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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

September 28, 2020-1:08 p.m. DAY 1
AFTERNOON SESSION ONLY

[Remote Hearing conducted via Webex]

RE: DW 19-131
OMNI MOUNT WASHINGTON, LLC:
Complaint by Omni Mount Washington
Hotel, LLC, against Abenaki Water
Company, Inc.
[Hearing]

PRESENT:

Chairwoman Dianne Martin, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Doreen Borden, Clerk
Eric Wind, PUC Remote Hearing Host

APPEARANCES:

Reptg. Omni Mount Washington, LLC.:
Thomas B. Getz, Esq. (McLane...)

Reptg. Abenaki Water Company, Inc.:
Marcia A. Brown, Esq. (NH Brown Law)

Reptg. Bretton Woods Property Owners
Assoc. (BWPOA):
Paul Mueller

Reptg. Commission Staff:
Christopher Tuomala, Esq.
Jayson Laflamme, Asst. Dir./Gas & Water

COURT REPORTER: SUSAN J. ROBIDAS, N.H. LCR NO. 44

I N D E X

WITNESS PANEL: DONALD J. E. VAUGHAN
ROBERT GALLO
NANCY OLESON
STEPHEN P. ST. CYR

EXAMINATION: PAGE NO.

Direct Examination by Ms. Brown (cont'd) 3
Cross-examination by Mr. Getz 11
Cross-examination by Mr. Mueller 49
Cross-examination by Mr. Tuomala 55

QUESTIONS BY COMMISSIONERS:

Commissioner Bailey 60, 67, 98
Commissioner Giaimo 62, 66, 76, 86
Chairwoman Martin 64, 84, 93, 101
Redirect Examination by Ms. Brown 103
Recross Examination by Mr. Getz 115

* * * * *

WITNESS: DOUGLAS BROGAN

EXAMINATION:

Direct Examination by Mr. Getz 125

1 (AFTERNOON SESSION RESUMES AT 1:08 P.M.)

2 MS. BROWN: Thank you for the
3 opportunity to make sure we didn't have any
4 errors. And we did indeed find an error in
5 testimony by Mr. Vaughan, and we would like
6 to correct that by having Mr. St. Cyr sworn
7 in as a witness. He is the accountant for
8 Abenaki, and this was an accounting question
9 and error.

10 CHAIRWOMAN MARTIN: Okay. I cannot
11 see Mr. St. Cyr yet. Mr. St. Cyr, do you
12 have your video on? There you are. All
13 right.

14 Ms. Robidas, would you swear in the
15 witness.

16 (WHEREUPON, STEPHEN P. ST. CYR was duly
17 sworn and cautioned by the Court
18 Reporter.)

19 STEPHEN P. ST. CYR, SWORN

20 BY MS. BROWN:

21 Q. Mr. St. Cyr, can you please state your name
22 for the record.

23 A. (St. Cyr) My name is Stephen P. St. Cyr.

24 Q. And do you work for Rosewood Water Company?

1 A. (St. Cyr) I do do some consulting and
2 accounting work for them, yes.

3 Q. Thank you. I was going to ask you what
4 services you provide them.

5 A. (St. Cyr) So it's primarily --

6 Q. Did you --

7 A. (St. Cyr) Oh, do you want --

8 Q. Go ahead.

9 A. (St. Cyr) I was just going to say it's
10 primarily reviewing year-end financial
11 statements, preparing the PUC annual reports
12 and assisting them in regulatory matters,
13 including financings and rate cases.

14 Q. And have you been listening to today's
15 hearing?

16 A. (St. Cyr) I have.

17 Q. And with respect to Exhibit 13, are you
18 familiar with this exhibit?

19 A. (St. Cyr) Yes, I am.

20 Q. And did you prepare it?

21 A. (St. Cyr) I did.

22 Q. And are you also familiar with Exhibit 2?

23 A. (St. Cyr) Yes, I am.

24 Q. And did you prepare the response to Staff 1-1

1 with Mr. Vaughan?

2 A. (St. Cyr) Yes.

3 Q. Okay. And are you also familiar with
4 Exhibit 32 that's been entered for
5 identification?

6 A. (St. Cyr) Yes, I am.

7 Q. Okay. And with respect to Mr. Vaughan's
8 testimony where I had asked him a question
9 about a CIAC figure and backing into the
10 depreciation, what year that asset would have
11 been placed into service, and he answered
12 1985, do you recall that line of the
13 questioning?

14 A. (St. Cyr) I do.

15 Q. And do you believe that that year that he
16 gave is incorrect?

17 A. (St. Cyr) Yes, it is.

18 Q. And can you please walk us through the
19 exhibits that we need to review and your
20 explanation of why it is incorrect.

21 A. (St. Cyr) Sure. That was Exhibit 32. I
22 believe it was Page 8 on the PDF file. And
23 it's just a little ways down from the top of
24 the schedule. The line item on the Excel

1 version is 21. It's identified as Account
2 331 T&D, Mains, Valves, with the three in
3 parentheses. The amount -- the cost was
4 \$1,800. The amortization rate was 2 percent.
5 And the discussion was around the last couple
6 of columns. The 846 is the accumulated
7 amortization of CIAC at 12/31/2019. And the
8 amount to the right, 954, was the net value,
9 meaning a difference between the original
10 cost and the accumulated depreciation to
11 date.

12 What I wanted to point out, the 846,
13 which is the accumulated amortization through
14 the end of 2019, if you take that amount,
15 846, divided by the 36 amortization each
16 year, it comes out to 23.5, which would
17 represent the number of years in which the
18 amortization had been taken. And if you take
19 that amount divided -- you know, less the
20 year 2019, the actual year in which the asset
21 was constructed and contributed, would have
22 been 1995, 1996, and not 1985.

23 Q. Thank you.

24 A. (St. Cyr) I was just going to say, if you

1 want, if you go back to Exhibit 13 --

2 Q. Which pages, Mr. St. Cyr?

3 A. (St. Cyr) I'm sorry. Go ahead.

4 Q. I was asking which pages? Is it Pages 2 and
5 3?

6 A. (St. Cyr) So this is the calculation of the
7 purchase price, and it's Page 3. And there's
8 two groups of assets listed as 331. And the
9 second group of assets, the fourth line down,
10 says Account 331, 1996 T&D, Main, Valves with
11 the three in parentheses, there's the same
12 \$1,800. So this is telling me that this was
13 an asset that was constructed in either '95
14 or '96 and was contributed to the Company in
15 that same year.

16 And then if you go on to Exhibit 2, this
17 is the continuing property record that was
18 developed by the individual related to the
19 hotel or the prior owners. On Page 4 of this
20 exhibit, right down at the very bottom
21 there's five or six assets listed together.
22 The very top one says 1996. The three, I
23 assume, is in reference to the three valves.
24 It says T&D Mains, \$1,800. So this was three

1 valves that were constructed in 1996, so
2 placed in service in 1996 that were
3 contributed to the Company.

4 Q. And Mr. Vaughan, if you could get your
5 speaker off of mute, too. Do you agree, do
6 you agree with Mr. St. Cyr's correction of
7 your testimony regarding the year?

8 A. (Vaughan) Yes, I do agree. I went through
9 the calculation after I discovered there was
10 a mistake. Yes, I agree.

11 Q. Okay. And Mr. St. Cyr, just one last
12 follow-up question. Are the totals for -- if
13 you're looking at Exhibit 2, Page 4, there's
14 a \$457,134 total. Is that also reflected in
15 Exhibit 13?

16 A. (St. Cyr) Yes, it is. And you have to add a
17 couple of numbers together. But I can walk
18 you through that.

19 If you go back to Exhibit 13, under
20 Account 305, this is about a third of the --
21 a third from the top, 309, Mains, there's a
22 total there, 254,700. So that's the total of
23 the supply mains, 309.

24 Then, if you scroll back to the two

1 sections related to the T&D mains, you have
2 the first section that adds 46,332 and then
3 the second section, which is 158,102. The
4 sum of those three amounts add up to 259,134,
5 which is \$2,000 more than what's on the CPRs.
6 And that \$2,000 more is the very last entry
7 in the second section of Account 331. You
8 can see it says 2014, approximately 18 feet
9 of 6 -- I believe that's a type of main --
10 for \$2,000. And this was an addition in
11 2014, which was the year after the CPRs were
12 created.

13 So if you adjust for that addition, then
14 the sum of the amounts on the CPRs and the
15 sum of this record, which was used to
16 purchase the Rosebrook assets, is the same,
17 the 457,134.

18 And then I guess the only other thing I
19 would go on to point out, back on
20 Schedule II, you know, what this is telling
21 me is that there are -- there were no
22 contributions or values associated with the
23 1985 mains, and actually some of the other
24 mains in subsequent years as well.

1 CHAIRWOMAN MARTIN: Can I just
2 interrupt for a second? When you refer to
3 Schedule II, can you just identify the
4 exhibit, the location?

5 A. (St. Cyr) So Schedule II --

6 BY MS. BROWN:

7 Q. Are you talking about Exhibit 2?

8 A. (St. Cyr) I'm sorry. Exhibit 2, at the very
9 bottom of Page 4, the total is 457,134, which
10 is -- which matches up exactly with
11 Exhibit 13, except for the \$2,000 addition in
12 2014, which was the year after this record
13 was created. And what that's telling me is
14 the values here, the 457, agree with the
15 values on the books of the Company.

16 And when you see assets like the assets
17 recorded in 1985, where there's no value,
18 what that's telling me is that there was no
19 addition to plant on the books of the
20 Company. And if you look at the contribution
21 aid of construction schedule, there was no
22 contribution either. So these are assets
23 that have been identified that have no value,
24 are not reflected on the books of the

1 Company.

2 Q. Thank you, Mr. St. Cyr, for that, that
3 correction.

4 And Mr. Vaughan, just one more time.
5 You are okay with Mr. St. Cyr's corrections
6 of your earlier testimony?

7 A. (Vaughan) Yes, I agree with those.

8 Q. Thank you.

9 MS. BROWN: Thank you, Madam
10 Chairwoman. That was the only correction
11 that I needed to ask the witnesses about.

12 Thank you. I'm done with my
13 direct.

14 CHAIRWOMAN MARTIN: Okay. Thank
15 you.

16 Attorney Getz.

17 MR. GETZ: Thank you, Madam Chair.

18 CROSS-EXAMINATION

19 BY MR. GETZ:

20 Q. I'd like to begin by asking questions to
21 Ms. Oleson.

22 So, Ms. Oleson, I want to go back to
23 understanding your work on behalf of
24 Rosebrook. So you testified that you worked

1 for Rosebrook from 2007 to 2018; is that
2 correct?

3 A. (Oleson) Yes. Yes, it is.

4 Q. But is it more accurate to say -- but you
5 were not a direct employee of Rosebrook Water
6 Company; is that correct?

7 A. (Oleson) Right. I mean, we managed the
8 Rosebrook Water Company -- I managed the
9 Rosebrook Water Company -- the water system,
10 I should say, not the Company. I managed the
11 Rosebrook water system.

12 Q. But you worked for -- there was a number of
13 entities controlled by Charles Adams?

14 A. (Oleson) Yes. Yes, there was.

15 Q. Like BW Club, BW Services; is that correct?

16 A. (Oleson) That is correct. Yes.

17 Q. So you were an employee of BW Services?

18 A. (Oleson) Yes. For a time, yeah.

19 Q. And BW Services had a management service
20 agreement with Rosebrook Water Company?

21 A. (Oleson) I don't know the specifics of that.
22 They had a management agreement with two
23 wastewater companies, I know.

24 Q. Well, if I look at Exhibit 7 and go to

1 Page 9, there's a management service
2 agreement between BW Services, LLC and
3 Rosebrook Water Company.

4 A. (Oleson) Okay. Okay. Then, yes, I would
5 agree.

6 Q. But at that time -- so this was in 2011;
7 correct?

8 A. (Oleson) Hmm-hmm.

9 Q. But at that time, the hotel was not in common
10 ownership with BW Services or any of
11 Mr. Adams' entities, was it?

12 A. (Oleson) I believe you are correct.

13 Q. So -- I'm sorry?

14 A. (Oleson) No, I believe you are correct, yeah.

15 Q. So it's the case, then, and I think this is
16 also proved out in Abenaki's memorandum of
17 law, that going back to 2007, the ownership
18 of the hotel and the water company was
19 separated entirely. Is that your
20 understanding?

21 A. (Oleson) Back in 2007?

22 Q. In the cases where MWH sold off the hotel to
23 CNL and sold off the water company and other
24 assets to Mr. Adams and the BW Services and

1 those entities.

2 A. (Oleson) Yeah, I mean, that very well could
3 be. I'm sorry, I just don't know because,
4 again, it didn't change my job. I still did
5 all the same things day to day. The only
6 thing different was my paycheck would have
7 had a different name on it, where it came
8 from, but I just don't remember the details
9 of that.

10 Q. But the case would be that you weren't
11 employed by the hotel or paid by the hotel;
12 is that correct?

13 A. (Oleson) At some point I was. And I thought
14 it was when I first started it was the hotel.

15 Q. So let's focus on 2011. In 2011, you were
16 not paid by the hotel or employed by the
17 hotel?

18 A. (Oleson) I'm sorry. I don't remember that.

19 Q. Okay. So when you first were asked questions
20 by Ms. Brown earlier today, you talked about
21 working on the rate case.

22 A. (Oleson) Yes.

23 Q. Did you mean Docket 2000 -- the 11-117
24 docket? Is that what you meant by the rate

1 case?

2 A. (Oleson) It was the one where Marjorie Taylor
3 was involved in.

4 Q. The case where the changes were made to the
5 tariff?

6 A. (Oleson) Yes.

7 Q. So that, as I understand it, the 2011 case,
8 the 11-117, was a case involving
9 contributions in aid of construction and also
10 then ended up tariff changes. Is that fair
11 to say?

12 A. (Oleson) Yes, it is.

13 Q. So can you take a look at Exhibit 23, please?

14 A. (Oleson) Yup. I have it here.

15 Q. Yeah, this is the as-built water lines plans.
16 I don't know if you can enlarge it.

17 A. (Oleson) Oh, it's large.

18 Q. Okay. You have the hard copy?

19 A. (Oleson) I have the hard copy.

20 Q. Okay. Good.

21 A. It's on the whole table.

22 Q. So what I wanted to focus on is I guess in
23 the upper middle of the plan there's the
24 circle that shows the, I guess it's the Mount

1 Washington Place development?

2 A. (Oleson) Hmm-hmm.

3 Q. And if you follow, you know, below that and
4 to the left, you can see there's a 16-inch
5 line that goes from the tank, the water tank
6 on the mountain. It goes all the way to
7 Mount Washington Place; is that fair to say?

8 A. (Oleson) The 16-inch line goes that whole
9 length? Is that what you're saying?

10 Q. Yes.

11 A. (Oleson) Yes. Yup, that's correct.

12 Q. So, then, where that 16-inch line goes from
13 the water tank to Mount Washington Place --
14 and my understanding from the property
15 records is that was installed in 1973 -- then
16 if you look at where Base Road near Mount
17 Washington Place, you have a blue line that
18 goes down and to the right along Base Road
19 and that's the eight-inch line that connects
20 all the way to the hotel; is that correct?

21 A. (Oleson) That's what it looks like on the
22 plans, yes.

23 Q. Okay. If I can also ask you to take a look
24 at Exhibit 26, Pages 2 and 3.

1 A. (Oleson) That will take me a little longer.

2 (Pause)

3 A. (Oleson) Okay. I'm here.

4 Q. So Pages 2 and 3 -- and these are part of an
5 exhibit prepared by Mr. Brogan, and he will
6 testify about this later. But my question
7 for you is just, are you familiar with this
8 location? Does this look at all familiar?

9 A. (Oleson) This is the hotel. Boy, it doesn't
10 look familiar, but...

11 Q. You know, I'm not -- I'm just asking you
12 whether -- if it doesn't, that's entirely
13 fine. I understand these are two very --

14 A. (Oleson) I can't place it, no.

15 Q. Okay. Thank you.

16 Now, earlier you talked about the work
17 you performed for Rosebrook --

18 A. (Oleson) Hmm-hmm.

19 Q. -- including working on the hydrants and that
20 you didn't track your time to distinguish
21 between work done for Rosebrook or for the
22 hotel; is that correct?

23 A. (Oleson) That is correct.

24 Q. So under your employment contract and the

1 work you did on behalf of BW Services for
2 Rosebrook, you just went out and on hotel
3 property you flushed hydrants and you did
4 work on the hotel property for Rosebrook?

5 A. (Oleson) That is correct.

6 Q. So then can we turn then to Exhibit 20 and
7 start out on Page 36.

8 A. (Oleson) Okay. I'm sorry. Which page?
9 Twenty-six?

10 Q. Thirty-six.

11 A. (Oleson) 36. Okay. I'm here.

12 Q. So I take it this is the -- so this is the
13 tariff that was effective April 30, 1996. So
14 this would have been the tariff that was in
15 place that you would have been applying up
16 until 2011.

17 A. (Oleson) Okay.

18 Q. Is that fair to say?

19 A. (Oleson) Yes.

20 Q. So if I look at that tariff, and the
21 Installation, Ownership and Maintenance
22 section, it says, "Single-family homes: All
23 service pipes up to the premises' curb stop
24 shall be owned and maintained by the

1 Company." That's correct?

2 A. (Oleson) Yes, I believe so. Yeah. Yes.

3 Q. And the last sentence of that section says,
4 "All new curb stops shall be placed at the
5 property line"; correct?

6 A. (Oleson) Yes.

7 Q. So in reading that, is it fair for me to
8 conclude that there was an issue with
9 single-family homes where some curb stops
10 were beyond the property line and on company
11 property -- or excuse me -- on customer
12 property?

13 A. (Oleson) It was the single-family homes and
14 the condominiums. It was -- it was really
15 everything. Both of those, I should say.

16 Q. So then, for both single-family homes and
17 condominiums, there were issues -- or there
18 were circumstances where the curb stop was
19 beyond the property line and within customer
20 property?

21 A. (Oleson) Yes.

22 Q. And it just so happens here, in this version
23 of the tariff, in terms of single-family
24 homes, it talks about curb stops, but in

1 terms of condominiums, it talks about
2 exterior shut-off valves; is that correct?

3 A. (Oleson) Yes. Yup.

4 Q. So in your understanding, curb stop and
5 exterior shut-off valve are used
6 interchangeably?

7 A. (Oleson) In this case, yes. And that was
8 most likely one of the things we wanted to
9 change to make it clear that it was the same
10 thing.

11 Q. So a curb stop in Rosebrook's service
12 territory may or may not have been at the
13 property line?

14 A. (Oleson) Right. Some had them at the
15 property line and some didn't.

16 Q. So it's a question of fact in each case.
17 You'd have to figure out where --

18 A. (Oleson) Yes.

19 Q. -- where the curb stop is and then decide how
20 far the utilities' responsibility extended?

21 A. (Oleson) Yes.

22 Q. Which may be onto customer property?

23 A. (Oleson) Right.

24 Q. So if I look -- turn then to Page 46 in the

1 same exhibit --

2 A. (Oleson) Forty-six. Okay.

3 Q. And this is the tariff that was effective
4 February 3, 2012, as a result of the 2011
5 11-117 case.

6 A. (Oleson) Okay.

7 Q. Which you worked on this; correct?

8 A. (Oleson) Yes.

9 Q. And actually, you know, for ease of
10 reference, I think perhaps the exhibit that
11 Ms. Brown was pointing to you may be more
12 helpful because it shows the track change.
13 So now I'm going to ask you to go back to
14 Exhibit 5. And that would be to Page 42 of
15 Exhibit 5.

16 A. (Oleson) Okay.

17 Q. So it looks like to me that what the Company
18 was trying to do, the clarification you've
19 made -- have been trying to make was to not
20 use "curb stop" in one provision and
21 "exterior shut-off valve" in another. So you
22 took out the references to "curb stop" under
23 "Single-Family Home." Is that accurate?

24 A. (Oleson) If that's what's here. I mean, I

1 don't remember everything that we did.

2 Q. And then you also add the reference to
3 "commercial buildings" to that Section B; is
4 that correct?

5 A. (Oleson) Yes.

6 Q. So prior to 2011, the tariff did not have any
7 provision addressing installation, ownership
8 and maintenance with respect to commercial
9 buildings; is that correct?

10 A. (Oleson) I guess so. I mean, I'd have to
11 look back at that again. I don't really
12 remember, but I can look back at this.

13 Q. Well, if you turn back to Exhibit 20,
14 Page 36, there is no reference to --

15 A. (Oleson) Okay, okay.

16 Q. -- commercial buildings.

17 A. (Oleson) Okay. Then yes.

18 Q. Thank you.

19 So then it also -- the 11-117 proceeding
20 also added the definition that says,
21 "exterior shut-off," and in parens and in
22 quotation marks, curb stop, is the water
23 shut-off controlled by the Company; is that
24 correct?

1 A. (Oleson) I'm sorry. Can you say where you
2 are again?

3 Q. So -- well, if we go -- if you can go into
4 either Exhibit 5, Page 40 where I last had
5 you.

6 A. (Oleson) Okay. Yes, okay.

7 Q. And that's the new definition.

8 A. (Oleson) Oh, okay.

9 Q. "Exterior shut-off ('curb stop') --

10 A. (Oleson) Yup.

11 Q. -- water shut-off controlled by the Company."

12 A. Yes.

13 Q. Did you draft that section?

14 A. (Oleson) I'm sorry. I mean, it was 2011. I
15 don't remember the details. There were
16 several -- there were four of us working on
17 it. We all had a hand.

18 Q. So the four who were working on it, do you
19 remember, was it Marjorie Taylor --

20 A. (Oleson) Yup, Marjorie. Laurie Matthews had
21 a hand in it, Brian Sullivan. Everyone, you
22 know. It was probably mostly Marjorie and I,
23 but...

24 Q. So your colleagues from -- that worked for

1 Mr. Adams at BW Services.

2 A. (Oleson) Yes.

3 Q. What strikes me about this definition, it
4 seems like it has its own internal air
5 quotes. And when it says exterior shut-off,
6 in other words, may possibly refer to as curb
7 stop, is that a fair way for me to think
8 about that?

9 A. (Oleson) I'm not really sure what you're
10 saying.

11 Q. Well, is curb stop a technical term of art,
12 to your understanding?

13 A. (Oleson) Is it a technical term? Well, it's
14 a layman's term. It's a -- you know, in the
15 water business, everyone knows what a curb
16 stop is.

17 Q. But it's not always at the property line.

18 A. (Oleson) It is, usually in cities, in towns.
19 Yours probably is I'll bet. Am I wrong?

20 Q. So it's the way you would like it to be, but
21 in Rosebrook it wasn't universally the case.

22 A. (Oleson) That is correct. That is correct.
23 There were many different builders at
24 Rosebrook, and they all had own way of

1 building.

2 Q. So then, when you were asked by Ms. Brown
3 where are the curb stops located for the
4 hotel, what was your answer?

5 A. (Oleson) Base Road. Those were the ones that
6 we knew of that we kept clear in the winter
7 in case there was an emergency. Those were
8 the ones, you know (connectivity issue) --

9 (Court Reporter interrupts.)

10 A. (Oleson) I said there were two. There were
11 two curb stops there.

12 MS. BROWN: I think what she's --
13 if I can interject, I think what Susan's
14 getting at is you started to say that you
15 kept clear. So I think that's the sentence I
16 think she was missing.

17 WITNESS OLESON: Oh, okay.

18 MS. BROWN: Am I right, Susan?

19 Thank you. Sorry to interject.

20 A. (Oleson) Okay, okay. Sorry. Yeah, kept them
21 clear of snow so we could have access to
22 them.

23 CHAIRWOMAN MARTIN: Attorney Brown,
24 we can't see you at this point, just so you

1 know. Your video is off, I think.

2 MS. BROWN: I guess I haven't been
3 active enough. Thank you.

4 BY MR. GETZ:

5 Q. So there's two valves on Base Road, a 6-inch
6 valve that goes to -- that connects to the
7 water main to Bretton Woods and an 8-inch
8 valve --

9 A. (Oleson) Bretton Arms, yes, 8-inch --

10 Q. I'm sorry -- that connects to the hotel.

11 A. (Oleson) Yeah.

12 Q. Those two valves on Base Road, why do you say
13 they're curb stops?

14 A. (Oleson) Those were the valves that we would
15 have used in case of an emergency. Those
16 were what we kept clear. Did I use the wrong
17 word? I don't understand what you mean.

18 Q. It's a key issue in this case. So Omni has a
19 different position with Abenaki. Omni
20 understands there are two valves on Base
21 Road, that they're controlled by the Company,
22 but takes the position that they're not curb
23 stops or exterior shut-off valves, that
24 they're valves.

1 So you said that you believe them to be
2 the curb stops. And my question was, is that
3 because of your interpretation of the tariff
4 and the argument that a curb stop can only be
5 at the property line, or was there some other
6 basis for you saying they were the curb
7 stops?

8 A. (Oleson) I don't think that I really ever put
9 that much thought into the wording of it. It
10 was presented to me as a curb stop. And I
11 didn't argue. You know, I mean, it makes
12 sense that it's a curb stop. It was at the
13 edge of the property. So it made sense to
14 call it that.

15 Q. And this is a historical issue, not a recent
16 issue?

17 A. (Oleson) Yes, yes.

18 Q. So then let me ask. So what did you do to
19 prepare for the hearing today?

20 A. (Oleson) I read over, looked over the
21 exhibits, much as I could. Tried to think
22 back of all these things that we used to
23 do -- I used to do.

24 Q. And how did it come about that you are

1 testifying today?

2 A. (Oleson) I was contacted by Marcia Brown.

3 Q. And are you acting as a consultant to Abenaki
4 for purposes of the hearing?

5 A. (Oleson) Consultant? That word was not used.
6 It was just witness.

7 Q. So are you being compensated for your time?

8 A. (Oleson) I am.

9 Q. So are you familiar with the continuing
10 property records for Rosebrook?

11 A. (Oleson) Currently? The current records?

12 Q. Well, to say the Exhibit 2, Pages 3 and 4.

13 A. (Oleson) Anything after I left in 2018, no,
14 I've had no contact. So anything going on, I
15 don't know anything about that since after
16 2018 February.

17 Q. During the time you were working for
18 Rosebrook, did you understand the 8-inch main
19 from Mount Washington Place to the hotel to
20 be the property of the water company?

21 A. (Oleson) I did, yes.

22 Q. I think that's all I have at the moment for
23 Ms. Oleson. So I think I'll turn to
24 Mr. Vaughan and Mr. Gallo.

1 Good afternoon, gentlemen.

2 A. (Vaughan) Good afternoon.

3 Q. So, Mr. Vaughan, I guess the basic issue
4 here, as I understand it, is Abenaki says
5 it's not responsible for the 8-inch water
6 main from Base Road to the hotel; is that
7 correct?

8 A. (Vaughan) That is correct.

9 Q. So let's, if we can, turn to Exhibit 18,
10 Page 5.

11 A. (Vaughan) Yes, we have Exhibit 18.

12 Q. And this is essentially a plan, a drawing of
13 properties on Omni property west of Route
14 302; is that correct?

15 A. (Vaughan) Yes. West of 302? How about south
16 of 302?

17 Q. Or left of 302, according to the map.
18 However we want to describe it.

19 A. (Vaughan) Okay.

20 Q. So it also says Attachment 2, Staff Tech 2-2.
21 There are several water mains on this page I
22 want to ask about.

23 So there's a 16-inch main that basically
24 goes from the storage tank down the hill,

1 goes over around the base lodge and then down
2 to 302; correct?

3 A. (Vaughan) Correct.

4 Q. So are you responsible -- is Abenaki
5 responsible to maintain and repair that
6 16-inch water main?

7 A. (Vaughan) Yes.

8 Q. There's also on this page a 12-inch water
9 main that goes from the base lodge to
10 Crawford Ridge. Do you see that?

11 A. (Vaughan) Yes.

12 Q. And is Abenaki responsible to maintain and
13 repair that line?

14 A. (Vaughan) Yes.

15 Q. And finally, there's a 10-inch water main
16 that goes adjacent to Forest Cottage and down
17 to the Rosebrook Rec Center. Do you see
18 that?

19 A. (Vaughan) Yes.

20 Q. And you also are responsible to maintain and
21 repair that line?

22 A. (Vaughan) Yes.

23 Q. Now, all three of these lines are on Omni
24 private property; isn't that correct?

1 A. (Vaughan) I cannot tell. Some of this --
2 some of these mains look like they may go
3 through association property. I'm not sure.

4 Q. Well, let's talk about the 16-inch main as
5 opposed to beyond the base lodge and down to
6 302. Is it fair to say that that is Omni
7 property?

8 A. (Vaughan) It may be (connectivity issue).
9 (Court Reporter interrupts.)

10 Q. Now, let's see if we can establish this. On
11 this section of Omni property in the area of
12 the C area, would you agree that there are
13 water mains on Omni's private property that
14 you maintain and repair?

15 A. (Vaughan) It appears that way, yes. I'm
16 assuming that that is Omni's private
17 property. Correct.

18 Q. Okay. Thank you.

19 Let's turn now if we can to Exhibit 13,
20 I guess it is.

21 A. (Vaughan) Exhibit 13, Exhibit 13. Here we
22 are.

23 Q. So I have a number of questions about this
24 exhibit and how it was constructed. But --

1 so you used this exhibit and Exhibit 2,
2 Pages 3 and 4, to come up with the purchase
3 price; is that correct?

4 A. (Vaughan) Mr. St. Cyr did.

5 Q. And during these -- in your prior discussion
6 of this, I think you said that the continuing
7 property records that you attached to the
8 data request issued by Staff, 1-1, that that
9 attachment was prepared by somebody from the
10 hotel in 2013. Is that correct?

11 A. (Vaughan) I'm going to have to go back to --
12 which exhibit was that again, please?

13 Q. So, Exhibit 2.

14 A. (Vaughan) Okay.

15 Q. And Page 1 is the Staff Data Request 1-1.
16 Says, "Please provide a copy of the Abenaki
17 Water Company, Inc. property records
18 detailing ductile iron main footages by size
19 and location." And the response is, "See
20 Attachment 1-1," which I took to be
21 Abenaki/Rosebrook's continuing property
22 records.

23 I guess my immediate question is, I
24 understood you to say earlier today that this

1 attachment was prepared by somebody from the
2 hotel around 2013. Did I understand that
3 correctly?

4 A. (Vaughan) Yeah, it was my understanding that
5 those records were then re-established around
6 2013, or thereabouts.

7 Q. By the hotel?

8 A. (Vaughan) Well, I'm not sure. But they were
9 created. And I'm not sure if it was by the
10 hotel or someone else. Exhibit 2... okay.

11 Q. Okay. Well, then let me ask this then: This
12 is what I understood you to do in creating
13 Exhibit 13. You went through the -- you used
14 the continuing property records in part to
15 come up with the purchase price. And looking
16 at the continuing property records, you
17 included in the purchase price anyplace that
18 there were initial costs of the item. And I
19 think that's what Ms. Brown walked you
20 through. Is that fair to say?

21 A. (Vaughan) Yeah, I think that's -- I think
22 that's what -- well, let me just see. I
23 don't think these were the CPRs.

24 Q. Well, my recollection was that Ms. Brown was

1 walking you back and forth between
2 Exhibit 13, the calculation of purchase
3 price, and the attachment to Exhibit 2.

4 CHAIRWOMAN MARTIN: Attorney Getz,
5 I apologize for interrupting. We have lost
6 Ms. Oleson again it looks like. Are your
7 questions all directed at Mr. Vaughan and
8 Mr. Gallo for the moment? Can we keep going?

9 MR. GETZ: Yes. I may want to go
10 back to her at some point, but I don't -- I'm
11 not sure at this point. I can continue.

12 CHAIRWOMAN MARTIN: Okay. Let's do
13 that. Off the record for one minute.

14 (Discussion off the record)

15 CHAIRWOMAN MARTIN: All right.
16 Back on the record.

17 BY MR. GETZ:

18 Q. So, Mr. Vaughan, just trying to get back to
19 my understanding of how you constructed the
20 purchase price and that it appears that you
21 used the attachment to Exhibit 2 to the Staff
22 Data Request.

23 A. (Vaughan) I believe that was correct, I
24 think. As I said before, the purchase price

1 was established by Mr. St. Cyr.

2 Q. So when -- but my takeaway from your
3 discussion with Ms. Brown was the purchase
4 price does not include items -- or does not
5 include amounts relative to assets listed on
6 the continuing property record if there is no
7 dollar amount associated with it. And that's
8 how you calculated the purchase price; is
9 that fair? Is that correct?

10 A. (Vaughan) Yeah.

11 Q. But it also seemed that you were taking the
12 position that if an item in the continuing
13 property records had no cost associated with
14 it and it therefore wasn't included in the
15 purchase price, that as a result, you do not
16 have any responsibility for those items that
17 are listed in the continuing property records
18 that do not have a value associated with it.
19 Am I understanding this correctly?

20 A. (Vaughan) I'm not sure that that was our
21 position. I am saying that, according to
22 Mr. St. Cyr's calculation, we arrived at the
23 purchase price according to those costs, it
24 appeared.

1 Q. So then what's the relationship of the
2 purchase price to the items reflected, the
3 mains and valves, in your continuing property
4 records?

5 A. (Vaughan) The relationship is that the costs
6 that are shown in Exhibit 2 would have been
7 the part -- or constitute the purchase price.

8 Q. So let me try from a different direction.

9 So in Exhibit 2, Pages 3 and 4, it's
10 referred to in your response as the
11 "continuing property record." Do you own and
12 are you responsible to maintain and repair
13 all of the items described in the two pages
14 of that attachment?

15 A. (Vaughan) Yes.

16 Q. Okay. Thank you.

17 In Abenaki's memorandum of law, it says
18 at Page 9 that Abenaki relied on Rosebrook's
19 approved filed tariff for its acquisition in
20 Docket No. DW 16-448, and it did not conduct
21 due diligence on the hotel resort's
22 infrastructure on the belief that it was not
23 requiring lines on Omni's private property.
24 Are you familiar with that statement in the

1 memorandum?

2 A. (Vaughan) I'm not particularly familiar with
3 it, but I could agree with it.

4 Q. So does that mean in 2015 and 2016, when you
5 were doing due diligence for the acquisition,
6 that you had examined the Rosebrook tariff at
7 the time and concluded that Rosebrook was not
8 responsible for any pipes on Omni property?

