

STATE OF NEW MEXICO OIL CONSERVATION COMMISSION
SPECIAL MEETING

Moderated by Gerasimos Racatos, Acting Chair,
New Mexico Oil Conservation Commission
Monday, February 3, 2025
9:00 a.m.

Wendell Chino Building
1220 South Saint Francis Drive
Santa Fe, NM 87505

Reported by: Dana Fulton

JOB NO: 7140622

A P P E A R A N C E S

List of Attendees:

Dr. William Ampomah, Commissioner

Greg Bloom, Commissioner

Dana Hardy, Empire New Mexico

Ernest Padilla, Empire New Mexico

Sharon Shaheen, Empire New Mexico

Preston McGuire, Panel Member

Austin Anderson, Panel Member

Sheila Apodaca, Panel Member

Madai Corral, Panel Member

Dalva L. Moellenberg, Panel Member

Gerasimos Racatos, Panel Member

Adam Rankin, Panel Member

Jessee Tremaine, Panel Member

Chris Moander, Attendee

Daniel Rubin, Attendee (by videoconference)

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P R O C E E D I N G S

COMMISSIONER AMPOMAH: Good morning.
Dr. William Ampomah, designee of the energy secretary.
Thank you.

THE REPORTER: Excuse me, Mr. Racatos,
I don't think your mic is on. Now is it?

COMMISSIONER AMPOMAH: Hello?

THE CHAIR: Testing. Should we start
it over? Yeah. We'll just start it over since I
wasn't heard at the first round.

So, again, I'm Gerasimos Racatos. I am
the acting director for the Oil Conservation Division.
I'm also the acting chair for the Oil Conservation
Commission. We'll just do roll call real quickly one
more time. Commissioners, if you can introduce
yourselves.

COMMISSIONER BLOOM: Yes. Thank you,
Mr. Chair. Greg Bloom, designee of the Commissioner
of Public Lands.

COMMISSIONER AMPOMAH: Dr. William
Ampomah, designee of the Energy Secretary.

THE CHAIR: Excellent. Thank you.
Appreciate it. As was stated, this was the special
meeting for the Oil Conservation Commission. Today is
February 3, 2025. Our first item that we need to do

1 is approve our agenda for February 3, 2025. Can I get
2 a motion to approve.

3 COMMISSIONER BLOOM: I move to approve.

4 COMMISSIONER AMPOMAH: I second.

5 THE CHAIR: Excellent. Thank you. So
6 our agenda is approved for today. We'll move on to
7 our next set, which are our pending cases.

8 First case is the consolidated cases by
9 Goodnight Midstream and Empire New Mexico. And it's
10 as follows. It's case numbers 2412323614 through 17,
11 23775, and 24018 through 20, and 24025. Is everybody
12 present from Goodnight Empire and from the OCD?

13 MR. PADILLA: Yes, Director. Yes.

14 MR. RANKIN: Good morning,
15 Mr. Director. Adam Rankin with Good --

16 THE CHAIR: Things are acting weird,
17 Sheila. There's another one that's not working.
18 There we go. It worked.

19 MS. HARDY: Thank you. Dana Hardy on
20 behalf of Empire.

21 MR. PADILLA: Ernest Padilla on behalf
22 of Empire.

23 MS. SHAHEEN: Sharon Shaheen on behalf
24 of Empire.

25 THE CHAIR: Excellent. Thank you. So

1 before we started, I know, Mr. Rubin, you wanted to
2 step in. Mr. Daniel Rubin is on our online platform
3 right now. So, Mr. Rubin, I'll transfer it over to
4 you.

5 MR. RUBIN: Thank you, Mr. Chair. And
6 good morning everyone. I'm appearing virtually
7 because I am probably contagious in some capacity at
8 this point based on how I'm feeling.

9 So the reason I ask that this item be
10 put on the agenda -- there was a motion by the Oil
11 Conservation Division to compel the testimony of
12 Dr. Linze [ph], who will be a testifying expert by
13 Empire.

14 And while there are other pre-hearing
15 motions that we will resolve the first day of the
16 hearing, due to the exigent nature of this motion, it
17 was proper to hear it today because what Empire has
18 done is asserted privileges that would prevent OCD and
19 perhaps Goodnight from discovering the facts and
20 opinions held by their testifying expert,
21 Dr. Linze [ph].

22 And so to wait until the first day
23 would be one of those instances of justice delay is
24 justice denied. So I think it's pretty clear we are
25 guided by Rule 26 of the rules of civil procedure

1 governing discovery.

2 We use that as a guide. In fact, the
3 briefing -- I reviewed the briefing of both OCD and
4 Empire in response as filed by Mr. Padilla. And so at
5 the deposition, I think the first objection
6 Mr. Padilla made was that this is an attorney-client
7 privileged communications between him and
8 Dr. Linze [ph] or his firm and Dr. Linze [ph].

9 I don't see any grounds for that.
10 There was nothing in Mr. Padilla's response that
11 indicated a contract or -- nor did he even argue that
12 point. It is hard to fathom how he would be -- at
13 least in this case -- hired by Dr. Linze [ph] as an
14 attorney. So I think -- so what's left is did the
15 questions asked by OCD seek some privileged work
16 product?

17 Generally speaking, under Rule 26B --
18 6A and B -- the facts and opinions held by testifying
19 experts are completely open to discovery. That's a
20 bedrock provision of Rule 26.

21 That's how it works. Now of course,
22 under 26B-5, there's trial preparation materials and
23 in fact attorney work product that is not discoverable
24 generally except with some hardship and even their
25 attorney work product is generally not discoverable.

1 However, there is nothing I see in the case law that
2 says that once a -- whatever's said to an expert by an
3 attorney or otherwise, it becomes part of that
4 attorney -- that testifying expert facts and opinions.
5 That's part of Rule 26B A and B; that is what is
6 discoverable and that is what it appears OCD was
7 seeking here. What are the facts and opinions held by
8 Dr. Linze [ph]?

9 You cannot insulate your expert's facts
10 and opinions from discovery by asserting that it was
11 stuff that -- based on communications with the
12 attorney. And so of course lawyers need to be careful
13 with their -- in communicating with their experts.

14 The holding that Mr. Padilla cited the
15 Pacific Gold Court case, which does not stand for a
16 contrary position to what I've just said, there was no
17 issue in that case of a testifying expert's facts and
18 opinions held as being asserted as work product.

19 So to the extent that Dr. Linze [ph]
20 had facts and opinions as of the date of that
21 deposition, they should have been -- he should have
22 been testifying to them in that deposition.

23 I do want to -- I guess the final point
24 is we do have a scheduling order and the rebuttal
25 testimony reports are due February 10th, coming up in

1 a few -- in about a week. And the deposition occurred
2 in mid-January the 17th.

3 So if Dr. Linze [ph], at that point the
4 deposition didn't have his facts and opinions and
5 everything was in draft form, he probably should not
6 have been produced. I know that there's sort of a
7 common understanding of I'm producing my experts
8 because they're ready to be deposed.

9 So if at that deposition Dr. Linze [ph]
10 had yet to form his opinions and have any facts to
11 base it on, maybe it would've been a proper objection.
12 But you still have to parse that out under 26B, 7A.
13 What portions are facts and opinions held versus the
14 trial preparation or work product?

15 So my conclusion is that it's the --
16 that Dr. Linze [ph], by being noted on, I believe it
17 was January 6th as a rebuttal expert and being
18 produced for a deposition, had discoverable facts and
19 opinions. And you cannot again shield those by saying
20 that it's work product.

21 So my recommendation to the commission
22 is so that we can have fair and open discovery to
23 allow preparation before the hearing, the motion of
24 OCD I recommend be approved, be granted with the
25 further direction that Empire produce Dr. Linze [ph]

1 in a timely manner, with further instruction that his
2 facts and opinions held in this case that he intends
3 to testify to are subject to discovery.

4 So with that, I stand for questions
5 from the commission. I don't see the need -- I didn't
6 see the need for oral argument on this. It seems like
7 the parties pretty much covered everything in their
8 briefing, which was excellent as usual. So are there
9 any questions from my clients?

10 THE CHAIR: Commissioners, do you have
11 any questions?

12 COMMISSIONER AMPOMAH: Not from my
13 side.

14 COMMISSIONER BLOOM: Not at this time,
15 Mr. Chair.

16 THE CHAIR: I don't have any questions
17 either. So at this point, Mr. Rubin, do I put a
18 motion to see who approves it?

19 MR. RUBIN: Yes. Let me state, I would
20 ask for a motion by the commission to grant the motion
21 of OCD and to approve and to require Empire to produce
22 Dr. Linze [ph] at deposition in a timely manner, with
23 the further instruction that his facts and opinions
24 held are subject to discovery.

25 THE CHAIR: Before we go to that, the

1 OCD is wanting to state something.

2 MR. MOANDER: So one of the problems
3 we've got here is our procedural order was built in
4 such a way that if this motion were to get granted
5 today, that's going to result in a reconvene motion,
6 post rebuttal disclosure, and those would be the final
7 opinions.

8 In district court, that would usually
9 happen way ahead of a hearing or really with the
10 rebuttal opinions, those would've been consolidated.
11 So a deposition taken of an expert would've covered
12 probably everything there would be to that opinion in
13 totality.

14 You know, I appreciate Mr. Rubin's
15 comments on this. I do think there probably should be
16 a record -- or the parties should be allowed to make a
17 record on this issue because it involves privilege.
18 And if this does end up in an appeal, which I think
19 not necessarily on these grounds, there's a virtual
20 certainty that's the case with these cases.

21 I think there should be a record made
22 in order to preserve those arguments for the court of
23 appeals or the reviewing body.

24 In sum on this, I think one, there is
25 an element, and I will -- I think it's important, you

1 know, candor towards the tribunal that there's a level
2 of mootness here because there just isn't going to be
3 enough time to get a deposition done before the
4 disclosure. I can certainly say I'm not going to be
5 able to get this done by Friday at five.

6 I'm not going to encourage anyone to be
7 dragged into a deposition over a weekend, especially
8 with a deadline Monday and a big one at that. So
9 there's a level of mootness in this. On the other
10 hand, I do think the parties should make that record
11 so that way it's preserved, arguments made,
12 authorities, et cetera.

13 THE CHAIR: Okay. I kind of agree with
14 that. I think we should have a record here as well.
15 So I will open it up. Commissioner Bloom, did you
16 have something first?

17 COMMISSIONER BLOOM: No.

18 THE CHAIR: No?

19 COMMISSIONER BLOOM: No.

20 THE CHAIR: Okay. So I actually will
21 open it up. This could actually drag on for hours
22 just on this very topic. So for the sake of
23 expediency, let's keep the comments and arguments on
24 the more concise aspect please, so that we can all
25 have a fair share and a fair say.

1 Actually -- I'm going to start with
2 you, Mr. Moander; was there anything else that you
3 wanted to add?

4 MR. MOANDER: I just had a few thoughts
5 on -- and I will express these with brevity --
6 covering Empire's response. I mean -- recognizing
7 Mr. Rubin's spoken on this. The citation rule, I do
8 agree that Rule 26 ultimately would govern this issue
9 in its advisory capacity.

10 Again -- there's nothing that requires
11 the OCC to follow with any degree of stringency Rule
12 26. The citation of the United Nuclear case is
13 interesting because it involves non-party expert
14 witnesses and the common interest doctrine, which is
15 not at all in play in this case.

16 And there was a lot of nuance in the
17 facts that distinguish it from a run of the mill
18 expert witness issue. So there is something to
19 distinguish it there. OCD relied on it as well, but
20 it was for a general provision of law about discovery
21 that the court had reiterated and was part of its
22 analysis.

23 The reliance on the federal rules of
24 civil procedure, they don't apply to state,
25 administrative -- and state administrative matters

1 unless there's a jurisdictional element that would
2 necessitate their application, which isn't the case
3 here. There's no federal question; there's no federal
4 statute that's at the crux of the dispute between
5 Goodnight and Empire.

6 Also -- there was a citation to In Re:
7 Cendant; it's a case that concerns the Rule 26 of the
8 federal rules. But that's not the -- those are not
9 the same. I was not able to provide a copy of each to
10 the commission.

11 The federal Rule 26 is a beast. It has
12 mandatory report requirements, mandatory disclosures.
13 They're usually on what state practitioners see as an
14 abbreviated timeline, mandated pretrial disclosures.

15 The other two cases that were cited
16 basically said if the federal rule is an analog of the
17 state rule, that state courts can look to federal
18 guidance as to how to interpret the state rule of
19 civil procedure.

20 In the Romero case, it did concern Rule
21 20 or -- and sorry -- Romero -- that case concerned
22 Rule 23.1-023, not 1-026, a very separate rule that
23 does seem to align more with the federal one. And
24 that applies also to the Romero case. Again --
25 Rule 23, not 26.

1 And then finally, Empire didn't argue
2 against any of the evidentiary discussion that OCD
3 presented, specifically rules 501 and 503; OCD
4 construes, that as an acquiescence to that argument or
5 the arguments made in support thereof. And that's all
6 I have to say. And thank you, Commissioners.

