

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED
OCT 14 2005

===== SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FILING BY
SUPERIOR RENEWABLE ENERGY, LLC, ET AL.
AGAINST MONTANA-DAKOTA UTILITIES CO.
REGARDING THE JAVA WIND PROJECT

EL04-016

=====

Transcript of Proceedings
October 4, 2005

ORIGINAL

=====

BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
BOB SAHR, VICE CHAIRMAN
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Sara Greff
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Bob Knadle
Tina Douglas
Heather Forney
Pam Bonrud

APPEARANCES

David A. Gerdes, Montana-Dakota Utilities
Brad Moody, Superior Renewable Energy
Linda Walsh, Superior Renewable Energy

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING
L I M I T E D

1 THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF SOUTH DAKOTA
3
4 IN THE MATTER OF THE FILING BY
5 SUPERIOR RENEWABLE ENERGY, LLC, ET AL. EL04-016
6 AGAINST MONTANA-DAKOTA UTILITIES CO.
7 REGARDING THE JAVA WIND PROJECT
8
9
10 Transcript of Proceedings
11 October 4, 2005
12
13 BEFORE THE PUBLIC UTILITIES COMMISSION,
14 GARY HANSON, CHAIRMAN
15 BOB SAHR, VICE CHAIRMAN
16 DUSTY JOHNSON, COMMISSIONER
17
18 COMMISSION STAFF
19 Rolayne Ailts Wiest
20 John Smith
21 Karen Cremer
22 Sara Greff
23 Greg Rislov
24 Harlan Best
25 Keith Senger
26 Dave Jacobson
27 Michele Farris
28 Bob Knadle
29 Tina Douglas
30 Heather Forney
31 Pam Bonrud
32
33 APPEARANCES
34
35 David A. Gerdes, Montana-Dakota Utilities
36 Brad Moody, Superior Renewable Energy
37 Linda Walsh, Superior Renewable Energy
38
39
40 Reported By Cheri McComsey Wittler, RPR, CRR
41
42

1 APPEARANCES BY TELEPHONE 2
2 Denny Law
3 Marlene Bennett
4 Talbot Wieczorek
5 John Burke
6 Paul Leighton
7 Chris Madsen
8 Dick Augustine
9 Suzan Stewart
10 Melissa Thompson
11 Mark Holling
12 Colleen Sevold
13 Letty Friesen
14 Natalie Baker
15 Dave Chorzempa
16 Don Ball
17 Dan Kuntz
18 Andrea Stromberg
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State
Capitol, Room 412, 500 East Capitol Avenue, Pierre,
South Dakota, on the 4th day of October 2005,
commencing at 10:30 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN HANSON: ELO4-016, In the
Matter of the Filing by Superior Renewable Energy,
LLC Against Montana-Dakota Utilities Regarding the
Java Wind Project.
The question before the Commission today is
shall the Commission grant the Deferral Motion;
two, shall the Commission issue an order finding
that MDU has an existing obligation and/or contract
pending; and, three, shall the Commission issue an
order to show cause to MDU?
I believe MDU has a Motion for Deferral before
us.
MR. GERDES: Mr. Chairman, members
of the Commission, my name is Dave Gerdes. I'm a
lawyer from Pierre, and I represent Montana-Dakota
in this proceeding. I do have my notes with me but
I thought I had left them at the office. But I
found them in this pile of stuff that's in front of
me.
The first thing I'd like to say, Mr. Chairman,
members of the Commission, because this is a very
high interest topic in this state and in the plains
states generally, I want it to be clearly
understood that Montana-Dakota is not against wind
power. It is not against nonrenewables, is not

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

against any other energy -- type of energy.
MDU believes that it has a responsibility to
its rate payers and to its stockholders to evaluate
all offers in the marketplace. This is but one of
several approaches of this kind that MDU has
received, and MDU believes that it needs to
evaluate all such applications. And so I want that
on the table so that it's understood that it has
nothing to do with the fact that MDU does not
intend to be involved in wind power.
Secondly, there has been some discussion in
the filings by Superior that MDU somehow was --
should be penalized for having delayed the process.
As we have discussed in our filing, and we did file
responsive comments yesterday, we believe that's
totally irrelevant. We believe there's plenty of
blame to go around if you want to talk about that,
but whether or not there was delay we believe is
irrelevant.
So on the merits of whether or not a deferral
should occur in this case, MDU -- Montana-Dakota
believes, quite frankly, that the core issue here
is if for the convenience of the parties and for
the -- as a method of saving both work and costs on
the part of the parties, does it make sense to

5

1 delay this process until FERC has decided, which it
 2 will decide very shortly after the time that the
 3 hearing in this matter is now scheduled.
 4 So do we want to go ahead and have an avoided
 5 cost hearing on something that has been already
 6 negotiated between the parties, or do we want to
 7 see what FERC has to say about whether or not the
 8 Energy Policy Act has sort of changed the rules in
 9 the middle of the game.
 10 And we would submit that it is a small delay
 11 when we think about what could happen if we go
 12 ahead with the current plan, the current schedule.
 13 I would like to make a comment about the
 14 issues that are before the Commission. It's our
 15 view that the issue before the Commission is the
 16 Deferral Motion. Now I know that the agenda states
 17 and that staff has stated that the issue before the
 18 Commission also involves whether or not there is an
 19 obligation on the part of MDU to purchase energy
 20 under the Federal Energy Act.
 21 We would submit that the only thing before the
 22 Commission is the Motion to Defer. And there are
 23 other grounds to support the Motion to Defer other
 24 than whether or not an obligation to -- an
 25 obligation exists. And so, thus, while there is

6

1 consideration of whether or not there is an
 2 obligation, that's part of the analytical process
 3 that the Commission is going to go through,
 4 nonetheless, the actual question before the
 5 Commission is simply whether or not it will defer.
 6 And I think it's important to keep that in
 7 mind because otherwise we would submit that the
 8 Commission perhaps maybe is straying beyond its
 9 statutory jurisdiction. We also would suggest that
 10 perhaps the Commission would be setting a precedent
 11 that it may not want to set. And so for those
 12 reasons we think that the question before the
 13 Commission is whether or not there should be a
 14 deferral.
 15 The other thing the Commission should
 16 consider, because this is -- this very same
 17 question is before FERC in at least two contexts,
 18 the Alliant petition and the MDU petition. And so
 19 what happens if the Commission makes a finding on
 20 the question of obligation and FERC goes ahead and
 21 makes a different finding, decision, then we have
 22 as my grandmother used to say a fine kettle of
 23 fish.
 24 So it seems to us that the most logical thing
 25 to do is to simply defer and wait and see what FERC

7

1 does. And that's why we made the Motion.
 2 As I have said, I think that the question of
 3 whether or not an obligation exists really is a
 4 subsidiary question and needs to be answered by
 5 this Commission not definitely but only as to
 6 whether or not there's a reasonable basis to
 7 believe that an obligation does in fact exist.
 8 And on that basis we believe that there is no
 9 contract or obligation in effect and pending before
 10 the Commission.
 11 And we would disagree with staff's position in
 12 their filing that an obligation exists. Because if
 13 Congress had intended that the savings clause apply
 14 to every QF certified before passage of the act, it
 15 could have easily have said as much but it did not
 16 say that. The fact that the Act refers to a
 17 contract or obligation in effect or pending
 18 approval clearly means more than a simple demand to
 19 purchase by a nonexistent QF.
 20 In other words, what are the price, quality,
 21 term, and delivery conditions? None of that part
 22 of the obligation is defined. And if an obligation
 23 is in effect, it must be reciprocal. What are
 24 Superior's responsibilities under this obligation?
 25 Because there have to be reciprocal obligations.

8

1 Again, we don't know what those are.
 2 So why do we -- if this was an obligation, why
 3 do we need to have a hearing to determine what the
 4 terms of the obligation are? By very definition
 5 the obligation is an obligation and it should be
 6 clearly defined. So it's our belief that as it
 7 relates to the amendment to PURPA, we believe that
 8 Congress did not intend that the mere fact that a
 9 QF has qualified gives rise to an obligation.
 10 I mean, current law is that the obligation is
 11 only conditional upon the parties being able to
 12 negotiate a satisfactory contract. I mean, the
 13 obligation is not unconditional and so, thus, we
 14 submit that it's not an obligation at all.
 15 The other point I would like to raise,
 16 Mr. Chairman and members of the Commission, and
 17 this, of course, is perhaps treading on somewhat
 18 thin ground because I now want to tell the
 19 Commission it doesn't have the authority to do what
 20 Superior has asked. We did discuss that in our
 21 filing with the Commission.
 22 If you look at the South Dakota Supreme
 23 Court's decision of the petition of Northwestern
 24 Public Service Company decided in 1997, the
 25 South Dakota Supreme Court unequivocally said,

9

1 number 1, the PUC is not a court and cannot
 2 exercise purely judicial functions. The other
 3 thing the court said very clearly is that there has
 4 to be some statutory authority to support the
 5 Commission's ability to render the relief that it
 6 is seeking to render.

7 And, again, we would submit that if you look
 8 at the chapter of the code that we are working
 9 under here, there simply is no authority for this
 10 Commission to make decisions under PURPA. And the
 11 statute -- the Legislature has not given this
 12 Commission the ability to do so.

13 Contrast that with telecommunications. If you
 14 look at 49-31-81, the Legislature has clearly said
 15 that the Commission may implement and comply with
 16 the provisions of the Federal Telecommunications
 17 Act of 1996. But I would submit that the
 18 Commission does not have that same kind of broad
 19 granted authority to implement PURPA. So therefore
 20 we submit that this question, whether or not
 21 there's an obligation, is in fact a federal
 22 question and it's in fact in front of FERC and it
 23 should be decided by FERC.

24 Finally, I'd like to just very briefly touch
 25 on the Iowa decision that was submitted by

10

1 Superior. They submitted it saying that they think
 2 the Commission should consider this as -- in
 3 reaching its decision. There are numerous things
 4 that distinguish the Iowa decision from the
 5 questions that the Commission has before it. First
 6 of all, in the Iowa decision it involved a
 7 statutory stay procedure that is not applicable
 8 here. There were issues, concerns, whether or not
 9 a deadline would be missed in order for the
 10 applicant to receive a state tax incentive. Those
 11 issues are not present here. And so our knowledge
 12 there really isn't any reason why under South
 13 Dakota Law this matter could not be continued if
 14 the Commission so ordered.

15 The Iowa decision also was based upon the fact
 16 that at least one of the dockets before the Iowa
 17 Commission had been fully briefed and was --
 18 Doughnut time.

19 VICE CHAIRMAN SAHR: Normally that
 20 happens to you.

21 MR. GERDES: It just happens to me.
 22 I was reaching for my phone, as a matter of fact.

23 And the other reason is that one of those
 24 dockets was ready for decision and the Iowa board
 25 said in the case of the other three in 90 days that

11

1 not that much is going to happen in the other three
 2 dockets anyway. So they were saying no harm, no
 3 foul, we don't need to postpone.

4 So we would submit that the Iowa decision is
 5 clearly distinguishable. We would submit that this
 6 Commission is treading -- we submit on thin ground
 7 in making a clearly federal decision based upon the
 8 statutory authority that this Commission has to
 9 act. There are other grounds not involving the
 10 PURPA amendments that exist and other reasons that
 11 this Commission should delay the hearing date from
 12 its current early November date to see what FERC
 13 does in these matters.

14 And, again, I would just reiterate the issue
 15 of whether or not an obligation exists in front of
 16 FERC in both of the petitions, the Alliant petition
 17 and the MDU petition. So if you want to talk about
 18 preemption, we can talk about that too. Has the
 19 federal act preempted this Commission's ability to
 20 address that issue? Certainly it's before FERC now
 21 before anyone else.

22 And with that, we would ask that the
 23 Commission grant the Motion to Defer.

24 CHAIRMAN HANSON: Thank you, Dave.
 25 In your remarks towards the beginning, and I was

12

1 trying to follow the -- I just have a quick
 2 question. You stated that the only issue before us
 3 was that MDU had filed a Deferral Motion requesting
 4 the continuance and that we didn't have the other
 5 item before us. Notwithstanding your remarks
 6 arguing against that particular position, Superior
 7 did file a response to your Deferral Motion and
 8 requested that the Commission deny your Deferral
 9 Motion and to grant affirmative relief in the form
 10 of an order finding that MDU has an existing
 11 obligation and/or contract pending.

12 So would that not place that item before us?
 13 MR. GERDES: Well, I guess the way I
 14 read the Superior filing, it was more in the nature
 15 of a "request" than in the nature of a "Motion."
 16 And it's my experience anyway that Motion practice
 17 involves a specifically defined issue that is
 18 placed before the Commission. And I was reading
 19 the Superior filing as being less than that.

20 Obviously the Commission needs to address it
 21 as the Commission views it. But it says it's a
 22 request for affirmative relief. Well, we make
 23 motions around here, and I didn't read it that way.

24 CHAIRMAN HANSON: Thank you. Any
 25 further questions?

13

1 VICE CHAIRMAN SAHR: Mr. Gerdes, do
 2 you know, has this Commission handled issues
 3 involving avoided costs in the past, to your
 4 knowledge, or any other PURPA interpretation or
 5 delegation?
 6 MR. GERDES: Well, of course,
 7 avoided costs, yes, I believe this Commission has
 8 handled avoided costs questions. But it's my --
 9 that is something that is delegated to the states
 10 by PURPA, and it's something that nobody's objected
 11 to.
 12 If you're addressing my point about there
 13 being a statutory impediment to the Commission
 14 going to the question of an obligation, nobody's
 15 objected to it.
 16 VICE CHAIRMAN SAHR: No. But I did
 17 think it was an interesting point, and I was kind
 18 of curious to flesh out a little bit more -- I may
 19 have some questions for you after we hear from the
 20 other parties. So thank you.
 21 MR. GERDES: Yeah. And I'll be
 22 happy to answer them. But I think here, you know,
 23 if you look at the Northwestern Public Service
 24 petition, I think it's the same thing. I think the
 25 Commission had interpreted contracts similar to the

14

1 one that was involved in Northwestern Public
 2 Service before, but nobody objected.
 3 VICE CHAIRMAN SAHR: Okay. So your
 4 distinction would be in cases where perhaps we did
 5 handle something that was delegated under PURPA or,
 6 you know, similar federal electricity laws that in
 7 those cases to your knowledge nobody objected to
 8 jurisdiction?
 9 MR. GERDES: Excuse me. That would
 10 be my understanding, yes.
 11 VICE CHAIRMAN SAHR: Thank you.
 12 CHAIRMAN HANSON: Further questions?
 13 John.
 14 MR. SMITH: Would you address the
 15 Metropolitan and Edison cases from FERC back in
 16 1995 that were cited by Superior and their relation
 17 to the issue of whether this Commission has
 18 authority to make this decision?
 19 MR. GERDES: Well, I believe the
 20 answer is that my objection is under state law or
 21 lack of statutory authority for the Commission to
 22 act.
 23 MR. SMITH: Okay. Thank you.
 24 VICE CHAIRMAN SAHR: Mr. Chairman.
 25 CHAIRMAN HANSON: Yes.