9 A. (Vaughan) Only with respect to the hotel
10 campus. We would not have been responsible
11 for those.

12 Q. But you would be responsible for the pipes
13 near the -- in the ski area?

14 A. (Vaughan) Yes. And the reason for that is
15 because they were essentially mains that were
16 carrying -- it carried water from one
17 association to another. And so just to
18 maintain continuity of service, we would
19 consequently maintain those services and
20 operate those services -- that main.

21 Q. So let me ask this question about an 8-inch
22 main that runs from Mount Washington Place to
23 the hotel -- that you agree was built in
24 1985; is that correct?

1 A. (Vaughan) No. I don't think that's correct.

2 Q. I believe Mr. Gallo agreed to that earlier.

3 A. (Gallo) I believe Mr. St. Cyr made a
4 correction on that potential date of
5 construction.

6 Q. I think Mr. St. Cyr was correcting an
7 inaccurate conclusion about the 1996 main and
8 the \$1,800 reference. I don't think he was
9 speaking to the 1985 8-inch water main.

10 But...

11 Did you earlier, Mr. Gallo, say that the
12 8-inch water main was constructed in 1985?

13 A. (Gallo) I believe I stated I went by the
14 records there. You know, I don't recall
15 stating it was 1985.

16 Q. You seem to be saying that for some reason
17 the \$1,800 cost associated with the 1996 main
18 somehow must have been the 1985 main based on
19 a misunderstanding of the depreciation
20 period. And I believe you stated that
21 there's no way that the 1985 main could have
22 been built for \$1,800. Do I recall that
23 correctly?

24 A. (Gallo) That's correct.

1 Q. But your premise was incorrect, as I believe
2 Mr. St. Cyr corrected the record; is that
3 correct?

4 A. (Gallo) He did correct the record.

5 Q. Okay. So getting back to the main, the 19 --
6 the records that you submitted show a main
7 that was installed in 1985 from Mount
8 Washington Place on Base Road going to the
9 hotel.

10 Now, I take it that your position is
11 that your obligation with respect to that
12 line ends at the valve on Base Road; is that
13 correct?

14 A. (Gallo) I didn't state that the main from
15 Mount Washington Place to the curb stop at
16 Base Road was -- yeah, I didn't acknowledge
17 that it was, I believe, the Omni property.
18 Basically, I stated from Base Road to the
19 hotel would have been Omni property. I did
20 not state that from Mount Washington Place to
21 Base Road. So I only stated from Base Road
22 to the hotel would be Omni property.

23 Q. So, well, then, from Base Road -- the 8-inch
24 main from Base Road back to Mount Washington

1 Place, whose property is that?

2 A. (Gallo) That would be Abenaki's.

3 Q. So there is the point where there's the
4 8-inch valve on Base Road and then it runs in
5 a public right-of-way for about 270 feet and
6 then it enters Omni property to connect to
7 the hotel. Is that how you understand the
8 water main works?

9 A. (Gallo) The curb stop at Base Road, the pipe
10 does run longitudinally along the road. I
11 can't say, you know, on which side of the
12 right-of-way that may be. You know, to be
13 perfectly honest, I -- you know, without
14 having that line laid out, it's difficult to
15 say whether it's in the right-of-way or it's
16 on the Omni property. It's -- you know, it
17 runs off the side of the road. So the exact
18 location isn't concrete.

19 Q. So is it your position that after the valve,
20 the 8-inch valve on Base Road, your
21 obligation stops regardless of whether the
22 8-inch main is in the public right-of-way, or
23 on Omni property?

24 A. (Gallo) I would -- I have seen -- in my

1 experience, I have seen -- you know, and this
2 is a hypothetical I'm talking about right
3 now -- if it was on the town side or the, you
4 know, the Base Road side of the right-of-way,
5 I have seen instances where towns have
6 granted permission to run a pipe in a
7 right-of-way that would be private. And so
8 as a hypothetical situation, you know, I have
9 seen that case happen before.

10 Q. Okay. So, Mr. Vaughan, I'm trying to
11 understand, if we can get back to the tariff,
12 then. And it's not entirely clear to me, you
13 know, Abenaki's position that it is not
14 responsible for the water main from the valve
15 to the hotel, whether you're relying on the
16 tariff changes that were made in the 11-117
17 case or the changes that were made in the
18 16-448 case. Can you tell me, you know,
19 which it is, or what's, you know, the basis
20 for your tariff argument that you're not
21 responsible?

22 A. (Vaughan) Well, that would be the most recent
23 tariff, or the current tariff.

24 Q. So let's see. When you're doing your due

1 diligence for the acquisition, it said you
2 had examined the tariff and concluded that
3 Rosebrook was not responsible. That would
4 have been the 11-117 tariff, not the tariff
5 that you had introduced and was approved by
6 the Commission.

7 A. (Vaughan) Yes, that is correct.

8 Q. That's correct that you were relying on the
9 language in the 11-117 case, the old tariff?

10 A. (Vaughan) The tariff that preceded the one
11 that exists now.

12 Q. And that's based on your reading of a
13 exterior shut-off valve can only be at the
14 property line.

15 A. (Vaughan) Yes.

16 Q. So, then, in 16-448 -- and if we turn to
17 Exhibit 20, and this was the case where you
18 had said in the testimony that you were
19 making certain minor tariff additions as part
20 of the acquisition docket; is that correct?

21 A. (Vaughan) I believe -- in what testimony,
22 please?

23 Q. So there was a -- so in that case, in 16-448,
24 and if you go back to the petition and --

1 that talks about making minor -- certain
2 minor tariff additions, and that was also
3 referred to in the settlement agreement in
4 that case. Does that sound familiar?

5 A. (Vaughan) Yeah, somewhat.

6 Q. And there was a dialogue between you and
7 Commissioner Bailey about what was the effect
8 of these tariff changes, and that's where you
9 had said that there were certain situations
10 where the curb stop was beyond the property
11 line and near the building, and you were
12 hoping to move them out to the property line.
13 Does that sound familiar?

14 A. (Vaughan) It does. And that was applicable
15 to common areas, more appropriately
16 townhouses, condominiums, et cetera; you
17 know, basically, single services. And I
18 think I said that in the context that these
19 curb stops are difficult to operate. They
20 were maybe located in shrubs, landscaping,
21 next to the buildings. However, we have not
22 made any of those changes. And we don't have
23 any plans to do that within the near term.

24 Q. So when you -- the tariff that you applied

1 when you sought to acquire the Company talked
2 about responsibility for all service pipes up
3 to and including the premises' exterior
4 shut-off valve shall be owned and maintained
5 by the Company. And I think you can see that
6 language in Exhibit 20 at Page 46.

7 A. (Vaughan) Particularly where?

8 Q. Well, if you look at -- you know, for each of
9 Section 1(b) under Single-Family Homes,
10 Condominiums and Commercial Buildings, they
11 all talk about all service pipes up to and
12 including the premises' exterior shut-off
13 valve shall be owned and maintained by the
14 Company.

15 A. (Vaughan) Yes.

16 Q. Basically the same language for all three
17 types of customers.

18 A. (Vaughan) Condominiums, single-family homes
19 and -- yes.

20 Q. But then you changed it in 16-448 to say that
21 all service pipes -- instead of up to and
22 including the exterior shut-off valve, it
23 says, "All service pipes from the main to the
24 property line or common area including the

1 premises' exterior shut-off valve shall be
2 owned and maintained by the Company"; is that
3 correct?

4 A. (Vaughan) That's correct.

5 Q. And so what did you see as the difference, or
6 what did you see you were accomplishing by
7 making that change?

8 A. (Vaughan) I wanted to make it clear as to
9 what the Company was responsible for with
10 respect to services, with explicit regard to
11 common areas.

12 Q. So as I read the prior tariff, which is on
13 Page 46 at Exhibit 20, the Company would be
14 responsible up to and including the exterior
15 shut-off valve, which hopefully is at the
16 property line.

17 Then the language changed. "All service
18 pipes from the main to the property line or
19 common area including the shut-off valve."
20 Seems like the same thing to me. I'm not
21 sure how the -- what the difference is.

22 A. (Vaughan) It's probably a difference without
23 a distinction -- or a distinction without a
24 difference, if you were. Essentially, the

1 Company would be responsible from the main to
2 the first valve, which would be the curb
3 stop. And that curb stop really, ideally,
4 falls near the property line. But in some
5 cases it goes beyond the property line,
6 depending on how it was installed by the
7 various contractors.

8 Q. Okay. Thank you.

9 And I don't think this is really Omni's
10 issue, but I have a tough time understanding
11 this, and it's the introduction of the
12 reference to the "common area."

13 So you added the language -- and this is
14 on Page 65 of Exhibit 20 I'm referring to --
15 all services from the main to the property
16 line or common area. Isn't that the same
17 thing? I mean, if you got a main and it's
18 going to the property line, then there's --
19 either the property of an individual owner
20 starts at some geographic location or the
21 common area starts at a geographic location.
22 So aren't you kind of talking about the same
23 thing?

24 A. (Vaughan) If we're talking about exclusively

1 common areas.

2 Q. So the service pipe from the main to the
3 property line or common areas owned by and
4 maintained by the Company?

5 A. (Vaughan) Correct.

6 Q. Once it gets past the property line or into a
7 common area, then it's the customer's.

8 A. (Vaughan) Once it's beyond the curb stop,
9 it's the customer's, ideally, as I said
10 before.

11 Q. Wherever it might be.

12 A. (Vaughan) Wherever it might be. This is
13 common industry practice.

14 Q. What is?

15 A. (Vaughan) The location and the language that
16 pertains to curb stop locations and
17 demarcation, if you will, of maintenance
18 responsibility.

19 Q. And that typically, conventionally it would
20 be nice if all curb stops were at the
21 property line, but sometimes they're not.

22 A. (Vaughan) That's absolutely correct.

23 MR. GETZ: If I could take a
24 moment, Madam Chair, there's a lot of

1 discussion this morning that I want to take a
2 look back at.

3 CHAIRWOMAN MARTIN: Sure. Do you
4 need a break?

5 MR. GETZ: A five or ten-minute
6 break would be very helpful to make sure that
7 I've covered everything I want to.

8 CHAIRWOMAN MARTIN: Can you do it
9 in five or do you need ten?

10 MR. GETZ: I would like ten,
11 please.

12 CHAIRWOMAN MARTIN: Okay. We'll
13 come back at 2:30. Let's go off the record.

14 MR. GETZ: Thank you.

15 (Brief recess was taken at 2:23 p.m.,
16 and the hearing resumed at 2:35 p.m.)

17 CHAIRWOMAN MARTIN: Okay. Looks
18 like we have everybody back. Let's go back
19 on the record.

20 Attorney Getz.

21 MR. GETZ: Thank you, Madam Chair.
22 I appreciate the extra time. It allowed me
23 to conclude that I have no further questions.

24 CHAIRWOMAN MARTIN: Okay.

1 Excellent. Thank you.

2 Mr. Mueller, do you have questions?

3 MR. MUELLER: Yes, I do. Thank
4 you.

5 CROSS-EXAMINATION

6 BY MR. MUELLER:

7 Q. So my first question would be for Mr. Gallo.
8 And I would refer you to the tariff language
9 that we've talked a lot about today,
10 Exhibit 20, Page 65. Let me know when you're
11 there.

12 A. (Gallo) I was on mute. Yes, I have it.

13 Q. I'm going to refer to -- this is Section
14 1(b)(2) under Condominiums and Other
15 Multi-Family Residences. I'm going to read
16 the second sentence in that paragraph. It
17 says, "From the property line or common area
18 to the premises served, the service pipe
19 shall be installed, owned and maintained by
20 the association or customer."

21 What I'm trying to do is -- this morning
22 your statement, your testimony was if the
23 curb stop is within the common area, the
24 Company would own up to the curb stop. So my

1 question to you is: As a homeowner where
2 that is the situation, that curb stop is
3 clearly within that common area, how do I
4 reconcile those two? Your testimony this
5 morning seems different than that sentence I
6 just read out loud.

7 A. (Gallo) My testimony said that from -- we
8 would -- mains within the common area, that's
9 correct, we would own up to the curb stop.

10 Q. So if the curb stop is within the common
11 area, you would own up to the curb stop?

12 A. (Gallo) That's correct.

13 Q. Okay. That does not seem to be what that
14 sentence says that I just read out loud.
15 Again, as a homeowner in that situation, I'm
16 very confused.

17 A. (Gallo) I would -- I would still stand by our
18 assertion that it own -- we own up to the
19 curb stop.

20 Q. So in this situation, which usually dictates?
21 Is it the written word in the tariff or is it
22 your testimony from today?

23 A. (Gallo) As the terms and conditions are in
24 the tariff, you know, I assume that would

1 apply over my assertion.

2 A. (Vaughan) In practice, in practice, we would
3 consider ownership and maintenance of that
4 service from the main to the curb stop, no
5 matter where it's located in common area.

6 Q. Would you consider changing this tariff
7 language then to say that?

8 A. (Vaughan) Yes.

9 Q. You would?

10 A. (Vaughan) Yes.

11 Q. Okay. Thank you.

12 My second question, who do I want to ask
13 this of? So I'll go to Mr. Vaughan. So this
14 is Exhibit 12, Page 71.

15 A. (Vaughan) Page 71.

16 Q. To help you out, it's a map of Rosebrook
17 Townhomes with your water main.

18 A. (Vaughan) Exhibit 12. And what page?

19 Q. Page 71.

20 A. (Gallo) I don't know if we have that.

21 Exhibit 12 is -- doesn't have that many
22 pages. Exhibit 12 has the tax cards and
23 doesn't have the -- it only has the Omni
24 Hotel map for Exhibit 12.

1 Q. Well, it may then be -- I had it as 12. It
2 may be 11.

3 A. (Gallo) Okay. Yup.

4 Q. Okay. Sorry. And that's the map that shows
5 Rosebrook Townhomes?

6 A. Page 71 you said?

7 Q. Page 71.

8 A. (Gallo) Right there.

9 A. (Vaughan) Yes, I have it.

10 Q. Okay. And the writing that somebody put in
11 red says Abenaki Water owns and maintains
12 water mains... to the curb stops through the
13 common areas.

14 Since this shows your pipes going up
15 Rosebrook Lane servicing Rosebrook Townhomes,
16 my association right next to it, which is
17 Rosebrook Club, as far as cottages, can you
18 direct me to where on Exhibit 13 --
19 Exhibit 13 is the exhibit from this morning,
20 where we were going over the continuing
21 property records -- can you show me where
22 that would be in Exhibit 13.

23 A. (Vaughan) 13? I may or may not... I'm
24 looking -- I don't think that can be

1 determined from a quick look in Exhibit 13.
2 Dates of construction, I've got that. Not
3 readily determined.

4 Q. Okay. I agree with you. I couldn't tell
5 either. I looked at Accounts 331 and
6 couldn't tell where those water mains might
7 be. But thank you.

8 And then again back to Exhibit 12. Give
9 me a minute, just want to make sure I have
10 the right pages here. So Exhibit 12, Page
11 71, and then the next page, Page 72.

12 A. (Gallo) All right. We're back on 11.

13 Q. Eleven. I'm sorry. Eleven.

14 A. (Gallo) Seventy-one and 72?

15 Q. Yes.

16 A. (Gallo) Okay.

17 Q. So Page 71 says Rosebrook Townhomes and
18 Page 72 says Rosebrook Club, which was -- I
19 believe this was prepared by Abenaki to show
20 the maps and then show a definition of common
21 rights and ways. Mr. Gallo, I think you
22 referred to that this morning, that you have
23 extracts of condominium docs showing what
24 private and public rights-of-ways are.

1 My question to you is: You're aware
2 that Rosebrook Townhomes and Rosebrook Club
3 are two totally different associations?

4 A. (Gallo) Yeah. I may very well have conflated
5 that during my preparation of this. Is --
6 are both of them still condominium
7 associations?

8 Q. They're both condominium associations, yes.

9 A. (Gallo) Okay.

10 Q. And they're next to each other. I just
11 didn't want people to be confused that those
12 condo docs went with that map.

13 A. (Gallo) Okay. That's my understanding with
14 condominiums; anything outside the walls is
15 still common property.

16 Q. Okay. And then on that same exhibit, Page
17 48, there is a map that shows Mountain View
18 Homes.

19 A. (Gallo) Okay.

20 Q. You're aware that there is not a condominium
21 association by the name of Mountain View
22 Homes? That it is actually Rosebrook Club.

23 A. (Gallo) Okay. I don't believe on that -- I
24 don't believe on that exhibit I stipulated it

1 was a homeowners association. It is a common
2 lot, you know, per the tax records.

3 MR. MUELLER: Okay. Thank you.
4 That's all I have, Commissioner.

5 CHAIRWOMAN MARTIN: All right.
6 Thank you.

7 And Attorney Tuomala, do you have
8 questions?

9 MR. TUOMALA: I do, Madam
10 Chairwoman. I have a few.

11 CROSS-EXAMINATION

12 BY MR. TUOMALA:

13 Q. These are directed towards Mr. Vaughan and
14 Mr. Gallo. Good afternoon, gentlemen.

15 A. (Gallo) Good afternoon.

16 Q. My first question is just a point of
17 clarification, and I don't know if you can
18 recall the testimony that was earlier this
19 morning regarding I think it was DW 17-165,
20 the last Rosebrook rate case and discussion
21 regarding the test year.

22 I believe that, Mr. Vaughan, you
23 testified that it was probably a 2016 test
24 year. But I wanted to ask specifically.

1 wasn't the test year for Rosebrook in 17-165
2 a hybrid test year consisting of the last
3 quarter of 2016 and the first three quarters
4 of 2017?

5 A. (Vaughan) Yes, I believe it was.

6 Q. Okay. Thank you for that, Mr. Vaughan.

7 A. (Vaughan) Yeah.

8 Q. Next couple of questions, either Mr. Gallo or
9 Mr. Vaughan. I want to direct your attention
10 to Exhibit 2, again, the property records
11 that we've been referencing on Bates Pages 3
12 and 4. I think all my questions are going to
13 be specifically on Page 3 of Exhibit 2. Are
14 you both there?

15 A. (Vaughan) Yes.

16 Q. Okay. Thank you. And back to Mr. Gallo's
17 testimony earlier. Is it the Company's
18 position that the pipe in question, it's
19 reasonable to believe that it was installed
20 in 1985? Is that correct?

21 A. (Gallo) According to the records that have
22 been presented that were obtained from the
23 acquisition, that would be correct, according
24 to those documents.

1 Q. Okay. Thank you. And specifically in the
2 entry for 1985 and Exhibit 2 that lists --
3 I'm sorry, I'm going to have to switch to the
4 PDF because I'm having a bit of a difficult
5 time reading my printout.

6 That lists there in 1985 the 8-inch main
7 extension to MW Hotel and Bretton Arms. Is
8 it the Company's position that the pipe in
9 question that ruptured on Easter of last year
10 would be covered by this entry with the 45 --
11 4450 linear feet of 8-inch water main? Is
12 that reasonable?

13 A. (Gallo) No.

14 Q. It is not?

15 A. (Gallo) No, we do not believe.

16 Q. Okay. And so a follow-up to that. My
17 question is: You've been referencing the
18 pipe in question that ruptured. It's a
19 service line, that's the Company's position,
20 not a water main extension?

21 A. (Gallo) Correct.

22 A. (Vaughan) That's correct. Actually, it was a
23 tapping saddle on the 8-inch main.

24 Q. I'm sorry. Could you repeat that,

1 Mr. Vaughan?

2 A. (Vaughan) It was actually a tapping saddle on
3 the 8-inch main.

4 Q. Could you briefly explain what a tapping
5 saddle is for me.

6 A. (Vaughan) A tapping saddle is a fitting on
7 the main that provides the method to service
8 a building. So it's basically a branch, a T
9 of some sort.

10 Q. Okay. Thank you for that clarification.

11 And to the argument earlier, I guess,
12 spawned from a question from Staff about the
13 pipe in question possibly being CIAC.

14 Is it the Company's position that it's
15 not CIAC because your records do not show
16 CIAC in either a 309 or 331 account prior to
17 1996? Is that correct?

18 A. (Vaughan) Correct.

19 Q. Is it reasonable, though, since as the
20 Company has pointed out, that the records,
21 when it acquired the Rosebrook system -- I
22 believe the Company's position was the
23 records weren't complete. Is it possible
24 that the CIAC records pre-1996 are also not

1 complete?

2 A. (Vaughan) It's possible. There's a lot of
3 possibilities. There's a lot of speculation
4 that is revolving around the CPRs.

5 Q. Okay. Thank you for that, Mr. Vaughan.

6 And the last point of clarification that
7 I had, I think it was in a discussion with
8 Mr. Gallo about the purpose of the curb stop
9 or the shut-off valve. And the Company's
10 position is that there's two near Base Road
11 or in Base Road and one to the Mount
12 Washington Hotel and one to the Bretton Arms.

13 Could you repeat the reason for the
14 shut-off valve, the curb stop? I believe you
15 stated that it's to shut off service to the
16 customer. Is that correct?

17 A. (Gallo) It would be to shut off service. A
18 curb stop would be to shut off service to a
19 property -- in this case, a private property.

20 Q. And in that case, that would be either for a
21 leak or possibly a non-payment of bills? Is
22 there any other reason that you would shut
23 off service to that property?

24 A. (Gallo) If there was a major renovation where

1 they needed the main service shut down, that
2 would be another possibility.

3 MR. TUOMALA: Okay. Just one
4 moment, Madam Chairwoman. I'm going to look
5 over my notes. But I do not think... I do
6 not have any further questions. Thank you,
7 gentlemen.

8 CHAIRWOMAN MARTIN: All right.
9 Thank you.

10 Commissioner Bailey, do you have
11 questions?

12 COMMISSIONER BAILEY: Yes. Thank
13 you.

14 QUESTIONS BY COMMISSIONER BAILEY:

15 Q. Mr. Vaughan and Mr. Gallo, do you have the
16 big paper map that we have as an exhibit?

17 A. (Vaughan) Yes.

18 A. (Gallo) Takes up a bit of lap room.

19 Q. I know.

20 A. (Gallo) Okay. We have it.

21 Q. Okay. Could you tell me about how far it is
22 from the, I think it's -- well, I'm looking
23 at the 8-inch main along Base Road, from the
24 connection to Mount Washington Place on

1 Base Road to the section that's going into
2 Bretton Arms.

3 A. (Gallo) Okay.

4 Q. No need to write this down.

5 A. (Gallo) Looking at the scale of the map,
6 roughly -- probably roughly 3,000, 3500 feet,
7 somewhere around there.

8 Q. Okay. And if you look at Exhibit 2, Page 3,
9 8-inch water main that's 4,450 linear feet,
10 where is that 4,450 feet? That's almost a
11 mile.

12 A. (Gallo) It's -- you know, the pass -- you
13 know, the as-builts, as Ms. Oleson described
14 earlier, were inaccurate in places, and some
15 places it was missing information. So that's
16 been I think -- I think that's been one of
17 the major struggles here is to, you know,
18 properly assign main lengths to certain areas
19 of the system. So I don't think it could be
20 stated definitively, you know, what
21 measurements go to which areas of the system.

22 Q. Is it possible that that measurement could
23 have gone all the way to the hotel?

24 A. (Vaughan) It would be speculation.

1 Q. Okay. You know, the shut-off valves that are
2 close to the hotel?

3 A. (Vaughan) Yes.

4 Q. What were they -- do you know when they were
5 installed?

6 A. (Vaughan) No.

7 Q. Maybe Ms. Oleson can help. Did you ever
8 operate those valves?

9 A. (Oleson) No, we never operated them because I
10 would have turned the hotel -- the water off
11 completely to the hotel and we would need
12 special permission, basically, to do that.
13 So, no, we never turned those valves.

14 Q. Did you ever turn the curb stop off?

15 A. (Oleson) No. No, we just kept it clear to
16 make sure we could get the wrench on it in
17 case we had to, but we never turned it off.

18 COMMISSIONER BAILEY: Okay.

19 Commissioner Giaimo had follow-up. Go ahead.

20 QUESTIONS BY COMMISSIONER GIAIMO:

21 Q. I just had to get unmuted. I just want to
22 make sure I understand. You said you would
23 have never turned off the shut-off nearest
24 the building, you would have only gone to the

1 curb stop? Ms. Oleson, you would only shut
2 off from the Base Road?

3 A. (Oleson) How did she word that? She said to
4 test it or something. No, we wouldn't do it
5 to exercise that without permission. We
6 wouldn't even do the other. In the case of
7 an emergency, if we had to shut everything
8 off, we just had that area cleared, that one
9 curb stop cleared of snow and debris.

10 Q. What are the shut-off valves that are close
11 to the building for?

12 A. (Oleson) Just the hotel.

13 A. (Gallo) Well, there's also several shut-off
14 valves on the property. As I mentioned
15 earlier, in a campus setting like that, you
16 would want to have the ability to isolate any
17 building for renovations, emergencies. You
18 know, not unlike what you would see on a
19 college campus, you know, the ability to
20 isolate buildings for purposes that I
21 mentioned.

22 COMMISSIONER BAILEY: Chairwoman
23 Martin, do you have a follow-up, too?

24 CHAIRWOMAN MARTIN: I do. I just

1 want to get clarity so I make sure I'm
2 looking at exactly the same thing on the same
3 exhibit.

4 QUESTIONS BY CHAIRWOMAN MARTIN:

5 Q. Ms. Oleson, you're probably the best person
6 for this. But can you point us to exactly
7 where on this exhibit the two curb stops that
8 you referenced are located?

9 A. (Oleson) The two curb stops on the Base Road?

10 Q. Yes.

11 A. (Oleson) Yes, right as they come off Base
12 Road as they make the turn. It's like an
13 almost -- well, it's not even a turn. But
14 it's two distinct corners. They're right on
15 that (connectivity issue)

16 (Court Reporter interrupts.)

17 A. (Oleson) I don't remember what I said. The
18 corner, they're right on the corner.

19 A. (Gallo) If I could just add to that. If
20 you're looking at that map, there is a point
21 where it splits those two directions. It's
22 right at that point where it splits the curb
23 stops are located.

24 Q. Splits to go where?

1 A. (Gallo) One line splits to go to the hotel,
2 and the other line splits to go to the
3 Bretton Arms area.

4 Q. Okay. So it goes to Bretton Arms and then to
5 the hotel or vice versa?

6 A. (Gallo) No. There are two separate lines.
7 There is a common -- there is an 8-inch main
8 that runs down Base Road. From there, where
9 you see that Y where they split, one goes
10 down to Bretton Arms and one goes to the
11 Mount Washington Hotel. So there's two lines
12 shown there.

13 Q. And between the two it travels for some
14 distance on Base Road.

15 A. (Gallo) That is the one that goes to the
16 hotel.

17 Q. And there is a curb stop for the hotel one
18 located where?

19 A. (Gallo) That is where that Y -- where they
20 split at that Y.

21 Q. So they're both located there?

22 A. (Gallo) Correct.

23 CHAIRWOMAN MARTIN: Okay.

24 Commissioner Giaimo, I'm sorry. Did you have

1 something else?

2 [No verbal response]

3 CHAIRWOMAN MARTIN: Okay. I just
4 wanted to make sure I was perfectly clear as
5 to where they were located. Thank you.

6 QUESTIONS BY COMMISSIONER GIAIMO:

7 Q. And I was hoping to resolve the same thing.

8 So there are two separate lines, two
9 separate curb stops. It's not a situation
10 where the 8-inch line becomes the 6-inch line
11 and splits at the Y, and then it's a 6-inch
12 line and then there's another curb stop
13 270 feet east?

14 A. (Gallo) No, there's only -- the line --
15 there's an 8-inch line on Base Road and then
16 there's two curb stops there. One directs
17 flow out to the hotel, and the other --
18 (connectivity issue)

19 (Court Reporter interrupts.)

20 A. (Gallo) There's two curb stops. One is the
21 6-inch that branches off to the Bretton Arms,
22 and the other is an 8-inch valve that
23 branches off to the Mount Washington Hotel.

24 CHAIRWOMAN MARTIN: Commissioner

1 Giaimo.

2 Q. And they're at the same exact location of
3 the Y. So the curb stop for the 8-inch line
4 that goes to the hotel isn't 270 feet east of
5 the initial Y?

6 A. (Gallo) No. They're located -- they're
7 located probably, I'd say, within, you know,
8 just offhand, about 15 feet, you know,
9 probably somewhere in that vicinity. But not
10 more than that.

11 QUESTIONS BY COMMISSIONER BAILEY:

12 Q. So, then, the service line that the hotel
13 would own travels partly along Route 302?

14 A. (Gallo) As I said earlier, you know, these
15 are placed at or about the property line. So
16 it may, you know, depending on the exact
17 layout, which, you know, we can't say for
18 certain, you know, without obviously a survey
19 or something. It may run in a portion of
20 302. It may just run on the Omni property
21 and then turn towards the hotel.

22 But, again, as I said earlier, you know,
23 in my personal experience, you know, even if
24 it was in route -- or in the Base Road, I

1 have had experience where I've run a utility,
2 a private utility, a portion down a
3 right-of-way and then into a private
4 property.

5 Q. And you've had experience with this utility
6 where the point of demarcation is not at the
7 road?

8 A. (Gallo) Excuse me. Is not at?

9 Q. Is not at the property line?

10 A. (Gallo) Well, there isn't -- I'm sorry. I
11 might be misunderstanding. Is there an
12 actual property line demarcation there? Is
13 that your question?

14 Q. No. You said that you've had experience in
15 other places where somebody's private service
16 line that they have to maintain is along a
17 public way, like 302. And I'm asking you in
18 this case, you also have the experience where
19 the curb stop was not at the property line,
20 it was further into the property?

21 A. (Gallo) Correct. And it's at or about the
22 property line. So I think the general rule
23 that, you know, I think what most people
24 understand within the utility industry, is

1 that, you know, when you're installing these
2 curb stops, it's not necessarily you always
3 have a survey location that says this is
4 where you put it. Oftentimes it may just,
5 you know -- you know, a contractor is out
6 there and, you know, it's not always the case
7 where, you know, especially in a water line
8 installation, where you would have, you know,
9 a surveyed location for a curb stop.

10 Q. You think that this situation could be a
11 little unusual because the hotel owned the
12 water company when this was installed?

13 A. (Gallo) Potentially, yeah. You know, if they
14 kind of did what they wanted back then, you
15 know, I guess it could potentially.

16 Q. I imagine that when the hotel owned the water
17 utility they maintained that line all the way
18 to the hotel.

19 A. (Gallo) From the curb stop?

20 Q. From the curb stop to the hotel, yeah.

21 A. (Gallo) Yeah. From the curb stop to the
22 hotel, we would expect that they would
23 maintain that line. Correct.

24 Q. And when Rosebrook bought the system, did

1 your expectation change?

2 A. (Gallo) I think that was always the case,
3 wasn't it, that, you know, the customer owned
4 from the curb stop to the building?

5 A. (Vaughan) Correct.

6 Q. If you can jump in, Don.

7 A. (Vaughan) Correct. We bought the Rosebrook
8 Water Company with the understanding and the
9 knowledge that the 8-inch main was not part
10 of the assets that we purchased, even though
11 I -- yes, so I'll end it right there.

12 Q. Ms. Oleson, when you were working, when you
13 were operating the system, did you ever have
14 to do any maintenance from the curb stop to
15 the hotel?

16 A. (Oleson) No. No. Not that I remember.

17 Q. But I think you testified earlier that you
18 believed at that time that that was a service
19 line part of...

20 A. (Oleson) Yes, that's my understanding.

21 Q. Okay. Can we look at Exhibit 2, Page 2. The
22 very last words on that page, it says,
23 "Please see the partial listing attached."

24 A. (Gallo) Okay. We see that sentence.

1 Q. What do you mean by "partial listing"?

2 A. (Gallo) Right here.

3 A. (Vaughan) I think when this was written --
4 now, when was this? This was back in
5 February -- I'm not sure. I don't have a
6 complete answer for that.

7 Q. Doesn't it seem like it means incomplete?

8 A. (Vaughan) No, I don't think that. Let me
9 just see how this says. It could -- I'm not
10 sure exactly. I don't know why the word
11 "partial" is in there.

12 Q. Okay. Mr. Vaughan, you said in response to
13 one of Mr. Getz's questions that the most
14 recent tariff eliminated -- I thought this is
15 what you said. Sorry, this is
16 paraphrasing -- that the most recent tariff
17 eliminates your obligation to the 8-inch line
18 from Base Road to the hotel.

19 A. (Vaughan) Yes.

20 Q. So does that mean you were obligated before
21 you changed that tariff language?

22 A. (Vaughan) Well, might have been a poor choice
23 of words. If I said "eliminated," I meant to
24 probably say that it did not include the

1 obligation to maintain the service from Base
2 Road to the hotel.

3 Q. But there was a change that we talked about
4 in that hearing that Mr. Getz referenced.

5 A. (Vaughan) No, that was a transcript I think
6 that he was referring to.

7 Q. Yeah, it was a conversation between you and
8 I. I remember asking you these questions.

9 A. (Vaughan) Yes. And that had to do with
10 common areas. That had to do with services,
11 particularly, as I said before, services that
12 were located very close to the premises or
13 they're in shrubs or very difficult to
14 access. And so that was the context I think
15 that we said that, if I'm not mistaken, we
16 would make minor adjustments in the location.
17 And we have not done that and we don't have
18 any plans to do that in the near term.

19 Q. Well, I think I remember you saying that if
20 there was a new installation, that you would
21 locate the curb stop at the property line.

22 A. (Vaughan) Yes. And that would be reasonable.
23 Any new locations, we would install a curb
24 stop at the property line.

1 Q. And couldn't I interpret what you just said
2 about difficulty in accessing the valves to
3 equate to the difficulty you would have to
4 accessing the valves that are right next to
5 the hotel?

6 A. (Vaughan) I'm not sure I understand --
7 understood the question. Would you please
8 repeat that, please.

9 Q. Yeah. I'm having a hard time understanding
10 what the purpose of the valves next to the
11 hotel are for. I mean, they seem to me to
12 be -- they had the ability for somebody to
13 shut the water off right up by the hotel.
14 And when the hotel owned the water system,
15 you know, I guess there probably wasn't a
16 distinction between that place and the curb
17 stop. And so I understand why the hotel
18 thinks that that line to the hotel from the
19 curb stop is your maintenance responsibility.
20 And I just...

