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8 Counsel for Respondents
 9 Denver Energy Exploration, LLC
 10 and Michael Lee Christopher

11 **BEFORE THE ARIZONA CORPORATION COMMISSION**

13 In the matter of:
 14
 15 CRAIG RANDAL MUNSEY, an unmarried
 16 man,
 17
 18 MARKETING RELIABILITY CONSULTING,
 19 LLC (d.b.a. MRC LLC), an Arizona limited
 20 liability company,
 21
 22 DENVER ENERGY EXPLORATION, LLC, a
 23 Texas limited liability company,
 24
 25 MICHAEL LEE CHRISTOPHER
 26 (CRD#2695315), an unmarried man,
 27
 28 Respondents.

Docket No. S-20804A-11-0208

**RESPONDENTS DENVER
 ENERGY EXPLORATION, LLC's
 AND MICHAEL L. CHRISTOPHER'S
 CLOSING BRIEF**

24 In connection with the testimony and evidence presented at the hearing on October 1-3,
 25 2012, Respondents Denver Energy Exploration, LLC ("Denver Energy") and Michael Lee
 26 Christopher ("Christopher") (collectively, the "Denver Energy Respondents") hereby present the
 27 following as their Closing Brief.
 28

1 Denver Energy is a legitimate oil and gas development company in business for more than
2 ten years operating in New Braunfels, Texas, performing workovers on several wells in the
3 Brookshire salt Dome Oil Field near Houston, Texas. Hrg. Tr., Vol. II, pp. 309-311, 315.¹ Denver
4 Energy attempted in good faith to comply with the federal and Arizona securities laws in raising
5 money from investors in late 2010 and early 2011. Hrg. Tr., Vol. II, pp. 325-332, 381-382. The
6 Denver Energy Respondents have not received one complaint from any investors participating in
7 their projects. The wells in which their monies are invested are operating and some wells are
8 already producing with investors receiving returns on their investments. Hrg. Tr., Vol. II, pp. 391-
9 392., Exh. R-784. Indeed, to Denver Energy's knowledge, not a single investor has complained to
10 the Division about anything. Hrg. Tr., Vol. II, p. 362, l. 7-13.

11 **I. THE EVIDENCE PRESENTED IN THE HEARING.**

12
13 The Arizona Corporation Commission Securities Division ("Division") merely showed that
14 Mr. Munsey was involved in selling oil and gas well interests to four investors outside of Arizona
15 who were clearly accredited investors and experienced in oil and gas investment. Hrg. Tr., Vol. I,
16 p. 158, l. 2-15. They were provided with detailed private placement memoranda and other
17 disclosure documents, the sufficiency of which was not seriously impugned by the Division. Hrg.
18 Tr., Vol. II, p. 369, l. 20-25. This was not conduct that warranted an undercover investigation,
19 especially given that no investor had ever complained about Denver Energy.
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22 As it turns out, Mr. Munsey was not registered as a securities salesman. To the extent that
23 he had to be licensed – something the Division never clearly established, but merely insinuated,
24 from the testimony, it clearly was not an intentional omission. Given his sales were solely to
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27 ¹ The transcripts of the evidentiary hearing consist of three separate volumes (I, II and III)
28 corresponding to each of the three days of the evidentiary hearing that took place on October 1, 2,
and 3, 2012.

1 accredited investors², there was no harm caused by his lack of licensing, assuming it was even
2 required. The evidence showed that he thoroughly presented the investments to the four accredited
3 investors, providing them with risk disclosure orally and in the private placement memoranda for
4 the investments. Moreover, the fact that Mr. Munsey was not licensed as a securities salesman was
5 through no fault of Denver Energy or of Mr. Christopher. The independent contractor agreements
6 between Denver Energy and Mr. Munsey clearly directed him to be licensed in any state where
7 licensing was required. *See* Ex. S-8 (“The contractor agrees to abide by all Federal and State laws”
8 and “The contractor agrees to register with any and all states requiring registration.”)
9

