

1 STATE OF NEW YORK  
2 PUBLIC SERVICE COMMISSION

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3 Regular Meeting of the Public Service Commission

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5  
6 Thursday, September 16, 2010  
7 10:30 a.m.

8 Agency Building 3  
9 19th Floor  
10 Albany, New York

11  
12 COMMISSIONERS:

- 13 GARRY A. BROWN, Chairman  
14 PATRICIA L. ACAMPORA  
15 ROBERT E. CURRY, JR.  
16 MAUREEN F. HARRIS  
17 JAMES J. LAROCCA  
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## P R O C E E D I N G S

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2 CHAIRMAN BROWN: Good morning. I'd like to  
3 call the September 16th, 2010 session of the New  
4 York Public Service Commission to order.

5 Madam Secretary, are there any changes to the  
6 agenda today?

7 SECRETARY: Yes, Chairman Brown, there are.  
8 There are two changes. The first is Item 501 and  
9 that is Case 10-C-0215, petition of Verizon New  
10 York, Inc., for waiver of the NYCRR Title 16  
11 Subchapter 602.10B pertaining to the distribution  
12 of telephone directory, and that is over.

13 Removed from the session is Case 10-G-0399,  
14 Item Number 162, and that is the matter of an  
15 enforcement proceeding against Tickler (phonetic)  
16 Plumbing and Heating, LLC for alleged violations  
17 of 16 NYCRR Part 753, and that is the protection  
18 of underground facilities in the service territory  
19 of Niagara Mohawk Power Corporation, d/b/a  
20 National Grid. And this is just one of the items  
21 under consideration within the penalties section.  
22 All other items remain on the agenda.

23 CHAIRMAN BROWN: Okay. Thank you, Madam  
24 Secretary.

1           Let's move to the consent agenda. Is anyone  
2           abstaining or recusing themselves from voting in  
3           any of the consent agenda items today?

4           (No affirmative response.)

5           CHAIRMAN BROWN: Seeing none, all those in  
6           favor of the recommendations on the consent  
7           agenda, please say aye.

8           (Affirmative responses.)

9           CHAIRMAN BROWN: Opposed?

10          (No affirmative response.)

11          CHAIRMAN BROWN: Hearing none, the  
12          recommendations are adopted.

13          Let's move to the regular agenda. In order  
14          to accommodate some scheduling issues, the order  
15          of the agenda today will be: We will start with  
16          ConEdison's 202 items, we'll move to Item 301, the  
17          2010 storms, followed by Item 201, National Grid  
18          and, lastly, Item 203, the NYSEG and RG&E rate  
19          plans.

20          So the first item for discussion is Item 202,  
21          Cases 09S-0029, 09-S-0794 and 09-G-0795, in the  
22          proceeding to consider steam resource plan and  
23          East River re-powering project cost allocation  
24          study, and steam energy efficiency, as well as the

1 rates, charges, rules and regulations for  
2 Consolidated Edison Company of New York's steam  
3 and gas services be presented by Administrative  
4 Law Judges Gerry Lynch, Howard Jack and Rudy  
5 Stegemoeller.

6 Gentlemen.

7 ALJ LYNCH: Good morning, Chairman and  
8 Commissioners. My remarks this morning will be  
9 brief and limited to the gas rate case only.  
10 There's just a few recommendations in that case,  
11 two of which pertain also to the steam rate case.  
12 I'll summarize the recommendations but not the  
13 reasons which were discussed in detail at the  
14 September 8 session and about an hour into the  
15 second session for those who want to view it.

16 The first recommendation is that you deny  
17 CPB's motion that its sur-reply brief be  
18 considered on the merits. This is discussed in  
19 the draft order at pages eight through eleven.  
20 The second and the key recommendation is that you  
21 adopt all the terms of the Gas Joint Proposal with  
22 the minor exceptions of some boilerplate language  
23 that Judge Jack will discuss.

24 Key factors to recall with respect to the gas

1 rate case include that the company requested  
2 160.76 million for the first year or 115.5 million  
3 per year for three years. The Gas JP proposes  
4 three annual revenue increases of 47.1, 47.9 and  
5 46.7 million. Major revenue requirement drivers  
6 are a return on new rate base and associated  
7 depreciation, property taxes and pensions and OPEB  
8 expenses offset in part by costs projected to  
9 decrease in other categories.

10 These proposals are supported by seven  
11 parties, some of whom are customer or customer  
12 groups. One party objects to three substantive  
13 aspects of the Gas JP.

14 For the reasons discussed in the draft order  
15 and summarized at the last session, those  
16 objections should be overruled. Specifically, the  
17 Commission should adopt the proposed oil gas  
18 conversion incentive terms discussed at the draft  
19 at pages 22 to 32, adopt the proposed terms for  
20 capturing management audit savings discussed at  
21 the draft pages 35 to 47 -- and this, by the way,  
22 is one of the issues that also comes up in the  
23 steam rate case -- and, finally, adopt the  
24 proposed terms concerning low income discounts for

1 SC1 cooking and SC3 heating customers discussed  
2 at the draft pages 64 to 78.

3 There are two other recommendations that  
4 don't pertain specifically to the terms of the Gas  
5 JP. The first -- and, again, this relates to the  
6 steam case as well -- is that the Commission  
7 should find under Public Service Law 66.19 that  
8 ConEdison is reasonably implementing the  
9 recommendations of its most recent management  
10 audit.

11 The second is that the company should be  
12 directed to use the one million dollar regulatory  
13 liability and associated interest arising out of a  
14 Floral Park gas explosion to offset all firm  
15 customers' bills through the monthly rate  
16 adjustment in February, 2011 and to provide an  
17 accounting thereafter as proposed by trial staff.

18 The one million in interest will help offset  
19 at the billing level incremental annual gas  
20 safety costs of about \$410,000 per year arising  
21 out of that same explosion.

22 These are all of the recommendations in the  
23 gas case. Mr. Coonan previously provided to you a  
24 table summarizing the bill impacts of adopting the

1 terms of the Gas JP with the minor exceptions that  
2 I mentioned previously.

3 I'll turn it over to Judge Jack and be happy  
4 to answer any questions after the presentation or  
5 at any time that you decide you have questions.

6 ALJ JACK: Good morning, Mr. Chairman and  
7 Commissioners. Highlighting the Consolidated  
8 Edison steam rate case Joint Proposal, it was  
9 submitted by Con Edison staff, the City of New  
10 York and three customer organizations, Consumer  
11 Power Advocates, Joint Supporters and the New York  
12 Energy Consumers Council.

13 The Steam JP proposes a three-year rate plan  
14 based on annual revenue requirement increases of  
15 84.1 million, 10.4 million and 22.4 million. To  
16 moderate the first-year increase, the Steam JP  
17 recommends a levelized plan with equal annual  
18 increases of 49 and a half million dollars a year.

19 The levelized increases would produce higher  
20 base rates at the end of the rate plan than would  
21 a non-levelized approach. Therefore, 31.7 million  
22 of the third-year increase would be collected  
23 through class-specific temporary surcharges  
24 effective only for that rate year. The primary

1 rate drivers include lower forecast steam sales,  
2 expiring customer credits and increased property  
3 taxes, pension and OPEBs and carrying charges on  
4 new plant and service. Amounts are as I outlined  
5 at the September 8 session.

6 As in the case of the Gas Joint Proposal, the  
7 Steam Joint Proposal's revenue requirements are  
8 based on a 7.46 percent overall rate of return, a  
9 48.6 common equity ratio and a 9.6 percent allowed  
10 return on equity.

11 The Steam Joint Proposal includes a  
12 reallocation of 7.5 million in East River  
13 Re-powering Project fuel costs from the company's  
14 electric to its steam system in Rate Year 2 to  
15 remain at that level unless and until the  
16 Commission changes it. This reallocation would  
17 not affect the revenue requirement increases,  
18 because it would be recovered through the fuel  
19 adjustment clause.

20 Only Westchester County opposes the Steam  
21 Joint Proposal and it objects only to the ERRP  
22 cost allocation provisions. Judge Stegemoeller  
23 will address that issue in a moment.

24 There are three other minor issues with

1           respect to the Steam JP. Judge Lynch covered the  
2           CPB's objection to the adequacy of the provision  
3           reflecting potential savings from implementing the  
4           Liberty Management audit recommendations, and that  
5           objection to the Gas JP also implicitly challenges  
6           the parallel provisions to the Steam JP.

7           As Judge Lynch discussed, we recommend the  
8           Commission reject CPB's objections. That's again  
9           covered in the draft order on pages 35 through 47.

10          One provision in the Steam Joint Proposal  
11          under Roman Numeral VI, capital "D", would allow  
12          ConEdison with current currents of interested  
13          parties to defer an unlimited amount of consultant  
14          costs for the steam peak reduction collaborative  
15          report.

16          The draft order would decline to adopt this  
17          provision as an unreasonable delegation of  
18          Commission authority. That's discussed on page 86  
19          and 87 of the draft.

20          Finally, as in the case of the Gas Joint  
21          Proposal, the draft order would also decline to  
22          adopt certain boilerplate provisions that adjust  
23          the rights and obligations of the signatories  
24          vis-a-vis one another as not properly belonging in

1 a Commission order. That's discussed on pages 91  
2 through 92 of the order.

3 In all other respects, we recommend adoption  
4 of the terms of the Steam Joint Proposal, and I'll  
5 be glad to answer any questions you may have after  
6 Judge Stegemoeller discusses the ERRP cost  
7 allocation.

8 ALJ STEGEMOELLER: Thank you. I will, if  
9 possible, be even more brief than my colleagues.  
10 The order would find that with respect to the  
11 current system of cost allocation that from the  
12 isolated standpoint of costs and revenues that  
13 electric customers are paying more than they would  
14 be paying if they were purchasing the power from  
15 the market.

16 The order also finds that ERRP and the steam  
17 system in general does provide benefits to  
18 electric customers but that these benefits are not  
19 sufficient to -- they do not outweigh the current  
20 imbalance in cost allocation.

21 The third finding, essential finding, in the  
22 order is that the elasticity of steam demand is  
23 difficult to quantify, which means that there is a  
24 risk of customer migration from increases in steam

1 rates that can't be ignored, but it also does not  
2 warrant an indefinite continuation of the current  
3 imbalance in cost allocation.

4 So taking those findings into account, the  
5 order would do the following: It would adopt the  
6 terms of the JP, which apply to the three years of  
7 the rate plan; it would revise the allocation  
8 method for ERRP costs for the years following the  
9 steam rate plan. And it would revise them as  
10 follows: Non-fuel costs would continue to be  
11 allocated according to the current method; fuel  
12 costs would be allocated according to the  
13 above-market method; in other words, electric  
14 customers would be responsible for fuel costs up  
15 to the market value of the electricity produced.  
16 That's a shorthand way of describing it.

17 The result of this allocation -- it's a  
18 method, so we don't know precisely what the result  
19 will be in terms of dollars. Historically, taking  
20 averages from '06 through '09, if you apply this  
21 method, you would have had a shift in costs of 52  
22 million dollars per year. That would be a shift  
23 of costs that electric customers are currently  
24 paying and that would be paid by steam customers.

1 That's actually netted against the 7.5 million  
2 dollars that's in the Joint Proposal. That would  
3 be a 45 million dollar shift or approximately six  
4 percent of steam rates when fully rolled in after  
5 ten years.

6 And that's the final component of the order  
7 that this change in allocation would be phased in  
8 over a period not to exceed 10 years. And that's  
9 the conclusion.

10 CHAIRMAN BROWN: Thank you. We had a pretty  
11 good discussion on this the last time around, but  
12 I'll open it up to see if there's any other  
13 questions or comments.

14 Commissioner Larocca.

15 COMMISSIONER LAROCCA: This is really in the  
16 category of clarification. The recommendation  
17 which in the summary is number four, "find that  
18 the company is reasonably implementing the recent  
19 management audit recommendations", just flesh that  
20 out for me a little bit.

21 Do we mean that they're reasonably  
22 implementing the gas related, the steam related or  
23 the generic issues? And, also, tell me what  
24 reasonably means.

1           ALJ LYNCH: The information in the record is  
2           that staff and the company both put on witnesses  
3           that testified about what the company has done to  
4           implement the management audit recommendations.  
5           The exhibits that were provided by both are very  
6           similar. They have all the recommendations and  
7           what the status is. Some have been implemented.  
8           Staff is auditing -- the company thinks they're  
9           implemented. Staff's auditing others or  
10          continues.

11           There was concern expressed by two parties  
12          earlier in the case about whether the company was  
13          doing all that it should be doing to implement the  
14          recommendations. Those parties' concerns were  
15          allayed, because they're now parties to the Joint  
16          Proposal.

17           The Commission is required by statute to make  
18          a finding in a major rate case following a  
19          management audit. There was no -- based on that  
20          testimony about what had been done, and in the  
21          absence of any expression of concern -- and it  
22          all, by the way, seemed in good order to me. And  
23          in the absence of any expression of concern by any  
24          other active party, and given the requirement, I'm

1 recommending that you make that finding.

2 Reasonably means they're making progress  
3 timely, they're addressing all the  
4 recommendations, they're doing what they should be  
5 doing. I don't have any basis on the record for  
6 reaching any other conclusion.

7 COMMISSIONER LAROCCA: Will we have -- at the  
8 Commissioner level, will we be making additional  
9 findings over time about their progress under the  
10 audit?

11 ALJ LYNCH: Well, every time you set rates  
12 following completion of a management audit, you  
13 have to make the same finding under the statute  
14 and, presumably, if any issues arise -- I mean, I  
15 wouldn't think you'd have to wait for a rate case  
16 if there's an issue about whether things are going  
17 off-track. I think you would probably hear about  
18 that much quicker than that. But by the time you  
19 get to the next rate case, you would certainly  
20 have to review this again.

21 MS. STOUT: Commissioner, if you recall at  
22 the August session, Kate Tallmadge provided an  
23 update on the status of the management audits and  
24 also Wayne Brindley provided his opinion on some

1 portions of that. And we'll be doing those  
2 updates on a periodic basis probably about three  
3 times a year to bring the Commissioners up-to-date  
4 on the status and you can raise any questions at  
5 that time, too.

6 COMMISSIONER LAROCCA: This language that we  
7 would be using here, "reasonably implemented", is  
8 common to rate cases following audits?

9 ALJ LYNCH: It's common to rate cases  
10 following audits up til some period in the distant  
11 past after which there was a failure to do  
12 management audits, so there were no such findings  
13 unless from time to time, someone would refer back  
14 to the management audit done 13 years ago or  
15 something like that.

16 CHAIRMAN BROWN: I think we're reinstituting  
17 precedent as we speak here. Thank you.

18 ALJ LYNCH: You're welcome.

19 CHAIRMAN BROWN: Commissioner Curry.

20 COMMISSIONER CURRY: I don't know exactly  
21 whom to address this to. Just let me make a  
22 general comment. In the steam arena, I've been  
23 impressed over the last few years with customer  
24 site co-gen as a potential customer retention

1 tool.

2 Endurant, a company that after a couple of  
3 years of efforts is putting a new package border  
4 on the roof of one of the Pratunam buildings in  
5 Ten Plaza, is one such effort and when the Durst  
6 Organization built the Bank of America tower at  
7 6th Avenue and 42nd Street, they put one in the  
8 basement.

9 Are we fairly comfortable that the structure  
10 that's emerging from the process here is going to  
11 include methods of encouraging continuation of  
12 that effort?

13 ALJ STEGEMOELLER: There has been an effort  
14 underway since last year on that particular issue  
15 that came out of the 0029, the so-called steam  
16 planning case. It is also now part of the peak  
17 reduction collaborative that also resides in that  
18 case but is referred to in the Joint Proposal.

19 There is a status report that was filed  
20 August 27th in which the company indicates that it  
21 may see no need for addressing that particular  
22 issue in the context of reducing peak load. That  
23 was August 27th and I frankly --

24 COMMISSIONER CURRY: Is that dispositive?

1 ALJ STEGEMOELLER: It's not dispositive.  
2 It's a progress report. It's conditional  
3 language. To be honest, I have not had a chance  
4 to follow up on that so I could not tell you right  
5 now where all of the parties stand on whether or  
6 not that particular issue should be or whether  
7 they all want it to be pursued in this  
8 collaborative. And that --

9 COMMISSIONER CURRY: Is that the interesting  
10 word --

11 ALJ STEGEMOELLER: Well, again that's the  
12 point you raised. In the context of peak load  
13 reduction, the company's saying, "We might not  
14 need it. It's complicated. There are physical  
15 inter-connection issues. There are a lot of  
16 economic issues."

17 You raise the issue of customer retention as  
18 a potential value of this sort of initiative and I  
19 don't think that the collaborative has developed  
20 that side of it. I certainly haven't seen any  
21 factual development of that issue.

22 COMMISSIONER CURRY: I don't think it would  
23 affect my vote here today, but could you follow up  
24 on that and --

1 ALJ STEGEMOELLER: Yes.

2 COMMISSIONER CURRY: -- see where things  
3 stand?

4 ALJ STEGEMOELLER: Yes. I'll certainly  
5 communicate your concern to the parties.

6 COMMISSIONER CURRY: Thank you.

7 CHAIRMAN BROWN: Any other comments or  
8 questions?

9 (No affirmative response.)

10 CHAIRMAN BROWN: Hearing none, I believe we  
11 have six recommendations that are part of this,  
12 quickly: Denying CPB's motion, adopting the term  
13 of the steam rate's joint proposal, adopting the  
14 term of the gas rate's joint proposal, finding  
15 under PSL6619, the company's reasonably  
16 implementing the management audit recommendations,  
17 approving a post steam rate plan methodology for  
18 phasing in the allocation of significantly more of  
19 the East River re-powering project's fuel costs  
20 for the steam system and requiring the company to  
21 pay us back a one million dollar regulatory  
22 liability associated with the Floral Park gas  
23 explosion in February bills.

24 So with that, I would ask that we vote on

1           this as a group. All those in favor, please say  
2           aye.

3           (Affirmative responses.)

4           CHAIRMAN BROWN: Opposed?

5           (No affirmative response.)

6           CHAIRMAN BROWN: Hearing none, the  
7           recommendations are approved as a group. Thank  
8           you very much for all the judges and all the work  
9           that went into these complex cases. Thank you.

10          The next item is Item 301, Case 10-E-0331,  
11          matter of staff investigation into NYSEG, Central  
12          Hudson, ConEdison and Orange & Rockland's  
13          performance during and following the February and  
14          March, 2010 snowstorm related outages which will  
15          be presented by Paul Eddy, a Utility Supervisor  
16          with the Office of Electric, Gas & Water; also,  
17          Sandra Sloane, Director of the Office of Consumer  
18          Services, and Alice Miller, Chief of Consumer  
19          Advocacy in the Office of Consumer Policy are  
20          available for questions.

21          Paul, please begin.

22          MR. EDDY: Good morning, Mr. Chairman,  
23          Commissioners. I'll be briefing you on the  
24          results of staff's review of the utility response

1 to the February and March storms.

2 I'll take you back to February. We have a  
3 picture up here just in case you've forgotten that  
4 we had some significant weather occurrences back  
5 then. Both of the storms in February and March  
6 were so close and the issues were similar so I'll  
7 brief them both at the same time.

8 The February storm was actually two  
9 back-to-back storms, attacked Eastern New York  
10 State and on the map here, you can see the area  
11 all the way from the Canadian border down to New  
12 York City that was impacted.

13 This snapshot in time was taken on the 26th.  
14 February 23rd was when the first storm hit and it  
15 hit a little more to the north than originally  
16 projected by the National Weather Service and was  
17 more severe.

18 On February 25th, the second storm hit and,  
19 again, that hit in a different direction and  
20 with additional severity than what the National  
21 Weather Service had predicted. When it was over,  
22 up to six feet of snow had fallen in Central  
23 Hudson territory. Most affected in addition to  
24 Central Hudson were ConEdison, Orange & Rockland

1 and NYSEG. Each of these utilities submitted  
2 reports in accordance with 16 NYCRR Part 105.

3 All told, nearly 300,000 customers lost power  
4 from these storms. Restoration service took eight  
5 days to accomplish. It's important to recognize  
6 that damage assessment and preliminary restoration  
7 were very difficult to perform. I think it's  
8 fairly understandable with this amount of impact.  
9 Overall, the utilities did a very good job under  
10 these adverse circumstances.

11 On March 13th, another storm hit. This time,  
12 it was a major rain storm and wind storm and it  
13 hit the New York Metropolitan area and a little  
14 bit of the lower Hudson Valley and Long Island.  
15 Once again, the forecasts were underestimated by  
16 the weather services and as evidenced by the winds  
17 that reached tropical storm force.

18 ConEdison, Orange & Rockland and Long Island  
19 Power Authority were the hardest hit with nearly  
20 475,000 customers out of service. More than half  
21 of these were on Long Island, as LIPA customers.

22 Our focus was on ConEdison, Orange &  
23 Rockland, both of whom submitted Part 105 reports.  
24 Restoration from this event took seven days.

1           Before going to the recommendations for  
2           improvement, it's important to first understand  
3           that our overall assessment of utility performance  
4           in both of these events was commendable. I have  
5           sat here before you on previous occasions  
6           reporting about staffing issues and problems  
7           during storm restoration and before storms have  
8           hit.

9           During these events, the utilities  
10          aggressively attacked the staffing needs early in  
11          the events and added workers to meet the demands  
12          of the restoration effort. Over 3,400 line and  
13          tree crews, plus many hundreds more support  
14          positions, consumer service representatives and  
15          office staff worked tirelessly to restore power.  
16          To each of these, we give our thanks.

17          In staff's report of these storms, you will  
18          see there are nine recommendations for  
19          improvement. Two of these recommendations we felt  
20          had generic applicability for all electric  
21          utilities in the state. Those deal with updating  
22          outage management system procedures to more  
23          accurately match field conditions and  
24          communication with life support equipment

1 customers before and post storm.

2 Con Edison and Orange & Rockland utilities  
3 both need to improve development and reporting of  
4 localized estimated restoration times. This area  
5 was particularly disappointing as we had been  
6 working collaboratively with the utilities to  
7 improve this area since the December, 2008 ice  
8 storm.

9 Finally, I want to recognize the work that  
10 went into this review by the staff from  
11 Electric Distribution Systems and the Offices of  
12 Consumer Services and Consumer Policy in New York,  
13 Delmar and Albany. Mostly, I need to give credit  
14 for the majority of the review and editing of this  
15 report to Christian Bonvin and Mary Ferrer. Their  
16 work was excellent and worthy of special credit.

17 I want to mention that we also had several  
18 staff monitoring the restoration progress during  
19 these events and reporting to you and to SEMO and  
20 to other entities. This included staff from our  
21 GIS section doing the mapping that you just saw on  
22 the screen and also the Office of Consumer  
23 Services handling the phone lines and responding  
24 to consumer issues.

1           Thank you, and I will be happy to answer any  
2           questions.

3           CHAIRMAN BROWN: Do we have any comments or  
4           questions of Paul?

5           Just one observation, and thank you folks, I  
6           think, for this, is you point out -- I think you  
7           used the word commendable performance by the  
8           utilities and, certainly, just before I got here,  
9           I think some of the other Commissioners, we had  
10          some events that weren't so commendable and what's  
11          really good is that the experiences have been  
12          shared between utilities. It doesn't take each  
13          utility to have a terrible event to get them up  
14          the learning curve. You know, Central Hudson  
15          especially was amazing when you consider the  
16          damage that was in their system and the amount of  
17          snow. I mean, it was remarkable. But, yet, they  
18          kept the municipalities seemingly well informed.

19          You know, normally, in my chair, you end up  
20          hearing about it when that doesn't happen and I  
21          heard very little in the way of people being  
22          frustrated that they didn't have information. So  
23          I think that one thing we found is that people  
24          will understand if you give them timely and

1 accurate information about outages. What really  
2 frustrates them is not knowing. And so getting  
3 that information out has been the key and, you  
4 know, there's some good recommendations here. It  
5 means every time we go through one of these,  
6 there's some more lessons that can be learned and,  
7 hopefully, they can be learned again throughout  
8 all the service territories.

9 So thanks for your work and thank the  
10 utilities for taking this all so seriously.

11 COMMISSIONER HARRIS: I do have one quick  
12 question, though, on this estimated restoration  
13 time. Given the severity of the storms and  
14 back-to-back storms with O&R, O&R didn't deploy  
15 its full damage assessment personnel. Do we know  
16 why they wouldn't given the severity of the storm  
17 which would have assisted in the restoration time?  
18 I just -- I'm at a loss for understanding why a  
19 company wouldn't deploy their full assessment  
20 personnel to that.

21 MR. EDDY: I don't know if I have a good  
22 answer for you other than it's anticipation, how  
23 you look at the front end of a storm and what you  
24 get understanding what's in your hand by the

1 utilities, I'd say this is one of the areas that  
2 we've been pushing them. We push, as I call it,  
3 to the left, everything from the beginning before  
4 a storm hits and in the early goes of a storm so  
5 that when the damage has occurred, you're ready to  
6 attack. This is something we can pursue further  
7 with O&R.

8 COMMISSIONER HARRIS: I mean, since we've  
9 been working with the companies on their estimated  
10 restoration times and there's a direct connection,  
11 I think, with the damage assessment, I just --  
12 given the severity of the storm, I would think  
13 that -- and there could be a very logical  
14 explanation. I'm just at a loss for understanding  
15 what that could be but --

16 CHAIRMAN BROWN: I found it interesting, and  
17 I'll leave it to you Long Islanders, but LIPA is  
18 taking some criticism for all the money that they  
19 spent preparing for Hurricane Earl which, of  
20 course, then really didn't do much damage and,  
21 now, they're taking criticism for: Why did you  
22 spend all that money preparing for it?

23 I think, perhaps, you did note these storms  
24 were all under-forecast in a sense, that they

1 ended up being far worse than anybody had  
2 anticipated. So it's a rough line for the  
3 utilities sometimes to spend the money in advance  
4 to get everybody up and running and hire the  
5 contractors and then the storm ends up not causing  
6 much damage, then they get criticized for wasting  
7 money. So it's a tough call at times.

8 MR. EDDY: We've talked with the utilities  
9 about this issue before. We've talked about even  
10 having pre-staging areas and bringing crews in.  
11 But sometimes when you get a storm forecast, it's  
12 difficult to get crews from your neighbors because  
13 they don't know if they're gonna be hit or not  
14 also.

15 Damage assessment, you know, again is  
16 something that is normally done with their own  
17 people and there's little reason for not getting  
18 out and doing it.

19 MR. STEWART: I think we can probably follow  
20 up on your question and find out if there is a  
21 logical response.

22 CHAIRMAN BROWN: Commissioner Larocca.

23 COMMISSIONER LAROCCA: Just a thought. Of  
24 course, Long Island, you're damned if you do and

1           you're damned if you don't.  Fortunately, you  
2           don't have to worry about them from here.  But it  
3           does bring to mind the following question:  Where  
4           in the chain of events and preparation do we  
5           become specifically interested and involved in  
6           watching or participating in what the companies  
7           are doing?

8           I'll use the LIPA example only because it's  
9           not before us.  Externally, people can look at  
10          that preparatory period and say, well, at this  
11          point, that was the appropriate decision; that a  
12          little bit later might have been the appropriate  
13          decision, they were bringing people in from as far  
14          as Michigan and so forth.  But in the events  
15          you're now describing, when were we involved in  
16          these two storms in a meaningful way?

17          MR. EDDY:  We get involved -- we're in  
18          contact with the National Weather Service.  We're  
19          on direct distribution from them.  And I know  
20          recently in the Hurricane Earl, four days before  
21          Earl was here and we had the impact from it, I was  
22          on the conference calls with the National Weather  
23          Service along with about 125-plus entities from  
24          other areas within New York State and neighboring

1 states, communities. So we get involved very  
2 early.

3 If we see that a storm is going to be, you  
4 know, likely, we get in touch with the utilities,  
5 making certain that they're on their preparation,  
6 that they're taking steps to be ready. So we  
7 don't wait for a storm to hit to get things in  
8 gear.

9 COMMISSIONER LAROCCA: In that process, would  
10 we likely say to a company -- again, I'll stay  
11 with the LIPA example -- you're bringing in too  
12 much based on our assessment or you're not  
13 bringing in enough based on our assessment or  
14 you're starting too early or you're starting too  
15 late?

16 Do we have that kind of involvement in the  
17 decision chain of storm preparation?

18 MR. EDDY: The staffing numbers -- I mean,  
19 like, we can take ConEdison. In their emergency  
20 procedure, they have a chart that based on what  
21 the storm looks like it's gonna be is what they  
22 base their number of staffing positions on and  
23 where they'll staff and how much they will gear up  
24 for it.

1                   COMMISSIONER LAROCCA: Are we likely in the  
2 course of that happening to say, wait a minute,  
3 what are you waiting for, or that number's too big  
4 or too small? Do we have that kind of  
5 involvement?

6                   I'm looking for the flavor of the involvement  
7 we have in the preparatory process.

8                   MR. EDDY: I think some of that involvement  
9 comes away from the storm.

10                  CHAIRMAN BROWN: Paul, Mike Warden's got  
11 something.

12                  MR. WARDEN: I just wanted to comment on  
13 that. You know, we're generally there during a  
14 storm event to monitor what the utilities are  
15 doing and to monitor the performance. It's their  
16 job to make the decisions as to how they run the  
17 company and what they do. So, you know, we kind  
18 of stand hands off in terms of how we, you know,  
19 put our hands in and tell them what to do. That's  
20 not our role to tell them how to run their  
21 company. We expect them to be prepared to respond  
22 to the emergency. We expect them to take the  
23 necessary steps.

24                  COMMISSIONER LAROCCA: I don't want to make

1           this too hypothetical, but if in the course of  
2           that, you felt that, gee, by now, they should be  
3           canceling leaves, they should be having  
4           preliminary notices to neighboring utilities,  
5           whatever, and they're not doing that, what do we  
6           do?

7           MR. WARDEN:  There are occasions when we'll  
8           have discussions with the company if we have a  
9           concern and possibly raise a concern and say,  
10          well, we're wondering what you're doing in this  
11          regard.  We try to be very careful that we're not  
12          making it sound like we're telling them what to  
13          do.  But we occasionally raise concerns and say --  
14          you know, ask them about it and then expect them  
15          to respond.

16          COMMISSIONER LAROCCA:  Thank you.

17          MR. EDDY:  We also meet with the utilities  
18          with all the emergency managers twice a year  
19          through the New York Mutual Assistance Group and a  
20          lot of these subjects are brought up at those  
21          meetings, how to dispatch -- you know, dispatching  
22          of internal crews and calling in of external  
23          crews.

24          CHAIRMAN BROWN:  Commissioner Curry, your

1 comment on this.

2 COMMISSIONER CURRY: Paul, I have about 25  
3 years of experience working with companies very  
4 active in the Gulf of Mexico and down there, the  
5 National Weather Service is but one voice that is  
6 listened to and that's sometimes because every  
7 weather service has its own challenges. And last  
8 time I was involved in it, which was well over  
9 eight years ago, there were six or seven different  
10 private weather forecasting services that the  
11 companies had had men out on drill rigs, et  
12 cetera, pay attention to for the Gulf.

13 Is there a similar wealth of alternatives to  
14 the National Weather Service up here in the  
15 northeast? And if so, do people avail themselves  
16 of it or have they decided those guys are all not  
17 so great, we're gonna stick with the Weather  
18 Service?

19 Because I gather from what little I know  
20 about weather forecasting, it's, you know, not a  
21 particularly certain professional process and some  
22 people have better instincts than others.

23 MR. EDDY: Yes, the batting average of the  
24 weatherman is really not that great. But there

1 are several other weather agencies that the  
2 utilities do take advantage of and each one  
3 contracts with who they feel is the one with the  
4 best batting average.

5 Also, back in -- I think it was September,  
6 2006 when the storms that hit ConEdison, there was  
7 some significant damage and one of the issues that  
8 we did in our review, we saw that there was need  
9 for improved forecasting on the front end.

10 ConEdison took that and they went ahead and  
11 they developed a program with IBM, Blue Thunder,  
12 that has had, you know, some benefits and some  
13 mixed results as well. Again, it's a weather  
14 program.

