

Monthly Meeting - October 18, 2018

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

MEETING OF THE PUBLIC SERVICE COMMISSION

Thursday, October 18, 2018
10:37 a.m.
Three Empire State Plaza
Agency Building 3, 19th Floor

Albany, New York

COMMISSIONERS:

JOHN B. RHODES, Chair
GREGG C. SAYRE
DIANE X. BURMAN
JAMES S. ALESI

1 Monthly Meeting - October 18, 2018

2 (On the record 10:37 a.m.)

3 CHAIRMAN RHODES: Good morning. Thank
4 you all for coming. I call this session of the
5 Public Commission -- Public Service Commission to
6 order. Before I get into the business of the
7 commission, I want to remind everybody that this is
8 Domestic Violence Awareness Month as proclaimed by
9 the governor.

10 New Yorkers are united, need to be
11 united in offering their support to victims of this
12 pathology and to shine a light on the fact of this
13 pathology, and on our, you know, absolute intolerance
14 of the -- that kind of behavior and those related
15 crimes. We are seeking to remind ourselves and each
16 other of the importance of this issue and the
17 importance of our own behavior.

18 Purple is the color of domestic violence
19 awareness, and today is statewide Wear Purple Day.
20 And, unfortunately, I think it's timely and just
21 needs to be on our minds because this is -- this is
22 not a good thing. So thank you very much.

23 With that let me proceed to the business
24 of the session. Secretary Burgess, are there any
25 changes to the final agenda?

1 Monthly Meeting - October 18, 2018

2 SECRETARY BURGESS: Good morning Chair
3 and Commissioners. There is one change to the
4 agenda. Item 371 which is Case 15-E-0302 proceeding
5 on motion the commission to implement a large scale
6 renewable program and a clean energy standard. That
7 item has been pulled.

8 CHAIRMAN RHODES: Thank you. With that
9 amendment to the agenda, let's -- let's get to
10 business. The first item for discussion is an
11 informational item, Item 201 Case 18-M-0272 which is
12 staff's report on the New York State natural gas and
13 electric supply readiness for the upcoming winter
14 presented by Chris Stolicky, utility supervisor gas
15 and water rates and supply, Vijay Puran, utility
16 supervisor bulk electric systems, Paul Darmetko,
17 utility engineering specialist and Sharon Alvaro,
18 utility analyst. Chris, please begin.

19 MR. STOLICKY: Good morning Chair Rhodes
20 and Commissioners. Staff would like to take this
21 opportunity to brief you on the results of our
22 investigation into the readiness of the state's
23 natural gas and electric utilities for the coming
24 winter. Although each of us will provide more
25 detail, overall the electric and gas utilities are

1 Monthly Meeting - October 18, 2018

2 prepared for the coming winter.

3 First I will brief you on the readiness
4 of the state's natural gas utilities in a projection
5 of the average natural gas bills for the coming
6 winter. Vijay Puran will update you on the readiness
7 of the bulk electric system followed by Paul Darmetko
8 who will discuss projections for electricity prices
9 for the coming winter. Sharon Alvaro will conclude
10 the panel with the discussion of outreach efforts
11 related to winter bills and safety.

12 The state's gas utilities are also
13 called local distribution companies or L.D.C.s.
14 Based upon our review and representations by the
15 L.D.C.s regarding natural gas supply readiness for
16 the upcoming winter season, staff concludes that the
17 L.D.C.s serving New York State have adequate natural
18 gas supply, delivery capacity, and storage inventory
19 to satisfy current firm customer demands under design
20 winter conditions this winter.

21 Staff will continue to coordinate with
22 oil industry representatives in the New York State
23 Energy Research and Development Authority or NYSERDA
24 to ensure that customers have access to adequate
25 supplies of the winter heating fuels. Each utility

1 Monthly Meeting - October 18, 2018

2 has a unique mix of assets used to serve a unique mix
3 of customers. Some of the state's L.D.C.s are
4 experiencing growth in natural gas demand as local
5 government seek to phase out dirtier heating fuels
6 such as fuel oil and propane. Especially in the
7 downstate areas of New York City and Long Island,
8 interruptible customers are an important piece of the
9 puzzle and their ability to stop using natural gas
10 during periods of high demand reduces the amount of
11 pipeline capacity needed to serve winter load. This
12 is a type of demand response program that is decades
13 old.

14 Recently, however, many communities have
15 expressed an interest in meeting growing demand
16 through a greater use of demand response programs
17 including more efficiency combined with what is being
18 called non-pipes alternatives. Recent filings made
19 by Consolidated Edison, New York State Electric and
20 Gas, and rate case programs will focus on the use of
21 demand response and non-pipes alternatives to meet
22 growing space and winter heating needs.

23 We continue to monitor some areas of the
24 state where demand is growing at a faster pace and
25 where existing distribution systems are becoming

1 Monthly Meeting - October 18, 2018
2 constrained including New York City and the Capital
3 District. Staff will continue the traditional
4 monitoring of weather, pipeline and storage assets
5 and interruptible customer compliance but also work
6 with L.D.C.s and communities to find innovative
7 solutions that increase environmental benefits while
8 meeting customer expectations for economic solutions.

9 In this slide illustrates some
10 interesting information related to weather and gas
11 supply needs. The red line shows the total number of
12 heating degree days for the last thirty winters. We
13 calculate the number of heating degree days by
14 determining the average of the high and low
15 temperature for the day and subtracting that from
16 sixty-five with the assumption that utility customers
17 are neither heating nor cooling their homes. The
18 blue line represents the required supply needed to
19 meet demand due to colder and warmer days last
20 winter. As can be seen, last winter was about
21 normal. But the extreme temperature swings required
22 a balance of adequate preparedness for the extreme
23 cold but also the ability to handle gas supply when
24 it was warmer than normal. As can be seen, it is
25 possible to have extremely cold days in a normal

1 Monthly Meeting - October 18, 2018

2 winter, which is what the L.D.C.s must plan for.

3 Even though last winter was about
4 normal, April, which is generally not considered a
5 winter month, was one of the coldest on record in
6 most of New York. L.D.C.s continue to use storage
7 assets to meet demand in April which led to a delay
8 in what is typically the beginning of the storage
9 fill season. However, New York L.D.C.s are on
10 schedule to reach their storage fill targets by
11 November 1st.

12 The L.D.C.s purchase gas to supply their
13 customers winter needs in three ways, and this is
14 represented by the pie chart on this slide. The
15 first way is by filling their natural gas storage
16 facilities during the summer when demand is low. The
17 second way is by hedging which acts like an insurance
18 policy to guarantee the volatility of the gas price
19 will not be too high. The third way is by purchasing
20 at the prevailing market price which fluctuates with
21 market forces and is also called flowing gas. The
22 price of storage is a little higher than last year,
23 but it was a -- when it was the lowest in about
24 twenty years. Flowing gas is expected to be about
25 the same price as last year's projection while the

1 Monthly Meeting - October 18, 2018
2 cost of hedged gas is expected to be lower. The
3 price of natural gas is influenced by many factors.
4 Weather is chief among these. We expect the average
5 residential customer's winter heating bill to be just
6 over eight hundred dollars for this winter, assuming
7 normal weather, but this varies by utility. This is
8 about the same as last winter.

9 In conclusion, our review indicates that
10 L.D.C.s serving New York have secured adequate
11 supplies of natural gas to meet firm customer
12 requirements this winter. Staff will continue to
13 monitor supply, prices and interruptible customer
14 compliance throughout the winter and report any
15 situations that require commission attention. Staff
16 will also work with the L.D.C.s and interested
17 communities to find innovative solutions to the
18 challenges represented by increased demand for
19 natural gas.

20 This concludes my portion of the
21 presentation and be happy to take questions now or
22 after the panel is finished. If there are no
23 questions, I will turn it over to Vijay.

24 MR. PURAN: Thank you, Chris. Good
25 morning Chair Rhodes and Commissioners. My name is

1 Monthly Meeting - October 18, 2018
2 Vijay Puran and I'm a utility supervisor in the
3 department bulk electric system section. As Chris
4 mentioned, I'm here today to brief you on staff's
5 review of the bulk electric systems preparedness for
6 the upcoming 2018-2019 winter period. At the outset,
7 I would like to say that based upon our review, we
8 conclude that the bulk electric system is prepared to
9 reliably meet the state's upcoming winter's electric
10 demands.

11 Next slide please. This chart shows a
12 summer and winter historic coincident peak since year
13 2000. It also shows that New York State is a summer
14 peaking state and therefore has to have sufficient
15 available capability to meet loads well above those
16 typically experienced during the winter. Last
17 winter's actual electric peak load was 25,081
18 megawatts. This was 657 megawatts lower than the
19 2013-2014 polar vortex winter record of 25,738
20 megawatts. The New York I.S.O. expect peak forecast
21 for a upcoming winter period is 24,269 megawatts.

22 Next slide please. This slide
23 summarizes the resources expected to be available to
24 New York June to winter. The New York I.S.O. expects
25 to have 38,324 megawatts in net capacity resources

1 Monthly Meeting - October 18, 2018
2 available during the winter to serve the forecasted
3 winter peak load of 24,269 megawatts. Once operating
4 reserves, which are the resources available to meet
5 sudden system contingencies are accounted for, there
6 remains a capacity margin of 11,425 megawatts. In
7 short, we have sufficient capability to serve the
8 forecasted load during the upcoming winter.

9 Next slide please. As part of staff's
10 winter assessment, we reached out to major generating
11 facility owners in southeast New York who own about
12 12,000 megawatts of dual fuel generation capability.
13 We found that these owners are continuing to
14 implement lessons learned from the polar vortex
15 winter of 2013-2014 including having increased pre-
16 winter onsite fuel reserves, having firm contracts
17 with fuel oil suppliers, conducting more aggressive
18 replenishment plans and having more proactive pre-
19 winter maintenance and facilities preparations.

20 Next slide please. A winter
21 coordination protocol is in place to facilitate
22 communication between state agencies and the New York
23 I.S.O. in circumstances where fuel supply for
24 generating facilities may be at risk or if a
25 generator owner needs a fuel specification waiver

1 Monthly Meeting - October 18, 2018
2 from the D.E.C. to maintain reliability. The state
3 agencies involved are the D.P.S., D.E.C., NYSERDA and
4 D.O.T.

5 Staff also met with the New York I.S.O.
6 and discussed its procedures and protocols for the
7 winter period. In recent years, the New York I.S.O.
8 has instituted various changes to help ensure
9 electric reliability during period of tight natural
10 gas supply, especially closely monitoring generator
11 fuel levels and replenishments. In addition, the New
12 York I.S.O. has improved communications with
13 interstate pipelines, local -- local gas distribution
14 companies and neighboring I.S.O.s during period of
15 tight electric operating conditions.

16 That concludes my presentation. Thank
17 you. If there are no questions, I'll turn it over
18 to Paul.

19 CHAIRMAN RHODES: I'll just suggest that
20 we do questions at the end collectively. Thank you.
21 Paul.

22 MR. DARMETKO: Thank you, Vijay. Good
23 morning, Chair Rhodes. Good morning, commissioners.
24 I'll be providing you with a summary of how the
25 electric utilities have performed at reducing the

1 Monthly Meeting - October 18, 2018
2 electric supply price volatility for their full
3 service residential customers. I'll compare this
4 winter's NYMEX electric futures to last -- to the
5 last few years of futures in actual prices. And
6 finally I'll provide you with a summary of what we
7 expect full service residential customer supply rates
8 will look like this coming winter if we experience
9 normal weather.

10 This graph shows the results of the
11 utilities electric supply price volatility mitigation
12 efforts since December of 2008. It compares the
13 average New York I.S.O. day ahead market price
14 volatility, the red line, with the volatility of the
15 utilities residential electric supply portfolios, the
16 blue line. Each point represents the price
17 volatility over a twelve month period as measured by
18 the coefficient variation. The highpoint that you
19 see on the graph represents the volatility that was
20 experienced due to the 2014 polar vortex which
21 resulted in increased market prices and increased
22 price volatility. Even though customers benefited
23 from the hedges that the utilities had in place, the
24 bill impacts that customers experienced were high.
25 As a result of lessons learned, the utilities

1 Monthly Meeting - October 18, 2018

2 modified certain aspects of their hedging programs.

3 These changes included increasing the
4 fixed price hedge level for their residential supply
5 customers during the winter months from about fifty-
6 five percent to about seventy percent on a statewide
7 average basis as well as certain utilities
8 maintaining multiple portfolios to better hedge their
9 customers located in different regions of their
10 service territories. As you can see, the utilities
11 have continued to perform well at reducing the
12 portfolio price volatility compared to market. I'm
13 sure you've also noticed that last year we
14 experienced some increased volatility, which I'll get
15 into in the next slide.

16 This chart shows how New York I.S.O. day
17 ahead around the clock market prices have varied over
18 the last few years. The solid lines represent the
19 actual average monthly market prices for two New York
20 I.S.O. zones, west and New York City. The dashed
21 lines that are of the same color show what the NYMEX
22 futures were just prior to the winter season. In the
23 winter months, electric market prices can be
24 significantly affected by gas market prices and
25 weather.

1 Monthly Meeting - October 18, 2018

2 The winters of 2015-16 and 2016-17 were
3 significantly warmer than normal, whereas the winters
4 of 2013-14, the year of the polar vortex, and the
5 winter of 2014-15 were significantly colder than
6 normal. Last winter, as Chris mentioned, the state
7 experienced the cold snap at the end of December that
8 lasted through the mid -- mid-January. This caused
9 electric market prices to spike followed by an
10 unusually warm February which caused the prices to
11 swing the other way. This variability and
12 uncertainty is why the utilities hedge for their full
13 service mass market customers. To protect them
14 against these large swings in spot market prices.

15 This chart shows this winter's expected
16 average energy market prices based on NYMEX futures
17 and how they compare to last winter's futures and
18 actual prices for New York City, Hudson Valley and
19 Western New York. Last winter's expected energy
20 market prices that we reported to you last October
21 are in green. Last winter's actual market prices are
22 in blue, and this winter's expected market prices are
23 in red. As shown, last winter's actual average
24 market prices came out around where the futures
25 prices were indicating. This winter's futures prices

1 Monthly Meeting - October 18, 2018
2 are about the same as what was projected for last
3 year. However, as always, the actual prices this
4 winter will vary based on weather and other
5 conditions.

6 Finally, in respect to supply prices
7 that full service residential customers may
8 experience this winter season, if we experience
9 normal weather, we expect that on a statewide average
10 basis the full service residential commodity rate
11 will be about the same as it was the last three
12 years. However, if weather does turn cold, the
13 utilities have taken steps to protect their full
14 service residential customers through their
15 volatility management programs. And that concludes
16 this portion of the presentation. I'll turn it over
17 to Sharon.

18 MS. ALVARO: Good morning Chair Rhodes
19 and commissioners. This report describes --

20 CHAIRMAN RHODES: Sharon, I'm not sure
21 your mic is on.

22 MS. ALVARO: I'm sorry. Can you hear me
23 better? Thank you.

24 CHAIRMAN RHODES: Thank you. That is
25 better.

1 Monthly Meeting - October 18, 2018

2 MS. ALVARO: This report describes the
3 work that department staff and the New York State
4 energy utilities are doing to provide customers with
5 information to help manage their energy bills and
6 usage for the 2018-19 winter season.

7 Next slide please. As in previous
8 years, both the department and the utilities will
9 promote messages on how customers can control winter
10 bills. These messages will focus on bill management
11 strategies such as financial assistance that is
12 available from the utility and governmental programs,
13 such as HEAP, also know as the Home Energy Assistance
14 Program, budget billing and payment options including
15 deferred payment agreements. Customers are
16 encouraged to take simple, affordable measures to
17 reduce energy use, help lower energy bills and become
18 more energy efficient.

19 We will also raise awareness of the
20 resources available to assist consumers faced with
21 heat related energy emergency. We remind customers
22 there are special customer protections in place
23 during the cold winter period of November 1st to
24 April 15th. In addition to educating customers about
25 controlling their heating costs, winter messaging

1 Monthly Meeting - October 18, 2018

2 will include information on natural gas, electric and
3 carbon monoxide safety as well as what to do in the
4 event of storms and outages.

5 The department's winter outreach program
6 uses a variety of methods to get our message to
7 consumers such as developing and distributing
8 publications to approximately six thousand elected
9 officials and community leaders regarding winter
10 preparedness. The information is provided in English
11 and Spanish. We also have materials available in
12 other languages including Haitian, Creole, Korean,
13 Chinese, Russian and Italian. To further increase
14 our reach, staff engages in grassroots outreach
15 including presentations to community groups and
16 exhibits at public events across the state to reach
17 as many New Yorkers as possible. We also use the
18 department's website and our call center staff to get
19 our messages out to utility customers.

20 Next slide please. In addition to the
21 department's outreach program, the utilities have
22 developed plans to alert customers about their winter
23 messages. They are using a variety of tools to reach
24 customers including paid media advertisements such as
25 radio, T.V. and billboards, bill inserts and bill

1 Monthly Meeting - October 18, 2018
2 envelope messages, newsletters, the weatherization
3 kits, website features and social media platforms
4 such as Facebook, Twitter and Instagram. The
5 utilities also work with municipal and elected
6 officials and a partner with human service
7 organizations and community groups to educate
8 customers. Finally, the -- the companies provide
9 training to their consumer advocates and call center
10 staff on winter messaging and customer assistance.

11 In conclusion, the office of -- of
12 consumer services, winter energy outreach and
13 education program is designed to ensure that New York
14 utility customers have access to information and
15 programs they need to manage their winter energy
16 bills and use energy efficiently. Staff will
17 continue to monitor the need for additional outreach
18 and education efforts and will work with the
19 utilities to make modification as needed throughout
20 the heating season. This concludes my report. Thank
21 you.

22 CHAIRMAN RHODES: Thank you. I think
23 this is good news in terms of our readiness for the
24 winter. And I commend the staff for the good staff
25 work. But these are the issues we're supposed to

1 Monthly Meeting - October 18, 2018
2 really care about. I remind us all that we can't be
3 complacent about it. And we collectively can't
4 settle for where we are. We need to take lessons
5 from wherever we can, especially we know that nature
6 doesn't deliver average outcomes. Nature delivers a
7 lot of different outcomes, and that's our reality and
8 we have to be -- continue and increasingly to be
9 prepared for realities that depart from the average.

10 And we especially need to be attentive
11 and well prepared with respect to knowable and --
12 sorry, attentive and prepared with respect to
13 knowable and to known pinch points. And we simply
14 have to anticipate, I'm sorry to say, a much more
15 demanding future. Thank you. Are there any comments
16 or questions from my fellow commissioners?
17 Commissioner Sayre?

18 COMMISSIONER SAYRE: A great report.
19 Thank you. Like the Chair, I hope this will be an
20 average, relatively calm winter. I'd like to report
21 there was snow on my deck in Fairport this morning.
22 We can't trust Mother Nature to -- to make things
23 easy for us. So I urge the utilities to be fully
24 prepared for whatever blows in off the lakes or up
25 from the south or off the Atlantic this year.

1 Monthly Meeting - October 18, 2018

2 CHAIRMAN RHODES: Thank you.

3 Commissioner Burman?

4 COMMISSIONER BURMAN: Thanks. Thank you
5 very much. I appreciated this collaboration of staff
6 in looking at the winter review. It is something
7 that we do every year. I will say though that I am
8 particularly concerned going into this winter.
9 E.I.A. predicts that across the board on --
10 nationally on that we will expect to see average
11 household bills from most energy sources of home
12 heating will rise this winter because of higher
13 forecasted energy prices. Have we done -- and I have
14 a couple of questions and thoughts? But have we done
15 a stress test on what prices will look like if we
16 have a very cold winter?

17 MS. MCCARRAN: We -- no, we don't do any
18 sort of price forecasting. You know, what we do is
19 we require that, you know, and the commission has
20 policy statements that require the utilities to put
21 in place hedging programs. So those programs are the
22 insurance policy. Prices may very well spike due to
23 cold weather, something else like that. But because
24 our utilities have -- they buy a lot of fuel ahead of
25 time, lock in the price and our firm natural gas

1 Monthly Meeting - October 18, 2018

2 customers are certainly not subject to those big
3 spikes.

4 COMMISSIONER BURMAN: So I just want to
5 make clear, you're telling me that we don't do any
6 stress test analysis on the prices. What -- do we do
7 a stress test analysis? Okay.

8 MS. MCCARRAN: Maybe on the electric
9 side. On the gas side we don't. Paul would be more
10 qualified to comment on the electric.

11 COMMISSIONER BURMAN: Thank you.

12 MR. DARMETKO: So I don't know -- I
13 don't necessarily know that I'd call it a stress
14 test. But the -- the possibility of the actual
15 electric commodity prices for the electric customer
16 is getting anywhere near the level of like the polar
17 vortex in my opinion would be like slim to none just
18 because of the additional hedging that the utilities
19 have undertaken.

20 I mean, if the market price increases by
21 a hundred percent, the utilities have locked into
22 hedges that are seventy percent of the portfolio, so
23 they -- customers could really only see thirty
24 percent of any kind of market price spike that does
25 occur. As far as a stress test, I -- I would say no

1 Monthly Meeting - October 18, 2018

2 but I think we're very confident that it would not
3 arise to the level that we saw in the year 20 --
4 2013-14.

5 COMMISSIONER BURMAN: Okay. I -- I got
6 to push back a little bit on that because when I've
7 gone through and what I do is I go back for a few
8 years. In this case I went back to 2014 online at
9 each of our winter forecasts and review not only the
10 presentation and for information on the item. But I
11 also review the transcripts and look to get a sense
12 of what is matching up, what we've done differently
13 in some cases. Some years we focus more not just on
14 -- and I -- I do recognize we're focusing on -- and
15 this is a nuanced comment.

16 We focus on current firm customers. We
17 have in other years past we have focused on firm and
18 interruptible in a very detailed way as well as the
19 focus of current FERC customers concerns me because
20 that to me indicates that we may need to take a
21 deeper dive. And as to the stress test analysis,
22 that was in a very real way discussed lengthy -- in a
23 lengthy way in 2014 at that time and going into sort
24 of a deep dive on -- on the D.P.S.'s stress test
25 analysis. And so I would just urge us to sort of

1 Monthly Meeting - October 18, 2018
2 look a little deeper and under the hood on all of
3 that and see what that means with the scenarios where
4 we may have higher than expected winter. What it
5 means for a very cold winter and take the most cold
6 winter, go back to the polar vortex and do some of
7 that stress test analysis. Think it's important. I
8 think it's very important.

9 I also will challenge you that when we
10 look at this and we're looking at constraints, and
11 I'm just going to read from the 2014 transcript, in
12 2014, and these are not my comments. This was staff
13 and also some comments that matched up with the chair
14 at that time, Chair Zibelman. There was a
15 recognition that at this time, while we were
16 discussing the winter -- the current winter forecast,
17 we were not discussing the potential long term action
18 items. But there was a recognition that long term
19 action items include addressing basic infrastructure
20 needs, both in the electric and gas industries,
21 perhaps more gas pipeline capacity to meet winter
22 electric generation needs or some other firm gas
23 capacity products to help improve electric
24 reliability and reduce price volatility.

25 And perhaps also more electric

1 Monthly Meeting - October 18, 2018
2 transmission infrastructure to help reduce
3 congestion, to reduce price differentials between
4 west and east markets. And these initiatives would
5 require further study. There was actually also a
6 focus on the continued development of new supply
7 sources and the large increase in proposed and newly
8 constructed pipelines to access these supply sources.
9 And therefore it was determined that New York State
10 continues to see its situation improve regarding
11 reliability, supply, gas commodity pricing and gas
12 price volatility. And so it continues. So my focus
13 is really not just in the, you know, gas side of it
14 but how it all relates to system reliability not just
15 for the -- this winter but the projections out.

