

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Meeting of the Public Service Commission

Thursday, October 2, 2014
10:30 a.m.
Three Empire State Plaza
Agency Building 3, 19th Floor
Albany, New York

COMMISSIONERS:

AUDREY ZIBELMAN, Chair
DIANE X. BURMAN
GREGG C. SAYRE
PATRICIA L. ACAMPORA
GARRY BROWN

1 CHAIR ZIBELMAN: Good morning
2 everyone. I'd like to call the session of the
3 Public Service Commission to order.

4 Secretary Burgess are there any
5 changes to the agenda?

6 MS. BURGESS: Good morning Chair
7 and Commissioners there's two changes to the agenda
8 this morning.

9 The first is item 366 case
10 14-E-0104, Notice of Intent of Durst Development,
11 LLC to sub-meter electricity at 625 West 57th
12 Street, New York, New York. This is a confirming
13 order.

14 And the second is item 561 case
15 14-C-0182, which is a petition of Neustar, Inc. for
16 the North American Number Plan Administrator Relief
17 Plan for the 631 area code is being moved to the
18 regular agenda, renumbered, number 502.

19 CHAIR ZIBELMAN: Great. Thank
20 you. I'd just like to begin today with just a
21 brief comment with respect to the application of
22 Time Warner and Comcast for the merger and Comcast
23 extension of time for consideration.

24 So, just -- just so that everyone
25 is aware of this, is that there is a statutory

1 obligation under Federal Law that we would have
2 normally have had to -- to consider this -- this
3 transfer of ownership within a hundred and twenty
4 days.

5 Now, clearly, when these Federal
6 Laws were developed I'm sure they were thinking
7 about different types of transactions than one that
8 is as significant as -- as this one and -- and the
9 potential implications for the State of New York.
10 And with the nature of this transaction the fact
11 that we've had, I think over three thousand
12 comments to consider, we felt it was very critical
13 to make sure that we had both an opportunity to
14 look at the entire record. And, given the
15 importance of the transactions, a very lot of
16 complicated issues and that additional time to make
17 certain that the interest of all New Yorkers,
18 whether business, residential or institutional
19 companies were being adequately protected.

20 So, we requested and Comcast
21 agreed to an extension so that we would have
22 sufficient time to make certain that when we make a
23 decision that we were -- that we will be making is
24 that it's in the best interest of all of the people
25 of New York. So, that's sort of it on that.

1 I don't know if there are any other comments.

2 So with that, we're going to turn
3 then to the first item for discussion today, which
4 is the item 101, and that's the comprehensive
5 management and operations audit of National Grid's
6 U.S.A.'s New York Gas Companies. And, that's going
7 to be presented today by Jeremy Routhier-James, the
8 utility analyst at the Office of Accounting and
9 Finance, and John Scherer, his Deputy Director will
10 also be here and is available for questions.

11 So, Mr. Routhier-James, welcome
12 and I look forward to your presentation.

13 MR. ROUTHIER-JAMES: Thanks.
14 Good morning Chair and Commissioners. Item 101 is
15 an information item summarizing the findings and
16 recommendations from case 13-G-0009, a
17 comprehensive management and operations audit of
18 National Grid U.S.A.'s New York Gas Business.

19 I will discuss some of the more
20 significant findings and recommendations from this
21 audit. Next slide. In February 2013, pursuant to
22 Public Service Law section 66.19, the Commission
23 authorized the release of a request for proposal,
24 or RFP for an independent, third-party consultant
25 to conduct this audit. The audit focused on

1 also being presented to you today. After this
2 session, the final report will be issued publicly
3 along with the customer benefit analyses and
4 National Grid's comments. Pursuant to Public
5 Service Law section 66.19, National Grid will then
6 have thirty days to submit an implementation plan
7 for the thirty-one recommendations.

8 Once filed, the plan will be
9 submitted for public comment and will be reviewed
10 by staff. The plan will then be presented to the
11 Commission for approval or modification as
12 necessary. The plan will become enforceable once
13 it is approved by the Commission.

14 Now, I'd like to move on to the
15 consultant's findings on slide three.

16 Generally, Northstar found that
17 the New York Gas companies perform well from an
18 operations perspective. National Grid was found to
19 appropriately consider risk on its gas system and
20 its system planning processes. The Company was
21 found to successfully execute its existing
22 leak-prone pipe replacement and leak repair
23 programs.

24 However, some improvement
25 opportunities were recommended. Northstar found

1 that long-term planning at National Grid U.S.A. has
2 been primarily financial in nature and has not
3 addressed strategic matters. The Consultant
4 recommends that the Company prepare a true
5 strategic plan for its New York operations.

6 Similarly, Northstar found that
7 while National Grid has some well-developed system
8 planning processes, the Company does not have an
9 integrated system plan that explicitly addresses
10 both long-term system needs and infrastructure
11 replacements. The Consultant recommends that
12 National Grid develop such a plan and include all
13 identifiable projects over a five-year period.

14 Additionally, among Northstar's
15 thirty-one recommendations are enhancements to
16 project management procedures, improvements in
17 project estimating, tracker of worker productivity
18 and modifications to the Company's loaded
19 forecasting processes.

20 Despite the Company's generally
21 strong operational performance, Northstar concludes
22 that National Grid is challenged by a management
23 culture characterized as fraternal and focused on
24 good news management.

25 This culture manifests in two

1 major themes throughout the report. The first is
2 Corporate Governance; Northstar found that the
3 Company's organizational model is an improvement
4 over previous versions but is not yet fully meeting
5 the needs of New York's ratepayers.

6 Northstar also found that the
7 existing governance structure and service level
8 agreements do not adequately support the
9 organizational model.

10 The second theme is finance and
11 budgeting. Northstar found that the Company
12 struggles with the SAP software platform, present a
13 significant and very costly challenge.

14 Concurrently, National Grid is
15 attempting to remediate certain problems related to
16 internal controls and financial reporting.

17 First, I will discuss National
18 Grid's organizational model. In 2011, National
19 Grid reorganized into what the Company calls the
20 jurisdictional model. This model is pictured on
21 slide five. Under this model, the New York
22 Jurisdictional President is responsible for
23 communicating to management at National Grid USA
24 and National Grid PLC, the UK parent company, the
25 specific operating needs and requirements of the

1 utility. The Company functions through its service
2 company as a single, multi-state unregulated
3 utility. Northstar concludes that this arrangement
4 does not provide command and control authority over
5 core utility functions to the Jurisdictional
6 President.

7 To address this issue, Northstar
8 recommends that National Grid continue to evolve
9 the jurisdictional model to incorporate more direct
10 control over core utility functions. And during
11 the audit National Grid indicated that it was
12 planning to move in this direction.

13 Additionally, Northstar
14 recommends certain changes to the complement of the
15 Boards of Directors of National Grid USA and the
16 New York Gas Companies, including the addition of
17 an independent director.

18 Northstar believes more
19 independent representation will empower the Boards
20 to exercise more objective oversight of US and New
21 York operations. This improved oversight would
22 better support the jurisdictional model.

23 Northstar also recommends a
24 continued evolution of service level agreements or
25 SLAs. SLAs are internal agreements but are

1 conceptually similar to a contract the utility
2 might have with an outside vendor. Northstar
3 believes that SLAs, which more closely emulate
4 commercial agreements, would allow the
5 jurisdictional president to better control costs
6 and manage performance.

7 When National Grid acquired
8 Niagara Mohawk and the KeySpan Companies, each
9 Company had its own legacy software systems and
10 processes for functions such as financial, human
11 resources, supply chain and fleet.

12 National Grid USA decided to
13 consolidate many of these systems onto a modern
14 platform. The Company elected to implement SAP an
15 Enterprise Resource Planning Software, which is
16 widely used in the utility industry.

17 Since implementation National
18 Grid has struggled to stabilize the SAP platform.
19 The initial release of SAP went live on November
20 5th, 2012. And as you recall, Super Storm Sandy
21 made landfall in New York City one week earlier on
22 October 29th. Northstar found that the decision to
23 go live while the company was in storm recovery
24 mode contributed to National Grid's SAP
25 difficulties. This is because one of the primary

1 inputs into SAP is employees directly recording
2 their time. During the recovery from Sandy,
3 accurate timekeeping in this new system proved to
4 be a significant challenge.

5 Additionally, Northstar found
6 that the Company could have done a better job of
7 training its employees and testing the new system.

8 National Grid is not the only
9 utility to have difficulties with SAP
10 implementation but the Company did not reach out to
11 those other utilities for lessons learned.

12 Furthermore, National Grid's
13 build of SAP was particularly complex and the
14 Company employed an IS vendor with no US experience
15 to implement the platform. SAP instability became
16 apparent quickly as problems with reporting and
17 data quality manifested. Many of these problems,
18 which began in late 2012 continued during this
19 audit.

20 SAP instability was found to
21 permeate nearly every subject area of the audit
22 significantly impeding the Company's ability to
23 prepare financial reports, develop budgets and run
24 queries on productivity data.

25 National Grid has spent and

1 continues to spend an extraordinary amount of time,
2 effort and money to stabilize SAP. The total cost
3 sanctioned by National Grid USA for SAP
4 implementation in mid 2012 was three hundred and
5 eighty-four million dollars. Costs through March
6 of 2015 for SAP implementation and stabilization
7 are now estimated to reach nine hundred and
8 forty-five million dollars.

9 Please note that these figures
10 include capital costs and O&M expenses and
11 represent all of National Grid USA, not just New
12 York.

13 The National Grid PLC Board of
14 Directors has stated that all costs associated with
15 SAP stabilization will be held at the parent level
16 and will be borne by shareholders. To be clear,
17 the Company has indicated that it will not pass
18 stabilization costs on to ratepayers. That being
19 said, Northstar concludes that the true costs of
20 SAP are embedded in existing business practices and
21 can therefore be difficult to define and track.
22 Northstar therefore, recommends that National Grid
23 perform a study to identify and fully document the
24 SAP stabilization costs.

25 Closely related to the SAP

1 problems are issues involving finance and internal
2 controls. In January of this year, National Grid
3 informed the Department and the Consultant that the
4 Company's external auditor identified a material
5 weakness in financial reporting. The Company also
6 reported that the external auditor found
7 deficiencies, significant deficiencies and material
8 weaknesses in internal controls in prior years.
9 The prior year's findings were not previously
10 reported to the Department.

11 National Grid is currently
12 engaged in a program to remediate these problems,
13 which staff is monitoring closely. Terms such as
14 material weakness have specific meanings in the
15 financial world, financial auditing world, excuse
16 me a material weakness is the worst of the three
17 possible findings.

18 Northstar found that the material
19 weaknesses, which date back to the KeySpan
20 acquisition in 2006 were not resolved before the
21 implementation of SAP began and were therefore, not
22 addressed in the SAP design plans. This
23 exacerbated the existing problems.

24 Northstar concludes that National
25 Grid's internal audit function is ineffective.

1 Various internal audit reports mentioned the
2 material weakness issues, but these reports did not
3 fully appreciate their gravity. This was at least
4 in part due to National Grid's materiality
5 threshold for the purposes of internal audit being
6 at a PLC or global level. This means that a
7 problem, which might be quite significant for one
8 of our New York operating companies may not
9 register on the PLC radar.

10 To address this situation,
11 Northstar recommends that National Grid establish a
12 chief risk officer for the US organization. This
13 individual would be responsible for identifying and
14 mitigating risks to the US business.

15 Last slide. National Grid
16 provided written comments on the final report. The
17 comments were positive and indicate that National
18 Grid used the audit as a constructive exercise. In
19 its comments, the Company generally accepts
20 Northstar's recommendations and indicates that
21 National Grid is committed to making the necessary
22 modifications and improvements. In certain areas,
23 the Company is skeptical of Northstar's assessment
24 of the expected level of effort or cost of
25 implementing the recommendations. National Grid

1 was allowed to point out these areas of
2 disagreement in the customer benefit analyses,
3 which accompany the report.

4 As the implementation plan is
5 developed, staff will work with the Company to
6 ensure that appropriate steps are planned to meet
7 the intent of the recommendations and that
8 sufficient cost-tracking mechanisms are in place.

9 In response to Northstar's
10 criticism of the organizational model, National
11 Grid notes that the shift to a jurisdictional model
12 coincided with a number of significant weather
13 events, through which the Company operated reliable
14 gas networks and worked to assist affected
15 customers. The comments further state that the
16 jurisdictional model provides regulators with a
17 single point of contact, which facilitates a better
18 understanding of the regulatory perspective. This
19 enhances National Grid's ability to meet regulatory
20 expectations. Those improvements notwithstanding,
21 the Company acknowledges that more work needs to be
22 done to improve the organizational model.