15 COMMISSIONER CURRY: The only observation I  
16 make is that the folks in the Gulf of Mexico can  
17 track with all available opportunities and then  
18 they would pick and choose. That's too close a  
19 level of detail, but I'm just curious about how --

20 MR. EDDY: When we look at National Weather  
21 Service data, there's like six or seven different  
22 models that they project. I mean, even with  
23 Hurricane Earl, the most recent one that I know  
24 of, one of the models was an outlayer and it came

1 right up through, you know, Connecticut,  
2 Massachusetts, New Hampshire, picking everybody  
3 off on the inland. The rest of them had Earl  
4 going off to the ocean so --

5 CHAIRMAN BROWN: Commissioner Acampora.

6 COMMISSIONER ACAMPORA: You know, I think we  
7 keep going back to the same issue we talk about  
8 during rate cases and when we have storms about  
9 prevention management and our vegetation  
10 management, how important that really is.

11 On Long Island before Earl was planning to  
12 come but then swerved away from us fortunately,  
13 they had crews out that same day making sure that  
14 there were areas that they thought could be  
15 compromised by strong winds where trees needed  
16 trimming. They were out trimming that day. We  
17 know weather is just about predicting. It's very  
18 hard and that's why I think the prevention  
19 management of vegetation with the utilities is  
20 something that, you know, we keep hammering, but  
21 it just goes to show that how prepared can you be?  
22 Can you be prepared beforehand and then worry  
23 about bringing the crews in later if you don't do  
24 that work beforehand?

1           So it's really an issue that I think we're on  
2           top of. I know we have a proceeding that is going  
3           on there, but we talk about this every time we  
4           have a report about storm damages that sometimes  
5           that's not being taken care of and addressed.

6           CHAIRMAN BROWN: Okay. Also, I want to  
7           thank Sandra Sloane and your office that obviously  
8           has to respond to these storms as well in a  
9           different way with all the phone calls obviously  
10          that come and I know people work very hard and  
11          overtime to get questions answered and I know you  
12          work with municipalities as well to make sure that  
13          information flows. So thank all your staff as  
14          well on this.

15          MR. EDDY: Could I add one thing on the  
16          National Weather Service?

17          CHAIRMAN BROWN: Absolutely.

18          MR. EDDY: They also look at our maps after a  
19          storm's over. They're looking at our maps to see  
20          where the damage occurred and to help them with  
21          their predictions and where they can see, you  
22          know, they forecasted in one area and the damage  
23          was seen in another area. So we have worked with  
24          them. So it's a good relationship that we have

1 with the National Weather Service.

2 CHAIRMAN BROWN: Thank you for this report.

3 So no vote's required on this by the  
4 Commission. Thank you.

5 The third item for discussion is item --  
6 excuse me for one second.

7 The third item for discussion is Item 201,  
8 Cases 08-E-0827 and 10-E-0050, Comprehensive  
9 Management Audit of Niagara Mohawk Power  
10 Corporation, and a proceeding on motion of the  
11 Commission as to the rates, charges, rules and  
12 regulations for Niagara Mohawk Power electric  
13 service, which will be presented by Wayne  
14 Brindley, Deputy Director in the Office of  
15 Accounting and Finance, Chief Administrative Law  
16 Judge Elizabeth Liebschutz and Ben Wiles, Senior  
17 Attorney in the Office of General Counsel is also  
18 available for questions.

19 Wayne.

20 MR. BRINDLEY: Good morning, Chairman and  
21 Commissioners. Item 201, response to Chairman's  
22 request made at the August 19th session for  
23 options on how best to investigate affiliate  
24 related issues associated with National Grid's

1 allocation of service charges to and amongst its  
2 operating companies including Niagara Mohawk.

3 For purposes of today's discussion, I can  
4 describe these issues in general as relating to  
5 investigating questionable expenses being  
6 allocated to Niagara Mohawk such as certain costs  
7 associated with employee relocations and  
8 inappropriate allocation factors being utilized to  
9 allocate expenses to New York associated with the  
10 New England rate case. Those are just  
11 illustrative examples.

12 For a brief factual synopsis of the parties'  
13 positions in the ongoing rate case, staff has  
14 proposed to testify that a 26 million dollar macro  
15 adjustment is necessary to address these concerns  
16 and that the Commission should institute a  
17 proceeding to further investigate these issues in  
18 the future.

19 Niagara Mohawk has made some changes in its  
20 internal procedures and reduced its rate request  
21 by eight million to address some of these  
22 affiliate concerns. It has testified that the  
23 full macro adjustment is not appropriate and has  
24 started its own investigation.

1           In order to wrestle this issue to ground,  
2           there are really three objectives that we need to  
3           address. First: Ensure that current and future  
4           customers do not pay for costs the Commission  
5           deems inappropriate. Second: Ascertain whether  
6           customers in the past have paid for such costs and  
7           whether any of those such costs were capitalized  
8           or contained in deferral accounts setting the  
9           stage for future rate recovery. And third:  
10          Ascertain whether changes that Niagara Mohawk has  
11          already put in place and will put in place as a  
12          result of the management audit are adequate to  
13          mitigate future problems in this area.

14                 So we're looking forward and backwards  
15                 related to rates. Then, we're looking at policies  
16                 and procedures to mitigate future problems on  
17                 this.

18                 Before reviewing the options available to the  
19                 Commission, two points are noteworthy. First:  
20                 The rate case before you addresses electric rates  
21                 for the next year, 2011. Niagara Mohawk electric  
22                 customers have not -- repeat have not -- seen  
23                 increased bills that relate to the questionable  
24                 affiliate costs since base rates for Niagara

1 Mohawk have been frozen since 2001. There may be  
2 a relatively small portion in current gas rates.  
3 I say relatively small, because the service  
4 company allocations are much smaller to the gas  
5 operations than they are to the electric  
6 operations and, furthermore, the gas case test  
7 here predated some of the large percentage  
8 increases and issues identified in the electric  
9 case.

10 Second: As I pointed out at the last  
11 session, we need to exercise caution in discussing  
12 this item to avoid any potential of a perception  
13 of pre-decisional bias on related issues in the  
14 open Niagara Mohawk electric rate case. I will  
15 not address the merits or lack thereof of any  
16 issues in the rate case. If there are questions  
17 on this linkage from a procedural basis where  
18 further elaboration is necessary, Libby will be  
19 addressing those aspects.

20 Now to the heart of the matter, the different  
21 options that are available to the Commission for  
22 dealing with this issue. The session item before  
23 you gives you seven different options, but several  
24 of these are fairly similar. So as I talk to you,

1 I'm going to, perhaps, group them so that you get  
2 some additional perspective on them.

3 Option one is the do nothing for now  
4 approach. The Commission can protect customers  
5 while doing nothing at this moment and allowing  
6 the rate case and the management audit compliance  
7 process to be completed. At that point, the  
8 Commission could evaluate whether further  
9 investigation is necessary. This would probably  
10 be in the roughly around February of 2011 time  
11 frame. From a resource perspective, this would be  
12 efficient. But there are things that can be done  
13 now that are not overly burdensome to expedite  
14 resolution of this matter.

15 And while staff has proposed an adjustment in  
16 the rate case to deal with rate matters, it has  
17 also indicated that it is not able to audit  
18 affiliate transactions completely in that case.  
19 So while this is an option for the Commission to  
20 consider, it's not one that I would recommend.

21 Options two and three, and I'm grouping these  
22 two, suggest that regulatory resources outside New  
23 York State may be utilized to conduct an  
24 investigation of affiliate matters. This would

1 allow for some sharing of costs and expertise  
2 amongst regulators with a largely common interest.  
3 Potential candidates for joining forces would be  
4 New England states in which National Grid does  
5 business and FERC. The difficulties in this  
6 approach are management of the project and setting  
7 priorities. I run a multistate audit for  
8 NARUC and supervised a similar multistate effort  
9 under the Telecom Act. Coordinating these efforts  
10 is difficult and cumbersome.

11 And while we may largely share interests,  
12 there may be some conflicts. And with the FERC  
13 audit of National Grid relating to service company  
14 allocations, which begun in early 2009, they may  
15 issue their report in the near future, I'm not  
16 really sure how enamored they would be on  
17 beginning a new audit coming so close on the heels  
18 of completing one.

19 So, therefore, in the interest of full  
20 disclosure, these are options you can choose, but  
21 again, these are not options that I would  
22 recommend.

23 Option four is to do the audit ourselves. This  
24 would have the benefit that the audit scope would

1 be focused on New York operations and staff  
2 assigned to the case would possess all the  
3 requisite knowledge of New York State Commission  
4 policies. The weakness in this approach is that  
5 we really lack the staff to fully conduct this  
6 audit. In addition, there may be certain skill  
7 sets that we really need to go outside to obtain.  
8 Even when the Office of Accounting and Finance was  
9 40 or 50 percent larger than it was today, we  
10 sought external assistance to audit NYNEX  
11 affiliate transactions. So while I like this  
12 option from a practical perspective, it's not one  
13 that I can recommend at this juncture.

14 Options five and six involve engaging an  
15 outside consultant to assist staff in conducting  
16 the audit, and there are two variants of it. One  
17 would be to issue a new RFP while the other would  
18 be to extend NorthStar's existing audit management  
19 contract.

20 Both approaches would ensure that adequate  
21 and efficient resources would be brought to bear  
22 on this matter. Issuing a new RFP would ensure  
23 that the candidate field of consultants is as wide  
24 as possible. Reengaging NorthStar would bring

1 efficiency as it recently conducted a management  
2 audit of Grid and its audit report touched  
3 directly on this matter. NorthStar expressed  
4 strong concerns that Grid did not have an  
5 effective means to manage and control the level of  
6 services provided by its affiliates and they made  
7 some recommendations in this area, which included  
8 the development and execution of service level  
9 agreements to address this concern. This was a  
10 management audit recommendation. We haven't  
11 completed the review of this matter yet.

12 These are the two most desirable options for  
13 the Commission, but deciding exactly which one  
14 should be pursued does not need to be decided at  
15 this moment; rather, the recommendation contained  
16 in this memo is twofold.

17 First, the Commission should establish a new  
18 proceeding to investigate National Grid's  
19 affiliate costs, policies and procedures. This  
20 will ensure that the issue is comprehensively  
21 addressed beyond the limitations of the two open  
22 dockets on this matter which both have narrower  
23 scopes and tighter schedules.

24 Second: The Commission should direct staff

1 to provide a scoping memo on this investigation at  
2 the November session which will also include a  
3 recommendation either to reengage NorthStar or to  
4 issue an RFP to a larger group of possible  
5 consultants consistent with our standard  
6 Commission operating practices.

7 The process that these two steps here  
8 basically would allow the Commission to jump-start  
9 the investigation of Niagara Mohawk's affiliate  
10 transactions by directing that work be begun now  
11 to prepare to engage a consultant.

12 Meanwhile, the rate case and management audit  
13 compliance process can proceed as scheduled on  
14 their own independent courses. And most  
15 important, consumers can be held harmless as they  
16 have been to date through a variety of remedies  
17 available in the rate case.

18 That completes my portion of the  
19 presentation. I'm going to turn it over now to  
20 Libby.

21 MS. LIEBSCHUTZ: Good morning, Commissioners.  
22 I'd just like to emphasize that your action to  
23 begin an investigation today does not have any  
24 immediate impact on the ongoing rate case.

1           As Wayne mentioned, the issue was initially  
2 raised by staff, trial staff testimony in that  
3 case. The company has responded. The parties  
4 have been engaged in hearings, I think are in  
5 hearings as we speak, that includes this issue and  
6 they will be briefing the issue.

7           As Wayne mentioned, staff has proposed an  
8 adjustment that would resolve the issue as far as  
9 it impacts rates for 2011 and that's a remedy that  
10 remains available to the Commission when the rate  
11 case comes before you.

12           Alternatively, you might choose to decide  
13 that no adjustment is necessary or some lesser  
14 amount than what staff has proposed and that  
15 alternative remains to you.

16           Again, alternatively, you might choose to  
17 make some portion of rates temporary or institute  
18 some other sort of reconciliation mechanism such  
19 that after the completion of an investigation, you  
20 could go back and true-up an amount that may have  
21 been -- represent inappropriate allocation and do  
22 that after-the-fact. And all those remedies  
23 remain to you. And none of those are being  
24 prejudged today.

1           So I just want to make clear that the parties  
2           should continue to address this issue in the rate  
3           case. What we're really doing now is recognizing  
4           that the process of hiring a consultant is  
5           time-consuming and we don't want to lose time  
6           while we begin those steps to carry out an  
7           investigation at a later date -- or a consultant's  
8           investigation at a later date.

9           CHAIRMAN BROWN: Thank you. So I guess our  
10          options available to us today is, one, do we  
11          initiate a new proceeding under a separate case  
12          number; and, two, how do we move forward on that?  
13          And I think Wayne presented us with a variety of  
14          options, but I think the recommended option would  
15          be to consider use of an outside auditor to do  
16          this. And the question is: Can we use NorthStar  
17          who we have the relationship with through the  
18          management audit today, we're gonna study their  
19          capabilities, or do we issue an RFP?

20          So I think all we really need to do today  
21          would be to, one, initiate the proceeding and,  
22          two, I would recommend asking staff to come back  
23          to us in November with a recommendation on which  
24          way to go: Do we issue an RFP or can we continue

1 a contractual arrangement with an existing auditor  
2 that we already have under contract?

3 But we've got to take some time to discover  
4 capabilities and I'll just note these are the same  
5 people who are often involved in the rate case  
6 itself and all the nuances of the rate case.

7 Now, I just want to make absolutely clear  
8 what Libby said. In no way does instituting this  
9 proceeding decide anything in the rate case. All  
10 our options remain open there. This is just  
11 beginning a proceeding to conduct an investigation  
12 for our use.

13 So with that, I'll open it up for questions  
14 or comments.

15 Commissioner Curry.

16 COMMISSIONER CURRY: I guess, Wayne, we're  
17 dealing in some respects with a cultural program  
18 in terms of there being an established way of  
19 doing business at Grid that may or may not be the  
20 way that you move forward successfully to get  
21 beyond this issue.

22 So I suggest that when you're looking at the  
23 capabilities of potential responders, whether it's  
24 NorthStar or others, we also look at the kinds of

1           experience they have had or they can access in  
2           other states, in other jurisdictions, to come up  
3           with the best possible contractual arrangement  
4           between and among the various operating companies  
5           and the central staff to have whatever the best  
6           thinking is now on how to do these elements.  
7           Contracted service level agreements are basically  
8           you are going to have to eat X percent of  
9           overhead, because you're getting X percent of  
10          value and then we have a true-up or adjustment at  
11          the year-end, whether that's right, whether it's a  
12          management services contract, and I know that  
13          you've spoken today of your experience with New  
14          York Tel on various things, so you probably have a  
15          great deal of background in this area.

16                 So I just urge that one component of this is  
17                 not only, you know, what was allocated, that's got  
18                 a problem, how the allocation formula works,  
19                 that's a problem, and is there a better way of  
20                 doing the allocation process that can give more  
21                 confidence both to the people involved in it and  
22                 us in reviewing it.

23                         CHAIRMAN BROWN: Commissioner Harris.

24                         COMMISSIONER HARRIS: I just have a comment

1           that I think it's imperative that if there is a  
2           breakdown in the process that we identify it and  
3           fix it immediately to restore our confidences and  
4           the confidences of the National Grid ratepayers.  
5           So I'm in favor of initiating a proceeding  
6           today to begin this.

7           CHAIRMAN BROWN: Wayne, and I assume it's  
8           really kind of looking at two things. One is the  
9           costs. You've got common costs. How do you  
10          allocate it to different companies? That's one  
11          issue, and whether they're doing that properly and  
12          correctly. And I think the second one sounds like  
13          procedurally, do they have the safeguards in place  
14          so that when those decisions are made, somebody is  
15          checking the checker.

16          MR. BRINDLEY: That's exactly correct. When  
17          I started out this, I mentioned there were three  
18          objectives. The first one that you mentioned  
19          really covers the first two, which is look forward  
20          in rate, look backwards in rate, see what's  
21          happening with that. The second one is more like  
22          a management audit kind of thing, like let's get  
23          in there, evaluate their procedures, their  
24          methodologies, how they're doing this to ensure

1           that problems like this don't reoccur.

2           CHAIRMAN BROWN: Right, okay. I just want to  
3           make that clear. I think we're going down both  
4           roads with this investigation.

5           Commissioner Acampora.

6           COMMISSIONER ACAMPORA: Wayne, you said that  
7           FERC was instituting an audit?

8           MR. BRINDLEY: No. FERC routinely --

9           COMMISSIONER ACAMPORA: Or can?

10          MR. BRINDLEY: -- performs allocations of  
11          service company allocations. They began one in  
12          early 2009 and I would expect at this juncture  
13          that it should be issued in the near future as  
14          they complete their audit.

15          COMMISSIONER ACAMPORA: How does that impact  
16          or affect what we do?

17          MR. BRINDLEY: I'll use it as input in our  
18          investigation if it's available --

19          COMMISSIONER ACAMPORA: Okay.

20          MR. BRINDLEY: -- as I would with any other  
21          investigation that may come out of the New England  
22          states, that may come out of the rate case, that  
23          will all be input that guides our scope and the  
24          conduct of our audit.

1           CHAIRMAN BROWN: The problem is we don't know  
2           the complete timing. We can do some guesstimates,  
3           but we don't know exactly when it will be made  
4           available to us. So that's why we need to get  
5           moving ourselves here.

6           Anything else?

7           (No affirmative response.)

8           CHAIRMAN BROWN: Okay. So I think we have  
9           two parts of our recommendation: To initiate a  
10          proceeding to investigation into National Grid's  
11          affiliate transaction and to request staff to  
12          provide us in November a scoping memo on whether  
13          the current consultant working on the management  
14          audit perform the investigation or whether we  
15          should issue a new Request For Proposal for the  
16          investigation.

17          So all those in favor of the recommendation,  
18          please say aye.

19          (Affirmative responses.)

20          CHAIRMAN BROWN: Opposed?

21          (No affirmative response.)

22          CHAIRMAN BROWN: Hearing none, the  
23          recommendation is approved. Thank you in advance.  
24          And thanks for the work getting this moving,

1           because I know that there's an awful lot on your  
2           plate at this point. So we appreciate you taking  
3           this on as well.

4           The fourth item for discussion is Item 203,  
5           Cases 09-E-0715, 0717 and G-0718, proceeding as to  
6           the rates, charges, rules and regulations for  
7           electric and gas service provided by New York  
8           State Electric & Gas Corporation and Rochester  
9           Electric & Gas Corporation, which will be  
10          presented by Administrative Law Judges Michelle  
11          Phillips and Dave Prestemon in the Office of  
12          Hearings and Alternative Dispute Resolution, and  
13          John Stewart, Director of the Office of Utility  
14          Rates and Service.

15          And correct me if I'm wrong, Judges, or John,  
16          what we're dealing with here are really four  
17          cases, two separate electric cases and two  
18          separate gas cases, but for the purposes of the  
19          process, they've been lumped together into one  
20          kind of single process. Is that correct?

21          MR. STEWART: That's correct.

22          CHAIRMAN BROWN: Okay. Judges.

23          ALJ PHILLIPS: Good morning, Chairman Brown  
24          and Commissioners. You have before you a JP, as

1           you just noted, that would cover the rate plans  
2           for the gas and electric companies of NYSEG and  
3           RG&E for a three-month four-year period. If you  
4           adopt the rate plan, the rates would be set  
5           through the end of 2013 and would set safety,  
6           reliability and service quality standards that  
7           would continue until they are changed by you.

8           Last week, Judge Prestemon and I described  
9           the procedures that led to the development of the  
10          Joint Proposal and we also highlighted several of  
11          its provisions. Among the provisions and features  
12          that we highlighted were the rates, return on  
13          equity, the provisions concerning customer service  
14          reliability and safety, the low income program and  
15          vegetation management. The rates, as we stated,  
16          propose increases. We discussed how those compare  
17          to potential litigated outcome. We mentioned the  
18          drivers of the need to increase the rates, which  
19          include again rate of return, pensions and OPEB,  
20          the low income program cost, cost of environmental  
21          remediation and storm, vegetation management and,  
22          for RG&E in particular, property taxes.

23          We also explained how the proposed rate  
24          increases has been moderated through the use of

1 the public benefit adjustment amounts that were  
2 set aside as part of the merger rate order, excess  
3 depreciation reserve and certain proceeds from the  
4 gain on the sale of gas assets. The use of such  
5 moderators, as we've discussed, is somewhat  
6 constrained because they are non-cash assets and,  
7 therefore, affect cash flow which can, in turn,  
8 affect credit quality. However, the proposal for  
9 use of the moderators was maximized to the extent  
10 we think a maximum extent possible and, in fact,  
11 260 million of the 275 million in public benefit  
12 adjustment amount was used to help level the  
13 proposed rate increases.

14 We talked a little bit about the derivation  
15 of the proposed 10 percent rate of return. We  
16 discussed capital expenditures. And finally, we  
17 focused in on the low income programs which are  
18 provisions that no party opposes.

19 We talked about provisions and mechanisms  
20 that were put in place to protect customer  
21 service, electric reliability, gas safety and also  
22 to address vegetation management. We explained  
23 how all of those provisions had been designed with  
24 the intention of ensuring that those aspects are

1 not compromised by the recent company workforce  
2 reduction and other cost saving initiatives.

3 We also mentioned that no party opposes the  
4 Joint Proposal; however, two parties did request  
5 certain modifications, those being CPB, which  
6 wanted a modification for certain aspects of the  
7 Joint Proposal, particularly the rate levels, and  
8 Broome County who requested the creation of a  
9 separate municipal service class. We explained  
10 our recommendation and the basis, therefore, that  
11 these requests should be denied.

12 After we summarized all of the above  
13 provisions, several of -- I think all of you,  
14 actually, raised some concerns mainly regarding  
15 capital expenditures and also the status of  
16 certain merger order requirements.

17 If there are no questions regarding the JP  
18 provisions, at this point, we would like to turn,  
19 I believe, to John Stewart and possibly other  
20 members of senior staff to address the concerns  
21 that you raised last week.

22 CHAIRMAN BROWN: Again, any other new  
23 questions before John gets to last week's  
24 questions?

1 (No affirmative response.)

2 CHAIRMAN BROWN: Okay. John.

3 MR. STEWART: Good morning, Commissioners.

4 I'm going to address the outstanding questions  
5 from last week; however, before I go there, I want  
6 to just step back and note some context for your  
7 decision today.

8 The increases in base rates for NYSEG  
9 electric and gas delivery service before you today  
10 would, if approved, represent the first increases  
11 in those rates since 1993. Over that same time  
12 period, you have, in fact, reduced NYSEG's  
13 electric base rates -- well, the base rates for  
14 electric service by 300 million through the three  
15 different rate actions, about 300 million dollars.

16 Over the same 17-year period, you have  
17 increased RG&E's base rates for electric delivery  
18 service and decreased their rates one time each,  
19 the decrease being slightly greater than the  
20 amount of the increase.

21 For RG&E gas service, you have increased  
22 their base rates for gas delivery service three  
23 times; on no occasion an amount greater than seven  
24 million dollars. So the context basically is

1 three of the four divisions from which you're  
2 considering increases in base rates for delivery  
3 service today have not had net base rate increases  
4 over the last 17 years.

5 Last week, you raised six -- I recall six  
6 questions and, really, the first two questions  
7 related to: Is the public interest better served  
8 by rejecting the Joint Proposal and, instead,  
9 adopting a one-year rate case?

10 And what that discussion kind of raises is  
11 the -- what are the protections and benefits that  
12 are in the Joint Proposal that would not be in the  
13 one-year rate case? So I'm going to address that  
14 to some extent.

15 I'm also gonna address three other related  
16 questions that concern how well Iberdrola and  
17 Energy subsidiaries have lived up to the  
18 requirements you established in the September,  
19 2008 and January, 2009 merger orders when you  
20 approved the merger of Iberdrola and Energy East.

21 And we all know about the CAPEX requirements  
22 for electric and gas operations. You all know  
23 about the wind investment requirements. But  
24 there's a number of other requirements that I'm

1 also gonna touch base on.

2 And, finally, the final question which came  
3 up at this session last week concerned the  
4 effectiveness of the financial emergency/escape  
5 clause provisions of the Joint Proposal compared  
6 to what was in the merger order. And I'm actually  
7 going to take that item first.

8 And one of the things I'm going to do is we  
9 gave you a memorandum addressing all these issues  
10 in a lot more detail earlier this week as well as  
11 some appendices, and I'm not gonna go into all the  
12 details in there. I'm just gonna touch on what I  
13 think are the most important points here.

14 Going to the idea of the financial  
15 emergency/escape clauses first, we've looked at  
16 them and we think that the financial emergency and  
17 escape clauses in the Joint Proposal are vastly  
18 superior to what were contained in the merger  
19 order. And the basic two reasons for that are  
20 that the provisions in the Joint Proposal are  
21 symmetrical in that they also give you the  
22 specific ability to re-open the Joint Proposal in  
23 the event that you are not satisfied with the  
24 level of earnings.

1           So in other words, it gives you the ability  
2           if you think earnings are too high for some reason  
3           to re-open the Joint Proposal.

4           Now, we think that you have always implicitly  
5           had that ability, but the fact that it is put on a  
6           piece of paper and all the parties have signed off  
7           on it certainly makes your life a lot easier if  
8           those circumstances are warranted.

9           There's also language in the Joint Proposal  
10          that provides you the ability to take any actions  
11          to assure that companies are complying with the  
12          Public Service Law and your general policies. And  
13          in my opinion, this further strengthens your  
14          ability to take actions affecting the Joint  
15          Proposal in the event the companies are not acting  
16          in a manner consistent with their public service  
17          responsibilities.

18          So long story short, the financial protection  
19          and escape clause provisions in the Joint Proposal  
20          are much stronger than what we see in the  
21          merger order. They seem to be based on the  
22          provisions that were in the ConEdison Joint  
23          Proposal for electric service that you adopted  
24          earlier this year. They seem modeled on that.

1 And they definitely represent an improvement.

2 I next want to address the desirability of  
3 the Joint Proposal versus a one-year rate case. I  
4 think there are several reasons why the Joint  
5 Proposal is definitely superior and I want to  
6 first focus on rate impacts.

7 The parties in the Joint Proposal have  
8 estimated that the conventional rate increase in  
9 Year 1 would be 150 million dollars. The  
10 conventional rate increases in Years 2 and 3 of  
11 the Joint Proposal would be in the 20 to 30  
12 million dollar range.

13 What that means is if you decide to set rates  
14 only for one year, you would be staring squarely  
15 at issues surrounding 150 million dollar increase  
16 in net delivery rates for electric and gas  
17 services for the four companies. It's a  
18 cumulative rate increase.

19 By contrast, the Joint Proposal takes that  
20 150 million dollars and latches on to the much  
21 lower increases in the two other years and allows  
22 you to take some of that 150 million dollar  
23 increase in Year 1 and spread it into Years 2 and  
24 3, thereby, reducing the rate impact in Year 1 to

1 something below the 150 million dollars.

2 Now, there are a number of ways of doing the  
3 calculation, but if you forget about the use of  
4 the PBAs right now, if you just look at the  
5 levelizing impact of taking 150 million dollars  
6 and spreading it into Years 2 and 3, it reduces  
7 the first year increase from about 150 to about 95  
8 million dollars. So you get about a 55 million  
9 dollar upfront annual benefit from being able to  
10 spread the increases over a three-year period.

11 Now, that 95 million dollars, just full  
12 disclosure, is not equal to the amount of the  
13 increase in the Joint Proposal before you. The  
14 amount of the increase in the Joint Proposal is  
15 much lower, because the Joint Proposal also  
16 employ about 178 million of PBAs over the three  
17 years. But if you just focus on the levelizing  
18 impact of spreading the increases, it's about 55  
19 million dollars upfront.

20 So 150 million with a single year rate case  
21 versus effectively 55 million dollars less by  
22 being able to spread it out. So I see that as a  
23 major benefit of going from a one-year case to a  
24 three-year case reflected in the Joint Proposal.

1           Going on to a little more hard to quantify  
2           issues, the Joint Proposal contains a number of  
3           safeguards and negative revenue adjustments which  
4           protect ratepayers and create significant  
5           financial consequences in the event that companies  
6           do not adequately meet their public service  
7           responsibilities.

8           The Joint Proposal also resolves a number of  
9           really complicated and adversarial issues, some of  
10          which have been outstanding for four or five years  
11          and carrying over from rate plans that expired  
12          four or five years ago. By having these  
13          protections and by resolving these matters, it's a  
14          very positive thing, you know, for all the parties  
15          involved. It gets issues behind us.

16          If you are to reject the Joint Proposal and  
17          adopt a one-year case, it's not clear to me how  
18          many of these agreements that were reached within  
19          the confines of the three-year plan would really  
20          survive. So you were very likely at least to lose  
21          some of the benefits of the Joint Proposal in  
22          these areas.

23          And finally, last week, we heard a lot of  
24          concern from you about whether we can rely on the

1           company to meet all the requirements of the Joint  
2           Proposal, whether or not you can really trust the  
3           management to do what's actually in the Joint  
4           Proposal as far as the requirements for CAPEX,  
5           quality of service, et cetera.

6           At the same time, I can tell you that after  
7           reading the record and looking at the parties'  
8           comments, it seems to me that there's definitely  
9           been an improvement in communication between the  
10          parties, an uptake in the relationship between  
11          staff and the company and, perhaps, even some  
12          increase in the amount of trust between the  
13          parties compared to what happened in the past, and  
14          we're all aware of the past.

15          But with that said, the Joint Proposal  
16          reflects the experience of the parties in the past  
17          with the company and the Joint Proposal is based  
18          on some concept of not relying on trust but  
19          verifying all the actions the Joint Proposal  
20          requires the companies to do through extensive  
21          reporting requirements and establishing  
22          consequences in the event those actions don't  
23          occur.

24          So this is not a trust-based regulation.

1 This is a regulation based on extensive reporting  
2 requirements and consequences. And in that vein,  
3 I think the Joint Proposal is very solidly  
4 crafted.

5 Finally, I want to touch on the last three  
6 questions you had, which had to do with how well  
7 Iberdrola, NYSEG and RG&E have met the commitments  
8 established in the merger orders of 2008 and 2009.  
9 And, now, as I said, we're all aware of the wind  
10 investments and the CAPEX. I want to first start  
11 with the other 36 requirements that you  
12 established as part of the merger order.

13 And along with the memorandum we provided you  
14 earlier this week, we also had two appendices that  
15 restore cuts and show you how the companies were  
16 complying with the basic requirements. And what I  
17 can tell you is that with one exception, the  
18 companies have complied with and are complying  
19 with those 36 requirements.

20 The one exception being your requirement that  
21 the companies divest their remaining generation.  
22 And on that particular issue, as best as we can  
23 tell, the companies are certainly using their best  
24 efforts to comply. The process is turning out to

1           be much more difficult than expected. So there is  
2           best efforts to comply with it. It's just not  
3           happening yet.

4           With that said, there are also two other  
5           items that we have every reason to believe they  
6           are complying with but we're not able to fully  
7           verify compliance. And because of that, we would  
8           recommend that you require the companies to have  
9           an officer file an affidavit saying that, one,  
10          neither NYSEG nor RG&E are affected in any manner  
11          by any cross-fault (phonetic) provisions within  
12          Iberdrola, the whole company; and, two, that RG&E  
13          and NYSEG are, based on their statements, not  
14          participants in any money-pooling arrangements  
15          within the corporation. Those would close up  
16          those outstanding issues.

17          Turning to the wind investment, this morning,  
18          we just received a petition from Iberdrola  
19          requesting an extension of their time period to  
20          make the 200 million dollar investment from -- I  
21          believe it's September 18th to December 31st of  
22          this year.

23          Within that petition are the statements that  
24          they have invested approximately 160 million

1           dollars thus far in wind investments in New York,  
2           composed primarily of investments into  
3           Hardscrabble Wind Farm, which is a 74 megawatt  
4           wind farm located in Herkimer County, as well as  
5           some smaller investments in studies looking at  
6           other potential wind sites in New York.

7           The petition states that by the end of the  
8           year, they will have complied with the 200 million  
9           dollar investment requirement from the merger  
10          order. Just full disclosure, the merger orders in  
11          '08 and '09 provided the companies the opportunity  
12          to seek a modest extension of this requirement in  
13          the event the circumstances warranted. I can't  
14          tell you -- we just got the petition. I can't  
15          tell you right now what the process is for acting  
16          on it. I can definitely tell you that when the  
17          company files their final numbers showing that  
18          they've invested the 200 million dollars, we will  
19          review the numbers thoroughly and we'll report  
20          back to you on whether any additional action is  
21          necessary.