10 As Mr. Munsey testified, he was acting as a finder. He never handled any investor funds.
11 He merely made calls to accredited investors on an accredited investor lead list, and if they were
12 interested, the investment paperwork and investments were handled by Denver Energy in Texas.
13 Hrg. Tr., Vol. III, p. 482, l. 15-20.
14

15 All of the other alleged violations by the Respondents were immaterial and technical in
16 nature. For example, they allege that Mr. Munsey presented an offer to invest to investigator Robert
17 Eckert a/k/a “Jackson Roberts”. However, the subscription documents including the questionnaire
18 make clear that the company would review any questionnaire submitted by prospective investors to
19 assure that they were suitable. The fictitious investor “Jackson Roberts” did not submit a
20 questionnaire, was not approved by Denver Energy for any investment, and did not make an
21 investment. Moreover, “Jackson Roberts” called Mr. Munsey unsolicited, not the other way
22 around. Mr. Munsey’s testimony was clearly that he did not initiate contact with or solicit anyone
23 who was not on the accredited investor list provided by Denver Energy. The recording of the
24 phone call showed that Mr. Munsey advised “Jackson Roberts” that oil and gas investing was risky
25
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27 ² Charles Haegelin (Exs. S12-S18), Jack Jensen (Exs. S25-S33), Jacob Ullrich (Exs. S19-S24), and
28 Marshal Rauch (Ex. R-45).

1 and repeatedly encouraged "Jackson Roberts" to do his own due diligence and have his attorneys
2 check out the investment. He did so at least 13 times. Hrg. Tr., Vol. II, pp. 219-220; Vol. III, p.
3 488, l. 1-6. Mr. Munsey also told the fictitious "Jackson Roberts" that the investment was a "risky
4 investment". Hrg. Tr., Vol. III, p. 488, l. 1. There was nothing fraudulent about such statements.
5 Nor has the Division shown anything fraudulent in the detailed offering materials provided to the
6 investors.
7

8 It was clear from Mr. Munsey's testimony that he was following Mr. Christopher's
9 instructions and only soliciting the accredited investors on the list provided by DEE. That is where
10 all four of his investors came from. If the investigator posing as Mr. Roberts had not called Mr.
11 Munsey it is clear that no such communication would have occurred. Mr. Munsey was not
12 soliciting the general public. It was obvious from the recording that Mr. Munsey was in fact
13 surprised and a bit confused at the beginning of the telephone call. Moreover, not even suspecting
14 this was an undercover operation, Mr. Munsey nevertheless proceeded to answer questions and
15 repeatedly indicated that Jackson Roberts should do his own investigation and have his attorney
16 review the investment.
17

18 During the discovery in the case, the Division learned, through full disclosure by
19 Respondents that one investor was actually located in Arizona, who it turns out was not an
20 accredited investor. That investor, Lori Cook, invested less than \$10,000. Specifically, she
21 invested a total of \$9,668. See Ex. S-37. Ms. Cook was not solicited by either Mr. Munsey or Mr.
22 Christopher. While Ms. Cook was not an accredited investor, she was certainly a suitable investor
23 for the limited amount she invested given that she is an accountant, with an accounting degree, and
24 has prior experience in stocks, commodities and private placement investing. When Mr.
25 Christopher learned of her investment and that she was not an accredited investor (although she
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1 was, in fact a suitable investor), he made a written rescission offer to her which she declined. Hrg.
2 Tr., Vol. II, p. 334, l. 6 – 8; p. 335, l. 1-8; Ex. S-34. As of the date of the trial, she had already
3 recovered a return of \$4,705.27, representing approximately 50% of her investment amount.

4 The alleged non-disclosure of the Pennsylvania \$1,500 fine was immaterial and not
5 something that would be important to a reasonable investor. Hrg. Tr., Vol. II, pp. 338-342. It
6 involved an independent contractor in Pennsylvania who apparently did not follow Denver Energy's
7 directions about no general solicitations and placed an advertisement on an Internet bulletin board
8 without Denver Energy's permission. It did not result in any sales, and thus was a technical
9 violation. Neither Mr. Christopher nor Mr. Munsey were named in the Pennsylvania matter. See
10 Ex. S-3. A simple fine was paid by Denver Energy and the matter was concluded. See R-20.