16 And we really are always supposed to be
17 looking not just at this winter but projecting out
18 five and ten years and making some predictions. And
19 while I do understand that we made some course
20 corrections after the polar vortex, part of our
21 responsibility, I do believe, is to look at what it
22 means in terms of what other course corrections.
23 There were some course corrections that happened
24 including at the time of the polar vortex focusing on
25 encouraging fixed price contracts. That course

1 Monthly Meeting - October 18, 2018
2 correction has gotten a little lost and changed so
3 that we should be looking at some of the focus on
4 what that means. What the number of fixed price
5 contracts are as compared to 2013-2014, the
6 encouragement of that and if there's been a slip
7 because that does affect people's pocketbooks in a
8 way that maybe important to look at.

9 And I think it will help us overall
10 especially in 2014 when we're talking about
11 constraints, both on the transmission side and the
12 gas side. There was a recognition at that time that
13 there was a lot of system reliability and focus on a
14 forward system reliability would increase once we
15 alleviated some of those capacity constraints as
16 well, including both gas and transmission. So to the
17 extent that we need to take a look at some of those
18 projections back in the 2014 winter review, what it
19 looks like now.

20 Some of it obviously is not an isolation
21 from us. But it means that we have to collaborate in
22 a very real time way with others including the I.S.O.
23 and other -- other states in our region and what that
24 means for constraints. As well as also looking at
25 how many events, negative events are we prepared for.

1 Monthly Meeting - October 18, 2018

2 What does it mean? Do some tabletop exercises in
3 terms of the critical event that may cause system
4 issues. It also means drilling down more and pushing
5 the I.S.O. to focus on the fuel study that they have
6 and get some real time information in a way that will
7 be helpful to us. And being more hands-on in that
8 aspect. It's very important and it will affect
9 system reliability. And for me it's not just about
10 in 2014 where we say this initiative will have
11 further study. But it's about bringing it back to
12 the table and looking at it from, you know, one
13 season to another.

14 And obviously the winter season and the
15 summer season and some of those peak issues have
16 changed. Some of the things we would have seen in
17 the summer we now see in the winter and vice versa.
18 And it's -- it's imperative for us to look at that
19 and make sure we're matching it up. Some of the
20 issues are longer term, and some of the issues are
21 relevant to now. To the extent that we also are
22 looking at current firm customers, to me that also
23 means that one of the things that we need to look at
24 is what does that mean?

25 Are we talking about increased

1 Monthly Meeting - October 18, 2018
2 moratoriums in constraint areas? Are we talking
3 about economically as well as environmentally?
4 Negative, potential negative impacts. If we're
5 calling upon the interruptible customers more. We
6 saw just last month where we did an item where we
7 said that the folks who were called upon, the
8 temperature control customers who were called upon
9 who could showcase that. I think there were eighty-
10 nine who could showcase the large customers,
11 hospitals and schools primarily. That they couldn't
12 go from gas to oil because the oil was not there.
13 And, therefore, we allowed a waiver for a lesser
14 penalty for that.

15 That there were others outside of that
16 footprint who didn't showcase the same diligence as
17 those customers. And so they weren't given the
18 waiver and paid the higher penalty. But altogether
19 that information is relevant because as we enter this
20 -- this winter season, it's not just about talking
21 about the 2013-2014 polar vortex lessons learned.
22 It's really lessons learning from even just last
23 month where we looked at that.

24 At that time we were also looking at a
25 September 17th report that was supposed to be issued.

1 Monthly Meeting - October 18, 2018
2 I have not seen anything on it so I don't know if it
3 has been, that would look at the temperature control
4 customers and interruptible customers. And was
5 looking at the need for the issues surrounding that
6 and some potential course corrections in that aspect.
7 That's imperative now. Analysis on that is now.

8 That came about from, I believe, a 2015
9 and 2016 item that the -- that we dealt with. But it
10 also -- that 2015 item, 2016 item came about from the
11 2013-2014 polar vortex. So I laser focus us on these
12 issues because I think it is imperative that we look
13 at all of that. I also recognize that we are, I
14 believe, nationally as well as in New York, at the
15 lowest ever that we've been in the recent future on
16 our levels of storage. Is that correct?

17 MS. MCCARRAN: Well, you know, one
18 comment I would make, nationwide storage levels are
19 outside of the five-year average. The five-year
20 average is a little bit misleading because there were
21 a lot of additions to storage capacity in the, let's
22 say, late '90s, early 2000s. So if you go back
23 further than five or ten years, it's a little
24 misleading. But our New York utilities, we monitor
25 their storage fills. They are all on target to be

1 Monthly Meeting - October 18, 2018
2 full, as Chris said, by November 1st. Or we don't
3 like them to be full November 1st. We like them to
4 be somewhere around ninety or ninety-five percent
5 full in case there's warm weather in November. They
6 have a place to put the gas. But they are all on
7 target and they have firm contracts for delivery from
8 those storage caverns.

9 So because other entities have chosen
10 not to fill storage for whatever reasons this summer,
11 probably mostly because of economics, then that
12 should not impact New York State's reliability.

13 COMMISSIONER BURMAN: Okay. Thank you
14 for that. That's helpful. I -- I do think it's
15 important especially, again, I -- I think that
16 sometimes people when they hear gas think it's in a
17 silo. You know, natural gas is a crucial factor in
18 power generation and it also is a crucial factor in
19 the impact on the electricity side and prices. So we
20 need to be very cognizant of looking at all of those.

21 And so while, you know, I don't see them
22 as in isolation. I see them as needing to be
23 coordinated and collaborated together in a way that
24 is forward thinking and working not in the defensive
25 mode. But in the offensive mode to get to helping

1 Monthly Meeting - October 18, 2018
2 customers in -- in these issues. One of the things I
3 do want to recognize is the importance of consumer
4 outreach. We have not, since I have been on the
5 commission in 2013, I have not really been privy to a
6 under the hood analysis of our education and outreach
7 and our pamphlets.

8 And having to really take it into more
9 updated social media focus as well as, you know, we
10 have most of our pamphlets in English and Spanish.
11 We have some available in other languages. But to
12 the extent that we should be mirroring the -- the
13 utility territories and -- and what they're doing in
14 helping to compliment rather than sort of having in
15 isolation I think is important. I also do think that
16 the snail mail way we operate with the consumer
17 education and outreach where they can, you know, they
18 get it and they can check the box on what they want
19 to then get free copies.

20 Well, that way may work for some
21 communities. Others we may get more bang for the
22 buck if we are very focused on being that much more,
23 you know, on the ground. They are going through the
24 pamphlets, checking what they need and really in real
25 time helping to get that out there, working with the

1 Monthly Meeting - October 18, 2018

2 state legislators as well as other officials and
3 community organizations to help facilitate that.

4 There is nothing like one-on-one direct
5 customer access and contact. I had the pleasure of
6 going with National Grid to a local community center
7 a little while ago and seeing the National Grid
8 consumer advocates really working with the folks
9 there at the Schenectady, excuse me, at the community
10 center. And for me it gets to the heart of
11 understanding the challenges, understanding some of
12 the issues.

13 And I also was heartened to see at that
14 time that it was upper management that was there with
15 me as well. I was glad that that drove upper
16 management to come to witness their consumer
17 advocate, but they had been there before. They're
18 working through that. But it also showed the
19 consistency of having a utility consumer advocate in
20 some of these critical areas during times that are
21 really most necessary during summer peak hours as
22 well as winter, especially during the process for
23 HEAP and emergency HEAP is vital and critical.

24 As this is -- October is National
25 Domestic Violence Month, I will share with you that

1 Monthly Meeting - October 18, 2018
2 there also was for me watching how the consumer
3 advocate, the National Grid consumer advocate helped
4 to maneuver through in a very good way with the
5 community center folks. Someone who was a victim of
6 domestic violence at that time. And so it really is
7 about what we can do in that connection in helping.

8 I know that we have spent -- we have
9 increased the low income monies, but to the extent
10 that we need to also look at are they actually going
11 and helping the people that most need it and are
12 sometimes is the consumer advocate not always there
13 because they have other responsibilities. It is
14 crucial for us to send the message that hands-on
15 customer outreach is very important and working
16 through that.

17 So I would just ask us to focus a little
18 bit more on the outside the current firm customers
19 and what that means, especially if it means increased
20 moratoriums. Especially if it means more
21 interruptible customers being asked to go off of
22 their current fuel of gas and going to oil. That's
23 an environmental impact issue, but it also is what
24 are we doing from oil, propane, and issues and
25 challenges that may be there in making sure that that

1 Monthly Meeting - October 18, 2018

2 supply is there when needed at a reasonable cost.

3 And also addressing the, you know, if --
4 if gas prices get so high that oil is the more
5 preferred lower cost item, you -- we may actually see
6 people moving away from that to go to oil in the
7 interruptible time. And that might not necessarily -
8 - that has -- that has price implications,
9 environmental implications as well as them calling up
10 more people using an energy choice that is going to
11 be more stressed itself. So thank you very much.

12 CHAIRMAN RHODES: Thank you. And
13 Commissioner Alesi.

14 COMMISSIONER ALESI: Thank you, Mr.
15 Chairman. Very briefly, this is just very good work
16 reflective of the professional and competent efforts
17 of everybody in the staff. I -- as much as I
18 appreciate looking at this report for our
19 preparedness for winter, it's encouraging for me. I
20 look forward to one -- where some are in warmer
21 weather in the very near future. But thank you very
22 much for your hard professional efforts.

23 CHAIRMAN RHODES: Thank you very much.
24 We'll now proceed to the second item for discussion,
25 Item 401, Case 16-W-0259 as it relates to an

1 Monthly Meeting - October 18, 2018
2 independent monitor of New York American Water
3 Company's operations. Presented by Jeff Hogan,
4 deputy director management operations audit, John
5 Sipos, active general counsel and Mike Rieder, chief
6 of gas and water rates and supply are available for
7 questions.

8 All right. Jeff, please begin.

9 MR. HOGAN: Good morning, Chair Rhodes.
10 Good morning commissioners. The draft order you have
11 before you for Case 16-W-0259 addresses a filing that
12 New York American Water made last week seeking to
13 retain P.A. Consulting Group as an independent
14 monitor of several areas of the company's internal
15 operations. In July of this year, the commission
16 instructed counsel to the commission to commence --
17 to commence a special proceeding or action in the New
18 York State Supreme Court to stop and prevent
19 violations by New York American Water of commission
20 regulations and orders.

21 This directive arose from the company
22 filing incorrect information regarding its planned
23 inventory for its Sea Cliff division with -- with the
24 New York Office of Real Property Tax Services or
25 ORPTS and not being forthcoming regarding this in the

1 Monthly Meeting - October 18, 2018
2 company's rate filing. This mistake led to
3 significantly over assessed private tax values that
4 were then reflected in tax bills used in the support
5 of the company's rates.

6 After the directive was given to
7 commence a proceeding or action in court, numerous
8 customer bill complaints started to be received by
9 the company from its South Shore customers. To date,
10 nearly two thousand such complaints have been
11 received. I will note that the company reports that
12 the majority of these complaints have been resolved.
13 Many of these complaints have been filed by customers
14 with higher than average water usage. These
15 customers were experiencing the impact of inclining
16 block rates which had been instituted in the
17 company's latest rate plan. While such rates are a
18 common tool to encourage conservation of water, they
19 can lead to higher bills for customers who use more
20 water than -- than the average customer.

21 Without proper notification from a
22 utility of a change in the way they -- they will be
23 billed, customers do not have the knowledge that
24 their bills will likely increase if they do not
25 adjust their usage. Staff is determined that the

1 Monthly Meeting - October 18, 2018
2 company provided inadequate notice to customers
3 before the rates went into effect. Over two hundred
4 New York American Water customers have also filed
5 formal complaints with the department and many others
6 have sent in comments to the department.

7 And staff has been working to address
8 these complaints and has reviewed the customers'
9 comments. We believe that between a consent order, I
10 will discuss in a moment, and this draft order, many
11 of the customers' concerns regarding their bills will
12 be addressed in as expeditious a manner as possible.
13 In light of the many concerns raised by New York
14 American Water's customers, staff has acted promptly
15 to provide immediate relief to customers and to
16 ensure their customers are better informed in regard
17 to the conservation rates that are in place.

18 The company in counsel to the commission
19 entered into a consent and stipulation on August
20 28th, 2018 and filed it with the New York State
21 Supreme Court. A consent order in judgement was
22 approved by the court last month. The consent order
23 has many components including the company agreeing to
24 your shareholder money to refund any amounts the
25 customers have been billed under the highest block of

1 Monthly Meeting - October 18, 2018
2 rates and to not bill for that block for the
3 remainder of the rate year. The consent order also
4 in agreement from the company to spend up to 5,000
5 dollars to hire an independent monitor to oversee
6 several aspects of the company's operations over the
7 next three years. The scope of this oversight is
8 spelled out in detail in the consent order. Other
9 aspects of the consent order will be addressed at
10 future commission sessions.

11 The proposed independent monitor will
12 review two principal areas. First, they will review
13 New York American Water's internal controls related
14 to filings with ORPTS which impact property taxes and
15 special district taxes and New York American Water's
16 process for engaging with ORPTS. They will also
17 review New York American processes for ensuring the
18 accuracy of general rate case information and for
19 addressing discovery requests and reviewing
20 implementation of recommendations contained in the
21 June 29th, 2018 staff report which reported findings
22 regarding this property tax issue.

23 The independent monitor will continue in
24 its role of overseeing property tax issues until
25 September 30th, 2021. The independent monitor will

1 Monthly Meeting - October 18, 2018
2 also evaluate the cause of the elevated number of
3 bill complaints from customers of New York American
4 Water on the South Shore as well as New York American
5 Water's response to the situation. This portion of
6 the monitoring will include a review of New York
7 American Water's billing system determining if
8 inaccurate or faulty metering has led to inaccurate
9 bills, reviewing New York American Water's
10 communication plan for notifying customers of the
11 rate structure changes and various other aspects of
12 how the company has handled customer complaints.

13 It is expected that the -- the final
14 report regarding the billing issues will be completed
15 by the end of June 2019. The consent order also
16 calls for all findings, materials and reports
17 including required quarterly reporting of the
18 independent monitor -- monitor to be shared
19 simultaneously with the company and with staff. The
20 consent -- the consent order states that the company
21 should pick the independent monitor in consultation
22 with staff and its selection must be approved by the
23 commission. This process was designed in part to
24 ensure that action could be taken as soon as was
25 practically feasible.

1 Monthly Meeting - October 18, 2018

2 Many customers have been shocked by the
3 change in their bills and concerned about the errors
4 the company has made. If the department was to act
5 independently to resolve these issues, it would take
6 several months to file the procedures necessary to
7 put an independent monitor in place and to have the
8 independent monitor get to the bottom of the billing
9 complaints.

10 Staff and the company have been able to
11 act quickly to vet potential companies to serve as
12 the monitor and for that monitor to be able to begin
13 work just over one month after the consent order was
14 approved. Staff and the company work closely to
15 identify the best possible company or companies to
16 hire to act as the independent monitor. This
17 included getting proposals from multiple firms asking
18 money -- many of them for cost estimates,
19 interviewing them and making a final selection.

20 The companies input in this selection
21 process was critical due to the unique role of an
22 independent monitor which differs from the consultant
23 role in a management audit. For instance, the
24 monitor will be involved in the company's day-to-day
25 operations for three years and will work to advance

1 Monthly Meeting - October 18, 2018
2 culture change the company's management must buy into
3 in order for it to be effective. And while the
4 company had a say in who it selected, staff was there
5 to ensure that the most capable consultant was
6 picked.

7 Staff in New York American Water agree
8 that the monitor needs to help people experience with
9 the specific issues at hand, the correct methods and
10 procedures to meet the objectives laid out in the
11 scope of the consent order, and the ability to
12 complete the work in a timely manner. In this
13 instance, we were looking for a consultant who has an
14 in-depth knowledge of property taxes, preferably
15 including understanding ORPTS role in the process as
16 well as a strong background regarding customer
17 service and billing issues.

18 New York American Water has submitted a
19 filing requesting that they be allowed to enter a new
20 contract with P.A. Consulting Group. New York
21 America -- American Water believes that P.A.
22 Consulting is the best choice to monitor both the
23 property tax issues as well as the bill complaint
24 issues. The company points out the strong New York
25 property tax background of P.A. Consulting as well as

1 Monthly Meeting - October 18, 2018
2 the consultant's expertise regarding customer billing
3 and engagement issues. Having participated
4 personally in the selection process in interviews, I
5 agree.

6 The draft order has language to ensure
7 that the independent monitor process remains
8 transparent and its staff will be fully involved in
9 the oversight. In the draft order, New York American
10 Water is directed to work in consultation with staff
11 to address concerns raised by P.A. Consulting in its
12 role as independent monitor.

13 In addition, New York American Water is
14 directed to designate a senior officer to coordinate
15 the company's participation with the independent
16 monitor as well as the project manager to work with
17 staff and P.A. Consulting on a day-to-day basis. The
18 independent monitor will provide quarterly reports to
19 New York American Water senior management that will
20 be filed with the director of office -- with the
21 director of the Office of Accounting Audits and
22 Finance and the secretary to the commission.

23 New York American Water will file an
24 affidavit with implementation plans for all
25 recommendations contained in the independent

1 Monthly Meeting - October 18, 2018
2 monitor's reports. The final independent monitor
3 report regarding the billing issues will be submitted
4 to the commission for review and approval. And New
5 York American Water will be required to file an
6 implementation plan addressing any identified
7 corrective actions.

8 Considering P.A. Consultant's strong
9 presentation, their full understanding of the task at
10 hand, and the expertise of the team they will have
11 working on the project, staff recommends the
12 commission authorize New York American Water to enter
13 into a contract with P.A. Consulting as the
14 independent monitor at a not to exceed cost of
15 497,214 dollars. This concludes my presentation.
16 John Sipos, Mike Rieder and I are now available to
17 answer any questions you may have. Thank you.

18 CHAIRMAN RHODES: Thank you, Jeff. I
19 see this as a good step and as a good choice. I
20 appreciate the confidence that the staff has in the
21 selection. This step aligns with the consent order
22 and protects New Yorkers against recurrence of
23 violations and shortcomings. The company has to mend
24 its ways and it knows it. With this we have the
25 visibility and we have the teeth to ensure that. So

1 Monthly Meeting - October 18, 2018

2 I think this is a good step forward. Commissioner
3 Sayre?

4 COMMISSIONER SAYRE: I support this
5 item. This is a very serious situation where
6 employees of the utility knowingly gave us erroneous
7 data in the course of a rate case. If we can't trust
8 utilities to give us their best information with full
9 disclosure, we simply cannot do our job to protect
10 the public interest. That's why we're taking the
11 strong step of hiring this third party, to monitor
12 the problem areas that we've identified with this
13 utility, which as Mr. Hogan explained, include
14 billing issues and issues of -- of communications to
15 customers of rate increases.

16 The company is also suffering, as Mr.
17 Hogan also said, a number of other consequences from
18 this situation and the costs of those consequences
19 are being borne by the utility's share owners not the
20 rate payers. It's my hope that all goes well. But if
21 we see another situation like this, at this or any
22 other utility, I would support strong, swift and even
23 more draconian measures. Thank you.

24 CHAIRMAN RHODES: Commissioner Burman?

25 COMMISSIONER BURMAN: Thank you. So I

1 Monthly Meeting - October 18, 2018

2 do want to say that I appreciate all the hard work
3 that staff has done. I do feel comfortable with the
4 independent monitor selected. I do though want to
5 take an issue with the fact that the settlement
6 agreement was done without being approved by the full
7 commission body. While I recognize that it was
8 technically legally feasible to do, I do think it is
9 something that is so significant that it should have
10 come to the whole commission.

11 While we are addressing certain aspects
12 of the settlement agreement provisions where we
13 didn't have an opportunity to fully weigh in on the
14 settlement, may -- we may have even had some
15 improvements that could have been helpful. And I do
16 think the commission itself should be responsible for
17 the approval of any settlement agreement. So I think
18 it's important for folks to understand that going
19 forward that it's that important, at least to me as a
20 commissioner, that I weigh in expressly and
21 specifically in where I stand on the settlement
22 agreement that's -- that's going to be the
23 responsibility of the commission itself to work
24 through the challenges.

25 I do also want to say that while there

1 Monthly Meeting - October 18, 2018
2 are clearer issues that we have addressed in other
3 cases with, you know, potential fraud and other
4 things, the -- there are many aspects of this and the
5 independent monitor that is really outside of those -
6 - those issues and were being dealt with, you know,
7 in -- in -- while it's a part of it and while it's
8 the need for independent monitor, it really isn't the
9 driving sole factor.

10 And to the extent that when we look and,
11 you know, take blame for it, we as a commission
12 itself need to look at some of the lessons learned
13 and some of the lessons learning and how we could
14 approach things differently that may get us to seeing
15 some of that from the beginning and the outset.
16 Conservation rate is one in particular where it has
17 really nothing to do with that, and it's the
18 challenges of implementation. Some of it being,
19 there was a lack of notice to the customers. But we
20 ourselves as a commission really need to look at what
21 we, you know, could have done and could do better.
22 And it's not just in isolation of the rate case.
23 It's just across the board in helping. So I do think
24 we need to look at that.

25 I will recognize that some of the

1 Monthly Meeting - October 18, 2018
2 challenges I have with this relate to the
3 implementation steps of what the independent monitor
4 may be doing. And this goes to, you know, again,
5 where I think I, you know, not wanting to be Monday
6 night quarterback but also feeling comfortable in
7 looking at it, I do think that we do need a little
8 bit more teeth on the independent monitor and the
9 implementation part of it. While I think it's
10 important that the independent monitor is hands on, I
11 do agree with Jeff in explaining the distinction
12 between the independent monitor and traditional
13 management audit.

14 And, you know, having the company have
15 done the selection. And then, of course, because we
16 have the opportunity to approve that. I do think we
17 need to look carefully at how the process and
18 implementation will work and some of the challenges.
19 So I think it's very important that there is a clear
20 mapping out with the independent monitor as well as
21 the company, as well as the staff that will be
22 working through it, as well as the staff who will be
23 helping to facilitate the commission's understanding.
24 And facilitate the items that may need to come before
25 the commission for resolution rather than just

1 Monthly Meeting - October 18, 2018

2 waiting for the report.

3 So what I mean by that is while in real
4 time both the staff and the commission, excuse me,
5 and the company will be getting the report and kind
6 of working through it, the independent monitor
7 doesn't have the ability to direct the company to do
8 anything. And so what I don't want to see is the
9 company takes those into consideration, maybe makes
10 all the changes, maybe doesn't. Obviously, we've
11 seen in management audits where you kind of go
12 through where the company has an opportunity to say
13 why the -- why the auditors comments don't -- don't
14 work for them and alternative ways of doing it. We
15 need to have the flexibility in there that there is
16 real analysis in real time by the staff and, even if
17 informally, the commission on the direction that the
18 company is going rather than waiting until the report
19 comes, gets SAPA'd, comes to the commission and goes
20 through that process.

21 So I want to really be able to see that
22 this is working cohesively for the better of the
23 management and the better of the -- obviously, the --
24 the impact on the customers is -- is key. So the
25 only way that can happen is if we ourselves aren't

1 Monthly Meeting - October 18, 2018
2 just sort of riding along without actually being
3 involved in critical thinking and critical analysis
4 and giving real time feedback and opportunity so that
5 the changes that need to be done or the things that
6 we see as flagging issues that are going -- going to
7 need to be resolved can get worked through and
8 resolved in a fashion that -- that helps us in the
9 long term and the short term. Does that make sense?

10 MR. HOGAN: Yes, it does. And while I
11 focused on mentioning quarterly reports and final
12 reports and implementation plans, makes it sound kind
13 of like we're just going to be focusing on dry
14 written reports. You know, we've already been in
15 contact with -- with the company in terms of talking
16 about whether it be weekly or biweekly meetings,
17 staff will be seeing all discovery requests that the
18 implementation monitor asks -- you know, any
19 information they -- they gather.