22          The final piece of information I want to  
23          touch on is in regards to the merger orders 2009  
24          and 2010 CAPEX expenditure requirements in which

1           you required that the companies spend cumulatively  
2           460 million dollars on CAPEX over that two-year  
3           period. Right now, based on the latest  
4           conversations with the company, we estimate that  
5           NYSEG and RG&E will need to spend 48 million and  
6           61 million, respectively, in additional  
7           non-budgeted items between now and the end of the  
8           year to achieve the merger targets.

9           Now, what I mean when I say non-budgeted  
10          items, I mean items that are not in the approved  
11          2010 budget of the companies. So they're looking  
12          for new projects. The companies have indicated  
13          they're going to try to meet these investment  
14          requirements in two ways.

15          The first thing is they're going to try to  
16          accelerate investments that are budgeted in 2011  
17          to 2010. Now, most all these items are items that  
18          are reflected in the Joint Proposal already. So  
19          they're just gonna take things that were reflected  
20          in the Joint Proposal that they expected to do in  
21          2011 and move them to 2010. These amounts aren't  
22          large. For NYSEG, they estimate it to be about 12  
23          million dollars. For RG&E, it's estimated that  
24          would be about five million dollars.

1           This means that NYSEG is gonna have to find  
2           incremental investments of at least 36 million  
3           dollars to close that gap and that RG&E is going  
4           to have to find incremental investments of about  
5           56 million to close those gaps, and we're gonna  
6           have to look at that.

7           Because the JP establishes specific net plant  
8           targets for each of its three years and because  
9           staff looked at those various projects that go  
10          into those net plant targets, it's really  
11          important to make sure that there's no confusion  
12          going forward about how a company makes these  
13          incremental investments and how a company makes  
14          these accelerated investments and what they mean  
15          for how they interact with the requirements for  
16          net plant targets in the JP.

17          So we want to be perfectly clear on that and  
18          we recommend that you establish a couple  
19          clarifications. And Judge Prestemon, I believe,  
20          has circulated some proposed language on those,  
21          but basically, what those clarifications would do  
22          is basically establish that additional  
23          expenditures between now and the end of the year,  
24          they represent acceleration of projects already in

1 the Joint Proposal that were expected to be done  
2 in 2011 but are gonna be accelerated into 2010.  
3 They still can count for the Joint Proposal net  
4 plant targets, because we reviewed them, and they  
5 can also, because they're being moved into 2009,  
6 count towards the merger order CAPEX requirements  
7 as well.

8 CHAIRMAN BROWN: You said 2009. I think you  
9 meant --

10 MR. STEWART: 2009. I meant 2010, yes.  
11 However, incremental expenditures between now and  
12 the end of the year, that is, expenditures that  
13 are not budgeted for this year, expenditures that  
14 are not reflected in 2011 accelerated to this  
15 year, they are going to have to be the subject of  
16 a review of the January, 2011 CAPEX filing  
17 requirement, which you established when you issued  
18 an order in April of this year governing the  
19 treatment of any amounts that the company  
20 under-spent related to the merger requirement for  
21 CAPEX expenditures for the 2009 and 2010 period.  
22 So they're going to be subject to review.

23 And I also have to tell you that the Joint  
24 Proposal before you now specifically recognizes

1           that to the extent you review these incremental  
2           filings, incremental projects, and you find them  
3           reasonable, they can be included in the merger --  
4           I'm sorry -- they can be included in the Joint  
5           Proposal going forward as adjustments to the  
6           target capital expenditure levels and carrying  
7           costs associated with those incremental projects  
8           that you find reasonable would be referred for  
9           future treatment.

10           So that's where we're at right now on the  
11           CAPEX requirements. And we're gonna work closely  
12           with the company between now and the end of the  
13           year to make sure that any amounts they spend are  
14           not -- you know, make sure the amounts they spend  
15           are reasonable and that they don't create a lot of  
16           unnecessary future expenses for ratepayers.

17           So in summary, our conclusions are we think  
18           the Joint Proposal is superior to a one-year  
19           outcome; the company has complied with or is in  
20           the process of trying to comply with all the  
21           requirements of the merger order, and given these  
22           considerations as well as the safeguards we talked  
23           about, the ratepayer protections we talked about,  
24           the number of areas of controversy that are gonna

1 be resolved by the Joint Proposal and the fact  
2 that these are the first base delivery rate  
3 increases for three of the four companies in 17  
4 years, almost two decades, we find the Joint  
5 Proposal are in the public interest and we  
6 recommend that you approve them.

7 So we're open for questions now.

8 CHAIRMAN BROWN: Okay. Questions or  
9 comments?

10 Commissioner Curry, you want to begin?

11 COMMISSIONER CURRY: Yeah. John, earlier in  
12 the session, we've heard several references to  
13 management audits in the context of ConEd and, in  
14 particular, in the context of National Grid. And  
15 when we reinstated the process of having  
16 periodic management audits, they were, at least in  
17 my mind, to aid us in dealing with the issues that  
18 come up -- can come up in rate cases but require  
19 far more depth and study and an outsider's  
20 perspective on what has been going on.

21 And we have had experiences with Grid as a  
22 newcomer to our regulatory scheme 10 years ago and  
23 we're now going through the fruits of some of that  
24 audit work. It's helping to frame, I think, some

1 of the issues that, while totally different  
2 proceedings, I understand that, frame our  
3 understandings of how the company is working and  
4 how they are adhering to what we would have them  
5 do as a responsible citizen in the State of New  
6 York and responsible electric utility.

7 So, basically, what we've tried to do is  
8 incorporate the lessons learned from our  
9 management audit proceedings in how we look at  
10 rate cases and how we carry forward the  
11 understandings that we got there and, also, as is  
12 in the case of ConEd specifically, which I'm  
13 perhaps more familiar with, the company has  
14 embraced a lot of changes suggested by the  
15 management audit and has made significant  
16 attitudinal and structural changes of how they  
17 actually do business.

18 So we have in the case of each of these  
19 business units subsidiaries of a large and  
20 responsible Spanish company which hasn't been in  
21 our space very much time and, obviously, from what  
22 you've said about the CAPEX, has had trouble  
23 interpreting what we meant when we said that you  
24 need to spend X number of dollars.

1           So it struck me that in looking at  
2           particularly the management audit, I think I'm  
3           right on this, is focused specifically on electric  
4           and I think that we probably could wait until the  
5           management audit was completed to give a 40-month  
6           case and a 10 percent return on equity, because we  
7           are going to use that management audit to help  
8           Iberdrola better understand how we approach things  
9           here and it will enhance their understanding and  
10          our understanding of what changes might be  
11          necessary or appropriate in how these operating  
12          companies function.

13           ConEd had almost a hundred recommendations in  
14          the audit that we did with them. They have dealt  
15          with an awful lot of them, including stuff that's  
16          very morphous like culture, and I think that  
17          Iberdrola's electric subsidiaries would benefit  
18          from a management audit. We would benefit from a  
19          management audit and we could have structured a,  
20          let's say, 18-month rate case which gives, I  
21          think, enough time for an audit to be commenced,  
22          reviewed and completed.

23           And if we had the 18-month situation, we  
24          would not have a 10 percent ROE, because there are

1 significant points given to the staff provision  
2 which took it from, I think, the mid 9.5's up to  
3 10 percent return on equity.

4 So I think this is something that we were  
5 trying to use as an essential tool in better  
6 communicating with the electric utilities that we  
7 regulate and I'm really uncertain as to why we  
8 didn't -- I can understand why people in the rate  
9 case concluded what they did, because they were  
10 focused on reaching a Joint Proposal in the case.

11 When it comes to the approach of senior  
12 staff, I'm not entirely certain why it is -- you  
13 asked for new questions, John, so I'm giving you a  
14 new question now instead of earlier: Why is it  
15 that we didn't at least address the issue of a  
16 rate case and dismiss it -- excuse me -- of a  
17 management audit as a predicate to a longer rate  
18 case?

19 Because I believe we don't have a sufficient  
20 record right now before us in terms of performance  
21 to make a 40-month 10 percent ROE determination.

22 MR. STEWART: I think ultimately it's a  
23 tradeoff between the need or the problem of having  
24 to face the very significant upfront rate

1           increase, and 18 months won't give you enough time  
2           to moderate it very much at all versus the idea of  
3           recognizing that the management of Rochester and  
4           NYSEG is still fairly new. They're still getting  
5           on their feet. And maybe the idea that giving  
6           another year before a management audit really gets  
7           going gives them some time to start instituting  
8           changes, start getting used to their jobs and  
9           positions.

10           And I don't necessarily see it as a bad  
11           thing. We avoid the large upfront rate increase.  
12           We'd probably have the result of the management  
13           audit 18 to 24 months into the case. To the  
14           extent there is something really significant  
15           there, we think the provisions in the rate plan  
16           could enable us to re-open it if we had to. We  
17           would try not to, but if we had to, we could. And  
18           to the extent the management audit identifies  
19           positive things that are going to streamline the  
20           company's operations, save ratepayers money, the  
21           ratepayers will to some extent get those benefits  
22           thanks to the earnings sharing provisions of the  
23           rate plan and they will get the full benefits when  
24           we reset rates in 40 months at the conclusion of

1 the Joint Proposal. But I think you make some  
2 good points, but I think it comes down to a  
3 tradeoff.

4 COMMISSIONER CURRY: Thank you.

5 CHAIRMAN BROWN: The timing, too, assuming  
6 that they come in for another rate case at 40  
7 months would bring us in at 28 months, right, or  
8 29 months, which is just about when we'd have the  
9 results and the experience of how they implemented  
10 the management audit.

11 So while I agree with you about the timing  
12 doesn't work for this case, I think it is set up  
13 to allow the company the time to do what needs to  
14 be done with the company to get the management  
15 audit done, to give them time to implement the  
16 management audit and they have that as a full  
17 consideration the next time around.

18 Remember, we just reinstated the management  
19 audit program and we had to time -- with our  
20 existing staff, which continues to be less and  
21 less, we had to time these audits and we couldn't  
22 do them all at once.

23 So they're in the queue where they're in the  
24 queue. I think your point's a good one and

1 Commissioner Larocca's been talking about that a  
2 lot lately: How do we better incorporate the  
3 management audits into the rate cases? I think  
4 we're set up to do so, but we're not quite there  
5 yet.

6 COMMISSIONER ACAMPORA: Yeah, because I think  
7 that was the original question I had asked when we  
8 did ConEd: How could we better utilize the  
9 management audit along with the rate case? And of  
10 course, you know, in a perfect world, we could fix  
11 that, but unfortunately, this time, we can't. And  
12 I really thank you and the staff, John, for going  
13 over the protections. I think that was, you know,  
14 kind of fuzzy amongst all of us and you really  
15 spelled it out very well and I'm very satisfied  
16 with the work product you've given us.

17 CHAIRMAN BROWN: Commissioner Harris.

18 COMMISSIONER HARRIS: I just have a question  
19 on the CAPEX, well, my first question, on what the  
20 company has spent to date and what is needed to be  
21 spent by the end of the year to comply with the  
22 order, I believe was in April.

23 Do we have information on what the company  
24 has spent since April to date?

1 MR. DVORSKY: We do. I don't have it in that  
2 format. I do have -- John indicated the numbers.  
3 I could go over them with you, as they were filed.  
4 I don't have it since April, though. But last  
5 session, I indicated to you that they were  
6 under-spending as of the end of June. So I had it  
7 as of the end of June and, now, we have an update  
8 that was submitted.

9 COMMISSIONER HARRIS: And do you feel as  
10 though the increase that they spent since June is  
11 on track?

12 MR. DVORSKY: No.

13 COMMISSIONER HARRIS: Okay.

14 MR. DVORSKY: They are behind in their 2010,  
15 more Rochester -- 2010 budget, more Rochester than  
16 NYSEG. But their proposal is to make up the  
17 shortfall of both the '010 budget and what the  
18 shortfall was in '09 in the next three months.  
19 And, of course, we have concerns of spending such  
20 an amount in a short period of time. We have to  
21 ensure, like John indicated, that the projects are  
22 done efficiently and effectively and the ones that  
23 are new, the incremental ones, are reasonable; in  
24 other words, from a rate case point of view, they

1           were not part of the rate case and that gets a  
2           certain rate case quality scrutiny and there's  
3           adjustments made on discretionary -- you know,  
4           there's always a good -- every project has a  
5           benefit, but you have to weigh that in the  
6           context; is it really needed now as opposed to  
7           maybe in the future or not at all and stuff. So  
8           we have to go through that if they choose to spend  
9           incremental projects and then come back to you  
10          after their filing at the end of the year to  
11          indicate how much we feel that incremental, if it  
12          was spent, was reasonable.

13                 COMMISSIONER HARRIS: At the last session, we  
14          had discussed the notion of communicating with the  
15          company and staff on the proposed projects. Have  
16          they submitted to you the types of projects they  
17          intend to go forward with by 2010?

18                 MR. DVORSKY: Yes. Since the last session,  
19          our staff and the company has had several meetings  
20          both physically and also by phone and they  
21          submitted, I believe, a couple days ago a detailed  
22          list of at least the name of the projects -- and I  
23          have it in front of me, it's extensive -- that  
24          encompass the incremental projects and the ones

1           they believe should be accelerated into the 2010  
2           from the 2011 time frame.

3           So they have defined it. It's not basically  
4           undefined at this point in time. We have to have  
5           dialogue with them.

6           COMMISSIONER HARRIS: Explain to me again  
7           what happens if in those incremental  
8           expenditures in the incremental projects, if you  
9           will, they spend this money and they file in 2011  
10          in January and we find, yeah, it's not really  
11          reasonable, what's the impact to ratepayers on  
12          that both in not complying with the CAPEX merger  
13          and in carrying costs and deferrals and the like?

14          MR. DVORSKY: Well, what we do -- let's just  
15          talk in the aggregate. As far as the incremental  
16          projects, there's roughly 56 -- no. I'm sorry.  
17          Yes, 56 million in Rochester and let's say 60 and  
18          about 36, 35 -- so about 95 million dollars in  
19          incremental projects. So we'll review them. And,  
20          hopefully, the dialogue with staff early on would  
21          give some indication that we don't believe X  
22          amount of projects are reasonable and there may be  
23          a risk if we do spend them, that our assessment of  
24          that to the Commission in the first quarter of

1           2011 is not reasonable. If you accept -- and  
2           let's say a portion of that -- staff reports to  
3           you at a session in 2011 that we believe X amount  
4           are not reasonable, Y amount is, there's two  
5           things that happen. First of all, you have to  
6           agree with staff. You could not agree with staff.  
7           You could agree with the company and then there'd  
8           be no -- that's an option.

9           If you agree with staff, the amount that --  
10          would you agree, the amount would then by the  
11          merger order would -- they would absorb that  
12          carrying cost and not recover for X amount of --

13          MR. STEWART: You really have a series of  
14          choices here. If you thought that some of the  
15          incremental expenses were unreasonable and  
16          shouldn't be recovered from ratepayers at all, the  
17          company would have to write those expenses off at  
18          some point. And then you'd have to also determine  
19          they've already absorbed some expenses, should you  
20          also apply the carrying cost mechanism that you  
21          established in the April order as well?

22          So you really have to look at the facts and  
23          circumstances and see what the related numbers  
24          are. You have a variety of choices.

1 MR. DVORSKY: Yes, that's what I just  
2 indicated to you. Now, we got concurrence from  
3 another person, but I'll end it there.

4 COMMISSIONER HARRIS: All right.

5 CHAIRMAN BROWN: He was just trying to say it  
6 faster.

7 MR. DVORSKY: Well, or a different way.

8 COMMISSIONER HARRIS: Given the options that  
9 you two have both laid out so clearly and  
10 articulately, I guess before we make any sort of  
11 decision, I would just like to again reiterate how  
12 important I think it is to continue that  
13 communication with the company on those projects  
14 so we don't end up in a situation where it's a  
15 lose-lose for both the company and the ratepayers.

16 So as much as we possibly can, keep that open  
17 dialogue going on those projects, because it's  
18 good for the ratepayer, it's good for the  
19 infrastructure, good for the company, all the way  
20 around.

21 CHAIRMAN BROWN: To take it one step further  
22 under Commissioner Curry's points, the last thing  
23 we want to do is approve this rate case and have  
24 them say "See you in 40 months." You know, the

1 dialogue, the communications between the company  
2 and staff is, I think, significantly improved and  
3 I'm very hopeful that that's an ongoing, not just  
4 a rate case phenomena, and I know we'll be keeping  
5 our eyes open on that along the way and,  
6 certainly, the management audit will help that,  
7 too, but that's even off into the distance. So I  
8 know you guys will keep your eyes open.

9 MR. DVORSKY: Yes, we do meet -- one of the  
10 things that we do outside of the rate case, as the  
11 Chairman points out, not only with these companies  
12 but our transmission and distribution people meet  
13 periodically on the implementation of the  
14 construction budget and also operation and  
15 maintenance issues like tree trimming and stuff  
16 like this. So besides the management audit, we do  
17 have an ongoing relationship with not only these  
18 companies but the other companies, so we'll be  
19 doing that.

20 CHAIRMAN BROWN: Thank you. Anything else?

21 (No affirmative response.)

22 CHAIRMAN BROWN: Okay. I've had a request to  
23 just vote on this in two different groups. I'd  
24 like to take the two gas cases and then the two

1 electric cases.

2 So we've got a series of recommendations that  
3 have been laid out here, I think, with a couple of  
4 proposals that are before us today. So I'm gonna  
5 start with the gas cases.

6 All those in favor of the recommendations  
7 concerning rates for NYSEG and RG&E's gas services  
8 described by the Judges, please say aye.

9 (Affirmative responses.)

10 CHAIRMAN BROWN: Opposed?

11 (No affirmative response.)

12 CHAIRMAN BROWN: Hearing none, the  
13 recommendations are adopted.

14 Any other comments or questions before I go  
15 to electric?

16 (No affirmative response.)

17 CHAIRMAN BROWN: All those in favor of the  
18 recommendation concerning rates for NYSEG and  
19 RG&E's electric services described by the Judges,  
20 please say aye.

21 (Affirmative responses.)

22 CHAIRMAN BROWN: Opposed?

23 COMMISSIONER CURRY: Nay.

24 CHAIRMAN BROWN: Okay. By a vote of four to

1           one in favor, the recommendations are adopted.

2           Thank you very much for all the hard work in  
3           the case, Judges and staff, and it'll be good to  
4           have another one behind us here a little bit and  
5           move forward.

6           There is one other matter that I just want  
7           to bring up before we close the session. You may  
8           have noticed -- certainly, we notice and the  
9           Commission and staff notices that we keep losing  
10          several members of our department to retirement.  
11          In fact, if you go to all the retirement lunches,  
12          you've already gained about 17 pounds and they're  
13          not stopping. But two of the people that are here  
14          today, I just want to honor personally and  
15          publicly: Judge Gerry Lynch in the Office of  
16          Hearings and Alternative Dispute Resolution and  
17          Alice Miller, Chief of Consumer Advocacy in the  
18          Office of Consumer Policy.

19          Could you both stand up so we can publicly  
20          embarrass you? Thank you so much.

21                    (Appause.)

22          CHAIRMAN BROWN: You don't have to stand up  
23          through the whole thing. I won't do that to you.

24          Alice started with the department in 1981 and

1 if there's two words that describe Alice, it's can  
2 do. I don't know how many times I've heard people  
3 say, "Alice can do that," and she's done it. I  
4 think we may have asked her to do one too many  
5 things, the fact that she's leaving us, but she's  
6 been in a large number of offices, a series of  
7 promotions, chief utility rates analyst, chief of  
8 consumer advocacy in the Office of Consumer  
9 Policy. When we needed somebody to help us out  
10 with all our energy efficiency programs, off Alice  
11 went and helped out with that and always does it  
12 well and admirably.

13 Congratulations on your retirement. We are  
14 certainly gonna miss you. You're far too young to  
15 be eligible for retirement, but I guess not. So  
16 best of luck to you and your family and thank you  
17 again, Alice.

18 (Applause.)

19 CHAIRMAN BROWN: And Gerry Lynch also joined  
20 us in 1981. It was an all-star year for personnel  
21 and bringing in people. People may not remember,  
22 he was assistants to Chairman Paul Joya, Ann Meade  
23 and Peter Bradford, and that alone is a career,  
24 prior to becoming an Administrative Law Judge.

1           And I guess the best thing I can say about when we  
2           saw Gerry Lynch sitting up there, we always knew  
3           we were gonna get a well-balanced, reasonable, a  
4           well-said presentation. We knew that he had  
5           conducted the case in complete fairness. I've  
6           never heard anybody say a negative word about his  
7           performance as an ALJ and he just has done a  
8           tremendous job for us and we're gonna miss you  
9           being here in front of us, but you're a devoted  
10          family man and you need to move on in retirement  
11          and take care and best of luck to you and thank  
12          you very much, Gerry.

13                   (Applause.)

14           COMMISSIONER ACAMPORA: To Alice and Gerry, I  
15          have to say it has been an honor and a pleasure to  
16          work with people of such high caliber. The State  
17          of New York is the Empire State and it's because  
18          of people like you who have done public service  
19          and taken it to a different level. You raise the  
20          bar for everyone, you really do.

21                   Working with Alice, it's true what the  
22          Chairman said. She's never said no to anything  
23          you've ever asked of her. In fact, she's eager to  
24          meet the next challenge. And I thought when I

1 first heard you were leaving, Alice, I was like it  
2 can't be, she's much too young. But you've earned  
3 your retirement and you will sorely be missed.  
4 You made your footprint here and it's gonna take a  
5 lot of people to fill those shoes.

6 And Gerry, as a Judge, we did the Grid merger  
7 together on Long Island and we had a lot of  
8 interesting people at those public hearings and  
9 the way that Gerry handles people is just a  
10 pleasure to watch. He's a man with a velvet  
11 glove.

12 And as Garry has said, when we sit here and  
13 we know that Gerry is in front of us, we know  
14 that we have that secure feeling that the case has  
15 been handled in the utmost of professional level.  
16 And as Alice is entitled to retire, so are you.  
17 We just hope that you stay here in New York, that  
18 neither of you leave us, that sometimes we can  
19 reach back and go to your expertise to help us out  
20 in troubled times, which we've been seeing a lot  
21 of lately and everyone is stretched. But Gerry,  
22 to you and your family, I wish you the best of  
23 luck and I hope you both collect a lot of checks  
24 from the State of New York while we still have

1           some money.

2           COMMISSIONER HARRIS: I just wanted to say  
3 I've had the privilege of working with both of you  
4 for just four years and that's my loss that it  
5 hasn't been longer. It's a big loss for all of us  
6 here in the building and I think every single  
7 ratepayer in the State of New York that you will  
8 no longer be officially part of the team, but I  
9 think everybody would always consider both of you  
10 part of the team.

11           I'm humbled to have worked with you. Your  
12 professionalism, your decency, your dedication and  
13 commitment's unprecedented and thank you for  
14 sharing all of your knowledge with me these years.

15           COMMISSIONER CURRY: My colleagues have said  
16 it far more eloquently than I. I would only say  
17 that when I came to the Commission, I needed a lot  
18 of learning, a lot of schooling, a lot of  
19 teaching, and Alice and Gerry have given it to me  
20 with grace and with a sense of humor and with a  
21 lasting impact, much to somebody's regret, on how  
22 I approach things within this building. So I  
23 thank you and, as I said, I defer to my colleagues  
24 for their eloquence.

1                   COMMISSIONER LAROCCA: The whole universe of  
2 public service right now is held in rather low  
3 esteem by a lot of people that we serve and that's  
4 too bad and I think these two people are the kind  
5 of stories were more people outside of this room  
6 and outside of this building aware of this kind of  
7 public service, which has been exemplary but also  
8 something routine that we've come to expect.

9                   So if there are two examples, I knew you both  
10 by reputation before I got here and I wish more  
11 people did that and more people were aware of the  
12 example of your spectacular service. So just let  
13 me add my best wishes to you and for the models  
14 you have been for everybody else, thank you.

15                   CHAIRMAN BROWN: Thank you. And because you  
16 come before us so often, we get to publicly  
17 embarrass you here today, but I also want to note  
18 we are losing employees that are in the background  
19 that don't always sit here at these chairs that  
20 are incredibly valuable and, unfortunately, we  
21 don't get to honor them all in public session, but  
22 I just want to say thank you to all of them. They  
23 are appreciated as much as the people that show up  
24 in front of us, because without them, we wouldn't

1 have gotten to the point where we are today.

2 So thank you to all our retiring employees  
3 and I hope it slows down soon.

4 With that, Madam Secretary, is there anything  
5 else that's gonna come before us today?

6 SECRETARY: Not today, but I would like to  
7 announce that there will be the next regular  
8 session on October 14th and that will be here in  
9 Albany starting at 10:30. There will be another  
10 session-like event that will be a technical  
11 conference here on October 20th and the subject  
12 of that will be electric cars, and more  
13 information will be forthcoming about that. And  
14 happy birthday, Elaine.

15 CHAIRMAN BROWN: Thank you very much. And  
16 with that, session is adjourned.

17 (Meeting adjourned at 12:17 p.m.)

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C E R T I F I C A T I O N

I, **THERESA L. KLOS**, Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that the foregoing record taken by me at the time and place noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

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THERESA L. KLOS

Dated: September 21, 2010.

<b>\$</b>	<b>18-month</b> [2] - 73:21, 73:24	<b>3,400</b> [1] - 22:12	<b>8</b>	<b>accurate</b> [2] - 25:1, 92:7
<b>\$410,000</b> [1] - 6:20	<b>18th</b> [1] - 65:22	<b>30</b> [1] - 60:12	<b>8</b> [2] - 4:14, 8:5	<b>accurately</b> [1] - 22:23
<b>'</b>	<b>1981</b> [2] - 86:1, 86:21	<b>300</b> [2] - 56:15, 56:16	<b>84.1</b> [1] - 7:15	<b>achieve</b> [1] - 67:9
<b>'010</b> [1] - 78:18	<b>1993</b> [1] - 56:12	<b>300,000</b> [1] - 21:3	<b>86</b> [1] - 9:18	<b>Act</b> [1] - 41:9
<b>'06</b> [1] - 11:20	<b>19th</b> [2] - 1:8, 36:22	<b>301</b> [2] - 3:16, 19:10	<b>87</b> [1] - 9:19	<b>acting</b> [2] - 59:16, 66:16
<b>'08</b> [1] - 66:12	<b>2</b>	<b>31.7</b> [1] - 7:21	<b>9</b>	<b>action</b> [2] - 44:23, 66:21
<b>'09</b> [3] - 11:20, 66:12, 78:19	<b>2</b> [4] - 8:14, 60:11, 60:24, 61:7	<b>31st</b> [1] - 65:22	<b>9.5's</b> [1] - 74:3	<b>actions</b> [5] - 56:16, 59:11, 59:15, 63:20, 63:23
<b>0</b>	<b>20</b> [1] - 60:12	<b>32</b> [1] - 5:19	<b>91</b> [1] - 10:1	<b>active</b> [2] - 13:24, 32:4
<b>0029</b> [1] - 16:15	<b>200</b> [3] - 65:21, 66:9, 66:19	<b>35</b> [3] - 5:21, 9:9, 80:19	<b>92</b> [1] - 10:2	<b>add</b> [2] - 35:15, 90:14
<b>0717</b> [1] - 52:6	<b>2001</b> [1] - 39:1	<b>36</b> [4] - 64:12, 64:20, 68:3, 80:19	<b>95</b> [3] - 61:8, 61:12, 80:19	<b>added</b> [1] - 22:11
<b>08-E-0827</b> [1] - 36:8	<b>2006</b> [1] - 33:6	<b>4</b>	<b>A</b>	<b>addition</b> [2] - 20:23, 42:7
<b>09-E-0715</b> [1] - 52:6	<b>2008</b> [3] - 23:7, 57:20, 64:9	<b>40</b> [4] - 42:10, 76:1, 76:7, 83:1	<b>a.m</b> [1] - 1:6	<b>additional</b> [6] - 14:8, 20:20, 40:2, 66:21, 67:7, 68:23
<b>09-G-0795</b> [1] - 3:21	<b>2009</b> [9] - 41:15, 50:13, 57:20, 64:9, 66:24, 69:6, 69:9, 69:11, 69:22	<b>40-month</b> [2] - 73:6, 74:22	<b>ability</b> [6] - 58:23, 59:2, 59:6, 59:11, 59:15, 92:7	<b>address</b> [15] - 8:23, 15:21, 37:15, 37:21, 38:3, 39:15, 43:10, 46:3, 54:23, 55:21, 56:5, 57:14, 57:16, 60:3, 74:16
<b>09-S-0794</b> [1] - 3:21	<b>201</b> [3] - 3:17, 36:7, 36:21	<b>42nd</b> [1] - 16:7	<b>able</b> [4] - 40:17, 61:10, 61:23, 65:7	<b>addressed</b> [2] - 35:5, 43:22
<b>09S-0029</b> [1] - 3:21	<b>2010</b> [16] - 1:6, 2:3, 3:17, 19:14, 67:1, 67:12, 67:18, 67:22, 69:3, 69:11, 69:22, 78:15, 78:16, 79:18, 80:2, 92:14	<b>45</b> [1] - 12:3	<b>above-market</b> [1] - 11:13	<b>addresses</b> [1] - 38:20
<b>1</b>	<b>2011</b> [13] - 6:16, 38:21, 40:10, 45:10, 67:17, 67:22, 69:3, 69:15, 69:17, 80:3, 80:10, 81:2, 81:4	<b>46.7</b> [1] - 5:5	<b>absence</b> [2] - 13:21, 13:23	<b>addressing</b> [4] - 14:3, 16:21, 39:19, 58:10
<b>1</b> [3] - 60:10, 60:24, 61:1	<b>2013</b> [1] - 53:6	<b>47</b> [2] - 5:21, 9:9	<b>absolutely</b> [1] - 47:8	<b>adequacy</b> [1] - 9:2
<b>10</b> [7] - 12:8, 54:16, 71:23, 73:7, 74:1, 74:4, 74:22	<b>202</b> [2] - 3:16, 3:20	<b>47.1</b> [1] - 5:4	<b>absolutely</b> [1] - 35:17	<b>adequate</b> [2] - 38:12, 42:21
<b>10-C-0215</b> [1] - 2:9	<b>203</b> [2] - 3:18, 52:5	<b>47.9</b> [1] - 5:4	<b>absorb</b> [1] - 81:12	<b>adequately</b> [1] - 62:7
<b>10-E-0050</b> [1] - 36:8	<b>20th</b> [1] - 91:12	<b>475,000</b> [1] - 21:20	<b>absorbed</b> [1] - 81:20	<b>adhering</b> [1] - 72:5
<b>10-E-0331</b> [1] - 19:10	<b>21</b> [1] - 92:14	<b>48</b> [1] - 67:6	<b>abstaining</b> [1] - 3:2	<b>adjourned</b> [2] - 91:17, 91:18
<b>10-G-0399</b> [1] - 2:13	<b>22</b> [1] - 5:19	<b>48.6</b> [1] - 8:9	<b>ACAMPORA</b> [8] - 1:14, 34:6, 50:7, 50:10, 50:16, 50:20, 77:7, 87:15	<b>adjust</b> [1] - 9:22
<b>10.4</b> [1] - 7:15	<b>22.4</b> [1] - 7:15	<b>49</b> [1] - 7:18	<b>Acampora</b> [2] - 34:5, 50:6	<b>adjustment</b> [10] - 6:16, 8:19, 37:15, 37:23, 40:15, 45:9, 45:14, 48:11, 54:2, 54:13
<b>105</b> [2] - 21:2, 21:23	<b>23rd</b> [1] - 20:14	<b>5</b>	<b>accelerate</b> [1] - 67:17	<b>adjustments</b> [3] - 62:4, 70:6, 79:4
<b>10:30</b> [2] - 1:6, 91:10	<b>24</b> [1] - 75:14	<b>50</b> [1] - 42:10	<b>accelerated</b> [4] - 68:15, 69:3, 69:15, 80:2	<b>Administrative</b> [4] - 4:3, 36:15, 52:11, 87:1
<b>115.5</b> [1] - 5:2	<b>25</b> [1] - 32:2	<b>501</b> [1] - 2:8	<b>acceleration</b> [1] - 69:1	<b>admirably</b> [1] - 86:13
<b>12</b> [1] - 67:23	<b>25th</b> [1] - 20:18	<b>52</b> [1] - 11:21	<b>accept</b> [1] - 81:2	<b>adopt</b> [9] - 4:21, 5:17, 5:19, 5:23, 9:16, 9:22, 11:5, 53:5, 62:18
<b>125-plus</b> [1] - 28:23	<b>26</b> [1] - 37:14	<b>55</b> [3] - 61:9, 61:19, 61:22	<b>access</b> [1] - 48:2	<b>adopted</b> [4] - 3:12, 59:24, 84:14, 85:2
<b>12:17</b> [1] - 91:18	<b>260</b> [1] - 54:12	<b>56</b> [3] - 68:6, 80:17, 80:18	<b>accommodate</b> [1] - 3:14	<b>adopting</b> [4] - 6:24, 18:12, 18:13, 57:10
<b>13</b> [1] - 15:14	<b>26th</b> [1] - 20:13	<b>6</b>	<b>accomplish</b> [1] - 21:5	<b>adoption</b> [1] - 10:3
<b>13th</b> [1] - 21:11	<b>275</b> [1] - 54:12	<b>60</b> [1] - 80:18	<b>accordance</b> [1] - 21:2	<b>advance</b> [2] - 27:3,
<b>14th</b> [1] - 91:9	<b>27th</b> [2] - 16:20, 16:23	<b>602.10B</b> [1] - 2:11	<b>according</b> [2] - 11:11, 11:12	
<b>150</b> [8] - 60:10, 60:16, 60:21, 60:23, 61:2, 61:6, 61:8, 61:21	<b>28</b> [1] - 76:8	<b>61</b> [1] - 67:7	<b>account</b> [1] - 11:4	
<b>16</b> [4] - 1:6, 2:10, 2:17, 21:2	<b>29</b> [1] - 76:9	<b>64</b> [1] - 6:2	<b>accounting</b> [1] - 6:17	
<b>160</b> [1] - 66:1	<b>3</b>	<b>66.19</b> [1] - 6:7	<b>Accounting</b> [2] - 36:15, 42:9	
<b>160.76</b> [1] - 5:2	<b>3</b> [4] - 1:8, 60:11, 61:1, 61:7	<b>6th</b> [1] - 16:7	<b>accounts</b> [1] - 38:8	
<b>162</b> [1] - 2:14		<b>7</b>		
<b>16th</b> [1] - 2:3		<b>7.46</b> [1] - 8:8		
<b>17</b> [3] - 57:5, 71:4, 85:13		<b>7.5</b> [2] - 8:12, 12:1		
<b>17-year</b> [1] - 56:17		<b>74</b> [1] - 66:4		
<b>178</b> [1] - 61:17		<b>753</b> [1] - 2:17		
<b>18</b> [2] - 75:2, 75:14		<b>78</b> [1] - 6:2		

