of the NDAs  
24 during this whole process. I know we didn't provide all  
25 of them. There was quite a few that went around. But

1 the ones that were provided by the PUC Staff generally do  
2 contain clauses that cover any type of experts hired by  
3 the parties or any of their employees or associates, that  
4 type of thing.

5 Of course, I do not have that in front of me  
6 right now, and that was now almost a year ago, I think,  
7 that we sent that out so I don't remember the specific  
8 clauses that were included in that.

9 MR. SMITH: Well, the other thing I recall is, I  
10 mean, with this -- I don't know because I wasn't part of  
11 your discovery. When this information was received by  
12 you -- because you recall we also issued a protective  
13 order for those things produced in response to our  
14 motion -- or our order granting in part your motion to  
15 compel, Second Motion To Compel.

16 MR. UDA: And I believe, Mr. Smith, that was the  
17 basis for the confidentiality of this document. And if  
18 the parties and the Commission will bear with us for a  
19 moment, we will try to dig it out and see what it says to  
20 make sure we understand exactly what we're committing to  
21 here.

22 MR. SMITH: I think -- I'm not sure I have that  
23 one buried down in here right with me today. I probably  
24 do.

25 MR. UDA: Do you want us to look for it?

1 MR. SMITH: Why don't you look for it. My  
2 recollection, though, is that one covered all people to  
3 whom disclosure was made as a person needing to see the  
4 document. And I think that would include Mr. Wattne.

5 MR. UDA: Mr. Matney?

6 MR. SMITH: Matney. Pardon me.

7 MR. UDA: Well, if that's -- we can look it up  
8 if you'd like. Would NorthWestern like us to look it up?

9 MS. DANNEN: No. NorthWestern -- in the  
10 interest of, you know, keeping this moving, NorthWestern  
11 will, you know, research this stuff and look at our  
12 issues, but to the extent we're satisfied that all  
13 parties here are more than likely covered by NDA or the  
14 protective order and that we ask that anyone else not  
15 covered be excused. Which probably is just the internet.

16 MR. SMITH: Mr. Matney -- I forget which person  
17 is Mr. Matney. That's who I thought. We're deeming you  
18 covered by that confidentiality agreement. Okay? Or by  
19 the protective order that we issued.

20 MR. MATNEY: I'm a professional engineer. I'm  
21 used to this.

22 MR. SMITH: Okay. So that's our understanding  
23 and so you know that is we expect you to honor that  
24 then.

25 Go ahead.

1 MR. MATNEY: Yes, sir.

2 MR. SOYE: Thank you, Mr. Smith. We were able  
3 to pull up the agreement drafted by the Commission Staff,  
4 and it does address in terms of company-wide directors,  
5 officers, employees, including in-house counsel to any  
6 party in this action to the extent they disclose  
7 designated material. So we believe that would encompass  
8 the employees, officers, and directors of Oak Tree, if  
9 that's our primary concern here.

10 MR. SMITH: Our primary concern is consultants.

11 MR. SOYE: And consultants.

12 MR. SMITH: Thank you. I think that's enough  
13 then. And we do have that protective order so I think  
14 we're fine to go ahead. The internet should go off  
15 because obviously all those people didn't sign that  
16 agreement.

17 With that, feel free to proceed when you're  
18 able, Mr. Uda.

19 MR. UDA: Thank you, Mr. Smith.

20 (The following portion of the transcript is confidential)

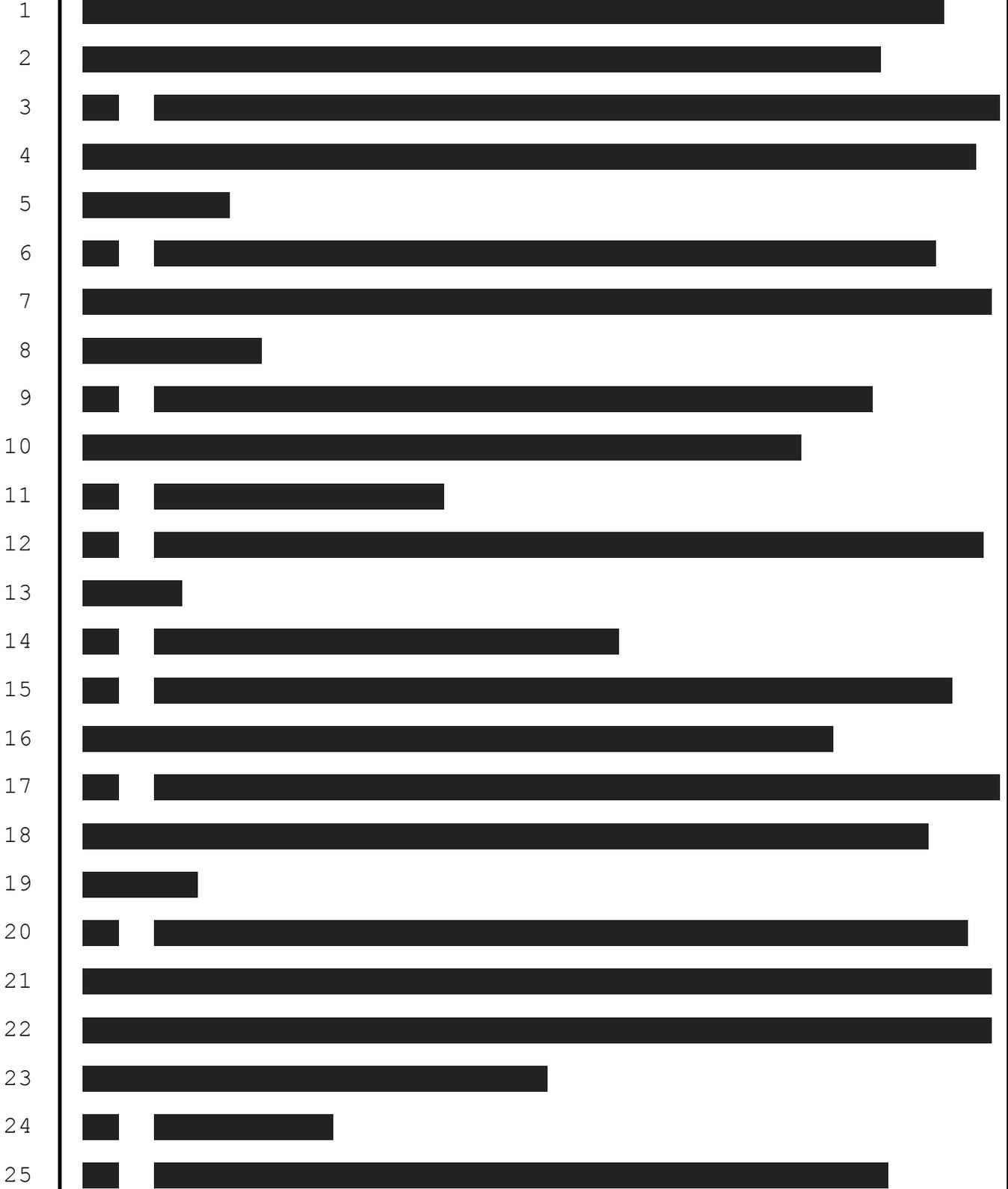
21 Q. [REDACTED]

22 [REDACTED]

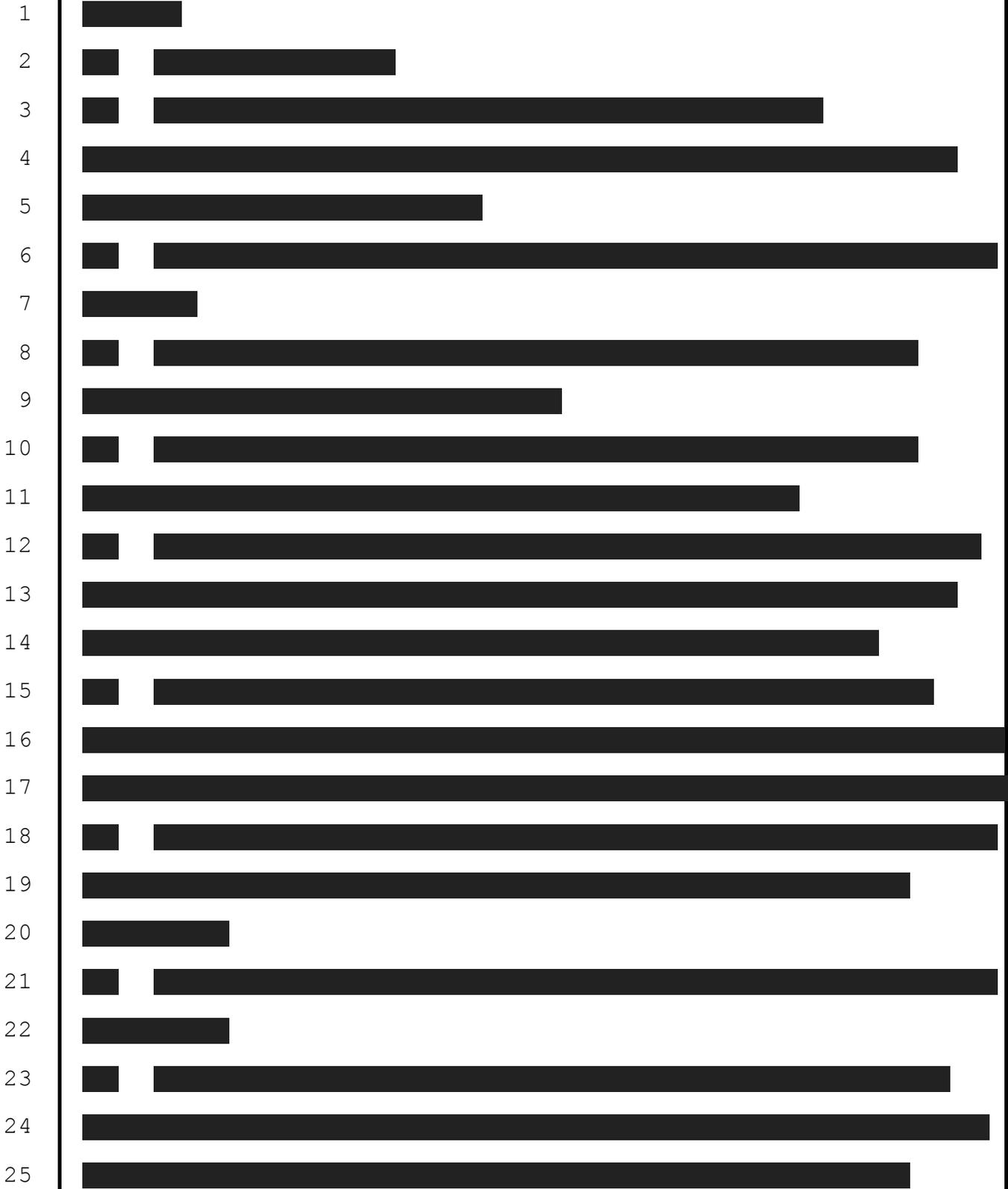
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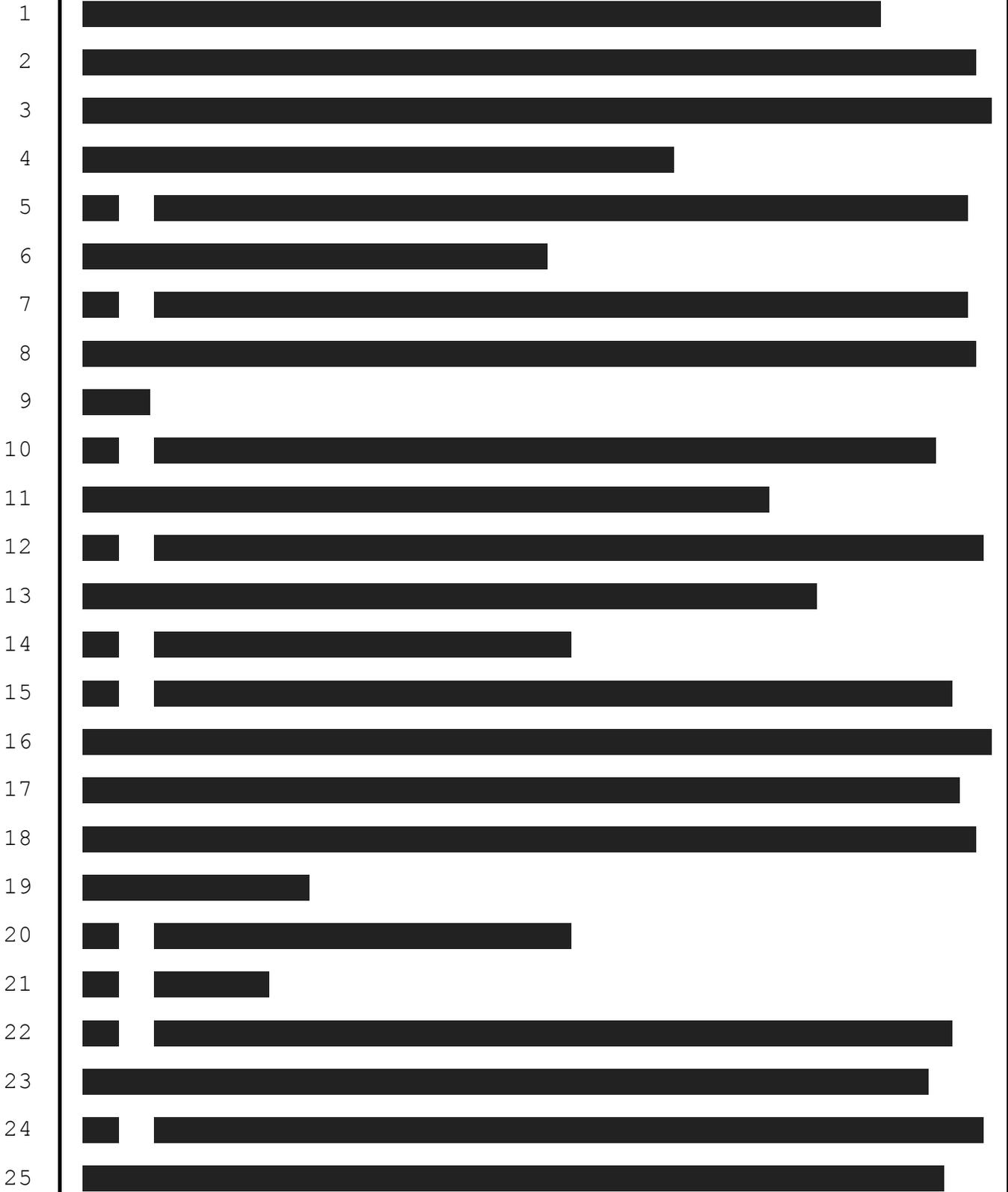
24 [REDACTED]

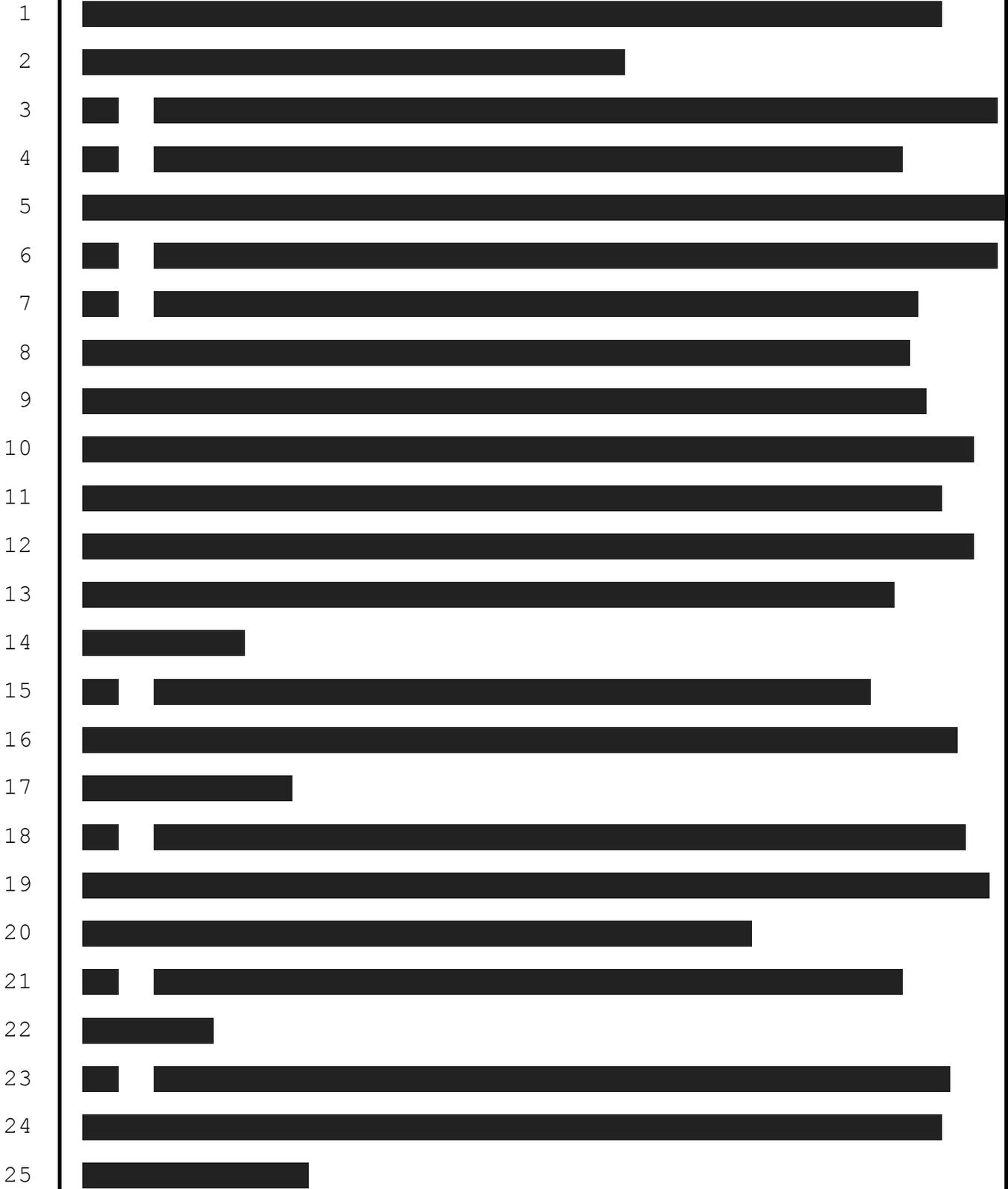
25 [REDACTED]

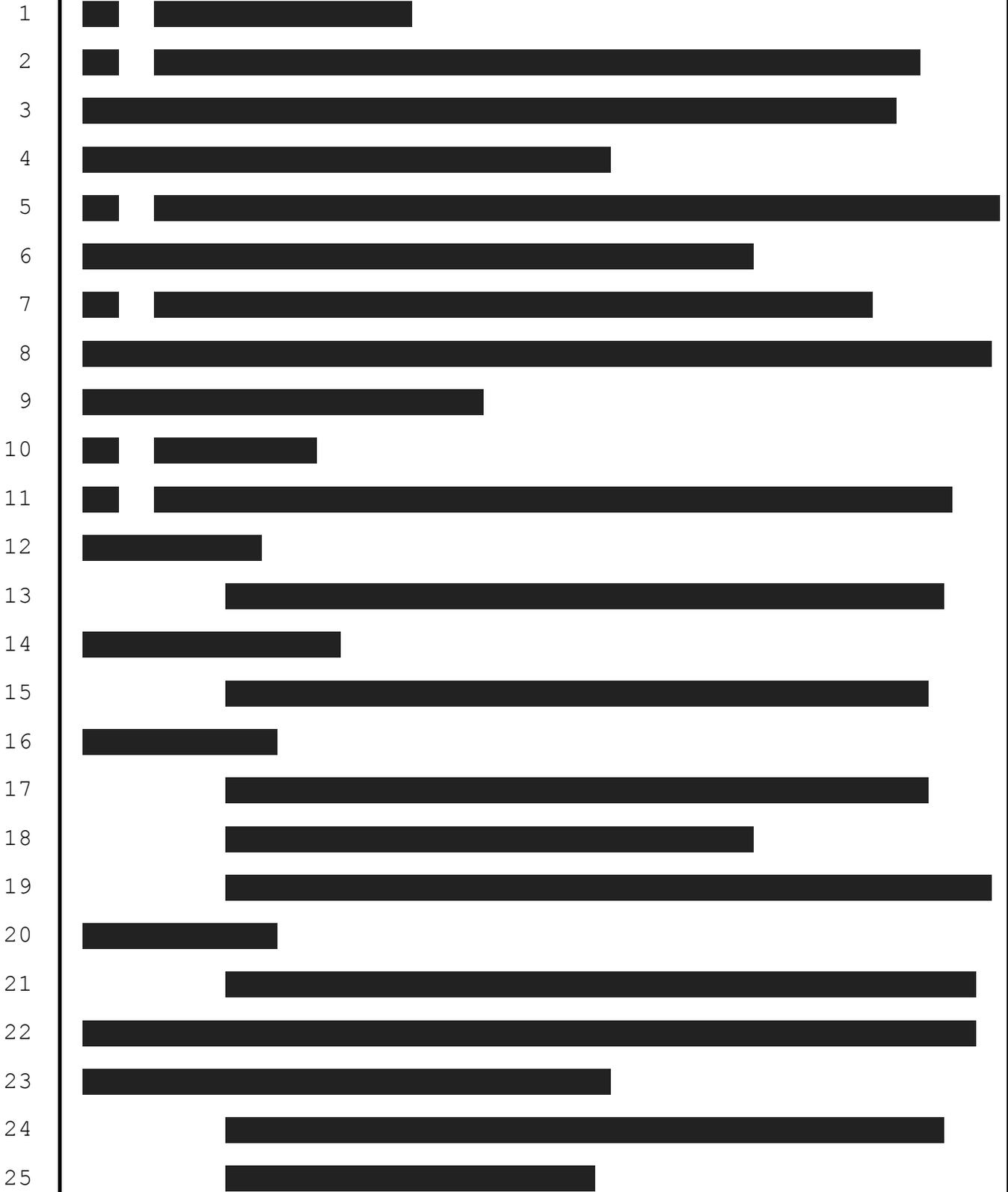


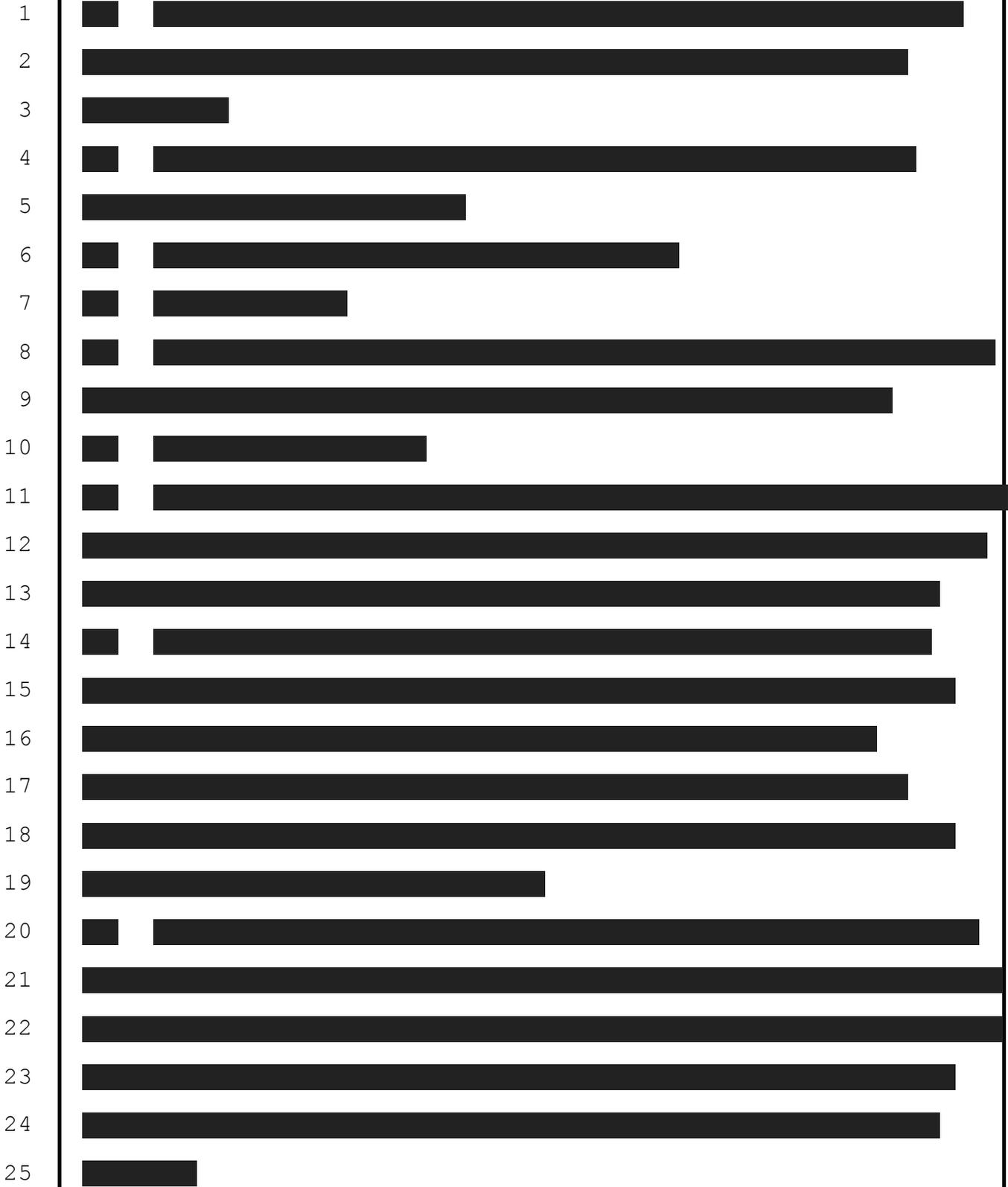












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Q. I want to talk about some basic terms, as I said. The first one I want to talk about is -- and please correct me if I'm wrong, but an operating reserve for a utility is basically used to deal with unexpected outages of generating facilities; is that correct?

A. I can answer some questions in generality, but those questions would be better formed to Mr. Wagner.

Q. Okay. We will move those to Mr. Wagner. I'm sure he's grateful.

A. I'm sure he's very excited.

Q. So at some point the map, M-A-P-P, reserve sharing agreement terminated; is that correct?

A. Again that's another question for Mr. Wagner, but I believe that's correct.

MS. DANNEN: And NorthWestern would like to object to this line of questioning. One, Mr. LaFave has sedated Mr. Wagner is more appropriate; and, two, it's

1 outside the scope of Mr. LaFave's prefiled testimony.

2 MR. UDA: That's fine.

3 MR. SMITH: Response, Mr. Uda?

4 MR. UDA: That's fine. We'll direct it to  
5 Mr. Wagner.

6 MR. SMITH: Okay. Objection is sustained.

7 Q. Well, this is simplifying things a great deal for  
8 you, Mr. LaFave.

9 Okay. I want to go -- skip to the subject of  
10 calculation of long-term avoided cost and ask you some  
11 questions about that. Because, you know, you provided  
12 testimony on that. I think we can agree on that.

13 So my understanding is that it's NorthWestern's  
14 position that it has not prepared a long-term avoided  
15 cost forecast; is that correct?

16 A. That's correct. We have prepared a long-term  
17 estimate based on our current filed avoided cost.

18 Q. So can you explain for the Commission's benefit  
19 what's the difference between those two things?

20 A. Sure. It was identified in my testimony.

21 Apologize. I was -- for NorthWestern I'll try to find it  
22 in my testimony, but for NorthWestern, NorthWestern's  
23 current profile has a mix of generation plants which  
24 serves 93 percent of the electricity to NorthWestern and  
25 then it goes to the market for 7 percent.

1 Utilizing that same portfolio, NorthWestern  
2 calculated and for -- and used information from 2008,  
3 2009, 2010, and 2011, and calculated what its incremental  
4 costs would have been had it either offset purchases or  
5 backed down its generation assets. And those are the  
6 true avoided costs NorthWestern can identify within its  
7 portfolio.

8 Q. Can I interject quick?

9 A. Certainly.

10 Q. Thanks. So if I understood what you just said, you  
11 took your incremental -- you took your incremental  
12 forecast from 2008, 2009, 2010, and 2011; is that  
13 correct?

14 A. No. We took the actuals.

15 Q. Okay. You took the actuals. So avoided cost is  
16 supposed to be a prospective determination; isn't that  
17 correct?

18 A. You'll have to define that for me, please.

19 Q. Okay. Prospective meaning, for example, the FERC  
20 regulations refer to it as the incremental price in the  
21 next unit of generation. So you would agree with me that  
22 that is supposed to be a forward looking analysis, not a  
23 backward looking analysis.

24 Would you agree with that?

25 A. I would agree that the filed avoided cost by

1 NorthWestern is a forward looking, but it is also going  
2 to be able to be checked by historical --

3 Q. So it's a reality check for you guys. You look at  
4 that, and you go, okay, this makes sense?

5 A. It identifies NorthWestern's opportunity in a  
6 reality, and then we have to forecast that forward.

7 Q. Does that presume that the future is going to  
8 reflect the past?

9 A. That tests our future projections against what has  
10 happened, which is an indicator but one of many  
11 indicators.

12 Q. Right. And so, for example, with -- and I don't  
13 know if you've read it or not or if you're familiar with  
14 it or not, but the Black & Veatch Electric Price Forecast  
15 they do much the same thing; correct?

16 I mean they look at trends, and they try to predict  
17 the future; is that right?

18 A. I have not read it, and I have never seen anything  
19 from Black & Veatch that was subject to NorthWestern  
20 Energy.

21 Q. Okay. I'm not sure what you mean by subject --

22 A. They evaluated NorthWestern Energy's resources and  
23 its avoided cost.

24 Q. Okay. Would you agree, at least based at least on  
25 what you've heard here today, that Black & Veatch,

1 Mr. Lauckhart using that forecast, prepared an avoided  
2 cost forecast until 2031?

3 A. They prepared an avoided cost forecast.

4 Q. Right. I'm not saying it was the avoided cost  
5 forecast. We're certainly not going to agree on that.  
6 I'm just saying --

7 A. Prepared one.

8 Q. Right. And so when they prepared this, and you've  
9 heard testimony about this, in February of 2010 they  
10 didn't anticipate substantial changes in the gas market.  
11 You've heard that testimony here today; correct?

12 A. You said February 2010. Is that --

13 Q. That's correct. That was the forecast -- excuse  
14 me. I'm wrong. My expert's punching me. Sorry.  
15 February 2011. I get my years mixed up. I think it's  
16 encroaching age.

17 Anyway so February 2011 they prepare their  
18 Electric Price Forecast that Mr. Lauckhart used in this  
19 proceeding, and you've heard at least implicit criticism  
20 that it didn't anticipate a substantial decrease in  
21 natural gas prices.

22 Have you heard that testimony?

23 A. I have heard that testimony, but I believe that it  
24 was that the forecast for the natural gas was prepared  
25 sometime earlier in 2010 and was not changed for

1 February 2011.

2 Q. Right. And so you would agree with me that anybody  
3 who makes a predictive forecast will look at the past to  
4 determine what might happen in the future. Would you  
5 agree with me?

6 A. Not to determine, but use it as a indicator to check  
7 what their values are.

8 Q. Sure. And you would agree with me that's a prudent  
9 way to go about doing things?

10 A. I would agree.

11 Q. And so if you were wrong in your avoided cost  
12 forecast based on your checks, it would be something that  
13 could just happen because of unanticipated circumstances.

14 A. I don't think you'd evaluate it as wrong. You would  
15 evaluate it based on the change based on historical  
16 information.

17 Q. Correct. I think I agree with you on that. That's  
18 great. Okay. So let's talk a little bit about this  
19 avoided cost methodology.

20 The first thing I need to know is you've really done  
21 a nice job in your testimony on these different methods  
22 that you've used for avoided cost, and so I kind of  
23 wanted to ask you some questions about those. And if you  
24 don't know, I mean that's fine. I just -- I need to ask.

25 So what I wanted to ask you about is have you

1 specifically ever prepared a long-term avoided cost  
2 forecast?

3 A. Just the estimate within this case.

4 Q. Okay. And that was your estimate, or was it  
5 Mr. Lewis doing the work and then you --

6 A. It was a combination. Mr. Green, as he will testify  
7 later, did the actual data scrubbing for NorthWestern to  
8 evaluate the different pieces within NorthWestern's  
9 avoided cost, and where the spot market prices would need  
10 to be utilized, that was brought in from Mr. Lewis.

11 Q. Okay. So could you please turn to page 9, line 18  
12 of your direct and rebuttal testimony?

13 A. Okay.

14 Q. You list several methods here; correct? I think  
15 there's five of them. Maybe I'm counting wrong.

16 A. I've five listed.

17 Q. Yeah. Okay. So the first one, method one, is this  
18 proxy method or surrogate avoided resource approach. Do  
19 you see that?

20 A. Yes, I do.

21 Q. Would you agree with me subject to check that the  
22 surrogate method is the method that the Montana Public  
23 Service Commission has used in recent NorthWestern Energy  
24 QF 1 rate cases?

25 A. Subject to check.

1 Q. And just for your reference in case you need to  
2 look, it's most recently October 2011 and D2010.7.77.

3 Okay. Are you familiar with the rate that that  
4 particular docket produced?

5 A. I am not.

6 Q. Okay. Now the second method you have is the  
7 component peaker method. And I don't really have any  
8 questions about that except maybe out of curiosity, and  
9 I'll hold off.

10 So method number 3 is the differential revenue  
11 requirement method. Would you agree with me subject to  
12 check that this is the method you used in the Spion Kop  
13 proceeding before the Montana Commission in Docket  
14 D2011.5.41?

15 A. No.

16 Q. Okay. What makes it different?

17 A. The Spion Kop hearing and in my own recollection is  
18 that was not a avoided -- that was not a QF filing based  
19 on avoided cost.

20 Q. Right. But you calculated the market price that you  
21 essentially were avoiding by building Spion Kop; correct?

22 You produced a number of roughly \$75 a megawatt hour  
23 as a demonstration to the Commission that Spion Kop was  
24 substantially less than that price. Or do you --

25 A. No. I don't remember that.

1 Q. Oh, okay. Would you agree with me that NorthWestern  
2 used the GenTrader model and ran the model, which was an  
3 hourly chronological unit commitment and dispatch model?

4 A. I believe we do have the GenTrader model, but I  
5 cannot confirm any specifics around it.

6 Q. Okay. Do you know anything about the GenTrader  
7 model?

8 A. I do not other than it's very costly.

9 Q. I'm sure that's true. Is Mr. Wagner somebody who  
10 could answer questions about this?

11 A. No.

12 Q. Okay. Is there anyone here from NorthWestern who  
13 can answer questions about this?

14 A. About the filings in Montana?

15 Q. Yeah.

16 A. No.

17 Q. Okay. Okay. Okay. Then I want to ask you about --  
18 hold on a second.

19 Okay. The first question I want to ask you is do  
20 you know whether in the Spion Kop proceeding NorthWestern  
21 testified that it believed carbon legislation in some  
22 form is going to exist in the future and that included a  
23 carbon penalty in the market forecast?

24 MS. DANNEN: NorthWestern would like to object  
25 to that question as outside the scope of Mr. LaFave's

1 prefiled testimony.

2 MR. UDA: Well, I'm trying to get to the  
3 question of this methodology and the result that it  
4 produced. And at least based on what I've heard here, he  
5 may be the only one that can answer the question.

6 MR. SMITH: Can you read the question back.

7 (Reporter reads back the last question)

8 MR. SMITH: I'm going to let you definitely  
9 answer that. I'm going to overrule because he's just  
10 asking if you know, if you have knowledge.

11 A. I have general knowledge, but I do not have a  
12 knowledge specifically of what we asked for in that  
13 filing. That was not part of my part of that testimony.

14 Q. Is there anybody here in this proceeding who would  
15 know the answer to that question?

16 A. No.

17 Q. Okay. Were you present during the hearing on  
18 Spion Kop?

19 A. Yes, I was.

20 Q. Okay. So you didn't hear that testimony?

21 A. I had my own testimony to prepare for.

22 Q. Okay.

23 A. They were preparing on their own.

24 Q. Okay. All right. So I want to ask you another  
25 question. And if you don't remember, that's fine.

1           Did you also testify that NorthWestern provided  
2 testimony in the Spion Kop proceeding that the real  
3 energy credit price was equal to the 20-year levelized  
4 price of the REC's in NorthWestern 2009 Electric Resource  
5 Procurement Plan in Montana?

6           MS. DANNEN: Again, NorthWestern would like to  
7 object to this line of questioning. The Spion Kop  
8 proceeding is irrelevant, and it's out the scope of  
9 Mr. LaFave's current prefiled testimony.

10          MR. UDA: I need to make this point very  
11 clearly. We had Prehearing Motion motions where they  
12 tried to strike Mr. Guldseth's testimony, and it was  
13 admitted because of two reasons: One, we're trying to  
14 figure out the appropriate methodology for avoided cost  
15 in this proceeding. That proceeding produced  
16 something -- if it wasn't an avoided cost, it looks a lot  
17 like it.

18          Second of all, it goes to the credibility of  
19 NorthWestern's witnesses as to whether or not they are  
20 credible on this subject matter, they really understand  
21 the subject matter. And, second of all, if they're  
22 telling you one thing and telling the Montana Commission  
23 something else.

24          MR. SMITH: I'm going to overrule -- overrule  
25 the objection. Could I ask Mr. Uda to move that mic.

1 down a little more? Because when you're asking the  
2 questions I'm having trouble hearing it. Maybe more a  
3 little that way. You're pointing your head down this  
4 way, and you're not in the mic.

5 MR. UDA: Okay. So can I ask that question?

6 MR. SMITH: Yes. I overruled the objection.

7 MR. UDA: And are we going to have an objection  
8 every time I ask a question about Spion Kop from this  
9 point forward?

10 MS. DANNEN: We would probably like a  
11 longstanding objection and renew it.

12 MR. SMITH: Why don't you just make a  
13 longstanding objection, and we'll proceed.

14 MS. DANNEN: For the interest of judicial  
15 economy, why don't we just move for the admission of the  
16 Spion Kop Order and let the Order speak for itself.

17 MR. UDA: Well, I ordinarily would be more than  
18 happy to do that, but I'd really like to ask some  
19 questions about what they know about it.

20 MR. SMITH: Is the Spion Kop Order not at this  
21 point an exhibit?

22 MR. UDA: It has been already entered as an  
23 exhibit. So has Mr. Todd Guldseth's testimony.

24 MR. SMITH: That's what I thought. I think it's  
25 already an exhibit in the case.

1 Proceed.

2 MR. UDA: Okay.

3 Q. Do you have a copy of Mr. Lauckhart's rebuttal  
4 testimony? It's Exhibit 2.

5 A. Yes.

6 Q. I'm asking this question to refresh your  
7 recollection. But at the top of that page of TAG-8,  
8 Exhibit 2 -- oh, Attachment 2. I apologize.  
9 Attachment 2, TAG-8. There is a table that's labeled --

10 MS. LAFRENTZ: No. That's the right exhibit.

11 MR. UDA: Under Attachment 2. What kind of  
12 operation are you -- anyway.

13 Q. Okay. So tab 2 to Exhibit 2 is Mr. Guldseth's  
14 testimony in Spion Kop, which is TAG-8.

15 A. Okay.

16 Q. And I would like you to review that table and that  
17 page to see if it refreshes your recollection.

18 (Witness examines document)

19 A. I have never seen it before. But okay.

20 Q. Okay. So is it the case that the total comparative  
21 cost for the Spion Kop project ranged from 91.37 to  
22 68.77?

23 MS. DANNEN: Again, NorthWestern would like to  
24 renew its longstanding objection and object to this line  
25 of questioning for this witness.

1 MR. SMITH: I think this one I'm going to  
2 sustain on that you're pointing to an exhibit that he's  
3 testified he didn't have any knowledge of and let's --  
4 why don't we let it speak for itself.

5 MR. UDA: Okay. That's fine. We'll do that.

6 Q. Okay. I want to talk about -- I think it's method 5  
7 is the bidding approach. And I don't really have any  
8 questions for that, but that's another approach to  
9 developing avoided cost.

10 So how did you come up with these five different  
11 methods for calculating avoided cost?

12 A. These five different methods were identified in an  
13 EIA report as options to look at for avoided cost. But  
14 then each utility and each state would evaluate these  
15 possible methods and, more specifically, for NorthWestern  
16 would choose the methods that most match its resources.

17 Q. Okay. So why didn't NorthWestern choose one of  
18 these methods?

19 A. NorthWestern used a combination of the component  
20 peaker method and the market estimates.

21 Q. Okay. So you did prepare an avoided cost forecast?

22 A. We did an avoided cost forecast for five years.

23 Q. Okay. So you didn't do it beyond five years?

24 A. We did it for the current year plus five as required  
25 under PURPA.

1 Q. Okay. I need to ask you this question because this  
2 is I think the third time you've said this. Where do you  
3 get the idea that PURPA only requires an avoided cost for  
4 five years?

5 A. Under the statute. And I don't have it in front of  
6 me, but under the statute I believe it's in the  
7 obligations of the utility -- it requires utilities to  
8 file an avoided cost for the current year plus five.

9 Q. Okay. You're talking about the South Dakota  
10 Statute?

11 A. No. I'm talking about the federal statute.

12 Q. Are you referring to 18 CFR 292.302(b)?

13 A. Without seeing it and subject to check, I would say  
14 possibly.

15 Q. That says several things, though, doesn't it? I can  
16 put it in front of you if you like.

17 A. Please.

18 Q. Would you like me to do that? I think we're going  
19 to have to circle back to that because I don't have that  
20 front of me right now. But let me just ask you if  
21 there's certain things you're aware of about it, and if  
22 you don't know, that's fine.

23 Okay. So at 18 CFR 292.302(b) the first part of it  
24 says that utilities have to prepare an energy forecast  
25 over a five-year period and state the price and cents per

1 kilowatt hour; is that correct?

2 A. Subject to check.

3 Q. Okay. And Subpart 2 of that same regulation says  
4 that a utility has to forecast additional capacity over a  
5 10-year period and make that information available in  
6 cost per kilowatt year; correct?

7 A. Subject to check.

8 Q. Okay. So it's not -- this is basically -- if you'd  
9 agree with me, this is basically an obligation that the  
10 utility has to prepare information by which avoided costs  
11 might be determined; is that correct?

12 A. I would agree.

13 Q. Okay. So it's not that PURPA or anybody else is  
14 requiring you only to prepare a five-year forecast; is  
15 that correct?

16 A. I believe just by looking at that the energy  
17 component would be required to be forecasted for five  
18 years, and then the capacity component the information  
19 would be needed to be provided for a 10-year period.

20 Q. Okay. So and obviously we have this situation where  
21 we're asking for a 20-year power purchase agreement. And  
22 I need to ask you some questions about that.

23 When a utility makes an investment decision to build  
24 its own generation does it typically finance that  
25 generation on a five-year period?

1 A. I believe the -- it would depend on the resource,  
2 and how we pulled it in would solely depend on how it was  
3 financed.

4 Q. Okay. But let's say, for example, Spion Kop, do you  
5 know how long the recovery period there is?

6 A. I believe it was set for 25 years.

7 Q. Okay. And with respect to Big Stone, do you know  
8 how long that's going to be placed in rate base?

9 A. I do not.

10 Q. Okay. Would you agree with me, subject to check,  
11 it's 30 years? I'm sorry. I got the wrong project. I  
12 apologize. It's actually Aberdeen.

13 Would you agree with me, subject to check, that  
14 Aberdeen is being depreciated over 30 years?

15 A. I guess I do not know the answer to that question.

16 Q. Okay. When utilities make investment decisions they  
17 try to figure out whether these are going to be  
18 essentially good deals for them and for the rate payers.  
19 Would you agree with me?

20 A. When they evaluate long-term investments they would  
21 take into account rate payer and company, yes.

22 Q. Okay. So when they make an investment they have to  
23 go based on the information that they have at the time;  
24 is that correct?

25 A. That is correct.

1 Q. And so if it turns out that that judgment is  
2 incorrect, does that mean that at that point the utility  
3 automatically starts rebating customers if they misjudged  
4 market?

5 A. I would say that it would depend on the ruling.

6 Q. Okay. But, for example, somebody would have to  
7 bring that to the attention of the regulators unless you  
8 were going to voluntarily do it yourself.

9 A. Again, I would say that would depend on the final  
10 ruling.

11 Q. Okay. Now I want to return because I missed  
12 something in the methods. I wanted to turn to method 4 I  
13 believe it is. Market estimates. Okay?

14 And this is basically an effort to calculate avoided  
15 costs by essentially estimating what market will be.  
16 That's -- I think it's on page 9 in your testimony. It  
17 might be on page 10.

18 A. Yes. That's -- I believe that's what the method  
19 said.

20 Q. Okay. And would you agree with me that this is the  
21 method that Mr. Lauckhart used in conjunction with the  
22 Black & Veatch Long-term Electric Price Forecast to  
23 produce a brown bag avoided cost in this proceeding?

24 A. From my understanding, I would say that this closely  
25 resembles.

1 Q. Okay. Now my understanding of NorthWestern's  
2 position in this proceeding has been that it -- that  
3 long-term avoided cost forecasts are simply too  
4 unreliable. Is that true?

5 A. NorthWestern's position is long-term forecasts have  
6 characteristics they are unreliable, yes.

7 Q. Okay. And so as I returned to this issue of utility  
8 investment and generation, when a utility makes  
9 investment and generation it runs the risk of being wrong  
10 too; correct?

11 A. Correct.

12 Q. Okay. And in, for example, the Spion Kop proceeding  
13 they decided to make a 25-year commitment based on what  
14 they knew at the time; is that correct?

15 A. Based on the specific circumstances, specifically in  
16 Montana with its resource portfolio, that is correct.

17 Q. Okay. So in general, generally speaking, at least  
18 the examples that I have gotten from you and if you have  
19 some counterexamples, you can let me know. But when a  
20 utility makes a decision to invest in a project that it  
21 will put in rate base it generally makes a long-term  
22 investment decision; isn't that right?

23 A. That's correct.

24 Q. Okay. Why specifically did you ask Mr. Lewis for  
25 a -- I don't know if he actually did it or you did it or

1 he did it, but one of you guys prepared a 20-year  
2 Electric Price Forecast. I'm a little confused about  
3 that. Maybe you can clarify that again.

4 A. NorthWestern does not have in-house a group that  
5 would do a long-term market forecast for NorthWestern  
6 South Dakota.

7 Q. Okay.

8 A. In the proper territory NorthWestern contracted  
9 Mr. Steve Lewis to provide that information.

10 Q. Okay. And, again, you can correct me if I'm wrong,  
11 but hasn't Mr. Stauffer in Montana been doing avoided  
12 cost calculations for a number of years?

13 A. That is specifically for the Montana market, which  
14 is considerably different than the South Dakota market.

15 Q. Is it your judgment that Mr. Stauffer could not have  
16 prepared those same calculations in this proceeding?

17 A. We asked the -- because we are -- we have separate  
18 planning groups, we asked that planning group if they  
19 could provide a market forecast, and they were not  
20 comfortable doing so because they were not familiar with  
21 the South Dakota market.

22 Q. And Mr. Lewis has been providing electric and  
23 natural gas price information to the Montana utility for  
24 several years now. Would you agree with that?

25 A. That is my understanding.

1 Q. Okay. So I -- again, I get back to this issue of  
2 why Mr. Lewis as opposed to Mr. Stauffer if both of them  
3 had been primarily working in Montana -- it's my  
4 understanding this is the first time Mr. Lewis has done  
5 this in South Dakota.

6 A. Mr. Lewis had helped NorthWestern through its 2007  
7 RFP and its 2009 RFI in search for renewal resources and  
8 had experience with the markets within South Dakota  
9 through those two processes.

10 Q. Okay. So you decided to have Mr. Lewis do this  
11 because he had had involvement with renewables?

12 A. He had involvement with NorthWestern providing  
13 resources in this area, yes.

14 Q. Okay. Are you aware that there are several entities  
15 that have price forecasts readily available, Ventyx, Wood  
16 Mackenzie, Black & Veatch, IHS Cambridge Energy Resource  
17 Associates, and others?

18 A. Specifically for what?

19 Q. I believe -- I don't know the answer to that, but I  
20 know, for example, Black & Veatch has one that's specific  
21 to this region.

22 A. Speaking to our supply team, there is no forecast  
23 for spot market prices on WAPA.

24 Q. Okay. And are you aware that at least Mr. Lauckhart  
25 testified that he had done a forecast a spot market

1 prices that was specific to the WAPA region?

2 A. My understanding, it was specific from a -- from a  
3 modeling transport, but had it been compared to the spot  
4 market -- I am not aware that it had been compared to any  
5 spot market prices, specifically to the sales  
6 transactions on WAPA.

7 Q. Okay. I'm not sure I exactly understand your  
8 answer. Are you saying that you're not sure whether they  
9 use spot market prices to prepare their forecast?

10 A. I'm saying you can get -- you can probably get a  
11 spot market forecast or a forecast from various groups,  
12 but you have to be able to try to validate that, that  
13 that is applicable in this particular situation.

14 Q. Okay. So are you aware -- you were here this  
15 morning. Are you aware of the methodology that goes into  
16 the Black & Veatch market price forecast?

17 A. I heard the methodology that was testified to this  
18 morning. I'm not specifically aware where the  
19 information came from, but I'm also aware of the forecast  
20 that was given and how it compares to what has transpired  
21 over the last several months and they're not compatible.

22 Q. Okay. So your point is is that because again the  
23 Black & Veatch forecast from February -- November 2010  
24 was wrong, that that means that it's unreliable?

25 A. I am saying that that is an indicator that there may

1 be concern with that forecast, yes.

2 Q. And so are you aware of any forecasts that are  
3 100 percent accurate all the time?

4 A. Most forecasts are not and that is why we put in the  
5 cautionary note that forecasts can be very unreliable,  
6 especially the farther you go out. But you at least hope  
7 that the first years it would be close.

8 Q. Okay. So is it your understanding that the  
9 preferred method in the industry is to use a  
10 fundamentals-based forecast that you fully understand all  
11 the variables that go into the creation of energy prices?

12 A. I do not. That's why we wanted Mr. Lewis.

13 Q. So you're not aware of that?

14 A. I do not fully understand it.

15 Q. Okay. Do you know what lending institutions use to  
16 finance power projects?

17 A. As to what?

18 Q. As to using these electric price forecasts from  
19 these companies.

20 A. I do not.

21 Q. Okay. Are you familiar with Ventyx?

22 A. I am not.

23 Q. Wood Mackenzie?

24 A. No.

25 Q. Until today, Black & Veatch?

1 A. Yes. I was aware of Black & Veatch prior to today.

2 Q. Okay. And IHS Cambridge Energy Research Associates?

3 A. I am not.

4 Q. Okay. And I want to understand a little bit about  
5 the negotiation process that took place here because it's  
6 both -- you and Mr. Makens have testified about it.

7 One of the questions I have to you is it's true,  
8 isn't it, that you guys couldn't agree for whatever  
9 reason. Not saying anybody acted in bad faith. Not  
10 saying there's a good guy or a bad guy, but the truth is  
11 it wasn't going to happen through negotiations.

12 A. NorthWestern could not -- from my perspective  
13 NorthWestern could not enter into -- prudently enter into  
14 an agreement that's above its avoided cost associated  
15 with a QF.

16 Q. Fair enough. But let's just suppose the following  
17 had happened. Let's suppose the following had happened.  
18 You guys do have a meeting and you say, well, here's our  
19 tariffed rate. And I can't remember. Maybe you know.  
20 \$23, somewhere in that range.

21 You say, okay, well, here's our tariffed avoided  
22 cost. And we say, well, we're up here at 70 and if you  
23 guys had gotten in a room and talked about that, was it  
24 possible that you could have reached an agreement?

25 A. Without -- without the agreement reflecting a at or

1 below avoided cost, my understanding through the QF and  
2 the requirements, I would not prudently be able to enter  
3 into an agreement, no.

4 Q. Okay. So would you agree with me subject to check  
5 that your current tariffed rate is applicable only to  
6 projects 100 kilowatts or less?

7 A. The current tariff filed rate is a 100 kilowatts or  
8 less.

9 Q. Okay. So it's not applicable to projects above  
10 100 kilowatts; is that right?

11 A. It gives an indicator based on the amount for the  
12 first year of those contracts and whether or not they're  
13 close.

14 Q. Okay. So if it was the case that you weren't  
15 necessarily bound by the tariff, you could have  
16 negotiated with them; right? I mean, you could have  
17 tried to get closer.

18 A. But I am bound by the tariff.

19 Q. Okay. Well, why are you bound with the tariff when  
20 you're dealing with a project above 100 kilowatts in  
21 design?

22 A. Because at that time that was our filed avoided  
23 cost. It was specified for under but that was our filed  
24 avoided cost and that's what I had to use for my  
25 benchmark.

1 Q. Okay. So it was a benchmark, but you and I can both  
2 agree that your short-term avoided cost would not  
3 necessarily match your long-term avoid cost; correct?

4 A. That's correct. But the first year of the offered  
5 price was \$54 as compared to \$20.

6 Q. But isn't that why you meet to find out what the  
7 longer term expectations of the other party might be?

8 A. And if they would have asked for a meeting, I would  
9 have met with them.

10 Q. Okay. So why do you think they didn't ask you for a  
11 meeting?

12 A. I do not know.

13 Q. Okay. Do you think they ever expressly said, hey,  
14 let's have a meeting?

15 A. Not to me.

16 Q. Okay. And you're not familiar with correspondence  
17 from me to you that said let's have a meeting?

18 A. I believe the correspondence from you to me said if  
19 I had any questions or corrections, and I responded in  
20 answering the questions that you provided to me. So I  
21 had no questions on those questions that you sent me.

22 Q. Okay. So when I said to you, for example, if you  
23 have any questions or concerns, please contact me, you  
24 didn't have any questions or concerns. My understanding  
25 is because at that point you had your position and your

1 position was you couldn't move off your short-term  
2 avoided cost tariff.

3 A. I'm sorry. Can you repeat that? I just want to  
4 make sure.

5 Q. Sure. So, for example, this is my letter from  
6 July 22, 2010. It's Exhibit 6 to Mr. Makens. Prefiled  
7 rebuttal testimony.

8 A. Can you tell me what exhibit?

9 Q. Yeah. It's --

10 A. Exhibit 1, Tab 6?

11 Q. Exhibit 3, Tab 6. It's Mr. Makens' prefiled  
12 rebuttal testimony.

13 MR. UDA: And while he's looking for that, I  
14 don't know traditionally how long you guys go. I know we  
15 had one really long hearing, and I don't want to try your  
16 patience. I am not going to be done probably in the next  
17 15 or 20 minutes.

18 MR. SMITH: Well, my thought is, again, we're  
19 scheduled just for two days. Pardon my voice here. It's  
20 really getting horse. But the -- if we're going to make  
21 that, it's occurring to me given how lengthy this  
22 examination of Mr. LaFave is that we probably should go  
23 late, I think.

24 However, that said, if you're going to be going  
25 on for quite a while yet with Mr. LaFave, we need a

1 break. I think we all do because I'm losing my  
2 concentration, I've got to admit.

3 MR. UDA: And I appreciate that. Let me just  
4 tell you what my expectation is so everybody knows. I  
5 think maybe I have a half an hour left with Mr. LaFave,  
6 unless he decides to help out Mr. Wagner by giving him a  
7 bunch more questions.

8 I expect my examination of Mr. Wagner will  
9 probably take an hour, maybe two, now that a bunch of  
10 questions have been deferred to him. But I don't have  
11 much, except for Mr. Lewis, which I probably have an hour  
12 or so. And then I really have very little for Mr. Green  
13 and Ms. Bonrud and very little for Mr. Rounds.

14 So it's my expectation adding all that time up  
15 and, of course, you have to account for Commissioner  
16 questions and redirect and so on, but my expectation is  
17 that my cross-examination will probably take about five  
18 hours. So I just wanted to sort of put that out there  
19 so people have an understanding of what we were looking  
20 at.

21 MR. SMITH: Does that include the remainder of  
22 Mr. LaFave or tomorrow?

23 MR. UDA: That would probably include  
24 Mr. LaFave.

25 MR. SMITH: Well, my own belief is we should

1 continue and finish Mr. LaFave today until you're  
2 done-done off the stand. And then -- and however late  
3 that goes -- hopefully it's before 6:00, but if it's not,  
4 so be it. And then we'll begin tomorrow.

5 We have the hearing scheduled to begin tomorrow  
6 at 9:00. Is there anybody here that -- we're on the  
7 record now. We're in public record on the record. We  
8 could move that time up if anybody would like to, if we  
9 could collectively agree to move that to an earlier time.

10 I think, Demaris, can we do that?

11 MS. AXTHELM: Uh-huh.

12 MR. SMITH: I mean, do we have the room reserved  
13 and the electronic system set up? We're on the record  
14 here.

15 COMMISSIONER HANSON: I was just wondering if  
16 you had to give the press 24 hours for open meetings  
17 laws. Do we have to?

18 MR. SMITH: I don't think so. This meeting's  
19 already convened. We're just adjourning we've done that  
20 on many, many occasions. We're just recessing the  
21 hearing. Pardon me -- several questions have been asked  
22 about whether we need to comply with the public notice  
23 requirements, but we have this meeting is in session.

24 And if somebody wants to be a part of it, they  
25 don't even have to come here. They can listen on the

1 internet, as far as I'm concerned. If we choose to --  
2 we're all supposed -- the meeting's only supposed to last  
3 until 5:00, and we're going to go longer than that.  
4 Well, we didn't give notice of that either. But we're in  
5 session.

6 And we've always taken the position that if we  
7 take that action in a public meeting that everyone has  
8 the right to be at and hear, we have changed that and  
9 it's -- it's a recess, that's acceptable. So but I'm  
10 just asking. I'm not -- we can still start at 9:00. I'm  
11 fine with that too.

12 MR. UDA: I mean, I guess I would like to hear  
13 from the Commission what they would like to do. If they  
14 want to meet early --

15 COMMISSIONER FIEGEN: 6:00.

16 MR. SMITH: Well, you know I'm usually here by  
17 then.

18 COMMISSIONER FIEGEN: I know.

19 CHAIRMAN NELSON: I'd go earlier.

20 COMMISSIONER HANSON: That's not going to work  
21 well because I usually work until about 11:30, 1:30 in  
22 the morning, and they start working at 6 a.m. So we'll  
23 just fly by what works out for everybody else.

24 MR. SMITH: Well, why don't we just leave it the  
25 way it is then at 9:00. We'll finish up. I think

1 everyone's getting kind of tired tonight. And I think  
2 we're going to do fine tomorrow with that. I don't think  
3 there's going to be a very lengthy Staff presentation, is  
4 there?

5 MS. SEMMLER: Oh, yeah.

6 MR. SMITH: There is?

7 MS. SEMMLER: No.

8 MR. SMITH: Why don't we recess for, what do you  
9 think, 10 minutes, Cheri, or 15?

10 Why don't we say quarter after. All right.  
11 Quarter after.

12 (A short recess is taken)

13 MR. SMITH: I think we're at a quarter after,  
14 the appointed time for our -- so we'll reconvene the  
15 hearing.

16 This is EL11-006 Oak Tree v. NorthWestern.  
17 Mr. Bleau LaFave is on the stand, and, Oak Tree, your  
18 cross-examination may resume.

19 Q. (BY MR. UDA) Okay. I wanted to ask you,  
20 Mr. LaFave, this is again in Exhibit 3, and it would be  
21 Attachment 10, Tab 10, which is a letter from me to you  
22 dated February 25, 2011. It's previously been referred  
23 to as our LEO letter.

24 And, specifically, once you're there, I would like  
25 to refer you to the last paragraph of that letter. It's

1 on page 2.

2 A. Okay.

3 Q. Okay. At this point did I state to you whether --  
4 to indicate whether or not NorthWestern intends to  
5 negotiate to produce a mutually satisfactory arrangement  
6 for both parties?

7 A. Did you state to me in this letter?

8 Q. February 25, 2011. Page 2 of 2, last paragraph.  
9 Maybe I should just read it, and then you can -- I'll ask  
10 you a question.

11 A. Okay.

12 Q. "Oak Tree formally requests a response to this  
13 letter May 2201 on whether NorthWestern intends to accept  
14 Oak Tree's offer or whether NorthWestern Energy intends  
15 to negotiate with Oak Tree to produce a mutually  
16 satisfactory arrangement for both parties."

17 Do you see that?

18 A. Yes, I do.

19 Q. So we did say why don't you negotiate with us to  
20 produce a mutually satisfactory arrangement; correct?

21 A. You requested a response from NorthWestern on  
22 whether it intends to negotiate with Oak Tree to produce  
23 a mutually satisfactory arrangement for both parties,  
24 yes.

25 Q. Okay. Do you recall what your response was? If you

1 need to have your recollection refreshed, that's in that  
2 same exhibit, Tab 11, and it's your letter to me,  
3 March 10, 2011.

4 A. Sorry. I'm at Tab 12.

5 Q. Okay.

6 A. The final response was "NorthWestern appreciates  
7 your interest in renewable energy in South Dakota. The  
8 filed avoided cost, as mentioned above, is the allowable  
9 rate for qualifying facilities. NorthWestern would be  
10 interested in any discussions that would add a  
11 cost-effective renewable resource to our portfolio that  
12 would maintain or reduce the cost to our customers.  
13 Thank you for your inquiry."

14 Q. And so had your response changed from July of 2010  
15 as of March 10, 2011?

16 A. NorthWestern was still under the same obligations of  
17 if the -- the QF's requirements would be add avoided cost  
18 or below.

19 Q. So did you indicate anywhere in here a willingness  
20 to negotiate further?

21 A. NorthWestern would be interested in any discussions  
22 that would add cost-effective renewable resources to our  
23 portfolio that would maintain or reduce the cost to our  
24 customers.

25 Q. Right. But that negotiation, in your mind, you were

1 fixed on a rate of \$23 for a short-term; correct?

2 A. I cannot -- NorthWestern could not prudently enter  
3 into a QF agreement above its avoided cost.

4 Q. Okay. So given that position, were any negotiations  
5 ever really possible?

6 A. Negotiations typically would also surround -- price  
7 is just function of a negotiated contract with a QF.  
8 There are many other --

9 Q. Fair enough. Fair enough. But I'm saying on the  
10 price term. There was really never any negotiation  
11 possible. Your offer was essentially here's what our  
12 tariffed rate is, take it or leave it.

13 A. As identified by PURPA, yes.

14 Q. Okay. Now I want to turn to some other questions I  
15 have, and one of them is you are aware of the fact that  
16 Mr. -- is it Todd Guldseth testified in the Spion Kop  
17 proceeding on the methodology that he used for  
18 Spion Kop?

19 A. It would be Mr. Todd Guldseth, yes.

20 Q. Why didn't somebody at NorthWestern suggest that  
21 Mr. Guldseth prepare the avoided cost analysis in this  
22 proceeding?

23 A. Mr. Todd Guldseth is from the Montana side of  
24 NorthWestern's business, not familiar with NorthWestern  
25 South Dakota's portfolio or its avoided cost.

1 Q. Okay. Let me ask you this question, is Mr. Guldseth  
2 completely unfamiliar with avoided cost utility rate  
3 making concepts?

4 A. I am not familiar totally with what Mr. Guldseth  
5 would or would not be familiar with. But I would say he  
6 is familiar with what it costs that they have evaluated  
7 in Montana.

8 Q. Okay. I'm just getting rid of questions that you  
9 graciously deferred to Mr. Wagner.

10 Is it true in 1982 in the South Dakota Public  
11 Utilities Commission PURPA Order that QFs and utilities  
12 were supposed to negotiate if they were above  
13 100 kilowatts in design?

14 A. That is my understanding of that order.

15 Q. Okay. Would you further agree that in the event  
16 that there's no agreement, the Public Utilities  
17 Commission is to resolve the dispute?

18 A. That is my understanding of that order.

19 Q. Okay. Would you agree with me that whatever  
20 resolution that the Public Utilities Commission reaches  
21 in this case needs to be consistent with PURPA and the  
22 FERC regulations implementing PURPA?

23 A. I'm not an attorney, but I would agree in principle,  
24 yes.

25 Q. Okay. In your opinion, would it have made sense for

1 Oak Tree to agree to a price that would not have allowed  
2 it to build its project?

3 A. I would say no. But that would be their choice to  
4 either build or not build, and they would have to make  
5 that determination based on the available price.

6 Q. Okay. And if Oak Tree feels that the PURPA and FERC  
7 rules require an avoided cost that would be sufficient to  
8 build its project, shouldn't Oak Tree ask the PUC to rule  
9 that way?

10 A. I'm not aware of that requirement being in PURPA or  
11 FERC.

12 Q. Okay. Okay. But it has to be an avoided cost. And  
13 we obviously disagree about what avoided cost is in this  
14 proceeding; correct?

15 A. Correct.

16 Q. Okay. So if Oak Tree feels that NorthWestern  
17 Energy's posted avoided cost rate was not consistent with  
18 avoided cost generally, shouldn't it go to the PUC to  
19 resolve that dispute?

20 A. I believe that decision would be up to Oak Tree.

21 Q. True. Okay. Let me ask you about this. And maybe  
22 you don't know anything about this, but I'm going to take  
23 a run at it.

24 I want to ask you, we've discussed this morning  
25 nonprice factors that relate to the development of wind

1 generation. On the one side we have, you know, the cost  
2 issues, you know, what's the avoided cost. On the other  
3 side we have these benefits, some of which perhaps are  
4 quantifiable, some of which may not be. But these were  
5 testified to by NorthWestern in the Spion Kop proceeding.

6 And I'm not asking you to say that, you know, you  
7 endorsed these. I just really want to ask you if you  
8 agree with them.

9 First of all, is it true that purchasing renewables  
10 can reduce reliance on market purchases and thereby  
11 reduce exposure to market risk?

12 MS. DANNEN: NorthWestern would like to renew  
13 its objection that the information surrounding the  
14 Spion Kop proceeding's again outside the scope  
15 Mr. LaFave's prefiled and rebuttal testimony.

16 MR. UDA: I think my question to him was  
17 different. I didn't ask him about the testimony. I said  
18 do you agree with these factors.

