

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

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Oral Argument
March 26, 2009
Jefferson City, Missouri
Volume 2

In the Matter of Laclede Gas)
Company's Purchased Gas Adjustment) Case No. GR-2005-0203
For 2004-2005)

In the Matter of the PGA Filing of)
Laclede Gas Company for 2005-2006) Case No. GR-2006-0288

KENNARD L. JONES, Presiding,
SENIOR REGULATORY LAW JUDGE.

ROBERT M. CLAYTON III, Chairman,
CONNIE MURRAY,
JEFF DAVIS,
TERRY JARRETT,
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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

APPEARANCES:

MICHAEL C. PENDERGAST, Attorney at Law
RICK ZUCKER, Attorney at Law
Laclede Gas Company
720 Olive Street
St. Louis, MO 63101
(314)342-0532

FOR: Laclede Gas Company.

MARC D. POSTON, Senior Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
(573)751-4857

FOR: Office of the Public Counsel
and the Public.

STEVE REED, Chief Litigation Attorney
LERA L. SHEMWELL, Deputy General Counsel
P.O. Box 360
200 Madison Street
Jefferson City, MO 65102
(573)751-3234

FOR: Staff of the Missouri Public
Service Commission.

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

2 JUDGE JONES: Okay. We are on the record
3 in Case No. GR-2005-0203 and GR-2006-0288. Although these
4 cases have not been consolidated, they are being
5 treated -- considered together because of the similarity
6 in issues.

7 At this time let's take entries of
8 appearances, beginning with Staff of the Commission.

9 MR. REED: Steve Reed and Lera Shemwell for
10 Staff, P.O. Box 360, Jefferson City, Missouri 65102.

11 JUDGE JONES: And Laclede?

12 MR. PENDERGAST: Michael C. Pendergast and
13 Rick Zucker appearing for Laclede Gas Company. Our
14 business address is 720 Olive Street, St. Louis, Missouri
15 63101.

16 JUDGE JONES: Office of the Public Counsel?

17 MR. POSTON: Thank you. Marc Poston
18 appearing for the Office of the Public Counsel and the
19 public, P.O. Box 2230, Jefferson City, Missouri 65102.

20 JUDGE JONES: Okay. Just prior to going on
21 record, we were discussing the procedure by which we would
22 proceed, and at this time we'll start with questions from
23 Commissioner Murray towards the Staff.

24 COMMISSIONER MURRAY: Okay. Which counsel
25 should I direct this to?

1 MR. REED: Should be me.

2 COMMISSIONER MURRAY: Mr. Reed, is the
3 Staff bound by 4 CSR 240-2.090 subsection 8, which is the
4 discovery -- discovery and prehearing rule?

5 MR. REED: Yes, I think so. Yes,
6 Commissioner.

7 COMMISSIONER MURRAY: Would you -- do you
8 have a way right now to take a look at that discovery
9 rule?

10 MR. REED: I can get the rule or I can have
11 Ms. Shemwell get the rule for me so we can discuss it,
12 sure.

13 COMMISSIONER MURRAY: Okay. I would like
14 to discuss it.

15 MR. REED: Can you hear me?

16 JUDGE JONES: I'm not sure your
17 microphone's on.

18 MR. REED: It is on, but I'm not sure you
19 can hear me.

20 JUDGE JONES: I can hear you. While we're
21 waiting, I just remind everyone to turn your cell phones
22 off.

23 MR. REED: Okay. Commissioner, I have
24 the -- I have the rule in front of me. I'm ready.

25 COMMISSIONER MURRAY: Okay. Thank you,

1 Mr. Reed. And I'm looking at 4 CSR 240-2.090,
2 subsection 8.

3 MR. REED: Yes.

4 COMMISSIONER MURRAY: That rule, correct me
5 if I'm wrong, says that the Commission shall not entertain
6 any discovery motions until the following requirements
7 have been satisfied.

8 MR. REED: Yes.

9 COMMISSIONER MURRAY: And then if you read
10 subsection A, it tells that the counsel for the moving
11 party has to have in good faith conferred or attempted to
12 confer by telephone or in person with opposing counsel
13 concerning the matter prior to the filing of the motion.

14 MR. REED: Yes.

15 COMMISSIONER MURRAY: Merely writing a
16 demand letter is not sufficient.

17 MR. REED: Yes.

18 COMMISSIONER MURRAY: And then the last
19 sentence says, counsel for the moving party shall certify
20 compliance with this rule in any discovery motion.

21 MR. REED: Yes, I see.

22 COMMISSIONER MURRAY: And when Staff filed
23 a Motion to Produce, was that complied with?

24 MR. REED: I think it was, Commissioner,
25 and here's why. I started with a bit of an unusual

1 procedure in that I filed a list that we had discussed at
2 some -- I think a prehearing conference, a list of items,
3 items that Staff needed to complete its ACC review, and
4 with that I included a request for an order that Laclede
5 produce those items. Well, what resulted was Judge Jones
6 called a discovery conference.

7 COMMISSIONER MURRAY: I'm sorry. We're
8 going to back up just a minute. You said you filed a
9 request for an order to produce?

10 MR. REED: Yes, I did, something to that
11 effect.

12 COMMISSIONER MURRAY: And at that time had
13 you attempted to confer by telephone or in person
14 regarding your request?

15 MR. REED: I don't recall, frankly.

16 COMMISSIONER MURRAY: And did you certify
17 that you had so done?

18 MR. REED: I don't believe that I did in
19 that particular pleading.

20 COMMISSIONER MURRAY: So there was a flaw
21 in that pleading?

22 MR. REED: I believe there may -- yes. I
23 withdrew that pleading.

24 COMMISSIONER MURRAY: Okay. Go on.

25 MR. REED: And after we met and had a

1 discovery conference with Judge Jones with Laclede, and
2 near the end of the discovery conference Judge Jones
3 determined that, okay, this will be considered compliance
4 with 2.090 subparagraph 8 in that the parties have
5 conferred, you've had your discussions with the judge,
6 were unable to resolve the issue, and so if a Motion to
7 Compel, if you elect to file one, then you're clear to
8 file it, so to speak.

9 So that was the next step. We withdrew the
10 previous motion or list of items that I had filed and
11 filed a separate and new Motion to Compel.

12 COMMISSIONER MURRAY: And then -- and you
13 said the judge determined in that conference that the rule
14 had been complied with by the in-person prehearing
15 conference; is that correct?

16 MR. REED: I believe that was the -- yes,
17 that was.

18 COMMISSIONER MURRAY: Did you agree with
19 that determination?

20 MR. REED: I believe I did agree, yes.

21 COMMISSIONER MURRAY: Did you read
22 subsection 8 of -- I mean subsection B of section 8 and
23 specifically the very last sentence that says, no written
24 discovery motion shall be filed until this telephone
25 conference has been held?

1 MR. REED: Well, we met in person rather
2 than have the telephone conference. That was my
3 understanding of what the result of the discovery
4 conference was, is that there was no disagreement that the
5 discovery conference had satisfied this rule so that a
6 Motion to Compel was allowed.

7 COMMISSIONER MURRAY: Okay. And then did
8 you meet the requirements in your written Motion to Compel
9 that said you certified compliance with this rule and
10 discovery motion?

11 MR. REED: I don't recall. I'd have to
12 look at the motion. I'd have to look at the motion.

13 COMMISSIONER MURRAY: I would like to see
14 whether you did comply.

15 MR. REED: What I did was in paragraph 3 of
16 that motion, I recited that at the time of the -- of the
17 discovery conference, the judge indicated that the
18 conference fulfilled the requirements of 4 CSR 240-2.090
19 subparagraph 8. So that if -- if additional certification
20 by counsel was required, the judge had indicated that, in
21 fact, that had been satisfied. There was no objection to
22 the -- to this motion on that basis in any event.

23 COMMISSIONER MURRAY: Well, I wanted to get
24 past that threshold issue because, in my opinion, if that
25 had not been complied with, then we shouldn't even be

1 here.

2 But in light of what the judge ruled at the
3 prehearing conference, I assume that everybody took that
4 to have been a threshold that was met, and there was no
5 objection filed or stated at that time.

6 MR. REED: That was my understanding,
7 Commissioner. There were no additional requirements that
8 needed to be met before the Motion to Compel could be
9 filed.

10 COMMISSIONER MURRAY: All right. Thank
11 you, Judge. I wanted to get that addressed before we went
12 ahead with the arguments.

13 JUDGE JONES: Okay. With that, Staff, you
14 may proceed.

15 MR. REED: Well, thank you for the
16 opportunity to appear and discuss this discovery issue
17 that we have with Laclede. This, of course, arises from
18 two cases that are prudence reviews that we're talking
19 about, and the question in those prudence reviews is did
20 the ratepayers pay higher costs for gas because of
21 Laclede's imprudence or whether decisions made by Laclede
22 that resulted in higher gas prices for the ratepayers.

23 What we've been seeking, as you'll see in
24 the motions and of course the most recent filing that we
25 made, are LER supply documents. LER, the affiliates,

1 we're looking for the --

2 JUDGE JONES: Let me interrupt you quickly.
3 You-all realize we are streaming, so if -- if you're going
4 to go into information that's highly confidential, let me
5 know.

6 MR. REED: I will. I certainly will, and
7 if I don't, I hope not to misstep. I think I know what
8 highly confidential is, so Mr. Pendergast will catch me.

9 All right. Sources of gas that LER used to
10 satisfy a contract with Laclede, that's one of the things
11 we're looking for. Also, LER, the affiliate's use of
12 Laclede's pipeline capacity, that's another set of
13 documents we've asked for.

14 Now, it's also important to understand that
15 where we are in this particular case, because on January
16 21, 2009, the Commission entered an Order that said
17 Laclede shall produce no later than February 4th to the
18 Staff the information set out in the Commission's Order of
19 October 20th, 2008, produce it by February 4th.

20 February 4th came and went. Nothing
21 responsive to that Motion to Compel or to the Commission's
22 Order was produced by Laclede. It came and went. Laclede
23 produced some information that was not responsive to what
24 we'd asked for or what the Commission had ordered and did
25 nothing else. Silence. No filing.

1 So two weeks passed, and I notified the
2 Commission that Laclede had failed to comply. I filed a
3 notice indicating Laclede had failed to comply with the
4 January 21 Order, and Laclede responded with a Motion for
5 Mediation, and here we are, here to relitigate five months
6 and hundreds of pages and many man hours of a discovery
7 issue.

8 So during the course of this case, just so
9 we know where we all are, there have been three Orders
10 from the Commission directing Laclede to produce this
11 information, October 20th, 2008, December 17th, 2008,
12 January 21st, 2009. I have copies of these Orders as well
13 as some additional information that I'd like to
14 distribute. I have them in binders. I'd like for each
15 Commissioner to have a copy. I also have copies for the
16 other attorneys if I could distribute those now.

17 JUDGE JONES: Mr. Pendergast, have you had
18 an opportunity to look at the information Mr. Reed has?

19 MR. PENDERGAST: No, not yet, your Honor.

20 JUDGE JONES: Before we look at it, why
21 don't you let him take a look at it. You can go ahead and
22 continue talking while he's looking. Do you need us to be
23 looking at that while you're proceeding?

24 MR. REED: I will in a moment.

25 JUDGE JONES: Okay.

1 with whether an investigatory docket into the relationship
2 between LER and Laclede should be opened or not. Laclede
3 wanted clarification. Is the Commission really ordering
4 an investigation into this relationship? The Commission
5 issued its Order clarifying and said no, and by the way,
6 Laclede, produce the documents by February 4th. So that's
7 how we got here.

8 Now --

9 COMMISSIONER MURRAY: So Mr. Reed, the
10 production of documents, then, is purely in relation to
11 the ACA case --

12 MR. REED: It is.

13 COMMISSIONER MURRAY: -- that is before us;
14 is that correct?

15 MR. REED: It is.

16 COMMISSIONER MURRAY: So everything that
17 Staff is requesting must be reasonably related to -- I'm
18 trying to get the wording correct here.

19 MR. REED: Everything that we're
20 requesting, Commissioner, must be reasonably calculated to
21 lead to the discovery of admissible evidence.

22 COMMISSIONER MURRAY: And for an ACA case,
23 the Staff is going to be looking at whether Laclede
24 complied with its tariff, including the Cost Allocation
25 Manual that is included in its tariff; is that correct?

1 MR. REED: As part of the ACA case, we'll
2 review that information as well, but the primary purpose
3 for this information is to determine whether Laclede paid
4 too much to LER for gas and determine what LER did with
5 Laclede's capacity that was released to LER.

6 COMMISSIONER MURRAY: And too much would be
7 defined by the rule, would it not?

8 MR. REED: Not necessarily. Because if
9 entering into the contract and taking action under the
10 contract was not prudent in that it led to higher gas
11 costs for the ratepayers, then that impacts the ACA.

12 COMMISSIONER MURRAY: So they could fully
13 comply with their Cost Allocation Manual and still be
14 imprudent, is that what you're saying?

15 MR. REED: Yes.

16 COMMISSIONER MURRAY: Go ahead.

17 MR. REED: Now, I know -- I know that
18 Laclede is here to argue this whole case again, and I'm
19 ready to do the same thing. We'll argue relevance. We'll
20 argue the affiliate rules. We'll do the whole thing
21 again. Five months of litigation, we'll do it all again.

22 But the real issue here is why didn't
23 Laclede produce the documents on February 4th? There's
24 been no filing explaining why that wasn't done. There has
25 been nothing filed in EFIS to explain why they didn't do

1 that. Motions for Reconsideration were denied. Motions
2 for Clarification were granted. Here we are, we're at the
3 end. The documents needed to be produced and they
4 weren't. If the issue here is that the Commission got it
5 wrong, then we have three Orders that weren't complied
6 with, especially the final Order, produce it by
7 February 4th.

8 Because the Commission, like any court, is
9 entitled to be wrong. This is a discovery issue. This is
10 not the resolution of the case. This is do we get the
11 documents or not? The Commission said produce the
12 documents and Laclede just said -- what did they say? No.
13 No. No. February 4th, no, you don't get them.

14 Here's what Laclede is really claiming, and
15 I'll bet you'll hear it at some point today. Laclede does
16 not have possession of these documents. We don't have
17 possession, so we can't produce them.

18 Now, let's turn to the binder that's in
19 front of you. If you look at the, I think it's the fourth
20 document, Unanimous Stipulation & Agreement. All right.
21 Now, this is the Stipulation & Agreement that I've been
22 accused of misquoting or selectively quoting from, so I
23 thought it important to bring it here today to let you
24 Commissioners look at it, read it, tell me what you think,
25 because I've been wrong before, but I have never

1 intentionally misled a court anywhere, and I will not do
2 that with this Stipulation & Agreement.

