

1 STATE OF NEW HAMPSHIRE  
2 PUBLIC UTILITIES COMMISSION  
3  
4 November 26, 2012 - 1:10 p.m. DAY 2  
5 Concord, New Hampshire  
6 RE: DE 11-216  
7 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:  
8 Alternative Default Energy Service Rate.  
9 PRESENT: Chairman Amy L. Ignatius, Presiding  
10 Commissioner Michael D. Harrington  
11 Commissioner Robert R. Scott  
12 Sandy Deno, Clerk  
13 APPEARANCES: Reptg. Public Service Co. of New Hampshire:  
14 Matthew J. Fossum, Esq.  
15 Reptg. PNE:  
16 James T. Rodier, Esq.  
17 Reptg. Retail Energy Suppliers Association:  
18 Joey Lee Miranda, Esq. (Robinson & Cole)  
19 Jonathan H. Schaefer, Esq. (Robinson & Cole)  
20 Reptg. Residential Ratepayers:  
21 Susan W. Chamberlin, Esq., Consumer Advocate  
22 Office of Chamber Advocate  
23 Reptg. PUC Staff:  
24 Suzanne G. Amidon, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

1 EXHIBITS  
2  
3 EXHIBIT NO. DESCRIPTION PAGE NO.  
4 15 PSNH Response to Technical Session 11  
5 TECH-01, Q-TECH-001 (08-10-12)  
6 16 Testimony of August G. Fromuth 86  
7 (08-24-12)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

{DE 11-216} [Day 2] {11-26-12}

1  
2 INDEX  
3 PAGE NO.  
4 WITNESS: STEVEN E. MULLEN (resumed)  
5 Direct examination resumed by Ms. Amidon 6  
6 Cross-examination by Mr. Fossum 12  
7 Cross-examination by Ms. Chamberlin 25  
8 Cross-examination by Mr. Rodier 27  
9 Cross-examination by Ms. Miranda 47  
10 Interrogatories by Cmsr. Harrington 49, 80  
11 Interrogatories by Cmsr. Scott 63  
12 Interrogatories by Chairman Ignatius 69  
13  
14 WITNESS: AUGUST G. FROMUTH  
15 Direct examination by Mr. Rodier 86  
16 Cross-examination by Ms. Miranda 93  
17 Cross-examination by Mr. Fossum 96  
18 Interrogatories by Cmsr. Harrington 112  
19 Interrogatories by Cmsr. Scott 120  
20 Interrogatories by Chairman Ignatius 125  
21  
22 \* \* \*  
23  
24 CLOSING STATEMENTS BY: PAGE NO.  
25 Mr. Rodier 132  
26 Ms. Miranda 136  
27 Ms. Chamberlin 142  
28 Ms. Amidon 145  
29 Mr. Fossum 146

{DE 11-216} [Day 2] {11-26-12}

1 PROCEEDING  
2 CHAIRMAN IGNATIUS: We are back with  
3 Docket DE 11-216. When we were last together, we had  
4 gotten through the evidence of PSNH and OCA's witnesses.  
5 We had had Mr. Mullen go through his direct, if I'm  
6 correct?  
7 MR. MULLEN: Yes.  
8 CHAIRMAN IGNATIUS: And, still have  
9 cross-examination of Mr. Mullen, and Mr. Fromuth's direct  
10 and cross-examination, I believe.  
11 So, why don't we begin with appearances,  
12 and, then, if there's any other procedural matters to get  
13 oriented, it's always a little hard for me to remember  
14 where we left off. So, anything we have to go back over,  
15 if there's any other matters, before we get into the  
16 evidence, we'll do so. But let's first take appearances.  
17 MR. FOSSUM: Good afternoon. Matthew  
18 Fossum, on behalf of Public Service Company of New  
19 Hampshire.  
20 CHAIRMAN IGNATIUS: Good afternoon.  
21 MR. RODIER: Good afternoon. Jim  
22 Rodier, for PNE. Mr. Fromuth is with me.  
23 MS. MIRANDA: Good afternoon,  
24 Commissioners. Joey Lee Miranda, from Robinson & Cole,

{DE 11-216} [Day 2] {11-26-12}

1 along with my colleague, Jon Schaefer, on behalf of the  
2 Retail Energy Supply Association.

3 CHAIRMAN IGNATIUS: Good afternoon.

4 MS. CHAMBERLIN: Good afternoon,  
5 Commissioners. Susan Chamberlin, Consumer Advocate, for  
6 the residential ratepayers.

7 CHAIRMAN IGNATIUS: Good afternoon.

8 MS. AMIDON: Good afternoon. Suzanne  
9 Amidon, for Commission Staff.

10 CHAIRMAN IGNATIUS: Good afternoon,  
11 everyone. So, are we right that we pick up with Mr.  
12 Mullen's cross-examination, unless is there anything we  
13 should take up first?

14 MS. AMIDON: If I may, madam Chairman.  
15 What I would like to do is ask Mr. Mullen to summarize his  
16 direct testimony, just to give a context for the  
17 cross-examination that will follow. And, as you know,  
18 there is a Settlement Agreement that's been -- a Partial  
19 Settlement Agreement that's been filed in this docket,  
20 Exhibit 9. The transcript was available to the parties,  
21 and I'm assuming they took advantage of that in order to  
22 prepare for today.

23 I think that is all that I have at this  
24 point.

{DE 11-216} [Day 2] {11-26-12}

[WITNESS: Mullen]

1 workings of the ADE rate, "ADE" standing for  
2 "Alternative Default Energy Service". And, in my  
3 testimony, when I was on the stand, I highlighted  
4 what's essentially the one difference between my  
5 position on the term of service and the position of  
6 PSNH and OCA. PSNH and the OCA support a 24-month term  
7 of service. And, in my prefiled testimony, I  
8 recommended a 12-month term of service.

9 And, to summarize the main reasons for  
10 that: One, I think just on simplicity terms, it's a  
11 better match for the eligibility criteria. If we  
12 recall, in order to be able -- to be eligible for  
13 service under Rate ADE, a customer must be served by a  
14 competitive supplier for at least 12 consecutive  
15 months. So, there, by having a term of service for  
16 Rate ADE of 12 months, I think it's just a better  
17 match. Also, in Mr. Hall's rebuttal testimony, he had  
18 mentioned that, with relation to the term in the  
19 Settlement Agreement that this -- actually, this came  
20 -- the Settlement Agreement came later, the term that I  
21 had recommended in my original testimony, about this  
22 being looked at on a pilot basis, he said, "yes, you  
23 know, it's probably a good idea, and I think we should  
24 look at this on an annual basis." So, I think that

{DE 11-216} [Day 2] {11-26-12}

[WITNESS: Mullen]

1 CHAIRMAN IGNATIUS: Is that acceptable  
2 to everyone to, although I know Mr. Mullen summarized  
3 testimony before, to kind of get reoriented here to start  
4 off the afternoon?

5 MR. FOSSUM: Yes.

6 CHAIRMAN IGNATIUS: All right. Then,  
7 unless there's anything else, are we good to go?

8 (No verbal response)

9 (Whereupon *Steven E. Mullen* was recalled  
10 to the stand, having been previously  
11 sworn.)

12 CHAIRMAN IGNATIUS: Mr. Mullen, you were  
13 sworn before. You remain under oath.

14 WITNESS MULLEN: Yes.

15 CHAIRMAN IGNATIUS: Thank you. Please  
16 proceed.

17 STEVEN E. MULLEN, Previously sworn

18 DIRECT EXAMINATION (resumed)

19 BY MS. AMIDON:

20 Q. And, Mr. Mullen, please, if you will, summarize the  
21 testimony that you filed in this docket.

22 A. Okay. Bringing us back to a few weeks ago, we heard  
23 significant testimony from PSNH and from the OCA  
24 witness about the Partial Settlement Agreement and the

{DE 11-216} [Day 2] {11-26-12}

[WITNESS: Mullen]

1 12-month term of service that I recommended is also a  
2 better match for the annual assessment of the rate.

3 Also, I think it helps mitigate -- the  
4 shorter term of service helps mitigate any potential  
5 concerns about this being anti-competitive, because the  
6 shorter term of service would limit the amount of time  
7 any eligible customer could be served under this rate.

8 As another reason, it gives a better  
9 idea, you can see more action, especially with this  
10 being a 36-month pilot, you can see more in terms of  
11 how customers react to the term of service ending and  
12 fulfilling their full term of service. If you were to  
13 go with a 24-month term of service, under a 36-month  
14 pilot, there could be a number of customers still being  
15 served by the rate at the end of the 36-month pilot  
16 period, that you wouldn't be able to see their full  
17 reactions during that entire term of service.

18 Let's see. Also, if for some reason, at  
19 the -- if the Commission were to terminate this rate,  
20 and say "well, you know, it's not really -- this isn't  
21 really working right", my position would be that the  
22 customers should serve their remaining term of service.  
23 So, if a customer had just recently started being  
24 served under Rate ADE, and it was a 24-month term of

{DE 11-216} [Day 2] {11-26-12}

1 service, they could have a significant period of time  
2 left, if, for some reason, the rate was terminated.  
3 So, I think, if you take all those into  
4 account, I just think that the 12-month period is my  
5 preference for what the term of service for this rate  
6 should be.

7 Q. Mr. Mullen, did you find anything in the Settlement  
8 Agreement that you felt needed to be corrected?

9 A. Yes. I just found a typo when I was going through  
10 this. If you look at -- this is Exhibit 9, Page 5. In  
11 Section 2.2.3, at the end of that section, there's a  
12 reference to -- it says "and for the reasons set out in  
13 Section 2.3.3 or 2.3.4, below", those really should be  
14 "2.3.3.1 or 2.3.3.2". And, I think, if you look at the  
15 Settlement, there is no "2.3.4", as was originally  
16 referenced in the Settlement.

17 CMSR. HARRINGTON: Could you give us  
18 those again please?

19 WITNESS MULLEN: Sure. The references  
20 should be to "2.3.3.1 or 2.3.3.2".

21 BY MS. AMIDON:

22 Q. Thank you. Finally, Mr. Mullen, in connection with  
23 discovery, PSNH provided a response that's identified  
24 as "TECH-001". Do you have a copy of that response in  
{DE 11-216} [Day 2] {11-26-12}

1 just look at it --

2 CHAIRMAN IGNATIUS: Please.

3 MR. RODIER: -- just for five seconds?

4 (Atty. Amidon handing document to Atty.  
5 Rodier.)

6 MR. RODIER: I notice this is nothing  
7 recent then. So, on that basis, we have no objection.

8 CHAIRMAN IGNATIUS: All right. Then,  
9 we'll mark it for identification as Exhibit?

10 MS. DENO: Fifteen.

11 CHAIRMAN IGNATIUS: Fifteen. Thank you.  
12 (The document, as described, was  
13 herewith marked as Exhibit 15 for  
14 identification.)

15 MS. AMIDON: Thank you.

16 WITNESS MULLEN: And, if I could just  
17 add something in relation to this?

18 MS. AMIDON: Yes, please.

19 WITNESS MULLEN: PSNH provided this  
20 response with respect to the 24-month term of service that  
21 they support. So, there are a few spots on here where it  
22 says "24 months", that the only difference in how I would  
23 look at it would be the "12 months", it would substitute  
24 "12 months" for those. But the decisions, the "yes" or  
{DE 11-216} [Day 2] {11-26-12}

1 front of you?

2 A. Yes, I do.

3 Q. And, it consists of a one-page -- I think, maybe a  
4 two-sentence answer and a diagram which depicts various  
5 situations, depending on when a customer chooses to --  
6 the ADE, and what various things will happen to reset  
7 the 24-month clock, for example, and is that correct?  
8 How would you characterize this?

9 A. It's a flow chart, that, essentially, it's a decision  
10 tree. And, it shows whether a customer would be served  
11 under Rate ADE or Rate DE, other things like whether  
12 the clock has started again or is it continuing? I  
13 just think that it -- it's a good pictorial view of  
14 what lots of words of the text might say.

15 MS. AMIDON: May I offer this as an  
16 exhibit? I think we're up to -- mark it for  
17 identification as "Exhibit 15", is that correct? I think  
18 it might be helpful to the Commission, and the other  
19 parties have copies of it. But it offers a flow chart  
20 that's easier to follow, because it's in color and shows  
21 the various decision points.

22 CHAIRMAN IGNATIUS: Is there any  
23 objection to marking it as an exhibit? Mr. Rodier.

24 MR. RODIER: Madam Chairman, could I  
{DE 11-216} [Day 2] {11-26-12}

1 "noes" and all that won't change.

2 BY MS. AMIDON:

3 Q. Okay. For example, if you go to the first triangle  
4 that's green, it says "is 24-month clock running?"  
5 Under Staff's position, it would be "is 12-month clock  
6 running?"

7 A. Correct.

8 MS. AMIDON: Thank you. The witness is  
9 available for cross-examination.

10 CHAIRMAN IGNATIUS: Thank you. Why  
11 don't we continue with other signatories to the Settlement  
12 Agreement. So, PSNH.

13 MR. FOSSUM: Thank you.

14 CROSS-EXAMINATION

15 BY MR. FOSSUM:

16 Q. Mr. Mullen, I just wanted to ask, since it's been a  
17 while since the first part of this hearing, and I know  
18 that you've given a quick summary of your direct, I  
19 just wanted to ask a few questions that would, I think,  
20 help clarify where we are.

21 Regarding eligibility for Rate ADE, just  
22 very briefly, how does a customer become eligible to be  
23 served under Rate ADE?

24 A. The customer must have been receiving service from a  
{DE 11-216} [Day 2] {11-26-12}

1 competitive supplier for a period of at least 12  
 2 consecutive months.  
 3 Q. And, are there circumstances under which Rate ADE can  
 4 close to new customers?  
 5 A. Yes.  
 6 Q. And, what circumstances would those be?  
 7 A. And, if I could refer to, give the right direction  
 8 here, if you look at the Settlement Agreement, the  
 9 description starts on Page 5, in Section 2.2.4. But  
 10 the technical workings of that are described in  
 11 Section 2.3.3.1, on Page 7. To summarize that, PSNH  
 12 will be looking at the projected marginal costs on a  
 13 monthly basis. And, if, in one of those monthly  
 14 reviews, it's comparison of the marginal costs at that  
 15 time for the remaining months of the period are more  
 16 than 75 percent -- have increased by at least  
 17 75 percent of the amount of the adder, as compared to  
 18 the projections of marginal costs for those same  
 19 periods at the initial setting of the rate. If that  
 20 occurs, then the rate could be temporarily closed to  
 21 new customers.  
 22 Q. You said that's what happens when the rate increases.  
 23 Does the same thing happen if the forward prices would  
 24 decrease?

{DE 11-216} [Day 2] {11-26-12}

1 to recover on its fixed costs?  
 2 A. Actually, yes, it does. Yes.  
 3 Q. Thank you.  
 4 A. Sorry.  
 5 Q. Is it possible that Rate ADE can be above the rate for  
 6 Rate DE?  
 7 A. That's possible.  
 8 Q. So, the price available to a customer under Rate ADE  
 9 will depend or could depend upon the market prices at  
 10 the time the customer returns to PSNH for Default  
 11 Service?  
 12 A. Yes.  
 13 Q. Have you reviewed the transcript from the first day of  
 14 this hearing?  
 15 A. Briefly.  
 16 Q. Either through that review or your own recollection, do  
 17 you recall questions from Commissioner Harrington about  
 18 whether a customer could leave for a competitive supply  
 19 and keep Rate ADE as an insurance policy?  
 20 A. Do you have a reference?  
 21 Q. Yes. The transcript, at Page 170.  
 22 A. Okay. I'm there.  
 23 Q. Now, this wasn't a question to you. I was just  
 24 wondering whether you recall the question being asked.

{DE 11-216} [Day 2] {11-26-12}

1 A. Well, the rate wouldn't close, but PSNH will file a  
 2 request for a authorization to decrease the rate.  
 3 Q. And, during any time that the availability of Rate ADE  
 4 is closed, what happens to customers returning for  
 5 Default Service?  
 6 A. They would be assigned to Rate DE.  
 7 Q. Now, as for -- so, you -- I'm sorry, you spoke about  
 8 the price, how the price of Rate ADE is set.  
 9 Currently, as you understand it, is the proposed price  
 10 for Rate ADE below Rate DE?  
 11 A. Yes.  
 12 Q. Even at a price that's below Rate AD -- that is below  
 13 Rate DE, does Rate ADE provide an opportunity for PSNH  
 14 to recover on its fixed costs?  
 15 A. No.  
 16 Q. Could you explain that. Does it provide any  
 17 opportunity for PSNH to recover on its fixed costs?  
 18 A. It's just the adder -- the rate itself is the marginal  
 19 cost of providing power. That's the bulk of the rate.  
 20 And, so, that's not a fixed cost to PSNH, that's  
 21 essentially the market price of power. The adder is  
 22 calculated on the non-operating costs of the Scrubber.  
 23 So, --  
 24 Q. So, does the adder then provide an opportunity for PSNH

{DE 11-216} [Day 2] {11-26-12}

1 Nevertheless, for purposes of refreshing your  
 2 recollection, the question asked to Mr. Estomin that --  
 3 Dr. Estomin, excuse me, on Page 170, at Lines 14  
 4 through 18, regarding an "insurance policy". Do you  
 5 have that in front of you?  
 6 A. Yes, I do.  
 7 Q. Does that refresh your recollection?  
 8 A. Yes.  
 9 Q. So, in light of -- so, in light of the fact that you  
 10 have said that Rate ADE could be above Rate DE, do you  
 11 think it's likely that a customer would leave for a  
 12 competitive supply and believe that, for 12 consecutive  
 13 months, and believe that Rate ADE would remain as an  
 14 insurance policy?  
 15 A. Well, I think -- I think, under various circumstances,  
 16 you know, there's lots of different -- there's lots of  
 17 different outcomes. And, so, I think, to view it as an  
 18 insurance policy kind of ignores the working -- the  
 19 movements of the market prices that can happen and the  
 20 changes in the rates that could happen.  
 21 Q. Thank you. I want to turn now to the issue that you  
 22 had said that there's some disagreement among the  
 23 signatories about on the term of service. And, you do  
 24 agree that there should be a term of service, is that

{DE 11-216} [Day 2] {11-26-12}

1 correct?

2 A. Yes.

3 Q. And, we only -- the only disagreement is the length of

4 that term?

5 A. Correct.

6 Q. In the first part of this hearing, do you recall

7 stating that you understood the arguments of PSNH and

8 the OCA about the benefits of a 24-month term of

9 service?

10 A. Yes.

11 Q. Would you agree that PSNH -- that PSNH's argument for a

12 24-month term of service was that it would avoid an

13 extended term of customers being on a discounted rate,

14 and to avoid having customers pay a higher rate for an

15 extended period?

16 A. Yes, I recall that.

17 Q. And, do you recall Dr. Estomin's testimony that he

18 believed the 24-month term would be more attractive to

19 returning customers?

20 A. Yes, I recall.

21 Q. Okay. And, despite those arguments, you still believe

22 12 months is the preferred term?

23 A. That's correct.

24 Q. Now, going to the issues that you had raised in your

{DE 11-216} [Day 2] {11-26-12}

1 eligibility requirement is, and I'll use my word, and

2 if you don't agree with it, please say so, is to help

3 avoid gaming, and the annual review is just to provide

4 an opportunity to make sure that the Rate ADE is

5 providing the benefits that it's intended to provide.

6 Is that an accurate summary?

7 A. Sure.

8 Q. Now, are either of those purposes the same as the

9 purpose of the term of service?

10 A. Are they the same as the purpose for the term of

11 service?

12 Q. Well, I guess, in other words, what is -- I'll start

13 this way. What is the purpose of the term of service?

14 A. The term of service is provided so that there -- again,

15 it's to avoid -- well, I was going to say -- I was

16 going to say "it's to avoid people moving back and

17 forth", however, people aren't required to stay on Rate

18 ADE. However, what it does is, it avoids a lot of

19 back-and-forth with Rate DE.

20 Q. The term of service avoids a back-and-forth with Rate

21 DE, is that --

22 A. Well, sure. Because, if there's a term of service

23 under Rate ADE, returning customers aren't served by

24 Rate DE, assuming Rate ADE is open.

{DE 11-216} [Day 2] {11-26-12}

1 summary of your direct, the first issue that you had

2 raised for in favor of a 12-month term of service was

3 that it matched, essentially, the eligibility term, is

4 that correct?

5 A. I said it was "a better match", yes.

6 Q. A better match. What is the purpose of the 12-month

7 eligibility requirement that is the purpose of

8 requiring a customer to be on competitive supply for 12

9 consecutive months before qualifying for Rate ADE?

10 A. The purpose of that is to, if I'm following your

11 correction -- your question correctly, is to ensure

12 that there's not a lot of going back and forth.

13 Q. In other words, to use a term that's come up previously

14 in this case, would it help avoid "gaming"?