7 THE CHAIR: Excellent. Thank you. I
8 will now turn over to Empire, who will be talking.
9 Mr. Padilla?

10 MR. PADILLA: May it please the
11 commission. As Mr. Moander points out, I've been at
12 this business 50 years. I've done federal cases, I've
13 done state cases, and I expect discovery disputes to
14 be handled in those cases.

15 The last case I had was a case against
16 Delta Airlines and we had a discovery dispute in the
17 federal court. I don't expect that type of scrutiny
18 in an administrative proceeding. Matter of fact, this
19 case has brought new items that have never been
20 typically argued or have become issues before the Oil
21 Conservation Commission or the division.

22 We have a number of depositions
23 already. I've never really had depositions other than
24 unavailability of witnesses from time to time. We've
25 had a motion for summary judgment that I'm working on

1 right now.

2 I mean -- I've never heard of a motion
3 for summary judgment before the Oil Conservation
4 Commission; let me put it that way. So there are a
5 whole bunch of things, but over the years when
6 attorney communications between expert witnesses or
7 consultants come up, there's going to be a discovery
8 dispute.

9 In this case, the question was asked:
10 have you discussed this with your attorneys? With
11 attorneys, not necessarily your attorneys. And the
12 answer was yes, I talked to Sharon and Ernie
13 yesterday.

14 At that point, we had not formulated a
15 response for rebuttal testimony at all. There had
16 been some discussion, but not with Dr. Linze [ph].
17 And Dr. Linze [ph] had some ideas, but those were
18 directed strictly to fracture studies.

19 So when you ask -- and again over the
20 years -- communications for lawyers with lawyers, it's
21 just not -- you don't go into that unless there's
22 fraud or some kind of information. In this case,
23 we've been very careful in depositions where one of
24 the first questions are, who'd you meet with?

25 And in the last deposition I did, "Did

1 you meet with Mr. Rankin yesterday?" And the answer
2 was yes. If Mr. Rankin was there, I'm not going to go
3 into what the discussions were. And that's exactly
4 what we have in this case.

5 Irrespective of the argument that
6 Mr. Rubin makes or his conclusion or the argument that
7 Mr. Moander makes, I mean this -- we're not in a
8 federal court. We're not in the district court. And
9 application of evidentiary Rule 26 or -- and on top of
10 that, Mr. Moander, in his discussion at the end states
11 that I've been in practice 50 years.

12 And I don't know whether that means
13 I've lost my marbles or I should be sanctioned because
14 he suggests that as well. I don't know the basis;
15 maybe he was trying to find out if I paid my bar dues.
16 But the point is that by bringing that up before the
17 commission is just almost irrelevant.

18 I mean -- our rebuttal testimony -- and
19 I can represent today that the rebuttal testimony of
20 Mr. Linze [ph] will not affect anything that the oil
21 conservation or division's case is about. It's a
22 fracture study showing that there may be communication
23 between the Grayburg and the San Andreas.

24 To the extent that this is an
25 overwhelming deal that the division needs to find out

1 exactly what Dr. Linze [ph]'s going to say in his
2 rebuttal testimony -- and it'll not affect the -- I
3 can represent that it is not going to affect the Oil
4 Conservation Division.

5 So it's a big -- the division has made
6 a big case out of really nothing. I suppose we have
7 never provided drafts until after the final paper is
8 submitted. And that's been the practice in this case,
9 even though this case is extraordinarily different
10 from a lot of other cases.

11 But to apply Rule 26, the way Mr. Rubin
12 analyzes this, is improper for an administrative
13 proceedings. The test here is going to be whether
14 each party has substantial evidence to support a
15 conclusion that the commission may make at the end.

16 So applying evidentiary rules, I think
17 is improper. But when the question is asked, what did
18 you discuss with the lawyers, I think that is not
19 proper.

20 I take a different view on the reason
21 for my objection. That my objection -- I was
22 immediately alerted to an objection once the question
23 of what was the discussion between you and Sharon and
24 Ernie, essentially. And that was the day before when
25 no draft was available. This issue, I think, is going

1 to be moot once we submit the rebuttal testimony on
2 February 10th.

3 Now in anticipation of that, if we're
4 prepared to submit some kind of a draft before then, I
5 would suggest that Empire do it. But otherwise it
6 hasn't been the practice. Thank you.

7 THE CHAIR: Thank you, Mr. Padilla.
8 Mr. Rankin?

9 MR. RANKIN: Thank you. I don't have
10 anything really to add to this discussion, although I
11 -- so I'll let Mr. Moander address it. I do have two
12 items that I would like to raise. They're not on the
13 agenda today, but I do -- but they are pre-hearing and
14 pre-hearing nature, and I think it's important, I want
15 to raise them for the commission's awareness.

16 I do think it'd be helpful if we could
17 possibly get determination on those two issues in
18 advance. And I'd like to just comment on those so I
19 can explain why I think it's important for the
20 commission to evaluate those before the 20th if
21 possible.

22 THE CHAIR: So let's wrap up this one
23 and then -- this issue and then we can always come up
24 with that. So you have nothing else to add for this
25 particular issue?

1 MR. RANKIN: I do not.

2 THE CHAIR: Okay. Thank you.

3 Commissioners, any questions that you may have?

4 COMMISSIONER AMPOMAH: A quick one. So
5 Mr. Padilla, you're saying that Dr. Linze's [ph]
6 testimony will not really impact anything, but he
7 talked about fractures.

8 So I don't know the magnitude of, let's
9 say the discussion, but if you talk about fractures in
10 the San Andreas, probably impacting, let's say top
11 layers, that is relevant to the discussion, from my
12 opinion.

13 I don't know the significant -- not --
14 I don't know all the details with regards to, let's
15 say, what Dr. Linze [ph] can bring to the table. But
16 once you start talking about fractures, that just
17 prompts my attention to the fact that if there are
18 some communication through fractures within the San
19 Andreas and let's say the upper layers, that is a
20 matter that is of a concern.

21 I know that during the pre-hearing
22 periods in the past, OCD talked about the fact that
23 they have concerns within the injection that is
24 actually going on in the San Andrews. So once you
25 start talking about fractures, I want to hear that.

1 Thank you.

2 MR. PADILLA: Sure. Dr. Linze [ph] has
3 already testified in his first testimony -- it's
4 before the commission already -- that there may be
5 contamination into the Goat Seep from injection of
6 produced waters into the San Andreas.

7 And he has already talked about
8 fractures occurring in some of the well bores,
9 especially the 679 well, where we did -- there was a
10 fracture study. I think the rebuttal testimony is
11 going to go against or is going to rebut Mr. McGuire's
12 -- Preston McGuire's testimony in his deposition and
13 in his paper. So that fracture study is already
14 before the commission and the rebuttal testimony is
15 going to be strictly against Mr. Preston's testimony.

16 COMMISSIONER AMPOMAH: So she already
17 offered testimony to the commission.

18 MR. PADILLA: It's already before the
19 commission.

20 COMMISSIONER AMPOMAH: Okay. But she
21 will not be here -- he will not be here to respond to,
22 let's say, any questions that we may have?

23 THE CHAIR: So I'm going to interrupt.
24 I think we're going a little outside of the scope of
25 this. I apologize, Commissioner, Dr. Ampomah.

1 We're not really talking about what
2 Dr. Linze [ph] is going to be testifying. The
3 question here is, did the OCD have the proper
4 opportunity to be able to depose Mr. -- Get a
5 deposition from Mr. -- Dr. Linze [ph] -- sorry, no
6 disrespect to the doctor -- and was it following
7 rules? And that's I think what our question is right
8 now.

9 And so I don't mean to interrupt; I
10 don't want to go further into this particular case
11 without being in the case. So let's not go onto that.
12 I think we need to play it on the safe side on this
13 instance.

14 Before any questions though,
15 Commissioner Ampomah, for this particular issue, do
16 you have any other questions for this particular
17 issue? I want to make sure we capture it.

18 COMMISSIONER AMPOMAH: No, I'm okay.

19 THE CHAIR: Okay. Commissioner Bloom.

20 COMMISSIONER BLOOM: Mr. Padilla, thank
21 you. Just to clarify -- are you concerned about
22 Dr. Linze [ph] being called back to the deposition?
23 Or specifically, are you concerned about him being
24 asked about a document that is still in draft form, an
25 unfinished work product?

1 MR. PADILLA: I think it's pretty final
2 now, so -- but I haven't been handled that aspect of
3 the -- my understanding is that it's pretty final. I
4 know that drafts were complete, but at the time that
5 the -- that I've made the objection, we had only the
6 day before, all that was, was impressions of what we
7 had and thinking process of opinions.

8 I think those are protected without
9 more, but we're not concerned about ultimately turning
10 in the rebuttal testimony. We have to do that if
11 we're going to submit rebuttal testimony. And I can
12 represent that there will be rebuttal testimony
13 against what Preston McGuire said in his deposition.

14 THE CHAIR: Ms. Hardy, did you have
15 something to add to that?

16 MS. HARDY: Well -- I just wanted to
17 sort of clarify that I think there was some
18 misunderstanding that the questions that were objected
19 to just related to Dr. Linze [ph]'s rebuttal opinions,
20 which were still in development at the time of the
21 deposition. We will submit them in final form with
22 the other rebuttal testimony on February 10th.

23 So that was the sole basis of the
24 objection. Dr. Linze [ph] was deposed for a full day
25 about all of his opinions in the case, and he will

1 testify at the hearing, but the objection was limited
2 just to his rebuttal, which was still in development.

3 And since that will be filed on Monday,
4 I think that's why everyone agrees it's really a moot
5 issue at this point; that he didn't have answers or he
6 was -- he didn't answer questions at his deposition
7 about the opinions for rebuttal that were being
8 developed. I just wanted to make sure everyone was on
9 the same page because I think there was some
10 confusion.

11 THE CHAIR: I think we are on the same
12 page. I think we understand. The question though in
13 the end is, did the OCD have the proper opportunity to
14 do a deposition to Dr. Linze [ph]? I think that's the
15 question.

16 There was the objection for Mr.
17 Padilla; there is the concern raised from the OCD.
18 And now it falls on our plate to try to figure out did
19 the OCD have the appropriate amount of information to
20 be able to do a proper deposition of Dr. Linze [ph]?
21 Commissioner Bloom?

22 COMMISSIONER BLOOM: It does. And I
23 thank you for clarifying that, Ms. Hardy. And, Mr.
24 Moander, you did speak to the question of -- or the
25 point of this may be moot at this point.

1 I mean -- can this be dropped? Or are
2 you looking for a, a finding here from the commission
3 that supports this for something later on?

4 MR. MOANDER: Thank you, Commissioner
5 Bloom. I mean -- the problem is, if I get the relief
6 requested, it's probably at this point -- it won't be
7 helpful. It won't advance any deeper understanding on
8 the part of OCD.

9 And just to be clear on this, this is
10 an issue of timing. It's not that the motion lacks in
11 OCD's view inherent value. It's that the relief
12 sought will in essence be given from the -- in the
13 form of the final opinion.

14 I was looking for what had been
15 developed to date on that, because I'm not convinced
16 that -- generally speaking, you're not going to have
17 rebuttal filed in more traditional litigation
18 environments. And so you would be able to depose an
19 expert once, and it's a one and done process.

20 And then if there's a discovery
21 dispute, you have time to take it back to a court and
22 hash it out, get an order, reconvene a depo if you
23 need to; whatever the case would be there.

24 In this instance, even if I get that
25 relief, I'm not sure it's going to be helpful. But I

1 did need to make a record of this issue because again
2 -- and this kind of brings me back to another point
3 that I think is important, this case will eventually
4 end up in an appellate posture.

5 And these are things that I've been
6 trained to preserve issues for the record, for
7 appellate review. And that's what's going on here.
8 So if my -- the relief I ask for is granted, I -- I
9 would see it as -- you know, I'm not willing to
10 totally conceive my motion on those grounds, which I'm
11 doing in -- to some extent here.

12 I'm going to get these final opinions.
13 That's what's going to be heard by the commission.
14 That's what I would expect Goodnight to be attacking.
15 And if I need to, I would be attacking that in the
16 hearing. And that'll be the axle on which, you know,
17 Dr. Linze [ph] turns.

18 A reconvened deposition won't get me
19 anything. I wanted to get -- let me give some context
20 to this. So OCD took a position that no one issued
21 discovery to OCD. No one seemed to know what it was.
22 If I'm not asked, I'm not giving is a general rule.

23 So there was a bit of a surprise across
24 the board as to what OCD'S position is. OCD is in a
25 position now when rebuttal is filed, that'll be the

1 very first time they're going to see opinions that may
2 be contrary to OCDs position, which puts us in a
3 disadvantage.

4 I mean -- that is -- that's a
5 disadvantage. That's built into the structure; you
6 know, it is what it is. OCD's not complaining about
7 that to be sure. And so there was an interest in
8 figuring out what could I learn as soon as possible
9 before rebuttal to help my witnesses prepare theirs.

