

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

NHPUC 25 JUL '18 PM 1:07

July 11, 2018 - 1:05 p.m.  
Concord, New Hampshire

**CERTIFIED  
ORIGINAL TRANSCRIPT**

**RE: DE 18-049  
EVERSOURCE ENERGY INVESTIGATION TO  
DETERMINE RATE EFFECTS OF FEDERAL  
AND STATE CORPORATE TAX REDUCTION  
(Hearing on the Merits)**

**PRESENT:** Chairman Martin P. Honigberg, Presiding  
Commissioner Kathryn M. Bailey  
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

**APPEARANCES: Reptg. Eversource Energy:**  
Matthew J. Fossum, Esq.

**Reptg. Residential Ratepayers:**  
D. Maurice Kreis, Esq., Consumer Adv.  
Office of Consumer Advocate

**Reptg. PUC Staff:**  
Suzanne G. Amidon, Esq.  
Richard Chagnon, Electric Div.

**Court Reporter:** Susan J. Robidas, NH LCR No. 44

## I N D E X

1  
2 WITNESS:

3 CHRISTOPHER J. GOULDING  
4  
5

6 EXAMINATION PAGE

7 Direct Examination by Mr. Fossum 7  
8 Cross-examination by Mr. Kreis 11  
9 Cross-examination by Ms. Amidon 50

10  
11 INTERROGATORIES BY COMMISSIONERS:

12 By Commissioner Bailey 73  
13 Chairman Honigberg 77  
14 Commissioner Giaimo 78  
15 Commissioner Bailey (cont'd) 79

16  
17 Redirect Examination by Mr. Fossum 82  
18

19 ADDITIONAL INTERROGATORIES BY COMMISSIONERS:

20 Chairman Honigberg 90  
21 Commmissioner Bailey 91  
22  
23 Response by Mr. Fossum 92  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**CLOSING STATEMENTS AND DISCUSSION WITH COMMISSIONERS**

<b>Mr. Kreis</b>	<b>92</b>
<b>Ms. Amidon</b>	<b>112</b>
<b>Mr. Fossum</b>	<b>116</b>
<b>Ms. Amidon</b>	<b>135</b>
<b>Mr. Fossum</b>	<b>137</b>
<b>Mr. Kreis</b>	<b>140</b>
<b>Ms. Amidon</b>	<b>141</b>
<b>Mr. Fossum</b>	<b>142</b>

## I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

EXHIBITS	DESCRIPTION	PAGE
1	3/30/18 Eversource Energy Initial Filing and Technical Statement of Christopher J. Goulding PREMARKED	8
2	6/26/18 Eversource Energy Supplemental Proposal and Supplemental Technical Statement of Christopher J. Goulding PREMARKED	9
3	2015 PSNH Restructuring and Rate Stabilization Agreement	11
4	4/23/18 Certification of Exogenous Events	16
5	7/9/18 Letter to Mr. Kreis from Mr. Bersak	28

1 P R O C E E D I N G S

2 CHAIRMAN HONIGBERG: Good  
3 afternoon. Everybody please be seated. We  
4 are here this afternoon in Docket DE 18-049,  
5 which is a docket to look at the rate effects  
6 of the changes in tax laws for Eversource.

7 Before we do anything else, let's  
8 take appearances.

9 MR. FOSSUM: Good afternoon,  
10 Commissioners. Matthew Fossum here for  
11 Public Service Company of New Hampshire,  
12 doing business as Eversource Energy.

13 MR. KREIS: Good afternoon,  
14 Commissioners. I'm D. Maurice Kreis, doing  
15 business as "Don Kreis." I am the Consumer  
16 Advocate here on behalf of residential  
17 utility customers.

18 MS. AMIDON: Good afternoon. My  
19 name is Suzanne Amidon. I am here with Rich  
20 Chagnon, who is to my immediate left, an  
21 analyst in the Electric Division. And to his  
22 left is Tom Franz, the director of the  
23 Electric Division. I'm here on behalf of  
24 Commission Staff.

1                   CHAIRMAN HONIGBERG: How are we  
2                   proceeding this afternoon? Mr. Fossum.

3                   MR. FOSSUM: Well, my understanding  
4                   is we have a couple of documents to present,  
5                   and we'll have a witness to present those.  
6                   And then I guess my understanding is, at  
7                   least some of the underlying issues here are  
8                   primarily legal, so I'm not certain how much  
9                   actual legal discussion there would be had.  
10                  After that, I suppose it's up to the  
11                  Commissioners as to what they want to  
12                  entertain. But at the outset, we do have a  
13                  witness to present, to make sure that a  
14                  couple of documents are properly entered on  
15                  the record.

16                  CHAIRMAN HONIGBERG: All right. It  
17                  does seem to me that if there are documents  
18                  that need to get in and facts that need to  
19                  get on the record, that's great. But it  
20                  seems like we want to hear from all of you  
21                  about what we should do and why. And I  
22                  think, Mr. Fossum, it may well be that much  
23                  of this is going to be the lawyers talking.  
24                  But, anyway, who is the witness going to be?

1 Is it Mr. Goulding?

2 MR. FOSSUM: It is.

3 CHAIRMAN HONIGBERG: Mr. Goulding,  
4 why don't you move into the witness box.

5 (WHEREUPON, CHRISTOPHER J. GOULDING was  
6 duly sworn and cautioned by the Court  
7 Reporter.)

8 CHAIRMAN HONIGBERG: Mr. Fossum.

9 MR. FOSSUM: Thank you. And before  
10 I go to Mr. Goulding, just for the  
11 Commissioners' reference, we provided to the  
12 Clerk the two documents. They have been  
13 premarked for identification. So, just for  
14 numbering purposes, the Company's March 30th,  
15 2018 filing in this docket has been premarked  
16 as Exhibit 1, and the Company's June 26th  
17 filing has been premarked as Exhibit 2.

18 CHAIRMAN HONIGBERG: All right.  
19 You may proceed.

20 MR. FOSSUM: Thank you.

21 DIRECT EXAMINATION

22 BY MR. FOSSUM:

23 Q. Mr. Goulding, could you please state your  
24 name, your place of employment and your

1           responsibilities for the record.

2    A.    Sure.  My name is Christopher Goulding.  I'm  
3           the manager of New Hampshire Revenue  
4           Requirements, located at 780 North Commercial  
5           Street in Manchester, New Hampshire.  And my  
6           responsibilities include revenue requirement  
7           calculations and implementation of rates  
8           associated with distribution, stranded cost  
9           recovery charge, transmission cost adjustment  
10          mechanism and the energy service rate.

11   Q.    Thank you.  Now, Mr. Goulding, back on  
12          March 30th, in what has been premarked for  
13          identification as Exhibit 1, did you file a  
14          technical statement and associated exhibits?

15   A.    Yes, I did.

16   Q.    Was that statement and were those exhibits  
17          prepared by you or at your direction?

18   A.    Yes, it was.

19   Q.    Do you have any changes or updates to the  
20          information contained in that filing?

21   A.    No, I do not.

22   Q.    And do you adopt that technical statement as  
23          your testimony in this proceeding?

24   A.    Yes, I do.



1 Q. And Mr. Goulding, did you, on June 26th,  
2 submit a supplemental technical statement?

3 A. Yes, I did.

4 Q. And was that supplemental technical statement  
5 prepared by you or at your direction?

6 A. Yes, it was.

7 Q. And do you have any changes or updates or  
8 corrections to that?

9 A. No, I do not.

10 Q. And do you adopt that technical statement as  
11 your testimony for this proceeding?

12 A. Yes, I do.

13 Q. Mr. Goulding, I really just have essentially  
14 one question for you. I'd just like you, if  
15 you could, to explain what is the Company's  
16 position. And we're aware of and the  
17 Commissioners are aware of what has been  
18 filed and premarked as Exhibit 2. But could  
19 you just explain the Company's position for  
20 purposes of this hearing today.

21 A. Yes. So the Company's position in the  
22 supplemental filing is to address the impact  
23 of the tax rate changes by redirecting the  
24 reduction associated with those tax changes

1 to the amortization of storm costs; this way,  
2 customers are accruing a lower amount of  
3 interest. Obviously, over the past couple  
4 years we've had a large volume of storms and  
5 significant outages that required significant  
6 resources to come in. So if there is a storm  
7 balance out there, that's uncollected. So to  
8 mitigate the rate impacts in the future, we  
9 thought it would be appropriate to redirect  
10 these funds to go towards those storm costs,  
11 which, like I said, would then reduce ongoing  
12 and future carrying costs.

13 And the other alternative would be to  
14 address the rate changes part of the  
15 "exogenous events" clause, which was  
16 contemplated -- or approved in Docket 14-238,  
17 the generation divestiture settlement  
18 agreement, which will be an "exogenous event"  
19 filed next March for rates effective  
20 July 1st.

21 Q. Thank you. I guess I do have one other  
22 question.

23 Mr. Goulding, is it the Company's  
24 position that these are the only two possible

1 alternatives?

2 A. No. We would be open to discussing other  
3 alternatives.

4 Q. But for purposes of today's hearing, these  
5 are the alternatives that have been  
6 presented; is that correct?

7 A. That's correct.

8 MR. FOSSUM: Thank you. That's all  
9 I have for direct.

10 CHAIRMAN HONIGBERG: Mr. Kreis.

11 MR. KREIS: Thank you, Mr. Chairman  
12 I would like to start, with your indulgence,  
13 by handing out an exhibit. I guess this is  
14 going to be Exhibit 3, yes.

15 CHAIRMAN HONIGBERG: That's  
16 correct.

17 (The document, as described, was  
18 herewith marked as Exhibit 3 for  
19 identification.)

20 CROSS-EXAMINATION

21 BY MR. KREIS:

22 Q. Okay. Mr. Goulding, ask you to take a look  
23 at what has just been marked for  
24 identification as Exhibit 3. Would you be

1 willing to accept, subject to check, that  
2 Exhibit 3 consists of pages that are copied  
3 directly from the settlement agreement filed  
4 in Docket No. DE 14-238 by Eversource, or  
5 PSNH, on June 10th of 2015?

6 A. Yes, I would.

7 Q. And would you agree with me that that  
8 settlement was approved by Order No. 25,920,  
9 entered by the Commission on July 1st of  
10 2016?

11 A. Yes.

12 Q. And you would also agree that that agreement  
13 was subsequently amended and supplemented  
14 with the so-called "partial litigation  
15 settlement," all of which were approved in  
16 that 2016 order that I just mentioned?

17 A. Yes.

18 Q. But you would agree with me, would you not,  
19 that the provisions governing so-called  
20 "exogenous events" in that original 2015  
21 settlement are intact -- in other words,  
22 weren't modified by any of those subsequent  
23 amendments or additional agreements?

24 A. Yes, I don't recall any changes to the

1 "exogenous events" language.

2 Q. So, turning to the excerpts from the  
3 settlement in Exhibit 3, and drawing your  
4 attention to, I guess it's the page marked 4,  
5 the first page of the exhibit, and looking at  
6 Line 1 of 7 of that exhibit, you would agree  
7 that the effect of changing the marginal  
8 federal corporate tax rate from 35 percent to  
9 21 percent meets the "exogenous events" rate  
10 adjustment threshold that's described there  
11 at Lines 107 through 109?

12 A. Yes. That change alone was roughly  
13 12 million a year. So it would exceed the  
14 million dollars.

15 Q. And turning to the very next page, which is  
16 marked Page 14, you would agree that the  
17 language beginning on Line 366 on that page  
18 and continuing to the Line 420 on Page 16 are  
19 the provisions that govern so-called  
20 "exogenous events."

21 A. To my best recollection, I believe that that  
22 was the only language that addressed  
23 exogenous events, yes.

24 Q. Thank you. Okay.

1           Looking at Page 14, would you mind  
2           reading into the record the sentence that  
3           begins at Line 367.

4    A.    "During the term of this agreement, PSNH will  
5           be allowed, upon Commission approval, to  
6           adjust distribution rates upward or downward  
7           as a result of 'exogenous events' as defined  
8           below."

9    Q.    Does that sentence say anything about what  
10           the OCA or the Staff or the Commission may or  
11           must do?

12   A.    I guess I would think that would be a legal  
13           opinion because it does not specifically say  
14           OCA will do this or will not do this. I just  
15           know they were a signatory to the overall  
16           agreement.

17   Q.    Okay. Would you agree that by using the word  
18           "allowed," it gives PSNH certain options that  
19           it can elect should there be any exogenous  
20           events?

21   A.    My interpretation of "allowed" would be in  
22           order to make a distribution rate change,  
23           we'd have to make a presentation of what that  
24           change would be, and then the Commission

1 allows you to change your rates.

2 Q. And yet, it's PSNH's position that it was the  
3 responsibility of the OCA or the Staff or the  
4 Commission to invoke the exogenous events  
5 provisions of this settlement with respect to  
6 the \$12 million a year we're talking about  
7 here.

8 A. No, I don't recall saying that.

9 Q. Okay. Turning to Line 397 on Page 15, which  
10 is the very next page -- sorry about not  
11 repaginating everything -- would you agree  
12 that that paragraph lays out the procedure  
13 for determining when an exogenous event has  
14 occurred?

15 A. Did you say beginning with 397?

16 Q. Yes.

17 (Witness reviews document.)

18 A. Yes.

19 Q. And would you also agree that that process is  
20 triggered by PSNH making a filing no later  
21 than March 31st of each year?

22 A. Yes.

23 MR. KREIS: Okay. Mr. Chairman,  
24 with your permission, I have another exhibit

1           that I'd like to mark for identification as  
2           Exhibit 4.

3                       CHAIRMAN HONIGBERG:   This will be  
4           four.

5                       (The document, as described, was  
6                       herewith marked as Exhibit 4 for  
7                       identification.)

8   Q.   Mr. Goulding, would you agree with me that  
9           the document that has been marked for  
10          identification as Exhibit 4 is an exogenous  
11          event filing that Eversource made in  
12          connection with the exogenous event  
13          provisions of the settlement agreement with  
14          respect to calendar year 2017?

15   A.   Yes.

16   Q.   Do you agree that the Company was obliged to  
17          file this letter on March 31st, but did not?

18   A.   Per the language of the settlement, it was  
19          supposed to be submitted by March 31st.

20   Q.   Do you happen to know if the Company made its  
21          filing for 2015 exogenous events on time --  
22          that is to say, on or about before  
23          March 31st, 2016?

24   A.   I don't recall.



1 Q. Do you happen to know if the Company made its  
2 filing for 2016 exogenous events on time --  
3 that is to say, on March 31st, 2017, or  
4 before?

5 A. I don't recall.

6 Q. Assuming that the Company did make those two  
7 filings on time, would it be reasonable, in  
8 your opinion, for the Commission to assume  
9 that your Company has some kind of system in  
10 place for assuring that it meets that  
11 deadline every year?

12 A. We do have a system that notifies when  
13 compliance items are due.

14 Q. Looking at the cover letter that is the very  
15 first page of Exhibit 4, the letter from  
16 counsel for Eversource says, "Due to an  
17 oversight, this certification was not made by  
18 March 31st as required under the agreement."

19 What was the nature of that oversight,  
20 and what caused it?

21 A. I don't believe that there was a notification  
22 from the system that the filing due date was  
23 coming up. The way our system works is  
24 there's an annual button you click to update

1           it the following year.

2       Q.     So it's your testimony, then, that there was  
3           some mechanical breakdown in the Company's  
4           system that essentially caused the Company as  
5           an institution to forget that it was supposed  
6           to make that filing on or before March 31st.

7       A.     I would more say it's an oversight because  
8           there's also paper copies, paper calendars  
9           that I have that have the dates of when items  
10          are due. And it was no more than an  
11          oversight of missing the date that it was  
12          due.

13      Q.     What was it that finally reminded you --

14                   MR. FOSSUM:  Mr. Chairman, I'm  
15           going to object at this point.  I have no  
16           idea what this has to do with today's  
17           hearing.

18                   CHAIRMAN HONIGBERG:  You've made a  
19           relevance objection.

20                   MR. FOSSUM:  Yes.

21                   CHAIRMAN HONIGBERG:  Mr. Kreis, why  
22           is this relevant?

23                   MR. KREIS:  Well, the Company is  
24           invoking the exogenous events provision of

1           that settlement agreement, and what triggers  
2           those provisions is the timely filing of the  
3           letter that the Company filed almost, well,  
4           more than three weeks late. And so, you  
5           know, I intend to argue at the conclusion of  
6           this hearing that the Company is simply not  
7           in a position to invoke any rights that it  
8           claims it enjoys under those exogenous events  
9           provision. And I frankly think the  
10          Commission should find not credible the claim  
11          that this was due to an oversight.

12                   CHAIRMAN HONIGBERG: So it's your  
13          position that unless the exogenous events  
14          provision -- well, unless the exogenous  
15          events letter is filed by March 31st, there  
16          is no exogenous events possible, even if it  
17          would enure to the benefit of ratepayers?

18                   MR. KREIS: I'm not ready to go  
19          that far.

20                   CHAIRMAN HONIGBERG: I wouldn't  
21          think so. But I'm not sure what the point  
22          ultimately is, though. Isn't the Company  
23          saying we want to do Plan A? Plan B, which  
24          is not a preferred result, Plan B is treat

1           this as an exogenous event and deal with it  
2           that way.

3                       MR. KREIS: To be candid, Mr.  
4           Chairman, I don't really think I fully  
5           understand what the Company's provision is.  
6           And to the extent you're puzzled, I'm  
7           puzzled, too, because sometimes the Company  
8           says, Oh, here's a couple of -- here's a  
9           bunch of different options that we might all  
10          consider about what to do with this pile of  
11          cash. But at other times the Company is  
12          saying, and I am about to show you a letter  
13          that says that by even mentioning publicly  
14          the possibility that this is not an exogenous  
15          event, I have committed a so-called  
16          "anticipatory breach of contract."

17                      CHAIRMAN HONIGBERG: All right. So  
18          why don't you continue. I'm not -- I don't  
19          know that I'm convinced that missing the  
20          deadline, such as it is -- I'm sure there is  
21          a deadline -- but by filing late, assuming  
22          it's a deadline, affects our decision. Maybe  
23          it does. But I think he's admitted that they  
24          failed, at least because of an oversight.

1 Some oversights are excusable. There are  
2 oversights that are probably not excusable.  
3 If we want to litigate that, we need a lot  
4 more facts and discovery about that. But why  
5 don't you continue in that direction if you  
6 feel you need to. But maybe you should  
7 advance us to the next step.

8 MR. KREIS: Okay. Well, my humble  
9 job, as you know, is simply to help build the  
10 record that will help you make the best  
11 decision you can.

12 CHAIRMAN HONIGBERG: Okay. If you  
13 need to get things on the record related to  
14 what the Company did or didn't do, by all  
15 means, continue to make your case. I'm not  
16 sure I'm convinced of the relevance. And I  
17 may entertain another relevance objection if  
18 you keep going too far, then you can make an  
19 offer of proof of what you would ask if you  
20 were allowed to continue. But for now, why  
21 don't you proceed.

22 MR. KREIS: Sure. And I think the  
23 good news is I think I have run through all  
24 the questions I have on that particular

1           subject, the failure of the Company to make  
2           its March 31st filing on time.

3   BY MR. KREIS:

4   Q.   I want to turn to the rate case that the  
5        Company has been talking about filing.  Why  
6        hasn't it been filed yet?

7   A.   I believe it was contemplated as part of the  
8        generation divestiture settlement, in the  
9        settlement agreement, that there will be time  
10       to complete the divestiture, and once the  
11       divestiture was completed, the plants were  
12       sold, that the Company would anticipate  
13       coming in for a rate review.  But obviously  
14       we all are aware that the hydro plants have  
15       not sold.  They're still delayed, and we're  
16       just waiting on FERC approval.  There's  
17       nothing that's been done by the Company or  
18       anybody to make that process go slower.  It's  
19       just that it's a slow process.

20   Q.   How does the Commission know that the lack of  
21        progress at the FERC is not something that is  
22        within the Company's control?

23                   MR. FOSSUM:  I'm going to object to  
24        that.  I don't know how Mr. Goulding would

1 know what the Commission does or doesn't know  
2 about that process.

3 MR. KREIS: Well, let me rephrase  
4 the question.

5 BY MR. KREIS:

6 Q. Is the lack of progress at the FERC entirely  
7 outside the Company's control?

8 A. I know we made a filing to FERC, and we're  
9 waiting on filing -- or FERC to act on it and  
10 approve the sale of the assets.

11 Q. And of course the fossil divestitures have  
12 long since been completed.

13 A. Yes. Those were completed in January.

14 Q. So, given that the fossil divestitures were  
15 completed in January and the hydro  
16 divestitures are pending, what is it about  
17 the lack of completion of the hydro  
18 divestitures that holds the Company back from  
19 filing its rate case?

20 A. Just the internal company review would be --  
21 we feel would be more appropriate to do once  
22 the hydro units are completely sold and there  
23 is no potential allocation issues between the  
24 different entities, to just get a much

1 clearer picture post-generation sale.

2 Q. But there's no legal impediment or technical  
3 impediment or anything that absolutely  
4 precludes the Company from filing the rate  
5 case now, essentially.

6 A. There was a 24-month window where we were not  
7 allowed to seek a distribution rate change,  
8 and that window has expired.

9 Q. When did that window expire?

10 A. I believe it was June 30th, 2017.

11 Q. And that, too, is a matter that is addressed  
12 in the 14-238 settlement, just not in the  
13 excerpts I included in Exhibit 3; true?

14 (Witness reviews document.)

15 A. No, it is in this Exhibit 3.

16 Q. Ha.

17 A. Bullet 3-H, Delivery Charge, Line 422.

18 Q. Thank you. And since we're back to looking  
19 at that exhibit, turning to the page which is  
20 marked as No. 35, which is actually the last  
21 page of the exhibit, could you read the very  
22 last sentence on that page, the one that  
23 starts at Line 955.

24 A. "The settling parties agree to support this



1           agreement before the Commission and in any  
2           related legal proceedings or legislative  
3           inquiries or hearings to oppose legislation  
4           inconsistent with this agreement and to take  
5           all such action as is necessary to secure  
6           approval and implementation of the provisions  
7           of this agreement."

8    Q.    In your opinion, does that language that you  
9           just read preclude any party from making  
10          public statements about how the agreement  
11          should be interpreted?

12                   (Witness reviews document.)

13   A.    No.  I read it as you should support the  
14          language of the agreement.

15   Q.    Does the language that you read preclude any  
16          party from making arguments to the Commission  
17          about how the agreement should be  
18          interpreted?

19                   (Witness reviews document.)

20   A.    Not as long as those arguments are not in  
21          opposition to -- or not as long as those  
22          arguments are inconsistent with this  
23          agreement -- or not inconsistent with this  
24          agreement.

1 Q. To your knowledge, Mr. Goulding, has  
2 anybody -- have any signatories to the  
3 settlement agreement done anything that you  
4 regard as a violation of the obligations set  
5 forth in Lines 955 through 958?

6 MR. FOSSUM: Again, I'm going to  
7 ask what the relevance of these questions are  
8 to this proceeding.

9 CHAIRMAN HONIGBERG: Mr. Kreis.

10 MR. KREIS: Well, the relevance is  
11 that through the course of this docket, the  
12 Staff and the Commission and the Office of  
13 the Consumer Advocate have been endeavoring  
14 to conduct conversations with Eversource  
15 about how to resolve the docket, and the  
16 Company has responded by accusing the Office  
17 of the Consumer Advocate of breaching the  
18 agreement.

19 MR. FOSSUM: The Company has done  
20 no such thing. There's no filing in this  
21 docket that says any such thing.

22 CHAIRMAN HONIGBERG: All right.  
23 Well, it may be relevant. I'm still not  
24 sure. I'm interested in this question as to

1           whether you're asking Mr. Goulding for a  
2           legal conclusion. You're asking him to  
3           interpret what statements may have been made,  
4           whether they're consistent or inconsistent  
5           with the agreement. I thought one of Mr.  
6           Goulding's answers might start with, "I'm not  
7           a lawyer, but..." so it seems like you're  
8           asking him to interpret the agreement, which  
9           is really what lawyers do in the first  
10          instance, and then ultimately, potentially,  
11          the Commission might have an opportunity to  
12          do.

13                       MR. KREIS: Indeed. And to the  
14                       extent that you are imputing to Eversource an  
15                       objection to my question and you are  
16                       sustaining the objection on the ground that  
17                       I've asked the witness to render legal  
18                       opinions --

19                       CHAIRMAN HONIGBERG: I'm raising  
20                       the issue on my own.

21                       MR. KREIS: So, to the extent you  
22                       have just raised that issue and you're  
23                       telling me that I'm asking the witness to  
24                       state a legal opinion that he's not qualified

1 to state because he's not a lawyer, I guess I  
2 would be happy to withdraw the question.

3 CHAIRMAN HONIGBERG: Fair enough.

4 MR. KREIS: Okay. I have another  
5 exhibit. I guess this one will be marked as  
6 Exhibit 5.

7 (The document, as described, was  
8 herewith marked as Exhibit 5 for  
9 identification.)

10 BY MR. KREIS:

11 Q. Okay. Mr. Goulding, with reference to what  
12 has just been marked for identification as  
13 Exhibit 5, first of all, are you familiar  
14 with this document? Have you seen it before?

15 A. I have seen it.

16 Q. And would you agree, subject to check, that  
17 Eversource delivered that letter to the  
18 Office of the Consumer Advocate via e-mail on  
19 July 9th?

20 A. It's dated July 9th, and it is on Eversource  
21 letterhead from Eversource. I don't know  
22 necessarily how it got to you.

23 Q. Fair enough.

24 Would you also agree that the ostensible

1 subject of the letter is a draft opinion  
2 column that was sent to Eversource for its  
3 review and comment on July 6th?

4 A. Based on the second paragraph, yes.

5 Q. Would you also agree that much of the letter  
6 offers assertions by your employer, PSNH,  
7 about how to interpret the exogenous events  
8 provisions of the 14-238 settlement agreement  
9 for purposes of this document and this  
10 hearing?

11 MR. FOSSUM: I'm going to object to  
12 this document. This is -- and I'm going to  
13 object to the questions going to Mr. Goulding  
14 about it. This is not a document Mr.  
15 Goulding prepared. The fact that he may have  
16 seen it doesn't make him qualified to speak  
17 about what is in it. It has no relevance to  
18 this proceeding. To the extent that Mr.  
19 Kreis has just asked about a document that  
20 was sent to Eversource for its review, he's  
21 not provided that document for any context,  
22 he's not provided any foundation for this  
23 document. And Mr. Bersak, whose name appears  
24 in the letterhead, is not here as a witness.

1                   CHAIRMAN HONIGBERG: So I've heard  
2                   relevance, I've heard lack of foundation for  
3                   the question pending, really any questions  
4                   directed to Mr. Goulding, and Mr. Goulding's  
5                   lack of knowledge about the providence of the  
6                   letter. And you have other grounds? I want  
7                   to make sure I get them all.

8                   MR. FOSSUM: Yes, at least those.  
9                   And I would say to the extent that Mr. Kreis  
10                  has or intends on asking Mr. Goulding about  
11                  whether this letter does or does not correct  
12                  the interpreted or implied settlement  
13                  agreement, it's looking for a legal opinion  
14                  from Mr. Goulding.

15                  CHAIRMAN HONIGBERG: Okay.  
16                  Mr. Kreis.

17                  MR. KREIS: Okay. With respect to  
18                  relevance, I think even a cursory look at  
19                  this letter establishes that it's highly  
20                  relevant. It discusses the very subject that  
21                  we're addressing at this very hearing. So,  
22                  you know, the idea that it's not relevant  
23                  doesn't seem to make any sense whatsoever.

24                  With regard to -- I've lost track

1 of the various objections.

2 CHAIRMAN HONIGBERG: Lack of  
3 knowledge for this witness, foundation, and  
4 potentially calls for legal knowledge.

5 MR. KREIS: Lack of knowledge. The  
6 witness testified that he's familiar with the  
7 letter, in the sense that he has seen it.

8 Third, he testified he didn't know  
9 how it got to me. That's fair. But I don't  
10 think anybody is going to dispute the fact  
11 that this letter got into my possession  
12 because I received it via e-mail from the  
13 Company.

14 CHAIRMAN HONIGBERG: I don't think  
15 there's any -- there's been no authentication  
16 objection. So I'm assuming, Mr. Fossum, this  
17 is a letter that the Company sent to  
18 Mr. Kreis.

19 MR. FOSSUM: Yes.

20 CHAIRMAN HONIGBERG: Okay. So  
21 there is no authentication problem.

22 MR. KREIS: Now, Mr. Fossum pointed  
23 out or argued that there's a lack of context  
24 or lack of foundation because the letter from

1 Mr. Bersak refers to something that I sent  
2 him. If the Commission would like to reserve  
3 an exhibit number, I would be happy to enter  
4 that document into the record. If the  
5 Commission would like to take a recess, I'd  
6 be happy to go back to my office and Xerox it  
7 and bring it in here. I chose not to  
8 introduce it because the Company said it  
9 doesn't like it.

10 CHAIRMAN HONIGBERG: All right. We  
11 haven't looked at this letter. It's the  
12 first time we've seen this letter. And it's  
13 a long, five-page, single-spaced letter.  
14 That's a lot of words. So I don't really  
15 know what's in this letter right now. I have  
16 no -- I don't know if it's useful to know  
17 what it's responding to or not. So we don't  
18 know very much right now, and maybe we need  
19 you to make an offer of proof as to what you  
20 intend to do with this letter and maybe give  
21 us a chance to read it.

22 MR. KREIS: I'd be happy to give  
23 you a chance to read it. The letter is  
24 offered principally because it is a



1           characterization from the Company of its  
2           position on the issues in this docket,  
3           particularly the effect of the 14-238  
4           settlement agreement on your options for what  
5           to do about the \$12 million in immediate tax  
6           relief that the OCA, and I think Staff, are  
7           arguing should be refunded to customers. And  
8           because the rules of evidence don't apply  
9           here, the usual objections one might see in a  
10          civil proceeding don't apply, you know,  
11          foundation, authenticity, all of that --

12                   CHAIRMAN HONIGBERG: Yeah, but  
13           there's sometimes useful benchmarks to  
14           understand how much weight to assign to  
15           something and how much we can rely on Mr.  
16           Goulding's testimony about what this letter  
17           means.

18                   MR. KREIS: Well, the letter I  
19           would say speaks for itself. I would have  
20           really enjoyed and welcomed, and perhaps you  
21           would have as well, the opportunity to  
22           cross-examine the author of this letter. But  
23           he isn't here, and I only get to  
24           cross-examine the witnesses the Company

1 offers.

2 CHAIRMAN HONIGBERG: Well, I don't  
3 think you want to go down that route, because  
4 if you felt that you needed to ask Mr. Bersak  
5 questions, you needed to let somebody know  
6 that you intended to, that you had questions  
7 about this letter and you wanted Mr. Bersak  
8 here. I don't know. Maybe that could have  
9 been arranged. But you look like you want to  
10 make an affirmative case about something.  
11 And if all you're doing is cross-examining  
12 Mr. Goulding and his technical statements,  
13 maybe this letter does something for you, but  
14 I don't understand it yet.

15 MR. KREIS: I think the letter is  
16 useful to you. Again, my job here is simply  
17 to give you as much of a record as I can that  
18 will help you make the best possible  
19 decision. And I am attempting -- I'm  
20 conducting inquiries here so that I can  
21 really understand myself and help you  
22 understand exactly what the Company's  
23 position is. I don't fully understand it.  
24 And all I was really trying to get Mr.

1 Goulding to agree with me is that this letter  
2 purports to state some positions about the  
3 effect of the 14-238 settlement agreement on  
4 this docket. Whether he agrees with them or  
5 not, I don't think that's necessary for him  
6 to answer. Whether that is --

7 CHAIRMAN HONIGBERG: I think Mr.  
8 Fossum would probably stipulate that this  
9 letter articulates some of the Company's  
10 positions regarding the terms of the  
11 settlement, although I can't speak for him  
12 right now.

13 Mr. Fossum, I just don't think -- I  
14 don't see productivity in asking Mr. Goulding  
15 to do what Mr. Kreis just asked.

16 MR. FOSSUM: I absolutely agree.  
17 And to the extent that Mr. Kreis has  
18 questions about the Company's positions,  
19 they're set out in the public filings that  
20 have been marked as Exhibits 1 and 2. Mr.  
21 Kreis is free to ask questions about his  
22 understanding of what is in Exhibits 1 and 2.  
23 To the extent that he wants to bring in some  
24 extraneous letter that purports to say

1 something about the Company's position, Mr.  
2 Goulding is here to testify -- Exhibit 2  
3 contains the Company's position. I don't see  
4 what this has to do with anything.

5 CHAIRMAN HONIGBERG: Well, wait.  
6 Again, I don't know what it says. Does it  
7 articulate a position that's different from  
8 what's in Exhibit 1 or Exhibit 2?

9 MR. FOSSUM: It does not.

10 CHAIRMAN HONIGBERG: Mr. Kreis?

11 MR. KREIS: I think it does. I  
12 guess that's for you to think about --

13 CHAIRMAN HONIGBERG: So you could  
14 be using this to impeach the witness when he  
15 is up here saying, well, our position is  
16 what's in Exhibit 2, based on what was in  
17 Exhibit 1 and what we've learned before our  
18 position is in Exhibit 2. You're saying this  
19 letter, which is dated July 9, so it's after  
20 Exhibit 2, states a different position.

21 MR. KREIS: Indeed, Mr. Chairman.  
22 And I'm telling you that the Company's  
23 position has been labile with respect to what  
24 effect the settlement agreement in 14-238 has

1 on the outcome of this case, and for that  
2 reason, I think the Company is subject to  
3 judicial estoppel with respect to its ability  
4 to exert the exogenous events provision of  
5 14-238 here.

6 CHAIRMAN HONIGBERG: That was a  
7 big -- you used a word I didn't know and made  
8 an assertion about estoppel, which is another  
9 leap forward from where I thought we were.

10 But Mr. Fossum, you look like you  
11 wanted to say something.

12 MR. FOSSUM: Yeah, I agree. I'm  
13 not sure where the argument for judicial  
14 estoppel comes from, nor how that matters.

15 I guess to the extent that Mr.  
16 Kreis has been confused or misunderstanding  
17 the Company's position or that we've been  
18 unclear about it, either Mr. Goulding can  
19 testify to what the Company's positions are,  
20 or to the extent legal argument is necessary,  
21 well, that's my job here today. To try to go  
22 through a letter that was sent to Mr. Kreis  
23 that he believes somehow and in some way  
24 states something marginally different, I

1 don't see how that has to do with anything in  
2 this proceeding. Moreover, I don't see how  
3 it has anything to do with the application of  
4 the exogenous events provision that came out  
5 of the settlement agreement. Commissioner  
6 Bailey raised the possibility of that in our  
7 prehearing conference in this matter. The  
8 possibility of exogenous events was raised by  
9 the Commission in its order opening 18-001.  
10 This matter is out there. The issue has been  
11 there from day one for consideration. I  
12 simply don't understand what Mr. Kreis is  
13 trying to do by attempting to introduce this  
14 letter that has anything to do with the  
15 issues that we're here to talk about today.

16 CHAIRMAN HONIGBERG: All right.

17 Mr. Kreis, let's take small bites. You want  
18 to use this to in some way undercut the  
19 Company's position -- no -- undercut -- yes,  
20 undercut the Company's position that what it  
21 wants to do is X. So why don't you start by  
22 doing that with this letter, if you can, by  
23 directing Mr. Goulding to particular parts of  
24 the letter that are inconsistent with the

1 positions, because since I haven't read it I  
2 don't know what's in it, and you're going to  
3 help me.