3 So let's turn -- by the way, this has to do
4 with the restructuring, right, the restructuring of
5 Laclede, where LER goes from being a subsidiary of Laclede
6 Gas Company on page 2 to the change where the Laclede
7 Group is the parent company for Laclede Gas and over here
8 is LER, Laclede Energy Resources.

9 Now, as a condition of the Commission's
10 approval of this restructuring, turn to page 7. Here's a
11 section, access to information conditions. It's at the
12 bottom of the page. Peruse paragraph 1. It has to do
13 with financial information. We turn to paragraph 2, we
14 can see condition relating to information to verify
15 compliance with the CAM, the Cost Allocation Manual. Read
16 a little further.

17 COMMISSIONER MURRAY: Mr. Reed, excuse me.
18 That is as may be reasonably required to verify compliance
19 with the Cost Allocation Manual; is that correct?

20 MR. REED: Yes.

21 COMMISSIONER MURRAY: So if there is -- and
22 at this point, I'd like to know, there is a specific way
23 that the Cost Allocation Manual provides for dealings with
24 an affiliate, correct?

25 MR. REED: Yes. That's right.

1 COMMISSIONER MURRAY: And it says the
2 higher -- depending on whether it's a sale or a purchase,
3 the higher of the fair market value or fully distributed
4 costs.

5 MR. REED: Right. Yes.

6 COMMISSIONER MURRAY: Or the lower of those
7 two things, right? So how does the information that Staff
8 has sought reasonably relate to whether that CAM has been
9 complied with?

10 MR. REED: The investigation isn't into
11 compliance with the CAM. The investigation is whether
12 Laclede paid too much to LER for the gas they bought.

13 COMMISSIONER MURRAY: But you're citing
14 something in the Stip & Agreement that indicates what
15 Laclede has agreed to provide, and what you're reciting
16 says they have agreed to provide this as may reasonably be
17 required to verify compliance with the cost allocation
18 manual.

19 MR. REED: I don't dispute that's what it
20 says, but this is not the -- this is not the part of the
21 Stipulation & Agreement that is germane to whether Laclede
22 produces these records. It's on the next page.

23 COMMISSIONER MURRAY: Okay. Go ahead.

24 MR. REED: You finish page 8 at the bottom
25 and there's information about access to collective

1 bargaining employees. And then on page 9 you have to go
2 down to line 3, Laclede Gas Company and the Laclede Group.
3 This is a long sentence that ends paragraph 2, and it
4 says -- you can see what it says, shall also provide any
5 such -- any other such information relevant to ratemaking,
6 financing, regulatory authority over the Laclede Gas
7 Company. Read it for yourself.

8 COMMISSIONER MURRAY: Provided that Laclede
9 Group shall have the right to object, and I know you're
10 going forward to say that an objection that it's not in
11 the possession or control of Laclede is not relevant
12 because that's one of the exceptions --

13 MR. REED: Correct.

14 COMMISSIONER MURRAY: -- but don't they
15 have the right to reject -- or to object based on
16 relevancy?

17 MR. REED: Yes, unless it has -- unless it
18 has to do with the proposed restructuring. They can, yes,
19 they can object on relevancy, absolutely.

20 COMMISSIONER MURRAY: So if it's not
21 relevant to the Cost Allocation Manual, they can object on
22 that basis, can they not?

23 MR. REED: They can object, but the issue
24 is whether it's relevant to the ACA review, whether
25 Laclede paid too much for gas and whether Laclede should

1 not have released that capacity to LER because -- because
2 Laclede could have and should have used that capacity.
3 It's a different issue.

4 COMMISSIONER MURRAY: Okay. Go ahead.

5 MR. REED: I realize that Laclede wants to
6 pigeonhole this thing into the affiliate rules and the
7 CAM, but that's not where we're coming from. We're trying
8 to decide --

9 JUDGE JONES: So if that's a different
10 issue, why are we looking at the Stip & Agreement?

11 MR. REED: Because this says that
12 possession, a lack of possession is not a defense.
13 Laclede has access to affiliate records, period. It's
14 right here.

15 COMMISSIONER MURRAY: But Mr. Reed, in our
16 Order we limited what they had to produce to those things
17 in their possession. Now, are you asking us to reconsider
18 our Order?

19 MR. REED: Those things in Laclede's
20 possession are also defined by this agreement, by this
21 Stipulation & Agreement.

22 COMMISSIONER MURRAY: But we indicated
23 those things that were in their possession, and you're
24 citing something that says they can't object --

25 MR. REED: Right.

1 COMMISSIONER MURRAY: -- to the production
2 based upon it not being in their possession, but our Order
3 only required them to produce what was actually in their
4 possession.

5 MR. REED: Well, they are in Laclede's
6 possession. They are, by operation of this Stipulation &
7 Agreement which is approved, which is law, they are in
8 Laclede's possession.

9 COMMISSIONER MURRAY: And where is
10 possession defined?

11 MR. REED: Well, possession is defined by
12 the case law like Hancock v Shook. You have a copy of it
13 in the binder. That's where -- where possession is
14 defined. It's control, it's custody, it's the practical
15 ability to obtain the documents from third parties.

16 Of course Laclede has the practical ability
17 to obtain these documents from LER. I mean, Mr. Neises is
18 the vice president of both companies. He signs contracts
19 for both of the companies, and you have copies of those in
20 the binder as well. So possession is that -- is defined
21 by the Missouri Supreme Court, and it's broad.

22 COMMISSIONER MURRAY: Go ahead.

23 MR. REED: So here's my point and I'll move
24 to the relevance. Commission ordered Laclede to produce
25 these documents, and it may have said the documents in

1 your possession ,but they have possession by virtue of
2 this Stipulation & Agreement. They have possession. They
3 agreed they have possession. It's a condition of the
4 approval of the merger, of the restructuring. They also
5 have possession by virtue of the Hancock v Shook case
6 which says that possession is broad. It's control. It's
7 access. It's the practical ability to obtain the
8 documents from a third party, a party not a party to the
9 case, a nonparty, to obtain those and produce them.

10 Now, Laclede never objected to possession
11 ever, ever before. I mean, they've never done it
12 formally. I think what they're saying is, well, the
13 affiliate rules say that -- the affiliate rules say that
14 Laclede must have possession for particular purposes.

15 Therefore, what Laclede is arguing is that
16 if you're investigating the affiliate relationship between
17 LER and Laclede, then I have the records, but if for any
18 other reason I don't have them, I don't have them in the
19 other hand. That's what Laclede is arguing.

20 But what we're saying here is that Laclede
21 does have possession of these records and that we can
22 access them under the general discovery provisions that
23 the -- that the Supreme Court rules provide and the case
24 law that follows and interprets those particular rules.

25 Now, that argument by Laclede that I have

1 them for one purpose but not another, that is Laclede
2 using the affiliate rules as a shield and basically saying
3 that unless the affiliate rules provide that you can have
4 these LER documents, you can never have them, and that is
5 contrary to the Missouri Supreme Court rules, to the
6 general discovery provisions, to the case law that
7 applies.

8 Do I have plenty of time left?

9 JUDGE JONES: You have about ten minutes
10 left.

11 MR. REED: Okay. I'll be fine, then.
12 Okay. I want to move to -- I want to -- the issue of
13 prudence. Of course this is a prudence case. Was Laclede
14 prudent in making purchases during the two ACA periods
15 we're talking about? In particular, there are two
16 contracts that you'll find in your binder between Laclede
17 and LER. They are at document No. 6 and No. 7.

18 Now, as I indicated earlier in the things
19 that we've filed, we're trying to obtain the sources of
20 gas that LER used to perform under this contract with
21 Laclede. You see the March 10, 2004 contract between
22 Laclede and LER. Laclede Energy Resources is the seller.
23 Laclede, the regulated company, is the buyer. So LER is
24 selling gas to Laclede. Now, the delivery location,
25 Laclede Gas Company aggregate. Okay. So that's St.

1 Louis.

2 JUDGE JONES: Is this highly confidential?

3 MR. REED: Yes, it is. Let's move to HC.

4 I'm sorry. Is it?

5 MR. PENDERGAST: Yes.

6 (REPORTER'S NOTE: At this point, an
7 in-camera session was held, which is contained in
8 Volume 2, pages 57 through 71 of the transcript.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. PENDERGAST: If it please the
2 Commission, I too want to thank you for this opportunity
3 to hold an oral argument on the important question at
4 issue today, namely the propriety of Staff's information
5 request of Laclede. Mr. Reed previously indicated that
6 what I was going to argue, and I have a few more things to
7 say than maybe Mr. Reed had indicated, and where I'd like
8 to begin is by saying that we object to having to provide
9 this information for three reasons.

10 The first reason is that it's based on a
11 fundamentally misleading depiction of the relationship
12 between Laclede and LER, one that is meant to give you a
13 false impression that LER has achieved its success only by
14 exploiting the gas supply assets of Laclede.

15 Second, and I think Commissioner Murray got
16 to this very quickly in her series of opening questions,
17 the Staff's information requests are premised on the
18 wholesale rewriting of the rules and standards that you've
19 approved to govern access to the records of a utility's
20 affiliate, rules and standards that Laclede and LER have
21 operated under in good faith during the ACA periods in
22 question, and that the Staff now seeks to retroactively
23 change through the guise of an ACA adjustment.

24 It's also inconsistent with the pricing
25 standards that are in the Cost Allocation Manual, and as

1 the Commissioner asked, that's the information that we
2 were obligated to provide was what was necessary to comply
3 with the pricing principles in the Cost Allocation Manual
4 and other requirements.

5 Mr. Reed just basically said today, well,
6 that's irrelevant. We come up with our own standard, we
7 come up with our own way of pricing these things, and so
8 you've got an obligation not to just provide information
9 to show compliance with the affiliate transaction rules,
10 which also limits it to information that's necessary to
11 show compliance with the standards in there, but also with
12 the CAM, because Mr. Sommerer has invented a new standard,
13 and that's the standard that he seeks to go ahead and have
14 information provided to go ahead and pursue it.

15 Well, if we didn't have rules, if we don't
16 have CAMS, if we didn't have requirements to say what
17 those standards and rules are supposed to be, maybe
18 Mr. Sommerer would be free to do that. But we do have
19 rules, we do have standards. And I believe Mr. Zucker is
20 going to go ahead and hand out relevant pages of the Cost
21 Allocation Manual as well as some of the materials I'll be
22 using.

23 COMMISSIONER JARRETT: Mr. Pendergast, I'd
24 like to ask a question. Mr. Reed started out by going
25 through a timeline of Orders we had issued. I wanted to

1 give you a chance to respond. I believe it was he said on
2 February -- we issued an Order that indicated that Laclede
3 was supposed to respond and provide the documents by
4 February 4th, and he said that Laclede just didn't
5 respond, didn't --

6 MR. PENDERGAST: That's not true, your
7 Honor.

8 COMMISSIONER JARRETT: Like I said, I
9 wanted to give you a chance to respond.

10 MR. PENDERGAST: And I appreciate that.
11 First of all ,in your Order you said that the set of
12 documents were in our possession that we needed to
13 provide, and the documents were not in our possession. We
14 didn't object to providing the documents, but we said the
15 Commission had indicated if they were in our possession we
16 were supposed to provide them, and I indicated to Mr. Reed
17 they weren't in our possession.

18 And what I also indicated to Mr. Reed is
19 that we wanted to sit down and we wanted to talk about
20 additional information that would indeed demonstrate that
21 we were in compliance with the affiliate transaction rule
22 and in compliance with the pricing standards in our CAM,
23 which is the relevant criteria for determining what
24 information we want to provide.

25 Staff said they weren't interested in

1 sitting down and talking about that, and that's because
2 Staff has their own standard that they want to get
3 information on. Unfortunately, it's not a standard that
4 you've authorized, it's not one you've approved, and it's
5 not one they've agreed on in the CAM.

6 COMMISSIONER JARRETT: Did you file
7 anything in EFIS indicating, letting the Commission know
8 that you did not have the records in your possession?

9 MR. PENDERGAST: I did not file something
10 immediately in there. What I did is I sent a rather
11 lengthy letter to Mr. Reed explaining that, and also
12 explaining the information that we were willing to provide
13 that we wanted to go ahead and discuss at a meeting that
14 they weren't interested in having with us.

15 And two weeks later it was Mr. Reed that
16 found that he had to file a request for clarification with
17 the Commission to have you change your Order that we had
18 complied with. So he asked for a request for
19 clarification because he didn't like the result that we
20 got under the Order that you had issued and said that you
21 needed to go ahead and change your Order, and that's what
22 he's trying basically to do today.

23 So I think that the real issue is, and I
24 think Staff has recognized this as well, is that the scope
25 of their access to affiliate records doesn't really depend

1 on possession. What it depends on is what the affiliate
2 transaction rule says, which establishes specific criteria
3 for what affiliate records have to be maintained.

4 It specifically provides that an affiliate
5 and a utility has to make records available to the extent
6 necessary for the sole purpose of showing compliance with
7 those standards, and, in fact, that's the same kind of
8 language that we have in the CAM that Commissioner Murray
9 asked Mr. Reed about. It says we've agreed to go ahead
10 and provide information as necessary to go ahead and show
11 compliance with the CAM. And I'm going to go over what
12 those standards are in just a minute.

13 COMMISSIONER MURRAY: Mr. Pendergast,
14 excuse me, but does the Cost Allocation Manual incorporate
15 all of the affiliate transaction rules or only a portion
16 of them?

17 MR. PENDERGAST: Well, it incorporates the
18 concepts in the affiliate transaction rule with
19 elaboration to show how they work in the context of the
20 specific transactions that Laclede Gas deals with. And in
21 the papers that we've provided you, the excerpts from the
22 Cost Allocation Manual, what's really at issue here are
23 those provisions that govern when we purchase gas supply
24 or capacity from the affiliate, which would be Laclede
25 Energy Resources, or when we sell gas supply or capacity

1 to an affiliate.

2 And basically what the CAM recognizes is
3 that it's a market test that you have to use in order to
4 determine whether or not those particular transactions
5 were reasonable. In the wholesale natural gas market,
6 everything is determined by the market. It's what can I
7 buy gas from, and if I'm buying gas from LER, what's the
8 competitive market price for that gas as established by
9 looking at other vendors who are also selling gas in the
10 same market and the same location?

11 And that's what we did to comply with the
12 affiliate transaction rule. We provided Staff with
13 information showing what that was. And if we could go
14 in-camera for just a moment, I'd like to go ahead and kind
15 of illustrate that up on the board if I could.