10 That benefit will evaporate as of
11 Monday for OCD. And like I said, there's just no
12 realistic way, even if we -- even if you were to order
13 us to do it, it would be having an earth moving to get
14 attorneys and a witness in a deposition within the
15 next four days.

16 I'm not convinced that that's worth --
17 that juice may not be worth the squeeze. I do want to
18 make a clarifying point. There was no implication --
19 this is a personal angle -- no implication that
20 Mr. Padilla is somehow deteriorating or in any way
21 failing in his duties.

22 That was an emphasis point that
23 Mr. Padilla's got more than twice the experience that
24 I do practicing as a licensed attorney. So a
25 rhetorical device and not intended to imply any

1 incompetence or anything on his part.

2 I do want to note that there was no --
3 there's not going to be any rebuttal discovery, but he
4 made an interesting point about not asking about legal
5 communications and depositions.

6 In my experience in multiple sectors of
7 litigation, that question gets asked pretty much every
8 time about expert witnesses. In fact, I'd argue if
9 you don't ask it, you might not be pushing the
10 envelope far enough.

11 There'll always be a discussion about
12 it. Most of us know what we're looking for, which is
13 what are these foundational elements. I've had cases
14 where I've been forced to turn over reams of emails
15 that I've wrote to experts and had them returned to
16 me. I think it's much more common.

17 But one last point, touching on the
18 appellate posture position. The entity that will do
19 the appellate review is going to be reviewing this
20 case through the state rules of civil procedure. Now
21 not applying them strictly, but that will be the lens
22 through which they look at it.

23 I think it's a better practice to
24 center on state rules over the federal rules. They're
25 very different. And the appellate courts look at the

1 state rules of civil procedure.

2 COMMISSIONER BLOOM: All right. Thank
3 you, Mr. Moander. No further questions, Mr. Chair.

4 MR. RUBIN: Anything else, Mr. Chair?

5 THE CHAIR: Yeah. I'd like to ask just
6 one question, Mr. Rubin, if I may. Just give me one
7 second.

8 MR. RUBIN: Yes.

9 THE CHAIR: So, Mr. Moander, I guess if
10 reprieve is granted in this instance, it's -- if I
11 understood you correctly, this is just for
12 preservation in the appellate if and when this goes to
13 appeals; is that what I'm understanding?

14 MR. MOANDER: Chair, that is correct
15 with a caveat. I do think the merit has motion, but
16 the timing is such that the relief won't accomplish
17 much, if anything. I mean -- that's -- the timing has
18 made it somewhat useless. But I did want to make that
19 record for preservation purposes as well.

20 THE chair: Okay. Thank you.
21 Mr. Rubin?

22 MR. RUBIN: Yes. Thank you,
23 Mr. Chairman, members of the commission. I appreciate
24 the colloquium and I haven't heard anything that
25 departs or changes my analysis.

1 I had presumed that there would be a,
2 another attempt at a deposition, perhaps after the
3 rebuttal reports were due on the 10th.

4 But if that's not the case, it still
5 stands as I framed the motion to recommend granting
6 OCD's motion ordering Empire to produce Dr. Linze [ph]
7 in a timely matter at the request of OCD with further
8 instruction that his facts and opinions held are
9 subject to discovery.

10 THE CHAIR: Okay. Thank you,
11 Mr. Rubin. Appreciate it. So do we have a motion for
12 -- to grant this?

13 COMMISSIONER BLOOM: Mr. Chair, I so
14 move.

15 COMMISSIONER AMPOMAH: I second.

16 THE CHAIR: Okay. So now we need a
17 roll call if we could. Commissioner?

18 COMMISSIONER AMPOMAH: Approved.

19 THE CHAIR: Commissioner Bloom?

20 COMMISSIONER BLOOM: Approved.

21 THE CHAIR: And I as the chair also
22 approve. So we'll pass this through and we go from
23 there. This particular issue is now done. We can
24 move on. Mr. Rankin, you had some other issues that
25 you wanted to bring up.

1 MR. RANKIN: Thank you, Mr. Chair.
2 Commissioners, may it please the commission. Good
3 morning.

4 There are two additional pending
5 pre-hearing matters that I believe the commission
6 should address in advance of the opening arguments on
7 the 20th.

8 One is a motion to compel that
9 Goodnight filed on the deadline seeking discovery of
10 additional documents from Empire. Empire has filed a
11 response, so that motion is currently ready for
12 decision. Happy to have a separate conference with
13 Mr. Rubin or with the commission as deemed necessary
14 and appropriate to address any arguments or address
15 any questions.

16 I understand it hasn't been noticed for
17 today's agenda, but there is an outstanding request
18 for discovery that I believe is justified, and that
19 Empire should be required to produce the documents and
20 be ordered to compel production. So that's number
21 one.

22 The second item is a motion to strike
23 Empire's disclosure of its rebuttal witnesses'
24 disclosure. Now there was an issue that I raised and
25 I did so as soon as I possibly could because I am

1 concerned about creating appellate issues.

2 The issue in that motion to strike is
3 that in its disclosure, Empire has identified two
4 additional witnesses, which is fine. They're
5 perfectly welcome to bring in two additional witnesses
6 that haven't previously been disclosed for purposes of
7 rebuttal.

8 However, the two witnesses that they
9 have identified, the subject matter of their testimony
10 is subject matter that was required to be presented as
11 part of their case in chief. And that is testimony
12 around petrophysics, identification of the oil
13 saturations within the target zone, and then also oil
14 in place calculations.

15 That was part of their original direct
16 testimony. And so now as I con sought to confer with
17 Empire counsel over the nature of that rebuttal
18 testimony, it appeared based on the disclosure on its
19 face that it was intended to be new -- a new
20 petrophysical model and a new oil in place analysis.

21 Empire has not refuted that contention
22 that in fact it is new, a new model and a new oil
23 place of calculation. Based on that, I believe it is
24 improper rebuttal testimony because it should have
25 been part of their direct case. And if it were, then

1 we would've had a chance to ourselves rebut it.

2 Now if it's due, it's being presented
3 at the very cusp of the hearing and we won't have a
4 chance to review or analyze it when it was required to
5 be part of their direct case.

6 So that I believe is an important
7 issue. I brought it up to the commission's attention
8 through a motion as quickly as I could. Empire has
9 responded to it.

10 We filed a reply brief yesterday, and I
11 believe in order to -- my hope was that we would get
12 direction on that motion in advance of submitting the
13 written rebuttal testimony so that the issue could be
14 resolved and Empire and Goodnight would have a
15 determination or direction from the commission on
16 whether or not the proposed rebuttal testimony is
17 proper or not.

18 So I raise that here just for the
19 purposes -- it may be too late, but it may not be, if
20 we get direction from the commission on what is proper
21 rebuttal testimony. So sort of along the same lines
22 as Mr. Moander stated, you know, all this testimony is
23 going to be filed on the 10th.

24 There's a procedure in the pre-hearing
25 order for parties to object to testimony. I can

1 pursue that at this -- at that time, I can pursue my
2 objections once I see the rebuttal testimony and
3 determine whether or not it is a new petrophysical
4 analysis and a new oil in place analysis.

5 So I raised that just for the
6 commission's awareness. My intent was to try to avoid
7 having to do that; that if we could identify this
8 issue on the front end, that we could address it and
9 have it be resolved without having to wait for the
10 rebuttal testimony to be filed.

11 So I raise that for the commission's
12 interest here on the front end. Those are the two
13 items.

14 MR. PADILLA: Mr. Chair, members of the
15 commission?

16 THE CHAIR: Yes.

17 MR. PADILLA: I think I can shed some
18 insight on, on what Mr. Rankin has just said. And
19 part of this, just as a function of how many things I
20 could look at.

21 We did get -- we got the response on
22 the motion to compel Friday after five. But if it is
23 a motion to compel that seeks discovery, it is
24 certainly a good point that Mr. Rankin is making that
25 again discovery denied before granted on the cusp of a

1 hearing is fairly useless.

2 So the other constraint of course is
3 how do we get the commission to meet to decide that
4 motion. It does get clunky, but we will -- I think
5 the commission can consider it might be -- might serve
6 the parties' interest to have that motion dealt with
7 prior to the 20th as well.

8 I don't see -- and I don't see how the
9 commission can delegate this to the chair as the
10 commission must hear the case. I don't know if the
11 parties have a position on that. I suppose if they
12 all agree that the chair could hear the motion to
13 compel and we could -- and in consultation with
14 myself, we could decide that fairly expediently.

15 The other motion, the motion to strike,
16 I respectfully disagree with Mr. Rankin that those
17 types of issues cannot be sorted out at the cusp or
18 during the hearing as to what's rebuttal, what's case
19 in chief; that usually sorts out pretty well once the
20 hearing gets going.

21 So that's, that is something for the
22 commission to consider -- the first one, however --
23 compelling discovery. Thank you.

24 THE CHAIR: Questions from the
25 commissioners?

1 MS. SHAHEEN: May I respond?

2 THE CHAIR: Oh, I'm sorry, Ms. Shaheen.
3 Yes, please. I apologize.

4 MS. SHAHEEN: Thank you. As Mr. Rubin
5 pointed out, we filed our response to the motion to
6 "kamel" -- to compel late on Friday, and I think after
7 midnight last night, Mr. Rankin filed his reply in
8 support of his motion to strike the rebuttal
9 testimony. So I agree with Mr. Rubin that the latter
10 is definitely not ripe for discussion today.

11 There are some other issues relating to
12 that, that I believe Goodnight has a misguided
13 interpretation of the burden of proof. We will be
14 filing a motion to clarify the scope of the decision
15 and including the burden of proof. I'm happy to
16 discuss that if we need to today.

17 But like I said, I agree with Mr. Rubin
18 that that is better left to another day. With respect
19 to the motion to compel, I'd like to be able to argue
20 if you're planning to decide that today, I'd like to
21 at least run through our response to the motion to
22 compel. And I'm happy to do that if you're interested
23 in deciding that issue today.

24 THE CHAIR: Thank you, Ms. Shaheen.
25 Appreciate it. I just wanted to see now, any

1 questions from the commissioners?

2 COMMISSIONER BLOOM: Not at this time,
3 Mr. Chair.

4 THE CHAIR: Dr. Ampomah?

5 COMMISSIONER AMPOMAH: So, Mr. Chair,
6 we do not have the documents as of now.

7 MR. RACATOS: That's what I was going
8 to say. I don't, I'm not prepared for it. I'm
9 looking through the case files right now online and
10 I'm not -- I can't find it. But it's also -- I'm up
11 here, the light's on me, and you know, technology
12 doesn't necessarily work in my favor some days.

13 I personally am not ready to be able to
14 even discuss this right at the moment. So, Mr. Rubin,
15 I'm not quite sure how we proceed from here. I agree
16 with Commissioner Ampomah. I don't have the
17 documents.

18 And excuse me -- if Mr. Rankin
19 submitted it after midnight last night, kudos to you,
20 Mr. Rankin, that you were awake that late. I was not.
21 So I definitely have not had the ability to review any
22 of that documentation, so I don't think I am ready to
23 -- I can only speak for myself. I think, Dr. Ampomah,
24 you're on the same page; you're not ready.
25 Commissioner Bloom?

1 COMMISSIONER BLOOM: Yes, Mr. Chair. I
2 was wondering how we're going to get at that -- you
3 know, if we could have the documents, we might have
4 time to review it. Perhaps we could pause, have time
5 to read those and reconvene in an hour or something
6 like that. But perhaps Mr. Rubin has more guidance.

7 MR. RUBIN: Thank you, Commissioner
8 Bloom; Mr. Chair. Yeah. I think we can huddle. I
9 can huddle with Chair Racatos and if we need to have
10 another pre-hearing meeting so that the parties can
11 argue again, I do feel like the motion to compel is
12 probably of more exigency than the motion to strike.
13 But I'm not prepared to offer intelligent advice on
14 either motion this morning.

15 THE CHAIR: I mean -- I think for
16 expediency on one of the topics, we could potentially
17 just kind of take a break and discuss amongst us and
18 go from there and get a copy of the information.
19 Again -- I apologize. This one kind of got me off
20 track.

21 MR. RANKIN: Thank you, Mr. Chair. I,
22 I just want to say I totally understand. This case
23 has been fast and furious and more paper flying, I
24 think, than the commission is accustomed to on a very
25 wide variety of issues. So I appreciate that, the

1 attention from the commission.

2 As to the motion to compel, I think
3 it's -- I have no -- I believe that the regulations
4 governed would allow the commission chair to dispose
5 of that issue without the full commission. But I
6 leave that to the commission's discretion and
7 Mr. Rubin's advice.

8 As to the motion to strike, like I
9 again -- given the timing, I think it's -- we're all
10 probably better served in terms of where things are,
11 to just address it at the submission of the testimony.

12 But I did want to raise that because I
13 think it's an important issue and we can address it on
14 the 10th, you know, after the 10th in the course of
15 the pre-hearing order.