23 So, to re -- reiterate following
24 this session, the final report, the customer
25 benefit analyses and National Grid's comments will

1 be issued by a secretary notice. Following the
2 release of the report, National Grid will have
3 thirty days to file its implementation plan, which
4 will then be submitted for public comment, reviewed
5 by staff and ultimately presented to you for
6 approval or modification.

7 A letter will be sent to National
8 Grid reminding them of the obligation to submit an
9 implementation plan and outlining the Commission's
10 expectations for the plan.

11 And before I close, I just wanted
12 to take a moment to thank the staff team that
13 worked on this audit. Management audits can be a
14 significant resource requirement for staff and the
15 efforts of the folks who worked on this audit are
16 definitely appreciated.

17 So, we would now be happy to
18 answer any questions you may have.

19 CHAIR ZIBELMAN: Thank you,
20 and -- and Jeremy great job in putting what I know
21 is I think over a seven hundred page report into a
22 really great summary. And I agree with you the
23 staff has done a great job and also I particularly
24 appreciate the work of Northstar in doing the work.
25 It's a -- it's credibly comprehensive. My mic is

1 wrong. It's an incredibly comprehensive audit.

2 And -- and I think we all
3 profited from -- from reviewing it. To me, and I
4 know we'll have a chance to look at this, the
5 things that jump out are really the issues around
6 that we all understand that there's a value in
7 having companies like National Grid that are large
8 interstate companies and we can profit from the
9 ability to have these companies to provide acumen
10 from experiences in other jurisdictions, as well as
11 other countries in terms of making sure that the
12 service to New Yorkers is at the highest quality.
13 And, as well, as what National Grid pointed out is
14 the opportunity to gain synergies.

15 But, unless these -- unless the
16 organization is structured well, and I think that
17 is a key point in terms of the findings of the
18 audit, that the potential benefits of these
19 synergies can be lost because you can lose focus on
20 the jurisdictions over which we are -- we are most
21 concerned, which is of course New York. And, that
22 you can end up in a -- either inadvertently or
23 because you don't have the right structures in
24 place imposing costs on New Yorkers that really
25 belong in other jurisdictions.

1 And, I think that the chief
2 recommendations of the audits around getting better
3 structure to ensure that this doesn't occur would
4 be incredibly important to this commission, so that
5 we have the assurances and that would apply to any
6 jurisdictional authority in which there are shared
7 enterprises.

8 And, so, I think that's -- that's
9 really important. The other is, I think and I
10 appreciated the recommendations around structure.
11 I think we all know that, you know -- you know it's
12 difficult sometimes to challenge someone if that
13 person happens to be your boss. And that
14 therefore, in an organization like this where you
15 have to frequently challenge people who are either
16 your colleagues or your bosses, it could be very
17 difficult for a jurisdictional president. And so
18 having an independent structure with contracts and
19 the potential of having independent board members
20 who have no fidelity other than to the New York
21 jurisdiction, I think were very key
22 recommendations.

23 And I'm going to be looking
24 forward to seeing National Grid's response to that
25 because I think all of these changes are going to

1 be essential for us to have confidence.

2 And in terms of the financial
3 reporting and the SAP, I know that this is
4 something that the Company's been struggling with.

5 It's been a huge challenge for
6 them, clearly it's of major concern to us and
7 something that we'll need to continue to watch. I
8 appreciate the fact that National Grid has
9 volunteered, that any overruns in terms of the SAP
10 that they didn't anticipate would not be borne by
11 ratepayers, which is totally appropriate. We
12 wouldn't expect anything else. But we will clearly
13 have to look at this issue. I know Doris and John
14 have already started thinking about, you know, how
15 do we monitor this. It -- when and in fact, rate
16 cases or procedures are in front of this, how do we
17 make certain that we're not incurring costs that we
18 should not be incurring. And clearly, how we're
19 going to have to work through some of these
20 financial reporting issues, which will be difficult
21 both for the Company and for this Commission if we
22 have rate proceedings in front of this.

23 So I -- I really do appreciate
24 what the audit has done. I appreciate the fact
25 that Grid has looked at this and said, yes we

1 agree. I am looking forward to their responses and
2 the implementation plan. And I think that
3 certainly if any -- anyone wants to kind of wonder
4 why we do these audits, I think this work really
5 demonstrates the huge value for the ability for
6 this agency to look into what's happening in
7 organizations outside of rate cases and find areas
8 with weakness, so that we can look at areas of
9 improvement.

10 And, I would expect that we will
11 take the learnings out of this audit and apply it
12 to other companies as well, because it's -- it will
13 just make us all better. So, I appreciate the
14 staff's work, I think its excellent work. And I'll
15 open it up for any other comments at this time.

16 COMMISSIONER BROWN: I just want
17 to -- this -- you know the Company's made continual
18 improvements over the last number of years and
19 becoming, for the lack of a better term, more New
20 York centric about focusing on New York.

21 They've done some wonderful work
22 in terms of storm response over that period, but
23 this audit kind of highlights still some of the
24 weaknesses in the structure and some of the
25 improvements they could make to really get that

1 focus where we need it to be.

2 I don't want, and I'm -- I'm
3 happy that this has not turned into any sort of
4 contentious debate about what needs to happen. In
5 fact, I think they viewed this audit as a tool, and
6 hopefully they can implement the tool and -- and
7 continually to improve from -- from maybe where we
8 were several years ago where we had some serious
9 concerns.

10 CHAIR ZIBELMAN: Ms. Acampora?

11 COMMISSIONER ACAMPORA: John, the
12 fact that we have now multiple utilities in our
13 State that are foreign-owned and we always seem to
14 come upon that governance issue always seem to
15 stand out. Have we made any comparisons as to all
16 these companies and the Government -- the
17 governance issue as to trying to set forth, you
18 know, a policy that, you know, we can look at and
19 see rather than like a piecemeal of the various
20 companies?

21 MR. SCHERER: We do have a -- a
22 number of corporate structures in -- in practice
23 here in New York. And it -- and it is difficult to
24 compare them. There is no one size fits all
25 answer. You know, part of the process we -- we

1 implement here is to seek out efficiencies.

2 And, as the Chair pointed out,
3 there are synergistic effects of
4 centrally-operating companies in -- in multiple
5 jurisdictions. But there's a fine line and a
6 delicate balance that has to be maintained between
7 achieving those synergies and -- and losing focus
8 on the New York operations, which is our -- our key
9 focus. I think the two most directly comparable
10 enterprises are the National Grid Companies and the
11 Iberdrola Companies.

12 We're -- we're continually coming
13 up with similar parallel findings in each of these
14 audits and -- and National Grid has been very
15 receptive in their electric audit to making
16 changes. And, I think this audit is just taking it
17 one step further as a result of some structural
18 elements that were found during the audit. I think
19 the auditors did conclude that the current
20 structure of National Grid works very well
21 primarily because of the people that are in place
22 and their focus.

23 This is trying to create a
24 corporate structure that will maintain the
25 durability of that focus over the long haul and

1 empower the people that are there to focus on our
2 concerns here in New York.

3 COMMISSIONER ACAMPORA: And in --
4 in the recommendation, Jeremy, you mentioned a
5 position of a Chief --

6 CHAIR ZIBELMAN: -- Risk.

7 COMMISSIONER ACAMPORA: -- some
8 kind of a Chief Risk Officer.

9 Do other companies have such a
10 position,

11 MR. ROUTHIER-JAMES: I'm not
12 certain.

13 CHAIR ZIBELMAN: I think most
14 companies today have Chief Risk Officers.

15 MR. SCHERER: Enterprise Risk
16 Management is a key audit finding, it was a key
17 audit finding in the Con Ed management audit.

18 COMMISSIONER ACAMPORA: Right.

19 MR. SCHERER: And Con Ed having a
20 different corporate structure, seems to be more
21 focused on New York as they're primarily a New York
22 Company. But yes, there are risk officers. The
23 concern here was their risk officer was up the
24 corporate chain a little bit more and what was
25 material to the larger corporation may not

1 register -- a New York only issue may not register
2 at that level.

3 COMMISSIONER ACAMPORA: Right.

4 MR. SCHERER: So it's bringing it
5 down to a local level. Yes, you're -- you're
6 negating some of the synergistic effects of doing
7 that work at the higher level, but the auditors
8 concluded it was appropriate and important to focus
9 on New York.

10 COMMISSIONER ACAMPORA: Yeah, I
11 think you know that that's a pretty good point with
12 regard to that matter. Great job, really.

13 MR. ROUTHIER-JAMES: Thank you.

14 CHAIR ZIBELMAN: Commissioner
15 Sayre.

16 COMMISSIONER SAYRE: I'd like to
17 focus just for a minute on the corporate structure
18 issue.

19 I'm very glad to see Grid's
20 response that more work needs to be done on the
21 jurisdictional model. I've had some experience
22 with matrix management and dotted-line reporting
23 and I'm personally not a very big fan of it. When
24 an employee who has some managerial discretion
25 decides what to focus on, you can expect that the

1 typical employee will follow the priorities of the
2 solid-line reporting arrangement and strive to
3 meet the needs of the straight-line manager, who is
4 primarily responsible for that employee's
5 performance and salary review.

6 So, what that means is that the
7 dotted-line relationship, which is the New York
8 control here in Grid's structure is secondary and
9 is subject to failure.

10 Now, Grid in my view, has been
11 blessed with a strong state president who was able
12 to get things done, possibly by sheer force of
13 will. But that's a function of the individual and
14 not of the reporting structure, so I look forward
15 to see some changes in that.

16 CHAIR ZIBELMAN: Commissioner
17 Burman.

18 COMMISSIONER BURMAN: Thank you.
19 First Jeremy, I think this was your first time
20 before us?

21 MR. ROUTHIER-JAMES: Yes, it was.

22 COMMISSIONER BURMAN: Job well
23 done.

24 MR. ROUTHIER-JAMES: Thank you.

25 COMMISSIONER BURMAN: This was a

1 successful comprehensive management and operations
2 audit of National Grid's Natural Gas Companies.

3 And, this audit focused on
4 program, project and system planning, operational
5 management in governance efficiencies. It also
6 looked at internal controls and risk management
7 efforts. And I applaud the Company embracing at
8 this point the goal of the audit, which is to
9 identify opportunities to improve New York Gas
10 Company's construction program planning and
11 operational efficiencies.

12 The importance of management and
13 operations audits of New York utilities needs to be
14 stated. It's very helpful that we are now really
15 focusing on this. It is a good forward-looking way
16 of looking at what we can do to improve the
17 companies. And this was highlighted by the
18 Governor and the Legislature who authorized the
19 Commission to direct utilities to comply with
20 recommendations made pursuant to these management
21 and operation audits.

22 So, I think that this is a very,
23 very important tool that we have and we are by
24 this -- looks like we have done a very good job of
25 working collaboratively and also in being very

1 blunt and being able to get to the heart of the
2 matter and -- and look at how to improve things.

3 Staff should be commended for
4 that. Doris your staff and I know other offices
5 were also involved, did a very good job and should
6 be commended for carrying out what is to me a very
7 comprehensive audit and this was to help ensure
8 that utilities are properly running their
9 operations and doing so with the most effective
10 tools that we have available to us. The goal of
11 the audit seems to me that it captured what we
12 strived to do, which is to ensure that customers
13 are provided with safe and reliable service at just
14 and reasonable rates.

15 The hard work is not done yet,
16 though. Now, the next phase, which is also
17 statutorily given to us and -- and I applaud that,
18 is that after the -- the final independent audit
19 report is released there's thirty days to file an
20 implementation plan.

21 And, then, to actually implement
22 it after the Commission votes on that. I look
23 forward to that next phase and to the same
24 drilling-down that's been done to make sure that
25 the recommendations are strategically implemented

1 for the most effective efficiencies, which is what
2 the audits are supposed to highlight. So, and I
3 think it's a very, very good job, so again, well
4 done.

5 CHAIR ZIBELMAN: Thank you.

6 So, just to -- to close on this
7 and I want to make certain that we, you know, we
8 make -- be clear what the audit did find and what
9 it didn't find.