21 A. (Vaughan) Well, we don't take that position,
22 obviously, Commissioner.

23 Q. I know. And I'm trying to understand.

24 A. (Gallo) Well, as I mentioned earlier, it's

1 not uncommon in a campus situation to have
2 shut-off valves at multiple buildings.
3 Again, I liken it to a college campus where
4 they -- you know, a college would own a piece
5 of property, but they would have the ability
6 to shut down certain buildings, you know.
7 And again, I mentioned this before, based on
8 emergency situations, you know, a fire, you
9 know, a break -- a water break in the
10 building, renovations that may need to happen
11 where they'll take the building out of
12 service for some time, you know, where they
13 wouldn't want to have, you know, standing
14 water in their pipes that might freeze over
15 the winter, I mean, there's -- you know,
16 there's various situations in which you would
17 have multiple shut-off valves on a campus.

18 A. (Vaughan) And if I may add to that,
19 Commissioner. The new hotel addition is a
20 66-unit hotel, as I understand it. It's a
21 freestanding building. We were asked to shut
22 two valves off, and they were new valves
23 installed by the contractor specifically to
24 shut the domestic service off at the new

1 hotel addition. That's a 4-inch valve, as
2 well as a 6-inch fire flow -- fire line valve
3 at the hotel addition. So those are other
4 examples of isolation valves used
5 specifically to shut domestic and fire line
6 service off at that particular building, and
7 they cannot be construed as curb stops. They
8 are no way understood to be curb stops. If
9 they were curb stops, then Omni would be
10 moving the goal posts further and further and
11 further onto the campus.

12 Q. But did you shut those valves off?

13 A. (Vaughan) We were requested to. We did, and
14 we charged the contractor who asked us to do
15 that.

16 Q. Okay. Mr. Gallo, on a college campus does
17 the college generally own all the
18 infrastructure on the campus property?

19 A. (Gallo) I would say yes. We may have town
20 roads going through an area. But I would say
21 that, you know, when it goes to their
22 buildings, yes, they would own that.

23 A. (Vaughan) And particularly with regard to
24 hospitals, hospitals occupy large expanses of

1 real estate infrastructure all over the
2 place, all owned by the hospital.

3 Q. Okay. All right.

4 COMMISSIONER BAILEY: I think
5 that's all I have, Madam Chair. Thank you.

6 A. (Vaughan) Thank you.

7 CHAIRWOMAN MARTIN: Okay.
8 Commissioner Giaimo.

9 QUESTIONS BY COMMISSIONER GIAIMO:

10 Q. Good afternoon.

11 A. (Gallo) Good afternoon.

12 Q. So does Abenaki have an assertion as to why
13 the leak happened? Timing? Age?

14 A. (Vaughan) Yeah, it's probably a combination
15 of everything. Combination of pressure,
16 combination of age, maybe workmanship in the
17 original installation. Those are plausible
18 theories.

19 Q. You mentioned the expansion. Where on the
20 map is the expansion? Can you point that out
21 to us? Did that have anything to do with it,
22 the expansion, work on the expansion?

23 A. (Vaughan) No. Expansion is subsequent to the
24 leak. And the expansion is -- (connectivity

1 issue)

2 (Court Reporter interrupts.)

3 CHAIRWOMAN MARTIN: Commissioner
4 Giaimo, can you mute in between just so Ms.
5 Robidas can hear? Thank you.

6 A. (Vaughan) The expansion was subsequent to the
7 leak and --

8 A. (Gallo) It's not shown on the map.

9 A. (Vaughan) And it's not shown on the map.

10 Q. Okay. The two new valves that were discussed
11 that are subject to, I believe, Exhibit 33,
12 are those the valves you were talking about a
13 second ago, Mr. Gallo, ones that were
14 associated with the 4-inch pipe and that you
15 shut off for -- (connectivity issue)

16 A. (Vaughan) Yes.

17 Q. Okay. I thought -- I actually thought I
18 heard Mr. Gallo earlier say that those were
19 on private property and they couldn't be
20 accessed by the utility and that you wouldn't
21 do it. But I guess maybe you would?

22 A. (Vaughan) We were (connectivity issue)

23 (Court Reporter interrupts.)

24 A. (Gallo) We did that as a contractor. The

1 contractor hired us, the New England Service
2 Company, to go out there and operate the
3 valves, particularly because of our
4 experience working with high pressures in the
5 system. But we did invoice the contractor,
6 you know, for those services.

7 Q. Thank you. That makes sense.

8 I'm not sure whose exhibit it is. The
9 exhibit number -- sorry -- 24, it talks about
10 the easements. Can you show us on the map
11 where the easement is? Is the easement the
12 two lines from the curb stop off of Base
13 Road?

14 A. (Gallo) The easements. This may be -- I
15 don't know if this was our exhibit. I'm
16 looking for a map of the easement. I don't
17 see it. As far as I know, there is no
18 easement that extends all the way to the
19 hotel building.

20 CHAIRWOMAN MARTIN: Commissioner
21 Giaimo, can you point us more specifically on
22 the exhibit to the location?

23 COMMISSIONER GIAIMO: That's
24 actually what I'm looking for.

1 CHAIRWOMAN MARTIN: Okay.

2 COMMISSIONER GIAIMO: I'm wondering
3 where it is on the map.

4 CHAIRWOMAN MARTIN: I have the same
5 question. That's why I'm asking. And I
6 couldn't find it either.

7 MS. BROWN: It is in my follow-up,
8 by the way.

9 COMMISSIONER GIAIMO: I can wait
10 with the -- I can live with the suspense,
11 Madam Chair. Should I wait or --

12 MS. BROWN: Be easier if I could
13 offer to just direct the witness to the
14 relevant documents.

15 CHAIRWOMAN MARTIN: If you could
16 point us to it, I think it would be most
17 helpful.

18 MS. BROWN: All right. Because if
19 you notice, Commissioner Giaimo, Exhibit 24,
20 the first two deeds deal with the protective
21 well radius. Those are shown on one of the
22 maps. I thought I would be able to save the
23 day and point you to the right map. Shoot.
24 I thought I could save the day. It's going

1 to take a bit to find them. I apologize.

2 COMMISSIONER GIAIMO: I'm happy to
3 keep going with the line of questioning, if
4 that's okay.

5 CHAIRWOMAN MARTIN: Commissioner
6 Giaimo, I don't know if -- (connectivity
7 issue)

8 (Court Reporter interrupts.)

9 CHAIRWOMAN MARTIN: I was telling
10 Commissioner Giaimo that we had lost
11 Ms. Oleson again, and I wanted to make sure
12 he didn't need her available for his
13 questions. If so, we should pause and get
14 her back.

15 COMMISSIONER GIAIMO: I don't think
16 my questions are specific to some of the
17 historical perspective that she could
18 provide. I guess to the extent that either
19 you or Commissioner Bailey feels like she
20 might be helpful, we could pause and then try
21 to get her back in.

22 CHAIRWOMAN MARTIN: Okay. Let's go
23 off the record for a second.

24 (Discussion off the record.)

1 CHAIRWOMAN MARTIN: So let's go
2 back on the record.

3 Commissioner Giaimo.

4 BY COMMISSIONER GIAIMO:

5 Q. Okay. Thanks. So my next question, see if I
6 can articulate this properly. If we look at
7 the map, Attorney Getz gave us an idea of the
8 property that Omni owns which the Company is
9 responsible for.

10 Now, my understanding maybe of the map,
11 and I guess I'm asking Mr. Vaughan and
12 Mr. Gallo to correct me if I'm wrong, but the
13 only places where there would be a leak,
14 based on the map and as I understand it,
15 where Omni is responsible is for, at least
16 according to Abenaki, is where the 6- and
17 8-inch line comes off of the curb stop. And
18 I want to make sure I understand that
19 correct. And if there is any other place on
20 this map where the -- where Abenaki would be
21 responsible for fixing a leak that's
22 associated with Omni's land.

23 A. (Vaughan) Would you repeat the last part of
24 that question? I didn't quite -- my speaker

1 is not -- a little garbled here.

2 Q. Based on -- looking on the map and knowing
3 where the property that Omni owns, where, if
4 there was a leak, would you be responsible
5 for repairing? Where on the map would the
6 Company be responsible?

7 Because from what I'm hearing -- where
8 would the hotel be responsible? Because what
9 I'm hearing is basically there are only two
10 lines right here, the 6-inch line and the
11 8-inch line from the curb stop, where the
12 hotel is responsible.

13 A. (Vaughan) And I understood the question.
14 Generally, Abenaki would be responsible for
15 every portion of the distribution system,
16 with the exception of the service line that's
17 dedicated to the hotel; that is, even where
18 the Abenaki mains went over Omni property on
19 the -- I think it's on the south side -- I
20 know it's on the south side of 302 where it
21 serves one association, goes through Omni's
22 property and serves another association,
23 Abenaki would be responsible for the repair
24 of those lines. Mains up to the curb stops.

1 And the reason for that is that Omni --
2 rather, Abenaki, has responsibility to
3 provide, you know, continuous service to the
4 extent that it's conceivable. And that would
5 accommodate that mission, that Abenaki would
6 repair that main, even if it were on the Omni
7 property on a ski slope.

8 As a matter of fact, the 650,000-gallon
9 storage tanks -- and it's shown incorrectly.
10 It's described as 600,000 gallons on the big
11 map. But there's a 16-inch main that goes
12 from the well house up to that tank over Omni
13 property. It's just a requirement that
14 Abenaki be responsible for that main. And I
15 hope that's been a clear explanation.

16 Q. Correct me if I'm wrong. That was the first
17 main installed before the area was developed?

18 A. (Vaughan) Yes.

19 Q. Okay. Is it fair and accurate to say that
20 based on this map, the only part of the map
21 that Omni is responsible for on Omni's
22 property are the two spurs that go from the
23 curb stop to the hotel and to Bretton Arms?

24 A. (Vaughan) Yes.

1 Q. Okay. So if there's a leak anywhere else,
2 we're not having this issue. It's only an
3 issue in this small, limited area of the
4 property.

5 A. (Vaughan) Yes, and particularly where it
6 serves one customer on one private parcel.
7 And that's a unique situation in the total
8 distribution system of the Rosebrook water
9 system.

10 CHAIRWOMAN MARTIN: Commissioner
11 Giaimo, can I get one point of clarity before
12 you move on?

13 COMMISSIONER GIAIMO: Please.

14 QUESTIONS BY CHAIRWOMAN MARTIN:

15 Q. Okay. So, Mr. Vaughan and Mr. Gallo, we
16 talked a few minutes ago about the location
17 of the curb stops, which you identified at
18 the point of the Y on Base Road. Between
19 that point where the curb stop for the hotel
20 is and where it goes off clearly into the
21 hotel property, it travels for some distance
22 on Base Road; correct?

23 A. (Gallo) This is something I had mentioned
24 earlier, that whether it's in the Base Road

1 right-of-way or just on the other side of the
2 property line on Omni's, it's difficult to
3 know that right now. But it does -- it does
4 shut off service to a private property. And
5 as I also mentioned earlier, I have had
6 experiences where, you know, there had been
7 exceptions made where you can actually put a
8 private service within a right-of-way.

9 Again, this all goes back to, you know,
10 predating the ownership -- our ownership of
11 the system. But at this point, you know, we
12 believe that that entire stretch from the
13 curb stop down, you know, does serve the
14 hotel because it's not -- it's a dead end to
15 that -- you know, to that use at the hotel.

16 Q. Do you have any evidence that that is the
17 case here, though, that this is laid in the
18 right-of-way with permission?

19 A. (Gallo) No, we don't. As I said before, it
20 was a hypothetical where, you know, at this
21 point you can't say definitively whether --
22 you know, it could be 2 feet on either side
23 of the property line. Who knows. You know,
24 it's -- like I said, it's speculation at this

1 point that -- you know, that's -- you know,
2 it's definitely in one area or another.

3 Q. I'm just trying to get at the distinction
4 between the 8-inch main that runs up to the Y
5 where the two curb stops are located and that
6 distance thereafter in or above the
7 right-of-way. What's the difference? Why
8 are they treated -- why are they treated
9 differently for purposes of the Omni
10 property? They both appear to be 8-inch.
11 They both appear to be in or about the
12 right-of-way. Why are they treated
13 differently?

14 A. (Gallo) Because it serves a single property
15 and, you know, we have the shut-off at the
16 property line.

17 CHAIRWOMAN MARTIN: Okay.

18 Commissioner Giaimo, I'm all set.

19 QUESTIONS BY COMMISSIONER GIAIMO:

20 Q. Okay. Switching gears slightly. So it's my
21 understanding that Abenaki's assertion is
22 that the hotel could dig a trench from the
23 walls of the hotel and start fixing
24 infrastructure because it's their

1 infrastructure. I want to make sure that's
2 right because -- make sure I understand, that
3 it's their responsibility. They could do
4 what they want with it.

5 A. (Vaughan) Did you say that they could start
6 (connectivity issue) their own
7 infrastructure? Is that what I heard you
8 say?

9 Q. No. My question was with the existing
10 infrastructure that's there, they could dig a
11 trench and fix the infrastructure because
12 it's their infrastructure, it's their pipe.
13 They can maintain and operate -- they can
14 maintain it as they see fit. I just want to
15 make sure I'm understanding that. That's
16 your assertion; correct?

17 A. (Vaughan) Well, no, not quite. We would have
18 to inspect it to make sure that it conforms
19 to our expected standards. As an example,
20 are they using the right pipe material? Is
21 it vented properly? Is it repaired properly?
22 Has it been inspected for leakage before it's
23 backfilled? And that would be standard for
24 any infrastructure that is owned by private

1 customers or commercial, whatever they be.
2 They're typically inspected during repairs by
3 the water utility.

4 A. (Gallo) I would just add, in the instance of
5 the hotel addition, you know, if there was a
6 new use off of the service line that required
7 additional demand, we would expect to be
8 consulted about that. You know, so the fact
9 that they can't go out there and add
10 additional services on that, that would
11 create demand because we would have to have
12 some input on that based on our system
13 capacity.

14 Q. I thought I recalled somewhere in one of the
15 exhibits a reference to the fact that you
16 were not, in fact, consulted with respect to
17 the expansion. Am I remembering correctly?

18 A. (Gallo) Yes, that's correct. If the service
19 line -- (connectivity issue)

20 (Court Reporter interrupts.)

21 A. (Gallo) That's correct. If they have a break
22 on their property, you know, they fix the
23 leak. But if it's a case of where they're
24 making adjustments or improvements to that

1 service line, which would include additional
2 uses that would require more demand, we would
3 have input on that. That's where we would
4 have the input, not necessarily if -- you
5 know, if they broke a -- you know, if they
6 broke the line between, you know, the hotel
7 shut-off in front of the hotel and around the
8 back to where the hotel is, or to where the
9 expansion is, you know, they would still be
10 responsible for repair there as well.

11 A. (Vaughan) And to that point, if I may make --
12 I think that was the question, that you
13 thought we should inspect the line if they
14 were making repairs. Well, in fact, what
15 happened relative to the hotel addition was
16 we were called at the last minute to shut the
17 main off, for what reason was not clear.
18 Although, as we were on the property, we
19 learned that they wanted to cap, I think it's
20 an 8-inch main that wraps around the hotel,
21 the location of which -- the valves location
22 of which we are not clear. We really don't
23 have records of those.

24 But we were advised to shut the main

1 down, which we did, so that they could start
2 construction of a -- actually, a demolition
3 of the spa -- the cabana, beg your pardon --
4 the cabana, and they could start construction
5 of the hotel.

6 So this is all last-minute. And it was
7 as if Omni did whatever they wanted to do and
8 owned that main and we were just incidental
9 to it.

10 Q. Okay. Thank you for the candor. Appreciate
11 it.

12 So I want to make sure I understand one
13 more thing. When Abenaki bought Rosebrook,
14 there was no specific itemizations of the
15 infrastructure. At least it sounds like
16 there was no true appreciation for the total
17 linear feet and all the infrastructure
18 associated with the system. Is that a fair
19 comment? And what was learned from it for
20 future purchases? Would there be a
21 requirement that everything is itemized?

22 A. (Vaughan) Everything is what again, please?

23 Q. Itemized. Specifically itemized.

24 A. (Vaughan) Well, obviously the infrastructure

1 on Omni property is not specifically located.
2 And what I mean when I say that, I mean as an
3 example, the mains. The mains are called out
4 as ductile lined. They're not ductile lined.
5 They're C900 mains -- in other words, "Blue
6 Brute" as they call it. Valves are not
7 located. We're not sure where the looping
8 goes.

9 So when we acquired the property, we
10 were acquiring only the assets. And I might
11 have said otherwise earlier in testimony. We
12 were only acquiring the assets exclusive of
13 what was on Omni property, that specific
14 property.

15 A. (Gallo) And I would also say, you know, you
16 mentioned, you know, in future purchases.
17 It's been our experience, you know, with
18 these smaller systems that have been, you
19 know, in this case, pieced together over
20 time. We have even smaller systems than that
21 in New Hampshire, where, you know, records
22 just weren't kept. So, you know, you've got,
23 you know, in some of these cases needy
24 systems that we've taken over and have

1 improved.

2 But as far as the due diligence goes,
3 you know, oftentimes there just aren't enough
4 records based on the way the system was
5 constructed, managed and operated. So we'd
6 like to do our best, you know, in making sure
7 everything is itemized. But, you know, we're
8 obviously in the water business, and we have
9 to, you know -- we wouldn't want to turn
10 away, you know, from a prospect. And, you
11 know, as I said, you know, most of the
12 systems just have very incomplete mapping.
13 It's not like a very large system where, you
14 know, records would have been kept, you know,
15 along the way.

16 And an additional point is that most of
17 these properties were developed originally by
18 Omni. So we would have -- you know, they
19 would have had to keep their own records I
20 guess I would say for that. So that's kind
21 of a long-winded answer. But, you know,
22 sometimes those are just difficult to come
23 by.

24 Q. And I appreciate it. And I appreciate the

1 uniqueness and the difficulty which the
2 company would have purchasing the stressed
3 system. So I certainly do appreciate that.

4 COMMISSIONER GIAIMO: Madam Chair,
5 those are the only questions I have. Thank
6 you.

7 CHAIRWOMAN MARTIN: Okay. Thank
8 you.

9 I'd like to start with the list of
10 easements that was included with the
11 complaint. And if counsel for any party
12 could point me to where that is in the
13 exhibits. I apologize. I have it up from
14 the complaint, not the exhibits. It's the
15 Schedule 1.1, purchased assets related to the
16 purchase of the water system.

17 MS. BROWN: It is, for the record,
18 Exhibit 16, Page 85.

19 WITNESS VAUGHAN: Exhibit 16.

20 MS. BROWN: And then it was
21 supplemented with Exhibit 24 so that we would
22 have the first two, or the first few
23 easements for the protective well radius.

24 QUESTIONS BY CHAIRWOMAN MARTIN:

1 Q. Just let me know when you're there.

2 A. (Gallo) Okay. We're there.

3 Q. Okay. Omni, in its complaint, claims that
4 this list included an easement or easements
5 from -- to the Rosebrook Water Company from a
6 predecessor of the Omni Company that grants
7 an easement to Rosebrook for maintenance,
8 operation, ownership of the water system
9 located on the private property.

10 Can you explain to me what the easement
11 listed in the purchase asset is for and why
12 it doesn't do what Omni claims that it does?

13 A. (Gallo) Is there a map of the easements to
14 determine where exactly these are?

15 Q. I don't have the map attached to the
16 complaint.

17 CHAIRWOMAN MARTIN: Attorney Brown,
18 do you know if there's a map that bears it
19 out?

20 MS. BROWN: There's no map
21 associated with each one of these easements.
22 However, on Exhibit 19, Page 6, the Horizon
23 map does show two of the well radius -- or
24 well radii. And also the well radii are

1 shown on another map produced by Omni, which
2 is Exhibit 18, Page 5.

3 But other than that, you have to
4 read the description and figure out who the
5 players were. And I did, in the memo of law,
6 go through these very specifically and
7 figured out which ones related and didn't
8 relate to the hotel parcel. But again,
9 there's no map for each one of these deeds.

10 BY CHAIRWOMAN MARTIN:

11 Q. If you're looking -- for the witnesses, if
12 you're looking at the attachment with the
13 purchased assets, and if you look at the one
14 titled "Deed of Easements GS Phoenix, LLC."

15 A. (Gallo) Let's see. Easement deed from
16 Rosebrook.

17 (Witness reviews document.)

18 A. (Gallo) Okay. Let's see.

19 Q. Have you seen that before?

20 A. (Gallo) Easement Deed. I'd have to look at
21 it for a second.

22 (Court Reporter interrupts.)

23 CHAIRWOMAN MARTIN: It's Deed of
24 Easements. GS Phoenix, LLC is the grantor to

1 Rosebrook Water Company as grantee.

2 BY CHAIRWOMAN MARTIN:

3 Q. And Ms. Oleson, if you know the answer to
4 this, you're welcome to jump in as well.

5 A. (Gallo) I do see that it's some -- you know,
6 for the water system currently serving the
7 Bretton Woods Resort. I don't see the hotel
8 on here mentioned explicitly. So without,
9 you know, without being explicitly stated and
10 seeing a map, you know, I couldn't speak to
11 where that easement would be on the
12 properties.

13 Q. Okay. That was going to be my question. Do
14 you have an understanding of this document
15 and what it relates to? Any of the three of
16 you.

17 A. (Gallo) Again, mapping, you know, property
18 records and mapping are incomplete or, you
19 know, just not available, maybe lost over
20 time. So, you know, as far as the mapping we
21 were going by, we don't have any easements on
22 our, you know, as-built drawings that extend
23 all the way to the hotel building.

24 Q. Does that say, though, if I read Paragraph 1,

1 "The perpetual right and easement to
2 construct, reconstruct, install, repair,
3 replace and maintain pipes, mains, manholes,
4 conduits, pumps, pump houses, storage tanks,
5 hydrants, wells, trenches and such other
6 appurtenances (all collectively referred to
7 as the 'Water System') as may be reasonably
8 necessary to provide water service to the
9 residents of the Bretton Woods Resort."

10 What do you think that means? Do you
11 have an idea of what that means?

12 A. (Gallo) I would speculate that it means we
13 would supply mains. It says service to, you
14 know, service to properties. You know, but
15 it doesn't necessarily mention service lines
16 to properties. So I don't -- again, that's
17 speculation. That's just what I can see as
18 being a possibility. But I don't see
19 anything, again, that explicitly states
20 anything to do with the hotel resort
21 property.

22 Q. Ms. Oleson, were you aware of this document
23 as the water system operator?

24 A. (Oleson) The document showing the easements?

1 Q. Yes.

2 A. (Oleson) No. Not that I recall.

3 Q. Okay. Thank you.

4 MR. GETZ: Madam Chair?

5 CHAIRWOMAN MARTIN: Yes, Attorney
6 Getz.

7 MR. GETZ: If I may, I can address
8 I think maybe some of the issues about the
9 easements.

10 CHAIRWOMAN MARTIN: Is it something
11 you need to do now, or can we wait?

12 MR. GETZ: I can wait.

13 CHAIRWOMAN MARTIN: Okay. All the
14 rest of my questions have been answered. I'm
15 just going to go through and make sure I
16 don't have any that haven't.

17 COMMISSIONER BAILEY: Madam Chair,
18 while you're looking, may I ask one more
19 question?

20 CHAIRWOMAN MARTIN: Go right ahead.

21 COMMISSIONER BAILEY: Thank you.

22 QUESTIONS BY COMMISSIONER BAILEY:

23 Q. On Exhibit 15, Page 2 --

24 A. (Gallo) Is that 15 or 16?

1 Q. Sixteen.

2 A. (Vaughan) Sixteen.

3 A. (Gallo) Okay. We're there.

4 Q. Why is there a valve and an exterior shut-off
5 for the hotel? Why are there two there?

6 A. (Gallo) Because as we were told at a
7 previous, I think it may have been a
8 technical session, that the hotel had then
9 tapped into that line and ran it around the
10 back of the building. So that was something
11 that was apparently constructed after the
12 service line to the main building was
13 constructed. So, again, that looks like it
14 was branched off. And again, that goes to
15 the fact that, you know, this was a service
16 line, and, you know, then it was just tapped
17 and brought to the back of the building to
18 serve another use. So that was done at a
19 later date.

20 Q. But the blue line on the big map, the
21 as-built map, goes behind the building,
22 doesn't it?

23 A. (Vaughan) No, it doesn't.

24 A. (Gallo) No. The big map just shows it going

1 to the main hotel building. It doesn't show
2 that additional line wrapping around the
3 back.

4 Q. So where it goes in between the two
5 buildings, that's not the wrapping around --
6 oh, no, I guess...

7 A. (Gallo) No. I think on the large-scale map,
8 it shows it going into -- yeah, I'm not sure.
9 I'm not sure where that map shows it entering
10 the building is the correct location.

11 But as I said during previous, again, I
12 don't know if it was a hearing or technical
13 session, I mean, it was stated that service
14 line was extended around the back of the
15 building.

16 Q. Who stated that? Ms. Oleson?

17 A. (Gallo) No. I believe at the time it might
18 have been a technical session. I believe
19 Mr. Elms may have mentioned that.

20 COMMISSIONER BAILEY: Okay. Thank
21 you, Madam Chair.

22 CHAIRWOMAN MARTIN: Looks like we
23 lost Ms. Oleson again in the interim.
24 Mr. Wind, are you able to communicate with

1 her? I have one question for her.

2 MR. WIND: She has been rejoining
3 as she's able. So let's give her a minute.

4 CHAIRWOMAN MARTIN: Okay.

5 (Pause in proceedings)

6 QUESTIONS BY CHAIRWOMAN MARTIN:

7 Q. I can ask questions in the interim of
8 Mr. Vaughan and Mr. Gallo, if you know.

9 Do you know if there are
10 backflow-prevention devices on either the --
11 what you're calling the curb stop at the Y on
12 Base Road or at the shut-off valves that are
13 in the property?

14 A. (Vaughan) Backflow devices did you say?

15 Q. Yes.

16 A. (Vaughan) They wouldn't be located -- they
17 would not be located as depicted in the blue
18 lines. They'd be within the building.

19 Q. So the backflow-prevention devices are
20 located in the building, the Bretton Arms
21 building and the Omni Hotel building?

22 A. (Vaughan) Yes, and it would be multiple
23 backflow preventing devices.

24 CHAIRWOMAN MARTIN: Okay.

1 Mr. Wind, were you able to connect with her?

2 A. (Gallo) I would just add to that, if I could,
3 that pipes typically where
4 backflow-prevention devices are placed are at
5 the buildings. You know, it's not often that
6 you would see a backflow-prevention device
7 out at a curb stop.

8 CHAIRWOMAN MARTIN: Okay. Thank
9 you.

10 Let's go off the record for a
11 second and see if we can get Ms. Oleson.

12 (Discussion off the record)

13 MR. WIND: I believe she has
14 rejoined, so -- (connectivity issue)

15 A. (Oleson) I'm sorry. I can hear you but --

16 BY CHAIRWOMAN MARTIN:

17 Q. Thank you. And I apologize because I only
18 have one question. But I was wondering
19 during your tenure, I think you indicated you
20 started in 2007 or '08.

21 A. (Oleson) Yes.

22 Q. And the tariff language changed in 2011. How
23 were commercial buildings treated?

24 A. (Oleson) I'm sorry. How were they what?

1 Q. How were they treated? They weren't
2 identified in the tariff. And you only had
3 two categories, residential or the multiple
4 condo-type situations. How were the
5 commercial buildings treated?

6 A. (Oleson) And I'm sorry. As far as repairs to
7 lines or --

8 Q. Yes.

9 A. (Oleson) I don't know that it came up during
10 that time. Yeah. Or if it -- yeah, I can't
11 think of an instance where it came up. But
12 we would have probably treated it the same as
13 the condos, as far as being responsible up to
14 the curb stop.

15 Q. Okay. Thank you. I don't have any other
16 questions.

17 CHAIRWOMAN MARTIN: Commissioners,
18 do you have any follow-up questions before we
19 go back?

20 [No verbal response]

21 CHAIRWOMAN MARTIN: Okay. Attorney
22 Brown.

23 REDIRECT EXAMINATION

24 BY MS. BROWN:

1 Q. Okay. Mr. Gallo, there was a question on
2 cross-examination about curb stops being
3 within a customer's property, and I'd like to
4 ask a follow-up on that.

5 Do single-family homes have multiple
6 curb stops?

7 A. (Gallo) Excuse me. No, they do not.

8 Q. Okay. Can you please explain whether there
9 are any other customers in the Rosebrook
10 system with multiple valves or, as Omni
11 alleges, multiple curb stops?

12 A. (Gallo) If that was the case, they would be
13 in common areas where we have a main that
14 goes through a common area, you know, to a
15 service lateral that stops at a curb stop.

16 On a single property, which technically
17 would be a condominium association, you know,
18 that could be the case, where you would have
19 multiple curb stops within that area.

20 Q. Okay. Mr. Gallo, I'd like to have you have
21 Exhibit 2 and 11 in front of you, please.

22 A. (Gallo) Give me just a moment here.

23 (Pause)

24 A. (Gallo) Oh, I have it here, yes.

1 Q. Okay. Let's start with Exhibit 2, Page 3
2 and 4. And in cross-examination by Attorney
3 Getz of Mr. Vaughan, Attorney Getz asked with
4 respect to the items that do not have costs
5 associated with them, does Rosebrook maintain
6 them, and Mr. Vaughan's answer was yes.

7 So I would like to ask you. With
8 respect to -- let's take -- go down to
9 Exhibit 2, Page 3, halfway down the page. It
10 says Crawford Ridge.

11 A. (Gallo) Halfway down the page.

12 Q. Do you see that?

13 A. (Gallo) One second.

14 Q. It's two under the 1985 hotel entry.

15 A. (Gallo) Oh, on Page 3, okay. Yes, I do see
16 it.

17 Q. Okay. Is that a condominium development?

18 A. (Gallo) Yes, it is.

19 Q. Okay. Can you please turn to Exhibit 11,
20 Page 2. And are you there?

21 A. (Gallo) Yes, I am.

22 Q. Okay. You see that list in the middle of the
23 page of various homeowners associations?

24 A. (Gallo) Yes, I do.

1 Q. Is Crawford Ridge among them?

2 A. Yes, it is.

3 Q. And so is it fair to say that for Crawford
4 Ridge, Rosebrook would operate and maintain
5 infrastructure according to the Articles of
6 Agreement or deeds of restrictive covenants
7 and declarations that you partially compiled
8 in Exhibit 11?

9 A. (Gallo) That's correct. If they were in
10 common areas, yes.

11 Q. Okay. So if we go down to the second entry
12 from the bottom, MW Place, is that Mount
13 Washington Place?

14 A. (Gallo) Mount Washington Place.

15 Q. That MW --

16 A. (Gallo) I believe that would be, yes.

17 Q. Okay. Is that also in Exhibit 11 listed as a
18 condo association or similar?

19 A. (Gallo) Yes, it is.

20 Q. And so infrastructure that would come in
21 through Mount Washington Place, it would be
22 in common areas. So your ownership and
23 maintenance obligation would kick in via the
24 easement deeds and common area definition

1 within your tariff; is that correct?

2 A. (Gallo) That's correct.

3 Q. Okay. So if we go to Page 4, at the top,
4 Fairway Village, is that another association
5 listed in Exhibit 11, Page 2?

6 A. (Gallo) Yes, it is.

7 Q. Okay. So that would be another association.
8 And your owner -- the Company's ownership
9 obligation would be via the deeds and tariff;
10 correct?

11 A. (Gallo) Correct, yes. Common area. I have
12 to keep clarifying that. In common areas,
13 yes.

14 Q. Okay. And I could keep going through the
15 list of all of these entries that don't have
16 costs associated with them and have you go
17 through and document how you -- how Rosebrook
18 has ownership obligation, but I will leave
19 that for another day because I think the
20 document speaks for itself if you compare
21 Exhibit 2 and 11.

22 With respect to the 1985 entry for the
23 Mount Washington Hotel and Bretton Arms, the
24 entry that Omni has directed us to, are there

1 similar easement documents, deeds and common
2 areas for that entry?

3 A. (Gallo) Not to my knowledge.

4 Q. So would it be a distinguishing fact that
5 these other developments have come in through
6 easement deeds, et cetera, whereas the hotel
7 is distinguishable and that it has not?

8 A. (Gallo) Correct.

9 Q. Okay. So, Mr. Vaughan, back to you. When
10 you answered the question of Attorney Getz
11 that Rosebrook operates these assets that
12 don't have costs associated with them, did
13 you want to distinguish the hotel line, the
14 1985 entry?

15 A. (Vaughan) Yes.

16 Q. Thank you.

17 Is Ms. Oleson here? Okay. Just want to
18 make sure.

19 Ms. Oleson, you were asked a question
20 about compensation. Are you aware of how
21 Abenaki is reimbursing your current employer
22 for your time?

23 A. (Oleson) Yes, I'm glad you asked that. I did
24 want to add that. I'm getting paid my

1 normal, my regular rate of pay through my
2 current job, and I believe they are invoicing
3 Abenaki.

4 Q. Okay. Now, Ms. Oleson, you were also asked
5 on cross-examination by Attorney Getz, and he
6 was referring you to Exhibit 23, which is the
7 very large map and the blue line around Mount
8 Washington Place, and he asked you a question
9 about does Rosebrook own the infrastructure
10 from Mount Washington Place to the hotel, and
11 your answer was yes.

12 A. (Oleson) Oh, okay. Yes.

13 Q. Did you want to distinguish up to the curb
14 stop?

15 A. (Oleson) Yes. Yeah, I didn't even notice I
16 did that. Sorry.

17 Q. Just want to check.

18 A. (Oleson) Up to the curb stop. Yes.

19 Q. Mr. Gallo, I'd like to have you go, turn to
20 Exhibit 24.

21 A. (Gallo) Give me a moment. We've got a lot of
22 exhibits here.

23 Q. To help you, they're the deeds, the most
24 recent deeds.

1 A. (Gallo) Deeds. Okay. Oh, here it is. Yes,
2 I have it.

3 Q. Okay. And I apologize if the print is tiny.
4 But can you make out halfway down this deed
5 that it is for a protective well radius?

