

1	STATE OF NEBRASKA
2	NEBRASKA POWER REVIEW BOARD
3	
4	IN THE MATTER OF THE)
5	CENTRAL NEBRASKA PUBLIC) CHARTER AMENDMENT 6
6	POWER AND IRRIGATION)
7	DISTRICT'S PETITION TO)
8	AMEND ITS CHARTER) TRANSCRIPT OF
9) HEARING
10	IN THE MATTER OF THE)
11	DAWSON PUBLIC POWER) DAY 3-TESTIMONY
12	DISTRICT'S PETITION FOR)
13)
14	DISSOLUTION)
15	
16	
17	Proceedings had before TIMOTHY J. TEXEL,
18	HEARING OFFICER, 1st Floor Hearing Room, 301
19	Centennial Mall South, Lincoln, Nebraska, on
20	February 17, 2023.
21	
22	BOARD MEMBERS:
23	Mr. Frank J. Reida - Chair (Via WebEx)
24	Mr. Chuck Hutchison - Vice Chair
25	Mr. Greg Moen
	Ms. Bridget Peck (Via WebEx)
	Ms. Kristen Gottschalk

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<p style="text-align: right;">Page 770</p> <p>1 (At 10:07 a.m., the following 2 proceedings were had:) 3 HEARING OFFICER TEXEL: Okay. 4 I'm going to call this hearing to order. 5 We are reconvening. It's 10:07. We are 6 Friday, February 17th. We are back in the 7 first floor hearing room of the State Office 8 Building. 9 All the board members are participating. 10 Chairman Reida and Ms. Peck are, again, on 11 WebEx. 12 Vice Chair Hutchison, Mr. Moen and 13 Ms. Gottschalk are here in person. 14 Okay. So with that, the -- Central had 15 rested yesterday. 16 And, Mr. Degan, you may proceed with your 17 case in chief. 18 MR. DEGAN: Thank you. 19 Protestants will call Don Wendell. 20 HEARING OFFICER TEXEL: Hi, 21 Mr. Wendell. Can you raise your right hand. 22 DONALD WENDELL, 23 Called as a witness on behalf of Protestants, 24 being first duly sworn, was examined and 25 testified as follows:</p>	<p style="text-align: right;">Page 771</p> <p>1 HEARING OFFICER TEXEL: And I 2 think you've probably seen the system we have. 3 But could you state your name, spell it and 4 your address. 5 THE WITNESS: My name is Donald 6 W. Wendell, D-O-N-A-L-D, W, W-E-N-D-E-L-L. 7 I live at 4457 Christensen Circle, 8 Littleton, Colorado 80123. 9 HEARING OFFICER TEXEL: All 10 right. Mr. Degan. 11 MR. DEGAN: Thank you. 12 DIRECT EXAMINATION 13 BY MR. DEGAN: 14 Q. Good morning, Mr. Wendell. 15 MR. DEGAN: May I approach? 16 HEARING OFFICER TEXEL: Yes. 17 MR. DEGAN: Can I have that 18 continuing? 19 HEARING OFFICER TEXEL: Yes. 20 MR. DEGAN: Thank you. 21 BY MR. DEGAN: 22 Q. Handing you what's been marked as 23 Exhibit 63, could you briefly identify that for 24 us? 25 A. It's my resume.</p>
<p style="text-align: right;">Page 772</p> <p>1 Q. And is that a current resume of your 2 professional and educational background? 3 A. It's current. 4 Q. Okay. 5 MR. DEGAN: Counsel, did 63 get 6 entered yesterday? I thought it did. 7 MR. JARECKE: I believe -- 8 MS. KREIFELS: Resume, yes. 9 MR. DEGAN: Okay. That's what 10 I -- 11 MS. KREIFELS: 62 was not. 12 MR. JARECKE: No objection. 13 BY MR. DEGAN: 14 Q. Okay. So I will direct -- 15 BOARD MEMBER HUTCHISON: I don't 16 have it. Some of us have it. Some of us do 17 not. 18 THE WITNESS: If you want this 19 back, you can have it. 20 HEARING OFFICER TEXEL: 62 is 21 the only one that was not. 22 BOARD MEMBER HUTCHISON: I have 23 60, and I have 64. I don't have anything 24 between 60 and 64. And I think the same thing 25 with Greg.</p>	<p style="text-align: right;">Page 773</p> <p>1 BOARD MEMBER MOEN: That's 2 correct. 3 MS. HALLGREN: Do you want me to 4 go get a copy? 5 HEARING OFFICER TEXEL: I have 6 one copy here. 7 BOARD MEMBER HUTCHISON: All 8 right. We'll just share. 9 HEARING OFFICER TEXEL: Let's do 10 that. 11 BOARD MEMBER REIDA: I have 63. 12 Is that what we're looking for? 13 MR. DEGAN: Yes. 14 HEARING OFFICER TEXEL: Yes. Do 15 we need two? 16 BOARD MEMBER REIDA: I have that 17 inside -- 18 BOARD MEMBER HUTCHISON: We're 19 good. 20 BY MR. DEGAN: 21 Q. Okay. Mr. Wendell, I've placed 22 Exhibit 63 in front of you to have you identify 23 that so that, just for the sake of expediency, 24 we can touch on some highlights but we don't 25 have to get into full depth the extent of your</p>

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1 qualifications.
2 What is your current occupation?
3 A. I'm retired.
4 Q. And prior to your retirement, if you
5 could briefly outline your educational and
6 professional experience?
7 A. After graduating from college, I
8 spent eleven years with Arthur Andersen, six
9 years in the Omaha office, five years in Boston
10 working primarily in the regulated utilities
11 industry.
12 In that timeframe, I've worked with a
13 number of clients, investor-owned utilities,
14 public power entities, independent power
15 generators, both gas and electric distribution
16 companies.
17 I left Andersen after 11 years and moved
18 to Colorado. Went to work for Public Service
19 Company of Colorado. I was there for 25 years
20 in a variety of financial management executive
21 roles.
22 In that capacity, I served as the
23 assistant controller, as the chief audit
24 executive, as the vice president of financial
25 planning which was corporate-wide for the

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1 and describe maybe some of the projects you
2 worked on and what your role was with regard to
3 those mergers?
4 A. Well, the two most significant were
5 mergers that were done by Xcel Energy and its
6 predecessor companies.
7 In 1995, Public Service Company of
8 Colorado announced a merger with Southwestern
9 Public Service Company of Amarillo, Texas.
10 They merged to form New Century Energies in
11 1997.
12 It took two years to effect that merger.
13 Lots of regulatory approvals to go through.
14 My role in that was as director of
15 financial reporting. I was not involved in the
16 negotiation of the merger but played an active
17 role in all of the approvals to get -- get
18 through that acquisition.
19 The second merger was a merger of New
20 Century Energies and Northern States Power of
21 Minnesota to form Xcel Energy. That merger was
22 announced in 1999 and completed in 2000.
23 I had a similar role in that engagement
24 except for the fact that I also by that time
25 was working on the service company.

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1 company.
2 And -- and during that timeframe, worked
3 on two large mergers of Xcel Energy and a
4 number of multiple acquisitions over that
5 timeframe as I worked in financial reporting
6 and accounting.
7 Q. Okay. And are you or were you a
8 certified public accountant?
9 A. I am -- well, I was -- I'm a retired
10 certified public accountant in the State of
11 Colorado.
12 I initially had my license here in
13 Nebraska and had a reciprocal license when I
14 lived and worked in Massachusetts and obtained
15 a reciprocal license in Colorado when I moved
16 to Colorado and have maintained an inactive
17 license in Nebraska. In the event that I ever
18 came back here and needed to practice, I could
19 always reactive it with continuing education.
20 Q. Okay. You mentioned that part of
21 your professional experience included work
22 with -- relating to the merger of utilities or
23 utility-related businesses?
24 A. Yes.
25 Q. Could you expand on that a little bit

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1 We -- when we formed the first merger, we
2 formed -- we were both -- Public Service
3 Company of Colorado used to be an exempt
4 holding company. That changed in that first
5 merger. And we became a fully regulated
6 holding company under the Public Utility
7 Holding Company Act of 1935. We had to create
8 a service company that then provided for
9 services across the multiple utilities that
10 were part of the holding company structure.
11 Q. Okay. And on the financial analysis
12 side and your role in that capacity with
13 respect to mergers, does that typically involve
14 forecasting anticipated future revenues and
15 expenses of the entity that's being examined?
16 A. Well, let me be clear. Are you
17 talking about kind of what's prepared before
18 the execution of a merger document or --
19 Q. Yes, I am, the --
20 A. Okay.
21 Q. -- the documents that would be
22 created to assist management in its assessment
23 of the suitability of the potential merger
24 partner.
25 A. Okay. Well, with an investor-owned

<p style="text-align: right;">Page 778</p> <p>1 utility, there's clearly some more complexities 2 than would necessarily be between two public 3 power entities. 4 Both entities that were involved in the 5 merger hired investment bankers to be involved 6 to advise them. Ultimately they issued 7 fairness opinions so that shareholders, when 8 they were voting to approve that merger, had 9 the adequate documentation that this, in fact, 10 was a good deal for them and it was really a 11 function of what's the exchange of stock price 12 as part of that merger. 13 Additionally, besides that, there were, as 14 a consultant that was hired in both cases, in 15 both mergers, to complete a synergy savings. 16 You know, these mergers were two regulated 17 utilities with similar operations. There were 18 exhaustive synergies that were part of the 19 process. All of the documentation of those 20 synergies were then presented to state 21 regulators. And that's what took the two-year 22 process to eventually get approval of those 23 mergers because of all of the state and federal 24 regulatory approvals, along with getting 25 shareholder approval, et cetera.</p>	<p style="text-align: right;">Page 779</p> <p>1 Q. Okay. And public utilities, is it 2 your understanding, do not have shareholders? 3 A. That's correct. 4 Q. So some of those complications would 5 not be present when you're talking about a 6 merger of a -- public districts, would you 7 agree? 8 A. Yes. 9 Q. Okay. Well, you currently reside in 10 Colorado; correct? 11 A. I do. 12 Q. Where did you grow up? 13 A. I grew up on a farm north of Axtell. 14 I was there up through college years when I 15 went to Hastings College to school. 16 I grew up on a farm. And I irrigated the 17 land that was also land -- some of the land 18 that we -- we farmed and a neighbor that I 19 worked for as well was water that was provided 20 by Central. 21 I learned in this proceeding that I was 22 not only a customer, I guess I'm an 23 accountholder. And -- and as working through 24 that process, you know, we -- almost lost my 25 train of thought there for a second.</p>
<p style="text-align: right;">Page 780</p> <p>1 But we had irrigation wells on our farm as 2 well. And, you know, after I got educated, I 3 moved away. And I've lived in Omaha, as I 4 said, and lived further away. 5 But I've continued to -- I still have 6 family, lots of friends that live in the 7 community. 8 I have a lot of relatives that are still 9 there, some of which I found out some of the 10 people I've met down here that knew those other 11 relatives that I hadn't seen in a long time. 12 Q. And are you currently a customer of 13 Central? 14 A. I am. My brothers and I retained 15 ownership. I'm a fourth-generation land 16 holder. And we recently set up for an LLC to 17 ultimately pass the land on to our fifth 18 generation, which is my kids and my brother's 19 children. 20 Q. Okay. And how many -- how many acres 21 is that holding? 22 A. Well, the land that is under lease 23 for Central is a quarter. So 160 acres. 24 The acres -- the amount of water is 25 something, like, 137 acres of water. So when</p>	<p style="text-align: right;">Page 781</p> <p>1 they've talked about the inch and a half or 2 what -- I mean, the 18 inches of water, we get 3 allocated the water for those number of acres, 4 137 acres on that one quarter. 5 HEARING OFFICER TEXEL: Those 6 are your rights? 7 THE WITNESS: Those are the 8 water rights that are attached to that land, 9 that's correct -- 10 HEARING OFFICER TEXEL: Okay. 11 Yes. 12 THE WITNESS: -- that is held in 13 trust by Central. 14 HEARING OFFICER TEXEL: Okay. 15 Thank you. 16 BY MR. DEGAN: 17 Q. Which is purchased by you through 18 your Water Service Agreement with Central? 19 A. That's correct. 20 We have -- since I'm not farming, we have 21 two tenants that are involved in the farming of 22 our land, one that is by the original home 23 place and another that is 10 miles south, 5 24 miles south of Axtell, that farms a quarter 25 down there that was originally homesteaded</p>

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1 land.
2 Q. When did you first learn of the
3 potential consolidation between Central and
4 Dawson?
5 A. Well, because I'm a customer, I
6 received the -- I think it's called the
7 Communicator. So when they talked about some
8 communication that there was a merger that was
9 being evaluated and I became aware of -- their
10 tenant had expressed to me -- it was either in
11 October, early November, that the merger was
12 either happening or likely to happen, he wasn't
13 too happy. So that was probably the first
14 piece.
15 And then I got another call from another
16 friend, family friend, who said that on October
17 24th, the merger had been approved and he
18 wanted to talk to me because he knew I'd worked
19 in the utility industry for 36 years and just
20 wanted to learn more. He wanted just to get my
21 perspective on the whole thing.
22 Q. Okay. So after these initial
23 conversations, did you personally have any
24 questions or concerns regarding the proposed
25 merger?

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1 THE WITNESS: All
2 this discussion was --
3 BOARD MEMBER MOEN: Your
4 October, November dates are all --
5 THE WITNESS: Yeah, all of this
6 was -- all of my discussions were after the
7 merger was approved on October 24th.
8 BY MR. DEGAN:
9 Q. Okay. That was going to be my next
10 question.
11 A. Yeah.
12 Q. You certainly were in November. But
13 it is your recollection that your conversation
14 with Dudley Nelson was after he had voted for
15 the merger?
16 A. That's correct.
17 Q. Okay. And I believe you testified
18 that you asked him, why did you vote for it.
19 What did Mr. Nelson tell you?
20 A. Well, the overall thing was that
21 Central's financial situation was deteriorating
22 and that they needed to do something drastic or
23 take significant action. And he believed that
24 the merger was an appropriate action based on
25 what he knew.

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1 A. Yeah. He, through that initially --
2 those two discussions initially piqued my
3 interest. And I was talking to my brother who
4 still lives there in the area. And Dudley
5 Nelson, a director for Central, is a close
6 friend of my brother's. I've known Dudley a
7 lot of time. And I decided that it made the
8 most sense for me just to call him directly to
9 find out, well, why did you approve the merger,
10 what's -- talk to me here, I'd like to
11 understand the facts around this.
12 Q. Okay. Do you recall approximately
13 when that conversation occurred with
14 Mr. Nelson?
15 A. Sometime in November. I don't know
16 the exact date. I didn't take any notes
17 specifically for that meeting. Dudley was on a
18 tractor. And I was just on my cell phone at my
19 desk.
20 THE WITNESS: Yes, sir.
21 BOARD MEMBER MOEN: What year
22 are you referring to?
23 THE WITNESS: Oh, this is in --
24 just 2022.
25 BOARD MEMBER MOEN: All --

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1 You know, he also said that he was under
2 an NDA, NonDisclosure Agreement. So there was
3 only a few things that he could tell me, which,
4 quite frankly, that was about it.
5 We didn't really -- I didn't get much out
6 of why -- why did you really vote for the
7 merger. And I didn't necessarily expect him
8 to. I just wanted to have at least a big
9 picture understanding.
10 Q. Were you surprised by his statement
11 that Central was in financial difficulty?
12 A. Well, I guess I was surprised. But I
13 didn't know. I hadn't looked at any of
14 Central's financial statements, God, my entire
15 life to be honest with you.
16 I knew who Central was. As far as I knew,
17 everything was going smoothly.
18 Q. Okay. So what did you do next?
19 A. So after that discussion, I said,
20 well, okay, this is -- everything's on the
21 internet; right?
22 So I went to both companies' internet
23 sites. They both have a series of documents
24 that were posted out there. I started reading
25 documents that existed.

<p style="text-align: right;">Page 786</p> <p>1 You know, I went to the Nebraska -- State 2 of Nebraska website and obtained the audited 3 financial statements for both Dawson and 4 Central, for, like, the last two years. I 5 didn't need to go back further than that. I 6 just wanted to see what did things look like 7 today. 8 You know, that just gives you historical 9 financial statements. That's -- you know, this 10 is in November. And so, yeah, we're almost to 11 the end of 2022. And that was calendar '21 12 audited financial statements that I looked at. 13 But in looking at that, there was nothing 14 that jumped out to me that said this was -- 15 this company was in dire straits or anything 16 along those lines. 17 Q. Okay. And to be clear, this was 18 before you had any communications with anybody 19 associated with the group that would 20 subsequently be formed and named Citizens 21 Against the Merger? 22 A. Well, Jeff Larson, who was somebody 23 who called me, I believe -- 24 Q. Okay. 25 A. -- is a member of Citizens. Because</p>	<p style="text-align: right;">Page 787</p> <p>1 I live in Colorado, I couldn't even join 2 Citizens if I wanted to. So I'm not a member 3 of Citizens. But, yes, I am a customer of 4 Central. 5 Q. Okay. 6 A. And the only other person that called 7 me even after my discussion with Dudley was Rob 8 McCormick. Until we had -- there was a meeting 9 of Citizens. And I was asked to join that 10 meeting. 11 Q. And did you? 12 A. So I did participate via Zoom. I was 13 the only one on Zoom. 14 You know, I was basically attending that 15 meeting because I wanted to hear what was going 16 on. Even if I couldn't be a member, I was 17 interested to know as our farmland is part of 18 this. 19 And at the beginning of the meeting, I 20 said, like, Mr. Wendell, can you just provide 21 your comments about this whole thing. And 22 ultimately -- so I did. 23 And, you know, I told them what I had done 24 so far in terms of looking at some documents, 25 that, you know, the overall conclusion at that</p>
<p style="text-align: right;">Page 788</p> <p>1 time was that it was difficult to identify the 2 benefits or risks of this transaction based on 3 what I'd looked at and that more due diligence 4 was really needed, I believed, based on my 5 experience and M and A work and things that I 6 would have thought. 7 So that's all I said at that point in 8 time. 9 And then later on, you know, through -- 10 they shared my name with you. And you engaged 11 me from Kutak Rock to be an expert witness in 12 this case. 13 Q. Okay. And if you know -- and if you 14 don't, you know, just let me know -- but that 15 first -- the Zoom meeting that you participated 16 in, do you know whether a lawyer had even been 17 hired by the group that became Citizens Against 18 the Merger? 19 A. I believe two different sets of 20 lawyers had been hired. Didn't know who they 21 were, one with regards to the litigation in 22 Holdrege and you with regards to the litigation 23 here -- or not litigation but this proceeding 24 before -- that was ultimately going to be 25 before the Power Review Board.</p>	<p style="text-align: right;">Page 789</p> <p>1 Q. But to be clear, the initial work 2 that you did, both for your own curiosity and 3 in the comments that you related on the Zoom 4 call, that was before you and I had ever had a 5 conversation? 6 A. Yes. 7 Q. Okay. So subsequently you were 8 engaged. You agreed to become engaged as an 9 expert witness to provide testimony on behalf 10 of the group that became Citizens Against the 11 Merger? 12 A. Yes. 13 Q. Okay. And what did you do in 14 connection with that engagement? What did you 15 look at, and what were you looking for? 16 A. So, really, the first step was to 17 continue to look at any other information that 18 was being made available to me. And I'll just 19 describe kind of this is really the -- for the 20 most part, the month of January through early 21 February because in December then, I was -- I 22 watched this board meeting in December or parts 23 of it. And that's where it's, like, okay -- I 24 could tell -- it sounded like a decision wasn't 25 until later but likely the intervenors,</p>

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1 Citizens, was going to have an opportunity to
2 present their position and why they did not
3 support this merger before the board.
4 So my steps were, as -- well, first, get
5 engaged so that I knew kind of what was my
6 expectation, what's the role here.
7 I've worked with attorneys before in rate
8 proceedings in other jurisdictions. I've
9 testified in the States of Colorado, Wyoming
10 and New Mexico, mostly in an accounting and
11 financial reporting perspective, not in
12 situations like this.
13 But I'm familiar with the process of
14 gathering information, having depositions. So
15 I ultimately read all the depositions that you
16 conducted, which I don't even know how many
17 there were, eight, ten, something like that.
18 Quite a few.
19 Q. Sixteen, I believe.
20 A. Oh, then I didn't read all of them.
21 I only read about eight. I'm sure that I would
22 have really -- the other eight were as equally
23 riveting.
24 But the -- I also wrote a number of
25 discovery questions that I submitted to you

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1 requested that you did not receive? I mean,
2 generally. You don't have to list it document
3 by document. But what are you looking for that
4 you didn't --
5 THE WITNESS: A couple obvious
6 ones were I asked for the unaudited calendar
7 2022 financial statements. It's mid February.
8 HEARING OFFICER TEXEL: For
9 Central?
10 THE WITNESS: For Central. I
11 think it's -- yeah, my whole approach was to
12 investigate really around what -- is this a
13 benefit for Central.
14 I did not really go after a lot of other
15 documents on behalf of Dawson. So that was an
16 example, 2022 audited -- unaudited financial
17 statements.
18 BOARD MEMBER HUTCHISON: And
19 was -- did anyone provide you a reason for why
20 that was not available to you?
21 THE WITNESS: I don't know.
22 Maybe my attorney does. But --
23 BOARD MEMBER HUTCHISON: Okay.
24 All right. Got it. Next.
25 THE WITNESS: Next was the 2023

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1 because, you know, my goal was to seek the
2 truth, to find out why -- why does Central want
3 to merge with Dawson and what is the benefits
4 or what are the risks around doing this, to be
5 able to reach a decision or an opinion on my
6 part is this thing -- is this in the best
7 interest of Central and its customers.
8 Q. As part of that, you provided me with
9 lists of documents and information that you
10 wanted to see; correct?
11 A. Yes, I did.
12 Q. And eventually were additional
13 documents made available to you?
14 A. Some of -- some were. There was a
15 number of outstanding discovery questions that
16 I still never received. But, you know, it's,
17 like, this hearing is going on whether I
18 receive those or not. So it's, like, I've got
19 to reach my own opinions around -- based on the
20 information that I do have.
21 BOARD MEMBER HUTCHISON: Can I
22 interrupt you real quick?
23 THE WITNESS: Yes.
24 BOARD MEMBER HUTCHISON: Can you
25 give me an idea of what kind of information you

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1 budget. I wanted -- liked to see is -- you
2 know, the premise that I was told was things
3 are deteriorating. So I'm an ex-auditor, you
4 know. My approach is trust but verify.
5 So I'm trying to grab all the information
6 that I can to -- that would support what I
7 heard in terms of why did they want to merge.
8 BOARD MEMBER HUTCHISON: And
9 just quick, 2023, do you know whether or not
10 the district is -- the fiscal year starts in
11 January 1st or in July 1st?
12 THE WITNESS: No. It starts
13 January 1st.
14 BOARD MEMBER HUTCHISON: Okay.
15 THE WITNESS: And I believe
16 there was a budget that was approved in -- I
17 think it was in the month of December.
18 You know, I did look -- one of the things
19 that I did look at, Mike had gathered
20 audited -- or minutes, agendas for the minutes
21 from, I think, like, the last two years prior
22 to November.
23 And so, like, in December of the prior
24 year, I could see that the budget had been
25 approved. So my expectation was is that around

<p style="text-align: right;">Page 794</p> <p>1 the December timeframe, they -- Central has two 2 meetings every month. So I assumed that the 3 budget had been prepared and would like to have 4 seen that. 5 I had requested a copy of the capital 6 expenditures. I wanted to know what kind of 7 capital expenditures were happening over the 8 next five years, you know. All the kind of 9 basic financial information that you would want 10 to gather to understand not only the current 11 financial position and results of operations 12 but looking to the future because that's 13 consistent with -- with Mr. Nelson who told me 14 was that it's not that we're terrible today, 15 it's that things are changing for the worst. 16 BOARD MEMBER HUTCHISON: Okay. 17 Thank you. 18 BY MR. DEGAN: 19 Q. Okay. And I'm going to want to go 20 back. And we'll get into more detail. 21 But on that point, did you ever come to 22 the conclusion that Central will have a 23 financial viability problem either today or, 24 say, 2030 or any other period in the future 25 that you've received data on?</p>	<p style="text-align: right;">Page 795</p> <p>1 A. Well, I -- as you know, and it's 2 been, I think, prepared was there's a -- I 3 prepared a report. I think it's labeled a 4 report. 5 In there, my opinions around -- and the 6 conclusions that I reached based on all of the 7 information that I gathered. 8 And, no, I -- I could not find a 9 deterioration of financial statements. 10 There's an exhibit in there -- and I think 11 we'll be talking more about that later today -- 12 that shows that financial -- the forecasts that 13 were presented and considered, which were 14 embedded in the PSE Phase 2 report, were -- 15 seemed reasonable, and it wasn't devastating at 16 all. 17 Q. Okay. And we'll -- and we'll get 18 into the detail. But I just, you know, don't 19 want to leave any cliffhanger. 20 When you got all the way through the 21 process, you found no support for the 22 conclusion that Central was facing a dire, 23 deteriorating financial situation? 24 A. That's correct. 25 Q. Okay. All right. So I will</p>
<p style="text-align: right;">Page 796</p> <p>1 represent to you and so that we can avoid 2 skirmishing over some of the information 3 issues, that there were some discovery 4 objections that were raised by the districts, 5 and there were some rulings made, and there 6 were some additional documents that were 7 withheld on confidentiality and other bases. 8 So some of the -- some of the documents 9 you didn't receive are issues that the lawyers 10 are certainly aware of. 11 But one set of information that we had 12 requested that we didn't receive because of 13 confidentiality concerns related to the Power 14 Purchase Agreements and related, certainly, to 15 the pricing of those agreements and the bids 16 that -- that Central received for those RFPs; 17 isn't that true? 18 A. That is correct. 19 Q. And that's information that you never 20 received; correct? 21 A. Never received it. 22 And then there was some information that 23 was confidential that I did receive. You and I 24 were to be the only ones to look at it. 25 That included four models that were</p>	<p style="text-align: right;">Page 797</p> <p>1 prepared by PSE that were the basis of the 2 Phase 2 report -- I shouldn't say the basis. 3 They were just -- the financial information 4 that's presented in there -- and we'll probably 5 catch up on some of that later on -- it came 6 from a standalone forecast that was prepared 7 for Central, the assumptions that are in there, 8 that's documented in that PSE report. 9 There happened to be a set of standalone 10 assumptions and forecasts for Dawson as well 11 that was in there. 12 I think in the prior discussions, you've 13 heard some -- that they talk about the combined 14 result, which is merely adding the two entities 15 together and then modeling in the two major 16 savings, one around the purchase power cost 17 savings and another which was dealt -- dealing 18 with compensation and benefits savings. 19 And when you considered those items, when 20 you added it to the combined, that's how you 21 get to the consolidated financial information 22 that was then presented in that report. 23 MR. JARECKE: Can I interject 24 with a question just for the clarity of the 25 record, Mr. Degan?</p>

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1 You clarified that there were some
2 documents, particularly the PPA, that were eyes
3 only, the model information that the witness
4 just testified to.
5 But I think that we left open the
6 suggestion that the budget, the 2023 budget and
7 the unaudited financials weren't provided when,
8 in fact, they were provided to your office.
9 Could you just confirm that on the record?
10 MR. DEGAN: I can confirm pieces
11 of that. But there was an issue with some of
12 those documents that were produced but --
13 MR. JARECKE: Those documents
14 don't contain a financial -- or, excuse me, a
15 confidential component?
16 MR. DEGAN: They do not.
17 HEARING OFFICER TEXEL: Which
18 pieces can you confirm?
19 MR. DEGAN: We have the audited
20 financials.
21 THE WITNESS: No, no, no.
22 MR. DEGAN: Or th unaudited
23 financials. We did receive '22.
24 THE WITNESS: Calendar 2022. I
25 never saw those.

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1 MR. DEGAN: Right.
2 MR. JARECKE: And we left this
3 cliffhanger that Central didn't cooperate. I
4 don't believe that's a correct
5 characterization.
6 MR. DEGAN: Counsel, do you
7 have --
8 BOARD MEMBER HUTCHISON: So just
9 for clarity then, was the 2023 -- you mentioned
10 the unaudited financial statements for 2022
11 were provided.
12 Was the 2023 budget made available, either
13 publicly off a website or somehow, from one
14 counsel to the other?
15 THE WITNESS: For Central, not
16 Dawson.
17 BOARD MEMBER HUTCHISON: For
18 Central. Yeah, I'm sorry if I meant -- I meant
19 to say Central.
20 MR. JARECKE: I believe the
21 answer is yes.
22 MR. BRASHEAR: I will represent
23 that there were enough document exchanges going
24 on that I'll confirm whether we did or not so
25 the board knows that.

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1 MR. DEGAN: Yeah.
2 MR. JARECKE: I think the
3 testimony was that was not received.
4 THE WITNESS: It's not --
5 MR. DEGAN: Clarification.
6 MR. JARECKE: Thank you.
7 THE WITNESS: I can state I did
8 not review that information. I did not receive
9 it.
10 MR. JARECKE: I just wanted to
11 make sure counsel knows it was available.
12 THE WITNESS: So we can kick
13 him.
14 MR. JARECKE: Yes.
15 THE WITNESS: You know, my
16 attorneys maybe messed up. But that's okay.
17 MR. DEGAN: I mean, Counsel, I'm
18 going to assume we're going to be in agreement
19 that there's nothing in those unaudited
20 financials that's going to change his
21 conclusion regarding the financial stability of
22 Central.
23 MR. JARECKE: I understand. But
24 vice chair just asked questions of what did you
25 receive.

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1 BOARD MEMBER HUTCHISON: Okay.
2 MR. BRASHEAR: I would also
3 note, I would ask opposing counsel just to note
4 that on February 10th, we did provide the Power
5 Purchase Agreement subject to the same
6 condition of other confidential documents.
7 MR. DEGAN: And I believe the
8 witness just testified to that.
9 MR. BRASHEAR: In their
10 entirety, however. I want to make sure --
11 THE WITNESS: Yeah. I
12 received -- I can --
13 MR. DEGAN: Okay. Just to
14 clarify the record, I mean, the reason I was
15 trying to foreclose this, you know, having an
16 on-the-record discovery fight was for that
17 purpose that we are not contending that we are
18 missing information concerning unaudited has
19 any impact on his modeling.
20 And I would like to focus on the documents
21 that he will say that we haven't been able to
22 review that may or may not change his opinions.
23 And I will also state that we did receive
24 a box of documents, I believe, on Monday, that
25 we did not have an opportunity to fully review

<p style="text-align: right;">Page 802</p> <p>1 prior to getting to the hearing. 2 So if we have to have a discussion about 3 discovery and documents, I would suggest we do 4 that off the record. Counsel? 5 MR. JARECKE: That's fine. 6 MR. BRASHEAR: I'm okay with 7 your clarifications. 8 HEARING OFFICER TEXEL: Okay. 9 MR. DEGAN: All right. 10 THE WITNESS: I just have one 11 thing I'd like to state. There were then two 12 other confidential documents that I did review. 13 One was the Evergy Purchase Power Contract that 14 was executed, I believe, in 2011. I was given 15 that on a confidential basis. 16 And the other thing was the RFP or the 17 Request for Proposals for -- for power to be 18 purchased beginning in 2024. 19 HEARING OFFICER TEXEL: From the 20 hydro? 21 THE WITNESS: It was written by 22 Central, that Central sent out. 23 I don't know who they sent it to. I only 24 know that they sent out a Request for Proposal. 25 And I saw the content of that. It was -- in</p>	<p style="text-align: right;">Page 803</p> <p>1 terms of that request. 2 HEARING OFFICER TEXEL: Was that 3 for the hydro? 4 THE WITNESS: That was for the 5 three hydros, for Jeffrey, Johnson 1 and 6 Johnson 2. 7 HEARING OFFICER TEXEL: Okay. 8 BY MR. DEGAN: 9 Q. Okay. Just to clarify on the PPAs, 10 we've only seen one existing PPA, and it was 11 for the three hydros to Kansas Power and Light 12 which became -- 13 A. Yes. 14 Q. -- Evergy? 15 A. The 10-year contract, yeah. If I 16 refer to it as Evergy because they're the 17 surviving holding company, I think, that's now 18 part of Kansas City Power and Light. 19 Q. And we saw the RFP request; correct? 20 A. Yes. 21 Q. But we have not seen any of the RFP 22 responses? 23 A. That's correct as well. 24 Q. And we've also not seen any proposed 25 either PPAs or term sheets regarding the future</p>
<p style="text-align: right;">Page 804</p> <p>1 sale of energy from the hydros? 2 A. That's correct. 3 Q. Okay. And so in the absence of that 4 information, it is difficult to make an 5 assessment as to whether the estimates that are 6 contained in the modeling with respect to 7 future power sales, we simply have to take at 8 Central's word? 9 A. That's -- that's true. 10 Q. And we've seen no verification that 11 would back up those numbers? 12 A. Well, and they didn't really want to 13 talk about those. I mean, not only did they 14 not share the detail, that's been identified as 15 just something that's been confidential. When 16 I read all the minutes, if you were to -- 17 there's -- in the minutes, every time they get 18 to those topics -- whether it's the merger, the 19 Purchase Power Contract -- they go into 20 executive session. 21 So, you know, reviewing the minutes was 22 kind of a worthless exercise on my part because 23 all the things I really wanted to find, it 24 wasn't there. 25 Q. Okay. I'm going to hand you what's</p>	<p style="text-align: right;">Page 805</p> <p>1 in evidence, a copy of Exhibit 56. 2 A. Okay. 3 Q. And have you reviewed this? Do you 4 recognize this document? 5 A. I do. 6 Q. And what is it? 7 A. It's labeled as Exhibit B to my 8 report that I prepared. 9 So as part of this whole proceeding, I 10 prepared a report last week. It was filed the 11 day before my deposition -- or not -- well, not 12 filed before. I think it's been now filed as 13 part of this proceeding. But it was given to 14 counsel, Central/Dawson counsel, before my 15 deposition. 16 Q. Okay. And the original spreadsheet 17 that you prepared, was that subsequently 18 revised? 19 A. It was. There was a couple minor 20 changes. I just wanted to -- would you like me 21 to speak to those changes? Or not yet? 22 Q. Yes. If you can highlight what's 23 different between the original spreadsheet that 24 you prepared and the version that we are 25 looking at?</p>

<p>Page 806</p> <p>1 A. Okay.</p> <p>2 MR. JARECKE: I'm going to</p> <p>3 object to that question. I think we need to</p> <p>4 lay some foundation for this document before we</p> <p>5 can speak to the changes.</p> <p>6 MR. DEGAN: It's in evidence.</p> <p>7 MR. JARECKE: The report's not</p> <p>8 in evidence.</p> <p>9 MR. DEGAN: 56 is not in</p> <p>10 evidence?</p> <p>11 HEARING OFFICER TEXEL: 56 I</p> <p>12 believe is.</p> <p>13 BOARD MEMBER GOTTSCHALK: It's</p> <p>14 just this.</p> <p>15 BOARD MEMBER HUTCHISON: It's</p> <p>16 the spreadsheet.</p> <p>17 MR. JARECKE: Yes.</p> <p>18 MR. DEGAN: It's just the</p> <p>19 spreadsheet. It's not the report.</p> <p>20 BOARD MEMBER GOTTSCHALK: Right.</p> <p>21 MR. DEGAN: Right.</p> <p>22 MR. JARECKE: Fair enough. But</p> <p>23 it is -- Exhibit B is the exhibit to the report</p> <p>24 itself, is it not?</p> <p>25 MR. DEGAN: It is a revised --</p>	<p>Page 807</p> <p>1 it's not the one that was attached to the</p> <p>2 report. This is the revised --</p> <p>3 MR. JARECKE: I understand.</p> <p>4 MR. DEGAN: -- spreadsheet.</p> <p>5 MR. JARECKE: Okay.</p> <p>6 HEARING OFFICER TEXEL: Yeah, 56</p> <p>7 is in evidence.</p> <p>8 BY MR. DEGAN:</p> <p>9 Q. So if you could, just walk us through</p> <p>10 what the changes are.</p> <p>11 A. Okay. So at the very top there, the</p> <p>12 lines where it says Central/Dawson combined, I</p> <p>13 didn't have the Central ones and the Dawson</p> <p>14 ones broke out separately. Being an</p> <p>15 ex-auditor, I wanted to leave a nice audit</p> <p>16 trail of adding up this is what was presented</p> <p>17 in the PSE report for those periods that are</p> <p>18 presented here.</p> <p>19 When I look at what was the -- this is the</p> <p>20 bottom line change in net position, you know,</p> <p>21 otherwise, sometimes referred to as net income</p> <p>22 on a -- on an income statement. But that's</p> <p>23 what those numbers were. So you can see those</p> <p>24 periods.</p> <p>25 There's a lot more years that are</p>
<p>Page 808</p> <p>1 presented in the PSE report. But I was trying</p> <p>2 to make this a little more simpler and to -- to</p> <p>3 focus on the forecast periods that I thought</p> <p>4 were most relevant and would be important in</p> <p>5 this discussion.</p> <p>6 Q. Okay. And --</p> <p>7 HEARING OFFICER TEXEL: I'm</p> <p>8 going to interrupt just for a moment.</p> <p>9 So this is Exhibit B of the report that</p> <p>10 you prepared. Is the report -- maybe I missed</p> <p>11 this. Is the report in evidence?</p> <p>12 MR. JARECKE: It is not.</p> <p>13 MR. DEGAN: It is not.</p> <p>14 HEARING OFFICER TEXEL: Okay.</p> <p>15 BOARD MEMBER HUTCHISON: And is</p> <p>16 it clear that the -- or I also understood this</p> <p>17 is not actually from the -- it's a revised</p> <p>18 version of this exhibit from the report.</p> <p>19 MR. DEGAN: Yes.</p> <p>20 BOARD MEMBER HUTCHISON: Is that</p> <p>21 right?</p> <p>22 MR. DEGAN: That's correct.</p> <p>23 BOARD MEMBER HUTCHISON: One</p> <p>24 other clarification, you're comparing this, if</p> <p>25 I'm understanding correctly, to portions of the</p>	<p>Page 809</p> <p>1 PSE report, as an alternative financial</p> <p>2 perspective?</p> <p>3 THE WITNESS: It is not an</p> <p>4 alternative. The -- the column's labeled</p> <p>5 history and LRFF, future -- so that's the 2020</p> <p>6 actual that's listed there.</p> <p>7 Then the third column that's labeled</p> <p>8 future so 2023 forecast, it says future, that</p> <p>9 column, the 2024 future period and the 2030</p> <p>10 forecast future, those periods and the --</p> <p>11 the -- those net income numbers are in the --</p> <p>12 that report.</p> <p>13 I have not done any revised forecasts in</p> <p>14 any of the work that I have done.</p> <p>15 BOARD MEMBER MOEN: This data</p> <p>16 all comes from the report?</p> <p>17 THE WITNESS: The audited</p> <p>18 financial statements on the first column, it</p> <p>19 says 2020 audited --</p> <p>20 BOARD MEMBER MOEN: Okay.</p> <p>21 THE WITNESS: -- I prepared from</p> <p>22 Central's audited financial statements that</p> <p>23 were on the Nebraska website.</p> <p>24 BY MR. DEGAN:</p> <p>25 Q. But to the -- the question, the</p>

<p>Page 810</p> <p>1 columns to the right are based on forecasting? 2 A. Yeah. I'm going to say they either 3 came from that report or they came from the 4 confidential models that I was given. 5 As I referenced earlier, the four separate 6 sets of models that -- one that was for Central 7 standalone, one for Dawson standalone, one for 8 combined and one consolidated. 9 Q. Okay. And -- 10 BOARD MEMBER HUTCHISON: I'm 11 sorry, one more time, just to make sure that 12 I'm understanding. 13 I want to make -- be able to clarify that 14 this is a -- so I'm looking at the PSE report 15 which I think is Exhibit 22. 16 MS. KREIFELS: That's correct. 17 BOARD MEMBER HUTCHISON: And I'm 18 on page 43, Table 18. Is that essentially 19 where these are coming from? 20 THE WITNESS: Let me get to that 21 same table. 22 You said Table 18? 23 BOARD MEMBER HUTCHISON: Table 24 18 on page 43. 25 THE WITNESS: So that's showing</p>	<p>Page 811</p> <p>1 combined versus consolidated. 2 What I would point you to first is -- is 3 where they talk about the standalone entities. 4 So beginning on page 48, it talks about 5 combined -- the long -- that's still combined. 6 Hang on. 7 Where -- Central, okay, here, beginning on 8 page 50 and the prior page that has the 9 assumptions, so it says Central long-range 10 financial forecasts. It then lists assumption 11 at the bottom of page 49, continuing on to the 12 top of page 40, lists summary results and then 13 a table that says LRFF summary. 14 And so the information that's there in 15 column 20 -- in 2023, 2024 in Table 23 and 16 in -- and 2030, those numbers agree back with 17 what's in my exhibit. 18 BOARD MEMBER HUTCHISON: Okay. 19 THE WITNESS: And I had to 20 gather additional detail from what was in the 21 model because the information presented in the 22 PSE report is still kind of summary 23 information. 24 BOARD MEMBER MOEN: So the 25 future forecasts in your data is all coming</p>
<p>Page 812</p> <p>1 from PSE data or information? 2 THE WITNESS: That's -- yes. 3 BOARD MEMBER MOEN: Okay. 4 BY MR. DEGAN: 5 Q. Okay. And while we're in the report, 6 if you can turn back to page 43, Table 18, I 7 believe. 8 MS. HALLGREN: Can I just ask an 9 administrative question? Can Frank and Bridget 10 still hear? 11 MR. DEGAN: Hold on. 12 BOARD MEMBER REIDA: Yeah. 13 HEARING OFFICER TEXEL: Go off 14 the record a moment. 15 (An off-the-record discussion was held.) 16 HEARING OFFICER TEXEL: Let's go 17 back on. 18 BY MR. DEGAN: 19 Q. So, in essence, if you look at Table 20 18, this is combined information, meaning it's 21 forecasting data from Central and forecasting 22 data from Dawson being combined for purposes of 23 this chart; correct? 24 A. That's what the first line item is. 25 Q. And then --</p>	<p>Page 813</p> <p>1 A. It says combined, yes. 2 Q. And then the bottom line, is it your 3 understanding that when they refer to 4 consolidated net income, that is the 5 information that has been flowed through the 6 modeling to reflect the savings that are 7 indicated on the allocation of -- or the total 8 savings line above? 9 A. Yes. Essentially the two topics or 10 the two issues that PSE investigated and then 11 provided additional information. 12 And then they modeled -- and there was a 13 separate model, it just showed the 14 consolidated. I didn't spend much time with 15 consolidated or the combined for that matter 16 because I just used these tables that were in 17 this report. 18 Q. Okay. But in order to analyze this 19 chart, you requested and we received the actual 20 model that was used by PSE in order to create 21 this report; correct? 22 A. I did. And that's how I filled in 23 the other line items that are on -- of either 24 balance sheet and income statement information 25 that are on I believe Exhibit 56.</p>