10 What the audit found is that the
11 Company operates -- has operated well. And that
12 the structural challenges in terms of moving to a
13 jurisdictional entity are areas for improvement and
14 the strength of the management team, quite frankly
15 that has made it work well is -- is Commissioner
16 Sayre pointed out a very -- a strong president.

17 But what's important is is that
18 we institutionalize these capabilities in such a
19 way as to make sure that from our perspective the
20 needs as Commissioner Burman pointed out of
21 consumers in New York are -- are being met and I --
22 what I'm looking forward to is these implementation
23 plans. I think we would like to review them. We
24 are anticipating, based on the comments that the
25 Company has made that they agree that these --

1 these recommended changes are good for them, as
2 well as good for their customers. And as I think
3 we all are appreciative of the fact that this has
4 not become a contentious matter, but rather has
5 demonstrated the -- the strength of doing these
6 types of audits and the benefit that they could
7 provide for -- for everyone -- for both the utility
8 and for their customers.

9 So, with that, I think we'll just
10 move on to the next statement but I appreciate the
11 Commissioners' comments and reflections on these
12 issues.

13 I do want to point out, before
14 the two of you leave. John, I think Commissioner
15 Acampora's observations is something we should take
16 account of. I think it would be helpful for us to
17 take a look at what the recommendation changes here
18 in terms of structure and see how they're being
19 used in other organizations in the State and see if
20 we can come up with the best practices that we can
21 then apply across the board.

22 MR. SCHERER: Will do.

23 CHAIR ZIBELMAN: Thank you. The
24 next item on the agenda is the -- the item 501.

25 Somebody tried to make this print

1 bigger, but now I can't read it because it's too
2 big. Item 501, it's the proceeding to examine
3 issues related to a universal service fund. Chief
4 Administrative Law Judge Elizabeth Liebschultz is
5 going to be presenting that today. Hello Libby.

6 And this is for information only
7 and Commissioner Sayre is recusing himself.

8 MS. LIEBSCHUTZ: Actually, this
9 is for a vote.

10 CHAIR ZIBELMAN: This is for a
11 vote, but --.

12 MS. LIEBSCHUTZ: Yes,
13 Commissioner Sayre is -- has recused himself.

14 CHAIR ZIBELMAN: See, the print
15 was too low.

16 MS. LIEBSCHUTZ: Thank you,
17 Chair.

18 Good morning Commissioners.

19 You -- you have before you a
20 draft order on which we will ask you to vote that
21 implements originating access-charge reform.

22 This follows up on your action in
23 January of this year, when you issued an order to
24 show cause why originating intrastate access
25 charges should not be phased out over a seven-year

1 period. At which point carriers would simply bill
2 their own customers and keep that revenue without
3 the exchange of access-charge revenues.

4 That action would have paralleled
5 what is currently under way with respect to
6 terminating intrastate access charges, where we are
7 in the middle of a seven-year phase down of those
8 charges as has been ordered by the Federal
9 Communications Commission.

10 Recall that these access charges
11 are a wholesale charge that is paid by
12 intra-exchange companies to local carriers for
13 access to the customer who has originated a
14 intrastate long-distance call or received such a
15 call.

16 At the time of the Order to Show
17 Cause in January, I was presenting on behalf of
18 advisory staff, our recommendation that you take
19 this action as an important step to foster the
20 competitive market for telecommunications in New
21 York State.

22 It is widely accepted that
23 current access charges do not accurately reflect
24 the cost of the service, but rather represent an
25 inherent subsidy of local telephone costs by

1 long-distance charges.

2 By moving charges closer to their
3 actual costs and making any subsidies transparent,
4 you improve the competitive market in the State and
5 move closer to a level playing-field where no
6 participant is receiving revenues at the expense of
7 another market participant.

8 The Order before you implements
9 such access-charge reform, although at a somewhat
10 reduced scale from what was proposed in the Order
11 to Show Cause in January.

12 The Order to Show Cause was
13 issued and put out for comments, which came in in
14 February with reply comments in March of this year.
15 Those comments raised some important issues, which
16 are factored into the recommendation that's before
17 you today.

18 Following receipt of those
19 comments a fairly wide range of carriers came in
20 with an alternative compromise proposal, as we call
21 it in this order, which was filed in June of this
22 year. That proposal was put out for further
23 comment and replies and that process was complete
24 in July. We've considered those comments, both the
25 initial round and those that came in on the

1 compromise proposal. And based on those we
2 recommend that you accept this alternative
3 compromise proposal and adopt its terms. It
4 reflects the agreement of a wide range of carriers,
5 including Verizon and Frontier, the small incumbent
6 carriers in the State and some competitive carriers
7 that have a significant presence in the State.

8 Consistent with that proposal the
9 draft order before you reduces intrastate
10 originating access charges to a level at parity
11 with interstate access charges, rather than all the
12 way down to zero.

13 This would be accomplished in a
14 two-step process with the original reductions to
15 reduce charges essentially halfway to the goal in
16 January of 2015 and the second step taking charges
17 down to the interstate level in January of 2016.

18 By then those charges would be at
19 parity both with interstate access charges and with
20 the access charges that have been established for
21 voice-over-internet protocol, or VoIP traffic.

22 One of the factors that counsels
23 in favor of this proposal was the arbitrage issue
24 that was raised in many of the comments from the
25 carriers. So long as interstate and intrastate

1 access charges are at different levels, there is an
2 incentive for carriers to engage in inappropriate
3 arbitrage where they re-route or reclassify calls
4 and essentially play games with how they
5 characterize calls, so that they can take advantage
6 of the different rates for the different types of
7 charges.

8 Another factor that we weighed in
9 favor of recommending this proposal is the
10 impending sunset of the State Universal Service
11 Fund at the end of 2016.

12 The Commission in establishing
13 the fund when it did, committed itself to
14 revisiting the need for and structure of the fund
15 before it expires in order to determine whether to
16 establish a successor or a continuation of the fund
17 or -- or to let it -- end of its own accord.

18 We thought at this time it made
19 sense to limit the phase down of access charges to
20 align that term with the current term of the State
21 Universal Service Fund. That allows the Commission
22 to consider further recovery of access charge
23 revenues in conjunction with your deliberations on
24 the future of the State Universal Service Fund.

25 The primary impact of -- of

1 today's action would be on the small-rural-
2 incumbent telephone companies. They have
3 participated as a group in this case calling
4 themselves the NYSTA smaller ILECs. They are
5 thirty-eight rural independent companies in the
6 State. The order before you would make this action
7 revenue neutral as to those companies. So for the
8 lost access-charge revenue that they would
9 experience, they will be entitled to seek increases
10 in their basic residential service rate, up to a
11 level of the benchmark rate that has been
12 established in the State at twenty-three dollars.

13 For those carriers whose basic
14 residential rate is already at the State benchmark
15 rate, they will be able to seek further
16 supplementation of their revenues through a claim
17 on the State Universal Service Fund. This will
18 require them to come here with a full rate case in
19 which staff will audit their costs and examine
20 their earnings and the Commission would then decide
21 whether the carrier was entitled to relief from the
22 State Universal Service Fund in order to continue
23 to provide service.

24 Staff has done an analysis, which
25 was presented to the Commission last year in

1 Order would bring New York into line with the
2 twenty-two other states that have reduced their
3 intrastate access charges to the interstate level,
4 and thus help make for consistency on a national
5 level impacting many of these carriers who do
6 operate across the country. That concludes my
7 presentation. I'm happy to answer any questions
8 you have and Chad Hume, to my right, is also
9 available for questions, as is Steve Sokal way to
10 our right.

11 CHAIR ZIBELMAN: Thank you Libby
12 for a very lucid explanation of -- of really
13 complex issues, so I appreciate that. Just as a --
14 just for a matter of record, I know when we started
15 this proceeding last year, one of the things that
16 we were hoping but apparently has not happened is
17 that the FCC would act on this issue.

18 Is there anything in the future
19 that we're anticipating, some activity out of
20 Washington?

21 MR. HUME: I can't see that in
22 the near future. We haven't gotten any kind of
23 signaling that the FCC is intending to move forward
24 any further on the -- on the reform that they've
25 already done.

1 CHAIR ZIBELMAN: Okay. Thank
2 you. I know that Chairman Wheeler has been
3 speaking recently about the importance of fostering
4 competition in telecom but also addressing some of
5 the challenges. So, hopefully with Commissioner
6 Sayre's, even though he's recused from this case,
7 activity at NARUC we can push this issue, right?

8 MR. SAYRE: Yes.

9 CHAIR ZIBELMAN: But, in -- in
10 any event, you know, we -- we are concerned about
11 competition. We're concerned about subsidies. We
12 recognize, of course that this is a -- there are
13 some challenges in telecom associated with this
14 transference from standard line service, to
15 wireless VoIP and all the other technologies. And
16 that presents challenges to the ILECss. So having
17 the Universal Service Fund available as we think
18 about one, fostering competition, where competition
19 is there and then addressing challenges that they
20 have in terms of maintaining costs and -- and
21 meeting service requirements when there's -- when
22 there's so much migration away. I think, you know
23 this -- this accommodates it and acting now will
24 allow us to make sure that the service fund is
25 available to meet these needs.

1 So, I think this is, you know,
2 from my perspective it's appropriate action.

3 Clearly, these issues never go
4 away and I would fully expect, if circumstances
5 change and that the alternative proposal, which
6 seems to be very sensible to me today, appears to
7 be insufficient that we have -- the staff will
8 bring it back or we could bring it back on our own
9 motion to change things if facts prove out that
10 maybe we should have gone a different direction,
11 maybe even accelerated this even more.

12 So, with that, you know I would
13 certainly prepare to vote in favor of the
14 recommended decision. Thank you.

15 CHAIR ZIBELMAN: Commissioner
16 Brown, Commissioner Acampora, Commissioner Burman?

17 COMMISSIONER BURMAN: Thank you.
18 I just wanted to echo that I agree with your
19 statements and I'm glad to see the reforms that
20 were advocated by staff in this phase down
21 happening. And I look forward to continued
22 dialogue on further phase down, if necessary.

23 CHAIR ZIBELMAN: Thank you. So
24 we'll -- we will take a vote. All those in favor
25 of the recommendation to order intrastate

1 originating access charges to be reduced to the
2 interstate level in two steps as proposed in the
3 recommended decision, please indicate by saying
4 Aye.

5 COMMISSIONERS: Aye.

6 CHAIR ZIBELMAN: Opposed?

7 Hearing no opposition, there being no opposition
8 the recommendation is adopted and for the record
9 Commissioner Sayre is recused from this proceeding.

10 So, the next item for discussion
11 is item 302, and this is a petition of New Star for
12 the approval of M.P.A. Relief Plan for the 631 area
13 code. And Dave Kitchen, our Utility Engineer in
14 the Office of Telecom will be presenting this and
15 Ben Wiles who is the Administrative Law Judge on
16 this matter is also available for questions.

17 Dave, welcome to the Commission
18 and please proceed.

19 MR. KITCHEN: In a letter dated
20 May 7th of this year, New Star Incorporated, which
21 is a current North American Numbering Plan
22 Administrator informed staff and the Commission
23 that the 631 -- pending exhaust of the 631 area
24 code, which serves Suffolk County. And in the same
25 letter they also updated a previous petition for

1 relief that they filed in 2001.

2 That petition became unnecessary,
3 and was abandoned when we developed and implemented
4 conservation and reclamation measures, therefore
5 moving the exhaust date out to now.

6 The current projected exhaust
7 date is the first quarter of 2016, which gives us a
8 little over a year to implement relief from this
9 point, pending Commission action, whenever you
10 choose to take it.

11 Staff reviewed the petition and,
12 you know, examined it, developed alternatives
13 for -- for relief. The only really available ones
14 were included in the petition was a geographic
15 split that was dividing the county into a very
16 small area and a very large area, or distributed
17 service overlay.

18 Staff released a white paper
19 detailing these -- these options and there was a
20 notice seeking public comment issued in early June.

21 The comment period ran through
22 the 31st of July. Public information sessions and
23 public statement hearings were held on July 15th
24 and 16th by Judge Wiles and we got a total of
25 thirteen statements taken at four hearings, and

1 seventeen other comments from -- by other means.

2 Early on in the process, I
3 believe in the middle of June, letters and enclosed
4 fact sheets to every single elected -- elected
5 member of the State Legislature from Suffolk County
6 were sent and we received replies from none of
7 them.