6 A. (Gallo) Let's see. 400-foot of any such
7 well. Yes, I do see that.

8 Q. I'm looking at Exhibit 24, Page 1. And I see
9 200 -- oh, okay. There were two.

10 Can you go up a line or two lines. Do
11 you see the 200-foot well radius as well?

12 A. (Gallo) Yes. Yes, I see, "The exclusive
13 right and easement to the sole use of all
14 land lying within a radius of 200 feet of any
15 well."

16 Q. Okay. And is there other -- point out if
17 there's other infrastructure.

18 If you go down to the second paragraph
19 from the bottom, "Also conveying all right,
20 title, interest..."

21 A. (Gallo) Yes, I see that.

22 Q. And do you see wells, water mains, pipelines,
23 pumps, et cetera?

24 A. (Gallo) Yes, I do.

1 Q. Now, if you look -- turn to Exhibit 9. It's
2 the Horizons report. And turn to Page 6.
3 Can you make out the protective well radius?

4 A. (Gallo) Oh, it's the map. Okay. Is it that
5 map over there?

6 Q. Well, let's try --

7 A. (Gallo) Oh, wait. I'm sorry. What exhibit
8 was that? Excuse me.

9 Q. Let me try Exhibit 18 because that's in
10 color, that map.

11 A. (Gallo) Okay. Let's see. Do you have 18?
12 Okay. I see this map now.

13 Q. Okay. All right. So Page 5 of Exhibit 18,
14 are you at that --

15 A. (Gallo) Yes, I am.

16 Q. Do you see the protective well radius --

17 A. (Gallo) I do.

18 Q. -- on this map?

19 Okay. So would it be fair to say that
20 this deed at Exhibit 24, Pages 1 and 2, would
21 pertain to property on this side of Omni's, I
22 guess, resort?

23 A. (Gallo) Yes, it would appear so. It's
24 mentioned specifically in that deed.

1 Q. Right. And I think I asked you prior on
2 direct that there are no protective wells or
3 there was no water supply wells on the hotel
4 campus; is that right?

5 A. (Gallo) That's correct.

6 Q. So there would be no need for a protective
7 well radius. Would you agree?

8 A. (Gallo) That's correct.

9 Q. Okay. Also on Page 3 of Exhibit 24, can you
10 also make out that this deed is -- concerns
11 protective well radii?

12 A. (Gallo) Page --

13 Q. Yeah, Page 3 of Exhibit 24.

14 A. (Gallo) Yup, let's see. Yeah, it says, yeah,
15 "No septic systems within a radius of
16 400 feet of any well now or in the future."

17 Q. Okay. And in the middle of the paragraph,
18 does it also convey the right to install,
19 use, operate, maintain and repair and replace
20 any water mains, pipelines, pumps, pump
21 houses, storage tanks, pumping equipment,
22 meters, hydrants? Do you see all that?

23 A. (Gallo) Yes, I do.

24 Q. Okay. So would it also be fair to say this

1 deed pertains to the protective well radius,
2 and it's on this side of the hotel -- or the
3 Omni resort complex?

4 A. (Gallo) It would appear so, yes.

5 Q. Okay. Mr. Gallo, I'd like you to turn to
6 Exhibit 29, please.

7 Exhibit 29.

8 A. (Gallo) Okay. I have it here. I have it in
9 front of me. I think you're on mute. I
10 cannot hear you.

11 Q. Shuffling papers so I was staying on mute.

12 The last page, Exhibit 29, last page,
13 you were asked -- you were asked a question
14 about where the location of the curb stops
15 were at Base Road. And can you see them on
16 the last page of this exhibit?

17 A. (Gallo) I can. I can see where they
18 separate, where the Y occurs, yes.

19 Q. And are there two little dots?

20 A. (Gallo) It's very small. But yes.

21 Q. Okay. And do those curb stops, those two
22 small dots, appear to be at or near the
23 property line?

24 A. (Gallo) Yes.

1 Q. And this is the property line of the hotel
2 campus?

3 A. (Gallo) Correct. The property line, yeah,
4 the overall hotel campus, which includes the
5 Bretton Arms, yes. So it's near that
6 property line.

7 Q. Clarification, Mr. Gallo. When you were
8 talking about Exhibit 33 and the invoicing
9 and work that was done for the hotel to turn
10 off valves, I just want to be clear. Was
11 that the water company or was that
12 New England Service Company who was
13 performing that work for the hotel? If you
14 could please clarify.

15 A. New England Service Company performed and
16 invoiced for that work.

17 Q. Okay. Thank you.

18 MS. BROWN: I think that's it for
19 my follow-up questions. If I could just have
20 a moment.

21 (Pause in proceedings)

22 MS. BROWN: No, that's it. Thank
23 you very much for your time.

24 CHAIRWOMAN MARTIN: All right.

1 Thank you.

2 And Attorney Getz, do you have any
3 recross?

4 MR. GETZ: Yes, Madam Chair. Just
5 one item.

6 RECROSS-EXAMINATION

7 BY MR. GETZ:

8 Q. Mr. Gallo, this is going back to Exhibit 2
9 and Pages 3 and 4. I want to understand
10 basically your theory about why you are
11 responsible for the mains and properties in
12 the homeowner associations, for example,
13 Crawford Ridge.

14 So tell me if this is correct: You seem
15 to be taking the position that, using
16 Crawford Ridge as an example, it's not your
17 property, even though it shows up on the
18 continuing property records, because there is
19 no dollar value associated with it. Is that
20 correct?

21 A. (Gallo) That's correct. That information
22 wasn't available on those records, to my
23 knowledge.

24 Q. I'm sorry. I don't know what that means.

1 A. (Gallo) The information on any costs
2 associated with that were just not provided.
3 But we do -- where our water mains run
4 through associations, we do own and maintain
5 those.

6 Q. Okay. So even though this is -- you provided
7 this document in discovery as your continuing
8 property records, it doesn't really mean --
9 just because something is on this list
10 doesn't mean it's your property is what
11 you're saying. The only things that are your
12 property are the things that have dollar
13 values associated with them. That's your
14 position about the -- about your continuing
15 property records.

16 MS. BROWN: I would like to object
17 to the question because it's embedding a fact
18 that is in dispute.

19 MR. GETZ: And what --

20 MS. BROWN: The reference to
21 Exhibit 2, Pages 3 and 4 as being "the
22 Company's continuing property records."
23 They're records. They're property records,
24 but they're not continuing property records.

1 So I want to make sure that I'm raising the
2 objection that you're embedding a fact that
3 the Company is not agreeing to.

4 CHAIRWOMAN MARTIN: Attorney Getz,
5 can you lay the foundation for the question
6 so that you're not embedding a fact?

7 MR. GETZ: Yes, Madam Chair. If I
8 look to the Data Request Staff No. 1-1, the
9 last sentence says, "Please provide a copy of
10 the Abenaki Water Company, Inc. property
11 records detailing ductile iron main footages
12 by size and location."

13 Response says, "See Attachment 1-1
14 property records."

15 I took this exhibit to be Abenaki's
16 Rosebrook property records and that this
17 exhibit includes mains and valves, et cetera
18 that belong to the utility.

19 CHAIRWOMAN MARTIN: Is there a
20 question?

21 MR. GETZ: Well, that's -- I was
22 just responding, you know, to whether it was
23 a fair question and --

24 CHAIRWOMAN MARTIN: I understand

1 you're describing where you get the question
2 from. But can you ask the witness that
3 question, and based upon their answer,
4 determine whether you can proceed to the next
5 question? I think that's Attorney Brown's
6 point.

7 BY MR. GETZ:

8 Q. My question to Mr. Gallo is your conclusion
9 about these continuing property records is
10 that the only valves and mains that you own
11 are the ones that have costs associated with
12 them; correct?

13 A. (Gallo) I believe when I was answering
14 questions from Attorney Brown, we discussed
15 that we do own and maintain the mains through
16 those homeowners associations. But the issue
17 with the 1985 entry is it's on private
18 property. So I think that's where the
19 distinction was that we were trying to make.

20 Q. So for Crawford Ridge, for example, let's use
21 that entry, there's no costs associated with
22 it on these property records. And so you
23 don't -- your conclusion is that you
24 therefore don't own that 12-inch main, the

1 one connection, the 350 feet of 4-inch water
2 main, et cetera. Everything that's under --
3 listed under 1987, you don't own that, or you
4 don't agree that this document has anything
5 to do with what you do or do not own.

6 A. (Gallo) As I, you know, mentioned earlier, we
7 do own through the common areas. And some of
8 those, you know, were specifically spoken to
9 before under questioning from Attorney Brown.

10 The other -- everything else under 1987
11 I think it's indeterminate where those --
12 where those, you know, facilities lie. But I
13 would certainly say for Crawford Ridge, we do
14 own the mains that go through there.

15 Q. Am I correct, though, that your theory of
16 responsibility for Crawford Ridge and other
17 homeowners associations comes from your
18 interpretation of the tariff?

19 A. (Gallo) No, no. That is from the Articles of
20 Incorporation, I believe, of many of the
21 homeowners associations. We -- you know, in
22 there it says we have the right to lay and
23 maintain, you know, water infrastructure
24 within those common properties. And I

1 believe there are deeds to that effect as
2 well.

3 Q. Are they in the exhibit that you provided,
4 the deeds?

5 A. (Gallo) I would have to defer to Attorney
6 Brown. She did prepare a lot of deed
7 research. Let's see. Going by the Articles
8 of Incorporation for many of those condo
9 associations, I would rely on that.

10 Q. That the Articles of Incorporation --

11 A. (Gallo) Yes, that would be -- oh, excuse me.

12 Q. But you're not a party to the Articles of
13 Incorporation; is that correct?

14 A. (Gallo) I personally am not. But the
15 Articles of Incorporation do lay out, for the
16 homeowners associations, do lay out that
17 there is the right to -- or they provide
18 permission to lay water mains within common
19 areas. So that's -- and apparently that is
20 what was done when it was constructed. So we
21 are not disputing that we own the mains
22 within those areas.

23 Q. But it has -- your responsibility has nothing
24 to do with the tariff. It stems from the

1 homeowner associations Articles of
2 Incorporation?

3 A. (Gallo) No. Our tariff -- our tariff -- we
4 do own in common properties per our tariff.

5 Q. So it's your tariff. It's by reading your
6 tariff that you conclude you have
7 responsibility for the mains that are in
8 association property.

9 A. (Gallo) I believe that's what our tariffs do
10 say.

11 Q. I believe the tariff says you're responsible
12 up to the property line or the common area.

13 A. (Gallo) Right. So in the common areas, we
14 are responsible up to the curb stops. So the
15 property line or the -- you know, I don't
16 know if this is the question you're asking.
17 But, you know, if a map shows a main ending
18 at a property line of an association, it's
19 generally due to a lack of information. But
20 the mains that do go through those
21 associations we do own up to the curb stops.
22 Excuse me if that's not your question, but
23 that's...

24 Q. Well, I'm just trying to understand the

1 theory of why the property records really
2 don't reflect any responsibility on your
3 part. And I thought what you were trying to
4 say was it's the -- your reading of the
5 tariff is what makes you responsible. But
6 then you started talking about the homeowners
7 associations Articles of Incorporation, which
8 I don't follow that.

9 A. I may have mis --

10 MS. BROWN: I'm going to object
11 just a bit, Mr. Gallo. Questions that have
12 been posed to you, again, have presumed facts
13 in them that I know Abenaki disagrees with.

14 So, Chairwoman Martin, I would like
15 him to at least qualify his answer. You
16 know, I think this is an objectionable form
17 because it's still embedding facts that are
18 in dispute. But I don't want to hold things
19 up, but I just want to make sure that my
20 witness is aware not to agree to the embedded
21 facts that we disagree with.

22 CHAIRWOMAN MARTIN: I'm going to
23 overrule that objection because what I just
24 heard Attorney Getz do is walk through the

1 most recent testimony of this witness and ask
2 him to confirm it. So let's let them get a
3 little bit further.

4 MS. BROWN: Okay.

5 BY MR. GETZ:

6 Q. Okay.

7 A. (Gallo) I may have misunderstood your
8 previous question. We do operate by the
9 tariffs. All I was doing was referring to
10 the fact that the homeowners associations'
11 articles do also allow for common areas to be
12 used for the installation of water mains.

13 MR. GETZ: Okay. I don't think I
14 have anything further on that, Madam Chair.
15 And that was the only recross I had.

16 CHAIRWOMAN MARTIN: Okay. Thank
17 you. So I think at this point we are done
18 with these witnesses for the day?

19 [No verbal response]

20 CHAIRWOMAN MARTIN: Okay. Seeing
21 nothing else, we will excuse the witnesses.
22 Thank you very much, everyone. I know that
23 was a long day.

24 Attorney Getz, do you have a --

1 MR. GETZ: Madam Chair, were you
2 closing the hearing for the day?

3 CHAIRWOMAN MARTIN: No.

4 MR. GETZ: Oh, okay. Thanks.

5 CHAIRWOMAN MARTIN: No, I'm asking
6 if you have any rebuttal, if you intend to
7 put on a rebuttal witness.

8 MR. GETZ: I have -- Mr. Brogan has
9 some extensive direct testimony.

10 CHAIRWOMAN MARTIN: How long do you
11 think that your evidence will take?

12 MR. GETZ: I would expect in the
13 neighborhood of an hour.

14 Is that correct, Mr. Brogan?

15 Yes.

16 CHAIRWOMAN MARTIN: Okay.

17 (Pause in proceedings)

18 CHAIRWOMAN MARTIN: Why don't we
19 start your evidence now and we'll see where
20 we get to.

21 MR. GETZ: Yes. Thank you, Madam
22 Chairwoman.

23 CHAIRWOMAN MARTIN: Ms. Robidas,
24 can you swear in the witness?

1 (WHEREUPON, DOUGLAS BROGAN was duly
2 sworn and cautioned by the Court
3 Reporter.)

4 DOUGLAS BROGAN, SWORN

5 DIRECT EXAMINATION

6 BY MR. GETZ:

7 Q. So, Mr. Brogan, by whom are you employed?

8 A. I am self-employed, working as an engineer
9 and consultant for Omni in this case.

10 MR. GETZ: Madam Chair, can you
11 hear that clearly enough?

12 CHAIRWOMAN MARTIN: I didn't hear
13 that very clearly. If you can speak up.

14 MR. GETZ: Thank you.

15 BY MR. GETZ:

16 Q. So, Mr. Brogan, please describe your
17 professional background and expertise.

18 A. So after graduation I held various public and
19 private sector jobs, engineering-related,
20 followed by 23 years at the Commission, last
21 20 of which were as water/sewer engineer. I
22 retired in 2012.

23 Since then I've performed engineering
24 consulting both for Commission Staff and

1 for -- (connectivity issue) -- and I'm a
2 licensed professional engineer in
3 New Hampshire.

4 Q. And what are the main points of your
5 testimony this afternoon?

6 A. That the shut-off to the Mount Washington
7 Hotel is 10 feet away from the building, 1870
8 feet away on Base Road, and that the
9 Commission records indicate that the easement
10 to the hotel is the property of Rosebrook --
11 (Court Reporter interrupts.)

12 Q. And what are your conclusions for your
13 testimony based on?

14 A. Thorough review of records in this proceeding
15 and in previous dockets, in discovery, and
16 several site visits to the Rosebrook system.

17 Q. And have you considered the issues that were
18 listed in the secretarial letter from
19 September 4?

20 A. Yes. And I'd like to address a number of
21 them. First, I'd like to go to the map, the
22 large map that we've already looked at, which
23 is Exhibit 23. Just to -- we've looked at
24 some of this, but just to orient the

1 Commission a little bit better and then go on
2 to discuss time lines and origins of this
3 system and so forth.

4 So, again, this large map was an exhibit
5 in a 1989 rate case. And it's self-described
6 in the bottom right as an as-built utilities
7 plan. And so it's a representation, I
8 believe, of water lines that the water
9 company owned in 1988. I think everyone's
10 clear by now, the blue is water, the brown is
11 sewer which is --

12 (Court Reporter interrupts.)

13 A. Sewer is not relevant to these proceedings.
14 They also show the signs of the water mains
15 in red. And apart from some additional
16 residential expansions, this is pretty much
17 what this system still looks like today. The
18 hotel as we notice is at the lower right.
19 Ski area's on the left, lower left. Route
20 302 divides those two. It's sort of a
21 north/south road, and there's a parallel
22 railroad right-of-way in that area. And so
23 you'll hear the terms "east of 302," which is
24 the hotel side of the system and "west of

1 302," which is the ski area side of the
2 system.

3 We know -- I think we know by now where
4 Base Road runs. It starts at 302 and runs
5 just north of the hotel. And we also I think
6 know by now the large development in the
7 upper right is Mount Washington Place.

8 And I won't spend very long. Some of
9 this we already have heard today. But the
10 original system, the Rosebrook system, dates
11 back to the early 1970s. And it initially
12 served the ski area west of 302, but with the
13 16-inch main that we'll look at in a minute
14 extending across 302 as far as the entrance
15 to Mount Washington Place.

16 And then in 1985, the main was extended
17 from that point to the hotel, the 8-inch
18 main, and in 1985 the 6-inch main down to the
19 Bretton Arms. It's the Bretton Arms Inn.
20 It's a smaller hotel.

21 The system was originally supplied by a
22 well. Today it's two wells; one has been
23 added since to the same location. And you
24 can see just a little bit west of 302, kind

1 of in the northern part of the system,
2 there's a jog in the blue line and it says
3 "well" in red. That's where the well and
4 pump station are for the entire system today
5 still.

6 So those wells pump water up the hill.
7 You can -- again, to the far lower left is
8 the tank up on the mountain. So at any given
9 time, if you're in between the wells and the
10 tank, you might be getting water in either
11 direction. You know, if the tank is full,
12 then it's feeding the entire system by
13 gravity. When it gets low enough, the well
14 pumps turn on. They refill the tank. And
15 so, you know, depending on what time of day
16 it is, if you live in Forest Cottages in
17 between, you could be getting water from the
18 tank or you could be getting water from the
19 wells. But those two supply, again, the
20 entire system. And clearly there are side
21 mains I probably didn't point out.

22 So the 16-inch primary backbone of the
23 system runs from the tank. And it's -- you
24 can -- it's labeled, pretty much jogs a

1 little bit, goes down to the wells. There's
2 one sharp 90-degree jog around the ski base
3 lodge, but it goes to the wells and then
4 across 302.

5 Since the date of this map, that 16-inch
6 backbone of the system has been extended
7 further down Base Road. We'll talk about
8 that later. But that is not shown on this
9 map.

10 Q. So, Mr. Brogan, how was the water supply --
11 well, what was the water supply to the hotel
12 prior to the construction of the 8-inch main
13 connecting the hotel?

14 A. In the 1970s and early 1980s, the hotel had
15 its own separate water supply, and it was a
16 surface water supply. There were reservoirs
17 up on the mountain behind the hotel totally
18 separate from the Rosebrook system.

19 The hotel opened in 1902. The Rosebrook
20 system started in 1973 or thereabouts. So
21 the hotel, when the Rosebrook system started,
22 was on its own independent surface water
23 supply. By the 1980s, there was some
24 significant problems that were beginning to

1 emerge with that surface water system.

2 Q. Mr. Brogan, is some of this history laid out
3 in Exhibit 22 and the reports that are part
4 of Exhibit 22?

5 A. Yes. I forgot to refer to that. So I could
6 walk you through where it says in the --
7 there are reports from the 1980s that's in
8 this exhibit. And basically the surface
9 water supply for the hotel, it was an old
10 leaky system with marginal chlorination. And
11 it was inadequately protected. The
12 reservoirs were open. The tanks were kind of
13 poorly protected.

14 And today we have the Department of
15 Environmental Services. It's predecessor was
16 the Water Supply and Pollution Control
17 Commission. And so some of these letters and
18 reports are from that agency saying, you
19 know, that basically this surface water
20 supply has to go. You have to -- and
21 strongly recommending connection of the hotel
22 to the new Rosebrook system.

23 Q. And were these records part of discovery in
24 the 1989 rate case before the Commission?

1 A. Yes, they were. It was Docket DR 89-031.

2 So, again, I won't spend a lot of time
3 on these because I think it's just adequate
4 to say that the surface water supply was not
5 in good shape. I could go through these and
6 see where it says that, but...

7 So I don't know what page it is because
8 I'm looking at a paper copy, but there is an
9 appendix for -- if you go through the
10 reports, there are actually two Appendix As.
11 First report had its own Appendix A.

12 Then there is an Appendix B, which is
13 what I am hoping everyone can turn to. It's
14 a June 5th, 1985, Sanitary Survey Report from
15 the Water Supply and Pollution Control
16 Commission. I don't know if people have --
17 oh, Page 25. Thank you.

18 It's addressed to Rosebrook Water
19 Company. But I would point out right off the
20 bat in the Subject it has -- it lists both
21 systems. It lists the Rosebrook system and
22 the Mount Washington Hotel. And the CWS to
23 the left of that is a community water system,
24 which is what the Rosebrook system was

1 paragraph says, "The surface water system
2 must ultimately be abandoned. We strongly
3 suggest this be completed as soon as
4 possible."

5 Then if you go on, I won't read it, but
6 it goes on to talk about issues with
7 cross-connection concerns inside the hotel
8 and so forth.

9 And if I -- and just to be clear, so
10 this is talking about the surface water
11 source on the next page, Item D. It's
12 addressing the well for the Rosebrook system
13 and what the Rosebrook Water Company has to
14 do to fix that system. Again, both were
15 under control of the water company at the
16 time.

17 Q. So, Mr. Brogan, you indicated that the
18 expectation was that the hotel would be
19 connected to the system in 1985. Can you
20 explain that further?

21 A. Yes. Using the same exhibit, if we back up
22 to page, I'm guessing it's Page 4, yes. So
23 Page 4, the bottom heading, "Existing Water
24 Supply Systems," plural -- I should identify

1 what this is. This was a Provan & Lorber
2 engineering company report about the water
3 systems.

4 And so, again, on Page 4, the bottom
5 heading, right under that, "The Bretton Woods
6 Resort is presently served by the Rosebrook
7 Water Company, which maintains several water
8 supply systems."

9 And at the -- almost at the bottom of
10 that page, "The surface water [sic] source
11 supplies water to the Mount Washington
12 Hotel."

13 If you go to the next page, in the
14 middle of that paragraph at the top, "The
15 groundwater supply presently serves the ski
16 area," and it goes on to list a number of
17 other buildings. But those -- the other
18 buildings include the stables and the
19 administration building and the caretaker.
20 The caretaker residence is almost next to the
21 hotel.

22 So that indicates to me that the 8-inch
23 water main from Mount Washington Place to the
24 hotel had been installed by this time. And

1 this correspondence is in July 1988.

2 I'm not sure how much it's worth going
3 more into this. But it appears as if, even
4 though the main had been laid, that the hotel
5 itself did not become a customer because of
6 internal leaks and the problems with its
7 refrigeration system and so forth. It's
8 pretty clear that's what was happening.

9 Q. So had those reports and other PUC documents
10 identified that there were internal plumbing
11 problems at the hotel and cross-connections
12 that needed to be addressed before the hotel
13 could interconnect to the Rosebrook system?

14 A. Yes. That's correct.

15 And can I go back to the large map?
16 Just a couple more points on that and then
17 we'll proceed.

18 So, again, the 8-inch line from the
19 Mount Washington Place Hotel I believe it's
20 clear was run sometime between June 1985
21 (inaudible) we already looked at to
22 anticipate the imminent construction that
23 fall and the date of this large map, which is
24 September 1988.

1 I also want to point out on this map, so
2 if you start at the hotel and you go kind of
3 to the left is the Bretton Arms in red, which
4 is one of the small gray buildings. But
5 there is a large gray building kind of just
6 to the upper left of that which I believe may
7 have been a large, multi-unit car barn that
8 was ultimately demolished to make way for the
9 Fairway Village development, residential
10 development. We'll look at that later.
11 Fairway Village did not exist at the time of
12 this as-built drawing in 1988.

13 Q. Do you have more detailed drawings of the
14 system other than the '88 system plans?

15 A. Yes. If we could look at Exhibit 17, which
16 is responses to Staff, Omni data requests.
17 And the last three pages are -- see, I
18 should -- or before we get to this.

19 So in 1988 we have this large as-built
20 plan. In 1995, Provan & Lorber, the same
21 company that is referenced on this 1988 plan,
22 drew very detailed as-built plans of the
23 Rosebrook system, the entire Rosebrook
24 system. There was nine full plan sheets

1 showing individual mains and sizes and valve
2 locations and so forth.

3 So in this Exhibit 17, the last three
4 pages, a portion of those 1995 as-builts is
5 shown on these three pages. That's where the
6 base map is from. And so I think, again, we
7 understand this.

8 But so on Page 1 of the attachment, so
9 the first of the last three pages, you can
10 see a blue line beginning at the bottom of
11 the page and going off the page. And it
12 starts -- it's starting at Hannah Loop, which
13 is the entrance to Mount Washington Place.

14 So as we have heard, the 16-inch main
15 from the ski area came across 302 as far as
16 Mount Washington Place. Then later, in 1985,
17 the 8-inch main to the hotel started there.
18 And if you go to the next page, you'll see it
19 running down Base Road in a little bit more
20 detail than we've seen it today. We'll look
21 at even more detail later.

22 And you can see the split where the
23 8-inch continues on to the -- toward the
24 hotel. The 6-inch in green goes to the

1 Bretton Arms. And then the last tiny bit of
2 the 8-inch to the hotel was shown at the top
3 of the last page.

4 And I need to point out, I think where
5 this last page shows the 8-inch main entering
6 the hotel is not where it enters the hotel.
7 It's an error that's been carried through
8 even into recent engineering drawings. You
9 can see there's kind of a Y to the shape of
10 the hotel and showing the water main entering
11 the right side of the Y. But what's not
12 shown is a central, kind of a central ring
13 that shoots straight to the north.

14 This erroneous plan has, you can barely
15 read it, it says "carpenter's shop" where the
16 main enters the hotel. Well, that
17 carpenter's shop is not in that wing; it's in
18 the central wing. And so the main has never
19 gone to that right wing. It's always
20 terminated where it does today at the --
21 where the carpenter shop really is on the
22 central wing. We'll see that later. But I
23 needed to point that out.

24 Q. Is there anything else on this exhibit that

1 you need to address?

2 A. Yes.

3 CHAIRWOMAN MARTIN: Attorney Getz,
4 I apologize for the interruption. I need to
5 take a two-minute break. We'll go off and
6 recess.

7 MR. GETZ: Absolutely. Sure.

8 CHAIRWOMAN MARTIN: I apologize.
9 We'll take a recess until 4:44.

10 MR. GETZ: Okay. Thank you.

11 CHAIRWOMAN MARTIN: Thank you. Off
12 the record.

13 (Brief recess was taken at 4:42 p.m.,
14 and the hearing resumed at 4:47 p.m..)

15 CHAIRWOMAN MARTIN: All right.
16 Let's go back on the record. Attorney Getz,
17 you can pick up where you left off.

18 MR. GETZ: Thank you, Madam Chair.
19 And I believe where we were was asking
20 Mr. Brogan if there was anything else about
21 Exhibit 17 that he wanted to address.

22 A. And there is. If you go to the second of
23 those three pages, you'll see in kind of the
24 lower left there's a whole development there

1 now, which is the Fairway Village
2 development. That was not there -- the car
3 barn had been there instead on the 1988 plan.
4 So Fairway Village was there by 1995. And
5 the entire water infrastructure inside
6 Fairway Village is shown as well.

7 And it's hard to see at this scale.
8 Probably you can hardly see it. But if you
9 go back to the first page of these three
10 pages, you'll see that the 16-inch main at
11 the entrance to Mount Washington Place, which
12 is also where the 8-inch main to the hotel
13 had started, that 16-inch main itself has now
14 been extended into and through Fairway
15 Village. So the backbone of the system from
16 the ski area tank to the wells down Base
17 Road, it now goes through Fairway Village.
18 And actually we'll get to this, but it goes a
19 little -- a couple of hundred feet, I think,
20 past the end of Fairway Village onto Omni
21 property.

22 And the only other thing I'll point out,
23 because we'll just mention it in passing in a
24 little bit, is on the second of these three

1 plan sheets in the upper left on the other
2 side of Base Road, there is the Stickney
3 Circle development.

4 (Court Reporter interrupts.)

5 BY MR. GETZ:

6 Q. So, Mr. Brogan, Abenaki denies responsibility
7 for the mains in this area that are on Omni
8 property. Do any of the mains you described
9 appear in Abenaki's or the Commission's
10 records?

11 A. I'd like to go back to the exhibit we looked
12 at quite a number of times now, which is
13 Exhibit 2, Pages 3 and 4, what I kind of
14 refer to as the "original" CPRs.

15 So the initial entry, of course, is in
16 1973 when the initial system was put in and
17 the 16-inch backbone was installed. Then you
18 have a number of residential developments
19 happening with side mains going out here and
20 there until you get to the 1985 DI, ductile
21 iron, main extensions to the Mount Washington
22 Hotel and Bretton Arms. And if you look
23 underneath that, you'll see it was not just
24 the 8-inch main, it was the 8-inch main plus

1 the 6-inch main to the Bretton Arms. And
2 then as you go down the page, there are
3 additional expansions, the side expansions,
4 the residential developments.

5 Then on Page 4, in 1989, four years
6 after the line was run to the hotel, the
7 16-inch main -- there is a 16-inch main
8 extension to Fairway Village. And that's
9 what I had just referred to on the 1995
10 plans. And again, you'll see specific
11 lengths for the 16-inch main itself under
12 that heading and also for 8-inch main.

13 And I should have pointed it out more
14 clearly, but there are several cul-de-sacs in
15 the Fairway Village development. The 8-inch
16 side studs are off of the 16-inch mains
17 serving the cul-de-sacs.

18 Then, again, just staying on the CPRs
19 here, we continue down, goes to Stone Hill,
20 then Stickney Circle you'll see in 1994. And
21 then jumping down to 2001 is an 8-inch main
22 extension to the Nordic Center. That is the
23 main we've referred to today. That's the --
24 it's referred to in Omni's complaint as "the

1 main behind the hotel." It was an 8-inch
2 main. It was extended primarily to serve the
3 new Golf/Nordic Center when that was built.
4 And again, it has the specific length. And
5 that main does not appear on the 1988 drawing
6 or the 1995 plans because clearly it was
7 after both of those, in 2001.

8 So I guess just to -- generally on these
9 CPRs, you can see almost a 30-year history,
10 kind of, you know, of the development of this
11 resort system to serve different communities
12 as they were built out.

13 Q. What is your view of the accuracy of these
14 records?

15 A. I'd like to turn to Exhibit 25, which is just
16 a one-page table. The numbers in the first
17 column are taken directly off the CPRs that
18 we were just looking at, which, you know, it
19 had a specific length for an 8-inch main or a
20 6-inch main. That's what these numbers are.

21 The second column are lengths that were
22 scaled off of drawings, in almost every case
23 the 1995 plans. The main behind the hotel,
24 again, was not on those plans or scaled using

1 GIS. And I would make -- just on this one
2 exhibit, the 8-inch main to the hotel, the
3 first row, to the extent that the length and
4 the accounting records is based on the
5 erroneous point of termination at the hotel,
6 the scaled length is the right length. It's
7 the correct -- it corrects the point of
8 termination. So that would bring those two
9 numbers a couple hundred feet closer
10 together.

11 And on the second row, the 8-inch main
12 behind the hotel, Omni has been unable to
13 find any plans. Omni has always viewed that
14 also as a Rosebrook Company water main. So
15 the 2200 feet in the middle column that were
16 scaled for that is based on an educated
17 guess. They know pretty well where it starts
18 and where it ends, but it has some jogs. So
19 that may account for some of the difference
20 between that and the length in the CPRs.

21 Q. So do you believe that the entries in the
22 Company's property records reflect what is
23 actually in the ground?

24 A. Yes, definitely. I need to refer to an

1 exhibit. We probably don't need to refer
2 back to the CPRs. But, yes, I don't think
3 there's any other fair conclusion to be
4 drawn. The dates for each of the main
5 extensions fit what we know. The diameters
6 fit the main lengths. We can't explain the
7 inaccuracies, but they're pretty close. And
8 kind of like the headings are explicit. This
9 was a main extension to this place, this was
10 a main extension to that specific place. I
11 really don't think there can be any fair
12 disagreement that the entries on those CPRs
13 refer to what they say they refer to.

14 Q. What's the next exhibit that you would like
15 to walk through?

16 A. Exhibit -- just one comment. Again, just to
17 go back to the CPRs, without looking at them,
18 but the mains that we specifically looked at,
19 the 1985 hotel and Bretton Arms, 2001 behind
20 the hotel, and the 1989 to Fairway Village,
21 none of those have dollar amounts listed on
22 those CPRs. So there's nothing to
23 distinguish ownership or responsibility in
24 that respect.

1 So the next exhibit would be 18. It's
2 about the fourth page in. It's an aerial.
3 It's based on an aerial photograph, so it's
4 pretty easy to spot it. And it has blue and
5 red and yellow lines on it. It's the second
6 to the last page. It's Attachment 1.

7 So this is an exhibit showing the four
8 specific mains that we looked at on the CPRs.
9 The light blue at the top is the 8-inch main
10 to the hotel. It begins off the page in the
11 upper left back at the entrance to Mount
12 Washington Place. But the road at the top of
13 this aerial photo is Base Road.

14 The Bretton Arms, again, starts up at
15 Base Road and goes -- it's the green going
16 down to the Bretton Arms Inn, which is the
17 building where the -- the larger building
18 with the gray roof kind of to the right of
19 that green main. Those two are 1985. The
20 dark blue is four years later. That's the
21 16-inch backbone of the system was extended
22 through Fairway Village and onto Omni
23 property.

24 And then another 11 years later, in

1 2001, the red main here was extended behind
2 the hotel down to the Golf/Nordic building,
3 which is visible just at the very bottom at
4 the end of that main. And that main behind
5 the hotel does indeed get its water from the
6 main to the hotel just a little bit before
7 the hotel.

8 On the 6-inch main, the green 6-inch
9 main at the Bretton Arms, there are three
10 Omni metered accounts off of that. We'll
11 look at those later.

12 On the 8-inch main to the hotel, there's
13 also -- the caretaker's residence takes its
14 water off that main. It's a little side
15 service. And then there are several other
16 accounts that are off the main behind the
17 hotel; there is the Golf/Nordic Center and
18 the spa building and the new addition and so
19 forth.