16 (REPORTER'S NOTE: At this point, an
17 in-camera session was held, which is contained in
18 Volume 2, pages 78 through 110 of the transcript.)

19

20

21

22

23

24

25

1 COMMISSIONER DAVIS: All of the documents
2 are highly confidential, correct?

3 MR. PENDERGAST: I think most -- well,
4 there are some orders in there and other things in there.

5 COMMISSIONER DAVIS: The rules -- the
6 affiliate transaction rule itself and any Commission
7 decisions aren't, but --

8 MR. PENDERGAST: Yeah. I think the others
9 are.

10 COMMISSIONER DAVIS: Anything that's a
11 number relating to Laclede is highly confidential for the
12 most part?

13 MR. PENDERGAST: That's generally fair.

14 COMMISSIONER DAVIS: Okay. Now,
15 Mr. Pendergast, I understand that -- I'm going to throw
16 out another scenario.

17 MR. PENDERGAST: Sure.

18 COMMISSIONER DAVIS: And I don't think it
19 violates the affiliate transaction rule. Okay. But let's
20 say, you know, it's -- it's an unexpected cold day in
21 January and, you know, Laclede -- and maybe this may not
22 even be technically feasible because Laclede may need all
23 of its capacity on cold days, but okay.

24 What is to stop someone -- if Laclede is
25 earning close to its allowed return and whoever

1 represents, you know, Laclede in terms of capacity knows
2 that, what's to stop them from calling up LER and saying,
3 hey, looks like it's going to be a good day. The company
4 can make a lot of money selling capacity off-system. You
5 know, I'll sell it to you at fair market value, you mark
6 it up and make whatever you can get, and you'll make off
7 like bandits and in the end the company will benefit?

8 I mean, I can envision that scenario
9 happening, and it causes me concern. It may not violate
10 the affiliate transaction rule, but that don't mean we
11 shouldn't do something about it.

12 MR. PENDERGAST: Well, and you know, I can
13 understand how somebody might have that concern,
14 Commissioner. What prohibits it from happening is, first
15 of all, the guy that's going to make the call for the gas
16 company, he gets rewarded based on whether he uses that to
17 make off-system sales, not on whether Mr. Jaskowiak takes
18 some and LER's earnings go up. okay. So that doesn't
19 factor in to his earnings.

20 And secondly, if I can just put up the --
21 as I showed before, our off-system sales have gone up
22 tremendously, and I know there's a belief at times that
23 every time a utility makes a decision there's some
24 underlying financial calculation that's made, that you
25 don't go ahead and necessarily do it just because it's the

1 right thing to do.

2 But the fact of the matter is, if you look
3 at how these have inclined, gone up, the amount that the
4 company's been able to keep of these transactions has gone
5 ahead and changed. Forget LER for a minute. It's been
6 able to -- it's been changed significantly over this
7 period of time.

8 Used to be when, you know, back here when
9 we were in a rate case, we kept everything, everything we
10 made between rate cases. Okay. And then around here I
11 think we went ahead and had to give 50 percent back once
12 we got to 12 million. Okay. And then here, I think we
13 got to the point where we had to give between 75 and 85
14 percent back to our customers.

15 Now, you know, if you just went ahead and
16 responded to what the financial incentive was, and not
17 that incentives aren't important, but that's the only
18 thing that entered into your calculation, you wouldn't
19 continue to work hard to go ahead and drive these things
20 up even though you're only getting 30 percent of what you
21 got before. I mean, you work hard because it's the right
22 thing to do. You work hard because it's in your
23 performance evaluation. You'll be rewarded on it.

24 I submit to you -- you know, can you be
25 absolutely 100 percent certain that nobody's ever made

1 that phone call? You know, you can't be absolutely
2 100 percent certain about anything. But you're never
3 going to go ahead and be able to have, I think, more
4 robust information than this that we played it on the up
5 and up.

6 And, you know, once again, Commissioner,
7 the rules themselves, the affiliate transaction rules
8 themselves are designed to go ahead and not have to look
9 into what somebody's motivation is. They're designed to
10 not have to look into what your real intention is. The
11 proof is in the pudding, and, you know, the pudding's been
12 cooked up by the Commission in the form of its affiliate
13 transaction rules.

14 Those are the rules of the game we did
15 business under. They're the rules of the game LER did
16 business under. If people think the rules ought to be
17 changed, the transactions ought to be outlawed, that there
18 ought to be additional separation, you know, whatever,
19 that's fine. I mean, you know, somebody can come forward
20 and propose a change to the rule and then we can go ahead
21 and debate that.

22 But what we shouldn't do is retroactively
23 go back and say, you know, we think a different standard
24 ought to apply because we don't like the standard that the
25 rule has gone ahead and imposed on everybody. I think the

1 rules work well, but if you're going to change it, it
2 ought to be changed prospectively.

3 COMMISSIONER DAVIS: All right. Thank you,
4 Mr. Pendergast.

5 MR. PENDERGAST: Thank you.

6 CHAIRMAN CLAYTON: Thank you, Judge. I
7 just have a few quick, I hope they're quick questions.

8 MR. PENDERGAST: Sure.

9 CHAIRMAN CLAYTON: On the chart that you
10 had up before where you set out a characterization of
11 Laclede's position and Staff's position, if we assume that
12 those characterizations are accurate the way -- and I'm
13 not saying they're not --

14 MR. PENDERGAST: Sure.

15 CHAIRMAN CLAYTON: -- but assuming that's
16 the case, as a matter of law, does the Commission have the
17 power to adopt Staff's position and disallow amounts
18 through this PGA?

19 MR. PENDERGAST: As a matter of law, I
20 would say the Commission does not have the power to adopt
21 the Staff adjustment that's based on a pricing standard
22 different than what's in the affiliate transaction rule.

23 CHAIRMAN CLAYTON: So as a matter of law,
24 we cannot adopt what Staff is doing?

25 MR. PENDERGAST: That would be my position,

1 yes.

2 CHAIRMAN CLAYTON: Aside from that, the
3 question of law or the legality of it, more of a policy
4 question. Is it Laclede's position that you are asking
5 the Commission to decide the ultimate decision in this
6 case, the way things have been framed up, without
7 reviewing any type of sampling of the documents Staff is
8 requesting?

9 MR. PENDERGAST: Yeah. Well, I guess --

10 CHAIRMAN CLAYTON: I mean, I look at this
11 thing and you're saying, this is what the Staff wants to
12 do, it's wrong, wrong, wrong, and we don't -- but this is
13 really kind of a discovery discussion or an exchange of
14 information discussion we're hearing here today. I guess
15 that's what I'm trying to --

16 MR. PENDERGAST: Yeah. I guess what I
17 would prefer is I would prefer if you looked at the Cost
18 Allocation Manual documents, if you looked at the
19 affiliate transaction rules, and if you looked at what
20 we've said here today and what we've said in the pleading,
21 if you could give clarification, yeah, that you really
22 ought to be evaluated when you're buying gas from an
23 affiliate on what the fair market price of that gas is as
24 determined by, you know, other vendors and sellers and
25 buyers in the market.

1 That would be helpful. That would be
2 helpful. It would be helpful to have some kind of clarity
3 because, quite frankly, given where Staff has come from,
4 we have absolutely no idea what the standard is that we're
5 supposed to be operating under. We don't know when we're
6 making money, not making money, when it's appropriate,
7 when it's not. It would be helpful to go ahead and have
8 that clarified.

9 If you don't clarify it, if you don't feel
10 comfortable going that far at this point, then what I
11 would submit is we ought to have an evidentiary hearing at
12 this point. Staff ought to come in, they ought to go over
13 this purchase contract that they said they had concerns
14 with, they ought to go over the sales stuff that they said
15 they had concerns with, and they ought to say, this is my
16 view of what the standard is in the rule, this is my view
17 of what the standard is in the CAM, this is my view of
18 why --

19 CHAIRMAN CLAYTON: Can I stop you right
20 there?

21 MR. PENDERGAST: Sure.

22 CHAIRMAN CLAYTON: The evidentiary hearing
23 that you want to have, what would be the case? Is the
24 case -- if you removed the PGA aspect of it, so basically
25 does it become a rulemaking, a proposed rulemaking to

1 change policy? Or explain to me what type of evidentiary
2 hearing, what type of case that would be.

3 MR. PENDERGAST: Yeah. What it would be is
4 we would finally get -- I mean, you know, Staff made its
5 first recommendation to disallow costs associated with
6 this contract we had with LER I think two and a half years
7 ago. Okay. And they said this is inappropriate, I have a
8 problem with it, here's \$4.5 million worth of costs we
9 ought to disallow. I think that's over two ACA periods.
10 It's not really a good number because it does include some
11 transportation that produces it.

12 But that notwithstanding, they ought to
13 come in and they ought to say, here's why we think it's
14 reasonable to go ahead and look at these other costs,
15 here's why we think this disallowance is appropriate.

16 And if they want to go ahead and say, you
17 know, here's the kind of information we think we should
18 have gotten or we're entitled to get under our view of
19 what the standard is, if you ultimately want to conclude,
20 well, okay, we think there's some merit to what Staff has
21 proposed here, we think, you know, they've shown us that
22 there's some shenanigans here and we think we need to look
23 forward, then fine.

24 But what I don't think we ought to do is
25 say we want to send them off on an audit of 93 percent of

1 transactions that LER does with third parties based on
2 these untested allegations that they've made. I mean,
3 they made the allegations two and a half years ago. Why
4 isn't it appropriate for them to come forward now and
5 prove them up?

6 CHAIRMAN CLAYTON: Wouldn't -- wouldn't an
7 evidentiary hearing in the PGA case, though, be an
8 appropriate place for that?

9 MR. PENDERGAST: Yeah. I agree,
10 absolutely. No, and I think that's what we should do.

11 CHAIRMAN CLAYTON: But I think what they've
12 suggested is that they need to review some materials to be
13 able to do that, and you-all are refusing to turn over
14 those materials.

15 MR. PENDERGAST: Chairman, what they're
16 saying is, we've refused to go ahead turn over some
17 materials that we need to pursue a standard that's not in
18 the affiliate transaction rule, that's not in Laclede's
19 CAM, that's not in any of the seminal documents that we've
20 operated under for the last four or five years.

21 Mr. Sommerer has got a different theory,
22 different standard about how things ought to be priced,
23 and you need to ignore your CAM -- Mr. Reed just said that
24 today -- and you need to go ahead and ignore the affiliate
25 transaction rule and give us what we want because I've got

1 a different theory and I've got a different standard, and
2 that's not appropriate.

3 CHAIRMAN CLAYTON: Let me try and ask this
4 question. I think it's a variation of what Commissioner
5 Davis asked. In your chart, you are setting out that the
6 company believes that the customer should be -- the gas
7 should be priced at the fair market price?

8 MR. PENDERGAST: Absolutely.

9 CHAIRMAN CLAYTON: And Staff is suggesting
10 something else. But if the Staff were to review the
11 material that they are seeking, some sampling of it, and
12 they were to find a consistent lower cost of gas going
13 through LER which is lower than what the fair market price
14 is, and that was happening on a consistent basis, do you
15 believe that would support a finding of imprudent behavior
16 on the part of Laclede?

17 MR. PENDERGAST: Well, first of all, since
18 we've provided information that shows we've met the fair
19 market price, I don't really understand how that could go
20 ahead and happen.

21 But what it's effectively saying is that,
22 you know, the criteria we've come up with for determining
23 whether these transactions are proper or not, basically
24 the fair market price and how you're supposed to calculate
25 that fair market price, you know, really ain't working,

1 you know, and we need to go ahead and look behind and see
2 if there's something else that's going on.

3 You know, my view would be, if that's the
4 case and we need to revisit the rules and we need to come
5 up with something other than fair market price and we need
6 to come up with a more specific way of determining what it
7 should be, then I think that's fine to go ahead and do and
8 look at.

9 But what we shouldn't do is go back and
10 say, you know, the standards you've been operating under
11 for the last six or seven years we need to go ahead and
12 revisit and we need to get information based on a
13 different standard. I mean, you know, ACA --

14 CHAIRMAN CLAYTON: Let me ask another
15 question. I don't mean to cut you off. I know this has
16 gone on for a while.

17 What you're saying, I think you're saying,
18 and please clarify if I'm wrong, is that basically
19 customers should be entitled to the fair market price and
20 no less?

21 MR. PENDERGAST: Yes.

22 CHAIRMAN CLAYTON: Is that what you're
23 saying?

24 MR. PENDERGAST: Yes.

25 CHAIRMAN CLAYTON: So even if an affiliate

1 on a consistent basis is selling gas that is beneath that
2 price to other customers outside of its native load or
3 outside of where they're going otherwise, that those
4 customers have -- they should not benefit at all from
5 those other transactions, that they're only entitled to
6 what your definition of what fair market price is?

7 (REPORTER'S NOTE: At this point, an
8 in-camera discussion was held, which is contained in
9 Volume 2, page 123 of the transcript.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. PENDERGAST: And I think that once you
2 have that kind of robust indication of this was a
3 competitive contract and it's done at the fair market
4 price, you know, there's not a need to look at anything
5 else.

6 And I certainly don't think that under
7 those circumstances somebody's justified an investigation
8 because something's rotten in Denmark, particularly when
9 you look at the macro results we've achieved in off-system
10 sales and how they've, you know, gone up on the gas
11 company side so dramatically over the last four or five,
12 six years when we were supposedly migrating them over to
13 our affiliate.

14 CHAIRMAN CLAYTON: From your perspective,
15 is Staff arguing that the fair market price can be
16 determined by looking at these documents?

17 MR. PENDERGAST: I think Staff is arguing
18 that if --

19 CHAIRMAN CLAYTON: Rather than by your
20 definition, I guess is what I'm asking.

21 MR. PENDERGAST: I don't know whether Staff
22 would go ahead and say they want to get what the fair
23 market price is, but if that's the fair market price, what
24 it's basically saying is the fair market price for an
25 affiliate only is what that affiliate ultimately does with

1 your capacity and gas that you've sold to them. If they
2 ultimately make another sale to somebody else that maybe
3 the gas company could have made a sale to, then we want to
4 go ahead and get those margins for the gas company.

5 If I go ahead and I sell that same gas
6 capacity to a BP Amoco or Conoco Phillips, the matter
7 ends. They can go compete with me. They can sell it to
8 anybody else they want. But if I do it with an affiliate,
9 we need to go ahead and follow them, and then we need to
10 go and have them give back any money they gave if we can
11 establish at some point that that's a customer that you
12 could have made an off-system sale to.