15

1 VICE CHAIRMAN SAHR: I'm just going
 2 to note one thing. And it's very, very minor but
 3 if people who are on the line or in the room do
 4 what I do and follow along through the live links
 5 or the links on our own website, it's very, very
 6 minor but under electric the agenda item number 1
 7 the Docket is -- should be EL04-016 and it's
 8 EL05-016. And I checked the link -- and, again,
 9 it's wonderful to have this. I'm not criticizing.
 10 I want to let people know, though, if you
 11 click on the link -- and it's right in the printed
 12 agenda. But if you click on the link, you will get
 13 to the right Docket. For those of you who are on
 14 the line or in the room that bounce back and forth
 15 like I do and check it out versus carrying the
 16 files up, it is correct if you actually click on
 17 the link.
 18 CHAIRMAN HANSON: Thank you. We'll
 19 hear from Superior attorneys, Brad or Linda.
 20 MR. MOODY: Hi. Good morning,
 21 Mr. Chairman and members of the Commission. This
 22 is Brad Moody in Houston, Texas for Superior
 23 Renewable Energy and with us on the telephone is my
 24 co-counsel Linda Walsh in Washington, D.C.
 25 I want to speak initially to some of the

16

1 comments made by Mr. Gerdes on behalf of MDU and
 2 also in general address this question of whether or
 3 not the Commission should grant the Motion to
 4 Defer. And then I want to turn the core, so to
 5 speak, over to Ms. Walsh to discuss some of the
 6 particulars of the petitions that have been filed
 7 by MDU and Alliance and how those petitions may
 8 impact the Motion and the requests that Superior
 9 has made for a finding that there is an obligation
 10 in effect that is protected even under the recent
 11 amendments to PURPA.
 12 When Mr. Gerdes was speaking at the beginning
 13 of his remarks he said that it was totally
 14 irrelevant how much delay -- how much delay MDU has
 15 caused by its failure to negotiate. And this
 16 comment mirrors the pleadings that MDU filed
 17 yesterday afternoon. I want to read the first
 18 sentence of the first paragraph of that pleading
 19 because I think it's really important in terms of
 20 illuminating exactly what's been going on over the
 21 course of the last two years. That sentence says,
 22 "While Superior spends a great deal of time arguing
 23 that Montana-Dakota intentionally delayed the
 24 proceedings and failed to negotiate in good faith,
 25 even if it were true, it has no bearing on the

17

1 questions before the Commission."
 2 In plain terms what that sentence says to me
 3 is that MDU is asking this Commission to ignore the
 4 fact that for almost three years Superior has been
 5 trying to obtain a power purchase agreement with
 6 MDU under the PURPA statute, that during that time
 7 MDU has been unwilling to negotiate with Superior,
 8 that MDU has failed to provide the required costs,
 9 avoided costs information necessary to complete
 10 that agreement, that MDU has misrepresented its
 11 avoided costs to this Commission and to Superior
 12 during the course of the proceedings.
 13 And in effect what they're saying is ignore
 14 all of this off deviation and ignore this delay
 15 because if you let me keep bootstrapping my delay
 16 long enough maybe Superior will get tired or run
 17 out of money and go away. Well, Superior believes
 18 that the law says you've got to take all of that
 19 prior conduct into account when deciding whether or
 20 not to grant this Motion. And I'm here to tell you
 21 that Superior has absolutely no intentions of going
 22 away.
 23 Superior is ready, willing, and able to
 24 operate the Java Wind Project. The only problem
 25 with this project has been getting MDU to comply

18

1 with its obligations under the PURPA statute. We
 2 filed an affidavit from Superior's executive
 3 Jeff Ferguson documenting that Superior has spent
 4 almost \$600,000 so far to develop this Java Wind
 5 Project. Superior has acquired wind easements,
 6 measured wind data, conducted engineering studies,
 7 and paid interconnection fees to MISO and certainly
 8 has incurred substantial legal expense going before
 9 this Commission to try to bring MDU to the table
 10 and do what it's required to do under the PURPA
 11 statute.
 12 Everything about the Java Wind Project looks
 13 great, except for the fact that MDU will not do
 14 what it's supposed to do under PURPA and negotiate
 15 in good faith for a PPA.
 16 Now Superior didn't spend \$600,000 on the
 17 Java Wind Project because it had some vein hope
 18 that someday MDU might decide that wind power was a
 19 good thing and that it should sit down and
 20 negotiate at arms-length for a power purchase
 21 agreement. Superior invested that money in the
 22 project because at the time it began the activity
 23 the PURPA statute gave Superior as a qualified
 24 facility the absolute right to sell energy and
 25 capacity to MDU at MDU's avoided costs.

19

1 As my co-counsel Ms. Walsh will explain in
 2 greater detail, that obligation has existed since
 3 19 -- excuse me, since 2003 when Superior filed its
 4 qualified facility and first asked MDU to provide
 5 Superior with the avoided cost information so that
 6 the PPA negotiations could go forward. Those kind
 7 of preexisting obligations are protected from the
 8 limited exemption that MDU is using as a basis for
 9 its deferral motions.
 10 So as we sit here today, MDU's obligation to
 11 take power from the Java wind facility still
 12 exists. PURPA is still the wall and the
 13 Commission's decision and order implementing PURPA
 14 is still in effect. MDU has not been granted an
 15 exemption by this Commission or by the FERC and it
 16 continues to be obligated to negotiate in good
 17 faith with Superior for a long-term power purchase
 18 agreement.
 19 Now isn't MDU negotiating in good faith?
 20 Well, right now MDU isn't talking to Superior at
 21 all. It has simply cut off negotiations and come
 22 to the Commission and said we need more time to
 23 resolve these complicated issues and appeals and
 24 whatnot. May take who knows how long but that's
 25 what we want.

20

1 Now if you knew that there was a pending
 2 amendment to the PURPA statute in the Energy Policy
 3 Act of 2005, would it be good faith not to disclose
 4 the -- your intentions to invoke that amendment as
 5 the basis to halt negotiations? I think it sounds
 6 like MDU was negotiating during this March to
 7 September time period with its fingers crossed
 8 behind its back.
 9 So, in any event, we've got significant delay.
 10 What are the consequences of this delay? In the
 11 last year the price of steel, turbine, concrete,
 12 and other construction costs have risen
 13 substantially. Besides adversely affecting the
 14 economics to the Java Wind Project, these costs are
 15 affecting MDU's avoided costs as well. They're
 16 causing them to go up. And that's a problem for
 17 MDU and it's a problem for MDU's rate payers to the
 18 extent that MDU is going to be asking this
 19 Commission to pass those costs through. The longer
 20 we delay this proceeding, the worse that problem is
 21 going to become.
 22 Superior believes that PURPA, even the recent
 23 amendments to PURPA, do not allow this delay to
 24 take place. Take a look at the recent Iowa
 25 Utilities Board decision, which ruled that no delay

21

1 should be forthcoming in a very similar situation.
 2 In that decision the board adopted a four-part test
 3 applicable to stay and said that based on all four
 4 of those portions of the tests the proceedings
 5 should be allowed to go forward. The test -- the
 6 four parts of the test are whether there would be
 7 irreparable harm to MDU if the stay is denied.
 8 Whether there's any harm to any party for granting
 9 the stay. How the public interest will be affected
 10 by granting or not granting the stay and the
 11 possibility that the MDU will prevail at FERC.
 12 We think this is a good decision and we think
 13 the Commission should follow it. MDU has shown no
 14 evidence of irreparable harm. As the Iowa
 15 Utilities Board held, the time and the resources of
 16 the parties to conduct this hearing is not
 17 irreparable harm. On the other side of the coin,
 18 there will be harm to Superior if this matter is
 19 further delayed. There's an expiring federal
 20 production tax credit and an Interconnection
 21 Agreement with MISO that has a similar time frame
 22 attached to it. If either of those events cause --
 23 expire, then the Java Wind Project could be in
 24 danger.
 25 Now with respect to the public interest,

22

1 Superior believes that the Commission has
 2 recognized repeatedly the importance of wind power
 3 to the State of South Dakota. The Commission knows
 4 that South Dakota possesses tremendous wind
 5 resources and that the development of these
 6 resources will add jobs, property taxes, and an
 7 essential commodity to future growth in the state.
 8 These all dictate to me that the public interest is
 9 supported by allowing this hearing to go forward.
 10 Last but certainly not least, Superior
 11 believes that MDU faces a low probability of
 12 success in obtaining the relief that it's requested
 13 from the FERC. To address the details of that I
 14 think Ms. Walsh would like to have a few minutes to
 15 talk to you about the Alliant and MDU petition.
 16 Thank you.
 17 CHAIRMAN HANSON: One moment,
 18 please, Brad. Thank you very much. We have a
 19 court reporter and I'm always amazed at how she is
 20 able to keep up with the speed at which people
 21 talk.
 22 (Discussion off the record)
 23 VICE CHAIRMAN SAHR: I have a
 24 question for Mr. Moody. Actually a couple of them.
 25 And they don't involve the Alliant filing or the

23

1 other one that he said his co-counsel was going to
 2 discuss. So if it would be appropriate, could I
 3 ask those now, Mr. Chairman?
 4 CHAIRMAN HANSON: Go ahead.
 5 VICE CHAIRMAN SAHR: Thank you.
 6 Mr. Moody, a couple of questions. First is under
 7 PURPA if a state does lack jurisdiction, then who
 8 would decide the questions that are at issue here?
 9 MR. MOODY: Well, again, the
 10 Metropolitan Edison case that Superior cites in its
 11 brief says that the Congress and the FERC have
 12 ultimately delegated to the state Public Utilities
 13 Commissions the authority for deciding the type of
 14 question that underlies the MDU Motion for -- to
 15 defer, namely whether there's an existing
 16 obligation or contract.
 17 And if for whatever reason the FERC changed
 18 its mind and said, no, in fact the states have been
 19 delegated that responsibility, I suppose it would
 20 be with the FERC.
 21 VICE CHAIRMAN SAHR: Well, I know in
 22 telecommunications law oftentimes if a state either
 23 does not have authority to act or chooses not to
 24 act on a certain issue which they sometimes can,
 25 then it gets bumped up to the FCC, the Federal

24

1 Communications Commission, and I'm just curious if
 2 you knew whether or not that was the case with
 3 issues like this if Mr. Gerdes is able to
 4 successfully raise the point on jurisdiction.
 5 MR. MOODY: All I can say is that
 6 the FERC historically appears to have exercised
 7 sort of high-level authority to watch over state
 8 implementation of the PURPA statute, but when
 9 parties who don't like what's happening in the
 10 state Public Utilities Commission that come to FERC
 11 for relief very often FERC has said no, we
 12 delegated this authority for the state PUC for a
 13 reason, now go back and get your issues resolved
 14 there.
 15 VICE CHAIRMAN SAHR: And then, you
 16 know, I certainly appreciate your perspective on
 17 the importance of wind power and the Java wind farm
 18 and so on and so forth, but one of the things I
 19 didn't hear you address is Mr. Gerdes' claim that
 20 we lack statutory authority to decide these issues.
 21 And to me that is a very important issue because if
 22 we don't have the authority regardless of how
 23 important it might be to the state, regardless of
 24 what happened in the course of negotiations, we
 25 would be unable to legally act if that argument

25

1 does prevail.

2 Do you have any perspective on whether or not

3 you think this Commission has authority either

4 under state or under some sort of federal

5 catch-all?

6 MR. MOODY: Sure. And I'll tell you

7 briefly because we, again, only had the benefit of

8 seeing this argument at 4:15 yesterday afternoon,

9 but I would tell you that ever since the initial

10 decision and order implementing the PURPA statute

11 this Commission has certainly acted as if it has

12 had the authority to resolve issues under the PURPA

13 statute.

14 And I'd go further and say that MDU has

15 acknowledged that as well by continually making the

16 required filings under the PURPA statute for small

17 generators. There is a tariff in effect right now

18 approved by the Commission for the small generator

19 PURPA tariff. So if there's a problem with

20 jurisdiction, it's never been raised in the many,

21 many years that the statute has been in effect.

22 VICE CHAIRMAN SAHR: So just so I

23 understand that last point, so would it be your

24 contention that because there is a tariff filing

25 that that somehow possibly brings MDU under state

26

1 jurisdiction?

2 MR. MOODY: No, I'm not arguing

3 that. I think what I'm trying to say is that we

4 certainly haven't seen any behavior by either the

5 Commission or MDU to this point to suggest that

6 there's any jurisdictional problem with respect to

7 MDU's -- excuse me. With respect to the delegation

8 by the FERC to the Commission to implement PURPA.

9 We've had these tariff filings made consistently

10 for many, many years without ever anybody, MDU in

11 particular, saying that somehow under state law the

12 Commission doesn't have the authority to review and

13 accept these tariffs for filing.

14 And certainly in the original decision and

15 order implementing PURPA that the Commission didn't

16 question its own jurisdiction.

17 VICE CHAIRMAN SAHR: Well, and I

18 appreciate kind of that historical and maybe

19 practical perspective but thinking back to my days

20 in law school and private practice and government

21 practice and here at the Commission, I mean,

22 jurisdiction either exists or it doesn't exist.

23 And I don't know if past practice -- you know, I

24 don't know of any cases that are going to hold that

25 past practice necessarily confers jurisdiction that

27

1 does not otherwise reside with the tribunal.

2 That's why if you could, if you could

3 elaborate on -- and I realize you're late in the

4 game and maybe need some more time. Just say so.

5 But here we have a party and albeit several months

6 into the Docket has made the contention that we

7 don't have jurisdiction. If we don't have it, I

8 don't know how we can proceed. I mean, so I think

9 it is an important issue for you to address, you

10 know, beyond all the -- you know, the arguments

11 that you're making about, you know, general

12 fairness in past practice, I think we do need to

13 hit that question or address the question of

14 whether or not we have jurisdiction. Because

15 frankly in my mind, you know, while certainly

16 compelling to some extent, I don't know if it

17 carries much legal weight to say past practices was

18 this and looking at the course of negotiations and

19 so on and so forth if we don't have the

20 jurisdiction in the first place.

21 MR. MOODY: Well, I don't have much

22 to add to the argument at this point. And

23 certainly if this is a great concern to the

24 Commission, Superior needs to go back and look at

25 the cite that appears in MDU's brief on this

28

1 question. It is surprising that, you know, in the

2 almost two years that we've been in front of the

3 Commission we're suddenly hearing that there's a

4 problem.

5 Usually these kind of jurisdictional issues

6 are raised initially because people, you know, see

7 the problem and bring it to the Commission's

8 attention. So with that, I guess I'd say let us go

9 back and study on this and if necessary, submit

10 supplemental briefs.

11 VICE CHAIRMAN SAHR: Well, and I'll

12 also look to PUC staff on that issue and see what

13 their perspective is. They may be able to answer

14 the question that I'm asking. So I appreciate you

15 taking these questions now and perhaps the other

16 parties may be able to help flesh out some of those

17 details. I just didn't want to lose my train of

18 thought on the jurisdiction issue. So thank you.

19 MR. MOODY: Certainly.

20 CHAIRMAN HANSON: Any further

21 questions? If not, we will hear from Linda Walsh.

22 MS. WALSH: Hi. Thank you,

23 Commissioners, for having this discussion. I'd

24 like to add something on the jurisdictional issue,

25 if I may.

