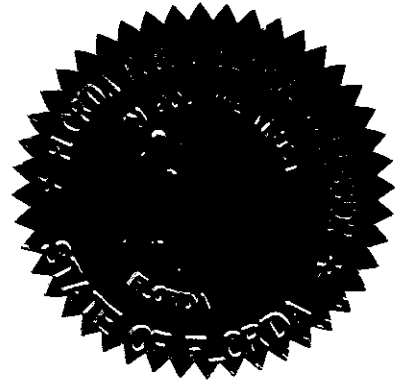


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
Proposed amendments to Rule :
25-6.1351, F.A.C., Cost Allocation: :
and Affiliate Transactions; :
Rule 25-6.135, F.A.C., Annual :
Reports; and Rule 25-6.0436, :
F.A.C., Depreciation :

DOCKET NO. 980643-EI



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* *****

PROCEEDINGS: WORKSHOP
CONDUCTED BY: MARY ANNE HELTON
DATE: Tuesday, August 24, 1999
TIME: Commenced at 10:00 a.m.
Concluded at 1:55 p.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: H. RUTHE POTAMI, CSR, RPR
KIMBERLY K. BERENS, CSR, RPR

1 **IN ATTENDANCE:**2 **WARREN R. MOHRFELD**, Florida Association of
3 Air Conditioning Contractors (FACCA).4 **CHARLES VAUGHN**, Florida Association of
5 Plumbing, Heating and Cooling Contractors (FAPHCC).6 **CHARLES GUYTON** and **DON BABKA**, Florida Power
7 & Light Company.8 **JAVIER PORTUONDO** and **JIM MCGEE**, Florida
9 Power Corporation.10 **JOE McCORMICK**, TECO Energy Corporation.11 **MARK LAUX**, Tampa Electric Company.12 **DARRYL TROY**, Florida Public Utilities
13 Company.14 **KIM McDANIEL** and **RICHARD McMILLAN**, Gulf
15 Power Company.16 **KEANE BISMARCK**, Refrigeration and Air
17 Conditioning Contractors Association (RACCA).18 **WILLIAM BARNES**, Gulf Coast Air Conditioning
19 Contractors Association (GACCA).20 **VICKI GORDON KAUFMAN**, Florida Industrial
21 Power Users Group (FIPUG).22 **RICK WATSON**, FAPHCC and FACCA.

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1 IN ATTENDANCE CONTINUED:

2 TIM DEVLIN, ANN CAUSSEAU, CRAIG HEWITT,
3 DALE MAILHOT, SAM MERTA, JAY REVELL, LEE ROMIG, BETH
4 SALAK, and RICK WRIGHT, FPSC Division of Auditing &
5 Financial Analysis.

6 MARY ANNE HELTON, FPSC, Division of Appeals.

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P R O C E E D I N G S

(Workshop convened at 10:00 a.m.)

MS. HELTON: I think we're ready to get started.

Pursuant to notice published in the July 16, 1999 edition of the Florida Administrative Weekly, this workshop was noticed in Docket 980643 for today. The purpose of the workshop is more fully set out in the notice.

Tim Devlin is going to be running the workshop, but he's been pulled off momentarily, so he's going to be coming in late. So until then, I'm going to try to get things started. I hope that you all can understand me. I had a sore throat this morning, so I feel like I'm not talking that clearly.

First off, I see that nobody has volunteered to come up to the microphone, and that's the exact opposite of what we want to happen this morning; if we could have at least somebody come from each entity that's here so that we can talk on the microphone. We're having this transcribed and the court reporter can't transcribe it if we don't talk in the microphone. There's also mikes over there next to the court reporter. You're welcome to use those.

I'd like to start this morning off by having

1 everybody introduce themselves; if you would say your
2 name and who you're here representing and give your
3 business address so that we can have that in the
4 record. And also, too, because I recognize some of
5 you here, but I don't recognize -- actually, I don't
6 recognize quite a few of you.

7 My name is Mary Anne Helton. I'm an
8 attorney here on the Staff of the Florida Public
9 Service Commission. And we'll just go around this
10 way.

11 **MR. REVELL:** I'm Jay Revell, and I'm a
12 member of the Electric and Gas Accounting Staff.

13 **MS. SALAK:** I'm Beth Salak. I'm with the
14 Division of Auditing and Financial Analysis.

15 **MR. MAILHOT:** I'm Dale Mailhot. I'm with
16 the Division of Auditing and Financial Analysis.

17 **MR. BARNES:** I'm William Barnes. I'm with
18 GACCA. My business address is 1905 North Tamiami
19 Trail, North Fort Myers, 33903.

20 **MS. SALAK:** I'm sorry. What is GACCA?

21 **MR. BARNES:** It's Gulf Coast Air
22 Conditioning Contractors Association.

23 **MS. SALAK:** Thank you.

24 **MR. BISMARCK:** My name is Keane Bismarck.
25 I'm executive director with RACCA, which stands for

1 the Refrigeration Air Conditioning Contractors
2 Association, located in Tampa, Florida. The address
3 is 1210 North Clearview Avenue, Tampa.

4 I'm also representing the Florida Alliance
5 for Fair Competition group.

6 **MR. McMILLAN:** Richard McMillan with Gulf
7 Power.

8 **MS. McDANIEL:** Kim McDaniel with Gulf Power.

9 **MR. TROY:** Darryl Troy, Florida Public
10 Utilities.

11 **MR. LAUX:** Mark Laux, Tampa Electric
12 Company, 101 North Monroe Street, Tallahassee,
13 Florida.

14 **MR. McCORMICK:** Joe McCormick, TECO Energy,
15 P.O. Box 111, Tampa, Florida 33601.

16 **MR. PORTUONDO:** Javier Portuondo, Florida
17 Power Corporation, P.O. Box 14042, St. Petersburg,
18 Florida.

19 **MR. BABKA:** Don Babka, Florida Power & Light
20 Company, 9250 West Flagler Street, Miami, Florida.

21 **MR. GUYTON:** Charles Guyton with the law
22 firm of Steel Hector & Davis, 215 South Monroe Street,
23 Suite 601, Tallahassee, Florida 32301, appearing on
24 behalf of Florida Power & Light.

25 **MR. VAUGHN:** Chuck Vaughn. I'm with the

1 Florida Association of Plumbing, Heating & Cooling
2 Contractors. Address you can use to reach me, 23061-C
3 Bayshore Road, Charlotte Harbor, Florida 33980.

4 **MR. MOHRFELD:** My name is Warren Mohrfeld.
5 I'm with the Florida Association of Air Conditioning
6 Contractors. Our corporate headquarters is in
7 Orlando, Florida, at P.O. Box 180458, Casselberry,
8 Florida 32718.

9 **MR. HEWITT:** Craig Hewitt, Commission Staff.

10 **MS. MERTA:** Sam Merta, Division of Auditing
11 and Financial Analysis.

12 **MR. ROMIG:** Lee Romig, Division of Auditing
13 and Financial Analysis.

14 **MR. WRIGHT:** Rick Wright, Division of
15 Auditing and Financial Analysis.

16 **MS. CAUSSEAU:** Ann Causseaux, Division of
17 Auditing and Financial Analysis.

18 **MS. KAUFMAN:** Vicki Gordon Kaufman of the
19 McWhirter Reeves Law Firm, Florida Industrial Power
20 Users Group.

21 **MS. HELTON:** And I see that there are some
22 more people in the audience that did not identify
23 themselves. Are you all not going to be talking
24 today? Are you all just here to observe?

25 **UNIDENTIFIED SPEAKER:** I don't believe that,

1 Jim.

2 **MR. MCGEE:** Jim McGee with Florida Power;
3 same address as Javier.

4 **MR. WATSON:** Rick Watson, legislative
5 counsel for the Florida Association of Plumbing,
6 Heating & Cooling Contractors and for the Florida
7 Association -- Air Conditioning Contractors
8 Association.

9 **MS. HELTON:** They've supposedly fixed these
10 mikes where if the light is green, you can talk, and
11 when it's red, then you won't broadcast, which means
12 that chances are we won't hear you and the court
13 reporter definitely won't hear you.

14 We're also sending around a sign-up sheet
15 where you could -- if you'd put your name and your
16 affiliation and your phone number; and if the members
17 of the audience who didn't identify themselves would
18 do that, too, just so we can have a record for our
19 file of who was here today.

20 We're here to discuss Rule 25-6.1351. Staff
21 published some pretty substantial changes to the rule
22 that was on the books, and we asked everybody in the
23 notice of the rule development to comment -- or make
24 some pre-workshop comments on the rule. And three of
25 the utilities did that, and copies of those comments

1 are over there on the little sidebar area there.

2 Staff met and looked over the comments and
3 we were able to identify some changes that we felt
4 comfortable making based on those comments, and those
5 changes are shaded or red-lined in the version of the
6 rule that's attached to that packet, and which I think
7 was faxed to -- or most of you have already received.

8 What we hope to do today is to -- we went
9 through and identified those areas where it seemed
10 that the utilities and Staff were in disagreement, and
11 we've highlighted those on the agenda. And what we'd
12 like to do is go through and take up each subject as
13 it comes up in the rule and have one discussion on
14 each subject instead of having each utility have its
15 say. I think it maybe will hopefully make it a little
16 bit more efficient and a little bit more productive if
17 we can do it that way.

18 Before we get started, however, do any of
19 you all have anything that you do wish to say before
20 we start going through the first rule?

21 **UNIDENTIFIED SPEAKER:** We've reviewed the
22 proposed rules.

23 **THE COURT REPORTER:** Could you all identify
24 yourselves please; if you could, each time you speak
25 say your names. I'm sorry to interrupt.

1 **MR. MOHRFELD:** My name, again, is Warren
2 Mohrfeld, and I'm with the Florida Air Conditioning
3 Contractors Association, and we have 12 affiliated
4 chapters all over the state of Florida of air
5 conditioning contractors.

6 We've reviewed the proposed rules, and have
7 several observations. These rules are limited to cost
8 accounting procedures. As such, they're generally
9 fine, but they're -- but will there be other rules to
10 cover other aspects of the affiliated transactions?

11 Obviously we're concerned about
12 cross-subsidization, cost shifting, and discriminatory
13 self-dealing as well. In terms of these rules, will
14 cross-subsidization be defined, and how are complaints
15 going to be handled? What are the penalties for
16 disregarding the rules?

17 As for specific rules, a loophole is created
18 under the exception in (3) (b): "Except, a utility may
19 charge an affiliate less than fully allocated costs if
20 the charge is above incremental cost and equivalent to
21 marketplaces."

22 Another loophole is created in (4) (c):
23 "Except, a utility may distribute indirect costs on an
24 incremental or market basis if the utility can
25 demonstrate that its ratepayers will benefit."

1 Noted economists have found that ratepayers
2 do benefit when they only charge incremental costs.
3 Utilities can't afford to charge incremental costs
4 because of cross-subsidized -- their unregulated
5 utilities. Contractors and small business in the
6 market are undercut. After the market is captured,
7 competition is decreased and prices will be raised.

8 These rules appear to be part of a
9 developing pattern that focuses on commodities and
10 sometimes excludes nontariffed services. These
11 services would be covered. The market price for
12 services could be below the fully allocated costs.
13 For example, if an affiliate develops a new product or
14 software program, the utility pays for the development
15 costs, but the affiliate receives the potential
16 profit.

17 Thank you for the opportunity to share our
18 concerns.

19 **MR. VAUGHN:** Good morning. My name is Chuck
20 Vaughn. I'm with the Florida Association of Plumbing,
21 Heating & Cooling Contractors.

22 I have here a letter that was written on
23 August 20th by our president, our state president,
24 Rick Rickenbacker (phonetic), to Mr. Garcia, and I'd
25 like to read this into the record, if I may, and then

1 present this Commission with this letter.

2 It goes: "I am writing you as president of
3 the Florida PHCC. Our national association is a
4 member of a coalition of 10 trade associations
5 representing 35,000 small businesses throughout the
6 United States. The National Alliance for Fair
7 Commission was formed to educate decision makers about
8 the effect deregulation of utilities could have on
9 small businesses."

10 "Our members include the Air Conditioning
11 Contractors of America, Air Conditioning and
12 Refrigeration Wholesalers Association, the American
13 Supply Association, Associated Builders and
14 Contractors, the Independent Electrical Contractors,
15 the Petroleum Marketers Association of America, the
16 Mechanical Contractors Association of America, the
17 National Association of Plumbing, Heating & Cooling
18 Contractors, the National Electric Contractors
19 Association, and the Sheet Metal and Air Conditioning
20 Contractors National Association."

21 "The attached is a copy of testimony given
22 in July of 1998 to the United States House of
23 Representatives' Small Business Subcommittee on
24 Regulatory Reform and Paperwork Reduction. It covers
25 the full range of issues in deregulation from cost

1 allocation to cross-subsidization."

2 "Since your rules deal with cost allocation,
3 I refer you to Pages 8 through 10 of the testimony.
4 Any cost allocation adopted by the Florida Public
5 Service Commission should include the following
6 principles: First; a fully distributed cost
7 allocation methodology. Second; asymmetric pricing
8 for the transfer of assets. Third; full costing of
9 services including direct and indirect costs for
10 services provided by the utility to the subsidiary.
11 And, fourth; the fair market value of services which
12 could reasonably be marketed by the utility to be
13 allocated as input at cost to the subsidiary for
14 services received from the utility."

15 "The deregulation of utilities is an
16 important issue for our industry. We look forward to
17 working with you as this concept develops in Florida."

18 This is signed "Sincerely, Rick
19 Rickenbacker" (phonetic), and he is president of our
20 association.

21 **MS. HELTON:** And have these been filed in
22 the clerk's office?

23 **MR. VAUGHN:** Probably not.

24 **MS. HELTON:** Okay.

25 **MR. VAUGHN:** (Handing documents to

1 Ms. Helton.)

2 **MS. HELTON:** Tim Devlin is with us now, so
3 I'm going to turn over the floor to him.

4 **MR. DEVLIN:** Good morning. I'm sorry I'm
5 late. I didn't catch the prelude from Mary Anne, but
6 I assume we've had introductions and we're just going
7 around getting some initial comments, and so I guess
8 I'll just keep with that trend.

9 And I suppose you're next? No comments?
10 Florida Power & Light? Power Corp? Joe, Mark, right
11 on down the line?

12 **MR. BISMARCK:** Yes. Keane Bismarck with
13 RACCA. I'll go ahead, I guess, and make my comments
14 at this point. I also have something for the
15 committee to be put on the record.

16 And I won't go through all of this stuff; I
17 won't take up a lot of your time. But included in our
18 packet is a report that our Alliance on Fair
19 Competition put together probably about two and a half
20 years ago as we began this effort.

21 I think it's clear from a House report which
22 was issued last year, and is also included in this
23 packet, that the utilities would have you believe that
24 we are concerned about holding our own ground about
25 preventing them from getting into the air conditioning

1 or electrical industry businesses and perhaps other
2 businesses as well.

3 That is not the case. That is not what the
4 industry has sought. The industry has merely sought a
5 fair playing field in which there would not be
6 cross-subsidization, predatory pricing and things of
7 that nature.

8 In this report -- or in this packet that I'm
9 going to give to the committee, or to the workshop
10 staff -- is also a report done in 1998 for the Air
11 Conditioning Contractors of America by Spectrums
12 Economics (phonetic), which is chaired by Richard C.
13 Carlson, who has also done some work in the past on
14 economic impact studies for the utilities themselves.
15 And the report is quite an eye-opener as to utilities
16 actually getting into our business on a
17 cross-subsidized basis and what it would -- the kind
18 of harm that it would have in our industry.

19 Also included in the packet is the House
20 report by the Honorable Mark Ogles on electric utility
21 entry into the appliance warranty and repair business.
22 As a result of that report, myself, on behalf of the
23 alliance, wrote a rebuttal, if you will. That is also
24 attached.

25 One of the things that came out of that

1 report was that the utilities basically passed off the
2 entire hearing or workshop that Ogles' committee had
3 on the basis that they would never do anything in the
4 way of cross-subsidizing, that they believed in fair
5 play; they wouldn't utilize their resources, manpower,
6 assets in order to implement and run these kind of
7 programs. And I have a really thick sheet of things
8 that we've collected over the past several years from
9 basically all of the four major investor-owned
10 utilities in the state that suggest otherwise.

11 There has been a lot of marketing, a lot of
12 the focus group planning, a lot of -- in fact, some
13 plans, Florida Power, for instance, has a home wiring
14 insurance plan now. They did -- I'm not sure what the
15 status was -- but they did start an air conditioning
16 planned maintenance program sometime ago. The
17 utilities have been involved in ventures outside of
18 the regulated activities for some time.

19 My question, both representing my industry
20 and as a ratepayer for Florida Power, because I was
21 offended when I saw the home wiring thing at \$2.95 a
22 month, I'd like to know whether the utilities have any
23 competition out there to sell these kind of warranties
24 and what sort of market value is it for that warranty.
25 Is that \$2.95 being subsidized by me as a ratepayer

1 and I'm not even interested in taking out the
2 warranty, and will its continued existence be financed
3 by me as a rate payer, and how much has been spent on
4 all of these programs and marketing focus groups,
5 implementation, administration, and eventually the
6 actual maintenance of those plans going to be
7 subsidized by the ratepayer?

8 I highly doubt that the investors in these
9 utilities have agreed to allow some of their dividends
10 to go back into the planning and the strategic
11 implementation of these kind of programs. So, you
12 know, when we talk about cross-subsidization, in my
13 mind it's already out there and it's already been out
14 there for years; and I doubt very seriously that there
15 has been some sort of an auditing process that can
16 discover that.

17 And, finally, included in the package is a
18 personal letter I wrote to Jack Shreve concerning this
19 very issue on this home wiring insurance plan that I
20 was sent in the mail.

21 You see, when they talk about assets, they
22 don't talk about other things, and your rules don't
23 talk about other things. I mean, do the assets --
24 when we talk about direct costs and allocations, are
25 we talking about payroll of regulated side employees,

1 all the benefits and insurances? Are we talking about
2 the buildings and vehicles that they drive? Are we
3 talking about the corporate attorneys and the
4 marketing people in these utilities that are involved
5 in these ventures? What about the mailings and the
6 logo recognition? All of these are assets.

7 And, you know, one utility guy in the House
8 report said, well, Sears Roebuck and Company, they're
9 entitled to their assets and their name recognition,
10 why shouldn't we be, as any big corporation. Well,
11 the fact of the matter is Sears Roebuck had to stand
12 or drop based on its reputation on its ability to do
13 business. It was not protected as a monopoly.

14 So as far as we're concerned, the ratepayers
15 own that recognition and that status and that logo,
16 not the utility company. But I'll bring this forward
17 and give it to the committee. We did not have time to
18 present this stuff in "prestuff". (Handing documents
19 to Mr. Devlin.)

20 **MR. DEVLIN:** Thank you, Mr. Bismarck.

21 Sir, no comments?

22 Vicki, do you have any comments?

23 **MS. KAUFMAN:** Thank you. Vicki Gordon
24 Kaufman, the Florida Industrial Power Users Group.

25 We applaud the Staff for some of the changes

1 that they want to make to these cost allocation rules.
2 We'll have some specific comments as we go through.
3 We don't think that they go far enough.

4 FIPUG's position before the Commission has
5 been for a long time that we're very concerned about
6 the subsidies that we see between the regulated
7 entities and the unregulated entities, particularly on
8 the purchase and sale of fuel.

9 So we applaud you, but we think you need to
10 go further; and we'll have some specific comments.

11 **MR. DEVLIN:** Okay. Thank you, Vicki. I
12 guess probably what we should do -- we have a lot of
13 interested folks here, and probably the best way to
14 keep this organized is to go rule by rule or section
15 by section and just go around the table a little bit
16 and have initial comments and maybe a little bit of
17 dialogue and perhaps rebuttal and the group here,
18 would consider, you know, whether we think changes are
19 necessary.

20 So let's just start off -- we'll go left to
21 right, I suppose. You've got your package; Page 1,
22 the purpose. And I assume Mary Anne mentioned that
23 Staff has taken into consideration the comments that
24 were filed, and some changes were made and they are
25 highlighted here in reaction to comments that were

1 filed from, I think, three investor-owned utilities.
2 So why don't we just do that, just sort of keep this
3 on track. We'll just go paragraph by paragraph around
4 the room.

5 Purpose, Number (1); any comments,
6 suggestions? Here we did make a change in response to
7 some comments, I think, that came from TECO.

8 **UNIDENTIFIED SPEAKER:** If there's no
9 others --

10 **MR. DEVLIN:** Go ahead, Joe.

11 **MR. McCORMICK:** I'd like to clarify on the
12 purpose itself. The first paragraph says the purpose
13 is to establish cost allocation guidelines, but in
14 Section (3) states the purpose of the section is to
15 establish requirements; and that's not a guideline.

16 In Section (4), there's a lot of wording,
17 "utility accounting records must show," and (b) it
18 says "direct costs shall be assigned." So I think
19 there's a conflict again between guidelines and actual
20 directives and requirements, and I think the purpose
21 should clearly state the -- that is the established
22 requirements for cost allocation.

23 **MR. DEVLIN:** I tend to agree, if my comrades
24 would also agree. I think we're talking about
25 requirements and we're talking about rules and not

1 guidelines. So anybody have any thoughts on that? I
2 would suggest that we change the word "guidelines --

3 **MS. HELTON:** If we struck "guidelines" and
4 put "requirements" there instead, would that satisfy
5 you, Joe?

6 **MR. McCORMICK:** It wouldn't make me happy,
7 but I think it would make the rule more clear.

8 **MS. HELTON:** Well, for purposes of --

9 **MR. McCORMICK:** For purposes of the rule --

10 **UNIDENTIFIED SPEAKER:** Just for
11 clarification, all you've got to do is remove the word
12 "guidelines," if that's where you're going, because
13 then the sentence continues to read on correctly as
14 to --

15 **UNIDENTIFIED SPEAKER:** Well, I --

16 **UNIDENTIFIED SPEAKER:** -- as to how you
17 pertain -- as to how you're showing it.

18 **MS. HELTON:** Well, I'm always a fan of fewer
19 words.

20 **MR. DEVLIN:** I don't think we need the word.
21 We'll just strike the word "guidelines."

22 **UNIDENTIFIED SPEAKER:** We were somewhat
23 under the understanding, though, that these were
24 guidelines, and utilities would have an option or
25 ability to be able to present their case in front of

1 the Commission. As I see it right now, these are not
2 guidelines, these are absolutes; and you either have
3 to do that or you have to go for some type of a waiver
4 of these rules; is that correct?

5 **MR. DEVLIN:** That's my understanding.

6 **UNIDENTIFIED SPEAKER:** Okay.

7 **MR. GUYTON:** While I don't necessarily
8 endorse the change, I think if you're going to remove
9 the language, you probably ought to remove "guidelines
10 and reporting," so it just reads "cost allocation
11 requirements."

12 **MR. DEVLIN:** Well, I believe there are
13 reporting requirements embedded in the --

14 **MR. GUYTON:** I don't disagree with that. I
15 just think it fits within the scope of the language
16 where --

17 **MS. HELTON:** Yeah; I think Charlie is saying
18 there's also other requirements, too, and we're
19 just -- we're kind of bringing "reporting" out to give
20 it more attention than maybe it deserves.

21 **MR. GUYTON:** If you just drop "guidelines,
22 then the sentence needs to be restructured a little
23 bit. If you drop "guidelines and reporting," then I
24 think you cover everything that you want to cover.

25 **MS. SALAK:** I think that's true, but I think

1 one of the reasons that we decided to put "reporting"
2 in the first line was to actually make it easier for
3 companies to know, oh, something has to happen here.
4 I mean, not just a requirement; that there was
5 actually something you needed to do; just put you on
6 notice. And if you think that no one needs to be put
7 on notice, then we'll be fully aware.

8 **MS. HELTON:** I'm comfortable with those
9 changes.

10 **MR. DEVLIN:** Changes, being?

11 **MS. HELTON:** Striking "guidelines" and
12 "reporting" so it would be -- the first sentence would
13 read, "The purpose of this rule is to establish cost
14 allocation requirements to ensure proper accounting."

15 **MR. DEVLIN:** Okay. For now let's pass on
16 that. I don't have strong feelings, and we may
17 reconsider that, but at this juncture we'll strike
18 those three words.

19 Okay. Any other suggestions for the first
20 paragraph?

21 **MS. KAUFMAN:** Beth is looking at me.

22 Yes, of course FIPUG would take issue with
23 that last shaded sentence there as to why these
24 requirements would not apply to fuel and
25 transportation services. We think that they should,

1 and I'm not sure why you would have that exception in
2 there.

3 **MR. DEVLIN:** I guess it's because we have
4 other vehicles to deal with those particular issues;
5 the annual hearings.

6 **MS. KAUFMAN:** Well, I understand that the
7 transactions are reviewed in those hearings. However,
8 I would it would be helpful to have the same
9 guidelines -- or requirements, as we've now agreed --
10 apply to any kind of affiliate transaction, including
11 fuel transactions.

12 **MR. DEVLIN:** Any comments, suggestions on
13 that? I think there may be some conflict with what
14 happened in those proceedings, but I'm not an expert
15 in what goes on in those proceedings.

16 **MR. PORTUONDO:** This is Javier Portuondo
17 from Florida Power Corp. I think there are existing
18 orders that govern the cost allocation of fuel
19 purchases between the utility and its affiliates.

20 **MS. KAUFMAN:** I'm not aware of what you're
21 talking about, except maybe the cost plus orders. Is
22 that what you're referring to?

23 **MR. PORTUONDO:** Correct.

24 **MS. KAUFMAN:** And I'm not sure that these
25 would be in conflict with that. It seems likes if

1 you're going to have a rule regulating affiliate
2 transactions, it certainly ought to apply to fuel.

3 **UNIDENTIFIED SPEAKER:** Tampa Electric
4 believes it already has certain orders that --

5 (Court reporter asked for speaker
6 clarification.)

7 **MR. LAUX:** Mark Laux, Tampa Electric
8 Company. Tampa Electric Company also believes that it
9 has orders that directs how the costs flow between the
10 regulated company affiliates when it deals with fuel
11 and transportation costs.

12 **MR. DEVLIN:** Now, my understanding --
13 correct me if I'm wrong -- we don't have any rules per
14 se in the fuel clause --

15 **MS. KAUFMAN:** You're right; there are no
16 rules.

17 **MR. DEVLIN:** So that's all -- all
18 philosophies, policies are based on order?

19 **MS. KAUFMAN:** That's my understanding, and I
20 think that it would be very helpful to have rules that
21 apply to fuel and transportation transactions just the
22 way you're trying to do for the other transactions in
23 this rule.

24 **MR. GUYTON:** Of course you don't have rules
25 in fuel adjustment because the Commission has been

1 excepted from having to promulgate rules in fuel
2 adjustment under the APA. I mean, it's consistent
3 with what the Legislature intended.

4 **MS. KAUFMAN:** Well, it's true that you don't
5 have to have rules, but there's no prohibition. They
6 just have an exception from the rulemaking requirement
7 of the APA for the fuel adjustment proceedings.

8 **MR. DEVLIN:** What we'll do on this, Vicki,
9 is we'll check with our fuel section -- I don't think
10 they're represented here -- and see whether that would
11 be a good idea to actually promulgate rules in that
12 area. There may be a good reason for not having rules
13 in that area, and -- I don't know. I would have to
14 check with the E&G folks.

15 Okay. Any other comments on the first
16 paragraph?

17 **MR. VAUGHN:** Yes. Charles Vaughn, FAPHCC.

18 You might want to leave that part out with
19 regards to the fuel. If it is not the duty of the PSC
20 by some other rule or whatever, fine. If it ever
21 becomes -- if it ever comes under PSC regulation and
22 if this were here, then you would have to readdress
23 this instrument and take this out.

24 So what I'm suggesting is, is just leave it
25 out right now, and depending on how it's otherwise

1 addressed, you could later come back to it.

2 **MR. DEVLIN:** Thank you. I think what we're
3 going to do is check with E&G and determine whether
4 there's a conflict or not with orders and whether it
5 belongs there or not.

6 If we leave it out, you know, I think some
7 of the parties would argue that we'd be inviting a
8 conflict, and we just aren't sure what the answer is
9 at this juncture.

10 Any other comments? (No response)

11 Okay. Going down to "Definitions," I think
12 here's another instance where we responded to the
13 comments on defining "affiliate". Got away from that
14 5% threshold.

15 **MR. McCORMICK:** Thank you. On that issue,
16 Tampa Electric in its written comments would like to
17 just call attention back to the written comments in
18 which we question the use of the term "subsidize" and
19 proposed a varying definition for that.

20 **MR. DEVLIN:** You're down at the bottom of
21 Page 2?

22 **MR. McCORMICK:** We are --

23 **MR. DEVLIN:** Where are you at, Joe?

24 (Inaudible comments from unidentified
25 speaker away from microphone.)

1 **MR. DEVLIN:** I was kind of -- okay.

2 (Inaudible comments from unidentified
3 speaker away from microphone.)

4 **MR. DEVLIN:** Well, I was kind of -- walking
5 through sort of definition by definition, but let's do
6 it this way. Does anybody have any comments -- and
7 we'll get to your comment on subsidize -- to any of
8 the definitions that are listed on Page 1 or 2?

9 **MR. GUYTON:** This is Charles Guyton with
10 Florida Power & Light.

11 I guess we're struggling with the definition
12 of regulated and nonregulated. As those terms are
13 used later in the rules, it fairly clearly applies to
14 operations or activities that are subject to the
15 Commission's price and other regulatory jurisdiction;
16 but these jurisdiction -- these definitions tend to
17 focus on whether or not they are recognized in setting
18 rates, and we're puzzled by that distinction and that
19 focus.

20 As we look at the NARUC rules, they focus on
21 things that are actually within the jurisdiction of
22 the Commission, things that are regulated by the
23 Commission or not regulated. But here, instead, there
24 is a focus on whether they're recognized in setting
25 rates.

1 So we have some concern with that, not so
2 much that we think it's wrong; we think it's
3 confusing, but we don't really understand the focus,
4 and we don't understand why this focus is preferable
5 to talking about regulation in the sense that we would
6 normally talk about regulation. That is something
7 over which the Commission has price setting
8 jurisdiction.

9 And the other question that we had is that
10 there's language in here about whether something is
11 taken into account in determining fair, just and
12 reasonable rates, and we're not sure how that's going
13 to be applied. Does that mean in a utility's last
14 rate case? In any utility's last rate case? In a
15 stipulated settlement?

16 We're just not sure how that -- what the
17 Commission would look to to interpret that language,
18 and we're looking for some feedback from Staff. We
19 don't know that we disagree so much; we're just trying
20 to understand.

21 **MR. DEVLIN:** Of course we have that dilemma
22 now in our surveillance system, and judgments
23 sometimes have to be made to what goes above the line,
24 what goes below the line based on previous orders,
25 decisions in rate cases, et cetera; and I think --

1 and, you know, Dale, Beth or somebody correct me --
2 that's what we're trying to get at here.

3 Sometimes it goes beyond what is price
4 regulated, you know. I think -- and I don't have an
5 example right off the top of my head, but there could
6 be some components of the operations of the company
7 that would be considered in ratemaking, but not
8 necessarily prices set by the Commission.

9 Is that what we're trying to get at here,
10 Dale?

11 **MR. MAILHOT:** I think from one of our
12 earlier workshops that, you know, there was some
13 confusion over what the terms "regulated" and
14 "nonregulated" meant, and "above the line" and "below
15 the line;" and we're just trying to sort that out, to
16 a certain extent, as best we can based on what we
17 think these things mean.

18 **MR. BABKA:** Don Babka with Florida Power &
19 Light.

20 Could you move the definitions back to just
21 "above the line" and "below the line" and get rid of
22 the terms "regulated" and "nonregulated" altogether?
23 They probably aren't needed in this rule and --

24 **MR. MAILHOT:** Well --

25 **MR. BABKA:** -- (inaudible overlap) -- took

1 out what is above the line, it would be all those
2 activities that are included in setting base rate
3 revenues, I guess.

4 **MR. MAILHOT:** What I think is, is within the
5 rule I don't think we've used "above the line" and
6 "below the line" anymore. I think we've done away
7 with that and switched it to "regulated" and
8 "nonregulated". I think, you know, if you look
9 further in the rule --

10 **MR. BABKA:** Yeah, but the thing I'm thinking
11 that -- my thoughts are that the "above the line" and
12 "below the line" would better describe what we're
13 doing rather than "regulated."

14 I guess my concern is stuff like the rent of
15 utility property. The Commission doesn't regulate
16 what we rent it for. They include those rents,
17 though, when they set our base rate revenues. So it's
18 really above the line revenue; it's not really a
19 regulated revenue. And that's the distinction that
20 we're worried about is what's regulated and what
21 isn't. I think we're more above the line than below
22 the line on this rule.

23 **MS. SALAK:** Part of the reason we switched
24 to "regulated" and "nonregulated" as opposed to "above
25 the line and below -- above and below was because of

1 the previous workshops when, I think, Don, you came
2 and said, well, excuse me, this isn't how we look at
3 above and below the line, you know; and so you weren't
4 looking at it as regulated and nonregulated, but
5 rather some -- a place on your financial statement.
6 So we switched to "regulated" and "nonregulated"
7 trying to distinguish that in trying to -- I'm not
8 saying we have the best definitions, and if you want
9 to take a stab at definitions --

10 **MR. BABKA:** I'm thinking if we come up with
11 a good definition of above and below the line, and --
12 I think we might be better off, might be clearer as to
13 what we're doing.

14 **MS. SALAK:** So can you draft some language
15 that would --

16 **MR. BABKA:** That's --

17 **MS. SALAK:** Can you draft some definitions
18 that would --

19 **MR. BABKA:** I --

20 **MS. SALAK:** -- encompass your thoughts --

21 **MR. BABKA:** As long as you give me a couple
22 days.

23 **MR. DEVLIN:** Well, if I understand what
24 you're saying, Don, you'd just replace -- correct me
25 if I'm wrong -- the word "regulated" with "above the

1 line" and the definition may stand. You might want to
2 take a look at it. I don't know --

3 **MS. SALAK:** It sounded --

4 **MR. DEVLIN:** And "nonregulated" with "below
5 the line," and that definition would stand. Is that
6 what you're saying, and that's a better description --

7 **MR. BABKA:** Well, the distinction we're
8 trying to make is base rate revenues are regulated.
9 The Commission sets the tariffs that we charge those
10 for -- that are charged for base rate revenue. But
11 when it comes to the rent of utility property, the
12 Commission doesn't tell us what we rent that property
13 for. We rent for, you know, whatever we can get to
14 get the best deal. Then those revenues are included
15 in base rate revenues when we set base rate revenues,
16 but they aren't regulated, and that's --

17 **MR. DEVLIN:** I think it's semantics
18 because --

19 **MR. BABKA:** It really is the --

20 **MR. DEVLIN:** -- it's regulated in the sense
21 that it's considered in ratemaking, but then the
22 Commission --

23 **MR. BABKA:** You're absolutely right. This
24 is semantics around --

25 **MR. DEVLIN:** We'll work on the semantics. I

1 don't know if there's a better way of describing it,
2 but I think what we're -- Staff was trying to do here
3 is to encompass those situations that go beyond what
4 the Commission sets prices for; you know, operations
5 that are considered in the ratemaking process, the
6 distinction between above the line and below the line
7 and --

8 **MR. BABKA:** And I'm sure by Monday next week
9 we'll have some definitions of above and below the
10 line for you to take a look at, too.

11 **MR. DEVLIN:** That would be fine.

12 **MR. GUYTON:** As a follow-up to that, I guess
13 I have some questions about the extent to which the
14 Commission is concerned about matters that it doesn't
15 set prices for, but it may or may not recognize in
16 establishing rates.

17 What is it that the Commission needs to
18 regulate there in terms of affiliated transactions or
19 nonregulated transactions? That's -- and when I use
20 "nonregulated" I use it in a sense of whether the
21 Commission regulates it as to price as opposed to
22 whether or not the Commission captures it in the
23 ratemaking determination or revenue requirements.

24 What I'm struggling with is why is the
25 Commission -- what is the Commission's concern about

1 the nonregulated activities other than
2 cross-subsidization? Say, for instance -- well, I'm
3 jumping ahead, but I -- you have a requirement of
4 competitively bidding certain transactions with an
5 affiliate. If that's not a matter that's related to
6 the delivery of electricity or gas, what is the
7 Commission's concern in that regard?

8 **MR. DEVLIN:** Well, you probably are jumping
9 ahead a little bit, but I think that's the crux of the
10 whole rule is to ensure that ratepayers aren't
11 impacted in a negative way when there is a transaction
12 that may be nonregulated in nature.

13 And, you know, Don mentioned rents; could be
14 Power & Light renting out the third floor of their
15 office building to an affiliate. And I think there
16 would be a concern that, you know, that's a reasonable
17 transfer price; otherwise the ratepayers could be
18 harmed if it isn't a reasonable transfer price.

19 Yeah, we don't regulate the rents per se,
20 but we would be interested that the transfer price
21 between the affiliates was reasonable.

22 **MR. VAUGHN:** Chuck Vaughn, PHCC. I have a
23 question on (e), Fully Allocated Costs, that may go in
24 hand with what was just discussed.

25 If we don't have some sort of significant

1 mechanism there to determine what would be the fair
2 and reasonable share of indirect costs, it seems to me
3 that we're kind of right back into the ball game of
4 cross-subsidization again.

5 I think that some mechanism with regards to
6 whatever particular activity is being entered into has
7 to be resolved hopefully within the rule to decide
8 just what is an indirect cost that would be a fair and
9 reasonable share to -- that would go into that service
10 or whatever, as well as the direct costs involved.