15 A. Well, that's one thing that can happen with people

16 going back and forth. I might say that there might be

17 people that move back and forth, and it's not

18 necessarily gaming.

19 Q. You had also mentioned a better match with the annual

20 review. What would the purpose be for the annual

21 review?

22 A. To see how the rate is working and to see if there's

23 any adjustments that need to be made.

24 Q. So, if I follow you correctly, the purpose of the

{DE 11-216} [Day 2] {11-26-12}

1 Q. Would you agree with Mr. Hall's previous testimony that

2 the -- that the purpose of the term of service is to

3 provide benefits -- or, is to ensure that customers do

4 not receive an extended period of discount rates or an

5 extended period of excessively high rates?

6 A. Well, I think that's one of the things. There's also

7 the -- the whole point of ADE is to provide, for those

8 returning customers, what it does is it, especially

9 through the adder, provides some benefit to other

10 customers on Rate DE.

11 Q. So, and I guess what I'm trying to get at is that the

12 term of service and the eligibility criteria and the

13 annual review all serve essentially somewhat different

14 purposes. Would you agree with that?

15 A. Yes.

16 Q. So, there's no particular underlying purpose that

17 requires those terms to match, it just sounds better?

18 A. Well, that's your characterization. But I think that,

19 yes, they all have their purpose.

20 Q. Now, you also mentioned in your direct that it would

21 help "mitigate concerns about being anti-competitive".

22 Could you explain that?

23 A. Well, yes. And, I think there's, you know, there's

24 been some concern from, I think, competitive suppliers

{DE 11-216} [Day 2] {11-26-12}

1 that this rate will keep people out of the competitive  
 2 market for an extended period of time. Now, whether  
 3 those concerns are valid or not, I think a shorter term  
 4 of service helps alleviate those concerns.  
 5 Q. Now, and you're not an attorney, Mr. Mullen?  
 6 A. That's correct.  
 7 Q. But are you familiar with the terms of the  
 8 restructuring statute, RSA 374-F?  
 9 A. Generally.  
 10 Q. Would you agree that the primary purpose of the  
 11 restructuring law is to reduce costs for all consumers  
 12 of electricity?  
 13 A. I think that's one of many that are stated in the  
 14 statute.  
 15 Q. Well, could the implementation of Rate ADE have the  
 16 effect of reducing the costs for consumers of  
 17 electricity?  
 18 A. It could.  
 19 Q. So, if it does have that effect, and would that be a  
 20 basis to limit it to 12 months?  
 21 A. I'm not sure I'm following your question.  
 22 Q. Well, if it has the effect of lowering costs for  
 23 consumers of electricity, wouldn't that be a basis to  
 24 extend it to 24 months, to ensure that those benefits  
 {DE 11-216} [Day 2] {11-26-12}

1 A. Yes, that's correct.  
 2 Q. Now, why would the -- what do you believe would be the  
 3 most likely reason that the rate would be terminated  
 4 prior to the end of the pilot period?  
 5 A. Well, you know, I wasn't thinking of anything in  
 6 particular. I was just trying to cover potential  
 7 outcomes that could happen. I mean, there's a variety  
 8 of things that could happen, you know. Now, whether it  
 9 requires a termination or whether it requires some  
 10 adjustments to the rate, you know, I haven't really  
 11 thought through every scenario that could happen, but I  
 12 was trying to cover different potential outcomes.  
 13 Q. Is it possible that Rate ADE could be terminated  
 14 because few or no customers take it?  
 15 A. That could happen.  
 16 Q. So, in that case, would there be a significant impact  
 17 for having to continue few or no customers till the end  
 18 of the term of service?  
 19 A. In that particular circumstance, no.  
 20 Q. And, Mr. Mullen, also in the first day of this hearing,  
 21 you had mentioned, but I didn't hear you mention today,  
 22 the possibility that "a longer term of service could  
 23 limit customer options". Do you recall saying that?  
 24 A. Yes. That's right.  
 {DE 11-216} [Day 2] {11-26-12}

1 are provided?  
 2 A. Well, that assumes (a) that people stay on the rate for  
 3 the entire period, which they're not required to.  
 4 Sorry, I lost my train of thought.  
 5 Q. If I might ask about that. That may be for an  
 6 individual customer, and you said this is a concern  
 7 about competitive suppliers. So, I was wondering if  
 8 this could have the effect of lowering costs in the  
 9 marketplace for all consumers of electricity, as  
 10 opposed to, say, an individual consumer?  
 11 A. Well, I think that, where the rate is calculated based  
 12 on marginal costs, I would think that those are  
 13 basically reflective of the market price. So, whether  
 14 you have a longer term of service or a shorter term of  
 15 service, I think that, you know, those same market  
 16 prices should be available. Again, I support the  
 17 shorter term of service for a variety of reasons, not  
 18 just for one in particular.  
 19 Q. Yes. And, one of the other reasons that you had raised  
 20 is that, if a customer is on Rate ADE at the time that  
 21 the pilot period ends or that the rate is terminated,  
 22 the customer should remain on, in your opinion, the  
 23 customer should remain on Rate ADE until the end of  
 24 their term of service?  
 {DE 11-216} [Day 2] {11-26-12}

1 Q. Currently, customers have the option of having  
 2 competitive service for PSNH's Default Service, is that  
 3 essentially the case?  
 4 A. Yes.  
 5 Q. So, once Rate -- assuming Rate ADE is implemented,  
 6 would that choice change?  
 7 A. The choice of returning to Default Service?  
 8 Q. Would customers still have the choice of obtaining  
 9 competitive supplier service or PSNH's Default Service?  
 10 A. Depending on how long they were being served by a  
 11 competitive supplier, they would -- if they wanted to  
 12 return, they would still have the competitive supply  
 13 option, and, if they wanted to return to PSNH, they  
 14 would either be served under Rate DE or Rate ADE.  
 15 Q. Either of which is a default service option, is that  
 16 correct?  
 17 A. That's correct.  
 18 Q. So, in that customers would have the choice to remain  
 19 on competitive supplier service or return to PSNH's  
 20 Default Service, have those choices changed? Would  
 21 those choices change with the implementation of Rate  
 22 ADE?  
 23 A. With the implementation of Rate ADE, the only thing  
 24 that changes is the amount of time somebody would be  
 {DE 11-216} [Day 2] {11-26-12}

1 served under -- a returning customer would be served  
 2 under the Alternative Default Energy Service, rather  
 3 than the standard Default Energy Service.  
 4 Q. But the choice of who would supply the energy is  
 5 essentially the same under -- whether Rate ADE exists  
 6 or does not exist?  
 7 A. Customers would still be served -- could still be  
 8 served by competitive suppliers or by PSNH.  
 9 MR. FOSSUM: Thank you. I don't have  
 10 anything further.  
 11 CHAIRMAN IGNATIUS: Thank you.  
 12 Ms. Chamberlin, questions?  
 13 MS. CHAMBERLIN: I have a few questions.  
 14 Thank you.  
 15 BY MS. CHAMBERLIN:  
 16 Q. Mr. Mullen, it's true that this is the second time that  
 17 PSNH has made a Rate ADE filing, correct?  
 18 A. Yes.  
 19 Q. And, the first time it was rejected by the Commission  
 20 for a variety of policy reasons, is that correct?  
 21 A. Yes.  
 22 Q. On Page 3 of the Settlement Agreement, PSNH summarized  
 23 those reasons. It's in Paragraph 1.3. Is it your  
 24 recollection that that correctly summarizes the  
 {DE 11-216} [Day 2] {11-26-12}

1 WITNESS MULLEN: Yes, I did. Thank you.  
 2 MR. RODIER: Great.  
 3 BY MR. RODIER:  
 4 Q. Do you have the transcript in front of you?  
 5 A. I do.  
 6 Q. Would you turn to Page 52.  
 7 CHAIRMAN IGNATIUS: And, if both the  
 8 witness and any questioner keep in mind, we don't have the  
 9 transcript. So, it's --  
 10 MR. RODIER: Okay.  
 11 CHAIRMAN IGNATIUS: All right, some of  
 12 "we" have it, some of "we" don't have it. There's nothing  
 13 wrong with using it, just don't assume that we're reading  
 14 along with you.  
 15 MR. RODIER: All right.  
 16 BY MR. RODIER:  
 17 Q. Mr. Mullen, let me know when you get to 52.  
 18 A. I'm there.  
 19 Q. Okay. I'm going to just read an excerpt from Lines 5  
 20 through 10. And, the reason I'm going to read it is,  
 21 didn't PSNH ask you a few questions related to "gaming"  
 22 a moment ago?  
 23 A. Yes, they did.  
 24 Q. Okay. Well, since you have it in front of you, would  
 {DE 11-216} [Day 2] {11-26-12}

1 original concerns of the Commission?  
 2 A. Yes.  
 3 Q. With this second filing, this is PSNH's attempt to meet  
 4 those concerns, correct?  
 5 A. Yes.  
 6 Q. And, the terms of the Settlement Agreement -- would you  
 7 agree with me that the terms of the Settlement  
 8 Agreement meet those concerns of the Commission?  
 9 A. Yes, they do.  
 10 Q. And, the question before the Commission is which  
 11 proposal the term of service is a better  
 12 implementation, is that correct?  
 13 A. Yes.  
 14 Q. So, either one meets the original concerns. And, it's  
 15 your testimony that 12 months is a better term of  
 16 service; it's PSNH and OCA's testimony that 24 months  
 17 is a better term?  
 18 A. Yes. That's correct.  
 19 MS. CHAMBERLIN: That's all I have.  
 20 Thank you.  
 21 CHAIRMAN IGNATIUS: Thank you. Then  
 22 let's turn to non-settling participants. Mr. Rodier.  
 23 MR. RODIER: Thank you. Mr. Mullen, by  
 24 the way, did you have a good holiday?  
 {DE 11-216} [Day 2] {11-26-12}

1 you read into the record 5 through 9, starting with the  
 2 sentence that begins with "a customer"?  
 3 A. And, I believe this is a question from you to the PSNH  
 4 panel at the time?  
 5 Q. It's Mr. Hall's answer.  
 6 A. Yes.  
 7 Q. All right. It's in response to my question.  
 8 A. Okay. I believe this is your question to Mr. Hall.  
 9 Q. No. If you look on the previous page, which is 51,  
 10 isn't it -- you're right, it is my question. Then,  
 11 given that, would you read that same section that I  
 12 asked you to, and then read Mr. Hall's answer, which is  
 13 on Page 10 [Line 10?]. I'm sorry.  
 14 A. Okay. The section of the question that starts on Line  
 15 5 reads as follows: "A customer has to be with a  
 16 competitive supplier for 12 months, I'm very sorry.  
 17 After that, they can go back to ADE on January 1st,  
 18 leave again on April 1st, come back again July 1st, and  
 19 leave again on October 1st?" And, Mr. Hall's answer  
 20 was "They could."  
 21 Q. And, do you agree with that?  
 22 A. Yes.  
 23 Q. Okay. So, to the extent the impression might have been  
 24 left that there's no potential for gaming, this might  
 {DE 11-216} [Day 2] {11-26-12}

1 say otherwise, is that correct?

2 A. What this says is people can -- people aren't required

3 to stay on Rate ADE, and they can move back to

4 competitive supply and come back to Rate ADE.

5 Q. Right. All right. So, like, in the spring, when the

6 supplier's costs are down, they may -- they could jump

7 to a competitive supplier, and then go back in the

8 summer, when the competitive prices are higher. Is

9 that correct?

10 A. They could do that.

11 Q. Okay.

12 A. A lot is going to depend on the market prices at the

13 time, compared to the existing cost of Rate ADE.

14 Q. Absolutely. You're absolutely correct. Now, the

15 Settlement -- a couple questions on the Settlement

16 Agreement. First one would be -- well, I got the wrong

17 copy of the Settlement Agreement in front of me. My

18 notes are -- well, let me just wing it then off the top

19 of my head. There is a provision in here that says

20 that, if the Commission -- the parties are still

21 looking for an agreement by January 1st, correct?

22 A. Looking to have the rate implemented by January 1st.

23 Q. Okay. Now, if the Commission comes out with an order

24 and they change something, there is a provision in here  
{DE 11-216} [Day 2] {11-26-12}

1 "PSNH, the Staff, and OCA", but it doesn't mean

2 necessarily that we exclude anybody?

3 A. Well, as I see it, Rate ADE is a tariffed rate. PSNH,

4 the Staff, and OCA can't make changes to tariffed

5 rates. Those get approved by the Commission.

6 Q. Yes. I'm just working on the part that says "PSNH, the

7 Staff, and OCA shall work cooperatively to develop any

8 recommended changes to the design of Rate ADE."

9 A. And, again, those are recommended changes.

10 Q. Right. And, would there be -- I think you're saying

11 there would be an opportunity for input into that

12 process for people like PNE?

13 A. Yes, I believe there would.

14 Q. Okay. That's all I wanted. Now, the other one I want

15 to go to is the annual -- well, first of all, why is

16 this a pilot? And, I'm looking for a very short

17 answer.

18 A. So it can be evaluated as to how it's working, how many

19 people are taking advantage of it. Just to basically

20 get a good view of, you know, whether it -- whether it

21 should be modified in any way, and how customers react.

22 Q. And, so, basically, keep it on a short leash, in case

23 something unanticipated should happen?

24 A. Sure. There's lots of different things that could  
{DE 11-216} [Day 2] {11-26-12}

1 that says the Settling Parties get together, figure out

2 what to do about it, is that right? Now, I'm actually

3 -- I found it. Top of Page 8.

4 A. I'm there.

5 Q. "Should the Commission approve an implementation date

6 other than January 1, 2013, PSNH, the Staff, and the

7 OCA shall discuss whether to amend the date by which

8 the annual report shall be filed and shall report the

9 results of such discussions to the Commission." Now,

10 "PSNH, the Staff, and OCA shall work cooperatively to

11 develop any recommended changes to the design of ADE to

12 the extent that such changes are necessary." Okay.

13 I'll skip the end of the sentence for sake of brevity.

14 Because my question really goes to, if the Commission

15 orders something here to change, why is it just the

16 PSNH, the Staff, and the OCA get to consult with each

17 other and work cooperative? Isn't it possible that my

18 client sees the decision, and they say "well, this

19 thing is on a pretty short leash. You know, we'd like

20 to get our word in edgewise here as to how to make the

21 recommended changes." Is that precluded?

22 A. I don't think it's precluded, no.

23 Q. Okay. And, what makes you think that? It just says --

24 it doesn't say that explicitly, it just includes the  
{DE 11-216} [Day 2] {11-26-12}

1 happen, marketwise or otherwise. So, it's basically an

2 evaluation period. It's a test period.

3 Q. Well, and do you recall that I suggested, through some

4 questions I believe to Mr. Hall, that, when you tell

5 people "you can get a lower rate from Public Service,

6 but first you've got to go to a competitive supplier

7 for a year", do you recall me suggesting that could

8 open the floodgates?

9 A. It could. There's lots of things that could happen.

10 Q. Yes. Okay. So, there could be some unanticipated

11 consequences? That's probably the third time you've

12 been asked that question, and I apologize.

13 (Court reporter interruption.)

14 BY MR. RODIER:

15 Q. I said "there could be unanticipated consequences."

16 Now, at the end of the pilot period, the Commission has

17 an opportunity to review this, correct?

18 A. Yes.

19 Q. Going back to Section 2.2, "which pilot shall be

20 evaluated by the Commission". Now, I wonder what that

21 means, if the Commission -- it doesn't say "the Staff

22 of the Commission", it means "the Commission". So, are

23 we talking about there's going to be a hearing,

24 perhaps?  
{DE 11-216} [Day 2] {11-26-12}

1 A. If you turn to Page 8, in Section 2.4.3, it says there,  
 2 "At least 3 months prior to the end of the pilot  
 3 period, PSNH shall file a request to extend, modify or  
 4 terminate Rate ADE and shall include information about  
 5 the historical performance of Rate ADE and support for  
 6 the requested relief." So, I think that in and of  
 7 itself would see a hearing.  
 8 Q. Okay. So, there would be notice, opportunity to be  
 9 heard, *etcetera*?  
 10 A. Correct.  
 11 Q. Okay. That's good. So, I want to talk to you briefly  
 12 about the adder. The adder is the non-operating costs  
 13 of the Scrubber?  
 14 A. That's correct.  
 15 Q. And, why are the costs of the Scrubber in there, and  
 16 let me just add a multi two-part question, isn't it  
 17 because RSA 125-O:18 says that the costs of the  
 18 Scrubber "shall be recovered through default service".  
 19 Does that sound right?  
 20 A. That's what 125-O:18 says, yes.  
 21 Q. So, in essence, it says "you must recover the cost of  
 22 the Scrubber through default service"?  
 23 A. Correct. Meaning not through any other rate component.  
 24 Q. Yes. Not on the wires or anything like that?  
 {DE 11-216} [Day 2] {11-26-12}

1 this is based on?"  
 2 Q. Okay. That's helpful. Well, I thought we agreed that  
 3 the costs of the Scrubber must be recovered through  
 4 Default Service?  
 5 A. Yes. And, they are.  
 6 Q. Does that mean just part of the costs or would that  
 7 mean total costs? All of the costs?  
 8 A. It would be any costs that the Commission finds  
 9 allowable into the Default Service rates would be  
 10 included in the Default Service rates.  
 11 Q. Well, isn't the non-operating -- isn't the operating  
 12 costs of the Scrubber going to be included in the  
 13 Default Service rates or is Public Service not going to  
 14 recover those?  
 15 A. PSNH will recover whatever the Commission determines  
 16 are recoverable. And, currently, there's a temporary  
 17 adder, temporary rate component that's included in  
 18 Default Service to include what up until this time that  
 19 the Commission has approved in rates for the Scrubber.  
 20 Q. That's for Rate DE, isn't that correct?  
 21 A. Yes. And, that's a Default Service rate.  
 22 Q. Right. In ADD -- ADE, though, it's not all of the  
 23 costs of the Scrubber, it's just the non-operating  
 24 costs?  
 {DE 11-216} [Day 2] {11-26-12}

1 A. Correct.  
 2 Q. Okay. Why -- tell me why it's just non-operating  
 3 costs? Aren't the operating costs costs of the  
 4 Scrubber?  
 5 A. Well, and I think you had a discussion with Mr. Hall on  
 6 this at length during the hearing. And, as he said,  
 7 first, those, the non-operating costs are readily  
 8 identifiable, as compared to others that include  
 9 allocated costs. But, also, the Commission, when PSNH  
 10 first proposed a Rate ADE, one of the concerns the  
 11 Commission had was that PSNH proposed a flat penny  
 12 adder, and said "there was no basis for that." So,  
 13 what the -- using the non-operating costs of the  
 14 Scrubber is, is a way that it can be calculated. And,  
 15 it's based on, you know, actual numbers. It's based on  
 16 -- you know, so, there is a basis for it. You know,  
 17 there's nothing that says that the adder has, you know,  
 18 that there's nothing -- the Commission didn't say  
 19 "well, it must be part of the Scrubber costs" or  
 20 anything like that. So, what it does is it gives you a  
 21 way to, as things change over time, say "here's what  
 22 the adder is", rather than just saying "well, it's a  
 23 penny." This was, again, to respond to one of the  
 24 Commission's concern about, "well, how do we know what  
 {DE 11-216} [Day 2] {11-26-12}

1 A. That's correct.  
 2 Q. So, we have a question here as to whether or not the  
 3 operating costs must be included as well in ADE? Would  
 4 you agree with that?  
 5 A. I think that's your question, yes.  
 6 Q. Okay. And, you don't think so, and tell me one more  
 7 time very briefly why?  
 8 A. I don't think they need to be, because, again, as you  
 9 pointed out, the statute in 125-O says that the costs  
 10 of the Scrubber get recovered through default service  
 11 rates.  
 12 Q. Yes.  
 13 A. Currently, they are being recovered through default  
 14 service rates. So, I don't see any problem with that.  
 15 Q. Okay. Now, you're saying ADE isn't a default service  
 16 rate?  
 17 A. It is.  
 18 Q. Okay. And, is there some inconsistency here? You're  
 19 saying that it must be recovered through default  
 20 service rates, and then you just agreed that ADE is a  
 21 default service rate?  
 22 A. Yes. But, again, the operating costs are included in  
 23 Rate DE, which is Default Service. It's not that  
 24 there's any costs that aren't recovered between either  
 {DE 11-216} [Day 2] {11-26-12}

1 one of those rates.

2 Q. Okay. So, you're saying that the -- here's what it

3 comes down to then, 125-O:18, when it says "the costs

4 of the Scrubber must be recovered through default

5 service rates", what you're saying is not necessarily

6 true for ADE?

7 A. Both operating and non-operating costs are currently

8 included in Rate DE.