1 FERC delegated to the states the duty to
 2 implement PURPA and gave states options on how to
 3 do that. And the South Dakota Commission issued
 4 its order -- F3365 I believe is the number -- and
 5 the State opted to require tariffs for small QFs,
 6 less than 100 kW, and required that larger QFs
 7 negotiate with the utility and that the Commission
 8 would then step in if necessary if negotiations
 9 failed.

10 That's just one of the options. States also
 11 have the option to actually implement procedures
 12 for larger facilities, and it necessarily varies
 13 from state to state as a result.

14 Now I think the question on jurisdiction is if
 15 the states have the authority to implement PURPA
 16 and gave them lots of discretion on how to do that,
 17 then, you know, certainly part of that discretion
 18 is to determine whether or not a particular QF was
 19 properly before the Commission in the first place.
 20 And I think that's where the State gets the
 21 authority and certainly has the jurisdictions that
 22 it can consider this proceeding and the particular
 23 issue of whether there is an existing obligation.

24 To say otherwise would essentially say that
 25 FERC didn't have the authority to delegate all of

1 the PURPA implementation procedures in the first
 2 place, which, you know, that's been in effect for
 3 several decades now. So I'm not sure that we need
 4 to go that far into the question.

5 I'd like to also speak to the particular --
 6 the FERC cases in this proceeding. We have an
 7 Alliant petition that was filed in August, and we
 8 have an MDU petition that was filed just about two
 9 weeks ago. And I noticed in Superior's response we
 10 put that a decision in the Alliant proceeding was
 11 expected in early December. It's really in
 12 November that it's expected. So there was an error
 13 there. I think I just calculated the dates wrong.

14 But the -- and that corresponds to the 90 days
 15 that's in the Energy Act of 2005. And that
 16 requires FERC render its decision within 90 days of
 17 the petition filed. Now the act specifically
 18 states that FERC is to determine whether or not a
 19 service territory of the applicant, in this case
 20 Alliant or MDU, has met the competitive -- I'll
 21 call them the competitive tests. There's those
 22 three requirements to indicate whether or not there
 23 is access to the markets essentially.

24 The act does not specifically state that FERC
 25 should consider whether there's an existing

1 obligation on any particular -- with respect to any
 2 particular QF. And that makes a lot of sense
 3 because the particular implementation was then
 4 turned over to the state. So FERC really never
 5 gets into questions regarding particular QFs in
 6 this kind of a situation because it has turned that
 7 over to the states.

8 I agree that the issue on whether there is an
 9 existing obligation with respect to the Alliant
 10 petition and the MDU petition is in fact before
 11 FERC. Because the applicants have raised that
 12 issue. So, you know, while it's certainly possible
 13 that FERC will rule on those questions, it doesn't
 14 have to rule on those questions in 90 days and
 15 doesn't have to rule on the question at all. It
 16 could just pass on that question, doesn't have to
 17 rule. It just has to rule on those competitive
 18 questions, which is part of a 210M1, the three
 19 factors which are cited in all the pleadings here.

20 So, you know, while there is a decision in
 21 90 days expected on the Alliant petition and
 22 90 days from the MDU petition which the MDU
 23 petition would put us in December, there's no
 24 telling whether or not those decisions from FERC
 25 are actually going to make any difference in this

1 proceeding. There's no question -- there's no
 2 telling whether they're going to decide the
 3 existing obligation question.

4 FERC's precedent is that it turned that
 5 particular decision over to the states who did the
 6 Metropolitan Edison case and my sense is that
 7 they're going to do the same thing because there's
 8 no way they can make a generic rule on what an
 9 existing obligation is because it's necessarily
 10 very state-specific depending on how each state
 11 implemented PURPA.

12 So my guess is they're going to say that that
 13 particular question with respect to any particular
 14 facilities is for the state to decide and the
 15 energy bill itself says that FERC is to make a
 16 service-territory-wide determination, not a
 17 project-by-project determination on the question.

18 So Mr. Gerdes said earlier that there would be
 19 a small delay if we wait for FERC to issue its
 20 decisions. I don't think it will be a small delay.
 21 It has the potential to be a very long delay first
 22 if FERC doesn't decide all of the issues. And
 23 also, you know, there could be appeals of FERC's
 24 decision. That could extend things out who knows
 25 how long. And there's no reason to delay the

33

1 hearing when FERC may not give any clear guidance
 2 on the particular issues here.
 3 I think also that one of the questions that
 4 Mr. Gerdes had answered was about whether it's
 5 necessary to decide the question about whether
 6 there's an existing obligation in this case, and I
 7 think it is necessary for the Commission to make
 8 that determination. It's certainly necessary for
 9 purposes of determining whether to grant the Motion
 10 to Defer. Because, you know, by definition the
 11 statute is -- you know, is -- removes mandatory
 12 purchase obligations for obligations that are not
 13 existing.
 14 I think we have an existing obligation here.
 15 We need to get that established and move forward.
 16 And because it's an existing obligation there's
 17 really no need to defer the hearing. The only way
 18 you would need to defer the hearing is if there's a
 19 question on that.
 20 So I think that it's necessary to determine
 21 that definitively. I think it will also help FERC
 22 in the sense that FERC can take guidance from some
 23 states on the very question that FERC has before
 24 it. And that will help resolve that piece of the
 25 puzzle at FERC which really belongs to the states

34

1 in the first place.
 2 And I think that's all that I wanted to add.
 3 If there's any questions, I'd be happy to answer
 4 them.
 5 CHAIRMAN HANSON: Are there any
 6 questions by the Commission?
 7 John.
 8 MR. SMITH: Either Mr. Moody or
 9 Ms. Walsh, you know, we just looked at the
 10 Affidavit of Mr. Ferguson that you filed yesterday
 11 that lists all of those costs. Do you have
 12 concerns that if we forge ahead here and go to
 13 hearing, I mean, that's going to be another lump of
 14 cost for you guys and is that of concern to you
 15 that you do that and then things turn around and go
 16 the other way?
 17 I mean, I'm assuming by making your Motion
 18 you're willing -- or by resisting MDU's Motion
 19 you're willing to undertake that risk.
 20 MR. MOODY: This is Brad Moody.
 21 I'll take a stab at answering that. The answer is
 22 yes. We think that going forward is the right
 23 answer and maybe even the most cost-effective
 24 answer because in Superior's experience piecemeal
 25 resolution of all of the issues can very often

35

1 cause the ultimate costs to go up. So it's
 2 Superior's preference to go ahead and have the
 3 hearing, get all of these issues decided and MDU
 4 will presumably appeal and it will all be decided
 5 upon.
 6 CHAIRMAN HANSON: Mr. Gerdes, did
 7 you have something to add to that?
 8 MR. GERDES: Mr. Chairman -- well, I
 9 do have some response to the argument of counsel.
 10 I don't have anything to add to the specific point
 11 raised by Mr. Smith.
 12 CHAIRMAN HANSON: All right. I'm
 13 debating whether to have you folks going back and
 14 forth or whether we should allow staff to jump into
 15 it at this point.
 16 MR. GERDES: Go ahead. That's fine.
 17 CHAIRMAN HANSON: Karen.
 18 MS. CREMER: Well, this is
 19 Karen Cremer from staff. You can read staff's
 20 response and we do believe that an obligation
 21 exists. I will just quickly address some of the
 22 points they've made because I do know time is a
 23 factor here.
 24 I would agree with Ms. Walsh on her take on
 25 what the FERC Act -- or the PURPA Act of 1978 did.

36

1 I don't have mine in front of me, the Commission's
 2 order, 3365, but my memory of that would coincide
 3 with her.
 4 And as to the Hub City case, if I remember
 5 that one correctly also, the court there did
 6 recognize and acknowledge that agencies have
 7 implied authority. And -- as I remember that case.
 8 And so I think the Commission does have
 9 jurisdiction here. We've certainly acted as
 10 requested under the PURPA of 1978 with the Order
 11 and that FERC clearly anticipated State Commissions
 12 have some active role in these matters. So I do
 13 believe we have jurisdiction.
 14 Staff's concern with deferring this Motion is
 15 the appeal process. You know, if it were to go to
 16 FERC and FERC were to make a decision in November,
 17 December, whatever it may be, that may be the most
 18 effective way and cost-effective, but my concern
 19 becomes when everybody starts appealing, you're
 20 talking a year, year and a half down the road and
 21 we're still sitting here waiting to hear this
 22 matter. Sometimes it's just best to do it and be
 23 done with it. And that's staff's position.
 24 As to the cost of steel, that's really nothing
 25 I think that's in front of the Commission today.

37

1 That's a factual matter. That's nothing we can
 2 decide. I've got notes all over but if you've got
 3 a particular question, I would take that.
 4 CHAIRMAN HANSON: I would like you
 5 to address the semantics of request versus Motion.
 6 MS. CREMER: I don't see one. I
 7 would agree with Mr. Gerdes in a courtroom
 8 situation that there is a difference probably, but
 9 we don't -- we're not very formal here and by
 10 choice in administrative law. And I believe
 11 that -- and that's what he's more accustomed to is
 12 the courtroom law where motions are made more
 13 formally. Here it's just real informal. So I know
 14 what you were saying, but I didn't buy it.
 15 CHAIRMAN HANSON: Thank you.
 16 Mr. Gerdes, I'd like to give you an opportunity to
 17 respond to staff's presentation and some of the
 18 discussion that took place with MDU.
 19 MR. GERDES: Thank you,
 20 Mr. Chairman. I appreciate this opportunity. And
 21 I will try to keep it -- oh, I'm not sitting close
 22 enough to it. Thank you.
 23 I appreciate the opportunity, and I will try
 24 to keep this brief. I do have copies of the
 25 Northwestern Public Service Company decision with

38

1 me taking up one of the last items first, and I'd
 2 be happy to pass them out to staff and the
 3 Commission.
 4 (Documents are distributed)
 5 And I won't belabor the point, but if you go
 6 to the very last paragraph in the decision, the
 7 court says, "The PUC is not a court and cannot
 8 exercise purely judicial functions." And then
 9 going down in that same paragraph it said, "The PUC
 10 has exceeded its statutory authority by
 11 interpreting and enforcing the contract between a
 12 rural cooperative and its customer."
 13 Now that was the holding. So I will stand by
 14 the characterization of that decision as I made to
 15 the Commission.
 16 Secondly, I think with respect to Commissioner
 17 Sahr's question as to whether or not the question
 18 reverts back to FERC, I believe that in the
 19 amendment to PURPA Congress has already given us
 20 that answer. If we look at Subparagraph M, which
 21 is added to Section 210 of PURPA, Subparagraph 3
 22 entitled Commission Review, the first sentence
 23 says, "Any electric utility may file an application
 24 with the Commission for relief from the mandatory
 25 purchase obligation pursuant to this section on a

39

1 service territory wide basis."
 2 That's just what we've done. And it talks
 3 about relief from the mandatory purchase option.
 4 Now we have just got done talking about that, and
 5 it would be my position that FERC in fact does have
 6 the jurisdiction to make that same decision and
 7 it's now in front of them.
 8 VICE CHAIRMAN SAHR: Mr. Chairman,
 9 if I may. Mr. Gerdes, is that under the new
 10 provision of the Energy Act?
 11 MR. GERDES: Yes.
 12 VICE CHAIRMAN SAHR: Because one of
 13 the things, of course, that we're grappling with is
 14 do we follow the old provisions or do we follow the
 15 new provisions. And I think there's some pretty
 16 good arguments both ways on that.
 17 Do you know, was there a similar -- I don't
 18 want to call it backstop, but was there a similar
 19 procedure do you know under the previous
 20 provisions? Or maybe at this point in time it's
 21 probably irrelevant. Probably in your mind you
 22 like the new provisions. That's not relevant;
 23 right?
 24 MR. GERDES: In my mind I like the
 25 new one and I cannot answer your question as to

40

1 what existed previously. It's been my general
 2 experience that I think it bounces back to the
 3 federal agency. If you talk about preemption as a
 4 concept, of course, it falls on the federal agency.
 5 But beyond that, I can't comment.
 6 I really don't want to get into this argument
 7 about, you know, he said, she said, who delayed
 8 what. If you look at our comments, however,
 9 Mr. Moody talked about, you know, MDU isn't talking
 10 to Superior. Well, our comments talk about a point
 11 in time when Superior wasn't talking to MDU. So,
 12 you know, without going into that any further, I'll
 13 just leave it at that.
 14 Mr. Moody, I think, made a mistake in his
 15 comments. He talked about Superior being a QF
 16 since 2003. I think the record will show that the
 17 QF filing was on April 15 of 2004.
 18 And then as far as the questions that -- the
 19 Iowa decision, Mr. Moody said that Iowa adopted a
 20 four-part test. Well, if you read the decision it
 21 was a statutory four-part test that exists in Iowa,
 22 which does not exist here. And it doesn't -- it
 23 doesn't apply to this proceeding, I would submit.
 24 And then finally the question of
 25 jurisdiction -- and I think Commissioner Sahr

1 pointed it out and that is jurisdiction is never
2 waived. If a lack of jurisdiction exists, it can
3 be brought up at any time. And the fact that MDU
4 has participated in this proceeding does not
5 prejudice its right to assert a lack of
6 jurisdiction.

7 Quite frankly, I think that probably the
8 question can be divided. I view it that even
9 though we go along in an avoided costs proceeding,
10 when we start talking about the federal question of
11 whether or not a -- an obligation exists under the
12 new PURPA language, then that can really be a
13 different question, I believe.

14 So those would be my comments. I don't want
15 to drag this out too long.

16 CHAIRMAN HANSON: Thank you. Did
17 you have additional?

18 VICE CHAIRMAN SAHR: I have a
19 question. I think Mr. Smith was first.

20 MR. SMITH: This one is I think for
21 probably Ms. Walsh and maybe you too, Mr. Gerdes.

22 Is not the way it worked under the old
23 PURPA -- and I think still works -- when viewed
24 from the QF's point of view the statute you're
25 referring to, Dave, is a statute that gives the

1 requested utility those rights?

2 MR. GERDES: That's correct.

3 MR. SMITH: But with respect to who
4 oversees an avoided cost proceeding and the other
5 proceedings relative to overseeing the PPA process,
6 right, I mean PURPA clearly indicated that with
7 respect to regulated utilities that would be State
8 Commissions; correct?

9 MR. GERDES: That's true. But,
10 again, the fact that -- PURPA can delegate all it
11 wants, but the only way this Commission can respond
12 to a delegation of authority is pursuant to
13 statutory authority given by the Legislature to
14 this Commission to respond.

15 MR. SMITH: Right. Here's my
16 question. And maybe -- Ms. Walsh, I'd like your
17 response too. Let's assume then if we were
18 assuming certainly without deciding that we find we
19 don't have jurisdiction to do anything here -- and
20 I think we either have jurisdiction to do most of
21 it or none.

22 Does that then mean that MDU under the terms
23 of the PURPA law, and I don't have it here with me,
24 I'm sorry, becomes an unregulated utility under the
25 terms of the PURPA act and therefore subject to the

1 regulatory provisions under that act for
2 unregulated utilities, which generally means
3 co-ops, et cetera? But if none of our utilities
4 are regulated at that point, is that the set of
5 procedures that would obtain and would put this
6 back in the hands of FERC or to arbitrate or to
7 adjudicate unreasonable actions by you?