<p>51:24  <b>advantage</b> [1] - 33:2  <b>adversarial</b> [1] - 62:10  <b>adverse</b> [1] - 21:10  <b>Advocacy</b> [2] - 19:19, 85:18  <b>advocacy</b> [1] - 86:9  <b>Advocates</b> [1] - 7:11  <b>affect</b> [5] - 8:17, 17:23, 50:17, 54:8, 54:9  <b>affected</b> [2] - 20:23, 65:11  <b>affecting</b> [1] - 59:15  <b>affidavit</b> [1] - 65:10  <b>affiliate</b> [9] - 36:23, 37:22, 38:24, 40:18, 40:24, 42:12, 43:20, 44:10, 51:12  <b>affiliates</b> [1] - 43:7  <b>after-the-fact</b> [1] - 45:23  <b>agencies</b> [1] - 33:1  <b>Agency</b> [1] - 1:8  <b>agenda</b> [7] - 2:6, 2:22, 3:1, 3:3, 3:7, 3:13, 3:15  <b>aggregate</b> [1] - 80:16  <b>aggressively</b> [1] - 22:10  <b>ago</b> [5] - 15:14, 32:9, 62:13, 71:23, 79:22  <b>agree</b> [6] - 76:12, 81:7, 81:8, 81:10, 81:11  <b>agreements</b> [3] - 43:10, 48:8, 62:19  <b>ahead</b> [1] - 33:10  <b>aid</b> [1] - 71:18  <b>Albany</b> [3] - 1:9, 23:13, 91:10  <b>Alice</b> [12] - 19:18, 85:18, 86:1, 86:2, 86:4, 86:11, 86:18, 87:15, 87:22, 88:2, 88:17, 89:20  <b>ALJ</b> [14] - 4:7, 7:6, 10:8, 13:1, 14:11, 15:9, 15:18, 16:13, 17:1, 17:11, 18:1, 18:4, 52:24, 87:8  <b>all-star</b> [1] - 86:21  <b>allayed</b> [1] - 13:15  <b>alleged</b> [1] - 2:16  <b>allocate</b> [2] - 37:9, 49:11  <b>allocated</b> [4] - 11:11, 11:12, 37:6, 48:18  <b>allocation</b> [15] - 3:23, 8:22, 10:7, 10:11,</p>	<p>10:20, 11:3, 11:7, 11:17, 12:7, 18:18, 37:1, 37:8, 45:22, 48:19, 48:21  <b>allocations</b> [4] - 39:4, 41:15, 50:11, 50:12  <b>allow</b> [4] - 9:11, 41:1, 44:9, 76:14  <b>allowed</b> [1] - 8:9  <b>allowing</b> [1] - 40:5  <b>allows</b> [1] - 60:22  <b>almost</b> [2] - 71:5, 73:14  <b>alone</b> [1] - 86:24  <b>alternative</b> [1] - 45:16  <b>Alternative</b> [2] - 52:13, 85:17  <b>Alternatively</b> [1] - 45:13  <b>alternatively</b> [1] - 45:17  <b>alternatives</b> [1] - 32:13  <b>amazing</b> [1] - 24:15  <b>America</b> [1] - 16:6  <b>amount</b> [18] - 9:13, 21:8, 24:16, 45:15, 45:21, 54:13, 56:21, 56:24, 61:13, 61:15, 63:13, 78:21, 80:23, 81:4, 81:5, 81:10, 81:11, 81:13  <b>Amounts</b> [1] - 8:4  <b>amounts</b> [5] - 54:2, 67:22, 69:20, 70:14, 70:15  <b>analyst</b> [1] - 86:8  <b>Ann</b> [1] - 86:23  <b>announce</b> [1] - 91:8  <b>annual</b> [5] - 5:4, 6:19, 7:14, 7:17, 61:10  <b>answer</b> [4] - 7:4, 10:5, 24:1, 25:22  <b>answered</b> [1] - 35:11  <b>anticipated</b> [1] - 27:2  <b>anticipation</b> [1] - 25:22  <b>appendices</b> [2] - 58:12, 64:15  <b>Applause</b> [3] - 85:22, 86:19, 87:14  <b>applicability</b> [1] - 22:20  <b>apply</b> [3] - 11:6, 11:20, 81:21  <b>appreciate</b> [1] - 52:3  <b>appreciated</b> [1] - 90:24  <b>approach</b> [7] - 7:21, 40:4, 41:6, 42:5,</p>	<p>73:9, 74:12, 89:23  <b>approaches</b> [1] - 42:21  <b>appropriate</b> [4] - 28:11, 28:12, 37:23, 73:12  <b>approve</b> [2] - 71:7, 82:24  <b>approved</b> [5] - 19:7, 51:24, 56:11, 57:21, 67:11  <b>approving</b> [1] - 18:17  <b>April</b> [5] - 69:19, 77:23, 78:1, 78:5, 81:22  <b>area</b> [9] - 20:10, 21:13, 23:4, 23:7, 35:22, 35:23, 38:13, 43:8, 48:16  <b>areas</b> [6] - 26:1, 27:10, 28:24, 34:14, 62:23, 71:1  <b>arena</b> [1] - 15:22  <b>arise</b> [1] - 14:14  <b>arising</b> [1] - 6:13, 6:20  <b>arrangement</b> [2] - 47:2, 48:4  <b>arrangements</b> [1] - 65:15  <b>articulately</b> [1] - 82:11  <b>Ascertain</b> [2] - 38:5, 38:10  <b>aside</b> [1] - 54:3  <b>aspects</b> [4] - 5:13, 39:19, 55:1, 55:7  <b>assessment</b> [9] - 21:6, 22:3, 25:15, 25:19, 26:11, 27:15, 29:12, 29:13, 80:24  <b>assets</b> [2] - 54:5, 54:7  <b>assigned</b> [1] - 42:3  <b>assist</b> [1] - 42:16  <b>Assistance</b> [1] - 31:19  <b>assistance</b> [1] - 42:11  <b>assistants</b> [1] - 86:23  <b>assisted</b> [1] - 25:17  <b>associated</b> [7] - 5:6, 6:13, 18:22, 36:24, 37:7, 37:9, 70:8  <b>assume</b> [1] - 49:8  <b>assuming</b> [1] - 76:6  <b>assure</b> [1] - 59:12  <b>attack</b> [1] - 26:6  <b>attacked</b> [2] - 20:9, 22:10  <b>attention</b> [1] - 32:12  <b>attitudinal</b> [1] - 72:17  <b>Attorney</b> [1] - 36:17  <b>audit</b> [53] - 5:20, 6:10, 9:4, 12:19, 13:4,</p>	<p>13:19, 14:10, 14:12, 15:14, 18:16, 38:12, 40:6, 40:17, 41:7, 41:14, 41:18, 41:24, 42:1, 42:7, 42:11, 42:17, 42:19, 43:3, 43:11, 44:13, 46:19, 49:23, 50:8, 50:15, 51:1, 51:15, 72:1, 72:10, 72:16, 73:3, 73:6, 73:8, 73:15, 73:19, 73:20, 73:22, 74:18, 75:7, 75:14, 75:19, 76:11, 76:16, 76:17, 76:20, 77:10, 83:7, 83:17  <b>Audit</b> [1] - 36:9  <b>auditing</b> [2] - 13:8, 13:9  <b>auditor</b> [2] - 46:16, 47:2  <b>audits</b> [8] - 14:23, 15:8, 15:10, 15:12, 71:14, 71:17, 76:22, 77:4  <b>August</b> [4] - 14:22, 16:20, 16:23, 36:22  <b>authority</b> [1] - 9:18  <b>Authority</b> [1] - 21:19  <b>avail</b> [1] - 32:15  <b>available</b> [10] - 19:20, 33:17, 36:18, 38:18, 39:21, 44:18, 45:11, 46:11, 50:19, 51:5  <b>Avenue</b> [1] - 16:7  <b>average</b> [2] - 32:23, 33:4  <b>averages</b> [1] - 11:20  <b>avoid</b> [2] - 39:12, 75:12  <b>aware</b> [4] - 63:15, 64:10, 90:7, 90:12  <b>awful</b> [2] - 52:2, 73:16  <b>aye</b> [5] - 3:7, 19:2, 51:19, 84:9, 84:21</p>	<p>29:22, 38:24, 56:9, 56:14, 56:18, 56:23, 57:3, 57:4, 58:2, 71:3  <b>based</b> [12] - 7:14, 8:8, 13:19, 29:12, 29:13, 29:20, 59:22, 63:18, 64:1, 64:2, 65:14, 67:4  <b>basement</b> [1] - 16:8  <b>basic</b> [2] - 58:20, 64:17  <b>basis</b> [4] - 14:5, 15:2, 39:17, 55:11  <b>batting</b> [2] - 32:23, 33:4  <b>bear</b> [1] - 42:22  <b>become</b> [1] - 28:5  <b>becoming</b> [1] - 87:1  <b>beforehand</b> [2] - 34:22, 34:24  <b>began</b> [1] - 50:12  <b>begin</b> [5] - 19:21, 44:24, 46:7, 49:7, 71:11  <b>beginning</b> [3] - 26:3, 41:18, 47:12  <b>begun</b> [2] - 41:15, 44:11  <b>behind</b> [3] - 62:16, 78:15, 85:5  <b>belief</b> [1] - 92:8  <b>belonging</b> [1] - 9:24  <b>below</b> [1] - 61:2  <b>Ben</b> [1] - 36:16  <b>benefit</b> [8] - 42:1, 54:2, 54:12, 61:10, 61:24, 73:18, 73:19, 79:6  <b>benefits</b> [7] - 10:17, 10:18, 33:12, 57:12, 62:22, 75:22, 75:24  <b>best</b> [13] - 33:4, 36:23, 48:4, 48:6, 64:23, 64:24, 65:3, 86:17, 87:2, 87:12, 88:23, 90:14, 92:7  <b>better</b> [7] - 32:22, 48:20, 57:8, 73:9, 74:6, 77:3, 77:9  <b>between</b> [11] - 24:12, 48:5, 63:10, 63:11, 63:13, 67:8, 68:24, 69:12, 70:13, 74:24, 83:2  <b>beyond</b> [2] - 43:22, 47:22  <b>bias</b> [1] - 39:13  <b>big</b> [2] - 30:3, 89:6  <b>bill</b> [1] - 6:24</p>
<b>B</b>				
<p><b>back-to-back</b> [2] - 20:9, 25:14  <b>background</b> [2] - 48:16, 90:19  <b>backwards</b> [2] - 38:14, 49:21  <b>bad</b> [2] - 75:11, 90:5  <b>balanced</b> [1] - 87:4  <b>Bank</b> [1] - 16:6  <b>bar</b> [1] - 87:21  <b>base</b> [13] - 5:6, 7:20,</p>				

<p><b>billing</b> [1] - 6:19  <b>bills</b> [3] - 6:15, 18:23, 38:23  <b>birthday</b> [1] - 91:15  <b>bit</b> [5] - 12:20, 21:14, 28:12, 54:15, 85:5  <b>Blue</b> [1] - 33:11  <b>boilerplate</b> [2] - 4:22, 9:22  <b>Bonvin</b> [1] - 23:15  <b>border</b> [2] - 16:3, 20:11  <b>Bradford</b> [1] - 86:24  <b>breakdown</b> [1] - 49:3  <b>brief</b> [5] - 4:9, 4:17, 10:9, 20:7, 37:12  <b>briefing</b> [2] - 19:23, 45:7  <b>BRINDLEY</b> [6] - 36:20, 49:17, 50:9, 50:11, 50:18, 50:21  <b>Brindley</b> [2] - 14:24, 36:14  <b>bring</b> [5] - 15:3, 28:3, 43:1, 76:8, 85:8  <b>bringing</b> [6] - 27:10, 28:13, 29:11, 29:13, 34:23, 86:22  <b>Broome</b> [1] - 55:9  <b>brought</b> [2] - 31:20, 42:22  <b>BROWN</b> [50] - 1:13, 2:2, 2:23, 3:5, 3:9, 3:11, 12:10, 15:16, 15:19, 18:7, 18:10, 19:4, 19:6, 24:3, 26:16, 27:22, 30:10, 31:24, 34:5, 35:6, 35:17, 36:2, 46:10, 48:24, 49:8, 50:3, 51:2, 51:9, 51:21, 51:23, 52:23, 55:23, 56:3, 69:9, 71:9, 76:6, 77:18, 82:6, 82:22, 83:21, 83:23, 84:11, 84:13, 84:18, 84:23, 85:1, 85:23, 86:20, 90:16, 91:16  <b>Brown</b> [2] - 2:7, 52:24  <b>budget</b> [4] - 67:12, 78:16, 78:18, 83:15  <b>budgeted</b> [4] - 67:8, 67:10, 67:17, 69:14  <b>building</b> [3] - 89:7, 89:23, 90:7  <b>Building</b> [1] - 1:8  <b>buildings</b> [1] - 16:4  <b>built</b> [1] - 16:6  <b>burdensome</b> [1] - 40:13</p>	<p><b>business</b> [4] - 41:5, 47:20, 72:18, 72:20</p> <p style="text-align: center;"><b>C</b></p> <p><b>calculation</b> [1] - 61:4  <b>caliber</b> [1] - 87:17  <b>Canadian</b> [1] - 20:11  <b>canceling</b> [1] - 31:3  <b>candidate</b> [1] - 42:24  <b>candidates</b> [1] - 41:3  <b>capabilities</b> [3] - 46:20, 47:5, 47:24  <b>CAPEX</b> [12] - 57:22, 63:5, 64:11, 67:1, 67:3, 69:7, 69:17, 69:22, 70:12, 72:23, 77:20, 80:13  <b>capital</b> [4] - 9:11, 54:17, 55:16, 70:7  <b>capitalized</b> [1] - 38:7  <b>capturing</b> [1] - 5:20  <b>care</b> [2] - 35:5, 87:12  <b>career</b> [1] - 86:24  <b>careful</b> [1] - 31:11  <b>carry</b> [2] - 46:7, 72:11  <b>carrying</b> [6] - 8:3, 62:12, 70:7, 80:14, 81:13, 81:21  <b>cars</b> [1] - 91:13  <b>Case</b> [3] - 2:9, 2:13, 19:10  <b>case</b> [67] - 4:9, 4:10, 4:11, 5:1, 5:23, 6:6, 6:23, 7:8, 8:6, 9:20, 13:12, 13:18, 14:15, 14:19, 16:16, 16:18, 20:3, 37:10, 37:13, 38:20, 39:6, 39:9, 39:14, 39:16, 40:6, 40:16, 40:18, 42:3, 44:13, 44:18, 45:1, 45:4, 45:12, 46:4, 46:12, 47:6, 47:7, 47:10, 50:23, 57:10, 57:14, 60:4, 61:21, 61:24, 62:1, 62:18, 72:13, 72:19, 73:7, 73:21, 74:10, 74:11, 74:17, 74:19, 75:14, 76:7, 76:13, 77:10, 79:1, 79:2, 79:3, 82:24, 83:5, 83:11, 85:4, 87:6, 88:15  <b>cases</b> [13] - 15:8, 15:9, 19:9, 34:8, 52:18, 52:19, 71:19, 72:11, 77:4, 84:1, 84:2, 84:6</p>	<p><b>Cases</b> [3] - 3:21, 36:8, 52:6  <b>cash</b> [2] - 54:7, 54:8  <b>categories</b> [1] - 5:9  <b>category</b> [1] - 12:16  <b>causing</b> [1] - 27:5  <b>caution</b> [1] - 39:11  <b>central</b> [1] - 48:6  <b>Central</b> [4] - 19:11, 20:22, 20:24, 24:14  <b>certain</b> [11] - 9:22, 29:5, 32:21, 37:6, 42:7, 54:4, 55:6, 55:7, 55:17, 74:13, 79:3  <b>certainly</b> [9] - 14:19, 17:20, 18:4, 24:8, 59:8, 64:24, 83:7, 85:9, 86:15  <b>CERTIFY</b> [1] - 92:5  <b>cetera</b> [2] - 32:12, 63:6  <b>chain</b> [2] - 28:4, 29:17  <b>chair</b> [1] - 24:19  <b>Chairman</b> [10] - 1:13, 2:7, 4:7, 7:6, 19:22, 36:20, 52:24, 83:12, 86:23, 87:23  <b>CHAIRMAN</b> [49] - 2:2, 2:23, 3:5, 3:9, 3:11, 12:10, 15:16, 15:19, 18:7, 18:10, 19:4, 19:6, 24:3, 26:16, 27:22, 30:10, 31:24, 34:5, 35:6, 35:17, 36:2, 46:10, 48:24, 49:8, 50:3, 51:2, 51:9, 51:21, 51:23, 52:23, 55:23, 56:3, 69:9, 71:9, 76:6, 77:18, 82:6, 82:22, 83:21, 83:23, 84:11, 84:13, 84:18, 84:23, 85:1, 85:23, 86:20, 90:16, 91:16  <b>Chairman's</b> [1] - 36:21  <b>chairs</b> [1] - 90:20  <b>challenge</b> [1] - 88:1  <b>challenges</b> [2] - 9:5, 32:7  <b>chance</b> [1] - 17:3  <b>change</b> [1] - 12:7  <b>changed</b> [1] - 53:8  <b>changes</b> [9] - 2:5, 2:8, 8:16, 37:19, 38:10, 72:15, 72:17, 73:11, 75:9  <b>charges</b> [5] - 4:1, 8:3, 36:11, 37:1, 52:7  <b>chart</b> [1] - 29:20</p>	<p><b>checker</b> [1] - 49:16  <b>checking</b> [1] - 49:16  <b>checks</b> [1] - 88:24  <b>Chief</b> [3] - 19:18, 36:15, 85:18  <b>chief</b> [2] - 86:8  <b>choices</b> [2] - 81:15, 82:1  <b>choose</b> [5] - 33:18, 41:21, 45:13, 45:17, 79:9  <b>Christian</b> [1] - 23:15  <b>circulated</b> [1] - 68:21  <b>circumstances</b> [4] - 21:10, 59:9, 66:14, 81:24  <b>citizen</b> [1] - 72:6  <b>City</b> [2] - 7:9, 20:12  <b>clarification</b> [1] - 12:16  <b>clarifications</b> [2] - 68:20, 68:22  <b>class</b> [2] - 7:23, 55:10  <b>class-specific</b> [1] - 7:23  <b>clause</b> [3] - 8:19, 58:6, 59:20  <b>clauses</b> [2] - 58:16, 58:18  <b>clear</b> [5] - 46:2, 47:8, 50:4, 62:18, 68:18  <b>clearly</b> [1] - 82:10  <b>close</b> [7] - 20:6, 33:18, 41:18, 65:16, 68:4, 68:6, 85:8  <b>closely</b> [1] - 70:12  <b>co</b> [1] - 15:24  <b>co-gen</b> [1] - 15:24  <b>collaborative</b> [4] - 9:14, 16:17, 17:8, 17:19  <b>collaboratively</b> [1] - 23:6  <b>colleagues</b> [3] - 10:9, 89:16, 89:24  <b>collect</b> [1] - 88:24  <b>collected</b> [1] - 7:22  <b>comfortable</b> [1] - 16:9  <b>coming</b> [1] - 41:18  <b>commenced</b> [1] - 73:22  <b>commendable</b> [3] - 22:4, 24:7, 24:10  <b>comment</b> [4] - 15:22, 30:12, 32:1, 49:1  <b>comments</b> [7] - 12:13, 18:7, 24:3, 47:15, 63:9, 71:10, 84:15  <b>COMMISSION</b> [1] - 1:1</p>	<p><b>Commission</b> [28] - 1:3, 2:4, 5:17, 6:6, 8:16, 9:8, 9:18, 10:1, 13:17, 36:4, 36:11, 37:16, 38:4, 38:19, 39:21, 40:4, 40:8, 40:19, 42:4, 43:14, 43:18, 44:1, 44:7, 44:9, 45:11, 81:1, 85:10, 89:18  <b>Commissioner</b> [14] - 12:14, 14:8, 14:21, 15:19, 27:22, 31:24, 34:5, 47:16, 48:24, 50:6, 71:11, 77:2, 77:18, 82:23  <b>COMMISSIONER</b> [40] - 12:15, 14:7, 15:6, 15:20, 16:24, 17:9, 17:22, 18:2, 18:6, 25:11, 26:8, 27:23, 29:9, 30:1, 30:24, 31:16, 32:2, 33:15, 34:6, 47:17, 49:1, 50:7, 50:10, 50:16, 50:20, 71:12, 76:5, 77:7, 77:19, 78:10, 78:14, 79:14, 80:7, 82:5, 82:9, 84:24, 87:15, 89:3, 89:16, 90:2  <b>Commissioners</b> [9] - 4:8, 7:7, 15:3, 19:23, 24:9, 36:21, 44:22, 53:1, 56:4  <b>COMMISSIONERS</b> [1] - 1:12  <b>commitment's</b> [1] - 89:14  <b>commitments</b> [1] - 64:8  <b>common</b> [5] - 8:9, 15:8, 15:9, 41:2, 49:10  <b>communicate</b> [1] - 18:5  <b>communicating</b> [2] - 74:7, 79:15  <b>communication</b> [3] - 22:24, 63:10, 82:14  <b>communications</b> [1] - 83:2  <b>communities</b> [1] - 29:1  <b>companies</b> [27] - 26:9, 28:6, 32:3, 32:11, 37:2, 48:5, 49:11, 53:3, 59:12, 59:16, 60:18, 62:6, 63:21, 64:16, 64:19, 64:22,</p>
---	---	---	--	---

<p>64:24, 65:9, 66:12, 67:2, 67:12, 67:13, 71:4, 73:13, 83:12, 83:19</p> <p><b>Company</b> [1] - 4:2</p> <p><b>company</b> [46] - 5:1, 6:11, 12:18, 13:2, 13:3, 13:8, 13:12, 16:2, 16:20, 18:20, 25:19, 29:10, 30:17, 30:21, 31:8, 39:4, 41:14, 45:4, 50:12, 55:2, 63:2, 63:12, 63:18, 65:13, 66:18, 67:5, 68:13, 68:14, 69:20, 70:13, 70:20, 72:4, 72:14, 72:21, 76:14, 76:15, 77:21, 77:24, 79:16, 79:20, 81:8, 81:18, 82:14, 82:16, 82:20, 83:2</p> <p><b>company's</b> [4] - 8:13, 17:13, 18:15, 75:21</p> <p><b>compare</b> [1] - 53:17</p> <p><b>compared</b> [2] - 58:6, 63:14</p> <p><b>complete</b> [3] - 50:15, 51:3, 87:6</p> <p><b>completed</b> [4] - 40:7, 43:12, 73:6, 73:23</p> <p><b>completely</b> [1] - 40:18</p> <p><b>completes</b> [1] - 44:19</p> <p><b>completing</b> [1] - 41:19</p> <p><b>completion</b> [2] - 14:12, 45:20</p> <p><b>complex</b> [1] - 19:9</p> <p><b>compliance</b> [3] - 40:6, 44:14, 65:8</p> <p><b>complicated</b> [2] - 17:14, 62:10</p> <p><b>complied</b> [3] - 64:19, 66:9, 70:20</p> <p><b>comply</b> [4] - 65:1, 65:3, 70:21, 77:22</p> <p><b>complying</b> [5] - 59:12, 64:17, 64:19, 65:7, 80:13</p> <p><b>component</b> [2] - 12:6, 48:17</p> <p><b>composed</b> [1] - 66:3</p> <p><b>Comprehensive</b> [1] - 36:8</p> <p><b>comprehensively</b> [1] - 43:21</p> <p><b>compromised</b> [2] - 34:15, 55:2</p> <p><b>Con</b> [2] - 7:9, 23:2</p> <p><b>concept</b> [1] - 63:19</p> <p><b>concern</b> [9] - 13:11, 13:21, 13:23, 18:5,</p>	<p>31:9, 43:10, 57:17, 63:1</p> <p><b>concerned</b> [1] - 58:4</p> <p><b>concerning</b> [4] - 5:24, 53:14, 84:8, 84:19</p> <p><b>concerns</b> [8] - 13:14, 31:13, 37:15, 37:22, 43:5, 55:15, 55:21, 78:20</p> <p><b>concluded</b> [1] - 74:10</p> <p><b>conclusion</b> [3] - 12:9, 14:6, 76:1</p> <p><b>conclusions</b> [1] - 70:18</p> <p><b>concurrence</b> [1] - 82:3</p> <p><b>conditional</b> [1] - 17:2</p> <p><b>conditions</b> [1] - 22:23</p> <p><b>conduct</b> [4] - 40:23, 42:6, 47:12, 51:1</p> <p><b>conducted</b> [2] - 43:2, 87:6</p> <p><b>conducting</b> [1] - 42:16</p> <p><b>ConEd</b> [4] - 71:14, 72:13, 73:14, 77:9</p> <p><b>ConEdison</b> [10] - 6:8, 9:12, 19:12, 20:24, 21:18, 21:22, 29:19, 33:6, 33:10, 59:23</p> <p><b>ConEdison's</b> [1] - 3:16</p> <p><b>conference</b> [2] - 28:22, 91:12</p> <p><b>confidence</b> [1] - 48:22</p> <p><b>confidences</b> [2] - 49:4, 49:5</p> <p><b>confines</b> [1] - 62:20</p> <p><b>conflicts</b> [1] - 41:13</p> <p><b>confusion</b> [1] - 68:12</p> <p><b>Congratulations</b> [1] - 86:14</p> <p><b>Connecticut</b> [1] - 34:1</p> <p><b>connection</b> [2] - 17:15, 26:10</p> <p><b>consent</b> [3] - 3:1, 3:3, 3:6</p> <p><b>consequences</b> [3] - 62:6, 63:23, 64:3</p> <p><b>consider</b> [5] - 3:22, 24:15, 40:20, 46:16, 89:10</p> <p><b>consideration</b> [2] - 2:21, 76:18</p> <p><b>considerations</b> [1] - 70:23</p> <p><b>considered</b> [1] - 4:18</p> <p><b>considering</b> [1] - 57:3</p> <p><b>consistent</b> [2] - 44:6, 59:17</p> <p><b>Consolidated</b> [2] -</p>	<p>4:2, 7:7</p> <p><b>constrained</b> [1] - 54:7</p> <p><b>construction</b> [1] - 83:15</p> <p><b>consultant</b> [5] - 9:13, 42:16, 44:12, 46:5, 51:14</p> <p><b>consultant's</b> [1] - 46:8</p> <p><b>consultants</b> [2] - 42:24, 44:6</p> <p><b>Consumer</b> [10] - 7:10, 19:17, 19:18, 19:19, 23:12, 23:22, 85:18, 85:19, 86:9</p> <p><b>consumer</b> [3] - 22:14, 23:24, 86:9</p> <p><b>Consumers</b> [1] - 7:12</p> <p><b>consumers</b> [1] - 44:16</p> <p><b>consuming</b> [1] - 46:6</p> <p><b>contact</b> [1] - 28:18</p> <p><b>contained</b> [3] - 38:8, 43:16, 58:19</p> <p><b>contains</b> [1] - 62:3</p> <p><b>context</b> [7] - 16:22, 17:12, 56:7, 57:1, 71:14, 71:15, 79:7</p> <p><b>continuation</b> [2] - 11:2, 16:11</p> <p><b>continue</b> [5] - 11:10, 46:3, 47:1, 53:8, 82:13</p> <p><b>continues</b> [2] - 13:10, 76:21</p> <p><b>contract</b> [3] - 42:20, 47:3, 48:13</p> <p><b>Contracted</b> [1] - 48:8</p> <p><b>contractors</b> [1] - 27:5</p> <p><b>contracts</b> [1] - 33:3</p> <p><b>contractual</b> [2] - 47:2, 48:4</p> <p><b>contrast</b> [1] - 60:20</p> <p><b>control</b> [1] - 43:6</p> <p><b>controversy</b> [1] - 71:1</p> <p><b>conventional</b> [2] - 60:9, 60:11</p> <p><b>conversations</b> [1] - 67:5</p> <p><b>conversion</b> [1] - 5:18</p> <p><b>cooking</b> [1] - 6:1</p> <p><b>Coonan</b> [1] - 6:23</p> <p><b>Coordinating</b> [1] - 41:10</p> <p><b>corporation</b> [1] - 65:16</p> <p><b>Corporation</b> [4] - 2:19, 36:10, 52:9, 52:10</p> <p><b>correct</b> [4] - 49:17, 52:16, 52:21, 52:22</p> <p><b>correctly</b> [1] - 49:13</p>	<p><b>cost</b> [11] - 3:23, 8:22, 10:6, 10:11, 10:20, 11:3, 53:21, 55:3, 81:13, 81:21</p> <p><b>costs</b> [23] - 5:8, 6:20, 8:13, 9:14, 10:12, 11:8, 11:10, 11:12, 11:14, 11:21, 11:23, 18:19, 37:6, 38:4, 38:6, 38:7, 38:24, 41:1, 43:20, 49:10, 70:8, 80:14</p> <p><b>Council</b> [1] - 7:12</p> <p><b>Counsel</b> [1] - 36:17</p> <p><b>count</b> [2] - 69:4, 69:7</p> <p><b>County</b> [3] - 8:20, 55:9, 66:5</p> <p><b>couple</b> [4] - 16:2, 68:19, 79:22, 84:4</p> <p><b>course</b> [6] - 26:20, 27:24, 30:2, 31:1, 77:11, 78:20</p> <p><b>courses</b> [1] - 44:15</p> <p><b>cover</b> [1] - 53:2</p> <p><b>covered</b> [2] - 9:1, 9:9</p> <p><b>covers</b> [1] - 49:20</p> <p><b>CPB</b> [1] - 55:6</p> <p><b>CPB's</b> [4] - 4:17, 9:2, 9:8, 18:12</p> <p><b>crafted</b> [1] - 64:5</p> <p><b>create</b> [2] - 62:5, 70:16</p> <p><b>creation</b> [1] - 55:9</p> <p><b>credit</b> [3] - 23:13, 23:16, 54:9</p> <p><b>credits</b> [1] - 8:2</p> <p><b>crews</b> [7] - 22:13, 27:10, 27:12, 31:22, 31:23, 34:13, 34:23</p> <p><b>criticism</b> [2] - 26:18, 26:21</p> <p><b>criticized</b> [1] - 27:6</p> <p><b>cross</b> [1] - 65:12</p> <p><b>cross-fault</b> [1] - 65:12</p> <p><b>cultural</b> [1] - 47:18</p> <p><b>culture</b> [1] - 73:17</p> <p><b>cumbersome</b> [1] - 41:11</p> <p><b>cumulative</b> [1] - 60:19</p> <p><b>cumulatively</b> [1] - 67:2</p> <p><b>curious</b> [1] - 33:19</p> <p><b>current</b> [8] - 9:12, 10:11, 10:19, 11:2, 11:11, 38:3, 39:2, 51:14</p> <p><b>currents</b> [1] - 9:12</p> <p><b>CURRY</b> [14] - 1:14, 15:20, 16:24, 17:9, 17:22, 18:2, 18:6,</p>	<p>32:2, 33:15, 47:17, 71:12, 76:5, 84:24, 89:16</p> <p><b>Curry</b> [4] - 15:19, 31:24, 47:16, 71:11</p> <p><b>Curry's</b> [1] - 82:23</p> <p><b>curve</b> [1] - 24:14</p> <p><b>customer</b> [10] - 5:11, 7:10, 8:2, 10:24, 15:23, 15:24, 17:17, 53:14, 54:21</p> <p><b>customers</b> [14] - 6:1, 10:13, 10:18, 11:14, 11:23, 11:24, 21:3, 21:20, 21:21, 23:1, 38:4, 38:6, 38:22, 40:4</p> <p><b>customers'</b> [1] - 6:15</p> <p><b>cuts</b> [1] - 64:16</p>
<b>D</b>				
<p><b>d/b/a</b> [1] - 2:19</p> <p><b>Damage</b> [1] - 27:15</p> <p><b>damage</b> [10] - 21:6, 24:16, 25:15, 26:5, 26:11, 26:20, 27:6, 33:7, 35:20, 35:22</p> <p><b>damages</b> [1] - 35:4</p> <p><b>damned</b> [2] - 27:24, 28:1</p> <p><b>data</b> [1] - 33:21</p> <p><b>date</b> [6] - 15:3, 44:17, 46:8, 46:9, 77:21, 78:1</p> <p><b>Dated</b> [1] - 92:14</p> <p><b>Dave</b> [1] - 52:12</p> <p><b>days</b> [4] - 21:5, 21:24, 28:20, 79:22</p> <p><b>deal</b> [3] - 22:21, 40:16, 48:16</p> <p><b>dealing</b> [4] - 39:22, 47:18, 52:17, 71:18</p> <p><b>dealt</b> [1] - 73:15</p> <p><b>decades</b> [1] - 71:5</p> <p><b>December</b> [2] - 23:7, 65:22</p> <p><b>decency</b> [1] - 89:13</p> <p><b>decide</b> [4] - 7:5, 45:13, 47:10, 60:14</p> <p><b>decided</b> [2] - 32:16, 43:15</p> <p><b>deciding</b> [1] - 43:14</p> <p><b>decision</b> [5] - 28:11, 28:13, 29:17, 56:8, 82:12</p> <p><b>decisional</b> [1] - 39:13</p> <p><b>decisions</b> [2] - 30:16, 49:15</p>				