20 Staff, just like it does in a management
21 audit, will be working -- will be speaking with P.A.
22 Consulting Group to, you know, assuming they're
23 approved here, to see where they're at, what they're
24 -- what they're -- what they're status is. So
25 there's a lot of weekly type hands-on, even day-to-

1 Monthly Meeting - October 18, 2018
2 day activity that will be going on especially through
3 June where we deal with billing complaints and the
4 initial review of the property tax issues. So
5 there's a lot more than just the quarterly reports
6 that will be involved. And what I think I'm hearing
7 you saying is that even in formal briefings on -- on
8 where -- where that's at, that can certainly be done
9 by staff in terms of whether it be a memo or a in-
10 person briefing to keep all -- the chair and all
11 commissioners up to speed in where we're at.

12 COMMISSIONER BURMAN: And it's not just
13 -- and I think it's important, it's not just about
14 giving, perceiving the information. It's about
15 actually then doing some discussion and collaboration
16 around, okay, what does this mean, how will this look
17 and helping to facilitate actual core management
18 changes, core operation changes that are necessary
19 and that are part of the independent monitor's
20 analysis in a way that helps everyone. It's not --
21 it should not be a -- actually I'll use Sara Goodman.
22 It should be friction-less.

23 It should be done in a way that -- that
24 is helpful to the overall -- overall process to get
25 the -- the end result that we've been focused on

1 Monthly Meeting - October 18, 2018

2 which is helping to make some critical fixes in a way
3 that is -- is helpful. Does that make --?

4 MR. HOGAN: Yeah, and the reason I'm
5 here is because as deputy director for management
6 audit operation -- operations audits, we're going to
7 be applying the same techniques we do with regular
8 manage -- management and operation audits. And, you
9 know, we routinely will give input into the process
10 if we don't think the consultant or in this case the
11 independent monitor is focusing on the right area.
12 If we think that they've -- you know, they believe
13 that they have found some recommendations but haven't
14 supported them well. These are all -- it's all
15 feedback that we're used to giving. And, you know,
16 my staff will be working on providing.

17 MR. RIEDER: So I'm here from the aspect
18 of the customer complaint issue. The Office of
19 Consumer Services and the Office of Electric Gas and
20 Water have been working hand in hand with the company
21 since the beginning of August. We've had daily
22 conference calls and updates throughout the entire
23 month of August including weekends. In September
24 we've scaled it back to not include weekends anymore,
25 but five days a week we have update calls on the

1 Monthly Meeting - October 18, 2018

2 company's progress with how they're -- how they're
3 handling their complaints. And what issues are
4 arising and how they're addressing those issues.

5 We have continued to do that through the
6 month of October and -- and on Tuesdays and Thursdays
7 to continue to have updates working hand in hand with
8 the company in order to ensure real time, provide
9 them feedback, where are their issues, where are
10 their sticking points, what they -- what can they do
11 better. So that's a combined effort from our
12 offices.

13 COMMISSIONER BURMAN: Okay. Thank you.
14 That's really helpful. One of the other issues for
15 me is that the conservation rate was -- didn't go
16 away. And so part of the challenge we have is when
17 we look at the upcoming April 2019 there will still
18 be a potential for high bills if the high water usage
19 customers do not conserve. Is that fair to say?

20 MR. RIEDER: Yes, that's accurate. So
21 what we did in this interim period is that we
22 suspended the tier four rate. But on the customer's
23 bill they're still going to be billed at the tier
24 four rate, but then they'll also receive a credit
25 that will credit customers for that usage amount in

1 Monthly Meeting - October 18, 2018
2 that tier four. So they'll still be able to look at
3 their bill and see if -- if I didn't receive this
4 credit, this is what my bill would have been at that
5 highest consumption level.

6 COMMISSIONER BURMAN: Okay.

7 MR. HOGAN: And to -- to be clear,
8 that's what we're doing for the past. But you're
9 absolutely right that the -- the incline block rate
10 structure is not being discarded here. We are going
11 to have the same -- same rates will be in effect in
12 rate year three. And so next summer you would have
13 this issue. However, what we're hopeful for is that
14 P.A. Consulting Group will be working with a major
15 part of the scope of what they're supposed to be
16 working with New York American Water on is community
17 outreach, community education of what -- of what this
18 rate structure is like. How customers can modify
19 their usage if they -- if necessary and making sure
20 people are much more aware. So they're bringing that
21 expertise to the table that we hope to -- hope to --
22 obviously hope to avoid this situation next summer.

23 COMMISSIONER BURMAN: Okay. So food for
24 thought. You know, obviously, when you look at, in
25 this case, Nassau County, it's made up of a bunch of

1 Monthly Meeting - October 18, 2018
2 water districts. It's made up of private water
3 companies as well as public water companies and water
4 districts. And as we know, D.E.C. issued a goal,
5 which I think a lot of people think is a directive,
6 but it's a goal. And it's a sound goal
7 environmentally of lowering the -- I don't want to
8 misspeak so, Jeff, why don't you say exactly what
9 that goal is or Michael?

10 MR. HOGAN: I think Mike can do that
11 better.

12 MR. RIEDER: Yeah, it's a fifteen
13 percent reduction of peak pumpage usage compared to
14 20 -- 2012 pumpage.

15 COMMISSIONER BURMAN: Right. So it's
16 within each water district and it's not just limited
17 to Nassau County. It's Nassau and Suffolk, is that
18 correct?

19 MR. RIEDER: That's correct.

20 COMMISSIONER BURMAN: This -- this
21 regulation rule, you know, soft --

22 MR. RIEDER: It's a goal -- it's a goal.

23 COMMISSIONER BURMAN: -- soft goal, all
24 right, came about outside of and after this
25 conservation rate went into effect in the rate order.

1 Monthly Meeting - October 18, 2018

2 I would challenge us, especially because it's not
3 just in the water issue. We've seen this in others.
4 The impact on those goals or mandates or directives,
5 because sometimes it is a mandate or directive,
6 actually has a real impact on the companies that we
7 regulate in a way -- or the companies indirectly are
8 affected by that.

9 And so we really need to be more
10 enmeshed in that and making sure that the economic
11 analysis is done and the potential impact on
12 customers is done before we issue soft or hard goals
13 in a way that helps us and could have, you know,
14 helped in terms of what that means for the impact on
15 the conservation rate and sort of work through those
16 challenges.

17 So I just say that because it is a
18 continual concern when I do see things being done
19 that could potentially have a dramatic impact on, you
20 know, on us and the folks that we regulate and the
21 customers that they deal with. And I think it's --
22 it's not just limited to this soft goal. But
23 actually even if you see in the peaker issue in New
24 York City some of that will have a direct impact on
25 reliability and -- and working through some of those

1 Monthly Meeting - October 18, 2018

2 challenges and repowering. So I just point that out
3 because I think it's imperative.

4 The other aspect that I think is that
5 looking at it and doing some of the studying that
6 will be going into account, we need to take into
7 account those high energy users or those high water
8 users who will not -- there's sort of a couple of
9 camps, right. They either can't, they won't or, you
10 know, they -- they are challenged by trying to
11 institute conservation measures. When I look at
12 across the board the water districts in Nassau
13 County, you know, a couple come to mind. Roslyn is
14 one where they have after this soft goal went into
15 effect by D.E.C., one I think everyone saw it as a
16 mandate not a goal. But and, again, it's not
17 necessarily a bad goal. It's just that the focus has
18 been on the customers in ways to reduce their water
19 usage without necessarily in -- for me working sort
20 of together with us and, in this case, American Water
21 as well as the other water districts to get
22 information and data that may be helpful.

23 Is there a problem in other water
24 districts? Are they doing things successfully in
25 terms of things that help to conserve? Are their --

1 Monthly Meeting - October 18, 2018
2 are their customers working through some of those
3 challenges? That information may be being done but
4 it's not being shared with me as a commissioner in a
5 way that helps me facilitate, you know, better
6 management over these issues.

7 MR. RIEDER: So I -- I could want to say
8 that New York American Water is currently undertaking
9 an execute -- and executing a strategy that will help
10 it better understand its customers' usage, their
11 willingness to modify behavior and their -- and
12 access to technology as well as improve the company's
13 service to those customers. It's a strategy that
14 includes a comprehensive conservation survey,
15 education and targeted communications and an
16 incentivized conservation program. The company is
17 undertaking that as we speak.

18 COMMISSIONER BURMAN: Okay. Thank you.

19 MS. STOUT: And I was just going to say
20 -- say basically the same thing. That that's one of
21 the components of the agreement between staff and the
22 -- and the company. And it was for the company to
23 fund this conservation study to the tune of a million
24 dollars out of shareholder funds.

25 COMMISSIONER BURMAN: Right. What I

1 Monthly Meeting - October 18, 2018
2 would say though is that we also need to look at it a
3 little bit more holistically in the extent that a
4 study is being undertaken in American Water's
5 territory to the effect that there is information
6 that can be utilized and incorporated in a way that
7 helps the surrounding water districts who may not
8 have the ability to get that information without
9 expending, you know, significant funding.

10 It is not about that American Water
11 should bear the brunt of that funding, but it's about
12 that we can all have some impactful information that
13 goes to help all the, you know, the -- the -- the
14 goal in that whole area in reducing water
15 conservation. And actually may help facilitate
16 understanding in what the customers are experiencing,
17 what some of their challenges are especially just
18 understanding even in terms of, you know,
19 infrastructure challenges, aging infrastructure
20 challenges of the water pipes.

21 And also since we're focused on that, to
22 the extent that we also focus on dig safely and other
23 aspects that go into that as part of the issues.
24 Because some of the challenges are the conservation
25 can only happen if the pipes are upgraded or there

1 Monthly Meeting - October 18, 2018

2 are issues with certain leakage issues that might --
3 might occur. And we need to look at that and help.

4 MR. RIEDER: So to -- to your point, I'm
5 sure New York American Water would be -- would be
6 willing to share the results of its study. Any
7 publically available information that comes out of
8 that, to share that on their website or to share that
9 with other water districts.

10 COMMISSIONER BURMAN: And to the extent
11 that they could work before the study gets issued
12 that there may be some components that can get
13 factored in that would be helpful to them in their
14 study, as well, I think is important. So, you know,
15 I just think I made myself clear on that, so I'm --
16 I'm good.

17 The other issue I do have is I do know
18 you said that the majority of complaints have been
19 resolved. For me it's about whether those customer
20 complaints have been resolved to the satisfaction of
21 the customer rather than just resolved. But also to
22 understand the nature of the complaints. While a
23 majority of them were high bill complaints, there
24 does need to be an analysis of what that means. What
25 was the impact?

1 Monthly Meeting - October 18, 2018

2 Was it -- was it because of a
3 conservation rate, was it because of other factors?
4 What were some of the lessons learned? What
5 percentage of them were able to make changes either
6 through their conservation measures or through
7 fixing, you know, a -- a potential leak? Other
8 things that will give us some help not only in the
9 American Water's territory but across the board as we
10 look at, you know, how to better oversee and regulate
11 our -- our water issues.

12 So, again, because April 2019 will be
13 here sooner rather than later. And, again, April we
14 may not see in -- if -- if there is -- if those folks
15 impacted by the conservation rate are not able to or
16 choose not to make changes on the conservation rate,
17 we do need to factor in that we will be looking at,
18 you know, the same situation we have now potentially.
19 And we need to be able to make some -- have some
20 analysis on what that means and work with the
21 customers and the company on what that means.

22 MR. HOGAN: And that -- and, again, that
23 is a large part of the scope. That's the -- the work
24 that -- the billing issues involves everything you
25 just mentioned. And while the report is due by June

1 Monthly Meeting - October 18, 2018
2 30th, 2019, we'll definitely have a good grasp by
3 March, April of what's -- what the findings are, what
4 the major reasons for the -- for the bill complaints
5 were, how they were resolved.

6 As I had mentioned, one of the things
7 they're looking at is kind of the nature of resolving
8 the complaints and was it done well. How do they
9 interact with the customers not just that, you know,
10 we spoke to them check. We -- you know, company says
11 we were right, check, we're done. So that -- the
12 P.A. Consulting Group would be looking at all of
13 that.

14 COMMISSIONER BURMAN: Okay.

15 MR. HOGAN: And we'll have I think by
16 April, May we'll have a lot of information on that.

17 COMMISSIONER BURMAN: All right. Great.
18 Thank you. And -- and --.

19 MR. RIEDER: And, in fact, staff --
20 staff has been looking at that since -- since the
21 early August as well. So it's -- it -- the -- the
22 scope for the independent monitor is very closely
23 aligned --

24 COMMISSIONER BURMAN: Okay. Great.

25 MR. RIEDER: -- with what staff has been

1 Monthly Meeting - October 18, 2018

2 doing.

3 COMMISSIONER BURMAN: Great. And one of
4 the issues for me, just to make sure, you know, you -
5 - you hear it ahead of time rather than later is as I
6 talked about the other water districts, it's
7 important for me to understand, you know, how folks
8 compare -- how American Water compares to the other
9 water districts in that fifteen percent goal. And
10 what are the challenges.

11 Now some of it may be, you know, the
12 particular water districts able to do it because they
13 have very few customers and they own the facilities
14 that have the majority of the energy high water
15 issues. So they're able to take, you know, direct
16 control versus American Water may not have that
17 ability. So it's about also understanding that and
18 understanding what that subset of customers are and
19 how they match up. I think that will help us as we
20 look really more holistically at our water policies.

21 And keep in mind, I know we still have
22 that generic proceeding on A.M.I. so that, you know,
23 sort of is still sticks out there from a water policy
24 perspective. All right. Thank you very much.

25 CHAIRMAN RHODES: Commissioner Alesi?

1 Monthly Meeting - October 18, 2018

2 COMMISSIONER ALESI: Thank you, Mr.
3 Chairman. Your report gives us a pretty strong
4 indication that P.A. has solid experience, uniquely
5 qualified personnel especially with regard to
6 billing, customer service ORPTS, et cetera. I think
7 that that can go a long way towards improving
8 customer confidence. But even more importantly, in
9 fact, most importantly, consumer protection in this
10 regard. So I'll be supporting the report.

11 CHAIRMAN RHODES: Okay. So let me, if I
12 may, just before I would call for a vote, underscore
13 some of what we've heard. The monitor, especially
14 the right monitor will give us knowledge. The
15 purpose of knowledge is action and impact. In this
16 case remedies, and we just need to be sure that we
17 see those remedies. I think that's consistent with
18 everything you've heard from the commission.

19 So with that I will proceed to call for
20 a vote on this item. My vote is in favor of the
21 recommendation to authorize New York American Water
22 to contract with P.A. -- P.A. Consulting Group to
23 serve as independent monitor as discussed.
24 Commissioner Sayre, how do you vote?

25 COMMISSIONER SAYRE: Aye.

1 Monthly Meeting - October 18, 2018

2 COMMISSIONER BURMAN: Aye.

3 CHAIRMAN RHODES: Commissioner Alesi?

4 COMMISSIONER ALESI: Aye.

5 CHAIRMAN RHODES: Thank you. The item
6 is approved and the recommendation is adopted.

7 We'll now move to the third item for
8 discussion which is Item 501 Case 15M0388 as it
9 relates to the confirming order granting an extension
10 to Charter Communications, Inc., presented by John
11 Sipos, acting general counsel. Brian Ossias,
12 managing attorney is available for questions.

13 John, please begin.

14 MR. SIPOS: Good morning, Chair Rhodes
15 and commissioners. Item 501 has -- was before the
16 commission in the September session of the same
17 number, concerns the proposed confirmation of an
18 earlier one commissioner order that provided an
19 extension of time for Charter Communications to make
20 certain following -- filings following the
21 commission's July 27 orders. The extensions concern
22 the time to file a Public Service Law Section 22,
23 petition for rehearing and a six month exit plan.

24 The extensions before the commission
25 today and discussed in the one commissioner order

1 Monthly Meeting - October 18, 2018
2 were requested by Charter. Staff also submitted a
3 letter outlining various principles that have -- that
4 will inform it going forward in the negotiations.
5 And the one commissioner order, which was issued on
6 October 10, extended the operative dates by forty-
7 five days. As I said at the beginning, this item is
8 similar to Item 501 that was on the September agenda.
9 And the provisions in the order before the commission
10 today are -- are similar to the provisions that were
11 in that September order.

12 Because we've discussed this matter
13 previously, in the interest of time, Brian and I
14 would be happy to answer any questions. But this
15 concludes our presentation now on the scheduling
16 issues. Thank you.

17 CHAIRMAN RHODES: Thank you very much.
18 I'm going to -- I find that this is a step that makes
19 sense. Charter owes New York. It owes its
20 fulfillment of its commitments. We are going to do
21 everything we can to make sure that they deliver.
22 And if this step and process is what it takes to get
23 them to deliver, then that's going to be a good
24 outcome. And exploring that option is a good
25 investment of regular -- of our regulatory capacity

1 Monthly Meeting - October 18, 2018

2 and time and energy. Thank you. Commissioner Sayre?

3 COMMISSIONER SAYRE: I'm voting in favor
4 of this item, but I have to say that I'm impatient.
5 What I'm looking for is the broadband that Charter
6 promised to Upstate New York residents. Appropriate
7 consequences for Charter's failure to provide what it
8 promised, when it promised, and an enforcement
9 mechanism that will make these things happen. If we
10 can't get an agreement on these things, in short
11 order, then let's find somebody else to operate these
12 systems.

13 I'm not looking to shut down any
14 services. What I want to see is more services,
15 particularly, more broadband in Upstate New York. I
16 thought that's what we would be getting with
17 Charter's merger commitments, and I'm very
18 disappointed that we have to exert so much effort and
19 take so much time to get what was promised.

20 CHAIRMAN RHODES: I have to turn the --
21 the floor over. Commissioner Burman.

22 COMMISSIONER BURMAN: Thank you. So I
23 to avoid any drama, I'm a no. I -- and when I say
24 avoid any drama in terms of suspense of where I'm --
25 I am on this, I -- I have -- I spoke at last session

1 Monthly Meeting - October 18, 2018
2 pretty lengthily about my concerns. So I stand by
3 all of those and then some. And I will not talk
4 about sort of the -- in more detail the ones that I
5 already focused on at last session. But I am
6 incorporating them by reference here in why I am a
7 no.

8 Make no mistake, this is not a no saying
9 that there should not be negotiations and potentially
10 a settlement with Charter if appropriate and helpful.
11 But why my no is -- is really much on this is a
12 broken process. And the way it was done is broken
13 and continues to be done is broken. The order for
14 the special session, which I was not at, gave no
15 wiggle room for settlements. It -- the two orders.
16 It was you are done. Tell us how you're going to be
17 done and good bye, good luck. And we're going to
18 court.

19 And so there's this weirdness, in my
20 mind, of then somehow that is, you know, now a, you
21 know, that was a window, I guess, an opportunity for
22 settlement discussions to happen. The order itself
23 did not allow that. The order itself was the orders,
24 and the comments at session, which I was not at, the
25 comments at session were very clear, you're done.

1 Monthly Meeting - October 18, 2018
2 Now I'm not going to get into because there is no
3 petition for a rehearing for -- before us to look at.
4 But I'm not going to get into the validity of that,
5 and I'm not going to talk about the threshold issues
6 I have with the validity of the orders themselves.
7 That is for another day if that opportunity arises.

8 What I am concerned about is the process
9 and the message we are sending. Whatever orders we
10 do, people have a right, if they want to, to
11 challenge them and bring petitions for a hearing. In
12 many ways, if we had allowed the first petition for
13 rehearing that had been denied in the first order in
14 July to have gotten SAPA'd and noticed and given
15 comments, it may have provided, as this order here
16 says, we're allowing this, it may help us and it also
17 may give us a fuller record.

18 We may have already had a fuller record
19 rather than changing the process and doing something
20 that we don't normally do, which is deciding a
21 petition for rehearing and denying it outside of that
22 normal comment period and SAPA period and sort of
23 blind siding everyone that we were doing that. Or
24 you would do -- the commission itself was doing. So
25 I am a little confused by that.

1 Monthly Meeting - October 18, 2018

2 Now we have a -- a obligation. There's
3 really two things here. One is whether or not the
4 item for allowing the implementation plan to be filed
5 the time period can be extended. Initially, the
6 first time that was done was by the -- by the
7 secretary. That's separate. That's not under Public
8 Service Law 22, and then afterwards we folded both of
9 those requests into one order where the commission
10 decided it.

11 So for me, one of the process issues is
12 we really do need to examine when those parts, those
13 types of requests come in whether or not the
14 commission itself on critical matters should have
15 less discretion to grant them without commission say-
16 so. Maybe appropriate to look at that and examine
17 it. She does have currently that discretion. The
18 order -- the orders generally allows that, you know,
19 boilerplate discretion. But it is something for me
20 I'm cognizant of especially when we do get criticism
21 across the board that we're potentially, continually
22 extending items through the secretary.

23 And so I do want to raise that as an
24 issue. We may need to look at what items and
25 extension requests need to have sort of weigh in by

1 Monthly Meeting - October 18, 2018
2 the commission. And it doesn't have to delay things
3 because the secretary is issuing that at the
4 direction of or in behalf of the commission through
5 the chair. So it could be done in a similar fashion
6 and looking at that. So it's just something for us,
7 food for thought, what the role of the secretary is
8 in some items that may go beyond ministerial actions
9 that actually impact the nature of the proceeding
10 itself and the tenor of the order. So I am laser
11 focused on that issue.

12 The second issue comes to the Public
13 Service Law Section 22 which is very clear. Parties
14 and those who want have an opportunity to petition
15 for rehearing. They must do so within thirty days.
16 Not thirty-one days, not thirty-five days, within
17 thirty days unless good cause is shown and determined
18 by the commission. There is discretion for the
19 commission to determine what good cause is.

20 There was never before good cause except
21 for one Entergy case. Good cause found to extend
22 that. The last time when Entergy -- when that case -
23 - it was a long time ago and it was never before done
24 by this body of commissioners. That was because of a
25 computer glitch that everyone could see that they had

1 Monthly Meeting - October 18, 2018
2 been filed but they -- there was a mix-up. And so it
3 was very clear that the technological challenges,
4 everyone was in agreement that there was no intent to
5 get around the deadline. It was, you know, an
6 unfortunate situation and therefore it was allowed.

7 I have not seen if we've ever denied for
8 good cause. So that's something I would want to know
9 from a -- have we -- do we have any orders out there
10 we have actually said no, no good cause is shown. Or
11 we actually just never -- there was a request for an
12 extension but we just didn't respond to it and
13 therefore they had no choice but to file petition for
14 rehearing or risk being late. So those are things
15 that would be helpful for me to have. I don't think
16 we'll find any because I think I would have been
17 shared that. But I do say it is food for thought.

18 So when we get to the good cause aspect,
19 we have in -- in where I sit, we have while it may
20 appear like the right thing to extend that good cause
21 because staff is working productively. And I say, as
22 I said last session, whatever that term means,
23 productively, in -- in discussions with the company
24 that warrant, you know, delaying the petition for
25 rehearing to be filed. I see that as very separate,

1 Monthly Meeting - October 18, 2018
2 and I don't see the good cause. I see this as a
3 very, very dangerous road to say that as long as the
4 staff agrees that -- that it is having productive
5 discussions with a party that may want to file a
6 petition for rehearing, we will stop the clock on
7 those petitions for rehearing.

8 That can have a very chilling effect.
9 One, it delays things. It delays the opportunity for
10 those who may wish to to weigh in on a petition for
11 rehearing. It may actually force some parties who
12 want to file a petition for rehearing to not file
13 because there is a, you know, there is a -- a --
14 there is -- that staff approaches them and says we
15 want you to not to file that petition for rehearing
16 and engage in settlement discussions. That may be
17 right, it may be wrong. I just don't want to see
18 that we have, you know, a delay factor that actually
19 can negatively impact the progress of deciding a
20 petition for a rehearing and is used as a sword in
21 trying to get people to settle rather than filing the
22 petition for rehearing.

23 To the extent that whatever may be said
24 in a petition for rehearing is deemed to have a
25 chilling effect or potential chilling effect on the

1 Monthly Meeting - October 18, 2018
2 settlement discussions. That concerns me. I
3 understand Charter's comment that they are asking for
4 this request to delay because they are in productive
5 discussions and they are concerned about by filing it
6 what it may mean. I don't understand what that --
7 what it may mean. May mean meaning that staff or the
8 commission will be upset by it. But will it mean
9 that the public will be upset by what they file? I
10 don't know what that means. So I can evaluate
11 whether there's good cause to file -- to not file
12 your petition for rehearing because it may have a
13 harmful effect when I don't know what that harmful
14 effect is.