11
12 The Division contends that fraud occurred because Denver Energy did not disclose a \$1,500
13 fine paid by Denver Energy to the state of Pennsylvania. But that is only fraud under 44-1991(2) if
14 it was an omission of "material facts that are necessary in order to make the statements made not
15 misleading in light of the circumstances under which they are made". Omitting the \$1,500 fine did
16 not make anything said in the offering documents misleading. Further, a material fact has to be one
17 that a reasonable investor would want to know as part of his or her decision making process. The
18 \$1,500 fine involved an error made by an IC in Pennsylvania, not an employee of Denver Energy,
19 who put something on a bulletin board that he shouldn't of, that did not result in any sales, and was
20 taken down and cleared up by a \$1,500 fine. Would any of the millionaire accredited investors that
21 we have looked at or the accountant really care about that \$1,500 fine? And again, the omission did
22 not render any statement made in the offering documents misleading. That is the test of whether
23 there is a violation or not. The Commission should not heap large fines and restitution on Mr.
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1 Christopher and his company related to a simple \$1,500 fine in 2010 that was paid in Pennsylvania
2 and fully resolved not involving any actual sale or offer of a security.

3 In short, the Division has presented no evidence in the hearing of any intentional violation of
4 the securities laws, nor any evidence of fraud by any of the Respondents. Yet, the Division would
5 have this Court impose an order of full restitution totaling several hundred thousand dollars to the
6 investors and assess fines that would destroy the confidence of investors and essentially destroy the
7 company. For the reasons discussed here, such drastic relief is not warranted.

9 **II. THE SUBJECT SECURITIES ARE EXEMPT FROM REGISTRATION**
10 **UNDER RULE 506 AND THERE IS NO VIOLATION OF A.R.S. § 44-1841.**

11 The Division claims that the Denver Energy Respondents violated A.R.S. § 44-1841 by
12 selling unregistered securities. The Division has not and cannot meet its burden of proof on the
13 alleged violation of A.R.S. § 44-1841 as the securities at issue are exempt from registration under
14 federal securities laws, including the private offering exemption provided for under Rule 506.

15 15 U.S.C. § 77e prohibits the sale of unregistered securities. However, 15 U.S.C. § 77e does
16 not apply to “transactions by an issuer not involving any public offering,” *i.e.*, any private offering.
17 *See* 15 U.S.C. § 77d(a)(2). Offers and sales of securities by an issuer that satisfy the conditions in
18 17 C.F.R. § 230.506(b) are “deemed to be transactions not involving any public offering.” *See* 17
19 C.F.R. § 230.506(a). 17 C.F.R. § 230.506 or Rule 506 is the safe harbor private offering exemption.

21 § 230.506 Exemption for limited offers and sales without regard to dollar amount of
22 offering.

23 (a) Exemption. Offers and sales of securities by an issuer that satisfy the conditions
24 in paragraph (b) of this section shall be deemed to be transactions not involving any
25 public offering within the meaning of section 4(2) of the Act.
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1 (b) Conditions to be met -- (1) General conditions. To qualify for an exemption
2 under this section, offers and sales must satisfy all the terms and conditions of §§
230.501 and 230.502.³

3 (2) Specific Conditions -- (i) Limitation on number of purchasers. There are no more
4 than or the issuer reasonably believes that there are no more than 35 purchasers of
5 securities from the issuer in any offering under this section.