8 We did not get a lot of public
9 comment, but the technical review of the situation
10 indicates that the geographics don't -- lone
11 geographic split that's available, is not
12 technically feasible or desirable in any way. And
13 review of the case record indicates that one of the
14 comments that we did receive from the public are
15 overwhelmingly in favor of the overlay.

16 This is not a complex issue in
17 terms of the overall North American Numbering Plan,
18 area code relief happens frequently. It's very
19 common and very simple. It doesn't happen very
20 often in New York because we've always sort of been
21 out in front with conservation and reclamation, but
22 every once in a while it happens.

23 And all in all staff's
24 recommendation is for an overlay, there's -- of
25 course all we can do is recommend, just recommend

1 something. But that is our recommendation and we
2 are hopefully prepared to answer any questions you
3 may have.

4 CHAIR ZIBELMAN: Thanks, David.
5 And so I think that in -- in looking at this from
6 the perspective of we have to address these issues
7 when we run out of numbering. And, I appreciate
8 the fact that we are aggressive in the State and
9 looking at reclamation and other vehicles, but it
10 does happen.

11 There are, obviously different
12 options available and it's important that the
13 public be -- be aware of them. I think that at
14 this stage, even though we did have hearings and we
15 sent the letters, we want to make certain that
16 before we implement this, at least I would like to
17 make certain, that we have a further opportunity to
18 submit -- to ascertain that people are aware of the
19 change and they have an opportunity to comment to
20 us and that there are no surprises to the affected
21 public that these changes are occurring.

22 So what I -- I would like to do
23 is have -- is propose that we not vote on this
24 today, and that -- and I think, you know, we -- we
25 direct the Secretary to issue another notice

1 And I'd like to just start off to see if there are
2 any comments from any of the Commissioners on the
3 consent agenda.

4 Commissioner Burman?

5 COMMISSIONER BURMAN: Thank you.

6 I have four items that I want to discuss just to
7 pace everyone.

8 The first is item 161, this is
9 the matter of revising the 16 NYCRR Gas Safety
10 Regulations for consistent application of more
11 stringent Federal gas safety standards. This is
12 something that I think is very important, and we
13 are by our actions today going to be confirming the
14 one commissioner order that allows us to consider
15 revising the Gas Safety Regulations to make them at
16 least as stringent as the Federal rules.

17 And I think that's very important
18 for us to do and to hear from folks that are
19 affected. And it doesn't just affect the gas
20 utilities, but it also affects professional
21 plumbers and local governments and building owners.
22 And, I'm sure others who we may not be thinking of.

23 So, I think that what I'm happy
24 to see is that this has been noticed and we are
25 going to be receiving comments to be filed with the

1 Secretary by November 10th.

2 But also a second notice was
3 issued, a Notice of Stakeholder Conferences that
4 will be held -- one will be held in the New York --
5 New York City, October 21st and the other I believe
6 will be held in Albany, October 28th. And I'm
7 looking forward to broad discussions on this and
8 looking at how we do this and making sure that we
9 have regulatory certainty and understand the
10 applications and -- that may happen.

11 So, I think this is very good
12 that we're doing this and the outreach is -- is
13 important and I know staff has been working on that
14 and I applaud their efforts with that, so thank
15 you.

16 Item 362, which is the Recharge
17 New York item. I just really wanted to make a
18 statement that I know that customers participating
19 in the Recharge New York Program are not going to
20 directly see a change in their service or rates as
21 a result of this tariff change. But what's very
22 important is that this decision today is going to
23 enable NYPA and the utilities to better administer
24 the program. And I think the increased
25 efficiencies in the administration ultimately

1 benefits the customers in the long run and I very
2 much support this decision in looking at trying to
3 help streamline the administration of the program.

4 And item 363, which is a waiver
5 of RG&E tariff. This holding as I look at it
6 really does remove a potential obstruction in
7 innovation and distributed generation
8 installations, by allowing a customer to install
9 net metering to also use emergency generation. And
10 I also think this flexibility that's here in this
11 order is very important, helps with the net
12 metering programs in general and also promotes
13 renewable generation in a very logical way. And I
14 look forward to continued discussions on these
15 items of interest with distributed generation.

16 The next is item 366, which would
17 be confirming a one commissioner order allowing
18 Dierks Development to sub-meter electricity. And I
19 just really wanted to focus on it and I'm
20 supportive of the item and I think it's important
21 that it gets approved and voted on today.

22 But one of the concerns I have,
23 which is a potential unintended consequence and
24 submetering regulations are -- are difficult and
25 we've been very good at streamlining and working

1 with the affected folks on making sure that the
2 application of the regulations are clearly
3 understood. And, we have been historically very
4 focused on how do we make sure that if there are
5 un -- unintended consequences that we work through
6 that and fix them and clarify it because regulatory
7 certainty is very important.

8 And the -- the thing that struck
9 me was that I think it's just a matter of and I'm
10 hoping that it's a matter of just working through
11 how to do this, but. On page four of the order the
12 sentence stated to be clear, if and when any sub
13 meterer who received Commission authorization to
14 sub meter prior to October 1st, 2014, replaces any
15 sub metering equipment in the future, the sub
16 meterer must use Commission-approved equipment as
17 required by the regs. And I'm just flagging what I
18 think is happening in the industry is there are
19 already in place sub-metering systems. And the
20 regulations do speak, when we talk about service
21 termination and our December 2012 Commission Memo
22 and Resolution also speaks about systems not
23 equipment. And what's very good is when there is a
24 problem with a meter equipment, not the whole
25 system that the building owners, the landlords get

1 that replaced and repaired. But you can't just
2 take out one meter from the system and put in a new
3 and improved Commission-authorized meter because to
4 do that just doesn't work right now with the
5 technology.

6 So you'd have to replace the
7 entire system if you were going to do that. And I
8 think it's just a technical flaw, but what I don't
9 want to have happen is people to either decide that
10 they're not going to repair and replace one or two,
11 or whatever equipment because they're in fear that
12 they have to replace the whole system to be in
13 compliance with the regulations.

14 And, so, I -- I think that this
15 is just making sure that we are not doing anything
16 different from what we intended in this. So I just
17 thought I'd flag it for you.

18 CHAIR ZIBELMAN: Any other
19 comments, Ms. Acampora? Mr. Sayre?

20 MR. SAYRE: No.

21 CHAIR ZIBELMAN: So, first of all
22 thank you for your comments. And one is, I just do
23 want to reflect on the fact that the item three --
24 363, which relates to the change for the use of
25 emergency generation.

1 I'm appreciative of the fact
2 that -- that we're making this change. We're doing
3 this waiver. I think that as we move forward with
4 REV, we are going to be looking more really
5 system-wide and looking at all these types of
6 tariffs that might have been sensible when we
7 crafted them, but may need to be changed as we
8 start rethinking and looking at distributed energy
9 resources in a much more, sort of significant way
10 as being integral of how we operate the system.

11 We don't want to inadvertently
12 impose costs that we don't need to do technically
13 or -- or actually would make the system actually
14 not operate as well. So, I'm appreciative of
15 that -- of your recognition of that fact. In terms
16 of the -- the one Commissioner order concerning the
17 sub metering, my thinking is, is like yours, I
18 think that we don't want to inadvertently send a
19 signal that we don't intend to -- to send.

20 And so Judge -- Judge -- Ms.
21 Harriman could you do -- would you take this back
22 and think about how you could put something forward
23 to make sure we can get a clarification of that
24 regulation.

25 I mean really the intent is this,

1 when somebody has to change out a particular meter
2 that was installed before October 1, it's not our
3 intention to retro -- retroactively go back and say
4 no, you have to replace the entire system. That
5 wouldn't be at all what I think the Commissioner
6 intended in the regulations and if in fact that
7 circumstances arise, we -- we wouldn't want people
8 just to do that without having to come to us. And
9 so, let's look at how we can do that and bring it
10 back to the Commission.

11 And then, in terms of this -- the
12 gas-safety proceeding, I think this is a necessary
13 move. I appreciate the fact that both of our
14 general counsel's office and our gas safety office
15 identified this issue very -- in the last, I think,
16 several months as a potential problem, acted on it
17 very quickly. And, hopefully, we will resolve this
18 within the next couple of months. So, I look
19 forward to the technical hearings on it too and,
20 and I also appreciate Commissioner Burman, your
21 continued focus on gas safety. I think it's very
22 important.

23 So, with that I don't think there
24 are any other matters to come before us today, is
25 that correct? Oh, wait, we have to vote. Let's

1 vote. On that I would like to move on the consent
2 agenda. All those in favor, please say -- indicate
3 by saying aye.

4 COMMISSIONERS: Aye.

5 CHAIR ZIBELMAN: And there's no
6 recusals, so hearing all in favor and no
7 opposition, we will vote as approved on the consent
8 agenda.

9 So, with that any further matters
10 to come before us today?

11 MS. BURGESS: There are no
12 further matters to come before you today. And the
13 next Commission meeting is October 23rd here in
14 Albany.

15 CHAIR ZIBELMAN: Thank you.

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1 STATE OF NEW YORK
I, Hannah Allen, do hereby certify that the foregoing
2 was reported by me, in the cause, at the time and place,
as stated in the caption hereto, at Page 1 hereof; that
3 the foregoing typewritten transcription consisting of
pages 1 through 53, is a true record of all proceedings
4 had at the hearing.

IN WITNESS WHEREOF, I have hereunto
5 subscribed my name, this the 9th day of October, 2014.

6 _____
Hannah Allen, Reporter

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21
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A	
abandoned 42:3	adopt 34:3
ability 12:22 16:19 18:9 21:5	adopted 41:8
able 26:11 28:1 36:15	advantage 35:5
acampora 1:11 22:10,11 24:3,7 24:18 25:3,10 40:16 50:19	advised 45:7
acamporas 30:15	advisory 32:18
accelerated 40:11	advocated 40:20
accept 34:2	affect 46:19
accepted 32:22	agency 1:7 21:6
accepts 15:19	agenda 2:5,7,18 30:24 45:25,25 46:3 53:2,8
access 31:24 32:6,10,13,23 34:10,11,19,20 35:1,19,22 37:7 38:3 41:1	aggressive 44:8
accesscharge 31:21 32:3 33:9 36:8	ago 22:8
accommodates 39:23	agree 17:22 21:1 29:25 40:18
accompany 16:3	agreed 3:21
accomplished 34:13	agreement 34:4
accord 35:17	agreements 8:8 10:24,25 11:4
account 30:16	albany 1:7 47:6 53:14
accounting 4:8	align 35:20
accurate 12:3	allen 54:1,6
accurately 32:23	allow 11:4 39:24
achieving 23:7	allowed 16:1
acknowledges 16:21	allowing 48:8,17
acquired 11:7	allows 35:21 46:14
acquisition 14:20	alternative 33:20 34:2 40:5
act 38:17 45:5,6,8	alternatives 42:12
acted 52:16	american 2:16 41:21 43:17
acting 39:23	amount 13:1
action 31:22 32:4,19 36:1,6 37:18,25 40:2 42:9 45:14,16	analyses 5:22 6:3 16:2,25
actions 46:13	analysis 36:24 37:1,6
activity 38:19 39:7	analyst 4:8
actual 33:3	annual 37:11
acumen 18:9	annually 37:10
addition 10:16	answer 17:18 22:25 38:7 44:2
additional 3:16	anticipate 20:10 37:5
additionally 7:14 10:13 12:5	anticipating 29:24 38:19
address 10:7 15:10 44:6	apparent 12:16
addressed 7:3 14:22	apparently 38:16
addresses 7:9	appears 40:6
addressing 39:4,19	applaud 27:7 28:17 47:14
adequately 3:19 8:8	application 2:21 46:10 49:2
administer 47:23	applications 47:10
administration 47:25 48:3	apply 19:5 21:11 30:21
administrative 31:4 41:15	appreciate 15:3 17:24 20:8,23 20:24 21:13 30:10 38:13 44:7 52:13,20
administrator 2:16 41:22	appreciated 17:16 19:10
	appreciative 30:3 51:1,14
	appropriate 16:6 20:11 25:8 40:2
	appropriately 6:19

approval 6:11 17:6 41:12
approved 6:13 48:21 53:7
arbitrage 34:23 35:3
area 2:17 12:21 41:12,23 42:16
 42:16 43:18 45:11,11
areas 15:22 16:1 21:7,8 29:13
arrangement 10:3 26:2
ascertain 44:18
asking 45:13
assessment 15:23
assist 16:14
associated 13:14 39:13
assurances 19:5
assuring 45:9
attempting 8:15
attended 5:16
audit 4:5,17,21,25,25 5:3,13
 10:11 12:19,21 14:25 15:1,5
 15:18 17:13,15 18:1,18 20:24
 21:11,23 22:5 23:15,16,18
 24:16,17,17 27:2,3,8 28:7,11
 28:18 29:8,10 36:19
auditing 14:15
auditor 14:4,6
auditors 23:19 25:7
audits 5:17 17:13 19:2 21:4
 23:14 27:13,21 29:2 30:6
audrey 1:10
authority 10:4 19:6
authorization 49:13
authorized 4:23 27:18
available 4:10 9:3 28:10 38:9
 39:17,25 41:16 42:13 43:11
 44:12
aware 2:25 44:13,18 45:3
aye 41:4,5 53:3,4