4 MR. KREIS: Okay. Let me try this.  
5 Maybe this is in the order of an offer of  
6 proof. When you have a chance to read this  
7 letter, assuming you do, it would tell you  
8 that the Company regards an argument by  
9 either us or the Staff that the exogenous  
10 events provisions don't apply as an  
11 anticipatory breach of a contractual  
12 undertaking as reflected in the settlement  
13 agreement that you approved. And I just  
14 disagree with that. I think that's wrong as  
15 a matter of law.

16 CHAIRMAN HONIGBERG: All right.  
17 Where's that phrasing in the letter? Where  
18 is "anticipatory breach"?

19 MR. KREIS: "Anticipatory breach"  
20 appears at... Page 4, in the second full  
21 paragraph, second line.

22 (Pause in proceedings)

23 CHAIRMAN HONIGBERG: Okay. You've  
24 made your offer.

1           MR. KREIS: So I think that, for  
2           the most part, particularly since this author  
3           of the letter isn't here, the letter speaks  
4           for itself with regard to Eversource and the  
5           positions that it has been taking in this  
6           docket. And it's true that this letter isn't  
7           something the Commission [sic] addressed  
8           through the Executive Director and filed  
9           here, but it sent that letter to me. And I  
10          regard it as reflective of the Company's  
11          official position because it's a letter  
12          written by a corporate officer of the  
13          Company, its chief regulatory counsel. It  
14          addresses the issues in this docket. It  
15          makes a bunch of arguments that are legal and  
16          factual in nature. I think it will help the  
17          Commission to figure out what to do here to  
18          review this letter.

19          CHAIRMAN HONIGBERG: Okay. I think  
20          we can take it for what it's worth to that  
21          extent. Are you going to take a legal  
22          position, or are you taking a legal position  
23          that the tax changes cannot be treated as an  
24          exogenous event?



1 MR. KREIS: Yes.

2 CHAIRMAN HONIGBERG: Why?

3 MR. KREIS: Because the Company  
4 failed to make a filing --

5 CHAIRMAN HONIGBERG: So that's  
6 important. That does highlight, then, the  
7 quote, unquote, deadline and missing the  
8 deadline. You're saying by missing the  
9 March 31st filing date, you're saying they  
10 are precluded from treating it as an  
11 exogenous event; right?

12 MR. KREIS: That's one reason.

13 CHAIRMAN HONIGBERG: Okay. I just  
14 want to make sure that that is what you're  
15 saying.

16 Okay. What else? What are the  
17 other reasons why it can't be?

18 MR. KREIS: So this whole process  
19 started at the beginning of the year when you  
20 opened Docket No. 18-001 and issued  
21 instructions to every utility in the state to  
22 basically send us a filing by the end of  
23 March telling us what you intend to do about  
24 this tax relief. And different utilities did

1 different things. Some utilities had pending  
2 rate cases, some didn't. But this utility  
3 wrote to you on March 31st and said we would  
4 like to deal with this in the rate case that  
5 we intend to file later this year. That  
6 would have been the point at which the  
7 Company should have popped up, if it intended  
8 to do so, and say, A, we believe that this is  
9 an exogenous event within the meaning of the  
10 14-238's settlement agreement, and we would  
11 like to handle it in that context; and, oh,  
12 by the way, here is our March 31st filing  
13 that lists this as an exogenous event that  
14 triggers those provisions --

15 CHAIRMAN HONIGBERG: Here's a  
16 question for you: Is the tax law change that  
17 took effect on January 1 of 2018 a 2017  
18 exogenous event?

19 MR. KREIS: Yes.

20 MR. FOSSUM: Absolutely not.

21 CHAIRMAN HONIGBERG: I mean, I  
22 expected Mr. Fossum to say that because it  
23 seems fairly obvious to me that the Company  
24 experienced no change in its tax obligations

1 in 2017 as a result of the laws we're talking  
2 about. All of them took effect 1/1/2018.

3 MR. KREIS: But the event occurred  
4 in 2017 because that is when the President of  
5 the United States signed the Tax Reform Bill  
6 into law.

7 CHAIRMAN HONIGBERG: Well, is the  
8 event the change in revenue, or is the event  
9 the -- I bet the effective date of the law  
10 was 1/1/18, just as an aside. But even if it  
11 had an effective date in December, no one's  
12 revenue changed.

13 MR. KREIS: Well, I think that  
14 would then require you to make some judgments  
15 about what the word "event" in the phrase  
16 "exogenous event" in the settlement agreement  
17 means.

18 CHAIRMAN HONIGBERG: It might.  
19 But, boy... let's assume it had an effective  
20 date of January 1st just for a moment. Would  
21 Congress, having passed it to great fanfare,  
22 and the President signing it to equal  
23 fanfare, constitute that kind of event?

24 MR. KREIS: I would argue that it

1 did. You might disagree.

2 CHAIRMAN HONIGBERG: I know Mr.  
3 Fossum would.

4 MR. FOSSUM: With reference to the  
5 settlement agreement itself, in the opening  
6 paragraph of the exogenous events provision,  
7 it speaks to events where "the total  
8 distribution of revenue impact (positive or  
9 negative) of all such events exceeds a  
10 million dollars, Exogenous Events Rate  
11 Adjustment Threshold, in any calendar year."  
12 There was no distribution revenue impact in  
13 calendar year 2017 from this event.

14 CHAIRMAN HONIGBERG: Okay. All  
15 right. Are there other reasons why you think  
16 the Company is precluded from treating this  
17 as an exogenous event?

18 MR. KREIS: Yes, because I think  
19 that there is an estoppel argument here. And  
20 I really was prepared to do that at the end,  
21 once everybody has been heard from on --

22 CHAIRMAN HONIGBERG: All right. If  
23 you want to wait, then you can. Is there  
24 anything else to do with this letter?

1 MR. KREIS: No.

2 CHAIRMAN HONIGBERG: Okay. So  
3 we're going to put Exhibit 5 aside. And are  
4 there other things you want to do with Mr.  
5 Goulding?

6 MR. KREIS: Just a couple more  
7 questions. And I do want to apologize. I'm  
8 not trying to be argumentative or anything  
9 other than --

10 CHAIRMAN HONIGBERG: No, you're  
11 supposed to be argumentative. This is what  
12 the purpose of this hearing is for. In large  
13 measure, I really did expect this to be more  
14 like an argument and less like an examination  
15 of Mr. Goulding, who only knows what he knows  
16 and can't be expected to know what he doesn't  
17 know.

18 MR. KREIS: He does know a lot,  
19 though.

20 CHAIRMAN HONIGBERG: He is a very  
21 good witness. I think we all agree with  
22 that. He does know a lot. But he's not a  
23 lawyer.

24 MR. KREIS: He doesn't even play

1           one on TV.

2                       I think, in any event, I have just  
3           a couple more questions for him, and I don't  
4           think any of them have to do with anything  
5           that is even remotely legal.

6   BY MR. KREIS:

7   Q.   You testified, I believe, and the letter that  
8       we've been talking about also says this, that  
9       Eversource is willing to discuss -- this is  
10      what the letter says: "Eversource remains  
11      ready and willing to discuss ideas and  
12      proposals for dealing with the federal tax  
13      law changes" --

14                   MR. FOSSUM: I apologize for  
15      interrupting Mr. Kreis. He's reading from a  
16      letter that's still subject to a pending  
17      objection, and he's reading it into the  
18      record of this case. If he's got a question  
19      for Mr. Goulding about what he's testified  
20      to, I don't have a problem with that.

21                   MR. KREIS: Okay. I think --

22                   CHAIRMAN HONIGBERG: I think Mr.  
23      Kreis can fix his question.

24                   MR. KREIS: I can fix my question

1           very easily.

2   BY MR. KREIS:

3   Q.   As I understand it, Eversource, through you,  
4       Mr. Goulding, and through Mr. Fossum, has  
5       indicated a willingness to discuss  
6       alternative ways of dealing with the federal  
7       tax law changes that are outside of invoking  
8       the exogenous events provisions of the 14-238  
9       settlement; correct? That's what you said.

10   A.   You're referring to what I testified to  
11       earlier when I said Option 1, Option 2, we're  
12       open to discussions. Yes.

13   Q.   So Option 1 was --

14   A.   Or Alternative 1, Alternative 2. Sorry.

15   Q.   Option 1 was apply the \$12 million to  
16       recoverable storm-related expenses?

17   A.   Yes.

18   Q.   Option 2 was treat the whole thing like it's  
19       an exogenous event in the 14-238 settlement.

20   A.   Yes.

21   Q.   But there's some third option out there.

22   A.   You're referring to the third option of  
23       having discussions on a resolution that all  
24       parties can support --

1 Q. Well --

2 A. -- or agree to.

3 Q. Well, I guess what I would say is that the  
4 problem is that we're here conducting an  
5 evidentiary hearing, whose purpose is to  
6 make -- cause the Commission to issue an  
7 order determining what to do about this  
8 money. So I think those discussions have to  
9 happen now if they're going to happen at all,  
10 don't they?

11 A. If this docket -- or this hearing is expected  
12 to end in a resolution on what to do with the  
13 tax dollars, then I guess it would have to  
14 happen here.

15 Q. Would the Company be willing to consider  
16 devoting some or all of that \$12 million to  
17 investments in the system data collection and  
18 the development of a system visibility plan?

19 A. I wouldn't even know what a system data  
20 collection, system visibility program is,  
21 so...

22 Q. Okay.

23 A. I couldn't comment.

24 Q. Does the Company have any other proposals?



1 A. I believe during the tech session we had  
2 spoke about possibly using a kickstart grid  
3 mod or EV -- I mean not EV, a battery storage  
4 pilot, those types of programs.

5 Q. And so if the Commission were interested in  
6 one or more of those options, how would you  
7 like the Commission to address them, given  
8 where we are?

9 A. Based on the expediated [sic] time line, we  
10 obviously did not submit those as part of the  
11 proposals because this docket ended up being  
12 fast-tracked. So we put out the two most,  
13 what we felt were the most reasonable  
14 proposals due to the limited time that  
15 existed.

16 MR. KREIS: Okay. Mr. Chairman, I  
17 think I have taxed everyone's patience enough  
18 today, and I will conclude my questioning of  
19 Mr. Goulding, with thanks to him.

20 CHAIRMAN HONIGBERG: Okay. Ms.  
21 Amidon.

22 MS. AMIDON: Thank you.

23 CROSS-EXAMINATION

24 BY MS. AMIDON:

1 Q. Good afternoon, Mr. Goulding. How are you?

2 A. Great.

3 Q. I first want to -- for the timeline, would  
4 you take, subject to check, that the  
5 Commission issued its order of notice on the  
6 effects of the new tax law on June 3rd of  
7 this year?

8 A. Yes, on January 3rd.

9 Q. Okay. And you mentioned exogenous events.  
10 And in that order of notice, if I recall  
11 correctly, the Commission noted that Liberty  
12 and Unitil had recent rate cases and had  
13 exogenous events provisions in those  
14 settlement agreements, but declined to  
15 recognize the change in the tax law for those  
16 purposes -- for that purpose to be an  
17 exogenous event.

18 MR. FOSSUM: To the extent Mr.  
19 Goulding is being asked to provide an  
20 interpretation of what the Commission's order  
21 means --

22 MS. AMIDON: Well, I can -- if you  
23 would prefer me just to refer to the order of  
24 notice?

1                   CHAIRMAN HONIGBERG: Was it titled  
2                   an "Order of Notice" or was it an "order"?

3                   MS. AMIDON: Order Opening  
4                   Investigation.

5                   CHAIRMAN HONIGBERG: Okay. I  
6                   thought that was right. So what is the  
7                   provision you're asking him about?

8                   MS. AMIDON: Well, it recognizes,  
9                   as I said, that Liberty and Unitil had  
10                  concluded rate cases within the last year and  
11                  that their respective rate agreements  
12                  contained a provision on the method by which  
13                  they shall manage exogenous events while  
14                  changes in tax -- well, this is a quote.  
15                  "While changes in tax law are typically  
16                  treated as exogenous events, the Commission  
17                  declines to make that finding pursuant to the  
18                  two approved rate case settlements at this  
19                  time and requires both Granite State Electric  
20                  and UES to comply no later than April 1,  
21                  2018, with the reporting requirements as  
22                  described in this Order."

23                  And as a result of those reporting  
24                  requirements -- and you may not know this,

1 Mr. Goulding -- subject to check, would you  
2 agree that the two companies made filings  
3 that included the credit of the -- it  
4 recalculated the tax rate to customers in the  
5 calculation of certain step increases?

6 A. It was my understanding that they used the  
7 reduction in taxes to offset other cost  
8 increases or rate increases.

9 Q. Correct. Okay. Now, you'll be glad because  
10 you actually wrote this. Do you recall the  
11 docket related to the Company's petition for  
12 continuation of the Reliability Enhancement  
13 Program, 17-196?

14 A. Yes.

15 MS. AMIDON: Okay. So I would like  
16 the Commission to take administrative notice  
17 of that proceeding, insofar as I want to  
18 reference a document.

19 CHAIRMAN HONIGBERG: I'm assuming  
20 there's not going to be an objection to the  
21 document because it's going to be something  
22 that's either in our files or he's going to  
23 authenticate anyways, so --

24 MS. AMIDON: Right. I'm just

1           trying to cover my bases. I'm going to show  
2           Mr. Fossum the document and then show it to  
3           the witness.

4                       (Pause in proceedings)

5                       MS. AMIDON: So this is the  
6           document I'm referring to. And I'm giving it  
7           to the witness so he can describe what  
8           happened with respect to the tax law in this  
9           filing.

10       BY MS. AMIDON:

11       Q.     And I've highlighted two sections, which if  
12           you could read in the record, please.

13                       CHAIRMAN HONIGBERG: Before you  
14           start, Mr. Goulding. Ms. Amidon, was that  
15           document an exhibit in that docket?

16                       MS. AMIDON: Yes.

17                       CHAIRMAN HONIGBERG: What exhibit  
18           number was it?

19                       MS. AMIDON: I'm sorry. I didn't  
20           look for the exhibit number. It's the  
21           June 23rd, 2018 supplemental filing --  
22           supplemental testimony of Christopher  
23           Goulding related to the Reliability  
24           Enhancement Program.

1                   CHAIRMAN HONIGBERG: Okay. So what  
2                   is it you want Mr. Goulding to read?

3                   MS. AMIDON: The highlighted text  
4                   on Pages 2 and 3. And this does relate to  
5                   the tax law.

6       A.       "More specifically, as a result of Congress's  
7               recently-enacted House Bill 1, commonly  
8               referred to as the "Tax Cuts and Jobs Act,"  
9               as well as minor changes in New Hampshire tax  
10              law, it is no longer necessary to adjust the  
11              Company's rates to continue the Reliability  
12              Enhancement Program (REP) as previously  
13              proposed. This testimony will briefly  
14              explain the changes to the laws and the  
15              resulting amendment to the Company's rate  
16              request." That's Bates Page 1.

17                   And then Bates Page 3. "QUESTION: Does  
18                   this submission account for all the changes  
19                   in the laws?

20                   "ANSWER: No. As noted earlier, the  
21                   full impact of the changes to the laws is  
22                   still being assessed by the Company. When  
23                   the assessment is more complete, the Company  
24                   will include information on the various

1 required calculations and adjustments in its  
2 submission in Docket No. IR 18-001.  
3 Nevertheless, it appeared appropriate and  
4 reasonable to incorporate the changes  
5 relating to the REP that are known to the  
6 Company now and to allow for further  
7 refinement later."

8 Q. So, what the Company did in that filing was  
9 to apply a credit based on the recalculation  
10 of taxes to the calculation of the REP rate.  
11 Is that -- am I saying that correctly?

12 A. What we did was when calculating the return  
13 for 2018, we adjusted the tax gross-up by the  
14 new tax gross-up effective January 1st, 2018,  
15 which was a 21 percent federal tax rate and a  
16 7.9 state rate, instead of the old 35 percent  
17 federal and 8.2 percent state rate.

18 Q. And so that, in effect, passed on some of the  
19 changes in the tax law to customers through  
20 the rate calculation.

21 A. Well, it reduced the amount that was  
22 necessary to collect in 2018 to extend the  
23 REP program.

24 Q. Right.

1 A. So the benefit of the tax reduction enured to  
2 customers.

3 Q. Thank you. And on March 30th, the Company  
4 made the filing, that responsive filing, to  
5 Docket IR 18-001, which ended up being turned  
6 into this docket, 18-049; is that right?

7 A. Yes.

8 Q. And this is the filing where the Company  
9 stated that it was going to make a rate case  
10 filing this year; is that right?

11 A. Yes. There was language in there that talked  
12 about here's the calculation and how to  
13 address the annual accrual amount -- or  
14 deferred amount will be addressed as part of  
15 the Company's upcoming rate review.

16 Q. And thus far, would you agree that Staff has  
17 not questioned the calculation of the various  
18 effects of the tax law at this time?

19 A. We have received no questions.

20 Q. And it probably wouldn't be surprised,  
21 though, if we subject that to some kind of  
22 review at some point to see if we agree with  
23 the Company's numbers? They appear to be  
24 consistent with how the other companies



1           calculated the rates, but we might still,  
2           nonetheless, subject it to some review.

3       A.    I think that's the obligation of Staff, so I  
4           would not object to that.

5       Q.    Thank you.

6       A.    And I think, hopefully we've provided all the  
7           work papers necessary to expediate that  
8           review.

9       Q.    Thank you.

10                   And on Page 4 of your technical  
11           statement there is the next to the last  
12           paragraph where you referenced the settlement  
13           agreement which was approved in Docket 14-238  
14           that was the subject of discussion with the  
15           Consumer Advocate earlier in this hearing.  
16           Do you see that?

17       A.    Yes.

18       Q.    And at this point, the Company again  
19           continued to assert that it would be filing a  
20           rate case this year and that it did not  
21           reference any exogenous event contingencies  
22           in this filing.  Is that fair to say?

23       A.    In this filing, there was no reference to  
24           exogenous events.  But in the, I believe it

1 was Exhibit 4, the exogenous event filing  
2 that was submitted on April 23rd, there was  
3 in the -- under Section 2, we have a  
4 statement that says, "For calendar year 2018,  
5 there will be an exogenous event triggered as  
6 a result of the Tax Cuts and Jobs Act." It  
7 talks about on December 22nd, 2017, the Tax  
8 Cuts and Jobs Act became law, which amended  
9 existing tax law and included numerous  
10 provisions that impacted corporations such as  
11 Eversource. Then there's some more talking  
12 about it. And Eversource submissions related  
13 to this specified change, as well as changes  
14 in tax law, were required to be submitted  
15 pursuant to the Commission's directive in  
16 Docket IR 18-001. Eversource's submissions  
17 related to those changes was made as being  
18 addressed in the docket. "The outcome of  
19 that proceeding may affect future submissions  
20 by Eversource relative to the exogenous  
21 events."

22 Q. So I'm glad you're there because I was going  
23 to ask you a question about what is the  
24 meaning of that last sentence. I don't know

1 if you prepared this, by the way. I don't  
2 believe there's a name on this submission.

3 But do you know what the meaning of that  
4 last sentence is? It's not a legal document.  
5 It's just what could affect future filings  
6 related to the exogenous events.

7 A. Well, I think it was unclear exactly what the  
8 18-001 docket was going to do, because it  
9 talked about, I believe we're required to  
10 make a submission to do the calculation  
11 resulting from the rate change in order to  
12 quantify how much dollars we're talking about  
13 and then how we were to handle those dollars.  
14 And we had said that's part of a rate case,  
15 so we didn't know if that was something the  
16 Commission would say yes or no on. And if it  
17 said no, there was always the option of, or  
18 the avenue of going with the order in 14-238  
19 for an exogenous event. It would fall under  
20 the exogenous event.

21 Q. Okay. And after it was -- after the receipt  
22 of basically the March 30th filing, there was  
23 a period of time you didn't hear anything  
24 moving forward on this docket; is that fair

1 to say?

2 A. Yes. I think the order of notice was issued  
3 sometime in late May.

4 Q. Yes, that's right. And what cause gave rise  
5 to that, would you believe, is that I had  
6 heard through one of my colleagues, I believe  
7 it may be Mr. Chagnon, that he understood  
8 from discussions with the Company that they  
9 were no longer going to file a case this  
10 year. Would you think that's a possible -- a  
11 possibility? Because that's what I recall.

12 A. I don't recall the exact conversations, but I  
13 know about that time was when it was  
14 determined that we would not be filing for  
15 temporary rates effective August 1st.

16 Q. Right, and I was hoping that we could -- we  
17 would have heard that through a supplemental  
18 filing, which we did not. So we moved  
19 directly to the prehearing conference after  
20 that point. Do you recall that?

21 A. I do, yes. We had a prehearing conference  
22 and followed up with a tech session.

23 Q. Right. And following the tech session, the  
24 Company filed what has been identified as

1 Exhibit 2. Do you recall that?

2 A. Yes.

3 Q. And in this document, this is where you  
4 present the two alternatives; is that right?

5 A. Yes.

6 Q. And on Page 2, at the bottom of the technical  
7 statement, it says, "During the discussions  
8 with the Staff and OCA, it was made clear to  
9 Eversource that the Staff and the OCA were  
10 open to only one" --

11 CHAIRMAN HONIGBERG: Slow down.

12 MS. AMIDON: Thank you. "-- one  
13 proposal, near-term return of the savings  
14 associated with the tax law changes by way of  
15 rate credits to customers.

16 A. Yes.

17 Q. But to be honest, that is consistent with how  
18 the Commission treated the rate -- the tax  
19 law changes effects with Liberty and Unitil;  
20 right?

21 A. They used those to offset other cost  
22 increases, yes.

23 Q. And the Company has a stranded cost filing  
24 coming to hearing soon, which I believe it's

1           tomorrow, as a matter of fact, unless I have  
2           my days of the week wrong. But it's coming  
3           before the Commission for rate changes  
4           effective August 1; is that right?

5       A.    Yes. The SCRC and TCAM are changing on  
6           August 1. There's a hearing tomorrow.

7       Q.    Yeah, it is tomorrow. That's too bad.

8                   And the rates for the SCRC, the rate is  
9           going up; is that right?

10      A.    Yes.

11      Q.    So why would it not be appropriate to offset  
12           that rate increase by applying the benefits  
13           from change in the tax law to those rates in  
14           a similar manner that the Commission applied  
15           those benefits to rate increases proposed by  
16           Unitil and Liberty?

17      A.    I view the rate -- or proposals by Liberty  
18           and Unitil as no different than our  
19           Alternative 1, which is offset costs that  
20           have been incurred by the Company on behalf  
21           of customers. So they're just paying down  
22           those costs. So it's still returning the  
23           dollars to customers.

24      Q.    Those vehicles, though, by which the

1 Commission approved crediting money back to  
2 customers were step increases that were  
3 planned through settlement agreements for  
4 both companies. Did you know that?

5 A. I was aware that one was due to a step  
6 increase. Not sure of the other one.

7 Q. And I don't know if you reviewed the filing.  
8 But Unitil initially proposed to spend down  
9 some of the benefit, the tax benefit, to  
10 accelerate recovery of storm costs. And they  
11 agreed not to do that and instead provide a  
12 credit to the proposed rate increase to  
13 customers. Did you know that?

14 A. I know where they ended up. I don't know the  
15 discussions in them ending up in that place.

16 Q. So I have a few questions about the  
17 Alternative 1. The proposal to recover -- to  
18 use the money, the tax windfall that  
19 Eversource has, to cover storms that occurred  
20 since 2016. Am I reading that correctly?

21 A. The middle of 2016, yes, but 2016.

22 Q. And have you submitted -- has the Company  
23 submitted for cost recovery of those storms?

24 A. We submitted it in Docket No. 18-058 cost of

1 recovery for storms through March of 2016.

2 Q. So the ones you're mentioning that you would  
3 propose to use as tax windfall to pay for are  
4 storms that occurred after that period?

5 A. Yes.

6 Q. And those have not been reported to the  
7 Commission.

8 A. They have not been filed to be reviewed and  
9 audited yet.

10 Q. So they haven't been audited either.

11 A. Correct.

12 Q. And so -- well, how would you propose to use  
13 this money? Just pay for it and then file to  
14 recover the cost?

15 A. Well, the current way that funding and cost  
16 mechanisms for the major storms are set up is  
17 when we have major storms, they're booked to  
18 a regulatory liability, and then we have the  
19 funding come in on a monthly basis that's  
20 booked to a regulatory asset. And then when  
21 we make a submission, like Docket 18-058, we  
22 say here's all the costs. We'd like to  
23 transfer the dollars from the storm funding  
24 reserve account to the storm cost account in



1           order to remove basically the liability and  
2           asset from our books. So what we would be  
3           doing is as the million dollars a month tax  
4           savings accrues, we would be reserving -- or  
5           putting it to the storm funding reserve  
6           account, so that when we submit a filing to  
7           be audited of the cost of the storms, we  
8           would ask for the storm funding to be -- to  
9           offset the storm costs. So those dollars  
10          would just be accruing until a submission is  
11          made. And both the storm cost account and  
12          storm reserve account accrue carrying charges  
13          at the same stipulated rate of return.

14    Q.    But if you're going to have a rate case next  
15          year, assuming that does occur next year and  
16          that the sales go through, wouldn't you be  
17          able to use your test year 2017 and the  
18          current balance in the major storm cost  
19          reserve fund? Wouldn't that be what you  
20          would use?

21    A.    Right. We'd have to make a proposal saying  
22          there's \$60 million at this time in the storm  
23          shortfall, storm cost shortfall, and  
24          determine how to recover that, whether it's

1 over a one-year period, a three-year period,  
2 a five-year period.

3 So what this was attempting to do was to  
4 reduce that impact when the rate review is  
5 filed, in terms of how much -- how long that  
6 cost -- the storm balance has to be amortized  
7 over and also just avoid the drop in rates  
8 for customers to go to have rates go right  
9 back up to recover these costs that we have  
10 incurred on behalf of customers.

11 Q. Well, would you be surprised that Staff does  
12 not support cost recovery for items that  
13 haven't been filed or audited?

14 A. Am I surprised by that? No. But this is the  
15 same mechanism that's working right now,  
16 where we have a storm funding level coming  
17 in, and once the storm costs are filed and  
18 audited, those dollars are allowed to be  
19 transferred over to pay for those costs. So  
20 that was the same kind of underlying  
21 principle in Alternative 1.

22 Q. And the last sentence, or next to the last  
23 sentence on Page 3 of your technical  
24 statement says, "Using the tax savings in

1           this manner is beneficial to both customers  
2           and the Company in the near term and the long  
3           term." And then the next sentence describes  
4           what the benefit is to the customers. What's  
5           the benefit to the Company?

6       A.    Right now, the Company has unfunded  
7           liability; so it would fund that liability.  
8           So we have an asset that's going to offset  
9           that cost, our storm cost liability. So it  
10          would help when we come in for a future rate  
11          review to avoid kind of rate fluctuations and  
12          rate shock, which is good for the Company,  
13          obviously, as well as customers.

14       Q.    And how do you plan to -- assuming that you  
15           have a rate case next year, and let's say  
16           rates are effective September 1, how would  
17           you restore to customers the amount of the  
18           tax benefit that was accrued between  
19           January 1 of this year and whatever date I  
20           said, August 31st of next year?

21       A.    Well, it would go -- January 1st from this  
22           year forward would be going into that storm  
23           funding reserve account. So when we file the  
24           rate case, we would basically say, okay,

1           here's the storm funding reserve account of  
2           \$24 million. Here's the storm cost account.  
3           There's a shortfall of \$40 million. And  
4           that's what we would present as part of the  
5           rate review for recovery.

6    Q.    Okay. Yeah, I guess I wasn't really going  
7           there. But I was just assuming right now, in  
8           the event you couldn't use the money for the  
9           storm reserve, how would you allocate the  
10          accumulated deferred tax between January 1  
11          and whatever date?

12   A.    Are you referring to the excess deferred tax  
13          piece or the tax gross-up piece? I just want  
14          to make sure I'm clear.

15   Q.    I'm not sure what the proper terminology is.  
16          But I'm talking about the period -- if you  
17          did not receive permission by the Commission  
18          to use the money for the storm and you had  
19          to -- you waited until some later point, how  
20          would you take into account the money that  
21          attributed to the time between January 1 when  
22          the law went into effect and the date that  
23          you had a rate change?

24   A.    Okay. So, assuming nothing, there was

1 nothing ordered, no rate change ordered in  
2 this docket, no determination that the funds  
3 should go to -- be directed to the storm  
4 fund, those dollars would just continue to  
5 accrue in a deferred liability account. So  
6 they would be addressed as part of a rate  
7 case, whether it's going to reduce the rate  
8 potential year one rate increase, potentially  
9 spread it out over many years. There's  
10 multiple ways it can be addressed. But it  
11 would be refunded to customers at that time  
12 via some vehicle. Could be, again, that it  
13 goes at that time determination is made that  
14 it goes to reduce the storm costs. I don't  
15 know.

16 Q. Federal and state income taxes paid by  
17 Eversource are part of the cost of providing  
18 service to customers; is that right?

19 A. Yes.

20 Q. And the current rate just for the federal tax  
21 law, what is the current rate at which  
22 your -- for the cost of service that's passed  
23 on to customers? Is it 35 percent for the  
24 corporate income tax rate?

1 A. I believe we were at 35 percent federal  
2 income tax rate.

3 Q. Okay. And customers are paying that, even  
4 though the actual rate is 21 percent; is that  
5 right?

6 A. Yes. The federal tax rate is now 21 percent,  
7 effective January 1st.

8 Q. Does the Company think that tax windfall that  
9 the Company has results -- and which it  
10 continues to hold until next year -- results  
11 in the customers paying just and reasonable  
12 rates, as they're required by statute?

13 MR. FOSSUM: I'm going to object,  
14 to the extent that Mr. Goulding's being asked  
15 to interpret an implied statute for a legal  
16 determination.

17 CHAIRMAN HONIGBERG: Mr. Goulding,  
18 if you have an opinion, you can offer it.

19 WITNESS GOULDING: No, thank you.

20 BY MS. AMIDON:

21 Q. Why would it be wrong for the -- why would it  
22 not be appropriate for the Commission to  
23 require the Company to treat Eversource like  
24 the other utilities and require Eversource to

1 use the next rate increase vehicle to begin  
2 allowing customers to receive the benefit of  
3 the reduced taxes?

4 A. Why would it be wrong? I'm not necessarily  
5 sure it would be wrong. What we have as a  
6 proposal we think is in the best interests of  
7 customers because there is the major storm  
8 costs that are out there that are unfunded,  
9 that are accruing carrying charges. So the  
10 Company's position is, in the long term this  
11 is a more appropriate way to address the tax  
12 savings that in the long run results in more  
13 savings for customers.

14 Q. Of which they could be receiving sooner if  
15 the rates were adjusted to reflect the actual  
16 corporate income tax rate; correct?

17 A. Well, it would be a one-time, temporary rate  
18 adjustment until a full rate review where  
19 these outstanding costs that we have in  
20 Alternative 1 would be presented for  
21 recovery. And it would more than likely  
22 result in a rate increase just for these  
23 items alone, let alone all the items, other  
24 upward pressure in cost that the Company is

1           incurring.

2       Q.     But that's the nature of ratemaking; costs go  
3           up or down.

4       A.     Right.  But we have been kind of in the  
5           mindset lately of customers are not -- don't  
6           like fluctuation of rates, the "see-saw  
7           effect."  So we've been doing what we can to  
8           kind of mitigate the rates see-sawing; hence,  
9           when we did the energy service, we tried to  
10          split that up, split the winter months up so  
11          that we don't have a see-saw effect.  And  
12          same thing with SCRC, where we did the SCRC  
13          and the energy service rate change back on  
14          April 1st at the same time to avoid the drop  
15          down/right back up increase.  So that was  
16          what this was attempting to do.

17                   MS. AMIDON:  Okay.  No further  
18           questions.  Thank you.  Thank you, Mr.  
19           Goulding.

20                   CHAIRMAN HONIGBERG:  All right.  
21           We're going to take a 15-minute break before  
22           we continue.

23                           (Brief recess was taken at 2:25 p.m.,  
24                           and the hearing resumed at 2:43 p.m.)



1                   CHAIRMAN HONIGBERG: Commissioner  
2           Bailey.

3                   COMMISSIONER BAILEY: Thank you.

4 INTERROGATORIES BY COMMISSIONERS:

5 BY COMMISSIONER BAILEY:

6 Q. Good afternoon.

7 A. Hello.

8 Q. I'm trying to understand how, under your  
9 Alternative 1, mechanically the reduction in  
10 tax expense gets back to customers. So can  
11 you go through the offsetting accounts with  
12 me again?

13 A. Okay. So as the dollars come in, they are  
14 booked to a 228430 regulatory liability. And  
15 what that is, is the storm funding. So,  
16 right now we currently have storm funding  
17 that comes in through our distribution rates  
18 of roughly a million dollars a month, and  
19 that is booked to the 228430 account. So  
20 under Proposal 1, the same thing would occur.  
21 Instead of being one million dollars a month  
22 to the 228430 account, it would be \$2 million  
23 a month, plus the \$23,000 a little extra  
24 dollars. So it would be building up in the

1           228430 account.

2                   And then on the other side, on the asset  
3           side, we have a 182430 account, and that's  
4           where all the deferred storm costs are  
5           charged to. So, once those deferred storm  
6           costs are approved, the storm reserve funding  
7           is moved to offset the storm cost. And right  
8           now we have a deficit of about over  
9           \$60 million between the asset and the  
10          liability because we've incurred a number of  
11          storms over the past basically two years; the  
12          most recent large one was the October 2017  
13          storm.

14   Q.    Okay. And you said once approved, the money  
15          essentially moves from one account to pay off  
16          the other account.

17   A.    Yes.

18   Q.    Okay. And when does that approval happen?

19   A.    We make a submission to say here's all the  
20          storms. We're looking for approval of these  
21          storm costs. And then a docket is opened,  
22          and they're reviewed and questioned, and  
23          discovery questions are asked. So it would  
24          be as part of that process. Right now we

1           have a docket that we submitted, I believe  
2           the end of March or April, and it was for  
3           about \$85 million, \$86 million of storm  
4           costs. And we have, as of June, about  
5           \$86 million of storm funding that we're  
6           asking for the costs to be reviewed and  
7           approved in the storm funding to offset those  
8           costs.

9       Q.    And you expect that you'll have an additional  
10           60 million on top of that?

11      A.    We do have an additional 60 million on top of  
12           that.

13      Q.    So you're just asking for the funding of the  
14           86 million?

15      A.    Yes, the storms through March of 2016.

16      Q.    So, assuming that we approved Alternative 1,  
17           when would the funding pay off? When do you  
18           think the funding would actually pay off some  
19           of that money, some of that cost?

20      A.    Well, in theory -- not in theory. In  
21           practice it's paying it off as it's coming in  
22           because those costs that customers owe are  
23           now funded. But then the Commission, when we  
24           make a filing to the Commission and say

1           here's the costs, then a determination can be  
2           made whether those costs were prudent and  
3           valid costs. And if they are said to be,  
4           yes, they are, then the revenues that we've  
5           collected from customers can go to offset  
6           those costs.

7    Q.    And when will that happen? That's my  
8           question.

9    A.    So we have the filing through -- or costs  
10          submitted for filing in Docket 18-058 through  
11          March of 2016. So we're looking to make  
12          another filing by the end of the year for, I  
13          believe it's costs through the end of 2017,  
14          which would be another 55, 60 million. So  
15          it's forthcoming.