16 My attempt was simply to raise this
17 issue and try to get it resolved and get direction in
18 advance of the hearing for the benefit of the parties
19 and the commission.

20 THE CHAIR: Thank you, Mr. Rankin.
21 Mr. Rubin, did, were you able to hear all of that?

22 MR. RUBIN: Yes. I was trying to track
23 down the agenda for today. Was the agenda specific to
24 just this one motion?

25 THE CHAIR: Matter to be heard,

1 resolution of Oil Conservation Division's Motion to
2 Compel Expert Witness Testimony of Robert Linze [ph].
3 So it was the -- today's was pretty succinct --

4 MR. RUBIN: Yes.

5 THE CHAIR: -- that it was going to be
6 expert witness to the motion regarding Dr. Linze [ph]?

7 MR. RUBIN: Yes. So the Open Meetings
8 Act has imposed upon us that limitation today.

9 THE CHAIR: Okay. So then I think we
10 will table this until after the 10th where everybody
11 submits. And then thank you for bringing up your
12 concerns. And I think we can look at it as of next
13 week when everything gets submitted.

14 And I think at this point I speak for
15 the commission, we're not ready if I understand
16 correctly, from all of us to be able to tackle this
17 today. So we will set it for another time.
18 Excellent. Anything else?

19 MS. HARDY: Mr. Chair?

20 THE CHAIR: Ms. Hardy?

21 MS. HARDY: I had one procedural
22 question --

23 THE CHAIR: Okay.

24 MS. HARDY: -- with respect to the
25 hearing. And our pre-hearing order states that

1 opening statements and argument on motions will be
2 heard on February 20th and the evidence will commence
3 on the 24th.

4 And the commission's meeting notice
5 that came out recently states that the hearing will be
6 held the 20th through the 28th. So we were just
7 trying to get clarification for purposes of our
8 witnesses and our plan that it is correct according to
9 the pre-hearing order, that we will commence with the
10 evidence on the 24th and not prior to that time.

11 THE CHAIR: Trust me; we don't want to
12 stay longer than we have to either. I think because
13 Thursday the 20th also has other agenda items, I think
14 that's why it was spilling over into Friday the 21st.
15 Just to cover us on that aspect.

16 I think we are on track, just as you
17 have understood it. I think it's just because there
18 are other agenda items on the OCC hearing that need to
19 be heard on the 20th Thursday, and hence it would
20 potentially spill opening statements for this case
21 into the 21st.

22 I don't think we necessarily expect
23 witnesses to be here on the 21st. I think the case
24 will start its normal track on that following Monday,
25 but it gives the commission the ability to hear all

1 the cases that are on the docket for that particular
2 day.

3 MS. HARDY: Understood. Thank you. We
4 just wanted to make sure that we were proceeding
5 according to the plan.

6 THE CHAIR: I think we're all on the
7 same page.

8 MS. HARDY: Thank you.

9 THE CHAIR: Thank you. Commissioner
10 Bloom? Question?

11 COMMISSIONER BLOOM: I think I'm on the
12 same page, but just to make sure. So there'll be --
13 there could be openings on the Thursday the 20th or
14 Friday the 21st, depending on when we get to them.
15 And then the witnesses will start to appear on Monday
16 the 24th?

17 THE CHAIR: Right.

18 COMMISSIONER BLOOM: We're all on the
19 same page?

20 THE CHAIR: Yes. I believe that's how
21 we all understand it.

22 COMMISSIONER BLOOM: Okay. Thank you.

23 THE CHAIR: And everybody's nodding
24 their heads yes. So that's where we're on with that.
25 Mr. Padilla, you have a question?

1 MR. PADILLA: Yes. We've discussed
2 whether or not it'd be appropriate to have like a
3 15-minute introduction for each expert witness.

4 In other words, I've been in cases
5 before the division where we've submitted the
6 testimony ahead of time, but we were allowed to
7 present about a 15-minute summary of what their
8 testimony would be. And I think it might be helpful
9 to the commission to have that. Just throw that out
10 there.

11 THE CHAIR: So I would probably say
12 yes --

13 MR. PADILLA: Yes.

14 THE CHAIR: -- and I think that that is
15 a good idea. Let's tackle that one on the 20th when
16 we convene. I don't necessarily see a problem with
17 that, but again -- I'm not -- there's a lot with this
18 case.

19 And so I just want to make sure that
20 we're all treading very, very carefully with how this
21 goes. Commissioner Bloom?

22 COMMISSIONER BLOOM: Mr. Chair, I
23 believe we set the PFAS rulemaking up in a similar
24 fashion and found after we got a little bit into that,
25 it was actually very helpful to have people give a

1 short summary of their positions and their testimony
2 at the beginning.

3 Just because there are so many
4 documents and so much material to grapple with that by
5 the time we get up here, it can be, you know, a
6 challenge to keep all those things straight.

7 So I think given things we've looked at
8 in the past, it was helpful to have just something
9 that kind of prepares the groundwork for us as we move
10 forward.

11 THE CHAIR: Okay. Commissioner
12 Ampomah?

13 COMMISSIONER AMPOMAH: Nothing from my
14 side.

15 THE CHAIR: Okay. Mr. Rubin?

16 MR. RUBIN: Sorry. Nothing further,
17 Mr. Chair.

18 THE CHAIR: Okay. Sure. We'll do it.
19 Since the other commissioners feel the same way. I
20 mean -- I'm fine with it either way. As I said, I
21 tend to lean towards that. I just wasn't ready to
22 tackle that one as well today, but okay. That's fine.
23 We can definitely do it.

24 MR. PADILLA: Thank you.

25 THE CHAIR: Thank you. Any other

1 points for this particular case? Thank you all for
2 your patience. Let's take a ten-minute break so then
3 we can start our next case. Thank you. We will
4 reconvene at 10:06.

5 (Off the record.)

6 THE CHAIR: Okay. We're going to get
7 back on record here. Our next item for today is case
8 number 24912, which is the application of Apache
9 Corporation for an adjudicatory hearing to contest the
10 division's conditions of approval on Apache
11 Corporation's scope of work for additional
12 investigation in Lee County. The matter to be heard
13 is the OCC deliberations.

14 Mr. Rubin, what --

15 MR. RUBIN: Yes.

16 THE CHAIR: Can we get your opinion
17 from here please.

18 MR. RUBIN: Sure. The first question
19 is whether the commission wishes to reconvene in
20 closed session pursuant to the adjudicatory exception
21 under the Open Meetings Act.

22 THE CHAIR: Okay. Commissioners?

23 MR. RUBIN: Or --

24 COMMISSIONER AMPOMAH: Yes. I want a
25 closed session.

1 THE CHAIR: Okay. Commissioner Bloom?

2 COMMISSIONER BLOOM: I am fine with the
3 closed session as well, Mr. Chair.

4 THE CHAIR: Okay. I would like a
5 closed session as well. So how do we proceed from
6 here, Mr. Rubin?

7 MR. RUBIN: Thank you, Mr. Chair. If
8 the commission can entertain a motion to enter to
9 close session to deliberate on the adjudicatory matter
10 in case number 24912 pursuant to section 10-15-1 H1,
11 N3

12 THE CHAIR: Okay. Can I get a motion.

13 COMMISSIONER BLOOM: And I so move.

14 COMMISSIONER AMPOMAH: I second.

15 THE CHAIR: Okay. Motion is granted.

16 MR. RUBIN: We need a roll call vote.

17 THE CHAIR: Oh -- and a roll call vote.
18 Commissioner Ampomah?

19 COMMISSIONER AMPOMAH: Approve.

20 THE CHAIR: Commissioner Bloom?

21 COMMISSIONER BLOOM: Approve.

22 THE CHAIR: I approve as well.

23 MR. RUBIN: Do you three want to kick
24 everyone out or do you want to convene in another
25 room?

1 THE CHAIR: So what we could do is we
2 can go upstairs to the OCD conference room and we can
3 connect with you there, Mr. Rubin. Is that okay with
4 you? Okay,

5 MR. RUBIN: That's great. Let me give
6 you my landline. It's probably going to be a better
7 connection.

8 THE CHAIR: Okay. Did you want to just
9 text it to me? Or we can send you my --

10 MR. RUBIN: That's okay.

11 THE CHAIR: We can send you a Teams
12 invite from up there.

13 MR. RUBIN: No, no. It's only online.
14 I don't know how to do that. So let me just give you
15 my number. It's fine.

16 THE CHAIR: Okay.

17 MR. RUBIN: 505-466 --

18 THE CHAIR: Five, zero, five -- was
19 that a four, six, six?

20 MR. RUBIN: Yes sir -- 4355.

21 THE CHAIR: Four, three, five, five.
22 It's a deal. We will go into closed hearing -- closed
23 session here and we'll give you a call here in a few
24 minutes, Mr. Rubin.

25 MR. RUBIN: Thank you.

1 THE CHAIR: Thank you. Okay. So we're
2 in closed hearings. We will reconvene and we'll let
3 the parties know.

4 MR. PADILLA: Mr. Chair, are you going
5 to leave the room?

6 MR. RUBIN: My understanding is that
7 yeah -- the three of you will now convene in the other
8 room.

9 THE CHAIR: Or in the room so they
10 could just sit in this -- in Pecos Hall. So we'll be
11 giving you a call here soon, Mr. Rubin from upstairs.

12 MR. RUBIN: Okay. Thank you.

13 MS. APODACA: Jerry, what do we do
14 about the court reporter?

15 THE CHAIR: That's a good question. We
16 will talk to Mr. Rubin and I will let you know,
17 Sheila.

18 MS. APODACA: Okay.

19 THE CHAIR: Thank you.

20 MR. RUBIN: Sheila?

21 MS. APODACA: Yes.

22 MR. RUBIN: Good question. We don't
23 need a court reporter in closed session.

24 THE CHAIR: Was that a no court
25 reporter?

1 MR. RUBIN: No court reporter in closed
2 session.

3 THE CHAIR: Okay. Thank you.

4 (Off the record.)

5 THE CHAIR: We discussed for those
6 listed in and no final actions were taken. There is a
7 motion that has been set before that's coming up that
8 we did discuss.

9 The motion is to grant the permit with
10 the conditions of approval that came with the OCD
11 closing arguments, the Oil Conservation Division's
12 closing arguments.

13 The approval is with the following
14 amendments that the commission would like to see. So
15 if we turn to OCD's closing arguments -- it is section
16 number 5 -- OCD's conditions of approval are
17 reasonable and appropriate.

18 The first one was the strikethrough for
19 1B, as in Boy. This one, the commission actually
20 feels needs to be reinstituted but moved. The
21 commission would like this one moved 200 feet east of
22 the windmill. So that is TMW 31. It was as a
23 strikethrough for the OCD, but the commission would
24 like it to be brought back in and moved 200 feet east
25 of the windmill.

1 Next was 1J, as in Joseph; that is
2 regarding TMW number 39. It was a strikethrough and
3 the commission believes that it should stay as a
4 strikethrough. So that one will be taken off.

5 The other amendment that we have is 1K,
6 as in Kevin for TMW 40. The commission would actually
7 like to move that particular well from where the OCD
8 is wanting it. The commission would like it moved
9 200 feet southwest of TMW 19. Again -- TMW 40 to be
10 moved 200 feet southwest of TMW 19.

11 Those were the only amendments that
12 were put in. Further, the commission request moves
13 the counsel to draft the order consistent with this
14 decision and with the deliberations of this case for
15 signature for the chair.

16 Can we get a motion for this motion.

17 COMMISSIONER BLOOM: Hey, Mr. Chair,
18 perhaps one question before I would make that motion.
19 You reiterated that 1J would be struck; correct?

20 THE CHAIR: Correct.

21 COMMISSIONER BLOOM: Are you also --
22 are we also going to suggest that number 2, number 3,
23 number 5, and number 8 be struck?

24 THE CHAIR: I apologize. We were going
25 to follow whatever the OCD stated except for these

1 amendments. So let me reiterate that the commission
2 is agreeing to what the OCD submitted as conditions of
3 approval except for those three changes. So
4 everything else stays the same except for the three
5 changes that I just mentioned.

6 COMMISSIONER BLOOM: Now I'm still a
7 little confused. So are we lead -- are we going to
8 continue with TMW 39? Is that well -- is that being
9 struck? Or --

10 THE CHAIR: That one is being struck.

11 COMMISSIONER BLOOM: Okay. So there's
12 only two changes then?

13 THE CHAIR: Correct.

14 COMMISSOPMER BLOOM: Okay.

15 THE CHAIR: Two changes. I apologize.
16 Two changes.

17 COMMISSIONER BLOOM: Very good. Just
18 wanted to make this clear for the record. Thank you.

19 THE CHAIR: No. No. You're very
20 right. I said three; I meant two.

21 COMMISSIONER BLOOM: So we're adopting
22 -- so I would move to adopt OCD's conditions of
23 approval, section 5, with the two changes that you
24 mentioned, Mr. Chair.