8 MR. GERDES: I don't believe so,
9 Mr. Smith, because, I mean, Montana-Dakota is a
10 regulated utility under state law certainly. And
11 so I don't know how that changes that fact.

12 I do not know under PURPA whether it is viewed
13 by PURPA as being regulated or not. It's my
14 impression that it is. But I haven't looked at
15 that for a long time so I can't answer that.

16 MR. SMITH: The answer to that would
17 be no one would have authority to deal with this
18 issue literally? There would be no agency out
19 there capable of hearing the avoided cost
20 proceeding in this case?

21 MR. GERDES: No. I'm saying that I
22 think Montana-Dakota is a regulated utility both
23 for FERC's purposes and for the state's purposes is
24 what I'm saying.

25 MR. SMITH: And is that -- does that

1 extend to this Commission's authority to determine
2 avoided cost and the other terms and conditions as
3 originally envisioned by the PURPA act?

4 MR. GERDES: You know, I haven't
5 really analyzed that. I've always had the
6 impression that the Commission could do it because
7 no one objected to it. But, I mean, I haven't done
8 the extended research that I would know. The
9 research I did related to the question of whether
10 or not an obligation exists or not. I can't answer
11 your question completely at this point.

12 MR. SMITH: Do you have anything to
13 add on that, Ms. Walsh?

14 MS. WALSH: Yes, I do, actually. I
15 think the question of what -- how the Commission
16 exercises jurisdiction depends on the issue. And
17 bringing in the Northwest Public Service case, that
18 case was a question of contract interpretation.
19 And I think what we're talking about here is not a
20 particular contract term that we're interpreting.
21 We're interpreting a regulatory obligation, which
22 is squarely within the Commission's jurisdiction.

23 And, you know, even FERC will not generally
24 get in the middle of a contract dispute between two
25 parties, which is where I think the Northwest case

1 was -- the issue that the Northwest case was
 2 dealing with. FERC will tell the parties to go to
 3 a state court to interpret a contract provision.
 4 For example, you know, who has to deliver at what
 5 time or how much or, you know, who has the
 6 liability or -- those kind of issues are contract
 7 issues, and those FERC won't decide.
 8 If it has to do with rates, if it has to do
 9 with any terms and conditions of service that are
 10 jurisdictional, those are things that FERC will
 11 hear under its jurisdiction.
 12 And I think the same is true with the State.
 13 And if we're dealing with the regulatory question
 14 of things that are regulated by the State, which
 15 would include the PURPA obligation, the State
 16 certainly has jurisdiction.
 17 Now if we were before the Commission asking
 18 you to decide what a particular contract provision
 19 means or what the parties intended by that, that
 20 would be another question, and I think that would
 21 be the situation where the State probably shouldn't
 22 exercise the jurisdiction.
 23 The question of what existed previously under
 24 PURPA -- and PURPA -- 210 of PURPA, 1A through L
 25 essentially and the Energy Act of 2005 added

1 Section M. And M has many different subsections
 2 and one of which allows utilities to apply to FERC
 3 for relief from the mandatory purchase obligations.
 4 And the Section M also contains provisions
 5 explaining how the utility should go about doing
 6 that.
 7 It also, though, contains a provision and this
 8 is 210M6, which says that nothing in 210M is
 9 intended to -- and I'll read the language
 10 specifically. It's entitled No Effect On Existing
 11 Rights And Remedies. "Nothing in this subsection,"
 12 which is referring to Subsection M, "affects the
 13 rights or remedies of any party under any contract
 14 or obligation in effect or pending approvals before
 15 the appropriate state authority or nonregulated
 16 electric utility on the date of enactment of this
 17 subsection." And it continues on, but I think
 18 that's the relevant piece of it.
 19 And that's I think where we are now. The
 20 question is whether 210M applies at all in this
 21 case, which we think it doesn't because this only
 22 affects new obligations. In fact, from the very
 23 beginning 210M1 states that "After the date of
 24 enactment of this subsection no electric utility
 25 shall be required to enter into a new contract or

1 obligation to purchase from a qualifying facility."
 2 And then it continues on "if there are competitive
 3 markets."
 4 So I don't think that 210M applies at all and
 5 that the old rules are in effect, which has the
 6 mandatory obligation -- purchase obligation in
 7 them.
 8 MR. SMITH: Let me clarify just a
 9 little bit. What I'm getting at -- and I just
 10 don't have the act right in front of me. If we
 11 have no authority under PURPA to do anything
 12 because we're lacking in explicit legislative
 13 delegation here at the state level, then does MDU
 14 become an unregulated utility and subject to the
 15 unregulated utility provisions under the original
 16 PURPA act?
 17 MS. WALSH: Well, if -- if I
 18 understand correctly, what you're saying is that
 19 the State did not have the authority to accept the
 20 delegation from FERC in the first place?
 21 MR. SMITH: That's right. You know,
 22 that's right. And, again, that's not quite the
 23 Hub City case, but what I'm getting at is to the
 24 extent that we don't have the authority to
 25 regulate, does that render MDU an unregulated

1 utility under PURPA and therefore subject to those
 2 provisions, that particular regulatory regime that
 3 applies to unregulated utilities like co-ops?
 4 MS. WALSH: Well, maybe. Yeah. I
 5 guess I can't answer that question. Unregulated
 6 utilities is certainly covered by PURPA, and I
 7 think it's essentially the same obligation. It's
 8 just not enforceable by a PUC. But FERC has
 9 enforcement authority. So if an unregulated
 10 utility were to fail to comply with PURPA, parties
 11 can go to FERC and seek enforcement.
 12 FERC has rarely done that. We did cite one
 13 case. One recent case is the Swecker case where
 14 FERC did in fact exercise enforcement authority and
 15 that was against an unregulated utility.
 16 MR. SMITH: Thank you.
 17 MS. WALSH: Thank you.
 18 VICE CHAIRMAN SAHR: I have one more
 19 question, if I could, please.
 20 CHAIRMAN HANSON: Please go ahead.
 21 VICE CHAIRMAN SAHR: Dave, when you
 22 talk about jurisdiction here -- and I'm trying not
 23 to lose -- I want to make sure I understand your
 24 argument. Is your argument that if we possibly
 25 lack jurisdiction for anything before us -- or,

1 excuse me, before all matters within this Docket
2 and not just some aspects of it and we can pursue
3 other aspects with jurisdiction or are you just
4 flat out saying that your opinion is that we have
5 no jurisdiction act under state law, therefore, we
6 can't do anything with this Docket?

7 MR. GERDES: Well, it's my opinion,
8 Commissioner Sahr, that clearly the Commission does
9 not have the statutory authority to interpret the
10 statute dealing with whether or not an obligation
11 exists.

12 And so then the question is does this
13 Commission have jurisdiction over an avoided cost
14 proceeding that has been delegated to it by PURPA.

15 I had not arrived at that conclusion and would
16 like to have time to perhaps go back and look at
17 the statutes with that thought in mind. When I
18 wrote this in our comments on Friday I was thinking
19 only of the -- only as it dealt with the question
20 of whether or not an obligation exists. And it
21 dovetailed in with my point that I did not think
22 that it was a question that was properly before the
23 Commission.

24 But nonetheless, I agree with you that the
25 natural, logical progression of the position

1 they've taken would indicate that perhaps there
2 would be no jurisdiction to address an avoided cost
3 proceeding as well. I mean, I understand that that
4 could flow from the position I've taken. I'm not
5 100 percent sure I'd want to say that but I'm
6 90 percent sure I guess I'd say it because it flows
7 from the position we've taken, yes.

8 VICE CHAIRMAN SAHR: Thank you.

9 CHAIRMAN HANSON: John, do you have
10 additional questions?

11 MR. SMITH: Yeah. And I think this
12 is a short one. The Commission in order to fulfill
13 its responsibilities under an avoided cost
14 determination must of necessity render decisions
15 concerning what the "obligations" of various
16 parties are from a regulatory standpoint under the
17 PURPA law and FERC's regulations, must it not?

18 MR. GERDES: But here we're being
19 asked to determine what the term "obligation" means
20 within the specific context of the new PURPA act,
21 and I think that's different.

22 You're being asked to make a decision as a
23 matter of law as to what this statute says.

24 MR. SMITH: Are we? Well, I guess
25 we are.

1 MR. GERDES: Yep. And I think
2 that's up to PURPA.

3 MR. SMITH: Well, that may be the
4 case. I mean, it necessarily is the case, but it
5 may also mean that we're being asked to render a
6 decision as to what the obligation is under the
7 original -- whether an obligation arose under the
8 original PURPA law.

9 MS. WALSH: That's exactly the
10 issue, I believe.

11 MR. GERDES: I think that the --
12 what we're talking about is the savings statute and
13 what does the term "obligation" or contract pending
14 before a State Commission mean as it relates to
15 this proceeding and whether or not it can go
16 forward.

17 And I believe that that is the question that's
18 before this Commission, and I believe that it does
19 not have jurisdiction to answer that question.

20 MR. SMITH: Thank you.

21 VICE CHAIRMAN SAHR: And I do just
22 want to note, I don't have -- I haven't formulated
23 any sort of opinion on jurisdiction. I just
24 thought it was an interesting question that had
25 been raised and certainly, you know, one that's

1 important for any tribunal to grapple with.

2 So I don't want anybody to think I'm tipping
3 one way or another necessarily. I've got an open
4 mind on it, but since it came up in the context of
5 today's motion, I thought it was important to
6 address.

7 MR. GERDES: Well, and we may very
8 well find out what the South Dakota Supreme Court
9 thinks about that eventually.

10 CHAIRMAN HANSON: Commissioner
11 Johnson, do you have any questions?

12 COMMISSIONER JOHNSON: Only a
13 comment. If there are any other questions, they
14 should go first.

15 CHAIRMAN HANSON: Any other
16 questions? If not, please.

17 COMMISSIONER JOHNSON: Just as a
18 procedural matter, Mr. Chairman, I have a question
19 for our General Counsel regarding these
20 jurisdictional issues, and unless we're under some
21 incredible time constraints, would prefer that we
22 take this matter under advisement rather than rule
23 from -- rule today.

24 CHAIRMAN HANSON: Thank you,
25 Commissioner Johnson. We'll be off the record for

1 a moment.

2 (Discussion off the record)

3 VICE CHAIRMAN SAHR: I would move

4 that at the end of the regular PUC hearing that we

5 go into executive session in this Docket.

6 CHAIRMAN HANSON: Did you have that

7 on record?

8 THE COURT REPORTER: Yes.

9 CHAIRMAN HANSON: Thank you. I

10 second the Motion.

11 COMMISSIONER JOHNSON: Concur.

12 (A recess is taken at which time the Commission

13 meets in executive session)

14 CHAIRMAN HANSON: I will move that

15 the Commission grant a continuance until FERC has

16 released its decision in Alliant Energy Corporate

17 Services, Incorporated in relationship to EL04-016.

18 VICE CHAIRMAN SAHR: Second.

19 COMMISSIONER JOHNSON: I concur.

20

21

22

23

24

25

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF HUGHES)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered

6 Professional Reporter and Notary Public in and for the

7 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 4th day of

11 October 2005, and that the attached is a true and

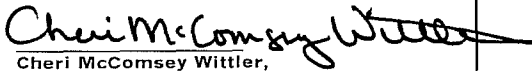
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 14th day

14 of October 2005.

15

16

17 

18 Cheri McComsey Wittler,

19 Notary Public and

20 Registered Professional Reporter

21

22

23

24

25

Word Index

\$	Able [6] 8:11 17:23 22:20 24:3 28:13 28:16	Approved [1] 25:18	
\$600,000 [2] 18:4 18:16	Above-entitled [2] 2:13 54:10	April [1] 40:17	
1	Absolute [1] 18:24	Arbitrate [1] 43:6	
1 [2] 9:1 15:6 100 [2] 29:6 50:5 10:30 [1] 2:16 14th [1] 54:13 15 [1] 40:17 19 [1] 19:3 1978 [2] 35:25 36:10 1995 [1] 14:16 1996 [1] 9:17 1997 [1] 8:24 1A [1] 45:24	Absolutely [1] 17:21 Accept [2] 26:13 47:19 Access [1] 30:23 Account [1] 17:19 Accustomed [1] 37:11 Acknowledge [1] 36:6 Acknowledged [1] 25:15 Acquired [1] 18:5 Act [26] 5:8 5:20 7:14 7:16 9:17 11:9 11:19 14:22 20:3 23:23 23:24 24:25 30:15 30:17 30:24 35:25 35:25 39:10 42:25 43:1 44:3 45:25 47:10 47:16 49:5 50:20 Acted [2] 25:11 36:9 Actions [1] 43:7 Active [1] 36:12 Activity [1] 18:22 Actual [1] 6:4 Add [7] 22:6 27:22 28:24 34:2 35:7 35:10 44:13 Added [2] 38:21 45:25 Additional [2] 41:17 50:10 Address [12] 11:20 12:20 14:14 16:2 22:13 24:19 27:9 27:13 35:21 37:5 50:2 52:6 Addressing [1] 13:12 Adjudicate [1] 43:7 Administrative [1] 37:10 Adopted [2] 21:2 40:19 Adversely [1] 20:13 Advisement [1] 52:22 Affected [1] 21:9 Affecting [2] 20:13 20:15 Affects [2] 46:12 46:22 Affidavit [2] 18:2 34:10 Afternoon [2] 16:17 25:8 Agencies [1] 36:6 Agency [3] 40:3 40:4 43:18 Agenda [3] 5:16 15:6 15:12 Ago [1] 30:9 Agree [4] 31:8 35:24 37:7 49:24 Agreement	17:5 17:10 18:21 19:18 21:21 Ahead [8] 5:4 5:12 6:20 23:4 34:12 35:2 35:16 48:20 Ailts [1] 1:13 AL [1] 1:4 Albeit [1] 27:5 Alliance [1] 16:7 Alliant [10] 6:18 11:16 22:15 22:25 30:7 30:10 30:20 31:9 31:21 53:16 Allow [2] 20:23 35:14 Allowed [1] 21:5 Allowing [1] 22:9 Allows [1] 46:2 Almost [3] 17:4 18:4 28:2 Amazed [1] 22:19 Amendment [4] 8:7 20:2 20:4 38:19 Amendments [3] 11:10 16:11 20:23 Analytical [1] 6:2 Analyzed [1] 44:5 Andrea [1] 2:10 Answer [14] 13:22 14:20 28:13 34:3 34:21 34:23 34:24 38:20 39:25 43:15 43:16 44:10 48:5 51:19 Answered [2] 7:4 33:4 Answering [1] 34:21 Anticipated [1] 36:11 Anyway [2] 11:2 12:16 Appeal [2] 35:4 36:15 Appealing [1] 36:19 Appeals [2] 19:23 32:23 APPEARANCES [2] 1:20 2:1 Applicable [2] 10:7 21:3 Applicant [2] 10:10 30:19 Applicants [1] 31:11 Application [1] 38:23 Applications [1] 4:7 Applies [3] 46:20 47:4 48:3 Apply [3] 7:13 40:23 46:2 Appreciate [5] 24:16 26:18 28:14 37:20 37:23 Approaches [1] 4:5 Appropriate [2] 23:2 46:15 Approval [1] 7:18 Approvals [1] 46:14	Arguing [3] 12:6 16:22 26:2 Argument [7] 24:25 25:8 27:22 35:9 40:6 48:24 48:24 Arguments [2] 27:10 39:16 Arms-length [1] 18:20 Arose [1] 51:7 Arrived [1] 49:15 Aspects [2] 49:2 49:3 Assert [1] 41:5 Assume [1] 42:17 Assuming [2] 34:17 42:18 Attached [2] 21:22 54:11 Attention [1] 28:8 Attorneys [1] 15:19 August [1] 30:7 Augustine [1] 2:5 Authority [32] 8:19 9:4 9:9 11:8 14:18 14:21 23:13 23:23 24:7 24:12 24:20 24:22 25:3 25:12 26:12 29:15 29:21 29:25 36:7 38:10 42:12 42:13 43:17 44:1 46:15 47:11 47:19 47:24 48:9 48:14 49:9 Avenue [1] 2:14 Avoided [16] 5:4 13:3 13:7 13:8 17:9 17:11 18:25 19:5 20:15 41:9 42:4 43:19 44:2 49:13 50:2 50:13
2	2003 [2] 19:3 40:16 2004 [1] 40:17 2005 [7] 1:8 2:15 20:3 30:15 45:25 54:11 54:14 210 [2] 38:21 45:24 210M [3] 46:8 46:20 47:4 210M1 [2] 31:18 46:23 210M6 [1] 46:8	Assert [1] 41:5 Assume [1] 42:17 Assuming [2] 34:17 42:18 Attached [2] 21:22 54:11 Attention [1] 28:8 Attorneys [1] 15:19 August [1] 30:7 Augustine [1] 2:5 Authority [32] 8:19 9:4 9:9 11:8 14:18 14:21 23:13 23:23 24:7 24:12 24:20 24:22 25:3 25:12 26:12 29:15 29:21 29:25 36:7 38:10 42:12 42:13 43:17 44:1 46:15 47:11 47:19 47:24 48:9 48:14 49:9 B	
3	3 [1] 38:21 3365 [1] 36:2	Backstop [1] 39:18 Baker [1] 2:8 Ball [1] 2:9 Based [3] 10:15 11:7 21:3 Basis [5] 7:6 7:8 19:8 20:5 39:1 Bearing [1] 16:25 Become [2] 20:21 47:14 Becomes [2] 36:19 42:24 Began [1] 18:22 Beginning [3] 11:25 16:12 46:23 Behalf [1] 16:1 Behavior [1] 26:4 Behind [1] 20:8 Belabor [1] 38:5 Belief	
4	4 [1] 1:8 412 [1] 2:14 49-31-81 [1] 9:14 4:15 [1] 25:8 4th [2] 2:15 54:10	B	
5	500 [1] 2:14		
9	90 [7] 10:25 30:14 30:16 31:14 31:21 31:22 50:6		
A	A.m. [1] 2:16 Ability [3] 9:5 9:12 11:19		