16   Q.    So you said by the end of the year. So the  
17          fund would be -- would pay off the debt  
18          sometime next year?

19   A.    Yes. Once the costs are reviewed, if they're  
20          approved, then the Commission order, I'm  
21          guessing, will basically specify that the  
22          cost reserve fund was allowed to be  
23          transferred over to the cost account to fund  
24          those approved costs.

1 Q. But that's not going to happen until next  
2 year.

3 A. Correct.

4 BY CHAIRMAN HONIGBERG:

5 Q. Okay. I'm trying to get a fix on when  
6 ratepayers see a benefit of that?

7 A. Well, they see a benefit as soon as we start  
8 collecting storm funding dollars from them to  
9 offset storm costs. That reduces carrying  
10 charges of a million dollars a month. So, a  
11 million --

12 Q. So that would appear in a ratepayer's bill as  
13 a reduction somewhere, or something would be  
14 lower as a result of this? Correct me if I'm  
15 wrong, but it seems to me that the ratepayers  
16 don't see it until the last step of the  
17 process. I mean, unless you collected less  
18 from ratepayers to fund the storm fund at a  
19 slower rate, I don't see how they're seeing a  
20 benefit in their rates until the last step.

21 A. Right. They would not see a benefit in their  
22 rates until all the storm costs are  
23 recovered. But at the same time, until those  
24 costs are recovered, they're experiencing or

1           incurring less carrying charges on the storm  
2           costs because you're basically paying down a  
3           credit card aspect of it, or paying down a  
4           debt.

5       Q.   Well, you're just keeping track of it on your  
6           books as to what's building up.  You're not  
7           building that account up that you will seek  
8           recovery from ratepayers for.  You'll be  
9           doing that at a slower rate because you will  
10          have applied this money to it.  You use that  
11          money rather than build up a larger liability  
12          that you would then seek recovery for.

13       A.   Yeah, recovery of the future storm balance  
14          will be reduced by whatever is recovered now.

15       Q.   But no change in the rates charged to your  
16          ratepayers until that happens --

17       A.   Correct.

18       Q.   -- something like a year from now.

19       A.   Depends on how long the million dollars a  
20          month is recovered or we come in for a full  
21          rate review.  That would be when all the  
22          other components would be adjusted.

23       BY COMMISSIONER GIAIMO:

24       Q.   I want to make sure I understand the numbers.

1           So, from March 2016 through the end of 2017,  
2           you saw approximately \$55- to \$60 million in  
3           weather-related costs?

4           A.    Yes.

5           Q.    And I thought I heard you say the monthly  
6           carrying cost is a million dollars on that 60  
7           million. Did you say that?

8           A.    No. No. Sorry. The monthly carrying charge  
9           is at the stipulated rate of return, which  
10          right now is roughly 7 percent. Excuse me.  
11          Annual carrying charge is 7 percent.

12          Q.    Okay. So just play this out mathematically.  
13          Sixty million paid off at a million a month  
14          would take five years.

15          A.    Yes, without addressing the carrying charge  
16          aspect of it.

17          Q.    Thanks.

18          BY COMMISSIONER BAILEY (cont'd):

19          Q.    So if you have the funds coming in to the  
20          account that will fund the storm costs, does  
21          that accrue interest at 7 percent?

22          A.    Yes.

23          Q.    So that's what you're saying -- is that what  
24          you're saying? That because there's more

1 money in the storm recovery fund, and it's  
2 accruing the same interest rate as you're  
3 charging on the costs, that's where the  
4 savings come from?

5 A. Yes, which at 12 million a year times  
6 7 percent interest is about \$850,000 a year.  
7 So, almost a million dollars a year.

8 Q. Okay. And if the Commission were to approve  
9 Alternative 1, this is a temporary fix until  
10 you get to a rate case. Then you have a test  
11 year with lower tax expense, and so it all  
12 gets reset?

13 A. Right. So when we come in for the full rate  
14 review, it would have the current tax level  
15 in it. And then it would say, all right,  
16 here is how much the shortfall is between the  
17 storm cost reserve account and the storm  
18 funding reserve account. And maybe the  
19 determination is, all right, spread that over  
20 five years for recovery. Instead of saying  
21 we're collecting \$12 million a year for storm  
22 funding, let's cut that down to 6 and then  
23 spread your outstanding balance over 10 years  
24 at 3 million a year or some number like that.



1 Q. The reduced tax expense, there's no dispute  
2 that the reduced tax expense is due back to  
3 customers in some form, right, from your  
4 current rates?

5 A. That's what our current proposal is now, that  
6 it's due back to customers.

7 Q. Well, is there any argument that it's not due  
8 back to customers?

9 A. I guess just questions on whether -- because  
10 we're not earning our allowed return on  
11 equity, whether we are -- that is the tax  
12 amount that should be adjusted. But as the  
13 proposal is set out, we've said effective  
14 with the order of notice being issued on  
15 January 2nd, that it would adjust and go back  
16 to customers in some form.

17 Q. And somebody mentioned, I think it was  
18 Attorney Amidon, reducing or using this as an  
19 offset for the increase in TCAM and stranded  
20 costs. Why isn't that an appropriate  
21 vehicle?

22 A. It would not fully offset. Actually, the  
23 TCAM and SCRC are more than offsetting each  
24 other. It's the energy service rate

1           effective August 1st that is causing upward  
2           pressure on rates.

3   Q.    I think I read today that the rate is going  
4           up for just TCAM and SCRC.

5   A.    I think I had a 2.6 percent decrease for TCAM  
6           and a 1 percent increase in stranded cost  
7           recovery charge. So I thought for those two  
8           components it was a decrease.

9   Q.    Okay. Maybe I just read -- maybe I just got  
10           the stranded cost -- well, I'll know that  
11           better tomorrow.

12                    COMMISSIONER BAILEY: All right. I  
13           think that's all I have. Thank you.

14                    CHAIRMAN HONIGBERG: Commissioner  
15           Giaimo.

16                    COMMISSIONER GIAIMO: I'm good.

17                    CHAIRMAN HONIGBERG: I don't think  
18           I have any other questions.

19                    Mr. Fossum, do you have any more  
20           questions for Mr. Goulding at this time?

21                    MR. FOSSUM: I do.

22                    REDIRECT EXAMINATION

23   BY MR. FOSSUM:

24   Q.    Mr. Goulding, do you have in front of you

1           what has been premarked as Exhibit 3 that Mr.  
2           Kreis provided, the excerpts of the 2015  
3           settlement agreement?

4   A.    Yes, I do.

5   Q.    I want to pick up -- I'll start with picking  
6           up with some of the questions you were  
7           receiving from the Bench.

8                    Could you turn, please, to what is noted  
9           at the top of Page 14 of that document.

10  A.    Okay.

11  Q.    Could you please read for me the sentence  
12           that begins on Line 364 and onto 365. Please  
13           read that.

14  A.    "PSNH may seek a modification to the storm  
15           funding level should additional major storms  
16           occur."

17  Q.    Mr. Goulding, is it your position that  
18           essentially what is proposed as Alternative 1  
19           by the Company is a modification to the storm  
20           funding level?

21  A.    Yes, it is.

22  Q.    And just for clarity, so as you've described  
23           it in relation to the questions you've been  
24           asked, would it be accurate to say that the

1 changes that would occur as a result of the  
2 implementation of Alternative 1, if it was  
3 approved, would result in a modification to  
4 this storm funding level?

5 A. Yes, that's exactly what it would be.

6 Q. Thank you.

7 Sticking with this same document and the  
8 same page, Mr. Goulding, do you recall being  
9 asked a series of questions by the Staff  
10 about the Company's REP filing?

11 A. Yes, I do.

12 Q. Mr. Goulding, would you consider the REP  
13 filing, the REP itself, essentially a  
14 stand-alone rate mechanism?

15 A. Yes, I would.

16 Q. Mr. Goulding, could you please look at what  
17 is on the same page of Exhibit 3 that we were  
18 just on. That's a long sentence, so I'll  
19 just try to truncate. The sentence beginning  
20 at Line 369 that carries down all the way  
21 down to 376, I'll just read a portion of  
22 that. Beginning at Line 371, "PSNH will be  
23 allowed to adjust distribution rates upward  
24 or downward (to the extent that the revenue

1           impact of such event is not otherwise  
2           captured through another rate mechanism that  
3           has been approved by the Commission) if the  
4           total distribution revenue..." and goes on  
5           from there. Did I read that accurately, Mr.  
6           Goulding?

7       A.    Yes, you did.

8       Q.    Is it your position that the REP is another  
9           rate mechanism that's been approved by the  
10          Commission?

11      A.    Yes.

12      Q.    So the treatment of the funding, the tax  
13           funding through there, is it your opinion and  
14           position that it's consistent with the  
15           settlement agreement?

16      A.    Yes.

17      Q.    Remaining with that document, Mr. Goulding,  
18           could you turn, please, to the next page  
19           there, marked Page 15. Do you recall some  
20           questions you received from the OCA related  
21           to the paragraph beginning at Line 397 on  
22           that page?

23                           (Witness reviews document.)

24      A.    Yes.

1 Q. Do you recall those questions had to do with  
2 the process of application of exogenous  
3 changes? Is that your recollection?

4 A. Yes, it is.

5 Q. Mr. Goulding, could I have you please read  
6 the sentence beginning on Line 406 of that  
7 page and continuing on through Line 409,  
8 please.

9 A. "On or before May 1 of each year until PSNH's  
10 next distribution rate case filing, the Staff  
11 and the OCA may make a filing requesting an  
12 exogenous event rate decrease or contest an  
13 exogenous event rate increase proposed by  
14 PSNH. Any adjustments to revenue  
15 requirements for exogenous events..."

16 Q. Okay. Mr. Goulding, are you aware or have  
17 you seen any filing from the Staff or the OCA  
18 requesting an exogenous event rate decrease?

19 A. No, we have not.

20 Q. Would that include for any such filing made  
21 in 2018? Have you seen any filing from the  
22 Staff or the OCA?

23 A. No, I have not.

24 Q. Is it your understanding that Staff and OCA

1           may make this filing independent of what the  
2           Company does relative to the exogenous  
3           events?

4       A.    Yes.

5       Q.    Just a few more questions, Mr. Goulding.

6                        With reference to what was marked as  
7           Exhibit 1, I just want to confirm with you  
8           that the Company indicated at the time it  
9           filed Exhibit 1 that the tax effects are to  
10          be handled as part of a comprehensive rate  
11          review.  Is that accurate?

12      A.    Yes.

13      Q.    Did that submission mention or reference  
14          exogenous events at that time?

15                       (Witness reviews document.)

16      A.    No, it did not.

17      Q.    To the best of your knowledge, would the  
18          filing of a rate review have extinguished the  
19          exogenous events provision in the 2015  
20          settlement agreement?

21      A.    Yes.

22      Q.    Thank you.

23                       Finally, I just want to circle back to a  
24          series of questions that you received from

1           the Staff relative to the rate proposals by  
2           other utilities. Do you recall those  
3           questions?

4    A.    Yes, I do.

5    Q.    And more specifically to the treatment of the  
6           tax change by Liberty and Unitil, do you  
7           recall those questions?

8    A.    Yes.

9    Q.    Mr. Goulding, did you play any part in any of  
10          those dockets? Did you receive any discovery  
11          in there? Did you participate in any  
12          settlement discussion or other discussion?

13   A.    No, I did not.

14   Q.    So you're not aware of -- I believe you  
15          testified to this earlier. But to confirm,  
16          you're not aware of how or why either of  
17          those companies ended up where they did with  
18          their tax proposals, are you?

19   A.    No, I'm not.

20   Q.    To the extent that either of those proposals,  
21          or perhaps both of them, were tied to  
22          something like a step adjustment coming out  
23          of a full rate case, is Eversource in a  
24          similar position to those companies?



1 A. No.

2 Q. And so would that treatment, in your opinion,  
3 be relevant to a proposal by Eversource?

4 A. Not necessarily.

5 MR. FOSSUM: Thank you. That's all  
6 for redirect.

7 CHAIRMAN HONIGBERG: All right.  
8 Mr. Goulding, I think you can return to your  
9 seat.

10 So I assume that there's no  
11 objections on 1, 2, 3 and 4 to striking ID;  
12 is that correct?

13 MR. FOSSUM: Yes.

14 CHAIRMAN HONIGBERG: All right.  
15 With respect to Exhibit 5, Mr. Fossum, do you  
16 want to continue to object to Exhibit 5 being  
17 a full exhibit?

18 MR. FOSSUM: Yes, I do.

19 (Discussion among Commissioners off the  
20 record.)

21 CHAIRMAN HONIGBERG: All right.  
22 We're going to overrule the objection and  
23 strike ID in Exhibit 5, understanding that it  
24 may be of limited utility on relevance

1 grounds and a number of other grounds. But  
2 we'll take it for what it's worth in this  
3 docket.

4 I think the last thing to do,  
5 unless somebody else has any other items we  
6 need to deal with, is to have the parties sum  
7 up. But this may turn into still something  
8 of a discussion because we're interested in  
9 knowing from OCA and Staff what they think  
10 should happen here. And I guess, Mr. Fossum,  
11 you're going to get a chance to respond to  
12 what they say.

13 But also, I want you to keep in  
14 mind that the order that we issued at the  
15 beginning of the year was in response to a  
16 law passed, I think as we agreed earlier, to  
17 great fanfare about what good this would do  
18 for the economy to return money to taxpayers  
19 so that it could be used to stimulate the  
20 economy and do other great things. That  
21 spurred activity throughout the country in  
22 commissions like ours working with utilities  
23 like yours to get money in the hands of  
24 people who would spend it, their ratepayers.

1           And all of the orders, all of the decisions  
2           that have been made to date have been toward  
3           that end. So it's a little -- I'm concerned  
4           that the proposals that you've made won't do  
5           that. And so I'm interested in how you  
6           respond to them and how you address the  
7           underlying general purpose of what these --  
8           the large federal change was all about, at  
9           least to hear the politicians talk about it,  
10          and what happened with our order and what  
11          happened nationwide with other utilities.

12                           Commissioner.

13                   COMMISSIONER BAILEY: I'd also like  
14           to hear from the Company about, I think  
15           Massachusetts ordered you to do an immediate  
16           refund to customers. And so if I'm wrong on  
17           that, let me know. And if I'm right on that,  
18           tell me why that's not relevant.

19                   MR. FOSSUM: Would you like that as  
20           part of a later statement or a response right  
21           now?

22                   CHAIRMAN HONIGBERG: Well, yeah,  
23           why don't you give an immediate response to  
24           that because that's a very specific question.

1                   MR. FOSSUM: To the best of my  
2                   understanding as I sit here, there was at the  
3                   time, at least for one of Eversource's  
4                   affiliate companies, a very recently  
5                   completed full rate case where the entirety  
6                   of revenue and cost of items had been  
7                   evaluated. It was completed, I believe  
8                   within perhaps weeks of this. So, in that  
9                   instance, there was a rather immediate return  
10                  of funds because it was essentially done  
11                  knowing what all of the other changes were.  
12                  My understanding is that that was the case  
13                  for that utility, and only that utility. I  
14                  don't believe that an immediate return  
15                  occurred for -- again, to the best of my  
16                  knowledge -- occurred for any other utility  
17                  in Massachusetts.

18                  CHAIRMAN HONIGBERG: All right.  
19                  Mr. Kreis, why don't you start this  
20                  discussion.

21                  CLOSING STATEMENTS

22                  MR. KREIS: Thank you, Mr.  
23                  Chairman. Let me start with the good news.  
24                  We do not, on behalf of residential

1 ratepayers, have any issues with the method  
2 that Public Service Company, d/b/a  
3 Eversource, used to calculate either the  
4 deferred tax liability of roughly \$12 million  
5 on an annual basis, or the estimate of  
6 accumulated deferred income taxes.

7 Second, we don't have any problem  
8 with taking up the issue of accumulated  
9 deferred income taxes -- we haven't really  
10 talked about that here -- in the Company's  
11 next rate case, or I mean distribution rate  
12 review, even though some of the utility  
13 sector have been complaining that that  
14 uncertainty is causing investors and bond  
15 purchasers to sour on investing in utilities.  
16 But we are very concerned about the Company's  
17 position when it comes to what to do with the  
18 deferred tax liability. The \$1.023 million  
19 per month of decreased revenue requirement as  
20 the result of changes in the federal tax code  
21 is not an "exogenous event" within the  
22 meaning of the settlement agreement approved  
23 in Docket DE 14-238.

24 On Page 14, Lines 367 and 368, the

1 settlement agreement says, and I'm reading,  
2 PSNH will be allowed to adjust distribution  
3 rates upward or downward as a result of  
4 exogenous events. That mechanism is intended  
5 to give PSNH a safety valve to protect it  
6 from unforeseen events, given the stay-out  
7 that applied through last July, a year ago,  
8 the end of July 2017.

9 Page 14, Lines 371 through 373 of  
10 that agreement says it's only an exogenous  
11 event, "to the extent that the revenue impact  
12 of such event is not otherwise captured  
13 through another rate mechanism." You heard  
14 Mr. Fossum quote that very language. The  
15 purpose of this docket is to create another  
16 rate mechanism.

17 If you look at Page 15 of the  
18 settlement agreement, at Lines 397 through  
19 399, exogenous events for the previous year  
20 must be certified no later than March 31st.  
21 This exogenous event, passage of the Tax  
22 Reform Act, took place, as the Chairman  
23 pointed out, in 2017. There was no  
24 certification on or before March 31st. The

1           Company filed nothing until April 23rd. They  
2           say this was an oversight. The Commission  
3           should regard this explanation as not  
4           credible and, therefore, reject it. The  
5           records of the Commission amply demonstrate,  
6           if you look at the docket entries in 14-238,  
7           that the previous two years this Company  
8           managed to file its exogenous event  
9           certification on time, on March 31st. Why  
10          they didn't do it this year, I just simply  
11          can't bring myself to accept the idea that  
12          this was a mere oversight, and neither should  
13          the Commission. Not should the Commission  
14          accept the Company's unpersuasive claim that  
15          because the tax act wasn't effective until  
16          January 1st, the whole thing isn't even  
17          actionable as an exogenous event within the  
18          meaning of the settlement agreement until  
19          next year. That would be fundamentally  
20          unfair to customers. And as the arbiter of  
21          the interests to customers and shareholders,  
22          the Commission should not stand for that --

23                   CHAIRMAN HONIGBERG: Can I stop you  
24           there for a minute?

1 MR. KREIS: Of course.

2 CHAIRMAN HONIGBERG: I don't hear  
3 the Company saying that this should be an  
4 exogenous event for 2017. I think they  
5 affirmatively disagree with that point. So  
6 the whole business about whether they filed  
7 on time and whether that's -- that's not  
8 relevant to the argument that they're making.  
9 It may be relevant to argue that we might  
10 want to say, well, it's not an exogenous  
11 event under the agreement, but by any other  
12 reasonable definition of what an exogenous  
13 event might be, yeah, this is an exogenous  
14 event -- I mean with a small E in the two  
15 words. It's just not within the agreement  
16 because -- for a variety of reasons.

17 So, for those purposes, maybe we  
18 shouldn't do it. But I don't -- the whole  
19 thing about estoppel and missing deadlines  
20 doesn't seem to make sense because that's not  
21 what they're trying to do. Their suggestion  
22 is do it as a 2018 exogenous event. That's  
23 Alternative B here.

24 MR. KREIS: Right. And with



1           respect to --

2                         CHAIRMAN HONIGBERG:   And I  
3           understand you think that's unfair.   And I  
4           think I agree with you.   I think I probably  
5           agree with you that that's unfair, given what  
6           I -- my introduction to all of your closings.

7                         MR. KREIS:   Indeed, Mr. Chairman.  
8           And I have to say, having been a law student,  
9           I learned in law school that sometimes when  
10          the Bench is making your best argument for  
11          you, it might be a good idea to say nothing.  
12          And you began this colloquy by making -- I  
13          thought by setting a really useful tone for  
14          this whole conversation, that, you know, the  
15          Tax Act had certain purposes.   And the  
16          Company appears to be thwarting them here.  
17          And that's a problem, and that's a problem  
18          you have the authority to address.   I'm  
19          making a bunch of arguments in the  
20          alternative.   And accepting your premise that  
21          whether the Company made a deadline on  
22          March 31st of this year is irrelevant because  
23          what we're really talking about is a 2018  
24          exogenous event that they will have to

1 certify in 2019. I'm telling you that that  
2 is the thing that the Company is actually  
3 estopped from doing, given other  
4 representations that the Company has made in  
5 this very docket. That's an argument I want  
6 to get to.

7 CHAIRMAN HONIGBERG: Okay.

8 MR. KREIS: Okay. So, along those  
9 lines, anything else -- meaning, any use of  
10 the exogenous event provisions in 14-238 --  
11 would be manifestly unfair because that would  
12 allow the Company to strategically file a  
13 rate case, and thus, as they're trying to do  
14 here, keep money it doesn't deserve. Even  
15 this is an exogenous event for whatever  
16 calendar year, and even if the provisions of  
17 the settlement related to exogenous events  
18 lived beyond the stay-out which expired last  
19 year, the Commission has the authority to  
20 conclude that the provisions are no longer  
21 applicable because invoking them here results  
22 in rates that are not just and reasonable.

23 The Company makes a spurious claim  
24 that even if I so much as say publicly that

1           these provisions no longer apply, I'm  
2           committing an anticipatory breach of  
3           contract. That's outrageous. In the context  
4           of garden variety civil proceedings,  
5           settlement agreements are contractual in  
6           nature. I know that because there's a case,  
7           Poland versus Twomey, 156 NH 412, a 2007  
8           case, that says so. But there's no authority  
9           for the proposition that this is how it works  
10          in the quasi-judicial administrative  
11          context -- i.e., contested proceedings under  
12          the Administrative Procedure Act. How could  
13          it? The Staff of the Commission sign  
14          settlement agreements all the time, and it's  
15          not a party. It can't be sued for breach of  
16          contract. It's incapable of supplying the  
17          requisite consideration to form a contract.

18                        The correct answer to this  
19          question, as a matter of New Hampshire  
20          utility law, is that the terms of the 14-238  
21          settlement agreement are binding because they  
22          were approved and adopted in a Commission  
23          order, a decision that has the force and  
24          effect of law. And RSA 365:28 explicitly

1 vests the Commission with the authority to  
2 alter, amend, suspend, annul, set aside or  
3 otherwise modify any order made by it after  
4 notice and hearing. The only limitation is  
5 that the Commission must follow due process.  
6 I know that because the New Hampshire Supreme  
7 Court said that in an appeal of the Office of  
8 Consumer Advocate, 134 NH 651. That's a 1991  
9 case.

10 There are no questions of  
11 transgressing anyone's due process rights  
12 here. The Company's had a full and fair  
13 opportunity to litigate the question of what  
14 to do with this money. The Commission can  
15 and should order PSNH to give it back.

16 Now, even if the tax windfall is an  
17 exogenous event, and even if the Commission  
18 can overlook the failure to meet the  
19 March 31st deadline on the theory that it's a  
20 2018 exogenous event, and even if the  
21 exogenous event provisions survive the end of  
22 the stay-out period last year, and even if in  
23 ordinary circumstances I'd be anticipatorily  
24 breaching a contract just by standing up in a

1 public space and raising this question, and  
2 even if the Commission were somehow  
3 foreclosed from modifying its order on the  
4 14-238 settlement in ordinary circumstances,  
5 that doesn't apply in these circumstances  
6 because this Company has waived the right to  
7 make the 14-238 arguments that it is  
8 attempting to make here. That is because  
9 this is a textbook example of judicial  
10 estoppel, as that concept has been elucidated  
11 in Kelleher versus Marvin Lumber and Cedar  
12 Company. That is a decision reported at 152  
13 New Hampshire 813. It's a 2005 case. And I  
14 will read the salient language from Page 848  
15 of that opinion with various citations in the  
16 text omitted.

17 "Where a party assumes a certain  
18 position in a legal proceeding and succeeds  
19 in maintaining that position, it may not  
20 thereafter, simply because its interests have  
21 changed, assume a contrary position. The  
22 purpose of this doctrine is to protect the  
23 integrity of the judicial process by  
24 prohibiting parties from deliberately

1 changing positions according to the  
2 exigencies of the moment. While the  
3 circumstances under which judicial estoppel  
4 may be invoked vary with each situation, the  
5 Court considers the following three factors:  
6 One, whether the party's later position is  
7 clearly inconsistent with its earlier  
8 position; two, whether the party has  
9 succeeded in persuading the tribunal to  
10 accept that party's earlier position; and,  
11 three, whether the party seeking to assert an  
12 inconsistent position would derive an unfair  
13 advantage or impose an unfair detriment on  
14 the opposing party if not estopped."

15 That is a road map of what Public  
16 Service Company of New Hampshire did here.  
17 You told this Company in Docket IR 18-001 in  
18 January: Make a filing before April 1st, and  
19 tell us what you intend to do with the  
20 windfall from the Tax Reform Act. In Order  
21 26,096, entered on January 3rd, you said, and  
22 I quote, "The Commission intends to open a  
23 separate docket for each of the filings  
24 received and will consider appropriate rate

1 impacts in those company-specific dockets."

2 PSNH did not object to this  
3 determination. PSNH did not say, oh-oh,  
4 exogenous event, has to be covered by 14-238.  
5 No. They made the filing you required, and  
6 you opened this docket. The Company's filing  
7 of March 30th did not say anything about  
8 exogenous events. It said PSNH is raking in  
9 this cash windfall to the tune of a million  
10 bucks a month, and we'd like to include it in  
11 the rate case we're planning on filing in  
12 2018. You relied on that representation, and  
13 so did we. No filing on May 1st in Docket  
14 14-238, just an agency and a Consumer  
15 Advocate taking the Company's word that this  
16 would all be fixed via a rate case with a  
17 recoupment date that takes place sometime  
18 this year.

19 Indeed, as recently as the  
20 prehearing conference in this very docket  
21 just a few weeks ago, on June 18th, the  
22 Company was not claiming exogenous event.  
23 The first mention of that came from  
24 Commissioner Bailey. It's on Page 8 of the

1 transcript. And when Commissioner Bailey  
2 raised that issue, "Is this an exogenous  
3 event?" Mr. Fossum said, "It could perhaps be  
4 considered an exogenous event." Now the  
5 Company's crying exogenous event. If it  
6 succeeds, it squeezes out of the system  
7 exactly the sort of unfair advantage that is  
8 simply not cricket, or maybe not soccer, per  
9 the Kelleher decision.

10 CHAIRMAN HONIGBERG: What did we  
11 and you do in reliance on that filing to your  
12 detriment?

13 MR. KREIS: We didn't file that  
14 letter that Mr. Fossum mentioned on May 1st  
15 saying wait a minute, we need an exogenous  
16 event change to this Company's rate. And you  
17 weren't expecting such a thing. You could  
18 have raised that sua sponte. The Staff could  
19 have.

20 CHAIRMAN HONIGBERG: If we all  
21 thought that this wasn't a 2017 exogenous  
22 event and therefore didn't want to trigger  
23 that provision, why would we have done that?  
24 You didn't want to trigger that as a -- or



1 did you? Did you feel that that was the  
2 right treatment, that we should treat this as  
3 a 2017 exogenous event and return the money  
4 that way?

5 MR. KREIS: No. I wanted you to do  
6 exactly what you said you were going to do:  
7 Open this docket, get the Company to come in  
8 and say what it thought it should do --

9 CHAIRMAN HONIGBERG: Then I'm  
10 missing the reliance. No one wanted to do  
11 what it is you said they disclaimed an  
12 interest in doing. So, ultimately it may not  
13 matter, but I think you may be missing the  
14 reliance element of your estoppel argument.

15 MR. KREIS: Well, I do admit that's  
16 probably the weakest of the triad with  
17 respect to my argument. But I still think  
18 that you, meaning the Commission, and me,  
19 meaning the Office of Consumer Advocate,  
20 relied on the Company's filing that it made  
21 in response to your order in early April or  
22 late March that said, Look, here's what we're  
23 going to do with the tax windfall. We're  
24 going to fold it into our rate case, and

1 we're filing that rate case this year. And  
2 we all acted in reliance on that and we  
3 didn't consider one way or another. We  
4 didn't think about is this a 2017 exogenous  
5 event, is it a 2018 exogenous event. Nobody  
6 was thinking about exogenous events. The  
7 first person that mentioned it was  
8 Commissioner Bailey. She did that on  
9 June 18th. And so everybody relying on the  
10 fact that it's neither a 2017 nor a 2018  
11 exogenous event, we're just moving forward  
12 with the broader question of what does the  
13 public interest require with respect to this  
14 \$12 million a year windfall.

15 CHAIRMAN HONIGBERG: Do you think  
16 we have the authority to say, notwithstanding  
17 what's in the agreement, or we want to modify  
18 that as we can under the statutes that you  
19 cited, we want to say that this is in fact an  
20 exogenous event that is treatable under that  
21 provision, we want to give the money back as  
22 if it were a 2017, or modify that provision,  
23 such that a tax law passed in 2017, but  
24 effects in 2018 counts and we can deal with

1           it as a 2017 exogenous event?

2                       MR. KREIS:   You mean by invoking  
3           the provision from RSA 365 --

4                       CHAIRMAN HONIGBERG:   Yeah.

5                       MR. KREIS:   -- that I quoted?

6                       CHAIRMAN HONIGBERG:   Yeah.

7                       MR. KREIS:   You absolutely could do  
8           that.   And that is one way of resolving this  
9           issue.

10                      Now, I want to be fair to the  
11           Company, because the letter that is Exhibit 5  
12           from Mr. Bersak raises some legitimate issues  
13           about, you know, at what point does everybody  
14           just get to repudiate the settlement  
15           agreement.   I think there are limits to that,  
16           and I think the limits have to do with due  
17           process and fundamental fairness; right?   I  
18           mean, you could not repudiate the core of  
19           that agreement without causing all kinds of  
20           legal trouble.   But this is a scenario that  
21           wasn't contemplated when the 14-238  
22           settlement agreement was approved -- and by  
23           "scenario," I mean a scenario in which the  
24           Company, for whatever reason, has, as far as

1 I know, indefinitely put off the filing of  
2 the rate case. And believe me, I'm not  
3 sitting here trying to get the Company to  
4 file the rate case anytime soon. They're  
5 welcome to do it whenever they see fit.

6 But taking advantage of the fact  
7 that a Company basically controls when it  
8 files its rate case and the fact that there  
9 are exogenous events provisions in the  
10 settlement agreement that are really intended  
11 to protect the Company by allowing it to  
12 adjust rates without filing a rate case in  
13 certain provisions, those things work and  
14 manifest unfairness by allowing the Company  
15 to basically keep money it shouldn't be  
16 allowed to keep. And it just isn't  
17 consistent with the spirit of 14-238, given  
18 the way events have played out historically.  
19 Nobody knew that the President of the United  
20 States was going to get elected, much less,  
21 you know, persuade Congress to adopt a  
22 massive tax decrease. And nobody knew that  
23 the divestitures would be delayed for as long  
24 they have been. So you're sort of outside

1 the realm of what the parties were thinking  
2 about at the time they negotiated that  
3 section, that Docket 14-238 settlement  
4 agreement.

5 So, once you get past this  
6 exogenous event controversy, I don't see any  
7 impediment to immediate rate relief. The  
8 Company wants to devote \$12 million to storm  
9 recovery. But in our judgment, that would be  
10 improvident to do so prior to a thorough  
11 investigation of the prudence of the  
12 expenditures the Company is seeking to  
13 recover. I don't think putting that  
14 particular cart before that particular horse  
15 would be in the public interest.

16 So then there's the argument that  
17 passing the \$12 million --

18 COMMISSIONER BAILEY: Before you go  
19 off of that point --

20 MR. KREIS: Sure.

21 COMMISSIONER BAILEY: Sorry. I  
22 don't think that's what they're asking us to  
23 do. They're asking us to put the money in a  
24 funding account, and that account is going to

1           add interest to offset the interest expense  
2           from the cost account. And so we still have  
3           to have another proceeding to say whether the  
4           costs, the storm costs that they want to  
5           recover, are prudent.

6                       MR. KREIS: Agreed. That's all  
7           true. And for that reason you could do that.  
8           I'm just urging you not to do that because I  
9           don't think that's the most fair thing to do  
10          for customers, given the circumstances. I  
11          mean, there are a bunch of -- I mean,  
12          tomorrow we'll be here talking about the  
13          transmission cost adjustment mechanism and  
14          the stranded cost recovery charge. We have  
15          just been through a proceeding that has seen  
16          a significant increase in the energy service  
17          rate. So, you know, there are reasons to  
18          deliver rate relief to customers in the very  
19          near term that are more compelling than even  
20          the certainty of long-term benefits to  
21          customers if you defer this storm recovery  
22          and then ultimately provide some rate relief  
23          to customers down the road. But, you know,  
24          again, it's up to you.

1           The OCA is not, despite everything  
2 I've said already, is not really trying to be  
3 intransigent on questions like these. We are  
4 always willing to talk with utilities about  
5 investing customer money in ways that will  
6 benefit them over the long run as a possible  
7 alternative to one-time, near-term rate  
8 relief.

9           The Company has in passing  
10 mentioned some kind of solar and battery  
11 pilot. That's intriguing, especially if it's  
12 accompanied by an experiment in time-of-use  
13 rates. Even more potentially fruitful from  
14 our standpoint is some kind of data  
15 acquisition and data-sharing effort,  
16 particularly if a project like that  
17 facilitated the procurement of non-wires  
18 alternatives to the Company's planned capital  
19 investments.

20           I've been arguing or talking in  
21 admittedly unproductive fashion with  
22 Eversource about whether they were obliged to  
23 come forward with such proposals first or  
24 whether we were obliged first to say what we

1 consider as an alternative to immediate rate  
2 relief. But the moral of the story I think  
3 is that we need guidance from you at this  
4 point. My best advice in these circumstances  
5 is to chalk up the lack of such proposals as  
6 just a missed opportunity in the name of just  
7 and reasonable rates and to advance the  
8 purposes of the Tax Reform Act, and in the  
9 public interest, to enter an order directing  
10 Eversource to get that \$12 million back into  
11 the hands of ratepayers forthwith.

12 And I think that's all I have to  
13 say unless you folks have questions.

14 CHAIRMAN HONIGBERG: We may circle  
15 back. We don't know yet.

16 Ms. Amidon.

17 MS. AMIDON: Thank you. I'm going  
18 to begin where the Consumer Advocate left off  
19 and just remind everyone that customers are  
20 currently paying in rates at the federal  
21 income tax, corporate income tax rate of  
22 35 percent. The Company is now paying a  
23 21 percent rate for that tax. To me, that  
24 means that the rates paid by customers are



1 not just and reasonable as required by RSA  
2 378:5 and 7, and something should be done to  
3 direct the Company to restore the money to  
4 customers.

5 Now, we agree with Mr. Goulding  
6 that we should attempt to avoid the  
7 fluctuation in rates. The filings that you  
8 have for tomorrow do include an increase to  
9 the stranded cost recovery charge. And while  
10 it's a small component, 1 percent of the  
11 increase in the monthly bill, the component  
12 itself changes by 10.3 percent for a customer  
13 who pays 650 -- who takes 650 kilowatt hours  
14 a month in service. And we think that it is  
15 another rate mechanism, as is discussed in  
16 the 2015 settlement agreement, whereby money  
17 can be returned, whether they found it an  
18 exogenous event or not, to help defray costs  
19 that the customer's paying in rates since the  
20 customers are essentially overpaying at this  
21 point.