6 The offers and sales of the securities at issue here met the conditions for and qualify for the
7 safe harbor private offering exemption under Rule 506. The oil and gas participation interests were
8 sold to six accredited investors and one sophisticated purchaser, Lori Cook (“Ms. Cook”), who has
9 a degree in accounting and works as an accountant at a certified professional accounting firm and
10 therefore has the requisite knowledge and experience in financial and business matters. *See* 17
11 C.F.R. § 230.506(b); Suitability Questionnaire regarding Lori Cook, Ex. S-39. Originally, the
12 Denver Energy Respondents reasonably believed that Ms. Cook was an accredited investor. When
13 the Denver Energy Respondents learned that Ms. Cook was not an accredited investor, they offered
14 to rescind her investment and fully refund her money. *See* Ex. S-34. Ms. Cook declined the
15 rescission and actually sought to invest additional money with the Denver Energy Respondents.
16

17
18 As “federally covered securities” Rule 506 offerings are not subject to state qualifications
19 (15 USC 77r(a)(1-3) for the offering itself, only to state notice filings and fee requirements. *See* 15
20 USC Sec. 77r. Denver Energy attempted to comply with the notice requirement by submission of a
21 Form D to the State of Arizona. *See* June 7, 2011 Letter to Arizona Securities Division enclosing
22 Form D and \$250 submission fee, Ex. R-50. Hrg. Tr., Vol. II, pp. 381-382. Moreover, the
23 Corporation Commission negotiated the check. *See* Canceled check, Ex. R-83.
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25
26 ³ Rule 501 requires that the investors be either accredited or has such knowledge and experience in
27 financial and business matters that he or she is capable of evaluating the merits of the prospective
28 investment. Rule 502 prohibits the use of general advertising. These conditions were met in
connection with the Denver Energy participation units.

1 All of the sales by Mr. Munsey were made to accredited, out of state investors, and as part of
2 a limited offering. In short, the activity was exempt on all of those bases.⁴

3 While the Division apparently claims that Denver Energy made some general advertising or
4 soliciting, perhaps through Denver Energy's website, the subject website did not constitute a
5 general advertisement or general solicitation. See Website, Ex. S-72. Rather, the website simply
6 provided general information about Denver Energy and an entirely different project that had nothing
7 to do with the investments at issue in this matter. Moreover, the website specifically stated that the
8 information was "for generally purposes only and is not a solicitation to buy or an offer to sell any
9 securities." When the Division raised concerns regarding that language on the website, the Denver
10 Energy Respondents immediately addressed their concerns and voluntarily removed the language.
11 See R-54. Finally, even if, *arguendo*, the original website language were construed as a general
12 advertisement or general solicitation, offers and sales exempt under 17 C.F.R. § 230.506 are not
13 deemed public offerings under the federal securities laws as a result of general advertising or
14 general solicitation. See 15 U.S.C. § 77d(b). Therefore, any general advertising or general
15 solicitation does not destroy the exemption. As Mr. Christopher testified, nobody purchased or
16 even inquired about purchasing units because of the company's website. Hrg. Tr., Vol. II, p. 337, l.
17 7-16.
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21 Further, Denver Energy attempted to limit sales to investors prequalified in accredited
22 investor lead lists. In H.B. Shaine & Co., Inc., No Action Letter dated May 1, 1987, the SEC staff
23 indicated that the distribution by a securities dealer of questionnaires to prospective accredited
24 investors to determine their suitability to participate in private offerings would not be a "general
25 solicitation or advertisement". This view was premised upon several factors, including the use of a
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27 ⁴ R14-4-140 accredited investor exemption; R14-4-126 limited offering exemption; 44-1844 out of
28 state investors, and the Regulation D, Rule 506 Federal exemption.

1 generic questionnaire and upon the elapse of a sufficient period of time between the completion of
2 the questionnaire and the contemplation or inception of any particular offering. 45 days has been
3 held to be a “sufficient period of time” to establish a “substantive preexisting relationship”
4 justifying offering securities to these prospective accredited investors. *See E.F. Hutton*, SEC No-
5 Action Letter (Dec. 3, 1985).
6

7 Lamp Technologies, Inc., SEC No Action Letter dated May 29, 1997, provides additional
8 guidance regarding the establishment of substantive preexisting relationships to avoid general
9 advertising and solicitation. The SEC consented to a 30 day waiting period following the
10 completion of a generic accredited investor questionnaire by a third party list provider (here a web-
11 site matching investors and issuers of securities) before an investor could invest in a company’s
12 offering. Further, once the thirty day period passed an investor-member of the web-site could invest
13 in any security that had been previously posted, not just those posted after their membership had
14 become effective. Finally, the SEC has stated that “we also would not object if similar screening
15 procedures were used by the publisher of a private fund directory (i.e., commercial list provider),
16 distributed in paper, rather than in electric format.”
17