19 MR. SMITH: I am going to overrule the objection  
20 because that's the way I heard the -- you've asked him a  
21 question that doesn't necessarily have to have anything  
22 to do with Spion Kop.

23 Q. Would you agree with the proposition that purchasing  
24 renewables can reduce reliance on market purchases and  
25 thereby reduce exposure to market price risk?

1 A. I would agree, but it would only be applicable in  
2 the case we could actually avoid cost due to those  
3 principles.

4 Q. Okay. Well, let's revisit something for a second.  
5 So we talked earlier about the fact that you entered into  
6 this contract with Basin Electric to serve your summer  
7 2013 load, 11 megawatt contract, and paid and you said,  
8 subject to check, \$5 a kilowatt month when Oak Tree was  
9 offering -- which, subject to check again, would equal  
10 5 times 12, \$60 over the course of the year. \$120 over  
11 the course of the year. Apologize.

12 And Oak Tree had offered \$17 a kilowatt year for  
13 those same months. So you would have saved money in that  
14 instance at least on the capacity charge over that period  
15 of time; correct?

16 A. I would have to do the calculation, but the way you  
17 laid it out is not correct because that capacity is only  
18 for summer months.

19 Q. I'm just talking about over the summer -- the  
20 contract is only over the summer months, but during those  
21 six months of summer you're paying \$5 every kilowatt  
22 month; correct?

23 A. My understanding, yes.

24 Q. Okay. So the 4 megawatts that you're buying from  
25 Basin of that 11 megawatt contract times 5 is essentially

1 \$20 every month in the summer, six months; correct?

2 A. Correct.

3 Q. Okay. So that if -- you would agree again subject  
4 to check that 6 times 20, that's \$120 for that kilowatt  
5 year even though you're only purchasing it in the summer  
6 months; correct?

7 A. Subject to check.

8 Q. Okay. And, again, we ran you through  
9 Mr. Lauckhart's Exhibit 3 and the kilowatt year  
10 calculation that he used, dollars per kilowatt year,  
11 which was \$17 per kilowatt year. Would you agree?

12 A. I believe that's what he used in his model.

13 Q. So for those four same -- those same \$4 times --  
14 4 megawatts times 17 would be 68, unless my math fails  
15 me; correct?

16 A. Correct.

17 Q. Okay. So, in fact, it's the case that if you had  
18 purchased, at least as the capacity component, from  
19 Oak Tree Energy, that you would have saved money even  
20 during the summer months?

21 A. If that capacity would be proven eligible for use in  
22 NorthWestern's capacity portfolio, which was not  
23 guaranteed under the PPA, yes.

24 Q. Okay. And the PPA you're referring to is the one  
25 that was tendered to you --

1 A. Correct.

2 Q. -- by Oak Tree? Okay. Let me move on to the next  
3 issue.

4 Okay. Would you agree with me, all things being  
5 equal, which they never are, that purchasing renewables  
6 can reduce exposure to fuel price uncertainty?

7 A. They can, under certain circumstances.

8 Q. Would you further agree with me that there is a  
9 substantial risk of NorthWestern having to make  
10 substantial investments in pollution control technology  
11 for the assets that it currently has an ownership  
12 interest in in the next few years?

13 A. What do you mean by "substantial risks"?

14 Q. Okay. Well, for example, the EPA regulations are  
15 becoming more strict with respect to coal plant  
16 emissions. Would you agree?

17 A. I would agree.

18 Q. Okay. And, in fact, has NorthWestern in  
19 South Dakota done an analysis of those risks?

20 A. I am not aware of those studies. The question would  
21 have to be posed to Mr. Wagner.

22 Q. Oh, I'm sure he's grateful for that. But you would  
23 agree with me that if, in fact, NorthWestern is facing a  
24 future where there may be substantial additional  
25 regulation imposed on coal-fired generation, that

1 purchasing renewables can reduce exposure to decrease  
2 costs in that area?

3 A. It's possible.

4 Q. Would you also agree with me that purchasing  
5 renewables can -- assuming that you have an intention to  
6 meet your renewable portfolio objective, that if you --  
7 if you buy them, you'll be able to satisfy that  
8 objective, and if you don't, you won't?

9 A. If I buy the -- if we have enough renewables to  
10 satisfy the objective, we would satisfy the objective.

11 But the objective itself is based on a financial --

12 Q. I want to apologize personally to you for that  
13 question.

14 Would you agree with me that renewables help provide  
15 resource diversity with a utility's generating portfolio?

16 A. Yes, I do.

17 Q. And do you agree they can help provide relative  
18 price stability for a portion of your electric supply  
19 portfolio?

20 A. Yes. Depending on the structure of the agreement.

21 Q. I understand. Would you agree with me looking at  
22 the big picture that there is a general movement in this  
23 country to shift away from fossil fuels to renewable  
24 fuels?

25 A. Yes.

1 Q. Okay. And would you -- I think we already covered  
2 this, and if we have, never mind, but would you agree the  
3 EPA is putting increasingly stringent emissions  
4 restrictions on coal plants?

5 A. From what I understand, yes.

6 Q. Okay. Okay. Would you agree that the  
7 implementation of these rules are likely to affect  
8 purchases from -- or the costs of purchasing from  
9 Big Stone and Neal?

10 A. Say it again.

11 Q. Would you agree with me that the enforcement or  
12 implementation of these new regulations with respect to  
13 coal-fired generation are likely to affect the price of  
14 generation from Big Stone and Neal?

15 A. They are likely to affect the base load costs, but  
16 the incremental costs that are associated with avoided  
17 costs they will not affect.

18 Q. Okay. But would you agree with me that the  
19 effective cost of the utility carrying that type of  
20 generation is going to become more expensive as a result  
21 of these regulations?

22 A. If the regulations are finalized, yes.

23 Q. Okay. Would you agree that there is at least some  
24 concern that at some point, 2016 perhaps, maybe even  
25 later, that there will be legislation, federal

1 legislation, with respect to greenhouse gas emissions?

2 A. I believe if it happens, it will happen much later.

3 Q. Okay. Okay. Is there a risk that the Environmental  
4 Protection Agency itself in the absence of Congressional  
5 legislation may implement greenhouse gas emission rules?

6 A. I do believe that is a risk.

7 Q. Okay. And is it the case, if you don't know that's  
8 fine, that Congress continues to discuss the renewable  
9 portfolio standards nationally as potential legislation?

10 A. I am not aware of anything active.

11 Q. Let me ask you this question because this is kind of  
12 a big, big picture question. One of the things that  
13 Oak Tree has testified to here is that it's important for  
14 the Commission to act while there are still production  
15 tax credits to reduce the total cost to rate payers. I'm  
16 assuming you heard that testimony.

17 A. I did.

18 Q. Okay. Would you agree that assuming for a second  
19 that, you know, NorthWestern didn't have this dispute  
20 with Oak Tree so I'm talking just generally, that it  
21 would be in the Commission's interest to get some wind in  
22 the portfolio while the production tax credit still  
23 exists?

24 A. If NorthWestern had a retirement for wind resources.  
25 And if -- NorthWestern already has a wind resource within

1 its portfolio. But if NorthWestern had a requirement to  
2 produce wind resources, then it would make sense to try  
3 to put in a resource to those tax credits.

4 But there is no requirement, and should there be  
5 some later requirement, there's also just as likely to be  
6 some type of federal action to where it would support  
7 those type of investments in the future similar to the  
8 current tax credit benefits.

9 Q. But we sitting here today, you and I not being --  
10 you know, having foresight perfectly, we don't know  
11 whether the production tax credit's going to be extended,  
12 do we?

13 A. Right. But we also do not have a requirement for  
14 wind in South Dakota.

15 Q. I understand. I wanted to ask you a question and --  
16 oh, never mind.

17 MR. UDA: I promise you, Mr. Smith, I am nearing  
18 the end.

19 Q. What would be -- I want you to turn to your  
20 responsive testimony, if you would. I wanted to turn you  
21 to page 2, line 33.

22 You state "Completing an all-hour 20-year future  
23 estimate using the incremental cost method would be  
24 resource intensive and expensive and would be no more  
25 valid due to the estimated load forecast price forecast,

1 technology availability, federal and state regulations,  
2 and transmission availability."

3 Do you see that?

4 A. I do.

5 Q. So you've heard about the Black & Veatch study that  
6 Mr. Lauckhart keeps saying repeatedly is 259 pages and  
7 that it cost \$500,000 to produce.

8 That's what you're referring to; correct?

9 A. No. I wasn't referring to his study. I was  
10 referring to what it would cost NorthWestern to produce  
11 this study for NorthWestern's customers.

12 Q. But you would agree with me in that case this is  
13 resource intensive and expensive to produce that  
14 forecast?

15 A. It is.

16 Q. Okay.

17 MR. UDA: Just a second. I would go off the  
18 record and talk to my expert.

19 No further questions.

20 MR. SMITH: Thank you. Cross by Staff.

21 CROSS-EXAMINATION

22 BY MS. SEMMLER:

23 Q. I just have one question. I noted in an e-mail  
24 attached to the original Complaint to this filing -- that  
25 e-mail dates back to June of 2010 -- there's a request by

1 Oak Tree for the five-year information pursuant to  
2 18 CFR 292.302.

3 I can't find where that was ever provided. Do you  
4 know if it was?

5 A. Can you --

6 Q. I can tell you it's the filing that was recently  
7 made by NorthWestern to this Commission.

8 A. You're saying the communication on June 10?

9 Q. June 25 back in 2010 was an e-mail that Oak Tree  
10 requested it. Was it provided to Oak Tree prior to the  
11 recent filing?

12 A. No, it was not.

13 MS. SEMMLER: No further questions.

14 MR. SMITH: Commissioner questions.

15 CHAIRMAN NELSON: Just a couple of questions.

16 And the first relates to something that Mr. Brogan  
17 mentioned in his opening statement. He talked about the  
18 avoided costs for NorthWestern's existing generation.  
19 And I believe he said the only cost to avoid is the  
20 variable costs of base load.

21 And so my question is does that include  
22 depreciation of the facility?

23 THE WITNESS: I believe it does not.

24 CHAIRMAN NELSON: Okay. Next question. There's  
25 been some mention of the wind purchase -- or electricity

1 purchase from Titan. What are you paying for that?  
2 What's NorthWestern paying?

3 THE WITNESS: I believe it's part of the docket.  
4 I don't know the numbers right off the top of my head,  
5 but it's --

6 MR. SMITH: Is that a confidential number?

7 THE WITNESS: It probably is.

8 MR. SMITH: I think do you want to weigh in on  
9 this?

10 MS. DANNEN: Yes. I believe the Titan agreement  
11 was filed on a -- it was filed confidential so I guess  
12 any questions regarding that we're going to have to go  
13 off the record.

14 MR. SMITH: Where is it? I mean, I don't --

15 MS. DANNEN: It's in response to one of our  
16 discovery requests.

17 MR. SMITH: Yeah. I don't recall it being an  
18 exhibit anywhere in here.

19 MS. DANNEN: It was just -- let me back up. It  
20 was produced in discovery, but that's not been made part  
21 of this record to this point.

22 MR. SMITH: But it is confidential so we should  
23 go off. I believe it was produced confidentially was my  
24 recollection.

25 MS. DANNEN: Can you give me a minute to check

1 that.

2 The document was produced in discovery to the  
3 parties in this matter, and it was marked confidential.

4 CHAIRMAN NELSON: If I might, as opposed to  
5 forcing this line of questioning and the second question  
6 I've got is the length of the term of that, obviously, if  
7 you'd be willing to file that as a confidential document  
8 so that the Commissioners can look at it, I'd forego the  
9 rest of those questions. Entirely up to you.

10 MS. DANNEN: NorthWestern would be willing to  
11 file a confidential exhibit and produce the Titan  
12 contract to the Commission.

13 CHAIRMAN NELSON: Thank you. No further  
14 questions.

15 MR. SMITH: Commissioner, additional  
16 Commissioner questions? Do you have another one,  
17 Mr. Chairman?

18 CHAIRMAN NELSON: No.

19 MR. SMITH: Commissioner Hanson.

20 COMMISSIONER HANSON: Thank you, Mr. Smith.  
21 Good afternoon, Mr. LaFave. How are we doing?

22 THE WITNESS: Good afternoon, Commissioner.

23 COMMISSIONER HANSON: I have a number of  
24 questions and some of them have been asked in relative  
25 sense by Mr. Uda. But I have some nuances I'm interested

1 in pursuing.

2 And as with previous questions, some of these  
3 may be better asked of another witness so just let me  
4 know.

5 Is it your opinion within the purview of the  
6 South Dakota Commission to decide the criteria for  
7 establishing a LEO for South Dakota?

8 THE WITNESS: It is my opinion, yes.

9 COMMISSIONER HANSON: What determines an LEO, in  
10 your opinion? Would just and reasonable to rate payers  
11 be included?

12 THE WITNESS: Yes. It would definitely be  
13 included. The offer would also -- there are several  
14 different things. And I'm trusting that this would be  
15 discussed in depth in a legal brief following the  
16 hearing, but it would also include a offer at or below  
17 the avoided cost and it would include obligations for  
18 delivery by the qualifying facility.

19 COMMISSIONER HANSON: Could the Oak Tree project  
20 decrease NorthWestern Energy's risk?

21 THE WITNESS: It has the ability to decrease and  
22 increase NorthWestern's risk, based on the price  
23 comparisons to the spot market.

24 COMMISSIONER HANSON: And questioning by Mr. Uda  
25 you seemed to imply that you did see a benefit to

1 diversifying the portfolio and it would decrease risk; is  
2 that true?

3 THE WITNESS: When you look at an overall  
4 portfolio any time you can diversify what you have for  
5 that portfolio I believe it will help with risk.  
6 Diversification also creates risk.

7 So, I mean, there's always a give and take.  
8 There are benefits. You have to evaluate the entire  
9 portfolio.

10 COMMISSIONER HANSON: Do you consider yourself a  
11 member of the negotiating team by NorthWestern Energy  
12 when negotiating with Oak Tree?

13 THE WITNESS: For South Dakota I am the  
14 negotiator for planning for long-term resources.

15 COMMISSIONER HANSON: So you're the top dog on  
16 the negotiating team?

17 THE WITNESS: I report directly to the vice  
18 president and the CEO.

19 COMMISSIONER HANSON: Okay. Who are the other  
20 members of that team?

21 THE WITNESS: It would depend on the resource  
22 and experience I would need for the negotiations.

23 COMMISSIONER HANSON: So there would be a number  
24 of people that you'd turn to for specific information?

25 THE WITNESS: I would bring in legal

1 consultation. I would also bring in somebody that would  
2 be aware of market conditions. I would bring in some  
3 operational expertise. Typically when we negotiate  
4 contracts, which I have several in the last few years, we  
5 always have a team usually of five or more in any  
6 negotiations.

7 COMMISSIONER HANSON: So any contacts with  
8 NorthWestern Energy by Oak Tree would ultimately arrive  
9 on your desk via someone?

10 THE WITNESS: Yes, they would.

11 COMMISSIONER HANSON: So then if there was a  
12 contact with anyone in regard to that, one would expect a  
13 standard operating procedure that, for instance, if they  
14 contacted Ms. Dannen or anybody else, that you should  
15 receive notice of that?

16 THE WITNESS: Once the letter came for  
17 Mr. Decker associating negotiations of a PPA, that was  
18 forwarded to me. Ms. Bonrud replied to that particular  
19 letter, but then we followed up with a letter that all  
20 future discussions should be gone through myself.

21 COMMISSIONER HANSON: Are you referring to the  
22 letter that was sent to Mr. Wagner and Mr. Decker?

23 THE WITNESS: Correct.

24 COMMISSIONER HANSON: I believe it's Exhibit  
25 No. 2 of the --

1 THE WITNESS: I also have it referenced in my  
2 testimony. I was just checking. Yeah. On page 7 of my  
3 testimony the correspondence that I have had with anybody  
4 concerning Oak Tree are listed there.

5 COMMISSIONER HANSON: What do you -- excuse me.  
6 What's the cost again for the 11 megawatts that was  
7 purchased from Basin? Do you know that?

8 THE WITNESS: I do not know that right off the  
9 top of my head. That would be Mr. Wagner. I believe  
10 Mr. Uda was saying \$5.

11 COMMISSIONER HANSON: Why shouldn't we believe  
12 that NorthWestern Energy was just simply stonewalling and  
13 stalling Oak Tree on this so that time would run out and  
14 they would not be able to access the PTC?

15 THE WITNESS: NorthWestern would enter into an  
16 agreement that is at or below its avoided cost in  
17 prudence and required by PURPA for capacity and energy.  
18 NorthWestern has identified needed capacity and had  
19 entered into other agreements because we need to have  
20 assurance.

21 We don't have the ability in our planning to  
22 wait and determine. But all the communications listed to  
23 Mr. Uda that are listed on my page identify that we were  
24 full through the end of 2012 and would need additional  
25 capacity after that. The -- any -- following their

1 filing and going through, NorthWestern entered into  
2 another agreement, which now puts NorthWestern's ability  
3 to avoid costs after 2015.

4 COMMISSIONER HANSON: I might pursue that in a  
5 little bit. Do you think there was any dilatoriness on  
6 NorthWestern Energy's part on the pursuit of this in  
7 negotiations?

8 THE WITNESS: From my perception on the  
9 negotiations, NorthWestern was not in the market for any  
10 base load resources. As testified earlier, we have  
11 93 percent of our generation internally and the rest of  
12 our supply is on spot market only when needed.

13 So we were not seeking any resources.  
14 NorthWestern received an offer from Oak Tree that is well  
15 above our avoided cost. Had that come to NorthWestern  
16 either if we had some need, which we may have 10 years in  
17 the future, or had that been at our avoided cost or less,  
18 and our avoided cost would be adjusted in the future  
19 based on whatever that need is, then we would have been  
20 able to have discussions.

21 But because that offer was more than twice what  
22 has been identified as the first year avoided cost,  
23 NorthWestern maintained the communications and did not  
24 aggressively seek an agreement with Oak Tree. We would  
25 entertain any discussions and more happy to answer any

1 questions, but it never got -- other than the letter  
2 communications I never got any calls or e-mails.

3 COMMISSIONER HANSON: You're saying it wouldn't  
4 make sense to pursue this even though fossil fuels are  
5 finite and it just would make sense for the environment?

6 THE WITNESS: I would say that this -- under  
7 current conditions this would negatively impact  
8 NorthWestern's customers.

9 COMMISSIONER HANSON: So you're primarily basing  
10 your decision on the cost? On the rate?

11 THE WITNESS: As identified through PURPA, which  
12 no utility shall pay above the avoided cost, and as  
13 identified in South Dakota where we will take the least  
14 cost resource, yes.

15 COMMISSIONER HANSON: Is there a better -- in  
16 your opinion, if you have one, a better alternative for  
17 Oak Tree? Mr. Makens went through a pretty lengthy list  
18 of entities that he had contacted in regard to a  
19 potential for PPA.

20 THE WITNESS: Given the current market, I would  
21 assume that would be very difficult to justify a project  
22 given the prices in -- within South Dakota. I do  
23 believe -- well, and discussions with WAPA, WAPA would  
24 have the availability for them to have access to the open  
25 market, but understandably that's probably hard to

1 finance.

2 So I would -- NorthWestern ran an RFI in 2009 to  
3 evaluate resources to see if this -- if wind or any other  
4 renewable resource would make sense in our current  
5 portfolio and trying to fulfill our obligation -- or  
6 trying to fulfill our desire under South Dakota's  
7 renewable.

8 Through that process we received several  
9 respondents, many of them who were below the offer that  
10 we received from Oak Tree. And we decided there was no  
11 way we could put those projects in place with  
12 NorthWestern's current portfolio load.

13 COMMISSIONER HANSON: I imagine when you go to  
14 Christmas parties, Thanksgiving parties, things of that  
15 nature, St. Patty's Day just around the corner here,  
16 people always want to talk about avoided cost. And --  
17 maybe not so much there, but perhaps you've gone before  
18 service groups or made presentations on a professional  
19 level, things of that nature regarding avoided cost.

20 THE WITNESS: For NorthWestern for avoid cost up  
21 until this discussion with Oak Tree and the filing, our  
22 experience with avoided costs and renewable QFs have been  
23 less than 100 megawatts. So this has been a area of more  
24 discussion because of this filing.

25 COMMISSIONER HANSON: Do you have an idea with

1 your amount of experience, which is considerable, what  
2 the average cost of electricity is in South Dakota that  
3 is serviced by NorthWestern Energy?

4 THE WITNESS: NorthWestern base load average  
5 costs are in the range between I think 17 and \$19. And,  
6 again, earlier the discussion -- that's how we were --  
7 that's the number we were using when we filed our avoided  
8 cost for our less than 100 kilowatt QFs.

9 COMMISSIONER HANSON: Forgive me for  
10 interrupting. Are you talking about fuel costs here?

11 THE WITNESS: I'm talking about incremental  
12 costs, yes.

13 COMMISSIONER HANSON: You're not talking  
14 about --

15 THE WITNESS: It would be fuel and operations.

16 COMMISSIONER HANSON: For instance, total  
17 residential cost per megawatt hour is not 17.

18 THE WITNESS: Yeah. It would be whatever  
19 NorthWestern's last filed -- I believe it's -- and I  
20 apologize. I don't even know what that is. I think it's  
21 around 7 cents.

22 COMMISSIONER HANSON: Okay. So you're speaking  
23 specifically of the fuel cost being right around 17 or  
24 19?

25 THE WITNESS: Yes. Well, it would be the fuel

1 and the operation cost, what you could throw into as far  
2 as operation costs for incremental costs. Some of it you  
3 cannot avoid.

4 COMMISSIONER HANSON: Well, I was going to say  
5 on my next question that the 35.85 seems extraordinarily  
6 low, and then you just stated the 17 and 19 for  
7 operational cost.

8 From the standpoint of a levelized cost of 35.85  
9 that just seems incredibly low. And to hear 17 -- and,  
10 of course, you've used that in your testimony earlier,  
11 the \$20 and such. I just -- why should I be absolutely  
12 amazed at 17 and \$19?

13 THE WITNESS: That is an easily identifiable  
14 number for us in our FERC 1 filings. And you'd be able  
15 to identify those costs that are rolled into there. As  
16 NorthWestern looks at its portfolio, right now we service  
17 most its needs with that base load generation. So  
18 obviously that drives that number down, especially in the  
19 early years when we calculated our avoided cost.

20 Then as you go out in years we end up buying  
21 more and more spot if you assume a normal growth. And  
22 you end up buying more and more market, more and more  
23 market, and at some point in time you could theoretically  
24 be 100 percent market, and then that would be at a higher  
25 rate than those following years. But when you blend it

1 all together for 20 years over a levelized cost, then  
2 that results in that lower -- that lower rate.

3 COMMISSIONER HANSON: So this is based primarily  
4 upon old coal, isn't it?

5 THE WITNESS: Yes.

6 COMMISSIONER HANSON: Do you have an idea of  
7 what the station 2, I believe, in Aberdeen -- do you have  
8 an idea what -- what would be the avoided cost for that  
9 station?

10 THE WITNESS: The only avoided -- that station  
11 is put in specifically for capacity. Mr. Wagner would  
12 have a little more detail on that. But it's put in  
13 specifically for capacity. NorthWestern had identified a  
14 need of capacity, and depending on where we were at in  
15 our process, identifying what our reserve requirements  
16 were, it changed, but it is anywhere from 80 to somewhere  
17 around 70 some required capacity.

18 NorthWestern looks at its capacity portfolio and  
19 realized we were going to market for a large percentage  
20 of our capacity, which is not where we want to be. We  
21 implemented the Aberdeen number 2 station, which is only  
22 52 megawatts of capacity for summer, which is the one  
23 we're most concerned with. So we still have a variable  
24 above and beyond that.

25 So the Aberdeen generation facility would -- the

1 Oak Tree offer or the Oak Tree agreement would in no way  
2 have either delayed or offset anything with the Aberdeen  
3 facility.

4 COMMISSIONER HANSON: That's fine. And I'll  
5 look forward to Mr. Wagner's answers to that question as  
6 well. But you're testifying that the cost per megawatt  
7 hour is somewhere around 70 to \$80 for -- did I hear you  
8 correctly for that station?

9 THE WITNESS: No. I don't think I said that.

10 COMMISSIONER HANSON: Yeah. I heard 80 and 70.

11 THE WITNESS: Oh, no. No. I'm talking about  
12 the actual capacity that we needed was 70 or 80  
13 megawatts.

14 COMMISSIONER HANSON: So you don't know what the  
15 avoided cost would be if that plant's not running as  
16 opposed to --

17 THE WITNESS: That plant is only certified to  
18 run 400 hours a year due to air quality. It's only for  
19 peaking reserves. If that plant was to run for specific  
20 peaks, which is what it's designed for, the operational  
21 avoided cost to that plant obviously would be heavily  
22 dependent on natural gas because of its fuel source.

23 But right now if it was running at the current  
24 market price, it would be between 40 and \$50.

25 COMMISSIONER HANSON: Is that a wild guess? 40

1 or \$50?

2 THE WITNESS: No. Those are numbers we run.

3 COMMISSIONER HANSON: Okay. And I'd like to  
4 have Mr. Wagner allude to that a little bit as well.

5 The reason I'm asking, obviously, is that  
6 natural gas is really the -- along with hydro is really  
7 practically the only and certainly one of the best  
8 methods to fill the troughs from the standpoint, if I can  
9 use that term, for when wind is not dispatchable -- well,  
10 when wind is not -- because of its variable nature when  
11 it's not producing, when it's not generating electricity.

12 So from a peaking standpoint it would seem to me  
13 to marry Oak Tree with that natural gas plant would be a  
14 great marriage because Oak Tree is going to be providing  
15 electricity, environmentally clean energy, and the  
16 peaking plant would be able to fill those troughs when  
17 the Oak Tree is not producing.

18 Has that been discussed?

19 THE WITNESS: A single cycle generation facility  
20 does not have the capability to operate the way you're  
21 suggesting as far as a peaking reserve to moderate a wind  
22 facility. Because a peaking facility, like Aberdeen,  
23 where there's only 400 operating hours, the time it takes  
24 to cold start that engine and run it for -- run it for a  
25 given period of time would be much longer in the realm of

1 hours to half a day as adverse to the wind profiles that  
2 bounce on quarter hour segments.

3 So in order to regulate wind, the facility would  
4 have to be configured differently, and it would have to  
5 be upgraded.

6 COMMISSIONER HANSON: Isn't that similar to the  
7 Angus Anson natural gas plants that Xcel has?

8 THE WITNESS: And I believe there's three  
9 turbines on that site. So they're able to utilize --  
10 they keep one running to modulate for the discrepancies,  
11 and then they can react to it. But they don't cold start  
12 them to try to accommodate.

13 COMMISSIONER HANSON: Wouldn't you be able to  
14 accomplish the same thing here? You just simply run it  
15 at a lower --

16 THE WITNESS: NorthWestern's only available to  
17 run it 400 hours in the year.

18 COMMISSIONER HANSON: And is that -- is that a  
19 rule, a law --

20 THE WITNESS: It's an air quality requirement.

21 COMMISSIONER HANSON: And --

22 THE WITNESS: Certified for that particular  
23 plant. The purpose of that plant was for peaking for  
24 NorthWestern.

25 COMMISSIONER HANSON: And marrying that with

1 clean energy you would not be able to change that?

2 THE WITNESS: You would -- could go through the  
3 process, but I would use a different -- I would change  
4 that to a combined cycle facility adding another -- and  
5 this is all hypothetical. It will have to be engineered  
6 and drawn up and designed, but you'd have to change it  
7 considerably in order to operate it the way you suggest.

8 It can be done. Yes. But that wasn't the  
9 purpose and it's not the design of the turbine that's  
10 going in in Aberdeen.

11 COMMISSIONER HANSON: Do you have the one south  
12 of Groton?

13 THE WITNESS: No, we do not.

14 COMMISSIONER HANSON: Okay. Is that  
15 Otter Tail's? Do you know?

16 THE WITNESS: Basin's.

17 COMMISSIONER HANSON: Okay. Thank you. I may  
18 have some more questions, but I'll save those for one of  
19 your cohorts.

20 THE WITNESS: Okay.

21 COMMISSIONER HANSON: Thank you, Mr. Smith.

22 MR. SMITH: Additional Commissioner questions?  
23 Mr. Rislov, do you have any questions?

24 I have just a couple, and they're really brief  
25 here. But you made a statement that there are -- no

1 variable costs will be associated with the new -- you  
2 know, the multitude of upgrades that various facilities  
3 are facing.

4 I mean, that isn't on a strict basis; that's not  
5 totally the case, is it?

6 THE WITNESS: No.

7 MR. SMITH: There are some variable costs  
8 associated with most --

9 THE WITNESS: There are variable costs, but I  
10 don't know if those costs are avoidable.

11 MR. SMITH: Well, I'm thinking like, for  
12 example -- and maybe they're just not quantifiable. But,  
13 for example, the amount of -- the rate at which  
14 filtration, right, or bag houses fill is directly  
15 proportional to the amount of fuel consumed.

16 THE WITNESS: Correct.

17 MR. SMITH: For example.

18 THE WITNESS: Yeah.

19 MR. SMITH: So those kinds of costs, for  
20 example, would be somewhat dependent on a theoretical  
21 basis to --

22 THE WITNESS: I would agree.

23 MR. SMITH: To energy; right?

24 THE WITNESS: Yep.

25 MR. SMITH: Okay. And just one related question

1 then. The upcoming litany of, you know, MACT and  
2 regional haze and all of that stuff that's coming down  
3 the tube, and some we haven't even had to face yet, those  
4 will affect the future purchased energy costs; right?  
5 The spot costs, in all likelihood?

6 THE WITNESS: I would guess.

7 MR. SMITH: They're likely to.

8 THE WITNESS: I would guess they would.

9 MR. SMITH: Thank you. That's all I have.  
10 Thank you. Let me see. I guess we're at redirect,  
11 Mr. Brogan. Or, oh, no. God, I've got to get that  
12 straight.

13 Ms. Dannen.

14 MS. DANNEN: Thank you, Mr. Smith.

15 REDIRECT EXAMINATION

16 BY MS. DANNEN:

17 Q. Just some questions. Mr. LaFave, Mr. Uda asked you  
18 several questions regarding capacity and NorthWestern's  
19 potential avoidance of capacity, should it have entered  
20 into an agreement with Oak Tree.

21 Did Oak Tree ever offer -- in your negotiations with  
22 Oak Tree did Oak Tree ever offer to sell its capacity  
23 without its energy?

24 A. No.

25 Q. Did any of the offers that Oak Tree gave to

1 NorthWestern ever separate out the capacity component  
2 during the negotiations?

3 A. No. Not that I'm aware of.

4 Q. Mr. Uda asked you also a lot of questions about the  
5 avoidance of the Basin contract. Do you have any  
6 knowledge that Basin would have been willing to sell the  
7 7 megawatts at the same price it sold 11 megawatts?

8 A. I do not.

9 Q. Mr. Uda also asked you a lot of questions regarding  
10 the methodologies you laid out in your prefiled testimony  
11 and our obligation to provide a 20-year avoided cost  
12 long-term avoided cost.

13 Are you aware of any legal obligations, you know,  
14 mandating NorthWestern provide a long-term 20-year  
15 avoided cost?

16 A. I am not.

17 Q. Also to clarify on your methodologies I think you  
18 testified that you learned about those in EIA -- is it  
19 EIA, or did you mean EEI?

20 A. I've got to remember. I apologize. I think it was  
21 EEI.

22 Q. Okay. Just clarifying.

23 A. Okay.

24 Q. Mr. Uda also talked about, you know, prudent utility  
25 investment decisions and what it takes to put -- what it

1 takes to make that long-term investment decision when  
2 you're talking about long-term generation. And you  
3 talked about the consequences of getting it wrong.

4 What are the consequences to a utility if we get  
5 that decision wrong?

6 A. I believe I discussed those in one of my question  
7 and answers. And the biggest issue that we would have is  
8 we would be overcharging NorthWestern customers for its  
9 energy.

10 As we look at it historically, NorthWestern in my  
11 Exhibit 3 of my testimony you can see the last 12 years'  
12 price that NorthWestern paid on the spot market. It is  
13 not a continuous uphill curve. And that risk would be  
14 assigned to NorthWestern's consumers when that market  
15 price adjusted or corrected and this contract price  
16 continued on an uphill curve.

17 Q. What other consequences could there be of getting it  
18 wrong, meaning from a regulation standpoint? We're a  
19 fully regulated utility. What if we get an investment  
20 decision wrong as it pertains to our regulators? Meaning  
21 do we run the risk of not getting it rate based?

22 A. I apologize. I'm just trying to figure out -- yeah.  
23 All of NorthWestern's investments are reviewed by the  
24 Commissioners, and they're brought before to go into rate  
25 base. If those -- if those decisions are deemed that

1 they were not prudent, we run the risk of not being able  
2 to collect on that rate base. So we do -- we are subject  
3 to any requirements.

4 Q. Thank you. There's been much talk about this  
5 nonquantifiable issues in setting our avoided cost. Do  
6 you agree that these nonquantifiable issues need to be --  
7 fit within FERC's definition of avoided costs need to be  
8 considered when setting NorthWestern's avoided cost in  
9 this docket?

10 A. I do believe there are benefits and there are risks  
11 associated with nonquantifiable issues. But FERC under  
12 PURPA required that NorthWestern not pay anything over  
13 its avoided cost. And if you cannot quantify it, how do  
14 you fit that requirement?

15 Q. There was also some concern about our tariffed  
16 avoided cost for the under 100 kW projects versus our  
17 over 100 kW projects. What's the primary difference, in  
18 your opinion, between those two rates?

19 A. The previously calculated avoided cost was based on  
20 an average of our base load units. So we talked a little  
21 bit earlier about having a 17 to \$19 cost. When we went  
22 to utilizing a -- the most expensive resource, in other  
23 words, if we got to choose which base load resource we  
24 would turn off as an avoided cost, we would pick the most  
25 expensive one to back down.

1           Once we utilized that, it increased our avoided cost  
2 when we made that change. That increase went from -- I  
3 believe the filed avoided cost in 2010 was \$20.40, and  
4 the new avoided cost with that change and also the change  
5 looking at every hour rather than just using an average  
6 price, spot price, moved it to just under \$25. I believe  
7 for the Oak Tree project would be somewhere around the  
8 neighborhood of -- first year, \$24.97.

9           And in comparisons we're talking about first year  
10 because what you do after that obviously can  
11 significantly affect your 20-year levelized average. But  
12 in comparison the first year it didn't move much, and it  
13 definitely didn't move anywhere close to the \$54 that was  
14 offered.

15 Q.    Thank you. Now kind of switching gears to the  
16 concept of LEO and the conversations that NorthWestern  
17 had or didn't have regarding negotiations in this matter.

18           Did you ever have any personal conversations with  
19 Oak Tree negotiating team members?

20 A.    I have not.

21 Q.    I think there was testimony that you had personal  
22 conversations with Claud Matney regarding this project.  
23 Did you ever have personal conversations with Mr. Matney  
24 regarding this project?

25 A.    Not that I'm aware of. The only conversations I had

1 were represented in the letters that were sent.

2 Q. I think there was also some concerns that, you know,  
3 all negotiations need to be reduced to writing and that,  
4 you know, there would be some opposition to phone calls  
5 and in person meetings.

6 As NorthWestern's lead negotiator, did you ever make  
7 that request that all communications be in writing and  
8 that there be no phone or in-person meetings?

9 A. I did not, and I have not ever conducted  
10 negotiations in that manner.

11 Q. There's also some -- you received some questions  
12 regarding this kind of six-month layoff from July of 2010  
13 to January of 2011 where NorthWestern did not hear  
14 anything from Oak Tree during that time?

15 MR. UDA: Objection. I don't believe that I had  
16 any questions in cross about the six-month period of  
17 time.

18 MR. SMITH: Can you repeat the question? I'm  
19 sorry.

20 (Reporter reads back the last question)

21 MS. DANNEN: Regarding Mr. LaFave's, you know,  
22 negotiations and lead member on the negotiating team,  
23 there was a six-month time frame where NorthWestern  
24 didn't hear anything from Oak Tree.

25 My question was is what did you assume was the

1 point of the project at that time was going to be my  
2 question had I finished.

3 MR. UDA: And I don't believe I asked him  
4 anything about that.

5 MR. SMITH: And your -- I guess I don't recall.  
6 And the point of the response is what? That it's not  
7 appropriate for redirect?

8 MR. UDA: Well, yeah. It's outside the scope of  
9 my cross.

10 MS. DANNEN: But he was asked about questions in  
11 negotiations so the door was opened.

12 MR. UDA: Well, I think what I asked him about  
13 was specific letters. I never brought up this six-month  
14 negotiation period.

15 MR. SMITH: I'm going to overrule the objection  
16 and let him answer it. For one thing I think there was  
17 some going down that direction by some of the questions  
18 from Commissioners. Yep. So go ahead.

19 Q. Again, Mr. LaFave, there was kind of a six-month  
20 hiatus from July 30, 2010, to January 25, 2011, wherein  
21 NorthWestern didn't hear anything from Oak Tree regarding  
22 the status of the project.

23 What did you or NorthWestern assume at that point  
24 the status of the project was?

25 A. NorthWestern responded to the last questions that

1 they received and didn't receive any communication after  
2 that so we assumed that they were either seeking  
3 something else or they had decided not to continue.

4 Q. I believe Mr. Uda asked you about I think I have it  
5 as Complainant's Exhibit 9, meaning it was Exhibit 9 to  
6 Oak Tree's Complaint. It was the last paragraph in that  
7 letter wherein you state that the filed avoided cost rate  
8 mentioned above is the allowable rate for qualified  
9 facilities. NorthWestern would be interested in any  
10 discussions that would add renewable resources to our  
11 portfolio that are at a price below the established  
12 avoided costs.

13 You know, you can read the rest for yourself. What  
14 did you mean by that statement?

15 A. I meant that NorthWestern would be willing to have  
16 any discussions surrounding a resource that would come in  
17 at or below NorthWestern's avoided cost.

18 Q. And you weren't closing the door to no further  
19 discussions or further talks of price or terms of any  
20 agreements?

21 A. No. We continue to have conversations and inquiries  
22 from other companies on any type of renewable resources  
23 or other resources. So we would continue to have  
24 discussions with Oak Tree also.

25 Q. There's been a lot of talk too from Mr. Uda, and I

1 believe the Commission, about the big picture and what is  
2 the big picture in everyone's mind.

3 What is the big picture in your mind or as you're a  
4 respective representative of NorthWestern Energy?

5 A. As it pertains to this particular case?

6 Q. Absolutely.

7 A. NorthWestern has a requirement under PURPA to  
8 execute agreements with -- or to purchase energy and  
9 capacity at or below its avoided cost. NorthWestern  
10 currently is not seeking base load or intermittent  
11 resource base load energy because we are currently in the  
12 market -- currently generate 93 percent of our own  
13 energy. We purchase 7 percent of our own energy -- of  
14 the energy that we use. We use energy -- or we generate  
15 of time over 50 percent we use with our own internal  
16 generation.

17 So with respect to this particular inquiry by  
18 Oak Tree, we would be more than happy to continue  
19 discussions at or below our avoided costs, but we are not  
20 currently seeking any additional generation.

21 MS. DANNEN: Thank you, Mr. LaFave. I have no  
22 further redirect of this witness.

23 MR. SMITH: Commissioner Hanson notified me that  
24 he has one additional question, which I'm going to let  
25 him ask before I then turn to Mr. Uda to see if you have

1 any recross.

2 And, Commissioner Hanson, do you recall your  
3 question?

4 COMMISSIONER HANSON: Thank you, Mr. Smith.

5 Yes, I do. And when I say I have one other  
6 question I say that every once in awhile and usually I'm  
7 correct but sometimes questions generate other  
8 questions.

9 Are you aware of any imminent request for a rate  
10 increase by NorthWestern Energy to this Commission?

11 THE WITNESS: I believe there will be -- there  
12 will be a possibility of a rate increase due to the  
13 environmental upgrades to the -- to the two generation  
14 facilities that have been spoken of earlier.

15 COMMISSIONER HANSON: Just to those two  
16 generating facilities?

17 THE WITNESS: And I believe -- well, I'm aware  
18 there's a possibility that it would also include -- well,  
19 it would include any rate baseable items. So it would  
20 also include -- all encompassing, which would also  
21 include the Aberdeen peaking facility.

22 COMMISSIONER HANSON: Aren't there considerable  
23 amount of analysis that goes into a rate increase  
24 request?

25 THE WITNESS: Yes.

1           COMMISSIONER HANSON:  Would not that information  
2 be appropriate for this Commission to examine regarding  
3 potential avoided cost in this type of a situation?

4           THE WITNESS:  If the avoided cost by the  
5 facility would be able to offset some of those expenses,  
6 it could be possible.  But because this particular  
7 intermittent facility would not offset the expenses of  
8 those large base load clients, I would say no.

9           COMMISSIONER HANSON:  So your analysis of  
10 avoided cost only specifically addresses what you have  
11 chosen to possibly be directly associated with in a  
12 geographical area to Oak Tree?

13          THE WITNESS:  It would only be in respect to  
14 costs that can possibly be avoided.

15          COMMISSIONER HANSON:  But doesn't that include  
16 then the work that you would have done for the analysis  
17 for a rate increase?

18          THE WITNESS:  The rate increase analysis I  
19 believe is based on a -- if they would do it, and I  
20 believe it was mentioned earlier, it would be based on a  
21 specific year, which would not be complete.

22          So if there is a -- if there was a rate case  
23 due, say, in 2013, it would be based on a 2012 test year.  
24 The analysis would not be complete.

25          COMMISSIONER HANSON:  And yet it would -- and

1 yet it would be very interesting at least to this  
2 Commissioner to see that information.

3 I certainly hope we don't have a big surprise  
4 when we receive that. Thank you.

5 MR. SMITH: Mr. Uda, do you have any follow-on  
6 cross?

7 MR. UDA: Well, on the probably hazardous theory  
8 that it's better to ask for permission than forgiveness,  
9 I was wondering what sort of latitude -- I mean, there's  
10 a couple of questions I'd like to follow up that  
11 NorthWestern asked on redirect, and I'd certainly be  
12 willing to grant them any right. I really have like two  
13 questions.

14 MR. SMITH: Well, yeah. Go ahead.

15 MR. UDA: I actually have one based on a  
16 question you asked too so there's actually three.

17 MR. SMITH: Fire away.

18 RECROSS-EXAMINATION

19 BY MR. UDA:

20 Q. First of all, Mr. LaFave -- first of all, I want to  
21 thank you for your indulgence at this late hour. And I  
22 know we're all tired so I'm going to try to get directly  
23 to the point.

24 Your counsel asked the question about capacity  
25 avoidance and whether or not we ever offered to sell our

1 capacity to you.

2 Isn't it true that our offers to you offered to sell  
3 the entire output of the plant to NorthWestern Energy?

4 A. I believe counsel --

5 MS. DANNEN: NorthWestern would like to object.  
6 That mischaracterized my question to Mr. LaFave.

7 MR. SMITH: Overruled.

8 Q. Well, okay. So did you understand the question?

9 A. I did. I believe the question had to do with did  
10 they ever offer NorthWestern the capacity separate, and  
11 the answer was no.

12 Q. Well, that first question was did they ever offer to  
13 sell you the capacity separately, and your answer was no.  
14 And I think that's true.

15 The second question was did they ever offer to sell  
16 you their capacity, and your answer was no. And I'm  
17 asking you --

18 MS. DANNEN: Again, objection. I think it  
19 mischaracterizes my questions that I asked of Mr. LaFave  
20 regarding capacity.

21 MR. SMITH: I'm going to sustain that because I  
22 don't recall that. Maybe it's in the transcript, and you  
23 can find it, maybe you can recall him if it's worth it.

24 MR. UDA: I'm not going to try to resurrect  
25 Lazarus.

1 Q. But let me just ask you this question. Did, in  
2 fact, Oak Tree offer to sell you their capacity?

3 A. Capacity and energy, yes.

4 Q. Thank you. And the only reason I'm asking you about  
5 this is because you used a strange expression to me in  
6 your answer about this six-month gap. And I have -- I  
7 lied. I have two questions.

8 First you used the phrase NorthWestern chose not to  
9 continue the negotiations. In your mind when did  
10 negotiations start?

11 A. I apologize. I don't remember saying that. Could  
12 you repeat what I said?

13 Q. You used the phrase chose not to continue  
14 negotiations.

15 A. Oh, Oak Tree chose not to continue. I said maybe  
16 Oak Tree chose not to continue. Somebody was asking me  
17 whether or not -- or what I -- or counsel asked me  
18 whether or not Oak Tree or what I thought Oak Tree had  
19 done to leave or had done to -- after that break, after  
20 that July letter.

21 Q. Okay.

22 A. And my response was I don't know. It wasn't I don't  
23 know, but it was it could have been they chose not to  
24 continue negotiations. And I would qualify that as they  
25 chose not to continue discussion.

1 Q. Okay. And you were present for the testimony from  
2 Mr. Makens that he recalls directly having conversations  
3 with you about the Oak Tree project.

4 A. I recall that testimony.

5 Q. Okay. And you don't agree with it.

6 A. I do not.

7 Q. Okay. And then I have a question about based on  
8 Mr. Smith's question if it's the case that NorthWestern  
9 has to make a significant investment decision in air  
10 pollution control technology, solid waste disposal  
11 technology, Clean Water Act technology in order to  
12 continue operating its coal plant resources and makes the  
13 investment decision to stop operating those plants rather  
14 than pay for those investments, is that going to affect,  
15 in your opinion, the price that people are going to pay  
16 for electricity in this region?

17 A. I believe it would.

18 MR. UDA: Thank you. No further questions.

19 MR. SMITH: Any final redirect?

20 MS. DANNEN: Just one.

21 MS. SEMMLER: May I ask a question?

22 MR. SMITH: Oh, you may. I'm sorry. I'm sorry,  
23 Staff.

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CROSS-EXAMINATION

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BY MS. SEMMLER:

Q. I have one clarification question about the negotiation process. And I'm confused about when NorthWestern believes it has an obligation to negotiate. It sounds like you don't believe there's an obligation to negotiate unless Oak Tree had submitted an offer exactly at or below what you believe the avoided cost to be.

Is that a correct characterization of your testimony?

A. NorthWestern would have the obligation -- or not an obligation. NorthWestern would negotiate and discuss all the different options, but one of the criteria for price is it needs to be at or below the avoided cost.

Q. You did testify that there were five methods to creating an avoided cost model, and couldn't those methods create a different avoided cost so unless Oak Tree did it exactly like NorthWestern and came up with the exact number, that would eliminate your need to have conversations? Is that --

A. No. The avoided cost you could calculate, using any one of those methods, an avoided cost. But for NorthWestern the method we used because we have an integrated base load generation and because we use spot prices utilizing the component -- partially the component

1 peaked method and partially the -- it's slipping my mind  
2 right now -- the market price method, using those --  
3 using a combination of those two most replicates what  
4 NorthWestern does. So it would most replicate the  
5 avoided cost NorthWestern could have.

6 MS. SEMMLER: Nothing further.

7 MR. SMITH: Nothing further, Kara?

8 MS. SEMMLER: Nothing further.

9 MR. SMITH: Okay. Any follow-on questions,  
10 NorthWestern? Redirect on what the other parties have  
11 asked?

12 MS. DANNEN: Can I just have one second to  
13 confer with my co-counsel?

14 Nothing further. Thank you.

15 MR. SMITH: Thank you. I think that concludes  
16 the examination of Mr. LaFave. I was going to say  
17 LaBleau, but I caught myself. I'm getting tired.

18 Okay. We're going to go into recess until I  
19 guess we've decided then the scheduled time 9 o'clock and  
20 hopefully everybody will be on time and we can get  
21 started at that time.

22 (The proceeding is in recess at 6:30 p.m.)

23

24

25

1 STATE OF SOUTH DAKOTA )

2 :SS CERTIFICATE

3 COUNTY OF SULLY )

4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 21st day of  
11 March, 2012, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 2nd day of  
14 April, 2012.

15

16

17

18 Cheri McComsey Wittler,  
19 Notary Public and  
20 Registered Professional Reporter  
21 Certified Realtime Reporter

22

23

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<p><b>\$10</b> [1] - 88:25  <b>\$100</b> [1] - 62:15  <b>\$120</b> [2] - 252:10, 253:4  <b>\$15</b> [1] - 126:15  <b>\$15,000</b> [1] - 54:3  <b>\$17</b> [7] - 44:6, 92:16, 92:17, 199:6, 199:22, 252:12, 253:11  <b>\$19</b> [3] - 270:5, 271:12, 281:21  <b>\$2,010</b> [1] - 129:24  <b>\$20</b> [12] - 59:14, 59:16, 59:25, 104:5, 105:12, 107:3, 107:4, 131:21, 183:11, 240:5, 253:1, 271:11  <b>\$20.40</b> [1] - 282:3  <b>\$200</b> [1] - 106:13  <b>\$23</b> [9] - 140:25, 155:18, 156:12, 157:16, 167:8, 182:1, 182:3, 238:20, 248:1  <b>\$24.97</b> [1] - 282:8  <b>\$25</b> [1] - 282:6  <b>\$35</b> [2] - 27:2, 35:14  <b>\$5</b> [1] - 266:10  <b>\$50</b> [3] - 121:14, 273:24, 274:1  <b>\$500,000</b> [3] - 54:2, 54:4, 259:7  <b>\$54</b> [5] - 72:8, 131:20, 131:24, 240:5, 282:13  <b>\$54.40</b> [1] - 142:15  <b>\$60</b> [1] - 252:10  <b>\$65</b> [3] - 31:17, 54:14, 150:9  <b>\$69</b> [1] - 150:6  <b>\$69,400</b> [1] - 81:18  <b>\$69.21</b> [1] - 184:7  <b>\$7.50</b> [1] - 30:25  <b>\$70</b> [1] - 31:6  <b>\$70.10</b> [1] - 142:23  <b>\$75</b> [4] - 20:1, 27:1, 60:20, 222:22  <b>\$80</b> [1] - 273:7  <b>\$90</b> [3] - 72:9, 131:4, 131:5  <b>\$90.13</b> [1] - 68:12  <b>\$99,120</b> [1] - 81:21</p>	<p><b>006</b> [1] - 15:10</p> <p><b>1</b></p> <p><b>1</b> [28] - 3:3, 3:10, 3:14, 3:16, 3:20, 3:20, 3:21, 13:18, 40:5, 41:23, 45:10, 50:2, 80:18, 144:17, 153:2, 173:14, 176:9, 184:21, 191:2, 193:9, 193:20, 194:7, 194:21, 195:1, 221:24, 241:10, 271:14  <b>1</b>(i) [1] - 19:5  <b>1,100</b> [2] - 77:19, 78:21  <b>1,200</b> [1] - 77:20  <b>1-295</b> [1] - 1:9  <b>1.4</b> [1] - 112:21  <b>10</b> [22] - 3:8, 23:12, 24:2, 32:3, 58:23, 95:22, 112:20, 139:3, 153:1, 153:7, 155:2, 158:23, 159:1, 170:19, 232:17, 245:9, 245:21, 247:3, 247:15, 260:8, 267:16  <b>10,000</b> [1] - 29:14  <b>10-year</b> [2] - 230:5, 230:19  <b>100</b> [17] - 36:23, 78:13, 110:19, 123:9, 134:5, 180:20, 237:3, 239:6, 239:7, 239:10, 239:20, 249:13, 269:23, 270:8, 271:24, 281:16, 281:17  <b>106</b> [2] - 57:25, 79:23  <b>10:00</b> [1] - 73:9  <b>11</b> [11] - 3:8, 73:14, 74:14, 214:9, 214:12, 214:24, 247:2, 252:7, 252:25, 266:6, 279:7  <b>111</b> [2] - 11:9, 138:13  <b>11:00</b> [1] - 61:14  <b>11:30</b> [1] - 244:21  <b>12</b> [10] - 156:22, 164:10, 164:15, 172:16, 172:18, 212:2, 214:21,</p>	<p>247:4, 252:10, 280:11  <b>12,224</b> [1] - 18:2  <b>129</b> [1] - 2:9  <b>13</b> [2] - 15:12, 155:9  <b>135</b> [1] - 2:9  <b>136</b> [1] - 2:9  <b>137</b> [2] - 3:4, 15:10  <b>138</b> [1] - 3:4  <b>14</b> [1] - 15:12  <b>143</b> [1] - 2:9  <b>145</b> [2] - 94:21, 94:22  <b>147</b> [5] - 119:25, 120:3, 120:4, 120:7  <b>149</b> [4] - 93:9, 93:10, 93:11, 120:9  <b>15</b> [15] - 27:20, 57:17, 58:6, 59:10, 82:14, 86:5, 88:25, 144:12, 150:18, 150:23, 161:5, 181:8, 213:8, 241:17, 245:9  <b>15,000</b> [1] - 54:5  <b>15-minute</b> [1] - 61:11  <b>16</b> [2] - 4:16, 144:13  <b>168th</b> [1] - 136:22  <b>17</b> [11] - 150:18, 150:24, 155:9, 253:14, 270:5, 270:17, 270:23, 271:6, 271:9, 271:12, 281:21  <b>17,000</b> [1] - 44:13  <b>175</b> [2] - 68:16, 130:4  <b>176,000</b> [2] - 119:13, 131:18  <b>178</b> [1] - 2:9  <b>18</b> [11] - 4:17, 4:21, 13:15, 17:24, 19:4, 32:1, 190:21, 221:11, 229:12, 229:23, 260:2  <b>19</b> [4] - 31:6, 142:17, 270:24, 271:6  <b>19.5</b> [10] - 43:21, 43:22, 114:5, 114:6, 115:16, 116:3, 116:12, 116:17, 117:8, 117:9  <b>192</b> [1] - 2:11  <b>194</b> [1] - 3:10  <b>195</b> [1] - 3:10  <b>196</b> [2] - 3:11  <b>197,259</b> [1] - 2:11  <b>1978</b> [1] - 12:13  <b>1980</b> [2] - 18:2, 66:22  <b>1982</b> [2] - 36:21, 249:10  <b>1:30</b> [1] - 244:21</p>	<p><b>2</b> [48] - 3:4, 3:11, 13:23, 17:5, 19:8, 31:17, 36:14, 42:19, 43:2, 51:6, 51:8, 51:13, 51:25, 52:16, 75:23, 76:4, 76:6, 80:18, 82:22, 142:16, 173:13, 182:12, 184:23, 185:2, 185:5, 191:7, 194:8, 195:8, 196:1, 196:2, 196:7, 196:15, 227:4, 227:8, 227:9, 227:11, 227:13, 230:3, 246:1, 246:8, 258:21, 265:25, 272:7, 272:21  <b>2.1</b> [5] - 112:14, 112:17, 112:18, 112:19  <b>2.5</b> [2] - 156:17, 173:7  <b>20</b> [28] - 30:2, 30:19, 36:14, 43:23, 60:21, 68:21, 68:22, 69:25, 72:7, 78:22, 98:8, 98:9, 109:4, 112:21, 114:15, 114:22, 115:3, 133:23, 154:3, 167:8, 173:13, 175:19, 183:17, 214:15, 214:22, 241:17, 253:4, 272:1  <b>20-year</b> [15] - 17:8, 31:5, 32:5, 68:17, 116:4, 129:24, 142:14, 156:13, 225:3, 230:21, 234:1, 258:22, 279:11, 279:14, 282:11  <b>200</b> [3] - 79:21, 80:4, 158:17  <b>2000</b> [1] - 65:12  <b>2002</b> [1] - 94:22  <b>2005</b> [1] - 138:17  <b>2007</b> [2] - 65:11, 235:6  <b>2008</b> [7] - 65:15, 139:11, 200:3, 202:7, 207:22, 217:2, 217:12  <b>2009</b> [11] - 81:19, 158:15, 164:9, 164:13, 164:15, 165:14, 217:3, 217:12, 225:4,</p>	<p><b>2010</b> [50] - 33:5, 33:17, 41:13, 42:9, 42:13, 42:15, 42:21, 46:6, 53:17, 68:4, 73:14, 74:3, 74:14, 74:16, 81:23, 87:22, 95:11, 136:1, 152:25, 153:9, 153:22, 165:13, 170:8, 178:15, 180:1, 180:8, 181:8, 182:16, 184:23, 185:3, 190:15, 190:16, 194:11, 194:12, 196:23, 208:5, 208:10, 217:3, 217:12, 219:9, 219:12, 219:25, 236:23, 241:6, 247:14, 259:25, 260:9, 282:3, 283:12, 284:20  <b>2011</b> [48] - 28:12, 28:14, 29:9, 29:17, 33:5, 36:12, 52:13, 85:19, 85:23, 88:9, 94:12, 95:22, 150:3, 153:1, 153:12, 153:23, 180:7, 181:1, 182:12, 189:24, 190:16, 194:12, 198:7, 198:10, 208:21, 208:22, 209:4, 210:23, 211:15, 211:25, 212:10, 212:20, 212:24, 213:11, 214:1, 217:3, 217:12, 219:15, 219:17, 220:1, 222:2, 245:22, 246:8, 247:3, 247:15, 283:13, 284:20  <b>2012</b> [29] - 1:8, 2:4, 4:6, 4:13, 16:23, 37:19, 42:7, 42:10, 42:21, 56:22, 57:1, 68:10, 84:12, 112:3, 129:24, 130:9, 130:12, 135:24, 142:5, 210:4, 210:7, 210:8, 210:10, 210:12, 211:4, 266:24, 288:23, 295:11, 295:14  <b>2013</b> [14] - 44:8, 44:9, 56:6, 56:9, 198:7, 198:21, 209:15,</p>

<p>209:20, 211:4, 212:12, 213:4, 252:7, 288:23 <b>2015</b> [4] - 23:12, 24:2, 88:25, 267:3 <b>2016</b> [8] - 88:21, 89:12, 130:9, 130:12, 130:16, 130:22, 135:25, 256:24 <b>2020</b> [4] - 21:5, 26:1, 88:25, 127:18 <b>2025</b> [1] - 88:25 <b>2031</b> [5] - 42:10, 68:12, 84:12, 131:18, 219:2 <b>205</b> [1] - 6:19 <b>208</b> [1] - 6:19 <b>21</b> [9] - 1:8, 4:6, 10:22, 32:22, 108:23, 147:14, 147:15, 156:22, 176:8 <b>21st</b> [2] - 2:4, 295:10 <b>22</b> [2] - 156:1, 241:6 <b>2201</b> [1] - 246:13 <b>222</b> [1] - 78:17 <b>23</b> [1] - 183:11 <b>23.40</b> [1] - 72:4 <b>24</b> [1] - 243:16 <b>25</b> [23] - 17:4, 20:3, 36:12, 52:13, 74:3, 74:16, 93:16, 151:12, 153:1, 153:12, 153:23, 180:1, 180:7, 181:1, 189:24, 190:16, 198:10, 212:24, 231:6, 245:22, 246:8, 260:9, 284:20 <b>25-year</b> [2] - 41:14, 233:13 <b>259</b> [6] - 27:7, 35:2, 53:18, 60:3, 60:4, 259:6 <b>259-page</b> [1] - 24:14 <b>26</b> [11] - 76:4, 151:12, 194:10, 194:11, 198:10, 208:22, 209:4, 211:15, 211:25, 213:11, 214:1 <b>278</b> [1] - 2:11 <b>28</b> [1] - 4:13 <b>289</b> [1] - 2:11 <b>292.302</b> [2] - 32:1, 260:2 <b>292.302(b)</b> [2] - 229:12, 229:23 <b>292.303</b> [1] - 4:17 <b>292.304</b> [1] - 4:21</p>	<p><b>292.304(a)</b> [1] - 19:4 <b>292.304(d)</b> [1] - 13:15 <b>292.304(d)</b> [1] - 190:21 <b>292.304(d)(2)(ii)</b> [1] - 17:24 <b>292.404</b> [1] - 4:17 <b>299</b> [3] - 3:14 <b>2:00</b> [2] - 128:15, 128:20 <b>2nd</b> [1] - 295:13</p> <p style="text-align: center;"><b>3</b></p> <p><b>3</b> [47] - 3:3, 3:4, 3:4, 3:5, 3:5, 3:6, 3:6, 3:7, 3:10, 3:11, 3:11, 3:12, 3:12, 3:13, 3:13, 3:14, 3:16, 40:13, 40:25, 41:3, 41:4, 42:2, 42:10, 43:25, 62:24, 63:4, 64:22, 67:21, 75:8, 75:17, 98:22, 129:8, 129:21, 137:14, 138:6, 144:12, 147:15, 199:14, 199:16, 199:18, 222:10, 241:11, 245:20, 253:9, 280:11 <b>3,009</b> [1] - 92:18 <b>3.9</b> [9] - 44:13, 92:10, 92:18, 115:19, 115:23, 116:8, 116:18, 199:6, 214:14 <b>30</b> [9] - 142:2, 152:25, 153:8, 153:22, 190:15, 190:16, 231:11, 231:14, 284:20 <b>300</b> [1] - 2:12 <b>3010</b> [1] - 192:25 <b>302</b> [2] - 3:12 <b>303</b> [2] - 3:12 <b>305,366</b> [1] - 2:12 <b>31</b> [1] - 142:5 <b>32</b> [1] - 156:22 <b>32.73</b> [1] - 68:10 <b>327</b> [1] - 3:8 <b>33</b> [2] - 80:17, 258:21 <b>35</b> [3] - 56:7, 211:19, 212:13 <b>35.85</b> [3] - 75:11, 271:5, 271:8 <b>357</b> [1] - 2:12 <b>363</b> [1] - 2:12 <b>367</b> [1] - 2:12 <b>371</b> [2] - 3:13</p>	<p><b>372</b> [2] - 3:13 <b>374,412</b> [1] - 2:12 <b>38</b> [2] - 2:9, 18:1 <b>39</b> [1] - 82:22</p> <p style="text-align: center;"><b>4</b></p> <p><b>4</b> [19] - 3:5, 3:12, 40:13, 47:20, 47:21, 49:16, 63:13, 64:10, 64:14, 78:17, 92:10, 120:5, 175:25, 176:13, 214:12, 232:12, 252:24, 253:13, 253:14 <b>40</b> [5] - 20:1, 139:9, 143:22, 273:24, 273:25 <b>400</b> [4] - 78:2, 273:18, 274:23, 275:17 <b>413</b> [2] - 2:3, 4:7 <b>425</b> [1] - 2:12 <b>42563</b> [1] - 136:22 <b>426</b> [1] - 2:12 <b>429</b> [1] - 2:13 <b>432</b> [2] - 3:11 <b>433</b> [1] - 2:13 <b>44.8</b> [1] - 48:14 <b>440</b> [1] - 2:13 <b>442</b> [2] - 3:14 <b>443</b> [1] - 2:13 <b>44475</b> [1] - 38:25 <b>45</b> [4] - 3:3, 18:1, 202:10, 207:23 <b>455</b> [10] - 3:5, 3:5, 3:6, 3:6, 3:7 <b>456</b> [1] - 2:15 <b>457</b> [2] - 3:16 <b>463,478</b> [1] - 2:15 <b>47</b> [1] - 3:3 <b>493</b> [1] - 2:15</p> <p style="text-align: center;"><b>5</b></p> <p><b>5</b> [25] - 3:5, 3:12, 40:13, 53:18, 56:7, 60:4, 64:10, 67:5, 81:19, 88:24, 93:7, 115:25, 119:25, 120:8, 181:8, 181:17, 198:25, 211:18, 211:22, 212:13, 228:6, 252:8, 252:10, 252:21, 252:25 <b>50</b> [3] - 70:3, 123:9, 286:15 <b>500</b> [2] - 2:3, 2:17</p>	<p><b>509,516</b> [1] - 2:17 <b>51</b> [2] - 3:4 <b>52</b> [2] - 26:1, 272:22 <b>54</b> [1] - 183:18 <b>54.4</b> [1] - 52:16 <b>54.40</b> [11] - 17:5, 31:16, 36:13, 72:3, 150:9, 151:2, 156:17, 156:21, 173:2, 173:6, 173:13 <b>55</b> [1] - 79:24 <b>55,000</b> [1] - 26:2 <b>57225</b> [1] - 136:22 <b>58</b> [1] - 188:16 <b>5:00</b> [1] - 244:3</p> <p style="text-align: center;"><b>6</b></p> <p><b>6</b> [12] - 3:6, 3:13, 40:13, 112:17, 154:3, 172:17, 194:10, 241:6, 241:10, 241:11, 244:22, 253:4 <b>60</b> [6] - 158:17, 158:19, 161:25, 162:2, 162:5, 162:8 <b>60,000</b> [2] - 25:25, 127:17 <b>61</b> [1] - 15:10 <b>61,87</b> [1] - 2:9 <b>65.1</b> [2] - 52:17, 52:18 <b>65.10</b> [1] - 17:7 <b>65.12</b> [1] - 17:7 <b>68</b> [1] - 253:14 <b>68.77</b> [1] - 227:22 <b>69</b> [1] - 18:1 <b>69.2</b> [1] - 185:16 <b>69.21</b> [1] - 185:18 <b>69th</b> [1] - 192:25 <b>6:00</b> [3] - 73:8, 243:3, 244:15 <b>6:30</b> [1] - 294:22</p> <p style="text-align: center;"><b>7</b></p> <p><b>7</b> [13] - 3:6, 3:13, 150:17, 150:18, 150:23, 155:2, 194:8, 213:3, 216:25, 266:2, 270:21, 279:7, 286:13 <b>7.1</b> [9] - 57:18, 57:22, 58:5, 58:8, 59:11, 86:6, 86:13, 86:15, 213:3 <b>70</b> [5] - 238:22,</p>	<p>272:17, 273:7, 273:10, 273:12 <b>70.8</b> [1] - 52:22 <b>75.52</b> [1] - 75:13 <b>78.9</b> [1] - 52:21 <b>78.90</b> [1] - 142:21 <b>79</b> [3] - 30:19, 183:17, 183:20 <b>79.92</b> [2] - 107:17, 107:20</p> <p style="text-align: center;"><b>8</b></p> <p><b>8</b> [14] - 3:7, 3:14, 3:20, 3:20, 80:12, 80:17, 114:15, 115:13, 151:12, 153:1, 153:7, 179:25, 181:2, 214:21 <b>8,760</b> [1] - 98:8 <b>80</b> [5] - 158:19, 164:21, 272:16, 273:10, 273:12 <b>824A-3</b> [1] - 4:16</p> <p style="text-align: center;"><b>9</b></p> <p><b>9</b> [19] - 2:5, 3:7, 3:14, 4:5, 72:20, 80:18, 132:3, 153:2, 154:3, 155:4, 173:8, 173:14, 182:10, 194:7, 221:11, 232:16, 285:5, 294:19 <b>90-plus</b> [1] - 154:14 <b>91.37</b> [1] - 227:21 <b>92</b> [1] - 30:20 <b>93</b> [3] - 216:24, 267:11, 286:12 <b>95618</b> [1] - 39:1 <b>97</b> [1] - 188:13 <b>9:00</b> [3] - 243:6, 244:10, 244:25</p> <p style="text-align: center;"><b>A</b></p> <p><b>a.m</b> [3] - 2:5, 4:5, 244:22 <b>Aberdeen</b> [24] - 54:23, 54:24, 56:5, 202:11, 207:23, 208:10, 209:5, 210:19, 211:1, 211:18, 212:11, 212:14, 212:16, 214:2, 214:5, 231:12, 231:14, 272:7,</p>	2
---	---	---	---	--	---