22 In my opinion, using the SCRC  
23 mechanism would result in just and reasonable  
24 rates if you allow -- if you require the

1           Company to calculate the rate including the  
2           offset resulting from the tax benefit.

3                         And please note for the record,  
4           Staff is not asking for the Company to  
5           accelerate its schedule for a distribution  
6           rate case. Given the divestiture of the  
7           Company, Staff actually would prefer that we  
8           have a clean test year. Hence, we were  
9           puzzled initially about the 2018 date for  
10          filing a rate case and feel more comfortable  
11          about them deferring that until next year  
12          when they have a cleaner test year. So I  
13          want to get that in the record.

14                        CHAIRMAN HONIGBERG: Ms. Amidon, do  
15          you have a sense of how the SCRC would change  
16          if we were to take the tax benefits and apply  
17          them to the SCRC?

18                        MS. AMIDON: Well, Mr. Chagnon has  
19          done an analysis. May I ask him to answer  
20          that question? I mean, this is subject to  
21          check. But he can respond to that.

22                        CHAIRMAN HONIGBERG: Sure. Well, I  
23          mean, the question may get asked formally  
24          tomorrow of the Company as well. But if you

1           have a sense of what we're talking about,  
2           that would be helpful.

3                   MR. CHAGNON:  The estimation that  
4           we came to is approximately .158 cents  
5           permanent decrease.  And then for dollars  
6           between January 1st through August 1st,  
7           there's an additional temporary reduction of  
8           .180.

9                   CHAIRMAN HONIGBERG:  So when you  
10          talk about a temporary reduction to deal with  
11          the first six months of the year, you're  
12          dealing with the money that was collected in  
13          the first half of the year at the higher  
14          rate, even though the tax rate was lower?

15                   MR. CHAGNON:  Correct.  The first  
16          seven months.

17                   CHAIRMAN HONIGBERG:  And what you  
18          talked about as permanent, it's to deal with  
19          each month going forward?

20                   MR. CHAGNON:  Correct.  Yeah.

21                   CHAIRMAN HONIGBERG:  Okay.

22                   MS. AMIDON:  And, you know,  
23          obviously this is subject to, you know, check  
24          and affirmation or contest by the Company.

1 But we think that is a rate mechanism by  
2 which the customers can get the benefit of  
3 the tax rate that is being paid by the  
4 corporation at this point in time and that it  
5 will result in just and reasonable rates.

6 So we don't propose any other use  
7 of the money. We believe that ratepayers are  
8 not being charged just and reasonable rates  
9 at this point and that the SCRC mechanism is  
10 a great rate mechanism to return that  
11 overpayment to customers as soon as possible  
12 for rates effective August 1. Thank you.

13 CHAIRMAN HONIGBERG: Mr. Fossum.

14 MR. FOSSUM: Well, golly, there's a  
15 lot to say. I'll start with a couple of --  
16 well, I'll try to sort of make this somewhat  
17 reasonable, as I've been going along here.  
18 Mr. Goulding, sitting here, can perhaps  
19 correct my math. But I'll just pick up where  
20 the Staff left off.

21 If I've done the math right, and I  
22 may not have, taking the numbers that Mr.  
23 Chagnon gave you, you're looking at a change  
24 of .338 cents per -- I assume that's per

1 kilowatt hour for a customer. Just doing the  
2 math here, a customer using 600 kilowatt  
3 hours a month, roughly, for a residential  
4 customer, you're looking at... I believe  
5 that's \$2 a month on the high end, and  
6 keeping in mind that the .18 portion of that,  
7 so the bulk of that would only be for six  
8 months. That's a return of the January  
9 through July dollars. So, just to give you  
10 an idea of what that's worth. And I think  
11 that also rolls a bit into where the Chairman  
12 had begun, which is to great fanfare this was  
13 rolled out with an idea to stimulate the  
14 economy and to get dollars in the hands of  
15 people who would spend them. Again, if I'm  
16 doing the math right, times 12, you're  
17 looking at \$24 a year to a residential  
18 customer. I don't say that because I'm  
19 saying therefore it's not worth doing. What  
20 I'm saying is that I don't understand this to  
21 be so exigent an issue that the economy might  
22 rise or fall or that the underlying public  
23 policy decisions that led to the passing of  
24 this law in the first place are going to be,

1           you know, substantially advanced or hindered  
2           by when this money goes back.

3                     Our proposals, the ones before you  
4           today, are proposals to send the money back  
5           to the benefit of customers one way or  
6           another. It's a matter of timing, not a  
7           matter of whether to do it at all.

8                     Having said that, now I want to --  
9           and I believe I need to address a goodly  
10          numbers of issues, particularly those raised  
11          in the lengthy closing from the Consumer  
12          Advocate. The idea that a change like this  
13          was not contemplated at the time of the 2015  
14          settlement agreement is belied by the fact  
15          that there's an exogenous events provision in  
16          the 2015 settlement agreement that explicitly  
17          calls for this treatment of these kinds of  
18          events. It was contemplated. It says so  
19          itself. So I think that there's little, if  
20          any, credibility whatsoever to that argument.

21                     Moreover, to the extent that  
22          there's a contention that this is to protect  
23          the Company, this exogenous events provision  
24          works both ways. It notes that rates could

1           be changed upward or downward. And as  
2           Commissioner Bailey brought up at the  
3           prehearing conference, if the dollars had  
4           gone in the other direction, what would have  
5           happened? Mr. Kreis has made a number of  
6           arguments about it being fundamentally unfair  
7           that this money be kept because it's somehow  
8           fundamentally unfair to customers to do what  
9           we're proposing to do, which is to follow  
10          this settlement agreement. Would Mr. Kreis  
11          then argue that it's fundamentally unfair if  
12          it had gone the other direction? I think it  
13          very likely that he would not. And as was  
14          indicated by a set of questions back and  
15          forth from the Chairman earlier in this  
16          hearing, this all has to work both ways or  
17          there's no point in having it. It goes up or  
18          it goes down. We're treated one way or the  
19          other way. This is what's accounted for.

20                        The settlement agreement also,  
21          looking at Exhibit 3, and what has been  
22          copied as Page 35, has a couple of other  
23          terms that are relevant here, or at least  
24          that have become relevant. At Lines 942 to

1           945, it states that the agreements contained  
2           herein, meaning in this agreement, are  
3           interdependent and not severable. They shall  
4           not be binding upon or deemed to represent  
5           positions of the settling parties if not  
6           approved in full and without modification or  
7           condition by the Commission, subject to a  
8           specific subsection. The agreements herein  
9           were in fact approved in full by the  
10          Commission, so they are binding upon the  
11          parties.

12                         At Lines 947 to 950, it states that  
13          if the Commission does not approve this  
14          agreement in its entirety, and without  
15          modification, the settling parties shall have  
16          an opportunity to amend or terminate this  
17          agreement. If terminated, the agreement  
18          shall be deemed withdrawn and not constitute  
19          a part of the record in any proceeding.

20                         Essentially what Mr. Kreis has  
21          argued for you to do is not amend the  
22          underlying contract, the settlement  
23          agreement, but amend your order approving it.  
24          And I'll get to the issue of the underlying



1 contract in a moment. But if the Commission  
2 amends its order, then it is in fact not  
3 approving this agreement in its entirety and  
4 without modification or condition any longer.  
5 In that case, the settling parties have an  
6 opportunity to amend or terminate the  
7 agreement.

8 Given that PSNH and -- yeah, PSNH  
9 has already gone so far as to divest a  
10 portion of its generating fleet, and it  
11 continues to do so, and has already written  
12 off \$25 million of deferred return on the  
13 Scrubber -- by the way, an investment the  
14 Commission has subsequently found to be  
15 entirely prudent -- I'm not so sure anybody  
16 wants to open this up to an opportunity to  
17 amend or terminate.

18 On that same issue, Mr. Kreis's  
19 argument that this settlement agreement is  
20 somehow not a contract because it doesn't  
21 work that way in quasi-judicial proceedings I  
22 find remarkable, in light of the fact that  
23 then he quotes you at length about the  
24 application of judicial estoppel and how that

1 applies in courtroom settings. So I must  
2 admit I'm a bit confused as to which judicial  
3 or quasi-judicial requirements pertain here.

4 We have a settlement agreement.  
5 The OCA was a party to that agreement. The  
6 OCA made a promise to uphold and support that  
7 settlement agreement. We're looking for the  
8 parties here to do that, and our proposals  
9 are in line with that.

10 CHAIRMAN HONIGBERG: Is it your  
11 view that we couldn't, even if we wanted to,  
12 either amend the order or the -- amend the  
13 order to make this a 2017 exogenous event and  
14 accelerate that provision? Is that what  
15 you're saying?

16 MR. FOSSUM: My argument, and I  
17 believe I raised this earlier, is that by the  
18 definition of "exogenous event," it's a  
19 backward-looking thing. It looks back to a  
20 prior calendar year. And the distribution  
21 revenue impact in Lines 373 and 374 note that  
22 impact can be positive or negative.

23 CHAIRMAN HONIGBERG: Let me ask the  
24 question maybe a different way.

1           If we were to say this isn't an  
2           "exogenous event" as defined in the  
3           agreement, but it's an exogenous event by a  
4           common definition, something outside of what  
5           people anticipate will happen in the normal  
6           course of events, and therefore we should do  
7           something about it, is it your view that we  
8           can't do something about it if it would be  
9           inconsistent with the settlement agreement?

10           MR. FOSSUM: I guess I'm not clear  
11           on how it could be declared an exogenous  
12           event, but somehow not an exogenous event  
13           that's subject to the provision here. I'm  
14           not --

15           CHAIRMAN HONIGBERG: I just want to  
16           understand the position you're taking. It  
17           may well be that your answer is, yes, that's  
18           what I'm saying, you can't even if you want  
19           to.

20           MR. FOSSUM: I don't see a way to  
21           draw a line between the two and to call it an  
22           exogenous event, but somehow say that it's  
23           not this kind of exogenous event.

24           In Exhibit 3, at the top of

1 Page 15, it defines "federally initiated cost  
2 change." And this fits very squarely within  
3 that definition. To the extent --

4 COMMISSIONER BAILEY: Mr. Fossum,  
5 can I ask, how can -- in my mind this was an  
6 exogenous event that took place in 2017. And  
7 from my experience with prior settlement  
8 agreements, exogenous event changes were  
9 meant to be able to quickly adjust things  
10 when federal tax laws change. So the federal  
11 tax law changed in 2017. How is that not a  
12 2017 exogenous event?

13 MR. FOSSUM: The way -- well, as  
14 for whether it's meant to be quickly, I guess  
15 the issue is, to the extent it's done  
16 annually rather than on, say, a five-year or  
17 eight-year cycle, then it is quickly,  
18 relatively speaking. In this case, I keep  
19 returning to the language of the agreement  
20 itself. For instance, Lines 399 and  
21 following, if in the prior calendar year PSNH  
22 incurs any changes in distribution costs,  
23 revenue or revenue requirements in excess of  
24 the threshold, and so on. PSNH did not

1 experience or incur any changes in costs,  
2 revenue or revenue requirement as a result of  
3 these changes in 2017. I understand, you  
4 know, it was signed in December. The parties  
5 knew it was coming. You could see this was  
6 on the horizon for some time. But we didn't  
7 actually have any impact of any kind from it  
8 until 2018.

9 A couple of other issues. The  
10 Staff and OCA both argued that, to use their  
11 term, the Company "keeping the money" means  
12 its rates are not just and reasonable.  
13 We're not "keeping the money." We're  
14 retaining it in a deferred account. We have  
15 proposed two ways to deal with that deferred  
16 account that returns money to customers, or  
17 at least return the value of that money to  
18 customers. We're not "keeping" anything.

19 As for whether to apply it in a  
20 stranded cost charge --

21 CHAIRMAN HONIGBERG: Okay. Wait.  
22 Now I wondered whether you were going to  
23 address specifically the Staff's position  
24 that because the rates as calculated and paid

1           today use the 35 percent tax rate, that the  
2           current rate is not just and reasonable  
3           because it doesn't reflect the actual tax  
4           rate.

5                         MR. FOSSUM: Well, I can. And I  
6           can address that by saying our current rates  
7           don't reflect our actual tax expense in a  
8           number of regards. Eversource has had  
9           property tax expenses that have gone up over  
10          time. Those have not been embedded in rates  
11          either. It has other expenses that have gone  
12          up over time. Those are not included in  
13          rates either. The inclusion or exclusion of  
14          this particular item doesn't automatically  
15          render our rates unjust or unreasonable.  
16          Granted, I'll say, you know, this one got  
17          quite a bit of notoriety, and the number is  
18          high enough to be interesting, but it is not  
19          in and of itself a cause of unjust or  
20          unreasonable rates. That was part of the  
21          reason that initially the suggestion -- the  
22          proposal had been to include this as part of  
23          a comprehensive rate filing; that way, all of  
24          the changes, up and down, would have been

1 addressed together so that the ultimate  
2 effect would be just and reasonable rates.

3 Things have changed. But  
4 nonetheless, we still believe and still hold  
5 the position that, if this is to -- if the  
6 determination is that a rate change must be  
7 made because that is the right thing to do  
8 for customers, then that is what we will do.  
9 And that is our Alternative 2. We will do  
10 that. We just believe that it must be done  
11 consistent with the settlement agreement that  
12 we signed, that other parties in this room  
13 have signed, that other parties outside of  
14 this room have signed, that the Commission  
15 has approved, and that Eversource acted on in  
16 good faith.

17 CHAIRMAN HONIGBERG: Can I ask  
18 about Alternative 1 for a minute? Something  
19 you said, maybe it was in response to  
20 something Commissioner Bailey asked you, I  
21 just don't remember now. The implication of  
22 what Mr. Goulding had in his technical  
23 statement, what he said earlier today is that  
24 storm-related costs have increased and that

1           you might need to come in and ask for the  
2           storm reserve fund to be larger.  If you were  
3           to make a case like that, then Alternative 1  
4           would be a mechanism for reducing the impact  
5           on ratepayers of a necessary increase to the  
6           storm fund.  Now, you haven't attempted to  
7           flush a case like that out here today, but  
8           you've alluded to enough things to tell me  
9           that that's a direction you might be able to  
10          go if that's something that you believe.

11                       MR. FOSSUM:  I think that's fair,  
12           yes.  I don't know that I would say storm  
13           costs have increased, because I guess the  
14           question would be increased relative to what.  
15           But if indeed the trend over -- going back to  
16           how the major storm cost reserve was created  
17           and how it operates, if you look at a trend  
18           in storm costs over a period of time, say  
19           five years, make an assessment of what kind  
20           of reserve you might need to offset those  
21           costs on a going-forward basis and you --  
22           presumably the idea is you would design a  
23           mechanism that balances those out in a fair  
24           and appropriate way.  If we were to come in



1           for a more comprehensive case, where we  
2           demonstrate that there is an increase in  
3           cost, such that an increase in the reserve is  
4           warranted, this would be a potential bridge  
5           into that change, yes.

6                         CHAIRMAN HONIGBERG: I interrupted  
7           you.

8                         MR. FOSSUM: Quite all right.

9                         I wanted to turn briefly to the  
10           contention that this ought to be or could be  
11           returned through the stranded cost recovery  
12           charge. I don't believe that's an  
13           appropriate vehicle for a couple of reasons.

14                        First, to the extent that the  
15           exogenous events provision applies, and we  
16           believe that it does, or that the 2015  
17           settlement agreement applies more thoroughly,  
18           and we believe that it does, then it calls  
19           for a change in distribution rates, not the  
20           stranded cost rate.

21                        Secondly, as this Commission is  
22           well aware, as a result of that 2015  
23           settlement agreement and the following  
24           proceedings and orders, the stranded cost

1 recovery charge has differing allocations by  
2 customer class for how it's returned. So  
3 those differing allocations mean that  
4 differing amounts of money would go back to  
5 different customer classes. We don't think  
6 that's the appropriate way to handle this.  
7 This is a cost that's borne by all customers  
8 effectively and should be returned to them as  
9 such.

10 Just a few more items. One, Mr.  
11 Kreis had noted about you can't do away the  
12 core of this agreement, but you might be able  
13 to make some changes around the edges, or at  
14 least that's my characterization of what he  
15 said. I already read into the record the  
16 portion of this settlement agreement that  
17 notes that all of its terms are  
18 interdependent and not severable. So I'm not  
19 certain where the "core" ends and the "edge"  
20 begins.

21 Secondly, I think that that's  
22 presenting what I believe to be a generally  
23 slippery slope type of argument. If the  
24 Commission was to start drawing a line and

1 saying, well, this is a core part of the  
2 agreement and that is not, and we decide we  
3 have to act some way on the core part and not  
4 the core part, I think that raises a great  
5 many questions going forward as to what are  
6 settlement agreements, what do they mean, how  
7 are they enforceable, and can anybody really  
8 rely on them. And I don't think that's a  
9 place that anybody practicing before this  
10 Commission wants to be.

11 As to Mr. Kreis's argument that the  
12 Company's oversight is not -- in filing this  
13 year was not a credible argument, I'm not  
14 sure what that's based on. He also notes  
15 that we've made the filing on time in prior  
16 years. And as we noted in our filing that we  
17 did make, looking backwards to 2017, we noted  
18 that there were no changes in 2017, asked for  
19 nothing to be done because there were no  
20 changes in 2017. I'm not certain what about  
21 that is inherently incredible. Furthermore,  
22 and perhaps more importantly, I'm not certain  
23 what it is about that particular event that  
24 somehow waives rights that Eversource had

1 relative to this settlement agreement.

2 Taking Mr. Kreis's words, as I believe he's  
3 saying, that because we missed that filing  
4 deadline for the first time in a number of  
5 years, that somehow magically the exogenous  
6 events provision is somehow now off limits to  
7 us, we can never invoke it again, I find that  
8 not credible.

9 Moreover, there's the provision in  
10 there that allows by May 1st of each year  
11 that the OCA or Staff make a filing to  
12 request something. Now, Mr. Kreis has argued  
13 to you that he acted in reliance on our  
14 statement in choosing not to do something,  
15 and you pointed out that -- as the Chairman  
16 pointed out, that's not at all clear that  
17 that's what happened. Secondly, he's asking  
18 you to assume that they did or did not do  
19 something based upon our filing. I don't  
20 think that's an assumption that anybody can  
21 make. They presented no witness and no  
22 evidence indicating that they in fact made  
23 some choice not to act by May 1st because  
24 they believed we wouldn't do something

1 different at some other time.

2 In the end, we have presented to  
3 you what we believe and what we contend are  
4 two -- oh, one other item before I get to  
5 that, perhaps two.

6 I just want to address, without  
7 giving it more weight than it's worth,  
8 Exhibit 5. I find it very unfortunate that  
9 that has made it in front of the Commission.  
10 There was an attempt to have some discussion  
11 in a somewhat informal way -- and it looks  
12 formal in that it was filed here, but I'm  
13 calling it an informal way -- about some  
14 issues that were the subject of some  
15 disagreements. And that's now been turned  
16 into evidence in this proceeding. I believe  
17 for the -- because of the argument I raised  
18 previously, I don't believe it should carry  
19 any weight in any decision you make today.  
20 But I also wanted to note that I don't  
21 believe items like that really have any place  
22 in a formal proceeding before the Commission.  
23 Now, finally looking at what has  
24 been provided in Exhibit 2, we provided what

1 we believe are two reasonable, appropriate,  
2 fair and legal options for returning money or  
3 the value of this money to customers.

4 Eversource is open to either of those  
5 alternatives because both of them are in line  
6 with the obligations that it has undertaken  
7 pursuant to the 2015 settlement agreement.

8 We believe that other parties have the  
9 responsibility to live up to those  
10 obligations as well. And the feeling that  
11 it's somehow unfair to do it in line with an  
12 agreement that has been put in front of the  
13 Commission, approved by the Commission and  
14 acted upon in good faith over a period of  
15 years, I think should bear -- should not be  
16 allowed to win the day. We'll return the  
17 money. We've proposed the means to do so.  
18 And we would appreciate the Commission  
19 approving either of the proposals that we put  
20 before you today.

21 CHAIRMAN HONIGBERG: Thank you, Mr.  
22 Fossum.

23 Ms. Amidon, with respect to the  
24 stranded cost recovery charge, Mr. Fossum has

1           said that because of the way that rate is  
2           calculated different for different rate  
3           classes, that that's not an appropriate way  
4           to do it because really it should go back  
5           through across the board as if it were in  
6           distribution rates. Any thoughts on that?

7                       MS. AMIDON: Yeah. My thought is  
8           it's an appropriate mechanism to get rate  
9           relief to customers sooner than later, and  
10          that when the distribution rate case is  
11          commenced, that there can be -- that that  
12          could be moved to the appropriate account.  
13          But as Mr. Fossum pointed out, it is a small  
14          amount of money. But it is the ratepayers'  
15          money, and it seems to me it needs to get  
16          back to them in some way. And I don't think  
17          that the various rate calculations for that  
18          percentage of a penny is going to really  
19          result in a drastic recalculation.

20                      On the other hand, if the  
21          Commission wanted to, on a temporary basis,  
22          it could apply it to the energy service  
23          calculation, where the costs are going up  
24          19 percent.

1                   CHAIRMAN HONIGBERG: Yeah, but  
2                   that's not paid by everyone.

3                   MS. AMIDON: Right. And that's why  
4                   I think the SCRC is the best way. And I  
5                   don't think that -- I think that it makes  
6                   sense. It's not going to result in any  
7                   injustice to distribution ratepayers, at  
8                   least be seeing the results of the benefits  
9                   of the tax reduction.

10                  COMMISSIONER BAILEY: Wouldn't it,  
11                  though, result in C & I customers getting  
12                  less of a reduction than residential on a  
13                  proportional basis, since residential  
14                  ratepayers pay 55 percent of the stranded  
15                  cost recovery charge, and I think the largest  
16                  C & I only pay, like, 5 percent? They're not  
17                  going to get as much -- they're not going to  
18                  get an equal share of the tax expense  
19                  reduction.

20                  MS. AMIDON: So Staff agrees with  
21                  that conclusion.

22                  COMMISSIONER BAILEY: And you think  
23                  that's appropriate?

24                  MS. AMIDON: I think it results in



1 closer to just and reasonable rates than are  
2 now being paid.

3 COMMISSIONER BAILEY: And I have a  
4 question for Mr. Fossum, if I may.

5 CHAIRMAN HONIGBERG: Go ahead.

6 COMMISSIONER BAILEY: If we adopted  
7 your Alternative 1, would that mean that we  
8 don't think this is an exogenous event under  
9 the settlement agreement?

10 MR. FOSSUM: Effectively you would  
11 be treating Alternative 1 essentially  
12 under -- in Exhibit 3, Page 14, it would be  
13 treated as a modification to the storm  
14 funding level, which is not an exogenous  
15 event, but still covered by the 2015  
16 agreement.

17 COMMISSIONER BAILEY: But this is  
18 classically defined, as you pointed out, as  
19 an exogenous event with the federal tax  
20 change.

21 MR. FOSSUM: Yes. And as I tried  
22 to point out at the prehearing conference, is  
23 that, yes, it is, but there are still,  
24 nonetheless, useful and meaningful ways to

1 address it outside of that particular  
2 provision if everybody could come to an  
3 agreement on them.

4 And I think to that point I want to  
5 make clear, when I say "everybody" come to  
6 agreement on them, I mean to the extent this  
7 is something that might be handled, you know,  
8 outside of a provision of this settlement  
9 agreement, then I think it appropriate that  
10 every party to that settlement agreement be  
11 given the opportunity to weigh in on it,  
12 which is part of one of the other reasons  
13 that probably handling this as an exogenous  
14 event is the most appropriate thing to do.

15 So, but my thought -- our thought  
16 had been that if it's treated as a  
17 modification to the storm funding level,  
18 because that is accounted for in that  
19 agreement, getting the agreement of the other  
20 settling parties to that treatment would be  
21 fairly straightforward to do. So that's why  
22 it made sense to make that proposal as well.

23 COMMISSIONER BAILEY: One more  
24 question. Sorry. Where was the language in

1 Exhibit 3 that talks about -- oh, I know.  
2 It's on Page 15. And you made the point that  
3 PSNH didn't incur any change in cost,  
4 revenue, or revenue requirement during 2017.

5 MR. FOSSUM: Yes, beginning on Line  
6 399.

7 COMMISSIONER BAILEY: Yes, but  
8 isn't tax expense a cost?

9 MR. FOSSUM: It is a change in  
10 cost, but it's a change in cost that occurred  
11 in 2018, not 2017.

12 COMMISSIONER BAILEY: Well, you are  
13 incurring a change in cost. Your costs  
14 changed. I guess they changed January 1st.

15 MR. FOSSUM: They changed when the  
16 law became effective, not --

17 COMMISSIONER BAILEY: Thank you.

18 CHAIRMAN HONIGBERG: All right.  
19 We've been all over the map. Does anybody  
20 want to say anything else? Mr. Kreis,  
21 anything else you wanted to respond to? Ms.  
22 Amidon?

23 And Mr. Fossum, I will give you  
24 another shot. You'll get the last word since

1           you're the moving party, if anybody does want  
2           to say anything.

3                       MR. KREIS: Just briefly. As  
4           Commissioner Bailey seemed to be potentially  
5           suggesting, the argument that PSNH is making  
6           about the legality of Alternative 1 as  
7           consistent with the settlement agreement in  
8           14-238 is really "too clever by half" because  
9           basically they're saying, well, no, it's not  
10          an exogenous event, but we can -- but there's  
11          another provision in the settlement agreement  
12          that happens to be on the same page that  
13          says, oh, we can make adjustments to storm  
14          recovery, so we'll do it that way.

15                      CHAIRMAN HONIGBERG: And that's  
16          actually the question I'd asked him, and I've  
17          forgotten why that came up.

18                      That's why I asked that question,  
19          Mr. Fossum, because you had alluded to that  
20          other provision on 14. It's not a case you  
21          necessarily flushed out here to make a change  
22          in storm recovery, but I understand where you  
23          could go with that.

24                      Mr. Kreis, I mean, you don't

1 disagree with the concept, but probably that  
2 they haven't made that case.

3 MR. KREIS: Correct. I cannot  
4 disagree with that.

5 I also fundamentally disagree with  
6 the idea that anything that might have the  
7 effect of changing the terms and conditions  
8 that the Commission approved in 2016 in its  
9 order in Docket 14-238 would require the  
10 assent of every single party that signed on  
11 to that agreement. The obligations of those  
12 parties to support and defend really ended  
13 when the record closed in Docket 14-238 and  
14 you issued your order approving the  
15 settlement agreement. And that's it. That  
16 docket's over.

17 CHAIRMAN HONIGBERG: Anybody else  
18 want to say anything? Ms. Amidon?

19 MS. AMIDON: Yes. Given the  
20 discussion about the SCRC, I was looking at a  
21 rate that was going to be implemented, a rate  
22 mechanism that was going to implemented in  
23 the near future. But alternatively, the  
24 Commission could order that distribution

1 rates be adjusted effective August 1 to  
2 reflect the results of the tax benefits that  
3 the Company is now receiving as a result of  
4 reduction in federal income tax. You can  
5 change the distribution rates.

6 CHAIRMAN HONIGBERG: Mr. Fossum.

7 MR. FOSSUM: Yes, thank you. I  
8 guess for all the reasons that I've set out,  
9 August 1st change in distribution rates is --  
10 that's not what's contemplated here. That's  
11 not part of the Company's proposal. It's not  
12 what's contemplated by the settlement  
13 agreement, and we would disagree with that.

14 I do want to take a moment to  
15 express how utterly shocked I am at the OCA's  
16 position that the moment the record closes in  
17 a docket, the obligations to support a  
18 settlement agreement reached in that docket  
19 end. That is an astounding position to me.  
20 That, to me, indicates the OCA's belief that  
21 these settlement agreements persist only as  
22 long as they deem them to persist, and that  
23 is all. And there are continuing obligations  
24 in this agreement for the parties. It says

1 "to take all such action as is necessary to  
2 secure approval and implementation of the  
3 provisions of this agreement." There are  
4 provisions of this agreement that have not  
5 yet been implemented. Does this mean that  
6 Eversource is relieved of its obligation to  
7 commit \$5 million to a clean energy fund?  
8 That's a provision in here that has not been  
9 implemented yet. I would think that Mr.  
10 Kreis would say we cannot do that. I don't  
11 think --

12 CHAIRMAN HONIGBERG: In fairness,  
13 I'm not sure I heard Mr. Kreis to go as far  
14 as you may have heard him go. I can take  
15 issue with elements of what he said. I'm not  
16 sure he was going as far as you think he was  
17 going.

18 MR. FOSSUM: I heard him use the  
19 words, "That docket is closed." I wanted to  
20 make very clear I don't think that docket  
21 closure has anything at all to do with seeing  
22 through the obligations we all have under the  
23 agreement.

24 CHAIRMAN HONIGBERG: Okay.

1 Understood.

2 All right. Well, thank you all.  
3 This turned out to be a longer hearing than I  
4 expected it would be. So we will take the  
5 matter under advisement and issue an order as  
6 quickly as we can. Thank you all.

7 (Hearing concluded at 4:07 p.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
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of the State of New Hampshire, do hereby  
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forth, to the best of my skill and ability  
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I further certify that I am neither  
attorney or counsel for, nor related to or  
employed by any of the parties to the  
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financially interested in this action.

---

Susan J. Robidas, LCR/RPR  
Licensed Shorthand Court Reporter  
Registered Professional Reporter  
N.H. LCR No. 44 (RSA 310-A:173)



<b>amortized (1)</b> 66:6	128:24;129:13; 130:6;134:1;135:3,8, 12;136:23;138:9,14	<b>assert (2)</b> 57:19;102:11	<b>authority (5)</b> 97:18;98:19;99:8; 100:1;106:16	49:3;111:10
<b>amount (7)</b> 10:2;55:21;56:13, 14;67:17;81:12; 135:14	<b>approval (6)</b> 14:5;22:16;25:6; 74:18,20;143:2	<b>assertion (1)</b> 37:8	<b>automatically (1)</b> 126:14	<b>bear (1)</b> 134:15
<b>amounts (1)</b> 130:4	<b>approve (3)</b> 23:10;80:8;120:13	<b>assertions (1)</b> 29:6	<b>avenue (1)</b> 59:18	<b>became (2)</b> 58:8;139:16
<b>amply (1)</b> 95:5	<b>approved (24)</b> 10:16;12:8,15; 39:13;51:18;57:13; 63:1;74:6,14;75:7, 16;76:20,24;84:3; 85:3,9;93:22;99:22; 107:22;120:6,9; 127:15;134:13;141:8	<b>assessed (1)</b> 54:22	<b>avoid (4)</b> 66:7;67:11;72:14; 113:6	<b>become (1)</b> 119:24
<b>analysis (1)</b> 114:19	<b>arbitrator (1)</b> 95:20	<b>assessment (2)</b> 54:23;128:19	<b>aware (8)</b> 9:16,17;22:14; 63:5;86:16;88:14,16; 129:22	<b>began (1)</b> 97:12
<b>analyst (1)</b> 5:21	<b>arbiters (1)</b> 95:20	<b>asset (5)</b> 64:20;65:2;67:8; 74:2,9	<b>away (1)</b> 130:11	<b>begin (2)</b> 71:1;112:18
<b>annual (4)</b> 17:24;56:13;79:11; 93:5	<b>arbitrage (1)</b> 95:20	<b>assets (1)</b> 23:10	<b>B</b>	
<b>annually (1)</b> 124:16	<b>arbitrage (1)</b> 95:20	<b>assign (1)</b> 33:14	<b>back (26)</b> 8:11;23:18;24:18; 32:6;63:1;66:9; 72:13,15;73:10;81:2, 6,8,15;87:23;100:15; 106:21;112:10,15; 118:2,4;119:14; 122:19;128:15; 130:4;135:4,16	<b>begins (3)</b> 14:3;83:12;130:20
<b>annul (1)</b> 100:2	<b>arbitrage (1)</b> 95:20	<b>associated (4)</b> 8:8,14;9:24;61:14	<b>backward-looking (1)</b> 122:19	<b>begun (1)</b> 117:12
<b>anticipate (2)</b> 22:12;123:5	<b>arbitrage (1)</b> 95:20	<b>assume (6)</b> 17:8;43:19;89:10; 101:21;116:24; 132:18	<b>backwards (1)</b> 131:17	<b>behalf (5)</b> 5:16,23;62:20; 66:10;92:24
<b>anticipatorily (1)</b> 100:23	<b>arbitrage (1)</b> 95:20	<b>assumes (1)</b> 101:17	<b>bad (1)</b> 62:7	<b>belied (1)</b> 118:14
<b>anticipatory (5)</b> 20:16;39:11,18,19; 99:2	<b>arbitrage (1)</b> 95:20	<b>Assuming (10)</b> 17:6;20:21;31:16; 39:7;52:19;65:15; 67:14;68:7,24;75:16	<b>Bailey (25)</b> 38:6;73:2,3,5; 79:18;82:12;91:13; 103:24;104:1;106:8; 109:18,21;119:2; 124:4;127:20; 136:10,22;137:3,6, 17;138:23;139:7,12, 17;140:4	<b>belief (1)</b> 142:20
<b>anyways (1)</b> 52:23	<b>argue (4)</b> 19:5;43:24;96:9; 119:11	<b>assumption (1)</b> 132:20	<b>balance (5)</b> 10:7;65:18;66:6; 78:13;80:23	<b>believes (1)</b> 37:23
<b>apologize (2)</b> 45:7;46:14	<b>argued (4)</b> 31:23;120:21; 125:10;132:12	<b>assuring (1)</b> 17:10	<b>balances (1)</b> 128:23	<b>below (1)</b> 14:8
<b>appeal (1)</b> 100:7	<b>arguing (2)</b> 33:7;111:20	<b>astounding (1)</b> 142:19	<b>Based (6)</b> 29:4;36:16;49:9; 55:9;131:14;132:19	<b>Bench (2)</b> 83:7;97:10
<b>appear (2)</b> 56:23;77:12	<b>argument (20)</b> 37:13,20;39:8; 44:19;45:14;81:7; 96:8;97:10;98:5; 105:14,17;109:16; 118:20;121:19; 122:16;130:23; 131:11,13;133:17; 140:5	<b>attempt (2)</b> 113:6;133:10	<b>bases (1)</b> 53:1	<b>benchmarks (1)</b> 33:13
<b>appearances (1)</b> 5:8	<b>argumentative (2)</b> 45:8,11	<b>attempted (1)</b> 128:6	<b>basically (10)</b> 41:22;59:22;65:1; 67:24;74:11;76:21; 78:2;108:7,15;140:9	<b>beneficial (1)</b> 67:1
<b>appeared (1)</b> 55:3	<b>arguments (7)</b> 25:16,20,22;40:15; 97:19;101:7;119:6	<b>attempting (5)</b> 34:19;38:13;66:3; 72:16;101:8	<b>Bates (2)</b> 54:16,17	<b>benefit (16)</b> 19:17;56:1;63:9,9; 67:4,5,18;71:2;77:6, 7,20,21;111:6;114:2; 116:2;118:5
<b>appears (3)</b> 29:23;39:20;97:16	<b>around (1)</b> 130:13	<b>attention (1)</b> 13:4	<b>battery (2)</b>	<b>benefits (6)</b> 62:12,15;110:20; 114:16;136:8;142:2
<b>applicable (1)</b> 98:21	<b>arranged (1)</b> 34:9	<b>Attorney (1)</b> 81:18		<b>Bersak (5)</b> 29:23;32:1;34:4,7; 107:12
<b>application (3)</b> 38:3;86:2;121:24	<b>articulate (1)</b> 36:7	<b>attributed (1)</b> 68:21		<b>best (10)</b> 13:21;21:10;34:18; 71:6;87:17;92:1,15; 97:10;112:4;136:4
<b>applied (3)</b> 62:14;78:10;94:7	<b>articulates (1)</b> 35:9	<b>audited (5)</b> 64:9,10;65:7; 66:13,18		<b>bet (1)</b> 43:9
<b>applies (3)</b> 122:1;129:15,17	<b>aside (3)</b> 43:10;45:3;100:2	<b>August (9)</b> 60:15;62:4,6; 67:20;82:1;115:6; 116:12;142:1,9		<b>better (1)</b> 82:11
<b>apply (10)</b> 33:8,10;39:10; 47:15;55:9;99:1; 101:5;114:16; 125:19;135:22	<b>aspect (2)</b> 78:3;79:16	<b>authenticate (1)</b> 52:23		<b>beyond (1)</b> 98:18
<b>applying (1)</b> 62:12	<b>assent (1)</b> 141:10	<b>authentication (2)</b> 31:15,21		<b>big (1)</b> 37:7
<b>appreciate (1)</b> 134:18		<b>authenticity (1)</b> 33:11		<b>Bill (4)</b> 43:5;54:7;77:12; 113:11
<b>appropriate (18)</b> 10:9;23:21;55:3; 62:11;70:22;71:11; 81:20;102:24;		<b>author (2)</b> 33:22;40:2		<b>binding (3)</b>

