

1 Public Service Commission Monthly Meeting - 7-11-19

2 STATE OF NEW YORK
3 PUBLIC SERVICE COMMISSION

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10 MONTHLY MEETING OF THE PUBLIC SERVICE COMMISSION

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Thursday, July 11, 2019
10:28 a.m.
Three Empire State Plaza
Agency Building 3, 19th Floor

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22 COMMISSIONERS:

23 JOHN B. RHODES, Chair

DIANE X. BURMAN

24 JAMES S. ALESI

TRACEY A. EDWARDS

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1 Public Service Commission Monthly Meeting - 7-11-19

2 (On the record 10:28 a.m.)

3 CHAIRMAN RHODES: I call this session
4 of the Public Service Commission to order. Secretary
5 Burgess, are there any changes to the final agenda?

6 SECRETARY BURGESS: Good morning,
7 Chair and Commissioners. There are no changes to the
8 agenda. If I could just kindly remind everyone when
9 they're making comments if they could just speak
10 closely into the microphone so that it's picked up by
11 the webcast. Thank you.

12 CHAIRMAN RHODES: Was that directed at
13 certain commissioners as well, Secretary?

14 SECRETARY BURGESS: Yes, please. Make
15 sure your green lights are on please. Thank you.

16 CHAIRMAN RHODES: Thank you. Before
17 we get started I'd like to welcome and acknowledge
18 and appreciate our new colleague, Commissioner Tracey
19 Edwards, to my left to your right. Welcome. Thank
20 you for -- for serving with us.

21 COMMISSIONER EDWARDS: Thank you very
22 much. We're looking forward to it. I'm looking
23 forward to being here and I'm looking forward to
24 working with all of you and serving the public.
25 Thank you very much. Thank you for having me.

1 Public Service Commission Monthly Meeting - 7-11-19

2 CHAIRMAN RHODES: Terrific. So with
3 that let's get down to business. The first item for
4 discussion is Item 201 Case 19-M-0265 which is in the
5 matter of a program to encourage clean energy in
6 Westchester County presented by Ted Kelly,
7 assistant counsel. Peggie Neville, deputy director
8 for clean energy is available for questions. Ted
9 please begin.

10 MR. KELLY: Good morning, Chair Rhodes
11 and Commissioners. Item 201 is a draft order
12 establishing a Westchester County consumer awareness
13 program consistent with the requirements of Public
14 Service Law Section 74A. PSL 74A was enacted as part
15 of the 2019 State Budget Bill. PSL 74A requires the
16 Public Service Commission to, within 90 days of April
17 1st, 2019 and in consultation with the New York State
18 Energy Research and Development Authority or NYSERDA,
19 establish a program to encourage the installation of
20 renewable energy resources and energy efficiencies in
21 the County of Westchester.

22 PSL 74A was passed in response to the
23 moratorium on new firm service connections for
24 natural gas in parts of Westchester County that was
25 announced by the Consolidated Edison Company of New

1 Public Service Commission Monthly Meeting - 7-11-19
2 York, Con Edison, on January 17th, 2019. Also in
3 relation to the moratorium, the department and
4 NYSERDA announced the Westchester Clean Energy Action
5 Plan, which I'll call the action plan, on March 14th
6 2019.

7 The action plan includes activities by
8 NYSERDA, Con Edison and the New York Power Authority
9 in collaboration with the commission and the
10 department, Westchester County and other stakeholders
11 to offer support to businesses and residents in the
12 area of Westchester County, the areas of Westchester
13 County affected by the moratorium. Specifically, the
14 action plan includes support for the purchase,
15 installation and development of alternative heating
16 and cooling systems, such as heat pumps, and other
17 energy efficiency measures by customers unable to
18 enroll in gas service due to the moratorium, as well
19 as for gas energy efficiency and cleaning and cooling
20 for existing customers in the area to reduce gas
21 demand.

22 To support commission action on PSL
23 74A, a notice was issued requesting that NYSERDA file
24 a description of the proposed consumer awareness
25 campaign and sustainable and clean energy workshop

1 Public Service Commission Monthly Meeting - 7-11-19
2 program including a description of Con Edison of --
3 sorry, including a description of coordination with
4 Con Edison and -- and Westchester County.

5 NYSERDA filed the proposed Westchester
6 County consumer awareness program plan on May 24th of
7 this year. The proposed awareness program was
8 developed with input from and will be implemented in
9 concert with Westchester County and Con Edison as
10 well as NYPA. Following baseline research to --
11 following baseline research to determine current
12 awareness and need with market segmentation informed
13 by that research, NYSERDA proposes to conduct
14 targeted marketing as well as one-on-one engagement
15 and workshops to educate individuals regarding
16 options available to reduce their energy use in
17 carbon footprint and to heat and cool their spaces
18 without the use of fossil fuels.

19 NYSERDA explains that it will work
20 with trade associations and professional
21 organizations as well as Westchester County, local
22 municipal governments, industrial development
23 authorities, Con Edison, NYPA and the Hudson Valley
24 Regional Economic Development Council to schedule and
25 promote workshops regarding clean energy and energy

1 Public Service Commission Monthly Meeting - 7-11-19
2 efficiency for existing and new construction
3 buildings.

4 NYSERDA explains that the
5 effectiveness of the program will be measured through
6 tracking media performance website traffic and
7 activity, comparison of awareness and implementation
8 to baseline studies, and by monitoring the
9 effectiveness of the action plan programs that the
10 awareness program supports. Consistent with the
11 requirements of PSL 74A, 2 public statement hearings
12 were held in the City of White Plains. In addition
13 written comments were filed.

14 The commenters universally supported
15 the action plan -- the sorry -- universally supported
16 the awareness program as an important tool to enhance
17 the effectiveness of the action plan. Several
18 commenters made recommendations on how to maximize
19 the success of the awareness program in the action
20 plan. In particular, Assemblymember Amy Paulin,
21 Westchester County Executive George Latimer and White
22 Plains Mayor Thomas Roach stated that NYSERDA should
23 ensure that the information on and process for taking
24 advantage of programs should be as streamlined as
25 possible and should work with local governments and

1 Public Service Commission Monthly Meeting - 7-11-19
2 local officials to fully inform communities of their
3 options.

4 Earth Justice, the PACE Energy and
5 Climate Center, the Association for Energy
6 Affordability and E for the Future encourage the full
7 inclusion of low- and moderate-income individuals
8 including through affordable housing providers in
9 collaboration with weatherization contractors. Both
10 the utility intervention unit and Bob Wyman [phonetic
11 spelling] filed comments stating that the awareness
12 program should include detailed and accurate
13 information about the benefits, costs and decisions
14 associated with the installation of heat pumps as
15 well as education on how to operate heat pumps to
16 ensure maximum comfort and efficiency.

17 The draft order finds that the
18 awareness program proposed by NYSERDA complies with
19 PSL 74A and is an effective means of educating
20 customers on both how their usage impacts the system
21 and knowing what programs and options are available
22 to manage their usage. New York's energy goals will
23 only be achieved through widespread participation in
24 the increasingly distributed efficient and clean
25 system envisioned by the -- performing the energy

1 Public Service Commission Monthly Meeting - 7-11-19
2 vision initiative. Such participation must be driven
3 by collaboration between the state, utilities, local
4 governments, community organizers, developers and
5 citizens.

6 The awareness program will advance
7 such collaboration and participation. Therefore, the
8 draft order approves and establishes the awareness
9 program and directs implementation by NYSERDA in
10 collaboration with Con Edison, West -- and
11 Westchester County. In implementing the program,
12 NYSERDA should take comment -- should take the
13 comments into account and ensure that it addresses
14 the recommendations by stakeholders. That concludes
15 my presentation and Peggy Neville and I are available
16 for questions. Thank you.

17 CHAIRMAN RHODES: Thank you, Ted.
18 This is a narrow item responding specifically as
19 instructed by statute. And it would approve a plan
20 for outreach and awareness triggered, of course, by
21 the moratorium in Con Ed's Westchester territory.
22 It's a useful and inclusive plan and one that is very
23 nicely coordinated among program administrators and
24 also coordinated with local government and the New
25 York Power Authority.

1 Public Service Commission Monthly Meeting - 7-11-19

2 It's one specific aspect of a larger
3 issue but it's a very good aspect. I will support
4 this item. Commissioner Burman?

5 COMMISSIONER BURMAN: Thank you. I
6 actually don't see it as narrowly tailored to the
7 legislation. And I have a number of different
8 thoughts and comments on this item. And I do think
9 it's important for us to go through it because while
10 I am very cognizant of the issues, I'm very pleased
11 to see the input from the stakeholders. I am also
12 very aware of the concerns.

13 What I am concerned about is that it
14 is our approach and our implementation of the
15 legislation is not actually with the full record.
16 And is actually trying to give lip service to
17 legislation in a way that is not taking into account
18 a more comprehensive alignment of all of the
19 information that is to come and that we need to have.
20 And a fuller accounting of the history that got us
21 here.

22 And I think it is foolhardy for us to
23 go forward without a recognition of that. And
24 without doing a deeper dive, all we really would be
25 doing is doing more customer confusion. And seeming

1 Public Service Commission Monthly Meeting - 7-11-19
2 to indicate that all in Westchester was now okay
3 because we have now adopted an awareness plan. And,
4 in fact, we still need to do much more deeper
5 analysis and we are awaiting a report that was
6 submitted July 1st and an analysis of that as well as
7 other information is important.

8 So let's take a deeper dive into what
9 this order is. And how it goes askew from the
10 legislation. So looking at -- taking a step back,
11 the legislation came about from the moratorium and
12 came about from the action plan. And the action plan
13 was an announcement that pulled together about 7
14 different things. Some of those plans, some of those
15 bullets from the action plan were adoptions of some
16 action items that the commission had done.

17 Not all of them were tied directly to
18 the commission. And not all of those pieces of the
19 action plan actually were directly connected to
20 Westchester per se. And so when we look at some of
21 that in pulling it together, we have to actually look
22 at what actually the commission itself is now having
23 before us.

24 So if you can take a moment to walk
25 through that action plan and what it is that the

1 Public Service Commission Monthly Meeting - 7-11-19
2 commission is -- has done, and then what is outside
3 of the commission, that would be helpful. And to the
4 extent that we also know from the dollar figure how
5 much of the dollar figure has been expended and -- so
6 far from that.

7 MR. KELLY: Sure. So I can do that.
8 I can give you the total dollar figure. I don't know
9 if we have information at this time on how much has
10 been expended so far. We're fairly early in these
11 programs so my guess would be it would be a small
12 percentage, but I -- I can't give you any specific
13 numbers on that. But I can give you --

14 COMMISSIONER BURMAN: Thank you.

15 MR. KELLY: -- what the total figure
16 was. So -- so the first component listed is a
17 \$165,000,000 Con Edison program supporting heat pumps
18 and energy efficiency. And that was approved by the
19 commission in a February 7th, 2019 order as part of
20 Con Ed's proposal regarding non-pipeline solutions.
21 The term smart solutions is also used for that.

22 The next component was \$28,000,000
23 from a NYSEDA program focused on new construction,
24 incentives and services for new customers including
25 low to moderate income residential development. And

1 Public Service Commission Monthly Meeting - 7-11-19
2 this was in particular focused at customers who were
3 currently in development and who would have sought to
4 have gas service but were unable to get it because of
5 the moratorium and focused on providing incentives
6 for heat pumps and also for other gas efficiency to
7 those customers.

8 The next component was a \$25,000,000
9 NYSERDA program to implement energy efficiency
10 measures for existing customers to reduce overall
11 demand constraints. So those 2 NYSERDA programs were
12 both already in action as part of the Clean Energy
13 Fund which was approved -- the Clean Energy Fund as a
14 whole was approved by the commission back in 2016,
15 January 2016. And they -- there were investment
16 plans that had been filed and approved by staff that
17 had components related to that. And, in particular,
18 that NYSERDA is targeting at gas -- at gas
19 constrained areas. Right now that would be the --
20 the relevant areas of Westchester for some of it.
21 Other -- other gas constrained areas of the state as
22 they -- as any further constraints happen would also
23 be eligible.

24 Let's see, there's a -- there's a
25 separate bullet which lists additional NYSERDA

1 Public Service Commission Monthly Meeting - 7-11-19
2 incentives for clean heating and cooling systems. I
3 believe that's also part of the \$25,000,000. It's
4 not a separate funding pool. There's another bullet
5 that lists \$32,000,000 in financing services provided
6 by the New York Power Authority for its Westchester
7 customers to retrofit heating systems with clean
8 energy alternatives. And that -- so that's money
9 from the New York Power Authority. It's not money
10 that's from any commission program or is under the
11 authority of the commission. That's under NYPA's
12 jurisdiction and authority.

13 And the next two bullets are -- relate
14 to the program that's before the commission now. The
15 consumer awareness campaign and the sustainable and
16 clean energy workshops led by NYSERDA. And NYSERDA
17 reports that the funding for that is expected to be a
18 little bit less than \$1,000,000 per year, and that
19 their proposal is for the program to -- to be in
20 effect for approximately 3 years with potential
21 consideration of extension or expansion based on
22 progress, need, effectiveness and also whether it
23 needs to be expanded to other areas based on gas
24 constraints.

25 COMMISSIONER BURMAN: Okay. Thank

1 Public Service Commission Monthly Meeting - 7-11-19
2 you. That's helpful. And all of that, I think, from
3 my perspective, so this -- we have the January 17th,
4 2019 moratorium as announced by Con Ed. Then we have
5 the February decision by the commission. We have all
6 of these other things already in place. We have then
7 a March 14th, 2019 action plan announced but not
8 voted on by the commission. It's announced and put
9 out there.

10 Then we have a -- then we have a -- a
11 legislation Section 74A, Public Service Law Section
12 74A adopted into law. And then we have a commission
13 session, and we don't mention it or do anything with
14 that. But on April 25th, 2019 a notice is issued by
15 the secretary identifying and asking for now NYSERDA
16 to file an awareness plan and for comments to be
17 received on that. And then that is taken into
18 consideration and then that is what is here before us
19 today. And a new case filing.

20 In the meantime, we also have ongoing
21 cases in the matters as it relates to the moratorium,
22 as it relates to non-pipes, as it relates to the Con
23 Ed rate case, as it relates to the energy efficiency
24 order which also deals and has a lot of activity
25 pretty heavily relating to many things. But, in

1 Public Service Commission Monthly Meeting - 7-11-19
2 particular, heat pump issues and activities. And I
3 think -- I think would say robust comments on that
4 issue. And lots of back and forth.

5 We also have updates from staff and
6 approvals that are coming in from NYSERDA seeking
7 approvals on the investment plans that are aligned
8 back to the 2016 C.F. order and staff is approving
9 them as appropriate aligned with the 2016 order to
10 match up the funding streams that are going in place.
11 Not necessarily coming for approval again to the
12 commission but from since 2016 there have been many
13 different updates and approvals that come in and get
14 approved and changes made to reflect that that will
15 come in and don't necessarily come before the
16 commission for evaluation or approval because it's
17 given to the staff to do so.

18 So I point that out because we're now
19 in a situation where this change in the law is now
20 before us to implement. So the law says within 90
21 days of the effective date of the section, the
22 commission shall in consultation with NYSERDA after a
23 hearing held on notice establish by order, rules and
24 regulations a program to encourage the installation
25 of renewable energy resources and energy efficiencies

1 Public Service Commission Monthly Meeting - 7-11-19
2 in the County of Westchester.

3 Now for the purposes of this section,
4 renewable energy resources and energy efficiency
5 shall have the same meaning as defined by the
6 commission consistent with the most recent state
7 energy plan pursuant to Article 6 of the Energy Law.
8 And for those of you who are wondering, yes,
9 renewable energy resources and energy efficiency are
10 defined in the 2015 State Energy Plan appendices. So
11 you can look for those definitions there. And we are
12 going with the 2015 state energy plan because it
13 hasn't been updated according to the law since, it
14 would have been 2019 if we're going with 2015 the
15 most recent one.

16 So, in any event, 2015 look -- state
17 energy plan that we'd be looking at for purposes of
18 this and those definitions. When I look to this, my
19 concern is that the order seems to go much more
20 beyond just having a program set up that encourages
21 the installation of renewable energy resources and
22 energy efficiencies in the County of Westchester.
23 What do I mean by that?

24 So the order says, 1, it gives more
25 funding than the 250,000,000. It goes for this --

1 Public Service Commission Monthly Meeting - 7-11-19
2 this section of the law which had no -- it was in the
3 budget -- it had no funding attached to it. It was
4 codifying the action plan, which we're not being
5 asked to adopt or vote on or being asked to vote on
6 the awareness plan. This law doesn't ask us to set
7 up an awareness program, but we came up with through
8 the notice of the secretary, not the commission, the
9 awareness program.

10 But, in any event, the awareness
11 program that was filed by NYSERDA is for 3 years and
12 has a budget of \$920,000 for -- annually. That's
13 what the order is saying. So this is effective for 1
14 year. Why do we go beyond the effective date of
15 this?

16 MR. KELLY: So -- so to -- right, to
17 clarify the effective date is one year because it's
18 part of the budget which has a 1-year effective
19 period. But the legislation doesn't actually state
20 that it should be a 1-year program. In theory it
21 could be a 2-month program or a 5-year program. It
22 just requires it to be authorized at a -- on a
23 certain date during that year.

24 And so essentially the reason for it
25 to be a multiyear program is to provide some

1 Public Service Commission Monthly Meeting - 7-11-19
2 certainty of term and to essentially, you know, the
3 develop -- between the development of the program and
4 actually implementing it seem -- it was determined to
5 be appropriate to have it be a multiyear program to
6 provide the continuous messaging to the area over
7 that period.

8 COMMISSIONER BURMAN: All right. So I
9 would agree that it would look from a certainty
10 perspective maybe a 3-year program, maybe a 5-year
11 program, maybe a 10-year program would work. Who
12 determines whether it -- the legislature, which we
13 apparently narrowly tailored to meet the
14 specifications? The legislature decided in the
15 budget this 1-year program for Westchester to meet
16 the demands of this.

17 This action plan was codifying it.
18 Was appropriate for 1 year. They didn't do it
19 outside of the budget. There was no -- there was no
20 funding attached to it. They said 1 year. They --
21 so they didn't say outside of the budget we're going
22 to have legislation that goes beyond that. It's just
23 for Westchester and we've set up now an order that is
24 a potentially -- because there's language that says
25 this may be a statewide program and we're going to do

1 Public Service Commission Monthly Meeting - 7-11-19
2 this potential statewide program for 3 years.

3 Why are we doing this now when we
4 don't have the full record? We don't even have
5 information on whether the action plan is being
6 effective. We don't have the -- because remember
7 when the -- when the announcement came on the action
8 plan and the press release came on the action plan,
9 it also noticed at that time that there was an
10 independent review from D.P.S. on the July 1st report
11 that was to come that was going to give information
12 on what was going on with gas supply.

13 So we don't have that information. We
14 don't have that analysis. We also talked about the
15 fact that the report yet was not there because we
16 were looking to see about aligning it with pending
17 legislation as well. So why would we move forward on
18 further beyond this legislation on information that
19 we don't yet have on whether or not it's appropriate
20 when we don't have more information?

21 Why not just say we're codifying this
22 further for here? We're doing what we need to do for
23 this legislation, but we are waiting for more
24 information to see what else we need to do when the
25 report comes in, when we have other information.

1 Public Service Commission Monthly Meeting - 7-11-19
2 When we see what the -- what's going on with the
3 action plan. When we look at what's happening in the
4 other proceedings. When we look at the upcoming
5 energy efficiency proceeding. Those are the right
6 places to look at that information. I'm just trying
7 to understand the disconnect.

8 MR. KELLY: Yes, I mean, the first
9 component of the awareness program is to -- is -- is
10 essentially a baseline study to determine what
11 current levels are -- of awareness are of these
12 various options and also what current levels of
13 deployment are. So I think to -- to have any kind of
14 a short period would really sort of hamstring the
15 potential of the awareness program in that, you know,
16 the study would probably end up taking up a
17 significant portion of that year when it wouldn't
18 even be a full year since the legislation last year.
19 So it would be only, you know, in April if we just
20 went through the expiry part of the legislation. So
21 6 or 9 months or so.

22 So that really wouldn't allow NYSERDA
23 or their partners the time to set up, you know,
24 advertising programs, workshop programs, outreach.
25 And to, you know, also, you know, presumably enter

1 Public Service Commission Monthly Meeting - 7-11-19
2 into the sorts of multiyear contracts that can be
3 cost effective and effective in terms of actual
4 outreach. So I think it really is, you know, since
5 we're setting up this program in compliance with the
6 legislation, we want to ensure it's set up in a way
7 that it will actually be an effective program. And I
8 think having a period of multiyear certainty is -- is
9 the most or staff -- staff proves that having a
10 period of multiyear certainty is the best way to do
11 that.

12 COMMISSIONER BURMAN: Okay. Thank
13 you. If it was NYSERDA's money and not rate payer
14 money, I wouldn't have an issue. But it's rate payer
15 money and that's where I have an issue. My concern
16 is that we have a lot of studies. We're still
17 waiting on the renewable energy study. Still waiting
18 on a lot of other things. We're still waiting on a
19 report. We're still waiting on analysis. And we
20 don't necessarily have information that is
21 necessarily helping.

22 I don't want to just see us pretending
23 that we are being helpful and saying that we want to
24 avoid customer confusion. And at the same time not
25 actually helping in a way that is giving people

1 Public Service Commission Monthly Meeting - 7-11-19
2 choices and opportunity to have the energy that they
3 need while they await further studies and further
4 analysis and further research. People don't need big
5 marketing campaigns. And I just want to make sure
6 that the collaboration that's being done is not
7 wasteful and is actually helpful.

8 I do think that when we look forward
9 what might be more helpful is, you know, one of the
10 things that I would say is I -- I -- I am very, very,
11 very cognizant of the need to really have quality
12 information out there for people. To really have all
13 the information about the costs and the benefits on
14 all different things in a way that people can make
15 rational choices.

16 But I also don't think that we should
17 just leave it to, you know, go off and go do it.
18 That why wouldn't we say to NYSERDA, if NYSERDA is
19 deemed the right entity, come back to us with your
20 implementation plan and we will put it out there for
21 comments? And we as the commission will say yes to
22 that. Why would I leave that to the staff to -- to
23 adopt that? It's too important.

24 MR. KENNEDY: So I, you know, I do
25 think the awareness program had a reasonable amount

1 Public Service Commission Monthly Meeting - 7-11-19
2 of detail in how it would be implemented. Certainly
3 not every single detail. But I do think it's
4 something where we believe it's appropriate to send
5 them forward and for them to actually start working
6 on the actual outreach and -- and program rather than
7 having to go through sort of a -- a plan -- a second
8 planning process that could really hamper the actual
9 start of studies and also outreach and workshops and
10 advertisements and so on could -- could delay that by
11 a further, you know, probably 6 months or so between
12 the process of them actually putting together
13 something additional and then having a comment period
14 and -- and full consideration of that.

15 COMMISSIONER BURMAN: Okay. So as I
16 see it, I see that they -- we are -- we do have a
17 disconnect. We have a lot of overlap. We have a lot
18 of missing pieces. We have legislation that is
19 targeted to Westchester but we are not necessarily
20 causing real information to be out there. We had not
21 done a real analysis. We do not have the
22 foundational information, and we are really only
23 picking and choosing.

24 You know, we have a gas demand
25 response pilot program. I know we have filings that

1 Public Service Commission Monthly Meeting - 7-11-19
2 have come in. We should be focused on a full
3 briefing of the information that we got on that, how
4 that ties in, how that ties into what's happening in
5 Westchester. But since we also are looking at taking
6 this in this order state wide, the question does
7 become so what does that mean when we're talking
8 about this money. What does that mean from a subsidy
9 perspective?

10 Am I to assume that we should see
11 another action plan press release since it didn't
12 come before the commission last time for Westchester,
13 a Lansing action plan press release. A Long Island
14 action plan press release? A -- I don't know come up
15 with another -- I just want to make sure that we as a
16 commission, as a body, understand the ramifications
17 of this because since in this action plan this pulled
18 out pieces of some of the things that the commission
19 itself did. And I will note for the record that not
20 all of these pieces I had been supportive in -- in.

21 So it really, for me, was not a
22 collaborative action plan. And yet if I vote yes for
23 this awareness plan, the underlying awareness -- the
24 underlying pieces of it are -- are in part adopting
25 the action plan. And yet I will not have oversight

1 Public Service Commission Monthly Meeting - 7-11-19
2 on many aspects of it. I will not be able to
3 evaluate the effectiveness of NYPA's energy
4 efficiency pieces. I will not be able to evaluate
5 the effectiveness of many attributes that may be
6 happening that will not have been directly connected
7 to the commission's funding.

8 So that is of concern to me because
9 what I care about is the true accountability and safe
10 and reliable service that's happening in real time.
11 And if we're being honest, what drove the action plan
12 was there was a moratorium. So we need to look at
13 what is the root causes of that moratorium. And are
14 we still having concerns with that, and has the
15 action plan alleviated any of those? And are we in a
16 better place? And what is the cost benefit analysis
17 that we've done from that?

18 And are we working with all of our
19 partners including the I.S.O. to look at our
20 reliability? And in this order there's no mention of
21 reliability. And for those who still want gas, what
22 are their alternatives? Where's their piece of
23 awareness? When I look at some of the pieces in the
24 filings from NYSERDA in their investment portfolios,
25 it also talked about the clean heat program. But

1 Public Service Commission Monthly Meeting - 7-11-19
2 when you see the filings and the awareness programs
3 that the Power Points that went out in Westchester,
4 it didn't have a lot on that.

5 It really was really focused on just
6 heat pumps. It did not focus on all renewable energy
7 resources. So I wondered is it really geared towards
8 that one particular attribute even though in what the
9 staff approved it was about the neutrality that was
10 supposed to be there. And yet their own Power Points
11 that were there were pushing one particular renewable
12 energy resource, and that concerned me.

13 MS. NEVILLE: Yeah, I guess I'll just
14 say a few points on -- on that is that the NYSERDA as
15 well as Con Edison have full compliments of energy
16 efficiency programs and -- and NYSERDA's case is
17 beyond that. You mentioned the clean heat program
18 which in the investment plan that you reviewed also
19 included some work to biomass as I believe --

20 COMMISSIONER BURMAN: Yes.

21 MS. NEVILLE: -- the one you're
22 referring to. So there's no restriction for
23 certainly the work that will happen under the
24 awareness program working with residents and business
25 owners in any of the affected areas for any programs

1 Public Service Commission Monthly Meeting - 7-11-19
2 that are available to them. Just because we are
3 highlighting certain key technologies here, that
4 doesn't mean they're exempted from other technologies
5 that are -- that exist in certain open enrollment
6 programs.

7 Excuse me, so I would certainly expect
8 that to be part of any local outreach which is the
9 one thing that we heard I think very strongly through
10 the comment process that I believe the awareness
11 programs speaks to is, you know, really working with
12 consumers in the affected areas at their level
13 whether that be through local workshops not just, you
14 know, the flashy marketing campaigns that might be
15 less effective. But really trying to, as Ted
16 mentioned, understand kind of base level
17 understandings from consumers about what their
18 options are.

19 And as we, you know, really look
20 forward because I don't think even in the action plan
21 release it presents itself as the final solution.
22 It's really just the first step in trying to, for all
23 of us collectively to understand how we move forward.
24 But that it's both new construction as well as
25 existing buildings, existing gas customers, making

1 Public Service Commission Monthly Meeting - 7-11-19
2 them as efficient as possible. And what are, you
3 know, all of the various measures that could be
4 implemented.

5 COMMISSIONER BURMAN: Okay. Thank
6 you. I think you both answered my questions. I'm
7 still not satisfied. I do appreciate your due
8 diligence. I think, excuse me, I am concerned. I
9 don't think that we should be deciding this without
10 all of the pieces of the pie. I think that we really
11 do need to have other information and we are trying
12 to limit other information. In some ways, I think
13 that is a disservice to -- and we're not taking into
14 account the -- the significant responsibility of what
15 really led us to the -- the dire circumstances of the
16 -- the moratorium, which I'm speaking about before
17 the moratorium. So it's of concern to me.

18 What I come with is that I do believe
19 that we have an opportunity and we need to all work
20 together. I am very grateful for the legislators for
21 speaking very loudly about their concerns in
22 Westchester, and I think that we could do better.
23 And this order is not a reflection of what we should
24 be doing to make sure that we are holistically
25 addressing that. And then using that as a model to

1 Public Service Commission Monthly Meeting - 7-11-19
2 address the other issues.

3 And we are also forgetting about the
4 other communities who are also needing attention.
5 And if we use this as a model, all we are really
6 doing is band aid approaches, and that is a problem
7 for me. Thank you.

8 CHAIRMAN RHODES: Thank you very much.
9 Commissioner Alesi.

10 COMMISSIONER ALESI: Thank you,
11 Chairman. I think that pursuing our clean energy
12 goals requires an informed participation not only by
13 the general public but utilities and businesses and
14 government agencies as well. And that informed
15 participation will be hopefully a byproduct of this
16 awareness plan. And I think the plan will go a long
17 way towards helping us achieve our clean energy
18 goals. I'll be supporting it.

19 CHAIRMAN RHODES: Thank you very much.
20 Commissioner Edwards?

21 COMMISSIONER EDWARDS: Well, thank you
22 very much, Chair. I first want to thank the staff
23 for providing me all of the information over the last
24 couple weeks on all of the things that are on the
25 regular agenda. I know I asked a lot, for a lot of

1 Public Service Commission Monthly Meeting - 7-11-19
2 information, and I appreciate you taking the time to
3 provide me the information and answer all of my
4 questions.

5 In particular with the consumer
6 awareness program, what I would ask is that we do a
7 little bit more on the consumer side, residential
8 consumer side because when I received the information
9 in terms of the workshops that had already taken
10 place, it really geared towards the business
11 community. And the -- in the order it says that
12 we're offering support to businesses and residents in
13 the area of Westchester affected by the moratorium
14 and that NYSERDA proposes to conduct marketing as
15 well as one-on-one engagement and workshops to
16 educate individuals regarding their options.

17 The more that we can do in terms of
18 community access and informing residents about their
19 incentives will go a long way. So what I would like
20 is two things. One, if we could ask to have some
21 ongoing information about where we are doing all of
22 these workshops. Partnering with the A.A.R.P, the
23 civic associations, the homeowner associations.
24 Making sure that we're all in the low and middle
25 income communities. And then one of the things that

1 Public Service Commission Monthly Meeting - 7-11-19
2 you had said, Mr. Kelly, can I call you Ted?

3 MR. KELLY: Absolutely.

4 COMMISSIONER EDWARDS: Is that you're
5 going to measure the effectiveness through tracking
6 media performance, website traffic and activity.
7 There are a lot of people that don't have access to
8 media performance and websites. So I think we have
9 to add another mechanism that we can provide some
10 feedbacks to ensure that we're getting and collecting
11 all of the feedback from everyone. That we're
12 ensuring that we're getting to the communities that
13 are going to be affected by this the most, and that
14 we have a constant feedback loop so that, you know, I
15 do look at this as a work in progress.

16 I think we can modify this as we go
17 along and we should. But the more information that
18 we could get back from the individual homeowner and
19 what they can do individually to help themselves and
20 the environment would be -- would be beneficial. So
21 I am voting in favor. I want to get it out there,
22 but I want to make sure that we're looking at this as
23 continuous improvement.

24 MS. NEVILLE: Certainly. And I think
25 those are elements that staff -- the staff team could

1 Public Service Commission Monthly Meeting - 7-11-19
2 certainly work with NYSERDA as we're implementing to
3 understand where workshops have been held, where we
4 might plan to offer them, where we might seek out and
5 then reporting as far as the effectiveness of the
6 awareness program. All angles of that to see, you
7 know, what has been most effective to hitting all the
8 target markets.

9 COMMISSIONER EDWARDS: Okay. That
10 would be great because there are gaps. I mean,
11 they're doing a good job in terms of the business
12 community. But when you look at to date where we
13 have communicated in the residential area, it's --
14 it's minor.

15 MS. NEVILLE: Okay.

16 COMMISSIONER EDWARDS: Okay?

17 MS. NEVILLE: Noted.

18 COMMISSIONER EDWARDS: Thank you.

19 CHAIRMAN RHODES: Thank you very much.

20 So with that I will proceed to call for a vote. My
21 vote is in favor of the recommendation to establish a
22 Westchester County consumer awareness program
23 pursuant to Public Service Law Section 74A as
24 discussed. Commissioner Burman, how do you vote?

25 COMMISSIONER BURMAN: No, without

1 Public Service Commission Monthly Meeting - 7-11-19
2 prejudice.

3 CHAIRMAN RHODES: Commissioner Alesi?

4 COMMISSIONER ALESI: Yes.

5 CHAIRMAN RHODES: Commissioner

6 Edwards?

7 COMMISSIONER EDWARDS: In favor.

8 CHAIRMAN RHODES: The item is approved
9 and the recommendations are adopted. Thank you, Ted
10 and Peggy. We will now move to the second item for
11 discussion which is Item 301 Case 18-E-0717 which is
12 in the matter of the December 2018 Electric Emergency
13 Plan Review presented by Laurie Cornelius, emergency
14 preparedness analyst. Christian Bonvin chief in
15 their Office of Resilience and Emergency
16 Preparedness, and Kevin Wisely, director of the
17 Office of Resilience and Emergency Preparedness are
18 available for questions.

19 MS. CORNELIUS: Make sure I don't get
20 yelled at by the secretary. Good morning Chair and
21 Commissioners. Emergency plans are an integral part
22 of a utility's strategy to be prepared for and
23 effectively respond to electric emergency events.
24 Each electric utility is required to develop, update
25 and file with the commission a detailed emergency

1 Public Service Commission Monthly Meeting - 7-11-19
2 response plan that articulates the utility's
3 restoration procedures and processes for emergencies.

4 The plans must comply with Section 66
5 of the Public Service Law and Title 16 New York Code
6 Rules and Regulations Part 105. As noted in Public
7 Service Law Section 6621 all emergency -- I'm sorry,
8 all electric emergency response plans must be updated
9 annually and filed on or before December 15th of
10 every year. Following staff's review, the plans are
11 submitted to the commission for approval.

12 While the primary reasons for the
13 plans are to coordinate restoration efforts, today's
14 plans do much more than detail the technical
15 procedures and processes necessary to restore
16 service. They also focus on the practices required
17 to ensure transparent, accurate and timely
18 communications with customers, the public, and other
19 outside stakeholders before, during and after
20 emergency events.

21 A series of significant storms that
22 occurred in 2018 including winter storms Riley and
23 Quinn prompted a department investigation into all of
24 the New York major electric utilities preparation and
25 response to these events and resulted in the 2018

1 Public Service Commission Monthly Meeting - 7-11-19
2 Winter and Spring Storms Investigation Report that
3 was filed on April 18th, 2019 under Case Number 19-M-
4 0285.

5 The utilities were directed to refile
6 their emergency response plans by May 20th, 2019
7 incorporating the recommendations and explaining why
8 any recommendation should be modified or rejected.
9 Additionally, implementation plans were filed to
10 outline the utility's actions and response to the
11 recommendations. Where applicable, references to the
12 modified sections of the plans were provided.

13 The 2018 Winter and Spring Storms
14 Investigation Report highlighted several areas in
15 need of improvement within the utilities' electric
16 emergency plans. The item presented today addresses
17 45 recommendations which apply to all utilities. 54
18 that apply to NYSEG and 52 that apply to Con Edison.
19 The remainder of the 94 recommendations were either
20 not directly related to language in the emergency
21 response plans or were not fully developed to be
22 included in the plans at this time.

23 The plans for approval before you
24 today are the culmination of multiple rounds of
25 review by staff in the Office of Resilience and

1 Public Service Commission Monthly Meeting - 7-11-19
2 Emergency Preparedness, Office of Electric Gas and
3 Water and Office of Consumer Services. The first
4 review was conducted immediately following the
5 initial plan filings on December 15th, 2018 and was
6 done concurrent with staff's investigation of the 20
7 -- I'm sorry, the investigation into the 2018 winter
8 and spring storms. During this review, staff focused
9 on identifying best practices, further clarifying
10 storm roles and responsibilities, enhancing
11 mobilization, demobilization processes and resource
12 tracking.

13 The second review began in May once
14 the utilities filed revised emergency response plans
15 and implementation plans to address the
16 recommendations in the 2018 winter spring -- winter
17 and spring storms investigation report. During this
18 review, staff determined whether the modifications
19 made to the plans were sufficient to satisfy the
20 intent of the recommendations. Staff held several
21 meetings, phone conversations and e-mail exchanges
22 with each utility to resolve areas where additional
23 information was necessary or to incorporate
24 recommendations we believe needed to be addressed at
25 this point in time.

1 Public Service Commission Monthly Meeting - 7-11-19
2 Staff's review also included
3 identifying opportunities to eliminate ambiguities
4 and specific tasks to set concrete expectations of
5 actions that must be taken by the utilities. As a
6 result the electric utilities recently filed amended
7 plans that reflect the collaborative efforts between
8 staff and the utilities.

9 It also should be noted that staff
10 conducted an initial review of the PSEG Long Island
11 emergency response plan filed in December and is in
12 the process of reviewing their updated plan submitted
13 in May. I will now highlight some of the major
14 improvements made in the amended plans.

15 Damage assessment is a vital action as
16 it leads to developing appropriate work plans,
17 identifying the type and number of resources needed,
18 and establishing estimated times of restoration. The
19 2018 winter and spring storms investigation report
20 found that NYSEG did not have enough resources
21 dedicated to complete damage assessment and that its
22 emergency response plan lacked detail on engaging
23 damage assessors from non-impacted areas and securing
24 outside resources to supplement internal damage
25 assessment resources.

1 Public Service Commission Monthly Meeting - 7-11-19
2 Through discussions with staff,
3 NYSEG's plan now specifies the minimum number of
4 damage assessors needed to perform damage assessment
5 going forward. Processes also exist in all of the
6 plans to ensure damage assessment activities
7 continued by having wire guards deployed timely
8 should an assessor come across a downed line.