25 The change being to 1B, TMW 31 shall be

1 installed 200 feet east of the windmill. Second
2 change being to 1K saying that TMW 40 shall be
3 installed approximately 200 feet southwest of TMW 19.

4 THE CHAIR: Correct. Is there a
5 second?

6 COMMISSIONER AMPOMAH: I second.

7 THE CHAIR: Okay. Excellent. So that
8 motion -- we need a roll call. So can we just get a
9 roll call. Commissioner Ampomah?

10 COMMISSIONER AMPOMAH: Approved.

11 THE CHAIR: Commissioner Bloom?

12 COMMISSIONER BLOOM: Approve.

13 THE CHAIR: I approve as well as the
14 acting chair. Excellent. Anything else for this
15 particular case? Mr. Tremaine?

16 MR. TREMAINE: Mr. Chair, I believe you
17 said that the expectation was for counsel to draft an
18 order. I want to make sure I'm clear on whether that
19 counsel means me or commission counsel.

20 THE CHAIR: I asked the same thing to
21 commission counsel; commission counsel will draft the
22 order.

23 MR. TREMAINE: Thank you.

24 THE CHAIR: I got the verbiage from
25 commission counsel. So any other questions? No?

1 MS. HARDY: No. Thank you,
2 Commissioners.

3 THE CHAIR: Okay. Excellent. Okay, so
4 that is the end of that particular case. If there's
5 nothing else, this special hearing of the OCC is now
6 adjourned. Thank you very much, everybody.

7 (Whereupon, at 11:37 a.m., the
8 proceeding was concluded.)
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CERTIFICATE

I, DANA FULTON, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Dana Fulton

February 17, 2025

DANA FULTON
Notary Public in and for the
State of Missouri

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CERTIFICATE OF TRANSCRIBER

I, HANNAH STOREY-GORE, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

February 17, 2025

A handwritten signature in black ink that reads "Hannah Lee". The signature is written in a cursive style with a large, stylized 'H' and 'L'.

HANNAH STOREY-GORE

[1-026 - advisory]

<p>1</p> <p>1-026 13:22 10-15-1 45:10 10:06 44:4 10th 7:25 18:2 22:22 29:3 32:23 38:14,14 39:10 11:37 52:7 1220 1:14 15 42:3,7 17 4:10 53:17 54:13 17th 8:2 19 49:9,10 51:3 1b 48:19 50:25 1j 49:1,19 1k 49:5 51:2</p>	<p>23775 4:11 24018 4:11 24025 4:11 2412323614 4:10 24912 44:8 45:10 24th 40:3,10 41:16 26 5:25 6:20 12:8,12 13:7 13:11,25 16:9 17:11 26322 54:14 26522 53:17 26b 6:17,22 7:5 8:12 28th 40:6</p>	<p>6</p> <p>679 20:9 6a 6:18 6th 8:17</p> <p>7</p> <p>7140622 1:21 7a 8:12</p> <p>8</p> <p>8 49:23 87505 1:15</p> <p>9</p> <p>9:00 1:10</p> <p>a</p> <p>a.m. 1:10 52:7 abbreviated 13:14 ability 36:21 40:25 53:10 54:7 able 11:5 13:9 21:4 23:20 24:18 35:19 36:13 38:21 39:16 accomplish 28:16 accurate 53:9 54:5 accustomed 37:24 acquiescence 14:4</p>	<p>act 39:8 44:21 acting 1:7 3:12 3:13 4:16 51:14 action 53:12,16 54:8,12 actions 48:6 actually 11:20 11:21 12:1 19:24 42:25 48:19 49:6 adam 2:14 4:15 add 12:3 18:10 18:24 22:15 additional 30:4 30:10 31:4,5 44:11 address 18:11 30:6,14,14 33:8 38:11,13 adjourned 52:6 adjudicatory 44:9,20 45:9 administrative 12:25,25 14:18 17:12 adopt 50:22 adopting 50:21 advance 18:18 24:7 30:6 32:12 38:18 advice 37:13 38:7 advisory 12:9</p>
<p>2</p> <p>2 49:22 20 4:11 13:21 200 48:21,24 49:9,10 51:1,3 2025 1:9 3:25 4:1 53:17 54:13 20th 18:20 30:7 34:7 40:2,6,13 40:19 41:13 42:15 21st 40:14,21 40:23 41:14 23 13:25 23.1-023 13:22</p>	<p>3</p> <p>3 1:9 3:25 4:1 49:22 31 48:22 50:25 39 49:2 50:8</p> <p>4</p> <p>40 49:6,9 51:2 4355 46:20</p> <p>5</p> <p>5 6:22 48:16 49:23 50:23 50 14:12 16:11 501 14:3 503 14:3 505-466 46:17</p>		

[affect - awake]

<p>affect 16:20 17:2,3</p> <p>agenda 4:1,6 5:10 18:13 30:17 38:23,23 40:13,18</p> <p>agree 11:13 12:8 34:12 35:9,17 36:15</p> <p>agreeing 50:2</p> <p>agrees 23:4</p> <p>ahead 10:9 42:6</p> <p>airlines 14:16</p> <p>alerted 17:22</p> <p>align 13:23</p> <p>allow 8:23 38:4</p> <p>allowed 10:16 42:6</p> <p>amendment 49:5</p> <p>amendments 48:14 49:11 50:1</p> <p>amount 23:19</p> <p>ampomah 2:3 3:2,3,7,20,21 4:4 9:12 19:4 20:16,20,25 21:15,18 29:15 29:18 36:4,5 36:16,23 43:12 43:13 44:24 45:14,18,19 51:6,9,10</p>	<p>analog 13:16</p> <p>analysis 12:22 28:25 31:20 33:4,4</p> <p>analyze 32:4</p> <p>analyzes 17:12</p> <p>anderson 2:9</p> <p>andreas 16:23 19:10,19 20:6</p> <p>andrews 19:24</p> <p>angle 26:19</p> <p>answer 15:12 16:1 23:6</p> <p>answers 23:5</p> <p>anticipation 18:3</p> <p>apache 44:8,10</p> <p>apodaca 2:10 47:13,18,21</p> <p>apologize 20:25 35:3 37:19 49:24 50:15</p> <p>appeal 10:18</p> <p>appeals 10:23 28:13</p> <p>appear 41:15</p> <p>appeared 31:18</p> <p>appearing 5:6</p> <p>appears 7:6</p> <p>appellate 25:4 25:7 27:18,19 27:25 28:12 31:1</p> <p>application 13:2 16:9 44:8</p>	<p>applies 13:24</p> <p>apply 12:24 17:11</p> <p>applying 17:16 27:21</p> <p>appreciate 3:23 10:14 28:23 29:11 35:25 37:25</p> <p>appropriate 23:19 30:14 42:2 48:17</p> <p>approval 44:10 48:10,13,16 50:3,23</p> <p>approve 4:1,2,3 9:21 29:22 45:19,21,22 51:12,13</p> <p>approved 4:6 8:24 29:18,20 51:10</p> <p>approves 9:18</p> <p>approximately 51:3</p> <p>argue 6:11 14:1 27:8 35:19 37:11</p> <p>argued 14:20</p> <p>argument 9:6 14:4 16:5,6 40:1</p> <p>arguments 10:22 11:11,23 14:5 30:6,14</p>	<p>48:11,12,15</p> <p>asked 6:15 15:9 17:17 21:24 25:22 27:7 51:20</p> <p>asking 27:4</p> <p>aspect 11:24 22:2 40:15</p> <p>asserted 5:18 7:18</p> <p>asserting 7:10</p> <p>attacking 25:14 25:15</p> <p>attempt 29:2 38:16</p> <p>attendee 2:16 2:17</p> <p>attendees 2:2</p> <p>attention 19:17 32:7 38:1</p> <p>attorney 6:6,14 6:23,25 7:3,4 7:12 15:6 26:24 53:14 54:10</p> <p>attorneys 15:10 15:11,11 26:14</p> <p>audio 53:8 54:4</p> <p>austin 2:9</p> <p>authorities 11:12</p> <p>available 17:25</p> <p>avoid 33:6</p> <p>awake 36:20</p>
---	--	--	--

[awareness - chair]

awareness 18:15 33:6 axle 25:16	bloom 2:4 3:17 3:18 4:3 9:14 11:15,17,19 21:19,20 23:21 23:22 24:5 28:2 29:13,19 29:20 36:2,25 37:1,8 41:10 41:11,18,22 42:21,22 45:1 45:2,13,20,21 49:17,21 50:6 50:11,14,17,21 51:11,12 board 25:24 body 10:23 bores 20:8 boy 48:19 break 37:17 44:2 brevity 12:5 brief 32:10 briefing 6:3,3 9:8 bring 19:15 29:25 31:5 bringing 16:16 39:11 brings 25:2 brought 14:19 32:7 48:24 building 1:13 built 10:3 26:5 bunch 15:5	burden 35:13 35:15 business 14:12	45:10 49:14 51:15 52:4 cases 4:7,8 10:20 13:15 14:12,13,14 17:10 27:13 41:1 42:4 caveat 28:15 cendant 13:7 center 27:24 certainly 11:4 33:24 certainty 10:20 certificate 53:1 54:1 certify 53:3 54:2 cetera 11:12 chair 1:7 3:8,13 3:18,22 4:5,16 4:25 5:5 9:10 9:15,16,25 11:13,18,20 14:7 18:7,22 19:2 20:23 21:19 22:14 23:11 28:3,4,5 28:9,14,20 29:10,13,16,19 29:21,21 30:1 33:14,16 34:9 34:12,24 35:2 35:24 36:3,4,5 37:1,8,9,15,21 38:4,20,25
b		c	
b 6:18 7:5 back 21:22 24:21 25:2 44:7 48:24 bar 16:15 base 8:11 based 5:8 7:11 31:18,23 basically 13:16 basis 16:14 22:23 beast 13:11 bedrock 6:20 beginning 43:2 behalf 4:20,21 4:23 believe 8:16 30:5,18 31:23 32:6,11 35:12 38:3 41:20 42:23 51:16 believes 49:3 benefit 26:10 38:18 best 53:9 54:6 better 27:23 35:18 38:10 46:6 big 11:8 17:5,6 bit 25:23 42:24		c 2:1 3:1 calculation 31:23 calculations 31:14 call 3:14 29:17 45:16,17 46:23 47:11 51:8,9 called 21:22 candor 11:1 capacity 5:7 12:9 capture 21:17 careful 7:12 15:23 carefully 42:20 case 4:8,10 6:13 7:1,15,17 9:2 10:20 12:12,15 13:2 13:7,20,21,24 14:15,15,19 15:9,22 16:4 16:21 17:6,8,9 21:10,11 22:25 24:23 25:3 27:20 29:4 31:11,25 32:5 34:10,18 36:9 37:22 40:20,23 42:18 44:1,3,7	

[chair - completely]

39:5,9,19,20,23 40:11 41:6,9 41:17,20,23 42:11,14,22 43:11,15,17,18 43:25 44:6,16 44:22 45:1,3,4 45:7,12,15,17 45:20,22 46:1 46:8,11,16,18 46:21 47:1,4,9 47:15,19,24 48:3,5 49:15 49:17,20,24 50:10,13,15,19 50:24 51:4,7 51:11,13,14,16 51:20,24 52:3 chairman 28:23 challenge 43:6 chance 32:1,4 change 50:25 51:2 changes 28:25 50:3,5,12,15,16 50:23 chief 31:11 34:19 chino 1:13 chris 2:16 citation 12:7,12 13:6 cited 7:14 13:15	civil 5:25 12:24 13:19 27:20 28:1 clarification 40:7 clarify 21:21 22:17 35:14 clarifying 23:23 26:18 clear 5:24 24:9 50:18 51:18 client 6:6 clients 9:9 close 45:9 closed 44:20,25 45:3,5 46:22 46:22 47:2,23 48:1 closing 48:11 48:12,15 clunky 34:4 colloquium 28:24 come 15:7 18:23 coming 7:25 48:7 commence 40:2 40:9 comment 18:18 comments 10:15 11:23 commission 1:1 1:8 3:14,24 8:21 9:5,20	13:10 14:11,21 15:4 16:17 17:15 18:20 20:4,14,17,19 24:2 25:13 28:23 30:2,5 30:13 32:15,20 33:15 34:3,5,9 34:10,22 37:24 38:1,4,5,19 39:15 40:25 42:9 44:19 45:8 48:14,19 48:21,23 49:3 49:6,8,12 50:1 51:19,21,21,25 commission's 18:15 32:7 33:6,11 38:6 40:4 commissioner 2:3,4 3:2,7,17 3:18,20 4:3,4 9:12,14 11:15 11:17,19 19:4 20:16,20,25 21:15,18,19,20 23:21,22 24:4 28:2 29:13,15 29:17,18,19,20 36:2,5,16,25 37:1,7 41:9,11 41:18,22 42:21 42:22 43:11,13 44:24 45:1,2	45:13,14,18,19 45:20,21 49:17 49:21 50:6,11 50:17,21 51:6 51:9,10,11,12 commissioners 3:15 9:10 14:6 19:3 30:2 34:25 36:1 43:19 44:22 52:2 commissopmer 50:14 common 8:7 12:14 27:16 communicating 7:13 communication 16:22 19:18 communicati... 6:7 7:11 15:6 15:20 27:5 compel 5:11 30:8,20 33:22 33:23 34:13 35:6,19,22 37:11 38:2 39:2 compelling 34:23 complaining 26:6 complete 22:4 completely 6:19
--	---	--	---