11 **MS. SALAK:** Are you suggesting that we come
12 up with a mechanism to show how we're going to show
13 those indirect costs, or are you suggesting that we
14 need to list --

15 **MR. VAUGHN:** Yeah, I think that we need to
16 have some language there or study the -- what would --
17 how would this Commission in a rule form suggest that
18 we could adequately look at what would be a fair and
19 reasonable share of an indirect cost; suggesting that
20 indirect costs are for the most part stable, or even
21 if not, what part of it would go toward a particular
22 activity.

23 We'd have to have some sort of mechanism in
24 place. Sometimes it's not just what's said; it's
25 what's not said or what's not addressed that gets us

1 into trouble.

2 **MS. SALAK:** I'm not sure how to put that in
3 a rule. I mean, right now all the companies have
4 their different allocation methods of indirect costs,
5 and we review them and we'll sometimes take issue with
6 them and sometimes not, but it -- I mean -- and
7 correct me if I'm wrong -- but it just seems like
8 every indirect cost may have a different allocation
9 factor or a different methodology in it; and sometimes
10 it's just a matter of reviewing it to make sure it's
11 reasonable.

12 **MR. VAUGHN:** I think --

13 **MS. SALAK:** That's why we used that
14 language.

15 **MR. DEVLIN:** Yeah. All we're trying to
16 accomplish here is that indirect costs would be
17 included in a definition of fully allocated.

18 There's a myriad -- like Beth says -- a
19 myriad of ways of allocating costs. I mean, we -- you
20 can only get too formulistic in these definitions. I
21 mean, there's the Massachusetts formula, but if you
22 have some suggested language that would help give --
23 bring precision to this definition, we would surely
24 entertain that.

25 **MR. VAUGHN:** Well, I think that we can all

1 assume that 100% of all costs eventually must be
2 assumed within the company's operation. So that
3 dependent upon what the activity is, or activities, if
4 there is a great deal of them, they may want to spread
5 their indirect cost over all of them or part of them.

6 And that's what I'm asking; would it be
7 expected that indirect costs would be in some
8 percentage, at least if not equally distributed
9 amongst the various activities, or in by percent share
10 of the income of these activities or the cost of these
11 activities, whatever they may be. I will try to work
12 on that. I will try to work on some language for you.

13 **MR. PORTUONDO:** This is Javier from Florida
14 Power.

15 I think it's implied. I think that the
16 utilities would allocate the indirect costs
17 proportionate to the types of services being rendered.

18 But I'd like to go back for a moment to the
19 regulated and nonregulated. I think we can stay with
20 the term "regulated" and "nonregulated." I think if
21 we turn the focus back to price regulation, I think
22 for nonregulated, there's no reason why we couldn't
23 just refer to services and products that are not
24 subject to price regulation by FPSC and then just add
25 to that definition, or change for regulated to say

1 "services and products that are subject to price
2 regulation by the PSC and/or are included in
3 ratemaking."

4 I think by making that change we have
5 incorporated both those things such as rent that may
6 be included for ratemaking, but which the PSC does not
7 have price regulation over; and we get away from the
8 "above and below the line."

9 MS. SALAK: Would you say that one more
10 time?

11 MR. PORTUONDO: For nonregulated, refers to
12 services and products that are not subject to price
13 regulation by the PSC. For regulated, refers to
14 services and products that are subject to price
15 regulation by the PSC and/or included in ratemaking.

16 MR. DEVLIN: Any comments?

17 MS. SALAK: Did you like that, Don?

18 MR. DEVLIN: Don was shaking his head yes.

19 MR. BISMARCK: Keane Bismarck with RACCA.

20 Of course I don't know a great deal about
21 utility accounting systems and I don't have -- I don't
22 think it's the alliance's concern that we get into
23 price regulation. I think our whole body of concern
24 has existed solely on the fact that we are concerned
25 about the cross-subsidy issue. And if proper

1 safeguards and guarantees can be made from accounting
2 reporting systems that the utilities are not engaged
3 in cross-subsidization, it has not been our goal to
4 not have utilities as competitors.

5 We think if the utilities play on a level
6 playing field, we can compete with them, but our
7 problem has been with the cross-subsidy issue; and
8 when we talk about rents and things like that, my
9 first question, both as a member of my industry and as
10 a ratepayer, is if you've got all this extra space
11 that you have to rent out or if you've got all these
12 extra people running around that you can devote to
13 marketing efforts on ventures that are not on the
14 regulated side or not demand-side management programs,
15 then why do you have these assets? You get rid of
16 them, because as a ratepayer, I see that I'm paying
17 for those things.

18 So that's the crux of our whole alliance's
19 concern is the cross-subsidy issue and that there is a
20 fair and level playing field, and that they are
21 responsible to the PSC to be -- that there will be
22 adequate auditing and accounting safeguards in there
23 to make sure they are not cross-subsidizing these
24 other operations.

25 Thank you.

1 **MR. DEVLIN:** Okay. Go ahead, Don.

2 **MR. BABKA:** I would agree with Florida Power
3 Corp's definition changes. I think that would be
4 appropriate. I also agree with the gentleman on
5 cross-subsidization issues. I think we have to be
6 careful with how we put that together, and I would
7 strongly recommend that we move the definition of
8 "subsidized" to the definition that's contained in the
9 NARUC guidelines on cost allocations that was just
10 approved by the NARUC; Definition 14. I think that
11 better spells out what it is, and it gets you to the
12 level playing field.

13 **MR. DEVLIN:** Does everybody -- I mean, are
14 we going to be doing some comparison to the NARUC
15 guidelines at this workshop? I guess -- hopefully,
16 everybody has a copy of that.

17 **MS. SALAK:** There were some over there. I
18 just want to make one comment about that definition.
19 And this -- yes, the NARUC definition is more
20 two-sided, but the way -- this definition tracks our
21 statute more. The statute refers to subsidization and
22 has a more one-sided slant to it, and that's what we
23 were reflecting there.

24 **MR. GUYTON:** Which definition are you
25 referring to? The one on subsidy?

1 MS. SALAK: Yes.

2 MR. GUYTON: Okay. I'm sorry.

3 MS. SALAK: I'm sorry.

4 MR. GUYTON: I just kind of lost track.

5 UNIDENTIFIED SPEAKER: I don't believe there
6 are any copies of the NARUC guidelines that were
7 placed out over there and I personally -- I don't have
8 a copy of mine with me.

9 MS. SALAK: I don't think --

10 (Simultaneous comments.)

11 MR. REVELL: I'm going to get them. I was
12 going to bring them down at the break.

13 UNIDENTIFIED SPEAKER: It could be an easy
14 solution. Why don't you read the definition?

15 MR. GUYTON: Before we move to subsidy, may
16 I go back to the regulated and nonregulated definition
17 before we lose it?

18 I guess we still have a couple of concerns.
19 We're still not entirely sure what "included in
20 ratemaking" will mean or how that will be applied.

21 MS. SALAK: When we're referring to putting
22 it in ratemaking, at least from my perspective, is
23 that that means that when we get a surveillance
24 report, it's on there; it's included in those revenues
25 and expenses that we're seeing that we're reg -- we're

1 not regulating, but we're reviewing your earnings, and
2 that's -- those are the revenues and expenses that
3 we're seeing.

4 **MR. GUYTON:** Right. And --

5 **MS. SALAK:** And that's what we're trying to
6 get at. If you don't think that definition gets at
7 it, then --

8 **MR. GUYTON:** Well, I just -- I wasn't sure.
9 I mean, I didn't know if you meant the last rate case
10 or, you know, everybody's last rate case, because the
11 Commission sometimes doesn't act consistently among
12 utilities. And so I was somewhat concerned as to how
13 that might be applied.

14 **MS. SALAK:** Well, that's how I was looking
15 at it was what we see on surveillance. It's not to
16 say -- and as you would know we would do that -- you
17 know, we wouldn't take at issue when that would come
18 into the fair and just part of it. It would have to
19 be a decision by the Commission. But that's the way I
20 was looking at it on what was included through -- on
21 surveillance.

22 **MR. PORTUONDO:** This is Javier Portuondo. I
23 have no objection if you want to add "as included for
24 ratemaking and reported in surveillance" to make it
25 perfectly clear what the intent is.

1 **MS. SALAK:** As long as everybody else --
2 we'll talk about it, I'm sure.

3 **UNIDENTIFIED SPEAKER:** We would agree with
4 that change.

5 **MS. HELTON:** Are we saying that we are going
6 to make that change?

7 **MR. DEVLIN:** No. We're saying that we're
8 going to consider it; it sounds like a good idea, but
9 we want to make sure.

10 **MS. HELTON:** Can I make sure I have the
11 language right? "Nonregulated" refers to services and
12 products not subject to price regulation by the
13 Commission, and "regulated" refers to services and
14 products subject to price regulation and are included
15 in ratemaking by the Commission and reported for
16 surveillance purposes.

17 **MS. SALAK:** Would you read nonreg again?
18 That would also include things that are not included
19 in --

20 **UNIDENTIFIED SPEAKER:** Yeah, could you read
21 that --

22 **MS. HELTON:** Read nonregulated again?

23 **MS. SALAK:** I think it needs the other
24 part --

25 **UNIDENTIFIED SPEAKER:** No; regulated.

1 (Simultaneous comments.)

2 **MS. HELTON:** Sorry. "Refers to services or
3 products subject to price regulation and are included
4 in ratemaking by the Commission and reported for
5 surveillance purposes."

6 **UNIDENTIFIED SPEAKER:** I think you did say
7 "and included for ratemaking," or some --

8 **MS. HELTON:** And are included in rate -- I'm
9 sorry. I know I'm not speaking very clearly. Can you
10 read it?

11 **UNIDENTIFIED SPEAKER:** Before we endorse
12 that wholeheartedly, let me say that we'd like to take
13 a look at it just like you'd like to take a look at
14 it.

15 **MR. DEVLIN:** We're starting to bog down a
16 little bit. We understand the issue. If you could
17 give us suggested language within a week -- we don't
18 want to get hung up on that, I don't think.

19 Okay. Why don't we -- we had subsidization,
20 and Beth gave a reason why there's a difference
21 between our more one-sided view versus the NARUC
22 two-sided view; and I think we're going to stay with
23 that for now.

24 Any other comments on the definitions?

25 **MR. BISMARCK:** Keane Bismarck with RACCA.

1 I'm assuming you're concluding the review of the
2 definitions right now. Did we talk about subsidize?

3 **MR. DEVLIN:** We briefly talked about it, and
4 there was a suggestion that we use the NARUC language,
5 and we're going to get copies of that. But the
6 response was that this definition -- you know, our
7 primary concern is the protection of the ratepayers.
8 Let me find the definition.

9 **MS. SALAK:** And that tracks closely our
10 statute, if I recall correctly.

11 **MR. BISMARCK:** It says "The act of utility
12 ratepayers paying more than their share of costs
13 associated with affiliated transactions than utility
14 nonregulated activities." We believe that it ought to
15 read "paying any share of costs," not "more than their
16 fair share."

17 Why should ratepayers pay any costs that are
18 associated with the nonregulated activities or the
19 affiliate transactions?

20 **MS. SALAK:** Well, there can be very valid
21 affiliated transactions where they're buying something
22 from their affiliate and they can buy that --

23 **MR. BISMARCK:** An example?

24 **UNIDENTIFIED SPEAKER:** Accounting services,
25 computer services --

1 **MS. SALAK:** Accounting services. We have
2 fuel that they buy from their affiliates, and that's
3 reviewed through the fuel clauses; just those type of
4 items.

5 **MR. VAUGHN:** Chuck Vaughn, PHCC. One of the
6 things that's included in that letter that went to
7 Mr. Garcia was something from California that they had
8 come up with with regard to answering this question
9 that we're here today about. They had four basic
10 premises within that -- within the structure of their
11 regulation.

12 One was that a utility and its affiliates
13 shall be separate corporate entities. The second,
14 that a utility and its affiliates shall keep separate
15 books and records. Third; that a utility shall not
16 share space, equipment, services and systems with its
17 affiliates; and, fourth; a utility shall not allow its
18 affiliates to access its computer information systems,
19 with limited exceptions related to corporate support
20 functions.

21 Having looked at this and these other ones
22 that were -- that came in this letter to you, this one
23 seems structured really well to help prevent
24 cross-subsidization.

25 If this Commission is looking at cost

1 allocations and how they're going to be dealt with, as
2 this gentleman down here was just saying, I really
3 think that we need to look at the whole thing. And,
4 in fact, I might suggest that we get a copy of -- that
5 this Commission get a copy of California's rule, find
6 out exactly the language that this -- and how they
7 approached this. Seems to me like they're working at
8 something really good here.

9 In this case what the gentleman is talking
10 about with certain services would not be permitted.

11 **MR. DEVLIN:** Let my try to respond to that.
12 In some respect we're looking at this in sort of a
13 series of events, but like -- of course, California
14 went through major restructuring, and maybe they're in
15 a little different scenario than we are.

16 But I think what you're talking about when
17 you're talking about separate entities and
18 restrictions on use of capital or employees between
19 affiliates and the utility, we're talking about codes
20 of conduct and those kind of questions; and we are
21 thinking about initiating another investigation
22 looking into that.

23 We kind of do this in a step fashion. Right
24 now we're just looking at the accounting aspects, not
25 behavioral aspects per se.

1 So maybe hold that thought, and maybe there
2 will be another day for it. But we're just trying to
3 deal with the reality of the situation that there are
4 affiliate transactions taking place, there are
5 allocations between regulated and nonregulated taking
6 place. Maybe there ought to be restrictions, maybe
7 not, but they're happening, and we just want to have
8 some means of accounting controls in place to at least
9 try to safeguard against cross-subsidization.

10 I think you're going a little beyond the
11 purpose of this rule. Your point is well taken.

12 Any other comments on that?

13 **UNIDENTIFIED SPEAKER:** Just a quick
14 clarification on my question about subsidizing. We're
15 not saying that the Public Service Commission may
16 authorize certain subsidies under certain situations
17 to take place.

18 What we're saying is for clarification of a
19 definition of subsidy, a subsidy is when they do any
20 of those things, not just a share. If they use any
21 portion of the ratepayers' money, it's going to be a
22 subsidy. Just for the purposes of definition.

23 It may be determined by the Commission later
24 on that certain subsidies are allowed, but what we're
25 saying is this is a definition of subsidy which should

1 state "ratepayers paying any share of the costs that
2 are associated with those other activities."

3 **MS. SALAK:** Just to clarify. The example of
4 coal that was given, if a utility buys coal from their
5 affiliate and it's what I call a good price and then
6 it's market price, it's the best they could do,
7 would -- and that's an affiliated transaction that I
8 would think would be acceptable. And you don't think
9 this definition would fit that kind of circumstances,
10 or you don't think that should happen where they buy
11 coal from their affiliate?

12 **UNIDENTIFIED SPEAKER:** I didn't say that
13 that activity shouldn't happen. That's probably a
14 legitimate subsidy by the ratepayers --

15 **MS. SALAK:** You're see, you're calling that
16 a subsidy. Under my -- I wouldn't call that a subsidy
17 if you're paying a fair price for coal, I mean, or
18 accounting services or something. But are you
19 considering any payment to an affiliate a subsidy?

20 **UNIDENTIFIED SPEAKER:** If it's out of the
21 realm of typically what the ratepayer would be
22 required to pay for the generation and distribution of
23 electricity of gas or whatever the medium may be
24 that's a situation that deviates from that ratepaying
25 effort, then, yeah, it's a subsidy, as far as I'm

1 concerned.

2 What we could do, let me talk with the other
3 folks in our group and we'll follow up with a letter
4 on this. I don't want to take up the time on it.

5 **MS. SALAK:** Provide us -- if this definition
6 doesn't fit, it may be your concept of a subsidy --
7 maybe you could give us language --

8 **UNIDENTIFIED SPEAKER:** Yeah; correct.

9 **MR. GUYTON:** I had an inquiry about this
10 definition. Charles Guyton.

11 Is there a subsidy when utility ratepayers
12 paid less than their share of cost in an affiliate
13 transaction? Is that an oversight, or is that
14 intentional that it only goes one way?

15 **MS. SALAK:** For purposes of this rule, we
16 were trying -- not trying, but because the statute
17 read the way it did, we felt that the language was
18 one-sided in the statute. So we were trying to
19 reflect the statute.

20 **MR. GUYTON:** Which statute are we referring
21 to?

22 **MS. SALAK:** This is when I punt and say,
23 "Mary Anne?"

24 **MS. HELTON:** 366.059 talks about the
25 Commission may require such reports or other data

1 necessary to ensure that a utility's ratepayers do not
2 subsidize nonutility activities.

3 In 366.093(1) the Commission has access to
4 affiliates' records regarding transactions or cost
5 allocations among utility and such affiliated
6 companies and such records necessary to ensure the
7 utility's ratepayers do not subsidize nonutility
8 activities.

9 So we were looking at the focus of the --
10 what the Legislature was saying in Chapter 366 as best
11 said.

12 **MR. GUYTON:** In light of that, but there
13 wasn't any thought given as to whether it was okay or
14 appropriate in terms of preventing subsidy from
15 running the other direction?

16 **MS. SALAK:** We felt -- we were designing
17 this rule to fulfill our responsibilities under the
18 statute. I mean, yes, of course we discussed it, but
19 we -- our baseline when we did this definition was
20 that the Legislature has told us to do this and this
21 is what we're going to fulfill.

22 **MR. GUYTON:** Okay. Thank you.

23 **MR. DEVLIN:** Okay. Are we done with the
24 definitions and now we're starting to slow down a
25 little bit?

1 And, by the way, we have had some volunteers
2 to offer language. What's a reasonable time to get
3 that established? Mary Anne, do we have a CASR or
4 something that --

5 **MS. HELTON:** No, we don't have a CASR. My
6 thoughts on this are that if there's some specific
7 language of certain parts of the rule that you have
8 you want to suggest to us, maybe if we could have a
9 date certain for that, then we could see what we agree
10 as far as incorporating it into the rule and then
11 sending out another draft for everyone to file their
12 post-workshop comments on that draft. Is that --

13 **MR. DEVLIN:** That's what I was thinking.

14 **MS. HELTON:** Do you all need the transcript
15 to offer your suggested language on particular parts
16 of the rule?

17 **MR. GUYTON:** I think it would be helpful.
18 The other thing that would be helpful is it's a little
19 bit hard to say right now how much time we need.

20 **MS. HELTON:** I know we had talked about
21 maybe taking -- if you all could be thinking about how
22 long it would take to get the language to us.

23 (Discussion off the record regard transcript
24 filing date.)

25 **MS. HELTON:** So maybe if you all could be

1 thinking about how long it will take for you all to
2 get the language to us, and at the end of the
3 workshop, Tim, maybe we could set dates.

4 **MR. DEVLIN:** Okay. Any other questions on
5 definitions or comments?

6 Somebody thinks of something later, we can
7 bring it up towards the end of the workshop. I'd like
8 to, you know, at least get one run-through of the
9 whole rule.

10 Okay. Let's turn to Page 3. How about
11 (3)(b); transactions from the utility to the
12 affiliate?

13 **MR. GUYTON:** We wanted to, if we could,
14 address something in (3)(a). Charles Guyton. I'm
15 sorry.

16 I wanted to ask if you'd consider language
17 to the effect that the purpose of subsection (3) is to
18 establish requirements for nontariffed affiliate
19 transactions related to the provision of electricity
20 or gas as a utility service.

21 **MS. SALAK:** What about those items that you
22 have above the line that it's arguable whether or not
23 they're related to the provision of -- (inaudible) --

24 **MR. GUYTON:** I'm sorry. I missed your --

25 **MS. SALAK:** It's arguable whether it's

1 related or not.

2 **MR. GUYTON:** Well --

3 **MS. SALAK:** I mean, was that an "and" or an
4 "or" you had in there? I'm sorry.

5 **MR. GUYTON:** Just transactions that were
6 related to the provision of electric or gas service,
7 or provision of electricity or gas.

8 I'm really trying to get at and limit the
9 scope of this to transactions that are related to or
10 part of the provision of the regulated utility
11 service, as opposed to something, I mean, that there
12 may be affiliated transactions between a utility and
13 an affiliate that is not related at all to the
14 provision of electricity or gas.

15 **MR. DEVLIN:** I would think I have a problem
16 with that. Maybe one scenario would be an engineer
17 who is working for the utility and doing utility work
18 one day and then the next day maybe is assigned to
19 work with an affiliate on a nonregulated project. And
20 I think we would have a concern that the cost that's
21 transferred to the affiliate was reasonable, even
22 though that doesn't necessarily relate to regulated
23 energy service.

24 **MR. GUYTON:** Well, I'd look at something
25 like, say, appliance sales, which are below the line,

1 not regulated at all but, nonetheless, is an activity
2 that several utilities engage in. Should this rule
3 really necessarily address the affiliated transactions
4 associated?

5 Say, for instance, the utility has an
6 affiliate that makes a wholesale purchase of
7 appliances and then resells it to the utility. Is
8 that a matter that intends to be addressed by the
9 scope of this rule and, if so, why?

10 **MS. SALAK:** A wholesale purchase of what?

11 **MR. GUYTON:** Of appliances that they then
12 sell to the utility, that the utility sells in its
13 unregulated aspect of the business.

14 **MR. DEVLIN:** Why would that -- I don't
15 understand that. I mean, why would that be the case?
16 Are you talking about an affiliate selling a bunch of
17 appliances to the utility who in turn sells to whom?
18 General public?

19 **MR. GUYTON:** Yes.

20 **MS. SALAK:** And why isn't the affiliate
21 selling them directly to the public?

22 **MR. GUYTON:** Well, let's just say it's
23 structured that -- or let's say that it's an affiliate
24 that's a joint venture within your definition that is
25 selling wholesale to not only my utility, but, say,

1 six or a consortium of seven others just to drive down
2 the wholesale price that they in turn can sell and
3 resell.

4 **MS. SALAK:** And this is all going above the
5 line?

6 **MR. GUYTON:** Well, it can't go above the
7 line under the statutes. That's clearly below the
8 line. It has to be separated appliance sales. That's
9 one of the few instances where the Legislature has
10 actually given us guidance.

11 **MR. DEVLIN:** I'm just trying to understand
12 that concept there. The utility is the one actually
13 making the sale to the customer. There would be some
14 reason for that, either through synergies associated
15 with billing or use of utility personnel, et cetera.
16 I mean, I'm not sure what the reason would be for
17 having the transaction run through the utility, other
18 than there would be some mixing up or commingling of
19 utility operations and nonregulated operations, which
20 would be of concern here.

21 **MR. GUYTON:** Well, I understand that, but I
22 guess I'm trying to focus on the appliance transaction
23 itself, because what it's going to trigger later on is
24 it's going to trigger things like mandatory bidding
25 and a prohibition of sole sourcing if it's over a

1 certain amount. And the query that I have is that is
2 that necessarily -- is the scope of this rule intended
3 to be that broad, particularly for an area where it
4 doesn't appear to be that that would fit within the
5 Commission's price regulation.

6 **MR. McMILLAN:** Yes. This is Richard
7 McMillan from Gulf.

8 I think what obviously he's -- you know,
9 what obviously he's getting at is you would have some
10 potential affiliate transactions between nonregulated
11 portions of the business. Maybe you could reword that
12 to the extent to say "The purpose of the subsection is
13 to establish requirements for affiliate transactions,"
14 and then use in your definition -- I know that may get
15 reworded -- but "that are taken into account in
16 determining fair, just and reasonable rates."

17 So that could be transfers into or out of
18 the utility business, depending upon the transaction,
19 but try to get it limited back to the regulated
20 portion of the business.

21 Depending on how that definition goes, you
22 could just instead of bringing in that whole wording,
23 you could use your definition there and just say
24 "requirements for affiliate transactions affecting the
25 regulated business or above the line transaction."

1 You know, I know we've had some discussion
2 on where that's going, but you've already got a
3 definition up there, and you're really getting at
4 transactions that affect the regulated business or the
5 above the line rate -- the base rate portion of the
6 business. So I think maybe you could tie that
7 together and to the exclusion of these other affiliate
8 transactions which really would be between
9 nonregulated portions of the business.

10 **MS. KAUFMAN:** Tim, this is Vicki Kaufman. I
11 thought this rule was supposed to apply to any
12 affiliate transaction that a regulated utility engages
13 in. And even in the situation that Charlie mentioned,
14 you still have the regulated utility engaging in this
15 transaction, perhaps using employees, space, postage,
16 or whatever.

17 So I would say if the utility wants to
18 engage in a transaction that's not covered by these
19 rules, then it shouldn't be doing it through the
20 regulated entity. So I would say these rules should
21 apply to any affiliate transaction that a regulated
22 utility engages in.

23 **MR. McMILLAN:** I agree; use that regulated
24 entity. Right now that section is so broad it doesn't
25 limit it to the regulated entity.

1 **MR. GUYTON:** But that goes to the main
2 thrust of why I posed the question.

3 **MR. McMILLAN:** Right.

4 **MR. GUYTON:** A utility, just because it's
5 regulated, doesn't give up its rights and
6 opportunities as a business to offer services that are
7 not regulated. But if you structure the rule in that
8 fashion, then you're either going to limit them to the
9 regulated operations, something the Legislature has
10 never seen fit to do, or you're going to end up having
11 such a broad rule that it's going to go below the
12 scope of the regulated transactions that you're trying
13 to regulate, and it's actually going to impact what's
14 nonregulated by design under the statute. And that's
15 what I'm trying to draw the line on.

16 And I take no issue at all with the
17 Commission's regulation of its price regulation and
18 the concern about cross-subsidy. It's an appropriate
19 concern and it's throughout the statutes. It's just
20 the question of how broad is -- in attempting to
21 address all affiliated tractions whether or not
22 they're related to the regulated provision of service,
23 are you going beyond the scope of what the Commission
24 is trying to regulate.

25 I raise that issue. I mean, we can try to

1 draft to it, but I'm trying to get some reaction from
2 you as to whether that's the underlying intent. I can
3 try to limit the scope of this as to what I think may
4 be more appropriate here.

5 **MR. DEVLIN:** We can think about this some
6 more, but my initial reaction is that if the utility
7 is involved in -- (inaudible comments away from
8 microphone) -- offering a service and products, there
9 could potentially be some relationship with
10 regulating --

11 (Court reporter asked for clarification.)

12 **MR. DEVLIN:** I'm sorry. I'm very sorry.

13 We may reconsider this, but my initial
14 reaction is if the utility is involved in providing a
15 product or service that's not tariffed, let's say not
16 price regulated by the Commission, there still
17 potentially could be an impact on ratepayers to the
18 commingling, as Vicki said, of employees, billing,
19 whatever.

20 And I think that it's still our concern here
21 that there would be some kind of firewall or safeguard
22 between costs that are considered for ratemaking and
23 costs that are considered below the line or
24 nonregulated. But if you have some suggested
25 language, we can further consider this issue.

1 **MR. PORTUONDO:** This is Javier from Florida
2 Power.

3 Would both those issues be addressed if we
4 just at the end of that sentence indicate "affiliated
5 transactions impacting regulated activities," and you
6 have the definition of "regulated" up front?
7 Therefore, to Charlie's point, if you have a
8 transaction that is totally nonregulated, it's using
9 nonregulated personnel, it's not affecting your
10 regulated side of the house; it's not in ratemaking;
11 it's not price regulated; therefore, that transaction
12 would not be reported.

13 Now, should you, to Vicki's point, be using
14 personnel that are in ratemaking, then it would be --

15 **MR. DEVLIN:** What's troubling me with this,
16 Javier, is I'm trying to envision a utility having
17 something within its corporate entity that's
18 completely divorced of regulated operations. Are we
19 talking about an employee force or part of the
20 building that's just completely removed and divorced
21 from utility operations where these transactions could
22 take place?

23 I just -- I can't envision that happening.
24 What I keep seeing is commingling of utility assets
25 and personnel, and what have you, between regulated

1 and nonregulated, which is the crux of this rule.

2 **MR. PORTUONDO:** But I think by the addition
3 of that language, you're covering the possibility of
4 that occurring in the --

5 **MR. DEVLIN:** Could you give us a scenario
6 where that would be the case?

7 **MR. PORTUONDO:** Pardon?

8 **MR. DEVLIN:** Give me a scenario or an
9 example where we would have a transaction that just
10 doesn't touch utility, people, assets at all.

11 **MR. PORTUONDO:** I mean, a utility could set
12 up a separate division that is totally out of
13 ratemaking that uses their own systems, but yet is
14 still part of the utility.

15 Current Code of Federal Regulations allows
16 for that by establishing nonregulated FERC accounts so
17 that they could have a separate division within the --

18 **MS. SALAK:** Do you have that now?

19 **MR. PORTUONDO:** No.

20 **MS. SALAK:** Do you?

21 **UNIDENTIFIED SPEAKER:** No, we don't?

22 **MS. SALAK:** Do you?

23 **UNIDENTIFIED SPEAKER:** (Shaking head.)

24 **MS. SALAK:** Anybody have that now?

25 **MR. McCORMICK:** This is Joe McCormick with

1 TECO Energy.

2 You get somewhat close to that with some of
3 the gas utilities that have a propane operation within
4 their regulated entity.

5 **MR. TROY:** This is Darryl Troy, Florida
6 Public Utilities.

7 In the propane operations, the way this
8 purpose reads, you would regulate the sale of propane
9 to our propane customers because that's a transaction
10 of the nontariffed affiliate.

11 It doesn't read in here "with the regulated
12 utility." And that's the language I think we need to
13 add to that; something like "The purpose of
14 subsection (3) is to establish requirements for
15 transactions between a nontariffed affiliate and a
16 regulated utility."

17 **MR. BISMARCK:** Keane Bismarck with RACCA.

18 Would I gather from that, then, that these
19 enterprises that are wholly and separate entities from
20 the regulated utility itself, would they be paid and
21 basically provided for by the investors in that
22 utility and not the ratepayers?

23 **MR. McCORMICK:** To make it clear, in the
24 TECO Energy Gas, our propane company is a separate --
25 completely separate company, but the natural gas

1 utilities that do have propane operations, all those
2 costs are separated by the Commission in a ratemaking
3 proceeding. All the cost of personnel, buildings,
4 vehicles are totally separated out, but they remain
5 under the same parent entity, I believe.

6 **MR. TROY:** This is Darryl Troy, Florida
7 Public Utilities.

8 It's the same way with our organization.
9 It's a separate entity, but there is facilities that
10 are shared that belong in the parent company books.
11 There's employees that belong in the parent company
12 and their services shared with the LP operations, but
13 there's lot of transactions within LP that is just
14 between the LP operations and the customers of the LP
15 operations.

16 **MR. DEVLIN:** Let's move on. I think we
17 understand the issue.

18 If you have some suggested language, we'll
19 think about it, but I'm a little leary at this point
20 for limiting this because, I'm still having a hard
21 time envisioning a regulated utility not being
22 impacted by these kind of transactions.

23 **UNIDENTIFIED SPEAKER:** Tim --

24 **MR. DEVLIN:** Yes.

25 **MR. ROMIG:** Over here. I wonder if we could

1 have some comments from Richard on Gulf Power's --

2 **MR. DEVLIN:** Appliance --

3 **MR. ROMIG:** -- appliance sales and service,
4 because -- like in their various buildings and
5 everything where they have a certain amount of floor
6 space dedicated to display of merchandise,
7 refrigerators, et cetera. And its my understanding --
8 of course, it's -- you have a rate case, all that --
9 that's allocated out based on, you know, floor space
10 and so forth.

11 But, Richard, have you got any comments so
12 as to --

13 **MR. McMILLAN:** Right now, I think, like they
14 said, looking forward as utilities try to get into
15 more -- I could see -- there's a potential there for
16 reorganization and having some nonregulated affiliates
17 potentially dealing with other nonregulated.

18 At Gulf today we don't have that. I mean,
19 we would have to admit our utility operation,
20 merchandise is sort of co -- it is in our office
21 buildings, and we do allocate that out, and that, to
22 me -- that's what I was trying to get at.

23 I think the transactions that affect the
24 utility business, either where the utility is billing
25 the nonaffiliate or the non -- or the other affiliate

1 is billing the utility, obviously should be included
2 in the rule, and -- but it sounded like some of the
3 others may have had some nonregulated businesses that
4 may have transactions between themselves that didn't
5 touch the utility.

6 But -- and I could see where that might
7 happen down the road if companies got into more
8 nonregulated items. It's not an issue today, but I
9 think the wording could be addressed if that was --
10 based on what I heard about the statute earlier and
11 stuff, it's really protecting the ratepayer and those
12 cross-subsidization -- where there would not be any
13 cross-subsidization unless the regulated entity was
14 being impacted, either in a transaction with the
15 nonaffiliate, one way or the other.

16 So -- but like Tim said, I think we know the
17 issue. Maybe when we do the rewording, each company
18 can try to --

19 **MR. DEVLIN:** And the only way --

20 **MR. McMILLAN:** -- dress that up.

21 **MR. DEVLIN:** The only way I could see the
22 regulated utility not being impacted, there's a
23 separation of facilities, personnel, billing systems,
24 et cetera. And I don't know if that's the case with
25 LP operations. It may be -- if that was the case,

1 then it seems like that would almost argue for
2 separate affiliate as opposed to having a division
3 within the utility, but I don't -- well, Charlie, if
4 you want to send us some language, we can consider
5 that.

6 **MR. McCORMICK:** Before we go on, if I
7 could -- Joe McCormick, TECO Energy.

8 Before we go on, if I could make a comment
9 on this whole Section (3). In our written comments
10 TECO Energy proposed that this whole segment be
11 removed and in its place just simply substitute a
12 sentence -- two sentences that say -- two sentences;
13 I'm sorry -- this is in keeping with Mary Anne's. I'm
14 doing exactly what Mary Anne wants.

15 I'm shortening the language, so you should
16 love this, Mary Anne. "Regulated utilities shall
17 price transactions with affiliates so as to ensure
18 that utility ratepayers are not harmed by the
19 tractions." You could insert "economically harmed."
20 "The burden of proof for this assurance will be borne
21 by the utility."

22 It seems that that is the jurisdiction the
23 Commission already has. As we go on and speak to
24 specific sections of the rule, I will talk about
25 sections of the rule, as we may have some proposed

1 changes. But I really believe that the preferred
2 method is a very succinct statement that the utility
3 ratepayers not be harmed by transactions with
4 affiliates.

5 **MR. DEVLIN:** It's just not very specific, I
6 guess is where we've come from. We feel like maybe a
7 little more precision is necessary, and all these
8 transactions should be conducted. I know this is a
9 very contentious area. This is the
10 asymmetric/symmetric transfer pricing issue.

11 **MR. McCORMICK:** One of the issues that is of
12 concern is that -- and I am not an attorney and not
13 trying to speak to the law of this -- but my
14 understanding of the Administrative Procedures Act
15 does not permit the Commission to waive any of its
16 own, and so -- except for procedural purposes.

17 Anything we do in this rulemaking form does
18 take away even the Commission's opportunity to take a
19 look at various things that are going on and make
20 decisions on case-by-case basis. And there are some
21 places in the rule where you do have some exceptions,
22 and if the Commission does have that authority, the
23 rule loses any real effect that it has if it -- if the
24 exceptions don't mean anything, then that's the part
25 that bothers me as a utility person.

1 If you rule out the exceptions, then you're
2 back to a very explicit "this is the way it must be
3 done." So the two conflict with each other, and
4 that's my concern. I can go to some of those
5 specifics later. But we either have an absolute
6 layout of the way it is with no provision for the
7 Commission to make decisions and case-by-case
8 analyses, or else we have something that is flexible;
9 and if it is flexible, then go back to the simple
10 wording that lays out that we can't harm our
11 ratepayers.

12 **MS. HELTON:** Well, I think 120 does allow
13 waivers or variances from rules if you meet the
14 requirements, and 125.42, I think, is the statute
15 number that lays out the procedure you have to follow.
16 But 120 also requires if the Commission has a policy
17 concerning how it wants something to be done, then
18 that has to be set out in a rule.

19 There is no exception for case-by-case
20 scenarios unless the Commission's policy is kind of
21 evolving and if it doesn't have enough information
22 together to have its policy laid out.

23 I believe that what we're doing here is that
24 this division -- or AFAD has come up with what it
25 believes the Commission's policy should be, and if it

1 has what it thinks the policy should be and the
2 Commission agrees, then that should be laid out in a
3 rule. I mean, I believe that's what 120 requires.

4 **MR. McCORMICK:** That's why I prefaced it
5 with I was not an attorney.

6 **MS. HELTON:** I know that some attorneys that
7 work for you disagree with that, but that's what this
8 attorney thinks.

9 **MR. DEVLIN:** Any other questions -- any
10 other comments on the general philosophy behind the
11 transfer pricing? Because, really, all three
12 categories here (3) (b), (c), (d), offer sort of a --
13 well, offer policy -- offer best practice for handling
14 these kind of transactions --

15 **MR. VAUGHN:** Chuck Vaughn, PHCC. I was
16 looking through (b) and I found on I think it's
17 Line 9, they're talking about fully allocated costs
18 again; 15, the same; 19, transfer of assets, and over
19 on the next page item (f), the amount of years.

20 I think our association would like to take a
21 closer look at this and possibly make some
22 recommendations to the Commission for this language.

23 **MR. DEVLIN:** That would be fine. Among
24 Staff, we're still taking a look at (3) (b). We're not
25 so sure we shouldn't be considering a higher market or

1 cost standard there, and we're just talking among
2 ourselves, so we haven't -- we are open-minded to some
3 extent on these areas.

4 And the other -- I actually have one
5 question for Mary Anne kind of addressing Joe's
6 concern about these being absolutes. This is just --
7 since it's a workshop, we're kind of informal here,
8 and I'll show my ignorance about rulemaking -- but
9 would it be possible if we have a provision in here
10 that would allow exceptions under certain
11 circumstances where the company can prove it's in the
12 best interest of the ratepayers, exceptions to these
13 kinds of pricing?

14 **MS. HELTON:** Yeah. I mean, I think it would
15 depend on how it's worded. I think what Joe is
16 getting at is we, the Commission, has opened a docket
17 to repeal certain parts of some rules that have waiver
18 language in there that say that the Commission can
19 waive the requirements of this rule without giving any
20 standards for the waiver.