9 There was also a staff recommendation
10 for NYSEG to secure contracts with third parties to
11 supplement its damage assessment resources when
12 needed. In its implementation plan, NYSEG offered a
13 bid process timeline. However, it lacked details on
14 the substance of what the anticipated contracts with
15 third parties would include such as the number of
16 resources being sought. As a result, the order
17 before you directs NYSEG to consult with staff and
18 amend its implementation plan on or before September
19 15th, 2019.

20 The estimated time of restoration or
21 E.T.R.s is critical information for customers to make
22 informed decisions during out of -- outage events as
23 they provide the approximate date and time when an
24 electric utility expects service will be restored
25 after a power outage. Staff worked to implement the

1 Public Service Commission Monthly Meeting - 7-11-19
2 E.T.R. related recommendations to avoid the
3 miscommunication and inaccuracy of E.T.R.s. In
4 addition, the E.T.R. protocols were modified to
5 require utilities to provide regional E.T.R.s on a
6 county basis that regional and local E.T.R.s
7 represent 95 percent of impacted customer base, and
8 that references to global E.T.R.s are discontinued
9 once the regional and or local E.T.R.s are published.

10 Public liaisons serve to communicate
11 information between the utilities and counties and
12 municipalities. The ineffectiveness of municipal
13 liaisons was well documented in the 2018 winter and
14 spring storms investigation report and breakdowns in
15 this process require immediate attention. In the
16 past, the plans reflected the liaisons' availability
17 by phone, e-mail or being physically present in an
18 emergency operations or command center.

19 They did not, however, provide the
20 minimum information that the liaisons need to have at
21 their disposal in order to answer specific questions.
22 Today the amended plans incorporate a much wider
23 breadth of information a liaison has access to
24 including daily work plans, crewing numbers and
25 locations, computer systems, circuit maps and

1 Public Service Commission Monthly Meeting - 7-11-19
2 visibility to impact critical facilities and life
3 support equipment customers.

4 By having the additional information
5 and access to real time data, the liaisons are now a
6 better position to provide detailed answers to county
7 and municipal officials. This should also act to
8 reduce the number of questions asked during municipal
9 calls which are better handled through the liaison
10 process.

11 Lastly, a clear process has been
12 included in the amended plans for liaisons to handle
13 escalated concerns and to obtain additional
14 assistance if they are unable to respond to inquiries
15 by emergency managers or governmental officials.
16 While substantial progress has been made, the plans
17 before you today do not address all of the
18 recommendations. However, where possible, interim
19 processes were included in each plan to comply with
20 certain recommendations such as the tracking of road
21 closures that prohibit ingress and egress and the
22 inclusion of the expectation of residential
23 developments with large elderly populations or other
24 similar vulnerable establishments as part of the
25 critical facilities priority categories.

1 Public Service Commission Monthly Meeting - 7-11-19

2 While the list may be small at this
3 point, we expect it to grow as additional
4 collaboration between the utilities and counties and
5 or municipalities continues over the upcoming months.
6 By including these interim processes in the emergency
7 response plans, the utilities are better able to
8 respond than in the past until the processes detailed
9 in the implementation process plans are completed.

10 I do also want to note that Con Edison
11 refiled their emergency plan this morning. In a
12 quick call to them there was an -- an issue with the
13 revision date. Inadvertently they had 7/20/19 as the
14 revision date. It now reflects 7/10/19 so that the
15 plan predates your approval on this order. And also
16 it included tweaking some language in the heat
17 staffing matrix. Not significant language changed
18 and no change to the numbers. This concludes my
19 presentation and we're happy to answer any questions
20 that you may have.

21 CHAIRMAN RHODES: Thank you, Laurie.
22 This is a timely and important item. New York State,
23 I'm afraid, has several danger seasons and we're now
24 entering into the hurricane season. So it's timely
25 to have these in place. And it's important. Good

1 Public Service Commission Monthly Meeting - 7-11-19
2 planning matters always but especially in an
3 emergency event. That would be a bad time to do the
4 planning.

5 So clarity, concreteness and fitness
6 for purpose. And the purpose in my mind is
7 preparing, protecting, restoring and communicating.
8 Clarity and concreteness is -- are the only ways to
9 learn from experience and I note that these plans
10 before us reflect some good learnings and
11 improvements from the 2018 version -- 2017 versions
12 out of the 2018 events. And concreteness and clarity
13 are the only ways -- is the only basis for
14 accountability. I am going to support this item.
15 Commissioner Burman?

16 COMMISSIONER BURMAN: Thank you. So
17 this -- the way the plans came about from commission
18 approval was after Superstorm Sandy in 2013 the
19 legislature in its wisdom sought to have the
20 commission approve the plans and as everyone knows
21 the -- the -- their plans were always done. It was
22 just then after Superstorm Sandy that the commission
23 itself approved them. And the utilities would file
24 every December 15th now and then staff would review
25 them, revisions would get made and then they would

1 Public Service Commission Monthly Meeting - 7-11-19
2 come before the commission for approval. And that's
3 been happening since that time.

4 And it shows I think the collaboration
5 in working with the legislature and the commission
6 and the different stakeholders. And it's a
7 continuous improvement opportunity. The plans are
8 not meant to be static, and with every event, it's a
9 learning opportunity and to see what we can do to
10 plan. There is a need for alignment and review and
11 to see how not only can the utilities continuously
12 improve but how we ourselves can continuously
13 improve.

14 And one of the concerns from where I
15 sit is also now some of the lessons learned having
16 had a few years under our belt in looking at this and
17 the commission approval process. What I like from
18 today's presentation is, one, I think it was a
19 quality presentation. It shows the hard work that
20 went into the plans themselves and the review that
21 went into it from not only the utilities but the
22 staff that's dedicated to the review. And that
23 really shows from that. And shows the dedication on
24 that.

25 But it also wasn't about a enforcement

1 Public Service Commission Monthly Meeting - 7-11-19
2 and a got you. It was about what we're going to do
3 now from an action in getting ready for the next
4 event and working together. And you, Laurie, talked
5 about collaboration. And that was really the intent,
6 I think, behind the plan and from the commission
7 itself from the very beginning was about the need for
8 these plans to not be static but to be flexible and
9 to be really live documents to work through so that
10 we were making changes as necessary. And that is
11 really very important.

12 And I say that because we -- these
13 plans are late in coming to us for approval. And so
14 for me when I look at it, I am glad that they're now
15 here. But we now have to look at a continuous
16 improvement in getting back on track to what is the
17 next steps so that as we look forward and have that
18 timeline we don't get sidetracked with when they come
19 in in December next time that we are late in getting
20 them out there, because that can be very disruptive.
21 And understanding that there were, you know, when we
22 look back what led us to that, some of it was there
23 were enforcement proceedings that were going on.
24 They're continuing to go on that sidetracked us.

25 And to the extent that all of that

1 Public Service Commission Monthly Meeting - 7-11-19
2 also helps to shape the plans but also can be
3 detractions from the plans. And we need to help make
4 sure that we're working together in a way that is
5 helpful to the overall mission of improving the --
6 the plans that are helpful to the customers and to
7 the state as a whole.

8 So I just really want to emphasize
9 it's really about the activities that are going on
10 and the experts that are really driving the ship. So
11 don't get detracted by the others. You guys are
12 really sort of the core and the heart of it more
13 than, you know, other folks, so this is at least
14 where I come from.

15 I also recognize that as we have -- as
16 we're doing this, yesterday was Thank a Lineworker
17 Day. So I do just think it's very important that we
18 do take a moment and -- and, you know -- you know, I
19 think it's important from that perspective. But also
20 on Saturday it will be 42 years since the Blackout of
21 1977. So while we talk about weather events, you
22 know, there are other events that happen. And I
23 think it's very important that we keep that in mind
24 as well because all of these events and keeping the
25 lights on are very, very important. And so our

1 Public Service Commission Monthly Meeting - 7-11-19
2 emergency response plans are very, very critical.

3 From my perspective, looking at sort
4 of continuous improvement and having looked at now
5 over the course of these years since 2013, we have
6 had a number of different things. And we have while
7 we -- we approved these E.R.P.s, the Emergency
8 Response Plans, we also do have other things. We
9 have the scorecards and now we have the resiliency
10 plans that will be starting up. And I want to make
11 sure that we are looking at an independently
12 reviewing the matchup of these.

13 And it may be time for us to clearly,
14 as a commission, identify whether or not there's a
15 true alignment with these. And if there is a
16 reasonableness in the metrics that go into these and
17 what are we actually looking at when we are putting
18 together the scorecards that are driving some of the
19 things that go into the E.R.P.s. But also what goes
20 into the E.R.P.s versus what goes into the resiliency
21 plans.

22 And then as we look towards that, is
23 there a difference between, you know, things that are
24 the storm hardening versus the resiliency plans and
25 vice versa because a lot of it may get tied together.

1 Public Service Commission Monthly Meeting - 7-11-19
2 But it does become important from a standards
3 perspective and where things fall in the bucket. And
4 I think that rather than wait to after things, we
5 really do need to have some clear guidelines.

6 And I say that because some of the
7 issues that come come from after the fact with orders
8 to show causes that cause people to be focused on the
9 -- the fight not on the collaboration. And so I want
10 us to be working together on what makes sense versus
11 we're looking to, you know, where can we get you.
12 It's not about a got you it's about what makes sense
13 and looking together to help build that and -- and
14 place it in the right -- the right bucket. And the
15 reasonableness of that.

16 When that comes into the count, I also
17 recognize that there is a need to look at the
18 escalating cost issue. And so you can look at it,
19 depending on where you sit and where you look, you
20 can look and you could say, well, I look and I see.
21 And there doesn't really seem to be an overall
22 escalation of, you know, the costs for the plans
23 themselves. And, you know, in isolation, the E.R.P.s
24 don't have that big of a implementation escalating
25 cost.

1 Public Service Commission Monthly Meeting - 7-11-19

2 It is not necessarily that the plans
3 are the issue. In fact, I don't think the plans are
4 the issue and the -- we do need effective plans. I
5 think that and I think what might be helpful is an
6 independent review that helps give us some true root
7 cause analysis but also some true helpful historical
8 analysis. And it would be easy to say well there's,
9 you know, lots more weather events, lots more damage
10 is caused.

11 We can look at some of the issues with
12 the trees, et cetera and we can point to all of that.
13 What we do need to look at are our expectations and
14 our standards maybe causing some of the escalating
15 costs? And are we also because we are saying even
16 before, you know, the weatherman says it's going to
17 rain or the weatherman says it's going to snow,
18 saying you better get out there because you might get
19 in trouble. So get out there and send all of your,
20 you know, all of your folks out there. That
21 everybody goes out and then there's nothing.

22 COMMISSIONER BURMAN: So we need to
23 take a look at that, right, because that then becomes
24 an issue if they get hit with penalties if they're
25 not there. But if they're there and there's no event

1 Public Service Commission Monthly Meeting - 7-11-19
2 and we've called all -- them all out there but it's -
3 - you know, so there's this issue, right? There's
4 this catch 22 and so we do need to look at that pre-
5 storm expectations as well and what is the
6 reasonableness and what is the -- what is the
7 commission's reasonableness standard. And have it --
8 when it's not in the throes of the event, have some
9 quality conversations and metrics and standards and
10 work through that.

11 And maybe it also is about analyzing
12 those costs and not just deferring them into the rate
13 cases. But having it really done in a way that looks
14 at it outside of the rate case so that some of it
15 also doesn't just get sort of pushed into the rate
16 case and, you know, we don't highlight it as much.
17 But maybe we can address it through a rider or
18 something else that, you know, maybe helps take care
19 of it. But also helps with the reasonableness of our
20 own expectations because I do think that we are not
21 fully taking ownership of our own, perhaps at times,
22 unreasonableness that may come. So I do just point
23 that out.

24 I also want to recognize Laurie's
25 first time in speaking at session. You did an

1 Public Service Commission Monthly Meeting - 7-11-19
2 amazing job and very proud of you.

3 MS. CORNELIUS: Thank you.

4 COMMISSIONER BURMAN: Thanks.

5 CHAIRMAN RHODES: Thank you very much.
6 Should I do -- John Sipos do you have a --?

7 MR. SIPOS: Yes. Thank you, Chair and
8 excuse me, Commissioners for raising this issue right
9 now. But I was actually looking at the last page of
10 the order that you have before you, and I noticed at
11 the end of it there was not actually a provision that
12 would provide or authorize the secretary to authorize
13 an extension of time. And so with your indulgence,
14 staff would propose adding that at this time. And
15 I'd be happy to read that in the record so that we
16 are all up to date if -- if I may.

17 The provision, which would be a new
18 paragraph 4, would be, quote, In the secretary's sole
19 discretion, comma, the deadline set forth in this
20 order may be extended, period. Any request for an
21 extension must be in writing, comma, must include a
22 justification for the extension, comma, and must be
23 filed at least one day prior to the effective
24 deadline, period, close quote. And then what is
25 presently the fourth paragraph would continue on as

1 Public Service Commission Monthly Meeting - 7-11-19
2 the fifth paragraph. Thank you.

3 CHAIRMAN RHODES: Thank you, John. I
4 appreciate the correction. I appreciate the just-in-
5 time nature of it. That addition makes sense to me
6 and as described, I don't need to amend my comments
7 or inclination to support this item. But,
8 Commissioner Burman, do you need to --?

9 COMMISSIONER BURMAN: So I would just
10 say that I would appreciate it we do this at every
11 session so we can vote affirmatively on whether or
12 not we give the secretary the discretion. Just makes
13 --

14 CHAIRMAN RHODES: Thank you. So with
15 that I'm going to turn it over to look to
16 Commissioner Alesi for your comments.

17 COMMISSIONER ALESI: Thank you, Mr.
18 Chairman. Just briefly I -- I don't want to lose
19 sight of the fact that we all do rely on so many
20 people for our everyday conveniences, electricity, et
21 cetera, utilities. Not the least of which our -- our
22 heat, our light, all of those things that many of us
23 were in our own mind deprived of at least 5 times
24 over a number of days during that storm period.

25 Most of the time we have favorite

1 Public Service Commission Monthly Meeting - 7-11-19
2 baseball teams or football teams and we like them and
3 we get very angry with them when they lose a game or
4 2 or maybe don't make the pennants or the World
5 Series, et cetera. But maybe it's a weak analogy.
6 But I have to give at least some credit to the fact
7 that the utilities, the department, emergency
8 response teams, everybody involved in a crisis when
9 it happens are out there for us. And we take them
10 for granted like opening the refrigerator and not
11 only getting something cold but being able to see
12 what's in there.

13 So I think that what -- I am going to
14 support this issue. Some things came out of it that
15 seem so very obvious like clearing roads and
16 communicating better. I mean, who would have thought
17 that some things as simple as that had just got in
18 the way of restoring our electricity. But with
19 regard to this plan, like any other plan, maybe if
20 they were -- the utilities were playing out of a road
21 -- a playbook that wasn't updated, it's certainly
22 getting updated. And I believe it will be
23 continually updated. So that's an opportunity for
24 all of us to learn and maybe take a step back and --
25 and say that we should all be grateful for some of

1 Public Service Commission Monthly Meeting - 7-11-19
2 the things that we take for granted. So I'll be
3 supporting this plan. I think it's a good plan.

4 CHAIRMAN RHODES: Thank you very much.
5 Commissioner Edwards?

6 COMMISSIONER EDWARDS: Thank you,
7 Chair. I just have a question. This says that there
8 were 94 recommendations. 45 of them are -- apply to
9 all utilities. So the ones that are not baked yet
10 and not included in here, I didn't see a date of when
11 that is expected to be included. Is it September
12 15th or is it next year or is there any date that we
13 want to have those other recommendations included?

14 MS. CORNELIUS: So some of the
15 measures that are not included in the plans today
16 would include collaborative efforts that would
17 include other outside parties. For instance, the
18 joint road closure task force that the report speaks
19 about. You know, we're asking telecommunications
20 companies to be a part of that task force,
21 municipalities, counties and the utilities. And --
22 and we're going to part -- play an integral part in --
23 -- in getting people to the table, the right parties
24 to the table. But this is going to be a statewide
25 effort, so it's not like we're targeting one specific

1 Public Service Commission Monthly Meeting - 7-11-19
2 area, for instance, Westchester County. So it's --
3 it's going to take us a little time to do that.

4 In the meantime, we made sure in the
5 plans that are before you today for approval, there's
6 a backstop. You know, there are clear roles and
7 responsibilities for actions that must be taking --
8 taken during events that have wires down that block
9 roads, block communities from getting in or out.
10 Blocking first responders from getting in and out.

11 So, to answer your question, we don't
12 have any set time frame. The September 15th date
13 that we referred to was something, a particular
14 implementation plan from NYSEG that we would -- that
15 we would like to see more detail on which is
16 something that will be able to be turned around
17 quickly. The -- the task force, you know, that's
18 probably going to be months in the making. And, you
19 know, we're going to get new plans this coming
20 December which is right around the corner. And
21 hopefully you're going to see some progress made in
22 the rest of those areas that are going to require
23 more time. But, unfortunately, I can't really give
24 you a -- you know, a --.

25 COMMISSIONER EDWARDS: Okay. So could

1 Public Service Commission Monthly Meeting - 7-11-19
2 I then just ask, because there are specific
3 recommendations, and they're important?

4 MS. CORNELIUS: Yes.

5 COMMISSIONER EDWARDS: They're
6 important for the public, they're important for the
7 workers. Can we then get an update --

8 MS. CORNELIUS: Absolutely.

9 COMMISSIONER EDWARDS: -- in September
10 on the remaining recommendations so that at least we
11 don't lose sight of them? And then, again in
12 December? Because my concern is if we're not asking
13 for it -- for on a particular date, they're going to
14 fall by the wayside unintentionally. So it would be
15 good if we could get an update on where all of them
16 are, right?

17 MS. CORNELIUS: I'd be more than happy
18 to do that.

19 COMMISSIONER EDWARDS: Okay. Thank
20 you.

21 CHAIRMAN RHODES: Thank you very much.
22 With that I will proceed to call for a vote on the --
23 on the matter. My vote is in favor of the
24 recommendations to approve the amended emergency
25 response plans as discussed. Commissioner Burman,

1 Public Service Commission Monthly Meeting - 7-11-19
2 how do you vote?

3 COMMISSIONER BURMAN: Yes.

4 CHAIRMAN RHODES: Commissioner Alesi,
5 how do you vote?

6 COMMISSIONER ALESI: Yes.

7 CHAIRMAN RHODES: Commissioner
8 Edwards, how do you vote?

9 COMMISSIONER EDWARDS: In favor, yes.

10 CHAIRMAN RHODES: Thank you. The item
11 is approved and the recommendations are adopted.

12 We now move to the third item for
13 discussion which is Item 401 Case 16-W-0259 as it
14 relates to the independent monitor's Billing Report
15 and Interim Implementation Plan for New York American
16 Water presented by Mike Rieder, chief Gas and Water
17 Rates and Supply. Tim Canty, chief of Water Policy
18 and Aric Rider, chief of Consumer Advocacy. Will
19 also present Joe Dowling, assistant counsel and Jeff
20 Hogan, deputy director of Management and Operations
21 Audit are available for questions. Mike, please
22 begin.

23 MR. RIEDER: Thank you. Good morning,
24 Chair. Good morning, Commissioners. Item 401 is a
25 draft order approving the independent monitor's

1 Public Service Commission Monthly Meeting - 7-11-19
2 billing report for New York American Water. Before
3 Aric goes into more detail on the report, Tim and I
4 will provide you with a recap of what transpired over
5 the last two years that culminated in the report that
6 is before you.

7 I'm going to take a moment to pause
8 till we get the slide deck up. Great. Thank you.
9 First, I'm going to briefly summarize New York
10 American Water's 2017 rate plan. Tim will then
11 discuss the company's property tax error and staff's
12 report on its investigation of the error. I will
13 then discuss the significant spike and high bill
14 complaints from South Shore customers that occurred
15 during the summer of 2018.

16 The property tax error and the high
17 bill complaints were the basis for the independent
18 monitor's South Shore billing review and
19 investigation of the Sea Cliff district property tax
20 matter at shareholders expense. Aric will then go
21 into detail on the independent monitor final billing
22 report which is the subject of Item 401 and the
23 company's interim implementation plan.

24 Tim will conclude our presentation
25 with a brief status update of the independent

1 Public Service Commission Monthly Meeting - 7-11-19
2 monitor's review of the property tax error and
3 expected future commission actions. So let's start
4 with New York American Water's 2017 rate plan. On
5 May 23, 2017 the commission approved with
6 modification a 4-year rate plan for New York American
7 Water that covered the period April 1, 2017 through
8 March 31st, 2021.

9 The rate plan created two districts
10 for New York American Water. Service Area 1, which
11 consists of the Lynbrook area and several small water
12 districts and Service Area 2, which consists of the
13 Merrick and Sea Cliff areas. The rate plan allowed
14 for levelized increases in revenues for Service Area
15 1 of approximately \$10.1 million annually and
16 levelized increases in revenues for Service Area 2 of
17 about \$3.1 million annually.

18 In addition to the revenue increases,
19 the rate plan contained several important items that
20 are relevant to today's -- to today's discussion of
21 an independent monitor's billing report. First, the
22 rate plan allowed for the reconciliation of revenues
23 and productions costs in order to eliminate any
24 disincentive for the company to promote water
25 conservation. The rate plan also put into place a

1 Public Service Commission Monthly Meeting - 7-11-19
2 conservation-oriented rate design.

3 The conservation rate is an inclining
4 4-block rate which means that the rates charged for a
5 set amount of usage increases as more water is used.
6 For example, the first usage block is for usage up to
7 3,000 gallons a month and is charged at a rate of
8 about \$0.46 per 100 gallons. The second usage block
9 is for the next 3,000 gallons used and is charged at
10 a rate of about \$0.63 per 100 gallons.

11 The third usage block is for the next
12 9,000 gallons used and is charged at a rate of about
13 \$0.90 per 100 gallons. And finally the fourth block,
14 which is the highest block, is the usage over 15,000
15 gallons per month and is charged a rate of about
16 \$1.18 for 100 gallons.

17 The commission also adopted a System
18 Improvement Charge or SIC mechanism which collects
19 the revenue requirement of capital projects that go
20 into service during the latter years of the rate
21 plan. The capital projects included in the SIC
22 mechanism were fully vetted during the rate case by
23 staff and interested parties. However, because the
24 timing of the completion of the projects was so
25 uncertain, for the protection of customers, it was

1 Public Service Commission Monthly Meeting - 7-11-19
2 decided to have the revenue requirement collect any
3 surcharge after the projects go into service rather
4 than have the associated revenue requirement be built
5 into rates during the course of the proceeding, the
6 rate proceeding.

7 Finally, the rate plan allowed for the
8 reconciliation of property taxes which is -- which is
9 common in all multiyear rate plans because it removes
10 the risk of missing property tax forecasts for both
11 the company and its customers. However, in this
12 case, because of the dramatic increases in property
13 taxes for the Sea Cliff district, the commission
14 decided that social -- socialization of property
15 taxes between Merrick and Sea Cliff was not
16 appropriate at that time and required that the
17 incremental property taxes be collected from Sea
18 Cliff customers via a separate surcharge.

19 To summarize, the rate plan, which
20 began on April 1, 2017, put into place the needed
21 tools to encourage water conservation to -- to
22 protect the Long Island aquifer. Tim will now share
23 what happened towards the end of 2017.

24 MR. CANTY: Thank you, Mike. Good
25 morning, Commissioner Rhodes and -- Chair Rhodes and

1 Public Service Commission Monthly Meeting - 7-11-19
2 Commissioners. Today I'm going to discuss the
3 property tax error that occurred in the Sea Cliff
4 service territory.

5 In December 2017, 7 months after a
6 trade order, New York American notified staff that it
7 had made significant errors in its property tax
8 filings with the New York State Tax Department
9 spanning several years that impacted the rates. In
10 January 2018 the commission issued an order for staff
11 to investigate there with two primary directives.

12 First, quantify the impact of the
13 error on customers to ensure customers are held
14 harmless. And, second, find the causes of the error
15 to ensure something like this does not happen again.
16 In April 2018 staff issued its report quantifying the
17 error in an August 2018 the commission issued an
18 order correcting the error. The commission found
19 that the tax filing error occurred over a 3- year
20 period but impacted 5 rate years. The retrospective
21 error amounted to \$2.3 million, but due to customer
22 I.O.U.s and the shutting off of a surcharge, it
23 netted to approximately \$300,000 dollars or a \$68
24 refund for each Sea Cliff customer.

25 Since the error impacted the historic

1 Public Service Commission Monthly Meeting - 7-11-19
2 test year in the rate case, it also impacted rates
3 going forward by approximately \$2.4 million, what I
4 call the prospective error. The commission corrected
5 this forecasting error by lowering Sea Cliff's
6 property tax surcharges and its annual property tax
7 targets.

8 In June 2018 staff issued a report on
9 the causes of the error. In 2012 American Water
10 acquired Sea Cliff and New York Water Service from
11 Aqua. The root cause of the tax filing error was due
12 to a shuffle in plant accounting data when that data
13 was being transferred from Aqua's information system
14 to American Water's information system. That data
15 was downloaded in Microsoft Excel for uploading into
16 a new system and the company performed a data sort
17 that did not include all of the columns. And the in-
18 service date was separated from the plant data it was
19 related to.

20 Staff's report found issues in three
21 departments at New York American Water. The plant
22 accounting department, where the initial data sort
23 error occurred, New York American Water's tax
24 department who was responsible for the tax filings,
25 New York American Water's regulatory team, who was

1 Public Service Commission Monthly Meeting - 7-11-19
2 responsible for a property tax reconciliation filings
3 and rate case filings.

4 The staff report found New York
5 American Water lacked proper controls and -- and was
6 not following some of its existing controls. It
7 found that New York American Water lacked proper
8 supervision and had poor communications within and
9 between departments. And it found certain involved
10 individuals were not following the company's own
11 ethics protocols, and certain individuals withheld
12 known material facts in the rate case in the property
13 tax reconciliation filings.

14 The staff report had specific
15 improvement recommendations in those areas, and that
16 report together with the high bill complaints that
17 Mike is about to discuss were the basis for the
18 consent order.

19 MR. RIEDER: Thank you, Tim. On July
20 -- on July 30th, 2018 New York American Water began
21 receiving an influx of high bill complaints from
22 customers on the south shore of Long Island. The
23 complaints either came directly from customers or
24 from local elected officials on behalf of customers.
25 Over 600 complaints were received in the first week

1 Public Service Commission Monthly Meeting - 7-11-19
2 alone.

3 The company immediately notified staff
4 of the steep increase in complaints and assembled a
5 team using many resources from its parent company to
6 investigate the cause of the complaints as well as
7 track and respond to each of the complaints received.
8 Staff set up daily calls with the company to monitor
9 its efforts in determining the cause of the
10 complaints as well as to monitor the company's
11 handling of the complaints.

12 By mid-August, over 1200 complaints
13 were received by New York American Water. Over the
14 course of 3 weeks, New York American Water evaluated
15 the accuracy of its metering and billing systems and
16 looked for any operational issues that could have
17 resulted in the significant number of high bill
18 complaints received. It soon became apparent that
19 the company's lack of adequate communication to
20 customers about the implementation of the
21 conservation-oriented rate design and educating
22 customers on how they can conserve water led to the
23 South Shore high bill complaints.

24 On August 18th, 2019 [sic] Governor
25 Cuomo announced an agreement with New York American

1 Public Service Commission Monthly Meeting - 7-11-19
2 Water that provided more than \$11,000,000 in lowered
3 bills and other benefits for the company's 1,000 -
4 120,000 customers on Long Island. The agreement
5 provided for accelerated rate relief to all customers
6 as well as the suspension of the highest rate block
7 of the conservation rate in the South Shore area that
8 surprised many customers due to the company's
9 insufficient advanced notice of the rate changes.

10 The agreement also addressed the
11 commission's findings that the company improperly
12 withheld information related to the property tax
13 assessments in the Sea Cliff district which Tim had
14 just discussed and required the company to pay for an
15 independent monitor to oversee complaint handling and
16 the implementation of the new internal controls.

17 On August 29th, the commission filed a
18 legal action in State Supreme Court in Albany County
19 against New York American Water. The legal action
20 was filed concurrently with a proposed consent order
21 and judgement that resulted in litigation and ensured
22 that customers receive the financial benefits
23 promised in the agreement. The consent order and
24 judgement was issued on September 11th, 2018.
25 Specifically, the consent order provided the

1 Public Service Commission Monthly Meeting - 7-11-19
2 following relief:

3 Established an independent monitor to
4 investigate the South Shore billing review and the
5 Sea Cliff property -- in the Sea Cliff district
6 property tax matter at shareholders' expense; it
7 required New York American Water to adopt all
8 internal controls outlined in the 2018 staff report;
9 accelerated a \$7,000,000 refund of the Town of
10 Hempstead garbage district settlement to customers
11 and accelerated a \$2.3 million credit to customers
12 arising out of the Tax Cuts and Jobs Act.

13 It required the shareholder portion of
14 the garbage district's settlement of about \$1,000,000
15 to be used on a conservation study and rebate
16 program. It also set aside \$1,000,000 in shareholder
17 funds to facilitate the Village of Sea Cliff's
18 acquisition of New York -- of New York American Water
19 property located in the village.

20 It suspended block 4 rates for all
21 Service Area 1 customers for rate year 2 at
22 shareholders' expense of up to \$2.5 million. It
23 suspended the revenue production costs and property
24 tax surcharge as of November 1st, 2018. And finally
25 required New York American Water to implement a

1 Public Service Commission Monthly Meeting - 7-11-19
2 robust education and outreach program to explain the
3 rate changes to customers prior to implementation of
4 rate year 3 and rate year 4 increases and educate
5 customers regarding the conservation-driven inclining
6 block rate design.

7 To put the savings in context for a
8 typical residential customer, a Service Area 1
9 residential customer using 8,000 gallons a month
10 received a one-time federal tax credit pass back of
11 \$1.47, received a one-time local tax savings credit
12 of \$4.34, and continues to receive an ongoing federal
13 tax credit pass back of \$2.48 each month.

14 A residential customer using 20,000
15 gallons during a single month - 20,000 gallons would
16 put it into tier 4 -- during a single month between
17 April 1st and October 19th received a tier 4
18 retroactive credit of \$4.74. Or if that same
19 customer used 20,000 gallons during a single month
20 between October 22nd and March 31st, the end of rate
21 year 2, it would have received a tier 4 suspension
22 credit in the same amount, \$4.74 for that month.

23 For Merrick customers, a typical
24 residential customer using 8,000 gallons a month
25 received a one-time federal tax credit pass back of

1 Public Service Commission Monthly Meeting - 7-11-19
2 \$0.64, received a one-time local tax savings credit
3 of \$3.90, and receives an ongoing federal tax credit
4 pass back of a \$1.28 each month.

5 For Sea Cliff customers, again, a
6 typical residential customer using 8,000 gallons a
7 month received the one-time federal tax credit pass
8 back of \$1.43, received a one-time Sea Cliff property
9 tax credit of \$68.14, and continues to receive an
10 ongoing federal tax credit pass back of \$1.28 each
11 month.

12 On October 18th, 2018, the commission
13 issued its order authorizing contract for independent
14 monitor to P.A. Consulting for both the property tax
15 error and South Shore high bill complaint.

16 Concurrently New York American Water embarked on a
17 conservation study and the development of a robust
18 communication plan for 2019. New York American Water
19 conducted a customer survey to gain insights and
20 understand opportunities regarding water use,
21 receptivity to conservation initiatives and
22 communication preferences.

23 New York American Water also did a
24 detailed data analysis of consumption data, high
25 usage root cost analysis, sector and spatial analysis

1 Public Service Commission Monthly Meeting - 7-11-19
2 and analyzed the impact of the conservation rates.
3 The customer survey and data research demonstrated
4 that there is a great opportunity for outdoor water
5 use conservation. And that customers want more
6 information about their consumption and are receptive
7 to conservation education.

8 Using the knowledge gained from the
9 customer survey and data analysis, New York American
10 Water and a strategic communication consultant
11 developed a sophisticated communication and
12 conservation campaign which the company calls H2O
13 Control. H2O Control which was rolled out in March
14 2019 went far beyond the regulatory customer notice
15 requirement in advance of the April 1 rate year 3
16 rate increase.

17 Extensive communication has taken
18 place over multiple platforms including multiple
19 letters to all customers, social media, e-mail,
20 public engagements and through media coverage. H2O
21 Control provides customers with information to help
22 them understand their consumption and how that
23 translates into their water bill, information to
24 place their -- information to place their use into
25 context such as individual letters based upon past

1 Public Service Commission Monthly Meeting - 7-11-19
2 consumption and mid-cycle reads. And tools such as
3 conservation tips, home water use audits and an
4 evapotranspiration watering app coupled with the
5 Rachio 3 Smart Sprinkler controllers to reduce
6 consumption.

7 New York American Water has provided
8 staff a detailed monthly communication plan that
9 extends through August, includes analytics shared
10 weekly and is dynamic in design to adjust to events
11 like weekends, rain and high temperatures. All in
12 all, quite an improvement in customer education and
13 outreach over the last year.

14 On February 25th, 2019 New York
15 American Water filed a petition to postpone the rate
16 year 3 levelization surcharge for Service Area 1
17 customers from April 1st, 2019 to April 1st, 2020.
18 It also proposed to substitute and expand the number
19 of capital projects eligible for cost recovery
20 through the system improvement charge and forego the
21 opportunity to file a rate case for an additional
22 year.

23 On February 27th, 2019 a one-
24 commissioner order was issued postponing a
25 levelization surcharge to provide economic benefit

1 Public Service Commission Monthly Meeting - 7-11-19
2 and reduce customer confusion as New York American
3 rolled -- as New York American Water rolled out its
4 communication plan as provided for in the consent
5 order and judgement. Several procedural orders were
6 issued in March, May and June. The issues raised in
7 the 20 -- in the February 20, 2015 petition will be
8 brought to the commission for its -- for its decision
9 at a later date.

10 Finally, on May 30th, 2019 New York
11 American Water filed to implement a system
12 improvement charge and implement the reconciliation
13 of its rate year two revenue production costs and
14 property taxes. That brings us up to where we are
15 today which is the recommended approval of the
16 independent monitor's billing report. For that I'll
17 turn it over to Aric.

18 MR. RIDER: Thank you. Mike. Good
19 afternoon, Chair and Commissioners. Mike and Tim
20 explained the background for New York American Water
21 to hire an independent monitor and the commission's
22 approval of P.A. Consulting as the monitor on October
23 18th, 2018.

24 Item Number 401 before you today is a
25 draft order regarding P.A. Consulting's final report

1 Public Service Commission Monthly Meeting - 7-11-19
2 which evaluated the cause of the elevated number of
3 bill complaints from customers of New York American
4 Water as well as New York American Water's response
5 to those complaints. The review also looked at New
6 York American Water's billing system, metering
7 devices, communication plan and how the company
8 handled such complaints.

9 P.A. Consulting's final report was
10 submitted on June 26th, 2019 and found that the
11 predominant reason for the extensive bill complaints
12 was New York American Water's failure to properly
13 communicate two changes to its customers. The
14 inclining block rate structure and the pressing need
15 for additional conservation efforts.

16 P.A. Consulting found that New York
17 American Water has taken steps to better address
18 customer complaints and improve its performance. But
19 the final report identifies several additional
20 actions which will improve New York American Water's
21 communication with its customers, produce more
22 accurate and timely bills and reduce customer
23 complaints going forward.

24 MR. RIDER: The final report includes
25 23 recommendations for improvement in the following

1 Public Service Commission Monthly Meeting - 7-11-19
2 areas: Billing system; customer communications;
3 cause of complaints; complaint resolution activities;
4 management processes; and strategies to reduce
5 complaints. In addition, P.A. Consulting recommends
6 New York American Water meet with staff so that any
7 additional modifications can be identified and help
8 to improve the company's performance in future years.

9 P.A. Consulting reviewed the company's
10 billing system for accuracy and reviewed meter test
11 to determine meter accuracy. P.A. Consulting's
12 review of the company's billing system found that
13 longer billing cycles during July 2018 contributing -
14 - contributed to higher customer bills and that
15 proration charges were not defined in New York
16 American Water's tariff. P.A. Consulting also found
17 meter accuracy did not factor into high bills.

18 In reviewing customer bills, P.A.
19 Consulting found the July billing cycles ranged from
20 30 to 35 days while the August billing cycles ranged
21 from 24 to 31 days. Due to the longer billing cycles
22 and the new inclining block rate structure, some
23 customers received higher than average bills. In
24 addition, P.A. Consulting determined that customers
25 with shorter billing cycles were charged prorated

1 Public Service Commission Monthly Meeting - 7-11-19
2 fees which are not defined in the company's tariff.
3 P.A. Consulting recommended the company implement
4 controls to limit the billing cycles to 30 to 31
5 days, define fees in its tariff and educate effective
6 -- affected customers accordingly.

7 In 2017 and 2018 New York American
8 Water used its normal communications to explain rate
9 changes to its customers which included press
10 releases, bill inserts, newspaper ads and website
11 updates. The introduction of inclining blocks rates,
12 however, was not a normal occurrence. P.A.
13 Consulting reviewed the company's communication
14 methods to determine if the company explained the new
15 rate structure and underlying reasons for the change
16 or conservation opportunities for customers to save
17 water. P.A. Consulting found that the company's
18 communications sent to customers did not outline the
19 impact the including block rate structure could have
20 on customer's -- customer bills or the need for water
21 conservation to provide long-term protection of the
22 Long Island Aquifer.

23 P.A. Consulting concluded the company
24 failed to adequately educate its customers about the
25 inclining block rate structure and recommends the

1 Public Service Commission Monthly Meeting - 7-11-19
2 company's future communication plans include a
3 detailed explanation of the New York State Department
4 of Environmental Conservation's goal of reducing peak
5 season water usage by 15 percent to ensure the long-
6 term sustainability of the Long Island Aquifer and
7 how conservation rates or inclining block rate
8 structures are a part of that plan. P.A. Consulting
9 also advises that future communication plans include
10 targeted messaging that draws customer attention to
11 rate changes, information about the likely impacts to
12 customer's bills and ways that customers could better
13 control their usage.