9 Q. Right.

10 A. What the adder in Rate ADE does is provide some

11 additional recovery that goes back to the benefit of

12 Default Service customers.

13 Q. Okay. Does 125-O:18, is that applicable to Rate ADE?

14 A. It's applicable to default service rates.

15 Q. Okay.

16 A. And, the Commission can approve whatever it --

17 Q. Yes.

18 A. -- deems appropriate for default service.

19 Q. I'm wondering if you have a response to the question

20 that I asked, which is "does 125-O:18 apply to Rate

21 ADE?"

22 A. And, I believe I just answered that. I said that 125-O

23 applies to Default Service rates. And, the Commission

24 can approve what it deems appropriate for Default

{DE 11-216} [Day 2] {11-26-12}

1 they incurred because of the existence of Rate ADE?

2 A. Again, I think you had a lengthy discussion with Mr.

3 Hall about these types of costs. And, he's basically

4 saying that people that would be performing these tasks

5 are currently employed and being paid. So, to that

6 extent, there's not an incremental cost associated with

7 that. And, they're --

8 Q. Do you agree?

9 A. And, they're not seeking any additional recovery of

10 those costs.

11 Q. Okay. You're not saying there aren't any opportunity

12 costs, are you?

13 A. No.

14 Q. Okay. Because, if they re-deploy people, they're not

15 doing what they have been paid to be doing all along,

16 now they're working on a new program, Rate ADE.

17 A. Well, I hesitate to make a general statement like that,

18 because I think people shift what they're working on

19 all the time, depending on what their job function is.

20 Q. Right. Would you agree with me that the people in

21 question would otherwise be working on other PSNH

22 projects, if they weren't re-deployed to ADE?

23 A. Well, I think, any time you're working on one thing,

24 you can't be working on something else.

{DE 11-216} [Day 2] {11-26-12}

1 Service rates, including alternative methods of

2 providing Default Service.

3 Q. Okay. I think we've beat that one into the ground.

4 So, thank you for your responses. I'm going to move on

5 at this point.

6 Okay. Well, let's talk about, since

7 we're on this general subject, the marketing -- well,

8 let me just read you the response to one of PSNH's data

9 requests. "PSNH's proposed calculation of Rate ADE

10 admittedly does not include any costs for marketing or

11 outreach programs."

12 MS. AMIDON: Could you please identify

13 the data request?

14 MR. RODIER: I don't have it in front of

15 me.

16 BY MR. RODIER:

17 Q. So, what I will just do is ask Mr. Mullen, are there

18 any costs for marketing, outreach, cost of

19 administration, promotional materials, marketing, sales

20 or customer service included in Rate ADE?

21 A. No.

22 Q. Is that because these costs don't exist?

23 A. No, they exist.

24 Q. Okay. Are they -- the fact of their existence, are

{DE 11-216} [Day 2] {11-26-12}

1 Q. That's right.

2 A. But, again, it would depend on the individuals, it

3 would depend on what the nature of their job is anyhow.

4 Q. So, I mean, if somebody is there right now, and they're

5 working on some existing project, their salaries are

6 being recovered through base rates, aren't they?

7 A. Depends on what they're doing, and, right now, it

8 depends on where their time is charged.

9 Q. Well, if the time is charged, it's recovered through

10 base rates, isn't it?

11 A. Well, they also have transmission rates. They also

12 have -- there's other components to their rates.

13 Q. Okay.

14 A. So, when you say "base rates", I assume you're

15 referring to distribution rates, and that might not be

16 the case.

17 Q. With that clarification, I understand. You're correct.

18 So, we could have a situation here where somebody is, I

19 don't know, is in, I don't know, Customer Service, been

20 there for five years. Now, they're working on

21 marketing, outreach, promotion, marketing, sales and

22 customer service for Rate ADE. And, the costs of that

23 are being recovered through base rates?

24 A. Possibly. Again, depending on -- like I say, there's

{DE 11-216} [Day 2] {11-26-12}

1 other rate components.

2 Q. Okay. "Other rate components", meaning "transmission  
3 costs" or something like that?

4 A. Yes.

5 Q. Okay. Fair enough. Back to, very quickly, and I know  
6 we want to make sure we get out of here at 4:30, so I'm  
7 going to try not to belabor this. You heard me  
8 question previously about two PSNH customers in  
9 Manchester that live next door to each other?

10 A. Yes. I believe it was on Dubuque Street.

11 Q. Exactly. And, so, let's make it North Bay Street this  
12 time, to go to a silk stocking district.

13 A. I know where that is, too.

14 Q. I bet you do. Okay. So, we have two customers on  
15 North Bay Street. And, one is a loyal PSNH customer,  
16 the other flew the coop as soon as they could, these  
17 are residential customers, to go to a competitive  
18 supplier. Now, there is going to be some kind of  
19 marketing and outreach program, is there not, on Rate  
20 ADE?

21 A. Yes.

22 Q. Okay. So, isn't the one who has been loyal going to  
23 wonder how he can or she can get the new lower rate?

24 A. And, I would assume that would be done through the  
{DE 11-216} [Day 2] {11-26-12}

1 A. It could.

2 Q. Do you think the Commission could get angry calls about  
3 their neighbor getting a lower rate and they can't get  
4 it?

5 A. Well, I think that that goes to the education, in terms  
6 of why it's available for some and not for others.

7 Q. Yes.

8 A. But, by the same token, those that would currently be  
9 eligible to receive the rate under Rate ADE, those  
10 customers already wouldn't be paying the same as a PSNH  
11 customer, because they're getting whatever the  
12 competitive suppliers have offered.

13 Q. Right.

14 A. So, there's already a difference in what they're  
15 paying.

16 Q. Right.

17 A. However much that is depends on what the suppliers are  
18 offering.

19 Q. Well, that brings me to my next question. The  
20 Commission has expressed an interest in market  
21 enhancements, has it not?

22 A. Could you be more specific?

23 Q. Well, like the POR docket?

24 A. The Commission has a docket open on that. I don't  
{DE 11-216} [Day 2] {11-26-12}

1 outreach program, education.

2 Q. Okay. And, so, the point would be, the prodigal son  
3 who left can come back with a much lower rate than Rate  
4 DE; the one who is loyal is out of luck?

5 A. That assumes circumstances as they are today. The one  
6 who was -- you say is "loyal", would not have yet met  
7 the eligibility criteria for the rate.

8 Q. Well, implied in the -- how I was using the word  
9 "loyal" is that they stayed with Public Service and  
10 resisted the blandishment of companies like PNE, right?

11 A. I understand your characterization.

12 Q. Okay. Do you -- is the PUC training any people to  
13 answer calls from people that are complaining that they  
14 can't get this rate?

15 A. Not that I am aware of, but Consumer Affairs is not my  
16 department.

17 Q. Okay. Could precipitate workload for the Commission,  
18 couldn't it?

19 A. We won't be increasing the number of people that are  
20 here. They answer questions all the time. And,  
21 there's always changes in tariffs.

22 Q. All right. It could precipitate workload for PSNH,  
23 couldn't it? People say "what do I got to do to get  
24 this?"  
{DE 11-216} [Day 2] {11-26-12}

1 think the Commission has ruled on it one way or  
2 another.

3 Q. That's correct. But what precipitated that was the  
4 reference in an order of the Commission that they  
5 wanted to "consider market enhancements". If you're  
6 not aware of that, that's fine.

7 A. No, I'm aware of the docket.

8 Q. Okay.

9 A. And, they said they would open it and take a look at  
10 it.

11 Q. Right. Because they were interested in market --  
12 considering market enhancements, is that correct?

13 A. They're interested in exploring the idea.

14 Q. Okay. So, do we have a -- do we have some  
15 schizophrenia here, where, on one hand, the Commission  
16 is looking to go forward here and enhance the market  
17 for residential customers, on the other hand, it's  
18 considering, to use a phrase that came up earlier, to  
19 "reverse the trend"?

20 A. I don't see it that way at all.

21 Q. Why is that?

22 A. Because what I see is, under this rate, I don't see the  
23 customers of PSNH are going to be any worse off than  
24 they are. If anything, this is a different option, and  
{DE 11-216} [Day 2] {11-26-12}

1 it addresses something that was in the Commission's  
2 prior docket, DE 10-160. Where it requested that PSNH  
3 develop a tariff proposal that would look to mitigate  
4 the impacts on those customers who have not migrated,  
5 that it's caused -- that the cost impacts, based on --  
6 resulting from those that have migrated. What this  
7 proposal does is it addresses that.

8 Q. And, that brings me to my last question. Now, it does,  
9 but, you know, do you recall in a subsequent order that  
10 the Commission issued that they said there were many  
11 issues that have to be developed with respect to  
12 whether this program is consistent with 374-F and  
13 369-B?

14 A. I'm not sure whether that was in relation to this  
15 proposal or something else. I have a vague  
16 recollection of what you're referring to.

17 Q. Okay.

18 A. But I can't place it in the right docket.

19 Q. Well, --

20 CHAIRMAN IGNATIUS: Mr. Rodier, do you  
21 have a citation to that order?

22 MR. RODIER: It was the order that  
23 denied my motion to dismiss. And, as a matter of fact,  
24 it's mentioned in Mr. Fromuth's testimony. And, if I

{DE 11-216} [Day 2] {11-26-12}

1 to me?

2 CHAIRMAN IGNATIUS: No. I was just  
3 curious about which order you were referring to.

4 MR. RODIER: Okay.

5 CHAIRMAN IGNATIUS: So, thank you.

6 MR. RODIER: Okay. You're welcome.

7 CHAIRMAN IGNATIUS: Does that conclude  
8 your questioning?

9 MR. RODIER: It does.

10 CHAIRMAN IGNATIUS: Thank you.

11 Ms. Miranda.

12 MS. MIRANDA: Thank you. For the  
13 record, Joey Lee Miranda, from Robinson & Cole, on behalf  
14 of the Retail Energy Supply Association. Good afternoon,  
15 Mr. Mullen.

16 WITNESS MULLEN: Good afternoon.

17 MS. MIRANDA: Just a few questions.

18 BY MS. MIRANDA:

19 Q. In response to cross-examination from PSNH today, you  
20 indicated that the Rate ADE allows PSNH to recover for  
21 fixed costs associated with the Scrubber, is that  
22 correct?

23 A. Yes.

24 Q. And, those costs are incurred by PSNH whether they  
{DE 11-216} [Day 2] {11-26-12}

1 could get it. Let me be more specific here. On Order  
2 Number 25,372, June 8th, --  
3 CMSR. HARRINGTON: Excuse me. Could you  
4 give us the exhibit number please?

5 MR. RODIER: Excuse me?

6 CMSR. HARRINGTON: The exhibit number,  
7 so we can find what you're reading from?

8 MR. RODIER: No, I'm just reading it,  
9 this is Mr. Fromuth's testimony.

10 CMSR. HARRINGTON: Oh. Okay.

11 MR. RODIER: It hasn't been filed yet.

12 And, so, I'm just stating, in response to the question,  
13 just make believe I've got this memorized, not reading  
14 from anything in particular. Your Order Number 25,372,  
15 June 8th, 2012, the Commission stated "Many factual issues  
16 will need to be developed in order for the Commission to  
17 determine, pursuant to RSA 369-B:3, IV(b)(1)(A), RSA  
18 Chapter 374-F, and RSA 377, whether the proposed  
19 redesigned ADE is reasonable and serves the public  
20 interest."

21 I have no -- I have no further  
22 questions, madam Chairman.

23 CHAIRMAN IGNATIUS: All right.

24 MR. RODIER: Do you have any follow-up  
{DE 11-216} [Day 2] {11-26-12}

1 serve Rate ADE customers or not, is that correct?

2 A. Yes.

3 Q. Thank you. Also in response to cross-examination from  
4 PSNH, you indicated that Rate ADE could lower costs of  
5 electricity for customers taking service on that rate,  
6 is that correct?

7 A. Yes, it could.

8 Q. But it could also increase the cost of electricity for  
9 customers above what customers on DE are paying,  
10 depending on the market, is that correct?

11 A. Well, it could. But you'd also have to look at what  
12 they're paying to competitive suppliers. Because, if  
13 they're on ADE, they're obviously coming from a  
14 competitive supply. So, depending on the relative  
15 pricing there, it could increase or decrease from that  
16 as well.

17 Q. Okay. So, it's possible that there is actually -- a  
18 customer, even though ADE is currently lower than DE, a  
19 customer returning to PSNH may actually pay more by  
20 taking Rate ADE than they would have paid if they  
21 stayed with a competitive supplier?

22 A. That's possible. Then, I'd have to question, you know,  
23 why they were coming off competitive supply.

24 MS. MIRANDA: Okay. Thank you. Those  
{DE 11-216} [Day 2] {11-26-12}

1 are the only questions I have. Thank you.

2 CHAIRMAN IGNATIUS: Thank you. Then, I

3 think we've been around all of the parties. Questions

4 from the Commissioners?

5 CMSR. HARRINGTON: Yes. I have a few.

6 CHAIRMAN IGNATIUS: Commissioner

7 Harrington.

8 BY CMSR. HARRINGTON:

9 Q. Let me see. Mr. Mullen, I guess let me start out with

10 a basic something here. What is the purpose? What is

11 the Rate ADE hoping to accomplish by being established?

12 A. The purpose is to try to mitigate the cost impacts to

13 non-migrating customers, that is the ones who are

14 remaining on PSNH's Default Energy Service, by those

15 who have migrated to competitive supply. Again, this

16 was a subject of an earlier Commission docket, DE

17 10-160. And, in its orders, the Commission requested

18 that PSNH develop a tariff proposal that would address

19 that concern.

20 Q. So, you're saying that, through the use of this rate,

21 it will tend to lower costs associated with people that

22 stay on Default Service, regular Default Service?

23 A. Correct. And, that's essentially through the working

24 of the adder.

{DE 11-216} [Day 2] {11-26-12}

1 A. Well, that's, you know, that's one. Yes, that's

2 certainly one consequence.

3 Q. And, just so I get this straight, the ADE is broken

4 down into two things. One was the marginal cost of

5 power, which I assume was more or less a pass-through?

6 A. Yes.

7 Q. Okay. And, then, the adder was put onto that, and

8 that's going to be revenue that comes out additional to

9 costs?

10 A. Yes. Well, additional to marginal costs.

11 Q. Additional to marginal costs, okay. And, that's

12 because that they are based on the fixed costs of the

13 Scrubber, which aren't marginal, they're going to be

14 there regardless, correct?

15 A. Yes.

16 Q. Okay. So, what we're doing is taking part of the cost

17 of the Scrubber and assigning it to people who are on

18 this ADE rate?

19 A. Yes.

20 Q. Okay. So, that means some of the costs that would have

21 been with the regular Default Service, they don't have

22 those costs?

23 A. No. Those costs are still figured in the Default

24 Service rate. What this does is this creates a

{DE 11-216} [Day 2] {11-26-12}

1 Q. Okay. And, that seems to conflict with, and I'm

2 looking at 374-F:3, F:3, II, where it says "The

3 commission should ensure that customer confusion will

4 be minimized and customers will be well informed about

5 changes resulting from restructuring and increased

6 customer choice." And, above that, it says "Customers

7 should expect to be responsible for the consequences of

8 their choices." Now, are there any customers out there

9 that I'm not aware of that are forced to take Default

10 Service, because nobody else offers it to them? Is

11 that still the case in Public Service's territory

12 anyway?

13 A. No, I don't believe that. That's correct.

14 Q. So, a customer should expect to be responsible for the

15 consequences of their choice. Any customer could leave

16 and go on Default -- off of Default Service and get a

17 competitive supplier, or they could stay on Default

18 Service?

19 A. That's correct.

20 Q. Okay. Well, if the customer needs to be responsible

21 for that, why are we trying to come up with a system to

22 make life better for them? Isn't that one of the

23 consequences of their actions, staying on Default

24 Service?

{DE 11-216} [Day 2] {11-26-12}

1 calculation whereby additional revenue gets recovered,

2 and then gets applied against the Default Energy

3 Service rate through the reconciliation process.

4 Q. So, the people that stay on Default Service will be

5 benefited at the expense of the people that are paying

6 the alternate rate? I'm trying to follow this.

7 A. Yes. There will be additional revenue received from

8 the ADE customers that will go towards lowering the

9 costs paid by Default -- regular DE customers.

10 Q. Okay. So, is the purpose of this then to slow down

11 migration of Default Service customers?

12 A. No.

13 Q. Okay. Then, why are we worried about lowering their

14 costs?

15 A. Well, one thing that came -- that rose in DE 10-160,

16 and, again, that was during -- especially during a

17 period where there were not as many options for

18 customers, especially on the residential and small

19 commercial side, the situation happened that, when

20 customers, primarily large customers left, there was a

21 smaller customer base to recover fixed costs over. So,

22 this proposal was developed in relation to that

23 circumstance.

24 It could be that nobody takes Rate ADE,

{DE 11-216} [Day 2] {11-26-12}

1 and then there won't be any additional benefit to  
 2 Default Service customers, because there wouldn't be  
 3 any revenue from an adder.  
 4 Q. Okay. Can you just help me with this flow diagram a  
 5 little bit? I know it came from Public Service, but  
 6 I'm sure you can help address my questions on it. I'm  
 7 just trying to get how this works. So, we're just  
 8 starting in the upper left-hand corner with the red  
 9 box, "Customer is taking supplier service." So,  
 10 somebody, and since we're dealing with residential  
 11 customers, somebody used to be a Default Service  
 12 customer of Public Service, and then they chose to go  
 13 to a competitive supplier. Is that correct?  
 14 A. Correct.  
 15 Q. Okay. And, so, for whatever reason now, they have  
 16 decided they want to come back to customer service.  
 17 They don't want to deal with that competitive supplier  
 18 anymore?  
 19 A. Back to Public Service, yes.  
 20 Q. Okay. So, this "24-month" is the next block, "Is  
 21 24-month clock running?" And, I guess we've been told  
 22 your position would be "Is 12-month clock running?"  
 23 Can you explain what that means?  
 24 A. That is really for the situation where a customer had  
 {DE 11-216} [Day 2] {11-26-12}

1 or "closed" on Rate ADE?  
 2 A. That gets to the circumstance that I described before  
 3 under questioning from Mr. Fossum. And, that's if --  
 4 Rate ADE is normally open. However, when PSNH looks at  
 5 the monthly projections of marginal costs, if the  
 6 change in those projections is more than 75 percent of  
 7 the adder, the rate could be closed. So, this is  
 8 referring to the situation "is it open or is it  
 9 closed?"  
 10 Q. Okay. So, there would be a -- this is would be a  
 11 dynamic situation, where customers, based on their  
 12 individual circumstances of where they have been buying  
 13 their electricity or how they have been buying it over  
 14 the past time frame, is there any -- does this go --  
 15 where does this go back to? Probably would start fresh  
 16 from January 1st, if it was implemented then?  
 17 A. Now you've lost me to where you are.  
 18 Q. Maybe I can reword it. To get to this initial box, the  
 19 green box, which says "Is 24-month clock running?" It  
 20 would be -- that's based on what they did previously as  
 21 a electric customer, correct?  
 22 A. Correct.  
 23 Q. Okay. So, does everybody start with a fresh slate on  
 24 January 1st, if this were to go into effect then, or is  
 {DE 11-216} [Day 2] {11-26-12}

1 previously been served under Rate ADE, and they had  
 2 gone back to the competitive market.  
 3 Q. So, this is for somebody who, I don't know, the boxes  
 4 that aren't on the chart, I guess, Default Service  
 5 customer of Public Service, left to go to take supplier  
 6 service, came back to Public Service and took ADE, then  
 7 went back to a supplier? Do I have that right?  
 8 A. Well, this -- yes. So, this box, this green box is  
 9 questioning "do they fit that circumstance or not?"  
 10 Q. Okay. And, then, going down, if the answer is "no",  
 11 that means "the clock isn't running." So, what does  
 12 that imply then? That they aren't eligible for  
 13 Alternative?  
 14 A. No. What that means is they were not previously served  
 15 under Rate ADE. This is their first time coming back  
 16 from a competitive supply.  
 17 Q. Okay. So, does that mean the clock's running or not  
 18 running?  
 19 A. The clock is not running.  
 20 Q. Not running. So, you would go to the "no", I mean, is  
 21 clock not running, you come down to "no". "12 months"  
 22 -- "12 consecutive months on supplier service?" And,  
 23 if the answer is "yes", then they go over to "Is Rate  
 24 ADE open?" And, what exactly does that imply, "open"  
 {DE 11-216} [Day 2] {11-26-12}