<p>272:21, 272:25, 273:2, 274:22, 276:10, 287:21 <b>ability</b> [7] - 113:5, 113:9, 126:10, 162:19, 263:21, 266:21, 267:2 <b>able</b> [31] - 10:16, 71:3, 73:18, 95:3, 115:17, 115:22, 141:8, 141:12, 150:19, 164:19, 198:22, 198:23, 207:2, 207:18, 208:2, 210:16, 210:17, 214:19, 218:2, 236:12, 239:2, 255:7, 266:14, 267:20, 271:14, 274:16, 275:9, 275:13, 276:1, 281:1, 288:5 <b>abnormal</b> [1] - 119:15 <b>above-entitled</b> [2] - 2:2, 295:10 <b>absence</b> [1] - 257:4 <b>absent</b> [3] - 22:5, 23:22, 55:7 <b>absolute</b> [1] - 73:15 <b>absolutely</b> [3] - 56:1, 271:11, 286:6 <b>absorb</b> [1] - 113:6 <b>abundance</b> [1] - 51:12 <b>accept</b> [12] - 49:2, 49:4, 68:18, 74:1, 74:12, 78:15, 78:16, 78:18, 80:5, 157:1, 169:25, 246:13 <b>acceptability</b> [1] - 174:4 <b>acceptable</b> [2] - 145:12, 244:9 <b>access</b> [2] - 266:14, 268:24 <b>accommodate</b> [1] - 275:12 <b>accomplish</b> [1] - 275:14 <b>accordance</b> [3] - 194:2, 195:15, 196:8 <b>according</b> [4] - 142:9, 145:20, 149:14, 168:18 <b>accordingly</b> [1] - 15:22 <b>Accords</b> [1] - 21:21 <b>account</b> [30] - 21:13, 24:13, 25:10, 25:19, 26:7, 28:1, 28:7, 28:13, 28:23, 29:11,</p>	<p>30:15, 48:18, 60:13, 60:16, 60:18, 61:2, 61:6, 90:5, 90:24, 91:5, 101:11, 102:14, 114:2, 114:25, 131:16, 131:25, 133:18, 134:7, 231:21, 242:15 <b>accounted</b> [1] - 19:19 <b>accreditation</b> [1] - 214:17 <b>accuracy</b> [2] - 28:20, 107:18 <b>accurate</b> [5] - 9:17, 154:16, 165:6, 199:12, 237:3 <b>accurately</b> [3] - 9:12, 154:20, 189:13 <b>accused</b> [2] - 38:8, 38:12 <b>acknowledge</b> [2] - 60:15, 60:17 <b>acknowledged</b> [2] - 85:3, 90:10 <b>acquire</b> [5] - 16:21, 16:23, 22:21, 23:13, 23:14 <b>acquired</b> [1] - 34:9 <b>acquiring</b> [2] - 20:11, 34:10 <b>acronym</b> [1] - 160:9 <b>act</b> [2] - 5:21, 257:14 <b>Act</b> [2] - 20:22, 292:11 <b>acted</b> [1] - 238:9 <b>action</b> [4] - 137:17, 207:6, 244:7, 258:6 <b>active</b> [1] - 257:10 <b>activities</b> [1] - 66:17 <b>activity</b> [2] - 67:6 <b>actual</b> [10] - 25:10, 35:18, 40:9, 67:4, 94:22, 106:8, 133:16, 200:13, 221:7, 273:12 <b>actuals</b> [4] - 94:12, 95:2, 217:14, 217:15 <b>adamant</b> [1] - 166:21 <b>add</b> [9] - 42:15, 120:24, 155:11, 181:22, 182:25, 247:10, 247:17, 247:22, 285:10 <b>added</b> [1] - 92:20 <b>adding</b> [3] - 23:9, 242:14, 276:4 <b>addition</b> [6] - 41:17, 45:3, 56:8, 92:11, 212:15, 213:2 <b>additional</b> [20] - 5:3,</p>	<p>20:24, 21:7, 71:14, 71:18, 77:25, 109:23, 129:18, 141:3, 172:24, 209:15, 209:21, 212:16, 230:4, 254:24, 262:15, 266:24, 276:22, 286:20, 286:24 <b>additions</b> [6] - 32:3, 39:11, 50:24, 137:10, 194:5, 195:18 <b>address</b> [11] - 6:18, 38:24, 38:25, 40:18, 40:21, 114:10, 136:21, 145:13, 162:18, 192:24, 207:4 <b>addressed</b> [1] - 81:13 <b>addresses</b> [1] - 288:10 <b>adequately</b> [2] - 28:6, 46:11 <b>adjacent</b> [1] - 43:10 <b>adjective</b> [1] - 100:1 <b>adjourning</b> [1] - 243:19 <b>adjust</b> [1] - 124:22 <b>adjusted</b> [3] - 125:3, 267:18, 280:15 <b>adjusting</b> [2] - 49:10, 124:21 <b>adjustment</b> [9] - 70:24, 71:1, 125:4, 125:9, 125:10, 125:15, 127:8, 145:6, 146:25 <b>adjustments</b> [2] - 125:5, 125:15 <b>administration</b> [1] - 193:12 <b>administration's</b> [1] - 27:14 <b>administrative</b> [2] - 152:17, 193:15 <b>admission</b> [7] - 39:20, 40:6, 49:15, 51:3, 137:14, 196:1, 226:15 <b>admit</b> [2] - 50:1, 242:2 <b>admitted</b> [10] - 6:11, 6:19, 45:10, 47:17, 47:19, 51:25, 138:6, 195:1, 196:7, 225:13 <b>adopted</b> [2] - 12:12, 18:25 <b>advantage</b> [1] - 126:11 <b>adverse</b> [2] - 152:23,</p>	<p>275:1 <b>advice</b> [1] - 200:7 <b>advised</b> [3] - 149:19, 149:21, 177:9 <b>advisor</b> [1] - 119:23 <b>advisors</b> [1] - 89:24 <b>affect</b> [10] - 16:7, 22:1, 25:11, 256:7, 256:13, 256:15, 256:17, 278:4, 282:11, 292:14 <b>affects</b> [1] - 139:7 <b>Affidavit</b> [1] - 62:19 <b>affiliated</b> [1] - 204:8 <b>afternoon</b> [15] - 128:22, 136:16, 136:17, 143:10, 143:11, 167:23, 167:24, 173:22, 178:8, 178:9, 192:21, 197:21, 197:22, 262:21, 262:22 <b>AGAINST</b> [1] - 1:4 <b>age</b> [1] - 219:16 <b>Agency</b> [1] - 257:4 <b>agency</b> [1] - 97:2 <b>aggressively</b> [1] - 267:24 <b>ago</b> [7] - 89:7, 131:5, 138:17, 139:1, 148:23, 184:12, 205:6 <b>agree</b> [68] - 12:20, 74:13, 76:8, 76:11, 89:1, 101:10, 105:25, 113:17, 156:3, 156:7, 198:13, 198:25, 199:3, 199:21, 216:12, 217:21, 217:24, 217:25, 218:24, 219:5, 220:2, 220:5, 220:8, 220:10, 220:17, 221:21, 222:11, 223:1, 230:9, 230:12, 231:10, 231:13, 231:19, 232:20, 234:24, 238:8, 239:4, 240:2, 243:9, 249:15, 249:19, 249:23, 250:1, 251:8, 251:18, 251:23, 252:1, 253:3, 253:11, 254:4, 254:8, 254:16, 254:17, 254:23, 255:4, 255:14,</p>	<p>255:17, 255:21, 3 256:2, 256:6, 256:11, 256:18, 256:23, 257:18, 259:12, 277:22, 281:6, 292:5 <b>agreed</b> [3] - 102:13, 130:3, 146:14 <b>agreeing</b> [1] - 57:23 <b>agreement</b> [67] - 4:4, 5:5, 14:10, 16:3, 17:19, 33:24, 55:7, 57:20, 58:2, 58:3, 59:22, 59:23, 86:8, 103:16, 122:15, 134:15, 140:8, 140:12, 145:9, 145:11, 145:12, 145:14, 145:17, 146:7, 146:9, 146:10, 146:12, 146:22, 146:24, 148:15, 148:18, 149:5, 160:6, 160:7, 160:16, 160:23, 163:16, 175:23, 175:25, 176:2, 176:13, 176:18, 185:13, 185:19, 192:12, 202:22, 203:24, 204:19, 206:18, 207:3, 207:16, 215:20, 230:21, 238:14, 238:24, 238:25, 239:3, 248:3, 249:16, 255:20, 261:10, 266:16, 267:2, 267:24, 273:1, 278:20 <b>AGREEMENT</b> [1] - 1:6 <b>agreement"</b> [1] - 18:23 <b>agreements</b> [5] - 148:6, 161:2, 266:19, 285:20, 286:8 <b>agrees</b> [1] - 105:6 <b>ahead</b> [9] - 38:13, 40:21, 91:25, 111:20, 161:24, 206:25, 207:14, 284:18, 289:14 <b>air</b> [6] - 28:25, 59:3, 113:20, 273:18, 275:20, 292:9 <b>airport</b> [1] - 164:21 <b>AI</b> [2] - 1:20, 6:17 <b>alignment</b> [1] - 186:20 <b>all-hour</b> [1] - 258:22</p>
--	--	--	--	---

<p><b>alleviated</b> [1] - 47:12  <b>allocated</b> [1] - 159:24  <b>allow</b> [4] - 31:10, 58:4, 116:22, 134:11  <b>allowable</b> [4] - 181:19, 182:1, 247:8, 285:8  <b>allowed</b> [4] - 62:24, 142:10, 182:24, 250:1  <b>allows</b> [4] - 63:15, 80:10, 89:18, 139:18  <b>allude</b> [1] - 274:4  <b>almost</b> [3] - 22:17, 141:7, 205:6  <b>alone</b> [1] - 120:2  <b>alter</b> [1] - 96:1  <b>alternative</b> [9] - 14:17, 20:6, 23:7, 37:11, 116:20, 117:2, 151:14, 187:3, 268:16  <b>alternatively</b> [1] - 106:25  <b>alternatives</b> [3] - 32:11, 35:19, 81:5  <b>amazed</b> [2] - 162:23, 271:12  <b>amortize</b> [1] - 112:20  <b>amount</b> [15] - 43:8, 44:12, 53:19, 69:14, 69:15, 89:13, 92:19, 112:7, 122:4, 172:13, 239:11, 270:1, 277:13, 277:15, 287:23  <b>amounts</b> [2] - 4:15, 71:14  <b>analysis</b> [33] - 16:10, 25:5, 26:20, 26:24, 30:17, 33:4, 54:12, 60:12, 65:20, 69:7, 108:22, 119:3, 119:4, 119:6, 119:10, 122:21, 125:23, 127:16, 136:2, 138:22, 139:4, 139:12, 151:3, 217:22, 217:23, 248:21, 254:19, 287:23, 288:9, 288:16, 288:18, 288:24  <b>analyst</b> [2] - 139:6, 158:21  <b>analysts</b> [2] - 16:12, 152:16  <b>analyze</b> [1] - 139:4  <b>analyzed</b> [1] - 139:8  <b>analyzing</b> [1] - 109:2  <b>Andrew</b> [1] - 148:3</p>	<p><b>anemometers</b> [1] - 158:24  <b>angle</b> [1] - 143:17  <b>Angus</b> [1] - 275:7  <b>animal</b> [1] - 110:16  <b>annual</b> [4] - 85:22, 142:16, 209:18, 209:23  <b>annually</b> [3] - 17:6, 31:17, 173:7  <b>Anson</b> [1] - 275:7  <b>answer</b> [41] - 63:24, 65:4, 65:6, 65:8, 65:9, 70:14, 80:17, 80:19, 86:21, 91:3, 92:4, 97:5, 100:16, 101:13, 115:25, 134:16, 149:11, 154:19, 173:4, 176:17, 176:21, 198:23, 200:24, 201:21, 208:14, 212:9, 215:14, 223:10, 223:13, 224:5, 224:9, 224:15, 231:15, 235:19, 236:8, 267:25, 284:16, 290:11, 290:13, 290:16, 291:6  <b>answered</b> [2] - 8:18, 8:20  <b>answering</b> [4] - 100:2, 108:8, 163:13, 240:20  <b>answers</b> [10] - 39:8, 50:22, 99:24, 119:19, 137:8, 168:1, 194:17, 195:23, 273:5, 280:7  <b>anticipate</b> [2] - 219:10, 219:20  <b>anxious</b> [2] - 8:18, 10:2  <b>anyway</b> [6] - 17:16, 31:12, 106:18, 135:19, 219:17, 227:12  <b>apart</b> [2] - 127:13, 133:15  <b>apologize</b> [15] - 39:23, 213:16, 213:22, 215:7, 216:21, 227:8, 231:12, 252:11, 255:12, 270:20, 279:20, 280:22, 291:11  <b>apology</b> [2] - 120:1, 120:7</p>	<p><b>appealed</b> [1] - 5:17  <b>appear</b> [5] - 41:22, 57:5, 62:11, 75:11, 137:7  <b>appearances</b> [1] - 6:7  <b>APPEARANCES</b> [1] - 1:18  <b>appeared</b> [1] - 143:17  <b>appearing</b> [1] - 62:14  <b>appended</b> [1] - 175:24  <b>apples</b> [1] - 156:14  <b>applicable</b> [4] - 236:13, 239:5, 239:9, 252:1  <b>applied</b> [4] - 25:3, 30:18, 41:18, 88:12  <b>apply</b> [3] - 126:25, 159:5  <b>applying</b> [1] - 43:2  <b>appointed</b> [2] - 245:14, 295:8  <b>appreciate</b> [5] - 55:25, 100:15, 119:19, 173:4, 242:3  <b>appreciated</b> [1] - 99:19  <b>appreciates</b> [1] - 247:6  <b>approach</b> [20] - 32:15, 33:14, 53:12, 53:14, 53:17, 53:21, 56:12, 57:12, 57:13, 76:14, 97:20, 116:20, 122:1, 124:15, 133:11, 139:18, 184:19, 221:18, 228:7, 228:8  <b>approached</b> [1] - 33:17  <b>approaches</b> [1] - 53:13  <b>appropriate</b> [11] - 63:22, 72:14, 184:18, 188:24, 188:25, 201:4, 201:14, 215:25, 225:14, 284:7, 288:2  <b>appropriation</b> [1] - 157:16  <b>approval</b> [4] - 159:15, 159:19, 160:21, 176:15  <b>approvals</b> [1] - 208:2  <b>approve</b> [2] - 107:4, 208:1  <b>approved</b> [1] - 207:22  <b>approving</b> [1] - 18:22  <b>April</b> [13] - 37:16, 198:6, 198:10, 208:21, 208:22,</p>	<p>209:4, 210:23, 211:15, 211:25, 212:10, 213:11, 214:1, 295:14  <b>apt</b> [1] - 19:16  <b>arbitrary</b> [1] - 90:12  <b>area</b> [15] - 57:5, 92:16, 93:25, 120:13, 120:15, 122:7, 139:17, 139:19, 139:20, 139:22, 193:9, 235:13, 255:2, 269:23, 288:12  <b>areas</b> [6] - 82:5, 127:23, 139:7, 179:13, 179:21, 193:11  <b>arrangement</b> [7] - 157:3, 157:8, 180:18, 246:5, 246:16, 246:20, 246:23  <b>arrive</b> [1] - 265:8  <b>aside</b> [3] - 11:10, 88:10, 186:23  <b>aspect</b> [2] - 163:25, 179:7  <b>assert</b> [2] - 81:11, 84:10  <b>asserting</b> [2] - 191:22, 191:23  <b>asserts</b> [1] - 189:23  <b>assessed</b> [1] - 127:14  <b>assessment</b> [2] - 60:21, 127:25  <b>assets</b> [2] - 217:5, 254:11  <b>assign</b> [2] - 120:16, 121:13  <b>assigned</b> [3] - 120:18, 159:22, 280:14  <b>assigning</b> [1] - 121:3  <b>assist</b> [1] - 164:2  <b>assistance</b> [1] - 15:18  <b>associated</b> [15] - 21:6, 23:1, 23:3, 23:4, 23:5, 50:2, 52:1, 52:14, 211:11, 238:14, 256:16, 277:1, 277:8, 281:11, 288:11  <b>Associates</b> [1] - 238:2  <b>associates</b> [2] - 205:3, 235:17  <b>associating</b> [1] - 265:17  <b>assume</b> [16] - 58:14, 69:24, 84:11, 92:8, 104:23, 109:15,</p>	<p>116:9, 120:13, 126:22, 127:16, 150:1, 201:4, 268:21, 271:21, 283:25, 284:23  <b>assumed</b> [4] - 27:19, 109:18, 127:22, 285:2  <b>assumes</b> [1] - 116:2  <b>assuming</b> [8] - 27:21, 92:8, 115:3, 122:23, 201:5, 255:5, 257:16, 257:18  <b>assumption</b> [4] - 84:14, 85:23, 122:2, 150:1  <b>assumptions</b> [6] - 45:20, 53:20, 67:16, 67:18, 67:19, 127:8  <b>assurance</b> [1] - 266:20  <b>attached</b> [4] - 40:10, 145:10, 259:24, 295:11  <b>attachment</b> [4] - 145:11, 150:15, 227:9, 245:21  <b>Attachment</b> [2] - 227:8, 227:11  <b>attachments</b> [1] - 163:18  <b>attempt</b> [2] - 31:18, 33:8  <b>attempted</b> [2] - 147:16, 147:20  <b>attempting</b> [1] - 198:15  <b>attempts</b> [2] - 140:11, 180:10  <b>attention</b> [2] - 14:7, 232:7  <b>attorney</b> [9] - 5:15, 6:10, 6:18, 64:25, 100:7, 117:14, 149:22, 170:15, 249:23  <b>attorneys</b> [3] - 138:19, 167:4, 204:15  <b>attributes</b> [1] - 22:5  <b>August</b> [6] - 43:5, 73:14, 74:14, 85:19, 95:22, 178:15  <b>authoritative</b> [1] - 97:10  <b>authority</b> [7] - 18:21, 72:11, 77:18, 126:7, 126:13, 172:5  <b>automatically</b> [2] - 203:2, 232:3  <b>Autumn</b> [2] - 161:18,</p>	4
--	---	---	--	--	---

<p>186:14  <b>availability</b> [5] -  154:11, 154:12,  259:1, 259:2, 268:24  <b>available</b> [30] - 4:18,  13:15, 13:19, 23:15,  29:19, 51:15, 51:16,  54:7, 77:9, 77:13,  78:5, 79:21, 80:9,  88:12, 97:3, 114:5,  135:2, 140:4,  140:25, 152:4,  152:19, 165:1,  169:2, 190:25,  191:4, 210:14,  230:5, 235:15,  250:5, 275:16  <b>Avenue</b> [1] - 2:3  <b>average</b> [9] - 68:5,  80:3, 80:5, 189:9,  270:2, 270:4,  281:20, 282:5,  282:11  <b>avoid</b> [20] - 71:6,  92:14, 115:16,  115:17, 115:18,  115:22, 116:2,  116:15, 116:22,  117:7, 117:18,  189:2, 200:5, 240:3,  252:2, 260:19,  267:3, 269:20, 271:3  <b>avoidable</b> [2] -  142:10, 277:10  <b>avoidance</b> [4] - 71:10,  278:19, 279:5,  289:25  <b>avoided</b> [255] - 4:20,  4:22, 4:23, 5:2, 8:5,  8:6, 8:11, 8:13, 9:1,  10:8, 13:21, 14:3,  14:5, 14:16, 14:23,  16:5, 17:22, 18:6,  18:7, 18:11, 18:20,  19:24, 25:2, 26:20,  26:23, 28:4, 29:2,  29:4, 29:21, 31:6,  31:24, 32:5, 32:19,  32:21, 32:23, 33:4,  33:8, 35:18, 36:16,  41:4, 41:5, 41:6,  41:9, 41:19, 43:12,  48:24, 52:19, 52:20,  52:21, 52:24, 53:3,  53:5, 53:9, 53:11,  54:15, 56:13, 60:15,  60:20, 63:2, 64:2,  64:5, 64:7, 64:11,  69:22, 72:14, 75:10,  76:8, 76:10, 76:15,</p>	<p>76:24, 77:1, 80:7,  87:21, 88:20, 90:6,  90:11, 90:13, 90:14,  91:13, 91:17, 92:5,  92:12, 92:19, 92:20,  92:21, 97:18, 97:21,  98:7, 98:9, 98:16,  98:18, 98:20,  100:17, 103:7,  103:21, 104:7,  105:7, 106:4, 106:8,  106:16, 106:17,  107:2, 110:15,  116:6, 116:14,  116:21, 117:3,  117:5, 117:18,  121:20, 121:25,  122:1, 123:25,  124:3, 131:25,  132:1, 133:16,  133:22, 134:6,  142:13, 142:19,  145:4, 151:5,  155:13, 155:19,  156:3, 156:8,  156:16, 157:16,  167:7, 168:18,  181:18, 182:23,  183:2, 183:21,  184:8, 188:22,  189:5, 189:8,  189:20, 189:24,  190:3, 190:4, 191:6,  191:12, 191:13,  192:10, 196:18,  197:4, 197:5, 197:7,  197:8, 214:11,  214:23, 216:10,  216:14, 216:17,  217:6, 217:15,  217:25, 218:23,  219:1, 219:3, 219:4,  220:11, 220:19,  220:22, 221:1,  221:9, 221:18,  222:18, 222:19,  225:14, 225:16,  228:9, 228:11,  228:13, 228:21,  228:22, 229:3,  229:8, 230:10,  232:14, 232:23,  233:3, 234:11,  238:14, 238:21,  239:1, 239:22,  239:24, 240:2,  241:2, 247:8,  247:17, 248:3,  248:21, 248:25,  249:2, 250:7,  250:12, 250:13,</p>	<p>250:17, 250:18,  251:2, 256:16,  260:18, 263:17,  266:16, 267:15,  267:17, 267:18,  267:22, 268:12,  269:16, 269:19,  269:22, 270:7,  271:19, 272:8,  272:10, 273:15,  273:21, 279:11,  279:12, 279:15,  281:5, 281:7, 281:8,  281:13, 281:16,  281:19, 281:24,  282:1, 282:3, 282:4,  285:7, 285:12,  285:17, 286:9,  286:19, 288:3,  288:4, 288:10,  288:14, 293:8,  293:14, 293:16,  293:17, 293:21,  293:22, 294:5  <b>avoiding</b> [2] - 72:9,  222:21  <b>await</b> [1] - 40:16  <b>aware</b> [52] - 63:5,  63:8, 63:9, 70:2,  70:17, 73:13, 74:2,  74:6, 79:12, 79:16,  79:20, 80:3, 80:7,  80:25, 81:1, 81:7,  81:17, 81:21, 81:25,  85:22, 103:6,  117:20, 117:25,  129:11, 132:6,  149:4, 169:8, 189:7,  198:14, 207:25,  211:5, 229:21,  235:14, 235:24,  236:4, 236:14,  236:15, 236:18,  236:19, 237:2,  237:13, 238:1,  248:15, 250:10,  254:20, 257:10,  265:2, 279:3,  279:13, 282:25,  287:9, 287:17  <b>awhile</b> [1] - 287:6  <b>AWS</b> [5] - 16:11, 47:2,  47:7, 47:13, 49:11  <b>Axthelm</b> [1] - 1:17  <b>AXTHELM</b> [1] - 243:11</p>	<p>100:7, 193:4  <b>backhoes</b> [1] - 16:18  <b>backward</b> [1] - 217:23  <b>backwards</b> [1] - 55:4  <b>bad</b> [7] - 36:18, 59:17,  90:23, 180:8,  186:22, 238:9,  238:10  <b>bad-faith</b> [1] - 36:18  <b>bag</b> [2] - 232:23,  277:14  <b>bait</b> [1] - 11:20  <b>balance</b> [1] - 131:3  <b>balancing</b> [4] - 77:18,  126:7, 126:13  <b>ballpark</b> [1] - 31:2  <b>banks</b> [3] - 24:22,  54:11, 94:19  <b>bargained</b> [2] - 186:22  <b>base</b> [33] - 74:6, 77:8,  79:21, 80:1, 84:2,  84:13, 101:25,  102:9, 103:9,  103:11, 110:14,  111:13, 112:11,  128:3, 188:15,  189:3, 189:10,  231:8, 233:21,  256:15, 260:20,  267:10, 270:4,  271:17, 280:25,  281:2, 281:20,  281:23, 286:10,  286:11, 288:8,  293:24  <b>baseable</b> [1] - 287:19  <b>baseball</b> [1] - 198:1  <b>based</b> [73] - 13:20,  14:3, 18:5, 25:4,  25:7, 25:9, 27:8,  27:20, 28:12, 28:22,  40:2, 43:8, 44:22,  44:24, 45:14, 49:10,  80:8, 82:9, 82:19,  84:5, 84:18, 87:22,  90:12, 91:8, 91:14,  97:20, 100:7,  103:20, 114:20,  121:25, 122:1,  122:4, 123:2,  123:25, 124:3,  124:14, 124:15,  125:10, 127:16,  133:4, 133:6, 133:9,  135:13, 159:8,  159:20, 191:5,  191:12, 196:8,  204:18, 216:17,  218:24, 220:12,  220:15, 222:18,</p>	<p>224:4, 231:23,  233:13, 233:15,  237:10, 239:11,  250:5, 255:11,  263:22, 267:19,  272:3, 280:21,  281:19, 288:19,  288:20, 288:23,  289:15, 292:7  <b>baseline</b> [2] - 110:9,  134:1  <b>basic</b> [2] - 42:14,  215:9  <b>basics</b> [1] - 9:11  <b>Basin</b> [17] - 86:23,  121:11, 121:15,  171:13, 174:7,  198:11, 198:20,  212:19, 213:2,  214:9, 214:13,  214:25, 252:6,  252:25, 266:7,  279:5, 279:6  <b>Basin's</b> [1] - 276:16  <b>basin</b> [3] - 58:7,  101:15, 268:9  <b>basis</b> [17] - 9:11, 9:17,  57:19, 65:18, 84:14,  97:8, 107:13,  111:13, 124:6,  161:10, 166:4,  189:8, 199:13,  205:17, 214:18,  277:4, 277:21  <b>basket</b> [1] - 36:7  <b>Battle</b> [1] - 11:12  <b>bear</b> [3] - 75:3,  118:22, 205:18  <b>beared</b> [1] - 169:25  <b>bearing</b> [3] - 109:10,  138:25, 189:19  <b>bears</b> [1] - 118:6  <b>beat</b> [1] - 183:12  <b>beautiful</b> [1] - 177:14  <b>became</b> [2] - 66:8,  163:11  <b>become</b> [4] - 6:1,  149:4, 189:7, 256:20  <b>becomes</b> [2] - 26:9,  107:20  <b>becoming</b> [1] - 254:15  <b>bed</b> [1] - 22:12  <b>beds</b> [1] - 22:20  <b>BEFORE</b> [1] - 1:11  <b>began</b> [4] - 74:23,  88:18, 105:22, 108:8  <b>begin</b> [5] - 4:1, 6:6,  6:8, 243:4, 243:5  <b>beginning</b> [14] - 7:15,  7:22, 7:24, 14:2,</p>
		<b>B</b>		
		<b>backed</b> [1] - 217:5 <b>background</b> [2] -		

<p>18:15, 76:4, 88:16, 88:21, 138:17, 150:23, 191:11, 209:13, 209:14, 209:20</p> <p><b>begins</b> [2] - 68:10, 144:22</p> <p><b>behalf</b> [2] - 7:2, 147:20</p> <p><b>beholder</b> [1] - 79:2</p> <p><b>belief</b> [3] - 89:8, 180:22, 242:25</p> <p><b>believes</b> [4] - 9:2, 16:4, 17:16, 293:5</p> <p><b>below</b> [25] - 36:15, 42:25, 71:21, 71:23, 131:19, 141:1, 142:18, 151:5, 155:12, 156:16, 158:17, 182:3, 183:2, 196:17, 239:1, 247:18, 263:16, 266:16, 269:9, 285:11, 285:17, 286:9, 286:19, 293:8, 293:14</p> <p><b>benchmark</b> [2] - 239:25, 240:1</p> <p><b>beneficial</b> [1] - 140:18</p> <p><b>benefit</b> [11] - 23:5, 34:12, 35:23, 36:2, 37:24, 57:3, 72:12, 111:22, 138:7, 216:18, 263:25</p> <p><b>benefiting</b> [1] - 111:24</p> <p><b>benefits</b> [12] - 17:2, 20:8, 20:9, 36:10, 37:22, 37:23, 37:24, 111:22, 251:3, 258:8, 264:8, 281:10</p> <p><b>Bennett</b> [2] - 184:2, 184:13</p> <p><b>best</b> [11] - 7:19, 33:13, 34:6, 63:21, 108:24, 133:25, 140:4, 151:10, 160:2, 171:15, 274:7</p> <p><b>better</b> [7] - 48:17, 100:1, 215:15, 263:3, 268:15, 268:16, 289:8</p> <p><b>between</b> [31] - 19:16, 24:12, 28:15, 56:7, 57:11, 61:5, 75:15, 96:10, 98:18, 98:19, 121:9, 122:15, 127:18, 130:9, 130:12, 131:18, 135:24, 146:3,</p>	<p>147:4, 153:22, 159:3, 163:20, 180:15, 183:17, 196:22, 211:18, 212:13, 216:19, 270:5, 273:24, 281:18</p> <p><b>beyond</b> [2] - 228:23, 272:24</p> <p><b>bias</b> [1] - 54:6</p> <p><b>bidding</b> [2] - 122:23, 228:7</p> <p><b>Big</b> [8] - 11:12, 57:25, 79:24, 211:2, 211:8, 231:7, 256:9, 256:14</p> <p><b>big</b> [27] - 21:17, 29:13, 56:21, 56:24, 60:6, 60:7, 66:1, 77:15, 77:21, 77:24, 91:1, 96:13, 163:7, 168:13, 168:15, 169:3, 174:8, 183:17, 183:21, 255:22, 257:12, 286:1, 286:2, 286:3, 289:3</p> <p><b>bigger</b> [2] - 107:20, 108:6</p> <p><b>biggest</b> [1] - 280:7</p> <p><b>bilateral</b> [3] - 122:9, 122:25, 123:7</p> <p><b>bilaterally</b> [1] - 123:18</p> <p><b>Bill</b> [3] - 89:6, 148:2, 184:4</p> <p><b>bills</b> [1] - 185:25</p> <p><b>binding</b> [1] - 15:23</p> <p><b>bit</b> [17] - 11:1, 11:23, 42:6, 47:8, 59:12, 77:11, 83:17, 92:2, 107:19, 110:1, 158:9, 220:18, 238:4, 267:5, 274:4, 281:21</p> <p><b>Black</b> [41] - 24:14, 25:24, 27:8, 29:8, 29:13, 30:1, 33:5, 35:3, 41:13, 44:10, 45:2, 45:18, 46:6, 49:12, 62:6, 62:8, 64:17, 65:2, 65:11, 65:15, 65:24, 69:23, 71:22, 82:6, 82:11, 87:23, 92:25, 94:11, 94:14, 142:19, 218:14, 218:19, 218:25, 232:22, 235:16, 235:20, 236:16, 236:23, 237:25, 238:1, 259:5</p> <p><b>black</b> [1] - 125:6</p>	<p><b>blanks</b> [1] - 176:7</p> <p><b>Bleau</b> [10] - 2:11, 149:6, 163:10, 166:18, 171:3, 171:6, 180:15, 192:17, 192:23, 245:17</p> <p><b>blend</b> [1] - 271:25</p> <p><b>blessing</b> [1] - 159:16</p> <p><b>blew</b> [1] - 69:8</p> <p><b>blowing</b> [1] - 115:20</p> <p><b>blue</b> [1] - 55:14</p> <p><b>Board</b> [1] - 208:20</p> <p><b>board</b> [28] - 54:21, 54:24, 55:3, 55:4, 56:5, 115:9, 177:18, 200:3, 200:25, 202:6, 202:10, 207:22, 208:4, 209:14, 209:25, 210:24, 211:6, 211:16, 211:25, 212:1, 212:9, 213:11, 213:20, 213:22, 214:1</p> <p><b>Boardman</b> [2] - 21:5, 21:8</p> <p><b>Bonrud</b> [4] - 2:13, 3:14, 242:13, 265:18</p> <p><b>bonus</b> [2] - 113:7, 113:9</p> <p><b>bookend</b> [2] - 73:20, 133:6</p> <p><b>border</b> [2] - 94:4, 125:18</p> <p><b>bottom</b> [3] - 59:22, 64:14, 80:16</p> <p><b>bought</b> [4] - 28:20, 111:4, 117:8, 158:6</p> <p><b>bounce</b> [1] - 275:2</p> <p><b>bound</b> [4] - 4:24, 239:15, 239:18, 239:19</p> <p><b>box</b> [1] - 125:6</p> <p><b>break</b> [7] - 93:14, 176:25, 177:2, 187:25, 188:3, 242:1, 291:19</p> <p><b>breaking</b> [1] - 196:14</p> <p><b>Brian</b> [2] - 1:16, 2:15</p> <p><b>brief</b> [5] - 52:4, 61:17, 87:20, 263:15, 276:24</p> <p><b>briefing</b> [1] - 9:6</p> <p><b>briefly</b> [5] - 11:1, 13:11, 185:22, 193:5, 196:12</p> <p><b>bring</b> [16] - 37:7, 39:18, 71:2, 75:5, 85:11, 138:20,</p>	<p>141:14, 143:24, 171:19, 180:23, 187:8, 232:7, 264:25, 265:1, 265:2</p> <p><b>bringing</b> [3] - 75:4, 167:16, 179:19</p> <p><b>broad</b> [1] - 125:10</p> <p><b>broad-based</b> [1] - 125:10</p> <p><b>broadcast</b> [1] - 38:16</p> <p><b>broader</b> [1] - 67:18</p> <p><b>BROGAN</b> [30] - 6:17, 7:11, 7:23, 40:8, 45:13, 49:19, 49:25, 51:9, 55:12, 61:22, 61:24, 70:13, 70:23, 87:6, 95:15, 96:21, 98:24, 135:11, 135:17, 135:22, 136:4, 138:3, 143:7, 143:9, 161:12, 162:12, 187:14, 188:2, 188:7, 188:9</p> <p><b>Brogan</b> [20] - 1:20, 6:17, 45:12, 49:18, 51:22, 55:9, 55:22, 61:20, 129:20, 130:3, 132:2, 132:22, 135:8, 143:6, 162:16, 185:11, 187:24, 192:13, 260:16, 278:11</p> <p><b>Brogan's</b> [3] - 129:7, 162:18, 163:14</p> <p><b>broke</b> [1] - 66:1</p> <p><b>broken</b> [1] - 196:15</p> <p><b>brought</b> [5] - 56:15, 152:7, 221:10, 280:24, 284:13</p> <p><b>brown</b> [16] - 22:4, 30:19, 30:20, 30:22, 41:3, 41:5, 52:20, 52:24, 53:11, 64:12, 64:13, 97:18, 116:5, 132:1, 142:21, 232:23</p> <p><b>bubble</b> [6] - 93:12, 94:3, 125:16, 125:17</p> <p><b>bubbles</b> [1] - 93:14</p> <p><b>bucket</b> [1] - 152:22</p> <p><b>bucks</b> [1] - 110:19</p> <p><b>buddy</b> [1] - 118:16</p> <p><b>build</b> [36] - 14:13, 14:22, 26:12, 31:4, 37:8, 37:10, 44:25, 48:13, 59:16, 76:17, 76:18, 91:20, 102:5, 103:8, 104:3, 104:13, 112:7,</p>	<p>115:16, 116:11, 116:13, 116:24, 116:25, 117:4, 117:6, 124:6, 140:18, 141:1, 151:6, 155:20, 156:19, 172:9, 230:23, 250:2, 250:4, 250:8</p> <p><b>building</b> [15] - 53:20, 101:15, 101:19, 105:2, 115:19, 115:23, 116:3, 116:15, 116:22, 117:7, 140:23, 174:2, 175:4, 208:9, 222:21</p> <p><b>Building</b> [1] - 2:3</p> <p><b>builds</b> [1] - 41:8</p> <p><b>built</b> [12] - 63:15, 72:15, 72:16, 89:5, 103:16, 111:9, 112:8, 127:23, 142:6, 160:24, 167:15, 186:13</p> <p><b>bulldozers</b> [1] - 16:18</p> <p><b>bump</b> [1] - 34:16</p> <p><b>bunch</b> [3] - 77:25, 242:7, 242:9</p> <p><b>burden</b> [3] - 5:12, 168:23, 169:24</p> <p><b>buried</b> [1] - 205:23</p> <p><b>business</b> [19] - 6:18, 37:9, 38:24, 38:25, 47:4, 61:12, 85:9, 136:21, 138:12, 138:15, 139:11, 143:23, 144:2, 144:7, 166:22, 166:24, 177:24, 192:24, 248:24</p> <p><b>businesses</b> [2] - 139:20, 144:9</p> <p><b>busy</b> [1] - 166:9</p> <p><b>butane</b> [1] - 22:18</p> <p><b>Butte</b> [2] - 148:23, 166:15</p> <p><b>buy</b> [17] - 12:4, 34:1, 35:9, 37:22, 37:23, 103:14, 117:24, 118:4, 118:16, 121:9, 121:15, 121:16, 157:25, 180:19, 255:7, 255:9</p> <p><b>buying</b> [8] - 31:8, 72:22, 131:14, 189:1, 189:2, 252:24, 271:20, 271:22</p> <p><b>buys</b> [1] - 131:12</p>	6
--	--	--	--	--	---

<p><b>BY</b> [27] - 1:4, 38:20, 40:24, 46:5, 47:20, 50:18, 52:3, 61:24, 70:23, 87:15, 129:5, 135:22, 136:15, 138:7, 143:9, 161:12, 178:7, 192:20, 195:4, 196:11, 197:20, 207:21, 245:19, 259:22, 278:16, 289:19, 293:2</p>	<p><b>cannot</b> [9] - 59:16, 135:12, 201:2, 211:5, 214:4, 223:5, 248:2, 271:3, 281:13  <b>cap</b> [5] - 21:16, 89:14, 89:15, 89:17, 89:19  <b>capability</b> [2] - 114:13, 274:20  <b>capacity</b> [116] - 4:23, 9:21, 13:23, 13:25, 18:10, 18:13, 32:3, 33:16, 33:20, 33:22, 33:24, 34:8, 34:10, 43:13, 43:20, 44:1, 44:4, 44:6, 44:14, 47:9, 47:11, 48:9, 48:15, 54:20, 54:22, 56:8, 92:3, 92:8, 92:9, 92:13, 92:14, 92:15, 92:19, 97:19, 101:15, 101:19, 104:13, 113:1, 115:10, 115:11, 115:12, 115:19, 115:22, 115:23, 116:19, 117:16, 126:1, 126:3, 127:21, 139:16, 141:3, 152:21, 152:24, 155:14, 158:4, 169:2, 169:9, 173:10, 183:3, 184:10, 184:14, 184:16, 191:7, 191:9, 196:17, 197:8, 198:7, 199:6, 199:10, 199:23, 201:12, 209:15, 209:18, 209:21, 209:24, 210:14, 212:1, 212:12, 212:16, 213:7, 214:12, 214:20, 214:22, 230:4, 230:18, 252:14, 252:17, 253:18, 253:21, 253:22, 266:17, 266:18, 266:25, 272:11, 272:13, 272:14, 272:17, 272:18, 272:20, 272:22, 273:12, 278:18, 278:19, 278:22, 279:1, 286:9, 289:24, 290:1, 290:10, 290:13, 290:16, 290:20, 291:2, 291:3  <b>capital</b> [2] - 48:19,</p>	<p>48:20  <b>Capitol</b> [3] - 2:3, 4:7  <b>capture</b> [1] - 38:17  <b>car</b> [2] - 157:25, 158:7  <b>carbon</b> [12] - 9:22, 88:24, 98:16, 98:20, 99:5, 99:9, 99:11, 99:12, 102:5, 102:6, 223:21, 223:23  <b>care</b> [3] - 61:12, 177:3  <b>career</b> [2] - 53:7, 158:22  <b>careful</b> [1] - 82:4  <b>carry</b> [2] - 58:9, 58:13  <b>carrying</b> [2] - 114:13, 256:19  <b>case</b> [51] - 7:22, 7:25, 10:16, 12:16, 12:21, 13:20, 13:25, 14:12, 22:2, 28:4, 35:5, 37:11, 37:25, 38:3, 52:25, 56:25, 68:25, 76:13, 76:22, 76:25, 80:23, 87:17, 88:8, 94:11, 97:11, 99:2, 108:1, 114:21, 115:2, 131:7, 131:9, 131:12, 146:11, 187:23, 191:4, 191:9, 211:4, 221:3, 222:1, 226:25, 227:20, 239:14, 249:21, 252:2, 253:17, 257:7, 259:12, 277:5, 286:5, 288:22, 292:8  <b>cases</b> [6] - 80:24, 105:2, 116:16, 116:17, 169:9, 221:24  <b>cats</b> [1] - 66:1  <b>caught</b> [2] - 36:7, 294:17  <b>caused</b> [3] - 130:12, 130:23, 131:1  <b>causing</b> [1] - 96:11  <b>caution</b> [1] - 51:12  <b>cautionary</b> [1] - 237:5  <b>Cedar</b> [2] - 12:8, 15:9  <b>cellular</b> [1] - 158:23  <b>cent</b> [2] - 112:17, 175:18  <b>centers</b> [1] - 115:6  <b>cents</b> [9] - 31:6, 112:14, 112:17, 112:18, 112:19, 112:21, 229:25, 270:21  <b>CEO</b> [2] - 171:2, 264:18</p>	<p><b>certain</b> [8] - 100:11, 139:7, 159:5, 159:6, 201:24, 229:21, 254:7  <b>certainly</b> [20] - 17:15, 21:14, 37:6, 93:8, 109:4, 109:6, 109:7, 112:24, 113:19, 123:21, 124:19, 162:18, 169:17, 190:10, 217:9, 219:5, 274:7, 289:3, 289:11  <b>certainty</b> [1] - 134:5  <b>CERTIFICATE</b> [1] - 295:2  <b>certified</b> [2] - 273:17, 275:22  <b>Certified</b> [2] - 295:6, 295:19  <b>CERTIFY</b> [1] - 295:8  <b>cetera</b> [1] - 166:17  <b>CFR</b> [10] - 4:17, 4:21, 13:15, 17:24, 19:4, 32:1, 190:21, 229:12, 229:23, 260:2  <b>CHAIRMAN</b> [22] - 1:11, 4:1, 90:2, 91:6, 91:13, 92:1, 92:22, 93:8, 94:9, 96:20, 97:12, 162:25, 163:13, 164:4, 165:9, 165:15, 244:19, 260:15, 260:24, 262:4, 262:13, 262:18  <b>Chairman</b> [6] - 4:8, 6:5, 10:13, 90:1, 133:13, 262:17  <b>challenging</b> [1] - 101:12  <b>chance</b> [1] - 180:3  <b>change</b> [21] - 18:8, 88:5, 88:6, 88:8, 96:11, 107:8, 107:11, 107:14, 107:15, 107:21, 122:16, 132:13, 194:10, 194:11, 220:15, 276:1, 276:3, 276:6, 282:2, 282:4  <b>changed</b> [7] - 33:10, 68:20, 86:20, 219:25, 244:8, 247:14, 272:16  <b>changes</b> [8] - 48:10, 95:25, 96:19, 108:6, 108:7, 109:8,</p>	<p>176:19, 219:10  <b>changing</b> [5] - 28:24, 48:21, 86:10, 86:17, 95:7  <b>characteristics</b> [2] - 175:8, 233:6  <b>characterization</b> [4] - 156:23, 156:24, 157:4, 293:9  <b>characterize</b> [3] - 17:12, 91:16, 123:12  <b>charge</b> [5] - 58:18, 58:22, 112:7, 198:19, 252:14  <b>charges</b> [2] - 151:25, 179:12  <b>charging</b> [1] - 161:1  <b>chart</b> [3] - 27:16, 130:19, 212:1  <b>chasing</b> [1] - 26:13  <b>chat</b> [1] - 171:20  <b>cheap</b> [2] - 20:13, 26:11  <b>cheaper</b> [2] - 35:18, 102:7  <b>check</b> [39] - 44:8, 49:2, 49:4, 67:22, 68:18, 74:1, 74:12, 78:15, 78:18, 80:6, 98:24, 98:25, 130:4, 198:12, 198:14, 198:25, 199:2, 199:3, 199:7, 203:11, 203:12, 213:5, 213:17, 218:3, 220:6, 221:21, 221:25, 222:12, 229:13, 230:2, 230:7, 231:10, 231:13, 239:4, 252:8, 252:9, 253:4, 253:7, 261:25  <b>checked</b> [1] - 218:2  <b>checking</b> [1] - 266:2  <b>checks</b> [1] - 220:12  <b>Cheri</b> [6] - 1:24, 61:9, 87:9, 177:4, 245:9, 295:18  <b>CHERI</b> [1] - 295:5  <b>chew</b> [1] - 169:13  <b>chief</b> [1] - 38:3  <b>choice</b> [1] - 250:3  <b>choose</b> [8] - 14:17, 33:1, 124:2, 187:6, 228:16, 228:17, 244:1, 281:23  <b>chooses</b> [1] - 14:20  <b>chose</b> [12] - 73:13, 73:22, 74:2, 98:1, 187:8, 208:12,</p>
<b>C</b>				
<p><b>calculate</b> [6] - 41:9, 86:2, 117:5, 121:25, 232:14, 293:21  <b>calculated</b> [30] - 13:21, 14:4, 14:5, 14:16, 14:24, 17:22, 18:7, 29:3, 43:9, 43:12, 52:20, 56:13, 64:11, 142:13, 156:13, 189:5, 189:21, 189:22, 189:25, 190:3, 190:4, 191:6, 191:13, 191:14, 192:10, 217:2, 217:3, 222:20, 271:19, 281:19  <b>calculating</b> [6] - 32:16, 69:21, 76:14, 98:7, 199:23, 228:11  <b>calculation</b> [28] - 5:2, 19:24, 22:3, 28:1, 28:12, 28:18, 32:17, 33:12, 41:7, 41:24, 43:9, 48:6, 48:7, 48:11, 64:20, 68:23, 70:23, 71:5, 71:19, 98:9, 99:3, 126:19, 129:23, 133:16, 199:23, 216:10, 252:16, 253:10  <b>calculations</b> [18] - 45:6, 45:15, 46:1, 48:23, 61:5, 64:21, 64:24, 87:22, 88:20, 99:4, 99:6, 115:2, 131:9, 142:19, 168:19, 199:22, 234:12, 234:16  <b>California</b> [1] - 39:1  <b>Cambridge</b> [2] - 235:16, 238:2  <b>camera</b> [4] - 55:10, 55:19, 202:18, 213:13</p>				

<p>291:8, 291:13, 291:15, 291:16, 291:23, 291:25 <b>chosen</b> [1] - 288:11 <b>CHRIS</b> [1] - 4:8 <b>CHRIS</b> [1] - 1:11 <b>chris</b> [1] - 1:16 <b>Christmas</b> [1] - 269:14 <b>chronological</b> [1] - 223:3 <b>circle</b> [1] - 229:19 <b>Circuit</b> [1] - 5:18 <b>circumstance</b> [1] - 30:21 <b>circumstances</b> [5] - 36:9, 121:22, 220:13, 233:15, 254:7 <b>citation</b> [1] - 15:10 <b>cite</b> [1] - 39:16 <b>cited</b> [2] - 132:7, 132:10 <b>citizens</b> [2] - 113:19, 143:3 <b>City</b> [1] - 81:22 <b>city</b> [1] - 81:23 <b>Civil</b> [1] - 11:11 <b>civil</b> [1] - 7:20 <b>claimed</b> [3] - 141:2, 155:18, 174:4 <b>claims</b> [1] - 57:16 <b>clarification</b> [3] - 76:25, 163:24, 293:3 <b>clarify</b> [8] - 87:21, 92:23, 92:25, 102:24, 184:13, 185:21, 234:3, 279:17 <b>clarifying</b> [1] - 279:22 <b>Clark</b> [7] - 11:4, 136:22, 138:13, 138:23, 139:11, 140:9, 142:25 <b>class</b> [2] - 138:18, 175:15 <b>Claud</b> [4] - 147:22, 149:16, 184:3, 282:22 <b>clauses</b> [2] - 205:2, 205:8 <b>clean</b> [3] - 134:24, 274:15, 276:1 <b>Clear</b> [2] - 20:22, 292:11 <b>cleaner</b> [1] - 60:7 <b>clear</b> [10] - 12:3, 12:11, 14:12, 19:1, 20:17, 31:21, 46:2, 103:5, 123:14, 182:7 <b>clearing</b> [2] - 89:18,</p>	<p>122:22 <b>clearly</b> [7] - 17:21, 33:22, 54:1, 72:10, 81:14, 82:20, 225:11 <b>client</b> [3] - 42:16, 54:7, 54:9 <b>clients</b> [5] - 53:24, 54:3, 54:4, 66:7, 288:8 <b>close</b> [14] - 21:4, 27:14, 27:15, 69:18, 89:8, 90:16, 91:21, 158:14, 170:19, 187:23, 192:8, 237:7, 239:13, 282:13 <b>closely</b> [2] - 18:17, 232:24 <b>closer</b> [3] - 104:6, 183:18, 239:17 <b>closing</b> [3] - 35:22, 111:18, 285:18 <b>clubhouse</b> [1] - 38:25 <b>co</b> [2] - 6:20, 294:13 <b>co-counsel</b> [2] - 6:20, 294:13 <b>CO2</b> [1] - 109:6 <b>coal</b> [36] - 20:23, 21:8, 25:22, 25:25, 26:2, 26:8, 30:11, 34:17, 57:25, 58:19, 58:20, 67:9, 67:10, 77:10, 77:21, 77:23, 77:25, 78:10, 78:12, 78:16, 78:23, 78:24, 79:3, 79:24, 79:25, 107:24, 118:14, 127:17, 254:15, 254:25, 256:4, 256:13, 272:4, 292:12 <b>Coal</b> [1] - 21:5 <b>coal-fired</b> [2] - 254:25, 256:13 <b>cogeneration</b> [1] - 19:8 <b>cohorts</b> [1] - 276:19 <b>coincide</b> [1] - 139:15 <b>coincidence</b> [1] - 186:6 <b>cold</b> [6] - 96:6, 96:8, 109:17, 109:22, 274:24, 275:11 <b>coldest</b> [1] - 113:22 <b>colleagues</b> [2] - 65:21, 200:7 <b>collect</b> [2] - 67:14, 281:2 <b>collected</b> [2] - 16:9, 44:23</p>	<p><b>collectively</b> [1] - 243:9 <b>colloquialism</b> [1] - 11:20 <b>column</b> [4] - 68:4, 68:8, 129:21 <b>combination</b> [3] - 221:6, 228:19, 294:3 <b>combined</b> [1] - 276:4 <b>comfortable</b> [1] - 234:20 <b>coming</b> [5] - 11:15, 102:7, 126:23, 141:24, 278:2 <b>commenced</b> [1] - 5:1 <b>commencing</b> [3] - 2:5, 61:18, 129:24 <b>comment</b> [2] - 191:25, 192:5 <b>comments</b> [2] - 113:18, 168:5 <b>Commission</b> [94] - 4:8, 5:24, 7:2, 8:4, 8:20, 8:21, 9:2, 9:7, 9:24, 10:13, 10:17, 11:24, 12:1, 12:2, 12:11, 12:18, 13:12, 16:20, 17:20, 18:4, 19:23, 20:5, 21:11, 25:8, 28:5, 29:3, 31:24, 32:9, 35:21, 37:7, 37:21, 41:21, 47:24, 49:7, 51:23, 51:24, 53:4, 55:14, 59:7, 60:19, 72:11, 81:8, 81:11, 84:7, 84:8, 85:2, 86:7, 86:10, 86:17, 90:4, 90:10, 100:4, 102:12, 102:13, 104:22, 104:23, 105:5, 105:11, 105:22, 137:17, 137:20, 138:8, 141:15, 156:15, 178:11, 181:14, 182:18, 185:11, 191:21, 192:9, 193:4, 194:3, 195:15, 196:13, 203:4, 204:16, 205:18, 207:3, 221:23, 222:13, 222:23, 225:22, 244:13, 249:11, 249:17, 249:20, 257:14, 260:7, 262:12, 263:6, 286:1, 287:10, 288:2 <b>COMMISSION</b> [3] - 1:1, 1:11, 1:13</p>	<p><b>Commission's</b> [11] - 4:12, 5:17, 5:22, 13:4, 14:7, 51:11, 163:24, 176:1, 196:9, 216:18, 257:21 <b>commissioned</b> [1] - 142:5 <b>commissioner</b> [6] - 97:13, 97:14, 97:24, 99:14, 119:23, 127:5 <b>COMMISSIONER</b> [116] - 1:12, 1:12, 97:15, 97:22, 98:15, 99:13, 99:16, 99:19, 99:25, 100:14, 101:12, 101:23, 102:16, 102:20, 104:10, 104:20, 105:16, 106:6, 107:6, 108:8, 109:13, 110:15, 110:18, 110:20, 110:21, 111:16, 112:13, 112:22, 113:17, 115:4, 115:24, 117:10, 117:20, 117:25, 118:5, 118:11, 118:18, 119:18, 165:19, 166:14, 167:3, 167:20, 167:22, 167:25, 169:8, 169:17, 170:3, 170:9, 170:12, 170:22, 171:8, 171:20, 171:23, 171:25, 172:3, 172:11, 172:19, 173:1, 173:16, 173:20, 177:13, 177:22, 178:1, 243:15, 244:15, 244:18, 244:20, 262:20, 262:23, 263:9, 263:19, 263:24, 264:10, 264:15, 264:19, 264:23, 265:7, 265:11, 265:21, 265:24, 266:5, 266:11, 267:4, 268:3, 268:9, 268:15, 269:13, 269:25, 270:9, 270:13, 270:16, 270:22, 271:4, 272:3, 272:6, 273:4, 273:10, 273:14, 273:25, 274:3, 275:6, 275:13, 275:18, 275:21,</p>	<p>275:25, 276:11, 8 276:14, 276:17, 276:21, 287:4, 287:15, 287:22, 288:1, 288:9, 288:15, 288:25 <b>Commissioner</b> [32] - 96:21, 99:15, 128:5, 128:25, 133:21, 134:14, 135:9, 135:19, 136:5, 162:24, 165:17, 165:18, 165:20, 167:21, 172:24, 172:25, 175:21, 177:9, 177:10, 177:12, 178:2, 187:17, 242:15, 260:14, 262:15, 262:16, 262:19, 262:22, 276:22, 286:23, 287:2, 289:2 <b>commissioners</b> [1] - 139:22 <b>Commissioners</b> [8] - 4:9, 8:8, 10:4, 89:24, 128:9, 262:8, 280:24, 284:18 <b>commit</b> [2] - 15:14, 16:1 <b>commitment</b> [3] - 17:8, 223:3, 233:13 <b>commitments</b> [1] - 15:22 <b>committee</b> [3] - 85:7, 85:11 <b>committing</b> [1] - 205:20 <b>communicate</b> [1] - 180:10 <b>communication</b> [5] - 163:2, 178:13, 180:6, 260:8, 285:1 <b>communications</b> [9] - 17:12, 166:6, 196:21, 196:22, 213:19, 266:22, 267:23, 268:2, 283:7 <b>community</b> [1] - 139:18 <b>companies</b> [10] - 12:25, 13:1, 29:20, 82:8, 82:17, 147:4, 152:15, 165:1, 237:19, 285:22 <b>company</b> [7] - 53:16, 65:12, 82:11, 89:22, 104:12, 207:4, 231:21 <b>company-wide</b> [1] -</p>
--	--	--	--	---

<p>207:4  <b>comparative</b> [1] - 227:20  <b>compare</b> [4] - 26:19, 27:5, 90:15, 116:7  <b>compared</b> [4] - 70:9, 236:3, 236:4, 240:5  <b>compares</b> [1] - 236:20  <b>comparing</b> [1] - 156:14  <b>comparison</b> [2] - 19:16, 282:12  <b>comparisons</b> [3] - 95:1, 263:23, 282:9  <b>compatible</b> [1] - 236:21  <b>compel</b> [3] - 31:24, 205:15  <b>compelled</b> [1] - 7:18  <b>compensation</b> [1] - 62:13  <b>competitive</b> [8] - 81:9, 124:1, 124:3, 124:5, 124:7, 124:16, 151:5, 170:1  <b>compiling</b> [2] - 121:6, 165:6  <b>Complainant</b> [1] - 6:8  <b>complainant</b> [1] - 5:12  <b>complainant's</b> [1] - 285:5  <b>Complaint</b> [5] - 4:2, 33:18, 179:20, 259:24, 285:6  <b>COMPLAINT</b> [1] - 1:4  <b>complete</b> [5] - 99:5, 148:1, 153:17, 288:21, 288:24  <b>completed</b> [2] - 19:21, 140:6  <b>completely</b> [4] - 56:12, 99:9, 117:5, 249:2  <b>completing</b> [1] - 258:22  <b>completion</b> [1] - 160:18  <b>compliance</b> [1] - 211:13  <b>complicated</b> [3] - 28:18, 30:9, 84:19  <b>complimentary</b> [1] - 108:21  <b>comply</b> [5] - 81:18, 82:1, 103:2, 161:25, 243:22  <b>component</b> [9] - 88:21, 222:7, 228:19, 230:17, 230:18, 253:18,</p>	<p>279:1, 293:25  <b>comprehensive</b> [1] - 57:13  <b>compromise</b> [1] - 141:9  <b>computed</b> [1] - 145:4  <b>concentration</b> [1] - 242:2  <b>concept</b> [5] - 76:19, 103:7, 105:5, 121:7, 282:16  <b>concepts</b> [1] - 249:3  <b>conceptual</b> [1] - 209:10  <b>concern</b> [6] - 101:14, 207:9, 207:10, 237:1, 256:24, 281:15  <b>concerned</b> [3] - 200:18, 244:1, 272:23  <b>concerning</b> [1] - 266:4  <b>concerns</b> [6] - 47:12, 58:11, 201:11, 240:23, 240:24, 283:2  <b>conclude</b> [1] - 38:1  <b>concluded</b> [4] - 54:14, 60:25, 151:23, 177:8  <b>concludes</b> [2] - 128:4, 294:15  <b>concluding</b> [1] - 10:3  <b>conclusion</b> [2] - 61:3, 128:24  <b>conditioning</b> [2] - 59:4, 113:20  <b>conditions</b> [3] - 109:19, 265:2, 268:7  <b>conduct</b> [2] - 5:21, 124:5  <b>conducted</b> [2] - 16:13, 283:9  <b>confer</b> [1] - 294:13  <b>conference</b> [2] - 148:8, 180:16  <b>confidence</b> [1] - 10:23  <b>Confidential</b> [6] - 3:5, 3:5, 3:6, 3:7, 3:14  <b>confidential</b> [27] - 55:2, 55:5, 75:19, 76:2, 76:3, 76:6, 80:13, 82:5, 82:9, 82:12, 82:15, 92:7, 145:7, 146:16, 200:14, 202:1, 203:2, 204:15, 207:20, 215:6, 215:8, 261:6, 261:11, 261:22,</p>	<p>262:3, 262:7, 262:11  <b>confidentiality</b> [18] - 145:9, 145:10, 145:14, 145:17, 146:6, 146:8, 146:10, 146:12, 146:22, 146:24, 200:1, 200:5, 202:15, 203:3, 204:13, 204:18, 205:17, 206:18  <b>confidentially</b> [1] - 261:23  <b>configured</b> [1] - 275:4  <b>confirm</b> [3] - 66:24, 104:9, 223:5  <b>confirmation</b> [1] - 105:3  <b>confuse</b> [1] - 116:5  <b>confused</b> [2] - 234:2, 293:4  <b>congestion</b> [1] - 121:12  <b>Congress</b> [5] - 34:23, 89:10, 103:5, 106:3, 257:8  <b>Congressional</b> [1] - 257:4  <b>conjunction</b> [1] - 232:21  <b>ConocoPhillips</b> [1] - 81:18  <b>consequences</b> [4] - 197:2, 280:3, 280:4, 280:17  <b>Conservation</b> [1] - 84:11  <b>conservation</b> [1] - 95:21  <b>consider</b> [7] - 26:18, 63:18, 83:25, 146:23, 179:12, 182:4, 264:10  <b>considerable</b> [7] - 44:12, 69:14, 69:15, 89:13, 190:10, 270:1, 287:22  <b>considerably</b> [2] - 234:14, 276:7  <b>consideration</b> [4] - 4:20, 133:16, 174:14, 174:18  <b>considered</b> [6] - 9:23, 73:5, 122:11, 146:15, 173:24, 281:8  <b>considering</b> [2] - 53:22, 90:18  <b>consistency</b> [1] - 127:2</p>	<p><b>consistent</b> [7] - 5:7, 5:8, 16:5, 156:10, 189:6, 249:21, 250:17  <b>consistently</b> [2] - 156:2, 156:6  <b>consisting</b> [1] - 196:23  <b>constant</b> [2] - 68:4, 129:24  <b>constraints</b> [3] - 83:9, 84:23, 100:11  <b>construct</b> [1] - 17:1  <b>constructed</b> [3] - 37:18, 209:6, 214:2  <b>construction</b> [3] - 54:22, 142:6, 214:4  <b>consult</b> [1] - 89:21  <b>consultant</b> [8] - 44:24, 47:1, 47:3, 69:6, 69:10, 84:20, 204:11  <b>consultants</b> [6] - 138:19, 139:4, 146:2, 166:2, 207:10, 207:11  <b>consultation</b> [1] - 265:1  <b>consulted</b> [2] - 86:10, 86:16  <b>consulting</b> [2] - 86:3, 86:7  <b>consumed</b> [1] - 277:15  <b>consumer</b> [1] - 19:6  <b>consumers</b> [5] - 26:15, 63:19, 63:21, 63:22, 280:14  <b>contact</b> [5] - 152:14, 153:3, 171:2, 240:23, 265:12  <b>contacted</b> [5] - 152:15, 165:22, 171:8, 265:14, 268:18  <b>contacts</b> [2] - 153:21, 265:7  <b>contain</b> [2] - 22:15, 205:2  <b>contained</b> [3] - 35:2, 93:3, 145:13  <b>containing</b> [1] - 145:15  <b>context</b> [1] - 97:4  <b>continually</b> [1] - 33:19  <b>continue</b> [18] - 27:23, 34:24, 38:8, 59:24, 108:18, 139:2, 243:1, 285:3, 285:21, 285:23, 286:18, 291:9,</p>	<p>291:13, 291:15, 291:16, 291:24, 291:25, 292:12  <b>continued</b> [2] - 65:14, 280:16  <b>continues</b> [1] - 257:8  <b>continuing</b> [5] - 49:21, 51:10, 51:12, 51:18, 147:14  <b>continuous</b> [1] - 280:13  <b>contract</b> [41] - 10:1, 15:16, 15:17, 15:23, 17:8, 18:9, 18:13, 18:19, 36:23, 52:14, 72:2, 88:17, 102:25, 103:1, 103:3, 104:11, 104:16, 105:8, 105:14, 154:15, 190:20, 198:11, 198:20, 208:16, 210:4, 210:9, 210:11, 210:13, 212:5, 212:19, 213:3, 214:9, 248:7, 252:6, 252:7, 252:20, 252:25, 262:12, 279:5, 280:15  <b>contracted</b> [1] - 234:8  <b>contracts</b> [3] - 123:8, 239:12, 265:4  <b>contractual</b> [3] - 58:25, 118:23, 118:24  <b>contradictory</b> [1] - 190:10  <b>contrast</b> [2] - 27:5, 161:17  <b>control</b> [9] - 20:24, 66:16, 67:10, 115:6, 120:13, 120:15, 139:14, 254:10, 292:10  <b>convened</b> [1] - 243:19  <b>conversation</b> [4] - 17:14, 149:8, 149:12, 149:17  <b>conversations</b> [16] - 140:14, 148:5, 148:11, 148:17, 148:25, 153:20, 180:15, 186:20, 282:16, 282:18, 282:22, 282:23, 282:25, 285:21, 292:2, 293:20  <b>conversely</b> [1] - 110:2  <b>converted</b> [3] - 43:1, 44:24, 158:18</p>	9
---	--	--	--	---	---