B

back 14:19 40:8,8 51:21 52:3,10
balance 23:6
based 29:24 34:1
basic 36:10,13
becoming 21:19
began 12:18 14:21
behalf 32:17
believe 43:3 47:5
believes 10:18 11:3
belong 18:25
ben 41:15
benchmark 36:11,14

benefit 5:22 6:3 16:2,25 30:6
benefits 18:18 37:16 48:1
best 3:24 30:20
better 10:22 11:5 12:6 16:17
 19:2 21:13,19 47:23
big 25:23 31:2
bigger 31:1
bill 32:1
bit 24:24
blessed 26:11
blunt 28:1
board 13:13 19:19 30:21
boards 10:15,19
borne 13:16 20:10
boss 19:13
bosses 19:16
brief 2:21
bring 38:1 40:8,8 52:9
bringing 25:4
broad 47:7
brown 1:12 21:16 40:16
budgeting 8:11
budgets 12:23
build 12:13
building 1:7 46:21 49:25
burgess 2:4,6 45:15,18 53:11
burman 1:10 26:17,18,22,25
 29:20 40:16,17 46:4,5 52:20
business 3:18 4:18 5:1 13:20
 15:14

C

c 1:11
call 2:2 32:14,15 33:20
calling 36:3
calls 8:19 35:3,5
cant 31:1 38:21 50:1
capabilities 29:18
capital 13:10
caption 54:2
captured 28:11
carrier 36:21
carriers 32:1,12 33:19 34:4,6,6
 34:25 35:2 36:13 37:14 38:5
carrying 28:6
case 2:9,14 4:16 36:3,18 39:6
 43:13
cases 9:2 20:16 21:7
cause 31:24 32:17 33:11,12
 37:15 54:2

<p>centrallyoperating 23:4 centric 21:20 certain 3:17,22 8:15 10:14 15:22 20:17 24:12 29:7 44:15 44:17 certainly 21:3 40:13 certainty 47:9 49:7 certify 54:1 chad 38:8 chain 11:11 24:24 chair 1:10 2:1,6,19 4:14 17:19 22:10 23:2 24:6,13 25:14 26:16 29:5 30:23 31:10,14,17 38:11 39:1,9 40:15,23 41:6 44:4 50:18,21 53:5,15 chairman 39:2 challenge 8:13 12:4 19:12,15 20:5 challenged 7:22 challenges 29:12 39:5,13,16,19 chance 18:4 45:7 change 40:5,9 44:19 47:20,21 50:24 51:2 52:1 changed 51:7 changes 2:5,7 10:14 19:25 23:16 26:15 30:1,17 44:21 characterize 35:5 characterized 7:23 characterizes 9:24 charge 32:11 35:22 charges 31:25 32:6,8,10,23 33:1 33:2 34:10,11,15,16,18,19,20 35:1,7,19 37:8 38:3 41:1 chart 9:10 chief 15:12 19:1 24:5,8,14 31:3 choose 42:10 circumstances 40:4 52:7 city 5:9 11:21 47:5 claim 36:16 claims 37:9 clarification 51:23 clarify 49:6 clear 13:16 29:8 45:1 49:12 clearly 3:5 20:6,12,18 40:3 49:2 close 17:11 29:6 closely 5:16 11:3 13:25 14:13 closer 33:2,5 code 2:17 41:13,24 43:18 45:11 coincided 16:12</p>	<p>collaboratively 27:25 colleagues 19:16 comcast 2:22,22 3:20 come 22:14 30:20 36:18 52:8,24 53:10,12 coming 23:12 command 10:4 commended 28:3,6 comment 2:21 6:9 17:4 33:23 42:20,21 43:9 44:19 45:7 comments 3:12 4:1 5:24,25 6:4 15:16,17,19 16:15,25 21:15 29:24 30:11 33:13,14,15,19,24 34:24 43:1,14 46:2,25 50:19 50:22 commercial 11:4 commission 1:1,3 2:3 4:22 5:12 6:11,13 19:4 20:21 27:19 28:22 32:9 35:12,21 36:20,25 41:17,22 42:9 49:13,21 52:10 53:13 commissionapproved 49:16 commissionauthorized 50:3 commissioner 21:16 22:11 24:3,7 24:18 25:3,10,14,16 26:16,18 26:22,25 29:15,20 30:14 31:7 31:13 39:5 40:15,16,16,17 41:9 46:4,5,14 48:17 51:16 52:5,20 commissioners 1:9 2:7 4:14 30:11 31:18 41:5 45:14 46:2 53:4 commissions 17:9 committed 15:21 35:13 common 43:19 communicating 8:23 communication 45:2 communications 32:9 45:19 community 9:22 companies 3:19 4:6 5:5 6:17 9:1 10:16 11:8 15:8 18:7,8,9 21:12 22:16,20 23:4,10,11 24:9,14 27:2,17 32:12 36:2,5 36:7 company 5:24 6:20 7:4,8 8:11,19 8:24 9:6,13 10:1,2 11:9,14,23 12:6,10,14 13:17 14:5 15:19 15:23 16:5,13,21 20:21 24:22 27:7 29:11,25 companys 7:18,20 8:3 12:22 14:4</p>
--	--

<p>20:4 21:17 27:10 comparable 23:9 compare 22:24 compares 37:11 comparisons 22:15 competition 39:4,11,18,18 competitive 32:20 33:4 34:6 37:24 complement 10:14 complete 33:23 complex 12:13 38:13 43:16 compliance 50:13 complicated 3:16 comply 27:19 comprehensive 4:4,17 17:25 18:1 27:1 28:7 compromise 33:20 34:1,3 con 24:17,19 conceptually 11:1 concern 20:6 24:23 concerned 18:21 39:10,11 concerning 51:16 concerns 22:9 24:2 45:13 48:22 conclude 23:19 concluded 25:8 concludes 7:21 10:3 13:19 14:24 38:6 conclusions 37:2 concurrently 8:14 conduct 4:25 conducted 5:14 conferences 47:3 confidence 20:1 45:6 configuration 9:25 confirming 2:12 46:13 48:17 conjunction 35:23 consent 45:25 46:3 53:1,7 consequence 48:23 consequences 49:5 conservation 42:4 43:21 consider 3:2,12 6:19 35:22 46:14 consideration 2:23 considered 33:24 consistency 38:4 consistent 34:8 46:10 consisting 54:3 consolidate 11:13 consolidated 9:6 37:18 construction 27:10</p>	<p>constructive 15:18 consultant 4:24 7:3,11 14:3 consultants 6:15 consulting 5:11 consumers 29:21 contact 16:17 contentious 22:4 30:4 continual 21:17 continually 22:7 23:12 continuation 35:16 continue 10:8 20:7 36:22 continued 10:24 12:18 40:21 48:14 52:21 continues 13:1 contract 11:1 contracts 19:18 contributed 11:24 control 10:4,10 11:5 26:8 controlled 9:3 controls 8:16 14:2,8 27:6 core 9:17 10:5,10 corporate 8:2 22:22 23:24 24:20 24:24 25:17 corporation 5:7 24:25 correct 52:25 cost 13:2 15:24 32:24 costly 8:13 costs 11:5 13:5,10,14,18,19,24 18:24 20:17 32:25 33:3 36:19 39:20 51:12 costtracking 16:8 counsels 34:22 52:14 countries 18:11 country 38:6 county 41:24 42:15 43:5 couple 52:18 course 18:21 39:12 43:25 crafted 51:7 create 23:23 credibly 17:25 critical 3:12 criticism 16:10 culture 7:23,25 current 9:25 23:19 32:23 35:20 37:1 41:21 42:6 currently 14:11 32:5 customer 5:22 6:3 16:2,24 32:13 48:8 customers 9:22 16:15 28:12 30:2 30:8 32:2 47:18 48:1</p>
---	--

D	
data 12:17, 24	director 4:9 10:17
date 14:19 42:5, 7	directors 10:15 13:14
dated 41:19	directreporting 9:15
dave 41:13, 17	disagreement 16:2
david 44:4	discretion 25:24
day 54:5	discuss 4:19 8:17 46:6
days 3:4 6:6 17:3 28:19	discussion 4:3 41:10
debate 22:4	discussions 47:7 48:14
december 37:1 49:21	distributed 42:16 48:7, 15 51:8
decide 36:20 50:9	dividing 42:15
decided 11:12	document 5:14 13:23
decides 25:25	doesnt 19:3 43:19 46:19 50:4
decision 3:23 11:22 40:14 41:3 47:22 48:2	doing 17:24 25:6 28:9 30:5 47:12 50:15 51:2
deficiencies 14:7, 7	dollars 13:5, 8 36:12 37:10, 12
define 13:21	dont 4:1 18:23 22:2 43:10 50:8 51:11, 12, 18, 19 52:23
definitely 17:16	doris 20:13 28:4
delay 45:15, 23	dotted 9:9, 16
deliberations 35:23	dottedline 25:22 26:7
delicate 23:6	draft 31:20 34:9 37:25
delivered 5:19	drillingdown 28:24
delivery 5:8, 9	due 15:4
demonstrated 30:5	durability 23:25
demonstrates 21:5	durst 2:10
denn 45:16	
department 14:3, 10	E
deputy 4:9	e 48:5
design 14:22	earlier 11:21
desirable 43:12	early 42:20 43:2
despite 7:20	earnings 36:20
detailing 42:19	echo 40:18
determine 35:15	ed 24:17, 19
develop 7:12 12:23	effective 28:9 29:1
developed 3:6 16:5 42:3, 12	effects 23:3 25:6
development 2:10 48:18	efficiencies 23:1 27:5, 11 29:1 47:25
dialogue 40:22	effort 13:2 15:24
diane 1:10	efforts 17:15 27:7 47:14
didnt 20:10 29:9	eightyfour 13:5
dierks 48:18	either 18:22 19:15 50:9
different 3:7 24:20 35:1, 6, 6 40:10 44:11 50:16	elected 11:14 43:4, 4
difficult 13:21 19:12, 17 20:20 22:23 48:24	electeds 45:2, 19
difficulties 11:25 12:9	electric 23:15
direct 9:4 10:9 27:19 44:25	electricity 2:11 48:18
directed 45:19	elements 23:18
direction 10:12 40:10	elizabeth 31:4
directly 9:19 12:1 23:9 47:20	embedded 13:20
	embracing 27:7
	emergency 48:9 50:25

empire 1:6	experience 12:14 25:21 36:9
employed 12:14	experiences 18:10
employee 25:24 26:1	expires 35:15
employees 12:1,7 26:4	explanation 38:12
empower 10:19 24:1	explicitly 7:9
emulate 11:3	extension 2:23 3:21
enable 47:23	external 14:4,6
enacted 37:21	extraordinary 13:1
enclosed 43:3	
energy 5:8,9 51:8	F
enforceable 6:12	facilitate 37:18
engage 35:2	facilitates 16:17
engaged 14:12	fact 3:10 20:8,15,24 22:5,12
engineer 41:13	30:3 43:4 44:8 50:23 51:1,15
enhancements 7:15	52:6,13
enhances 16:19	factor 35:8
ensure 16:6 19:3 28:7,12	factored 33:16
enterprise 11:15 24:15	factors 34:22
enterprises 19:7 23:10	facts 40:9
entire 3:14 50:7 52:4	failure 26:9
entitled 36:9,21	fairly 33:19
entity 29:13	fan 25:23
equipment 49:15,16,23,24 50:11	favor 34:23 35:9 40:13,24 43:15
essential 20:1	53:2,6
essentially 34:15 35:4	fcc 37:20 38:17,23
establish 15:11 35:16	fear 50:11
established 34:20 36:12	feasible 43:12
establishing 35:12	february 4:21 33:14
estimated 13:7	federal 3:1,5 32:8 46:11,16
estimating 7:17	felt 3:12
event 39:10	fidelity 19:20
events 16:13	figures 13:9
evolution 10:24	file 17:3 28:19
evolve 10:8	filed 6:8 33:21 42:1 46:25
exacerbated 14:23	final 5:19,20,25 6:2 15:16
examine 31:2 36:19	16:24 28:18
examined 42:12	finance 4:9 8:10 9:18 14:1
excellent 21:14	financial 7:2 8:16 11:10 12:23
exchange 32:3	14:5,15,15 20:2,20
excuse 14:15	find 21:7 29:8,9
execute 6:21	finding 24:16,17
exercise 10:20 15:18	findings 4:15,20 5:18 6:15 14:9
exhaust 41:23 42:5,6	14:17 18:17 23:13
existing 6:21 8:7 13:20 14:23	fine 23:5
expands 37:20	first 2:9 4:3 8:1,17 26:19,19
expect 20:12 21:10 25:25 40:4	42:7 46:8 50:21
expectations 16:20 17:10	fits 22:24
expected 15:24	five 8:21
expense 33:6	fiveyear 7:13
expenses 13:10	fix 49:6