<p style="text-align: right;">Page 814</p> <p>1 Q. Because by having the model, you were 2 able to pull out the data for the respective 3 districts and to see it in its -- what 4 component of it was being contributed from 5 Central's data versus what portion of it was 6 being contributed from Dawson's data; correct? 7 A. Yes. Because I -- again, my premise 8 was I really wanted to understand what's 9 driving Central's financial performance or 10 deterioration that I was told was happening. 11 Q. Yeah. And -- and put simply, that 12 you wanted to be able to verify from combined 13 information whether or not there was anything 14 in there that would indicate a problem at 15 Central if that data was pulled out separately? 16 A. Yes. And, I mean, I also wanted to 17 see what was there relative to Dawson. 18 I mean, if you are going to merge with 19 somebody else, you want to know what this 20 merger partner's -- what's the key information 21 about this merger partner. 22 Q. Okay. And so on Exhibit 56, when you 23 completed your work, you started with audited 24 financial information. That's the far left 25 column for 2020.</p>	<p style="text-align: right;">Page 815</p> <p>1 And then in 2020, history and LRFF you're 2 comparing as a starting point the information 3 that was in the audited financials versus the 4 starting point in the model; correct? 5 A. Yes. LRFF stands for long-range 6 financial forecast. That's just an acronym 7 that was used for that. 8 Q. Okay. And then we have some -- the 9 years 2023 and 2024. Was there a particular 10 reason why you chose those two years? 11 A. Yes. Because I knew the contract 12 with Evergy was expiring December 31st of 2023. 13 And I really wanted to see, well, was that the 14 sole reason or driver behind what maybe was 15 going on. 16 So I wanted to really zero in on 2023, 17 2024. 18 The other thing, the reason I left the 19 audited actually in here as well is when you're 20 doing a forecast -- and I used to manage a 21 forecast process for a Fortune 500 company for 22 a number of years. You -- it's helpful to be 23 grounded in the actuals. 24 So the auditor in me said, okay, if 25 they're starting their forecast and looking</p>
<p style="text-align: right;">Page 816</p> <p>1 forward from 2020 in their model, okay, I'm 2 going to pull out the audited financial 3 statements and see if I can see that it agrees. 4 And what I did find, though, was there's 5 some differences. And I don't care about small 6 dollar differences, to be honest with you. 7 This is just a forecast and whatever else. I 8 mean, there can be modeling errors. 9 But I don't understand why net position, 10 which is essentially equity, is -- there's a 11 difference of almost \$20 million. I don't know 12 why. I'm just -- but that's the way it is in 13 the model. 14 And there's some other minor differences. 15 I mean, net income even for the -- excuse me, 16 I -- I used net income. If I use the word net 17 income, it's because I've been working with 18 public companies for so many years that to 19 speak to change in net position as being the 20 same thing as net income. 21 So I'll try to use net position, change in 22 net position consistent with the financial 23 statements here. But I -- I might make a 24 mistake. 25 So -- but you can see that change in that</p>	<p style="text-align: right;">Page 817</p> <p>1 position even for Central, there's a \$2 million 2 difference, 8.2 million versus 6.1 million for 3 2020. I don't know why that difference exists. 4 I mean, those two things were, you know, 5 bigger differences than I thought. 6 You can see some things agree. 7 Depreciation agrees exactly. And I -- and I 8 didn't see differences for Dawson. And I 9 suspect that that's because Dawson uses these 10 models for their own basis. 11 And so when the consultant was grabbing 12 Central information, Central's not using this 13 model because it's a -- it's a rural electric 14 utility. I don't know if it came out of -- 15 it's a model that I think gets used by a lot of 16 public power entities here in Nebraska. So it 17 made sense that, you know, Dawson was nearly 18 identical. 19 Q. Okay. Well, you mentioned that you 20 pulled out 2023 and 2024 because you were 21 looking to see whether or not rolling off the 22 PPAs had triggered some sort of a significant 23 change in Central's forward projections; is 24 that true? 25 A. That's correct.</p>

<p style="text-align: right;">Page 818</p> <p>1 Q. And, again, because you were told by 2 Mr. Nelson that there was a deteriorating 3 financial statement, so that's what you were 4 looking for; right? 5 A. Yes. But it wasn't even just the 6 discussion with Mr. Nelson because if you look 7 at the responses, there's letters that Central 8 wrote back to explain the reasoning behind the 9 merger, there's documentation in that -- those 10 same communications that reference a 11 deteriorating financial statement and rate 12 instability and the kinds of things that, you 13 know, I guess I wanted to see if I'm looking at 14 the forecasted financial information. 15 Do you know what I'm referring to? 16 Q. Are you referring to Exhibit 47? Is 17 it this letter? 18 A. Yes, October 10th letter. 19 Q. And as a Central customer, did you 20 receive that letter? 21 A. I did not. I was -- this letter was 22 provided to me by, I believe, Rob McCormick. 23 Q. Okay. But I just want to clarify the 24 record when you -- 25 A. Yeah.</p>	<p style="text-align: right;">Page 819</p> <p>1 Q. -- referred to a letter out there 2 from Central indicating a deteriorating 3 financial condition, is it that letter? 4 A. Yes. 5 Q. Exhibit 47? 6 A. Yes. 7 Q. Okay. But back on your model, 8 Exhibit 56, did you ever discover any financial 9 deterioration in any of your analysis? 10 A. Well, you can see that in the change 11 in net position, even from 2023, if you look at 12 that line item and go from the left side -- for 13 Central, the second to the bottom line in that 14 middle caption there in between the blue lines, 15 you can see that they have a forecast of a loss 16 of 1 point -- I'm just going to round, 1.3 17 million. I'm used to dealing with numbers in 18 millions in my financial reporting. 19 Q. Okay. But to be clear, you're 20 referring to the balance sheet, change in net 21 position? 22 A. No. I'm -- the income statement line 23 item, the change in net position -- 24 Q. Okay. 25 A. -- the second from the bottom of the</p>
<p style="text-align: right;">Page 820</p> <p>1 Central information within the income 2 statement. And if you go to 2030, you can see 3 that there is a loss in the forecast in 2030. 4 Q. Now, I want to stop you there and 5 have you turn to the Phase 2 report, Exhibit 6 22, and look at Table 23 on page 50. 7 A. Okay. 8 Q. Is that the same number? Or do the 9 two numbers agree? Your change in net position 10 2030 on Exhibit 56, does that agree with change 11 in net position between Exhibit 56 and Table 12 23? 13 A. Yeah, in fact, all three numbers 14 agree, the forecasted information for '23, '24 15 and '30. 16 Q. Okay. 17 HEARING OFFICER TEXEL: Is this 18 Table 23 you said? 19 MR. DEGAN: Table 23 of the 20 report, yes. 21 HEARING OFFICER TEXEL: On page 22 50? 23 MR. DEGAN: On page 50. 24 HEARING OFFICER TEXEL: Okay. 25 A. There is no -- yeah, there's 22. So</p>	<p style="text-align: right;">Page 821</p> <p>1 there's -- there's no 2020 data in Table 23. 2 There only is '23, '24 and '30. 3 BY MR. DEGAN: 4 Q. And I want to stick on '30. 5 A. Yeah. 6 Q. Because '30's where we first see a 7 negative change in net position; would you 8 agree? 9 A. In the model, I believe it actually 10 starts the year before that. I don't have that 11 in front of me. 12 Q. Okay. 13 A. But I -- I think there's a small loss 14 in 2029. 15 Q. All right. But change in net 16 position, that's going to include noncash 17 charges like depreciation? 18 A. It definitely does, yes. 19 Q. Okay. And a depreciation charge, 20 because it's noncash, it doesn't deprive the 21 entity of the use of cash from operations for 22 whatever purposes it deems fit; agreed? 23 A. That's correct. 24 Q. Okay. So when you revised Exhibit 25 56, did you undertake an effort in order to</p>

<p style="text-align: right;">Page 822</p> <p>1 reflect adding depreciation back in to show 2 what Central's forecast would actually be at 3 least from an operating cash perspective? 4 A. Yes. There -- there is no cash flow 5 information that was in the model. I thought 6 there might be when I got it. 7 And in lieu of having a cash flow forecast 8 where I could have visibility to operating cash 9 flows, investing cash flows, financing cash 10 flows, I just wanted to zero in on an -- a 11 proxy of operating cash flows. 12 So I added back the depreciation, created 13 the line item that's the -- directly below 14 change in net in -- position which is change in 15 net position excluding depreciation. 16 Q. And once we add depreciation back in, 17 then what are we looking at for an 18 approximation of cash from operations -- and 19 understanding it's an approximation because you 20 don't have a cash flow model. If we add 21 depreciation back in, where would Central end 22 up in 2030 pursuant to this model? 23 A. Essentially rounding to \$4.0 million. 24 Q. Okay. And you can't see that from 25 the report because the -- there's -- it just</p>	<p style="text-align: right;">Page 823</p> <p>1 shows the -- that change in net position; 2 correct? 3 A. That's correct. And they don't 4 show -- well, they show all the years. But, 5 also, they don't show an aggregate. 6 So I created an extra column on here that 7 was 2024 to 2030 because, you know, I don't 8 just care about one year. I really wanted to 9 see, what's the cumulative results of this 10 entire period with a new contract that was 11 going to be in effect, is that -- was it the 12 contract that was having that much of an impact 13 and what I saw when I added up the seven years, 14 in other words, calendars 2024 to 2030 in the 15 forecast, that even change in net position was 16 still a net positive \$432,000 for those seven 17 years. 18 So they were not -- while they might have 19 been losing money at the end of that period in 20 that forecast, over the seven-year period, it 21 was essentially break even. 22 And if you looked at change in net 23 position, excluding depreciation then for that 24 same seven-year period, it was \$35 million 25 positive.</p>
<p style="text-align: right;">Page 824</p> <p>1 Q. And just to be clear, this -- we're 2 strictly talking about operating revenues? 3 We're not talking about dipping into the 4 reserve fund? 5 A. That's correct. Although, we can 6 kind of see some of that information in the 7 balance sheet information here when we get to 8 that. 9 Q. But I -- I want to stay on the -- on 10 the income statement that we're talking about 11 revenues and operating revenues? 12 A. An income statement would not reflect 13 any withdrawals from a reserve fund or 14 investments. That's a -- that would have been 15 in the cash flow statement but not on an income 16 statement. 17 Q. But it would show up in the -- in the 18 balance? 19 A. It would show up on the balance 20 sheet. And that -- that is presented here on 21 my exhibit. 22 Q. Before we turn to the balance sheet, 23 is -- does gross revenues have any meaning if 24 you're looking at a potential merger partner? 25 A. Well, gross revenues is one element.</p>	<p style="text-align: right;">Page 825</p> <p>1 MR. JARECKE: Can I just ask you 2 to -- I'm confused if we're now talking about a 3 private utilities merging or public utilities? 4 BY MR. DEGAN: 5 Q. Well, We'll start with your 6 particular experience with a investor-owned 7 utility. 8 A. Well, I think for both, whether it's 9 an invest -- a merger of investor-owned 10 utilities or public power entities, operating 11 revenues is still just one element of 12 consideration when you're looking at the entity 13 and its financial performance. 14 Q. You've been here through the 15 testimony since the hearings began? 16 A. I have been. I sat through the last 17 two days. They were totally enjoyable. 18 Q. And I apologize, I've got to take a 19 step back before we leave this issue. 20 But throughout your analysis, did you ever 21 find anything indicative of a deterioration in 22 either gross revenues or cash available for 23 operations based on everything that you've 24 looked at? 25 A. Well, you can see that revenues drop</p>

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1 from 2023 to 2024, and I can see within the
2 model on a confidential basis how much of
3 that -- those revenues was attributed to an
4 assumption that's made around a Purchase Power
5 Contract in terms of lower revenues.
6 Again, this is all Central on a standalone
7 basis assuming it's going forward. So you --
8 that was -- was visible.
9 And so you're just seeing the summary
10 result here.
11 HEARING OFFICER TEXEL: When you
12 say the revenues drop, which line is that?
13 THE WITNESS: So if you were to
14 look at in 2023, operating revenues are 21.9
15 million in 2023 forecast. And they drop to
16 20.3 million.
17 Now, I'm not saying that's all related to
18 the -- any change in wholesale power contract.
19 But it's a driver.
20 HEARING OFFICER TEXEL: That's
21 the line you're talking about is operating
22 revenues?
23 THE WITNESS: That's the line
24 I'm talking about, operating revenues.
25 HEARING OFFICER TEXEL: Okay.

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1 water can I run through those generators.
2 And so, yes, there has -- was
3 significant -- I think when they talked about
4 historically, you know, you have good years and
5 bad years. That's what I heard. You know, you
6 have dry years and wet years.
7 And, you know, Central has -- has lived
8 with that volatility over the years. And you
9 can see how much over the years they've still
10 retained in terms of growing investments,
11 through still managing their financials, I
12 think relatively conservatively. I have to be
13 positive to the way Central has done that.
14 But, you know, a lot of companies don't
15 have that volatility. And I think if you
16 presented the Central -- or the Dawson
17 information, it's a regulated utility that
18 customers -- that -- you know, the use per
19 customer, the amount of sales, sure, weather
20 drives things. Customer growth drives things.
21 But for the most part, revenues are a lot more
22 stable in a -- in a retail distribution
23 utility.
24 Q. Okay. So initially --
25 BOARD MEMBER REIDA: Can I

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1 BY MR. DEGAN:
2 Q. And if you were here for prior
3 testimony, do you recall the slide showing the
4 revenue curve that Central has seen
5 historically for the revenues from the sale of
6 its hydropower?
7 A. I can honestly say that I didn't see
8 it. But I heard it because it was only
9 presented up here. And I was sitting in the
10 back row.
11 But as it was described and -- and -- and
12 I'll just -- what I heard was that, you know,
13 revenues change a lot from one year to the
14 other. I think that's what I would have
15 expected. I've seen it in its existing
16 financial statements.
17 And the primary driver of those
18 operating -- wholesale sales revenues, there's
19 really two things that drive it, what are my
20 sales and what's the price of that energy
21 that's being sold.
22 And we know that in terms of how much
23 water we have in the hydroelectric generating
24 facility, that's what really drives how much
25 generation can I get out of this, how much

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1 ask -- can I ask a question?
2 When you did your analysis yesterday,
3 the -- I believe it was the manager for
4 Central, in Exhibit 21, page -- our page 52,
5 there's a line that talks about the power not
6 sold externally. And so that's a \$32 million
7 line item.
8 He indicated that that was actually a PPA
9 bit. Would you consider that within your
10 analysis, that that would be money that they
11 would be getting from a -- potentially from a
12 PPA that was offered?
13 THE WITNESS: So I'm not sure
14 which page -- which table you referenced. But
15 if I look at Table 18 that's -- what is this
16 exhibit?
17 BOARD MEMBER REIDA: This would
18 be Exhibit 21.
19 THE WITNESS: Is this Exhibit
20 21?
21 BOARD MEMBER REIDA: The page
22 number that I have is --
23 MS. KREIFELS: It is not.
24 THE WITNESS: -- 52.
25 BOARD MEMBER HUTCHISON: It's

<p style="text-align: right;">Page 830</p> <p>1 the same table.</p> <p>2 MR. DEGAN: It's the same name.</p> <p>3 BOARD MEMBER REIDA: Combined --</p> <p>4 combined versus consolidated net income impact</p> <p>5 areas.</p> <p>6 THE WITNESS: Yes. So that line</p> <p>7 item that you reference the total savings</p> <p>8 from -- it's really 2024 to 2030 there, of the</p> <p>9 32,589,341?</p> <p>10 BOARD MEMBER REIDA: Right.</p> <p>11 That would be the opportunity loss of not</p> <p>12 taking a PPA that was offered?</p> <p>13 THE WITNESS: For Jeffrey</p> <p>14 because in this model, they've only been</p> <p>15 talking about using the Jeffrey generation to</p> <p>16 provide that 10 percent carveout of renewable</p> <p>17 carveout under the contract that Dawson has</p> <p>18 with NPPD.</p> <p>19 BOARD MEMBER REIDA: Okay. So I</p> <p>20 guess my question is, did you consider that in</p> <p>21 your analysis, that potentially they could have</p> <p>22 had -- or could have that as cash flow?</p> <p>23 THE WITNESS: When I'm looking</p> <p>24 at Central on a standalone basis, I'm seeing</p> <p>25 forecast data that still assumes Central is</p>	<p style="text-align: right;">Page 831</p> <p>1 marketing that power to somebody. It could</p> <p>2 have been Dawson under a PPA. I don't know.</p> <p>3 Doesn't matter. But it was that they were</p> <p>4 selling that power probably under a PPA of some</p> <p>5 structure. That was the assumption.</p> <p>6 On the consolidated model, what was the</p> <p>7 way it was presented, as I understand it, was</p> <p>8 that on a consolidated basis, you were going to</p> <p>9 take the costs associated with operating that</p> <p>10 generation facility and that would be allocated</p> <p>11 to your retail distribution utility -- that's</p> <p>12 the generation, all the cost of that</p> <p>13 generation -- and that, yes, you would not be</p> <p>14 able to sell that power because it was being</p> <p>15 used as part of the utility operations on the</p> <p>16 distribution side of your business.</p> <p>17 And so here, what you were seeing in this</p> <p>18 table is the power cost savings that were</p> <p>19 calculated, estimated in this PSE report that</p> <p>20 was driven because the purchase power costs</p> <p>21 that Dawson was going to pay NPPD post -- and</p> <p>22 whether it -- you know, it happened in 2024 or</p> <p>23 really was a year later, I don't know how the</p> <p>24 contract works because I don't have that</p> <p>25 information, but essentially they would be</p>
<p style="text-align: right;">Page 832</p> <p>1 lowering their purchase power costs paid to</p> <p>2 NPPD and then incurring -- they would have the</p> <p>3 generation costs from Jeffrey as that's where</p> <p>4 they were going to be able to meet the demand,</p> <p>5 the kilowatt hour consumption of their</p> <p>6 customers.</p> <p>7 BY MR. DEGAN:</p> <p>8 Q. Are you aware of any reason why</p> <p>9 Dawson and Central couldn't agree to sell the</p> <p>10 power from Jeffrey on a PPA basis?</p> <p>11 A. I'm -- that -- PPAs are standard in</p> <p>12 the industry. They're done all the time over</p> <p>13 different periods of time. I would have</p> <p>14 thought that's the easiest way to have</p> <p>15 delivered and achieved some savings --</p> <p>16 MR. JARECKE: I'm going to</p> <p>17 object to the narrative of this response. It</p> <p>18 was a simply yes or no, if you're aware of a</p> <p>19 reason, no.</p> <p>20 HEARING OFFICER TEXEL: I guess,</p> <p>21 first, if you could answer whether you -- the</p> <p>22 question --</p> <p>23 THE WITNESS: The answer is, no,</p> <p>24 I was not aware of a reason that they could not</p> <p>25 do a PPA.</p>	<p style="text-align: right;">Page 833</p> <p>1 BY MR. DEGAN:</p> <p>2 Q. All right. So your initial inquiry</p> <p>3 was to look to see if you could find some</p> <p>4 evidence of a financial need for Central to</p> <p>5 merge.</p> <p>6 And you came to the conclusion, after</p> <p>7 looking at all the data that you could get your</p> <p>8 hands on, what conclusion did you come to?</p> <p>9 A. That I did not see a significant</p> <p>10 financial deterioration of Central and that --</p> <p>11 in other words, there was -- if that was the</p> <p>12 primary reason for this merger to happen, that</p> <p>13 it did not exist.</p> <p>14 Q. Okay. Did you also review the Phase</p> <p>15 2 report that was issued by PSE, Exhibit 22?</p> <p>16 A. I did. It was, like, 100 pages long.</p> <p>17 And initially when I -- my preliminary</p> <p>18 results were only just looking at the</p> <p>19 highlights, but when I was fully engaged, I had</p> <p>20 to go through the whole thing.</p> <p>21 Q. After reviewing that report, did you</p> <p>22 come to the conclusion that there was any</p> <p>23 meaningful benefit to Central and strictly from</p> <p>24 Central's perspective?</p> <p>25 MR. JARECKE: I have to object</p>

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1 to the leading form of this question. We're
2 going to have to let this witness testify.
3 BY MR. DEGAN:
4 Q. What conclusions did you come to
5 after reviewing the report?
6 MR. JARECKE: Now I have to
7 object to the form. I really don't understand
8 the scope of your question.
9 I think the witness has already testified
10 his task was to see if there was deterioration.
11 He's already testified that he did not find
12 from his viewpoint deterioration of Central.
13 MR. DEGAN: Well --
14 MR. JARECKE: There's been --
15 there's been no questioning, no foundation
16 whatsoever that he has had any other task.
17 MR. DEGAN: As counsel pointed
18 out yesterday, the rules of evidence do not
19 apply to these proceedings. They've not been
20 invoked. So the question is whether or not the
21 information is helpful to the board.
22 MR. JARECKE: Rules of evidence
23 don't apply. But the usefulness of the
24 Schafersman Daubert rules do apply to this
25 hearing.

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1 latitude on leading questions, trust
2 Mr. Wendell to answer correctly and if it's --
3 whether it's leading or not, he has to answer
4 correctly and accurately.
5 So I'll let it go with that.
6 BY MR. DEGAN:
7 Q. Okay. Mr. Wendell, let's start with
8 did you review in depth the Phase 2 report?
9 A. I did.
10 Q. And what benefits to the parties are
11 identified in Phase 2?
12 A. There are really -- the whole report
13 focuses on two items, the power cost savings
14 and employee and benefit savings opportunities.
15 Q. Okay. And what were those
16 conclusions?
17 A. The conclusions were --
18 HEARING OFFICER TEXEL: And
19 you're talking in the report?
20 MR. DEGAN: In the report.
21 HEARING OFFICER TEXEL: Okay.
22 A. In this report, the total savings
23 that we were just on Table 18, and so -- and I
24 think these numbers have been thrown around a
25 long time, the 11 -- overall total savings of

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1 MR. DEGAN: No, they do not.
2 MR. JARECKE: They most
3 certainly do.
4 And in terms of just random opinions,
5 without any underlying questions is, I believe,
6 not something the hearing officer would find
7 useful.
8 HEARING OFFICER TEXEL: Well,
9 it's what the board would find useful.
10 But I did let quite a bit -- I mean,
11 there's been quite a bit of leading questions
12 throughout the hearing yesterday. I don't know
13 that they were to expert witnesses.
14 But, you know, I am allowing some fair
15 amount of latitude on leading questions. I
16 know there were a lot of them yesterday. I
17 will allow some latitude with the expert
18 witness. I don't know that they were expert
19 testimony yesterday.
20 But certainly as a professional,
21 Mr. Wendell needs to answer the question first
22 to foundation, and then he can give his
23 opinion. If the scope is too broad, Central's
24 welcome to object to that.
25 But I think I'm going to allow some

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1 the 11.4 million, of which the 6.7 million was
2 related to generation and power savings. That
3 subtotal's there in Table 18. And then the 4.7
4 million for employee and benefits savings that
5 were on a combined basis.
6 And then if you go to Table 19, there is
7 an allocation of that savings between the
8 retail electric savings and the water savings
9 of being the 8.2 million there, the total --
10 this is on page 44, Table 19. And then 3.2
11 million for water resources.
12 I believe water resources is intended to
13 be Central's operations. You know, Central is
14 an irrigation company. Dawson is an electric
15 utility. And so that's -- I think they were
16 fairly consistent throughout this document how
17 they were dealing with that.
18 BY MR. DEGAN:
19 Q. Okay.
20 HEARING OFFICER TEXEL: I'm just
21 going to make one clarification.
22 We've been using the word company
23 throughout the hearing. They're actually
24 districts. But I'm allowing the company. I
25 think we all know what it means. But I would

<p style="text-align: right;">Page 838</p> <p>1 clarify they aren't actually private companies. 2 THE WITNESS: I'll try to use 3 the word districts. 4 HEARING OFFICER TEXEL: It's 5 okay. Lots of people before you have used 6 company. I just want to clarify for the 7 record, they're actually political subdivisions 8 of the state and they're districts. But we all 9 know what it means. So I'm not going to 10 address it again. 11 THE WITNESS: I'll try to refer 12 to them as either Central or Dawson. Maybe 13 that's the easier way to think about it. 14 HEARING OFFICER TEXEL: I just 15 want to clarify, they're not a private company. 16 I think we all know that. We can move forward. 17 BY MR. DEGAN: 18 Q. Was there any items of financial 19 diligence that you would have expected to have 20 been done that you do not see either reflected 21 in the Phase 2 report or in the modeling that 22 you've examined? 23 MR. JARECKE: I have to object 24 to the form of the question. 25 Again, I think all of his experience as to</p>	<p style="text-align: right;">Page 839</p> <p>1 your question relates to private utilities. If 2 that's the question, what would you expect to 3 see when private utilities are undertaking this 4 examination, he can answer that. 5 HEARING OFFICER TEXEL: I think 6 he testified that he has dealt with public 7 utilities and mergers in those -- in that area, 8 too. 9 Have you not? 10 MR. JARECKE: I do not believe 11 so. 12 THE WITNESS: I said -- I've 13 stated, I believe, that my public accounting 14 experience of 11 years with Arthur Andersen 15 dealt with a number of different types of 16 entities that make up the utility industry, 17 including investor-owned utilities, public 18 power entities, independent power generators, 19 both gas and electric distribution utilities. 20 HEARING OFFICER TEXEL: Have you 21 dealt with mergers of public entities? 22 THE WITNESS: I have not dealt 23 with the merger of two public power districts. 24 I have not. 25 HEARING OFFICER TEXEL: Or other</p>
<p style="text-align: right;">Page 840</p> <p>1 types of public entities? 2 THE WITNESS: Or other public 3 entities, I have not dealt with a merger of 4 those entities. That's correct. 5 HEARING OFFICER TEXEL: Okay. 6 And could you repeat the question? 7 MR. DEGAN: Well, let me -- I'll 8 lay some additional foundation. 9 BY MR. DEGAN: 10 Q. I'm asking you whether or not from a 11 financial diligence standpoint, not governance, 12 not whether a merger is a good idea or bad 13 idea. Is there any difference when you're 14 doing financial diligence between a private 15 entity or a public district? 16 A. I think they both -- you would want 17 to do some due diligence so that -- doesn't 18 matter who it is. And -- I thought he was 19 objecting. 20 MR. JARECKE: No. 21 THE WITNESS: I was prepared for 22 your objection, whatever it was. 23 MR. JARECKE: Not at all. 24 A. I lose track of my train of thought. 25 So, you know, due diligence is -- is</p>	<p style="text-align: right;">Page 841</p> <p>1 discussed in the accounting and financial 2 reporting function. It doesn't distinguish 3 between -- you know, that I should do some 4 degree of due diligence different from a 5 district or a public power entity versus two 6 investor-owned utilities. 7 It's doing what you need to do from a 8 reasonable business perspective to -- so that 9 you can gather the information to reach a 10 conclusion that -- that if it was a merger, 11 that this merger was in the best interest of 12 both entities or each individual -- entity 13 individually. 14 HEARING OFFICER TEXEL: So is it 15 your -- your opinion and belief as a 16 professional that the process of review for 17 whether it's public or private would be largely 18 the same, although some of the -- there's not 19 shareholders, there's some differences, but the 20 process of review would be the same? 21 THE WITNESS: The effort for due 22 diligence should be -- there would be a lot of 23 similarities. 24 I would expect that for two large 25 investor-owned utilities, it might be more --</p>

<p style="text-align: right;">Page 842</p> <p>1 it -- would likely be done confidentially. 2 I can assure you the two mergers that I 3 was involved with, all due diligence before you 4 announced a merger was all done in secret by a 5 handful of the people on a confidential basis. 6 That's not really the case here because -- 7 HEARING OFFICER TEXEL: But is 8 the process for -- sorry to cut you off. But 9 is the process for review, do you know, would 10 it largely be the same from a financial 11 accounting standpoint whether it's public or 12 private entities? 13 THE WITNESS: I would say the 14 process is basically the same. It's the scope 15 of that review probably still does change a 16 little bit. 17 HEARING OFFICER TEXEL: And 18 there's different facts that come in because 19 there's not shareholders with public. I 20 understand that. 21 THE WITNESS: Yeah. 22 HEARING OFFICER TEXEL: I'm just 23 wondering if the process would really be any 24 different. 25 THE WITNESS: I don't think the</p>	<p style="text-align: right;">Page 843</p> <p>1 process is -- is really any different. I think 2 it's the scope. 3 HEARING OFFICER TEXEL: Okay 4 Mr. Degan. 5 MR. DEGAN: Thank you. 6 BOARD MEMBER REIDA: I'm going 7 to go back to my original question, which I 8 think is in my mind simple but probably not. 9 If Central had accepted the PPA of 10 32,900 -- 589,341 in lieu of going through a 11 merger and they're flush with cash right now -- 12 my understanding, 100 mill -- if they had 13 accepted that PPA, would they still have 14 financial stability? 15 THE WITNESS: I don't know that 16 there was an offer of a PPA for that exact 17 million. But that 32 million that you 18 referenced is the revenue that's in the 19 financial model. And so the results that I 20 summarized do present that I don't have a 21 financial situation, and they reflected those 22 revenues. Does that make sense? 23 BOARD MEMBER REIDA: Well, 24 yesterday I asked the question of the GM for 25 Central if they actually got a -- because I</p>
<p style="text-align: right;">Page 844</p> <p>1 knew that there was some discussion as to 2 whether you were able to get PPAs and that sort 3 of thing. So I asked him if that was an actual 4 offer. And he indicated that that was an 5 offer. 6 So had they accepted that so you'd have a 7 PPA instead of a merger, would -- would Central 8 still be financially stable and -- and viable? 9 THE WITNESS: I think it would 10 have been stable and viable, and it's presented 11 that way in the individual forecast of Central 12 on a standalone basis. 13 BOARD MEMBER REIDA: Thank you. 14 BY MR. DEGAN: 15 Q. Okay. And maybe to clarify that 16 point, this 32,589,341 in the total savings 17 column, that's in this model as part of 18 combined net income; correct? 19 A. Yeah. It's the assumed revenues from 20 the sale of power from Jeffrey in the -- on -- 21 in the model. 22 Q. Right. And that's all -- you know, 23 because it is a little bit confusing. But the 24 top line combined net income, that assumes 25 there is no merger and both entities continue</p>	<p style="text-align: right;">Page 845</p> <p>1 operating independently; correct? 2 A. That's correct. 3 Q. And so -- 4 A. Well, it's just adding the two 5 entities together. 6 Q. But it assumes -- 7 A. Yeah, in an effort to try to present 8 a consolidated result. 9 Q. But the numbers assume that the 10 districts are operating independently? 11 A. Yes. 12 Q. Okay. And we don't know how that 13 32,589,341 is derived, but it -- it's being 14 indicated as a savings item and being deducted 15 out of the combined net income; right? 16 A. Yeah. It's the revenue that's 17 reduced in the model -- 18 Q. Okay. 19 A. -- on a consolidated basis. 20 Q. So I think Chairman Reida was looking 21 for clarification that -- 22 A. Correct. 23 Q. -- that number is assumed in the 24 model and in your analysis? 25 BOARD MEMBER REIDA: Right. So</p>

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1 my understanding is that it's an opportunity
2 lost and that's the reason that they're saying
3 the power is not used externally but instead
4 they're using it to offset peaks so as to
5 reduce the demand charges for Central -- no,
6 for Dawson.
7 THE WITNESS: That's exactly --
8 yeah.
9 BOARD MEMBER REIDA: Isn't that
10 correct?
11 THE WITNESS: Yeah. That's
12 exactly my understanding as well.
13 BOARD MEMBER REIDA: Yeah. So
14 this is an opportunity lost. So what I asked
15 yesterday is did you actually get an offer.
16 And that's my understanding is that's what he
17 indicated, that was an offer that they got from
18 a PPA so -- and that's what my question is, had
19 they accepted that, would they have financial
20 viability and stability. And right now my
21 understanding is they got \$100 million of
22 the -- you know, cash flush.
23 HEARING OFFICER TEXEL: So if
24 you make that assumption, can you respond to
25 the question?

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1 model for the entire period of the forecast
2 model for Central.
3 BOARD MEMBER REIDA: Okay.
4 Thank you.
5 BY MR. DEGAN:
6 Q. Mr. Wendell, if I could have you turn
7 to the balance sheet portion of your
8 spreadsheet, Exhibit 56.
9 You'd referenced earlier that any
10 disbursements from any -- any either cash
11 accounts or reserve funds, they're not going to
12 show up as an income statement item, we would
13 have to look at the balance sheet; correct?
14 A. That's correct.
15 Q. Is there anything on Exhibit 56 that
16 would indicate that in order for this solvent
17 model to exist, that it's relying upon
18 withdrawals from any of those reserve funds?
19 A. So there's -- as I referenced
20 earlier, there's no cash flow modeling. So I
21 couldn't see the details in the balance sheet
22 that I grabbed from there.
23 And there was not even a separation of
24 cash, cash equivalents, investments, restricted
25 cash, restricted investments. It was all

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1 BOARD MEMBER REIDA: I think
2 that's -- somebody had indicated that. I don't
3 know, 90 to 100 million or something like that.
4 Maybe the -- the testimony yesterday.
5 THE WITNESS: Oh, yeah, okay.
6 So there's kind of two different things here.
7 One is the investment side, which is the
8 balance sheet which we have not gotten to yet
9 in -- in my exhibit.
10 But the revenues that were forecast --
11 maybe the -- I have to be careful because I was
12 told that any information on these models was
13 confidential. So I can't speak to any pricing.
14 But there is a lower pricing assumption
15 that was assumed in 2024 as being total
16 revenues that could be wholesale revenues from
17 those three generating facilities.
18 And I believe that the line item that
19 you've referred to there, Chairman Reida, is
20 essentially then the portion of revenues that
21 was in that model that would have been sold
22 to -- well, sold from the Jeffrey facility at
23 the price that they assumed, which was lower
24 than the current contract, but it's the price
25 that they're -- that's also reflected in the

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1 lumped together in the forecast model as one
2 line item.
3 So that's why I had to aggregate it and
4 present it in this line item as just being
5 cash, cash equivalents, investments. I didn't
6 try to break out what was restricted.
7 But you can see here in this model that if
8 I have 100 -- well, in the audited financial,
9 \$115 million of cash and aggregated
10 investments, but in 2030, I still have \$115
11 million.
12 So there's not -- there may have been a
13 year that they had to use some cash. But for
14 the most part in the model, they've assumed
15 consistent year-to-year results on sales.
16 I mean, you're escalating things. But
17 they did not -- there's not a significant drain
18 of the cash reserves, or, if there is, they've
19 got a lot of extra cash, but they don't have as
20 much reserves. But I can't tell.
21 But I would say the financial position for
22 the most part is stable.
23 And in 2030 for Central, as you can see in
24 terms of the net position, even in their own
25 model, if I'm at 143.5 million of net position

<p style="text-align: right;">Page 850</p> <p>1 in 2020 but 10 years later, I'm at 45 -- 145.5 2 million, I'm still in a very good financial 3 position. 4 Q. Okay. And you testified that the 5 finding that was made in Exhibit 2 is that the 6 districts could save \$11.3 million over the 7 period of 2023 to 2030 by virtue of 8 consolidating; is that right? 9 A. Yeah. You said Exhibit 2? 10 Q. Exhibit 22. I apologize. 11 A. Oh, which is the MS -- the PSE 12 report? 13 Q. Correct. 14 A. Yes, yes, that's correct. 15 Q. And those savings are derived from 16 what two sources? Where are those savings 17 coming from? 18 A. Well, the power savings which we've 19 talked about and has been extensively discussed 20 throughout this whole proceeding of how you use 21 the generation from Jeffrey to serve your 22 retail load, which is the 6.7 million -- 23 Q. And what's the other component? 24 A. And then employee compensation and 25 benefits, which is a 4.7 million, which I</p>	<p style="text-align: right;">Page 851</p> <p>1 believe it's been described is that you were 2 going to have attrition of about 11 employees 3 over the next three to four years after the 4 merger, so you were going to have compensation 5 savings from the reduction of those 11 6 employees, at least by the end of the period. 7 And then the benefits equalization is -- 8 is really a -- your plan, as I understood it, 9 was they would have to merge some benefit plans 10 and that -- I believe it's even described that 11 Central's benefit plans are not as -- they're 12 lower cost than what Dawson's benefit plans 13 were. And, therefore, the -- there would be 14 incremental costs of putting these benefit 15 plans together for your employee base. 16 And so benefits equalization is really an 17 increase of benefits expenses, not -- and 18 that's why it's negative here in Table 18. 19 You're seeing staff changes, savings, 20 which is the lower employees. And with regards 21 to compensation levels, I understand it from 22 the testimony is they haven't actually figured 23 that one out yet, as to whether or not there 24 would be any compensation adjustments to any 25 current employees. So the assumption here was</p>
<p style="text-align: right;">Page 852</p> <p>1 that you were just going to have lower -- 11 2 lower employees and you had some escalation. 3 And I believe in Central's model, I mean, 4 as you looked at the forecast, they talked 5 through what were the labor assumptions in the 6 base model. And then these are the savings 7 related to that. 8 Q. Okay. Well -- 9 HEARING OFFICER TEXEL: 10 They're -- 11 BY MR. DEGAN: 12 Q. -- you testified that the benefits 13 that could purportedly be derived from entering 14 into an arrangement between Central and Dawson 15 for the energy that's going to become available 16 from Jeffrey, that could be accomplished 17 through a Power Purchase Agreement? 18 A. I believe it could, yes. 19 Q. Okay. So assuming that the parties 20 could come to an agreement that was acceptable 21 to both sides; right? 22 A. Just need to negotiate one. 23 Q. Okay. Well, so having concluded that 24 there was not a financial need or emergency 25 that would drive a consolidation and having</p>	<p style="text-align: right;">Page 853</p> <p>1 concluded that whatever benefits could be 2 derived from making the energy from Jeffrey 3 available to Dawson through a PPA, as a 4 customer of Central, in your mind, was the 5 benefits and cost savings from consolidating 6 these two entities a justification or 7 sufficient to make the consolidation make sense 8 in your mind? 9 A. Well, savings of \$11 million over 10 this entire period is not a very significant 11 number in the first place. 12 We haven't figured out how we're going to 13 allocate those savings as well. So there's 14 uncertainty about how that would happen. 15 And I'm not proposing any specific 16 methods. I'm taking the assumptions that are 17 embedded in this report as being a valid way 18 that I might allocate them. 19 But that's -- and I think other people 20 have testified, you know, I'm not doing this 21 merger because there's a lot of savings here. 22 Q. Well, I'm just asking in your 23 opinion, as a customer, would the savings -- 24 and I'm only -- I'm not talking about the power 25 savings from Jeffrey. If we assume those could</p>

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1 be -- could be delivered through a Power
2 Purchase Agreement rather than a consolidation,
3 would the benefits and cost savings on the
4 administrative side, would they be worth it
5 of -- for purposes of justifying a
6 consolidation in your mind?
7 A. Well, they're not.
8 And I -- there's another big
9 consideration, which is what are all the costs
10 of this merger. And those have not been
11 presented.
12 And having lived through a couple of
13 mergers, it's not zero. So even though we're
14 talking about one item of savings around
15 compensation and benefits, I don't know --
16 there's a lot of information I still wish that
17 I knew.
18 Q. Well, on that diligence piece, do you
19 see anywhere in the Phase 2 report where any
20 potential risks or potential complicating
21 factors are identified?
22 A. There's some, only I would just say a
23 little bit of discussion around that.
24 For example, for Central, there's a
25 reference to a transmission matter of Dawson

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1 was engaged on a combined basis for the two
2 entities, and if I assume that they did exactly
3 what they were asked to do -- I never saw the
4 Request for Proposal to understand the full
5 scope of what PSE was asked to do. But if I
6 look at this result and they did everything
7 they were asked to do, they were really looking
8 at maybe the viability of a merger, if that's
9 the word that was correct, and evaluation of
10 two specific benefits, some -- doing some
11 surveys of some board members.
12 And beyond that, I -- it's -- there wasn't
13 anything else that really jumped out at me.
14 But it was not that they were asked to do
15 due diligence.
16 And I've heard a couple of the things
17 where, yes, there was some due diligence around
18 evaluating the legality, could we merge. And
19 it's, like, okay, that was done through some
20 attorneys. I wouldn't expect PSE -- these are
21 engineers. So I wouldn't have expected them to
22 do that.
23 But I don't know what -- you know, what
24 due diligence was completed.
25 Q. Okay. Thank you.

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1 that -- of transformers and not -- didn't know
2 what was the -- you know, there was -- it was,
3 like, there's a transformer problem. And the
4 report just says there's a problem. And I'm
5 not aware of any followup that said, oh, yeah,
6 that's not a risk.
7 Is there a risk there or not? I don't
8 know. But it's flagged in this report as being
9 something that I would have liked to have
10 followed up on.
11 Q. Well, in fact, there's a -- this
12 report reflects the results of a survey that
13 was presented to the directors and managers of
14 the two districts where they were asked to
15 identify potential benefits and potential
16 complications of the consolidation?
17 A. Yeah. There is survey information.
18 Although, survey information just is -- these
19 are some what do people think, are they aware
20 of this risk.
21 It's not the due diligence of evaluating
22 necessarily those risks. And that's not
23 documented in this report.
24 And I don't think that was within the
25 scope of PSE to be doing due diligence. PSE

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1 MR. DEGAN: Your witness.
2 MR. JARECKE: Thank you.
3 CROSS-EXAMINATION
4 BY MR. JARECKE:
5 Q. Mr. Wendell, your time spent in the
6 private utility sector was -- I know you played
7 several different roles. But you were an
8 auditor; is that a fair statement?
9 A. I was an auditor and a consultant.
10 Prior to Sarbanes-Oxley happening,
11 probably half of my work was consulting work in
12 the utility industry.
13 Q. Okay. And -- but with --
14 specifically to the two mergers that you talked
15 about under your Xcel experience, you were not
16 part of the decisionmaking process whether or
17 not the merger should go forward or not?
18 A. I was not asked to make a decision in
19 that merger. I was a worker bee. I observed a
20 lot of that stuff. And I saw the results. And
21 it was done prior to the merger being announced
22 and during the entire two-year period that it
23 still took for -- well, one- to two-year
24 period, depending which merger it took, to
25 actually effect each of those mergers.

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1 Q. And I'm going to simplify and call
2 them Xcel if that's okay for the simplicity of
3 the title. I understand they went through name
4 variations over the time.
5 A. That's fine. I typically refer to
6 them as that way. Xcel and its predecessor
7 companies.
8 Q. Yes. And isn't it true, Mr. Wendell,
9 that in terms of examination and, again,
10 somebody in your role and a larger staff that
11 would be examining those numbers is first
12 looking to verify the accuracy of those
13 numbers?
14 A. From a forecasting perspective, yes.
15 You -- and that's actually still what I
16 did. And that's my background as a financial
17 planning, an executive as a vice president.
18 And I had responsibilities for all the modeling
19 and forecasting of Xcel Energy on a
20 corporate-wide basis.
21 Q. Yes. But initially in terms of
22 merger, you're going to look at the historical
23 documents, make certain that the historical
24 documents are accurate?
25 A. Yeah. I think you rely a lot on

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1 throughout the company. It's a pretty
2 broad-based, comprehensive process to flesh
3 out, to have confidence that your financial
4 forecasts are accurate to the degree that they
5 would still be expected to be accurate. It's
6 just a forecast, though.
7 Q. Absolutely. And, Mr. Wendell, I'm
8 not disputing any of that.
9 But the reason for that forecast, the
10 accountability that you and those executives
11 would have is ultimately to bring a better
12 return to your shareholder?
13 A. It's not solely to bring a return to
14 shareholders. I mean, you -- you're managing
15 all kinds of things.
16 That happens to be a pretty high objective
17 is that as a Fortune 500 company, you're --
18 you -- you want to earn a return, and you're
19 going to have a dividend, and you're going to
20 dividend that back.
21 But it's -- you know, it's a lot -- I
22 think it's a lot broader than what you're
23 saying.
24 Q. Okay. Well, in your deposition, you
25 identified it as the primary objective is -- in

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1 external auditors if the historical documents
2 are accurate as opposed to try to do all that
3 yourself.
4 There are forecasts. So without a doubt,
5 there were 5-year forecasts, maybe even 10-year
6 forecasts that were prepared -- that each
7 company manages, and when they merged, they
8 would have shared that information in a -- a
9 restricted, confidential, due diligence room
10 and discussed that information amongst the
11 merger teams.
12 Q. But the purpose of your forecasting
13 in that setting with a privately owned utility
14 is ultimately to see if we can increase or
15 bring a better return to the shareholder?
16 A. Not really. I think it's -- you
17 know, you're make -- I presented to the board
18 of directors of forecasts, and what I will tell
19 you is the decisions that were made before a
20 Fortune 500 company are based on the forecasts,
21 not based on the historical results. And so
22 that information was -- it had to be vetted.
23 I worked with not just a couple finance
24 people to throw together some numbers. I mean,
25 the assumptions are owned by other executives

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1 response to that question, shareholder return?
2 A. Shareholder return, it was the
3 primary objective. But I don't know that we
4 talked specifically about forecasting only.
5 Q. No. And I'm not narrowing my
6 question.
7 A. Okay.
8 Q. But, again, you wouldn't -- two
9 companies wouldn't consider merging if they
10 thought it would lower the results for the
11 shareholders. You wouldn't consider that
12 merger?
13 A. No. That's -- and that's part of
14 you're going to bring in the synergy savings,
15 you know, and -- and there was a lot more
16 comprehensive what are we going to do on a
17 merged basis.
18 And in our mergers -- and I was familiar
19 with it -- we're talking about merging two
20 electric utilities, electric and gas utilities
21 where you had combined operations that were
22 being done twice and how can I consolidate
23 those operations, achieve those savings.
24 And that's not present or disclosed in
25 this merger. This is a merger of an irrigation

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1 company -- and its operations are going to
2 continue pretty much as they've described it --
3 and a distribution company. And then we have
4 even the way the management is is to be kind of
5 separate operating those so --
6 Q. You just described Central as an
7 irrigation company. And you did also on direct
8 examination.
9 But, in fact, isn't Central a public power
10 district with additional --
11 A. It is a public power district that
12 provides water resources services.
13 It manages and has irrigation customers.
14 It operates a canal system and dams to
15 create generation that it -- that it obtains
16 some revenue to support its ongoing operations.
17 It operates the canals to recharge the
18 groundwater.
19 It has lakes for recreation.
20 It manages water that helps with wildlife
21 and those kinds of things.
22 And I think if you were to look at the
23 mission statement of Central, those are all
24 covered in that mission statement. And that's
25 what I believe Central is.