[con - deposition]

con 31:16 conceive 25:10 concern 13:20 19:20 23:17 concerned 13:21 21:21,23 22:9 31:1 concerns 13:7 19:23 39:12 concise 11:24 concluded 52:8 conclusion 8:15 16:6 17:15 conditions 44:10 48:10,16 50:2,22 confer 31:16 conference 30:12 46:2 confused 50:7 confusion 23:10 connect 46:3 connection 46:7 conservation 1:1,8 3:12,13 3:24 5:11 14:21 15:3 16:21 17:4 39:1 48:11 consider 34:5 34:22 consistent 49:13	consolidated 4:8 10:10 constraint 34:2 construes 14:4 consultants 15:7 consultation 34:13 contagious 5:7 contamination 20:5 contention 31:21 contest 44:9 context 25:19 continue 50:8 contract 6:11 contrary 7:16 26:2 convene 42:16 45:24 47:7 convinced 24:15 26:16 copy 13:9 37:18 corporation 44:9 corporation's 44:11 corral 2:11 correct 28:14 40:8 49:19,20 50:13 51:4 correctly 28:11 39:16	counsel 31:17 49:13 51:17,19 51:19,21,21,25 53:10,13 54:7 54:10 county 44:12 course 6:21 7:12 34:2 38:14 court 7:15 10:8 10:22 12:21 14:17 16:8,8 24:21 47:14,23 47:24 48:1 courts 13:17 27:25 cover 40:15 covered 9:7 10:11 covering 12:6 creating 31:1 crux 13:4 currently 30:11 cusp 32:3 33:25 34:17	days 26:15 36:12 deadline 11:8 30:9 deal 16:25 46:22 dealt 34:6 decide 34:3,14 35:20 deciding 35:23 decision 30:12 35:14 49:14 deemed 30:13 deeper 24:7 definitely 35:10 36:21 43:23 degree 12:11 delay 5:23 delegate 34:9 deliberate 45:9 deliberations 44:13 49:14 delta 14:16 denied 5:24 33:25 departs 28:25 depending 41:14 depo 24:22 depose 21:4 24:18 deposed 8:8 22:24 deposition 6:5 7:21,22 8:1,4,9
		d	
		d 3:1 dalva 2:12 dana 1:20 2:5 4:19 53:2,18 daniel 2:17 5:2 date 7:20 24:15 day 5:15,22 17:24 22:6,24 35:18 41:2	

[deposition - empire]

8:18 9:22 10:11 11:3,7 15:25 20:12 21:5,22 22:13 22:21 23:6,14 23:20 25:18 26:14 29:2 depositions 14:22,23 15:23 27:5 designee 3:3,18 3:21 details 19:14 deteriorating 26:20 determination 18:17 32:15 determine 33:3 developed 23:8 24:15 development 22:20 23:2 device 26:25 different 17:9 17:20 27:25 digital 53:8 54:3 direct 31:15,25 32:5 directed 15:18 direction 8:25 32:12,15,20 38:17 director 3:12 4:13,15	disadvantage 26:3,5 disagree 34:16 disclosed 31:6 disclosure 10:6 11:4 30:23,24 31:3,18 disclosures 13:12,14 discoverable 6:23,25 7:6 8:18 discovering 5:19 discovery 6:1 6:19 7:10 8:22 9:3,24 12:20 14:13,16 15:7 24:20 25:21 27:3 29:9 30:9 30:18 33:23,25 34:23 discretion 38:6 discuss 17:18 35:16 36:14 37:17 48:8 discussed 15:10 42:1 48:5 discussion 14:2 15:16 16:10 17:23 18:10 19:9,11 27:11 35:10 discussions 16:3	dispose 38:4 dispute 13:4 14:16 15:8 24:21 disputes 14:13 disrespect 21:6 distinguish 12:17,19 district 10:8 16:8 division 3:12 5:11 14:21 16:25 17:4,5 42:5 division's 16:21 39:1 44:10 48:11 docket 41:1 doctor 21:6 doctrine 12:14 document 21:24 documentation 36:22 documents 30:10,19 36:6 36:17 37:3 43:4 doing 25:11 dr 2:3 3:3,20 5:12,21 6:8,8 6:13 7:8,19 8:3 8:9,16,25 9:22 15:16,17 17:1 19:5,15 20:2	20:25 21:2,5 21:22 22:19,24 23:14,20 25:17 29:6 36:4,23 39:6 draft 8:5 17:25 18:4 21:24 49:13 51:17,21 drafts 17:7 22:4 drag 11:21 dragged 11:7 drive 1:14 dropped 24:1 due 5:16 7:25 29:3 32:2 dues 16:15 duly 53:5 duties 26:21
			e
			e 2:1,1 3:1,1 earth 26:13 east 48:21,24 51:1 either 9:17 37:14 40:12 43:20 element 10:25 13:1 elements 27:13 emails 27:14 emphasis 26:22 empire 2:5,6,7 4:9,12,20,22,24 5:13,17 6:4

[empire - finding]

8:25 9:21 13:5 14:1,8 18:5 29:6 30:10,10 30:19 31:3,17 31:21 32:8,14 empire's 12:6 30:23 employed 53:11,14 54:8 54:11 employee 53:13 54:10 encourage 11:6 energy 3:3,21 enter 45:8 entertain 45:8 entity 27:18 envelope 27:10 environments 24:18 ernest 2:6 4:21 ernie 15:12 17:24 es 53:4 especially 11:7 20:9 essence 24:12 essentially 17:24 et 11:12 evaluate 18:20 evaporate 26:10 eventually 25:3	everybody 4:11 39:10 52:6 everybody's 41:23 evidence 17:14 40:2,10 evidentiary 14:2 16:9 17:16 exactly 16:3 17:1 excellent 3:22 4:5,25 9:8 14:7 39:18 51:7,14 52:3 except 6:24 49:25 50:3,4 exception 44:20 excuse 3:5 36:18 exigency 37:12 exigent 5:16 expect 14:13,17 25:14 40:22 expectation 51:17 expediency 11:23 37:16 expediently 34:14 experience 26:23 27:6 expert 5:12,20 7:2,4 8:17	10:11 12:13,18 15:6 24:19 27:8 39:2,6 42:3 expert's 7:9,17 experts 6:19 7:13 8:7 27:15 explain 18:19 express 12:5 extent 7:19 16:24 25:11 extraordinarily 17:9 f face 31:19 fact 6:2,23 14:18 19:17,22 27:8 31:22 facts 5:19 6:18 7:4,7,9,17,20 8:4,10,13,18 9:2,23 12:17 29:8 failing 26:21 fair 8:22 11:25 11:25 fairly 34:1,14 falls 23:18 far 27:10 fashion 42:24 fast 37:23 fathom 6:12 favor 36:12 fe 1:15	february 1:9 3:25 4:1 7:25 18:2 22:22 40:2 53:17 54:13 federal 12:23 13:3,3,8,11,16 13:17,23 14:12 14:17 16:8 27:24 feel 37:11 43:19 feeling 5:8 feels 48:20 feet 48:21,24 49:9,10 51:1,3 figure 23:18 figuring 26:8 filed 6:4 23:3 24:17 25:25 30:9,10 32:10 32:23 33:10 35:5,7 files 36:9 filing 35:14 final 7:23 10:6 17:7 22:1,3,21 24:13 25:12 48:6 finally 14:1 financially 53:15 54:11 find 16:15,25 36:10 finding 24:2
--	--	---	---

[fine - hard]

fine 31:4 43:20 43:22 45:2 46:15 firm 6:8 first 3:10,25 4:8 5:15,22 6:5 11:16 15:24 20:3 26:1 34:22 44:18 48:18 five 11:5 33:22 46:18,18,21,21 flying 37:23 follow 12:11 49:25 following 21:6 40:24 48:13 follows 4:10 forced 27:14 foregoing 53:3 53:4 54:4 form 8:5,10 21:24 22:21 24:13 formulated 15:14 forward 43:10 found 42:24 foundational 27:13 four 26:15 46:19,21 fracture 15:18 16:22 20:10,13	fractures 19:7 19:9,16,18,25 20:8 framed 29:5 francis 1:14 fraud 15:22 friday 11:5 33:22 35:6 40:14 41:14 front 33:8,12 full 22:24 38:5 fulton 1:20 53:2,18 function 33:19 furious 37:23 further 8:25 9:1,23 21:10 28:3 29:7 43:16 49:12 53:12 54:9	giving 25:22 47:11 go 4:18 9:25 15:21 16:2 20:11 21:10,11 29:22 37:18 46:2,22 goat 20:5 goes 28:12 42:21 going 10:5 11:2 11:4,6 12:1 15:7 16:2 17:1 17:3,13,25 19:24 20:11,11 20:15,23,24 21:2 22:11 24:16,25 25:7 25:12,13 26:1 27:3,19 32:23 34:20 36:7 37:2 39:5 44:6 46:6 47:4 49:22,24 50:7 gold 7:15 good 3:2 4:14 4:15 5:6 30:2 33:24 42:15 47:15,22 50:17 goodnight 4:9 4:12 5:19 13:5 25:14 30:9 32:14 35:12 gore 54:2,15	govern 12:8 governed 38:4 governing 6:1 grant 9:20 29:12 48:9 granted 8:24 10:4 25:8 28:10 33:25 45:15 granting 29:5 grapple 43:4 grayburg 16:23 great 46:5 greg 2:4 3:18 grounds 6:9 10:19 25:10 groundwork 43:9 guess 7:23 28:9 guidance 13:18 37:6 guide 6:2 guided 5:25
	g		h
	g 3:1 general 12:20 25:22 generally 6:17 6:24,25 24:16 gerasimos 1:7 2:13 3:11 give 25:19 28:6 42:25 46:5,14 46:23 given 24:12 38:9 43:7 gives 40:25		h1 45:10 hall 47:10 hand 11:10 handled 14:14 22:2 hannah 54:2,15 happen 10:9 happy 30:12 35:15,22 hard 6:12

[hardship - items]

hardship 6:24 hardy 2:5 4:19 4:19 22:14,16 23:23 39:19,20 39:21,24 41:3 41:8 52:1 hash 24:22 heads 41:24 hear 5:17 19:25 34:10,12 38:21 40:25 heard 3:10 15:2 25:13 28:24 38:25 40:2,19 44:12 hearing 5:14,16 8:23 10:9 18:13,14 19:21 23:1 25:16 30:5 32:3,24 34:1,18,20 37:10 38:15,18 39:25,25 40:5 40:9,18 44:9 46:22 52:5 hearings 47:2 held 5:20 6:18 7:7,18 8:13 9:2 9:24 29:8 40:6 hello 3:7 help 26:9 helpful 18:16 24:7,25 42:8 42:25 43:8	hereto 53:14 54:11 hey 49:17 hired 6:13 holding 7:14 hope 32:11 hour 37:5 hours 11:21 huddle 37:8,9 <hr/> <p style="text-align: center;">i</p> <hr/> idea 42:15 ideas 15:17 identification 31:12 identified 31:3 31:9 identify 33:7 immediately 17:22 impact 19:6 impacting 19:10 implication 26:18,19 imply 26:25 important 10:25 18:14,19 25:3 32:6 38:13 imposed 39:8 impressions 22:6 improper 17:12 17:17 31:24	including 35:15 incompetence 27:1 indicated 6:11 information 15:22 23:19 37:18 inherent 24:11 injection 19:23 20:5 insight 33:18 installed 51:1,3 instance 21:13 24:24 28:10 instances 5:23 instruction 9:1 9:23 29:8 insulate 7:9 intelligent 37:13 intended 26:25 31:19 intends 9:2 intent 33:6 interest 12:14 26:7 33:12 34:6 interested 35:22 53:15 54:12 interesting 12:13 27:4 interpret 13:18 interpretation 35:13	interrupt 20:23 21:9 introduce 3:15 introduction 42:3 investigation 44:12 invite 46:12 involves 10:17 12:13 irrelevant 16:17 irrespective 16:5 issue 7:17 10:17 12:8,18 17:25 18:23,25 21:15,17 23:5 24:10 25:1 29:23 30:24 31:2 32:7,13 33:8 35:23 38:5,13,17 issued 25:20 issues 14:20 18:17 25:6 29:24 31:1 34:17 35:11 37:25 it'd 18:16 42:2 it'll 17:2 item 3:25 5:9 30:22 44:7 items 14:19 18:12 33:13
---	---	--	---

[items - meetings]