14 The final report states New York
15 American Water should proactively notify its
16 customers and stakeholders through numerous
17 communication channels and meeting prior to
18 implementing any new surcharges or change to an
19 existing surcharge. P.A. Consulting recommends the
20 company develop rebate partnerships with various
21 vendors on water conservation products. In addition,
22 P.A. Consulting recommends the company work with
23 staff to develop and implement a program to monitor
24 the progress of communication improvements and
25 complaint reduction. This program should include

1 Public Service Commission Monthly Meeting - 7-11-19
2 regular performance reporting and updated action
3 plans to ensure events like the summer of 2018 do not
4 reoccur.

5 P.A. Consulting sampled 120 complaints
6 received by New York American Water in July and
7 August 2018 to determine the causes of complaints.
8 P.A. Consulting also reviewed training documents used
9 by customer service representatives to handle high
10 bill complaints. P.A. Consulting found that most of
11 the complaints were related to high bills and the
12 customers had high bills and fell into use -- into
13 tier 4 of the inclining block rate structure with the
14 majority having experience -- experienced a year-on-
15 year bill increase of greater than 50 percent
16 compared to July 2017.

17 P.A. Consulting found that the
18 complaint tracking was comprehensive during the peak
19 complaint period. New York American Water opened and
20 closed complaints on a daily basis, closed public
21 service commission complaints on a weekly basis,
22 identified the reason for com -- for the complaint
23 and had appropriate tracking information. P.A.
24 Consulting did determine that root cause analysis of
25 complaints was not completed beyond an initial

1 Public Service Commission Monthly Meeting - 7-11-19
2 assignment of cause and that no information was
3 readily available on how long it takes to close
4 complaints or complaint resolution cycle times.

5 P.A. Consulting conducted a review of
6 weather data to determine if usage was higher from
7 outdoor irrigation usage which is affected by wetter
8 or hotter than normal weather. P.A. Consulting found
9 that weather was not a contributing factor to
10 complaints because July 2018 was slightly wetter --
11 wetter than July 2017 and the temperature in July
12 2018 was almost the same as July 2017 which was close
13 to normal.

14 Overall, P.A. Consulting determined
15 that bill increases were not solely driven by a
16 sudden change in customer behavior, rather likely by
17 a combination of some change in customer behavior,
18 price changes and longer than average billing cycles.
19 P.A. Consulting recommends the company categorize
20 complaints and conduct a root cause analysis of
21 reoccurring outliers. P.A. Consulting recommends New
22 York American Water review all complaints every 6
23 months to validate the root cause and determine, if
24 necessary, remedial action was taken and initiate a
25 complaint resolution cycle time to determine the

1 Public Service Commission Monthly Meeting - 7-11-19
2 average time it takes to address customer complaints
3 to satisfaction.

4 P.A. Consulting reviewed New York
5 American Water's complaint handling procedures
6 focusing on the source and the process. New York
7 American Water's customer advocacy team receives
8 escalated complaints from multiple sources. P.A.
9 Consulting found that the company responds within 2
10 hours for complaints that are related to collections,
11 urgent service issues or no water calls and to all
12 complaints no later than the next business day. P.A.
13 Consulting determined the company's complaint
14 handling procedures did not contribute significantly
15 to the problems which gave rise to this review and
16 stated that the company's procedures are working
17 well.

18 P.A. Consulting found the company made
19 several managerial and process changes during the
20 summer of 2018 to address the high volume of customer
21 complaints. These changes included additional field
22 resources, suspension of tier 4 block rates,
23 suspension of normal credit and collections,
24 suspension of late payment fees, daily meetings and
25 interactions with staff, lowering high bill

1 Public Service Commission Monthly Meeting - 7-11-19
2 exceptions from \$1,000 to \$500 prior to the bill
3 being sent to customer and reaching out to customers
4 who complained to outside agencies or by social media
5 and not directly to the company. P.A. Consulting
6 reviewed written responses to customer complaints and
7 made directly to New York American Water and sampled
8 its resolution activities. Letters sent in response
9 to customer complaints did not address ways for
10 customers to conserve and therefore P.A. Consulting
11 recommends the company include information about
12 conservation measures in future customer
13 communications.

14 P.A. Consulting reviewed New York
15 American Water's management processes by analyzing
16 billing exceptions, average customer usage, estimated
17 meter reading and call answer rates as well as
18 customer satisfaction in budget billing. The company
19 established 3 parameters for billing exception or
20 bill outlier to occur. Only one of the 3 parameters
21 is needed to be true for the company to review the
22 bill before it's sent to the customer. Consumption
23 is 6 times greater than the same prior year period,
24 the current period bill is greater than \$1,000 or the
25 total bill is greater than \$5,000. During August

1 Public Service Commission Monthly Meeting - 7-11-19
2 2018, when complaints spiked, the company revised and
3 lowered its bill exception parameter from \$1,000 to
4 \$500 to help minimize the potential for customers
5 receiving inaccurate bills.

6 P.A. Consulting compared New York
7 American Water's average residential water
8 consumption to all other American Water customers
9 nationwide and found that average consumption at New
10 York American Water was significantly higher. High
11 volume months were about twice the average elsewhere,
12 representing 5,000 to 6,000 gallons more. P.A.
13 Consulting reviewed the amount of the estimated meter
14 reads and found that they accounted for 3.3 percent
15 of all bills issued in 2015, 2016, 2017 and the first
16 10 months of 2018. The percentage was lower and
17 improved at the end of 2018, but P.A. Consulting
18 indicated that this is a relatively high percentage
19 with the top performing utilities averaging around 1
20 percent. P.A. Consulting stated that estimated
21 bills, in particular consecutive estimates, are often
22 a contributing factor to usage related complaints.

23 P.A. Consulting reviewed the average
24 time to answer calls during the months of July
25 through October 2018 and found the company maintained

1 Public Service Commission Monthly Meeting - 7-11-19
2 an average speed to answer calls with a range of 2
3 minutes and 48 seconds to 6 minutes and 30 second --
4 37 seconds. Despite a call volume increase of 900
5 percent, customer service answer time only increased
6 by 20 percent. P.A. Consulting reviewed overall
7 customer satisfaction and reported deterioration of
8 customer satisfaction for overall satisfaction,
9 customer service representatives' overall performance
10 and ease of use of the company's website.

11 P.A. Consulting reported that only 170
12 customers served by New York American Water are
13 registered for the budget billing plan which may
14 conflict with sending appropriate price signals
15 through the inclining block rate structure. P.A.
16 Consulting recommends the company complete a root
17 cause analysis of billing exceptions to help balance
18 billing accuracy with efficient management of the
19 billing process and reduce the number of estimated
20 bills. P.A. Consulting recommends the company
21 maintain its focus on customer satisfaction in 2019
22 and measure performance with customer surveys.
23 Moreover, P.A. Consulting recommends the company
24 complete an analysis to determine if budget billing
25 plans undermine conservation efforts.

1 Public Service Commission Monthly Meeting - 7-11-19

2 P.A. Consulting recommends the company
3 develop a comprehensive complaint reduction strategy
4 with objectives, goals, targets and initiatives.

5 P.A. Consulting further recommends New York American
6 Water report internally on the status of meeting its
7 objectives and develop a strategy to facilitate
8 management review and decision making.

9 While the bill complaint situation was
10 created primarily due to the lack of communication on
11 the company's part, New York American Water was very
12 responsive to what was occurring as the complaints
13 mounted. It handled the volume of complaints well
14 and worked closely with staff to resolve the -- the
15 issues. P.A. Consulting states in its final report
16 that the company provided needed access to New York
17 American Water employees and were very forthcoming
18 with data. Further, the company's suspension of tier
19 4 block rates and late payment fees for rate year 2
20 of the rate plan provided a measure of relief for
21 affected customers.

22 On June 26, 2019 in conjunction with
23 the final report, New York American Water submitted
24 an interim implementation plan in which New York
25 American Water accepted all recommendation made by

1 Public Service Commission Monthly Meeting - 7-11-19
2 P.A. Consulting. For each recommendation the company
3 identified the steps it has taken or will take to
4 implement the recommendation. The timing of such and
5 how New York American Water will demonstrate that it
6 has completed those steps. As outlined in the
7 -- its interim implementation plan,
8 the company has already acted in multiple ways to
9 improve communications with customers in 2019 and it
10 has already begun to address the recommendations in
11 the final report. The draft order stresses that New
12 York American Water remain vigilant regarding
13 customer complaints in finding opportunities to
14 improve in the areas covered in the final report.
15 The draft order recognizes the time sensitivity of
16 P.A. Consulting's recommendations as well as the need
17 for public input on the company's implementation
18 approach. The draft order accepts the interim
19 implementation plan as filed and states the plan will
20 be released for public comment in accordance with the
21 State Administrative Procedure Act.

22 During the public notice period the
23 draft order directs the company to continue its
24 efforts to implement the final report's
25 recommendations. The draft order directs the company

1 Public Service Commission Monthly Meeting - 7-11-19
2 to meet with staff on or about August 1st, 2019 to
3 discuss its implementation progress and staff's
4 review of submitted deliverables regarding its
5 implementation plan. The draft order requires the
6 company to meet again with staff within 30 days after
7 the completion of the SAPA review period or post-
8 summary review period to review the comments received
9 on the interim implementation plan as well as review
10 the company's performance during 2019 for continued
11 improvement going forward.

12 The draft order requires New York
13 American Water, after consultation with staff, to
14 identify improvements or modifications to its interim
15 implementation plan and submit a final implementation
16 plan to the secretary to the commission no less than
17 30 days after the post-summary review period. After
18 the filings are made, the commission can review the
19 proposed final implementation plan and either approve
20 or modify at that time. And now I will turn it to --
21 over to Tim.

22 MR. CANTY: Thanks Aric. P.A.
23 Consulting is currently at the beginning stages of
24 the property tax part of its review and that review
25 is expected to last until 2021 when we anticipate New

1 Public Service Commission Monthly Meeting - 7-11-19
2 York American Waters' next rate filing. The October
3 2018 order approving the selection of P.A. Consulting
4 requires them to review New York American Water's
5 internal controls related to property taxes, review
6 New York American Water's process for engaging with
7 the New York State Tax Department, review New York
8 American Water's process for ensuring accuracy of
9 general rate filings and review the implementation of
10 recommendations contained in the June 2018 staff
11 report.

12 P.A. Consulting has begun its property
13 tax review and has conducted a series of interviews
14 with regulatory ethics, property tax and plant
15 accounting staff. It is currently reviewing New York
16 American Water's 2019 ORPS property tax filing and
17 the property tax reconciliation filing New York
18 American Water recently made with us. P.A.
19 Consulting is required to report its results to the
20 department as well New York American Water's senior
21 management and board of directors. P.A. Consulting
22 has been providing monthly updates on its progress to
23 staff and has been submitting and will continue to
24 submit the required quarterly reports regarding its
25 investigation of the property tax issue.

1 Public Service Commission Monthly Meeting - 7-11-19
2 Now we're going to update you on
3 future commission actions. The final implementation
4 plan for the billing report is expected to be ready
5 for commission action later this year. Staff also
6 expects that the issues related -- the issues raised
7 in the company's February 25th petition in the rate
8 year 2 revenue and property tax reconciliations will
9 be ready for commission action in the fall of this
10 year. The timing of the commission's action on the -
11 - on the Section 70 sale of the Sea Cliff property is
12 contingent on the parties coming to an agreement and
13 the property tax monitors' final report and any
14 associated implementation plan is expected in 2021.
15 That concludes our presentation, Aric, Mike, Jeff,
16 Joe and I are available for any questions.

17 CHAIRMAN RHODES: Thank you very much,
18 Mike, Tim and Aric. This is an important milestone,
19 New York American Water had a tough year last year
20 and even more so, so did their customers. Since then
21 the staff has worked very hard and very well with,
22 I'm glad to note this, good responsive engagement
23 from the company which has gotten us to the point of
24 having an independent monitor in place and therefore
25 the billing independent monitor report is now before

1 Public Service Commission Monthly Meeting - 7-11-19
2 us. This, to me, is well done, it's thorough,
3 factual and clear about failures and remedies and is
4 also true of the planning and act -- implementation
5 planning and the act -- other actions described. I'm
6 encouraged that we're learning lessons and I'm
7 encouraged at the corrective actions that are
8 underway. We do need to stay vigilant and demand
9 much better performance going forward. I'm going to
10 support this item. Commissioner Burman?

11 COMMISSIONER BURMAN: I think I said -
12 - everything that you said I could very much agree
13 with, I think it was well stated. One -- I just want
14 to pull up a -- have you pull up a few of the slides,
15 if that's -- I don't know who that -- who does that,
16 so. Is that -- okay.

17 CHAIRMAN RHODES: Not us.

18 COMMISSIONER BURMAN: Okay, yeah, I've
19 got -- okay, sorry. So I think slide 25, I think it
20 just will be easier than my -- actually it's not that
21 slide, it's maybe the one before it? Yes, it's 24.
22 The last bullet says, complete analysis to determine
23 if budget billing plans undermine conservation
24 efforts. And I just want to point out, I think that
25 we do have challenges whenever we look at budget

1 Public Service Commission Monthly Meeting - 7-11-19
2 billing and it's not just limited to whether budget
3 billing is undermining conservation efforts, it's
4 really any efforts when you're trying to change
5 behavior when you have budget billing. Budget
6 billing can have a unintended consequences of not
7 changing behavior, so it may be helpful for there to
8 look at what's been done in other situations where we
9 have encountered budget billing and it has not been
10 helpful for behaviors that we want to change and of
11 what -- if that's been a problem or not.

12 So to the extent that there may have
13 been studies done or not, it's not just really
14 limited to conservation efforts. And I'm not really
15 sure if the -- and really I guess I'm trying to get
16 an -- an assessment of what are we really trying to -
17 - to get out of here. If an analysis shows that yes,
18 sometimes some people who are on budget billing don't
19 look at their bills then, so that then they're not
20 conserving, what do we do with that, right? Do we
21 then say to them, look at your bills more or don't
22 have budget billing because you're not conserving?
23 Like what -- what is then -- what is then -- what are
24 we looking to do with that information, I guess is
25 really the - is really supposed to be for us, it's

1 Public Service Commission Monthly Meeting - 7-11-19
2 the analysis to do what with, right?

3 MR. RIDER: Right. So they're going
4 to study whether -- as you said, they'll study
5 whether or not budget billing hinders conservation
6 efforts and once we have information that either
7 supports that or doesn't support that, we'll have to
8 develop a strategy in how to deal with that.

9 COMMISSIONER BURMAN: Right.

10 MR. RIDER: So it's too early to tell
11 you what -- what we're going to do --

12 COMMISSIONER BURMAN: Right.

13 MR. RIDER: -- but -- but certainly --
14 we have to -- have to look at the information.

15 COMMISSIONER BURMAN: Right. And then
16 I guess it also --

17 MR. RIDER: And then we develop a
18 plan.

19 COMMISSIONER BURMAN: -- depends for
20 certain people depending on -- there's other factors
21 too, right, whether or not you can afford to pay your
22 bill, whether you have a budget bill or not, it
23 doesn't matter. Whether your bill goes up and down
24 might not matter if you can afford to pay your bill,
25 if you have it electronically or not. So there's

1 Public Service Commission Monthly Meeting - 7-11-19
2 other factors outside of budget billing and the
3 payment of your bill. So I just -- just it sort of
4 struck me, it could be a deeper analysis, so we may
5 be going -- while I think it's helpful, I just want
6 to make sure that we've sort of -- make sure before
7 we go forward that we kind of look at what it is
8 exactly that we're trying to get at and whether --
9 what resources we're expending into that that's
10 actually brought -- going to be helpful or not so
11 that we, you know, take the appropriate time, but
12 also not sort of go down a rabbit hole that gives us
13 a lot of information that then be like, okay, now
14 what do we do with it, that's all.

15 MR. RIDER: Okay.

16 COMMISSIONER BURMAN: I just want to
17 point that out.

18 MR. RIDER: Thank you.

19 COMMISSIONER BURMAN: And then I think
20 I want to go to, I think it's now slide 26, but
21 obviously my numbers were wrong, so. Yes this is, so
22 on here there's this -- the interim implementation
23 plan. I think this is very helpful, I do like that
24 these -- while this was a lot of -- these were a lot
25 of slides with a lot of words, so it's very, very

1 Public Service Commission Monthly Meeting - 7-11-19
2 helpful, lays out historically as well as the going
3 forward and the action. So this -- these slides will
4 be available for folks after session, right? They'll
5 be on our website, is that correct?

6 MR. RIDER: Yes that's correct.

7 COMMISSIONER BURMAN: Okay, just
8 making sure. It says that the company is to meet
9 with staff on or about August 1st, 2019 and the
10 company's to meet again with staff and I think that's
11 also good that you'll be engaging with them. But I
12 do just want to point out that there have been --
13 just please keep in mind my own sensitivities to the
14 fact that the commission itself and each of the
15 commissioners needs to also be engaged in a way that
16 is appropriate. I have not been comfortable at times
17 when there has been what I feel can be actions that
18 happened that I find out after the fact.

19 When filings get made, you know, and
20 emergency actions get done and I'm not aware of and
21 it turns out that staff has been, you know, working
22 with folks. I just want to make sure that there's an
23 engagement in a timely fashion with commissioners so
24 that, you know, we are all given appropriate time to
25 process things in a way that us, as decision makers,

1 Public Service Commission Monthly Meeting - 7-11-19
2 can be involved in this in -- in a real way. It's
3 very important to me especially because, you don't
4 have to go back to it, but on slide 13 it talks
5 about, you know, executive actions as well as then
6 counsel going to court and a lot of that I felt
7 uncomfortable with because for me it was more about
8 the commission itself has the opportunity to take its
9 own action without necessity to go outside of its own
10 commission orders and enforcement and I don't -- I
11 don't want to -- I don't want to lose that authority
12 and I also don't want to then be left to just
13 approving what's been done by others. So for me,
14 when I saw slide 13 and slide 26, it was very
15 important to me to be focused on that my role is not,
16 you know, a -- a one that is insignificant. So, you
17 know, I just point out that to the extent that
18 engagement with all the commissioners is very
19 important.

20 And then the other is going back to
21 slide 31, thank you. This also -- the future
22 commission actions, this slide is, I think, very
23 helpful. I look forward to looking at the final
24 implementation plan, you know, I think this report is
25 going out there, it's getting SAPA'd, it'll be

1 Public Service Commission Monthly Meeting - 7-11-19
2 noticed. I look forward to all stakeholders giving
3 us information and comments so that we could look at,
4 you know, what we may want to do as a commission on
5 that and then we would have the opportunity to adopt
6 that final implementation plan, is that correct?

7 MR. RIDER: Yes, that's correct.

8 COMMISSIONER BURMAN: Okay. So it's
9 not sort of the -- the end of the story?

10 MR. RIDER: No.

11 COMMISSIONER BURMAN: And then the
12 February 25th petition is also getting -- it also has
13 already been SAPA'd and noticed?

14 MR. RIDER: That's correct.

15 COMMISSIONER BURMAN: Comment period
16 ends when?

17 MR. RIDER: That's a good question.

18 COMMISSIONER BURMAN: Okay. Sorry, I
19 didn't mean to blindside you with that, I should have
20 --

21 MR. RIDER: Yeah, um -- it -- it -- it
22 may -- it -- it -- it -- it may -- it's probably over
23 already.

24 COMMISSIONER BURMAN: Okay, but people
25 can still file comments if they want to right?

1 Public Service Commission Monthly Meeting - 7-11-19

2 MR. RIDER: That's correct.

3 COMMISSIONER BURMAN: Okay. And we
4 anticipate that coming on to a session in the near
5 future?

6 MR. RIDER: Sometime later this year.

7 COMMISSIONER BURMAN: Sometime later
8 this year? And at that time we'll be looking at
9 those attributes that, to the extent that all of that
10 will get flushed into the different things, there --
11 so what aspects of that -- have people commented
12 already?

13 MR. RIDER: I'm -- I'm not familiar
14 with the comments received --

15 COMMISSIONER BURMAN: Have --

16 MR. RIDER: I'm not familiar with any
17 of the comments that received any --

18 COMMISSIONER BURMAN: Okay. Have we
19 done any public outreach in terms of, you know, a --
20 a hearing or anything like that?

21 MR. RIDER: It's not a procedural --
22 it's not procedural --

23 COMMISSIONER BURMAN: Okay. So this
24 is a no --

25 MR. RIDER: -- it's -- unless you have

1 Public Service Commission Monthly Meeting - 7-11-19
2 a hearing.

3 COMMISSIONER BURMAN: There's then no
4 -- there's been no conference or anything?

5 MR. RIDER: No.

6 COMMISSIONER BURMAN: Okay, just --
7 it's just a paper, okay. That's it, thank you very
8 much.

9 MR. RIDER: Welcome.

10 CHAIRMAN RHODES: Thank you very much.
11 Commissioner Alesi?

12 COMMISSIONER ALESI: Thank you
13 Chairman. Something did impress me about this, first
14 of all I was a little bit surprised by the -- the
15 failures of the company that were brought to light,
16 but very quickly after that, company officials
17 reached out personally and I was impressed by the
18 fact that they were willing to own mistakes that they
19 made. They actually were contrite, apologetic and in
20 the same paragraph they promised to take every step
21 necessary to do better and I would compliment the
22 action taken by hiring the outside consulting firm,
23 which I think did a pretty good job of providing us
24 with the information that the -- we're seeing here
25 today so that we can make better decisions. I'm

1 Public Service Commission Monthly Meeting - 7-11-19
2 looking forward to -- I think there's the next
3 contact early in August and later in the year when
4 we'll see some more things, but without seeming
5 overly confident, I am hopeful that things will
6 continue to improve. It seems as though they've laid
7 out a plan and the plan that can be followed, that
8 they're willing to follow and they want to follow.
9 And to the extent that the department and the
10 commission can be helpful with that, that's a good
11 thing because at the end of the day, the service to
12 the people is what matters and that's why we're all
13 here so I'll be supporting the issue.

14 CHAIRMAN RHODES: Thank you very much.
15 Commissioner Edwards?

16 COMMISSIONER EDWARDS: Thank you Chair
17 Rhodes. So I don't even know where to start. I want
18 to -- let me start with saying thank you again to all
19 of you. I probably know more about American Water in
20 the last 3 weeks, this is a really important issue.
21 I was uncomfortable with some of the language as --
22 as all of you know in terms of approving what is --
23 what is here because quite frankly, I think that they
24 have a lot more to do in terms of communication. But
25 I am cognizant and do agree that the best step for us

1 Public Service Commission Monthly Meeting - 7-11-19
2 is to approve this and to get it out for public
3 comment so that we could make sure that we are
4 holding American Water accountable, that the
5 residents have an opportunity to comment on the plans
6 that they have.

7 I do want to ask just a -- a couple of
8 questions. So how quickly does this go out for
9 public comment after today?

10 MR. DOWLING: We're preparing a SAPA
11 notice that we'll publish in the New York Regis --
12 State Register, that should go out on Tuesday. I
13 believe there's a week delay before it's published.

14 COMMISSIONER EDWARDS: Okay.

15 MR. DOWLING: And then we'll be open
16 for comments.

17 COMMISSIONER EDWARDS: Okay. And will
18 they, American Water, proactively communicate with
19 the state, county and local elected officials? And
20 the reason why I'm saying that is because just like
21 the P.S.C. received a lot of the complaints, so did
22 all of the elected officials. And the communication
23 form that I asked for, it looks like that American
24 Water was responsive to the complaints of the elected
25 officials but it was on that specific item, that

1 Public Service Commission Monthly Meeting - 7-11-19
2 individual complaint. So what I want to make sure is
3 that they are proactively sharing this information
4 with all of the public servants that we have.

5 MR. RIDER: So staff meets with New
6 York American Water on a bi-weekly basis to -- to --
7 to go over where they are with this -- with this
8 summer.

9 CHAIRMAN RHODES: Mike, could you get
10 closer perhaps, or?

11 MR. RIDER: They meet with staff on a
12 bi-weekly basis to -- for us to monitor where they
13 are in their progress with the -- with the summer of
14 2019, what they're doing with the communication
15 plans, who they're reaching out to. We will make
16 sure that the company reaches out to local elected
17 officials and shares with them the draft order or
18 excuse me, the -- the order once it's issued and the
19 interim implementation plan.

20 COMMISSIONER EDWARDS: Okay. Because
21 I may have shared with you during my confirmation and
22 hearings, all of the elected officials spoke about
23 this issue. So I think it's important that all of
24 the elected officials get some information on that as
25 well.

1 Public Service Commission Monthly Meeting - 7-11-19

2 MR. RIDER: Absolutely.

3 COMMISSIONER EDWARDS: Okay.

4 MR. RIDER: And the company has been
5 communicating very well with all local elected
6 officials on the island from really beginning, you
7 know, at the end of the summer last year or during
8 the hypo complaint [sic] issues, starting then, going
9 through the winter period, during the development of
10 their communication plan. It's a very high priority
11 for them --

12 COMMISSIONER EDWARDS: Okay.

13 MR. RIDER: -- and we continue to --
14 to monitor their activities in that regard.

15 COMMISSIONER EDWARDS: And what
16 opportunity do we have as commissioners to add
17 recommendations? So for example, I looked at the
18 2019 communication plan and I think that there are
19 more things that can be added to their communication
20 stream. So I know that we have 23 recommendations,
21 so I want to know, like, do I have an opportunity
22 between now and during the public comment period to
23 suggest other things or how does that work?

24 MR. RIDER: So are you asking if you
25 have an opportunity to -- to suggest other things

1 Public Service Commission Monthly Meeting - 7-11-19
2 that they can do with their communication plan --

3 COMMISSIONER EDWARDS: Correct.

4 MR. RIDER: -- or their implementation
5 plan?

6 COMMISSIONER EDWARDS: Well overall in
7 -- not anything new as it relates to the management
8 controls, the communication, the things that are
9 included in the recommendations. It looks like
10 there's 23, if there are additional ones would I be
11 able -- have an opportunity to suggest more?

12 MR. HOGAN: Absolutely. Our staff
13 would be glad to meet with you to hear your -- any
14 commissioner's concerns or thoughts on how the
15 interim implementation plan could be improved, that's
16 why it's out there for comments as well to the public
17 and any other stakeholder who wants to weight in. So
18 the end product will be a final implementation plan
19 that the company will be putting together. Staff
20 will be meeting with the company that will be looking
21 at a draft of that final plan. We can give feedback
22 to the -- to the company as well on where we think it
23 needs to be beefed up and that could be informed by
24 discussion with yourself or other commissioners.

25 COMMISSIONER EDWARDS: Okay.

1 Public Service Commission Monthly Meeting - 7-11-19

2 MR. HOGAN: And at the time the final
3 implementation plan comes to you, if that final
4 product, you had a concern about, that could also be
5 raised and the final implementation plan could be
6 with the commissioner's -- with the commission's
7 approval, be modified.

8 COMMISSIONER EDWARDS: Okay. I just
9 want to make sure that it's not simultaneous, like I
10 want to be able to have an opportunity to look at the
11 feedback that comes in from the public comment and
12 then see if we have an opportunity to say, they
13 pointed out a really good issue, let's give this
14 recommendation so that, you know, because you don't
15 know what you don't know, you don't know what's going
16 to come in, right? So I guess my -- the other piece
17 of it is, in the order it says, any request for an
18 extension must be in writing, is that extension on
19 the comment period or is that an extension for what?

20 MR. RIDER: So it's a -- it's an
21 extension for any of the -- any of the deadlines that
22 are raised in the order, it is not an extension for
23 the comment period.

24 COMMISSIONER EDWARDS: Okay. So when
25 would you expect the final implementation plan to be

1 Public Service Commission Monthly Meeting - 7-11-19
2 ready?

3 MR. HOGAN: We would expect that final
4 implementation plan to be filed sometime in the
5 October, perhaps -- I think October is our best guess
6 right now of when the company would have, you know,
7 have made its changes to the interim implementation
8 plan based on comments it's received, feedback --
9 feedback from staff, that August 1st meeting that was
10 discussed, the meeting 30 days after the end of the
11 irrigation season. So I would expect that by October
12 all that will be baked in, we'll get that report or
13 it will come in

14 -- that will be well after the
15 deadline for the comments under SAPA. So those are
16 public comments, you would be able to see those and
17 you could certainly, as you said, pick one out or
18 more that you think are meritus (phonetic) and that
19 you, you know, believe should be considered in the
20 final implementation -- in the final implementation
21 plan, we can make sure that the -- that that plan
22 addresses those concerns.

23 COMMISSIONER EDWARDS: Okay.

24 MR. HOGAN: And it would come to you
25 probably in the November/December timeframe,

1 Public Service Commission Monthly Meeting - 7-11-19
2 depending on how, you know, all the -- all those
3 moving parts work.

4 COMMISSIONER EDWARDS: Okay. I am
5 concerned about the balance billing and I also want
6 to make sure that what they are communicating in the
7 toolbox that they have, the same information is
8 included in the bill inserts for those seniors. I
9 just want to make sure there's consistency in the
10 communication. I can't tell from that, like I have
11 the listing of what it is that they are communicating
12 in terms of their August communication plan, but it -
13 - it feels like they are emailing one thing, bill
14 inserting another thing and I want to make sure that
15 there's consistency, that -- that all customers are
16 receiving all of the information in different ways of
17 communication.

18 MR. RIDER: Absolutely and that's --
19 that -- that has been the company's intent, to make
20 sure there is a consistent communication using
21 multiple platforms based on the customer's desire for
22 how they want to receive their information. Some
23 customers don't look at their bills, don't look at
24 their inserts, they want to get it by social media
25 and the company's been doing that.

1 Public Service Commission Monthly Meeting - 7-11-19

2 COMMISSIONER EDWARDS: Okay.

3 MR. RIDER: We -- when we meet with
4 the company next Wednesday, I'll be sure to bring
5 this back to their attention to make sure that all
6 customers are receiving a consistent communication.

7 COMMISSIONER EDWARDS: Okay. Because
8 we've got to watch this.

9 MR. RIDER: Yes.

10 COMMISSIONER EDWARDS: This is -- this
11 is really, I guess, unbelievable would be a good way
12 to describe this and, you know, the other
13 commissioners are right, they are doing what they can
14 to clean this up, but they've got a lot of cleanup
15 here. So I think we should get this going and I'm
16 going to approve this, but there's a lot more work to
17 be done, I think, in this matter. Okay.

18 (On the record)

19 CHAIRMAN RHODES: Thank you very much.
20 So with that, I will move to call for a vote on this
21 item. My vote is in favor of the recommendations to
22 approve the billing independent monitor final report,
23 release the interim implementation plan for public
24 comment and direct New York American Water to take
25 further actions as discussed. Commissioner Burman,

1 Public Service Commission Monthly Meeting - 7-11-19

2 how do you vote?

3 COMMISSIONER BURMAN: Yes.

4 CHAIRMAN RHODES: Commissioner Alesi,

5 how do you vote?

6 COMMISSIONER ALESI: Yes.

7 CHAIRMAN RHODES: Commissioner

8 Edwards, how do you vote?

9 COMMISSIONER EDWARDS: Yes.

10 CHAIRMAN RHODES: The item is approved

11 and the recommendations are adopted. So we have one

12 more regular item, but can I break protocol a bit and

13 ask my colleague commissioners and our colleague

14 stenographer if they need a break --

15 COMMISSIONER ALESI: Yes.

16 (Off the record)

17 CHAIRMAN RHODES: Okay. With that,

18 let's -- let's resume, if we could. We're now at the

19 fourth item for discussion, Case -- Item 501, Case

20 15-M-0388, et al as it relates to the 2019 settlement

21 agreement with Charter Communications presented by

22 Brian Ossias, managing attorney and Debbie Labelle,

23 director, Office of Telecommunications, John Sipos,

24 acting general counsel is available for questions and

25 you've all taken a seat at the table, so please

1 Public Service Commission Monthly Meeting - 7-11-19
2 begin.

3 MR. OSSIAS: Good morning, Chairman
4 Rhodes and Commissioners. My name, as indicated, is
5 Brian Ossias, I'm with my colleagues, Debbie Labelle,
6 director of the Office of Telecommunications and John
7 Sipos, acting general counsel. We will be presenting
8 the following item: Before you is item 501
9 consisting of an order adopting a 2019 settlement
10 agreement and reconsidering other related actions in
11 Cases 15-M, as in Mary, -0388 and 18-M, as in Mary, -
12 0178. Before I begin with a review of the background
13 and -- and some of the issues that underline the --
14 the -- the settlement agreement, I -- I would like to
15 point out a minor address, which I believe has been
16 circulated to the commissioner in redline. A minor
17 correction on page 3, we have deleted the reference
18 to compliance order in one spot on page 3 as -- and
19 we have reinserted it to correctly identify that the
20 June 27th, 2018 order -- excuse me, the July 27th,
21 2018 order is, in fact, the correct reference for the
22 compliance order throughout the document.

23 So by way of background, on January
24 8th, 2016 the commission approved the joint petition
25 of Time Warner Cable and Charter Communications, Inc.

1 Public Service Commission Monthly Meeting - 7-11-19
2 seeking to approve the merger of the two companies.
3 At that time, the commission explicitly conditioned
4 its approval on a host of conditions designed to
5 yield incremental net benefits. Among those
6 established conditions was a network expansion
7 condition wherein the commission initially required
8 that extension of Charter's network to pass an
9 additional 145,000 unserved and underserved homes and
10 businesses within 4 years of the close of the
11 transaction. However, as a result of the delays and
12 Charter's deployment in February 2017, Charter and
13 D.P.S. staff began their first settlement discussions
14 aimed at modifying the timeline of the company's
15 network deployment associated with the network
16 expansion condition.

17 The results of those discussions was a
18 settlement agreement that's opted by the commission
19 on September 14th, 2017. While the 2017 settlement
20 agreement addressed specific concerns over the
21 company's buildout schedule and construction
22 milestones, it did not address issues associated with
23 where Charter was required to -- to employ its
24 network under the network expansion condition as
25 those issues had not yet manifested themselves.

1 Public Service Commission Monthly Meeting - 7-11-19
2 Subsequently, Charter and the department staff did
3 disagree on the eligibility of certain address
4 included in Charter's network expansion condition
5 reports.

6 What followed was the issue into
7 several commission orders seeking to clarify which
8 addresses were eligible and which addresses were not
9 eligible culminating in the commission's revocation
10 order and compliance order. Subsequent discussions
11 ensued between Charter and D.P.S. staff aimed at
12 resolving the network expansion condition disputes
13 related to the areas of deployment throughout
14 Charter's footprint. After several months and many
15 extensions, Charter and D.P.S. staff ultimately filed
16 the 2019 settlement agreement on April 19th, 2019,
17 which is before you today for consideration.

18 The 2019 settlement agreement is a
19 reasonable resolution to the disputes that arose in
20 this proceeding and will result in Charter's network
21 expansion efforts being completed in a focused
22 manner. The 2019 settlement agreement fully and
23 finally resolves all of the issues and concerns
24 raised and/or asserted or that could -- that could
25 properly have been raised and/or asserted with regard

1 Public Service Commission Monthly Meeting - 7-11-19
2 to the disputes that gave rise to the commission's
3 revocation order and compliance order and subsequent
4 New York State Supreme Court litigation.

5 Charter's New York customer base will
6 benefit from the further deployment of Charter's
7 video, telephone and broadband network on a schedule
8 that Charter has agreed is achievable. However, the
9 -- the 2019 settlement agreement includes
10 consequences should Charter fail to meet those
11 important milestones. The 2019 settlement agreement
12 not only furthers consumer interests, but it provides
13 stronger incentives for Charter to meet its future
14 buildout commitments. The revisions to Charter's
15 buildout schedule are reasonable and we -- and will
16 require that Charter meet its original commitment to
17 pass 145,000 premises, albeit 18 months later than
18 originally anticipated. Additionally, the 2019
19 settlement agreement ensures that all of the network
20 expansion will take place outside of New York City.
21 Further, the continuation of Charter's communications
22 plan and web portal established in the 2017
23 settlement agreement will provide those with access
24 to Broadband's service, the information that they
25 need to determine whether they will be eligible to

1 Public Service Commission Monthly Meeting - 7-11-19
2 receive service under Charter's revised buildout
3 commitment here.

4 As a result of the 2019 settlement
5 agreement, many of the actions previously taken by
6 the commission have been rendered moot. Those
7 actions include: The order denying Charter
8 Communication, Inc.'s response to order to show cause
9 and denying good cause justifications dated June
10 14th, 2018; the order on compliance dated June 14th,
11 2018, however only with regard to the network
12 expansion condition; the order confirming missed June
13 2018 compliance obligations and denying good cause
14 justifications issued July 27th, 2018 which is now
15 correctly referred to in the draft order as the
16 compliance order; the order denying petitions for
17 rehearing and reconsideration revoking approval
18 issued July 27th, 2018; and finally the March 19th,
19 2018 order to show cause in case 18 M as in Mary,
20 0178, which is the proceeding to investigate whether
21 Charter Communications, Inc. and its subsidiaries,
22 providing service under the tradename Spectrum, had
23 materially breached the New York City franchise
24 agreement. I will now turn it over to Debbie Labelle
25 who will summarize the 2019 settlement agreement in

1 Public Service Commission Monthly Meeting - 7-11-19
2 more detail.

3 MS. LABELLE: Thank you Brian and good
4 afternoon chair and commissioners. As part of the
5 2019 settlement agreement, Charter, among other
6 things, explicitly agrees to include no addresses
7 within the boundaries of the City of New York as a
8 passing; include only residential or business units
9 located outside of the boundaries of the City of New
10 York and which are not passed served or capable of
11 being served by either a standard or non-standard
12 installation by pre-existing network from Charter or
13 any other provider capable of delivering Broadband
14 speeds of 100 megabits per second or higher; include
15 up to, but no more than 9,500 addresses located
16 within the boundaries of Charter's municipal cable
17 franchises in Albany, Buffalo, Mount Vernon,
18 Rochester, Schenectady and Syracuse; include up to,
19 but no more than 9,400 addresses required to be
20 passed pursuant to a grant awarded through the new
21 New York broadband program to a wireline service
22 provider other than Charter; include up to, but no
23 more than 30,000 addresses in Upstate New York that
24 are both identified by Charter and its plan of record
25 and awarded by the -- sorry, Broadband program office

1 Public Service Commission Monthly Meeting - 7-11-19
2 through the new New York broadband program by a grant
3 to a wireless or satellite service provider other
4 than Charter.