flag 50:17	future 35:24 38:18,22 49:15
flagging 49:17	
flaw 50:8	G
fleet 11:11	gain 18:14
flexibility 48:10	games 35:4
floor 1:7	garry 1:12
focus 18:19 22:1 23:7,9,22,25 24:1 25:8,17,25 48:19 52:21	gas 4:6,18 5:1,6 6:17,19 9:1 10:16 16:14 27:2,9 46:9,11,15 46:19 52:14,21
focused 4:25 7:23 9:22 24:21 27:3 49:4	gassafety 52:12
focusing 21:20 27:15	general 48:12 52:14
folks 17:15 46:18 49:1	generally 6:16 7:20 15:19
follow 26:1	generation 48:7,9,13,15 50:25
following 16:23 17:1 33:18	geographic 42:14 43:11
follows 31:22	geographics 43:10
force 26:12	getting 19:2
forecasting 7:19	given 3:14 28:17
foregoing 54:1,3	gives 42:7
foreignowned 22:13	glad 25:19 40:19
forth 22:17	global 15:6
fortyfive 13:8	go 11:23 40:3 52:3
forward 4:12 19:24 21:1 26:14 28:23 29:22 38:23 40:21 47:7 48:14 51:3,22 52:19	goal 27:8 28:10 34:15 37:23
forwardlooking 27:15	going 4:2,6 19:23,25 20:19 31:5 46:13,25 47:19,22 50:7,10 51:4
foster 32:19	good 2:1,6 4:14 7:24 25:11 27:15,24 28:5 29:3 30:1,2 31:18 47:11 48:25 49:23
fostering 37:24 39:3,18	gotten 38:22
found 6:16,18,21,25 7:6 8:2,6 8:11 11:22 12:5,20 14:6,18 23:18 29:10	governance 8:2,7 22:14,17 27:5
four 37:11 42:25 46:6 49:11	government 22:16
frankly 29:14	governments 46:21
fraternal 7:23	governor 27:18
frequently 19:15 43:18	gravity 15:3
front 20:16,22 43:21	great 2:19 17:20,22,23 25:12
frontier 34:5	gregg 1:11
full 36:18 45:6,21	grid 4:18 5:1,5 6:5,18 7:1,7,12 7:22 8:14,19,23,24 9:25 10:8 10:11,15 11:7,12,18 12:8,25 13:3,11,13,22 14:2,11 15:11 15:15,18,21,25 16:11 17:2,8 18:7,13 20:8,25 23:10,14,20 26:10
fully 8:4 13:23 15:3 40:4	grids 4:5 5:15 6:4 8:18 9:6 11:24 12:12 14:25 15:4 16:19 16:25 19:24 25:19 26:8 27:2
function 9:21 14:25 26:13	group 36:3
functional 9:12	groups 9:12
functions 9:17 10:1,5,10 11:10	
fund 31:3 35:11,13,14,16,21,24 36:17,22 37:4,9,12 39:17,24	H
funding 37:11	
funds 37:3	
further 16:15 23:17 33:22 35:22 36:15 38:24 40:22 44:17 53:9 53:12	
furthering 37:23	
furthermore 12:12	

half 37:10	ill 21:14
halfway 34:15	im 3:6 19:23 22:2,2 24:11 25:19
hannah 54:1,6	25:23 29:22 38:7 40:19 46:22
happen 22:4 43:19 44:10 47:10	46:23 47:6 48:19 49:9,17 51:1
50:9	51:14
happened 38:16	impact 35:25
happening 21:6 40:21 49:18	impacting 38:5
happens 19:13 43:18,22	impacts 37:14
happy 17:17 22:3 38:7 46:23	impeding 12:22
hard 28:15	impending 35:10
harriman 51:21	implement 11:14 12:15 22:6 23:1
haul 23:25	28:21 42:8 44:16
havent 38:22	implementation 6:6 11:17 12:10
hear 46:18	13:4,6 14:21 16:4 17:3,9 21:2
hearing 41:7 53:6 54:4	28:20 29:22
hearings 42:23,25 44:14 52:19	implemented 28:25 42:3
heart 28:1	implementing 15:25
held 13:15 42:23 47:4,4,6	implements 31:21 33:8
hello 31:5	implications 3:9
help 28:7 38:4 48:3	importance 3:15 27:12 39:3
helpful 27:14 30:16	important 19:4,9 25:8 27:23
helps 48:11	29:17 32:19 33:15 44:12 46:12
hereof 54:2	46:17 47:13,22 48:11,20 49:7
hereto 54:2	52:22
hereunto 54:4	impose 51:12
hes 39:6	imposing 18:24
higher 25:7	improve 16:22 22:7 27:9,16 28:2
highest 18:12	33:4
highlight 29:2	improved 10:21 50:3
highlighted 27:17	improvement 5:22 6:24 8:3 21:9
highlights 21:23	29:13 37:22
historically 49:3	improvements 7:16 15:22 16:20
holding 48:5	21:18,25
hopefully 22:6 39:5 44:2 52:17	inadvertently 18:22 51:11,18
hoping 38:16 49:10	inappropriate 35:2
huge 20:5 21:5	incentive 35:2
human 11:10	include 7:12 9:17 13:10
hume 38:8,21	included 5:4 42:14
hundred 3:3 5:13,14 13:4,7	includes 5:21
17:21	including 10:16 34:5
	incorporate 10:9
I	incorporated 41:20
iberdrola 23:11	increased 47:24
id 2:2,20 6:14 25:16 46:1 50:17	increases 36:9
identifiable 7:13	incredibly 18:1 19:4
identified 14:4 52:15	incumbent 34:5 36:2 37:14
identify 13:23 27:9	incurring 20:17,18
identifying 15:13	independent 4:24 10:17,19 19:18
ilecs 36:4	19:19 28:18 36:5
ilecss 39:16	indicate 15:17 41:3 53:2

indicated 10:11 13:17 37:22	items 46:6 48:15
indicates 15:20 37:1 43:10,13	ive 25:21
indirect 9:10	
individual 15:13 26:13	<hr/> J <hr/>
industry 11:16 49:18	january 14:2 31:23 32:17 33:11 34:16,17
ineffective 14:25	jeremy 4:7 17:20 24:4 26:19
information 4:15 31:6 42:22	job 12:6 17:20,23 25:12 26:22 27:24 28:5 29:3
informed 14:3 41:22	john 4:9 20:13 22:11 30:14
infrastructure 7:10	joint 37:18
inherent 32:25	judge 31:4 41:15 42:24 51:20,20
initial 11:19 33:25	july 5:20 33:24 42:22,23
innovation 48:7	jump 18:5
inputs 12:1	june 5:11 33:21 42:20 43:3
instability 12:15,20	jurisdiction 19:21
install 48:8	jurisdictional 8:20,22 9:5,11 9:19 10:5,9,22 11:5 16:11,16 19:6,17 25:21 29:13
installations 48:8	jurisdictions 9:8 18:10,20,25 23:5
installed 52:2	<hr/> K <hr/>
institutional 3:18	kedli 5:10
institutionalize 29:18	kedny 5:8
insufficient 40:7	keep 32:2
integral 51:10	key 18:17 19:21 23:8 24:16,16
integrated 7:9	keyspan 5:8,9 11:8 14:19
intend 51:19	kind 21:3,23 24:8 38:22
intended 50:16 52:6	kitchen 41:13,19
intending 38:23	know 4:1 17:20 18:4 19:11,11,11 20:3,13,14 21:17 22:18,18,25 25:11 28:4 29:7 38:14 39:2,10 39:22 40:1,12 42:12 44:24 45:16 47:13,18
intent 2:10 16:7 51:25	knowledge 45:21
intention 52:3	<hr/> L <hr/>
interest 3:17,24 48:15	l 1:11
internal 8:16 10:25 14:1,8,25 15:1,5 27:6	lack 21:19
interstate 18:8 34:11,17,19,25 37:8,19 38:3 41:2	landfall 11:21
interviews 5:15,16	landlords 49:25
intraexchange 32:12	large 9:22 18:7 42:16
intrastate 31:24 32:6,14 34:9 34:25 37:7,19 38:3 40:25	larger 24:25
involved 28:5	late 12:18
involving 14:1	law 3:1 4:22 6:5 31:4 41:15
island 5:10,10	laws 3:6
issue 10:7 20:13 22:14,17 25:1 25:18 34:23 38:17 39:7 43:16 44:25 52:15	leak 6:22
issued 5:13 6:2 17:1 31:23 33:13 42:20 47:3	leakprone 6:22
issues 3:16 14:1 15:2 18:5 20:20 30:12 31:3 33:15 38:13 40:3 44:6	learned 12:11
item 2:9,14 4:3,4,14,15 30:24 30:24 31:2 41:10,11 46:8 47:16,17 48:4,16,20 50:23	

learnings 21:11	major 8:1 20:6
leave 30:14	majority 9:16
legacy 11:9	making 3:23 15:21 18:11 23:15 33:3 47:8 49:1 50:15 51:2
legal 9:18	manage 11:6
legislature 27:18 43:5	management 4:5,17 5:4 7:16,22 7:24 8:23 9:23 17:13 24:16,17 25:22 27:1,5,6,12,20 29:14
lessons 12:11	manager 26:3
letter 17:7 41:19,25	managerial 25:24
letters 43:3 44:15	managers 9:3
level 8:7 10:24 13:15 15:6,24 25:2,5,7 33:5 34:10,17 36:11 37:8,11 38:3,5 41:2	manifested 12:17
levels 35:1	manifests 7:25
liaisons 9:12	march 13:5 33:14
libby 31:5 38:11	market 32:20 33:4,7 37:24
liebschultz 31:4	material 14:4,7,14,16,18 15:2 24:25
liebschutz 31:8,12,16	materiality 15:4
limit 35:19	matrix 25:22
limited 9:20	matter 25:12 28:2 30:4 38:14 41:16 46:9 49:9,10
line 9:14,20 23:5 38:1 39:14	matters 7:3 52:24 53:9,12
lines 9:9,16	mean 51:25
little 24:24 42:8	meanings 14:14
live 11:19,23	means 15:6 26:6 43:1
llc 2:11	measures 42:4
loaded 7:18	mechanisms 16:8
local 25:5 32:12,25 45:2,19 46:21	meet 16:6,19 26:3 39:25
logical 48:13	meeting 1:3 8:4 39:21 53:13
lone 43:10	member 43:5
long 5:10,10 23:25 34:25 48:1	members 19:19
longdistance 32:14 33:1	memo 49:21
longterm 7:1,10	mentioned 15:1 24:4
look 3:14 4:12 18:4 20:13 21:6 21:8 22:18 26:14 28:2,22 30:17 40:21 48:5,14 52:9,18	merger 2:22
looked 20:25 27:6	met 29:21
looking 19:23 21:1 27:16 29:22 44:5,9 47:7,8 48:2 51:4,5,8	meter 49:14,24 50:2,3 52:1
looks 27:24	meterer 49:13,16
lose 18:19	metering 48:9,12 49:15 51:17
losing 23:7	mic 17:25
lost 18:19 36:8	mid 13:4
lot 3:15 43:8	middle 32:7 43:3
low 31:15	migration 39:22
lucid 38:12	million 13:5,8 37:10,12
	minute 25:17
	mitigating 15:14
	mode 11:24
	model 8:3,9,18,20,20,21 10:9,22 16:10,11,16,22 25:21
	modern 11:13
	modification 6:11 17:6
M	
m 1:6 13:10 41:12	
maintain 23:24	
maintained 23:6	
maintaining 39:20	

modifications 7:18 15:22
mohawk 5:7 11:8
moment 17:12
money 13:2
monitor 5:17 20:15
monitoring 14:13
months 52:16,18
morning 2:1,6,8 4:14 31:18
motion 40:9
move 6:14 10:12 30:10 33:5
 38:23 45:25 51:3 52:13 53:1
moved 2:17
moving 29:12 33:2 42:5
multiple 22:12 23:4
multistate 10:2