20 And just to be clear again, here on this
21 exhibit, in this aerial photo you can see
22 kind of the central Y feature of the Mount
23 Washington Hotel. And the main to the hotel
24 does not go to the right wing of that Y., it

1 goes up straight in to the northernmost wing.

2 Q. Is there anything else you can draw from
3 these exhibits with respect to Fairway
4 Village or other items?

5 A. Yeah. I think it's important to look at
6 Fairway Village because it really plays into
7 the whole scheme of this area.

8 That 16-inch main is much larger. It's
9 a much larger diameter than is needed to
10 serve just the little Fairway Village
11 development. It's my (connectivity issue) I
12 would tell you that a 12-inch main, even all
13 the way back from Mount Washington Place,
14 would have been adequate if your only intent
15 was to serve Fairway Village.

16 And again, you can't tell on this, we'll
17 see it later. But it does -- it extends
18 160 feet onto Omni property. There's no
19 valid reason for it to have done that if it
20 was only intended to have served Fairway
21 Village at the time it went in. And so for
22 these -- it's clear to me that the thought of
23 looping some of these mains has always been a
24 consideration. And I know from my time at

1 the Commission that that issue came up from
2 time to time. And I could point you to a
3 1995 rate case correspondence and so forth.

4 But looping would help with fire flows
5 at the hotel. But it also has clear benefits
6 for any distribution system, as far as water
7 quality and reliability. So if something
8 were to break on this Fairway Village main
9 anywhere from Mount Washington Place, you
10 know, all the way to the development, or even
11 inside it, customers are going to be out of
12 water. And that Stickney Circle development
13 that we've just kind of noticed on the other
14 side of Base Road further back is also served
15 off of this Fairway Village 16-inch main. So
16 they could be out of water completely as
17 well, depending on where the break was.
18 There is no other way to supply those
19 customers.

20 Looping would provide -- I guess
21 probably just on this exhibit, if you see the
22 yellow, that's kind of, in my mind, a
23 logical -- one logical location for a future
24 loop that would tie everything together. It

1 would provide a second way in to feed
2 Stickney Circle, you know, and Fairway
3 Village kind of the back way. So that's one
4 issue.

5 The other is the water quality. We have
6 a -- Fairway Village is a dead-end main.
7 It's a fairly long one, but it's an
8 especially large one for the number of
9 customers served, and that's not good for
10 water quality.

11 So if some kind of looping were done, as
12 I believe has always been anticipated, that
13 would help with water quality, too. It would
14 benefit. It would benefit more than the
15 hotel. I think what we've heard at times is,
16 well, the 8-inch mains to the hotel only
17 benefits the hotel. Well, that's missing the
18 picture in this area that I think has existed
19 from 1985 on. It's missing some important
20 factors.

21 And one -- just one last factor in that
22 regard. More recently, in the DW 17-165 rate
23 case, Horizon's engineering has -- and this
24 came up today earlier -- but, you know, they

1 did look at fire flows. Actually, when they
2 looked at fire flows to the hotel, that was
3 not under present conditions. That was
4 under -- that was after a pressure reduction
5 project. It was to look at the impact of the
6 pressure reduction. That's when the, you
7 know, low or negative pressures could happen
8 in the line to the hotel.

9 But, nonetheless, even Horizons, in
10 their report, pointed out some possible
11 looping locations. So I think... so to the
12 extent looping happens, whether in
13 association with the pressure reduction
14 project or some other way, the outcome of
15 this case kind of has an amplified impact
16 because Omni is looking at are there going to
17 be more mains installed on our property that
18 Abenaki says it has no responsibility for.

19 I think, to be honest, Omni felt just
20 blind-sided by Abenaki's position in response
21 to the Easter water main break. This 1985
22 main has been there over 30 years. All of a
23 sudden, it's not the responsibility of
24 Abenaki Water Company.

1 Q. Mr. Brogan, so with respect to Exhibit 16,
2 does that give another maybe little more
3 detailed look at the mains near the hotel?

4 A. Exhibit 16 was in Omni's original complaint.
5 It was Attachment A in that complaint. And
6 this is, again, even more detailed. So the
7 pink is the Omni property boundary. Again,
8 the blue lines are the water mains. The
9 8-inch starts from the upper left and runs to
10 the hotel. The 6-inch comes off of that on
11 Base Road and goes down to the Bretton Arms.

12 So you can see the five metered Omni
13 accounts on this drawing served by these two
14 mains. Obviously the hotel. To the right, a
15 little before the hotel, is the caretaker's
16 residence with its own short service line;
17 and then the three yellow buildings on the
18 6-inch main; the other stables near the
19 beginning; Bretton Arms, lower right; admin
20 building, lower left. And each of those has
21 its own service line and its own shut-off.
22 The stables should have been -- a little
23 service line should have been highlighted
24 blue, but it's shown on the drawing.

1 The location of the Easter water main
2 break is pointed out near the hotel, near the
3 caretaker's residence, but it was on the
4 8-inch main.

5 And here you can see -- you can see the
6 Fairway Village development, although the
7 mains are not highlighted for that. You can
8 see the 16-inch running down the middle of
9 it. We see the 8-inch side studs for the
10 cul-de-sacs. And you can see the 16-inch
11 main running past the boundary line onto Omni
12 property, again, I think anticipating future
13 interconnection of some kind.

14 MS. BROWN: Interject at this
15 point? I don't see any of my witnesses in
16 any of the waiting rooms. Eric, can you
17 verify that they are listening to this?

18 MR. WIND: I can verify that Don
19 Vaughan is still on as an attendee. So
20 that's probably both Don and Bob.
21 Mr. St. Cyr, Mr. Lachance. However, I do not
22 see --

23 MS. BROWN: Nancy Oleson?

24 MR. WIND: -- Nancy. Correct.

1 MS. BROWN: Okay. All right. This
2 line of questioning is pertinent to Don and
3 Bob, so that's fine. But I just was getting
4 a New Hampshire call and just like, what's
5 going on? Thank you for checking. I'm sorry
6 to interject, Chairwoman Martin.

7 CHAIRWOMAN MARTIN: No problem.
8 And I just want to note that it is 5 --
9 almost 5:15. We do have a hard stop at 5:30.
10 So to the extent we need to discuss the
11 schedule, we need to stop short of that as
12 well. So perhaps you can wrap up at least
13 this exhibit and then we can talk about the
14 schedule.

15 MR. GETZ: Yes, Madam Chair.
16 A. So also in this exhibit you can see the two
17 valves up at Base Road, one on the 8-inch,
18 one on the 6-inch. I would call them
19 isolation valves. It's very common at a T
20 intersection to put valves on one or two or
21 maybe even sometimes all three sides of that
22 T just to be able to isolate longer lengths
23 of water main adjacent to the T.

24 And if you looked on the 1995 plans,

1 you'll see that happening throughout the
2 entire distribution system. So these are
3 perfectly normal isolation valves for these
4 two mains.

5 And I would also point out that
6 physically when you're talking about a buried
7 8-inch valve, there's no -- you know, an
8 8-inch valve is an 8-inch valve. There are
9 no distinctions based on where it's placed or
10 what its function is.

11 MR. GETZ: So I think that finishes
12 up that exhibit. And I would say roughly
13 that Mr. Brogan is three quarters of the way
14 through his direct.

15 CHAIRWOMAN MARTIN: Okay. Thank
16 you. I think we should wrap up for today.
17 And I'm wondering if the parties are
18 available tomorrow morning perhaps.

19 MR. GETZ: Omni is, Madam Chair.

20 CHAIRWOMAN MARTIN: Attorney Brown?

21 MS. BROWN: I believe I can move
22 what I have tomorrow. Just let me make sure
23 I'm unmuted.

24 MR. GETZ: Is it possible to start

1 at 10:00 rather than 9:00?

2 CHAIRWOMAN MARTIN: I think it
3 would be possible, but I think we may have an
4 afternoon scheduling conflict. So to the
5 extent we think this will take more than a
6 couple hours, we probably we need to go to
7 another day. And we still need to hear
8 from -- legal argument as well.

9 Attorney Brown, do you have any
10 thoughts on remaining time?

11 MS. BROWN: I can be available in
12 the morning tomorrow.

13 CHAIRWOMAN MARTIN: Okay.
14 Mr. Mueller?

15 MR. MUELLER: I could be available
16 until 12:00. I have a hard stop at 12:00.

17 CHAIRWOMAN MARTIN: Okay. And
18 Attorney Tuomala?

19 MR. TUOMALA: Available.

20 CHAIRWOMAN MARTIN: It sounds like
21 we would be able to do it tomorrow. But we
22 have a very limited time frame, and I think
23 this may take longer than two hours.

24 So why don't we continue the

1 hearing, leave the date open, and we'll have
2 staff work with you all to come up with a
3 date that we can get this done. Does that
4 make sense to everyone?

5 MS. BROWN: Abenaki can work with
6 that.

7 CHAIRWOMAN MARTIN: Attorney Getz,
8 any problem with that?

9 MR. GETZ: That's fine, Madam
10 Chair.

11 CHAIRWOMAN MARTIN: Mr. Mueller?

12 MR. MUELLER: That's fine.

13 CHAIRWOMAN MARTIN: And Attorney
14 Tuomala?

15 MR. TUOMALA: That's certainly fine
16 with me, Madam Chairwoman. I just would like
17 to ask, would you want the response from the
18 parties as far as scheduling a written
19 submission? Or how would you like me to
20 handle the follow-up date to the hearing?

21 CHAIRWOMAN MARTIN: I think you
22 could just work with the Executive Director
23 to get a date set for us, then we can put out
24 the notice for that.

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MR. TUOMALA: Okay. Thank you.

CHAIRWOMAN MARTIN: Well, thanks,
everyone. It was a long day, but we got
through a lot. We will continue this hearing
to another date and we will provide notice of
that date as soon as we have it.

We'll go off the record, and we're
adjourned. Thank you.

(Hearing adjourned at 5:16 p.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed Shorthand Court Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

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	29:17;35:21,23; 56:21,23;81:16; 106:5	143:3	agreeing (1) 117:3	142:9;144:5
\$		additions (2) 42:19;43:2	agreement (5) 12:20,22;13:2; 43:3;106:6	appeared (1) 35:24
\$1,800 (6) 6:4;7:12,24;38:8, 17,22	Account (6) 6:1;7:10;8:20;9:7; 58:16;145:19	address (4) 98:7;126:20;140:1, 21	ahead (4) 4:8;7:3;62:19; 98:20	appears (3) 31:15;34:20;136:3
\$2,000 (4) 9:5,6,10;10:11	accountant (1) 3:7	addressed (2) 132:18;136:12	aid (2) 10:21;15:9	appendix (4) 132:9,10,11,12
\$457,134 (1) 8:14	accounting (3) 3:8;4:2;145:4	addressing (2) 22:7;134:12	air (1) 24:4	applicable (1) 43:14
[Accounts (4) 53:5;148:10,16; 153:13	adds (1) 9:2	alleges (1) 104:11	applied (1) 43:24
[No (3) 66:2;103:20; 123:19	accumulated (3) 6:6,10,13	adequate (2) 132:3;149:14	allow (1) 123:11	apply (1) 51:1
[sic] (1) 135:10	accuracy (1) 144:13	adjacent (2) 30:16;155:23	allowed (1) 48:22	applying (1) 18:15
A	accurate (3) 12:4;21:23;83:19	adjourned (2) 159:8,9	almost (7) 61:10;64:13;135:9, 20;144:9,22;155:9	appreciate (5) 48:22;90:10;92:24, 24;93:3
abandoned (1) 134:2	acknowledge (1) 39:16	adjust (1) 9:13	along (6) 16:18;40:10;60:23; 67:13;68:16;92:15	appreciation (1) 90:16
abandonment (1) 133:17	acquire (1) 44:1	adjustments (2) 72:16;88:24	Although (2) 89:18;154:6	appropriately (1) 43:15
Abenaki (28) 3:8;26:19;28:3; 29:4;30:4,12;32:16; 36:18;52:11;53:19; 76:12;81:16,20; 82:14,18,23;83:2,5, 14;90:13;108:21; 109:3;117:10; 122:13;142:6; 152:18,24;158:5	acquired (2) 58:21;91:9	admin (1) 153:19	always (8) 24:17;69:2,6;70:2; 139:19;145:13; 149:23;151:12	approved (2) 36:19;42:5
Abenaki/Rosebrook's (1) 32:21	acquiring (2) 91:10,12	administration (1) 135:19	among (1) 106:1	approved (2) 36:19;42:5
Abenaki's (8) 13:16;36:17;40:2; 41:13;86:21;117:15; 142:9;152:20	acquisition (5) 36:19;37:5;42:1, 20;56:23	advised (1) 89:24	amortization (5) 6:4,7,13,15,18	approximately (1) 9:8
ability (4) 63:16,19;73:12; 74:5	across (3) 128:14;130:4; 138:15	aerial (4) 147:2,3,13;148:21	amount (5) 6:3,8,14,19;35:7	appurtenances (1) 97:6
able (6) 79:22;100:24; 101:3;102:1;155:22; 157:21	acting (1) 28:3	AFTERNOON (9) 3:1;29:1,2;55:14, 15;76:10,11;126:5; 157:4	amounts (4) 9:4,14;35:5;146:21	April (1) 18:13
above (1) 86:6	active (1) 26:3	again (43) 14:4;22:11;23:2; 32:12;34:6;50:15; 53:8;56:10;67:22; 74:3,7;80:11;85:9; 90:22;95:8;96:17; 97:16,19;99:13,14; 100:11,23;122:12; 127:4;129:7,19; 132:2;133:21; 134:14;135:4; 136:18;138:6; 143:10,18;144:4,24; 146:16;147:14; 148:20;149:16; 153:6,7;154:12	amplified (1) 152:15	area (35) 31:11,12;37:13; 44:24;45:19;46:12, 16,21;47:7;49:17,23; 50:3,8,11;51:5;63:8; 65:3;75:20;83:17; 84:3;86:2;104:14,19; 106:24;107:11; 121:12;127:22; 128:1,12;135:16; 138:15;141:16; 142:7;149:7;151:18
absolutely (2) 47:22;140:7	actual (2) 6:20;68:12	Age (2) 76:13,16	annual (1) 4:11	areas (18) 43:15;45:11;47:1, 3;52:13;61:18,21; 72:10;104:13; 106:10,22;107:12; 108:2;119:7;120:19, 22;121:13;123:11
access (2) 25:21;72:14	actually (13) 9:23;21:9;54:22; 57:22;58:2;77:17; 78:24;85:7;90:2; 132:10;141:18; 145:23;152:1	agency (1) 131:18	answered (3) 5:11;98:14;108:10	area's (1) 127:19
accessed (1) 77:20	Adams (3) 12:13;13:24;24:1	ago (2) 77:13;84:16	anticipated (1) 151:12	argue (1) 27:11
accessing (2) 73:2,4	Adams' (1) 13:11	agree (14) 8:5,6,8,10;10:14; 11:7;13:5;31:12; 37:3,23;53:4;112:7; 119:4;122:20	anticipating (1) 154:12	argument (4) 27:4;41:20;58:11; 157:8
accommodate (1) 83:5	add (9) 8:16;9:4;22:2; 64:19;74:18;88:4,9; 102:2;108:24	agree (14) 8:5,6,8,10;10:14; 11:7;13:5;31:12; 37:3,23;53:4;112:7; 119:4;122:20	anyplace (1) 33:17	Arms (24) 26:9;57:7;59:12; 61:2;65:3,4,10; 66:21;83:23;101:20; 107:23;114:5; 128:19,19;137:3; 139:1;142:22;143:1;
accomplishing (1) 45:6	added (3) 22:20;46:13; 128:23	agreed (1) 38:2	apart (1) 127:15	
according (7)	addition (10) 9:10,13;10:11,19; 74:19;75:1,3;88:5; 89:15;148:18		apologize (7) 34:5;80:1;93:13; 102:17;110:3;140:4, 8	

146:19;147:14,16; 148:9;153:11,19 around (14) 6:5;30:1;33:2,5; 59:4;61:7;89:7,20; 99:9;100:2,5,14; 109:7;130:2 arrived (1) 35:22 art (1) 24:11 Articles (9) 106:5;119:19; 120:7,10,12,15; 121:1;122:7;123:11 articulate (1) 81:6 as-built (7) 15:15;96:22;99:21; 127:6;137:12,19,22 as-builts (2) 61:13;138:4 assertion (5) 50:18;51:1;76:12; 86:21;87:16 asset (4) 5:10;6:20;7:13; 94:11 assets (15) 7:8,9,21;9:16; 10:16,16,22;13:24; 35:5;70:10;91:10,12; 93:15;95:13;108:11 assign (1) 61:18 assisting (1) 4:12 associated (17) 9:22;35:7,13,18; 38:17;77:14;81:22; 90:18;94:21;105:5; 107:16;108:12; 115:19;116:2,13; 118:11,21 association (15) 31:3;37:17;49:20; 52:16;54:21;55:1; 82:21,22;104:17; 106:18;107:4,7; 121:8,18;152:13 associations (14) 54:3,7,8;105:23; 115:12;116:4; 118:16;119:17,21; 120:9,16;121:1,21; 122:7 associations' (1) 123:10 assume (2) 7:23;50:24 assuming (1) 31:16 attached (3)	32:7;70:23;94:15 Attachment (12) 29:20;32:9,20; 33:1;34:3,21;36:14; 95:12;117:13;138:8; 147:6;153:5 attendee (1) 154:19 attention (1) 56:9 Attorney (28) 11:16;25:23;34:4; 48:20;55:7;81:7; 94:17;98:5;103:21; 105:2,3;108:10; 109:5;115:2;117:4; 118:5,14;119:9; 120:5;122:24; 123:24;140:3,16; 156:20;157:9,18; 158:7,13 available (7) 80:12;96:19; 115:22;156:18; 157:11,15,19 aware (5) 54:1,20;97:22; 108:20;122:20 away (3) 92:10;126:7,8 <p style="text-align: center;">B</p> back (54) 7:1;8:19,24;9:19; 11:22;13:17,21; 21:13;22:11,12,13; 27:22;32:11;34:1,10, 16,18;39:5,24;41:11; 42:24;48:2,13,18,18; 53:8,12;56:16;69:14; 71:4;80:14,21;81:2; 85:9;89:8;99:10,17; 100:3,14;103:19; 108:9;115:8;128:11; 134:21;136:15; 140:16;141:9; 142:11;146:2,17; 147:11;149:13; 150:14;151:3 backbone (5) 129:22;130:6; 141:15;142:17; 147:21 backfilled (1) 87:23 Backflow (2) 101:14,23 backflow-prevention (4) 101:10,19;102:4,6 background (1) 125:17 backing (1)	5:9 Bailey (13) 43:7;60:10,12,14; 62:18;63:22;67:11; 76:4;80:19;98:17,21, 22;100:20 barely (1) 139:14 barn (2) 137:7;141:3 Base (54) 16:16,18;25:5; 26:5,12,20;29:6;30:1, 9;31:5;39:8,12,16,18, 21,21,23,24;40:4,9, 20;41:4;59:10,11; 60:23;61:1;63:2; 64:9,11;65:8,14; 66:15;67:24;71:18; 72:1;78:12;84:18,22, 24;101:12;113:15; 126:8;128:4;130:2,7; 138:6,19;141:16; 142:2;147:13,15; 150:14;153:11; 155:17 based (14) 38:18;42:12;74:7; 81:14;82:2;83:20; 88:12;92:4;118:3; 126:13;145:4,16; 147:3;156:9 basic (1) 29:3 basically (10) 29:23;39:18;43:17; 44:16;58:8;62:12; 82:9;115:10;131:8, 19 basis (2) 27:6;41:19 bat (1) 132:20 Bates (1) 56:11 bears (1) 94:18 become (1) 136:5 becomes (1) 66:10 beg (1) 90:3 begin (2) 11:20;133:20 beginning (4) 130:24;133:18; 138:10;153:19 begins (1) 147:10 behalf (2) 11:23;18:1 behind (9)	99:21;130:17; 144:1,23;145:12; 146:19;148:1,4,16 belief (1) 36:22 belong (1) 117:18 below (1) 16:3 benefit (2) 151:14,14 benefits (2) 150:5;151:17 best (2) 64:5;92:6 bet (1) 24:19 better (1) 127:1 beyond (6) 19:10,19;31:5; 43:10;46:5;47:8 big (4) 60:16;83:10;99:20, 24 bills (1) 59:21 bit (12) 57:4;60:18;80:1; 122:11;123:3;127:1; 128:24;130:1; 138:19;139:1; 141:24;148:6 blind-sided (1) 152:20 blue (13) 16:17;91:5;99:20; 101:17;109:7; 127:10;129:2; 138:10;147:4,9,20; 153:8,24 Bob (2) 154:20;155:3 books (3) 10:15,19,24 Both (14) 19:15,16;54:6,8; 56:14;65:21;86:10, 11;125:24;132:20; 133:5;134:14;144:7; 154:20 bottom (11) 7:20;10:9;106:12; 110:19;127:6;133:7; 134:23;135:4,9; 138:10;148:3 bought (3) 69:24;70:7;90:13 boundary (2) 153:7;154:11 Boy (1) 17:9 branch (1)	58:8 branched (1) 99:14 branches (2) 66:21,23 break (10) 48:4,6;74:9,9; 88:21;140:5;150:8, 17;152:21;154:2 Bretton (28) 26:7,9;57:7;59:12; 61:2;65:3,4,10; 66:21;83:23;96:7; 97:9;101:20;107:23; 114:5;128:19,19; 135:5;137:3;139:1; 142:22;143:1; 146:19;147:14,16; 148:9;153:11,19 Brian (1) 23:21 Brief (2) 48:15;140:13 briefly (1) 58:4 bring (1) 145:8 Brogan (14) 17:5;124:8,14; 125:1,4,7,16;130:10; 131:2;134:17; 140:20;142:6;153:1; 156:13 broke (2) 89:5,6 brought (1) 99:17 BROWN (42) 3:2,20;10:6;11:9; 14:20;21:11;25:2,12, 18,23;26:2;28:2; 33:19,24;35:3;79:7, 12,18;93:17,20; 94:17,20;103:22,24; 114:18,22;116:16,20; 118:14;119:9;120:6; 122:10;123:4; 127:10;154:14,23; 155:1;156:20,21; 157:9,11;158:5 Brown's (1) 118:5 Brute (1) 91:6 builders (1) 24:23 building (32) 25:1;43:11;58:8; 62:24;63:11,17;70:4; 74:10,11,21;75:6; 78:19;96:23;99:10, 12,17,21;100:1,10, 15;101:18,20,21,21;
--	--	---	---	--

126:7;135:19;137:5; 147:17,17;148:2,18; 153:20 buildings (17) 22:3,9,16;43:21; 44:10;63:20;74:2,6; 75:22;100:5;102:5, 23;103:5;135:17,18; 137:4;153:17 built (4) 37:23;38:22;144:3, 12 buried (1) 156:6 business (2) 24:15;92:8 BW (9) 12:15,15,17,19; 13:2,10,24;18:1;24:1	125:10,13;128:24; 129:7,24;132:13; 134:19;136:15; 138:9,22;139:9,14; 140:17;141:8;144:9; 146:11;148:21; 149:2;153:12;154:5, 5,7,10,16,18;155:12, 13,16;156:21; 157:11;158:3,5,23 candor (1) 90:10 cap (1) 89:19 capacity (1) 88:13 car (2) 137:7;141:2 cards (1) 51:22 caretaker (2) 135:19,20 caretaker's (3) 148:13;153:15; 154:3 carpenter (1) 139:21 carpenter's (2) 139:15,17 carried (2) 37:16;139:7 carrying (1) 37:16 case (41) 13:15;14:10,21; 15:1,4,7,8;20:7,16; 21:5;24:21;25:7; 26:15,18;41:9,17,18; 42:9,17,23;43:4; 55:20;59:19,20; 62:17;63:6;68:18; 69:6;70:2;85:17; 88:23;91:19;104:12, 18;125:9;127:5; 131:24;144:22; 150:3;151:23;152:15 cases (4) 4:13;13:22;46:5; 91:23 categories (1) 103:3 cautioned (2) 3:17;125:2 Center (4) 30:17;143:22; 144:3;148:17 central (5) 139:12,12,18,22; 148:22 certain (6) 42:19;43:1,9; 61:18;67:18;74:6 certainly (3)	93:3;119:13; 158:15 cetera (5) 43:16;108:6; 110:23;117:17;119:2 Chair (18) 11:17;47:24;48:21; 76:5;79:11;93:4; 98:4,17;100:21; 115:4;117:7;123:14; 124:1;125:10; 140:18;155:15; 156:19;158:10 CHAIRWOMAN (88) 3:10;10:1;11:10, 14;25:23;34:4,12,15; 48:3,8,12,17,24;55:5, 10;60:4,8;63:22,24; 64:4;65:23;66:3,24; 76:7;77:3;78:20; 79:1,4,15;80:5,9,22; 81:1;84:10,14;86:17; 93:7,24;94:17;95:10, 23;96:2;98:5,10,13, 20;100:22;101:4,6, 24;102:8,16;103:17, 21;114:24;117:4,19, 24;122:14,22;123:16, 20;124:3,5,10,16,18, 22,23;125:12;140:3, 8,11,15;155:6,7; 156:15,20;157:2,13, 17,20;158:7,11,13, 16,21;159:2 change (6) 14:4;20:9;21:12; 45:7;70:1;72:3 changed (4) 44:20;45:17;71:21; 102:22 changes (6) 15:4,10;41:16,17; 43:8,22 changing (1) 51:6 charged (1) 75:14 Charles (1) 12:13 check (1) 109:17 checking (1) 155:5 chlorination (1) 131:10 choice (1) 71:22 CIAC (6) 5:9;6:7;58:13,15, 16,24 circle (5) 15:24;142:3; 143:20;150:12;151:2	circumstances (1) 19:18 cities (1) 24:18 claims (2) 94:3,12 clarification (5) 21:18;55:17;58:10; 59:6;114:7 clarify (1) 114:14 clarifying (1) 107:12 clarity (2) 64:1;84:11 clear (20) 20:9;25:6,15,21; 26:16;41:12;45:8; 62:15;66:4;83:15; 89:17,22;114:10; 127:10;134:9;136:8, 20;148:20;149:22; 150:5 cleared (2) 63:8,9 clearly (7) 50:3;84:20;125:11, 13;129:20;143:14; 144:6 close (4) 62:2;63:10;72:12; 146:7 closer (1) 145:9 closing (1) 124:2 Club (5) 12:15;52:17;53:18; 54:2,22 CNL (1) 13:23 colleagues (1) 23:24 collectively (1) 97:6 college (5) 63:19;74:3,4; 75:16,17 color (1) 111:10 column (3) 144:17,21;145:15 columns (1) 6:6 combination (3) 76:14,15,16 comment (2) 90:19;146:16 commercial (7) 22:3,8,16;44:10; 88:1;102:23;103:5 Commission (9) 42:6;125:20,24;	126:9;127:1;131:17, 24;132:16;150:1 Commissioner (40) 43:7;55:4;60:10, 12,14;62:18,19,20; 63:22;65:24;66:6,24; 67:11;73:22;74:19; 76:4,8,9;77:3;78:20, 23;79:2,9,19;80:2,5, 10,15,19;81:3,4; 84:10,13;86:18,19; 93:4;98:17,21,22; 100:20 Commissioners (1) 103:17 Commission's (1) 142:9 common (40) 13:9;43:15;44:24; 45:11,19;46:12,16, 21;47:1,3,7,13;49:17, 23;50:3,8,10;51:5; 52:13;53:20;54:15; 55:1;65:7;72:10; 104:13,14;106:10,22, 24;107:11,12;108:1; 119:7,24;120:18; 121:4,12,13;123:11; 155:19 communicate (1) 100:24 communities (1) 144:11 community (1) 132:23 companies (1) 12:23 Company (56) 3:24;7:14;8:3; 10:15,20;11:1;12:6,8, 9,10,20;13:3,18,23; 19:1,10;21:17;22:23; 23:11;26:21;28:20; 32:17;44:1,5,14;45:2, 9,13;46:1;47:4; 49:24;58:20;69:12; 70:8;78:2;81:8;82:6; 93:2;94:5,6;96:1; 114:11,12,15;117:3, 10;127:9;132:19; 133:6;134:13,15; 135:2,7;137:21; 145:14;152:24 Company's (9) 56:17;57:8,19; 58:14,22;59:9;107:8; 116:22;145:22 compare (1) 107:20 compensated (1) 28:7 compensation (1) 108:20
--	---	--	---	---

compiled (1) 106:7	134:19	continuity (1) 37:18	52:17;129:16	6,11,15,19;109:13, 18;113:14,21;121:14, 21
complaint (7) 93:11,14;94:3,16; 143:24;153:4,5	connecting (1) 130:13	continuous (1) 83:3	counsel (1) 93:11	
complete (3) 58:23;59:1;71:6	connection (3) 60:24;119:1; 131:21	contract (1) 17:24	couple (7) 6:5;8:17;56:8; 136:16;141:19; 145:9;157:6	
completed (1) 134:3	connectivity (13) 25:8;31:8;64:15; 66:18;76:24;77:15, 22;80:6;87:6;88:19; 102:14;126:1;149:11	contractor (6) 69:5;74:23;75:14; 77:24;78:1,5	course (2) 133:14;142:15	'curb (1) 23:9
completely (3) 62:11;133:13; 150:16	connects (3) 16:19;26:6,10	contractors (1) 46:7	Court (14) 3:17;25:9;31:9; 64:16;66:19;77:2,23; 80:8;88:20;95:22; 125:2;126:11; 127:12;142:4	C
complex (3) 113:3;133:12,15	consequently (1) 37:19	contributed (3) 6:21;7:14;8:3	covenants (1) 106:6	current (4) 28:11;41:23; 108:21;109:2
conceivable (1) 83:4	consider (2) 51:3,6	contribution (2) 10:20,22	covered (2) 48:7;57:10	Currently (2) 28:11;96:6
concerns (2) 112:10;134:7	consideration (1) 149:24	contributions (2) 9:22;15:9	CPRs (15) 9:5,11,14;33:23; 59:4;142:14;143:18; 144:9,17;145:20; 146:2,12,17,22;147:8	customer (8) 19:11,19;20:22; 49:20;59:16;70:3; 84:6;136:5
conclude (3) 19:8;48:23;121:6	considered (1) 126:17	Control (4) 131:16;132:15; 133:6;134:15	Crawford (9) 30:10;105:10; 106:1,3;115:13,16; 118:20;119:13,16	customer's (6) 44:17;88:1;104:9; 150:11,19;151:9
concluded (2) 37:7;42:2	consisting (1) 56:2	controlled (4) 12:13;22:23;23:11; 26:21	create (1) 88:11	customer's (3) 47:7,9;104:3
conclusion (4) 38:7;118:8,23; 146:3	constitute (1) 36:7	conventionally (1) 47:19	created (3) 9:12;10:13;33:9	CWS (1) 132:22
conclusions (1) 126:12	construct (1) 97:2	conversation (1) 72:7	creating (1) 33:12	Cyr (36) 3:6,11,11,16,19,21, 23,23;4:1,5,7,9,16,19, 21,23;5:2,6,14,17,21; 6:24;7:2,3,6;8:11,16; 10:5,8;11:2;32:4; 35:1;38:3,6;39:2; 154:21
concrete (1) 40:18	constructed (10) 6:21;7:13;8:1; 31:24;34:19;38:12; 92:5;99:11,13; 120:20	convey (1) 112:18	cross-connection (1) 134:7	Cyr's (3) 8:6;11:5;35:22
conditions (2) 50:23;152:3	construction (8) 10:21;15:9;38:5; 53:2;90:2,4;130:12; 136:22	conveying (1) 110:19	cross-connections (1) 136:11	D
condo (3) 54:12;106:18; 120:8	construed (1) 75:7	copy (5) 15:18,19;32:16; 117:9;132:8	CROSS-EXAMINATION (6) 11:18;49:5;55:11; 104:2;105:2;109:5	dark (1) 147:20
condominium (6) 53:23;54:6,8,20; 104:17;105:17	consultant (3) 28:3,5;125:9	corner (2) 64:18,18	cul-de-sacs (3) 143:14,17;154:10	data (5) 32:8,15;34:22; 117:8;137:16
condominiums (8) 19:14,17;20:1; 43:16;44:10,18; 49:14;54:14	consulted (2) 88:8,16	corners (1) 64:14	curb (94) 18:23;19:4,9,18, 24;20:4,11,19;21:20, 22;22:22;24:6,11,15; 25:3,11;26:13,22; 27:2,4,6,10,12;39:15; 40:9;43:10,19;46:2, 3;47:8,16,20;49:23, 24;50:2,9,10,11,19; 51:4;52:12;59:8,14, 18;62:14;63:1,9; 64:7,9,22;65:17;66:9, 12,16,20;67:3;68:19; 69:2,9,19,20,21;70:4, 14;72:21,23;73:16, 19;75:7,8,9;78:12; 81:17;82:11,24; 83:23;84:17,19; 85:13;86:5;101:11; 102:7;103:14;104:2,	date (11) 6:11;38:4;99:19; 130:5;136:23;158:1, 3,20,23;159:5,6
condo-type (1) 103:4	consulting (2) 4:1;125:24	corrected (1) 39:2		Dates (3) 53:2;128:10;146:4
conduct (1) 36:20	contact (1) 28:14	correcting (1) 38:6		day (11) 14:5,5;79:23,24; 107:19;123:18,23; 124:2;129:15;157:7; 159:3
conduits (1) 97:4	contacted (1) 28:2	correction (4) 8:6;11:3,10;38:4		dead (1) 85:14
confirm (1) 123:2	context (2) 43:18;72:14	corrections (1) 11:5		dead-end (1) 151:6
conflated (1) 54:4	continue (4) 34:11;143:19; 157:24;159:4	correctly (4) 33:3;35:19;38:23; 88:17		deal (1) 79:20
conflict (1) 157:4	continued (1) 133:10	corrects (1) 145:7		debris (1)
conforms (1) 87:18	continues (1) 138:23	correspondence (2) 136:1;150:3		
confused (2) 50:16;54:11	continuing (18) 7:17;28:9;32:6,21; 33:14,16;35:6,12,17; 36:3,11;52:20; 115:18;116:7,14,22, 24;118:9	cost (4) 6:3,10;35:13;38:17		
connect (4) 40:6;102:1;133:15, 20		costs (9) 33:18;35:23;36:5; 105:4;107:16; 108:12;116:1; 118:11,21		
connected (1)		Cottage (1) 30:16		
		cottages (2)		