5 Charter also agreed to a new schedule
6 for completion of its buildout with interim
7 milestones; payments for missed interim milestones in
8 the amount of \$2,800 for each individual missed
9 eligible passing below the applicable interim
10 milestone. They also agreed to use any funds
11 remaining in the escrow account following Charter's
12 completion of the network expansion condition to fund
13 additional network expansion efforts. They agreed to
14 place \$6,000,000 in escrow within 60 days of
15 commission adoption of the proposed 2019 settlement
16 agreement for the purposes of funding Broadband
17 expansion incremental to those required in the
18 settlement agreement and as directed by the
19 department and make a one-time deposit of \$6,000,000
20 into a fund dedicated to financing incremental
21 Broadband expansion projects selected by the
22 Broadband program office. That concludes our
23 presentation and we'd be happy to answer any
24 questions you may have.

25 CHAIRMAN RHODES: Thank you very much.

1 Public Service Commission Monthly Meeting - 7-11-19
2 I am going to support this item, we have before us a
3 settlement that resolves a number of open matters and
4 delivers for New Yorkers, especially in underserved
5 areas of the state, with a company that is committed
6 and accountable and we've just heard the salient
7 points. It's been a tough process and I'm glad that
8 we have at this point a substantive, good resolution.
9 In all this, there are lessons to be learned,
10 including how to improve process for even greater
11 effectiveness. I chose our path on this matter out
12 of the fullest and strongest conviction that the
13 public interest demanded it, in fact 145,000 public
14 interests that were rightfully expecting Upstate
15 Broadband.

16 I know there's been some discussion of
17 this, but I can't be impeded from pursuing that
18 public interest just because other -- others read the
19 facts as I do and just because others agree with my
20 direction. One additional note, I believed and
21 believe -- believe I was right in my belief, that we
22 needed to move quickly as well as strongly, which
23 meant as soon as possible which meant as soon as some
24 of the impediments to our action had lapsed and this
25 led to my calling for a special session just about 1

1 Public Service Commission Monthly Meeting - 7-11-19
2 year ago. I regret that this step that I took meant
3 that one of my colleagues, Commissioner Burman,
4 couldn't participate in our discussion that day and
5 that concludes my remarks. Commissioner Burman, over
6 to you.

7 COMMISSIONER BURMAN: Thank you. I do
8 appreciate you acknowledging that you regret having
9 gone forward with the session without me. I do note
10 that, as I've stated publically since that time, that
11 I felt there were procedural missteps. I recognize
12 that you are the chair and had the discretion and for
13 your reasons chose to go forward with the special
14 session and I leave it to you for that and there is a
15 high burden as chair to weigh all those decisions and
16 make the determination and I do not, you know -- we
17 -- the decisions we make as energy regulators need to
18 be made not on substance, need to be made based on
19 the substance of the matters before us and not based
20 on personal positions on how we feel about that. I
21 do have concerns as I had expressed then and will
22 continue to in no one's voice being overlooked or
23 being silenced even if it was not intended and it's -
24 - you can't cure someone's -- can't cure after the
25 fact even if one tries to. But I do recognize that a

1 Public Service Commission Monthly Meeting - 7-11-19
2 -- a sorry is offered and I accept that and that's
3 meaningful.

4 I also recognize that where I sit is
5 as the only commissioner who was here at the time of
6 the merger and -- and the approval of that merger and
7 it was the first time that we were approving a large
8 merger of its kind and looking at the public interest
9 standard outside of our normal jurisdiction in
10 including Broadband and looking at doing things that
11 were to enhance and to help spur competition and
12 access beyond what was normal communication for --
13 for folks. And there are probably lessons to be
14 learned in that approval process and in terms of
15 things that we had done and agreements that we
16 entered into at that time thinking that we were -- it
17 was all going to be easier in meeting and targets
18 that we were setting. And as time has shown, some of
19 the -- some of the things that we thought were easy,
20 whether it was

21 -- the company thought it was easy or
22 we thought it was easy or there were other
23 attributes, led to some difficulties and challenges
24 and led to also confusion on what we actually meant
25 and some engagement on that. And it really meant

1 Public Service Commission Monthly Meeting - 7-11-19
2 that we had to take a step back and focus on, in my
3 mind, more of a collaborative nature and engagement.

4 I am disappointed in some of the --
5 what I think is more of a -- at times became too
6 volatile and too much about -- not about figuring out
7 the pathways forward, but more about grandstanding
8 for, you know, taking shots at -- at folks for
9 whatever reasons and didn't necessarily get to
10 helping to figure out positive pathways and
11 solutions, but more about putting people in difficult
12 positions.

13 So for me, I think the -- kind of some
14 of the lessons that I would think are very important
15 is that when I look back at the merger and then going
16 forward and all the different lessons, it's some of
17 the same lessons that I would say are important for
18 us in all of our proceedings. And some of it I've
19 said before, but I think it's worth repeating,
20 especially as we have a new commissioner here and I
21 think as we go forward and our path forward is, I do
22 think that there is not one perfect way to be a
23 regulator. But I do think that an active openness to
24 continuous learning and improving are critical and I
25 do think that a good energy regulator recognizes the

1 Public Service Commission Monthly Meeting - 7-11-19
2 need for independence and true transparency and
3 consumer and investor protections and instilling the
4 public confidence and being forward thinking while
5 understanding our history of what got us here. And I
6 do think that it means having actively engaged
7 regulators and we must be focused on both our
8 historical and present context of our regulations and
9 doing so could help shape and understand our desired
10 future regulatory needs and can help to find short
11 and long-term economically sound solutions and
12 encourage true, sustainable innovation and ensure a
13 continuous drive to improve whether it's the
14 reliability and resiliency of the grid or the
15 telecommunications infostructure and foster
16 productivity and growth. And we as regulators can
17 and must strive to do this through timely, sensible
18 and thoughtful regulatory approval processes with
19 decisions that give clarity and certainty while also
20 allowing some level of flexibility so as not to
21 become stagnant and stale.

22 So we can't just continuously pat
23 ourselves on the back and say we designed, well rules
24 and regulations and we went after folks and enforced,
25 you know, had enforcement actions and we mandated

1 Public Service Commission Monthly Meeting - 7-11-19
2 actions and we brought them to their knees and we
3 succeeded then in producing good regulatory outcomes.
4 The ends don't always justify the means and we have
5 to be mindful of our regulatory powers and how we use
6 them and we have to focus on using judiciously our
7 powers. We can't just be reactive, we're supposed to
8 be developing policies and helping to set up the
9 frameworks together to implement so that we truly are
10 moving forward in a way that has long-lasting
11 soundness.

12 So for me, it is important for us to
13 take a step back and look and I do have some
14 questions, more in the weeds on the order that's
15 separate and apart that gets into sort of the heart
16 of some of the questions on the -- the settlement.
17 But I do just want to take a pause on some of the
18 processes and it's not about sort of going down the
19 road of, you know, the special session, it should
20 have happened, shouldn't have not happened. It
21 happened, the chair, in his discretion, decided to
22 have it, it is what it is and now, for us, it's a
23 question of what does that mean. And the issue
24 really is going forward, it's the certainty in that,
25 for me, is that getting past it means that that type

1 Public Service Commission Monthly Meeting - 7-11-19
2 of activity, that type of special session, I cannot
3 fear that that will happen again, that if I go out of
4 town, that there may be a special session without me,
5 that I have to have worries about that.

6 That doesn't mean just because me that
7 each and every one of us needs to feel that we are
8 part of the whole and so that also gives regulatory
9 certainty to all of the parties and stakeholders,
10 that we are all operating together and that, I think,
11 is a very powerful message and the choices work
12 together and that if there is a session where someone
13 can't be there, there are certain circumstances that
14 work and that are understood for why that may happen,
15 but that it is a together decision for whatever the
16 reasons may be. And obviously there may be certain
17 emergency situations outside of a person's own
18 reasons that may mean that a special session needs to
19 happen, but that there needs to be not for an event
20 just like when we talked earlier today on 301 and
21 emergency responses, we can't be having the
22 conversation in the moment of the crisis or the issue
23 because that will be too volatile and not the right
24 time.

25 So we do need for going forward to

1 Public Service Commission Monthly Meeting - 7-11-19
2 understand and have some confirmation. But that gets
3 to the heart of then sort of our processes in general
4 and some of the things that I've been saying on
5 others in terms of when we decide things and how
6 things work. And some of the issues that we've seen
7 is when people have asked for more time for filing
8 comments or they file comments and we don't decide
9 something for a long time and then all of a sudden we
10 do. We need to have some type of way of people
11 understanding what our process is and why something
12 popped up or why something seems to languish and a
13 recognition of that uncertainty of things languishing
14 for no reason at all or why all of a sudden something
15 just seems to pop on there and maybe sort of a way of
16 getting people to have an opportunity maybe to brush
17 up on whether or not they do -- if they haven't
18 responded, if they haven't updated their comments
19 since 2016 and now we're about to decide something,
20 not overnight have them have to say, wait, wait, but
21 give them time to say, just so you know, this, you
22 know, we need to get an idea of what you might be
23 deciding or something.

24 So those are food for thought and
25 regulatory attributes that I think might help us in

1 Public Service Commission Monthly Meeting - 7-11-19
2 us giving people the feeling of regulatory certainty
3 and producing the -- the -- and encouraging people to
4 feel that we are invested in producing good results
5 and working together truth to -- for the benefit of
6 all. And it is really important that we don't just
7 do the bare minimum and so if we have processes, if
8 we are just checking the box to say yes, we filed
9 that SAPA, but we know that no one really saw it,
10 think about who it may impact and make sure that we
11 have engaged in a way. If we're filing a, you know,
12 if there's a tariff filing that no one ever is really
13 going to read and we know that deep down it actually
14 is going to impact certain customers in a way that
15 they wouldn't necessarily understand, it's on us as
16 commission to be obligated to explain it a little bit
17 more and -- and make sure that -- that we are really
18 doing that due diligence and engaged in that way
19 especially if it has statewide implications.

20 Why do I share this in Charter when
21 we're doing that? Because it is that -- it is that
22 impactful and because the process for me was broken,
23 but I think it is very much going forward, something
24 that is repairable and something that we are very --
25 all of us are engaged in being much more mindful of.

1 Public Service Commission Monthly Meeting - 7-11-19
2 You heard the -- the chair's remarks and I think he
3 is very engaged in -- in taking heart of -- in -- in
4 fixing that part of it and that, to me, is very
5 impactful.

6 As you know, I did have concerns with
7 the petition for rehearing and not having the
8 petition for rehearing filed. That was, I think, a
9 decision and I think there's a difference between a
10 broken process and a difference of opinion that the
11 decision decided. The commission as a whole voted
12 and I was in the minority and I accept that. I
13 disagree with the ultimate decision, but I definitely
14 respect that the majority at the time made not the
15 right call, sorry, made a decision that I, as the
16 dissenting -- as the dissenting vote have respected.
17 And so for me, I did explain why I felt it was
18 important that, you know, that the petition for
19 rehearing should have gone -- gone forward and not
20 just accepted it under -- under the -- the legal
21 ramifications.

22 COMMISSIONER BURMAN: It comes to for
23 me now when we're looking at the settlement
24 agreement, what do I do with whether or not I approve
25 the settlement agreement when I feel that the

1 Public Service Commission Monthly Meeting - 7-11-19
2 threshold issues were wrongly decided and when I feel
3 that the underlying matters were inappropriate and
4 were improper? For me, the distinction is that we --
5 we go back to, in many ways in this order, the
6 revocation order is mooted, the compliance order is
7 mooted -- I'm looking at you to make sure I'm saying
8 the right words, I don't want to have a disagreement
9 with you, so.

10 MR. SIPOS: Yes commissioner.

11 COMMISSIONER BURMAN: Okay. So that
12 what stands is really a modification in essence of
13 the merger which I initially approved. That's a
14 nuanced answer, but it really is technically what
15 we're dealing with. However, the order itself is
16 through a very tortured process. So it's a very
17 difficult process for me that I wouldn't have been
18 able to get to but for the fact that I do feel very
19 strongly that we have won a chair who has publicly
20 acknowledged the concern for having -- has regret for
21 having had the special session without me and I thank
22 you for that. And also, we have -- we're blessed
23 with a new commissioner who I think brings an
24 enormous amount of value to the table and also she,
25 herself, all of that side stuff is not for her. She

1 Public Service Commission Monthly Meeting - 7-11-19
2 was not here for any of that, so she, herself, will
3 not have to -- cannot really contend with the review
4 of that. She, herself, is really all just looking at
5 the settlement agreement itself and whether that is
6 appropriate or not because the -- the noise of all of
7 that before is really something that she can't wade
8 through in a way that would make sense except to the
9 extent of going forward the process must be different
10 because we all have a voice that needs to be
11 recognized and I think that that's a powerful one.
12 So to the extent that that, I think, is really the
13 message that -- for today is that I think we can --
14 we can all embrace.

15 When I look at the settlement, I do
16 just want to pick out a few things that speaks to me
17 in terms of one of the -- the comments that were made
18 was on stop the cap requesting that the commission
19 study the impact of the Charter strike and
20 encouraging Charter to settle the strike at the
21 earliest opportunity. My concern with that is the
22 order does not make it affirmatively clear that we do
23 not, nor shall we ever, use the commission to
24 leverage position for the union or management in
25 their labor management negotiations, we don't, we

1 Public Service Commission Monthly Meeting - 7-11-19
2 should not. And to the extent that that has been
3 some of the concern by folks that that has been done,
4 I think that this should be very clear. It is not
5 within our jurisdiction and it is -- has a chilling
6 effect to do so and I just want to make sure that we
7 understand that we are not involved in -- we do not
8 get involved in labor disputes. Is that fair to say?

9 MR. OSSIAS: I think it's fair to say.
10 I do think that there are -- there are -- there are
11 consequences during a labor dispute that has impacts
12 on or potential impacts on areas under the
13 commission's authority that can be impacted, service
14 quality being one of them. So I think that we still
15 have responsibility to make sure that when there is a
16 labor concern, and this has happened several times
17 during Verizon's, you know, labor issues, we -- we do
18 -- we do ensure that service quality standards are
19 not affected by that. So there are -- there are
20 issues that we need to be very careful, you know, not
21 to ignore.

22 COMMISSIONER BURMAN: Right. But to
23 the extent that it is not seen as wading into any
24 labor dispute or being used as bullying tactics on
25 either end, we have to be very clear. Is that fair

1 Public Service Commission Monthly Meeting - 7-11-19
2 to say?

3 MR. SIPOS: Yes, that's correct
4 commissioner.

5 COMMISSIONER BURMAN: Okay. The other
6 question I have is, the order speaks to that Charter
7 will be required to make a one-time deposit of
8 \$6,000,000 into a fund to be identified by D.P.S.
9 staff or the commission and dedicated to financing
10 incremental Broadband expansion projects selected by
11 the B.P.O. Can you explain to me what makes the
12 distinction between D.P.S. staff or the commission?

13 MR. OSSIAS: Yeah, I'll try to answer.
14 Just to clarify, there's -- there's two separate
15 \$6,000,000 funds.

16 COMMISSIONER BURMAN: Yes.

17 MR. OSSIAS: One is -- I want to -- I
18 want to make sure I'm in the right section of the
19 settlement agreement, so please indulge me for a
20 second. So there's the incremental Broadband fund
21 that would require Charter to make a deposit of
22 \$6,000,000 into a fund to be identified by the
23 department and the commission and dedicated to the
24 construction of additional Broadband passings. There
25 is also the incremental build commitment which --

1 Public Service Commission Monthly Meeting - 7-11-19
2 which requires Charter to make a one-time deposit of
3 \$6,000,000 into a fund to be identified by the
4 Department of Commission. So just to be -- just for
5 absolute clarification, the two \$6,000,000 funds
6 would be treated in a similar manner with regard to
7 how it's identified by the department and the
8 commission.

9 I think the -- I think the intent of
10 having that oversight by the department and the
11 commission is to ensure the flexibility necessary to
12 -- to allow the company to establish a fund that we
13 feel is -- establish an account that we feel is
14 appropriate and to hold them to some accountability
15 going forward once we -- department staff or the
16 commission is comfortable that that is the
17 appropriate mechanism to -- to receive those funds.

18 COMMISSIONER BURMAN: Right. I guess
19 I'm trying to figure out who decides between -- do
20 you decide, do I decide? Who decides D.P.S. staff or
21 the commission?

22 MR. OSSIAS: I think at this point we
23 would -- the staff would do this in consultation with
24 the commission in the first instance.

25 COMMISSIONER BURMAN: What is

1 Public Service Commission Monthly Meeting - 7-11-19
2 consultation with the commission mean? Because I've
3 seen consultation with the commission not be very
4 robust at times.

5 MR. OSSIAS: Well we need to give
6 further thought to that and I can give a
7 consideration right now because there were many other
8 things that were going on during the settlement. So
9 we could certainly consider that and get back to you
10 with regard to what we think options are available.

11 COMMISSIONER BURMAN: I guess my
12 concern is it's in the order, so it's our order so
13 I'm a little concerned. I would just strike D.P.S.
14 staff or and just leave it at commission.

15 MR. OSSIAS: Well it's in the
16 settlement agreement.

17 COMMISSIONER BURMAN: But at the --

18 MR. OSSIAS: The order -- the -- the -
19 - in the section of the order it was simply a summary
20 of the settlement agreement.

21 COMMISSIONER BURMAN: But the order
22 can always modify a settlement agreement and have --
23 we have done that.

24 MR. SIPOS: And this provision really
25 is to ensure accountability, just that there's a way

1 Public Service Commission Monthly Meeting - 7-11-19
2 to -- to track -- track the account. It is, I would
3 suggest, a -- a very modest check that I believe
4 staff is capable of -- of doing. I'm not
5 anticipating today that there would be an issue with
6 it and I believe it would be appropriate for -- for
7 staff. I mean this is -- again this is a -- really a
8 tracking to -- to -- to follow through, to make sure
9 that it is -- it is accounted for. I -- I -- I look
10 at is as a -- as an oversight financing
11 accountability, auditability aspect.

12 COMMISSIONER BURMAN: So I guess I'll
13 give you my perspective. Anyone who's ever listened
14 to me at any session knows that anytime it says staff
15 and not the commission, I have always flagged it.
16 Anyone that ever has listened to me at any time in an
17 order where it says staff or commission knows that I
18 will always question. This is a question I raised,
19 this is a question that I am very comfortable with
20 and for me, the answer of, didn't really think about
21 it, is not sufficient. And I'm not really sure the
22 hesitation on figuring out on why it is inappropriate
23 to have it as the commission being involved in it in
24 a way that takes it away from staff. And my concern
25 is that part of the issue is that I want to look at

1 Public Service Commission Monthly Meeting - 7-11-19
2 this from the perspective of the transparency of it
3 and the involvement of the commission itself because
4 part of when we look at this and some of the concerns
5 that have been raised is what is the commission
6 involved in or not and I want to make sure that my
7 voice is one that's involved, that my involvement is
8 impactful from a substantive perspective and that
9 when I look at it it's also about going forward which
10 gets to the larger issue of, I don't want to see that
11 we go backwards rather than forwards.

12 So right now you have had some success
13 in coming together, if tomorrow things go haywire,
14 are we going to look at now being presented with
15 another revocation order and another compliance order
16 draft before us? How do we prevent that next step?
17 What's -- so those are the things that I guess I want
18 to -- trying to look at.

19 CHAIRMAN RHODES: May I -- may I
20 propose, I think this is -- I think John has been
21 pointing out that this is a narrow almost
22 administrative matter. Maybe I could nearly describe
23 it as identifying an escrow account.

24 MR. SIPOS: That's correct.

25 CHAIRMAN RHODES: Why don't we agree

1 Public Service Commission Monthly Meeting - 7-11-19
2 that you will -- the staff will identify the escrow
3 account and then bring it back to the commission for
4 approval?

5 MR. SIPOS: All right, we will do
6 that.

7 COMMISSIONER BURMAN: So you'd have to
8 change the order language.

9 MR. OSSIAS: No, I mean we can -- the
10 -- the settlement agreement says by the Department of
11 the Commission, so the department will bring it back
12 to the commission. I think -- I think it --

13 CHAIRMAN RHODES: I think the language
14 as is permits the solution and I will stand by that
15 commitment if you'd like.

16 COMMISSIONER BURMAN: Okay.

17 CHAIRMAN RHODES: Thank you.

18 COMMISSIONER BURMAN: So then my next
19 -- thank you. So then my next --

20 CHAIRMAN RHODES: Thank you.

21 COMMISSIONER BURMAN: -- question is
22 on in the -- in the -- right before the discussion
23 section there's a reference to P.S.L. Section 12 and
24 cites to the duty of counsel to the commission
25 subject to the direction of the chairman to represent

1 Public Service Commission Monthly Meeting - 7-11-19
2 and appear for the people of the state and the
3 commission in all actions and proceedings involving
4 any question under this chapter within the
5 jurisdiction of the commission and if directed to do
6 so, to intervene if possible in any action or
7 proceeding in which any question is involved to
8 commence and prosecute all actions and proceedings
9 directed or authorized. So this is our standard
10 P.S.L. Section 12 section and then there's a footnote
11 39 which talks about the legal support for the
12 proposition that any agency may reconsider or rehear
13 a decision on its initiative. And it says that the
14 Court of Appeals expressly held an agency may
15 reconsider and alter a prior determination when
16 there's a change in circumstances.

17 So I think what -- in -- what -- I
18 think what you're trying to do is to say that's the
19 proposition that you can utilize to moot your
20 revocation order and compliance order and change your
21 position going forward. And then the Section 12 is
22 the boiler plate language so that if there's an issue
23 with the settlement agreement you can go to court, is
24 that correct?

25 MR. SIPOS: Yes in part. There are

1 Public Service Commission Monthly Meeting - 7-11-19
2 two issues here and I think you've -- you've
3 identified them. The footnote 39 really goes to the
4 preceding paragraph and the Section 12 reference is a
5 -- anticipates the process by which the ongoing
6 litigation will be resolved consistent with the
7 settlement agreement and that's what this author --
8 that's what -- excuse me, that's what this order is -
9 - is setting up. So if this order is approved and
10 the parties move forward, there is a process by which
11 Charter and -- and the commission, through its
12 counsel, will address and resolve the litigation
13 matters -- the two litigation matters which are
14 pending before Albany County Supreme Court.

15 COMMISSIONER BURMAN: Right. But then
16 you use the 2009 settlement agreement as changed
17 circumstances for the proposition that that changed
18 circumstances of the subject. It results in being
19 able to get rid of the commission actions taken as a
20 result of the disputes.

21 MR. SIPOS: Yes, that's a separate
22 issue. The 2019 --

23 COMMISSIONER BURMAN: Right.

24 MR. SIPOS: -- settlement agreement,
25 yes.

1 Public Service Commission Monthly Meeting - 7-11-19

2 COMMISSIONER BURMAN: Right, right.

3 Okay. So I guess for me, I did take a little pause
4 from that because that gets back to, again,
5 underlying orders that I did not agree with. And so
6 to the extent that we are -- the order itself is one
7 that the language is, for me, and referencing all of
8 that, that -- those are all voided because of the
9 process issues versus the change in circumstances so
10 that the settlement agreement goes to a -- based on
11 the merger and actions from that. Does that make
12 sense?

13 MR. SIPOS: I'm not sure I --

14 COMMISSIONER BURMAN: It's not clean.

15 MR. SIPOS: -- was able to follow that
16 precisely, I -- if I could take a --

17 COMMISSIONER BURMAN: It's -- it's
18 muddled.

19 MR. SIPOS: If I -- well I'm not --
20 I'm not sure that I understood exactly the --

21 COMMISSIONER BURMAN: Right. No, I'm
22 just saying --

23 MR. SIPOS: -- point, but.

24 COMMISSIONER BURMAN: -- it's because
25 the process is muddled, it's a muddled process to try

1 Public Service Commission Monthly Meeting - 7-11-19
2 to get through because the order itself has many
3 different actions that are sort of -- kind of moving
4 and changing based on now the settlement agreement.

5 MR. SIPOS: Well I would actually
6 suggest that it -- it is not muddled from -- from our
7 perspective, from staff's perspective. I would
8 suggest that the 2019 settlement order resolves
9 multiple issues in a comprehensive way, holistically
10 going forward and that as a result of the 2019
11 settlement agreement, previous orders are moot.

12 MR. OSSIAS: I -- I would -- I would
13 add that the -- the -- the orders that preceded
14 revocation and compliance were primarily based on a
15 disagreement on the network buildout. The 2019
16 settlement agreement spends a large part of its time
17 resolving that issue which is the changed
18 circumstance upon which we believe the commission can
19 revisit those orders.

20 COMMISSIONER BURMAN: Okay.

21 MR. OSSIAS: And I agree with -- with
22 -- with -- with John that Section 12 is more in line
23 with what we would do with regard to the resolution
24 of the Supreme Court litigation.

25 COMMISSIONER BURMAN: That makes

1 Public Service Commission Monthly Meeting - 7-11-19
2 sense. And just so we're clear though, when I talked
3 earlier about the need for flushing out on the path
4 forward and looking at what it means from a certainty
5 perspective, Section 12, which has been utilized in a
6 generic way, has now been utilized much more
7 frequently in a way that I am not comfortable with to
8 step outside the bounds of the commission proceedings
9 to go to court affirmatively against companies and
10 then to reach settlements outside of the normal
11 P.S.C. proceedings and then to step back into the
12 commission after the fact outside of the commission
13 itself being involved.

14 So to the extent that when we're
15 looking at the commission and the full commission
16 being involved, that is something -- and I've spoken
17 about this before, but it is something that I just
18 pull up as something that when we look at process,
19 it's important because that establishes in a very
20 real way the certainty and the consistency to those
21 market participants, to the customers and to
22 stakeholders in what our regulatory structure is and
23 will be and it gives the commission its
24 jurisdictional boundaries and helps to set, you know,
25 what we're doing. So I think we need to keep that in

1 Public Service Commission Monthly Meeting - 7-11-19
2 mind and that's very important to me, especially in
3 making sure that the commission as a whole is
4 involved in those decisions. It's different, you
5 know, in terms of, you know, some ministerial
6 material matters, but as to substantive matters,
7 substantive decisions, we need to be very mindful of
8 -- of that, so this -- rather than an after the fact.
9 So just be mindful.

10 One of the other things and then I
11 think I'm through, is that because we did not have a
12 petition for rehearing filed, it was not so much that
13 the petition for rehearing was not filed that was a
14 difficult one, but it left then a vacuum. We had a -
15 - we had the July session, ironically almost a year
16 since then. What a July session, which had two
17 orders, the revocation order and the compliance
18 order, and then now we just -- now we -- and then we
19 had a lot of, you know, procedural extension orders
20 and then we have now the settlement agreement before
21 us. But what we don't have and what is concerning to
22 me is we don't have, as commissioners, a -- anything
23 that showcases what the weakness is and we -- meaning
24 even a confidential legal memo, that showcases the
25 weaknesses of our own position.

1 Public Service Commission Monthly Meeting - 7-11-19
2 So for me, and you once referenced,
3 you know, going to court and the importance of that
4 and enforcement, that when you go that mode, if
5 you're going to settle, it's important that you
6 understand whether or not when you're looking at it
7 if that's a good settlement or not. And part of that
8 is to understand your own litigation risk and
9 weighing it. And I, as a decision maker, feel it's
10 very important that I know, myself, whether we had a
11 strong case. Now, publically the order speaks that,
12 but we never had in the petition -- the -- the
13 petition for rehearing would have showcased some of
14 the weaknesses. And so I do feel that my desire,
15 which I have spoken about, for that memo from counsel
16 should have come to me and that is something that I
17 would like to see with settlement agreements, whether
18 it's this case or another case because I think that
19 that then gives me the tools as a decision maker on
20 sound decision making when I'm deciding the weight of
21 the settlement agreement as well as weighing the
22 public interest because it is, I think, an important
23 component.

24 MR. OSSIAS: I'm -- I -- I -- I think
25 that I'm going to just address the first part of your

1 Public Service Commission Monthly Meeting - 7-11-19
2 question and then turn it over to John. But the
3 company, for its reasons, decided not to pursue the
4 rehearing and ask for the extensions. I can't, you
5 know, I'm not going to sit here and speak for their
6 actions and why they decided to do that, but we -- we
7 did and we have been consistent in -- in -- in our --
8 in our presentations to the commission during the --
9 during the times of the extension that it was -- we
10 had every intension of making sure that SAPAs were
11 going to be issued and in the case

12 -- in this case, Secretary's notices
13 were the issues as well, so the settlement agreement
14 could be reviewed under the -- under that lens as
15 well. So I just wanted to point that out.

16 COMMISSIONER BURMAN: Yeah, it's not
17 about whether the company -- it's about, I think,
18 something that should be -- is part and parcel of
19 from counsel's office.

20 MR. SIPOS: Well I'd like to speak to
21 that, if I may, and I'd like to talk about the public
22 interests, I'd like to talk about efficiency and I'd
23 like to talk about, in my view, the bottom line. And
24 the settlement agreement, from our perspective, from
25 the Office of Counsel's perspective, is in the public

1 Public Service Commission Monthly Meeting - 7-11-19
2 interest because, among other things, it provides for
3 buildout, it provides for buildout that will take
4 place in Upstate New York and it provides for a
5 buildout to occur on a prompt and enforceable
6 timeline. And these considerations plus the funding
7 commitments that we've already discussed clearly
8 weigh in favor in materially advance the public
9 interest of New Yorkers.

10 As to efficiency, the settlement does
11 resolve outstanding litigation matters and it does so
12 without the time, the expense and the delay that
13 could be associated with protracted litigation. So
14 we're much further along in terms of a benefit -- a
15 public benefit and we're much further along in terms
16 of time and that actually allows department staff --
17 it frees up department staff, you know, to pursue
18 other initiatives and other -- other reviews and it
19 provides certainty. So the bottom line from -- from
20 the litigation context that you're speaking of is
21 that with the 2019 settlement agreement and with
22 today's order, from -- from my perspective, the
23 public interest of New Yorkers are in a materially
24 better place today than where they were where things
25 stood a year ago and we have brought -- we have -- we

1 Public Service Commission Monthly Meeting - 7-11-19
2 have presented an option here that provides certainty
3 and provides it in a timely manner. So from a --
4 from a public interest perspective, from a reasonable
5 perspective, this is clearly in favor of the public
6 interest.

7 COMMISSIONER BURMAN: You -- you know,
8 I think -- think -- thank you, because the public
9 interest piece is valid and I appreciate that. The
10 irony of it all is that if I was at the special
11 session, before looking at the revocation order and
12 the compliance order, I would have asked you for the
13 pros and cons on the merits of the case and therefore
14 the weakness of whether or not it was a good order or
15 not and whether it was strong or not would have been
16 some of those very issues. So for me, that gets to
17 some of the heart of the very issues that I'm now
18 asking for that still are not forthcoming.

19 COMMISSIONER BURMAN: That is
20 something that I think is important from a litigation
21 risk perspective and looking at it, I think its part
22 and parcel of any, you know, settlement agreement.
23 Internally I think it's something that I think most
24 prudent legal decision makers would ask for and would
25 add value to any decision, especially when it's, you

1 Public Service Commission Monthly Meeting - 7-11-19
2 know, and -- and would help. I accept that, for
3 whatever reason, that's not going to be forthcoming
4 on decisions, but it is something that I think would
5 be well worth the value of going through. So, thank
6 you very much.

7 CHAIRMAN RHODES: Thank you.
8 Commissioner Alesi?

9 COMMISSIONER ALESI: Thank you Mr.
10 Chairman. This was not an easy process, arriving
11 here, and I think those who might remember the months
12 leading up to this that I wasn't dragged kicking and
13 screaming, but I wasn't happy that we were continuing
14 to give our approval to extensions. At one point I
15 was frustrated enough to suggest maybe we should give
16 a 60-day extension prior to Thanksgiving rather than
17 a 30-day because we knew that it wasn't going happen.
18 And sitting here and having to vote yes, it can be
19 kind of frustrating, but I guess to make a long story
20 short, which probably is more my nature, we -- we
21 knew we had to get somewhere with this because it was
22 on our plates.

23 Maybe we didn't like the way it was
24 put on our plates, but the fact is that there was a
25 call to duty and when you answer the call to duty,

1 Public Service Commission Monthly Meeting - 7-11-19
2 you don't necessarily have to try to figure out how
3 and why the call to duty came about because the
4 object is to serve the public interest first and
5 foremost. And part of the serving the public
6 interest is to look into everything that is presented
7 to you, weigh it, measure it and act on it and we
8 acted on several times, once again, maybe not the
9 most pleasant thing to do. In fact, I believe at one
10 of the sessions I said, I don't want to do this
11 again, it's probably on the record and probably the
12 only one that remembers it. But to make a long story
13 short, once again, I always knew that I was going to
14 be the swing vote and up until the time we have a
15 fifth member, it's possible that, you know, that
16 could be the case for any one of us here. But on
17 this particular issue, it was an additional
18 responsibility, not a burden. I don't think anything
19 we do here as far as voting has to be a burden. At
20 the end of the day, we vote the way we want to vote.
21 I have no regrets about voting on this issue, I
22 always put my confidence, even though I questioned
23 it, reasonably so, my confidence in the department
24 and in the leadership and I will do today as I did
25 all along, I will vote yes on this issue.

1 Public Service Commission Monthly Meeting - 7-11-19

2 CHAIRMAN RHODES: Thank you.

3 Commissioner Edwards?

4 COMMISSIONER EDWARDS: I just have a
5 question about the comments that you and the back and
6 forth with Commissioner Burman. It's unfortunate
7 that some of the comments we would not be able to
8 address, especially when the employees are concerned
9 in the negotiation. And while we can't weigh in on
10 the specifics of the negotiation on either side, we
11 can encourage some sort of settlement because if
12 they're not settled, we can't get this done, right?
13 So I do think that we have some sort of
14 responsibility to say we encourage continued
15 discussions or -- or am I wrong there? Because how
16 are we going to enforce this order to complete this
17 buildout if they're not together? So I just want to
18 just be --

19 CHAIRMAN RHODES: Are -- are you
20 talking about the labor discussions?

21 COMMISSIONER EDWARDS: Yes.

22 CHAIRMAN RHODES: I see.

23 COMMISSIONER EDWARDS: Yeah, so while
24 we can't weigh in one -- on one side or the other,
25 it's to our advantage that they come to some sort of

1 Public Service Commission Monthly Meeting - 7-11-19
2 resolution otherwise how are we going to be able to
3 get this done and hold them to the timelines?

4 MR. SIPOS: So I would suggest that
5 the issue that's before the commissioners today is
6 this 2019 settlement agreement and the proposed
7 order, which concerns the network buildout --

8 COMMISSIONER EDWARDS: Right.

9 MR. SIPOS: -- in -- in Upstate New
10 York.

11 COMMISSIONER EDWARDS: Understood --

12 MR. SIPOS: And --

13 COMMISSIONER EDWARDS: No, I
14 understand. I just wanted to make sure that I --
15 because I just didn't understand the communication
16 between you and Commissioner Burman as it relates to
17 whether we're weighing in on any type of labor
18 negotiation settlement. We don't have a -- we can't
19 do that, but --

20 MR. SIPOS: Right. This order and
21 today -- today's process is -- is -- does not concern
22 -- does not involve that.

23 COMMISSIONER EDWARDS: It's not
24 addressed one way or the other, it's just that the
25 comments that came in related to that.

1 Public Service Commission Monthly Meeting - 7-11-19

2 MR. SIPOS: Yes.

3 COMMISSIONER EDWARDS: Yes? Okay, all
4 right, fine. Okay. The only comment that I have and
5 this is for after this, is, would be able to get the
6 exception process given to us? Because if there are
7 a certain number of addresses that have to be
8 provided, there is an exception process or
9 substitution of addresses. It's not just -- because
10 it's specific addresses that have to be put in, but
11 behind that there's always a, well we thought we were
12 going to be able to do this address, but we can't and
13 then there's a substitution. So I just would be
14 interested going forward, not for today, but for
15 going forward, is understanding what that exception
16 process is because I think that that's very
17 important.

18 MR. OSSIAS: Yes and we will be happy
19 to brief you on that point, but I will generally
20 point out that the settlement agreement does contain
21 several areas where staff will be validating
22 addresses, auditing, so we will be looking at those.

23 COMMISSIONER EDWARDS: But it's the
24 substitution piece of it, so that, you know, we just
25 want to make sure that it's going in the places where

1 Public Service Commission Monthly Meeting - 7-11-19
2 the intent of this order is and not just being
3 heavily skewed one way or the other based on
4 exceptions.

5 MR. OSSIAS: So backing up a little
6 bit, we -- we -- the -- the settlement agreement --
7 one of the other areas that the settlement agreement
8 attempts to resolve is to ensure that we don't have
9 that problem on a large scale going forward because
10 we've identified so many eligible addresses or not
11 eligible addresses, if the case may be, in the first
12 instance.

13 COMMISSIONER EDWARDS: Okay.

14 MR. OSSIAS: It's -- it -- and maybe
15 I'll turn it over to Debbie for a --

16 CHAIRMAN RHODES: Well I think --

17 MR. OSSIAS: -- little more
18 clarification --

19 CHAIRMAN RHODES: I think Brian
20 perhaps -

21 MR. OSSIAS: -- or we can do it on a -
22 -

23 CHAIRMAN RHODES: I think the main
24 point is your commitment to brief --

25 COMMISSIONER EDWARDS: Right.

1 Public Service Commission Monthly Meeting - 7-11-19

2 CHAIRMAN RHODES: -- the commissioner.

3 COMMISSIONER EDWARDS: That's all.

4 MR. OSSIAS: Yes.

5 CHAIRMAN RHODES: Thank you.

6 COMMISSIONER EDWARDS: Okay, thank
7 you. That's all for me.

8 CHAIRMAN RHODES: Commissioners,
9 plural, thank you.

10 COMMISSIONER BURMAN: So I just want
11 to understand what the process is then with the next
12 steps for engagement with the commissioners.