1 it January 1st, looking backwards two years?  
 2 A. Everybody starts with a fresh slate. This would be the  
 3 first time that the tariff is actually available. So,  
 4 there would be nobody that was previously served under  
 5 ADE, so nobody would already have a 24-month clock  
 6 running.  
 7 Q. So, the fact that they may or may not have been served  
 8 under DE in the past, then left and came back and left  
 9 and came back, has no bearing?  
 10 A. Correct.  
 11 Q. Only whether they were ADE in the past?  
 12 A. They wouldn't have been ADE.  
 13 Q. Yes. But, I mean, that's the only criteria as we go  
 14 into the future?  
 15 A. Yes.  
 16 Q. Okay. All right. I think I have a little better  
 17 handle on how that works now. Thank you. There's a  
 18 couple of things on here I'm trying to figure out  
 19 what's the rationale for. And, the green box that  
 20 talks about "12 consecutive months on supplier  
 21 service?" Is there any basis for that "12 months"? I  
 22 mean, why not 6 months or 13 months or whatever?  
 23 A. It's, you know, there's no -- there's no magic number.  
 24 But it's a reasonable number of months in terms of,  
 {DE 11-216} [Day 2] {11-26-12}

1 well, how long have they been out on competitive  
 2 supply? You know, if they have been out for a month,  
 3 do you set up a new tariff proposal for them or, you  
 4 know, 12 months is, you know, basically, is looked at  
 5 as a reasonable significant period of time.  
 6 Q. So, you would have a situation then where some  
 7 customers were eligible for one rate, some customers  
 8 weren't?  
 9 A. Correct.  
 10 Q. For instance, if someone went with a competitive  
 11 supplier, and the supplier went out of business. And,  
 12 at that time, the only option left to them was to come  
 13 back to Public Service. If they had been with this --  
 14 both people, two people been with that supplier, one  
 15 for 14 months, one for 6 months, the one with 14 months  
 16 would come in and get Rate ADE at a lower rate than the  
 17 one that came in with the 6 months, because they would  
 18 have to get the DE rate, is that correct?  
 19 A. Well, that's possible. But, considering there's other  
 20 competitive supplier options out there, if one supplier  
 21 was to go out of business, I would assume there would  
 22 be others there that they could also look at.  
 23 Q. And, this is where I get confused. Because you said  
 24 earlier that the intent of this was not to get  
 {DE 11-216} [Day 2] {11-26-12}

1 A. Correct.  
 2 Q. Okay. So, maybe it's not what we're trying to  
 3 accomplish here with this rate, but it's certainly  
 4 required for it to accomplish that. We have to get  
 5 customers that are paying the ADE rate, so you can take  
 6 advantage of that adder to help the DE rate?  
 7 A. Correct. In order for any benefit to flow to DE  
 8 customers, customers have to be taking service under  
 9 ADE.  
 10 Q. Okay. And, these are the same customers that are  
 11 supposed to be responsible for the consequences of  
 12 their choices. So, I get back to that. And, I'm just,  
 13 again, a little confused as to what we're trying to  
 14 accomplish with that. But you're saying that you have  
 15 two customers then could be in the situation where  
 16 they, for whatever reason, they both decide they want  
 17 to do business with Public Service, as far as buying  
 18 Energy Service from them. And, we're supposed to be  
 19 sensitive to a regulated utility charging, you know,  
 20 actual, prudent and reasonable costs. And, that would  
 21 have to be the same, whether it was ADE or DE, and yet  
 22 they're different. So, how do you reconcile that  
 23 seemingly confusion?  
 24 A. Well, first, without the proposal for ADE, they would  
 {DE 11-216} [Day 2] {11-26-12}

1 customers back to Public Service. But, if that doesn't  
 2 happen, what is this rate accomplishing?  
 3 A. This rate is put in place to, again, to provide benefit  
 4 to other default -- DE customers through the revenue  
 5 provided from the adder.  
 6 Q. So, in order to do that, you've got to attract people  
 7 to take the ADE rate?  
 8 A. Well, again, but I don't see the purpose of developing  
 9 the rate as being done for that purpose. I see it  
 10 being done to provide benefit to other customers. Now,  
 11 again, I think I said in my prefiled direct testimony  
 12 that the number of customers that take it, it's going  
 13 to basically depend on how the amount of the adder  
 14 compares to the margin charged by suppliers. Assuming  
 15 that marginal cost is at the market price will be the  
 16 same for all players. So, you have to kind of see how  
 17 that matches up. And, right now, I'm not sure how  
 18 that's going to match up. It could be that a number of  
 19 people take advantage of ADE, it could be that nobody  
 20 does.  
 21 Q. But, I guess, in order to accomplish the goal of  
 22 benefiting Default Service customers, somebody has to  
 23 take the Alternate -- the ADE rate or that won't  
 24 happen, correct?  
 {DE 11-216} [Day 2] {11-26-12}

1 have just basically one choice, and that would be DE.  
 2 Second, also in 374-F, I'm looking at 374-F:3, V(e),  
 3 which also says that "Notwithstanding any decision of  
 4 subparagraphs (b) and (c), as competitive markets  
 5 develop, the Commission may approve alternative means  
 6 of providing transition or default services which are  
 7 designed to minimize customer risk, not unduly harm the  
 8 development of competitive markets, and mitigate  
 9 against price volatility without creating new deferred  
 10 costs, if the Commission determines such means to be in  
 11 the public interest." So, I think, it's certainly, you  
 12 know, this is certainly something that's permitted.  
 13 Q. Okay. So, what you're saying here is, even though the  
 14 rates are both held to the same standard, they can be  
 15 different, and that's acceptable?  
 16 A. Yes.  
 17 Q. Okay. And, this section you just read talks about or  
 18 "not unduly harm the development of competitive  
 19 markets". What effect do you think this will have on  
 20 competitive markets, if this rate were to go into  
 21 effect?  
 22 A. It's one other option out there. Again, I don't see,  
 23 you know, I don't see this as something that's going to  
 24 cause all the competitive marketers -- competitive  
 {DE 11-216} [Day 2] {11-26-12}

1 suppliers to lose their customers. Again, because this  
2 is priced above marginal cost. So, again, you've got  
3 to think that the competitive suppliers are, you know,  
4 have their market price as their basis. And, now,  
5 whatever they do to that price, you know, for any  
6 margin or whatever else they add to it, you would think  
7 it would be somewhat comparable. What this basically  
8 does is it provides another option, which also, to the  
9 extent customers take service under it, provides  
10 benefit to other customers.

11 Q. Well, I guess, if you look at competitive markets, I  
12 look at them and I picture them as Public Service being  
13 a cost-based utility, it's not part of the competitive  
14 market. They develop their costs and they get recovery  
15 through the tariffs for those costs. So, to the effect  
16 that, now you've got a different non-competitive  
17 market-based option out there, at a lower price than  
18 Default Service, I'm finding a hard time saying or  
19 figuring out how this doesn't harm the development of  
20 competitive markets. It would seem to me it would be  
21 directly harmful to it, in that the goal here is to get  
22 people to leave competitive suppliers and sign up with  
23 Public Service under this new Rate ADE. Because,  
24 unless, we already established, unless that happens,  
{DE 11-216} [Day 2] {11-26-12}

1 service through Public Service. So, I don't see how it  
2 cannot be harmful to the competitive supplier market?

3 A. Well, that could happen.

4 CMSR. HARRINGTON: Okay. All right.

5 That's all the questions I have. Thank you.

6 CHAIRMAN IGNATIUS: Commissioner Scott.

7 CMSR. SCOTT: Thank you.

8 BY CMSR. SCOTT:

9 Q. Following the same stream of questioning. So, I just  
10 want to make sure I understood you right, Mr. Mullen.  
11 Your thought was, and I don't want to put words in your  
12 mouth, so, if I do, please correct me, that the ADE  
13 rate will still be higher than the competitive supplier  
14 rate?

15 A. I say on that, I'm not sure.

16 Q. Okay. Would you agree that a rational customer would  
17 not likely change from a competitive supplier back to  
18 PSNH, if the ADE was higher than the rate they were  
19 currently paying?

20 A. That would be my assumption, yes.

21 Q. Do you think it's possible that this pricing scheme  
22 with ADE would be an inducement for people to leave  
23 PSNH Default Service?

24 A. Well, if so, then they have to -- you know, if creating  
{DE 11-216} [Day 2] {11-26-12}

1 there is going be no benefit to the DE rate customers,  
2 which, as you stated, is the whole purpose of this.

3 A. But, by the same token, competitive suppliers will all  
4 know how this rate is calculated. So, they can, you  
5 know, they will be looking at forward prices, as well  
6 as PSNH. And, they will know, they can do a pretty  
7 easy calculation of the adder, plus this is set on an  
8 annual basis, with some provision for changing it  
9 possibly at six months.

10 You know, so, suppliers can alter their  
11 offerings, they can, again, they will know how this is  
12 set. So, from that perspective, you know, PSNH, I  
13 don't believe, knows how competitive suppliers set  
14 their rates. So, you know, I think that -- I don't see  
15 this as something that's going to cause competitive  
16 suppliers to fold up their tent and go home. I just  
17 see it as another option that's out there.

18 Q. Okay. But, again, I'm still trying to get back to this  
19 then. Where we have retail suppliers out there now,  
20 the purpose of this new rate structure is to get funds  
21 to flow to the Default Service customers that are  
22 presently Default Service customers. And, the only way  
23 that happens is if a customer, who used to be with a  
24 competitive supplier, switches back to a cost-based  
{DE 11-216} [Day 2] {11-26-12}

1 this rate leads a current Default Service customer to  
2 figure "well, 12 months down the road, I'll be eligible  
3 for Rate ADE", not knowing what that ADE price is going  
4 to be at that time, you know, I think, as more and more  
5 competitors come into the market, there will be more  
6 options out there as well.

7 So, you know, could there be a customer  
8 out there who thinks that way? Possibly. But, I  
9 think, doing that, you have to have a pretty good  
10 crystal ball, in order to figure out that "12 months,  
11 I'm still going to be better off than where I am."

12 Q. Let me ask the question another way. Is it -- if I was  
13 a PSNH customer, and I believed that the ADE rate  
14 ultimately was going to be less than the competitive  
15 supply rate, do you believe that would be an inducement  
16 for me to leave PSNH and go to a competitive supplier?

17 A. I think, if you thought that, and actually thought that  
18 you had a pretty good handle on that, that's certainly  
19 an outcome. However, where, again, the foundation for  
20 the rate is on market prices, and competitive suppliers  
21 most likely are starting with market prices as well.  
22 So, unless there's expected to be a significant  
23 difference between the two, again, then I go back to my  
24 "crystal ball" comment.

{DE 11-216} [Day 2] {11-26-12}

- 1 Q. Right now, though, the Default Service rate is higher
- 2 than the competitive rate, competitive suppliers' rate?
- 3 A. I'm not sure of what all the competitive suppliers are
- 4 offering. Right now, PSNH's Default Service rate is
- 5 7.11 cents. But that's scheduled to change on
- 6 January 1st. And, right now, PSNH has proposed a rate
- 7 that's almost 9 cents. Again, I'm not familiar with
- 8 what competitive suppliers are offering. I'm aware of
- 9 one that's slightly below 7.11 cents, but I'm not sure
- 10 what others are offering.
- 11 Q. In the scenario I presented that, as a customer, I
- 12 think all this -- I have this crystal ball, and I think
- 13 this is how I want to go. Do you see that -- would
- 14 that have the potential to be a windfall for the
- 15 competitive suppliers, at least in that first year?
- 16 A. A windfall, in terms of an influx of new customers?
- 17 That's possible.
- 18 Q. Okay. Let me go back to the term of service. Just a
- 19 couple quick questions on that. Do you -- obviously,
- 20 you've made a good case, I think, for the 12 months.
- 21 Others have made a case for the 24 months. I'm not
- 22 suggesting the Commission would do this. What's your
- 23 opinion if we split the baby and did 18 months, for
- 24 instance?

{DE 11-216} [Day 2] {11-26-12}

- 1 A. Well, and I think PSNH is going to be providing
- 2 information about the number of customers taking
- 3 service under Rate ADE. So, in looking at that, we'll
- 4 be able to see some of the movement back from
- 5 competitive supply. That's one way we can review it.
- 6 Q. So, help me out then with that a little bit more. So,
- 7 what would that tell us about the impact on
- 8 competition? How would we --
- 9 A. Well, if we saw a significantly large number of
- 10 customers being served under Rate ADE, we know that
- 11 they're no longer in the competitive market. Granted,
- 12 you'd also have to kind of see, well, how many of those
- 13 customers stay on ADE for the term? Or, maybe stay on
- 14 for a couple months, then go back to competitive
- 15 supply. So, you know, there could be some movement
- 16 from competitive supply, but there also could be
- 17 movement back to competitive supply from the ADE,
- 18 depending on what's going on in the marketplace.
- 19 Q. And, you feel we'll be able to see that, we'll have
- 20 sight of that?
- 21 A. Yes.
- 22 Q. Okay. How about gaming -- well, let me back up. Is
- 23 gaming necessarily bad?
- 24 A. Bad for whom?

{DE 11-216} [Day 2] {11-26-12}

- 1 A. That's, again, that's a potential outcome. You know,
- 2 I've supported 12 months for the reasons I've stated,
- 3 and PSNH and OCA have stated -- supported 24 for their
- 4 reasons. So, again, you know, the Commission is free
- 5 to do as it chooses. But, you know, I would still
- 6 support the shorter 12 months.
- 7 Q. Or, another alternative, what if we were to split, for
- 8 instance, residential and non-residential customers,
- 9 put one at 24 months and the other at 12 months, is
- 10 there a value to something like that?
- 11 A. That's nothing that I had looked at before. So, again,
- 12 I suppose that's a -- that's a potential outcome. It's
- 13 not something that I had considered.
- 14 Q. Okay. Thank you. You mentioned, both in your
- 15 testimony verbally and in your -- I don't remember what
- 16 exhibit it is, forgive me, the need for a review or the
- 17 12-month review, and your indication was that was a
- 18 good thing, I believe. And, some of the things I think
- 19 were talked about were the impact on competition, is
- 20 that correct?
- 21 A. That's one of them, yes.
- 22 Q. How would we or how do you plan to measure that? How
- 23 would we know if it's having a negative impact on
- 24 competition?

{DE 11-216} [Day 2] {11-26-12}

- 1 Q. I guess that's my question. So, I know, in the
- 2 Commissioners' earlier order, we talked about "gaming
- 3 could have a negative impact on PSNH", if I remember
- 4 correctly. Is some gaming okay, though? Is that not
- 5 just competition?
- 6 A. Well, you know, some people might look at one customer
- 7 moving back and forth as "gaming", and others might
- 8 just think it's a customer taking advantage of
- 9 opportunities in the marketplace. So, you know,
- 10 whether it's good or bad, I think, if something is done
- 11 in a way where it becomes detrimental in one way or
- 12 another, but you really have to look at -- I think it's
- 13 hard to paint all customer movement with the same
- 14 brush, and say "well, all this movement back and forth
- 15 is "gaming"." Different customers will move for
- 16 different reasons.
- 17 Q. So, the proposal is for a 36-month pilot. What do you
- 18 see as the -- you know, at the end of the day, what
- 19 does this do for the utility? Where do we end up at
- 20 the end of this?
- 21 A. Well, I think, one of the things that's going to have
- 22 to be assessed is, you know, how's this working? Is it
- 23 providing benefit to other customers? You also have to
- 24 look at, you know, what kind of impacts is it having on

{DE 11-216} [Day 2] {11-26-12}

1 the competitive market? And, should it continue?  
 2 Should it be revised further? You know, there's going  
 3 to be -- there can be a lot of changes between now and  
 4 the end of 36 months that could impact this proposal  
 5 one way or another. So, I think what it provides is a  
 6 way to reassess everything and say "Okay. Now, knowing  
 7 what we know, and having this track record of customers  
 8 that took service under ADE, and how long they stayed?  
 9 You know, what the impacts were or weren't, I think  
 10 would just provide a good assessment of all of that.  
 11 Q. At the end of the day, isn't the Default Service rate  
 12 going to determine all of that at the end of the day,  
 13 as far as migration and what competitive suppliers are  
 14 doing?  
 15 A. Well, that's -- and that's one indicator, and it's  
 16 basically the relationship of the Default Service price  
 17 to what the market price is and what competitive  
 18 suppliers are offering.  
 19 CMSR. SCOTT: Okay. Thank you. That's  
 20 all I have.  
 21 CHAIRMAN IGNATIUS: Thank you. A few  
 22 more questions.  
 23 BY CHAIRMAN IGNATIUS:  
 24 Q. Mr. Mullen, looking at the Settlement Agreement, there  
 {DE 11-216} [Day 2] {11-26-12}

1 basis.  
 2 Q. So, in both cases, you're forecasting -- using  
 3 forecasted numbers. And, then, at what point do you  
 4 analyze actuals?  
 5 A. That all gets done through the DE reconciliation  
 6 process. Any revenue from the adder, from this rate,  
 7 gets incorporated into the DE reconciliation. That's  
 8 done on an annual basis.  
 9 Q. And, the Rate ADE doesn't get adjusted on the basis of  
 10 actuals, actuals could tell you whether the rate --  
 11 whether the class should be closed -- whether the rate  
 12 should be closed?  
 13 A. No. The rate should be -- whether the rate is closed  
 14 or not depends on the marginal costs and the forecast  
 15 of marginal costs, looked at on a monthly basis each  
 16 year, compared to what the forecast for those  
 17 particular months was at the beginning of the process.  
 18 Q. You're right. I was wrong. So, it's comparing an  
 19 earlier set of forecasts against a more current set of  
 20 forecasts?  
 21 A. Correct.  
 22 Q. So, there's no reconciliation for Rate ADE as we think  
 23 of it in Rate DE?  
 24 A. Correct.  
 {DE 11-216} [Day 2] {11-26-12}

1 are a few just mechanical questions I want to be sure I  
 2 understand. And, following in the order that they  
 3 appear, if you turn first to Page 6.  
 4 A. I'm there.  
 5 Q. Section 2.3.1 requires "forecasting of marginal costs".  
 6 Then, 2.3.2, addressing the adder, to include  
 7 "non-operating costs of the Scrubber". It doesn't say  
 8 if it's "forecasted" or "actual". What's anticipated  
 9 there?  
 10 A. That is going to be done in the same manner as PSNH's  
 11 Energy Service rate is calculated. Let me see if I can  
 12 refer you to -- for example, if you look at Exhibit 7,  
 13 which is PSNH's April 27th testimony.  
 14 Q. I'm sorry, which exhibit?  
 15 A. Exhibit 7.  
 16 Q. And, did you give us a page yet or no?  
 17 A. I did not. And, it's one of the attachments at the  
 18 very back. It's Attachment 5, which is a three-page  
 19 attachment.  
 20 Q. All right.  
 21 A. If you look at that, you can see that, say on Line 19,  
 22 it says "Total Forecasted Merrimack Scrubber  
 23 Non-Operating Cost", then you have "Forecasted Retail  
 24 Megawatt-Hour Sales". So, it's done on a prospective  
 {DE 11-216} [Day 2] {11-26-12}

1 Q. All right. Going back to the Settlement Agreement,  
 2 Section 2.3.3, at the bottom of Page 6, I think maybe  
 3 what we were just talking about. Just describe, give  
 4 me maybe a little more explanation of how that 2.3.3  
 5 provision would operate.  
 6 A. Yes. As we just discussed, on a monthly basis, PSNH  
 7 will take a look at its forecasted marginal costs, and  
 8 compare those to the prices that were used when the  
 9 rate -- the annual rate was set at the beginning of the  
 10 process. So, for instance, when you get to the 15th  
 11 day of February, PSNH will provide a forecast for the  
 12 remaining period of March through December, assuming  
 13 this goes into effect on January 1st. And, it will  
 14 compare those forecasted marginal prices to the  
 15 forecasted marginal prices for the months of March  
 16 through December that were included in its annual  
 17 forecast at the beginning of the process. To the  
 18 extent that the new forecasts -- new forecasted  
 19 marginal prices are more than 75 percent of the adder,  
 20 then the rate could be closed.  
 21 Q. And, if you don't hit that 75 percent trigger, you'll  
 22 just be looking at comparison of the forecast used for  
 23 the start of the program to what the more updated  
 24 forecasts are for the completion, the remaining months  
 {DE 11-216} [Day 2] {11-26-12}

1 of the program?

2 A. Right. And, the rate would remain open, if you did not

3 hit the 75 percent trigger.

4 Q. And, as you get closer to the -- to December, assuming

5 it started January 1st, you'd be comparing fewer months

6 forecast to the original forecasted levels?

7 A. Yes.

8 Q. So, let's assume that's all in place. You get to the

9 following January 1st, the second year for Rate ADE.

10 How is the rate set?

11 A. And, that is set on an annual basis. And, that would

12 be done, again, they would look at a 12-month calendar

13 year, assuming it goes into effect January 1st,

14 forecast the prices for the year, calculation for the

15 Scrubber adder.

16 Q. Is there a docket open, parties to intervene, to

17 evaluate all of that, or is it more of a sort of

18 compliance filing, in your anticipation?

19 A. I believe that would be done through a docket process.

20 Q. So, that would have to come in some number of months

21 before January 1st, --

22 A. Yes.

23 Q. -- in order to be through the process and a resolution?

24 A. Yes. And, I'm just trying to refresh my memory on  
{DE 11-216} [Day 2] {11-26-12}

1 decision-making process.