13 You know, Chairman, I -- why would this
14 suggest to anybody that Laclede's been involved in
15 anything other than a robust effort to go ahead and grow
16 its off-system sales for its regulated customers? I mean,
17 you know, you can hypothecate and you can theorize, but
18 sometimes just looking at the facts and looking at the
19 real world and looking at what's happened is enough, and I
20 think it is in this particular case. I just don't think
21 you can treat an affiliate substantially different than
22 you do a non-affiliate.

23 CHAIRMAN CLAYTON: You've made some very
24 interesting arguments here today on -- for the outcome of
25 the whole case. Ultimately, though, today we have the

1 question before us of whether or not we are going to move
2 forward with discovery and the exchange of this
3 information.

4 What is your response to me if I suggest
5 that by not sharing some sampling of information, that
6 perhaps that suggests that maybe there really is something
7 that the Staff should be seeing, by not turning this over?
8 And I don't want to get -- I understand you're advocating
9 very strongly for your client. I don't want to -- but
10 what is your response if I say, you know, the Staff's
11 asking to look at this, don't want to turn over, so maybe
12 there is something there? And I'm not suggesting that,
13 but what's your response?

14 MR. PENDERGAST: Well, my response to that
15 is, No. 1, the reason they said they need to look at it is
16 because they happen to go ahead and have a standard that's
17 different than anything in the affiliate transaction rule,
18 anything in the CAM. And we've given them the information
19 to show compliance with that, and we shouldn't be required
20 just to go ahead and prove our innocence, go ahead and
21 provide them information that isn't required under any of
22 those rules.

23 And the second thing I would say on the if
24 you don't have anything else to hide, you know, assume
25 you're a judge and you go out there and you've ruled in

1 favor of somebody and then, you know, a couple weeks later
2 you buy a new car. It's a pretty nice car. Can somebody
3 on a judicial salary really afford that nice a car? Maybe
4 moved into a new house. Somebody comes up to you and
5 says, looks like you're doing pretty well there. I'd like
6 to take a look at your financial records if you don't
7 mind. And I think, you know, the response would be that's
8 none of your business.

9 And if they were to go ahead and come back
10 and say, well, if you've got nothing to hide, why don't
11 you go ahead and provide it to them, I think you might
12 punch them in the nose. That's just not in my view a very
13 reasoned objection to somebody not providing --

14 CHAIRMAN CLAYTON: I understand. Point
15 taken on that. And I'm not driving a new car. I want to
16 be clear on the record. I haven't bought anything new.
17 I've got bald tires on there. I've got problems with
18 that.

19 I take that point, but the difference is
20 that there is a relationship that the Staff and the
21 regulated entities and their affiliates have that is
22 ongoing. So having exchanges of information are quite a
23 bit different from just the simple making an accusation,
24 go prove it. That's what we're here to do. This is our
25 job.

1 MR. PENDERGAST: I understand.

2 CHAIRMAN CLAYTON: So that's why I'm -- is
3 there any -- is there any compromise or sampling of
4 information that would make sense in this instance if it
5 is overly broad or perhaps overly burdensome?

6 (REPORTER'S NOTE: At this point, an
7 in-camera session was held, which is contained in
8 Volume 2, page 128 of the transcript.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. PENDERGAST: Now, Staff's view on that
2 was, well, that's just arbitrary. You're just taking data
3 and you're just putting your own mental construct on it,
4 and you're saying we ought to use an average instead of
5 using the lowest or instead of using the higher end.

6 I guess all I'm saying is, if you go and
7 you start saying I need to sample information, what you're
8 going to need to do is you're going to have to make a lot
9 of subjective arbitrary assessments of what do I relate to
10 what, what costs do I relate to what sales, how do I
11 determine what was the margin? In a business where you go
12 ahead and have a portfolio supply and transportation
13 portfolio to customers and you don't draw lines from one
14 to the other, I'm not sure that that's ever going to go
15 ahead and get you anywhere.

16 But we tried to give them some additional
17 information. They said it's arbitrary. And, you know, if
18 you have information on that 93 percent of the
19 transactions that you did with other, whatever you come up
20 with, I can guarantee you it's going to be arbitrary, it's
21 going to be somebody's view of how things ought to be
22 allocated.

23 We're probably in all likelihood going to
24 go ahead and disagree with it. And I think in the end
25 you're not going to come up with anything that's any more

1 satisfying than the information that your own rules say
2 ought to be provided to show some compliance with both the
3 CAM and with the affiliate transaction standards.

4 CHAIRMAN CLAYTON: Should we be
5 reevaluating our affiliate transaction rules?

6 MR. PENDERGAST: You know, I think it might
7 be helpful to look at the affiliation transaction rules.
8 Again, I think that, you know, we've learned some things
9 about how you really need to price transactions. You
10 know, for example, a lot of transactions, market and cost
11 are the same thing. The rule might want to go ahead and
12 recognize that.

13 I think also providing some additional
14 elaboration on how you go ahead and determine some of
15 those things under the rule might be helpful. I also
16 think it's helpful for us to go ahead and try and come up
17 with a way to better satisfy people's needs for this
18 information. And quite frankly, you know, there are a lot
19 of transactions out there. It's hard to keep up with
20 them.

21 One thing we've talked about doing is
22 coming up with a system where we could put these
23 transactions on a secure website, we could go ahead and
24 provide the contemporaneous market data that shows these
25 transactions were competitive, give Staff a code, give

1 Public Counsel a code, so that we don't have to wait three
2 or four years after these transactions took place to go
3 ahead and go back and try and make that evaluation. We
4 can make them as you go along.

5 I really think that's what we ought to be
6 spending our time on rather than spending our time making
7 up new standards, you know, and applying them
8 retroactively.

9 CHAIRMAN CLAYTON: Thank you.

10 JUDGE JONES: Commissioner Davis.

11 COMMISSIONER DAVIS: Can I get Mr. Zucker
12 to bring the LER sales to Laclede that --

13 MR. ZUCKER: Do what with it?

14 COMMISSIONER DAVIS: Can you bring that up
15 here so I can --

16 MR. ZUCKER: You have that on paper.

17 MR. PENDERGAST: But it's kind of hard to
18 see 2008.

19 COMMISSIONER DAVIS: Okay. All right.
20 Thank you. This would be a highly confidential document,
21 I'm assuming. I don't believe it's in our packet in terms
22 of actual LER revenue, a chart like you have for Laclede
23 in terms of you've got the chart there that has 5, 10 --
24 you've got the sales percentage, but you don't have a
25 dollar percentage for -- or dollar number for LER?

1 MR. PENDERGAST: Not for the percentages.
2 We do have overall revenue for those four years, but not
3 connected specifically to Laclede.

4 COMMISSIONER DAVIS: You've got that chart
5 right there, that's in our packet, correct?

6 MR. PENDERGAST: Correct. That is and that
7 is.

8 COMMISSIONER DAVIS: Can you produce
9 another chart just like that one except make it for LER?

10 MR. PENDERGAST: Laclede sales to LER?

11 COMMISSIONER DAVIS: No. Just LER, you
12 know, sales -- I don't guess LER has any capacity release.
13 Okay.

14 MR. PENDERGAST: We've got total revenues
15 here.

16 COMMISSIONER DAVIS: Okay. That's -- all
17 right. That's total revenues, that's not net, and --

18 MR. PENDERGAST: Earnings you mean?

19 COMMISSIONER DAVIS: Yes. What is the
20 amount on the previous -- let's go back to the -- is that
21 net margins, is that what that is for Laclede?

22 MR. PENDERGAST: Yes.

23 COMMISSIONER DAVIS: Okay. So can you
24 generate a chart just like that for LER?

25 MR. PENDERGAST: Oh, you mean -- yeah. We

1 can generate something that shows what the earnings are.

2 COMMISSIONER DAVIS: And will you do that
3 and will you send it to us?

4 MR. PENDERGAST: Sure. And I think we
5 have that -- I think we disclosed that with the -- yeah.

6 COMMISSIONER DAVIS: Okay. All right.
7 Next question, and Mr. Pendergast, I've been listening to
8 you intently here, and let me phrase it this way. Are you
9 here today acknowledging that Laclede Gas may have, in
10 fact, been gaming the system but that's okay just because
11 it wasn't, in fact, prohibited by any regulation or
12 agreement or anything else here at the Commission or in
13 law?

14 MR. PENDERGAST: No, not at all,
15 Commissioner. What I'm here today is to say that Laclede
16 in conducting its affiliate transactions with LER has
17 complied with the pricing standards that the Commission
18 itself went ahead and approved. We've complied with the
19 CAM provisions that were developed in compliance with that
20 particular order, and that we've done everything on the up
21 and up.

22 And I'm here to say today that
23 Laclede -- the fact that LER's existence has been a
24 benefit to Laclede's regulated ratepayers. They have not
25 done anything but been a market for our off-system sales

1 capacity release revenues. They have provided us 50 or
2 \$60 million worth of liquidity at very cheap rates during
3 very tight credit market times, and they've been a
4 reliable supplier of gas. And, you know, I don't think
5 there's any question that LER has been good for Laclede's
6 ratepayers.

7 JUDGE JONES: We're in open court again,
8 just so you know.

9 COMMISSIONER DAVIS: One last question.
10 How would you feel if this Commission appointed a, quote,
11 special master or a third-party expert, someone who is
12 truly independent and impartial to review these documents
13 and make any recommendations to this Commission about what
14 we should do, which could include promulgating an
15 emergency rule to fix any gaps that may exist in the
16 existing affiliate transaction rule?

17 MR. PENDERGAST: Well, it's interesting
18 that you should mention that, Commissioner. One of the
19 things we had proposed when we -- one of the numerous
20 pleadings we filed in this case was, in the same pleading
21 we asked for this oral argument, we also suggested that we
22 have mediation, and the purpose of that was to get a third
23 party to sit down and go over, No. 1, first the data we
24 have provided that we say shows that these were
25 competitive deals, shows that they were consistent with

1 the affiliate transaction rule, and have them look it
2 over, and if they continue to have concerns, we could go
3 to a different step.

4 So I'm not averse to doing that. As far as
5 turning over what would probably be 30 or 40,000 documents
6 relating to purchases that LER made and an equal number of
7 confirmations and sales data on sales they made over a
8 two-year period and having that person try and make any
9 sense out of that, I just really don't think that would
10 get you anywhere.

11 I just think that there's too much
12 information. There's no direct line between the costs and
13 the revenues. And you know, I honestly don't know what
14 you do with it. I don't know what Staff would do with it
15 if they went in and they looked at those 93 percent of
16 LER's transactions that were with people other than
17 Laclede Gas Company.

18 But I do think it would be helpful if the
19 Commission were so inclined to sit down and say, okay,
20 here's all the information we've provided that shows we
21 were in compliance with the standard in the affiliate
22 transaction rule and have that master and try and, you
23 know, have an understanding of what that rule is, have an
24 understanding of what the documents are that we've
25 provided and, you know, reach a conclusion as to whether

1 or not it satisfies it. I think that would be fine.

2 COMMISSIONER DAVIS: You referenced
3 mediation, which I think of mediation as something
4 where -- a process where you have two parties that have a
5 dispute but don't necessarily have irreconcilable
6 differences.

7 My concern here is that I don't think
8 Laclede and the Staff are ever going to be able to
9 reconcile any of those differences through mediation.
10 What about binding arbitration?

11 MR. PENDERGAST: You know, I suppose that
12 would depend on what the terms of it is and what was the
13 binding thing about, whether -- if you're talking about
14 the merits of the issue, whether you provide the
15 information. I can't honestly tell you at this point that
16 I would necessarily be comfortable with that.

17 COMMISSIONER DAVIS: Okay. I'm sorry. No
18 further questions, Judge.

19 JUDGE JONES: I just have one question,
20 Mr. Pendergast. Do you agree, then, with Mr. Reed that
21 Laclede could have acted imprudently with regard to the
22 standards under the ACA but been in compliance with the
23 CAM and the affiliate transaction rule?

24 MR. PENDERGAST: I would agree with
25 Mr. Reed that there are certain circumstances under which

1 that could happen. I would not agree with Mr. Reed that
2 any of the circumstances and any of the transactions that
3 Staff has pointed to are ones where you could have been
4 both in compliance with the rule and at the same time
5 imprudent.

6 JUDGE JONES: Well, we've gone -- we're
7 past two hours now. Mr. Pendergast has gotten
8 substantially large bulk of the argument time. Mr. Reed,
9 do you need to reply?

10 MR. REED: I do, and I need to do so in
11 about five minutes because I need to leave, and so I will
12 be very quick, and I'd like to get this done now if we
13 can.

14 JUDGE JONES: Okay. That's fine. Thank
15 you, Mr. Pendergast.

16 MR. PENDERGAST: Thank you.

17 MR. REED: I just want to address a couple
18 things. One is that this is not -- this case is not about
19 whether Laclede violated the affiliate transactions rule.
20 This case is about whether Laclede was prudent in entering
21 into these contracts with LER. So the standard is, was
22 Laclede prudent in entering into these contracts? Was it
23 a good idea to enter into these contracts? Was the cost
24 of gas higher for Laclede's ratepayers because of the
25 contracts?

1 Laclede so far has given us only the
2 information that they believe will prove what they want to
3 prove.

4 (REPORTER'S NOTE: At this point, an
5 in-camera session was held, which is contained in
6 Volume 2, pages 139 through 140 of the transcript.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 JUDGE JONES: Okay.

2 COMMISSIONER DAVIS: For the record, I
3 think that was less than five minutes.

4 JUDGE JONES: Probably was. With that,
5 then, we stand adjourned. Thank you.

6 WHEREUPON, the hearing in this case was
7 adjourned.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified
Shorthand Reporter with the firm of Midwest Litigation
Services, and Notary Public within and for the State of
Missouri, do hereby certify that I was personally present
at the proceedings had in the above-entitled cause at the
time and place set forth in the caption sheet thereof;
that I then and there took down in Stenotype the
proceedings had; and that the foregoing is a full, true
and correct transcript of such Stenotype notes so made at
such time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.



Kellene K. Feddersen, RPR, CSR, CCR
Notary Public (County of Cole)
My commission expires March 28, 2009.