<p><b>decline</b> [2] - 9:16, 9:21  <b>decrease</b> [2] - 5:9, 56:20  <b>deceased</b> [1] - 56:19  <b>dedication</b> [1] - 89:13  <b>deems</b> [1] - 38:5  <b>defer</b> [2] - 9:13, 89:24  <b>deferral</b> [1] - 38:8  <b>deferrals</b> [1] - 80:14  <b>defined</b> [1] - 80:4  <b>definitely</b> [4] - 60:2, 60:6, 63:9, 66:17  <b>delegation</b> [1] - 9:17  <b>delivery</b> [6] - 56:10, 56:18, 56:23, 57:3, 60:17, 71:3  <b>Delmar</b> [1] - 23:13  <b>demand</b> [1] - 10:22  <b>demands</b> [1] - 22:11  <b>denied</b> [1] - 55:12  <b>deny</b> [1] - 4:16  <b>Denying</b> [1] - 18:12  <b>department</b> [2] - 85:11, 86:1  <b>deploy</b> [2] - 25:14, 25:19  <b>depreciation</b> [2] - 5:7, 54:4  <b>depth</b> [1] - 71:20  <b>Deputy</b> [1] - 36:14  <b>derivation</b> [1] - 54:15  <b>describe</b> [2] - 37:4, 86:2  <b>described</b> [3] - 53:9, 84:9, 84:20  <b>describing</b> [2] - 11:16, 28:15  <b>designed</b> [1] - 54:24  <b>desirability</b> [1] - 60:3  <b>desirable</b> [1] - 43:13  <b>detail</b> [3] - 4:13, 33:19, 58:11  <b>detailed</b> [1] - 79:22  <b>details</b> [1] - 58:13  <b>determination</b> [1] - 74:22  <b>determine</b> [1] - 81:19  <b>developed</b> [2] - 17:19, 33:11  <b>development</b> [4] - 17:21, 23:3, 43:9, 53:10  <b>devoted</b> [1] - 87:10  <b>dialogue</b> [4] - 80:6, 80:21, 82:18, 83:2  <b>different</b> [12] - 20:19, 32:9, 33:21, 35:9, 39:20, 39:23, 49:11, 56:16, 72:2, 82:8, 83:24, 87:20</p>	<p><b>difficult</b> [5] - 10:23, 21:7, 27:12, 41:10, 65:2  <b>difficulties</b> [1] - 41:5  <b>direct</b> [3] - 26:10, 28:19, 44:1  <b>directed</b> [1] - 6:12  <b>directing</b> [1] - 44:11  <b>direction</b> [1] - 20:19  <b>directly</b> [1] - 43:4  <b>Director</b> [3] - 19:17, 36:14, 52:14  <b>directory</b> [1] - 2:12  <b>disappointing</b> [1] - 23:5  <b>disclosure</b> [3] - 41:21, 61:13, 66:11  <b>discounts</b> [1] - 5:24  <b>discover</b> [1] - 47:4  <b>discretionary</b> [1] - 79:4  <b>discuss</b> [1] - 4:23  <b>discussed</b> [13] - 4:13, 4:18, 5:14, 5:18, 5:20, 6:1, 9:7, 9:18, 10:1, 53:17, 54:6, 54:17, 79:15  <b>discusses</b> [1] - 10:6  <b>discussing</b> [1] - 39:11  <b>discussion</b> [7] - 3:20, 12:11, 36:5, 36:7, 37:3, 52:5, 57:11  <b>discussions</b> [1] - 31:8  <b>dismiss</b> [1] - 74:17  <b>dispatch</b> [1] - 31:21  <b>dispatching</b> [1] - 31:21  <b>dispositive</b> [2] - 16:24, 17:1  <b>Dispute</b> [2] - 52:13, 85:17  <b>distance</b> [1] - 83:8  <b>distant</b> [1] - 15:10  <b>Distribution</b> [1] - 23:11  <b>distribution</b> [3] - 2:11, 28:19, 83:13  <b>divest</b> [1] - 64:22  <b>divisions</b> [1] - 57:2  <b>dockets</b> [1] - 43:23  <b>dollar</b> [10] - 6:12, 12:3, 18:21, 37:14, 60:13, 60:16, 60:23, 61:10, 65:21, 66:10  <b>dollars</b> [22] - 7:18, 11:19, 11:22, 12:2, 56:16, 57:1, 60:10, 60:21, 61:2, 61:6, 61:9, 61:12, 61:20, 61:22, 66:2, 66:19,</p>	<p>67:3, 67:24, 68:1, 68:4, 73:1, 80:19  <b>done</b> [12] - 13:3, 13:20, 15:14, 27:16, 40:12, 69:2, 76:15, 76:16, 78:23, 86:4, 87:8, 87:19  <b>down</b> [5] - 20:11, 32:4, 50:4, 76:3, 91:4  <b>draft</b> [9] - 4:19, 5:14, 5:18, 5:21, 6:2, 9:9, 9:16, 9:19, 9:21  <b>drill</b> [1] - 32:11  <b>drivers</b> [3] - 5:5, 8:1, 53:19  <b>During</b> [1] - 22:9  <b>during</b> [5] - 19:13, 22:7, 23:18, 30:13, 34:8  <b>Durst</b> [1] - 16:5  <b>DVORSKY</b> [8] - 78:2, 78:13, 78:15, 79:19, 80:15, 82:2, 82:8, 83:10</p>	<p>43:2, 86:11  <b>efficient</b> [2] - 40:12, 42:22  <b>efficiently</b> [1] - 78:23  <b>effort</b> [5] - 16:5, 16:12, 16:13, 22:12, 41:9  <b>efforts</b> [4] - 16:3, 41:10, 65:1, 65:3  <b>eight</b> [4] - 4:19, 21:4, 32:9, 37:21  <b>either</b> [1] - 44:4  <b>elaboration</b> [1] - 39:18  <b>Elaine</b> [1] - 91:15  <b>elasticity</b> [1] - 10:22  <b>electric</b> [31] - 8:14, 10:13, 10:18, 11:13, 11:23, 22:20, 36:12, 38:20, 38:21, 39:5, 39:8, 39:14, 52:8, 52:18, 53:3, 54:22, 56:10, 56:14, 56:15, 56:18, 57:23, 59:24, 60:17, 72:7, 73:4, 73:18, 74:7, 84:2, 84:16, 84:20, 91:13  <b>Electric</b> [4] - 19:16, 23:11, 52:9, 52:10  <b>electricity</b> [1] - 11:15  <b>elements</b> [1] - 48:7  <b>eleven</b> [1] - 4:19  <b>eligible</b> [1] - 86:16  <b>Elizabeth</b> [1] - 36:16  <b>eloquence</b> [1] - 90:1  <b>eloquently</b> [1] - 89:17  <b>embarrass</b> [2] - 85:21, 90:18  <b>embraced</b> [1] - 72:15  <b>emergency</b> [4] - 29:19, 30:22, 31:18, 58:17  <b>emergency/escape</b> [2] - 58:5, 58:16  <b>emerging</b> [1] - 16:10  <b>emphasize</b> [1] - 44:23  <b>Empire</b> [1] - 87:18  <b>employ</b> [1] - 61:17  <b>employee</b> [1] - 37:7  <b>employees</b> [2] - 90:19, 91:3  <b>enable</b> [1] - 75:17  <b>enamored</b> [1] - 41:17  <b>encompass</b> [1] - 80:1  <b>encouraging</b> [1] - 16:11  <b>end</b> [17] - 7:20, 24:19, 25:23, 33:9, 48:12, 53:6, 66:8, 67:8, 68:24, 69:13, 70:13, 77:22, 78:7, 78:8, 79:11, 82:4, 82:15</p>	<p><b>ended</b> [1] - 27:1  <b>ends</b> [1] - 27:5  <b>Endurant</b> [1] - 16:2  <b>energy</b> [2] - 3:24, 86:11  <b>Energy</b> [3] - 7:12, 57:18, 57:21  <b>enforcement</b> [1] - 2:15  <b>engage</b> [1] - 44:12  <b>engaged</b> [1] - 45:5  <b>engaging</b> [1] - 42:15  <b>England</b> [3] - 37:10, 41:4, 50:22  <b>enhance</b> [1] - 73:10  <b>Ensure</b> [1] - 38:3  <b>ensure</b> [5] - 42:21, 42:23, 43:21, 50:1, 78:22  <b>ensuring</b> [1] - 55:1  <b>entirely</b> [1] - 74:13  <b>entities</b> [2] - 23:20, 28:23  <b>entitled</b> [1] - 88:17  <b>environmental</b> [1] - 53:21  <b>equal</b> [2] - 7:17, 61:13  <b>equipment</b> [1] - 22:24  <b>equity</b> [5] - 8:9, 8:10, 53:14, 73:7, 74:4  <b>ERRP</b> [4] - 8:21, 10:6, 10:16, 11:8  <b>escape</b> [2] - 58:18, 59:20  <b>especially</b> [1] - 24:15  <b>essential</b> [2] - 10:21, 74:6  <b>establish</b> [3] - 43:18, 68:19, 68:23  <b>established</b> [6] - 47:19, 57:19, 64:9, 64:13, 69:18, 81:22  <b>establishes</b> [1] - 68:8  <b>establishing</b> [1] - 63:22  <b>esteem</b> [1] - 90:4  <b>estimate</b> [2] - 67:5, 67:23  <b>estimated</b> [5] - 23:4, 25:12, 26:9, 60:9, 67:24  <b>et</b> [2] - 32:11, 63:6  <b>evaluate</b> [2] - 40:8, 49:24  <b>event</b> [9] - 21:24, 24:13, 30:14, 58:24, 59:16, 62:6, 63:23, 66:14, 91:11  <b>events</b> [7] - 22:4, 22:9, 22:11, 23:19, 24:10,</p>
<b>E</b>				
<p><b>eager</b> [1] - 87:24  <b>Earl</b> [6] - 26:19, 28:20, 28:21, 33:23, 34:3, 34:11  <b>early</b> [7] - 22:10, 26:4, 29:2, 29:14, 41:15, 50:13, 80:21  <b>earned</b> [1] - 88:3  <b>earnings</b> [3] - 59:1, 59:3, 75:23  <b>easier</b> [1] - 59:8  <b>East</b> [4] - 3:23, 8:12, 18:19, 57:21  <b>Eastern</b> [1] - 20:9  <b>eat</b> [1] - 48:9  <b>economic</b> [1] - 17:16  <b>Eddy</b> [1] - 19:15  <b>EDDY</b> [11] - 19:22, 25:21, 27:8, 28:17, 29:18, 30:8, 31:17, 32:23, 33:20, 35:15, 35:18  <b>Edison</b> [4] - 4:2, 7:8, 7:9, 23:2  <b>editing</b> [1] - 23:14  <b>effective</b> [2] - 7:24, 43:6  <b>effectively</b> [2] - 61:22, 78:23  <b>effectiveness</b> [1] - 58:5  <b>efficiency</b> [3] - 3:24,</p>	<p><b>equal</b> [2] - 7:17, 61:13  <b>equipment</b> [1] - 22:24  <b>equity</b> [5] - 8:9, 8:10, 53:14, 73:7, 74:4  <b>ERRP</b> [4] - 8:21, 10:6, 10:16, 11:8  <b>escape</b> [2] - 58:18, 59:20  <b>especially</b> [1] - 24:15  <b>essential</b> [2] - 10:21, 74:6  <b>establish</b> [3] - 43:18, 68:19, 68:23  <b>established</b> [6] - 47:19, 57:19, 64:9, 64:13, 69:18, 81:22  <b>establishes</b> [1] - 68:8  <b>establishing</b> [1] - 63:22  <b>esteem</b> [1] - 90:4  <b>estimate</b> [2] - 67:5, 67:23  <b>estimated</b> [5] - 23:4, 25:12, 26:9, 60:9, 67:24  <b>et</b> [2] - 32:11, 63:6  <b>evaluate</b> [2] - 40:8, 49:24  <b>event</b> [9] - 21:24, 24:13, 30:14, 58:24, 59:16, 62:6, 63:23, 66:14, 91:11  <b>events</b> [7] - 22:4, 22:9, 22:11, 23:19, 24:10,</p>			

<p>28:4, 28:14  <b>evidenced</b> [1] - 21:16  <b>exactly</b> [4] - 15:20, 43:14, 49:17, 51:4  <b>example</b> [3] - 28:8, 29:11, 90:13  <b>examples</b> [2] - 37:11, 90:10  <b>exceed</b> [1] - 12:8  <b>excellent</b> [1] - 23:16  <b>exception</b> [2] - 64:18, 64:21  <b>exceptions</b> [2] - 4:22, 7:1  <b>excess</b> [1] - 54:3  <b>excuse</b> [2] - 36:6, 74:17  <b>execution</b> [1] - 43:9  <b>exemplary</b> [1] - 90:8  <b>exercise</b> [1] - 39:11  <b>exhibits</b> [1] - 13:5  <b>existing</b> [3] - 42:19, 47:2, 76:21  <b>expect</b> [5] - 30:21, 30:22, 31:14, 50:13, 90:9  <b>expected</b> [3] - 65:2, 67:21, 69:2  <b>expedite</b> [1] - 40:13  <b>expenditure</b> [2] - 67:1, 70:7  <b>expenditures</b> [8] - 54:17, 55:16, 68:24, 69:12, 69:13, 69:14, 69:22, 80:9  <b>expenses</b> [7] - 5:8, 37:5, 37:9, 70:17, 81:16, 81:18, 81:20  <b>experience</b> [5] - 32:3, 48:2, 48:14, 63:17, 76:10  <b>experiences</b> [2] - 24:11, 71:22  <b>expertise</b> [2] - 41:1, 88:20  <b>expired</b> [1] - 62:12  <b>expiring</b> [1] - 8:2  <b>Explain</b> [1] - 80:7  <b>explained</b> [3] - 53:24, 54:23, 55:10  <b>explanation</b> [1] - 26:14  <b>explosion</b> [3] - 6:14, 6:21, 18:23  <b>expressed</b> [2] - 13:11, 43:4  <b>expression</b> [2] - 13:21, 13:23  <b>extend</b> [1] - 42:19  <b>extension</b> [2] - 65:20,</p>	<p>66:13  <b>extensive</b> [3] - 63:21, 64:2, 79:24  <b>extent</b> [7] - 54:10, 54:11, 57:15, 70:2, 75:15, 75:19, 75:22  <b>external</b> [2] - 31:22, 42:11  <b>Externally</b> [1] - 28:9  <b>eyes</b> [2] - 83:6, 83:9</p> <p style="text-align: center;"><b>F</b></p> <p><b>face</b> [1] - 75:1  <b>facilities</b> [1] - 2:18  <b>fact</b> [8] - 45:23, 54:11, 56:13, 59:6, 71:2, 85:12, 86:6, 87:24  <b>factors</b> [2] - 4:24, 37:8  <b>facts</b> [1] - 81:23  <b>factual</b> [2] - 17:21, 37:12  <b>failure</b> [1] - 15:11  <b>fairly</b> [4] - 16:9, 21:8, 39:24, 75:5  <b>fairness</b> [1] - 87:6  <b>fallen</b> [1] - 20:22  <b>familiar</b> [1] - 72:14  <b>family</b> [3] - 86:17, 87:11, 88:23  <b>far</b> [9] - 27:1, 28:13, 45:9, 63:5, 66:2, 71:20, 80:16, 86:15, 89:17  <b>Farm</b> [1] - 66:4  <b>farm</b> [1] - 66:5  <b>faster</b> [1] - 82:7  <b>fault</b> [1] - 65:12  <b>favor</b> [7] - 3:6, 19:1, 49:6, 51:18, 84:7, 84:18, 85:2  <b>features</b> [1] - 53:12  <b>February</b> [10] - 6:16, 18:23, 19:13, 20:1, 20:2, 20:5, 20:8, 20:14, 20:18, 40:10  <b>feet</b> [2] - 20:22, 75:6  <b>felt</b> [2] - 22:19, 31:2  <b>FERC</b> [4] - 41:5, 41:13, 50:8, 50:9  <b>Ferrer</b> [1] - 23:15  <b>few</b> [2] - 4:10, 15:23  <b>field</b> [2] - 22:23, 42:24  <b>file</b> [2] - 65:10, 80:10  <b>filed</b> [2] - 16:19, 78:4  <b>files</b> [1] - 66:18  <b>filing</b> [2] - 69:17, 79:11  <b>filings</b> [1] - 70:3</p>	<p><b>fill</b> [1] - 88:6  <b>final</b> [4] - 12:6, 58:3, 66:18, 66:23  <b>finally</b> [4] - 5:23, 54:17, 58:3, 62:24  <b>Finally</b> [3] - 9:20, 23:9, 64:6  <b>Finance</b> [2] - 36:15, 42:9  <b>financial</b> [5] - 58:5, 58:15, 58:17, 59:19, 62:6  <b>findings</b> [3] - 11:4, 14:9, 15:12  <b>firm</b> [1] - 6:14  <b>First</b> [4] - 38:3, 38:19, 43:18, 81:6  <b>first</b> [22] - 2:8, 3:20, 4:16, 5:2, 6:5, 7:16, 20:14, 22:2, 49:19, 49:20, 56:11, 57:7, 58:8, 58:16, 60:7, 61:8, 64:11, 67:16, 71:3, 77:20, 81:1, 88:2  <b>first-year</b> [1] - 7:16  <b>five</b> [4] - 42:15, 62:11, 62:13, 68:1  <b>fix</b> [2] - 49:4, 77:11  <b>flavor</b> [1] - 30:6  <b>flesh</b> [1] - 12:19  <b>Floor</b> [1] - 1:8  <b>Floral</b> [2] - 6:14, 18:22  <b>flow</b> [1] - 54:8  <b>flows</b> [1] - 35:13  <b>focus</b> [3] - 21:22, 60:7, 61:18  <b>focused</b> [4] - 42:2, 54:18, 73:4, 74:11  <b>folks</b> [2] - 24:5, 33:16  <b>follow</b> [3] - 17:4, 17:23, 27:19  <b>followed</b> [1] - 3:17  <b>following</b> [8] - 11:5, 11:8, 13:18, 14:12, 15:8, 15:10, 19:13, 28:3  <b>follows</b> [1] - 11:10  <b>footprint</b> [1] - 88:5  <b>force</b> [1] - 21:17  <b>forces</b> [1] - 41:3  <b>forecast</b> [3] - 8:1, 26:24, 27:11  <b>forecasting</b> [1] - 35:22  <b>forecasting</b> [3] - 32:10, 32:20, 33:9  <b>forecasts</b> [1] - 21:15  <b>foregoing</b> [1] - 92:5  <b>forget</b> [1] - 61:4  <b>forgotten</b> [1] - 20:3</p>	<p><b>format</b> [1] - 78:3  <b>formula</b> [1] - 48:19  <b>forth</b> [1] - 28:14  <b>forthcoming</b> [1] - 91:14  <b>fortunately</b> [1] - 34:12  <b>Fortunately</b> [1] - 28:1  <b>forward</b> [9] - 38:14, 46:13, 47:21, 49:20, 68:13, 70:6, 72:11, 79:18, 85:6  <b>four</b> [12] - 12:17, 28:20, 41:24, 52:17, 53:4, 57:2, 60:18, 62:11, 62:13, 71:4, 85:1, 89:5  <b>four-year</b> [1] - 53:4  <b>fourth</b> [1] - 52:5  <b>frame</b> [4] - 40:11, 72:1, 72:3, 80:3  <b>frankly</b> [1] - 16:23  <b>front</b> [6] - 25:23, 33:9, 79:24, 87:10, 88:14, 91:1  <b>frozen</b> [1] - 39:1  <b>fruits</b> [1] - 71:24  <b>frustrated</b> [1] - 24:22  <b>frustrates</b> [1] - 25:2  <b>fuel</b> [6] - 8:13, 8:18, 11:10, 11:11, 11:14, 18:19  <b>full</b> [8] - 25:15, 25:19, 37:23, 41:20, 61:12, 66:11, 75:24, 76:17  <b>fully</b> [3] - 12:4, 42:6, 65:7  <b>function</b> [1] - 73:13  <b>furthermore</b> [1] - 39:6  <b>future</b> [10] - 37:18, 38:3, 38:9, 38:13, 38:16, 41:16, 50:14, 70:10, 70:17, 79:8  <b>fuzzy</b> [1] - 77:15</p> <p style="text-align: center;"><b>G</b></p> <p><b>G-0718</b> [1] - 52:6  <b>gain</b> [1] - 54:5  <b>gained</b> [1] - 85:13  <b>gap</b> [1] - 68:4  <b>gaps</b> [1] - 68:6  <b>GARRY</b> [1] - 1:13  <b>Garry</b> [1] - 88:13  <b>gas</b> [26] - 4:3, 4:9, 4:24, 5:17, 6:14, 6:19, 6:23, 12:22, 18:14, 18:22, 39:2, 39:4, 39:6, 52:8, 52:19, 53:3, 54:5,</p>	<p>54:22, 56:10, 56:22, 56:23, 57:23, 60:17, 84:1, 84:6, 84:8  <b>Gas</b> [11] - 4:21, 5:3, 5:13, 6:4, 7:1, 8:6, 9:5, 9:20, 19:16, 52:9, 52:10  <b>gather</b> [1] - 32:19  <b>gear</b> [2] - 29:8, 29:23  <b>gee</b> [1] - 31:2  <b>gen</b> [1] - 15:24  <b>General</b> [1] - 36:17  <b>general</b> [4] - 10:17, 15:22, 37:4, 59:13  <b>generally</b> [1] - 30:13  <b>generation</b> [1] - 64:22  <b>generic</b> [2] - 12:23, 22:20  <b>Gentlemen</b> [1] - 4:6  <b>Gerry</b> [11] - 4:4, 85:16, 86:20, 87:3, 87:13, 87:15, 88:7, 88:10, 88:14, 88:22, 89:20  <b>GIS</b> [1] - 23:21  <b>Given</b> [2] - 25:13, 82:9  <b>given</b> [7] - 13:24, 25:16, 26:12, 70:22, 74:2, 77:17, 89:20  <b>glad</b> [1] - 10:5  <b>glove</b> [1] - 88:12  <b>gonna</b> [20] - 27:13, 29:21, 32:17, 46:19, 57:16, 58:2, 58:12, 58:13, 67:20, 68:2, 68:6, 69:3, 70:12, 71:1, 84:5, 86:15, 87:4, 87:9, 88:5, 91:6  <b>governing</b> [1] - 69:19  <b>grace</b> [1] - 89:21  <b>great</b> [3] - 32:17, 32:24, 48:16  <b>greater</b> [2] - 56:20, 56:24  <b>Grid</b> [11] - 2:20, 3:17, 41:4, 41:14, 43:3, 43:5, 47:20, 49:5, 71:15, 71:22, 88:7  <b>Grid's</b> [3] - 36:24, 43:19, 51:11  <b>ground</b> [1] - 38:1  <b>Group</b> [1] - 31:19  <b>group</b> [4] - 19:1, 19:7, 40:1, 44:5  <b>grouping</b> [1] - 40:21  <b>groups</b> [2] - 5:12, 83:24  <b>guess</b> [5] - 46:10, 47:17, 82:11, 86:16, 87:2</p>
--	---	---	---	--

<p><b>guesstimates</b> [1] - 51:3  <b>guides</b> [1] - 50:24  <b>Gulf</b> [3] - 32:4, 32:12, 33:16  <b>guys</b> [2] - 32:16, 83:9</p>	<p><b>high</b> [2] - 59:3, 87:17  <b>higher</b> [1] - 7:19  <b>highlighted</b> [2] - 53:11, 53:13  <b>Highlighting</b> [1] - 7:7  <b>hire</b> [1] - 27:4  <b>hiring</b> [1] - 46:5  <b>Historically</b> [1] - 11:19  <b>hit</b> [11] - 20:14, 20:15, 20:18, 20:19, 21:11, 21:13, 21:19, 22:8, 27:13, 29:7, 33:6  <b>hits</b> [1] - 26:4  <b>honest</b> [1] - 17:3  <b>honor</b> [3] - 85:15, 87:16, 90:22  <b>hope</b> [3] - 88:18, 88:24, 91:4  <b>hopeful</b> [1] - 83:4  <b>hopefully</b> [2] - 25:7, 80:21  <b>hour</b> [1] - 4:14  <b>Howard</b> [1] - 4:4  <b>Hudson</b> [5] - 19:12, 20:23, 20:24, 21:14, 24:14  <b>humbled</b> [1] - 89:12  <b>humor</b> [1] - 89:21  <b>hundred</b> [1] - 73:14  <b>hundreds</b> [1] - 22:13  <b>Hurricane</b> [3] - 26:19, 28:20, 33:23  <b>hypothetical</b> [1] - 31:1</p>	<p>45:10, 60:7  <b>imperative</b> [1] - 49:2  <b>implement</b> [3] - 13:4, 13:13, 76:16  <b>implementation</b> [1] - 83:14  <b>implemented</b> [4] - 13:7, 13:9, 15:7, 76:10  <b>implementing</b> [5] - 6:8, 9:3, 12:18, 12:22, 18:16  <b>implicitly</b> [2] - 9:5, 59:5  <b>important</b> [7] - 21:5, 22:2, 34:10, 44:16, 58:14, 68:12, 82:13  <b>impressed</b> [1] - 15:23  <b>improve</b> [2] - 23:3, 23:7  <b>improved</b> [2] - 33:9, 83:3  <b>improvement</b> [4] - 22:2, 22:19, 60:2, 63:10  <b>inappropriate</b> [3] - 37:8, 38:5, 45:22  <b>Inc</b> [1] - 2:10  <b>incentive</b> [1] - 5:18  <b>include</b> [5] - 5:1, 8:1, 16:11, 44:3, 53:20  <b>included</b> [4] - 23:20, 43:8, 70:4, 70:5  <b>includes</b> [2] - 8:11, 45:6  <b>including</b> [2] - 37:2, 73:16  <b>income</b> [4] - 5:24, 53:15, 53:21, 54:18  <b>incorporate</b> [2] - 72:9, 77:3  <b>increase</b> [15] - 7:16, 7:22, 53:19, 56:21, 60:9, 60:16, 60:19, 60:24, 61:8, 61:14, 61:15, 63:13, 75:2, 75:12, 78:11  <b>increased</b> [4] - 8:2, 38:23, 56:18, 56:22  <b>increases</b> [19] - 5:4, 7:14, 7:18, 7:19, 8:17, 10:24, 39:8, 53:17, 54:1, 54:14, 56:9, 56:11, 57:3, 57:4, 60:11, 60:22, 61:11, 61:19, 71:4  <b>incredibly</b> [1] - 90:21  <b>incremental</b> [17] - 6:19, 68:3, 68:5, 68:14, 69:12, 70:2,</p>	<p>70:3, 70:8, 78:24, 79:10, 79:12, 80:1, 80:8, 80:9, 80:16, 80:20, 81:16  <b>indefinite</b> [1] - 11:2  <b>independent</b> [1] - 44:15  <b>indicate</b> [1] - 79:12  <b>indicated</b> [6] - 40:17, 67:13, 78:3, 78:6, 78:22, 82:3  <b>indicates</b> [1] - 16:20  <b>indication</b> [1] - 80:22  <b>information</b> [8] - 13:1, 24:22, 25:1, 25:3, 35:13, 66:23, 77:24, 91:14  <b>informed</b> [1] - 24:18  <b>infrastructure</b> [1] - 82:20  <b>initiate</b> [3] - 46:12, 46:22, 51:10  <b>initiating</b> [1] - 49:6  <b>initiative</b> [1] - 17:18  <b>initiatives</b> [1] - 55:3  <b>inland</b> [1] - 34:3  <b>input</b> [2] - 50:18, 50:24  <b>instead</b> [2] - 57:9, 74:15  <b>instincts</b> [1] - 32:22  <b>institute</b> [2] - 37:16, 45:18  <b>instituting</b> [3] - 47:9, 50:8, 75:8  <b>intend</b> [1] - 79:18  <b>intention</b> [1] - 55:1  <b>inter</b> [1] - 17:15  <b>inter-connection</b> [1] - 17:15  <b>interact</b> [1] - 68:16  <b>interest</b> [6] - 6:13, 6:18, 41:2, 41:20, 57:8, 71:6  <b>interested</b> [2] - 9:12, 28:5  <b>interesting</b> [3] - 17:9, 26:16, 88:9  <b>interests</b> [1] - 41:12  <b>internal</b> [2] - 31:22, 37:20  <b>interpreting</b> [1] - 72:24  <b>invested</b> [2] - 66:1, 66:19  <b>investigate</b> [3] - 36:23, 37:17, 43:19  <b>investigating</b> [1] - 37:5  <b>investigation</b> [17] -</p>	<p>19:11, 37:24, 40:9, 40:24, 44:2, 44:10, 44:24, 45:20, 46:8, 46:9, 47:12, 50:5, 50:19, 50:22, 51:11, 51:15, 51:17  <b>investment</b> [5] - 57:24, 65:18, 65:21, 66:10, 67:14  <b>investments</b> [9] - 64:11, 66:2, 66:3, 66:6, 67:17, 68:3, 68:5, 68:14, 68:15  <b>involve</b> [1] - 42:15  <b>involved</b> [8] - 28:5, 28:15, 28:17, 29:1, 32:8, 47:6, 48:22, 62:16  <b>involvement</b> [4] - 29:16, 30:5, 30:6, 30:8  <b>Island</b> [6] - 21:14, 21:18, 21:21, 27:24, 34:11, 88:8  <b>Islanders</b> [1] - 26:17  <b>isolated</b> [1] - 10:12  <b>issue</b> [28] - 8:23, 14:16, 16:14, 16:22, 17:6, 17:17, 17:21, 27:9, 34:7, 35:1, 38:1, 39:22, 41:16, 42:18, 43:21, 44:5, 45:2, 45:6, 45:7, 45:9, 46:3, 46:20, 47:1, 47:22, 49:12, 51:16, 64:23, 74:16  <b>issued</b> [2] - 50:14, 69:18  <b>issues</b> [26] - 3:14, 5:22, 8:24, 12:23, 14:14, 17:15, 17:16, 20:6, 22:6, 23:24, 33:7, 36:24, 37:4, 37:17, 39:8, 39:13, 39:16, 58:10, 60:16, 62:3, 62:10, 62:16, 65:17, 71:18, 72:2, 83:16  <b>Issuing</b> [1] - 42:23  <b>it'll</b> [1] - 85:4  <b>item</b> [9] - 3:20, 19:10, 36:5, 36:7, 39:12, 39:22, 52:5, 58:8  <b>Item</b> [10] - 2:8, 2:14, 3:16, 3:17, 3:18, 3:20, 19:10, 36:7, 36:21, 52:5  <b>items</b> [10] - 2:20, 2:22, 3:3, 3:16, 65:6, 67:8, 67:11, 67:18</p>
<b>H</b>	<b>I</b>			
<p><b>half</b> [2] - 7:18, 21:20  <b>hammering</b> [1] - 34:20  <b>Hampshire</b> [1] - 34:2  <b>hand</b> [1] - 25:24  <b>handled</b> [1] - 88:16  <b>handles</b> [1] - 88:10  <b>handling</b> [1] - 23:23  <b>hands</b> [2] - 30:18, 30:19  <b>happy</b> [3] - 7:3, 24:1, 91:15  <b>hard</b> [4] - 34:18, 35:10, 62:2, 85:3  <b>hardest</b> [1] - 21:19  <b>Hardscrabble</b> [1] - 66:4  <b>harmless</b> [1] - 44:16  <b>HARRIS</b> [12] - 1:15, 25:11, 26:8, 49:1, 77:19, 78:10, 78:14, 79:14, 80:7, 82:5, 82:9, 89:3  <b>Harris</b> [2] - 48:24, 77:18  <b>heading</b> [1] - 92:6  <b>hear</b> [1] - 14:17  <b>heard</b> [6] - 24:21, 62:24, 71:13, 86:3, 87:7, 88:2  <b>Hearing</b> [5] - 3:11, 18:10, 19:6, 51:23, 84:13  <b>hearing</b> [1] - 24:20  <b>Hearings</b> [2] - 52:13, 85:17  <b>hearings</b> [3] - 45:5, 45:6, 88:9  <b>heart</b> [1] - 39:20  <b>Heating</b> [1] - 2:16  <b>heating</b> [1] - 6:1  <b>heels</b> [1] - 41:18  <b>held</b> [2] - 44:16, 90:3  <b>help</b> [7] - 6:18, 35:20, 54:13, 73:8, 83:7, 86:10, 88:20  <b>helped</b> [1] - 86:12  <b>helping</b> [1] - 72:1  <b>hereby</b> [1] - 92:4  <b>hereof</b> [1] - 92:6  <b>Herkimer</b> [1] - 66:5</p>	<p><b>lberdrola</b> [6] - 57:17, 57:21, 64:8, 65:13, 65:19, 73:9  <b>lberdrola's</b> [1] - 73:18  <b>IBM</b> [1] - 33:11  <b>ice</b> [1] - 23:7  <b>idea</b> [3] - 58:15, 75:3, 75:6  <b>identified</b> [1] - 39:8  <b>identifies</b> [1] - 75:19  <b>identify</b> [1] - 49:3  <b>ignored</b> [1] - 11:1  <b>illustrative</b> [1] - 37:11  <b>imbalance</b> [2] - 10:20, 11:3  <b>immediate</b> [1] - 45:1  <b>immediately</b> [1] - 49:4  <b>impact</b> [9] - 21:8, 28:21, 45:1, 50:16, 61:1, 61:6, 61:19, 80:12, 89:22  <b>impacted</b> [1] - 20:12  <b>impacts</b> [3] - 6:24,</p>			