13 MS. LABELLE: So I think we committed
14 to come back to you -- the first thing would be
15 coming back to you with where the escrow would be
16 placed, we'll work with the company and come to a
17 decision and we'll bring that to you for your
18 approval.

19 COMMISSIONER BURMAN: Right. And I do
20 -- I just want to comment, I think that Commissioner
21 Edwards's question was not really fully answered, it
22 doesn't have to be answered here. I think she really
23 was legitimately trying to find out and understand --
24 and I don't mean to put words in your mouth -- what
25 the appropriate boundaries were as it dealt with

1 Public Service Commission Monthly Meeting - 7-11-19
2 labor because I raised the issue of the labor
3 disputes. Obviously there's a lot of concern around
4 that, one of the commenters raised that issue, we did
5 not affirmatively address it in the order and so it
6 leaves some concern especially because there's been a
7 feeling that -- or by some that, you know, we are
8 involved -- involving ourselves. So we need to be
9 very careful that as to labor disputes, we do not get
10 involved in those and what our boundaries are.

11 So while it may not be this item, we
12 do need to be careful that there's not an appearance
13 that we are inappropriately engaged in activities
14 that seem to be done to -- to direct certain outcomes
15 whether for the benefit of management or for the
16 benefit of labor. And to the extent that we are
17 working towards doing things that are helpful
18 overall, like when we have obviously looking at
19 different things through, you know, whether or not
20 there's certain -- I mean in other avenues we get
21 involved in looking at whether there's enough
22 workforce development in other avenues. I just want
23 to be very careful that we are appropriately
24 addressing these issues outside of this forum because
25 I think it's important and we're mindful of that.

1 Public Service Commission Monthly Meeting - 7-11-19

2 I also want to be mindful of that as
3 to, you know, the next steps for how we engage or how
4 staff engages with commissioners on enforcement
5 actions and going forward in -- in settlements, that
6 that's -- or if there's disruption or disputes, that
7 before it's -- gets out of hand that you -- we are
8 engaged in that way because I don't -- I don't want
9 it to be, now we're back to a situation. I know that
10 previously there had been requests for an A.L.J. to
11 be assigned, that may be something that we look at,
12 so that's all.

13 COMMISSIONER EDWARDS: I'm good, I'm
14 good.

15 COMMISSIONER BURMAN: Thanks.

16 CHAIRMAN RHODES: Thank you very much.
17 So I think we're ready, at this point, to call for a
18 vote and I'll proceed to vote myself. My vote is in
19 favor of the recommendations to adopt the 2019
20 settlement agreement and reconsider other related
21 actions as discussed. Commissioner Burman, how do
22 you vote?

23 COMMISSIONER BURMAN: I'm not going to
24 be voting for this item because the order itself is
25 tied too much to the underlying orders that are

1 Public Service Commission Monthly Meeting - 7-11-19
2 problems for me and the ends don't justify the means.
3 While I do support the overall underlying merger and
4 I do -- I am happy that we have moved beyond what I
5 think was a problem with the revocation order and the
6 compliance, I can't, in good conscience, vote for
7 something that I think was a problem process that
8 would only encourage continued justification.
9 However, I am comfortable with the path forward and I
10 do think that we've had a dialogue in what needs to
11 be for future engagement on that. So this is not a
12 voting no meaning that I support a revocation order
13 on compliance, it's a vote no to the actions that
14 were taken predating this. Thank you.

15 CHAIRMAN RHODES: Thank you.

16 Commissioner Alesi?

17 COMMISSIONER ALESI: I vote yes.

18 CHAIRMAN RHODES: Thank you.

19 Commissioner Edwards?

20 COMMISSIONER EDWARDS: I think that
21 the Upstate folks need to have their Broadband as
22 quickly as possibly especially in the low-income
23 areas, so if this is going to get us there, I'm all
24 in so I vote in favor.

25 CHAIRMAN RHODES: Thank you very much.

1 Public Service Commission Monthly Meeting - 7-11-19
2 The item is approved and the recommendation is
3 adopted -- recommendations are adopted, excuse me.

4 We will now move to the consent
5 agenda. Do any commissioners wish to comment on or
6 recuse from voting on any items on the consent
7 agenda? Commissioner Burman?

8 COMMISSIONER BURMAN: I'm just getting
9 my notes, sorry. For item 261 I'm voting in favor of
10 the tariff amendments filed by Orange and Rockland
11 Utilities that made permanent the rates and
12 provisions for rate year 1. Notwithstanding that I
13 concurred in the underlying order that approved the
14 company's rates. I am voting in favor of this item
15 because the tariffs that set forth are consistent
16 with this order. I am voting in 373, I am abstaining
17 from voting on this item. It does -- while I am
18 supportive that it votes to grant in part the
19 petition for rehearing, it does change the program
20 dynamics and I do think that that changes a policy
21 direction and I think that we should be awaiting the
22 full commission as well as looking at what this means
23 in light of all the E.V. and the white paper that is
24 soon to come out. Thank you.

25 CHAIRMAN RHODES: Thank you very much.

1 Public Service Commission Monthly Meeting - 7-11-19
2 Commissioner Alesi?

3 COMMISSIONER ALESI: Yes, thank you,
4 Mr. Chair. Under item 165A, Case Number 19-G-0423, I
5 would like to recuse myself from voting.

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

8 COMMISSIONER EDWARDS: On item 167, I
9 just want to point out that I'm glad to see that
10 we're doing more in terms of performance and holding
11 people accountable for training and compliance
12 because as it relates to 165, there's 20 alleged
13 violations and 165B there's 11 more. I want to make
14 sure that we're doing -- and it looks like we are,
15 we're doing whatever we can to ensure that the --
16 that the companies are not using the fine as a cost
17 of doing business, that they're taking it seriously
18 that they need to be compliant with the safety
19 protocols and the training and everything that they
20 need to do to keep people safe. It's very important,
21 so I am glad to see that we're taking this step and -
22 - and I look forward to seeing if we could do even
23 more to ensure that they are compliant with the
24 safety aspects of excavation and also how they are
25 putting together the piping and so forth.

1 Public Service Commission Monthly Meeting - 7-11-19

2 CHAIRMAN RHODES: So, Commissioner,
3 just to clarify, you're drawing favorable attention
4 to these items?

5 COMMISSIONER EDWARDS: Absolutely,
6 certainly.

7 CHAIRMAN RHODES: And they will be --
8 they will be a yes in your consent --

9 COMMISSIONER EDWARDS: It's a yes.

10 CHAIRMAN RHODES: -- vote.

11 COMMISSIONER EDWARDS: Yes, it's a
12 good thing.

13 CHAIRMAN RHODES: Okay. Are you good,
14 Secretary?

15 COMMISSIONER BURMAN: I think you just
16 need to call for the vote.

17 CHAIRMAN RHODES: I know, but that's
18 clear enough?

19 COMMISSIONER EDWARDS: Yes, thank you.

20 CHAIRMAN RHODES: Okay, terrific.

21 COMMISSIONER EDWARDS: Thank you.

22 CHAIRMAN RHODES: So with those
23 remarks and recusals, et cetera, I will -- I call for
24 a vote on the consent agenda. My own vote is in
25 favor of the recommendations on the consent agenda.

1 Public Service Commission Monthly Meeting - 7-11-19
2 Commissioner Burman?

3 COMMISSIONER BURMAN: Yes.

4 CHAIRMAN RHODES: As modified.

5 Commissioner Alesi?

6 COMMISSIONER ALESI: Yes as noted.

7 CHAIRMAN RHODES: Thank you.

8 Commissioner Edwards?

9 COMMISSIONER EDWARDS: In favor, yes.

10 CHAIRMAN RHODES: The items are
11 approved and the recommendations are adopted. Dare I
12 ask, Secretary Burgess, is there anything --

13 SECRETARY BURGESS: There's nothing --

14 CHAIRMAN RHODES: -- further to come
15 before us today?

16 SECRETARY BURGESS: Nothing further
17 for today.

18 CHAIRMAN RHODES: Thank you very much.

19 Thank you all colleagues.
20
21
22
23
24
25

1 Public Service Commission Monthly Meeting - 7-11-19
2 STATE OF NEW YORK
3 I, KATHERINE WOLLEBEN, do hereby certify that the
4 foregoing was reported by me, in the cause, at the time
5 and place, as stated in the caption hereto, at Page 1
6 hereof; that the foregoing typewritten transcription
7 consisting of pages 1 through 156, is a true record of all
8 proceedings had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 19th day of July, 2019.

11

12

13 KATHERINE WOLLEBEN, Reporter

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A	
A.A.R.P 30:22	72:20 86:3 87:5,7 91:17,20
A.L.J 150:10	92:5,22 104:25 106:10 110:5,7
a.m 1:13 2:2	117:25 118:2 132:3,8 133:19
able 25:2,4 41:7 52:11 54:16	134:11 135:3 139:6 150:5,21
100:11 101:10 102:16 123:18	151:13
133:19 134:15 144:7 145:2	active 116:23
146:5,12	actively 117:6
absolute 127:5	activities 4:7 15:2 38:6 45:9
Absolutely 31:3 55:8 99:2	73:3 79:8 99:14 149:13
100:12 103:18 154:5	activity 6:7 14:24 31:6 119:2
abstaining 152:16	actual 21:3 23:6,8
accelerated 65:5 66:9,11	add 31:9 99:16 135:13 141:25
accept 115:2 122:12 142:2	added 99:19
accepted 82:25 122:20	adding 50:14
accepts 83:18	addition 6:12 39:4 51:5 58:18
access 30:18 31:7 39:23 40:5	73:5,24 75:21
82:16 109:23 115:12	additional 12:25 23:13 36:22
account 8:13 9:17 28:14 112:11	40:4,13 41:3 70:21 72:15,19
127:13 129:2 130:23 131:3	73:7 78:21 100:10 107:9
accountability 25:9 42:14	112:13 113:20 126:24 143:17
127:14 128:25 129:11	Additionally 35:9 109:18
accountable 97:4 113:6 153:11	address 29:2 36:15 40:17 49:17
accounted 80:14 129:9	72:17 78:2,20 79:9 83:10
accounting 9:20 62:12,22 85:15	106:15 107:22 108:3 133:12
accuracy 64:15 73:10,11,17	138:25 144:8 146:12 149:5
81:18 85:8	addressed 36:24 65:10 107:20
accurate 7:12 34:17 72:22	145:24
achievable 109:8	addresses 8:13 35:16 102:22
achieve 29:17	108:8,8 111:6,15,19,23 146:7
achieved 7:23	146:9,10,22 147:10,11
acknowledge 2:17	addressing 28:25 149:24
acknowledged 123:20	adequate 64:19
acknowledging 114:8	adequately 74:24
acquired 62:10	adjust 70:10
acquisition 66:18	administrative 83:21 130:22
act 40:7 66:12 83:21 87:4,5	administrators 8:23
143:7	adopt 17:5 22:23 66:7 93:5
acted 83:8 143:8	150:19
acting 105:24 106:7	adopted 10:3 14:12 33:9 56:11
action 4:4,5,7,14,22 6:9,15,17	59:17 105:11 152:3,3 155:11
6:19 10:12,12,15,16,19,25	adopting 24:24 106:9
12:12 14:7 17:4 18:17 19:5,7	adoption 112:15
19:8 20:3 24:11,13,14,17,22	adoptions 10:15
24:25 25:11,15 27:20 37:15	ads 74:10
44:3 65:18,19 76:2 77:24 86:5	advance 8:6 69:15 140:8
86:9,10 91:3 92:9 95:22	advanced 65:9
113:24 132:6	advantage 6:24 144:25
actions 35:10 37:5 54:7 58:3	advertisements 23:10
	advertising 20:24
	advises 75:9

advocacy 56:18 78:7
affirmatively 51:11 124:22
 136:9 149:5
afford 89:21, 24
Affordability 7:6
affordable 7:8
afraid 41:23
afternoon 71:19 111:4
agencies 29:14 79:4
agency 1:14 132:12, 14
agenda 2:5, 8 29:25 152:5, 7
 154:24, 25
ago 114:2 140:25
agree 18:9 87:12 96:25 113:19
 130:25 134:5 135:21
agreed 109:8 112:5, 10, 13
agreement 64:25 65:4, 10, 23
 86:12 105:21 106:10, 14 107:18
 107:20 108:16, 18, 22 109:9, 11
 109:19, 23 110:5, 24, 25 111:5
 112:16, 18 122:24, 25 124:5
 126:19 128:16, 20, 22 131:10
 132:23 133:7, 16, 24 134:10
 135:4, 11, 16 137:20 138:21
 139:13, 24 140:21 141:22 145:6
 146:20 147:6, 7 150:20
agreements 115:15 138:17
agrees 111:6
aid 29:6
aimed 107:14 108:11
al 105:20
Albany 1:15 65:18 111:17 133:14
albeit 109:17
Alesi 1:24 29:9, 10 33:3, 4 51:16
 51:17 56:4, 6 95:11, 12 105:4, 6
 105:15 142:8, 9 151:16, 17
 153:2, 3 155:5, 6
aligned 15:7, 9
aligning 19:16
alignment 9:18 43:10 46:15
alleged 153:12
alleviated 25:15
allow 20:22 127:12
allowed 58:13, 22 60:7
allowing 117:20
allows 140:16
alter 132:15
alternative 4:15
alternatives 13:8 25:22
amazing 50:2
ambiguities 37:3
amend 38:18 51:6
amended 37:6, 14 39:22 40:12
 55:24
amendments 152:10
American 56:15 57:2, 10 58:4, 6
 58:10 61:6 62:9, 14, 21, 23, 25
 63:5, 7, 20 64:13, 14, 25 65:19
 66:7, 18, 25 68:16, 18, 23 69:9
 70:7, 15 71:2, 3, 11, 20 72:3, 4, 6
 72:12, 17, 20 73:6, 16 74:7
 75:15 76:6, 19 77:22 78:5, 7
 79:7, 15 80:7, 8, 10 81:12 82:5
 82:11, 17, 23, 25 83:5, 12 84:13
 85:2, 4, 6, 8, 16, 18, 20 86:19
 96:19 97:4, 18, 23 98:6 104:24
amount 22:25 59:5 67:22 80:13
 112:8 123:24
amounted 61:21
Amy 6:20
analogy 52:5
analysis 10:5, 6 19:14 21:19
 22:4 23:21 25:16 48:7, 8 68:24
 68:25, 25 69:9 76:24 77:20
 81:17, 24 87:22 88:17 89:2
 90:4
analyst 33:14
analytics 70:9
analyzed 69:2
analyzing 49:11 79:15
and/or 108:24, 25
angles 32:6
angry 52:3
announced 3:25 4:4 14:4, 7, 8
 64:25
announcement 10:13 19:7
annual 62:6
annually 17:12 34:9 58:15, 17
answer 30:3 39:21 41:19 54:11
 79:17 80:24 81:2, 5 112:23
 123:14 126:13 129:20 142:25
answered 28:6 148:21, 22
answers 40:6
anticipate 84:25 94:4
anticipated 38:14 109:18
anticipates 133:5
anticipating 129:5
anytime 129:14
apart 118:15
apologetic 95:19

app 70:4
apparent 64:18
apparently 18:13
Appeals 132:14
appear 132:2
appearance 149:12
appendices 16:10
applicable 35:11 112:9
apply 35:17,18,18 53:8
appreciate 2:18 28:7 30:2 51:4
 51:4,10 114:8 141:9
approach 9:14 83:18
approaches 29:6
appropriate 15:9 18:5,18 19:19
 23:4 37:16 60:16 76:23 81:14
 90:11 91:16,24 124:6 127:14
 127:17 129:6 148:25
appropriately 149:23
approval 15:11,16 34:11 35:23
 41:15 42:18 43:2,17 44:13
 54:5 71:15,22 101:7 107:4
 110:17 115:6,14 117:18 131:4
 142:14 148:18
approvals 15:6,7,13
approve 8:19 42:20 55:24 84:19
 97:2 104:16,22 107:2 122:24
approved 11:18 12:13,14,16
 15:14 26:9 33:8 42:23 46:7
 56:11 58:5 105:10 106:24
 123:13 133:9 152:2,13 155:11
approves 8:8
approving 15:8 56:25 85:3 92:13
 96:22 115:7
approximate 38:23
approximately 13:20 58:15 61:23
 62:3
April 3:16 14:14 20:19 35:3
 58:7 60:20 61:16 67:17 69:15
 70:17,17 108:16
Aqua 62:11
Aqua's 62:13
aquifer 60:22 74:22 75:6
area 4:12,20 18:6 30:13 32:13
 54:2 58:10,11,12,14,16 65:7
 66:21 67:8 70:16
areas 4:12 12:19,20,21 13:23
 26:25 27:12 35:14 36:22 37:23
 54:22 58:13 63:15 73:2 83:14
 108:13 113:5 125:12 146:21
 147:7 151:23
Aric 56:18 57:3,20 71:17 84:22
 86:15,18
arising 66:12
arose 108:19
arriving 142:10
Article 16:7
articulates 34:2
aside 66:16
asked 17:5,5 29:25 40:8 97:23
 120:7 141:12
askew 10:9
asking 14:15 53:19 55:12 99:24
 141:18
aspect 9:2,3 129:11
aspects 25:2 94:11 153:24
assembled 64:4
Assemblymember 6:20
asserted 108:24,25
assessment 37:15,21,25 38:4,6
 38:11 88:16
assessments 65:13
assessor 38:8
assessors 37:23 38:4
assigned 150:11
assignment 77:2
assistance 40:14
assistant 3:7 56:19
associated 7:14 60:4 86:14
 107:15,22 140:13
Association 7:5
associations 5:20 30:23,23
assume 24:10
attached 17:3 18:20
attempts 147:8
attention 29:4 39:15 75:10
 104:5 154:3
attorney 105:22
attribute 26:8
attributes 25:5 94:9 115:23
 120:25
Audit 56:21
auditability 129:11
auditing 146:22
audits 70:3
August 61:17 64:24 65:17 70:9
 73:20 76:7 79:25 84:2 91:9
 96:3 102:9 103:12
author 133:7
authorities 5:23
authority 3:18 4:8 8:25 13:6,9

13:11,12 92:11 125:13
authorize 50:12,12
authorized 17:22 132:9
authorizing 68:13
availability 39:16
available 3:8 5:16 7:21 8:15
 27:2 33:18 56:21 77:3 86:16
 91:4 105:24 128:10
avenues 149:20,22
average 73:23 77:18 78:2 79:16
 80:7,9,11,23 81:2
averaging 80:19
avoid 21:24 39:2
await 22:3
awaiting 10:5 152:21
awarded 111:20,25
aware 9:12 91:20
awareness 3:12 4:24 5:6,7,12
 6:7,10,16,19 7:11,18 8:6,8,20
 10:3 13:15 14:16 17:6,7,9,10
 20:9,11,15 22:25 24:23,23
 25:23 26:2,24 27:10 29:16
 30:6 32:6,22

B

B 1:23
B.P.O 126:11
back 10:10 12:14 15:4,8 22:19
 31:18 44:16,22 52:24 67:10,13
 67:25 68:4,8,10 92:4,20 104:5
 116:2,15 117:23 118:13 123:5
 128:9 131:3,11 134:4 136:11
 144:5 148:14,15 150:9
background 71:20 106:12,23
backing 147:5
backstop 54:6
backwards 130:11
bad 42:3
baked 53:9 102:12
balance 81:17 103:5
band 29:6
bare 121:7
base 27:16 39:7 109:5
baseball 52:2
based 13:21,23 69:25 102:8
 103:21 114:18,19 134:10 135:4
 135:14 147:3
baseline 5:10,11 6:8 20:10
basis 39:6 42:13 57:17 63:17
 76:20,21 98:6,12

beefed 100:23
began 36:13 60:20 63:20 107:13
beginning 44:7 84:23 99:6
begun 83:10 85:12
behalf 63:24
behavior 77:16,17 88:5,7
behaviors 88:10
belief 113:21
believe 13:3 23:4 26:19 27:10
 28:18 36:24 52:22 97:13
 102:19 106:15 113:21,21 129:3
 129:6 135:18 143:9
believed 113:20
belt 43:16
beneficial 31:20
benefit 25:16 70:25 109:6 121:5
 140:14,15 149:15,16
benefits 7:13 22:13 65:3,22
 107:5
best 21:10 36:9 96:25 102:5
better 25:16 28:22 40:6,9 41:7
 48:18 52:16 72:17 75:12 87:9
 95:21,25 140:24
beyond 16:20 17:14 18:22 19:18
 26:17 69:14 76:25 115:12
 151:4
bi-weekly 98:6,12
bid 38:13
big 22:4 47:24
bill 3:15 57:13,17 63:16,21
 64:17,23 68:15 69:23 72:3,11
 74:10 76:10,15 77:15 78:25
 79:2,20,22,24,25 80:3 82:9
 89:22,22,23,24 90:3 103:8,13
billing 56:14 57:2,18,21 58:21
 64:15 66:4 71:16 72:6 73:2,10
 73:12,13,19,20,21,25 74:4
 77:18 79:16,18,19 81:13,17,18
 81:19,24 86:4,25 87:23 88:2,3
 88:5,6,9,18,22 89:5 90:2
 103:5 104:22
bills 65:3 72:22 73:14,17,18,23
 74:20 75:12 76:11,12 80:5,15
 80:21 81:20 88:19,21 103:23
biomass 26:19
bit 13:18 30:7 95:14 105:12
 121:16 147:6
Blackout 45:20
blessed 123:22
blindsided 93:19

block 54:8,9 59:6,8,11,13,14
 65:6 66:20 67:6 72:14 73:22
 74:19,25 75:7 76:13 78:22
 81:15 82:19
Blocking 54:10
blocks 74:11
board 85:21
Bob 7:10
body 24:16
boiler 132:22
Bonvin 33:14
bottom 139:23 140:19
boundaries 111:7,9,16 136:24
 148:25 149:10
bounds 136:8
box 121:8
breached 110:23
breadth 39:23
break 105:12,14
breakdowns 39:14
Brian 105:22 106:5 111:3 147:19
brief 57:25 146:19 147:24
briefing 24:3
briefly 51:18 57:9
bring 104:4 131:3,11 148:17
brings 71:14 123:23
broadband 109:7 111:13,21,25
 112:2,16,21,22 113:15 115:10
 126:10,20,24 151:21
Broadband's 109:24
broken 121:22 122:10
brought 71:8 90:10 95:15 118:2
 140:25
brush 120:16
bucket 47:3,14
budget 3:15 17:3,12,18 18:15,19
 18:21 79:18 81:13,24 87:23,25
 88:2,5,5,9,18,22 89:5,22 90:2
Buffalo 111:17
build 47:13 126:25
Building 1:14
buildings 6:3 27:25
buildout 107:21 109:14,15 110:2
 112:6 135:15 140:3,3,5 144:17
 145:7
built 60:4
bullet 12:25 13:4 87:22
bullets 10:15 13:13
bullying 125:24
burden 114:15 143:18,19

Burgess 2:5,6,14 155:12,13,16
Burman 1:23 9:4,5 11:14 13:25
 18:8 21:12 23:15 26:20 28:5
 32:24,25 42:15,16 48:22 50:4
 51:8,9 55:25 56:3 87:10,11,18
 89:9,12,15,19 90:16,19 91:7
 93:8,11,15,18,24 94:3,7,15,18
 94:23 95:3,6 104:25 105:3
 114:3,5,7 122:22 123:11
 125:22 126:5,16 127:18,25
 128:11,17,21 129:12 131:7,16
 131:18,21 133:15,23 134:2,14
 134:17,21,24 135:20,25 139:16
 141:7,19 144:6 145:16 148:10
 148:19 150:15,21,23 152:7,8
 154:15 155:2,3
business 3:3 26:24 30:10 32:11
 78:12 111:8 153:17
businesses 4:11 29:13 30:12
 107:10
byproduct 29:15

C

C.F 15:8
cable 106:25 111:16
call 2:3 4:5 31:2 32:20 41:12
 55:22 62:4 79:17 81:4 104:20
 122:15 142:25,25 143:3 150:17
 154:16,23
called 49:2
calling 113:25
calls 40:9 64:8 69:12 78:11
 80:24 81:2
campaign 4:25 13:15 69:12
campaigns 22:5 27:14
can't 103:10 113:17 114:24,24
 117:22 118:7 119:13,21 124:7
 139:4 144:9,12,24 145:18
 146:12 151:6
Canty 56:17 60:24 84:22
cap 124:18
capable 111:10,13 129:4
capital 59:19,21 70:19
caption 156:5
carbon 5:17
care 25:9 49:18
careful 125:20 149:9,12,23
case 3:4 14:19,23 26:16 33:11
 35:3 49:14,16 56:13 59:22
 60:12 62:2 63:3,12 70:21

105:19,19 110:19 138:11,18,18 139:11,12 141:13 143:16 147:11 153:4 cases 14:21 49:13 106:11 catch 49:4 categories 40:25 categorize 77:19 cause 47:8 48:7 62:11 64:6,9 72:2 73:3 76:24 77:2,20,23 81:17 110:8,9,13,19 156:4 caused 48:10 causes 25:13 47:8 61:14 62:9 76:7 causing 23:20 48:14 center 7:5 39:18 certain 2:13 17:23 27:3,5 40:20 63:9,11 89:20 108:3 119:13,16 121:14 146:7 149:14,20 certainly 23:2 26:23 27:7 31:24 32:2 52:21 89:13 102:17 128:9 154:6 certainty 18:2,9 21:8,10 117:19 118:24 119:9 121:2 136:4,20 140:19 141:2 certify 156:3 cetera 48:12 51:21 52:5 154:23 chair 1:23 2:7 3:10 29:22 33:20 50:7 53:7 56:24 60:25 71:19 96:16 111:4 114:12,15 118:21 123:19 153:4 chair's 122:2 chairman 2:3,12,16 3:2 8:17 29:8,11,19 32:19 33:3,5,8 41:21 50:5 51:3,14,18 53:4 55:21 56:4,7,10 86:17 87:17 95:10,13 96:14 98:9 104:19 105:4,7,10,17 106:3 112:25 130:19,25 131:13,17,20,25 142:7,10 144:2,19,22 147:16 147:19,23 148:2,5,8 150:16 151:15,18,25 152:25 153:6 154:2,7,10,13,17,20,22 155:4 155:7,10,14,18 challenges 87:25 115:23 change 15:19 41:18 74:15 75:18 77:16,17 88:4,10 131:8 132:16 132:20 134:9 152:19 changed 41:17 133:16,17 135:17 changes 2:5,7 15:14 44:10 65:9 67:3 72:13 74:9 75:11 77:18	78:19,21 102:7 152:20 changing 88:7 135:4 channels 75:17 chapter 132:4 charge 59:18 70:20 71:12 charged 59:4,7,9,12,15 73:25 charges 73:15 Charter 105:21 106:25 107:12,23 108:2,11,15 109:8,10,13,16 110:7,21 111:5,12,22,24 112:4 112:5 121:20 124:19,20 126:6 126:21 127:2 133:11 Charter's 107:8,12 108:4,14,20 109:5,6,14,21 110:2 111:16 112:11 check 129:3 checking 121:8 chief 33:14 56:16,17,18 chilling 125:5 choices 22:2,15 119:11 choosing 23:23 chose 113:11 114:13 Christian 33:14 circuit 39:25 circulated 106:16 circumstance 135:18 circumstances 28:15 119:13 132:16 133:17,18 134:9 cites 131:24 citizens 8:5 City 6:12 109:20 110:23 111:7,9 civic 30:23 clarification 127:5 147:18 clarify 17:17 108:7 126:14 154:3 clarifying 36:9 clarity 42:5,8,12 117:19 clean 3:5,8 4:4,25 5:25 7:24 12:12,13 13:2,7,16 25:25 26:17 29:11,17 104:14 134:14 cleaning 4:19 cleanup 104:14 clear 40:11 47:5 54:6 87:3 124:22 125:4,25 136:2 154:18 clearing 52:15 clearly 46:13 140:7 141:5 Cliff 57:19 58:13 60:13,15,18 61:3,24 62:10 65:13 66:5,5 68:5,8 86:11 Cliff's 62:5 66:17
--	---

<p>Climate 7:5 close 50:24 77:3,12 107:10 closed 76:20,20 closely 2:10 82:14 closer 98:10 closure 53:18 closures 40:21 Code 34:5 codifying 17:4 18:17 19:21 cognizant 9:10 22:11 96:25 cold 52:11 collaboration 4:9 7:9 8:3,7,10 22:6 41:4 43:4 44:5 47:9 collaborative 24:22 37:7 53:16 116:3 colleague 2:18 105:13,13 colleagues 106:5 114:3 155:19 collect 60:2 collected 60:17 collecting 31:10 collections 78:10,23 collectively 27:23 collects 59:18 columns 62:17 com 76:22 combination 77:17 come 9:19 15:13,15,15 19:11 22:19 24:2,12,14 28:18 38:8 43:2 44:18 45:14 47:7,7 49:22 101:16 102:13,24 138:16 144:25 148:14,16 152:24 155:14 comes 19:25 47:16 101:3,11 122:22 comfort 7:16 comfortable 91:16 127:16 129:19 136:7 151:9 coming 15:6,11 44:13 54:19 86:12 94:4 130:13 148:15 comma 50:19,21,22 command 39:18 commence 132:8 comment 8:12 23:13 27:10 83:20 93:15 97:3,5,9 99:22 101:11 101:19,23 104:24 146:4 148:20 152:5 commented 94:11 commenters 6:14,18 149:4 comments 2:9 6:13 7:11 8:13 9:8 14:16 15:3 22:21 51:6,16 84:8</p>	<p>93:3,25 94:14,17 97:16 100:16 102:8,15,16 120:8,8,18 124:17 144:5,7 145:25 commission 1:1,2,9 2:1,4 3:1,16 4:1,9,22 5:1 6:1 7:1 8:1 9:1 10:1,16,18,22 11:1,2,3,19 12:1,14 13:1,10,11,14 14:1,5 14:8,12 15:1,12,16,22 16:1,6 17:1,8 18:1 19:1 20:1 21:1 22:1,21 23:1 24:1,12,16,18 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1,25 34:1,11 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1,17,20,22 43:1,2,5 43:17 44:1,6 45:1 46:1,14 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 58:3,5 59:1,17 60:1,13 61:1 61:10,17,18 62:1,4 63:1 64:1 65:1,17 66:1 67:1 68:1,12 69:1 70:1 71:1,8 72:1 73:1 74:1 75:1 76:1,21 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 84:16,18 85:1 86:1,3,5,9 87:1 88:1 89:1 90:1 91:1,14 92:1,8 92:10,22 93:1,4 94:1 95:1 96:1,10 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1,24 107:1,3,7,18 108:1,7 109:1 110:1,6 111:1 112:1,15 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1,16 122:1,11 123:1 124:1,18,23 125:1 126:1,9,12,23 127:1,4,8 127:11,16,21,24 128:1,2,3,14 129:1,15,17,23 130:1,3,5 131:1,3,11,12,24 132:1,3,5 133:1,11,19 134:1 135:1,18 136:1,8,12,12,15,15,23 137:1 137:3 138:1 139:1,8 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1,22 153:1 154:1 155:1 156:1 commission's 25:7 49:7 65:11 71:21 commission's 86:10 101:6 108:9 109:2 125:13 commissioner 2:18,21 9:4,5 11:14 13:25 18:8 21:12 23:15</p>
--	--

26:20 28:5 29:9,10,20,21 31:4
 32:9,16,18,24,25 33:3,4,5,7
 42:15,16 48:22 50:4 51:8,9,16
 51:17 53:5,6 54:25 55:5,9,19
 55:25 56:3,4,6,7,9 60:25
 70:24 87:10,11,18 89:9,12,15
 89:19 90:16,19 91:7 93:8,11
 93:15,18,24 94:3,7,15,18,23
 95:3,6,11,12 96:15,16 97:14
 97:17 98:20 99:3,12,15 100:3
 100:6,25 101:8,24 102:23
 103:4 104:2,7,10,25 105:3,4,6
 105:7,9,15 106:16 114:3,5,7
 115:5 116:20 122:22 123:10,11
 123:23 125:22 126:4,5,16
 127:18,25 128:11,17,21 129:12
 131:7,16,18,21 133:15,23
 134:2,14,17,21,24 135:20,25
 139:16 141:7,19 142:8,9 144:3
 144:4,6,21,23 145:8,11,13,16
 145:23 146:3,23 147:13,25
 148:2,3,6,10,19,20 150:13,15
 150:21,23 151:16,17,19,20
 152:7,8 153:2,3,7,8 154:2,5,9
 154:11,15,19,21 155:2,3,5,6,8
 155:9
commissioner's 100:14 101:6
commissioners 1:22 2:7,13 3:11
 33:21 50:8 56:24 61:2 71:19
 91:15,23 92:18 99:16 100:24
 104:13 105:13 106:4 111:4
 137:22 145:5 148:8,12 150:4
 152:5
commitment 109:16 110:3 126:25
 131:15 147:24
commitments 109:14 140:7
committed 113:5 148:13
common 60:9
communicate 39:10 72:13 97:18
communicated 32:13
communicating 42:7 52:16 99:5
 103:6,11
communication 64:19 68:18,22
 69:10,11,17 70:8 71:4 72:7,21
 74:13 75:2,9,17,24 82:10
 96:24 97:22 98:14 99:10,18,19
 100:2,8 103:10,12,17,20 104:6
 110:8 115:12 145:15
communications 34:18 63:8 73:2
 74:8,18 79:13 83:9 105:21
 106:25 109:21 110:21
communities 7:2 29:4 30:25
 31:12 54:9
community 8:4 30:11,18 32:12
companies 53:20 107:2 136:9
 153:16
company 3:25 58:24 60:11 62:16
 64:3,5,8 65:11,14 69:12 72:7
 74:3,14,23 75:20,22 77:19
 78:9,18 79:5,11,18,21 80:2,25
 81:16,20,23 82:2,16 83:2,8,23
 83:25 84:6 86:23 91:8 95:15
 95:16 98:16 99:4 100:19,20,22
 102:6 104:4 113:5 115:21
 127:12 139:3,17 148:16
company's 57:11,23 63:10 64:10
 64:19 65:3,8
company's 73:8,9,12 74:2,13,17
 75:2 78:13,16 81:10 82:11,18
 83:17 84:10 86:7 91:10 103:19
 103:25 107:14,21 152:14
compared 76:16 80:6
comparison 6:7
competition 115:11
complained 79:4
complaint 65:15 68:15 73:3
 75:25 76:18,19,22 77:4,25
 78:5,13 82:3,9 98:2 99:8
complaints 57:14,17 63:16,21,23
 63:25 64:4,6,7,10,11,12,18,23
 72:3,5,8,11,18,23 73:3,5 76:5
 76:7,10,11,20,21,25 77:4,10
 77:20,22 78:2,8,10,12,21 79:6
 79:9 80:2,22 82:12,13 83:13
 97:21,24
complete 37:21 81:16,24 87:22
 144:16
completed 41:9 76:25 83:6
 108:21
completion 59:24 84:7 112:6,12
compliance 21:5 106:18,22
 108:10 109:3 110:10,13,16
 123:6 130:15 132:20 135:14
 137:17 141:12 151:6,13 153:11
compliant 153:18,23
complies 7:18
compliment 95:21
compliments 26:15
comply 34:4 40:19
component 11:16,22 12:8 20:9