99:21;120:4,10 <b>bit (3)</b> 117:11;122:2; 126:17 <b>bites (1)</b> 38:17 <b>board (1)</b> 135:5 <b>bond (1)</b> 93:14 <b>booked (4)</b> 64:17,20;73:14,19 <b>books (2)</b> 65:2;78:6 <b>borne (1)</b> 130:7 <b>both (9)</b> 51:19;63:4;65:11; 67:1;88:21;118:24; 119:16;125:10;134:5 <b>bottom (1)</b> 61:6 <b>box (1)</b> 7:4 <b>boy (1)</b> 43:19 <b>breach (6)</b> 20:16;39:11,18,19; 99:2,15 <b>breaching (2)</b> 26:17;100:24 <b>break (1)</b> 72:21 <b>breakdown (1)</b> 18:3 <b>bridge (1)</b> 129:4 <b>Brief (1)</b> 72:23 <b>briefly (3)</b> 54:13;129:9;140:3 <b>bring (3)</b> 32:7;35:23;95:11 <b>broader (1)</b> 106:12 <b>brought (1)</b> 119:2 <b>bucks (1)</b> 103:10 <b>build (2)</b> 21:9;78:11 <b>building (3)</b> 73:24;78:6,7 <b>bulk (1)</b> 117:7 <b>Bullet (1)</b> 24:17 <b>bunch (4)</b> 20:9;40:15;97:19; 110:11 <b>business (3)</b> 5:12,15;96:6 <b>button (1)</b>	17:24  <b>C</b>  <b>calculate (2)</b> 93:3;114:1 <b>calculated (3)</b> 57:1;125:24;135:2 <b>calculating (1)</b> 55:12 <b>calculation (7)</b> 52:5;55:10,20; 56:12,17;59:10; 135:23 <b>calculations (3)</b> 8:7;55:1;135:17 <b>calendar (7)</b> 16:14;44:11,13; 58:4;98:16;122:20; 124:21 <b>calendars (1)</b> 18:8 <b>call (1)</b> 123:21 <b>calling (1)</b> 133:13 <b>calls (3)</b> 31:4;118:17; 129:18 <b>came (4)</b> 38:4;103:23;115:4; 140:17 <b>can (46)</b> 14:19;21:11,18; 33:15;34:17,20; 37:18;38:22;40:20; 44:23;46:23,24; 47:24;50:22;53:7; 69:10;70:18;72:7; 73:10;76:1,5;89:8; 95:23;100:14,18; 106:18,24;113:17; 114:21;116:2,18; 122:22;124:5,5; 126:5,6;127:17; 131:7;132:7,20; 135:11;140:10,13; 142:4;143:14;144:6 <b>candid (1)</b> 20:3 <b>capital (1)</b> 111:18 <b>captured (2)</b> 85:2;94:12 <b>card (1)</b> 78:3 <b>carries (1)</b> 84:20 <b>carry (1)</b> 133:18 <b>carrying (9)</b> 10:12;65:12;71:9; 77:9;78:1;79:6,8,11,	15 <b>cart (1)</b> 109:14 <b>case (46)</b> 21:15;22:4;23:19; 24:5;34:10;37:1; 42:4;46:18;51:18; 56:9;57:20;59:14; 60:9;65:14;67:15,24; 69:7;80:10;86:10; 88:23;92:5,12;93:11; 98:13;99:6,8;100:9; 101:13;103:11,16; 105:24;106:1;108:2, 4,8,12;114:6,10; 121:5;124:18;128:3, 7;129:1;135:10; 140:20;141:2 <b>cases (3)</b> 42:2;50:12;51:10 <b>cash (2)</b> 20:11;103:9 <b>cause (3)</b> 48:6;60:4;126:19 <b>caused (2)</b> 17:20;18:4 <b>causing (3)</b> 82:1;93:14;107:19 <b>cautioned (1)</b> 7:6 <b>Cedar (1)</b> 101:11 <b>cents (2)</b> 115:4;116:24 <b>certain (9)</b> 6:8;14:18;52:5; 97:15;101:17; 108:13;130:19; 131:20,22 <b>certainty (1)</b> 110:20 <b>certification (3)</b> 17:17;94:24;95:9 <b>certified (1)</b> 94:20 <b>certify (1)</b> 98:1 <b>Chagnon (7)</b> 5:20;60:7;114:18; 115:3,15,20;116:23 <b>CHAIRMAN (113)</b> 5:2;6:1,16;7:3,8, 18;11:10,11,15; 15:23;16:3;18:14,18, 21;19:12,20;20:4,17; 21:12;26:9,22;27:19; 28:3;30:1,15;31:2,14, 20;32:10;33:12;34:2; 35:7;36:5,10,13,21; 37:6;38:16;39:16,23; 40:19;41:2,5,13; 42:15,21;43:7,18; 44:2,14,22;45:2,10,	20;46:22;49:16,20; 51:1,5;52:19;53:13, 17;54:1;61:11;70:17; 72:20;73:1;77:4; 82:14,17;89:7,14,21; 91:22;92:18,23; 94:22;95:23;96:2; 97:2,7;98:7;104:10, 20;105:9;106:15; 107:4,6;112:14; 114:14,22;115:9,17, 21;116:13;117:11; 119:15;122:10,23; 123:15;125:21; 127:17;129:6; 132:15;134:21; 136:1;137:5;139:18; 140:15;141:17; 142:6;143:12,24 <b>chalk (1)</b> 112:5 <b>chance (4)</b> 32:21,23;39:6; 90:11 <b>change (35)</b> 13:12;14:22,24; 15:1;24:7;42:16,24; 43:8;50:15;58:13; 59:11;62:13;68:23; 69:1;72:13;78:15; 88:6;91:8;104:16; 114:15;116:23; 118:12;124:2,10; 127:6;129:5,19; 137:20;139:3,9,10, 13;140:21;142:5,9 <b>changed (8)</b> 43:12;101:21; 119:1;124:11;127:3; 139:14,14,15 <b>changes (36)</b> 5:6;8:19;9:7,23,24; 10:14;12:24;40:23; 46:13;47:7;51:14,15; 54:9,14,18,21;55:4, 19;58:13,17;61:14, 19;62:3;84:1;86:3; 92:11;93:20;113:12; 124:8,22;125:1,3; 126:24;130:13; 131:18,20 <b>changing (4)</b> 13:7;62:5;102:1; 141:7 <b>characterization (2)</b> 33:1;130:14 <b>charge (13)</b> 8:9;24:17;79:8,11, 15;82:7;110:14; 113:9;125:20; 129:12;130:1; 134:24;136:15 <b>charged (3)</b>	74:5;78:15;116:8 <b>charges (4)</b> 65:12;71:9;77:10; 78:1 <b>charging (1)</b> 80:3 <b>check (6)</b> 12:1;28:16;50:4; 52:1;114:21;115:23 <b>chief (1)</b> 40:13 <b>choice (1)</b> 132:23 <b>choosing (1)</b> 132:14 <b>chose (1)</b> 32:7 <b>CHRISTOPHER (3)</b> 7:5;8:2;53:22 <b>circle (2)</b> 87:23;112:14 <b>circumstances (6)</b> 100:23;101:4,5; 102:3;110:10;112:4 <b>citations (1)</b> 101:15 <b>cited (1)</b> 106:19 <b>civil (2)</b> 33:10;99:4 <b>claim (3)</b> 19:10;95:14;98:23 <b>claiming (1)</b> 103:22 <b>claims (1)</b> 19:8 <b>clarity (1)</b> 83:22 <b>class (1)</b> 130:2 <b>classes (2)</b> 130:5;135:3 <b>classically (1)</b> 137:18 <b>clause (1)</b> 10:15 <b>clean (2)</b> 114:8;143:7 <b>cleaner (1)</b> 114:12 <b>clear (6)</b> 61:8;68:14;123:10; 132:16;138:5;143:20 <b>clearer (1)</b> 24:1 <b>clearly (1)</b> 102:7 <b>Clerk (1)</b> 7:12 <b>clever (1)</b> 140:8 <b>click (1)</b> 17:24
---	--	---	---	--

<p>closed (2)                  141:13;143:19                  closer (1)                  137:1                  closes (1)                  142:16                  CLOSING (2)                  92:21;118:11                  closings (1)                  97:6                  closure (1)                  143:21                  code (1)                  93:20                  colleagues (1)                  60:6                  collect (1)                  55:22                  collected (3)                  76:5;77:17;115:12                  collecting (2)                  77:8;80:21                  collection (2)                  48:17,20                  colloquy (1)                  97:12                  column (1)                  29:2                  comfortable (1)                  114:10                  coming (9)                  17:23;22:13;61:24;                  62:2;66:16;75:21;                  79:19;88:22;125:5                  commenced (1)                  135:11                  comment (2)                  29:3;48:23                  Commercial (1)                  8:4                  Commission (72)                  5:24;12:9;14:5,10,                  24;15:4;17:8;19:10;                  22:20;23:1;25:1,16;                  26:12;27:11;32:2,5;                  38:9;40:7,17;48:6;                  49:5,7;50:5,11;                  51:16;52:16;59:16;                  61:18;62:3,14;63:1;                  64:7;68:17;70:22;                  75:23,24;76:20;80:8;                  85:3,10;95:2,5,13,13,                  22;98:19;99:13,22;                  100:1,5,14,17;101:2;                  102:22;105:18;                  120:7,10,13;121:1,                  14;127:14;129:21;                  130:24;131:10;                  133:9,22;134:13,13,                  18;135:21;141:8,24                  Commissioner (29)                  38:5;73:1,3,5;                  78:23;79:18;82:12,</p>	<p>14,16;91:12,13;                  103:24;104:1;106:8;                  109:18,21;119:2;                  124:4;127:20;                  136:10,22;137:3,6,                  17;138:23;139:7,12,                  17;140:4                  Commissioners (6)                  5:10,14;6:11;9:17;                  73:4;89:19                  Commissioners' (1)                  7:11                  commissions (1)                  90:22                  Commission's (2)                  50:20;58:15                  commit (1)                  143:7                  committed (1)                  20:15                  committing (1)                  99:2                  common (1)                  123:4                  commonly (1)                  54:7                  companies (6)                  52:2;56:24;63:4;                  88:17,24;92:4                  Company (96)                  5:11;16:16,20;                  17:1,6,9;18:4,23;                  19:3,6,22;20:7,11;                  21:14;22:1,5,12,17;                  23:18,20;24:4;26:16,                  19;31:13,17;32:8;                  33:1,24;37:2;39:8;                  40:13;41:3;42:7,23;                  44:16;48:15,24;                  54:22,23;55:6,8;56:3,                  8;57:18;60:8,24;                  61:23;62:20;63:22;                  67:2,5,6,12;70:8,9,                  23;71:24;83:19;87:2,                  8;91:14;93:2;95:1,7;                  96:3;97:16,21;98:2,4,                  12,23;101:6,12;                  102:16,17;103:22;                  105:7;107:11,24;                  108:3,7,11,14;109:8,                  12;111:9;112:22;                  113:3;114:1,4,7,24;                  115:24;118:23;                  125:11;142:3                  Company's (40)                  7:14,16;9:15,19,                  21;10:23;18:3;20:5;                  22:22;23:7;34:22;                  35:9,18;36:1,3,22;                  37:17,19;38:19,20;                  40:10;52:11;54:11,                  15;56:15,23;71:10;                  84:10;93:10,16;</p>	<p>95:14;100:12;103:6,                  15;104:5,16;105:20;                  111:18;131:12;                  142:11                  company-specific (1)                  103:1                  compelling (1)                  110:19                  complaining (1)                  93:13                  complete (2)                  22:10;54:23                  completed (6)                  22:11;23:12,13,15;                  92:5,7                  completely (1)                  23:22                  completion (1)                  23:17                  compliance (1)                  17:13                  comply (1)                  51:20                  component (2)                  113:10,11                  components (2)                  78:22;82:8                  comprehensive (3)                  87:10;126:23;                  129:1                  concept (2)                  101:10;141:1                  concerned (2)                  91:3;93:16                  conclude (2)                  49:18;98:20                  concluded (2)                  51:10;144:7                  conclusion (3)                  19:5;27:2;136:21                  condition (2)                  120:7;121:4                  conditions (1)                  141:7                  conduct (1)                  26:14                  conducting (2)                  34:20;48:4                  conference (6)                  38:7;60:19,21;                  103:20;119:3;137:22                  confirm (2)                  87:7;88:15                  confused (2)                  37:16;122:2                  Congress (2)                  43:21;108:21                  Congress's (1)                  54:6                  connection (1)                  16:12                  consider (6)                  20:10;48:15;84:12;</p>	<p>102:24;106:3;112:1                  consideration (2)                  38:11;99:17                  considered (1)                  104:4                  considers (1)                  102:5                  consistent (7)                  27:4;56:24;61:17;                  85:14;108:17;                  127:11;140:7                  consists (1)                  12:2                  constitute (2)                  43:23;120:18                  Consumer (10)                  5:15;26:13,17;                  28:18;57:15;100:8;                  103:14;105:19;                  112:18;118:11                  contained (3)                  8:20;51:12;120:1                  contains (1)                  36:3                  cont'd (1)                  79:18                  contemplated (7)                  10:16;22:7;107:21;                  118:13,18;142:10,12                  contend (1)                  133:3                  contention (2)                  118:22;129:10                  contest (2)                  86:12;115:24                  contested (1)                  99:11                  context (5)                  29:21;31:23;42:11;                  99:3,11                  contingencies (1)                  57:21                  continuation (1)                  52:12                  continue (8)                  20:18;21:5,15,20;                  54:11;69:4;72:22;                  89:16                  continued (1)                  57:19                  continues (2)                  70:10;121:11                  continuing (3)                  13:18;86:7;142:23                  contract (8)                  20:16;99:3,16,17;                  100:24;120:22;                  121:1,20                  contractual (2)                  39:11;99:5                  contrary (1)                  101:21                  control (2)</p>	<p>22:22;23:7                  controls (1)                  108:7                  controversy (1)                  109:6                  conversation (1)                  97:14                  conversations (2)                  26:14;60:12                  convinced (2)                  20:19;21:16                  copied (2)                  12:2;119:22                  copies (1)                  18:8                  core (6)                  107:18;130:12,19;                  131:1,3,4                  corporate (5)                  13:8;40:12;69:24;                  71:16;112:21                  corporation (1)                  116:4                  corporations (1)                  58:10                  corrections (1)                  9:8                  correctly (3)                  50:11;55:11;63:20                  cost (50)                  8:8,9;52:7;61:21,                  23;63:23,24;64:14,                  15,24;65:7,11,18,23;                  66:6,12;67:9,9;68:2;                  69:17,22;71:24;74:7;                  75:19;76:22,23;79:6;                  80:17;82:6,10;92:6;                  110:2,13,14;113:9;                  124:1;125:20;                  128:16;129:3,11,20,                  24;130:7;134:24;                  136:15;139:3,8,10,                  10,13                  costs (49)                  10:1,10,12;62:19,                  22;63:10;64:22;65:9;                  66:9,17,19;69:14;                  71:8,19;72:2;74:4,6,                  21;75:4,6,8,22;76:1,                  2,3,6,9,13,19,24;77:9,                  22,24;78:2;79:3,20;                  80:3;81:20;110:4,4;                  113:18;124:22;                  125:1;127:24;                  128:13,18,21;135:23;                  139:13                  counsel (2)                  17:16;40:13                  country (1)                  90:21                  counts (1)                  106:24                  couple (10)</p>
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6:4,14;10:3;20:8; 45:6;46:3;116:15; 119:22;125:9;129:13 <b>course (4)</b> 23:11;26:11;96:1; 123:6 <b>Court (3)</b> 7:6;100:7;102:5 <b>courtroom (1)</b> 122:1 <b>cover (3)</b> 17:14;53:1;63:19 <b>covered (2)</b> 103:4;137:15 <b>create (1)</b> 94:15 <b>created (1)</b> 128:16 <b>credibility (1)</b> 118:20 <b>credible (4)</b> 19:10;95:4;131:13; 132:8 <b>credit (4)</b> 52:3;55:9;63:12; 78:3 <b>crediting (1)</b> 63:1 <b>credits (1)</b> 61:15 <b>cricket (1)</b> 104:8 <b>CROSS-EXAMINATION (2)</b> 11:20;49:23 <b>cross-examine (2)</b> 33:22,24 <b>cross-examining (1)</b> 34:11 <b>crying (1)</b> 104:5 <b>current (9)</b> 64:15;65:18;69:20, 21;80:14;81:4,5; 126:2,6 <b>currently (2)</b> 73:16;112:20 <b>cursor (1)</b> 30:18 <b>customer (8)</b> 111:5;113:12; 117:1,2,4,18;130:2,5 <b>customers (55)</b> 5:17;10:2;33:7; 52:4;55:19;56:2; 61:15;62:21,23;63:2, 13;66:8,10;67:1,4,13, 17;69:11,18,23;70:3, 11;71:2,7,13;72:5; 73:10;75:22;76:5; 81:3,6,8,16;91:16; 95:20,21;110:10,18, 21,23;112:19,24; 113:4,20;116:2,11;	118:5;119:8;125:16, 18;127:8;130:7; 134:3;135:9;136:11 <b>customer's (1)</b> 113:19 <b>cut (1)</b> 80:22 <b>Cuts (3)</b> 54:8;58:6,8 <b>cycle (1)</b> 124:17	<b>declines (1)</b> 51:17 <b>decrease (6)</b> 82:5,8;86:12,18; 108:22;115:5 <b>decreased (1)</b> 93:19 <b>deem (1)</b> 142:22 <b>deemed (2)</b> 120:4,18 <b>defend (1)</b> 141:12 <b>defer (1)</b> 110:21 <b>deferred (13)</b> 56:14;68:10,12; 69:5;74:4,5;93:4,6,9, 18;121:12;125:14,15 <b>deferring (1)</b> 114:11 <b>deficit (1)</b> 74:8 <b>defined (3)</b> 14:7;123:2;137:18 <b>defines (1)</b> 124:1 <b>definition (4)</b> 96:12;122:18; 123:4;124:3 <b>defray (1)</b> 113:18 <b>delayed (2)</b> 22:15;108:23 <b>deliberately (1)</b> 101:24 <b>deliver (1)</b> 110:18 <b>delivered (1)</b> 28:17 <b>Delivery (1)</b> 24:17 <b>demonstrate (2)</b> 95:5;129:2 <b>Depends (1)</b> 78:19 <b>derive (1)</b> 102:12 <b>describe (1)</b> 53:7 <b>described (6)</b> 11:17;13:10;16:5; 28:7;51:22;83:22 <b>describes (1)</b> 67:3 <b>deserve (1)</b> 98:14 <b>design (1)</b> 128:22 <b>despite (1)</b> 111:1 <b>determination (7)</b> 69:2,13;70:16;	76:1;80:19;103:3; 127:6 <b>determine (1)</b> 65:24 <b>determined (1)</b> 60:14 <b>determining (2)</b> 15:13;48:7 <b>detriment (2)</b> 102:13;104:12 <b>development (1)</b> 48:18 <b>devote (1)</b> 109:8 <b>devoting (1)</b> 48:16 <b>different (13)</b> 20:9;23:24;36:7, 20;37:24;41:24;42:1; 62:18;122:24;130:5; 133:1;135:2,2 <b>differing (3)</b> 130:1,3,4 <b>DIRECT (3)</b> 7:21;11:9;113:3 <b>directed (2)</b> 30:4;69:3 <b>directing (2)</b> 38:23;112:9 <b>direction (6)</b> 8:17;9:5;21:5; 119:4,12;128:9 <b>directive (1)</b> 58:15 <b>directly (2)</b> 12:3;60:19 <b>director (2)</b> 5:22;40:8 <b>disagree (7)</b> 39:14;44:1;96:5; 141:1,4,5;142:13 <b>disagreements (1)</b> 133:15 <b>disclaimed (1)</b> 105:11 <b>discovery (3)</b> 21:4;74:23;88:10 <b>discuss (3)</b> 46:9,11;47:5 <b>discussed (1)</b> 113:15 <b>discusses (1)</b> 30:20 <b>discussing (1)</b> 11:2 <b>discussion (9)</b> 6:9;57:14;88:12, 12;89:19;90:8;92:20; 133:10;141:20 <b>discussions (6)</b> 47:12,23;48:8; 60:8;61:7;63:15 <b>dispute (2)</b>	31:10;81:1 <b>distribution (22)</b> 8:8;14:6,22;24:7; 44:8,12;73:17;84:23; 85:4;86:10;93:11; 94:2;114:5;122:20; 124:22;129:19; 135:6,10;136:7; 141:24;142:5,9 <b>divest (1)</b> 121:9 <b>divestiture (5)</b> 10:17;22:8,10,11; 114:6 <b>divestitures (5)</b> 23:11,14,16,18; 108:23 <b>Division (2)</b> 5:21,23 <b>Docket (49)</b> 5:4,5,7;15;10:16; 12:4;26:11,15,21; 33:2;35:4;40:6,14; 41:20;48:11;49:11; 52:11;53:15;55:2; 56:5,6;57:13;58:16, 18;59:8,24;63:24; 64:21;69:2;74:21; 75:1;76:10;90:3; 93:23;94:15;95:6; 98:5;102:17,23; 103:6,13,20;105:7; 109:3;141:9,13; 142:17,18;143:19,20 <b>dockets (2)</b> 88:10;103:1 <b>docket's (1)</b> 141:16 <b>doctrine (1)</b> 101:22 <b>document (28)</b> 11:17;15:17;16:5, 9;24:14;25:12,19; 28:7,14;29:9,12,14, 19,21,23;32:4;52:18, 21;53:2,6,15;59:4; 61:3;83:9;84:7; 85:17,23;87:15 <b>documents (4)</b> 6:4,14,17;7:12 <b>dollars (24)</b> 13:14;44:10;48:13; 59:12,13;62:23; 64:23;65:3,9;66:18; 69:4;73:13,18,21,24; 77:8,10;78:19;79:6; 80:7;115:5;117:9,14; 119:3 <b>Don (1)</b> 5:15 <b>done (11)</b> 22:17;26:3,19; 92:10;104:23;113:2;
	<b>D</b>			
	<b>d/b/a (1)</b> 93:2 <b>data (3)</b> 48:17,19;111:14 <b>data-sharing (1)</b> 111:15 <b>date (12)</b> 17:22;18:11;41:9; 43:9,11,20;67:19; 68:11,22;91:2; 103:17;114:9 <b>dated (2)</b> 28:20;36:19 <b>dates (1)</b> 18:9 <b>day (2)</b> 38:11;134:16 <b>days (1)</b> 62:2 <b>DE (3)</b> 5:4;12:4;93:23 <b>deadline (9)</b> 17:11;20:20,21,22; 41:7,8;97:21;100:19; 132:4 <b>deadlines (1)</b> 96:19 <b>deal (7)</b> 20:1;42:4;90:6; 106:24;115:10,18; 125:15 <b>dealing (3)</b> 46:12;47:6;115:12 <b>debt (2)</b> 76:17;78:4 <b>December (3)</b> 43:11;58:7;125:4 <b>decide (1)</b> 131:2 <b>decision (7)</b> 20:22;21:11;34:19; 99:23;101:12;104:9; 133:19 <b>decisions (2)</b> 91:1;117:23 <b>declared (1)</b> 123:11 <b>declined (1)</b> 50:14			

<p>114:19;116:21;                  124:15;127:10;                  131:19  <b>down (13)</b>                  34:3;61:11;62:21;                  63:8;72:3;78:2,3;                  80:22;84:20,21;                  110:23;119:18;                  126:24  <b>down/right (1)</b>                  72:15  <b>downward (4)</b>                  14:6;84:24;94:3;                  119:1  <b>draft (1)</b>                  29:1  <b>drastic (1)</b>                  135:19  <b>draw (1)</b>                  123:21  <b>drawing (2)</b>                  13:3;130:24  <b>drop (2)</b>                  66:7;72:14  <b>due (14)</b>                  17:13,16,22;18:10,                  12;19:11;49:14;63:5;                  81:2,6,7;100:5,11;                  107:16  <b>duly (1)</b>                  7:6  <b>During (4)</b>                  14:4;49:1;61:7;                  139:4</p>	<p>67:16;70:7;81:13;                  82:1;95:15;116:12;                  139:16;142:1  <b>effectively (2)</b>                  130:8;137:10  <b>effects (6)</b>                  5:5;50:6;56:18;                  61:19;87:9;106:24  <b>effort (1)</b>                  111:15  <b>eight-year (1)</b>                  124:17  <b>either (12)</b>                  37:18;39:9;52:22;                  64:10;88:16,20;93:3;                  122:12;126:11,13;                  134:4,19  <b>elect (1)</b>                  14:19  <b>elected (1)</b>                  108:20  <b>Electric (3)</b>                  5:21,23;51:19  <b>element (1)</b>                  105:14  <b>elements (1)</b>                  143:15  <b>else (8)</b>                  5:7;41:16;44:24;                  90:5;98:9;139:20,21;                  141:17  <b>elucidated (1)</b>                  101:10  <b>e-mail (2)</b>                  28:18;31:12  <b>embedded (1)</b>                  126:10  <b>employer (1)</b>                  29:6  <b>employment (1)</b>                  7:24  <b>end (14)</b>                  41:22;44:20;48:12;                  75:2;76:12,13,16;                  79:1;91:3;94:8;                  100:21;117:5;133:2;                  142:19  <b>endeavoring (1)</b>                  26:13  <b>ended (5)</b>                  49:11;56:5;63:14;                  88:17;141:12  <b>ending (1)</b>                  63:15  <b>ends (1)</b>                  130:19  <b>Energy (8)</b>                  5:12;8:10;72:9,13;                  81:24;110:16;                  135:22;143:7  <b>enforceable (1)</b>                  131:7  <b>Enhancement (3)</b></p>	<p>52:12;53:24;54:12  <b>enjoyed (1)</b>                  33:20  <b>enjoys (1)</b>                  19:8  <b>enough (5)</b>                  28:3,23;49:17;                  126:18;128:8  <b>enter (2)</b>                  32:3;112:9  <b>entered (3)</b>                  6:14;12:9;102:21  <b>entertain (2)</b>                  6:12;21:17  <b>entirely (2)</b>                  23:6;121:15  <b>entirety (3)</b>                  92:5;120:14;121:3  <b>entities (1)</b>                  23:24  <b>entries (1)</b>                  95:6  <b>enure (1)</b>                  19:17  <b>enured (1)</b>                  56:1  <b>equal (2)</b>                  43:22;136:18  <b>equity (1)</b>                  81:11  <b>especially (1)</b>                  111:11  <b>essentially (10)</b>                  9:13;18:4;24:5;                  74:15;83:18;84:13;                  92:10;113:20;                  120:20;137:11  <b>establishes (1)</b>                  30:19  <b>estimate (1)</b>                  93:5  <b>estimation (1)</b>                  115:3  <b>estopped (2)</b>                  98:3;102:14  <b>estoppel (9)</b>                  37:3,8,14;44:19;                  96:19;101:10;102:3;                  105:14;121:24  <b>EV (2)</b>                  49:3,3  <b>evaluated (1)</b>                  92:7  <b>even (23)</b>                  19:16;20:13;30:18;                  43:10;45:24;46:5;                  48:19;70:3;93:12;                  95:16;98:14,16,24;                  100:16,17,20,22;                  101:2;110:19;                  111:13;115:14;                  122:11;123:18  <b>event (81)</b></p>	<p>10:18;15:13;16:11,                  12;20:1,15;40:24;                  41:11;42:9,13,18;                  43:3,8,8,15,16,23;                  44:13,17;46:2;47:19;                  50:17;57:21;58:1,5;                  59:19,20;68:8;85:1;                  86:12,13,18;93:21;                  94:11,12,21;95:8,17;                  96:4,11,13,14,22;                  97:24;98:10,15;                  100:17,20,21;103:4,                  22;104:3,4,5,16,22;                  105:3;106:5,5,11,20;                  107:1;109:6;113:18;                  122:13,18;123:2,3,                  12,12,22,23;124:6,8,                  12;131:23;137:8,15,                  19;138:14;140:10  <b>events (50)</b>                  10:15;12:20;13:1,                  9,20,23;14:20;15:4;                  16:21;17:2;18:24;                  19:8,13,15,16;29:7;                  37:4;38:4,8;39:10;                  44:6,7,9,10;47:8;                  50:9,13;51:13,16;                  57:24;58:21;59:6;                  86:15;87:3,14,19;                  94:4,6,19;98:17;                  103:8;106:6;108:9,                  18;118:15,18,23;                  123:6;129:15;132:6  <b>events' (1)</b>                  14:7  <b>Eversource (34)</b>                  5:6,12;12:4;16:11;                  17:16;26:14;27:14;                  28:17,20,21;29:2,20;                  40:4;46:9,10;47:3;                  58:11,12,20;61:9;                  63:19;69:17;70:23,                  24;88:23;89:3;93:3;                  111:22;112:10;                  126:8;127:15;                  131:24;134:4;143:6  <b>Eversource's (2)</b>                  58:16;92:3  <b>Everybody (6)</b>                  5:3;44:21;106:9;                  107:13;138:2,5  <b>everyone (2)</b>                  112:19;136:2  <b>everyone's (1)</b>                  49:17  <b>evidence (3)</b>                  33:8;132:22;                  133:16  <b>evidentiary (1)</b>                  48:5  <b>exact (1)</b>                  60:12  <b>exactly (5)</b></p>	<p>34:22;59:7;84:5;                  104:7;105:6  <b>EXAMINATION (3)</b>                  7:21;45:14;82:22  <b>example (1)</b>                  101:9  <b>exceed (1)</b>                  13:13  <b>exceeds (1)</b>                  44:9  <b>excerpts (3)</b>                  13:2;24:13;83:2  <b>excess (2)</b>                  68:12;124:23  <b>exclusion (1)</b>                  126:13  <b>excusable (2)</b>                  21:1,2  <b>Excuse (1)</b>                  79:10  <b>Executive (1)</b>                  40:8  <b>exert (1)</b>                  37:4  <b>Exhibit (54)</b>                  7:16,17;8:13;9:18;                  11:13,14,18,24;12:2;                  13:3,5,6;15:24;16:2,                  6,10;17:15;24:13,15,                  19,21;28:5,6,8,13;                  32:3;36:2,8,8,16,17,                  18,20;45:3;53:15,17,                  20;58:1;61:1;83:1;                  84:17;87:7,9;89:15,                  16,17,23;107:11;                  119:21;123:24;                  133:8,24;137:12;                  139:1  <b>exhibits (4)</b>                  8:14,16;35:20,22  <b>exigencies (1)</b>                  102:2  <b>exigent (1)</b>                  117:21  <b>existed (1)</b>                  49:15  <b>existing (1)</b>                  58:9  <b>exogenous (116)</b>                  10:15,18;12:20;                  13:1,9,20,23;14:7,19;                  15:4,13;16:10,12,21;                  17:2;18:24;19:8,13,                  14,16;20:1,14;29:7;                  37:4;38:4,8;39:9;                  40:24;41:11;42:9,13,                  18;43:16;44:6,10,17;                  47:8,19;50:9,13,17;                  51:13,16;57:21,24;                  58:1,5,20;59:6,19,20;                  86:2,12,13,15,18;                  87:2,14,19;93:21;                  94:4,10,19,21;95:8,</p>
<b>E</b>				
<p><b>earlier (10)</b>                  47:11;54:20;57:15;                  88:15;90:16;102:7,                  10;119:15;122:17;                  127:23  <b>early (1)</b>                  105:21  <b>earning (1)</b>                  81:10  <b>easily (1)</b>                  47:1  <b>economy (4)</b>                  90:18,20;117:14,                  21  <b>edge (1)</b>                  130:19  <b>edges (1)</b>                  130:13  <b>effect (13)</b>                  13:7;33:3;35:3;                  36:24;42:17;43:2;                  55:18;68:22;72:7,11;                  99:24;127:2;141:7  <b>effective (15)</b>                  10:19;43:9,11,19;                  55:14;60:15;62:4;</p>	<p><b>employ (1)</b>                  29:6  <b>employment (1)</b>                  7:24  <b>end (14)</b>                  41:22;44:20;48:12;                  75:2;76:12,13,16;                  79:1;91:3;94:8;                  100:21;117:5;133:2;                  142:19  <b>endeavoring (1)</b>                  26:13  <b>ended (5)</b>                  49:11;56:5;63:14;                  88:17;141:12  <b>ending (1)</b>                  63:15  <b>ends (1)</b>                  130:19  <b>Energy (8)</b>                  5:12;8:10;72:9,13;                  81:24;110:16;                  135:22;143:7  <b>enforceable (1)</b>                  131:7  <b>Enhancement (3)</b></p>	<p>52:12;53:24;54:12  <b>enjoyed (1)</b>                  33:20  <b>enjoys (1)</b>                  19:8  <b>enough (5)</b>                  28:3,23;49:17;                  126:18;128:8  <b>enter (2)</b>                  32:3;112:9  <b>entered (3)</b>                  6:14;12:9;102:21  <b>entertain (2)</b>                  6:12;21:17  <b>entirely (2)</b>                  23:6;121:15  <b>entirety (3)</b>                  92:5;120:14;121:3  <b>entities (1)</b>                  23:24  <b>entries (1)</b>                  95:6  <b>enure (1)</b>                  19:17  <b>enured (1)</b>                  56:1  <b>equal (2)</b>                  43:22;136:18  <b>equity (1)</b>                  81:11  <b>especially (1)</b>                  111:11  <b>essentially (10)</b>                  9:13;18:4;24:5;                  74:15;83:18;84:13;                  92:10;113:20;                  120:20;137:11  <b>establishes (1)</b>                  30:19  <b>estimate (1)</b>                  93:5  <b>estimation (1)</b>                  115:3  <b>estopped (2)</b>                  98:3;102:14  <b>estoppel (9)</b>                  37:3,8,14;44:19;                  96:19;101:10;102:3;                  105:14;121:24  <b>EV (2)</b>                  49:3,3  <b>evaluated (1)</b>                  92:7  <b>even (23)</b>                  19:16;20:13;30:18;                  43:10;45:24;46:5;                  48:19;70:3;93:12;                  95:16;98:14,16,24;                  100:16,17,20,22;                  101:2;110:19;                  111:13;115:14;                  122:11;123:18  <b>event (81)</b></p>	<p>10:18;15:13;16:11,                  12;20:1,15;40:24;                  41:11;42:9,13,18;                  43:3,8,8,15,16,23;                  44:13,17;46:2;47:19;                  50:17;57:21;58:1,5;                  59:19,20;68:8;85:1;                  86:12,13,18;93:21;                  94:11,12,21;95:8,17;                  96:4,11,13,14,22;                  97:24;98:10,15;                  100:17,20,21;103:4,                  22;104:3,4,5,16,22;                  105:3;106:5,5,11,20;                  107:1;109:6;113:18;                  122:13,18;123:2,3,                  12,12,22,23;124:6,8,                  12;131:23;137:8,15,                  19;138:14;140:10  <b>events (50)</b>                  10:15;12:20;13:1,                  9,20,23;14:20;15:4;                  16:21;17:2;18:24;                  19:8,13,15,16;29:7;                  37:4;38:4,8;39:10;                  44:6,7,9,10;47:8;                  50:9,13;51:13,16;                  57:24;58:21;59:6;                  86:15;87:3,14,19;                  94:4,6,19;98:17;                  103:8;106:6;108:9,                  18;118:15,18,23;                  123:6;129:15;132:6  <b>events' (1)</b>                  14:7  <b>Eversource (34)</b>                  5:6,12;12:4;16:11;                  17:16;26:14;27:14;                  28:17,20,21;29:2,20;                  40:4;46:9,10;47:3;                  58:11,12,20;61:9;                  63:19;69:17;70:23,                  24;88:23;89:3;93:3;                  111:22;112:10;                  126:8;127:15;                  131:24;134:4;143:6  <b>Eversource's (2)</b>                  58:16;92:3  <b>Everybody (6)</b>                  5:3;44:21;106:9;                  107:13;138:2,5  <b>everyone (2)</b>                  112:19;136:2  <b>everyone's (1)</b>                  49:17  <b>evidence (3)</b>                  33:8;132:22;                  133:16  <b>evidentiary (1)</b>                  48:5  <b>exact (1)</b>                  60:12  <b>exactly (5)</b></p>	<p>34:22;59:7;84:5;                  104:7;105:6  <b>EXAMINATION (3)</b>                  7:21;45:14;82:22  <b>example (1)</b>                  101:9  <b>exceed (1)</b>                  13:13  <b>exceeds (1)</b>                  44:9  <b>excerpts (3)</b>                  13:2;24:13;83:2  <b>excess (2)</b>                  68:12;124:23  <b>exclusion (1)</b>                  126:13  <b>excusable (2)</b>                  21:1,2  <b>Excuse (1)</b>                  79:10  <b>Executive (1)</b>                  40:8  <b>exert (1)</b>                  37:4  <b>Exhibit (54)</b>                  7:16,17;8:13;9:18;                  11:13,14,18,24;12:2;                  13:3,5,6;15:24;16:2,                  6,10;17:15;24:13,15,                  19,21;28:5,6,8,13;                  32:3;36:2,8,8,16,17,                  18,20;45:3;53:15,17,                  20;58:1;61:1;83:1;                  84:17;87:7,9;89:15,                  16,17,23;107:11;                  119:21;123:24;                  133:8,24;137:12;                  139:1  <b>exhibits (4)</b>                  8:14,16;35:20,22  <b>exigencies (1)</b>                  102:2  <b>exigent (1)</b>                  117:21  <b>existed (1)</b>                  49:15  <b>existing (1)</b>                  58:9  <b>exogenous (116)</b>                  10:15,18;12:20;                  13:1,9,20,23;14:7,19;                  15:4,13;16:10,12,21;                  17:2;18:24;19:8,13,                  14,16;20:1,14;29:7;                  37:4;38:4,8;39:9;                  40:24;41:11;42:9,13,                  18;43:16;44:6,10,17;                  47:8,19;50:9,13,17;                  51:13,16;57:21,24;                  58:1,5,20;59:6,19,20;                  86:2,12,13,15,18;                  87:2,14,19;93:21;                  94:4,10,19,21;95:8,</p>