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|---|--|---|--|--|
| <p style="text-align: center;">A</p> <p>ability 53:15,16 54:7</p> <p>able 113:4,6 114:3 119:13 136:8</p> <p>about 42:19 50:25 55:9,15 74:19 75:1 76:9 112:11 114:2 119:22 130:9,21 134:13 136:10,13,13 137:11,18,20</p> <p>above-entitled 142:8</p> <p>absolutely 51:19 113:25 114:1 117:4 119:10 120:8</p> <p>ACA 46:11,22 47:1 47:11 51:24 55:14 72:21,23 118:9 121:13 136:22</p> <p>ACC 39:3</p> <p>access 49:11 50:25 52:13 54:7,22 72:19 75:25</p> <p>accurate 115:12</p> <p>accusation 126:23</p> <p>accused 48:22</p> <p>achieved 72:13 123:9</p> <p>acknowledging 133:9</p> <p>acted 136:21</p> <p>action 47:9</p> <p>actual 131:22</p> <p>actually 53:3</p> <p>additional 41:19 42:7 44:13 74:20 114:18 129:16 130:13</p> <p>address 36:14 137:17</p> <p>addressed 42:11</p> <p>adjourned 141:5,7</p> <p>adjustment 34:11 72:23 115:21</p> <p>admissible 46:21</p> <p>adopt 115:17,20,24</p> <p>advocating 125:8</p> <p>affiliate 47:20 49:24 52:6,13 54:13,13 54:16 55:2,3 72:20 73:9 74:21 75:25 76:1,3,4,15 76:18,24 77:1,12 111:6,19 112:10 114:7,12 115:22</p> | <p>116:19,23 119:18 119:24 121:25 123:13,25,25 124:8,21 125:17 130:3,5 133:16 134:16 135:1,21 136:23 137:19</p> <p>affiliates 42:25 126:21</p> <p>affiliate's 43:11</p> <p>affiliation 130:7</p> <p>afford 126:3</p> <p>after 39:25 45:19 131:2</p> <p>again 47:18,21,21 114:6 130:8 134:7</p> <p>aggregate 55:25</p> <p>ago 118:7 119:3</p> <p>agree 40:18,20 119:9 136:20,24 137:1</p> <p>agreed 50:15,16 54:3 75:5 76:9</p> <p>agreement 48:20,21 49:2 50:14,21 52:10,20,21 53:7 54:2 133:12</p> <p>ahead 42:12 44:21 47:16 50:23 52:4 53:22 73:13,14,20 75:13,21 76:9,10 77:14 112:25 113:5,11,15,19 114:3,8,20,25 117:7 118:14,16 119:16,24 120:20 121:1,7,11 123:22 124:4,5,9,15 125:16,20,20 126:9,11 129:12 129:15,24 130:11 130:14,16,23 131:3 133:18</p> <p>ain't 120:25</p> <p>allegations 119:2,3</p> <p>allocated 129:22</p> <p>allocation 46:24 47:13 49:15,19,23 50:17 51:21 72:25 73:3,21 76:14,22 116:18</p> <p>allowed 41:6 111:25</p> <p>along 131:4</p> <p>Although 36:3</p> <p>Amoco 124:6</p> <p>amount 113:3 132:20</p> <p>amounts 115:17</p> | <p>another 43:12 55:1 111:16 121:14 124:2 132:9</p> <p>anybody 124:8,14</p> <p>anything 75:7 111:10 114:2 123:4 124:15 125:17,18,24 126:16 129:25 133:12,25</p> <p>anywhere 49:1 129:15 135:10</p> <p>appear 42:16</p> <p>appearances 35:1 36:8</p> <p>appearing 36:13,18</p> <p>applies 55:7</p> <p>apply 114:24</p> <p>applying 131:7</p> <p>appointed 134:10</p> <p>appreciate 74:10</p> <p>appropriate 117:6 118:15 119:4,8 120:2</p> <p>approval 49:10 54:4</p> <p>approved 53:7 72:19 75:4 133:18</p> <p>arbitrary 129:2,9 129:17,20</p> <p>arbitration 136:10</p> <p>argue 47:18,19,20 72:6</p> <p>arguing 54:15,19 123:15,17</p> <p>argument 34:7 54:25 72:3 134:21 137:8</p> <p>arguments 42:12 124:24</p> <p>arises 42:17</p> <p>around 113:10</p> <p>Aside 116:2</p> <p>asked 43:13,24 73:1 75:18 76:9 120:5 134:21</p> <p>asking 52:17 116:4 123:20 125:11</p> <p>aspect 117:24</p> <p>assessments 129:9</p> <p>assets 72:14</p> <p>associated 118:5</p> <p>assume 42:3 115:11 125:24</p> <p>assuming 115:15 131:21</p> <p>attempted 38:11 39:13</p> | <p>Attorney 35:2,2,11</p> <p>attorneys 44:16</p> <p>audit 118:25</p> <p>authority 51:6</p> <p>authorized 75:4</p> <p>available 76:5</p> <p>average 129:4</p> <p>averse 135:4</p> <hr/> <p style="text-align: center;">B</p> <p>B 40:22</p> <p>back 39:8 113:8,11 113:14 114:23 121:9 124:10 126:9 131:3 132:20</p> <p>bald 126:17</p> <p>bandits 112:7</p> <p>bargaining 51:1</p> <p>based 51:15 53:2 72:10 112:16 115:21 119:1 121:12</p> <p>basically 55:2 73:5 75:22 77:2 117:24 120:23 121:18 123:24</p> <p>basis 41:22 51:22 120:14 122:1</p> <p>become 117:25</p> <p>before 42:8,11 44:20 46:13 48:25 54:11 112:21 113:21 115:10 125:1</p> <p>begin 72:8</p> <p>beginning 36:8</p> <p>behavior 120:15</p> <p>behind 121:1</p> <p>being 36:4 49:5 53:2</p> <p>belief 112:22</p> <p>believe 39:18,22 40:16,20 73:19 74:1 120:15 131:21 138:2</p> <p>believes 120:6</p> <p>beneath 122:1</p> <p>benefit 112:7 122:4 133:24</p> <p>bet 48:15</p> <p>better 130:17</p> <p>between 46:2 54:16 55:16,21 72:12 113:10,13 135:12</p> <p>beyond 45:7</p> <p>binder 48:18 53:13 53:20 55:16</p> | <p>binders 44:14</p> <p>binding 136:10,13</p> <p>bit 38:25 126:23</p> <p>board 77:15</p> <p>both 53:18,19 130:2 137:4</p> <p>bottom 49:12 50:24</p> <p>bought 50:12 126:16</p> <p>bound 37:3</p> <p>Box 35:7,12 36:10 36:19</p> <p>BP 124:6</p> <p>bring 48:23 131:12 131:14</p> <p>broad 53:21 54:6 127:5</p> <p>bulk 137:8</p> <p>burdensome 127:5</p> <p>business 36:14 114:15,16 126:8 129:11</p> <p>buy 77:7 126:2</p> <p>buyer 55:23</p> <p>buyers 116:25</p> <p>buying 77:7 116:22</p> <hr/> <p style="text-align: center;">C</p> <p>C 35:2 36:1,12 142:1,1</p> <p>calculate 120:24</p> <p>calculated 46:20</p> <p>calculation 112:24 113:18</p> <p>call 112:15 114:1</p> <p>called 39:6</p> <p>calling 112:2</p> <p>CAM 49:15 50:8,11 52:7 73:12 74:22 75:5 76:8,11 77:2 117:17 119:19,23 125:18 130:3 133:19 136:23</p> <p>came 43:20,22</p> <p>CAMS 73:16</p> <p>capacity 43:12 47:5 52:1,2 76:24,25 111:23 112:1,4 124:1,6 132:12 134:1</p> <p>caption 142:9</p> <p>car 126:2,2,3,15</p> <p>case 34:11,13 36:3 43:15 44:8 46:11 46:22 47:1,18 48:10 53:12 54:5 54:9,23 55:6,13 113:9 115:16</p> |
|---|--|---|--|--|

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|--|---|--|---|--|
| <p>116:6 117:23,24 118:2 119:7 121:4 124:20,25 134:20 137:18,20 141:6 cases 36:4 42:18 113:10 catch 43:8 cause 142:8 causes 112:9 CCR 34:23 142:17 cell 37:21 certain 113:25 114:2 136:25 certainly 43:6 45:10 45:11 123:6 certification 41:19 certified 41:9 142:4 certify 38:19 39:16 142:7 Chairman 34:18 115:6,9,15,23 116:2,10 117:19 117:22 119:6,11 119:15 120:3,9 121:14,22,25 123:14,19 124:13 124:23 126:14 127:2 130:4 131:9 chance 74:1,9 change 49:6 72:23 75:17,21 114:20 115:1 118:1 changed 113:5,6 114:17 115:2 characterization 115:10 characterizations 115:12 chart 115:9 120:5 131:22,23 132:4,9 132:24 cheap 134:2 Chief 35:11 circumstances 123:7 136:25 137:2 citing 50:13 52:24 City 34:8 35:8,13 36:10,19 142:14 claiming 48:14 clarification 45:24 45:25 46:3 48:2 75:16,19 116:21 clarified 117:8 clarify 117:9 121:18 clarifying 46:5 clarity 117:2 CLAYTON 34:18</p> | <p>115:6,9,15,23 116:2,10 117:19 117:22 119:6,11 120:3,9 121:14,22 121:25 123:14,19 124:23 126:14 127:2 130:4 131:9 clear 40:7 126:16 client 125:9 close 111:25 code 130:25 131:1 cold 111:20,23 Cole 142:3,15,17 collective 50:25 come 73:6,7 114:19 117:3,12 118:13 119:4 120:22 121:4,6 126:9 129:19,25 130:16 comes 126:4 comfortable 117:10 136:16 coming 52:7 130:22 commission 34:2 35:15 36:8 38:5 43:16,24 44:2,10 45:4,8,10,11,19 45:20,22 46:3,4 48:4,8,11 53:24 72:2 74:15 75:7 75:17 111:6 114:12 115:16,20 116:5 133:12,17 134:10,13 135:19 142:18 Commissioner 36:23,24 37:2,6,7 37:13,23,25 38:4 38:9,15,18,22,24 39:7,12,16,20,24 40:12,18,21 41:7 41:13,23 42:7,10 44:15 45:1,4,12 46:9,13,16,20,22 47:6,12,16 49:17 49:21 50:1,6,13 50:23 51:8,14,20 52:4,15,22 53:1,9 53:22 72:15 73:1 73:23 74:8 75:6 76:8,13 111:1,5 111:10,14,18 112:14 114:6 115:3 120:4 131:10,11,14,19 132:4,8,11,16,19 132:23 133:2,6,15 134:9,18 136:2,17</p> | <p>141:2 Commissioners 34:20 48:24 Commission's 43:18,21 49:9 companies 53:18,19 company 34:13 35:3,5 36:13 49:6 49:7 51:2,7 55:23 55:25 112:3,7,16 120:6 123:11 124:3,4 135:17 company's 34:11 113:4 Compel 40:7,11 41:6,8 42:8 43:21 compete 124:7 competitive 77:8 123:3 130:25 134:25 complete 39:3 compliance 38:20 40:3 41:9 49:15 49:18 50:11,17 73:9,11 74:21,22 76:6,11 125:19 130:2 133:19 135:21 136:22 137:4 complied 38:23 40:14 41:25 46:24 48:5 50:9 75:18 133:17,18 comply 41:14 44:2 44:3 47:13 73:2 77:11 compromise 127:3 concepts 76:18 concern 112:9,13 136:7 concerning 38:13 concerns 117:13,15 135:2 conclude 118:19 conclusion 135:25 condition 49:9,14 54:3 conditions 49:11 conducting 133:16 confer 38:12 39:13 conference 39:2,6 40:1,2,13,15,25 41:2,4,5,17,18 42:3 conferred 38:11 40:5 confidential 43:4,8 56:2 111:2,11</p> | <p>131:20 confirmations 135:7 connected 132:3 CONNIE 34:18 Conoco 124:6 considered 36:5 40:3 consistent 120:12 120:14 122:1 134:25 consolidated 36:4 construct 129:3 contained 56:7 77:17 122:8 127:7 138:5 contemporaneous 130:24 context 76:19 continue 44:22 113:19 135:2 contract 43:10 47:9 47:10 55:20,21 117:13 118:6 123:3 contracts 53:18 55:16 137:21,22 137:23,25 contrary 55:5 control 51:11 53:14 54:6 cooked 114:12 copies 44:12,15 53:19 copy 44:15 53:12 correct 38:4 40:15 46:14,18,25 49:19 49:24 51:13 111:2 132:5,6 142:12 cost 46:24 47:13 49:15,19,23 50:17 51:21 72:25 73:3 73:20 76:14,22 116:17 120:12 130:10 137:23 costs 42:20 47:11 50:4 118:5,8,14 129:10 135:12 counsel 35:6,9,11 36:16,18,24 38:10 38:12,19 41:20 131:1 County 142:3,15,17 couple 126:1 137:17 course 42:17,24 44:8 53:16 55:13 court 48:8 49:1 53:21 54:23 55:5</p> | <p>134:7 credit 134:3 criteria 74:23 76:2 120:22 CSR 34:23 37:3 38:1 41:18 142:17 custody 53:14 customer 120:6 124:11 customers 113:14 121:19 122:2,4 124:16 129:13 cut 121:15</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 35:6 36:1 data 129:2 130:24 134:23 135:7 Davis 34:19 111:1,5 111:10,14,18 115:3 120:5 131:10,11,14,19 132:4,8,11,16,19 132:23 133:2,6 134:9 136:2,17 141:2 day 111:20 112:3 days 111:23 dealings 49:23 deals 76:20 134:25 dealt 45:25 debate 114:21 December 44:11 45:22 decide 52:8 116:5 decision 112:23 116:5 decisions 42:21 111:7 defense 52:12 defined 47:7 52:20 53:10,11,14,20 definition 122:6 123:20 delivery 55:24 demand 38:16 demonstrate 74:20 denied 45:22 48:1 Denmark 123:8 depend 75:25 136:12 depending 50:2 depends 76:1 depiction 72:11 Deputy 35:11 designed 114:8,9 determination 40:19</p> |
|--|---|--|---|--|