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1 Q. Okay. But from an internal
2 accounting standpoint, the \$32 million doesn't
3 actually go away? Dawson or at least the
4 financial component will still pay the
5 equivalency of that same amount to Dawson -- or
6 to the combined entity? It doesn't simply
7 disappear?
8 A. Well --
9 Q. They're not getting the power for
10 free?
11 A. It's not clear how -- what they're
12 going to actually pay for the power, if I
13 understand this transaction correctly.
14 Q. Correct. But when you looked at the
15 model and you looked at the forecasting, as you
16 testified to, they utilized a lower number
17 based upon --
18 A. They -- they -- on the consolidated
19 basis, they were forecasting lower wholesale
20 sales, yes.
21 Q. Correct.
22 But then they utilized that same number --
23 and, again, we won't get into the specifics of
24 the number -- but that same number which is
25 utilized in the assumption as to what this

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1 Q. Very much agree.
2 And, again, as we've seen through the
3 prior testimony and the prior exhibits, the
4 largest source of their revenue is, in fact,
5 from the production of electricity?
6 A. By design from its initial years,
7 yes.
8 Q. So when we talk about -- again, you
9 talked about -- jump to actually Chairman
10 Reida's questions.
11 Chairman Reida, in utilization of Exhibit
12 21, a couple of times in his questions to you,
13 identified the 32 million -- we'll round it off
14 to that -- as a lost opportunity cost.
15 Again, you're a CPA. You're an auditor.
16 The \$32 million in the lost opportunity cost,
17 did you understand Director Reida's question to
18 mean that \$32 million went away? Did you
19 respond to that question with that?
20 A. I thought that's how I responded to
21 it.
22 It was the revenues that were forecast
23 that I was going to forego because the
24 generation that created those revenues was
25 going to be used by Dawson.

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1 combined unit would bring in in terms of
2 revenue?
3 A. I think that's correct.
4 Q. Okay. So, again, to Mr. Reida's
5 question, it's not -- to simply say it's a lost
6 opportunity cost for \$32 million is not really
7 accurate. There's going to be a large sum of
8 money, approximately equivalency of this \$32
9 million, that still flows into the books?
10 A. Yeah, I think you would -- the way I
11 would view it is there's a positive opportunity
12 along with a lost opportunity, if you're going
13 to -- because the only way you can think about
14 this is on a -- in aggregate, which is the
15 lower -- the lower revenues but lower purchase
16 power costs. I mean, that's how I look at
17 it --
18 Q. I understand. That's a fair summary.
19 So in terms of you -- and you also said --
20 and I believe others have testified ahead of
21 you -- if it was truly about trying to save \$11
22 million, we wouldn't do it. I mean, that
23 wouldn't be a big enough return to really move
24 the needle forward, private utilities or maybe
25 for public utilities if that was purely the

<p style="text-align: right;">Page 866</p> <p>1 motivation? 2 A. Yeah, unless I were a really 3 itty-bitty company, it might -- it would still 4 make sense, 11 million. 5 Q. And you're not going to consider 6 either of these itty-bitty companies? 7 A. I think they're decent-size 8 companies. 9 Q. Yes. Not Fortune 500, but they're 10 significant for central Nebraska. 11 And in terms of your review and your 12 expertise, your -- you do not have any 13 expertise within utilities, at least as I 14 understand it, when it comes to rate analysis? 15 A. That's not really correct. 16 Q. Okay. Go ahead. 17 A. For the last year and a half of my 18 work at Xcel Energy, I was the vice president 19 of regulatory in Colorado. 20 I led an electric rate case, a gas rate 21 case. I led the change in -- that resulted 22 from changes in tax reform in 19 -- in 2017 23 that all had to be negotiated with the Colorado 24 commission staff and other intervenors. 25 And what I can tell you in the forecasting</p>	<p style="text-align: right;">Page 867</p> <p>1 process, our forecasting model was significant 2 such that we modeled cost of service for every 3 jurisdiction. 4 So if I had electric rates, gas rates, 5 even for public service, and every other 6 utility, we were modeling cost of service and 7 ratemaking as if we were doing it in actual 8 world. 9 Q. Very good. 10 And in terms of your involvement -- and 11 you used the term earlier on direct examination 12 as to regulated utility, Xcel in the various 13 states has to go to a commission, before a 14 commission to actually approve those rates; is 15 that the process? 16 A. That's correct. They file for change 17 in rates and -- and it has to get approved by 18 the commission. 19 And there's -- each state has its own 20 jurisdictions. Nebraska, as you all know -- 21 we're here today -- is uniquely different. 22 Q. Okay. And, again, this public power 23 district is uniquely different for a number of 24 reasons but one of which, as you just 25 identified a -- turn to the question to the</p>
<p style="text-align: right;">Page 868</p> <p>1 moment to Dawson, Dawson Public Power District 2 doesn't have to come before a commission in 3 setting its rate? 4 A. That's correct. Well, in both cases, 5 the board of directors in public power entities 6 approve the changes in rates, I believe. 7 Q. Okay. And returning to, again, this 8 LLC farm that you still have an interest in, I 9 would presume you're either a Dawson or 10 Southern customer in terms of electricity 11 that's provided to that farm? 12 A. Since I don't live there, I'm not a 13 Southern customer. And we do not have electric 14 generation on any wells. So I'm personally not 15 a Southern customer. 16 My brother that lives there is, yes. 17 Q. Okay. Does your brother use center 18 pivot irrigation? 19 A. We have all -- well, he has some farm 20 operations separate from the rest of our 21 family's farm. And we have diesel generation 22 on the pivots that we operate. 23 There is -- I guess there's a small 24 electric motor to pump some of the surface 25 water rights. It's not very big. But</p>	<p style="text-align: right;">Page 869</p> <p>1 ultimately that's paid for by the tenant. So 2 it's not a cost of our -- what we -- what we've 3 retained as a landlord for the farmland. 4 Q. Okay. I'll avoid the whole line of 5 questioning on why he's using diesel since 6 electricity's cheaper. But we'll -- 7 A. Well, because there was a decision 8 made a long time ago. And I can assure you 9 that the tenant is kicking himself right now 10 that he has diesel. And there may be a day 11 when he wants -- he gets -- wants to change 12 that out or whatever else. 13 Q. Well, fair enough. 14 A. And we'll deal it. 15 Q. But where I'm going with that 16 question is, again, internally Dawson and 17 Central as well, as you point out, there's a 18 ratemaking authority that those directors are 19 accountable for. 20 And with respect to the rates that a -- 21 we'll just presume for the purposes of this 22 question that your tenant has shifted to 23 electricity. The ratemaking authority for an 24 irrigation company is certainly not going to be 25 the same as a residential customer or the large</p>

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1 industrial? There are going to be different
2 rates within those classes?
3 A. They are.
4 Q. Absolutely. And you know that from
5 your experience?
6 A. Yeah. Doesn't matter whether I'm an
7 investor-owned utility or public power, they
8 all have different rate structures.
9 Q. Absolutely. And, again, let's --
10 again, what these directors are responsible
11 for -- whether it be Central, Dawson or this
12 combined unit of Platte River -- that
13 ratemaking authority falls on them?
14 A. The board is responsible for --
15 management is probably responsible for
16 evaluating cost of service rates, making a
17 proposal to the board. The board ultimately
18 makes the approval.
19 Q. And you understand in that process,
20 again, slightly different than the private
21 utility, but certainly within the public
22 utility, first of all, we have to understand
23 what's the cost of service. That's the
24 underlying determination we have to make?
25 A. Definitely want to understand your

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1 separate businesses, I believe. And so Dawson
2 really has to do the same thing from the
3 electric side of the business as a retail
4 distribution utility.
5 Q. And, again, Xcel did the same. You
6 would were involved in that. Whether it be gas
7 or electricity, all held under the same entity,
8 there were different ratemaking authorities
9 that apply to both?
10 A. Ratemaking authorities, yes. We are
11 regulated by the FERC and by state regulators
12 and other regulators. But -- and you don't
13 have to deal with too much of those.
14 Q. That's correct.
15 A. Yeah.
16 Q. But in terms of using your Xcel
17 experience again, it was -- there were
18 efficiencies obviously of bringing a gas and
19 electric company together, probably not on the
20 delivery of gas or the delivery of electricity,
21 but within the management structure itself. I
22 can only assume those entities merged for the
23 efficiencies that were gained and ultimately
24 the better return for your shareholders?
25 A. I think that was one of the large --

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1 costs, that's correct.
2 Q. But in setting the appropriate rate,
3 we have to cover that cost. We have to cover
4 the expenses associated with that delivery.
5 But in the instance with the public
6 utility like Dawson, again, you struggled with
7 the term net profits, margin, but we can't
8 deliver that energy at a loss. But Dawson's
9 not looking to make a profit. Do you agree
10 with that?
11 A. I would agree that an investor-owned
12 utility needs to deliver net income so that it
13 can provide that return to its shareholders.
14 And that is not the case for a public power
15 entity.
16 Q. Okay. And under this combined
17 entity, is it your expectation that this
18 ratemaking responsibility, that continues?
19 That can't go away?
20 A. Without a doubt, you still -- whether
21 you merge or not, Central still has to evaluate
22 its own costs -- the cost of service for how
23 they're charging any products and services on
24 the water side of the business.
25 So, I mean, you're still running two

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1 one of the reasons that they merged.
2 And there are synergies even between
3 combining an electric company -- electric
4 distribution and gas distribution. All your
5 customer service functions are consolidated,
6 operated together. So you achieve economies of
7 scale.
8 You -- you combined IT operations to help
9 make this all work. And it wasn't clear to me
10 if, like, combining IT operations is part of
11 what is going to happen here.
12 There was a discussion of having a
13 separate district services organization,
14 which -- but I don't know how any of that
15 was -- is going to be done. It was yet to be
16 determined, I guess.
17 Q. Okay. But if we operate with the
18 assumption that IT, I think is an easy example,
19 that those services will be combined, there
20 could be cost savings in that synergy for this
21 combined entity?
22 A. Could be cost savings. Could be
23 additional costs.
24 Q. The -- in terms of -- let's return to
25 the balance sheet.

<p style="text-align: right;">Page 874</p> <p>1 Strictly from a -- the term merger has 2 been used throughout your direct. And I'm not 3 criticizing you. It's been used throughout 4 this whole hearing process. 5 A. I was going to say, I was trying not 6 to do anything different from what I've heard 7 throughout this whole procedure. 8 Q. You have not. It wasn't a criticism. 9 But, again, when we talk about the balance 10 sheet, I just -- I need to walk through a 11 couple of steps and see if you agree with me. 12 First and foremost, the balance sheet of 13 Central -- and you just walked through what 14 those numbers are, and whether or not there was 15 a cash component of 100 million or not, it is 16 what it is. That's their balance sheet. 17 But what we know on day one of the merger, 18 the assets of Dawson come to this combined 19 entity. Those assets undoubtedly, just an 20 asset question, increase the asset side of this 21 new combined entity? 22 A. If the only thing you're asking is do 23 assets increase on a combined basis, yes, they 24 do. 25 Q. And undoubtedly liabilities are going</p>	<p style="text-align: right;">Page 875</p> <p>1 to come over also? 2 A. Yes, they do. 3 Q. Okay. But purely from a balance 4 sheet standpoint in followup to your questions 5 on direct examination, bring over net assets, 6 bring over net liabilities, from a purely 7 balance standpoint, the merged entity is in a 8 stronger position? 9 A. It's bigger. 10 Q. It's bigger. 11 A. I don't know if it's stronger or not. 12 I think you have to evaluate a lot of other 13 factors. 14 Q. Okay. Well, there will be more 15 assets and proportionally less liabilities? 16 A. In -- 17 Q. In proportion to the assets? 18 A. Oh, there -- liabilities are less 19 than assets when you merge these two companies, 20 that's still a true statement. 21 Q. Okay. 22 A. But I didn't hear things, like, the 23 S & P credit rating, like, is the credit rating 24 stronger or not. We didn't hear that 25 yesterday.</p>
<p style="text-align: right;">Page 876</p> <p>1 Q. No. And, of course, that analysis 2 has not been completed. 3 A. Yeah. 4 Q. But in terms of -- again, I want to 5 back up to Xcel for a moment. Again, when it 6 looks at a private merger, I would assume you 7 had to look at what's the value of our 8 production plants? Would that not be part of 9 the analysis? 10 A. Part of what you are still looking 11 at, particularly in a utility environment that 12 we have today, is -- is if -- is the assets -- 13 just what's on the book value is -- and I think 14 there was some discussion here yesterday about, 15 you know, accounting is at historical cost. 16 It's -- you purchase things that are recorded 17 at whatever you paid for them. You depreciate 18 them over time. And at any point in time, the 19 fair market value of the assets are -- they're 20 never going to equal what that historical cost 21 is, I don't think. 22 Q. I agree. 23 A. But they're always going to be 24 different. They could be more. They could be 25 less.</p>	<p style="text-align: right;">Page 877</p> <p>1 Q. We are in agreement. 2 So when Xcel was, again, valuing its 3 assets and its production utilities, that would 4 have included the coal utilities? 5 A. Yeah, they still have some coal 6 utilities. They're trying to get rid of all of 7 them but, yes. 8 By 2050, they're saying they're going to 9 be 100 percent renewable. 10 Q. Actually, they've said by 2030 that 11 the -- well, at least the coal plant in 12 Colorado is scheduled to close before 2030? 13 A. Yeah, I think they're trying to get 14 to 80 -- they're trying to get to 70 percent 15 renewable, 80 percent renewable. And so, yeah, 16 the coal plants -- there's a plan, I think, to 17 shut down every coal plant yet between now 18 and -- I don't know what the exact date is. 19 Q. That's fair enough. 20 A. It keeps changing. 21 Q. But the forecast you completed did 22 not anticipate the closing of that coal plant? 23 A. You know, when I was there five years 24 ago still, yes. 25 Q. But now when the merger occurred, you</p>

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1 didn't anticipate it?
2 A. That one -- well, yeah, when the
3 merger occurred, I don't -- I don't recall -- I
4 mean, there might have been some discussion
5 around how long are these coal plants going to
6 continue to operate. Some of them were pretty
7 old in the first place.
8 Q. Right.
9 A. And it's, like, do I really want to
10 continue to operate them but, yeah.
11 Q. So -- and I --
12 A. Industry changes.
13 Q. Industry changes. But you've made
14 the point that -- that whether or not something
15 is, in fact, an asset or liability when you're
16 making that forecast, it is -- part of that
17 aging facility has to be considered. Part of
18 what the change in environment, all of those
19 considerations have to go into effect. But
20 somebody might say here's a \$100 million asset,
21 in fact, it might be a liability.
22 Coal plant, at least in the viewpoint of
23 the Colorado structure, could be considered a
24 liability today?
25 A. Yeah, I -- we're not talking about

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1 generation than they can. But there's limited
2 numbers of rivers and limited numbers of dams.
3 And trying to build a new dam has got its own
4 challenges with it.
5 So -- but I think that doesn't -- that
6 doesn't reduce the value of hydroelectric
7 generation that is dispatchable. It can run at
8 a fairly constant level for -- and here it's --
9 I would totally agree with some of the study
10 information, if you can run this renewable
11 generation during the peak summer months,
12 that's a -- that's a good thing.
13 Q. Exactly.
14 A. So, yes, anyway, but --
15 Q. You led perfectly to my next
16 question. So, in fact, here's a renewable --
17 A. That's probably not a good thing for
18 me.
19 Q. Valuable resource and, again, the --
20 at least one of the intents identified in the
21 merger, that through the synergies to, quote,
22 produce the energy and ultimately deliver it to
23 your own customer is where they hope to achieve
24 some cost savings. Is that not the goal of
25 phase -- one of the goals of the Phase 2

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1 coal here, though.
2 I think, yeah, we're talking about in
3 Central's case, hydroelectric generation, which
4 has a license already through 2037. It's
5 renewable. It's dispatchable. It's clean
6 energy.
7 And I think it's -- I'm not an expert in
8 it. But I would put money on it, it's actually
9 worth more from a fair market value than what
10 is on the cost of Central's books today.
11 Q. Okay. And I agree that we're not
12 here to talk about coal. But we do have a FERC
13 license through 2037 to operate that facility.
14 And I'm confident everybody in the room hopes
15 it's renewed and continues beyond that. But we
16 know --
17 A. I hope that, too, as well to be
18 honest with you so --
19 Q. Yeah, of course.
20 But we know from other examples, on the
21 Columbia River in particular, hydro structures
22 have been removed?
23 A. And it's a challenge. I think people
24 are still, where they can, would love to
25 explore more opportunities to have more hydro

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1 report?
2 A. It clearly documents that. And I
3 personally think I would -- that it should have
4 been done through a PPA. But that's -- I guess
5 I'm in Chairman Reida's board -- his camp.
6 Q. Okay. And, again, whether it could
7 have or should have been done through a PPA is
8 really a different question.
9 The question before us today is, from your
10 perspective as a financial expert, is -- again,
11 when we look at the balance sheet, we know what
12 more assets are coming through this merger, and
13 in terms of the mergers you would have been
14 involved with, it would have been a payment to
15 those shareholders of the company being
16 acquired; is that true?
17 A. Could have been a payment or an
18 exchange of stock, something other than a one
19 for one or whatever it might have been. I
20 don't know.
21 Q. Yeah. But there was an exchange of
22 value?
23 A. There was an exchange of value which
24 is not contemplated in this transaction, to the
25 best of my knowledge.

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1 Q. Correct. So the assets will come
2 over at no cost?
3 A. That's what's proposed in this
4 merger.
5 But that's also one of the reasons why
6 when you look at this merger in total, that I
7 don't think this is in the best interest --
8 this merger as proposed is not in the best
9 interest of Central. That's my overall
10 conclusion that I've had ever since I got
11 through all of this documentation.
12 Q. Okay. But your conclusion is really
13 narrowly focused on the fact you think through
14 a PPA, they would sell the power for more, the
15 energy production at a higher price?
16 A. That's not my conclusion.
17 Q. Okay. You just stated that the PPA
18 would be a better avenue?
19 A. That's -- I think it is a better
20 avenue. But that's not my conclusion overall.
21 I've said that the merger was not in the
22 best interest because there's a lot of other
23 consequences that are happening in this merger.
24 Some of my other witnesses on behalf of Central
25 are going to speak to some of that later on.

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1 able to utilize the market you just identified?
2 A. It -- that's a correct statement that
3 if it enters into a long-term power contract,
4 its obligations are under that power contract.
5 But there's also another key provision of
6 that PSA, purchase and sale agreement, that I
7 think is really important. And if -- and I
8 didn't really know about it until I read the
9 Kansas City Power and Light/Evergy contract.
10 But it says that we will provide
11 reasonable -- you know, generation as you want
12 it, as much as possible, except to the extent
13 we're not going to disrupt our water
14 operations.
15 And those aren't -- I don't have it in
16 front of me. But it says something like that.
17 So there is a customer protection for the
18 water customers that exists under the current
19 contract that I don't think that exists if
20 you're going to use that generation and you're
21 going to start making decisions based on using
22 generation for a retail utility.
23 Q. Have you -- have you reviewed any
24 document of any source that suggests that the
25 irrigation users will be harmed? Have you seen

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1 Q. Okay. We'll get to that.
2 A. Okay.
3 Q. But in terms of your expertise,
4 again, you are the CPA, you're the accountant,
5 this is going to build a stronger balance
6 sheet?
7 A. It's a bigger balance sheet. That's
8 what I would say it is, not necessarily
9 stronger.
10 Q. Okay. It is -- again, undoubtedly,
11 as you touched upon, the renewable energy
12 aspect, a dispatchable resource, that resource
13 is going to have more opportunities as a result
14 of Southwest Power Pool. And, again, maybe
15 it's going to pull all of its synergy in the
16 day-to-day market. We don't know what that
17 future decision will be?
18 A. Could be capacity markets that
19 evolve. And that provides an additional
20 opportunity for Central and its generation as
21 well.
22 Q. Absolutely.
23 So, again, as we were yesterday on the eve
24 of the polar vortex, if Central had a -- all of
25 its energy locked into a PPA, it would not be

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1 a single document, anything within the Phase 2
2 report, anything that said we're going to use
3 energy in such a way that will harm the
4 irrigator?
5 A. Well, now you've limited the question
6 to say is there something where they're going
7 to use energy that harms them.
8 Q. The purpose of your question was the
9 irrigation customer would be harmed -- the
10 premise of your response, excuse me. And
11 I'm -- again --
12 A. I said that --
13 Q. -- you reviewed a lot of documents?
14 A. Well, I don't know that I've ever
15 used the word that irrigation customer's
16 harmed. I said this is not in the best
17 interest of Central.
18 It's kind of stating something a different
19 way. If you -- if you believe those are the
20 same statements, that if it's not in the best
21 interest, that means by definition harming
22 somebody?
23 Q. Well, let's go back to the contract.
24 You were just referring to the Kansas City
25 Power and Light contract. And, again, you --

<p style="text-align: right;">Page 886</p> <p>1 the clause you're referring to is that the 2 irrigation customer would be protected under 3 that contract? 4 A. I believe so, based on that 5 provision. 6 Q. Okay. 7 A. Some protection. 8 Q. I'm asking within your review of any 9 document, confidential or otherwise, have you 10 seen anything to suggest that that will not 11 continue to be true? 12 A. There's a lot of things that -- 13 Q. That's a simple yes or no. 14 A. Maybe. I don't know. I've -- 15 there's some issues that I -- I can't -- I 16 don't think I can answer that as a yes or no 17 answer. 18 Q. Okay. So -- 19 HEARING OFFICER TEXEL: Well -- 20 MR. JARECKE: Fair enough. 21 HEARING OFFICER TEXEL: Okay. 22 MR. JARECKE: I'm sorry, unless 23 you wish -- 24 HEARING OFFICER TEXEL: Well, I 25 just -- the question's whether you've seen</p>	<p style="text-align: right;">Page 887</p> <p>1 anything in the documents that would show that. 2 THE WITNESS: I've seen some 3 things -- 4 HEARING OFFICER TEXEL: Not your 5 opinion, if I can -- 6 THE WITNESS: I've seen some 7 things that concern me. Is that answering the 8 question? 9 HEARING OFFICER TEXEL: Well, I 10 think the question was whether you've seen 11 anything that said there would be any harm, if 12 I understand it right, not -- that would be 13 separate from your opinion based on what's in 14 the documents. Does that make sense? 15 Was there anything -- maybe I'm 16 rephrasing -- I should let Mr. Jarecke reask 17 the question. So I'll withdraw it and let 18 Mr. Jarecke ask. 19 A. Well, then please restate the 20 question, I guess, because I'm not sure that 21 I'm -- and I know I can -- we can do kind of as 22 a rebuttal here. So my attorney's going to 23 help get me out of anything I get into problem 24 with so -- 25 BY MR. JARECKE:</p>
<p style="text-align: right;">Page 888</p> <p>1 Q. He might. 2 MR. DEGAN: What? 3 BY MR. JARECKE: 4 Q. Again, the premise of my question was 5 focused upon, again, a prior contract that you 6 reviewed, a -- actually, I think expiring 7 contract that you reviewed is in place that has 8 certain protections from a hydro production 9 standpoint to make certain that the irrigation 10 customers aren't harmed. 11 And the narrowness of my question is 12 whether or not you've seen any document or a 13 forecast from a document that says are this 14 future production will harm the irrigation 15 utilization? 16 A. I don't know because I don't know how 17 the change in operations might happen to do 18 that. Does that make sense? 19 Q. All right. Well, no. Because you're 20 jumping to the next question. 21 A. Well, then ask the next question. 22 Q. I understand you have fears. I'm 23 asking if you've seen a document? 24 A. I don't know. I don't know. 25 Q. Okay.</p>	<p style="text-align: right;">Page 889</p> <p>1 A. Sorry, I don't know how to answer 2 other than I don't know. 3 Q. That's fair. 4 Mr. Wendell, I'd like to move back to 5 ratemaking -- rate forecasting. 6 Before I get into that question, again, 7 I'm going to assume for purposes of this 8 question that you have some experience in this 9 area also, but you understand that all the 10 hydroelectric production of Kingsley Dam is 11 purchased by Nebraska Public Power District? 12 A. Yes, I do. 13 Q. Okay. 14 A. Separately accounted for as its own 15 division of Central. 16 Q. Correct. 17 And do you also have the expectation that 18 it would be NPP -- under that contract, would 19 you have the expectation that Nebraska Public 20 Power District has the full responsibility to 21 pay for all of the hydro facilities located 22 within that dam, within the Kingsley Dam, the 23 operation and maintenance? 24 A. It's my understanding that they have 25 a cost of service contract that essentially</p>

<p style="text-align: right;">Page 890</p> <p>1 pays for the Kingsley Dam operations. 2 Q. But clearly I think we both have the 3 expectation that NPPD's not interested in 4 paying for the other dams, the other hydro 5 facilities? That would be outside the purview 6 of their contract? 7 A. Which is why they put a provision in 8 the -- or there's a provision structured in the 9 Plan of Consolidation to specifically say that 10 you can't move assets or revenues, expenses 11 between that division and any other division. 12 Q. Correct. And, again, much like Xcel, 13 that's a common practice within utilities, 14 you're going to have, again, these silos where 15 both revenue and costs are siloed, not unusual 16 within the utility industry; is that true? 17 A. Yeah, you're -- you've set up 18 accounting to track your cost of service. 19 Q. Very good. 20 But with respect to Nebraska Public Power 21 District and, again, Lake McConaughy for the 22 water storage facility, would you also not 23 agree that Nebraska Public Power District is 24 not going to accept a cost that -- whatever the 25 entire cost of the dam structure is, the</p>	<p style="text-align: right;">Page 891</p> <p>1 maintenance surrounding Lake McConaughy, 2 they're not -- they would not view that as a 3 proportional cost that they should pick up 100 4 percent of that? 5 A. I don't know for sure the split of 6 what costs they pay for or not. I'd have to 7 actually look at that contract. 8 Q. I -- and I'm not asking you to 9 project that number. But would you agree that 10 that facility that feeds the canals that then 11 feed the later hydros, they're going to have to 12 share in the cost of Lake McConaughy, the 13 impoundment for that water? 14 A. I assume that the way the cost 15 structure is set up on Central today and what 16 costs are part of the hydro division are -- are 17 reflected as some of those operations that 18 you've disclosed if they're part of the 19 irrigation and that side of the operation. 20 Q. Okay. So you recognize -- and, 21 again, as a Central customer, in terms of their 22 internal accounting methodology, you're happy 23 with the way they do it, you trust the way that 24 they do it, that they can, again, appropriately 25 apportion their costs between competing</p>
<p style="text-align: right;">Page 892</p> <p>1 interests or shared interests as -- 2 A. I think the accounting structure and 3 they call it divisions that Central has used 4 historically and in the Plan of Consolidation, 5 they refer to it as units, and so you're adding 6 a new unit, which is the electric distribution 7 unit. And you're proposing that you're going 8 to now have that additional unit, along with 9 another additional unit, which is district 10 services. 11 So, you know, my -- I do agree that 12 Central has the basis of how you would pull 13 this together and there's an opportunity that 14 you would be fair in how you do this. 15 But I don't know how you plan to handle 16 all of the allocation of costs between the 17 district services. 18 And I don't know how you might -- if 19 you're going to make decisions of moving 20 revenues or expenses -- even if it takes a 21 three-fifths vote of the board, if you're going 22 to move revenues or expenses between those 23 units or take assets from one of those units 24 somehow to move back and forth, whether you 25 even agree to pay them back or not, those --</p>	<p style="text-align: right;">Page 893</p> <p>1 the lack of that, where we're just talking 2 about there's an intent that we're going to 3 figure this all out, that bothers me. 4 Q. But as you just testified to, you 5 don't know the proportionality today as to the 6 division of the allocated costs for Lake 7 McConaughy as it relates to the NPPD contract 8 or to the Johnson 1 or the Johnson 2? You 9 don't know those internal numbers? 10 A. No, I don't know. 11 Q. But you have no qualm with their 12 methodology? 13 A. If NPPD is buying off on it and 14 Central's been buying off on it, I'm assuming 15 they're going to continue business as usual 16 along those lines. 17 Q. And so wouldn't they continue to do 18 business as usual with this new division -- 19 again, they're going to do the math, they're 20 going to figure out the proportion of costs 21 that should be associated with that division 22 and charge the customer correctly as they have 23 in the past? 24 A. Well, now that's a hypothetical 25 because I don't know, we're talking about</p>

<p style="text-align: right;">Page 894</p> <p>1 creating a new unit. If that's what you're 2 referring to is the new units that are being 3 created? 4 Q. I think if it's within the existing 5 unit, there's a hydro production now. 6 A. The -- so are you talking about 7 changes that will impact how I record my costs 8 amongst the hydro unit? 9 Q. No. My -- 10 A. No. 11 Q. -- question is today, today, Central 12 has a responsibility to the ratepayers, 13 including you or your brother or your tenant, 14 to proportionally charge you on a rate function 15 what they believe is attributable to the 16 irrigation water that they deliver to your 17 property? 18 A. The board makes a decision annually 19 whether or not to change irrigation rates. 20 I got a letter in January that said they 21 weren't increasing rates this year. 22 And so, yeah, that -- I'm assuming we -- 23 they're capturing the costs and they're 24 evaluating that as part of their ongoing 25 operations.</p>	<p style="text-align: right;">Page 895</p> <p>1 Q. So you believe today that Central 2 is -- is performing that function to your 3 satisfaction that they have the capability to 4 calculate rates fairly to their customers? 5 A. As far as I know, I think that's 6 correct, yes. 7 Q. Okay. And, again, the -- today 8 that's between competing customers, whether 9 that be Kansas City Light, whether that be 10 Nebraska Public Power District or the recipient 11 of irrigation water? 12 A. Yes. But it's not -- 13 Q. You've answered my question. 14 So in terms of -- again, whether or not 15 there's an electric service unit, retail -- 16 again, you just mentioned that you have a small 17 electric well on your property -- 18 A. No, we do not have electric well on 19 our property. 20 Q. The pump that has to pump the water 21 out of the canal? 22 A. Oh, yes, that's a small pump. 23 Q. Okay. 24 A. One place. 25 Q. Maybe only 110 K -- or kilowatts.</p>
<p style="text-align: right;">Page 896</p> <p>1 But whatever that pump is, it's using 2 electricity. But you -- you're not sitting 3 here and disputing that they can't calculate 4 the charges -- again, I understand they're not 5 delivering electricity -- but you're not 6 disputing that the charges that they're 7 calculating are inappropriate or somehow 8 disproportionate to their customers? 9 A. Yeah, as far as I know, Central has 10 done a good job of managing finances in 11 accounting, at least in terms of the operations 12 they have today. 13 Q. Okay. And you've seen nothing in the 14 Phase 2 report or your further analysis that 15 suggests that they will not continue to have 16 this same capability even if additional 17 services are brought in? 18 A. I think that's outside the scope of 19 what the Phase 2 report was. 20 Q. Okay. 21 MR. JARECKE: Can I take a 22 five-minute break, just to review my notes and 23 make sure that -- 24 BOARD MEMBER HUTCHISON: I'll 25 tell you what, what if I were to ask some</p>	<p style="text-align: right;">Page 897</p> <p>1 questions? Because I have some questions. I 2 don't know if /that provides you an opportunity 3 to review your notes. 4 MR. JARECKE: It will. Thank 5 you. 6 BOARD MEMBER HUTCHISON: Okay. 7 You referred to Exhibit 47 earlier, which is a 8 letter from Mr. McCormick? 9 THE WITNESS: Yes, I did. 10 BOARD MEMBER HUTCHISON: Do you 11 have a copy of that close by? 12 THE WITNESS: Did I give it back 13 to you? 14 MR. DEGAN: I have a copy. 15 THE WITNESS: Okay. 16 BOARD MEMBER HUTCHISON: On the 17 last paragraph in the middle, it says that the 18 revenue that Central can realize for marketing 19 its hydroelectric generation are not as 20 favorable as they have been in the past. 21 And the very last sentence, "Central 22 can -- Central no longer can expect to gain the 23 same level of revenue from hydropower 24 generation as it did in the past." 25 Do you have an opinion about whether</p>

<p style="text-align: right;">Page 898</p> <p>1 that's true?</p> <p>2 THE WITNESS: It's consistent</p> <p>3 with the forecast that I reviewed. They</p> <p>4 lowered revenues in the forecast with the new</p> <p>5 contract.</p> <p>6 BOARD MEMBER HUTCHISON: And</p> <p>7 that forecast came from PSE?</p> <p>8 THE WITNESS: It's my</p> <p>9 understanding that Central prepares its own</p> <p>10 financial forecasts.</p> <p>11 BOARD MEMBER HUTCHISON: Okay.</p> <p>12 THE WITNESS: They gave it to</p> <p>13 PSE.</p> <p>14 BOARD MEMBER HUTCHISON: Okay.</p> <p>15 THE WITNESS: And modeled it.</p> <p>16 BOARD MEMBER HUTCHISON: Do you</p> <p>17 have an opinion whether that forecast is</p> <p>18 accurate or not?</p> <p>19 THE WITNESS: I'm not an expert</p> <p>20 in power markets. And no one shared with me</p> <p>21 what -- any results of an RFP. So I don't know</p> <p>22 whether it's accurate or not.</p> <p>23 BOARD MEMBER HUTCHISON: Okay.</p> <p>24 Okay. Can we go back to Table 18 that you</p> <p>25 referred to in Exhibit 22 on page 43?</p>	<p style="text-align: right;">Page 899</p> <p>1 THE WITNESS: Okay.</p> <p>2 BOARD MEMBER HUTCHISON: I know</p> <p>3 we've talked about this a number of times,</p> <p>4 including previous witnesses as well. But I'm</p> <p>5 looking at the power of cost savings and the</p> <p>6 power not sold externally.</p> <p>7 And there's a difference between those.</p> <p>8 And we've talked about what each one of those</p> <p>9 lines -- I'm --</p> <p>10 THE WITNESS: Excuse me. Are</p> <p>11 you on Table 22 you say?</p> <p>12 BOARD MEMBER HUTCHISON: No, no.</p> <p>13 THE WITNESS: No.</p> <p>14 BOARD MEMBER HUTCHISON: I'm on</p> <p>15 Table 18, page 43.</p> <p>16 THE WITNESS: Oh, sorry. Table</p> <p>17 18.</p> <p>18 HEARING OFFICER TEXEL: Exhibit</p> <p>19 22.</p> <p>20 BOARD MEMBER HUTCHISON: Exhibit</p> <p>21 22, yes.</p> <p>22 THE WITNESS: Okay. I'm on</p> <p>23 Table 18 now. Sorry.</p> <p>24 BOARD MEMBER HUTCHISON: So the</p> <p>25 power cost savings and power not sold</p>
<p style="text-align: right;">Page 900</p> <p>1 externally -- and we've discussed what those --</p> <p>2 what is represented there. And I guess my</p> <p>3 question is, do you have an opinion about</p> <p>4 whether or not those two revenue streams, one</p> <p>5 that's being lost and the other one that would</p> <p>6 be gained in the event of a merger, whether</p> <p>7 those are accurate or reasonable forecasts?</p> <p>8 THE WITNESS: You know, it --</p> <p>9 that's all still going back to what the power</p> <p>10 market is and I -- or understanding the NPPD</p> <p>11 contract.</p> <p>12 So that's what the one line item is</p> <p>13 saying, hey, I'm going to lower my costs in the</p> <p>14 NPPD contract because I can lower my</p> <p>15 consumption because I'm buying power from</p> <p>16 someplace else. And the other is the revenues</p> <p>17 that I'm going to forego.</p> <p>18 So -- but they both have assumptions</p> <p>19 around pricing. And I did not have assess to</p> <p>20 either one. So I cannot speak to those.</p> <p>21 Does that make sense?</p> <p>22 BOARD MEMBER HUTCHISON: Yes, it</p> <p>23 does.</p> <p>24 One of the things that's been described is</p> <p>25 how a consolidated -- in other words, Platte</p>	<p style="text-align: right;">Page 901</p> <p>1 River would have some flexibility associated</p> <p>2 that they would have a difficulty achieving in</p> <p>3 a PPA.</p> <p>4 You had some opinion because I think you</p> <p>5 read a PPA with Kansas City Power and Light</p> <p>6 that provides some degree of flexibility, it</p> <p>7 sounds like -- do you -- I guess do you have an</p> <p>8 opinion about the -- and maybe this is not your</p> <p>9 area of expertise but the amount of flexibility</p> <p>10 that's being gained and perhaps the value</p> <p>11 that's being gained as a function of a merged</p> <p>12 entity versus a PPA and how that might generate</p> <p>13 additional revenue in the sale of electricity?</p> <p>14 THE WITNESS: So I'm not a power</p> <p>15 purchase expert. But I can share with you some</p> <p>16 comments, if that's okay.</p> <p>17 We talked about this provision in the</p> <p>18 power contract that basically says, in the</p> <p>19 existing contract, that I'm not going to do</p> <p>20 anything that's contrary to managing my water</p> <p>21 operations. So, you know, can I -- is there</p> <p>22 some benefit? Can I manage the power</p> <p>23 differently in a post-merged position?</p> <p>24 I mean, people schedule energy deliveries</p> <p>25 daily. There's probably -- I don't know all</p>

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1 the details of how often it's all scheduled and
 2 all that detail. But that happens today under
 3 a power contract.
 4 And I would assume that even in a -- if
 5 I'm managing my own generation and I've got my
 6 retail load over here, I still have -- I'm
 7 going to try to maximize what I can get out of
 8 that generation because everything I can do is
 9 going to help lower my NPPD costs.
 10 Does that make sense?
 11 So how they will really plan to manage
 12 that differently, is there a benefit? I don't
 13 know. There's probably some opportunity. But
 14 I don't know how much there is.
 15 BOARD MEMBER HUTCHISON: Okay.
 16 Thank you.
 17 MR. JARECKE: And I have no
 18 further questions. Thank you.
 19 HEARING OFFICER TEXEL: Do we --
 20 how long do you have for redirect?
 21 MR. DEGAN: Probably -- probably
 22 good time for a break.
 23 HEARING OFFICER TEXEL: Okay.
 24 If it's not a short -- your questions, then I
 25 think this would be a good time to take our

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1 (At 1:05 p.m., with parties present as
 2 before, the following proceedings were had:)
 3 HEARING OFFICER TEXEL: Okay.
 4 So we'll go back on the record. We will
 5 reconvene the hearing.
 6 And all board members are present,
 7 participating -- present or participating on
 8 WebEx as before.
 9 With that, Mr. Jarecke, you had something
 10 to add.
 11 MR. JARECKE: Mr. Texel, just as
 12 a brief preliminary matter, Mr. Erik Sonju is
 13 the author of the Phase 2 report, Power Systems
 14 Engineering. We do not intend or believe we
 15 have time for any rebuttal.
 16 But I want to make certain the board is
 17 comfortable excusing that witness for the day.
 18 BOARD MEMBER GOTTSCHALK: I'm
 19 fine.
 20 HEARING OFFICER TEXEL: Seeing
 21 all nods -- are you okay with that, Chairman
 22 Reida?
 23 BOARD MEMBER REIDA: They're
 24 going to excuse the person who performed the
 25 analysis?

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1 lunch break, come back for redirect and finish
 2 that rather than --
 3 MR. DEGAN: In fact, the break
 4 may facilitate getting him off quicker.
 5 HEARING OFFICER TEXEL: Okay.
 6 Well, I mean, if it was five or six minutes, we
 7 can go. But since it's already 12:20, I think
 8 we want to take our lunch break now.
 9 We will break -- does the board and
 10 parties want to do an hour like we have been?
 11 MR. BRASHEAR: Go till one?
 12 HEARING OFFICER TEXEL: Go till
 13 one maybe?
 14 MR. DEGAN: Yeah, one.
 15 HEARING OFFICER TEXEL: Gain a
 16 little bit of time.
 17 MR. JARECKE: Yeah.
 18 HEARING OFFICER TEXEL: Let's
 19 try to reconvene at one o'clock. It's now
 20 12:20.
 21 (12:20 p.m. - Recess taken.)
 22
 23
 24
 25

Page 905

1 HEARING OFFICER TEXEL: For the
 2 PSE report.
 3 BOARD MEMBER REIDA: Okay. Who
 4 was going to call that witness?
 5 MR. JARECKE: He was purely
 6 retained as a -- or identified as a rebuttal
 7 witness. And at this point, we don't believe
 8 there will be either opportunity or time
 9 available for that.
 10 HEARING OFFICER TEXEL: Would he
 11 have been a Central --
 12 MR. BRASHEAR: Yes.
 13 HEARING OFFICER TEXEL: --
 14 witness?
 15 MR. BRASHEAR: He would have
 16 been --
 17 HEARING OFFICER TEXEL: I think
 18 that's what Chairman Reida is asking, who would
 19 have --
 20 MR. JARECKE: On behalf of
 21 Central, yes.
 22 BOARD MEMBER REIDA: I don't
 23 have a problem with it.
 24 HEARING OFFICER TEXEL: Okay.
 25 Then yes.

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1 All right. I think where we left off was
2 redirect with -- Mr. Degan was going to start
3 when we took our lunch break.
4 MR. DEGAN: Thank you.
5 REDIRECT EXAMINATION
6 BY MR. DEGAN:
7 Q. Mr. Wendell --
8 HEARING OFFICER TEXEL: I
9 just -- just remind you --
10 THE WITNESS: Yes.
11 HEARING OFFICER TEXEL: -- you're
12 still under oath. Yep. Sorry. Go ahead.
13 MR. DEGAN: No. I jumped the
14 gun.
15 BY MR. DEGAN:
16 Q. Good afternoon, Mr. Wendell.
17 Where we left off, counsel had asked you a
18 series of questions regarding anything that you
19 saw in the documents that may have indicated
20 harm. Did you see anything in the documents
21 that caused you concern?
22 A. So it's kind of global. And you've
23 heard this in testimony here from different
24 people is that this transaction, there's a lot
25 of things that have not been determined.

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1 HEARING OFFICER TEXEL: Okay.
2 BOARD MEMBER REID: I do have a
3 question.
4 You're very familiar with ratemaking?
5 THE WITNESS: I am.
6 BOARD MEMBER REIDA: And are you
7 familiar with NPPD, how they do the ratemaking?
8 THE WITNESS: Well, I don't --
9 I'm not familiar with their -- how they handle
10 the revenue side of what they're operating. I
11 mean, they're a public power entity. They
12 operate in a similar structure even to the
13 retail companies except for the fact that they
14 have irrigation. They have --
15 BOARD MEMBER REIDA: So let
16 me --
17 THE WITNESS: -- all different
18 elements.
19 BOARD MEMBER REIDA: Let me
20 narrow -- let me narrow the scope. Are you
21 familiar with how they set their demand
22 charges?
23 THE WITNESS: I am not -- I've
24 never seen any of the power contracts on how
25 they set the demand charges.

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1 And it's, like, once the merger is
2 effective and the new board votes to approve
3 things, whether it's how do we allocate the
4 costs, how do we, you know, just deal with a
5 number of different matters, all of the service
6 company stuff, I mean, there's going to a lot
7 of things -- there's a lot of work that has to
8 get done between now and when the effective
9 date will be. I know that from personal
10 experience.
11 But it's -- you know, without -- without
12 knowing that, it's hard -- very -- it's
13 impossible to say what the impacts are of some
14 of these elements and how will that impact the
15 customers of Central in terms of any revenue or
16 expenses.
17 HEARING OFFICER TEXEL: So is
18 that you don't -- it's kind of speculative
19 whether it would be good or bad?
20 THE WITNESS: Well, not having
21 all of these terms defined and clear is really
22 one of do I have a meeting of the minds at the
23 board level around this transaction if I have
24 all of these significant terms that have not
25 been addressed.