138:23
components 12:17
comprehensive 9:18 76:18 82:3
 135:9
computer 39:25
Con 4:2,8 5:2,4,9,23 8:10,21
 11:17,20 14:4,22 26:15 35:18
 41:10
concern 16:19 21:15 25:8 28:17
 55:12 101:4 123:20 124:21
 125:3,16 128:12 129:24 145:21
 149:3,6
concerned 9:13 26:12 28:8 103:5
 128:13 144:8
concerning 137:21
concerns 9:12 25:14 28:21 40:13
 43:14 100:14 102:22 107:20
 108:23 114:21 122:6 130:4
 145:7
concert 5:9
conclude 57:24
concluded 74:23
concludes 8:14 41:18 86:15
 112:22 114:5
concrete 37:4
concreteness 42:5,8,12
concurred 152:13
concurrent 36:6
concurrently 65:20 68:16
condition 107:7,16,24 108:4,12
 110:12 112:12
conditioned 107:3
conditions 107:4,6
conduct 5:13 30:14 77:20
conducted 36:4 37:10 68:19 77:5
 85:13
conference 95:4
confidence 117:4 143:22,23
confident 96:5
confidential 137:24
confirmation 98:21 120:2
confirming 110:12
conflict 81:14
confusion 9:25 21:24 71:2
 115:24
conjunction 82:22
connected 10:19 25:6
connections 3:23
cons 141:13
conscience 151:6
consecutive 80:21
consent 63:18 65:20,23,25 71:4
 152:4,6 154:8,24,25
consequences 88:6 109:10 125:11
conservation 58:25 59:3 60:21
 65:7 66:15 68:17,21 69:2,5,7
 69:12 70:3 72:15 74:16,21
 75:7,21 79:12 81:25 87:23
 88:3,14 89:5
conservation-driven 67:5
conservation-oriented 59:2
 64:21
Conservation's 75:4
conserve 64:22 79:10
conserving 88:20,22
consider 128:9
consideration 13:21 14:18 23:14
 108:17 128:7
considerations 140:6
considered 102:19
consistency 103:9,15 136:20
consistent 3:13 6:10 16:6
 103:20 104:6 133:6 139:7
 152:15
consisting 106:9 156:7
consists 58:11,12
Consolidated 3:25
constant 31:14
constrained 12:19,21
constraints 12:11,22 13:24
construction 6:2 11:23 27:24
 107:21 126:24
consult 38:17
consultant 69:10
consultation 3:17 15:22 84:13
 127:23 128:2,3
consulting 68:14 71:22 72:16
 73:5,9,16,19,24 74:3,13,17,23
 75:8,19,22 76:5,8,10,17,24
 77:5,8,14,19,21 78:4,9,13,18
 79:5,10,14 80:6,13,17,20,23
 81:6,11,16,20,23 82:2,5,15
 83:2 84:23 85:3,12,19,21
 95:22
Consulting's 71:25 72:9
Consulting's 73:11 83:16
consumer 3:12 4:24 5:6 13:15
 30:5,7,8 32:22 36:3 56:18
 109:12 117:3
consumers 27:12,17

consumption 68:24 69:6,22 70:2
 70:6 79:22 80:8,9
contact 96:3
contain 146:20
contained 58:19 85:10
contend 124:3
context 67:7 69:25 117:8 140:20
contingent 86:12
continually 52:23
continuation 109:21
continue 50:25 83:23 85:23 96:6
 99:13 114:22
continued 38:7 84:10 144:14
 151:8
continues 41:5 67:12 68:9
continuing 44:24 142:13
continuous 18:6 31:23 43:7
 44:15 46:4 116:24 117:13
continuously 43:11,12 117:22
contract 68:13
contractors 7:9
contracts 21:2 38:10,14
contribute 78:14
contributed 73:14
contributing 73:13 77:9 80:22
contribute 95:19
control 69:13,13,21 75:13
controllers 70:5
controls 63:5,6 65:16 66:8 74:4
 85:5 100:8
conveniences 51:20
conversation 119:22
conversations 36:21 49:9
conviction 113:12
cool 5:17
cooling 4:16,19 13:2
coordinate 34:13
coordinated 8:23,24
coordination 5:3
core 45:12
Cornelius 33:13,19 50:3 53:14
 55:4,8,17
corner 54:20
correct 91:5,6 93:6,7,14 94:2
 100:3 106:21 126:3 130:24
 132:24
corrected 62:4
correcting 61:18
correction 51:4 106:17
corrective 87:7

correctly 106:19 110:15
cost 21:3 25:16 47:18,25 68:25
 70:19 153:16
costs 7:13 22:13 47:22 48:15
 49:12 58:23 66:23 71:13
couldn't 114:4
Council 5:24
counsel 3:7 56:19 92:6 105:24
 106:7 131:24 133:12 138:15
counsel's 139:19,25
count 47:16
counties 39:11 41:4 53:21
county 3:6,12,21,24 4:10,12,13
 5:4,6,9,21 6:21 8:11 16:2,22
 32:22 39:6 40:6 54:2 65:18
 97:19 133:14
couple 29:24 97:7
coupled 70:4
course 8:20 46:5 60:5 64:14
court 65:18 92:6 109:4 132:14
 132:23 133:14 135:24 136:9
 138:3
coverage 69:20
covered 58:7 83:14
created 58:9 82:10
credit 52:6 66:11 67:10,11,13
 67:18,22,25 68:2,3,7,9,10
 78:23
crewing 39:24
crisis 52:8 119:22
critical 38:21 40:2,25 46:2
 116:24
culminated 57:5
culminating 108:9
culmination 35:24
Cuomo 64:25
cure 114:24,24
current 5:11 20:11,12 79:24
currently 12:3 84:23 85:15
customer 9:25 21:24 39:7 61:21
 61:24 67:8,9,14,19,24 68:6,19
 69:3,9,14 70:12 71:2 72:18,22
 73:2,14,18 74:20 75:10 76:9
 77:16,17 78:2,7,20 79:3,6,9
 79:12,16,18,22 81:5,7,8,9,21
 81:22 83:13 109:5
customer's 74:20 75:12 103:21
customers 4:17,20 7:20 11:24
 12:2,7,10 13:7 27:25 34:18
 38:21 40:3 45:6 57:14 59:25

57:3,21 111:2
detailed 7:12 33:25 40:6 41:8
 68:24 70:8 75:3
details 38:13
deterioration 81:7
determination 114:16 132:15
determine 5:11 20:10 73:11
 74:14 76:7,24 77:6,23,25
 81:24 87:22 109:25
determined 18:4 36:18 73:24
 77:14 78:13
determines 18:12
determining 64:9
detracted 45:11
detractions 45:3
develop 18:3 33:24 75:20,23
 82:3,7 89:8,17
developed 5:8 35:21 69:11
developers 8:4
developing 37:16 118:8
development 3:18 4:15 5:22,24
 11:25 12:3 18:3 68:17 99:9
 149:22
developments 40:23
devices 72:7
dialogue 151:10
DIANE 1:23
didn't 93:19 116:9 129:20
 142:23 145:15
difference 46:23 122:9,10
different 9:7 10:14 15:13 22:14
 43:6 46:6 94:10 103:16 116:16
 124:9 135:3 137:4 149:19
difficult 116:11 123:17 137:14
difficulties 115:23
diligence 28:8 121:18
dire 28:15
direct 104:24 149:14
directed 2:12 35:5 112:18 132:5
 132:9
direction 113:20 131:25 152:21
directives 61:11
directly 10:17,19 25:6 35:20
 63:23 79:5,7
director 3:7 33:16 56:20 105:23
 106:6
directors 85:21
directs 8:9 38:17 83:23,25
disagree 108:3 122:13
disagreement 123:8 135:15
disappointed 116:4
disconnect 20:7 23:17
discontinued 39:8
discretion 50:19 51:12 114:12
 118:21
discuss 57:11,13 61:2 63:17
 84:3
discussed 32:24 55:25 65:14
 102:10 104:25 140:7 150:21
discussion 3:4 33:11 56:13
 58:20 100:24 105:19 113:16
 114:4 131:22
discussions 38:2 107:13,17
 108:10 144:15,20
disincentive 58:24
disposal 39:21
dispute 125:11,24
disputes 108:12,19 109:2 125:8
 133:20 149:3,9 150:6
disruption 150:6
disruptive 44:20
dissenting 122:16,16
disservice 28:13
distinction 123:4 126:12
distributed 7:24
district 57:19 60:13 65:13 66:5
 66:10
district's 66:14
districts 58:9,12
dive 9:24 10:8
document 106:22
documented 39:13
documents 44:9 76:8
doesn't 89:7,23 119:6 148:22
doing 9:24,25,25 19:3,22 28:24
 29:6 30:21 32:11 45:16 98:14
 103:25 104:13 115:10 117:9
 121:18,21 129:4 136:25 149:17
 153:10,14,15,17
dollar 11:4,5,8
dollars 61:23
don't 87:15 88:18,21 92:3,10,11
 92:11,12 96:17 101:14,15,15
 103:23,23 118:4 120:8 121:6
 123:8 124:25 130:10,25 137:21
 137:22 143:2,10,18 145:18
 147:8 148:24 150:8,8 151:2
Dowling 56:19 97:10,15
downed 38:8
downloaded 62:15

draft 3:11 7:17 8:8 56:25 71:25
83:11,15,18,23,25 84:5,12
98:17 100:21 110:15 130:16
dragged 142:12
dramatic 60:12
drawing 154:3
draws 75:10
drive 117:13
driven 8:2 77:15
driving 45:10 46:18
drove 25:11
due 4:18 28:7 61:21 62:11 65:8
73:21 82:10 121:18
duty 131:24 142:25,25 143:3
dynamic 70:10
dynamics 152:20

E

E 7:6
e-mail 36:21 39:17 69:19
E.R.P.s 46:7,19,20 47:23
E.T.R 39:2,4
E.T.R.s 38:21 39:3,5,6,8,9
E.V 152:23
earlier 119:20 136:3
earliest 124:21
early 11:10 89:10 96:3
Earth 7:4
ease 81:10
easier 87:20 115:17
easy 48:8 115:19,21,22 142:10
economic 5:24 70:25
economically 117:11
Ed 14:4,23
Ed's 8:21 11:20
Edison 3:25 4:2,8 5:2,4,9,23
8:10 11:17 26:15 35:18 41:10
educate 5:15 30:16 67:4 74:5,24
educating 7:19 64:21
education 7:15 67:2 69:7 70:12
Edwards 1:24 2:19,21 29:20,21
31:4 32:9,16,18 33:6,7 53:5,6
54:25 55:5,9,19 56:8,9 96:15
96:16 97:14,17 98:20 99:3,12
99:15 100:3,6,25 101:8,24
102:23 103:4 104:2,7,10 105:8
105:9 144:3,4,21,23 145:8,11
145:13,23 146:3,23 147:13,25
148:3,6 150:13 151:19,20
153:7,8 154:5,9,11,19,21

155:8,9
Edwards' s 148:21
effect 13:20 125:6
effective 7:19 15:21 17:13,14
17:17,18 19:6 21:3,3,7 27:15
32:7 48:4 50:23 74:5
effectively 33:23
effectiveness 6:5,9,17 13:22
25:3,5 31:5 32:5 113:11
efficiencies 3:20 15:25 16:22
efficiency 4:17,19 6:2 7:16
11:18 12:6,9 14:23 16:4,9
20:5 25:4 26:16 139:22 140:10
efficient 7:24 28:2 81:18
effort 53:25
efforts 34:13 37:7 53:16 64:9
72:15 81:25 83:24 87:24 88:3
88:4,14 89:6 108:21 112:13
egress 40:21
either 35:19 63:23 84:19 89:6
111:11 125:25 144:10
elderly 40:23
elected 63:24 97:19,22,24 98:16
98:22,24 99:5
electric 33:12,23,24 34:8,24
35:15 36:2 37:6 38:24
electricity 51:20 52:18
electronically 89:25
elements 31:25
elevated 72:2
eligibility 108:3
eligible 12:23 70:19 108:8,9
109:25 112:9 147:10,11
eliminate 37:3 58:23
emailing 103:13
embarked 68:16
embrace 124:14
emergencies 34:3
emergency 33:12,13,15,17,21,23
33:25 34:7,8,20 35:6,16,20
36:2,14 37:11,22 39:18 40:15
41:6,11 42:3 46:2,7 52:7
55:24 91:20 119:17,21
emphasize 45:8
Empire 1:14
employ 107:23
employees 82:17 144:8
enacted 3:14
encountered 88:9
encourage 3:5,19 7:6 15:24

60:21 117:12 144:11,14 151:8	errors 61:7
encouraged 87:6,7	escalated 40:13 78:8
encourages 16:20	escalating 47:18,24 48:14
encouraging 121:3 124:20	escalation 47:22
ends 93:16 118:4 151:2	escrow 112:11,14 130:23 131:2
energy 3:5,8,18,20,20 4:4,17,19	148:15
4:25 5:16,25,25 7:4,5,22,25	especially 42:2 92:3 113:4
11:18 12:9,12,13 13:8,16	116:20 121:19 137:2 141:25
14:23 15:25,25 16:4,4,7,7,9,9	144:8 149:6 151:22
16:10,12,17,21,22 20:5 21:17	essence 123:12
22:2 25:3 26:6,12,15 29:11,17	essentially 17:24 18:2 20:10
114:17 116:25	establish 3:19 15:23 32:21
enforce 144:16	127:12,13
enforceable 140:5	established 66:3 79:19 107:6
enforced 117:24	109:22
enforcement 43:25 44:23 92:10	establishes 8:8 136:19
117:25 138:4 150:4	establishing 3:12 37:18
engage 150:3	establishments 40:24
engaged 91:15 117:6 121:11,18	estimated 37:18 38:20 79:16
121:25 122:3 149:13 150:8	80:13,20 81:19
engagement 5:14 30:15 86:22	estimates 80:21
91:23 92:18 115:25 116:3	et 48:12 51:20 52:5 105:20
148:12 151:11	154:23
engagements 69:20	ethics 63:11 85:14
engages 150:4	evaluate 25:3,4
engaging 37:22 85:6 91:11	evaluated 64:14 72:2
enhance 6:16 115:11	evaluation 15:16
enhancing 36:10	evapotranspiration 70:4
enormous 123:24	event 16:16 17:10 42:3 43:8
enroll 4:18	44:4 48:25 49:8 119:19
enrollment 27:5	events 33:23 34:20,25 38:22
ensued 108:11	42:12 45:21,22,24 48:9 54:8
ensure 6:23 7:16 8:13 21:6	70:10 76:3
31:10 34:17 38:6 61:13,15	everybody 48:21 52:8
75:5 76:3 117:12 125:18	everyday 51:20
127:11 128:25 147:8 153:15,23	exactly 90:8 134:20
ensured 65:21	example 59:6 99:17
ensures 109:19	excavation 153:24
ensuring 31:12 85:8	Excel 62:15
enter 20:25	exception 79:19 80:3 146:6,8,15
entered 115:16	exceptions 79:2,16 81:17 147:4
entering 41:24	exchanges 36:21
entity 22:19	excuse 27:7 28:8 50:8 98:18
environment 31:20	106:20 133:8 152:3
Environmental 75:4	executive 6:21 92:5
envisioned 7:25	exempted 27:4
equipment 40:3	exist 27:5 38:5
error 57:11,12,16 58:2 61:3,13	existing 4:20 6:2 12:10 27:25
61:14,17,18,19,21,25 62:4,5,9	27:25 63:6 75:19
62:11,23 68:15	expand 70:18

expanded 13:23
expansion 13:21 107:6,16,24
 108:4,12,21 109:20 110:12
 112:12,13,17,21 126:10
expect 27:7 41:3 101:25 102:3
 102:11
expectation 40:22
expectations 37:4 48:13 49:5,20
expected 13:17 53:11 58:3 84:25
 86:4,14
expecting 113:14
expects 38:24 86:6
expended 11:5,10
expending 90:9
expense 57:20 66:6,22 140:12
experience 42:9 76:14
experienced 76:14
experts 45:10
expiry 20:20
explain 67:2 74:8 121:16 122:17
 126:11
explained 71:20 74:14
explaining 35:7
explains 5:19 6:4
explanation 75:3
explicitly 107:3 111:6
expressed 114:21
expressly 132:14
extended 50:20
extends 70:9
extension 13:21 50:13,21,22
 101:18,18,19,21,22 107:8
 137:19 139:9 142:16
extensions 108:15 139:4 142:14
extensive 69:17 72:11
extent 11:4 44:25 88:12 92:17
 94:9 96:9 124:9,12 125:2,23
 134:6 136:14 149:16

F

facilitate 66:17 82:7
facilities 40:2,25
fact 10:4 19:15 47:7 48:3 51:19
 52:6 91:14,18 95:18 106:21
 113:13 114:25 123:18 136:12
 137:8 142:24 143:9
factor 73:17 77:9 80:22
factors 89:20 90:2
facts 63:12 113:19
factual 87:3

fail 109:10
failed 74:24
failure 72:12
failures 87:3 95:15
fair 125:8,9,25
fairly 11:10
fall 47:3 55:14 86:9
familiar 94:13,16
far 11:6,10 32:5 69:14 143:19
fashion 91:23
favor 31:21 32:21 33:7 55:23
 56:9 104:21 140:8 141:5
 150:19 151:24 152:9,14 154:25
 155:9
favorable 154:3
favorite 51:25
fear 119:3
February 11:19 14:5 70:14,23
 71:7 86:7 93:12 107:12
federal 67:10,12,25 68:3,7,10
feedback 31:11,14 100:21 101:11
 102:8,9
feedbacks 31:10
feel 91:17 114:20 119:7 121:4
 122:25 123:2,18 127:13,13
 138:9,14
feeling 121:2 149:7
feels 103:13
fees 74:2,5 78:24 82:19
fell 76:12
felt 92:6 114:11 122:17
field 78:21
fifth 51:2 143:15
fight 47:9
figure 11:4,5,8,15 116:10
 127:19 143:2
figuring 116:6 129:22
file 4:23 14:16 33:25 42:23
 70:21 93:25 120:8
filed 5:5 6:13 7:11 12:16 17:11
 34:9 35:3,9 36:14 37:6,11
 50:23 65:17,20 70:15 71:11
 83:19 102:4 108:15 121:8
 122:8 137:12,13 152:10
filing 14:19 61:19 62:11 85:2
 85:16,17 120:7 121:11,12
filings 23:25 25:24 26:2 36:5
 61:8 62:24 63:2,3,13 84:18
 85:9 91:19
final 2:5 27:21 57:21 71:25

72:9,19,24 75:14 82:15,23
 83:11,14,24 84:15,19 86:3,13
 92:23 93:6 100:18,21 101:2,3
 101:5,25 102:3,20,20 104:22
finally 59:13 60:7 66:24 71:10
 108:23 110:18
financial 65:22
financing 13:5 112:20 126:9
 129:10
find 61:14 91:18 117:10 148:23
finding 83:13
findings 65:11
finds 7:17
fine 146:4 153:16
firm 3:23 95:22
first 3:3 11:16 20:8 27:22
 29:22 36:3 49:25 54:10 57:9
 58:21 59:6 61:12 63:25 80:15
 95:13 107:13 115:7 127:24
 138:25 143:4 147:11 148:14
fitness 42:5
fixing 122:4
flagged 129:15
flashy 27:14
flexibility 117:20 127:11
flexible 44:8
Floor 1:14
flushed 94:10
flushing 136:3
focus 26:6 34:16 81:21 116:2
 118:6
focused 11:23 12:2,5 24:2 26:5
 36:8 47:8 92:15 108:21 117:7
focusing 78:6
folks 45:13 48:20 91:4,22
 115:13 116:8 117:24 125:3
 151:21
follow 96:8,8 129:8 134:15
followed 96:7 108:6
following 5:10,11 34:10 36:4
 63:6,10 66:2 72:25 106:8
 112:11
food 120:24
foolhardy 9:22
football 52:2
footnote 132:10 133:3
footprint 5:17 108:14
force 53:18,20 54:17
forecasting 62:5
forecasts 60:10
forego 70:20
foregoing 156:4,6
foremost 143:5
forgetting 29:3
form 97:23
forth 15:4 50:19 144:6 152:15
 153:25
forthcoming 82:17 141:18 142:3
forum 149:24
forward 2:22,23,23 9:23 19:17
 22:8 23:5 27:20,23 38:5 44:17
 62:3 72:23 84:11 87:9 90:7
 91:3 92:23 93:2 96:2 114:9,13
 116:7,16,21,21 117:4 118:10
 118:24 119:25 121:23 122:19
 124:9 127:15 130:9 132:21
 133:10 135:10 136:4 146:14,15
 147:9 150:5 151:9 153:22
forwards 130:11
fossil 5:18
foster 117:15
found 37:20 61:18 62:20 63:4,7
 63:9 72:10,16 73:12,16,19
 74:17 76:10,17 77:8 78:9,18
 80:9,14,25
foundational 23:22
fourth 50:25 59:13 105:19
frame 54:12
frameworks 118:9
franchise 110:23
franchises 111:17
frankly 96:23
frees 140:17
frequently 136:7
frustrated 142:15
frustrating 142:19
fuels 5:18
full 7:6 9:15 19:4 20:18 23:14
 24:2 26:15 136:15 152:22
fuller 9:20
fullest 113:12
fully 7:2 35:21 49:21 59:22
 108:22 148:21
fund 12:13,13 112:12,20 126:8
 126:20,22 127:3,12
funding 13:4,17 15:10 16:25
 17:3 18:20 25:7 112:16 140:6
funds 66:17 112:10 126:15 127:5
 127:17
further 12:22 19:18,22 22:3,3,4

23:11 36:9 82:5,18 104:25
 109:6,21 128:6 140:14,15
 155:14,16
furthers 109:12
future 7:6 58:3 73:8 75:2,9
 79:12 86:3 92:21 94:5 109:13
 117:10 151:11

G

gain 68:19
gained 69:8
gallons 59:7,8,9,10,12,13,15,16
 67:9,15,15,19,24 68:6 80:12
game 52:3
gaps 32:10
garbage 66:10,14
gas 3:24 4:18,19,20 12:4,6,18
 12:18,21 13:23 19:12 23:24
 25:21 27:25 36:2 56:16
geared 26:7 30:10
general 29:13 85:9 105:24 106:7
 120:3
generally 146:19
generic 136:6
George 6:21
getting 31:10,12 44:3,16,19
 52:11,22 53:23 54:9,10 92:25
 93:12 118:25 120:16 152:8
give 9:16 11:8,12,13 19:11 48:6
 51:12 52:6 54:23 100:21
 101:13 117:19 120:21 128:5,6
 129:13 142:14,15
given 15:17 91:24 146:6
gives 16:24 90:12 119:8 136:23
 138:19
giving 21:25 93:2 121:2
glad 44:14 86:22 100:13 113:7
 153:9,21
global 39:8
go 9:9,23 16:19 17:14 22:17,17
 23:7 29:16 30:19 31:16 44:24
 46:16,19 57:20 59:19 60:3
 90:7,12,20 92:4,9 97:8,12
 98:7 114:13 116:21 119:3
 123:5 130:11,13 132:23 136:9
 138:4
goal 75:4
goals 7:22 29:12,18 82:4
goes 10:9 16:25 18:22 46:19,20
 48:21 57:3 89:23 133:3 134:10

going 15:10 16:12,14 18:21,25
 19:11,12 20:2 31:5,13 38:5
 42:14 44:2,23 45:9 48:16,17
 51:15 52:13 53:22,24 54:3,18
 54:19,21,22 55:13 57:7,9 61:2
 62:3 72:23 84:11 86:2 87:9,9
 89:3,11 90:5,10 91:2 92:6,20
 92:25 99:8 101:15 104:15,16
 113:2 115:17 116:15 118:18,24
 119:25 121:13,14,23 124:9
 127:15 128:8 130:9,14 132:21
 135:10 138:3,5,25 139:5,11
 142:3,5,17 143:13 144:16
 145:2 146:12,14,15,25 147:9
 150:5,23 151:23
good 2:6 3:10 9:3 32:11 33:20
 41:25 42:10 53:3 55:15 56:23
 56:24 60:24 71:18 86:22 91:11
 93:17 95:23 96:10 101:13
 104:11 106:3 110:9,13 111:3
 113:8 116:25 118:3 121:4
 138:7 141:14 150:13,14 151:6
 154:12,13
gotten 86:23
government 8:24 29:14
governmental 40:15
governments 5:22 6:25 8:4
Governor 64:24
grandstanding 116:7
grant 111:20 112:2 152:18
granted 52:10 53:2
grateful 28:20 52:25
great 32:10 57:8 69:4
greater 76:15 79:23,24,25
 113:10
green 2:15
grid 117:14
grow 41:3
growth 117:16
guards 38:7
guess 11:11 26:13 88:15,24
 89:16 101:16 102:5 104:11
 127:18 128:11 129:12 130:17
 134:3 142:19
guidelines 47:5
guys 45:11

H

H2O 69:12,13,20
hamper 23:8

hamstring 20:14
hand 150:7
handle 40:12 76:9
handled 40:9 72:8 82:13
handling 64:11 65:15 78:5,14
happen 12:22 26:23 45:22 61:15
 119:3,14,19 142:17
happened 60:23 91:18 118:20,20
 118:21 125:16
happening 20:3 24:4 25:6,10
 43:3
happens 52:9
happy 41:19 50:15 55:17 112:23
 142:13 146:18 151:4
hard 43:19 86:21
hardening 46:24
harmless 61:14
haven't 120:17,18
haywire 130:13
hear 100:13
heard 27:9 113:6 122:2
hearing 15:23 94:20 95:2 156:8
hearings 6:11 98:22
heart 45:12 118:15 120:3 122:3
 141:17
heat 4:16 5:17 7:14,15 11:17
 12:6 15:2 25:25 26:6,17 41:16
 51:22
heating 4:15 13:2,7
heavily 14:25 147:3
held 6:12 15:23 32:3 36:20
 61:13 132:14
help 31:19 45:3 47:13 69:21
 73:7 80:4 81:17 115:11 117:9
 117:10 120:25 142:2
helpful 11:3 14:2 21:23 22:7,9
 45:5,6 48:5,7 88:7,10 90:5,10
 90:23 91:2 92:23 96:10 149:17
helping 21:21,25 29:17 116:10
 118:8
helps 45:2 48:6 49:18,19 136:24
Hempstead 66:10
hereof 156:6
hereto 156:5
hereunto 156:9
hesitation 129:22
high 57:13,16 63:16,21 64:17,23
 68:15,24 70:11 73:17 76:9,11
 76:12 78:20,25 80:10,18 99:10
 114:15

higher 73:14,23 77:6 80:10
 111:14
highest 59:14 65:6
highlight 37:13 49:16
highlighted 35:14
highlighting 27:3
hinders 89:5
hire 71:21
hiring 95:22
historic 61:25
historical 48:7 117:8
historically 91:2
history 9:20 117:5
hit 48:24
hitting 32:7
Hogan 56:20 100:12 101:2 102:3
 102:24
hold 127:14 145:3
holding 97:4 153:10
hole 90:12
holistically 28:24 135:9
home 70:3
homeowner 30:23 31:18
homes 107:9
honest 25:11
hopeful 96:5
hopefully 29:15 54:21
host 107:4
hotter 77:8
hours 78:10
housing 7:8
Hudson 5:23
hurricane 41:24
hypo 99:8

I

I.O.U.s 61:22
I.S.O 25:19
I'd 139:20,21,22,22
I'll 96:13 104:4 126:13 129:12
 147:15 150:18
I'm 57:9 61:2 86:22 87:5,6,9
 88:14,15 91:20 94:13,13,16
 95:25 97:20 104:15 106:5
 113:7 123:7,7 126:18 127:19
 128:13 129:4,21 134:13,19,20
 134:21 137:11 138:20,24,25
 139:5 141:17 150:13,13,23
 151:23 152:8,9 153:9
I've 87:18 114:10 116:18 120:4

128:2 136:16	improved 80:17 100:15
idea 120:22	improvement 31:23 35:15 43:7
identified 73:7 76:22 83:3	44:16 46:4 59:18 63:15 70:12
111:24 126:8,22 127:3,7 133:3	70:20 71:12 72:25 84:11
147:10	improvements 37:14 42:11 75:24
identifies 72:19	84:14
identify 46:14 84:14 106:19	improving 45:5 116:24
131:2	in- 62:17
identifying 14:15 36:9 37:3,17	inaccuracy 39:3
130:23	inaccurate 80:5
ignore 125:21	Inadvertently 41:13
immediate 39:15	inappropriate 123:3 129:22
immediately 36:4 64:3	inappropriately 149:13
impact 40:2 61:12 69:2 74:19	incentives 11:24 12:5 13:2
121:10,14 124:19	30:19 109:13
impacted 39:7 61:9,20,25 62:2	inclination 51:7
125:13	inclining 59:3 67:5 72:14 73:22
impactful 121:22 122:5 130:8	74:11,25 75:7 76:13 81:15
impacts 7:20 75:11 125:11,12	include 7:12 38:15 50:21 53:16
impeded 113:17	53:17 62:17 75:2,9,25 79:11
impediments 113:24	110:7 111:6,8,14,18,22
implement 12:9 15:20 38:25	included 26:19 35:22 37:2 40:12
66:25 71:11,12 74:3 75:23	40:19 41:16 53:10,11,13,15
83:4,24 118:9	59:21 74:9 78:21 100:9 103:8
implementation 6:7 8:9 9:14	108:4
22:20 35:9 36:15 38:12,18	includes 4:7,14 70:9 72:24
41:9 47:24 54:14 56:15 57:23	109:9
64:20 65:16 67:3 82:24 83:7	including 5:2,3 7:8 11:24 25:19
83:17,19 84:3,5,9,15,15,19	34:22 39:24 41:6 69:18 74:19
85:9 86:3,14 87:4 90:22 92:24	113:10 115:10
93:6 98:19 100:4,15,18 101:3	inclusion 7:7 40:22
101:5,25 102:4,7,20,20 104:23	inclusive 8:22
implemented 5:8 23:2 28:4	income 11:25 30:25
implementing 8:11 18:4 32:2	incorporate 36:23 39:22
75:18	incorporating 35:7
implications 121:19	increase 64:4 69:16 76:15 81:4
importance 138:3	increased 81:5
important 6:16 9:9 10:7 22:23	increases 58:14,16,18 59:5
41:22,25 44:11 45:17,19,23,25	60:12 67:4 77:15
47:2 55:3,6,6 58:19 86:18	increasingly 7:24
92:3,15,19 96:20 98:23 109:11	incremental 60:17 107:5 112:17
116:14,17 118:12 121:6 122:18	112:20 126:10,20,25
136:19 137:2 138:5,10,22	independence 117:2
141:20 146:17 149:25 153:20	independent 19:10 48:6 56:14,25
impress 95:13	57:17,21,25 58:21 65:15 66:3
impressed 95:17	68:13 71:16,21 86:24,25
improper 123:4	104:22
improperly 65:11	independently 46:11
improve 43:12,13 72:18,20 73:8	indicate 10:2
83:9,14 96:6 113:10 117:13	indicated 80:18 106:4

<p>individual 31:18 69:25 98:2 112:8</p> <p>individually 31:19</p> <p>individuals 5:15 7:7 30:16 63:10,11</p> <p>indulge 126:19</p> <p>indulgence 50:13</p> <p>industrial 5:22</p> <p>ineffectiveness 39:12</p> <p>influx 63:21</p> <p>inform 7:2</p> <p>information 6:23 7:13 9:19 10:7 11:9 19:5,11,13,18,20,24,25 20:6 21:20 22:12,13 23:20,22 24:3 28:11,12 29:23 30:2,3,8 30:21 31:17 36:23 38:21 39:11 39:20,23 40:4 62:13,14 65:12 69:6,21,23,24 75:11 76:23 77:2 79:11 88:24 89:6,14 90:13 93:3 95:24 98:3,24 103:7,16,22 109:24</p> <p>informed 5:12 29:12,14 38:22 100:23</p> <p>informing 30:18</p> <p>infostructure 117:15</p> <p>ingress 40:21</p> <p>initial 36:5 37:10 62:22 76:25</p> <p>initially 107:7 123:13</p> <p>initiate 77:24</p> <p>initiates 140:18</p> <p>initiative 8:2 132:13</p> <p>initiatives 68:21 82:4</p> <p>innovation 117:12</p> <p>input 5:8 9:11 83:17</p> <p>inquiries 40:14</p> <p>inserting 103:14</p> <p>inserts 74:10 103:8,24</p> <p>insights 68:19</p> <p>insignificant 92:16</p> <p>installation 3:19 4:15 7:14 15:24 16:21 111:12</p> <p>instance 53:17 54:2 127:24 147:12</p> <p>instilling 117:3</p> <p>instructed 8:19</p> <p>insufficient 65:9</p> <p>integral 33:21 53:22</p> <p>intended 114:23</p> <p>intension 139:10</p> <p>intent 36:20 44:5 103:19 127:9</p>	<p>147:2</p> <p>interactions 78:25</p> <p>interest 113:13,18 115:8 138:22 140:2,9,23 141:4,6,9 143:4,6</p> <p>interested 59:23 146:14</p> <p>interests 109:12 113:14 139:22</p> <p>interim 40:18 41:6 56:15 57:23 82:24 83:7,18 84:9,14 90:22 98:19 100:15 102:7 104:23 112:6,7,9</p> <p>internal 37:24 65:16 66:8 85:5</p> <p>internally 82:6 141:23</p> <p>intervene 132:6</p> <p>intervention 7:10</p> <p>interviews 85:13</p> <p>introduction 74:11</p> <p>invested 121:4</p> <p>investigate 61:11 64:6 66:4 110:20</p> <p>investigation 34:23 35:2,14 36:6,7,17 37:19 39:14 57:12 57:19 85:25</p> <p>investment 12:15 15:7 25:24 26:18</p> <p>investor 117:3</p> <p>involve 145:22</p> <p>involved 52:8 63:9 92:2 125:7,8 129:23 130:6,7 132:7 136:13 136:16 137:4 149:8,10,21</p> <p>involvement 130:3,7</p> <p>involving 132:3 149:8</p> <p>ironically 137:15</p> <p>irony 141:10</p> <p>irrigation 77:7 102:11</p> <p>island 24:13 37:10 60:22 63:22 65:4 74:22 75:6 99:6</p> <p>isolation 47:23</p> <p>issue 9:3 15:4 21:14,15 41:12 47:18 48:3,4,24 49:3 50:8 52:14 85:25 96:13,20 98:23 101:13 108:6 118:23 119:22 129:5,25 130:10 132:22 133:22 135:17 143:17,21,25 145:5 149:2,4</p> <p>issued 4:23 14:14 61:10,16,17 62:8 65:24 68:13 70:24 71:6 80:15 98:18 110:14,18 139:11</p> <p>issues 9:10 15:2 29:2 47:7 48:11 62:20 64:16 71:6 78:11 82:15 86:6,6 99:8 106:13</p>
---	---

107:22,25 108:23 120:6 123:2
 125:17,20 133:2 134:9 135:9
 139:13 141:16,17 149:24
it'll 92:25
it's 79:22 87:2,20,21,21 88:2,3
 88:13,25 89:10 90:5,20,25
 92:2,25 93:8,22 94:21,22,25
 95:7 97:13 98:18,23 99:10
 100:16 101:9,20,20 102:8
 113:7 114:23 116:16,19 117:13
 118:18,22,24 121:15 123:16
 125:9 127:7 128:12,12,15
 130:9 134:14,17,17,24,25
 136:19 137:4 138:5,9,18
 139:16,17 141:23,25 143:11,15
 144:6,25 145:23,24 146:9,10
 146:23,25 147:14 149:25 150:7
 151:13 153:20 154:9,11
item 3:3,4,11 8:18 9:4,8 33:8
 33:10,11 35:16 41:22 42:14
 51:7 56:10,12,13,24 57:22
 71:24 87:10 97:25 104:21
 105:10,12,19,19 106:8,8 113:2
 149:11 150:24 152:2,9,14,17
 153:4,8
items 10:16 58:19 152:6 154:4
 155:10

J

JAMES 1:24
January 4:2 12:15 14:3 61:10
 106:23
Jeff 56:19 86:15
job 32:11 50:2 95:23
Jobs 66:12
Joe 56:19 86:16
John 1:23 50:6 51:3 105:23
 106:6 130:20 135:22 139:2
joint 53:18 106:24
judgement 65:21,24 71:5
judiciously 118:6
July 1:13 10:6 19:10 63:19,20
 73:13,19 76:6,16 77:10,11,11
 77:12 80:24 106:20 110:14,18
 137:15,16 156:10
June 62:8 71:6 72:10 82:22
 85:10 106:20 110:9,10,12
jurisdiction 13:12 115:9 125:5
 132:5
jurisdictional 136:24

just-in- 51:4
Justice 7:4
justification 50:22 151:8
justifications 110:9,14
justify 118:4 151:2

K

KATHERINE 156:3,13
keep 45:23 91:13 136:25 153:20
keeping 45:24
Kelly 3:10 11:7,15 17:16 20:8
 31:2,3
Kelly 3:6 22:24
Kevin 33:16
key 27:3
kicking 142:12
kind 20:13 27:16 90:7 115:8
 116:13 135:3 142:19
kindly 2:8
knees 118:2
knew 142:17,21 143:13
know 11:4,8 18:2 20:15,19,23,25
 20:25 21:4 22:9,17,24 23:11
 23:24,25 24:14 27:11,14,19
 28:3 29:25 31:14 32:7 44:21
 45:13,18,18,22 46:23 47:11,22
 47:23 48:9,16,20 49:3,16,18
 53:19 54:6,17,19,24 87:15
 90:11 91:19,21,24 92:5,16,17
 92:24 93:4 94:19 96:17,19,22
 99:7,20,21 101:14,15,15,15
 102:6,19 103:2 104:12 113:16
 114:16 116:8 117:25 118:19
 120:21,22 121:9,11,13 122:6
 122:18 125:17,20 136:24 137:5
 137:5,19 138:3,10 139:5
 140:17 141:7,22 142:2 143:15
 146:24 149:7,19 150:3,9
 154:17
knowing 7:21
knowledge 69:8
known 63:12
knows 42:20 129:14,17

L

Labelle 105:22 106:5 110:24
 111:3 148:13
labor 124:25 125:8,11,16,17,24
 144:20 145:17 149:2,2,9,16
lack 64:19 82:10

<p> lacked 37:22 38:13 63:5,7 laid 96:6 language 18:24 35:20 41:16,17 96:21 131:8,13 132:22 134:7 languish 120:12 languishing 120:13 Lansing 24:13 lapsed 113:24 large 40:23 115:7 135:16 147:9 larger 9:2 130:10 Lastly 40:11 late 44:13,19 78:24 82:19 Latimer 6:21 Laurie 33:13 41:21 44:4 Laurie's 49:24 law 3:14 14:11,12 15:19,20 16:7 16:13 17:2,6 32:23 34:5,7 lays 91:2 leadership 143:24 leading 142:12 leads 37:16 learn 42:9 52:24 learned 43:15 113:9 115:14 learning 43:9 87:6 116:24 learnings 42:10 leave 22:17,22 114:14 128:14 leaves 149:6 led 13:16 28:15 44:22 64:22 113:25 115:23,24 left 2:19 92:12 137:14 legal 65:18,19 122:20 132:11 137:24 141:24 legislation 9:7,15,17 10:10,11 14:11 17:19 18:22 19:17,18,23 20:18,20 21:6 23:18 legislators 28:20 legislature 18:12,14 42:19 43:5 legitimately 148:23 lens 139:14 lessons 43:15 87:6 113:9 115:13 116:14,16,17 let's 3:3 10:8 12:24 58:3 let's 101:13 105:18,18 letters 69:19,25 79:8 level 27:12,16 117:20 levelization 70:16,25 levelized 58:14,16 levels 20:11,12 leverage 124:24 liaison 39:23 40:9 </p>	<p> liaisons 39:10,13,20 40:5,12 liaisons' 39:16 life 40:2 light 51:22 95:15 152:23 lights 2:15 45:25 limit 28:12 74:4 limited 88:2,14 line 38:8 135:22 139:23 140:19 Lineworker 45:16 lip 9:16 list 41:2 listed 11:16 listened 129:13,16 listing 103:11 lists 12:25 13:5 litigation 65:21 109:4 133:6,12 133:13 135:24 138:8 140:11,13 140:20 141:20 little 13:18 30:7 54:3 95:14 121:16 128:13 134:3 147:5,17 live 44:9 local 5:21 6:25 7:2 8:3,24 27:8 27:13 39:6,9 63:24 67:11 68:2 97:19 98:16 99:5 located 66:19 111:9,15 locations 39:25 long 24:13 29:16 30:19 37:10 60:22 63:22 65:4 74:22 75:6 77:3 120:9 142:19 143:12 long- 75:5 long-lasting 118:10 long-term 74:21 117:11 longer 73:13,21 77:18 look 10:20,21 16:11,16,18 18:9 20:3,4,6 22:8 25:12,19,23 27:19 31:15 32:12 44:14,15,17 44:22 46:22 47:17,18,19,20,20 48:11,13,23 49:4 51:15 87:25 88:8,19,21 89:14 90:7 92:23 93:2,3 101:10 103:23,23 116:15 118:13 124:15 129:9,25 130:4,9,14,18 136:18 143:6 150:11 153:22 looked 46:4 64:16 72:5 99:17 looking 2:22,22,23 10:10 16:17 19:16 24:5 31:22 43:16 46:3 46:11,17 47:11,13 50:9 88:24 92:23 94:8 96:2 100:20 115:8 115:10 122:23 123:7 124:4 136:4,15 138:6 141:11,21 </p>
--	--