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|--|--|---|---|---|
| <p>determine 47:3,4 77:4 129:11 130:14 determined 40:3,13 77:6 116:24 123:16 determining 74:23 120:22 121:6 developed 133:19 difference 126:19 differences 136:6,9 different 52:3,9 114:23 115:22 119:21,22 120:1,1 121:13 124:21 125:17 126:23 135:3 direct 36:25 135:12 directing 44:10 disagree 129:24 disagreement 41:4 disallow 115:17 118:5,9 disallowance 118:15 disclosed 133:5 discovery 37:4,4,8 38:6,20 39:6 40:1 40:2,24 41:3,5,10 41:17 42:16 44:6 46:21 48:9 54:22 55:6 116:13 125:2 discuss 37:11,14 42:16 75:13 discussed 39:1 discussing 36:21 discussion 116:13 116:14 122:8 discussions 40:5 dispute 50:19 136:5 distribute 44:14,16 distributed 50:3 docket 46:1 document 48:20 55:17 131:20 documents 42:25 43:13 45:5,24 46:6,10 47:23 48:3,11,12,16 53:15,17,25,25 54:8 55:4 74:3,12 74:13,14 111:1 116:7,18 119:19 123:16 134:12 135:5,24 doing 115:24 126:5 130:21 135:4 dollar 131:25,25</p> | <p>done 39:17 47:24 54:11 123:3 133:20,25 137:12 down 51:2 74:19 75:1 134:23 135:19 142:10 dramatically 123:11 draw 129:13 drive 113:19 driving 126:15 during 44:8 55:14 72:21 134:2</p> <hr/> <p style="text-align: center;">E</p> <p>E 36:1,1 142:1,1 each 44:14 earlier 55:18 earning 111:25 earnings 112:18,19 132:18 133:1 effect 39:11 effectively 120:21 effort 124:15 EFIS 47:25 75:7 elaboration 76:19 130:14 elect 40:7 emergency 134:15 employees 51:1 end 40:2 48:3 112:7 129:5,24 ends 51:3 124:7 Energy 49:8 55:22 76:25 enough 124:19 enter 137:23 entered 43:16 113:18 entering 47:9 137:20,22 entertain 38:5 entities 126:21 entitled 48:9 118:18 121:19 122:5 entries 36:7 envision 112:8 equal 135:6 especially 48:6 establish 124:11 established 77:8 establishes 76:2 evaluated 116:22 evaluation 113:23 131:3 even 41:25 111:22 113:20 121:25 event 41:22</p> | <p>ever 54:11,11 113:25 129:14 136:8 every 112:23 everybody 42:3 114:25 everyone 37:21 everything 46:16,19 77:6 113:9,9 133:20 evidence 46:21 evidentiary 117:11 117:22 118:1 119:7 example 130:10 except 132:9 exceptions 51:12 excerpts 76:21 exchange 116:13 125:2 exchanges 126:22 excuse 49:17 76:14 exist 134:15 existence 133:23 existing 134:16 expert 134:11 expires 142:18 explain 47:25 118:1 75:11,12 explaining 47:24 exploiting 72:14 extent 76:5</p> <hr/> <p style="text-align: center;">F</p> <p>F 142:1 fact 41:21 45:19 76:7 113:2 133:10 133:11,23 factor 112:19 facts 124:18 failed 44:2,3 fair 50:3 111:13 112:5 116:23 120:7,13,18,24,25 121:5,19 122:6 123:3,15,22,23,24 faith 38:11 72:21 false 72:13 far 117:10 135:4 138:1 favor 126:1 feasible 111:22 February 43:17,19 43:20 46:6 47:23 48:7,13 74:2,4 Feddersen 34:23 142:4,17 feel 117:9 134:10</p> | <p>few 72:6 115:7 file 40:7,8 75:6,9,16 filed 38:22 39:1,8 40:10,11,24 42:5 42:9 44:2 45:21 47:25 55:19 134:20 filing 34:13 38:13 42:24 43:25 47:24 final 48:6 finally 118:4 financial 49:13 112:24 113:16 126:6 financing 51:6 find 55:16 120:12 finding 120:15 fine 45:17 55:11 114:19 118:23 121:7 136:1 137:14 finish 50:24 firm 142:5 first 72:10 74:11 112:14 118:5 120:17 134:23 five 44:5 47:21 119:20 123:11 137:11 141:3 fix 134:15 flaw 39:20 follow 124:9 following 38:6 follows 54:24 foregoing 142:11 Forget 113:5 form 114:12 formally 54:12 forth 142:9 forward 51:10 114:19 118:23 119:4 125:2 found 75:16 four 119:20 123:11 131:2 132:2 fourth 48:19 framed 116:6 frankly 39:15 117:3 130:18 free 73:18 from 36:22 42:17 44:10 48:22 49:5 52:7 53:15,17 54:8 76:21,24 77:7,7 112:2,14 116:2,22 117:3 122:4 123:14 126:23 129:13</p> | <p>front 37:24 48:19 fulfilled 41:18 full 142:11 fully 47:12 50:3 fundamentally 72:11 further 49:16 136:18</p> <hr/> <p style="text-align: center;">G</p> <p>G 36:1 game 114:14,15 gaming 133:10 gaps 134:15 gas 34:11,11,13 35:3,5 36:13 42:20,22 43:9 47:4,10 49:6,7 50:12 51:2,6,25 55:20,24,25 72:14 76:20,23,25 77:5 77:7,7,8,9 112:15 116:22,23 120:6 120:12 122:1 123:10 124:1,3,4 124:5 133:9 134:4 135:17 137:24 gave 124:10 general 35:11 54:22 55:6 generally 111:13 generate 132:24 133:1 germane 50:21 gets 112:16 getting 113:20 give 72:12 74:1,9 113:11,13 116:21 119:25 124:10 129:16 130:25,25 given 117:3 125:18 138:1 142:14 go 39:24 43:4 44:21 47:16 50:23 51:1 52:4 53:22 73:13 73:14,20 75:13,21 76:9,10,11 77:13 77:14 112:18,25 113:19 114:3,8,20 114:23 117:7,12 117:14 118:14,16 119:16,24 120:19 121:1,7,9,11 123:22 124:4,5,7 124:9,10,15 125:16,20,20,25 126:9,11,24 129:6 129:11,14,24</p> |
|--|--|---|---|---|

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|--|---|---|--|---|
| 130:11,14,16,23 131:2,3,4 132:20 134:23 135:2 goes 49:5 going 36:20 39:8 43:3 46:23 51:10 72:6 73:20,24 76:11 111:15 112:3,15 114:3 115:1 117:10 120:12 121:2 122:3 125:1 129:8 129:8,14,20,21,23 129:25 136:8 gone 112:21 113:3,4 114:25 121:16 123:10 137:6 good 38:11 72:21 112:3 118:10 134:5 137:23 gotten 118:18 137:7 govern 72:19 76:23 granted 48:2 Group 49:7 51:2,9 grow 124:15 GR-2005-0203 34:11 36:3 GR-2006-0288 34:13 36:3 guarantee 129:20 guess 116:9,14,16 123:20 129:6 132:12 guise 72:23 guy 112:15 | helpful 117:1,2,2,7 130:7,15,16 135:18 her 72:16 hey 112:3 hide 125:24 126:10 higher 42:20,22 47:10 50:2,3 129:5 137:24 highly 43:4,8 56:2 111:2,11 131:20 him 44:21 hold 72:3 honestly 135:13 136:15 Honor 44:19 45:16 74:7 hope 43:7 115:7 hours 44:6 137:7 house 126:4 hundreds 44:6 hypothecate 124:17 | indicates 50:14 indicating 44:3 75:7 indication 123:2 information 43:4,18 43:23 44:11,13,18 47:2,3 49:11,13 49:14 50:7,25 51:5 72:4,9,17 73:1,8,10,14 74:20,24 75:3,12 76:10 77:13 114:4 116:14 118:17 120:18 121:12 125:3,5,18,21 126:22 127:4 129:7,17,18 130:1 130:18 135:12,20 136:15 138:2 innocence 125:20 instance 127:4 instead 129:4,5 intention 114:10 intentionally 49:1 intently 133:8 interested 74:25 75:14 interesting 124:24 134:17 interprets 54:24 interrupt 43:2 45:2 invented 73:12 investigating 54:16 investigation 46:4 50:10,11 123:7 investigatory 46:1 involved 124:14 in-camera 56:7 77:14,17 122:8 127:7 138:5 in-person 40:14 irreconcilable 136:5 irrelevant 73:6 issue 40:6 41:24 42:16 44:7 45:5,7 47:22 48:4,9 51:23 52:3,10 55:12 72:4 75:23 76:22 136:14 issued 46:5 73:25 74:2 75:20 issues 36:6 items 39:2,3,5 40:10 | 73:23 74:8 75:6 Jaskowiak 112:17 JEFF 34:19 Jefferson 34:8 35:8 35:13 36:10,19 142:15 job 126:25 Jones 34:15 36:2,11 36:16,20 37:16,20 39:5 40:1,2 42:13 43:2 44:17,20,25 45:14 52:9 55:9 56:2 131:10 134:7 136:19 137:6,14 141:1,4 judge 34:16 36:2,11 36:16,20 37:16,20 39:5 40:1,2,5,13 41:17,20 42:2,11 42:13 43:2 44:17 44:20,25 45:14 52:9 55:9 56:2 115:6 125:25 131:10 134:7 136:18,19 137:6 137:14 141:1,4 judicial 126:3 just 36:20 37:21 39:8 44:8 48:12 73:5,8 74:4 76:12 77:14 112:20,25 113:15 115:7 119:23 124:18,20 125:20 126:12,23 129:2,2,3 132:9 132:11,24 133:10 134:8 135:9,11 136:19 137:17 justified 123:7 | 116:24 117:5 118:4,17,21 120:22,25 121:1,3 121:10,13,15 123:4,10,21 124:13,17 125:10 125:24 126:1,7 129:17 130:6,8,10 130:18 131:7 132:12 134:4,8 135:13,13,14,23 135:25 136:11 knows 112:1 |
| ----- H ----- half 118:6 119:3 Hancock 53:12 54:5 hand 54:19 73:20 happen 120:20 125:16 137:1 happened 124:19 happening 112:9,14 120:14 hard 113:19,21,22 130:19 131:17 having 72:8 75:14 126:22 135:8 HC 56:3 hear 37:15,19,20 48:15 hearing 116:14 117:11,22 118:2 119:7 141:6 held 40:25 56:7 77:17 122:8 127:7 138:5 | ----- I ----- idea 117:4 137:23 ignore 119:23,24 III 34:18 illustrate 77:15 immediately 75:10 impacts 47:11 impartial 134:12 important 43:14 48:23 72:3 113:17 imposed 114:25 impression 72:13 imprudence 42:21 imprudent 47:14 120:15 137:5 imprudently 136:21 inappropriate 118:7 incentive 113:16 incentives 113:17 inclined 113:3 135:19 include 118:10 134:14 included 39:4 46:25 including 46:24 inconsistent 72:24 incorporate 76:14 incorporates 76:17 indeed 74:20 independent 134:12 indicated 41:17,20 52:22 55:18 72:5 72:7 74:2,15,16 74:18 | ----- J ----- January 43:15 44:4 44:12 111:21 JARRETT 34:19 | ----- K ----- K 34:23 142:4,17 keep 113:4 130:19 Kellene 34:23 142:4 142:17 KENNARD 34:15 kept 113:9 kind 76:7 77:14 116:13 117:2 118:17 123:2 131:17 know 43:5,7 44:9 47:17,17 49:22 51:9 75:7 111:20 111:21 112:1,5,12 112:22 113:8,15 113:24 114:1,6,11 114:18,19,23 | ----- L ----- L 34:15 35:11 lack 52:12 Lacde 34:11,13 35:3,5 36:11,13 39:4 40:1 42:17 42:21 43:10,17,22 43:22 44:2,3,4,10 45:23 46:2,2,6,23 47:3,18,23 48:12 48:14,15 49:5,5,6 49:7,8 50:12,15 50:21 51:2,2,6,8 51:11,25,25 52:2 52:5,13 53:16,24 54:10,14,15,17,19 54:20,25 55:1,13 55:16,21,22,22,23 55:24,25 72:5,12 72:14,20 74:2,4 76:20,24 111:11 111:21,22,24 112:1 120:16 131:12,22 132:3 132:10,21 133:9 133:15,23 135:17 136:8,21 137:19 137:20,22 138:1 Lacde's 42:21 43:12 47:5 52:19 53:5,8 115:11 116:4 119:18 124:14 133:24 134:5 137:24 language 76:8 large 137:8 last 38:18 40:23 119:20 121:11 123:11 134:9 later 43:17 45:6 75:15 126:1 law 34:16 35:2,2 53:7,12 54:24 55:6 115:16,19,23 |