Word Index

[1] 8:6
Believes
 [7] 4:2 4:6 4:22 17:17 20:22 22:1 22:11
Belongs
 [1] 33:25
Benefit
 [1] 25:7
Bennett
 [1] 2:2
Best
 [2] 1:15 36:22
Between
 [3] 5:6 38:11 44:24
Beyond
 [3] 6:8 27:10 40:5
Bill
 [1] 32:15
Bit
 [2] 13:18 47:9
Blame
 [1] 4:17
Board
 [4] 10:24 20:25 21:2 21:15
Bob
 [2] 1:11 1:17
Bonrud
 [1] 1:19
Bootstrapping
 [1] 17:15
Bounce
 [1] 15:14
Bounces
 [1] 40:2
Brad
 [5] 1:21 15:19 15:22 22:18 34:20
Brief
 [3] 23:11 27:25 37:24
Briefed
 [1] 10:17
Briefly
 [2] 9:24 25:7
Briefs
 [1] 28:10
Bring
 [2] 18:9 28:7
Bringing
 [1] 44:17
Brings
 [1] 25:25
Broad
 [1] 9:18
Brought
 [1] 41:3
Bumped
 [1] 23:25
Burke
 [1] 2:3
Buy
 [1] 37:14

C

Calculated
 [1] 30:13
Cannot
 [3] 9:1 38:7 39:25
Capable
 [1] 43:19
Capacity
 [1] 18:25
Capitol
 [2] 2:14 2:14
Carries
 [1] 27:17
Carrying
 [1] 15:15
Case
 [21] 4:21 10:25 23:10 24:2 30:19 32:6
 33:6 36:4 36:7 43:20 44:17 44:18 44:
 25 45:1 46:21 47:23 48:13 48:13 48:
 13 51:4 51:4

Cases
 [5] 14:4 14:7 14:15 26:24 30:6
Catch
 [1] 25:5
Catch-all
 [1] 25:5
Caused
 [1] 16:15
Causing
 [1] 20:16
Certain
 [1] 23:24
Certainly
 [20] 11:20 18:7 22:10 24:16 25:11 26:
 4 26:14 27:15 27:23 28:19 29:17 29:
 21 31:12 33:8 36:9 42:18 43:10 45:16
 48:6 51:25
CERTIFICATE
 [1] 54:2
Certified
 [1] 7:14
CERTIFY
 [1] 54:8
Cetera
 [1] 43:3
Chairman
 [59] 1:10 1:11 3:1 3:13 3:20 8:16 10:
 19 11:24 12:24 13:1 13:16 14:3 14:11
 14:12 14:24 14:24 14:25 15:1 15:18
 15:21 22:17 22:23 23:3 23:4 23:5 23:
 21 24:15 25:22 26:17 28:11 28:20 34:
 5 35:6 35:8 35:12 35:17 37:4 37:15
 37:20 39:8 39:8 39:12 41:16 41:18 48:
 18 48:20 48:21 50:8 50:9 51:21 52:10
 52:15 52:18 52:24 53:3 53:6 53:9 53:
 14 53:18
Changed
 [2] 5:8 23:17
Changes
 [1] 43:11
Chapter
 [1] 9:8
Characterization
 [1] 38:14
Check
 [1] 15:15
Checked
 [1] 15:8
Cheri
 [3] 1:24 54:5 54:18
Choice
 [1] 37:10
Chooses
 [1] 23:23
Chorzempa
 [1] 2:8
Chris
 [1] 2:4
Cite
 [2] 27:25 48:12
Cited
 [2] 14:16 31:19
Cites
 [1] 23:10
City
 [2] 36:4 47:23
Claim
 [1] 24:19
Clarify
 [1] 47:8
Clause
 [1] 7:13
Clear
 [1] 33:1
Clearly
 [10] 3:23 7:18 8:6 9:3 9:14 11:5 11:7
 36:11 42:6 49:8
Click
 [3] 15:11 15:12 15:16
Close
 [1] 37:21
Co

[3] 1:5 43:3 48:3
Co-counsel
 [3] 15:24 19:1 23:1
Co-ops
 [2] 43:3 48:3
Code
 [1] 9:8
Coin
 [1] 21:17
Coincide
 [1] 36:2
Colleen
 [1] 2:7
Commencing
 [1] 2:16
Comment
 [4] 5:13 16:16 40:5 52:13
Comments
 [7] 4:15 16:1 40:8 40:10 40:15 41:14
 49:18
Commission
 [95] 1:1 1:10 1:12 3:5 3:6 3:7 3:9 3:
 14 3:21 5:14 5:15 5:18 5:22 6:3 6:5 6:
 8 6:10 6:13 6:15 6:19 7:5 7:10 8:16 8:
 19 8:21 9:10 9:12 9:15 9:18 10:2 10:
 5 10:14 10:17 11:6 11:8 11:11 11:23
 12:8 12:18 12:20 12:21 13:2 13:7 13:
 13 13:25 14:17 14:21 15:21 16:3 17:1
 17:3 17:11 18:9 19:15 19:22 20:19 21:
 13 22:1 22:3 24:1 24:10 25:3 25:11
 25:18 26:5 26:8 26:12 26:15 26:21 27:
 24 28:3 29:3 29:7 29:19 33:7 34:6 36:
 8 36:25 38:3 38:15 38:22 38:24 42:11
 42:14 44:6 44:15 45:17 49:8 49:13 49:
 23 50:12 51:14 51:18 53:12 53:15
Commission's
 [7] 9:5 11:19 19:13 28:7 36:1 44:1 44:
 22
Commissioner
 [10] 1:11 38:16 40:25 49:8 52:10 52:
 12 52:17 52:25 53:11 53:19
Commissioners
 [1] 28:23
Commissions
 [3] 23:13 36:11 42:8
Commodity
 [1] 22:7
Communications
 [1] 24:1
Company
 [2] 8:24 37:25
Compelling
 [1] 27:16
Competitive
 [4] 30:20 30:21 31:17 47:2
Complete
 [1] 17:9
Completely
 [1] 44:11
Complicated
 [1] 19:23
Comply
 [3] 9:15 17:25 48:10
Concept
 [1] 40:4
Concern
 [4] 27:23 34:14 36:14 36:18
Concerning
 [1] 50:15
Concerns
 [2] 10:8 34:12
Conclusion
 [1] 49:15
Concrete
 [1] 20:11
Concur
 [2] 53:11 53:19
Conditional
 [1] 8:11
Conditions
 [3] 7:21 44:2 45:9
Conduct

[2] 17:19 21:16
Conducted
 [1] 18:6
Confers
 [1] 26:25
Congress
 [4] 7:13 8:8 23:11 38:19
Consequences
 [1] 20:10
Consider
 [4] 6:16 10:2 29:22 30:25
Consideration
 [1] 6:1
Consistently
 [1] 26:9
Constraints
 [1] 52:21
Construction
 [1] 20:12
Contains
 [2] 46:4 46:7
Contention
 [2] 25:24 27:6
Context
 [2] 50:20 52:4
Contexts
 [1] 6:17
Continually
 [1] 25:15
Continuance
 [2] 12:4 53:15
Continued
 [1] 10:13
Continues
 [3] 19:16 46:17 47:2
Contract
 [16] 3:8 7:9 7:17 8:12 12:11 23:16 38:
 11 44:18 44:20 44:24 45:3 45:6 45:18
 46:13 46:25 51:13
Contracts
 [1] 13:25
Contrast
 [1] 9:13
Convenience
 [1] 4:23
Cooperative
 [1] 38:12
Copies
 [1] 37:24
Core
 [2] 4:22 16:4
Corporate
 [1] 53:16
Correct
 [4] 15:16 42:2 42:8 54:12
Correctly
 [2] 36:5 47:18
Corresponds
 [1] 30:14
Cost
 [11] 5:5 19:5 34:14 36:18 36:24 42:4
 43:19 44:2 49:13 50:2 50:13
Cost-effective
 [2] 34:23 36:18
Costs
 [15] 4:24 13:3 13:7 13:8 17:8 17:9 17:
 11 18:25 20:12 20:14 20:15 20:19 34:
 11 35:1 41:9
Counsel
 [2] 35:9 52:19
COUNTY
 [1] 54:3
Couple
 [2] 22:24 23:6
Course
 [8] 8:17 13:6 16:21 17:12 24:24 27:18
 39:13 40:4
Court
 [10] 8:25 9:1 9:3 22:19 36:5 38:7 38:
 7 45:3 52:8 53:8
Court's

Word Index

[1] 8:23
Courtroom
 [2] 37:7 37:12
Covered
 [1] 48:6
Credit
 [1] 21:20
Cremer
 [4] 1:14 35:18 35:19 37:6
Criticizing
 [1] 15:9
Crossed
 [1] 20:7
CRR
 [1] 1:24
Curious
 [2] 13:18 24:1
Current
 [4] 5:12 5:12 8:10 11:12
Customer
 [1] 38:12
Cut
 [1] 19:21

D

D. C.
 [1] 15:24
Dakota
 [13] 1:2 2:13 2:15 8:22 8:25 10:13 22:3 22:4 29:3 52:8 54:1 54:7 54:13
Dan
 [1] 2:9
Danger
 [1] 21:24
Data
 [1] 18:6
Date
 [4] 11:11 11:12 46:16 46:23
Dated
 [1] 54:13
Dates
 [1] 30:13
Dave
 [6] 1:16 2:8 3:14 11:24 41:25 48:21
David
 [1] 1:21
Days
 [7] 10:25 26:19 30:14 30:16 31:14 31:21 31:22
Deadline
 [1] 10:9
Deal
 [2] 16:22 43:17
Dealing
 [3] 45:2 45:13 49:10
Dealt
 [1] 49:19
Debating
 [1] 35:13
Decades
 [1] 30:3
December
 [3] 30:11 31:23 36:17
Decide
 [11] 5:2 18:18 23:8 24:20 32:2 32:14 32:22 33:5 37:2 45:7 45:18
Decided
 [5] 5:1 8:24 9:23 35:3 35:4
Deciding
 [3] 17:19 23:13 42:18
Decision
 [32] 6:21 8:23 9:25 10:3 10:4 10:6 10:15 10:24 11:4 11:7 14:18 19:13 20:25 21:2 21:12 25:10 26:14 30:10 30:16 31:20 32:5 32:24 36:16 37:25 38:6 38:14 39:6 40:19 40:20 50:22 51:6 53:16
Decisions
 [4] 9:10 31:24 32:20 50:14
Defer
 [10] 5:22 5:23 6:5 6:25 11:23 16:4 23:15 33:10 33:17 33:18

Deferral
 [9] 3:6 3:11 4:20 5:16 6:14 12:3 12:7 12:8 19:9
Deferring
 [1] 36:14
Defined
 [3] 7:22 8:6 12:17
Definitely
 [1] 7:5
Definition
 [2] 8:4 33:10
Definitively
 [1] 33:21
Delay
 [17] 4:18 5:1 5:10 11:11 16:14 16:14 17:14 17:15 20:9 20:10 20:20 20:23 20:25 32:19 32:20 32:21 32:25
Delayed
 [4] 4:13 16:23 21:19 40:7
Delegate
 [2] 29:25 42:10
Delegated
 [7] 13:9 14:5 23:12 23:19 24:12 29:1 49:14
Delegation
 [5] 13:5 26:7 42:12 47:13 47:20
Deliver
 [1] 45:4
Delivery
 [1] 7:21
Demand
 [1] 7:18
Denied
 [1] 21:7
Denny
 [1] 2:2
Deny
 [1] 12:8
Detail
 [1] 19:2
Details
 [2] 22:13 28:17
Determination
 [4] 32:16 32:17 33:8 50:14
Determine
 [6] 8:3 29:18 30:18 33:20 44:1 50:19
Determining
 [1] 33:9
Develop
 [1] 18:4
Development
 [1] 22:5
Deviation
 [1] 17:14
Dick
 [1] 2:5
Dictate
 [1] 22:8
Difference
 [2] 31:25 37:8
Different
 [4] 6:21 41:13 46:1 50:21
Disagree
 [1] 7:11
Disclose
 [1] 20:3
Discretion
 [2] 29:16 29:17
Discuss
 [3] 8:20 16:5 23:2
Discussed
 [1] 4:14
Discussion
 [5] 4:11 22:22 28:23 37:18 53:2
Dispute
 [1] 44:24
Distinction
 [1] 14:4
Distinguish
 [1] 10:4
Distinguishable