itself [1] - 47:7	jurisdictions [1] - 48:3	learning [2] - 24:14, 89:19	47:23, 49:9, 63:8, 66:6, 67:12, 73:2	managers [1] - 31:18
<b>J</b>	<b>K</b>	least [5] - 62:21, 68:3, 71:17, 74:16, 79:23	looks [1] - 29:21	manner [2] - 59:17, 65:11
<b>JACK</b> [1] - 7:6	<b>Kate</b> [1] - 14:22	leave [2] - 26:17, 88:19	lose [4] - 46:6, 62:21, 82:16	map [1] - 20:10
<b>Jack</b> [3] - 4:4, 4:23, 7:3	<b>keep</b> [5] - 34:7, 34:20, 82:17, 83:9, 85:10	leaves [1] - 31:3	lose-lose [1] - 82:16	mapping [1] - 23:21
<b>JAMES</b> [1] - 1:15	<b>keeping</b> [1] - 83:5	leaving [2] - 86:6, 88:2	losing [2] - 85:10, 90:19	maps [2] - 35:18, 35:19
<b>January</b> [3] - 57:20, 69:17, 80:11	<b>kept</b> [1] - 24:18	led [1] - 53:10	loss [4] - 25:18, 26:14, 89:5, 89:6	<b>March</b> [4] - 19:14, 20:1, 20:5, 21:11
<b>job</b> [3] - 21:9, 30:16, 87:9	<b>key</b> [2] - 4:20, 25:3	left [1] - 26:3	lost [1] - 21:3	<b>market</b> [3] - 10:15, 11:13, 11:15
<b>jobs</b> [1] - 75:9	<b>Key</b> [1] - 4:24	less [3] - 61:22, 76:21, 76:22	low [5] - 5:24, 53:15, 53:21, 54:18, 90:3	<b>Mary</b> [1] - 23:15
<b>John</b> [10] - 52:14, 52:16, 55:20, 55:24, 56:3, 71:12, 74:14, 77:13, 78:3, 78:22	<b>kind</b> [10] - 29:16, 30:4, 30:17, 49:9, 49:23, 52:21, 57:11, 77:15, 90:5, 90:7	lesser [1] - 45:14	lower [4] - 8:1, 21:14, 60:22, 61:16	<b>Massachusetts</b> [1] - 34:2
<b>joined</b> [1] - 86:20	<b>kinds</b> [1] - 48:1	lessons [2] - 25:6, 72:9	<b>luck</b> [3] - 86:17, 87:12, 88:24	<b>match</b> [1] - 22:23
<b>joining</b> [1] - 41:3	<b>KLOS</b> [2] - 92:3, 92:12	level [11] - 6:19, 8:15, 14:8, 33:19, 43:6, 43:9, 48:8, 54:13, 59:1, 87:20, 88:16	<b>lumped</b> [1] - 52:20	<b>matter</b> [9] - 2:14, 19:11, 39:20, 40:14, 42:23, 43:4, 43:12, 43:23, 85:7
<b>joint</b> [2] - 18:13, 18:14	<b>knowing</b> [1] - 25:2	levelized [3] - 7:17, 7:19, 7:21	<b>lunches</b> [1] - 85:12	<b>matters</b> [3] - 40:16, 40:24, 62:14
<b>Joint</b> [57] - 4:21, 7:8, 7:11, 8:6, 8:7, 8:11, 8:21, 9:10, 9:20, 10:4, 12:2, 13:15, 16:18, 53:11, 55:5, 55:8, 57:9, 57:13, 58:6, 58:18, 58:21, 58:23, 59:4, 59:10, 59:15, 59:20, 59:23, 60:4, 60:5, 60:8, 60:12, 60:20, 61:14, 61:15, 61:16, 62:1, 62:3, 62:9, 62:17, 62:22, 63:2, 63:4, 63:16, 63:18, 63:20, 64:4, 67:19, 67:21, 69:2, 69:4, 69:24, 70:5, 70:19, 71:2, 71:5, 74:11, 76:2	<b>knowledge</b> [2] - 42:4, 89:15	levelizing [2] - 61:6, 61:18	<b>Lynch</b> [6] - 4:4, 9:1, 9:7, 85:16, 86:20, 87:3	<b>matters</b> [3] - 40:16, 40:24, 62:14
<b>Joy</b> [1] - 86:23	<b>lack</b> [2] - 39:15, 42:6	levels [2] - 55:8, 70:7	<b>LYNCH</b> [5] - 4:7, 13:1, 14:11, 15:9, 15:18	<b>MAUREEN</b> [1] - 1:15
<b>JP</b> [14] - 5:3, 5:13, 6:5, 7:1, 7:13, 7:16, 9:1, 9:5, 9:6, 11:6, 53:1, 55:18, 68:8, 68:17	<b>laid</b> [2] - 82:10, 84:4	liability [2] - 6:13, 18:22	<b>M</b>	<b>maximized</b> [1] - 54:10
<b>JR</b> [1] - 1:14	<b>language</b> [5] - 4:22, 15:6, 17:3, 59:10, 68:21	Libby [3] - 39:18, 44:21, 47:9	<b>macro</b> [2] - 37:14, 37:23	<b>maximum</b> [1] - 54:11
<b>Judge</b> [12] - 4:23, 7:3, 8:22, 9:1, 9:7, 10:6, 36:16, 53:9, 68:20, 85:16, 87:1, 88:7	<b>large</b> [5] - 39:7, 67:23, 72:20, 75:12, 86:7	Liberty [1] - 9:4	<b>Madam</b> [3] - 2:5, 2:23, 91:5	<b>Meade</b> [1] - 86:23
<b>Judges</b> [7] - 4:4, 52:11, 52:16, 52:23, 84:9, 84:20, 85:4	<b>largely</b> [2] - 41:2, 41:12	Liebschutz [1] - 36:16	<b>maintenance</b> [1] - 83:16	<b>mean</b> [9] - 12:21, 14:14, 24:17, 26:8, 29:18, 33:22, 67:10, 67:11, 68:15
<b>judges</b> [1] - 19:8	<b>larger</b> [2] - 42:10, 44:5	<b>LIEBSCHUTZ</b> [1] - 44:22	<b>major</b> [3] - 13:18, 21:12, 61:24	<b>meaningful</b> [1] - 28:16
<b>jump</b> [1] - 44:9	<b>Larocca</b> [2] - 12:14, 27:22	life [2] - 22:24, 59:8	<b>Major</b> [1] - 5:5	<b>means</b> [7] - 10:23, 12:24, 14:2, 25:5, 43:6, 60:14, 68:2
<b>jump-start</b> [1] - 44:9	<b>LAROCCA</b> [10] - 1:15, 12:15, 14:7, 15:6, 27:23, 29:9, 30:1, 30:24, 31:16, 90:2	likely [4] - 29:4, 29:10, 30:1, 62:21	<b>majority</b> [1] - 23:14	<b>meant</b> [3] - 69:10, 69:11, 72:24
<b>junction</b> [2] - 42:14, 50:13	<b>Larocca's</b> [1] - 77:2	limitations [1] - 43:22	<b>man</b> [2] - 87:11, 88:11	<b>Meanwhile</b> [1] - 44:13
<b>June</b> [3] - 78:7, 78:8, 78:11	<b>Last</b> [2] - 53:9, 57:6	limited [1] - 4:9	<b>manage</b> [1] - 43:6	<b>mechanism</b> [2] - 45:19, 81:21
	<b>last</b> [17] - 5:15, 12:11, 15:23, 16:14, 32:7, 39:10, 55:22, 55:24, 56:6, 57:5, 58:4, 62:24, 64:6, 78:5, 79:14, 79:19, 82:23	line [2] - 22:12, 27:2	<b>management</b> [51] - 5:20, 6:9, 12:19, 13:4, 13:19, 14:12, 14:23, 15:12, 15:14, 18:16, 22:22, 34:9, 34:10, 34:19, 38:12, 40:6, 41:6, 42:19, 43:2, 43:11, 44:13, 46:19, 48:13, 49:23, 51:14, 53:16, 53:22, 54:23, 63:4, 71:14, 71:17, 72:10, 72:16, 73:3, 73:6, 73:8, 73:19, 73:20, 74:18, 75:4, 75:7, 75:13, 75:19, 76:11, 76:15, 76:17, 76:19, 77:4, 77:10, 83:7, 83:17	<b>mechanisms</b> [1] - 54:20
	<b>lasting</b> [1] - 89:22	lines [1] - 23:23	<b>Management</b> [2] - 9:4, 36:9	<b>meet</b> [8] - 22:11, 31:17, 62:7, 63:2, 67:14, 83:10, 83:13, 88:1
	<b>lastly</b> [1] - 3:18	linkage [1] - 39:17		<b>Meeting</b> [2] - 1:3, 91:18
	<b>latches</b> [1] - 60:21	LIPA [4] - 21:21, 26:17, 28:8, 29:11		<b>meetings</b> [2] - 31:21, 79:20
	<b>late</b> [1] - 29:15	list [1] - 79:23		<b>megawatt</b> [1] - 66:4
	<b>lately</b> [2] - 77:3, 88:22	listened [1] - 32:6		<b>members</b> [2] - 55:21, 85:11
	<b>latest</b> [1] - 67:4	litigated [1] - 53:18		<b>memo</b> [3] - 43:17, 44:2, 51:13
	<b>Law</b> [6] - 4:4, 6:7, 36:15, 52:11, 59:13, 87:1	lived [1] - 57:18		<b>memorandum</b> [2] - 58:10, 64:14
	<b>learned</b> [3] - 25:6, 25:7, 72:9	LLC [1] - 2:16		<b>men</b> [1] - 32:11
		load [2] - 16:22, 17:12		<b>mention</b> [1] - 23:17
		localized [1] - 23:4		<b>mentioned</b> [7] - 7:2, 45:2, 45:8, 49:18, 49:19, 53:18, 55:4
		located [1] - 66:5		
		logical [2] - 26:13, 27:21		
		look [11] - 25:23, 28:9, 33:20, 35:18, 48:1, 49:20, 49:21, 61:5, 68:7, 72:10, 81:23		
		looked [2] - 58:16, 68:10		
		looking [10] - 30:6, 35:19, 38:14, 38:15,		

<p><b>merger</b> [20] - 54:3, 55:17, 57:20, 57:21, 58:7, 58:19, 59:22, 64:9, 64:13, 66:10, 66:11, 66:24, 67:9, 69:7, 69:21, 70:4, 70:22, 80:13, 81:12, 88:7</p> <p><b>merits</b> [2] - 4:18, 39:15</p> <p><b>met</b> [1] - 64:8</p> <p><b>method</b> [5] - 11:8, 11:11, 11:13, 11:18, 11:21</p> <p><b>methodologies</b> [1] - 50:1</p> <p><b>methodology</b> [1] - 18:17</p> <p><b>methods</b> [1] - 16:11</p> <p><b>Metropolitan</b> [1] - 21:13</p> <p><b>Mexico</b> [2] - 32:4, 33:16</p> <p><b>Michelle</b> [1] - 52:11</p> <p><b>Michigan</b> [1] - 28:14</p> <p><b>mid</b> [1] - 74:3</p> <p><b>might</b> [5] - 17:13, 28:12, 45:13, 45:17, 73:11</p> <p><b>migration</b> [1] - 10:24</p> <p><b>Mike</b> [1] - 30:10</p> <p><b>Miller</b> [2] - 19:18, 85:18</p> <p><b>million</b> [49] - 5:2, 5:5, 6:12, 6:18, 7:15, 7:18, 7:21, 8:12, 11:22, 12:1, 12:3, 18:21, 37:14, 37:21, 54:12, 56:15, 56:16, 57:1, 60:10, 60:13, 60:16, 60:21, 60:23, 61:2, 61:6, 61:9, 61:12, 61:17, 61:20, 61:21, 61:22, 65:21, 66:1, 66:9, 66:19, 67:3, 67:6, 67:7, 67:24, 68:1, 68:3, 68:6, 80:18, 80:19</p> <p><b>mind</b> [2] - 28:3, 71:18</p> <p><b>minor</b> [3] - 4:22, 7:1, 8:24</p> <p><b>minute</b> [1] - 30:2</p> <p><b>miss</b> [2] - 86:15, 87:9</p> <p><b>missed</b> [1] - 88:4</p> <p><b>mitigate</b> [2] - 38:13, 38:16</p> <p><b>mixed</b> [1] - 33:13</p> <p><b>modeled</b> [1] - 60:1</p> <p><b>models</b> [3] - 33:22, 33:24, 90:14</p>	<p><b>moderate</b> [2] - 7:16, 75:3</p> <p><b>moderated</b> [1] - 54:1</p> <p><b>moderators</b> [2] - 54:6, 54:10</p> <p><b>modest</b> [1] - 66:13</p> <p><b>modification</b> [1] - 55:7</p> <p><b>modifications</b> [1] - 55:6</p> <p><b>Mohawk</b> [10] - 2:19, 36:9, 36:12, 37:2, 37:6, 37:19, 38:10, 38:21, 39:1, 39:14</p> <p><b>Mohawk's</b> [1] - 44:10</p> <p><b>moment</b> [3] - 8:23, 40:5, 43:16</p> <p><b>money</b> [8] - 26:18, 26:22, 27:3, 27:7, 65:15, 75:21, 80:10, 89:2</p> <p><b>money-pooling</b> [1] - 65:15</p> <p><b>monitor</b> [2] - 30:14, 30:15</p> <p><b>monitoring</b> [1] - 23:18</p> <p><b>month</b> [1] - 53:4</p> <p><b>monthly</b> [1] - 6:15</p> <p><b>months</b> [8] - 75:2, 75:14, 76:1, 76:8, 76:9, 78:19, 83:1</p> <p><b>morning</b> [10] - 2:2, 4:7, 4:8, 7:6, 19:22, 36:20, 44:22, 52:24, 56:4, 65:18</p> <p><b>morphous</b> [1] - 73:17</p> <p><b>most</b> [6] - 6:9, 33:23, 43:13, 44:15, 58:14, 67:18</p> <p><b>Most</b> [1] - 20:23</p> <p><b>Mostly</b> [1] - 23:13</p> <p><b>motion</b> [3] - 4:17, 18:12, 36:10</p> <p><b>move</b> [8] - 3:1, 3:13, 3:16, 46:13, 47:21, 67:22, 85:6, 87:11</p> <p><b>moved</b> [1] - 69:6</p> <p><b>moving</b> [2] - 51:6, 52:1</p> <p><b>MR</b> [33] - 19:22, 25:21, 27:8, 27:19, 28:17, 29:18, 30:8, 30:12, 31:7, 31:17, 32:23, 33:20, 35:15, 35:18, 36:20, 49:17, 50:9, 50:11, 50:18, 50:21, 52:22, 56:4, 69:11, 74:23, 78:2, 78:13, 78:15, 79:19, 80:15, 81:14, 82:2, 82:8, 83:10</p>	<p><b>MS</b> [2] - 14:21, 44:22</p> <p><b>multistate</b> [2] - 41:7, 41:9</p> <p><b>municipal</b> [1] - 55:10</p> <p><b>municipalities</b> [2] - 24:18, 35:12</p> <p><b>Mutual</b> [1] - 31:19</p>	<p>2:9, 4:2, 7:9, 7:11, 20:9, 20:11, 21:13, 23:12, 28:24, 31:19, 34:2, 37:9, 37:10, 40:22, 41:4, 42:2, 42:4, 48:14, 50:22, 52:8, 66:2, 66:7, 72:6, 87:18, 88:18, 89:1, 89:8, 92:4</p> <p><b>newcomer</b> [1] - 71:23</p> <p><b>next</b> [8] - 14:19, 19:10, 38:21, 60:3, 76:18, 78:19, 88:1, 91:8</p> <p><b>Niagara</b> [11] - 2:19, 36:9, 36:12, 37:2, 37:6, 37:19, 38:10, 38:21, 38:24, 39:14, 44:10</p> <p><b>nine</b> [1] - 22:18</p> <p><b>non</b> [4] - 7:21, 54:7, 67:8, 67:10</p> <p><b>Non</b> [1] - 11:10</p> <p><b>non-budgeted</b> [2] - 67:8, 67:10</p> <p><b>non-cash</b> [1] - 54:7</p> <p><b>Non-fuel</b> [1] - 11:10</p> <p><b>non-levelized</b> [1] - 7:21</p> <p><b>none</b> [7] - 3:5, 3:11, 18:10, 19:6, 45:24, 51:23, 84:13</p> <p><b>normally</b> [2] - 24:19, 27:16</p> <p><b>north</b> [1] - 20:15</p> <p><b>northeast</b> [1] - 32:15</p> <p><b>NorthStar</b> [5] - 43:1, 43:4, 44:4, 46:17, 48:1</p> <p><b>NorthStar's</b> [1] - 42:19</p> <p><b>Notary</b> [1] - 92:3</p> <p><b>note</b> [4] - 26:23, 47:5, 56:7, 90:18</p> <p><b>noted</b> [2] - 53:2, 92:6</p> <p><b>noteworthy</b> [1] - 38:19</p> <p><b>nothing</b> [2] - 40:3, 40:5</p> <p><b>notice</b> [1] - 85:9</p> <p><b>noticed</b> [1] - 85:9</p> <p><b>notices</b> [2] - 31:4, 85:10</p> <p><b>notion</b> [1] - 79:15</p> <p><b>November</b> [3] - 44:3, 46:24, 51:13</p> <p><b>nuances</b> [1] - 47:7</p> <p><b>number</b> [10] - 12:17, 29:22, 46:13, 58:1, 61:3, 62:3, 62:9, 71:1, 73:1, 86:7</p> <p><b>Number</b> [1] - 2:14</p> <p><b>number's</b> [1] - 30:3</p>	<p><b>numbers</b> [5] - 29:18, 66:18, 66:20, 78:3, 81:24</p> <p><b>Numeral</b> [1] - 9:11</p> <p><b>NYCRR</b> [3] - 2:10, 2:17, 21:2</p> <p><b>NYNEX</b> [1] - 42:11</p> <p><b>NYSEG</b> [15] - 3:18, 19:11, 21:1, 53:3, 56:9, 64:8, 65:11, 65:14, 67:6, 67:23, 68:2, 75:5, 78:17, 84:8, 84:19</p> <p><b>NYSEG's</b> [1] - 56:13</p>
<b>N</b>				
<p><b>name</b> [1] - 79:23</p> <p><b>narrower</b> [1] - 43:23</p> <p><b>National</b> [18] - 2:20, 3:17, 20:16, 20:20, 28:18, 28:22, 32:5, 32:14, 33:20, 35:16, 36:1, 36:24, 41:4, 41:14, 43:19, 49:5, 51:11, 71:15</p> <p><b>NAY</b> [1] - 41:8</p> <p><b>Nay</b> [1] - 84:24</p> <p><b>NAY-ROOT</b> [1] - 41:8</p> <p><b>near</b> [2] - 41:16, 50:14</p> <p><b>nearly</b> [2] - 21:3, 21:19</p> <p><b>necessarily</b> [1] - 75:11</p> <p><b>necessary</b> [7] - 30:23, 37:15, 39:18, 40:9, 45:14, 66:22, 73:12</p> <p><b>need</b> [16] - 16:21, 17:14, 23:3, 23:13, 33:8, 38:2, 39:11, 42:8, 43:15, 46:21, 51:5, 53:19, 67:6, 73:1, 74:24, 87:11</p> <p><b>needed</b> [5] - 34:15, 77:21, 79:7, 86:10, 89:18</p> <p><b>needs</b> [2] - 22:10, 76:14</p> <p><b>negative</b> [2] - 62:4, 87:7</p> <p><b>neighboring</b> [2] - 28:24, 31:4</p> <p><b>neighbors</b> [1] - 27:12</p> <p><b>net</b> [6] - 57:4, 60:17, 68:8, 68:11, 68:17, 69:4</p> <p><b>netted</b> [1] - 12:1</p> <p><b>never</b> [2] - 87:7, 87:23</p> <p><b>new</b> [15] - 5:6, 8:4, 16:3, 41:18, 42:18, 42:23, 43:18, 46:12, 51:16, 55:23, 67:13, 74:14, 74:15, 75:5, 78:24</p> <p><b>NEW</b> [1] - 1:1</p> <p><b>New</b> [30] - 1:9, 2:3,</p>	<p>2:9, 4:2, 7:9, 7:11, 20:9, 20:11, 21:13, 23:12, 28:24, 31:19, 34:2, 37:9, 37:10, 40:22, 41:4, 42:2, 42:4, 48:14, 50:22, 52:8, 66:2, 66:7, 72:6, 87:18, 88:18, 89:1, 89:8, 92:4</p> <p><b>newcomer</b> [1] - 71:23</p> <p><b>next</b> [8] - 14:19, 19:10, 38:21, 60:3, 76:18, 78:19, 88:1, 91:8</p> <p><b>Niagara</b> [11] - 2:19, 36:9, 36:12, 37:2, 37:6, 37:19, 38:10, 38:21, 38:24, 39:14, 44:10</p> <p><b>nine</b> [1] - 22:18</p> <p><b>non</b> [4] - 7:21, 54:7, 67:8, 67:10</p> <p><b>Non</b> [1] - 11:10</p> <p><b>non-budgeted</b> [2] - 67:8, 67:10</p> <p><b>non-cash</b> [1] - 54:7</p> <p><b>Non-fuel</b> [1] - 11:10</p> <p><b>non-levelized</b> [1] - 7:21</p> <p><b>none</b> [7] - 3:5, 3:11, 18:10, 19:6, 45:24, 51:23, 84:13</p> <p><b>normally</b> [2] - 24:19, 27:16</p> <p><b>north</b> [1] - 20:15</p> <p><b>northeast</b> [1] - 32:15</p> <p><b>NorthStar</b> [5] - 43:1, 43:4, 44:4, 46:17, 48:1</p> <p><b>NorthStar's</b> [1] - 42:19</p> <p><b>Notary</b> [1] - 92:3</p> <p><b>note</b> [4] - 26:23, 47:5, 56:7, 90:18</p> <p><b>noted</b> [2] - 53:2, 92:6</p> <p><b>noteworthy</b> [1] - 38:19</p> <p><b>nothing</b> [2] - 40:3, 40:5</p> <p><b>notice</b> [1] - 85:9</p> <p><b>noticed</b> [1] - 85:9</p> <p><b>notices</b> [2] - 31:4, 85:10</p> <p><b>notion</b> [1] - 79:15</p> <p><b>November</b> [3] - 44:3, 46:24, 51:13</p> <p><b>nuances</b> [1] - 47:7</p> <p><b>number</b> [10] - 12:17, 29:22, 46:13, 58:1, 61:3, 62:3, 62:9, 71:1, 73:1, 86:7</p> <p><b>Number</b> [1] - 2:14</p> <p><b>number's</b> [1] - 30:3</p>	<p><b>numbers</b> [5] - 29:18, 66:18, 66:20, 78:3, 81:24</p> <p><b>Numeral</b> [1] - 9:11</p> <p><b>NYCRR</b> [3] - 2:10, 2:17, 21:2</p> <p><b>NYNEX</b> [1] - 42:11</p> <p><b>NYSEG</b> [15] - 3:18, 19:11, 21:1, 53:3, 56:9, 64:8, 65:11, 65:14, 67:6, 67:23, 68:2, 75:5, 78:17, 84:8, 84:19</p> <p><b>NYSEG's</b> [1] - 56:13</p>		
<b>O</b>				
<p><b>O&amp;R</b> [3] - 25:14, 26:7</p> <p><b>objection</b> [2] - 9:2, 9:5</p> <p><b>objections</b> [2] - 5:16, 9:8</p> <p><b>objectives</b> [2] - 38:2, 49:19</p> <p><b>objects</b> [2] - 5:12, 8:21</p> <p><b>obligations</b> [1] - 9:23</p> <p><b>observation</b> [2] - 24:5, 33:15</p> <p><b>obtain</b> [1] - 42:8</p> <p><b>obviously</b> [3] - 35:7, 35:9, 72:22</p> <p><b>occasion</b> [1] - 56:24</p> <p><b>occasionally</b> [1] - 31:13</p> <p><b>occasions</b> [2] - 22:5, 31:7</p> <p><b>occur</b> [1] - 63:24</p> <p><b>occurred</b> [2] - 26:5, 35:20</p> <p><b>occurrences</b> [1] - 20:4</p> <p><b>ocean</b> [1] - 34:4</p> <p><b>October</b> [2] - 91:9, 91:12</p> <p><b>OF</b> [1] - 1:1</p> <p><b>off-track</b> [1] - 14:17</p> <p><b>office</b> [2] - 22:15, 35:7</p> <p><b>Office</b> [12] - 19:16, 19:17, 19:19, 23:22, 36:14, 36:17, 42:9, 52:12, 52:14, 85:16, 85:19, 86:9</p> <p><b>officer</b> [1] - 65:10</p> <p><b>Offices</b> [1] - 23:11</p> <p><b>offices</b> [1] - 86:7</p> <p><b>officially</b> [1] - 89:9</p> <p><b>offset</b> [3] - 5:8, 6:14, 6:18</p> <p><b>often</b> [2] - 47:6, 90:17</p> <p><b>oil</b> [1] - 5:17</p>	<p><b>name</b> [1] - 79:23</p> <p><b>narrower</b> [1] - 43:23</p> <p><b>National</b> [18] - 2:20, 3:17, 20:16, 20:20, 28:18, 28:22, 32:5, 32:14, 33:20, 35:16, 36:1, 36:24, 41:4, 41:14, 43:19, 49:5, 51:11, 71:15</p> <p><b>NAY</b> [1] - 41:8</p> <p><b>Nay</b> [1] - 84:24</p> <p><b>NAY-ROOT</b> [1] - 41:8</p> <p><b>near</b> [2] - 41:16, 50:14</p> <p><b>nearly</b> [2] - 21:3, 21:19</p> <p><b>necessarily</b> [1] - 75:11</p> <p><b>necessary</b> [7] - 30:23, 37:15, 39:18, 40:9, 45:14, 66:22, 73:12</p> <p><b>need</b> [16] - 16:21, 17:14, 23:3, 23:13, 33:8, 38:2, 39:11, 42:8, 43:15, 46:21, 51:5, 53:19, 67:6, 73:1, 74:24, 87:11</p> <p><b>needed</b> [5] - 34:15, 77:21, 79:7, 86:10, 89:18</p> <p><b>needs</b> [2] - 22:10, 76:14</p> <p><b>negative</b> [2] - 62:4, 87:7</p> <p><b>neighboring</b> [2] - 28:24, 31:4</p> <p><b>neighbors</b> [1] - 27:12</p> <p><b>net</b> [6] - 57:4, 60:17, 68:8, 68:11, 68:17, 69:4</p> <p><b>netted</b> [1] - 12:1</p> <p><b>never</b> [2] - 87:7, 87:23</p> <p><b>new</b> [15] - 5:6, 8:4, 16:3, 41:18, 42:18, 42:23, 43:18, 46:12, 51:16, 55:23, 67:13, 74:14, 74:15, 75:5, 78:24</p> <p><b>NEW</b> [1] - 1:1</p> <p><b>New</b> [30] - 1:9, 2:3,</p>	<p>2:9, 4:2, 7:9, 7:11, 20:9, 20:11, 21:13, 23:12, 28:24, 31:19, 34:2, 37:9, 37:10, 40:22, 41:4, 42:2, 42:4, 48:14, 50:22, 52:8, 66:2, 66:7, 72:6, 87:18, 88:18, 89:1, 89:8, 92:4</p> <p><b>newcomer</b> [1] - 71:23</p> <p><b>next</b> [8] - 14:19, 19:10, 38:21, 60:3, 76:18, 78:19, 88:1, 91:8</p> <p><b>Niagara</b> [11] - 2:19, 36:9, 36:12, 37:2, 37:6, 37:19, 38:10, 38:21, 38:24, 39:14, 44:10</p> <p><b>nine</b> [1] - 22:18</p> <p><b>non</b> [4] - 7:21, 54:7, 67:8, 67:10</p> <p><b>Non</b> [1] - 11:10</p> <p><b>non-budgeted</b> [2] - 67:8, 67:10</p> <p><b>non-cash</b> [1] - 54:7</p> <p><b>Non-fuel</b> [1] - 11:10</p> <p><b>non-levelized</b> [1] - 7:21</p> <p><b>none</b> [7] - 3:5, 3:11, 18:10, 19:6, 45:24, 51:23, 84:13</p> <p><b>normally</b> [2] - 24:19, 27:16</p> <p><b>north</b> [1] - 20:15</p> <p><b>northeast</b> [1] - 32:15</p> <p><b>NorthStar</b> [5] - 43:1, 43:4, 44:4, 46:17, 48:1</p> <p><b>NorthStar's</b> [1] - 42:19</p> <p><b>Notary</b> [1] - 92:3</p> <p><b>note</b> [4] - 26:23, 47:5, 56:7, 90:18</p> <p><b>noted</b> [2] - 53:2, 92:6</p> <p><b>noteworthy</b> [1] - 38:19</p> <p><b>nothing</b> [2] - 40:3, 40:5</p> <p><b>notice</b> [1] - 85:9</p> <p><b>noticed</b> [1] - 85:9</p> <p><b>notices</b> [2] - 31:4, 85:10</p> <p><b>notion</b> [1] - 79:15</p> <p><b>November</b> [3] - 44:3, 46:24, 51:13</p> <p><b>nuances</b> [1] - 47:7</p> <p><b>number</b> [10] - 12:17, 29:22, 46:13, 58:1, 61:3, 62:3, 62:9, 71:1, 73:1, 86:7</p> <p><b>Number</b> [1] - 2:14</p> <p><b>number's</b> [1] - 30:3</p>	<p><b>numbers</b> [5] - 29:18, 66:18, 66:20, 78:3, 81:24</p> <p><b>Numeral</b> [1] - 9:11</p> <p><b>NYCRR</b> [3] - 2:10, 2:17, 21:2</p> <p><b>NYNEX</b> [1] - 42:11</p> <p><b>NYSEG</b> [15] - 3:18, 19:11, 21:1, 53:3, 56:9, 64:8, 65:11, 65:14, 67:6, 67:23, 68:2, 75:5, 78:17, 84:8, 84:19</p> <p><b>NYSEG's</b> [1] - 56:13</p>	