18 The Division also claims that a prior securities matter in Pennsylvania disqualified the
19 Denver Energy Respondents from relying on the Rule 506 exemption. That securities matter in
20 Pennsylvania was de minimis, related to an entirely different project, and has been resolved.
21 Further, the alleged disqualification is set forth under Arizona law, which is preempted by federal
22 law since the investment, as discussed above, is a private offering and thus a “covered security.”
23 *See* 15 U.S.C. § 77r. Therefore, there is no disqualification under state law and no disqualification
24 provisions exist under federal law that preclude the Rule 506 exemption. The only state
25 requirements that are not preempted and are preserved are the filing requirements, which the Denver
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1 Energy Respondents attempted to comply with by filing a Form D with the Division. *See* 15 U.S.C.
2 § 77r(b)(4)(E); A.R.S. §44-1843.02(C); Form D, Ex. R-50. The fact the Denver Energy
3 Respondents were unable to complete that filing was through no fault of their own and is excusable
4 under A.A.C. R14-4-126(H) as an insignificant deviation. The Denver Energy Respondents also
5 filed a Form D with the Securities and Exchange Commission on three different occasions. *See*
6 Form D, Exs. S-112, S-113, and S-114.
7

8 **III. THERE IS NO VIOLATION OF A.R.S. § 44-1842.**

9 The Division alleges that the Denver Energy Respondents violated A.R.S. § 44-1842 by
10 engaging in transactions by unregistered dealers or salespersons. The Division has not and cannot
11 sustain its burden of proof on the alleged violation of A.R.S. § 44-1842 because Denver Energy
12 required its salespersons to have any necessary licenses, and this was an exempt, non-public
13 offering under Rule 506. The independent contractor agreements between Denver Energy and Mr.
14 Munsey clearly directed him to comply with federal and state laws, and be licensed in any state
15 where licensing was required. *See* Ex. S-8.⁵ However, to the extent that there was any licensing
16 violation, at most, a modest fine should be imposed because Mr. Munsey's sales were limited to
17 accredited investors to whom he provided a private placement memorandum and other investment
18 documents.
19

20 **IV. THERE IS NO VIOLATION OF A.R.S. § 44-1991.**

21 The Division claims that the Denver Energy Respondents violated A.R.S. § 44-1991 by
22 engaging in fraud in connection with the offer or sale of securities. The Division has not and cannot
23 sustain its burden of proof on the alleged violation of A.R.S. § 44-1991 as it has not shown any
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26 ⁵ The addendum provided:

- 27 1. The contractor agrees to abide by all Federal and State laws.
28 2. The contractor agrees to register with any and all states requiring registration.

1 material omission of information that any reasonable investor would want to know. The offering
2 documents make clear that the oil and gas business is a risky one and there are no guarantees as to
3 the success of the venture. The private placement memorandum indicates that: "There are risks
4 associated with Exploration for Oil and Gas and the purchase of interest should only be made by
5 those individuals who can afford the loss of all or a portion of their investment in the Joint Venture
6 Well." Further, the failure to affirmatively disclose a trivial violation and \$1,500 fine that was
7 incurred by a non-employee's conduct in Pennsylvania and which fine was paid, in no way
8 constitutes a scheme or artifice to defraud, or omission of material fact necessary in order to make
9 the statements made not misleading, or practice operating as a fraud or deceit, under A.R.S. § 44-
10 1991. To the contrary, every effort was made by Denver Energy to assure that the independent
11 contractors offering unit investments in Denver Energy oil and gas wells were completely
12 forthcoming and truthful to interested investors. The independent contractor agreements
13 specifically provided in section 2(5) as follows:

16 The contractor shall be honest, forthright, and convey only the facts about the project
17 to their prospective participant funding partner referrals. They will not make any
18 misrepresentations, exaggerations, or provide any false or misleading information
19 about the project/wells. No promises will be made as to the success or outcome of
20 the new wells to be drilled. The drilling, completing, and production updates will be
21 forwarded by Denver to all participants and to the Independent Contractor. This is a
Private Offering, no advertising is allowed. Denver provides Accredited Investor
leads. Only sophisticated investors with business experience are considered for
participation. Certain States are excluded from this offering, (see Prospectus).