MIDWEST LITIGATION SERVICES

www.midwestlitigation.com

Phone: 1.800.280.3376

Fax: 314.644.1334

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|---|---|---|--|--|
| <p>116:3 133:13 lead 46:21 learned 130:8 leave 137:11 led 47:10 left 55:8,10 legality 116:3 lengthy 75:11 LER 42:25,25 43:9 43:11 46:2 47:4,4 47:5 49:5,8 50:12 52:1 53:17 54:17 55:4,17,20,22,23 72:12,13,20 77:7 112:2 113:5 114:15 118:6 119:1 120:13 131:12,22,25 132:9,10,11,12,24 133:16 134:5 135:6 137:21 Lera 35:11 36:9 LER's 112:18 133:23 135:16 less 121:20 141:3 let 43:2,4 44:21 48:23 120:3 121:14 133:8 letter 38:16 75:11 letting 75:7 let's 36:7 48:18 49:3 56:3 111:19 132:20 light 42:2 like 37:13 41:13 44:13,14 48:8 49:22 53:12 72:7 73:24 74:8 75:19 77:14 112:3,7 114:24 126:5,5 131:22 132:9,24 137:12 likelihood 129:23 limited 52:16 limits 73:10 line 51:2 135:12 lines 129:13 liquidity 134:2 list 39:1,2 40:10 listening 133:7 litigation 34:23 35:11 47:21 142:5 little 49:16 load 122:2 location 55:24 77:10 long 51:3 look 37:8 41:12,12</p> | <p>44:18,20,21 45:15 48:19,24 113:2 114:8,10 116:10 118:14,22 121:1,8 123:4,9 125:11,15 126:6 130:7 135:1 looked 116:17,18,19 135:15 looking 38:1 43:1 43:11 44:22,23 46:23 52:10 77:9 123:16 124:18,18 124:19 looks 112:3 126:5 lot 112:4 129:8 130:10,18 Louis 35:4 36:14 56:1 lower 50:6 120:12 120:13 lowest 129:5</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 34:18 macro 123:9 made 42:21,25 112:24 113:10,25 118:4 119:2,3 124:3,12,23 135:6 135:7 142:12 Madison 35:7,12 maintained 76:3 make 76:5 112:4,6,6 112:15,17 124:2 127:4 129:8 131:3 131:4 132:9 134:13 135:8 makes 112:23 making 55:14 117:6 117:6 126:23 131:6 man 44:6 manual 46:25 47:13 49:15,19,23 50:18 51:21 72:25 73:3 73:21 76:14,22 116:18 many 44:6 Marc 35:6 36:17 March 34:7 55:21 142:18 margin 129:11 margins 124:4 132:21 mark 112:5 market 50:3 77:3,5 77:6,8,10 112:5 116:23,25 120:7</p> | <p>120:13,19,24,25 121:5,19 122:6 123:3,15,23,23,24 130:10,24 133:25 134:3 master 134:11 135:22 material 120:11 materials 73:21 119:12,14,17 matter 34:11,13 38:13 113:2 115:16,19,23 124:6 may 39:22 42:14 49:18 50:16 53:25 111:21,22 112:9 133:9 134:15 maybe 72:7 73:17 111:21 124:2 125:6,11 126:3 mean 40:22 53:17 54:11 112:8,10 113:21 114:19 116:10 118:4 119:2 121:13,15 124:16 132:18,25 meant 72:12 mediation 44:5 134:22 136:3,3,9 meet 41:8 meeting 75:13 mental 129:3 mention 134:18 Merely 38:15 merger 54:4 merit 118:20 merits 136:14 met 39:25 41:1 42:4 42:8 120:18 Michael 35:2 36:12 microphone's 37:17 Midwest 34:23 142:5 might 112:13 126:11 130:6,11 130:15 migrating 123:12 million 113:12 118:8 134:2 mind 126:7 minute 39:8 76:12 113:5 minutes 55:9 137:11 141:3 misleading 72:11 misled 49:1 misquoting 48:22</p> | <p>Missouri 34:1,8 35:14 36:10,14,19 53:21 55:5 142:2 142:7,15 misstep 43:7 MO 35:4,8,13 moment 44:24 77:14 money 112:4 117:6 117:6 124:10 months 44:5 47:21 more 72:6 114:3 116:3 121:6 129:25 most 42:24 111:3,12 motion 38:13,20,23 40:6,10,11,24 41:6,8,10,12,12 41:16,22 42:8 43:21 44:4 45:22 motions 38:6 42:24 48:1,1 motivation 114:9 move 53:23 55:12 56:3 125:1 moved 126:4 moving 38:10,19 much 47:4,6 50:12 51:25 135:11 Murray 34:18 36:23,24 37:2,7 37:13,25 38:4,9 38:15,18,22 39:7 39:12,16,20,24 40:12,18,21 41:7 41:13,23 42:10 45:1,4,12 46:9,13 46:16,22 47:6,12 47:16 49:17,21 50:1,6,13,23 51:8 51:14,20 52:4,15 52:22 53:1,9,22 72:15 76:8,13 must 46:17,20 54:14</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 36:1 namely 72:4 native 122:2 natural 77:5 near 40:2 necessarily 47:8 112:25 136:5,16 necessary 73:2,10 76:6,10 need 44:22 111:22 118:22 119:12,17</p> | <p>119:23,24 121:1,4 121:4,5,11,12 123:4 124:9,9 125:15 129:7,8 130:9 137:9,10,11 needed 39:3 42:8 48:3 74:12 75:21 needs 130:17 Neises 53:17 net 132:17,21 never 48:25 54:10 54:11 55:4 114:2 new 40:11 73:12 126:2,4,15,16 131:7 next 40:9 50:22 133:7 nice 126:2,3 nobody's 113:25 none 126:8 nonparty 54:9 non-affiliate 124:22 nose 126:12 Notary 142:6,17 NOTE 56:6 77:16 122:7 127:6 138:4 notes 142:12 nothing 43:20,25 47:25 126:10 notice 44:3 notified 44:1 notwithstanding 118:12 number 111:11 118:10 131:25 135:6 numerous 134:19</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 36:1 object 51:9,15,19 51:21,23 52:24 72:8 74:14 objected 54:10 objection 41:21 42:5 51:10 126:13 obligated 73:2 obligation 73:8 obtain 53:15,17 54:7,9 55:19 October 43:19 44:11 45:20 off 37:22 112:6 118:25 121:15 office 35:9 36:16,18 142:14 off-system 112:4,17 112:21 123:9</p> |
|---|---|---|--|--|

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|---|---|--|---|--|
| <p>124:12,16 133:25 Oh 132:25 okay 36:2,20,24 37:13,23,25 39:24 40:3 41:7 42:13 44:25 45:13 50:23 52:4 55:11,12,25 111:14,19,23 112:18 113:10,12 118:7,20 131:19 132:13,16,23 133:6,10 135:19 136:17 137:14 141:1 Olive 35:3 36:14 once 113:11 114:6 123:1 one 40:7 43:10 51:12 55:1 72:12 75:4,5 129:13 130:21 132:9 134:9,18,19 136:19 137:18 ones 137:3 ongoing 126:22 only 53:3 72:13 76:15 113:17,20 122:5 123:25 138:1 open 134:7 opened 46:2 opening 72:16 operated 72:21 119:20 operating 117:5 121:10 operation 53:6 opinion 41:24 opportunity 42:16 44:18 45:15 72:2 opposing 38:12 oral 34:7 72:3 134:21 order 39:4,9 43:16 43:18,22 44:4 45:5,19,20 46:5 48:6 52:16,18 53:2 74:2,11 75:17,20,21 77:3 133:20 ordered 43:24 45:23 53:24 ordering 46:3 orders 44:9,12 45:9 48:5 73:25 111:4 other 44:16 51:5 54:18,19 73:4 77:9 111:4 116:24</p> | <p>118:14 121:5 122:2,5 124:15 129:14,19 135:16 others 111:8 otherwise 122:3 ought 114:16,17,18 114:24 115:2 116:22 117:11,12 117:12,14,15 118:9,12,13,24 119:22 129:4,21 130:2 131:5 out 43:18 45:18 73:20,24 111:16 115:10 120:5 125:25 130:19 135:9 outcome 124:24 outlawed 114:17 outside 122:2,3 over 49:7 51:6 76:11 113:6 117:12,14 118:9 119:13,16 123:11 123:12 125:7,11 134:23 135:2,5,7 overall 132:2 overly 127:5,5 own 73:6,7 75:2 129:3 130:1</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 36:1 packet 131:21 132:5 page 49:6,10,12 50:22,24 51:1 122:9 127:8 pages 44:6 56:8 73:20 77:18 138:6 paid 47:3 50:12 51:25 paper 131:16 papers 76:21 paragraph 41:15 49:12,13 51:3 parent 49:7 part 47:1 50:20 111:12 120:16 particular 39:19 43:15 54:14,24 55:15 77:4 124:20 133:20 particularly 123:8 parties 40:4 53:15 119:1 136:4 party 38:11,19 54:8 54:8,8 134:23</p> | <p>pass 45:18 passed 44:1 past 41:24 137:7 pay 42:20 Pendergast 35:2 36:12,12 43:8 44:17,19 45:14,16 56:5 72:1 73:23 74:6,10 75:9 76:13,17 111:3,8 111:13,15,17 112:12 115:4,5,8 115:14,19,25 116:9,16 117:21 118:3 119:9,15 120:8,17 121:21 121:24 123:1,17 123:21 125:14 127:1 129:1 130:6 131:17 132:1,6,10 132:14,18,22,25 133:4,7,14 134:17 136:11,20,24 137:7,15,16 people 114:16 135:16 people's 130:17 percent 113:11,14 113:20,25 114:2 118:25 129:18 135:15 percentage 131:24 131:25 percentages 132:1 perform 55:20 performance 113:23 perhaps 125:6 127:5 period 52:13 113:7 135:8 periods 55:14 72:21 118:9 person 38:12 39:13 41:1 135:8 personally 142:7 perspective 123:14 Peruse 49:12 PGA 34:13 115:18 117:24 119:7 Phillips 124:6 phone 114:1 phones 37:21 phrase 133:8 pigeonhole 52:6 pipeline 43:12 place 119:8 131:2 142:9,13</p> | <p>played 114:4 pleading 39:19,21 39:23 116:20 134:20 pleadings 45:21 134:20 please 72:1 121:18 plenty 55:8 point 48:15 49:22 53:23 56:6 77:16 113:13 117:10,12 122:7 124:11 126:14,19 127:6 136:15 138:4 pointed 137:3 policy 116:3 118:1 portfolio 129:12,13 portion 76:15 position 115:11,11 115:17,25 116:4 possession 48:16,17 51:11 52:12,12,17 52:20,23 53:2,4,6 53:8,10,11,13,20 54:1,1,2,3,5,6,10 54:14,21 74:12,13 74:15,17 75:8 76:1 Poston 35:6 36:17 36:17 power 115:17,20 practical 53:14,16 54:7 prefer 116:17,17 prehearing 37:4 39:2 40:14 42:3 premised 72:17 present 142:7 president 53:18 Presiding 34:15 pretty 126:2,5 previous 40:10 132:20 previously 72:5 price 77:8 116:23 120:7,13,19,24,25 121:5,19 122:2,6 123:4,15,23,23,24 130:9 priced 119:22 120:7 prices 42:22 pricing 72:24 73:3,7 74:22 115:21 133:17 primary 47:2 principles 73:3 prior 36:20 38:13 probably 129:23</p> | <p>135:5 141:4 problem 118:8 problems 126:17 procedure 36:21 39:1 proceed 36:22 42:14 proceeding 44:23 proceedings 34:6 142:8,11 process 136:4 produce 38:23 39:5 39:9 43:17,19 44:10 45:23 46:6 47:23 48:6,11,17 52:16 53:3,24 54:9 132:8 produced 43:22,23 48:3 produces 50:22 118:11 production 45:5,6 46:10 53:1 prohibited 133:11 prohibits 112:14 promulgating 134:14 proof 114:11 proper 120:23 propose 114:20 proposed 51:18 117:25 118:21 134:19 propriety 72:4 prospectively 115:2 prove 119:5 125:20 126:24 138:2,3 proven 45:6,8 provide 50:15,16 51:4 54:23 55:3 72:8 73:2,8 74:3 74:13,16,24 75:12 76:10 125:21 126:11 130:24 136:14 provided 51:8 73:14 76:21 77:12 120:18 130:2 134:1,24 135:20 135:25 provides 49:23 76:4 providing 74:14 126:13 130:13 provisions 54:22 55:6 76:23 133:19 prudence 42:18,19 55:13,13 prudent 47:10</p> |
|---|---|--|---|--|

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|--|--|--|--|---|
| 55:14 137:20,22 public 34:2 35:6,9 35:10,14 36:16,18 36:19 131:1 142:6 142:17 pudding 114:11 pudding's 114:11 punch 126:12 purchase 50:2 76:23 117:13 Purchased 34:11 purchases 55:14 135:6 purely 46:10 purpose 47:2 55:1 76:6 134:22 purposes 54:14 pursue 73:14 119:17 put 112:20 130:22 putting 129:3 P.O. 35:7,12 36:10 36:19 | realize 43:3 52:5 really 46:3 48:14 75:25 76:22 116:13,21 118:10 120:19,25 125:6 126:3 130:9 131:5 135:9 reason 54:18 72:10 125:15 reasonable 77:5 118:14 reasonably 45:7 46:17,20 49:18 50:8,16 reasoned 126:13 reasons 72:9 recall 39:15 41:11 recent 42:24 recited 41:16 reciting 50:15 recognize 130:12 recognized 75:24 recognizes 77:2 recommendation 118:5 recommendations 134:13 reconcile 136:9 reconsider 45:19,20 52:17 Reconsideration 45:23 48:1 record 36:2,21 126:16 141:2 records 50:22 52:13 54:17,21 72:19 75:8,25 76:3,5 126:6 Reed 35:11 36:9,9 37:1,2,5,10,15,18 37:23 38:1,3,8,14 38:17,21,24 39:10 39:15,18,22,25 40:16,20 41:1,11 41:15 42:6,15 43:6 44:18,24 45:1,3,10,13,18 46:9,12,15,19 47:1,8,15,17 49:17,20,25 50:5 50:10,19,24 51:13 51:17,23 52:5,11 52:15,19,25 53:5 53:11,23 55:11 56:3 72:5,7 73:5 73:24 74:16,18 75:11,15 76:9 119:23 136:20,25 | 137:1,8,10,17 reevaluating 130:5 referenced 136:2 refused 119:16 refusing 119:13 regard 136:21 regarding 39:14 regulated 55:23 124:16 126:21 133:24 regulation 133:11 regulatory 34:16 51:6 reject 51:15 relate 50:8 129:9,10 related 46:17 relating 49:14 111:11 135:6 relation 46:10 relationship 46:1,4 54:16 72:11 126:20 release 132:12 134:1 released 47:5 52:1 relevance 47:19 53:24 relevancy 51:16,19 relevant 51:5,11,21 51:24 73:20 74:23 reliable 134:4 relitigate 44:5 remind 37:21 removed 117:24 reply 137:9 REPORTED 34:22 Reporter 142:5 REPORTER'S 56:6 77:16 122:7 127:6 138:4 represents 112:1 request 39:4,9,14 45:6,24,25 72:5 75:16,18 requesting 46:17,20 116:8 requests 72:17 required 41:20 45:7 49:18 50:17 53:3 125:19,21 requirements 38:6 41:8,18 42:7 73:4 73:16 resolution 48:10 resolve 40:6 Resources 49:8 55:22 76:25 respond 74:1,3,5,9 | responded 44:4 113:16 response 125:4,10 125:13,14 126:7 responsive 43:21,23 restructuring 49:4 49:4,10 51:18 54:4 result 41:3 75:19 resulted 39:5 42:22 results 123:9 rethink 45:8 retroactively 72:22 114:22 131:8 return 111:25 revenue 131:22 132:2 revenues 132:14,17 134:1 135:13 review 39:3 47:2 51:24 119:12 120:10 134:12 reviewing 116:7 reviews 42:18,19 revisit 121:4,12 rewarded 112:16 113:23 rewriting 72:18 Rick 35:2 36:13 right 37:8 42:10 43:9 48:20 49:4 49:25 50:5,7 51:9 51:15 52:14,25 113:1,21 115:3 117:19 131:19 132:5,17 133:6 ROBERT 34:18 robust 114:4 123:2 124:15 rotten 123:8 RPR 34:23 142:17 rule 37:4,9,10,11,24 38:4,20 40:13 41:5,9 47:7 74:21 76:2,18 77:12 111:6,19 112:10 114:20,25 115:22 117:16 119:18,25 125:17 130:11,15 134:15,16 135:1 135:22,23 136:23 137:4,19 ruled 42:2 125:25 rulemaking 117:25 117:25 rules 47:20 52:6 54:13,13,23,24 55:2,3,5 72:18,20 | 73:9,15,17,19 76:15 111:5 114:7 114:7,13,14,15,16 115:1 116:19 121:4 125:22 130:1,5,7 <hr/> <p style="text-align: center;">S</p> <hr/> S 36:1 salary 126:3 sale 50:2 124:2,3,12 sales 112:17,21 117:14 123:10 124:16 129:10 131:12,24 132:10 132:12 133:25 135:7,7 same 47:19 76:7 77:10,10 124:5 130:11 134:20 137:4 sample 129:7 sampling 116:7 120:11 125:5 127:3 satisfied 38:7 41:5 41:21 satisfies 136:1 satisfy 43:10 130:17 satisfying 130:1 saying 47:14 54:12 54:20 55:2 72:8 112:2 115:13 116:11 119:16 120:21 121:17,17 121:23 123:24 129:4,6,7 says 38:5,19 40:23 50:1,16,20 51:4,4 52:11,24 54:6 76:2,9 126:5 scenario 111:16 112:8 scope 75:24 second 72:15 125:23 secondly 112:20 section 40:22 49:11 secure 130:23 see 38:21 41:13 42:23 49:14 51:4 55:21 121:1 131:18 seeing 125:7 seeking 42:23 120:11 seeks 72:22 73:13 selectively 48:22 |
|--|--|--|--|---|