2 Q. Also, on the very top of that page, it actually begins

3 on the bottom of Page 4, is the provisions that allow

4 someone to come in and out of service under ADE that

5 Mr. Rodier was asking you about. Tell me if I have

6 this right. There is an eligibility requirement to get

7 involved in the program in the first instance. So, the

8 12 months consecutive service from a competitive

9 supplier, correct?

10 A. Correct.

11 Q. Once you're eligible and a customer opts to get into

12 ADE, leave the competitive supplier and get in on ADE,

13 they can come and go without any consecutive periods of

14 time, as long as they don't go more than -- they don't

15 go a full 12 months off the program. But, if they go

16 in and out every month or a few months, that's okay?

17 A. If they go back to competitive supply for a period of

18 less than 12 consecutive months, and the term of

19 service, whether it be 24 months or 12 months, would

20 continue -- that clock will continue to run. If they

21 go back to competitive supply for a period of more than

22 12 -- at least 12 consecutive months, and they were to

23 come back to Rate ADE, they would start a new clock.

24 Q. What's the logic of requiring a full 12 months to be  
{DE 11-216} [Day 2] {11-26-12}

1 here. It would be set at the same time that the price

2 on the Rate DE is set, and that's discussed in

3 Section 2.2.3.

4 Q. So, although it doesn't say a deadline for the Company

5 to make a filing, there will have to be something, if

6 this were approved, as a setup, would have to set some

7 dates for filing of a proposed Rate ADE?

8 A. Yes.

9 Q. In the provision just above that, I had forgotten to

10 ask you about that one, so, I'm glad you flipped back

11 to it. What's the reason for a nine month delay for

12 implementation for smaller customers?

13 A. That is for PSNH to get its computer systems to allow

14 for those changes to those rate classes.

15 Q. Do you anticipate the marketing efforts at the

16 beginning of the program would be designed to include

17 those that, although they can't yet take it, would be

18 aware of how it's going to play out?

19 A. I would assume so, yes. Because it would, even though

20 somebody might not be eligible for nine months from

21 now, until nine months from now, to the extent that

22 they were to make some decisions about whether to stay

23 on Default Service or go to competitive supply in the

24 interim, I think that could help inform their  
{DE 11-216} [Day 2] {11-26-12}

1 eligible for the program, full 12 months off of PSNH's

2 service in order to be eligible? But, once they're in

3 the program, they're able to come and go?

4 A. Well, I think it's, you know, it's -- if you were to

5 keep them -- if you were to restrict them from going

6 back to the competitive market, I think then that

7 certainly could be viewed as "anti-competitive",

8 because now you're restricting what option they

9 previously had even under Default Service.

10 Q. Can you explain that?

11 A. Well, under Default Service, they're free to leave and

12 go to the competitive supply. If somebody were to

13 return to PSNH and be served under ADE, and said "oh,

14 by the way, you're now -- you have to take this rate,

15 you can't go back to competitive supply", that -- I'm

16 sure that would be viewed as "anti-competitive".

17 Q. But what about if you were to allow someone to come

18 back on the service, and if they decide to leave again

19 and go back to a competitive supplier, why not have

20 another eligibility period before they can return to

21 ADE?

22 A. Well, you do, and that's, again, the 12 months.

23 Q. Well, maybe I'm misunderstanding. I thought we were

24 saying that, once you've met the eligibility test and  
{DE 11-216} [Day 2] {11-26-12}

1 you opt for ADE, you could stay on it for a few months,  
2 and then leave, and come back in a few months after  
3 that. And, so, there's no corollary to the 12-month  
4 eligibility period once you're in the program. If  
5 you're out 12 months, then you reset that clock. But  
6 you can come and go in the program for any reason you  
7 may choose. And, what's the logic? If we think  
8 there's a good reason for requiring a 12-month  
9 eligibility period to initially get in the program, why  
10 is it no longer important that someone stay put for a  
11 while under ADE?

12 A. Well, again, then I think you'd be limiting options  
13 that they currently have now to come and go under  
14 regular Default Service. So, this is not to be more  
15 restrictive than what currently exists.

16 Q. If you turn to Page 8 of the Settlement Agreement, it  
17 calls for, in Section 2.4.3, that, at least three  
18 months prior to the end of the pilot period, PSNH will  
19 have an obligation to make a request to extend or  
20 modify or terminate the rate. Is three months adequate  
21 time for people to be able to evaluate the program,  
22 make sense of its success or lack of success, and  
23 whether any modifications should be made or whether it  
24 should even be terminated at that point?

{DE 11-216} [Day 2] {11-26-12}

1 A. For the Default Service reconciliation dockets?

2 Q. Yes.

3 A. Those come in on an annual basis. And, there's not a  
4 set time it has to be resolved by. Because, if you  
5 recall, we also look at operation of PSNH's plants and  
6 outages and all sorts of things, and that takes some  
7 time to go through. As a result of those  
8 reconciliation dockets, there isn't a rate adjustment  
9 at that time. But any adjustments through the  
10 reconciliation process take place through the Default  
11 Service rate-setting process independent of the  
12 reconciliation.

13 Q. How long does the Default Service rate-setting time  
14 from filing to our general track record on when the  
15 rate changes go into effect?

16 A. The rate is initially set on an annual basis, and it  
17 usually comes in during the month of September. And,  
18 then, we have hearings in December, for a rate on  
19 January 1st. Then, we have a mid-year review, that  
20 information is filed around the middle of May for a  
21 July 1st rate change.

22 Q. Earlier this afternoon you were asked, I think by Mr.  
23 Fossum, that "could the Rate ADE be terminated if few  
24 or no customers take it?" And, you said "yes, that's

{DE 11-216} [Day 2] {11-26-12}

1 A. Well, I think, if you go back to the beginning of  
2 Section 2.4, on Page 7, in 2.4.1 and 2.4.2, it  
3 describes other reports PSNH is going to be filing,  
4 either monthly or annually, about activity in the rate,  
5 number of kilowatt-hours served, difference between the  
6 revenue received and marginal costs. So, I think  
7 there's going to be a lot of information filed in the  
8 interim, prior to that three-month filing, that would  
9 allow for people having a good idea even before that  
10 filing comes in.

11 Q. And, that's a good point, if people are evaluating  
12 what's being generated regularly over the course of the  
13 pilot. But, then, the three-month period is really  
14 when the Commission process kicks in to put it out  
15 through an adjudicative process for review and parties'  
16 participation. You think three months will work?

17 A. I think it's certainly doable. I mean, it wouldn't be  
18 a new thing, as it is today. So, you know, I think  
19 there would be a decent track record, in terms of  
20 what's happened over time. And, that I think -- it  
21 says "at least three months", too. So, I mean, it  
22 could come in sooner than that.

23 Q. The time period for the reconciliation dockets is -- is  
24 it more like six months?

{DE 11-216} [Day 2] {11-26-12}

1 correct." Is there a provision in the Settlement  
2 Agreement that says that that I've missed?

3 A. I believe there is. And, now, you've tested me with  
4 finding it. Yes. On Page 4, Section 2.2. The last  
5 sentence says that "Nothing in this agreement shall be  
6 construed to limit the authority of the Commission to  
7 terminate this rate prior to the end of the 36-month  
8 pilot period."

9 CHAIRMAN IGNATIUS: All right. Thank  
10 you. That's it for questions from me. But, Commissioner  
11 Harrington, another question?

12 CMSR. HARRINGTON: Yes. Just still  
13 trying to maybe just follow this moving in and out thing,  
14 to make sure I've got it correct.

15 BY CMSR. HARRINGTON:

16 Q. I think I understand you have to be with a competitive  
17 supplier for 12 months before you're eligible for Rate  
18 ADE, that's correct?

19 A. At least 12 months.

20 Q. At least 12 months. Once you meet that, you are then  
21 able to come back to Public Service and get the ADA  
22 rate?

23 A. ADE, yes.

24 Q. ADE rate. And, then, you could take that for two

{DE 11-216} [Day 2] {11-26-12}

1 months, and then go back to a competitive supplier for  
 2 two months, and come back and get the ADE rate again?  
 3 A. Yes.  
 4 Q. And, is there any -- there was some other clock  
 5 involved in that. How does that work? You just keep  
 6 switching every two months?  
 7 A. You could do that. And, then, your term of service,  
 8 whether it be 12 months or 24 months, would continue to  
 9 run. The only time that that clock would be reset is  
 10 if you went back to competitive supply for a period of  
 11 at least 12 consecutive months.  
 12 Q. So, you could do this back and forth for up to that  
 13 term of service, let's just say it's 12 months, and  
 14 then, if you stayed with Public Service, you'd go to  
 15 the DE rates, or you could go back to a competitive  
 16 supplier?  
 17 A. Once your term of service runs out, --  
 18 Q. Yes.  
 19 A. -- if you stayed with PSNH, you would be assigned to  
 20 Rate DE.  
 21 Q. Okay. Fine. That helps. Thank you. Now, one final  
 22 question. Has there been any analysis done on this? I  
 23 mean, it appears what we're doing is putting out a  
 24 proposal, and, you know, as stated by yourself and in  
 {DE 11-216} [Day 2] {11-26-12}

1 A. Well, otherwise would be using competitive suppliers  
 2 or, without this rate, would be served under DE.  
 3 Q. Okay. And, is there -- this is what I'm trying to get  
 4 at. Do we have any numbers? I mean, how many  
 5 customers that have left Public Service, that are on  
 6 some competitive supplier now, how many would have to  
 7 come back to make this program successful, because, I  
 8 mean, was there any estimate? Do we need a thousand  
 9 customers? Twenty thousand customers?  
 10 A. I'm not aware of any analysis on that. But, one way to  
 11 look at it is, any customers that are served under this  
 12 rate would provide -- any revenue from them would  
 13 provide some benefit that isn't currently there.  
 14 Q. Okay. And, after the 12-month clock or whatever period  
 15 of time runs out, then they have the option of being  
 16 assigned to Default -- just the regular Default Service  
 17 rate or going back to a competitive supplier. And, I'm  
 18 assuming no analysis has been done for that. Because,  
 19 in other words, if this thing worked fairly well, you'd  
 20 get people coming back. And, if it was, as  
 21 Commissioner Scott pointed out, most rational people  
 22 are not going to say "well, I can get a", making up a  
 23 number, "a 10 percent rate increase by going with ADA  
 24 -- ADE rates, go back to Public Service. I'll just  
 {DE 11-216} [Day 2] {11-26-12}

1 various letters, filings here, it's -- the idea is to  
 2 help the DE customers, I mean, it's to mitigate some of  
 3 the costs that they're seeing. So, in order for that  
 4 to happen, someone just doing a loop, you know, if they  
 5 were a DE customer, they became a competitive supplier  
 6 customer, they came back to ADA [ADE?], that really  
 7 didn't -- they have to get them back, you still haven't  
 8 created any more customers for Public Service that way,  
 9 you just stayed even. So, presumably, you're going to  
 10 have to get customers that would otherwise not come  
 11 back to use this ADE rate. So, if you bring customers  
 12 back, then I guess you're saying, because you're  
 13 covering the marginal cost of power, plus the adder,  
 14 each customer will be paying that adder, and that's an  
 15 extra source of revenue that they would get -- Public  
 16 Service wouldn't receive otherwise, is that correct?  
 17 A. That's an extra source of revenue that would get  
 18 applied to the benefit of other Default Service  
 19 customers.  
 20 Q. Okay. But that's where the benefit of the program  
 21 comes from, is bringing back people who otherwise would  
 22 be using competitive suppliers?  
 23 A. Yes.  
 24 Q. Okay.  
 {DE 11-216} [Day 2] {11-26-12}

1 stay with the competitive supplier." And, if their  
 2 rates were lower than the competitive supplier, then  
 3 people would come back. Presumably, they're -- I guess  
 4 the best case would be that it would be lower than the  
 5 regular Default Service rates, but lower than the  
 6 competitive supplier, that would induce people to come  
 7 back, take the ADE rates, which would bring in the  
 8 extra revenue. But, after 12 months, they lose that.  
 9 So, then, they're looking at Default Service rates  
 10 versus competitive supplier rates. So, chances are,  
 11 they're going to make the same decision they made six  
 12 months -- or, two years ago, whenever they first left,  
 13 and say "well, that's still lower, so I'm going to go  
 14 back and do that again." So, now, there's no more  
 15 benefit from this program for that -- at least for  
 16 those people. So, has there been any analysis of how  
 17 this works in equilibrium, when you're going to have  
 18 this constant flow of, if the rate attracts people in,  
 19 at the end of a year, it's more than likely going to  
 20 have them go back to where they came from?  
 21 A. Well, there's a lot of scenarios in your question. I  
 22 can tell you, I haven't performed that analysis. And,  
 23 I can't speak for the Company or anyone else in this  
 24 room as to whether they have performed any such  
 {DE 11-216} [Day 2] {11-26-12}

1 analysis.  
 2 Q. But you haven't seen any?  
 3 A. I have not.  
 4 CMSR. HARRINGTON: Okay. Thank you.  
 5 CHAIRMAN IGNATIUS: Thank you. Ms.  
 6 Amidon, do you have redirect?  
 7 MS. AMIDON: No, I don't. Thank you.  
 8 CHAIRMAN IGNATIUS: All right. Then,  
 9 you're excused, Mr. Mullen. Thank you. Let's take a  
 10 break for ten minutes, let's say 3:15, to resume with  
 11 Mr. Fromuth.  
 12 (Recess taken at 3:02 p.m. and the  
 13 hearing resumed at 3:18 p.m.)  
 14 CHAIRMAN IGNATIUS: We're back on the  
 15 record. Mr. Fromuth, I think you are up next. Are you  
 16 ready, Mr. Rodier?  
 17 MR. RODIER: Yes, we are. And, if we  
 18 could have the witness sworn here, before we takes a seat,  
 19 that would be good.  
 20 (Whereupon August G. Fromuth was duly  
 21 sworn by the Court Reporter.)  
 22 MR. RODIER: May I?  
 23 CHAIRMAN IGNATIUS: Please.  
 24 AUGUST G. FROMUTH, SWORN  
 {DE 11-216} [Day 2] {11-26-12}

1 BY MR. RODIER:  
 2 Q. Mr. Fromuth, a couple of introductory questions. Let  
 3 me first just very quickly go to so-called "Freedom  
 4 Energy Logistics". Does the providence of Freedom  
 5 Energy Logistics, does that go back to the mid '90s or  
 6 earlier?  
 7 A. Yes.  
 8 Q. And, briefly, the signature accomplishment at that  
 9 point was the obtaining a decision from the New  
 10 Hampshire Supreme Court that basically said there's no  
 11 exclusive franchise for utilities, is that right?  
 12 A. That's correct.  
 13 Q. Okay. And, one other thing about Freedom, did you  
 14 pioneer the market in New England for MPEUs?  
 15 A. Yes, I did.  
 16 Q. And, what's an "MPEU"?  
 17 A. It's a "Market Participant End User". It's an entity  
 18 that can take power directly from the Grid, from the  
 19 Power Pool, by conforming to some entry requirements  
 20 and other stair-step items that it must clear with the  
 21 various states in which it's located.  
 22 Q. Is there anybody we've heard of that you can mention  
 23 here today to give an example of an MPEU?  
 24 A. Yes. We have a number in New Hampshire that are --  
 {DE 11-216} [Day 2] {11-26-12}

1 DIRECT EXAMINATION  
 2 BY MR. RODIER:  
 3 Q. Mr. Fromuth, did you prefile some testimony in this  
 4 proceeding?  
 5 A. I did.  
 6 Q. Do you have a copy of it with you?  
 7 A. I do.  
 8 Q. Is there any errors or anything in there that you would  
 9 want to correct at this point? Or does it look --  
 10 A. No, it's fine.  
 11 Q. It's still accurate, okay. And, it's true and accurate  
 12 to the best of your information, knowledge and belief  
 13 today, right?  
 14 A. It is.  
 15 MR. RODIER: Okay. Madam Chairman,  
 16 could I have that marked for identification please?  
 17 CHAIRMAN IGNATIUS: Yes. That would be  
 18 "Exhibit 16".  
 19 MS. DENO: Yes.  
 20 (The document, as described, was  
 21 herewith marked as Exhibit 16 for  
 22 identification.)  
 23 MR. RODIER: Okay. Thank you. Does  
 24 anybody need a copy?  
 {DE 11-216} [Day 2] {11-26-12}

1 have a commercial relationship with the Power Pool  
 2 directly, and don't operate with any kind of a supplier  
 3 middleman, including Saint Anselm's College, High Liner  
 4 Foods, the Manchester Union Leader.  
 5 Q. Okay. And, do you provide services to them, managing  
 6 their accounts?  
 7 A. We do. We schedule and coordinate their power for  
 8 them.  
 9 Q. Okay. Now, I just want to ask you about one of the  
 10 other companies that you're CEO, PNE Energy Supplier.  
 11 That's sort of a newcomer to the market, would you say?  
 12 A. Yes. That's a competitive energy provider.  
 13 Q. And, you're testifying on behalf of PNE here today, is  
 14 that right?  
 15 A. That's correct.  
 16 Q. And, was PNE the first company to market to residential  
 17 customers in New Hampshire?  
 18 A. Indirectly, PNE was -- is a source of supply for an  
 19 aggregator, Resident Power, that was the first to  
 20 aggregate households, to combine them to sell power to  
 21 households.  
 22 Q. Okay. So, and that's one of your companies as well,  
 23 Resident?  
 24 A. Right.  
 {DE 11-216} [Day 2] {11-26-12}

1 Q. And, working, not exclusively, but working with PNE,  
2 they were the first to market with a residential  
3 offering in New Hampshire?

4 A. That's correct.

5 Q. Okay. Now, what I want to -- hmm, just trying to --  
6 oh. The only other thing in a preliminary I want to  
7 ask you is are you active in NEPOOL and ISO-New  
8 England?

9 A. Yes.

10 Q. And, what's your capacity with NEPOOL?

11 CHAIRMAN IGNATIUS: Mr. Rodier, before  
12 you go on, I'm a little concerned.

13 MR. RODIER: Yes.

14 CHAIRMAN IGNATIUS: As far as I can  
15 tell, none of this is in the prefiled testimony. The  
16 whole point of prefiled is for everyone to have an  
17 opportunity to review and ask discovery questions. It's  
18 interesting information, but, if it wasn't important  
19 enough to put in the prefiled, why are we going into it  
20 now?

21 MR. RODIER: Well, madam Chairman, I  
22 think it is, on the top of Page 1, isn't it? It talks  
23 about "MPEUs", talks about "Freedom Logistics", talks  
24 about how "Mr. Fromuth is Vice Chairman of NEPOOL, Chair  
{DE 11-216} [Day 2] {11-26-12}

1 them back. And, it will frustrate, I think, almost ten  
2 years of marketplace advancement and increased  
3 sophistication to have, as the saying goes, the  
4 900-pound gorilla re-enter the market with an offering  
5 price that will be, obviously, well below where they  
6 are right now, or where they will be after the first of  
7 the year, according to their forecast. And, my concern  
8 is that this will redirect folks away from the notion  
9 that they should be, on the whole, migrating away from  
10 being dependent upon standard offer service or default  
11 energy service. And, they retreat from essentially  
12 what's been public policy in New Hampshire for more  
13 than a decade, through, I think, three gubernatorial  
14 terms, obviously, ten years of PUC rulings, and  
15 investment in this state, by not just my firm, but  
16 many, many others that have come into this state and  
17 have built customer books that are substantial for one  
18 reason, and that's because the price advantage to  
19 customers for doing so has been evident.

20 My view is that Public Service is, in  
21 many respects, acting like a competitive energy  
22 provider by undertaking this rate class. And,  
23 throughout their testimony, they haven't shied away  
24 from the notion that the idea here is to lure customers  
{DE 11-216} [Day 2] {11-26-12}

1 of the End User Sector." I'm just trying to establish his  
2 -- refresh the Commission's mind, you know, his  
3 credentials. And, I'm almost through. And, certainly, if  
4 that's your wish, that we move on, we're going to move on.

5 CHAIRMAN IGNATIUS: Well, we need -- we  
6 have.

7 MR. RODIER: Okay. I agree.

8 CHAIRMAN IGNATIUS: -- not a lot of time

9 left. And, we're to focus on the issues --

10 MR. RODIER: I agree.

11 CHAIRMAN IGNATIUS: -- of his testimony  
12 regarding ADE. So, --

13 MR. RODIER: So, we'll do that.

14 CHAIRMAN IGNATIUS: Thank you.

15 BY MR. RODIER:

16 Q. Mr. Fromuth, would you please summarize your testimony.

17 A. My testimony focuses on the fact that the offering  
18 before the Commission of Rate ADE is, in our view,  
19 anti-competitive. It will injure the marketplace from  
20 the standpoint of creating, not just confusion, but it  
21 will create the perception and, obviously, which is  
22 tied very much to the reality, that PSNH is seeking to  
23 have customers return to the host utility, with an  
24 offering price that's an inducement to do so to lure  
{DE 11-216} [Day 2] {11-26-12}

1 back into the fold, so that they can -- so they can  
2 gain revenue that would then be applied to the  
3 activities that they have described. That's all well  
4 and good, but it does completely -- causes a complete  
5 juxtaposition of what the role -- I thought the role  
6 was of the host utility, which is to be a prior of  
7 default service, and not to be and actively campaign to  
8 bring new business back to its supply.