15 So for me it shouldn't be an either or.
16 There should be some way of filing that petition for
17 a rehearing that doesn't stop the clock and yet also
18 if settlement discussions, again, it was not
19 something that was -- that was seen in July as a
20 possibility. But if there is some wiggle room to
21 have productive settlement discussions that may help
22 the overall focus and intent behind the orders, then
23 we should figure out a way to do that that is also
24 not potentially harming anyone who needs that
25 petition for rehearing to be resolved.

1 Monthly Meeting - October 18, 2018

2 Many times there are petitions for a
3 rehearing that are filed and then it may get settled.
4 If the petition for rehearing in cases I think that -
5 - that actually should go forward have been
6 withdrawn. And so for me when I look at Public
7 Service Law Section 22, and I did go to the
8 legislative history, there was nothing in the
9 legislative history that was available to understand
10 what maybe would help -- be helpful to the language
11 and what good cause the legislature was thinking
12 about. Primarily because the section where Public
13 Service Law 22 had the added with good cause I
14 believe we've determined that the -- the 1911 fire
15 destroyed those legislative history documents.

16 However, if somehow they're out there
17 that may be helpful to explain what the good cause
18 they were envisioning by it. Since we've seen since
19 then in all of our history, and I have not seen
20 anything else to indicate that good cause isn't seen
21 as because staff is negotiating productively, I just
22 think it's a very dangerous road for us to go on and
23 may actually have a very negative impact in other
24 matters. And may actually harm us processing this.
25 If we as Commissioner Sayre says he's very -- I

1 Monthly Meeting - October 18, 2018

2 forget what word you used --

3 COMMISSIONER SAYRE: Impatient.

4 COMMISSIONER BURMAN: -- impatient, well

5 then he should actually be supporting not allowing

6 that and having the petition for rehearing to be

7 filed so that we can actually get the ball rolling

8 from a SAPA and notice and start the clock.

9 Otherwise, no matter what, whether we lead to

10 productive settlement discussions that end in

11 resolution or we lead to a petition for rehearing

12 because we weren't able to resolve it, we actually

13 stopped the clock. And so we're that much further

14 away from deciding how we're handling things.

15 And I just don't get that. It -- it --

16 it really sits in a way that for me, from a policy

17 and perspective what we're trying to achieve and what

18 the fear is of filing a petition for rehearing that

19 clearly staff also agrees with is a problem if it's

20 filed. And not knowing what that actually means,

21 that is deeply troubling to me. And we should be

22 more engaging in -- in trying to figure that out.

23 And as lessons learned are in that the

24 orders themselves, when you issue directives that do

25 not allow any wiggle room, need to be very clear that

1 Monthly Meeting - October 18, 2018
2 there may be wiggle room. And allow what that means
3 because otherwise our order does not speak for
4 itself. And they -- we're making changes to it, you
5 know, without necessarily the benefit of the
6 commission as a whole looking at that. So we may
7 need to revisit that issue.

8 I -- I do -- I do think that it comes
9 down to how to resolve this. I -- I look at the
10 order itself, this -- the newest one and let me just
11 make sure I read the -- read the right language. I -
12 - I -- this is a question and -- and I'm -- I just
13 want to make sure I'm understanding this. On page
14 six which continues on to page seven of the item it
15 says D.P.S. staff and Charter are therefore directed
16 to present to the commission any settlement agreement
17 reached before the end of the forty-five day
18 extension period related to the filing of P.S.L.
19 Section 22 rehearing petitions. Let me just stop
20 before I go on. So we are in agreement that whatever
21 settlement agreement happens we'll come to the
22 commission as a whole for resolution.

23 MR. SIPOS: That is correct.

24 COMMISSIONER BURMAN: Okay. Thank you.
25 I appreciate that. Or if such agreement is not

1 Monthly Meeting - October 18, 2018
2 reached a joint filing. And this is I think what I
3 have concern with. A joint filing, so that would be
4 D.P.S staff and Charter, one, providing good cause
5 justification for why the deadline should be further
6 extended. Okay. So regardless of what we said here
7 we're actually indicating that there may be another
8 need for another extension. Not necessarily
9 definite. That's obviously not the goal. But at
10 least in this order, we are acknowledging that it's
11 not a hard stop. There actually may be, if good
12 cause is shown, a need to extend this.

13 Or, two, stating that no settlement
14 agreement was reached and that the processes set
15 forth in the compliance or revocation orders will
16 resume without delay. So I have two, I think,
17 questions here though they may sound like statements.
18 One is there has been no discussion here on what
19 further good cause justification may be. So I would
20 assume it would be the same. Productive discussions
21 deemed by staff and the company. Not necessarily
22 just the company alone. So the staff also needs to
23 agree that productive discussions are happening.

24 MR. SIPOS: It's difficult to project
25 what may occur in the future. But this provision

1 Monthly Meeting - October 18, 2018

2 does envision or does -- it does envision if -- if --
3 if there was going to be another request that -- that
4 it be -- that it be joint.

5 COMMISSIONER BURMAN: Joint. But, well,
6 here it envisions it must be.

7 MR. SIPOS: Yes.

8 COMMISSIONER BURMAN: It doesn't
9 envision. I mean, if I'm the company and I think the
10 productive discussions are happening despite what a
11 staff member may think, I have a right to say I'd
12 like a further extension. Now clearly you're
13 indicating staff must agree. Clearly we understand
14 that we always look at well where is staff and they
15 would put in papers in opposition if they didn't
16 agree primarily. But there have been times where
17 it's only been a company or a party who's put in
18 papers saying we want this and then it's been denied
19 by the secretary. And we don't know where the staff
20 is. But my concern here is this joint filing
21 language. Not necessarily with first there is --
22 really should be a discussion. Obviously, I'm a no,
23 but there should be an understanding of what further
24 good cause justification is because it may -- it
25 changed from last month to this month.

1 Monthly Meeting - October 18, 2018

2 Last month it just was the company and
3 staff acknowledging, though not formally, that they
4 were in productive discussions. This month it
5 changed to company asked and then staff filed a, you
6 know, support. Cutting down the time period but also
7 issuing their directives, which there really hasn't
8 been a discussion here on that. Their directives for
9 the guidelines on settlement which frankly cause me
10 some pause because it was indicating what the nature
11 of the settlement was which is good from a
12 transparency perspective. But it was also for me I
13 just looked at that is that seems a little odd.

14 So, for me, I would like to understand
15 is it so good cause means that there will be an
16 explanation of sort of take the guideline settlements
17 now. Those still are the same. They may change. Or
18 we may have something a little different, and I think
19 that's what I'm hearing from you, right? That there
20 may be -- we -- you don't know. You don't have a
21 crystal ball, you don't know.

22 MR. SIPOS: That is correct. I don't
23 have a crystal ball. But going to the question about
24 good cause and the legal standard and to your last
25 question, but also I think to your prior observation

1 Monthly Meeting - October 18, 2018
2 going and looking at the legislative history of
3 Public Service Law Section 22, the phrase good cause
4 is a pretty common phrase throughout procedural
5 statutes here in the state of New York. And it is a
6 -- it is a standard that vests discretion. And I
7 think based on our -- based on the discussions we
8 have had, there's agreement on that. I would also
9 suggest that that is a case by case standard
10 depending on -- and -- and vested in the discretion
11 of the deciding body.

12 COMMISSIONER BURMAN: I totally agree
13 with you. Where I disagree is, one, that you utilize
14 good cause in other sections of the law that leaves
15 sort of wiggle room for what the interpretation of
16 good cause is. Here the good cause is related to
17 what the commission, in its discretion, has. I think
18 it's an abuse of discretion or has, in my mind,
19 liberalized the meaning behind good cause in this
20 legislation which, again, it's -- it is for the most
21 part, except for that Entergy case, for the most part
22 is a first impression issue.

23 And what we've done is take a first
24 impression, how are we going to interpret good cause
25 and granting it. Again, I don't believe there are

1 Monthly Meeting - October 18, 2018

2 any cases where we've denied it, but that would be
3 helpful to see if there are because that may actually
4 give us some information. But for me the issue
5 becomes, we're saying that good cause is staff and
6 the company, whatever the company is, agrees or some
7 party. It could actually be someone else, agrees
8 that they're having productive discussions and these
9 are the guidelines. I agree it's on a case by case
10 basis. I don't agree in the liberalization of good
11 cause and the chilling effect it can have if applied
12 in other situations.

13 So I understand that, and I think I hear
14 you saying it's on a case by case basis. These facts
15 are unique therefore, we are going to allow it here.
16 We may not allow it elsewhere. You may recommend not
17 allowing it elsewhere. It's the commission who will
18 decide. And but there's no language in here in us
19 actually drilling down in nine times out of ten this
20 situation good cause would -- would not be found and
21 you would have to file your petition for a rehearing
22 within those thirty days. Or -- and -- and then you
23 may be able to have settlement discussions or not.

24 But we have in other situations not
25 allowed that pause button to be hit and have gone in

1 Monthly Meeting - October 18, 2018

2 a -- in a, you know, file it. So we have to think
3 about that and what that may mean in that now the bar
4 is -- is fairly low in -- in my opinion. So that's
5 what I have real concern with. And I know that for
6 many people they think that I'm too focused on the
7 process of this. It is really at the core of -- of -
8 - of what we're doing to allow the ability for
9 decisions to be made and for people to have an
10 opportunity to comment on those decisions and weigh
11 in.

12 And it's not just the party who files
13 the petition for a hearing. It's all the other
14 parties who may want to say yay or nay on something.
15 And so we need to be cognizant of that. And, again,
16 we stop the clock and that is of particular concern
17 for me. And whatever -- listen, we may need to
18 understand what some of the issues were with the
19 orders or agree that there were no issues to be able
20 to help facilitate.

21 You know, it's -- you know, you talk
22 quite rightfully about looking at it, you know, with
23 a litigators cap on, right. That goes into what we
24 need to do. I don't have information as a
25 commissioner in what the litigation risk is. And so

1 Monthly Meeting - October 18, 2018
2 part of your settlement discussions have to take that
3 into a factor as well as when you come before the
4 commission in looking at why this is a good --
5 potentially good settlement or not good settlement.
6 And some of that hinges on the validity of that
7 underlying July order, which may be a hard pill to
8 swallow but it is something we have to recognize.

9 And I think that to the extent that from
10 a process perspective, it's a -- it's a justice
11 perspective in my mind in getting that out there and
12 rolling. Again, I understand that there is concern
13 about the chilling effect that that may have. I
14 don't really think that that should then dictate a
15 stop the clock. We need to figure out something else
16 if we're concerned about the chilling effect. And,
17 obviously, staff is as well because to me the -- at
18 the core of that is what does that mean and why is it
19 a chilling effect just because somebody files a
20 petition for a hearing.

21 And that is deeply troubling to me in a
22 -- in -- because it hits at -- at the essence of
23 people feeling comfortable in filing their petitions
24 for a rehearing. And we need to figure out solutions
25 to that because it's information that I need as a

1 Monthly Meeting - October 18, 2018

2 commissioner in evaluating all of the different
3 aspects of it.

4 But now let me just get to the joint
5 filing piece, which is the second aspect. So joint
6 filing D.P.S. staff and Charter and obviously we just
7 talked about the providing good cause justification
8 or. And the or is stating that no settlement
9 agreement was reached and that the processes set
10 forth in the compliance and revocation orders will
11 resume without delay. Those are the two prongs that
12 are given for when its directives says D.P.S. staff
13 and Charter therefore directed.

14 However, to me, there's other options
15 which is that the company says, you know what, we're
16 going to file a petition for a rehearing despite
17 staff thinking that they shouldn't and settlement
18 discussions should continue. Or -- or move forward
19 on something else. So to me you don't need to as a
20 company have a joint filing with staff on your
21 stating no settlement agreement was reached in the
22 processes set forth in the compliance and revocation
23 orders. You can just file your petition for
24 rehearing and do that.

25 You don't need to have a -- a joint

1 Monthly Meeting - October 18, 2018
2 filing. It would be understood by that joint -- that
3 filing a petition for rehearing that the settlement
4 agreement, you know, was -- they felt wasn't going to
5 be reached. Or they felt it wasn't now, again, the
6 other thing, the other option is they feel it's all
7 right to start the clock and continue the
8 discussions, right. So -- and it's not chilling. I
9 -- I just -- I don't -- I guess I'm trying to figure
10 out is it meant to be exclusive to these are the only
11 two and it has to be a joint filing? The language
12 indicates it's exclusive.

13 MR. SIPOS: That's the way it's written.
14 And when that time comes, I am -- I am careful to
15 predict. I -- I don't like to predict but I'm
16 careful -- but my -- my thought is that there would
17 be some notification to the commission that either
18 there is an agreement, there's a possibility or there
19 is not. And we're going to go back to litigation and
20 -- and whatever else is on the table.

21 COMMISSIONER BURMAN: Why do they have
22 to -- why do we have to -- the notification is
23 petition for rehearing? Why do we have to have a
24 joint filing? Why do we have to have this -- joint
25 filings usually indicate agreement on the actual

1 Monthly Meeting - October 18, 2018
2 wording in the filing. Why do we have to have that?
3 That's an extra layer. Why do we have -- why can't
4 it just be the -- and it's -- it's to me it gets to
5 the heart of -- of the order has to speak for itself.

6 This directive allows only two
7 approaches and both of them deal with a joint filing.
8 Why does it have to be? Why can't -- again, company
9 has filed their good cause justification. Staff then
10 looked at it and evaluated and gave their -- their
11 support to that. Why do we have to have a joint
12 filing?

13 MR. SIPOS: And there's nothing in this
14 order that would prohibit --

15 COMMISSIONER BURMAN: But it --.

16 MR. SIPOS: -- the scenario that you are
17 suggesting.

18 COMMISSIONER BURMAN: But it does when
19 it only allows it. It's -- because the implicit --
20 the implicit -- the -- and you just even said -- you
21 just even said before that you would anticipate that
22 there would be some notice. So why? Like this is
23 not clear in that if I looked at it under the four
24 corners of this order, the only two options are there
25 is no -- it's a -- because it says D.P.S. staff and

1 Monthly Meeting - October 18, 2018
2 Charter are therefore directed. And then it talks
3 about a joint filing. Doesn't say or carry on, you
4 know, and -- and you can -- you know, it's a -- it's
5 a joint -- it's not -- it's not a joint filing that's
6 permissive.

7 This is an option if you want to do.
8 It's a directive in that this is how you must carry
9 on. And there's only two options here. I'm hearing,
10 and I think it needs clarification in the order that
11 it -- there is -- there is an opportunity for
12 something outside of a joint filing that doesn't mean
13 that the company didn't file -- because they're going
14 to have to go by what the order itself says.

15 MR. SIPOS: And -- and the second option
16 that we're talking about here it could be a one-
17 sentence letter. It -- staff and Charter, you know,
18 inform the commission that --

19 COMMISSIONER BURMAN: But you're missing
20 my point.

21 MR. SIPOS: -- scenario. And -- and
22 Charter has -- I want to come back to another point.
23 Charter -- Charter is the one who has asked for an
24 extension and is free to, you know, chart its course.
25 And -- and that's what it has -- this is a Charter

1 Monthly Meeting - October 18, 2018

2 request for an extension. And Charter -- and getting
3 back to the Entergy case, that was a situation where
4 the request came after.

5 This is a -- this is a case where the
6 request came before. So there are -- there are
7 differences and there will either -- and -- and staff
8 is concerned also about the timing of what is going
9 on. And that is one of the reasons that staff asked
10 for -- suggested that it be forty-five days rather
11 than sixty days. So --

12 COMMISSIONER BURMAN: Right.

13 MR. SIPOS: -- this --.

14 COMMISSIONER BURMAN: Counsel, I totally
15 understand and I understand in this situation. But
16 you are not listening in a way that I feel we can get
17 to -- again, it gets back into sort of the siloed
18 approach here, right. When I look at this, I look at
19 strictly the order language has to speak for itself,
20 okay. I very much understand that you are -- are
21 trying to get to a good result, whatever that result
22 is, okay.

23 And I -- I have -- my concern is that
24 when I look at the four corners of this order I am
25 concerned that we are setting up a joint filing

1 Monthly Meeting - October 18, 2018
2 requirement that is potentially unnecessary. It
3 could be. They could -- you could choose to do that
4 and it is helpful that you're sharing that there may
5 be. But you are not allowing the flexibility in the
6 order itself, which is what we have to go with, in
7 the order itself to allow the company or staff to
8 file something outside of that in a way that is not
9 seen as not following the dictates of the order. So
10 I am making sure that we're comfortable with that and
11 why we can't be more precise in the permissiveness of
12 filing a petition for a rehearing.

13 I mean, the first order where we
14 extended this we had sort of discussion about the
15 meaning and the terms. And there wasn't this joint
16 filing requirement. This is a new aspect of it. And
17 so for me I'm just trying to get to we have to be
18 clear in the orders itself so that people understand
19 what the directives are and what the -- the wiggle
20 room is in allowing that.

21 CHAIRMAN RHODES: So can I put you on
22 the spot, John, as counsel?

23 MR. SIPOS: Please go ahead.

24 CHAIRMAN RHODES: Is it your view and
25 advice that we are on solid procedural grounds with

1 Monthly Meeting - October 18, 2018

2 what we're doing here?

3 MR. SIPOS: Yes.

4 CHAIRMAN RHODES: And is it your view
5 and advice that this order as written properly
6 reflects the steps we want to take in this matter?

7 MR. SIPOS: That is correct, yes.

8 CHAIRMAN RHODES: So I appreciate that
9 Commissioner Burman disagrees, but I wanted to
10 understand whether you stood by the language and the
11 procedural and legal approach.

12 MR. SIPOS: Yes, I do.

13 CHAIRMAN RHODES: Okay.

14 MR. SIPOS: That is correct.

15 CHAIRMAN RHODES: Thank you.

16 COMMISSIONER BURMAN: Thank you. I do
17 have one other aspect to raise. I just have to find
18 the language, and I'm sorry. If you give me a
19 moment.

20 Well, since I can't find it I'll -- and
21 since I'm voting no because I think that the order
22 does not meet the Public Service Law Section 22 legal
23 standard for good cause in the -- to the extent that
24 I think this discretion is overly broad and had --
25 could have a chilling effect on other future cases as

1 Monthly Meeting - October 18, 2018
2 well as I think that the order itself is similar to
3 the July order not allowing enough clarity in next
4 steps. And I think that that is a disservice not
5 only to the company and to staff but to those folks
6 who are following the specific directives in the
7 order itself.

8 I didn't -- don't think that there was
9 an intent to, you know, be difficult on this. I do
10 think that the intent of the language on joint filing
11 was to try to be helpful in the next steps. But I do
12 think it's a fail and I do think that my concern on
13 the joint filing is one that could potentially cause
14 confusion. I think we probably in talking here
15 caused more confusion. But I do think that I'm on
16 record as -- as being clear that it should not have
17 to be a joint filing. And this might be an
18 opportunity to allow filing other than a joint
19 filing. The order itself, the language, does not
20 have that in there. And that is a fail. So I will
21 be a no. Thank you.

22 CHAIRMAN RHODES: Appreciate all that.
23 Thank you, Commissioner Burman. Commissioner Alesi?

24 COMMISSIONER ALESI: I'm going to
25 support the issue. I would say for the record I

1 Monthly Meeting - October 18, 2018
2 would have supported the sixty days, but that's just
3 my personal preference. I think if we're going to go
4 this far, if they asked for sixty days we're pushing
5 back with forty-five, putting that kind of pressure
6 on the negotiating process may or may not work. But
7 I don't want to be here again voting on this issue.
8 So I'm going to vote yes today and that will be my
9 vote.

10 CHAIRMAN RHODES: So thank you. I think
11 our positions are clear, but we actually need to call
12 for a vote. So I will do that. So calling for a
13 vote on Item 501, my vote is in favor of the
14 recommendation to confirm the October 10, 2018 order
15 granting a forty-five day extension to Charter
16 Communications as discussed. Commissioner Sayre, how
17 do you vote?

18 COMMISSIONER SAYRE: Aye.

19 CHAIRMAN RHODES: Commissioner Burman?

20 COMMISSIONER BURMAN: I vote no based on
21 my comments today and based on my comments at the
22 last session that should be incorporated by reference
23 to explain my no vote. And thank you.

24 CHAIRMAN RHODES: And Commissioner
25 Alesi?

1 Monthly Meeting - October 18, 2018

2 COMMISSIONER ALESI: Yes.

3 CHAIRMAN RHODES: The item is approved
4 and the recommendation is adopted. We will now move
5 to the consent agenda. Do any commissioners wish to
6 comment on or recuse from voting on any items on the
7 consent agenda? Commissioner Sayre?

8 COMMISSIONER SAYRE: No.

9 CHAIRMAN RHODES: Commissioner Burman?

10 COMMISSIONER BURMAN: I am not going to
11 be voting on Item 265. I'm abstaining because I did
12 not feel that it fully incorporated the information I
13 needed to make a decision. And so I abstain and I do
14 want to flag for me that part of the issue relates to
15 looking at this more holistically. Looking at the
16 relevant items as it relates to -- to the items that
17 are addressed here but not fully looked at including
18 Item -- excuse me footnote seventeen and footnote
19 nineteen.

20 I do think that staff did an exceptional
21 job, incredible job of working through the issues.
22 But I do think that how this may impact all of our
23 overall focus, especially with micro grids as well as
24 looking at how the -- we're looking at all of the
25 different issues especially redundancy issues. I am

1 Monthly Meeting - October 18, 2018
2 concerned that in isolation we are -- we are not
3 taking into consideration some of our energy policies
4 that may be more helpful across the board. And maybe
5 we should be addressing some of them.

6 I do understand that this item by itself
7 without those other extenuating circumstances is
8 clear. However, I do think that what leaves me pause
9 is that we need to address more holistically
10 information that's not here and that would be helpful
11 to me overall to know by doing this what are some of
12 the implicit next steps. What are some things that
13 may wind up and projects that may wind up falling off
14 the table because we go forward in this approach that
15 others might be relying on especially as it relates
16 to state funding and other sister agencies?

17 I think it's really important for us to
18 clearly know and look at the item, not just in
19 isolation of this particular specific but in terms of
20 the holistic nature of what this customer in general
21 is doing. What's happening in that area, and then
22 how it is potentially impacting some of our policy
23 decisions in other areas as -- specifically as it
24 relates to micro grids and specifically as it relates
25 to redundancy. And specifically as it relates to

1 Monthly Meeting - October 18, 2018

2 other state funding and projects that may either get
3 paired up with it or not get paired with it because
4 of our decision today. So I'm abstaining because I
5 don't have that information. Thank you.

6 CHAIRMAN RHODES: Thank you very much.
7 Commissioner Alesi?

8 COMMISSIONER ALESI: I vote yes.

9 CHAIRMAN RHODES: The items are approved
10 and the recommendations are adopted. Secretary
11 Burgess, is there anything --?

12 SECRETARY BURGESS: Excuse me, excuse
13 me, Chair Rhodes. Could -- could you just retake
14 that vote? I don't know if Commissioner Sayre, did
15 you vote or you were just saying you didn't have any
16 comments on the agenda?

17 COMMISSIONER SAYRE: I just said I
18 didn't have any comments. I hereby vote in favor of
19 the consent agenda.

20 CHAIRMAN RHODES: I beg your pardon.

21 SECRETARY BURGESS: Okay. I'm sorry.

22 CHAIRMAN RHODES: Thank you, Secretary
23 Burgess. Well, let's proceed to vote.

24 SECRETARY BURGESS: Okay. Thank you.

25 CHAIRMAN RHODES: My vote is in favor of

1 Monthly Meeting - October 18, 2018

2 the recommendation -- recommendations on the consent
3 agenda. Commissioner Sayre, how do you vote?