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1 But my -- I heard -- but this is not
2 definitive -- that you kind of measure the
3 demand annually, you know, look at this -- the
4 contract and then the next year is -- they
5 adjust some of the billings under those
6 contracts based on that demand from the prior
7 year.
8 I don't know definitively if that's
9 correct. But I've heard something along those
10 lines.
11 BOARD MEMBER REIDA: So let me
12 just -- I've -- I have not seen NPPD's. I'm
13 familiar with other utilities. But typically
14 they run the demand, is what they call the
15 ratchet. What you're saying is, once you set
16 that demand, it's good for a year period or
17 some extended period?
18 THE WITNESS: I think that's a
19 common term in a lot of them.
20 But, you know -- and I -- I've heard that
21 that's -- but someone at Dawson really is the
22 expert that would know that.
23 HEARING OFFICER TEXEL: You
24 don't know from personal knowledge?
25 THE WITNESS: But I don't know

<p style="text-align: right;">Page 910</p> <p>1 from personal experience. I've never reviewed 2 the contracts between NPPD and any of the other 3 utilities on how they're billing them Purchase 4 Power Contracts -- purchase power costs. 5 And none of that was shared in any of the 6 details that I've seen in this transaction. 7 BOARD MEMBER REIDA: Well, 8 here's -- here's my question -- and I don't 9 know whether you can answer or not, but 10 yesterday the GM for Dawson had indicated that 11 part of the flexibility for this combination 12 would be that they would not necessarily take 13 the generation from Central and use it to 14 offset -- my guess it's, like, 20 megawatts of 15 demand on Dawson's, which is where -- my 16 understanding is that's where the big gain is, 17 that they're going to reduce their demand 18 charge by 20 megawatts on NPPD's -- for Dawson 19 for their wholesale supply. 20 So if -- what she had indicated is, well, 21 if the market is such that it's better to go 22 and just sell it out on the market and let 23 Dawson go and, you know, basically go 20 24 megawatts high on their demand charge, was that 25 reasonable that then they would be setting that</p>	<p style="text-align: right;">Page 911</p> <p>1 demand for a whole year, that they had 2 basically -- if they would sell it out and not 3 use it to offset the demand on Dawson's system, 4 that then for a whole year, they basically have 5 lost all their potential savings? 6 THE WITNESS: Well, I guess when 7 I heard her state that, my assumption was that 8 if power markets change significantly, all of a 9 sudden the wholesale market was going to 10 provide an opportunity where I could sell power 11 at a significantly higher price than what I'm 12 seeing today or maybe they were seeing in any 13 of the existing RFP responses, that that's 14 always an option is you could sell power on the 15 wholesale market instead of using it to serve 16 your retail load. That's how I interpreted her 17 response. 18 BOARD MEMBER REIDA: But if they 19 did that, then they would be setting a new 20 demand for Dawson? If they weren't using that 21 to offset the demand for Dawson and they set a 22 new 20-megawatt demand, doesn't -- by selling 23 it on the open market rather than providing it 24 to Dawson, doesn't -- 25 THE WITNESS: You can't --</p>
<p style="text-align: right;">Page 912</p> <p>1 BOARD MEMBER REIDA: -- that 2 basically lose their savings for a year? 3 THE WITNESS: Yeah, you wouldn't 4 be able to double dip by achieving both of 5 them. You've either got to do -- use it 6 internally, try to get the savings from the 7 lower NPPD costs through demand charges, or 8 sell it on the wholesale market or -- unless 9 there's an ability to use it during just the 10 peak months. 11 And I don't know. But could you use it 12 during just June, July, August, reduce your 13 peaks, sell it off during the other months of 14 the year? I -- I mean, it's possible, I would 15 think. 16 BOARD MEMBER REIDA: But -- 17 okay. That -- that was just a comment. So 18 that was just a thought. 19 What you're saying is they wouldn't use it 20 where it was real high demand period, which is 21 probably where the big price would be to sell 22 it on the wholesale market? 23 THE WITNESS: I think that would 24 be correct because that's when not only 25 Dawson's peak is probably almost all of the</p>	<p style="text-align: right;">Page 913</p> <p>1 retail electric utilities in Nebraska are 2 peaking during the summer. 3 BOARD MEMBER REIDA: Okay. 4 Thank you. 5 BY MR. DEGAN: 6 Q. And, Mr. Wendell, will you agree with 7 me that there were no marketing sale of power 8 assumptions included in any of the modeling 9 that was done by PSE? 10 A. Yeah, no, I don't believe there were 11 any, no. 12 Q. I think there's a reference that 13 there may be future or other benefits at some 14 point in the future, but they didn't actually 15 run any modeling based on an ability to sell 16 power into market -- markets? 17 A. Exactly what Chairman Reida was 18 referencing. 19 Q. Exactly. 20 A. I didn't see any of that, no. 21 Q. Now, the cost savings that is part of 22 the findings in the PSE report is strictly 23 limited to the cost avoided between the cost of 24 buying from NPPD versus running the unit as a 25 cost unit for native load?</p>

<p style="text-align: right;">Page 914</p> <p>1 A. Yeah. Selling wholesale or using it 2 for your native load. 3 Q. Now, counsel asked you a question 4 along the lines of the problem that you have -- 5 well, strike that. 6 To the extent that there are savings 7 with -- for this 20 megawatts at Jeffrey, that 8 could also be accomplished by a PPA; correct? 9 A. That's right. 10 Q. As opposed to a merger? 11 A. Yes. 12 Q. And counsel asked you if the problem 13 that you had with the PPA option is you don't 14 like the price. Is that the basis for the 15 reason you don't prefer a merger over a PPA? 16 A. Well, the merger contemplates putting 17 these two entities all the way together. And 18 in reality, alls we can do is use one 19 20-megawatt unit. Because of the contract with 20 NPPD, I'm limited to just essentially using the 21 Jeffrey to help serve the native load of 22 Dawson. 23 And so that means, you know, of my three 24 hydro units, two-thirds is -- nothing's 25 changing. It's there to serve Central before.</p>	<p style="text-align: right;">Page 915</p> <p>1 And it's there afterwards. And, you know, 2 there's going to be, you know, a lot of work to 3 figure out, what will be the value down the 4 road, we don't know. 5 But I don't know that I would want to give 6 that up at this point in time. And that's why 7 I believe a PPA is the simplest and it avoids a 8 whole bunch of other issues to -- you know -- 9 to, you know, achieve -- you know, both 10 entities have been working together on this 11 merger. It can achieve the lion's share of the 12 savings if they would -- if they put -- you 13 know, put their heads together and make that 14 happen. 15 Q. If you get a PPA with a price you 16 don't like, it is temporary; right? It's for 17 the life of the agreement? 18 A. So you're talking about the RFP with 19 other customers and whatever else? 20 Q. I'm saying if you have to take a PPA 21 price that's not as attractive as you would 22 like it to be, you only have to take that price 23 for the term of the contract? 24 A. That's correct. 25 Q. It would eventually --</p>
<p style="text-align: right;">Page 916</p> <p>1 A. The term of the contract is key. 2 And, you know, PPAs are done with all kinds of 3 terms, especially on, I would think, older 4 units that been around a long time. 5 And, you know, I don't think anyone's 6 going to want to do a contract longer than the 7 remaining FERC license but -- 8 Q. But a consolidation is permanent; 9 right? 10 A. Consolidation is -- well, mergers are 11 permanent. 12 In this case here, what's being asked for 13 is to dissolve Dawson. You're going to -- you 14 know, that's another thing that still has to 15 happen is, you know, we talked about that we 16 don't know the answer to it yet, are you going 17 to use Central's investments to pay off some of 18 that debt? Are you going to issue more bonds? 19 They're alluding that it's going to be the 20 bonds. 21 But it's -- it's not like a marriage that 22 can be -- you know, you can just have a divorce 23 and it's all done. This -- it's a permanent. 24 It's -- you know, it's going to -- there's no 25 unwinding it after you -- you've done this.</p>	<p style="text-align: right;">Page 917</p> <p>1 Q. Okay. Handing you what's been marked 2 as Exhibit 62, do you identify this document? 3 A. This is the report that I prepared 4 that summarized my opinions based on the work 5 that I've been engaged to do. 6 Q. And does that report reflect the work 7 that you did and the conclusions that you 8 reached? 9 A. Yes. 10 Hang on a second here. You still have a 11 copy where it has some yellow highlights on it. 12 Q. Oh. 13 A. Which is inconsistent with what you 14 gave me on Exhibit 56. 15 Q. I gave you the -- I gave you the 16 wrong document. 17 A. Okay. 18 Q. Well, this is -- 19 A. Trying to trick me? 20 Q. No. That's the original. This is a 21 copy. But the Exhibit 62 that you have has the 22 original spreadsheet. 23 A. Okay. Well, this one that's on here 24 still has yellow highlights on it. So can I 25 rip it off?</p>

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1 Q. No. That was what was submitted with
2 your report.
3 A. Oh, this was what was submitted. And
4 then we're just saying that the final one that
5 was also submitted, it updates this one.
6 Q. Okay. So let's take it one step at a
7 time.
8 A. Sorry. Yes.
9 Q. So let's just start with Exhibit 62.
10 It represents the report that you completed
11 with the original spreadsheet that was
12 disclosed to opposing counsel?
13 A. Yes. Prior to my deposition.
14 Q. Okay. And then to clean up the
15 second piece, as you testified to this morning,
16 you subsequently revised your -- the analysis
17 spreadsheet to reflect the depreciation and --
18 that you've talked about during your testimony?
19 A. Yes.
20 Q. Agreed?
21 A. Yes.
22 Q. All right. So does the combination
23 of Exhibit 62 and Exhibit 56 constitute the
24 entirety of the report and documents that you
25 prepared for purposes of this hearing?

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1 HEARING OFFICER TEXEL: All
2 right. I'll accept Exhibit 62.
3 (Exhibit 62 is made a part of
4 this record and may be found
5 separate.)
6 MR. DEGAN: And no further
7 questions.
8 Mr. Wendell, hold on.
9 THE WITNESS: Sorry.
10 HEARING OFFICER TEXEL: See if
11 the board has questions.
12 THE WITNESS: You couldn't tell
13 I was ready to get out of here?
14 HEARING OFFICER TEXEL: Not
15 going to let you escape yet.
16 THE WITNESS: I'm going to stay
17 in this hot room for a little while longer.
18 HEARING OFFICER TEXEL: Does the
19 board -- I believe we aren't going to do
20 recross, so does the board have any questions?
21 I'm seeing all -- Mr. Chairman Reida, do
22 you have any questions before this witness is
23 excused?
24 BOARD MEMBER REIDA: No.
25 HEARING OFFICER TEXEL: Okay.

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1 A. Yes, it does.
2 MR. DEGAN: Offer Exhibit 62.
3 HEARING OFFICER TEXEL: I
4 believe that's the one that hasn't been put
5 into evidence. So --
6 MR. JARECKE: And just one
7 clarification, Counsel. With this
8 clarification, I believe I'll have no
9 objection.
10 The last sentence of the report is it --
11 it states, quite literally, my findings, my
12 conclusion, et cetera. I just want to clarify
13 that those are Mr. Wendell's conclusions as a
14 Central customer?
15 MR. DEGAN: Fair point, Counsel.
16 So let me lay some foundation for that.
17 BY MR. DEGAN:
18 Q. Mr. Wendell, is -- the conclusions
19 that are stated in your report, are they based
20 both on your position as a Central customer, as
21 well as a witness that was retained for
22 purposes of this hearing?
23 A. Yes. Both positions, yes.
24 MR. JARECKE: Okay. No
25 objection.

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1 BOARD MEMBER REIDA: I'm good.
2 HEARING OFFICER TEXEL: All
3 right.
4 (An off-the-record discussion was held.)
5 HEARING OFFICER TEXEL: All
6 right. Your next witness.
7 MR. DEGAN: Thank you. Call
8 Gary Robison.
9 HEARING OFFICER TEXEL: Okay.
10 Mr. -- is it Robinson?
11 THE WITNESS: Robison.
12 HEARING OFFICER TEXEL: Robison,
13 I'm sorry. Okay.
14 GARY ROBISON,
15 Called as a witness on behalf of Protestants,
16 being first duly sworn, was examined and
17 testified as follows:
18 HEARING OFFICER TEXEL: Okay.
19 You know the routine, but if you could spell
20 your name and give your address. You don't
21 have to stand.
22 THE WITNESS: Gary Robison,
23 G-A-R-Y, R-O-B-I-S-O-N.
24 HEARING OFFICER TEXEL: And can
25 you give address, too.

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1 THE WITNESS: 10316 738 Road,
2 Bertrand, Nebraska.
3 HEARING OFFICER TEXEL: Thank
4 you.
5 DIRECT EXAMINATION
6 BY MR. DEGAN:
7 Q. Good afternoon, Mr. Robison. Where
8 do you currently reside?
9 A. Bertrand, rural Bertrand, Nebraska.
10 Q. And which county is Bertrand located
11 in?
12 A. Phelps.
13 Q. And have you been present for all of
14 the testimony that has been elicited during
15 this hearing?
16 A. Yes, I have.
17 HEARING OFFICER TEXEL: Not just
18 today but the previous two days?
19 THE WITNESS: The whole time. I
20 watched the first coupled hours on Zoom.
21 HEARING OFFICER TEXEL: Okay.
22 BY MR. DEGAN:
23 Q. And, Mr. Robison, have you heard some
24 testimony regarding the concept of the
25 Tri County -- Tri County region?

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1 acres that's not irrigated.
2 Q. Okay. And -- and when I say
3 irrigation, are we talking both surface water
4 irrigation and ground -- groundwater?
5 A. Yes.
6 Q. And are you a Central customer?
7 A. Yes.
8 Q. And how long have you been a Central
9 customer?
10 A. The whole time.
11 Q. Okay. And, Mr. Robison, to clarify
12 for the board, you're testifying here in your
13 own right as a resident?
14 A. Yes.
15 Q. And in addition to that, are you
16 testifying here today as an officer of Citizens
17 Against the Merger?
18 A. Yes. Citizens Opposed to the Merger.
19 Q. Opposed to the Merger. I apologize.
20 And is that a legal entity?
21 A. Yes.
22 Q. Is it -- do you know, is it a
23 corporation? Is it a partnership?
24 A. It's a corporation that we formed.
25 Q. And when was Citizens formed?

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1 A. Yes.
2 Q. And which counties does the
3 Tri County region comprise?
4 A. Be Gosper, Phelps and Kearney
5 Counties.
6 Q. Okay. So you are a resident of the
7 Tri County area?
8 A. Yes.
9 Q. And what's your current occupation?
10 A. We farm.
11 Q. Okay.
12 A. And we ranch.
13 Q. And how long have you been in -- been
14 farming?
15 A. Forty-five years.
16 Q. And do you own farmland?
17 A. Yes.
18 Q. How many acres are you farming? And
19 I'm asking for land you own --
20 A. Just --
21 Q. -- land you rent?
22 A. Yeah, about 1,800 acres.
23 Q. And what portion of that is
24 irrigated?
25 A. Almost all of it. Maybe, like, 150

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1 A. I believe November 4th.
2 Q. And what position do you hold?
3 A. President.
4 HEARING OFFICER TEXEL: So it
5 was formed November 4th of 2022?
6 THE WITNESS: 2022, yes.
7 BY MR. DEGAN:
8 Q. What was the purpose of forming
9 Citizens?
10 A. To oppose the merger.
11 Q. Well, let me go back from November
12 4th. And when did you first become aware that
13 there was a potential or discussion about a
14 merger between Central and Dawson?
15 A. Probably the two-plus years ago.
16 Early on, we could follow it in the
17 newspaper. But then during the COVID thing,
18 the newspaper deal got pretty sketchy.
19 Q. At some point, did the proposed
20 merger become a concern for you?
21 A. Yes.
22 Q. Do you recall roughly when that was?
23 A. The first week of October.
24 Q. And what occurred in the first week
25 of October that -- well --

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1 HEARING OFFICER TEXEL: Let
2 me --
3 MR. DEGAN: Go ahead.
4 HEARING OFFICER TEXEL: If you
5 can rethink the question --
6 THE WITNESS: 2022.
7 HEARING OFFICER TEXEL: Yeah,
8 I'm going to -- if you could -- when you give a
9 date, if you could give the year. I'm going to
10 assume it's 2022 --
11 THE WITNESS: Yeah.
12 HEARING OFFICER TEXEL: -- unless
13 you say different. But just to make sure,
14 let's put the date in -- the year in. I'm
15 sorry.
16 THE WITNESS: October 2022.
17 HEARING OFFICER TEXEL: Thank
18 you.
19 BY MR. DEGAN:
20 Q. And, actually, let me back up.
21 When you first heard about a potential
22 merger, what was your initial thought?
23 A. Initially, our thoughts were it
24 probably didn't make sense because we didn't do
25 the same thing, you know.

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1 A. Oh, yes, yes.
2 Q. Okay.
3 A. I feel like we've been partners. You
4 know, as we -- it's been alluded to about all
5 the pivot development. Central was actually --
6 drove that to a degree early on, you know,
7 helping give us incentives when we put pivots
8 on the ground and, you know, save the water,
9 which was good for both of us.
10 Yeah, I would feel confident to say
11 Central and myself and all of us have had a
12 good relationship.
13 Q. And has Central been impactful to the
14 Tri County area?
15 A. That would be a understatement for
16 sure.
17 Q. In a positive way or negative way?
18 A. In a positive way, yeah.
19 Q. And they've been operating for
20 80-some years now?
21 A. 80-some years, yeah.
22 Q. Just briefly, can you describe the
23 importance of water in your farming operations?
24 A. Well, let's just go to this year,
25 which was a dry year, probably almost the

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1 They -- they -- we do operate some land in
2 Dawson County that's under Dawson Public Power.
3 And that's what they are is a power entity. We
4 buy power to run our well over there.
5 On our side is just water. And, yeah, we
6 do have the generation. But that didn't seem
7 like that was -- would be enough to even drive
8 this thing.
9 Q. Okay. So you were puzzled; is that
10 fair?
11 A. I was -- we were puzzled, yes.
12 Q. But did you have a concern initially?
13 Did you have a -- I mean, were you watching
14 this closely? Were you --
15 A. We were watching it from afar. I did
16 have a friend that called me one day. And he
17 says we need to be more aware of this probably
18 about a year out.
19 And I told him basically what I just told
20 you is this will never happen, it's just like
21 two different of a thing.
22 Q. Okay. Generally speaking, what's --
23 what has your experience been with Central in
24 terms of how they manage their system? Have
25 you been happy with it?

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1 driest year that I've farmed in. We've had
2 droughts. But this year was literally dry the
3 whole season, about 40 percent of our normal
4 rainfall.
5 Our dryland production this year was 80
6 bushel per acre.
7 Our irrigated production was a little over
8 250.
9 So just that being said, that's a
10 thousand-plus dollars an acre, you know,
11 difference.
12 Q. Do you ascribe that because of the
13 difference of having irrigation versus not
14 having irrigation?
15 A. Well, irrigation versus not having
16 irrigation.
17 And then, you know, we -- we farm ground
18 that's not surface water, that's pumping --
19 pumping water that we pump from the ground.
20 And our -- we pump from a low -- lower level --
21 or a higher level, I guess is the -- we pump
22 less because of the mound of water that's built
23 up.
24 We also have a farming interest in north
25 Texas where there are no restrictions on water.

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1 There's no recharge. And without recharge, the
2 Ogallala -- the Ogallala aquifer is declining
3 really fast.
4 So Central has impacted us both with
5 surface water and it's been referred to here as
6 the mound or the water that's leached down and
7 is sitting underneath us to pump.
8 Q. And I take it that it's impacted in a
9 positive direction, both for groundwater and
10 surface water?
11 A. Absolutely. Both.
12 Q. Okay. And I also want to clarify, I
13 believe your land has some areas that are
14 surface water and groundwater irrigated, some
15 is surface water only and some groundwater
16 only? Do I have that right?
17 A. That's right, yes.
18 Q. Okay. You mentioned that you have
19 some land over in Dawson's electric service
20 territory. Who's the electric provider for the
21 majority of your electric power units?
22 A. That would be Dawson Public Power.
23 Q. And it is for the majority of your
24 land?
25 A. Yeah, yeah.

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1 Central's board minutes of what the board
2 governance and the subdivisions were going to
3 be.
4 So we looked on the website. There was
5 nothing there, you know, about that.
6 So, once again, asked Bob. And then
7 there's going to be some public meetings.
8 Those public meetings started October 12th.
9 We went to the meetings. And, you know,
10 they were set up at, like, a set of tables
11 around a room.
12 And Gwen and Devin was at one of the
13 tables. And they can probably remember that
14 there was three or four of us there. And we
15 questioned them for -- the meetings were set up
16 for two-hour increments. And I'm going to say
17 we tied up their table for most of an hour
18 asking questions, and one of them being, you
19 know, how they set up the subdivisions.
20 We had other questions, one of which was,
21 you know, the -- what's going to happen to the
22 power created by the water going through the
23 generators. And that was going to be, you
24 know, going -- part of it was going to go into
25 the new company because of this 10 percent

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1 Q. All right. Well, let's skip forward
2 to the event that occurred in October of 2022
3 that began to give you more significant
4 concerns about this proposed merger.
5 A. Okay. What -- the first thing we
6 heard about was that they had announced that
7 how the board governance and the subdivisions
8 were going to be. So I went and found my local
9 board member, Bob Dahlgren, Central board
10 member.
11 Q. Uh-huh.
12 A. Bob meets every morning at the six
13 o'clock in the brain trust in Bertrand at the
14 convenience store, so we can slip up there and
15 get truthful knowledge.
16 And so I -- as soon as I found out, I went
17 and asked Bob. And he said, yeah, that's been
18 released.
19 And so that -- that gave us, you know,
20 curiosity. You know, we wanted to better
21 understand it. So we were hoping to have some
22 interaction with -- with Central.
23 And so they had actually -- October 3rd is
24 the first time we can see where it was
25 published in the minutes of Dawson -- or of

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1 allotment that was allowed by NPPD.
2 And I would say the meeting was
3 informational. I think it's that map there by
4 that wall that was on the wall and showed the
5 subdivisions. So that would have been our
6 first exposure of actually seeing it in public
7 October 12th. And we knew the vote was coming
8 up --
9 Q. Okay.
10 A. -- October 24th, or we found out then
11 that the vote was come up October 24th.
12 Q. At that time, were there any
13 directors on Central's board that represented a
14 power company or an interest other than
15 directly devoted to water?
16 A. Well, in our -- in our Tri County
17 area, there's -- there was nine on the old --
18 on the board now that -- of Central now.
19 There's nine directors in the three county area
20 that's called the Tri County area.
21 And then there's three more -- or two more
22 and one at large. And so --
23 Q. Well, I --
24 A. -- I would say, to my knowledge, none
25 of those people are -- they were on the board

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1 because they evidently wanted to be on a board
2 that managed water. It wouldn't have been
3 any -- any reason other than that.
4 Q. And I guess that was the point I was
5 getting at is that currently at this time,
6 Central's being managed solely for management
7 of water and the people who benefit from the
8 water; isn't that true?
9 A. That's absolutely true.
10 Q. And I take it when the change in
11 governance caused you to have some concerns, is
12 that the ultimate issue that you have is the
13 fact that now management will be shared between
14 water users and electricity users?
15 A. I think -- I think our -- our mission
16 statement, which we don't have, but the whole
17 time would be, you know, the change in
18 concentration of 9 out of the 12 being from the
19 Tri County area currently to going down to 6
20 out of the Tri County area versus the 14, two
21 of which in the Dawson area are also -- or in
22 the Gosper County are also Dawson and were
23 Dawson customers when they took the vote.
24 Q. Uh-huh.
25 A. And, yes, there are two out at

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1 not have to take into consideration the
2 concerns or needs or benefits of the
3 electricity customers?
4 A. Exactly.
5 Q. Which will change if the
6 consolidation goes through?
7 A. Yes.
8 Q. Okay. So the board eventually --
9 well, let me back up.
10 Did you -- I'm going to strike that.
11 The board approved the merger in a --
12 Central's board and Dawson's boards each
13 respectively approved the merger in a joint
14 meeting in October?
15 A. Yes, they did. And there was about
16 10 of us that spoke at that meeting. And all
17 we asked was just a 90-day, you know -- since
18 we had just found out about the governance
19 two -- less than two weeks before the vote, we
20 just asked -- all of us asked for a 90-day
21 extension just to get our head around what was
22 going on in the public input of the meeting.
23 Q. Okay. But that was denied; right?
24 A. Yeah, that was denied.
25 Q. So the two boards in a joint meeting

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1 Ogallala. But I think there could be some idea
2 of, you know, they would like the lake full and
3 we might want the lake lower. So, you know, I
4 mean, just to sit around and say we think
5 it's -- there's some way it could magically
6 work out, I don't know. There's just a lot of
7 different interest now. Before it was just
8 water.
9 Q. Well, your board currently doesn't
10 have to worry about how any of its decisions
11 will affect electricity customers; is that
12 true?
13 A. That's -- that's true.
14 HEARING OFFICER TEXEL: You say
15 your board. Can you clarify --
16 THE WITNESS: Central, Central.
17 HEARING OFFICER TEXEL: --Dawson
18 or the Citizens Opposed to the Merger board?
19 MR. DEGAN: Yes. Thank you.
20 Fair point.
21 BY MR. DEGAN:
22 Q. So let me restate my question.
23 Your concerns regarding Central's
24 potential merger with Dawson are -- revolve
25 around the fact that currently the board does

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1 did vote to move -- to consolidate; correct?
2 A. They approved the Plan of
3 Consolidation.
4 Q. The Plan of Consolidation?
5 A. Yeah.
6 Q. Okay. So was it at that time you
7 decided to form Citizens?
8 A. Actually, a couple of us had retained
9 counsel and tried to get an injunction to stop
10 the vote.
11 State statutes would indicate that if we
12 would have done that, the two companies could
13 have asked that a bond be held during the
14 timeframe of the -- you know, till the
15 injunction was straightened out. And our
16 attorney felt that that could be -- they could
17 make that quite harmful to us. So he
18 recommended that we didn't do that.
19 So we retained some counsel on the 18th of
20 October.
21 Then there was a couple factions. You
22 know, there was a group that was thinking Power
23 Review Board, and a couple of us were thinking
24 procedure of how we got here. And so we, over
25 the next couple of weeks, just ended up melding

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1 and getting in a room. And this is what
2 resulted.

3 Q. Okay. And how many -- how many
4 members of Citizens are there currently?

5 A. Over a hundred.

6 Q. Do you have any idea how much -- how
7 many irrigated acres your group represents?

8 A. I don't know if we've ever added up
9 that way. But I'd say it's a big chunk of --
10 especially Phelps County and Kearney County,
11 which the acres is about 108,000 acres of
12 surface water.

13 There's a couple little groups in Dawson
14 and maybe Lincoln County. But the majority of
15 it got -- Phelps County has over 60,000 of the
16 acres.

17 I'm not sure how the other splits out but
18 about 20 some and 30 some or something like
19 that. So most of our -- majority of our people
20 are from Phelps County just because of that
21 split.

22 Q. Okay. And are most of the surface
23 water irrigation customers of Central in
24 Phelps, Kearney and Gosper County?

25 A. Yes.

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1 A. You know --

2 Q. Did Citizens hold a public meeting?

3 A. We held one public meeting
4 specifically advertised and everything for a
5 public meeting. We had several meetings -- we
6 met together weekly.

7 Q. Okay.

8 A. Either Monday or Tuesday mornings.
9 And so what we started doing at the beginning
10 of those meetings was going between Kearney
11 County and Phelps County and, you know, finding
12 a place to meet.

13 And we would have up to 20 -- I think one
14 meeting almost 40 people that just came just to
15 sit around and ask us why are you guys doing
16 this and, you know, what's driving you.

17 Q. And did you have a big public meeting
18 that you advertised?

19 A. We had a big public meeting that we
20 advertised.

21 Q. And when was that?

22 A. I think it was January 25th. We had
23 it. And we had this massive snowstorm. So we
24 had to kick it down the road a week. And I
25 think the final date that we had it was January

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1 Q. I mean, more than 90 percent?

2 A. I'm going to say yeah. I think it
3 was alluded to yesterday as about 5,000 acres
4 that's not in those three areas.

5 Q. And -- and I neglected to ask you,
6 but pursuant to your Water Service Agreement
7 with Central, you pay Central for water
8 deliveries; correct?

9 A. We pay Central for water delivery.

10 Q. Okay. And would you -- would you
11 agree that Central has done a good job of
12 keeping water rates low?

13 A. I would say better than a good job.
14 I would say, you know, in the last few years,
15 all of our inputs have gone up by 30 percent in
16 the last two years. And Central hasn't raised
17 the rates either year.

18 Q. Okay. So this protest was filed.
19 And these proceedings began. Did -- did
20 Central hold a public meeting in order to get
21 the word out on what Citizens was attempting to
22 accomplish?

23 A. No, I don't think so. I don't think
24 a public meeting at all.

25 Q. Okay.

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1 25th.

2 HEARING OFFICER TEXEL: That
3 would have been 2023?

4 THE WITNESS: 2022, yeah.

5 HEARING OFFICER TEXEL: '23?

6 THE WITNESS: '23, excuse me,
7 yeah, there you go.

8 BY MR. DEGAN:

9 Q. And approximately how many people
10 attended that large public meeting?

11 A. Well, we set up 160 chairs. And
12 there was about 20 people that were standing in
13 the back. I'm going to say they could have all
14 sat down. It would have been pretty full at
15 that point.

16 Q. And was -- representatives of
17 Central, were they invited and allowed to
18 speak?

19 A. We didn't go that way. We felt that
20 they had had plenty of time or they could
21 handle it their way. A couple board members
22 did come. Some staff members came.

23 We did question and answer, you know. We
24 did -- we gave what we called the
25 disadvantages -- disadvantages of the merger,

<p style="text-align: right;">Page 942</p> <p>1 you know, like, six points that we felt that 2 weren't -- that were disadvantages to Central, 3 that, you know, had no advantage, we really 4 can't find an advantage to the thing. 5 So we presented that. We did questions 6 and answers. And we didn't have lunch. We got 7 160 farmers in a room, and we didn't supply 8 lunch. That's my testimony. 9 Q. Surprised a fight didn't break out. 10 Okay. But it was a civil discussion even 11 between the representatives of Central that 12 were there? 13 A. Yeah. 14 Q. Because it's your position as you sit 15 here, both as an individual and as president of 16 your group, that you like Central and you want 17 Central to go on in the form that it's in? 18 A. We like Central. We would like it to 19 stay as it is. And we're going to be -- we're 20 obviously doing business together, as we speak. 21 Q. What proportion of your members are 22 Central customers? I think I talked in acres. 23 But specifically would have contracts? 24 A. It's way -- it's way over 90 percent. 25 There are -- there are some stakeholders,</p>	<p style="text-align: right;">Page 943</p> <p>1 you know, like -- there's some banks. There's 2 some -- couple irrigation companies, you know. 3 Some seed companies, fertilizer companies, 4 people that have a stake in irrigated 5 agriculture also. 6 Q. Is Ed Schrock one of your directors? 7 A. That would be Former State Senator Ed 8 Schrock. 9 Q. Former Senator -- 10 A. Yes. 11 Q. That's my bad. And he's in the room? 12 A. He's in the room. Might be asleep. 13 Q. And he's a current member of NPPD's 14 board? 15 A. And he's a current member of NPPD's 16 board. 17 Q. And what are your -- your -- of the 18 six points -- we don't have to go through all 19 of them. But as you sit here today, first, 20 let's -- let's go with COM's or Citizens' 21 principal objections. 22 A. Well, the first one we call loss of 23 control, which just goes to the fact that 75 24 percent of the current board is living in 25 Central's footprint now, Tri County's</p>
<p style="text-align: right;">Page 944</p> <p>1 footprint. 2 Q. Uh-huh. 3 A. And we go to, like, 43 percent in 4 Tri County's footprint. 5 The second one is the board controls the 6 Water Service Agreement. The connection 7 between us as farmers and Central is the Water 8 Service Agreement. 9 The Water Service Agreement, it states 10 annually that Central sets the price of water. 11 They also forecast and determine if they can 12 give us the full amount of allotment of water. 13 They determine what level the lake's going 14 to be before they -- when they have to say, no, 15 Guys, we've got to slow down. 16 And so we understand how important that 17 board is to us as -- as water users. 18 Therefore, our worry about loss of -- I know 19 it's still local control, but it's less -- it's 20 more local the way it is than the way it's 21 projected to be. 22 Q. And it's also having to balance 23 the -- two different ratepayers? You've got 24 electric and water; right? 25 A. So that was one of our points is</p>	<p style="text-align: right;">Page 945</p> <p>1 70 -- Dawson has \$77 million in revenue. 2 Central has around 20 million in revenue. As 3 you can see, we've built up \$90 million. And a 4 big chunk of that's been the last 20 years. So 5 we make \$5 million a year average, give or 6 take. 7 I'm not in any way implying that Dawson's 8 debt is out of a boundary of what debt a person 9 can carry or a business can carry. It's just 10 the way they do business. 11 But the way we look at it as farmers, 12 Dawson's like an elevator, they buy corn at a 13 price, sell corn at a price and hope that they 14 did their math right so they cover their cost. 15 Central has been fortunate enough that 16 they have the revenue from the hydros that's 17 pouring into this account that's building up a 18 reserve that is sitting there -- like, right 19 now there's a proposal to build a \$20 million 20 new siphon from Johnson Lake over to Elwood 21 Lake. 22 I'd go hat in hand into the bank if I had 23 to borrow \$20 million, and they just call the 24 guys up and say let's get going, you know. 25 So the money has built up. But that's a</p>

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1 good thing.
2 We've got FERC relicensing coming. That's
3 going to -- it got carried away last time.
4 Hopefully it won't be that bad this time. But,
5 you know, we like that reserve building up.
6 Q. Did you attend a meeting of the
7 Tri-Basin NRD in -- on February 8th?
8 A. Yes, I did.
9 Q. What was the purpose of that meeting?
10 A. Well, they -- the Tri-Basin called a
11 special meeting. And I think the main order of
12 business was discuss their position on the
13 merger.
14 Q. Okay. So Tri-Basin called a special
15 meeting of its directors to address whether the
16 NRD was going to take a position on the merger?
17 A. Yes.
18 Q. Okay. And you were present for that
19 meeting?
20 A. Yes.
21 Q. And -- well, let me start with who
22 was present in addition to the board?
23 A. Well, the board of directors that --
24 the NRD board of directors, their manager.
25 There was four of us from our board of

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1 A. Yeah. They had -- they had -- I
2 think they had asked Devin and Gwen to come and
3 talk to them.
4 When I found out about the meeting, I
5 called and asked if we could be on the agenda.
6 And it was -- we just found out the meeting a
7 couple of days beforehand. So they said, well,
8 you know, we're probably not going to get you
9 on the agenda but you can sure use the open --
10 the input part.
11 So -- but when we got there, they ran the
12 meeting, you know, kind of like a town hall. I
13 mean, they let Devin give a statement. And I
14 gave a short -- mostly just a, you know, here
15 you are, Board Members, and this is what local
16 control looks like right here, you know.
17 And they asked questions. They asked me
18 if I could -- you know, wanted to respond to
19 any of the responses. And then they took their
20 vote.
21 Q. Okay. Before we get to the vote, so
22 I take it Citizens and yourself were there to
23 advocate against the merger; is that right?
24 A. We just wanted to be there to make
25 sure that we weren't misrepresented or -- yeah,

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1 directors.
2 Q. Meaning -- meaning Citizens?
3 A. Citizens Opposed. There was four of
4 us, Gwen and Devin.
5 Q. From Dawson?
6 A. From -- Gwen from Dawson. Devin from
7 Central.
8 I think three staff members from Central.
9 I might have missed somebody. But that would
10 be about.
11 Q. Well, was there any directors present
12 from either?
13 A. Oh, there was some directors.
14 Central had Dave Olson -- Dave Nelson from
15 Minden. And Dudley Nelson. I think Dudley's
16 from maybe Minden or Axtell.
17 Q. And they're -- they're both Central
18 directors; right?
19 A. Central directors, yes.
20 Q. Were there any directors there from
21 Dawson?
22 A. I don't believe so.
23 Q. Okay. And were -- was the Citizens
24 Group allowed to make a presentation to the
25 NRD?

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1 that we were --
2 Q. Okay.
3 A. Yeah.
4 Q. All right. And was Mr. Brundage
5 making a -- the case that -- what? That they
6 shouldn't take a vote or if they took a vote --
7 A. No, he never -- he never implied to
8 them in any way that they shouldn't take a
9 vote.
10 Q. Okay.
11 A. He gave a sales pitch for the
12 project.
13 Q. Okay. So there was a vote; is that
14 right?
15 A. There was a vote.
16 Q. And how did the vote come out?
17 A. It was seven/five to support a motion
18 to support Citizens Opposing the Merger.
19 And the reasoning was -- part of the --
20 part of the -- part of the motion was they felt
21 in their mission statement -- their mission --
22 Tri-Basin NRD is the NRD that sits exactly on
23 top of Central. When I say Central, the
24 Tri County area. And so that's just their job
25 is to monitor what's going on with the

<p style="text-align: right;">Page 950</p> <p>1 groundwater. 2 And part of their mission statement is to 3 look after the groundwater quantity and 4 quality. 5 So they felt in the -- in the motion that 6 they made, they felt like it was in the best 7 interest of the NRD to try to, once again, keep 8 that local control to match up with their -- 9 their district is -- the Tri-Basin NRD is -- 10 their electorate -- their directors are elected 11 from an area that's exactly the same as 12 Central's footprint. 13 Q. Okay. And the name Tri-Basin, what 14 does that refer to? 15 A. Well, I think all the other NRDs in 16 the state are aligned with a river basin, like, 17 the Republican or the Central Platte, the Twin 18 Platte. 19 Try -- Tri County is part of the Platte 20 Basin, the Republican Basin and the Little Blue 21 Basin because of that -- that's Central's 22 footprint. So they basically, when they formed 23 it, they -- they put it right there. 24 BOARD MEMBER GOTTSCHALK: Can I 25 ask you a quick question? When you say</p>	<p style="text-align: right;">Page 951</p> <p>1 Central's footprint, are you still just talking 2 about the -- where the majority of the water 3 users are in the Tri County area? 4 THE WITNESS: Where the 90-plus 5 percent of the water is on the Tri County area. 6 BOARD MEMBER GOTTSCHALK: But 7 not the whole footprint of Central? 8 THE WITNESS: Not the whole 9 footprint, yeah. 10 BOARD MEMBER GOTTSCHALK: Okay. 11 Thank you. 12 BY MR. DEGAN: 13 Q. Did Dave Nelson speak during the 14 meeting? 15 A. Yes, Dave did. Director -- Central 16 Director Dave. 17 Q. Okay. Dave Nelson? 18 A. Dave Nelson, yes. 19 Q. What did he say during the meeting? 20 A. He was concerned that we were 21 misrepresenting our side about the -- the loss 22 of directors was one of his points. 23 Second point that he made, which, you 24 know, we've kind of heard through the whole 25 thing is that unless Central did something,</p>
<p style="text-align: right;">Page 952</p> <p>1 they were -- they were financially doomed, they 2 needed to do this or financially they were 3 doomed. 4 Q. Did he say words to the effect that 5 Central needed this merger in order to survive? 6 A. I think that's accurate. I think he 7 even threw out maybe a time limit of how long 8 they could make it. But I think 10 years or 9 something. But, yeah, that was -- 10 Q. Okay. And you have Exhibit 47 in 11 front of you there? 12 A. Yes. 13 Q. Did you receive a letter similar to 14 Exhibit 47? 15 A. Yes, we did. 16 Q. And you -- when -- you alluded to the 17 fact that the statements that Mr. Nelson made 18 during the NRD board meeting were in line with 19 some of the previous communications you'd 20 received from Central? 21 A. Yes. This -- and this document -- 22 this document came -- it's dated October 10th. 23 So we would have probably got it around the 24 12th, which would have matched up with the 25 first meeting that I went to in Holdrege. I</p>	<p style="text-align: right;">Page 953</p> <p>1 think I got this actually in the mail the day I 2 came. 3 I went to the first meeting in the 4 morning. When I came home then -- and I wish I 5 would have had this that morning. I would have 6 quizzed them about it then. 7 But it says, "Absent the merger, Central's 8 long-range financial position is projected to 9 deteriorate before the end of the decade 10 because of decreased revenue from hydro 11 generation." 12 So obviously the next morning, I took this 13 letter up to the brain trust in the morning. 14 And we talked about it with Bob. 15 Now, Bob's background as a member is 60 16 years of banking. He just retired from 60-plus 17 years of being a banker. 18 So as a board member, Bob probably saw 19 everything that was going on through his lens. 20 And he immediately told me, he says, that would 21 be news to me. 22 And he does like this, you know 23 (indicating). He shrugged. He couldn't make 24 heads or tail of how that got in this letter. 25 HEARING OFFICER TEXEL: You said</p>

<p style="text-align: right;">Page 954</p> <p>1 you took to the brain trust. What is that? 2 THE WITNESS: Oh, that's the 3 convenience -- that's the -- 4 HEARING OFFICER TEXEL: Is that 5 what you referred to earlier as -- 6 THE WITNESS: Yeah, the six 7 o'clock in the morning group. 8 HEARING OFFICER TEXEL: Okay. 9 I'd forgotten that. Thanks. 10 THE WITNESS: Yeah. 11 BY MR. DEGAN: 12 Q. Mr. Robison, do you believe that the 13 merger is in the best interest of Central? 14 A. No, I don't. And I -- early on, 15 we -- we've been watching this build up. 16 About eight years ago, I took issue with a 17 project that Central was doing that was 18 projected to cost 75 million. And I'm going to 19 say that was about six or seven years ago. 20 And the reason I took issue with it was 21 because the project was going to cost 75 22 million. And at the time we had exactly 75 23 million in our reserves. And that project 24 didn't transpire. 25 But in that six years, we've built up from</p>	<p style="text-align: right;">Page 955</p> <p>1 75 to 90. And so we're watching that. We see 2 that -- you know, we get the Communicator. And 3 we -- we -- you know, we know what's going on 4 as farmers. 5 And I'm thinking to myself when I -- when 6 I looked at the PSE report and we're going to 7 save 11 million over seven years and we somehow 8 built up in six years -- or -- I might be off 9 on that. Might be eight years. But we went 10 from 75 to 90, I'm, like, we're making more 11 money than that by ourselves, what's going on 12 here, why would we -- why would we join in a 13 merger that -- I understand, you know, if there 14 was some benefit that in the backside of this 15 it came back and we made this investment into 16 something, that's what farmers do. But we 17 can't see it. 18 So I -- I don't feel that this merger is 19 helpful to Central. 20 Q. Do you have concerns as an individual 21 that this merger, depending on all these 22 decisions that have to be made in the future, 23 could end up harming you in the form of higher 24 water rates? 25 A. Yeah.</p>
<p style="text-align: right;">Page 956</p> <p>1 Q. If it's not managed appropriately? 2 A. If it's not managed right or 3 something, you know. Obviously money's going 4 somewhere. 5 I mean, if that was on my farm, I'd be 6 wanting to know why was I making 5 million a 7 year, now I'm going to make -- we're going to 8 split a million a year, however that's split. 9 I don't know for sure. I would be wanting to 10 know -- I wouldn't probably get into that 11 venture for sure. 12 So that's our -- we think like farmers. 13 So at the end of the year, you do a balance 14 sheet. And you measure what just happened last 15 year by the -- that bottom number in the 16 right-hand corner called net worth. 17 And it looks to me like the revenue stream 18 that was building the reserves for Central is 19 now going to be divided between two companies. 20 And it would -- we would have had less angst if 21 the merger agreement -- Plan of 22 Consolidation -- get my terms right -- would 23 have had some hard -- hard written, you know, 24 like, the water is the water, it's not to be 25 negotiated, sold. Anything can happen to the</p>	<p style="text-align: right;">Page 957</p> <p>1 water. 2 The power made by the water is -- certain 3 amount of that revenue is -- there's some 4 formula in the charter, not the bylaws, in the 5 charter is coming back to Central, not a silo 6 inside of a company. 7 I -- we got -- we've got cattle. We've 8 got a fertilizer company. We've got a truck 9 company. We've got a chopping company. And we 10 farm. I understand how silos work, you know. 11 You go into the bank and, well, let's put it 12 over here for today, and then when it comes 13 back -- when you make that payment and this 14 comes in -- that's my worry with silos. 15 Q. Mr. Robison, you're under oath. Be 16 careful. 17 A. They're probably watching at home. 18 Q. Thank you. 19 MR. DEGAN: Your witness. 20 CROSS-EXAMINATION 21 BY MR. BRASHEAR: 22 Q. Mr. Robison, I think you testified 23 earlier Citizens Opposed to the Merger had over 24 a hundred members. Do you have a more specific 25 number than that in mind?</p>

<p style="text-align: right;">Page 958</p> <p>1 A. I think the last number I heard 2 that -- before we left home was 115. 3 Q. 115, approximately? 4 A. Yeah. 5 Q. And how many of those approximately 6 115 members, to the best of your knowledge, are 7 irrigation customers of Central? 8 A. I'm going to say 90 percent. 9 Q. So you think around 95 perhaps? 10 A. Yeah. And I would say then there are 11 probably 10 customers that aren't Central 12 customers that live on the south edge of the 13 counties that are for sure mound water users. 14 Q. And just to be clear, I think you 15 just said 10 customers. I'm assuming you meant 16 10 members? 17 A. Ten members, yes. 18 Q. But they're irrigators? 19 A. They're irrigators. 20 Q. From the mound? 21 A. From the mound, yes. 22 Q. Speaking of the mound, I think you 23 testified Central really benefits both surface 24 water and groundwater -- 25 A. Yes.</p>	<p style="text-align: right;">Page 959</p> <p>1 Q. -- irrigation? 2 A. Yes. 3 Q. It benefits -- you viewed it as you 4 have benefits from Central in both of those 5 areas; is that correct? 6 A. Yes. We have -- probably 30 percent 7 of our farm is, you know, groundwater from the 8 mound. 9 Q. Do you pay Central anything related 10 to your groundwater pumping? 11 A. No. 12 Q. Do you pay Central for your surface 13 water? 14 A. Yes. 15 Q. Mr. Robison, are you -- you're 16 familiar with the Plan of Consolidation? 17 A. Fairly, yeah. I've read it. 18 Q. Generally? 19 A. Generally, yes. 20 Q. You understand that Dawson has -- 21 Dawson Public Power District has debt today? 22 A. I do. Bonded debt. 23 Q. Do you have an understanding of how 24 much debt that might be? 25 A. Does it say that in the merger</p>
<p style="text-align: right;">Page 960</p> <p>1 agreement? I think it's -- I've read around 55 2 million. 3 Q. I would represent to you you're very 4 close so -- 5 A. Okay. 6 Q. So that \$55 million in debt, does 7 that give -- Platte River will assume that 8 debt. Do you understand that -- if the 9 amendments are approved, Central will become 10 Platte River and assume that debt; is that your 11 understanding? 12 A. Yes. 13 Q. Does Platte River assuming that debt 14 cause you any concerns? 15 A. No. Because I would have to assume 16 that whoever loaned Dawson that money would 17 have had fairly a strong idea that they were 18 going to get it back. That's how that works 19 generally. 20 And so if they were doing that before we 21 merged, this is a stronger balance sheet now. 22 Q. Mr. Robison, I would like you to look 23 at Exhibit 30, please. And we'll get that to 24 you. 25 Do you have Exhibit 30 in front of you,</p>	<p style="text-align: right;">Page 961</p> <p>1 sir? 2 A. Yes. 3 Q. Is Exhibit 30 related to an interview 4 that you did with Mike I believe it's Konz of 5 the Kearney Hub in early January? 6 A. Yes. It appears to be. 7 Q. Could I have you turn to the last 8 page of that exhibit, please, sir. 9 A. Yes. 10 Q. I will read -- would you -- I'll read 11 through the last three sentences -- paragraphs. 12 "A merger could be a helpful thing, but let's 13 get that right, Robison said. We feel like 14 there wasn't enough stuff written in the merger 15 agreement. As an example, he said, CNPPID's 16 electrical sales currently subsidize irrigation 17 operations to keep down rates for irrigators. 18 He said, CNPPID's water rights might -- may be 19 safe but the manner in which the water is used 20 could boil over into future disagreements if 21 they don't get attention today. They can take 22 away the water but the new board will decide 23 if -- they can't take" -- 24 HEARING OFFICER TEXEL: They 25 can't --</p>

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1 BY MR. BRASHEAR:
 2 Q. -- "take away the water" --
 3 MR. BRASHEAR: Thank you.
 4 By MR. BRASHEAR:
 5 Q. "They can't take away the water, but
 6 the new board will decide if they make -- if
 7 they'll make electricity or deliver water.
 8 That's what gives us anxiety, Robison said."
 9 Did I read -- once I corrected that word,
 10 did I read that correctly?
 11 A. Yes.
 12 Q. Or accurately?
 13 A. Yes.
 14 Q. I'd like to focus --
 15 HEARING OFFICER TEXEL: I would
 16 have one correction. At the beginning, you
 17 said, "A merger could be a helpful thing but
 18 let's get that right." And it says, "Let's get
 19 it right."
 20 MR. BRASHEAR: Thank you.
 21 HEARING OFFICER TEXEL: I don't
 22 think it matters a lot. But you're talking
 23 about verbatim. So I want to correct that.
 24 MR. BRASHEAR: I appreciate
 25 that.