21 And the Staff has proposed -- or has
22 recommended to the Commission and the Commission
23 proposed repealing those waiver provisions. Lawyers
24 from TECO and lawyers from Florida Power & Light have
25 disagreed with the Commission's -- or the Staff's,

1 anyway -- take on whether we can do that or not.

2 I think that you can have some language in a
3 rule to provide for exceptions if the exceptions are
4 clearly laid out so that the Commission doesn't have
5 what we refer to as unbridled discretion and so that
6 so everyone is on notice when reading the rule what
7 the exception is and how you can meet that exception.
8 Does that answer the question?

9 **MR. McCORMICK:** Yes. Thank you.

10 **MR. DEVLIN:** Okay. Any other comments? (No
11 response.)

12 We were going to take under consideration
13 (3) (a). How about (3) (b)? And I've already
14 mentioned, among Staff we're still thinking about
15 higher market or cost standard there.

16 Any other comments on (3) (b)?

17 **MS. KAUFMAN:** Tim, I have a comment or a
18 question on (3) (b), the "except" sentence, the second
19 sentence.

20 I don't understand what you have in mind.
21 What kind of showing does the utility have to make in
22 order to employ that exception? Is that something
23 that you do through the audit process or they have to
24 petition, or how is that going to work?

25 **MS. SALAK:** We didn't envision a petition.

1 We envisioned more the audit process and monitoring.

2 **MS. KAUFMAN:** So whatever the transaction
3 is, has to be equivalent to market prices, some
4 showing is going to be made in the audit?

5 **MS. SALAK:** There is no mandatory filing
6 here. I mean, it would be -- we would have to --
7 there's no mandatory action before the Commission. I
8 mean, once you have a petition, there's -- we were
9 thinking that at times there are lot of time -- short
10 time frame turn-arounds, and we didn't want to hold it
11 up by -- with Commission action.

12 So we were thinking that, though, after the
13 fact, just as TECO proposes in their language that the
14 burden of proof will always fall on the utility, and
15 we'd be reviewing them through surveillance.

16 **MS. KAUFMAN:** Well, I guess my question is,
17 it's fine to say the burden of proof falls on the
18 utility. I'm all for that, but how do they make that
19 showing, and what standard is going to be employed to
20 see whether the transaction is equivalent to market
21 price? I mean, is it going to be a bid?

22 I guess what I'm saying is I'd like to see
23 some standards employed that flesh out that
24 requirement, whether it's something done through the
25 auditor, whether it is some showing before the

1 Commission.

2 **MS. SALAK:** And when you're -- and through
3 the rule if you're setting a standard, what kind of
4 standard would you be looking for? I mean, fixed
5 standard that you can put in words in a rule?

6 **MS. KAUFMAN:** Well, I have to think about
7 it, but the first thing that comes to mind is there's
8 some sort of a bid. Otherwise, I don't know how they
9 can make a showing that the price is equivalent to
10 market prices.

11 But, you know, I'm not wed to that. I need
12 to think about it. I think that that sentence --
13 someone already referred to it -- and I don't remember
14 who -- as a loophole, and I kind of see it that way,
15 too, unless it's beefed up a little bit. But I'll
16 work on that.

17 **MS. SALAK:** Well, what kind of -- nobody
18 else made a comment about that except to refer to it
19 as a loophole.

20 What kind of showing as a utility do you
21 believe would be sufficient for the loophole, as it's
22 been referred to, on Line 8 under (b)?

23 **MR. McMILLAN:** I would have thought we would
24 have had that documented in our manual, and then based
25 upon audit review or whatever, we would have to come

1 forth with the facts and circumstances and how that
2 benefits the ratepayer and actually -- does -- there's
3 no -- you know, prove there's no subsidization and
4 that there's truly a benefit to the ratepayer.

5 I didn't make any comments earlier, but I
6 would like -- since we're in (b) and (c), I would like
7 to state is that obviously Gulf is opposed to this
8 asymmetrical pricing as a requirement. We don't mind
9 that being a test if there is some type of an
10 exception where the utility takes the burden to prove
11 that there is no subsidization from the regulated to
12 the nonregulated.

13 And plus you don't really show in here --
14 you know, we've got past practices that are already
15 approved, our merchandising business, et cetera, which
16 may or may not comply with these rules. You know,
17 that certainly -- I don't see how that could be just a
18 rule pop out and then what's going to be the action
19 there. The Commission has already previously approved
20 existing practices.

21 That's why I think there needs to be some
22 type of exception, because I think we can demonstrate
23 and have demonstrated in the past with the Commission
24 that the customer benefits and there's no
25 cross-subsidization.

1 Another issue that comes up, and it may just
2 be Gulf's unique situation as being part of the
3 Southern Company, and it's not addressed in this rule,
4 and I toyed with -- I can't really decide where it
5 goes; in the preamble or in these cost transfer
6 pricings, but obviously a lot of our affiliate
7 transactions are with our service company, which are
8 all required by the SEC to be at cost.

9 We don't have an option doing -- you know,
10 pricing their services at market. Obviously we argue
11 that they're less than market, and we do periodically
12 review their cost to market, but we couldn't comply
13 with this right today for 90% of our affiliate
14 transactions because of the PUHCA, the Holding Company
15 Act, requires any affiliate transactions between -- in
16 a holding company be at cost.

17 We don't have the option of running around
18 doing market pricing. So -- and I think some of these
19 other nonregulated, still it ought to be symmetrical
20 pricing, not asymmetrical, the way these things are
21 designed. And I know you all heard those arguments
22 through EEI over the year, and that will just be a
23 contentious issue.

24 But I still -- I'm not sure where it would
25 fit in here that -- the service company type, because

1 they are -- it is a regulated business; it's just
2 regulated by the SEC and the Commission has reviewed
3 that.

4 **MR. DEVLIN:** This may be a legal issue, but
5 we've kicked it around how the PUHCA fits in this with
6 this, and it requires cost-based transactions. But as
7 far as the jurisdiction of the Commission, it seems
8 that this Commission still has the jurisdiction over
9 retail rates. And would they -- were to find that
10 market is a better transfer price, for whatever
11 direction we're talking about for retail rates, I
12 mean, the Commission would have that authority to
13 direct such a pricing, wouldn't it, for retail
14 ratemaking?

15 **MR. McMILLAN:** It could, but if we tried to
16 implement this for everything we do, I would have
17 to -- I'd tell you the ratepayer is going to be
18 impacted negatively, because you're adding a
19 significant administrative burden that --

20 **MR. DEVLIN:** But that's a logistical
21 concern. It's a valid one, to be sure, but it's not a
22 legal constraint. I'm just trying to understand
23 whether --

24 **MR. McMILLAN:** Well --

25 **MR. DEVLIN:** -- we are constrained for

1 retail ratemaking --

2 **MR. McMILLAN:** No, I don't think -- whenever
3 we go in for rates, obviously, if you feel our costs
4 are imprudent, you can disallow those. But I think
5 when you're coming out with a rule that's very
6 prescriptive, I think it should have recognition that
7 there's other -- and I think if you read in the NARUC
8 version, it sort of has a few more examples.

9 But the fully allocated cost is pretty much
10 how all those transactions are done, and -- but I
11 guess when you get into (c) and you're requiring
12 basically bidding for anything over 500,000, we've got
13 a lot of things we'd have to go out bidding annually.
14 I mean, you're talking significant dollars expended;
15 what changes from year to year when the services are
16 the same.

17 I think the thing was set up for a different
18 transaction than what's going on with our service
19 company, and I guess I'm not sure how that fits in;
20 but that's an issue with us that I think that there --
21 shouldn't fall under the same requirements as other
22 nonregulated air conditioning or whatever other kind
23 of type things we try to get into, because it's all
24 utility related.

25 **MR. DEVLIN:** Service company charges. We're

1 kind of bouncing around a little bit, and I apologize.
2 Why don't we -- I know asymmetric pricing is a
3 contentious issue, but we probably need to go through
4 this in somewhat orderly fashion.

5 We've already had discussion on the prelude
6 here, (a). (b) already mentioned that we're still in
7 a -- considering a higher cost of market standard. Is
8 there any other -- again, you're all welcome to file
9 supplementary comments to any section here. Any other
10 comments on (3) (b)? (No response.)

11 Okay. (3) (c)? And that's where your issue
12 really comes into play, Richard, is (3) (c), service
13 company charges. Any other comments on (3) (c)?

14 **MR. PORTUONDO:** This is Javier from Florida
15 Power. I do have comments.

16 As we filed in our preworkshop statements, I
17 think that the transactions from the affiliate to the
18 utility should be priced at market, that the affiliate
19 should not be harmed for entering into transactions
20 with the utility, and it should be able to price its
21 products just like any other third party would.

22 There are benefits from accepting a market
23 price from the affiliate if you know who you're
24 dealing with. There's reliability, assurances of
25 getting the product or service that you're committed

1 to purchase.

2 We also had proposed to address in this
3 section the services rendered by a parent company that
4 we feel would not be the types of services that you
5 would go out and price at market, that there would be
6 an exception to those services; the allocations of the
7 CEO of the holding company, treasury services that
8 might be at the parent company. These are services
9 that you would not secure from a third party. You
10 would only secure from a parent/affiliate
11 relationship.

12 And I think this is also the area where we
13 could potentially address Gulf's issue to make an
14 exception for a service company transaction which
15 would fall under the prescribed cost allocation
16 methodologies issued by the SEC.

17 I have some potential wording for the
18 exception. It would read: "Exception for parent
19 company or service company transactions which should
20 be charged at fully allocated costs or under the SEC
21 prescribed allocation methodologies respectively."

22 **MR. DEVLIN:** I guess this has become all of
23 a sudden important to you. (Laughter.)

24 **MR. PORTUONDO:** No, no, no. Part of this
25 was in my preworkshop comments.

1 **MR. DEVLIN:** If you could just submit those.
2 I'm not sure but what you're trying to do is carve out
3 service company allocations and have a different
4 standard for them because of PUHCA, or this is --
5 doesn't make sense to do other than cost because there
6 isn't a market there to compare it to.

7 We'll consider that, but I can tell you, one
8 of the reasons for this asymmetric pricing is that it
9 again is a burden of proof standard, and at least
10 there's a possibility that the reason an affiliate can
11 provide a service or product to a utility is because
12 of the unique advantages of its relationship with the
13 utility. Computer services, for instance; maybe the
14 computer systems of the utility are tailor-made to be
15 facilitated by the affiliate.

16 Quantity of purchases; you know, just an
17 overall relationship between the utility and the
18 affiliate leads towards unique efficiencies, and
19 that's why we look at the lower cost of market as a
20 beginning standard. Now, there may have to be
21 exceptions to that for PUHCA or otherwise.

22 Any other comments on (3)(c)?

23 **MR. McCORMICK:** Joe McCormick for TECO
24 Energy.

25 I would have one comment on (3)(c) in that

1 the application of that portion of the rule as written
2 could be harmful to the ratepayers. If you, as a
3 regulated utility -- I'll just use some \$5/\$10
4 numbers. If the fully allocated cost of the affiliate
5 is \$5 to produce or deliver a product, a competing
6 source is going to charge the utility \$10, but if the
7 utility and its affiliate can work out a price of
8 \$7.50 and make that transaction, that benefits the
9 utility ratepayers.

10 The transaction will not be made, because
11 the provisions of this rule would require that the
12 affiliate make the transaction at \$5; and, therefore,
13 the utility's cost is going to be \$10 and it's going
14 to cost the ratepayers --

15 **MR. DEVLIN:** Let's go a little slower on
16 that. It's real important to understand philosophy.

17 \$5 is what?

18 **MR. McCORMICK:** \$5 is the affiliate's fully
19 allocated cost, and I think there are a lot of
20 questions about how the fully allocated cost of an
21 affiliate would be calculated and whether that's
22 Commission jurisdictional or not. But just say
23 that's -- it's \$5 to deliver that product.

24 For whatever reasons that may be, the
25 nearest market price, somebody's going to sell us a

1 product to the utility for \$10. The utility and its
2 affiliate could work out a contract agreement where
3 the utility purchases that good or service for \$7.50
4 from its affiliate.

5 The affiliate makes some money. The utility
6 ratepayers get the product for \$7.50. However, under
7 this rule as written, the affiliate -- the transaction
8 would have to be priced at \$5. Therefore, the
9 affiliate would not make that transaction, and the
10 utility's fall-back price would be \$10 and, therefore,
11 the utility's ratepayers are harmed.

12 The example that we have discussed
13 previously falls within the category of fuel and
14 transportation. The difference between waterborne
15 transportation and rail transportation in Florida is a
16 good example, and the savings to the utility have been
17 tremendous, and those ratepayers -- those have been
18 passed to the ratepayer. But that would stop
19 cost-effective transactions from being made by the
20 affiliate because it's going to lose money, and it
21 will not make the transaction.

22 **MR. DEVLIN:** You say lose money. You said
23 the cost is not --

24 **MR. McCORMICK:** Not make money; I'm sorry.
25 It's not going to make a --

1 **MR. DEVLIN:** Well, costs would involve a
2 profit element.

3 **MR. McCORMICK:** That's where the question
4 comes in; who sets the profit element. Is it set at
5 the utility's authorized rate of return? That's an
6 area where I question whether the Commission has the
7 authority to get in and determine what that profit
8 component would be. And when we make a transaction at
9 a fully allocated cost, is that 12%, is that 20%, is
10 that 5%; you know, what is that ROE. So I think
11 that's a question that comes into the whole fully
12 allocated costing issue.

13 **MR. DEVLIN:** I think that's a legitimate
14 question, and one of -- the premise, I think, under
15 (3)(c) is that maybe the reason that the company can
16 provide a service or product at \$5 and the market is
17 \$10 is because of the unique advantages with the
18 utility. And that's sort of a premise there; quantity
19 of purchase, close linkage with the utility, et
20 cetera. Otherwise, you know, how could the affiliate
21 provide that at, you know, one half the market.

22 It puts a burden on the utility to show
23 that. And I'm just throwing this out. If there was a
24 provision in here like we had in the NARUC guidelines
25 where, again, placing that hard burden on the utility

1 to show that, listen, you know, this is going to harm
2 the ratepayer if we have to, you know, process this
3 transaction at \$5, if the affiliate and utility could
4 put a showing on that there's a market value of \$7.50
5 or \$10 and that really should be what the transaction
6 should be processed at; and they have to keep the
7 necessary evidence and records to support that, would
8 that calm your nerves?

9 **MR. McCORMICK:** The problem here is that
10 this is one of the paragraphs that does not have any
11 waiver provision, that it doesn't permit anything
12 except this, that --

13 **MR. DEVLIN:** Is that your problem, Joe --

14 **MR. McCORMICK:** -- it won't --

15 **MR. DEVLIN:** -- if there was --

16 **MR. McCORMICK:** It won't --

17 **MR. DEVLIN:** -- not a waiver provision, but
18 an exception that had enough meat to it, there
19 wouldn't be unbridled discretion, but --

20 **MR. McCORMICK:** Tim, I -- that burden to
21 prove --

22 **MR. DEVLIN:** -- keeps that --

23 **MR. McCORMICK:** -- I believe that is our
24 concern in Section (a), (b) and (c). We are unsure of
25 whether or not if we have an example where our

1 customers benefit from that type of transaction being
2 priced at something that is outside of what is
3 required in this rule that we would be able to come to
4 this Commission and petition this Commission and be
5 able to get a waiver of that rule.

6 That's our overall concern at (a), (b) and
7 (c). We have -- I think we have examples in each one
8 of these where we have a concern, an actual
9 transaction that may be going on in our corporation at
10 this point in time that we would not be able to waive
11 this rule, and it would be -- it would force us to
12 price it at something that would eliminate a benefit
13 from our retail customers.

14 **MS. KAUFMAN:** Tim, I think Mary Anne already
15 said you can always come to the Commission and ask for
16 a waiver. It's a hard burden in Chapter 120, but if
17 you can file a petition and you can make your case and
18 the Commission agrees with you, you can get a waiver
19 from the rule; but the waiver is -- a waiver is by
20 definition, I guess, an exception to the standards
21 that I think are trying to be set out in the rule, but
22 you can --

23 **MS. HELTON:** Well, I would even go beyond
24 that. I mean, I would like to look at the language
25 that you would suggest, but I don't have a problem

1 legally with laying out an exception here that you may
2 use a different cost level if you can make a showing
3 that the ratepayers would be harmed if you didn't.

4 **MR. McCORMICK:** While Tampa Electric has no
5 problem in making that showing, we don't believe our
6 customers should be excluded from seeing benefits
7 because of a hard burden, a high burden. We should be
8 able come in and show that burden.

9 Now, our standard for that burden should be
10 high, but to be able to come in front of this
11 Commission and present that evidence should not be a
12 high hurdle. It's the benefits that should go to our
13 retail customers because of organizations of our
14 business that we have been able to set up. We should
15 be able -- be allowed to show that to the Commission
16 and should have -- shouldn't have to jump through
17 higher hurdles to be able to make that showing.

18 **MS. SALAK:** I'm kind of interested.
19 Everybody keeps talking about the waiver and talks
20 about a petition. I mean, the rule isn't set up for a
21 petition.

22 You've mentioned a petition, you've
23 mentioned it, and so did you. (Indicating) So, I
24 mean, is it better to draft the language if we have an
25 except or a waiver, whatever you want to call it, that

1 we actually have a petition and then get it out of --

2 **UNIDENTIFIED SPEAKER:** We offered language
3 which we believe --

4 **MS. SALAK:** So what you --

5 **MR. McCORMICK:** -- does that for you --

6 **MS. SALAK:** Okay.

7 **MS. KAUFMAN:** Well, I'm certainly in favor
8 of having to come before the Commission to get a
9 waiver or an exception. I'm not sure what language
10 Mark is referring to.

11 But in principle, yes, we think if you want
12 an exception to any of these rules, you should file a
13 petition and make your case in front of the
14 Commission, because as you know, in the audits,
15 consumers don't really have access and they don't
16 really know what goes on in those audits, whereas if
17 it's a proceeding before the Commission, we would have
18 notice and we could participate if we wanted to.

19 **MS. SALAK:** Does FPL want to comment on
20 that?

21 **MR. GUYTON:** I'd say I think you're creating
22 a level of regulatory costs associated with cost
23 allocation that you don't envision, you don't intend.
24 If you formalize this in a waiver format and a
25 petition format, I mean, the exception which is

1 envisioned in some of the subsections but not in the
2 others I think is the preferable vehicle to go; and it
3 arises in the context of audit there.

4 I mean, that's the Commission and the
5 Commission Staff's role to address it there, and I
6 think it's appropriately addressed there.

7 **MR. DEVLIN:** Charlie, I'd like to address
8 that, because this came up in the NARUC deliberations
9 quite a bit.

10 And one of the arguments for the exception
11 versus petition is that the petition process can be
12 arduous and time-consuming, et cetera, and that could
13 discourage transactions. But then I hear Vicki saying
14 that it's just an exception process and you're kind of
15 relying on auditors to catch it; you know, that may
16 not get flushed out in a public forum.

17 And there may be something in between that
18 we could at least discuss where it doesn't have to be
19 a "mother may I" for a waiver, but there would be some
20 kind of a filing of some sort -- and I'm just talking
21 off the top of my head -- or some kind of a formal
22 process of keeping track of exceptions. So they
23 aren't -- you know, they aren't something that the
24 auditors miss in an audit.

25 You understand what I'm saying? There may

1 be something in between an exception that, you know,
2 is buried in the company's record versus a petition
3 where you have to come before the Commission and have
4 a hearing, you know, and that can be not the most
5 useful --

6 **MS. KAUFMAN:** Yeah, there may be a halfway
7 point. My point is just that customers and my clients
8 have no access to -- have no idea what goes on in the
9 audit. That's not to say the auditors aren't doing a
10 great job. But just some kind of a public notice or
11 whatever that puts consumers on notice that an
12 exception to a rule has been sought for whatever
13 reason and that the utility's justification is
14 whatever they choose to put forth.

15 **MR. PORTUONDO:** This is Javier from Florida
16 Power.

17 Wouldn't this issue be satisfied in the
18 audit section where you're asking for deviations or
19 irregularities? If we take Florida Power's suggestion
20 to limit it to material errors or exceptions, couldn't
21 it be addressed there where we actually provide upon
22 audit those deviations from the rule so the auditors
23 don't have to dig for it?

24 I mean, it's right there. You can review
25 the justification for deviating or the exception for,

1 using a particular pricing methodology? And the
2 other --

3 **MS. SALAK:** You're talking about under
4 (6)(c)?

5 **MR. DEVLIN:** Yeah. I was looking for it,
6 because providing the auditors may or may not be
7 sufficient for an intervenor, but there was some --
8 oh, interested party -- if there was some way that
9 there be a reporting requirement of some sort.

10 **UNIDENTIFIED SPEAKER:** It was part of the
11 audit. It's part of the --

12 **MS. SALAK:** Those are --

13 **MR. BABKA:** Don Babka with Florida Power &
14 Light. Why couldn't you make it part of the reporting
15 requirement and just report that each year in your
16 annual report? I think you have the page back there.
17 Just report it as an exception. That way it would
18 make it have to put it out there for you.

19 **MS. KAUFMAN:** Maybe I'm missing something.
20 I mean, I'm not that familiar with your audit process,
21 but where is the opportunity for an intervenor to say,
22 well, wait a second; the utility did not carry their
23 burden of proof in making this transaction. What is
24 an exception to the rule? Where is that opportunity
25 by putting it in a report?

1 **MR. DEVLIN:** I would think -- and this is
2 off the top of my head -- if it's an after-the-fact
3 review -- kind of I think that what they're talking
4 about -- they'd make a report and say, listen, we did
5 this exception, we did markets that are cost, and
6 here's all the reasons why; and then you took
7 exception to it in a subsequent proceeding, I mean, at
8 that juncture I think there could be a -- you know, a
9 disallowance or an adjustment made in the proceeding.

10 **MS. SALAK:** I think part of the problem with
11 that would be the time lag.

12 **MR. DEVLIN:** There's a time --

13 (Simultaneous inaudible comments.)

14 **MR. DEVLIN:** -- there. That's the drawback.
15 I agree with that.

16 **MS. KAUFMAN:** And, again, I'm not sure if
17 these are the same reports that the utilities now all
18 want to keep confidential. I'm just not clear on how
19 somebody that's not a utility would get access to the
20 necessary information.

21 **MS. SALAK:** That's a good question. I don't
22 know.

23 **MR. DEVLIN:** I've got a feeling it would be
24 confidential when you're talking about affiliate
25 transactions, but we'll let the industry talk.

1 Anybody have a comment on confidentiality?

2 **UNIDENTIFIED SPEAKER:** My understanding, all
3 the information is available to FIPUG or any other
4 group as long as they're willing to sign a
5 confidentiality agreement.

6 **MS. KAUFMAN:** Well, you know that we have a
7 lot of problems with confidentiality, and I'm sure
8 this is not the forum to get into that. We have a lot
9 of differences in the way accessed information is
10 being denied by the utilities.

11 But be that as it may, in regard -- coming
12 back to putting an exception in a report, my question
13 still is how the public would have knowledge of that
14 and where their opportunity would come; and if it's
15 after the fact, Tim, whether that's really a
16 sufficient check on these kind of transactions.

17 **MR. DEVLIN:** Okay. Point is well taken.

18 **MS. SALAK:** And your idea, would it be
19 before the fact, then, or --

20 **MS. KAUFMAN:** Yes, absolutely.

21 **MS. HELTON:** What about some kind of a
22 threshold limit whereas if you -- if the cost of the
23 transaction goes above a certain amount, then coming
24 before the Commission and getting preapproval?

25 **MS. KAUFMAN:** That's certainly something to

1 consider, and you have some monetary thresholds in
2 other parts of the rule, and that might work. I don't
3 have a number to tell you that would be appropriate at
4 this time, though.

5 **MS. SALAK:** I did have a question about that
6 bidding part of the rule, that you had made a comment
7 about annually doing your bid.

8 I mean, I guess when I looked at the
9 portion -- or looked at that portion of the rule, I
10 was thinking that, say, you were signing a three-year
11 contract or something like that, that that would --
12 you would be looking at it, looking at a competitive
13 bid, and then it would be in place for three years and
14 you wouldn't have to do that annually.

15 **UNIDENTIFIED SPEAKER:** Our service company
16 agreement has been in effect for 20 years. So, I
17 mean, it's not re-signed. So if I can use that, then,
18 you know, I'm clear. (Laughter.)

19 **MS. SALAK:** Maybe I'll take my
20 interpretation -- (inaudible) --

21 **UNIDENTIFIED SPEAKER:** I mean, that's not
22 really revised. It's really between the service
23 company and the other -- there's, you know, five
24 electric utility operating companies that are getting
25 the same service at the same costs. So -- but we'll

1 figure out something.

2 **MR. PORTUONDO:** Beth, this is Javier,
3 Florida Power. I think if you move to a market based
4 pricing, I think there's no need for the bidding
5 requirement. As long as the utility has the burden of
6 proof that they are accepting those services at a
7 market price, it gives -- it eliminates the
8 subsidization.

9 **MR. DEVLIN:** Ruthe, are you ready for a
10 break?

11 (Discussion off the record with reporter.)

12 **MR. DEVLIN:** We have two options. We can
13 take a break and slug through this or -- I don't know;
14 we're probably more than halfway through. We can take
15 a short break or longer break and go to lunch.

16 (Discussion off the record.)

17 **MR. DEVLIN:** Short 15-minute break.

18 (Brief recess.)

19 - - - - -

20 **MR. DEVLIN:** And, please, it's very
21 difficult on the court reporters. You know, we want
22 to keep this informal and have open dialogue, but if
23 you could try to remember to introduce yourself, and I
24 guess we all need to talk a little slower and not
25 interrupt each other.

1 I guess we're ready to go. We were kind of
2 in the midst of talking about in sort of a broad way
3 transfer pricing between affiliates and utilities, and
4 we have a couple of areas that we're taking under
5 consideration.

6 So I guess I'll open it up. We were talking
7 about (3)(c). We were talking about exceptions,
8 whether there should be any; if there are, should they
9 be in the form of a petition where there's open
10 review, or should it be something that would be
11 revealed in the audit process. And that's something
12 that we're going to take under consideration.

13 Is there anything else somebody wants to
14 bring up in the area of transfer pricing?

15 **MR. BABKA:** This has already been said, but
16 I'd like to reiterate, because it is a concern of
17 Florida Power & Light Company as well.

18 Item (3)(c) contains the bidding for
19 products over \$500,000. The parent company contains
20 people such as the chairman of the board. It includes
21 the board of directors, human resources, some
22 accounting, the tax group, items such as that that you
23 would normally not go out and get bids on, nor is
24 there a market price. We would expect that that would
25 not be included in Item (c) and would come under the

1 normal allocation process.

2 We also believe that a service company, such
3 as Gulf Power has, where they're also doing such
4 things as depreciation studies for several different
5 utilities, that the economy of scales of saving money
6 is far better to have that done at the parent company
7 and have the -- or the service company have those
8 costs allocated down to each individual utility,
9 rather than each utility having their own depreciation
10 group.

11 I can see where it would be far more
12 expensive to require bids for that sort of thing. So
13 there FPL would suggest that the parent company or
14 service company, such as Southern Company has, should
15 be removed from Item (c).

16 Now, I do believe that an affiliate -- if
17 Florida Power & Light had an affiliate that was
18 building, say, electric poles, that they should be
19 under the same conditions as any other third party
20 that's selling the utility poles. They'd have to
21 cover the bids, they'd have to have the best deal, and
22 be able to provide us the best service so that we
23 could take that into consideration when giving out the
24 bid.

25 In addition to that, I have one more thing

1 to add is that I would like to see a little more
2 symmetry in this rule; that cost for market should --
3 it should go both ways, to and from the utility so
4 there is symmetry.

5 **MR. DEVLIN:** Thanks, Don. Any questions or
6 any comments?

7 **MR. GUYTON:** This is Charlie Guyton for
8 Florida Power & Light.

9 We've raised one other comment about (3)(c),
10 and that is the reference to competitive bidding.
11 We're a bit concerned that the implication may be here
12 or the expectation may be here that the lowest bid
13 should prevail, and that's not necessarily always the
14 case. We're concerned about being constrained by the
15 lowest bid when there may be a discernible difference
16 in quality or nonprice factors that ought to come into
17 play.

18 In that regard, I think we're more attuned
19 with Power Corp's comment that bidding may not be the
20 key here; it may be the market price may be the key.

21 **MS. SALAK:** (Inaudible comments away from
22 microphone.) We were just discussing -- use market;
23 you have two companies, one provides it and it's a
24 lower price than the other one, but the quality is
25 worse. Are you saying that -- how would you

1 distinguish -- if we just put market here, how would
2 you distinguish between those two? I mean, if you say
3 market, to me it's lower. I would take the lower one
4 in that scenario, too.

5 **MR. GUYTON:** Well, in either case, then, I
6 think we have a concern, then, about price being the
7 sole determinant; and that's really whether you
8 address it through, quote, competitive bidding or
9 market price.

10 I'm not sure the price should be the sole
11 determinant here, and I think the rule needs to have
12 some sensitivity to that.

13 **MR. DEVLIN:** Anybody on Staff want to
14 address it, because I'm not familiar with where the
15 \$500,000 threshold came up? Does anybody want to
16 address that?

17 **MS. SALAK:** It was actually originally
18 picked up in the NARUC guidelines.

19 **MR. DEVLIN:** Okay. Just the materiality --

20 **MS. SALAK:** Uh-huh.

21 **MR. DEVLIN:** How about the notion of culling
22 out service companies and parent companies? It seems
23 like that may be difficult in doing, by the way. I
24 mean, how do you define a service company from a -- or
25 distinguish a service company from another common

1 affiliate?

2 **MR. PORTUONDO:** This is Javier Portuondo,
3 Florida Power Corp.

4 I think it would be a separate entity that
5 would -- its sole purpose would be to just provide
6 services to the affiliate parent --

7 **MR. DEVLIN:** Okay. Why don't you, if you
8 will, try to draft some language if you want to
9 propose culling out service company from the rest of
10 the standard.

11 **MR. PORTUONDO:** We'd be glad to do so.

12 **MR. DEVLIN:** Any other --

13 **MS. SALAK:** I do want to embellish on the
14 500,000.

15 It was -- we started off with these
16 guidelines, and then we were looking to see if it was
17 arbitrary; and we didn't think it was because it was a
18 certain percentage of -- and we looked at Gulf to be
19 the standard because it was the smallest of the large,
20 and that it was a certain percentage of earnings; and
21 we thought that that was reasonable to be based on
22 that.

23 **MR. GUYTON:** With that rationale, you might
24 need to have a certain percentage of earnings as
25 opposed to 500,000. It would be far different for my

1 client than, say, Gulf.

2 **MS. SALAK:** We did discuss that, and we
3 thought that -- we had used certain percentages before
4 in the past, and it was very contentious. We -- we're
5 going back to the flat amount using the smallest
6 company.

7 We had another hearing, rule hearing, where
8 percentages got to be very controversial.

9 **UNIDENTIFIED SPEAKER:** That must be AFUDC.

10 **UNIDENTIFIED SPEAKER:** Beth, if I understand
11 this, this is on a per service basis; it's a 500
12 limit, not on aggregate services, but on a per service
13 basis?

14 **MS. SALAK:** It would be for what you would
15 contract for. I mean, if you did a bundle of
16 services, I would think -- well, this is me talking
17 again, perhaps -- it would be per contract basically
18 what you would -- in the normal course of your
19 business, what you'd be contracting for.

20 **MR. GUYTON:** I don't want it to go without
21 saying again -- I don't want to dwell on it unduly
22 either. This is another area, particularly this rule,
23 where we have some question whether the bidding
24 requirement ought to apply to affiliate transactions
25 between a utility and affiliates that clearly are

1 related solely to something that is other than
2 electricity and -- or the provision of gas.

3 We think the rule, to the extent that it
4 attempts to address that, goes too far.

5 MS. SALAK: So you're back to your appliance
6 example?

7 MR. GUYTON: Pardon?

8 MS. SALAK: You're back on your appliance --
9 we're back to your appliance?

10 MR. GUYTON: Back to the appliance, and --

11 MS. SALAK: Okay.

12 MR. GUYTON: -- there may be some others,
13 too, and we'll work towards trying to present
14 something that's a little easier to get your hands on.

15 MS. SALAK: Is that a real -- it's not a
16 real case scenario, the appliances?

17 MR. GUYTON: I don't think it is with my
18 client. It's one that came readily to my mind as we
19 were drafting comments, because the statute carves out
20 appliances as below the line. But there are some
21 others that certainly it's conceivable and could be
22 contemplated into the future where it clearly would be
23 a transaction or a service that is not related to or
24 part of the provision of electricity, and --

25 MS. SALAK: You can't think of an example

1 right now that's happening?

2 **MR. GUYTON:** I can't. I'm not at liberty to
3 say.

4 **MR. DEVLIN:** Okay. And you're going to try
5 to draft comments. That really leads to your concern
6 on (3) (a).

7 **MR. GUYTON:** Yes, and it probably is most
8 manifest here in (3) (d), which is why I wanted to
9 raise it again. I just didn't want it to be forgotten
10 for lack of having mentioned it.

11 **MR. DEVLIN:** Okay. Any other comments on
12 (3) (c)? (No response.)

13 Okay. (3) (d), transfer of assets.

14 **MR. McCORMICK:** Joe McCormick with TECO
15 Energy. This is a question from a nonaccountant on
16 the net book value of an asset on the unregulated
17 affiliate.

18 If that is not necessarily -- using the
19 Uniform System of Accounts, but perhaps using an
20 accelerated depreciation methodology that the
21 Commission would not normally recognize, what happens?
22 And I don't know the answer to that. I don't have
23 any -- so net book value becomes, to me, a concern. I
24 don't know for sure what that means.

25 **MR. DEVLIN:** Well, even the affiliate

1 company files generally accepted accounting
2 principles, I assume, and there is depreciation.

3 I guess your question is, depreciation would
4 be set by the Commission if you're zooming in on the
5 depreciation angle?

6 **MR. McCORMICK:** Yes. Essentially, does this
7 give the Commission the authority to go to the
8 affiliate and design the way it has to do its
9 depreciation, in which case it puts an affiliate of
10 the utility at a competitive -- or could put a utility
11 affiliate at a competitive disadvantage. And, again,
12 I think that probably moves outside Commission
13 statutory authority.

14 **MR. GUYTON:** I guess I'm interested in that
15 because I never conceived that the Commission would
16 even think about that or apply the rule in this way.
17 If that's being considered, we'd sure like to know.

18 **MS. HELTON:** We added a definition of net
19 book value in the depreciation rule with the thought
20 that it really better went there, but that that
21 definition would apply here. Does that help?

22 **UNIDENTIFIED SPEAKER:** No.

23 **MR. McCORMICK:** It should apply to the
24 utility, but not to the nonutility.

25 **MR. DEVLIN:** We're not trying to put

1 ourselves in a position of setting depreciation rates
2 for affiliate companies. But that does not mean that
3 we wouldn't question, perhaps, the calculation of net
4 book value of an affiliate.

5 **MR. McCORMICK:** I'm sure you would question
6 that; and that was the question, to try to get some
7 clarification, as I'm not sure.

8 **MR. DEVLIN:** It's like any other
9 transaction. I mean, it's hard to be able to define
10 exactly, you know, how we would go about evaluating
11 net book of an affiliate.

12 **MR. McCORMICK:** Right. That's really the
13 reason for my question, and we have a rule that looks
14 like it's specific, but it's not, because net book
15 value of an affiliate I don't think you have the
16 authority to define.

17 And so I think you end up again having a
18 rule that doesn't really define something, and I kind
19 of go back to the initial language of making sure you
20 don't harm the ratepayers, and that is in the purview
21 of the Commission.

22 **MR. DEVLIN:** Well, I mean, we don't define
23 depreciation for the affiliate, but we would expect
24 the affiliates to keep records under GAP and would
25 have a calculation of net book for asset that's

1 transferred from the affiliate to the utility, whether
2 it be a truck or land or what have you. Well, on land
3 you wouldn't have depreciation.

4 I mean, it wouldn't be USOA type accounting,
5 but there would be some kind of an accounting that we
6 could rely upon for defining net book.

7 **MR. TROY:** This is Darryl Troy.

8 **MR. McCORMICK:** Could I finish it, Darryl?

9 **MR. TROY:** Sure.

10 **MR. McCORMICK:** As an example -- and this is
11 just a big example outside the realm of any reality --
12 if an affiliate has a nonregulated generating asset
13 and that has been, for whatever reason, written down
14 with some more rapid depreciation than the Commission
15 would normally permit, and the utility buys that, the
16 way this rule reads, you have to buy it at the lower
17 of market or net book value. If the plant has for
18 some reason been depreciated down to zero in 10 years
19 and the Commission's normal depreciation would be
20 30-year or whatever the life might be, you can see
21 where my reason for questioning this comes in. And
22 all it is is a question of clarification, and I'm not
23 sure how you clarify it.

24 **MR. DEVLIN:** Well, I think even in the real
25 world -- which we're not in, I guess -- you appreciate

1 over life. You depreciate over life, and I can't
2 imagine where you'd have a zero -- you know,
3 depreciate 100% a generating plant when there's still
4 life there existing.

5 **MR. McCORMICK:** I can't -- I'm not sure
6 where it would come up, but if a plant, for some
7 economic reason, is written off that brought a new
8 utility because it is economic -- I don't know. All
9 I'm saying is that I think the wording here creates a
10 potential for some problems.

11 And as I think, you know, Charlie Guyton
12 said, if that is something that falls in what this
13 rule could do, I think we all have a concern, and
14 that's all it is is a concern to be expressed. I
15 don't know the answer, but it raises a question.