4 COMMISSIONER SAYRE: Aye.

5 CHAIRMAN RHODES: Commissioner Burman?

6 COMMISSIONER BURMAN: I abstain.

7 CHAIRMAN RHODES: Commissioner Alesi?

8 COMMISSIONER ALESI: Yes.

9 CHAIRMAN RHODES: The item is approved.

10 SECRETARY BURGESS: I'm -- I'm sorry.

11 Are you saying for the whole consent agenda or just
12 265?

13 COMMISSIONER BURMAN: Two sixty five.

14 SECRETARY BURGESS: Two sixty five. And
15 voting yes on the remainder?

16 COMMISSIONER BURMAN: Yes.

17 SECRETARY BURGESS: Thank you.

18 CHAIRMAN RHODES: Thank you, again,
19 Secretary Burgess. We're difficult I guess.

20 SECRETARY BURGESS: Sorry.

21 CHAIRMAN RHODES: The items are approved
22 and the recommendations are adopted. Secretary
23 Burgess, again, is there anything further to come
24 before us today?

25 SECRETARY BURGESS: Nothing further for

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Monthly Meeting - October 18, 2018

today. The next commission meeting is November 15th.

CHAIRMAN RHODES: Thank you.

(Off the record 12:47 p.m.)

1 Monthly Meeting - October 18, 2018

2 STATE OF NEW YORK

3 I, HANNAH ALLEN, do hereby certify that the foregoing
4 was reported by me, in the cause, at the time and
5 place, as stated in the caption hereto, at Page 1
6 hereof; that the foregoing typewritten transcription
7 consisting of pages 1 through 97, is a true record of
8 all proceedings had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 25th day of October,
11 2018.

12

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14 HANNAH ALLEN, Reporter

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| A | |
|--|--|
| a.m 1:13 2:2 | advocate 31:17,19 32:3,3,12 |
| A.M.I 61:22 | advocates 18:9 31:8 |
| ability 5:9 6:23 40:11 47:7 57:8 61:17 81:8 | affect 25:7 26:8 |
| able 39:10,12 47:21 52:2 59:5 59:15,19 61:12,15 74:12 80:23 81:19 | affidavit 41:24 |
| absolute 2:13 | affordable 16:16 |
| absolutely 52:9 | agencies 10:22 11:3 93:16 |
| abstain 92:13 95:6 | Agency 1:14 |
| abstaining 92:11 94:4 | agenda 2:25 3:4,9 64:8 92:5,7 94:16,19 95:3,11 |
| abuse 79:18 | aggressive 10:17 |
| access 4:24 18:14 24:8 31:5 56:12 | aging 57:19 |
| account 55:6,7 | ago 31:7 69:23 |
| accounted 10:5 | agree 40:7 41:5 46:11 76:23 77:13,16 79:12 80:9,10 81:19 |
| Accounting 41:21 | agreeing 36:23 |
| accuracy 37:18 | agreement 37:4 44:6,12,17,22 56:21 65:10 70:4 75:16,20,21 75:25 76:14 79:8 83:9,21 84:4 84:18,25 |
| accurate 51:20 | agreements 16:15 |
| achieve 74:17 | agrees 71:4 74:19 80:6,7 |
| acknowledging 76:10 78:3 | ahead 12:13 13:17 20:24 61:5 88:23 |
| act 39:4,11,16 | Albany 1:15 |
| acted 36:14 | alert 17:22 |
| acting 63:11 | Alesi 1:24 33:13,14 61:25 62:2 63:3,4 90:23,24 91:25 92:2 94:7,8 95:7,8 |
| action 23:17,19 34:17 35:7 38:24 62:15 | aligned 60:23 |
| actions 42:7 69:8 | aligns 42:21 |
| active 34:5 | ALLEN 97:3,14 |
| activity 49:2 | alleviated 25:15 |
| acts 7:17 | allow 66:23 74:25 75:2 80:15,16 81:8 88:7 90:18 |
| actual 9:17 12:5 13:19 14:18,21 14:23 15:3 21:14 49:17 84:25 | allowed 27:13 40:19 67:12 70:6 80:25 |
| added 73:13 | allowing 67:16 68:4 74:5 80:17 88:5,20 90:3 |
| addition 11:11 16:24 17:20 41:13 | allows 68:18 85:6,19 |
| additional 18:17 21:18 | alternative 47:14 |
| additions 28:21 | alternatives 5:18,21 |
| address 36:7 41:11 93:9 | altogether 27:18 |
| addressed 36:12 37:9 45:2 92:17 | Alvaro 3:17 4:9 15:18,22 16:2 |
| addresses 34:11 | amendment 3:9 |
| addressing 23:19 33:3 37:19 42:6 44:11 51:4 93:5 | America 40:21 |
| adequate 4:17,24 6:22 8:10 | American 34:2,12,19 36:4,14 37:13,15,17 38:3,4,7,9 40:7 40:18,21 41:9,13,19,23 42:5 42:12 52:16 55:20 56:8 57:4 57:10 58:5 59:9 61:8,16 62:21 |
| adjust 35:25 | |
| adopted 63:6 92:4 94:10 95:22 | |
| advance 39:25 | |
| advertisements 17:24 | |
| advice 88:25 89:5 | |

amount 5:10 51:25
amounts 36:24
analysis 21:6,7 22:21,25 23:7
 28:7 30:6 47:16 48:3 49:20
 54:11 58:24 59:20
analyst 3:18
answer 42:17 64:14
anticipate 19:14 85:21
anymore 50:24
appear 70:20
applied 80:11
applying 50:7
appreciate 33:18 42:20 44:2
 75:25 89:8 90:22
appreciated 20:5
approach 45:14 87:18 89:11
 93:14
approaches 71:14 85:7
appropriate 65:6 66:10 68:16
approval 42:4 44:17
approve 46:16
approved 36:22 38:22 39:14 44:6
 48:23 63:6 92:3 94:9 95:9,21
approximately 17:8
April 7:4,7 16:24 51:17 59:12
 59:13 60:3,16
area 50:11 57:14 93:21
areas 5:7,23 27:2 31:20 34:14
 37:12 43:12 93:23
arises 67:7
arising 51:4
arose 34:21
asked 32:21 78:5 86:23 87:9
 91:4
asking 39:17 72:3
asks 48:18
aspect 26:8 28:6 50:17 55:4
 70:18 83:5 88:16 89:17
aspects 13:2 37:6,9 38:11 44:11
 45:4 57:23 83:3
assessed 35:3
assessment 10:10
assets 5:2 6:4 7:7
assist 16:20
assistance 16:11,13 18:10
assume 76:20
assuming 8:6 48:22
assumption 6:16
Atlantic 19:25

attention 8:15
attentive 19:10,12
attorney 63:12
audit 34:4 39:23 46:13 48:21
 50:6
auditors 47:13
audits 41:21 47:11 50:6,8
August 36:19 50:21,23 60:21
Authority 4:23
authorize 42:12 62:21
available 9:15,23 10:2,4 16:12
 16:20 17:11 30:11 34:6 42:16
 58:7 63:12 73:9
average 4:5 6:14 8:4 12:13 13:7
 13:19 14:16,23 15:9 19:6,9,20
 20:10 28:19,20 35:14,20
avoid 52:22 65:23,24
aware 52:20
awareness 2:8,19 16:19
Aye 62:25 63:2,4 91:18 95:4

B

B 1:23
back 22:6,7,8 23:6 25:18 26:11
 28:22 50:24 84:19 86:22 87:3
 87:17 91:5
background 40:16,25
bad 55:17
balance 6:22
ball 74:7 78:21,23
bang 30:21
bar 81:3
based 4:14 9:7 14:16 15:4 79:7
 79:7 91:20,21
basic 23:19
basically 56:20
basis 13:7 15:10 41:17 80:10,14
bear 57:11
becoming 5:25
beg 94:20
beginning 7:8 45:15 50:21 64:7
behalf 69:4
behavior 2:14,17 56:11
believe 24:21 28:8,14 36:9
 50:12 73:14 79:25
believes 40:21
benefit 75:5
benefited 12:22
benefits 6:7
best 39:15 40:22 43:8

better 13:8 15:23,25 36:16
 45:21 47:22,23 51:11 53:11
 56:5,10 59:10
beyond 69:8
big 21:2
bill 8:5 12:24 16:10 17:25,25
 35:8 37:2 38:3 40:23 51:23
 52:3,4 58:23 60:4
billboards 17:25
billed 35:23 36:25 51:23
billing 16:14 38:7,14 39:8
 40:17 41:2 42:3 43:14 49:3
 59:24 62:6
bills 4:5,11 16:5,10,17 18:16
 20:11 35:4,19,24 36:11 38:9
 39:3 51:18
bit 22:6 28:20 32:18 46:8 57:3
biweekly 48:16
blame 45:11
blind 67:23
block 35:16 36:25 37:2 52:9
blows 19:24
blue 6:18 12:16 14:22
board 20:9 45:23 55:12 59:9
 68:21 93:4
body 44:7 69:24 79:11
boilerplate 68:19
borne 43:19
bottom 39:8
box 30:18
Brian 63:11 64:13
brief 3:21 4:3 9:4
briefing 49:10
briefings 49:7
briefly 33:15
bring 67:11
bringing 26:11 52:20
broad 89:24
broadband 65:5,15
broken 66:12,12,13
brunt 57:11
buck 30:22
budget 16:14
Building 1:14
bulk 3:16 4:7 9:3,5,8
bunch 52:25
Burgess 2:24 3:2 94:11,12,21,23
 94:24 95:10,14,17,19,20,23,25
Burman 1:24 20:3,4 21:4,11 22:5
 29:13 43:24,25 49:12 51:13

52:6,23 53:15,20,23 56:18,25
 58:10 60:14,17,24 61:3 63:2
 65:21,22 74:4 75:24 77:5,8
 79:12 84:21 85:15,18 86:19
 87:12,14 89:9,16 90:23 91:19
 91:20 92:9,10 95:5,6,13,16
business 2:6,23 3:10
button 80:25
buy 20:24 40:2
bye 66:17

C

C 1:23
calculate 6:13
call 2:4 17:18 18:9 21:13 62:12
 62:19 91:11
called 4:13 5:18 7:21 27:7,8
calling 27:5 33:9 91:12
calls 38:16 50:22,25
calm 19:20
camps 55:9
cap 81:23
capability 9:15 10:7,12
capable 40:5
capacity 4:18 5:11 9:25 10:6
 23:21,23 25:15 28:21 64:25
Capital 6:2
caption 97:5
carbon 17:3
care 19:2
careful 84:14,16
carefully 46:17
carry 86:3,8
case 3:4,11 5:20 22:8 29:5
 33:25 34:11 37:18 43:7 45:22
 50:10 52:25 55:20 62:16 63:8
 69:21,22 79:9,9,21 80:9,9,14
 80:14 87:3,5
cases 22:13 45:3 73:4 80:2
 89:25
cause 26:3 38:2 69:17,19,20,21
 70:8,10,18,20 71:2 72:11
 73:11,13,17,20 76:4,12,19
 77:24 78:9,15,24 79:3,14,16
 79:16,19,24 80:5,11,20 83:7
 85:9 89:23 90:13 97:4
caused 14:8,10 90:15
caverns 29:8
center 17:18 18:9 31:6,10 32:5
certain 13:2,7 44:11 58:2 63:20

certainly 21:2 49:8
certify 97:3
cetera 62:6
chair 1:23 3:2,19 8:25 11:23
 15:18 19:19 23:13,14 34:9
 49:10 63:14 69:5 94:13
Chairman 2:3 3:8 11:19 15:20,24
 18:22 20:2 33:12,15,23 42:18
 43:24 61:25 62:3,11 63:3,5
 64:17 65:20 88:21,24 89:4,8
 89:13,15 90:22 91:10,19,24
 92:3,9 94:6,9,20,22,25 95:5,7
 95:9,18,21 96:3
challenge 23:9 51:16 54:2 67:11
challenged 55:10
challenges 8:18 31:11 32:25
 44:24 45:18 46:2,18 54:16
 55:2 56:3 57:17,19,20,24
 61:10 70:3
change 3:3 35:22 39:3 40:2
 78:17
changed 25:2 26:16 77:25 78:5
changes 2:25 11:8 13:3 38:11
 47:10 48:5 49:18,18 59:5,16
 75:4
changing 67:19
chart 7:14 9:11 13:16 14:15
 86:24
Charter 63:10,19 64:2,19 65:5
 66:10 75:15 76:4 83:6,13 86:2
 86:17,22,23,23,25 87:2 91:15
Charter's 65:7,17 72:3
check 30:18 60:10,11
checking 30:24
chief 8:4 34:5
chilling 71:8,25,25 80:11 82:13
 82:16,19 84:8 89:25
Chinese 17:13
choice 33:10 40:22 42:19 70:13
choose 59:16 88:3
chosen 29:9
Chris 3:14,18 8:24 9:3 14:6
 29:2
circumstances 10:23 93:7
City 5:7 6:2 13:20 14:18 54:24
clarification 86:10
clarity 90:3
clean 3:6
clear 21:5 46:19 52:7 58:15
 66:25 69:13 70:3 74:25 85:23
 88:18 90:16 91:11 93:8
clearer 45:2
clearly 74:19 77:12,13 93:18
Cliff 34:23
clock 13:17 71:6 72:17 74:8,13
 81:16 82:15 84:7
closely 11:10 39:14 60:22
coefficient 12:18
cognizant 29:20 68:20 81:15
cohesively 47:22
coincident 9:12
cold 6:23,25 14:7 15:12 16:23
 20:16,23 23:5,5
colder 6:19 14:5
coldest 7:5
collaborate 25:21
collaborated 29:23
collaboration 20:5 49:15
collectively 11:20 19:3
color 2:18 13:21
combined 5:17 51:11
come 31:16 44:10 46:24 55:13
 68:13 75:21 82:3 86:22 95:23
comes 47:19,19 58:7 69:12 75:8
 84:14
comfortable 44:3 46:6 82:23
 88:10
coming 2:4 3:23 4:2,5,9 12:8
commence 34:16,17 35:7
commend 18:24
comment 21:10 22:15 28:18 67:22
 72:3 81:10 92:6
comments 19:15 23:12,13 36:6,9
 47:13 66:24,25 67:15 91:21,21
 94:16,18
commission 1:2,9 2:5,5,7 3:5
 8:15 20:19 30:5 34:15,16,19
 36:18 37:10 38:23 41:22 42:4
 42:12 44:7,10,16,23 45:11,20
 46:25 47:4,17,19 62:18 63:16
 63:24 64:9 67:24 68:9,14,15
 69:2,4,18,19 72:8 75:6,16,22
 79:17 80:17 82:4 84:17 86:18
 96:2
commission's 46:23 63:21
commissioner 19:17,18 20:3,4
 21:4,11 22:5 29:13 33:13,14
 43:2,4,24,25 44:20 49:12
 51:13 52:6,23 53:15,20,23
 56:4,18,25 58:10 60:14,17,24

61:3,25 62:2,24,25 63:2,3,4
 63:18,25 64:5 65:2,3,21,22
 73:25 74:3,4 75:24 77:5,8
 79:12 81:25 83:2 84:21 85:15
 85:18 86:19 87:12,14 89:9,16
 90:23,23,24 91:16,18,19,20,24
 92:2,7,8,9,10 94:7,8,14,17
 95:3,4,5,6,7,8,13,16
commissioners 1:22 3:3,20 8:25
 11:23 15:19 19:16 34:10 49:11
 63:15 69:24 92:5
commitments 64:20 65:17
commodity 15:10 21:15 24:11
common 35:18 79:4
communication 10:22 38:10
communications 11:12 43:14
 56:15 63:10,19 91:16
communities 5:14 6:6 8:17 30:21
community 17:9,15 18:7 31:3,6,9
 32:5 52:16,17
companies 4:13 11:14 18:8 39:11
 39:15,20 53:3,3 54:6,7
company 34:21 35:9,11 36:2,18
 36:23 37:4 38:12,19,20 39:4
 39:10,14,15 40:4,24 42:23
 43:16 46:14,21 47:5,7,9,12,18
 48:15 50:20 51:8 56:16,22,22
 59:21 60:10 70:23 76:21,22
 77:9,17 78:2,5 80:6,6 83:15
 83:20 85:8 86:13 88:7 90:5
company's 34:3,14 35:2,5,17
 37:6 39:24 40:2 41:15 51:2
 56:12
compare 12:3 14:17 61:8
compared 13:12 25:5 53:13
compares 12:12 61:8
competent 33:16
complacent 19:3
complaint 40:23 50:18
complaints 35:8,10,12,13 36:5,8
 38:3,12 39:9 49:3 51:3 58:18
 58:20,22,23 60:4,8
complete 40:12
completed 38:14
compliance 6:5 8:14 76:15 83:10
 83:22
compliment 30:14
components 36:23 56:21 58:12
comprehensive 56:14
computer 69:25
concern 54:18 63:21 76:3 77:20
 81:5,16 82:12 87:23 90:12
concerned 20:8 39:3 67:8 72:5
 82:16 87:8,25 93:2
concerns 22:19 36:11,13 41:11
 63:17 66:2 72:2
conclude 4:9 9:8
concludes 4:16 8:20 11:16 15:15
 18:20 42:15 64:15
conclusion 8:9 18:11
conditions 4:20 11:15 15:5
conducting 10:17
conference 50:22
confidence 42:20 62:8
confident 22:2
confirm 91:14
confirmation 63:17
confirming 63:9
confused 67:25
confusion 90:14,15
congestion 24:3
connection 32:7
consent 36:9,19,21,22 37:3,8,9
 38:15,20,20 39:13 40:11 42:21
 92:5,7 94:19 95:2,11
consequences 43:17,18 65:7
conservation 35:18 36:17 45:16
 51:15 53:25 54:15 55:11 56:14
 56:16,23 57:15,24 59:3,6,15
 59:16
conserve 51:19 55:25
consideration 47:9 93:3
considered 7:4
Considering 42:8
consistency 31:19
consistent 62:17
consisting 97:7
Consolidated 5:19
constrained 6:2
constraint 27:2
constraints 23:10 25:11,15,24
constructed 24:8
consultant 39:22 40:5,13 50:10
consultant's 41:2 42:8
consultation 38:21 41:10
Consulting 34:13 40:20,22,25
 41:11,17 42:13 48:22 52:14
 60:12 62:22

consumer 18:9,12 30:3,16 31:8
 31:16,19 32:2,3,12 50:19 62:9
consumers 16:20 17:7
consumption 52:5
contact 31:5 48:15
contained 37:20 41:25
contingencies 10:5
continual 54:18
continually 68:21
continue 4:21 5:23 6:3 7:6 8:12
 18:17 19:8 37:23 51:7 83:18
 84:7
continued 13:11 24:6 51:5
continues 24:10,12 66:13 75:14
continuing 10:13
contract 40:20 42:13 62:22
contracts 10:16 24:25 25:5 29:7
control 16:9 27:8 28:3 61:16
controlling 16:25
controls 37:13
cooling 6:17
coordinate 4:21 41:14
coordinated 29:23
coordination 10:21
copies 30:19
core 49:17,18 81:7 82:18
corners 85:24 87:24
correct 28:16 40:9 53:18,19
 75:23 78:22 89:7,14
correction 25:2
corrections 24:20,22,23 28:6
corrective 42:7
cost 8:2 33:2,5 39:18 42:14
costs 16:25 43:18
counsel 34:5,16 36:18 63:11
 87:14 88:22
County 52:25 53:17 55:13
couple 20:14 55:8,13
course 24:19,22,23,25 28:6 43:7
 46:15 86:24
court 34:18 35:7 36:21,22 66:18
credit 51:24,25 52:4
Creole 17:12
crimes 2:15
critical 26:3 31:20,23 39:21
 48:3,3 50:2 68:14
criticism 68:20
crucial 29:17,18 32:14
crystal 78:21,23

culture 40:2
current 4:19 22:16,19 23:16
 26:22 32:18,22
currently 56:8 68:17
customer 4:19 6:5,8 8:11,13
 12:7 16:22 18:10 21:15 31:5
 32:15 35:8,20 38:12 40:16
 41:2 50:18 58:19,21 62:6,8
 93:20
customer's 8:5 51:22
customers 4:24 5:3,8 6:16 7:13
 12:3,22,24 13:5,9 14:13 15:7
 15:14 16:4,9,15,21,24 17:19
 17:22,24 18:8,14 21:2,23
 22:16,19 26:22 27:5,8,10,17
 28:4,4 30:2 32:18,21 35:9,13
 35:15,19,23 36:2,4,14,15,16
 36:25 38:3,10 39:2 43:15
 45:19 47:24 51:19,25 52:18
 54:12,21 55:18 56:2,13 57:16
 59:21 60:9 61:13,18
customers' 36:8,11 56:10
Cutting 78:6

D

D.E.C 11:2,3 53:4 55:15
D.O.T 11:4
D.P.S 11:3 75:15 76:4 83:6,12
 85:25
D.P.S.'s 22:24
daily 50:21
dangerous 71:3 73:22
Darmetko 3:16 4:7 11:22 21:12
dashed 13:20
data 43:7 55:22
date 35:9
dates 64:6
day 2:19 6:15 12:13 13:16 49:2
 67:7 75:17 91:15 97:10
day-to- 48:25
day-to-day 39:24 41:17
days 6:12,13,19,25 50:25 64:7
 69:15,16,16,17 80:22 87:10,11
 91:2,4
deadline 70:5 76:5
deal 49:3 54:21 85:7
dealt 28:9 45:6
decades 5:12
December 12:12 14:7
decide 80:18

| | |
|--|---|
| <p> decided 68:10 deciding 67:20 71:19 74:14 79:11 decision 92:13 94:4 decisions 81:9,10 93:23 deck 19:21 deemed 71:24 76:21 deep 22:24 deeper 22:21 23:2 deeply 74:21 82:21 defensive 29:24 deferred 16:15 definite 76:9 definitely 60:2 degree 6:12,13 delay 7:7 69:2 71:18 72:4 76:16 83:11 delaying 70:24 delays 71:9,9 deliver 19:6 64:21,23 delivers 19:6 delivery 4:18 29:7 demand 5:4,10,12,15,16,21,24 6:19 7:7,16 8:18 demanding 19:15 demands 4:19 9:10 denied 67:13 70:7 77:18 80:2 denying 67:21 depart 19:9 department 9:3 16:3,8 36:5,6 39:4 department's 17:5,18,21 depending 79:10 deputy 34:4 50:5 describes 15:19 16:2 design 4:19 designate 41:14 designed 18:13 38:23 despite 77:10 83:16 destroyed 73:15 detail 3:25 37:8 66:4 detailed 22:18 determine 69:19 determined 24:9 35:25 69:17 73:14 determining 6:14 38:7 developed 17:22 developing 17:7 development 4:23 24:6 </p> | <p> DIANE 1:24 dictate 82:14 dictates 88:9 differences 87:7 different 13:9 19:7 78:18 83:2 92:25 differentials 24:3 differently 22:12 45:14 differs 39:22 difficult 76:24 90:9 95:19 dig 57:22 diligence 27:16 direct 31:4 47:7 54:24 61:15 directed 41:10,14 75:15 83:13 86:2 direction 47:17 69:4 directive 34:21 35:6 53:5 54:5 85:6 86:8 directives 54:4 74:24 78:7,8 83:12 88:19 90:6 director 34:4 41:20,21 50:5 dirtier 5:5 disagree 79:13 disagrees 89:9 disappointed 65:18 discarded 52:10 disclosure 43:9 discovery 37:19 48:17 discretion 68:15,17,19 69:18 79:6,10,17,18 89:24 discuss 4:8 36:10 discussed 11:6 22:22 62:23 63:25 64:12 91:16 discussing 23:16,17 discussion 3:10 4:10 33:24 49:15 63:8 76:18 77:22 78:8 88:14 discussions 66:22 70:23 71:5,16 72:2,5,18,21 74:10 76:20,23 77:10 78:4 79:7 80:8,23 82:2 83:18 84:8 disservice 90:4 distinction 46:11 distributing 17:7 distribution 4:13 5:25 11:13 district 6:3 37:15 53:16 districts 53:2,4 55:12,21,24 57:7 58:9 61:6,9,12 dive 22:21,24 </p> |
|--|---|

division 34:23
documents 73:15
doing 16:4 30:13 32:24 46:4
 47:14 49:15 52:8 55:5,24 61:2
 67:19,23,24 81:8 89:2 93:11
 93:21
dollars 8:6 37:5 42:15 56:24
domestic 2:8,18 31:25 32:6
downstate 5:7
draconian 43:23
draft 34:10 36:10 41:6,9
drama 65:23,24
dramatic 54:19
drilling 26:4 80:19
driving 45:9
drove 31:15
dry 48:13
dual 10:12
due 6:19 12:20 20:22 39:21
 59:25