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1 with regard to the merger, the primary issue
 2 for you if you were asked to rank them?
 3 A. Rank them or one?
 4 Q. Which would be the most important
 5 issue to you?
 6 A. I think it -- most important would be
 7 the -- the -- you know, the lack -- the
 8 reduction of board concentration in our
 9 Tri County area.
 10 Q. And that's important to you because?
 11 A. Because that board was elected to do
 12 water, you know, run a water company.
 13 The new board is going to be elected by
 14 people that are ratepayers and -- excuse me,
 15 and water users. And we just feel like that's
 16 the dilution right there, you know, just the
 17 fact that there's two different ideas about
 18 how what now will be one company will be --
 19 will be being run.
 20 The second thing, which is -- is that --
 21 is that electricity that's produced by the
 22 water through the generators, that that -- that
 23 that revenue is evidently -- from what I can
 24 see in the PSE report, that revenue is being
 25 diluted into the new company in order to --

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1 BY MR. BRASHEAR:
 2 Q. Could we first -- Mr. Robison, would
 3 you agree CNPPID is referring to Central in
 4 that context?
 5 A. Yes.
 6 Q. I'd like to focus you specifically on
 7 your quote at the end, "They can't take away
 8 the water, but the new board will decide if
 9 they'll make electricity or deliver water." Do
 10 you see that quote?
 11 A. Right.
 12 Q. Is that an accurate quote?
 13 A. Well, they can take away the water.
 14 That was discussed earlier.
 15 HEARING OFFICER TEXEL: Well, I
 16 think the question is, is that a correct quote.
 17 Is that what you told the reporter?
 18 THE WITNESS: Oh, that's what I
 19 said.
 20 BY MR. BRASHEAR:
 21 Q. That's what you told the reporter?
 22 A. Uh-huh.
 23 Q. Okay. Thank you, sir. I appreciate
 24 that.
 25 Mr. Robison, what is your primary concern

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1 Q. And there doesn't appear to be a
 2 concrete allocation anywhere? Is that your --
 3 A. It's not in the merger -- the Plan of
 4 Consolidation document.
 5 And I think that's what I was alluding to
 6 in this statement was if there would have just
 7 been more things written down or we would have
 8 had more time to understand, you know -- the
 9 idea of -- I wouldn't buy a set of cattle on my
 10 neighbor's yard and say, yeah, you know,
 11 there's 100 head more or less, you know. I
 12 would want to know that's the pen of cattle I'm
 13 buying and how we're weighing them, what the
 14 shrink is, what the price is, the delivery
 15 date, are you feeding them in the morning, are
 16 you not feeding them in the morning.
 17 We would write down a lot more stuff over
 18 a pen of cattle than we did here, you know, in
 19 the merger agreement.
 20 Q. Mr. Robison, do you remember many of
 21 us being here in mid December 2022 for a
 22 hearing on standing?
 23 A. Yes, I do.
 24 Q. Were you present that day at the
 25 hearing on standing before the Power Review

<p style="text-align: right;">Page 966</p> <p>1 Board? 2 A. Yes, I was here. 3 Q. Do you recall -- did you have a 4 conversation with Devin Brundage that day? 5 A. Devin caught me out in the hallway, 6 yes. 7 Q. And do you recall Mr. Brundage 8 inviting you to visit with him to perhaps sit 9 down and see if there were things that could be 10 put in the bylaws or elsewhere to address some 11 of your concerns? 12 A. Yes, he made that offer. 13 Q. And did you follow up on that offer 14 with Mr. Brundage? 15 A. At that time, we had counsel. And he 16 recommended that we not do individual 17 negotiations. 18 Plus -- and I think if I -- my recall of 19 what I responded to him was we're not 20 interested in what's going in the bylaws. The 21 things that we're concerned about we want in 22 the charter agreement. 23 I didn't say that to him. I said I just 24 think we're past that, talking about bylaws. 25 Q. But you did not at any point after</p>	<p style="text-align: right;">Page 967</p> <p>1 that visit with him? 2 A. No, I didn't. 3 Q. Either personally -- did you -- 4 A. No. 5 Q. -- visit with him in your personal 6 capacity? 7 A. No. 8 Q. Did you visit with him as president 9 of Citizens Opposed to the Merger? 10 A. No. 11 Q. Is it your opinion, sir, as president 12 of Citizens Opposed to the Merger that anything 13 could be done to this contemplated merger 14 between Dawson and Central that Citizens would 15 support the merger? 16 A. That was one of the questions that 17 was asked numerous times at the NRD meeting by 18 the NRD board to Devin and Gwen, was is there 19 any way that we can change this -- this 20 governance alignment, you know, before we come 21 here. 22 And they -- they said they couldn't, you 23 know, couldn't -- that couldn't change. 24 Probably because the Plan of Consolidation had 25 been approved. I don't think you guys can</p>
<p style="text-align: right;">Page 968</p> <p>1 change that between there and here. 2 HEARING OFFICER TEXEL: And when 3 they said before we come here, they meant the 4 Power Review Board? 5 THE WITNESS: The Power Review 6 Board, yeah. 7 HEARING OFFICER TEXEL: Okay. 8 BY MR. BRASHEAR: 9 Q. And I appreciate that, sir. But my 10 question to you is, is there anything that 11 could be changed, fixed, resolved in this 12 merger plan that it would make it acceptable to 13 Citizens Opposed to the Merger? 14 A. Well, I think the things that we've 15 been talking about here, if they were addressed 16 in a definite fashion where we were secure in 17 where the income that was produced by the 18 electricity, where that's going to go and the 19 formula that that's going to come back to make 20 sure that the water bills are being steady 21 and -- and discuss board governance. 22 Once again, I think board governance goes 23 to farmer logic. And we look at Central as 24 being this massive, valuable, hard-asset 25 company. No offense, we see poles and wire.</p>	<p style="text-align: right;">Page 969</p> <p>1 Okay? And I know this wasn't a takeover. I 2 know this wasn't a buyout. So that's not 3 farmer thinking. 4 But as farmers, the lens that we were 5 looking this -- through this was -- was that, 6 you know, a large, very valuable company just 7 thrown in to a \$250 million company and giving 8 up the control of the value of the electricity 9 and giving up -- you know, reducing ourselves, 10 a lower voting position. 11 BOARD MEMBER GOTTSCHALK: May I 12 ask a question? Just kind of your statement 13 about farmer thinking, you know, I get that. 14 And as I look at the way that they changed 15 the districts for elections for Central under 16 the new -- the -- what would be Platte 17 Valley -- 18 HEARING OFFICER TEXEL: Platte 19 River. 20 BOARD MEMBER GOTTSCHALK: Platte 21 River. Excuse me. Platte River, they 22 eliminated much of the urban areas that were 23 already within the Central voting area that 24 votes came from for potential directors to the 25 board. They eliminated a lot of those and</p>

<p style="text-align: right;">Page 970</p> <p>1 maybe created a more rural aspect for directors 2 coming into the new board when the transition 3 goes through. Did you not see that as a 4 benefit? 5 THE WITNESS: I don't -- I'm 6 sorry. I don't think that's exactly accurate. 7 BOARD MEMBER GOTTSCHALK: Okay. 8 THE WITNESS: I think the voting 9 subdistricts are just as they were. 10 Those carve-outs were already in Dawson's 11 company, North Platte, Cozad, Lexington. To my 12 understanding, those carve-outs were already 13 there. 14 So they just put the two companies 15 together because we don't have those carve-outs 16 on our side of the river. We -- everybody on 17 our side of the river -- and you weren't here 18 for the first time. But, you know, over -- it 19 was even the mailman can vote over here. 20 And so on our side, everybody can vote for 21 the directors on the new company. 22 On Dawson's side, I -- Dawson doesn't 23 furnish power to those cities, so they weren't 24 part of Dawson election process either. And I 25 could stand corrected. But that's -- somehow</p>	<p style="text-align: right;">Page 971</p> <p>1 in this I was told that. 2 BOARD MEMBER GOTTSCHALK: But 3 those areas were part of Central, and those 4 communities were not carved out -- 5 THE WITNESS: Okay. I see 6 your -- 7 BOARD MEMBER GOTTSCHALK: -- 8 previous. 9 THE WITNESS: -- I see your 10 point now. 11 BOARD MEMBER GOTTSCHALK: So now 12 you've pulled out some what would have been 13 urban votes from what would have been the 14 Central area. So that's the point I was 15 making. 16 THE WITNESS: Yeah. There's -- 17 there's -- to me there's no overlap. It's been 18 alluded to that there's recharge from Central 19 to that area. 20 I don't know if that's exactly accurate 21 because Devin's -- Devin's testimony said that 22 the recharge can't cross the river, the water 23 comes to the river. So Central -- most of 24 Central's water is south of the river. 25 The recharge on the north side is through</p>
<p style="text-align: right;">Page 972</p> <p>1 the NPPD canals, which are going to happen 2 whether this thing transpired or not. 3 BOARD MEMBER GOTTSCHALK: Right. 4 And I guess my point, it didn't have to do with 5 recharge. It had to do with board member 6 representation being more rural now in those 7 areas where you could have easily had a 8 North Platte representative on the Central 9 board? 10 THE WITNESS: I follow you. 11 BOARD MEMBER GOTTSCHALK: Okay. 12 And my way of thinking that more rural 13 representation is better -- 14 THE WITNESS: Yeah. 15 BOARD MEMBER GOTTSCHALK: --than 16 it was now. That's where my question went. 17 THE WITNESS: To your point. 18 MR. BRASHEAR: I have no further 19 questions. 20 BOARD MEMBER HUTCHISON: I have 21 one question. So just so you kind of have a 22 position -- or an understanding of where I 23 think our -- my way of thinking about this and 24 the criteria we have to make a decision; right? 25 So we have an amendment before us with a</p>	<p style="text-align: right;">Page 973</p> <p>1 charter amendment that's been approved by both 2 board of directors. 3 And then as I'm looking the -- one of the 4 same -- main statutes here that gives us the 5 criteria upon which we can use to disapprove an 6 amendment to the charter, which is essentially 7 what this merger results in is these amendment 8 charters, I have to be able to affirmatively 9 find that -- one of the potential findings is 10 to affirmatively find that this amendment is 11 going to jeopardize and impair the rights of in 12 this case we'll say it's the irrigators. 13 So I -- I need to be able to -- which 14 means I -- it can't be speculative, as I 15 interpret that. I have to be able to 16 affirmatively find that someone's rights are 17 being impaired. 18 Can you help me understand how the 19 Citizens -- the irrigators that are represented 20 are included in the Citizens Group, how their 21 rights are being impaired? 22 THE WITNESS: I think per 23 testimony that's been going on here for two 24 days, that even became more clear to me. 25 BOARD MEMBER HUTCHISON: Okay.</p>

<p style="text-align: right;">Page 974</p> <p>1 THE WITNESS: Over and over 2 again, it's been stated that we're going to 3 figure that out, when we get the new board 4 together, we're going to address that. 5 Depending on how that gets figured out 6 could impact the irrigators in this way, that 7 that money that's being created by the -- by 8 the water going through the generators, within 9 the new company, the reserve is theoretically 10 locked out there to be used, you know, for -- 11 for the irrigators. 12 The revenue from there on is to be 13 determined. I think that was in testimony 14 yesterday. 15 So if that revenue gets diluted down and 16 that reserve starts dropping and we come to 17 whatever problem comes up within our system -- 18 one thing I look at, Johnson Lake is silting 19 in. Some day we're going to have to address 20 silting in Johnson Lake. That's going to be a 21 big project. 22 That would be a helpful thing if we had by 23 that time \$150 million in the lake and it was 24 going to cost 50 of it to try to address that 25 problem. That's -- that's my angst with it.</p>	<p style="text-align: right;">Page 975</p> <p>1 The way it is now, we know -- I think it's 2 in this letter right here, it's referred to, as 3 a savings account strictly set up for repair 4 and maintenance. And now that revenue stream 5 will be -- depending on the new board, 6 depending on the bylaws, depending on all these 7 things that haven't been decided yet, even by 8 the vote of how it's going to be decided, could 9 be possibly impaired of building up that 10 revenue for our repairs because we have no 11 taxing authority. If things go south, we just 12 got to figure it out. 13 And Central has done a wonderful job of 14 straightening that out over the years. 15 BOARD MEMBER HUTCHISON: Thank 16 you. 17 BOARD MEMBER GOTTSCHALK: Is it 18 a -- just one more question. Is it just as 19 possible -- because there's a lot of 20 speculation going on here. So things could go 21 one way or the other. 22 For example, Dawson using the -- the hydro 23 off of the Jeffrey plant, selling that to the 24 retail customers brings in additional revenue. 25 Could a portion of that additional revenue in</p>
<p style="text-align: right;">Page 976</p> <p>1 theory be used to supplement these funds as 2 well, since there's a direct correlation to the 3 benefit of both? 4 THE WITNESS: That could also 5 happen. To be determined. 6 BOARD MEMBER GOTTSCHALK: So -- 7 right. And I understand where the unknown 8 is -- is frightening. 9 THE WITNESS: Yeah. 10 BOARD MEMBER GOTTSCHALK: In a 11 dramatic change such as this. But I guess that 12 was just my -- my statement more than a 13 question is that this could go either way. 14 Okay. Thanks. 15 HEARING OFFICER TEXEL: I don't 16 see any more -- are there any questions from 17 Chairman Reida or Ms. Peck? 18 Chairman Reida, did you have a question? 19 BOARD MEMBER REIDA: No. I said 20 no. 21 HEARING OFFICER TEXEL: Oh, I am 22 sorry. I didn't hear that. I thought the way 23 was leaning forward, I thought he -- all right. 24 Then this witness is excused. 25 THE WITNESS: Thank you.</p>	<p style="text-align: right;">Page 977</p> <p>1 MR. DEGAN: Can I redirect? 2 HEARING OFFICER TEXEL: Yes. 3 I'm sorry. Redirect. 4 MR. DEGAN: Okay. Thank you. I 5 just have a couple of questions. 6 REDIRECT EXAMINATION 7 BY MR. DEGAN: 8 Q. Ms. Gottschalk asked you some 9 questions about whether or not the removal of 10 some of the metropolitan areas from Central's 11 chartered territory would give you some comfort 12 because it's more rural. Do you remember that 13 line of questioning? 14 A. Yep. 15 Q. Well, as we sit here today, no 16 director from Central, regardless if they're 17 from North Platte or rural areas, has to worry 18 about electric retail customers? 19 A. No. 20 Q. Not even an issue? 21 A. No. 22 Q. Not whatsoever? 23 Isn't that the primary issue that you're 24 concerned about? 25 A. Yeah, yes.</p>

<p style="text-align: right;">Page 978</p> <p>1 Q. And -- and whether it's 1 of 14 or 7 2 of 14, the first day after the consolidation 3 becomes effective, that board is going to have 4 to make decisions that impact electric 5 ratepayers and water ratepayers; right? 6 A. Yes. That's right. 7 Q. And those interests don't always 8 align; right? 9 A. That would be my difficulty of -- to 10 the point of the power, the power. 11 Q. If I could have you turn to that 12 newspaper article in front of you. And I've 13 got to catch back up again. Exhibit 30, I 14 believe. 15 If I can have you turn down below, "The 16 people are reading," section. There's some 17 references that -- 18 HEARING OFFICER TEXEL: "People 19 are also reading"? 20 MR. DEGAN: Yeah. 21 BY MR. DEGAN: 22 Q. It's below those numbered sections. 23 It's on the second page of the article. 24 There's a couple of paragraphs that talk about 25 many said it was unfair to conduct such a</p>	<p style="text-align: right;">Page 979</p> <p>1 pivotal meeting in the middle of harvest when 2 many farmers would be too busy to be in Elwood 3 to express their opposition. See where that's 4 indicated? 5 A. Yes. 6 Q. And is that true? Was that -- was 7 that harvest season for folks up in the 8 Tri County area? 9 A. That was peak harvest season. 10 Harvest kind of starts in our area with silage 11 chopping the last week of August. Usually go 12 about the 10th of September. Bean harvest 13 starts. Corn harvest starts with bean harvest, 14 and we're trying to wrap up by the first week 15 in November. 16 Q. Okay. 17 A. So that was prime time harvest. 18 Q. And we've heard testimony that this 19 study of this potential consolidation lasted 20 for two years; right? 21 A. Right. 22 Q. And so was that a concern, that with 23 two years of study, they wait to drop the final 24 decision right in the middle of harvesttime? 25 A. Well, it was awkward for us, you</p>
<p style="text-align: right;">Page 980</p> <p>1 know, as the people that -- that became aware 2 of -- when we -- when it became aware of what 3 was going on, yeah, we didn't have much extra 4 time to attend to this. 5 Q. Okay. And is that why you had asked 6 for the continuance for -- 7 A. That's why -- 8 Q. -- a delay of the vote? 9 A. Excuse me. That's why we asked for 10 the continuance, just -- 11 Q. But that request was denied? 12 A. That request was -- 13 HEARING OFFICER TEXEL: Request 14 for continuance from? 15 THE WITNESS: Taking the vote on 16 the Plan of Consolidation. 17 HEARING OFFICER TEXEL: By 18 Central? 19 THE WITNESS: By Central and 20 Dawson. 21 HEARING OFFICER TEXEL: Just 22 wanted to clarify. It wasn't a Power Review 23 Board continuance so -- 24 THE WITNESS: October 24th. 25 BY MR. DEGAN:</p>	<p style="text-align: right;">Page 981</p> <p>1 Q. All right. Let me go back and 2 clarify. We're talking about the October 24, 3 2022, joint board meeting between Central and 4 Dawson for purposes of voting on the 5 consolidation agreement? 6 A. Yes. 7 Q. And it was that -- it was that vote 8 that you in your individual capacity were 9 asking the two boards, Central and Dawson, to 10 postpone? 11 A. Yes. 12 Q. But that decision was -- or that 13 request to continue that vote was denied? 14 A. Both -- both boards had a motion -- 15 Q. Uh-huh. 16 A. -- which didn't pass, to extend the 17 time or not take the vote, wait 90 days. 18 Q. So Central said no, and Dawson said 19 no? 20 A. And Dawson said no. Both of them had 21 a motion. 22 Q. Okay. 23 MR. DEGAN: Thank you. 24 HEARING OFFICER TEXEL: Do you 25 remember what the votes were? Was it unanimous</p>

<p style="text-align: right;">Page 982</p> <p>1 on both or -- 2 THE WITNESS: On the -- the 3 motion to -- 4 HEARING OFFICER TEXEL: To 5 continue -- to delay the vote and request -- 6 and -- 7 THE WITNESS: I believe the 8 votes on the motion to delay were the same as 9 the votes to pass. 10 HEARING OFFICER TEXEL: Okay. 11 THE WITNESS: You know, I think 12 the votes were -- 13 HEARING OFFICER TEXEL: The 14 same -- 15 THE WITNESS: They were the 16 same. 17 HEARING OFFICER TEXEL: -- in 18 favor of the same, dissenters were the same -- 19 THE WITNESS: Yeah. 20 HEARING OFFICER TEXEL: -- in 21 favor of your delay and the vote to -- 22 THE WITNESS: And in Central's 23 case, it was nine to three and -- 24 HEARING OFFICER TEXEL: Neither 25 was unanimous?</p>	<p style="text-align: right;">Page 983</p> <p>1 THE WITNESS: Neither of them 2 were unanimous. Both failed. 3 HEARING OFFICER TEXEL: Were you 4 requesting a delay of a certain amount of time 5 or -- 6 THE WITNESS: Ninety days. 7 HEARING OFFICER TEXEL: So you 8 had a specific time in your request? 9 THE WITNESS: Yes. We had a 10 specific time. 11 HEARING OFFICER TEXEL: Did they 12 give you a reason why they said no at the time? 13 THE WITNESS: I was given a 14 reason. And it was that we needed to get -- 15 the proposed group needed to get this merger in 16 front of your board before the president -- or 17 the new governor started making appointments. 18 HEARING OFFICER TEXEL: On their 19 boards? 20 THE WITNESS: On your board. 21 HEARING OFFICER TEXEL: Oh, on 22 our board. Okay. On the Power Review Board? 23 THE WITNESS: Yeah, yeah. 24 HEARING OFFICER TEXEL: Okay. 25 And that was from who?</p>
<p style="text-align: right;">Page 984</p> <p>1 THE WITNESS: Central. 2 HEARING OFFICER TEXEL: Who told 3 you that? 4 THE WITNESS: People from 5 Central. 6 HEARING OFFICER TEXEL: Okay. 7 Okay. Thank you. 8 THE WITNESS: Yeah. 9 BOARD MEMBER REIDA: I have one 10 followup question. 11 You had indicated that you looked at the 12 Plan of Consolidation? 13 THE WITNESS: Yes. 14 BOARD MEMBER REIDA: And that -- 15 and that there's nothing that you found in 16 there that would indicate protections for the 17 water users? 18 THE WITNESS: That's my -- 19 that's my idea. 20 BOARD MEMBER REIDA: Okay. And 21 if you had found something, if I understand 22 this right, you -- had they addressed those 23 issues in this Plan of Consolidation that would 24 then be transferred into the charter of the new 25 organization, that that would be -- that's what</p>	<p style="text-align: right;">Page 985</p> <p>1 you were looking for, something that would be 2 not just a nebulous idea but assurity that you 3 would be protected? 4 THE WITNESS: Yes, for us to 5 support this merger, we would have to have 6 assurity that -- 7 HEARING OFFICER TEXEL: And that 8 would be to put it into the charter? 9 THE WITNESS: It would have to 10 be in the charter. 11 BOARD MEMBER REIDA: And that's 12 what would -- that would make this acceptable 13 to you? 14 THE WITNESS: Well, depending on 15 how it was, you know, negotiated. But, yes. 16 BOARD MEMBER REIDA: But if -- 17 if, in fact, it was a positive portion put in 18 that would end up in the charter, that you 19 would support it? 20 THE WITNESS: Well, I'm speaking 21 for two people here. So I'm going to say -- 22 MR. DEGAN: Not speaking for me, 23 unfortunately. 24 THE WITNESS: No, I'm not 25 speaking -- for the group.</p>

<p>1 MR. DEGAN: Okay. Page 986 2 THE WITNESS: The Citizens 3 Opposed Group, I think if we took a vote of 4 that board, there would be -- it would be hard 5 to get that passed -- anything past that group 6 that would -- they would accept here. 7 As me personally, I think I could 8 negotiate. We'd probably end up with no merger 9 by the time I'm done getting what I wanted on 10 it. 11 BOARD MEMBER REIDA: Okay. 12 Thank you. 13 HEARING OFFICER TEXEL: All 14 right. 15 MR. JARECKE: Mr. Texel, I don't 16 have a question or -- I just wanted to clarify 17 for the sake of the record, Mrs. Gottschalk's 18 question in terms of the rural nature and what 19 was carved out, I believe she was referring to 20 Exhibit 41 for the -- for the clarity of the 21 record in terms of the rural versus -- where 22 the carve-outs, what was the nature -- 23 HEARING OFFICER TEXEL: What was 24 Exhibit 41? 25 MR. JARECKE: Exhibit 41</p>	<p>1 shows -- and, of course, there's a reduced Page 987 2 version of this in your notebook. Exhibit 41 3 shows the original -- the current, I should 4 say -- 5 HEARING OFFICER TEXEL: The 6 current. 7 MR. JARECKE: -- footprint of 8 Central with an overlay of the lines that would 9 change as a result of the proposed merger. 10 HEARING OFFICER TEXEL: Which 11 includes North Platte in the current charter 12 territory? 13 MR. JARECKE: It does. Yes. 14 Thank you. 15 MS. KREIFELS: No. 16 MR. JARECKE: Well, current. 17 MS. KREIFELS: Current, yeah. 18 HEARING OFFICER TEXEL: This on 19 the easel is Exhibit 43? 20 MS. KREIFELS: Three. 21 HEARING OFFICER TEXEL: And 22 shows North Platte not in it. 23 I haven't compared the rest of it. But 24 that's the largest difference I see. 25 One of the counsels looks like they want</p>
<p>1 to -- Page 988 2 MS. KREIFELS: No. 3 HEARING OFFICER TEXEL: -- 4 clarify? Okay. 5 MS. KREIFELS: I'm good. 6 HEARING OFFICER TEXEL: All 7 right. I think then you're excused, 8 Mr. Robison. Thank you very much. 9 BOARD MEMBER GOTTSCHALK: Thank 10 you. 11 HEARING OFFICER TEXEL: Your 12 next witness. 13 MR. DEGAN: Thank you. Brad 14 Lundeen. 15 HEARING OFFICER TEXEL: 16 Mr. Lundeen -- did I say that right? 17 THE WITNESS: Uh-huh. 18 BRADLEY LUNDEEN, 19 Called as a witness on behalf of Protestants, 20 being first duly sworn, was examined and 21 testified as follows: 22 HEARING OFFICER TEXEL: Thank 23 you. Could you state your name and spell it 24 and then give your address? 25 THE WITNESS: My name's Bradley</p>	<p>1 Lundeen, B-R-A-D-L-E-Y, L-U-N-D-E-E-N. Page 989 2 HEARING OFFICER TEXEL: And 3 what's your address? 4 THE WITNESS: 524 D Road, 5 Wilcox, Nebraska. 6 HEARING OFFICER TEXEL: Thank 7 you. Your witness. 8 DIRECT EXAMINATION 9 BY MR. DEGAN: 10 Q. Good afternoon, Mr. Lundeen. What 11 county is Wilcox located in? 12 A. Kearney County. 13 Q. And what is your current occupation? 14 A. Retired farmer. 15 Q. Do you still own farmland? 16 A. Yes, I do. 17 Q. Is that land located in Kearney 18 County, Nebraska? 19 A. Yes, it is. 20 Q. How many -- so do you have a tenant 21 that's farming your land? 22 A. I have two sons that are engaged in 23 farming. 24 Q. Okay. In the long term, the more 25 expensive of the tenant farmer variety?</p>

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1 A. That's right. And free labor.
2 Q. Maybe what we're talking about here,
3 an exchange for revenue versus available
4 assets.
5 And do you currently sit on any public
6 boards?
7 A. Yes, I do.
8 Q. And which board is that?
9 A. Tri-Basin NRD.
10 Q. Okay. I guess as an initial matter,
11 I need to make clear, are you testifying here
12 today in your individual capacity or as a
13 representative of the NRD?
14 A. As an individual.
15 Q. Okay. And just to make clear, you
16 are not authorized to speak on behalf of the
17 NRD?
18 A. That is correct.
19 Q. And you are in no way, shape or form
20 implying to the board that your views or
21 opinions are anything other than your own?
22 A. That's correct.
23 Q. Okay. Can you give the board a
24 general description of, I guess, what an NRD is
25 in general in Nebraska and what it does?

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1 that I was in attendance at meetings and read
2 about it.
3 Q. And I neglected to ask you this, but
4 is the land that you own, is it surface water
5 irrigated?
6 A. Some of it is.
7 Q. Do you also have some groundwater
8 irrigation?
9 A. Yes, we do.
10 Q. Do you have agreements with Central
11 for surface water?
12 A. Yes.
13 Q. And how long have you been a Central
14 customer?
15 A. We've been Central about eight years
16 on one parcel, and my son's got for the last
17 three.
18 Q. Okay. Have you generally been
19 pleased with the manner in which Central
20 operates its district?
21 A. Very well, very -- perfect job.
22 Q. Do you own surface water irrigated
23 land in other irrigation districts?
24 A. Yes, I do.
25 Q. And do you have surface water

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1 A. Sure. It's basically a public entity
2 created with elected officials to manage the
3 groundwater quality and quantity and the rest
4 of the natural resources of their basin.
5 Q. Okay. And with your particular
6 board, the Tri-Basin NRD, where, roughly, is
7 that located?
8 A. Basically Kearney County, Phelps and
9 Gosper.
10 Q. And north or south of the Platte?
11 A. South of the Platte.
12 Q. How many members serve currently on
13 your board?
14 A. Thirteen.
15 Q. And when did -- well, let me start
16 with this, when did you personally become aware
17 of the proposed merger between Central and
18 Dawson?
19 A. Probably about a year and a half ago.
20 Q. And what form did that come in? Was
21 there a presentation made? Or did it just come
22 from reading news accounts? Or tell me --
23 A. Both. I had been to several
24 meetings, one with Central that Devin presented
25 to us. And there were several other instances

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1 irrigation contracts with those irrigation
2 districts?
3 A. No. I'm sorry. I don't have surface
4 water. I have a farm in another NRD.
5 Q. Oh, okay. Another NRD. All right.
6 At any point in time, was there a
7 presentation made by either Central or Dawson
8 to your NRD?
9 A. No.
10 Q. Had -- was your NRD actively
11 monitoring the situation?
12 A. We've been monitoring, yes. We're
13 very interested in their activities. But
14 we've -- and we worked in the past well with
15 Central. We have a good relationship.
16 Q. Okay. To your knowledge, was anybody
17 from the NRD tasked with acting as a go-between
18 between the NRD and either Central or Dawson
19 regarding this proposed merger?
20 A. No.
21 Q. Well, let me bring your attention to
22 a special meeting that was called on February
23 8th of 2022. Were you present at that meeting?
24 A. Yes, I was.
25 HEARING OFFICER TEXEL: That was

<p style="text-align: right;">Page 994</p> <p>1 a meeting of the Tri-Basin NRD? 2 THE WITNESS: Yes, that's 3 correct. 4 MR. DEGAN: Yes. 5 BY MR. DEGAN: 6 Q. And let me strike that and back up 7 because I misstated in my question the year. 8 So was there a special meeting of the 9 Tri-Basin NRD called on February 8th of 2023? 10 A. Yes, there was. 11 Q. Okay. And were you present at that 12 meeting? 13 A. Yes. 14 Q. What was the reason that that special 15 meeting was called? 16 A. There was a concern on some of the 17 NRD board members that we need to either take a 18 stand and either oppose it or agree to their 19 proposal. And there's just been so much talk 20 about it, we wanted to have an open discussion 21 about the pros and cons of it. 22 Q. Okay. And so, again, I'm asking for 23 what your understanding was. And if I 24 understand your testimony, that the special 25 meeting was called so that your board could</p>	<p style="text-align: right;">Page 995</p> <p>1 determine either, A, to take a position at all; 2 B, to take a position for the merger; or, C, 3 take a position against the merger? 4 A. That's correct. 5 Q. Okay. So going into the special 6 meeting, it was unknown as to even whether or 7 not the NRD was going to take a position? 8 A. Absolutely. 9 Q. All right. Do you recall who was 10 present at that special meeting? 11 A. I believe all of our board members 12 were present. And then there was several staff 13 from Central and some board members, and the 14 water group opposed to the merger was also in 15 attendance. 16 Q. Okay. Let's start with Dawson. Who 17 was present from Dawson? 18 A. Just Gwen, the manager. 19 Q. And who was present from Central? 20 A. Devin and some other staff members. 21 Q. Were there any board members present 22 for either district? 23 A. There was two, yes. 24 Q. And who were they? 25 A. Dave Nelson and Dudley Nelson.</p>
<p style="text-align: right;">Page 996</p> <p>1 HEARING OFFICER TEXEL: Which 2 district are they with? 3 THE WITNESS: Pardon me? 4 HEARING OFFICER TEXEL: Which 5 district are they with, do you know? 6 THE WITNESS: They're with 7 Central. 8 HEARING OFFICER TEXEL: Okay. 9 BY MR. DEGAN: 10 Q. And what was the format of the 11 meeting? Did -- did the opponents get an 12 opportunity to state their concerns? 13 A. Yes. The chairman let them have an 14 opportunity to ask some questions, open 15 questions to both staff. And there was quite a 16 few questions back and forth. 17 Q. Now, let me back up. 18 Even before the special meeting was called 19 in February, were there members on your board 20 that already had concerns regarding the merger? 21 A. Yes, there was. 22 Q. And had those concerns been relayed 23 to you in conversations with those other 24 members? 25 A. Yes.</p>	<p style="text-align: right;">Page 997</p> <p>1 Q. And what were those concerns, if you 2 could describe them generally? 3 A. Oh, there's a lot of concerns. But 4 mostly was the representation, the final 5 representation of the board makeup. 6 Q. And do you personally have a position 7 on the merger or do you have any concerns 8 regarding the merger? 9 A. Personally I'm opposed to the merger. 10 Q. And why are you personally opposed? 11 A. Because I feel it's not in the best 12 interest of our NRD, my family farm, district 13 as a whole. The people that I represent I 14 don't feel like it is in the best interest of 15 them. 16 Q. And why is that? 17 A. Basically you're losing up control on 18 partial -- on the makeup of the Central's 19 board, which I think is very important. 20 And the other concern personally I have is 21 after this merger takes place, I get my power 22 from Southern Public Power. And our irrigation 23 district bills us from them. And that's -- 24 there's no benefit to Southern Power whatsoever 25 from this district, from this merger.</p>

<p style="text-align: right;">Page 998</p> <p>1 Q. Okay. So you don't see Southern 2 getting any benefit from it? 3 A. No, I don't see any. 4 Q. And when you talk about your issues 5 regarding Central's board, is it your concern 6 of having to share any portion of control over 7 that board or even any influence on the board 8 with folks that are interested in delivering 9 electric power? 10 A. My main concern on that, the makeup 11 of the board is that the -- now the 12 representation's going to shift mainly to 13 Dawson County, and that's governed by a 14 different NRD, Central Platte NRD. And 15 sometimes their interests are in conflict with 16 us. Sometimes they're the same. 17 But to me the long term, that's a big -- 18 big issue. 19 Q. Okay. So -- 20 BOARD MEMBER HUTCHISON: Can I 21 ask a question about that? 22 MR. DEGAN: Sure. 23 BOARD MEMBER HUTCHISON: So you 24 said Dawson County. Dawson County from a 25 representation perspective has two -- in the</p>	<p style="text-align: right;">Page 999</p> <p>1 Platte River PPD, there will be two directors 2 in that county. Is that your understanding? 3 THE WITNESS: I think so. 4 BOARD MEMBER HUTCHISON: And 5 there will still be two in each of Gosper, 6 Phelps and Kearney? 7 THE WITNESS: Yep -- there will 8 only be a total of six in Gosper, Kearney and 9 Phelps. 10 BOARD MEMBER HUTCHISON: So can 11 you explain? I'm not tracking you. Can you 12 help me understand why you're concerned that 13 Dawson County is going to have an outsized 14 influence, if I understood your comment 15 correctly? Or help me clarify. 16 THE WITNESS: Yes. Yes. Dawson 17 County is in Central Platte NRD's jurisdiction, 18 other than Tri-Basin's NRD jurisdiction 19 boundaries. So there's a -- there's a -- it's 20 a different territory that they represent. 21 BOARD MEMBER HUTCHISON: Okay. 22 So when you said Central -- so if I am 23 understanding correctly, you're concerned that 24 that NRD will have more influence that this new 25 entity that you're -- than the NRD that you're</p>
<p style="text-align: right;">Page 1000</p> <p>1 currently a part of? 2 THE WITNESS: That's my concern. 3 BOARD MEMBER HUTCHISON: Okay. 4 Thank you. 5 BY MR. DEGAN: 6 Q. Okay. I think you testified that the 7 folks from the Citizens Group were allowed to 8 state their case; is that right? 9 A. Yes. 10 HEARING OFFICER TEXEL: I want 11 to clarify. You said that they were allowed to 12 ask questions to the staff. To the Tri-Basin 13 staff or the staff from the districts from 14 Central and Dawson or whose staff? 15 THE WITNESS: Both staffs. 16 HEARING OFFICER TEXEL: Okay. 17 So whoever -- basically could ask questions to 18 whoever they wanted? 19 THE WITNESS: Yeah, right. 20 HEARING OFFICER TEXEL: Okay. 21 I'm sorry. Go ahead. 22 BY MR. DEGAN: 23 Q. Did the representatives of Central 24 and Dawson also speak? 25 A. Yes.</p>	<p style="text-align: right;">Page 1001</p> <p>1 Q. And at the conclusion of that 2 discussion, was a -- was a motion made? 3 A. Yes, there was a motion. 4 Q. And I'm going to hand you a copy of 5 Exhibit 58 and have you first review that 6 document. 7 A. Yes, that's an accurate statement of 8 a motion. 9 Q. Okay. So it states that a motion was 10 made, that the new entity would leave the 11 Tri-Basin NRD constituents without adequate 12 representation. With this loss of 13 representation, we would not be able to fulfill 14 the mission statement of the Tri-Basin NRD? 15 A. That's correct. 16 Q. And in -- were there additional 17 concerns beyond this that were discussed during 18 that NRD meeting? 19 A. Not really, just the open discussion 20 back and forth. People were wanting to hear 21 both sides of the issue. 22 Q. But you don't recall any of the other 23 particular concerns that were voiced during 24 that meeting? 25 A. No.</p>

<p style="text-align: right;">Page 1002</p> <p>1 Q. Was -- was a vote taken? 2 A. Yes, there was. 3 Q. And what was the outcome of the vote? 4 A. I believe it was seven to five. 5 Q. This resolution passed? 6 A. Yeah, this motion passed. 7 Q. And so is it your understanding that 8 Tri-Basin NRD took a position to oppose the 9 merger? 10 A. That's -- that's my interpretation. 11 Q. Okay. Do you recall whether Dave 12 Nelson, a member of Central's board of 13 directors, saying anything during the meeting? 14 A. Yes. He had some comments. 15 Q. And what were his comments? 16 A. The best of my recollection that he 17 was -- had some concerns about the long-term 18 viability of Central the way it's run. 19 Q. Okay. Do you recall specifically 20 what he said? 21 A. Not exactly. 22 Q. Well, did he say words to the -- to 23 the effect that in the absence of a merger, 24 there will be no more Central? 25 A. I think that put it in the context,</p>	<p style="text-align: right;">Page 1003</p> <p>1 yes. 2 Q. Okay. And were members of Central's 3 staff there? 4 A. Yes. 5 Q. Okay. Mr. Brundage was? 6 A. Yes, he was. 7 Q. And Dudley Nelson, another director 8 from Central, was there? 9 A. Yes. 10 Q. And I think you stated that Don -- or 11 Gwen Kautz from Dawson was also there? 12 A. Yes, she was. 13 Q. Okay. So when -- when Mr. Nelson 14 stood up and said words to the effect that 15 if -- without this merger, there will be no 16 more Central, did anybody from -- else from 17 Dawson or Central stand up and correct the 18 record? 19 A. Not that my -- not to my 20 recollection. 21 Q. So that assertion that this -- if 22 this merger doesn't happen, Central's going 23 down, that remained with your board? 24 A. Yes. 25 Q. Unrebutted?</p>
<p style="text-align: right;">Page 1004</p> <p>1 A. Yeah. 2 Q. Do you think that assertion would 3 have some impact or cause some concern on your 4 board? 5 A. I would think so. 6 Q. Well, can you describe generally the 7 relationship between Central and Tri-Basin NRD 8 and what would happen to Tri-Basin? 9 A. We've had a long-term relationship 10 with them. I've been on the board for 30 11 years. And we've worked closely with them. 12 We've become really good friends. We've worked 13 common goals, especially intentional recharge 14 and a lot of other issues. 15 Q. Okay. 16 MR. DEGAN: Your witness. 17 MR. JARECKE: No questions. 18 HEARING OFFICER TEXEL: Okay. 19 MR. DEGAN: All right. 20 HEARING OFFICER TEXEL: Does the 21 board have any questions further for -- 22 BOARD MEMBER HUTCHISON: No. 23 HEARING OFFICER TEXEL: -- this 24 witness? 25 All right. Thank you.</p>	<p style="text-align: right;">Page 1005</p> <p>1 MR. DEGAN: We good? Keep 2 trucking or a break? 3 HEARING OFFICER TEXEL: It's up 4 to the board. Does the board or the court 5 reporter need a break? 6 MR. DEGAN: Okay. Apparently we 7 need a break. My next witness needs one. 8 HEARING OFFICER TEXEL: Let's 9 take a break and restart at three o'clock. 10 (2:52 p.m. - Recess taken.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 1006</p> <p>1 (At 3:05 p.m., with parties present as 2 before, the following proceedings were had:) 3 HEARING OFFICER TEXEL: We'll go 4 back on the record. 5 Mr. Degan. 6 MR. DEGAN: Yes. 7 HEARING OFFICER TEXEL: I'd just 8 note for the record, all the board members are 9 present in the same type of appearance they 10 were previous to the recess. 11 MR. DEGAN: Yeah, call James 12 Yahn. 13 HEARING OFFICER TEXEL: Yahn? 14 THE WITNESS: Yahn. 15 JAMES YAHN, 16 Called as a witness on behalf of Protestants, 17 being first duly sworn, was examined and 18 testified as follows: 19 HEARING OFFICER TEXEL: You 20 heard the -- what I'm going to ask. But if you 21 could spell your name and then state your 22 address. 23 THE WITNESS: May name is James 24 T. Yahn. That's J-A-M-E-S, T, Yahn, Y-A-H-N. 25 My address is 23029 County Road 37,</p>	<p style="text-align: right;">Page 1007</p> <p>1 Sterling, Colorado 80751. 2 HEARING OFFICER TEXEL: Thank 3 you. 4 THE WITNESS: You're welcome. 5 DIRECT EXAMINATION 6 BY MR. DEGAN: 7 Q. Thank you. Mr. Yahn, what is your 8 current occupation? 9 A. I am the manager of the North 10 Sterling Irrigation District. And I also 11 manage the Prewitt Reservoir. 12 Q. And where is the North Sterling 13 Irrigation District? 14 A. The North Sterling Irrigation 15 District is about 41,000 acres that is north 16 and east of Sterling, Colorado. 17 The reservoir is about 12 miles north of 18 Sterling. And then the irrigation district is 19 to the east of the reservoir. 20 Q. And how large is the reservoir? 21 A. The reservoir is 74,590 acre-feet. 22 Q. And how many irrigation customers 23 does North Sterling have? 24 A. We call them landowners where we are. 25 But irrigation customers is fine.</p>
<p style="text-align: right;">Page 1008</p> <p>1 Q. Okay. 2 A. It's 125. 3 Q. Okay. And is -- is North Sterling's 4 reservoir, is it an on-stream reservoir, or is 5 it off-stream? 6 A. No. It's an off-stream reservoir, as 7 well as Prewitt. 8 I might add that I manage the Prewitt 9 Reservoir, which is in no way associated. They 10 have some farmers that overlap. But it's not 11 associated with the North Sterling Irrigation 12 District. 13 In fact, the Prewitt has three owners 14 within the Prewitt. It's the Logan Irrigation 15 District, the Iliff Irrigation District and the 16 Morgan-Prewitt Reservoir Company. So I manage 17 three irrigation districts on behalf of 18 farmers, totaling 350 water users. 19 Q. Okay. And is that two reservoirs, or 20 are there more than two? 21 A. Just two. 22 Q. And they're both off stream, I'm 23 assuming? 24 A. They're both off stream. 25 Q. And are they interconnected?</p>	<p style="text-align: right;">Page 1009</p> <p>1 A. They are not interconnected. 2 Q. And can you explain for the benefit 3 of the board what an on-stream versus an 4 off-stream reservoir or what the distinction 5 means? 6 A. Yeah, absolutely. So I'll try to 7 paint you a picture here. But the -- so what 8 we do is we have a reservoir that was built 9 from 1909 to 1911. 10 And we divert water from the South Platte 11 River. And it's by Hillrose, Colorado. So 12 it's about -- it's 61 miles from the reservoir. 13 So a diversion is we just put a -- we have 14 gates in the river that stop the river or at 15 least enough for -- so that we can get the 16 water out. 17 And it -- we have gates in a ditch then. 18 So we stop the river. The water goes into the 19 ditch and travels towards the reservoir -- 20 towards the reservoir. 21 The river falls at about seven feet every 22 mile. And our ditch falls on the slope of the 23 ditch is about one foot every mile. So as we 24 go a mile along, we actually look like we're 25 raising in elevation, but we're just not</p>

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1 falling as fast.
2 So if that makes sense, where our
3 reservoir is is about 250 feet above the river.
4 So we took it at a place that was far enough
5 away that we could fill this large river.
6 So we're trying to divert water right now
7 in the wintertime to fill the reservoir. We do
8 that in the winter so that we can release the
9 water in the summer to our irrigators.
10 So along -- along that canal, we have
11 issues all the time. Today it's ice. We're
12 running water under ice conditions. So we have
13 a 500 cubic foot per second inlet canal. It's
14 just a large ditch, unlined that goes towards
15 the reservoir.
16 And the ice builds up in there in the
17 wintertime when it's cold. And we have to run
18 less than we can and fill -- so that the water
19 doesn't overflow the banks because it flows a
20 lot slower when it's frozen, a weak flow
21 underneath.
22 And then that fills the reservoir in the
23 wintertime. We release it in the summer.
24 Same is true for the Prewitt. We only
25 have a smaller inlet canal about five miles

Page 1012

1 A. That is correct.
2 Q. And have you been here for at least
3 the last day or so of testimony?
4 A. Yeah, yeah, I came in right ahead of
5 the storm. I've been -- I was here all day
6 yesterday and then today.
7 Q. Okay. So you have -- you've had an
8 opportunity to hear some of the testimony that
9 has been elicited?
10 A. I have.
11 Q. Okay. And what is the river or
12 stream that your reservoirs are connected to?
13 A. We divert water from the South Platte
14 River.
15 Q. Okay. So South Platte water that's
16 running through your system before it comes
17 downstream here into Central's system?
18 A. That is correct.
19 Q. And Central draws both from the North
20 and the South Platte; is that your
21 understanding?
22 A. That's my understanding.
23 Q. How long have you been in the
24 irrigation business?
25 A. Well, I grew up on a farm under the

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1 long. And the Prewitt has a two-mile outlet
2 canal.
3 The North Sterling has a 65-mile outlet
4 canal that serves our farmers.
5 Q. Okay. So at the end of the day, you
6 serve water irrigation customers? You call
7 them landowners; is that right?
8 A. Yep, that is correct.
9 Q. But despite the difference in names,
10 the service that's being provided is the same;
11 correct?
12 A. It is. We're a -- we're a public
13 instrumentality of the State of Colorado. We
14 were formed under the irrigation district law
15 of 1905.
16 So we -- we serve our farmers who pay
17 taxes to our county treasurer. She collects
18 with the property tax and gives those taxes to
19 us, the irrigation district, to use to -- for
20 our expenses.
21 Q. Okay. So under Colorado law, you
22 have the authority to levy the tax for that?
23 A. That is correct, each October.
24 Q. So it's done through that mechanism
25 as opposed to a Water Service Agreement?