<p><b>convinced</b> [1] - 33:10  <b>coordinated</b> [1] - 160:2  <b>copy</b> [5] - 147:12, 150:14, 193:22, 195:10, 227:3  <b>corner</b> [1] - 269:15  <b>corporate</b> [1] - 177:18  <b>corporation</b> [1] - 177:17  <b>correct</b> [122] - 9:18, 10:7, 43:6, 44:19, 45:4, 45:5, 49:14, 62:4, 62:5, 62:24, 63:13, 64:10, 64:15, 68:15, 69:4, 72:20, 74:9, 75:8, 77:2, 77:3, 80:19, 82:14, 82:23, 84:10, 86:4, 88:21, 88:22, 91:9, 97:16, 104:13, 143:18, 143:23, 144:14, 144:17, 147:7, 147:18, 150:1, 150:17, 150:18, 151:14, 152:25, 153:7, 154:4, 154:17, 155:6, 156:4, 156:11, 156:24, 157:4, 159:13, 160:10, 163:3, 163:21, 182:12, 182:16, 185:13, 186:25, 187:4, 189:24, 193:22, 195:10, 202:7, 202:8, 202:11, 209:7, 209:12, 211:14, 212:18, 212:21, 212:25, 213:1, 214:3, 214:9, 214:10, 215:1, 215:11, 215:13, 215:20, 215:22, 216:15, 216:16, 217:13, 217:17, 218:15, 219:11, 219:13, 220:17, 221:14, 222:21, 230:1, 230:6, 230:11, 230:15, 231:24, 231:25, 233:10, 233:11, 233:14, 233:16, 233:23, 234:10, 240:3, 240:4, 246:20, 248:1, 250:14, 250:15, 252:15, 252:17,</p>	<p>252:22, 253:1, 253:2, 253:6, 253:15, 253:16, 254:1, 259:8, 265:23, 277:16, 287:7, 293:9, 295:11  <b>corrected</b> [1] - 280:15  <b>corrections</b> [9] - 39:11, 50:24, 137:10, 194:5, 194:18, 195:2, 195:18, 196:8, 240:19  <b>correctly</b> [4] - 45:1, 192:10, 212:8, 273:8  <b>correspondence</b> [29] - 17:12, 141:7, 146:3, 146:4, 146:20, 146:21, 147:11, 149:20, 150:13, 153:13, 153:15, 153:19, 154:1, 160:19, 160:25, 161:17, 161:21, 163:23, 166:1, 166:6, 166:13, 170:11, 170:15, 178:14, 186:14, 199:8, 240:16, 240:18, 266:3  <b>cost</b> [324] - 4:21, 5:2, 8:5, 8:6, 8:11, 8:13, 9:1, 10:8, 13:21, 14:4, 14:5, 14:16, 14:23, 16:5, 16:24, 16:25, 17:1, 18:6, 18:7, 18:11, 18:20, 19:24, 20:23, 22:5, 22:19, 22:21, 23:19, 25:2, 26:7, 26:20, 26:24, 27:23, 28:4, 29:2, 29:4, 29:21, 31:4, 31:6, 31:24, 32:5, 32:9, 32:20, 32:21, 32:23, 33:4, 33:8, 35:16, 35:18, 36:16, 41:7, 41:9, 41:20, 43:12, 48:8, 48:12, 48:19, 48:20, 48:24, 49:13, 52:19, 52:20, 52:21, 52:25, 53:3, 53:5, 53:9, 53:11, 54:15, 56:13, 56:23, 60:15, 60:20, 63:2, 63:21, 64:2, 64:5, 64:7, 64:12, 68:16, 69:22, 71:6, 71:10, 71:18, 72:14, 72:17, 75:10, 76:8, 76:9, 76:15, 76:24,</p>	<p>77:2, 77:8, 78:23, 78:24, 79:21, 80:7, 80:8, 81:4, 87:22, 88:20, 88:21, 88:24, 89:2, 90:6, 90:11, 90:13, 90:14, 91:13, 91:17, 92:5, 92:12, 92:15, 92:20, 92:21, 93:18, 93:22, 97:21, 98:7, 98:9, 98:20, 99:5, 100:18, 103:21, 104:7, 105:8, 106:5, 106:7, 106:8, 106:16, 106:17, 106:19, 107:2, 109:3, 110:15, 112:15, 116:6, 116:14, 116:21, 117:3, 117:5, 117:6, 117:19, 118:6, 118:22, 121:4, 121:20, 121:25, 122:1, 122:17, 122:18, 122:24, 123:3, 123:25, 124:3, 126:9, 126:14, 126:16, 127:8, 132:1, 132:21, 133:16, 133:22, 134:6, 137:22, 142:10, 142:13, 142:19, 151:19, 155:13, 155:19, 156:3, 156:8, 156:16, 157:16, 167:7, 168:18, 170:1, 181:18, 181:22, 181:24, 182:23, 183:2, 183:21, 184:8, 188:22, 189:3, 189:5, 189:9, 189:11, 189:20, 189:25, 190:3, 190:4, 191:6, 191:12, 191:14, 192:10, 192:11, 196:18, 197:4, 197:5, 197:7, 197:8, 209:18, 209:24, 214:22, 216:10, 216:15, 216:17, 217:15, 217:25, 218:23, 219:2, 219:3, 219:4, 220:11, 220:19, 220:22, 221:1, 221:9, 222:19, 225:14, 225:16, 227:21, 228:9,</p>	<p>228:11, 228:13, 228:21, 228:22, 229:3, 229:8, 230:6, 232:23, 233:3, 234:12, 238:14, 238:22, 239:1, 239:23, 239:24, 240:2, 240:3, 241:2, 247:8, 247:11, 247:12, 247:17, 247:22, 247:23, 248:3, 248:21, 248:25, 249:2, 250:7, 250:12, 250:13, 250:17, 250:18, 251:1, 251:2, 252:2, 256:19, 257:15, 258:23, 259:7, 259:10, 260:19, 263:17, 266:6, 266:16, 267:15, 267:17, 267:18, 267:22, 268:10, 268:12, 268:14, 269:16, 269:19, 269:20, 270:2, 270:8, 270:17, 270:23, 271:1, 271:7, 271:8, 271:19, 272:1, 272:8, 273:6, 273:15, 273:21, 279:11, 279:12, 279:15, 281:5, 281:8, 281:13, 281:16, 281:19, 281:21, 281:24, 282:1, 282:3, 282:4, 285:7, 285:17, 286:9, 288:3, 288:4, 288:10, 293:8, 293:14, 293:16, 293:17, 293:21, 293:22, 294:5  <b>cost-effective</b> [4] - 132:21, 181:22, 247:11, 247:22  <b>cost-effectiveness</b> [1] - 23:19  <b>costing</b> [1] - 54:4  <b>costly</b> [1] - 223:8  <b>costs</b> [66] - 4:22, 4:23, 9:22, 17:22, 21:6, 22:24, 23:3, 30:20, 34:8, 34:10, 34:17, 41:5, 54:1, 78:25, 92:19, 97:18, 98:16, 98:18, 103:7, 117:18, 131:25,</p>	<p>133:23, 140:19, 142:4, 145:4, 145:6, 147:1, 151:5, 174:15, 174:16, 189:13, 197:4, 199:23, 217:4, 217:6, 230:10, 232:15, 249:6, 255:2, 256:8, 256:15, 256:16, 256:17, 260:18, 260:20, 267:3, 269:22, 270:5, 270:10, 270:12, 271:2, 271:15, 277:1, 277:7, 277:9, 277:10, 277:19, 278:4, 278:5, 281:7, 285:12, 286:19, 288:14  <b>Council</b> [4] - 84:11, 84:15, 85:6, 95:10  <b>council</b> [2] - 95:21, 96:18  <b>council's</b> [1] - 95:21  <b>Council's</b> [1] - 97:2  <b>counsel</b> [10] - 5:20, 6:13, 6:20, 141:19, 163:1, 207:5, 289:24, 290:4, 291:17, 294:13  <b>counsel's</b> [2] - 5:24, 157:10  <b>count</b> [8] - 43:22, 43:23, 114:4, 114:6, 114:7, 114:8, 115:3, 116:18  <b>counterexamples</b> [1] - 233:19  <b>counterintuitive</b> [2] - 57:23, 58:4  <b>counting</b> [1] - 221:15  <b>country</b> [9] - 21:20, 60:5, 60:7, 102:15, 107:25, 110:4, 134:23, 169:20, 255:23  <b>county</b> [1] - 139:22  <b>County</b> [1] - 175:12  <b>COUNTY</b> [1] - 295:3  <b>couple</b> [20] - 22:9, 46:3, 48:8, 49:10, 73:2, 89:7, 98:14, 114:10, 119:22, 119:23, 125:14, 137:20, 143:19, 162:25, 177:10, 190:6, 203:12, 260:15, 276:24, 289:10</p>
--	--	--	--	---

<p><b>course</b> <sup>[14]</sup> - 72:7, 100:6, 101:2, 103:22, 104:8, 106:2, 131:3, 131:23, 151:9, 205:5, 242:15, 252:10, 252:11, 271:10</p> <p><b>court</b> <sup>[5]</sup> - 38:6, 105:14, 136:13, 141:6, 192:18</p> <p><b>COURT</b> <sup>[1]</sup> - 87:10</p> <p><b>Court</b> <sup>[2]</sup> - 5:18, 5:19</p> <p><b>courts</b> <sup>[2]</sup> - 12:1, 63:9</p> <p><b>cover</b> <sup>[4]</sup> - 50:14, 52:8, 54:25, 205:2</p> <p><b>covered</b> <sup>[9]</sup> - 164:7, 203:1, 203:2, 204:8, 206:2, 206:13, 206:15, 206:18, 256:1</p> <p><b>Coyote</b> <sup>[2]</sup> - 74:9, 74:13</p> <p><b>create</b> <sup>[7]</sup> - 17:2, 35:7, 41:19, 46:18, 48:11, 120:19, 293:17</p> <p><b>created</b> <sup>[12]</sup> - 8:25, 9:2, 15:21, 41:1, 41:6, 44:21, 46:12, 47:25, 52:12, 63:6, 94:5</p> <p><b>creates</b> <sup>[1]</sup> - 264:6</p> <p><b>creating</b> <sup>[5]</sup> - 34:16, 41:8, 63:10, 94:7, 293:16</p> <p><b>creation</b> <sup>[2]</sup> - 16:7, 237:11</p> <p><b>credibility</b> <sup>[3]</sup> - 94:15, 94:16, 225:18</p> <p><b>credible</b> <sup>[1]</sup> - 225:20</p> <p><b>credit</b> <sup>[12]</sup> - 37:23, 56:22, 57:2, 111:21, 112:2, 118:3, 160:20, 186:17, 214:20, 225:3, 257:22, 258:8</p> <p><b>credit's</b> <sup>[1]</sup> - 258:11</p> <p><b>credits</b> <sup>[12]</sup> - 16:22, 16:25, 23:15, 30:22, 112:4, 112:8, 112:9, 142:22, 173:17, 257:15, 258:3</p> <p><b>Creek</b> <sup>[2]</sup> - 12:8, 15:9</p> <p><b>criteria</b> <sup>[6]</sup> - 100:5, 100:9, 183:5, 183:13, 263:6, 293:13</p> <p><b>criticism</b> <sup>[2]</sup> - 32:25, 219:19</p> <p><b>crop</b> <sup>[1]</sup> - 138:16</p>	<p><b>cross</b> <sup>[24]</sup> - 5:16, 39:15, 50:9, 51:16, 61:8, 61:19, 61:21, 87:12, 128:25, 135:9, 143:5, 164:22, 164:25, 196:12, 197:12, 197:17, 200:20, 202:3, 242:17, 245:18, 259:20, 283:16, 284:9, 289:6</p> <p><b>CROSS</b> <sup>[10]</sup> - 2:8, 2:10, 2:14, 2:16, 61:23, 87:14, 143:8, 197:19, 259:21, 293:1</p> <p><b>CROSS-EXAMINATION</b> <sup>[6]</sup> - 61:23, 87:14, 143:8, 197:19, 259:21, 293:1</p> <p><b>cross-examination</b> <sup>[15]</sup> - 5:16, 39:15, 50:9, 51:16, 61:8, 61:19, 61:21, 87:12, 128:25, 143:5, 196:12, 197:12, 197:17, 242:17, 245:18</p> <p><b>cross-reference</b> <sup>[2]</sup> - 164:22, 164:25</p> <p><b>crossing</b> <sup>[1]</sup> - 55:23</p> <p><b>Crow</b> <sup>[1]</sup> - 174:3</p> <p><b>CRR</b> <sup>[1]</sup> - 1:24</p> <p><b>crunch</b> <sup>[1]</sup> - 151:9</p> <p><b>cuff</b> <sup>[1]</sup> - 66:4</p> <p><b>culmination</b> <sup>[1]</sup> - 41:6</p> <p><b>cups</b> <sup>[1]</sup> - 158:24</p> <p><b>curiosity</b> <sup>[3]</sup> - 172:11, 176:12, 222:8</p> <p><b>curious</b> <sup>[3]</sup> - 108:19, 109:1, 125:8</p> <p><b>current</b> <sup>[22]</sup> - 88:11, 141:6, 150:8, 155:13, 183:3, 185:25, 192:24, 194:7, 214:14, 216:17, 216:23, 225:9, 228:24, 229:8, 239:5, 239:7, 258:8, 268:7, 268:20, 269:4, 269:12, 273:23</p> <p><b>curtail</b> <sup>[2]</sup> - 58:23, 59:1</p> <p><b>curtailed</b> <sup>[3]</sup> - 118:6, 118:19, 118:21</p> <p><b>curtailment</b> <sup>[3]</sup> - 118:10, 118:11, 118:25</p>	<p><b>curve</b> <sup>[7]</sup> - 16:10, 25:5, 44:25, 83:11, 139:11, 280:13, 280:16</p> <p><b>curves</b> <sup>[1]</sup> - 160:1</p> <p><b>Custer</b> <sup>[1]</sup> - 11:12</p> <p><b>custom</b> <sup>[2]</sup> - 65:18, 66:12</p> <p><b>customers</b> <sup>[22]</sup> - 34:6, 57:3, 60:13, 61:1, 71:12, 71:13, 71:17, 71:24, 72:4, 72:12, 72:19, 90:19, 91:2, 112:12, 181:24, 196:19, 232:3, 247:12, 247:24, 259:11, 268:8, 280:8</p> <p><b>cut</b> <sup>[2]</sup> - 11:20, 49:19</p> <p><b>cycle</b> <sup>[2]</sup> - 274:19, 276:4</p>	<p>171:25, 172:1, 172:6, 184:14, 184:15, 184:22, 188:12, 192:25, 193:13, 193:14, 229:9, 234:6, 234:14, 234:21, 235:5, 235:8, 247:7, 249:10, 254:19, 258:14, 263:6, 263:7, 264:13, 268:13, 268:22, 270:2, 295:7, 295:13</p> <p><b>DAKOTA</b> <sup>[2]</sup> - 1:2, 295:1</p> <p><b>Dakota's</b> <sup>[3]</sup> - 141:6, 248:25, 269:6</p> <p><b>Dakota-North</b> <sup>[1]</sup> - 125:18</p> <p><b>Dakotas</b> <sup>[2]</sup> - 123:10, 123:20</p> <p><b>damages</b> <sup>[1]</sup> - 154:18</p> <p><b>Daniel</b> <sup>[1]</sup> - 136:20</p> <p><b>Dannen</b> <sup>[9]</sup> - 1:20, 6:22, 144:13, 145:19, 171:4, 192:15, 200:21, 265:14, 278:13</p> <p><b>DANNEN</b> <sup>[42]</sup> - 6:22, 192:16, 192:20, 194:20, 195:3, 195:4, 195:25, 196:10, 196:11, 197:11, 200:9, 200:22, 201:10, 201:16, 201:19, 201:23, 202:5, 202:12, 203:11, 203:15, 206:9, 215:23, 223:24, 225:6, 226:10, 226:14, 227:23, 251:12, 261:10, 261:15, 261:19, 261:25, 262:10, 278:14, 278:16, 283:21, 284:10, 286:21, 290:5, 290:18, 292:20, 294:12</p> <p><b>Dannen's</b> <sup>[2]</sup> - 144:21, 146:19</p> <p><b>data</b> <sup>[68]</sup> - 16:9, 25:5, 31:25, 32:2, 32:3, 44:22, 44:23, 45:3, 45:23, 46:15, 46:16, 46:17, 46:18, 46:19, 46:22, 46:25, 47:6, 49:11, 67:4, 67:6, 67:7, 67:9, 67:12,</p>	<p>67:13, 67:20, 69:4, 11 69:5, 69:6, 69:15, 72:24, 73:18, 73:19, 73:23, 83:6, 83:11, 85:2, 88:13, 89:20, 114:9, 114:10, 139:2, 139:3, 139:5, 145:3, 158:19, 158:22, 164:6, 164:10, 164:11, 164:16, 164:19, 164:20, 164:23, 164:24, 164:25, 165:4, 165:5, 165:6, 165:8, 165:10, 165:14, 172:13, 172:17, 221:7</p> <p><b>database</b> <sup>[2]</sup> - 83:19, 165:2</p> <p><b>date</b> <sup>[18]</sup> - 4:5, 33:9, 104:19, 104:21, 105:9, 113:2, 145:22, 147:10, 152:25, 153:2, 153:10, 159:13, 190:1, 190:3, 190:5, 198:9, 208:22</p> <p><b>Dated</b> <sup>[1]</sup> - 295:13</p> <p><b>dated</b> <sup>[6]</sup> - 95:22, 153:8, 181:8, 182:12, 185:2, 245:22</p> <p><b>dates</b> <sup>[1]</sup> - 259:25</p> <p><b>Daugaard</b> <sup>[1]</sup> - 1:16</p> <p><b>days</b> <sup>[13]</sup> - 8:18, 73:13, 84:14, 88:4, 95:12, 98:14, 113:21, 113:22, 161:25, 162:2, 162:5, 162:8, 241:19</p> <p><b>daytime</b> <sup>[1]</sup> - 73:4</p> <p><b>deal</b> <sup>[10]</sup> - 12:15, 37:17, 101:22, 110:11, 124:10, 131:10, 134:5, 148:25, 215:12, 216:7</p> <p><b>dealing</b> <sup>[4]</sup> - 163:7, 164:6, 188:10, 239:20</p> <p><b>deals</b> <sup>[2]</sup> - 166:3, 231:18</p> <p><b>dealt</b> <sup>[1]</sup> - 148:25</p> <p><b>debate</b> <sup>[2]</sup> - 9:5, 10:2</p> <p><b>debated</b> <sup>[1]</sup> - 141:3</p> <p><b>debt</b> <sup>[1]</sup> - 18:18</p> <p><b>December</b> <sup>[4]</sup> - 43:5, 43:10, 62:19, 142:5</p> <p><b>decide</b> <sup>[14]</sup> - 11:19, 13:2, 13:5, 14:13,</p>
<b>D</b>		<p><b>D2008.12.146</b> <sup>[1]</sup> - 49:1</p> <p><b>D2010.7.77</b> <sup>[3]</sup> - 28:5, 49:3, 222:2</p> <p><b>D2011.5.41</b> <sup>[3]</sup> - 19:22, 51:14, 222:14</p> <p><b>Dakota</b> <sup>[111]</sup> - 2:2, 2:4, 4:7, 5:8, 6:12, 6:13, 6:24, 9:13, 11:5, 11:14, 12:19, 17:2, 19:15, 19:17, 21:20, 23:11, 24:1, 24:5, 24:7, 24:9, 25:12, 26:4, 31:5, 35:18, 35:24, 36:21, 41:16, 44:2, 44:3, 48:13, 48:17, 53:4, 57:2, 60:13, 61:5, 63:19, 68:20, 68:25, 75:15, 76:23, 79:18, 79:22, 80:4, 80:21, 82:1, 86:3, 86:9, 86:12, 90:19, 93:4, 94:4, 100:4, 122:5, 122:7, 124:11, 124:19, 124:21, 125:12, 125:13, 125:18, 125:23, 125:25, 126:5, 126:21, 126:24, 127:1, 132:4, 136:22, 138:21, 143:3, 144:3, 145:4, 145:5, 166:22, 166:24, 167:1, 168:17, 169:12, 169:21, 169:23, 169:24,</p>	<p>171:25, 172:1, 172:6, 184:14, 184:15, 184:22, 188:12, 192:25, 193:13, 193:14, 229:9, 234:6, 234:14, 234:21, 235:5, 235:8, 247:7, 249:10, 254:19, 258:14, 263:6, 263:7, 264:13, 268:13, 268:22, 270:2, 295:7, 295:13</p>	

<p>37:4, 56:17, 67:16, 89:22, 90:18, 91:24, 100:5, 102:3, 124:6, 263:6</p> <p><b>decided</b> [10] - 58:13, 65:24, 74:22, 99:1, 167:3, 233:13, 235:10, 269:10, 285:3, 294:19</p> <p><b>decides</b> [2] - 116:11, 242:6</p> <p><b>deciding</b> [2] - 24:23, 90:12</p> <p><b>decision</b> [38] - 5:17, 9:15, 9:24, 12:8, 12:10, 13:4, 15:12, 19:25, 21:4, 34:1, 37:14, 51:24, 56:16, 60:22, 72:19, 101:15, 101:19, 101:21, 101:25, 102:9, 133:8, 134:9, 134:12, 147:1, 147:3, 163:9, 171:2, 202:9, 230:23, 233:20, 233:22, 250:20, 268:10, 280:1, 280:5, 280:20, 292:9, 292:13</p> <p><b>decision-maker</b> [1] - 171:2</p> <p><b>decisions</b> [21] - 10:5, 13:6, 24:22, 33:25, 34:1, 59:8, 59:9, 84:5, 99:10, 101:16, 101:17, 105:22, 127:14, 133:4, 133:6, 147:6, 201:6, 208:18, 231:16, 279:25, 280:25</p> <p><b>deck</b> [2] - 94:21, 101:3</p> <p><b>Decker</b> [3] - 184:24, 265:17, 265:22</p> <p><b>decrease</b> [7] - 110:25, 111:1, 219:20, 255:1, 263:20, 263:21, 264:1</p> <p><b>deemed</b> [2] - 186:10, 280:25</p> <p><b>deeming</b> [1] - 206:17</p> <p><b>default</b> [2] - 185:24, 186:19</p> <p><b>defaulted</b> [2] - 100:9, 186:4</p> <p><b>defective</b> [1] - 47:6</p> <p><b>defects</b> [1] - 32:24</p> <p><b>deferred</b> [2] - 242:10, 249:9</p> <p><b>deficit</b> [2] - 211:17,</p>	<p>213:7</p> <p><b>define</b> [2] - 81:1, 217:18</p> <p><b>definitely</b> [5] - 132:19, 204:11, 224:8, 263:12, 282:13</p> <p><b>definition</b> [4] - 73:11, 105:24, 174:21, 281:7</p> <p><b>definitional</b> [1] - 215:3</p> <p><b>definitions</b> [1] - 73:2</p> <p><b>definity</b> [1] - 165:10</p> <p><b>degree</b> [1] - 160:3</p> <p><b>delay</b> [1] - 154:18</p> <p><b>delayed</b> [2] - 89:11, 273:2</p> <p><b>deliver</b> [3] - 14:15, 37:19, 170:1</p> <p><b>delivery</b> [12] - 13:22, 13:24, 14:4, 14:24, 18:7, 18:12, 174:15, 179:12, 191:7, 191:8, 191:13, 263:18</p> <p><b>Delphi</b> [1] - 85:13</p> <p><b>deluge</b> [1] - 127:9</p> <p><b>demand</b> [12] - 83:8, 83:13, 84:22, 89:16, 96:13, 108:1, 108:4, 109:18, 109:21, 109:23, 126:3</p> <p><b>demands</b> [3] - 83:14, 83:15</p> <p><b>Demaris</b> [2] - 1:17, 243:10</p> <p><b>demonstrate</b> [3] - 5:13, 81:3, 98:12</p> <p><b>demonstrated</b> [1] - 104:3</p> <p><b>demonstration</b> [2] - 132:15, 222:23</p> <p><b>Dennis</b> [3] - 2:12, 148:8, 184:24</p> <p><b>dependent</b> [5] - 20:10, 73:6, 186:12, 273:22, 277:20</p> <p><b>deposit</b> [5] - 161:5, 161:22, 162:2, 162:4, 186:15</p> <p><b>deposits</b> [1] - 161:20</p> <p><b>depreciated</b> [1] - 231:14</p> <p><b>depreciation</b> [3] - 113:7, 113:10, 260:22</p> <p><b>depressed</b> [2] - 44:5, 44:11</p> <p><b>depth</b> [3] - 159:25, 201:12, 263:15</p> <p><b>describe</b> [3] - 60:11,</p>	<p>64:11, 153:8</p> <p><b>described</b> [3] - 57:12, 158:10, 184:1</p> <p><b>design</b> [5] - 36:23, 209:11, 239:21, 249:13, 276:9</p> <p><b>designated</b> [1] - 207:7</p> <p><b>designed</b> [4] - 125:11, 142:25, 273:20, 276:6</p> <p><b>desire</b> [2] - 7:15, 269:6</p> <p><b>desk</b> [1] - 265:9</p> <p><b>despite</b> [4] - 141:5, 161:21, 162:21</p> <p><b>detail</b> [9] - 35:4, 40:18, 53:19, 67:3, 154:16, 159:25, 168:12, 208:2, 272:12</p> <p><b>detailed</b> [3] - 127:16, 139:4, 140:15</p> <p><b>details</b> [7] - 41:7, 60:6, 145:5, 146:25, 208:6, 210:15, 210:16</p> <p><b>determination</b> [12] - 4:19, 8:9, 8:22, 15:6, 18:24, 31:14, 35:20, 60:20, 102:22, 102:23, 217:16, 250:5</p> <p><b>determinations</b> [1] - 49:12</p> <p><b>determine</b> [9] - 9:7, 63:6, 117:3, 121:19, 122:18, 129:16, 220:4, 220:6, 266:22</p> <p><b>determined</b> [7] - 8:11, 18:11, 80:8, 191:21, 191:22, 191:23, 230:11</p> <p><b>determines</b> [5] - 13:19, 102:17, 156:15, 191:3, 263:9</p> <p><b>determining</b> [3] - 97:21, 116:21, 122:1</p> <p><b>develop</b> [3] - 29:21, 123:22, 187:3</p> <p><b>developed</b> [5] - 10:18, 10:23, 48:5, 90:6, 121:5</p> <p><b>developer</b> [1] - 169:25</p> <p><b>developing</b> [1] - 228:9</p> <p><b>development</b> [5] - 12:24, 13:1, 122:6, 139:25, 250:25</p> <p><b>devoting</b> [1] - 123:18</p> <p><b>died</b> [1] - 11:13</p> <p><b>difference</b> [11] - 23:22, 33:12, 52:23,</p>	<p>57:11, 75:14, 98:18, 98:19, 159:3, 183:17, 216:19, 281:17</p> <p><b>differences</b> [7] - 19:16, 19:18, 28:13, 61:4, 76:21, 126:19</p> <p><b>different</b> [53] - 19:15, 35:1, 35:4, 56:12, 65:25, 66:2, 71:13, 76:14, 83:20, 83:23, 84:24, 94:13, 104:24, 111:13, 114:8, 117:6, 120:15, 121:24, 123:19, 125:19, 125:21, 134:2, 140:3, 159:8, 164:22, 167:2, 169:19, 169:20, 173:9, 173:10, 173:11, 174:1, 174:17, 179:10, 179:13, 185:15, 189:21, 193:11, 220:21, 221:8, 222:16, 228:10, 228:12, 234:14, 251:17, 263:14, 276:3, 293:13, 293:17</p> <p><b>differential</b> [1] - 222:10</p> <p><b>differently</b> [1] - 275:4</p> <p><b>difficult</b> [3] - 42:6, 95:23, 268:21</p> <p><b>dig</b> [1] - 205:19</p> <p><b>dilatoriness</b> [1] - 267:5</p> <p><b>diligence</b> [2] - 24:25, 54:11</p> <p><b>Dillon</b> [1] - 6:14</p> <p><b>dimensions</b> [1] - 134:20</p> <p><b>Direct</b> [7] - 3:3, 3:10, 3:11, 3:12, 3:13, 3:14, 3:16</p> <p><b>DIRECT</b> [7] - 2:8, 2:10, 2:14, 2:16, 38:19, 136:14, 192:19</p> <p><b>direct</b> [19] - 7:6, 14:7, 39:5, 40:4, 40:9, 52:4, 52:8, 54:14, 62:2, 62:3, 62:16, 62:18, 62:20, 62:22, 63:4, 162:10, 199:18, 216:4, 221:12</p> <p><b>directed</b> [4] - 135:19, 153:23, 166:25,</p>	<p>213:6</p> <p><b>direction</b> [4] - 60:9, 134:23, 167:2, 284:17</p> <p><b>directly</b> [7] - 147:5, 208:18, 264:17, 277:14, 288:11, 289:22, 292:2</p> <p><b>director</b> [3] - 193:12, 193:17, 194:8</p> <p><b>directors</b> [3] - 115:9, 207:4, 207:8</p> <p><b>disagree</b> [1] - 250:13</p> <p><b>disagrees</b> [1] - 16:6</p> <p><b>disappeared</b> [1] - 190:15</p> <p><b>discerning</b> [1] - 179:21</p> <p><b>discernment</b> [1] - 141:22</p> <p><b>disciplines</b> [1] - 29:12</p> <p><b>disclose</b> [1] - 207:6</p> <p><b>disclosure</b> [1] - 206:3</p> <p><b>discounting</b> [1] - 115:1</p> <p><b>discovery</b> [7] - 33:21, 146:11, 163:25, 205:11, 261:16, 261:20, 262:2</p> <p><b>discrepancies</b> [1] - 275:10</p> <p><b>discriminate</b> [2] - 19:2, 19:8</p> <p><b>discrimination</b> [1] - 19:13</p> <p><b>discuss</b> [9] - 46:22, 147:16, 147:20, 192:1, 197:3, 197:9, 210:17, 257:8, 293:12</p> <p><b>discussed</b> [10] - 34:21, 53:10, 67:19, 101:4, 184:5, 192:6, 250:24, 263:15, 274:18, 280:6</p> <p><b>discusses</b> [1] - 197:1</p> <p><b>discussing</b> [6] - 13:8, 16:16, 64:13, 170:16, 172:12, 196:16</p> <p><b>discussion</b> [9] - 55:16, 117:13, 148:20, 168:6, 169:13, 269:21, 269:24, 270:6, 291:25</p> <p><b>discussions</b> [21] - 56:18, 59:7, 140:14, 148:12, 148:14, 148:21, 155:11,</p>	12
---	---	--	---	---	----

<p>178:18, 181:22, 182:25, 247:10, 247:21, 265:20, 267:20, 267:25, 268:23, 285:10, 285:16, 285:19, 285:24, 286:19</p> <p><b>dispatch</b> [3] - 30:6, 93:24, 223:3</p> <p><b>dispatchable</b> [1] - 274:9</p> <p><b>dispatched</b> [3] - 122:19, 123:2</p> <p><b>dispatching</b> [1] - 30:3</p> <p><b>displaced</b> [1] - 33:23</p> <p><b>disposal</b> [2] - 20:25, 292:10</p> <p><b>dispute</b> [6] - 35:12, 64:7, 104:18, 249:17, 250:19, 257:19</p> <p><b>disputed</b> [1] - 8:25</p> <p><b>disputing</b> [1] - 8:23</p> <p><b>distinction</b> [1] - 190:22</p> <p><b>distinguish</b> [4] - 95:24, 96:10, 96:18, 98:6</p> <p><b>diversification</b> [2] - 34:13, 264:6</p> <p><b>diversify</b> [2] - 36:6, 264:4</p> <p><b>diversifying</b> [1] - 264:1</p> <p><b>diversity</b> [2] - 90:22, 255:15</p> <p><b>DO</b> [1] - 295:8</p> <p><b>docket</b> [14] - 51:14, 62:17, 81:7, 81:13, 124:18, 188:21, 189:13, 189:17, 189:19, 190:1, 222:4, 222:13, 261:3, 281:9</p> <p><b>Docket</b> [4] - 4:2, 15:11, 61:17, 128:23</p> <p><b>document</b> [17] - 29:11, 41:1, 41:11, 66:6, 73:19, 97:6, 97:10, 154:14, 162:6, 167:10, 200:5, 202:14, 205:17, 206:4, 227:18, 262:2, 262:7</p> <p><b>documented</b> [4] - 139:3, 139:8, 151:2, 170:18</p> <p><b>documents</b> [8] - 33:21, 97:2, 161:9, 200:13, 201:24,</p>	<p>201:25, 202:15, 203:1</p> <p><b>dog</b> [1] - 264:15</p> <p><b>dollar</b> [1] - 92:19</p> <p><b>dollars</b> [10] - 13:2, 24:23, 42:9, 42:13, 42:15, 42:21, 54:12, 68:5, 253:10</p> <p><b>Don</b> [3] - 148:9, 148:23, 166:15</p> <p><b>done</b> [43] - 15:15, 15:25, 16:14, 26:25, 27:5, 28:2, 40:3, 42:15, 53:6, 54:10, 57:8, 66:6, 66:18, 67:15, 68:23, 103:18, 104:2, 112:3, 114:13, 133:25, 135:2, 141:18, 142:7, 147:9, 159:12, 159:21, 160:3, 163:2, 169:4, 179:3, 213:13, 220:20, 235:4, 235:25, 241:16, 243:2, 243:19, 254:19, 276:8, 288:16, 291:19</p> <p><b>done-done</b> [1] - 243:2</p> <p><b>door</b> [2] - 284:11, 285:18</p> <p><b>double</b> [1] - 130:9</p> <p><b>doubling</b> [2] - 130:11, 135:24</p> <p><b>down</b> [41] - 10:14, 21:1, 21:4, 42:25, 73:3, 74:7, 74:19, 74:21, 91:14, 96:9, 96:15, 102:8, 107:24, 107:25, 118:14, 119:13, 126:23, 135:6, 136:6, 136:9, 141:9, 149:25, 150:2, 150:7, 161:8, 171:16, 174:3, 175:14, 179:19, 183:22, 187:18, 196:14, 196:15, 205:23, 217:5, 226:1, 226:3, 271:18, 278:2, 281:25, 284:17</p> <p><b>draft</b> [2] - 141:10, 149:25</p> <p><b>drafted</b> [3] - 154:24, 207:3</p> <p><b>drawn</b> [1] - 276:6</p> <p><b>drilling</b> [6] - 22:12,</p>	<p>22:14, 22:19, 22:21, 27:24, 108:16</p> <p><b>drive</b> [1] - 38:25</p> <p><b>driven</b> [1] - 126:2</p> <p><b>drives</b> [2] - 125:23, 271:18</p> <p><b>driving</b> [2] - 60:11, 96:15</p> <p><b>drop</b> [3] - 86:5, 96:9, 152:22</p> <p><b>due</b> [8] - 24:25, 54:11, 135:25, 252:2, 258:25, 273:18, 287:12, 288:23</p> <p><b>duly</b> [1] - 295:8</p> <p><b>duly-appointed</b> [1] - 295:8</p> <p><b>duration</b> [1] - 18:19</p> <p><b>during</b> [28] - 18:15, 62:6, 70:3, 73:25, 74:10, 74:15, 79:13, 118:13, 146:13, 148:5, 153:4, 165:23, 168:9, 178:19, 180:9, 199:10, 201:17, 204:24, 209:16, 209:21, 211:2, 211:15, 211:17, 224:17, 252:20, 253:20, 279:2, 283:14</p>	<p>25:20, 26:4, 127:10, 132:14</p> <p><b>effective</b> [8] - 105:9, 114:12, 132:21, 151:19, 181:22, 247:11, 247:22, 256:19</p> <p><b>effectiveness</b> [1] - 23:19</p> <p><b>effects</b> [1] - 152:23</p> <p><b>effort</b> [7] - 54:1, 89:5, 149:19, 155:24, 171:19, 180:24, 232:14</p> <p><b>efforts</b> [5] - 53:20, 152:2, 180:25, 181:3, 184:18</p> <p><b>eggs</b> [1] - 36:7</p> <p><b>EIA</b> [9] - 28:9, 84:10, 84:15, 84:17, 85:23, 228:13, 279:18, 279:19</p> <p><b>EIA's</b> [1] - 94:24</p> <p><b>eight</b> [1] - 73:25</p> <p><b>either</b> [23] - 8:10, 9:19, 13:18, 14:3, 14:13, 15:22, 18:6, 20:23, 80:23, 91:25, 166:24, 170:14, 174:11, 189:14, 191:2, 191:12, 203:15, 217:4, 244:4, 250:4, 267:16, 273:2, 285:2</p> <p><b>EI</b> [1] - 39:1</p> <p><b>EL11-006</b> [6] - 1:4, 4:2, 61:17, 128:23, 177:7, 245:16</p> <p><b>elaborate</b> [2] - 114:12, 191:25</p> <p><b>electric</b> [19] - 15:14, 15:15, 15:16, 15:19, 18:22, 19:6, 19:7, 24:14, 26:19, 29:1, 32:13, 68:16, 68:24, 81:22, 193:13, 225:4, 234:22, 237:18, 255:18</p> <p><b>Electric</b> [9] - 45:2, 198:11, 212:19, 214:9, 218:14, 219:18, 232:22, 234:2, 252:6</p> <p><b>Electric's</b> [1] - 21:4</p> <p><b>electrical</b> [1] - 188:14</p> <p><b>electricity</b> [19] - 4:18, 5:6, 26:17, 28:15, 57:10, 68:20, 81:9, 117:12, 118:6, 118:13, 118:20,</p>	<p>118:21, 193:14, 216:24, 260:25, 270:2, 274:11, 274:15, 292:16</p> <p><b>electronic</b> [1] - 243:13</p> <p><b>element</b> [1] - 9:21</p> <p><b>elements</b> [1] - 153:18</p> <p><b>elephant</b> [1] - 167:9</p> <p><b>elevations</b> [1] - 159:3</p> <p><b>elevators</b> [2] - 59:3, 113:20</p> <p><b>eligible</b> [1] - 253:21</p> <p><b>eliminate</b> [1] - 293:19</p> <p><b>ELL-59-00</b> [1] - 15:11</p> <p><b>elsewhere</b> [2] - 183:24, 189:15</p> <p><b>eminently</b> [1] - 36:15</p> <p><b>emission</b> [1] - 257:5</p> <p><b>emissions</b> [8] - 21:22, 67:10, 88:21, 88:24, 127:12, 254:16, 256:3, 257:1</p> <p><b>emitters</b> [1] - 21:18</p> <p><b>EMP</b> [1] - 88:14</p> <p><b>employed</b> [8] - 39:2, 39:3, 46:5, 62:4, 62:8, 136:23, 138:10, 193:17</p> <p><b>employee</b> [3] - 48:4, 88:17, 193:1</p> <p><b>employees</b> [5] - 29:14, 177:19, 205:3, 207:5, 207:8</p> <p><b>enables</b> [1] - 18:8</p> <p><b>enclosed</b> [1] - 145:11</p> <p><b>encompass</b> [1] - 207:7</p> <p><b>encompassing</b> [1] - 287:20</p> <p><b>encourage</b> [1] - 24:3</p> <p><b>encroaching</b> [1] - 219:16</p> <p><b>end</b> [29] - 16:23, 22:20, 35:13, 37:18, 44:18, 56:22, 82:25, 84:1, 84:9, 107:3, 113:8, 113:16, 132:24, 133:3, 133:4, 133:8, 133:10, 133:11, 142:3, 160:22, 165:12, 178:16, 208:9, 211:23, 215:8, 258:18, 266:24, 271:20, 271:22</p> <p><b>endorsed</b> [1] - 251:7</p> <p><b>ends</b> [2] - 113:7, 150:24</p> <p><b>energized</b> [1] - 24:12</p>
		<b>E</b>		
		<p><b>e-mail</b> [6] - 158:23, 165:25, 166:6, 259:23, 259:25, 260:9</p> <p><b>e-mails</b> [7] - 140:14, 153:16, 163:15, 170:20, 170:22, 178:18, 268:2</p> <p><b>early</b> [4] - 170:9, 172:20, 244:14, 271:19</p> <p><b>easily</b> [2] - 101:9, 271:13</p> <p><b>east</b> [1] - 171:13</p> <p><b>East</b> [1] - 2:3</p> <p><b>Eastern</b> [5] - 24:10, 26:1, 26:3, 93:13, 120:17</p> <p><b>economic</b> [1] - 84:4</p> <p><b>economics</b> [1] - 157:6</p> <p><b>economy</b> [1] - 226:15</p> <p><b>EEI</b> [2] - 279:19, 279:21</p> <p><b>effect</b> [5] - 20:19,</p>		

<p><b>energy</b> <sup>[66]</sup> - 4:22, 13:18, 13:19, 13:23, 13:25, 18:10, 18:13, 23:7, 27:14, 30:21, 31:3, 32:2, 41:14, 43:12, 58:10, 65:14, 67:17, 68:16, 84:18, 85:22, 92:12, 92:20, 97:17, 97:18, 97:19, 115:20, 115:21, 117:21, 117:22, 118:3, 123:8, 132:4, 139:10, 142:10, 142:22, 155:14, 183:3, 188:14, 191:3, 191:7, 191:9, 196:17, 197:7, 225:3, 229:24, 230:16, 235:16, 237:11, 238:2, 247:7, 266:17, 274:15, 276:1, 277:23, 278:4, 278:23, 280:9, 286:8, 286:11, 286:13, 286:14, 291:3</p> <p><b>Energy</b> <sup>[50]</sup> - 1:20, 1:20, 4:3, 4:15, 4:19, 5:6, 6:18, 6:23, 12:2, 17:4, 48:4, 54:16, 62:12, 87:23, 93:4, 98:17, 111:23, 112:25, 116:2, 117:11, 117:15, 117:21, 118:7, 136:24, 138:11, 138:24, 140:21, 143:25, 144:10, 145:8, 153:24, 183:5, 184:25, 188:22, 193:2, 201:1, 210:4, 218:20, 221:23, 246:14, 253:19, 264:11, 265:8, 266:12, 270:3, 286:4, 287:10, 290:3</p> <p><b>ENERGY</b> <sup>[2]</sup> - 1:4, 1:5</p> <p><b>Energy's</b> <sup>[13]</sup> - 5:10, 68:19, 110:22, 140:22, 146:4, 156:16, 188:22, 190:12, 192:3, 218:22, 250:17, 263:20, 267:6</p> <p><b>enforce</b> <sup>[1]</sup> - 15:18</p> <p><b>enforceable</b> <sup>[16]</sup> - 4:25, 5:1, 13:16, 13:24, 14:18, 15:2,</p>	<p>15:20, 15:24, 16:8, 35:7, 36:13, 62:25, 129:8, 189:18, 191:1, 191:8</p> <p><b>enforcement</b> <sup>[1]</sup> - 256:11</p> <p><b>enforcing</b> <sup>[1]</sup> - 20:21</p> <p><b>engagements</b> <sup>[2]</sup> - 66:11, 66:12</p> <p><b>engine</b> <sup>[1]</sup> - 274:24</p> <p><b>engineer</b> <sup>[3]</sup> - 193:10, 206:20</p> <p><b>engineered</b> <sup>[1]</sup> - 276:5</p> <p><b>enormous</b> <sup>[2]</sup> - 29:11, 30:9</p> <p><b>enormously</b> <sup>[1]</sup> - 29:23</p> <p><b>entails</b> <sup>[1]</sup> - 144:8</p> <p><b>enter</b> <sup>[8]</sup> - 4:4, 51:10, 198:10, 238:13, 239:2, 248:2, 266:15</p> <p><b>ENTER</b> <sup>[1]</sup> - 1:5</p> <p><b>entered</b> <sup>[8]</sup> - 210:5, 212:19, 214:8, 226:22, 252:5, 266:19, 267:1, 278:19</p> <p><b>entering</b> <sup>[1]</sup> - 134:15</p> <p><b>enters</b> <sup>[1]</sup> - 18:12</p> <p><b>entertain</b> <sup>[1]</sup> - 267:25</p> <p><b>entire</b> <sup>[6]</sup> - 33:8, 88:11, 107:7, 167:25, 264:8, 290:3</p> <p><b>entirely</b> <sup>[2]</sup> - 39:23, 262:9</p> <p><b>entirety</b> <sup>[1]</sup> - 51:3</p> <p><b>entities</b> <sup>[7]</sup> - 24:25, 82:18, 120:15, 166:23, 173:23, 235:14, 268:18</p> <p><b>entitled</b> <sup>[5]</sup> - 2:2, 64:4, 67:22, 146:1, 295:10</p> <p><b>entity</b> <sup>[4]</sup> - 122:15, 122:16, 177:24, 188:18</p> <p><b>environment</b> <sup>[4]</sup> - 28:23, 28:24, 29:1, 268:5</p> <p><b>environmental</b> <sup>[11]</sup> - 16:13, 22:5, 23:5, 34:15, 67:9, 138:24, 211:2, 211:7, 211:10, 211:12, 287:13</p> <p><b>Environmental</b> <sup>[1]</sup> - 257:3</p> <p><b>environmentally</b> <sup>[1]</sup> - 274:15</p> <p><b>EPA</b> <sup>[8]</sup> - 20:20, 20:21, 100:21, 127:9,</p>	<p>127:13, 211:13, 254:14, 256:3</p> <p><b>equal</b> <sup>[5]</sup> - 105:7, 106:4, 225:3, 252:9, 254:5</p> <p><b>equity</b> <sup>[5]</sup> - 103:10, 113:10, 167:13, 180:18, 180:21</p> <p><b>equivalent</b> <sup>[1]</sup> - 112:21</p> <p><b>erection</b> <sup>[1]</sup> - 142:7</p> <p><b>escalated</b> <sup>[3]</sup> - 17:5, 31:17, 52:16</p> <p><b>escalation</b> <sup>[1]</sup> - 156:17</p> <p><b>escalator</b> <sup>[1]</sup> - 142:16</p> <p><b>especially</b> <sup>[3]</sup> - 6:11, 237:6, 271:18</p> <p><b>essence</b> <sup>[3]</sup> - 111:20, 142:1, 142:8</p> <p><b>essentially</b> <sup>[16]</sup> - 11:5, 23:21, 27:10, 28:16, 49:9, 80:20, 107:5, 126:9, 130:9, 132:14, 171:6, 222:21, 231:18, 232:15, 248:11, 252:25</p> <p><b>establish</b> <sup>[5]</sup> - 17:3, 18:9, 22:13, 62:25, 106:7</p> <p><b>established</b> <sup>[13]</sup> - 53:4, 100:9, 104:8, 104:10, 104:20, 104:21, 106:9, 106:20, 129:9, 129:17, 155:12, 183:2, 285:11</p> <p><b>establishing</b> <sup>[4]</sup> - 100:5, 105:21, 122:10, 263:7</p> <p><b>establishments</b> <sup>[1]</sup> - 115:5</p> <p><b>esteemed</b> <sup>[1]</sup> - 5:20</p> <p><b>estimate</b> <sup>[9]</sup> - 25:24, 44:5, 65:3, 83:24, 197:4, 216:17, 221:3, 221:4, 258:23</p> <p><b>estimated</b> <sup>[7]</sup> - 18:20, 64:16, 69:10, 71:22, 92:16, 115:21, 258:25</p> <p><b>estimates</b> <sup>[2]</sup> - 228:20, 232:13</p> <p><b>estimating</b> <sup>[2]</sup> - 99:8, 232:15</p> <p><b>et</b> <sup>[1]</sup> - 166:17</p> <p><b>ethene</b> <sup>[1]</sup> - 22:18</p> <p><b>evaluate</b> <sup>[8]</sup> - 156:18, 220:14, 220:15,</p>	<p>221:8, 228:14, 231:20, 264:8, 269:3</p> <p><b>evaluated</b> <sup>[5]</sup> - 138:16, 139:24, 140:1, 218:22, 249:6</p> <p><b>evaluating</b> <sup>[1]</sup> - 71:20</p> <p><b>event</b> <sup>[3]</sup> - 57:15, 96:6, 249:15</p> <p><b>events</b> <sup>[4]</sup> - 96:16, 119:11, 119:15, 119:17</p> <p><b>evidence</b> <sup>[10]</sup> - 11:16, 15:5, 17:10, 20:18, 34:7, 45:18, 59:8, 190:1, 190:11, 192:1</p> <p><b>evidentiary</b> <sup>[1]</sup> - 5:23</p> <p><b>evolved</b> <sup>[1]</sup> - 163:12</p> <p><b>exact</b> <sup>[9]</sup> - 8:8, 48:7, 71:18, 73:4, 75:25, 80:11, 90:13, 105:18, 293:19</p> <p><b>exactly</b> <sup>[13]</sup> - 32:8, 50:10, 69:13, 95:17, 105:19, 159:25, 164:11, 200:16, 203:21, 205:20, 236:7, 293:7, 293:18</p> <p><b>EXAMINATION</b> <sup>[14]</sup> - 38:19, 61:23, 87:14, 129:4, 135:21, 136:14, 143:8, 178:6, 192:19, 197:19, 259:21, 278:15, 289:18, 293:1</p> <p><b>examination</b> <sup>[19]</sup> - 5:16, 39:15, 50:9, 51:16, 61:8, 61:19, 61:21, 87:12, 128:25, 129:7, 143:5, 196:12, 197:12, 197:17, 241:22, 242:8, 242:17, 245:18, 294:16</p> <p><b>examine</b> <sup>[2]</sup> - 46:16, 288:2</p> <p><b>examined</b> <sup>[1]</sup> - 35:3</p> <p><b>Examiner</b> <sup>[1]</sup> - 5:21</p> <p><b>examines</b> <sup>[1]</sup> - 227:18</p> <p><b>example</b> <sup>[30]</sup> - 9:19, 18:16, 20:12, 21:2, 21:3, 23:6, 25:14, 30:11, 34:7, 41:22, 42:4, 42:7, 43:3, 98:14, 102:3, 109:22, 120:19, 217:19, 218:12, 231:4, 232:6, 233:12, 235:20,</p>	<p>240:22, 241:5, 254:14, 277:12, 277:13, 277:17, 277:20</p> <p><b>examples</b> <sup>[1]</sup> - 233:18</p> <p><b>exceed</b> <sup>[2]</sup> - 18:20, 63:2</p> <p><b>exceedingly</b> <sup>[4]</sup> - 130:15, 130:18, 130:20, 131:5</p> <p><b>excellent</b> <sup>[1]</sup> - 175:11</p> <p><b>except</b> <sup>[5]</sup> - 73:11, 105:12, 119:10, 222:8, 242:11</p> <p><b>exception</b> <sup>[1]</sup> - 189:6</p> <p><b>exchange</b> <sup>[6]</sup> - 146:13, 146:21, 147:4, 163:11, 175:23, 178:24</p> <p><b>exchanged</b> <sup>[1]</sup> - 163:20</p> <p><b>exchanges</b> <sup>[3]</sup> - 163:6, 170:19, 171:5</p> <p><b>excited</b> <sup>[1]</sup> - 215:18</p> <p><b>excuse</b> <sup>[13]</sup> - 7:7, 14:17, 55:1, 68:4, 95:15, 96:21, 150:17, 174:7, 174:20, 190:16, 202:12, 219:13, 266:5</p> <p><b>excused</b> <sup>[2]</sup> - 135:7, 206:15</p> <p><b>execute</b> <sup>[2]</sup> - 145:17, 286:8</p> <p><b>executed</b> <sup>[2]</sup> - 176:2, 176:14</p> <p><b>executing</b> <sup>[1]</sup> - 146:23</p> <p><b>execution</b> <sup>[1]</sup> - 146:24</p> <p><b>exercise</b> <sup>[1]</sup> - 14:2</p> <p><b>exercised</b> <sup>[1]</sup> - 191:11</p> <p><b>exercising</b> <sup>[1]</sup> - 141:23</p> <p><b>exhausted</b> <sup>[1]</sup> - 171:13</p> <p><b>exhaustive</b> <sup>[2]</sup> - 32:22, 108:22</p> <p><b>EXHIBIT</b> <sup>[3]</sup> - 3:2, 3:9, 3:15</p> <p><b>exhibit</b> <sup>[26]</sup> - 39:16, 39:17, 41:8, 41:22, 43:20, 47:17, 47:19, 48:1, 48:2, 60:5, 99:1, 99:7, 144:19, 147:23, 176:10, 185:1, 199:19, 226:21, 226:23, 226:25, 227:10, 228:2, 241:8, 247:2, 261:18, 262:11</p>
---	--	---	---	---

<p><b>Exhibit</b> <sup>[55]</sup> - 3:21, 40:25, 41:3, 41:4, 42:2, 42:10, 45:10, 47:21, 49:16, 50:2, 51:6, 51:8, 51:13, 51:25, 53:18, 60:4, 64:22, 67:5, 67:21, 93:7, 98:22, 119:25, 120:8, 129:21, 137:14, 138:6, 144:17, 176:9, 179:24, 181:2, 181:8, 181:17, 182:10, 185:2, 193:20, 194:21, 195:1, 195:8, 196:1, 196:2, 199:14, 199:16, 199:18, 227:4, 227:8, 227:13, 241:6, 241:10, 241:11, 245:20, 253:9, 265:24, 280:11, 285:5</p> <p><b>exhibits</b> <sup>[6]</sup> - 40:9, 50:3, 51:4, 52:1, 140:16, 179:24</p> <p><b>Exhibits</b> <sup>[3]</sup> - 3:20, 3:20, 40:13</p> <p><b>exist</b> <sup>[1]</sup> - 223:22</p> <p><b>existing</b> <sup>[5]</sup> - 67:10, 127:12, 139:16, 157:14, 260:18</p> <p><b>exists</b> <sup>[1]</sup> - 257:23</p> <p><b>expect</b> <sup>[4]</sup> - 30:7, 206:23, 242:8, 265:12</p> <p><b>expectation</b> <sup>[7]</sup> - 86:23, 130:13, 130:24, 242:4, 242:14, 242:16</p> <p><b>expectations</b> <sup>[3]</sup> - 96:2, 130:25, 240:7</p> <p><b>expected</b> <sup>[5]</sup> - 25:4, 42:23, 63:16, 95:25, 96:1</p> <p><b>expense</b> <sup>[2]</sup> - 28:20, 189:2</p> <p><b>expenses</b> <sup>[2]</sup> - 288:5, 288:7</p> <p><b>expensive</b> <sup>[9]</sup> - 24:20, 26:9, 29:23, 32:10, 256:20, 258:24, 259:13, 281:22, 281:25</p> <p><b>experience</b> <sup>[13]</sup> - 10:19, 10:20, 47:14, 49:10, 49:12, 66:19, 108:23, 108:24, 144:1, 235:8,</p>	<p>264:22, 269:22, 270:1</p> <p><b>experienced</b> <sup>[2]</sup> - 32:23, 57:5</p> <p><b>experiences</b> <sup>[1]</sup> - 193:6</p> <p><b>expert</b> <sup>[9]</sup> - 20:16, 24:15, 26:21, 66:9, 102:20, 129:10, 141:19, 158:18, 259:18</p> <p><b>expert's</b> <sup>[1]</sup> - 219:14</p> <p><b>experted</b> <sup>[1]</sup> - 151:10</p> <p><b>expertise</b> <sup>[5]</sup> - 65:17, 65:19, 138:20, 154:25, 265:3</p> <p><b>experts</b> <sup>[6]</sup> - 29:11, 67:7, 67:9, 85:7, 204:15, 205:2</p> <p><b>expire</b> <sup>[2]</sup> - 16:22, 142:3</p> <p><b>expired</b> <sup>[1]</sup> - 142:2</p> <p><b>explain</b> <sup>[7]</sup> - 40:25, 41:21, 47:24, 98:2, 133:19, 216:18</p> <p><b>explained</b> <sup>[3]</sup> - 28:6, 32:13, 157:24</p> <p><b>explanation</b> <sup>[1]</sup> - 149:1</p> <p><b>exploited</b> <sup>[1]</sup> - 27:25</p> <p><b>exploration</b> <sup>[1]</sup> - 179:22</p> <p><b>exploratory</b> <sup>[1]</sup> - 179:1</p> <p><b>explore</b> <sup>[2]</sup> - 77:14, 152:3</p> <p><b>exploring</b> <sup>[3]</sup> - 140:13, 151:20, 151:21</p> <p><b>export</b> <sup>[1]</sup> - 30:14</p> <p><b>exposure</b> <sup>[4]</sup> - 251:11, 251:25, 254:6, 255:1</p> <p><b>expound</b> <sup>[4]</sup> - 55:5, 92:1, 92:4, 208:6</p> <p><b>expression</b> <sup>[1]</sup> - 291:5</p> <p><b>expressly</b> <sup>[1]</sup> - 240:13</p> <p><b>extended</b> <sup>[1]</sup> - 258:11</p> <p><b>extending</b> <sup>[1]</sup> - 123:16</p> <p><b>extensive</b> <sup>[2]</sup> - 24:13, 24:18</p> <p><b>extensively</b> <sup>[1]</sup> - 140:2</p> <p><b>extent</b> <sup>[7]</sup> - 108:9, 189:20, 200:10, 200:12, 201:23, 206:12, 207:6</p> <p><b>external</b> <sup>[1]</sup> - 9:22</p> <p><b>extra</b> <sup>[1]</sup> - 143:19</p> <p><b>extraordinarily</b> <sup>[1]</sup> - 271:5</p> <p><b>extrapolate</b> <sup>[1]</sup> - 159:7</p> <p><b>extrapolation</b> <sup>[1]</sup> - 159:10</p>	<p><b>extreme</b> <sup>[5]</sup> - 96:6, 109:22, 119:10, 131:7, 133:8</p> <p><b>extremely</b> <sup>[7]</sup> - 12:20, 29:3, 96:14, 108:11, 113:18, 113:22, 115:14</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>FAA</b> <sup>[1]</sup> - 159:15</p> <p><b>FAA's</b> <sup>[1]</sup> - 159:16</p> <p><b>face</b> <sup>[9]</sup> - 101:19, 101:21, 166:18, 166:19, 167:5, 170:14, 278:3</p> <p><b>facilities</b> <sup>[15]</sup> - 12:5, 19:9, 103:15, 181:19, 182:24, 188:15, 189:9, 193:16, 214:18, 215:13, 247:9, 277:2, 285:9, 287:14, 287:16</p> <p><b>facility</b> <sup>[36]</sup> - 13:17, 13:18, 14:2, 14:14, 14:15, 14:22, 18:6, 18:9, 18:12, 18:17, 18:18, 22:6, 30:22, 36:22, 36:24, 103:21, 103:23, 123:6, 123:19, 131:12, 191:2, 191:3, 191:11, 198:16, 260:22, 263:18, 272:25, 273:3, 274:19, 274:22, 275:3, 276:4, 287:21, 288:5, 288:7</p> <p><b>facing</b> <sup>[3]</sup> - 213:8, 254:23, 277:3</p> <p><b>fact</b> <sup>[21]</sup> - 24:11, 32:21, 34:20, 42:15, 48:14, 48:16, 53:18, 66:9, 70:17, 96:13, 101:7, 130:18, 135:1, 186:23, 210:12, 248:15, 252:5, 253:17, 254:18, 254:23, 291:2</p> <p><b>factor</b> <sup>[10]</sup> - 18:24, 22:15, 34:20, 47:9, 47:11, 48:9, 48:15, 113:7, 114:14, 135:3</p> <p><b>factored</b> <sup>[4]</sup> - 112:1, 113:12, 113:13, 128:2</p> <p><b>factors</b> <sup>[12]</sup> - 20:14,</p>	<p>24:6, 25:10, 27:25, 49:10, 90:17, 100:17, 100:19, 109:2, 173:10, 250:25, 251:18</p> <p><b>facts</b> <sup>[6]</sup> - 9:3, 15:5, 26:18, 74:24, 75:1, 97:11</p> <p><b>fails</b> <sup>[1]</sup> - 253:14</p> <p><b>failure</b> <sup>[3]</sup> - 81:18, 81:23, 82:1</p> <p><b>fair</b> <sup>[12]</sup> - 17:13, 141:24, 141:25, 142:12, 150:20, 151:5, 168:17, 170:1, 209:8, 238:16, 248:9</p> <p><b>fairly</b> <sup>[4]</sup> - 34:16, 52:10, 114:12, 124:5</p> <p><b>faith</b> <sup>[13]</sup> - 9:3, 36:18, 37:3, 37:5, 59:13, 59:17, 141:24, 167:18, 186:22, 186:23, 190:8, 238:9</p> <p><b>fall</b> <sup>[3]</sup> - 41:13, 87:22, 88:15</p> <p><b>Falls</b> <sup>[4]</sup> - 6:24, 81:22, 166:25, 192:25</p> <p><b>familiar</b> <sup>[26]</sup> - 11:2, 39:24, 46:11, 63:12, 67:23, 67:24, 77:5, 78:9, 79:17, 80:10, 154:6, 154:8, 201:6, 204:12, 208:25, 209:2, 210:12, 218:13, 222:3, 234:20, 237:21, 240:16, 248:24, 249:4, 249:5, 249:6</p> <p><b>family</b> <sup>[19]</sup> - 11:7, 11:9, 11:13, 11:14, 138:11, 138:12, 138:21, 141:12, 144:7, 144:8, 144:9, 144:10, 158:8, 163:7, 168:16, 168:22, 177:17, 177:19</p> <p><b>far</b> <sup>[11]</sup> - 43:11, 55:18, 65:10, 74:20, 74:24, 94:16, 125:6, 186:24, 244:1, 271:1, 274:21</p> <p><b>farm</b> <sup>[24]</sup> - 11:14, 123:9, 123:10, 138:15, 138:17, 138:23, 139:12, 140:18, 140:24, 141:1, 141:12, 144:9, 144:10,</p>	<p>155:20, 157:19, 158:5, 163:7, 168:16, 174:3, 175:12, 175:14, 177:15, 177:17</p> <p><b>Farm</b> <sup>[4]</sup> - 140:10, 142:25, 184:21, 188:19</p> <p><b>farm's</b> <sup>[1]</sup> - 162:10</p> <p><b>farmers</b> <sup>[1]</sup> - 138:13</p> <p><b>farming</b> <sup>[2]</sup> - 138:13, 177:25</p> <p><b>farms</b> <sup>[3]</sup> - 155:21, 168:25, 169:18</p> <p><b>fashion</b> <sup>[1]</sup> - 52:5</p> <p><b>fast</b> <sup>[1]</sup> - 95:7</p> <p><b>fatal</b> <sup>[2]</sup> - 138:22, 138:23</p> <p><b>fatally</b> <sup>[1]</sup> - 32:15</p> <p><b>fault</b> <sup>[2]</sup> - 59:20, 59:21</p> <p><b>favor</b> <sup>[1]</sup> - 19:2</p> <p><b>February</b> <sup>[23]</sup> - 4:13, 17:4, 29:17, 33:4, 33:9, 36:12, 52:13, 62:19, 88:9, 88:14, 178:16, 182:12, 189:24, 196:24, 212:24, 219:9, 219:12, 219:15, 219:17, 220:1, 236:23, 245:22, 246:8</p> <p><b>federal</b> <sup>[10]</sup> - 12:1, 63:9, 100:13, 126:24, 141:5, 142:9, 229:11, 256:25, 258:6, 259:1</p> <p><b>Federal</b> <sup>[6]</sup> - 12:2, 13:11, 18:2, 100:20, 100:24, 101:10</p> <p><b>federals</b> <sup>[1]</sup> - 100:10</p> <p><b>feet</b> <sup>[2]</sup> - 101:24, 158:17</p> <p><b>fell</b> <sup>[1]</sup> - 33:3</p> <p><b>felt</b> <sup>[5]</sup> - 17:13, 48:12, 48:17, 63:20, 90:4</p> <p><b>FERC</b> <sup>[28]</sup> - 12:9, 14:10, 14:21, 15:7, 15:10, 17:25, 18:25, 62:24, 63:5, 63:6, 72:10, 80:7, 80:10, 103:6, 103:12, 106:3, 119:2, 129:12, 129:15, 129:19, 190:14, 190:20, 217:19, 249:22, 250:6, 250:11, 271:14, 281:11</p> <p><b>FERC's</b> <sup>[1]</sup> - 281:7</p>	15
---	--	--	--	--	----