N

name 54:5
naruc 39:7
national 4:5,18 5:1,5,15 6:4,5
 6:18 7:1,7,12,22 8:14,17,18
 8:23,24 9:6,24 10:8,11,15
 11:7,12,17,24 12:8,12,25 13:3
 13:11,13,22 14:2,11,24 15:4
 15:11,15,17,21,25 16:10,19,25
 17:2,7 18:7,13 19:24 20:8
 23:10,14,20 27:2 38:4
natural 27:2
nature 3:10 7:2
near 38:22
nearly 12:21
necessary 6:12 15:21 40:22
 52:12
need 20:7 22:1 35:14 51:7,12
needs 7:10 8:5,25 16:21 22:4
 25:20 26:3 27:13 29:20 39:25
negating 25:6
net 48:9,11
networks 16:14
neustar 2:15
neutral 36:7
never 40:3
new 1:1,7 2:12,12 3:9,17,25 4:6
 4:18 5:1,6,7,8,9 6:17 7:5 8:5
 8:21 9:1,4,11,19 10:16,20
 11:21 12:3,7 13:11 15:8 18:12
 18:21,24 19:20 21:19,20 22:23
 23:8 24:2,21,21 25:1,9 26:7
 27:9,13 29:21 32:20 38:1
 41:11,20 43:20 45:11 47:4,5

47:17,19 50:2 54:1
news 7:24
niagara 5:7 11:8
nine 13:7
normally 3:2
north 2:16 41:21 43:17
northstar 5:11,13,17,19 6:16,25
 7:6,21 8:2,6,11 9:24 10:3,7
 10:13,18,23 11:2,22 12:5
 13:19,22 14:18,24 15:11 17:24
northstars 7:14 15:20,23 16:9
note 13:9
notes 16:11
notice 2:10 17:1 42:20 44:25
 47:2,3
noticed 46:24
notwithstanding 16:20
november 11:19 47:1
number 2:16,18 9:20 16:12 21:18
 22:22 45:10
numbering 41:21 43:17 44:7
nycrr 46:9
nypa 47:23
nysta 36:4

O

o 13:10
objective 10:20
obligation 3:1 17:8
observations 30:15
obstruction 48:6
obviously 44:11
occur 19:3
occurring 44:21
october 1:5 11:22 47:5,6 49:14
 52:2 53:13 54:5
office 4:8 41:14 52:14,14
officer 15:12 24:8,23
officers 24:14,22
offices 28:4
oh 52:25
okay 39:1
once 6:8,12 43:22
ones 42:13
open 21:15
operate 38:6 51:10,14
operated 16:13 29:11
operates 29:11
operating 5:5 8:25 15:8
operation 27:21

operational 7:21 27:4,11	parts 5:9
operations 4:5,17 5:4 6:18 7:5 9:17 10:21 23:8 27:1,13 28:9	pass 13:17
opportunities 6:25 27:9	patricia 1:11
opportunity 3:13 18:14 44:17,19	pending 41:23 42:9
opposed 41:6	people 3:24 19:15 23:21 24:1 44:18 50:9 52:7
opposition 41:7,7 53:7	perform 5:12 6:17 13:23
options 42:19 44:12	performance 7:21 9:23 11:6 26:5
order 2:3,13 31:20,23 32:16 33:8,10,12,21 34:9 35:15 36:6 36:22 37:13,15 38:1 40:25 46:14 48:11,17 49:11 51:16	period 7:13 21:22 32:1 42:21
ordered 32:8	permeate 12:21
organization 9:10 15:12 18:16 19:14	person 19:13
organizational 8:3,9,18 16:10 16:22	personally 25:23
organizations 21:7 30:19	personnel 5:15
original 34:14	perspective 6:18 16:18 29:19 40:2 44:6
originated 32:13	petition 2:15 41:11,25 42:2,11 42:14
originating 31:21,24 34:10 41:1	phase 28:16,23 32:7 35:19 40:20 40:22
outlining 17:9	phased 31:25
outreach 47:12	phone 45:10
outside 11:2 21:7	phonetic 45:17
overall 43:17	pictured 8:20
overlay 42:17 43:15,24	piecemeal 22:19
overruns 20:9	pipe 6:22
oversight 10:20,21	place 16:8 18:24 23:21 49:19 54:2
overwhelming 9:16	plan 2:16,17 6:6,8,10,12 7:5,9 7:12 16:4 17:3,9,10 21:2 28:20 41:12,21 43:17
overwhelmingly 43:15	planned 16:6
owners 46:21 49:25	planning 6:20 7:1,8 10:12 11:15 27:4,10
ownership 3:3	plans 14:22 29:23
	platform 8:12 11:14,18 12:15
P	play 35:4
p 41:12	playingfield 33:5
pace 46:7	plaza 1:6
page 17:21 49:11 54:2	plc 8:24 13:13 15:6,9
pages 54:3	please 13:9 41:3,18 53:2
paid 32:11	plumbers 46:21
paper 42:18	point 16:1,17 18:17 25:11 27:8 30:13 32:1 42:9
parallel 23:13	pointed 18:13 23:2 29:16,20
paralleled 32:4	policy 22:18
parent 8:24 13:15	position 24:5,10 45:9
parity 34:10,19	positions 9:21
part 15:4 22:25	positive 15:17
participant 33:6,7	possible 14:17
participated 36:3	possibly 26:12
participating 47:18	
particular 52:1	
particularly 12:13 17:23	

potential 3:9 18:18 19:19 48:6
 48:23 52:16
power 5:7
practice 22:22
practices 13:20 30:20
preparation 45:1
prepare 7:4 12:23 40:13
prepared 44:2
presence 34:7
present 8:12
presentation 4:12 38:7
presented 4:7 6:1,10 17:5 36:25
presenting 31:5 32:17 41:14
presents 39:16
president 8:22 9:5,11,20 10:6
 11:5 19:17 26:11 29:16
pretty 25:11
previous 8:4 41:25
previously 14:9
primarily 7:2 9:21 23:21 24:21
 26:4
primary 11:25 35:25
print 30:25 31:14
prior 14:8,9 49:14
priorities 26:1
problem 15:7 49:24 52:16
problems 8:15 12:16,17 14:1,12
 14:23
procedures 7:16 20:16
proceed 41:18 45:21
proceeding 31:2 38:15 41:9
 52:12
proceedings 20:22 54:3
process 22:25 33:23 34:14 43:2
processes 6:20 7:8,19 11:10
productivity 7:17 12:24
professional 46:20
profit 18:8
profited 18:3
program 14:12 27:4,10 47:19,24
 48:3
programs 6:23 48:12
progress 5:17
project 7:16,17 27:4
projected 42:6
projects 7:13
promotes 48:12
properly 28:8
proposal 4:23 33:20,22 34:1,3,8
 34:23 35:9 40:5

propose 44:23
proposed 33:10 37:17 41:2
protected 3:19
protocol 34:21
prove 40:9
proved 12:3
provide 5:6 10:4 18:9 30:7
 36:23 37:4
provided 5:24 15:16 28:13
provides 9:7 16:16 37:16
public 1:1,3 2:3 4:22 6:4,9
 17:4 42:20,22,23 43:8,14
 44:13,21 45:6
publicly 6:2
purposes 15:5
pursuant 4:21 6:4 27:20
push 39:7
put 33:13,22 45:3 50:2 51:22
putting 17:20

Q

quality 12:17 18:12
quarter 42:7
queries 12:24
questions 4:10 17:18 38:7,9
 41:16 44:2
quickly 12:16 52:17
quite 15:7 29:14
quo 37:22

R

radar 15:9
raised 33:15 34:24
ran 42:21
range 33:19 34:4 37:9
rate 20:15,22 21:7 36:10,11,14
 36:15,18
ratepayers 8:5 13:18 20:11
rates 28:14 35:6 37:19 47:20
reach 12:10 13:7
read 31:1
really 17:22 18:5,24 19:9 20:23
 21:4,25 25:12 27:14 38:12
 42:13 47:17 48:6,19 51:4,25
reasonable 28:14
recall 11:20 32:10
receipt 33:18
receive 43:14
received 32:14 43:6 49:13
receiving 33:6 46:25

<p> receptive 23:15 recharge 47:16,19 reclamation 42:4 43:21 44:9 reclassify 35:3 recognition 51:15 recognize 39:12 recommend 34:2 43:25,25 recommendation 24:4 30:17 32:18 33:16 40:25 41:8 43:24 44:1 recommendations 4:16,20 5:21,23 6:7 7:15 15:20,25 16:7 19:2 19:10,22 27:20 28:25 recommended 6:25 30:1 40:14 41:3 recommending 35:9 recommends 7:4,11 10:8,14,23 13:22 15:11 record 3:14 38:14 41:8 43:13 54:3 recording 12:1 recovery 11:23 12:2 35:22 recusals 53:6 recused 31:13 39:6 41:9 recusing 31:7 reduce 34:15 reduced 33:10 38:2 41:1 reduces 34:9 37:14 reducing 37:7,23 reductions 34:14 37:19 reflect 32:23 50:23 reflected 37:25 reflections 30:11 reflects 34:4 reform 31:21 33:9 37:17,20 38:24 reforms 40:19 regard 25:12 register 15:9 25:1,1 regs 49:17 regular 2:18 45:25 regulation 9:18 51:24 regulations 46:10,15 48:24 49:2 49:20 50:13 52:6 regulators 16:16 regulatory 16:18,19 47:9 49:6 reiterate 16:23 related 8:15 13:25 31:3 relates 50:24 relations 9:22 relationship 9:4,15 26:7 </p>	<p> relationships 9:10 release 4:23 11:19 17:2 released 28:19 42:18 reliable 16:13 28:13 relief 2:16 36:21 37:4 41:12 42:1,8,13 43:18 remediate 8:15 14:12 reminding 17:8 remove 48:6 renewable 48:13 renumbered 2:18 reorganized 8:19 repair 6:22 50:10 repaired 50:1 replace 50:6,10,12 52:4 replaced 50:1 replacement 6:22 replacements 7:11 replaces 49:14 replies 33:23 43:6 reply 33:14 report 5:20,20,25 6:2 8:1 15:16 16:3,24 17:2,21 28:19 reported 14:6,10 54:2 reporter 54:6 reporting 8:16 9:4 12:16 14:5 20:3,20 25:22 26:2,14 reports 9:19 12:23 15:1,2 represent 9:10 13:11 32:24 representation 10:19 represents 9:14 request 4:23 requested 3:20 requests 5:14 require 36:18 required 49:17 requirement 17:14 requirements 8:25 39:21 reroute 35:3 residential 3:18 36:10,14 resolution 49:22 resolve 52:17 resolved 14:20 resource 11:15 17:14 resources 9:3,5 11:11 51:9 respect 2:21 32:5 response 5:25 16:9 19:24 21:22 25:20 responses 21:1 responsible 8:22 15:13 26:4 </p>
--	---

result 23:17 37:8 47:21
resulted 37:15
rethinking 51:8
retro 52:3
retroactively 52:3
rev 51:4
revenue 32:2 36:7,8
revenues 32:3 33:6 35:23 36:16
review 5:4 26:5 29:23 43:9,13
reviewed 6:9 17:4 42:11
reviewing 18:3
revising 46:9,15
revisiting 35:14
rfp 4:24
rg 48:5
right 18:23 24:18 25:3 38:8,10
 39:7 50:4
risk 6:19 15:12 24:6,8,14,15,22
 24:23 27:6
risks 15:14
round 33:25
routhierjames 4:7,11,13 24:11
 25:13 26:21,24
rules 46:16
run 12:23 44:7 48:1
running 28:8
rural 36:5