MIDWEST LITIGATION SERVICES

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|--|--|--|---|---|
| <p>sell 76:25 112:5 124:5,7 seller 55:22 sellers 116:24 selling 55:24 77:9 112:4 122:1 seminal 119:19 send 118:25 133:3 Senior 34:16 35:6 sense 127:4 135:9 sent 75:10 sentence 38:19 40:23 51:3 separate 40:11 separation 114:18 series 72:16 Service 34:2 35:15 Services 34:23 142:6 session 56:7 77:17 127:7 138:5 set 43:12,18 74:11 115:10 142:9 setting 120:5 seven 121:11 several 45:21 sharing 125:5 sheet 142:9 Shemwell 35:11 36:9 37:11 shenanigans 118:22 shield 55:2 Shook 53:12 54:5 Shorthand 142:5 show 73:9,11 76:10 76:19 125:19 130:2 showed 112:21 showing 76:6 77:13 shown 118:21 shows 120:18 130:24 133:1 134:24,25 135:20 side 123:11 significantly 113:6 signs 53:18 Silence 43:25 similarity 36:5 simple 126:23 since 120:17 sit 74:19 134:23 135:19 sitting 75:1 six 121:11 123:12 sold 124:1 sole 76:6 some 39:2 43:23 44:13 48:15 73:21</p> | <p>111:4 112:18,23 117:2 118:10,20 118:22 119:12,16 120:11 124:11,23 125:5 129:16 130:2,8,13,14 somebody 112:13 114:19 124:2 126:1,2,4,13 somebody's 114:9 123:7 129:21 someone 111:24 134:11 something 39:10 50:14 52:24 75:9 112:11 120:10 121:2,5 125:6,12 133:1 136:3 something's 123:8 sometimes 124:18 Sommerer 73:12,18 119:21 sorry 39:7 56:4 136:17 sought 50:8 sources 43:9 55:19 speak 40:8 special 134:11 specific 49:22 76:2 76:20 121:6 specifically 40:23 76:4 132:3 spending 131:6,6 ss 142:2 St 35:4 36:14 55:25 Staff 35:14 36:8,10 36:23 37:3 38:22 39:3 42:13 43:18 46:17,23 50:7 72:22 74:25 75:2 75:24 77:12 115:21,24 116:7 116:11 117:3,12 118:4,20 120:9,10 123:15,17,21 125:7 126:20 130:25 135:14 136:8 137:3 Staff's 72:4,17 115:11,17 125:10 129:1 stand 141:5 standard 73:6,12,13 75:2,3 114:23,24 115:21 117:4,16 117:17 118:19 119:17,22 120:1 121:13 125:16</p> | <p>135:21 137:21 standards 72:18,20 72:25 73:11,17,19 74:22 76:7,12 121:10 130:3 131:7 133:17 136:22 start 36:22 129:7 started 38:25 73:24 State 34:1 142:2,6 142:15 stated 42:5 Stenotype 142:10 142:12 step 40:9 135:3 Steve 35:11 36:9 still 47:13 Stip 50:14 52:10 Stipulation 48:20 48:21 49:2 50:21 52:21 53:6 54:2 stop 111:24 112:2 117:19 streaming 43:3 Street 35:3,7,12 36:14 strongly 125:9 stuff 117:14 subjective 129:9 submit 113:24 117:11 subparagraph 40:4 41:19 subsection 37:3 38:2,10 40:22,22 subsidiary 49:5 substantially 124:21 137:8 success 72:13 sufficient 38:16 suggest 124:14 125:4 suggested 119:12 134:21 suggesting 120:9 125:12 suggests 125:6 Suite 35:7 supplier 134:4 supply 42:25 72:14 76:23,25 129:12 support 120:15 suppose 136:11 supposed 73:17 74:3,16 117:5 120:24 supposedly 123:12 Supreme 53:21</p> | <p>54:23 55:5 sure 37:12,16,18 111:17 115:8,14 117:21 129:14 133:4 system 130:22 133:10</p> <p style="text-align: center;">T</p> <p>T 142:1,1 take 36:7 37:8 44:21 126:6,19 taken 126:15 takes 112:17 taking 47:9 129:2 talk 74:19 talked 130:21 talking 42:18 44:22 55:15 75:1 136:13 tariff 46:24,25 technically 111:22 telephone 38:12 39:13 40:24 41:2 tell 48:24 136:15 tells 38:10 ten 55:9 terms 112:1 131:21 131:23 136:12 TERRY 34:19 test 77:3 thank 36:17 37:25 42:10,15 45:12 72:2 115:3,5,6 131:9,20 137:14 137:16 141:5 their 47:13 52:17 52:23 53:2,3 75:2 75:25 126:21 themselves 114:7,8 theorize 124:17 theory 119:21 120:1 thereof 142:9 thing 47:19,20 52:6 113:1,18,22 116:11 125:23 130:11,21 136:13 things 43:10 50:7 52:16,19,23 55:18 72:6 73:7 111:4 113:19 116:6 119:22 129:21 130:8,15 134:19 137:18 think 37:5 38:24 39:2 43:7 48:19 48:24 54:12 72:15 75:23,24 111:3,8 111:18 113:11,12</p> | <p>114:3,16,23,25 118:6,9,13,15,17 118:20,21,22,24 119:10,11 120:4 121:7,17 123:1,6 123:17 124:20,20 126:7,11 129:24 130:6,8,13,16 131:5 133:4,5 134:4 135:9,11,18 136:1,3,7 141:3 third 53:15 54:8 119:1 134:22 third-party 134:11 though 113:20 119:7 124:25 thought 48:23 three 44:9 45:18 48:5 72:9 131:1 threshold 41:24 42:4 through 56:8 72:23 73:25 77:18 115:18 120:13 136:9 138:6 throw 111:15 tight 134:3 time 36:7,22 39:12 41:16 42:5 55:8 112:23 113:7 131:6,6 137:4,8 142:9,13 timeline 73:25 times 112:22 134:3 tires 126:17 today 48:15,23 72:4 73:5 75:22 116:14 116:20 119:24 124:24,25 133:9 133:15,22 together 36:5 total 132:14,17 towards 36:23 transaction 73:9 74:21 76:2,15,18 77:12 111:6,19 112:10 114:7,13 115:22 116:19 119:18,25 125:17 130:3,5,7 134:16 135:1,22 136:23 transactions 76:20 77:4 113:4 114:17 119:1 120:23 122:5 129:19 130:9,10,19,23,25 131:2 133:16 135:16 137:2,19</p> |
|--|--|--|---|---|

PUBLIC SERVICE COMMISSION 3/26/2009

| | | | | |
|---|---|--------------------------------------|-------------------------------------|----------------------------|
| transcript 34:6 56:8 77:18 122:9 127:8 138:6 142:12 | used 43:9 52:2 55:20 113:8 | 73:5,15,21 75:24 76:17 111:3 | written 40:23 41:8 | 26 34:7 |
| transportation 118:11 129:12 | uses 112:16 | 112:12 115:1 | wrong 38:5 48:5,9 | 28 142:18 |
| treat 124:21 | using 55:2 73:22 129:5,5 | 116:9 118:20 | 48:25 116:12,12 | |
| treated 36:5 | utility 76:5 112:23 | 120:17 125:14 | 116:12 121:18 | <u>3</u> |
| tremendously 112:22 | utility's 72:19 | 126:5,10 129:2 | | 3 41:15 51:2 |
| tried 129:16 | <u>V</u> | 134:17 137:6 | <u>Y</u> | 30 113:20 135:5 |
| true 74:6 142:11 | v 53:12 54:5 | went 42:11 43:20 | yeah 111:8 116:9,16 | 314)342-0532 35:4 |
| truly 134:12 | value 50:3 112:5 | 43:22 45:6 113:11 | 116:21 118:3 | 360 35:12 36:10 |
| try 120:3 130:16 131:3 135:8,22 | variation 120:4 | 113:15 133:18 | 119:9 132:25 | <u>4</u> |
| trying 45:7 46:18 52:7 55:19 75:22 116:15 | vendors 77:9 116:24 | 135:15 | 133:5 | 4 37:3 38:1 41:18 |
| turn 37:21 48:18 49:3,10,13 119:13 119:16 125:11 | verify 49:14,18 50:17 | were 36:21 40:6 | years 118:6 119:3 | 4th 43:17,19,20 |
| turning 125:7 135:5 | very 40:23 72:16 124:23 125:9 | 42:7 45:5,21 48:1 | 119:20 121:11 | 46:6 47:23 48:7 |
| two 42:18 44:1 50:7 55:14,15 75:15 | 126:12 134:2,3 | 48:2 52:23 73:2 | 123:12 131:2 | 48:13 74:4 |
| 118:6,9 119:3 | 137:12 | 74:12,13,15,16,21 | 132:2 | 40,000 135:5 |
| 136:4 137:7 | vice 53:18 | 75:12 77:5 113:9 | you-all 43:3 119:13 | <u>5</u> |
| two-year 135:8 | view 117:16,16,17 118:18 121:3 | 120:10,12 123:12 | <u>Z</u> | 5 131:23 |
| type 116:7 118:1,2 | 126:12 129:1,21 | 126:9 130:25 | Zucker 35:2 36:13 | 50 113:11 134:1 |
| <u>U</u> | virtue 54:1,5 | 133:19 134:24,25 | 73:19 131:11,13 | 57 56:8 |
| ultimate 116:5 | Volume 34:8 56:8 77:18 122:9 127:8 | 135:16,19,21 | 131:16 | 573)751-3234 35:13 |
| ultimately 45:21 118:19 123:25 124:2,25 | <u>W</u> | weren't 48:4,5 74:17,25 75:14 | <u>\$</u> | 573)751-4857 35:8 |
| unable 40:6 | wait 131:1 | we'll 36:22 47:1,19 47:19,20,21 | \$4.5 118:8 | <u>6</u> |
| Unanimous 48:20 | waiting 37:21 | we're 37:20 39:7 42:18 43:1,11 | \$60 134:2 | 6 55:17 |
| under 47:9 54:22 55:20 72:21 75:20 | want 45:1 55:12,12 72:2 74:24 75:2 | 46:19 48:2 52:7,7 | <u>I</u> | 63101 35:4 36:15 |
| 114:15,16 117:5 | 72:2 74:24 75:2 | 54:20 55:15,19 | 1 49:12 125:15 | 650 35:7 |
| 118:18 119:20 | 117:23 118:16,19 | 116:14 117:4,5 | 134:23 | 65102 35:13 36:10 |
| 121:10 123:6 | 118:25 119:25 | 118:18 126:24 | 10 55:21 131:23 | 36:19 |
| 125:21 130:15 | 123:22 124:3,8 | 129:23 134:7 | 100 113:25 114:2 | 65102-2230 35:8 |
| 136:22,25 | 125:8,9,11 126:15 | 137:6 | 110 77:18 | <u>7</u> |
| underlying 112:24 | 130:11 137:17 | we've 42:23 43:13 | 12 113:12 | 7 49:10 55:17 |
| understand 43:14 111:15 112:13 | 138:2 | 55:19 76:9,21 | 123 122:9 | 71 56:8 |
| 120:19 125:8 | wanted 41:23 42:11 46:3 73:25 74:9 | 116:20,20 119:16 | 128 127:8 | 720 35:3 36:14 |
| 126:14 127:1 | 74:19,19 75:13 | 119:19 120:18,18 | 139 138:6 | 75 113:13 |
| understanding 41:3 42:6 135:23,24 | wants 52:5 116:11 | 120:22 123:9 | 140 138:6 | 78 77:18 |
| unexpected 111:20 | wasn't 47:24 133:11 | 125:18 130:8,21 | 17th 44:11 45:22 | <u>8</u> |
| Unfortunately 75:3 | way 37:8 46:5 49:3 49:22 73:7 115:12 | 132:14 133:18,20 | <u>2</u> | 8 37:3 38:2 40:4,22 |
| unless 51:17,17 55:3 | 116:6 121:6 | 135:20,24 137:6 | 2 34:8 49:6,13 51:3 | 40:22 41:19 50:24 |
| untested 119:2 | 130:17 133:8 | while 37:20 44:22 44:23 121:16 | 56:8 77:18 122:9 | 85 113:13 |
| until 38:6 40:24 | website 130:23 | whole 47:18,20 124:25 | 127:8 138:6 | <u>9</u> |
| unusual 38:25 | weeks 44:1 75:15 126:1 | wholesale 72:18 77:5 | 2,090 40:4 | 9 51:1 |
| use 43:11 77:3 129:4 | well 39:5 41:1,23 42:15 44:12 47:2 53:5,11,20 54:12 | willing 75:12 | 20th 43:19 44:11 45:20 | 93 118:25 129:18 135:15 |
| | | withdrew 39:23 40:9 | 200 35:7,12 | |
| | | wording 46:18 | 2004 55:21 | |
| | | work 76:19 113:19 113:21,22 115:1 | 2004-2005 34:12 | |
| | | working 120:25 | 2005-2006 34:13 | |
| | | world 124:19 | 2008 43:19 44:11,11 45:20 131:18 | |
| | | worth 118:8 134:2 | 2009 34:7 43:16 | |
| | | wouldn't 113:18 119:6,6 | 44:12 142:18 | |
| | | writing 38:15 | 21 43:16 44:4 | |
| | | | 21st 44:12 | |
| | | | 2230 35:7 36:19 | |
| | | | 240-2,090 37:3 38:1 41:18 | |

MIDWEST LITIGATION SERVICES