E

E. I. A 20:9
earlier 63:18
early 28:22 60:21
east 24:4
easy 19:23
economic 6:8 54:10
economically 27:3
economics 29:11
Edison 5:19
educate 18:7
educating 16:24
education 18:13,18 30:6,17
 52:17 56:15
effect 36:3 52:11 53:25 55:15
 57:5 71:8,25,25 72:13,14
 80:11 82:13,16,19 89:25
effective 40:3
efficiency 5:17
efficient 16:18
efficiently 18:16
effort 51:11 65:18
efforts 4:10 12:12 18:18 33:16
 33:22
eight 8:6
eighty- 27:9
either 55:9 59:5 72:15 84:17
 87:7 94:2
elected 17:8 18:5

electric 3:13,16,23,25 4:7 5:19
 9:3,5,8,9,17 11:9,15,25 12:2
 12:4,11,15 13:23 14:9 17:2
 21:8,10,15,15 23:20,22,23,25
 50:19
electricity 4:8 29:19
elevated 38:2
emergency 16:21 31:23
Empire 1:14
employees 43:6
encourage 35:18
encouraged 16:16
encouragement 25:6
encouraging 24:25 33:19
energy 3:6 4:23 14:16,19 16:4,5
 16:13,17,17,18,21 18:12,15,16
 20:11,13 33:10 55:7 61:14
 65:2 93:3
enforcement 65:8
engage 71:16
engagement 41:3
engages 17:14
engaging 37:16 74:22
engineering 3:17
English 17:10 30:10
enmeshed 54:10
ensure 4:24 11:8 18:13 36:16
 38:24 40:5 41:6 42:25 51:8
ensuring 37:17
enter 27:19 40:19 42:12
entered 36:19
Entergy 69:21,22 79:21 87:3
entire 50:22
entities 29:9
envelope 18:2
environmental 6:7 32:23 33:9
environmentally 27:3 53:7
envision 77:2,2,9
envisioning 73:18
envisions 77:6
erroneous 43:6
errors 39:3
especially 5:6 11:10 19:5,10
 25:10 29:15 31:22 32:19,20
 49:2 54:2 57:17 62:5,13 68:20
 92:23,25 93:15
essence 82:22
estimates 39:18
et 62:6

evaluate 38:2 72:10
evaluated 85:10
evaluating 83:2
event 17:4 26:3
events 17:16 25:25,25
everybody 2:7 33:17
exactly 53:8
examine 68:12,16
exceed 42:14
exceptional 92:20
exclusive 84:10,12
excuse 31:9 47:4 92:18 94:12,12
execute 56:9
executing 56:9
exercises 26:2
exert 65:18
exhibits 17:16
existing 5:25
exit 63:23
expect 8:4 9:20 12:7 15:9 20:10
expectations 6:8
expected 7:24 8:2 9:23 14:15,19
 14:22 23:4 38:13
expects 9:24
expeditious 36:12
expending 57:9
experience 12:8 15:8,8 40:8
 62:4
experienced 9:16 12:20,24 13:14
 14:7
experiencing 5:4 35:15 57:16
expertise 41:2 42:10 52:21
explain 73:17 91:23
explained 43:13
explaining 46:11
explanation 78:16
exploring 64:24
expressed 5:15
expressly 44:20
extend 69:21 70:20 76:12
extended 64:6 68:5 76:6 88:14
extending 68:22
extension 63:9,19 68:25 70:12
 75:18 76:8 77:12 86:24 87:2
 91:15
extensions 63:21,24
extent 25:17 26:21 30:12 32:9
 45:10 57:3,22 58:10 71:23
 82:9 89:23

extenuating 93:7
extra 85:3
extreme 6:21,22
extremely 6:25

F

Facebook 18:4
faced 16:20
facilitate 10:21 31:3 46:23,24
 49:17 56:5 57:15 81:20
facilities 7:16 10:19,24 61:13
facility 10:11
fact 2:12 44:5 60:19 62:9
factor 29:17,18 45:9 59:17
 71:18 82:3
factored 58:13
factors 8:3 59:3
facts 80:14
fail 90:12,20
failure 65:7
fair 51:19
fairly 81:4
Fairport 19:21
falling 93:13
far 21:25 91:4
fashion 48:8 69:5
faster 5:24
faulty 38:8
favor 62:20 65:3 91:13 94:18,25
fear 74:18
feasible 38:25 44:8
features 18:3
February 14:10
feedback 48:4 50:15 51:9
feel 44:3 84:6 87:16 92:12
feeling 46:6 82:23
fellow 19:16
felt 84:4,5
FERC 22:19
fifteen 53:12 61:9
fifty- 13:5
figure 72:23 74:22 82:15,24
 84:9
file 39:6 41:23 42:5 63:22
 70:13 71:5,12,12,15 72:9,11
 72:11 80:21 81:2 83:16,23
 86:13 88:8
filed 35:13 36:4,20 41:20 68:4
 70:2,25 73:3 74:7,20 78:5
 85:9

| | |
|---|--|
| files 81:12 82:19 | folks 27:7 31:8 32:5 44:18 54:20 59:14 61:7 90:5 |
| filing 34:11,22 35:2 40:19 71:21 72:5,16 74:18 75:18 76:2,3 77:20 82:23 83:5,6,20 84:2,3,11,24 85:2,7,12 86:3,5 86:12 87:25 88:12,16 90:10,13 90:17,18,19 | followed 4:7 14:9 |
| filings 5:18 37:14 63:20 84:25 | following 63:20,20 88:9 90:6 |
| fill 7:9,10 29:10 | food 52:23 69:7 70:17 |
| filling 7:15 | footnote 92:18,18 |
| fills 28:25 | footprint 27:16 |
| final 2:25 38:13 39:19 42:2 48:11 | force 71:11 |
| finally 12:6 15:6 18:8 | forces 7:21 |
| Finance 41:22 | forecast 9:20 23:16 |
| financial 16:11 | forecasted 10:2,8 20:13 |
| find 6:6 8:17 64:18 65:11 70:16 89:17,20 | forecasting 20:18 |
| findings 37:21 38:16 60:3 | forecasts 22:9 |
| finished 8:22 | foregoing 97:3,6 |
| fire 73:14 | forget 74:2 |
| firm 4:19 8:11 10:16 20:25 22:16,17 23:22 26:22 29:7 32:18 | formal 36:5 49:7 |
| firms 39:17 | formally 78:3 |
| first 3:10 4:3 7:15 37:12 67:12 67:13 68:6 77:21 79:22,23 88:13 | forth 76:15 83:10,22 |
| five 13:6 24:18 28:23 50:25 64:7 95:13,14 | forthcoming 34:25 |
| five-year 28:19,19 | forty- 64:6 |
| fixed 13:4 24:25 25:4 | forty-five 75:17 87:10 91:5,15 |
| fixes 50:2 | forward 25:14 29:24 33:20 43:2 44:19 64:4 73:5 83:18 93:14 |
| fixing 59:7 | found 10:13 50:13 69:21 80:20 |
| flag 92:14 | four 51:22,24 52:2 85:23 87:24 |
| flagging 48:6 | frankly 78:9 |
| flexibility 47:15 88:5 | fraud 45:3 |
| floor 1:14 65:21 | free 30:19 86:24 |
| flowing 7:21,24 | friction-less 49:22 |
| fluctuates 7:20 | fuel 5:6 10:12,16,17,23,25 11:11 20:24 26:5 32:22 |
| focus 5:20 16:10 22:13,16,19 24:6,12 25:3,13 26:5 28:11 30:9 32:17 55:17 57:22 72:22 92:23 | fuels 4:25 5:5 |
| focused 22:17 30:22 48:11 49:25 57:21 66:5 69:11 81:6 | fulfillment 64:20 |
| focusing 22:14 24:24 48:13 50:11 | full 12:2,7 14:12 15:7,10,13 29:2,3,5 42:9 43:8 44:6 |
| folded 68:8 | fuller 67:17,18 |
| | fully 19:23 41:8 44:13 92:12,17 |
| | fund 56:23 |
| | funding 57:9,11 93:16 94:2 |
| | funds 56:24 |
| | further 17:13 24:5 26:11 28:23 74:13 76:5,19 77:12,23 95:23 95:25 |
| | future 19:15 28:15 33:21 37:10 76:25 89:25 |
| | futures 12:4,5 13:22 14:16,17 14:24,25 |
| | G |
| | gas 3:12,14,23,25 4:4,5,12,15 |

4:18 5:4,9,20 6:10,23 7:12,15
 7:18,21,24 8:2,3,11,19 11:10
 11:13 13:24 17:2 20:25 21:9
 23:20,21,22 24:11,11,13 25:12
 25:16 27:12 29:6,16,17 32:22
 33:4 34:6 50:19
gather 48:19
general 34:5 37:18 63:11 93:20
generally 7:4 68:18
generating 10:10,24
generation 10:12 23:22 29:18
generator 10:25 11:10
generic 61:22
getting 21:16 39:17 47:5 65:16
 82:11 87:2
give 43:8 50:9 59:8 62:14 67:17
 80:4 89:18
given 27:17 35:6 67:14 83:12
gives 62:3
giving 48:4 49:14 50:15
glad 31:15
glitch 69:25
go 22:7 23:6 27:12 28:22 32:21
 33:6 47:11 51:15 57:23 62:7
 69:8 73:5,7,22 75:20 84:19
 86:14 88:6,23 91:3 93:14
goal 53:4,6,6,9,22,22,23 54:22
 55:14,16,17 57:14 61:9 76:9
goals 54:4,12
goes 43:20 46:4 47:19 57:13
 81:23
going 20:8 22:23 23:11 30:23
 31:6 32:10,22 33:10 44:18,22
 47:18 48:6,6,13 49:2 50:6
 51:23 52:10 55:6 56:19 64:4
 64:18,20,23 66:16,17 67:2,4,5
 77:3 78:23 79:2,24 80:15
 83:16 84:4,19 86:13 87:8
 90:24 91:3,8 92:10
good 2:3,22 3:2,19 8:24 11:22
 11:23 15:18 18:23,24 32:4
 33:15 34:9,10 42:19,19 43:2
 58:16 60:2 63:14 64:23,24
 66:17,17 69:17,19,20,21 70:8
 70:10,18,20 71:2 72:11 73:11
 73:13,17,20 76:4,11,19 77:24
 78:11,15,24 79:3,14,16,16,19
 79:24 80:5,10,20 82:4,5,5
 83:7 85:9 87:21 89:23

Goodman 49:21
gotten 25:2 67:14
government 5:5
governmental 16:12
governor 2:9
grant 68:15
granting 63:9 79:25 91:15
graph 12:10,19
grasp 60:2
grassroots 17:14
great 19:18 60:17,24 61:3
greater 5:16
green 14:21
GREGG 1:23
Grid 31:6,7 32:3
grids 92:23 93:24
ground 30:23
grounds 88:25
Group 34:13 40:20 48:22 52:14
 60:12 62:22
groups 17:15 18:7
growing 5:15,22,24
growth 5:4
guarantee 7:18
guess 66:21 84:9 95:19
guideline 78:16
guidelines 78:9 80:9

H

Haitian 17:12
hand 40:9 42:10 50:20,20 51:7,7
handle 6:23
handled 38:12
handling 51:3 74:14
hands 46:10
hands-on 26:7 32:14 48:25
HANNAH 97:3,14
happen 47:25 57:25 65:9 66:22
happened 24:23
happening 76:23 77:10 93:21
happens 75:21
happy 8:21 64:14
hard 33:22 44:2 54:12 76:11
 82:7
harm 73:24
harmful 72:13,13
harming 72:24
HEAP 16:13 31:23,23
hear 15:22 29:16 61:5 80:13
heard 62:13,18

hearing 49:6 67:11 78:19 81:13
 82:20 86:9 97:8
heart 31:10 85:5
heartened 31:13
heat 16:21
heating 4:25 5:5,22 6:12,13,17
 8:5 16:25 18:20 20:12
hedge 13:4,8 14:12
hedged 8:2
hedges 12:23 21:22
hedging 7:17 13:2 20:21 21:18
help 11:8 16:5,17 23:23 24:2
 25:9 31:3 40:8 55:25 56:9
 57:13,15 58:3 59:8 61:19
 67:16 72:21 73:10 81:20
helped 32:3 54:14
helpful 26:7 29:14 44:15 49:24
 50:3 51:14 55:22 58:13 66:10
 70:15 73:10,17 80:3 88:4
 90:11 93:4,10
helping 29:25 30:14,25 32:7,11
 45:23 46:23 49:17 50:2
helps 48:8 49:20 54:13 56:5
 57:7
hereof 97:6
hereto 97:5
hereunto 97:9
high 5:10 6:14 7:19 12:24 33:4
 51:18,18 55:7,7 58:23 61:14
higher 7:22 20:12 23:4 27:18
 35:14,19
highest 36:25 52:5
highpoint 12:18
hinges 82:6
hire 37:5 39:16
hiring 43:11
historic 9:12
history 73:8,9,15,19 79:2
hit 80:25
hits 82:22
Hogan 34:3,9 43:13,17 48:10
 50:4 52:7 53:10 59:22 60:15
holistic 93:20
holistically 57:3 61:20 92:15
 93:9
home 16:13 20:11
homes 6:17
hood 23:2 30:6
hope 19:19 43:20 52:21,21,22

hopeful 52:13
hospitals 27:11
hours 31:21
household 20:11
Hudson 14:18
human 18:6
hundred 8:6 21:21 36:3

I

I.S.O 9:20,24 10:23 11:5,7,12
 12:13 13:16,20 25:22 26:5
I.S.O.s 11:14
I'm 15:20 65:4 77:22 78:19
identified 42:6 43:12
identify 39:15
illustrates 6:9
immediate 36:15
impact 29:12,19 32:23 35:15
 37:14 47:24 54:4,6,11,14,19
 54:24 58:25 62:15 69:9 71:19
 73:23 92:22
impacted 59:15
impactful 57:12
impacting 93:22
impacts 12:24 27:4
impatient 65:4 74:3,4
imperative 26:18 28:7,12 55:3
implement 3:5 10:14
implementation 37:20 41:24 42:6
 45:18 46:3,9,18 48:12,18 68:4
implications 33:8,9
implicit 85:19,20 93:12
importance 2:16,17 30:3
important 5:8 23:7,8 25:8 26:8
 29:15 30:15 32:15 44:18,19
 46:10,19 49:13 58:14 61:7
 93:17
importantly 62:8,9
impression 79:22,24
improve 23:23 24:10 56:12
improved 11:12
improvements 44:15
improving 62:7
in- 49:9
in-depth 40:14
inaccurate 38:8,8
inadequate 36:2
incentivized 56:16
incline 52:9
inclining 35:15

| | |
|---|---|
| <p>include 17:2 23:19 38:6 43:13 50:24</p> <p>included 13:3 39:17</p> <p>includes 56:14</p> <p>including 5:17 6:2 10:15 16:14 17:12,15,24 24:24 25:16,22 36:23 38:17 40:15 50:23 92:17</p> <p>income 32:9</p> <p>incorporated 57:6 91:22 92:12</p> <p>incorporating 66:6</p> <p>incorrect 34:22</p> <p>increase 6:7 17:13 24:7 25:14 35:24</p> <p>increased 8:18 10:15 12:21,21 13:14 26:25 32:9,19</p> <p>increases 21:20 43:15</p> <p>increasing 13:3</p> <p>increasingly 19:8</p> <p>incredible 92:21</p> <p>independent 34:2,13 37:5,11,23 37:25 38:18,21 39:7,8,16,22 41:7,12,15,18,25 42:2,14 44:4 45:5,8 46:3,8,10,12,20 47:6 49:19 50:11 60:22 62:23</p> <p>independently 39:5</p> <p>indicate 73:20 84:25</p> <p>indicates 8:9 22:20 84:12</p> <p>indicating 14:25 76:7 77:13 78:10</p> <p>indication 62:4</p> <p>indirectly 54:7</p> <p>industries 23:20</p> <p>industry 4:22</p> <p>influenced 8:3</p> <p>inform 64:4 86:18</p> <p>informally 47:17</p> <p>information 6:10 16:5 17:2,10 18:14 22:10 26:6 27:19 34:22 37:18 43:8 48:19 49:14 55:22 56:3 57:5,8,12 58:7 60:16 80:4 81:24 82:25 92:12 93:10 94:5</p> <p>informational 3:11</p> <p>informed 36:16</p> <p>infrastructure 23:19 24:2 57:19 57:19</p> <p>initial 49:4</p> <p>Initially 68:5</p> <p>initiative 26:10</p> | <p>initiatives 24:4</p> <p>innovative 6:6 8:17</p> <p>input 39:20 50:9</p> <p>inserts 17:25</p> <p>Instagram 18:4</p> <p>instance 39:23 40:13</p> <p>institute 55:11</p> <p>instituted 11:8 35:16</p> <p>instructed 34:16</p> <p>insurance 7:17 20:22</p> <p>intent 70:4 72:22 90:9,10</p> <p>interact 60:9</p> <p>interest 5:15 43:10 64:13</p> <p>interested 8:16</p> <p>interesting 6:10</p> <p>interim 51:21</p> <p>internal 34:14 37:13</p> <p>interpret 79:24</p> <p>interpretation 79:15</p> <p>interruptible 5:8 6:5 8:13 22:18 27:5 28:4 32:21 33:7</p> <p>interstate 11:13</p> <p>interviewing 39:19</p> <p>interviews 41:4</p> <p>intolerance 2:13</p> <p>inventory 4:18 34:23</p> <p>investigation 3:22</p> <p>investment 64:25</p> <p>involved 11:3 39:24 41:8 48:3 49:6</p> <p>involves 59:24</p> <p>Island 5:7</p> <p>isolation 25:20 29:22 30:15 45:22 93:2,19</p> <p>issue 2:16 32:23 37:22 44:5 50:18 52:13 54:3,12,23 58:17 68:24 69:11,12 74:24 75:7 79:22 80:4 90:25 91:7 92:14</p> <p>issued 27:25 53:4 58:11 64:5</p> <p>issues 18:25 26:4,15,20,20 28:5 28:12 30:2 31:12 32:24 37:24 38:14 39:5 40:9,17,23,24 41:3 42:3 43:14,14 45:2,6 48:6 49:4 51:3,4,9,14 56:6 57:23 58:2,2 59:11,24 61:4,15 64:16 67:5 68:11 81:18,19 92:21,25 92:25</p> <p>issuing 69:3 78:7</p> <p>Italian 17:13</p> |
|---|---|

item 3:4,7,10,11,11 22:10 27:6
28:9,10,10 33:5,24,25 43:5
62:20 63:5,7,8,15 64:7,8 65:4
68:4 75:14 91:13 92:3,11,18
93:6,18 95:9
items 23:18,19 46:24 68:22,24
69:8 92:6,16,16 94:9 95:21

J

JAMES 1:24
Jeff 34:3,8 42:18 46:11 53:8
job 43:9 92:21,21
John 1:23 34:4 42:16 63:10,13
88:22
joint 76:2,3 77:4,5,20 83:4,5
83:20,25 84:2,11,24,24 85:7
85:11 86:3,5,5,12 87:25 88:15
90:10,13,17,18
judgement 36:21
July 34:15 63:21 67:14 72:19
82:7 90:3
June 9:24 37:21 38:15 49:3
59:25
justice 82:10
justification 76:5,19 77:24
83:7 85:9

K

keep 49:10 61:21
key 47:24
kind 2:14 21:24 47:5,11 48:12
60:7 91:5
kits 18:3
know 2:13 16:13 19:5 20:18,19
21:12,13 24:13 26:12 28:2,17
29:17,21 30:9,17,23 32:8 33:3
45:3,6,11,21 46:4,5,14 48:14
48:18,22 50:9,12,15 52:24
53:4,21 54:13,20 55:10,13
56:5 57:9,13,18 58:14,17 59:7
59:10,18 60:9,10 61:4,7,11,15
61:21,22 66:20,21 68:18 70:5
70:8,24 71:13,18 72:10,13
75:5 77:19 78:6,20,21 81:2,5
81:21,21,22 83:15 84:4 86:4,4
86:17,24 90:9 93:11,18 94:14
knowable 19:11,13
knowing 74:20
knowingly 43:6
knowledge 35:23 40:14 62:14,15

known 19:13
knows 42:24
Korean 17:12

L

L.D.C.s 4:13,15,17 5:3 6:6 7:2
7:6,9,12 8:10,16
lack 45:19
laid 40:10
lakes 19:24
language 41:6 73:10 75:11 77:21
80:18 84:11 87:19 89:10,18
90:10,19
languages 17:12 30:11
large 3:5 14:14 24:7 27:10
59:23
laser 28:11 69:10
lasted 14:8
late 28:22 70:14
latest 35:17
law 63:22 68:8 69:13 73:7,13
79:3,14 89:22
layer 85:3
lead 35:19 74:9,11
leaders 17:9
leak 59:7
leakage 58:2
learned 10:14 12:25 27:21 45:12
59:4 74:23
learning 27:22 45:13
leaves 79:14 93:8
led 7:7 35:2 38:8
legal 78:24 89:11,22
legally 44:8
legislation 79:20
legislative 73:8,9,15 79:2
legislators 31:2
legislature 73:11
lengthily 66:2
lengthy 22:22,23
lesser 27:13
lessons 10:14 12:25 19:4 27:21
27:22 45:12,13 59:4 74:23
let's 3:9,9 28:21 65:11 94:23
letter 64:3 86:17
level 13:4 21:16 22:3 52:5
levels 11:11 28:16,18
liberalization 80:10
liberalized 79:19
light 2:12 36:13

| | |
|---|---|
| limited 53:16 54:22 | majority 35:12 58:18,23 61:14 |
| line 6:11,18 12:14,16 | making 24:18 32:25 39:19 52:19 54:10 75:4 88:10 |
| lines 13:18,21 | manage 16:5 18:15 50:8 |
| listen 81:17 | management 15:15 16:10 31:14,16 34:4 39:23 40:2 41:19 46:13 47:11,23 48:20 49:17 50:5,8 56:6 |
| listening 87:16 | manager 41:16 |
| litigation 81:25 84:19 | managing 63:12 |
| litigators 81:23 | mandate 54:5 55:16 |
| little 7:22 22:6 23:2 25:2 28:20,23 31:7 32:17 46:7 57:3 67:25 78:13,18 | mandates 54:4 |
| load 5:11 9:17 10:3,8 | maneuver 32:4 |
| loads 9:15 | manner 36:12 40:12 |
| local 4:13 5:4 11:13,13 31:6 | mapping 46:20 |
| located 13:9 | March 60:3 |
| lock 20:25 | margin 10:6 |
| locked 21:21 | market 7:20,21 12:13,21 13:12 13:17,19,23,24 14:9,13,14,16 14:20,21,22,24 21:20,24 |
| long 5:7 23:17,18 48:9 62:7 69:23 71:3 | markets 24:4 |
| longer 26:20 | mass 14:13 |
| look 12:8 20:15 22:11 23:2,10 24:21 25:8,17 26:18,23 28:3 28:12 32:10 33:20 45:10,12,20 45:24 46:17 49:16 51:17 52:2 52:24 55:11 57:2 58:3 59:10 61:20 67:3 68:16,24 73:6 75:9 77:14 87:18,18,24 93:18 | match 61:19 |
| looked 27:23 78:13 85:10,23 92:17 | matched 23:13 |
| looking 20:6 23:10 24:17 25:3 25:24 26:12,22 27:24 28:5 29:20 33:18 40:13 46:7 55:5 59:17 60:7,12,20 65:5,13 69:6 75:6 79:2 81:22 82:4 92:15,15 92:24,24 | matching 22:12 26:19 |
| looks 25:19 | materials 17:11 38:16 |
| lost 25:2 | matter 64:12 74:9 89:6 |
| lot 19:7 20:24 25:13 28:21 48:25 49:5 53:5 60:16 | matters 68:14 73:24 |
| low 6:14 7:16 32:9 81:4 | MCCARRAN 20:17 21:8 28:17 |
| lower 8:2 9:18 16:17 33:5 | mean 21:20 26:2,24 47:3 49:16 72:6,7,7,8 77:9 81:3 82:18 86:12 88:13 |
| lowering 53:7 | meaning 72:7 79:19 88:15 |
| lowest 7:23 28:15 | means 23:3,5 24:22 25:4,21,24 26:4,23 32:19,19,20 54:14 58:24 59:20,21 70:22 72:10 74:20 75:2 78:15 |
| luck 66:17 | meant 84:10 |
| | measured 12:17 |
| M | measures 16:16 43:23 55:11 59:6 |
| mail 30:16 | mechanism 65:9 |
| maintain 11:2 | media 17:24 18:3 30:9 |
| maintaining 13:8 | meet 5:21 6:19 7:7 8:11 9:9,15 10:4 23:21 40:10 89:22 |
| maintenance 10:19 | meeting 1:1,9 2:1 3:1 4:1 5:1 5:15 6:1,8 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 |
| major 10:10 52:14 60:4 | |