<p>146:22 149:18,21 152:22 looks 49:13 97:23 100:9 153:14 loop 31:14 lose 51:18 52:3 55:11 92:11 lot 14:24 21:16,18 23:17,17 26:4 29:25,25 31:7 46:25 90:13,24,24,25 92:6 96:24 97:21 104:14,16 137:19 149:3 lots 15:4 48:9,9 loudly 28:21 low 11:25 30:24 low- 7:7 low-income 151:22 lower 80:16 lowered 65:2 80:3 lowering 62:5 78:25 Lynbrook 58:11</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 110:19 main 147:23 maintain 81:21 maintained 80:25 major 34:24 37:13 majority 76:14 122:14 maker 138:9,19 makers 91:25 141:24 making 2:9 27:25 30:24 44:10 54:18 82:8 91:8 137:3 138:20 139:10 manage 7:22 management 56:20 73:4 79:15 81:18 82:8 85:21 100:7 124:24 124:25 149:15 managerial 78:19 managers 40:15 managing 105:22 mandated 117:25 manifested 107:25 manner 108:22 127:6 141:3 maps 39:25 March 4:5 14:7 58:8 67:20 69:13 71:6 110:18 market 5:12 136:21 marketing 5:14 22:5 27:14 30:14 markets 32:8 Mary 106:11,11 110:19 match 15:10 matchup 46:12 material 63:12 137:6</p>	<p>materially 110:23 140:8,23 matrix 41:17 matter 3:5 33:12 55:23 57:20 66:6 89:23,24 104:17 113:11 130:22 matters 14:21 42:2 96:12 113:3 114:19 123:3 133:13,13 137:6 137:6 140:11 maximize 6:18 maximum 7:16 Mayor 6:22 mean 16:23 20:8 24:7,8 27:4 32:10 52:16 93:19 118:23 119:6,18 128:2 129:7 131:9 148:24 149:20 meaning 16:5 137:23 151:12 meaningful 115:3 means 7:19 59:4 117:6 118:4,25 136:4 151:2 152:22 meant 43:8 113:23,23 114:2 115:24,25 measure 31:5 81:22 82:20 143:7 measured 6:5 measures 4:17 12:10 28:3 53:15 79:12 mechanism 31:9 59:18,22 127:17 media 6:6 31:6,8 69:19,20 79:4 103:24 meet 18:13,15 73:6 84:2,6 91:8 91:10 98:11 100:13 104:3 109:10,13,16 meeting 1:1,9 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 75:1,17 76:1 77:1 78:1 79:1 80:1 81:1 82:1 82:6 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 98:1 99:1 100:1,20 101:1 102:1,9,10 103:1 104:1 105:1 106:1 107:1</p>
---	---

108:1 109:1 110:1 111:1 112:1	miscommunication 39:3
113:1 114:1 115:1,17 116:1	missed 110:12 112:7,8
117:1 118:1 119:1 120:1 121:1	missing 23:18 60:10
122:1 123:1 124:1 125:1 126:1	mission 45:5
127:1 128:1 129:1 130:1 131:1	missteps 114:11
132:1 133:1 134:1 135:1 136:1	mistakes 95:18
137:1 138:1 139:1 140:1 141:1	mobilization 36:11
142:1 143:1 144:1 145:1 146:1	mode 138:4
147:1 148:1 149:1 150:1 151:1	model 28:25 29:5
152:1 153:1 154:1 155:1 156:1	moderate 11:25
meetings 36:21 78:24	moderate-income 7:7
meets 98:5	modest 129:3
megabits 111:14	modification 58:6 123:12
member 143:15	modifications 36:18 73:7 84:14
memo 137:24 138:15	modified 35:8,12 39:4 101:7
mention 14:13 25:20	155:4
mentioned 26:17 27:16	modify 31:16 84:20 128:22
merger 107:2 115:6,6,8 116:15	modifying 107:14
123:13 134:11 151:3	moment 10:24 45:18 57:7 119:22
merits 141:13	money 13:8,9 21:13,14,15 24:8
meritus 102:18	monitor 57:21 64:8,10 65:15
Merrick 58:13 60:15 67:23	66:3 68:14 71:21,22 75:23
message 119:11 124:13	86:24,25 98:12 99:14 104:22
messaging 18:6 75:10	monitor's 56:14,25 57:18 58:2
meter 73:10,11,17 79:17 80:13	58:21 71:16
metering 64:15 72:6	monitoring 6:8
methods 74:14	monitors 86:13
metrics 46:16 49:9	month 59:7,15 67:9,13,15,16,19
microphone 2:10	67:22,24 68:4,7,11
Microsoft 62:15	monthly 1:1,9 2:1 3:1 4:1 5:1
mid-August 64:12	6:1 7:1 8:1 9:1 10:1 11:1
mid-cycle 70:2	12:1 13:1 14:1 15:1 16:1 17:1
middle 30:24	18:1 19:1 20:1 21:1 22:1 23:1
Mike 56:16,21 60:24 63:17 71:18	24:1 25:1 26:1 27:1 28:1 29:1
71:19 86:15,18 98:9	30:1 31:1 32:1 33:1 34:1 35:1
milestone 86:18 112:10	36:1 37:1 38:1 39:1 40:1 41:1
milestones 107:22 109:11 112:7	42:1 43:1 44:1 45:1 46:1 47:1
112:7	48:1 49:1 50:1 51:1 52:1 53:1
million 58:15,17 61:21 62:3	54:1 55:1 56:1 57:1 58:1 59:1
66:11,22	60:1 61:1 62:1 63:1 64:1 65:1
mind 42:6 45:23 51:23 91:13	66:1 67:1 68:1 69:1 70:1,8
116:3 137:2	71:1 72:1 73:1 74:1 75:1 76:1
mindful 118:5 121:25 137:7,9	77:1 78:1 79:1 80:1 81:1 82:1
149:25 150:2	83:1 84:1 85:1,22 86:1 87:1
minimize 80:4	88:1 89:1 90:1 91:1 92:1 93:1
minimum 38:3 39:20 121:7	94:1 95:1 96:1 97:1 98:1 99:1
ministerial 137:5	100:1 101:1 102:1 103:1 104:1
minor 32:14 106:15,16	105:1 106:1 107:1 108:1 109:1
minority 122:12	110:1 111:1 112:1 113:1 114:1
minutes 81:3,3	115:1 116:1 117:1 118:1 119:1

120:1 121:1 122:1 123:1 124:1	28:19 35:15 39:20 43:10 44:7
125:1 126:1 127:1 128:1 129:1	45:3 47:5,17 48:4,13,22 49:4
130:1 131:1 132:1 133:1 134:1	51:6,8 72:14 74:20 83:16 87:8
135:1 136:1 137:1 138:1 139:1	105:14 109:25 114:17,18 117:2
140:1 141:1 142:1 143:1 144:1	119:25 120:10,22 125:20 128:5
145:1 146:1 147:1 148:1 149:1	136:3,25 137:7 149:8,12
150:1 151:1 152:1 153:1 154:1	151:21 153:18,20 154:16
155:1 156:1	needed 36:24 37:17 38:4,12
months 20:21 23:11 41:5 54:18	60:20 79:21 82:16 113:22
61:5 77:23 80:11,16,24 108:14	needing 29:4
109:17 142:11	needs 13:23 91:15 100:23 117:10
moot 110:6 132:19 135:11	119:7,18,19 124:10 151:10
mooted 123:6,7	negotiation 144:9,10 145:18
moratorium 3:23 4:3,13,18 8:21	negotiations 124:25
10:11 12:5 14:4,21 25:12,13	net 107:5
28:16,17 30:13	netted 61:23
morning 2:6 3:10 33:20 41:11	network 107:6,8,15,15,24,24
56:23,24 60:25 106:3	108:4,12,20 109:7,19 110:11
Mount 111:17	111:12 112:12,13 135:15 145:7
mounted 82:13	neutrality 26:9
mouth 148:24	never 138:12
move 19:17 27:23 33:10 56:12	Neville 3:7 8:15 26:13,21 31:24
104:20 113:22 133:10 152:4	32:15,17
moved 151:4	new 1:2,15 2:18 3:17,23,25 4:8
moving 103:3 118:10 135:3	6:2 7:22 8:24 11:23,24 13:6,9
muddled 134:18,25,25 135:6	14:19 27:24 34:5,24 41:22
multiple 35:24 69:18,18 78:8	50:17 54:19 56:15 57:2,9 58:4
83:8 103:21 135:9	58:6,10 61:6,8 62:10,16,21,23
multiyear 17:25 18:5 21:2,8,10	62:25 63:4,7,20 64:13,14,25
60:9	65:16,19 66:7,18,18,25 68:16
municipal 5:22 39:12 40:7,8	68:18,23 69:9 70:7,14 71:2,3
111:16	71:10,20 72:3,4,5,12,16,20
municipalities 39:12 41:5 53:21	73:6,15,22 74:7,14 75:3,14,18
	76:6,19 77:21 78:4,6 79:7,14
	80:6,9 81:12 82:5,11,16,23,24
N	83:5,11 84:12,25 85:4,6,7,7
name 106:4 156:10	85:15,17,20 86:19 97:11 98:5
narrow 8:18 130:21	100:7 104:24 109:4,5,20
narrowly 9:6 18:13	110:23 111:7,9,20,21,23 112:2
nationwide 80:9	112:2,5 113:4 116:20 123:23
natural 3:24	140:4,9,23 145:9 156:2
nature 51:5 116:3 142:20	newspaper 74:10
near 94:4	nicely 8:23
nearly 130:22	noise 124:6
necessarily 15:11,15 21:20,21	non-impacted 37:23
23:19 48:2 116:9 121:15 143:2	non-pipeline 11:20
necessary 34:15 36:23 44:10	non-pipes 14:22
77:24 95:21 127:11	non-standard 111:11
necessity 92:9	normal 74:8,12 77:8,13 78:23
need 5:12 9:19 10:4 13:22 19:22	115:9,12 136:10
19:24 22:3,4,11 25:12 28:11	

note 24:19 41:10 42:9 86:22
 113:20 114:9
noted 32:17 34:6 37:9 155:6
notes 152:9
notice 4:23 14:14 15:23 17:8
 65:9 69:14 83:22 97:11
noticed 19:9 50:10 93:2,13
notices 139:12
notified 61:6 64:3
notify 75:15
Notwithstanding 152:12
November 66:24
November/December 102:25
nuanced 123:14
number 9:7 35:3 37:17 38:3,15
 40:8 46:6 51:24 64:17 70:18
 71:24 72:2 81:19 113:3 146:7
 153:4
numbers 11:13 39:24 41:18 90:21
numerous 75:16
NYPA 5:10,23
NYPA's 13:11 25:3
NYSEG 35:18 37:20 38:10,12,17
 54:14
NYSEG's 38:3
NYSERDA 3:18 4:4,8,23 5:5,13,19
 6:4,22 7:18 8:9,12 11:23 12:9
 12:11,18,25 13:16,16 14:15
 15:6,22 17:11 20:22 22:18,18
 25:24 26:14 30:14 32:2
NYSERDA's 21:13 26:16

O

object 143:4
objectives 82:4,7
obligated 121:16
obligations 110:13
obtain 40:13
obvious 52:15
obviously 90:21 119:16 149:3,18
occur 79:20 140:5
occurred 34:22 57:14 61:3,19
 62:23
occurrence 74:12
occurring 82:12
October 67:17,20 68:12 71:22
 80:25 85:2 102:5,5,11
offer 4:11 32:4
offered 38:12 115:2
offering 30:12

office 33:15,17 35:25 36:2,3
 105:23 106:6 111:25 112:22
 139:19,25
officials 7:2 40:7,15 63:24
 95:16 97:19,22,25 98:17,22,24
 99:6
okay 10:2 13:25 21:12 23:15
 28:5 32:9,15,16 54:25 55:19
 87:16,18,19 90:13,15 91:7
 93:8,18,24 94:3,18,23 95:6,7
 97:14,17 98:20 99:3,12 100:25
 101:8,24 102:23 103:4 104:2,7
 104:17 105:17 123:11 126:5
 131:16 134:3 135:20 146:3,4
 147:13 148:6 154:13,20
once 36:13 39:9 89:6 98:18
 127:15 138:2 143:8,13
one- 70:23
one-on-one 5:14 30:15
one-time 67:10,11,25 68:2,7,8
 112:19 126:7 127:2
one's 114:22
ones 53:9 100:10
ongoing 14:20 30:21 67:12 68:3
 68:10 133:5
open 27:5 97:15 113:3
opened 76:19
opening 52:10
openness 116:23
operate 7:15
operating 119:10
operational 64:16
operations 39:18 56:20
opinion 122:10
opportunities 37:3 68:20 74:16
 83:13
opportunity 22:2 28:19 43:7,9
 52:23 69:4 70:21 92:8 93:5
 97:5 99:16,21,25 100:11
 101:10,12 120:16 124:21
opted 107:18
option 141:2
options 5:16 7:3,21 20:12 27:18
 30:16 128:10
Orange 152:10
order 2:4 3:11 7:17 8:8 10:9
 11:19 14:24 15:8,9,23 16:19
 16:24 17:13 18:23 24:6 25:20
 28:23 30:11 38:16 39:21 41:15
 50:10,20 56:25 58:23 61:6,10

61:18 63:18 65:20,23,25 68:13 70:24 71:5,25 83:11,15,18,23 83:25 84:5,12 85:3 98:17,18 101:17,22 106:9,18,20,21,22 108:10,10 109:3,3 110:7,8,10 110:12,15,16,16,19 118:14 123:5,6,6,15 124:22 126:6 128:12,12,18,19,21 129:17 130:15,15 131:8 132:20,20 133:8,9 134:6 135:2,8 137:17 137:18 138:11 140:22 141:11 141:12,14 144:16 145:7,20 147:2 149:5 150:24 151:5,12 152:13,16 orders 47:7 71:5 92:10 108:7 134:5 135:11,13,19 137:17,19 150:25 organizations 5:21 organizers 8:4 original 109:16 originally 109:18 ORPS 85:16 Ossias 105:22 106:3,5 125:9 126:13,17 127:22 128:5,15,18 131:9 135:12,21 138:24 146:18 147:5,14,17,21 148:4 outage 38:22,25 outcomes 118:3 149:14 outdoor 69:4 77:7 outlier 79:20 outliers 77:21 outline 35:10 74:18 outlined 66:8 83:6 outreach 8:20 20:24 21:4 23:6,9 27:8 67:2 70:13 94:19 outside 11:2 18:19,21 34:19 37:24 49:14 53:17 79:4 90:2 92:9 95:22 109:20 111:9 115:9 119:17 136:8,10,12 149:24 outstanding 140:11 overall 12:10 45:5 47:21 77:14 81:6,8,9 100:6 149:18 151:3 overlap 23:17 overlooked 114:22 overly 96:5 overnight 120:20 oversee 65:15 oversight 24:25 127:10 129:10 owners 26:25 ownership 49:21	P
	P.A 68:14 71:22,25 72:9,16 73:5 73:9,11,16,18,24 74:3,12,17 74:23 75:8,19,22 76:5,8,10,17 76:23 77:5,8,14,19,21 78:4,8 78:12,18 79:5,10,14 80:6,12 80:17,20,23 81:6,11,15,20,23 82:2,5,15 83:2,16 84:22 85:3 85:12,18,21 P.S.C 97:21 136:11 P.S.L 131:23 132:10 PACE 7:4 page 50:9 106:17,18 156:5 pages 156:7 paper 95:7 152:23 paragraph 50:18,25 51:2 95:20 133:4 parameter 80:3 parameters 79:19,20 parcel 139:18 141:22 parent 64:5 part 3:14 11:19 12:12 13:3 17:18 20:20 24:24 27:8 33:21 34:6 40:24 53:20,22,22 75:8 82:11 84:24 111:4 119:8 122:4 129:25 130:4 132:25 135:16 138:7,25 139:18 141:21 143:5 152:18 participants 136:21 participate 114:4 participation 7:23 8:2,7 29:12 29:15 particular 6:20 12:2,17 15:2 26:8,11 30:5 54:13 55:13 80:21 143:17 parties 38:10,15 53:17,23 59:23 86:12 119:9 133:10 Partnering 30:22 partners 20:23 25:19 partnerships 75:20 parts 3:24 103:3 pass 67:10,13,25 68:4,7,10 107:8 109:17 passed 3:22 111:10,20 passing 111:8 112:9 passings 126:24 pat 117:22 path 113:11 116:21 136:3 151:9 pathways 116:7,10

Paulin 6:20
pause 57:7 118:17 134:3
pay 65:14 89:21,24
payer 21:13,14
payment 78:24 82:19 90:3
payments 112:7
peak 75:4 76:18
Peggie 3:7
Peggy 8:15 33:10
penalties 48:24
pending 19:16 133:14
pennants 52:4
people 21:25 22:4,12,14 31:7
 47:8 51:20 53:23 88:18 89:20
 93:24 94:11 96:12 116:11
 120:7,10,16 121:2,3 132:2
 153:11,20
percent 39:7 75:5 76:15 80:14
 80:20 81:5,6
percentage 11:12 80:16,18
perfect 116:22
perform 38:4
performance 6:6 31:6,8 72:18
 73:8 76:2 81:9,22 84:10 87:9
 153:10
performed 62:16
performing 7:25 80:19
period 17:19 18:7 20:14 21:8,10
 23:13 50:20,24 51:24 58:7
 61:20 76:19 79:23,24 83:22
 84:7,8,17 93:15 99:9,22
 101:19,23
permanent 152:11
permits 131:14
person's 119:17
personal 114:20
personally 95:17
perspective 14:3 18:10 24:9
 45:19 46:3 47:3 129:13 130:2
 130:8 135:7,7 136:5 139:24,25
 140:22 141:4,5,21
petition 70:15 71:7 86:7 93:12
 106:24 122:7,8,18 137:12,13
 138:12,13 152:19
petitions 110:16
phone 36:21 39:17
phonetic 7:10 102:18
physically 39:17
pick 102:17 124:16
picked 2:10

picking 23:23
pie 28:10
piece 25:22 101:16 141:9 146:24
pieces 10:18 23:18 24:18,20,24
 25:4,23 28:10
pilot 23:25
piping 153:25
place 14:6 15:10 25:16 30:10
 41:25 47:14 58:25 60:20 69:18
 69:24,24 86:24 109:20 112:14
 140:4,24 156:5
placed 148:16
places 20:6 146:25
Plains 6:12,22
plan 4:5,5,7,14 5:6 6:9,15,17
 6:20 8:19,22 10:3,12,12,15,19
 10:25 14:7,16 16:7,10,12,17
 17:4,6 18:17 19:5,8,8 20:3
 22:20 23:7 24:11,13,14,17,22
 24:23,25 25:11,15 26:18 27:20
 29:16,16 32:4 33:13 34:2 36:5
 37:11,12,22 38:3,12,18 40:19
 41:11,15 43:10 44:6 52:19,19
 53:3,3 54:14 56:15 57:10,23
 58:4,6,9,13,19,22,25 59:21
 60:7,19 68:18 70:8 71:4 72:7
 75:8 81:13 82:20,24 83:7,19
 83:19 84:5,9,15,16,19 86:4,14
 89:18 90:23 92:24 93:6 96:7,7
 98:19 99:10,18 100:2,5,15,18
 100:21 101:3,5,25 102:4,8,21
 102:21 103:12 104:23 109:22
 111:24
planning 23:8 42:2,4 87:4,5
plans 10:14 12:16 15:7 33:21
 34:4,8,10,13,14 35:6,9,12,16
 35:21,22,23 36:14,15,19 37:7
 37:14,16 38:6 39:16,22,24
 40:12,16 41:7,9 42:9,17,20,21
 43:7,20 44:8,13 45:2,3,6 46:2
 46:8,10,21,24 47:22 48:2,3,4
 53:15 54:5,19 55:25 60:9 75:2
 75:9 76:3 81:25 87:23 97:5
 98:15
plant 62:12,18,21 85:14
plate 132:22
plates 142:22,24
platforms 69:18 103:21
play 53:22
playbook 52:21

<p> playing 52:20 Plaza 1:14 pleasant 143:9 please 2:14,15 3:9 56:21 91:13 105:25 126:19 pleased 9:10 plural 148:9 plus 140:6 point 15:18 36:25 41:3 48:12 49:22 86:23 87:24 90:17 91:12 92:17 106:15 113:8 127:22 134:23 139:15 142:14 146:19 146:20 147:24 150:17 153:9 pointed 101:13 pointing 130:21 points 26:3,10,14 113:7 policies 118:8 policy 56:17 152:20 pool 13:4 poor 63:8 pop 120:15 popped 120:12 populations 40:23 portal 109:22 portfolios 25:24 portion 20:17 66:13 position 40:6 124:24 132:21 137:25 positions 114:20 116:12 positive 116:10 possible 6:25 28:2 40:18 113:23 132:6 143:15 possibly 151:22 post- 84:7 post-summary 84:17 postpone 70:15 postponing 70:24 potential 13:20 19:2 20:15 80:4 125:12 potentially 18:24 power 4:8 8:25 13:6,9 26:3,10 38:25 powerful 119:11 124:11 powers 118:5,7 practices 34:16 36:9 pre- 49:4 pre-existing 111:12 preceded 135:13 preceding 133:4 precisely 134:16 </p>	<p> predates 41:15 predating 151:14 predominant 72:11 preferences 68:22 prejudice 33:2 premises 109:17 preparation 34:24 prepared 33:22 preparedness 33:14,16,17 36:2 preparing 42:7 97:10 present 39:17 56:19 117:8 presentation 8:15 41:19 43:18 43:19 57:24 86:15 112:23 presentations 139:8 presented 3:6 33:13 35:16 56:16 105:21 130:14 141:2 143:6 presenting 106:7 presently 50:25 presents 27:21 press 19:8 24:11,13,14 74:9 pressing 72:14 presumably 20:25 pretending 21:22 pretty 14:25 95:23 prevent 130:16 previous 135:11 previously 110:5 150:10 price 77:18 81:14 primarily 82:10 135:14 primary 34:12 61:11 prior 50:23 67:3 75:17 79:2,23 132:15 142:16 priority 40:25 99:10 proactively 75:15 97:18 98:3 probably 20:16 23:11 54:18 93:22 96:19 102:25 115:13 142:20 143:11,11 problem 29:6 88:11 147:9 151:5 151:7 problems 78:15 151:2 procedural 71:5 94:21,22 114:11 137:19 Procedure 83:21 procedures 34:3,15 78:5,14,16 proceed 32:20 55:22 150:18 proceeding 20:5 60:5,6 108:20 110:20 132:7 proceedings 20:4 44:23 116:18 132:3,8 136:8,11 156:8 process 6:23 23:8,12 27:10 </p>
---	--

37:12 38:13 39:15 40:10,11
 41:9 43:17 78:6,19 81:19 85:6
 85:8 91:25 113:7,10 115:14
 120:11 121:22 122:10 123:16
 123:17 124:9 133:5,10 134:9
 134:25,25 136:18 142:10
 145:21 146:6,8,16 148:11
 151:7
processes 34:3,15 36:11 38:5
 40:19 41:6,8 73:4 79:15
 117:18 118:18 120:3 121:7
produce 72:21
producing 118:3 121:3,4
product 100:18 101:4
production 66:23 71:13
productions 58:23
productivity 117:16
products 75:21
professional 5:20
program 3:5,13,19 5:2,6,7 6:5
 6:10,16,19 7:12,18 8:6,9,11
 8:23 11:17,23 12:9 13:10,14
 13:19 15:24 16:20 17:7,9,11
 17:20,21,21,25 18:3,5,10,11
 18:11,15,25 19:2 20:9,15 21:5
 21:7 22:25 23:6,25 25:25
 26:17,24 30:6 32:6,22 66:16
 67:2 75:23,25 111:21,25 112:2
 112:22 152:19
programs 6:9,24 7:21 11:11
 12:11 20:24,24 26:2,16,25
 27:6,11
progress 13:22 31:15 40:16
 54:21 75:24 84:3 85:22 98:13
prohibit 40:21
projects 59:19,21,24 60:3 70:19
 112:21 126:10
promised 65:23 95:20
promote 5:25 58:24
prompt 140:5
prompted 34:23
proper 63:5,7
properly 72:12 108:25
property 57:11,16,19 58:2 60:8
 60:10,12,14,17 61:3,7 62:6,6
 63:2,12 65:12 66:5,6,19,23
 68:8,14 71:14 84:24 85:5,12
 85:14,16,17,25 86:8,11,13
proposal 11:20 13:19
propose 50:14 130:20
proposed 4:24 5:5,7 7:18 65:20
 70:18 84:19 112:15 145:6
proposes 5:13 30:14
proposition 132:12,19 133:17
prorated 73:25
proration 73:15
pros 141:13
prosecute 132:8
prospective 62:4
protect 60:22
protecting 42:7
protection 59:25 74:21
protections 117:3
protocol 105:12
protocols 39:4 63:11 153:19
protracted 140:13
proud 50:2
proves 21:9
provide 17:25 18:6 30:3 31:9
 38:23 39:5,19 40:6 50:12 57:4
 70:25 74:21 109:23
provided 13:5 35:12 65:2,5,25
 70:7 71:4 82:16,20 146:8
provider 111:13,22 112:3
providers 7:8
provides 69:21 109:12 140:2,3,4
 140:19 141:2,3
providing 12:5 29:23 85:22
 95:23 110:22
provision 50:11,17 128:24
provisions 152:12
prudent 141:24
PSEG 37:10
PSL 3:14,15,22 4:22 6:11 7:19
public 1:1,2,9 2:1,4,24 3:1,13
 3:16 4:1 5:1 6:1,11 7:1 8:1
 9:1 10:1 11:1 12:1 13:1 14:1
 14:11 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 29:1,13
 30:1 31:1 32:1,23 33:1 34:1,5
 34:6,18 35:1 36:1 37:1 38:1
 39:1,10 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
 55:6 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 69:1,20 70:1 71:1
 72:1 73:1 74:1 75:1 76:1,20
 77:1 78:1 79:1 80:1 81:1 82:1

83:1,17,20,22 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1,19 95:1 96:1 97:1,2 97:9 98:1,4 99:1,22 100:1,16 101:1,11 102:1,16 103:1 104:1 104:23 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1,13,13,18 114:1 115:1,8 116:1 117:1,4 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1,22 139:1,21,25 140:1,8,15,23 141:1,4,5,8 142:1 143:1,4,5 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 publically 114:10 138:11 publicly 123:19 publish 97:11 published 39:9 97:13 pull 87:14,14 136:18 pulled 10:13 24:17 pulling 10:21 pump 15:2 pumps 4:16 7:14,15 11:17 12:6 26:6 purchase 4:14 purpose 42:6,6 purposes 16:3,17 112:16 pursuant 16:7 32:23 111:20 pursue 139:3 140:17 pursuing 29:11 113:17 pushed 49:15 pushing 26:11 put 14:8 22:20 58:25 60:20 67:7 67:16 142:24 143:22 146:10 148:24 putting 23:12 46:17 100:19 116:11 153:25	131:21 132:4,7 139:2 144:5 148:21 questioned 143:22 questions 3:8 8:16 28:6 30:4 33:18 39:21 40:8 41:19 56:21 86:16 97:8 105:24 112:24 118:14,16 quick 41:12 quickly 54:17 95:16 97:8 113:22 151:22 Quinn 34:23 quite 70:12 96:23 quote 50:18,24
	R
	rabbit 90:12 Rachio 70:5 rain 48:17 70:11 raised 71:6 86:6 101:5,22 108:24,25 129:18 130:5 149:2 149:4 raising 50:8 ramifications 24:16 122:21 range 81:2 ranged 73:19,20 rate 14:23 21:13,14 49:12,14,15 57:10 58:4,6,9,13,19,22,25 59:2,3,4,7,10,12,15,20,22 60:6,7,9,19 61:20 62:2 63:3 63:12 64:21 65:5,6,7,9 66:21 67:3,4,4,6,20 69:15,16 70:15 70:21 71:13 72:14 73:22 74:8 74:15,19,25 75:7,11 76:13 81:15 82:19,20 85:2,9 86:7 152:12 rates 56:17 59:4 60:5 61:9 62:2 66:20 69:2 74:11 75:7 78:22 79:17 82:19 152:11,14 rational 22:15 reach 136:10 reached 95:17 reaches 98:16 reaching 79:3 98:15 reactive 118:7 read 50:15 113:18 121:13 readily 77:3 reading 79:17 reads 70:2 80:14 ready 44:3 86:4,9 102:2 150:17 real 23:20,21 25:10 40:5 92:2
Q	
quality 22:11 43:19 49:9 125:14 125:18 quantify 61:12 quantifying 61:16 quarterly 85:24 question 24:6 53:7 54:11 93:17 118:23 126:6 129:18,18,19	

136:20	82:2,5
really 9:24 20:14,22 21:4 22:11	reconciliation 58:22 60:8 63:2
22:12 23:8,22 24:21 26:5,5,7	63:13 71:12 85:17
27:11,15,19,22 28:10,15 29:5	reconciliations 86:8
30:10 43:23 44:5,9,11 45:8,9	reconsider 132:12,15 150:20
45:10,12 47:5,21 49:13 54:23	reconsideration 110:17
88:4,13,14,15,16,25,25 96:20	reconsidering 106:10
99:6 101:13 104:11 115:25	record 2:2 9:15 19:4 24:19
118:24 121:6,9,12,17 123:12	50:15 104:18 105:16 111:24
123:14 124:3,4,7,12 128:24	143:11 156:7
129:7,20,21 133:3 148:21,22	recovery 70:19
reason 17:24 72:11 76:22 97:20	recusals 154:23
120:14 142:3	recuse 152:6 153:5
reasonable 22:25 108:19 109:15	redline 106:16
141:4	reduce 4:20 5:16 12:10 40:8
reasonableness 46:16 47:15 49:6	70:5 71:2 72:22 73:4 81:19
49:7,19	reducing 75:4
reasonably 143:23	reduction 75:25 82:3
reasons 34:12 74:15 114:13	reference 106:17,21 131:23
116:9 119:16,18 139:3	133:4
rebate 66:15 75:20	referenced 138:2
recap 57:4	references 35:11 39:8
receive 65:22 67:12 68:9 103:22	referencing 134:7
110:2 127:17	referred 54:13 110:15
received 14:17 30:8 63:25 64:7	referring 26:22
64:13,18 67:10,11,17,21,25	refile 35:5
68:2,7,8 73:23 76:6 84:8	refiled 41:11
94:14,17 97:21 102:8	reflect 15:14 37:7 42:10
receives 68:3 78:7	reflected 39:16
receiving 63:21 80:5 103:16	reflection 28:23
104:6	reflects 41:14
receptive 69:6	refrigerator 52:10
receptivity 68:21	refund 61:24 66:9
recognition 9:23 120:13	regard 52:19 99:14 108:25
recognize 45:15 47:17 49:24	110:11 127:6 128:10 135:23
114:11,25 115:4	regarding 5:15,25 11:20 30:16
recognized 124:11	67:5 68:20 71:25 83:12 84:4
recognizes 83:15 116:25	85:24
recommendation 32:21 35:8 38:9	regional 5:24 39:5,6,9
82:25 83:2,4 101:14 152:2	Regis 97:11
recommendations 6:18 8:14 33:9	Register 97:12
35:7,11,17,19 36:16,20,24	registered 81:13
39:2 40:18,20 53:8,13 55:3,10	regret 114:2,8 123:20
55:24 56:11 63:15 72:25 83:10	regrets 143:21
83:16,25 85:10 99:17,20 100:9	regular 29:25 76:2 105:12
104:21 105:11 150:19 152:3	regulations 15:24 34:6 117:8,24
154:25 155:11	regulator 116:23,25
recommended 71:15 74:3	regulators 114:17 117:7,16
recommends 73:5 74:25 75:19,22	regulatory 62:25 69:14 85:14
77:19,21 79:11 81:16,20,23	117:10,18 118:3,5 119:8

120:25 121:2 136:22
rehear 132:12
rehearing 110:17 122:7,8,19
 137:12,13 138:13 139:4 152:19
reinserted 106:19
rejected 35:8
relate 13:13
related 12:17 35:20 39:2 62:19
 65:12 76:11 78:10 80:22 85:5
 86:6 106:10 108:13 145:25
 150:20
relates 14:21,22,22,23 56:14
 100:7 105:20 145:16 153:12
relating 14:25
relation 4:3
relatively 80:18
release 19:8 24:11,13,14 27:21
 104:23
released 83:20
releases 74:10
relevant 12:20 58:20
reliability 25:20,21 117:14
reliable 25:10
relief 65:5 66:2 82:20
rely 51:19
remain 83:12
remainder 35:19
remaining 55:10 112:11
remarks 114:5 122:2 154:23
remedial 77:24
remedies 87:3
remember 19:6 142:11
remembers 143:12
remind 2:8
removes 60:9
rendered 110:6
renewable 3:20 15:25 16:4,9,21
 21:17 26:6,11
reoccur 76:4
reoccurring 77:21
repairable 121:24
repeating 116:19
report 10:5 19:10,15,25 21:19
 35:2,14 36:17 37:19 39:14
 53:18 56:14 57:2,3,5,12,22
 58:21 61:16 62:8,20 63:4,14
 63:16 66:8 71:16,25 72:9,19
 72:24 75:14 82:6,15,23 83:11
 83:14 85:11,19 86:4,13,25
 92:24 102:12 104:22
report's 83:24
reported 81:7,11 156:4
Reporter 156:13
reporting 32:5 76:2
reports 13:17 85:24 108:5
represent 39:7 131:25
representatives 76:9 81:9
representing 80:12
request 50:20 101:17
requesting 4:23 124:18
requests 150:10
require 39:5,15 54:22 109:16
 126:21
required 33:24 34:16 60:16
 65:14 66:7,13,25 85:19,24
 107:7,23 111:19 112:17 126:7
requirement 59:19 60:2,4 69:15
requirements 3:13 6:11
requires 3:15 17:22 29:12 84:5
 84:12 85:4 127:2
research 3:18 5:10,11,13 22:4
 69:3
residential 11:25 30:7 32:13
 40:22 67:8,9,14,24 68:6 80:7
 111:8
residents 4:11 26:24 30:12,18
 97:5
Resilience 33:15,17 35:25
resiliency 46:9,20,24 117:14
resolution 73:3 77:4,25 79:8
 108:19 113:8 135:23 145:2
resolve 36:22 82:14 133:12
 140:11 147:8
resolved 133:6
resolves 108:23 113:3 135:8
resolving 108:12 135:17
resource 26:12 36:11
resources 3:20 15:25 16:4,9,21
 26:7 37:17,20,24,25 38:11,16
 64:5 78:22 90:9
respect 122:14
respected 122:16
respond 33:23 40:14 41:8 64:7
responded 120:18
responders 54:10
responding 8:18
responds 78:9
response 3:22 23:25 34:2,8,25
 35:6,10,21 36:14 37:11,22
 41:7 46:2,8 52:8 55:25 72:4

79:8 110:8
responses 79:6 119:21
responsibilities 36:10 54:7
responsibility 28:14 125:15
 143:18 144:14
responsible 62:24 63:2
responsive 82:12 86:22 97:24
rest 54:22
restoration 34:3,13 37:18 38:20
restore 34:15
restored 38:24
restoring 42:7 52:18
restriction 26:22
result 37:6 38:16 107:11 108:20
 110:4 133:20 135:10
resulted 34:25 64:17 65:21
results 85:19 107:17 121:4
 133:18
resume 105:18
retroactive 67:18
retrofit 13:7
retrospective 61:20
revenue 58:18 59:19 60:2,4
 66:23 71:13 86:8
revenues 58:14,16,22
review 19:10 33:13 34:10 35:25
 36:4,8,13,18 37:2,10 42:24
 43:10,20,22 48:6 57:18 58:2
 66:4 72:5 73:12 77:5,22 78:15
 79:21 82:8 84:4,7,8,8,9,17,18
 84:24,24 85:4,5,7,9,13 106:12
 124:3
reviewed 26:18 73:9,10 74:13
 76:8 78:4 79:6,14 80:13,23
 81:6 139:14
reviewing 37:12 46:12 73:18
 85:15
reviews 140:18
revised 36:14 80:2 110:2
revision 41:13,14
revisions 42:25 109:14
revisit 135:19
revocation 108:9 109:3 123:6
 130:15 132:20 135:14 137:17
 141:11 151:5,12
revoking 110:17
Rhodes 1:23 2:3,12,16 3:2,10
 8:17 29:8,19 32:19 33:3,5,8
 41:21 50:5 51:3,14 53:4 55:21
 56:4,7,10 60:25,25 86:17