16 **MR. TROY:** Darryl Troy, Florida Public
17 Utilities. I think we also have a problem with
18 appreciation assets, if an affiliated company has
19 appreciated assets that it -- like a piece of land it
20 picked up for \$1,000 and the utility, regulated
21 utility, wants it, I don't know that they would pass
22 it through at cost. They would probably put it on the
23 market and sell it. The same with structures that
24 would appreciate.

25 I don't know about the other utilities, but

1 I think a phrase like "market" or "lower," has that
2 been considered, or is there problems with that? That
3 way a utility could go down from market, which should
4 be the fair cost, fair to all people, all companies
5 involved, as to the value of that asset.

6 **MR. PORTUONDO:** This is Javier from Florida
7 Power Corp.

8 As we proposed in our preworkshop comments,
9 I feel that (3) (d) needs to take a market focus which
10 reflects the fair value of the assets, whether coming
11 or going, that's being sold, and thereby giving the
12 ratepayer the benefit of the appreciation and the
13 asset. And if it's an asset that hasn't appreciated
14 in value, more than likely they wouldn't be able to
15 dispose of it if there's a need to dispose of it. So,
16 therefore, market would be prudent in either
17 direction.

18 **MR. BABKA:** Don Babka with Florida Power &
19 Light.

20 We agree there should be symmetry in this.
21 I can see cases where you could have problems with the
22 language here. Say, the utility has a piece of
23 equipment that they'd love to get rid of, they have
24 very little use for it, but their net book value is
25 higher than market. So the affiliate buys from the

1 third party, the utility is stuck with the equipment.

2 The reverse is true. If the affiliate has a
3 piece of equipment that is critical that the utility
4 has in their operations, but since we can only pay
5 them net book, other people need that part, too, and
6 they can sell it to the third party for market value.
7 Therefore, the utility doesn't have it and there could
8 be problems with operation on account of it.

9 So there could be problems with having this
10 sort of a rule working two different ways. I think
11 there should be symmetry.

12 **MR. DEVLIN:** Well, you almost have to look
13 at both sides of the transaction. But the one side
14 where a utility sells an asset to an affiliate and the
15 cost is greater than market, and if you went market,
16 what that would do is leave stranded costs with the
17 utility, I think.

18 **MR. BABKA:** But the affiliate wouldn't buy
19 it. They'd buy it from somebody else cheaper.

20 **MR. DEVLIN:** And I think there would have to
21 be a showing before we automatically -- because we --
22 there's a premise here, all this affiliate transaction
23 that business, that they're not arm's length
24 transactions. They aren't real life and they aren't
25 transactions that you could compare to open market

1 transactions and there are certain incentives to cost
2 shifting, and in this case if we didn't have a rule
3 and you could transfer assets below cost to an
4 affiliate without any kind of safeguarding, it would
5 create stranded costs.

6 I think that's one of the reasons that at
7 least I feel like higher cost to market is
8 appropriate, transactions going from the utility to
9 the affiliate.

10 That doesn't say we're talking about the
11 possibility of having an exception language. There
12 may be instances where that's the smart thing to do.
13 You, know, you get into generation problems, I don't
14 know, but -- I think there should be a strong burden
15 of proof on the utility to show that that's in the
16 best interests of the ratepayers to strand costs with
17 the utility. And that's what you be doing there when
18 you go below cost.

19 **MR. BABKA:** I guess if there could be some
20 exception language in here that would -- I guess it
21 would have to be -- you'd have to be able to work it
22 very quickly without incurring a lot of expense so you
23 knew exactly where you stood.

24 If I wanted to buy that equipment, I'd need
25 it now, so I'd have to be able to get approval to do

1 it real quickly. I wouldn't want to have to do it in
2 the dark and find out later that I was going to be
3 denied those costs.

4 So if we did have some except -- way to get
5 exceptions on this quickly without incurring a lot of
6 costs, it may work.

7 **MR. PORTUONDO:** This is Javier from Florida
8 Power.

9 To your point about stranded costs, if the
10 utility does not have the opportunity to sell that
11 asset that for some reason they found that no longer
12 is used and useful, if they can't get market, at least
13 you're stuck with the full net book value as a
14 stranded cost. At least you're mitigating some of
15 that stranded cost by getting market.

16 **MR. REVELL:** Well, what I don't -- in these
17 examples, I mean, why can't the utility go out and
18 sell to some third party at the market, I mean, and
19 then just avoid this?

20 I mean, if you're selling to a third party,
21 there's no affiliate transaction here. You know, I
22 mean, you're making the assumption the only person --
23 the only other entity you could sell to is an
24 affiliate. I mean, is that the situation, or --.

25 **MR. PORTUONDO:** This is Javier.

1 In response to your statement, I think we're
2 addressing our responses in context of this rule. It
3 does not mean that we wouldn't have a third party that
4 you could also sell it to at market, but should the
5 situation arise where the affiliate is the one that is
6 in need of a particular asset which is not -- is no
7 longer used and useful to the utility, it needs to be
8 addressed here in this rule. Otherwise that
9 transaction could not happen.

10 **MR. REVELL:** But in the example, I mean, we
11 keep talking about the utility getting stuck with
12 stranded investment; you know, as if this rule is
13 going to cause that somehow.

14 **MR. PORTUONDO:** No. That was in response to
15 Tim's question about creating stranded asset at the
16 utility.

17 **MR. LAUX:** Mark Laux from Tampa Electric.
18 The premise remains the same no matter who
19 you sell it to, an affiliate or a third party. If
20 it's going to generate a stranded cost, the stranded
21 cost is going to be there no matter what. So that
22 particular portion doesn't play into it.

23 They're talking about limitation of who you
24 can sell an asset to. Under these rules, there are
25 certain limitations or people in the marketplace that

1 you can sell an asset to because of a nonmarket
2 pricing mechanism, a regulation of a pricing
3 mechanism.

4 **MS. SALAK:** But, just to follow up on
5 Dale's -- but are you harmed? If you have a market
6 out there and you can sell it, are you harmed? As a
7 utility, are you harmed?

8 **MR. LAUX:** No. I believe that's what the
9 gentleman from Florida Power & Light said; if we're
10 not restricting ourself to that. But if the case is
11 that way, that that is the only person out there that
12 can use that particular piece of equipment or will
13 give you that higher cost or something like that, what
14 you're doing is removing a benefit from your retail
15 customers that they would not have had before. And my
16 understanding is, the whole purpose of these rules are
17 to protect your retail customers.

18 **MR. DEVLIN:** Not to belabor it, but it
19 really depends on whether you have a real market out
20 there to look at and if you have a real market out
21 there to look at and different, you know, possible
22 buyers for your utility assets -- and Dale's point is
23 well taken; utility doesn't lose anything by going to
24 the open market as opposed to an affiliate.

25 If you don't have the option to sell it

1 outside of the affiliate, then we would question
2 whether there is really a market value there.

3 **MR. MCMILLAN:** Sometimes the market value
4 may be less than what you can get the affiliate to pay
5 you for it. Because, let's face it, some of our
6 equipment is for utility business, and like in
7 Southern, we got other utilities. Our net book,
8 theoretically, could be higher than what they're
9 willing to pay for a used piece of equipment. But if
10 I'm going to get scrap as my alternative in some
11 cases -- because there is transportation costs. You
12 start moving this stuff around the country, there's
13 not really a big market. Your scrap dealers, your
14 used vehicle dealers, they love for us to dump the
15 stuff on the market because they get it cheap and they
16 resell it and they can get a nice little profit.

17 But, I think Tim hit the nail on the head.
18 It's really, is there a real viable market and is
19 there going to be Monday morning quarterbacking on
20 this down the road. It's sort of ham strung, you
21 know, you're making it so prescriptive and maybe the
22 way we did this exception process, as long as it's not
23 burdensome and time -- these are day-to-day business
24 decisions that have to be made. And you can't really
25 be coming down here with a long drawn out petition

1 because you got a used tractor that you may be able
2 to -- that you don't feel like repairing that you can
3 use and that affiliate can use.

4 **MR. DEVLIN:** Well, give us some examples
5 because I don't see a lot of activity here, but I may
6 be missing something; assets transferring from utility
7 to an affiliate. In the past decade or two of being
8 around here I've seen some land transfer, I've seen
9 some buildings and maybe some motor vehicles, but
10 nothing really of substance and usually it's isolated.
11 It's not like you got a whole bunch of these
12 transactions every month. But am I missing something?

13 **MR. MCMILLAN:** I can tell you what we're
14 doing in the Southern Company, and I don't think it's
15 any trade secret. But we move around a lot of
16 materials at our steam plants and we do it at cost.
17 But if the cost that's on the company's book is over
18 current market what could be purchased, we'll transfer
19 it at the market price.

20 **MR. DEVLIN:** You talking about transfers
21 between one utility, like Gulf Power to Alabama Power?

22 **MR. MCMILLAN:** Yes. But it's -- you know,
23 they are affiliates because we are under the Southern
24 Company. But I mean, it's really dealing with one
25 utility and another and we're -- because of the

1 Holding Company Act, we've predominantly done that at
2 cost and there's not what you would call an open
3 market. It doesn't go out and buy the stuff new and --
4 but -- and I'm sure there's other examples, but that's
5 one thing that comes to mind that we're doing day to
6 day. And, you know, we couldn't be in a position of
7 having to go out and get appraisals and you're just
8 adding a lot of administrative costs potentially, and
9 I think just leaving the company -- the burden on the
10 company to prove that it's to the benefit is a high
11 enough administrative cost, much less trying to fill
12 our files up with paper and hire a bunch of outside
13 independent people to come in day to day. And then
14 maybe we can just come over and get an exception for
15 these type of transactions and maybe that will work.
16 You know, just a one time deal, but --

17 **MR. DEVLIN:** You know it says here
18 nonregulated affiliate and I may be wrong, when you
19 talk about it. Maybe that's the bulk of your
20 activities between electric utilities, the four
21 electric utilities. I assume that's the case. I
22 don't know if we're covering that. Help me out. It
23 says, utility to nonregulated affiliates. Is that
24 nonregulated from a Florida perspective?

25 **MS. SALAK:** We were thinking about TECO and

1 People's -- (inaudible). We were concerned about
2 that.

3 MR. MCCORMICK: I can't hear that part, and
4 I think I'd like to. What was that?

5 MS. SALAK: We were worried about TECO and
6 People's.

7 MR. MCCORMICK: That's why I thought I
8 wanted to hear that.

9 MR. LAUX: I think they are both regulated
10 companies.

11 MS. SALAK: Yes, they are.

12 MR. LAUX: So that wouldn't address that at
13 all. The transfer of assets -- this section of the
14 rule wouldn't deal with the transfer between People's.

15 MS. SALAK: Precisely, and that's what we're
16 trying to do; not make it apply.

17 MR. DEVLIN: Well, how about Alabama Power
18 and Gulf?

19 MS. SALAK: Well, see, I would argue that I
20 don't think we were trying to cut it down, but that
21 wasn't a --

22 MR. DEVLIN: We need to consider that.

23 MS. SALAK: -- concise thing.

24 MR. GUYTON: And this goes back to your
25 definition of nonregulated because here you're talking

1 about regulated in the sense that it's regulated by
2 price regulation by the Commission, not whether you
3 recognize it in setting rates and charges of the
4 utility. This is one instance where your definition
5 of nonregulated I don't think serves the purpose or
6 your intent of your rule.

7 **MS. SALAK:** (Inaudible comments away from
8 microphone.)

9 **MR. GUYTON:** I'm going to try.

10 **MR. DEVLIN:** Any other --

11 **MR. VAUGHN:** Yes. Chuck Vaughn, PHCC. I
12 believe this whole process of deregulation is going to
13 bring about these additional rules and so forth that
14 the utilities will have to comply with. It may slow
15 them down a little bit, but it's only in the effort to
16 make sure that every one is protected all the way
17 around, including themselves. So I just see it as
18 that's part of the mechanism that you're going to get
19 involved with.

20 **MR. DEVLIN:** Thank you. Any other questions
21 or comments on (3)(d)? Okay. (3)(e).

22 **MR. LAUX:** Tim, this is Mark Laux. Does
23 this include all affiliates whether or not they have
24 any interactions with the regulated utility or not?
25 Are you suggesting under this language that if we have

1 an affiliate that has no transactions with the
2 regulated company, and they do not keep their records
3 under the uniform system of accounts, that we would
4 have to keep a mapping system within the regulated
5 utility?

6 **MR. DEVLIN:** So I guess Beth's whispering.
7 Afterwards, does it relate to nontariff affiliate
8 transaction activities? So if there was a foreign
9 company maybe, it wouldn't relate to that?

10 **MS. SALAK:** I would say no. I mean, we
11 envisioned picking up the nontariffed affiliate
12 transactions. So as it falls under that subsection,
13 that is what was envisioned. If it's questionable we
14 can make it clear.

15 **MR. LAUX:** I just wanted to know what your
16 motivation was.

17 **MS. SALAK:** It was not for everybody.

18 **MR. DEVLIN:** Well, it kind of, I think,
19 relates to a question that Darryl had or somebody had
20 on net book and getting a handle on what the value of
21 an affiliate transaction is. We know we can't
22 prescribe the USOA and depreciation rates for the
23 affiliate, but we'd like to have some mechanism, I
24 guess, to give some comfort that the cost levels are
25 reasonable or comparable to the utility cost levels.

1 **MR. LAUX:** I premised the question that this
2 particular affiliate had no interaction with the
3 regulated utility. If I understand, this will be a
4 standard that the auditors will come down when they
5 audit us and they will look for either a declaration
6 that each one of our affiliates have their systems
7 under USO -- the Uniform System of Accounts, or that
8 we have a mapping system within the regulated utility
9 to tie our accounts to the affiliate's account. And I
10 was --

11 **MR. DEVLIN:** I think the answer is, Mark,
12 that they would have to be affiliate transactions
13 between the utility and the affiliate for this
14 provision to apply. Maybe we can clarify that.

15 **MR. GUYTON:** And you have language to that
16 effect in the next subsection that makes it clear, but
17 you're talking about affiliates involved in affiliate
18 transactions. You may want to just use that language
19 in (e).

20 **MR. DEVLIN:** Okay.

21 **MR. PORTUONDO:** This is Javier from Florida
22 Power. I'm unsure what the underlying need for such a
23 mapping system is. I envision it to be a very costly
24 system to develop and maintain. The utility already
25 has the burden of maintaining the records necessary to

1 support all the transactions between itself and the
2 affiliate and the underlying methodology for the cost
3 that's charged out. Currently affiliated transactions
4 are audited by the PSC Staff and there is no mapping
5 system in place. And to my knowledge, I don't think
6 there's been a problem in being able to trace back
7 transactions. So I guess I'm a little perplexed as to
8 the need for such a burdensome requirement.

9 **MS. SALAK:** How much do you think this
10 would cost? Any idea?

11 **MR. PORTUONDO:** I don't have an idea, but
12 knowing that any time you make a request for
13 information technology-type issues, it's very costly.

14 **MR. MCMILLAN:** Richard McMillan at Gulf.
15 You know, I'm not even sure how you would even do this
16 to be perfectly honest. You know, obviously just a
17 good example here, I'm going to go back to our service
18 company. It falls under the SEC, which isn't too far
19 different than our requirements, but in certain areas
20 it is. But their billing process is a work order
21 system just like any other -- it's a fully loaded work
22 order. Now, we can map that back to our FERC
23 accounts, but we don't have a break down of every work
24 order back to their SEC accounts. There's all kinds
25 of cost in there because they're fully loading those

1 work orders. So, I guess, what you're calling a
2 mapping system is not real clear.

3 Now, if you're saying, document in this
4 manual how these affiliates are billing you and how
5 those costs are accounted for at your company, I
6 think, we can -- in a general nature, with enough
7 information that a auditor can come in and do an
8 audit, which they've done from time to time, that's
9 reasonable.

10 But to assume that you could sit here and
11 keep up some perpetual mapping system, they're adding
12 work order subs daily, there is just -- I don't even
13 know how you would do it to be honest with you. It
14 would be almost an imposs -- you'd have a full time
15 one or two people in direct communication that would
16 be very, very cost prohibitive when we can work
17 directly with the auditors or whoever is in there
18 looking at us and making sure -- as far as I know,
19 we've always met any data request requirements and
20 providing the detail they needed from the affiliates.

21 But, you know, it's almost going beyond I
22 think really what a manual should be able to lay out;
23 the basic products and services by affiliate and then
24 how those are being accounted for in the companies.
25 But not a direct down to your account number. I think

1 that would be very difficult and time consuming and
2 costly, too.

3 **MR. DEVLIN:** In this area, was the main
4 issue administrative costs; slowing down and trying to
5 make sure when we talk about lobbying or legal from a
6 parent company, you know, it's comparable to lobbying
7 and legal at the utility company?

8 **MR. MAILHOT:** I think that's part of it. In
9 a lot of cases I think what we see is, you know, the
10 utility company gets charged \$10 million, you know.
11 And it all ends up in other expense in one account and
12 we know nothing about it. And, you know, you try to
13 find out something from whoever the charges that
14 \$10 million came from and, you know, you find they
15 have it all in three accounts. There is no way to
16 possibly analyze what that \$10 million is for, you
17 know, parent company charges.

18 And that's kind of what we're looking for
19 here is some method for us to see some additional
20 detail that makes some kind of sense and that's the
21 reason for the mapping requirement. You know, if
22 somebody has a lot better idea, that would be fine,
23 but that's our goal here is to get some better
24 analysis of what these costs are.

25 **MR. PORTUONDO:** Javier from Florida Power.

1 In our last FERC audit we used to do exactly what
2 you're saying, record the affiliate charge or the
3 parent company charge in one account. Since then we
4 have been recording the charge to the FERC account
5 where it would have been incurred had it been
6 performed at the utility. So you have that detail.
7 You'll see it in the account respective to the type of
8 costs incurred.

9 **MR. DEVLIN:** Isn't that mapping?

10 **MR. PORTUONDO:** No. That's actually just --
11 I'm not tracking where the parent company recorded
12 their costs or their charge to us. I'm analyzing the
13 charge to Florida Power and saying, if it was
14 lobbying, if it was corporate secretary, where would I
15 have recorded it within the Uniform System of Accounts
16 at the utility and that's where I record the expense.

17 **MR. BABKA:** Don Babka with Florida Power &
18 Light. I don't think a mapping system will give you
19 what you want. All you're going to get through that
20 is that they recorded this amount in this account but
21 it's not going to tell me what it was. So you won't
22 get the detail you're looking for.

23 I think what you're really looking for is,
24 like Javier said. What you're looking for is the
25 detail of that charge. We really don't care where the

1 affiliate charged it to. If my example of buying
2 electric poles, if I buy ten electric poles, it comes
3 in as an invoice to me, ten electric poles, and I
4 record those in the proper transfer to distribution
5 account and they show up as ten electric poles and
6 from that affiliate. That's what you really want to
7 see and that's what you'd see on our books through
8 work orders and so forth.

9 Now, for me to tell you that came out of
10 account 421 on the affiliate really doesn't tell you
11 anything. Or if they use the same accounts that we
12 do, still doesn't tell you much. So I don't see there
13 is any benefit to having this mapping system. The
14 benefit is what I'm really paying for and what I'm
15 getting charged for from the utilities and how I'm
16 recording that on the utility's books and records.

17 **MR. MAILHOT:** I think the idea behind the
18 mapping system is that, you know, when you get into, I
19 don't know, various kinds of administrative and
20 general expenses that there's, you know, some kind of
21 a break down there, you know. Yeah, it doesn't tell
22 you exactly what it is, but I think if it goes into, I
23 don't know what, pensions and benefits or, you know,
24 various accounts like that, that it would at least --
25 it would help us know something about what the

1 \$10 million was charged for.

2 You know, I mean, if you end up with \$2
3 million in accounting expense, whatever account that
4 is in, and, you know, \$1 million in what, corporate,
5 you know, executive salaries, that kind of thing. At
6 least we'd have some idea of what you're being charged
7 \$10 million for. That's the only thing; the only
8 reason for this mapping system primarily.

9 **MR. PORTUONDO:** This is Javier, Florida
10 Power. Wouldn't the underlying invoice detail already
11 provide you with that, or at least it does at Florida
12 Power.

13 **MR. MAILHOT:** Well, see that's the thing.
14 In your example, sounds like what you're doing is
15 useful and helpful. I mean, we have seen companies
16 where, seriously, I mean, you get \$10 million in
17 allocations a year and we have no idea what for. I
18 mean, unless you go off to the parent company and do
19 an in-depth study, you know, you really don't know
20 what -- you know, what the utility company is being
21 charged for.

22 **MR. PORTUONDO:** But wouldn't the fact that
23 you're already requiring as part of this rule that you
24 maintain the supporting documentation for that
25 transaction, wouldn't that direct the utilities that

1 are currently just getting that \$10 million to have
2 underlying detail now?

3 **MR. MAILHOT:** It depends on the accounting
4 system. I mean, very seriously, we've seen, you know,
5 companies where they just pay it every month because
6 it's from the parent. You know, I mean, what else are
7 they going to do? And that's the detail, you know.
8 It's about one page. Seriously, it depends a lot on
9 each company's accounting system and that's the
10 reason, you know, for this proposal here is to -- you
11 know, for those companies who don't maintain any
12 detail is to try to get some detail on this. That's
13 all.

14 **MR. BISMARCK:** Keane Bismarck with RACCA.
15 One scenario might be where a utility shows in its
16 expense that it has utilized mailing costs to send out
17 their monthly billings to their ratepayers and yet an
18 affiliate company that they may have, let's say, does
19 service air conditioning work and is a nonregulated
20 affiliate ends up with a stuffer in that particular
21 mailing. How is that going to show?

22 Now, it could be argued that since those
23 things are typically done on a bulk mail basis it may
24 well not have cost the utility any more to put a
25 marketing device in there for it's nonregulated

1 affiliate, but what about the money for producing the
2 brochure or the item that went out there? What is
3 that market value anyway? If a private company had to
4 go out and do that kind of mass marketing to hundreds
5 of thousands of people, that's a tremendous advantage
6 that the utility and it's affiliate would have over
7 the open market.

8 **MR. DEVLIN:** I think that's why we advocated
9 earlier on that it should be higher cost of marketing.
10 I heard the example one time that a particular
11 company, not in this state, priced out the cost of
12 advertising a nonregulated service -- I don't know if
13 it was air conditioning or heating or whatever -- at
14 the cost of the ink on the bill, which is
15 inconsequential, obviously, compared to the value.
16 And so that's why I think that we advocate a higher --
17 and the cost might have been less than a penny, but
18 the value was much greater than that.

19 Okay. Well, we'll take under consideration
20 the point of it, should it relate only to those
21 affiliates that have affiliate transactions with a
22 utility similar to the way we have it articulated in
23 (f).

24 And as far as mapping versus a detailed
25 record, probably stick with mapping for now unless we

1 are persuaded that this is a real costly process but
2 I'm sure Dale will be open-minded about that.

3 How about (f)? Seems pretty
4 noncontroversial. Doesn't the USOA address this, in
5 my record retention? I was just wondering if it's
6 already addressed in the USOA or our rules somewhere
7 else, but apparently not.

8 Okay. How about (4)?

9 **MS. KAUFMAN:** Tim, if we're looking at
10 (4)(c) I would just make the same comments about the
11 exception process that we talked about earlier.

12 **MR. PORTUONDO:** This is Javier with Florida
13 Power. On (4)(a), this is more of a question. I
14 assume that what's meant by (4)(a) is to utilize the
15 Uniform System of Accounts as it exists to demonstrate
16 whether it's a regulated or nonregulated transaction?

17 **MS. SALAK:** When you say USOA, you're
18 talking about some things -- I think we go back to the
19 definition of what is included --

20 **MR. PORTUONDO:** Well, currently you have
21 FERC accounts --

22 **MS. SALAK:** Right.

23 **MR. PORTUONDO:** -- in existence that address
24 nonregulated transaction versus a regulated
25 transaction.

1 **MR. DEVLIN:** I think what --

2 **MR. PORTUONDO:** I guess --

3 **MR. DEVLIN:** We found out in our review
4 about a year ago, looking at the FERC accounts, it
5 wasn't always clear -- I don't have all the accounts
6 memorized -- whether items within some of those
7 accounts, those miscellaneous accounts, were involved
8 regulated or nonregulated amounts. And that's why we
9 go back to our definition, and really getting into a
10 circle here. But what's really relevant here is
11 whether we consider the transaction above the line for
12 ratemaking purposes that would be regulated.

13 **MR. PORTUONDO:** Would you allow a simple --
14 something as simple as just a chart of accounts by the
15 utility that designates it whether it's regulated or
16 nonregulated?

17 **MR. DEVLIN:** Again, don't we have some
18 accounts -- help me out here -- that you can have both
19 regulated and nonregulated transactions in a
20 particular account? Haven't we run into that?

21 **MS. SALAK:** Some of the information we got
22 back from the utilities when we asked for a data
23 request early on had some accounts -- and Sam, Jay,
24 Lee, you've always looked at them better than I did.
25 But some of them had accounts where some of them we

1 were actually putting the things above the line or
2 through surveillance, and in the same account had some
3 items that you were placing below the line. And I'm
4 not saying "you", as in "you", but just generically.
5 That we had some accounts where people were making a
6 decision, "yes, we are going to put this in
7 surveillance;" "no, we are going to put it below the
8 line."

9 **MR. MCMILLAN:** Well, some of it was based on
10 prior Commission decisions. You got stuff up 930,
11 advertising, so much billing, advertising that's been
12 disallowed. It's legitimately booked up 930 at most
13 companies. So, your FERC account -- but you got
14 subaccounts typically -- I don't know how other
15 companies refer to it -- that would segregate those
16 dollars, I guess. And I guess that that's all -- that
17 regulated, nonregulated is easier to me than trying to
18 start even finely -- more finely refining that between
19 product and service, because typically I'm not even
20 sure what that definition is. But the regulated,
21 nonregulated, typically our classification of accounts
22 manual would specify that or you'd have certain
23 subaccounts within the accounts that would be nonbase
24 rate regulated and -- but yet legitimately charged
25 into an above the line FERC account.

1 **MR. MAILHOT:** I think what we're looking at
2 was like say some of below line accounts, you know,
3 like other income and other expenses. Like say under
4 other income, you know, you would have, you know,
5 three types of other income in there from three
6 different products or services and one of those would
7 be moved above the line and the other two would stay
8 below the line. You know, I mean, not you
9 necessarily, but --

10 **MR. MCMILLAN:** You all didn't let us move
11 anything above the line.

12 **MR. MAILHOT:** I mean, that's the thing we're
13 looking at is, you know, we couldn't just say whatever
14 account -- I don't know what the account numbers are,
15 but, you know, 440 something; that this is a
16 nonregulated account, because within that below the
17 line account, there was both regulated and
18 nonregulated. I mean, in the sense of some of those
19 revenues may have been moved above the line and some
20 stayed below the line. So that's what I think what
21 we're getting at here.

22 **MR. MCMILLAN:** Just have to make sure your
23 accounting records differentiate and that's no
24 problem.

25 **MR. DEVLIN:** If your accounting records

1 differentiate then this doesn't have any extra work
2 associated with it.

3 Okay. Any more comments on -- how about
4 (b)? I think Vicky had a comment on (c). (b)?
5 Motherhood, apple pie there.

6 (c). And your comment? I'm sorry. I
7 didn't catch it; about the exception?

8 **MS. KAUFMAN:** It's the same that we talked
9 about in an earlier section which has an exception and
10 that is, you know, how is the exception going to be
11 proved up? What is the process going to be for
12 consumers to have access when a utility is seeking an
13 exception from one of these rules?

14 So it's the same comments I made earlier
15 that we had a somewhat extended discussion on. We
16 would like to see, you know, a petition. We'd like to
17 say the utility come forward and explain why it needs
18 an exception and justify it.

19 **MR. MOHRFELD:** Warren Mohrfeld, Florida Air
20 Conditioning Contractors Association. I'd like to see
21 that whole line striked (sic). It's not hard for a
22 utility company to come in and undercut somebody if
23 they're cross-subsidized. As an independent
24 contractor, I have a truck on the road or a series of
25 trucks on the road that cost me so much every day to

1 go down that road. If I'm subsidized then
2 consequently I can charge less and undercut my
3 competition. I don't have that luxury. And with that
4 exception in there, I run a great risk of having that
5 happen to me.

6 **MR. DEVLIN:** So your position would be
7 always fully allocated costs?

8 **MR. MOHRFELD:** Absolutely.

9 **MR. MCCORMICK:** Joe McCormick with TECO
10 Energy. In this rule, and particularly in the aspect
11 of the -- of the exception, I think you have the
12 potential for establishing the Commission precedent
13 for a whole lot of competitive issues that will be
14 coming to face the Commission over the next however
15 many years.

16 I'm going to tread very carefully I think in
17 what looks like a simple decision on the concept of
18 incremental costs and market basis. I would suggest
19 that without that exception this rule does not permit
20 any kinds of flexibility and the utility's ratepayers
21 will be harmed.

22 Also, on Section C, specifically on your
23 agenda, you have for Item 4, I believe you have the
24 discussion of should the ratepayers benefit or not be
25 harmed. And as such, I would say that the Commission

1 it seems like in the past has generally used the
2 provision that ratepayers shall not be harmed, and I
3 believe that that's more appropriate than the benefit.

4 **MR. PORTUONDO:** This is Javier from Florida
5 Power. I would concur with TECO Energy that the not
6 to be harmed test should be the requirement of the
7 rule.

8 **MR. DEVLIN:** The ratepayers not be harmed,
9 not the competitors. I mean, that's really what we're
10 talking about. This may or may not have some impact
11 on the particular market, heating and air
12 conditioning, whatever.

13 **MR. PORTUONDO:** I would agree. But I guess
14 one of the situations that I'm trying to make sure
15 that -- that is addressed is a situation where, and I
16 think FP&L raised it at one of the workshops where
17 you're leasing space and you may have to lease it at
18 less than fully allocated costs. And you're doing
19 that in order to at least contribute to reducing
20 revenue requirement of the ratepayer. It may not
21 benefit -- there may not be a benefit but there is a
22 break even or a not harmed test that's met.

23 **MR. DEVLIN:** I understand the difference of
24 opinion. I'm not sure it will ever have a consensus
25 on that issue between the competitors and utilities.

1 How about (d)?

2 **MR. BABKA:** Don Babka with FP&L. I'm
3 assuming in (d) the list would be maintained and our
4 method through work orders would be fine. It doesn't
5 have to be some drawn out type list? And what you're
6 talking about is -- well, let's think of some examples
7 you may have; pole attachment rents. You have both
8 pole attachment rents revenues, and you have pole
9 attachment rent expenses and they're kept in separate
10 subaccounts and I assumed that would be sufficient
11 because you have the revenues and expenses associated
12 with pole attachment rents. Is that what you're
13 looking for here?

14 **MS. SALAK:** And you have them separated out?
15 When we asked the data request there were a lot of
16 items that companies were saying that they didn't
17 track the expenses.

18 **MR. BABKA:** Yeah. What I mean, Beth, is
19 this is the type of thing; miscellaneous revenues such
20 as pole attachment rents? Well, let's see.
21 Nonutility -- rent of utility property; stuff like
22 that. That's what you're looking for here, isn't it?
23 And if you keep it in separate subaccounts by work
24 order that is sufficient?

25 **MS. SALAK:** And then in turn you would have

1 your requirement in (a) that would say whether it was
2 regulated or nonregulated?

3 **MR. BABKA:** I'm sorry. I didn't hear.

4 **MS. SALAK:** In (a) then you would have the
5 requirement to say whether it was regulated or
6 nonregulated?

7 **MR. BABKA:** Right.

8 **MS. SALAK:** So you would have revenue
9 expenses of all your products and services and then we
10 would know whether it was regulated or nonregulated?

11 **MR. BABKA:** Right. By project. There might
12 be some real minor projects that are very few dollars
13 that we may not identify, but it wouldn't be worth
14 looking at anyway. I'm talking about a very small
15 thing, you know, \$100 on this or \$100 there.

16 But -- well, an example would be the boat
17 rent or rental at the Cutler Plant. There's probably
18 about \$75,000 worth of annual revenue and we do not
19 have any showing expenses associated with that because
20 it's employees that buy the stuff from another
21 employee and, you know, how does an employee allocate
22 time to that specific activity. It would cost more
23 than it would be worth. So there is no expenses
24 associated with that.

25 **MR. DEVLIN:** Sounds like we're talking about

1 incremental expenses. Like the example about the bill
2 earlier, and let's say you had a line on there
3 promoting a nonregulated service on your bill as a
4 stuffer in a bill or something like that. I mean,
5 would this get at the expenses associated with that
6 stuffer or extra line item on the bill? It's a
7 nontariffed service that you're providing for an
8 affiliate. It's advertising heating and lighting as a
9 stuffer in the bill.

10 **MR. PORTUONDO:** This is Javier from Florida
11 Power. I think that what you would find or what I
12 would propose is that you would see a particular FERC
13 account for a particular product or service. Within
14 that account you would see the charges for the
15 indirects and direct costs associated with the -- that
16 product line. So to the extent that you're assigning
17 the fully allocated cost of bill stuffer, mailing,
18 whatever, you'd see it all in that account.

19 And at least that's how I interpreted this
20 section here is that we could utilize the FERC chart
21 of accounts to accomplish that. That we would hit one
22 particular revenue account and expense account
23 respectively for a particular product or service and
24 upon audit you could go down transaction by
25 transaction within those accounts and see what the

1 expenses were for.

2 **MR. DEVLIN:** Any more comments on (d)? (5).

3 **MR. MCCORMICK:** Joe McCormick with TECO
4 Energy. I just have a clarification question. For
5 the form, the reference to be changed, does that
6 require that this rule is reopened or is that
7 changeable or -- I know there is a rule. I think it's
8 25-22 that lists all the forms. What process do we
9 have for input if that form is to be changed in the
10 future? I just don't recall what that is.

11 **MS. HELTON:** There is not supposed to be a
12 rule that lists all the forms any more. I think the
13 electric one may still be on the books, but it really
14 has no meaning. I think the form is really
15 incorporated by reference into the annual report rule
16 so if it were to be changed it would be changed
17 through that. So you would find out about it just
18 like you would any other rulemaking.

19 **MR. MCCORMICK:** Thank you. I just couldn't
20 remember the process.

21 **MR. DEVLIN:** How about audit requirements?

22 **MR. PORTUONDO:** This is Javier from Florida
23 Power. If we could go back just a second to (5).
24 With regards to nonregulated activities, I was
25 wondering whether that was -- that statement was too

1 broad that it needed to be more narrowly stated to
2 address nonregulated activities effecting, I guess,
3 regulated products and services of the utility because
4 you could have a situation, as we've discussed before,
5 where you have a nonregulated division or section of
6 the company that is not effecting the regulated side,
7 and under this particular section it appears to me
8 that that would be subject to disclosure.

9 **MS. SALAK:** We're back to the appliances on
10 Charlie's example?

11 **MR. PORTUONDO:** Uh-huh.

12 **MS. SALAK:** Maybe we can consider that when
13 we consider the other issues and it seems like it
14 would be fall out.

15 **MR. DEVLIN:** Okay. Let's trudge on here.
16 Audit requirements. (a) is okay.

17 **MR. MCCORMICK:** In written comments of TECO
18 Energy we had asked that Paragraph 6 (b), (c) and (d)
19 be deleted. Commission should not require an
20 independent outside auditor to issue a report from the
21 cost allocation manual. We refer again just to the
22 written comments there.

23 And then finally -- well, I guess we'll
24 stick with (b). I have some comments further on (d)
25 when we get there.

1 **MR. DEVLIN:** We are done with (a) I assume?
2 We are on to (b), requirement of an audit.

3 **MR. PORTUONDO:** This is Javier from Florida
4 Power. I would concur with TECO Energy that (b), (c)
5 and (d) should be stricken; that PSC Staff already has
6 the audit authority and that utilities should not have
7 to incur an additional expense of an external auditor.

8 **MR. MCMILLAN:** Richard McMillan with Gulf.
9 I think we would go for that same position.
10 Especially on ours in here is requiring a separate
11 independent review when our existing review process
12 would include our affiliate transactions and the
13 Commission auditors all ready have access to those --
14 our audit work papers -- auditor's work papers upon
15 request. So we haven't bid out what this would cost
16 but it would be a very costly process. And especially
17 Item D, where I say there's no materiality threshold,
18 I'm not even sure if we want to bid on something like
19 that, because they typically, just like your auditors
20 do, do use certain audit judgment and materiality
21 thresholds.

22 **MR. TROY:** Darryl Troy, Florida Public
23 Utilities. I agree also. I don't see a necessity of
24 going to additional expense when the Staff has
25 adequate resources to audit the manual. A company our

1 size and the amount of allocations we have, not only
2 with affiliates but also between regulated operations,
3 that manual is going to be pretty thick.

4 **MR. BABKA:** Florida Power & Light Company
5 agrees with the comments that (b), (c) and (d) should
6 be removed. Florida Power & Light believes that the
7 Commission audit staff is certainly capable of doing
8 these audits.

9 **MR. DEVLIN:** What has happened is this is
10 obviously discretionary on the utility's part to be
11 involved in affiliate transactions, and you're saying,
12 well, okay, there's, we think, an extra burden there
13 and sure there isn't cross-subsidy and let the PSC
14 auditors go out there and check on that. Maybe it
15 ought to be a cost to the utilities for the privilege
16 of being involved in these activities. Maybe that's
17 the philosophy here and you're obligated somewhat to
18 procure on auditor to make sure that the CAM is being
19 followed.

20 This is not all that different than what's
21 being going on in telecommunications probably for 15
22 years, 10 years. If the telephone company's elected
23 to be involved in mixing up regulated and unregulated
24 activities and setting up affiliates, they had that
25 follow up CAM, and they had to have an attestation

1 audit. Rick, help me out on this. Once a year or so?