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1 North Sterling Irrigation District. So all my
2 life. But I managed the district for the last
3 30 years, almost 31. I have my 31st
4 anniversary in May.
5 Q. Okay. And what is your educational
6 training and professional background? Do you
7 hold any certifications or licenses?
8 A. I'm a registered professional
9 engineer, civil engineer, in Colorado. I got
10 my degree from Colorado State University in
11 agricultural engineering.
12 I worked for five years as a consulting
13 engineer, doing hydrology and geotechnical-type
14 engineering for mine reclamation. Basically
15 our -- our emphasis was in mine reclamation.
16 Q. Okay.
17 MR. DEGAN: Tim, may I approach?
18 HEARING OFFICER TEXEL: Yes.
19 And we already said that's continuing.
20 MR. DEGAN: It may be
21 continuing. I forgot that.
22 BY MR. DEGAN:
23 Q. Handing you what's been marked as
24 Exhibit 64. Do you recognize that?
25 A. I do.

<p style="text-align: right;">Page 1014</p> <p>1 Q. And do you recognize that as your 2 professional resume? 3 A. It is. 4 Q. And is it current? 5 A. It is current. 6 Q. Okay. So we've talked generally 7 about the configuration of your irrigation 8 systems. But I do want to recognize there are 9 some differences between the irrigation system 10 that we're talking about before this board. 11 And the principal one is that your reservoirs 12 do not have hydro units? 13 A. We do not have hydro units. We are 14 not on the stream. 15 Q. So you're strictly withdrawing and 16 storing water and releasing it as needed into 17 your native irrigation system? 18 A. Yes. 19 Q. Okay. And it's certainly true that 20 not all irrigation systems have hydro units? 21 A. Yeah, I -- I don't know of any in my 22 area. We have six reservoirs. North Sterling 23 is the largest in our area. None of us have 24 hydro. 25 Q. For those in-stream reservoirs, they</p>	<p style="text-align: right;">Page 1015</p> <p>1 have the ability to build large capital 2 improvement projects like hydro units in order 3 to provide an additional source of revenue for 4 the irrigation system; correct? 5 A. Yes. Lake McConaughy wouldn't be the 6 only one that -- especially in-stream 7 reservoirs that have the ability to do that. 8 Q. On the Platte system? 9 A. On the Platte system? 10 Q. Yes. 11 A. Restate your question. 12 Q. On the Platte River? 13 A. What about it? 14 Q. Any of -- 15 A. Yeah, I don't know of any on the 16 Platte River in my area. 17 Q. Right. 18 Are you aware of any others on the Platte 19 River between the Rockies and Missouri River? 20 A. I -- I'm pretty sure there are. 21 Glendo. And there's other ones, but I don't 22 know -- I don't know for sure. 23 Q. Oh, I'm sorry, you're differentiating 24 between specifically Kingsley. And that was 25 probably my bad question.</p>
<p style="text-align: right;">Page 1016</p> <p>1 But other than Central, are you aware of 2 any irrigation district on the Platte that has 3 in-stream hydro units? 4 A. I'm not aware. 5 Q. Okay. But of your knowledge 6 generally of hydro-incorporated irrigation 7 systems, isn't it true that those units are 8 employed to provide supplemental revenue in 9 order to lower the cost of irrigation? 10 A. That is my understanding the reason 11 that they were constructed with hydro was to 12 offset the costs of the irrigation. 13 Q. Okay. Now, you were contacted by me 14 to testify in this matter; is that true? 15 A. That is true. 16 Q. And can -- do you recall -- go ahead. 17 A. Oh, I just want to say, I was 18 contacted first by Jeff Larson who is part of 19 the Citizens to -- 20 HEARING OFFICER TEXEL: Citizens 21 Opposed to the Merger? 22 A. -- Opposed to the Merger. I'm sorry. 23 Citizens Opposed to the Merger. So I was 24 contacted by him first. He was -- and he put 25 me in contact with you.</p>	<p style="text-align: right;">Page 1017</p> <p>1 BY MR. DEGAN: 2 Q. Okay. And what did I ask you to do? 3 A. Just look at a few documents. One is 4 the Phase 2 assessment, the amendment to the 5 charter, the Plan of Consolidation and a letter 6 that you've used before. 7 Q. Okay. 8 A. And just give from my perspective of 9 our reservoirs my opinion on -- on those 10 documents. 11 HEARING OFFICER TEXEL: Is the 12 letter Exhibit 47? That letter? 13 MR. DEGAN: Yes. 14 HEARING OFFICER TEXEL: Okay. 15 MR. DEGAN: Exhibit 47 and the 16 report is Exhibit 22, the Phase 2 report. 17 BY MR. DEGAN: 18 Q. Okay. And so did I ask you, after 19 you reviewed those documents, just to give me 20 your impression? 21 A. You did. 22 Q. And what was your reaction after you 23 reviewed the merger documents and the Phase 2 24 report? 25 A. Why on earth would they do this.</p>

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1 That was my first -- I mean, really, I mean,
2 that's my first impression when I'm reading
3 through that.
4 You're giving up exclusive control to an
5 amazing asset. I was at a loss why you would
6 do that, particularly an on-stream reservoir.
7 Q. Okay. Now, you touched on, you know,
8 some of the mechanics of how you operate your
9 system. And on a strictly irrigation system,
10 we're essentially talking about storing and
11 releasing. Isn't that the primary function?
12 A. Yeah.
13 Q. Okay. That's what water management
14 comes down to --
15 A. Right.
16 Q. -- storing and releasing?
17 A. We store in times of plenty so that
18 we have it in times of scarcity.
19 Q. And for people that rely upon Platte
20 River for irrigation, that's a constant cycle
21 of wet periods and dry periods and in between
22 periods; correct?
23 A. Yeah, correct. I -- I've seen them
24 all -- there's -- North Sterling usually fills
25 every year. But there was a time in 2004 where

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1 the Pawnee Power Plant in Brush.
2 And one is with Tallgrass Western Water to
3 provide water to oil fields to the west of us
4 for oil production.
5 So we made -- that's a 10-year deal. So
6 we've made some deals on behalf of the farmers
7 that we deliver to as well, if necessary.
8 BOARD MEMBER HUTCHISON: Just to
9 clarify, the power use on the first example is
10 essentially a heat sync for a power plant? Or
11 a cooling source?
12 THE WITNESS: It's a cooling
13 source, I believe. I'm not a power person.
14 BOARD MEMBER HUTCHISON: Okay.
15 THE WITNESS: I don't know what
16 they do with it. I know that we have an
17 agreement to deliver -- to hold water in
18 reserve if they need it during the wintertime.
19 BOARD MEMBER HUTCHISON: Okay.
20 BY MR. DEGAN:
21 Q. Okay. But those were contracts for
22 sale of water; correct?
23 A. Correct.
24 Q. So when you sell water, do you then
25 become conflicted with having to juggle between

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1 we didn't fill. And that was a drought year.
2 But there's other times we have a refill
3 decree on some of our reservoirs, so we -- we
4 get varying amounts of water every year.
5 Q. Okay. And in certain periods of
6 scarcity, have you ever had occasions that
7 there was not enough water to deliver the full
8 allotment that was requested by your customers?
9 A. Absolutely. It happened last year.
10 Q. Okay. And that's called allotment?
11 A. Yeah. We give an allotment to our
12 irrigation users, our customers.
13 Q. You can't provide water you don't
14 have?
15 A. That's correct.
16 Q. Okay. And since your system is
17 strictly irrigators, you operate your system
18 only for those users of the water; right?
19 A. That is correct.
20 Q. Okay. You don't have hydro units, so
21 you're not selling power somewhere; right?
22 A. The only thing we do have is we have
23 a -- we've made a couple of agreements through
24 our boards to provide water to other people,
25 short-term agreements. One is Xcel Energy for

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1 your land-owning farmers versus these entities
2 you've sold your water to?
3 A. It could create a conflict. But the
4 way we wrote our agreements is that we lose no
5 control of the water. And if we deliver water,
6 we're paid for the water that we would deliver.
7 The other thing we do is we put in -- a
8 protection in there that any farmer can either
9 subscribe to that agreement or not. So -- so
10 it's completely voluntary.
11 Our first agreement with Xcel Energy, 84
12 percent of our landowners signed up for the
13 agreement. So if we ever deliver water, they
14 get the money -- the district gets some of the
15 money to stand by in reserve.
16 But the farmers get the money if they use
17 any water and only those that signed up for the
18 deal.
19 The other guys get the full allotment. We
20 have a reduced allotment if Xcel would take
21 some water.
22 And that's the same in the other agreement
23 as well. But the second time because they saw
24 the benefit of that, we had 99 percent
25 participation of our farmers.

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1 So -- and we put protections in those that
2 either we're paid -- and quite a bit -- for our
3 water or we keep the water and we don't have to
4 deliver it.
5 Q. And I just want to clarify that,
6 because you stated that you have contractual
7 protections in place. So if you got to a
8 situation where you've got a scarcity of water
9 and you're maybe running into an allocation
10 event but you've got an agreement to -- with
11 Xcel or somebody else that you've got to
12 deliver water, is it your testimony that that
13 contract gives you the option to either not
14 deliver to Xcel or this third party or to
15 deliver but at an extremely elevated rate?
16 A. Yes. So what we have in there is
17 protection so that our farmers know before the
18 irrigation season if these entities have taken
19 water.
20 So the Xcel deal is easy. We just deliver
21 water in the wintertime. By the end of March,
22 we know whether the water has been used. So
23 our farmers know upfront, hey, I'm not going to
24 have quite as much water as I would have if
25 they wouldn't have taken the water.

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1 we're not going to give up that water. If we
2 have a surplus, yeah, we might give them some
3 water. So we have that ability.
4 Q. Okay. And, again, because your
5 system does not have any, say, electric retail
6 customers, you don't have to juggle between
7 those interests?
8 A. No.
9 Q. And you've already alluded to this,
10 the -- the water storage and release cycle
11 varies over the course of a year; correct?
12 A. That is correct.
13 Q. That's seasonal -- seasonal
14 variability?
15 A. Yeah, I mean, we have -- all winter
16 long, we're storing because nobody irrigates in
17 the winter.
18 And then we have -- sometimes when
19 snowmelt begins, we'll have the ability to
20 store an additional amount in the May and June
21 timeframe. So it's -- it's -- there's always
22 those seasonal fluctuations.
23 And they vary a lot in timing.
24 Q. Okay. And sometimes can you have
25 situations where there would even be in-season

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1 So they know they can either fallow some
2 ground or not irrigate their alfalfa all the
3 time, so they have options. We -- we offer
4 them those options.
5 The other deal -- and it's even at a
6 higher rate -- they tell us in March how much
7 water they need for that. They have -- they
8 have a couple of them.
9 In December, they can request up to 4,000
10 acre-feet.
11 In March, they can raise that request to
12 6,800 acre-feet if Xcel didn't take any water,
13 because we only have so much water.
14 So in March, if they decide that they want
15 some water, again, our farmers will know how
16 much water they're requesting.
17 If during the course of the summer, say
18 they didn't -- which they have done, say they
19 didn't request any water, we don't need any
20 water this year and then they find out, hey, I
21 need water in July, we can say, no, our farmers
22 have corn in the field, they have alfalfa,
23 they've already made their plans, they're going
24 all the way through harvest.
25 So our farmers are protected that, hey,

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1 variability on releases?
2 A. Yeah. I mean, we get a big rain
3 event within our district, our farmers will
4 order their water off.
5 And we've actually shut off in June for --
6 actually, in my 31 years, we shut off in June
7 for the whole month because we just didn't have
8 any need of the water. It was one of those
9 years where it just rained a lot. And our
10 farmers didn't have any need. So we kept it in
11 storage for later use. And it was important.
12 Q. Okay. And, again, you can't create
13 the water, you can only manage the water you
14 have?
15 A. Right.
16 Q. Okay. So you had testified that
17 after you reviewed -- well, let me back up.
18 Did you gain an understanding from your
19 review of the Phase 2 report whether you
20 Central currently has any retail electric
21 customers?
22 A. I did.
23 Q. And --
24 A. So Central is a irrigation provider
25 that also generates electricity. I had saw

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1 that in the report.
 2 I saw that Dawson is a electric retailer
 3 and -- Central sells the power. Dawson is a
 4 buyer of the power that -- that turns it over
 5 to their customers.
 6 Q. But that Central currently doesn't
 7 have any --
 8 A. They do not.
 9 Q. -- electric retail customers?
 10 A. Correct.
 11 Q. Okay. So -- and there -- is it your
 12 understanding -- well, did you gain an
 13 understanding as to how many hydro units that
 14 Central currently controls?
 15 A. Four.
 16 Q. And to the extent that Central enters
 17 into power agreements for the sale of that
 18 power, controlled by those contracts; correct?
 19 A. Correct.
 20 Q. But they're just selling the power?
 21 They're not beholding to do anything to those
 22 customers --
 23 A. Right.
 24 Q. -- other than deliver the power?
 25 A. So they have -- the way I saw it,

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1 In fact, in the reports, I couldn't even
 2 find out how big McConaughy was. And I was --
 3 I went online to look at Central's website to
 4 see how big it was. It seems like that would
 5 be something important that you would want to
 6 list.
 7 It said they had 575 miles canal and they
 8 had 208,000 irrigated district acres, surface
 9 water acres and 310,00 acres that depended on
 10 groundwater. But I didn't -- and they said
 11 they had three reservoirs in the report.
 12 And I just didn't -- I thought -- I
 13 thought it was interesting that they didn't
 14 value -- if you're going to merge two
 15 companies, in my mind -- I'm not a financial
 16 expert. You already heard from him. But if
 17 you're going to merge them, don't you want to
 18 know what you're getting into as far as the
 19 assets that you're gaining or losing or -- and
 20 then you're giving up exclusive control of
 21 those. And that was troubling to me.
 22 HEARING OFFICER TEXEL: When you
 23 talk -- excuse me just a minute. When you talk
 24 about the amazing asset, is that Kingsley Dam
 25 or one of the other hydros or what specific --

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1 they have the interest of their irrigators in
 2 mind when they release the water from -- from
 3 these hydropower plants.
 4 Q. So you testified that it made no
 5 sense to you to go forward with this merger
 6 from your perspective after you reviewed this
 7 report. Why was that?
 8 A. Simply because when I looked at that
 9 report, coupled with the amend -- amendment,
 10 coupled with the Plan of Consolidation, I saw
 11 no protections in -- in anything.
 12 And I saw the makeup of the board changed
 13 and the loss of exclusive control of a -- of an
 14 amazing asset.
 15 So I couldn't understand, they're already
 16 doing something, which is selling the
 17 hydropower, through PPAs, agreements, and
 18 they're not going to -- they don't have to do
 19 this in perpetuity with anybody. They looked
 20 fine to me.
 21 And the other thing I saw in there is that
 22 Central had \$102 million in the bank, and
 23 Dawson had 55 million in debt. And I'm
 24 wondering, they're -- the other thing was there
 25 was no valuation of the -- of the irrigation.

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1 THE WITNESS: All.
 2 HEARING OFFICER TEXEL: For all
 3 the hydro --
 4 THE WITNESS: Yeah, the --
 5 HEARING OFFICER TEXEL: --
 6 facilities?
 7 THE WITNESS: -- canals, the
 8 dams, the reservoirs, the water rights that you
 9 own, all of that.
 10 HEARING OFFICER TEXEL: Okay.
 11 So it's amazing assets --
 12 THE WITNESS: Assets.
 13 HEARING OFFICER TEXEL: --
 14 plural?
 15 THE WITNESS: Oh, yeah, sorry.
 16 HEARING OFFICER TEXEL: And
 17 maybe I just misheard you. Okay. Thank you.
 18 THE WITNESS: No. I might have
 19 misspoke.
 20 BY MR. DEGAN:
 21 Q. Actually, that's a good point to
 22 touch off of. I mean, isn't McConaughy, the
 23 reservoir, isn't that really the crown jewel?
 24 A. It is. I mean, it's a -- so in our
 25 area, way back in the 1950s, they set up a --

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1 the Lower South Platte Water Conservancy
2 District. And they wanted to build a reservoir
3 similar to Lake McConaughy. They got it all
4 set up and funded.
5 And in the late 1970s, Jimmy Carter's hit
6 list, they canceled that reservoir off.
7 Denver Water tried to build Two Forks
8 Reservoir, an on-stream reservoir, so
9 Narrows -- I'm sorry, let me back up.
10 The Narrows Dam, which we looked at in our
11 area and was ready for construction, served --
12 served irrigators around. And it was -- it was
13 going to be owned by the Lower South Platte
14 Water Conservancy District. It was an
15 on-stream reservoir.
16 Two Forks is a Denver water project. It
17 was an on-stream reservoir but up in the
18 mountains. And it was not allowed for
19 environmental concerns.
20 So an on-stream reservoir is in my opinion
21 a priceless asset.
22 Q. Just because under the current
23 environmental -- it's going to be redundant.
24 But in the current political environment that's
25 evolved over the last several decades, you

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1 on on a high level. But I'm not in the weeds
2 in the Platte River Recovery Program. But I do
3 understand some of that.
4 Q. Okay. Fair enough.
5 But I guess the point I was getting at is
6 that the parties that are along a stream or a
7 river like the Platte, they all kind of have
8 some level of vested interest on how that water
9 gets managed because mismanaged upstream can
10 affect management issues downstream?
11 A. Absolutely. We're always -- we're
12 always watching the river very carefully.
13 If you look at our Lower South Platte
14 Water Conservancy District's website, we have
15 every diversion from Chatfield Reservoir to the
16 state line and every flow in the river. And I
17 look at it daily.
18 Q. Okay.
19 A. So we're watching to make sure the
20 state is doing the right thing when -- dividing
21 up water according to your priority.
22 Q. Have you ever sat on either an
23 elected or politically appointed position or
24 board?
25 A. Yes.

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1 can't satisfy the EPA, you wouldn't be able to
2 build it?
3 A. Not an on-stream. I mean, there's
4 reservoirs being built today. And I'm aware of
5 some of them and some that are being looked
6 into. And, yeah, you couldn't build it today
7 on stream.
8 Q. Okay. Is either of the irrigation
9 districts part of the plan -- the Platte River
10 Conservancy Program? I might be misstating
11 the --
12 A. My irrigation district's --
13 Q. Yeah.
14 A. -- part of the -- oh, the Platte
15 River Recovery Program?
16 Q. Yes.
17 A. We've been part of it. Right now
18 we're not because there's issues with us paying
19 the dues. We never get a bill. So I can't
20 say. But we have been in the past. And we
21 intend to in the future. But we're part of it.
22 Q. Okay. But so you have been involved
23 in part of the planning process?
24 A. Well, not really the planning. A
25 little bit. I'm -- I mean, I know what's going

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1 Q. And what was that?
2 A. Well, I was appointed by Governor
3 Hickenlooper to serve on the Colorado Water
4 Conservation Board. And I represented the
5 South Platte River and the Republican River
6 Basins.
7 There are eight directors because we have
8 eight river basins in Colorado. And each one
9 gets a director, along with the city and county
10 of Denver.
11 So there are nine directors that vote and
12 another director from the -- that is the
13 executive director of the Department of Natural
14 Resources that also gets a vote.
15 And then there's ex officio members which
16 include the state engineer, the commissioner of
17 agriculture and others, the attorney general
18 that sit on that board.
19 Q. Okay. And what -- what -- what's the
20 role of the board? What does the board do?
21 A. Well, we have a large loan program
22 for water projects within Colorado. So -- and
23 we also have a grant program for all different
24 kinds of water projects within Colorado.
25 And we -- we look at in-stream flows. We

<p style="text-align: right;">Page 1034</p> <p>1 look at watershed protection, different -- a 2 wide variety of things. 3 Q. Okay. And how long did you serve on 4 that board? 5 A. Five years. 6 Q. Okay. But you're no longer on the 7 board? 8 A. I'm not on the board anymore. 9 Q. Okay. But during that period when 10 you were on the board and you were reviewing 11 projects in -- I believe you indicated your 12 board would extend loans? 13 A. Yes. 14 Q. And so as part of that process, did 15 you have to review and evaluate the costs and 16 the -- the planning for those various projects? 17 A. Yeah. You know, the staff, there was 18 a whole staff associated with the Colorado 19 Water Conservation Board. And the staff looked 20 at a lot of those, brought them to the board. 21 And we reviewed each board meeting. We had 22 quarterly board meetings that we reviewed if 23 somebody was asking for a loan. 24 A lot of the bigger reservoirs would do 25 bonding, that kind of thing. But they would</p>	<p style="text-align: right;">Page 1035</p> <p>1 also come to the Water Conservation District or 2 the Water Conservation Board to -- to maybe 3 fill a certain area for a little while. 4 So one was a \$90 million loan for the 5 Windy Gap Firming Project, which is being built 6 today. It's Chimney Hollow Reservoir. 7 Q. Okay. And were you involved in 8 the -- reviewing that project for your board? 9 A. Yeah, yeah. 10 Q. Okay. And during either your period 11 on the board or during the work you've done for 12 the irrigation district, do you have a rough 13 approximation of the range of cost per acre it 14 takes in Colorado in order to build a 15 reservoir? 16 A. Well, it would be cost per acre-foot? 17 Q. Yeah. 18 A. Yeah. So, I mean, just ones that I 19 know of because I'm involved in a lot of that. 20 We have one that's -- the Windy Gap Firming 21 Project, and that's \$20,000 per acre-foot. 22 Q. Okay. 23 A. It's a 90,000 acre-foot reservoir. 24 We have the Northern Integrated Supply 25 Project which is a reservoir above Fort Collins</p>
<p style="text-align: right;">Page 1036</p> <p>1 coupled with a reservoir north of Greeley for a 2 total of 210,000 acre-feet. 3 And that -- the yield on that, so yield -- 4 by yield I mean they might fill the reservoirs, 5 but there's not enough water to actually take 6 all the water out of the reservoir every year 7 so you fill it up when you can. And they 8 expect a yield of 40,000 acre-feet. And that's 9 \$50,000 per acre-foot. 10 I have a deal that we're looking at with 11 Parker Water and Sanitation District. That 12 one's \$30,000 acre-feet. 13 And then, you know, I've been watching the 14 Perkins County Canal which -- because I'm -- 15 my -- my area of service is in District 64, 16 which is subject to the compact with Nebraska. 17 And so I look at -- there was a 18 feasibility study that was just done. And they 19 showed it was \$567 million for a 70,000 20 acre-feet. So that's \$8,100 per acre-foot. 21 So -- so those kind of numbers I do have. 22 And, you know, I -- when I looked at Lake 23 McConaughy, of course, it's a 1.74 million 24 acre-foot reservoir. But the influence to 25 that, kind of the yield would be 758,000.</p>	<p style="text-align: right;">Page 1037</p> <p>1 So the range in my mind of that asset is 2 6.1 to \$38 billion worth. 3 So, you know, I'm not an appraiser. But 4 just from other projects, even -- the 6.1 is 5 the Perkins County Canal. But all these 6 reservoirs are not on stream. None of them 7 have hydropower. So this is just the reservoir 8 to store the water and the water rights 9 associated with that. 10 Q. And that's just for the reservoir? 11 A. Just for the reservoir. 12 Q. Okay. 13 A. Not any hydropower. 14 Q. And I understand that you're not an 15 appraisal -- appraiser. 16 A. No. 17 Q. And what you're giving us is a 18 back-of-the-napkin based on numbers you've seen 19 and there's a great deal of variability on 20 projects ranging from land costs to scope of 21 the project; correct? 22 A. Absolutely. 23 Q. But, you know, in your mind, if you 24 had to replace this asset, which you couldn't 25 do, but if you had to, then we would be talking</p>

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1 a range low side of 6 billion and high side,
2 did you say, 38 billion?
3 A. 38 billion.
4 Q. Okay. Billion with a B?
5 A. B. Uh-huh.
6 Q. Okay. And that's not including the
7 hydro units, not including the canals?
8 A. Correct.
9 Q. And it's also not putting a dollar
10 value on the water itself; right?
11 A. Those reservoirs that I mentioned,
12 that is -- that is for the water stored in them
13 as well.
14 Q. Okay.
15 A. So they have water rights associated
16 with them.
17 Q. Okay. Now, nowhere in the Phase 2
18 report was there any assessment of fair value
19 for any of the assets; do you agree?
20 A. I agree. That's one thing that
21 surprised me is that there -- when I first
22 looked at the report, I saw that it was done by
23 a power company or power utility engineering
24 consultant. And there was no consultant used
25 for how this might affect the water users at

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1 back in 1909 to 1911. That's what we carry on
2 the books. It's worth a lot more than that.
3 Q. And Kingsley's many multiples larger?
4 A. Of ours, yeah.
5 Q. And it's also in stream?
6 A. Right.
7 Q. And has a FERC license?
8 A. Yeah.
9 HEARING OFFICER TEXEL: When you
10 say a lot more than that, exponentially more
11 or --
12 THE WITNESS: Yeah.
13 HEARING OFFICER TEXEL: Can you
14 give us a scope?
15 THE WITNESS: 38 billion. So as
16 far as --
17 HEARING OFFICER TEXEL: You have
18 a range.
19 THE WITNESS: -- Central -- yes,
20 Central, he said 84 million on the books. But
21 it's 6 billion to 38 billion, in my estimation,
22 North Sterling would have that same kind of
23 growth. I didn't do the numbers on those.
24 HEARING OFFICER TEXEL: It had
25 the same equivalent ratio --

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1 all.
2 Q. And so setting aside that this isn't
3 a cashout merger and there aren't shareholders
4 who have to be remunerated, you know, we're
5 talking about a merger of two public districts,
6 but in your estimation, based on the sheer
7 volume of the assets, should that have not been
8 taken into consideration at some level for
9 purposes of how this should be structured and
10 managed?
11 A. It absolutely should have been taken
12 into consideration.
13 Q. Just from a fairness proposition?
14 A. For fairness.
15 Q. I will represent to you that -- well,
16 I'll represent to you that the only numbers
17 that are carried on Central's balance sheet for
18 its capital assets -- which include McConaughy,
19 all four hydros and the canals -- is booked at
20 roughly 84 -- 84,277,664. So \$84 million for
21 all of those assets at book value. I take it
22 in your mind, that has absolutely no
23 approximation to actual value?
24 A. No. Our book value on North Sterling
25 is the same. It cost 2.4 million to build it

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1 THE WITNESS: Yeah.
2 HEARING OFFICER TEXEL: --
3 approximately? Okay.
4 THE WITNESS: Correct.
5 BY MR. DEGAN:
6 Q. Have you ever been approached by an
7 entity that was interested in buying your
8 irrigation system or buying a portion of your
9 system?
10 A. No.
11 Q. What was the High Line Project?
12 A. Oh, you know, we have a rural
13 electric provider, High Line Electric --
14 Q. Yeah.
15 A. -- in our area. And so they were
16 just looking for renewable energy so were
17 looking at a low-head hydro in our dam.
18 So we had a consultant who did both water
19 and energy, had this water and energy nexus
20 that they did that they looked at would it be
21 feasible to put hydroelectric in North
22 Sterling.
23 Q. Okay.
24 A. And so that -- that's what that was.
25 And we did a feasibility study that showed

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1 that it wouldn't be feasible because we don't
2 release water -- although it matches during
3 certain times, it's not enough of a match and
4 enough of a constant supply because we don't
5 release any water in the wintertime that they
6 could establish a -- that it would be cost
7 effective.
8 Q. Well, if -- if an entity did approach
9 you and it's a retail electric utility and, you
10 know, said we want to come in, we want to
11 consolidate, you know, we think there's a play
12 here to put some hydro in so we'd like to have,
13 you know, some access to a water source, with
14 the intent that eventually there would be, you
15 know, sharing of these assets, would you be
16 comfortable with that transaction?
17 A. Absolutely not.
18 Q. And why is that?
19 A. Because we have differing ideas,
20 differing customers that we're trying to
21 deliver to.
22 And our -- our board and I are beholding
23 to our irrigators to do -- to deliver
24 irrigation water. We wouldn't be -- that's why
25 we did all the other agreements with the

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1 irrigation users?
2 THE WITNESS: Correct.
3 BOARD MEMBER HUTCHISON: The
4 board changes, in other words, how governance
5 is going to work in the proposed entity versus
6 the current entity and loss of exclusive
7 control, in other words, it's -- it's -- maybe
8 those two things are closely related, you know.
9 Essentially what I think has previously been
10 described is 9 out of 12 directors versus 6 out
11 of 14. I mean, would that be a way to
12 summarize your primary concerns?
13 THE WITNESS: Pretty much. I
14 mean, I don't know if I know enough about the
15 area to tell you that -- how the board makeup,
16 how that hurts. But exclusive control,
17 absolutely.
18 BOARD MEMBER HUTCHISON: Okay.
19 THE WITNESS: The only other --
20 the only thing I do know is that we have
21 competing -- just because all of our farmers
22 live in a rural area, they have different
23 ideas.
24 We have farmers that are exclusively
25 groundwater. We have farmers that are

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1 protections in there so that, hey, we're either
2 paid or -- and they're only for short terms.
3 We don't like perpetuity either. So those are
4 things that make us cringe.
5 Q. And because your directors are only
6 serving water users and water irrigators, they
7 don't have the conflict of having to decide
8 whether a decision should be made which
9 benefits an irrigator more than an electric
10 consumer or vice versa; correct?
11 A. Correct.
12 Q. Which would be a difficult position
13 for any director to be in?
14 A. Absolutely.
15 MR. DEGAN: Thank you. Your
16 witness.
17 BOARD MEMBER HUTCHISON: I have
18 some questions before you go.
19 I want to kind of go down a line of
20 questions. If I understood -- and you can
21 clarify this or correct me if I understood.
22 I think in response to one of the
23 questions, the primary concerns that you see in
24 the proposed merger is no protections, I think,
25 and I think by that, protections of the water

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1 exclusively surface water. And we have
2 combined. And sometimes we have what's called
3 augmentation plans that have to deliver water
4 to the aquifer to make up for well pumping so
5 that you folks in Nebraska aren't injured by
6 the compact. You know, we offset all of our
7 pumping. And those don't always match, even
8 within farmers.
9 So if you have a whole area that's getting
10 surface water -- I don't know the whole setup.
11 I'm just saying in our area, if you have a
12 whole area that's getting surface water and
13 they were going to combine with a area that's
14 provided groundwater, there's going to be a lot
15 of consternation and butting of heads. And
16 most likely that -- those would never combine
17 in our area.
18 We've gone through a lot of troubles. And
19 I've been in the middle of a lot of fights
20 between well users and surface water users.
21 And even that is difficult enough. And they're
22 all rural farmers.
23 BOARD MEMBER HUTCHISON: So
24 let's -- let's look at some of the differences
25 then between what you're used to managing where

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1 most of your expertise is and here.
2 If I have understood correctly -- and if
3 you have an understanding of this, you can
4 clarify it or, if not, you know, I'll -- I'm
5 sorry. But I think what I've heard is that
6 most of the revenue that's generated by Central
7 comes from the hydroelectric generation.
8 THE WITNESS: That's the way I
9 understand it, yes.
10 BOARD MEMBER HUTCHISON: And
11 so -- and your revenue is coming from the
12 ability to levy a tax on landowners?
13 THE WITNESS: Correct.
14 BOARD MEMBER HUTCHISON: And so
15 in -- in this case, I mean, there's a lot of
16 already competing interests in being able to
17 generate -- it's not really competing because
18 all the revenue right now is going to support
19 the irrigation and lowering those rates.
20 Essentially that's the -- I think a way to
21 think about it; right? That Central is
22 generating revenue from hydroelectric sales to
23 be able to keep water rates lower; right?
24 THE WITNESS: That is correct.
25 BOARD MEMBER HUTCHISON: So do

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1 DNR or something like that.
2 And -- and, yeah. But you can use them at
3 different times. And that could be to the
4 detriment of the farmers that are relying on
5 that surface water.
6 If they need -- if all of a sudden power
7 becomes really important in the wintertime for
8 some reason, which I don't know, but eventually
9 you -- you will have issues where you're
10 releasing some water at a time -- whether it's
11 rainfall or whatever it may be, a time that
12 your irrigators in certain areas don't need it.
13 And that is the problem I see.
14 BOARD MEMBER HUTCHISON: So do
15 you see anything -- you've described a \$38
16 billion -- up to \$38 billion asset. Do you --
17 can you definitively point to anything that
18 will reduce the value of that asset as a result
19 of the merger?
20 THE WITNESS: No. It's just
21 exclusive -- you don't have control like you
22 did before.
23 BOARD MEMBER HUTCHISON: Okay.
24 And -- all right. That's good enough. Thank
25 you.

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1 you -- if you have expertise in this area, do
2 you have any opinion on the difference in
3 projected revenues in this PSE report between
4 what they are currently able to get in the
5 market and what they think the value will be in
6 this combined entity?
7 THE WITNESS: No. It's -- it's
8 the potential conflicts. I don't know the
9 value.
10 BOARD MEMBER HUTCHISON: Okay.
11 THE WITNESS: It's the potential
12 conflicts of wanting to -- you have -- on day
13 one, rather than having exclusive control of
14 the board, you have some other board members
15 that are coming in where there's nothing to
16 protect the water users in any of the documents
17 that I've seen, and you have these other board
18 members coming in, and they're going to set
19 those later apparently, when I read the letter
20 of October 10th, 2022.
21 And so -- so what could happen is you
22 don't lose your water right. You can't even --
23 you mentioned it earlier yesterday, I believe,
24 that, hey, you can't use them for another
25 purpose. I mean, unless you go to the Nebraska

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1 THE WITNESS: You're welcome.
2 Thank you.
3 BOARD MEMBER REIDA: When you
4 were speaking of the different valuations, my
5 understanding from listening to the testimony,
6 in particular from the GM from Dawson, they
7 have -- their book value of their distribution
8 system is about 200 million. And they've got
9 about 50 million of debt that would be assumed
10 in this transaction.
11 And so I asked, well, why are you using
12 booked value versus fair market value, because
13 there could be a difference in -- you know,
14 even though there's -- there's not shareholders
15 involved here, there could very easily or
16 should be maybe some sort of a stronger
17 position to an entity that has a higher value
18 of the assets coming in.
19 And the explanation that she gave was,
20 well, we have to compare apples to apples.
21 What do you think about that?
22 THE WITNESS: It's an apple and
23 an orange. You have an irrigation district
24 that generates power at the highest possible
25 price that they can merging with an entity that

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1 tries to buy it at the lowest price they can.
2 I wouldn't -- I wouldn't want to be --
3 BOARD MEMBER REIDA: I was
4 referring to the -- when they're looking at
5 doing these valuations based on book value.
6 THE WITNESS: Oh, I see. Sorry.
7 BOARD MEMBER REIDA: Yeah. So
8 that was her explanation, using book to book
9 because that way we're apples to apples.
10 THE WITNESS: Right. But I
11 think it would be better because they've been
12 in the business for 80 years -- I don't know
13 how long the powerlines have been there, but my
14 understanding is powerlines depreciate. I have
15 yet to see a water asset depreciate. It's only
16 gone skyrocketing in my area.
17 BOARD MEMBER REIDA: Thank you.
18 HEARING OFFICER TEXEL: Okay. I
19 don't see any other board questions.
20 MR. BRASHEAR: Okay. Thank you.
21 CROSS-EXAMINATION
22 BY MR. BRASHEAR:
23 Q. Mr. Yahn, good afternoon.
24 A. Good afternoon.
25 Q. Have -- have you ever led a public

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1 members?
2 A. Irrigators.
3 Q. How many board members are there?
4 A. Three for each of the districts that
5 I manage --
6 Q. And all three of those districts
7 are --
8 A. -- three.
9 Q. -- elected by irrigators --
10 A. Correct.
11 Q. -- the boards are?
12 A. Correct.
13 Q. As you talked about the system for
14 Central, you've been talking about Lake
15 McConaughy as part of that as well. Would you
16 agree with me that Lake McConaughy and Keith
17 County where it's located are aligned in
18 interest with Phelps, Kearney and Gosper
19 County?
20 A. I don't know that.
21 Q. Do you -- do you view Lake McConaughy
22 as being related to water --
23 A. Yes.
24 Q. -- to water issues?
25 A. Yeah, it's a big reservoir.

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1 district in or through a merger?
2 A. No.
3 Q. And I appreciate you sharing your
4 expertise in Colorado irrigation district work.
5 Have you ever led a public power and irrigation
6 district in Nebraska?
7 A. No.
8 Q. Have you ever led an irrigation
9 district in Nebraska?
10 A. No.
11 Q. Do you understand, sir, that the
12 current footprint -- footprint of Central today
13 includes more groundwater irrigators than
14 surface water irrigators?
15 A. I don't know that.
16 Q. Are -- are you surprised by that?
17 A. No.
18 Q. Does that make any difference to you?
19 A. No.
20 Q. Mr. Yahn, you've talked about control
21 or at least your North Sterling district serves
22 irrigators. Who elects the board of North
23 Sterling district?
24 A. The water users.
25 Q. So irrigators elect the board

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1 Q. And do you understand Phelps, Kearney
2 and Gosper Counties as being related to water
3 and irrigation?
4 A. Yes.
5 Q. So would you view them as aligned?
6 A. With Keith County?
7 Q. With regard to water.
8 A. They could be. They're -- Keith
9 County, I -- just listening here in the last
10 couple of days, there's no irrigation land
11 there.
12 But they do have complementary interests
13 in Lake McConaughy because they use it for
14 recreation in Keith County.
15 But the water users that actually own and
16 operate it are -- are us -- in Central's
17 district and predominantly I understand -- I
18 didn't know this before, you know, Gosper and
19 Phelps and Kearney Counties.
20 MR. BRASHEAR: I have no further
21 questions.
22 HEARING OFFICER TEXEL:
23 Redirect?
24 MR. DEGAN: No questions. Thank
25 you.

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1 THE WITNESS: Thank you.
2 HEARING OFFICER TEXEL: Before
3 you go, any final board questions?
4 There are not. Okay. So thank you.
5 THE WITNESS: Thank you.
6 HEARING OFFICER TEXEL: You're
7 dismissed.
8 MR. DEGAN: Moving right
9 along --
10 HEARING OFFICER TEXEL: Yes.
11 MR. DEGAN: -- for a change.
12 Call Dudley Nelson.
13 DUDLEY NELSON,
14 Called as a witness on behalf of Protestants,
15 being first duly sworn, was examined and
16 testified as follows:
17 HEARING OFFICER TEXEL: Okay.
18 Could you spell your name and then state your
19 address.
20 THE WITNESS: Dudley Nelson,
21 D-U-D-L-E-Y, N-E-L-S-O-N, 970 25 Road, Axtell,
22 Nebraska.
23 HEARING OFFICER TEXEL:
24 Mr. Degan.
25 MR. DEGAN: Thank you.