9 MR. RODIER: That's all we have, madam  
10 Chairman. Are you through, Mr. Fromuth? Is that your  
11 summary?

12 WITNESS FROMUTH: Yes, that is my  
13 summary.

14 MR. RODIER: Okay.

15 CHAIRMAN IGNATIUS: Thank you.

16 MR. RODIER: You're welcome.

17 CHAIRMAN IGNATIUS: I don't know if  
18 there was any discussion of order of witnesses -- I mean,  
19 excuse me, order of cross. If not, I think we should  
20 first take the non-settling parties, which really is RESA,  
21 and then go to the settling parties. So, Ms. Miranda?

22 MS. MIRANDA: Thank you. Good

23 afternoon, Mr. Fromuth.

24 WITNESS FROMUTH: Good afternoon.

CROSS-EXAMINATION

1  
 2 BY MS. MIRANDA:  
 3 Q. Wouldn't you agree that, when customers have accurate  
 4 price signals, they can make better choices about their  
 5 energy use and management?  
 6 A. Yes.  
 7 Q. And, the most accurate price signal that a customer can  
 8 receive is the actual price they're paying for a  
 9 particular power at a particular time of day or month,  
 10 correct?  
 11 A. Correct.  
 12 Q. And, PSNH is planning to base Rate ADE on a forecast of  
 13 pricing for up to a year in advance, is that correct?  
 14 A. That's my understanding.  
 15 Q. And, when customers have accurate price signals, can  
 16 they use those accurate price signals to make  
 17 conservation decisions and energy efficiency decisions  
 18 about their power?  
 19 A. Yes.  
 20 Q. And, if the price during the month of August is  
 21 artificially low, customers don't have a reason to  
 22 conserve energy in August, for instance, is that  
 23 correct?  
 24 A. That's correct.

{DE 11-216} [Day 2] {11-26-12}

1 A. That's right.  
 2 Q. And, typically, when an introductory rate is provided,  
 3 the customer is also told what the rate will be after  
 4 the introductory rate expires, is that correct?  
 5 A. I'm sorry, could you repeat that.  
 6 Q. Assuming a customer takes an introductory rate from a  
 7 competitive supplier, do they typically know at the end  
 8 of the introductory period what their rate will be or  
 9 how that rate will be calculated?  
 10 A. Yes, they do.  
 11 Q. Thank you. When PSNH proposed its original Rate ADE,  
 12 that was rejected by the Commission. Are you familiar  
 13 with that?  
 14 A. A bit.  
 15 Q. And, in that, in that original proposal, they proposed  
 16 to adjust rates two times per year, is that correct, in  
 17 January and July?  
 18 A. That's my recollection.  
 19 Q. And, now, they're proposing only to adjust the rates  
 20 once per year, is that correct?  
 21 A. That's right.  
 22 MS. MIRANDA: Thank you. I have no  
 23 further questions.  
 24 CHAIRMAN IGNATIUS: Thank you. Mr.

{DE 11-216} [Day 2] {11-26-12}

1 Q. You were here on the first day of the hearing, correct?  
 2 A. I was.  
 3 Q. And, did you hear PSNH testify that Rate ADE is no  
 4 different than introductory rates from competitive  
 5 suppliers?  
 6 A. I believe I did.  
 7 Q. And, when a customer is considering an introductory  
 8 rate from a competitive supplier, they aren't required  
 9 to -- typically aren't required to be on, for instance,  
 10 Rate DE from PSNH for some period of time, is that  
 11 correct?  
 12 A. No.  
 13 Q. That's not correct?  
 14 A. You are correct. They are not required to have that  
 15 preface to their deal, right.  
 16 Q. And, they're not required to determine how long they  
 17 were on a particular rate from PSNH, for instance,  
 18 before being eligible for an introductory rate, is that  
 19 correct?  
 20 A. That is correct.  
 21 Q. And, they're not typically required to understand how  
 22 long they were with another competitive supplier before  
 23 they are eligible to take an introductory rate from a  
 24 competitive supplier, is that correct?

{DE 11-216} [Day 2] {11-26-12}

1 Fossum.  
 2 MR. FOSSUM: Thank you.  
 3 BY MR. FOSSUM:  
 4 Q. Mr. Fromuth, I'd like to begin by understanding your  
 5 role exactly. Your -- the first page of your testimony  
 6 states that you're the "Managing Director of Freedom  
 7 Logistics, and CEO of PNE", is that correct?  
 8 A. That's correct.  
 9 Q. And, earlier in this docket, Freedom Logistics had  
 10 petitioned to intervene as a joint petition with  
 11 Halifax American Energy Company. Are aware of that?  
 12 A. I believe so, yes.  
 13 Q. And, in response to Mr. Rodier's question, you  
 14 testified that you're here only on behalf of PNE today,  
 15 is that correct?  
 16 A. That's right.  
 17 Q. So, as the Managing Director of Freedom Logistics, do  
 18 you have authority to speak for that entity?  
 19 A. Yes, I do.  
 20 Q. Does Freedom have a position that's different from PNE?  
 21 A. No.  
 22 Q. So, would it be fair to say that the positions that  
 23 Freedom has taken at various stages of this docket  
 24 would be the same as PNE would have taken had PNE been

{DE 11-216} [Day 2] {11-26-12}

1 the entity asserting those positions?  
 2 A. Correct.  
 3 Q. And, would the same also be the case for Halifax  
 4 American Energy Company?  
 5 A. Yes.  
 6 Q. Thank you. Do you have a copy of your testimony with  
 7 you?  
 8 A. I do.  
 9 Q. Would you turn to the bottom of Page 2 of your  
 10 testimony please. Now, in the paragraph at the bottom  
 11 numbered "1", your testimony states: "The purpose of  
 12 RSA 374-F is to "harness the power of competitive  
 13 markets"." Did I read that accurately?  
 14 A. Yes, you did.  
 15 Q. And, you have a footnote there that attributes that  
 16 quotation to "RSA 374-F:1, I". Is that also correct?  
 17 A. I believe that -- yes. That's right, yes.  
 18 Q. Isn't it true that RSA 374-F:1, I, actually begins by  
 19 stating "The most compelling reason to restructure the  
 20 New Hampshire electric utility industry is to reduce  
 21 costs for all consumers of electricity"?  
 22 A. Well, I don't have the cite here, so I can't react to  
 23 that.  
 24 Q. I'm happy to provide you with a copy of the statute, if  
 {DE 11-216} [Day 2] {11-26-12}

1 five six, the seventh line down in the version that  
 2 I've handed to you, does that read that "increased  
 3 customer choice and the development of competitive  
 4 markets for wholesale and retail are key elements of a  
 5 restructured industry"? Does it begin with that  
 6 phrase?  
 7 A. It does.  
 8 Q. So, you would agree then -- do you agree then with the  
 9 statute -- do you agree with the statement then that  
 10 "increased customer choice is a key element in the  
 11 restructured industry"?  
 12 A. I would. And, this is the same statute, I believe,  
 13 that also prescribed for the divestiture of all of  
 14 PSNH's generating assets, which, as we all know, has  
 15 not yet transpired. So, there's a number of aspects to  
 16 the statute that are relevant today, and some that were  
 17 not fulfilled.  
 18 Q. Yes, I understand. I was just asking whether you  
 19 agreed that "increased customer choice is", as the  
 20 statute says, "a key element of a restructured  
 21 industry"?  
 22 A. It does say that.  
 23 Q. Thank you. Returning to your testimony, near the  
 24 bottom of Page 3, you state that Rate ADE is a  
 {DE 11-216} [Day 2] {11-26-12}

1 you'd like to read it?  
 2 A. Sure.  
 3 MR. FOSSUM: May I approach?  
 4 CHAIRMAN IGNATIUS: Please.  
 5 (Atty. Fossum handing book to the  
 6 witness.)  
 7 BY MR. FOSSUM:  
 8 Q. So, I would restate my question. Does RSA 374-F:1, I,  
 9 actually begin with the phrase "The most compelling  
 10 reason to restructure the New Hampshire electric  
 11 utility industry is to reduce costs for all consumers  
 12 of electricity"?  
 13 A. It does.  
 14 Q. Thank you. So, would you agree that the actual purpose  
 15 of RSA Chapter 374-F is to reduce costs for all  
 16 consumers of electricity?  
 17 A. Well, it certainly is one of the stated purposes, yes.  
 18 Q. Now, if the Commission were to approve Rate ADE, would  
 19 any customer be forced to take Rate ADE?  
 20 A. No.  
 21 Q. Would Rate ADE provide another option to customers for  
 22 their consideration?  
 23 A. It would.  
 24 Q. Now, in RSA 374-F:1, I, about one, two, three, four,  
 {DE 11-216} [Day 2] {11-26-12}

1 "discounted default service rate", do you see that?  
 2 MR. RODIER: I think you have to be a  
 3 little more specific, madam Chairman. Even I'm having a  
 4 little trouble finding it.  
 5 CHAIRMAN IGNATIUS: Yes. I haven't  
 6 found it either.  
 7 MR. FOSSUM: I apologize. There's no  
 8 line numbers, so -- yes. The very last line in the main  
 9 text on Page 3.  
 10 CMSR. HARRINGTON: Is this under "A.  
 11 Issues with respect to RSA 374-F"?  
 12 MR. FOSSUM: Yes. So, directly above  
 13 where the footnotes begin, the very last line -- the last  
 14 two lines state about "the design of Rate ADE", and "PSNH  
 15 is proposing...a discounted default service rate", in the  
 16 last line there.  
 17 BY THE WITNESS:  
 18 A. Well, the line that I am reading from here, which I  
 19 think is geographically where you are, it says: "The  
 20 design of Rate ADE PSNH is proposing to take on the  
 21 role of a competitive supplier by means of offering a  
 22 discounted default service rate targeted to customers  
 23 who have migrated to competitive suppliers." Is that  
 24 where you are?  
 {DE 11-216} [Day 2] {11-26-12}

1 Q. Yes. And, it was the characterization of "a discounted  
 2 default service rate". Now, as we've read, the very  
 3 first words of RSA 374-F indicate that "the most  
 4 compelling reason to restructure the industry is to  
 5 reduce all costs." So, wouldn't a rate reducing costs  
 6 meet that compelling reason?  
 7 A. The marketplace that is anticipated by the  
 8 restructuring statute is one in which the players in  
 9 the marketplace were to be competitive providers, and  
 10 that the PSNH's role would sunset as a supplier. That  
 11 was the idea 10 or 12 years ago, and here is where we  
 12 are today. We're talking about re-entering Public  
 13 Service into the marketplace with a newer rate, a lower  
 14 rate as of today, and it takes on all the appearances  
 15 of a competitive energy provider.  
 16 Q. Okay. Thank you. On the next page of your testimony,  
 17 on Page 4, there's a section of your testimony, letter  
 18 "A" there, and there is, in the third paragraph under  
 19 letter "A", your testimony states: "There cannot be  
 20 two very different definitions under RSA 369-B for the  
 21 term "actual costs"; one based on booked costs", and  
 22 then, in parentheses, "(Rated DE), and then the other  
 23 based upon estimated marginal costs", and then, in  
 24 parentheses, "(Rate ADE)." Did I read that accurately?  
 {DE 11-216} [Day 2] {11-26-12}

1 CHAIRMAN IGNATIUS: I think it's a  
 2 question of what the "aren't" was qualifying.  
 3 MR. RODIER: Oh. I'm sorry.  
 4 CHAIRMAN IGNATIUS: But why don't you go  
 5 ahead and rephrase the question Mr. Fossum.  
 6 BY MR. FOSSUM:  
 7 Q. In your testimony, it seems to state that "actual costs  
 8 are booked costs", and that "Rate DE is based on booked  
 9 costs", which are actual costs, but that there is  
 10 another cost, marginal costs, that are not permitted to  
 11 be included under the term "actual" costs. Is that  
 12 correct?  
 13 A. The marginal cost is a cost that is not included under  
 14 the booked costs, that's right.  
 15 Q. So, I guess to phrase it very simply, is marginal cost  
 16 an actual cost?  
 17 MR. RODIER: That question has been  
 18 answered at least twice already.  
 19 CHAIRMAN IGNATIUS: No, I'd like to hear  
 20 the answer.  
 21 MR. RODIER: Okay.  
 22 WITNESS FROMUTH: Your question is what  
 23 again?  
 24 BY MR. FOSSUM:  
 {DE 11-216} [Day 2] {11-26-12}

1 A. You did.  
 2 Q. Is it your testimony that marginal cost is not an  
 3 actual cost?  
 4 A. No.  
 5 Q. In the very next sentence of your testimony, it reads  
 6 "An "actual" cost is a booked cost as utilized in the  
 7 calculation of Rate DE for over ten years." Did I read  
 8 that accurately?  
 9 A. You did.  
 10 Q. So, does your testimony say that "an actual cost is a  
 11 booked cost"? Is that an accurate characterization of  
 12 your testimony there?  
 13 A. That is what is said, yes.  
 14 Q. So, is it your testimony then that marginal costs are  
 15 not actual costs?  
 16 A. No, it is not.  
 17 Q. Then, perhaps you could help me understand why your  
 18 testimony states that "actual cost is a booked cost"  
 19 and that marginal costs are not. That I don't -- could  
 20 you explain that apparent inconsistency?  
 21 MR. RODIER: Excuse me. That  
 22 mischaracterizes his testimony. He says "actual costs  
 23 are". He's saying -- the question was "tell me why they  
 24 aren't?"  
 {DE 11-216} [Day 2] {11-26-12}

1 Q. Are marginal costs an actual cost?  
 2 A. Marginal costs are an actual cost, certainly.  
 3 Q. Thank you.  
 4 A. They're incurred costs.  
 5 Q. Turning to Page 5 of your testimony, in the third  
 6 paragraph under section, the V, "Summary and  
 7 Conclusion". That third paragraph states: "Moreover,  
 8 the PUC does not appear to have any authority to  
 9 implement a default service option to encourage  
 10 long-term use of default service." Is that correct?  
 11 A. That's what it says, yes.  
 12 Q. Now, do you still have the statute book in front of  
 13 you?  
 14 A. I do.  
 15 Q. Could you turn to RSA 374-F:3, V, please. And, more  
 16 specifically, to subpart (d), 80 percent of the way  
 17 down the page. Now, that section reads: "The  
 18 commission should establish transition and default  
 19 service appropriate to the particular circumstances of  
 20 each jurisdictional utility." Did I read that  
 21 accurately?  
 22 A. You did.  
 23 Q. So, the Commission has the -- would you agree that the  
 24 Commission has the authority to establish default  
 {DE 11-216} [Day 2] {11-26-12}

1 service appropriate to the particular circumstances of  
 2 PSNH?  
 3 A. It would certainly make reference to that here, yes.  
 4 Q. Thank you. And, I apologize. Going back a couple of  
 5 pages in your testimony, and I apologize, to Page 3.  
 6 At the very top of the page, the paragraph numbered  
 7 "2". The testimony states that "By law, Default  
 8 Service means electricity supply that is available to  
 9 retail customers who are otherwise without an  
 10 electricity supplier." Did I read that accurately?  
 11 A. Yes.  
 12 Q. To the best of your knowledge, does the law provide any  
 13 reason for a customer to be "otherwise without a  
 14 supplier"?  
 15 A. Does the law provide any what?  
 16 Q. Any reason for a customer to be "otherwise without a  
 17 supplier"?  
 18 A. I'm not sure I understand what your question is.  
 19 Q. Well, could you turn please to RSA 374-F:2, Paragraph  
 20 I-a, under "Definitions". There it defines "Default  
 21 Service" to mean "electricity supply that is available  
 22 to retail customers who are otherwise without an  
 23 electricity supplier and are ineligible for transition  
 24 service." Is there anything in there that asks why a  
 {DE 11-216} [Day 2] {11-26-12}

1 isn't your characterization of PSNH's belief, in fact,  
 2 accurate, and not erroneous?  
 3 A. Well, I think that PSNH's belief is erroneous, because  
 4 I view their position is based upon a sense of what the  
 5 market is -- is or is not offering. And, their view of  
 6 the market behavior, with respect to what will happen  
 7 as a consequence of introduction of ADE, that is  
 8 erroneous. And, they're portraying this as being a  
 9 choice that does not exist currently. And, my argument  
 10 is that it very much does exist currently.  
 11 Q. Could you point me to where that is spelled out in your  
 12 testimony?  
 13 A. Well, I think it's spelled out throughout my testimony,  
 14 but I'm opining on it right now. I'm not citing a  
 15 particular statement in the testimony. I'm simply  
 16 elaborating on what I already said in writing.  
 17 Q. In your direct, you testified that you believe "Rate  
 18 ADE would be anti-competitive", is that accurate?  
 19 A. Yes.  
 20 Q. If a new competitor, a new competitive supplier entered  
 21 the market tomorrow, say, with prices set exactly at  
 22 the same level as PSNH's, would that be harmful to  
 23 competition?  
 24 A. No.  
 {DE 11-216} [Day 2] {11-26-12}

1 customer is "otherwise without an electricity  
 2 supplier"?  
 3 A. In other words, the circumstances of why they don't  
 4 have one is not explored, is that what your point is?  
 5 Q. Yes. That's what I'm asking.  
 6 A. Right. That's what -- that doesn't address that, no.  
 7 Q. So, is it possible that a customer could be without a  
 8 supplier for pretty much any reason?  
 9 A. Yes. There are all sorts of reasons.  
 10 Q. Could it be that the customer doesn't want a supplier?  
 11 A. It could very well be that, yes.  
 12 Q. Could it be that a customer, for example, might have  
 13 poor credit, and that no supplier would be willing to  
 14 offer service to them?  
 15 A. True.  
 16 Q. Now, back to your testimony on Page 3, in the first  
 17 paragraph under "A", the second to last sentence, it  
 18 reads: "PSNH erroneously believes that default service  
 19 is for any customers who, for whatever reason, elect  
 20 not to have a competitive supplier supply their  
 21 energy." Did I read that accurately?  
 22 A. You did.  
 23 Q. So, because -- since a customer, as we've just  
 24 discussed, could be without a supplier for any reason,  
 {DE 11-216} [Day 2] {11-26-12}

1 Q. If that new competitor offered prices below those  
 2 offered by PSNH, would that be harmful to competition?  
 3 A. No.  
 4 Q. So, in your opinion, it's only because it's PSNH making  
 5 this offering that is harmful to competition?  
 6 A. Well, what goes into making a rate offer, a price offer  
 7 by a competitive supplier, is not just merely the  
 8 construct of that rate. That rate has to be arrived at  
 9 through careful calculations of what the costs are that  
 10 go into the rate. Not just the energy, but all the  
 11 other aspects of it. Plus, to offer the rate and to  
 12 promote it, a competitive provider has to spend a great  
 13 deal of resources to broadcast that rate offering and  
 14 has to put it out in the marketplace. So, all of those  
 15 add up to a war chest that a competitive provider must  
 16 have to essentially offer -- successfully offer a rate  
 17 inducement to the market and get people to enroll.  
 18 In the case of PSNH, I think we've heard  
 19 here today, on the first day, that there really isn't  
 20 any value that's been assigned to the marketing budget  
 21 of PSNH, which we know is immense from past  
 22 disclosures. And, in the case with my company, whereas  
 23 sometimes we spend as much as \$10,000 a month on  
 24 marketing and putting information out into the media,  
 {DE 11-216} [Day 2] {11-26-12}

1 we could find ourselves having to double down or triple  
 2 down or spend enormous sums just to keep up with the  
 3 fact that PSNH, which, as you know, has very, very  
 4 expansive resources, would be able to spend --  
 5 Q. Mr. Fromuth, I --  
 6 A. -- at a much higher rate than we could.  
 7 Q. I apologize for interrupting. I asked a relatively  
 8 simple, straightforward question. Is your belief that  
 9 this is "anti-competitive", is that based upon the fact  
 10 that it's being offered by PSNH?  
 11 A. Based upon the fact that it's being offered by a  
 12 company with a very, very large deep pocket, and the  
 13 ability to go and market a product that may not be  
 14 successful financially, but may have other objectives.  
 15 Q. So, is the answer "yes"?  
 16 A. Yes, it is.  
 17 Q. So, is it your testimony then that the relative  
 18 financial strength of the competitor has something to  
 19 do with whether they have a competitive offering? Or  
 20 that whether their competitive offering would be  
 21 anti-competitive, I'm sorry?  
 22 A. Well, let's be clear. The offering that's being  
 23 proposed by PSNH has a cost basis to it, which they,  
 24 obviously, detailed for us, plus it has a marginal  
 {DE 11-216} [Day 2] {11-26-12}