17;96:4,10,12,13,22; 97:24;98:10,15,17; 100:17,20,21;103:4, 8,22;104:2,4,5,15,21; 105:3;106:4,5,6,11, 20;107:1;108:9; 109:6;113:18; 118:15,23;122:13,18; 123:2,3,11,12,22,23; 124:6,8,12;129:15; 132:5;137:8,14,19; 138:13;140:10	<b>extra (1)</b> 73:23 <b>extraneous (1)</b> 35:24	<b>felt (2)</b> 34:4;49:13 <b>FERC (5)</b> 22:16,21;23:6,8,9 <b>few (4)</b> 63:16;87:5;103:21; 130:10 <b>figure (1)</b> 40:17 <b>file (10)</b> 8:13;16:17;42:5; 60:9;64:13;67:23; 95:8;98:12;104:13; 108:4 <b>filed (16)</b> 9:18;10:19;12:3; 19:3,15;22:6;40:8; 60:24;64:8;66:5,13, 17;87:9;95:1;96:6; 133:12 <b>files (2)</b> 52:22;108:8 <b>filing (71)</b> 7:15,17;8:20;9:22; 15:20;16:11,21;17:2, 22;18:6;19:2;20:21; 22:2,5;23:8,9,19; 24:4;26:20;41:4,9, 22;42:12;53:9,21; 55:8;56:4,4,8,10; 57:19,22,23;58:1; 59:22;60:14,18; 61:23;63:7;65:6; 75:24;76:9,10,12; 84:10,13;86:10,11, 17,20,21;87:1,18; 102:18;103:5,6,11, 13;104:11;105:20; 106:1;108:1,12; 114:10;126:23; 131:12,15,16;132:3, 11,19 <b>filings (6)</b> 17:7;35:19;52:2; 59:5;102:23;113:7 <b>finally (3)</b> 18:13;87:23; 133:23 <b>find (4)</b> 19:10;121:22; 132:7;133:8 <b>finding (1)</b> 51:17 <b>first (16)</b> 13:5;17:15;27:9; 28:13;32:12;50:3; 103:23;106:7; 111:23,24;115:11,13, 15;117:24;129:14; 132:4 <b>fit (1)</b> 108:5 <b>fits (1)</b>	124:2 <b>five (3)</b> 79:14;80:20; 128:19 <b>five-page (1)</b> 32:13 <b>five-year (2)</b> 66:2;124:16 <b>fix (4)</b> 46:23,24;77:5;80:9 <b>fixed (1)</b> 103:16 <b>fleet (1)</b> 121:10 <b>fluctuation (2)</b> 72:6;113:7 <b>fluctuations (1)</b> 67:11 <b>flush (1)</b> 128:7 <b>flushed (1)</b> 140:21 <b>fold (1)</b> 105:24 <b>folks (1)</b> 112:13 <b>follow (2)</b> 100:5;119:9 <b>followed (1)</b> 60:22 <b>following (5)</b> 18:1;60:23;102:5; 124:21;129:23 <b>force (1)</b> 99:23 <b>foreclosed (1)</b> 101:3 <b>forget (1)</b> 18:5 <b>forgotten (1)</b> 140:17 <b>form (3)</b> 81:3,16;99:17 <b>formal (2)</b> 133:12,22 <b>formally (1)</b> 114:23 <b>forth (2)</b> 26:5;119:15 <b>forthcoming (1)</b> 76:15 <b>forthwith (1)</b> 112:11 <b>forward (7)</b> 37:9;59:24;67:22; 106:11;111:23; 115:19;131:5 <b>fossil (2)</b> 23:11,14 <b>FOSSUM (73)</b> 5:9,10;6:2,3,22; 7:2,8,9,20,22;11:8; 18:14,20;22:23;26:6,	19;29:11;30:8;31:16, 19,22;35:8,13,16; 36:9;37:10,12;42:20, 22;44:3,4;46:14; 47:4;50:18;53:2; 70:13;82:19,21,23; 89:5,13,15,18;90:10; 91:19;92:1;94:14; 104:3,14;116:13,14; 122:16;123:10,20; 124:4,13;126:5; 128:11;129:8; 134:22,24;135:13; 137:4,10,21;139:5,9, 15,23;140:19;142:6, 7;143:18 <b>found (2)</b> 113:17;121:14 <b>foundation (5)</b> 29:22;30:2;31:3, 24;33:11 <b>four (1)</b> 16:4 <b>frankly (1)</b> 19:9 <b>Franz (1)</b> 5:22 <b>free (1)</b> 35:21 <b>front (3)</b> 82:24;133:9; 134:12 <b>fruitful (1)</b> 111:13 <b>full (11)</b> 39:20;54:21;71:18; 78:20;80:13;88:23; 89:17;92:5;100:12; 120:6,9 <b>fully (3)</b> 20:4;34:23;81:22 <b>fund (13)</b> 65:19;67:7;69:4; 76:17,22,23;77:18, 18;79:20;80:1;128:2, 6;143:7 <b>fundamental (1)</b> 107:17 <b>fundamentally (5)</b> 95:19;119:6,8,11; 141:5 <b>funded (1)</b> 75:23 <b>funding (27)</b> 64:15,19,23;65:5, 8;66:16;67:23;68:1; 73:15,16;74:6;75:5,7, 13,17,18;77:8;80:18, 22;83:15,20;84:4; 85:12,13;109:24; 137:14;138:17 <b>funds (4)</b> 10:10;69:2;79:19;
<b>expect (2)</b> 45:13;75:9 <b>expected (4)</b> 42:22;45:16;48:11; 144:4 <b>expecting (1)</b> 104:17 <b>expediate (1)</b> 57:7 <b>expedited (1)</b> 49:9 <b>expenditures (1)</b> 109:12 <b>expense (8)</b> 73:10;80:11;81:1, 2;110:1;126:7; 136:18;139:8 <b>expenses (3)</b> 47:16;126:9,11 <b>experience (2)</b> 124:7;125:1 <b>experienced (1)</b> 42:24 <b>experiencing (1)</b> 77:24 <b>experiment (1)</b> 111:12 <b>expire (1)</b> 24:9 <b>expired (2)</b> 24:8;98:18 <b>explain (3)</b> 9:15,19;54:14 <b>explanation (1)</b> 95:3 <b>explicitly (2)</b> 99:24;118:16 <b>express (1)</b> 142:15 <b>extend (1)</b> 55:22 <b>extent (20)</b> 20:6;27:14,21; 29:18;30:9;35:17,23; 37:15,20;40:21; 50:18;70:14;84:24; 88:20;94:11;118:21; 124:3,15;129:14; 138:6 <b>extinguished (1)</b> 87:18	<b>F</b> <b>facilitated (1)</b> 111:17 <b>fact (12)</b> 29:15;31:10;62:1; 106:10,19;108:6,8; 118:14;120:9;121:2, 22;132:22 <b>factors (1)</b> 102:5 <b>facts (2)</b> 6:18;21:4 <b>factual (1)</b> 40:16 <b>failed (2)</b> 20:24;41:4 <b>failure (2)</b> 22:1;100:18 <b>Fair (11)</b> 28:3,23;31:9; 57:22;59:24;100:12; 107:10;110:9; 128:11,23;134:2 <b>fairly (2)</b> 42:23;138:21 <b>fairness (2)</b> 107:17;143:12 <b>faith (2)</b> 127:16;134:14 <b>fall (2)</b> 59:19;117:22 <b>familiar (2)</b> 28:13;31:6 <b>fanfare (4)</b> 43:21,23;90:17; 117:12 <b>far (7)</b> 19:19;21:18;56:16; 107:24;121:9; 143:13,16 <b>fashion (1)</b> 111:21 <b>fast-tracked (1)</b> 49:12 <b>federal (16)</b> 13:8;46:12;47:6; 55:15,17;69:16,20; 70:1,6;91:8;93:20; 112:20;124:10,10; 137:19;142:4 <b>federally (1)</b> 124:1 <b>feel (4)</b> 21:6;23:21;105:1; 114:10 <b>feeling (1)</b> 134:10	<b>felt (2)</b> 34:4;49:13 <b>FERC (5)</b> 22:16,21;23:6,8,9 <b>few (4)</b> 63:16;87:5;103:21; 130:10 <b>figure (1)</b> 40:17 <b>file (10)</b> 8:13;16:17;42:5; 60:9;64:13;67:23; 95:8;98:12;104:13; 108:4 <b>filed (16)</b> 9:18;10:19;12:3; 19:3,15;22:6;40:8; 60:24;64:8;66:5,13, 17;87:9;95:1;96:6; 133:12 <b>files (2)</b> 52:22;108:8 <b>filing (71)</b> 7:15,17;8:20;9:22; 15:20;16:11,21;17:2, 22;18:6;19:2;20:21; 22:2,5;23:8,9,19; 24:4;26:20;41:4,9, 22;42:12;53:9,21; 55:8;56:4,4,8,10; 57:19,22,23;58:1; 59:22;60:14,18; 61:23;63:7;65:6; 75:24;76:9,10,12; 84:10,13;86:10,11, 17,20,21;87:1,18; 102:18;103:5,6,11, 13;104:11;105:20; 106:1;108:1,12; 114:10;126:23; 131:12,15,16;132:3, 11,19 <b>filings (6)</b> 17:7;35:19;52:2; 59:5;102:23;113:7 <b>finally (3)</b> 18:13;87:23; 133:23 <b>find (4)</b> 19:10;121:22; 132:7;133:8 <b>finding (1)</b> 51:17 <b>first (16)</b> 13:5;17:15;27:9; 28:13;32:12;50:3; 103:23;106:7; 111:23,24;115:11,13, 15;117:24;129:14; 132:4 <b>fit (1)</b> 108:5 <b>fits (1)</b>		



<p>92:10  <b>further (2)</b>                  55:6;72:17  <b>Furthermore (1)</b>                  131:21  <b>future (7)</b>                  10:8,12;58:19;                  59:5;67:10;78:13;                  141:23</p>	<p>50:1,19;52:1;53:14,                  23;54:2;70:17,19;                  72:19;82:20,24;                  83:17;84:8,12,16;                  85:6,17;86:5,16;                  87:5;88:9;89:8;                  113:5;116:18;127:22  <b>Goulding's (4)</b>                  27:6;30:4;33:16;                  70:14</p>	<p>90:23;112:11;                  117:14  <b>happen (10)</b>                  16:20;17:1;48:9,9,                  14;74:18;76:7;77:1;                  90:10;123:5  <b>happened (5)</b>                  53:8;91:10,11;                  119:5;132:17  <b>happens (2)</b>                  78:16;140:12  <b>happy (4)</b>                  28:2;32:3,6,22  <b>hear (5)</b>                  6:20;59:23;91:9,                  14;96:2  <b>heard (10)</b>                  30:1,2;44:21;60:6,                  17;79:5;94:13;                  143:13,14,18  <b>hearing (17)</b>                  9:20;11:4;18:17;                  19:6;29:10;30:21;                  45:12;48:5,11;57:15;                  61:24;62:6;72:24;                  100:4;119:16;144:3,                  7  <b>hearings (1)</b>                  25:3  <b>Hello (1)</b>                  73:7  <b>help (8)</b>                  21:9,10;34:18,21;                  39:3;40:16;67:10;                  113:18  <b>helpful (1)</b>                  115:2  <b>hence (2)</b>                  72:8;114:8  <b>herein (2)</b>                  120:2,8  <b>here's (10)</b>                  20:8,8;42:15;                  56:12;64:22;68:1,2;                  74:19;76:1;105:22  <b>herewith (3)</b>                  11:18;16:6;28:8  <b>high (2)</b>                  117:5;126:18  <b>higher (1)</b>                  115:13  <b>highlight (1)</b>                  41:6  <b>highlighted (2)</b>                  53:11;54:3  <b>highly (1)</b>                  30:19  <b>hindered (1)</b>                  118:1  <b>historically (1)</b>                  108:18  <b>hold (2)</b>                  70:10;127:4</p>	<p><b>holds (1)</b>                  23:18  <b>honest (1)</b>                  61:17  <b>HONIGBERG (101)</b>                  5:2;6:1,16;7:3,8,                  18;11:10,15;16:3;                  18:18,21;19:12,20;                  20:17;21:12;26:9,22;                  27:19;28:3;30:1,15;                  31:2,14,20;32:10;                  33:12;34:2;35:7;                  36:5,10,13;37:6;                  38:16;39:16,23;                  40:19;41:2,5,13;                  42:15,21;43:7,18;                  44:2,14,22;45:2,10,                  20;46:22;49:20;51:1,                  5;52:19;53:13,17;                  54:1;61:11;70:17;                  72:20;73:1;77:4;                  82:14,17;89:7,14,21;                  91:22;92:18;95:23;                  96:2;97:2;98:7;                  104:10,20;105:9;                  106:15;107:4,6;                  112:14;114:14,22;                  115:9,17,21;116:13;                  122:10,23;123:15;                  125:21;127:17;                  129:6;134:21;136:1;                  137:5;139:18;                  140:15;141:17;                  142:6;143:12,24  <b>hopefully (1)</b>                  57:6  <b>hoping (1)</b>                  60:16  <b>horizon (1)</b>                  125:6  <b>horse (1)</b>                  109:14  <b>hour (1)</b>                  117:1  <b>hours (2)</b>                  113:13;117:3  <b>House (1)</b>                  54:7  <b>humble (1)</b>                  21:8  <b>hydro (4)</b>                  22:14;23:15,17,22</p>	<p><b>identification (9)</b>                  7:13;8:13;11:19,                  24;16:1,7,10;28:9,12  <b>identified (1)</b>                  60:24  <b>ie (1)</b>                  99:11  <b>immediate (8)</b>                  5:20;33:5;91:15,                  23;92:9,14;109:7;                  112:1  <b>impact (11)</b>                  9:22;44:8,12;                  54:21;66:4;85:1;                  94:11;122:21,22;                  125:7;128:4  <b>impacted (1)</b>                  58:10  <b>impacts (2)</b>                  10:8;103:1  <b>impeach (1)</b>                  36:14  <b>impediment (3)</b>                  24:2,3;109:7  <b>implementation (4)</b>                  8:7;25:6;84:2;                  143:2  <b>implemented (4)</b>                  141:21,22;143:5,9  <b>implication (1)</b>                  127:21  <b>implied (2)</b>                  30:12;70:15  <b>important (1)</b>                  41:6  <b>importantly (1)</b>                  131:22  <b>impose (1)</b>                  102:13  <b>improvident (1)</b>                  109:10  <b>imputing (1)</b>                  27:14  <b>incapable (1)</b>                  99:16  <b>include (6)</b>                  8:6;54:24;86:20;                  103:10;113:8;126:22  <b>included (4)</b>                  24:13;52:3;58:9;                  126:12  <b>including (1)</b>                  114:1  <b>inclusion (1)</b>                  126:13  <b>income (9)</b>                  69:16,24;70:2;                  71:16;93:6,9;112:21,                  21;142:4  <b>inconsistent (8)</b>                  25:4,22,23;27:4;                  38:24;102:7,12;                  123:9</p>
<b>G</b>				
<p><b>garden (1)</b>                  99:4  <b>gave (2)</b>                  60:4;116:23  <b>general (1)</b>                  91:7  <b>generally (1)</b>                  130:22  <b>generating (1)</b>                  121:10  <b>generation (2)</b>                  10:17;22:8  <b>gets (2)</b>                  73:10;80:12  <b>GIAIMO (3)</b>                  78:23;82:15,16  <b>given (11)</b>                  23:14;49:7;94:6;                  97:5;98:3;108:17;                  110:10;114:6;121:8;                  138:11;141:19  <b>gives (1)</b>                  14:18  <b>giving (2)</b>                  53:6;133:7  <b>glad (2)</b>                  52:9;58:22  <b>goes (6)</b>                  69:13,14;85:4;                  118:2;119:17,18  <b>going-forward (1)</b>                  128:21  <b>golly (1)</b>                  116:14  <b>Good (15)</b>                  5:2,9,13,18;21:23;                  45:21;50:1;67:12;                  73:6;82:16;90:17;                  92:23;97:11;127:16;                  134:14  <b>goodly (1)</b>                  118:9  <b>Goulding (57)</b>                  7:1,3,5,10,23;8:2,                  11;9:1,13;10:23;                  11:22;16:8;22:24;                  26:1;27:1;28:11;                  29:13,15;30:4,10,14;                  34:12;35:1,14;36:2;                  37:18;38:23;45:5,15;                  46:19;47:4;49:19;</p>	<p><b>govern (1)</b>                  13:19  <b>governing (1)</b>                  12:19  <b>Granite (1)</b>                  51:19  <b>Granted (1)</b>                  126:16  <b>great (8)</b>                  6:19;43:21;50:2;                  90:17,20;116:10;                  117:12;131:4  <b>grid (1)</b>                  49:2  <b>gross-up (3)</b>                  55:13,14;68:13  <b>ground (1)</b>                  27:16  <b>grounds (3)</b>                  30:6;90:1,1  <b>guess (19)</b>                  6:6;10:21;11:13;                  13:4;14:12;28:1,5;                  36:12;37:15;48:3,13;                  68:6;81:9;90:10;                  123:10;124:14;                  128:13;139:14;142:8  <b>guessing (1)</b>                  76:21  <b>guidance (1)</b>                  112:3</p>			
<b>H</b>				
	<p><b>Ha (1)</b>                  24:16  <b>half (2)</b>                  115:13;140:8  <b>Hampshire (8)</b>                  5:11;8:3,5;54:9;                  99:19;100:6;101:13;                  102:16  <b>hand (1)</b>                  135:20  <b>handing (1)</b>                  11:13  <b>handle (3)</b>                  42:11;59:13;130:6  <b>handled (2)</b>                  87:10;138:7  <b>handling (1)</b>                  138:13  <b>hands (3)</b></p>			
			<b>I</b>	
			<p><b>ID (2)</b>                  89:11,23  <b>idea (9)</b>                  18:16;30:22;95:11;                  97:11;117:10,13;                  118:12;128:22;141:6  <b>ideas (1)</b>                  46:11</p>	

			<b>K</b>	<b>L</b>
<b>incorporate (1)</b> 55:4	<b>intact (1)</b> 12:21	<b>investors (1)</b> 93:14		
<b>increase (16)</b> 62:12;63:6,12; 69:8;71:1,22;72:15; 81:19;82:6;86:13; 110:16;113:8,11; 128:5;129:2,3	<b>integrity (1)</b> 101:23	<b>invoke (3)</b> 15:4;19:7;132:7	<b>keep (6)</b> 21:18;90:13;98:14; 108:15,16;124:18	<b>labile (1)</b> 36:23
<b>increased (3)</b> 127:24;128:13,14	<b>intend (5)</b> 19:5;32:20;41:23; 42:5;102:19	<b>invoked (1)</b> 102:4	<b>keeping (5)</b> 78:5;117:6;125:11, 13,18	<b>lack (10)</b> 22:20;23:6,17; 30:2,5;31:2,5,23,24; 112:5
<b>increases (6)</b> 52:5,8,8;61:22; 62:15;63:2	<b>intended (4)</b> 34:6;42:7;94:4; 108:10	<b>invoking (4)</b> 18:24;47:7;98:21; 107:2	<b>Kelleher (2)</b> 101:11;104:9	<b>language (12)</b> 13:1,17,22;16:18; 25:8,14,15;56:11; 94:14;101:14; 124:19;138:24
<b>incredible (1)</b> 131:21	<b>intends (2)</b> 30:10;102:22	<b>IR (4)</b> 55:2;56:5;58:16; 102:17	<b>kept (1)</b> 119:7	<b>larger (2)</b> 78:11;128:2
<b>incur (2)</b> 125:1;139:3	<b>interdependent (2)</b> 120:3;130:18	<b>irrelevant (1)</b> 97:22	<b>kickstart (1)</b> 49:2	<b>largest (1)</b> 136:15
<b>incurred (3)</b> 62:20;66:10;74:10	<b>interest (10)</b> 10:3;79:21;80:2,6; 105:12;106:13; 109:15;110:1,1; 112:9	<b>issue (13)</b> 27:20,22;38:10; 48:6;93:8;104:2; 107:9;117:21; 120:24;121:18; 124:15;143:15;144:5	<b>kilowatt (3)</b> 113:13;117:1,2	<b>last (15)</b> 24:20,22;51:10; 57:11;58:24;59:4; 66:22,22;77:16,20; 90:4;94:7;98:18; 100:22;139:24
<b>incurring (3)</b> 72:1;78:1;139:13	<b>interested (4)</b> 26:24;49:5;90:8; 91:5	<b>issued (6)</b> 41:20;50:5;60:2; 81:14;90:14;141:14	<b>kind (12)</b> 17:9;43:23;56:21; 66:20;67:11;72:4,8; 111:10,14;123:23; 125:7;128:19	<b>larger (2)</b> 78:11;128:2
<b>incurs (1)</b> 124:22	<b>interesting (1)</b> 126:18	<b>issues (10)</b> 6:7;23:23;33:2; 38:15;40:14;93:1; 107:12;118:10; 125:9;133:14	<b>kinds (2)</b> 107:19;118:17	<b>last (15)</b> 24:20,22;51:10; 57:11;58:24;59:4; 66:22,22;77:16,20; 90:4;94:7;98:18; 100:22;139:24
<b>Indeed (5)</b> 27:13;36:21;97:7; 103:19;128:15	<b>interests (3)</b> 71:6;95:21;101:20	<b>item (2)</b> 126:14;133:4	<b>knew (3)</b> 108:19,22;125:5	<b>late (4)</b> 19:4;20:21;60:3; 105:22
<b>indefinitely (1)</b> 108:1	<b>internal (1)</b> 23:20	<b>items (9)</b> 17:13;18:9;66:12; 71:23,23;90:5;92:6; 130:10;133:21	<b>knowing (2)</b> 90:9;92:11	<b>lately (1)</b> 72:5
<b>independent (1)</b> 87:1	<b>interpret (4)</b> 27:3,8;29:7;70:15		<b>knowledge (7)</b> 26:1;30:5;31:3,4,5; 87:17;92:16	<b>later (9)</b> 15:20;42:5;51:20; 55:7;68:19;91:20; 94:20;102:6;135:9
<b>indicated (3)</b> 47:5;87:8;119:14	<b>interpretation (2)</b> 14:21;50:20	<b>J</b>	<b>known (1)</b> 55:5	<b>law (31)</b> 39:15;42:16;43:6, 9;46:13;47:7;50:6, 15;51:15;53:8;54:5, 10;55:19;56:18;58:8, 9,14;61:14,19;62:13; 68:22;69:21;90:16; 97:8,9;99:20,24; 106:23;117:24; 124:11;139:16
<b>indicates (1)</b> 142:20	<b>interpreted (3)</b> 25:11,18;30:12	<b>January (18)</b> 23:13,15;42:17; 43:20;50:8;55:14; 67:19,21;68:10,21; 70:7;81:15;95:16; 102:18,21;115:6; 117:8;139:14	<b>knows (2)</b> 45:15,15	<b>laws (6)</b> 5:6;43:1;54:14,19, 21;124:10
<b>indicating (1)</b> 132:22	<b>INTERROGATORIES (1)</b> 73:4	<b>job (3)</b> 21:9;34:16;37:21	<b>KREIS (91)</b> 5:13,14,15;11:10, 11,21;15:23;18:21, 23;19:18;20:3;21:8, 22;22:3;23:3,5;26:9, 10;27:13,21;28:4,10; 29:19;30:9,16,17; 31:5,18,22;32:22; 33:18;34:15;35:15, 17,21;36:10,11,21; 37:16,22;38:12,17; 39:4,19;40:1;41:1,3, 12,18;42:19;43:3,13, 24;44:18;45:1,6,18, 24;46:6,15,21,23,24; 47:2;49:16;83:2; 92:19,22;96:1,24; 97:7;98:8;104:13; 105:5,15;107:2,5,7; 109:20;110:6;119:5, 10;120:20;130:11; 132:12;139:20; 140:3,24;141:3; 143:10,13	<b>lawyer (3)</b> 27:7;28:1;45:23
<b>indulgence (1)</b> 11:12	<b>interrupted (1)</b> 129:6	<b>Jobs (3)</b> 54:8;58:6,8	<b>known (1)</b> 55:5	<b>lawyers (2)</b> 6:23;27:9
<b>informal (2)</b> 133:11,13	<b>interrupting (1)</b> 46:15	<b>judgment (1)</b> 109:9	<b>known (1)</b> 55:5	<b>lays (1)</b> 15:12
<b>information (2)</b> 8:20;54:24	<b>into (17)</b> 7:4;14:2;31:11; 32:4;43:6;46:17; 56:6;67:22;68:20,22; 90:7;105:24;112:10; 117:11;129:5; 130:15;133:16	<b>judgments (1)</b> 43:14	<b>known (1)</b> 55:5	<b>leap (1)</b> 37:9
<b>inherently (1)</b> 131:21	<b>intransigent (1)</b> 111:3	<b>judicial (7)</b> 37:3,13;101:9,23; 102:3;121:24;122:2	<b>known (1)</b> 55:5	<b>learned (2)</b> 36:17;97:9
<b>initially (3)</b> 63:8;114:9;126:21	<b>intriguing (1)</b> 111:11	<b>July (9)</b> 10:20;12:9;28:19, 20;29:3;36:19;94:7, 8;117:9	<b>known (1)</b> 55:5	<b>least (9)</b> 6:7;20:24;30:8; 91:9;92:3;119:23; 125:17;130:14;136:8
<b>initiated (1)</b> 124:1	<b>introduce (2)</b> 32:8;38:13	<b>June (9)</b> 7:16;9:1;12:5; 24:10;50:6;53:21; 75:4;103:21;106:9	<b>known (1)</b> 55:5	
<b>injustice (1)</b> 136:7	<b>introduction (1)</b> 97:6		<b>known (1)</b> 55:5	
<b>inquiries (2)</b> 25:3;34:20	<b>Investigation (2)</b> 51:4;109:11		<b>known (1)</b> 55:5	
<b>insofar (1)</b> 52:17	<b>investing (2)</b> 93:15;111:5		<b>known (1)</b> 55:5	
<b>instance (3)</b> 27:10;92:9;124:20	<b>investment (1)</b> 121:13		<b>known (1)</b> 55:5	
<b>instead (4)</b> 55:16;63:11;73:21; 80:20	<b>investments (2)</b> 48:17;111:19		<b>known (1)</b> 55:5	
<b>institution (1)</b> 18:5			<b>known (1)</b> 55:5	
<b>instructions (1)</b> 41:21			<b>known (1)</b> 55:5	

<b>led (1)</b> 117:23	13:6,17,18;14:3; 15:9;24:17,23;39:21;	<b>M</b>	79:12	100:18
<b>left (4)</b> 5:20,22;112:18; 116:20	49:9;83:12;84:20,22; 85:21;86:6,7;122:9; 123:21;130:24; 134:5,11;139:5		<b>matter (10)</b> 24:11;38:7,10; 39:15;62:1;99:19; 105:13;118:6,7; 144:5	<b>meets (2)</b> 13:9;17:10
<b>legal (20)</b> 6:8,9;14:12;24:2; 25:2;27:2,17,24; 30:13;31:4;37:20; 40:15,21,22;46:5; 59:4;70:15;101:18; 107:20;134:2	<b>Lines (10)</b> 13:11;26:5;93:24; 94:9,18;98:9;119:24; 120:12;122:21; 124:20	<b>magically (1)</b> 132:5	<b>matters (1)</b> 37:14	<b>mentioned (6)</b> 12:16;50:9;81:17; 104:14;106:7;111:10
<b>legality (1)</b> 140:6	<b>lists (1)</b> 42:13	<b>maintaining (1)</b> 101:19	<b>Matthew (1)</b> 5:10	<b>mentioning (2)</b> 20:13;64:2
<b>legislation (1)</b> 25:3	<b>litigate (2)</b> 21:3;100:13	<b>major (6)</b> 64:16,17;65:18; 71:7;83:15;128:16	<b>Maurice (1)</b> 5:14	<b>mere (1)</b> 95:12
<b>legislative (1)</b> 25:2	<b>litigation (1)</b> 12:14	<b>makes (3)</b> 40:15;98:23;136:5	<b>may (33)</b> 6:22;7:19;14:10; 21:17;26:23;27:3; 29:15;51:24;58:19; 60:3,7;83:14;86:9; 11:87;1;89:24;90:7; 96:9;101:19;102:4; 103:13;104:14; 105:12,13;112:14; 114:19,23;116:22; 123:17;132:10,23; 137:4;143:14	<b>method (2)</b> 51:12;93:1
<b>legitimate (1)</b> 107:12	<b>little (3)</b> 73:23;91:3;118:19	<b>making (8)</b> 15:20;25:9,16; 96:8;97:10,12,19; 140:5	<b>Maybe (14)</b> 20:22;21:6;32:18, 20;34:8,13;39:5; 80:18;82:9,9;96:17; 104:8;122:24;127:19	<b>middle (1)</b> 63:21
<b>length (1)</b> 121:23	<b>live (1)</b> 134:9	<b>managed (1)</b> 95:8	<b>mean (18)</b> 42:21;49:3;77:17; 93:11;96:14;107:2, 18,23;110:11,11; 114:20,23;130:3; 131:6;137:7;138:6; 140:24;143:5	<b>might (17)</b> 20:9;27:6,11;33:9; 43:18;44:1;57:1; 96:9,13;97:11; 117:21;128:1,9,20; 130:12;138:7;141:6
<b>lengthy (1)</b> 118:11	<b>lived (1)</b> 98:18	<b>manager (1)</b> 8:3	<b>Manchester (1)</b> 8:5	<b>million (43)</b> 13:13,14;15:6; 33:5;44:10;47:15; 48:16;65:3,22;68:2, 3;73:18,21,22;74:9; 75:3,3,5,10,11,14; 76:14;77:10,11; 78:19;79:2,6,7,13,13; 80:5,7,21,24;93:4,18; 103:9;106:14;109:8, 17;112:10;121:12; 143:7
<b>less (5)</b> 45:14;77:17;78:1; 108:20;136:12	<b>located (1)</b> 8:4	<b>Manchesters (1)</b> 8:5	<b>manifest (1)</b> 108:14	<b>mind (4)</b> 14:1;90:14;117:6; 124:5
<b>letter (50)</b> 16:17;17:14,15; 19:3,15;20:12;28:17; 29:1,5;30:6,11,19; 31:7,11,17,24;32:11, 12,13,15,20,23; 33:16,18,22;34:7,13, 15;35:1,9,24;36:19; 37:22;38:14,22,24; 39:7,17;40:3,3,6,9, 11,18;44:24;46:7,10, 16;104:14;107:11	<b>long (13)</b> 23:12;25:20,21; 32:13;66:5;67:2; 71:10,12;78:19; 84:18;108:23;111:6; 142:22	<b>manifestly (1)</b> 98:11	<b>manifestly (1)</b> 98:11	<b>mindset (1)</b> 72:5
<b>letterhead (2)</b> 28:21;29:24	<b>longer (6)</b> 54:10;60:9;98:20; 99:1;121:4;144:3	<b>manner (2)</b> 62:14;67:1	<b>many (2)</b> 69:9;131:5	<b>minor (1)</b> 54:9
<b>level (7)</b> 66:16;80:14;83:15, 20;84:4;137:14; 138:17	<b>long-term (1)</b> 110:20	<b>map (2)</b> 102:15;139:19	<b>March (30)</b> 7:14;8:12;10:19; 15:21;16:17,19,23; 17:3,18;18:6;19:15; 22:2;41:9,23;42:3, 12;56:3;59:22;64:1; 75:2,15;76:11;79:1; 94:20,24;95:9;97:22; 100:19;103:7;105:22	<b>minute (3)</b> 95:24;104:15; 127:18
<b>liability (11)</b> 64:18;65:1;67:7,7, 9;69:5;73:14;74:10; 78:11;93:4,18	<b>look (11)</b> 5:5;11:22;30:18; 34:9;37:10;53:20; 84:16;94:17;95:6; 105:22;128:17	<b>marginally (1)</b> 37:24	<b>meaning (9)</b> 42:9;58:24;59:3; 93:22;95:18;98:9; 105:18,19;120:2	<b>missed (2)</b> 112:6;132:3
<b>Liberty (6)</b> 50:11;51:9;61:19; 62:16,17;88:6	<b>looked (1)</b> 32:11	<b>marked (13)</b> 11:18,23;13:4,16; 16:6,9;24:20;28:5,8, 12;35:20;85:19;87:6	<b>meaningful (1)</b> 137:24	<b>missing (7)</b> 18:11;20:19;41:7, 8;96:19;105:10,13
<b>light (1)</b> 121:22	<b>looking (15)</b> 13:5;14:1;17:14; 24:18;30:13;74:20; 76:11;116:23;117:4, 17;119:21;122:7; 131:17;133:23; 141:20	<b>mark (1)</b> 16:1	<b>means (7)</b> 21:15;33:17;43:17; 50:21;112:24; 125:11;134:17	<b>misunderstanding (1)</b> 37:16
<b>likely (2)</b> 71:21;119:13	<b>looks (2)</b> 122:19;133:11	<b>marginally (1)</b> 37:24	<b>meant (2)</b> 124:9,14	<b>mitigate (2)</b> 10:8;72:8
<b>limitation (1)</b> 100:4	<b>lost (1)</b> 30:24	<b>marked (13)</b> 11:18,23;13:4,16; 16:6,9;24:20;28:5,8, 12;35:20;85:19;87:6	<b>measure (1)</b> 45:13	<b>mod (1)</b> 49:3
<b>limited (2)</b> 49:14;89:24	<b>lot (5)</b> 21:3;32:14;45:18, 22;116:15	<b>Marvin (1)</b> 101:11	<b>mechanical (1)</b> 18:3	<b>modification (8)</b> 83:14,19;84:3; 120:6,15;121:4; 137:13;138:17
<b>limits (3)</b> 107:15,16;132:6	<b>lower (4)</b> 10:2;77:14;80:11; 115:14	<b>Massachusetts (2)</b> 91:15;92:17	<b>mechanically (1)</b> 73:9	<b>modified (1)</b> 12:22
<b>Line (21)</b>	<b>Lumber (1)</b> 101:11	<b>massive (1)</b> 108:22	<b>mechanism (18)</b> 8:10;66:15;84:14; 85:2,9;94:4,13,16; 110:13;113:15,23; 116:1,9,10;128:4,23; 135:8;141:22	<b>modify (3)</b> 100:3;106:17,22
		<b>math (4)</b> 116:19,21;117:2, 16	<b>mechanisms (1)</b> 64:16	
		<b>mathematically (1)</b>	<b>meet (1)</b>	