<p><b>few</b> <sup>[10]</sup> - 8:2, 8:18, 129:6, 143:13, 147:22, 147:24, 174:13, 204:25, 254:12, 265:4</p> <p><b>FIGEN</b> <sup>[18]</sup> - 1:12, 97:15, 97:22, 98:15, 99:13, 110:20, 165:19, 166:14, 167:3, 167:20, 173:1, 173:16, 173:20, 177:13, 177:22, 178:1, 244:15, 244:18</p> <p><b>Fiegen</b> <sup>[6]</sup> - 4:9, 97:14, 165:18, 172:25, 177:10, 177:12</p> <p><b>fifth</b> <sup>[1]</sup> - 34:22</p> <p><b>fighting</b> <sup>[1]</sup> - 59:19</p> <p><b>figuratively</b> <sup>[1]</sup> - 170:13</p> <p><b>figure</b> <sup>[14]</sup> - 36:5, 93:25, 101:22, 141:1, 142:21, 142:23, 157:17, 182:1, 184:18, 185:16, 199:22, 225:14, 231:17, 280:22</p> <p><b>figures</b> <sup>[1]</sup> - 141:10</p> <p><b>figuring</b> <sup>[2]</sup> - 89:16, 180:21</p> <p><b>file</b> <sup>[6]</sup> - 31:23, 145:4, 211:3, 229:8, 262:7, 262:11</p> <p><b>filed</b> <sup>[23]</sup> - 33:18, 39:4, 52:7, 54:18, 54:23, 56:3, 136:25, 145:7, 181:18, 182:23, 195:11, 216:17, 217:25, 239:7, 239:22, 239:23, 247:8, 261:11, 270:7, 270:19, 282:3, 285:7</p> <p><b>filing</b> <sup>[8]</sup> - 222:18, 224:13, 259:24, 260:6, 260:11, 267:1, 269:21, 269:24</p> <p><b>filings</b> <sup>[5]</sup> - 145:8, 145:15, 189:9, 223:14, 271:14</p> <p><b>fill</b> <sup>[3]</sup> - 274:8, 274:16, 277:14</p> <p><b>filled</b> <sup>[2]</sup> - 176:7</p> <p><b>filtration</b> <sup>[1]</sup> - 277:14</p> <p><b>final</b> <sup>[12]</sup> - 5:17, 6:1, 9:24, 102:22,</p>	<p>159:18, 160:21, 183:9, 187:17, 232:9, 247:6, 292:19</p> <p><b>finalized</b> <sup>[1]</sup> - 256:22</p> <p><b>finally</b> <sup>[4]</sup> - 60:2, 60:3, 195:18, 196:11</p> <p><b>finance</b> <sup>[6]</sup> - 24:23, 172:8, 186:13, 230:24, 237:16, 269:1</p> <p><b>financeable</b> <sup>[3]</sup> - 140:18, 141:1, 164:16</p> <p><b>financed</b> <sup>[3]</sup> - 63:15, 164:18, 231:3</p> <p><b>financial</b> <sup>[5]</sup> - 139:12, 172:14, 175:7, 175:9, 255:11</p> <p><b>financially</b> <sup>[7]</sup> - 150:21, 151:1, 151:24, 155:20, 156:18, 173:19, 175:1</p> <p><b>financing</b> <sup>[4]</sup> - 103:24, 139:24, 159:24, 160:17</p> <p><b>findings</b> <sup>[1]</sup> - 108:14</p> <p><b>fine</b> <sup>[16]</sup> - 7:22, 31:16, 50:17, 128:17, 198:18, 207:14, 216:2, 216:4, 220:24, 224:25, 228:5, 229:22, 244:11, 245:2, 257:8, 273:4</p> <p><b>fined</b> <sup>[2]</sup> - 132:16, 132:19</p> <p><b>finish</b> <sup>[3]</sup> - 150:20, 243:1, 244:25</p> <p><b>finished</b> <sup>[1]</sup> - 284:2</p> <p><b>finite</b> <sup>[1]</sup> - 268:5</p> <p><b>fire</b> <sup>[2]</sup> - 135:19, 289:17</p> <p><b>fired</b> <sup>[2]</sup> - 254:25, 256:13</p> <p><b>firm</b> <sup>[3]</sup> - 57:6, 209:9</p> <p><b>firms</b> <sup>[1]</sup> - 139:9</p> <p><b>first</b> <sup>[57]</sup> - 10:25, 12:5, 12:12, 12:18, 13:7, 14:7, 14:22, 27:12, 44:8, 48:3, 52:6, 54:18, 63:14, 63:18, 72:2, 72:13, 72:18, 77:15, 82:7, 94:17, 112:19, 125:15, 125:24, 130:5, 130:8, 132:8, 138:18, 143:17, 152:4, 170:5, 178:10, 180:6,</p>	<p>182:18, 182:19, 192:14, 196:15, 197:23, 198:5, 215:10, 220:20, 221:17, 223:19, 229:23, 235:4, 237:7, 239:12, 240:4, 251:9, 260:16, 267:22, 282:8, 282:9, 282:12, 289:20, 290:12, 291:8</p> <p><b>firstly</b> <sup>[1]</sup> - 34:12</p> <p><b>fish</b> <sup>[1]</sup> - 11:20</p> <p><b>fit</b> <sup>[3]</sup> - 83:3, 281:7, 281:14</p> <p><b>five</b> <sup>[26]</sup> - 27:12, 27:15, 27:19, 32:2, 53:13, 65:25, 66:1, 76:14, 121:24, 221:15, 221:16, 228:10, 228:12, 228:22, 228:23, 228:24, 229:4, 229:8, 229:25, 230:14, 230:17, 230:25, 242:17, 260:1, 265:5, 293:15</p> <p><b>five-year</b> <sup>[6]</sup> - 27:12, 27:15, 229:25, 230:14, 230:25, 260:1</p> <p><b>fixed</b> <sup>[4]</sup> - 18:9, 78:25, 189:8, 248:1</p> <p><b>flaw</b> <sup>[2]</sup> - 138:22, 138:23</p> <p><b>flawed</b> <sup>[1]</sup> - 32:15</p> <p><b>fleet</b> <sup>[1]</sup> - 193:16</p> <p><b>flexibility</b> <sup>[1]</sup> - 129:17</p> <p><b>flexible</b> <sup>[1]</sup> - 58:8</p> <p><b>flip</b> <sup>[1]</sup> - 44:7</p> <p><b>floor</b> <sup>[1]</sup> - 111:5</p> <p><b>flow</b> <sup>[2]</sup> - 25:22, 30:22</p> <p><b>flowing</b> <sup>[1]</sup> - 30:5</p> <p><b>fluctuations</b> <sup>[1]</sup> - 109:2</p> <p><b>fly</b> <sup>[1]</sup> - 244:23</p> <p><b>focusing</b> <sup>[1]</sup> - 94:3</p> <p><b>folio</b> <sup>[1]</sup> - 141:6</p> <p><b>folks</b> <sup>[2]</sup> - 41:18, 128:7</p> <p><b>follow</b> <sup>[6]</sup> - 135:9, 136:7, 175:22, 289:5, 289:10, 294:9</p> <p><b>follow-on</b> <sup>[2]</sup> - 289:5, 294:9</p> <p><b>follow-up</b> <sup>[2]</sup> - 135:9, 136:7</p> <p><b>followed</b> <sup>[2]</sup> - 100:13, 265:19</p> <p><b>following</b> <sup>[9]</sup> - 7:19,</p>	<p>8:19, 61:16, 207:20, 238:16, 238:17, 263:15, 266:25, 271:25</p> <p><b>FOR</b> <sup>[1]</sup> - 1:5</p> <p><b>force</b> <sup>[3]</sup> - 17:18, 105:14, 180:19</p> <p><b>forced</b> <sup>[4]</sup> - 20:25, 74:20, 104:1, 113:1</p> <p><b>forcing</b> <sup>[1]</sup> - 262:5</p> <p><b>forecast</b> <sup>[113]</sup> - 24:14, 25:2, 25:8, 25:9, 25:11, 25:15, 25:24, 26:6, 26:19, 27:12, 27:15, 28:8, 28:9, 28:22, 29:8, 29:18, 29:21, 29:22, 32:5, 32:13, 32:20, 32:21, 32:23, 33:5, 33:8, 41:15, 42:14, 44:11, 46:6, 53:16, 53:22, 53:23, 53:24, 54:2, 54:10, 54:11, 57:10, 60:15, 64:17, 64:20, 67:8, 82:25, 84:3, 85:18, 85:21, 89:5, 89:21, 94:12, 94:14, 94:23, 94:24, 95:3, 95:4, 95:10, 96:5, 96:17, 101:2, 101:6, 107:7, 107:12, 107:14, 108:2, 109:14, 109:15, 120:22, 130:13, 131:15, 132:23, 132:25, 133:3, 133:4, 133:6, 134:1, 134:6, 209:15, 209:21, 214:15, 216:15, 217:12, 218:6, 219:1, 219:2, 219:3, 219:5, 219:13, 219:24, 220:3, 220:12, 221:2, 223:23, 228:21, 228:22, 229:24, 230:4, 230:14, 234:5, 234:19, 235:22, 235:25, 236:9, 236:11, 236:16, 236:19, 236:23, 237:1, 237:10, 258:25, 259:14</p> <p><b>Forecast</b> <sup>[5]</sup> - 45:2, 218:14, 219:18, 232:22, 234:2</p> <p><b>forecasted</b> <sup>[5]</sup> - 9:20, 42:18, 42:20, 95:21, 230:17</p>	<p><b>forecasting</b> <sup>[3]</sup> - 16 66:13, 82:19, 133:23</p> <p><b>forecasts</b> <sup>[15]</sup> - 25:20, 65:12, 83:1, 83:4, 84:13, 93:13, 95:3, 133:22, 233:3, 233:5, 235:15, 237:2, 237:4, 237:5, 237:18</p> <p><b>forego</b> <sup>[1]</sup> - 262:8</p> <p><b>foremost</b> <sup>[2]</sup> - 63:14, 63:18</p> <p><b>foresight</b> <sup>[1]</sup> - 258:10</p> <p><b>forget</b> <sup>[5]</sup> - 148:9, 148:22, 148:24, 168:15, 206:16</p> <p><b>forgetting</b> <sup>[1]</sup> - 55:15</p> <p><b>forgive</b> <sup>[2]</sup> - 105:17, 270:9</p> <p><b>forgiveness</b> <sup>[1]</sup> - 289:8</p> <p><b>forgot</b> <sup>[1]</sup> - 177:16</p> <p><b>form</b> <sup>[7]</sup> - 18:1, 45:2, 139:14, 175:25, 176:1, 176:15, 223:22</p> <p><b>formal</b> <sup>[3]</sup> - 149:20, 163:11, 212:4</p> <p><b>formally</b> <sup>[1]</sup> - 246:12</p> <p><b>formas</b> <sup>[1]</sup> - 16:13</p> <p><b>format</b> <sup>[2]</sup> - 48:3, 48:5</p> <p><b>formed</b> <sup>[2]</sup> - 177:23, 215:15</p> <p><b>former</b> <sup>[1]</sup> - 198:1</p> <p><b>formula</b> <sup>[1]</sup> - 49:9</p> <p><b>forth</b> <sup>[7]</sup> - 17:23, 57:10, 121:11, 153:16, 163:15, 170:19, 171:6</p> <p><b>forward</b> <sup>[17]</sup> - 9:5, 49:21, 52:11, 56:17, 92:15, 101:1, 134:11, 134:13, 135:3, 139:24, 186:9, 210:13, 217:22, 218:1, 218:6, 226:9, 273:5</p> <p><b>forwarded</b> <sup>[1]</sup> - 265:18</p> <p><b>fossil</b> <sup>[3]</sup> - 20:10, 255:23, 268:4</p> <p><b>fought</b> <sup>[2]</sup> - 11:11</p> <p><b>foundation</b> <sup>[7]</sup> - 40:2, 40:14, 45:14, 45:17, 45:25, 50:12, 157:10</p> <p><b>four</b> <sup>[11]</sup> - 24:18, 29:10, 33:6, 44:17, 73:18, 73:19, 79:14, 196:23, 209:16, 209:22, 253:13</p> <p><b>fourth</b> <sup>[1]</sup> - 34:17</p>
--	--	---	---	--

<p><b>fracking</b> [6] - 22:24, 22:25, 23:1, 23:4, 26:7, 27:23</p> <p><b>fraction</b> [1] - 176:17</p> <p><b>frame</b> [8] - 8:3, 8:21, 8:22, 11:23, 37:18, 165:23, 211:3, 283:23</p> <p><b>framework</b> [1] - 196:16</p> <p><b>Frank</b> [1] - 184:2</p> <p><b>free</b> [1] - 207:17</p> <p><b>frequent</b> [1] - 124:5</p> <p><b>freshen</b> [1] - 61:11</p> <p><b>Friday</b> [1] - 73:9</p> <p><b>front</b> [16] - 9:9, 31:24, 41:25, 42:3, 47:21, 154:13, 154:15, 161:9, 162:6, 163:20, 193:19, 195:8, 205:5, 229:5, 229:16, 229:20</p> <p><b>fruitful</b> [3] - 152:2, 171:19, 180:23</p> <p><b>fruition</b> [1] - 161:3</p> <p><b>fuel</b> [15] - 20:9, 22:7, 26:9, 34:14, 95:22, 95:24, 145:6, 146:25, 254:6, 270:10, 270:15, 270:23, 270:25, 273:22, 277:15</p> <p><b>fuels</b> [5] - 20:10, 20:11, 255:23, 255:24, 268:4</p> <p><b>fulfill</b> [3] - 113:25, 269:5, 269:6</p> <p><b>full</b> [11] - 38:21, 83:18, 83:19, 84:20, 136:18, 144:22, 153:17, 154:13, 182:19, 182:20, 266:24</p> <p><b>fully</b> [8] - 27:25, 37:18, 63:8, 188:11, 192:6, 237:10, 237:14, 280:19</p> <p><b>fun</b> [1] - 111:8</p> <p><b>function</b> [2] - 118:25, 248:7</p> <p><b>fundamental</b> [9] - 82:9, 82:19, 84:18, 84:22, 84:23, 96:19, 119:10, 125:22, 126:18</p> <p><b>fundamental-based</b> [3] - 82:9, 82:19, 84:18</p> <p><b>fundamentally</b> [1] - 96:1</p>	<p><b>fundamentals</b> [8] - 25:7, 25:9, 25:15, 27:8, 95:7, 122:16, 122:17, 237:10</p> <p><b>fundamentals-based</b> [4] - 25:7, 25:9, 27:8, 237:10</p> <p><b>furnaces</b> [1] - 113:21</p> <p><b>future</b> [19] - 36:8, 95:4, 96:2, 108:12, 124:12, 130:24, 186:18, 218:7, 218:9, 218:17, 220:4, 223:22, 254:24, 258:7, 258:22, 265:20, 267:17, 267:18, 278:4</p> <p><b>futures</b> [2] - 73:12, 130:14</p>	<p>132:24, 133:2, 135:25, 136:1, 193:13, 202:10, 207:23, 219:10, 219:21, 219:24, 234:23, 257:1, 257:5, 273:22, 274:6, 274:13, 275:7</p> <p><b>gases</b> [2] - 21:10, 102:4</p> <p><b>gasoline</b> [2] - 22:17, 22:18</p> <p><b>gather</b> [4] - 67:4, 67:7, 67:9, 67:12</p> <p><b>gathered</b> [1] - 88:13</p> <p><b>gathering</b> [2] - 67:6, 67:14</p> <p><b>GE</b> [1] - 173:13</p> <p><b>gears</b> [1] - 282:15</p> <p><b>gee</b> [1] - 127:20</p> <p><b>general</b> [19] - 5:20, 13:8, 42:16, 42:18, 42:20, 43:2, 75:24, 76:11, 76:12, 76:19, 162:8, 164:17, 198:6, 200:10, 201:10, 202:3, 224:11, 233:17, 255:22</p> <p><b>General</b> [2] - 11:12, 21:4</p> <p><b>generality</b> [1] - 215:14</p> <p><b>generally</b> [14] - 66:25, 70:9, 73:3, 158:21, 160:9, 169:24, 176:16, 205:1, 209:2, 211:5, 233:17, 233:21, 250:18, 257:20</p> <p><b>generate</b> [5] - 26:16, 35:16, 286:12, 286:14, 287:7</p> <p><b>generated</b> [1] - 25:5</p> <p><b>generates</b> [1] - 188:13</p> <p><b>generating</b> [8] - 9:13, 22:6, 34:17, 189:14, 215:13, 255:15, 274:11, 287:16</p> <p><b>generation</b> [44] - 21:8, 24:24, 26:9, 29:1, 30:3, 44:19, 44:20, 44:24, 60:8, 76:9, 77:9, 79:21, 93:17, 115:10, 118:7, 121:22, 139:19, 142:17, 189:11, 208:7, 210:25, 216:23, 217:5, 217:21, 230:24, 230:25, 233:8,</p>	<p>233:9, 251:1, 254:25, 256:13, 256:14, 256:20, 260:18, 267:11, 271:17, 272:25, 274:19, 280:2, 286:16, 286:20, 287:13, 293:24</p> <p><b>generations</b> [1] - 189:4</p> <p><b>generator</b> [4] - 139:10, 142:10, 160:6, 210:19</p> <p><b>generators</b> [4] - 12:15, 69:8, 69:9, 159:6</p> <p><b>genesis</b> [1] - 40:25</p> <p><b>gentleman</b> [1] - 166:15</p> <p><b>GenTrader</b> [3] - 223:2, 223:4, 223:6</p> <p><b>geographical</b> [1] - 288:12</p> <p><b>given</b> [12] - 94:16, 131:11, 134:19, 175:10, 186:17, 199:10, 236:20, 241:21, 248:4, 268:20, 268:22, 274:25</p> <p><b>global</b> [1] - 65:14</p> <p><b>goal</b> [4] - 8:4, 24:2, 140:17, 168:21</p> <p><b>goals</b> [2] - 116:10, 125:1</p> <p><b>God</b> [1] - 278:11</p> <p><b>gold</b> [1] - 25:1</p> <p><b>good-faith</b> [4] - 9:3, 36:18, 37:5, 141:24</p> <p><b>gouged</b> [1] - 179:7</p> <p><b>Government</b> [4] - 97:2, 100:20, 100:24, 101:10</p> <p><b>GPCM</b> [4] - 82:15, 83:3, 83:5, 84:22</p> <p><b>GPS</b> [1] - 160:1</p> <p><b>graciously</b> [1] - 249:9</p> <p><b>grant</b> [3] - 49:20, 142:2, 289:12</p> <p><b>granted</b> [1] - 5:4</p> <p><b>granting</b> [1] - 205:14</p> <p><b>granularity</b> [3] - 120:12, 120:14, 125:6</p> <p><b>graph</b> [1] - 159:4</p> <p><b>graphic</b> [1] - 93:12</p> <p><b>graphs</b> [1] - 89:20</p> <p><b>grapple</b> [1] - 12:18</p> <p><b>grass</b> [1] - 28:25</p> <p><b>grateful</b> [2] - 215:17, 254:22</p>	<p><b>gray</b> [1] - 93:10</p> <p><b>great</b> [8] - 35:22, 37:17, 108:13, 108:23, 169:1, 216:7, 220:18, 274:14</p> <p><b>Great</b> [1] - 81:22</p> <p><b>greater</b> [2] - 18:14, 101:13</p> <p><b>greatly</b> [1] - 35:23</p> <p><b>Green</b> [2] - 2:13, 3:11</p> <p><b>green</b> [15] - 31:6, 31:8, 31:9, 31:10, 52:21, 52:23, 53:8, 55:15, 116:1, 116:9, 116:14, 142:23, 142:24, 221:6, 242:12</p> <p><b>greenhouse</b> [12] - 20:20, 21:10, 21:21, 25:18, 34:18, 102:4, 126:23, 126:24, 127:13, 127:25, 257:1, 257:5</p> <p><b>Greg</b> [3] - 1:15, 119:21, 119:23</p> <p><b>grew</b> [1] - 177:18</p> <p><b>grip</b> [1] - 83:7</p> <p><b>gritty</b> [1] - 168:12</p> <p><b>Groton</b> [1] - 276:12</p> <p><b>ground</b> [2] - 23:4, 183:21</p> <p><b>grounds</b> [1] - 40:13</p> <p><b>Group</b> [1] - 209:9</p> <p><b>group</b> [7] - 67:19, 161:13, 161:14, 161:18, 207:25, 234:4, 234:18</p> <p><b>groups</b> [3] - 234:18, 236:11, 269:18</p> <p><b>growth</b> [2] - 103:10, 271:21</p> <p><b>guaranteed</b> [1] - 253:23</p> <p><b>guaranteeing</b> [1] - 161:21</p> <p><b>guarantees</b> [1] - 154:11</p> <p><b>guess</b> [19] - 19:6, 77:3, 124:20, 125:3, 128:6, 133:20, 174:21, 175:5, 200:13, 202:21, 231:15, 244:12, 261:11, 273:25, 278:6, 278:8, 278:10, 284:5, 294:19</p> <p><b>guessed</b> [1] - 87:16</p> <p><b>guidance</b> [2] - 15:8,</p>
<b>G</b>				
<p><b>gain</b> [1] - 123:8</p> <p><b>gained</b> [1] - 139:21</p> <p><b>gap</b> [4] - 178:12, 183:21, 291:6</p> <p><b>Gary</b> [1] - 4:10</p> <p><b>GARY</b> [1] - 1:12</p> <p><b>gas</b> [97] - 9:20, 20:13, 20:20, 21:21, 22:9, 22:16, 22:21, 23:1, 24:8, 25:18, 25:21, 26:10, 26:11, 26:12, 27:20, 27:23, 28:7, 28:10, 28:16, 29:1, 30:5, 33:2, 33:3, 34:18, 57:9, 67:7, 67:8, 77:12, 82:9, 82:19, 82:25, 83:4, 83:8, 83:12, 83:13, 83:21, 83:23, 84:12, 85:4, 85:7, 85:8, 85:20, 85:24, 94:22, 94:24, 95:10, 96:4, 96:13, 107:9, 107:12, 107:14, 107:22, 107:25, 108:2, 108:3, 108:4, 108:11, 108:14, 108:16, 108:18, 109:3, 109:5, 109:8, 109:10, 109:12, 109:18, 109:20, 109:23, 109:25, 110:4, 111:4, 127:22, 127:25, 130:14, 130:17, 130:18, 130:19, 130:25, 132:23,</p>				

<p>17:25  <b>guide</b> [1] - 143:20  <b>guidelines</b> [3] -  129:16, 129:18,  129:19  <b>Guldseth</b> [7] - 51:13,  248:16, 248:19,  248:21, 248:23,  249:1, 249:4  <b>Guldseth's</b> [4] - 51:15,  225:12, 226:23,  227:13  <b>guy</b> [2] - 238:10  <b>guys</b> [7] - 106:18,  218:3, 234:1, 238:8,  238:18, 238:23,  241:14</p>	<p>263:24, 264:10,  264:15, 264:19,  264:23, 265:7,  265:11, 265:21,  265:24, 266:5,  266:11, 267:4,  268:3, 268:9,  268:15, 269:13,  269:25, 270:9,  270:13, 270:16,  270:22, 271:4,  272:3, 272:6, 273:4,  273:10, 273:14,  273:25, 274:3,  275:6, 275:13,  275:18, 275:21,  275:25, 276:11,  276:14, 276:17,  276:21, 287:4,  287:15, 287:22,  288:1, 288:9,  288:15, 288:25  <b>Hanson</b> [7] - 4:10,  99:15, 134:14,  167:21, 262:19,  286:23, 287:2  <b>happy</b> [3] - 226:18,  267:25, 286:18  <b>hard</b> [3] - 126:14,  179:21, 268:25  <b>harmless</b> [2] - 71:24,  72:5  <b>harvest</b> [1] - 138:16  <b>hazardous</b> [1] - 289:7  <b>haze</b> [1] - 278:2  <b>head</b> [15] - 37:2, 78:1,  79:11, 136:3,  145:24, 147:11,  150:12, 153:16,  153:25, 168:9,  170:7, 184:11,  226:3, 261:4, 266:9  <b>headed</b> [1] - 162:10  <b>heading</b> [1] - 60:9  <b>headline</b> [1] - 59:2  <b>hear</b> [29] - 7:6, 11:4,  11:16, 12:13, 15:3,  15:4, 19:10, 19:20,  20:15, 20:18, 22:8,  22:23, 25:8, 27:4,  32:25, 35:6, 53:12,  91:6, 192:1, 192:2,  192:6, 224:20,  244:8, 244:12,  271:9, 273:7,  283:13, 283:24,  284:21  <b>heard</b> [21] - 31:12,  33:19, 39:19, 90:3,  164:5, 164:7,</p>	<p>166:21, 174:13,  182:2, 218:25,  219:9, 219:11,  219:19, 219:22,  219:23, 224:4,  236:17, 251:20,  257:16, 259:5,  273:10  <b>hearing</b> [35] - 4:1, 4:6,  4:11, 4:14, 5:21,  5:25, 9:6, 10:2, 10:4,  16:7, 34:8, 61:16,  62:11, 62:14,  108:15, 128:23,  139:13, 160:17,  161:19, 164:1,  167:16, 174:19,  177:6, 184:6, 186:6,  192:7, 222:17,  224:17, 226:2,  241:15, 243:5,  243:21, 245:15,  263:16  <b>Hearing</b> [2] - 4:13,  5:21  <b>Heartland</b> [1] - 86:24  <b>heat</b> [3] - 26:15, 28:11,  28:14  <b>heaviest</b> [2] - 98:1,  98:5  <b>heavily</b> [3] - 179:17,  179:18, 273:21  <b>heavy</b> [8] - 58:1,  70:10, 72:23, 73:5,  73:8, 73:20, 97:25,  98:4  <b>hedge</b> [5] - 20:9,  34:14, 36:11,  110:13, 111:15  <b>hedges</b> [1] - 90:23  <b>hedging</b> [2] - 60:23,  123:1  <b>height</b> [1] - 158:20  <b>Heights</b> [1] - 184:21  <b>heights</b> [2] - 159:5,  164:22  <b>held</b> [6] - 2:1, 68:25,  71:24, 72:5, 80:7,  193:15  <b>Helena</b> [1] - 6:10  <b>hello</b> [1] - 119:22  <b>help</b> [16] - 23:10,  35:24, 36:2, 37:17,  57:24, 58:2, 84:20,  88:18, 93:5, 152:16,  164:11, 204:20,  242:6, 255:14,  255:17, 264:5  <b>helped</b> [1] - 235:6  <b>helps</b> [2] - 22:18, 76:5</p>	<p><b>Henwood</b> [1] - 65:13  <b>HEREBY</b> [1] - 295:8  <b>herself</b> [1] - 6:21  <b>hiatus</b> [1] - 284:20  <b>high</b> [15] - 47:8, 55:17,  73:17, 78:25, 79:2,  79:3, 84:3, 91:23,  96:15, 131:5, 133:6,  133:10, 158:16,  197:6, 197:7  <b>high-level</b> [3] - 55:17,  197:6, 197:7  <b>higher</b> [13] - 29:4,  34:10, 63:22, 64:3,  64:4, 106:7, 109:20,  111:7, 113:3, 150:6,  159:9, 169:24,  271:24  <b>highest</b> [4] - 73:15,  73:21, 189:10,  189:11  <b>highlights</b> [1] - 153:14  <b>highly</b> [1] - 108:21  <b>hint</b> [1] - 177:1  <b>hired</b> [4] - 65:21,  138:19, 139:4, 205:2  <b>historical</b> [3] - 95:2,  218:2, 220:15  <b>historically</b> [6] -  108:11, 109:21,  114:17, 114:19,  130:20, 280:10  <b>history</b> [7] - 11:13,  144:1, 164:21,  164:25, 193:6, 193:8  <b>hit</b> [3] - 22:14, 52:10,  178:25  <b>hodgepodge</b> [1] -  34:25  <b>hold</b> [2] - 222:9,  223:18  <b>holding</b> [1] - 71:12  <b>homes</b> [1] - 26:15  <b>honor</b> [3] - 55:11,  105:13, 206:23  <b>honoring</b> [1] - 104:17  <b>hook</b> [1] - 172:9  <b>hope</b> [6] - 8:14, 10:4,  162:9, 200:2, 237:6,  289:3  <b>hopefully</b> [4] - 52:4,  162:19, 243:3,  294:20  <b>hopes</b> [1] - 187:8  <b>hoping</b> [2] - 31:15,  199:25  <b>horizon</b> [1] - 37:15  <b>horizontal</b> [5] - 22:11,  22:13, 22:15, 22:19,  27:24</p>	<p><b>Horn</b> [1] - 11:12  <b>horse</b> [1] - 241:20  <b>hot</b> [1] - 59:3  <b>hottest</b> [1] - 113:21  <b>hour</b> [49] - 20:2, 30:2,  30:6, 30:20, 31:7,  52:16, 52:17, 52:18,  52:21, 52:22, 59:14,  59:17, 62:15, 68:6,  68:7, 68:13, 68:17,  71:2, 71:3, 71:7,  75:11, 79:14, 94:1,  98:8, 106:14,  110:19, 115:20,  119:4, 121:14,  121:15, 122:19,  126:15, 128:10,  128:14, 128:16,  131:11, 131:21,  131:23, 222:22,  230:1, 242:5, 242:9,  242:11, 258:22,  270:17, 273:7,  275:2, 282:5, 289:21  <b>hourly</b> [28] - 25:4,  25:5, 30:5, 41:15,  41:17, 41:18, 41:19,  42:22, 42:23, 45:3,  64:19, 69:24, 70:5,  70:6, 70:7, 73:19,  80:3, 80:5, 92:13,  93:16, 94:7, 120:19,  120:22, 120:24,  131:17, 223:3  <b>hours</b> [34] - 30:18,  70:3, 70:10, 70:11,  70:24, 72:22, 72:23,  72:25, 73:2, 73:4,  73:8, 73:10, 73:25,  74:11, 74:16, 79:13,  98:8, 114:18,  114:19, 119:6,  119:12, 119:13,  119:14, 131:19,  131:23, 188:16,  242:18, 243:16,  273:18, 274:23,  275:1, 275:17  <b>house</b> [2] - 207:5,  234:4  <b>House</b> [1] - 89:7  <b>houses</b> [1] - 277:14  <b>hub</b> [3] - 158:19,  159:5, 164:22  <b>huge</b> [5] - 53:19, 54:1,  67:6, 84:18, 118:16  <b>hundreds</b> [1] - 54:12  <b>hydro</b> [7] - 58:9,  77:11, 79:5, 79:7,  79:8, 274:6</p>
<b>H</b>				
<p><b>hac</b> [2] - 6:12, 6:20  <b>half</b> [16] - 17:6, 27:3,  31:17, 36:14, 42:19,  43:2, 52:16, 88:6,  142:16, 142:17,  173:8, 173:13,  173:14, 242:5, 275:1  <b>halfway</b> [1] - 152:3  <b>hand</b> [4] - 7:4, 17:18,  27:7, 43:9  <b>handed</b> [1] - 98:21  <b>handled</b> [1] - 201:12  <b>handwriting</b> [1] -  129:22  <b>HANSON</b> [98] - 1:12,  99:16, 99:19, 99:25,  100:14, 101:12,  101:23, 102:16,  102:20, 104:10,  104:20, 105:16,  106:6, 107:6, 108:8,  109:13, 110:15,  110:18, 110:21,  111:16, 112:13,  112:22, 113:17,  115:4, 115:24,  117:10, 117:20,  117:25, 118:5,  118:11, 118:18,  119:18, 167:22,  167:25, 169:8,  169:17, 170:3,  170:9, 170:12,  170:22, 171:8,  171:20, 171:23,  171:25, 172:3,  172:11, 172:19,  243:15, 244:20,  262:20, 262:23,  263:9, 263:19,</p>				

<p><b>hydrocarbons</b> [2] - 26:14</p> <p><b>hypothetical</b> [2] - 106:13, 276:5</p>	<p>25:9, 26:6, 26:18, 28:20, 29:3, 32:18, 55:19, 56:16, 113:19, 113:23, 115:14, 120:7, 135:3, 188:20, 190:22, 257:13</p>	<p>130:23, 135:25, 173:7, 209:17, 209:23, 263:22, 282:2, 287:10, 287:12, 287:23, 288:17, 288:18</p>	<p><b>industry</b> [8] - 47:14, 60:14, 73:1, 88:3, 114:3, 164:15, 164:17, 237:9</p>	<p>177:17, 180:7, 214:24</p>
<p><b>I</b></p>			<p><b>inefficient</b> [1] - 30:4</p>	<p><b>institution</b> [1] - 172:14</p>
<p><b>Idaho</b> [1] - 12:10</p> <p><b>idea</b> [8] - 20:9, 90:18, 103:13, 116:25, 229:3, 269:25, 272:6, 272:8</p> <p><b>identifiable</b> [1] - 271:13</p> <p><b>identified</b> [13] - 11:22, 26:25, 40:5, 40:12, 82:15, 216:20, 228:12, 248:13, 266:18, 267:22, 268:11, 268:13, 272:13</p> <p><b>identifies</b> [1] - 218:5</p> <p><b>identify</b> [5] - 79:8, 95:16, 217:6, 266:23, 271:15</p> <p><b>identifying</b> [2] - 66:3, 272:15</p> <p><b>identity</b> [2] - 82:8, 82:11</p> <p><b>IHS</b> [2] - 235:16, 238:2</p> <p>ii [1] - 191:13</p> <p><b>illustrated</b> [1] - 200:9</p> <p><b>imagine</b> [2] - 98:3, 269:13</p> <p><b>immediate</b> [1] - 144:7</p> <p><b>imminent</b> [1] - 287:9</p> <p><b>impact</b> [2] - 5:2, 268:7</p> <p><b>impacts</b> [2] - 92:5, 197:9</p> <p><b>impasse</b> [2] - 11:17, 186:24</p> <p><b>impertinent</b> [2] - 99:21, 99:23</p> <p><b>implement</b> [4] - 12:1, 18:25, 129:13, 257:5</p> <p><b>implementation</b> [5] - 13:8, 15:21, 89:12, 256:7, 256:12</p> <p><b>implemented</b> [2] - 123:23, 272:21</p> <p><b>implementing</b> [1] - 249:22</p> <p><b>implicit</b> [1] - 219:19</p> <p><b>implicitly</b> [1] - 204:2</p> <p><b>imply</b> [1] - 263:25</p> <p><b>import</b> [1] - 30:14</p> <p><b>important</b> [23] - 12:21, 12:23, 13:5, 13:12, 15:4, 16:20, 21:25,</p>	<p><b>importantly</b> [2] - 20:7, 71:23</p> <p><b>imposed</b> [5] - 15:18, 63:10, 81:17, 81:21, 254:25</p> <p><b>impractical</b> [1] - 118:14</p> <p><b>improper</b> [1] - 51:17</p> <p><b>improve</b> [1] - 83:21</p> <p><b>IN</b> [1] - 1:4</p> <p><b>in-camera</b> [4] - 55:10, 55:19, 202:18, 213:13</p> <p><b>in-house</b> [2] - 207:5, 234:4</p> <p><b>in-person</b> [1] - 283:8</p> <p><b>inappropriate</b> [1] - 86:8</p> <p><b>incentives</b> [3] - 169:10, 169:12, 169:19</p> <p><b>include</b> [14] - 100:19, 154:10, 193:12, 206:4, 242:21, 242:23, 260:21, 263:16, 263:17, 287:18, 287:19, 287:20, 287:21, 288:15</p> <p><b>included</b> [7] - 88:20, 105:24, 144:16, 205:8, 223:22, 263:11, 263:13</p> <p><b>including</b> [10] - 4:22, 41:16, 50:2, 51:4, 51:25, 66:11, 83:14, 129:13, 193:15, 207:5</p> <p><b>income</b> [1] - 175:2</p> <p><b>inconsiderable</b> [1] - 10:21</p> <p><b>incorporate</b> [1] - 127:8</p> <p><b>incorporating</b> [1] - 164:1</p> <p><b>incorporation</b> [1] - 139:18</p> <p><b>incorrect</b> [2] - 156:24, 232:2</p> <p><b>increase</b> [20] - 27:19, 28:7, 34:17, 68:16, 110:22, 110:24, 112:14, 130:4,</p>	<p><b>increased</b> [1] - 282:1</p> <p><b>increases</b> [5] - 85:3, 85:20, 111:3, 209:16, 209:22</p> <p><b>increasing</b> [1] - 85:23</p> <p><b>increasingly</b> [1] - 256:3</p> <p><b>incredible</b> [1] - 122:4</p> <p><b>incredibly</b> [1] - 271:9</p> <p><b>incremental</b> [9] - 189:13, 217:3, 217:11, 217:20, 256:16, 258:23, 270:11, 271:2</p> <p><b>incur</b> [1] - 189:14</p> <p><b>incurred</b> [9] - 14:6, 14:25, 15:7, 17:23, 18:8, 36:12, 189:23, 191:14</p> <p><b>incurring</b> [1] - 71:18</p> <p><b>indeed</b> [1] - 132:24</p> <p><b>independent</b> [2] - 12:15, 54:15</p> <p><b>independently</b> [2] - 54:9, 121:3</p> <p><b>Indiana</b> [1] - 115:6</p> <p><b>indicate</b> [2] - 246:4, 247:19</p> <p><b>indicated</b> [14] - 62:3, 79:4, 82:24, 93:19, 133:17, 135:23, 143:21, 149:24, 156:22, 158:11, 159:11, 160:5, 163:1, 213:23</p> <p><b>indicates</b> [2] - 72:24, 87:2</p> <p><b>indicating</b> [1] - 93:15</p> <p><b>indication</b> [2] - 74:20, 156:25</p> <p><b>indicative</b> [2] - 48:12, 48:16</p> <p><b>indicator</b> [4] - 218:10, 220:6, 236:25, 239:11</p> <p><b>indicators</b> [1] - 218:11</p> <p><b>indifferent</b> [1] - 196:19</p> <p><b>individual</b> [1] - 121:21</p> <p><b>individually</b> [2] - 67:16, 149:17</p> <p><b>indulgence</b> [1] - 289:21</p> <p><b>industrial</b> [1] - 83:15</p>	<p><b>infer</b> [1] - 149:11</p> <p><b>inferring</b> [2] - 211:8, 211:10</p> <p><b>infinite</b> [1] - 22:22</p> <p><b>inflation</b> [5] - 42:16, 42:17, 42:18, 42:20, 43:2</p> <p><b>informal</b> [2] - 166:5, 178:17</p> <p><b>informally</b> [2] - 147:17, 180:10</p> <p><b>information</b> [30] - 33:13, 47:25, 82:5, 83:16, 105:18, 139:2, 145:15, 146:13, 146:15, 147:4, 165:21, 165:22, 172:15, 172:21, 204:15, 205:11, 217:2, 220:16, 230:5, 230:10, 230:18, 231:23, 234:9, 234:23, 236:19, 251:13, 260:1, 264:24, 288:1, 289:2</p> <p><b>informed</b> [1] - 204:2</p> <p><b>infrastructure</b> [1] - 139:16</p> <p><b>initial</b> [1] - 209:10</p> <p><b>initiate</b> [1] - 149:17</p> <p><b>initiatives</b> [1] - 140:22</p> <p><b>input</b> [6] - 29:12, 41:10, 41:12, 54:9, 83:6, 174:23</p> <p><b>inputs</b> [6] - 8:15, 9:1, 9:16, 9:18, 45:1, 107:9</p> <p><b>inquiries</b> [1] - 285:21</p> <p><b>inquiry</b> [2] - 247:13, 286:17</p> <p><b>insert</b> [1] - 194:9</p> <p><b>inserted</b> [1] - 52:15</p> <p><b>insightful</b> [1] - 95:13</p> <p><b>installed</b> [5] - 49:13, 69:12, 139:1, 139:9, 143:22</p> <p><b>instance</b> [7] - 103:5, 126:15, 154:2, 169:11, 252:14, 265:13, 270:16</p> <p><b>instantaneous</b> [1] - 152:18</p> <p><b>instead</b> [6] - 33:2, 33:25, 43:16,</p>	<p><b>institutions</b> [1] - 237:15</p> <p><b>instigated</b> [1] - 10:6</p> <p><b>integrated</b> [2] - 124:25, 293:24</p> <p><b>intended</b> [3] - 157:1, 157:2, 162:17</p> <p><b>intends</b> [5] - 18:4, 246:4, 246:13, 246:14, 246:22</p> <p><b>intensive</b> [2] - 258:24, 259:13</p> <p><b>intention</b> [1] - 255:5</p> <p><b>Interconnect</b> [6] - 24:10, 24:11, 26:1, 26:3, 93:14, 120:17</p> <p><b>interconnect</b> [3] - 94:6, 171:17, 174:16</p> <p><b>interconnecting</b> [1] - 179:4</p> <p><b>interconnection</b> [23] - 16:2, 140:6, 140:8, 148:6, 148:10, 148:13, 149:2, 153:21, 160:5, 160:6, 160:16, 160:18, 160:23, 161:2, 162:11, 166:7, 166:11, 171:11, 175:23, 175:25, 185:22, 186:7, 186:10</p> <p><b>interconnects</b> [1] - 179:14</p> <p><b>interest</b> [13] - 5:10, 5:11, 19:7, 63:18, 63:19, 63:21, 140:22, 180:20, 206:10, 226:14, 247:7, 254:12, 257:21</p> <p><b>interested</b> [15] - 63:14, 99:2, 104:5, 155:10, 167:13, 170:23, 174:3, 174:10, 178:12, 181:21, 182:25, 247:10, 247:21, 262:25, 265:9</p> <p><b>interesting</b> [13] - 11:3, 11:10, 27:5, 71:9, 73:1, 73:11, 87:5, 95:9, 104:15, 106:11, 119:1, 121:1, 289:1</p> <p><b>interject</b> [1] - 217:8</p> <p><b>intermittent</b> [3] -</p>

<p>113:24, 286:10, 288:7  <b>intermittently</b> [1] - 188:25  <b>internal</b> [1] - 286:15  <b>internally</b> [1] - 267:11  <b>internet</b> [5] - 38:16, 158:23, 206:15, 207:14, 244:1  <b>interpretation</b> [1] - 190:23  <b>interrupting</b> [4] - 95:16, 174:20, 213:24, 270:10  <b>INTO</b> [1] - 1:5  <b>introduce</b> [1] - 6:21  <b>invest</b> [3] - 157:21, 175:19, 233:20  <b>invested</b> [1] - 140:8  <b>investigate</b> [1] - 152:8  <b>investment</b> [21] - 13:3, 13:6, 20:24, 21:7, 151:3, 157:13, 173:6, 173:19, 175:17, 210:25, 230:23, 231:16, 231:22, 233:8, 233:9, 233:22, 279:25, 280:1, 280:19, 292:9, 292:13  <b>investments</b> [6] - 24:22, 231:20, 254:10, 258:7, 280:23, 292:14  <b>investor</b> [1] - 113:10  <b>involved</b> [20] - 45:19, 45:21, 46:9, 66:2, 66:5, 66:10, 140:10, 140:19, 143:1, 146:20, 147:6, 148:11, 148:17, 152:12, 165:3, 166:2, 166:3, 167:19, 169:5, 180:16  <b>involvement</b> [3] - 65:2, 235:11, 235:12  <b>involves</b> [1] - 64:15  <b>Iowa</b> [1] - 169:23  <b>irrelevant</b> [1] - 225:8  <b>irrespective</b> [1] - 186:22  <b>island</b> [1] - 26:5  <b>issue</b> [58] - 4:20, 8:21, 9:7, 9:14, 12:19, 13:9, 17:20, 20:17, 21:9, 21:13, 22:23, 23:9, 24:3, 24:4, 27:13, 29:2, 32:18,</p>	<p>34:14, 34:15, 34:18, 34:22, 35:10, 36:18, 55:10, 56:21, 57:14, 59:12, 92:2, 95:11, 102:15, 107:21, 113:5, 119:2, 124:13, 129:9, 138:20, 141:23, 160:15, 162:20, 164:4, 170:16, 187:9, 188:21, 189:17, 189:19, 190:6, 190:8, 190:18, 190:19, 200:6, 200:8, 233:7, 235:1, 254:3, 280:7  <b>issued</b> [3] - 4:13, 205:12, 206:19  <b>issues</b> [37] - 4:14, 4:21, 8:3, 8:19, 11:23, 21:23, 21:25, 23:1, 23:8, 26:7, 35:4, 35:5, 35:7, 35:12, 60:11, 60:16, 87:16, 90:5, 90:7, 91:8, 91:14, 100:18, 119:1, 133:14, 138:25, 162:17, 164:1, 170:16, 190:7, 201:12, 206:12, 210:16, 251:2, 281:5, 281:6, 281:11  <b>ITC</b> [1] - 142:2  <b>items</b> [1] - 287:19  <b>iterative</b> [2] - 108:5, 108:6  <b>itself</b> [15] - 9:8, 15:14, 16:1, 54:24, 69:5, 161:7, 173:24, 174:10, 175:3, 189:15, 207:24, 226:16, 228:4, 255:11, 257:4</p>	<p><b>joined</b> [1] - 65:11  <b>judgment</b> [3] - 134:18, 232:1, 234:15  <b>judicial</b> [1] - 226:14  <b>July</b> [17] - 42:11, 152:25, 153:8, 153:22, 165:20, 178:15, 181:8, 182:16, 184:23, 185:2, 190:16, 196:23, 241:6, 247:14, 283:12, 284:20, 291:20  <b>jump</b> [1] - 110:1  <b>June</b> [7] - 17:11, 33:17, 190:15, 196:23, 259:25, 260:8, 260:9  <b>justice</b> [1] - 65:9  <b>justification</b> [1] - 20:5  <b>justify</b> [3] - 19:24, 32:9, 268:21</p>	<p>96:18, 100:24, 103:10, 105:13, 110:3, 110:14, 114:18, 134:8, 177:16, 186:8, 186:17, 213:15, 220:22, 227:11, 245:1, 257:11, 282:15, 283:12, 284:19  <b>kinds</b> [8] - 10:19, 20:11, 36:11, 65:12, 67:15, 127:1, 127:2, 277:19  <b>knowledge</b> [10] - 85:16, 159:14, 166:24, 207:24, 224:10, 224:11, 224:12, 228:3, 279:6  <b>knowledgeable</b> [1] - 85:8  <b>known</b> [3] - 47:3, 57:8, 102:13  <b>knows</b> [6] - 14:10, 31:1, 59:16, 155:19, 201:21, 242:4  <b>Kop</b> [30] - 19:22, 19:25, 26:23, 32:10, 35:21, 36:1, 60:25, 71:20, 72:17, 81:14, 222:12, 222:17, 222:21, 222:23, 223:20, 224:18, 225:2, 225:7, 226:8, 226:16, 226:20, 227:14, 227:21, 231:4, 233:12, 248:16, 248:18, 251:5, 251:14, 251:22  <b>Kristie</b> [1] - 4:9  <b>KRISTIE</b> [1] - 1:12  <b>kW</b> [2] - 281:16, 281:17</p>	<p>192:23, 194:13, 195:4, 197:10, 197:12, 197:24, 197:25, 198:2, 200:23, 200:24, 201:5, 201:10, 215:24, 216:8, 241:22, 241:25, 242:5, 242:22, 242:24, 243:1, 245:17, 245:20, 262:21, 278:17, 284:19, 286:21, 289:20, 290:6, 290:19, 294:16  <b>LaFave's</b> [5] - 216:1, 223:25, 225:9, 251:15, 283:21  <b>LaFay</b> [1] - 198:3  <b>LAFRENTZ</b> [3] - 137:19, 204:4, 227:10  <b>LaFrentz</b> [3] - 1:19, 6:14, 204:2  <b>laid</b> [2] - 252:17, 279:10  <b>Lake</b> [1] - 174:3  <b>land</b> [4] - 11:6, 11:8, 138:13, 144:9  <b>language</b> [8] - 15:1, 87:1, 87:4, 95:11, 118:24, 161:7, 190:23, 191:18  <b>large</b> [6] - 53:23, 75:14, 88:7, 141:13, 272:19, 288:8  <b>last</b> [42] - 12:9, 28:4, 36:17, 37:13, 37:14, 43:19, 68:24, 70:6, 70:8, 74:23, 79:14, 94:10, 98:15, 108:2, 118:5, 124:17, 130:22, 141:8, 142:3, 147:23, 148:9, 148:22, 148:24, 152:4, 167:17, 178:14, 179:22, 181:10, 181:16, 182:21, 199:19, 224:7, 236:21, 244:2, 245:25, 246:8, 265:4, 270:19, 280:11, 283:20, 284:25, 285:6  <b>late</b> [5] - 128:6, 170:9, 241:23, 243:2, 289:21  <b>lately</b> [1] - 161:8  <b>latitude</b> [1] - 289:9</p>
<p><b>involved</b> [20] - 45:19, 45:21, 46:9, 66:2, 66:5, 66:10, 140:10, 140:19, 143:1, 146:20, 147:6, 148:11, 148:17, 152:12, 165:3, 166:2, 166:3, 167:19, 169:5, 180:16  <b>involvement</b> [3] - 65:2, 235:11, 235:12  <b>involves</b> [1] - 64:15  <b>Iowa</b> [1] - 169:23  <b>irrelevant</b> [1] - 225:8  <b>irrespective</b> [1] - 186:22  <b>island</b> [1] - 26:5  <b>issue</b> [58] - 4:20, 8:21, 9:7, 9:14, 12:19, 13:9, 17:20, 20:17, 21:9, 21:13, 22:23, 23:9, 24:3, 24:4, 27:13, 29:2, 32:18,</p>	<p><b>January</b> [17] - 42:11, 42:22, 42:23, 150:3, 153:1, 153:12, 153:23, 165:20, 180:1, 180:7, 180:8, 181:1, 190:16, 196:24, 283:13, 284:20  <b>Jeff</b> [1] - 184:24  <b>job</b> [3] - 193:6, 193:8, 220:21  <b>jobs</b> [1] - 193:15  <b>John</b> [2] - 1:14, 5:20</p>	<p><b>Kara</b> [3] - 1:14, 7:1, 294:7  <b>keep</b> [10] - 26:22, 31:8, 55:16, 142:4, 188:7, 200:11, 200:14, 201:25, 202:15, 275:10  <b>keeping</b> [2] - 140:19, 206:10  <b>keeps</b> [2] - 52:25, 259:6  <b>kept</b> [1] - 168:14  <b>key</b> [2] - 22:14, 153:18  <b>kick</b> [2] - 10:3, 127:10  <b>kilowatt</b> [21] - 36:23, 44:6, 44:13, 92:17, 139:9, 143:22, 198:20, 199:1, 199:6, 199:22, 230:1, 230:6, 252:8, 252:12, 252:21, 253:4, 253:9, 253:10, 253:11, 270:8  <b>kilowatts</b> [6] - 92:18, 239:6, 239:7, 239:10, 239:20, 249:13  <b>kind</b> [37] - 7:5, 16:12, 23:7, 27:16, 32:16, 43:17, 44:4, 66:6, 66:17, 71:9, 73:10, 85:13, 90:14, 90:20, 90:25, 91:1, 94:19,</p>	<p><b>labeled</b> [3] - 68:3, 137:14, 227:9  <b>LaBleau</b> [1] - 294:17  <b>lack</b> [1] - 210:14  <b>LaFave</b> [48] - 2:11, 3:10, 3:11, 76:13, 97:20, 149:6, 149:13, 149:18, 153:8, 163:10, 166:18, 171:3, 171:6, 179:25, 180:15, 181:8, 192:17, 192:21,</p>	<p><b>L</b></p>

<p><b>Lauckhart</b> [68] - 2:9, 2:17, 3:3, 3:4, 19:12, 19:20, 20:16, 24:15, 25:2, 26:20, 30:17, 32:19, 33:3, 33:10, 38:5, 38:23, 39:4, 40:24, 43:3, 44:15, 45:15, 45:19, 46:3, 46:5, 47:21, 50:18, 52:3, 55:1, 61:8, 61:19, 61:25, 62:16, 63:24, 70:16, 71:21, 72:20, 74:23, 75:4, 75:19, 75:22, 76:2, 76:12, 76:25, 77:14, 78:7, 82:4, 86:14, 86:22, 87:7, 87:16, 89:25, 95:19, 99:17, 119:19, 129:1, 129:6, 135:23, 142:20, 164:5, 165:10, 199:5, 199:9, 202:13, 219:1, 219:18, 232:21, 235:24, 259:6</p> <p><b>Lauckhart's</b> [8] - 40:13, 51:3, 197:3, 199:15, 199:16, 199:21, 227:3, 253:9</p> <p><b>law</b> [6] - 9:5, 63:7, 141:5, 142:10, 174:4, 275:19</p> <p><b>laws</b> [2] - 132:14, 243:17</p> <p><b>lawyer</b> [2] - 102:19, 162:21</p> <p><b>lay</b> [1] - 50:12</p> <p><b>layoff</b> [1] - 283:12</p> <p><b>Lazarus</b> [1] - 290:25</p> <p><b>lead</b> [3] - 174:6, 283:6, 283:22</p> <p><b>leading</b> [1] - 152:1</p> <p><b>learned</b> [2] - 54:21, 279:18</p> <p><b>least</b> [27] - 11:8, 19:12, 32:1, 97:8, 108:12, 108:13, 125:15, 126:18, 168:3, 170:18, 176:6, 176:14, 188:16, 198:14, 204:23, 218:24, 219:19, 224:4, 233:17, 235:24, 237:6, 252:14, 253:18, 256:23, 268:13, 289:1</p> <p><b>leave</b> [6] - 8:7, 37:4, 128:14, 244:24,</p>	<p>248:12, 291:19</p> <p><b>leaving</b> [1] - 186:23</p> <p><b>led</b> [1] - 129:20</p> <p><b>leeway</b> [1] - 141:13</p> <p><b>left</b> [2] - 6:13, 242:5</p> <p><b>legal</b> [9] - 9:25, 129:10, 154:15, 154:25, 163:1, 177:23, 263:15, 264:25, 279:13</p> <p><b>legally</b> [16] - 4:25, 5:1, 13:16, 13:24, 14:18, 15:2, 15:20, 15:23, 16:8, 35:7, 36:13, 62:25, 129:8, 189:18, 191:1, 191:8</p> <p><b>legislation</b> [9] - 25:18, 102:4, 126:23, 126:24, 223:21, 256:25, 257:1, 257:5, 257:9</p> <p><b>legitimate</b> [5] - 75:14, 82:25, 83:4, 83:25, 107:15</p> <p><b>lend</b> [1] - 105:3</p> <p><b>lending</b> [3] - 54:12, 94:15, 237:15</p> <p><b>length</b> [3] - 10:1, 190:19, 262:6</p> <p><b>lengthy</b> [4] - 172:21, 241:21, 245:3, 268:17</p> <p><b>LEO</b> [33] - 29:17, 52:13, 52:15, 54:23, 56:4, 63:6, 63:10, 100:5, 102:17, 102:23, 103:1, 103:4, 104:7, 104:10, 104:15, 105:9, 105:21, 105:24, 106:9, 106:14, 106:20, 129:13, 129:16, 189:19, 189:23, 190:6, 190:18, 190:19, 212:11, 245:23, 263:7, 263:9, 282:16</p> <p><b>less</b> [19] - 27:2, 31:16, 32:10, 52:19, 54:15, 78:22, 80:4, 105:7, 106:4, 108:16, 117:18, 131:13, 214:15, 222:24, 239:6, 239:8, 267:17, 269:23, 270:8</p> <p><b>letter</b> [48] - 29:18, 52:14, 56:4, 144:13, 144:21, 146:1,</p>	<p>146:10, 146:18, 153:8, 160:20, 161:22, 171:4, 175:24, 176:8, 178:15, 179:25, 180:1, 181:1, 181:7, 181:10, 181:15, 182:6, 182:8, 182:15, 182:20, 183:7, 184:23, 185:5, 185:24, 186:17, 196:24, 196:25, 212:23, 241:5, 245:21, 245:23, 245:25, 246:7, 246:13, 247:2, 265:16, 265:19, 265:22, 268:1, 285:7, 291:20</p> <p><b>letterhead</b> [1] - 145:13</p> <p><b>letters</b> [6] - 140:15, 153:16, 163:11, 196:23, 283:1, 284:13</p> <p><b>level</b> [12] - 18:16, 55:17, 74:14, 78:2, 89:2, 134:10, 136:1, 159:9, 197:6, 197:7, 211:18, 269:19</p> <p><b>levelized</b> [11] - 17:6, 20:2, 30:19, 31:17, 109:3, 150:6, 150:8, 225:3, 271:8, 272:1, 282:11</p> <p><b>levelizes</b> [1] - 52:17</p> <p><b>levels</b> [3] - 96:14, 159:7, 159:9</p> <p><b>Lewis</b> [22] - 2:12, 3:13, 3:13, 26:21, 57:7, 82:24, 85:10, 85:19, 88:23, 89:20, 130:14, 221:5, 221:10, 233:24, 234:9, 234:22, 235:2, 235:4, 235:6, 235:10, 237:12, 242:11</p> <p><b>Lewis's</b> [7] - 27:9, 27:10, 57:4, 83:24, 94:10, 132:23, 133:2</p> <p><b>liability</b> [1] - 58:24</p> <p><b>liberal</b> [1] - 135:15</p> <p><b>license</b> [2] - 83:7, 83:9</p> <p><b>lied</b> [1] - 291:7</p> <p><b>lieu</b> [1] - 123:5</p> <p><b>life</b> [5] - 4:18, 17:7, 103:24, 123:19, 175:2</p> <p><b>lifespan</b> [1] - 63:16</p> <p><b>Light</b> [1] - 57:8</p>	<p><b>light</b> [13] - 55:13, 70:11, 72:22, 72:25, 73:2, 73:5, 73:10, 73:21, 74:5, 74:21, 97:25, 119:7, 151:19</p> <p><b>lightest</b> [1] - 73:21</p> <p><b>lights</b> [2] - 55:14, 55:15</p> <p><b>likelihood</b> [3] - 20:19, 102:8, 278:5</p> <p><b>likely</b> [7] - 100:25, 206:13, 256:7, 256:13, 256:15, 258:5, 278:7</p> <p><b>limitations</b> [1] - 121:10</p> <p><b>limited</b> [1] - 4:22</p> <p><b>limits</b> [1] - 100:10</p> <p><b>line</b> [35] - 55:23, 58:1, 59:22, 76:4, 80:17, 82:22, 92:7, 147:14, 147:15, 150:17, 150:18, 150:23, 150:24, 152:21, 153:1, 153:2, 153:7, 155:2, 155:4, 156:1, 194:7, 194:8, 194:10, 194:11, 200:19, 200:20, 202:3, 208:4, 210:14, 215:24, 221:11, 225:7, 227:24, 258:21, 262:5</p> <p><b>lines</b> [11] - 80:18, 93:19, 139:16, 139:17, 144:12, 151:12, 154:3, 155:9, 156:22, 166:12, 169:2</p> <p><b>link</b> [1] - 203:9</p> <p><b>list</b> [3] - 90:20, 221:14, 268:17</p> <p><b>listed</b> [6] - 82:17, 82:18, 221:16, 266:4, 266:22, 266:23</p> <p><b>listen</b> [2] - 9:3, 243:25</p> <p><b>listened</b> [1] - 168:1</p> <p><b>litany</b> [1] - 278:1</p> <p><b>litigate</b> [1] - 152:5</p> <p><b>litigation</b> [1] - 137:22</p> <p><b>live</b> [1] - 38:16</p> <p><b>lives</b> [1] - 166:3</p> <p><b>LLC</b> [3] - 1:4, 4:3, 177:23</p> <p><b>load</b> [60] - 58:1, 58:23, 70:10, 70:11, 72:22, 72:23, 72:25, 73:2, 73:5, 73:8, 73:10,</p>	<p>73:15, 73:17, 73:20, 21 73:21, 74:5, 74:6, 74:22, 77:9, 77:16, 77:18, 77:19, 78:6, 78:19, 79:21, 79:22, 80:1, 80:2, 80:4, 80:5, 86:22, 111:13, 114:13, 119:8, 120:19, 120:22, 120:24, 188:14, 188:15, 189:4, 189:10, 252:7, 256:15, 258:25, 260:20, 267:10, 269:12, 270:4, 271:17, 281:20, 281:23, 286:10, 286:11, 288:8, 293:24</p> <p><b>loads</b> [9] - 59:1, 70:6, 73:3, 73:4, 93:16, 93:25, 97:25, 98:1, 120:24</p> <p><b>loads's</b> [1] - 78:21</p> <p><b>local</b> [6] - 139:10, 139:17, 139:19, 139:21, 139:23, 143:23</p> <p><b>locally</b> [1] - 140:4</p> <p><b>locals</b> [1] - 143:2</p> <p><b>locate</b> [3] - 93:16, 180:1, 182:9</p> <p><b>located</b> [5] - 6:14, 6:23, 11:4, 67:24, 182:13</p> <p><b>location</b> [2] - 4:6, 25:20</p> <p><b>locations</b> [3] - 24:12, 83:13, 159:1</p> <p><b>lodge</b> [1] - 96:23</p> <p><b>logic</b> [1] - 157:23</p> <p><b>long-term</b> [27] - 18:12, 53:3, 53:4, 57:9, 72:12, 95:25, 104:6, 123:7, 131:15, 157:16, 194:8, 216:10, 216:14, 216:16, 221:1, 231:20, 232:22, 233:3, 233:5, 233:21, 234:5, 240:3, 264:14, 279:12, 279:14, 280:1, 280:2</p> <p><b>longstanding</b> [3] - 226:11, 226:13, 227:24</p> <p><b>look</b> [64] - 8:15, 9:5, 35:14, 48:2, 54:15, 60:5, 60:6, 65:25,</p>
--	---	---	---	--

<p>66:14, 66:24, 67:5, 67:21, 69:5, 75:22, 75:25, 76:4, 93:15, 95:2, 101:3, 106:16, 109:5, 109:7, 109:9, 109:15, 109:21, 114:17, 115:10, 119:13, 121:1, 121:2, 121:21, 122:9, 123:7, 123:10, 131:17, 141:13, 151:3, 151:10, 154:19, 156:12, 164:14, 168:13, 168:15, 169:3, 169:22, 172:2, 172:16, 173:11, 179:21, 199:14, 205:25, 206:1, 206:7, 206:8, 206:11, 218:3, 218:16, 220:3, 222:2, 228:13, 262:8, 264:3, 273:5, 280:10</p> <p><b>looked</b> [22] - 46:17, 67:8, 69:3, 69:9, 97:25, 109:2, 109:3, 115:7, 130:19, 152:19, 157:20, 159:16, 165:20, 172:1, 172:5, 173:9, 174:6, 179:1, 179:5, 179:9, 187:7</p> <p><b>looking</b> [46] - 21:3, 30:4, 43:16, 55:13, 55:14, 65:17, 65:19, 68:3, 68:8, 72:12, 73:17, 73:20, 75:18, 76:20, 98:13, 119:25, 120:6, 121:4, 125:6, 130:5, 138:15, 139:23, 140:2, 152:15, 152:16, 153:25, 156:23, 156:25, 157:13, 157:14, 165:5, 172:7, 172:10, 172:18, 172:20, 179:16, 183:20, 217:22, 217:23, 218:1, 230:16, 241:13, 242:19, 255:21, 282:5</p> <p><b>looks</b> [5] - 106:17, 198:2, 225:16, 271:16, 272:18</p> <p><b>lose</b> [1] - 58:19</p> <p><b>losing</b> [2] - 127:20,</p>	<p>242:1</p> <p><b>loss</b> [1] - 86:22</p> <p><b>losses</b> [1] - 93:22</p> <p><b>lost</b> [1] - 12:16</p> <p><b>loud</b> [7] - 38:8, 38:9, 38:12, 52:5, 145:2, 185:6</p> <p><b>love</b> [1] - 60:4</p> <p><b>loving</b> [1] - 162:21</p> <p><b>low</b> [28] - 22:9, 77:8, 78:23, 78:24, 79:21, 82:25, 84:1, 84:3, 84:4, 84:5, 84:6, 84:9, 91:22, 107:3, 108:17, 119:12, 130:15, 130:19, 130:20, 132:24, 133:3, 133:4, 133:10, 140:19, 156:9, 271:6, 271:9</p> <p><b>lower</b> [12] - 106:16, 106:23, 109:19, 110:6, 134:21, 142:12, 159:7, 159:8, 190:4, 272:2, 275:15</p> <p><b>lowered</b> [1] - 113:14</p> <p><b>lowest</b> [2] - 80:8, 151:8</p> <p><b>lunch</b> [3] - 128:6, 128:10, 128:21</p>	<p>131:1, 135:24</p> <p><b>Makens</b> [35] - 2:9, 3:4, 11:6, 11:9, 11:10, 11:15, 16:17, 69:16, 69:20, 136:12, 136:16, 136:20, 138:7, 138:12, 143:5, 143:10, 148:1, 148:2, 152:11, 153:7, 154:21, 157:23, 161:4, 167:23, 168:22, 177:8, 178:8, 184:4, 187:18, 203:13, 203:14, 238:6, 241:6, 268:17, 292:2</p> <p><b>Makens'</b> [1] - 241:11</p> <p><b>Makenses</b> [2] - 204:7, 204:10</p> <p><b>maker</b> [1] - 171:2</p> <p><b>man</b> [2] - 96:6, 177:15</p> <p><b>manageable</b> [1] - 23:2</p> <p><b>management</b> [1] - 193:12</p> <p><b>mandating</b> [1] - 279:14</p> <p><b>mandatory</b> [2] - 80:25, 81:1</p> <p><b>manner</b> [4] - 12:23, 38:15, 189:6, 283:10</p> <p><b>map</b> [2] - 120:6, 215:19</p> <p><b>MAPP</b> [1] - 215:19</p> <p><b>March</b> [8] - 1:8, 2:4, 4:6, 161:5, 196:25, 247:3, 247:15, 295:11</p> <p><b>margin</b> [14] - 57:17, 59:10, 86:2, 86:6, 86:11, 86:13, 86:15, 86:18, 86:21, 87:3, 94:1, 212:2, 213:4, 213:9</p> <p><b>marginal</b> [1] - 134:8</p> <p><b>Mark</b> [1] - 48:4</p> <p><b>mark</b> [1] - 157:16</p> <p><b>marked</b> [7] - 3:20, 3:20, 3:21, 181:2, 193:20, 195:7, 262:3</p> <p><b>Market</b> [1] - 87:23</p> <p><b>market</b> [115] - 20:6, 20:13, 24:8, 28:11, 28:14, 32:10, 41:14, 53:1, 53:12, 53:14, 53:15, 60:21, 64:17, 67:17, 70:25, 71:4, 71:21, 72:4, 72:18, 76:23, 77:1, 77:12, 79:12, 81:5, 87:25,</p>	<p>88:11, 89:18, 97:17, 97:20, 98:12, 116:6, 116:7, 117:3, 117:24, 118:4, 118:15, 118:16, 118:17, 119:9, 120:1, 121:18, 121:25, 122:1, 122:4, 122:10, 122:12, 122:21, 122:22, 122:23, 123:7, 123:15, 123:20, 123:23, 124:15, 125:23, 127:9, 128:3, 130:11, 130:13, 130:14, 131:19, 140:1, 140:3, 150:21, 152:16, 152:17, 156:12, 179:1, 179:5, 179:22, 189:1, 216:25, 219:10, 221:9, 222:20, 223:23, 228:20, 232:4, 232:13, 232:15, 234:5, 234:13, 234:14, 234:19, 234:21, 235:23, 235:25, 236:4, 236:5, 236:9, 236:11, 236:16, 251:10, 251:11, 251:24, 251:25, 263:23, 265:2, 267:9, 267:12, 268:20, 268:25, 271:22, 271:23, 271:24, 272:19, 273:24, 280:12, 280:14, 286:12, 294:2</p> <p><b>market's</b> [1] - 130:24</p> <p><b>market-based</b> [2] - 122:1, 124:15</p> <p><b>marketing</b> [1] - 151:22</p> <p><b>marketplace</b> [1] - 152:20</p> <p><b>markets</b> [3] - 131:6, 172:7, 235:8</p> <p><b>Markey</b> [1] - 89:6</p> <p><b>marking</b> [1] - 176:10</p> <p><b>marriage</b> [1] - 274:14</p> <p><b>marry</b> [1] - 274:13</p> <p><b>marrying</b> [1] - 275:25</p> <p><b>match</b> [3] - 18:17, 228:16, 240:3</p> <p><b>material</b> [5] - 55:2, 56:23, 107:16, 121:12, 207:7</p>	<p><b>materials</b> [1] - 22:16 22</p> <p><b>math</b> [4] - 74:17, 74:18, 89:15, 253:14</p> <p><b>MATNEY</b> [2] - 206:20, 207:1</p> <p><b>Matney</b> [15] - 146:2, 146:19, 147:22, 148:3, 149:16, 166:2, 180:15, 184:3, 204:11, 206:5, 206:6, 206:16, 206:17, 282:22, 282:23</p> <p><b>matter</b> [16] - 2:2, 4:2, 7:4, 9:5, 16:16, 37:7, 113:21, 118:24, 190:11, 195:5, 195:11, 225:20, 225:21, 262:3, 282:17, 295:10</p> <p><b>MATTER</b> [1] - 1:4</p> <p><b>matters</b> [2] - 5:24, 7:6</p> <p><b>mayors</b> [1] - 139:21</p> <p><b>McComsey</b> [2] - 1:24, 295:18</p> <p><b>MCCOMSEY</b> [1] - 295:5</p> <p><b>mean</b> [50] - 15:3, 16:18, 17:21, 21:25, 27:14, 35:5, 36:4, 39:25, 63:24, 72:14, 72:25, 91:11, 97:1, 106:16, 107:22, 109:11, 115:4, 126:21, 131:17, 135:15, 149:11, 151:18, 152:10, 157:25, 170:17, 174:11, 175:1, 175:15, 181:25, 183:8, 183:16, 185:6, 200:16, 201:4, 205:10, 218:16, 218:21, 220:24, 232:2, 239:16, 243:12, 244:12, 254:13, 261:14, 264:7, 277:4, 279:19, 285:14, 289:9</p> <p><b>meaning</b> [5] - 13:14, 217:19, 280:18, 280:20, 285:5</p> <p><b>means</b> [6] - 14:11, 22:4, 100:15, 142:5, 150:2, 236:24</p> <p><b>meant</b> [5] - 30:21, 182:3, 185:14, 203:22, 285:15</p> <p><b>measure</b> [1] - 139:1</p>
<b>M</b>		<p><b>Macero</b> [1] - 39:1</p> <p><b>Mackenzie</b> [2] - 235:16, 237:23</p> <p><b>MACT</b> [1] - 278:1</p> <p><b>mail</b> [6] - 158:23, 165:25, 166:6, 259:23, 259:25, 260:9</p> <p><b>mails</b> [7] - 140:14, 153:16, 163:15, 170:20, 170:22, 178:18, 268:2</p> <p><b>main</b> [3] - 11:23, 22:11, 184:11</p> <p><b>maintain</b> [3] - 181:23, 247:12, 247:23</p> <p><b>maintained</b> [1] - 267:23</p> <p><b>maintenance</b> [2] - 74:7, 193:13</p> <p><b>major</b> [9] - 58:19, 147:1, 147:3, 147:6, 174:23, 188:20, 188:21, 211:1, 211:7</p> <p><b>majority</b> [3] - 11:5,</p>	<p><b>margin</b> [14] - 57:17, 59:10, 86:2, 86:6, 86:11, 86:13, 86:15, 86:18, 86:21, 87:3, 94:1, 212:2, 213:4, 213:9</p> <p><b>marginal</b> [1] - 134:8</p> <p><b>Mark</b> [1] - 48:4</p> <p><b>mark</b> [1] - 157:16</p> <p><b>marked</b> [7] - 3:20, 3:20, 3:21, 181:2, 193:20, 195:7, 262:3</p> <p><b>Market</b> [1] - 87:23</p> <p><b>market</b> [115] - 20:6, 20:13, 24:8, 28:11, 28:14, 32:10, 41:14, 53:1, 53:12, 53:14, 53:15, 60:21, 64:17, 67:17, 70:25, 71:4, 71:21, 72:4, 72:18, 76:23, 77:1, 77:12, 79:12, 81:5, 87:25,</p>	<p><b>market's</b> [1] - 130:24</p> <p><b>market-based</b> [2] - 122:1, 124:15</p> <p><b>marketing</b> [1] - 151:22</p> <p><b>marketplace</b> [1] - 152:20</p> <p><b>markets</b> [3] - 131:6, 172:7, 235:8</p> <p><b>Markey</b> [1] - 89:6</p> <p><b>marking</b> [1] - 176:10</p> <p><b>marriage</b> [1] - 274:14</p> <p><b>marry</b> [1] - 274:13</p> <p><b>marrying</b> [1] - 275:25</p> <p><b>match</b> [3] - 18:17, 228:16, 240:3</p> <p><b>material</b> [5] - 55:2, 56:23, 107:16, 121:12, 207:7</p>