1 objective. So, that's an unfair advantage posed by  
 2 PSNH's entry into this market with this rate.  
 3 Q. Well, I want to follow up, I guess, on two things.  
 4 First, you said that other companies entering have a  
 5 profit motive and a desire to return money to  
 6 shareholders that PSNH does not have. Is that an  
 7 accurate summary of what you -- at least one portion of  
 8 what you said?  
 9 A. Yes. Because I was comparing the offering, if it was  
 10 coming from a private company, as you pointed out,  
 11 versus PSNH. So, in that isolated instance, that is a  
 12 very, very great advantage for PSNH and a disadvantage  
 13 for the private actor.  
 14 Q. Would a "private actor", as you describe it, with  
 15 substantial funding from some source, coming into New  
 16 Hampshire and offering prices at or below what PSNH is  
 17 offering, would that be anti-competitive?  
 18 A. No. That's the case today with many companies.  
 19 MR. FOSSUM: Thank you. I have nothing  
 20 further.  
 21 CHAIRMAN IGNATIUS: Thank you.  
 22 Ms. Chamberlin, questions?  
 23 MS. CHAMBERLIN: I have no questions.  
 24 CHAIRMAN IGNATIUS: Ms. Amidon?  
 {DE 11-216} [Day 2] {11-26-12}

1 element that's going to be fully allocated to the  
 2 operation or the retirement of the Scrubber costs.  
 3 In a competitive market environment,  
 4 while we don't have to worry about Scrubber costs, we  
 5 have to worry about profit margin, we have to worry  
 6 about cost of capital, we have to worry about labor, we  
 7 have to worry about the O&A of operating a business.  
 8 So, all of those things must go into the cost of our  
 9 recovery in a price, none of which have I heard is a  
 10 consideration for Public Service. Plus, we have to  
 11 have a profit margin to return to our investors; also  
 12 not a concern of Public Service.  
 13 Q. Okay. I was merely asking a follow-up on your prior  
 14 testimony that you gave just a few minutes ago, having  
 15 to do with the relatively financial strength of a  
 16 company. And, I understood your testimony to be that,  
 17 because PSNH has, as you put it, I believe, "deep  
 18 pockets", that is a problem that may be  
 19 anti-competitive. Is that accurate?  
 20 A. Well, it's also -- it's also the equivalent of, say, an  
 21 entity coming in that does not have a profit objective,  
 22 but merely a market share objective or a cost recovery  
 23 objective, coming into the market, and competing with  
 24 other companies. Every other company has a profit  
 {DE 11-216} [Day 2] {11-26-12}

1 MS. AMIDON: We have nothing.  
 2 CHAIRMAN IGNATIUS: All right.  
 3 Questions from the Commissioners? Commissioner  
 4 Harrington.  
 5 CMSR. HARRINGTON: Yes. I've got a few  
 6 questions.  
 7 BY CMSR. HARRINGTON:  
 8 Q. On -- I'm not quite as organized, so, I'll be jumping  
 9 around your testimony a little bit more. On Page 4, in  
 10 the middle of the page, there was a lot of discussion  
 11 of actual costs versus booked costs and so forth. And,  
 12 I had read this slightly different, I guess. I thought  
 13 what you were implying here is that, in the case of the  
 14 DE rate, that it was based on the actual booked costs  
 15 versus the estimated marginal costs for the ADE rate.  
 16 And, that the major difference was one was an actual  
 17 and one was an estimated cost, is that correct?  
 18 A. Yes. That's a much better flowing characterization  
 19 than I had in there.  
 20 Q. Okay. I just wanted to make sure on that. And, going  
 21 along that paragraph a little lower, it says:  
 22 "Moreover, PSNH's proposed calculation of Rate ADE  
 23 admittedly does not contain any costs for marketing,  
 24 outreach", *etcetera, etcetera*. And, so, again, if I'm  
 {DE 11-216} [Day 2] {11-26-12}

1 reading this correctly, what you're saying is, because  
 2 the administration, promotional materials, marketing,  
 3 *etcetera*, are not in the ADE rate, then that rate  
 4 cannot be an actual cost, because it's missing some  
 5 actual costs?  
 6 A. That's correct.  
 7 Q. Oh. Well, while we're on that particular page,  
 8 something that I thought was -- right at the beginning  
 9 of Paragraph A, the first paragraph -- under "A", I  
 10 should say, it says concluding "moreover, PSNH must  
 11 supply all default service Rates DE and ADE in the  
 12 first instance from its own generation assets." Can  
 13 you elaborate on that statement? What does the "first  
 14 instance" mean? Is it before buying power someplace  
 15 else?  
 16 A. Well, before resorting to market purchases, they first  
 17 draw down all available power from their own  
 18 generation.  
 19 Q. So, I'm trying to get this straight. So, if the cost  
 20 of running, say, the Merrimack plant is higher than the  
 21 real-time price for buying power in the ISO market,  
 22 they run the plant nonetheless, rather than buying it  
 23 cheaper?  
 24 A. Well, Commissioner, I'm not aware of what the practices  
 {DE 11-216} [Day 2] {11-26-12}

1 "Introduction", you quote from a PUC docket. And, on  
 2 the third line it says -- it talks about "residential  
 3 and smaller commercial customers who have little choice  
 4 but to remain on Energy Service even as market price  
 5 fluctuations above and below Energy Service rates."  
 6 Would you say that that statement is no longer true  
 7 then? That there are choices?  
 8 A. I'm looking here for -- to look at your cite.  
 9 Q. Yes. But it's --  
 10 A. Right. And, the choice is much more expansive now than  
 11 when first written.  
 12 Q. Okay. And, there was a lot of discussion on what meant  
 13 competition, what was good for competition and what  
 14 wasn't. And, there was talk about, if an entity was --  
 15 had deep pockets or a lot of financial resources, would  
 16 that be good or bad for how they -- whether they were  
 17 considered competitive or not. And, you seem to be  
 18 saying that Public Service is not competitive as, let's  
 19 say, some other independent non-public utility that  
 20 came in to sell electricity in New Hampshire, because  
 21 of their -- and this is the part I'm trying to get, is  
 22 it because of their rate structure? Or, is it because  
 23 they're a public utility that has -- you know, is a  
 24 cost of service basis, as compared to another company  
 {DE 11-216} [Day 2] {11-26-12}

1 are on a daily basis by PSNH. But it's my, on my  
 2 information and belief, that they generally operate the  
 3 power plants when there is, obviously, both regulatory  
 4 and economic financial reasons for doing so. In the  
 5 scenario that you pose, I actually don't know what  
 6 would be the internal policy.  
 7 Q. Okay. Fair enough. Thank you. Looking at 374-F:2,  
 8 and it talks about ""default service" means electricity  
 9 supply that is available to retail customers who are  
 10 otherwise without an electricity supplier and are  
 11 ineligible for transition service." Do you agree with  
 12 Mr. Mullen, that there is nobody in New Hampshire that  
 13 is otherwise without an opportunity to at least select  
 14 an electric supplier now?  
 15 A. The abundance of providers out there means that there  
 16 is virtually a provider for everybody. And, if  
 17 somebody in his example, and now that I've had it to  
 18 think about it, was -- had less than desirable credit,  
 19 then there would probably be an arrangement that could  
 20 be made to satisfy the credit concerns of the provider,  
 21 to enable that customer to participate in a non-PSNH  
 22 source of energy.  
 23 Q. Okay. And, kind of going along with this availability  
 24 of options, on Page 1 of your testimony, under  
 {DE 11-216} [Day 2] {11-26-12}

1 that doesn't have that?  
 2 A. Well, first of all, the disadvantage that I posed was  
 3 one where, certainly, there are companies here in the  
 4 state who probably have the financial wherewithal and  
 5 the strength of Public Service just on a value  
 6 measurement. The problem I have with is the other end  
 7 of that transaction. Which is that those companies are  
 8 here for one reason only, and that is that they see an  
 9 opportunity to make a profit in serving this market.  
 10 Without that opportunity, of course, they would  
 11 redirect their efforts elsewhere.  
 12 The question on the table, though, is  
 13 "does Public Service have that same motivation?" And,  
 14 I'm submitting that they don't. And that, without a  
 15 profit motivation, without a return on that  
 16 transaction, that goes into the profit bucket, then  
 17 that is a -- that basically is a -- well, it submerges  
 18 the market, because what it does is it puts into the  
 19 marketplace a player of significant financial strength,  
 20 that has the wherewithal to do these transactions, but  
 21 whose objectives are not to make a profit, but to  
 22 retire the cost of an investment that has caused them  
 23 to look for other ways to do so, other than the  
 24 traditional mechanism. So, that is a much different  
 {DE 11-216} [Day 2] {11-26-12}

1 set of motivations. It's almost a public policy  
 2 motivation, not a private market motivation. And, that  
 3 makes for a very, very screwed up marketplace.  
 4 Q. And, you said in the beginning of your testimony here,  
 5 sort of like a mini-resumé, you've been involved in  
 6 competitive power supply for sometime, and in a number  
 7 of states. That's correct?  
 8 A. Yes, sir.  
 9 Q. Okay. Now, we've also discussed previously that the  
 10 proposed ADE rate would be approximately seven cents a  
 11 kilowatt-hour. What will -- if that rate were to be  
 12 out there and were available to people, what effect  
 13 would that have on competitive suppliers in New  
 14 Hampshire?  
 15 A. Well, we have looked at this. And, we think that the  
 16 competitive marketplace would have, as a result,  
 17 pressures that would cause other marketers, whose rates  
 18 are higher than seven cents, obviously, to have to go  
 19 and calibrate themselves against that benchmark rate.  
 20 Now, that in and of itself is a calculation that each  
 21 one of these marketers must do on their own. The  
 22 problem with the whole structure of the rate is that,  
 23 in every case, the private competitive energy providers  
 24 will be factoring in a profit margin of some value to  
 {DE 11-216} [Day 2] {11-26-12}

1 have a very, very good handle on how some of the  
 2 non-energy costs are priced by Public Service. We know  
 3 what they are, because we have independent sources.  
 4 But, Public Service, for instance, will price capacity  
 5 charges to a particular end-user at a rate that's much  
 6 different than what we think that capacity charge ought  
 7 to be. So, we have some -- we feel we have a  
 8 disadvantage there, because PSNH can have capacity  
 9 charges associated with a single account, that is less  
 10 than what we would price that capacity charge at, then  
 11 there is another source of pricing disadvantage for us  
 12 that would become much more striking under this  
 13 scenario.  
 14 Q. So, you -- I guess it sounds like you're saying their  
 15 method of coming up with this marginal cost to provide  
 16 full requirements, plus an adder, is on a completely  
 17 different basis than a competitive supplier would be  
 18 doing it?  
 19 A. It very well could be.  
 20 CMSR. HARRINGTON: Okay. All right.  
 21 Thank you. That's all the questions I have.  
 22 CHAIRMAN IGNATIUS: Thank you  
 23 Commissioner Scott.  
 24 CMSR. SCOTT: Good afternoon.  
 {DE 11-216} [Day 2] {11-26-12}

1 compete with the random seven cents that we're talking  
 2 about. That is not a factor that goes into PSNH's  
 3 equation. So, therefore, at the beginning of the day,  
 4 when the number is set, everybody has to have a rate  
 5 that's below PSNH, but it does include a profit margin.  
 6 And, since the rate has been said to have been  
 7 benchmarked against what the forward price curve is in  
 8 the marketplace, it's hard for me to see how, over  
 9 time, competitive energy providers could successfully  
 10 and continually realize a margin, if continually  
 11 pressed to price against PSNH's value of what the  
 12 forward market is telling them.  
 13 Q. And, the costs that that -- the ADE is made up of is  
 14 the marginal going-forward cost, I think was the term,  
 15 marginal cost to provide full requirements of service,  
 16 plus an adder. Now, is that marginal cost to provide  
 17 full requirements, is that basically the same cost that  
 18 competitive suppliers could go out and buy electricity  
 19 for?  
 20 A. Well, that is a question that I don't have the answer  
 21 to, Commissioner. Because, in our business, we  
 22 obviously have a -- assert the same look, forward look  
 23 at prices in the energy market that everybody else in  
 24 the trade does. But what we don't have is we don't  
 {DE 11-216} [Day 2] {11-26-12}

1 WITNESS FROMUTH: Good afternoon.  
 2 BY CMSR. SCOTT:  
 3 Q. Okay. I'm going to re-ask, I think, something you've  
 4 already answered, I apologize, from Commissioner  
 5 Harrington, but just a clarification. So, if the ADE  
 6 is implemented, and, again, we've been talking about  
 7 seven cents, is your -- is it correct, effectively, you  
 8 were suggesting that the competitive electric suppliers  
 9 would then adjust their prices to accommodate that  
 10 price?  
 11 A. Well, with Rate ADE going into force at that level,  
 12 then your price levels, of course, with competitive  
 13 providers would have to respond to that and to maintain  
 14 some pricing advantage to their -- either their  
 15 incumbent customers or future customers, because,  
 16 without a pricing advantage, there really isn't any  
 17 relevance in the marketplace for competitive providers.  
 18 Q. Thank you. And, do you agree that the availability of  
 19 an ADE, lower than the DE, could create a windfall for  
 20 the competitive electric providers? Is that a  
 21 potential scenario, at least in the short term?  
 22 A. I think the windfall scenario is one in which people  
 23 flock to competitive providers, so they can put in  
 24 their time to become eligible for the ADE. I'm not a  
 {DE 11-216} [Day 2] {11-26-12}

1 really big believer in that. I think that that all  
 2 depends upon how well publicized the ADE rate is by  
 3 Public Service. That's a concern that I've got.  
 4 Because, if they're going to put it forward, they need  
 5 to do, obviously, something to get the word out. And,  
 6 that could consist of a major media campaign, it could  
 7 consist of sending out their flock of key account reps  
 8 to pedal it to their markets. It's very, very  
 9 ambiguous right now, because they have not assigned any  
 10 value to it, nor have they said what their plan is.  
 11 But any time you're coming into this market, whether  
 12 you're a brand new entrant, or you're one that's been  
 13 around for a while, you have to put a lot of resources  
 14 into promoting your product, and making sure that  
 15 there's an distinction understood by the marketplace as  
 16 to what you're offering. So, if PSNH is going to break  
 17 new ground here, which, of course, they are, then  
 18 they're going to have to make sure that it is well  
 19 publicized that they're doing so. And, that is a --  
 20 and the effect of that will be it's hard to measure  
 21 today, until we know what the scale that's going to be.  
 22 Q. Thank you. If, in the scenario that, again, the ADE is  
 23 in effect, and, as a competitive supplier, you start to  
 24 lose customers to that Alternative Default Service, is  
 {DE 11-216} [Day 2] {11-26-12}

1 presumably, they would wait till their contracts  
 2 lapsed, and then they would have to have the  
 3 information that this was a choice. The fact that it's  
 4 a choice may not be provided to them by their  
 5 competitive provider, for obvious reasons. So, there  
 6 would have to be some sort of an advisement given them  
 7 by PSNH that this was going to take place. PSNH, to my  
 8 knowledge, has no information, independent information  
 9 as to what the duration of independent customer  
 10 contracts are. So, they would have to do a random  
 11 notification on an ongoing basis to do this to make  
 12 folks aware of it. I think that, so, it would take  
 13 some time, a considerable amount of time for this to  
 14 come home to roost, because then you have a delay, in  
 15 terms of how this information is filed, accumulated,  
 16 and reported. And, the impact over time certainly  
 17 could be seen in a way that perhaps your migration  
 18 reports now reveal what's going on with more  
 19 specificity. But I think that my concern is that, by  
 20 the time that information reached this body, some  
 21 serious damage could be done, and the market could be  
 22 -- the market could be distorted by, frankly,  
 23 artificially low prices.  
 24 Q. Is the -- is 36 months enough time to see that result,  
 {DE 11-216} [Day 2] {11-26-12}

1 there anything that would prevent you from implementing  
 2 a similar program, for somebody who was a PNE customer,  
 3 and they wish to come back, they get a lower rate. Is  
 4 that a possibility or does that make sense?  
 5 A. Well, it does make sense. But my problem would be that  
 6 I would -- I have to clear all my costs, then I would  
 7 also have to clear some sort of a margin to justify the  
 8 offering. And, in that respect, I'm not competing on a  
 9 level playing field with PSNH.  
 10 Q. Thank you. You may recall, when Mr. Mullen was here, I  
 11 was asking him some questions regarding the annual  
 12 review. And, maybe you could help me out. One of the  
 13 things, assuming we went down this road, is we would  
 14 want to be looking at anti-competitive impacts of ADE.  
 15 Do you have any suggestions on, if we went down that --  
 16 if we were to do that, how would we measure that? How  
 17 would we know that's happening? Are there some metrics  
 18 we could use?  
 19 A. Well, I think that, from an absolute numerical  
 20 standpoint, it would be important to quantify both the  
 21 number of customers and their size that had undertaken  
 22 this migration back to ADE from a competitive supplier.  
 23 Most customers who are engaged in a competitive  
 24 supplier relationship are under contract. So,  
 {DE 11-216} [Day 2] {11-26-12}

1 that negative result?  
 2 A. Well, I think 36 months is plenty of time to see that  
 3 result. But it's also probably enough time to have  
 4 some harm done to the competitive market that can't be  
 5 reversed. What I'm focusing on, basically, is that the  
 6 market has matured and has come a long way in ten  
 7 years, with basically the helping hand of public  
 8 policy, which has not reversed itself. This would be a  
 9 situation in which it would be -- created a great  
 10 amount of uncertainty, because then private consumers  
 11 of electricity would always be of the mind that, rather  
 12 than being told to migrate away from Public Service,  
 13 which was what the initial intention was, I thought.  
 14 They're being induced to come back. And, obviously,  
 15 there being induced to come back with the Commission  
 16 blessing that action.  
 17 So, I think it creates a very, very  
 18 distorted and confused marketplace, where, to date,  
 19 we've had a single-minded marketplace directionally, in  
 20 the direction of more competition, welcoming more  
 21 entrants into the market. And, I think that one thing  
 22 that could possibly happen would be that marketers, if  
 23 they weren't successful and saw a lot of migration,  
 24 might pick up and leave and go elsewhere where this  
 {DE 11-216} [Day 2] {11-26-12}

1 wasn't going on.

2 CMSR. SCOTT: Thank you. That's it.

3 CHAIRMAN IGNATIUS: Thank you.

4 BY CHAIRMAN IGNATIUS:

5 Q. Mr. Fromuth, you've a couple of times referred to the  
6 difference between companies like yours and PSNH, that  
7 you had investors, you had people you had to answer to,  
8 regarding profit for their investment. But PSNH also  
9 has shareholders, does it not?

10 A. True.

11 Q. So, is the difference, in your mind, that some of the  
12 other costs of PSNH's operations are being picked up  
13 through the standard Default Service rate, and that  
14 dropping some of those costs out of the ADA rate -- ADE  
15 rate -- you've got me doing it now -- the ADE rate is  
16 what's unfair?

17 A. Well, my simple understanding of this, and I'm  
18 certainly open to being clarified, is that there is no  
19 revenue that would be forthcoming from the ADE rate  
20 that would be to the benefit of stockholders. So, it's  
21 essentially a -- hard-wired to simply be a recovery of  
22 costs that have been already expended. And, if there's  
23 an effort to try and find a way to bring those costs  
24 back in to recover the spend on the Scrubber.

{DE 11-216} [Day 2] {11-26-12}

1 A. Well, my experience in a number of other states is that  
2 there is a trajectory that the other states are on, to  
3 a large degree. In which there is a point in the  
4 future, at some point, the hope is that there will be a  
5 end to the process of floating a standard offer. And,  
6 that all customers will eventually find a competitive  
7 provider for whom then we'll will supply their energy.  
8 That, obviously, has a model that harkens back to 15,  
9 20, 25 years ago with telecom. And that, of course,  
10 was something that you had to hasten on us, I say  
11 "you", I mean the Commission, had to hasten in many  
12 states because they had to go and sort of set up a --  
13 sort of a forced exit, if you will, from the host  
14 utility. And, when folks didn't respond to that, then  
15 they were simply migrated over to random suppliers, who  
16 were -- obviously, met a certain standard in the state.  
17 And, they took them on. And, at the same time as  
18 taking them on, they were, in some measure, guaranteed  
19 that the poor credit folks would pay their bills for a  
20 period of time. That is not a bad example, in my view,  
21 to what could be applied here. Now that we've got  
22 companies out there that are proving themselves, the  
23 concept is no longer innovative or new. It's in place,  
24 and it's operating, I think, in some 14 or 15 states.

{DE 11-216} [Day 2] {11-26-12}

1 And, my comparison to that is that, when  
2 you have, obviously, a market that is full of folks,  
3 like myself, who have investors that have set up these  
4 businesses to do this, then there's a whole different  
5 metric involved in accounting for the return on one's  
6 investment. And, I don't feel that that's the case  
7 with Public Service, as it is for the private players  
8 that are in the market.