<p><b>modifying (1)</b> 101:3</p> <p><b>moment (5)</b> 43:20;102:2;121:1; 142:14,16</p> <p><b>money (38)</b> 48:8;63:1,18; 64:13;68:8,18,20; 74:14;75:19;78:10, 11;80:1;90:18,23; 98:14;100:14;105:3; 106:21;108:15; 109:23;111:5;113:3, 16;115:12;116:7; 118:2,4;119:7; 125:11,13,16,17; 130:4;134:2,3,17; 135:14,15</p> <p><b>month (13)</b> 65:3;73:18,21,23; 77:10;78:20;79:13; 93:19;103:10; 113:14;115:19; 117:3,5</p> <p><b>monthly (4)</b> 64:19;79:5,8; 113:11</p> <p><b>months (4)</b> 72:10;115:11,16; 117:8</p> <p><b>moral (1)</b> 112:2</p> <p><b>more (29)</b> 18:7,10;19:4;21:4; 23:21;45:6,13;46:3; 49:6;54:6,23;58:11; 71:11,12,21;79:24; 81:23;82:19;87:5; 88:5;110:19;111:13; 114:10;129:1,17; 130:10;131:22; 133:7;138:23</p> <p><b>Moreover (3)</b> 38:2;118:21;132:9</p> <p><b>most (6)</b> 40:2;49:12,13; 74:12;110:9;138:14</p> <p><b>move (1)</b> 7:4</p> <p><b>moved (3)</b> 60:18;74:7;135:12</p> <p><b>moves (1)</b> 74:15</p> <p><b>moving (3)</b> 59:24;106:11; 140:1</p> <p><b>much (14)</b> 6:8,22;23:24;29:5; 32:18;33:14,15; 34:17;59:12;66:5; 80:16;98:24;108:20; 136:17</p> <p><b>multiple (1)</b></p>	<p>69:10</p> <p><b>must (6)</b> 14:11;94:20;100:5; 122:1;127:6,10</p> <p><b>myself (2)</b> 34:21;95:11</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>name (6)</b> 5:19;7:24;8:2; 29:23;59:2;112:6</p> <p><b>nationwide (1)</b> 91:11</p> <p><b>nature (4)</b> 17:19;40:16;72:2; 99:6</p> <p><b>near (3)</b> 67:2;110:19; 141:23</p> <p><b>near-term (2)</b> 61:13;111:7</p> <p><b>necessarily (4)</b> 28:22;71:4;89:4; 140:21</p> <p><b>necessary (8)</b> 25:5;35:5;37:20; 54:10;55:22;57:7; 128:5;143:1</p> <p><b>need (12)</b> 6:18,18;21:3,6,13; 32:18;90:6;104:15; 112:3;118:9;128:1, 20</p> <p><b>needed (2)</b> 34:4,5</p> <p><b>needs (1)</b> 135:15</p> <p><b>negative (2)</b> 44:9;122:22</p> <p><b>negotiated (1)</b> 109:2</p> <p><b>neither (2)</b> 95:12;106:10</p> <p><b>Nevertheless (1)</b> 55:3</p> <p><b>New (10)</b> 5:11;8:3,5;50:6; 54:9;55:14;99:19; 100:6;101:13;102:16</p> <p><b>news (2)</b> 21:23;92:23</p> <p><b>next (20)</b> 10:19;13:15;15:10; 21:7;57:11;65:14,15; 66:22;67:3,15,20; 70:10;71:1;76:18; 77:1;85:18;86:10; 93:11;95:19;114:11</p> <p><b>NH (2)</b> 99:7;100:8</p> <p><b>Nobody (3)</b> 106:5;108:19,22</p>	<p><b>nonetheless (3)</b> 57:2;127:4;137:24</p> <p><b>non-wires (1)</b> 111:17</p> <p><b>nor (2)</b> 37:14;106:10</p> <p><b>normal (1)</b> 123:5</p> <p><b>North (1)</b> 8:4</p> <p><b>note (3)</b> 114:3;122:21; 133:20</p> <p><b>noted (6)</b> 50:11;54:20;83:8; 130:11;131:16,17</p> <p><b>notes (3)</b> 118:24;130:17; 131:14</p> <p><b>notice (8)</b> 50:5,10,24;51:2; 52:16;60:2;81:14; 100:4</p> <p><b>notification (1)</b> 17:21</p> <p><b>notifies (1)</b> 17:12</p> <p><b>notoriety (1)</b> 126:17</p> <p><b>notwithstanding (1)</b> 106:16</p> <p><b>number (10)</b> 32:3;53:18,20; 74:10;80:24;90:1; 119:5;126:8,17; 132:4</p> <p><b>numbering (1)</b> 7:14</p> <p><b>numbers (4)</b> 56:23;78:24; 116:22;118:10</p> <p><b>numerous (1)</b> 58:9</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>object (8)</b> 18:15;22:23;29:11, 13;57:4;70:13;89:16; 103:2</p> <p><b>objection (8)</b> 18:19;21:17;27:15, 16;31:16;46:17; 52:20;89:22</p> <p><b>objections (3)</b> 31:1;33:9;89:11</p> <p><b>obligation (2)</b> 57:3;143:6</p> <p><b>obligations (8)</b> 26:4;42:24;134:6, 10;141:11;142:17, 23;143:22</p> <p><b>obliged (3)</b></p>	<p>16:16;111:22,24</p> <p><b>obvious (1)</b> 42:23</p> <p><b>Obviously (5)</b> 10:3;22:13;49:10; 67:13;115:23</p> <p><b>OCA (17)</b> 14:10,14;15:3; 33:6;61:8,9;85:20; 86:11,17,22,24;90:9; 111:1;122:5,6; 125:10;132:11</p> <p><b>OCA's (2)</b> 142:15,20</p> <p><b>occur (4)</b> 65:15;73:20;83:16; 84:1</p> <p><b>occurred (7)</b> 15:14;43:3;63:19; 64:4;92:15,16; 139:10</p> <p><b>October (1)</b> 74:12</p> <p><b>off (13)</b> 74:15;75:17,18,21; 76:17;79:13;89:19; 108:1;109:19; 112:18;116:20; 121:12;132:6</p> <p><b>offer (5)</b> 21:19;32:19;39:5, 24;70:18</p> <p><b>offered (1)</b> 32:24</p> <p><b>offers (2)</b> 29:6;34:1</p> <p><b>Office (6)</b> 26:12,16;28:18; 32:6;100:7;105:19</p> <p><b>officer (1)</b> 40:12</p> <p><b>official (1)</b> 40:11</p> <p><b>offset (15)</b> 52:7;61:21;62:11, 19;65:9;67:8;74:7; 75:7;76:5;77:9; 81:19,22;110:1; 114:2;128:20</p> <p><b>offsetting (2)</b> 73:11;81:23</p> <p><b>oh-oh (1)</b> 103:3</p> <p><b>old (1)</b> 55:16</p> <p><b>omitted (1)</b> 101:16</p> <p><b>once (8)</b> 22:10;23:21;44:21; 66:17;74:5,14;76:19; 109:5</p> <p><b>one (31)</b> 9:14;10:21;24:22;</p>	<p>27:5;28:5;33:9; 38:11;41:12;46:1; 49:6;60:6;61:10,12; 63:5,6;69:8;73:21; 74:12,15;92:3;102:6; 105:10;106:3;107:8; 118:5;119:18; 126:16;130:10; 133:4;138:12,23</p> <p><b>ones (2)</b> 64:2;118:3</p> <p><b>one's (1)</b> 43:11</p> <p><b>one-time (2)</b> 71:17;111:7</p> <p><b>one-year (1)</b> 66:1</p> <p><b>ongoing (1)</b> 10:11</p> <p><b>only (11)</b> 10:24;13:22;33:23; 45:15;61:10;92:13; 94:10;100:4;117:7; 136:16;142:21</p> <p><b>onto (1)</b> 83:12</p> <p><b>open (7)</b> 11:2;47:12;61:10; 102:22;105:7; 121:16;134:4</p> <p><b>opened (3)</b> 41:20;74:21;103:6</p> <p><b>opening (3)</b> 38:9;44:5;51:3</p> <p><b>operates (1)</b> 128:17</p> <p><b>opinion (11)</b> 14:13;17:8;25:8; 27:24;29:1;30:13; 70:18;85:13;89:2; 101:15;113:22</p> <p><b>opinions (1)</b> 27:18</p> <p><b>opportunity (8)</b> 27:11;33:21; 100:13;112:6; 120:16;121:6,16; 138:11</p> <p><b>oppose (1)</b> 25:3</p> <p><b>opposing (1)</b> 102:14</p> <p><b>opposition (1)</b> 25:21</p> <p><b>Option (8)</b> 47:11,11,13,15,18, 21,22;59:17</p> <p><b>options (5)</b> 14:18;20:9;33:4; 49:6;134:2</p> <p><b>Order (37)</b> 12:8,16;14:22; 38:9;39:5;48:7;50:5,</p>
---	---	---	--	--

10,20,23;51:2,2,3,22; 59:11,18;60:2;65:1; 76:20;81:14;90:14; 91:10;99:23;100:3, 15;101:3;102:20; 105:21;112:9; 120:23;121:2; 122:12,13;141:9,14, 24;144:5	<b>overpayment (1)</b> 116:11	11,15;121:5;122:8; 125:4;127:12,13; 134:8;138:20; 141:12;142:24	2;68:16;100:22; 128:18;134:14	68:19;96:5;107:13; 109:19;112:4; 113:21;116:4,9; 119:17;137:22; 138:4;139:2
<b>ordered (3)</b> 69:1,1;91:15	<b>overrule (1)</b> 89:22	<b>parts (1)</b> 38:23	<b>permanent (2)</b> 115:5,18	<b>pointed (6)</b> 31:22;94:23; 132:15,16;135:13; 137:18
<b>orders (2)</b> 91:1;129:24	<b>oversight (9)</b> 17:17,19;18:7,11; 19:11;20:24;95:2,12; 131:12	<b>party (11)</b> 25:9,16;99:15; 101:17;102:8,11,14; 122:5;138:10;140:1; 141:10	<b>permission (2)</b> 15:24;68:17	<b>Poland (1)</b> 99:7
<b>ordinary (2)</b> 100:23;101:4	<b>oversights (2)</b> 21:1,2	<b>party's (2)</b> 102:6,10	<b>persist (2)</b> 142:21,22	<b>policy (1)</b> 117:23
<b>original (1)</b> 12:20	<b>owe (1)</b> 75:22	<b>passage (1)</b> 94:21	<b>person (1)</b> 106:7	<b>politicians (1)</b> 91:9
<b>ostensible (1)</b> 28:24	<b>own (1)</b> 27:20	<b>passed (5)</b> 43:21;55:18;69:22; 90:16;106:23	<b>persuade (1)</b> 108:21	<b>popped (1)</b> 42:7
<b>otherwise (3)</b> 85:1;94:12;100:3	<b>P</b>	<b>passing (3)</b> 109:17;111:9; 117:23	<b>persuading (1)</b> 102:9	<b>portion (4)</b> 84:21;117:6; 121:10;130:16
<b>ought (1)</b> 129:10	<b>page (36)</b> 13:4,5,15,16,17,18; 14:1;15:9,10;17:15; 24:19,21,22;39:20; 54:16,17;57:10;61:6; 66:23;83:9;84:8,17; 85:18,19,22;86:7; 93:24;94:9,17; 101:14;103:24; 119:22;124:1; 137:12;139:2;140:12	<b>past (2)</b> 10:3;74:11;109:5	<b>pertain (1)</b> 122:3	<b>position (40)</b> 9:16,19,21;10:24; 15:2;19:7,13;33:2; 34:23;36:1,3,7,15,18, 20,23;37:17;38:19, 20;40:11,22,22; 71:10;83:17;85:8,14; 88:24;93:17;101:18, 19,21;102:6,8,10,12; 123:16;125:23; 127:5;142:16,19
<b>ours (1)</b> 90:22	<b>pages (2)</b> 12:2;54:4	<b>patience (1)</b> 49:17	<b>petition (1)</b> 52:11	<b>positions (8)</b> 35:2,10,18;37:19; 39:1;40:5;102:1; 120:5
<b>out (29)</b> 10:7;11:13;15:12; 31:23;35:19;38:4,10; 40:17;47:21;49:12; 69:9;71:8;79:12; 81:13;88:22;94:23; 104:6;108:18; 117:13;128:7,23; 132:15,16;135:13; 137:18,22;140:21; 142:8;144:3	<b>paid (7)</b> 69:16;79:13; 112:24;116:3; 125:24;136:2;137:2	<b>Pause (2)</b> 39:22;53:4	<b>pick (2)</b> 83:5;116:19	<b>positive (2)</b> 44:8;122:22
<b>outages (1)</b> 10:5	<b>paper (2)</b> 18:8,8	<b>pay (9)</b> 64:3,13;66:19; 74:15;75:17,18; 76:17;136:14,16	<b>picking (1)</b> 83:5	<b>possession (1)</b> 31:11
<b>outcome (2)</b> 37:1;58:18	<b>papers (1)</b> 57:7	<b>pays (1)</b> 113:13	<b>picture (1)</b> 24:1	<b>possibility (4)</b> 20:14;38:6,8;60:11
<b>outrageous (1)</b> 99:3	<b>paragraph (6)</b> 15:12;29:4;39:21; 44:6;57:12;85:21	<b>pending (4)</b> 23:16;30:3;42:1; 46:16	<b>piece (2)</b> 68:13,13	<b>possible (6)</b> 10:24;19:16;34:18; 60:10;111:6;116:11
<b>outset (1)</b> 6:12	<b>part (21)</b> 10:14;22:7;40:2; 49:10;56:14;59:14; 68:4;69:6,17;74:24; 87:10;88:9;91:20; 120:19;126:20,22; 131:1,3,4;138:12; 142:11	<b>paying (9)</b> 62:21;70:3,11; 75:21;78:2,3;112:20, 22;113:19	<b>pile (1)</b> 20:10	<b>possibly (1)</b> 49:2
<b>outside (7)</b> 23:7;47:7;108:24; 123:4;127:13;138:1, 8	<b>paper (2)</b> 18:8,8	<b>people (3)</b> 90:24;117:15; 123:5	<b>pilot (2)</b> 49:4;111:11	<b>post-generation (1)</b> 24:1
<b>outstanding (2)</b> 71:19;80:23	<b>papers (1)</b> 57:7	<b>Per (5)</b> 16:18;93:19;104:8; 116:24,24	<b>place (9)</b> 7:24;17:10;63:15; 94:22;103:17; 117:24;124:6;131:9; 133:21	<b>potential (3)</b> 23:23;69:8;129:4
<b>over (18)</b> 10:3;66:1,7,19; 69:9;74:8,11;76:23; 80:19,23;111:6; 126:9,12;128:15,18; 134:14;139:19; 141:16	<b>paragraph (6)</b> 15:12;29:4;39:21; 44:6;57:12;85:21	<b>percent (23)</b> 13:8,9;55:15,16, 17;69:23;70:1,4,6; 79:10,11,21;80:6; 82:5,6;112:22,23; 113:10,12;126:1; 135:24;136:14,16	<b>Plan (5)</b> 19:23,23,24;48:18; 67:14	<b>potentially (5)</b> 27:10;31:4;69:8; 111:13;140:4
<b>overall (1)</b> 14:15	<b>part (21)</b> 10:14;22:7;40:2; 49:10;56:14;59:14; 68:4;69:6,17;74:24; 87:10;88:9;91:20; 120:19;126:20,22; 131:1,3,4;138:12; 142:11	<b>percentage (1)</b> 135:18	<b>planned (2)</b> 63:3;111:18	<b>practice (1)</b> 75:21
<b>overlook (1)</b> 100:18	<b>partial (1)</b> 12:14	<b>perhaps (7)</b> 33:20;88:21;92:8; 104:3;116:18; 131:22;133:5	<b>planning (1)</b> 103:11	<b>practicing (1)</b> 131:9
<b>overpaying (1)</b> 113:20	<b>participate (1)</b> 88:11	<b>period (9)</b> 59:23;64:4;66:1,1, 11,15;121:5;122:8; 125:4;127:12,13; 134:8;138:20; 141:12;142:24	<b>plants (2)</b> 22:11,14	<b>preclude (2)</b> 25:9,15

<p><b>prefer (2)</b> 50:23;114:7</p> <p><b>preferred (1)</b> 19:24</p> <p><b>prehearing (6)</b> 38:7;60:19,21; 103:20;119:3;137:22</p> <p><b>premarked (6)</b> 7:13,15,17;8:12; 9:18;83:1</p> <p><b>premise (1)</b> 97:20</p> <p><b>prepared (5)</b> 8:17;9:5;29:15; 44:20;59:1</p> <p><b>present (5)</b> 6:4,5,13;61:4;68:4</p> <p><b>presentation (1)</b> 14:23</p> <p><b>presented (4)</b> 11:6;71:20;132:21; 133:2</p> <p><b>presenting (1)</b> 130:22</p> <p><b>President (3)</b> 43:4,22;108:19</p> <p><b>pressure (2)</b> 71:24;82:2</p> <p><b>presumably (1)</b> 128:22</p> <p><b>previous (2)</b> 94:19;95:7</p> <p><b>previously (2)</b> 54:12;133:18</p> <p><b>primarily (1)</b> 6:8</p> <p><b>principally (1)</b> 32:24</p> <p><b>principle (1)</b> 66:21</p> <p><b>prior (5)</b> 109:10;122:20; 124:7,21;131:15</p> <p><b>probably (7)</b> 21:2;35:8;56:20; 97:4;105:16;138:13; 141:1</p> <p><b>problem (6)</b> 31:21;46:20;48:4; 93:7;97:17,17</p> <p><b>procedure (2)</b> 15:12;99:12</p> <p><b>proceed (2)</b> 7:19;21:21</p> <p><b>proceeding (15)</b> 6:2;8:23;9:11; 26:8;29:18;33:10; 38:2;52:17;58:19; 101:18;110:3,15; 120:19;133:16,22</p> <p><b>proceedings (7)</b> 25:2;39:22;53:4; 99:4,11;121:21;</p>	<p>129:24</p> <p><b>process (12)</b> 15:19;22:18,19; 23:2;41:18;74:24; 77:17;86:2;100:5,11; 101:23;107:17</p> <p><b>procurement (1)</b> 111:17</p> <p><b>productivity (1)</b> 35:14</p> <p><b>program (5)</b> 48:20;52:13;53:24; 54:12;55:23</p> <p><b>programs (1)</b> 49:4</p> <p><b>progress (2)</b> 22:21;23:6</p> <p><b>prohibiting (1)</b> 101:24</p> <p><b>project (1)</b> 111:16</p> <p><b>promise (1)</b> 122:6</p> <p><b>proof (3)</b> 21:19;32:19;39:6</p> <p><b>proper (1)</b> 68:15</p> <p><b>properly (1)</b> 6:14</p> <p><b>property (1)</b> 126:9</p> <p><b>proportional (1)</b> 136:13</p> <p><b>proposal (11)</b> 61:13;63:17;65:21; 71:6;73:20;81:5,13; 89:3;126:22;138:22; 142:11</p> <p><b>proposals (15)</b> 46:12;48:24;49:11, 14;62:17;88:1,18,20; 91:4;111:23;112:5; 118:3,4;122:8; 134:19</p> <p><b>propose (3)</b> 64:3,12;116:6</p> <p><b>proposed (8)</b> 54:13;62:15;63:8, 12;83:18;86:13; 125:15;134:17</p> <p><b>proposing (1)</b> 119:9</p> <p><b>proposition (1)</b> 99:9</p> <p><b>protect (4)</b> 94:5;101:22; 108:11;118:22</p> <p><b>provide (3)</b> 50:19;63:11; 110:22</p> <p><b>provided (7)</b> 7:11;29:21,22; 57:6;83:2;133:24,24</p>	<p><b>providence (1)</b> 30:5</p> <p><b>providing (1)</b> 69:17</p> <p><b>provision (26)</b> 18:24;19:9,14; 20:5;37:4;38:4;44:6; 51:7,12;87:19; 104:23;106:21,22; 107:3;118:15,23; 122:14;123:13; 129:15;132:6,9; 138:2,8;140:11,20; 143:8</p> <p><b>provisions (21)</b> 12:19;13:19;15:5; 16:13;19:2;25:6; 29:8;39:10;42:14; 47:8;50:13;58:10; 98:10,16,20;99:1; 100:21;108:9,13; 143:3,4</p> <p><b>prudence (1)</b> 109:11</p> <p><b>prudent (3)</b> 76:2;110:5;121:15</p> <p><b>PSNH (20)</b> 12:5;14:4,18; 15:20;29:6;83:14; 84:22;86:14;94:2,5; 100:15;103:2,3,8; 121:8,8;124:21,24; 139:3;140:5</p> <p><b>PSNH's (2)</b> 15:2;86:9</p> <p><b>Public (10)</b> 5:11;25:10;35:19; 93:2;101:1;102:15; 106:13;109:15; 112:9;117:22</p> <p><b>publicly (2)</b> 20:13;98:24</p> <p><b>purchasers (1)</b> 93:15</p> <p><b>purports (2)</b> 35:2,24</p> <p><b>purpose (6)</b> 45:12;48:5;50:16; 91:7;94:15;101:22</p> <p><b>purposes (8)</b> 7:14;9:20;11:4; 29:9;50:16;96:17; 97:15;112:8</p> <p><b>pursuant (3)</b> 51:17;58:15;134:7</p> <p><b>put (6)</b> 45:3;49:12;108:1; 109:23;134:12,19</p> <p><b>putting (2)</b> 65:5;109:13</p> <p><b>puzzled (3)</b> 20:6,7;114:9</p>	<p style="text-align: center;"><b>Q</b></p> <p><b>qualified (2)</b> 27:24;29:16</p> <p><b>quantify (1)</b> 59:12</p> <p><b>quasi-judicial (3)</b> 99:10;121:21; 122:3</p> <p><b>quickly (4)</b> 124:9,14,17;144:6</p> <p><b>quite (2)</b> 126:17;129:8</p> <p><b>quote (4)</b> 41:7;51:14;94:14; 102:22</p> <p><b>quoted (1)</b> 107:5</p> <p><b>quotes (1)</b> 121:23</p>	<p>23;127:6;129:20; 135:1,2,8,10,17; 141:21,21</p> <p><b>ratemaking (1)</b> 72:2</p> <p><b>ratepayers (13)</b> 19:17;77:6,15,18; 78:8,16;90:24;93:1; 112:11;116:7;128:5; 136:7,14</p> <p><b>ratepayers' (1)</b> 135:14</p> <p><b>ratepayer's (1)</b> 77:12</p> <p><b>rates (51)</b> 8:7;10:19;14:6; 15:1;54:11;57:1; 60:15;62:8,13;66:7, 8;67:16;70:12;71:15; 72:6,8;73:17;77:20, 22;78:15;81:4;82:2; 84:23;94:3;98:22; 108:12;111:13; 112:7,20,24;113:7, 19,24;116:5,8,12; 118:24;125:12,24; 126:6,10,13,15,20; 127:2;129:19;135:6; 137:1;142:1,5,9</p> <p><b>rather (3)</b> 78:11;92:9;124:16</p> <p><b>reached (1)</b> 142:18</p> <p><b>read (19)</b> 24:21;25:9,13,15; 32:21,23;39:1,6; 53:12;54:2;82:3,9; 83:11,13;84:21;85:5; 86:5;101:14;130:15</p> <p><b>reading (5)</b> 14:2;46:15,17; 63:20;94:1</p> <p><b>ready (2)</b> 19:18;46:11</p> <p><b>really (22)</b> 9:13;20:4;27:9; 30:3;32:14;33:20; 34:21,24;44:20; 45:13;68:6;93:9; 97:13,23;108:10; 111:2;131:7;133:21; 135:4,18;140:8; 141:12</p> <p><b>realm (1)</b> 109:1</p> <p><b>reason (5)</b> 37:2;41:12;107:24; 110:7;126:21</p> <p><b>reasonable (17)</b> 17:7;49:13;55:4; 70:11;96:12;98:22; 112:7;113:1,23; 116:5,8,17;125:12;</p>
			<p style="text-align: center;"><b>R</b></p> <p><b>raised (8)</b> 27:22;38:6,8; 104:2,18;118:10; 122:17;133:17</p> <p><b>raises (2)</b> 107:12;131:4</p> <p><b>raising (2)</b> 27:19;101:1</p> <p><b>raking (1)</b> 103:8</p> <p><b>rate (133)</b> 5:5;8:10;9:23;10:8, 14;13:8,9;14:22; 22:4,13;23:19;24:4, 7;42:2,4;44:10; 50:12;51:10,11,18; 52:4,8;54:15;55:10, 15,16,17,20;56:9,15; 57:20;59:11,14; 61:15,18;62:3,8,12, 15,17;63:12;65:13, 14;66:4;67:10,11,12, 15,24;68:5,23;69:1,6, 7,8,20,21,24;70:2,4, 6;71:1,16,17,18,22; 72:13;77:19;78:9,21; 79:9;80:2,10,13; 81:24;82:3;84:14; 85:2,9;86:10,12,13, 18;87:10,18;88:1,23; 92:5;93:11,11;94:13, 16;98:13;102:24; 103:11,16;104:16; 105:24;106:1;108:2, 4,8,12;109:7;110:17, 18,22;111:7;112:1, 21,23;113:15;114:1, 6,10;115:14,14; 116:1,3,10;126:1,2,4,</p>	