2 **MR. WRIGHT:** Yes. I think they've loosened
3 up to maybe every three years now. But, yeah, that's
4 been going on for at least 15 years.

5 **MR. VAUGHN:** Chuck Vaughn, PHCC. Like I
6 said before, I think that's the cost of doing business
7 as we're getting into something new here. I think it
8 is certainly worth continuing to look at it until some
9 final language can be resolved.

10 **MR. DEVLIN:** Do we have any feel for the
11 cost at all? I mean, somebody mentioned they hadn't
12 really put it up for bid or anything. Richard I think
13 said that.

14 **MS. SALAK:** I heard an estimate from your
15 NARUC talks somewhere between \$50,000 and \$100,000.

16 **MR. MCMILLAN:** I think one of the points I
17 had made, too, is our external auditors and our
18 internal auditors already are reviewing affiliate
19 transactions. We've made those reports available. To
20 go out and hire our outside auditors or some other
21 auditor I would venture to say, even with our small
22 size, you'd be -- I'll be looking at \$75,000 to
23 \$100,000 minimum, you know. I mean, if you got a more
24 complex parent company it could be a lot -- you're
25 talking about setting up a whole separate set of work

1 papers for it with the way it's worded today.

2 Now, I think if you argue or maybe there
3 could just be some wordsmithing here as incorporated
4 in the existing audits somehow, you know, because I
5 think we do have that in a rolling review process
6 because, I think I said, all of our affiliate stuff, a
7 lot of it is covered by SEC and there's an audit
8 requirement there. But some of this is covered. But
9 you all requiring another audit would just be another
10 administrative burden.

11 **MR. BISMARCK:** Keane Bismarck with RACCA.
12 All this could be solved if the utilities just decided
13 to set -- if they went to their investors and said,
14 look, we want to start a new venture and we want you
15 guys to invest in it. Get it completely out of the
16 regulated side. Don't add the power company's name on
17 it. Don't be using their bill stuffers. Don't be
18 using their employees and their vehicles to set up
19 these programs. Don't house them in the utility
20 buildings. Make it a separate venture and then you
21 don't have to worry about these audits. Set it up as
22 a separate thing through your investors.

23 **MS. SALAK:** Can I ask about -- go back to
24 part (a)? At least two companies commented on the
25 part about the CAM must be organized and indexed so

1 the information contained therein can be easily
2 accessed. And Javier, you added, "for audit
3 purposes".

4 So would you -- I mean, if Staff in
5 Tallahassee wanted to take a peek at it and we asked
6 for it, does that exclude that or were you -- what
7 does that add when you put "for audit purposes"?

8 **MR. PORTUONDO:** The reason that was added is
9 because we eliminated (b), (c) and (d).

10 **MS. SALAK:** Okay. But if we ask for it
11 you'd send it up here?

12 **MR. PORTUONDO:** Yes.

13 **MS. SALAK:** And then TECO, you scratched
14 that line.

15 **MR. MCCORMICK:** Yes. We scratched that line
16 because we're not sure what it means that information
17 can be easily accessed. Easily accessed can mean it
18 has to be all computerized records and you can do a
19 search in one way. It can mean some other report
20 mechanism that is easy to track. The words didn't
21 have sufficient meaning that we knew what was there
22 and they didn't really say a lot, so we just said,
23 move them out and suggested some other wording.

24 **MS. SALAK:** Well, I believe our intent on
25 that line was that if someone went to look at your

1 book, look at your procedures, that it wouldn't take
2 them forever to figure out what was happening with
3 Account 471 or it would be neatly organized and in
4 some logical manner so that it would not take forever
5 to look up a certain transaction, which should go
6 without saying, but it doesn't always. And that's
7 what we were trying to get at.

8 **MR. MCCORMICK:** We didn't want to be found
9 in violation of a rule when we weren't sure what the
10 rule meant. When we thought it was easy and you
11 didn't think it was easy, we didn't want to be in
12 front of the Commission defending that we were in
13 violation of a rule because it was not easily
14 accessible.

15 **MS. SALAK:** Okay.

16 **MR. MCCORMICK:** I think it's understood that
17 you're going to have a cost allocation manual which is
18 going to let you know how to allocate costs. I think
19 that's the purpose of it. You need to be able to
20 index. You need to be able to have a way to find your
21 way through it. I think it's kind of self-indicating.
22 Self-indicating, not vindicating, and that was why we
23 removed it.

24 **MR. DEVLIN:** Well, we got the big issue of
25 (b), (c), and (d), audit requirements; cost of them;

1 whether they should be in conjunction with current
2 audits or not. That was one suggestion.

3 Then the point was made by the gentleman
4 representing the competitive industry that this is
5 perhaps a cost for the privilege of being involved in
6 mixing up regulated and nonregulated activities and
7 another way of doing it is to have a clear fire wall
8 between the two, and it would be subject to this
9 audit -- kind of an audit. That's a choice that the
10 utilities make.

11 Any other -- a lot of this language, I
12 believe, is sort of stolen from what's been going on
13 again in telecommunications for the last 15 years, at
14 least it looks familiar to me.

15 **MR. GUYTON:** Florida Power & Light had a
16 question about what was intended by (b). We just
17 thought it was a bit unclear, beginning in 2000 the
18 compliance audit shall be performed no less than every
19 three years. Does that mean one has to be performed
20 by 1-1-2004?

21 **MR. DEVLIN:** I think that would be the first
22 one.

23 **MR. GUYTON:** Okay. And what would the audit
24 period be? Would it be for three years? One year?
25 Would it be --

1 **MR. MAILHOT:** We have the same requirement
2 in the telephone industry and basically it's once -- I
3 mean, one out of the three years. It just covers one
4 year at a time.

5 **MR. GUYTON:** Okay. It wasn't clear the way
6 it was drafted. That's why we raised the question.
7 That's kind of what we were hoping, but we weren't
8 sure.

9 **MR. BABKA:** Don Babka with FP&L. I just had
10 one question. Where we talk about fully allocated
11 costs, that would include a return on investment
12 wherever there would be an investment?

13 **MR. DEVLIN:** Where you looking at Don?

14 **MR. BABKA:** Where it says that -- where you
15 use the term fully allocated costs for all indirect
16 cost, direct and indirect costs, that would include
17 the return on investment.

18 **MR. DEVLIN:** That's my understanding.
19 Somebody correct me if I'm wrong. Getting a lot of
20 nods yes. Okay. Where we at? We're still on --
21 about done with auditing.

22 **MR. BABKA:** Don't take our silence on (d) as
23 acquiescence with the idea that this cost should not
24 be recoverable from ratepayers.

25 **MR. MCCORMICK:** TECO would mirror that

1 sediment and we commented so in our written comments
2 and we believe if it's a mandated cost mandated by the
3 Commission it should be recoverable in rates.

4 **MR. DEVLIN:** I don't think this is without
5 precedence and I'm going back to my telephone days.
6 But it gets back to the argument that it's the
7 utility's choice to be involved in these nonregulated
8 ventures and to sort of mix up operations, and
9 therefore, the cost of protection of the ratepayers
10 ought to be borne by the utility. And I think that's
11 what we had in telephone -- Florida telephone rules
12 for a bunch of years didn't we? It's just like this.

13 **MR. GUYTON:** If you take that logic then you
14 can apply that to any regulatory cost. The utility
15 opts to provide electric service so, therefore, it
16 decides in its discretion to provide electric service
17 so, therefore, it shouldn't be able to recover its
18 cost. The logic breaks down.

19 **MR. DEVLIN:** Well, I think there is an extra
20 thread, if you will, of cross subsidization the
21 ratepayers could be subject to because of the option
22 the utility makes to be involved in some of these
23 businesses.

24 **MR. MCMILLAN:** Well, I might be a little
25 off, but there you tried to limit this to just

1 transactions between affiliates with non --
2 nonregulated affiliates. Can I assume that this whole
3 thing doesn't apply to any affiliate transactions
4 between utilities?

5 **MR. DEVLIN:** Between what?

6 **MR. MCMILLAN:** Utilities. Service company.
7 I have transactions between Alabama Power, Georgia
8 Power. They're both regulated. They're just not both
9 regulated by the Florida Public Service Commission.

10 Again, I guess, today we do it -- you know,
11 this diversification rule is being expanded and
12 ballooned into a bigger document, but I mean, today I
13 think it's really couched as affiliate transactions.
14 But -- so I don't know.

15 There is some confusion I guess because you
16 just talked about it would only -- you know, you were
17 dealing with the transactions between a regulated
18 affiliate and a nonregulated affiliate. Well, that
19 would exclude probably 95% of my affiliate
20 transactions which would make this a lot less painful
21 as far as some of these additional administrative
22 requirements that are being put in here, including
23 this external audit.

24 **MR. DEVLIN:** I may be speaking out of
25 school. Beth or Dale, when we talk about a Gulf

1 situation, the dominant share transactions between one
2 utility and another, we just need to make sure, are we
3 addressing that as well? I think that's an open
4 question.

5 **MR. BISMARCK:** Keane Bismarck with RACCA. I
6 apologize. I don't have the information right in
7 front of me. I think it may be somewhere in that
8 packet that I gave the Staff.

9 However, there is federal legislation that
10 has been introduced that deals directly with
11 cross-subsidization on a federal level, which my
12 understanding is, is supposed to be able to deal with
13 situations where you have interconnecting agreements
14 between utilities and different consortiums between
15 states.

16 So, you know, I'm not real familiar with
17 that legislation because it's fairly new. But I
18 believe there is federal legislation there. It's
19 supposed to deal with this whole issue at a federal
20 level. It was just recently introduced within the
21 past couple of weeks.

22 **MR. DEVLIN:** Thank you.

23 **MR. MCMILLAN:** I assure you each state and
24 each company is making sure, you know, for our own
25 ratepayer's sake that there is not

1 cross-subsidization. I guess the issue is, some of
2 this documentation, is it more heavily leaning toward
3 the nonregulated. Like I say, we can just voice that
4 question in the areas where we think it might be more
5 than required.

6 **MR. DEVLIN:** We need to get our ducks in a
7 row, but I think the impetus for this whole rulemaking
8 was, at least in my mind, the nonregulated, regulated
9 relationships between utilities. Whether there ought
10 to be a different standard or not, I don't have the
11 answer at this point. I understand that is your
12 dominant share of transactions.

13 Okay. Well, I wasn't that helpful I
14 suppose. We got to resolve that internally. Anything
15 else on auditing? We're winding down.

16 We have a minor change. Well, maybe not
17 minor, to depreciation rules.

18 **MS. CAUSSEAU:** I think that in response to
19 several comments we changed on Page 9 (f) to include
20 salvage cost of removal and amortization. And then on
21 Page 11 and in part (c) I think we had a semantics
22 problem. Sales and transfers are booked as transfers
23 and that was the point that was trying to be made that
24 when there is a sale over a transfer there has to be
25 or should be an adjustment to the utility's books for

1 the reserve amount that is related to the
2 transactions.

3 **MR. BABKA:** Don Babka, Florida Power &
4 Light. On Page 11 of rule -- Line 12 --

5 **THE REPORTER:** I'm sorry. You need to turn
6 your microphone on.

7 **MR. BABKA:** I'm not 100% certain of this.
8 But if you look at Line 12 the word "or from a
9 regulated company to an affiliate", I think those
10 words should be struck.

11 **MS. CAUSSEAU:** Say again please.

12 **MR. BABKA:** I think when you transfer the
13 investment from one plant account to the other you
14 transfer the reserve, but when you transfer it to a
15 nonregulated affiliate you have to retire the plant on
16 your books and record the amount as your net book,
17 whatever the utility or -- subpays would be recorded
18 as a gain, anything over net book. So the reserve
19 would stay with the utility. I think those words need
20 to be struck. It's something you might want to look
21 at.

22 **MS. CAUSSEAU:** Okay.

23 **MR. MCCORMICK:** Joe McCormick with TECO. I
24 would agree. I had the same comment there. If you
25 sell an asset to an affiliate or to anyone else,

1 you're going to sell it at whatever the sale price is
2 and adjust the utility's books accordingly. But
3 you're not going to transfer to the affiliate the
4 asset and the reserve account, so --

5 **MS. CAUSSEAU:** That isn't the intent of
6 this. The intent of this is to book on the utility's
7 books the appropriate amount. And it's my
8 understanding that if you sell it or transfer it to an
9 affiliate or nonregulated affiliate, it's termed a
10 transfer, and the amount that's booked on the
11 utility's books is called a transfer. So that we're
12 not telling you what to do with the utility's books,
13 but we'll look at it and see if it's still unclear.

14 **MR. MCCORMICK:** I also propose some language
15 that I think clarifies without the use -- the specific
16 use of the terms that may cause a misunderstanding, or
17 it did for me anyway, and the language is very simple.

18 **MR. DEVLIN:** Okay. I think we are wrapping
19 up and we'll take that under consideration. Do we
20 need to talk about the forms then?

21 **MS. HELTON:** I think there was only one form
22 that was in addition to what you've all ready been
23 filing. And --

24 **MR. MCMILLAN:** Do you all have copies of
25 that new form?

1 **MS. HELTON:** It should have been attached to
2 the packet that you shall have received prior to the
3 workshop.

4 **MR. REVELL:** Richard, it's the last page.

5 **MR. MCMILLAN:** Okay. We didn't have it
6 during the original package, but I see you've got one
7 here. Thanks.

8 **MR. MCCORMICK:** Before we break, Tim, there
9 have been some documents that have been presented to
10 Staff today that the rest of us have not had access to
11 and it would be helpful to us as we proceed with this
12 docket to get copies of those materials.

13 **MR. DEVLIN:** Yes. Do we have like a service
14 list of some sort, Mary Anne, that we could use?

15 **MS. HELTON:** What I will do is file them in
16 the Clerk's office and if we could just -- what we can
17 do is provide one to each of the utilities. Do we
18 have one contact person that we gave the agendas to,
19 Jay? We can fax them to you all or you can either
20 come and pick them up.

21 **MS. SALAK:** It's too voluminous to fax.

22 **MS. HELTON:** Maybe we can have -- we can go
23 make copies right afterwards and you can pick up a
24 copy this afternoon in the Clerk's office or -- how
25 big is it?

1 **MS. SALAK:** There's four different documents
2 here.

3 **UNIDENTIFIED SPEAKER:** And there's another
4 document.

5 **MS. HELTON:** Maybe this afternoon we'll have
6 them in the Clerk's office by 4:00, 4:30.

7 **MR. DEVLIN:** What do we need about? 10
8 copies or so? All right. We'll try to get them
9 there.

10 **MS. SALAK:** (Inaudible comments away from
11 microphone.)

12 **MS. HELTON:** I tell you what. If you want a
13 copy of the form why don't you come up and tell me
14 that you want one after the workshop and we'll figure
15 out how to get a copy to you. How does that sound?

16 **MR. GUYTON:** Tomorrow is fine. There is no
17 urgency by this afternoon.

18 **MS. HELTON:** Some of you aren't
19 necessarily -- don't have contact people here in town.
20 Well, I guess Gulf has someone here in town. So we
21 could --

22 **MR. DEVLIN:** So they're going to come up and
23 we'll have a sheet of paper. Put your name and
24 number -- phone number, address, phone number, if you
25 want a copy of this package or not and we'll make sure

1 we get it to you one way or another. It may not be
2 ready tonight, though.

3 The other thing we had to deal with is
4 comments and we needed to wait until we had an idea
5 about the transcript.

6 **MS. HELTON:** Ruthe had said that she thought
7 we could get the transcript by next Wednesday. Do you
8 think that's within you all's work load?

9 **THE REPORTER:** Yes.

10 **MS. HELTON:** If we have the transcript by
11 next Wednesday, how long do you all need to make
12 changes to the rule language to give to us so that we
13 can see if we can come up with some changes for
14 everyone to comment on? I think -- is that what we
15 had talked about?

16 **MR. GUYTON:** As we went through this we were
17 encouraged to give you more and more language. I'd
18 ask for three weeks from whenever we get the
19 transcript.

20 **MS. HELTON:** Okay. Unfortunately I didn't
21 bring my calendar, but we can revise the --

22 **MR. DEVLIN:** Let's say -- three weeks would
23 be -- Wednesday, transcript. That's September 1. So
24 three weeks would be September 22nd.

25 **MS. HELTON:** Then can we leave it open-ended

1 as far as when we get the rule back to you all because
2 obviously we don't know until we see what you provide.

3 I can -- if you all give me a disk, I can
4 put the rule on a disk or I can e-mail it to you. Did
5 it work when I e-mailed it to you?

6 **MR. PORTUONDO:** (Shaking head
7 affirmatively.)

8 **MS. HELTON:** So if you want to get with me.

9 **MR. GUYTON:** You want this sent to you?
10 Those revisions sent to Staff as opposed to filing it
11 with the Commission?

12 **MS. HELTON:** I really -- I think it works
13 better for us if you can file it with the Clerk's
14 office. That way it gets distributed to everybody
15 that needs to get it.

16 **MR. DEVLIN:** Now, from there we'll gather
17 and try to figure out our next step, but it might
18 be -- we'll see Mary Anne, and making changes. We'll
19 send out another draft and there may not be need for
20 another workshop. I know this has been somewhat
21 painful. But we can't make that call until we see
22 what we get in.

23 **MS. HELTON:** I have, I guess, a more generic
24 question than that. I think it was helpful for the
25 Staff for you all to file the pre-workshop comments

1 where you made some suggested changes and we were able
2 to make changes to the rules so we could kind of
3 bypass that conversation.

4 On more controversial rules along the road,
5 do you think that process would be helpful? Was it
6 productive to you to file the pre-workshop comments?
7 This is just thinking about rulemaking in general.

8 **MR. MCCORMICK:** It seemed to focus -- Joe
9 McCormick with TECO Energy. It seemed to focus the
10 beginning of the conversations today, and in that way
11 I think provided some assistance. It's somewhat
12 difficult -- not really difficult. It helped somewhat
13 in formulating comments when you've heard the input of
14 the other people in the workshop so the ability to
15 comment before a workshop and then again following a
16 workshop, I think, has worked quite well.

17 **MR. GUYTON:** Charlie Guyton. I tend to
18 agree with that. I think it helps focus issues and I
19 think anything that you can do to help focus issues
20 helps on down the road.

21 **MR. PORTUONDO:** Javier, Florida Power Corp.
22 I would agree. It helps also to eliminate some things
23 that streamline conversation at the workshop.

24 **MS. HELTON:** Well, I guess you may see some
25 more of that then, at least if I'm working on the

1 rule.

2 **MR. DEVLIN:** I think we are concluding.

3 Remember to sign your name up here if you want copies
4 of what was filed here today with an address and phone
5 number. Thank you. We are done.

6 (Thereupon, the workshop concluded at
7 1:55 p.m.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTERS
3 COUNTY OF LEON)

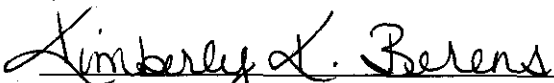
4 We, H. RUTHE POTAMI, CSR, RPR and
5 KIMBERLY K. BERENS, CSR, RPR,

6 DO HEREBY CERTIFY that the Workshop in
7 Docket No. 980643-EI was heard by the Staff of the
8 Florida Public Service Commission at the time and
9 place herein stated; it is further

10 CERTIFIED that we stenographically reported
11 the said proceedings; that the same has been
12 transcribed by us; and that this transcript,
13 consisting of 161 pages, constitutes a true
14 transcription of our notes of said proceedings.

15 DATED this 30th day of August, 1999.

16 
17 _____
18 H. RUTHE POTAMI, CSR, RPR
19 FPSC Commission Reporter
20 (850) 413-6732

21 
22 _____
23 KIMBERLY K. BERENS, CSR, RPR
24 FPSC Commission Reporter
25 (850) 413-6736

\$	4	advocated 129/8 AFAD 70/24 affect 59/4, 66/23 affecting 58/24, 62/9 Affiliate 1/5, 10/19, 11/13, 11/15, 24/10, 25/1, 27/13, 35/5, 35/15, 46/19, 46/22, 49/4, 50/5, 50/11, 50/19, 51/12, 54/12, 54/18, 55/13, 55/19, 55/21, 56/6, 56/16, 56/20, 56/23, 58/10, 58/13, 58/24, 59/7, 59/12, 59/21, 64/10, 64/15, 66/25, 68/2, 77/6, 77/13, 77/15, 80/17, 80/18, 80/23, 82/10, 82/15, 82/18, 83/4, 83/7, 83/12, 83/21, 84/2, 84/4, 84/5, 84/7, 84/9, 84/20, 85/20, 86/3, 93/24, 98/16, 98/17, 101/1, 101/6, 102/24, 104/17, 104/25, 105/8, 105/9, 105/11, 106/2, 106/4, 106/11, 106/15, 106/23, 107/1, 107/12, 109/25, 110/2, 110/14, 110/18, 110/22, 111/4, 111/9, 112/21, 112/24, 113/5, 113/19, 114/24, 115/1, 115/4, 116/3, 116/7, 117/18, 120/1, 120/7, 120/11, 120/21, 120/23, 121/2, 121/12, 121/13, 121/17, 122/2, 123/23, 125/2, 126/1, 126/6, 126/10, 128/18, 128/20, 129/1, 129/6, 129/21, 139/8, 142/12, 143/11, 144/18, 145/6, 151/3, 151/13, 151/18, 151/19, 154/9, 154/15, 154/25, 155/3, 155/9 affiliate's 83/18, 121/9 affiliated 10/3, 10/10, 34/18, 46/13, 46/21, 50/7, 52/5, 55/12, 56/3, 60/21, 62/4, 108/18, 122/3 affiliates 24/19, 25/10, 35/21, 47/2, 47/12, 47/14, 47/17, 47/18, 48/19, 66/16, 68/17, 69/4, 97/3, 102/25, 106/24, 116/23, 117/23, 119/23, 121/6, 121/17, 123/4, 123/20, 129/21, 143/2, 143/24, 151/1, 151/2 affiliates' 52/4 affiliation 8/16 affirmatively 159/7 afford 11/3 after-the-fact 93/2 afternoon 156/24, 157/5, 157/17 Afterwards 120/7, 156/23 AFUDC 102/9 agenda 9/11, 135/23 agendas 156/18 aggregate 102/12 agree 20/23, 20/24, 41/2, 41/4, 44/3, 53/9, 59/23, 93/15, 109/20, 136/13, 142/23, 154/24, 160/18, 160/22 agreed 17/9, 24/9 agreement 84/2, 94/5, 95/16 agreements 152/13 agrees 71/2, 87/18, 143/5 Air 2/3, 2/16, 2/18, 5/21, 6/1, 7/5, 8/7, 10/2, 10/4, 12/10, 12/11, 12/19, 14/25, 15/10, 16/15, 79/22, 128/19, 129/13, 134/19, 136/11 Alabama 116/21, 118/17, 151/7 Alliance 6/4, 12/6, 14/18, 15/23 alliance's 39/22, 40/18 allocate 38/16, 66/21, 138/21, 147/18 allocated 10/19, 11/12, 13/13, 35/23, 37/17, 66/9, 71/17, 79/9, 81/20, 83/4, 83/19, 83/20, 85/9, 85/12, 98/8, 135/7, 136/18, 139/17, 149/10, 149/15 allocating 37/19 Allocation 1/5, 13/1, 13/2, 13/4, 13/7, 19/1, 20/13, 20/22, 22/10, 23/14, 24/18, 37/4, 37/8, 81/15, 81/21, 89/23, 98/1, 141/21, 147/17 allocations 17/24, 41/9, 48/1, 49/5, 52/5, 81/6, 82/3, 127/17, 143/1 allow 17/9, 47/17, 70/12, 72/10, 131/13 allowed 49/24, 88/15 allows 63/15 alternative 115/10 amendments 1/4 America 12/11, 12/15, 12/16, 15/11 American 12/12 amortization 153/20 amount 58/1, 66/5, 71/19, 94/23, 102/5, 125/20, 143/1, 154/1, 154/16, 155/7, 155/10 amounts 131/8 analyses 70/8 Analysis 3/5, 5/14, 5/16, 7/11, 7/13, 7/15, 7/17, 124/24 analyze 124/16 analyzing 125/12 angle 105/5 ANN 3/2, 7/16 ANNE 1/16, 3/6, 5/7, 14/5, 19/22, 51/23, 53/3, 68/14, 68/16, 72/5, 87/14, 156/14, 159/18 Anne's 68/13 Annual 1/6, 24/5, 92/16, 138/18, 140/15 annually 79/13, 95/7, 95/14 answer 27/8, 73/8, 104/22, 108/15, 121/11, 153/11 answering 47/8 APA 26/2, 26/7 apologize 80/1, 152/6 Appeals 3/6 applaud 18/25, 19/9 apple 134/5 appliance 15/21, 55/25, 57/8, 57/22, 66/2, 66/3, 103/5, 103/8, 103/9, 103/10
\$1 127/4 \$1,000 108/20 \$10 83/6, 83/13, 84/1, 84/10, 85/17, 86/5, 124/10, 124/14, 124/16, 127/1, 127/7, 127/16, 128/1 \$100 138/15 \$100,000 144/15, 144/23 \$2 127/2 \$2.95 16/21, 16/25 \$5 83/5, 83/12, 83/17, 83/18, 83/23, 84/8, 85/16, 86/3 \$5/\$10 83/3 \$50,000 144/15 \$500,000 97/19, 100/15 \$7.50 83/8, 84/3, 84/6, 86/4 \$75,000 138/18, 144/22	4 10/22, 20/16, 130/8, 130/10, 130/13, 130/14, 135/23 4075 1/22 421 126/10 440 133/15 471 147/3 4:00 157/6 4:30	
&	5	5 140/2, 140/23 5% 27/14, 85/10 500 102/11 500,000 79/12, 101/14, 101/25
& 2/7, 3/4, 6/19, 6/22, 6/24, 7/1, 8/6, 11/21, 12/17, 14/10, 28/10, 30/18, 35/14, 72/24, 92/13, 97/17, 98/17, 99/8, 109/18, 114/9, 125/17, 143/4, 143/6, 148/15, 154/3	6 92/4, 141/18 601 6/23	6
*	8 13/3, 75/22	8
• 1/10, 1/11, 1/12 ***** 1/9, 1/13	9 71/17, 153/19 90% 77/13 9250 6/20 930 132/10, 132/12 95% 151/19 980643 4/7 980643-EI 1/3, 162/5	9
1	A	a.m 1/19, 4/2 ability 18/12, 21/25, 160/14 absolute 70/5 absolutes 22/2, 72/6 accelerated 104/20 acceptable 50/8 accepted 105/1 accepting 80/22, 96/6 access 47/18, 52/3, 89/15, 91/8, 93/19, 134/12, 142/13, 156/10 accessed 94/9, 146/2, 146/17 accessible 147/14 accomplish 37/16, 139/21 account 29/11, 58/15, 110/8, 121/9, 123/25, 124/11, 125/3, 125/4, 125/7, 125/20, 126/5, 126/10, 127/3, 131/20, 132/2, 132/13, 132/25, 133/14, 133/16, 133/17, 139/13, 139/14, 139/18, 139/22, 147/3, 154/13, 155/4 accounted 123/5, 123/24 Accounting 5/12, 10/8, 20/17, 23/14, 39/21, 40/1, 40/22, 46/24, 47/1, 48/24, 49/8, 50/18, 97/22, 105/1, 107/4, 107/5, 127/3, 128/3, 128/9, 133/23, 133/25 accounts 63/16, 104/19, 120/3, 121/7, 121/9, 122/23, 122/24, 124/15, 125/15, 126/11, 126/24, 130/15, 130/21, 131/4, 131/5, 131/7, 131/14, 131/18, 131/23, 131/25, 132/5, 132/21, 132/23, 133/2, 139/21, 139/25 acquiescence 149/23 act 43/11, 46/11, 69/14, 77/15, 117/1 action 74/7, 74/11, 76/18 activities 16/18, 28/14, 31/2, 35/1, 38/3, 38/9, 38/10, 38/11, 46/14, 46/18, 50/2, 52/2, 52/8, 62/5, 117/20, 120/8, 140/24, 141/2, 143/16, 143/24, 148/6 activity 36/6, 36/22, 38/3, 50/13, 56/1, 116/5, 138/22 add 38/24, 43/23, 64/13, 99/1, 145/16, 146/7 added 105/18, 146/2, 146/8 adding 78/18, 117/8, 123/11 address 5/3, 5/18, 6/2, 7/2, 8/3, 54/14, 56/3, 60/21, 81/2, 81/13, 90/5, 90/7, 100/8, 100/14, 100/16, 103/4, 118/12, 130/4, 130/23, 141/2, 157/24, 161/4 addressed 27/1, 36/25, 56/8, 62/3, 67/9, 77/3, 90/6, 91/21, 113/8, 130/6, 136/15 addressing 72/5, 113/2, 152/3 adequate 40/22, 142/25 adjust 155/2 adjustment 25/25, 26/2, 26/7, 93/9, 153/25 administration 17/5 Administrative 4/6, 69/14, 78/19, 117/8, 117/11, 124/4, 126/19, 145/10, 151/21 admit 66/19 adopted 13/4 advantage 129/5 advantages 82/12, 85/17 advertising 129/12, 132/11, 139/8 advocate 129/16
19/21, 20/5, 28/8, 52/3, 158/23 1-1-2004 148/20 10 12/4, 13/3, 107/18, 143/22, 157/7 100% 38/1, 108/3, 154/7 101 6/12 10:00 1/19, 4/2 11 153/21, 154/4 111 6/15 12 10/3, 154/4, 154/8 12% 85/9 120 70/12, 70/16, 71/3, 87/16 1210 6/3 125.42 70/14 14 41/10 14042 6/17 148 1/21 15 71/18, 143/21, 144/4, 148/13 15-minute 96/17 16 4/5 160 162/8 180458 7/7 19 71/18 1905 5/18 1998 12/22, 15/10 1999 1/18, 4/6, 162/10 1:55 1/20, 161/7	2 27/21, 28/8 20 95/16 20% 85/9 2000 148/17 20th 11/23 215 6/22 22nd 158/24 23061-C 7/2 24 1/18 25-22 140/8 25-6.0436 1/6 25-6.135 25-6.1351 1/5, 8/20	2
3	3 10/18, 20/14, 54/10, 54/11, 54/14, 54/17, 64/14, 68/9, 71/12, 71/24, 73/13, 73/16, 73/18, 80/10, 80/11, 80/12, 80/13, 82/22, 82/25, 85/15, 97/7, 97/18, 99/9, 104/6, 104/8, 104/12, 104/13, 109/9, 119/21 30-year 107/20 30th 162/10 32301 6/23 32718 7/8 33601 6/15 33903 5/19 33980 7/3 35,000 12/5 366 52/10 366.059 51/24 366.093 52/3	3

appliances 56/7, 56/11, 56/17, 103/16, 103/20, 141/9
 application 83/1
 applied 29/13, 42/20, 43/13
 applies 28/13
 apply 23/24, 24/10, 25/2, 25/21, 59/11, 59/21,
 102/24, 105/16, 105/21, 105/23, 118/16, 121/14,
 150/14, 151/3
 appraisals 117/7
 appreciate 107/25, 108/24
 appreciated 108/19, 109/13
 appreciation 108/18, 109/12
 approached 48/7
 appropriate 41/4, 52/14, 60/18, 61/4, 95/3, 111/8,
 136/3, 155/7
 appropriately 90/6
 approval 111/25
 approved 41/10, 76/15, 76/19
 arbitrary 101/17
 arduous 90/12
 area 9/1, 26/12, 26/13, 58/3, 69/9, 81/12, 85/6,
 97/14, 102/22, 124/3
 areas 9/9, 72/3, 97/4, 122/19, 153/4
 arguable 54/22, 54/25
 argue 27/7, 68/1, 77/10, 118/19, 145/2
 argued 128/22
 argument 150/6
 arguments 77/21, 90/10
 arise 113/5
 arises 90/3
 arm's 110/23
 articulated 129/22
 aspect 56/13, 135/10
 aspects 10/10, 48/24, 48/25
 asset 104/16, 106/25, 107/12, 109/5, 109/13, 110/14,
 112/11, 113/6, 113/15, 113/24, 114/1, 154/25, 155/4
 assets 13/8, 16/6, 17/21, 17/23, 18/6, 18/9, 40/15,
 62/24, 63/10, 71/18, 104/13, 108/18, 108/19, 109/10,
 111/3, 114/22, 116/6, 118/13
 assigned 20/18, 55/18
 assigning 139/16
 assistance 160/11
 Associated 12/13, 46/13, 46/18, 50/2, 56/4, 57/14,
 89/22, 134/2, 137/11, 138/19, 138/24, 139/5, 139/15
 Association 2/2, 2/4, 2/17, 2/19, 5/22, 6/2, 7/1, 7/5,
 8/5, 8/7, 8/8, 10/3, 11/20, 12/3, 12/12, 12/13, 12/15,
 12/16, 12/17, 12/19, 12/20, 13/20, 71/20, 134/20
 associations 12/4
 assumption 112/22
 assurance 68/20
 assurances 80/24
 assure 152/23
 asymmetric 13/7, 80/2, 82/8
 asymmetric/symmetric 69/10
 asymmetrical 76/8, 77/20
 attached 9/6, 12/21, 15/24, 156/1
 attachment 137/7, 137/8, 137/9, 137/12, 137/20
 attempting 60/20
 attempts 103/4
ATTENDANCE 2/1, 3/1
 attention 22/20, 27/17
 attestation 143/25
 attorney 5/8, 69/12, 71/5, 71/8
 attorneys 18/3, 71/6
 attuned 99/18
 audience 7/22, 8/17
 audit 73/23, 74/1, 74/4, 75/25, 90/3, 90/24, 91/9,
 91/18, 91/22, 92/11, 92/20, 97/11, 121/5, 123/8, 125/1,
 139/24, 140/21, 141/16, 142/2, 142/6, 142/14, 142/20,
 142/25, 143/7, 144/1, 145/7, 145/9, 146/2, 146/7,
 147/25, 148/9, 148/18, 148/23, 151/23
 audited 122/4
 Auditing 3/4, 5/14, 5/16, 7/10, 7/12, 7/15, 7/17,
 17/15, 40/22, 149/21, 153/15
 auditor 74/25, 123/7, 141/20, 142/7, 143/18, 144/21
 auditor's 142/14
 auditors 90/15, 90/24, 91/9, 91/22, 92/6, 121/4,
 123/17, 142/13, 142/19, 143/14, 144/17, 144/18, 144/20
 audits 89/14, 89/16, 143/8, 145/4, 145/21, 148/2
 August 1/18, 11/23, 162/10
 authority 69/22, 78/12, 85/7, 105/7, 105/13, 106/16,
 142/6
 authorize 49/16
 authorized 85/5
 automatically 110/21
 available 94/3, 144/19
 Avenue 6/3
 avoid 112/19

B

BABKA 2/6, 6/19, 30/18, 92/13, 109/18, 125/17,
 137/2, 149/9, 154/3
 ball 36/3

ballooned 151/12
BARNES 2/18, 5/17
 base 31/2, 31/17, 33/8, 33/10, 33/15, 59/5
 based 9/4, 18/12, 25/18, 29/24, 30/16, 66/9, 67/10,
 75/24, 96/3, 101/21, 132/9
 baseline 52/19
 basis 10/24, 15/17, 16/3, 69/20, 102/11, 102/13,
 128/23, 135/18
 Bayshore 7/3
 beefed 75/15
 behavioral 48/25
 belabor 114/18
 benefit 10/25, 11/2, 76/4, 87/1, 87/12, 109/12,
 114/14, 117/10, 126/13, 126/14, 135/24, 136/3, 136/21
 benefits 18/1, 76/2, 76/24, 80/22, 83/8, 88/6, 88/12,
 126/23
BERENS 1/24, 162/3
BETH 3/3, 5/13, 23/21, 30/1, 37/18, 45/20, 96/2,
 102/10, 137/18, 151/25
 Beth's 120/6
 Betty 1/21
 bid 74/21, 75/8, 95/7, 95/13, 98/24, 99/12, 99/15,
 142/15, 142/18, 144/12
 bidding 35/4, 57/24, 79/12, 79/13, 95/6, 96/4, 97/18,
 99/10, 99/19, 100/8, 102/23
 bids 97/23, 98/12, 98/21
 big 18/10, 107/11, 115/13, 147/24, 156/25
 bigger 151/12
 bill 129/14, 139/1, 139/3, 139/4, 139/6, 139/9, 139/17,
 145/17
 billing 57/15, 61/18, 66/24, 67/1, 67/23, 122/20,
 123/4, 132/11
 billings 128/17
BISMARCK 2/16, 5/24, 14/12, 39/19, 45/25, 64/17,
 128/14, 145/11, 152/5
 bit 9/16, 19/15, 19/16, 22/23, 35/9, 45/16, 52/25,
 53/19, 75/15, 80/1, 90/9, 99/11, 119/15, 148/17
 board 97/20, 97/21
 boat 138/16
 body 39/23
 bog 45/15
 book 104/16, 104/23, 105/19, 106/4, 106/11, 106/14,
 106/25, 107/6, 107/17, 109/24, 110/5, 112/13, 115/7,
 116/17, 120/20, 147/1, 154/16, 154/18, 155/6
 booked 132/12, 153/22, 155/10
 books 8/22, 47/15, 65/10, 126/7, 126/16, 140/13,
 153/25, 154/16, 155/2, 155/7, 155/11, 155/12
 borne 68/20, 150/10
 bothers 69/25
 bottom 27/20
 bouncing 80/1
 Box 6/15, 6/17, 7/7
 break 42/12, 96/10, 96/13, 96/15, 96/17, 122/23,
 126/21, 136/22, 156/8
 breaks 150/18
 Brief 96/18
 bring 18/16, 37/23, 42/12, 54/7, 97/14, 119/13, 158/21
 bringing 22/19, 58/22
 broad 58/3, 59/24, 60/11, 60/20, 97/2, 141/1
 broadcast 8/11
 brochure 129/2
 brought 108/7
 Builders 12/13
 building 35/15, 62/20, 98/18
 buildings 18/2, 65/3, 66/4, 66/21, 116/9, 145/20
 bulk 117/19, 128/23
 bunch 56/16, 116/11, 117/12, 150/12
 bundle 102/15
 burden 68/20, 74/14, 74/17, 76/10, 78/19, 82/9,
 85/22, 85/25, 86/20, 87/16, 88/7, 88/8, 88/9, 92/23,
 96/5, 111/14, 117/9, 121/25, 143/12, 145/10
 burdensome 115/23, 122/8
 buried 91/2
 business 5/3, 5/18, 11/5, 12/23, 15/16, 15/21, 18/13,
 56/13, 58/11, 58/18, 58/20, 58/25, 59/4, 59/6, 59/9,
 60/6, 66/24, 76/15, 78/1, 88/14, 102/19, 110/23, 115/6,
 115/23, 144/6
 businesses 12/5, 12/9, 15/1, 15/2, 67/3, 150/23
 buy 46/22, 47/2, 50/10, 107/16, 110/18, 110/19,
 111/24, 126/2, 138/20
 buyers 114/22
 buying 46/21, 126/1
 buys 50/4, 107/15, 109/25
 bypass 160/3