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1 entity?
2 A. Yes.
3 Q. And you also recognize that you saw
4 that there would be some financial benefits
5 from merging the two entities, their balance
6 sheets and their incomes?
7 A. Yes.
8 Q. Okay. But there was also some
9 dissent on your board; would you agree with me?
10 A. Yes.
11 Q. In particular, for example, Bob
12 Dahlgren, another board member, was -- was not
13 in favor of this?
14 A. No, he was not.
15 Q. And what was the basis for his
16 objections?
17 A. I believe he was worried about the
18 loss of control.
19 Q. Okay. And I apologize. I don't
20 recall what you told me in your deposition.
21 But did you have any one-on-one conversations
22 with Mr. Dahlgren about the merger issue?
23 A. I don't believe so.
24 Q. Okay. Were there other members of
25 the board that expressed to you their concerns

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1 DIRECT EXAMINATION
2 BY MR. DEGAN:
3 Q. Good afternoon.
4 A. Good afternoon.
5 Q. Mr. Nelson, you currently serve as a
6 director for Central?
7 A. Yes, I do.
8 Q. How long have you been a board
9 member?
10 A. Twenty-four years.
11 Q. And you've been here, I believe, for
12 a good substantial portion of the testimony
13 that's been given the last few days?
14 A. All of it.
15 Q. And I had a prior opportunity to take
16 your deposition?
17 A. Yes, you did.
18 Q. Okay. And you voted in favor of the
19 merger?
20 A. Yes.
21 Q. And your reasons for voting in favor
22 of the merger, if I recall, were predominantly
23 the political advantage that having a larger
24 entity with more resources and more
25 geographical scope would bring to the combined

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1 over loss in control other than Mr. Dahlgren?
2 A. I don't believe so, no.
3 Q. But Mr. Dahlgren was not the only
4 Central board member who voted against the
5 merger; correct?
6 A. That's right.
7 Q. The other board member being Roger
8 Olson?
9 A. Yes, that's correct.
10 Q. And -- but Mr. Olson never expressed
11 to you what his particular viewpoints were?
12 A. No, he did not.
13 Q. Did he not speak during consideration
14 or discussion sessions regarding the merger,
15 Mr. Olson?
16 A. I don't remember him saying anything.
17 Q. Okay. And so when the vote was
18 taken -- and it was during a joint session of
19 both the Central board and the Dawson board;
20 right?
21 A. Yes.
22 Q. When that vote was taken, there were
23 three no votes for Central; correct?
24 A. Yes, that's correct.
25 Q. And one was Roger Olson. One was

<p style="text-align: right;">Page 1058</p> <p>1 Robert Dahlgren -- Dahlgren; correct? 2 A. Yes. 3 Q. And then the third was for the vacant 4 seat that currently existed on Central's board? 5 A. Yes, it was. 6 Q. And that seat was subsequently filled 7 by Mr. Soneson? 8 A. Yes. 9 Q. Did Mr. Soneson participate in any of 10 the deliberations regarding the proposed 11 merger? 12 A. No, he did not. 13 Q. And he was not seated as a director 14 until after the vote; correct? 15 A. Yes. In January. 16 Q. I'll hand you what's been marked as 17 Exhibit 7. Have you take a look at that. 18 HEARING OFFICER TEXEL: Seven? 19 BY MR. DEGAN: 20 Q. Oh, I'm sorry. It's Exhibit 48. 21 Deposition 7. 22 A. Okay. Yes. 23 Q. Okay. The first page of Exhibit 48 24 appears to be an email string that began 25 with -- well, let me strike that and back up.</p>	<p style="text-align: right;">Page 1059</p> <p>1 Is -- is the bottom email on the first 2 page of Exhibit 48 an email from yourself to 3 Mr. Brundage and Scott Dicke and Emily Anderson 4 at Central? 5 A. From me? 6 Q. From you on the bottom. 7 A. I guess so. It's got -- says it's 8 from me. 9 Q. Okay. Well, the second page is a 10 letter that you identified in your deposition 11 that you received from Bob Dahlgren? 12 A. Yes. 13 Q. So is this a letter he sent to all of 14 the directors? 15 A. I'm assuming he did. 16 Q. Okay. And I'm just clarifying that 17 from the cover sheet, you forwarded the copy 18 that you received on to management for Central; 19 correct? 20 A. Yes. 21 Q. All right. And paraphrasing, but in 22 Mr. Dahlgren's letter, he is suggesting that, 23 to the extent there's any revenue issue, that 24 Central should hold the course and not make any 25 radical changes in how it has operated over the</p>
<p style="text-align: right;">Page 1060</p> <p>1 last 80 years. Is that a fair summary? 2 A. I'll take your word for it. 3 Q. Okay. Well, certainly at this time, 4 there were merger discussions underway by 5 February of 2022? 6 A. Yes. 7 Q. Okay. Is that consistent with what 8 his viewpoint was with respect to the merger, 9 that he -- he did not think it was either 10 prudent or necessary? 11 A. Yes, for Mr. Dahlgren, that would be 12 true. 13 Q. Okay. I'm handing you what's been 14 previously marked as Exhibit 49. 15 Yeah, you can just leave that in front of 16 you. 17 Mr. Nelson, handing you what's been marked 18 as Exhibit 49. 19 Now, the cover sheet is dated December 29, 20 2021. And, again, in your deposition, you 21 identified this as another communication from 22 Bob Dahlgren; although, it's not signed? 23 A. I don't remember identifying this in 24 my deposition. 25 Q. Did you tell me if you'd seen it</p>	<p style="text-align: right;">Page 1061</p> <p>1 before? 2 A. I don't think so. 3 HEARING OFFICER TEXEL: You 4 don't think you told him, or you don't think 5 you've seen it before? 6 THE WITNESS: I don't think I've 7 seen it. 8 HEARING OFFICER TEXEL: Okay. 9 A. There's a lot here. If I've seen it, 10 I don't remember it. 11 BY MR. DEGAN: 12 Q. Well, this doesn't have the exhibits. 13 So I can't tell whether it was marked. So 14 we'll set that aside. 15 If you could look, does it -- can you tell 16 by looking at it whether or not that seems to 17 be something that Mr. Dahlgren would have sent? 18 It's my understanding that he was fairly 19 prolific in sharing his views to the board? 20 A. Yes, it's possible it came from him. 21 Q. Okay. Well, if you don't recall it, 22 I don't want to hold you to it or ask any more 23 questions about it. So we'll set that aside. 24 In addition to that, will you agree with 25 me that there were board meetings in the spring</p>

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1 of 2022 where at people appeared and gave
2 public comment to the board about raising
3 concerns and questions about the proposed
4 merger?
5 A. There may have.
6 Q. Okay. Do you recall whether Greg
7 Heiden gave public commentary at any point in
8 the first half of 2022?
9 A. I'm not sure. But he probably did.
10 Maybe he did.
11 Q. Okay. Do you have any recollection
12 one way or the other about Dave Dahlgren giving
13 negative commentary about the merger in the
14 first half of 2022?
15 A. Dave Dahlgren probably did give some
16 opinions.
17 Q. Okay. So the board certainly was
18 aware in the first half of 2022 that there were
19 some water users who had questions and concerns
20 and issues about the proposed merger?
21 A. Yes, a few.
22 Q. Okay. All right. Were you present
23 at a meeting of the Tri-Basin NRD that took
24 place on February 8th of 2023?
25 A. Yes, I was.

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1 of maintenance to dams and generators. I'm not
2 sure exactly what he said, that we could --
3 some of our -- some of our financial position
4 could go away.
5 And he also said that they should consider
6 Keith County as a Central friendly county
7 because of the water in -- because of Lake
8 McConaughy.
9 Q. Okay. So your recollection is that
10 he wasn't saying there was any imminent
11 financial crises but there could be future need
12 for the reserve funds for infrastructure?
13 A. Yes, for infrastructure.
14 Q. Okay. Do you recall him saying words
15 to the effect that merger is survival for
16 Central?
17 A. I do not remember him saying that.
18 Q. Or, you know, things are pretty
19 bleak?
20 A. I think I already said -- quoted what
21 I believed that he said.
22 Q. Okay. Well, did he say that Central
23 needs to merge?
24 A. I think he probably hinted at it. I
25 don't know that he said it directly.

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1 Q. And who else was present?
2 A. The directors were there. Tri-Basin
3 directors were there. Their general manager
4 was there. Their secretary was there. I was
5 there. Dave Nelson was there. Gwen Kautz was
6 there. Devin Brundage was there. Three to
7 four people representing the opponents to the
8 merger were there.
9 Q. Okay. And what was -- do you recall
10 what the purpose of that NRD meeting was?
11 A. To vote to oppose the merger.
12 Q. Okay. And was it a special meeting
13 that the NRD had called?
14 A. Yes, it was a special meeting.
15 Q. Okay. Do you recall -- and just to
16 be clear, David Nelson was a -- and is a
17 director of Central?
18 A. Yes.
19 Q. Do you recall Mr. Nelson making
20 statements during that meeting to the effect
21 that due to financial issues, there would be no
22 Central unless this merger were approved?
23 A. I believe you're not quoting him
24 correctly. I believe he said we are -- our
25 reserves could be in jeopardy because of a lot

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1 Q. Well, you -- you don't agree with
2 that statement, do you?
3 A. What?
4 Q. That Central needs to merge?
5 A. I don't know that we need to merge.
6 But I think it's a very good idea to merge.
7 Q. But it's not due to a financial
8 necessity?
9 A. No, not necessarily.
10 Q. Well, when I asked you in your
11 deposition, you were pretty clear that you felt
12 this was an opportunity, not a need?
13 A. Yes. I believe that it's an
14 opportunity to strengthen the financial
15 position of both districts that currently exist
16 apart because of synergies and -- I don't
17 remember exactly what I said.
18 But I did say that I believed it was a
19 good idea to merge because of finance -- both
20 make a bigger -- bigger company more
21 financially stable.
22 Q. Okay.
23 MR. DEGAN: Matt? Why don't we
24 go off the record for a moment.
25 HEARING OFFICER TEXEL: Okay.

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1 Off the record.
2 (4:08 p.m. - Recess taken.)
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1 corrected him or --
2 THE WITNESS: No, nobody
3 corrected him.
4 HEARING OFFICER TEXEL: --
5 nobody disagreed with what he said? I'm not
6 sure --
7 THE WITNESS: No, no, nobody
8 corrected him.
9 HEARING OFFICER TEXEL: Okay.
10 THE WITNESS: Sorry.
11 BY MR. DEGAN:
12 Q. Okay. So his comments stood as far
13 as he uttered them?
14 A. Yes.
15 Q. And you certainly didn't correct him
16 or try to correct the record after Mr. Nelson
17 spoke?
18 A. No, I did not. I didn't realize
19 there was a record to correct.
20 Q. Okay.
21 MR. DEGAN: Thank you. No
22 further questions. Or at least pass the
23 witness.
24 MR. JARECKE: Just one.
25 ///

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1 (At 4:22 p.m., with parties present as
2 before, the following proceedings were had:)
3 BY MR. DEGAN:
4 Q. Mr. Nelson, I just want to clarify,
5 the testimony that you just gave in respect to
6 a series of questions I asked you regarding the
7 testimony given by Mr. Nelson at the NRD board
8 meeting, that is your -- that is your best
9 recollection as you sit here today?
10 A. Yes, it is.
11 Q. So we are going to provide the board
12 a recording of Mr. Nelson's testimony as it was
13 recorded by the NRD. Would you agree with me
14 that whatever's on that recording is actually
15 what transpired during the board meeting?
16 A. Yes.
17 Q. Even if it doesn't necessarily
18 comport with your recollection?
19 A. Yes. I'm fine with that.
20 Q. Okay. Will you agree with me that
21 after Mr. Nelson spoke, that nobody from
22 Central stood up to correct him?
23 A. No.
24 Q. And I take it that --
25 HEARING OFFICER TEXEL: Nobody

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1 CROSS-EXAMINATION
2 BY MR. JARECKE:
3 Q. You heard many things at that meeting
4 that day; correct, the NRD meeting?
5 A. Yes, I did.
6 Q. And I assume you heard many things
7 you did not agree with?
8 A. Yes, I did.
9 Q. Did you correct those?
10 A. No, I did not.
11 MR. JARECKE: No further
12 questions.
13 BOARD MEMBER HUTCHISON: I have
14 a procedural question. So you're going to
15 provide a recording? Is this an audio
16 recording or video recording?
17 MR. DEGAN: It's an audio
18 recording.
19 BOARD MEMBER HUTCHISON: All
20 right. So let's talk about that at the end of
21 the day because, I mean, when we figure out
22 what we're doing after the end of the day, I
23 mean, when we're going to get that -- because
24 you don't have that here for us today?
25 MR. DEGAN: I think we could

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1 have it today.
 2 Matt?
 3 Yep.
 4 BOARD MEMBER HUTCHISON: Are you
 5 wanting to -- what are we supposed to do with
 6 that? I mean, I guess it's just like one of
 7 the exhibits that we haven't actually
 8 physically discussed? Is that basically how
 9 we're treating that?
 10 MR. DEGAN: Yes. I think we
 11 would mark it as an exhibit. It would go into
 12 the official record and make a record of.
 13 BOARD MEMBER HUTCHISON: Okay.
 14 I'm good with that.
 15 HEARING OFFICER TEXEL: We going
 16 to have it transcribed, or are we going to have
 17 a recording?
 18 MR. JARECKE: You'll receive an
 19 electronic recording of that file.
 20 HEARING OFFICER TEXEL: Okay,
 21 okay.
 22 MR. DEGAN: We can figure it
 23 out, whatever form you want.
 24 HEARING OFFICER TEXEL: Just
 25 wanted to make sure I -- let's go off the

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1 (At 4:26 p.m., with parties present as
 2 before, the following proceedings were had:)
 3 HEARING OFFICER TEXEL: Let's go
 4 back on the record.
 5 All right. We worked out how -- how the
 6 board is going to receive the recording.
 7 That's what we did when we were off the record.
 8 And where are we at? We just had the
 9 one question.
 10 MR. JARECKE: I'm good.
 11 HEARING OFFICER TEXEL: Okay.
 12 Did you have any redirect?
 13 MR. DEGAN: I have no further
 14 questions.
 15 HEARING OFFICER TEXEL: Okay.
 16 Did -- did Chairman Reida or Ms. Peck have any
 17 questions for Dudley Nelson before he's
 18 excused?
 19 BOARD MEMBER REIDA: No.
 20 HEARING OFFICER TEXEL: Okay.
 21 All right.
 22 Thank you, Mr. Nelson.
 23 Mr. Degan?
 24 MR. DEGAN: Yes. Call Tom
 25 Schwarz.

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1 record.
 2 (An off-the-record discussion was held.)
 3 (4:26 p.m. - Recess taken.)
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1 For purposes of planning, this is the last
 2 witness that we intend to call.
 3 HEARING OFFICER TEXEL: Okay.
 4 Mr. Schwarz, can you raise your right hand.
 5 THOMAS SCHWARZ,
 6 Called as a witness on behalf of Protestants,
 7 being first duly sworn, was examined and
 8 testified as follows:
 9 HEARING OFFICER TEXEL: Okay.
 10 And for both the court reporter and me, could
 11 you spell your name?
 12 THE WITNESS: Do you want my
 13 legal name? Thomas, T-H-0-M-A-S, Schwarz,
 14 S-C-H-W-A-R-Z.
 15 HEARING OFFICER TEXEL: Do you
 16 go by Tom?
 17 THE WITNESS: Yes, correct.
 18 HEARING OFFICER TEXEL: Would
 19 you like us to use Tom?
 20 THE WITNESS: I would prefer
 21 that, yes.
 22 HEARING OFFICER TEXEL: Okay.
 23 Happy to do that.
 24 And what's your address.
 25 THE WITNESS: 311 Medina Avenue,

<p style="text-align: right;">Page 1074</p> <p>1 Bertrand, Nebraska. 2 HEARING OFFICER TEXEL: All 3 right. Mr. Degan's witness. 4 BOARD MEMBER MOEN: Did you 5 swear him in? 6 HEARING OFFICER TEXEL: I did 7 swear him in. He was standing while he did 8 that. 9 DIRECT EXAMINATION 10 BY MR. DEGAN: 11 Q. Good afternoon, Mr. Schwarz. Where 12 are you currently employed? 13 A. Self-employed farmer. 14 Q. And where do you reside? 15 A. In Bertrand, Nebraska. 16 Q. And what county is Bertrand in? 17 A. Phelps. 18 Q. Do you -- as a self-employed farmer, 19 you have land in Phelps County? 20 A. Actually, the majority of our ground 21 is in Gosper County, around the Smithfield 22 area. 23 We did just pick up a quarter of an 80 24 that is in Phelps County. 25 Q. And is that irrigated farmland?</p>	<p style="text-align: right;">Page 1075</p> <p>1 A. Correct. But -- the bulk of it is, 2 yes. 3 Q. Bulk is. You have some dryland? 4 A. A little dryland, yes. 5 Q. And I assume that -- well, strike 6 that. 7 I'm going to ask you total acreage that 8 you farm. And in that number, if you could 9 include land that you own, land that you 10 control, land that you rent and related either 11 corporate or family interests? 12 A. It's about a thousand acres. 13 Q. Okay. 14 A. We farm -- I farm -- I'm a 15 fifth-generation farmer. Our kids farm with 16 us. And so we've got a -- the kids are 17 involved and my wife so -- 18 Q. Okay. And of that thousand acres, 19 the majority of it is irrigated? 20 A. Correct. 21 Q. And is that surface water irrigation? 22 A. Most of it is groundwater. We have 23 about 200 -- oh, 200 and probably 30, 40 acres 24 of Central water. 25 Q. Any of it --</p>
<p style="text-align: right;">Page 1076</p> <p>1 HEARING OFFICER TEXEL: What was 2 that number again? 3 THE WITNESS: 230 or 40. I 4 can't just give you the -- 5 HEARING OFFICER TEXEL: Of 6 surface water? 7 THE WITNESS: Right. 8 HEARING OFFICER TEXEL: Okay. 9 THE WITNESS: Approximately. 10 BY MR. DEGAN: 11 Q. Any of those acres both surface and 12 groundwater irrigated? 13 A. Yes. There would be about 200 of 14 those acres that would be both surface and 15 groundwater or have access to surface and 16 groundwater. 17 Q. Okay. Do you serve as an officer or 18 director of any organization? 19 A. Yes. I'm currently the vice 20 president of the Central District, Tri County 21 Water Users. 22 Q. And what is -- what is that? What is 23 that organization, what -- what -- who are its 24 members, and what does it do? 25 A. When Central was formed, there was a</p>	<p style="text-align: right;">Page 1077</p> <p>1 decision made at the state level that there 2 needed to be an organization that was strictly 3 farmers that were involved in -- where the 4 board of directors can be elected from any 5 community. 6 And in fairness, the first boards of 7 directors were mostly from Hastings, Minden and 8 Holdrege in the cities. So the Water Users 9 became a very important component to bring 10 forward water user or farmer issues directly. 11 Q. Okay. And so is it your testimony 12 that the Water User Group has been in existence 13 since roughly -- since Central was created? 14 A. Yes, correct. 15 Q. And how many members does Tri County 16 Water User Group have? 17 A. Oh, that's an excellent question. 18 Q. Approximately. 19 A. I'm not -- I'm going to guess, 120 to 20 150. 21 Q. And to clarify, is the Tri County 22 Water Users Group, is that a separate 23 organization from the Citizens Group? 24 A. Yes, correct. 25 Q. I take it there's some overlap?</p>

<p style="text-align: right;">Page 1078</p> <p>1 A. Yes. Greg Heiden that is on our 2 board is also a member of the Citizens Group, 3 uh-huh. 4 Q. How about of your respective members, 5 are there any other members of the Tri County 6 Water Users Group that are also members of 7 Citizens Against the Merger? 8 A. Yeah, I'm certain there are. 9 Q. Okay. But are you a member of the 10 Citizens Group? 11 A. Well, that's a good question. 12 Q. All right. Give me your best shot. 13 A. We did -- we did help them out 14 initially with a \$500 donation. And that did 15 not qualify us as a member of the group. 16 Now, my wife did recently send another 17 \$500 donation. So who knows. Maybe we'll be 18 in. 19 Q. Application pending. 20 HEARING OFFICER TEXEL: Maybe 21 you were going to get to this, but I wanted to 22 clarify the Tri County Water Users Group, is 23 this a group that's part of the State of 24 Nebraska or a political subdivision? Are you 25 elected? Or is this a nonprofit corporation?</p>	<p style="text-align: right;">Page 1079</p> <p>1 THE WITNESS: Okay. Yeah, we 2 are a corporation under the State of Nebraska. 3 And it's listed under the State of Nebraska as 4 Tri County Water Users. 5 HEARING OFFICER TEXEL: But it's 6 a private corporation? 7 THE WITNESS: Correct. 8 HEARING OFFICER TEXEL: It's 9 not -- you're -- through the Secretary of 10 State. But you don't -- the elections -- you 11 don't have elections publicly elected for your 12 directors or anything like that? 13 THE WITNESS: The elections are 14 handled at our annual meeting. 15 HEARING OFFICER TEXEL: As a 16 corporation? 17 THE WITNESS: As a corporation, 18 correct, uh-huh. 19 HEARING OFFICER TEXEL: Okay. 20 So I -- I wanted to make sure whether it was a 21 state entity -- 22 THE WITNESS: No. 23 HEARING OFFICER TEXEL: -- or 24 political subdivision -- 25 THE WITNESS: No.</p>
<p style="text-align: right;">Page 1080</p> <p>1 HEARING OFFICER TEXEL: -- or 2 private corporation, private entity. It was 3 just formed a very long time ago? 4 THE WITNESS: Now, it was 5 explained to me that we were in the original 6 charter. And I have -- I've been told both 7 ways on that. So -- 8 HEARING OFFICER TEXEL: In the 9 original -- 10 THE WITNESS: I've not read the 11 original charter for Central. 12 HEARING OFFICER TEXEL: In the 13 original -- oh. 14 THE WITNESS: Central Public 15 Power, that that was something that was in 16 there that had to be. But I -- 17 HEARING OFFICER TEXEL: Okay. 18 THE WITNESS: -- don't know that 19 to be a fact. 20 HEARING OFFICER TEXEL: Okay. 21 BY MR. DEGAN: 22 Q. Okay. But the purpose of the 23 organization, it -- do you meet? Do you take 24 input from your farmer members? 25 A. Yeah, we meet probably four, five</p>	<p style="text-align: right;">Page 1081</p> <p>1 times a year, sometimes more often if there's 2 an issue that we really need to deal with. 3 The district is really good about keeping 4 us up to date regarding water issues for the 5 coming year. And we'll have discussions about 6 improvements that may be needed in the system 7 or be helpful. 8 For example, right now there's a new 9 siphon that Central -- siphon project Central 10 has going to bring water from near Johnson Lake 11 into the Elwood Reservoir, which is going to be 12 a wonderful addition to the system. And that's 13 the kind of thing we might discuss in those 14 meetings. 15 Q. And how long have you been a member 16 of the Water Users Group? 17 A. I believe it was about 1985. 18 Q. And during that period, how would you 19 characterize the relationship between the Water 20 Users Group and Central? 21 A. It's -- it's been a pretty good 22 relationship other than a couple rocky spots. 23 Back in the early '90s, Central had a 24 water rights problem that came to light. And 25 things were a little tense because about a</p>

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1 third of our acres were found to not have valid
2 water rights on them. And people were,
3 needless to say, a little upset about that.
4 But aside from that, I think we've had a
5 very strong -- and today we have an extremely
6 good relationship.
7 Q. And what happened with those water
8 rights? Was that action taken by DNR -- the
9 Department of Natural Resources? Or was it an
10 action taken by Central?
11 A. No. It was -- it was -- Department
12 of Water Resources had allowed this thing to --
13 they knew there was an issue. The department
14 had let it slide.
15 And then a reporter for the World-Herald
16 actually found this out in the course of
17 working on the relicensing of McConaughy. And
18 he put it in the World-Herald.
19 At that point, the -- you know, the
20 Department of Natural Resources couldn't look
21 away anymore. So they had to --
22 Q. Okay. But it was the department that
23 acted to act on those water rights?
24 A. Correct.
25 Q. It wasn't Central?

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1 referring to is you asked if I was a member.
2 HEARING OFFICER TEXEL: Okay.
3 So the Tri -- the --
4 THE WITNESS: And that's not --
5 no. Central District Water Users has put no
6 money in.
7 HEARING OFFICER TEXEL: The
8 group didn't donate the money, you and your
9 wife did?
10 THE WITNESS: No, no, that was
11 my wife, yes.
12 HEARING OFFICER TEXEL: And so
13 it was a personal donation?
14 THE WITNESS: Right, correct,
15 yeah, yeah.
16 HEARING OFFICER TEXEL: Okay.
17 THE WITNESS: Central Water
18 Users is not --
19 HEARING OFFICER TEXEL: The
20 Tri County Water Users didn't make that
21 donation?
22 THE WITNESS: No, no.
23 HEARING OFFICER TEXEL: I
24 misunderstood that. Okay. Thank you.
25 THE WITNESS: And, honestly,

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1 A. No.
2 Q. Okay. Okay. All right. But other
3 than that issue, I take it your farmer members
4 and your group have been generally -- generally
5 happy with the way that Central has managed the
6 district?
7 A. Yes, absolutely.
8 Q. And I should clarify, are you
9 testifying here on behalf of the Water Users
10 Group?
11 A. I would say I should -- I should --
12 I -- I guess I should say I am testifying here
13 on behalf of myself.
14 Q. Okay. There wasn't a resolution
15 passed authorizing --
16 A. No, there was not a resolution
17 passed, so -- we don't meet that often, as I
18 stated.
19 Q. Okay. Thank you for clarifying that.
20 HEARING OFFICER TEXEL: I have
21 one question about the \$500 donation.
22 Was that vote to make that donation
23 unanimous of your directors?
24 THE WITNESS: Oh, no, this --
25 the \$500 donation, that's -- that we're

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1 that was somewhat on my advice to our group
2 because if this merger were to come to pass,
3 I'm afraid we're going to need our -- need our
4 financial resources possibly down the road if
5 there's problems. And I didn't want to see us
6 completely empty our coffers.
7 HEARING OFFICER TEXEL: Okay.
8 BOARD MEMBER HUTCHISON: So
9 what's the source of funding of Tri County
10 Water Users Association? You said limited
11 resources. Does it have resources?
12 THE WITNESS: Yeah. We have --
13 we get -- I think it's \$20 a year membership.
14 BOARD MEMBER HUTCHISON: From?
15 THE WITNESS: From irrigators.
16 BOARD MEMBER HUTCHISON: And how
17 many irrigators have joined?
18 THE WITNESS: I think there's --
19 I'm -- again, don't hold me to this completely.
20 But I think it's around 120.
21 HEARING OFFICER TEXEL: And
22 previously you said 120 to 150 members.
23 THE WITNESS: Yeah.
24 BOARD MEMBER HUTCHISON: Okay.
25 HEARING OFFICER TEXEL:

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1 Somewhere in there?
2 THE WITNESS: Yeah, it's in that
3 range. I mean, I'm being conservative but --
4 HEARING OFFICER TEXEL: That's
5 an estimate?
6 THE WITNESS: Yeah.
7 BY MR. DEGAN:
8 Q. Okay. Was the Water Users Group --
9 did they take an interest in this proposed
10 merger?
11 A. Yes.
12 Q. And did they take a position before
13 the respective boards voted on the issue,
14 Central and Dawson?
15 A. No. Our -- we met in December. And
16 our previous meeting was at the end of August.
17 And at that point, at our previous meeting at
18 the end of August, no decision had been made
19 regarding the board and the makeup of the
20 board. It wasn't completely ironed out at that
21 point.
22 And a number of other issues, we didn't
23 know if they were ironed out. So I know
24 myself, I suggested we wait to make a decision
25 until we knew what we were voting on, you know,

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1 Q. And who is that? Can you give us his
2 name and his position?
3 A. Jeff is -- well, he was actually the
4 grandson of the board member that passed away
5 that created the vacancy on Central's board.
6 He's been a -- he's been -- he's a younger
7 gentleman. He's been on the Water Users for --
8 again, I hate to guess, but I would say five,
9 ten years at the maximum.
10 Q. And Jeff ultimately filled the
11 vacancy?
12 AUDIENCE MEMBER: Brent.
13 A. Brent, sorry. Jeff, oh, gees, sorry.
14 BY MR. DEGAN:
15 Q. Excuse me.
16 A. Old-timers disease.
17 HEARING OFFICER TEXEL: Why
18 don't you clarify that because we had some --
19 THE WITNESS: Yes.
20 HEARING OFFICER TEXEL: --
21 chatter from the peanut gallery.
22 THE WITNESS: Yeah, yeah, Brent,
23 Brent. Sorry, my bad.
24 BY MR. DEGAN:
25 Q. So it's Brent Soneson?

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1 had hard information.
2 Q. And was there a communication of that
3 decision made to Central?
4 A. No. We just didn't take -- we just
5 didn't vote or -- you know, there was no motion
6 passed or anything. We just -- we listened to
7 the Central staff and then left it at that, at
8 that time --
9 Q. So the board --
10 A. -- you know, so --
11 Q. So the board -- the respective boards
12 moved forward and made their vote; correct?
13 A. Correct.
14 Q. And following that, was there further
15 action taken by your group in connection with
16 this merger?
17 A. Yes. In late December, we met again.
18 And that, of course, was after the vote of the
19 two districts.
20 And we voted -- it's my recollection is,
21 we voted five to zero with one abstaining to
22 oppose the merger.
23 Q. Now, is there a Mr. Soneson who is a
24 member of Water Users Group?
25 A. Yes.

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1 A. Yeah.
2 Q. And his grandfather's name?
3 A. Gordon.
4 Q. Gordon. You didn't know you were
5 going to get quizzed on the Soneson family?
6 A. No, no. Names are not my specialty,
7 I'll say that.
8 Q. It's my bad because I had written
9 down Soneson. So -- okay.
10 Were you here during the testimony of
11 Mr. Muhlbach?
12 A. Okay, you're --
13 Q. Dan Muhlbach, the director from
14 Dawson?
15 A. Yes, uh-huh.
16 Q. And do you recall when he made a
17 comment that he had had a conversation with
18 Brent Soneson regarding Brent Soneson's
19 position on this merger?
20 A. Uh-huh, yes.
21 Q. Did that surprise you?
22 A. Yes, it did.
23 The last meeting I attended with him, he
24 was opposed to the merger, very -- I thought
25 strongly opposed to the merger. So I'm not --

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1 I -- I don't know what that's all about.
2 Q. Okay. Was he an officer or a
3 director of the Water Users Group?
4 A. He's -- Jeff -- or I'm back again.
5 Brent is -- is a -- is the treasurer. He's an
6 officer.
7 Q. An officer of Water Users Group?
8 A. Water Users, uh-huh.
9 Q. Did he resign once he became a board
10 member of Central?
11 A. No, he has not resigned at this
12 point.
13 Q. So he still has a position?
14 A. Correct.
15 Q. And the official position of the
16 Water Users Group is in opposition to the
17 merger?
18 A. Correct.
19 Q. And that vote happened in December?
20 A. Correct.
21 MR. DEGAN: Thank you. Your
22 witness.
23 CROSS-EXAMINATION
24 BY MR. BRASHEAR:
25 Q. Mr. Schwarz, good afternoon.

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1 talking about?
2 A. Absolutely. Absolutely.
3 Q. You talked about the Water Users
4 Group taking a vote, I believe you said five
5 voting in favor --
6 A. Uh-huh.
7 Q. -- no one opposed, one --
8 A. Correct.
9 Q. -- abstention?
10 A. Correct.
11 Q. How many directors are on -- that was
12 in December of 2022?
13 A. Uh-huh.
14 Q. How many directors are or were on the
15 board of directors in December of 2022?
16 A. That's three -- there's three per
17 county. So there would be nine.
18 There's three from Gosper -- now, if -- I
19 don't know if you want to get into nitpicking,
20 but just in case you do, I mean, Gosper -- the
21 directors for Water Users on Gosper actually
22 are one township over into Phelps because of
23 the -- to make it somewhat even amongst all the
24 water use.
25 So even though I live in Phelps County,

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1 A. Good afternoon.
2 Q. With regard to the line of
3 questioning Mr. Degan was just on for -- I want
4 to clarify a couple of things.
5 The Tri County Water Users Association,
6 which also goes by the Central District Water
7 Users?
8 A. Correct, yes.
9 Q. Those are the same thing?
10 A. Yep.
11 Q. How long have you been a director of
12 that organization?
13 A. Since mid '80s, 1985, about, I'd say.
14 Q. Okay.
15 A. In fact, I was president for a number
16 of years. And then with relicensing, I got
17 bogged down to the point I needed to cut back.
18 So I removed myself as president. And I was
19 president of the Nebraska Water Users, which is
20 overriding.
21 Q. And you talked about the Water
22 Users -- can I just use Water Users? Is that
23 okay?
24 A. Sure, absolutely.
25 Q. We'll both understand what we're

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1 I'm technically a Gosper County director.
2 Q. Okay. And so -- so there were -- it
3 would appear there were three directors absent
4 that day?
5 A. Correct.
6 Q. When you say the Water Users
7 Association has taken a position and met, are
8 you referring to the board of directors? Or
9 are you referring to the membership --
10 A. No.
11 Q. -- at large?
12 A. I'm referring to the board of
13 directors.
14 Q. Okay. Did the board of directors
15 poll its membership before taking that vote on
16 what their positions might be on the merger?
17 A. No.
18 Q. Mr. Schwarz, I think you just
19 indicated, I believe, you started your service
20 as a director in 1985?
21 A. It was about --
22 Q. Roughly?
23 A. -- yeah, it was about that. I don't
24 remember exactly, but it was in that area.
25 Q. And it's been continuous since then?

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1 A. Since then, right.
2 Q. Do you recall conversations in 2007
3 for the board of directors and the Water Users
4 Group about additional revenue streams for
5 Central or the need for additional revenue
6 streams?
7 A. No, I don't.
8 I'm not saying something didn't -- a
9 discussion like that didn't take place. I
10 don't recall it off the top of my head.
11 Q. I'm not making fun of you. But we're
12 talking about names of people; right? And so
13 that's more than fair.
14 MR. BRASHEAR: If I may
15 approach, Mr. Texel?
16 HEARING OFFICER TEXEL: Yes.
17 BY MR. BRASHEAR:
18 Q. Mr. Schwarz, showing you a document
19 that -- do you see it appears to be a fax
20 transmission at the top? There's reference to
21 a fax where it says HP laserjet fax?
22 A. Uh-huh, yes, yes.
23 Q. And while there's a little bit of a
24 block there, it would -- it would appear to me
25 it says August 27th, 2007.

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1 Q. When it refers to Central Water Users
2 would like to thank each of the directors, do
3 you have an impression of who that would be
4 referring to? Who does board of directors
5 refer to?
6 A. I'm certain it's the Central board of
7 directors based on what I -- the way I read it.
8 Q. The next paragraph refers to the
9 potential of implementing subsurface storage
10 recharge fees?
11 A. Uh-huh.
12 Q. Would you -- would that trigger some
13 recollection of whether that's been discussed
14 in the past with the Central Water Users board
15 while you've been on it?
16 A. It has been discussed, yes.
17 Q. So that is a topic that's been --
18 A. Yes. That topic --
19 Q. -- addressed?
20 A. -- in fact, that topic actually goes
21 back -- in my history, I guess, that's when I
22 started working on water resource issues.
23 I was actually a student at UNL, taking
24 lobbying classes with a gentleman that's
25 actually seated behind me. And we -- we

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1 A. That would be my guess as well,
2 correct.
3 Q. Does that appear fair?
4 A. Yep, uh-huh.
5 Q. And it's addressed to the board of
6 directors, "Dear board of directors"?
7 A. Uh-huh.
8 Q. And it -- at least it doesn't have a
9 signature. But it's type signed, Central Water
10 Users?
11 A. Uh-huh.
12 Q. Would -- does this -- do you recall
13 perhaps this letter or this document?
14 A. I've got to be honest, I do not at
15 all. This is the first time I've seen it.
16 Q. That's okay.
17 I'd like you to look at the first
18 paragraph. It states, "The Central Water Users
19 would like to thank each of the directors and
20 their staff for their willingness to take on
21 the responsibility of ensuring the delivery of
22 water to those of us who use the water system."
23 A. Uh-huh.
24 Q. Is that an accurate reading of that?
25 A. Yes.

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1 were -- that was the -- the issue at that time
2 was fees for groundwater recharge.
3 Q. Okay.
4 A. That was in the late '70s.
5 MR. BRASHEAR: At this time, I'd
6 like to offer Exhibit 46 into evidence.
7 MS. KREIFELS: We need it
8 marked, first.
9 MR. BRASHEAR: So mark, yes.
10 (Exhibit 46 marked for
11 identification.)
12 HEARING OFFICER TEXEL: Do you
13 want a copy of it?
14 MR. DEGAN: Yeah, I do.
15 BOARD MEMBER GOTTSCHALK: Tim?
16 MR. DEGAN: Off record for a
17 second.
18 (An off-the-record discussion was held.)
19 MR. DEGAN: No objection. Have
20 to go back on.
21 No objection.
22 HEARING OFFICER TEXEL: Go back
23 on.
24 MR. BRASHEAR: So we would offer
25 Exhibit 46 into evidence.

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1 MR. DEGAN: No objection.
2 BOARD MEMBER PECK: So we don't
3 have this; right? It's just there in the room?
4 HEARING OFFICER TEXEL: Correct.
5 MS. KREIFELS: Sara should be
6 emailing it to you.
7 MS. BIRKETT: I emailed it to
8 you, Bridget.
9 BOARD MEMBER PECK: Okay.
10 MS. BIRKETT: I don't know if
11 you have your -- your office.
12 BOARD MEMBER PECK: Okay. Thank
13 you.
14 HEARING OFFICER TEXEL: If it
15 helps any, I just got it for the first time,
16 too. So -- but you should be getting it
17 shortly.
18 And I'll accept Exhibit 46 into the
19 record.
20 (Exhibit 46 is made a part of
21 this record and may be found
22 separate.)
23 MR. BRASHEAR: I want to make
24 sure that the directors have it, I guess,
25 before.

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1 but also well into the future."
2 Do you see that?
3 A. Correct, yes.
4 Q. Is that an accurate reading of that
5 paragraph?
6 A. Yes, it is.
7 Q. The district there would be referring
8 to Central in that sentence; would that be
9 your --
10 A. I'm --
11 Q. -- assumption?
12 A. Yes, that would be my assumption,
13 yes.
14 Q. Not -- not saying you remember this
15 letter directly, but that conversation in --
16 that idea in 2007, would that be consistent
17 with conversations you had as a director of
18 Central District Water Users to find additional
19 revenue streams?
20 A. Yes. I'm certain. In fact, the wind
21 power paragraph is the one that actually jogs
22 my memory a little bit. Because that was
23 unusual discussion at that time. And that
24 does -- I kind of vaguely remember this.
25 Q. And -- and so going with that, the

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1 HEARING OFFICER TEXEL: Let's go
2 off the record for just a moment.
3 (An off-the-record discussion was held.)
4 BY MR. BRASHEAR:
5 Q. So, Mr. Schwarz, I believe a moment
6 ago we talked about the second paragraph, the
7 potential for implementing subsurface storage
8 recharge fees. And you said that's an issue
9 that the Water Users board has talked about in
10 your tenure on the board?
11 A. Yes, that is correct.
12 Q. And you would understand that to be
13 Central potentially implementing subsurface
14 storage recharge fees, Central District?
15 A. Correct.
16 Q. Potentially --
17 A. Yes.
18 Q. -- imposing those?
19 A. Yes, correct.
20 Q. I would direct your attention, sir,
21 to the next paragraph. "We need to know that
22 the district is researching every possible
23 avenue in developing additional revenues that
24 will benefit both the district and its
25 customers, not only during years of low flow

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1 fourth paragraph says, "We" -- in the relevant
2 part, "We are requesting research be made in
3 areas that would generate additional revenue
4 from those who also use the water in perhaps a
5 more indirect way."
6 Do you see that?
7 A. No. Sorry.
8 Q. Sorry. The fourth paragraph.
9 A. Okay. "To avoid continual taxation"?
10 Q. "Of the same group of people, we are
11 requesting research."
12 A. Okay, okay. Yep. Okay. Sorry.
13 Q. No apologies. We're doing this
14 together.
15 A. Uh-huh.
16 Q. The "we" in that sentence, would you
17 believe that would refer to the Central Water
18 Users or the Central Water Users' board at
19 least?
20 A. I would assume that, yes.
21 Q. And then the letter goes on to state
22 suggestions of looking at wind power
23 generation, working with NPPD, company charges,
24 boaters or turbines; is that fair?
25 A. Yes.

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1 Q. So is it fair, Mr. Schwarz, to say
2 that, you know, in 2007, at least, the Water
3 Users Group was encouraging Central to consider
4 additional revenue streams beyond those it
5 already had?
6 A. Correct.
7 Q. And would it be your understanding in
8 2007 that Central revenue streams included,
9 obviously, irrigation, surface water delivery
10 fees for delivering surface water?
11 A. Correct.
12 Q. And it at least included hydropower
13 generation at that time?
14 A. Yes, yes.
15 Q. And so this was encouraging
16 potentially revenue sources beyond those?
17 A. Correct.
18 Q. And you understand that those are the
19 two primary drivers of revenue for Central
20 today?
21 A. Correct.
22 Q. And would it be your understanding
23 that those were the two primary drivers of
24 revenue in 2007, if you --
25 A. Oh, yeah, primary, yes, yes.