126:2;127:2;134:1; 137:1 <b>reasons (7)</b> 41:17;44:15;96:16; 110:17;129:13; 138:12;142:8 <b>recalculated (1)</b> 52:4 <b>recalculation (2)</b> 55:9;135:19 <b>recall (15)</b> 12:24;15:8;16:24; 17:5;50:10;52:10; 60:11,12,20;61:1; 84:8;85:19;86:1; 88:2,7 <b>receipt (1)</b> 59:21 <b>receive (3)</b> 68:17;71:2;88:10 <b>received (5)</b> 31:12;56:19;85:20; 87:24;102:24 <b>receiving (3)</b> 71:14;83:7;142:3 <b>recent (2)</b> 50:12;74:12 <b>recently (2)</b> 92:4;103:19 <b>recently-enacted (1)</b> 54:7 <b>recess (2)</b> 32:5;72:23 <b>recognize (1)</b> 50:15 <b>recognizes (1)</b> 51:8 <b>recollection (2)</b> 13:21;86:3 <b>record (17)</b> 6:15,19;8:1;14:2; 21:10,13;32:4;34:17; 46:18;53:12;89:20; 114:3,13;120:19; 130:15;141:13; 142:16 <b>records (1)</b> 95:5 <b>recoupment (1)</b> 103:17 <b>recover (6)</b> 63:17;64:14;65:24; 66:9;109:13;110:5 <b>recoverable (1)</b> 47:16 <b>recovered (4)</b> 77:23,24;78:14,20 <b>recovery (23)</b> 8:9;63:10,23;64:1; 66:12;68:5;71:21; 78:8,12,13;80:1,20; 82:7;109:9;110:14, 21;113:9;129:11;	130:1;134:24; 136:15;140:14,22 <b>redirect (3)</b> 10:9;82:22;89:6 <b>redirecting (1)</b> 9:23 <b>reduce (4)</b> 10:11;66:4;69:7,14 <b>reduced (5)</b> 55:21;71:3;78:14; 81:1,2 <b>reduces (1)</b> 77:9 <b>reducing (2)</b> 81:18;128:4 <b>reduction (11)</b> 9:24;52:7;56:1; 73:9;77:13;115:7,10; 136:9,12,19;142:4 <b>refer (1)</b> 50:23 <b>reference (8)</b> 7:11;28:11;44:4; 52:18;57:21,23;87:6, 13 <b>referenced (1)</b> 57:12 <b>referred (1)</b> 54:8 <b>referring (4)</b> 47:10,22;53:6; 68:12 <b>refers (1)</b> 32:1 <b>refinement (1)</b> 55:7 <b>reflect (4)</b> 71:15;126:3,7; 142:2 <b>reflected (1)</b> 39:12 <b>reflective (1)</b> 40:10 <b>Reform (4)</b> 43:5;94:22;102:20; 112:8 <b>refund (1)</b> 91:16 <b>refunded (2)</b> 33:7;69:11 <b>regard (5)</b> 26:4;30:24;40:4, 10;95:3 <b>regarding (1)</b> 35:10 <b>regards (2)</b> 39:8;126:8 <b>regulatory (4)</b> 40:13;64:18,20; 73:14 <b>reject (1)</b> 95:4 <b>relate (1)</b>	54:4 <b>related (9)</b> 21:13;25:2;52:11; 53:23;58:12,17;59:6; 85:20;98:17 <b>relating (1)</b> 55:5 <b>relation (1)</b> 83:23 <b>relative (5)</b> 58:20;87:2;88:1; 128:14;132:1 <b>relatively (1)</b> 124:18 <b>relevance (9)</b> 18:19;21:16,17; 26:7,10;29:17,30;2, 18;89:24 <b>relevant (10)</b> 18:22;26:23;30:20, 22;89:3;91:18;96:8, 9;119:23,24 <b>Reliability (3)</b> 52:12;53:23;54:11 <b>reliance (5)</b> 104:11;105:10,14; 106:2;132:13 <b>relied (2)</b> 103:12;105:20 <b>relief (8)</b> 33:6;41:24;109:7; 110:18,22;111:8; 112:2;135:9 <b>relieved (1)</b> 143:6 <b>rely (2)</b> 33:15;131:8 <b>relying (1)</b> 106:9 <b>Remaining (1)</b> 85:17 <b>remains (1)</b> 46:10 <b>remarkable (1)</b> 121:22 <b>remember (1)</b> 127:21 <b>remind (1)</b> 112:19 <b>reminded (1)</b> 18:13 <b>remotely (1)</b> 46:5 <b>remove (1)</b> 65:1 <b>render (2)</b> 27:17;126:15 <b>REP (8)</b> 54:12;55:5,10,23; 84:10,12,13;85:8 <b>repaginating (1)</b> 15:11 <b>rephrase (1)</b>	23:3 <b>reported (2)</b> 64:6;101:12 <b>Reporter (1)</b> 7:7 <b>reporting (2)</b> 51:21,23 <b>represent (1)</b> 120:4 <b>representation (1)</b> 103:12 <b>representations (1)</b> 98:4 <b>repudiate (2)</b> 107:14,18 <b>request (2)</b> 54:16;132:12 <b>requesting (2)</b> 86:11,18 <b>require (6)</b> 43:14;70:23,24; 106:13;113:24;141:9 <b>required (8)</b> 10:5;17:18;55:1; 58:14;59:9;70:12; 103:5;113:1 <b>requirement (4)</b> 8:6;93:19;125:2; 139:4 <b>Requirements (6)</b> 8:4;51:21,24; 86:15;122:3;124:23 <b>requires (1)</b> 51:19 <b>requisite (1)</b> 99:17 <b>reserve (16)</b> 32:2;64:24;65:5, 12,19;67:23;68:1,9; 74:6;76:22;80:17,18; 128:2,16,20;129:3 <b>reserving (1)</b> 65:4 <b>reset (1)</b> 80:12 <b>residential (6)</b> 5:16;92:24;117:3, 17;136:12,13 <b>resolution (2)</b> 47:23;48:12 <b>resolve (1)</b> 26:15 <b>resolving (1)</b> 107:8 <b>resources (1)</b> 10:6 <b>respect (11)</b> 15:5;16:14;30:17; 36:23;37:3;53:8; 89:15;97:1;105:17; 106:13;134:23 <b>respective (1)</b> 51:11	<b>respond (4)</b> 90:11;91:6;114:21; 139:21 <b>responded (1)</b> 26:16 <b>responding (1)</b> 32:17 <b>response (5)</b> 90:15;91:20,23; 105:21;127:19 <b>responsibilities (2)</b> 8:1,6 <b>responsibility (2)</b> 15:3;134:9 <b>responsive (1)</b> 56:4 <b>restore (2)</b> 67:17;113:3 <b>result (20)</b> 14:7;19:24;43:1; 51:23;54:6;58:6; 71:22;77:14;84:1,3; 93:20;94:3;113:23; 116:5;125:2;129:22; 135:19;136:6,11; 142:3 <b>resulting (3)</b> 54:15;59:11;114:2 <b>results (7)</b> 70:9,10;71:12; 98:21;136:8,24; 142:2 <b>resumed (1)</b> 72:24 <b>retaining (1)</b> 125:14 <b>return (15)</b> 55:12;61:13;65:13; 79:9;81:10;89:8; 90:18;92:9,14;105:3; 116:10;117:8; 121:12;125:17; 134:16 <b>returned (4)</b> 113:17;129:11; 130:2,8 <b>returning (3)</b> 62:22;124:19; 134:2 <b>returns (1)</b> 125:16 <b>Revenue (19)</b> 8:3,6;43:8,12;44:8, 12;84:24;85:4;86:14; 92:6;93:19;94:11; 122:21;124:23,23; 125:2,2;139:4,4 <b>revenues (1)</b> 76:4 <b>review (18)</b> 22:13;23:20;29:3, 20;40:18;56:15,22; 57:2,8;66:4;67:11;
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68:5;71:18;78:21; 80:14;87:11,18; 93:12 <b>reviewed (5)</b> 63:7;64:8;74:22; 75:6;76:19 <b>reviews (6)</b> 15:17;24:14;25:12, 19;85:23;87:15 <b>Rich (1)</b> 5:19 <b>right (61)</b> 6:16;7:18;20:17; 26:22;32:10,15,18; 35:12;38:16;39:16; 41:11;44:15,22;51:6; 52:24;55:24;56:6,10; 60:4,16,23;61:4,20; 62:4,9;65:21;66:8, 15;67:6;68:7;69:18; 70:5;72:4,20;73:16; 74:7,24;77:21;79:10; 80:13,15,19;81:3; 82:12;89:7,14,21; 91:17,20;92:18; 96:24;101:6;105:2; 107:17;116:21; 117:16;127:7;129:8; 136:3;139:18;144:2 <b>rights (3)</b> 19:7;100:11; 131:24 <b>rise (2)</b> 60:4;117:22 <b>road (2)</b> 102:15;110:23 <b>rolled (1)</b> 117:13 <b>rolls (1)</b> 117:11 <b>room (2)</b> 127:12,14 <b>roughly (5)</b> 13:12;73:18;79:10; 93:4;117:3 <b>route (1)</b> 34:3 <b>RSA (3)</b> 99:24;107:3;113:1 <b>rules (1)</b> 33:8 <b>run (3)</b> 21:23;71:12;111:6	101:14 <b>same (13)</b> 65:13;66:15,20; 72:12,14;73:20; 77:23;80:2;84:7,8, 17;121:18;140:12 <b>savings (6)</b> 61:13;65:4;66:24; 71:12,13;80:4 <b>saw (1)</b> 79:2 <b>saying (23)</b> 15:8;19:23;20:12; 36:15,18;41:8,9,15; 55:11;65:21;79:23, 24;80:20;96:3; 104:15;117:19,20; 122:15;123:18; 126:6;131:1;132:3; 140:9 <b>scenario (3)</b> 107:20,23,23 <b>schedule (1)</b> 114:5 <b>school (1)</b> 97:9 <b>SCRC (12)</b> 62:5,8;72:12,12; 81:23;82:4;113:22; 114:15,17;116:9; 136:4;141:20 <b>Scrubber (1)</b> 121:13 <b>seat (1)</b> 89:9 <b>seated (1)</b> 5:3 <b>second (4)</b> 29:4;39:20,21;93:7 <b>Secondly (3)</b> 129:21;130:21; 132:17 <b>Section (2)</b> 58:3;109:3 <b>sections (1)</b> 53:11 <b>sector (1)</b> 93:13 <b>secure (2)</b> 25:5;143:2 <b>seeing (3)</b> 77:19;136:8; 143:21 <b>seek (4)</b> 24:7;78:7,12;83:14 <b>seeking (2)</b> 102:11;109:12 <b>seem (3)</b> 6:17;30:23;96:20 <b>seeded (1)</b> 140:4 <b>seems (5)</b> 6:20;27:7;42:23;	77:15;135:15 <b>see-saw (2)</b> 72:6,11 <b>see-sawing (1)</b> 72:8 <b>send (2)</b> 41:22;118:4 <b>sense (7)</b> 30:23;31:7;96:20; 114:15;115:1;136:6; 138:22 <b>sent (6)</b> 29:2,20;31:17; 32:1;37:22;40:9 <b>sentence (12)</b> 14:2,9;24:22; 58:24;59:4;66:22,23; 67:3;83:11;84:18,19; 86:6 <b>separate (1)</b> 102:23 <b>September (1)</b> 67:16 <b>series (2)</b> 84:9;87:24 <b>Service (12)</b> 5:11;8:10;69:18, 22;72:9,13;81:24; 93:2;102:16;110:16; 113:14;135:22 <b>session (3)</b> 49:1;60:22,23 <b>set (7)</b> 26:4;35:19;64:16; 81:13;100:2;119:14; 142:8 <b>setting (1)</b> 97:13 <b>settings (1)</b> 122:1 <b>settlement (74)</b> 10:17;12:3,8,15, 21;13:3;15:5;16:13, 18;19:1;22:8,9; 24:12;26:3;29:8; 30:12;33:4;35:3,11; 36:24;38:5;39:12; 42:10;43:16;44:5; 47:9,19;50:14;57:12; 63:3;83:3;85:15; 87:20;88:12;93:22; 94:1,18;95:18;98:17; 99:5,14,21;101:4; 107:14,22;108:10; 109:3;113:16; 118:14,16;119:10,20; 120:22;121:19; 122:4,7;123:9;124:7; 127:11;129:17,23; 130:16;131:6;132:1; 134:7;137:9;138:8, 10;140:7,11;141:15; 142:12,18,21	<b>settlements (1)</b> 51:18 <b>settling (5)</b> 24:24;120:5,15; 121:5;138:20 <b>seven (1)</b> 115:16 <b>severable (2)</b> 120:3;130:18 <b>shall (4)</b> 51:13;120:3,15,18 <b>share (1)</b> 136:18 <b>shareholders (1)</b> 95:21 <b>shock (1)</b> 67:12 <b>shocked (1)</b> 142:15 <b>shortfall (4)</b> 65:23,23;68:3; 80:16 <b>shot (1)</b> 139:24 <b>show (3)</b> 20:12;53:1,2 <b>side (2)</b> 74:2,3 <b>sign (1)</b> 99:13 <b>signatories (1)</b> 26:2 <b>signatory (1)</b> 14:15 <b>signed (6)</b> 43:5;125:4;127:12, 13,14;141:10 <b>significant (3)</b> 10:5,5;110:16 <b>signing (1)</b> 43:22 <b>similar (2)</b> 62:14;88:24 <b>simply (7)</b> 19:6;21:9;34:16; 38:12;95:10;101:20; 104:8 <b>single (1)</b> 141:10 <b>single-spaced (1)</b> 32:13 <b>sit (1)</b> 92:2 <b>sitting (2)</b> 108:3;116:18 <b>situation (1)</b> 102:4 <b>six (2)</b> 115:11;117:7 <b>Sixty (1)</b> 79:13 <b>slippery (1)</b> 130:23	<b>slope (1)</b> 130:23 <b>slow (2)</b> 22:19;61:11 <b>slower (3)</b> 22:18;77:19;78:9 <b>small (4)</b> 38:17;96:14; 113:10;135:13 <b>so-called (4)</b> 12:14,19;13:19; 20:15 <b>soccer (1)</b> 104:8 <b>solar (1)</b> 111:10 <b>sold (3)</b> 22:12,15;23:22 <b>somebody (3)</b> 34:5;81:17;90:5 <b>somehow (10)</b> 37:23;101:2;119:7; 121:20;123:12,22; 131:24;132:5,6; 134:11 <b>sometime (3)</b> 60:3;76:18;103:17 <b>sometimes (3)</b> 20:7;33:13;97:9 <b>somewhat (2)</b> 116:16;133:11 <b>somewhere (1)</b> 77:13 <b>soon (4)</b> 61:24;77:7;108:4; 116:11 <b>sooner (2)</b> 71:14;135:9 <b>sorry (6)</b> 15:10;47:14;53:19; 79:8;109:21;138:24 <b>sort (3)</b> 104:7;108:24; 116:16 <b>sour (1)</b> 93:15 <b>space (1)</b> 101:1 <b>speak (2)</b> 29:16;35:11 <b>speaking (1)</b> 124:18 <b>speaks (3)</b> 33:19;40:3;44:7 <b>specific (2)</b> 91:24;120:8 <b>specifically (4)</b> 14:13;54:6;88:5; 125:23 <b>specified (1)</b> 58:13 <b>specify (1)</b> 76:21
<b>S</b>				
<b>safety (1)</b> 94:5 <b>sale (2)</b> 23:10;24:1 <b>sales (1)</b> 65:16 <b>salient (1)</b>				



<p><b>spend (3)</b> 63:8;90:24;117:15</p> <p><b>spirit (1)</b> 108:17</p> <p><b>split (2)</b> 72:10,10</p> <p><b>spoke (1)</b> 49:2</p> <p><b>sponte (1)</b> 104:18</p> <p><b>spread (3)</b> 69:9;80:19,23</p> <p><b>spurious (1)</b> 98:23</p> <p><b>spurred (1)</b> 90:21</p> <p><b>squarely (1)</b> 124:2</p> <p><b>squeezes (1)</b> 104:6</p> <p><b>Staff (26)</b> 5:24;14:10;15:3; 26:12;33:6;39:9; 56:16;57:3;61:8,9; 66:11;84:9;86:10,17, 22,24;88:1;90:9; 99:13;104:18;114:4, 7;116:20;125:10; 132:11;136:20</p> <p><b>Staff's (1)</b> 125:23</p> <p><b>stand (1)</b> 95:22</p> <p><b>stand-alone (1)</b> 84:14</p> <p><b>standing (1)</b> 100:24</p> <p><b>standpoint (1)</b> 111:14</p> <p><b>start (10)</b> 11:12;27:6;38:21; 53:14;77:7;83:5; 92:19,23;116:15; 130:24</p> <p><b>started (1)</b> 41:19</p> <p><b>starts (1)</b> 24:23</p> <p><b>state (9)</b> 7:23;27:24;28:1; 35:2;41:21;51:19; 55:16,17;69:16</p> <p><b>stated (1)</b> 56:9</p> <p><b>statement (13)</b> 8:14,16,22;9:2,4, 10;57:11;58:4;61:7; 66:24;91:20;127:23; 132:14</p> <p><b>statements (4)</b> 25:10;27:3;34:12; 92:21</p> <p><b>states (6)</b></p>	<p>36:20;37:24;43:5; 108:20;120:1,12</p> <p><b>statute (2)</b> 70:12,15</p> <p><b>statutes (1)</b> 106:18</p> <p><b>stay-out (3)</b> 94:6;98:18;100:22</p> <p><b>step (7)</b> 21:7;52:5;63:2,5; 77:16,20;88:22</p> <p><b>Sticking (1)</b> 84:7</p> <p><b>still (13)</b> 22:15;26:23;46:16; 54:22;57:1;62:22; 90:7;105:17;110:2; 127:4,4;137:15,23</p> <p><b>stimulate (2)</b> 90:19;117:13</p> <p><b>stipulate (1)</b> 35:8</p> <p><b>stipulated (2)</b> 65:13;79:9</p> <p><b>stop (1)</b> 95:23</p> <p><b>storage (1)</b> 49:3</p> <p><b>storm (63)</b> 10:1,6,10;63:10; 64:23,24;65:5,8,9,11, 12,18,22,23;66:6,16, 17;67:9,22;68:1,2,9, 18;69:3,14;71:7; 73:15,16;74:4,5,6,7, 13,21;75:3,5,7;77:8, 9,18,22;78:1,13; 79:20;80:1,17,17,21; 83:14,19;84:4;109:8; 110:4,21;128:2,6,12, 16,18;137:13; 138:17;140:13,22</p> <p><b>storm-related (2)</b> 47:16;127:24</p> <p><b>storms (12)</b> 10:4;63:19,23; 64:1,4,16,17;65:7; 74:11,20;75:15; 83:15</p> <p><b>story (1)</b> 112:2</p> <p><b>straightforward (1)</b> 138:21</p> <p><b>stranded (13)</b> 8:8;61:23;81:19; 82:6,10;110:14; 113:9;125:20; 129:11,20,24;134:24; 136:14</p> <p><b>strategically (1)</b> 98:12</p> <p><b>Street (1)</b> 8:5</p>	<p><b>strike (1)</b> 89:23</p> <p><b>striking (1)</b> 89:11</p> <p><b>student (1)</b> 97:8</p> <p><b>sua (1)</b> 104:18</p> <p><b>subject (17)</b> 12:1;22:1;28:16; 29:1;30:20;37:2; 46:16;50:4;52:1; 56:21;57:2,14; 114:20;115:23; 120:7;123:13;133:14</p> <p><b>submission (8)</b> 54:18;55:2;59:2, 10;64:21;65:10; 74:19;87:13</p> <p><b>submissions (3)</b> 58:12,16,19</p> <p><b>submit (3)</b> 9:2;49:10;65:6</p> <p><b>submitted (8)</b> 16:19;58:2,14; 63:22,23,24;75:1; 76:10</p> <p><b>subsection (1)</b> 120:8</p> <p><b>subsequent (1)</b> 12:22</p> <p><b>subsequently (2)</b> 12:13;121:14</p> <p><b>substantially (1)</b> 118:1</p> <p><b>succeeded (1)</b> 102:9</p> <p><b>succeeds (2)</b> 101:18;104:6</p> <p><b>sued (1)</b> 99:15</p> <p><b>suggesting (1)</b> 140:5</p> <p><b>suggestion (2)</b> 96:21;126:21</p> <p><b>sum (1)</b> 90:6</p> <p><b>supplemental (6)</b> 9:2,4,22;53:21,22; 60:17</p> <p><b>supplemented (1)</b> 12:13</p> <p><b>supplying (1)</b> 99:16</p> <p><b>support (7)</b> 24:24;25:13;47:24; 66:12;122:6;141:12; 142:17</p> <p><b>suppose (1)</b> 6:10</p> <p><b>supposed (3)</b> 16:19;18:5;45:11</p> <p><b>Supreme (1)</b></p>	<p>100:6</p> <p><b>sure (21)</b> 6:13;8:2;19:21; 20:20;21:16,22; 26:24;30:7;37:13; 41:14;63:6;68:14,15; 71:5;78:24;109:20; 114:22;121:15; 131:14;143:13,16</p> <p><b>surprise (1)</b> 66:11</p> <p><b>surprised (2)</b> 56:20;66:14</p> <p><b>survive (1)</b> 100:21</p> <p><b>suspend (1)</b> 100:2</p> <p><b>sustaining (1)</b> 27:16</p> <p><b>Suzanne (1)</b> 5:19</p> <p><b>sworn (1)</b> 7:6</p> <p><b>system (10)</b> 17:9,12,22,23; 18:4;48:17,18,19,20; 104:6</p>	<p>114:2,16;115:14; 116:3;124:10,11; 126:1,3,7,9;136:9,18; 137:19;139:8;142:2, 4</p> <p><b>taxed (1)</b> 49:17</p> <p><b>taxes (6)</b> 52:7;55:10;69:16; 71:3;93:6,9</p> <p><b>taxpayers (1)</b> 90:18</p> <p><b>TCAM (5)</b> 62:5;81:19,23; 82:4,5</p> <p><b>tech (3)</b> 49:1;60:22,23</p> <p><b>technical (11)</b> 8:14,22;9:2,4,10; 24:2;34:12;57:10; 61:6;66:23;127:22</p> <p><b>telling (4)</b> 27:23;36:22;41:23; 98:1</p> <p><b>temporary (6)</b> 60:15;71:17;80:9; 115:7,10;135:21</p> <p><b>term (6)</b> 14:4;67:2,3;71:10; 110:19;125:11</p> <p><b>terminate (3)</b> 120:16;121:6,17</p> <p><b>terminated (1)</b> 120:17</p> <p><b>terminology (1)</b> 68:15</p> <p><b>terms (6)</b> 35:10;66:5;99:20; 119:23;130:17;141:7</p> <p><b>test (4)</b> 65:17;80:10;114:8, 12</p> <p><b>testified (6)</b> 31:6,8;46:7,19; 47:10;88:15</p> <p><b>testify (2)</b> 36:2;37:19</p> <p><b>testimony (6)</b> 8:23;9:11;18:2; 33:16;53:22;54:13</p> <p><b>textbook (1)</b> 101:9</p> <p><b>thanks (2)</b> 49:19;79:17</p> <p><b>theory (3)</b> 75:20,20;100:19</p> <p><b>thereafter (1)</b> 101:20</p> <p><b>therefore (4)</b> 95:4;104:22; 117:19;123:6</p> <p><b>thinking (2)</b> 106:6;109:1</p>
<b>T</b>				
			<p><b>talk (4)</b> 38:15;91:9;111:4; 115:10</p> <p><b>talked (4)</b> 56:11;59:9;93:10; 115:18</p> <p><b>talking (12)</b> 6:23;15:6;22:5; 43:1;46:8;58:11; 59:12;68:16;97:23; 110:12;111:20;115:1</p> <p><b>talks (2)</b> 58:7;139:1</p> <p><b>tax (92)</b> 5:6;9:23,24;13:8; 33:5;40:23;41:24; 42:16,24;43:5;46:12; 47:7;48:13;50:6,15; 51:14,15;52:4;53:8; 54:5,8,9;55:13,14,15, 19;56:1,18;58:6,7,9, 14;61:14,18;62:13; 63:9,18;64:3;65:3; 66:24;67:18;68:10, 12,13;69:20,24;70:2, 6,8;71:11,16;73:10; 80:11,14;81:1,2,11; 85:12;87:9;88:6,18; 93:4,18,20;94:21; 95:15;97:15;100:16; 102:20;105:23; 106:23;108:22; 112:8,21,21,23;</p>	

<b>Third (3)</b> 31:8;47:21,22	42:17;43:2;94:22; 124:6	53:1;73:8;77:5; 96:21;98:13;108:3; 111:2	<b>unfair (11)</b> 95:20;97:3,5; 98:11;102:12,13; 104:7;119:6,8,11; 134:11	38:18;63:18;64:3, 12:65;17:20;68:8,18; 71:1;78:10;98:9; 116:6;125:10;126:1; 143:18
<b>thorough (1)</b> 109:10	<b>top (4)</b> 75:10,11;83:9; 123:24	<b>tune (1)</b> 103:9	<b>unfairness (1)</b> 108:14	<b>used (5)</b> 37:7;52:6;61:21; 90:19;93:3
<b>thoroughly (1)</b> 129:17	<b>total (2)</b> 44:7;85:4	<b>turn (5)</b> 22:4;83:8;85:18; 90:7;129:9	<b>unforeseen (1)</b> 94:6	<b>useful (5)</b> 32:16;33:13;34:16; 97:13;137:24
<b>though (8)</b> 19:22;45:19;56:21; 62:24;70:4;93:12; 115:14;136:11	<b>toward (1)</b> 91:2	<b>turned (3)</b> 56:5;133:15;144:3	<b>unfortunate (1)</b> 133:8	<b>using (7)</b> 14:17;36:14;49:2; 66:24;81:18;113:22; 117:2
<b>thought (12)</b> 10:9;27:5;37:9; 51:6;79:5;82:7; 97:13;104:21;105:8; 135:7;138:15,15	<b>towards (1)</b> 10:10	<b>turning (4)</b> 13:2,15;15:9;24:19	<b>unfunded (2)</b> 67:6;71:8	<b>usual (1)</b> 33:9
<b>thoughts (1)</b> 135:6	<b>track (2)</b> 30:24;78:5	<b>TV (1)</b> 46:1	<b>United (2)</b> 43:5;108:19	<b>utilities (8)</b> 41:24;42:1;70:24; 88:2;90:22;91:11; 93:15;111:4
<b>three (3)</b> 19:4;102:5,11	<b>transcript (1)</b> 104:1	<b>two (18)</b> 7:12;10:24;17:6; 49:12;51:18;52:2; 53:11;61:4;74:11; 82:7;95:7;96:14; 102:8;123:21; 125:15;133:4,5; 134:1	<b>Unitil (7)</b> 50:12;51:9;61:19; 62:16,18;63:8;88:6	<b>utility (9)</b> 5:17;41:21;42:2; 89:24;92:13,13,16; 93:12;99:20
<b>three-year (1)</b> 66:1	<b>transfer (1)</b> 64:23	<b>Twomey (1)</b> 99:7	<b>units (1)</b> 23:22	<b>utterly (1)</b> 142:15
<b>threshold (3)</b> 13:10;44:11; 124:24	<b>transferred (2)</b> 66:19;76:23	<b>type (1)</b> 130:23	<b>unjust (2)</b> 126:15,19	
<b>throughout (1)</b> 90:21	<b>transgressing (1)</b> 100:11	<b>types (1)</b> 49:4	<b>unless (6)</b> 19:13,14;62:1; 77:17;90:5;112:13	<b>V</b>
<b>thus (2)</b> 56:16;98:13	<b>transmission (2)</b> 8:9;110:13	<b>typically (1)</b> 51:15	<b>unpersuasive (1)</b> 95:14	
<b>thwarting (1)</b> 97:16	<b>treat (4)</b> 19:24;47:18;70:23; 105:2		<b>unproductive (1)</b> 111:21	
<b>tied (1)</b> 88:21	<b>treatable (1)</b> 106:20	<b>U</b>	<b>unquote (1)</b> 41:7	<b>valid (1)</b> 76:3
<b>timeline (1)</b> 50:3	<b>treated (6)</b> 40:23;51:16;61:18; 119:18;137:13; 138:16	<b>UES (1)</b> 51:20	<b>unreasonable (2)</b> 126:15,20	<b>value (2)</b> 125:17;134:3
<b>timely (1)</b> 19:2	<b>treating (3)</b> 41:10;44:16; 137:11	<b>ultimate (1)</b> 127:1	<b>up (39)</b> 6:10;17:23;36:15; 42:7;49:11;56:5; 60:22;62:9;63:14,15; 64:16;66:9;72:3,10, 10,15;73:24;78:6,7, 11;82:4;83:5,6; 88:17;90:7;93:8; 100:24;110:24; 112:5;116:19;119:2, 17;121:16;126:9,12, 24;134:9;135:23; 140:17	<b>valve (1)</b> 94:5
<b>time-of-use (1)</b> 111:12	<b>treatment (6)</b> 85:12;88:5;89:2; 105:2;118:17;138:20	<b>ultimately (4)</b> 19:22;27:10; 105:12;110:22	<b>upcoming (1)</b> 56:15	<b>variety (2)</b> 96:16;99:4
<b>times (3)</b> 20:11;80:5;117:16	<b>trend (2)</b> 128:15,17	<b>uncertainty (1)</b> 93:14	<b>update (1)</b> 17:24	<b>various (5)</b> 31:1;54:24;56:17; 101:15;135:17
<b>timing (1)</b> 118:6	<b>triad (1)</b> 105:16	<b>unclear (2)</b> 37:18;59:7	<b>updates (2)</b> 8:19;9:7	<b>vary (1)</b> 102:4
<b>titled (1)</b> 51:1	<b>tribunal (1)</b> 102:9	<b>uncollected (1)</b> 10:7	<b>uphold (1)</b> 122:6	<b>vehicle (4)</b> 69:12;71:1;81:21; 129:13
<b>today (11)</b> 9:20;37:21;38:15; 49:18;82:3;118:4; 126:1;127:23;128:7; 133:19;134:20	<b>tried (2)</b> 72:9;137:21	<b>under (15)</b> 17:18;19:8;58:3; 59:19;73:8,20;96:11; 99:11;102:3;106:18, 20;137:8,12;143:22; 144:5	<b>upon (5)</b> 14:5;120:4,10; 132:19;134:14	<b>vehicles (1)</b> 62:24
<b>today's (2)</b> 11:4;18:16	<b>trigger (2)</b> 104:22,24	<b>undercut (3)</b> 38:18,19,20	<b>update (1)</b> 17:24	<b>versus (2)</b> 99:7;101:11
<b>together (1)</b> 127:1	<b>triggered (2)</b> 15:20;58:5	<b>underlying (6)</b> 6:7;66:20;91:7; 117:22;120:22,24	<b>updates (2)</b> 8:19;9:7	<b>vests (1)</b> 100:1
<b>told (1)</b> 102:17	<b>triggers (2)</b> 19:1;42:14	<b>understood (2)</b> 60:7;144:1	<b>uphold (1)</b> 122:6	<b>via (4)</b> 28:18;31:12;69:12; 103:16
<b>Tom (1)</b> 5:22	<b>trouble (1)</b> 107:20	<b>undertaken (1)</b> 134:6	<b>upon (5)</b> 14:5;120:4,10; 132:19;134:14	<b>view (3)</b> 62:17;122:11; 123:7
<b>tomorrow (7)</b> 62:1,6,7;82:11; 110:12;113:8;114:24	<b>true (3)</b> 24:13;40:6;110:7	<b>undertaking (1)</b> 39:12	<b>upward (6)</b> 14:6;71:24;82:1; 84:23;94:3;119:1	<b>violation (1)</b> 26:4
<b>tone (1)</b> 97:13	<b>truncate (1)</b> 84:19		<b>urging (1)</b> 110:8	<b>visibility (2)</b> 48:18,20
<b>took (4)</b>	<b>try (4)</b> 37:21;39:4;84:19; 116:16		<b>use (15)</b>	<b>volume (1)</b>

10:4	108:5	worth (5) 40:20;90:2;117:10, 19;133:7	80:23	100:8
<b>W</b>	<b>whereby (1)</b> 113:16	<b>written (2)</b> 40:12;121:11	<b>10.3 (1)</b> 113:12	<b>1st (19)</b> 10:20;12:9;43:20; 55:14;60:15;67:21; 70:7;72:14;82:1; 95:16;102:18; 103:13;104:14; 115:6,6;132:10,23; 139:14;142:9
<b>wait (4)</b> 36:5;44:23;104:15; 125:21	<b>Where's (1)</b> 39:17	<b>wrong (7)</b> 39:14;62:2;70:21; 71:4,5;77:15;91:16	<b>107 (1)</b> 13:11	
<b>waited (1)</b> 68:19	<b>WHEREUPON (1)</b> 7:5	<b>wrote (2)</b> 42:3;52:10	<b>109 (1)</b> 13:11	
<b>waited (2)</b> 22:16;23:9	<b>whole (6)</b> 41:18;47:18;95:16; 96:6,18;97:14		<b>10th (1)</b> 12:5	
<b>waived (1)</b> 101:6	<b>whose (2)</b> 29:23;48:5	<b>X</b>	<b>12 (3)</b> 13:13;80:5;117:16	<b>2</b>
<b>waives (1)</b> 131:24	<b>willing (5)</b> 12:1;46:9,11; 48:15;111:4	<b>Xerox (1)</b> 32:6	<b>134 (1)</b> 100:8	<b>2 (19)</b> 7:17;9:18;35:20, 22;36:2,8,16,18,20; 47:11,14,18;54:4; 58:3;61:1,6;89:11; 127:9;133:24
<b>wants (5)</b> 35:23;38:21;109:8; 121:16;131:10	<b>willingness (1)</b> 47:5	<b>Y</b>	<b>14 (7)</b> 13:16;14:1;83:9; 93:24;94:9;137:12; 140:20	<b>2:25 (1)</b> 72:23
<b>warranted (1)</b> 129:4	<b>win (1)</b> 134:16	<b>year (59)</b> 13:13;15:6,21; 16:14;17:11;18:1; 41:19;42:5;44:11,13; 50:7;51:10;56:10; 57:20;58:4;60:10; 65:15,15,17;67:15, 19,20,22;69:8;70:10; 76:12,16,18;77:2; 78:18;80:5,6,7,11,21, 24;86:9;90:15;94:7, 19;95:10,19;97:22; 98:16,19;100:22; 103:18;106:1,14; 114:8,11,12;115:11, 13;117:17;122:20; 124:21;131:13; 132:10	<b>14-238 (26)</b> 10:16;12:4;24:12; 29:8;33:3;35:3; 36:24;37:5;47:8,19; 57:13;59:18;93:23; 95:6;98:10;99:20; 101:4,7;103:4,14; 107:21;108:17; 109:3;140:8;141:9, 13	<b>2:43 (1)</b> 72:24
<b>way (34)</b> 10:1;17:23;20:2; 37:23;38:18;42:12; 59:1;61:14;64:15; 71:11;84:20;105:4; 106:3;107:8;108:18; 118:5;119:18,19; 121:13,21;122:24; 123:20;124:13; 126:23;128:24; 130:6;131:3;133:11, 13;135:1,3,16;136:4; 140:14	<b>windfall (8)</b> 63:18;64:3;70:8; 100:16;102:20; 103:9;105:23;106:14		<b>14-238's (1)</b> 42:10	<b>2.6 (1)</b> 82:5
<b>ways (7)</b> 47:6;69:10;111:5; 118:24;119:16; 125:15;137:24	<b>window (3)</b> 24:6,8,9		<b>15 (5)</b> 15:9;85:19;94:17; 124:1;139:2	<b>2005 (1)</b> 101:13
<b>weakest (1)</b> 105:16	<b>winter (1)</b> 72:10	<b>years (11)</b> 10:4;69:9;74:11; 79:14;80:20,23;95:7; 128:19;131:16; 132:5;134:15	<b>152 (1)</b> 101:12	<b>2007 (1)</b> 99:7
<b>weather-related (1)</b> 79:3	<b>withdraw (1)</b> 28:2		<b>155 (1)</b> 99:7	<b>2015 (12)</b> 12:5,20;16:21; 83:2;87:19;113:16; 118:13,16;129:16,22; 134:7;137:15
<b>week (1)</b> 62:2	<b>withdrawn (1)</b> 120:18	<b>1</b>	<b>158 (1)</b> 115:4	<b>2016 (12)</b> 12:10,16;16:23; 17:2;63:20,21,21; 64:1;75:15;76:11; 79:1;141:8
<b>weeks (3)</b> 19:4;92:8;103:21	<b>within (8)</b> 22:22;42:9;51:10; 92:8;93:21;95:17; 96:15;124:2	<b>1 (44)</b> 7:16;8:13;13:6; 35:20,22;36:8,17; 42:17;47:11,13,14, 15;51:20;54:7,16; 62:4,6,19;63:17; 66:21;67:16,19; 68:10,21;71:20;73:9, 20;75:16;80:9;82:6; 83:18;84:2;86:9; 87:7,9;89:11;113:10; 116:12;127:18; 128:3;137:7,11; 140:6;142:1	<b>15-minute (1)</b> 72:21	<b>2017 (32)</b> 16:14;17:3;24:10; 42:17;43:1,4;44:13; 58:7;65:17;74:12; 76:13;79:1;94:8,23; 96:4;104:21;105:3; 106:4,10,22,23; 107:1;122:13;124:6, 11,12;125:3;131:17, 18,20;139:4,11
<b>weigh (1)</b> 138:11	<b>witness (21)</b> 6:5,13,24;7:4; 15:17;24:14;25:12, 19;27:17,23;29:24; 31:3,6;36:14;45:21; 53:3,7;70:19;85:23; 87:15;132:21		<b>16 (1)</b> 13:18	<b>2018 (19)</b> 7:15;42:17;51:21; 53:21;55:13,14,22; 58:4;86:21;96:22; 97:23;100:20; 103:12;106:5,10,24; 114:9;125:8;139:11
<b>weight (3)</b> 33:14;133:7,19	<b>witnesses (1)</b> 33:24		<b>17-196 (1)</b> 52:13	<b>2019 (1)</b> 98:1
<b>welcome (1)</b> 108:5	<b>wondered (1)</b> 125:22		<b>18 (1)</b> 117:6	<b>21 (5)</b> 13:9;55:15;70:4,6; 112:23
<b>welcomed (1)</b> 33:20	<b>word (5)</b> 14:17;37:7;43:15; 103:15;139:24		<b>180 (1)</b> 115:8	<b>228430 (4)</b> 73:14,19,22;74:1
<b>weren't (2)</b> 12:22;104:17	<b>words (5)</b> 12:21;32:14;96:15; 132:2;143:19		<b>18-001 (7)</b> 38:9;41:20;55:2; 56:5;58:16;59:8; 102:17	<b>22nd (1)</b>
<b>what's (10)</b> 32:15;36:8,16; 39:2;67:4;78:6; 106:17;119:19; 142:10,12	<b>work (4)</b> 57:7;108:13; 119:16;121:21		<b>18-049 (2)</b> 5:4;56:6	
<b>whatsoever (2)</b> 30:23;118:20	<b>working (2)</b> 66:15;90:22		<b>18-058 (3)</b> 63:24;64:21;76:10	
<b>whenever (1)</b>	<b>works (3)</b> 17:23;99:9;118:24		<b>182430 (1)</b> 74:3	
			<b>18th (2)</b> 103:21;106:9	
			<b>19 (1)</b> 135:24	
			<b>191 (1)</b>	

58:7 <b>23rd (3)</b> 53:21;58:2;95:1 <b>24-month (1)</b> 24:6 <b>25,920 (1)</b> 12:8 <b>26,096 (1)</b> 102:21 <b>26th (2)</b> 7:16;9:1 <b>2nd (1)</b> 81:15	94:18 <b>399 (3)</b> 94:19;124:20; 139:6 <b>3-H (1)</b> 24:17 <b>3rd (3)</b> 50:6,8;102:21	<b>8</b>			
<b>3</b>	<b>4</b>	<b>8 (1)</b> 103:24 <b>8.2 (1)</b> 55:17 <b>813 (1)</b> 101:13 <b>848 (1)</b> 101:14 <b>86 (1)</b> 75:14			
<b>3 (18)</b> 11:14,18,24;12:2; 13:3;24:13,15;54:4, 17;66:23;80:24;83:1; 84:17;89:11;119:21; 123:24;137:12;139:1 <b>30th (6)</b> 7:14;8:12;24:10; 56:3;59:22;103:7 <b>31st (18)</b> 15:21;16:17,19,23; 17:3,18;18:6;19:15; 22:2;41:9;42:3,12; 67:20;94:20,24;95:9; 97:22;100:19 <b>338 (1)</b> 116:24 <b>35 (8)</b> 13:8;24:20;55:16; 69:23;70:1;112:22; 119:22;126:1 <b>364 (1)</b> 83:12 <b>365 (2)</b> 83:12;107:3 <b>365:28 (1)</b> 99:24 <b>366 (1)</b> 13:17 <b>367 (2)</b> 14:3;93:24 <b>368 (1)</b> 93:24 <b>369 (1)</b> 84:20 <b>371 (2)</b> 84:22;94:9 <b>373 (2)</b> 94:9;122:21 <b>374 (1)</b> 122:21 <b>376 (1)</b> 84:21 <b>378:5 (1)</b> 113:2 <b>397 (4)</b> 15:9,15;85:21;	<b>4 (9)</b> 13:4;16:2,6,10; 17:15;39:20;57:10; 58:1;89:11 <b>4:07 (1)</b> 144:7 <b>406 (1)</b> 86:6 <b>409 (1)</b> 86:7 <b>412 (1)</b> 99:7 <b>420 (1)</b> 13:18 <b>422 (1)</b> 24:17	<b>9</b>	<b>9 (1)</b> 36:19 <b>942 (1)</b> 119:24 <b>945 (1)</b> 120:1 <b>947 (1)</b> 120:12 <b>950 (1)</b> 120:12 <b>955 (2)</b> 24:23;26:5 <b>958 (1)</b> 26:5 <b>9th (2)</b> 28:19,20		
	<b>5</b>				
	<b>5 (10)</b> 28:6,8,13;45:3; 89:15,16,23;107:11; 133:8;136:16 <b>55 (2)</b> 76:14;136:14				
	<b>6</b>				
	<b>6 (1)</b> 80:22 <b>60 (4)</b> 75:10,11;76:14; 79:6 <b>600 (1)</b> 117:2 <b>650 (2)</b> 113:13,13 <b>651 (1)</b> 100:8 <b>6th (1)</b> 29:3				
	<b>7</b>				
	<b>7 (6)</b> 13:6;79:10,11,21; 80:6;113:2 <b>7.9 (1)</b> 55:16 <b>780 (1)</b> 8:4				