| | |
|--|--|
| 35:1 36:1 37:1 38:1 39:1 40:1 | moment 36:10 89:19 |
| 41:1 42:1 43:1 44:1 45:1 46:1 | Monday 46:5 |
| 47:1 48:1 49:1 50:1 51:1 52:1 | money 36:24 39:18 |
| 53:1 54:1 55:1 56:1 57:1 58:1 | monies 32:9 |
| 59:1 60:1 61:1 62:1 63:1 64:1 | monitor 5:23 8:13 18:17 28:24 |
| 65:1 66:1 67:1 68:1 69:1 70:1 | 34:2,14 37:5,11,23,25 38:18 |
| 71:1 72:1 73:1 74:1 75:1 76:1 | 38:18,21 39:7,8,12,12,16,22 |
| 77:1 78:1 79:1 80:1 81:1 82:1 | 39:24 40:8,22 41:7,12,16,18 |
| 83:1 84:1 85:1 86:1 87:1 88:1 | 42:2,14 43:11 44:4 45:5,8 |
| 89:1 90:1 91:1 92:1 93:1 94:1 | 46:3,8,10,12,20 47:6 48:18 |
| 95:1 96:1,2 97:1 | 50:11 60:22 62:13,14,23 |
| meetings 48:16 | monitor's 42:2 49:19 |
| megawatts 9:18,18,20,21,25 10:3 | monitoring 6:4 11:10 38:6 |
| 10:6,12 | monoxide 17:3 |
| member 77:11 | month 2:8 7:5 12:17 27:6,23 |
| memo 49:9 | 31:25 36:22 39:13 50:23 51:6 |
| mend 42:23 | 63:23 77:25,25 78:2,4 |
| mentioned 9:4 14:6 59:25 60:6 | monthly 1:1 2:1 3:1 4:1 5:1 6:1 |
| mentioning 48:11 | 7:1 8:1 9:1 10:1 11:1 12:1 |
| merger 65:17 | 13:1,19 14:1 15:1 16:1 17:1 |
| message 17:6 32:14 67:9 | 18:1 19:1 20:1 21:1 22:1 23:1 |
| messages 16:9,10 17:19,23 18:2 | 24:1 25:1 26:1 27:1 28:1 29:1 |
| messaging 16:25 18:10 | 30:1 31:1 32:1 33:1 34:1 35:1 |
| met 11:5 | 36:1 37:1 38:1 39:1 40:1 41:1 |
| metering 38:8 | 42:1 43:1 44:1 45:1 46:1 47:1 |
| methods 17:6 40:9 | 48:1 49:1 50:1 51:1 52:1 53:1 |
| mic 15:21 | 54:1 55:1 56:1 57:1 58:1 59:1 |
| Michael 53:9 | 60:1 61:1 62:1 63:1 64:1 65:1 |
| micro 92:23 93:24 | 66:1 67:1 68:1 69:1 70:1 71:1 |
| mid 14:8 | 72:1 73:1 74:1 75:1 76:1 77:1 |
| mid-January 14:8 | 78:1 79:1 80:1 81:1 82:1 83:1 |
| Mike 34:5 42:16 53:10 | 84:1 85:1 86:1 87:1 88:1 89:1 |
| million 56:23 | 90:1 91:1 92:1 93:1 94:1 95:1 |
| mind 55:13 61:21 66:20 79:18 | 96:1 97:1 |
| 82:11 | months 13:5,23 39:6 |
| minds 2:21 | moratoriums 27:2 32:20 |
| ministerial 69:8 | morning 2:3 3:2,19 8:25 11:23 |
| mirroring 30:12 | 11:23 15:18 19:21 34:9,10 |
| misleading 28:20,24 | 63:14 |
| missing 86:19 | Mother 19:22 |
| misspeak 53:8 | motion 3:5 |
| mistake 35:2 66:8 | move 63:7 83:18 92:4 |
| mitigation 12:11 | moving 33:6 |
| mix 5:2,2 | multiple 13:8 39:17 |
| mix-up 70:2 | municipal 18:5 |
| mode 29:25,25 | |
| modification 18:19 | N |
| modified 13:2 | name 8:25 97:10 |
| modify 52:18 56:11 | Nassau 52:25 53:17,17 55:12 |
| | National 31:6,7,24 32:3 |

nationally 20:10 28:14
nationwide 28:18
natural 3:12,23 4:4,5,15,17 5:4
 5:9 7:15 8:3,11,19 11:9 17:2
 20:25 29:17
nature 19:5,6,22 58:22 60:7
 69:9 78:10 93:20
nay 81:14
near 21:16 33:21
nearly 35:10
necessarily 21:13 33:7 55:17,19
 75:5 76:8,21 77:21
necessary 31:21 39:6 49:18
 52:19
need 2:10 18:15,17 19:4,10
 22:20 25:17 26:23 28:5 29:20
 30:24 32:10,11 45:8,12,20,24
 46:7,17,24 47:15 48:5,7 54:9
 55:6 57:2 58:3,24 59:17,19
 62:16 68:12,24,25 74:25 75:7
 76:8,12 81:15,17,24 82:15,24
 82:25 83:19,25 91:11 93:9
needed 5:11 6:18 18:19 33:2
 92:13
needing 29:22
needs 2:21 5:22 6:11 7:13 10:25
 23:20,22 40:8 72:24 76:22
 86:10
negative 25:25 27:4,4 73:23
negatively 71:19
negotiating 73:21 91:6
negotiations 64:4 66:9
neighboring 11:14
neither 6:17
net 9:25
never 69:20,23 70:11
new 1:2,15 2:10 3:12 4:17,22
 5:7,19 6:2 7:6,9 8:10 9:13,20
 9:24,24 10:11,22 11:5,7,11
 12:13 13:16,19,20 14:18,19
 16:3 17:17 18:13 24:6,9 28:14
 28:24 29:12 34:2,12,17,19,24
 36:4,13,20 37:13,15,17 38:3,4
 38:6,9 40:7,18,19,20,24 41:9
 41:13,19,23 42:4,12,22 52:16
 54:23 56:8 58:5 62:21 64:19
 65:6,15 79:5 88:16 97:2
newest 75:10
newly 24:7

news 18:23
newsletters 18:2
night 46:6
nine 27:10 80:19
nineteen 92:19
ninety 29:4
ninety-five 29:4
non-pipes 5:18,21
normal 6:21,24,25 7:4 8:7 12:9
 14:3,6 15:9 67:22
normally 67:20
note 35:11
notice 36:2 45:19 74:8 85:22
noticed 13:13 67:14
notification 35:21 84:17,22
notifying 38:10
November 7:11 16:23 29:2,3,5
 96:2
nuanced 22:15
number 6:11,13 25:4 38:2 43:17
 63:17
numerous 35:7
NYMEX 12:4 13:21 14:16
NYSERDA 4:23 11:3

O

objectives 40:10
obligation 68:2
observation 78:25
obviously 25:20 26:14 47:10,23
 52:22,24 76:9 77:22 82:17
 83:6
occur 21:25 58:3 76:25
October 1:1,13 2:1 3:1 4:1 5:1
 6:1 7:1 8:1 9:1 10:1 11:1
 12:1 13:1 14:1,20 15:1 16:1
 17:1 18:1 19:1 20:1 21:1 22:1
 23:1 24:1 25:1 26:1 27:1 28:1
 29:1 30:1 31:1,24 32:1 33:1
 34:1 35:1 36:1 37:1 38:1 39:1
 40:1 41:1 42:1 43:1 44:1 45:1
 46:1 47:1 48:1 49:1 50:1 51:1
 51:6 52:1 53:1 54:1 55:1 56:1
 57:1 58:1 59:1 60:1 61:1 62:1
 63:1 64:1,6 65:1 66:1 67:1
 68:1 69:1 70:1 71:1 72:1 73:1
 74:1 75:1 76:1 77:1 78:1 79:1
 80:1 81:1 82:1 83:1 84:1 85:1
 86:1 87:1 88:1 89:1 90:1 91:1
 91:14 92:1 93:1 94:1 95:1

96:1 97:1,10
odd 78:13
offensive 29:25
offering 2:11
office 18:11 34:24 41:20,21
 50:18,19
officer 41:14
offices 51:12
officials 17:9 18:6 31:2
oil 4:22 5:6 10:17 27:12,12
 32:22,24 33:4,6
okay 21:7 22:5 29:13 49:16
 51:13 52:6,23 56:18 60:14,24
 62:11 75:24 76:6 87:20,22
 89:13 94:21,24
old 5:13
once 10:3 25:14
one- 86:16
one-on-one 31:4
ones 66:4
online 22:8
onsite 10:16
operate 30:16 65:11
operating 10:3 11:15
operation 49:18 50:6,8
operations 34:3,4,15 37:6 39:25
 50:6
operative 64:6
opinion 21:17 81:4
opportunity 3:21 44:13 46:16
 47:12 48:4 66:21 67:7 69:14
 71:9 81:10 86:11 90:18
opposition 77:15
option 64:24 84:6 86:7,15
options 16:14 83:14 85:24 86:9
order 2:6 34:10 36:9,10,21,22
 37:3,8,9 38:15,20 39:13 40:3
 40:11 41:6,9 42:21 51:8 53:25
 63:9,18,25 64:5,9,11 65:11
 66:13,22,23 67:13,15 68:9,18
 69:10 75:3,10 76:10 82:7 85:5
 85:14,24 86:10,14 87:19,24
 88:6,7,9,13 89:5,21 90:2,3,7
 90:19 91:14
orders 34:20 63:21 66:15,23
 67:6,9 68:18 70:9 72:22 74:24
 76:15 81:19 83:10,23 88:18
organizations 18:7 31:3
ORPTS 34:25 37:14,16 40:15 62:6

Ossias 63:11
outages 17:4
outcome 64:24
outcomes 19:6,7
outlining 64:3
outreach 4:10 17:5,14,21 18:12
 18:17 30:4,6,17 32:15 52:17
outset 9:6 45:15
outside 27:15 28:19 32:18 45:5
 53:24 67:21 86:12 88:8
overall 3:25 25:9 49:24,24
 72:22 92:23 93:11
overly 89:24
oversee 37:5 59:10
overseeing 37:24
oversight 37:7 41:9
owes 64:19,19
owner 10:25
owners 10:11,13 43:19

P

P.A 34:13 40:20,21,25 41:11,17
 42:8,13 48:21 52:14 60:12
 62:4,22,22
p.m 96:4
P.S.L 75:18
pace 5:24
page 75:13,14 97:5
pages 97:7
paid 17:24 27:18
paired 94:3,3
pamphlets 30:7,10,24
panel 4:10 8:22
papers 77:15,18
pardon 94:20
part 10:9 24:20 38:23 45:7 46:9
 49:19 51:16 52:15 57:23 59:23
 79:21,21 82:2 92:14
participated 41:3
participation 41:15
particular 45:16 61:12 81:16
 93:19
particularly 20:8 65:15
parties 69:13 71:11 81:14
partner 18:6
parts 68:12
party 43:11 71:5 77:17 80:7
 81:12
pathology 2:12,13
Paul 3:16 4:7 11:18,21 21:9

| | |
|---|---|
| pause 78:10 80:25 93:8 | plan 7:2 35:17 38:10 42:6 63:23 68:4 |
| payers 43:20 | planned 34:22 |
| payment 16:14,15 | plans 10:18 17:22 41:24 48:12 |
| peak 9:12,17,20 10:3 26:15 31:21 53:13 | platforms 18:3 |
| peaker 54:23 | Plaza 1:14 |
| peaking 9:14 | please 3:18 9:11,22 10:9,20 16:7 17:20 34:8 63:13 88:23 |
| penalty 27:14,18 | pleasure 31:5 |
| people 29:16 32:11 33:6,10 40:8 52:20 53:5 67:10 71:21 81:6,9 82:23 88:18 | pocketbooks 25:7 |
| people's 25:7 | point 12:16 55:2 58:4 86:20,22 |
| perceiving 49:14 | points 19:13 40:24 51:10 |
| percent 13:6,6 21:21,22,24 29:4 53:13 61:9 | polar 9:19 10:14 12:20 14:4 21:16 23:6 24:20,24 27:21 28:11 |
| percentage 59:5 | policies 61:20 93:3 |
| perform 13:11 | policy 7:18 20:20,22 61:23 74:16 93:22 |
| performed 11:25 | portfolio 13:12 21:22 |
| period 9:6,21 11:7,9,14 12:17 16:23 51:21 67:22,22 68:5 75:18 78:6 | portfolios 12:15 13:8 |
| periods 5:10 | portion 8:20 15:16 38:5 |
| permissive 86:6 | positions 91:11 |
| permissiveness 88:11 | possibility 21:14 72:20 84:18 |
| person 49:10 | possible 6:25 17:17 36:12 39:15 |
| personal 91:3 | potential 23:17 27:4 28:6 39:11 45:3 51:18 54:11 59:7 71:25 |
| personally 41:4 | potentially 54:19 59:18 66:9 68:21 72:24 82:5 88:2 90:13 93:22 |
| personnel 62:5 | power 29:18 |
| perspective 61:24 74:17 78:12 82:10,11 | practically 38:25 |
| petition 63:23 67:3,12,21 69:14 70:13,24 71:6,10,12,15,20,22 71:24 72:12,16,25 73:4 74:6 74:11,18 80:21 81:13 82:20 83:16,23 84:3,23 88:12 | pre- 10:15,18 |
| petitions 67:11 71:7 73:2 75:19 82:23 | precise 88:11 |
| phase 5:5 | predict 84:15,15 |
| phrase 79:3,4 | predictions 24:18 |
| pick 38:21 | predicts 20:9 |
| picked 40:6 | preferably 40:14 |
| pie 7:14 | preference 91:3 |
| piece 5:8 83:5 | preferred 33:5 |
| pill 82:7 | preparations 10:19 |
| pinch 19:13 | prepared 4:2 9:8 19:9,11,12,24 25:25 |
| pipeline 5:11 6:4 23:21 | preparedness 6:22 9:5 17:10 33:19 |
| pipelines 11:13 24:8 | present 75:16 |
| pipes 57:20,25 | presentation 8:21 11:16 15:16 22:10 42:9,15 64:15 |
| place 10:21 12:23 16:22 20:21 29:6 36:17 39:7 97:5 | presentations 17:15 |
| | presented 3:14 34:3 63:10 |

| | |
|--|---|
| pressure 91:5 | project 41:16 42:11 76:24 |
| pretty 62:3 66:2 79:4 | projected 15:2 |
| prevailing 7:20 | projecting 24:17 |
| prevent 34:18 | projection 4:4 7:25 |
| previous 16:7 | projections 4:8 24:15 25:18 |
| previously 64:13 | projects 93:13 94:2 |
| price 7:18,20,22,25 8:3 12:2,11 12:13,16,22 13:4,12 20:18,25 21:20,24 23:24 24:3,12,25 25:4 33:8 | promised 65:6,8,8,19 |
| prices 4:8 8:13 12:5,21 13:17 13:19,23,24 14:9,10,14,16,18 14:20,21,22,24,25,25 15:3,6 20:13,15,22 21:6,15 29:19 33:4 | promote 16:9 |
| pricing 24:11 | promptly 36:14 |
| primarily 27:11 73:12 77:16 | prongs 83:11 |
| principal 37:12 | propane 5:6 32:24 |
| principles 64:3 | proper 35:21 |
| prior 13:22 78:25 | properly 89:5 |
| private 35:3 53:2 | property 34:24 37:14,22,24 40:14,23,25 49:4 |
| privy 30:5 | proposals 39:17 |
| proactive 10:18 | proposed 24:7 37:11 63:17 |
| probably 29:11 90:14 | protect 14:13 15:13 43:9 |
| problem 43:12 55:23 74:19 | protection 62:9 |
| procedural 79:4 88:25 89:11 | protections 16:22 |
| procedures 11:6 39:6 40:10 | protects 42:22 |
| proceed 2:23 33:24 62:19 94:23 | protocol 10:21 |
| proceeding 3:4 34:17 35:7 61:22 69:9 | protocols 11:6 |
| proceedings 97:8 | provide 3:24 12:6 16:4 18:8 36:15 41:18 51:8 65:7 |
| process 31:22 37:16 38:23 39:21 40:15 41:4,7 46:17 47:20 49:24 50:9 64:22 66:12 67:8 67:19 68:11 81:7 82:10 91:6 | provided 17:10 36:2 63:18 67:15 |
| processes 37:17 76:14 83:9,22 | providing 11:24 50:16 76:4 83:7 |
| processing 73:24 | provision 76:25 |
| proclaimed 2:8 | provisions 44:12 64:9,10 |
| productive 71:4 72:4,21 74:10 76:20,23 77:10 78:4 80:8 | public 1:2,9 2:5,5 17:16 43:10 53:3 63:22 68:7 69:12 72:9 73:6,12 79:3 89:22 |
| productively 70:21,23 73:21 | publically 58:7 |
| products 23:23 | publications 17:8 |
| professional 33:16,22 | pulled 3:7 |
| program 3:6 5:12 16:14 17:5,21 18:13 56:16 | pumpage 53:13,14 |
| programs 5:16,20 13:2 15:15 16:12 18:15 20:21,21 | Puran 3:15 4:6 8:24 9:2 |
| progress 51:2 71:19 | purchase 7:12 |
| prohibit 85:14 | purchasing 7:19 |
| | Purple 2:18,19 |
| | purpose 62:15 |
| | push 22:6 |
| | pushing 26:4 91:4 |
| | put 20:20 29:6 39:7 77:15,17 88:21 |
| | putting 91:5 |
| | puzzle 5:9 |
| | <hr/> Q <hr/> |
| | qualified 21:10 62:5 |

quarterback 46:6
quarterly 38:17 41:18 48:11
 49:5
question 75:12 78:23,25
questions 8:21,23 11:17,20
 19:16 20:14 34:7 42:17 63:12
 64:14 76:17
quickly 39:11
quite 81:22

R

radio 17:25
raise 16:19 68:23 89:17
raised 36:13 41:11
rate 5:20 15:10 35:2,17 37:3,18
 38:11 43:7,15,20 45:16,22
 51:15,22,24 52:9,12,18 53:25
 53:25 54:15 59:3,15,16
rates 3:15 12:7 34:6 35:5,16,17
 36:3,17 37:2 52:11
reach 7:10 17:14,16,23
reached 10:10 75:17 76:2,14
 83:9,21 84:5
read 23:11 75:11,11
readiness 3:13,22 4:3,6,15
 18:23
real 22:22 25:22 26:6 30:24
 34:24 47:3,16,16 48:4 51:8
 54:6 81:5
realities 19:9
reality 19:7
really 19:2 21:23 24:13,16
 27:22 30:5,8,24 31:8,21 32:6
 45:5,8,17,20 47:21 51:14 54:9
 61:20 66:11 68:3,12 74:16
 77:22 78:7 81:7 82:14 93:17
reason 50:4
reasonable 33:2
reasons 29:10 60:4 87:9
receive 51:24 52:3
received 35:8,11
recognition 23:15,18 25:12
recognize 22:14 28:13 30:3 44:7
 45:25 82:8
recommend 80:16
recommendation 62:21 63:6 91:14
 92:4 95:2
recommendations 37:20 41:25
 50:13 94:10 95:2,22
recommends 42:11

record 2:2 7:5 9:19 67:17,18
 90:16,25 96:4 97:7
recurrence 42:22
recuse 92:6
red 6:11 12:14 14:23
reduce 16:17 23:24 24:2,3 55:18
reduces 5:10
reducing 11:25 13:11 57:14
reduction 53:13
redundancy 92:25 93:25
reference 66:6 91:22
reflected 35:4
reflective 33:16
reflects 89:6
refund 36:24
regard 36:16 62:5,10
regarding 4:15 17:9 24:10 34:22
 34:25 36:11 37:22 38:14 40:16
 41:2 42:3
regardless 76:6
region 25:23
regions 13:9
regular 50:7 64:25
regulate 54:7,20 59:10
regulation 53:21
regulations 34:20
regulatory 64:25
rehearing 63:23 67:3,13,21
 69:15 70:14,25 71:6,7,11,12
 71:15,20,22,24 72:12,17,25
 73:3,4 74:6,11,18 75:19 80:21
 82:24 83:16,24 84:3,23 88:12
relate 46:2
related 2:14 4:11 6:10 16:21
 37:13 75:18 79:16
relates 24:14 33:25 63:9 92:14
 92:16 93:15,24,24,25
relatively 19:20
relevant 26:21 27:19 92:16
reliability 11:2,9 23:24 24:11
 24:14 25:13,14 26:9 29:12
 54:25
reliably 9:9
relief 36:15
relying 93:15
remainder 37:3 95:15
remains 10:6 41:7
remedies 62:16,17
remind 2:7,15 16:21 19:2

| | |
|---|--|
| renewable 3:6 | retake 94:13 |
| replenishment 10:18 | review 4:14 8:9 9:5,7 20:6 22:9 22:11 25:18 37:12,12,17 38:6 42:4 49:4 |
| replenishments 11:11 | reviewed 36:8 |
| report 3:12 8:14 15:19 16:2 18:20 19:18,20 27:25 33:18 37:21 38:14 42:3 47:2,5,18 59:25 62:3,10 | reviewing 37:19 38:9 |
| reported 14:20 37:21 97:4 | revisit 75:7 |
| Reporter 97:14 | revocation 76:15 83:10,22 |
| reporting 38:17 | Rhodes 1:23 2:3 3:8,19 8:25 11:19,23 15:18,20,24 18:22 20:2 33:12,23 34:9 42:18 43:24 61:25 62:11 63:3,5,14 64:17 65:20 88:21,24 89:4,8 89:13,15 90:22 91:10,19,24 92:3,9 94:6,9,13,20,22,25 95:5,7,9,18,21 96:3 |
| reports 35:11 38:16 41:18 42:2 48:11,12,14 49:5 | riding 48:2 |
| repowering 55:2 | Rieder 34:5 42:16 50:17 51:20 53:12,19,22 56:7 58:4 60:19 60:25 |
| represent 13:18 | right 34:8 50:11 52:9 53:15,24 55:9 56:25 60:11,17 61:24 62:14 67:10 70:20 71:17 75:11 77:11 78:19 81:23 84:7,8 87:12,18 |
| representations 4:14 | rightfully 81:22 |
| representatives 4:22 | rise 20:12 |
| represented 7:14 8:18 | risk 10:24 70:14 81:25 |
| represents 6:18 12:16,19 | road 71:3 73:22 |
| request 70:11 72:4 77:3 87:2,4 87:6 | role 37:24 39:21,23 40:15 41:12 69:7 |
| requested 64:2 | rolling 74:7 82:12 |
| requesting 40:19 | room 66:15 72:20 74:25 75:2 79:15 88:20 |
| requests 37:19 48:17 68:9,13,25 | Roslyn 55:13 |
| require 8:15 20:19,20 24:5 | routinely 50:9 |
| required 6:18,21 38:17 42:5 | rule 53:21 |
| requirement 88:2,16 | Russian 17:13 |
| requirements 8:12 | |
| Research 4:23 | <hr/> S <hr/> |
| reserves 10:4,16 | S 1:24 |
| residential 8:5 12:3,7,15 13:4 15:7,10,14 | safely 57:22 |
| residents 65:6 | safety 4:11 17:3 |
| resolution 46:25 74:11 75:22 | SAPA 67:22 74:8 |
| resolve 39:5 74:12 75:9 | SAPA'd 47:19 67:14 |
| resolved 35:12 48:7,8 58:19,20 58:21 60:5 72:25 | Sara 49:21 |
| resolving 60:7 | satisfaction 58:20 |
| resources 9:23,25 10:4 16:20 | satisfy 4:19 |
| respect 15:6 19:11,12 | saw 22:3 27:6 55:15 |
| respond 70:12 | say- 68:15 |
| response 5:12,16,21 38:5 | |
| responsibilities 32:13 | |
| responsibility 24:21 44:23 | |
| responsible 44:16 | |
| result 12:25 49:25 87:21,21 | |
| resulted 12:21 | |
| results 3:21 12:10 58:6 | |
| resume 76:16 83:11 | |
| retain 34:13 | |