[1] 11:5
Distributed
 [1] 38:4
Divided
 [1] 41:8
Docket
 [6] 15:7 15:13 27:6 49:1 49:6 53:5
Dockets
 [3] 10:16 10:24 11:2
Documenting
 [1] 18:3
Documents
 [1] 38:4
Don
 [1] 2:9
Done
 [5] 36:23 39:2 39:4 44:7 48:12
Doughnut
 [1] 10:18
Douglas
 [1] 1:18
Dovetailed
 [1] 49:21
Down
 [3] 18:19 36:20 38:9
Drag
 [1] 41:15
Duly-appointed
 [1] 54:8
During
 [3] 17:6 17:12 20:6
DUSTY
 [1] 1:11
Duty
 [1] 29:1

E

Early
 [2] 11:12 30:11
Easements
 [1] 18:5
Easily
 [1] 7:15
East
 [1] 2:14
Economics
 [1] 20:14
Edison
 [3] 14:15 23:10 32:6
Effect
 [12] 7:9 7:17 7:23 16:10 17:13 19:14 25:17 25:21 30:2 46:10 46:14 47:5
Effective
 [2] 36:18 36:18
Either
 [7] 21:22 23:22 25:3 26:4 26:22 34:8 42:20
EL04-016
 [4] 1:4 3:1 15:7 53:17
EL05-016
 [1] 15:8
Elaborate
 [1] 27:3
Electric
 [4] 15:6 38:23 46:16 46:24
Electricity
 [1] 14:6
Enactment
 [2] 46:16 46:24
End
 [1] 53:4
Energy
 [17] 1:4 1:21 1:22 3:2 4:1 4:1 5:8 5:19 5:20 15:23 18:24 20:2 30:15 32:15 39:10 45:25 53:16
Enforceable
 [1] 48:8
Enforcement
 [3] 48:9 48:11 48:14
Enforcing
 [1] 38:11

Engineering
 [1] 18:6
Enter
 [1] 46:25
Entitled
 [2] 38:22 46:10
Envisioned
 [1] 44:3
Error
 [1] 30:12
Essential
 [1] 22:7
Essentially
 [4] 29:24 30:23 45:25 48:7
Established
 [1] 33:15
Et
 [2] 1:4 43:3
Evaluate
 [2] 4:3 4:7
Event
 [1] 20:9
Events
 [1] 21:22
Eventually
 [1] 52:9
Evidence
 [1] 21:14
Exactly
 [2] 16:20 51:9
Example
 [1] 45:4
Exceeded
 [1] 38:10
Except
 [1] 18:13
Excuse
 [4] 14:9 19:3 26:7 49:1
Executive
 [3] 18:2 53:5 53:13
Exemption
 [2] 19:8 19:15
Exercise
 [4] 9:2 38:8 45:22 48:14
Exercised
 [1] 24:6
Exercises
 [1] 44:16
Exist
 [4] 7:7 11:10 26:22 40:22
Existed
 [3] 19:2 40:1 45:23
Existing
 [13] 3:8 12:10 23:15 29:23 30:25 31:9 32:3 32:9 33:6 33:13 33:14 33:16 46:10
Exists
 [13] 5:25 7:3 7:12 11:15 19:12 26:22 35:21 40:21 41:2 41:11 44:10 49:11 49:20
Expected
 [3] 30:11 30:12 31:21
Expense
 [1] 18:8
Experience
 [3] 12:16 34:24 40:2
Expire
 [1] 21:23
Expiring
 [1] 21:19
Explain
 [1] 19:1
Explaining
 [1] 46:5
Explicit
 [1] 47:12
Extend
 [2] 32:24 44:1
Extended
 [1] 44:8
Extent

Word Index

[3] 20:18 27:16 47:24

F

F3365
 [1] 29:4
Faces
 [1] 22:11
Facilities
 [2] 29:12 32:14
Facility
 [4] 18:24 19:4 19:11 47:1
Fact
 [18] 4:9 7:7 7:16 8:8 9:21 9:22 10:15
 10:22 17:4 18:13 23:18 31:10 39:5 41:
 3 42:10 43:11 46:22 48:14
Factor
 [1] 35:23
Factors
 [1] 31:19
Factual
 [1] 37:1
Fail
 [1] 48:10
Failed
 [3] 16:24 17:8 29:9
Failure
 [1] 16:15
Fairness
 [1] 27:12
Faith
 [5] 16:24 18:15 19:17 19:19 20:3
Falls
 [1] 40:4
Far
 [3] 18:4 30:4 40:18
Farm
 [1] 24:17
Farris
 [1] 1:17
FCC
 [1] 23:25
Federal
 [12] 5:20 9:16 9:21 11:7 11:19 14:6
 21:19 23:25 25:4 40:3 40:4 41:10
Fees
 [1] 18:7
FERC
 [57] 5:1 5:7 6:17 6:20 6:25 9:22 9:23
 11:12 11:16 11:20 14:15 19:15 21:11
 22:13 23:11 23:17 23:20 24:6 24:10
 24:11 26:8 29:1 29:25 30:6 30:16 30:
 18 30:24 31:4 31:11 31:13 31:24 32:
 15 32:19 32:22 33:1 33:21 33:22 33:
 23 33:25 35:25 36:11 36:16 36:16 38:
 18 39:5 43:6 44:23 45:2 45:7 45:10
 46:2 47:20 48:8 48:11 48:12 48:14 53:
 15
FERC's
 [4] 32:4 32:23 43:23 50:17
Ferguson
 [2] 18:3 34:10
Few
 [1] 22:14
File
 [3] 4:14 12:7 38:23
Filed
 [9] 12:3 16:6 16:16 18:2 19:3 30:7 30:
 8 30:17 34:10
Files
 [1] 15:16
Filing
 [11] 1:4 3:2 4:14 7:12 8:21 12:14 12:
 19 22:25 25:24 26:13 40:17
Filings
 [3] 4:12 25:16 26:9
Finally
 [2] 9:24 40:24
Fine
 [2] 6:22 35:16
Fingers
 [1] 20:7
First

[16] 3:20 10:5 16:17 16:18 19:4 23:6
 27:20 29:19 30:1 32:21 34:1 38:1 38:
 22 41:19 47:20 52:14
Fish
 [1] 6:23
Flat
 [1] 49:4
Flesh
 [2] 13:18 28:16
Flow
 [1] 50:4
Flows
 [1] 50:6
Folks
 [1] 35:13
Follow
 [5] 12:1 15:4 21:13 39:14 39:14
Forge
 [1] 34:12
Form
 [1] 12:9
Formal
 [1] 37:9
Formally
 [1] 37:13
Formulated
 [1] 51:22
Forney
 [1] 1:18
Forth
 [4] 15:14 24:18 27:19 35:14
Forthcoming
 [1] 21:1
Forward
 [6] 19:6 21:5 22:9 33:15 34:22 51:16
Foul
 [1] 11:3
Four
 [5] 21:2 21:3 21:6 40:20 40:21
Four-part
 [3] 21:2 40:20 40:21
Frame
 [1] 21:21
Frankly
 [3] 4:22 27:15 41:7
Friday
 [1] 49:18
Friesen
 [1] 2:7
Front
 [8] 3:18 9:22 11:15 28:2 36:1 36:25
 39:7 47:10
Fulfill
 [1] 50:12
Fully
 [1] 10:17
Functions
 [2] 9:2 38:8
Future
 [1] 22:7

G

Game
 [2] 5:9 27:4
GARY
 [1] 1:10
General
 [4] 16:2 27:11 40:1 52:19
Generally
 [3] 3:23 43:2 44:23
Generator
 [1] 25:18
Generators
 [1] 25:17
Generic
 [1] 32:8
Gerdes
 [35] 1:21 3:13 3:14 10:21 12:13 13:1
 13:6 13:21 14:9 14:19 16:1 16:12 24:
 3 32:18 33:4 35:6 35:8 35:16 37:7 37:
 16 37:19 39:9 39:11 39:24 41:21 42:2

42:9 43:8 43:21 44:4 49:7 50:18 51:1
 51:11 52:7
Gerdes'
 [1] 24:19
Given
 [3] 9:11 38:19 42:13
Government
 [1] 26:20
Grandmother
 [1] 6:22
Grant
 [7] 3:6 11:23 12:9 16:3 17:20 33:9 53:
 15
Granted
 [2] 9:19 19:14
Granting
 [3] 21:8 21:10 21:10
Grapple
 [1] 52:1
Grappling
 [1] 39:13
Great
 [3] 16:22 18:13 27:23
Greater
 [1] 19:2
Greff
 [1] 1:14
Greg
 [1] 1:15
Ground
 [2] 8:18 11:6
Grounds
 [2] 5:23 11:9
Growth
 [1] 22:7
Guess
 [6] 12:13 28:8 32:12 48:5 50:6 50:24
Guidance
 [2] 33:1 33:22
Guys
 [1] 34:14

H

Half
 [1] 36:20
Halt
 [1] 20:5
Handle
 [1] 14:5
Handled
 [2] 13:2 13:8
Hands
 [1] 43:6
HANSON
 [25] 1:10 3:1 11:24 12:24 14:12 14:25
 15:18 22:17 23:4 28:20 34:5 35:6 35:
 12 35:17 37:4 37:15 41:16 48:20 50:9
 52:10 52:15 52:24 53:6 53:9 53:14
Happy
 [3] 13:22 34:3 38:2
Harlan
 [1] 1:15
Harm
 [6] 11:2 21:7 21:8 21:14 21:17 21:18
Hear
 [6] 13:19 15:19 24:19 28:21 36:21 45:
 11
Hearing
 [14] 5:3 5:5 8:3 11:11 21:16 22:9 28:
 3 33:1 33:17 33:18 34:13 35:3 43:19
 53:4
Heather
 [1] 1:18
Held
 [2] 2:12 21:15
Help
 [3] 28:16 33:21 33:24
HEREBY
 [1] 54:8
Hi
 [2] 15:20 28:22

High
 [1] 3:22
High-level
 [1] 24:7
Historical
 [1] 26:18
Historically
 [1] 24:6
Hit
 [1] 27:13
Hold
 [1] 26:24
Holding
 [1] 38:13
Holling
 [1] 2:6
Hope
 [1] 18:17
Houston
 [1] 15:22
Hub
 [2] 36:4 47:23
HUGHES
 [1] 54:3

I

Ignore
 [3] 17:3 17:13 17:14
Illuminating
 [1] 16:20
Impact
 [1] 16:8
Impediment
 [1] 13:13
Implement
 [6] 9:15 9:19 26:8 29:2 29:11 29:15
Implementation
 [3] 24:8 30:1 31:3
Implemented
 [1] 32:11
Implementing
 [3] 19:13 25:10 26:15
Implied
 [1] 36:7
Importance
 [2] 22:2 24:17
Important
 [7] 6:6 16:19 24:21 24:23 27:9 52:1
 52:5
Impression
 [2] 43:14 44:6
Incentive
 [1] 10:10
Include
 [1] 45:15
Incorporated
 [1] 53:17
Incredible
 [1] 52:21
Incurred
 [1] 18:8
Indicate
 [2] 30:22 50:1
Indicated
 [1] 42:6
Informal
 [1] 37:13
Information
 [2] 17:9 19:5
Initial
 [1] 25:9
Intend
 [2] 4:10 8:8
Intended
 [3] 7:13 45:19 46:9
Intentionally
 [1] 16:23
Intentions
 [2] 17:21 20:4
Interconnection

[2] 18:7 21:20
Interest
 [4] 3:22 21:9 21:25 22:8
Interesting
 [2] 13:17 51:24
Interpret
 [2] 45:3 49:9
Interpretation
 [2] 13:4 44:18
Interpreted
 [1] 13:25
Interpreting
 [3] 38:11 44:20 44:21
Invested
 [1] 18:21
Invoke
 [1] 20:4
Involve
 [1] 22:25
Involved
 [3] 4:10 10:6 14:1
Involves
 [2] 5:18 12:17
Involving
 [2] 11:9 13:3
Iowa
 [12] 9:25 10:4 10:6 10:15 10:16 10:24
 11:4 20:24 21:14 40:19 40:19 40:21
Irrelevant
 [4] 4:16 4:19 16:14 39:21
Irreparable
 [3] 21:7 21:14 21:17
Issue
 [25] 3:7 3:9 4:22 5:15 5:17 11:14 11:
 20 12:2 12:17 14:17 23:8 23:24 24:21
 27:9 28:12 28:18 28:24 29:23 31:8 31:
 12 32:19 43:18 44:16 45:1 51:10
Issued
 [1] 29:3
Issues
 [17] 5:14 10:8 10:11 13:2 19:23 24:3
 24:13 24:20 25:12 28:5 32:22 33:2 34:
 25 35:3 45:6 45:7 52:20
Item
 [3] 12:5 12:12 15:6
Items
 [1] 38:1
Itself
 [1] 32:15

J

Jacobson
 [1] 1:16
Java
 [10] 1:5 3:4 17:24 18:4 18:12 18:17
 19:11 20:14 21:23 24:17
Jeff
 [1] 18:3
Jobs
 [1] 22:6
John
 [5] 1:13 2:3 14:13 34:7 50:9
Johnson
 [7] 1:11 52:11 52:12 52:17 52:25 53:
 11 53:19
Judicial
 [2] 9:2 38:8
Jump
 [1] 35:14
Jurisdiction
 [36] 6:9 14:8 23:7 24:4 25:20 26:1 26:
 16 26:22 26:25 27:7 27:14 27:20 28:
 18 29:14 36:9 36:13 39:6 40:25 41:1
 41:2 41:6 42:19 42:20 44:16 44:22 45:
 11 45:16 45:22 48:22 48:25 49:3 49:5
 49:13 50:2 51:19 51:23
Jurisdictional
 [5] 26:6 28:5 28:24 45:10 52:20
Jurisdictions
 [1] 29:21

K

Karen
 [3] 1:14 35:17 35:19
Keep
 [5] 6:6 17:15 22:20 37:21 37:24
Keith
 [1] 1:16
Kettle
 [1] 6:22
Kind
 [8] 4:5 9:18 13:17 19:6 26:18 28:5 31:
 6 45:6
Knadle
 [1] 1:17
Knowledge
 [3] 10:11 13:4 14:7
Knows
 [3] 19:24 22:3 32:24
Kuntz
 [1] 2:9
KW
 [1] 29:6

L

Lack
 [6] 14:21 23:7 24:20 41:2 41:5 48:25
Lacking
 [1] 47:12
Language
 [2] 41:12 46:9
Larger
 [2] 29:6 29:12
Last
 [6] 16:21 20:11 22:10 25:23 38:1 38:6
Late
 [1] 27:3
Law
 [16] 2:2 8:10 10:13 14:20 17:18 23:22
 26:11 26:20 37:10 37:12 42:23 43:10
 49:5 50:17 50:23 51:8
Laws
 [1] 14:6
Lawyer
 [1] 3:15
Least
 [3] 6:17 10:16 22:10
Leave
 [1] 40:13
Left
 [1] 3:17
Legal
 [2] 18:8 27:17
Legally
 [1] 24:25
Legislative
 [1] 47:12
Legislature
 [3] 9:11 9:14 42:13
Leighton
 [1] 2:4
Less
 [2] 12:19 29:6
Letty
 [1] 2:7
Level
 [1] 47:13
Liability
 [1] 45:6
Limited
 [1] 19:8
Linda
 [4] 1:22 15:19 15:24 28:21
Line
 [2] 15:3 15:14
Link
 [4] 15:8 15:11 15:12 15:17
Links
 [2] 15:4 15:5
Lists