<p><b>meat</b> [2] - 170:16, 170:23</p> <p><b>mechanical</b> [1] - 154:11</p> <p><b>mediate</b> [1] - 187:9</p> <p><b>mediation</b> [1] - 141:22</p> <p><b>meet</b> [28] - 23:16, 23:20, 24:2, 56:9, 78:5, 80:9, 80:23, 81:2, 81:3, 81:4, 81:9, 81:15, 81:23, 89:15, 89:18, 111:6, 114:5, 116:10, 116:24, 132:20, 158:4, 183:4, 183:11, 183:13, 183:24, 240:6, 244:14, 255:6</p> <p><b>Meeting</b> [5] - 3:5, 3:5, 3:6, 3:6, 208:21</p> <p><b>meeting</b> [30] - 23:23, 43:22, 43:24, 55:4, 166:10, 184:5, 184:9, 200:3, 200:18, 200:25, 202:6, 202:9, 207:24, 208:7, 208:23, 209:1, 209:3, 210:24, 211:6, 211:16, 211:25, 213:12, 214:1, 238:18, 240:8, 240:11, 240:14, 240:17, 243:23, 244:7</p> <p><b>meeting's</b> [2] - 243:18, 244:2</p> <p><b>meetings</b> [4] - 201:18, 243:16, 283:5, 283:8</p> <p><b>megawatt</b> [43] - 20:1, 20:2, 30:20, 31:7, 43:21, 52:16, 52:17, 52:18, 52:21, 52:22, 57:25, 59:14, 59:16, 68:5, 68:6, 68:7, 68:12, 68:17, 75:11, 78:2, 79:24, 106:14, 116:3, 116:12, 116:17, 117:8, 117:9, 121:14, 123:9, 126:15, 142:15, 142:17, 173:14, 183:12, 202:10, 207:23, 214:9, 222:22, 252:7, 252:25, 270:17, 273:6</p> <p><b>megawatts</b> [38] - 21:7, 25:25, 43:22, 43:25, 44:13, 56:7, 77:20,</p>	<p>78:17, 79:21, 79:23, 80:4, 92:10, 92:18, 114:5, 115:12, 115:13, 115:16, 115:19, 115:23, 116:8, 116:19, 127:17, 199:6, 211:19, 212:13, 214:12, 214:24, 252:24, 253:14, 266:6, 269:23, 272:22, 273:13, 279:7</p> <p><b>member</b> [4] - 115:8, 202:25, 264:11, 283:22</p> <p><b>members</b> [7] - 10:13, 85:12, 89:22, 177:18, 177:19, 264:20, 282:19</p> <p><b>mention</b> [4] - 28:2, 39:19, 147:22, 260:25</p> <p><b>mentioned</b> [13] - 13:9, 29:6, 29:9, 33:6, 34:13, 133:14, 181:18, 182:23, 184:19, 247:8, 260:17, 285:8, 288:20</p> <p><b>mere</b> [1] - 63:11</p> <p><b>met</b> [31] - 31:11, 44:23, 46:15, 46:16, 46:17, 46:18, 46:19, 46:22, 46:25, 67:13, 69:5, 69:6, 69:11, 69:17, 88:12, 158:7, 158:11, 158:13, 160:14, 164:5, 164:6, 164:8, 164:16, 164:19, 165:7, 171:11, 171:12, 171:13, 179:9, 184:1, 240:9</p> <p><b>meteorological</b> [2] - 139:1, 164:25</p> <p><b>meters</b> [3] - 158:17, 158:19</p> <p><b>methane</b> [1] - 22:18</p> <p><b>method</b> [27] - 64:12, 64:13, 64:15, 116:1, 116:2, 123:1, 188:23, 189:12, 221:17, 221:18, 221:22, 222:6, 222:7, 222:10, 222:11, 222:12, 228:6, 228:20, 232:12, 232:18, 232:21, 237:9,</p>	<p>258:23, 293:23, 294:1, 294:2</p> <p><b>methodologies</b> [2] - 279:10, 279:17</p> <p><b>methodology</b> [12] - 26:25, 28:3, 46:12, 49:6, 53:9, 65:23, 220:19, 224:3, 225:14, 236:15, 236:17, 248:17</p> <p><b>methods</b> [13] - 197:1, 220:21, 221:14, 228:11, 228:12, 228:15, 228:16, 228:18, 232:12, 274:8, 293:15, 293:17, 293:22</p> <p><b>mic</b> [3] - 38:17, 225:25, 226:4</p> <p><b>Michael</b> [7] - 1:18, 2:9, 16:17, 69:16, 136:12, 136:20, 147:24</p> <p><b>micro</b> [3] - 159:18, 159:21, 160:3</p> <p><b>Mid</b> [2] - 171:25, 172:1</p> <p><b>MidAmerican</b> [5] - 208:16, 210:4, 210:9, 210:11, 212:5</p> <p><b>middle</b> [3] - 37:16, 183:18, 183:20</p> <p><b>midlevel</b> [1] - 134:10</p> <p><b>midpoint</b> [1] - 85:18</p> <p><b>midrange</b> [1] - 133:12</p> <p><b>midway</b> [1] - 61:10</p> <p><b>Midwest</b> [6] - 21:21, 41:15, 66:11, 66:15, 66:20, 67:17</p> <p><b>midwestern</b> [1] - 65:2</p> <p><b>might</b> [23] - 23:1, 40:22, 67:11, 75:18, 76:20, 80:2, 91:22, 94:2, 109:21, 111:12, 119:11, 119:15, 122:14, 122:25, 128:1, 131:13, 163:15, 220:4, 230:11, 232:17, 240:7, 262:4, 267:4</p> <p><b>Mike</b> [1] - 6:10</p> <p><b>milestone</b> [1] - 166:10</p> <p><b>milestones</b> [2] - 160:12, 160:14</p> <p><b>millions</b> [2] - 24:23, 54:12</p> <p><b>mind</b> [18] - 26:22, 58:14, 59:4, 79:2, 103:13, 168:14, 169:7, 173:8,</p>	<p>179:15, 188:11, 199:9, 247:25, 256:2, 258:16, 286:2, 286:3, 291:9, 294:1</p> <p><b>mine</b> [1] - 120:9</p> <p><b>minimum</b> [1] - 142:4</p> <p><b>Minnesota</b> [4] - 118:20, 169:11, 169:23</p> <p><b>minor</b> [2] - 107:11, 107:14</p> <p><b>minute</b> [3] - 55:1, 188:9, 261:25</p> <p><b>minutes</b> [9] - 8:3, 55:3, 55:4, 200:3, 200:13, 201:1, 203:12, 241:17, 245:9</p> <p><b>Minutes</b> [5] - 3:5, 3:5, 3:6, 3:6, 208:21</p> <p><b>mischaracterized</b> [1] - 290:6</p> <p><b>mischaracterizes</b> [1] - 290:19</p> <p><b>misjudged</b> [1] - 232:3</p> <p><b>MISO</b> [14] - 86:23, 114:3, 118:19, 122:7, 125:11, 151:24, 152:15, 171:9, 174:16, 179:9, 210:13, 212:5, 214:14, 214:15</p> <p><b>MISO's</b> [2] - 114:18, 115:5</p> <p><b>missed</b> [2] - 164:2, 232:11</p> <p><b>Mississippi</b> [1] - 37:1</p> <p><b>mistake</b> [2] - 34:4, 189:7</p> <p><b>mistaken</b> [2] - 23:12, 182:11</p> <p><b>misunderstood</b> [1] - 115:24</p> <p><b>Mitchell</b> [4] - 202:11, 207:23, 208:10, 209:5</p> <p><b>mix</b> [1] - 216:23</p> <p><b>mixed</b> [1] - 219:15</p> <p><b>mode</b> [1] - 179:1</p> <p><b>model</b> [46] - 8:15, 9:1, 9:8, 9:9, 9:10, 9:12, 9:17, 9:23, 30:15, 30:16, 83:3, 83:5, 83:6, 83:7, 83:8, 83:9, 83:12, 83:14, 83:20, 83:22, 83:23, 84:17, 84:18, 84:19, 84:24, 85:6, 85:12,</p>	<p>99:6, 108:3, 109:12, 2 3 109:24, 109:25, 120:14, 121:6, 122:13, 127:7, 127:19, 223:2, 223:3, 223:4, 223:7, 253:12, 293:16</p> <p><b>modelers</b> [1] - 66:24</p> <p><b>modeling</b> [3] - 83:22, 84:18, 236:3</p> <p><b>models</b> [13] - 9:9, 66:20, 66:21, 82:9, 82:16, 82:19, 84:25, 85:13, 107:12, 139:12, 173:9</p> <p><b>moderate</b> [1] - 274:21</p> <p><b>modify</b> [1] - 83:21</p> <p><b>modulate</b> [1] - 275:10</p> <p><b>moment</b> [4] - 75:3, 100:15, 144:19, 205:19</p> <p><b>Monday</b> [1] - 73:9</p> <p><b>monetarily</b> [2] - 155:13, 183:2</p> <p><b>money</b> [7] - 63:23, 105:3, 111:6, 140:8, 186:18, 252:13, 253:19</p> <p><b>Montana</b> [88] - 6:10, 6:14, 6:19, 19:15, 19:17, 19:22, 20:1, 20:5, 21:11, 23:21, 23:22, 24:7, 26:22, 32:7, 35:20, 36:2, 37:21, 48:6, 48:16, 48:17, 48:25, 49:6, 56:11, 56:18, 56:20, 60:19, 61:1, 61:5, 71:19, 72:16, 75:12, 75:13, 75:15, 76:23, 77:6, 77:9, 77:16, 77:22, 78:8, 78:23, 79:5, 79:7, 79:8, 79:13, 80:20, 80:25, 81:7, 81:17, 81:21, 84:7, 85:2, 90:10, 102:12, 102:13, 112:6, 112:11, 124:18, 124:19, 125:19, 125:20, 125:24, 126:3, 126:12, 126:20, 126:22, 126:25, 128:7, 132:5, 166:3, 166:20, 166:22, 184:2, 184:7, 184:14, 204:13, 221:22, 222:13, 223:14, 225:5, 225:22, 233:16,</p>
--	--	--	--	--

<p>234:11, 234:13, 234:23, 235:3, 248:23, 249:7</p> <p><b>Montana's</b> <sup>[1]</sup> - 24:10</p> <p><b>month</b> <sup>[16]</sup> - 41:25, 42:7, 85:19, 88:5, 142:6, 198:20, 199:1, 252:8, 252:22, 253:1, 283:12, 283:16, 283:23, 284:13, 284:19, 291:6</p> <p><b>months</b> <sup>[39]</sup> - 24:18, 29:10, 33:7, 42:11, 43:5, 43:7, 54:23, 56:3, 88:8, 105:9, 153:5, 164:10, 164:15, 164:19, 165:10, 172:12, 172:15, 172:16, 172:17, 172:18, 179:15, 182:15, 190:15, 198:7, 198:21, 209:17, 209:22, 209:23, 212:11, 212:23, 236:21, 252:13, 252:18, 252:20, 252:21, 253:1, 253:6, 253:20</p> <p><b>moat</b> <sup>[1]</sup> - 105:13</p> <p><b>morning</b> <sup>[15]</sup> - 6:6, 61:10, 61:25, 62:1, 62:2, 73:8, 99:17, 99:18, 168:1, 169:7, 200:10, 236:15, 236:18, 244:22, 250:24</p> <p><b>most</b> <sup>[22]</sup> - 9:17, 15:9, 32:22, 80:24, 88:3, 102:11, 105:1, 108:22, 110:4, 135:18, 175:13, 189:1, 222:2, 228:16, 237:4, 271:17, 272:23, 277:8, 281:22, 281:24, 294:3, 294:4</p> <p><b>mostly</b> <sup>[1]</sup> - 127:22</p> <p><b>mother</b> <sup>[1]</sup> - 59:18</p> <p><b>Motion</b> <sup>[4]</sup> - 51:11, 194:2, 195:16, 225:11</p> <p><b>motion</b> <sup>[4]</sup> - 31:23, 205:14, 205:15</p> <p><b>motions</b> <sup>[1]</sup> - 225:11</p> <p><b>move</b> <sup>[39]</sup> - 40:6, 49:15, 50:6, 51:2, 52:11, 56:17, 91:13, 93:18, 93:21, 93:23,</p>	<p>111:20, 114:18, 121:11, 130:17, 134:11, 134:13, 135:3, 137:13, 139:24, 150:10, 155:22, 159:18, 167:9, 183:15, 186:9, 194:21, 196:1, 196:21, 197:3, 197:6, 215:16, 225:25, 226:15, 241:1, 243:8, 243:9, 254:2, 282:12, 282:13</p> <p><b>moved</b> <sup>[6]</sup> - 138:15, 141:9, 150:7, 183:22, 193:10, 282:6</p> <p><b>movement</b> <sup>[3]</sup> - 11:18, 60:14, 255:22</p> <p><b>moves</b> <sup>[1]</sup> - 24:12</p> <p><b>moving</b> <sup>[7]</sup> - 20:14, 60:7, 134:23, 149:25, 150:2, 206:10, 213:15</p> <p><b>MPSC</b> <sup>[2]</sup> - 51:14, 82:23</p> <p><b>MR</b> <sup>[324]</sup> - 6:5, 6:9, 6:16, 6:17, 6:25, 7:3, 7:9, 7:10, 7:11, 7:12, 7:14, 7:23, 8:1, 10:9, 10:12, 38:2, 38:4, 38:10, 38:11, 38:13, 38:20, 39:14, 39:16, 39:22, 39:25, 40:4, 40:7, 40:8, 40:15, 40:21, 40:23, 40:24, 45:9, 45:11, 45:13, 46:2, 46:4, 46:5, 47:16, 47:18, 47:20, 49:15, 49:17, 49:19, 49:22, 49:25, 50:1, 50:4, 50:11, 50:17, 50:18, 51:2, 51:5, 51:6, 51:7, 51:8, 51:9, 51:19, 51:22, 52:2, 52:3, 55:1, 55:3, 55:9, 55:12, 55:21, 61:7, 61:9, 61:16, 61:22, 61:24, 70:13, 70:18, 70:22, 70:23, 75:18, 87:6, 87:8, 87:11, 87:15, 89:23, 89:24, 95:15, 95:18, 96:21, 96:25, 97:1, 97:7, 97:13, 98:24, 99:14, 119:21, 119:22, 120:4, 120:6, 120:10, 120:12,</p>	<p>121:1, 121:17, 122:3, 123:4, 123:14, 124:17, 127:4, 127:5, 128:4, 128:17, 128:18, 128:22, 129:3, 129:5, 135:4, 135:5, 135:11, 135:14, 135:17, 135:18, 135:22, 136:4, 136:5, 136:8, 136:9, 136:11, 136:15, 137:13, 137:15, 137:18, 137:20, 137:23, 137:25, 138:3, 138:4, 138:6, 138:7, 143:4, 143:6, 143:7, 143:9, 157:9, 157:11, 161:6, 161:11, 161:12, 162:12, 162:14, 162:16, 162:23, 165:17, 167:21, 172:24, 173:21, 173:22, 174:7, 174:10, 174:20, 175:5, 175:20, 175:21, 176:6, 176:20, 176:23, 177:1, 177:3, 177:6, 178:2, 178:7, 187:11, 187:12, 187:14, 187:15, 187:16, 187:17, 187:20, 187:22, 187:24, 188:2, 188:6, 188:7, 188:8, 188:9, 192:13, 194:22, 194:23, 194:24, 195:1, 196:3, 196:4, 196:5, 196:7, 197:13, 197:14, 197:15, 197:18, 197:20, 199:25, 200:15, 200:20, 201:3, 201:14, 201:17, 201:20, 202:2, 202:6, 202:17, 202:19, 202:23, 203:8, 203:14, 203:16, 203:19, 204:1, 204:6, 204:10, 204:17, 204:22, 205:9, 205:16, 205:22, 205:25, 206:1, 206:5, 206:6, 206:7, 206:16, 206:20, 206:22, 207:1, 207:2, 207:10,</p>	<p>207:11, 207:12, 207:19, 207:21, 213:13, 213:15, 213:17, 213:18, 213:19, 213:21, 213:24, 213:25, 215:6, 215:7, 216:2, 216:3, 216:4, 216:6, 224:2, 224:6, 224:8, 225:10, 225:24, 226:5, 226:6, 226:7, 226:12, 226:17, 226:20, 226:22, 226:24, 227:2, 227:11, 228:1, 228:5, 241:13, 241:18, 242:3, 242:21, 242:23, 242:25, 243:12, 243:18, 244:12, 244:16, 244:24, 245:6, 245:8, 245:13, 245:19, 251:16, 251:19, 258:17, 259:17, 259:20, 260:14, 261:6, 261:8, 261:14, 261:17, 261:22, 262:15, 262:19, 276:22, 277:7, 277:11, 277:17, 277:19, 277:23, 277:25, 278:7, 278:9, 283:15, 283:18, 284:3, 284:5, 284:8, 284:12, 284:15, 286:23, 289:5, 289:7, 289:14, 289:15, 289:17, 289:19, 290:7, 290:21, 290:24, 292:18, 292:19, 292:22, 294:7, 294:9, 294:15</p> <p><b>MS</b> <sup>[63]</sup> - 6:22, 7:1, 7:13, 8:2, 40:20, 51:21, 137:19, 138:5, 192:16, 192:20, 194:20, 194:25, 195:3, 195:4, 195:25, 196:6, 196:10, 196:11, 197:11, 200:9, 200:22, 201:10, 201:16, 201:19, 201:23, 202:5, 202:12, 203:6, 203:11, 203:15, 204:4, 206:9, 215:23,</p>	<p>223:24, 225:6, 24 226:10, 226:14, 227:10, 227:23, 243:11, 245:5, 245:7, 251:12, 259:22, 260:13, 261:10, 261:15, 261:19, 261:25, 262:10, 278:14, 278:16, 283:21, 284:10, 286:21, 290:5, 290:18, 292:20, 292:21, 293:2, 294:6, 294:8, 294:12</p> <p><b>Muller</b> <sup>[2]</sup> - 161:18, 186:14</p> <p><b>multiple</b> <sup>[3]</sup> - 158:24, 158:25, 159:2</p> <p><b>multiplied</b> <sup>[2]</sup> - 28:14, 92:17</p> <p><b>multiply</b> <sup>[1]</sup> - 42:22</p> <p><b>multiplying</b> <sup>[2]</sup> - 64:16, 69:22</p> <p><b>multitude</b> <sup>[1]</sup> - 277:2</p> <p><b>must</b> <sup>[5]</sup> - 8:20, 9:7, 72:21, 80:8, 105:23</p> <p><b>mutually</b> <sup>[6]</sup> - 157:2, 157:7, 246:5, 246:15, 246:20, 246:23</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N.W.E</b> <sup>[2]</sup> - 2:10, 3:9</p> <p><b>name</b> <sup>[21]</sup> - 6:9, 6:22, 38:21, 38:23, 43:24, 47:2, 79:10, 79:25, 115:1, 136:18, 142:18, 147:24, 147:25, 148:9, 148:22, 148:24, 152:10, 152:12, 192:22, 192:23, 197:24</p> <p><b>named</b> <sup>[1]</sup> - 198:2</p> <p><b>names</b> <sup>[2]</sup> - 148:3, 166:16</p> <p><b>NARG</b> <sup>[1]</sup> - 82:16</p> <p><b>national</b> <sup>[3]</sup> - 24:8, 25:17, 84:17</p> <p><b>National</b> <sup>[1]</sup> - 165:3</p> <p><b>nationally</b> <sup>[2]</sup> - 16:11, 257:9</p> <p><b>natural</b> <sup>[32]</sup> - 9:20, 20:12, 22:9, 22:16, 22:21, 23:1, 24:8, 26:10, 26:11, 27:19, 27:22, 28:7, 28:10,</p>
--	--	---	--	--

<p>28:16, 29:1, 30:5, 84:12, 85:4, 85:24, 107:9, 109:3, 109:8, 109:10, 132:24, 193:13, 219:21, 219:24, 234:23, 273:22, 274:6, 274:13, 275:7</p> <p><b>nature</b> [3] - 269:15, 269:19, 274:10</p> <p><b>NDA</b> [6] - 203:22, 204:4, 204:9, 204:17, 206:13</p> <p><b>NDAs</b> [2] - 204:3, 204:23</p> <p><b>Neal</b> [4] - 211:2, 211:8, 256:9, 256:14</p> <p><b>near</b> [2] - 22:17, 175:12</p> <p><b>nearing</b> [1] - 258:17</p> <p><b>nearly</b> [4] - 24:7, 68:15, 87:18, 190:15</p> <p><b>Nebraska</b> [1] - 193:14</p> <p><b>necessarily</b> [8] - 9:10, 9:18, 64:8, 66:12, 121:23, 239:15, 240:3, 251:21</p> <p><b>necessary</b> [4] - 5:4, 9:21, 30:10, 172:13</p> <p><b>need</b> [81] - 7:6, 10:5, 10:6, 33:16, 33:20, 33:22, 37:14, 54:20, 54:22, 57:18, 58:9, 58:18, 60:13, 64:7, 64:8, 71:16, 76:15, 76:16, 76:18, 92:3, 92:8, 96:10, 102:14, 103:24, 108:3, 111:20, 113:10, 113:25, 117:16, 117:19, 118:13, 119:8, 126:16, 126:17, 141:2, 142:4, 147:16, 147:21, 152:23, 157:24, 158:4, 163:8, 180:3, 187:25, 192:4, 198:7, 198:11, 200:1, 202:19, 203:12, 204:20, 207:22, 209:15, 209:16, 209:21, 209:22, 212:12, 212:16, 220:20, 220:24, 221:9, 222:1, 225:10, 229:1, 230:22, 241:25, 243:22, 247:1, 264:22,</p>	<p>266:19, 266:24, 267:16, 267:19, 272:14, 281:6, 281:7, 283:3, 293:19</p> <p><b>needed</b> [23] - 32:9, 48:18, 54:7, 56:21, 57:17, 67:14, 90:4, 91:20, 92:9, 118:12, 149:4, 158:8, 163:23, 167:10, 184:10, 184:14, 184:15, 208:4, 230:19, 266:18, 267:12, 273:12</p> <p><b>needing</b> [1] - 206:3</p> <p><b>needs</b> [13] - 17:21, 55:6, 55:7, 80:9, 120:25, 127:2, 132:15, 142:5, 158:2, 158:7, 249:21, 271:17, 293:14</p> <p><b>negative</b> [3] - 119:5, 119:14, 119:16</p> <p><b>negatively</b> [1] - 268:7</p> <p><b>negotiate</b> [22] - 36:20, 36:24, 37:3, 140:11, 142:11, 155:4, 155:16, 155:24, 157:2, 167:17, 179:18, 180:22, 246:5, 246:15, 246:19, 246:22, 247:20, 249:12, 265:3, 293:5, 293:7, 293:12</p> <p><b>negotiated</b> [2] - 239:16, 248:7</p> <p><b>negotiating</b> [17] - 17:9, 17:10, 59:13, 59:17, 151:21, 152:1, 155:7, 166:18, 167:14, 170:24, 181:7, 185:16, 264:11, 264:12, 264:16, 282:19, 283:22</p> <p><b>negotiation</b> [13] - 36:19, 37:5, 140:22, 152:6, 155:23, 183:16, 199:10, 238:5, 247:25, 248:10, 284:14, 293:4</p> <p><b>negotiations</b> [26] - 9:4, 11:17, 141:24, 152:13, 171:18, 186:25, 190:8, 238:11, 248:4, 248:6, 264:22,</p>	<p>265:6, 265:17, 267:7, 267:9, 278:21, 279:2, 282:17, 283:3, 283:10, 283:22, 284:11, 291:9, 291:10, 291:14, 291:24</p> <p><b>negotiator</b> [2] - 264:14, 283:6</p> <p><b>neighbor</b> [1] - 184:8</p> <p><b>neighborhood</b> [3] - 78:13, 114:22, 282:8</p> <p><b>neighborly</b> [1] - 166:4</p> <p><b>neighbors</b> [1] - 139:22</p> <p><b>NELSON</b> [22] - 1:11, 4:1, 90:2, 91:6, 91:13, 92:1, 92:22, 93:8, 94:9, 96:20, 97:12, 162:25, 163:13, 164:4, 165:9, 165:15, 244:19, 260:15, 260:24, 262:4, 262:13, 262:18</p> <p><b>Nelson</b> [7] - 4:8, 90:1, 96:22, 133:13, 133:21, 136:5, 165:20</p> <p><b>NEMS</b> [2] - 82:15, 84:17</p> <p><b>never</b> [13] - 99:11, 160:23, 170:4, 183:23, 218:18, 227:19, 248:10, 254:5, 256:2, 258:16, 268:1, 268:2, 284:13</p> <p><b>new</b> [9] - 54:20, 54:22, 88:14, 117:16, 138:16, 163:6, 256:12, 277:1, 282:4</p> <p><b>newspaper</b> [1] - 59:2</p> <p><b>next</b> [19] - 8:18, 27:20, 30:2, 60:21, 69:15, 82:22, 109:17, 114:7, 122:20, 136:10, 153:10, 181:20, 197:1, 217:21, 241:16, 254:2, 254:12, 260:24, 271:5</p> <p><b>nice</b> [1] - 220:21</p> <p><b>night</b> [1] - 73:9</p> <p><b>nighttime</b> [1] - 73:3</p> <p><b>nine</b> [1] - 74:11</p> <p><b>nitty</b> [1] - 168:12</p> <p><b>nitty-gritty</b> [1] - 168:12</p> <p><b>nobody</b> [2] - 95:3,</p>	<p>96:16</p> <p><b>nobody's</b> [4] - 88:5, 88:6, 105:2, 105:3</p> <p><b>nominal</b> [1] - 43:1</p> <p><b>nonconflicted</b> [1] - 54:8</p> <p><b>noncontractual</b> [3] - 15:20, 15:23, 103:4</p> <p><b>nondisclosure</b> [3] - 55:7, 202:22, 203:24</p> <p><b>nondispatchable</b> [1] - 113:24</p> <p><b>none</b> [2] - 56:18, 105:18</p> <p><b>noneconomic</b> [1] - 56:14</p> <p><b>nonfundamentals</b> [1] - 28:22</p> <p><b>nonfundamentals-based</b> [1] - 28:22</p> <p><b>nonmonetary</b> [2] - 20:8, 21:25</p> <p><b>nonnegotiation</b> [1] - 187:9</p> <p><b>nonprice</b> [1] - 250:25</p> <p><b>nonpublic</b> [1] - 55:19</p> <p><b>nonPURPA</b> [1] - 24:3</p> <p><b>nonquantifiable</b> [1] - 281:11</p> <p><b>nonquantifiable</b> [11] - 60:16, 90:5, 90:7, 91:3, 91:8, 91:14, 110:12, 111:1, 133:14, 281:5, 281:6</p> <p><b>nonquantify</b> [1] - 90:21</p> <p><b>nonregulated</b> [1] - 18:22</p> <p><b>nonsigned</b> [1] - 103:1</p> <p><b>normal</b> [7] - 96:4, 96:5, 109:16, 109:18, 110:5, 119:17, 271:21</p> <p><b>normally</b> [1] - 204:16</p> <p><b>North</b> [7] - 6:19, 94:4, 122:5, 122:7, 125:18, 169:23, 172:6</p> <p><b>northeast</b> [1] - 109:23</p> <p><b>northwest</b> [1] - 85:9</p> <p><b>Northwest</b> [6] - 17:4, 84:11, 85:5, 95:9, 95:20, 97:1</p> <p><b>Northwestern</b> [387] - 1:20, 1:20, 3:20, 4:3, 4:15, 4:19, 5:5, 5:10, 6:16, 6:18, 6:23, 7:10, 7:11, 7:23, 8:23, 10:17, 11:24, 12:4, 12:19, 16:2,</p>	<p>16:4, 16:6, 17:5, 17:11, 17:15, 17:18, 19:11, 19:14, 19:23, 20:7, 21:10, 26:22, 28:4, 28:6, 29:5, 29:18, 31:4, 31:14, 31:18, 31:25, 32:4, 33:1, 33:19, 34:9, 35:20, 35:25, 37:12, 37:20, 40:11, 48:4, 48:12, 51:9, 52:19, 53:2, 54:16, 55:18, 56:4, 56:11, 57:16, 58:11, 58:12, 58:24, 59:15, 61:18, 68:19, 70:2, 70:6, 70:24, 71:6, 71:7, 71:19, 71:23, 72:2, 72:16, 72:21, 73:24, 74:10, 74:15, 75:9, 75:11, 77:4, 77:8, 77:10, 77:21, 77:23, 78:4, 79:4, 79:9, 79:12, 79:20, 81:15, 82:24, 84:15, 86:2, 87:18, 88:23, 92:3, 93:3, 98:17, 102:12, 110:22, 111:23, 112:6, 112:23, 112:25, 114:23, 115:16, 116:2, 116:10, 116:22, 117:11, 117:15, 117:21, 118:7, 120:13, 121:3, 121:11, 121:16, 125:12, 126:6, 126:12, 128:24, 131:11, 131:13, 132:17, 134:19, 138:2, 140:5, 140:7, 140:12, 140:17, 140:21, 140:23, 140:24, 141:2, 141:10, 142:11, 142:14, 145:8, 145:21, 145:23, 145:25, 146:14, 147:16, 148:4, 149:18, 149:22, 149:25, 150:4, 151:6, 151:21, 151:23, 152:1, 152:5, 152:9, 152:20, 153:3, 153:24, 154:4, 154:25, 155:3, 155:7, 155:9, 155:10, 155:19, 155:25, 156:2, 156:15, 157:1,</p>
---	--	---	--	---

<p>157:15, 157:21, 158:6, 160:20, 161:1, 163:3, 163:21, 165:23, 166:4, 166:9, 166:15, 166:21, 167:7, 167:18, 170:3, 170:4, 170:14, 171:7, 171:12, 171:17, 174:12, 176:3, 177:7, 178:11, 178:24, 179:5, 179:17, 180:10, 180:17, 181:4, 181:6, 181:21, 182:2, 182:4, 182:24, 183:5, 183:16, 183:22, 184:2, 184:10, 184:19, 184:24, 185:13, 185:18, 185:25, 186:1, 186:24, 187:2, 187:13, 188:12, 188:17, 188:22, 189:5, 189:7, 189:8, 189:12, 189:14, 190:2, 190:12, 191:17, 192:2, 192:10, 192:11, 192:16, 193:1, 193:7, 193:10, 193:11, 193:18, 193:20, 194:20, 195:1, 195:7, 195:25, 196:1, 196:7, 196:16, 197:11, 198:6, 198:9, 198:16, 199:10, 200:8, 200:11, 201:1, 201:7, 201:25, 202:10, 202:14, 202:20, 206:8, 206:9, 206:10, 207:22, 208:9, 208:12, 209:10, 209:15, 209:20, 211:3, 211:16, 212:4, 212:8, 212:15, 212:24, 213:8, 214:18, 214:23, 215:23, 216:21, 216:22, 216:24, 217:1, 217:6, 218:1, 218:19, 218:22, 221:7, 221:23, 223:1, 223:12, 223:20, 223:24,</p>	<p>225:1, 225:4, 225:6, 227:23, 228:15, 228:17, 228:19, 234:4, 234:5, 234:8, 235:6, 235:12, 238:12, 238:13, 245:16, 246:4, 246:13, 246:14, 246:21, 247:6, 247:9, 247:16, 247:21, 248:2, 248:20, 248:24, 250:16, 251:5, 251:12, 254:9, 254:18, 254:23, 257:19, 257:24, 257:25, 258:1, 259:10, 260:7, 261:2, 262:10, 263:20, 264:11, 265:8, 266:12, 266:15, 266:18, 267:1, 267:6, 267:9, 267:14, 267:15, 267:23, 269:2, 269:20, 270:3, 270:4, 271:16, 272:13, 272:18, 275:24, 279:1, 279:14, 280:8, 280:10, 280:12, 281:12, 282:16, 283:13, 283:23, 284:21, 284:23, 284:25, 285:9, 285:15, 286:4, 286:7, 286:9, 287:10, 289:11, 290:3, 290:5, 290:10, 291:8, 292:8, 293:5, 293:11, 293:12, 293:18, 293:23, 294:4, 294:5, 294:10</p> <p><b>NORTHWESTERN</b> [1] - 1:5</p> <p><b>NorthWestern's</b> [68] - 8:6, 8:11, 9:12, 9:17, 16:5, 19:21, 23:20, 24:9, 25:12, 26:21, 30:24, 31:23, 33:16, 36:15, 37:25, 54:17, 63:19, 64:11, 68:24, 69:21, 72:4, 73:14, 73:15, 77:5, 77:15, 78:8, 78:16, 79:17, 80:3, 117:13, 141:11, 142:18, 146:3, 155:5, 156:7, 156:8, 161:13, 189:20, 190:2,</p>	<p>190:23, 194:21, 196:18, 197:5, 197:7, 197:8, 216:13, 216:22, 218:5, 221:8, 225:19, 233:1, 233:5, 248:24, 253:22, 259:11, 260:18, 263:22, 267:2, 268:8, 269:12, 270:19, 275:16, 278:18, 280:14, 280:23, 281:8, 283:6, 285:17</p> <p><b>NOS</b> [3] - 3:2, 3:9, 3:15</p> <p><b>notable</b> [1] - 85:10</p> <p><b>Notary</b> [2] - 295:7, 295:18</p> <p><b>note</b> [2] - 36:19, 237:5</p> <p><b>noted</b> [4] - 40:15, 49:23, 51:22, 259:23</p> <p><b>notes</b> [1] - 100:15</p> <p><b>nothing</b> [10] - 7:9, 7:11, 7:13, 14:8, 18:20, 178:16, 294:6, 294:7, 294:8, 294:14</p> <p><b>notice</b> [10] - 161:14, 161:16, 162:1, 185:24, 186:19, 193:25, 195:13, 243:22, 244:4, 265:15</p> <p><b>Notice</b> [1] - 4:13</p> <p><b>noticed</b> [2] - 4:12, 62:20</p> <p><b>noticing</b> [1] - 14:8</p> <p><b>notified</b> [1] - 286:23</p> <p><b>November</b> [5] - 12:9, 29:9, 33:5, 53:16, 236:23</p> <p><b>nuances</b> [2] - 106:11, 262:25</p> <p><b>nudge</b> [2] - 91:7, 91:12</p> <p><b>nudging</b> [1] - 91:10</p> <p><b>nullify</b> [1] - 160:22</p> <p><b>number</b> [42] - 4:14, 4:24, 5:3, 27:1, 27:3, 36:25, 39:17, 42:8, 42:24, 44:8, 48:11, 53:24, 56:13, 78:14, 85:17, 89:4, 90:6, 90:8, 91:13, 92:5, 93:21, 125:7, 125:21, 156:19, 164:7, 172:12, 175:13, 182:2, 183:24, 185:1,</p>	<p>222:10, 222:22, 234:12, 261:6, 262:23, 264:23, 270:7, 271:14, 271:18, 272:21, 293:19</p> <p><b>numbers</b> [23] - 41:10, 41:13, 41:22, 42:13, 43:13, 48:8, 91:7, 91:11, 91:12, 93:3, 93:10, 99:7, 99:12, 106:16, 121:5, 130:6, 134:3, 151:10, 151:11, 183:19, 261:4, 274:2</p> <p><b>numerous</b> [5] - 140:11, 141:9, 147:17, 147:22, 170:17</p> <p><b>NYMEX</b> [1] - 94:25</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>o'clock</b> [2] - 2:5, 294:19</p> <p><b>OAK</b> [4] - 1:4, 2:8, 2:16, 3:2</p> <p><b>Oak</b> [201] - 1:18, 1:19, 3:20, 4:3, 4:17, 4:24, 5:4, 5:12, 6:7, 6:15, 7:9, 7:16, 8:6, 11:1, 11:4, 12:25, 15:25, 16:4, 16:9, 17:4, 17:13, 19:11, 25:4, 25:6, 30:18, 31:13, 31:14, 33:23, 34:2, 34:4, 34:11, 36:22, 37:11, 40:5, 41:18, 42:23, 43:21, 44:18, 44:20, 44:22, 45:4, 45:10, 45:24, 45:25, 46:20, 46:23, 51:8, 51:25, 52:12, 52:25, 53:25, 54:19, 56:4, 59:13, 59:14, 59:24, 61:17, 62:12, 63:13, 64:1, 64:16, 69:2, 69:24, 71:7, 71:24, 72:3, 77:1, 88:13, 92:10, 106:13, 110:22, 111:25, 112:1, 112:23, 113:5, 113:25, 116:4, 116:16, 117:9, 118:7, 123:17, 128:23, 129:23, 131:13, 131:22, 134:16, 134:19, 134:21, 134:22, 136:24,</p>	<p>137:14, 138:6, 26 138:11, 138:24, 140:6, 140:21, 141:9, 142:14, 143:25, 144:2, 144:6, 144:8, 144:10, 146:3, 146:14, 147:2, 147:15, 147:20, 150:4, 152:9, 153:4, 153:24, 156:6, 156:17, 157:1, 158:9, 159:11, 160:14, 161:5, 161:12, 164:6, 168:21, 176:3, 177:7, 177:20, 184:1, 185:25, 189:16, 189:23, 190:14, 194:22, 196:3, 196:21, 196:22, 197:16, 198:15, 199:5, 204:8, 207:8, 214:13, 214:24, 215:2, 245:16, 245:17, 246:12, 246:14, 246:15, 246:22, 250:1, 250:6, 250:8, 250:16, 250:20, 252:8, 252:12, 253:19, 254:2, 257:13, 257:20, 260:1, 260:9, 260:10, 263:19, 264:12, 265:8, 266:4, 266:13, 267:14, 267:24, 268:17, 269:10, 269:21, 273:1, 274:13, 274:14, 274:17, 278:20, 278:21, 278:22, 278:25, 282:7, 282:19, 283:14, 283:24, 284:21, 285:6, 285:24, 286:18, 288:12, 291:2, 291:15, 291:16, 291:18, 292:3, 293:7, 293:18</p> <p><b>object</b> [8] - 40:12, 157:9, 161:6, 215:24, 223:24, 225:7, 227:24, 290:5</p> <p><b>objection</b> [37] - 40:7, 40:10, 40:19, 45:11, 45:12, 45:14, 47:18, 49:21, 49:23, 51:5, 51:10, 51:12, 51:18,</p>
--	---	---	--	--

<p>51:21, 70:18, 96:23, 135:6, 137:15, 138:2, 138:3, 161:10, 194:22, 194:23, 196:3, 196:4, 216:6, 225:25, 226:6, 226:7, 226:11, 226:13, 227:24, 251:13, 251:19, 283:15, 284:15, 290:18</p> <p><b>objectionable</b> [1] - 97:5</p> <p><b>objections</b> [1] - 89:1</p> <p><b>objective</b> [14] - 23:11, 23:17, 23:20, 23:24, 24:1, 82:2, 132:4, 141:6, 158:5, 255:6, 255:8, 255:10, 255:11</p> <p><b>objectives</b> [1] - 31:11</p> <p><b>obligation</b> [41] - 4:25, 5:1, 8:24, 8:25, 9:2, 11:25, 12:4, 13:9, 13:16, 13:24, 14:5, 14:18, 14:25, 15:3, 15:18, 15:20, 16:8, 17:23, 18:8, 18:10, 18:15, 35:8, 36:13, 37:3, 58:10, 62:25, 129:9, 141:4, 189:18, 190:19, 191:1, 191:8, 191:14, 215:1, 230:9, 269:5, 279:11, 293:5, 293:6, 293:11, 293:12</p> <p><b>obligations</b> [8] - 11:25, 13:13, 15:24, 129:14, 229:7, 247:16, 263:17, 279:13</p> <p><b>observation</b> [1] - 70:12</p> <p><b>observations</b> [2] - 130:8, 137:21</p> <p><b>observe</b> [1] - 60:3</p> <p><b>observer</b> [1] - 21:21</p> <p><b>obtain</b> [4] - 5:5, 21:7, 46:25, 146:24</p> <p><b>obtained</b> [4] - 20:4, 33:21, 45:4, 47:25</p> <p><b>obvious</b> [4] - 32:24, 122:8, 179:17, 183:15</p> <p><b>obviously</b> [13] - 8:5, 16:6, 23:10, 105:1, 161:23, 207:15,</p>	<p>230:20, 250:13, 262:6, 271:18, 273:21, 274:5, 282:10</p> <p><b>occasionally</b> [1] - 88:7</p> <p><b>occasions</b> [2] - 178:25, 243:20</p> <p><b>occur</b> [2] - 100:25, 119:17</p> <p><b>occurred</b> [1] - 39:21</p> <p><b>occurring</b> [2] - 101:1, 241:21</p> <p><b>October</b> [1] - 222:2</p> <p><b>OF</b> [6] - 1:2, 1:4, 2:1, 295:1, 295:3</p> <p><b>off-the-cuff</b> [1] - 66:4</p> <p><b>off-the-shelf</b> [8] - 24:20, 29:15, 29:18, 29:24, 30:1, 65:16, 65:20, 93:1</p> <p><b>offer</b> [38] - 15:12, 17:4, 35:15, 39:17, 40:2, 50:6, 64:1, 64:4, 106:6, 112:3, 112:5, 155:4, 155:16, 157:1, 169:12, 169:13, 170:5, 183:4, 183:6, 183:13, 185:18, 188:2, 188:23, 246:14, 248:11, 263:13, 263:16, 267:14, 267:21, 269:9, 273:1, 278:21, 278:22, 290:10, 290:12, 290:15, 291:2, 293:7</p> <p><b>offer's</b> [1] - 142:18</p> <p><b>offered</b> [19] - 3:7, 3:8, 3:8, 28:3, 31:14, 31:16, 59:14, 142:15, 156:16, 167:11, 169:11, 170:6, 180:17, 240:4, 252:12, 282:14, 289:25, 290:2</p> <p><b>offering</b> [6] - 63:1, 63:11, 64:3, 142:14, 199:5, 252:9</p> <p><b>offers</b> [3] - 50:14, 278:25, 290:2</p> <p><b>office</b> [2] - 148:23, 166:25</p> <p><b>officers</b> [2] - 207:5, 207:8</p> <p><b>offs</b> [1] - 53:21</p> <p><b>offset</b> [4] - 217:4, 273:2, 288:5, 288:7</p> <p><b>often</b> [3] - 12:13,</p>	<p>95:23, 114:21</p> <p><b>oftentimes</b> [2] - 73:7</p> <p><b>old</b> [2] - 177:17, 272:4</p> <p><b>OMS</b> [1] - 115:9</p> <p><b>on-site</b> [1] - 16:18</p> <p><b>once</b> [9] - 24:19, 42:25, 145:9, 145:13, 159:23, 245:24, 265:16, 282:1, 287:6</p> <p><b>oncoming</b> [1] - 214:16</p> <p><b>one</b> [153] - 4:14, 8:21, 9:10, 9:25, 11:11, 12:11, 14:3, 14:21, 16:11, 17:14, 19:1, 19:5, 20:8, 20:15, 22:11, 25:14, 27:7, 29:23, 33:16, 36:7, 36:19, 37:6, 41:13, 42:8, 45:17, 48:8, 48:9, 48:24, 53:6, 53:14, 54:9, 56:13, 65:7, 72:6, 73:13, 76:15, 76:16, 76:17, 77:4, 85:19, 88:16, 88:19, 93:19, 98:2, 100:17, 100:22, 105:21, 107:8, 108:22, 108:24, 109:5, 112:13, 112:18, 112:19, 114:12, 114:23, 116:15, 116:16, 118:5, 120:18, 121:25, 122:19, 123:6, 123:23, 123:25, 124:9, 124:17, 127:6, 127:7, 135:17, 143:19, 144:5, 146:2, 146:10, 146:17, 147:9, 150:3, 150:5, 152:12, 157:25, 164:17, 164:24, 165:8, 169:21, 171:16, 172:2, 173:22, 175:13, 175:22, 176:14, 176:21, 183:10, 184:7, 185:12, 188:20, 189:6, 189:7, 190:7, 196:24, 200:22, 202:25, 203:13, 203:15, 204:23, 205:23, 206:2, 213:21, 215:10, 215:24, 218:10, 219:7, 221:17,</p>	<p>224:5, 225:13, 225:22, 228:1, 228:17, 234:1, 235:20, 238:7, 241:15, 248:15, 251:1, 253:24, 257:12, 259:23, 261:15, 262:16, 265:12, 268:16, 272:22, 274:7, 275:10, 276:11, 276:18, 277:25, 280:6, 281:25, 284:16, 286:24, 287:5, 289:15, 292:20, 293:3, 293:13, 293:22, 294:12</p> <p><b>one-sided</b> [1] - 17:14</p> <p><b>one-way</b> [1] - 37:6</p> <p><b>ones</b> [2] - 108:25, 205:1</p> <p><b>Onida</b> [1] - 295:13</p> <p><b>onshore</b> [1] - 175:13</p> <p><b>open</b> [9] - 140:3, 152:16, 152:17, 163:24, 167:13, 167:14, 180:21, 243:16, 268:24</p> <p><b>opened</b> [1] - 284:11</p> <p><b>opening</b> [12] - 7:7, 7:15, 7:18, 7:21, 7:24, 10:10, 105:17, 108:20, 188:5, 191:15, 192:8, 260:17</p> <p><b>openly</b> [1] - 146:15</p> <p><b>operable</b> [1] - 113:16</p> <p><b>operate</b> [3] - 38:15, 274:20, 276:7</p> <p><b>operated</b> [1] - 63:16</p> <p><b>operating</b> [8] - 74:8, 74:14, 215:5, 215:11, 265:13, 274:23, 292:12, 292:13</p> <p><b>operation</b> [5] - 112:20, 173:3, 227:12, 271:1, 271:2</p> <p><b>operational</b> [5] - 175:8, 175:11, 265:3, 271:7, 273:20</p> <p><b>operations</b> [3] - 166:22, 177:25, 270:15</p> <p><b>operator</b> [1] - 101:24</p> <p><b>opinion</b> [18] - 100:3, 102:17, 102:18, 102:21, 117:15, 132:4, 132:13,</p>	<p>155:17, 186:3, 187:2, 204:9, 249:25, 263:5, 263:8, 263:10, 268:16, 281:18, 292:15</p> <p><b>opinions</b> [1] - 128:13</p> <p><b>opportunities</b> [1] - 179:6</p> <p><b>opportunity</b> [6] - 16:21, 71:10, 137:3, 166:17, 192:6, 218:5</p> <p><b>opposed</b> [7] - 40:9, 55:14, 73:4, 189:10, 235:2, 262:4, 273:16</p> <p><b>opposition</b> [1] - 283:4</p> <p><b>option</b> [16] - 13:17, 14:1, 14:13, 14:19, 15:13, 18:5, 140:2, 140:4, 140:13, 141:14, 151:23, 152:20, 187:7, 189:25, 191:2, 191:10</p> <p><b>options</b> [10] - 14:21, 73:12, 140:1, 151:20, 151:22, 152:4, 171:14, 179:2, 228:13, 293:13</p> <p><b>oranges</b> [1] - 156:14</p> <p><b>Order</b> [1] - 18:1</p> <p><b>order</b> [28] - 4:12, 5:8, 37:16, 53:8, 72:10, 90:3, 160:17, 187:3, 192:11, 194:3, 195:16, 196:9, 200:5, 203:24, 205:13, 205:14, 206:14, 206:19, 207:13, 226:16, 226:20, 249:11, 249:14, 249:18, 275:3, 276:7, 292:11</p> <p><b>ordinarily</b> [1] - 226:17</p> <p><b>Oregon</b> [2] - 21:3, 36:25</p> <p><b>organization</b> [1] - 66:5</p> <p><b>organizations</b> [1] - 132:18</p> <p><b>organize</b> [1] - 66:4</p> <p><b>organized</b> [2] - 188:1, 188:4</p> <p><b>original</b> [3] - 170:4, 210:10, 259:24</p> <p><b>originally</b> [2] - 48:21, 65:13</p> <p><b>OT</b> [1] - 50:2</p> <p><b>otherwise</b> [2] - 34:9, 183:12</p>
---	---	---	---	---

<p><b>Otter</b> [2] - 171:21, 276:15</p> <p><b>ourselves</b> [2] - 107:20, 177:24</p> <p><b>outage</b> [1] - 74:20</p> <p><b>outages</b> [1] - 215:12</p> <p><b>outcome</b> [2] - 111:8, 111:11</p> <p><b>outcome's</b> [1] - 111:12</p> <p><b>outfit</b> [3] - 29:14, 165:3, 172:6</p> <p><b>outfits</b> [1] - 165:5</p> <p><b>outlook</b> [1] - 85:22</p> <p><b>output</b> [26] - 12:4, 14:14, 15:15, 16:2, 25:4, 35:10, 37:10, 41:17, 41:19, 64:16, 66:24, 69:2, 69:9, 69:23, 70:7, 71:7, 72:3, 116:4, 117:9, 131:12, 152:9, 153:4, 153:24, 180:11, 198:15, 290:3</p> <p><b>outrageous</b> [1] - 173:15</p> <p><b>outset</b> [3] - 7:17, 18:10, 38:7</p> <p><b>outside</b> [6] - 177:14, 204:14, 216:1, 223:25, 251:14, 284:8</p> <p><b>overall</b> [4] - 16:25, 91:1, 172:17, 264:3</p> <p><b>overbuilt</b> [1] - 44:4</p> <p><b>overcharging</b> [1] - 280:8</p> <p><b>overrule</b> [8] - 5:24, 51:24, 97:7, 224:9, 225:24, 251:19, 284:15</p> <p><b>overruled</b> [5] - 6:1, 47:18, 157:11, 226:6, 290:7</p> <p><b>overruling</b> [1] - 97:11</p> <p><b>oversee</b> [1] - 66:23</p> <p><b>oversight</b> [1] - 5:22</p> <p><b>oversupply</b> [1] - 96:9</p> <p><b>overview</b> [5] - 66:8, 194:9, 197:6, 197:8, 201:11</p> <p><b>own</b> [29] - 19:2, 31:4, 32:8, 78:12, 97:10, 103:8, 116:3, 116:11, 116:13, 116:22, 117:4, 124:7, 126:12, 126:13, 129:22, 138:14, 144:6,</p>	<p>144:10, 149:22, 174:2, 180:20, 222:17, 224:21, 224:23, 230:24, 242:25, 286:12, 286:13, 286:15</p> <p><b>owned</b> [7] - 11:6, 78:8, 78:11, 79:3, 79:5, 116:18</p> <p><b>owners</b> [5] - 111:25, 112:23, 127:15, 144:6, 144:8</p> <p><b>ownership</b> [1] - 254:11</p> <p><b>owns</b> [4] - 77:23, 77:24, 78:4, 79:9</p>	<p>280:12</p> <p><b>Pam</b> [1] - 2:13</p> <p><b>pans</b> [1] - 175:18</p> <p><b>paper</b> [1] - 43:17</p> <p><b>Paragraph</b> [1] - 15:10</p> <p><b>paragraph</b> [10] - 144:22, 144:23, 144:25, 181:10, 181:16, 182:21, 185:5, 245:25, 246:8, 285:6</p> <p><b>parameters</b> [1] - 185:14</p> <p><b>paraphrasing</b> [2] - 108:10, 111:19</p> <p><b>pardon</b> [4] - 51:7, 206:6, 241:19, 243:21</p> <p><b>part</b> [28] - 15:14, 17:16, 31:18, 36:4, 45:10, 51:17, 80:19, 101:6, 116:1, 147:3, 152:4, 169:13, 203:3, 205:10, 205:14, 208:7, 208:17, 208:18, 210:10, 210:21, 224:13, 229:23, 243:24, 261:3, 261:20, 267:6</p> <p><b>partially</b> [2] - 293:25, 294:1</p> <p><b>participants</b> [1] - 193:5</p> <p><b>participated</b> [1] - 57:21</p> <p><b>particular</b> [19] - 20:11, 41:11, 42:9, 48:1, 49:16, 54:6, 78:25, 81:10, 90:3, 118:21, 146:18, 176:13, 222:4, 236:13, 265:18, 275:22, 286:5, 286:17, 288:6</p> <p><b>parties</b> [32] - 5:9, 5:14, 5:17, 5:18, 6:7, 7:5, 7:14, 7:20, 8:25, 10:7, 39:19, 102:25, 128:13, 138:8, 140:10, 140:19, 143:1, 146:14, 157:3, 169:5, 180:16, 203:16, 205:3, 205:18, 206:13, 246:6, 246:16, 246:23, 262:3, 269:14, 294:10</p> <p><b>parts</b> [2] - 45:14, 66:10</p>	<p><b>party</b> [10] - 8:10, 9:19, 29:23, 104:25, 135:6, 139:6, 203:22, 204:3, 207:6, 240:7</p> <p><b>pass</b> [2] - 27:22, 57:2</p> <p><b>passed</b> [5] - 34:19, 34:20, 89:6, 89:9</p> <p><b>past</b> [5] - 68:21, 68:22, 139:21, 218:8, 220:3</p> <p><b>patience</b> [1] - 241:16</p> <p><b>pattern</b> [1] - 69:25</p> <p><b>Patty's</b> [1] - 269:15</p> <p><b>Paul</b> [1] - 115:6</p> <p><b>pause</b> [1] - 100:14</p> <p><b>pay</b> [14] - 4:17, 22:18, 29:23, 30:8, 71:13, 104:5, 175:3, 186:15, 192:11, 268:12, 281:12, 292:14, 292:15</p> <p><b>payer</b> [2] - 106:7, 231:21</p> <p><b>payers</b> [19] - 5:10, 17:2, 17:17, 35:23, 36:2, 37:25, 56:24, 103:18, 105:23, 106:5, 111:23, 111:24, 112:7, 112:24, 197:2, 197:9, 231:18, 257:15, 263:10</p> <p><b>paying</b> [8] - 22:20, 71:24, 72:2, 72:8, 104:6, 252:21, 261:1, 261:2</p> <p><b>payment</b> [3] - 18:16, 160:18, 186:10</p> <p><b>payments</b> [1] - 18:19</p> <p><b>peak</b> [8] - 43:23, 43:24, 73:15, 73:24, 77:20, 114:5, 114:18, 114:19</p> <p><b>peaked</b> [1] - 294:1</p> <p><b>peaker</b> [3] - 211:1, 222:7, 228:20</p> <p><b>Peaking</b> [1] - 3:7</p> <p><b>peaking</b> [8] - 211:18, 273:19, 274:12, 274:16, 274:21, 274:22, 275:23, 287:21</p> <p><b>peaks</b> [1] - 273:20</p> <p><b>penalized</b> [2] - 23:23, 80:24</p> <p><b>penalties</b> [2] - 81:16, 82:1</p> <p><b>penalty</b> [7] - 21:17, 23:25, 81:6, 81:12, 81:17, 81:22, 223:23</p>	<p><b>pencilling</b> [1] - 72:13</p> <p><b>28</b></p> <p><b>people</b> [44] - 26:9, 27:22, 30:13, 38:14, 40:1, 54:8, 57:23, 58:2, 58:16, 59:2, 59:3, 59:19, 59:20, 66:5, 66:19, 83:5, 83:20, 83:23, 85:8, 88:3, 102:11, 114:8, 114:14, 114:16, 114:23, 123:22, 126:8, 128:10, 130:21, 134:2, 134:23, 134:24, 139:22, 141:19, 147:22, 172:7, 203:2, 206:2, 207:15, 242:19, 264:24, 269:16, 292:15</p> <p><b>per</b> [21] - 30:20, 52:18, 68:5, 68:6, 68:7, 68:12, 68:17, 75:11, 142:15, 175:8, 183:11, 198:20, 198:25, 209:17, 209:23, 229:25, 230:6, 253:10, 253:11, 270:17, 273:6</p> <p><b>percent</b> [56] - 17:6, 23:12, 24:2, 31:17, 36:14, 42:19, 43:2, 43:24, 48:14, 52:16, 57:17, 57:18, 58:5, 58:6, 58:8, 58:23, 59:10, 59:11, 68:16, 70:3, 78:22, 81:19, 86:5, 86:6, 86:13, 86:15, 114:15, 114:22, 115:3, 130:4, 134:5, 142:2, 142:16, 156:17, 173:7, 173:15, 180:20, 188:13, 188:16, 212:2, 213:3, 213:8, 214:15, 214:21, 214:22, 216:24, 216:25, 237:3, 267:11, 271:24, 286:12, 286:13, 286:15</p> <p><b>percentage</b> [3] - 18:14, 78:19, 272:19</p> <p><b>perception</b> [1] - 267:8</p> <p><b>perfectly</b> [1] - 258:10</p> <p><b>perform</b> [2] - 139:5, 139:6</p> <p><b>performed</b> [4] - 45:16,</p>
<b>P</b>				
<p><b>p.m</b> [1] - 294:22</p> <p><b>package</b> [2] - 67:24, 68:1</p> <p><b>page</b> [75] - 15:12, 18:2, 27:7, 35:2, 41:23, 42:11, 43:4, 43:5, 43:10, 43:17, 43:19, 43:25, 48:3, 53:18, 60:3, 60:4, 62:24, 63:4, 63:13, 64:10, 64:14, 72:20, 75:8, 75:16, 75:23, 76:4, 76:6, 80:12, 80:17, 80:18, 82:14, 82:22, 93:9, 93:11, 94:21, 115:25, 119:25, 120:3, 129:8, 132:3, 143:19, 144:12, 144:21, 144:22, 147:15, 150:18, 150:22, 150:23, 151:12, 153:1, 153:2, 153:7, 153:11, 154:3, 154:14, 155:2, 156:1, 156:22, 193:9, 194:7, 194:8, 194:10, 196:15, 199:19, 221:11, 227:7, 227:17, 232:16, 232:17, 246:1, 246:8, 258:21, 266:2, 266:23</p> <p><b>Pages</b> [1] - 1:9</p> <p><b>pages</b> [2] - 44:17, 259:6</p> <p><b>paginated</b> [1] - 44:17</p> <p><b>paid</b> [4] - 16:10, 129:23, 252:7,</p>				