saying 49:7 66:8 77:18 80:5,14
 94:15 95:11
Sayre 1:23 19:17,18 43:3,4
 62:24,25 65:2,3 73:25 74:3
 91:16,18 92:7,8 94:14,17 95:3
 95:4
says 60:10 67:16 71:14 73:25
 75:15 83:12,15 85:25 86:14
scale 3:5
scaled 50:24
scenario 85:16 86:21
scenarios 23:3
schedule 7:10
scheduling 64:15
Schenectady 31:9
schools 27:11
scope 37:7 40:11 52:15 59:23
 60:22
Sea 34:23
season 4:16 7:9 13:22 15:8 16:6
 18:20 26:13,14,15 27:20
second 7:17 33:24 69:12 83:5
 86:15
secretary 2:24 3:2 41:22 68:7
 68:22 69:3,7 77:19 94:10,12
 94:21,22,24 95:10,14,17,19,20
 95:22,25
section 9:3 63:22 69:13 73:7,12
 75:19 79:3 89:22
sections 79:14
secured 8:10
see 12:19 13:10 20:10 21:23
 23:3 24:10 26:17 29:21,22
 31:13 33:5 42:19 43:21 47:8
 47:21 48:6,23 52:3 54:18,23
 59:14 62:17 65:14 69:25 70:25
 71:2,2,17 80:3
seeing 31:7 45:14 48:17
seek 5:5
seeking 2:15 34:12
seen 6:20,24 26:16 28:2 47:11
 54:3 70:7 72:19 73:18,19,20
 88:9
selected 40:4 44:4
selection 38:22 39:19,20 41:4
 42:21 46:15
send 32:14
sending 67:9
senior 41:14,19
sense 22:11 48:9 64:19
sent 36:6
sentence 86:17
separate 68:7 70:25
September 27:25 37:25 50:23
 63:16 64:8,11
serious 43:5
serve 5:2,11 10:2,7 39:11 62:23
service 1:2,9 2:5 12:3,7 13:10
 14:13 15:7,10,14 18:6 40:17
 56:13 62:6 63:22 68:8 69:13
 73:7,13 79:3 89:22
services 18:12 34:24 50:19
 65:14,14
serving 4:17 8:10
session 2:4,24 63:16 65:25 66:5
 66:14,24,25 70:22 91:22
sessions 37:10
set 76:14 83:9,22
setting 87:25
settle 19:4 71:21
settled 73:3
settlement 44:5,12,14,17,21
 66:10,22 71:16 72:2,18,21
 74:10 75:16,21 76:13 78:9,11
 80:23 82:2,5,5 83:8,17,21
 84:3
settlements 66:15 78:16
seven 75:14
seventeen 92:18
seventy 13:6 21:22
share 31:25 43:19 58:6,8,8
shared 38:18 56:4 70:17
shareholder 36:24 56:24
sharing 88:4
Sharon 3:17 4:9 15:17,20
shine 2:12
shocked 39:2
Shore 35:9 38:4
short 10:7 48:9 65:10
shortcomings 42:23
show 13:21
showcase 27:9,10,16
showed 31:18
shown 14:23 69:17 70:10 76:12
shows 6:11 9:11,13 12:10 13:16
 14:15
shut 65:13
side 21:9,9 24:13 25:11,12
 29:19

| | |
|---|---|
| <p> siding 67:23 significant 44:9 57:9 significantly 13:24 14:3,5 35:3 silo 29:17 siloed 87:17 similar 64:8,10 69:5 90:2 simple 16:16 simply 19:13 43:9 simultaneously 38:19 Sipos 34:5 42:16 63:11,14 75:23 76:24 77:7 78:22 84:13 85:13 85:16 86:15,21 87:13 88:23 89:3,7,12,14 sister 93:16 sit 70:19 sits 74:16 situation 24:10 38:5 43:5,18,21 52:22 59:18 70:6 80:20 87:3 87:15 situations 8:15 80:12,24 six 17:8 63:23 75:14 sixty 87:11 91:2,4 95:13,14 sixty-five 6:16 slide 6:9 7:14 9:11,22,22 10:9 10:20 13:15 16:7 17:20 slim 21:17 slip 25:6 snail 30:16 snap 14:7 snow 19:21 social 18:3 30:9 soft 53:21,23 54:12,22 55:14 sole 45:9 solid 13:18 62:4 88:25 solutions 6:7,8 8:17 82:24 somebody 65:11 82:19 soon 38:24 sooner 59:13 sorry 15:22 19:12,14 89:18 94:21 95:10,20 sort 20:18 22:23,25 30:14 48:2 54:15 55:8,19 61:23 66:4 67:22 68:25 78:16 79:15 87:17 88:14 sound 48:12 53:6 76:17 sources 20:11 24:7,8 south 19:25 35:9 38:4 southeast 10:11 space 5:22 </p> | <p> Spanish 17:11 30:10 speak 56:17 75:3 85:5 87:19 speaking 48:21 special 16:22 34:17 37:15 66:14 specialist 3:17 specific 40:9 90:6 93:19 specifically 44:21 93:23,24,25 specification 10:25 speed 49:11 spelled 37:8 spend 37:4 spent 32:8 spike 14:9 20:22 21:24 spikes 21:3 spoke 60:10 65:25 spot 14:14 88:22 staff 3:20 4:16,21 6:3 8:12,15 11:5 16:3 17:14,18 18:10,16 18:24,24 20:5 23:12 33:17 35:25 36:7,14 37:21 38:19,22 39:10,14 40:4,7 41:8,10,17 42:11,20 44:3 46:21,22 47:4 47:16 48:17,20 49:9 50:16 56:21 60:19,20,25 64:2 70:21 71:4,14 72:7 73:21 74:19 75:15 76:4,21,22 77:11,13,14 77:19 78:3,5 80:5 82:17 83:6 83:12,17,20 85:9,25 86:17 87:7,9 88:7 90:5 92:20 staff's 3:12 9:4 10:9 stand 44:21 66:2 standard 3:6 78:24 79:6,9 89:23 start 74:8 84:7 started 35:8 state 1:2,14 3:12 4:17,22 5:19 5:24 9:13,14 10:22 11:2 14:6 16:3 17:16 24:9 31:2 34:18 36:20 79:5 93:16 94:2 97:2 state's 3:22 4:4,12 5:3 9:9 29:12 stated 97:5 statements 20:20 76:17 states 25:23 38:20 statewide 2:19 13:6 15:9 stating 76:13 83:8,21 status 48:24 statutes 79:5 step 42:19,21 43:2,11 64:18,22 steps 15:13 46:3 89:6 90:4,11 93:12 </p> |
|---|---|

sticking 51:10
sticks 61:23
stipulation 36:19
Stolicky 3:14,19
stood 89:10
stop 5:9 34:18 71:6 72:17 75:19
 76:11 81:16 82:15
stopped 74:13
storage 4:18 6:4 7:6,8,10,15,22
 28:16,18,21,25 29:8,10
storms 17:4
STOUT 56:19
strategies 16:11
strategy 56:9,13
stress 20:15 21:6,7,13,25 22:21
 22:24 23:7
stressed 33:11
strictly 87:19
strong 40:16,24 42:8 43:11,22
 62:3
structure 38:11 52:10,18
study 24:5 26:5,11 56:23 57:4
 58:6,11,14
studying 55:5
subject 21:2
submitted 40:18 42:3 64:2
subscribed 97:10
subset 61:18
subtracting 6:15
successfully 55:24
sudden 10:5
suffering 43:16
sufficient 9:14 10:7
Suffolk 53:17
suggest 11:19 79:9
suggested 87:10
suggesting 85:17
summarizes 9:23
summary 11:24 12:6
summer 7:16 9:12,13 26:15,17
 29:10 31:21 52:12,22
supervisor 3:14,16 9:2
suppliers 10:17
supplies 4:25 8:11
supply 3:13,15 4:15,18 6:11,18
 6:23 7:12 8:13 10:23 11:10
 12:2,7,11,15 13:4 15:6 24:6,8
 24:11 33:2 34:6
support 2:11 35:4 43:4,22 78:6
 85:11 90:25

supported 50:14 91:2
supporting 62:10 74:5
supposed 18:25 24:16 27:25
 52:15
Supreme 34:18 36:21
sure 13:13 15:20 26:19 32:25
 52:19 54:10 58:5 61:4 62:16
 64:21 75:11,13 88:10
surrounding 28:5 57:7
survey 56:14
suspended 51:22
suspense 65:24
swallow 82:8
swift 43:22
swing 14:11
swings 6:21 14:14
sword 71:20
system 4:7 9:3,8 10:5 24:14
 25:13,14 26:3,9 38:7
systems 3:16 5:25 9:5 65:12

T

T.V 17:25
table 26:12 52:21 84:20 93:14
tabletop 26:2
take 3:20 8:21 16:16 19:4 22:20
 23:5 25:17 30:8 39:5 44:5
 45:11 55:6 61:15 65:19 78:16
 79:23 82:2 89:6
taken 15:13 38:24
takes 47:9 64:22
talk 66:3 67:5 81:21
talked 61:6 83:7
talking 25:10 26:25 27:2,20
 48:15 86:16 90:14
talks 86:2
target 28:25 29:7
targeted 56:15
targets 7:10
task 42:9
tax 34:24 35:3,4 37:22,24 40:23
 40:25 49:4
taxes 37:14,15 40:14
team 42:10
technically 44:8
techniques 50:7
technological 70:3
technology 56:12
teeth 42:25 46:8
Tell 66:16

| | |
|--|--|
| <p> telling 21:5 temperature 6:15,21 27:8 28:3 ten 24:18 28:23 80:19 tenor 69:10 term 23:17,18 26:20 48:9,9 70:22 terms 18:23 24:22 26:3 48:15 49:9 54:14 55:25 57:18 65:24 88:15 93:19 territories 13:10 30:13 territory 57:5 59:9 test 20:15 21:6,7,14,25 22:21 22:24 23:7 thank 2:3,22 3:8 8:24 11:16,20 11:22 15:23,24 18:20,22 19:15 19:19 20:2,4 21:11 29:13 33:11,12,14,21,23 42:17,18 43:23,25 51:13 56:18 60:18 61:24 62:2 63:5 64:16,17 65:2 65:22 75:24 89:15,16 90:21,23 91:10,23 94:5,6,22,24 95:17 95:18 96:3 Thanks 20:4 thing 2:22 56:20 70:20 84:6 things 19:22 26:16,23 30:2 45:4 45:14 48:5 54:18 55:24,25 59:8 60:6 65:9,10 68:3 69:2 70:14 71:9 74:14 93:12 think 2:20 18:22 22:2 23:7,8 25:9 27:9 28:12 29:14,15,16 30:15,15 43:2 44:8,16,17 45:23 46:5,7,9,16,19 49:6,13 50:10,12 53:5,5,10 54:21 55:3 55:4,15 58:14,15 60:15 61:19 62:6,17 70:15,16 73:4,22 75:8 76:2,16 77:9,11 78:18,25 79:7 79:17 80:13 81:2,6 82:9,14 86:10 89:21,24 90:2,4,8,10,12 90:12,14,15 91:3,10 92:20,22 93:8,17 thinking 29:24 48:3 73:11 83:17 third 7:19 43:11 63:7 thirty 6:12 21:23 69:15,17 80:22 thirty-five 69:16 thirty-one 69:16 thought 52:24 65:16 69:7 70:17 84:16 thoughts 20:14 </p> | <p> thousand 17:8 35:10 three 1:14 7:13 15:11 37:7 39:25 52:12 threshold 67:5 Thursday 1:13 Thursdays 51:6 tier 51:22,23 52:2 tight 11:9,15 time 20:25 22:23 23:14,15 24:24 25:12,22 26:6 27:24 30:25 31:14 32:6 33:7 47:4,16 48:4 51:8 61:5 63:19,22 64:13 65:2 65:19 68:5,6 69:22,23 78:6 84:14 97:4 timely 2:20 40:12 times 31:20 73:2 77:16 80:19 timing 87:8 today 2:19 9:4 63:25 64:10 91:8 91:21 94:4 95:24 96:2 tool 35:18 tools 17:23 total 6:11 totally 79:12 87:14 traditional 6:3 46:12 training 18:9 transcript 23:11 transcription 97:6 transcripts 22:11 transmission 24:2 25:11,16 transparency 78:12 transparent 41:8 troubling 74:21 82:21 true 97:7 trust 19:22 43:7 try 90:11 trying 55:10 71:21 74:17,22 84:9 87:21 88:17 Tuesdays 51:6 tune 56:23 turn 8:23 11:17 15:12,16 65:20 twelve 12:17 twenty 7:24 Twitter 18:4 two 13:19 35:10 36:3 37:12 66:15 68:3 76:13,16 83:11 84:11 85:6,24 86:9 95:13,14 type 5:12 48:25 types 68:13 typewritten 97:6 </p> |
|--|--|

| | |
|--|---|
| typically 7:8 9:16 | utilized 57:6 |
| U | V |
| uncertainty 14:12 | validity 67:4, 6 82:6 |
| underlying 82:7 | Valley 14:18 |
| underscore 62:12 | values 35:3 |
| understand 24:19 44:18 56:10 58:22 61:7 72:3, 6 73:9 77:13 78:14 80:13 81:18 82:12 87:15 87:15, 20 88:18 89:10 93:6 | variability 14:11 |
| understanding 31:11, 11 40:15 42:9 46:23 57:16, 18 61:17, 18 75:13 77:23 | variation 12:18 |
| understood 84:2 | varied 13:17 |
| undertaken 21:19 57:4 | varies 8:7 |
| undertaking 56:8, 17 | variety 17:6, 23 |
| unfortunate 70:6 | various 11:8 38:11 64:3 |
| unfortunately 2:20 | vary 15:4 |
| unique 5:2, 2 39:21 80:15 | versa 26:17 |
| uniquely 62:4 | versus 61:16 |
| united 2:10, 11 | vested 79:10 |
| unnecessary 88:2 | vests 79:6 |
| unusually 14:10 | vet 39:11 |
| upcoming 3:13 4:16 9:6, 9, 21 10:8 51:17 | vice 26:17 |
| update 4:6 50:25 | victim 32:5 |
| updated 30:9 | victims 2:11 |
| updates 50:22 51:7 | view 88:24 89:4 |
| upgraded 57:25 | Vijay 3:15 4:6 8:23 9:2 11:22 |
| upper 31:14, 15 | violations 34:19 42:23 |
| upset 72:8, 9 | violence 2:8, 18 31:25 32:6 |
| Upstate 65:6, 15 | visibility 42:25 |
| urge 19:23 22:25 | vital 31:23 |
| usage 16:6 35:14, 25 51:18, 25 52:19 53:13 55:19 56:10 | volatility 7:18 12:2, 11, 14, 14 12:17, 19, 22 13:12, 14 15:15 23:24 24:12 |
| use 5:16, 20 7:6 16:17 17:17 18:16 35:19 49:21 | vortex 9:19 10:14 12:20 14:4 21:17 23:6 24:20, 24 27:21 28:11 |
| users 55:7, 8 | vote 62:12, 20, 20, 24 91:8, 9, 12 91:13, 13, 17, 20, 23 94:8, 14, 15 94:18, 23, 25 95:3 |
| uses 17:6 | voting 65:3 89:21 91:7 92:6, 11 95:15 |
| usually 84:25 | W |
| utilities 3:23, 25 4:4, 12 11:25 12:11, 15, 23, 25 13:7, 10 14:12 15:13 16:4, 8 17:21 18:5, 19 19:23 20:20, 24 21:18, 21 28:24 43:8 | waiting 47:2, 18 |
| utility 3:14, 15, 17, 18 4:25 6:16 8:7 9:2 16:12 17:19 18:14 30:13 31:19 35:22 43:6, 13, 22 | waiver 10:25 27:13, 18 |
| utility's 43:19 | want 2:7 21:4 30:3, 18 44:2, 4, 25 47:8, 21 53:7 56:7 65:14 67:10 68:23 69:14 70:8 71:5, 12, 15 71:17 75:13 77:18 81:14 86:7 86:22 89:6 91:7 92:14 |
| utilize 79:13 | wanted 89:9 |
| | wanting 46:5 |
| | warm 14:10 29:5 |

warmer 6:19,24 14:3 33:20
warrant 70:24
wasn't 84:4,5 88:15
watching 32:2
water 3:15 34:2,6,12,19 35:14
 35:18,20 36:4 38:4 40:7,18,21
 41:10,13,19,23 42:5,12 50:20
 51:18 52:16 53:2,2,3,3,16
 54:3 55:7,12,18,20,21,23 56:8
 57:7,10,14,20 58:5,9 59:11
 61:6,8,9,12,14,16,20,23 62:21
Water's 36:14 37:13,15 38:5,7,9
 57:4 59:9
way 7:15,17,19 14:11 22:18,22
 22:23 25:8,22 26:6 29:23
 30:16,20 32:4 35:22 47:25
 49:20,23 50:2 54:7,13 56:5
 57:6 62:7 66:12 72:16,23
 74:16 84:13 87:16 88:8
ways 7:13 42:24 47:14 55:18
 67:12
we'll 33:24 60:2,15,16 63:7
 70:16 75:21
we're 18:25 22:2,14 23:10 25:10
 26:19 27:4 43:10 48:13 49:11
 50:6,15 52:8,13 57:21 60:11
 66:17 67:16 68:21 74:13,14,17
 75:4 76:7 80:5 81:8 82:16
 83:15 84:19 86:16 88:10 89:2
 91:3,4 92:24 95:19
we've 22:12 28:15 43:12 47:10
 48:14 49:25 50:21,24 54:3
 62:13 64:12 70:7 73:14,18
 79:23 80:2
Wear 2:19
weather 6:4,10 8:4,7 12:9 13:25
 15:4,9,12 20:23 29:5 33:21
weatherization 18:2
website 17:18 18:3 58:8
week 34:12 50:25
weekends 50:23,24
weekly 48:16,25
weigh 44:13,20 68:25 71:10
 81:10
weirdness 66:19
went 22:8 36:3 53:25 55:14
weren't 27:17 74:12
west 13:20 24:4
Western 14:19

WHEREOF 97:9
wiggle 66:15 72:20 74:25 75:2
 79:15 88:19
willing 58:6
willingness 56:11
wind 93:13,13
window 66:21
winter 3:13,24 4:2,6,9,11,16,20
 4:20,25 5:11,22 6:20,20 7:2,3
 7:5,13 8:5,6,8,12,14 9:6,12
 9:16,19,21,24 10:2,3,8,10,15
 10:16,19,20 11:7 12:8 13:5,22
 13:23 14:5,6 15:4,8 16:6,9,23
 16:25 17:5,9,22 18:10,12,15
 18:24 19:20 20:6,8,12,16 22:9
 23:4,5,6,16,16,21 24:15,17
 25:18 26:14,17 27:20 31:22
 33:19
winter's 9:9,17 12:4 14:15,17
 14:19,21,22,23,25
winters 6:12 14:2,3
wish 71:10 92:5
withdrawn 73:6
witness 31:16 97:9
word 74:2
wording 85:2
work 6:5 8:16 16:3 18:5,18,25
 30:20 33:15 39:13,14,25 40:12
 41:10,16 44:2,23 46:18 47:14
 54:15 58:11 59:20,23 91:6
worked 48:7
working 29:24 30:25 31:8,18
 32:15 36:7 42:11 46:22 47:6
 47:22 48:21 50:16,20 51:7
 52:14,16 54:25 55:19 56:2
 70:21 92:21
written 48:14 84:13 89:5
wrong 71:17

X

X 1:24

Y

yay 81:14
Yeah 50:4 53:12
year 7:22 9:12 13:13 14:4 15:3
 19:25 20:7 22:3 34:15 37:3
 52:12
year's 7:25
years 7:24 11:7 12:5 13:18

| | |
|---|--|
| 15:12 16:8 22:8,13,17 24:18 28:23 37:7 39:25 York 1:2,15 3:12 4:17,22 5:7,19 6:2 7:6,9 8:10 9:13,20,24,24 10:11,22 11:5,7,12 12:13 13:16,19,20 14:18,19 16:3 18:13 24:9 28:14,24 29:12 34:2,12,18,19,24 36:4,13,20 37:13,15,17 38:3,4,6,9 40:7 40:18,20,24 41:9,13,19,23 42:5,12 52:16 54:24 56:8 58:5 62:21 64:19 65:6,15 79:5 97:2 Yorkers 2:10 17:17 42:22 | 1911 73:14 19th 1:14 1st 7:11 16:23 29:2,3 |
| | 2 |
| | 20 22:3 53:14 2000 9:13 2000s 28:22 2008 12:12 201 3:11 2012 53:14 2013 30:5 2013-14 14:4 22:4 2013-2014 9:19 10:15 25:5 27:21 28:11 2014 12:20 22:8,23 23:11,12 25:10,18 26:10 2014-15 14:5 2015 28:8,10 2015-16 14:2 2016 28:9,10 2016-17 14:2 2018 1:1,13 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 36:20 37:1,21 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1,14 92:1 93:1 94:1 95:1 96:1 97:1,11 2018-19 16:6 2018-2019 9:6 2019 38:15 51:17 59:12 60:2 2021 37:25 22 63:22 68:8 69:13 73:7,13 75:19 79:3 89:22 24,269 9:21 10:3 25,081 9:17 25,738 9:19 25th 97:10 265 92:11 95:12 |
| Z | |
| Zibelman 23:14 zones 13:20 | |
| 0 | |
| 1 | |
| 1 97:5,7 10 64:6 91:14 10:37 1:13 2:2 11,425 10:6 12,000 10:12 12:47 96:4 15-E-0302 3:4 15M0388 63:8 15th 16:24 96:2 16-W-0259 33:25 34:11 17th 27:25 18 1:1,13 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 18-M-0272 3:11 | |

| | |
|-------------------------------|--|
| 27 63:21 | |
| 28th 36:20 | |
| 29th 37:21 | |
| <hr/> | |
| 3 | |
| <hr/> | |
| 3 1:14 | |
| 30th 37:25 60:2 | |
| 371 3:4 | |
| 38, 324 9:25 | |
| <hr/> | |
| 4 | |
| <hr/> | |
| 401 33:25 | |
| 497, 214 42:15 | |
| <hr/> | |
| 5 | |
| <hr/> | |
| 5,000 37:4 | |
| 501 63:8,15 64:8 91:13 | |
| <hr/> | |
| 6 | |
| <hr/> | |
| 657 9:18 | |
| <hr/> | |
| 7 | |
| <hr/> | |
| 8 | |
| <hr/> | |
| 9 | |
| <hr/> | |
| 90s 28:22 | |
| 97 97:7 | |