87:17 95:10 96:14,17 98:9
 104:19 105:4,7,10,17 106:4
 112:25 130:19,25 131:13,17,20
 142:7 144:2,19,22 147:16,19
 147:23 148:2,5,8 150:16
 151:15,18,25 152:25 153:6
 154:2,7,10,13,17,20,22 155:4
 155:7,10,14,18
rid 133:19
rider 49:17 56:18 71:18 72:24
 89:3,10,13,17 90:15,18 91:6
 93:7,10,14,17,21 94:2,6,13,16
 94:21,25 95:5,9 98:5,11 99:2
 99:4,13,24 100:4 101:20
 103:18 104:3,9
Rieder 56:16,23 63:19
right 2:19 12:19 17:16 18:8
 20:5 22:19 47:14,14 48:23
 49:3 50:8 53:23 54:20 55:16
 88:20 89:2,3,9,12,15,21 91:4
 93:25 101:16 102:6 104:13
 113:21 119:23 122:15 123:8
 125:22 126:18 127:18 128:7
 130:12 131:5,22 133:15,23
 134:2,2,21 144:12 145:8,20
 146:4 147:25 148:19
rightfully 113:14
Riley 34:22
rise 78:15 109:2
risk 60:10 138:8 141:21
Roach 6:22
road 40:20 52:20 53:18 118:19
roads 52:15 54:9
robust 15:3 67:2 68:17 128:4
Rochester 111:18
Rockland 152:10
role 92:15
roles 36:10 54:6
rolled 69:13 71:3,3
root 25:13 48:6 62:11 68:25
 76:24 77:20,23 81:16
rounds 35:24
rules 15:23 34:6 117:23

S

s 1:24 110:8
safe 25:9 153:20
safety 153:18,24
sale 86:11
salient 113:6

sampled 76:5 79:7
Sandy 42:18,22
SAPA 84:7 97:10 102:15 121:9
SAPA'd 92:25 93:13
SAPAs 139:10
satellite 112:3
satisfaction 78:3 79:18 81:7,8
81:8,21
satisfied 28:7
satisfy 36:19
Saturday 45:20
save 74:16
savings 67:7,11 68:2
saw 92:14 121:9
saying 17:13 21:23 48:15,18
96:18 97:20 120:4 123:7
134:22
says 15:20 16:24 18:24 30:11
48:16,17 53:7 87:22 91:8
101:17 129:14,17 131:10
132:13
scale 147:9
schedule 5:24 107:21 109:7,15
112:5
Schenectady 111:18
scorecards 46:9,18
screaming 142:13
se 10:20
Sea 57:19 58:13 60:13,15,17
61:3,24 62:5,10 65:13 66:5,5
66:17 68:5,8 86:11
season 41:24 75:5 102:11
seasons 41:23
seat 105:25
second 23:7 33:10 36:13 59:8
61:14 81:3 111:14 126:20
seconds 81:3,4
secretary 2:4,6,13,14 14:15
17:8 33:20 50:12 51:12 84:16
154:14 155:12,13,16
secretary's 50:18
Secretary's 139:12
section 3:14 14:11,11 15:21
16:3 17:2 32:23 34:4,7 86:11
126:18 128:19 131:23,23
132:10,10,21 133:4 135:22
136:5
sections 35:12
sector 68:25
secure 38:10

securing 37:23
see 9:6,11 12:24 19:16,24 20:2
21:22 23:16,16 24:10 26:2
32:6 43:9,11 47:20 52:11
53:10 54:15,21 96:4 101:12
102:16 130:10 138:17 144:22
153:9,21
seeing 95:24 153:22
seek 32:4
seeking 15:6 107:2 108:7
seen 120:6 125:23 128:3
segmentation 5:12
selected 112:21 126:10
selection 85:3
send 23:4 48:19
sending 81:14
senior 85:20
seniors 103:8
sense 47:10,12 51:5 124:8
134:12 136:2
sensible 117:17
sensitivities 91:13
sensitivity 83:15
sent 74:18 79:3,8,22
separate 12:25 13:4 60:18
118:15 126:14 133:21
separated 62:18
September 38:18 53:11 54:12
55:9 65:24 107:19
series 34:21 52:5 85:13
seriously 153:17
servants 98:4
serve 39:10 143:4
served 81:12 111:10,11
service 1:1,2,9 2:1,4 3:1,14,16
3:23 4:1,18 5:1 6:1 7:1 8:1
9:1,16 10:1 11:1 12:1,4 13:1
14:1,11 15:1 16:1 17:1 18:1
19:1 20:1 21:1 22:1 23:1 24:1
25:1,10 26:1 27:1 28:1 29:1
30:1 31:1 32:1,23 33:1 34:1,5
34:7,16 35:1 36:1 37:1 38:1
38:24 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 58:1,10,12,14
58:16 59:1,20 60:1,3 61:1,4
62:1,10,18 63:1 64:1 65:1
66:1,21 67:1,8 68:1 69:1 70:1
70:16 71:1 72:1 73:1 74:1

75:1 76:1,9,21 77:1 78:1,11
 79:1 80:1 81:1,5,9 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
 96:1,11 97:1 98:1 99:1 100:1
 101:1 102:1 103:1 104:1 105:1
 106:1 107:1 108:1 109:1,24
 110:1,2,22 111:1,21 112:1,3
 113:1 114:1 115:1 116:1 117:1
 118:1 119:1 120:1 121:1 122:1
 123:1 124:1 125:1,13,18 126:1
 127:1 128:1 129:1 130:1 131:1
 132:1 133:1 134:1 135:1 136:1
 137:1 138:1 139:1 140:1 141:1
 142:1 143:1 144:1 145:1 146:1
 147:1 148:1 149:1 150:1 151:1
 152:1 153:1 154:1 155:1 156:1
services 11:24 13:5 36:3
serving 2:20,24 143:5
session 2:3 14:13 49:25 51:11
 91:4 94:4 113:25 114:9,14
 118:19 119:2,4,12,18 123:21
 129:14 137:15,16 141:11
sessions 143:10
set 16:20 17:6 18:23 20:23 21:6
 37:4 50:19 54:12 59:5 64:8
 66:16 118:8 136:24 152:15
setting 21:5 115:18 133:9
settle 124:20 138:5
settled 144:12
settlement 66:10,14 105:20
 106:9,14 107:13,18,19 108:16
 108:18,22 109:9,11,19,23
 110:4,25 111:5 112:15,18
 113:3 118:16 122:23,25 124:5
 124:15 126:19 128:8,16,20,22
 131:10 132:23 133:7,16,24
 134:10 135:4,8,11,16 137:20
 138:7,17,21 139:13,24 140:10
 140:21 141:22 144:11 145:6,18
 146:20 147:6,7 150:20
settlements 136:10 150:5
shape 45:2 117:9
share 60:22 121:20
shared 70:9 98:21
shareholder 66:13,16
shareholders 57:20
shareholders' 66:6,22
shares 98:17
sharing 98:3
ship 45:10
shore 57:14,18 63:22 64:23 65:7
 66:4 68:15
short 20:14 117:10 142:20
 143:13
shorter 73:25
shots 116:8
shouldn't 118:20
show 47:8 110:8,19
showcased 138:13
showcases 137:23,24
shown 115:18
shows 43:4,19,23,23 88:17
shuffle 62:12
shutting 61:22
sic 59:18,21 64:24 99:8
side 30:7,8 123:25 144:10,24
sidetracked 44:18,24
sight 51:19 55:11
signals 81:14
significant 20:17 28:14 34:21
 41:17 57:13 61:7 64:17
significantly 78:14 80:10
silenced 114:23
similar 40:24 127:6
simple 52:17
simply 128:19
simultaneous 101:9
single 23:3 67:15,16,19
Sipos 50:6,7 105:23 106:7
 123:10 126:3 128:24 130:24
 131:5 132:25 133:21,24 134:13
 134:15,19,23 135:5 139:20
 145:4,9,12,20 146:2
sit 43:15 47:19 115:4 139:5
sitting 142:18
situation 15:19 82:9 150:9
situations 88:8 119:17
skewed 147:3
slide 57:8 87:19,21 90:20 92:4
 92:14,14,21,22
slides 87:14 90:25 91:3
slightly 77:10
small 11:11 41:2 58:11
smart 11:21 70:5
snow 48:17
social 60:14 69:19 79:4 103:24
socialization 60:14
sole 50:18
solely 77:15

<p> solution 27:21 131:14 solutions 11:20,21 116:11 117:11 someone's 114:24 soon 64:18 113:23,23 152:24 sophisticated 69:11 sorry 5:3 6:15 34:7 36:7 87:19 93:18 111:25 115:2 122:15 152:9 sort 20:14 23:7 45:12 46:3 49:15 62:16,22 90:3,6,12 93:9 118:15,18 120:3,15 135:3 144:11,13,25 sorts 21:2 sought 12:3 38:16 42:19 sound 117:11 138:20 soundness 118:11 source 78:6 sources 78:8 south 57:14,18 63:22 64:23 65:7 66:4 68:15 spaces 5:17 spanning 61:9 spatial 68:25 speak 2:9 139:5,20 speaking 28:16,21 49:25 140:20 speaks 27:11 53:18 124:16 126:6 138:11 special 113:25 114:13 118:19 119:2,4,18 123:21 141:10 specific 9:2 11:12 37:4 39:21 53:25 55:2 63:14 97:25 107:20 146:10 specifically 4:13 8:18 65:25 specifications 18:14 specifics 144:10 specifies 38:3 Spectrum 110:22 speed 81:2 speeds 111:14 spelling 7:11 spends 135:16 spike 57:13 spiked 80:2 spoke 98:22 spoken 136:16 138:15 spot 106:18 spring 35:2,13 36:8,16,17 37:19 39:14 Sprinkler 70:5 </p>	<p> spur 115:11 staff 12:16 15:5,8,17 21:9,9 22:22 26:9 29:22 31:25,25 35:25 36:8,18,20 37:8,9 38:2 38:9,17,25 42:24 43:22 50:14 59:23 61:6,10,16 62:8 63:4,14 64:3,8 66:8 70:8 73:6 75:23 78:25 82:14 84:2,6,13 85:10 85:15,23 86:5,21 91:9,10,21 98:5,11 100:12,19 102:9 107:13 108:2,11,15 126:9,12 127:15,20,23 128:14 129:4,7 129:14,17,24 131:2 140:16,17 146:21 150:4 staff's 34:10 36:6 37:2 57:11 62:20 staff's 84:3 135:7 staffing 41:17 stages 84:23 stagnant 117:21 stakeholder 100:17 stakeholders 4:10 8:14 9:11 34:19 43:6 75:16 93:2 119:9 136:22 stale 117:21 stand 131:14 standard 49:7 111:11 115:9 132:9 standards 47:2 48:14 49:9 125:18 stands 123:12 start 23:5,9 58:3 96:17,18 started 2:17 starting 46:10 99:8 state 1:2,14 3:15,17 8:3 12:21 16:6,10,12,16 17:19 24:6 41:22 45:7 61:8 65:18 75:3 83:21 85:7 97:12,19 109:4 113:5 132:2 156:2 stated 6:22 78:16 80:20 87:13 114:10 156:5 statement 6:11 states 75:14 82:15 83:19 statewide 18:25 19:2 53:24 121:19 static 43:8 44:8 stating 7:11 status 57:25 82:6 statute 8:19 stay 87:8 </p>
--	---

<p>steep 64:4 stenographer 105:14 step 10:10 27:22 52:24 95:20 96:25 114:2 116:2 118:13 130:16 136:8,11 153:21 steps 44:17 72:17 83:3,6 148:12 150:3 stood 140:25 stop 124:18 storm 36:10 46:24 49:5 51:24 storms 34:21,22 35:2,13 36:8,17 37:19 39:14 story 93:9 142:19 143:12 strategic 69:10 strategies 73:4 strategy 33:22 82:3,7 89:8 stream 99:20 streamlined 6:24 streams 15:10 stresses 83:11 strike 124:19,20 128:13 strive 117:17 strong 138:11 141:15 stronger 109:13 strongest 113:12 strongly 27:9 113:22 123:19 struck 90:4 structure 72:14 73:22 74:15,19 74:25 76:13 81:15 136:22 structures 75:8 studies 6:8 21:16 22:3 23:9 88:13 study 20:10,16 21:17 66:15 68:17 89:4,4 124:19 stuff 123:25 subject 57:22 131:25 133:18 submit 84:15 85:24 submitted 10:6 34:11 37:12 72:10 82:23 84:4 submitting 85:23 subscribed 156:10 subsequent 108:10 109:3 Subsequently 108:2 subsidiaries 110:21 subsidy 24:8 substance 38:14 114:18,19 substantial 40:16 substantive 113:8 130:8 137:6,7 substitute 70:18 substitution 146:9,13,24</p>	<p>succeeded 118:3 success 6:19 130:12 sudden 77:16 120:9,14 sufficient 36:19 129:21 suggest 99:23,25 100:11 129:3 135:6,8 142:15 145:4 summarize 57:9 60:19 110:25 summary 84:8 128:19 summer 57:15 76:3 78:20 98:8,13 99:7 Superstorm 42:18,22 supervision 63:8 supplement 37:24 38:11 supply 19:12 56:17 support 4:11,14,22 9:3 30:12 40:3 42:14 51:7 52:14 87:10 89:7 113:2 132:11 151:3,12 supported 6:14,15 supporting 11:17 29:18 53:3 96:13 supportive 24:20 152:18 supports 6:10 89:7 supposed 26:10 88:25 118:7 Supreme 65:18 109:4 133:14 135:24 surcharge 60:3,18 61:22 66:24 70:16,25 75:19 surcharges 62:6 75:18 sure 2:15 11:7 22:5 24:15 28:24 30:24 31:22 33:19 45:4 46:11 54:4 88:15 90:6,6 91:8,22 97:3 98:2,16 101:9 102:21 103:6,9,14,20 104:4,5 121:10 121:17 123:7 125:6,15 126:18 129:8,21 130:6 134:13,20 137:3 139:10 145:14 146:25 153:14 surprised 65:8 95:14 survey 68:19 69:3,9 surveys 81:22 suspended 66:20,23 suspension 65:6 67:21 78:22,23 78:24 82:18 sustainability 75:6 sustainable 4:25 13:15 117:12 swing 143:14 Syracuse 111:18 system 7:20,25 59:17 62:13,14 62:16 70:20 71:11 72:6 73:2 73:10,12</p>
--	--

systems 4:16 13:2,7 39:25 64:15	96:22,24 103:12 115:14 120:5 124:17 137:5 140:14,15 153:10
T	
table 53:23,24 105:25 123:24	terrific 3:2 154:20
tactics 125:24	territory 8:21 61:4
tailored 9:6 18:13	test 62:2 73:10
take 8:12,12 10:8,24 45:18 48:23 49:18 52:9,24 53:2 54:3 57:7 83:3 90:11 92:8 95:20 104:24 109:20 116:2 118:13,17 134:3,16 140:3	thank 2:11,15,16,19,21,25,25 8:16,17 9:5 11:14 13:25 21:12 28:5 29:7,8,10,19,21,22 32:18 32:19 33:9 41:21 42:16 45:16 50:3,5,7 51:2,3,14,17 53:4,6 55:19,21 56:10,23 57:8 60:24 63:19 71:18 86:17 90:18 92:21 95:7,10,12 96:14,16,18 104:19 111:3 112:25 114:7 123:21 131:17,19,20 141:8 142:5,7,9 144:2 148:5,6,9 150:16 151:14 151:15,18,25 152:24,25 153:3 153:6 154:19,21 155:7,18,19
taken 14:17 30:9 37:5 54:8 69:17 72:17 77:24 83:3 95:22 105:25 110:5 133:19 151:14	Thanks 50:4 84:22 150:15
takes 77:3 78:2 129:24	Thanksgiving 142:16
talk 45:21 139:21,22,23	that's 87:15 88:11 90:9,14 91:6 91:10 93:7,14,17 94:2 95:7 96:10,12 100:15 103:18 107:18 115:2 118:14 123:13 124:11 126:3 130:7,24 132:18 133:7,8 133:8,21 137:2 138:7 142:3 145:5 146:16 148:3,7 150:6,12 154:17
talked 19:14 25:25 44:4 119:20 136:2	theory 17:20
talking 24:7 144:20	there's 89:20,25 90:22 91:22 95:3,4 96:2 97:13 100:10 103:9,15 104:16 113:16 121:12 122:9 126:14,14,20 128:25 131:23 132:10,16,22 146:11,13 149:3,6,12,20,21 150:6 153:12 153:13 155:13
talks 92:4 132:11	they'll 89:4 91:4
target 32:8	they're 88:19 89:3 96:8 98:14 98:15 144:12,17 153:17
targeted 5:14 23:19 75:10	they've 96:6 104:14
targeting 12:18 53:25	thing 27:9 96:11 103:13,14 143:9 148:14 154:12
targets 62:7 82:4 115:17	things 10:14 14:6,25 21:18 22:10,14 24:18 29:24 30:20,25 46:6,8,19,23 47:3,4 51:22 52:14,17 53:2 91:25 94:10 96:4,5 99:19,23,25 100:8 111:6 115:10,15,19 120:4,5,6 120:13 124:16 128:8 130:13,17 137:10 140:2,24 149:17,19
tariff 73:16 74:2,5 121:12 152:10	
tariffs 152:15	
task 53:18,20 54:17	
tasks 37:4	
tax 57:11,16,19 58:2 60:10 61:3 61:7,8,19 62:6,6,11,23,24 63:2,13 65:12 66:6,12,24 67:10,11,13,25 68:2,3,7,9,10 68:14 84:24 85:7,13,14,16,17 85:25 86:8,13	
taxes 60:8,13,15,17 71:14 85:5	
team 31:25 62:25 64:5 78:7	
teams 52:2,2,8	
technical 34:14	
technically 123:14	
technologies 27:3,4	
Ted 3:6,8 8:17 27:15 31:2 33:9	
telecommunications 53:19 105:23 106:6 117:15	
telephone 109:7	
tell 89:10 103:10	
temperature 77:11	
temperatures 70:11	
term 11:21 18:2 75:6	
terms 21:3 30:9,17 32:11 94:19	

think 9:8,22 14:2 15:3,3 20:13
 21:4,8 22:8,16,25 23:3 27:9
 27:20 28:6,8,9,10,12,22 29:11
 29:16 31:8,16,24 43:4,18 44:6
 45:17,19,23 47:4 48:3,5,5
 49:20 52:13 53:3 87:11,13,19
 87:19,24 90:5,19,20,23 91:10
 92:22,24 95:23 96:2,23 98:23
 99:18 100:22 102:5,18 104:15
 104:17 116:5,13,14,19,21,22
 116:23,25 117:6 119:10 120:25
 121:10,23 122:2,8,9 123:23
 124:11,12,13 125:4,9,10,14
 127:9,9,22 128:10 129:20
 130:20,20 131:12,12,13 132:17
 132:18 133:2 136:25 137:11
 138:18,22,24 139:17 141:8,8
 141:20,21,23,23 142:4,11
 143:18 144:13 146:16 147:16
 147:19,23 148:13,20,22 149:25
 150:17 151:5,7,10,20 152:20
 152:21 154:15
thinking 115:16 117:4
third 38:10,15 56:12 59:11
Thomas 6:22
thorough 87:2
thought 52:16 115:19,21,22
 120:24 128:6 146:11
thoughtful 117:18
thoughts 9:8 100:14
three 1:14 62:20
threshold 123:2
throes 49:8
Thursday 1:13
tied 10:17 46:25 150:25
tier 67:16,17,21 76:13 78:22
 82:18
ties 24:4,4
till 57:8
Tim 56:17 57:3,10,24 60:22
 63:19 65:13 71:19 84:21 86:18
time 11:9 19:9 20:23 21:24
 24:12 25:10 30:2 35:22 36:25
 38:20,23 40:5 42:3 43:3 44:19
 46:13 49:25 50:13,14 51:5,25
 54:3,12,23 60:16 77:25 78:2
 80:24 81:5 83:15 84:20 90:11
 91:24 94:8 101:2 106:25 107:3
 114:10 115:5,7,16,18 119:24
 120:7,9,21 122:14 129:16
 135:16 140:12,16 143:14 156:4
timeframe 102:25
timeline 38:13 44:18 107:14
 140:6
timelines 145:3
timely 34:17 38:7 41:22,24
 72:22 91:23 117:17 141:3
times 37:18 49:21 51:23 77:4
 79:23 91:16 116:5 125:16
 128:4 139:9 143:8
timing 59:24 83:4 86:10
tips 70:3
Title 34:5
today 14:19 35:16,24 39:22
 40:17 53:15 54:5 61:2 71:15
 71:24 95:25 97:9 108:17
 119:20 124:13 129:5 140:24
 143:24 145:5,21 146:14 155:15
 155:17
today's 34:13 43:18 58:20
today's 58:20 140:22 145:21
tomorrow 130:13
tool 6:16
toolbox 103:7
tools 60:21 70:2 138:19
top 80:19
tortured 123:16
total 11:8,15 79:25
tough 86:19 113:7
town 66:9 119:4
Tracey 1:24 2:18
track 44:16 64:7 129:2,2
tracking 6:6 31:5 36:12 40:20
 76:18,23 129:8
trade 5:20 61:6
tradenname 110:22
traffic 6:6 31:6
training 76:8 153:11,19
transaction 107:11
transcription 156:6
transferred 62:13
translates 69:23
transparency 117:2 130:2
transparent 34:17
transpired 57:4
treated 127:6
trees 48:12
tries 114:25
triggered 8:20
trouble 48:19

true 25:9 46:15 48:6,7 79:21
87:4 117:2,12 156:7
truly 118:9
truth 121:5
try 126:13 134:25 143:2
trying 9:16 20:6 27:15,22 28:11
88:4,15,16 90:8 127:19 130:18
132:18 148:23
Tuesday 97:12
turn 51:15 71:17 84:20 110:24
139:2 147:15
turned 54:16
turns 91:21
tweaking 41:16
twice 80:11
two 13:13 30:20 57:5 58:9 61:11
71:13 72:13 107:2 126:14
127:5 133:2,13 137:16
type 37:17 118:25 119:2 120:10
145:17
typewritten 156:6
typical 67:8,23 68:6

U

ultimate 122:13
ultimately 108:15
um 93:21
unable 4:17 12:4 40:14
unbelievable 104:11
uncertain 59:25
uncertainty 120:13
uncomfortable 92:7 96:21
underline 106:13
underlying 24:23,24 74:15 123:3
134:5 150:25 151:3 152:13
undermine 81:25 87:23
undermining 88:3
underserved 107:9 113:4
understand 20:7 24:16 27:16,23
32:3 68:20 69:22 117:9 120:2
121:15 125:7 138:6,8 145:14
145:15 148:11,23
understanding 44:21 117:5
120:11 146:15
understandings 27:17
understood 119:14 134:20 145:11
underway 87:8
unfortunate 144:6
unfortunately 54:23
unintended 88:6

unintentionally 55:14
union 124:24
unit 7:10
units 111:8
universally 6:14,15
unreasonableness 49:22
unserved 107:9
upcoming 20:4 41:5
update 33:24 55:7,15 57:25 86:2
updated 16:13 34:8 37:12 52:21
52:22,23 76:2 120:18
updates 15:5,13 74:11 85:22
uploading 62:15
Upstate 111:23 113:14 140:4
145:9 151:21
urgent 78:11
usage 7:20,22 59:5,6,6,8,11,14
68:25 75:5,13 77:6,7 79:16
80:22
use 5:16,18 29:5 68:20 69:5,24
70:3 76:12 81:10 112:10 118:5
124:23 133:16
useful 8:22
utilities 8:3 29:13 34:24 35:5
35:15,17 36:14 37:5,6,8 39:5
39:11 41:4,7 42:23 43:11,21
51:21 52:7,20 53:9,21 80:19
152:11
utility 7:10 33:24 36:22 38:24
utility's 33:22 34:2
utility's 35:10
utilize 132:19
utilized 136:5,6

V

vacuum 137:14
valid 141:9
validate 77:23
validating 146:21
Valley 5:23
value 123:24 141:25 142:5
various 20:12 28:3 75:20
vendors 75:21
Verizon's 125:17
Vernon 111:17
versa 46:25
version 42:11
versions 42:11
versus 46:20,24 47:10 134:9
vetted 59:22

vice 46:25
video 109:7
view 139:23
vigilant 83:12 87:8
village 66:17,19
violations 153:13
visibility 40:2
vision 8:2
vital 37:15
voice 114:22 124:10 130:7
voided 134:8
volatile 116:6 119:23
volume 78:20 80:11 81:4 82:13
vote 17:5,5 24:22 32:20,21,24
 51:11 55:22,23 56:2,5,8
 104:20,21 105:2,5,8 122:16
 142:18 143:14,20,20,25 150:18
 150:18,18,22 151:6,13,17,24
 154:10,16,24,24
voted 14:8 122:11
votes 152:18
voting 31:21 143:19,21 150:24
 151:12 152:6,9,14,16,17 153:5
vulnerable 40:24

W

wade 124:7
wading 125:23
wait 47:4 120:20,20
waiting 19:23 21:17,17,18,19
walk 10:24
want 21:6,22,23 22:5 24:15
 25:21 29:22 31:21,22 41:10
 45:8 46:10 47:9 49:24 51:18
 53:13 69:5 87:13,24 88:10
 90:5,16,20 91:12,22 92:11,11
 92:12 93:4,25 96:8,17 97:7
 98:2 99:21 101:9,10 103:5,9
 103:14,22,24 118:17 123:8
 124:16 125:6 126:17,18 129:25
 130:6,10,17 143:10,20 144:17
 146:25 148:10,20 149:22 150:2
 150:8 153:9,13
wanted 139:15 145:14
wants 100:17
Warner 106:25
wasn't 43:25 52:21
wasn't 142:12,13,17
wasteful 22:7
watch 104:8

water 36:3 56:16,16,17 57:2
 58:7,10,11,24 59:5 60:21 62:9
 62:10,21 63:5,7,20 64:13,14
 64:22 65:2,19 66:7,18,25
 68:16,18,20,23 69:4,10,23
 70:3,7,15 71:3,11,20 72:4,17
 73:6 74:8,17,20 75:5,15,21
 76:6,19 77:22 78:11 79:7 80:7
 80:8,10 81:12 82:6,11,17,23
 82:25 83:5,12 84:13 85:18
 86:19 96:19 97:4,18,24 98:6
 104:24
Water's 57:10 58:4 62:14,23,25
 72:4,6,12,20
Water's 73:16 78:5,7 79:15 80:7
 85:4,6,8,16,20
watering 70:4
Waters 85:2
way 9:17 21:6,10,25 22:14 29:17
 30:19 42:17 45:4 49:13 52:18
 91:15,25 92:2 104:11 106:23
 116:22 118:10 120:10,15
 121:11,14,18 124:8 128:25
 129:24 135:9 136:6,7,20
 142:23 143:20 145:24 147:3
 150:8
ways 28:12 42:8,13 75:12 79:9
 83:8 103:16 123:5
wayside 55:14
we're 2:22 11:10 15:18 16:14
 17:4 18:21,25 19:21,22 21:5
 21:16,18,19 24:7 25:11 28:13
 30:12,24 31:10,11,12,22 32:2
 41:19,23 44:2 45:4,16 47:11
 53:19,22,25 54:19 55:12
we've 18:23 25:17 49:2
we'd 112:23
we'll 89:7 94:8 96:4 97:11,15
 102:12 148:16,17
we're 86:2 87:6 89:11 90:8,9
 95:24 96:12 97:10 105:18
 118:7 120:19 121:11,21 122:23
 123:15,22 136:2,14,25 140:14
 140:15 145:17 149:25 150:9,17
 153:10,14,15,21
we've 90:6 104:8 113:6 120:6
 140:7 147:10 151:10
weak 52:5
weakness 137:23 141:14
weaknesses 137:25 138:14

weather 45:21 48:9 77:6,8,9
weatherization 7:9
weatherman 48:16,17
web 109:22
webcast 2:11
website 6:6 31:6 74:10 81:10
 91:5
websites 31:8
Wednesday 104:4
weeds 118:14
week 63:25 97:13
weekends 70:11
weekly 70:10 76:21
weeks 29:24 64:14 96:20
weigh 114:15 140:8 143:7 144:9
 144:24
weighing 138:9,21 145:17
weight 100:17 138:20
welcome 2:17,19 95:9
went 20:20 26:3 43:20,21 69:14
 117:24
West 8:10
Westchester 3:6,12,21,24 4:4,10
 4:12,12 5:4,5,9,21 6:21 8:11
 8:21 10:2,20 12:20 13:6 16:2
 16:22 18:15,23 23:19 24:5,12
 26:3 28:22 30:13 32:22 54:2
wetter 77:7,10,11
what's 88:8 92:13 101:15 130:17
WHEREOF 156:9
white 6:12,21 152:23
who's 129:13
wide 24:6
wider 39:22
widespread 7:23
willing 95:18 96:8
winter 34:22 35:2,13 36:7,16,16
 37:19 39:13 99:9
wire 38:7
wireless 112:3
wireline 111:21
wires 54:8
wisdom 42:19
Wisely 33:16
wish 152:5
withheld 63:11 65:12
WITNESS 156:9
WOLLEBEN 156:3,13
won 123:19
wondered 26:7

wondering 16:8
words 90:25 123:8 148:24
work 5:19 6:25 18:11 26:19,23
 28:19 31:15 32:2 37:16 39:24
 43:19 44:9 49:10 75:22 99:23
 103:3 104:16 119:11,14 120:6
 148:16
worked 38:25 82:14 86:21
workers 55:7
workforce 149:22
working 2:24 23:5 25:18 26:24
 27:11 43:5 44:4 45:4 47:10
 78:16 91:21 121:5 149:17
workshop 4:25 20:24
workshops 5:15,25 13:16 23:9
 27:13 30:9,15,22 32:3
World 52:4
worries 119:5
worth 116:19 142:5
wouldn't 20:17,22 21:14 22:18
wouldn't 121:15 123:17
writing 50:21 101:18
written 6:13 79:6
wrong 90:21 144:15
wrongly 123:2
Wyman 7:10

X

X 1:23

Y

yeah 26:13 87:18 93:21 126:13
 139:16 144:23
year 5:7 13:18 17:14,17,23
 18:18,20 20:17,18,18 34:10
 53:12 61:19 62:2 66:21 67:4,4
 67:21 69:15 70:13,16,22 71:13
 76:15 79:23 82:19 86:5,8,10
 86:19,19 94:6,8 96:3 99:7
 114:2 137:15 140:25 152:12
year-on- 76:14
years 13:20 17:11 19:2 43:16
 45:20 46:5 57:5 59:20 61:9,20
 73:8 107:10
yelled 33:20
yesterday 45:16
yield 107:5
York 1:2,15 3:17 4:2,8 8:25
 13:6,9 34:5,24 41:22 56:15
 57:2,9 58:4,6,10 61:6,8 62:10

62:21,23,25 63:4,7,20 64:13 64:14,25 65:19 66:7,18,18,25 68:16,18,23 69:9 70:7,14 71:2 71:3,10,20 72:3,4,6,12,16,20 73:6,15 74:7 75:3,14 76:6,19 77:22 78:4,6 79:7,14 80:6,10 81:12 82:5,11,16,23,24 83:5 83:12 84:12 85:2,4,6,7,7,15 85:17,20 86:19 97:11 98:6 104:24 109:4,5,20 110:23 111:7,10,21,23 112:2 140:4 145:10 156:2	11,000,000 65:2 11th 65:24 12 131:23 132:10,21 133:4 135:22 136:5 120 76:5 120,000 65:4 1200 64:12 13 92:4,14 145,000 107:9 109:17 113:13 14th 4:5 14:7 107:19 110:10,10 15 75:5 15-M 106:11 15-M-0388 105:20 15,000 59:14 156 156:7 15th 34:9 36:5 38:19 42:24 53:12 54:12 16 34:5 16-W-0259 56:13 165 153:12 165,000,000 11:17 165A 153:4 165B 153:13 167 153:8 170 81:11 17th 4:2 14:3 18 109:17 110:19 18-E-0717 33:11 18-M 106:11 18th 35:3 64:24 68:12 71:23 19-G-0423 153:4 19-M- 35:3 19-M-0265 3:4 1977 45:21 19th 1:14 67:17 108:16 110:18 156:10 1st 3:17 10:6 19:10 66:24 67:17 70:17,17 84:2 91:9 102:9
York's 7:22 Yorkers 113:4 140:9,23 you'd 131:7,15 you'll 91:11 you're 88:4,22 132:18 138:5,6 140:20 154:3 you've 105:25 133:2,2	11,000,000 65:2 11th 65:24 12 131:23 132:10,21 133:4 135:22 136:5 120 76:5 120,000 65:4 1200 64:12 13 92:4,14 145,000 107:9 109:17 113:13 14th 4:5 14:7 107:19 110:10,10 15 75:5 15-M 106:11 15-M-0388 105:20 15,000 59:14 156 156:7 15th 34:9 36:5 38:19 42:24 53:12 54:12 16 34:5 16-W-0259 56:13 165 153:12 165,000,000 11:17 165A 153:4 165B 153:13 167 153:8 170 81:11 17th 4:2 14:3 18 109:17 110:19 18-E-0717 33:11 18-M 106:11 18th 35:3 64:24 68:12 71:23 19-G-0423 153:4 19-M- 35:3 19-M-0265 3:4 1977 45:21 19th 1:14 67:17 108:16 110:18 156:10 1st 3:17 10:6 19:10 66:24 67:17 70:17,17 84:2 91:9 102:9
Z	
0	
0.46 59:8 0.63 59:10 0.64 68:2 0.90 59:13 0178 106:12 110:20 0285 35:4 0388 106:11	
1	2
1 16:24 17:13 18:18,20 58:7,10 58:15 60:20 66:21 67:8 69:15 70:16 80:19 113:25 152:12 156:5,7 1-year 17:18,20 18:15 1,000 65:3 79:2,24 80:3 1,000,000 13:18 66:14,16 1.18 59:16 1.28 68:4,10 1.43 68:8 1.47 67:11 10 80:16 10-year 18:11 10.1 58:15 10:28 1:13 2:2 100 59:8,10,13,16 111:14 105 34:6 11 1:13 153:13	2 6:11 12:11 52:4 58:12,16 66:21 67:21 78:9 81:2 82:19 86:8 2-month 17:21 2,800 112:8 2.3 61:21 66:11 2.4 62:3 2.48 67:13 2.5 66:22 20 36:6 71:7,7 81:6 153:12

<p>20,000 67:14, 15, 19 2009 133:16 201 3:4, 11 2012 62:9 2013 42:18 46:5 2015 16:10, 12, 14, 16 71:7 80:15 2016 12:14, 15 15:8, 9, 12 80:15 106:24 120:19 2017 42:11 57:10 58:4, 5, 7 60:20 60:23 61:5 74:7 76:16 77:11 77:12 80:15 107:12, 19, 19 109:22 2018 33:12 34:22, 25 35:13 36:5 36:7, 16 37:19 39:13 42:11, 12 57:15 61:10, 16, 17 62:8 63:20 65:24 66:8, 24 68:12 71:23 73:13 74:7 76:3, 7 77:10, 12 78:20 80:2, 16, 17, 25 85:3, 10 106:20, 21 110:10, 11, 13, 14, 18 110:19 2019 1:13 3:15, 17 4:2, 6 11:19 14:4, 7, 14 16:14 35:3, 6 38:19 64:24 68:18 69:14 70:14, 17, 23 71:10 72:10 81:21 82:22 83:9 84:2, 10 85:16 91:9 98:14 99:18 105:20 106:9 108:16, 16 108:18, 22 109:9, 11, 18 110:4 110:25 111:5 112:15 133:22 135:8, 10, 15 140:21 145:6 150:19 156:10 2020 70:17 2021 58:8 84:25 86:14 20th 35:6 22 49:4 22nd 67:20 23 58:5 72:25 99:20 100:10 24 73:21 87:21 24th 5:6 25 87:19 25,000,000 12:8 13:3 250,000,000 16:25 25th 14:14 70:14 86:7 93:12 26 82:22 90:20 92:14 261 152:9 26th 72:10 27th 70:23 106:20, 20 110:14, 18 28,000,000 11:22 29th 65:17</p> <hr/> <p style="text-align: center;">3</p>	<p>3 1:14 13:20 17:11 19:2 64:14 67:4 69:15 70:5, 16 79:19, 20 96:20 106:17, 18 3- 61:19 3-year 18:10 3,000 59:7, 9 3.1 58:17 3.3 80:14 3.90 68:3 30 73:20 74:4 81:3 84:6, 17 102:10 30-day 142:17 30,000 111:23 300,000 61:23 301 33:11 119:20 30th 63:20 71:10 31 73:21 74:4 92:21 31st 58:8 67:20 32,000,000 13:5 35 73:20 37 81:4 373 152:16 39 132:11 133:3</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 50:18 66:20 67:4, 16, 17, 21 76:13 78:22 82:19 107:10 4-block 59:4 4-year 58:6 4.34 67:12 4.74 67:18, 22 401 56:13, 24 57:22 71:24 42 45:20 45 35:17 53:8 48 81:3</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 51:23 61:20 5-year 17:21 18:10 5,000 79:25 80:12 50 76:15 500 79:2 80:4 501 105:19 106:8 52 35:18 54 35:17</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 16:7 20:21 23:11 77:22 79:23 81:3 6,000 80:12</p>
--	---

<p>6,000,000 112:14,19 126:8,15,22 127:3,5 60 112:14 60-day 142:16 600 63:25 66 34:4 6621 34:7 68 61:23 68.14 68:9</p>	<p>8th 106:24</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 20:21 9,000 59:12 9,400 111:19 9,500 111:15 90 3:16 15:20 900 81:4 920,000 17:12 94 35:19 53:8 95 39:7</p>
<hr/> <p style="text-align: center;">7</p> <hr/> <p>7 10:13 61:5 7-11-19 1:1 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 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 7,000,000 66:9 7/10/19 41:14 7/20/19 41:13 70 86:11 74A 3:14,14,15,22 4:23 6:11 7:19 14:11,12 32:23 7th 11:19</p>	
<hr/> <p style="text-align: center;">8</p> <hr/> <p>8,000 67:9,24 68:6</p>	