<p>136:1, 138:22, 138:25</p> <p><b>perhaps</b> [9] - 22:25, 40:17, 55:5, 94:14, 115:24, 185:11, 251:3, 256:24, 269:17</p> <p><b>period</b> [23] - 28:8, 33:17, 34:11, 64:18, 64:20, 68:17, 115:9, 116:4, 118:13, 160:22, 178:19, 180:5, 180:9, 211:23, 229:25, 230:5, 230:19, 230:25, 231:5, 252:14, 274:25, 283:16, 284:14</p> <p><b>periods</b> [2] - 209:16, 209:22</p> <p><b>permission</b> [1] - 289:8</p> <p><b>person</b> [6] - 149:4, 163:9, 206:3, 206:16, 283:5, 283:8</p> <p><b>personal</b> [3] - 282:18, 282:21, 282:23</p> <p><b>personally</b> [9] - 46:16, 146:20, 147:6, 148:11, 148:17, 149:10, 166:1, 172:2, 255:12</p> <p><b>personnel</b> [1] - 148:25</p> <p><b>persons</b> [2] - 5:15, 203:20</p> <p><b>perspective</b> [9] - 12:14, 41:14, 67:17, 87:25, 88:11, 88:12, 109:1, 143:24, 238:12</p> <p><b>Perspective</b> [1] - 87:23</p> <p><b>pertains</b> [2] - 280:20, 286:5</p> <p><b>pertinent</b> [1] - 99:21</p> <p><b>PG&amp;E</b> [1] - 123:24</p> <p><b>PGM</b> [2] - 171:9, 172:3</p> <p><b>phase</b> [1] - 139:25</p> <p><b>phone</b> [6] - 66:17, 148:7, 148:8, 180:14, 283:4, 283:8</p> <p><b>phrase</b> [4] - 22:17, 99:20, 291:8, 291:13</p> <p><b>pick</b> [3] - 98:3, 103:23, 281:24</p> <p><b>picked</b> [2] - 98:4, 98:5</p> <p><b>picks</b> [1] - 43:7</p> <p><b>picture</b> [11] - 60:6, 60:7, 91:2, 168:14, 168:16, 169:3, 255:22, 257:12,</p>	<p>286:1, 286:2, 286:3</p> <p><b>piece</b> [2] - 77:23, 98:10</p> <p><b>pieces</b> [2] - 166:11, 221:8</p> <p><b>Pierre</b> [2] - 2:4, 4:7</p> <p><b>pipeline</b> [4] - 83:9, 83:18, 83:21, 84:23</p> <p><b>pipelines</b> [2] - 25:21, 83:19</p> <p><b>PJM</b> [2] - 125:10, 152:15</p> <p><b>place</b> [26] - 9:4, 12:12, 19:13, 59:4, 95:5, 95:6, 100:20, 100:23, 101:24, 108:16, 146:7, 146:9, 146:13, 146:22, 155:22, 160:25, 167:2, 168:2, 168:7, 168:25, 169:19, 172:5, 173:17, 180:13, 238:5, 269:11</p> <p><b>placed</b> [1] - 231:8</p> <p><b>places</b> [2] - 169:1, 184:16</p> <p><b>plan</b> [3] - 36:8, 103:25, 225:5</p> <p><b>planned</b> [1] - 44:25</p> <p><b>Planning</b> [3] - 85:6, 95:10, 97:1</p> <p><b>planning</b> [22] - 34:5, 36:5, 37:15, 57:14, 57:17, 58:5, 59:10, 84:15, 86:6, 86:13, 86:15, 86:17, 86:20, 133:4, 133:5, 193:16, 213:4, 213:9, 234:18, 264:14, 266:21</p> <p><b>Plant</b> [4] - 21:5, 42:24, 43:21, 117:9</p> <p><b>plant</b> [47] - 21:8, 25:22, 48:13, 54:23, 54:24, 56:5, 56:17, 57:25, 58:19, 58:20, 59:16, 75:1, 75:10, 75:13, 77:21, 77:25, 79:24, 90:19, 104:2, 104:3, 111:4, 113:15, 116:3, 116:12, 116:13, 116:17, 116:24, 117:4, 117:8, 122:19, 127:14, 127:15, 209:11, 211:18, 214:2, 214:5, 254:15,</p>	<p>273:17, 273:19, 273:21, 274:13, 274:16, 275:23, 290:3, 292:12</p> <p><b>plant's</b> [1] - 273:15</p> <p><b>plants</b> [22] - 20:23, 20:25, 25:25, 26:2, 30:12, 56:14, 56:21, 67:10, 70:7, 77:10, 77:12, 77:23, 83:15, 107:22, 118:14, 209:5, 211:11, 216:23, 256:4, 275:7, 292:13</p> <p><b>plate</b> [3] - 43:24, 115:1, 142:18</p> <p><b>plated</b> [1] - 25:1</p> <p><b>play</b> [2] - 20:14, 129:12</p> <p><b>player</b> [1] - 198:1</p> <p><b>plenty</b> [1] - 164:17</p> <p><b>plus</b> [5] - 156:17, 165:6, 173:6, 228:24, 229:8</p> <p><b>plunt</b> [65] - 7:3, 11:19, 12:19, 16:20, 17:9, 19:14, 23:18, 23:25, 26:6, 31:20, 32:19, 37:20, 39:3, 39:17, 40:11, 45:24, 50:5, 50:7, 50:13, 51:2, 53:23, 54:8, 55:2, 56:24, 57:11, 59:13, 61:4, 61:18, 63:3, 67:25, 104:8, 105:13, 105:15, 106:22, 113:12, 121:20, 123:1, 123:25, 124:12, 125:22, 137:13, 143:4, 157:9, 175:3, 175:19, 187:22, 190:22, 198:14, 209:8, 215:19, 225:10, 226:9, 226:21, 232:2, 236:22, 240:25, 246:3, 256:24, 261:21, 271:23, 284:1, 284:6, 284:23, 289:23</p> <p><b>pointed</b> [5] - 47:10, 54:19, 56:10, 103:22, 147:23</p> <p><b>pointing</b> [3] - 85:1, 226:3, 228:2</p> <p><b>points</b> [2] - 20:15, 184:11</p> <p><b>policy</b> [10] - 24:1, 24:4, 37:8, 169:23,</p>	<p>196:16, 201:6, 201:11</p> <p><b>political</b> [2] - 101:16</p> <p><b>politics</b> [2] - 100:19, 100:23</p> <p><b>pollution</b> [3] - 20:24, 254:10, 292:10</p> <p><b>popping</b> [1] - 168:8</p> <p><b>portfolio</b> [37] - 23:10, 34:24, 77:6, 78:9, 79:18, 81:10, 82:2, 121:22, 132:5, 155:12, 155:15, 158:5, 181:23, 183:1, 183:4, 217:1, 217:7, 233:16, 247:11, 247:23, 248:25, 253:22, 255:6, 255:15, 255:19, 257:9, 257:22, 258:1, 264:1, 264:4, 264:5, 264:9, 269:5, 269:12, 271:16, 272:18, 285:11</p> <p><b>portion</b> [6] - 11:8, 202:18, 207:20, 214:22, 215:8, 255:18</p> <p><b>Portland</b> [1] - 21:4</p> <p><b>posed</b> [2] - 134:15, 254:21</p> <p><b>poses</b> [1] - 134:19</p> <p><b>position</b> [15] - 5:9, 31:23, 141:11, 156:2, 156:3, 156:6, 156:7, 194:7, 216:14, 233:2, 233:5, 240:25, 241:1, 244:6, 248:4</p> <p><b>positions</b> [2] - 160:2, 161:22</p> <p><b>possibility</b> [2] - 287:12, 287:18</p> <p><b>possible</b> [18] - 5:9, 55:20, 56:1, 74:17, 140:20, 152:8, 180:23, 187:7, 197:1, 200:12, 213:11, 214:14, 228:15, 238:24, 248:5, 248:11, 255:3, 288:6</p> <p><b>possibly</b> [7] - 16:14, 16:15, 135:14, 189:3, 229:14, 288:11, 288:14</p> <p><b>posted</b> [1] - 250:17</p> <p><b>posture</b> [1] - 170:24</p> <p><b>potential</b> [8] - 19:12,</p>	<p>25:10, 122:5, 171:9, 29 257:9, 268:19, 278:19, 288:3</p> <p><b>potentially</b> [1] - 22:7</p> <p><b>Power</b> [6] - 57:7, 84:11, 85:5, 95:10, 97:1, 209:9</p> <p><b>power</b> [101] - 4:4, 5:5, 14:23, 16:1, 16:3, 16:10, 17:5, 19:9, 22:4, 22:5, 24:12, 25:5, 25:11, 30:14, 30:23, 41:15, 44:25, 54:13, 58:18, 58:21, 58:22, 63:1, 63:11, 63:14, 70:3, 70:10, 70:11, 70:25, 71:3, 71:8, 72:18, 72:22, 72:23, 73:24, 74:10, 74:15, 76:9, 76:10, 78:11, 79:13, 81:23, 83:15, 84:7, 84:15, 93:18, 93:21, 93:23, 95:20, 103:16, 119:8, 119:11, 121:9, 121:11, 122:15, 123:18, 130:10, 130:11, 133:23, 134:15, 139:11, 139:16, 139:18, 140:1, 140:12, 140:23, 141:5, 142:21, 142:23, 143:23, 145:6, 147:1, 148:14, 148:18, 149:2, 149:5, 150:20, 151:22, 152:17, 160:1, 163:9, 163:16, 166:9, 172:7, 172:10, 179:6, 179:8, 179:10, 179:13, 179:22, 185:12, 185:14, 185:19, 188:13, 188:18, 189:1, 189:10, 189:14, 189:15, 192:12, 230:21, 237:16</p> <p><b>POWER</b> [1] - 1:5</p> <p><b>PPA</b> [31] - 3:14, 140:17, 142:14, 147:16, 147:21, 150:6, 154:3, 154:6, 154:8, 154:10, 154:13, 154:19, 154:24, 155:1, 155:4, 157:18, 158:6, 159:22,</p>
---	---	--	--	---

<p>159:24, 160:16, 161:23, 171:9, 172:10, 173:10, 186:12, 187:10, 190:17, 253:23, 253:24, 265:17, 268:19</p> <p><b>PPAs</b> [3] - 141:10, 149:25, 150:3</p> <p><b>practical</b> [1] - 151:19</p> <p><b>practically</b> [1] - 274:7</p> <p><b>practice</b> [1] - 65:22</p> <p><b>Pratt</b> [1] - 210:18</p> <p><b>precedent</b> [1] - 12:21</p> <p><b>precedential</b> [1] - 13:4</p> <p><b>precisely</b> [1] - 21:5</p> <p><b>predict</b> [1] - 218:16</p> <p><b>predictive</b> [1] - 220:3</p> <p><b>prefer</b> [3] - 7:21, 200:13, 202:15</p> <p><b>preferable</b> [1] - 20:6</p> <p><b>preference</b> [1] - 50:6</p> <p><b>preferred</b> [2] - 103:14, 237:9</p> <p><b>prefiled</b> [24] - 39:5, 40:4, 50:19, 51:13, 52:5, 52:7, 62:3, 94:10, 143:12, 143:16, 181:2, 181:9, 182:10, 192:4, 193:22, 193:25, 194:16, 216:1, 224:1, 225:9, 241:6, 241:11, 251:15, 279:10</p> <p><b>Prehearing</b> [3] - 194:2, 195:16, 225:11</p> <p><b>preliminary</b> [3] - 5:25, 6:1, 7:5</p> <p><b>preparation</b> [1] - 45:19</p> <p><b>prepare</b> [16] - 50:18, 53:6, 54:1, 54:2, 54:9, 62:16, 82:8, 209:10, 219:17, 224:21, 228:21, 229:24, 230:10, 230:14, 236:9, 248:21</p> <p><b>prepared</b> [24] - 16:13, 19:23, 24:14, 25:12, 26:20, 26:21, 29:8, 33:3, 45:7, 46:7, 53:2, 53:16, 53:25, 86:23, 216:14, 216:16, 219:1, 219:3, 219:7, 219:8, 219:24, 221:1, 234:1, 234:16</p>	<p><b>preparing</b> [5] - 46:9, 62:13, 65:2, 67:17, 224:23</p> <p><b>present</b> [8] - 5:14, 10:16, 113:3, 139:21, 201:17, 208:23, 224:17, 292:1</p> <p><b>presentation</b> [5] - 208:3, 209:14, 209:25, 210:24, 245:3</p> <p><b>presentations</b> [1] - 269:18</p> <p><b>presented</b> [2] - 4:21, 212:1</p> <p><b>presently</b> [1] - 136:23</p> <p><b>president</b> [1] - 264:18</p> <p><b>presiding</b> [1] - 4:11</p> <p><b>press</b> [1] - 243:16</p> <p><b>presume</b> [1] - 218:7</p> <p><b>pretty</b> [8] - 10:18, 10:23, 27:14, 27:16, 112:16, 112:17, 121:9, 268:17</p> <p><b>prevent</b> [1] - 36:8</p> <p><b>previous</b> [1] - 263:2</p> <p><b>previously</b> [3] - 168:4, 245:22, 281:19</p> <p><b>price</b> [134] - 8:8, 18:9, 18:15, 20:2, 20:4, 22:1, 22:8, 22:9, 24:14, 25:11, 26:19, 28:10, 29:22, 30:7, 30:19, 30:23, 32:13, 35:11, 44:6, 52:15, 53:12, 57:10, 63:15, 66:12, 67:8, 69:23, 71:4, 71:21, 71:23, 72:18, 76:23, 82:19, 83:1, 83:4, 85:3, 85:20, 89:18, 91:20, 94:24, 95:10, 103:20, 104:17, 104:24, 105:6, 105:12, 106:2, 106:5, 106:22, 106:23, 107:1, 107:12, 107:14, 108:4, 108:17, 109:5, 112:4, 112:5, 113:2, 113:13, 113:14, 118:17, 119:9, 121:13, 121:14, 121:15, 121:16, 121:18, 122:12, 122:22, 125:16, 125:17, 125:19, 126:1, 131:24, 132:23,</p>	<p>132:24, 133:2, 141:25, 142:12, 142:15, 150:2, 151:5, 151:6, 151:8, 155:18, 155:20, 155:25, 156:13, 156:14, 168:17, 170:2, 173:2, 174:11, 174:19, 174:23, 183:12, 185:15, 217:20, 222:20, 222:24, 225:3, 225:4, 229:25, 234:23, 235:15, 236:16, 237:18, 240:5, 248:6, 248:10, 250:1, 250:5, 251:25, 254:6, 255:18, 256:13, 258:25, 263:22, 273:24, 279:7, 280:12, 280:15, 282:6, 285:11, 285:19, 292:15, 293:13, 294:2</p> <p><b>Price</b> [5] - 45:2, 218:14, 219:18, 232:22, 234:2</p> <p><b>priced</b> [2] - 155:12, 183:1</p> <p><b>prices</b> [62] - 9:20, 26:4, 26:11, 27:20, 28:7, 28:15, 28:16, 33:2, 33:3, 41:15, 41:19, 42:22, 44:5, 58:20, 64:17, 68:20, 83:23, 84:12, 85:24, 94:5, 94:7, 94:22, 95:22, 95:24, 96:4, 96:7, 96:9, 96:15, 97:17, 108:11, 108:18, 109:10, 109:25, 110:7, 111:4, 119:4, 119:14, 119:15, 130:14, 130:17, 130:18, 130:20, 130:25, 131:6, 131:17, 131:19, 135:24, 135:25, 136:1, 157:15, 174:13, 219:21, 221:9, 235:23, 236:1, 236:5, 236:9, 237:11, 268:22, 293:25</p> <p><b>pricing</b> [1] - 109:9</p> <p><b>primarily</b> [9] - 37:25, 96:12, 106:2,</p>	<p>111:22, 130:12, 175:7, 235:3, 268:9, 272:3</p> <p><b>primary</b> [4] - 41:12, 207:9, 207:10, 281:17</p> <p><b>principle</b> [1] - 249:23</p> <p><b>principles</b> [1] - 252:3</p> <p><b>print</b> [1] - 42:12</p> <p><b>printed</b> [2] - 43:4, 143:20</p> <p><b>printout</b> [1] - 42:5</p> <p><b>pro</b> [3] - 6:12, 6:20, 16:13</p> <p><b>probability</b> [1] - 102:10</p> <p><b>probed</b> [1] - 141:16</p> <p><b>problem</b> [4] - 27:17, 27:18, 57:25, 58:12</p> <p><b>problems</b> [1] - 57:24</p> <p><b>procedural</b> [1] - 5:23</p> <p><b>procedure</b> [2] - 7:20, 265:13</p> <p><b>procedures</b> [1] - 39:24</p> <p><b>proceed</b> [17] - 10:10, 38:3, 38:13, 40:18, 47:20, 61:20, 87:13, 129:2, 138:1, 176:24, 178:4, 187:21, 187:25, 197:16, 207:17, 226:13, 227:1</p> <p><b>proceeding</b> [38] - 6:12, 6:20, 8:8, 19:10, 19:22, 24:16, 26:23, 27:2, 32:20, 36:1, 39:5, 45:7, 48:6, 50:19, 56:19, 75:10, 81:14, 136:25, 162:9, 199:4, 200:11, 219:19, 222:13, 223:20, 224:14, 225:2, 225:8, 225:15, 232:23, 233:2, 233:12, 234:16, 248:17, 248:22, 250:14, 251:5, 294:22</p> <p><b>proceeding's</b> [1] - 251:14</p> <p><b>Proceedings</b> [1] - 1:8</p> <p><b>PROCEEDINGS</b> [1] - 2:1</p> <p><b>proceedings</b> [9] - 6:3, 10:19, 10:21, 30:24, 48:22, 48:24, 62:7, 295:9, 295:12</p> <p><b>process</b> [26] - 24:21, 36:4, 36:5, 88:19,</p>	<p>125:8, 140:7, 140:9, 30 141:18, 141:20, 147:3, 148:7, 148:10, 148:13, 149:1, 163:5, 166:11, 171:11, 174:2, 179:4, 185:23, 204:24, 238:5, 269:8, 272:15, 276:3, 293:4</p> <p><b>processes</b> [2] - 82:6, 235:9</p> <p><b>procurement</b> [2] - 149:3, 225:5</p> <p><b>produce</b> [11] - 157:2, 232:23, 246:5, 246:15, 246:20, 246:22, 258:2, 259:7, 259:10, 259:13, 262:11</p> <p><b>produced</b> [11] - 5:6, 27:1, 132:1, 205:13, 222:4, 222:22, 224:4, 225:15, 261:20, 261:23, 262:2</p> <p><b>producer</b> [1] - 174:8</p> <p><b>producing</b> [3] - 74:10, 274:11, 274:17</p> <p><b>product</b> [11] - 24:20, 29:16, 29:24, 30:2, 65:16, 65:20, 67:18, 82:6, 93:1, 109:9, 139:19</p> <p><b>production</b> [15] - 8:7, 16:22, 16:25, 19:9, 23:15, 37:22, 42:23, 45:25, 56:22, 69:25, 111:21, 173:17, 257:14, 257:22, 258:11</p> <p><b>professional</b> [3] - 134:18, 206:20, 269:18</p> <p><b>Professional</b> [2] - 295:6, 295:19</p> <p><b>profile</b> [1] - 216:23</p> <p><b>profiles</b> [1] - 275:1</p> <p><b>program</b> [1] - 21:14</p> <p><b>programs</b> [1] - 21:19</p> <p><b>prohibit</b> [1] - 18:21</p> <p><b>prohibit</b> [103] - 4:18, 4:19, 5:6, 11:1, 11:6, 16:15, 17:1, 19:25, 20:1, 24:18, 25:6, 31:3, 31:4, 32:8, 32:10, 33:23, 35:22, 36:1, 36:10, 36:14, 36:22, 37:8, 37:10, 47:10, 60:12, 63:15,</p>
---	---	--	--	--

<p>63:23, 64:16, 66:4, 71:20, 72:15, 72:17, 79:8, 90:15, 91:21, 92:10, 107:5, 110:22, 116:4, 118:22, 131:22, 134:11, 134:13, 138:24, 139:14, 139:15, 139:17, 139:25, 140:20, 141:25, 142:4, 142:17, 142:23, 150:20, 150:21, 151:1, 151:4, 151:7, 152:22, 153:24, 157:21, 158:10, 159:12, 160:18, 160:23, 161:2, 161:24, 167:13, 167:15, 167:19, 171:14, 172:9, 173:6, 174:25, 175:17, 180:19, 184:20, 186:9, 186:11, 186:13, 187:3, 189:16, 193:10, 204:12, 210:20, 210:22, 227:21, 231:11, 233:20, 239:20, 250:2, 250:8, 263:19, 268:21, 282:7, 282:22, 282:24, 284:1, 284:22, 284:24, 292:3</p> <p><b>Project</b> [3] - 3:7, 69:3, 88:13</p> <p><b>project's</b> [2] - 161:20, 175:2</p> <p><b>projected</b> [3] - 69:2, 69:23</p> <p><b>projection</b> [1] - 88:24</p> <p><b>projections</b> [2] - 165:11, 218:9</p> <p><b>projects</b> [15] - 19:3, 24:24, 54:13, 123:22, 164:18, 211:10, 211:12, 214:16, 214:21, 237:16, 239:6, 239:9, 269:11, 281:16, 281:17</p> <p><b>promise</b> [2] - 37:14, 258:17</p> <p><b>promulgated</b> [1] - 106:3</p> <p><b>pronounced</b> [1] - 198:2</p> <p><b>pronouncing</b> [1] -</p>	<p>197:23</p> <p><b>proof</b> [1] - 5:12</p> <p><b>proper</b> [8] - 9:8, 9:16, 10:7, 100:2, 141:20, 151:3, 187:10, 234:8</p> <p><b>properly</b> [3] - 8:10, 9:20, 129:13</p> <p><b>property</b> [2] - 139:14, 169:15</p> <p><b>proportional</b> [1] - 277:15</p> <p><b>proposal</b> [1] - 29:5</p> <p><b>proposed</b> [8] - 11:6, 127:12, 139:12, 155:3, 158:20, 189:12, 189:16, 197:3</p> <p><b>proposition</b> [1] - 251:23</p> <p><b>prospective</b> [3] - 127:12, 217:16, 217:19</p> <p><b>protect</b> [2] - 17:17, 177:24</p> <p><b>Protection</b> [1] - 257:4</p> <p><b>protective</b> [5] - 203:24, 205:12, 206:14, 206:19, 207:13</p> <p><b>proven</b> [1] - 253:21</p> <p><b>provide</b> [28] - 5:22, 7:18, 10:5, 13:18, 13:23, 18:13, 31:25, 36:10, 42:18, 58:10, 62:10, 97:4, 111:14, 126:10, 129:18, 139:10, 145:14, 191:2, 191:7, 204:23, 204:24, 215:2, 234:9, 234:19, 255:14, 255:17, 279:11, 279:14</p> <p><b>provided</b> [14] - 21:11, 46:19, 47:6, 48:5, 88:23, 105:6, 204:5, 205:1, 216:11, 225:1, 230:19, 240:20, 260:3, 260:10</p> <p><b>provides</b> [1] - 126:8</p> <p><b>providing</b> [3] - 234:22, 235:12, 274:14</p> <p><b>provisions</b> [3] - 81:25, 105:8, 154:18</p> <p><b>proxy</b> [3] - 76:24, 77:1, 221:18</p> <p><b>prudence</b> [1] - 266:17</p> <p><b>prudent</b> [5] - 21:12, 99:10, 220:8,</p>	<p>279:24, 281:1</p> <p><b>prudently</b> [3] - 238:13, 239:2, 248:2</p> <p><b>PSC</b> [3] - 75:12, 81:17, 81:21</p> <p><b>PTC</b> [6] - 111:22, 111:24, 112:22, 135:2, 142:3, 266:14</p> <p><b>PTC's</b> [1] - 113:4</p> <p><b>Public</b> [14] - 12:10, 19:23, 21:11, 49:6, 81:8, 84:8, 85:2, 141:15, 221:22, 249:10, 249:16, 249:20, 295:7, 295:18</p> <p><b>PUBLIC</b> [2] - 1:1, 1:11</p> <p><b>public</b> [13] - 5:11, 19:7, 24:1, 24:4, 37:8, 38:15, 55:20, 56:1, 167:16, 200:12, 243:7, 243:22, 244:7</p> <p><b>publicly</b> [1] - 165:1</p> <p><b>publish</b> [1] - 84:25</p> <p><b>published</b> [3] - 85:2, 97:2, 97:3</p> <p><b>PUC</b> [18] - 5:8, 21:3, 145:5, 145:7, 145:15, 152:7, 160:21, 161:19, 171:19, 179:19, 179:20, 179:23, 186:9, 187:8, 204:5, 205:1, 250:8, 250:18</p> <p><b>Puget</b> [2] - 57:7, 79:2</p> <p><b>pull</b> [1] - 207:3</p> <p><b>pulled</b> [1] - 231:2</p> <p><b>punching</b> [1] - 219:14</p> <p><b>purchase</b> [39] - 4:4, 5:5, 8:24, 15:19, 16:3, 18:15, 19:25, 70:2, 71:8, 73:24, 74:10, 76:10, 77:24, 78:11, 103:16, 118:8, 122:15, 134:15, 140:12, 141:4, 145:6, 147:1, 148:15, 148:18, 149:5, 163:16, 185:12, 185:14, 185:19, 189:15, 192:12, 196:17, 209:18, 209:24, 230:21, 260:25, 261:1, 286:8, 286:13</p> <p><b>PURCHASE</b> [1] - 1:5</p> <p><b>purchased</b> [7] - 70:10, 74:15, 214:13, 214:23, 253:18,</p>	<p>266:7, 278:4</p> <p><b>purchasers</b> [1] - 152:8</p> <p><b>purchases</b> [18] - 13:15, 13:19, 14:1, 18:5, 19:5, 116:3, 117:11, 117:21, 189:10, 190:25, 191:4, 191:5, 191:10, 217:4, 251:10, 251:24, 256:8</p> <p><b>purchasing</b> [17] - 13:21, 70:25, 71:6, 79:12, 140:23, 188:18, 189:15, 191:5, 214:13, 214:24, 251:9, 251:23, 253:5, 254:5, 255:1, 255:4, 256:8</p> <p><b>PURPA</b> [30] - 5:7, 5:8, 11:25, 12:1, 12:7, 12:12, 13:10, 13:13, 15:18, 15:22, 18:25, 105:21, 123:24, 129:13, 141:5, 142:9, 174:4, 228:25, 229:3, 230:13, 248:13, 249:11, 249:21, 249:22, 250:6, 250:10, 266:17, 268:11, 281:12, 286:7</p> <p><b>PURPA-imposed</b> [1] - 15:18</p> <p><b>purpose</b> [5] - 110:8, 118:9, 118:25, 275:23, 276:9</p> <p><b>purposes</b> [3] - 6:11, 13:20, 115:2</p> <p><b>pursuant</b> [12] - 4:12, 4:16, 13:16, 13:23, 14:18, 15:21, 63:7, 146:10, 146:11, 190:25, 191:7, 260:1</p> <p><b>pursue</b> [4] - 70:20, 202:10, 267:4, 268:4</p> <p><b>pursuing</b> [2] - 63:23, 263:1</p> <p><b>pursuit</b> [1] - 267:6</p> <p><b>purview</b> [2] - 100:4, 263:5</p> <p><b>put</b> [43] - 29:10, 29:12, 29:15, 37:2, 53:18, 57:9, 59:5, 64:4, 66:7, 67:11, 69:8, 73:18, 83:6, 83:12, 83:14, 85:19, 88:14, 93:16, 93:20, 93:22,</p>	<p>95:11, 97:4, 99:1, 31 109:24, 110:2, 112:11, 126:15, 127:23, 138:25, 146:13, 155:21, 160:25, 165:13, 168:23, 229:16, 233:21, 237:4, 242:18, 258:3, 269:11, 272:11, 272:12, 279:25</p> <p><b>puts</b> [2] - 102:6, 267:2</p> <p><b>putting</b> [2] - 107:18, 256:3</p> <p><b>puzzle</b> [1] - 166:12</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>QF</b> [23] - 14:17, 15:13, 15:17, 15:19, 17:22, 62:25, 63:11, 105:6, 105:13, 106:7, 184:6, 189:2, 191:16, 191:19, 192:12, 196:17, 221:24, 222:18, 238:15, 239:1, 248:3, 248:7</p> <p><b>QF's</b> [6] - 12:6, 13:10, 14:13, 14:19, 142:10, 247:17</p> <p><b>QFs</b> [5] - 19:2, 103:7, 249:11, 269:22, 270:8</p> <p><b>qualified</b> [1] - 285:8</p> <p><b>qualify</b> [1] - 291:24</p> <p><b>qualifying</b> [21] - 12:5, 13:17, 13:18, 14:2, 18:5, 18:8, 18:17, 19:8, 36:22, 36:24, 103:15, 103:21, 103:23, 131:12, 181:19, 182:24, 191:1, 191:3, 191:11, 247:9, 263:18</p> <p><b>quality</b> [5] - 23:1, 66:16, 123:6, 273:18, 275:20</p> <p><b>quantifiable</b> [2] - 251:4, 277:12</p> <p><b>quantified</b> [1] - 101:8</p> <p><b>quantify</b> [5] - 35:4, 56:15, 90:22, 101:9, 281:13</p> <p><b>quarter</b> [7] - 61:14, 128:15, 128:19, 245:10, 245:11, 245:13, 275:2</p> <p><b>quarterly</b> [3] - 145:5,</p>
---	---	--	--	---

<p>145:15, 146:25  <b>questioned</b> [1] - 47:9  <b>questioning</b> [6] -  185:10, 215:24,  225:7, 227:25,  262:5, 263:24  <b>questions</b> [115] - 8:17,  8:20, 39:7, 39:8,  46:3, 50:21, 87:7,  89:23, 89:25, 90:2,  94:19, 97:12, 97:13,  99:14, 99:21, 100:1,  119:21, 119:24,  120:2, 127:5, 128:5,  128:25, 129:6,  131:9, 132:25,  135:4, 135:9,  135:19, 136:4,  137:6, 143:12,  154:19, 161:9,  162:13, 162:22,  162:24, 163:14,  165:16, 165:17,  166:18, 167:21,  168:1, 168:3,  172:24, 175:21,  177:9, 177:10,  178:3, 181:5,  187:11, 187:17,  194:15, 195:21,  200:2, 200:10,  200:17, 200:24,  201:9, 201:15,  201:21, 215:14,  215:15, 216:11,  220:23, 222:8,  223:10, 223:13,  226:2, 226:19,  228:8, 230:22,  238:7, 240:19,  240:20, 240:21,  240:23, 240:24,  242:7, 242:10,  242:16, 243:21,  248:14, 249:8,  259:19, 260:13,  260:14, 260:15,  261:12, 262:9,  262:14, 262:16,  262:24, 263:2,  268:1, 276:18,  276:22, 276:23,  278:17, 278:18,  279:4, 279:9,  283:11, 283:16,  284:10, 284:17,  284:25, 287:7,  287:8, 289:10,  289:13, 290:19,  291:7, 292:18, 294:9  <b>quibbling</b> [2] - 45:15,</p>	<p>45:17  <b>quick</b> [2] - 175:22,  217:8  <b>quickly</b> [1] - 52:10  <b>quite</b> [9] - 69:19,  80:10, 91:22, 96:7,  110:1, 112:18,  197:15, 204:25,  241:25  <b>quotation</b> [1] - 15:11  <b>quote</b> [5] - 13:10,  18:3, 95:12, 155:9,  190:21  <b>quoted</b> [2] - 155:5,  190:20</p>	<p>197:2, 197:9, 211:3,  221:24, 222:3,  231:8, 231:18,  231:21, 233:21,  238:19, 239:5,  239:7, 247:9, 248:1,  248:12, 249:2,  250:17, 257:15,  263:10, 268:10,  271:25, 272:2,  277:13, 280:21,  280:24, 281:2,  285:7, 285:8, 287:9,  287:12, 287:19,  287:23, 288:17,  288:18, 288:22  <b>rates</b> [19] - 13:20,  14:1, 18:4, 19:4,  19:5, 30:6, 111:7,  129:23, 130:10,  130:11, 145:6,  146:25, 168:23,  173:11, 191:5,  191:10, 196:18,  281:18  <b>rather</b> [10] - 8:12,  29:19, 90:11, 98:13,  125:2, 168:2,  174:12, 176:25,  282:5, 292:13  <b>raw</b> [2] - 164:19,  164:24  <b>RC</b> [4] - 2:8, 2:10,  2:14, 2:16  <b>RD</b> [4] - 2:8, 2:10,  2:14, 2:16  <b>REA</b> [1] - 173:25  <b>reach</b> [5] - 59:21,  59:23, 61:3, 67:8,  140:17  <b>reached</b> [2] - 67:7,  238:24  <b>reaches</b> [1] - 249:20  <b>react</b> [1] - 275:11  <b>read</b> [19] - 12:8, 66:1,  86:22, 93:10, 97:6,  129:22, 144:25,  159:3, 181:14,  181:20, 182:18,  185:6, 192:4,  209:19, 218:13,  218:18, 224:6,  246:9, 285:13  <b>readily</b> [1] - 235:15  <b>reading</b> [5] - 15:1,  95:17, 96:22,  143:18, 156:4  <b>reads</b> [3] - 159:2,  224:7, 283:20  <b>ready</b> [8] - 14:15,</p>	<p>16:19, 87:11, 104:4,  141:25, 157:25,  159:17, 176:24  <b>real</b> [13] - 27:15,  27:19, 28:7, 37:11,  43:16, 68:16, 68:20,  68:22, 84:11, 85:3,  85:20, 85:23, 225:2  <b>reality</b> [6] - 101:20,  121:8, 122:14,  157:14, 218:3, 218:6  <b>realize</b> [1] - 157:6  <b>realized</b> [4] - 140:20,  141:25, 167:6,  272:19  <b>really</b> [73] - 10:4,  11:18, 12:17, 13:12,  14:14, 15:1, 21:18,  22:4, 27:5, 27:13,  27:17, 30:25, 31:22,  33:17, 35:7, 35:8,  36:10, 37:17, 54:6,  56:21, 66:9, 71:16,  73:5, 76:14, 78:1,  85:6, 85:12, 86:19,  88:17, 89:5, 90:22,  91:23, 97:5, 105:9,  106:2, 107:3,  109:17, 110:3,  114:16, 115:17,  118:23, 120:7,  124:6, 126:7,  126:14, 126:20,  129:22, 134:12,  134:21, 166:16,  170:15, 170:22,  170:23, 178:16,  179:7, 181:6,  220:20, 222:7,  225:20, 226:18,  228:7, 241:15,  241:20, 242:12,  248:5, 248:10,  251:7, 274:6,  276:24, 289:12  <b>realm</b> [1] - 274:25  <b>Realtime</b> [2] - 295:6,  295:19  <b>reason</b> [17] - 15:3,  32:18, 37:6, 47:5,  58:13, 75:14, 81:3,  107:15, 116:11,  116:23, 120:20,  130:15, 186:3,  199:11, 238:9,  274:5, 291:4  <b>reasonable</b> [16] - 19:6,  33:14, 35:15, 36:15,  60:21, 67:2, 90:14,  90:15, 90:16, 91:16,</p>	<p>105:8, 105:23, 32  106:5, 134:2,  196:19, 263:10  <b>reasonably</b> [1] - 107:1  <b>reasons</b> [9] - 12:12,  22:10, 22:11, 35:25,  60:23, 122:8,  125:21, 134:22,  225:13  <b>rebate</b> [1] - 142:2  <b>rebating</b> [1] - 232:3  <b>rebuttal</b> [23] - 50:7,  50:13, 50:19, 51:4,  52:9, 54:18, 56:10,  70:4, 75:4, 75:8,  80:12, 132:3, 137:1,  137:7, 176:9, 181:2,  181:9, 182:11,  221:12, 227:3,  241:7, 241:12,  251:15  <b>REBUTTAL</b> [1] - 2:16  <b>Rebuttal</b> [8] - 3:4, 3:4,  3:10, 3:11, 3:12,  3:13, 3:14, 3:16  <b>REC's</b> [1] - 225:4  <b>receipt</b> [1] - 104:21  <b>receive</b> [8] - 18:11,  18:14, 113:1,  145:13, 161:16,  265:15, 285:1, 289:4  <b>received</b> [11] - 161:12,  161:23, 162:2,  173:6, 178:24,  205:11, 267:14,  269:8, 269:10,  283:11, 285:1  <b>receiving</b> [1] - 54:17  <b>recent</b> [2] - 221:23,  260:11  <b>recently</b> [9] - 15:9,  19:21, 42:19, 88:15,  114:20, 143:14,  157:19, 222:2, 260:6  <b>recess</b> [12] - 61:11,  61:13, 61:15, 61:17,  128:19, 128:21,  177:5, 244:9, 245:8,  245:12, 294:18,  294:22  <b>recessing</b> [1] - 243:20  <b>recognizing</b> [2] -  155:13, 183:3  <b>recollection</b> [10] -  79:6, 145:20,  149:14, 206:2,  208:15, 222:17,  227:7, 227:17,  247:1, 261:24  <b>recommendation</b> [2] -</p>
<b>R</b>		<p><b>rainbow</b> [1] - 172:6  <b>raise</b> [2] - 112:11,  168:23  <b>raises</b> [1] - 113:5  <b>ran</b> [5] - 66:19, 69:7,  223:2, 253:8, 269:2  <b>range</b> [28] - 82:25,  83:3, 83:25, 84:4,  84:5, 84:9, 90:14,  90:15, 90:16, 91:1,  91:16, 91:19, 91:21,  91:22, 91:23, 96:1,  107:2, 107:3,  107:19, 110:7,  150:6, 150:7,  156:21, 167:8,  183:11, 238:20,  270:5  <b>ranged</b> [1] - 227:21  <b>ranges</b> [1] - 114:15  <b>rate</b> [86] - 5:10, 14:24,  16:4, 17:2, 17:6,  17:17, 28:4, 28:11,  28:14, 35:23, 36:2,  36:15, 37:25, 43:2,  56:23, 63:1, 68:24,  103:9, 103:11,  103:17, 105:23,  106:5, 106:7,  111:23, 112:7,  112:11, 112:24,  140:24, 140:25,  142:11, 150:6,  150:8, 150:9,  150:21, 151:1,  151:2, 156:16,  167:8, 168:18,  173:5, 181:18,  181:19, 182:1,  182:23, 182:24,  184:6, 185:15,  187:10, 197:1,</p>	<p><b>rates</b> [19] - 13:20,  14:1, 18:4, 19:4,  19:5, 30:6, 111:7,  129:23, 130:10,  130:11, 145:6,  146:25, 168:23,  173:11, 191:5,  191:10, 196:18,  281:18  <b>rather</b> [10] - 8:12,  29:19, 90:11, 98:13,  125:2, 168:2,  174:12, 176:25,  282:5, 292:13  <b>raw</b> [2] - 164:19,  164:24  <b>RC</b> [4] - 2:8, 2:10,  2:14, 2:16  <b>RD</b> [4] - 2:8, 2:10,  2:14, 2:16  <b>REA</b> [1] - 173:25  <b>reach</b> [5] - 59:21,  59:23, 61:3, 67:8,  140:17  <b>reached</b> [2] - 67:7,  238:24  <b>reaches</b> [1] - 249:20  <b>react</b> [1] - 275:11  <b>read</b> [19] - 12:8, 66:1,  86:22, 93:10, 97:6,  129:22, 144:25,  159:3, 181:14,  181:20, 182:18,  185:6, 192:4,  209:19, 218:13,  218:18, 224:6,  246:9, 285:13  <b>readily</b> [1] - 235:15  <b>reading</b> [5] - 15:1,  95:17, 96:22,  143:18, 156:4  <b>reads</b> [3] - 159:2,  224:7, 283:20  <b>ready</b> [8] - 14:15,</p>	<p><b>real</b> [13] - 27:15,  27:19, 28:7, 37:11,  43:16, 68:16, 68:20,  68:22, 84:11, 85:3,  85:20, 85:23, 225:2  <b>reality</b> [6] - 101:20,  121:8, 122:14,  157:14, 218:3, 218:6  <b>realize</b> [1] - 157:6  <b>realized</b> [4] - 140:20,  141:25, 167:6,  272:19  <b>really</b> [73] - 10:4,  11:18, 12:17, 13:12,  14:14, 15:1, 21:18,  22:4, 27:5, 27:13,  27:17, 30:25, 31:22,  33:17, 35:7, 35:8,  36:10, 37:17, 54:6,  56:21, 66:9, 71:16,  73:5, 76:14, 78:1,  85:6, 85:12, 86:19,  88:17, 89:5, 90:22,  91:23, 97:5, 105:9,  106:2, 107:3,  109:17, 110:3,  114:16, 115:17,  118:23, 120:7,  124:6, 126:7,  126:14, 126:20,  129:22, 134:12,  134:21, 166:16,  170:15, 170:22,  170:23, 178:16,  179:7, 181:6,  220:20, 222:7,  225:20, 226:18,  228:7, 241:15,  241:20, 242:12,  248:5, 248:10,  251:7, 274:6,  276:24, 289:12  <b>realm</b> [1] - 274:25  <b>Realtime</b> [2] - 295:6,  295:19  <b>reason</b> [17] - 15:3,  32:18, 37:6, 47:5,  58:13, 75:14, 81:3,  107:15, 116:11,  116:23, 120:20,  130:15, 186:3,  199:11, 238:9,  274:5, 291:4  <b>reasonable</b> [16] - 19:6,  33:14, 35:15, 36:15,  60:21, 67:2, 90:14,  90:15, 90:16, 91:16,</p>

<p>8:12, 8:14  <b>recommended</b> [3] - 5:23, 102:12, 163:2  <b>reconvene</b> [1] - 245:14  <b>recovered</b> [1] - 177:6  <b>record</b> [24] - 10:18, 10:24, 12:16, 38:11, 38:22, 51:17, 96:23, 136:19, 139:2, 148:1, 149:23, 158:25, 180:6, 192:22, 194:17, 194:21, 195:23, 243:7, 243:13, 259:18, 261:13, 261:21  <b>recording</b> [1] - 165:3  <b>recover</b> [2] - 108:16, 108:18  <b>recoverable</b> [1] - 108:14  <b>recovery</b> [1] - 231:5  <b>recross</b> [4] - 135:13, 135:16, 187:12, 287:1  <b>RECROSS</b> [2] - 135:21, 289:18  <b>RECROSS-EXAMINATION</b> [2] - 135:21, 289:18  <b>recs</b> [2] - 52:23, 52:25  <b>redacted</b> [1] - 137:23  <b>redaction</b> [1] - 75:20  <b>redid</b> [1] - 48:10  <b>REDIRECT</b> [3] - 129:4, 178:6, 278:15  <b>redirect</b> [15] - 70:21, 128:6, 129:2, 135:13, 135:18, 136:7, 176:24, 178:5, 242:16, 278:10, 284:7, 286:22, 289:11, 292:19, 294:10  <b>redo</b> [3] - 33:8, 107:7, 107:9  <b>redoing</b> [1] - 88:10  <b>reduce</b> [14] - 16:25, 17:1, 58:5, 59:9, 181:23, 247:12, 247:23, 251:10, 251:11, 251:24, 251:25, 254:6, 255:1, 257:15  <b>reduced</b> [2] - 211:17, 283:3  <b>reduction</b> [1] - 56:23  <b>Ree</b> [1] - 184:21</p>	<p><b>reemphasize</b> [1] - 29:6  <b>refer</b> [13] - 144:13, 144:19, 154:3, 179:24, 181:5, 181:7, 181:9, 184:23, 201:14, 201:22, 208:20, 217:20, 245:25  <b>reference</b> [9] - 93:2, 153:1, 153:2, 164:22, 164:25, 184:17, 185:12, 201:24, 222:1  <b>referenced</b> [4] - 87:2, 176:11, 188:19, 266:1  <b>referred</b> [6] - 111:21, 163:15, 163:16, 163:18, 189:18, 245:22  <b>referring</b> [24] - 80:22, 94:8, 95:17, 98:11, 105:20, 111:21, 146:9, 154:2, 154:10, 169:16, 176:4, 184:20, 185:17, 200:4, 202:13, 203:14, 211:1, 211:13, 229:12, 253:24, 259:8, 259:9, 259:10, 265:21  <b>refers</b> [1] - 155:7  <b>reflect</b> [3] - 180:7, 197:4, 218:8  <b>reflected</b> [1] - 97:9  <b>reflecting</b> [1] - 238:25  <b>reflects</b> [3] - 9:12, 68:15, 189:13  <b>refrain</b> [1] - 33:18  <b>refresh</b> [2] - 208:15, 227:6  <b>refreshed</b> [2] - 88:3, 247:1  <b>refreshes</b> [1] - 227:17  <b>refusal</b> [1] - 12:14  <b>refuses</b> [1] - 15:16  <b>refusing</b> [1] - 4:4  <b>REFUSING</b> [1] - 1:5  <b>regard</b> [3] - 120:14, 265:12, 268:18  <b>regarding</b> [18] - 8:13, 8:14, 8:22, 12:10, 97:10, 147:1, 261:12, 269:19, 278:18, 279:9, 282:17, 282:22, 282:24, 283:12, 283:21, 284:21,</p>	<p>288:2, 290:20  <b>region</b> [9] - 25:13, 66:11, 126:3, 126:4, 169:22, 235:21, 236:1, 292:16  <b>regional</b> [3] - 13:1, 116:10, 278:2  <b>regionally</b> [1] - 12:24  <b>regions</b> [3] - 65:23, 65:25, 66:2  <b>Register</b> [1] - 18:2  <b>registered</b> [1] - 144:2  <b>Registered</b> [2] - 295:5, 295:19  <b>regular</b> [2] - 65:20, 66:17  <b>regularly</b> [1] - 67:13  <b>regulate</b> [1] - 275:3  <b>regulated</b> [2] - 18:21, 280:19  <b>regulating</b> [2] - 126:8, 126:10  <b>regulation</b> [8] - 14:8, 15:13, 20:22, 34:16, 190:20, 230:3, 254:25, 280:18  <b>Regulations</b> [1] - 13:11  <b>regulations</b> [16] - 14:22, 18:25, 20:20, 20:21, 36:20, 127:9, 129:13, 211:13, 217:20, 249:22, 254:14, 256:12, 256:21, 256:22, 259:1  <b>regulator</b> [1] - 21:12  <b>regulators</b> [4] - 86:3, 104:9, 232:7, 280:20  <b>regulatory</b> [1] - 15:17  <b>Regulatory</b> [1] - 12:2  <b>reinvent</b> [1] - 29:19  <b>reject</b> [1] - 183:13  <b>rejects</b> [1] - 183:6  <b>relate</b> [1] - 250:25  <b>related</b> [3] - 96:16, 190:18, 277:25  <b>relates</b> [1] - 260:16  <b>relationship</b> [4] - 28:15, 109:10, 115:11, 159:4  <b>relative</b> [3] - 78:19, 255:17, 262:24  <b>relatively</b> [3] - 22:9, 26:11, 135:15  <b>relatives</b> [1] - 11:10  <b>released</b> [4] - 87:25, 88:4, 88:15  <b>reliability</b> [6] - 113:18, 113:22, 114:1,</p>	<p>115:1, 115:2, 115:14  <b>reliance</b> [2] - 251:10, 251:24  <b>relief</b> [2] - 5:3, 5:13  <b>reluctantly</b> [1] - 11:16  <b>rely</b> [2] - 47:13, 87:2  <b>relying</b> [2] - 23:6, 33:4  <b>remain</b> [1] - 200:14  <b>remainder</b> [1] - 242:21  <b>remains</b> [1] - 34:20  <b>remark</b> [1] - 36:17  <b>remarks</b> [5] - 10:3, 38:1, 105:17, 108:20, 111:18  <b>remember</b> [12] - 79:25, 80:11, 137:22, 170:5, 184:6, 199:9, 205:7, 222:25, 224:25, 238:19, 279:20, 291:11  <b>remind</b> [1] - 38:14  <b>reminder</b> [1] - 162:1  <b>remote</b> [1] - 179:13  <b>renew</b> [4] - 45:13, 226:11, 227:24, 251:12  <b>renewable</b> [36] - 23:11, 24:24, 30:21, 31:3, 31:9, 31:11, 34:23, 60:8, 81:10, 82:2, 111:5, 116:24, 117:22, 118:3, 125:1, 125:2, 132:4, 132:5, 139:10, 141:6, 142:22, 155:11, 158:5, 181:22, 183:1, 247:7, 247:11, 247:22, 255:6, 255:23, 257:8, 269:4, 269:7, 269:22, 285:10, 285:22  <b>renewables</b> [11] - 60:24, 127:23, 134:24, 235:11, 251:9, 251:24, 254:5, 255:1, 255:5, 255:9, 255:14  <b>renewal</b> [1] - 235:7  <b>renewed</b> [3] - 208:16, 210:6, 210:9  <b>repeat</b> [4] - 150:22, 241:3, 283:18, 291:12  <b>repeated</b> [2] - 141:7, 155:23  <b>repeatedly</b> [2] - 140:24, 259:6</p>	<p><b>repetition</b> [1] - 170:10 3 3  <b>rephrase</b> [1] - 153:6  <b>replace</b> [2] - 30:12, 127:21  <b>replacing</b> [2] - 30:3, 107:23  <b>replicate</b> [1] - 294:4  <b>replicates</b> [1] - 294:3  <b>replied</b> [1] - 265:18  <b>report</b> [14] - 27:8, 35:2, 35:3, 45:18, 45:20, 46:11, 87:5, 93:1, 145:5, 146:25, 149:23, 153:17, 228:13, 264:17  <b>Reported</b> [1] - 1:24  <b>reporter</b> [4] - 38:6, 136:13, 192:18, 295:9  <b>Reporter</b> [6] - 224:7, 283:20, 295:6, 295:19, 295:19  <b>REPORTER</b> [1] - 87:10  <b>reports</b> [2] - 139:5, 165:4  <b>representative</b> [2] - 73:14, 286:4  <b>representatives</b> [2] - 147:15, 203:18  <b>Representatives</b> [1] - 89:7  <b>represented</b> [3] - 5:15, 142:19, 283:1  <b>representing</b> [2] - 6:15, 6:23  <b>represents</b> [1] - 121:8  <b>reputable</b> [1] - 139:9  <b>request</b> [11] - 53:25, 55:18, 81:16, 145:3, 192:9, 202:16, 212:5, 259:25, 283:7, 287:9, 287:24  <b>requested</b> [4] - 5:13, 145:16, 246:21, 260:10  <b>requests</b> [2] - 246:12, 261:16  <b>require</b> [5] - 4:20, 21:24, 63:11, 211:3, 250:7  <b>required</b> [12] - 4:16, 23:20, 31:25, 35:8, 67:11, 103:2, 190:14, 228:24, 230:17, 266:17, 272:17, 281:12  <b>requirement</b> [12] - 81:19, 118:8, 161:4, 222:11, 250:10,</p>
---	--	--	---	---

<p>258:1, 258:4, 258:5, 258:13, 275:20, 281:14, 286:7</p> <p><b>requirements</b> [10] - 5:7, 81:11, 105:21, 155:14, 183:4, 239:2, 243:23, 247:17, 272:15, 281:3</p> <p><b>requires</b> [3] - 80:11, 229:3, 229:7</p> <p><b>requiring</b> [1] - 230:14</p> <p><b>requisites</b> [1] - 105:22</p> <p><b>rerun</b> [2] - 107:12, 108:3</p> <p><b>research</b> [3] - 152:13, 206:11, 238:2</p> <p><b>resembles</b> [1] - 232:25</p> <p><b>reserve</b> [24] - 7:21, 7:24, 40:11, 57:17, 57:20, 58:5, 58:13, 59:10, 86:2, 86:6, 86:8, 86:10, 86:13, 86:17, 86:20, 87:3, 212:2, 213:4, 213:9, 215:5, 215:11, 215:19, 272:15, 274:21</p> <p><b>reserved</b> [1] - 243:12</p> <p><b>reserves</b> [4] - 57:15, 126:8, 126:11, 273:19</p> <p><b>residential</b> [2] - 83:14, 270:17</p> <p><b>residents</b> [2] - 139:20, 139:23</p> <p><b>resolution</b> [1] - 249:20</p> <p><b>resolve</b> [4] - 141:23, 187:9, 249:17, 250:19</p> <p><b>resort</b> [2] - 167:17, 179:22</p> <p><b>resource</b> [42] - 22:4, 31:9, 33:25, 34:13, 48:16, 74:6, 76:17, 76:19, 77:5, 78:23, 79:1, 79:17, 80:8, 103:8, 112:17, 113:1, 113:25, 122:23, 133:3, 133:5, 138:16, 169:1, 175:15, 215:2, 221:18, 225:4, 231:1, 233:16, 235:16, 247:11, 255:15, 257:25, 258:3, 258:24, 259:13, 264:21, 268:14,</p>	<p>269:4, 281:22, 281:23, 285:16, 286:11</p> <p><b>resources</b> [29] - 22:21, 23:6, 23:14, 34:9, 58:9, 78:8, 93:24, 131:11, 134:24, 155:11, 181:23, 183:1, 194:8, 196:20, 218:22, 228:16, 235:7, 235:13, 247:22, 257:24, 258:2, 264:14, 267:10, 267:13, 269:3, 285:10, 285:22, 285:23, 292:12</p> <p><b>respect</b> [32] - 17:17, 35:21, 40:8, 40:24, 45:22, 46:15, 49:13, 49:24, 69:2, 82:6, 131:10, 132:22, 133:2, 146:17, 148:12, 148:14, 148:18, 149:5, 153:3, 153:20, 159:12, 203:20, 204:17, 204:18, 212:5, 213:22, 231:7, 254:15, 256:12, 257:1, 286:17, 288:13</p> <p><b>respected</b> [1] - 16:12</p> <p><b>respectfully</b> [1] - 200:9</p> <p><b>respective</b> [2] - 5:9, 286:4</p> <p><b>respond</b> [1] - 155:3</p> <p><b>responded</b> [2] - 240:19, 284:25</p> <p><b>respondents</b> [1] - 269:9</p> <p><b>response</b> [18] - 96:25, 138:10, 155:5, 155:10, 155:24, 171:7, 178:25, 183:5, 205:13, 216:3, 246:12, 246:21, 246:25, 247:6, 247:14, 261:15, 284:6, 291:22</p> <p><b>responses</b> [2] - 94:21, 140:21</p> <p><b>responsive</b> [7] - 70:15, 195:5, 195:10, 195:13, 195:19, 195:22, 258:20</p>	<p><b>Responsive</b> [3] - 3:11, 3:12, 3:13</p> <p><b>rest</b> [5] - 61:11, 128:7, 262:9, 267:11, 285:13</p> <p><b>restriction</b> [1] - 102:5</p> <p><b>restrictions</b> [2] - 63:10, 256:4</p> <p><b>result</b> [5] - 15:22, 23:2, 213:3, 224:3, 256:20</p> <p><b>resulted</b> [1] - 96:14</p> <p><b>results</b> [3] - 67:2, 84:25, 272:2</p> <p><b>resume</b> [2] - 61:16, 245:18</p> <p><b>resurrect</b> [1] - 290:24</p> <p><b>retail</b> [2] - 124:24, 130:10</p> <p><b>retained</b> [2] - 62:10, 209:10</p> <p><b>retire</b> [3] - 25:25, 26:2, 30:12</p> <p><b>retired</b> [1] - 127:18</p> <p><b>retirement</b> [2] - 25:23, 257:24</p> <p><b>retiring</b> [2] - 30:4, 127:17</p> <p><b>return</b> [6] - 103:9, 145:12, 173:5, 173:14, 175:17, 232:11</p> <p><b>returned</b> [1] - 233:7</p> <p><b>revenue</b> [3] - 43:8, 112:2, 222:10</p> <p><b>revert</b> [1] - 130:16</p> <p><b>review</b> [8] - 137:3, 145:10, 154:25, 180:3, 185:5, 185:7, 185:8, 227:16</p> <p><b>reviewed</b> [3] - 16:11, 146:21, 280:23</p> <p><b>reviewing</b> [1] - 49:11</p> <p><b>revisit</b> [1] - 252:4</p> <p><b>RFI</b> [2] - 235:7, 269:2</p> <p><b>RFP</b> [1] - 235:7</p> <p><b>rich</b> [1] - 67:22</p> <p><b>Richard</b> [7] - 2:9, 2:13, 2:17, 19:12, 38:5, 38:23, 142:20</p> <p><b>rid</b> [1] - 249:8</p> <p><b>right-hand</b> [1] - 43:9</p> <p><b>rights</b> [3] - 12:7, 13:10, 191:16</p> <p><b>ripe</b> [1] - 16:15</p> <p><b>rise</b> [1] - 71:11</p> <p><b>risk</b> [29] - 20:10, 21:19, 22:7, 25:17, 25:18, 25:22, 26:8, 34:14, 36:6, 101:14,</p>	<p>110:22, 111:2, 111:3, 134:19, 134:21, 233:9, 251:11, 251:25, 254:9, 257:3, 257:6, 263:20, 263:22, 264:1, 264:5, 264:6, 280:13, 280:21, 281:1</p> <p><b>risks</b> [9] - 25:15, 36:11, 110:24, 110:25, 134:15, 134:17, 254:13, 254:19, 281:10</p> <p><b>Rislov</b> [4] - 1:15, 119:23, 173:21, 276:23</p> <p><b>RISLOV</b> [18] - 119:22, 120:4, 120:6, 120:10, 120:12, 121:1, 121:17, 122:3, 123:4, 123:14, 124:17, 127:4, 173:22, 174:7, 174:10, 174:20, 175:5, 175:20</p> <p><b>river</b> [1] - 171:13</p> <p><b>road</b> [8] - 10:15, 47:11, 102:8, 126:23, 161:8, 171:15, 175:14, 179:19</p> <p><b>roadmap</b> [1] - 10:5</p> <p><b>role</b> [1] - 129:12</p> <p><b>rolled</b> [1] - 271:15</p> <p><b>Room</b> [2] - 2:3, 4:7</p> <p><b>room</b> [4] - 55:8, 202:24, 238:23, 243:12</p> <p><b>rough</b> [2] - 99:4, 99:6</p> <p><b>roughly</b> [4] - 20:1, 27:1, 99:8, 222:22</p> <p><b>rounds</b> [1] - 242:13</p> <p><b>Rounds</b> [3] - 1:16, 2:15, 3:16</p> <p><b>route</b> [1] - 123:6</p> <p><b>RPR</b> [1] - 1:24</p> <p><b>RPS</b> [5] - 25:17, 80:20, 80:21, 80:25, 81:23</p> <p><b>RTOs</b> [1] - 140:3</p> <p><b>rule</b> [3] - 190:23, 250:8, 275:19</p> <p><b>ruled</b> [3] - 51:11, 51:23, 63:5</p> <p><b>rules</b> [10] - 18:21, 20:21, 176:1, 190:14, 203:3, 204:13, 250:7, 256:7, 257:5</p>	<p><b>ruling</b> [4] - 104:22, 104:23, 232:5, 232:10</p> <p><b>rulings</b> [4] - 5:23, 5:25, 6:1, 6:2</p> <p><b>run</b> [25] - 66:20, 66:21, 83:22, 84:17, 84:20, 84:24, 85:6, 85:12, 99:5, 107:25, 109:25, 110:6, 127:19, 250:23, 266:13, 273:18, 273:19, 274:2, 274:24, 275:14, 275:17, 280:21, 281:1</p> <p><b>running</b> [10] - 75:2, 94:6, 101:14, 107:23, 118:12, 168:2, 190:6, 273:15, 273:23, 275:10</p> <p><b>runs</b> [1] - 233:9</p> <p><b>Ryan</b> [2] - 1:15, 7:1</p>
<b>S</b>				
				<p><b>safe</b> [2] - 102:3, 209:4</p> <p><b>safely</b> [1] - 102:1</p> <p><b>safest</b> [2] - 102:5, 102:7</p> <p><b>salaried</b> [1] - 177:19</p> <p><b>salaries</b> [1] - 177:19</p> <p><b>sale</b> [3] - 72:6, 72:7, 152:18</p> <p><b>sales</b> [1] - 236:5</p> <p><b>sampling</b> [1] - 82:18</p> <p><b>sanity</b> [3] - 67:22, 98:24, 98:25</p> <p><b>sara</b> [1] - 1:20</p> <p><b>Sara</b> [3] - 6:22, 144:13, 145:19</p> <p><b>satisfactory</b> [6] - 157:2, 157:8, 246:5, 246:16, 246:20, 246:23</p> <p><b>satisfied</b> [1] - 206:12</p> <p><b>satisfy</b> [3] - 255:7, 255:10</p> <p><b>Saturday</b> [2] - 74:3, 74:4</p> <p><b>save</b> [2] - 201:8, 276:18</p> <p><b>saved</b> [2] - 252:13, 253:19</p> <p><b>saw</b> [1] - 158:4</p> <p><b>scary</b> [2] - 100:22, 100:23</p> <p><b>scenario</b> [1] - 31:8</p>