S

s 4:6,6,18,18 5:1,1,5 7:1
safe 28:13
safety 46:9,11,15 52:14,21
salary 26:5
sanctioned 13:3
sandy 11:20 12:2
sap 8:12 11:14,18,19,24 12:1,9
 12:13,15,20 13:2,3,6,15,20,24
 13:25 14:21,22 20:3,9
saying 41:3 53:3
sayre 1:11 25:15,16 29:16 31:7
 31:13 39:8 41:9 50:19,20
sayres 39:6
scale 33:10
scherer 4:9 22:21 24:15,19 25:4
 30:22
scope 5:3 37:20
second 2:14 8:10 34:16 47:2
secondary 26:8
secretary 2:4 17:1 44:25 45:15
 45:18 47:1

section 4:22 6:5
see 9:15 22:19 25:19 26:15
 30:18,19 31:14 38:21 40:19
 46:1,24 47:20
seeing 19:24
seek 23:1 36:9,15
seeking 42:20
selected 5:12
send 51:18,19
sense 35:19
sensible 40:6 51:6
sent 17:7 43:6 44:15
sentence 49:12
serious 22:8
serves 41:24
service 1:1,3 2:3 4:22 5:6 6:5
 8:7 9:6,13 10:1,24 18:12
 28:13 31:3 32:24 35:10,21,24
 36:10,17,22,23 37:4,9 39:14
 39:17,21,24 42:17 47:20 49:20
services 9:7
session 2:2 6:2 16:24
sessions 42:22
set 22:17
seven 5:13 17:21
seventeen 43:1
sevenyear 31:25 32:7
shared 19:6
shareholders 13:16
sheer 26:12
sheets 43:4
shift 16:11
show 31:24 32:16 33:11,12 37:15
signal 51:19
signaling 38:23
significant 3:8 4:20 8:13 12:4
 14:7 15:7 16:12 17:14 34:7
 37:21 51:9
significantly 12:22
similar 9:7 11:1 23:13
similarly 7:6
simple 43:19
simply 32:1
single 10:2 16:17 43:4
situation 15:10 43:9
size 22:24
skeptical 15:23
slas 10:25,25 11:3
slide 4:21 6:15 8:21 15:15
small 34:5 42:16

smaller 36:4
smallrural 36:1
software 8:12 11:9,15
sokal 38:9
solid 9:14,20
solidline 26:2
somebody 30:25 52:1
somewhat 33:9
sort 3:25 22:3 43:20 51:9
speak 49:20
speaking 39:3
speaks 49:22
specific 8:25 14:14
specifically 5:3 37:6
spelling 45:17
spend 13:1
spent 12:25
split 42:15 43:11
stabilization 13:6,15,18,24
stabilize 11:18 13:2
staff 5:15,20 6:10 9:18 14:13
16:5 17:5,12,14,23 28:3,4
32:18 36:19,24 40:7,20 41:22
42:11,18 47:13
staffs 21:14 37:6 43:23
stage 44:14
stakeholder 47:3
stand 22:15
standard 39:14
standards 46:11
star 41:11,20
start 46:1 51:8
started 20:14 38:14
state 1:1,6 3:9 5:2,6 16:15
22:13 26:11 30:19 32:21 33:4
34:6,7 35:10,20,24 36:6,12,14
36:17,22 37:3,24 43:5 44:8
54:1
stated 13:14 27:14 49:12 54:2
statement 30:10 42:23 47:18
statements 40:19 42:25
states 38:2
status 37:22
statutorily 28:17
statutory 2:25
step 23:17 32:19 34:16
steps 16:6 41:2
steve 38:9
storm 11:20,23 21:22
straightline 26:3
strategic 7:3,5
strategically 28:25
streamline 48:3
streamlining 48:25
street 2:12
strength 29:14 30:5
stringent 46:11,16
strive 26:2
strived 28:12
strong 7:21 26:11 29:16
struck 49:8
structural 23:17 29:12
structure 8:7 19:3,10,18 21:24
23:20,24 24:20 25:17 26:8,14
30:18 35:14
structured 18:16
structures 18:23 22:22
struggled 11:18
struggles 8:12
struggling 20:4
study 13:23
sub 49:12,14,15,15 51:17
subject 12:21 26:9
submeter 2:11 48:18
submetering 48:24 49:19
submit 6:6 17:8 44:18
submitted 6:9 17:4
subscribed 54:5
subsidies 33:3 37:23 39:11
subsidy 32:25
successful 27:1
successfully 6:21
successor 35:16
sufficient 3:22 16:8 37:3
suffolk 41:24 43:5
suggests 37:7
summarizing 4:15
summary 17:22
sunset 35:10
super 11:20
supplementation 36:16
supply 11:11
support 8:8 10:22 48:2
supporting 5:23
supportive 48:20
supposed 29:2
sure 3:6,13 18:11 28:24 29:19
39:24 45:18,20 46:22 47:8
49:1,4 50:15 51:23
surprised 45:10

surprises 44:20	think 3:11 17:21 18:2,16 19:1,8
synergies 18:14,19 23:7	19:9,11,21,25 21:2,4,14 22:5
synergistic 23:3 25:6	23:9,16,18 24:13 25:11 26:19
system 6:19,20 7:7,9,10 12:3,7	27:22 29:3,23 30:2,9,14,16
27:4 49:25 50:2,7,12 51:10,13	39:17,22 40:1 44:5,13,24
52:4	45:24 46:12,17,23 47:11,24
systems 11:9,13 49:19,22	48:10,20 49:9,18 50:8,14 51:3
systemwide 51:5	51:18,22 52:5,12,15,21,23
	thinking 3:6 20:14 46:22 51:17
T	thirdparty 4:24
take 17:12 21:11 30:15,17 32:18	thirteen 42:25
35:5 40:24 42:10 45:14,16	thirty 6:6 17:3 28:19
50:2 51:21	thirtyeight 36:5
taken 42:25	thirtyone 5:21 6:7 7:15
talk 49:20	thought 35:18 50:17
tariff 47:21 48:5	thousand 3:11
tariffs 51:6	three 1:6 3:11 5:5 6:15 13:4
team 17:12 29:14	14:16 50:23
technical 43:9 50:8 52:19	threshold 15:5
technically 43:12 51:12	thursday 1:5
technologies 39:15	time 2:22,23 3:16,22 12:2 13:1
technology 50:5	21:15 26:19 32:16 35:18 37:16
telecom 39:4,13 41:14	37:17 54:2
telecommunications 32:20	timekeeping 12:3
telephone 32:25 36:2	today 2:20 4:3,7 6:1 24:14 31:5
term 21:19 35:20,20	33:17 37:13,21 40:6 44:24
terminating 32:6	45:15 46:13 47:22 48:21 52:24
termination 49:21	53:10,12
terms 14:13 18:11,17 20:2,9	today's 36:1
21:22 29:12 30:18 34:3 39:20	tool 22:5,6 27:23
43:17 51:15 52:11	tools 28:10
testing 12:7	total 13:2 42:24
thank 2:19 17:12,19 25:13 26:18	totally 20:11
26:24 29:5 30:23 31:16 38:11	track 13:21
39:1 40:14,17,23 45:22,23	tracker 7:17
46:5 47:14 50:22 53:15	traffic 34:21
thanks 4:13 44:4	training 12:7
thats 3:25 4:4,6 19:8,8 25:11	transaction 3:10
26:13 28:24 33:16 43:11 46:17	transactions 3:7,15
48:10	transcription 54:3
theme 8:10	transfer 3:3
themes 8:1	transference 39:14
theres 2:7 18:6 23:5 28:19	transparent 33:3
39:21,22 43:24 45:21 53:5	tried 30:25
theyre 24:21 30:18 45:2 50:10	true 7:4 13:19 54:3
50:11	trying 22:17 23:23 48:2
theyve 21:21 38:24 45:7	turn 4:2
thing 49:8	turned 22:3
things 18:5 26:12 28:2 38:15	twenty 3:3
40:9	twentythree 36:12

twentytwo 38:2	wait 52:25
two 2:7 5:14 7:25 23:9 30:14 41:2 50:10	waiver 48:4 51:3
twostep 34:14	want 21:16 22:2 29:7 30:13 44:15 46:6 50:9,23 51:11,18 52:7
types 3:7 30:6 35:6 51:5	wanted 17:11 40:18 47:17 48:19
typewritten 54:3	wants 21:3
typical 26:1	warner 2:22
<hr/> U <hr/>	
u 4:6,18 5:1,5 7:1	washington 38:20
uk 8:24	watch 20:7
ultimately 17:5 47:25	way 27:15 29:19 32:5 34:12 38:9 43:12 48:13 51:9
un 49:5	weakness 14:5,14,16 15:2 21:8
unchanged 37:2	weaknesses 14:8,19 21:24
understand 18:6 47:9	weather 16:12
understanding 16:18	websites 45:4
understood 49:3	week 11:21
unintended 48:23 49:5	weighed 35:8
universal 31:3 35:10,21,24 36:17,22 37:3,9 39:17	welcome 4:11 41:17
unnecessary 42:2	welldeveloped 7:7
unregulated 10:2	went 11:19
updated 41:25	west 2:11
upstate 5:7	weve 3:11 33:24 43:20 48:25
usa 8:23 10:15 11:12 13:3,11	whats 21:6 29:17 47:21 49:23
use 48:9 49:16 50:24	wheeler 39:2
utilities 12:11 22:12 27:13,19 28:8 46:20 47:23	whereof 54:4
utility 4:8 9:17 10:1,3,5,10 11:1,16 12:9 30:7 41:13	white 42:18
<hr/> V <hr/>	
value 18:6 21:5	wholesale 32:11
various 15:1 22:19	wide 33:19 34:4
vehicles 44:9	widely 11:16 32:22
vendor 11:2 12:14	wiles 41:15 42:24
verizon 34:5	wireless 39:15
versions 8:4	witness 54:4
view 26:10	wonder 21:3
viewed 22:5	wonderful 21:21
virtual 9:25	work 16:5,21 17:24,24 20:19 21:4,14,14,21 25:7,20 28:15 29:15 45:17 49:5 50:4
voiceoverinternet 34:21	worked 5:16 16:14 17:13,15
voip 34:21 39:15	worker 7:17
volunteered 20:9	working 27:25 47:13 48:25 49:10
vote 31:9,11,20 40:13,24 44:23 52:25 53:1,7	works 23:20
voted 48:21	world 14:15,15
votes 28:22	worst 14:16
<hr/> W <hr/>	
	wouldnt 20:12 52:5,7
	written 15:16
	wrong 18:1
<hr/> X <hr/>	
	x 1:10

Y	
yeah 25:10	2012 11:20 12:18 13:4 49:21
year 14:2 31:23 33:14,22 36:25 38:15 41:20 42:8	2013 4:21 5:11
years 14:8,9 21:18 22:8	2014 1:5 5:20 49:14 54:5
york 1:1,7 2:12,12 3:9,25 4:6 4:18 5:1,6,8,8,9 6:17 7:5 8:21 9:1,5,11,19 10:16,21 11:21 13:12 15:8 18:21 19:20 21:20,20 22:23 23:8 24:2,21 24:21 25:1,9 26:7 27:9,13 29:21 32:21 38:1 43:20 47:4,5 47:17,19 54:1	2015 13:6 34:16
yorkers 3:17 18:12,24	2016 34:17 35:11 42:7
yorks 8:5	21st 47:5
youd 50:6	23rd 53:13
youre 25:5,5 37:23	28th 47:6
	29th 11:22
Z	3
zero 34:12	3 1:7
zibelman 1:10 2:1,19 17:19 22:10 24:6,13 25:14 26:16 29:5 30:23 31:10,14 38:11 39:1,9 40:15,23 41:6 44:4 50:18,21 53:5,15	30 1:6
	302 41:11
0	31st 42:22
	362 47:16
1	363 48:4 50:24
1 52:2 54:2,3	366 2:9 48:16
10 1:6	4
101 4:4,14	
10th 47:1	5
13g0009 4:16	501 30:24 31:2
14c0182 2:15	502 2:18
14e0104 2:10	53 54:3
15th 42:23	561 2:14
16 46:9	57th 2:11
161 46:8	5th 11:20
16th 42:24	6
19 4:22 6:5	625 2:11
19th 1:7	631 2:17 41:12,23,23
1st 49:14	66 4:22 6:5
	7
2	7th 41:20
2 1:5	8
2001 42:1	
2006 14:20	9
2011 8:18	9th 54:5