63:9 decide (1) 20:19 declarations (1) 106:7 dedicated (1) 82:17 Deed (10) 95:14,15,20,23; 110:4;111:20,24; 112:10;113:1;120:6 deeds (12) 79:20;95:9;106:6, 24;107:9;108:1,6; 109:23,24;110:1; 120:1,4 defer (1) 120:5 deficiency (1) 133:9 definitely (2) 86:2;145:24 definition (5) 22:20;23:7;24:3; 53:20;106:24 definitively (2) 61:20;85:21 demand (3) 88:7,11;89:2 demarkation (3) 47:17;68:6,12 demolished (1) 137:8 demolition (1) 90:2 denies (1) 142:6 Department (1) 131:14 depending (4) 46:6;67:16;129:15; 150:17 depicted (1) 101:17 depreciation (3) 5:10;6:10;38:19 describe (2) 29:18;125:16 described (4) 36:13;61:13;83:10; 142:8 describing (1) 118:1 description (1) 95:4 detail (2) 138:20,21 detailed (4) 137:13,22;153:3,6 detailing (2) 32:18;117:11 details (2) 14:8;23:15	determine (2) 94:14;118:4 determined (2) 53:1,3 developed (3) 7:18;83:17;92:17 development (14) 16:1;105:17;128:6; 137:9,10;140:24; 141:2;142:3;143:15; 144:10;149:11; 150:10,12;154:6 developments (3) 108:5;142:18; 143:4 device (1) 102:6 devices (5) 101:10,14,19,23; 102:4 DI (1) 142:20 dialogue (1) 43:6 diameter (1) 149:9 diameters (1) 146:5 dictates (1) 50:20 difference (7) 6:9;45:5,21,22,24; 86:7;145:19 different (8) 14:6,7;24:23; 26:19;36:8;50:5; 54:3;144:11 differently (2) 86:9,13 difficult (6) 40:14;43:19;57:4; 72:13;85:2,92:22 difficulty (3) 73:2,3;93:1 dig (2) 86:22;87:10 diligence (4) 36:21;37:5;42:1; 92:2 direct (9) 11:13;12:5;52:18; 56:9;79:13;112:2; 124:9;125:5;156:14 directed (3) 34:7;55:13;107:24 direction (2) 36:8;129:11 directions (1) 64:21 directly (1) 144:17 Director (1) 158:22	directs (1) 66:16 disagree (1) 122:21 disagreement (1) 146:12 disagrees (1) 122:13 discovered (1) 8:9 discovery (3) 116:7;126:15; 131:23 discuss (2) 127:2;155:10 discussed (2) 77:10;118:14 discussion (9) 6:5;32:5;34:14; 35:3;48:1;55:20; 59:7;80:24;102:12 dispute (2) 116:18;122:18 disputing (1) 120:21 distance (3) 65:14;84:21;86:6 distinct (1) 64:14 distinction (5) 45:23,23;73:16; 86:3;118:19 distinctions (1) 156:9 distinguish (4) 17:20;108:13; 109:13;146:23 distinguishable (1) 108:7 distinguishing (1) 108:4 distribution (4) 82:15;84:8;150:6; 156:2 divided (2) 6:15,19 divides (1) 127:20 Docket (5) 14:23,24;36:20; 42:20;132:1 dockets (1) 126:15 docs (2) 53:23;54:12 document (8) 95:17;96:14;97:22, 24;107:17,20;116:7; 119:4 documents (4) 56:24;79:14;108:1; 136:9 dollar (4)	35:7;115:19; 116:12;146:21 domestic (2) 74:24;75:5 Don (4) 70:6;154:18,20; 155:2 done (10) 11:12;17:21;72:17; 99:18;114:9;120:20; 123:17;149:19; 151:11;158:3 dots (2) 113:19,22 DOUGLAS (2) 125:1,4 down (35) 5:23;7:9,20;16:18; 29:24;30:1,16;31:5; 60:1;61:4;65:8,10; 68:2;74:6;85:13; 90:1;105:8,9,11; 106:11;110:4,18; 128:18;130:1,7; 133:18;138:19; 141:16;143:2,19,21; 147:16;148:2; 153:11;154:8 DR (1) 132:1 draft (1) 23:13 draw (1) 149:2 drawing (5) 29:12;137:12; 144:5;153:13,24 drawings (4) 96:22;137:13; 139:8;144:22 drawn (1) 146:4 drew (1) 137:22 ductile (5) 32:18;91:4,4; 117:11;142:20 due (5) 36:21;37:5;41:24; 92:2;121:19 duly (2) 3:16;125:1 During (75) 28:17;32:5;54:5; 88:2;100:11;102:19; 103:9 DW (3) 36:20;55:19; 151:22	11:6;14:20;17:16; 32:24;38:2,11;55:18; 56:17;58:11;61:14; 63:15;67:14,22; 70:17;73:24;77:18; 84:24;85:5;91:11; 119:6;151:24 early (2) 128:11;130:14 ease (1) 21:9 easement (16) 78:11,11,16,18; 94:4,7,10;95:15,20; 96:11;97:1;106:24; 108:1,6;110:13; 126:9 easements (12) 78:10,14;93:10,23; 94:4,13,21;95:14,24; 96:21;97:24;98:9 easier (1) 79:12 east (3) 66:13;67:4;127:23 Easter (3) 57:9;152:21;154:1 easy (1) 147:4 edge (1) 27:13 educated (1) 145:16 effect (2) 43:7;120:1 effective (2) 18:13;21:3 eight-inch (1) 16:19 either (13) 7:13;10:22;23:4; 46:19;53:5;56:8; 58:16;59:20;79:6; 80:18;85:22;101:10; 129:10 Eleven (2) 53:13,13 eliminated (2) 71:14,23 eliminates (1) 71:17 Elms (1) 100:19 else (8) 33:10;66:1;84:1; 119:10;123:21; 139:24;140:20;149:2 embedded (1) 122:20 embedding (4) 116:17;117:2,6; 122:17 emerge (1)
E				
earlier (21)				

131:1 emergencies (1) 63:17 emergency (4) 25:7;26:15;63:7; 74:8 employed (3) 14:11,16;125:7 employee (2) 12:5,17 employer (1) 108:21 employment (1) 17:24 end (5) 6:14;70:11;85:14; 141:20;148:4 ended (1) 15:10 ending (1) 121:17 ends (2) 39:12;145:18 engineer (3) 125:8,21;126:2 engineering (4) 125:23;135:2; 139:8;151:23 engineering-related (1) 125:19 England (3) 78:1;114:12,15 enlarge (1) 15:16 enough (4) 26:3;92:3;125:11; 129:13 entered (1) 5:4 entering (3) 100:9;139:5,10 enters (3) 40:6;139:6,16 entire (7) 85:12;129:4,12,20; 137:23;141:5;156:2 entirely (3) 13:19;17:12;41:12 entities (3) 12:13;13:11;14:1 entrance (4) 128:14;138:13; 141:11;147:11 entries (3) 107:15;145:21; 146:12 entry (12) 9:6;57:2,10; 105:14;106:11; 107:22,24;108:2,14; 118:17,21;142:15 Environmental (1) 131:15	equate (1) 73:3 equipment (1) 112:21 Eric (1) 154:16 erroneous (2) 139:14;145:5 error (3) 3:4,9;139:7 errors (1) 3:4 especially (2) 69:7;151:8 essentially (3) 29:12;37:15;45:24 establish (1) 31:10 established (1) 35:1 estate (1) 76:1 estimated (1) 133:19 et (5) 43:16;108:6; 110:23;117:17;119:2 even (18) 63:6;64:13;67:23; 70:10;82:17;83:6; 91:20;109:15; 115:17;116:6;136:3; 138:21;139:8; 149:12;150:10; 152:9;153:6;155:21 everybody (1) 48:18 Everyone (6) 23:21;24:15; 123:22;132:13; 158:4;159:3 everyone's (1) 127:9 evidence (3) 85:16;124:11,19 exact (3) 40:17;67:2,16 exactly (5) 10:10;64:2,6; 71:10;94:14 EXAMINATION (2) 103:23;125:5 examined (2) 37:6;42:2 example (5) 87:19;91:3;115:12, 16;118:20 examples (1) 75:4 Excel (1) 5:24 Excellent (1) 49:1	except (1) 10:11 exception (1) 82:16 exceptions (1) 85:7 exclusive (2) 91:12;110:12 exclusively (1) 46:24 excuse (7) 19:11;68:8;104:7; 111:8;120:11; 121:22;123:21 Executive (1) 158:22 exercise (1) 63:5 Exhibit (137) 4:17,18,22;5:4,21; 7:1,16,20;8:13,15,19; 10:4,7,8,11;12:24; 15:13;16:24;17:5; 18:6;21:1,10,14,15; 22:13;23:4;28:12; 29:9,11;31:19,21,21, 24;32:1,1,12,13; 33:10,13;34:2,3,21; 36:6,9;42:17;44:6; 45:13;46:14;49:10; 51:14,18,21,22,24; 52:18,19,19,22;53:1, 8,10;54:16,24;56:10, 13;57:2;60:16;61:8; 64:3,7;70:21;77:11; 78:8,9,15,22;79:19; 93:18,19,21;94:22; 95:2;98:23;104:21; 105:1,9,19;106:8,17; 107:5,21;109:6,20, 110:8;111:1,7,9,13, 20;112:9,13;113:6,7, 12,16;114:8;115:8; 116:21;117:15,17; 120:3;126:23;127:4; 131:3,4,8;134:21; 137:15;138:3; 139:24;140:21; 142:11,13;144:15; 145:2;146:1,14,16; 147:1,7;148:21; 150:21;153:1,4; 155:13,16;156:12 exhibits (7) 5:19;27:21;88:15; 93:13,14;109:22; 149:3 exist (1) 137:11 existed (1) 151:18 existing (2) 87:9;134:23	exists (1) 42:11 expanses (1) 75:24 expansion (9) 76:19,20,22,22,23, 24;77:6;88:17;89:9 expansions (3) 127:16;143:3,3 expect (3) 69:22;88:7;124:12 expectation (2) 70:1;134:18 expected (1) 87:19 experience (8) 41:1;67:23;68:1,5, 14,18;78:4;91:17 experiences (1) 85:6 expertise (1) 125:17 explain (5) 58:4;94:10;104:8; 134:20;146:6 explanation (2) 5:20;83:15 explicit (2) 45:10;146:8 explicitly (3) 96:8,9;97:19 extend (1) 96:22 extended (8) 20:20;100:14; 128:16;130:6; 141:14;144:2; 147:21;148:1 extending (1) 128:14 extends (2) 78:18;149:17 extension (6) 57:7,20;143:8,22; 146:9,10 extensions (2) 142:21;146:5 extensive (1) 124:9 extent (6) 80:18;83:4;145:3; 152:12;155:10;157:5 exterior (14) 20:2,5;21:21; 22:21;23:9;24:5; 26:23;42:13;44:3,12, 22;45:1,14;99:4 extra (1) 48:22 extracts (1) 53:23	F facilities (1) 119:12 fact (12) 20:16;83:8;88:8, 15,16;89:14;99:15; 108:4;116:17;117:2, 6;123:10 factor (1) 151:21 factors (1) 151:20 facts (3) 122:12,17,21 fair (16) 15:10;16:7;18:18; 19:7;24:7;31:6; 33:20;35:9;83:19; 90:18;106:3;111:19; 112:24;117:23; 146:3,11 fairly (1) 151:7 Fairway (23) 107:4;137:9,11; 141:1,4,6,14,17,20; 143:8,15;146:20; 147:22;149:3,6,10, 15,20;150:8,15; 151:2,6;154:6 fall (2) 133:21;136:23 falls (1) 46:4 familiar (11) 4:18,22;5:3;17:7,8, 10;28:9;36:24;37:2; 43:4,13 far (13) 20:20;52:17;60:21; 78:17;92:2;96:20; 103:6,13;128:14; 129:7;138:15;150:6; 158:18 feature (1) 148:22 February (3) 21:4;28:16;71:5 feed (1) 151:1 feeding (1) 129:12 feels (1) 80:19 feet (20) 9:8;40:5;57:11; 61:6,9,10;66:13;67:4, 8;85:22;90:17; 110:14;112:16; 119:1;126:7,8; 141:19;145:9,15;
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149:18 felt (1) 152:19 few (3) 55:10;84:16;93:22 figure (3) 5:9;20:17;95:4 figured (1) 95:7 file (1) 5:22 filed (1) 36:19 finally (1) 30:15 financial (1) 4:10 financings (1) 4:13 find (4) 3:4;79:6;80:1; 145:13 fine (5) 17:13;155:3;158:9, 12,15 finishes (1) 156:11 fire (7) 74:8;75:2,2,5; 150:4;152:1,2 first (18) 9:2;14:14,19;46:2; 49:7;55:16;56:3; 79:20;83:16;93:22, 22;126:21;132:11; 133:24;138:9;141:9; 144:16;145:3 fit (3) 87:14;146:5,6 fitting (1) 58:6 five (4) 7:21;48:5,9;153:12 fix (3) 87:11;88:22; 134:14 fixing (2) 81:21;86:23 flow (2) 66:17;75:2 flows (3) 150:4;152:1,2 flushed (1) 18:3 focus (2) 14:15;15:22 follow (2) 16:3;122:8 followed (1) 125:20 follow-up (9) 8:12;57:16;62:19; 63:23;79:7;103:18;	104:4;114:19;158:20 footages (2) 32:18;117:11 Forest (2) 30:16;129:16 forgot (1) 131:5 form (1) 122:16 forth (7) 34:1;127:3;134:8; 136:7;138:2;148:19; 150:3 Forty-six (1) 21:2 foundation (1) 117:5 four (5) 23:16,18;143:5; 147:7,20 fourth (2) 7:9;147:2 frame (1) 157:22 freestanding (1) 74:21 freeze (1) 74:14 front (3) 89:7;104:21;113:9 full (2) 129:11;137:24 function (1) 156:10 further (11) 48:23;60:6;68:20; 75:10,10,11;123:3, 14;130:7;134:20; 150:14 future (5) 90:20;91:16; 112:16;150:23; 154:12	78:14;81:12;84:15, 23;85:19;86:14;88:4, 18,21;91:15;94:2,13; 95:15,18,20;96:5,17; 97:12;98:24;99:3,6, 24;100:7,17;101:8; 102:2;104:1,7,12,20, 22,24;105:11,13,15, 18,21,24;106:9,14, 16,19;107:2,6,11; 108:3,8;109:19,21; 110:1,6,12,21,24; 111:4,7,11,15,17,23; 112:5,8,12,14,23; 113:4,5,8,17,20,24; 114:3,7;115:8,21; 116:1;118:8,13; 119:6,19;120:5,11, 14;121:3,9,13; 122:11;123:7 gallons (1) 83:10 Gallo's (1) 56:16 garbled (1) 82:1 gave (2) 5:16;81:7 gears (1) 86:20 general (1) 68:22 generally (4) 75:17;82:14; 121:19;144:8 gentlemen (3) 29:1;55:14;60:7 geographic (2) 46:20,21 gets (2) 47:6;129:13 Getz (56) 11:16,17,19;26:4; 34:4,9,17;47:23;48:5, 10,14,20,21;72:4; 81:7;98:4,6,7,12; 105:3,3;108:10; 109:5;115:2,4,7; 116:19;117:4,7,21; 118:7;122:24;123:5, 13,24;124:1,4,8,12, 21;125:6,10,14,15; 140:3,7,10,16,18; 142:5;155:15; 156:11,19,24;158:7,9 Getz's (1) 71:13 Gaiimo (24) 62:19,20;65:24; 66:6;67:1;76:8,9; 77:4;78:21,23;79:2,9, 19;80:2,6,10,15;81:3, 4;84:11,13;86:18,19;	93:4 GIS (1) 145:1 given (1) 129:8 glad (1) 108:23 goal (1) 75:10 goes (38) 16:5,6,8,12,18; 26:6;29:24;30:1,9, 16;46:5;65:4,9,10,15; 67:4;75:21;82:21; 83:11;84:20;85:9; 91:8;92:2;99:14,21; 100:4;104:14;130:1, 3;134:6;135:16; 138:24;141:17,18; 143:19;147:15; 149:1;153:11 Golf/Nordic (3) 144:3;148:2,17 Good (9) 15:20;29:1,2; 55:14,15;76:10,11; 132:5;151:9 graduation (1) 125:18 granted (1) 41:6 grantee (1) 96:1 grantor (1) 95:24 grants (1) 94:6 gravity (1) 129:13 gray (3) 137:4,5;147:18 green (4) 138:24;147:15,19; 148:8 ground (1) 145:23 groundwater (1) 135:15 group (1) 7:9 groups (1) 7:8 GS (2) 95:14,24 guess (20) 9:18;15:22,24; 22:10;26:2;29:3; 31:20;32:23;58:11; 69:15;73:15;77:21; 80:18;81:11;92:20; 100:6;111:22;144:8; 145:17;150:20 guessing (1)	134:22 guests (1) 133:4
H				
halfway (3) 105:9,11;110:4 Hampshire (3) 91:21;126:3;155:4 hand (2) 23:17,21 handle (1) 158:20 Hannah (1) 138:12 happen (3) 41:9;74:10;152:7 happened (2) 76:13;89:15 happening (3) 136:8;142:19; 156:1 happens (2) 19:22;152:12 happy (1) 80:2 hard (6) 15:18,19;73:9; 141:7;155:9;157:16 hardly (1) 141:8 heading (3) 134:23;135:5; 143:12 headings (1) 146:8 hear (7) 77:5;102:15; 113:10;125:11,12; 127:23;157:7 heard (6) 77:18;87:7;122:24; 128:9;138:14;151:15 hearing (14) 4:15;27:19;28:4; 48:16;72:4;82:7,9; 100:12;124:2; 140:14;158:1,20; 159:4,9 held (1) 125:18 help (5) 51:16;62:7;109:23; 150:4;151:13 helpful (4) 21:12;48:6;79:17; 80:20 high (1) 78:4 highlighted (2) 153:23;154:7 hill (3)				

29:24;129:6; 143:19 hired (1) 78:1 historical (2) 27:15;80:17 history (2) 131:2;144:9 Hmm-hmm (3) 13:8;16:2;17:18 hold (1) 122:18 Home (1) 21:23 homeowner (4) 50:1,15;115:12; 121:1 homeowners (8) 55:1;105:23; 118:16;119:17,21; 120:16;122:6;123:10 homes (10) 18:22;19:9,13,16, 24;44:9,18;54:18,22; 104:5 honest (2) 40:13;152:19 hope (1) 83:15 hopefully (1) 45:15 hoping (3) 43:12;66:7;132:13 Horizon (1) 94:22 Horizons (2) 111:2;152:9 Horizon's (1) 151:23 hospital (1) 76:2 hospitals (2) 75:24,24 hotel (170) 7:19;13:9,18,22; 14:11,11,14,16,17; 16:20;17:9,22;18:2, 4;25:4;26:10;28:19; 29:6;32:10;33:2,7, 10;36:21;37:9,23; 39:9,19,22;40:7; 41:15;51:24;57:7; 59:12;61:23;62:2,10, 11;63:12;65:1,5,11, 16,17;66:17,23;67:4, 12,21;69:11,16,18, 20,22;70:15;71:18; 72:2;73:5,11,13,14, 17,18;74:19,20;75:1, 3;78:19;82:8,12,17; 83:23;84:19,21; 85:14,15;86:22,23; 88:5;89:6,7,8,15,20;	90:5;95:8;96:7,23; 97:20;99:5,8;100:1; 101:21;105:14; 107:23;108:6,13; 109:10;112:3;113:2; 114:1,4,9,13;126:7, 10;127:18,24;128:5, 17,20;130:11,13,14, 17,19,21;131:9,21; 132:22;133:2,4,11, 15;134:7,18;135:12, 21,24;136:4,11,12, 19;137:2;138:17,24; 139:2,6,6,10,16; 141:12;142:22; 143:6;144:1,23; 145:2,5,12;146:19, 20;147:10;148:2,5,6, 7,12,17,23,23;150:5; 151:15,16,17;152:2, 8;153:3,10,14,15; 154:2 hour (1) 124:13 hours (2) 157:6,23 house (1) 83:12 houses (2) 97:4;112:21 hundred (2) 141:19;145:9 hybrid (1) 56:2 hydrants (4) 17:19;18:3;97:5; 112:22 hypothetical (3) 41:2,8;85:20	I	idea (2) 81:7;97:11 ideally (2) 46:3;47:9 identification (1) 5:5 identified (5) 6:1;10:23;84:17; 103:2;136:10 identify (2) 10:3;134:24 II (3) 9:20;10:3,5 imagine (1) 69:16 immediate (1) 32:23 imminent (1) 136:22 impact (2) 152:5,15	important (2) 149:5;151:19 improved (1) 92:1 improvements (1) 88:24 inaccuracies (1) 146:7 inaccurate (2) 38:7;61:14 inadequately (1) 131:11 inaudible (1) 136:21 Inc (2) 32:17;117:10 incidental (1) 90:8 include (5) 35:4,5;71:24;89:1; 135:18 included (4) 33:17;35:14;93:10; 94:4 includes (2) 114:4;117:17 including (8) 4:13;17:19;44:3, 12,22,24;45:14,19 incomplete (3) 71:7;92:12;96:18 Incorporation (7) 119:20;120:8,10, 13,15;121:2;122:7 incorrect (3) 5:16,20;39:1 incorrectly (1) 83:9 indeed (2) 3:4;148:5 independent (1) 130:22 indeterminate (1) 119:11 indicate (1) 126:9 indicated (2) 102:19;134:17 indicates (1) 135:22 individual (3) 7:18;46:19;138:1 industry (2) 47:13;68:24 information (4) 61:15;115:21; 116:1;121:19 infrastructure (19) 36:22;75:18;76:1; 86:24;87:1,7,10,11, 12,24;90:15,17,24; 106:5,20;109:9; 110:17;119:23;141:5	initial (4) 33:18;67:5;142:15, 16 initially (1) 128:11 Inn (2) 128:19;147:16 input (3) 88:12;89:3,4 inside (3) 134:7;141:5; 150:11 inspect (2) 87:18;89:13 inspected (2) 87:22;88:2 install (3) 72:23;97:2;112:18 Installation (6) 18:21;22:7;69:8; 72:20;76:17;123:12 installed (12) 16:15;39:7;46:6; 49:19;56:19;62:5; 69:12;74:23;83:17; 135:24;142:17; 152:17 installing (1) 69:1 instance (2) 88:4;103:11 instances (1) 41:5 instead (2) 44:21;141:3 intend (1) 124:6 intended (1) 149:20 intent (1) 149:14 intention (1) 133:12 interchangeably (1) 20:6 interconnect (1) 136:13 interconnection (1) 154:13 interest (1) 110:20 interim (2) 100:23;101:7 interject (4) 25:13,19;154:14; 155:6 internal (3) 24:4;136:6,10 interpret (1) 73:1 interpretation (2) 27:3;119:18 interrupt (1)	10:2 interrupting (1) 34:5 interruption (1) 140:4 interrupts (12) 25:9;31:9;64:16; 66:19;77:2,23;80:8; 88:20;95:22;126:11; 127:12;142:4 intersection (1) 155:20 into (15) 5:9,11;23:3;27:9; 47:6;61:1;68:3,20; 84:20;99:9;100:8; 136:3;139:8;141:14; 149:6 introduced (1) 42:5 introduction (1) 46:11 invoice (1) 78:5 invoiced (1) 114:16 invoicing (2) 109:2;114:8 involved (1) 15:3 involving (1) 15:8 iron (3) 32:18;117:11; 142:21 isolate (3) 63:16,20;155:22 isolation (3) 75:4;155:19;156:3 issue (24) 19:8;25:8;26:18; 27:15,16;29:3;31:8; 46:10;64:15;66:18; 77:1,15,22;80:7;84:2, 3;87:6;88:19;102:14; 118:16;126:1; 149:11;150:1;151:4 issued (1) 32:8 issues (4) 19:17;98:8;126:17; 134:6 item (5) 5:24;33:18;35:12; 115:5;134:11 itemizations (1) 90:14 itemized (4) 90:21,23,23;92:7 items (6) 35:4,16;36:2,13; 105:4;149:4
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<p>J</p> <p>job (2) 14:4;109:2</p> <p>jobs (1) 125:19</p> <p>jog (2) 129:2;130:2</p> <p>jogs (2) 129:24;145:18</p> <p>July (1) 136:1</p> <p>jump (2) 70:6;96:4</p> <p>jumping (1) 143:21</p> <p>June (3) 132:14;133:22; 136:20</p>	<p>81:22;110:14</p> <p>landscaping (1) 43:20</p> <p>Lane (1) 52:15</p> <p>language (10) 42:9;44:6,16; 45:17;46:13;47:15; 49:8;51:7;71:21; 102:22</p> <p>lap (1) 60:18</p> <p>large (13) 15:17;75:24;92:13; 109:7;126:22;127:4; 128:6;136:15,23; 137:5,7,19;151:8</p> <p>larger (3) 147:17;149:8,9</p> <p>large-scale (1) 100:7</p>	<p>81:15;90:15; 122:15;155:12</p> <p>leave (2) 107:18;158:1</p> <p>left (15) 16:4;28:13;29:17; 127:19,19;129:7; 132:23;137:3,6; 140:17,24;142:1; 147:11;153:9,20</p> <p>legal (1) 157:8</p> <p>length (7) 16:9;144:4,19; 145:3,6,6,20</p> <p>lengths (5) 61:18;143:11; 144:21;146:6;155:22</p> <p>less (1) 6:19</p> <p>letter (3) 126:18;133:22,22</p> <p>letters (1) 131:17</p> <p>licensed (1) 126:2</p> <p>lie (1) 119:12</p> <p>light (1) 147:9</p> <p>likely (1) 20:8</p> <p>liken (1) 74:3</p> <p>limited (2) 84:3;157:22</p>	<p>lined (2) 91:4,4</p> <p>lines (17) 15:15;30:23;36:23; 65:6,11;66:8;78:12; 82:10,24;97:15; 101:18;103:7; 110:10;127:2,8; 147:5;153:8</p> <p>list (6) 93:9;94:4;105:22; 107:15;116:9;135:16</p> <p>listed (10) 7:8,21;35:5,17; 94:11;106:17;107:5; 119:3;126:18;146:21</p> <p>listening (2) 4:14;154:17</p> <p>listing (2) 70:23;71:1</p> <p>lists (4) 57:2,6;132:20,21</p> <p>little (18) 5:23;17:1;69:11; 82:1;113:19;123:3; 127:1;128:24;130:1; 138:19;141:19,24; 148:6,14;149:10; 153:2,15,22</p> <p>live (2) 79:10;129:16</p> <p>LLC (3) 13:2;95:14,24</p> <p>locate (1) 72:21</p> <p>located (18) 25:3;43:20;51:5; 64:8,23;65:18,21; 66:5;67:6,7;72:12; 86:5;91:1,7;94:9; 101:16,17,20</p> <p>location (21) 10:4;17:8;32:19; 40:18;46:20,21; 47:15;67:2;69:3,9; 72:16;78:22;84:16; 89:21,21;100:10; 113:14;117:12; 128:23;150:23;154:1</p> <p>locations (4) 47:16;72:23;138:2; 152:11</p> <p>lodge (4) 30:1,9;31:5;130:3</p> <p>logical (2) 150:23,23</p> <p>long (5) 123:23;124:10; 128:8;151:7;159:3</p> <p>longer (3) 17:1;155:22; 157:23</p> <p>longitudinally (1)</p>	<p>40:10</p> <p>long-winded (1) 92:21</p> <p>look (33) 10:20;12:24;15:13; 16:16,23;17:8,10; 18:20;20:24;22:11, 12;31:2;44:8;48:2; 53:1;60:4;61:8; 70:21;81:6;95:13,20; 111:1;117:8;128:13; 137:10,15;138:20; 142:22;148:11; 149:5;152:1,5;153:3</p> <p>looked (10) 27:20;53:5;126:22, 23;136:21;142:11; 146:18;147:8;152:2; 155:24</p> <p>looking (18) 8:13;33:15;52:24; 60:22;61:5;64:2,20; 78:16,24;82:2;95:11, 12;98:18;110:8; 132:8;144:18; 146:17;152:16</p> <p>looks (7) 16:21;21:17;34:6; 48:17;99:13;100:22; 127:17</p> <p>Loop (2) 138:12;150:24</p> <p>looping (7) 91:7;149:23;150:4, 20;151:11;152:11,12</p> <p>Lorber (2) 135:1;137:20</p> <p>lost (4) 34:5;80:10;96:19; 100:23</p> <p>lot (9) 47:24;49:9;55:2; 59:2,3;109:21;120:6; 132:2;159:4</p> <p>loud (2) 50:6,14</p> <p>low (2) 129:13;152:7</p> <p>lower (6) 127:18,19;129:7; 140:24;153:19,20</p> <p>lying (1) 110:14</p>
<p>K</p> <p>keep (5) 34:8;80:3;92:19; 107:12,14</p> <p>kept (7) 25:6,15,20;26:16; 62:15;91:22;92:14</p> <p>key (1) 26:18</p> <p>kick (1) 106:23</p> <p>kind (21) 46:22;69:14;92:20; 128:24;131:12; 137:2,5;139:9,12; 140:23;142:13; 144:10;146:8; 147:18;148:22; 150:13,22;151:3,11; 152:15;154:13</p> <p>knew (1) 25:6</p> <p>knowing (1) 82:2</p> <p>knowledge (3) 70:9;108:3;115:23</p> <p>knows (2) 24:15;85:23</p>	<p>last (26) 6:5;8:11;9:6;19:3; 23:4;55:20;56:2; 57:9;59:6;70:22; 81:23;89:16;113:12, 12,16;117:9;125:20; 133:8;137:17;138:3, 9;139:1,3,5;147:6; 151:21</p> <p>last-minute (1) 90:6</p> <p>later (11) 17:6;99:19;130:8; 137:10;138:16,21; 139:22;147:20,24; 148:11;149:17</p> <p>lateral (1) 104:15</p> <p>Laurie (1) 23:20</p> <p>law (3) 13:17;36:17;95:5</p> <p>lay (5) 117:5;119:22; 120:15,16,18</p> <p>layman's (1) 24:14</p> <p>layout (1) 67:17</p> <p>leak (9) 59:21;76:13,24; 77:7;81:13,21;82:4; 84:1;88:23</p> <p>leakage (1) 87:22</p> <p>leaks (1) 136:6</p> <p>leaky (1) 131:10</p> <p>learned (2) 89:19;90:19</p> <p>least (4)</p>	<p>lie (1) 119:12</p> <p>light (1) 147:9</p> <p>likely (1) 20:8</p> <p>liken (1) 74:3</p> <p>limited (2) 84:3;157:22</p> <p>line (98) 5:12,24;7:9;16:5,8, 12,17,19;19:5,10,19; 20:13,15;24:17;27:5; 30:13,21;39:12; 40:14;42:14;43:11, 12;44:24;45:16,18; 46:4,5,16,18;47:3,6, 21;49:17;57:19;65:1, 2;66:10,10,12,14,15; 67:3,12,15;68:9,12, 16,19,22;69:7,17,23; 70:19;71:17;72:21, 24;73:18;75:2,5; 80:3;81:17;82:10,11, 16;85:2,23;86:16; 88:6,19;89:1,6,13; 99:9,12,16,20;100:2, 14;108:13;109:7; 110:10;113:23; 114:1,3,6;121:12,15, 18;129:2;136:18; 138:10;143:6;152:8; 153:16,21,23;154:11; 155:2</p> <p>linear (3) 57:11;61:9;90:17</p>	<p>lined (2) 91:4,4</p> <p>lines (17) 15:15;30:23;36:23; 65:6,11;66:8;78:12; 82:10,24;97:15; 101:18;103:7; 110:10;127:2,8; 147:5;153:8</p> <p>list (6) 93:9;94:4;105:22; 107:15;116:9;135:16</p> <p>listed (10) 7:8,21;35:5,17; 94:11;106:17;107:5; 119:3;126:18;146:21</p> <p>listening (2) 4:14;154:17</p> <p>listing (2) 70:23;71:1</p> <p>lists (4) 57:2,6;132:20,21</p> <p>little (18) 5:23;17:1;69:11; 82:1;113:19;123:3; 127:1;128:24;130:1; 138:19;141:19,24; 148:6,14;149:10; 153:2,15,22</p> <p>live (2) 79:10;129:16</p> <p>LLC (3) 13:2;95:14,24</p> <p>locate (1) 72:21</p> <p>located (18) 25:3;43:20;51:5; 64:8,23;65:18,21; 66:5;67:6,7;72:12; 86:5;91:1,7;94:9; 101:16,17,20</p> <p>location (21) 10:4;17:8;32:19; 40:18;46:20,21; 47:15;67:2;69:3,9; 72:16;78:22;84:16; 89:21,21;100:10; 113:14;117:12; 128:23;150:23;154:1</p> <p>locations (4) 47:16;72:23;138:2; 152:11</p> <p>lodge (4) 30:1,9;31:5;130:3</p> <p>logical (2) 150:23,23</p> <p>long (5) 123:23;124:10; 128:8;151:7;159:3</p> <p>longer (3) 17:1;155:22; 157:23</p> <p>longitudinally (1)</p>	<p>looking (18) 8:13;33:15;52:24; 60:22;61:5;64:2,20; 78:16,24;82:2;95:11, 12;98:18;110:8; 132:8;144:18; 146:17;152:16</p> <p>looks (7) 16:21;21:17;34:6; 48:17;99:13;100:22; 127:17</p> <p>Loop (2) 138:12;150:24</p> <p>looping (7) 91:7;149:23;150:4, 20;151:11;152:11,12</p> <p>Lorber (2) 135:1;137:20</p> <p>lost (4) 34:5;80:10;96:19; 100:23</p> <p>lot (9) 47:24;49:9;55:2; 59:2,3;109:21;120:6; 132:2;159:4</p> <p>loud (2) 50:6,14</p> <p>low (2) 129:13;152:7</p> <p>lower (6) 127:18,19;129:7; 140:24;153:19,20</p> <p>lying (1) 110:14</p>
<p>L</p> <p>labeled (1) 129:24</p> <p>Lachance (1) 154:21</p> <p>lack (1) 121:19</p> <p>laid (4) 40:14;85:17;131:2; 136:4</p> <p>land (2)</p>	<p>leak (9) 59:21;76:13,24; 77:7;81:13,21;82:4; 84:1;88:23</p> <p>leakage (1) 87:22</p> <p>leaks (1) 136:6</p> <p>leaky (1) 131:10</p> <p>learned (2) 89:19;90:19</p> <p>least (4)</p>	<p>lie (1) 119:12</p> <p>light (1) 147:9</p> <p>likely (1) 20:8</p> <p>liken (1) 74:3</p> <p>limited (2) 84:3;157:22</p> <p>line (98) 5:12,24;7:9;16:5,8, 12,17,19;19:5,10,19; 20:13,15;24:17;27:5; 30:13,21;39:12; 40:14;42:14;43:11, 12;44:24;45:16,18; 46:4,5,16,18;47:3,6, 21;49:17;57:19;65:1, 2;66:10,10,12,14,15; 67:3,12,15;68:9,12, 16,19,22;69:7,17,23; 70:19;71:17;72:21, 24;73:18;75:2,5; 80:3;81:17;82:10,11, 16;85:2,23;86:16; 88:6,19;89:1,6,13; 99:9,12,16,20;100:2, 14;108:13;109:7; 110:10;113:23; 114:1,3,6;121:12,15, 18;129:2;136:18; 138:10;143:6;152:8; 153:16,21,23;154:11; 155:2</p> <p>linear (3) 57:11;61:9;90:17</p>	<p>lined (2) 91:4,4</p> <p>lines (17) 15:15;30:23;36:23; 65:6,11;66:8;78:12; 82:10,24;97:15; 101:18;103:7; 110:10;127:2,8; 147:5;153:8</p> <p>list (6) 93:9;94:4;105:22; 107:15;116:9;135:16</p> <p>listed (10) 7:8,21;35:5,17; 94:11;106:17;107:5; 119:3;126:18;146:21</p> <p>listening (2) 4:14;154:17</p> <p>listing (2) 70:23;71:1</p> <p>lists (4) 57:2,6;132:20,21</p> <p>little (18) 5:23;17:1;69:11; 82:1;113:19;123:3; 127:1;128:24;130:1; 138:19;141:19,24; 148:6,14;149:10; 153:2,15,22</p> <p>live (2) 79:10;129:16</p> <p>LLC (3) 13:2;95:14,24</p> <p>locate (1) 72:21</p> <p>located (18) 25:3;43:20;51:5; 64:8,23;65:18,21; 66:5;67:6,7;72:12; 86:5;91:1,7;94:9; 101:16,17,20</p> <p>location (21) 10:4;17:8;32:19; 40:18;46:20,21; 47:15;67:2;69:3,9; 72:16;78:22;84:16; 89:21,21;100:10; 113:14;117:12; 128:23;150:23;154:1</p> <p>locations (4) 47:16;72:23;138:2; 152:11</p> <p>lodge (4) 30:1,9;31:5;130:3</p> <p>logical (2) 150:23,23</p> <p>long (5) 123:23;124:10; 128:8;151:7;159:3</p> <p>longer (3) 17:1;155:22; 157:23</p> <p>longitudinally (1)</p>	<p>M</p> <p>Madam (23) 11:9,17;47:24; 48:21;55:9;60:4; 76:5;79:11;93:4; 98:4,17;100:21; 115:4;117:7;123:14; 124:1,21;125:10;</p>