40:13,18	knowledge	22:19,24 23:14	makes 16:6,7
j	53:9 54:6	23:20 25:17	making 33:24
january 8:2,17	kudos 36:19	29:6 39:2,6	mandated
jerry 47:13	l	linze's 19:5	13:14
jese 2:15	l 2:12	list 2:2	mandatory
job 1:21	lacks 24:10	listed 48:6	13:12,12
joseph 49:1	landline 46:6	litigation 24:17	manner 9:1,22
judgment	lands 3:19	27:7	marbles 16:13
14:25 15:3	late 32:19 35:6	little 20:24	material 43:4
juice 26:17	36:20	42:24 50:7	materials 6:22
jurisdictional	law 7:1 12:20	longer 40:12	matter 14:18
13:1	lawyers 7:12	look 13:17	19:20 29:7
justice 5:23,24	15:20,20 17:18	27:22,25 33:20	31:9,10 38:25
justified 30:18	layers 19:11,19	39:12	44:12 45:9
k	lead 50:7	looked 43:7	matters 12:25
kamel 35:6	lean 43:21	looking 24:2,14	30:5
keep 11:23 43:6	learn 26:8	27:12 36:9	mcguire 2:8
kevin 49:6	leave 38:6 47:5	lost 16:13	22:13
kick 45:23	lee 44:12	lot 12:16 17:10	mcguire's
kind 11:13	left 6:14 35:18	42:17	20:11,12
15:22 18:4	legal 27:4	m	mean 12:6 15:2
25:2 37:17,19	lens 27:21	madai 2:11	16:7,18 21:9
43:9	level 11:1,9	made 6:6 10:21	24:1,5 26:4
know 5:1 8:6	licensed 26:24	11:11 14:5	28:17 37:15
10:14 11:1	light's 36:11	17:5 22:5 27:4	43:20
16:12,14 19:8	limitation 39:8	28:18	means 16:12
19:13,14,21	limited 23:1	magnitude	51:19
22:4 25:9,16	lines 32:21	19:8	meant 50:20
25:21 26:6	linze 5:12,21	make 10:16	meet 15:24
27:12 32:22	6:8,8,13 7:8,19	11:10 17:15	16:1 34:3
34:10 36:11	8:3,9,16,25	21:17 23:8	meeting 1:2
37:3 38:14	9:22 15:16,17	25:1 26:18	3:24 37:10
43:5 46:14	16:20 17:1	28:18 41:4,12	40:4
47:3,16	19:15 20:2	42:19 49:18	meetings 39:7
	21:2,5,22	50:18 51:18	44:21

[member - occurred]

member 2:8,9 2:10,11,12,13 2:14,15 members 28:23 33:14 mentioned 50:5 50:24 merit 28:15 mexico 1:1,8 2:5,6,7 4:9 mic 3:6 mid 8:2 midnight 35:7 36:19 midstream 4:9 mill 12:17 minute 42:3,7 44:2 minutes 46:24 misguided 35:12 missouri 53:20 misunderstan... 22:18 moander 2:16 10:2 12:2,4 14:11 16:7,10 18:11 23:24 24:4 28:3,9,14 32:22 model 31:20,22 moderated 1:7 moellenberg 2:12	moment 36:14 monday 1:9 11:8 23:3 26:11 40:24 41:15 moot 18:1 23:4 23:25 mootness 11:2 11:9 morning 3:2 4:14 5:6 30:3 37:14 motion 4:2 5:10 5:16 8:23 9:18 9:20,20 10:4,5 14:25 15:2 24:10 25:10 28:15 29:5,6 29:11 30:8,11 30:22 31:2 32:8,12 33:22 33:23 34:4,6 34:12,15,15 35:5,8,14,19,21 37:11,12,14 38:2,8,24 39:1 39:6 45:8,12 45:15 48:7,9 49:16,16,18 51:8 motions 5:15 40:1 move 4:3,6 29:14,24 43:9 45:13 49:7	50:22 moved 48:20 48:21,24 49:8 49:10 moves 49:12 moving 26:13 multiple 27:6	31:19,19,20,22 31:22,22 33:3 33:4 night 35:7 36:19 nm 1:15 nodding 41:23 non 12:13 normal 40:24 notary 53:19 note 27:2 noted 8:16 notice 40:4 noticed 30:16 nuance 12:16 nuclear 12:12 number 14:22 30:20 44:8 45:10 46:15 48:16 49:2,22 49:22,23,23 numbers 4:10	
		n	n 2:1 3:1 n3 45:11 nature 5:16 18:14 31:17 necessarily 10:19 15:11 36:12 40:22 42:16 necessary 30:13 necessitate 13:2 need 3:25 7:12 9:5,6 21:12 24:23 25:1,15 29:16 35:16 37:9 40:18 45:16 47:23 51:8 needs 16:25 48:20 neither 53:10 54:7 never 14:19,23 15:2 17:7 new 1:1,8 2:5,6 2:7 4:9 14:19	o 3:1 object 32:25 objected 22:18 objection 6:5 8:11 17:21,21 17:22 22:5,24 23:1,16 objections 33:2 occ 12:11 40:18 44:13 52:5 occurred 8:1

[occurring - petrophysical]

<p>occurring 20:8</p> <p>ocd 4:12 5:18 6:3,15 7:6 8:24 9:21 10:1 12:19 14:2,3 19:22 21:3 23:13,17,19 24:8 25:20,21 25:24 26:11 29:7 46:2 48:10,23 49:7 49:25 50:2</p> <p>ocd's 24:11 25:24 26:6 29:6 48:15,16 50:22</p> <p>ocds 26:2</p> <p>offer 37:13</p> <p>offered 20:17</p> <p>officer 53:2</p> <p>oh 35:2 45:17</p> <p>oil 1:1,8 3:12 3:13,24 5:10 14:20 15:3 16:20 17:3 31:12,13,20,22 33:4 39:1 48:11</p> <p>okay 11:13,20 19:2 20:20 21:18,19 28:20 29:10,16 39:9 39:23 41:22 43:11,15,18,22 44:6,22 45:1,4</p>	<p>45:12,15 46:3 46:4,8,10,16 47:1,12,18 48:3 50:11,14 51:7 52:3,3</p> <p>once 7:2 17:22 18:1 19:16,24 24:19 33:2 34:19</p> <p>online 5:2 36:9 46:13</p> <p>open 6:19 8:22 11:15,21 39:7 44:21</p> <p>opening 30:6 40:1,20</p> <p>openings 41:13</p> <p>opinion 10:12 19:12 24:13 44:16</p> <p>opinions 5:20 6:18 7:4,7,10 7:18,20 8:4,10 8:13,19 9:2,23 10:7,10 22:7 22:19,25 23:7 25:12 26:1 29:8</p> <p>opportunity 21:4 23:13</p> <p>oral 9:6</p> <p>order 7:24 10:3 10:22 24:22 26:12 32:11,25 38:15 39:25</p>	<p>40:9 49:13 51:18,22</p> <p>ordered 30:20</p> <p>ordering 29:6</p> <p>original 31:15</p> <p>outcome 53:15 54:12</p> <p>outside 20:24</p> <p>outstanding 30:17</p> <p>overwhelming 16:25</p>	<p>parse 8:12</p> <p>part 7:3,5 12:21 24:8 27:1 31:11,15 31:25 32:5 33:19</p> <p>particular 18:25 21:10,15 21:16 29:23 41:1 44:1 49:7 51:15 52:4</p> <p>parties 9:7 10:16 11:10 32:25 34:6,11 37:10 38:18 47:3 53:11,14 54:8,11</p> <p>party 12:13 17:14</p> <p>pass 29:22</p> <p>past 19:22 43:8</p> <p>patience 44:2</p> <p>pause 37:4</p> <p>pecos 47:10</p> <p>pending 4:7 30:4</p> <p>people 42:25</p> <p>perfectly 31:5</p> <p>periods 19:22</p> <p>permit 48:9</p> <p>personal 26:19</p> <p>personally 36:13</p> <p>petrophysical 31:20 33:3</p>
		p	
		<p>p 2:1,1 3:1</p> <p>pacific 7:15</p> <p>padilla 2:6 4:13 4:21,21 6:4,6 7:14 14:9,10 18:7 19:5 20:2 20:18 21:20 22:1 23:17 26:20 33:14,17 41:25 42:1,13 43:24 47:4</p> <p>padilla's 6:10 26:23</p> <p>page 23:9,12 36:24 41:7,12 41:19</p> <p>paid 16:15</p> <p>panel 2:8,9,10 2:11,12,13,14 2:15</p> <p>paper 17:7 20:13 37:23</p>	

[petrophysics - proposed]

<p>petrophysics 31:12</p> <p>pfas 42:23</p> <p>ph 5:12,21 6:8 6:8,13 7:8,19 8:3,9,16,25 9:22 15:16,17 16:20 17:1 19:5,15 20:2 21:2,5,22 22:19,24 23:14 23:20 25:17 29:6 39:2,6</p> <p>place 31:14,20 31:23 33:4</p> <p>plan 40:8 41:5</p> <p>planning 35:20</p> <p>plate 23:18</p> <p>platform 5:2</p> <p>play 12:15 21:12</p> <p>please 11:24 14:10 30:2 35:3 44:17</p> <p>point 5:8 6:12 7:23 8:3 9:17 15:14 16:16 23:5,25,25 24:6 25:2 26:18,22 27:4 27:17 33:24 39:14</p> <p>pointed 35:5</p> <p>points 14:11 44:1</p>	<p>portions 8:13</p> <p>position 7:16 25:20,24,25 26:2 27:18 34:11</p> <p>positions 43:1</p> <p>possible 18:21 26:8</p> <p>possibly 18:17 30:25</p> <p>post 10:6</p> <p>posture 25:4 27:18</p> <p>potentially 37:16 40:20</p> <p>practice 16:11 17:8 18:6 27:23</p> <p>practicing 26:24</p> <p>practitioners 13:13</p> <p>pre 5:14 18:13 18:14 19:21 30:5 32:24 37:10 38:15 39:25 40:9</p> <p>preparation 6:22 8:14,23</p> <p>prepare 26:9</p> <p>prepared 18:4 36:8 37:13 54:3</p> <p>prepares 43:9</p>	<p>present 4:12 42:7</p> <p>presented 14:3 31:10 32:2</p> <p>preservation 28:12,19</p> <p>preserve 10:22 25:6</p> <p>preserved 11:11</p> <p>preston 2:8 20:12 22:13</p> <p>preston's 20:15</p> <p>presumed 29:1</p> <p>pretrial 13:14</p> <p>pretty 5:24 9:7 22:1,3 27:7 34:19 39:3</p> <p>prevent 5:18</p> <p>previously 31:6</p> <p>prior 34:7 40:10 53:5</p> <p>privilege 10:17</p> <p>privileged 6:7 6:15</p> <p>privileges 5:18</p> <p>probably 5:7 8:5 10:12,15 19:10 24:6 37:12 38:10 42:11 46:6</p> <p>problem 24:5 42:16</p> <p>problems 10:2</p>	<p>procedural 10:3 39:21</p> <p>procedure 5:25 12:24 13:19 27:20 28:1 32:24</p> <p>proceed 36:15 45:5</p> <p>proceeding 14:18 41:4 52:8 54:4</p> <p>proceedings 17:13 53:3,4,6 53:8 54:6</p> <p>process 22:7 24:19</p> <p>produce 8:25 9:21 29:6 30:19</p> <p>produced 8:6 8:18 20:6</p> <p>producing 8:7</p> <p>product 6:16 6:23,25 7:18 8:14,20 21:25</p> <p>production 30:20</p> <p>prompts 19:17</p> <p>proof 35:13,15</p> <p>proper 5:17 8:11 17:19 21:3 23:13,20 32:17,20</p> <p>proposed 32:16</p>
---	--	---	---

[protected - reports]

protected 22:8 provide 13:9 provided 17:7 provision 6:20 12:20 public 3:19 53:19 purposes 28:19 31:6 32:19 40:7 pursuant 44:20 45:10 pursue 33:1,1 pushing 27:9 put 5:10 9:17 15:4 49:12 puts 26:2	quick 19:4 quickly 3:14 32:8 quite 36:15	reasonable 48:17 rebut 20:11 32:1 rebuttal 7:24 8:17 10:6,10 15:15 16:18,19 17:2 18:1 20:10,14 22:10 22:11,12,19,22 23:2,7 24:17 25:25 26:9 27:3 29:3 30:23 31:7,17 31:24 32:13,16 32:21 33:2,10 34:18 35:8 recently 40:5 recognizing 12:6 recommend 8:24 29:5 recommenda... 8:21 reconvene 10:5 24:22 37:5 44:4,19 47:2 reconvened 25:18 record 10:16 10:17,21 11:10 11:14 25:1,6 28:19 44:5,7 48:4 50:18 53:9 54:5	recorded 53:6 recording 53:8 54:4 reduced 53:6 refuted 31:21 regarding 39:6 49:2 regards 19:14 regulations 38:3 reinstated 48:20 reiterate 50:1 reiterated 12:21 49:19 related 22:19 53:11 54:7 relating 35:11 relative 53:13 54:10 relevant 19:11 reliance 12:23 relied 12:19 relief 24:5,11 24:25 25:8 28:16 reply 32:10 35:7 report 13:12 reported 1:20 reporter 3:5 47:14,23,25 48:1 reports 7:25 29:3
q	r 2:1 3:1 racatos 1:7 2:13 3:5,11 36:7 37:9 raise 18:12,15 32:18 33:11 38:12,16 raised 23:17 30:24 33:5 rankin 2:14 4:14,15 16:1,2 18:8,9 19:1 29:24 30:1 33:18,24 34:16 35:7 36:18,20 37:21 38:20 read 37:5 ready 8:8 30:11 36:13,22,24 39:15 43:21 real 3:14 realistic 26:12 really 10:9 14:23 17:6 18:10 19:6 21:1 23:4 reams 27:14 reason 5:9 17:20		