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1 became the Platte River Program, with some
2 changes. But that's -- that was the basis for
3 that development.
4 And then beyond that, I served on the
5 water policy task force and was part of the
6 core group that put together LB962, the courses
7 most -- that governs most of our water today.
8 Q. And why were you advocating at that
9 time for relicensure of Kingsley?
10 A. Well --
11 Q. Why did it matter to you?
12 A. Yeah, I mean, in our area, I -- and
13 it was funny, at that time, we'd lost one piece
14 of ground. So I was down to actually 22 acres
15 of Central ground.
16 And some NRD folks, because I was
17 advocating for surface water, were questioning
18 why was I such an advocate when almost all my
19 ground was groundwater.
20 And my concern is to maintain that
21 groundwater supply in our area is critical for
22 Phelps, Kearney and Gosper County to maintain
23 that underground supply of water.
24 And we have a stable supply of water today
25 because of Central. And we've watched other

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1 Q. Okay.
2 A. Absolutely, uh-huh.
3 Q. Thank you. I appreciate that.
4 You mentioned a moment ago, sir,
5 relicensing of Kingsley --
6 A. Uh-huh.
7 Q. -- and being involved in that.
8 A. Uh-huh.
9 Q. It's -- is it fair to say that you
10 were an advocate of relicensing of Kingsley
11 when that came up?
12 A. Oddly enough, I should give -- I
13 should have given you a little background when
14 I first sat down.
15 Q. You can do that now.
16 A. And I talked about the fact that I
17 started this back in college with Maurice
18 Kremer, some of you might know Senator Kremer
19 or knew him. But, anyway, and then got
20 involved with the Water Users, ultimately
21 formed the Nebraska Water Users to support
22 Central and NPPD in the relicensing process.
23 In that process, I was one of the eight
24 people that basically put together what was
25 called the Nebraska Plan, which ultimately

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1 areas of the State of Nebraska that have
2 serious problems because they don't have that
3 water. And I don't want to see our area ever
4 to be in that position.
5 The way relicensing was going in the late
6 '80s was there was a decree by the Federal
7 Energy Regulatory Commission basically telling
8 Central you and NPPD have to release water, we
9 don't care about the irrigators, you're going
10 to release it for the environmental purposes
11 that we're requesting.
12 And that's where we got involved as Water
13 Users to try and fight this.
14 We hired a young and upcoming attorney you
15 might know by the name of Michael Johanns. And
16 he --
17 Q. Heard of him.
18 A. He was who represented us in that
19 process.
20 And then ultimately after Mike moved on to
21 bigger and better things, we actually had to go
22 to Landmark Legal Foundation out of Kansas City
23 to help us in relicensing.
24 And our attorney there was Mark Levin, who
25 some of you, if you ever listen to conservative

<p style="text-align: right;">Page 1106</p> <p>1 talk radio and TV, he's pretty popular there. 2 Q. And you were advocating because you 3 were a resident of Central? 4 A. Correct. 5 Q. Because you were a surface water 6 customer but also obviously had a groundwater 7 interest? 8 A. Yes, yes. 9 Q. And were you advocating on behalf of 10 the Central District Water Users Association as 11 well? 12 A. Yes. As -- yeah, I -- okay. I had a 13 number of hats at that time. In fact, during 14 the '90s, I was on the Central board, Central 15 Public Power board as well so -- 16 Q. Okay. Were there others who -- 17 obviously you had a lot of connection with 18 Central at that time? 19 A. Uh-huh. 20 Q. Were there others who were not 21 residents of Central who were not members of 22 the Central District Water Users Groups, were 23 there others also advocating for the 24 licensure -- relicensure of Kingsley? 25 A. Oh, yes.</p>	<p style="text-align: right;">Page 1107</p> <p>1 Q. Why were they advocating for that? 2 A. Well, the NRDs were very concerned 3 about the precedent that was being set or could 4 be set if Central lost their water or a 5 significant part of it. And a lot of 6 irrigation districts, of course. 7 When we formed the Nebraska Water Users, 8 that was the basis for that was the irrigators 9 all kind of sticking together and fighting the 10 fight together because we knew when our license 11 was -- was finished or accomplished, that they 12 were going to move on to the Bureau of 13 Reclamation projects in Scottsbluff and 14 probably go after them for water as well. 15 And if we could come up with a global 16 settlement, which was what we did with the 17 Nebraska -- the Platte program, that relieved 18 us of that risk because if they had taken -- 19 which they did take a percentage of our water, 20 if they'd gone upstream and taken a percentage 21 of everybody's water, then that then hurts our 22 long-term supply in McConaughy. 23 So we were going to get hit for our 10 24 percent plus potentially a lot more. 25 Q. When you say they took a percentage</p>
<p style="text-align: right;">Page 1108</p> <p>1 of our water, who is the they that you mean? 2 A. In this case, it would be the Federal 3 Energy Regulatory Commission giving an order 4 based on the arguments of the environmental 5 community. 6 Q. Do you believe it was beneficial for 7 entities other than Central to be joining 8 Central and advocating for relicensure? 9 A. Yeah, we -- and this was -- and I 10 will credit Mike Johanns on this. This was 11 actually his idea to organize all the districts 12 in the state on the Platte River at a minimum 13 to work together for this. 14 Q. And by districts, do you mean 15 irrigation districts -- 16 A. Irrigation districts -- 17 Q. -- NRDs? 18 A. Correct. 19 No. NRDs were not -- I mean, NRDs were 20 supportive. But they really weren't a part of 21 our organization. They weren't a part of our 22 organization. It was irrigation districts -- 23 surface water irrigation districts. 24 Q. But it was good to have other 25 irrigation districts joining Central and</p>	<p style="text-align: right;">Page 1109</p> <p>1 advocating? 2 A. Yes, correct. 3 Q. Thank you. 4 Sir, do you recall a meeting -- you were 5 on the Central Water Users board in September 6 of 2022; correct? 7 A. Yes. 8 Q. Do you recall a meeting with Devin 9 Brundage in September of 2022 where he 10 presented on plans for the -- 11 A. Yes. 12 Q. -- merger? 13 A. That would have been the Water Users 14 meeting. I thought it was the end of August. 15 But it could have been the beginning of 16 September. I'm not -- 17 Q. In that timeframe? 18 A. Yeah, in that timeframe, yes. 19 Q. Do you recall him making a 20 presentation at that meeting? 21 A. Yes. 22 Q. You were present at that meeting? 23 A. Yes. 24 Q. Do you recall him saying that 25 Central -- that Platte River, by which I mean</p>

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1 the proposed amended Central?
2 A. Yep, okay.
3 Q. That Platte River would have seven
4 subdivisions?
5 A. That was when I know the debate was
6 still going on regarding Keith County and the
7 addition of that director.
8 I think that -- okay. I could be wrong.
9 I -- as I recall, that's when the decision had
10 been made to add another director in Keith
11 County.
12 Q. Do you recall that he had shared that
13 there were going to be two directors in the
14 other subdivisions?
15 A. Yes.
16 Q. At that presentation to the Water
17 Users board?
18 A. Yeah, ultimately, there would be,
19 yeah, after a period of time. I don't remember
20 the exact period.
21 Q. And then the question may be -- your
22 memory may not exactly remember -- is that the
23 only outstanding question was how many
24 representatives Keith County would have?
25 A. Yes, that -- that was one of my

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1 their demands. And how do you balance between
2 those two?
3 Central has -- has purposely kept itself
4 out of retail power over its history. And that
5 was because Central and their boards over the
6 years have wanted to focus on water.
7 They were trying to stay true to George
8 Johnson's philosophies. You know, the goal of
9 the district was to maintain water in that
10 three-district area.
11 And that's one of my concerns in this
12 whole thing is the dilution of that focus to
13 electrical consumers, of which I am one of
14 those electrical consumers. We're customers of
15 Dawson on virtually all of our deals.
16 Q. But isn't that the essential
17 conflict, that even a director who's voted
18 from -- or elected from the residents of Gosper
19 County, they're still an elected official with
20 fiduciary duties and they have to make their --
21 their choices in the best interest of the
22 combined entity?
23 A. Yes, yeah. A director elected in
24 Gosper County that is a power consumer but has
25 no interest in the irrigation side of things is

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1 concerns, yeah.
2 MR. BRASHEAR: I have no further
3 questions. Thank you.
4 REDIRECT EXAMINATION
5 BY MR. DEGAN:
6 Q. Mr. Schwarz, counsel asked you a
7 question about the change in the voting
8 districts. But isn't it true that regardless
9 of whichever directors are appointed for
10 whichever county, on the first day after the
11 merger, the combined entity will no longer be
12 exclusively controlled by people who are solely
13 interested in water usage?
14 A. Correct, yes, that's true.
15 Q. Because on day one, the board's got
16 to juggle --
17 A. Yeah.
18 Q. -- electric power consumers and water
19 users; right?
20 A. Yep, yep. That's one of the inherent
21 problems with this concept is on one side,
22 you've got a group of water users that are
23 going to have their demands. On the other
24 side, you're going to have a group of
25 electrical customers that are going to have

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1 going to decide things on their interests. And
2 that's understandable.
3 Q. But they also have to do their job.
4 And so I -- even somebody who's elected from
5 Gosper, they might be sympathetic to the water
6 users, but they still have to do whatever's
7 best for the --
8 A. Yeah.
9 Q. -- combined entity and --
10 A. Yeah, they still have an obligation
11 to the electrical customers.
12 Q. They can't just throw them under the
13 bus --
14 A. Yes.
15 Q. -- because I prefer water?
16 A. Yes, that's -- yep, that's correct.
17 Q. And isn't that the essential problem
18 here is how do you -- how do you juggle these
19 inherent conflicts?
20 A. That -- that's what I would say.
21 And, again, it was -- it goes back to the
22 comment that was made earlier, kind of an
23 apples and oranges thing.
24 You know, we've had a district that has
25 been narrowly focused over a long period of

<p style="text-align: right;">Page 1114</p> <p>1 time on water issues. We understand water. We 2 do it very well. I would challenge that 3 Central is probably the finest irrigation 4 district in the state today. 5 They're extremely well managed. They 6 understand water and how to use it and use it 7 conservatively, you know. 8 We want to keep water in McConaughy as 9 much as we can. You know, a full Lake 10 McConaughy is something we want. And it's also 11 something recreation people want. So we're 12 kind of in line there. 13 But when the lake gets down to 200 14 acre-foot, hard decisions have to be made. 15 Q. Especially if the -- if the power 16 savings are based on maximizing the efficiency 17 of running the Jeffrey unit? 18 A. Yes. 19 Q. And -- 20 A. Well, that -- that's a whole other -- 21 yeah. Okay. Sorry. 22 Q. Well, I mean, do you have a general 23 understanding that the good folks in Dawson -- 24 Dawson's district, they're going to need power 25 in the winter, too; right?</p>	<p style="text-align: right;">Page 1115</p> <p>1 A. Yes. 2 Q. And for the -- for the combined 3 entity to maximize the savings that are 4 predicted in the report, that's assuming that 5 that Jeffrey unit's going to be running all 6 year? 7 A. Uh-huh. 8 Q. Now, counsel asked you a series of 9 questions on Exhibit 46 which was this Water 10 Users letter. 11 A. Yes. 12 Q. I just, again, want to clarify today 13 you're testifying in your individual capacity; 14 correct? 15 A. Correct. I am representing myself. 16 Q. And counsel asked you a series of 17 questions that were written on behalf of the 18 Water Users Group? 19 A. Uh-huh. 20 Q. They've been approved by the entire 21 group; right? 22 A. Yes, yes. Well, I -- yeah, I don't 23 recall approving it. But I -- that wind power 24 thing kind of jogged my memory that there was a 25 discussion.</p>
<p style="text-align: right;">Page 1116</p> <p>1 Q. It would have been during your 2 period -- your tenure? 3 A. Yeah, oh, absolutely. 4 Q. Okay. Well, and I also want to 5 clarify, you're not against more revenue 6 sources? That's not your objection to the 7 merger? 8 A. No, no. I -- I continue to be open 9 to the concept of groundwater fees. 10 Now, there's some -- some issues that have 11 to be dealt with in that area as well. But 12 I -- yeah, I would be open to that. 13 Q. Groundwater's good? 14 A. Yeah. 15 Q. I mean, it benefits surface water 16 irrigation? 17 A. Water's worth more than money to us. 18 I mean, without water, we don't have anything. 19 I mean, we're in deep trouble. 20 And, you know, we have a strange outlook 21 maybe some people would say. But, you know, 22 water is so valuable in our part of the state. 23 And it's hard to even -- for someone in the 24 eastern part of the state to understand the 25 challenges, you know, in the western half of</p>	<p style="text-align: right;">Page 1117</p> <p>1 the state because, you know, precipitation 2 drops very quickly as you cross Nebraska. And 3 so for us, it's a very key, key thing. 4 Q. But Central's doing a good job at 5 groundwater recharge already? 6 A. Oh, absolutely, yeah. 7 Q. Central doesn't need to consolidate 8 or merge with Dawson in order to do groundwater 9 recharge, do they? 10 A. No, no. 11 Q. And Central doesn't need to merge 12 with Dawson in order to realize the benefits of 13 piping the power from Jeffrey into Dawson's 14 district? 15 A. No. 16 Q. Could do it by a contract? 17 A. No. I would love to see a Power 18 Purchase Agreement with -- with maybe more than 19 one rural to do that. I think that would be a 20 useful -- useful thing for everybody. 21 Q. A winning solution that would avoid 22 all these inherent conflicts that this combined 23 entity is going to have? 24 A. Yes. Because at some point, if 25 you're sitting on that board, you're going to</p>

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1 have to decide, am I over here or am I over
2 here.
3 Q. There's going to be a winner or a
4 loser between two different ratepayers?
5 A. And it's just a sad fact that that's
6 going to be what's going to happen. You
7 can't -- you just can't get around it.
8 Q. Okay.
9 MR. DEGAN: Thank you. No
10 further questions.
11 HEARING OFFICER TEXEL: Any
12 questions from the board?
13 BOARD MEMBER REIDA: I would
14 just have two.
15 Would you summarize your testimony to say
16 that this merger would be contrary to the best
17 interest of the district, that district being
18 Central?
19 THE WITNESS: Yes. I think it
20 could be.
21 I -- I have a fair amount of knowledge of
22 our area. And I think the risk of a problem is
23 fairly -- is high, warrantly.
24 BOARD MEMBER REIDA: Thank you.
25 BOARD MEMBER HUTCHISON: Let me

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1 can put natural flow water on my ground. If
2 it's not, we release water out of McConaughy,
3 and we use the storage use right. Okay?
4 Now, the board with its powers is a
5 trustee for us. We don't have the direct
6 ability to say I want my water or -- you know,
7 we -- we have to take what Central essentially
8 decides to give us. And we have agreements
9 with Central that lay some of that out.
10 But in the end, that board can decide
11 whether I get water or not, period.
12 Now, if they -- if a lake is clear full
13 and they say, yeah, we don't think we've got
14 enough water for you, I'm pretty sure we'd have
15 a decent argument. And I'd leave that to you
16 guys that are attorneys. But I'm pretty we'd
17 have a good argument to say, no, I don't think
18 so.
19 But when the lake is nearing the bottom
20 third, I don't know then how it falls out.
21 It's a tougher decision, obviously and probably
22 a tougher case to make in court.
23 I mean, in theory, we have the right to
24 drain McConaughy as water users.
25 BOARD MEMBER HUTCHISON: And

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1 ask the same question then as it relates to
2 whether or not this would -- you can
3 affirmatively determine whether or not this
4 would impair the rights of water users, this
5 merger would impair the rights of water users?
6 THE WITNESS: You know, I -- I
7 guess the answer is yes. But I -- can I
8 explain why my answer is yes?
9 The way -- I actually wrote a book on
10 water rights, Farmers Guide to Water Rights, a
11 Guide to the Adjudication Process, which the
12 DNR used in the adjudication process. They
13 handed it out to farmers and whatnot to help
14 them understand because it -- water rights is
15 a -- as you guys probably know, is a -- it's a
16 challenging arena.
17 When we formed Central, there were water
18 rights granted on all of the ground in that
19 area. Okay?
20 Now, there's different kinds of rights.
21 There's a natural flow right, which all of us
22 were to have.
23 There is a storage use right, which all of
24 us need to have.
25 When natural flows are available, Central

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1 that right exists --
2 THE WITNESS: Now, would we do
3 that?
4 BOARD MEMBER HUTCHISON: Does
5 that right exist today?
6 THE WITNESS: Uh-huh.
7 BOARD MEMBER HUTCHISON: And
8 would it still exist after the merger?
9 THE WITNESS: I believe so, yes.
10 BOARD MEMBER HUTCHISON: Okay.
11 Thank you.
12 THE WITNESS: But the decision
13 has to be made at the board level as to how
14 much water is allocated in those tight years.
15 BOARD MEMBER HUTCHISON: Thank
16 you.
17 HEARING OFFICER TEXEL: All
18 right.
19 MR. DEGAN: Yeah, can we let the
20 witness go?
21 HEARING OFFICER TEXEL: Yeah.
22 MR. DEGAN: I'm sorry.
23 HEARING OFFICER TEXEL: I didn't
24 know if you had any questions based on the
25 board's questions. I thought that's why --

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1 MR. BRASHEAR: We stipulated.
 2 MR. DEGAN: Yeah. I already
 3 gave that away.
 4 HEARING OFFICER TEXEL: Okay.
 5 THE WITNESS: So we're good?
 6 HEARING OFFICER TEXEL: We are.
 7 You're dismissed. Thank you very much.
 8 MR. DEGAN: Let's go off the
 9 record.
 10 (An off-the-record discussion was held.)
 11 (Exhibits 71 through 72 marked
 12 for identification.)
 13 HEARING OFFICER TEXEL: Let's go
 14 back on the record.
 15 MR. JARECKE: I think you stated
 16 on the record that that concludes the
 17 Protestants' --
 18 MR. DEGAN: Yes. It -- we rest
 19 subject to some housekeeping matters and
 20 stipulations that we've agreed to off the
 21 record that we will put those on the record at
 22 the conclusion of your rebuttal witness'
 23 testimony.
 24 HEARING OFFICER TEXEL: Do we
 25 want to handle the seven -- the three exhibits

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1 Road 761, Lexington, Nebraska.
 2 HEARING OFFICER TEXEL: All
 3 right. Thank you.
 4 DIRECT EXAMINATION
 5 BY MR. JARECKE:
 6 Q. Okay. Mr. Batie, thank you. Have
 7 you been present for all of the testimony?
 8 A. I have been present for all of the
 9 testimony except for the first two witnesses.
 10 I have -- am a member of another
 11 commission. And we had our quarterly meeting
 12 on Wednesday morning.
 13 Q. And what is that other --
 14 HEARING OFFICER TEXEL: We're
 15 talking about Wednesday to Friday of this week,
 16 not the standing?
 17 THE WITNESS: Correct.
 18 MR. JARECKE: That's correct.
 19 HEARING OFFICER TEXEL: Okay.
 20 A. The commission, I serve on the
 21 Nebraska Natural Resource Commission. And I
 22 was elected chairman of that commission
 23 Wednesday morning.
 24 BY MR. JARECKE:
 25 Q. And in the interest of time,

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1 at this point?
 2 MR. DEGAN: We've still got to
 3 deal with the transfer of that. And so rather
 4 than keeping this witness waiting --
 5 HEARING OFFICER TEXEL: Okay.
 6 MR. JARECKE: And we're in
 7 agreement on the housekeeping.
 8 MR. DEGAN: Yeah.
 9 MR. BRASHEAR: Yes.
 10 MR. DEGAN: That way we keep
 11 rolling.
 12 HEARING OFFICER TEXEL: Okay.
 13 MR. JARECKE: So with that
 14 understanding, Central would call Mr. Don Batie
 15 as its rebuttal witness.
 16 DON BATIE,
 17 Called as a rebuttal witness on behalf of
 18 CNPPID and Dawson Public Power, being first
 19 duly sworn, was examined and testified as
 20 follows:
 21 HEARING OFFICER TEXEL: Could
 22 you spell your name and give your address,
 23 please.
 24 THE WITNESS: My name is Don
 25 Batie, D-0-N, B-A-T-I-E. My address is 43590

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1 Mr. Batie, we're going to move rather quickly.
 2 But in -- back up to your relationship with
 3 Dawson. What capacity -- I'm sorry. Let's
 4 back up a little bit.
 5 I need to know a little bit about your
 6 education and background.
 7 A. I am a farmer. And I farm north of
 8 Lexington.
 9 And so my education, I have a bachelor of
 10 science from University of Nebraska-Lincoln.
 11 And I have been farming my entire life.
 12 BOARD MEMBER HUTCHISON: What's
 13 your bachelor of science in?
 14 THE WITNESS: Bachelor of
 15 science is ag honor, slash, general ag.
 16 HEARING OFFICER TEXEL: Is ag
 17 what --
 18 THE WITNESS: Ag honors and
 19 general ag.
 20 Ag honors is a very small program. We
 21 actually designed our own graduation
 22 requirements. A lot of fun.
 23 HEARING OFFICER TEXEL: Okay.
 24 BY MR. JARECKE:
 25 Q. And, Mr. Batie, in terms of the

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1 previous witness, Mr. Schwarz, obviously
2 testified extensively about his relationship
3 with water and this Water Users Group. You're
4 also a member of that group?
5 A. Yeah. I was a member of the Nebraska
6 Water Users. In fact, when he talked about his
7 work with the unicameral in the '70s, I was the
8 one that -- the two of us went together. We've
9 been friends since '77.
10 Q. Okay. And in terms of -- well, your
11 bachelor of science was in ag honors. How was
12 it you developed your own water interest or
13 water expertise?
14 A. Mr. Schwarz contacted me after the
15 FERC ruling on February 14th of 1990. I
16 remember that date because my oldest daughter
17 was supposed to be born on the 1st of March
18 that year. So that date is pretty well
19 ingrained.
20 So the two of us got together. I called
21 one of my cousins who happened to be president
22 of the Dawson County Irrigator Users. And the
23 three of us then were kind of some of the
24 cohorts that founded Nebraska Water Users.
25 Q. And you've been actively engaged in

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1 offered me a position on the board of
2 directors.
3 Q. I take it you went through some sort
4 of approval process at Dawson Public Power
5 District and ultimately were sworn in?
6 A. I was sworn in May 4th of '22.
7 Q. Okay. And before getting sworn in,
8 were you aware that there was this issue of
9 this potential merger?
10 A. Oh, yes. I -- I was aware of that
11 almost from the very get-go, as I'm interested
12 in water.
13 I've did work with Central for -- since
14 1990. And I'm a Dawson customer. So been very
15 well aware of the situation.
16 Q. And backing up to your water
17 experience for a little bit, you talked about
18 the legislature. But have you actually
19 testified on water issues before?
20 A. I testified on dozens of bills on my
21 own behalf and also on behalf of many different
22 organizations, including Nebraska Farm Bureau,
23 Nebraska Cattlemen and Nebraska Water Users.
24 Q. And, again, Mr. Schwarz testified a
25 bit about the relicensing of McConaughy. Were

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1 that group?
2 A. I've been actively engaged in that
3 group. I was secretary for many years.
4 President for a short period of time. But I
5 was -- that was one of many organizations I'm
6 involved with with water.
7 Q. And in terms of let's jump now to the
8 Dawson board. How were you initially
9 approached to potentially fill a vacancy on the
10 Dawson Public Power District?
11 A. Joe Jeffrey, who is a current member
12 of Dawson Public Power, ran into me at Husker
13 Harvest Days in September of '21 and asked if
14 I'd be interested in filling a vacancy on the
15 Dawson Power board.
16 Q. And what happened from there? How
17 did you explore your interest or further
18 develop it?
19 A. I talked -- at that point, I did talk
20 to Pat Hecox, who was president of the board,
21 and told him I would be interested if it came
22 up.
23 I then did not hear any more from
24 Mr. Hecox or anyone else until probably late
25 April of '22 when Mr. Hecox called me and

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1 you also actively involved in that?
2 A. Yes. I was active in a lot of the
3 work with a Memorandum of Agreement,
4 Cooperative Agreement, so forth. I attended --
5 I don't know. I wish Tom and I and Jim
6 Lundgren had any idea of how many meetings we
7 attended over those seven to ten years. But it
8 was in the hundreds.
9 Q. And getting to your initial approach
10 in terms of the Dawson board, do you know how
11 Joe Jeffrey ultimately voted in terms of this
12 potential merger?
13 A. Joe voted against the merger.
14 Q. Okay. But Joe was the person that
15 approached you to recruit you to the Dawson
16 board?
17 A. Correct.
18 Q. And ultimately how did you vote with
19 respect to this merger?
20 A. I voted in favor of the merger --
21 Q. When you --
22 A. -- or whatever you want to call it.
23 Q. Before getting appointed to the
24 board, what was your thought process as it
25 stood with this merger?

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1 A. Unsure. In fact, I was actually
2 preparing to testify at the unicameral a year
3 ago in February of '22 on the Perkins County
4 Canal. And I was visiting with Mike Drain, who
5 is a staff member of Central, and asked him
6 what I was missing because I did not see the
7 benefit of merger.
8 Mike gave me a 30,000-foot view from his
9 view of it.
10 Shortly thereafter -- and I don't have the
11 exact date, sometime in the first part of
12 February, Mr. Schwarz and myself were invited
13 to visit with Central staff, including Devin
14 and other staff members to go over the Phase 2
15 study that's been discussed in a great deal.
16 Q. So in the process of talking to Devin
17 Brundage and others, what components of that --
18 ultimately obviously you voted in favor of
19 this, but what components made you change your
20 mind?
21 A. My mind was not made up until
22 probably the first week of July of '22.
23 I was reserving judgment based on I wanted
24 to make sure we had protection of water. I'm
25 much more a water guy than a power guy, even

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1 retired farmers. And much like the board of
2 Central, we've met several times, had a few
3 social activities with the Central board, and
4 we all have the same beliefs about the
5 importance of irrigation water.
6 And I feel that in my opinion, the current
7 board -- I have no guarantee what the future
8 will look like, but the current board
9 understands the importance of irrigation water
10 to the Central District.
11 Q. Were you present for the testimony of
12 Devin Brundage?
13 A. I was here for all of Mr. Brundage's
14 testimony, yes.
15 MR. DEGAN: Counsel, you know,
16 certainly understand some -- some latitude
17 here. But in light of the hour, I think we're
18 well beyond scope of rebuttal.
19 We didn't put on any testimony or evidence
20 regarding what Dawson did or didn't do.
21 I understand it is rebuttal to the extent
22 it relates to the Water Users Group. But you
23 know, we're on a -- we're on a short clock
24 here.
25 MR. JARECKE: Absolutely. And,

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1 though I was on the Dawson Power board. I was
2 looking to ensure that the water customers were
3 protected.
4 And so I guess what ultimately led to it
5 is there's a lot of synergistic benefits of a
6 merged unit that -- than the two separately.
7 So it's kind of like instead of being two
8 plus two equal four, in my opinion, two plus
9 two equals six or seven or eight. It's a much
10 greater than each individually.
11 Q. So, again, Mr. Schwarz testified,
12 particularly in direct response to a question
13 from Chairman Reida, that this would be
14 contrary to the best interests of Central. I
15 take it you don't share that view?
16 A. I don't -- I don't share that view
17 for several reasons.
18 First of all, the current makeup -- excuse
19 me. I better back up. The makeup of the
20 Dawson board while I was a board member -- I
21 was only a board member from May until the end
22 of December when my permanent replacement was
23 elected in.
24 But in those terms -- times, virtually all
25 of the Dawson board members are farmers or

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1 again, we're only rebutting the evidence of the
2 suggestions that this is against the best
3 interest of Central as it relates to water use.
4 MR. DEGAN: But the evidence was
5 to Central, not to deliberations. And you're
6 having him comment on Brundage.
7 MR. JARECKE: Briefly. Give me
8 a little latitude there because there were
9 questions from the board.
10 BY MR. JARECKE:
11 Q. The board's questions and I believe
12 the synergies I want to get to were the
13 explanation of timing of use. How -- there
14 were a number of questions to Devin Brundage of
15 how can we -- again, the rebuttal is the
16 assumption that these two things cannot work in
17 harmony, as was just said by counsel a minute
18 ago, they're in direct conflict.
19 I believe it's your testimony that it
20 is -- Mr. Batie, that that is not the case?
21 A. I believe that the -- the combined
22 units can work very much in harmony together
23 because they are very synergistic. They are
24 not in opposition to each other.
25 Q. Okay. And why?

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1 A. And I -- one of the things that
2 Mr. Brundage and I had talked about as a
3 potential benefit of a merged unit that would
4 not be available under a PPA is some of the
5 conjunctive-use discussions.
6 And I believe Commissioner Hutchison, you
7 had asked Mr. Brundage about this particular --
8 it might be Mr. Brundage gave an engineer
9 answer and not a farmer answer. So I'll try to
10 make it simple.
11 There -- I am a surface water and
12 groundwater irrigator. My surface water is
13 delivered by Nebraska Public Power District.
14 And it, in the large part, is stored -- has
15 storage rights in McConaughy.
16 I also have a lot of groundwater
17 irrigators. Many of my fields are -- have the
18 capability -- capability to be irrigated by
19 both surface and groundwater and is served by
20 Dawson Power for electric motors for pumps.
21 The concept that Mr. Brundage and I have
22 discussed and worked on is that potentially we
23 could put in one set of transformers and one
24 meter for both the surface and groundwater
25 pumps on that property with a switch.

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1 called the Dawson County Canal, just to make it
2 really complicated.
3 And, therefore, the Central irrigators
4 could be utilizing the water that I would
5 normally be diverting but then they could
6 divert.
7 The reason this could only happen under a
8 merged entity is that there currently is no
9 reason for Dawson Power to allow one meter and
10 transformers for two different pumps. They
11 have no economic reason to do that.
12 There's also no economic reason for me to
13 do the switching back and forth because I'm not
14 a customer of Central.
15 Q. Mr. Batie, I'll interject with a
16 question.
17 A. Correct.
18 Q. So if I understand the premise of
19 your concept, you could be incentivized to do
20 so as a -- again, presently as a Dawson
21 customer but under a -- under a single unit
22 under Platte River, you could actually be
23 incentivized for your rate whether to select or
24 use ground water and/or surface water to the
25 benefit of the other surface water irrigators?

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1 In a wet year, we would be using the
2 surface water because there was plenty of
3 surface water to go around. Thereby, the --
4 would not be -- I'd still be using electricity.
5 But I'm using the available water that's
6 flowing down the river.
7 The big thing is in the dry years. These
8 are the years that Central needs to keep more
9 water in the reservoir. Then you would switch
10 over your switch to pumping groundwater.
11 This groundwater had been built up over
12 the years from the depercolation of water, so
13 we have a great water supply on that.
14 My water rights on the river are senior
15 water rights. We're the third oldest water
16 rights in the State of Nebraska and as well as
17 we have storage rights in McConaughy.
18 If I'm pumping groundwater, we don't have
19 to make a call on that water out of the
20 reservoir. It can stay in the reservoir.
21 Also, we don't have to make a call on the
22 water flowing down the river. Any natural flow
23 that is flowing in the river could then be
24 diverted into the Central region and not into
25 the -- my canal, which ironically enough is

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1 A. Correct. Incentives could be a
2 number of ways. That's up to the future board
3 to decide. It could be a rate, whatever.
4 Yeah.
5 Q. Okay. And it's with this concept of
6 how we best allocate and utilize water to
7 maximize the economic return?
8 A. Correct. And to go further, I mean,
9 there are hundreds of irrigators --
10 HEARING OFFICER TEXEL: I'm
11 going to interrupt for just a moment.
12 We're going to need to limit the
13 narratives here because we have --
14 MR. JARECKE: Yes.
15 HEARING OFFICER TEXEL: -- less
16 than 15 minutes and cross yet, and we have some
17 administrative things to finish up before 5:45.
18 THE WITNESS: Okay.
19 HEARING OFFICER TEXEL: So we're
20 on a time --
21 THE WITNESS: I will stop.
22 HEARING OFFICER TEXEL: -- very
23 short time.
24 MR. DEGAN: And, again --
25 HEARING OFFICER TEXEL: What I

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1 need is a very short answer to Mr. Jarecke's
2 questions.
3 THE WITNESS: Yes.
4 HEARING OFFICER TEXEL: I
5 appreciate the narratives.
6 THE WITNESS: I'm done now with
7 the narrative.
8 HEARING OFFICER TEXEL: But my
9 job is to control the time here.
10 MR. DEGAN: Again, I'm going to
11 object. This is from a --
12 MR. JARECKE: Ultimately --
13 HEARING OFFICER TEXEL: It is
14 getting beyond rebuttal.
15 MR. JARECKE: Okay.
16 BY MR. JARECKE:
17 Q. Mr. Batie, do you find this to be in
18 the best interest of Central's customers to
19 move forward with this merger proposal?
20 A. I do.
21 Q. Do you also find it to be in the best
22 interest of the Dawson customers to move
23 forward with this proposal?
24 A. I do.
25 Q. And that's why you voted in favor of

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1 A. Correct.
2 MR. DEGAN: Thank you. No
3 further questions.
4 BOARD MEMBER HUTCHISON: I have
5 some questions.
6 You just described that those are
7 speculative, you know, concepts that are not
8 definitively going to happen?
9 THE WITNESS: Yes. It is a
10 speculative concept that could happen, much
11 like the speculation that the opposition had
12 that the water could be harmed. They're all
13 speculations, that the water users could be
14 harmed.
15 BOARD MEMBER HUTCHISON: Okay.
16 Thank you.
17 HEARING OFFICER TEXEL: Any
18 questions by Chairman Reida or Ms. Peck?
19 Okay. They both indicated no.
20 Thank you very much.
21 THE WITNESS: Thank you.
22 HEARING OFFICER TEXEL: Okay.
23 With that --
24 MR. BRASHEAR: No further
25 witnesses.

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1 the --
2 A. Yes.
3 Q. -- Plan of Consolidation?
4 MR. JARECKE: I have no further
5 questions.
6 CROSS-EXAMINATION
7 BY MR. DEGAN:
8 Q. Mr. Batie, this concept about the
9 meter switch, that's a conversation you had
10 with Mr. Brundage; correct?
11 A. Correct.
12 Q. Okay. There's no formal proposal or
13 anything that's been flushed out? It's just a
14 concept; right?
15 A. It's a concept.
16 Q. It didn't form any part of the basis
17 for why Dawson agreed to move forward with the
18 merger; would you agree with that?
19 A. I would agree with that.
20 Q. And I take it, it was not
21 communicated to Central as a reason to go
22 forward with the merger?
23 A. Correct.
24 Q. And that, in fact, this may or may
25 not happen?

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1 HEARING OFFICER TEXEL: -- we
2 need to take up those last three exhibits.
3 MR. JARECKE: Yeah. We have no
4 further witnesses. With that, Central has
5 presented its case. And we can do the
6 housekeeping.
7 MR. DEGAN: Okay. First, we
8 want to clarify the discovery issue. So do you
9 want to state which of the documents we -- you
10 need to clarify?
11 MR. BRASHEAR: Yes. Just to
12 clarify and I think also as we'd said we would
13 indicate in response to Member Hutchison's --
14 Vice Chairman Hutchison's question, Central did
15 provide the 2022 and 2023 budgets as approved
16 by the board of directors to the Protestants --
17 to Protestants' counsel, I should say.
18 BOARD MEMBER HUTCHISON: As I
19 recall, that was a '23 budget and the '22
20 unaudited financial statements?
21 MR. BRASHEAR: Those were also
22 provided. But the '22 budget and the 2023
23 budget were both provided as well.
24 BOARD MEMBER HUTCHISON: Thank
25 you.

<p style="text-align: right;">Page 1142</p> <p>1 MR. DEGAN: That's stipulated 2 and in agreement. That's not an issue. 3 Would propose a stipulation that if Greg 4 Heiden were called to testify, he would testify 5 that he's a former farmer and current landowner 6 in Central's chartered territory and is a 7 current Central water service customer holding 8 a Water Service Agreement. 9 Can we stipulate that if he were called to 10 testify, he would so testify? 11 MR. BRASHEAR: Agreed. 12 MR. DEGAN: Similarly, if 13 Richard Waller were called to testify, he would 14 provide testimony that he owns and farms land 15 in the chartered territory of Central and is a 16 current water service customer receiving water 17 service per the agreement? 18 MR. BRASHEAR: Agreed. 19 MR. DEGAN: Thank you. With 20 those two stipulations and -- 21 HEARING OFFICER TEXEL: So 22 stipulated. 23 MR. DEGAN: And I think we 24 offered and received the depositions? 25 HEARING OFFICER TEXEL: We did</p>	<p style="text-align: right;">Page 1143</p> <p>1 not yet. 2 MR. JARECKE: Not yet. 3 HEARING OFFICER TEXEL: We have 4 them marked. But we haven't -- I haven't ruled 5 on them. And they haven't, I don't think been 6 offered yet. 7 MR. DEGAN: All right. So I'm 8 going to offer the original transcript of the 9 deposition of Roger Olson. 10 HEARING OFFICER TEXEL: Is that 11 71? 12 MR. DEGAN: That's 71. 13 And as Exhibit 72, would be the original 14 transcript of the deposition of Robert 15 Dahlgren. 16 HEARING OFFICER TEXEL: Any 17 objections? 18 MR. BRASHEAR: No objection. 19 HEARING OFFICER TEXEL: So I'll 20 accept Exhibit 71 and 72 into evidence. 21 (Exhibits 71 and 72 are made a 22 part of this record and may be 23 found separate.) 24 MR. DEGAN: And then do we have 25 a -- that's the recording?</p>
<p style="text-align: right;">Page 1144</p> <p>1 MS. HALLGREN: This is a flash 2 drive. 3 MR. DEGAN: Okay. 4 MR. BRASHEAR: It's a blank 5 flash drive. 6 MR. DEGAN: Oh, it's a blank 7 flash drive. 8 HEARING OFFICER TEXEL: I will 9 leave the record open for acceptance of the 10 audio of Exhibit 73 that is -- I don't know how 11 to summarize what it's going to state. It's an 12 audio recording is all I know at this point. 13 MR. DEGAN: I'll put on the 14 record that, pursuant to agreement with 15 counsel, 73 will be a flash drive containing a 16 segment of the Tri-Basin NRD meeting conducted 17 on February 8th of 2023, consisting only of 18 a -- may even be just a portion of David 19 Nelson's comments to the board. 20 MR. BRASHEAR: During the public 21 comments section -- session. 22 MR. DEGAN: During the public 23 comment session. 24 HEARING OFFICER TEXEL: Okay. 25 And I would leave -- no objection that exhibit?</p>	<p style="text-align: right;">Page 1145</p> <p>1 MR. BRASHEAR: No objection. 2 HEARING OFFICER TEXEL: So I'll 3 accept Exhibit -- the acceptance of Exhibit 73, 4 but I will leave the record open to accept that 5 actual flash drive or whatever form it can be 6 delivered in until after the close of evidence 7 since I don't believe we have it yet. 8 (Exhibit 73 is made a part of 9 this record and may be found 10 separate.) 11 HEARING OFFICER TEXEL: So with 12 that, any other exhibits to deal with? 13 MR. DEGAN: None for 14 Protestants. 15 HEARING OFFICER TEXEL: I 16 believe that's -- okay. 17 MR. BRASHEAR: No. 18 HEARING OFFICER TEXEL: All 19 right. 20 So we had talked about closing arguments. 21 I think given the hour and our hard stop, I 22 believe the board would like to waive -- not 23 have closing arguments even though we discussed 24 those. 25 We are going to have briefs. And I told</p>

<p style="text-align: right;">Page 1146</p> <p>1 the parties previously in the prehearing 2 conferences, the board members and the counsels 3 would decide on the length and timing of the 4 briefs. 5 So unless the parties want me to decide 6 that at a later date, I would defer to the 7 board members to set that up at this point, 8 whether it be simultaneous or we have a 9 briefing schedule. 10 As I told the parties, a briefing schedule 11 is very difficult because we only have 60 days. 12 And this is going to be a very voluminous 13 record for me to get the board's decision 14 out -- written. 15 I would say simultaneous briefs unless the 16 parties want to agree to extend the 60 days. 17 So with that, I would turn it over to the 18 board members and counsels to decide on briefs. 19 BOARD MEMBER HUTCHISON: So 20 before deciding on the length of the briefs, I 21 do have one request for the briefs, especially 22 on -- so a lot of the testimony today -- so the 23 thought process that I'm going through is 24 trying to understand the statutory criteria. 25 And I see basically three things, two of</p>	<p style="text-align: right;">Page 1147</p> <p>1 them are very, very closely related. So if I 2 misunderstood this, please make sure this is 3 clear in your briefs. 4 I see best interest. 5 I see jeopardizing or impair the rights of 6 the irrigated user -- the irrigation users, and 7 then I think -- and those are under 664. 8 I think in 612, there's something about 9 being -- that the users of irrigation water 10 service will be prejudiced by this petition. 11 So I think those are -- at least as I've 12 thought about it, those are the three primary 13 criteria. So if there's more that I've missed, 14 make sure those are clarified. 15 And then the other question that I had 16 today that I would be asking if we were having 17 closing comments is there was a lot of 18 testimony today about the current financial 19 condition of Central and perhaps differences of 20 opinion or whether it was alleged or understood 21 about whether or not that condition was 22 changing over time and whether that made it 23 necessary to do this merger. 24 It's not really clear to me how the scope 25 of most of that conversation is relevant to the</p>
<p style="text-align: right;">Page 1148</p> <p>1 criteria that is statutorily before us. And so 2 if you could make -- that's especially, I 3 think, on you. If you could help make me 4 understand how the content of most of the 5 discussion today was relevant, that would be 6 very helpful. 7 MR. DEGAN: Understood. 8 MR. BRASHEAR: Understood. 9 MR. DEGAN: Uh-huh. 10 HEARING OFFICER TEXEL: So as to 11 the length of the briefs and the due date, what 12 does the board want for that and in 13 consultation with counsels? 14 BOARD MEMBER REIDA: How long is 15 it going to take to get transcripts? 16 THE REPORTER: Two weeks. 17 BOARD MEMBER REIDA: Two weeks? 18 THE REPORTER: Yes. 19 BOARD MEMBER REIDA: What would 20 be a reasonable time that you think after they 21 get the transcripts? 22 MR. JARECKE: If the board and 23 counsel were interested, maybe there's a 30 24 days -- assuming we're going to have the 25 transcript in two weeks, maybe approximately 30</p>	<p style="text-align: right;">Page 1149</p> <p>1 days thereafter we could submit initial briefs 2 simultaneously and then a response brief 3 approximately two weeks thereafter, if either 4 party so selected to respond. That would 5 complete the entire process within the 60-day 6 limit. 7 MR. DEGAN: My concern is I 8 think that kind of extends out the whole 9 process in getting the decision. 10 MR. JARECKE: Okay. I don't 11 think it's necessary if we want -- 12 MR. BRASHEAR: Let's do 13 simultaneous. 14 MR. JARECKE: -- to just state 15 initial briefs. 16 MR. DEGAN: Yeah, that's what -- 17 I think 30 days is reasonable. But I think, 18 you know, with responses, I think we could 19 probably go forever here. 20 MR. BRASHEAR: Simultaneous 21 briefs in 30 days, 30 days after delivery of 22 transcript. 23 HEARING OFFICER TEXEL: After 24 the transcripts? 25 MR. BRASHEAR: 30 days after</p>

<p>1 delivery of the transcript. Page 1150 2 MR. JARECKE: Well, or 3 effectively 45 days from now is, I think, what 4 your estimate would mean. 5 MR. DEGAN: Yeah, with the two 6 weeks. 7 HEARING OFFICER TEXEL: So 45 8 days from now? 9 MR. BRASHEAR: From today. 10 MR. JARECKE: Yeah. Today is 11 Feb. 17. Looks like March 31. 12 HEARING OFFICER TEXEL: If the 13 briefs are due 45 days from now, that leaves 15 14 days for the board to deliberate and me to get 15 the order out encompassing that. That's not 16 going to happen in -- 17 MR. BRASHEAR: How about March 18 24th? 19 HEARING OFFICER TEXEL: What's 20 that? 21 MR. BRASHEAR: What about March 22 24th? 23 MS. KREIFELS: That's three 24 weeks after the transcript. 25 HEARING OFFICER TEXEL: Well,</p>	<p>1 what I'm wondering is to -- I see the Page 1151 2 protections -- and we talked about this before, 3 the protection, the 60 days is for the 4 applicant so they have expeditious decisions. 5 I think the applicant can agree to extend that, 6 is my understanding, because it's your 7 protection. 8 I'm just saying in two weeks, I don't 9 think I'm going to have a chance to go through 10 the record and write the board's order and have 11 a chance to go back and forth with them. 12 MR. BRASHEAR: The applicant 13 would ask if March 24th would work? 14 HEARING OFFICER TEXEL: How much 15 of an extension is that? 16 MR. BRASHEAR: No. To submit 17 the briefs by March 24th if opposing counsel is 18 agreeable. That's one week sooner. 19 MR. DEGAN: I would agree with 20 that. We can start working on the briefs. 21 MR. BRASHEAR: Right. 22 MR. DEGAN: And then fill in the 23 record. 24 MR. BRASHEAR: Right. 25 HEARING OFFICER TEXEL: Okay.</p>
<p>1 Is the board okay with that? Page 1152 2 And then what is the -- 3 BOARD MEMBER REIDA: Yeah, I'm 4 fine with that. 5 HEARING OFFICER TEXEL: March 6 24th. 7 MR. BRASHEAR: I guess length of 8 the briefs is the next issue we need to -- 9 MR. DEGAN: Got a trial in mid 10 March. 11 HEARING OFFICER TEXEL: Forty 12 days. 13 MR. BRASHEAR: Five pages? 14 MR. DEGAN: Yeah. Rock, paper 15 scissors? 16 I guess maybe on length, if I may, just 17 direct to the board, what's the board's 18 expectation here? I mean, are you looking for 19 more? Or -- I mean, are you looking for 20 something that just succinctly -- 21 BOARD MEMBER HUTCHISON: I 22 think -- 23 HEARING OFFICER TEXEL: Let's go 24 off the record so we can work out the details. 25 (An off-the-record discussion was held.)</p>	<p>1 (Exhibit 73 marked for Page 1153 2 identification.) 3 HEARING OFFICER TEXEL: Let's go 4 back on the record. 5 We've -- I've accepted Exhibit 73. We 6 have the physical exhibit now. So we don't 7 have to leave the record open. 8 And we have the briefing schedule 9 simultaneously to be submitted due March 24th, 10 30 pages, double spaced. 11 With that -- make sure I don't have 12 anything else I need to cover. 13 All right. That is all we needed. So we 14 are adjourned on this hearing on Central's 15 Petition for Charter Amendment 6. Thank you 16 very much. 17 (Hearing concluded at 5:48 p.m.) 18 19 20 21 22 23 24 25</p>

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C E R T I F I C A T E

We, Lori J. McGowan and Jane Malone,
court reporters, do hereby certify that the
within and following complete transcript
contains all the evidence requested to be
transcribed by us, and the rulings of the court
thereon, from the proceedings had in or at the
trial of the foregoing cause in said court; and
that said complete transcript is a correct and
complete transcription of the evidence
requested to be transcribed from the record
made at the time of said proceedings or trial.

Dated this day of , .

Court Reporter

Court Reporter

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