22 *See* Ex. S-8. These guidelines provided to the Independent Contractors as a primary term of their
23 contracts reflects Denver Energy's and Mr. Christopher's good faith in connection with the offering
24 of the participation units.

1 **V. THERE IS NO CONTROLLING PERSON LIABILITY UNDER**
2 **A.R.S. § 44-1999.**

3 The Division alleges that Michael Christopher is a controlling person of Denver Energy
4 under A.R.S. § 44-1999 therefore is jointly and severally liable thereunder. The Division has not
5 and cannot sustain its burden of proof on the alleged controlling person liability under A.R.S. § 44-
6 1999. A.R.S. § 44-1999 specifically exempts persons acting in good faith where such person had
7 “no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which
8 the liability of the controlled person is alleged to exist.”⁶ All of the documents presented in
9 evidence demonstrate that it was the full intent of Denver Energy and Mr. Christopher to comply
10 with applicable securities laws, and they expected, and contracted that their independent contractor
11 salespeople would do the same. It was not shown, nor could be shown, that Mr. Christopher in any
12 way knowingly approved or acquiesced to any securities violations by independent contractors of
13 Denver Energy. Indeed, it was the testimony of both Mr. Christopher and Mr. Munsey that the
14 instructions given to Mr. Munsey were to present the participation units solely to accredited
15 investors whose names were on the lead sheet. It was clear from the record that if “Jackson
16 Roberts” had not called Mr. Munsey, no such contact would have occurred.
17
18

19 **VI. CONCLUSION.**

20 Based upon the foregoing, Respondents Denver Energy Exploration, LLC and Michael Lee
21 Christopher respectfully request that the relief sought by the Division be denied against them, and
22 the action be dismissed with prejudice in its entirety.
23

24 ⁶ In order to establish an affirmative defense of good faith, controlling persons must establish that
25 they exercised due care by taking reasonable steps to “maintain and enforce a reasonable and proper
26 system of supervision and internal control[s].” S.E.C. v. First Jersey Securities, Inc., 101 F.3d 1450,
27 1473 (2d Cir. 1996) (quoting Marbury Management, Inc. v. Kohn, 629 F.2d 705, 716 (2d Cir.)).
28 Here, not only did Mr. Christopher not know of any violations of securities laws by Mr. Munsey, he
took affirmative steps to include specific instructions and contractual commitments in the
independent contractor agreements to follow the applicable federal and state laws.

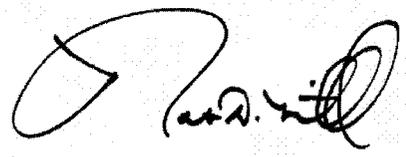
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The Commission should not destroy a company and a life unnecessarily with a restitution order of the type sought by the Division and make serious adverse findings of fact, where there has been no harm to any investors, no investor complaints, nothing more than the operation of a legitimate business, and returns already flowing to investors.

Alternatively, if some technical violation is determined by the Court to have occurred, we respectfully request that minimal fines be entered to commensurate with the technical and inconsequential violations, if any, that may have occurred.

DATED this 30th day of November, 2012.

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1 ORIGINAL of the foregoing plus 13 copies
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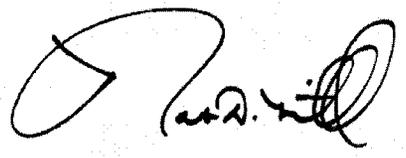
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7 COPIES of the foregoing mailed
8 on this 30th day of November, 2012 to:

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25 _____
26 denver energy/pldgs/denver energy resps.' closing brief
27
28