[1] 34:11
Literally
 [1] 43:18
Live
 [1] 15:4
LLC
 [2] 1:4 3:3
Logical
 [2] 6:24 49:25
Long-term
 [1] 19:17
Look
 [10] 8:22 9:7 9:14 13:23 20:24 27:24
 28:12 38:20 40:8 49:16
Looked
 [2] 34:9 43:14
Looking
 [1] 27:18
Looks
 [1] 18:12
Lose
 [2] 28:17 48:23
Low
 [1] 22:11
Lump
 [1] 34:13

M

Madsen
 [1] 2:4
Mandatory
 [5] 33:11 38:24 39:3 46:3 47:6
March
 [1] 20:6
Mark
 [1] 2:6
Marketplace
 [1] 4:4
Markets
 [2] 30:23 47:3
Marlene
 [1] 2:2
Matter
 [13] 1:4 2:13 3:2 5:3 10:13 10:22 21:
 18 36:22 37:1 50:23 52:18 52:22 54:
 10
Matters
 [3] 11:13 36:12 49:1
McComsey
 [3] 1:24 54:5 54:18
MDU
 [59] 3:8 3:10 3:11 4:2 4:5 4:6 4:9 4:
 12 4:21 5:19 6:18 11:17 12:3 12:10
 16:1 16:7 16:14 16:16 17:3 17:6 17:7
 17:8 17:10 17:25 18:9 18:13 18:18 18:
 25 19:4 19:8 19:14 19:19 19:20 20:6
 20:17 20:18 21:7 21:11 21:13 22:11
 22:15 23:14 25:14 25:25 26:5 26:10
 30:8 30:20 31:10 31:22 31:22 35:3 37:
 18 40:9 40:11 41:3 42:22 47:13 47:25
MDU's
 [7] 18:25 19:10 20:15 20:17 26:7 27:
 25 34:18
Mean
 [14] 8:10 8:12 26:21 27:8 34:13 34:17
 42:6 42:22 43:9 44:7 50:3 51:4 51:5
 51:14
Means
 [4] 7:18 43:2 45:19 50:19
Measured
 [1] 18:6
Meets
 [1] 53:13
Melissa
 [1] 2:6
Members
 [4] 3:13 3:21 8:16 15:21
Memory
 [1] 36:2
Mere
 [1] 8:8
Merits

[1] 4:20
Met
 [1] 30:20
Method
 [1] 4:24
Metropolitan
 [3] 14:15 23:10 32:6
Michele
 [1] 1:17
Middle
 [2] 5:9 44:24
Might
 [2] 18:18 24:23
Mind
 [7] 6:7 23:18 27:15 39:21 39:24 49:17
 52:4
Mine
 [1] 36:1
Minor
 [2] 15:2 15:6
Minutes
 [1] 22:14
Mirrors
 [1] 16:16
MISO
 [2] 18:7 21:21
Misrepresented
 [1] 17:10
Missed
 [1] 10:9
Mistake
 [1] 40:14
Moment
 [2] 22:17 53:1
Money
 [2] 17:17 18:21
Montana-Dakota
 [9] 1:5 1:21 3:3 3:15 3:24 4:21 16:23
 43:9 43:22
Months
 [1] 27:5
Moody
 [17] 1:21 15:20 15:22 22:24 23:6 23:9
 24:5 25:6 26:2 27:21 28:19 34:8 34:
 20 34:20 40:9 40:14 40:19
Morning
 [1] 15:20
Most
 [4] 6:24 34:23 36:17 42:20
Motion
 [23] 3:6 3:11 5:16 5:22 5:23 7:1 11:
 23 12:3 12:7 12:9 12:15 12:16 16:3
 16:8 17:20 23:14 33:9 34:17 34:18 36:
 14 37:5 52:5 53:10
Motions
 [3] 12:23 19:9 37:12
Move
 [3] 33:15 53:3 53:14
Must
 [3] 7:23 50:14 50:17

N

Name
 [1] 3:14
Namely
 [1] 23:15
Natalie
 [1] 2:8
Natural
 [1] 49:25
Nature
 [2] 12:14 12:15
Necessarily
 [5] 26:25 29:12 32:9 51:4 52:3
Necessary
 [7] 17:9 28:9 29:8 33:5 33:7 33:8 33:
 20
Necessity
 [1] 50:14
Need
 [9] 8:3 11:3 19:22 27:4 27:12 30:3 33:

Word Index

15 33:17 33:18
Needs
 [4] 4:6 7:4 12:20 27:24
Negotiate
 [8] 8:12 16:15 16:24 17:7 18:14 18:20 19:16 29:7
Negotiated
 [1] 5:6
Negotiating
 [2] 19:19 20:6
Negotiations
 [6] 19:6 19:21 20:5 24:24 27:18 29:8
Never
 [3] 25:20 31:4 41:1
New
 [8] 39:9 39:15 39:22 39:25 41:12 46:22 46:25 50:20
Nobody
 [2] 14:2 14:7
Nobody's
 [2] 13:10 13:14
None
 [3] 7:21 42:21 43:3
Nonetheless
 [2] 6:4 49:24
Nonexistent
 [1] 7:19
Nonregulated
 [1] 46:15
Nonrenewables
 [1] 3:25
Normally
 [1] 10:19
Northwest
 [3] 44:17 44:25 45:1
Northwestern
 [4] 8:23 13:23 14:1 37:25
Notary
 [2] 54:6 54:18
Note
 [2] 15:2 51:22
Notes
 [2] 3:16 37:2
Nothing
 [5] 4:9 36:24 37:1 46:8 46:11
Noticed
 [1] 30:9
November
 [3] 11:12 30:12 36:16
Number
 [3] 9:1 15:6 29:4
Numerous
 [1] 10:3

O

Objected
 [5] 13:10 13:15 14:2 14:7 44:7
Objection
 [1] 14:20
Obligated
 [1] 19:16
Obligation
 [55] 3:8 5:19 5:24 5:25 6:2 6:20 7:3 7:7 7:9 7:12 7:17 7:22 7:22 7:24 8:2 8:4 8:5 8:5 8:9 8:10 8:13 8:14 9:21 11:15 12:11 13:14 16:9 19:2 19:10 23:16 29:23 31:1 31:9 32:3 32:9 33:6 33:14 33:16 35:20 38:25 41:11 44:10 44:21 45:15 46:14 47:1 47:6 47:6 48:7 49:10 49:20 50:19 51:6 51:7 51:13
Obligations
 [8] 7:25 18:1 19:7 33:12 33:12 46:3 46:22 50:15
Obtain
 [2] 17:5 43:5
Obtaining
 [1] 22:12
Obviously
 [1] 12:20
Occur
 [1] 4:21

October
 [4] 1:8 2:15 54:11 54:14
Offers
 [1] 4:4
Office
 [1] 3:17
Often
 [2] 24:11 34:25
Oftentimes
 [1] 23:22
Old
 [3] 39:14 41:22 47:5
One
 [25] 4:4 10:16 10:23 14:1 15:2 22:17 23:1 24:18 29:10 33:3 36:5 37:6 38:1 39:12 39:25 41:20 43:17 44:7 46:2 48:12 48:13 48:18 50:12 51:25 52:3
Open
 [1] 52:3
Operate
 [1] 17:24
Opinion
 [3] 49:4 49:7 51:23
Opportunity
 [3] 37:16 37:20 37:23
Ops
 [2] 43:3 48:3
Opted
 [1] 29:5
Option
 [2] 29:11 39:3
Options
 [2] 29:2 29:10
Order
 [11] 3:7 3:10 10:9 12:10 19:13 25:10 26:15 29:4 36:2 36:10 50:12
Ordered
 [1] 10:14
Original
 [4] 26:14 47:15 51:7 51:8
Originally
 [1] 44:3
Otherwise
 [3] 6:7 27:1 29:24
Overseeing
 [1] 42:5
Oversees
 [1] 42:4
Own
 [2] 15:5 26:16

P

Paid
 [1] 18:7
Pam
 [1] 1:19
Paragraph
 [3] 16:18 38:6 38:9
Part
 [9] 4:25 5:19 6:2 7:21 21:2 29:17 31:18 40:20 40:21
Participated
 [1] 41:4
Particular
 [17] 12:6 26:11 29:18 29:22 30:5 31:1 31:2 31:3 31:5 32:5 32:13 32:13 33:2 37:3 44:20 45:18 48:2
Particulars
 [1] 16:6
Parties
 [13] 4:23 4:25 5:6 8:11 13:20 21:16 24:9 28:16 44:25 45:2 45:19 48:10 50:16
Parts
 [1] 21:6
Party
 [3] 21:8 27:5 46:13
Pass
 [3] 20:19 31:16 38:2
Passage
 [1] 7:14

Past
 [5] 13:3 26:23 26:25 27:12 27:17
Paul
 [1] 2:4
Payers
 [2] 4:3 20:17
Penalized
 [1] 4:13
Pending
 [7] 3:9 7:9 7:17 12:11 20:1 46:14 51:13
People
 [4] 15:3 15:10 22:20 28:6
Percent
 [2] 50:5 50:6
Perhaps
 [7] 6:8 6:10 8:17 14:4 28:15 49:16 50:1
Period
 [1] 20:7
Perspective
 [4] 24:16 25:2 26:19 28:13
Petition
 [15] 6:18 6:18 8:23 11:16 11:17 13:24 22:15 30:7 30:8 30:17 31:10 31:10 31:21 31:22 31:23
Petitions
 [3] 11:16 16:6 16:7
Phone
 [1] 10:22
Piece
 [2] 33:24 46:18
Piecemeal
 [1] 34:24
Pierre
 [3] 2:14 3:15 54:13
Pile
 [1] 3:18
Place
 [8] 12:12 20:24 27:20 29:19 30:2 34:1 37:18 47:20
Placed
 [1] 12:18
Plain
 [1] 17:2
Plains
 [1] 3:22
Plan
 [1] 5:12
Pleading
 [1] 16:18
Pleadings
 [2] 16:16 31:19
Plenty
 [1] 4:16
Point
 [16] 8:15 13:12 13:17 24:4 25:23 26:5 27:22 35:10 35:15 38:5 39:20 40:10 41:24 43:4 44:11 49:21
Pointed
 [1] 41:1
Points
 [1] 35:22
Policy
 [2] 5:8 20:2
Portions
 [1] 21:4
Position
 [7] 7:11 12:6 36:23 39:5 49:25 50:4 50:7
Possesses
 [1] 22:4
Possibility
 [1] 21:11
Possible
 [1] 31:12
Possibly
 [2] 25:25 48:24
Postpone
 [1] 11:3
Potential

[1] 32:21
Power
 [9] 3:25 4:10 17:5 18:18 18:20 19:11 19:17 22:2 24:17
PPA
 [3] 18:15 19:6 42:5
Practical
 [1] 26:19
Practice
 [6] 12:16 26:20 26:21 26:23 26:25 27:12
Practices
 [1] 27:17
Precedent
 [2] 6:10 32:4
Preempted
 [1] 11:19
Preemption
 [2] 11:18 40:3
Preexisting
 [1] 19:7
Prefer
 [1] 52:21
Preference
 [1] 35:2
Prejudice
 [1] 41:5
Present
 [1] 10:11
Presentation
 [1] 37:17
Presumably
 [1] 35:4
Pretty
 [1] 39:15
Prevail
 [2] 21:11 25:1
Previous
 [1] 39:19
Previously
 [2] 40:1 45:23
Price
 [2] 7:20 20:11
Printed
 [1] 15:11
Private
 [1] 26:20
Probability
 [1] 22:11
Problem
 [8] 17:24 20:16 20:17 20:20 25:19 26:6 28:4 28:7
Procedural
 [1] 52:18
Procedure
 [2] 10:7 39:19
Procedures
 [3] 29:11 30:1 43:5
Proceed
 [1] 27:8
Proceeding
 [14] 3:16 20:20 29:22 30:6 30:10 32:1 40:23 41:4 41:9 42:4 43:20 49:14 50:3 51:15
Proceedings
 [8] 1:7 2:12 16:24 17:12 21:4 42:5 54:9 54:12
Process
 [5] 4:13 5:1 6:2 36:15 42:5
Production
 [1] 21:20
Professional
 [2] 54:6 54:19
Progression
 [1] 49:25
Project
 [12] 1:5 3:4 17:24 17:25 18:5 18:12 18:17 18:22 20:14 21:23 32:17 32:17
Project-by-project
 [1] 32:17
Properly

Word Index

[2] 29:19 49:22
Property
 [1] 22:6
Protected
 [2] 16:10 19:7
Provide
 [2] 17:8 19:4
Provision
 [4] 39:10 45:3 45:18 46:7
Provisions
 [9] 9:16 39:14 39:15 39:20 39:22 43:1 46:4 47:15 48:2
Public
 [14] 1:1 1:10 8:24 13:23 14:1 21:9 21:25 22:8 23:12 24:10 37:25 44:17 54:6 54:18
PUC
 [7] 9:1 24:12 28:12 38:7 38:9 48:8 53:4
Purchase
 [11] 5:19 7:19 17:5 18:20 19:17 33:12 38:25 39:3 46:3 47:1 47:6
Purely
 [2] 9:2 38:8
PURPA
 [57] 8:7 9:10 9:19 11:10 13:4 13:10 14:5 16:11 17:6 18:1 18:10 18:14 18:23 19:12 19:13 20:2 20:22 20:23 23:7 24:8 25:10 25:12 25:16 25:19 26:8 26:15 29:2 29:15 30:1 32:11 35:25 36:10 38:19 38:21 41:12 41:23 42:6 42:10 42:23 42:25 43:12 43:13 44:3 45:15 45:24 45:24 45:24 47:11 47:16 48:1 48:6 48:10 49:14 50:17 50:20 51:2 51:8
Purposes
 [3] 33:9 43:23 43:23
Pursuant
 [2] 38:25 42:12
Pursue
 [1] 49:2
Put
 [3] 30:10 31:23 43:5
Puzzle
 [1] 33:25

Q

QF
 [7] 7:14 7:19 8:9 29:18 31:2 40:15 40:17
QF's
 [1] 41:24
QFs
 [3] 29:5 29:6 31:5
Qualified
 [3] 8:9 18:23 19:4
Qualifying
 [1] 47:1
Quality
 [1] 7:20
Questions
 [22] 10:5 12:25 13:8 13:19 14:12 17:1 23:6 23:8 28:15 28:21 31:5 31:13 31:14 31:18 33:3 34:3 34:6 40:18 50:10 52:11 52:13 52:16
Quick
 [1] 12:1
Quickly
 [1] 35:21
Quite
 [3] 4:22 41:7 47:22