<p><b>once</b> [1] - 76:23  <b>Once</b> [1] - 21:15  <b>One</b> [4] - 5:12, 9:10, 42:17, 49:9  <b>one</b> [56] - 2:20, 5:22, 6:12, 6:18, 9:24, 16:4, 16:5, 16:7, 18:21, 24:5, 24:23, 25:5, 25:11, 26:1, 32:5, 33:2, 33:3, 33:7, 33:23, 33:24, 35:15, 35:22, 36:6, 40:3, 40:20, 41:19, 42:13, 43:14, 46:11, 46:22, 48:17, 49:11, 49:13, 49:19, 49:22, 50:12, 52:20, 56:19, 57:10, 57:14, 58:9, 60:4, 60:15, 61:24, 62:18, 64:18, 64:21, 65:10, 70:19, 77:1, 82:22, 83:10, 85:2, 85:5, 85:7, 86:5  <b>one-year</b> [6] - 57:10, 57:14, 60:4, 61:24, 62:18, 70:19  <b>ones</b> [3] - 78:23, 78:24, 80:1  <b>ongoing</b> [4] - 37:13, 45:1, 83:4, 83:18  <b>OPEB</b> [2] - 5:7, 53:20  <b>OPEBs</b> [1] - 8:3  <b>open</b> [12] - 12:12, 39:14, 43:22, 47:11, 47:14, 58:23, 59:4, 71:8, 75:17, 82:17, 83:6, 83:9  <b>operating</b> [4] - 37:2, 44:7, 48:5, 73:12  <b>operation</b> [1] - 83:15  <b>operations</b> [5] - 39:5, 39:6, 42:2, 57:23, 75:21  <b>opinion</b> [2] - 14:24, 59:14  <b>opportunities</b> [1] - 33:17  <b>opportunity</b> [1] - 66:12  <b>opposed</b> [1] - 79:7  <b>Opposed</b> [5] - 3:9, 19:4, 51:21, 84:11, 84:23  <b>opposes</b> [3] - 8:20, 54:19, 55:4  <b>Option</b> [2] - 40:3, 41:24  <b>option</b> [4] - 40:19, 42:13, 46:15, 81:9  <b>options</b> [11] - 36:23,</p>	<p>38:18, 39:21, 39:23, 41:21, 41:22, 43:13, 46:11, 46:15, 47:11, 82:9  <b>Options</b> [2] - 40:21, 42:15  <b>Orange</b> [5] - 19:12, 20:24, 21:18, 21:22, 23:2  <b>order</b> [30] - 2:4, 3:13, 3:14, 4:19, 5:14, 9:9, 9:16, 9:21, 10:1, 10:2, 10:10, 10:16, 10:22, 11:5, 12:6, 13:22, 38:1, 54:3, 55:17, 58:7, 58:20, 59:22, 64:13, 66:11, 69:7, 69:19, 70:22, 77:23, 81:12, 81:22  <b>orders</b> [4] - 57:20, 64:9, 66:11, 66:24  <b>Organization</b> [1] - 16:6  <b>organizations</b> [1] - 7:10  <b>original</b> [1] - 77:8  <b>originally</b> [1] - 20:15  <b>ourselves</b> [1] - 41:24  <b>ourself</b> [1] - 41:24  <b>ourselves</b> [1] - 51:6  <b>outage</b> [1] - 22:22  <b>outages</b> [2] - 19:14, 25:1  <b>outcome</b> [2] - 53:18, 70:20  <b>outlayer</b> [1] - 33:24  <b>outlined</b> [1] - 8:4  <b>outside</b> [7] - 40:22, 42:8, 42:16, 46:16, 83:11, 90:6, 90:7  <b>outsider's</b> [1] - 71:20  <b>outstanding</b> [3] - 56:5, 62:11, 65:17  <b>outweigh</b> [1] - 10:19  <b>Overall</b> [1] - 21:9  <b>overall</b> [2] - 8:8, 22:3  <b>overhead</b> [1] - 48:10  <b>overly</b> [1] - 40:13  <b>overruled</b> [1] - 5:16  <b>overtime</b> [1] - 35:11  <b>own</b> [4] - 27:16, 32:7, 37:24, 44:15</p>	<p><b>paid</b> [2] - 11:24, 38:6  <b>paper</b> [1] - 59:7  <b>parallel</b> [1] - 9:6  <b>Park</b> [2] - 6:14, 18:22  <b>Part</b> [3] - 2:17, 21:2, 21:23  <b>part</b> [8] - 5:8, 16:16, 18:11, 54:3, 64:13, 79:2, 89:9, 89:11  <b>participants</b> [1] - 65:15  <b>participating</b> [1] - 28:6  <b>particular</b> [6] - 16:14, 16:21, 17:6, 53:23, 64:23, 71:15  <b>particularly</b> [4] - 23:5, 32:21, 55:8, 73:3  <b>parties</b> [15] - 5:11, 9:13, 13:11, 13:15, 17:5, 18:5, 45:4, 46:2, 55:5, 59:7, 60:8, 62:15, 63:11, 63:14, 63:17  <b>parties'</b> [3] - 13:14, 37:12, 63:8  <b>parts</b> [1] - 51:10  <b>party</b> [4] - 5:12, 13:24, 54:19, 55:4  <b>past</b> [5] - 15:11, 38:6, 63:14, 63:15, 63:17  <b>PATRICIA</b> [1] - 1:14  <b>Paul</b> [6] - 19:15, 19:21, 24:4, 30:10, 32:2, 86:23  <b>pay</b> [3] - 18:21, 32:12, 38:4  <b>paying</b> [3] - 10:13, 10:14, 11:24  <b>PBAs</b> [2] - 61:5, 61:17  <b>peak</b> [4] - 9:14, 16:16, 16:22, 17:12  <b>penalties</b> [1] - 2:21  <b>pension</b> [1] - 8:3  <b>pensions</b> [2] - 5:7, 53:20  <b>People</b> [1] - 86:22  <b>people</b> [26] - 24:21, 24:23, 27:17, 28:9, 28:13, 32:15, 32:22, 35:10, 47:6, 48:22, 74:9, 83:13, 85:14, 86:3, 86:22, 87:17, 87:19, 88:6, 88:9, 88:10, 90:4, 90:5, 90:6, 90:12, 90:24  <b>per</b> [3] - 5:3, 6:20, 11:22  <b>percent</b> [11] - 8:8, 8:9, 12:4, 42:10, 48:9,</p>	<p>48:10, 54:16, 73:7, 74:1, 74:4, 74:22  <b>percentage</b> [1] - 39:7  <b>perception</b> [1] - 39:12  <b>perfect</b> [1] - 77:11  <b>perfectly</b> [1] - 68:18  <b>perform</b> [2] - 21:7, 51:15  <b>performance</b> [6] - 19:13, 22:3, 24:7, 30:15, 74:21, 87:8  <b>performs</b> [1] - 50:11  <b>perhaps</b> [4] - 26:23, 40:1, 63:12, 72:14  <b>period</b> [11] - 12:8, 15:10, 28:10, 53:4, 56:13, 56:17, 61:11, 65:20, 67:4, 69:22, 78:21  <b>periodic</b> [2] - 15:2, 71:17  <b>periodically</b> [1] - 83:14  <b>person</b> [1] - 82:4  <b>personally</b> [1] - 85:15  <b>personnel</b> [3] - 25:15, 25:20, 86:21  <b>perspective</b> [4] - 40:2, 40:11, 42:13, 71:21  <b>pertain</b> [2] - 4:11, 6:4  <b>pertaining</b> [1] - 2:11  <b>Peter</b> [1] - 86:24  <b>petition</b> [5] - 2:9, 65:19, 65:24, 66:8, 66:15  <b>phased</b> [1] - 12:7  <b>phasing</b> [1] - 18:18  <b>phenomena</b> [1] - 83:5  <b>PHILLIPS</b> [1] - 52:24  <b>Phillips</b> [1] - 52:12  <b>phone</b> [3] - 23:23, 35:9, 79:21  <b>phonetic</b> [3] - 2:15, 41:8, 65:12  <b>physical</b> [1] - 17:14  <b>physically</b> [1] - 79:21  <b>pick</b> [1] - 33:18  <b>picking</b> [1] - 34:2  <b>picture</b> [1] - 20:3  <b>piece</b> [2] - 59:7, 66:23  <b>place</b> [5] - 38:11, 49:14, 54:21, 92:6  <b>plan</b> [11] - 3:22, 7:13, 7:17, 7:20, 11:7, 11:9, 18:17, 53:5, 62:20, 75:16, 75:24  <b>planning</b> [2] - 16:16, 34:11  <b>plans</b> [3] - 3:19, 53:2, 62:12</p>	<p><b>plant</b> [5] - 8:4, 68:8, 68:11, 68:17, 69:5  <b>plate</b> [1] - 52:3  <b>Plaza</b> [1] - 16:5  <b>pleasure</b> [2] - 87:16, 88:11  <b>Plumbing</b> [1] - 2:16  <b>plus</b> [1] - 22:13  <b>point</b> [10] - 17:12, 24:6, 28:11, 40:7, 52:3, 55:19, 79:1, 80:5, 81:19, 91:2  <b>point's</b> [1] - 77:1  <b>pointed</b> [1] - 39:10  <b>points</b> [6] - 38:19, 58:14, 74:2, 76:3, 82:23, 83:12  <b>policies</b> [4] - 38:15, 42:5, 43:20, 59:13  <b>Policy</b> [4] - 19:19, 23:12, 85:19, 86:10  <b>pooling</b> [1] - 65:15  <b>portion</b> [4] - 39:2, 44:19, 45:18, 81:3  <b>portions</b> [1] - 15:1  <b>positions</b> [4] - 22:14, 29:22, 37:13, 75:10  <b>positive</b> [2] - 62:15, 75:20  <b>possess</b> [1] - 42:3  <b>possible</b> [5] - 10:9, 43:1, 44:5, 48:4, 54:11  <b>possibly</b> [3] - 31:9, 55:20, 82:17  <b>post</b> [2] - 18:17, 23:1  <b>Potential</b> [1] - 41:3  <b>potential</b> [7] - 9:3, 15:24, 17:18, 39:12, 47:24, 53:18, 66:7  <b>pounds</b> [1] - 85:13  <b>Power</b> [5] - 2:19, 7:11, 21:19, 36:9, 36:12  <b>power</b> [3] - 10:14, 21:3, 22:15  <b>powering</b> [3] - 3:23, 8:13, 18:19  <b>practical</b> [1] - 42:13  <b>practices</b> [1] - 44:7  <b>Pratunam</b> [1] - 16:4  <b>pre</b> [2] - 27:10, 39:13  <b>pre-decisional</b> [1] - 39:13  <b>pre-staging</b> [1] - 27:10  <b>precedent</b> [1] - 15:17  <b>precisely</b> [1] - 11:18  <b>predated</b> [1] - 39:7  <b>predicate</b> [1] - 74:18  <b>predicted</b> [1] - 20:21</p>
	<b>P</b>			
<p><b>p.m</b> [1] - 91:18  <b>package</b> [1] - 16:3  <b>page</b> [1] - 9:18  <b>pages</b> [6] - 4:19, 5:19, 5:21, 6:2, 9:9, 10:1</p>				

<p><b>predicting</b> [1] - 34:17  <b>predictions</b> [1] - 35:21  <b>prejudged</b> [1] - 46:1  <b>preliminary</b> [2] - 21:6, 31:4  <b>preparation</b> [3] - 28:4, 29:5, 29:17  <b>preparatory</b> [2] - 28:10, 30:7  <b>prepare</b> [1] - 44:12  <b>prepared</b> [3] - 30:21, 34:21, 34:22  <b>preparing</b> [2] - 26:19, 26:22  <b>presentation</b> [3] - 7:4, 44:20, 87:5  <b>presented</b> [5] - 4:3, 19:15, 36:13, 46:14, 52:11  <b>Prestemon</b> [3] - 52:12, 53:9, 68:20  <b>presumably</b> [1] - 14:14  <b>pretty</b> [1] - 12:10  <b>prevention</b> [2] - 34:9, 34:18  <b>previous</b> [1] - 22:5  <b>previously</b> [2] - 6:23, 7:2  <b>primarily</b> [1] - 66:3  <b>primary</b> [1] - 7:24  <b>priorities</b> [1] - 41:7  <b>private</b> [1] - 32:10  <b>privilege</b> [1] - 89:4  <b>problem</b> [4] - 48:19, 48:20, 51:2, 74:24  <b>problems</b> [4] - 22:6, 38:13, 38:16, 50:2  <b>procedural</b> [1] - 39:17  <b>procedurally</b> [1] - 49:14  <b>procedure</b> [1] - 29:20  <b>procedures</b> [6] - 22:22, 37:20, 38:16, 43:20, 49:24, 53:10  <b>proceed</b> [1] - 44:14  <b>proceeding</b> [13] - 2:15, 3:22, 35:2, 36:10, 37:17, 43:19, 46:12, 46:22, 47:10, 47:12, 49:6, 51:11, 52:6  <b>proceedings</b> [2] - 72:3, 72:10  <b>proceeds</b> [1] - 54:4  <b>process</b> [16] - 16:10, 29:9, 30:7, 32:21, 40:7, 44:8, 44:14, 46:5, 48:21, 49:3, 52:20, 52:21, 65:1,</p>	<p>66:16, 70:21, 71:16  <b>produce</b> [1] - 7:19  <b>produced</b> [1] - 11:15  <b>product</b> [1] - 77:17  <b>professional</b> [2] - 32:21, 88:16  <b>professionalism</b> [1] - 89:13  <b>program</b> [6] - 33:11, 33:14, 47:18, 53:15, 53:21, 76:20  <b>programs</b> [2] - 54:18, 86:11  <b>progress</b> [4] - 14:2, 14:9, 17:2, 23:18  <b>Project</b> [1] - 8:13  <b>project</b> [4] - 3:23, 33:22, 41:6, 79:5  <b>project's</b> [1] - 18:19  <b>projected</b> [2] - 5:8, 20:16  <b>projects</b> [17] - 67:13, 68:10, 69:1, 70:3, 70:8, 78:22, 79:10, 79:16, 79:17, 79:23, 80:1, 80:9, 80:17, 80:20, 80:23, 82:14, 82:18  <b>promotions</b> [1] - 86:8  <b>properly</b> [2] - 9:24, 49:12  <b>property</b> [3] - 5:7, 8:2, 53:23  <b>proposal</b> [4] - 18:13, 18:14, 54:9, 78:17  <b>Proposal</b> [56] - 4:21, 7:8, 8:6, 8:11, 8:21, 9:10, 9:21, 10:4, 12:2, 13:16, 16:18, 51:16, 53:11, 55:5, 55:8, 57:9, 57:13, 58:6, 58:18, 58:21, 58:23, 59:4, 59:10, 59:16, 59:20, 59:24, 60:4, 60:6, 60:8, 60:12, 60:20, 61:14, 61:15, 61:16, 62:1, 62:3, 62:9, 62:17, 62:22, 63:3, 63:5, 63:16, 63:18, 63:20, 64:4, 67:19, 67:21, 69:2, 69:4, 70:1, 70:6, 70:19, 71:2, 71:6, 74:11, 76:2  <b>Proposal's</b> [1] - 8:7  <b>proposals</b> [2] - 5:10, 84:5  <b>propose</b> [1] - 53:17  <b>proposed</b> [13] - 5:17, 5:19, 5:24, 6:17,</p>	<p>37:14, 40:15, 45:8, 45:15, 53:24, 54:14, 54:16, 68:21, 79:16  <b>proposes</b> [2] - 5:3, 7:13  <b>protect</b> [3] - 40:4, 54:21, 62:5  <b>protection</b> [2] - 2:17, 59:19  <b>protections</b> [4] - 57:12, 62:14, 70:24, 77:14  <b>provide</b> [4] - 6:16, 10:17, 44:2, 51:13  <b>provided</b> [8] - 6:23, 13:5, 14:22, 14:24, 43:7, 52:8, 64:14, 66:12  <b>provides</b> [1] - 59:11  <b>provision</b> [4] - 9:2, 9:10, 9:17, 74:2  <b>provisions</b> [18] - 8:22, 9:6, 9:22, 53:12, 53:14, 54:19, 54:20, 54:24, 55:14, 55:19, 58:6, 58:21, 59:20, 59:23, 65:12, 75:16, 75:23  <b>PSL6619</b> [1] - 18:15  <b>public</b> [11] - 54:2, 54:12, 57:8, 59:17, 62:7, 71:6, 87:19, 88:9, 90:3, 90:8, 90:22  <b>PUBLIC</b> [1] - 1:1  <b>Public</b> [5] - 1:3, 2:4, 6:7, 59:13, 92:4  <b>publicly</b> [3] - 85:16, 85:20, 90:17  <b>purchasing</b> [1] - 10:14  <b>purposes</b> [2] - 37:3, 52:19  <b>pursue</b> [1] - 26:6  <b>pursued</b> [2] - 17:7, 43:15  <b>push</b> [1] - 26:2  <b>pushing</b> [1] - 26:2  <b>put</b> [7] - 13:2, 16:7, 30:19, 38:11, 54:21, 59:6  <b>putting</b> [1] - 16:3</p>	<p><b>questionable</b> [2] - 37:5, 38:23  <b>Questions</b> [1] - 71:9  <b>questions</b> [24] - 7:4, 7:5, 10:5, 12:13, 15:4, 18:8, 19:20, 24:2, 24:4, 35:11, 36:18, 39:16, 47:14, 55:18, 55:24, 56:1, 56:5, 57:7, 57:17, 64:7, 71:8, 74:14, 84:15  <b>queue</b> [2] - 76:24, 77:1  <b>quick</b> [1] - 25:11  <b>quicker</b> [1] - 14:18  <b>quickly</b> [1] - 18:12  <b>quite</b> [1] - 77:5</p>	<p><b>ratepayer</b> [3] - 70:24, 82:19, 89:8  <b>ratepayers</b> [8] - 49:5, 62:5, 70:17, 75:21, 75:22, 80:12, 81:17, 82:16  <b>rates</b> [31] - 4:1, 7:20, 11:1, 12:4, 14:11, 36:11, 38:15, 38:20, 38:24, 39:2, 45:10, 45:18, 52:7, 53:5, 53:13, 53:16, 53:19, 56:9, 56:12, 56:14, 56:18, 56:19, 56:23, 57:3, 60:14, 60:17, 76:1, 84:8, 84:19, 86:8  <b>Rates</b> [1] - 52:15  <b>rather</b> [2] - 43:16, 90:3  <b>ratio</b> [1] - 8:9  <b>re</b> [5] - 3:23, 18:19, 58:23, 59:4, 75:17  <b>Re</b> [1] - 8:13  <b>re-open</b> [3] - 58:23, 59:4, 75:17  <b>Re-powering</b> [1] - 8:13  <b>re-powering</b> [2] - 3:23, 18:19  <b>reach</b> [1] - 88:20  <b>reached</b> [2] - 21:17, 62:19  <b>reaching</b> [2] - 14:6, 74:11  <b>reading</b> [1] - 63:8  <b>ready</b> [2] - 26:5, 29:6  <b>reallocation</b> [2] - 8:12, 8:16  <b>really</b> [31] - 12:15, 24:11, 25:1, 26:20, 32:24, 34:10, 35:1, 38:2, 41:17, 42:6, 42:8, 46:4, 46:21, 49:9, 49:20, 52:17, 57:7, 62:10, 62:20, 63:3, 68:11, 74:8, 75:7, 75:15, 77:13, 77:15, 79:7, 80:11, 81:14, 81:23, 87:21  <b>reason</b> [3] - 27:17, 59:3, 65:6  <b>reasonable</b> [10] - 70:4, 70:9, 70:16, 78:24, 79:13, 80:12, 80:23, 81:2, 81:5, 87:4  <b>Reasonably</b> [1] - 14:2  <b>reasonably</b> [6] - 6:8, 12:18, 12:21, 12:24, 15:7, 18:15  <b>reasons</b> [4] - 4:13,</p>
<b>R</b>				
<p><b>rain</b> [1] - 21:12  <b>raise</b> [5] - 15:4, 17:17, 31:9, 31:13, 87:20  <b>raised</b> [5] - 17:12, 45:3, 55:15, 55:22, 57:6  <b>raises</b> [1] - 57:11  <b>range</b> [1] - 60:13  <b>rate</b> [83] - 3:18, 4:9, 4:11, 5:1, 5:6, 5:23, 6:15, 7:8, 7:13, 7:20, 7:24, 8:1, 8:8, 11:7, 11:9, 13:18, 14:15, 14:19, 15:8, 15:9, 18:17, 34:8, 37:10, 37:13, 37:20, 38:9, 38:20, 39:14, 39:16, 40:6, 40:16, 44:13, 44:18, 45:1, 45:11, 46:3, 47:6, 47:7, 47:10, 49:21, 50:23, 53:2, 53:5, 53:20, 53:24, 54:3, 54:14, 54:16, 55:8, 56:16, 57:4, 57:10, 57:14, 60:4, 60:7, 60:9, 60:11, 60:19, 61:1, 61:21, 62:12, 71:3, 71:19, 72:11, 73:21, 74:9, 74:17, 74:18, 75:1, 75:12, 75:16, 75:24, 76:7, 77:4, 77:10, 79:1, 79:2, 79:3, 82:24, 83:5, 83:11  <b>Rate</b> [1] - 8:14  <b>rate's</b> [2] - 18:13, 18:14</p>				
<b>Q</b>				
<p><b>quality</b> [4] - 53:7, 54:9, 63:6, 79:3  <b>quantify</b> [2] - 10:23, 62:2  <b>quarter</b> [1] - 81:1</p>				

<p>5:14, 58:20, 60:5  <b>received</b> [1] - 65:19  <b>recent</b> [4] - 6:9, 12:18, 33:23, 55:2  <b>recently</b> [2] - 28:20, 43:2  <b>recognize</b> [2] - 21:5, 23:9  <b>recognizes</b> [1] - 70:1  <b>recognizing</b> [2] - 46:4, 75:4  <b>recommend</b> [9] - 9:7, 10:3, 40:20, 41:23, 42:14, 46:23, 65:9, 68:19, 71:7  <b>recommendation</b> [12] - 4:16, 4:20, 12:16, 43:11, 43:16, 44:4, 46:24, 51:10, 51:18, 51:24, 55:11, 84:19  <b>recommendations</b> [26] - 3:6, 3:12, 4:10, 4:12, 6:3, 6:9, 6:22, 9:4, 12:19, 13:4, 13:6, 13:14, 14:4, 18:11, 18:16, 19:7, 22:1, 22:18, 22:19, 25:4, 43:8, 73:14, 84:3, 84:7, 84:14, 85:2  <b>recommended</b> [1] - 46:15  <b>recommending</b> [1] - 14:1  <b>recommends</b> [1] - 7:17  <b>reconciliation</b> [1] - 45:19  <b>record</b> [5] - 13:1, 14:5, 63:8, 74:21, 92:5  <b>recover</b> [1] - 81:13  <b>recovered</b> [2] - 8:18, 81:17  <b>recovery</b> [1] - 38:9  <b>recusing</b> [1] - 3:2  <b>reduced</b> [2] - 37:20, 56:13  <b>reduces</b> [1] - 61:7  <b>reducing</b> [2] - 16:22, 61:1  <b>reduction</b> [4] - 9:14, 16:17, 17:13, 55:3  <b>reengage</b> [1] - 44:4  <b>Reengaging</b> [1] - 43:1  <b>refer</b> [1] - 15:13  <b>references</b> [1] - 71:13  <b>referred</b> [2] - 16:18, 70:9  <b>reflected</b> [4] - 62:1, 67:19, 67:20, 69:15</p>	<p><b>reflecting</b> [1] - 9:3  <b>reflects</b> [1] - 63:17  <b>regard</b> [1] - 31:11  <b>regarding</b> [2] - 55:15, 55:18  <b>regards</b> [1] - 66:24  <b>regret</b> [1] - 89:22  <b>regular</b> [2] - 3:13, 91:8  <b>Regular</b> [1] - 1:3  <b>regulate</b> [1] - 74:8  <b>regulation</b> [2] - 64:1, 64:2  <b>regulations</b> [3] - 4:1, 36:12, 52:7  <b>regulators</b> [1] - 41:2  <b>regulatory</b> [4] - 6:12, 18:21, 40:22, 71:23  <b>reinstated</b> [2] - 71:16, 76:19  <b>reinstating</b> [1] - 15:16  <b>reiterate</b> [1] - 82:12  <b>reject</b> [2] - 9:8, 62:17  <b>rejecting</b> [1] - 57:9  <b>relate</b> [1] - 38:23  <b>related</b> [10] - 12:22, 19:14, 36:24, 38:15, 39:13, 57:8, 57:16, 69:21, 81:24  <b>relates</b> [1] - 6:5  <b>relating</b> [2] - 37:4, 41:14  <b>relationship</b> [4] - 35:24, 46:18, 63:11, 83:18  <b>relatively</b> [2] - 39:2, 39:3  <b>reliability</b> [3] - 53:7, 53:15, 54:22  <b>relocations</b> [1] - 37:7  <b>rely</b> [1] - 63:1  <b>relying</b> [1] - 63:19  <b>remain</b> [4] - 2:22, 8:15, 45:24, 47:11  <b>remaining</b> [1] - 64:22  <b>remains</b> [2] - 45:11, 45:16  <b>remarkable</b> [1] - 24:17  <b>remarks</b> [1] - 4:8  <b>remediation</b> [1] - 53:22  <b>remedies</b> [2] - 44:17, 45:23  <b>remedy</b> [1] - 45:10  <b>Remember</b> [1] - 76:19  <b>remember</b> [1] - 86:22  <b>Removed</b> [1] - 2:13  <b>reoccur</b> [1] - 50:2  <b>repeat</b> [1] - 38:22</p>	<p><b>reply</b> [1] - 4:17  <b>report</b> [10] - 9:15, 16:19, 17:2, 22:17, 23:15, 35:4, 36:2, 41:16, 43:3, 66:20  <b>Reporter</b> [1] - 92:3  <b>reporting</b> [5] - 22:6, 23:3, 23:19, 63:22, 64:2  <b>reports</b> [3] - 21:2, 21:23, 81:3  <b>represent</b> [4] - 45:22, 56:11, 60:2, 69:1  <b>representatives</b> [1] - 22:14  <b>reputation</b> [1] - 90:11  <b>request</b> [5] - 36:22, 37:20, 51:12, 55:5, 83:23  <b>Request</b> [1] - 51:16  <b>requested</b> [2] - 5:1, 55:9  <b>requesting</b> [1] - 65:20  <b>requests</b> [1] - 55:12  <b>require</b> [2] - 65:9, 71:19  <b>required</b> [3] - 13:17, 36:3, 67:2  <b>requirement</b> [9] - 5:5, 7:14, 8:17, 13:24, 64:21, 66:10, 66:13, 69:18, 69:21  <b>requirements</b> [19] - 8:7, 55:17, 57:19, 57:22, 57:24, 58:1, 63:2, 63:5, 63:22, 64:3, 64:12, 64:17, 64:20, 67:1, 67:15, 68:16, 69:7, 70:12, 70:22  <b>requires</b> [1] - 63:21  <b>requiring</b> [1] - 18:20  <b>requisite</b> [1] - 42:4  <b>reserve</b> [1] - 54:4  <b>reset</b> [1] - 76:1  <b>resides</b> [1] - 16:17  <b>Resolution</b> [2] - 52:13, 85:17  <b>resolution</b> [1] - 40:14  <b>resolve</b> [1] - 45:9  <b>resolved</b> [1] - 71:2  <b>resolves</b> [1] - 62:9  <b>resolving</b> [1] - 62:14  <b>resource</b> [2] - 3:22, 40:11  <b>resources</b> [2] - 40:22, 42:22  <b>respect</b> [3] - 4:24, 9:1, 10:10  <b>respectively</b> [1] - 67:7</p>	<p><b>respects</b> [2] - 10:3, 47:18  <b>respond</b> [3] - 30:21, 31:15, 35:8  <b>responded</b> [1] - 45:4  <b>responders</b> [1] - 47:24  <b>responding</b> [1] - 23:23  <b>response</b> [13] - 3:4, 3:10, 18:9, 19:5, 19:24, 27:21, 36:21, 51:8, 51:22, 56:2, 83:22, 84:12, 84:17  <b>responses</b> [5] - 3:8, 19:3, 51:20, 84:10, 84:22  <b>responsibilities</b> [2] - 59:18, 62:8  <b>responsible</b> [4] - 11:14, 72:6, 72:7, 72:21  <b>rest</b> [1] - 34:3  <b>Restoration</b> [2] - 21:4, 21:24  <b>restoration</b> [8] - 21:6, 22:7, 22:12, 23:4, 23:18, 25:12, 25:17, 26:10  <b>restore</b> [3] - 22:15, 49:4, 64:16  <b>result</b> [4] - 11:17, 11:18, 38:12, 75:13  <b>results</b> [3] - 19:24, 33:13, 76:10  <b>retention</b> [2] - 15:24, 17:17  <b>retire</b> [1] - 88:17  <b>retirement</b> [6] - 85:11, 85:12, 86:14, 86:16, 87:11, 88:4  <b>retiring</b> [1] - 91:3  <b>return</b> [8] - 5:6, 8:8, 8:10, 53:13, 53:20, 54:16, 73:7, 74:4  <b>revenue</b> [6] - 5:4, 5:5, 7:14, 8:7, 8:17, 62:4  <b>revenues</b> [1] - 10:12  <b>review</b> [11] - 14:20, 19:24, 23:10, 23:14, 33:8, 43:12, 66:20, 69:17, 69:23, 70:2, 80:20  <b>reviewed</b> [2] - 69:5, 73:23  <b>reviewing</b> [2] - 38:18, 48:23  <b>revise</b> [2] - 11:7, 11:9  <b>RFP</b> [5] - 42:18, 42:23, 44:5, 46:20, 47:1</p>	<p><b>RG&amp;E</b> [10] - 3:18, 53:4, 53:23, 56:22, 64:8, 65:11, 65:13, 67:6, 67:24, 68:4  <b>RG&amp;E's</b> [3] - 56:18, 84:8, 84:20  <b>rights</b> [1] - 9:23  <b>rigs</b> [1] - 32:11  <b>risk</b> [2] - 10:24, 80:24  <b>River</b> [3] - 3:23, 8:12, 18:19  <b>roads</b> [1] - 50:5  <b>ROBERT</b> [1] - 1:14  <b>Rochester</b> [5] - 52:9, 75:4, 78:16, 80:18  <b>Rockland</b> [4] - 20:24, 21:18, 21:23, 23:2  <b>Rockland's</b> [1] - 19:12  <b>ROE</b> [2] - 74:1, 74:22  <b>role</b> [1] - 30:20  <b>rolled</b> [1] - 12:4  <b>Roman</b> [1] - 9:11  <b>roof</b> [1] - 16:4  <b>room</b> [1] - 90:6  <b>ROOT</b> [1] - 41:8  <b>rough</b> [1] - 27:2  <b>roughly</b> [2] - 40:10, 80:17  <b>routine</b> [1] - 90:9  <b>routinely</b> [1] - 50:9  <b>Rudy</b> [1] - 4:4  <b>rules</b> [3] - 4:1, 36:11, 52:7  <b>run</b> [3] - 30:16, 30:20, 41:7  <b>running</b> [1] - 27:4</p>
<b>S</b>				
<p><b>safeguards</b> [3] - 49:14, 62:4, 70:23  <b>safety</b> [4] - 6:20, 53:6, 53:15, 54:22  <b>sale</b> [1] - 54:5  <b>sales</b> [1] - 8:1  <b>Sandra</b> [2] - 19:17, 35:7  <b>sat</b> [1] - 22:5  <b>satisfied</b> [2] - 58:24, 77:16  <b>save</b> [1] - 75:21  <b>saving</b> [1] - 55:3  <b>savings</b> [2] - 5:20, 9:3  <b>saw</b> [3] - 23:21, 33:8, 87:3  <b>SC1</b> [1] - 6:1  <b>SC3</b> [1] - 6:1  <b>scheduled</b> [1] - 44:14  <b>schedules</b> [1] - 43:24</p>				