C

calculated 83/21
 calculation 106/3, 106/25
 calendar 158/21
 California 47/7, 48/13
 California's 48/5
 call 27/17, 50/5, 50/16, 88/25, 117/2, 159/21

calm 86/8
CAM 143/18, 143/25, 145/25
 came 15/25, 20/7, 32/1, 47/22, 90/8, 100/15, 103/18,
 124/14, 126/9
 capital 48/18
 captured 11/6
 captures 34/22
 care 125/25
 careful 41/6
 carefully 135/16
 Carlson 15/13
 carry 92/22
 carve 82/2
 carves 103/19
 case 15/3, 21/25, 29/14, 43/9, 43/10, 48/9, 56/15,
 63/6, 66/8, 67/24, 67/25, 87/17, 89/13, 99/14, 100/5,
 103/16, 105/9, 111/2, 114/10, 117/21
 case-by-case 69/20, 70/7, 70/19
 cases 29/25, 109/21, 115/11, 124/9
CASR 53/3, 53/5
 Casselberry 7/7
 catch 14/5, 90/15, 134/7
 categories 71/12
 category 84/13
CAUSSEAUX 3/2, 7/16
 Center 1/21
CEO 81/7
CERTIFICATE 162/1
CERTIFIED 162/7
CERTIFY 162/4
 chaired 15/12
 chairman 97/20
 chances 8/12
 change 20/6, 21/2, 22/8, 38/25, 39/4, 44/4, 44/6,
 153/16
 changeable 140/7
 changed 140/5, 140/9, 140/16, 153/19
 changes 8/21, 9/3, 9/5, 18/25, 19/18, 19/24, 23/9,
 23/10, 41/3, 69/1, 79/15, 158/12, 158/13, 159/18,
 160/1, 160/2
Chapter 52/10, 87/16
 chapters 10/4
 charge 10/19, 10/20, 11/2, 11/3, 33/9, 83/6, 125/2,
 125/3, 125/4, 125/12, 125/13, 125/25, 135/2
 charged 33/10, 81/20, 122/3, 124/10, 126/1, 126/15,
 127/1, 127/6, 127/21, 132/24
 charges 79/25, 80/13, 119/3, 124/13, 124/17, 139/14
CHARLES 2/4, 2/6, 6/21, 26/17, 28/9, 51/10, 54/14
 Charlie 22/17, 59/13, 68/3, 90/7, 99/7, 108/11, 160/17
 Charlie's 62/7, 141/10
 Charlotte 7/3
 chart 131/14, 139/20
 cheap 115/15
 cheaper 110/19
 check 26/9, 26/14, 27/3, 94/16, 143/14
 choice 148/9, 150/7
 choose 91/14
 Chuck 6/25, 11/19, 35/22, 47/5, 71/15, 119/11, 144/5
 circle 131/10
 circumstances 50/9, 72/11, 76/1
 clarification 21/11, 25/6, 49/14, 49/18, 61/11, 106/7,
 107/22, 140/4
 clarifies 155/15
 clarify 20/11, 50/3, 107/23, 121/14
 classification 132/21
 clause 25/14
 clauses 47/3
 clear 44/21, 21/7, 43/25, 64/23, 93/18, 95/18, 120/14,
 121/16, 123/2, 131/5, 148/7, 149/5
 clearer 32/12
 clearly 4/15, 20/21, 28/13, 45/9, 57/7, 73/4, 102/25,
 103/22
Clearview 6/3
 clerk's 13/22, 156/16, 156/24, 157/6, 159/13
 client 102/1, 103/18
 clients 91/7
 close 64/2, 85/19
 closer 71/21
 coal 50/4, 50/11, 50/17
 coalition 12/4
Coast 2/18, 5/21
Code 63/15
 codes 48/19
 collected 16/8
 comfort 120/24
 comfortable 9/4, 23/8
Commenced 1/19
 comment 8/23, 28/7, 41/18, 68/8, 73/17, 75/18,
 82/25, 89/19, 94/1, 95/6, 99/9, 99/19, 134/4, 134/6,
 154/24, 158/14, 160/15
 commented 145/24, 150/1
 comments 8/24, 8/25, 9/2, 9/4, 14/7, 14/9, 14/13,
 18/21, 18/22, 19/2, 19/10, 19/16, 19/23, 19/25, 20/5,

20/7, 24/12, 26/15, 27/10, 27/13, 27/16, 27/17, 27/24,
28/2, 28/6, 39/16, 42/10, 45/1, 45/24, 49/12, 53/12,
54/5, 61/7, 66/1, 66/11, 68/9, 71/10, 73/10, 73/16,
76/5, 80/9, 80/10, 80/13, 80/15, 81/25, 82/22, 93/13,
99/6, 99/21, 103/19, 104/5, 104/11, 109/8, 119/7,
119/21, 130/10, 134/3, 134/14, 140/2, 141/17, 141/22,
141/24, 143/5, 150/1, 153/19, 157/10, 158/4, 159/25,
160/6, 160/13
commingling 57/18, 61/18, 62/24
COMMISSION 1/1, 5/9, 7/9, 12/1, 12/7, 13/5, 19/4,
22/1, 25/25, 28/22, 28/23, 29/7, 29/17, 30/8, 31/15,
33/9, 33/12, 33/22, 34/4, 34/14, 34/17, 34/21, 34/22,
34/25, 36/17, 43/11, 43/19, 44/13, 44/15, 45/4, 47/25,
48/5, 49/15, 49/23, 51/25, 52/3, 60/23, 61/16, 65/2,
68/23, 69/15, 69/22, 70/7, 70/16, 71/2, 71/22, 72/16,
72/18, 72/22, 73/4, 74/7, 74/11, 75/1, 76/19, 76/23,
78/2, 78/7, 78/8, 78/12, 83/22, 85/6, 87/4, 87/15,
87/18, 88/11, 88/15, 89/8, 89/14, 89/17, 90/4, 90/5,
91/3, 94/24, 104/21, 105/4, 105/7, 105/12, 105/15,
106/21, 107/14, 119/2, 132/10, 135/12, 135/14, 135/25,
141/19, 142/13, 143/7, 147/12, 150/3, 151/9, 159/11,
162/5
Commission's 28/15, 34/25, 35/7, 58/5, 60/17,
69/18, 70/20, 70/25, 72/25, 107/19
committed 80/25
committee 14/15, 15/9, 16/2, 18/17
commodities 11/9
common 100/25
communication 123/15
companies 23/3, 37/3, 52/6, 67/7, 95/24, 99/23,
100/22, 106/2, 109/4, 118/10, 123/24, 127/15, 128/5,
128/11, 132/13, 132/15, 137/16, 145/24
Company 2/7, 2/11, 2/13, 2/15, 6/12, 6/20, 18/8,
18/16, 25/8, 25/10, 30/6, 64/24, 64/25, 65/10, 65/11,
67/17, 72/11, 77/3, 77/7, 77/14, 77/16, 77/25, 79/19,
79/25, 80/13, 81/3, 81/7, 81/8, 81/14, 81/19, 82/3,
85/15, 95/15, 95/23, 97/17, 97/19, 98/2, 98/6, 98/7,
98/13, 98/14, 100/24, 100/25, 101/9, 102/6, 105/1,
108/18, 116/14, 116/24, 117/1, 117/9, 117/10, 120/2,
120/9, 122/18, 123/5, 124/6, 124/7, 124/10, 124/17,
125/3, 125/11, 127/18, 127/20, 128/18, 129/3, 129/11,
134/22, 141/6, 142/25, 143/4, 144/24, 151/6, 152/24,
154/9
company's 38/2, 91/2, 116/17, 128/9, 143/22, 145/16
comparable 120/25, 124/6
compare 82/6, 110/25
compared 129/15
comparison 41/14
compete 40/6
competing 83/5
Competition 6/5, 11/7, 14/19, 16/23, 135/3
competitive 95/12, 99/10, 100/8, 105/10, 105/11,
135/13, 148/4
competitively 35/4
competitors 40/4, 136/9, 136/25
complaints 10/14
complex 144/24
compliance 148/18
comply 76/16, 77/12, 119/14
component 85/8
components 30/6
computer 46/25, 47/18, 82/13, 82/14
computerized 146/18
comrades 20/23
conceivable 103/21
conceived 105/15
concept 13/17, 51/6, 57/12, 135/17
concern 29/1, 31/14, 34/25, 35/7, 35/16, 39/22,
39/23, 40/19, 46/7, 55/20, 57/20, 60/18, 60/19, 61/20,
69/12, 70/4, 72/6, 78/21, 86/24, 87/6, 87/8, 97/16,
100/6, 104/5, 104/23, 108/13, 108/14
concerned 10/11, 14/24, 18/14, 19/5, 34/14, 39/24,
43/12, 51/1, 99/11, 99/14, 118/1
concerns 11/18, 42/18
concise 118/23
Concluded 1/20, 161/6
concluding 46/1, 161/2
concur 136/5, 142/4
Conditioning 2/3, 2/17, 2/18, 5/22, 6/1, 7/5, 8/7,
10/2, 10/5, 12/10, 12/11, 12/19, 14/25, 15/11, 16/15,
79/22, 128/19, 129/13, 134/20, 136/12
conditions 98/19
conduct 48/20
CONDUCTED 1/16, 69/8
Conference 1/21
confidential 93/18, 93/24
confidentiality 94/1, 94/5, 94/7
conflict 20/19, 24/13, 24/25, 27/4, 27/8, 70/3
confusing 29/3
confusion 30/13, 151/15
conjunction 148/1
consensus 136/24
consideration 19/23, 73/12, 97/5, 97/12, 98/23,

129/19, 155/19
consistent 26/2
consistently 43/11
consortium 57/1
consortiums 152/14
constitutes 162/8
constrained 78/25, 99/14
constraint 78/22
consumers 89/15, 91/11, 134/12
consuming 124/1
contact 156/18, 157/19
contained 41/8, 146/1
contains 97/18, 97/19
contemplated 103/22
contentious 69/9, 77/23, 80/3, 102/4
context 90/3, 113/2
CONTINUED 3/1, 17/2
continues 21/13
continuing 144/8
contract 84/2, 95/11, 102/15, 102/17
contracting 102/19
contractor 134/24
Contractors 2/3, 2/5, 2/17, 2/19, 5/22, 6/1, 7/2, 7/6,
8/6, 8/7, 10/3, 10/5, 11/5, 11/21, 12/11, 12/14, 12/16,
12/18, 12/20, 15/11, 134/20
contribute 136/19
controls 49/8
controversial 102/8, 160/4
convened 4/2
CONVENIENCE 1/11
conversation 160/3, 160/23
conversations 160/10
Cooling 2/5, 7/1, 8/6, 11/21, 12/17
copies 8/25, 42/6, 46/5, 155/24, 156/12, 156/23,
157/8, 161/3
COPY 1/11, 12/21, 41/16, 42/8, 48/4, 48/5, 156/24,
157/13, 157/15, 157/25
Corp's 41/3, 99/19
corporate 7/6, 18/3, 47/13, 47/19, 62/17, 125/14,
127/4
Corporation 2/9, 2/10, 6/17, 18/10, 87/9
correct 22/4, 24/23, 25/13, 30/1, 32/24, 37/7, 51/8,
149/19
correctly 21/13, 46/10
Cost 1/5, 10/7, 10/12, 10/20, 12/25, 13/2, 13/4, 13/6,
13/13, 19/1, 20/13, 20/22, 22/10, 23/13, 24/18, 24/21,
36/8, 36/19, 37/8, 38/5, 38/10, 41/9, 47/25, 51/12,
52/4, 55/20, 65/3, 72/1, 73/15, 77/5, 77/8, 77/12,
77/16, 79/9, 80/7, 81/15, 82/5, 82/19, 83/4, 83/13,
83/14, 83/19, 83/20, 84/23, 85/9, 88/2, 89/22, 93/5,
94/22, 99/2, 108/22, 109/4, 110/15, 111/1, 111/3,
111/7, 111/18, 112/14, 112/15, 113/20, 113/21, 114/13,
116/16, 116/17, 117/2, 117/11, 120/24, 120/25, 122/2,
122/10, 122/25, 123/16, 128/24, 129/9, 129/11, 129/14,
129/17, 134/25, 138/22, 139/17, 141/21, 142/15,
143/15, 144/6, 144/11, 147/17, 147/25, 148/5, 149/16,
149/23, 150/2, 150/9, 150/14, 150/18, 153/20
cost-based 78/6
cost-effective 84/19
costing 13/8, 85/12
costly 121/23, 122/13, 124/2, 130/1, 142/16
costs 10/19, 10/23, 11/2, 11/3, 11/12, 11/15, 13/9,
17/24, 20/18, 25/9, 25/11, 35/23, 36/2, 36/10, 36/13,
36/20, 37/4, 37/16, 37/19, 38/1, 38/7, 38/16, 46/12,
46/15, 46/17, 50/1, 61/22, 61/23, 65/2, 71/17, 79/3,
81/20, 85/1, 89/22, 95/25, 98/8, 110/16, 111/5, 111/16,
112/3, 112/6, 112/9, 115/11, 117/8, 123/5, 124/4,
124/24, 125/8, 125/12, 128/16, 135/7, 135/18, 136/18,
139/15, 147/18, 149/11, 149/15, 149/16
couched 151/13
counsel 8/5
country 115/12
COUNTY 162/2
couple 32/21, 42/18, 97/4, 152/21
course 23/22, 25/24, 29/21, 39/20, 48/13, 52/18,
66/8, 102/18
court 4/21, 4/24, 8/12, 9/23, 25/5, 61/11, 96/21
cover 10/10, 22/24, 98/21
covered 11/11, 59/18, 145/7, 145/8
covering 63/3, 117/22
covers 12/24, 149/3
CRAIG 3/2, 7/9
create 111/5
created 10/17, 10/22
creates 108/9
creating 89/21, 113/15
critical 110/3
cross 150/20
cross-subsidization 10/12, 10/14, 13/1, 15/6, 17/12,
35/2, 36/4, 40/3, 41/5, 47/24, 49/9, 67/12, 67/13,
76/25, 152/11, 153/1
cross-subsidized 11/4, 15/17, 134/23
cross-subsidizing 16/4, 40/23

cross-subsidy 39/25, 40/7, 40/19, 60/18, 143/13
crux 35/9, 40/18, 63/1
CSR 1/24, 162/3, 162/12
culling 100/21, 101/9
Currently 122/3, 128/1, 130/20
customer 57/13, 76/24
customers 64/9, 65/14, 87/1, 87/13, 88/6, 88/13,
91/7, 114/15, 114/17
cut 118/20
Cutler 138/17

D

daily 123/12
DALE 3/3, 5/15, 30/1, 30/10, 130/2, 151/25
Dale's 114/5, 114/22
dark 112/2
DARRYL 2/12, 6/9, 64/5, 65/6, 107/7, 107/8,
108/16, 120/19, 142/22
data 51/25, 123/19, 131/22, 137/15
DATE 1/18, 53/9, 53/24
DATED 162/10
dates 54/3
Davis 61/22
day 49/2, 55/18, 117/5, 117/6, 117/13, 134/25, 162/10
days 32/22, 150/5
deal 13/2, 24/4, 33/14, 38/4, 39/20, 49/3, 98/21,
117/16, 118/14, 152/12, 152/19, 158/3
dealers 115/13, 115/14
dealing 66/17, 80/24, 116/24, 151/17
deals 25/10, 152/10
dealt 48/1
decade 116/7
decide 36/7, 77/4
decided 23/1, 145/12
decides 150/16
decision 12/7, 43/19, 132/6, 135/17
decisions 29/25, 69/20, 70/7, 115/24, 132/10
declaration 121/5
decreased 11/7
dedicated 66/6
defending 147/12
define 100/24, 106/9, 106/16, 106/18, 106/22
defined 10/14
defining 27/13, 107/6
definition 27/19, 28/5, 28/11, 32/11, 33/1, 33/5,
37/17, 37/23, 38/25, 41/3, 41/7, 41/8, 41/10, 41/18,
41/19, 41/20, 41/24, 42/14, 42/16, 43/6, 46/6, 46/8,
49/19, 49/22, 49/25, 50/9, 51/5, 51/10, 52/19, 56/24,
58/14, 58/21, 58/23, 59/3, 62/6, 87/20, 105/18, 105/21,
118/25, 119/4, 130/19, 131/9, 132/20
Definitions 27/11, 28/8, 28/16, 30/20, 32/8, 32/9,
32/17, 34/9, 37/20, 45/24, 46/2, 52/24, 54/5
deleted 141/19
deliberations 90/8
deliver 83/5, 83/23
delivery 35/6
demand-side 40/14
demonstrate 10/25, 76/22, 130/15
demonstrated 76/23
denied 94/10, 112/3
depend 72/15
dependent 38/3
depends 114/19, 128/3, 128/8
depreciate 108/1, 108/3
depreciated 107/18
Depreciation 1/7, 98/4, 98/9, 104/20, 105/2, 105/3,
105/5, 105/9, 105/19, 106/1, 106/23, 107/3, 107/14,
107/19, 120/22, 153/17
deregulation 12/8, 12/25, 13/15, 119/12
describe 31/12
describing 34/1
description 33/6
deserves 22/20
design 60/14, 105/8
designates 131/15
designed 77/21
designing 52/16
detail 123/20, 124/20, 125/6, 125/22, 125/25, 127/10,
128/2, 128/7, 128/12
detailed 129/24
determinant 100/7, 100/11
determination 34/23
determine 27/3, 36/1, 85/7
determined 49/23
determining 29/11, 58/16
develop 121/24
developing 11/9
development 8/23, 11/14
develops 11/13, 13/17
deviates 50/24
deviating 91/25
deviations 91/18, 91/22

device 128/25
 DEVLIN 3/2, 4/10, 14/2
 devote 40/12
 dialogue 19/17, 96/22
 difference 45/20, 84/14, 99/15, 136/23
 differences 94/9
 differentiate 133/23, 134/1
 difficult 96/21, 100/23, 124/1, 160/12
 dig 91/23
 dilemma 29/21
 direct 13/9, 17/24, 20/18, 36/10, 78/13, 123/15,
 123/25, 127/25, 139/15, 149/16
 direction 52/15, 78/11, 109/17
 directives 20/20
 director 5/25
 directors 97/21
 directs 25/9
 disadvantage 105/11
 disagree 22/14, 29/19, 71/7
 disagreed 72/25
 disagreement 9/10
 disallow 79/4
 disallowance 93/9
 disallowed 132/12
 discernible 99/15
 disclosure 141/8
 discourage 90/13
 discover 17/16
 discretion 73/5, 86/19, 150/16
 discretionary 143/10
 discriminatory 10/12
 discuss 8/20, 90/18, 102/2
 discussed 35/24, 52/18, 84/12, 141/4
 discussing 99/22
 discussion 9/13, 53/23, 59/1, 80/5, 96/11, 96/16,
 134/15, 135/24
 disk 159/3, 159/4
 display 66/6
 dispose 109/15
 disregarding 10/16
 distinction 28/18, 31/19, 33/7, 34/6
 distinguish 32/7, 100/1, 100/2, 100/25
 distribute 10/23
 distributed 13/6, 38/8, 159/14
 distribution 50/22, 126/4
 diversification 151/11
 dividends 17/9
 Division 3/4, 3/6, 5/14, 5/16, 7/10, 7/12, 7/14, 7/16,
 63/12, 63/17, 68/2, 70/24, 141/5
 divorced 62/18, 62/20
 DOCKET 1/3, 4/7, 72/16, 156/12, 162/5
 document 123/3, 151/12, 157/4
 documentation 127/24, 153/2
 documented 75/24
 documents 13/25, 18/18, 156/9, 157/1
 doesn't 31/15, 33/12, 34/14, 43/11, 51/6, 55/22, 58/4,
 59/24, 60/5, 63/10, 64/11, 70/21, 73/4, 82/5, 86/11,
 90/18, 106/18, 110/7, 111/10, 113/22, 114/23, 117/3,
 126/10, 126/12, 126/21, 130/4, 134/1, 137/4, 147/6,
 151/3
 dollars 79/14, 132/16, 138/12
 dominant 152/1, 153/12
 DON 2/6, 6/19, 30/18, 32/1, 32/24, 35/13, 39/17,
 39/18, 41/1, 92/13, 99/5, 109/18, 125/17, 137/2, 149/9,
 149/13, 154/3
 doubt 17/8, 17/14
 draft 32/14, 32/17, 53/11, 53/12, 61/1, 88/24, 101/8,
 104/5, 159/19
 drafted 149/6
 drafting 103/19
 draw 60/15
 drawback 93/14
 drawn 115/25, 137/5
 dress 67/20
 drive 18/2, 57/1
 drop 18/12, 22/21, 22/23
 ducks 153/6
 dump 115/14
 during 156/6
 duty 26/19
 dwell 102/21

E

E&G 26/14, 27/3
 e-mail 159/4
 e-mailed 159/5
 earnings 43/1, 101/20, 101/24
 easier 23/2, 103/14, 132/17
 easily 146/1, 146/17, 147/13
 Easley 1/21
 easy 42/13, 146/20, 147/10, 147/11
 economic 15/14, 108/7, 108/8

economically 68/19
 Economics 15/12
 economists 11/1
 economy 98/5
 edition 4/6
 educate 12/7
 EEI 77/22
 effect 12/8, 54/17, 69/23, 95/16, 121/16
 effecting 141/2, 141/6
 efficiencies 82/18
 efficient 9/16
 effort 14/20, 50/25, 119/15
 efforts 40/13
 elected 143/22
 Electric 2/11, 5/12, 6/11, 12/18, 15/20, 25/3, 25/7,
 25/8, 27/16, 55/6, 88/4, 95/24, 98/18, 113/17, 117/20,
 117/21, 126/2, 126/3, 126/5, 140/13, 150/15, 150/16
 Electrical 12/14, 15/1
 electricity 35/6, 50/23, 54/19, 55/7, 55/14, 103/2,
 103/24
 ELECTRONIC 1/10
 element 85/2, 85/4
 eliminate 87/12, 160/22
 eliminated 146/9
 eliminates 96/7
 embedded 22/13
 embellish 101/13
 employ 73/22
 employed 74/19, 74/23
 employee 62/19, 138/21
 employees 17/25, 48/18, 59/15, 61/18, 65/11, 138/20,
 145/18
 encompass 32/20, 34/3
 encouraged 158/17
 end 54/2, 54/7, 60/10, 62/4, 106/17, 127/2
 endorse 22/8, 45/11
 ends 124/11, 128/20
 Energy 2/10, 6/14, 55/23, 64/1, 64/24, 68/7, 68/10,
 82/24, 104/15, 135/10, 136/5, 140/4, 141/18, 142/4,
 160/9
 engage 56/2, 59/18
 engaged 40/2
 engages 59/12, 59/22
 engaging 59/14
 engineer 55/16
 ensure 23/14, 35/10, 52/1, 52/6, 68/17
 entered 36/6
 entering 80/19
 enterprises 64/19
 entertain 37/24
 entities 19/7, 47/13, 48/17, 64/19
 entitled 18/9
 entity 4/19, 59/20, 59/24, 59/25, 62/17, 64/4, 65/5,
 65/9, 67/13, 101/4, 112/23
 entry 15/21
 envision 62/16, 62/23, 73/25, 89/23, 121/23
 envisioned 74/1, 90/1, 120/11, 120/13
 envisioning 65/21
 equally 38/8
 equipment 47/16, 109/23, 110/1, 110/3, 111/24,
 114/12, 115/6, 115/9
 equivalent 10/20, 74/3, 74/20, 75/9
 errors 91/20
 Esplanade 1/22
 establish 20/13, 20/15, 23/13, 54/18, 58/13, 64/14
 established 20/21, 53/3
 establishing 34/16, 63/16, 135/12
 estimate 144/14
 evaluating 106/10
 events 48/13
 evidence 86/7, 88/11
 evolving 70/21
 excepted 26/1
 exception 10/18, 24/1, 26/6, 70/19, 73/7, 73/22,
 76/10, 76/22, 81/6, 81/14, 81/18, 86/18, 87/20, 88/1,
 89/9, 89/12, 89/25, 90/10, 90/14, 91/1, 91/12, 91/25,
 92/17, 92/24, 93/5, 93/7, 94/12, 111/11, 111/20,
 115/22, 117/14, 130/11, 134/7, 134/9, 134/10, 134/13,
 134/18, 135/4, 135/11, 135/19
 exceptions 47/19, 69/21, 69/24, 70/1, 72/10, 72/12,
 73/3, 82/21, 90/22, 91/20, 97/7, 112/5
 exclude 146/6, 151/19
 excluded 88/6
 excludes 11/10
 exclusion 59/7
 excuse 32/2
 executive 5/25, 127/5
 existed 39/24
 existence 17/2, 130/23
 existing 24/17, 76/20, 108/4, 142/11, 145/4
 exists 130/15
 expanded 151/11
 expect 97/24, 106/23

expectation 99/12
 expected 38/7
 expended 79/14
 expense 111/22, 124/11, 125/16, 127/3, 128/16,
 139/22, 142/7, 142/24
 expenses 42/25, 43/2, 126/20, 133/3, 137/9, 137/11,
 137/17, 138/9, 138/19, 138/23, 139/1, 139/5, 140/1
 expensive 98/12
 expert 24/14
 explicit 70/2
 expressed 108/14
 extended 134/15
 external 142/7, 144/17, 151/23
 eye-opener 15/15

F

F.A.C 1/5, 1/6, 1/7
 FACCA 2/3, 2/22
 face 115/5, 135/14
 facilitated 82/15
 facilities 65/9, 67/23
 fact 16/12, 18/11, 39/24, 48/4, 74/13, 94/15, 94/19,
 127/22
 factor 37/9
 factors 99/16
 facts 76/1
 Fair 6/5, 12/6, 13/11, 14/18, 15/5, 16/4, 29/11, 36/1,
 36/8, 36/18, 40/20, 43/18, 46/16, 50/17, 58/16, 109/4,
 109/10
 fall 74/14, 79/21, 81/15, 141/14
 fall-back 84/10
 falls 74/17, 84/13, 108/12, 120/12, 122/18
 fan 21/18
 FAPHCC 2/5, 2/22, 26/17
 fashion 48/23, 60/8, 80/4
 favor 89/7
 fax 156/19, 156/21
 faxed 9/7
 Federal 63/15, 152/9, 152/11, 152/18, 152/19
 feedback 29/18
 feelings 23/16
 FERC 63/16, 122/22, 125/1, 125/4, 130/21, 131/4,
 132/13, 132/25, 139/12, 139/20
 field 15/5, 40/6, 40/20, 41/12
 figure 96/1, 147/2, 157/14, 159/17
 file 8/19, 53/11, 80/8, 87/17, 89/12, 156/15, 159/13,
 159/25, 160/6
 filed 13/21, 19/24, 20/1, 80/16, 161/4
 files 105/1, 117/12
 filing 53/24, 74/5, 90/20, 155/23, 159/10
 fill 117/11
 financed 17/2
 Financial 3/5, 5/14, 5/16, 7/11, 7/13, 7/15, 7/17, 32/5
 find 46/8, 48/5, 78/9, 112/2, 124/13, 124/14, 139/11,
 140/17, 147/20
 fine 10/9, 26/20, 34/11, 71/23, 74/17, 124/22, 137/4,
 157/16
 finish 107/8
 FIPUG 2/21, 23/22, 94/3
 FIPUG's 19/4
 fire 148/7
 firewall 61/21
 firm 6/22, 7/19
 fit 50/9, 51/6, 58/4, 60/10, 77/25
 fits 22/15, 78/5, 79/19
 five 95/23
 fixed 8/9, 75/4
 Flagler 6/20
 flat 102/5
 flesh 74/23
 flexibility 135/20
 flexible 70/8, 70/9
 floor 14/3, 35/14, 66/5, 66/9
 FLORIDA 1/1, 1/22, 2/2, 2/4, 2/6, 2/8, 2/12, 2/20,
 4/6, 5/8, 6/2, 6/4, 6/9, 6/13, 6/15, 6/16, 6/18, 6/19,
 6/20, 6/23, 6/24, 7/1, 7/3, 7/5, 7/7, 7/8, 7/19, 8/2, 8/5,
 8/6, 10/2, 10/4, 11/20, 12/3, 13/4, 13/17, 14/10, 16/13,
 16/20, 18/24, 24/17, 28/10, 30/18, 38/13, 41/2, 62/1,
 64/5, 65/6, 72/24, 80/14, 84/15, 91/15, 91/19, 92/13,
 96/3, 97/17, 98/17, 99/8, 101/3, 108/16, 109/6, 109/18,
 112/7, 114/9, 117/24, 121/21, 124/25, 125/13, 125/17,
 127/9, 127/11, 130/12, 134/19, 136/4, 139/10, 140/22,
 142/3, 142/22, 143/4, 143/6, 148/15, 150/11, 151/9,
 154/3, 160/21, 162/1, 162/5
 flow 25/9
 flushed 90/16
 focus 16/12, 17/4, 28/17, 28/19, 28/20, 28/24, 29/3,
 29/4, 38/21, 52/9, 57/22, 109/9, 160/8, 160/9, 160/18,
 160/19
 focuses 11/9
 folks 19/13, 26/14, 51/3
 follow 70/15, 114/4, 143/25

follow-up 34/12
 followed 143/19
 force 62/19, 87/11
 foreign 120/8
 forgotten 104/9
 form 36/17, 69/17, 97/9, 140/5, 140/9, 140/14,
 155/21, 155/25, 157/13
 formal 90/21
 formalize 89/24
 format 89/25
 formed 12/7
 forms 140/8, 140/12, 155/20
 formula 37/21
 formulating 160/13
 formulistic 37/20
 Fort 5/19
 forum 90/16, 94/8
 found 11/1, 71/16, 112/11, 131/3, 147/8
 four 16/9, 47/9, 117/20, 157/1
 fourth 13/11, 47/17
 FP&L 136/16, 137/2, 149/9
 FPL 89/19, 98/13
 FPSC 3/4, 3/6, 38/24
 frame 74/10
 front 21/25, 62/6, 88/10, 89/13, 147/12, 152/7
 fuel 19/8, 23/24, 24/11, 24/18, 25/2, 25/10, 25/14,
 25/21, 25/25, 26/1, 26/7, 26/9, 26/19, 47/2, 47/3, 84/13
 fulfill 52/17, 52/21
 functions 47/20
 future 103/22, 140/10

G

GACCA 2/19, 5/18, 5/20
 gain 154/18
 game 36/3
 GAP 106/24
 Gas 5/12, 35/6, 50/23, 54/20, 55/6, 55/7, 55/14, 64/3,
 64/24, 64/25, 103/2
 gather 64/18, 159/16
 generate 113/20
 generating 107/12, 108/3
 generation 50/22, 111/13
 generic 159/23
 generically 132/4
 gentleman 41/4, 48/2, 48/9, 114/9, 148/3
 Georgia 151/7
 glad 101/11
 goal 40/3, 124/23
 GORDON 2/20, 7/18, 18/23
 govern 24/18
 greater 110/15, 129/18
 green 8/10
 ground 14/24
 Group 2/21, 6/5, 7/20, 16/12, 18/24, 19/17, 51/3,
 94/4, 97/22, 98/10
 groups 17/4
 guarantees 40/1
 guess 14/7, 14/13, 19/12, 24/3, 28/11, 31/3, 31/14,
 34/12, 41/15, 42/18, 57/22, 69/6, 74/16, 74/22, 79/11,
 79/19, 81/22, 87/20, 95/8, 96/24, 97/1, 97/6, 105/3,
 105/14, 107/25, 111/19, 111/20, 120/6, 120/24, 122/7,
 123/1, 131/2, 132/16, 136/13, 141/2, 141/23, 151/10,
 151/15, 153/1, 157/20, 159/23, 160/24
 guidance 57/10
 guideline 20/15
 guidelines 20/13, 20/19, 21/1, 21/2, 21/3, 21/12,
 21/21, 21/24, 22/2, 22/9, 22/21, 22/23, 23/11, 24/9,
 41/9, 41/15, 42/6, 85/24, 100/18, 101/16
 Gulf 2/14, 2/18, 5/21, 6/6, 6/8, 58/7, 66/1, 66/18,
 76/7, 98/3, 101/18, 102/1, 116/21, 118/18, 122/14,
 142/8, 151/25, 157/20
 Gulf's 77/2, 81/13
 guy 18/7
 guys 145/15
 GUYTON 2/6, 6/21, 28/9, 51/10, 54/14, 99/7,
 108/11, 160/17

H

half 14/19, 85/21
 ham 115/20
 hand 35/24
 Handing 13/25, 18/18
 handle 120/20
 handled 10/15
 handling 71/13
 hands 103/14
 happy 21/6
 Harbor 7/3
 hard 53/19, 65/20, 85/25, 87/16, 88/7, 106/9, 134/21
 harm 15/18, 70/10, 86/1, 106/20

harmed 35/18, 68/18, 68/19, 69/3, 80/19, 84/11,
 88/3, 114/5, 114/6, 114/7, 135/21, 135/25, 136/2,
 136/6, 136/8, 136/22
 harmful 83/2
 head 30/5, 39/18, 63/23, 90/21, 93/2, 115/17, 159/6
 headquarters 7/6
 hearings 24/5, 24/7
 Heating 2/5, 7/1, 8/6, 11/21, 12/17, 129/13, 136/11,
 139/8
 heavily 153/2
 Hector 6/22
 help 37/22, 47/23, 105/21, 117/22, 126/25, 131/18,
 144/1, 160/19
 helped 160/12
 helpful 24/8, 25/20, 53/17, 53/18, 127/15, 153/13,
 156/11, 159/24, 160/5
 helps 160/18, 160/20, 160/22
 HELTON 1/16, 3/6, 5/7
 HEWITT 3/2, 7/9
 high 88/7, 88/10, 88/12, 117/10
 higher 71/25, 73/15, 80/7, 88/17, 109/25, 111/7,
 114/13, 115/8, 129/9, 129/16
 highlighted 9/11, 19/25
 hire 117/12, 144/20
 hit 115/17, 139/21
 hold 49/1, 74/10
 holding 14/24, 77/14, 77/16, 81/7, 117/1
 home 16/13, 16/21, 17/19
 honest 122/16, 123/13
 Honorable 15/20
 hope 4/13, 9/8
 hoping 149/7
 House 12/22, 14/21, 15/19, 18/7, 62/10, 145/19
 human 97/21
 hundreds 129/4
 hung 45/18
 hurdle 88/12
 hurdles 88/17

I

idea 26/11, 44/8, 91/8, 94/18, 122/10, 122/11, 124/22,
 126/17, 127/6, 127/17, 149/23, 158/4
 identified 9/9
 identify 7/22, 8/17, 9/3, 9/23, 138/13
 ignorance 72/8
 imagine 108/2
 impact 15/14, 60/13, 61/17, 136/10
 impacted 35/11, 65/22, 67/14, 67/22, 78/18
 impacting 62/5
 impetus 153/7
 implement 16/6, 78/16
 implementation 17/5, 17/11
 implication 99/11
 implied 38/15
 impose 123/14
 imprudent 79/4
 in-depth 127/19
 Inaudible 27/24, 28/2, 30/25, 54/23, 61/7, 93/13,
 95/20, 99/21, 118/11, 119/7, 157/10
 incentives 111/1
 income 38/10, 133/3, 133/4, 133/5
 inconsequential 129/15
 incorporated 39/5, 140/15, 145/3
 incorporating 53/10
 incremental 10/20, 10/24, 11/2, 11/3, 135/18, 139/1
 incur 142/7
 incurred 125/5, 125/8
 incurring 111/22, 112/5
 Independent 12/14, 117/13, 134/23, 141/20, 142/11
 index 147/20
 indexed 145/25
 indicate 62/4
 Indicating 88/23
 indirect 10/23, 13/9, 36/2, 36/8, 36/13, 36/19, 36/20,
 37/4, 37/8, 37/16, 38/5, 38/7, 38/16, 149/15, 149/16
 indirects 139/15
 Industrial 2/20, 7/19, 18/24
 industry 13/16, 15/1, 15/4, 15/18, 16/19, 40/9, 93/25,
 148/4, 149/2
 informal 72/7, 96/22
 information 47/18, 70/21, 93/20, 94/3, 94/9, 122/13,
 123/7, 131/21, 146/1, 146/16, 152/6
 initial 14/7, 19/16, 61/6, 61/13, 106/19
 inflating 48/21
 ink 129/14
 input 13/13, 140/9, 160/13
 inquiry 51/9
 insert 68/19
 instrument 26/23
 insurance 16/14, 17/19
 insurances 18/1
 intent 43/25, 61/2, 119/6, 146/24, 155/5, 155/6

intentional 51/14
 interaction 121/2
 interactions 119/24
 interconnecting 152/13
 interest 72/12
 internal 144/18
 internally 153/14
 interpret 29/17
 interpretation 95/20
 interpreted 139/19
 interrupt 9/25, 96/25
 intervenor 92/7, 92/21
 introduce 5/1, 96/23
 introduced 152/10, 152/20
 introductions 14/6
 invest 145/15
 investigation 48/21
 investment 113/12, 149/11, 149/12, 149/17, 154/13
 investor-owned 16/9, 20/1
 investors 17/8, 64/21, 145/13, 145/22
 inviting 27/7
 invoice 126/3, 127/10
 irregularities 91/19
 isolated 116/10
 issue 13/16, 17/19, 23/22, 27/15, 37/5, 39/25, 40/7,
 40/19, 43/17, 45/16, 60/16, 60/25, 61/25, 65/17, 67/8,
 67/17, 69/10, 77/1, 77/23, 78/4, 79/20, 80/3, 80/11,
 81/13, 85/12, 91/17, 124/4, 136/25, 141/20, 147/24,
 152/19, 153/1
 issued 14/22, 81/16
 issues 12/25, 24/4, 41/5, 62/3, 69/11, 122/13, 135/13,
 141/13, 160/18, 160/19
 item 71/19, 97/18, 97/25, 98/15, 129/2, 135/23,
 139/6, 142/17
 items 47/4, 54/21, 67/8, 97/22, 131/6, 132/3, 137/16