<p>140:18;155:15; 156:19;158:9,16 Main (126) 7:10;9:9;26:7; 28:18;29:6,23;30:6,9, 15;31:4;32:18;37:20, 22;38:7,9,12,17,18, 21;39:5,6,14,24;40:8, 22;41:14;44:23; 45:18;46:1,15,17; 47:2;51:4,17;57:6,11, 20,23;58:3,7;60:1,23; 61:9,18;65:7;70:9; 83:6,11,14,17;86:4; 89:17,20,24;90:8; 99:12;100:1;104:13; 117:11;118:24; 119:2;121:17;126:4; 128:13,16,18,18; 130:12;135:23; 136:4;138:14,17; 139:5,10,16,18; 141:10,12,13;142:21, 24,24;143:1,7,7,11, 12,21,23;144:1,2,5, 19,20,23;145:2,11, 14;146:4,6,9,10; 147:9,19;148:1,4,4,6, 8,9,12,14,16,23; 149:8,12;150:8,15; 151:6;152:21,22; 153:18;154:1,4,11; 155:23 Mains (52) 6:2;7:24;8:21,23; 9:1,23,24;29:21;31:2, 13;36:3;37:15;50:8; 52:12;53:6;82:18,24; 91:3,3,5;97:3,13; 110:22;112:20; 115:11;116:3; 117:17;118:10,15; 119:14;120:18,21; 121:7,20;123:12; 127:14;129:21; 138:1;142:7,8,19; 143:16;146:18; 147:8;149:23; 151:16;152:17; 153:3,8,14;154:7; 156:4 maintain (19) 30:5,12,20;31:14; 36:12;37:18,19; 68:16;69:23;72:1; 87:13,14;97:3;105:5; 106:4;112:19;116:4; 118:15;119:23 maintained (7) 18:24;44:4,13; 45:2;47:4;49:19; 69:17 maintains (2)</p>	<p>52:11;135:7 Maintenance (8) 18:21;22:8;47:17; 51:3;70:14;73:19; 94:7;106:23 major (2) 59:24;61:17 makes (3) 27:11;78:7;122:5 making (6) 42:19;43:1;45:7; 88:24;89:14;92:6 managed (4) 12:7,8,10;92:5 management (3) 12:19,22;13:1 manholes (1) 97:3 many (4) 24:23;51:21; 119:20;120:8 map (54) 29:17;51:16,24; 52:4;54:12,17;60:16; 61:5;64:20;76:20; 77:8,9;78:10,16;79:3, 23;81:7,10,14,20; 82:2,5;83:11,20,20; 94:13,15,18,20,23; 95:1,9;96:10;99:20, 21,24;100:7,9;109:7; 111:4,5,10,12,18; 121:17;126:21,22; 127:4;130:5,9; 136:15,23;137:1; 138:6 mapping (4) 92:12;96:17,18,20 maps (2) 53:20;79:22 Marcia (1) 28:2 marginal (1) 131:10 Marjorie (4) 15:2;23:19,20,22 marks (1) 22:22 MARTIN (83) 3:10;10:1;11:14; 25:23;34:4,12,15; 48:3,8,12,17,24;55:5; 60:8;63:23,24;64:4; 65:23;66:3,24;76:7; 77:3;78:20;79:1,4, 15;80:5,9,22;81:1; 84:10,14;86:17;93:7, 24;94:17;95:10,23; 96:2;98:5,10,13,20; 100:22;101:4,6,24; 102:8,16;103:17,21; 114:24;117:4,19,24; 122:14,22;123:16,20;</p>	<p>124:3,5,10,16,18,23; 125:12;140:3,8,11, 15;155:6,7;156:15, 20;157:2,13,17,20; 158:7,11,13,21;159:2 matches (1) 10:10 material (1) 87:20 matter (2) 51:5;83:8 matters (1) 4:12 Matthews (1) 23:20 may (34) 20:12,12,22;21:11; 24:6;31:2,8;34:9; 40:12;52:1,2,23,23; 54:4;67:16,19,20; 69:4;74:10,18;75:19; 78:14;89:11;97:7; 98:7,18;99:7;100:19; 122:9;123:7;137:6; 145:19;157:3,23 maybe (9) 43:20;62:7;76:16; 77:21;81:10;96:19; 98:8;153:2;155:21 mean (19) 12:7;14:2,23; 21:24;22:10;23:14; 26:17;27:11;37:4; 46:17;71:1,20;73:11; 74:15;91:2,2;100:13; 116:8,10 meaning (1) 6:9 means (5) 71:7;97:10,11,12; 115:24 meant (2) 14:24;71:23 measurement (1) 61:22 measurements (1) 61:21 memo (1) 95:5 memorandum (3) 13:16;36:17;37:1 mention (2) 97:15;141:23 mentioned (12) 63:14,21;73:24; 74:7;76:19;84:23; 85:5;91:16;96:8; 100:19;111:24;119:6 metered (2) 148:10;153:12 meters (1) 112:22 method (1)</p>	<p>58:7 middle (6) 15:23;105:22; 112:17;135:14; 145:15;154:8 might (10) 47:11,12;53:6; 68:11;71:22;74:14; 80:20;91:10;100:17; 129:10 mile (1) 61:11 mind (1) 150:22 minor (4) 42:19;43:1,2;72:16 minute (5) 34:13;53:9;89:16; 101:3;128:13 minutes (1) 84:16 mis (1) 122:9 missing (4) 25:16;61:15; 151:17,19 mission (1) 83:5 mistake (1) 8:10 mistaken (1) 72:15 misunderstanding (2) 38:19;68:11 misunderstood (1) 123:7 moment (7) 28:22;34:8;47:24; 60:4;104:22;109:21; 114:20 more (23) 9:5,6;11:4;12:4; 21:11;43:15;67:10; 78:21;89:2,90:13; 98:18;136:3,16; 137:13;138:19,21; 143:13;151:14,22; 152:17;153:2,6; 157:5 morning (8) 48:1;49:21;50:5; 52:19;53:22;55:19; 156:18;157:12 most (11) 20:8;41:22;68:23; 71:13,16;79:16; 92:11,16;109:23; 123:1;133:9 mostly (1) 23:22 Mount (35) 15:24;16:7,13,16; 28:19;37:22;39:7,15,</p>	<p>20,24;59:11;60:24; 65:11;66:23;106:12, 14,21;107:23;109:7, 10;126:6;128:7,15; 132:22;135:11,23; 136:19;138:13,16; 141:11;142:21; 147:11;148:22; 149:13;150:9 mountain (5) 16:6;54:17,21; 129:8;130:17 move (3) 43:12;84:12; 156:21 moving (1) 75:10 much (9) 27:9,21;114:23; 123:22;127:16; 129:24;136:2;149:8, 9 Mueller (8) 49:2,3,6;55:3; 157:14,15;158:11,12 Multi-Family (1) 49:15 multiple (8) 74:2,17;101:22; 103:3;104:5,10,11,19 multi-unit (1) 137:7 must (2) 38:18;134:2 mute (5) 8:5;49:12;77:4; 113:9,11 MW (3) 57:7;106:12,15 MWH (1) 13:22</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name (4) 3:21,23;14:7;54:21 Nancy (2) 154:23,24 NCWS (1) 133:2 near (13) 16:16;37:13;43:11, 23;46:4;59:10;72:18; 113:22;114:5;153:3, 18;154:2,2 nearest (1) 62:23 necessarily (3) 69:2;89:4;97:15 necessary (1) 97:8 need (18) 5:19;48:4,9;61:4;</p>
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62:11;74:10;80:12; 98:11;112:6;139:4; 140:1,4;145:24; 146:1;155:10,11; 157:6,7 needed (5) 11:11;60:1;136:12; 139:23;149:9 needy (1) 91:23 negative (1) 152:7 neighborhood (1) 124:13 net (1) 6:8 new (18) 19:4;23:7;72:20, 23;74:19,22,24; 77:10;78:1;88:6; 91:21;114:12,15; 126:3;131:22;144:3; 148:18;155:4 next (18) 43:21;52:16;53:11; 54:10;56:8;73:4,10; 81:5;118:4;133:14, 19,24;134:11;135:13, 20;138:18;146:14; 147:1 nice (1) 47:20 nine (1) 137:24 non-community (1) 133:2 none (1) 146:21 nonetheless (1) 152:9 non-payment (1) 59:21 Nordic (1) 143:22 normal (2) 109:1;156:3 north (2) 128:5;139:13 north/south (1) 127:21 northern (1) 129:1 northernmost (1) 149:1 note (1) 155:8 notes (1) 60:5 notice (5) 79:19;109:15; 127:18;158:24;159:5 noticed (1) 150:13	number (9) 6:17;12:12;31:23; 78:9;126:20;135:16; 142:12,18;151:8 numbers (4) 8:17;144:16,20; 145:9 O object (2) 116:16;122:10 objection (2) 117:2;122:23 objectionable (1) 122:16 obligated (1) 71:20 obligation (7) 39:11;40:21;71:17; 72:1;106:23;107:9, 18 obtained (1) 56:22 obviously (5) 67:18;73:22;90:24; 92:8;153:14 occupy (1) 75:24 occurs (1) 113:18 off (54) 8:5;13:22,23;26:1; 34:13,14;40:17; 48:13;59:15,17,18, 23;62:10,14,17,23; 63:2,8;64:11;66:21, 23;73:13;74:22,24; 75:6,12;77:15;78:12; 80:23,24;81:17; 84:20;85:4;88:6; 89:17;99:14;102:10, 12;114:10;132:19; 138:11;140:5,11,17; 143:16;144:17,22; 147:10;148:10,14,16; 150:15;153:10;159:7 offer (1) 79:13 offhand (1) 67:8 often (1) 102:5 Oftentimes (2) 69:4;92:3 old (2) 42:9;131:9 Oleson (121) 11:21,22;12:3,7,14, 16,18,21;13:4,8,12, 14,21;14:2,13,18,22; 15:2,6,12,14,17,19; 16:2,8,11,21;17:1,3,	9,14,18,23;18:5,8,11, 17,19;19:2,6,13,21; 20:3,7,14,18,21,23; 21:2,6,8,16,24;22:5, 10,15,17;23:1,6,8,10, 14,20;24:2,9,13,18, 22;25:5,10,17,20; 26:9,11,14;27:8,17, 20;28:2,5,8,11,13,21, 23;34:6;61:13;62:7, 9,15;63:1,3,12;64:5, 9,11,17;70:12,16,20; 80:11;96:3;97:22,24; 98:2;100:16,23; 102:11,15,21,24; 103:6,9;108:17,19, 23;109:4,12,15,18; 154:23 Omni (52) 26:18,19;29:13; 30:23;31:6,11;37:8; 39:17,19,22;40:6,16, 23;51:23;67:20;75:9; 81:8,15;82:3,18;83:1, 6,12,21;86:9;90:7; 91:1,13;92:18;94:3,6, 12;95:1;101:21; 104:10;107:24; 113:3;125:9;137:16; 141:20;142:7; 145:12,13;147:22; 148:10;149:18; 152:16,19;153:7,12; 154:11;156:19 Omni's (11) 31:13,16;36:23; 46:9;81:22;82:21; 83:21;85:2;111:21; 143:24;153:4 Once (2) 47:6,8 one (53) 7:22;8:11;11:4; 15:2;20:8;21:20; 34:13;37:16;42:10; 59:11,12;60:3;61:16; 63:8;65:1,9,10,15,17; 66:16,20;71:13; 79:21;82:21;84:6,6, 11;86:2;88:14;90:12; 94:21;95:9,13;98:18; 101:1;102:18; 105:13;115:5;119:1; 128:22;130:2;137:4; 145:1;146:16; 150:23;151:3,7,8,21, 21;155:17,18,20 one-page (1) 144:16 ones (5) 25:5,8;77:13;95:7; 118:11 only (27)	9:18;11:10;14:5; 27:4;37:9;39:21; 42:13;51:23;62:24; 63:1;66:14;81:13; 82:9;83:20;84:2; 91:10,12;93:5; 102:17;103:2; 116:11;118:10; 123:15;141:22; 149:14,20;151:16 onto (6) 20:22;75:11; 141:20;147:22; 149:18;154:11 open (2) 131:12;158:1 opened (1) 130:19 operate (8) 37:20;43:19;62:8; 78:2;87:13;106:4; 112:19;123:8 operated (2) 62:9;92:5 operates (1) 108:11 operating (1) 70:13 operation (1) 94:8 operator (1) 97:23 opportunity (1) 3:3 opposed (1) 31:5 orient (1) 126:24 original (5) 6:9;76:17;128:10; 142:14;153:4 originally (2) 92:17;128:21 origins (1) 127:2 otherwise (1) 91:11 out (47) 6:12,16;9:19; 13:16;18:2,7;20:17; 21:22;40:14;43:12; 50:6,14;51:16;58:20; 66:17;69:5;74:11; 76:20;78:2;88:9; 91:3;94:19;95:4,7; 102:7;110:4,16; 111:3;112:10; 120:15,16;129:21; 131:2;132:19;137:1; 139:4,23;141:22; 142:19;143:13; 144:12;150:11,16; 152:10;154:2;156:5;	158:23 outcome (1) 152:14 outside (1) 54:14 over (15) 27:20,20;30:1; 51:1;52:20;60:5; 74:14;76:1;82:18; 83:12;91:19,24; 96:19;111:5;152:22 overall (1) 114:4 overrule (1) 122:23 own (32) 24:4,24;36:11; 49:24;50:9,11,18,18; 67:13;74:4;75:17,22; 87:6;92:19;109:9; 116:4;118:10,15,24; 119:3,5,7,14;120:21; 121:4,21;130:15,22; 132:11;153:16,21,21 owned (14) 18:24;44:4,13; 45:2;47:3;49:19; 69:11,16;70:3;73:14; 76:2;87:24;90:8; 127:9 owner (2) 46:19;107:8 owners (2) 7:19;133:13 ownership (12) 13:10,17;18:21; 22:7;51:3;85:10,10; 94:8;106:22;107:8, 18;146:23 owns (3) 52:11;81:8;82:3
P				
Page (82) 5:22;7:7,19;8:13; 10:9;13:1;18:7,8; 20:24;21:14;22:14; 23:4;29:10,21;30:8; 32:15;36:18;44:6; 45:13;46:14;49:10; 51:14,15,18,19;52:6, 7;53:10,11,11,17,18; 54:16;56:13;61:8; 70:21,22;93:18; 94:22;95:2;98:23; 105:1,9,9,11,15,20, 23;107:3,5;110:8; 111:2,13;112:9,12, 13;113:12,12,16; 132:7,17;133:8,14; 134:11,22,22,23; 135:4,10,13;138:8,				

<p>11,11,18;139:3,5; 141:9;143:2,5;147:2, 6,10 pages (22) 7:2,4,4;16:24;17:4; 28:12;32:2;36:9,13; 51:22;53:10;56:11; 111:20;115:9; 116:21;137:17; 138:4,5,9;140:23; 141:10;142:13 paid (3) 14:11,16;108:24 paper (2) 60:16;132:8 papers (1) 113:11 paragraph (7) 49:16;96:24; 110:18;112:17; 133:19;134:1;135:14 parallel (1) 127:21 paraphrasing (1) 71:16 parcel (2) 84:6;95:8 pardon (1) 90:3 parens (1) 22:21 parentheses (2) 6:3;7:11 part (12) 17:4;33:14;36:7; 42:19;70:9,19;81:23; 83:20;122:3;129:1; 131:3,23 partial (3) 70:23;71:1,11 partially (1) 106:7 particular (1) 75:6 particularly (6) 37:2;44:7;72:11; 75:23;78:3;84:5 parties (2) 156:17;158:18 partly (1) 67:13 party (2) 93:11;120:12 pass (1) 61:12 passing (1) 141:23 past (3) 47:6;141:20; 154:11 Pause (7) 17:2;80:13,20; 101:5;104:23;</p>	<p>114:21;124:17 pay (1) 109:1 paycheck (1) 14:6 PDF (2) 5:22;57:4 people (3) 54:11;68:23; 132:16 per (2) 55:2;121:4 percent (1) 6:4 perfectly (3) 40:13;66:4;156:3 performed (3) 17:17;114:15; 125:23 performing (1) 114:13 perhaps (3) 21:10;155:12; 156:18 period (1) 38:20 permission (5) 41:6;62:12;63:5; 85:18;120:18 perpetual (1) 97:1 person (1) 64:5 personal (1) 67:23 personally (1) 120:14 perspective (1) 80:17 pertain (1) 111:21 pertains (2) 47:16;113:1 pertinent (1) 155:2 petition (1) 42:24 Phoenix (2) 95:14,24 photo (2) 147:13;148:21 photograph (1) 147:3 physically (1) 156:6 pick (1) 140:17 picture (1) 151:18 piece (1) 74:4 pieced (1) 91:19</p>	<p>pink (1) 153:7 pipe (11) 40:9;41:6;47:2; 49:18;56:18;57:8,18; 58:13;77:14;87:12, 20 pipelines (2) 110:22;112:20 pipes (12) 18:23;37:8,12; 44:2,11,21,23;45:18; 52:14;74:14;97:3; 102:3 Place (34) 16:1,7,13,17; 17:14;18:15;28:19; 37:22;39:8,15,20; 40:1;60:24;73:16; 76:2;81:19;106:12, 13,14,21;109:8,10; 128:7,15;135:23; 136:19;138:13,16; 141:11;146:9,10; 147:12;149:13;150:9 placed (6) 5:11;8:2;19:4; 67:15;102:4;156:9 places (4) 61:14,15;68:15; 81:13 plan (9) 15:23;29:12;127:7; 137:20,21,24;139:14; 141:3;142:1 plans (12) 15:15;16:22;43:23; 72:18;137:14,22; 143:10;144:6,23,24; 145:13;155:24 plant (1) 10:19 plausible (1) 76:17 players (1) 95:5 plays (1) 149:6 please (19) 3:21;5:18;15:13; 32:12,16;42:22; 48:11;70:23;73:7,8; 84:13;90:22;104:8, 21;105:19;113:6; 114:14;117:9;125:16 plumbing (1) 136:10 plural (1) 134:24 plus (1) 142:24 PM (6) 3:1;48:15,16;</p>	<p>140:13,14;159:9 point (41) 6:12;9:19;14:13; 25:24;34:10,11;40:3; 55:16;59:6;64:6,20, 22;68:6;76:20;78:21; 79:16,23;84:11,18, 19;85:11,21;86:1; 89:11;92:16;93:12; 110:16;118:6; 123:17;128:17; 129:21;132:19; 137:1;139:4,23; 141:22;145:5,7; 150:2;154:15;156:5 pointed (4) 58:20;143:13; 152:10;154:2 pointing (1) 21:11 points (3) 126:4;133:23; 136:16 Pollution (2) 131:16;132:15 poor (1) 71:22 poorly (1) 131:13 portion (4) 67:19;68:2;82:15; 138:4 posed (1) 122:12 position (17) 26:19,22;35:12,21; 39:10;40:19;41:13; 56:18;57:8,19;58:14, 22;59:10;73:21; 115:15;116:14; 152:20 possibilities (1) 59:3 possibility (2) 60:2;97:18 possible (7) 58:23;59:2;61:22; 134:4;152:10; 156:24;157:3 possibly (3) 24:6;58:13;59:21 posts (1) 75:10 potential (1) 38:4 Potentially (2) 69:13,15 practice (3) 47:13;51:2,2 pre-1996 (1) 58:24 preceded (1) 42:10</p>	<p>predating (1) 85:10 predecessor (2) 94:6;131:15 premise (1) 39:1 premises (2) 49:18;72:12 premises' (4) 18:23;44:3,12;45:1 preparation (1) 54:5 prepare (4) 4:20,24;27:19; 120:6 prepared (4) 17:5;32:9;33:1; 53:19 preparing (1) 4:11 present (2) 133:12;152:3 presented (2) 27:10;56:22 presently (2) 135:6,15 pressing (1) 133:9 pressure (4) 76:15;152:4,6,13 pressures (2) 78:4;152:7 presumed (1) 122:12 pretty (6) 127:16;129:24; 136:8;145:17;146:7; 147:4 preventing (1) 101:23 previous (4) 99:7;100:11;123:8; 126:15 price (13) 7:7;32:3;33:15,17; 34:3,20,24;35:4,8,15, 23;36:2,7 primarily (3) 4:5,10;144:2 primary (1) 129:22 print (1) 110:3 printout (1) 57:5 prior (7) 7:19;22:6;32:5; 45:12;58:16;112:1; 130:12 private (18) 30:24;31:13,16; 36:23;41:7;53:24; 59:19;68:2,3,15;</p>
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77:19;84:6;85:4,8; 87:24;94:9;118:17; 125:19 probably (18) 23:22;24:19;45:22; 55:23;61:6;64:5; 67:7,9;71:24;73:15; 76:14;103:12; 129:21;141:8;146:1; 150:21;154:20;157:6 problem (2) 155:7;158:8 problems (3) 130:24;136:6,11 proceed (2) 118:4;136:17 proceeding (2) 22:19;126:14 proceedings (4) 101:5;114:21; 124:17;127:13 produced (1) 95:1 professional (2) 125:17;126:2 project (2) 152:5,14 properly (4) 61:18;81:6;87:21, 21 properties (8) 29:13;92:17;96:12; 97:14,16;115:11; 119:24;121:4 property (140) 7:17;16:14;18:3,4; 19:5,10,11,12,19,20; 20:13,15,22;24:17; 27:5,13;28:10,20; 29:13;30:24;31:3,7, 11,13,17;32:7,17,21; 33:14,16;35:6,13,17; 36:3,11,23;37:8; 39:17,19,22;40:1,6, 16,23;42:14;43:10, 12;44:24;45:16,18; 46:4,5,15,18,19;47:3, 6,21;49:17;52:21; 54:15;56:10;59:19, 19,23;63:14;67:15, 20;68:4,9,12,19,20, 22;72:21,24;74:5; 75:18;77:19;81:8; 82:3,18,22;83:7,13, 22;84:4,21;85:2,4,23; 86:10,14,16;88:22; 89:18;91:1,9,13,14; 94:9;96:17;97:21; 101:13;104:3,16; 111:21;113:23; 114:1,3,6;115:17,18; 116:8,10,12,15,22,23, 24;117:10,14,16;	118:9,18,22;121:8, 12,15,18;122:1; 126:10;141:21; 142:8;145:22; 147:23;149:18; 152:17;153:7;154:12 prospect (1) 92:10 protected (2) 131:11,13 protective (9) 79:20;93:23;110:5; 111:3,16;112:2,6,11; 113:1 Provan (2) 135:1;137:20 proved (1) 13:16 provide (10) 4:4;32:16;80:18; 83:3;97:8;117:9; 120:17;150:20; 151:1;159:5 provided (3) 116:2,6;120:3 provides (1) 58:7 provision (2) 21:20;22:7 public (5) 40:5,22;53:24; 68:17;125:18 PUC (2) 4:11;136:9 pump (4) 97:4;112:20;129:4, 6 pumping (1) 112:21 pumps (4) 97:4;110:23; 112:20;129:14 purchase (16) 7:7;9:16;32:2; 33:15,17;34:2,20,24; 35:3,8,15,23;36:2,7; 93:16;94:11 purchased (3) 70:10;93:15;95:13 purchases (2) 90:20;91:16 purchasing (1) 93:2 purpose (2) 59:8;73:10 purposes (3) 28:4;63:20;86:9 put (8) 27:8;52:10;69:4; 85:7;124:7;142:16; 155:20;158:23	Q qualify (1) 122:15 quality (4) 150:7;151:5,10,13 quarter (1) 56:3 quarters (2) 56:3;156:13 quick (1) 53:1 quite (3) 81:24;87:17; 142:12 quotation (1) 22:22 quotes (1) 24:5	72:22 reasonably (1) 97:7 rebuttal (2) 124:6,7 Rec (1) 30:17 recall (5) 5:12;38:14,22; 55:18;98:2 recalled (1) 88:14 recent (7) 27:15;41:22;71:14, 16;109:24;123:1; 139:8 recently (1) 151:22 recess (4) 48:15;140:6,9,13 recollection (1) 33:24 recommending (1) 131:21 reconcile (1) 50:4 reconstruct (1) 97:2 record (22) 3:22;7:17;9:15; 10:12;34:13,14,16; 35:6;36:11;39:2,4; 48:13,19;80:23,24; 81:2;93:17;102:10, 12;140:12,16;159:7 recorded (1) 10:17 records (49) 16:15;28:10,11; 32:7,17,22;33:5,14, 16;35:13,17;36:4; 38:14;39:6;52:21; 55:2;56:10,21;58:15, 20,23,24;89:23; 91:21;92:4,14,19; 96:18;115:18,22; 116:8,15,22,23,23, 24;117:11,14,16; 118:9,22;122:1; 126:9,14;131:23; 142:10;144:14; 145:4,22 recross (2) 115:3;123:15 RECROSS-EXAMINATION (1) 115:6 red (6) 52:11;127:15; 129:3;137:3;147:5; 148:1 REDIRECT (1) 103:23 reduction (3)	152:4,6,13 re-established (1) 33:5 refer (10) 10:2;24:6;49:8,13; 131:5;142:14; 145:24;146:1,13,13 reference (8) 7:23;21:10;22:2, 14;38:8;46:12;88:15; 116:20 referenced (3) 64:8;72:4;137:21 references (1) 21:22 referencing (2) 56:11;57:17 referred (7) 36:10;43:3;53:22; 97:6;143:9,23,24 referring (4) 46:14;72:6;109:6; 123:9 refill (1) 129:14 reflect (2) 122:2;145:22 reflected (3) 8:14;10:24;36:2 refrigeration (1) 136:7 regard (3) 45:10;75:23; 151:22 regarding (3) 8:7;55:19,21 regardless (1) 40:21 regular (1) 109:1 regulatory (1) 4:12 reimbursing (1) 108:21 rejoined (1) 102:14 rejoining (1) 101:2 relate (1) 95:8 related (4) 7:18;9:1;93:15; 95:7 relates (1) 96:15 relationship (2) 36:1,5 relative (2) 35:5;89:15 relevant (2) 79:14;127:13 reliability (1) 150:7
		R radii (3) 94:24,24;112:11 radius (11) 79:21;93:23;94:23; 110:5,11,14;111:3, 16;112:7,15;113:1 railroad (1) 127:22 raising (1) 117:1 ran (1) 99:9 rate (10) 4:13;6:4;14:21,24; 55:20;109:1;127:5; 131:24;150:3;151:22 rather (2) 83:2;157:1 read (9) 27:20;45:12;49:15; 50:6,14;95:4;96:24; 134:5;139:15 readily (1) 53:3 reading (5) 19:7;42:12;57:5; 121:5;122:4 real (1) 76:1 really (12) 19:14;22:11;24:9; 27:8;46:3,9;89:22; 116:8;122:1;139:21; 146:11;149:6 reason (7) 37:14;38:16;59:13, 22;83:1;89:17; 149:19 reasonable (4) 56:19;57:12;58:19;		

<p>relied (1) 36:18 rely (1) 120:9 relying (2) 41:15;42:8 remaining (1) 157:10 remember (10) 14:8,18;22:1,12; 23:15,19;64:17; 70:16;72:8,19 remembering (1) 88:17 renovation (1) 59:24 renovations (2) 63:17;74:10 repair (10) 30:5,13,21;31:14; 36:12;82:23;83:6; 89:10;97:2;112:19 repaired (1) 87:21 repairing (1) 82:5 repairs (3) 88:2;89:14;103:6 repeat (4) 57:24;59:13;73:8; 81:23 replace (2) 97:3;112:19 report (5) 111:2;132:11,14; 135:2;152:10 Reporter (14) 3:18;25:9;31:9; 64:16;66:19;77:2,23; 80:8;88:20;95:22; 125:3;126:11; 127:12;142:4 reports (6) 4:11;131:3,7,18; 132:10;136:9 represent (1) 6:17 representation (1) 127:7 request (4) 32:8,15;34:22; 117:8 requested (1) 75:13 requests (1) 137:16 require (1) 89:2 required (1) 88:6 requirement (2) 83:13;90:21 requiring (1)</p>	<p>36:23 research (1) 120:7 reservoirs (2) 130:16;131:12 residence (4) 135:20;148:13; 153:16;154:3 Residences (1) 49:15 residential (5) 103:3;127:16; 137:9;142:18;143:4 residents (2) 97:9;133:1 resolve (1) 66:7 Resort (7) 96:7;97:9,20; 111:22;113:3;135:6; 144:11 resort's (1) 36:21 respect (13) 4:17;5:7;22:8; 37:9;39:11;45:10; 88:16;105:4,8; 107:22;146:24; 149:3;153:1 responding (1) 117:22 response (7) 4:24;32:19;36:10; 71:12;117:13; 152:20;158:17 response] (3) 66:2;103:20; 123:19 responses (1) 137:16 responsibility (15) 20:20;35:16;44:2; 47:18;73:19;83:2; 87:3;119:16;120:23; 121:7;122:2;142:6; 146:23;152:18,23 responsible (32) 29:5;30:4,5,12,20; 36:12;37:8,10,12; 41:14,21;42:3;45:9, 14;46:1;81:9,15,21; 82:4,6,8,12,14,23; 83:14,21;89:10; 103:13;115:11; 121:11,14;122:5 rest (1) 98:14 restrictive (1) 106:6 result (3) 21:4;35:15;133:16 resumed (2) 48:16;140:14</p>	<p>RESUMES (1) 3:1 retired (1) 125:22 review (2) 5:19;126:14 reviewing (1) 4:10 reviews (1) 95:17 revolving (1) 59:4 Ridge (9) 30:10;105:10; 106:1,4;115:13,16; 118:20;119:13,16 right (57) 3:13;6:8;7:20; 12:7;16:18;20:14,23; 25:18;34:15;41:2; 52:8,16;53:10,12; 55:5;60:8;64:11,14, 18,22;70:11;71:2; 73:4,13;76:3;79:18, 23;82:10;85:3;87:2, 20;97:1;98:20; 110:13,19;111:13; 112:1,4,18;114:24; 119:22;120:17; 121:13;127:6,18; 128:7;132:19;135:5; 139:11,19;140:15; 145:6;147:18; 148:24;153:14,19; 155:1 right-of-way (13) 40:5,12,15,22;41:4, 7;68:3;85:1,8,18; 86:7,12;127:22 rights (1) 53:21 rights-of-ways (1) 53:24 ring (1) 139:12 Road (54) 16:16,18;25:5; 26:5,12,21;29:6;39:8, 12,16,18,21,21,23,24; 40:4,9,10,17,20;41:4; 59:10,11;60:23;61:1; 63:2;64:9,12;65:8, 14;66:15;67:24;68:7; 71:18;72:2;78:13; 84:18,22,24;101:12; 113:15;126:8; 127:21;128:4;130:7; 138:19;141:17; 142:2;147:12,13,15; 150:14;153:11; 155:17 roads (1) 75:20</p>	<p>Robidas (3) 3:14;77:5;124:23 roof (1) 147:18 room (1) 60:18 rooms (1) 154:16 Rosebrook (69) 9:16;11:24;12:1,5, 8,9,11,20;13:3;17:17, 21;18:2,4;24:21,24; 28:10,18;30:17;37:6, 7;42:3;51:16;52:5, 15,15,17;53:17,18; 54:2,2,22;55:20; 56:1;58:21;69:24; 70:7;84:8;90:13; 94:5,7;95:16;96:1; 104:9;105:5;106:4; 107:17;108:11; 109:9;117:16; 126:10,16;128:10; 130:18,19,21;131:22; 132:18,21,24;133:6, 16,20;134:12,13; 135:6;136:13; 137:23,23;145:14 Rosebrook's (2) 20:11;36:18 Rosewood (1) 3:24 roughly (3) 61:6,6;156:12 Route (4) 29:13;67:13,24; 127:19 row (2) 145:3,11 rule (1) 68:22 run (8) 40:10;41:6;67:19, 20;68:1;116:3; 136:20;143:6 running (3) 138:19;154:8,11 runs (9) 37:22;40:4,17; 65:8;86:4;128:4,4; 129:23;153:9 ruptured (2) 57:9,18</p>	<p>67:2;79:4;103:12; 128:23;134:21; 137:20 Sanitary (1) 132:14 save (2) 79:22,24 saying (8) 16:9;24:10;27:6; 35:21;38:16;72:19; 116:11;131:18 scale (2) 61:5;141:7 scaled (4) 144:22,24;145:6, 16 schedule (8) 5:24;9:20;10:3,5, 21;93:15;155:11,14 scheduling (2) 157:4;158:18 scheme (1) 149:7 scroll (1) 8:24 second (19) 7:9;9:3,7;10:2; 49:16;51:12;77:13; 80:23;95:21;102:11; 105:13;106:11; 110:18;140:22; 141:24;144:21; 145:11;147:5;151:1 secretarial (1) 126:18 section (11) 9:2,3,7;18:22;19:3; 22:3;23:13;31:11; 44:9;49:13;61:1 sections (1) 9:1 sector (1) 125:19 seeing (2) 96:10;123:20 seem (5) 38:16;50:13;71:7; 73:11;115:14 seemed (1) 35:11 seems (3) 24:4;45:20;50:5 self-described (1) 127:5 self-employed (1) 125:8 sense (4) 27:12,13;78:7; 158:4 sentence (9) 19:3;25:15;49:16; 50:5,14;70:24;117:9; 133:8,24</p>
S				
<p>saddle (4) 57:23;58:2,5,6 same (20) 7:11,15;9:16;14:5; 20:9;21:1;44:16; 45:20;46:16,22; 54:16;64:2,2;66:7;</p>				