<p><b>scheduling</b> [1] - 3:14  <b>scheme</b> [1] - 71:23  <b>schooling</b> [1] - 89:19  <b>scope</b> [2] - 42:1, 50:24  <b>scopes</b> [1] - 43:24  <b>scoping</b> [2] - 44:2, 51:13  <b>screen</b> [1] - 23:22  <b>scrutiny</b> [1] - 79:3  <b>second</b> [7] - 4:15, 4:20, 6:11, 20:18, 36:6, 49:13, 49:22  <b>Second</b> [3] - 38:5, 39:10, 44:1  <b>Secretary</b> [3] - 2:5, 2:24, 91:5  <b>SECRETARY</b> [2] - 2:7, 91:7  <b>section</b> [2] - 2:21, 23:21  <b>secure</b> [1] - 88:15  <b>See</b> [1] - 83:1  <b>see</b> [13] - 12:12, 16:21, 18:2, 20:10, 22:18, 29:3, 35:19, 35:21, 49:21, 59:21, 61:23, 75:11, 81:24  <b>Seeing</b> [1] - 3:5  <b>seeing</b> [1] - 88:21  <b>seek</b> [1] - 66:13  <b>seem</b> [2] - 59:22, 60:1  <b>seemingly</b> [1] - 24:18  <b>SEMO</b> [1] - 23:19  <b>senior</b> [2] - 55:21, 74:12  <b>Senior</b> [1] - 36:16  <b>sense</b> [2] - 26:24, 89:21  <b>separate</b> [4] - 46:12, 52:18, 52:19, 55:10  <b>September</b> [8] - 1:6, 2:3, 4:14, 8:5, 33:5, 57:19, 65:22, 92:14  <b>series</b> [3] - 81:14, 84:3, 86:7  <b>seriously</b> [1] - 25:10  <b>serve</b> [1] - 90:4  <b>served</b> [1] - 57:8  <b>service</b> [33] - 2:18, 8:4, 21:4, 21:20, 22:14, 25:8, 32:7, 36:13, 37:1, 39:3, 41:14, 43:9, 48:8, 50:12, 52:8, 53:7, 53:14, 54:22, 55:10, 56:10, 56:15, 56:19, 56:22, 56:23, 57:4, 59:17, 59:24, 62:7, 63:6, 87:19, 90:3, 90:8, 90:13</p>	<p><b>SERVICE</b> [1] - 1:1  <b>Service</b> [15] - 1:3, 2:4, 6:7, 20:16, 20:21, 28:18, 28:23, 32:5, 32:14, 32:18, 33:21, 35:16, 36:1, 52:15, 59:13  <b>Services</b> [3] - 19:18, 23:12, 23:23  <b>services</b> [8] - 4:3, 21:16, 32:10, 43:7, 48:13, 60:18, 84:8, 84:20  <b>session</b> [22] - 2:3, 2:13, 4:14, 4:15, 5:15, 8:5, 14:22, 36:22, 39:11, 39:22, 44:3, 58:4, 71:13, 78:6, 79:14, 79:19, 81:4, 85:8, 90:22, 91:9, 91:11, 91:17  <b>session-like</b> [1] - 91:11  <b>set</b> [7] - 14:11, 53:5, 53:6, 54:3, 60:14, 76:13, 77:5  <b>sets</b> [1] - 42:8  <b>setting</b> [2] - 38:8, 41:6  <b>seven</b> [6] - 5:10, 21:24, 32:9, 33:21, 39:23, 56:24  <b>several</b> [9] - 23:17, 33:1, 39:23, 53:11, 55:14, 60:5, 71:13, 79:20, 85:11  <b>severe</b> [1] - 20:17  <b>severity</b> [4] - 20:20, 25:13, 25:16, 26:12  <b>share</b> [1] - 41:12  <b>shared</b> [1] - 24:12  <b>sharing</b> [3] - 41:1, 75:23, 89:15  <b>shift</b> [3] - 11:21, 11:22, 12:3  <b>shoes</b> [1] - 88:6  <b>short</b> [2] - 59:19, 78:21  <b>shortfall</b> [2] - 78:18, 78:19  <b>Shorthand</b> [1] - 92:3  <b>shorthand</b> [1] - 11:16  <b>show</b> [3] - 34:21, 64:16, 90:24  <b>showing</b> [1] - 66:18  <b>side</b> [1] - 17:20  <b>signatories</b> [1] - 9:23  <b>signed</b> [1] - 59:7  <b>significant</b> [7] - 20:4, 33:7, 62:5, 72:16, 74:2, 75:1, 75:15</p>	<p><b>significantly</b> [2] - 18:18, 83:3  <b>similar</b> [5] - 13:6, 20:6, 32:13, 39:24, 41:8  <b>single</b> [3] - 52:21, 61:21, 89:7  <b>sit</b> [2] - 88:13, 90:20  <b>site</b> [1] - 15:24  <b>sites</b> [1] - 66:7  <b>sitting</b> [1] - 87:3  <b>situation</b> [2] - 73:24, 82:15  <b>six</b> [8] - 12:3, 18:11, 20:22, 32:9, 33:21, 42:15, 57:6  <b>skill</b> [1] - 42:7  <b>slightly</b> [1] - 56:20  <b>Sloane</b> [2] - 19:17, 35:7  <b>slows</b> [1] - 91:4  <b>small</b> [3] - 30:4, 39:2, 39:3  <b>smaller</b> [2] - 39:4, 66:6  <b>snapshot</b> [1] - 20:13  <b>snow</b> [2] - 20:22, 24:17  <b>snowstorm</b> [1] - 19:14  <b>so-called</b> [1] - 16:15  <b>solidly</b> [1] - 64:4  <b>someone</b> [1] - 15:13  <b>sometimes</b> [5] - 27:3, 27:11, 32:6, 35:4, 88:19  <b>somewhat</b> [1] - 54:6  <b>soon</b> [1] - 91:4  <b>sorely</b> [1] - 88:4  <b>sorry</b> [2] - 70:5, 80:17  <b>sort</b> [3] - 17:18, 45:19, 82:11  <b>sought</b> [1] - 42:11  <b>sound</b> [1] - 31:12  <b>sounds</b> [1] - 49:13  <b>space</b> [1] - 72:22  <b>Spanish</b> [1] - 72:21  <b>special</b> [1] - 23:16  <b>specific</b> [3] - 7:23, 58:23, 68:8  <b>Specifically</b> [1] - 5:16  <b>specifically</b> [5] - 6:4, 28:5, 70:1, 72:13, 73:4  <b>spectacular</b> [1] - 90:13  <b>spelled</b> [1] - 77:16  <b>spend</b> [10] - 26:22, 27:3, 67:2, 67:6, 70:14, 70:15, 73:1, 79:9, 80:10, 80:24</p>	<p><b>spending</b> [2] - 78:7, 78:20  <b>spent</b> [7] - 26:19, 69:21, 77:21, 77:22, 78:1, 78:11, 79:13  <b>spoken</b> [1] - 48:14  <b>spread</b> [3] - 60:24, 61:11, 61:23  <b>spreading</b> [2] - 61:7, 61:19  <b>squarely</b> [1] - 60:15  <b>Staff</b> [1] - 13:8  <b>staff</b> [40] - 6:17, 7:9, 13:2, 19:11, 22:15, 23:10, 23:18, 23:20, 29:23, 35:13, 37:13, 40:15, 42:2, 42:6, 42:16, 44:1, 45:3, 45:8, 45:15, 46:23, 48:6, 51:12, 55:21, 63:12, 68:10, 74:2, 74:13, 76:21, 77:13, 79:16, 79:20, 80:21, 81:3, 81:7, 81:10, 83:3, 85:4, 85:10  <b>Staff's</b> [1] - 13:9  <b>staff's</b> [2] - 19:24, 22:17  <b>staffing</b> [4] - 22:6, 22:10, 29:18, 29:22  <b>stage</b> [1] - 38:9  <b>staging</b> [1] - 27:10  <b>stand</b> [5] - 17:5, 18:3, 30:18, 85:20, 85:23  <b>standard</b> [1] - 44:6  <b>standards</b> [1] - 53:7  <b>standpoint</b> [1] - 10:12  <b>star</b> [1] - 86:21  <b>staring</b> [1] - 60:15  <b>start</b> [6] - 3:15, 44:9, 64:11, 75:8, 75:9, 84:6  <b>started</b> [3] - 37:24, 49:18, 86:1  <b>starting</b> [3] - 29:14, 91:10  <b>State</b> [11] - 20:10, 28:24, 40:23, 42:4, 52:9, 72:6, 87:17, 87:18, 89:1, 89:8, 92:4  <b>state</b> [1] - 22:21  <b>STATE</b> [1] - 1:1  <b>statements</b> [2] - 65:14, 65:24  <b>states</b> [5] - 29:1, 41:4, 48:3, 50:23, 66:8  <b>status</b> [5] - 13:7, 14:23, 15:4, 16:19, 55:16</p>	<p><b>statute</b> [2] - 13:17, 14:13  <b>stay</b> [2] - 29:10, 88:18  <b>steam</b> [22] - 3:22, 3:24, 4:2, 4:11, 5:23, 6:6, 7:8, 8:1, 8:14, 9:14, 10:16, 10:22, 10:24, 11:9, 11:24, 12:4, 12:22, 15:22, 16:15, 18:13, 18:17, 18:20  <b>Steam</b> [9] - 7:13, 7:16, 8:7, 8:11, 8:20, 9:1, 9:6, 9:10, 10:4  <b>STEGEMOELLER</b> [6] - 10:8, 16:13, 17:1, 17:11, 18:1, 18:4  <b>Stegemoeller</b> [3] - 4:5, 8:22, 10:6  <b>step</b> [2] - 56:7, 82:22  <b>steps</b> [4] - 29:6, 30:23, 44:8, 46:7  <b>Stewart</b> [2] - 52:14, 55:20  <b>STEWART</b> [6] - 27:19, 52:22, 56:4, 69:11, 74:23, 81:14  <b>stick</b> [1] - 32:17  <b>still</b> [4] - 69:4, 75:5, 89:1  <b>stopping</b> [1] - 85:14  <b>stories</b> [1] - 90:6  <b>storm</b> [25] - 20:8, 20:14, 20:18, 21:11, 21:12, 21:17, 22:7, 23:1, 23:8, 25:16, 25:23, 26:4, 26:12, 27:5, 27:11, 29:3, 29:7, 29:17, 29:21, 30:9, 30:14, 35:4, 53:22  <b>storm's</b> [1] - 35:19  <b>storms</b> [14] - 3:17, 20:1, 20:5, 20:9, 21:4, 22:7, 22:17, 25:13, 25:14, 26:23, 28:16, 33:6, 34:8, 35:8  <b>story</b> [1] - 59:19  <b>STOUT</b> [1] - 14:21  <b>streamline</b> [1] - 75:20  <b>Street</b> [1] - 16:7  <b>strengthens</b> [1] - 59:14  <b>stretched</b> [1] - 88:22  <b>strong</b> [2] - 34:15, 43:5  <b>stronger</b> [1] - 59:21  <b>struck</b> [1] - 73:2  <b>structural</b> [1] - 72:17</p>
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<p><b>structure</b> <sup>[1]</sup> - 16:9  <b>structured</b> <sup>[1]</sup> - 73:20  <b>studies</b> <sup>[1]</sup> - 66:6  <b>study</b> <sup>[3]</sup> - 3:24, 46:19, 71:20  <b>stuff</b> <sup>[3]</sup> - 73:16, 79:8, 83:16  <b>Subchapter</b> <sup>[1]</sup> - 2:11  <b>subject</b> <sup>[3]</sup> - 69:16, 69:23, 91:12  <b>subjects</b> <sup>[1]</sup> - 31:20  <b>submitted</b> <sup>[6]</sup> - 7:9, 21:1, 21:23, 78:9, 79:17, 79:22  <b>subsidiaries</b> <sup>[3]</sup> - 57:18, 72:20, 73:18  <b>substantive</b> <sup>[1]</sup> - 5:12  <b>successfully</b> <sup>[1]</sup> - 47:21  <b>sufficient</b> <sup>[2]</sup> - 10:19, 74:20  <b>suggest</b> <sup>[2]</sup> - 40:22, 47:23  <b>suggested</b> <sup>[1]</sup> - 72:15  <b>summarize</b> <sup>[1]</sup> - 4:12  <b>summarized</b> <sup>[2]</sup> - 5:15, 55:13  <b>summarizing</b> <sup>[1]</sup> - 6:24  <b>summary</b> <sup>[2]</sup> - 12:17, 70:18  <b>superior</b> <sup>[3]</sup> - 58:19, 60:6, 70:19  <b>supervised</b> <sup>[1]</sup> - 41:8  <b>Supervisor</b> <sup>[1]</sup> - 19:15  <b>support</b> <sup>[2]</sup> - 22:13, 22:24  <b>supported</b> <sup>[1]</sup> - 5:10  <b>Supporters</b> <sup>[1]</sup> - 7:11  <b>sur</b> <sup>[1]</sup> - 4:17  <b>sur-reply</b> <sup>[1]</sup> - 4:17  <b>surcharges</b> <sup>[1]</sup> - 7:23  <b>surrounding</b> <sup>[1]</sup> - 60:16  <b>survive</b> <sup>[1]</sup> - 62:21  <b>swerved</b> <sup>[1]</sup> - 34:12  <b>symmetrical</b> <sup>[1]</sup> - 58:22  <b>synopsis</b> <sup>[1]</sup> - 37:12  <b>system</b> <sup>[6]</sup> - 8:14, 10:11, 10:17, 18:20, 22:22, 24:16  <b>Systems</b> <sup>[1]</sup> - 23:11</p>	<p><b>targets</b> <sup>[5]</sup> - 67:9, 68:9, 68:11, 68:17, 69:5  <b>taxes</b> <sup>[3]</sup> - 5:7, 8:3, 53:23  <b>teaching</b> <sup>[1]</sup> - 89:20  <b>team</b> <sup>[2]</sup> - 89:9, 89:11  <b>technical</b> <sup>[1]</sup> - 91:11  <b>Tel</b> <sup>[1]</sup> - 48:15  <b>Telecom</b> <sup>[1]</sup> - 41:9  <b>telephone</b> <sup>[1]</sup> - 2:12  <b>temporary</b> <sup>[2]</sup> - 7:23, 45:18  <b>ten</b> <sup>[1]</sup> - 12:5  <b>Ten</b> <sup>[1]</sup> - 16:5  <b>term</b> <sup>[2]</sup> - 18:12, 18:14  <b>terms</b> <sup>[12]</sup> - 4:21, 5:18, 5:19, 5:24, 6:4, 7:1, 10:4, 11:6, 11:19, 30:18, 47:19, 74:21  <b>terrible</b> <sup>[1]</sup> - 24:13  <b>territories</b> <sup>[1]</sup> - 25:8  <b>territory</b> <sup>[2]</sup> - 2:18, 20:23  <b>test</b> <sup>[1]</sup> - 39:6  <b>testified</b> <sup>[2]</sup> - 13:3, 37:22  <b>testify</b> <sup>[1]</sup> - 37:14  <b>testimony</b> <sup>[2]</sup> - 13:20, 45:3  <b>themselves</b> <sup>[2]</sup> - 3:2, 32:15  <b>there'd</b> <sup>[1]</sup> - 81:8  <b>thereafter</b> <sup>[1]</sup> - 6:17  <b>thereby</b> <sup>[1]</sup> - 61:1  <b>Therefore</b> <sup>[1]</sup> - 7:21  <b>therefore</b> <sup>[3]</sup> - 41:20, 54:8, 55:11  <b>thereof</b> <sup>[1]</sup> - 39:15  <b>THERESA</b> <sup>[2]</sup> - 92:3, 92:12  <b>they've</b> <sup>[3]</sup> - 52:20, 66:19, 81:20  <b>thinking</b> <sup>[1]</sup> - 48:7  <b>thinks</b> <sup>[1]</sup> - 13:8  <b>third</b> <sup>[5]</sup> - 7:22, 10:21, 36:5, 36:7, 38:9  <b>third-year</b> <sup>[1]</sup> - 7:22  <b>thoroughly</b> <sup>[1]</sup> - 66:20  <b>three</b> <sup>[24]</sup> - 5:3, 5:4, 5:12, 7:10, 7:13, 8:24, 11:6, 15:2, 38:2, 40:21, 49:18, 53:4, 56:15, 56:23, 57:2, 57:16, 61:11, 61:17, 62:1, 62:20, 64:6, 68:9, 71:4, 78:19  <b>three-month</b> <sup>[1]</sup> - 53:4  <b>three-year</b> <sup>[4]</sup> - 7:13,</p>	<p>61:11, 62:1, 62:20  <b>throughout</b> <sup>[1]</sup> - 25:7  <b>Thunder</b> <sup>[1]</sup> - 33:11  <b>Thursday</b> <sup>[1]</sup> - 1:6  <b>Tickler</b> <sup>[1]</sup> - 2:15  <b>tighter</b> <sup>[1]</sup> - 43:24  <b>til</b> <sup>[1]</sup> - 15:10  <b>time-consuming</b> <sup>[1]</sup> - 46:6  <b>timely</b> <sup>[2]</sup> - 14:3, 24:24  <b>timing</b> <sup>[3]</sup> - 51:3, 76:6, 76:12  <b>tirelessly</b> <sup>[1]</sup> - 22:15  <b>Title</b> <sup>[1]</sup> - 2:10  <b>today</b> <sup>[21]</sup> - 2:6, 3:3, 3:15, 17:23, 42:10, 44:24, 46:1, 46:11, 46:19, 46:21, 48:14, 49:7, 56:8, 56:10, 57:4, 84:5, 85:15, 90:18, 91:2, 91:6, 91:7  <b>today's</b> <sup>[1]</sup> - 37:3  <b>together</b> <sup>[2]</sup> - 52:20, 88:8  <b>took</b> <sup>[4]</sup> - 21:4, 21:24, 33:10, 74:3  <b>tool</b> <sup>[2]</sup> - 16:1, 74:6  <b>top</b> <sup>[1]</sup> - 35:2  <b>totally</b> <sup>[1]</sup> - 72:2  <b>touch</b> <sup>[5]</sup> - 29:4, 58:2, 58:13, 64:6, 66:24  <b>touched</b> <sup>[1]</sup> - 43:3  <b>tough</b> <sup>[1]</sup> - 27:7  <b>towards</b> <sup>[1]</sup> - 69:7  <b>tower</b> <sup>[1]</sup> - 16:6  <b>track</b> <sup>[3]</sup> - 14:17, 33:17, 78:12  <b>tradeoff</b> <sup>[2]</sup> - 74:24, 76:4  <b>transaction</b> <sup>[1]</sup> - 51:12  <b>transactions</b> <sup>[3]</sup> - 40:18, 42:12, 44:11  <b>transcript</b> <sup>[1]</sup> - 92:7  <b>transmission</b> <sup>[1]</sup> - 83:13  <b>treatment</b> <sup>[2]</sup> - 69:20, 70:10  <b>tree</b> <sup>[2]</sup> - 22:13, 83:16  <b>trees</b> <sup>[1]</sup> - 34:15  <b>tremendous</b> <sup>[1]</sup> - 87:9  <b>trial</b> <sup>[2]</sup> - 6:17, 45:3  <b>tried</b> <sup>[1]</sup> - 72:8  <b>trimming</b> <sup>[3]</sup> - 34:16, 83:16  <b>tropical</b> <sup>[1]</sup> - 21:17  <b>trouble</b> <sup>[1]</sup> - 72:23  <b>troubled</b> <sup>[1]</sup> - 88:21  <b>true</b> <sup>[4]</sup> - 45:21, 48:11, 87:22, 92:6</p>	<p><b>true-up</b> <sup>[2]</sup> - 45:21, 48:11  <b>trust</b> <sup>[4]</sup> - 63:3, 63:13, 63:19, 64:1  <b>trust-based</b> <sup>[1]</sup> - 64:1  <b>try</b> <sup>[4]</sup> - 31:11, 67:14, 67:16, 75:18  <b>trying</b> <sup>[3]</sup> - 70:21, 74:6, 82:6  <b>turn</b> <sup>[4]</sup> - 7:3, 44:20, 54:8, 55:19  <b>turning</b> <sup>[1]</sup> - 65:1  <b>Turning</b> <sup>[1]</sup> - 65:18  <b>twice</b> <sup>[1]</sup> - 31:18  <b>two</b> <sup>[39]</sup> - 2:8, 4:11, 6:3, 13:11, 20:8, 28:16, 38:19, 40:21, 40:22, 42:17, 43:13, 43:22, 44:8, 46:13, 46:23, 49:9, 49:20, 51:10, 52:18, 55:5, 57:7, 58:20, 60:22, 64:15, 65:5, 65:13, 67:3, 67:15, 71:5, 81:5, 82:10, 83:24, 84:1, 85:14, 86:2, 90:5, 90:10  <b>Two</b> <sup>[1]</sup> - 22:19  <b>two-year</b> <sup>[1]</sup> - 67:3  <b>twofold</b> <sup>[1]</sup> - 43:17  <b>types</b> <sup>[1]</sup> - 79:17</p>	<p><b>units</b> <sup>[1]</sup> - 72:20  <b>universe</b> <sup>[1]</sup> - 90:2  <b>unless</b> <sup>[2]</sup> - 8:15, 15:13  <b>unlimited</b> <sup>[1]</sup> - 9:13  <b>unnecessary</b> <sup>[1]</sup> - 70:17  <b>unprecedented</b> <sup>[1]</sup> - 89:14  <b>unreasonable</b> <sup>[2]</sup> - 9:17, 81:16  <b>up</b> <sup>[38]</sup> - 5:22, 11:14, 12:12, 15:3, 15:10, 17:4, 17:23, 20:3, 20:22, 24:13, 24:19, 27:1, 27:4, 27:5, 27:20, 29:23, 31:20, 32:14, 34:1, 45:21, 47:14, 48:3, 48:11, 57:18, 58:4, 65:16, 71:19, 74:3, 76:13, 77:5, 78:17, 82:15, 85:8, 85:20, 85:23, 87:3, 90:24  <b>up-to-date</b> <sup>[1]</sup> - 15:3  <b>update</b> <sup>[2]</sup> - 14:23, 78:8  <b>updates</b> <sup>[1]</sup> - 15:2  <b>updating</b> <sup>[1]</sup> - 22:21  <b>upfront</b> <sup>[4]</sup> - 61:10, 61:20, 75:1, 75:12  <b>uptake</b> <sup>[1]</sup> - 63:11  <b>urge</b> <sup>[1]</sup> - 48:17  <b>utilities</b> <sup>[19]</sup> - 21:1, 21:9, 22:9, 22:21, 23:2, 23:6, 24:8, 24:12, 25:10, 26:1, 27:3, 27:8, 29:4, 30:14, 31:4, 31:17, 33:2, 34:19, 74:7  <b>Utility</b> <sup>[2]</sup> - 19:15, 52:14  <b>utility</b> <sup>[5]</sup> - 19:24, 22:3, 24:13, 72:7, 86:8  <b>utilize</b> <sup>[1]</sup> - 77:9  <b>utilized</b> <sup>[2]</sup> - 37:8, 40:23  <b>utmost</b> <sup>[1]</sup> - 88:16</p>
<b>T</b>			<b>U</b>	
<p><b>table</b> <sup>[1]</sup> - 6:24  <b>Tallmadge</b> <sup>[1]</sup> - 14:22  <b>target</b> <sup>[1]</sup> - 70:7</p>			<p><b>ultimately</b> <sup>[1]</sup> - 74:23  <b>uncertain</b> <sup>[1]</sup> - 74:8  <b>undefined</b> <sup>[1]</sup> - 80:5  <b>under</b> <sup>[14]</sup> - 2:21, 6:7, 9:11, 14:9, 14:13, 18:15, 21:9, 26:24, 41:9, 46:12, 47:3, 69:21, 78:7, 82:23  <b>under-forecast</b> <sup>[1]</sup> - 26:24  <b>under-spending</b> <sup>[1]</sup> - 78:7  <b>under-spent</b> <sup>[1]</sup> - 69:21  <b>underestimated</b> <sup>[1]</sup> - 21:15  <b>underground</b> <sup>[1]</sup> - 2:18  <b>understandable</b> <sup>[1]</sup> - 21:8  <b>understandings</b> <sup>[2]</sup> - 72:4, 72:12  <b>underway</b> <sup>[1]</sup> - 16:14  <b>unfortunately</b> <sup>[2]</sup> - 77:12, 90:21</p>	
			<b>V</b>	<p><b>Valley</b> <sup>[1]</sup> - 21:14  <b>valuable</b> <sup>[1]</sup> - 90:21  <b>value</b> <sup>[3]</sup> - 11:15, 17:18, 48:11  <b>variants</b> <sup>[1]</sup> - 42:17  <b>variety</b> <sup>[3]</sup> - 44:17, 46:14, 82:1  <b>various</b> <sup>[3]</sup> - 48:5,</p>

<p>48:15, 68:10  <b>vastly</b> [1] - 58:18  <b>vegetation</b> [5] - 34:9,  34:19, 53:16, 53:22,  54:23  <b>vein</b> [1] - 64:3  <b>velvet</b> [1] - 88:11  <b>verify</b> [1] - 65:8  <b>verifying</b> [1] - 63:20  <b>Verizon</b> [1] - 2:9  <b>versus</b> [3] - 60:4,  61:22, 75:3  <b>VI</b> [1] - 9:11  <b>view</b> [2] - 4:15, 79:1  <b>violations</b> [1] - 2:16  <b>vis</b> [2] - 9:24  <b>vis-a-vis</b> [1] - 9:24  <b>voice</b> [1] - 32:5  <b>vote</b> [4] - 17:23, 18:24,  83:24, 85:1  <b>vote's</b> [1] - 36:3  <b>voting</b> [1] - 3:2</p>	<p><b>week's</b> [1] - 55:24  <b>weigh</b> [1] - 79:6  <b>welcome</b> [1] - 15:18  <b>well-balanced</b> [1] -  87:4  <b>well-said</b> [1] - 87:5  <b>Westchester</b> [1] - 8:20  <b>whole</b> [3] - 65:13,  85:24, 90:2  <b>wide</b> [1] - 42:24  <b>Wiles</b> [1] - 36:16  <b>Wind</b> [1] - 66:4  <b>wind</b> [7] - 21:12,  57:24, 64:10, 65:18,  66:2, 66:5, 66:7  <b>winds</b> [2] - 21:16,  34:15  <b>wish</b> [2] - 88:23, 90:11  <b>wishes</b> [1] - 90:14  <b>witnesses</b> [1] - 13:2  <b>wondering</b> [1] - 31:10  <b>word</b> [3] - 17:10, 24:7,  87:7  <b>words</b> [4] - 11:13,  59:2, 79:1, 86:2  <b>workers</b> [1] - 22:11  <b>workforce</b> [1] - 55:2  <b>works</b> [1] - 48:19  <b>world</b> [1] - 77:11  <b>worry</b> [2] - 28:2, 34:22  <b>worse</b> [1] - 27:1  <b>worthy</b> [1] - 23:16  <b>wrestle</b> [1] - 38:1  <b>write</b> [1] - 81:18</p>	<p>15:14, 15:23, 16:3,  32:3, 32:9, 57:5,  60:22, 61:18, 62:11,  62:13, 68:9, 71:5,  71:23, 89:5, 89:15  <b>YORK</b> [1] - 1:1  <b>York</b> [25] - 1:9, 2:4,  2:10, 7:10, 7:11,  20:9, 20:12, 21:13,  23:12, 28:24, 31:19,  37:9, 40:23, 42:2,  42:4, 48:15, 52:8,  66:2, 66:7, 72:7,  87:18, 88:18, 89:1,  89:8, 92:4  <b>York's</b> [1] - 4:2  <b>young</b> [2] - 86:15,  88:3</p>
<b>W</b>		
<p><b>wait</b> [4] - 14:15, 29:7,  30:2, 73:5  <b>waiting</b> [1] - 30:3  <b>waiver</b> [1] - 2:10  <b>WARDEN</b> [2] - 30:12,  31:7  <b>Warden's</b> [1] - 30:10  <b>warrant</b> [1] - 11:2  <b>warranted</b> [2] - 59:9,  66:14  <b>wasting</b> [1] - 27:6  <b>watch</b> [1] - 88:11  <b>watching</b> [1] - 28:6  <b>Water</b> [1] - 19:16  <b>Wayne</b> [9] - 14:24,  36:13, 36:19, 45:2,  45:8, 46:14, 47:17,  49:8, 50:7  <b>ways</b> [2] - 61:3, 67:15  <b>weakness</b> [1] - 42:5  <b>wealth</b> [1] - 32:13  <b>weather</b> [8] - 20:4,  21:16, 32:7, 32:10,  32:20, 33:1, 33:13,  34:17  <b>Weather</b> [10] - 20:16,  20:21, 28:18, 28:22,  32:5, 32:14, 32:17,  33:20, 35:16, 36:1  <b>weatherman</b> [1] -  32:24  <b>week</b> [8] - 53:9, 55:22,  56:6, 57:6, 58:4,  58:11, 62:24, 64:15</p>	<b>Y</b>	<p><b>year</b> [42] - 5:2, 5:3,  6:20, 7:13, 7:16,  7:18, 7:22, 7:24,  11:22, 15:3, 16:14,  31:18, 38:21, 48:12,  53:4, 57:10, 57:14,  60:1, 60:4, 60:15,  61:8, 61:11, 61:21,  61:24, 62:1, 62:18,  62:20, 65:23, 66:9,  67:3, 67:9, 68:24,  69:13, 69:14, 69:16,  69:19, 70:14, 70:19,  75:7, 77:22, 79:11,  86:21  <b>Year</b> [4] - 8:14, 60:10,  60:24, 61:1  <b>year-end</b> [1] - 48:12  <b>Years</b> [3] - 60:11,  60:24, 61:7  <b>years</b> [20] - 5:3, 11:6,  11:8, 12:5, 12:8,</p>