<p><b>scenarios</b> [1] - 142:20</p> <p><b>schedule</b> [2] - 18:16, 18:18</p> <p><b>scheduled</b> [3] - 241:19, 243:5, 294:19</p> <p><b>scope</b> [5] - 216:1, 223:25, 225:8, 251:14, 284:8</p> <p><b>scrubbing</b> [1] - 221:7</p> <p><b>SD</b> [1] - 3:7</p> <p><b>se</b> [1] - 175:8</p> <p><b>search</b> [1] - 235:7</p> <p><b>season</b> [5] - 210:4, 210:8, 210:10, 210:13, 211:17</p> <p><b>second</b> [26] - 9:7, 34:14, 35:10, 43:3, 74:2, 126:1, 144:21, 144:22, 153:10, 181:13, 181:15, 181:16, 182:19, 189:17, 190:18, 205:15, 222:6, 223:18, 225:18, 225:21, 252:4, 257:18, 259:17, 262:5, 290:15, 294:12</p> <p><b>secondly</b> [1] - 45:23</p> <p><b>seconds</b> [3] - 139:3, 158:23, 159:1</p> <p><b>section</b> [2] - 127:11, 197:1</p> <p><b>Section</b> [6] - 4:16, 4:21, 42:10, 120:5, 190:21, 191:16</p> <p><b>sections</b> [1] - 4:17</p> <p><b>security</b> [1] - 160:25</p> <p><b>sedated</b> [1] - 215:25</p> <p><b>see</b> [49] - 23:16, 27:16, 30:10, 41:4, 42:4, 42:7, 42:12, 43:1, 43:25, 44:9, 44:10, 60:3, 60:4, 63:4, 67:5, 72:1, 75:25, 76:5, 76:6, 85:1, 85:18, 88:9, 97:5, 99:7, 99:8, 123:12, 130:17, 139:6, 140:20, 141:16, 141:25, 144:23, 145:3, 161:19, 167:14, 175:17, 204:15, 205:19, 206:3, 221:19, 227:17, 246:17, 259:3, 263:25, 269:3, 278:10, 280:11, 286:25,</p>	<p>289:2</p> <p><b>seeing</b> [4] - 179:10, 179:11, 203:13, 229:13</p> <p><b>seek</b> [3] - 15:17, 141:24, 267:24</p> <p><b>seeking</b> [4] - 267:13, 285:2, 286:10, 286:20</p> <p><b>seeks</b> [1] - 192:12</p> <p><b>seem</b> [3] - 56:25, 58:7, 274:12</p> <p><b>segments</b> [1] - 275:2</p> <p><b>selected</b> [1] - 210:18</p> <p><b>self</b> [2] - 39:3, 62:4</p> <p><b>self-employed</b> [2] - 39:3, 62:4</p> <p><b>sell</b> [33] - 14:14, 14:18, 14:20, 14:23, 15:14, 17:5, 24:21, 37:10, 54:2, 71:4, 118:18, 121:9, 121:15, 121:16, 131:13, 139:20, 140:4, 150:20, 171:17, 172:9, 179:6, 179:8, 179:10, 180:11, 198:15, 199:5, 278:22, 279:6, 289:25, 290:2, 290:13, 290:15, 291:2</p> <p><b>seller</b> [1] - 52:25</p> <p><b>selling</b> [14] - 16:1, 54:5, 63:14, 70:11, 71:2, 72:3, 72:22, 118:7, 123:18, 140:3, 143:22, 153:4, 153:23</p> <p><b>sells</b> [1] - 117:12</p> <p><b>semantics</b> [1] - 71:11</p> <p><b>SEMMLER</b> [17] - 7:1, 7:13, 8:2, 40:20, 51:21, 138:5, 194:25, 196:6, 203:6, 245:5, 245:7, 259:22, 260:13, 292:21, 293:2, 294:6, 294:8</p> <p><b>Semmler</b> [3] - 1:14, 7:1, 11:22</p> <p><b>send</b> [3] - 145:19, 150:4, 185:19</p> <p><b>sending</b> [3] - 141:10, 146:17, 181:1</p> <p><b>sense</b> [13] - 33:7, 59:24, 66:16, 66:25, 107:7, 126:22, 218:4, 249:25, 258:2, 262:25,</p>	<p>268:4, 268:5, 269:4</p> <p><b>sensitive</b> [1] - 55:9</p> <p><b>sent</b> [24] - 16:3, 17:4, 29:17, 104:12, 105:10, 145:20, 145:22, 145:25, 149:25, 150:3, 150:5, 150:11, 154:4, 154:25, 155:23, 158:22, 180:7, 185:12, 190:17, 205:7, 212:24, 240:21, 265:22, 283:1</p> <p><b>sentence</b> [9] - 150:23, 152:2, 181:13, 181:15, 181:16, 181:20, 182:19, 182:20</p> <p><b>separate</b> [10] - 127:13, 133:15, 148:14, 161:14, 166:23, 177:24, 190:13, 234:17, 279:1, 290:10</p> <p><b>separately</b> [1] - 290:13</p> <p><b>separation</b> [1] - 149:2</p> <p><b>September</b> [3] - 74:3, 74:16, 212:20</p> <p><b>series</b> [1] - 123:17</p> <p><b>serve</b> [6] - 77:9, 79:22, 188:14, 198:11, 198:20, 252:6</p> <p><b>served</b> [1] - 120:25</p> <p><b>serves</b> [1] - 216:24</p> <p><b>service</b> [3] - 18:18, 269:18, 271:16</p> <p><b>Service</b> [7] - 19:23, 21:11, 49:7, 81:8, 84:8, 85:2, 221:23</p> <p><b>serviced</b> [1] - 270:3</p> <p><b>servicing</b> [1] - 193:17</p> <p><b>session</b> [3] - 128:23, 243:23, 244:5</p> <p><b>set</b> [13] - 14:9, 14:24, 16:22, 17:23, 37:8, 72:14, 123:25, 124:3, 124:11, 184:8, 187:24, 231:6, 243:13</p> <p><b>sets</b> [2] - 12:21, 129:15</p> <p><b>setting</b> [3] - 87:3, 281:5, 281:8</p> <p><b>settle</b> [1] - 67:20</p> <p><b>settlement</b> [1] - 186:8</p> <p><b>seven</b> [3] - 209:17, 209:23, 212:23</p> <p><b>several</b> [22] - 49:6,</p>	<p>90:2, 138:17, 143:12, 152:10, 152:15, 153:4, 158:11, 163:14, 171:5, 193:11, 221:14, 229:15, 234:24, 235:14, 236:21, 243:21, 263:13, 265:4, 269:8, 278:18</p> <p><b>SGIA</b> [6] - 160:9, 160:12, 160:14, 161:4, 161:7, 161:15</p> <p><b>shale</b> [4] - 22:12, 22:14, 22:19, 27:24</p> <p><b>shall</b> [9] - 13:17, 13:20, 14:1, 19:5, 191:2, 191:5, 191:10, 196:18, 268:12</p> <p><b>share</b> [5] - 77:24, 78:16, 79:3, 145:8, 146:15</p> <p><b>sharing</b> [3] - 57:20, 86:8, 215:19</p> <p><b>Shaw</b> [1] - 209:9</p> <p><b>sheet</b> [2] - 42:24, 68:8</p> <p><b>shelf</b> [9] - 24:20, 24:21, 29:15, 29:18, 29:24, 30:1, 65:16, 65:20, 93:1</p> <p><b>shift</b> [1] - 255:23</p> <p><b>shipping</b> [1] - 179:13</p> <p><b>shoes</b> [1] - 101:24</p> <p><b>shoot</b> [1] - 174:11</p> <p><b>short</b> [21] - 37:17, 56:6, 61:15, 65:6, 65:8, 95:24, 104:7, 117:12, 117:22, 123:5, 123:16, 140:25, 167:8, 177:5, 187:25, 188:5, 188:7, 240:2, 241:1, 245:12, 248:1</p> <p><b>short-term</b> [9] - 95:24, 104:7, 123:5, 123:16, 140:25, 167:8, 240:2, 241:1, 248:1</p> <p><b>shorthand</b> [2] - 295:9</p> <p><b>show</b> [19] - 12:17, 17:10, 25:3, 27:18, 29:7, 31:10, 32:7, 32:14, 33:9, 33:22, 34:8, 42:1, 66:25, 73:23, 93:17, 94:22, 94:25, 119:14, 190:2</p> <p><b>showed</b> [1] - 140:22</p> <p><b>showing</b> [2] - 89:14, 94:23</p>	<p><b>shown</b> [1] - 64:21 35</p> <p><b>shows</b> [10] - 41:24, 42:11, 44:20, 94:3, 114:9, 114:10, 119:3, 119:6, 122:22, 188:23</p> <p><b>shut</b> [5] - 21:1, 74:6, 74:19, 107:24, 118:14</p> <p><b>shutdown</b> [1] - 23:2</p> <p><b>shutting</b> [1] - 74:21</p> <p><b>sic</b> [2] - 54:19, 204:7</p> <p><b>side</b> [11] - 27:9, 43:9, 152:23, 166:7, 166:8, 190:12, 190:13, 190:14, 248:23, 251:1, 251:3</p> <p><b>sided</b> [1] - 17:14</p> <p><b>sides</b> [2] - 27:6, 134:17</p> <p><b>sighing</b> [1] - 111:10</p> <p><b>sign</b> [12] - 15:17, 17:19, 62:20, 62:22, 103:3, 103:15, 103:20, 141:10, 145:9, 145:12, 203:17, 207:15</p> <p><b>signal</b> [1] - 158:23</p> <p><b>signed</b> [21] - 16:2, 16:3, 33:24, 55:7, 102:25, 104:11, 140:7, 145:14, 157:18, 159:24, 160:5, 160:16, 161:24, 176:18, 176:21, 186:7, 202:22, 202:24, 203:10, 203:21, 204:4</p> <p><b>significant</b> [8] - 20:23, 21:6, 33:12, 34:16, 77:8, 89:5, 95:25, 292:9</p> <p><b>significantly</b> [5] - 16:24, 33:11, 94:13, 109:20, 282:11</p> <p><b>signing</b> [3] - 160:15, 186:12, 203:18</p> <p><b>similar</b> [8] - 27:16, 35:19, 47:11, 65:16, 84:24, 90:9, 258:7, 275:6</p> <p><b>simple</b> [5] - 28:1, 28:11, 28:19, 32:15, 127:7</p> <p><b>simpler</b> [3] - 72:1, 107:8, 107:10</p> <p><b>simplicity</b> [1] - 28:19</p> <p><b>simplified</b> [1] - 57:12</p> <p><b>simplifying</b> [1] - 216:7</p>
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<p><b>simply</b> [4] - 130:23, 233:3, 266:12, 275:14</p> <p><b>simulation</b> [1] - 120:1</p> <p><b>simultaneously</b> [1] - 75:12</p> <p><b>single</b> [3] - 98:13, 119:4, 274:19</p> <p><b>Sioux</b> [3] - 6:24, 166:25, 192:25</p> <p><b>site</b> [6] - 16:18, 69:17, 69:19, 138:19, 139:15, 275:9</p> <p><b>sites</b> [1] - 159:16</p> <p><b>siting</b> [3] - 159:18, 159:21, 160:3</p> <p><b>sitting</b> [2] - 183:18, 258:9</p> <p><b>situation</b> [6] - 131:10, 157:14, 188:10, 230:20, 236:13, 288:3</p> <p><b>situations</b> [3] - 132:9, 157:7, 162:22</p> <p><b>six</b> [11] - 88:8, 164:18, 190:15, 252:21, 253:1, 283:12, 283:16, 283:23, 284:13, 284:19, 291:6</p> <p><b>six-month</b> [6] - 283:12, 283:16, 283:23, 284:13, 284:19, 291:6</p> <p><b>size</b> [4] - 121:22, 134:20, 142:18, 157:19</p> <p><b>sized</b> [1] - 139:15</p> <p><b>sizes</b> [1] - 159:6</p> <p><b>skip</b> [2] - 182:8, 216:9</p> <p><b>slide</b> [2] - 60:10, 101:3</p> <p><b>slightly</b> [1] - 128:15</p> <p><b>slipping</b> [1] - 294:1</p> <p><b>slough</b> [1] - 163:22</p> <p><b>small</b> [11] - 19:9, 57:6, 139:17, 139:19, 141:12, 152:22, 160:6, 163:7, 168:13, 168:16</p> <p><b>smaller</b> [1] - 125:1</p> <p><b>smart</b> [1] - 157:13</p> <p><b>Smith</b> [50] - 1:14, 5:20, 6:4, 6:9, 6:17, 7:23, 10:12, 38:4, 38:11, 39:23, 40:8, 40:22, 45:13, 46:2, 49:19, 50:4, 50:5, 51:9, 52:2, 55:16, 61:7, 61:22, 70:13, 87:6, 95:15, 96:21, 99:16,</p>	<p>119:20, 129:3, 135:11, 162:12, 162:16, 167:22, 172:22, 176:5, 187:14, 187:22, 188:2, 192:16, 196:10, 197:18, 204:22, 205:16, 207:2, 207:19, 258:17, 262:20, 276:21, 278:14, 287:4</p> <p><b>SMITH</b> [163] - 6:5, 6:16, 6:25, 7:3, 7:10, 7:12, 7:14, 8:1, 10:9, 38:2, 38:10, 38:13, 39:16, 39:25, 40:7, 40:15, 40:23, 45:11, 46:4, 47:18, 49:17, 49:22, 50:1, 50:11, 51:5, 51:7, 51:19, 51:22, 55:1, 55:9, 55:21, 61:9, 61:16, 70:18, 75:18, 87:8, 87:11, 89:24, 95:18, 96:25, 97:7, 97:13, 99:14, 119:21, 127:5, 128:4, 128:18, 128:22, 135:5, 135:14, 135:18, 136:5, 136:9, 137:15, 137:20, 137:25, 138:4, 138:6, 143:6, 157:11, 161:11, 162:14, 162:23, 165:17, 167:21, 172:24, 173:21, 175:21, 176:6, 176:20, 176:23, 177:3, 177:6, 178:2, 187:12, 187:15, 187:17, 187:20, 187:24, 188:6, 188:8, 192:13, 194:22, 194:24, 195:1, 196:3, 196:5, 196:7, 197:13, 197:15, 200:20, 202:17, 202:23, 203:8, 203:19, 204:6, 204:17, 205:9, 205:22, 206:1, 206:6, 206:16, 206:22, 207:10, 207:12, 213:13, 213:17, 213:19, 213:24, 215:6, 216:3, 216:6, 224:6, 224:8, 225:24, 226:6,</p>	<p>226:12, 226:20, 226:24, 228:1, 241:18, 242:21, 242:25, 243:12, 243:18, 244:16, 244:24, 245:6, 245:8, 245:13, 251:19, 259:20, 260:14, 261:6, 261:8, 261:14, 261:17, 261:22, 262:15, 262:19, 276:22, 277:7, 277:11, 277:17, 277:19, 277:23, 277:25, 278:7, 278:9, 283:18, 284:5, 284:15, 286:23, 289:5, 289:14, 289:17, 290:7, 290:21, 292:19, 292:22, 294:7, 294:9, 294:15</p> <p><b>Smith's</b> [1] - 292:8</p> <p><b>snapshot</b> [1] - 27:21</p> <p><b>socialized</b> [1] - 126:9</p> <p><b>society</b> [1] - 103:17</p> <p><b>sold</b> [5] - 65:13, 65:14, 71:17, 122:15, 279:7</p> <p><b>solely</b> [1] - 231:2</p> <p><b>solicitation</b> [1] - 124:8</p> <p><b>solicitations</b> [4] - 124:1, 124:4, 124:5, 124:16</p> <p><b>solid</b> [3] - 20:22, 155:1, 292:10</p> <p><b>someone</b> [7] - 38:9, 46:20, 46:23, 149:11, 149:12, 201:9, 265:9</p> <p><b>sometime</b> [2] - 146:13, 219:25</p> <p><b>sometimes</b> [2] - 157:6, 287:7</p> <p><b>somewhat</b> [4] - 64:25, 125:5, 196:15, 277:20</p> <p><b>somewhere</b> [7] - 56:7, 128:11, 150:7, 238:20, 272:16, 273:7, 282:7</p> <p><b>soon</b> [1] - 88:4</p> <p><b>sophisticated</b> [3] - 30:15, 32:16, 132:18</p> <p><b>sorry</b> [14] - 51:8, 60:2, 120:10, 152:11, 185:2, 213:14, 213:24, 219:14, 231:11, 241:3, 247:4, 283:19,</p>	<p>292:22</p> <p><b>sort</b> [12] - 32:12, 65:20, 66:8, 66:14, 67:1, 73:3, 90:12, 100:10, 122:10, 178:11, 242:18, 289:9</p> <p><b>sorted</b> [1] - 186:16</p> <p><b>sorts</b> [1] - 125:5</p> <p><b>sought</b> [3] - 26:15, 142:11, 212:17</p> <p><b>sound</b> [1] - 22:2</p> <p><b>Sound</b> [1] - 57:7</p> <p><b>sounded</b> [1] - 166:16</p> <p><b>sounds</b> [2] - 57:22, 293:6</p> <p><b>source</b> [1] - 273:22</p> <p><b>sources</b> [3] - 41:12, 67:20, 83:12</p> <p><b>south</b> [1] - 276:11</p> <p><b>SOUTH</b> [2] - 1:2, 295:1</p> <p><b>South</b> [108] - 2:2, 2:4, 4:7, 5:8, 6:12, 6:13, 6:24, 9:13, 11:5, 11:14, 12:19, 17:2, 19:15, 19:17, 21:20, 23:11, 24:1, 24:5, 24:7, 24:9, 25:12, 26:4, 31:5, 35:18, 35:24, 36:21, 41:16, 44:2, 44:3, 48:13, 48:17, 53:4, 57:2, 60:13, 61:5, 63:19, 68:20, 68:25, 75:15, 76:23, 79:18, 79:22, 80:4, 80:21, 82:1, 86:3, 86:9, 86:12, 90:19, 93:4, 94:4, 100:4, 122:5, 122:7, 124:11, 124:19, 124:21, 125:12, 125:13, 125:18, 125:23, 125:25, 126:5, 126:21, 126:24, 127:1, 132:4, 136:22, 138:21, 141:6, 143:3, 144:3, 145:4, 145:5, 166:22, 166:24, 167:1, 168:17, 169:12, 169:21, 169:24, 184:14, 184:15, 184:22, 188:12, 192:25, 193:13, 193:14, 229:9, 234:6, 234:14, 234:21, 235:5, 235:8, 247:7,</p>	<p>248:25, 249:10, 254:19, 258:14, 263:6, 263:7, 264:13, 268:13, 268:22, 269:6, 270:2, 295:7, 295:13</p> <p><b>SOYE</b> [7] - 87:15, 89:23, 162:16, 187:16, 204:22, 207:2, 207:11</p> <p><b>Soye</b> [3] - 1:15, 7:1, 204:21</p> <p><b>speaking</b> [8] - 62:6, 158:21, 162:8, 170:13, 170:20, 233:17, 235:22, 270:22</p> <p><b>speaks</b> [2] - 161:7, 162:18</p> <p><b>special</b> [1] - 41:16</p> <p><b>specialize</b> [1] - 165:2</p> <p><b>specific</b> [21] - 15:8, 29:21, 33:9, 76:9, 93:3, 94:3, 120:2, 154:1, 160:1, 200:12, 204:14, 205:7, 208:21, 233:15, 235:20, 236:1, 236:2, 264:24, 273:19, 284:13, 288:21</p> <p><b>specifically</b> [33] - 8:13, 25:12, 32:4, 35:17, 37:2, 66:2, 70:16, 73:17, 100:21, 121:5, 122:7, 124:22, 125:11, 125:12, 129:7, 148:4, 153:22, 174:22, 203:17, 221:1, 224:12, 228:15, 233:15, 233:24, 234:13, 235:18, 236:5, 236:18, 245:24, 270:23, 272:11, 272:13, 288:10</p> <p><b>specificities</b> [1] - 104:12</p> <p><b>specificity</b> [3] - 200:17, 200:25, 202:12</p> <p><b>specifics</b> [1] - 223:5</p> <p><b>specified</b> [11] - 13:25, 14:3, 14:19, 14:20, 14:25, 191:9, 191:12, 191:19, 191:20, 239:23</p> <p><b>specify</b> [1] - 191:17</p>
--	---	---	--	--

<p><b>speed</b> [1] - 158:25  <b>speeds</b> [2] - 159:7, 159:8  <b>spending</b> [3] - 63:23, 211:2, 211:7  <b>spent</b> [2] - 111:6, 179:15  <b>Spion</b> [30] - 19:22, 19:25, 26:23, 32:10, 35:21, 36:1, 60:25, 71:20, 72:17, 81:14, 222:12, 222:17, 222:21, 222:23, 223:20, 224:18, 225:2, 225:7, 226:8, 226:16, 226:20, 227:14, 227:21, 231:4, 233:12, 248:16, 248:18, 251:5, 251:14, 251:22  <b>spoken</b> [1] - 287:14  <b>sponsored</b> [1] - 125:7  <b>spot</b> [32] - 28:15, 28:16, 64:17, 68:5, 70:25, 71:8, 72:18, 72:22, 94:5, 97:17, 119:4, 122:21, 130:11, 131:19, 142:1, 156:12, 162:19, 221:9, 235:23, 235:25, 236:3, 236:5, 236:9, 236:11, 263:23, 267:12, 271:21, 278:5, 280:12, 282:6, 293:24  <b>spots</b> [5] - 22:14, 22:15, 22:22, 27:24, 94:8  <b>SPP</b> [1] - 125:11  <b>spreadsheet</b> [7] - 42:5, 43:4, 43:11, 43:16, 67:23, 68:3  <b>spring</b> [2] - 88:14, 88:19  <b>SS</b> [1] - 295:2  <b>St</b> [2] - 115:6, 269:15  <b>stability</b> [1] - 255:18  <b>Staff</b> [21] - 3:21, 7:2, 10:17, 40:19, 51:20, 87:11, 138:4, 138:8, 162:15, 162:17, 187:15, 194:24, 196:5, 202:25, 204:5, 204:23, 205:1, 207:3, 245:3, 259:20, 292:23  <b>STAFF</b> [3] - 1:13, 2:14, 3:15</p>	<p><b>staff</b> [3] - 6:25, 7:12, 8:1  <b>Staff's</b> [1] - 162:19  <b>stalling</b> [1] - 266:13  <b>stand</b> [6] - 38:5, 136:11, 177:8, 192:17, 243:2, 245:17  <b>standard</b> [11] - 25:17, 66:3, 81:10, 111:5, 132:5, 155:1, 164:15, 176:1, 176:13, 176:15, 265:13  <b>standards</b> [4] - 34:24, 125:2, 132:7, 257:9  <b>standpoint</b> [7] - 34:4, 34:5, 34:6, 271:8, 274:8, 274:12, 280:18  <b>start</b> [17] - 26:9, 26:10, 30:3, 41:24, 65:9, 65:22, 76:20, 90:13, 104:17, 105:2, 108:5, 196:15, 244:10, 244:22, 274:24, 275:11, 291:10  <b>started</b> [5] - 64:13, 94:23, 193:9, 214:5, 294:21  <b>starters</b> [1] - 42:14  <b>starting</b> [3] - 41:23, 142:15, 150:9  <b>starts</b> [4] - 26:13, 108:6, 150:23, 232:3  <b>STATE</b> [2] - 1:2, 295:1  <b>state</b> [36] - 15:17, 18:21, 38:21, 45:11, 62:24, 63:7, 63:10, 63:13, 72:21, 75:9, 80:19, 95:14, 115:15, 117:11, 124:2, 124:23, 136:18, 143:2, 150:17, 150:19, 155:5, 156:1, 170:4, 183:10, 184:8, 192:21, 202:25, 212:21, 228:14, 229:25, 246:3, 246:7, 258:22, 259:1, 285:7  <b>State</b> [10] - 2:2, 4:7, 5:18, 11:25, 24:1, 24:5, 124:11, 144:2, 295:7  <b>state's</b> [1] - 15:21  <b>state-imposed</b> [1] - 63:10</p>	<p><b>state-regulated</b> [1] - 18:21  <b>statement</b> [14] - 7:18, 7:24, 10:11, 74:23, 74:25, 75:24, 92:24, 97:8, 188:5, 191:15, 192:9, 260:17, 276:25, 285:14  <b>statements</b> [8] - 7:7, 7:15, 7:21, 143:14, 200:18, 200:25, 201:24, 202:14  <b>states</b> [18] - 13:15, 13:17, 19:4, 34:25, 36:25, 63:6, 100:8, 100:11, 116:1, 123:23, 124:9, 129:12, 129:18, 144:18, 151:15, 169:10, 169:20, 169:22  <b>stating</b> [1] - 201:11  <b>station</b> [6] - 164:21, 272:7, 272:9, 272:10, 272:21, 273:8  <b>statistics</b> [1] - 115:8  <b>status</b> [4] - 155:14, 183:3, 284:22, 284:24  <b>statute</b> [3] - 229:5, 229:6, 229:11  <b>Statute</b> [1] - 229:10  <b>Staufer</b> [10] - 48:3, 48:4, 48:21, 48:22, 49:5, 53:9, 234:11, 234:15, 235:2  <b>stay</b> [1] - 142:22  <b>stayed</b> [1] - 141:11  <b>steered</b> [1] - 171:3  <b>step</b> [8] - 55:22, 58:2, 82:5, 135:6, 136:6, 136:9, 187:18, 188:9  <b>stepping</b> [2] - 92:7, 200:19  <b>Steve</b> [4] - 2:12, 85:19, 130:14, 234:9  <b>stick</b> [2] - 109:20, 120:22  <b>sticking</b> [1] - 84:22  <b>still</b> [23] - 8:17, 15:20, 34:21, 39:8, 55:15, 55:18, 72:19, 77:11, 79:6, 98:1, 105:4, 135:2, 158:4, 170:1, 173:17, 212:12, 212:15, 213:19, 244:10, 247:16, 257:14, 257:22, 272:23</p>	<p><b>stipulation</b> [2] - 39:19, 186:8  <b>Stone</b> [7] - 57:25, 79:24, 211:2, 211:8, 231:7, 256:9, 256:14  <b>stonewalling</b> [1] - 266:12  <b>stop</b> [2] - 65:10, 292:13  <b>storage</b> [1] - 96:14  <b>straight</b> [4] - 128:14, 166:12, 174:19, 278:12  <b>straightened</b> [1] - 162:11  <b>strange</b> [1] - 291:5  <b>Street</b> [2] - 136:22, 192:25  <b>street</b> [1] - 37:6  <b>stricken</b> [5] - 70:14, 194:1, 195:14, 195:15  <b>strict</b> [2] - 254:15, 277:4  <b>strike</b> [3] - 70:19, 96:7, 225:12  <b>Strike</b> [1] - 51:11  <b>stringent</b> [1] - 256:3  <b>strip</b> [5] - 77:25, 78:17, 79:3, 94:25, 95:4  <b>structure</b> [1] - 255:20  <b>stuck</b> [1] - 59:2  <b>studied</b> [1] - 142:9  <b>studies</b> [5] - 16:14, 66:15, 138:24, 160:1, 254:20  <b>study</b> [10] - 46:9, 58:8, 65:24, 86:23, 87:2, 114:13, 138:18, 259:5, 259:9, 259:11  <b>stuff</b> [10] - 59:2, 61:2, 66:1, 84:8, 111:14, 116:6, 116:8, 118:3, 206:11, 278:2  <b>sub</b> [2] - 190:7, 190:18  <b>subject</b> [40] - 5:16, 5:22, 49:2, 49:4, 68:18, 74:1, 74:12, 78:15, 78:18, 80:5, 130:3, 137:16, 194:17, 198:12, 198:13, 198:25, 199:2, 199:3, 199:7, 203:11, 213:5, 216:9, 218:19, 218:21, 221:21, 221:25, 222:11, 225:20, 225:21, 229:13, 230:2,</p>	<p>230:7, 231:10, 231:13, 239:4, 252:8, 252:9, 253:3, 253:7, 281:2  <b>subjects</b> [1] - 33:15  <b>submission</b> [1] - 52:13  <b>submit</b> [4] - 45:9, 47:16, 139:5, 195:4  <b>submitted</b> [4] - 104:24, 160:20, 201:1, 293:7  <b>subpart</b> [1] - 230:3  <b>subscribe</b> [1] - 85:12  <b>subsidiary</b> [1] - 81:22  <b>substantial</b> [11] - 20:19, 26:3, 26:8, 34:12, 134:19, 219:10, 219:20, 254:9, 254:10, 254:13, 254:24  <b>substantially</b> [1] - 222:24  <b>substituted</b> [1] - 48:8  <b>subtitle</b> [1] - 20:22  <b>successful</b> [1] - 181:3  <b>suffice</b> [1] - 89:13  <b>sufficient</b> [4] - 54:25, 164:16, 175:13, 250:7  <b>sufficiently</b> [1] - 204:8  <b>suggest</b> [2] - 248:20, 276:7  <b>suggesting</b> [5] - 64:2, 88:5, 88:6, 124:10, 274:21  <b>suite</b> [1] - 6:19  <b>SULLY</b> [1] - 295:3  <b>summarize</b> [3] - 52:7, 52:9, 138:9  <b>summarized</b> [1] - 193:8  <b>summary</b> [12] - 41:3, 41:5, 50:8, 50:14, 52:4, 55:17, 60:2, 143:15, 149:24, 153:17, 196:13, 196:14  <b>summer</b> [30] - 56:6, 56:9, 96:12, 158:15, 158:16, 164:8, 165:13, 170:8, 170:9, 198:7, 198:11, 198:21, 208:4, 208:10, 210:4, 210:8, 210:10, 210:13, 211:17, 212:12, 252:6, 252:18, 252:19, 252:20,</p>	37
---	---	---	---	--	----

<p>252:21, 253:1, 253:5, 253:20, 272:22</p> <p><b>super</b> [1] - 38:15</p> <p><b>supervised</b> [1] - 45:21</p> <p><b>supplier</b> [2] - 81:9, 210:19</p> <p><b>supplies</b> [1] - 25:21</p> <p><b>supply</b> [19] - 60:8, 83:8, 83:11, 84:23, 89:15, 122:17, 122:18, 126:2, 149:2, 161:14, 166:9, 190:12, 190:14, 193:17, 207:25, 208:7, 235:22, 255:18, 267:12</p> <p><b>support</b> [4] - 58:15, 74:24, 139:21, 258:6</p> <p><b>suppose</b> [2] - 238:16, 238:17</p> <p><b>supposed</b> [8] - 39:22, 71:12, 81:2, 217:16, 217:22, 244:2, 249:12</p> <p><b>Supreme</b> [1] - 5:19</p> <p><b>surprise</b> [2] - 186:19, 289:3</p> <p><b>surprised</b> [4] - 47:8, 57:9, 59:6, 86:1</p> <p><b>surprising</b> [1] - 57:15</p> <p><b>surrogate</b> [2] - 221:18, 221:22</p> <p><b>surround</b> [1] - 248:6</p> <p><b>surrounding</b> [2] - 251:13, 285:16</p> <p><b>susceptible</b> [1] - 15:1</p> <p><b>suspect</b> [2] - 47:5, 58:14</p> <p><b>sustain</b> [4] - 70:18, 161:11, 228:2, 290:21</p> <p><b>sustainable</b> [1] - 60:8</p> <p><b>sustained</b> [1] - 216:6</p> <p><b>sweet</b> [4] - 22:14, 22:15, 22:22, 27:24</p> <p><b>switch</b> [1] - 27:22</p> <p><b>switching</b> [3] - 22:8, 26:10, 282:15</p> <p><b>sworn</b> [4] - 5:16, 38:6, 136:13, 192:18</p> <p><b>system</b> [10] - 24:9, 24:10, 58:24, 73:14, 84:18, 86:24, 99:6, 174:1, 174:22, 243:13</p>	<p style="text-align: center;"><b>T</b></p> <p><b>Tab</b> [3] - 241:10, 241:11, 247:4</p> <p><b>tab</b> [5] - 67:21, 98:22, 227:13, 245:21, 247:2</p> <p><b>table</b> [6] - 44:18, 48:15, 167:18, 170:14, 227:9, 227:16</p> <p><b>TAG-8</b> [3] - 227:7, 227:9, 227:14</p> <p><b>tags</b> [4] - 31:8, 31:9, 31:10, 142:24</p> <p><b>Tail</b> [1] - 171:21</p> <p><b>Tail's</b> [1] - 276:15</p> <p><b>talks</b> [3] - 70:4, 114:24, 285:19</p> <p><b>tallied</b> [1] - 175:13</p> <p><b>target</b> [3] - 58:5, 86:6, 156:20</p> <p><b>targets</b> [3] - 80:20, 80:21, 116:25</p> <p><b>tariff</b> [5] - 239:7, 239:15, 239:18, 239:19, 241:2</p> <p><b>tariffed</b> [5] - 238:19, 238:21, 239:5, 248:12, 281:15</p> <p><b>tariffs</b> [1] - 37:2</p> <p><b>task</b> [1] - 107:8</p> <p><b>tax</b> [15] - 16:22, 16:25, 23:15, 37:22, 56:22, 57:2, 111:21, 112:8, 112:9, 113:10, 257:15, 257:22, 258:3, 258:8, 258:11</p> <p><b>taxes</b> [2] - 169:15, 169:24</p> <p><b>team</b> [13] - 66:18, 67:13, 146:3, 146:4, 149:19, 184:1, 235:22, 264:11, 264:16, 264:20, 265:5, 282:19, 283:22</p> <p><b>technically</b> [1] - 88:10</p> <p><b>technique</b> [1] - 85:14</p> <p><b>technologies</b> [1] - 20:24</p> <p><b>technology</b> [5] - 254:10, 259:1, 292:10, 292:11</p> <p><b>telephone</b> [1] - 147:17</p> <p><b>telephonic</b> [4] - 140:14, 148:7, 149:8, 180:16</p> <p><b>tender</b> [3] - 39:14,</p>	<p>61:7, 143:4</p> <p><b>tendered</b> [1] - 253:25</p> <p><b>Tennessee</b> [1] - 172:4</p> <p><b>term</b> [63] - 10:1, 13:25, 14:3, 14:9, 14:11, 14:19, 14:21, 14:25, 15:2, 18:12, 18:20, 31:5, 53:3, 53:4, 57:9, 72:12, 95:24, 95:25, 103:21, 103:23, 104:6, 104:7, 122:10, 123:5, 123:7, 123:16, 129:24, 131:15, 140:25, 156:13, 157:16, 167:8, 190:19, 191:9, 191:12, 191:17, 191:18, 191:20, 191:21, 194:8, 216:10, 216:14, 216:16, 221:1, 231:20, 232:22, 233:3, 233:5, 233:21, 234:5, 240:2, 240:3, 240:7, 241:1, 248:1, 248:10, 262:6, 264:14, 274:9, 279:12, 279:14, 280:1, 280:2</p> <p><b>terminated</b> [1] - 215:20</p> <p><b>termination</b> [3] - 161:14, 161:16, 162:1</p> <p><b>terms</b> [17] - 5:6, 13:14, 37:21, 68:21, 68:22, 104:16, 154:8, 162:8, 164:17, 167:18, 169:15, 173:12, 204:18, 207:4, 215:3, 215:9, 285:19</p> <p><b>territory</b> [2] - 93:4, 234:8</p> <p><b>test</b> [6] - 23:19, 23:21, 67:1, 211:4, 288:23</p> <p><b>testified</b> [31] - 20:8, 35:25, 49:5, 52:12, 52:14, 52:18, 53:2, 53:3, 53:11, 53:15, 56:3, 56:11, 57:4, 57:14, 58:7, 69:3, 75:12, 86:1, 92:2, 123:24, 178:17, 223:21, 228:3, 235:25, 236:17, 238:6, 248:16, 251:5, 257:13,</p>	<p>267:10, 279:18</p> <p><b>testifies</b> [2] - 75:9, 76:13</p> <p><b>testify</b> [14] - 24:17, 45:21, 46:12, 53:8, 53:17, 106:15, 110:19, 152:11, 164:8, 202:20, 211:5, 221:6, 225:1, 293:15</p> <p><b>testifying</b> [4] - 5:15, 111:17, 115:5, 273:6</p> <p><b>testimony</b> [168] - 7:7, 11:3, 12:17, 15:25, 17:3, 19:10, 19:19, 20:18, 21:10, 21:24, 22:8, 22:13, 25:3, 25:8, 26:24, 27:4, 27:9, 27:10, 27:18, 29:7, 31:13, 31:21, 32:7, 32:14, 33:9, 33:15, 35:6, 39:5, 39:12, 40:5, 40:9, 41:8, 50:7, 50:9, 50:19, 50:25, 51:4, 51:13, 52:5, 52:7, 52:9, 53:19, 54:14, 54:18, 54:19, 56:19, 57:4, 57:9, 62:2, 62:3, 62:10, 62:14, 62:17, 62:18, 62:21, 62:23, 63:4, 64:10, 70:4, 70:19, 72:21, 75:4, 75:9, 80:12, 81:14, 82:14, 86:5, 88:23, 90:4, 90:21, 94:10, 98:4, 98:10, 99:20, 114:24, 115:15, 115:25, 117:10, 132:3, 133:15, 137:1, 137:4, 137:7, 137:11, 137:16, 138:9, 140:15, 143:13, 143:16, 143:21, 144:5, 144:12, 144:16, 147:5, 147:14, 149:24, 150:8, 150:19, 151:12, 153:13, 153:14, 153:18, 155:2, 156:4, 163:18, 175:24, 176:9, 176:11, 181:2, 181:9, 182:11, 188:23, 192:2, 192:4, 193:9, 193:23, 193:25, 194:2, 194:6, 194:16, 195:5,</p>	<p>195:11, 195:14, 38 195:15, 195:19, 195:22, 196:13, 196:14, 199:4, 199:15, 199:16, 216:1, 216:12, 216:20, 216:22, 219:9, 219:11, 219:22, 219:23, 220:21, 221:12, 224:1, 224:13, 224:20, 224:21, 225:2, 225:9, 225:12, 226:23, 227:4, 227:14, 232:16, 241:7, 241:12, 251:15, 251:17, 257:16, 258:20, 266:2, 266:3, 271:10, 279:10, 280:11, 282:21, 292:1, 292:4, 293:10</p> <p><b>tests</b> [1] - 218:9</p> <p><b>Texas</b> [1] - 67:7</p> <p><b>Thanksgiving</b> [1] - 269:14</p> <p><b>THE</b> [154] - 1:1, 1:2, 1:4, 1:11, 38:7, 75:21, 87:10, 90:9, 91:10, 91:15, 92:6, 93:6, 93:9, 94:18, 95:20, 97:19, 98:6, 98:21, 98:25, 99:18, 99:23, 100:6, 100:22, 101:18, 102:2, 102:18, 102:24, 104:14, 105:1, 106:1, 106:10, 107:11, 109:11, 109:14, 110:17, 110:24, 112:1, 112:16, 113:4, 114:2, 115:18, 116:5, 117:17, 117:23, 118:2, 118:9, 118:15, 118:23, 120:3, 120:5, 120:9, 120:11, 120:16, 121:7, 121:24, 122:13, 123:11, 123:21, 125:14, 127:11, 163:4, 163:22, 164:13, 165:12, 165:25, 166:20, 167:6, 167:24, 168:11, 169:15, 169:21, 170:7, 170:10, 170:17, 171:1,</p>
---	---	---	--	---

<p>171:10, 171:22, 171:24, 172:1, 172:4, 172:16, 172:23, 173:8, 173:18, 173:25, 174:9, 174:13, 174:25, 175:10, 176:4, 176:16, 176:22, 177:21, 177:23, 187:19, 201:2, 260:23, 261:3, 261:7, 262:22, 263:8, 263:12, 263:21, 264:3, 264:13, 264:21, 264:25, 265:10, 265:16, 265:23, 266:1, 266:8, 266:15, 267:8, 268:6, 268:11, 268:20, 269:20, 270:4, 270:11, 270:15, 270:18, 270:25, 271:13, 272:5, 272:10, 273:9, 273:11, 273:17, 274:2, 274:19, 275:8, 275:16, 275:20, 275:22, 276:2, 276:13, 276:16, 276:20, 277:6, 277:9, 277:16, 277:18, 277:22, 277:24, 278:6, 278:8, 287:11, 287:17, 287:25, 288:4, 288:13, 288:18 <b>themselves</b> [1] - 203:17 <b>theoretical</b> [1] - 277:20 <b>theoretically</b> [1] - 271:23 <b>theories</b> [1] - 126:21 <b>theory</b> [2] - 112:25, 289:7 <b>thereabouts</b> [1] - 184:7 <b>thereby</b> [2] - 251:10, 251:25 <b>therefore</b> [4] - 53:5, 72:21, 87:17, 94:13 <b>they've</b> [7] - 69:13, 69:19, 77:12, 104:3, 115:13, 126:13, 141:4 <b>thick</b> [1] - 176:19 <b>thinking</b> [1] - 60:17,</p>	<p>68:9, 76:16, 78:2, 78:13, 79:23, 89:11, 116:23, 127:3, 137:21, 277:11 <b>thinks</b> [1] - 42:16 <b>third</b> [9] - 9:14, 9:15, 34:15, 43:5, 68:8, 126:5, 139:6, 182:20, 229:2 <b>thorough</b> [1] - 32:23 <b>thoroughness</b> [1] - 162:19 <b>thousands</b> [1] - 115:12 <b>three</b> [14] - 5:3, 24:18, 29:9, 33:6, 70:7, 70:8, 125:15, 126:18, 148:3, 158:14, 172:20, 176:19, 275:8, 289:16 <b>throughout</b> [3] - 5:25, 166:10, 169:19 <b>throw</b> [1] - 271:1 <b>tier</b> [2] - 175:25, 176:13 <b>tighter</b> [1] - 131:4 <b>timing</b> [2] - 66:5, 67:15 <b>tiny</b> [1] - 108:6 <b>tired</b> [3] - 245:1, 289:22, 294:17 <b>Titan</b> [7] - 3:14, 184:21, 188:18, 261:1, 261:10, 262:11 <b>titled</b> [1] - 190:25 <b>TO</b> [1] - 1:5 <b>today</b> [26] - 6:20, 8:4, 10:14, 11:21, 20:13, 31:1, 37:13, 39:8, 50:21, 53:13, 90:4, 137:6, 137:8, 141:3, 141:21, 143:24, 194:16, 195:21, 195:23, 205:23, 218:25, 219:11, 237:25, 238:1, 243:1, 258:9 <b>Todd</b> [4] - 226:23, 248:16, 248:19, 248:23 <b>together</b> [6] - 29:10, 29:15, 120:24, 165:6, 272:1 <b>tomorrow</b> [4] - 242:22, 243:4, 243:5, 245:2 <b>ton</b> [3] - 88:24, 88:25 <b>tonight</b> [1] - 245:1</p>	<p><b>took</b> [19] - 9:4, 25:3, 41:17, 53:21, 69:6, 99:9, 128:15, 137:20, 150:13, 168:2, 168:6, 179:21, 180:13, 217:11, 217:14, 217:15, 238:5, 295:9 <b>top</b> [21] - 37:1, 42:9, 48:2, 78:1, 79:10, 120:5, 126:16, 127:24, 136:3, 145:24, 147:10, 150:12, 153:15, 153:25, 170:7, 184:11, 211:23, 227:7, 261:4, 264:15, 266:9 <b>topic</b> [1] - 122:3 <b>topics</b> [2] - 52:8, 52:11 <b>total</b> [8] - 18:14, 18:19, 43:8, 78:3, 92:21, 227:20, 257:15, 270:16 <b>totality</b> [1] - 50:14 <b>totally</b> [4] - 161:13, 190:13, 249:4, 277:5 <b>touched</b> [3] - 87:18, 162:17, 163:25 <b>tough</b> [3] - 90:25, 110:15, 172:8 <b>toughest</b> [1] - 169:22 <b>toward</b> [1] - 43:24 <b>towards</b> [11] - 43:22, 60:7, 91:4, 108:21, 116:19, 134:9, 153:23, 155:22, 171:3, 183:15, 183:16 <b>tower</b> [15] - 16:9, 44:23, 46:15, 46:16, 46:17, 46:18, 46:19, 46:22, 46:25, 69:5, 69:6, 88:13, 159:1, 159:5, 164:6 <b>towers</b> [8] - 69:11, 69:17, 139:1, 158:11, 158:13, 164:5, 164:8, 165:7 <b>toxics</b> [1] - 20:21 <b>trade</b> [3] - 21:16, 53:21, 89:17 <b>trade-offs</b> [1] - 53:21 <b>traditionally</b> [1] - 241:14 <b>transactions</b> [3] - 122:9, 123:5, 236:6 <b>transcript</b> [3] - 207:20, 215:8, 290:22</p>	<p><b>Transcript</b> [1] - 1:8 <b>TRANSCRIPT</b> [1] - 2:1 <b>transcription</b> [1] - 295:12 <b>transfer</b> [1] - 142:24 <b>transmission</b> [13] - 83:8, 121:10, 121:12, 122:25, 151:25, 152:23, 161:13, 161:18, 166:7, 174:15, 179:12, 190:13, 259:2 <b>transpired</b> [3] - 208:25, 209:2, 236:20 <b>transport</b> [1] - 236:3 <b>trapped</b> [1] - 113:20 <b>treading</b> [2] - 55:2, 199:25 <b>treat</b> [2] - 22:24, 204:17 <b>treated</b> [1] - 202:16 <b>treating</b> [1] - 23:3 <b>treatment</b> [2] - 26:8, 145:7 <b>treats</b> [1] - 204:16 <b>TREE</b> [4] - 1:4, 2:8, 2:16, 3:2 <b>Tree</b> [192] - 1:18, 1:19, 3:20, 4:3, 4:17, 4:24, 5:4, 5:12, 6:7, 6:15, 7:9, 7:16, 11:1, 11:4, 12:25, 16:4, 16:9, 17:4, 17:13, 19:11, 25:4, 25:6, 30:18, 31:13, 31:14, 33:23, 34:2, 34:4, 34:11, 36:22, 37:11, 40:5, 41:18, 42:23, 43:21, 44:18, 44:20, 44:22, 45:4, 45:10, 45:24, 45:25, 46:20, 46:23, 51:8, 51:25, 52:12, 52:25, 53:25, 54:19, 56:4, 59:13, 59:14, 59:24, 61:17, 62:12, 63:13, 64:1, 64:16, 69:2, 69:24, 71:7, 71:24, 72:3, 77:1, 88:13, 92:10, 106:13, 110:22, 111:25, 112:1, 112:23, 113:5, 116:4, 116:16, 117:9, 118:7, 128:23, 129:23, 131:13, 131:22, 134:16, 134:19, 134:21, 134:22,</p>	<p>136:24, 137:14, 39 138:6, 138:11, 138:24, 140:6, 140:21, 141:9, 142:14, 143:25, 144:2, 144:6, 144:8, 144:10, 146:3, 146:14, 147:2, 147:20, 150:4, 153:4, 153:24, 156:6, 156:17, 158:9, 159:11, 160:14, 161:5, 161:12, 164:6, 168:21, 176:3, 177:7, 177:20, 184:1, 185:25, 189:16, 189:23, 190:14, 194:22, 196:3, 196:21, 196:22, 197:16, 198:15, 199:5, 204:8, 207:8, 214:13, 214:24, 215:2, 245:16, 245:17, 246:12, 246:15, 246:22, 250:1, 250:6, 250:8, 250:16, 250:20, 252:8, 252:12, 253:19, 254:2, 257:13, 257:20, 260:1, 260:9, 260:10, 263:19, 264:12, 265:8, 266:4, 266:13, 267:14, 267:24, 268:17, 269:10, 269:21, 273:1, 274:13, 274:14, 274:17, 278:20, 278:21, 278:22, 278:25, 282:7, 282:19, 283:14, 283:24, 284:21, 285:24, 286:18, 288:12, 291:2, 291:15, 291:16, 291:18, 292:3, 293:7, 293:18 <b>Tree's</b> [8] - 8:6, 15:25, 113:25, 147:15, 152:9, 157:1, 246:14, 285:6 <b>Trees</b> [1] - 123:17 <b>trended</b> [1] - 28:12 <b>trends</b> [1] - 218:16 <b>tried</b> [6] - 98:2, 171:2, 172:10, 180:22, 225:12, 239:17</p>
--	--	--	---	---

<p><b>tripping</b> [1] - 58:1  <b>trouble</b> [1] - 226:2  <b>troubled</b> [2] - 96:22, 157:23  <b>troughs</b> [2] - 274:8, 274:16  <b>true</b> [22] - 12:25, 24:9, 24:10, 33:3, 83:24, 157:15, 193:22, 195:10, 209:13, 213:2, 214:11, 217:6, 223:9, 233:4, 238:7, 249:10, 250:21, 251:9, 264:2, 290:2, 290:14, 295:11  <b>truepower</b> [1] - 165:2  <b>Truewind</b> [5] - 16:11, 47:2, 47:7, 47:13, 49:11  <b>trust</b> [1] - 204:2  <b>trusting</b> [1] - 263:14  <b>truth</b> [2] - 44:3, 238:10  <b>try</b> [27] - 24:2, 33:7, 38:15, 38:17, 52:9, 58:17, 58:18, 81:2, 99:23, 114:14, 161:1, 183:24, 184:18, 188:7, 201:20, 202:2, 205:19, 216:21, 218:16, 231:17, 236:12, 241:15, 258:2, 275:12, 289:22, 290:24  <b>trying</b> [23] - 29:19, 37:9, 73:20, 76:22, 78:7, 97:4, 98:12, 99:21, 99:25, 123:22, 154:22, 167:9, 168:13, 172:7, 174:21, 180:19, 199:8, 224:2, 225:13, 269:5, 269:6, 280:22  <b>tube</b> [1] - 278:3  <b>turbine</b> [7] - 48:9, 69:7, 69:9, 139:10, 143:22, 210:19, 276:9  <b>turbines</b> [12] - 44:25, 48:20, 49:13, 139:7, 154:12, 159:15, 160:2, 173:10, 202:11, 207:23, 208:1, 275:9  <b>turn</b> [23] - 6:3, 7:4, 7:15, 25:19, 93:7, 93:9, 93:11, 94:20, 94:21, 128:5,</p>	<p>171:18, 182:10, 197:11, 199:19, 203:8, 221:11, 232:12, 248:14, 258:19, 258:20, 264:24, 281:24, 286:25  <b>turned</b> [1] - 171:15  <b>turning</b> [3] - 80:12, 115:13, 196:11  <b>turns</b> [2] - 111:3, 232:1  <b>twice</b> [4] - 24:19, 87:25, 88:2, 267:21  <b>two</b> [50] - 4:24, 9:9, 11:22, 14:4, 14:16, 14:21, 27:6, 32:1, 35:6, 41:12, 45:14, 54:23, 56:3, 56:14, 88:4, 89:22, 94:20, 132:13, 138:25, 141:8, 142:20, 146:11, 147:4, 158:7, 159:1, 165:5, 165:7, 166:23, 172:19, 179:21, 183:19, 184:11, 202:10, 207:22, 208:1, 211:11, 212:11, 215:25, 216:19, 225:13, 235:9, 241:19, 242:9, 281:18, 287:13, 287:15, 289:12, 291:7, 294:3  <b>type</b> [11] - 78:19, 155:1, 173:5, 188:24, 205:2, 205:4, 256:19, 258:6, 258:7, 285:22, 288:3  <b>types</b> [1] - 103:14  <b>typical</b> [1] - 53:13  <b>typically</b> [5] - 40:1, 83:19, 230:24, 248:6, 265:3</p>	<p>128:17, 129:3, 129:5, 135:4, 136:8, 136:11, 136:15, 137:13, 137:18, 137:23, 138:7, 143:4, 157:9, 161:6, 177:1, 178:7, 187:11, 187:22, 194:23, 196:4, 197:14, 197:18, 197:20, 199:25, 200:15, 201:3, 201:14, 201:17, 201:20, 202:2, 202:6, 202:19, 203:14, 203:16, 204:1, 204:10, 205:16, 205:25, 206:5, 206:7, 207:19, 207:21, 213:15, 213:18, 213:21, 213:25, 215:7, 216:2, 216:4, 224:2, 225:10, 226:5, 226:7, 226:17, 226:22, 227:2, 227:11, 228:5, 241:13, 242:3, 242:23, 244:12, 245:19, 251:16, 258:17, 259:17, 283:15, 284:3, 284:8, 284:12, 289:7, 289:15, 289:19, 290:24, 292:18  <b>Uda</b> [43] - 1:18, 6:10, 7:8, 10:10, 38:2, 40:17, 56:20, 57:12, 70:20, 72:10, 92:24, 96:25, 105:16, 107:6, 108:20, 111:18, 127:15, 129:2, 136:10, 147:24, 176:24, 178:4, 187:21, 190:20, 191:15, 197:13, 202:17, 207:18, 213:14, 216:3, 225:25, 262:25, 263:24, 266:10, 266:23, 278:17, 279:4, 279:9, 279:24, 285:4, 285:25, 286:25, 289:5  <b>Uda's</b> [1] - 190:24  <b>ultimate</b> [2] - 8:4, 73:24  <b>ultimately</b> [8] - 9:4, 10:7, 22:1, 32:15,</p>	<p>92:5, 134:25, 151:13, 265:8  <b>unanticipated</b> [1] - 220:13  <b>uncertain</b> [4] - 37:21, 91:1, 105:4, 128:1  <b>uncertainties</b> [3] - 60:23, 110:11, 110:13  <b>uncertainty</b> [11] - 90:11, 91:18, 101:20, 101:21, 101:22, 114:25, 133:7, 133:21, 133:24, 134:4, 254:6  <b>uncommit</b> [1] - 74:22  <b>undebatable</b> [1] - 175:16  <b>undecided</b> [1] - 101:16  <b>under</b> [32] - 11:25, 12:7, 13:10, 13:13, 14:21, 15:13, 30:21, 31:7, 88:17, 109:18, 145:7, 161:4, 168:18, 173:12, 174:1, 174:4, 176:1, 185:10, 227:11, 228:25, 229:5, 229:6, 239:23, 247:16, 253:23, 254:7, 268:6, 269:6, 281:11, 281:16, 282:6, 286:7  <b>underbar</b> [1] - 67:22  <b>understandably</b> [1] - 268:25  <b>understood</b> [1] - 217:10  <b>undertaking</b> [1] - 30:9  <b>unexpected</b> [1] - 215:12  <b>unfamiliar</b> [1] - 249:2  <b>unforeseen</b> [1] - 36:9  <b>unfortunately</b> [2] - 8:12, 28:19  <b>unit</b> [2] - 217:21, 223:3  <b>units</b> [3] - 30:4, 281:20  <b>unknown</b> [2] - 101:16, 109:7  <b>unless</b> [9] - 23:13, 37:9, 135:5, 136:6, 232:7, 242:6, 253:14, 293:7, 293:17  <b>unquantifiable</b> [1] - 100:18  <b>unreliable</b> [5] - 32:6,</p>	<p>233:4, 233:6, 236:24, 237:5  <b>unrestricted</b> [1] - 121:10  <b>up</b> [96] - 8:5, 10:7, 22:20, 28:10, 30:5, 30:18, 31:5, 31:21, 33:17, 39:18, 41:8, 43:7, 44:20, 46:2, 47:10, 50:11, 53:22, 55:10, 58:2, 58:20, 61:11, 63:5, 73:4, 73:15, 75:4, 75:5, 79:10, 80:1, 83:23, 85:17, 88:8, 89:4, 90:8, 91:14, 92:18, 92:20, 94:3, 94:22, 96:7, 99:25, 110:1, 114:21, 121:14, 124:11, 130:22, 130:25, 131:25, 134:2, 135:9, 136:7, 138:25, 142:21, 143:20, 143:24, 151:11, 152:24, 154:1, 155:21, 158:11, 158:13, 159:4, 159:12, 164:8, 165:13, 167:9, 168:25, 169:18, 172:9, 173:2, 175:22, 177:18, 178:23, 183:23, 185:23, 206:7, 206:8, 207:3, 208:9, 219:15, 228:10, 238:22, 242:14, 243:8, 243:13, 244:25, 250:20, 261:19, 262:9, 265:19, 269:20, 271:20, 271:22, 276:6, 284:13, 289:10, 293:18  <b>upcoming</b> [1] - 278:1  <b>update</b> [2] - 88:2, 95:21  <b>updated</b> [2] - 48:19, 95:10  <b>upgraded</b> [1] - 275:5  <b>upgrades</b> [2] - 277:2, 287:13  <b>upheld</b> [1] - 63:9  <b>uphill</b> [2] - 280:13, 280:16  <b>useful</b> [1] - 73:11  <b>uses</b> [4] - 82:12, 188:14, 188:23  <b>Utilities</b> [5] - 12:10,</p>	<p>40</p>
	<b>U</b>				
	<p><b>U.S.C</b> [1] - 4:16  <b>UDA</b> [104] - 6:9, 7:9, 10:12, 38:4, 38:11, 38:20, 39:14, 39:22, 40:4, 40:21, 40:24, 45:9, 46:2, 46:5, 47:16, 47:20, 49:15, 50:4, 50:17, 50:18, 51:2, 51:6, 51:8, 52:2, 52:3, 55:3, 61:7, 70:22, 97:1,</p>				

<p>141:15, 249:11, 249:16, 249:20</p> <p><b>UTILITIES</b> [2] - 1:1, 1:11</p> <p><b>utilities</b> [22] - 12:15, 24:22, 26:16, 76:20, 87:2, 103:6, 103:12, 103:14, 103:15, 120:21, 120:23, 121:2, 121:8, 121:19, 123:8, 123:19, 132:6, 179:10, 229:7, 229:24, 231:16, 249:11</p> <p><b>utilities'</b> [1] - 120:21</p> <p><b>utility</b> [80] - 9:13, 12:13, 14:9, 14:11, 14:14, 14:17, 14:20, 15:15, 15:16, 15:19, 18:13, 18:16, 18:22, 19:1, 19:7, 31:7, 34:5, 35:9, 35:25, 36:2, 36:5, 36:24, 37:2, 52:24, 59:5, 63:1, 72:11, 76:15, 77:18, 77:19, 81:8, 86:9, 86:12, 86:15, 86:16, 86:20, 101:14, 101:25, 103:2, 103:19, 103:25, 104:4, 104:12, 104:18, 104:21, 120:17, 121:5, 124:23, 124:24, 125:1, 132:15, 141:13, 142:24, 143:2, 163:7, 168:24, 188:12, 188:24, 188:25, 191:17, 191:23, 215:12, 228:14, 229:7, 230:4, 230:10, 230:23, 232:2, 233:7, 233:8, 233:20, 234:23, 249:2, 256:19, 268:12, 279:24, 280:4, 280:19</p> <p><b>utility's</b> [6] - 13:21, 76:8, 80:9, 121:21, 191:6, 255:15</p> <p><b>utilize</b> [2] - 214:19, 275:9</p> <p><b>utilized</b> [2] - 221:10, 282:1</p> <p><b>utilizing</b> [3] - 217:1, 281:22, 293:25</p> <p><b>utter</b> [1] - 153:17</p>	<p style="text-align: center;"><b>V</b></p> <p><b>vagaries</b> [1] - 20:11</p> <p><b>valid</b> [3] - 130:5, 130:7, 258:25</p> <p><b>validate</b> [1] - 236:12</p> <p><b>Valley</b> [1] - 172:5</p> <p><b>valuable</b> [1] - 31:9</p> <p><b>value</b> [34] - 41:4, 41:5, 43:20, 44:14, 52:20, 52:21, 52:24, 53:8, 53:11, 53:14, 53:15, 56:14, 68:12, 71:17, 75:13, 75:15, 90:22, 115:20, 115:21, 116:1, 116:6, 116:9, 116:14, 117:17, 118:3, 119:5, 119:11, 119:12, 131:21, 131:22, 132:1, 199:9</p> <p><b>valued</b> [2] - 30:24, 44:12</p> <p><b>values</b> [1] - 220:7</p> <p><b>vanes</b> [1] - 158:25</p> <p><b>variable</b> [17] - 78:24, 93:17, 109:6, 109:7, 113:25, 122:17, 122:18, 122:24, 123:3, 151:20, 189:3, 260:20, 272:23, 274:10, 277:1, 277:7, 277:9</p> <p><b>variables</b> [2] - 109:5, 237:11</p> <p><b>variation</b> [1] - 132:11</p> <p><b>variations</b> [3] - 95:24, 96:19, 119:16</p> <p><b>varied</b> [1] - 170:4</p> <p><b>variety</b> [2] - 29:12, 169:11</p> <p><b>various</b> [10] - 9:8, 30:24, 54:13, 67:19, 90:23, 127:23, 159:8, 193:15, 236:11, 277:2</p> <p><b>vast</b> [1] - 11:5</p> <p><b>Veatch</b> [38] - 24:15, 25:24, 27:8, 29:8, 29:13, 30:1, 35:3, 41:13, 44:10, 45:2, 45:18, 46:6, 49:12, 62:6, 62:8, 65:2, 65:11, 65:16, 65:24, 69:23, 71:22, 82:11, 87:23, 92:25, 94:11, 94:14, 142:19, 218:14, 218:19, 218:25, 232:22,</p>	<p>235:16, 235:20, 236:16, 236:23, 237:25, 238:1, 259:5</p> <p><b>Veatch's</b> [3] - 33:5, 64:17, 82:6</p> <p><b>vendor</b> [1] - 83:18</p> <p><b>Ventyx</b> [3] - 65:15, 235:15, 237:21</p> <p><b>verbal</b> [4] - 140:13, 163:4, 163:6, 166:5</p> <p><b>verbally</b> [1] - 180:17</p> <p><b>version</b> [8] - 69:21, 75:19, 76:2, 76:3, 76:6, 80:13, 82:15, 137:24</p> <p><b>versus</b> [8] - 36:18, 61:17, 128:24, 132:5, 133:10, 149:2, 177:7, 281:16</p> <p><b>vertically</b> [1] - 124:25</p> <p><b>via</b> [6] - 38:17, 147:17, 158:23, 183:5, 203:3, 265:9</p> <p><b>viability</b> [1] - 175:9</p> <p><b>viable</b> [23] - 141:14, 150:21, 151:1, 151:6, 151:8, 151:13, 151:18, 151:23, 151:25, 152:20, 155:20, 156:18, 167:19, 173:3, 173:19, 173:24, 174:21, 174:24, 175:1, 175:6, 186:11, 186:12, 187:3</p> <p><b>vice</b> [3] - 6:12, 6:20, 264:17</p> <p><b>view</b> [15] - 52:19, 54:8, 59:23, 60:19, 64:2, 65:4, 101:5, 104:2, 118:24, 127:15, 128:3, 131:3, 132:17, 133:17, 134:1</p> <p><b>viewed</b> [1] - 131:7</p> <p><b>viewpoints</b> [1] - 153:18</p> <p><b>views</b> [1] - 97:10</p> <p><b>violate</b> [1] - 129:19</p> <p><b>violating</b> [1] - 132:7</p> <p><b>virtual</b> [2] - 138:18, 164:20</p> <p><b>visiting</b> [1] - 166:14</p> <p><b>voice</b> [1] - 241:19</p> <p><b>volatile</b> [3] - 108:11, 108:12, 108:18</p> <p><b>volatility</b> [1] - 111:13</p> <p><b>Volume</b> [2] - 1:9, 18:1</p> <p><b>voluntarily</b> [2] - 135:1,</p>	<p>232:8</p> <p><b>voluntary</b> [1] - 23:16</p> <p><b>voting</b> [1] - 13:2</p> <p style="text-align: center;"><b>W</b></p> <p><b>wagner</b> [1] - 215:25</p> <p><b>Wagner</b> [30] - 2:12, 3:12, 3:12, 114:23, 148:8, 184:24, 198:22, 201:13, 201:15, 201:17, 201:19, 201:22, 210:17, 212:3, 212:6, 213:6, 214:7, 215:15, 215:16, 215:21, 216:5, 223:9, 242:6, 242:8, 249:9, 254:21, 265:22, 266:9, 272:11, 274:4</p> <p><b>Wagner's</b> [1] - 273:5</p> <p><b>wait</b> [3] - 23:16, 161:19, 266:22</p> <p><b>waiver</b> [4] - 23:23, 81:16, 132:16, 132:20</p> <p><b>walking</b> [1] - 177:14</p> <p><b>wants</b> [5] - 103:22, 116:10, 116:11, 118:16, 243:24</p> <p><b>WAPA</b> [24] - 58:8, 58:10, 58:11, 58:16, 58:21, 58:22, 86:23, 120:13, 125:16, 126:6, 126:7, 171:10, 171:12, 173:23, 173:24, 174:10, 174:16, 174:19, 174:22, 235:23, 236:1, 236:6, 268:23</p> <p><b>WAPA's</b> [1] - 58:14</p> <p><b>War</b> [1] - 11:11</p> <p><b>warm</b> [1] - 110:3</p> <p><b>warrant</b> [1] - 55:10</p> <p><b>waste</b> [3] - 20:22, 20:25, 292:10</p> <p><b>water</b> [5] - 22:24, 22:25, 23:4, 26:8, 28:25</p> <p><b>Water</b> [2] - 20:22, 292:11</p> <p><b>Wattne</b> [2] - 204:7, 206:4</p> <p><b>Waxman</b> [1] - 89:6</p> <p><b>Waxman-Markey</b> [1] - 89:6</p> <p><b>ways</b> [6] - 9:8, 76:14,</p>	<p>89:14, 114:10, 41 121:24, 172:3</p> <p><b>wayside</b> [1] - 37:24</p> <p><b>weather</b> [4] - 96:16, 109:22, 164:21, 177:14</p> <p><b>weather-related</b> [1] - 96:16</p> <p><b>web</b> [2] - 203:7, 203:9</p> <p><b>website</b> [2] - 21:3, 97:3</p> <p><b>weigh</b> [3] - 91:4, 134:9, 261:8</p> <p><b>weighed</b> [1] - 179:16</p> <p><b>weighing</b> [1] - 179:18</p> <p><b>well-aware</b> [1] - 103:6</p> <p><b>well-known</b> [1] - 47:3</p> <p><b>west</b> [3] - 151:24, 152:16, 192:25</p> <p><b>Western</b> [1] - 24:11</p> <p><b>western</b> [1] - 66:9</p> <p><b>whatsoever</b> [1] - 157:10</p> <p><b>wheel</b> [1] - 29:20</p> <p><b>wheeling</b> [2] - 93:22, 124:24</p> <p><b>wherein</b> [2] - 284:20, 285:7</p> <p><b>Whitney</b> [1] - 210:18</p> <p><b>whole</b> [26] - 12:6, 21:9, 34:15, 34:18, 34:22, 36:4, 36:5, 36:18, 41:8, 41:15, 66:18, 93:25, 94:6, 96:1, 103:13, 127:11, 129:8, 140:9, 141:18, 151:4, 163:5, 164:7, 166:10, 174:1, 190:8, 204:24</p> <p><b>wholesale</b> [4] - 130:10, 130:11, 130:17, 135:24</p> <p><b>wide</b> [3] - 203:22, 204:3, 207:4</p> <p><b>wild</b> [1] - 273:25</p> <p><b>willing</b> [12] - 59:25, 103:14, 103:20, 145:8, 169:25, 179:18, 180:18, 262:7, 262:10, 279:6, 285:15, 289:12</p> <p><b>willingness</b> [1] - 247:19</p> <p><b>win/win</b> [4] - 140:10, 168:20, 168:24, 169:5</p> <p><b>Wind</b> [12] - 12:8, 15:9, 42:24, 43:21, 69:3,</p>
---	---	---	---	--

<p>88:13, 117:9, 140:9, 142:25, 165:3, 184:21, 188:19</p> <p><b>wind</b> <sup>[118]</sup> - 12:24, 13:1, 16:21, 16:23, 20:1, 20:8, 23:10, 25:5, 34:12, 35:16, 41:17, 41:19, 44:24, 45:3, 45:23, 45:25, 47:10, 48:9, 48:13, 48:16, 48:20, 56:14, 56:17, 56:21, 56:23, 57:1, 59:16, 60:12, 63:15, 69:4, 69:8, 69:9, 71:2, 71:4, 71:15, 71:16, 75:10, 75:13, 75:15, 107:5, 110:12, 111:4, 115:13, 115:19, 116:3, 116:11, 116:12, 116:17, 116:22, 116:24, 117:1, 117:4, 117:7, 117:8, 122:4, 123:9, 126:8, 126:16, 126:17, 138:15, 138:18, 138:23, 139:1, 139:2, 139:7, 139:9, 139:12, 139:24, 140:18, 140:24, 141:1, 142:17, 143:22, 150:20, 155:20, 155:21, 157:19, 158:5, 158:18, 158:19, 158:21, 158:25, 159:7, 159:8, 160:2, 162:10, 164:17, 168:16, 168:25, 169:1, 169:18, 172:17, 174:2, 175:12, 175:13, 175:15, 184:20, 214:16, 214:17, 214:21, 250:25, 257:21, 257:24, 257:25, 258:2, 258:14, 260:25, 269:3, 274:9, 274:10, 274:21, 275:1, 275:3</p> <p><b>winter</b> <sup>[4]</sup> - 110:3, 209:16, 209:21, 212:1</p> <p><b>wish</b> <sup>[2]</sup> - 18:14, 70:20</p> <p><b>wishes</b> <sup>[1]</sup> - 104:13</p> <p><b>wishing</b> <sup>[1]</sup> - 123:8</p> <p><b>witness</b> <sup>[27]</sup> - 19:11, 20:16, 24:15, 26:21,</p>	<p>38:6, 39:14, 61:19, 69:16, 95:16, 102:21, 128:25, 136:10, 136:13, 161:9, 192:14, 192:18, 198:19, 201:3, 201:6, 201:8, 201:11, 202:20, 214:6, 227:25, 263:3, 286:22</p> <p><b>WITNESS</b> <sup>[149]</sup> - 38:7, 75:21, 90:9, 91:10, 91:15, 92:6, 93:6, 93:9, 94:18, 95:20, 97:19, 98:6, 98:21, 98:25, 99:18, 99:23, 100:6, 100:22, 101:18, 102:2, 102:18, 102:24, 104:14, 105:1, 106:1, 106:10, 107:11, 109:11, 109:14, 110:17, 110:24, 112:1, 112:16, 113:4, 114:2, 115:18, 116:5, 117:17, 117:23, 118:2, 118:9, 118:15, 118:23, 120:3, 120:5, 120:9, 120:11, 120:16, 121:7, 121:24, 122:13, 123:11, 123:21, 125:14, 127:11, 163:4, 163:22, 164:13, 165:12, 165:25, 166:20, 167:6, 167:24, 168:11, 169:15, 169:21, 170:7, 170:10, 170:17, 171:1, 171:10, 171:22, 171:24, 172:1, 172:4, 172:16, 172:23, 173:8, 173:18, 173:25, 174:9, 174:13, 174:25, 175:10, 176:4, 176:16, 176:22, 177:21, 177:23, 187:19, 201:2, 260:23, 261:3, 261:7, 262:22, 263:8, 263:12, 263:21, 264:3, 264:13, 264:17, 264:21, 264:25, 265:10, 265:16, 265:23,</p>	<p>266:1, 266:8, 266:15, 267:8, 268:6, 268:11, 268:20, 269:20, 270:4, 270:11, 270:15, 270:18, 270:25, 271:13, 272:5, 272:10, 273:9, 273:11, 273:17, 274:2, 274:19, 275:8, 275:16, 275:20, 275:22, 276:2, 276:13, 276:16, 276:20, 277:6, 277:9, 277:16, 277:18, 277:22, 277:24, 278:6, 278:8, 287:11, 287:17, 287:25, 288:4, 288:13, 288:18</p> <p><b>Witness</b> <sup>[1]</sup> - 227:18</p> <p><b>witness's</b> <sup>[1]</sup> - 70:14</p> <p><b>witnesses</b> <sup>[4]</sup> - 187:23, 190:2, 192:3, 225:19</p> <p><b>WITNESSES</b> <sup>[3]</sup> - 2:8, 2:10, 2:14</p> <p><b>WITTLER</b> <sup>[1]</sup> - 295:5</p> <p><b>Wittler</b> <sup>[2]</sup> - 1:24, 295:18</p> <p><b>wondering</b> <sup>[2]</sup> - 243:15, 289:9</p> <p><b>Wood</b> <sup>[2]</sup> - 235:15, 237:23</p> <p><b>word</b> <sup>[4]</sup> - 100:23, 125:3, 194:9</p> <p><b>wordage</b> <sup>[1]</sup> - 155:25</p> <p><b>words</b> <sup>[6]</sup> - 57:1, 76:1, 80:11, 151:16, 183:10, 281:23</p> <p><b>works</b> <sup>[4]</sup> - 106:20, 122:14, 166:20, 244:23</p> <p><b>worksheet</b> <sup>[1]</sup> - 67:22</p> <p><b>world</b> <sup>[2]</sup> - 175:14, 175:15</p> <p><b>world's</b> <sup>[1]</sup> - 130:24</p> <p><b>worth</b> <sup>[10]</sup> - 31:1, 44:2, 92:14, 108:17, 164:10, 164:15, 165:8, 165:10, 165:14, 290:23</p> <p><b>writing</b> <sup>[6]</sup> - 149:20, 163:2, 167:4, 183:23, 283:3, 283:7</p> <p><b>written</b> <sup>[6]</sup> - 115:25, 117:10, 140:14, 149:23, 165:22,</p>	<p>170:14</p> <p><b>wrote</b> <sup>[1]</sup> - 190:9</p> <p style="text-align: center;"><b>X</b></p> <p><b>Xcel</b> <sup>[2]</sup> - 171:23, 275:7</p> <p style="text-align: center;"><b>Y</b></p> <p><b>year</b> <sup>[65]</sup> - 24:19, 27:12, 27:15, 30:7, 44:6, 44:13, 52:17, 54:2, 68:10, 69:25, 70:3, 72:2, 72:6, 72:13, 72:18, 88:1, 88:2, 88:16, 88:19, 92:17, 94:17, 109:17, 110:4, 113:8, 113:16, 135:2, 135:3, 142:3, 160:22, 164:17, 164:24, 173:13, 188:17, 194:10, 194:11, 199:6, 199:22, 205:6, 209:17, 209:23, 211:4, 228:24, 229:8, 229:25, 230:6, 230:14, 230:25, 239:12, 240:4, 252:10, 252:11, 252:12, 253:5, 253:9, 253:10, 253:11, 260:1, 267:22, 273:18, 275:17, 282:8, 282:9, 282:12, 288:21, 288:23</p> <p><b>year's</b> <sup>[4]</sup> - 81:10, 164:15, 165:8, 165:14</p> <p><b>years</b> <sup>[66]</sup> - 10:22, 11:9, 16:9, 20:3, 27:19, 27:20, 30:2, 30:19, 32:1, 32:2, 32:3, 32:22, 36:14, 42:25, 55:13, 60:21, 68:21, 68:22, 69:25, 70:7, 70:8, 72:7, 72:8, 73:18, 73:19, 79:14, 89:7, 93:16, 98:8, 98:9, 108:23, 109:4, 112:20, 112:21, 115:8, 133:23, 138:13, 138:17, 139:1, 141:8, 158:12,</p>	<p>158:14, 164:7, 164:21, 165:7, 172:20, 175:19, 219:15, 228:22, 228:23, 229:4, 230:18, 231:6, 231:11, 231:14, 234:12, 234:24, 237:7, 254:12, 265:4, 267:16, 271:19, 271:20, 271:25, 272:1</p> <p><b>years'</b> <sup>[1]</sup> - 280:11</p> <p><b>yourself</b> <sup>[4]</sup> - 21:2, 232:8, 264:10, 285:13</p> <p><b>Yvette</b> <sup>[2]</sup> - 1:19, 6:14</p> <p style="text-align: center;"><b>Z</b></p> <p><b>zero</b> <sup>[4]</sup> - 114:7, 114:8, 114:9, 114:11</p> <p><b>zone</b> <sup>[11]</sup> - 41:16, 93:19, 93:25, 120:20, 120:23, 120:25, 121:2, 121:4, 121:9, 121:13, 122:12</p> <p><b>zones</b> <sup>[4]</sup> - 93:14, 93:15, 93:16, 120:18</p>
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