R

Raise
 [2] 8:15 24:4
Raised
 [5] 25:20 28:6 31:11 35:11 51:25
Rarely
 [1] 48:12
Rate
 [2] 4:3 20:17
Rates

[1] 45:8
Rather
 [1] 52:22
Reaching
 [2] 10:3 10:22
Read
 [6] 12:14 12:23 16:17 35:19 40:20 46:9
Reading
 [1] 12:18
Ready
 [2] 10:24 17:23
Real
 [1] 37:13
Realize
 [1] 27:3
Really
 [11] 7:3 10:12 16:19 30:11 31:4 33:17 33:25 36:24 40:6 41:12 44:5
Reason
 [5] 10:12 10:23 23:17 24:13 32:25
Reasonable
 [1] 7:6
Reasons
 [2] 6:12 11:10
Receive
 [1] 10:10
Received
 [1] 4:6
Recent
 [4] 16:10 20:22 20:24 48:13
Recess
 [1] 53:12
Reciprocal
 [2] 7:23 7:25
Recognize
 [1] 36:6
Recognized
 [1] 22:2
Record
 [5] 22:22 40:16 52:25 53:2 53:7
Referring
 [2] 41:25 46:12
Refers
 [1] 7:16
Regarding
 [4] 1:5 3:3 31:5 52:19
Regardless
 [2] 24:22 24:23
Regime
 [1] 48:2
Registered
 [2] 54:5 54:19
Regular
 [1] 53:4
Regulate
 [1] 47:25
Regulated
 [6] 42:7 43:4 43:10 43:13 43:22 45:14
Regulations
 [1] 50:17
Regulatory
 [5] 43:1 44:21 45:13 48:2 50:16
Reiterate
 [1] 11:14
Related
 [1] 44:9
Relates
 [2] 8:7 51:14
Relation
 [1] 14:16
Relationship
 [1] 53:17
Relative
 [1] 42:5
Released
 [1] 53:16
Relevant
 [2] 39:22 46:18
Relief
 [8] 9:5 12:9 12:22 22:12 24:11 38:24

39:3 46:3
Remarks
 [3] 11:25 12:5 16:13
Remedies
 [2] 46:11 46:13
Remember
 [2] 36:4 36:7
Removes
 [1] 33:11
Render
 [6] 9:5 9:6 30:16 47:25 50:14 51:5
Renewable
 [5] 1:4 1:21 1:22 3:2 15:23
Repeatedly
 [1] 22:2
Reported
 [1] 1:24
Reporter
 [5] 22:19 53:8 54:6 54:9 54:19
Represent
 [1] 3:15
Request
 [3] 12:15 12:22 37:5
Requested
 [4] 12:8 22:12 36:10 42:1
Requesting
 [1] 12:3
Requests
 [1] 16:8
Require
 [1] 29:5
Required
 [5] 17:8 18:10 25:16 29:6 46:25
Requirements
 [1] 30:22
Requires
 [1] 30:16
Research
 [2] 44:8 44:9
Reside
 [1] 27:1
Resisting
 [1] 34:18
Resolution
 [1] 34:25
Resolve
 [3] 19:23 25:12 33:24
Resolved
 [1] 24:13
Resources
 [3] 21:15 22:5 22:6
Respect
 [9] 21:25 26:6 26:7 31:1 31:9 32:13 38:16 42:3 42:7
Respond
 [3] 37:17 42:11 42:14
Response
 [5] 12:7 30:9 35:9 35:20 42:17
Responsibilities
 [2] 7:24 50:13
Responsibility
 [2] 4:2 23:19
Responsive
 [1] 4:15
Result
 [1] 29:13
Reverts
 [1] 38:18
Review
 [2] 26:12 38:22
Rights
 [3] 42:1 46:11 46:13
Rise
 [1] 8:9
Risen
 [1] 20:12
Risk
 [1] 34:19
Rislov
 [1] 1:15
Road

[1] 36:20
Rolayne
 [1] 1:13
Role
 [1] 36:12
Room
 [3] 2:14 15:3 15:14
RPR
 [1] 1:24
Rule
 [8] 31:13 31:14 31:15 31:17 31:17 32:8 52:22 52:23
Ruled
 [1] 20:25
Rules
 [2] 5:8 47:5
Run
 [1] 17:16
Rural
 [1] 38:12

S

Sahr
 [26] 1:11 10:19 13:1 13:16 14:3 14:11 14:24 15:1 22:23 23:5 23:21 24:15 25:22 26:17 28:11 39:8 39:12 40:25 41:18 48:18 48:21 49:8 50:8 51:21 53:3 53:18
Sahr's
 [1] 38:17
Sara
 [1] 1:14
Satisfactory
 [1] 8:12
Saving
 [1] 4:24
Savings
 [2] 7:13 51:12
Schedule
 [1] 5:12
Scheduled
 [1] 5:3
School
 [1] 26:20
Second
 [2] 53:10 53:18
Secondly
 [2] 4:11 38:16
Section
 [4] 38:21 38:25 46:1 46:4
See
 [6] 5:7 6:25 11:12 28:6 28:12 37:6
Seeing
 [1] 25:8
Seek
 [1] 48:11
Seeking
 [1] 9:6
Sell
 [1] 18:24
Semantics
 [1] 37:5
Senger
 [1] 1:16
Sense
 [4] 4:25 31:2 32:6 33:22
Sentence
 [4] 16:18 16:21 17:2 38:22
September
 [1] 20:7
Service
 [9] 8:24 13:23 14:2 30:19 32:16 37:25 39:1 44:17 45:9
Service-territory-wide
 [1] 32:16
Services
 [1] 53:17
Session
 [2] 53:5 53:13
Set
 [2] 6:11 43:4

Word Index

<p>Setting [1] 6:10 Several [3] 4:5 27:5 30:3 Sevold [1] 2:7 Shall [4] 3:6 3:7 3:9 46:25 Short [1] 50:12 Shorthand [2] 54:9 54:9 Shortly [1] 5:2 Show [2] 3:10 40:16 Shown [1] 21:13 Side [1] 21:17 Significant [1] 20:9 Similar [6] 13:25 14:6 21:1 21:21 39:17 39:18 Simple [1] 7:18 Simply [4] 6:5 6:25 9:9 19:21 Sit [2] 18:19 19:10 Sitting [2] 36:21 37:21 Situation [4] 21:1 31:6 37:8 45:21 Small [6] 5:10 25:16 25:18 29:5 32:19 32:20 Smith [20] 1:13 14:14 14:23 34:8 35:11 41:19 41:20 42:3 42:15 43:9 43:16 43:25 44:12 47:8 47:21 48:16 50:11 50:24 51:3 51:20 Someday [1] 18:18 Sometimes [2] 23:24 36:22 Somewhat [1] 8:17 Sorry [1] 42:24 Sort [4] 5:8 24:7 25:4 51:23 Sounds [1] 20:5 South [13] 1:2 2:13 2:15 8:22 8:25 10:12 22:3 22:4 29:3 52:8 54:1 54:7 54:13 Speaking [1] 16:12 Specific [3] 32:10 35:10 50:20 Specifically [4] 12:17 30:17 30:24 46:10 Speed [1] 22:20 Spend [1] 18:16 Spends [1] 16:22 Spent [1] 18:3 Squarely [1] 44:22 SS [1] 54:2 Stab [1] 34:21 Staff [6] 1:12 5:17 28:12 35:14 35:19 38:2 Staff's [5] 7:11 35:19 36:14 36:23 37:17 Stand</p>	<p>[1] 38:13 Standpoint [1] 50:16 Start [1] 41:10 Starts [1] 36:19 State [41] 1:2 2:13 3:22 10:10 14:20 22:3 22:7 23:7 23:12 23:22 24:7 24:10 24:12 24:23 25:4 25:25 26:11 29:5 29:13 29:13 29:20 30:24 31:4 32:10 32:10 32:14 36:11 42:7 43:10 45:3 45:12 45:14 45:15 45:21 46:15 47:13 47:19 49:5 51:14 54:1 54:7 State's [1] 43:23 State-specific [1] 32:10 States [14] 3:23 5:16 13:9 23:18 29:1 29:2 29:10 29:15 30:18 31:7 32:5 33:23 33:25 46:23 Statute [17] 9:11 17:6 18:1 18:11 18:23 20:2 24:8 25:10 25:13 25:16 25:21 33:11 41:24 41:25 49:10 50:23 51:12 Statutes [1] 49:17 Statutory [11] 6:9 9:4 10:7 11:8 13:13 14:21 24:20 38:10 40:21 42:13 49:9 Stay [5] 10:7 21:3 21:7 21:9 21:10 Steel [2] 20:11 36:24 Step [1] 29:8 Stewart [1] 2:5 Still [5] 19:11 19:12 19:14 36:21 41:23 Stockholders [1] 4:3 Straying [1] 6:8 Stromberg [1] 2:10 Studies [1] 18:6 Study [1] 28:9 Stuff [1] 3:18 Subject [3] 42:25 47:14 48:1 Submit [12] 5:10 5:21 6:7 8:14 9:7 9:17 9:20 11:4 11:5 11:6 28:9 40:23 Submitted [2] 9:25 10:1 Subparagraph [2] 38:20 38:21 Subsection [4] 46:11 46:12 46:17 46:24 Subsections [1] 46:1 Subsidiary [1] 7:4 Substantial [1] 18:8 Substantially [1] 20:13 Success [1] 22:12 Successfully [1] 24:4 Suddenly [1] 28:3 Suggest [2] 6:9 26:5 Superior</p>	<p>[40] 1:4 1:21 1:22 3:2 4:12 8:20 10:1 12:6 12:14 12:19 14:16 15:19 15:22 16:8 16:22 17:4 17:7 17:11 17:16 17:17 17:21 17:23 18:3 18:5 18:16 18:21 18:23 19:3 19:5 19:17 19:20 20:22 21:18 22:1 22:10 23:10 27:24 40:10 40:11 40:15 Superior's [5] 7:24 18:2 30:9 34:24 35:2 Supplemental [1] 28:10 Support [2] 5:23 9:4 Supported [1] 22:9 Suppose [1] 23:19 Supposed [1] 18:14 Supreme [3] 8:22 8:25 52:8 Surprising [1] 28:1 Suzan [1] 2:5 Swecker [1] 48:13</p>	<p>[4] 3:5 19:10 36:25 52:23 Today's [1] 52:5 Took [2] 37:18 54:9 Topic [1] 3:22 Totally [2] 4:16 16:13 Touch [1] 9:24 Towards [1] 11:25 Train [1] 28:17 Transcript [2] 1:7 2:12 Transcription [1] 54:12 Treading [2] 8:17 11:6 Tremendous [1] 22:4 Tribunal [2] 27:1 52:1 True [4] 16:25 42:9 45:12 54:11 Try [3] 18:9 37:21 37:23 Trying [4] 12:1 17:5 26:3 48:22 Turbine [1] 20:11 Turn [2] 16:4 34:15 Turned [3] 31:4 31:6 32:4 Two [6] 3:7 6:17 16:21 28:2 30:8 44:24 Type [2] 4:1 23:13</p>
T			
<p>Table [2] 4:8 18:9 Talbot [1] 2:3 Talks [1] 39:2 Tariff [4] 25:17 25:19 25:24 26:9 Tariffs [2] 26:13 29:5 Tax [2] 10:10 21:20 Taxes [1] 22:6 Telecommunications [3] 9:13 9:16 23:22 Telephone [2] 2:1 15:23 Term [4] 7:21 44:20 50:19 51:13 Terms [7] 8:4 16:19 17:2 42:22 42:25 44:2 45:9 Territory [3] 30:19 32:16 39:1 Test [5] 21:2 21:5 21:6 40:20 40:21 Tests [2] 21:4 30:21 Texas [1] 15:22 Therefore [4] 9:19 42:25 48:1 49:5 They've [2] 35:22 50:1 Thin [2] 8:18 11:6 Thinking [2] 26:19 49:18 Thinks [1] 52:9 Thompson [1] 2:6 Three [6] 3:9 10:25 11:1 17:4 30:22 31:18 Tina [1] 1:18 Tipping [1] 52:2 Tired [1] 17:16 Today</p>	<p style="text-align: center;">U</p> <p>Ultimate [1] 35:1 Ultimately [1] 23:12 Unable [1] 24:25 Unconditional [1] 8:13 Under [43] 5:20 7:24 9:9 9:10 10:12 14:5 14:20 15:6 16:10 17:6 18:1 18:10 18:14 23:6 25:4 25:4 25:12 25:16 25:25 26:11 36:10 39:9 39:19 41:11 41:22 42:22 42:24 43:1 43:10 43:12 45:11 45:23 46:13 47:11 47:15 48:1 49:5 50:13 50:16 51:6 51:7 52:20 52:22 Underlies [1] 23:14 Understood [2] 3:24 4:8 Undertake [1] 34:19 Unequivocally [1] 8:25 Unless [1] 52:20 Unreasonable [1] 43:7 Unregulated [9] 42:24 43:2 47:14 47:15 47:25 48:3 48:5 48:9 48:15 Unwilling [1] 17:7 Up [9] 15:16 20:16 22:20 23:25 35:1 38:1 41:3 51:2 52:4 Utilities [15] 1:1 1:5 1:10 1:21 3:3 20:25 21:</p>		

Word Index

15 23:12 24:10 42:7 43:2 43:3 46:2 48:3 48:6 Utility [14] 29:7 38:23 42:1 42:24 43:10 43: 22 46:5 46:16 46:24 47:14 47:15 48:1 48:10 48:15	Wrote [1] 49:18
V	Y
Varies [1] 29:12 Various [1] 50:15 Vein [1] 18:17 Versus [2] 15:15 37:5 VICE [24] 1:11 10:19 13:1 13:16 14:3 14:11 14:24 15:1 22:23 23:5 23:21 24:15 25: 22 26:17 28:11 39:8 39:12 41:18 48: 18 48:21 50:8 51:21 53:3 53:18 View [3] 5:15 41:8 41:24 Viewed [2] 41:23 43:12 Views [1] 12:21	Year [3] 20:11 36:20 36:20 Years [5] 16:21 17:4 25:21 26:10 28:2 Yesterday [4] 4:15 16:17 25:8 34:10
W	
Wait [2] 6:25 32:19 Waiting [1] 36:21 Waived [1] 41:2 Wall [1] 19:12 Walsh [17] 1:22 15:24 16:5 19:1 22:14 28:21 28:22 34:9 35:24 41:21 42:16 44:13 44:14 47:17 48:4 48:17 51:9 Wants [1] 42:11 Washington [1] 15:24 Watch [1] 24:7 Ways [1] 39:16 Website [1] 15:5 Weeks [1] 30:9 Weight [1] 27:17 Whatnot [1] 19:24 Wide [2] 32:16 39:1 Wieczorek [1] 2:3 Wiest [1] 1:13 Willing [3] 17:23 34:18 34:19 Wind [18] 1:5 3:4 3:24 4:10 17:24 18:4 18: 5 18:6 18:12 18:17 18:18 19:11 20:14 21:23 22:2 22:4 24:17 24:17 Withstanding [1] 12:5 Wittler [3] 1:24 54:5 54:18 Wonderful [1] 15:9 Words [1] 7:20 Works [1] 41:23 Worse [1] 20:20	