J

Jack 17/18
 JAVIER 2/8, 6/16, 8/3, 24/16, 38/13, 43/22, 62/1,
 62/16, 80/14, 91/15, 96/2, 101/2, 109/6, 112/7, 112/25,
 121/21, 124/25, 125/24, 127/9, 130/12, 136/4, 139/10,
 140/22, 142/3, 146/2, 160/21
 JAY 3/3, 5/11, 131/23, 156/19
 JIM 2/8, 8/1, 8/2
 job 91/10
 JOE 2/10, 6/14, 14/10, 20/10, 21/5, 27/23, 63/25,
 68/7, 72/15, 82/23, 86/13, 104/14, 135/9, 140/3,
 154/23, 160/8
 Joe's 72/5
 joint 56/24
 judgment 142/20
 judgments 29/22
 July 4/5, 12/22
 jump 88/16
 jumping 35/3, 35/8
 juncture 23/17, 27/9, 93/8
 jurisdiction 28/15, 28/16, 28/21, 29/8, 68/22, 78/7,
 78/8
 jurisdictional 83/22
 justification 91/13, 91/25
 justify 134/18

K

KAUFMAN 2/20, 7/18, 18/24, 59/10
 KEANE 2/16, 5/24, 14/12, 39/19, 45/25, 64/17,
 128/14, 145/11, 152/5
 key 99/20
 kicked 78/5
 KIM 2/14, 6/8
 KIMBERLY 1/24, 162/3
 knowledge 94/13, 122/5

L

lack 104/10
 lag 93/11
 laid 70/22, 71/2, 73/4
 land 107/2, 108/19, 116/8
 language 22/9, 22/15, 29/10, 29/17, 32/14, 36/16,
 37/14, 37/22, 38/12, 44/11, 45/17, 46/4, 48/6, 51/7,
 51/17, 53/2, 53/7, 53/15, 53/22, 54/2, 54/16, 61/25,
 63/3, 64/12, 65/18, 68/4, 68/15, 71/22, 72/18, 73/2,
 74/13, 87/24, 88/24, 89/2, 89/9, 101/8, 106/19, 109/22,
 111/11, 111/20, 119/25, 121/15, 121/18, 144/9, 148/11,
 155/14, 155/17, 158/12, 158/17
 large 101/19
 later 27/1, 28/13, 49/23, 54/6, 57/23, 70/5, 112/2
 Llaughter 81/23, 95/18
 LAUX 2/11, 6/11, 25/7, 113/17, 119/22
 law 6/21, 7/19, 69/13

Lawyers 72/23, 72/24
 lay 123/22
 laying 88/1
 layout 70/6
 lays 70/10, 70/15
 leads 82/18, 104/5
 leaning 153/2
 leary 65/19
 lease 136/17
 leasing
 leave 26/18, 26/24, 27/6, 110/16, 158/25
 leaving 117/9
 LEE 3/3, 7/12, 131/24
 left 19/20
 legal 78/4, 78/22, 124/5, 124/7
 legally 88/1
 legislation 152/9, 152/17, 152/18
 legislative 8/4
 Legislature 26/3, 52/10, 52/20, 57/9, 60/9
 legitimate 50/14, 85/13
 legitimately 132/12, 132/24
 length 110/23
 LEON 162/2
 letter 11/22, 12/1, 17/18, 47/6, 47/22, 51/3
 level 40/5, 40/20, 41/12, 88/2, 89/22, 152/11, 152/20
 levels 120/24, 120/25
 liberty 104/2
 life 107/20, 108/1, 108/4, 110/24
 Light 2/7, 6/19, 6/24, 8/10, 14/10, 28/10, 30/19,
 35/14, 52/12, 72/24, 92/14, 97/17, 98/17, 99/8, 109/19,
 114/9, 125/18, 143/4, 143/6, 148/15, 154/4
 lighting 139/8
 limit 55/8, 59/25, 60/8, 61/3, 91/20, 94/22, 102/12,
 150/25
 limitation 113/23
 limitations 113/25
 limited 10/7, 47/19, 58/19
 limiting 65/20
 line 14/11, 23/2, 29/23, 29/24, 30/14, 30/15, 30/21,
 31/1, 31/5, 31/6, 31/11, 31/12, 31/18, 31/21, 31/22,
 31/25, 32/3, 32/11, 33/1, 33/5, 34/6, 34/10, 39/8,
 54/22, 55/25, 57/5, 57/7, 57/8, 58/25, 59/5, 60/15,
 61/23, 71/17, 75/22, 103/20, 131/11, 132/1, 132/3,
 132/8, 132/25, 133/2, 133/7, 133/8, 133/11, 133/17,
 133/19, 133/20, 134/21, 139/2, 139/6, 139/16, 146/14,
 146/15, 146/25, 154/4, 154/8
 linkage 85/19
 list 36/14, 137/3, 137/5, 156/14
 listed 28/8
 listen 86/1, 93/4
 lists 140/8, 140/12
 little 9/1, 9/15, 9/16, 19/15, 19/16, 22/22, 35/9,
 45/16, 48/15, 49/10, 52/25, 53/18, 65/19, 69/7, 75/15,
 80/1, 83/15, 96/24, 99/1, 103/14, 109/24, 115/16,
 119/15, 122/7, 150/24
 load 158/8
 loaded 122/21
 loading 122/25
 lobbying 124/5, 124/6, 125/14
 located 6/2
 logic 150/13, 150/18
 logical 147/4
 logistical 78/20
 logo 18/6, 18/15
 loophole 10/17, 10/22, 75/14, 75/19, 75/21
 loosened 144/2
 lose 42/17, 84/20, 84/22, 114/23
 losses 69/23
 lost 42/4
 love 68/16, 109/23, 115/14
 lower 82/19, 99/24, 100/3, 107/16, 109/1
 lowest 99/12, 99/15
 LP 65/12, 65/13, 65/14, 67/25
 lunch 96/15
 luxury 135/3

M

mail 17/20, 128/23
 MAILHOT 3/3, 5/15
 mailing 128/16, 128/21, 139/17
 mailings 18/5
 main 60/1, 124/3
 maintain 121/24, 127/24, 128/11
 maintained 137/3
 maintaining 121/25
 maintenance 16/16, 17/6
 major 16/9, 48/14
 makers 12/7
 management 40/14
 mandated 150/2
 mandatory 57/24, 74/5, 74/7
 manifest 104/8

manner 147/4
 manpower 16/5
 manual 75/24, 123/4, 123/22, 132/22, 141/21,
 142/25, 143/3, 147/17
 map 122/22
 mapping 120/4, 121/8, 121/23, 122/4, 123/2, 123/11,
 124/21, 125/9, 125/18, 126/13, 126/18, 127/8, 129/24,
 129/25
 MARK 2/11, 6/11, 14/10, 15/20, 25/7, 89/10, 113/17,
 119/22, 121/11
 market 10/24, 11/6, 11/11, 13/11, 16/24, 50/6, 71/25,
 73/15, 74/3, 74/20, 75/10, 77/10, 77/11, 77/12, 77/18,
 78/10, 80/7, 80/18, 80/22, 81/5, 82/6, 82/19, 83/25,
 85/16, 85/21, 86/4, 96/3, 96/7, 97/24, 99/2, 99/20,
 99/22, 100/1, 100/3, 100/9, 107/17, 108/23, 109/1,
 109/3, 109/9, 109/16, 109/25, 110/6, 110/15, 110/25,
 111/7, 112/12, 112/15, 112/18, 113/4, 114/5, 114/19,
 114/20, 114/24, 115/2, 115/3, 115/13, 115/15, 115/18,
 116/18, 116/19, 117/3, 129/3, 129/7, 135/18, 136/11
 marketed 13/12
 Marketers 12/15
 marketing 16/11, 17/4, 18/4, 40/13, 128/25, 129/4,
 129/9
 marketplace 113/25
 marketplaces 10/21
 markets 93/5
 MARY 1/16, 3/6, 5/7, 14/5, 19/22, 51/23, 53/3,
 68/13, 68/14, 68/16, 72/5, 87/14, 156/14, 159/18
 mass 129/4
 Massachusetts 37/21
 material 91/20
 materiality 100/19, 142/17, 142/20
 materials 116/16, 156/12
 Matter 1/3, 18/11, 35/5, 37/10, 56/8, 113/18, 113/21
 matters 34/14
 McCORMICK 2/10, 6/14, 63/25, 68/7, 82/23,
 104/14, 135/9, 140/3, 154/23, 160/9
 McDANIEL 2/14, 6/8
 McGEE 2/8, 8/2
 McMILLAN 2/14, 6/6, 58/7, 122/14, 142/8
 McWhirter 7/19
 meaning 140/14, 146/21
 meat 86/18
 Mechanical 12/16
 mechanism 36/1, 36/5, 36/12, 36/23, 114/2, 114/3,
 119/18, 120/23, 146/20
 medium 50/23
 meet 70/13, 73/7
 member 5/12, 12/4, 40/9
 members 8/16, 12/10
 memorized 131/6
 mentioned 19/22, 35/13, 59/13, 73/14, 80/6, 88/22,
 88/23, 104/10, 144/11
 merchandise 66/6, 66/20
 merchandising 76/15
 MERTA 3/3, 7/10
 met 9/2, 123/19, 136/22
 Metal 12/19
 method 69/2, 124/19, 137/4
 methodologies 81/16, 81/21
 methodology 13/7, 37/9, 92/1, 104/20, 122/2
 methods 37/4
 Miami 6/20
 microphone 4/17, 4/20, 4/23, 27/25, 28/3, 61/8,
 99/22, 119/8, 154/6, 157/11
 mikes 4/23, 8/10
 million 124/10, 124/14, 124/16, 127/1, 127/3, 127/4,
 127/7, 127/16, 128/1
 mind 17/13, 73/20, 75/7, 76/8, 103/18, 117/5, 153/8
 minimum 144/23
 minor 138/12, 153/16, 153/17
 mirror 149/25
 miscellaneous 131/7, 137/19
 miss 90/24
 missed 54/24
 missing 92/19, 116/6, 116/12
 misunderstanding 155/16
 mitigating 112/14
 mix 150/8
 mixing 57/18, 143/23, 148/6
 MOHRFELD 2/2, 7/4, 10/2, 134/19
 moment 38/18
 Monday 34/8, 115/19
 money 49/21, 84/5, 84/20, 84/22, 84/24, 98/5, 129/1
 monetary 95/1
 monitoring 74/1
 monopoly 18/13
 Monroe 6/12, 6/22
 month 16/22, 116/12, 128/5
 monthly 128/17
 morning 4/15, 4/18, 4/25, 11/19, 14/4, 115/19
 mother 90/19
 Motherhood 134/5

motivation 120/16
 motor 116/9
 move 30/20, 41/7, 42/15, 65/16, 96/3, 116/15, 133/10,
 146/23
 moved 133/7, 133/19
 moves 105/12
 moving 115/12
 MR. BABKA 6/19, 30/18, 30/25, 31/10, 32/10,
 32/16, 32/19, 32/21, 33/7, 33/19, 33/23, 34/8, 41/2,
 92/13, 97/15, 109/18, 110/18, 111/19, 125/17, 137/2,
 137/18, 138/3, 138/7, 138/11, 143/4, 149/9, 149/14,
 149/22, 154/3, 154/7, 154/12
 MR. BARNES 5/17, 5/21
 MR. BISMARCK 5/24, 14/12, 18/20, 39/19, 45/25,
 46/11, 46/23, 64/17, 128/14, 145/11, 152/5
 MR. DEVLIN 14/4, 18/19, 18/20, 19/11, 20/10,
 20/23, 21/20, 22/5, 22/12, 23/10, 23/15, 24/3, 24/12,
 25/12, 25/17, 26/8, 27/2, 27/20, 27/23, 28/1, 28/4,
 29/21, 32/23, 33/4, 33/17, 33/20, 33/25, 34/11, 35/8,
 37/15, 39/16, 39/18, 41/1, 41/13, 44/7, 45/15, 46/3,
 48/11, 52/23, 53/13, 54/4, 55/15, 56/14, 57/11, 61/5,
 61/12, 62/15, 63/5, 63/8, 65/16, 65/24, 66/2, 67/19,
 67/21, 69/5, 71/9, 71/23, 73/10, 78/4, 78/20, 78/25,
 79/25, 81/22, 82/1, 83/15, 84/22, 85/1, 85/13, 86/13,
 86/15, 86/17, 86/22, 90/7, 92/5, 93/1, 93/12, 93/14,
 93/23, 94/17, 96/9, 96/12, 96/17, 96/20, 99/5, 100/13,
 100/19, 100/21, 101/7, 101/12, 104/4, 104/11, 104/25,
 105/25, 106/8, 106/22, 107/24, 110/12, 110/20, 114/18,
 116/4, 116/20, 117/17, 118/17, 118/22, 119/10, 119/20,
 120/6, 120/18, 121/11, 121/20, 124/3, 125/9, 129/8,
 131/1, 131/3, 131/17, 133/25, 135/6, 136/8, 136/23,
 138/25, 140/2, 140/21, 141/15, 142/1, 143/9, 144/10,
 147/24, 148/21, 149/13, 149/18, 150/4, 150/19, 151/5,
 151/24, 152/22, 153/6, 155/18, 156/13, 157/7, 157/22,
 158/22, 159/16, 161/2
 Mr. Garcia 11/24, 47/7
 MR. GUYTON 6/21, 22/7, 22/14, 22/21, 25/24,
 28/9, 34/12, 41/24, 42/2, 42/4, 42/15, 43/4, 43/8, 51/9,
 51/20, 52/12, 52/22, 53/17, 54/13, 54/24, 55/2, 55/5,
 55/24, 56/11, 56/19, 56/22, 57/6, 57/21, 60/1, 60/4,
 89/21, 99/7, 100/5, 101/23, 102/20, 103/7, 103/10,
 103/12, 103/17, 104/2, 104/7, 105/14, 118/24, 119/9,
 121/15, 148/15, 148/23, 149/5, 150/13, 157/16, 158/16,
 159/9, 160/17
 MR. HEWITT 7/9
 MR. LAUX 6/11, 25/7, 113/17, 114/8, 118/9,
 118/12, 119/22, 120/15, 121/1
 MR. MAILHOT 5/15, 30/11, 30/24, 31/4, 124/8,
 126/17, 127/13, 128/3, 133/1, 133/12, 149/1
 MR. McCORMICK 6/14, 20/11, 21/6, 21/9, 27/15,
 27/22, 63/25, 64/23, 68/6, 69/11, 71/4, 73/9, 82/23,
 83/18, 84/24, 85/3, 86/9, 86/14, 86/16, 86/20, 86/23,
 88/4, 89/5, 104/14, 105/6, 105/23, 106/5, 106/12,
 107/8, 107/10, 108/5, 118/3, 118/7, 135/9, 140/3,
 140/19, 141/17, 146/15, 147/8, 147/16, 149/25, 154/23,
 155/14, 156/8, 160/8
 MR. McGEE 8/2
 MR. McMILLAN 6/6, 58/6, 59/23, 60/3, 66/13,
 67/20, 75/23, 78/15, 78/24, 79/2, 115/3, 116/13,
 116/22, 122/14, 132/9, 133/10, 133/22, 142/8, 144/16,
 150/24, 151/6, 152/23, 155/24, 156/5
 MR. MOHRFELD 7/4, 10/1, 134/19, 135/8
 MR. PORTUONDO 6/16, 24/16, 24/23, 38/13,
 39/11, 43/22, 62/1, 63/2, 63/7, 63/11, 63/19, 80/14,
 81/24, 91/15, 96/2, 101/2, 101/11, 109/6, 112/7,
 112/25, 113/14, 121/21, 122/11, 124/25, 125/10, 127/9,
 127/22, 130/12, 130/20, 130/23, 131/2, 131/13, 136/4,
 136/13, 139/10, 140/22, 141/11, 142/3, 146/8, 146/12,
 159/6, 160/21
 MR. REVELL 5/11, 42/11, 112/16, 113/10, 156/4
 MR. ROMIG 7/12, 65/25, 66/3
 MR. TROY 6/9, 64/5, 65/6, 107/7, 107/9, 108/16,
 142/22
 MR. VAUGHN 6/25, 11/19, 13/23, 13/25, 26/17,
 35/22, 36/15, 37/12, 37/25, 47/5, 71/15, 119/11, 144/5
 MR. WATSON 8/4
 MR. WRIGHT 7/14, 144/2
 MS. CAUSSEAU 7/16, 153/18, 154/11, 154/22,
 155/5
 MS. HELTON 4/3, 7/21, 8/9, 13/21, 13/24, 14/1,
 14/2, 21/3, 21/8, 21/18, 22/17, 23/8, 23/11, 44/5,
 44/10, 44/22, 45/2, 45/8, 51/24, 53/5, 53/14, 53/20,
 53/25, 70/12, 71/6, 72/14, 87/23, 94/21, 105/18,
 140/11, 155/21, 156/1, 156/15, 156/22, 157/5, 157/12,
 157/18, 158/6, 158/10, 158/20, 158/25, 159/8, 159/12,
 159/23, 160/24
 MS. KAUFMAN 7/18, 18/23, 23/21, 24/6, 24/20,
 24/24, 25/15, 25/19, 26/4, 59/10, 73/17, 74/2, 74/16,
 75/6, 87/14, 89/7, 91/6, 92/19, 93/16, 94/6, 94/20,
 94/25, 130/9, 134/8
 MS. McDANIEL 6/8
 MS. MERTA 7/10
 MS. SALAK 5/13, 5/20, 5/23, 22/25, 31/23, 32/14,

32/17, 32/20, 33/3, 36/11, 37/2, 37/13, 39/9, 39/17, 41/17, 42/1, 42/3, 42/9, 42/21, 43/5, 43/14, 44/1, 44/17, 44/23, 46/9, 46/20, 47/1, 50/3, 50/15, 51/5, 51/15, 51/22, 52/16, 54/21, 54/25, 55/3, 56/10, 56/20, 57/4, 63/18, 63/20, 63/22, 63/24, 73/25, 74/5, 75/2, 75/17, 88/18, 89/4, 89/6, 89/19, 92/3, 92/12, 93/10, 93/21, 94/18, 95/5, 95/19, 99/21, 100/17, 100/20, 101/13, 102/2, 102/14, 103/5, 103/8, 103/11, 103/15, 103/25, 114/4, 117/25, 118/5, 118/11, 118/15, 118/19, 118/23, 119/7, 120/10, 120/17, 122/9, 130/17, 130/22, 131/21, 137/14, 137/25, 138/4, 138/8, 141/9, 141/12, 144/14, 145/23, 146/10, 146/13, 146/24, 147/15, 156/21, 157/1, 157/10
Myers 5/19
myriad 37/18, 37/19

N

nail 115/17
name 5/2, 5/7, 5/24, 7/4, 8/15, 10/1, 11/19, 18/9, 145/16, 157/23, 161/3
names 9/25
NARUC 28/20, 41/9, 41/10, 41/14, 41/19, 42/6, 45/21, 46/4, 79/7, 85/24, 90/8, 100/18, 144/15
national 12/3, 12/6, 12/17, 12/18, 12/20
natural 64/25
nature 15/7, 35/12, 123/6
nearest 83/25
neatly 147/3
necessary 19/19, 52/1, 52/6, 69/7, 86/7, 93/20, 121/25
necessity 142/23
need 19/9, 21/20, 36/14, 36/15, 48/3, 53/14, 53/19, 64/12, 75/11, 80/3, 96/4, 96/24, 101/24, 109/15, 110/5, 111/24, 113/6, 118/22, 121/22, 122/8, 147/19, 147/20, 152/2, 153/6, 154/5, 154/19, 155/20, 157/7, 158/11, 159/19
needed 23/5, 30/23, 123/20, 141/1, 158/4
needs 22/22, 23/6, 34/17, 44/23, 76/21, 100/11, 109/9, 113/7, 134/17, 159/15
negative 35/11
negatively 78/18
nerves 86/8
net 104/16, 104/23, 105/18, 106/3, 106/11, 106/14, 106/25, 107/6, 107/17, 109/24, 110/5, 112/13, 115/7, 120/20, 154/16, 154/18
new 11/13, 108/7, 117/3, 144/7, 145/14, 152/17, 155/25
nice 115/16
nods 149/20
nonaccountant 104/15
nonaffiliate 66/25, 67/15
nonbase 132/23
noncontroversial 130/4
nonetheless 56/1
nonmarket 114/1
nonprice 99/16
nonreg 44/17
nonregulated 28/12, 30/14, 30/22, 31/8, 31/24, 32/4, 32/6, 33/4, 34/19, 34/20, 35/1, 35/12, 38/19, 38/20, 38/22, 39/11, 42/16, 44/11, 44/22, 46/14, 46/18, 49/5, 55/19, 57/19, 58/10, 59/9, 60/14, 61/24, 62/8, 62/9, 63/1, 63/16, 66/16, 66/17, 67/3, 67/8, 76/12, 77/19, 79/22, 107/12, 117/18, 117/23, 117/24, 118/25, 119/5, 128/19, 128/25, 129/12, 130/16, 130/24, 131/8, 131/16, 131/19, 132/17, 132/21, 133/16, 133/18, 138/2, 138/6, 138/10, 139/3, 140/24, 141/2, 141/5, 148/6, 150/7, 151/2, 151/18, 153/3, 153/8, 154/15, 155/9
nontariff 120/7
nontariffed 11/10, 54/18, 64/10, 64/15, 120/11, 139/7
nonutility 52/2, 52/7, 105/24, 137/21
normal 98/1, 102/18, 107/19
normally 29/6, 97/23, 104/21, 107/15
North 5/18, 5/19, 6/3, 6/12
notes 162/9
notice 4/5, 4/9, 8/23, 23/6, 23/7, 73/6, 89/18, 91/10, 91/11
notion 100/21
number 8/16, 20/5, 70/15, 95/3, 123/25, 157/24, 161/5
numbers 83/4, 133/14

O

objection 43/23
obligated 143/17
observations 10/7
observe 7/24
occurring 63/4
offended 16/21
offer 53/2, 53/15, 60/6, 71/12, 71/13
offered 89/2
offering 61/8

office 13/22, 35/15, 66/20, 156/16, 156/24, 157/6, 159/14
OFFICIAL 1/11
Ogles 15/20
Ogles' 16/2
one-sided 41/22, 45/21, 51/18
open 96/22, 97/6, 97/9, 110/25, 114/24, 117/2, 129/7, 152/3
open-ended 158/25
open-minded 72/2, 130/2
opened 72/16
operating 95/24
operation 38/2, 64/3, 66/19, 110/8
operations 28/14, 30/6, 34/4, 40/24, 57/19, 60/9, 62/18, 62/21, 64/7, 65/1, 65/12, 65/14, 65/15, 67/25, 110/4, 143/2, 150/8
opinion 136/24
opportunities 60/6
opportunity 11/17, 69/18, 92/21, 92/24, 94/14, 112/10
opposed 31/24, 34/21, 55/11, 68/2, 76/7, 101/25, 114/24, 159/10
opposite 4/18
option 21/24, 77/9, 77/17, 114/25, 150/21
options 96/12
opts 150/15
order 16/6, 25/18, 73/22, 122/20, 122/22, 122/24, 123/12, 136/19, 137/24
orderly 80/4
orders 24/18, 24/21, 25/4, 25/9, 27/4, 29/24, 123/1, 126/8, 137/4
organization 65/8
organizations 88/13
organized 19/14, 145/25, 147/3
original 156/6
originally 100/17
Orlando 7/7
overlap 30/25
oversight 51/13

P

p.m 1/20, 161/7
P.O 6/15, 6/17, 7/7
package 17/17, 19/21, 156/6, 157/25
packet 9/6, 14/18, 14/23, 15/8, 15/19, 152/8, 156/2
Pages 13/3, 162/8
paid 51/12, 64/20
painful 151/20, 159/21
paper 117/12, 157/23
papers 142/14, 145/1
Paperwork 12/24
paragraph 20/3, 20/12, 23/20, 26/16, 141/18
paragraphs 86/10
Pardon 63/7, 103/7
parent 65/5, 65/10, 65/11, 81/3, 81/8, 81/18, 97/19, 98/6, 98/13, 100/22, 101/6, 124/6, 124/17, 125/3, 125/11, 127/18, 128/6, 144/24
parent/affiliate 81/10
part 11/8, 26/18, 31/23, 36/20, 36/21, 38/5, 43/18, 44/24, 55/10, 62/19, 63/14, 69/24, 77/2, 81/24, 92/10, 92/11, 92/14, 93/10, 95/6, 103/24, 110/5, 118/3, 119/18, 124/8, 127/23, 143/10, 145/24, 145/25, 153/21
participate 89/18
parties 27/7
parts 53/7, 53/15, 72/17, 95/2
party 80/21, 81/9, 92/8, 98/19, 110/1, 110/6, 112/18, 112/20, 113/3, 113/19
pass 23/15, 108/21
passed 16/1, 84/18
pattern 11/9
pay 46/17, 50/22, 110/4, 115/4, 115/9, 128/5
payer 17/3
paying 40/16, 46/12, 46/15, 50/1, 50/17, 126/14
payment 50/19
payroll 17/25
pays 11/14
peek 146/5
penalties 10/15
penny 129/17
pensions 126/23
percentage 38/8, 101/18, 101/20, 101/24
percentages 102/3, 102/8
performed 125/6, 148/18, 148/19
period 148/24
permit 69/15, 86/11, 107/15, 135/19
permitted 48/10
perpetual 123/11
perplexed 122/7
personal 17/18
personally 42/7
personnel 57/15, 62/9, 62/14, 62/25, 65/3, 67/23
perspective 42/22, 117/24
persuaded 130/1

Petersburg 6/17
petition 73/24, 73/25, 74/8, 87/4, 87/17, 88/20, 88/21, 88/22, 89/1, 89/13, 89/25, 90/11, 91/2, 97/9, 115/25, 134/16
Petroleum 12/15
PHCC 12/3, 35/22, 47/5, 71/15, 119/11, 144/5
philosophies 25/18
philosophy 71/10, 83/16, 143/17
phone 8/16, 157/24, 161/4
phonetic 11/24, 13/19, 15/12
phrase 109/1
pick 156/20, 156/23
picked 100/18, 108/20
picking 120/11
pie 134/5
piece 108/19, 109/22, 110/3, 114/12, 115/9
PLACE 1/21, 32/5, 36/24, 49/4, 49/6, 49/8, 49/17, 62/22, 68/11, 95/13, 122/5, 162/6
placed 42/7
places 69/21
placing 85/25, 132/3
plan 16/14, 17/19
planned 16/16
planning 16/12, 17/10
plans 16/13, 17/6
plant 107/17, 108/3, 108/6, 138/17, 154/13, 154/15
plants 116/16
play 16/5, 40/5, 80/12, 99/17, 113/22
playing 15/5, 40/6, 40/20, 41/12
Plumbing 2/5, 7/1, 8/5, 11/20, 12/17
plus 24/21, 76/13
point 14/14, 49/11, 62/7, 62/13, 65/19, 87/10, 91/7, 94/17, 112/9, 114/22, 129/20, 148/3, 153/11, 153/23
points 144/16
pole 137/7, 137/8, 137/12, 137/20
poles 98/18, 98/20, 126/2, 126/3, 126/5
policies 25/18
policy 70/16, 70/20, 70/22, 70/25, 71/1, 71/13
pop 76/18
portion 49/21, 58/20, 59/5, 83/1, 95/9, 113/22
portions 58/11, 59/9
PORTUONDO 2/8, 6/16, 24/16, 43/22, 101/2
posed 60/2
position 19/4, 106/1, 117/6, 135/6, 142/9
possibility 63/3, 82/10, 111/11
possible 72/9, 114/21
post-workshop 53/12
postage 59/15
POTAMI 1/24, 162/3, 162/12
potential 11/15, 58/10, 66/15, 81/17, 108/10, 135/12
Power 2/6, 2/9, 2/15, 2/21, 6/7, 6/8, 6/17, 6/19, 6/24, 7/19, 8/2, 14/10, 16/13, 16/20, 18/24, 24/17, 28/10, 30/18, 35/14, 38/14, 41/2, 62/2, 72/24, 80/15, 91/16, 92/13, 96/3, 97/17, 98/3, 98/17, 99/8, 99/19, 101/3, 109/7, 109/18, 112/8, 114/9, 116/21, 118/17, 121/22, 124/25, 125/13, 125/17, 127/10, 127/12, 130/13, 136/5, 139/11, 140/23, 142/4, 143/4, 143/6, 145/16, 148/15, 151/7, 151/8, 154/3, 160/21
Power's 66/1, 91/19
practice 71/13
practices 76/14, 76/20
pre-workshop 8/24, 159/25, 160/6
preamble 77/5
preapproval 94/24
precedence 150/5
precedent 135/12
precision 37/23, 69/7
predatory 15/6
predominantly 117/1
prefaced 71/4
preferable 29/4, 90/2
preferred 69/1
PREFILED 1/12
prelude 14/5, 80/5
premise 85/14, 85/18, 110/22, 113/18
premised 121/1
premises 47/10
prescribe 120/22
prescribed 81/15, 81/21
prescriptive 79/6, 115/21
presented 156/9
president 11/23, 12/2, 13/19
prestuff 18/18
pretty 8/21, 79/9, 130/3, 143/3
prevall 99/13
prevent 47/23
preventing 14/25, 52/14
preworkshop 80/16, 81/25, 109/8
price 11/11, 28/15, 29/7, 30/3, 34/21, 35/17, 35/18, 35/20, 38/21, 38/24, 39/1, 39/7, 39/12, 39/14, 39/23, 44/12, 44/14, 45/3, 50/5, 50/6, 50/17, 57/2, 58/5, 60/17, 61/16, 62/11, 68/17, 74/21, 75/9, 78/10, 80/20, 80/23, 81/5, 83/7, 83/25, 84/10, 87/12, 96/7, 97/24,

99/20, 99/24, 100/6, 100/9, 100/10, 116/19, 119/2, 155/1
 priced 80/18, 84/8, 87/2, 129/11
 prices 11/7, 30/8, 34/4, 34/15, 74/3, 75/10
 pricing 13/7, 15/6, 69/10, 71/11, 72/13, 76/8, 77/10,
 77/18, 77/20, 78/13, 80/2, 82/8, 92/1, 96/4, 97/3,
 97/14, 114/2
 pricings 77/6
 primary 46/7
 principle 89/11
 principles 13/6, 105/2
 private 129/3
 privilege 143/15, 148/5
 problem 40/7, 55/15, 86/9, 86/13, 87/25, 88/5, 93/10,
 108/17, 122/6, 133/24, 153/22
 problems 94/7, 108/10, 109/2, 109/21, 110/8, 110/9,
 111/13
 procedural 69/16
 procedure 70/15
 procedures 10/8, 69/14, 147/1
 proceed 156/11
 proceeding 65/3, 89/17, 93/7, 93/9
 PROCEEDINGS 1/15, 24/14, 24/15, 26/7, 162/7,
 162/9
 process 17/15, 34/5, 73/23, 74/1, 86/2, 90/11, 90/14,
 90/22, 92/20, 97/11, 98/1, 115/22, 119/12, 122/20,
 130/1, 130/11, 134/11, 140/8, 140/20, 142/11, 142/16,
 145/5, 160/5
 processed 86/6
 procure 143/18
 produce 83/5
 producing 129/1
 product 11/13, 61/15, 80/25, 82/11, 83/5, 83/23,
 84/1, 84/6, 85/16, 132/19, 139/13, 139/16, 139/23
 productive 9/16, 160/6
 products 38/23, 39/1, 39/12, 39/14, 44/12, 44/14,
 45/3, 61/8, 80/21, 97/19, 123/23, 133/6, 138/9, 141/3
 profit 11/16, 85/2, 85/4, 85/7, 115/16
 program 11/14, 16/16
 programs 16/7, 17/4, 17/11, 40/14, 145/19
 prohibition 26/5, 57/25
 prohibitive 123/16
 project 55/19, 138/11
 projects 138/12
 promoting 139/3
 promulgate 26/1, 26/11
 proof 68/20, 74/14, 74/17, 82/9, 92/23, 96/6, 111/15
 propane 64/3, 64/7, 64/8, 64/9, 64/24, 65/1
 property 31/15, 33/11, 33/12, 137/21
 proportionate 38/17
 proposal 128/10
 propose 101/9, 139/12, 155/14
 Proposed 1/4, 9/22, 10/6, 27/19, 68/10, 68/25, 72/21,
 72/23, 81/2, 109/8
 proposes 74/13
 protect 114/17
 protected 18/13, 119/16
 protecting 67/11
 protection 46/7, 150/9
 prove 72/11, 76/3, 76/10, 86/21, 117/10
 proved 134/11
 Provide 51/5, 73/3, 82/11, 85/16, 85/21, 91/21,
 98/22, 101/5, 127/11, 150/15, 150/16, 156/17, 159/2
 provides 99/23
 provision 54/19, 54/23, 55/6, 55/7, 55/10, 55/14,
 60/22, 70/6, 72/9, 85/24, 86/11, 86/17, 103/2, 103/24,
 121/14, 136/2
 provisions 72/23, 83/11
 prudent 109/16
 PSC 26/19, 26/21, 39/2, 39/6, 39/13, 39/15, 40/21,
 122/4, 142/5, 143/13
 PUBLIC 1/1, 2/12, 5/8, 6/9, 13/4, 49/15, 56/18,
 56/21, 64/6, 65/7, 90/16, 91/10, 94/13, 108/16, 142/22,
 151/9, 162/5
 published 4/5, 8/21
 PUHCA 77/14, 78/5, 82/4, 82/21
 pulled 4/11
 punt 51/22
 purchase 19/8, 56/6, 56/10, 81/1, 85/19
 purchased 116/18
 purchases 24/19, 82/16, 84/3
 purpose 4/8, 19/22, 20/5, 20/12, 20/14, 20/20, 23/13,
 49/11, 54/17, 58/12, 64/8, 64/13, 101/5, 114/16, 119/5,
 147/19
 purposes 21/8, 21/9, 44/16, 45/5, 49/22, 51/15,
 69/16, 131/12, 146/3, 146/7
 purview 106/20
 put 8/15, 14/15, 14/19, 21/4, 23/1, 23/5, 23/6, 37/2,
 41/6, 75/5, 86/4, 91/14, 92/18, 100/1, 105/10, 105/25,
 108/22, 128/24, 132/6, 132/7, 144/12, 146/7, 151/22,
 157/23, 159/4
 puts 85/22, 91/11, 105/9
 putting 42/21, 92/25, 94/12, 132/1
 puzzled 28/18

Q

quality 99/16, 99/24
 Quantity 82/16, 85/18
 quarterbacking 115/19
 query 58/1
 question 16/19, 27/18, 29/9, 35/23, 40/9, 47/8, 49/14,
 60/2, 60/20, 72/5, 73/8, 73/18, 74/16, 85/3, 85/6,
 85/11, 85/14, 93/21, 94/12, 95/5, 102/23, 104/15,
 105/3, 106/3, 106/5, 106/6, 106/13, 107/22, 108/15,
 113/15, 115/1, 120/19, 121/1, 130/13, 140/4, 148/16,
 149/6, 149/10, 152/4, 153/4, 159/24
 questionable 120/13
 questioning 107/21
 questions 34/13, 48/20, 54/4, 71/9, 83/20, 99/5,
 119/20
 quick 49/13
 quote 100/8