[represent - set]

represent 16:19 17:3 22:12 reprieve 28:10 request 29:7 30:17 49:12 requested 24:6 require 9:21 required 30:19 31:10 32:4 requirements 13:12 requires 12:10 resolution 39:1 resolve 5:15 resolved 32:14 33:9 38:17 respect 35:18 39:24 respectfully 34:16 respond 20:21 35:1 responded 32:9 response 6:4,10 12:6 15:15 30:11 33:21 35:5,21 result 10:5 returned 27:15 review 25:7 27:19 32:4 36:21 37:4 reviewed 6:3	reviewing 10:23 27:19 rhetorical 26:25 right 5:3 15:1 21:7 28:2 36:9 36:14 41:17 50:20 ripe 35:10 robert 39:2 roll 3:14 29:17 45:16,17 51:8 51:9 romero 13:20 13:21,24 room 45:25 46:2 47:5,8,9 round 3:10 rubin 2:17 5:1 5:2,3,5 9:17,19 16:6 17:11 28:4,6,8,21,22 29:11 30:13 35:4,9,17 36:14 37:6,7 38:21,22 39:4 39:7 43:15,16 44:14,15,18,23 45:6,7,16,23 46:3,5,10,13,17 46:20,24,25 47:6,11,12,16 47:20,22 48:1 rubin's 10:14 12:7 38:7	rule 5:25 6:17 6:20 7:5 12:7,8 12:11 13:7,11 13:16,17,18,20 13:22,22,25 16:9 17:11 25:22 rulemaking 42:23 rules 5:25 12:23 13:8 14:3 17:16 21:7 27:20,24 27:24 28:1 run 12:17 35:21	scope 20:24 35:14 44:11 scrutiny 14:17 second 4:4 28:7 29:15 30:22 45:14 51:1,5,6 secretary 3:3 3:21 section 45:10 48:15 50:23 sectors 27:6 see 6:9 7:1 9:5 9:6,18 13:13 25:9 26:1 33:2 34:8,8 35:25 42:16 48:14 seek 6:15 seeking 7:7 30:9 seeks 33:23 seem 13:23 seemed 25:21 seems 9:6 seep 20:5 send 46:9,11 separate 13:22 30:12 serve 34:5 served 38:10 session 44:20 44:25 45:3,5,9 46:23 47:23 48:2 set 4:7 39:17 42:23 48:7
		s	
		s 2:1 3:1 17:1 22:19 safe 21:12 saint 1:14 sake 11:22 san 16:23 19:10 19:18,24 20:6 sanctioned 16:13 santa 1:15 saturation 31:13 saying 8:19 19:5 51:2 says 7:2 scheduling 7:24	

shaheen 2:7 4:23,23 35:1,2 35:4,24 share 11:25 sharon 2:7 4:23 15:12 17:23 shed 33:17 sheila 2:10 4:17 47:17,20 shield 8:19 short 43:1 showing 16:22 side 9:13 21:12 43:14 signature 49:15 53:17 54:14 significant 19:13 similar 42:23 simply 38:16 sir 46:20 sit 47:10 six 46:19,19 skills 53:10 54:6 sole 22:23 somewhat 28:18 soon 26:8 30:25 47:11 sorry 13:21 21:5 35:2 43:16 sort 8:6 22:17 32:21	sorted 34:17 sorts 34:19 sought 24:12 31:16 south 1:14 southwest 49:9 49:10 51:3 speak 23:24 36:23 39:14 speaking 6:17 24:16 special 1:2 3:23 52:5 specific 38:23 specifically 14:3 21:23 spill 40:20 spilling 40:14 spoken 12:7 squeeze 26:17 stand 7:15 9:4 stands 29:5 start 3:8,9 12:1 19:16,25 40:24 41:15 44:3 started 5:1 state 1:1 9:19 10:1 12:24,25 13:13,17,17,18 14:13 27:20,24 28:1 53:20 stated 3:23 32:22 49:25 statements 40:1,20	states 16:10 39:25 40:5 statute 13:4 stay 40:12 49:3 stays 50:4 step 5:2 storey 54:2,15 straight 43:6 strictly 15:18 20:15 27:21 strike 30:22 31:2 34:15 35:8 37:12 38:8 striketrough 48:18,23 49:2 49:4 stringency 12:11 struck 49:19,23 50:9,10 structure 26:5 studies 15:18 study 16:22 20:10,13 stuff 7:11 subject 9:3,24 29:9 31:9,10 submission 38:11 submit 18:1,4 22:11,21 submits 39:11 submitted 17:8 36:19 39:13	42:5 50:2 submitting 32:12 substantial 17:14 succinct 39:3 suggest 18:5 49:22 suggests 16:14 sum 10:24 summary 14:25 15:3 42:7 43:1 support 14:5 17:14 35:8 supports 24:3 suppose 17:6 34:11 sure 20:2 21:17 23:8 24:25 26:7 36:15 41:4,12 42:19 43:18 44:18 51:18 surprise 25:23 sworn 53:5
			t
			table 19:15 39:10 tackle 39:16 42:15 43:22 take 17:20 24:21 37:17 44:2 taken 10:11 48:6 49:4 53:3

[taken - trust]

<p>53:12 54:9</p> <p>talk 19:9 47:16</p> <p>talked 15:12</p> <p>19:7,22 20:7</p> <p>talking 14:8</p> <p>19:16,25 21:1</p> <p>target 31:13</p> <p>teams 46:11</p> <p>technology</p> <p>36:11</p> <p>ten 44:2</p> <p>tend 43:21</p> <p>terms 38:10</p> <p>test 17:13</p> <p>testified 20:3</p> <p>testify 9:3 23:1</p> <p>testifying 5:12</p> <p>5:20 6:18 7:4</p> <p>7:17,22 21:2</p> <p>53:5</p> <p>testimony 5:11</p> <p>7:25 15:15</p> <p>16:18,19 17:2</p> <p>18:1 19:6 20:3</p> <p>20:10,12,14,15</p> <p>20:17 22:10,11</p> <p>22:12,22 31:9</p> <p>31:11,16,18,24</p> <p>32:13,16,21,22</p> <p>32:25 33:2,10</p> <p>35:9 38:11</p> <p>39:2 42:6,8</p> <p>43:1</p> <p>testing 3:8</p>	<p>text 46:9</p> <p>thank 3:4,17,22</p> <p>4:5,19,25 5:5</p> <p>14:6,7 18:6,7,9</p> <p>19:2 20:1</p> <p>21:20 23:23</p> <p>24:4 28:2,20</p> <p>28:22 29:10</p> <p>30:1 34:23</p> <p>35:4,24 37:7</p> <p>37:21 38:20</p> <p>39:11 41:3,8,9</p> <p>41:22 43:24,25</p> <p>44:1,3 45:7</p> <p>46:25 47:1,12</p> <p>47:19 48:3</p> <p>50:18 51:23</p> <p>52:1,6</p> <p>theirs 26:9</p> <p>thereof 14:5</p> <p>thing 51:20</p> <p>things 4:16</p> <p>15:5 25:5</p> <p>33:19 38:10</p> <p>43:6,7</p> <p>think 3:6 5:24</p> <p>6:5,14 10:15</p> <p>10:18,21,24,25</p> <p>11:10,14 17:16</p> <p>17:18,25 18:14</p> <p>18:16,19 20:10</p> <p>20:24 21:7,12</p> <p>22:1,8,17 23:4</p> <p>23:9,11,12,14</p> <p>25:3 27:16,23</p>	<p>28:15 33:17</p> <p>34:4 35:6</p> <p>36:22,23 37:8</p> <p>37:15,24 38:2</p> <p>38:9,13 39:9</p> <p>39:12,14 40:12</p> <p>40:13,16,17,22</p> <p>40:23 41:6,11</p> <p>42:8,14 43:7</p> <p>thinking 22:7</p> <p>thoughts 12:4</p> <p>three 45:23</p> <p>46:21 47:7</p> <p>50:3,4,20</p> <p>throw 42:9</p> <p>thursday 40:13</p> <p>40:19 41:13</p> <p>time 3:15 9:14</p> <p>11:3 14:24,24</p> <p>22:4,20 24:21</p> <p>26:1 27:8 33:1</p> <p>36:2 37:4,4</p> <p>39:17 40:10</p> <p>42:6 43:5</p> <p>timeline 13:14</p> <p>timely 9:1,22</p> <p>29:7</p> <p>timing 24:10</p> <p>28:16,17 38:9</p> <p>tmw 48:22 49:2</p> <p>49:6,9,9,10</p> <p>50:8,25 51:2,3</p> <p>today 3:24 4:6</p> <p>5:17 10:5</p> <p>16:19 18:13</p>	<p>35:10,16,20,23</p> <p>38:23 39:8,17</p> <p>43:22 44:7</p> <p>today's 30:17</p> <p>39:3</p> <p>took 25:20</p> <p>top 16:9 19:10</p> <p>topic 11:22</p> <p>topics 37:16</p> <p>totality 10:13</p> <p>totally 25:10</p> <p>37:22</p> <p>touching 27:17</p> <p>towards 11:1</p> <p>43:21</p> <p>track 37:20</p> <p>38:22 40:16,24</p> <p>traditional</p> <p>24:17</p> <p>trained 25:6</p> <p>transcriber</p> <p>54:1</p> <p>transcript 54:3</p> <p>54:5</p> <p>transcriptionist</p> <p>53:7</p> <p>transfer 5:3</p> <p>treading 42:20</p> <p>tremaine 2:15</p> <p>51:15,16,23</p> <p>trial 6:22 8:14</p> <p>tribunal 11:1</p> <p>true 53:9 54:5</p> <p>trust 40:11</p>
--	---	--	---

[try - zone]

try 23:18 33:6 38:17 trying 16:15 38:22 40:7 turn 14:8 27:14 48:15 turning 22:9 turns 25:17 twice 26:23 two 13:15 18:11,17 30:4 31:3,5,8 33:12 50:12,15,16,20 50:23 type 14:17 types 34:17 typewriting 53:7 typically 14:20	41:3 unfinished 21:25 united 12:12 upper 19:19 upstairs 46:2 47:11 use 6:2 useless 28:18 34:1 usual 9:8 usually 10:8 13:13 34:19	46:8 51:18 wanted 5:1 12:3 22:16 23:8 25:19 29:25 35:25 41:4 50:18 wanting 10:1 49:8 waters 20:6 way 10:4,9 11:11 15:4 17:11 26:12,20 43:19,20 we've 10:3 14:24 15:23 42:1,5 43:7 week 8:1 39:13 weekend 11:7 weird 4:16 welcome 31:5 wendell 1:13 whatever's 7:2 wide 37:25 william 2:3 3:3 3:20 willing 25:9 windmill 48:22 48:25 51:1 wishes 44:19 witness 12:18 26:14 39:2,6 42:3 53:4 witnesses 12:14 14:24 15:6 26:9 27:8	30:23 31:4,5,8 40:8,23 41:15 wondering 37:2 words 42:4 work 6:15,23 6:25 7:18 8:14 8:20 21:25 36:12 44:11 worked 4:18 working 4:17 14:25 works 6:21 worth 26:16,17 would've 8:11 10:10,11 32:1 wrap 18:22 written 32:13 wrote 27:15
u	v		y
ultimately 12:8 22:9 unavailability 14:24 under 6:17,22 8:12 44:21 understand 23:12 30:16 37:22 39:15 41:21 understanding 8:7 22:3 24:7 28:13 47:6 understood 28:11 40:17	value 24:11 variety 37:25 verbiage 51:24 versus 8:13 videoconfere... 2:17 view 17:20 24:11 virtual 10:19 virtually 5:6 vote 45:16,17		yeah 3:9 28:5 37:8 47:7 years 14:12 15:5,20 16:11 yesterday 15:13 16:1 32:10
	w		z
	wait 5:22 33:9 want 7:23 18:14 19:25 21:10,17 26:17 27:2 28:18 37:22 38:12 40:11 42:19 44:24 45:23,24		zero 46:18 zone 31:13