<p>separate (6) 65:6;66:8,9; 113:18;130:15,18</p> <p>separated (1) 13:19</p> <p>September (2) 126:19;136:24</p> <p>septic (1) 112:15</p> <p>serve (7) 85:13;99:18; 133:11;144:2,11; 149:10,15</p> <p>served (9) 49:18;128:12; 133:1,3;135:6; 149:20;150:14; 151:9;153:13</p> <p>serves (5) 82:21,22;84:6; 86:14;135:15</p> <p>service (51) 5:11;8:2;12:19; 13:1;18:23;20:11; 37:18;44:2,11,21,23; 45:17;47:2;49:18; 51:4;57:19;58:7; 59:15,17,18,23;60:1; 67:12;68:15;70:18; 72:1;74:12,24;75:6; 78:1;82:16;83:3; 85:4,8;88:6,18;89:1; 97:8,13,14,15;99:12, 15;100:13;104:15; 114:12,15;148:15; 153:16,21,23</p> <p>services (19) 4:4;12:15,17,19; 13:2,10,24;18:1; 24:1;37:19,20;43:17; 45:10;46:15;72:10, 11;78:6;88:10; 131:15</p> <p>servicing (1) 52:15</p> <p>serving (2) 96:6;143:17</p> <p>SESSION (4) 3:1;99:8;100:13,18</p> <p>set (2) 86:18;158:23</p> <p>setting (1) 63:15</p> <p>settlement (1) 43:3</p> <p>Seventy-one (1) 53:14</p> <p>several (7) 23:16;29:21;63:13; 126:16;135:7; 143:14;148:15</p> <p>sewer (2) 127:11,13</p>	<p>shall (6) 18:24;19:4;44:4, 13;45:1;49:19</p> <p>shape (2) 132:5;139:9</p> <p>sharp (1) 130:2</p> <p>sheets (2) 137:24;142:1</p> <p>Shoot (1) 79:23</p> <p>shoots (1) 139:13</p> <p>shop (3) 139:15,17,21</p> <p>short (2) 153:16;155:11</p> <p>show (9) 39:6;52:21;53:19, 20;58:15;78:10; 94:23;100:1;127:14</p> <p>showing (5) 53:23;97:24;138:1; 139:10;147:7</p> <p>shown (13) 36:6;65:12;77:8,9; 79:21;83:9;95:1; 130:8;138:5;139:2, 12;141:6;153:24</p> <p>shows (11) 15:24;21:12;52:4, 14;54:17;99:24; 100:8,9;115:17; 121:17;139:5</p> <p>shrubs (2) 43:20;72:13</p> <p>Shuffling (1) 113:11</p> <p>shut (17) 59:15,17,18,22; 60:1;63:1,7;73:13; 74:6,21,24;75:5,12; 77:15;85:4;89:16,24</p> <p>shut-off (30) 20:2,5;21:21; 22:21,23;23:9,11; 24:5;26:23;42:13; 44:4,12,22;45:1,15, 19;59:9,14;62:1,23; 63:10,13;74:2,17; 86:15;89:7;99:4; 101:12;126:6;153:21</p> <p>side (21) 40:11,17;41:3,4; 82:19,20;85:1,22; 111:21;113:2; 127:24;128:1; 129:20;139:11; 142:2,19;143:3,16; 148:14;150:14;154:9</p> <p>sides (1) 155:21</p> <p>significant (2)</p>	<p>130:24;133:9</p> <p>signs (1) 127:14</p> <p>similar (2) 106:18;108:1</p> <p>single (3) 43:17;86:14; 104:16</p> <p>Single-family (9) 18:22;19:9,13,16, 23;21:23;44:9,18; 104:5</p> <p>site (1) 126:16</p> <p>situation (8) 41:8;50:2,15,20; 66:9;69:10;74:1;84:7</p> <p>situations (4) 43:9;74:8,16;103:4</p> <p>six (1) 7:21</p> <p>Sixteen (2) 99:1,2</p> <p>size (2) 32:18;117:12</p> <p>sizes (1) 138:1</p> <p>ski (9) 37:13;83:7;127:19; 128:1,12;130:2; 135:15;138:15; 141:16</p> <p>slightly (1) 86:20</p> <p>slope (1) 83:7</p> <p>small (4) 84:3;113:20,22; 137:4</p> <p>smaller (3) 91:18,20;128:20</p> <p>snow (2) 25:21;63:9</p> <p>sold (2) 13:22,23</p> <p>sole (1) 110:13</p> <p>somebody (4) 32:9;33:1;52:10; 73:12</p> <p>somebody's (1) 68:15</p> <p>somehow (1) 38:18</p> <p>someone (1) 33:10</p> <p>sometime (2) 133:21;136:20</p> <p>sometimes (3) 47:21;92:22; 155:21</p> <p>somewhat (1) 43:5</p>	<p>somewhere (3) 61:7;67:9;88:14</p> <p>soon (2) 134:3;159:6</p> <p>sorry (26) 7:3;10:8;13:13; 14:3,18;18:8;23:1, 14;25:19,20;26:10; 52:4;53:13;57:3,24; 65:24;68:10;71:15; 78:9;102:15,24; 103:6;109:16;111:7; 115:24;155:5</p> <p>sort (2) 58:9;127:20</p> <p>sought (1) 44:1</p> <p>sound (2) 43:4,13</p> <p>sounds (2) 90:15;157:20</p> <p>source (4) 133:11,17;134:11; 135:10</p> <p>south (3) 29:15;82:19,20</p> <p>spa (2) 90:3;148:18</p> <p>spawned (1) 58:12</p> <p>speak (2) 96:10;125:13</p> <p>speaker (2) 8:5;81:24</p> <p>speaking (1) 38:9</p> <p>speaks (1) 107:20</p> <p>special (1) 62:12</p> <p>specific (8) 80:16;90:14;91:13; 143:10;144:4,19; 146:10;147:8</p> <p>specifically (12) 55:24;56:13;57:1; 74:23;75:5;78:21; 90:23;91:1;95:6; 111:24;119:8;146:18</p> <p>specifics (1) 12:21</p> <p>speculate (1) 97:12</p> <p>speculation (4) 59:3;61:24;85:24; 97:17</p> <p>spend (2) 128:8;132:2</p> <p>split (3) 65:9,20;138:22</p> <p>splits (6) 64:21,22,24;65:1, 2;66:11</p>	<p>spoken (1) 119:8</p> <p>spot (1) 147:4</p> <p>spurs (1) 83:22</p> <p>St (39) 3:6,11,11,16,19,21, 23,23;4:1,5,7,9,16,19, 21,23;5:2,6,14,17,21; 6:24;7:2,3,6;8:6,11, 16;10:5,8;11:2,5; 32:4;35:1,22;38:3,6; 39:2;154:21</p> <p>stables (3) 135:18;153:18,22</p> <p>Staff (10) 4:24;29:20;32:8, 15;34:21;58:12; 117:8;125:24; 137:16;158:2</p> <p>stand (1) 50:17</p> <p>standard (1) 87:23</p> <p>standards (1) 87:19</p> <p>standing (1) 74:13</p> <p>start (10) 18:7;86:23;87:5; 90:1,4;93:9;105:1; 124:19;137:2;156:24</p> <p>started (8) 14:14;25:14; 102:20;122:6; 130:20,21;138:17; 141:13</p> <p>starting (1) 138:12</p> <p>starts (7) 46:20,21;128:4; 138:12;145:17; 147:14;153:9</p> <p>state (3) 3:21;39:14,20</p> <p>stated (9) 38:13,20;39:18,21; 59:15;61:20;96:9; 100:13,16</p> <p>statement (2) 36:24;49:22</p> <p>statements (1) 4:11</p> <p>states (1) 97:19</p> <p>stating (1) 38:15</p> <p>station (1) 129:4</p> <p>staying (2) 113:11;143:18</p> <p>stems (1)</p>
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120:24 STEPHEN (3) 3:16,19,23 Stickney (4) 142:2;143:20; 150:12;151:2 still (10) 14:4;50:17;54:6, 15;89:9;122:17; 127:17;129:5; 154:19;157:7 stipulated (1) 54:24 Stone (1) 143:19 stop (64) 18:23;19:18;20:4, 11,19;21:20,22; 22:22;24:7,11,16; 27:4,10,12;39:15; 40:9;43:10;46:3,3; 47:8,16;49:23,24; 50:2,9,10,11,19;51:4; 59:8,14,18;62:14; 63:1,9;65:17;66:12; 67:3;68:19;69:9,19, 20,21;70:4,14;72:21, 24;73:17,19;78:12; 81:17;82:11;83:23; 84:19;85:13;101:11; 102:7;103:14; 104:15;109:14,18; 155:9,11;157:16 stop' (1) 23:9 stops (35) 19:4,9,24;25:3,11; 26:13,23;27:2,7; 40:21;43:19;47:20; 52:12;64:7,9,23;66:9, 16,20;69:2,7;78:8,9; 82:24;84:17;86:5; 104:2,6,11,15,19; 113:14,21;121:14,21 storage (4) 29:24;83:9;97:4; 112:21 straight (2) 139:13;149:1 stressed (1) 93:2 stretch (1) 85:12 strikes (1) 24:3 strongly (2) 131:21;134:2 struggles (1) 61:17 studs (2) 143:16;154:9 subject (2) 77:11;132:20	submission (1) 158:19 submitted (1) 39:6 subsequent (3) 9:24;76:23;77:6 sudden (1) 152:23 suggest (1) 134:3 Sullivan (1) 23:21 sum (3) 9:4,14,15 supplemented (1) 93:21 supplied (1) 128:21 supplies (1) 135:11 supply (18) 8:23;97:13;112:3; 129:19;130:10,11,15, 16,23;131:9,16,20; 132:4,15;134:24; 135:8,15;150:18 sure (38) 3:3;5:21;24:9; 31:3;33:8,9;34:11; 35:20;45:21;48:3,6; 53:9;62:16,22;64:1; 66:4;71:5,10;73:6; 78:8;80:11;81:18; 87:1,2,15,18;90:12; 91:7;92:6;98:15; 100:8,9;108:18; 117:1;122:19;136:2; 140:7;156:22 surface (11) 130:16,22;131:1,8, 19;132:4;133:11,17; 134:1,10;135:10 survey (3) 67:18;69:3;132:14 surveyed (1) 69:9 Susan (1) 25:18 Susan's (1) 25:13 suspense (1) 79:10 swear (2) 3:14;124:24 switch (1) 57:3 Switching (1) 86:20 sworn (5) 3:6,17,19;125:2,4 system (67) 12:9,11;58:21; 61:19,21;69:24;	70:13;73:14;78:5; 82:15;84:8,9;85:11; 88:12;90:18;92:4,13; 93:3,16;94:8;96:6; 97:23;104:10; 126:16;127:3,17,24; 128:2,10,10,21; 129:1,4,12,20,23; 130:6,18,20,21; 131:1,10,22;132:21, 23,24;133:2,3,14,16, 21;134:1,12,14,19; 136:7,13;137:14,14, 23,24;141:15; 142:16;144:11; 147:21;150:6;156:2 System' (1) 97:7 systems (11) 91:18,20,24;92:12; 112:15;132:21; 133:5,10;134:24; 135:3,8 T T&D (4) 6:2;7:10,24;9:1 table (2) 15:21;144:16 takeaway (1) 35:2 talk (5) 31:4;44:11;130:7; 134:6;155:13 talked (6) 14:20;17:16;44:1; 49:9;72:3;84:16 talking (9) 10:7;41:2;46:22, 24;77:12;114:8; 122:6;134:10;156:6 talks (4) 19:24;20:1;43:1; 78:9 tank (12) 16:5,5,13;29:24; 83:12;129:8,10,11, 14,18,23;141:16 tanks (4) 83:9;97:4;112:21; 131:12 tapped (2) 99:9,16 tapping (4) 57:23;58:2,4,6 tariff (46) 15:5,10;18:13,14, 20;19:23;21:3;22:6; 27:3;36:19;37:6; 41:11,16,20,23,23; 42:2,4,4,9,10,19; 43:2,8,24;45:12;	49:8;50:21,24;51:6; 71:14,16,21;102:22; 103:2;107:1,9; 119:18;120:24; 121:3,3,4,5,6,11; 122:5 tariffs (2) 121:9;123:9 tax (2) 51:22;55:2 Taylor (2) 15:2;23:19 Tech (1) 29:20 technical (5) 24:11,13;99:8; 100:12,18 technically (1) 104:16 telling (5) 7:12;9:20;10:13, 18;80:9 ten (2) 48:9,10 ten-minute (1) 48:5 tenure (1) 102:19 term (5) 24:11,13,14;43:23; 72:18 terminated (1) 139:20 termination (2) 145:5,8 terms (4) 19:23;20:1;50:23; 127:23 territory (1) 20:12 test (5) 55:21,23;56:1,2; 63:4 testified (3) 11:24;55:23;70:17 testify (1) 17:6 testifying (1) 28:1 testimony (17) 3:5;5:8;8:7;11:6; 42:18,21;49:22;50:4, 7,22;55:18;56:17; 91:11;123:1;124:9; 126:5,13 Thanks (3) 81:5;124:4;159:2 theories (1) 76:18 theory (3) 115:10;119:15; 122:1 thereabouts (2)	33:6;130:20 thereafter (1) 86:6 therefore (2) 35:14;118:24 third (2) 8:20,21 Thirty-six (1) 18:10 Thorough (1) 126:14 though (8) 58:19;70:10;85:17; 96:24;115:17;116:6; 119:15;136:4 thought (11) 14:13;27:9;71:14; 77:17,17;79:22,24; 88:14;89:13;122:3; 149:22 thoughts (1) 157:10 three (21) 6:2;7:11,22,23,24; 9:4;30:23;44:16; 56:3;96:15;137:17; 138:3,5,9;140:23; 141:9,24;148:9; 153:17;155:21; 156:13 throughout (1) 156:1 tie (1) 150:24 times (2) 142:12;151:15 Timing (1) 76:13 tiny (2) 110:3;139:1 title (1) 110:20 titled (1) 95:14 today (16) 14:20;27:19;28:1; 32:24;49:9;50:22; 127:17;128:9,22; 129:4;131:14; 138:20;139:20; 143:23;151:24; 156:16 today's (1) 4:14 together (5) 7:21;8:17;91:19; 145:10;150:24 told (1) 99:6 tomorrow (4) 156:18,22;157:12, 21 took (3)
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21:22;32:20; 117:15 top (8) 5:23;7:22;8:21; 107:3;135:14;139:2; 147:9,12 total (6) 8:14,22,22;10:9; 84:7;90:16 totally (2) 54:3;130:17 totals (1) 8:12 tough (1) 46:10 toward (1) 138:23 towards (2) 55:13;67:21 town (2) 41:3;75:19 Townhomes (5) 51:17;52:5,15; 53:17;54:2 townhouses (1) 43:16 towns (2) 24:18;41:5 track (2) 17:20;21:12 transcript (1) 72:5 travels (3) 65:13;67:13;84:21 treated (7) 86:8,8,12;102:23; 103:1,5,12 trench (2) 86:22;87:11 trenches (1) 97:5 Tried (1) 27:21 true (1) 90:16 try (4) 36:8;80:20;111:6,9 trying (10) 21:18,19;34:18; 41:10;49:21;73:23; 86:3;118:19;121:24; 122:3 Tuomala (9) 55:7,9,12;60:3; 157:18,19;158:14,15; 159:1 turn (21) 18:6;20:24;22:13; 28:23;29:9;31:19; 42:16;62:14;64:12, 13;67:21;92:9; 105:19;109:19; 111:1,2;113:5;114:9;	129:14;132:13; 144:15 turned (4) 62:10,13,17,23 Twenty-six (1) 18:9 two (53) 7:8;8:24;12:22; 17:13;25:10,11;26:5, 12,20;36:13;50:4; 54:3;59:10;64:7,9,14, 21;65:6,11,13;66:8,8, 16,20;74:22;77:10; 78:12;79:20;82:9; 83:22;86:5;93:22; 94:23;99:5;100:4; 103:3;105:14;110:9, 10;113:19,21; 127:20;128:22; 129:19;132:10; 133:23;145:8; 147:19;153:13; 155:16,20;156:4; 157:23 two-minute (1) 140:5 type (1) 9:9 types (1) 44:17 typically (3) 47:19;88:2;102:3 <hr/> <p style="text-align: center;">U</p> <hr/> ultimately (2) 134:2;137:8 unable (1) 145:12 uncommon (1) 74:1 under (17) 8:19;17:24;21:22; 44:9;49:14;105:14; 119:2,3,9,10;133:5, 23;134:15;135:5; 143:11;152:3,4 underneath (1) 142:23 understands (1) 26:20 understood (5) 32:24;33:12;73:7; 75:8;82:13 unique (1) 84:7 uniqueness (1) 93:1 universally (1) 24:21 unlike (1) 63:18 unmuted (2)	62:21;156:23 unusual (1) 69:11 up (48) 9:4;10:10;15:10; 18:15,23;32:2;33:15; 44:2,11,21;45:14; 49:24;50:9,11,18; 52:14;60:18;73:13; 82:24;83:12;86:4; 93:13;103:9,11,13; 109:13,18;110:10; 115:17;121:12,14,21; 122:19;125:13; 129:6,8;130:17; 134:21;140:17; 147:14;149:1;150:1; 151:24;155:12,17; 156:12,16;158:2 upgrade (1) 133:13 upon (1) 118:3 upper (6) 15:23;128:7;137:6; 142:1;147:11;153:9 use (9) 21:20;26:16;85:15; 88:6;99:18;110:13; 112:19;118:20; 133:10 used (11) 9:15;20:5;26:15; 27:22,23;28:5;32:1; 33:13;34:21;75:4; 123:12 uses (1) 89:2 using (4) 87:20;115:15; 134:21;144:24 usually (2) 24:18;50:20 utilities (1) 127:6 utilities' (1) 20:20 utility (8) 68:1,2,5,24;69:17; 77:20;88:3;117:18 <hr/> <p style="text-align: center;">V</p> <hr/> valid (1) 149:19 value (5) 6:8;10:17,23; 35:18;115:19 values (4) 9:22;10:14,15; 116:13 valve (27) 20:5;21:21;26:6,8;	39:12;40:4,19,20; 41:14;42:13;44:4,13, 22;45:1,15,19;46:2; 59:9,14;66:22;75:1, 2;99:4;138:1;156:7, 8,8 Valves (40) 6:2;7:10,23;8:1; 20:2;26:5,12,14,20, 23,24;36:3;62:1,8,13; 63:10,14;73:2,4,10; 74:2,17,22,22;75:4, 12;77:10,12;78:3; 89:21;91:6;101:12; 104:10;114:10; 117:17;118:10; 155:17,19,20;156:3 various (4) 46:7;74:16;105:23; 125:18 Vaughan (132) 3:5;5:1;8:4,8;11:4, 7;28:24;29:2,3,8,11, 15,19;30:3,7,11,14, 19,22;31:1,8,15,21; 32:4,11,14;33:4,8,21; 34:7,18,23;35:10,20; 36:5,15;37:2,9,14; 38:1;41:10,22;42:7, 10,15,21;43:5,14; 44:7,15,18;45:4,8,22; 46:24;47:5,8,12,15, 22;51:2,8,10,13,15, 18;52:9,23;55:13,22; 56:5,6,7,9,15;57:22; 58:1,2,6,18;59:2,5; 60:15,17;61:24;62:3, 6;70:5,7;71:3,8,12, 19,22;72:5,9,22;73:6, 21;74:18;75:13,23; 76:6,14,23;77:6,9,16, 22;81:11,23;82:13; 83:18,24;84:5,15; 87:5,17;89:11;90:22, 24;93:19;99:2,23; 101:8,14,16,22; 105:3;108:9,15; 154:19 Vaughan's (2) 5:7;105:6 vented (1) 87:21 verbal (3) 66:2;103:20; 123:19 verify (2) 154:17,18 versa (1) 65:5 version (2) 6:1;19:22 via (2) 106:23;107:9 	vice (1) 65:5 vicinity (1) 67:9 video (2) 3:12;26:1 View (3) 54:17,21;144:13 viewed (1) 145:13 Village (23) 107:4;137:9,11; 141:1,4,6,15,17,20; 143:8,15;146:20; 147:22;149:4,6,10, 15,21;150:8,15; 151:3,6;154:6 visible (1) 148:3 visits (1) 126:16 <hr/> <p style="text-align: center;">W</p> <hr/> wait (5) 79:9,11;98:11,12; 111:7 waiting (1) 154:16 walk (5) 5:18;8:17;122:24; 131:6;146:15 walked (1) 33:19 walking (1) 34:1 walls (2) 54:14;86:23 Washington (35) 16:1,7,13,17; 28:19;37:22;39:8,15, 20,24;59:12;60:24; 65:11;66:23;106:13, 14,21;107:23;109:8, 10;126:6;128:7,15; 132:22;135:11,23; 136:19;138:13,16; 141:11;142:21; 147:12;148:23; 149:13;150:9 wastewater (1) 12:23 Water (122) 3:24;12:5,8,9,9,11, 20;13:3,18,23;15:15; 16:5,13;22:22;23:11; 24:15;26:7;28:20; 29:5,21;30:6,8,15; 31:13;32:17;37:16; 38:9,12;40:8;41:14; 51:17;52:11,12;53:6; 57:11,20;61:9;62:10; 69:7,12,16;70:8;
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73:13,14;74:9,14; 84:8;88:3;92:8; 93:16;94:5,8;96:1,6; 97:7,8,23;110:22; 112:3,20;114:11; 116:3;117:10;119:1, 23;120:18;123:12; 127:8,8,10,14;129:6, 10,17,18;130:10,11, 15,16,22;131:1,9,16, 19;132:4,15,18,23; 133:3,6,10,11,13,16, 17;134:1,10,13,15, 23;135:2,7,7,10,11, 23;139:10;141:5; 145:14;148:5,14; 150:6,12,16;151:5, 10,13;152:21,24; 153:8;154:1;155:23 water/sewer (1) 125:21 way (24) 16:6,20;24:7,20, 24;31:15;38:21; 61:23;68:17;69:17; 75:8;78:18;79:8; 92:4,15;96:23;137:8; 149:13;150:10,18; 151:1,3;152:14; 156:13 ways (2) 5:23;53:21 welcome (1) 96:4 wells (11) 97:5;110:22;112:2, 3;128:22;129:6,9,19; 130:1,3;141:16 weren't (4) 14:10;58:23;91:22; 103:1 west (5) 29:13,15;127:24; 128:12,24 what's (8) 9:5;21:24;36:1; 41:19;86:7;139:11; 146:14;155:4 whereas (1) 108:6 WHEREUPON (2) 3:16;125:1 Wherever (2) 47:11,12 whole (4) 15:21;16:8;140:24; 149:7 whose (2) 40:1;78:8 Wind (6) 100:24;101:2; 102:1,13;154:18,24 wing (6)	139:17,18,19,22; 148:24;149:1 winter (2) 25:6;74:15 within (18) 19:19;43:23;49:23; 50:3,8,10;67:7; 68:24;85:8;101:18; 104:3,19;107:1; 110:14;112:15; 119:24;120:18,22 without (8) 40:13;45:22,23; 63:5;67:18;96:8,9; 146:17 witness (12) 3:7,15;25:17;28:6; 79:13;93:19;95:17; 118:2;122:20;123:1; 124:7,24 witnesses (5) 11:11;95:11; 123:18,21;154:15 wondering (3) 79:2;102:18; 156:17 Woods (4) 26:7;96:7;97:9; 135:5 word (5) 26:17;28:5;50:21; 63:3;71:10 wording (1) 27:9 words (4) 24:6;70:22;71:23; 91:5 work (15) 3:24;4:2;11:23; 17:16,21;18:1,4; 76:22;114:9,13,16; 133:20;158:2,5,22 worked (4) 11:24;12:12;21:7; 23:24 working (8) 14:21;17:19;23:16, 18;28:17;70:12;78:4; 125:8 workmanship (1) 76:16 works (1) 40:8 worth (1) 136:2 wrap (2) 155:12;156:16 wrapping (2) 100:2,5 wraps (1) 89:20 wrench (1) 62:16	write (1) 61:4 writing (1) 52:10 written (3) 50:21;71:3;158:18 wrong (4) 24:19;26:16;81:12; 83:16 Y year (14) 5:10,15;6:16,20, 20;7:15;8:7;9:11; 10:12;55:21,24;56:1, 2;57:9 year-end (1) 4:10 year-round (2) 133:1,4 years (7) 6:17;9:24;125:20; 143:5;147:20,24; 152:22 yellow (3) 147:5;150:22; 153:17 Yup (7) 15:14;16:11;20:3; 23:10,20;52:3; 112:14 0 08 (1) 102:20 1 1 (6) 32:15;96:24;110:8; 111:20;138:8;147:6 1.1 (1) 93:15 1:08 (1) 3:1 10 (1) 126:7 10:00 (1) 157:1 10-inch (1) 30:15 11 (9) 52:2;53:12;104:21; 105:19;106:8,17; 107:5,21;147:24 1-1 (6) 4:24;32:8,15,20; 117:8,13 11-117 (7) 14:23;15:8;21:5; 22:19;41:16;42:4,9	12 (8) 51:14,18,21,22,24; 52:1;53:8,10 12/31/2019 (1) 6:7 12:00 (2) 157:16,16 12-inch (3) 30:8;118:24; 149:12 13 (15) 4:17;7:1;8:15,19; 10:11;31:19,21,21; 33:13;34:2;52:18,19, 22,23;53:1 15 (3) 67:8;98:23,24 158,102 (1) 9:3 16 (5) 93:18,19;98:24; 153:1,4 160 (1) 149:18 16-448 (5) 36:20;41:18;42:16, 23;44:20 16-inch (23) 16:4,8,12;29:23; 30:6;31:4;83:11; 128:13;129:22; 130:5;138:14; 141:10,13;142:17; 143:7,7,11,16; 147:21;149:8; 150:15;154:8,10 17 (3) 137:15;138:3; 140:21 17-165 (3) 55:19;56:1;151:22 18 (8) 9:8;29:9,11;95:2; 111:9,11,13;147:1 1870 (1) 126:7 19 (2) 39:5;94:22 1902 (1) 130:19 1970s (2) 128:11;130:14 1973 (3) 16:15;130:20; 142:16 1980s (3) 130:14,23;131:7 1985 (30) 5:12;6:22;9:23; 10:17;37:24;38:9,12, 15,18,21;39:7;56:20; 57:2,6;105:14; 107:22;108:14;	118:17;128:16,18; 132:14;133:22; 134:19;136:20; 138:16;142:20; 146:19;147:19; 151:19;152:21 1987 (2) 119:3,10 1988 (8) 127:9;136:1,24; 137:12,19,21;141:3; 144:5 1989 (4) 127:5;131:24; 143:5;146:20 1994 (1) 143:20 1995 (9) 6:22;137:20;138:4; 141:4;143:9;144:6, 23;150:3;155:24 1996 (9) 6:22;7:10,22;8:1,2; 18:13;38:7,17;58:17 1b (1) 44:9 1b2 (1) 49:14 2 2 (36) 4:22;6:4;7:4,16; 8:13;10:7,8;16:24; 17:4;28:12;29:20; 32:1,13;33:10;34:3, 21;36:6,9;56:10,13; 57:2;61:8;70:21,21; 85:22;98:23;104:21; 105:1,9,20;107:5,21; 111:20;115:8; 116:21;142:13 2:23 (1) 48:15 2:30 (1) 48:13 2:35 (1) 48:16 20 (8) 18:6;22:13;42:17; 44:6;45:13;46:14; 49:10;125:21 200 (2) 110:9,14 2000 (1) 14:23 2001 (4) 143:21;144:7; 146:19;148:1 2007 (4) 12:1;13:17,21; 102:20 200-foot (1)
---	--	--	---	--

110:11 2011 (9) 13:6;14:15,15; 15:7;18:16;21:4; 22:6;23:14;102:22 2012 (2) 21:4;125:22 2013 (3) 32:10;33:2,6 2014 (3) 9:8,11;10:12 2015 (1) 37:4 2016 (3) 37:4;55:23;56:3 2017 (1) 56:4 2018 (3) 12:1;28:13,16 2019 (2) 6:14,20 21 (1) 6:1 22 (2) 131:3,4 2-2 (1) 29:20 2200 (1) 145:15 23 (4) 15:13;109:6; 125:20;126:23 23.5 (1) 6:16 24 (8) 78:9;79:19;93:21; 109:20;110:8; 111:20;112:9,13 25 (2) 132:17;144:15 254,700 (1) 8:22 259,134 (1) 9:4 26 (1) 16:24 270 (3) 40:5;66:13;67:4 29 (3) 113:6,7,12 <hr/> <p style="text-align: center;">3</p> <hr/> 3 (19) 7:5,7;16:24;17:4; 21:4;28:12;32:2; 36:9;56:11,13;61:8; 105:1,9,15;112:9,13; 115:9;116:21;142:13 3,000 (1) 61:6 30 (2) 18:13;152:22	302 (19) 29:14,15,16,17; 30:2;31:6;67:13,20; 68:17;82:20;127:20, 23;128:1,4,12,14,24; 130:4;138:15 305 (1) 8:20 309 (3) 8:21,23;58:16 30-year (1) 144:9 32 (2) 5:4,21 33 (2) 77:11;114:8 331 (6) 6:2;7:8,10;9:7; 53:5;58:16 350 (1) 119:1 3500 (1) 61:6 36 (4) 6:15;18:7,11;22:14 <hr/> <p style="text-align: center;">4</p> <hr/> 4 (17) 7:19;8:13;10:9; 28:12;32:2;36:9; 56:12;105:2;107:3; 115:9;116:21; 126:19;134:22,23; 135:4;142:13;143:5 4,450 (2) 61:9,10 4:42 (1) 140:13 4:44 (1) 140:9 4:47 (1) 140:14 40 (1) 23:4 400 (1) 112:16 400-foot (1) 110:6 42 (1) 21:14 4450 (1) 57:11 45 (1) 57:10 457 (1) 10:14 457,134 (2) 9:17;10:9 46 (3) 20:24;44:6;45:13 46,332 (1) 9:2	48 (1) 54:17 4-inch (3) 75:1;77:14;119:1 <hr/> <p style="text-align: center;">5</p> <hr/> 5 (7) 21:14,15;23:4; 29:10;95:2;111:13; 155:8 5:15 (1) 155:9 5:16 (1) 159:9 5:30 (1) 155:9 5th (1) 132:14 <hr/> <p style="text-align: center;">6</p> <hr/> 6 (3) 9:9;94:22;111:2 6- (1) 81:16 600,000 (1) 83:10 65 (2) 46:14;49:10 650,000-gallon (1) 83:8 66-unit (1) 74:20 6-inch (15) 26:5;66:10,11,21; 75:2;82:10;128:18; 138:24;143:1; 144:20;148:8,8; 153:10,18;155:18 <hr/> <p style="text-align: center;">7</p> <hr/> 7 (1) 12:24 71 (7) 51:14,15,19;52:6, 7;53:11,17 72 (3) 53:11,14,18 <hr/> <p style="text-align: center;">8</p> <hr/> 8 (1) 5:22 846 (3) 6:6,12,15 85 (1) 93:18 88 (1) 137:14 89-031 (1) 132:1	8-inch (57) 26:7,9;28:18;29:5; 37:21;38:9,12;39:23; 40:4,20,22;57:6,11, 23;58:3;60:23;61:9; 65:7;66:10,15,22; 67:3;70:9;71:17; 81:17;82:11;86:4,10; 89:20;128:17; 130:12;135:22; 136:18;138:17,23; 139:2,5;141:12; 142:24,24;143:12,15, 21;144:1,19;145:2, 11;147:9;148:12; 151:16;153:9;154:4, 9;155:17;156:7,8,8 <hr/> <p style="text-align: center;">9</p> <hr/> 9 (3) 13:1;36:18;111:1 9:00 (1) 157:1 90-degree (1) 130:2 95 (1) 7:13 954 (1) 6:8 96 (1) 7:14
---	--	--	---