R

RACCA 2/17, 5/25, 14/13, 39/19, 45/25, 64/17,
 128/14, 145/11, 152/5
 rail 84/15
 raise 60/25, 104/9
 raised 11/7, 99/9, 136/16, 149/6
 raises 108/15
 range 12/25
 rapid 107/14
 rate 17/3, 29/14, 29/25, 31/2, 31/17, 33/8, 33/10,
 33/15, 43/9, 43/10, 45/8, 59/5, 66/8, 85/5, 132/24
 ratemaking 30/7, 33/21, 34/5, 34/23, 39/3, 39/6,
 39/15, 42/20, 42/22, 43/24, 44/15, 45/4, 45/7, 61/22,
 62/10, 62/14, 63/13, 65/2, 78/14, 79/1, 131/12
 ratepayer 16/20, 16/25, 17/7, 40/10, 40/16, 50/21,
 67/11, 76/2, 76/4, 78/17, 84/18, 86/2, 109/12, 136/20
 ratepayer's 152/25
 ratepayers 10/25, 11/1, 18/14, 35/10, 35/17, 46/7,
 46/12, 46/17, 50/1, 50/14, 51/11, 52/1, 52/7, 61/17,
 64/22, 68/18, 69/3, 70/11, 72/12, 83/2, 83/9, 83/14,
 84/6, 84/11, 84/17, 88/3, 106/20, 111/16, 128/17,
 135/20, 135/24, 136/2, 136/8, 149/24, 150/9, 150/21
 ratepayers' 49/21
 ratepaying 50/24
 rates 28/18, 28/25, 29/12, 34/16, 58/16, 78/9, 78/11,
 79/3, 106/1, 119/3, 120/22, 150/3
 rationale 101/23
 re-signed 95/17
 reach 7/2
 reaction 19/25, 61/1, 61/6, 61/14
 read 11/25, 21/13, 23/13, 42/14, 44/17, 44/20, 44/22,
 45/10, 46/15, 51/17, 64/11, 79/7, 81/18
 readdress 26/22
 reading 73/6
 reads 22/10, 64/8, 107/16
 reality 49/3, 107/11
 realm 50/21, 107/11
 reason 26/12, 31/23, 38/22, 45/20, 57/14, 57/16,
 82/10, 85/15, 91/13, 106/13, 107/13, 107/18, 107/21,
 108/7, 112/11, 124/21, 127/8, 128/10, 146/8
 reasonable 29/12, 35/16, 35/18, 35/21, 36/2, 36/9,
 36/19, 37/11, 53/2, 55/21, 58/16, 101/21, 120/25, 123/9
 reasons 23/1, 82/8, 83/24, 93/6, 111/6
 rebuttal 15/23, 19/17
 recall 46/10, 140/10
 received 9/7, 13/14, 156/2
 receives 11/15
 recess 96/18
 recognition 18/6, 18/9, 18/15, 79/6
 recommend 41/7
 recommendations 71/22
 recommended 72/22
 reconsider 23/17, 61/13
 record 5/4, 8/18, 11/25, 14/15, 53/23, 91/2, 96/11,
 96/16, 125/2, 125/16, 126/4, 129/25, 130/5, 154/16
 recorded 125/11, 125/15, 125/20, 154/17
 recording 125/4, 126/16
 records 20/17, 47/15, 52/4, 52/6, 86/7, 106/24,
 120/2, 121/25, 126/16, 133/23, 133/25, 146/18
 recover 150/17
 recoverable 149/24, 150/3
 red 8/11
 red-lined 9/5
 reducing 136/19
 Reduction 12/24
 Reeves 7/19
 reference 99/10, 140/5, 145/15
 refining 132/18
 reflect 51/19
 reflecting 41/23
 reflects 109/10
 Reform 12/24

Refrigeration 2/16, 6/1, 12/12
 refrigerators 66/7
 reg 42/25
 regulate 31/15, 34/18, 35/19, 60/13, 60/24, 64/8
 regulated 16/18, 17/25, 19/6, 25/10, 28/12, 28/22,
 28/23, 30/4, 30/13, 30/22, 31/7, 31/13, 31/19, 31/20,
 31/24, 32/4, 32/6, 32/25, 33/8, 33/16, 33/20, 38/19,
 38/20, 38/25, 39/13, 40/14, 42/16, 44/13, 44/25, 49/5,
 55/10, 55/22, 56/1, 58/19, 58/25, 59/4, 59/12, 59/14,
 59/20, 59/21, 59/23, 59/25, 60/5, 60/7, 60/9, 60/12,
 60/22, 61/16, 62/5, 62/6, 62/10, 62/11, 62/18, 62/25,
 64/4, 64/11, 64/16, 64/20, 65/21, 67/13, 67/22, 68/16,
 76/11, 78/1, 78/2, 83/3, 108/20, 118/9, 119/1, 119/24,
 120/2, 120/4, 121/3, 121/8, 130/16, 130/24, 131/8,
 131/12, 131/15, 131/19, 132/17, 132/20, 132/24,
 133/17, 138/2, 138/5, 138/10, 141/3, 141/6, 143/2,
 143/23, 145/16, 148/6, 151/8, 151/9, 151/17, 153/8,
 154/9
 regulates 34/21
 regulating 25/1, 43/1, 61/10
 regulation 26/21, 29/5, 29/6, 38/21, 38/24, 39/2,
 39/7, 39/13, 39/15, 39/23, 44/12, 44/14, 45/3, 47/11,
 58/5, 60/17, 114/2, 119/2
 Regulations 63/15
 Regulatory 12/24, 28/15, 89/22, 150/14
 relate 55/22, 120/7, 120/9, 129/20
 related 35/5, 47/19, 54/19, 54/23, 55/1, 55/6, 55/9,
 55/13, 60/22, 79/24, 103/1, 103/23, 154/1
 relates 120/19
 relationship 61/9, 81/11, 82/12, 82/17
 relationships 153/9
 reliability 80/24
 rely 107/6
 relying 90/15
 remain 65/4
 remains 113/18
 remember 75/13, 96/23, 140/20, 161/3
 removal 153/20
 remove 21/11, 22/8, 22/9
 removed 62/20, 68/11, 98/15, 143/6, 147/23
 removing 114/14
 rendered 38/17, 81/3
 rent 31/14, 31/16, 33/11, 33/12, 33/13, 39/5, 40/11,
 137/9, 137/21, 138/17
 rental
 renting 35/14
 rents 31/16, 35/13, 35/19, 40/8, 137/7, 137/8, 137/12,
 137/20
 reopened 140/6
 reorganization 66/16
 repair 15/21
 repairing 116/2
 repeal 72/17
 repealing 72/23
 replace 32/24
 report 14/18, 14/21, 15/8, 15/10, 15/15, 15/20, 15/22,
 16/1, 18/8, 42/24, 92/15, 92/16, 92/17, 92/25, 93/4,
 94/12, 140/15, 141/20, 146/19
 REPORTED 1/24, 43/24, 44/15, 45/4, 62/12, 162/7
 reporter 4/21, 4/24, 8/13, 9/23, 25/5, 61/11, 96/11,
 154/5, 158/9
 reporters 96/21, 162/1
 reporting 22/10, 22/13, 22/19, 22/23, 23/1, 23/12,
 40/2, 92/9, 92/14
 Reports 1/6, 51/25, 93/17, 144/19
 Representatives' 12/23
 represented 26/10
 representing 5/2, 6/4, 12/5, 16/19, 148/4
 reputation 18/12
 request 122/12, 123/19, 131/23, 137/15, 142/15
 require 51/25, 83/11, 98/12, 140/6, 141/19
 required 50/22, 77/8, 87/3, 153/5
 requirement 23/4, 26/6, 35/3, 74/24, 76/8, 92/9,
 92/15, 96/5, 102/24, 122/8, 124/21, 136/6, 136/20,
 138/1, 138/5, 142/2, 145/8, 149/1
 requirements 20/15, 20/20, 20/22, 20/25, 21/4,
 22/11, 22/13, 22/18, 23/14, 23/24, 24/9, 34/23, 54/18,
 58/13, 58/24, 64/14, 70/14, 72/19, 79/21, 122/19,
 123/19, 140/21, 141/16, 147/25, 151/22
 requires 70/16, 71/3, 77/15, 78/6
 requiring 79/11, 127/23, 142/10, 145/9
 resell 57/3, 115/16
 resells 56/7
 reserve 154/1, 154/14, 154/18, 155/4
 resolve 153/14
 resolved 36/7, 144/9
 resources 16/5, 97/21, 142/25
 respect 48/12
 respond 48/11
 responded 27/12
 response 20/6, 27/10, 46/6, 73/11, 80/10, 104/12,
 113/1, 113/14, 153/18
 responses 113/2

responsibilities 52/17
 responsible 40/21
 rest 101/9, 156/10
 restricting 114/10
 restrictions 48/18, 49/6
 restructured 22/22
 restructuring 48/14
 result 15/22
 retail 78/9, 78/11, 78/13, 79/1, 87/13, 88/13, 114/14, 114/17
 retention 130/5
 retire 154/15
 return 85/5, 149/11, 149/17
 revealed 97/11
 REVELL 3/3, 5/11
 revenue 31/18, 31/19, 33/10, 34/23, 136/20, 138/8, 138/18, 139/22
 revenues 31/3, 31/17, 33/8, 33/14, 33/15, 42/24, 43/2, 133/19, 137/8, 137/11, 137/19
 reverse 110/2
 review 37/5, 46/1, 75/25, 77/12, 91/24, 93/3, 97/10, 131/3, 142/11, 145/5
 reviewed 9/21, 10/6, 24/7, 47/3, 78/2
 reviewing 37/10, 43/1, 74/15, 144/18
 revise 158/21
 revised 95/22
 revisions 159/10
 reword 58/11
 reworded 58/15
 rewording 67/17
 RICHARD 2/14, 6/6, 15/12, 58/6, 66/1, 66/11, 80/12, 122/14, 142/8, 144/12, 156/4
 RICK 2/22, 3/4, 7/14, 8/4, 11/24, 13/18, 144/1
 Rickenbacker 11/24, 13/19
 rid 30/21, 40/15, 109/23
 rights 60/5
 risk 135/4
 Road 7/3, 67/7, 115/20, 134/24, 134/25, 135/1, 160/4, 160/20
 ROE 85/10
 Roebuck 18/8, 18/11
 role 90/5
 rolling 145/5
 ROMIG 3/3, 7/12
 Room 1/21, 20/4
 row 153/7
 RPR 1/24, 162/3, 162/12
 Rule 1/4, 1/6, 8/20, 8/21, 8/23, 8/24, 9/6, 9/13, 9/20, 19/14, 21/7, 21/9, 23/13, 25/1, 25/23, 26/20, 30/23, 31/5, 31/9, 31/22, 35/10, 36/7, 36/17, 37/3, 48/5, 49/11, 51/15, 52/17, 53/7, 53/10, 53/16, 54/9, 56/2, 56/9, 58/2, 59/11, 60/7, 60/11, 63/1, 67/2, 68/24, 68/25, 69/21, 69/23, 70/1, 70/18, 71/3, 72/19, 73/3, 73/6, 75/3, 75/5, 76/18, 77/3, 79/5, 83/1, 83/11, 84/7, 87/3, 87/5, 87/11, 87/19, 87/21, 88/20, 91/12, 91/22, 92/24, 95/2, 95/6, 95/9, 99/2, 100/11, 102/7, 102/22, 103/3, 105/16, 105/19, 106/13, 106/18, 107/16, 108/13, 110/10, 111/2, 113/2, 113/8, 113/12, 118/14, 119/6, 127/23, 135/10, 135/19, 136/7, 140/6, 140/7, 140/12, 140/15, 147/9, 147/10, 147/13, 151/11, 154/4, 158/12, 159/1, 159/4, 161/1
 rulemaking 26/6, 69/17, 72/8, 140/18, 153/7, 160/7
 rules 9/22, 10/6, 10/7, 10/9, 10/13, 10/16, 10/17, 11/8, 13/2, 17/22, 19/1, 20/25, 22/4, 25/13, 25/16, 25/20, 25/24, 26/1, 26/5, 26/11, 26/12, 28/13, 28/20, 59/19, 59/20, 70/13, 72/17, 76/16, 89/12, 113/24, 114/16, 119/13, 130/6, 134/13, 150/11, 153/17, 160/2, 160/4
 run 16/6, 57/17, 131/20, 135/4
 run-through 54/8
 RUNNING 4/10, 40/12, 52/15, 77/17
 RUTHE 1/24, 96/9, 158/6, 162/3, 162/12

S

safeguard 49/9, 61/21
 safeguarding 111/4
 safeguards 40/1, 40/22
 SALAK 3/4, 5/13
 salaries 127/5
 sale 19/8, 57/13, 64/8, 153/24, 155/1
 sales 55/25, 57/8, 66/3, 153/22
 salvage 153/20
 SAM 3/3, 7/10, 131/23
 satisfied 91/17
 satisfy 21/4
 saving 98/5
 savings 84/16
 saw 16/21
 scales 98/5
 scenario 48/15, 55/16, 63/5, 63/8, 100/4, 103/16, 128/15
 scenarios 70/20

school 151/25
 scope 22/15, 55/9, 56/9, 58/2, 60/12, 60/23, 61/3
 scrap 115/10, 115/13
 scratched 146/13, 146/15
 se 25/14, 35/19, 48/25
 search 146/19
 Sears 18/8, 18/11
 SEC 77/8, 78/2, 81/16, 81/20, 122/18, 122/24, 145/7
 Second 13/7, 47/13, 73/18, 92/22, 140/23
 secret 116/15
 secretary 125/14
 section 19/14, 19/15, 20/14, 20/16, 26/9, 59/24, 68/9, 80/9, 81/3, 86/24, 91/18, 118/13, 134/9, 135/22, 139/20, 141/5, 141/7
 sections 68/24, 68/25
 secure 81/9, 81/10
 sediment 150/1
 seeking 134/12
 segment 68/10
 segregate 132/15
 self-dealing 10/13
 self-indicating 147/21, 147/22
 sell 16/23, 56/12, 57/2, 83/25, 108/23, 110/6, 112/10, 112/18, 112/23, 113/4, 113/19, 113/24, 114/1, 114/6, 114/25, 154/25, 155/1, 155/8
 selling 56/16, 56/21, 56/25, 98/20, 112/20
 sells 56/12, 56/17, 110/14
 semantics 33/17, 33/24, 33/25, 153/21
 send 68/4, 128/16, 146/11, 159/19
 sending 8/14, 53/11
 sense 29/5, 33/20, 34/20, 82/5, 119/1, 124/20, 133/18
 sensitivity 100/12
 sent 17/20, 159/9, 159/10
 sentence 21/13, 22/22, 23/12, 23/23, 62/4, 68/12, 73/18, 73/19, 75/12
 sentences 68/12
 separate 47/13, 47/14, 48/17, 63/12, 63/17, 64/19, 64/24, 64/25, 65/9, 68/2, 101/4, 137/9, 137/23, 142/10, 144/25, 145/20, 145/22
 separated 57/8, 65/2, 65/4, 137/14
 separation 67/23
 September 158/23, 158/24
 series 48/13, 134/24
 serves 119/5
 SERVICE 1/1, 5/9, 13/5, 36/9, 49/15, 54/20, 55/6, 55/11, 55/23, 60/22, 61/8, 61/15, 66/3, 77/7, 77/25, 79/18, 79/25, 80/12, 80/25, 81/14, 81/19, 82/3, 82/11, 84/3, 85/16, 95/15, 95/22, 95/25, 98/2, 98/7, 98/14, 98/22, 100/22, 100/24, 100/25, 101/9, 102/11, 102/12, 103/23, 122/17, 128/19, 129/12, 132/19, 139/3, 139/7, 139/13, 139/23, 150/15, 150/16, 151/6, 151/9, 156/13, 162/5
 services 11/10, 11/11, 11/12, 13/9, 13/10, 13/11, 13/14, 23/25, 38/17, 38/23, 39/1, 39/12, 39/14, 44/11, 44/13, 45/2, 46/24, 46/25, 47/1, 47/16, 48/10, 50/18, 60/6, 65/12, 77/10, 79/15, 81/3, 81/4, 81/6, 81/7, 81/8, 82/13, 96/6, 101/6, 102/12, 102/16, 123/23, 133/6, 138/9, 141/3
 set 4/8, 30/8, 31/17, 33/15, 34/15, 54/3, 63/11, 70/18, 79/17, 85/4, 87/21, 88/14, 88/20, 105/4, 144/25, 145/13, 145/18, 145/21
 sets 33/9, 34/4, 85/4
 setting 28/17, 28/24, 29/7, 31/2, 75/3, 106/1, 119/3, 143/24, 144/25
 settlement 29/15
 seven 57/1
 shaded 9/5, 23/23
 shaking 39/18, 63/23, 159/6
 share 11/17, 36/2, 36/9, 36/19, 38/9, 46/12, 46/15, 46/16, 47/16, 49/20, 50/1, 51/12, 152/1, 153/12
 shared 65/10, 65/12
 sheet 8/14, 12/19, 16/7, 157/23
 shifting 10/12, 111/2
 short 74/9, 96/15, 96/17
 shortening 68/15
 show 20/17, 36/12, 72/8, 76/13, 85/22, 86/1, 88/8, 88/15, 111/15, 126/5, 128/21
 shows 128/15
 Shreve 17/18
 side 17/25, 40/14, 62/10, 110/13, 141/6, 145/16
 sidebar 9/1
 sides 110/13
 sign 94/4, 161/3
 sign-up 8/14
 signed 13/18
 signing 95/10
 silence 149/22
 simple 70/9, 131/13, 131/14, 135/17, 155/17
 Simultaneous 42/10, 45/1, 93/13
 sit 123/10
 situation 49/3, 50/24, 59/13, 77/2, 112/24, 113/5, 136/15, 141/4, 152/1
 situations 34/3, 49/16, 136/14, 152/13

six 57/1
 size 143/1, 144/22
 slant 41/22
 slow 52/24, 119/14
 slower 83/15, 96/24
 slowing 124/4
 slug 96/13
 small 11/5, 12/5, 12/9, 12/23, 138/14, 144/21
 smallest 101/19, 102/5
 smart 111/12
 software 11/14
 sold 109/11
 sole 57/25, 100/7, 100/10, 101/5
 solution 42/14
 solved 145/12
 sore 4/14
 sort 16/24, 17/15, 20/2, 28/5, 30/15, 35/25, 36/23, 48/12, 66/20, 71/12, 75/8, 79/8, 85/18, 90/20, 92/9, 97/2, 98/12, 110/10, 115/20, 148/12, 150/8, 156/14
 sought 15/4, 91/12
 sound 157/15
 sounded 33/3, 67/2
 sounds 44/8, 127/14, 138/25
 source 83/6
 sourcing 57/25
 South 6/22
 Southern 77/3, 98/14, 115/7, 116/14, 116/23
 space 40/10, 47/16, 59/15, 66/6, 66/9, 136/17
 SPEAKER 7/25, 9/21, 20/8, 21/10, 21/15, 21/16, 21/22, 22/6, 25/3, 25/5, 27/25, 28/3, 42/5, 42/13, 44/3, 44/20, 44/25, 45/6, 45/11, 46/24, 49/13, 50/12, 50/20, 51/8, 63/21, 63/23, 65/23, 89/2, 92/10, 94/2, 95/15, 95/21, 102/9, 102/10, 105/22, 157/3
 specify 132/22
 Spectrums 15/11
 spells 41/11
 spent 17/3
 spread 38/4
 stab 32/9
 stable 36/20
 Staff 5/8, 5/12, 7/9, 8/20, 9/2, 9/10, 15/10, 18/25, 19/23, 29/18, 34/2, 71/24, 72/21, 73/14, 100/13, 122/4, 142/5, 142/24, 143/7, 146/4, 152/8, 156/10, 159/10, 159/25, 162/5
 Staff's 72/25, 90/5
 stand 18/11, 33/1, 33/5
 standard 72/1, 73/15, 74/19, 75/3, 75/4, 75/5, 80/7, 82/4, 82/9, 82/20, 88/9, 101/10, 101/19, 121/4, 153/10
 standards 72/20, 74/23, 87/20
 stands 5/25
 start 4/25, 9/20, 16/15, 19/20, 115/12, 132/18, 145/14
 started 4/4, 4/13, 9/18, 101/15
 starting 45/15, 52/24
 state 10/4, 11/23, 16/10, 20/21, 50/1, 76/7, 129/11, 152/23, 162/1
 statement 32/5, 69/2, 113/1, 140/25
 statements 80/16
 States 12/6, 12/22, 20/14, 152/15
 status 16/15, 18/15
 statute 41/21, 46/10, 51/16, 51/18, 51/19, 51/20, 52/18, 60/14, 67/10, 70/14, 103/19
 statutes 57/7, 60/19
 statutory 105/13
 stay 38/19, 45/22, 133/7, 154/19
 stayed 133/20
 steam 116/16
 Steel 6/22
 stenographically 162/7
 step 48/23, 159/17
 stick 129/25, 141/24
 stipulated 29/15
 stolen 148/12
 stood 111/23
 stop 84/18
 strand 111/16
 stranded 110/16, 111/5, 112/9, 112/14, 112/15, 113/12, 113/15, 113/20
 strategic 17/10
 streamline 160/23
 Street 6/12, 6/20, 6/22
 stricken 142/5
 strike 21/21, 23/17
 struck 134/21
 Striking 23/11
 strong 23/16, 111/14
 struck 21/3, 154/10, 154/20
 structure 47/10, 60/7
 structured 47/23, 56/23
 structures 108/23
 struggling 28/11, 34/24
 strung 115/20
 stuck 110/1, 112/13, 113/11
 studies 15/14, 98/4

study 36/16, 127/19
 stuff 14/16, 18/18, 31/14, 67/11, 115/12, 115/15,
 117/3, 132/10, 137/21, 138/20, 145/6
 stuffer 128/20, 139/4, 139/6, 139/9, 139/17
 stuffers 145/17
 subaccounts 132/14, 132/23, 137/10, 137/23
 Subcommittee 12/23
 subject 9/12, 9/14, 28/14, 38/24, 39/1, 39/12, 39/14,
 44/12, 44/14, 45/3, 141/8, 148/8, 150/21
 submit 82/1
 subpays 154/17
 subs 123/12
 subsection 54/17, 58/12, 64/14, 120/12, 121/16
 subsections 90/1
 subsidiary 13/10, 13/13
 subsidies 19/6, 49/16, 49/24
 subsidization 41/21, 45/19, 76/3, 76/11, 96/8, 150/20
 subsidize 27/18, 28/7, 46/2, 52/2, 52/7
 subsidized 16/25, 17/7, 41/8, 135/1
 subsidizing 49/14
 subsidy 41/25, 42/15, 49/19, 49/22, 49/25, 50/14,
 50/16, 50/19, 50/25, 51/6, 51/11, 52/14
 substance 116/10
 substitute 68/11
 succinct 69/2
 sufficient 75/21, 92/7, 94/16, 137/10, 137/24, 146/21
 suggestion 46/4, 91/19, 148/2
 suggestions 20/6, 23/19, 24/12
 Suite 6/23
 supplementary 80/9
 Supply 12/13
 support 47/19, 86/7, 122/1
 supporting 127/24
 surveillance 29/22, 42/23, 43/15, 43/21, 43/24,
 44/16, 45/5, 74/15, 132/2, 132/7
 switched 31/7, 31/23, 32/6
 symmetrical 77/19
 symmetry 99/2, 99/4, 109/20, 110/11
 synergies 57/14
 system 29/22, 104/19, 120/3, 120/4, 121/7, 121/8,
 121/23, 121/24, 122/5, 122/21, 123/2, 123/11, 125/15,
 125/18, 126/13, 126/18, 127/8, 128/4, 128/9, 130/15
 systems 39/21, 40/2, 47/16, 47/18, 63/13, 67/23,
 82/14, 121/6

T

table 19/15
 tailor-made 82/14
 talk 4/20, 4/22, 8/10, 17/12, 17/21, 17/22, 17/23,
 17/24, 29/6, 40/8, 44/2, 46/2, 51/2, 68/24, 93/25,
 96/24, 117/19, 124/5, 149/10, 151/25, 155/20
 talked 46/3, 53/20, 130/11, 134/8, 151/16, 158/15
 talking 4/15, 7/23, 17/25, 18/1, 18/3, 20/24, 20/25,
 24/21, 29/5, 48/9, 48/16, 48/17, 48/19, 56/16, 62/19,
 71/17, 72/1, 78/11, 79/14, 88/19, 90/20, 92/3, 93/3,
 93/24, 97/2, 97/6, 97/7, 102/16, 111/10, 113/11,
 113/23, 116/20, 118/25, 121/17, 130/18, 136/10, 137/6,
 138/14, 138/25, 144/25
 talks 51/24, 88/19, 144/15
 Tallahassee 1/22, 6/12, 6/23, 146/5
 Tamiami 5/18
 Tampa 2/11, 6/2, 6/3, 6/11, 6/15, 25/3, 25/7, 25/8,
 27/16, 88/4, 113/17
 tariffed 61/15
 tariffs 33/9
 tax 97/22
 technology-type 122/13
 TECO 2/10, 6/14, 20/7, 64/1, 64/24, 68/7, 68/10,
 72/24, 74/13, 82/23, 104/14, 117/25, 118/5, 135/9,
 136/5, 140/3, 141/17, 142/4, 146/13, 149/25, 154/23,
 160/9
 telecommunications 143/21, 148/13
 telephone 143/22, 149/2, 150/5, 150/11
 ten 126/2, 126/3, 126/5
 tend 20/23, 28/16, 160/17
 term 27/18, 38/20, 149/15
 termed 155/9
 terms 10/13, 28/12, 30/13, 30/22, 34/18, 52/14, 155/16
 test 76/9, 136/6, 136/22
 TESTIMONY 1/12, 12/21, 13/3
 Thank 5/23, 11/17, 18/20, 18/23, 19/11, 27/2, 27/15,
 40/25, 52/22, 73/9, 119/20, 140/19, 152/22, 161/5
 Thanks 99/5, 156/7
 theoretically 115/8
 Thereupon 161/6
 They've 8/9, 123/8, 144/2
 thick 16/7, 143/3
 Third 13/8, 35/14, 47/15, 80/21, 81/9, 98/19, 110/1,
 110/6, 112/18, 112/20, 113/3, 113/19
 thousands 129/5
 thread 150/20
 three 8/24, 20/1, 23/18, 71/11, 95/13, 124/15, 133/5,

144/3, 148/19, 148/24, 149/3, 158/18, 158/22, 158/24
 three-year 95/10
 threshold 27/14, 94/22, 100/15, 142/17
 thresholds 95/1, 142/21
 throat 4/14
 throwing 85/23
 thrust 60/2
 tie 59/6, 121/9
 TIM 3/2, 4/10, 14/2, 54/3, 59/10, 65/23, 67/16,
 73/17, 86/20, 87/14, 94/15, 115/17, 119/22, 130/9, 156/8
 Tim's 113/15
 TIME 1/19, 9/24, 14/17, 16/18, 18/17, 19/5, 39/10,
 51/4, 53/2, 53/19, 65/21, 74/9, 74/10, 87/10, 93/11,
 93/12, 95/4, 115/23, 117/16, 122/12, 123/8, 123/14,
 124/1, 129/10, 138/22, 149/4, 162/5
 time-consuming 90/12
 times 74/9
 top 30/5, 90/21, 93/2
 touch 63/10, 67/5
 town 157/19, 157/20
 toyed 77/4
 trace 122/6
 track 20/3, 42/4, 90/22, 137/17, 146/20
 tracking 125/11
 tracks 41/20, 46/9
 tractions 60/21, 68/19
 tractor 116/1
 trade 12/4, 116/15
 Trail 5/19
 transaction 24/10, 35/11, 50/7, 51/13, 57/17, 57/22,
 58/18, 58/25, 59/12, 59/15, 59/18, 59/21, 62/8, 62/11,
 63/9, 64/9, 67/14, 74/2, 74/20, 79/18, 81/14, 83/8,
 83/10, 83/12, 84/7, 84/9, 84/21, 85/8, 86/3, 86/5, 87/1,
 87/9, 92/23, 94/23, 103/23, 106/9, 110/13, 110/22,
 112/21, 113/9, 120/8, 120/21, 127/25, 130/16, 130/24,
 130/25, 131/11, 139/24, 139/25, 147/5
 Transactions 1/5, 10/10, 24/7, 24/11, 25/2, 25/21,
 25/22, 34/18, 34/19, 35/4, 46/13, 46/19, 46/21, 49/4,
 52/4, 54/11, 54/19, 55/5, 55/9, 55/12, 56/3, 58/10,
 58/13, 58/24, 59/4, 59/8, 60/12, 62/5, 62/21, 64/15,
 65/13, 65/22, 66/23, 67/4, 68/17, 69/3, 69/8, 71/14,
 77/7, 77/14, 77/15, 78/6, 79/10, 80/17, 80/19, 81/19,
 84/19, 90/13, 93/25, 94/16, 102/24, 110/24, 110/25,
 111/1, 111/8, 116/12, 117/15, 120/1, 120/12, 121/12,
 121/18, 122/1, 122/3, 122/7, 129/21, 131/19, 142/12,
 143/11, 144/19, 151/1, 151/3, 151/7, 151/13, 151/17,
 151/20, 152/1, 153/12, 154/2
 transcribe 4/22
 transcribed 4/21, 162/8
 TRANSCRIPT 1/10, 1/11, 53/14, 53/23, 158/5,
 158/7, 158/10, 158/19, 158/23, 162/8
 transcription 162/9
 transfer 13/8, 35/17, 35/18, 35/20, 69/10, 71/11,
 71/18, 77/5, 78/10, 97/3, 97/14, 104/13, 111/3, 116/8,
 116/18, 118/13, 118/14, 126/4, 153/24, 154/12, 154/14,
 155/3, 155/8, 155/10, 155/11
 transferred 55/21, 107/1
 transferring 116/6
 transfers 58/17, 116/20, 153/22
 transportation 23/25, 25/11, 25/21, 84/14, 84/15,
 115/11
 tread 135/16
 treasury 81/7
 trend 14/8
 trigger 57/23, 57/24
 trouble 37/1
 troubling 62/15
 TROY 2/12, 6/9, 64/5, 65/6, 107/7, 108/16, 142/22
 truck 107/2, 134/24
 trucks 134/25
 trudge 141/15
 true 22/25, 26/4, 110/2, 162/8
 Tuesday 1/18
 turn 14/3, 38/21, 54/10, 56/17, 57/2, 137/25, 154/5
 turn-arounds 74/10
 two 14/19, 68/12, 70/3, 96/12, 99/23, 100/2, 110/10,
 116/7, 123/15, 133/7, 145/24, 148/8
 two-sided 41/20, 45/22
 type 22/3, 47/3, 76/9, 76/22, 77/25, 79/23, 87/1,
 107/4, 117/15, 125/7, 137/5, 137/19
 types 38/17, 81/4, 133/5

U

unbridled 73/5, 86/19
 unclear 148/17, 155/13
 undercut 11/6, 134/22, 135/2
 underlying 61/2, 121/22, 122/2, 127/10, 128/2
 UNIDENTIFIED 7/25, 9/21, 20/8, 21/10, 21/15,
 21/16, 21/22, 22/6, 25/3, 27/24, 28/2, 42/5, 42/13,
 44/3, 44/20, 44/25, 45/6, 45/11, 46/24, 49/13, 50/12,
 50/20, 51/8, 63/21, 63/23, 65/23, 89/2, 92/10, 94/2,
 95/15, 95/21, 102/9, 102/10, 105/22, 157/3

Uniform 104/19, 120/3, 121/7, 125/15, 130/15
 United 12/6, 12/22
 unregulated 11/4, 19/7, 56/13, 104/16, 143/23
 unsure 86/24, 121/22
 urgency 157/17
 useful 91/5, 112/12, 113/7, 127/15
 Users 2/21, 7/20, 18/24
 USO 121/7
 USOA 107/4, 120/22, 130/4, 130/6, 130/17
 Utilities 2/12, 6/10, 8/25, 9/10, 11/3, 11/5, 12/8,
 13/15, 14/23, 15/14, 15/15, 16/1, 16/10, 16/17, 16/22,
 17/9, 18/4, 20/1, 21/24, 38/16, 40/2, 40/4, 40/5, 43/12,
 56/2, 64/3, 64/6, 65/1, 65/7, 66/14, 68/16, 93/17,
 94/10, 97/3, 98/5, 108/17, 108/25, 115/7, 117/20,
 117/21, 119/14, 126/15, 127/25, 131/22, 136/25, 142/6,
 142/23, 143/15, 145/12, 148/10, 151/4, 151/6, 152/14,
 153/9, 156/17
 utility 9/14, 10/18, 10/23, 10/24, 11/14, 13/10, 13/12,
 13/14, 15/20, 18/7, 18/16, 20/17, 24/19, 31/15, 33/11,
 39/21, 46/11, 46/13, 47/12, 47/14, 47/15, 47/17, 48/19,
 50/4, 51/11, 52/5, 54/11, 54/20, 55/10, 55/12, 55/17,
 56/5, 56/7, 56/12, 56/17, 56/25, 57/12, 57/15, 57/17,
 57/19, 58/18, 59/12, 59/14, 59/17, 59/22, 60/4, 61/6,
 61/14, 62/16, 62/21, 62/24, 63/10, 63/11, 63/14, 64/12,
 64/16, 64/20, 64/22, 65/21, 66/19, 66/24, 67/1, 67/5,
 67/22, 68/3, 68/18, 68/21, 69/2, 69/25, 73/21, 74/14,
 74/18, 75/20, 76/10, 79/24, 80/18, 80/20, 82/11, 82/13,
 82/14, 82/17, 83/3, 83/6, 83/7, 83/9, 84/1, 84/3, 84/5,
 84/16, 85/18, 85/19, 85/22, 85/25, 86/3, 92/22, 93/19,
 95/24, 96/5, 98/8, 98/9, 98/20, 99/3, 102/25, 105/10,
 105/24, 107/1, 107/15, 108/8, 108/20, 108/21, 109/3,
 109/22, 110/1, 110/3, 110/7, 110/14, 110/17, 111/8,
 111/15, 111/17, 112/10, 112/17, 113/7, 113/11, 113/16,
 114/7, 114/22, 114/23, 115/6, 116/6, 116/21, 116/25,
 117/23, 119/4, 119/24, 120/5, 120/25, 121/3, 121/8,
 121/13, 121/24, 124/7, 124/10, 125/6, 125/16, 127/20,
 128/15, 128/24, 129/6, 129/22, 131/15, 134/12, 134/17,
 134/22, 137/21, 141/3, 145/19, 150/10, 150/14, 150/22,
 152/2, 154/17, 154/19
 utility's 29/13, 29/14, 52/1, 52/7, 83/13, 84/10,
 84/11, 85/5, 91/13, 126/16, 135/20, 143/10, 150/7,
 153/25, 155/2, 155/6, 155/11, 155/12
 utilize 16/5, 130/14, 139/20
 utilized 128/16

V

valid 46/20, 78/21
 value 13/11, 16/24, 86/4, 104/16, 104/23, 105/19,
 106/4, 106/15, 107/17, 109/5, 109/10, 109/14, 109/24,
 110/6, 112/13, 115/2, 115/3, 120/20, 129/3, 129/15,
 129/18
 variances 70/13
 varying 27/19
 VAUGHN 2/4, 6/25, 11/20, 26/17, 35/22, 47/5,
 71/15, 119/11, 144/5
 vehicle 90/2, 115/14
 vehicles 18/2, 24/4, 65/4, 116/9, 145/18
 venture 56/24, 144/21, 145/14, 145/20
 ventures 16/17, 18/5, 40/13, 150/8
 version 9/5, 79/8
 VERSIONS 1/10
 viable 115/18
 VICKI 2/20, 7/18, 18/22, 18/23, 19/11, 26/8, 59/10,
 61/18, 90/13
 Vicki's 62/13
 Vicky 134/4
 view 45/21, 45/22
 vindicating 147/22
 violation 147/9, 147/13
 voice 153/3
 voluminous 156/21
 volunteered 4/16
 volunteers 53/1

W

wait 92/22, 158/4
 waive 69/15, 72/19, 87/10
 waiver 22/3, 72/17, 72/20, 72/23, 86/11, 86/17, 87/5,
 87/16, 87/18, 87/19, 88/19, 88/25, 89/9, 89/24, 90/19
 waivers 70/13
 walking 28/4
 wall 148/7
 warrants 16/23
 warranty 15/21, 16/24, 17/2
 WARREN 2/2, 7/4, 10/1, 134/19
 waterborne 84/14
 WATSON 2/22, 8/4
 wed 75/11
 Wednesday 158/7, 158/11, 158/23
 week 34/8, 45/17

Weekly 4/6
weeks 152/21, 158/18, 158/22, 158/24
welcome 4/24, 80/8
West 6/20
wherever 149/12
whispering 120/6
wholeheartedly 45/12
wholesale 56/6, 56/10, 56/25, 57/2
Wholesalers 12/12
WILLIAM 2/18, 5/17
willing 94/4, 115/9
winding 153/15
wiring 16/13, 16/21, 17/19
wish 9/19
wonder 65/25
wondering 130/5, 140/25
word 21/2, 21/11, 21/20, 21/21, 32/25, 154/8
worded 72/15, 145/1
wording 20/16, 58/22, 67/9, 70/10, 81/17, 108/9,
146/23
words 21/19, 23/18, 75/5, 146/20, 154/10, 154/19
wordsmithing 145/3
work 15/13, 33/25, 38/11, 38/12, 55/17, 55/19, 71/7,
73/24, 75/16, 83/7, 84/2, 95/2, 103/13, 111/21, 112/6,
117/15, 122/20, 122/21, 122/23, 123/1, 123/12, 123/16,
126/8, 128/19, 134/1, 137/4, 137/23, 142/14, 144/25,
158/8, 159/5
worked 160/16
working 13/17, 48/7, 55/17, 110/10, 160/25
works 159/12
WORKSHOP 1/15, 4/2, 4/7, 4/8, 4/11, 15/9, 16/2,
41/15, 54/3, 54/7, 72/7, 156/3, 157/14, 159/20, 160/14,
160/15, 160/16, 160/23, 161/6, 162/4
workshops 30/12, 32/1, 136/16
world 107/25
worried 31/20, 118/5
worry 145/21
worth 138/13, 138/18, 138/23, 144/8
wrapping 155/18
WRIGHT 3/4, 7/14
writing 12/2
written 11/22, 27/16, 27/17, 68/9, 83/1, 84/7, 107/13,
108/7, 141/17, 141/22, 150/1
wrong 25/13, 29/2, 32/25, 37/7, 117/18, 149/19
wrote 15/23, 17/18

Y

year 14/22, 77/22, 79/15, 92/15, 127/17, 131/4,
144/1, 148/24, 149/4
years 14/20, 16/8, 17/14, 71/19, 95/13, 95/16, 107/18,
135/15, 143/22, 144/3, 144/4, 148/13, 148/19, 148/24,
149/3, 150/12

Z

zero 107/18, 108/2
zooming 105/4