9 Q. You understand that the opening of this docket grew out  
10 of concerns raised in a prior docket addressing  
11 customer migration, that there was an increasingly  
12 small pool of customers left to absorb all of the fixed  
13 costs of the Company, correct?

14 A. Yes.

15 Q. And that, if competitive offerings continued to grow,  
16 as we've hoped that they do, that problem would be  
17 exacerbated, correct?

18 A. Yes.

19 Q. Do you have any experience in the other states you've  
20 worked in or your knowledge of the industry of how to  
21 get through the transition that we're seeing here, in a  
22 way that's both good for competition, with some  
23 mindfulness of the realities of those customers who are  
24 left with fewer and fewer of them to share those costs?

{DE 11-216} [Day 2] {11-26-12}

1 That could be the way in which the credentials of those  
2 companies could be verified and ascertained. And, some  
3 standard could be applied to make sure that they were  
4 all equipped to take on migrated customers. And, the  
5 incumbent utilities all settled into a role of being a  
6 sort of pipes and wires outfit only.

7 Another mechanism that I think is a fair  
8 one, is that, when folks leave a competitive provider,  
9 and go back to the host utility, and that largely is  
10 done for reasons of price, and price alone. Then, that  
11 should not be something that is done without a cost to  
12 that customer. And, that customer could be induced to  
13 either rethink that move, by having to pay a re-entry  
14 fee to the host utility, or to pay a per kilowatt-hour  
15 rate in excess of the normalized rate for the duration  
16 of the time that they were back with the utility.

17 In this state, it's largely a non-cost  
18 event, in fact, it's a cost advantage for many  
19 customers to return to the host when the price is  
20 advantageous to do so, if they have a contract open  
21 they can do that. That, to me, seems to be also a  
22 reversal of a good common sense policy, because, if the  
23 intent is to move customers into a total relationship,  
24 without looking back to the host utility, a total

{DE 11-216} [Day 2] {11-26-12}

1 relationship where they're buying their power from a  
2 competitive provider, then there should be a  
3 disincentive to go back to the host. And, I know it's  
4 referred to as "gaming" here. But, you know, whether  
5 it's pejorative or not, it goes on. And, I think that  
6 that's a process that someone should be assessed a  
7 cost, and, probably, appropriately, it should be the  
8 customer.

9 Q. You mentioned a moment ago that there were -- I wrote  
10 down 14 or 15 states, I think you were saying that are  
11 in "some form of this transition", is that what you  
12 were saying?

13 A. That's correct. Yes.

14 Q. Do you happen to know if any of them are in the  
15 situation we are in New Hampshire, where we have  
16 something of a hybrid, of movement to competitive  
17 supply for some of our electric utilities, and not  
18 taking that step for PSNH through the Legislature?

19 A. I'm pretty familiar with the other scenarios in the  
20 other states. And, I have to say, this is a very  
21 unique situation.

22 CHAIRMAN IGNATIUS: All right. I have  
23 no other questions. I have a million questions, but I  
24 have no other questions now. Thank you. Appreciate it.

{DE 11-216} [Day 2] {11-26-12}

1 don't know if people could stay a bit late to be able to  
2 work our way around the room. And, you know, if we were  
3 able to finish by 5:00, is that -- would that work for  
4 everyone? We've got a conference call starting at 5:00.  
5 So, we would have to end by then. And, we've got a court  
6 reporter who can't go on forever.

7 Let's go off the record.

8 (Brief off-the-record discussion  
9 ensued.)

10 CHAIRMAN IGNATIUS: All right. Then,  
11 we're back on the record. We will now then go to closing  
12 arguments. And, we'll stay a bit late to be able to  
13 finish by 5:00, when we have another commitment. If  
14 people can try to limit their remarks to 5-7 minutes, that  
15 would be helpful, in order to give a chance for everyone  
16 to have an opportunity.

17 Because, although it's not a total  
18 Settlement, it's a Partial Settlement, I think what I'd  
19 like to do is have the non-settling parties go first, then  
20 have the settling parties bearing the burden to go last.

21 So, I'd begin either with Mr. Rodier or  
22 Ms. Miranda, I don't care between the two, if you have a  
23 preference among yourselves?

24 MR. RODIER: May Mr. Fromuth come back?  
{DE 11-216} [Day 2] {11-26-12}

1 Any redirect, Mr. Rodier?

2 MR. RODIER: Well, there's a lot of  
3 things I'd like to do, madam Chairman. But, in view of  
4 the hour, *etcetera, etcetera*, I'm very happy to just drop  
5 it right here.

6 CHAIRMAN IGNATIUS: All right. Then,  
7 you're excused. Thank you, Mr. Fromuth. Well, actually,  
8 you can sit there while we figure out what we're still  
9 doing this afternoon. But you're done being a witness, so  
10 you can relax.

11 We have no other witnesses, as far as I  
12 know. Is there anyone I'm missing?

13 (No verbal response)

14 CHAIRMAN IGNATIUS: Seeing nothing, then  
15 do we have any procedural matters, other than addressing  
16 the exhibits?

17 (No verbal response)

18 CHAIRMAN IGNATIUS: Is there any  
19 objection to striking the identification of the exhibits  
20 and making them full exhibits in the docket?

21 (No verbal response)

22 CHAIRMAN IGNATIUS: Seeing no objection,  
23 then we'll do so. I had anticipated we would go to  
24 closings, oral closings at this point. It's 4:20. I

{DE 11-216} [Day 2] {11-26-12}

1 CHAIRMAN IGNATIUS: Oh, certainly.

2 MR. RODIER: Well, thank you very much.

3 I'm going to keep my comments very brief here. I really  
4 think it's a well-trying issue, if you want to call it  
5 that, I think. All the facts are out there. So, I just  
6 want to kind of stick to the law. But I do want to begin  
7 by pointing out that Mr. Estomin -- Dr. Estomin, or  
8 whatever he is, he did say clearly that "Rate ADE is  
9 antithetical to the basic premise of industry  
10 restructuring." Now, we got a pilot program here that's  
11 on a short-term leash, but this was a very capable  
12 witness, and, you know, that was his view.

13 Mr. Fromuth did concede, this is *sui*  
14 *generis*, this state. And, we acknowledge that, that it  
15 sort of complicates things.

16 Now, one of the key issues is the  
17 definition of "Default Service", which is -- it's  
18 available if you would not otherwise be without a  
19 supplier, migrating customers would not otherwise be  
20 without a supplier. That's what default service is all  
21 about. If you read RSA 374-F, I won't bother with the  
22 cite. That's about provider-of-last-resort service, now  
23 that's what default service is. Default service should be  
24 designed to provide a safety net, to ensure universal

{DE 11-216} [Day 2] {11-26-12}

1 access. That's what Default Service is. Is to make sure  
2 nobody goes without -- goes without electricity.

3 To make my argument as brief as  
4 possible, I'm just saying that, in this case, with Rate  
5 ADE, how can you possibly say, when the purpose of ADE is  
6 to lure customers back to PSNH, that they're otherwise  
7 without a supplier. The customer has a supplier, they're  
8 going to leave them and go to Public Service. They have a  
9 supplier. This has got -- so, ADE has got nothing to do  
10 with one of the purposes of 374-F, which is safety net,  
11 universal access.

12 Now, I've always felt that Rate ADE  
13 encourages the long-term use of Default Service, which  
14 would be wrong, unlawful, to encourage long-term use of  
15 Default Service. In this case here, when we get this  
16 three year pilot program, I would have to concede that,  
17 probably premature or untimely maybe to push too hard on  
18 that, but, certainly, the statute is very clear. You  
19 know, it says you "may discourage" -- "may discourage  
20 misuse". There's nothing in there that says you may  
21 "encourage long-term use".

22 Now, one of the arguments here, halfway  
23 through already, Rate ADE does not include the operating  
24 costs of the Scrubber. 125-O:18 says "the costs of the  
{DE 11-216} [Day 2] {11-26-12}

1 boy, this is a really awkward citation, and I won't even  
2 give it, but it's in RSA 363-B:3, IV [369-B:3, IV?], "PSNH  
3 shall apply all" -- "shall supply all transition service  
4 and default service offered in its retail electric service  
5 territory from its generation assets and, if necessary,  
6 through supplemental power purchases." They are not --  
7 this is the law. They are not -- ADE is not being  
8 supplied through PSNH's generation assets.

9 Finally, one of the key points here is  
10 that there's been a couple of -- Commissioner Harrington  
11 raised this issue, and it came up again today, I think  
12 it's a fairly key aspect of this proceeding, where we've  
13 heard at least twice, maybe three times, that the law says  
14 that "as competitive markets develop, the Commission may  
15 approve alternate means of providing transition or default  
16 services." Let me continue. The Commission may do that.  
17 Which are designed to minimize customer risk, not unduly  
18 harm the development of competitive markets, and mitigate  
19 against price volatility. Those are what the purposes  
20 are. If you're going to do an alternate means here of  
21 providing default service, there's only three permissible  
22 purposes: Minimize customer risk, not unduly harm the  
23 development of competitive markets, and mitigate against  
24 price volatility. So, this is not an open-ended loophole  
{DE 11-216} [Day 2] {11-26-12}

1 Scrubber should be recovered", "must" or "shall be", it's  
2 mandatory, it "shall be recovered through Default Service  
3 rate". ADE is a Default Service rate. You've got to  
4 recover the costs of the Scrubber. That just doesn't mean  
5 non-operating costs, we don't have operating costs in  
6 there, because we'd have to do some allocations and  
7 analysis, okay? So, by law, I think the operating costs  
8 have to be included in that adder, as well as the  
9 non-operating costs.

10 Along the same line, there's nothing in  
11 there for the costs of marketing and implementation and  
12 promotion and customer service, and impact to customer  
13 service here I think is going to be large. I think  
14 there's going to be a lot of incoming calls. In any  
15 event, there is nothing in this rate, okay? And, I think  
16 that what it comes down to is the employees, they're not  
17 sitting around with nothing to do, I'm sure they're  
18 productively occupied. They're going to be transferred  
19 over to work on ADE, and they're going to be getting paid  
20 out of base rates. I think this is what Mr. Fromuth has  
21 in mind by saying, you know, this is really unfair. He's  
22 got to recover all of those costs, and Public Service  
23 isn't.

24 Two more things. The statute, the laws,  
{DE 11-216} [Day 2] {11-26-12}

1 that you can drive a truck through. There's very limited  
2 purposes for which you can have an alternative default  
3 service rate. Thank you.

4 CHAIRMAN IGNATIUS: Thank you.  
5 Ms. Miranda.

6 MS. MIRANDA: Thank you. PSNH's  
7 Alternative Default Energy rate is both inconsistent with  
8 this Commission's Order 25,230 [25,320?] and the  
9 restructuring act principles. In particular, in Order  
10 25,230 [25,320?], the Commission indicated that the  
11 alternative Alternative Default Energy rate that would be  
12 proposed by PSNH must be cost-based, non-discriminatory,  
13 and avoid an adverse effect on competition.

14 First of all, it is not cost-based.  
15 "Cost-based" is actual, prudent and reasonable costs.  
16 Well, what is the cost? PSNH testified that the marginal  
17 cost is the only cost associated with serving these  
18 customers. However, they're charging these customers for  
19 the non-operating costs of the Scrubber, a cost that they  
20 incur whether they have Rate ADE customers or not. So,  
21 it's not cost-based from that perspective. The cost  
22 associated with the Scrubber, as indicated today and  
23 earlier, is an embedded fixed cost, that applies whether  
24 there are ADE customers or not. And, it's just simply  
{DE 11-216} [Day 2] {11-26-12}

1 being reallocated to those customers. So, it's not  
2 cost-based.

3           The costs associated with marketing and  
4 outreach, modifying the billing system, tracking  
5 customers, tracking costs, none of those costs are  
6 included in Rate ADE. Now, PSNH argued "well, we're going  
7 to use our current employees. So, there's really no added  
8 cost." But every mailing that they send out, every piece  
9 of media that they do with respect to providing  
10 information to customers about Rate ADE is a cost they're  
11 not currently incurring. In addition, there are the costs  
12 associated with allocating current employees to use -- to  
13 be providing marketing and administrative services for  
14 Rate ADE that are not accounted for in the cost of Rate  
15 ADE.

16           In addition, they're using an average  
17 forecasted annual price. Forecast prices distort price  
18 signals to customers. And, they do not provide accurate  
19 price signals. In addition, at the last hearing day, PSNH  
20 testified that they're basing Rate ADE on forward market  
21 prices, but they're not making forward purchases. They're  
22 purchasing on the spot market. So, that the forecast is  
23 already going to be off, because they're basing that  
24 forecast on something they're not even going to purchase,  
    {DE 11-216} [Day 2] {11-26-12}

1 are paying different rates. All customers are eligible to  
2 choose competitive suppliers, as was testified here today.  
3 Why should customers, who remain on competitive supply for  
4 11 months and 29 days, pay a different rate than those who  
5 remain on competitive supply for 12 months and one day.  
6 And, in fact, as the witness for the OCA testified, that  
7 it was absolutely a non -- it was a discriminatory rate  
8 that was being imposed.

9           Everyone seems to say "well, yes, we  
10 understand there's potential negative effects on  
11 competition. Yes, we understand that it's a potentially  
12 discriminatory rate. But it's a pilot. So, you know,  
13 three years from now you can figure out if there was  
14 really a problem." Three years from now, as testified to  
15 today, those effects on competition will be long-term  
16 effects, where suppliers have exited the market, and you  
17 will have difficulty bringing them back, if you ever can.

18           The last was that Order 25,230 [25,320?]  
19 said that it should not have a negative effect on  
20 competition. And, there will be negative customer choice  
21 effects. The stated benefit to this Rate ADE by PSNH is  
22 to mitigate migration. They have testified that it's  
23 partly to reverse migration. There's no migration back  
24 under today's circumstances, and the amount of the  
    {DE 11-216} [Day 2] {11-26-12}

1 they're not making forward purchases.

2           There's a further distortion of the  
3 price to customers through the reconciliations. First of  
4 all, reconciliations in and of themselves distort the  
5 price the customers receive. But, in this case, PSNH is  
6 not even going to reconcile the costs to the customers  
7 that created them. They're going to violate cost  
8 causation principles and take costs associated with  
9 forecasts, inaccurate forecasts, whether they be under  
10 recoveries or over recoveries, and reconcile them back to  
11 an entirely different customer base, the Rate DE  
12 customers. Therefore, violating cost causation  
13 principles. And, further distorting the price that  
14 customers on Rate ADE are seeing from what the actual  
15 price would be.

16           In addition to violating the cost  
17 causation principles, inaccurate price signals distort  
18 customer behavior. Customers react to the appropriate  
19 price signal. If a customer is not given the appropriate  
20 price signal, they can't make accurate energy conservation  
21 and energy efficiency choices.

22           Order 25,230 [25,320?] also said that  
23 the PSNH Alternative Default Energy rate had to be  
24 non-discriminatory. However, similarly situated customers  
    {DE 11-216} [Day 2] {11-26-12}

1 benefit, as Commissioner Harrington correctly pointed out  
2 today, is largely dependent on the amount of load that  
3 returns. If load doesn't return, there is no benefit.  
4 So, the whole premise behind this is to reverse migration.  
5 Therefore, by its very nature, it's going to have a  
6 negative effect on customer choice.

7           In addition, as Attorney Rodier pointed  
8 out, Default Service is the -- the restructuring act calls  
9 for the discouragement of the long-term use of Default  
10 Service. And, again, the thought is "Well, it's a pilot.  
11 It's 36 months. Or, the customer can only remain on the  
12 rate for 24 months. Therefore, there's really no  
13 long-term use of Default Service."

14           However, if the long-term effects on  
15 competition, permanent, irreversible effects on  
16 competition are felt today, or over the time of this  
17 pilot, and those suppliers don't return, what are the  
18 customer's choice? The customer's choice then is  
19 long-term use of Default Service.

20           In addition, it's an unnecessarily  
21 complex process. As Exhibit 15 shows in the flow chart,  
22 there are a variety of choices a customer has to make and  
23 understand before they can determine the value of the  
24 choice. Now, Section 374-F:3, III, says the customers are  
    {DE 11-216} [Day 2] {11-26-12}

1 supposed to be provided "clear price information". And,  
 2 PSNH claims that Rate ADE creates a new benchmark that  
 3 will benefit the competitive market. But it's not really  
 4 a benchmark if a customer doesn't know which rate it will  
 5 be paying, so -- or how much that rate will be. So, when  
 6 a customer is coming back or potentially deciding whether  
 7 to leave a competitive supplier for PSNH, it has to figure  
 8 out "was it on ADE previously? For how long? How long  
 9 was it on competitive supply? Is Rate ADE open? If it is  
 10 open, what is that rate?" If it's closed, then the  
 11 customer actually has to know what Rate DE is, because  
 12 that's where they're going first, and then understand what  
 13 Rate ADE will be when it reopens in the future. So,  
 14 there's not really a benchmark, because they won't know  
 15 that pricing for a very long time potentially into the  
 16 future.

17 And, PSNH also claims that it's the same  
 18 as an interim rate from a supplier. And, as was testified  
 19 here today, that is not true. Customers who are choosing  
 20 an introductory rate from a supplier will -- are not  
 21 required to stay out on PSNH service for some particular  
 22 time, required to be on a competitive supply for some  
 23 particular time. They know what rate they're going to be  
 24 charged after the introductory rate is over. They just do  
 {DE 11-216} [Day 2] {11-26-12}

1 the parties liked our witness and found him credible.  
 2 And, I would say that it's on the basis of his testimony  
 3 that the OCA entered into this Settlement Agreement.  
 4 Residential customers will be better off under the terms  
 5 of this Settlement Agreement than they would be without  
 6 it.

7 It is important to note that this is a  
 8 stopgap measure. We are not saying that this is a pure  
 9 policy implementation that should go on for indefinitely.  
 10 We have a situation where residential customers are the  
 11 last to migrate. That's consistent everywhere that  
 12 competition has been introduced. It's only recently,  
 13 perhaps within a year, that residential customers have had  
 14 any options at all. And, so, the fact that they have not  
 15 switched has certainly not been their choice up to this  
 16 point.

17 Now, all of the policy arguments that  
 18 have been made today assume full information, a  
 19 sophisticated customer, market analysis. This may be true  
 20 for large industrial customers, it may be true for some  
 21 small commercial customers; it simply is not true for  
 22 residential customers.

23 Residential customers have been directed  
 24 by law to be the source -- or, the default customers have  
 {DE 11-216} [Day 2] {11-26-12}

1 not need to know as much information to make a decision  
 2 about an introductory rate. And, lastly, the  
 3 restructuring act, in particular Section 374-F:3, II, says  
 4 that "customers should be responsible for the consequences  
 5 of their choices."

6 However, through Rate ADE, what's  
 7 happening is, DE customers, who decide not to make a  
 8 choice, are benefiting from over recoveries from customers  
 9 who do make a choice, and they're paying for under  
 10 recoveries for those same customers. So, Rate DE  
 11 customers are not taking the consequence of their own  
 12 choice not to choose, and, to the extent ADE results in an  
 13 under recovery, they're paying that cost, even though they  
 14 chose not to go on competitive supply.

15 Thus, we ask that -- RESA asks that the  
 16 Commission deny PSNH's request for approval of Rate ADE,  
 17 not approve the Settlement Agreement that's been put  
 18 forth, and send PSNH back to the drawing board, to come up  
 19 with a alternative rate that is not counter to the  
 20 restructuring act principles and satisfies the  
 21 requirements of Order 25,230 [25,320?]. Thank you.

22 CHAIRMAN IGNATIUS: Thank you. Office  
 23 of Consumer Advocate.

24 MS. CHAMBERLIN: Thank you. I'm glad  
 {DE 11-216} [Day 2] {11-26-12}

1 been directed by law to be the source of recovery for  
 2 these rather large fixed costs. That is not a policy that  
 3 can withstand scrutiny. It happened over time, it  
 4 happened through a coincidence of events, but it cannot  
 5 last. And, I fully expect that actions will overtake this  
 6 Rate ADE, that this will not be a permanent rate. This is  
 7 simply something to put into place, protect customers,  
 8 residential customers a little bit more during the  
 9 transition. There needs to be a final settlement of these  
 10 issues that is simply outside the purview of this  
 11 particular case.

12 There was a Rate ADE that was proposed  
 13 previously. The Commission had some concerns with it.  
 14 This proposal addresses those concerns. I would be happy  
 15 if this rate was very temporary, that we did other things  
 16 that would move the market forward. But that takes time.  
 17 There's regulatory lag. There's -- we have a new  
 18 legislature coming in, a new governor, all sorts of things  
 19 are going on. Whatever's going to happen is not going to  
 20 happen as fast as January 1, which is when this rate will  
 21 take effect. And, even if one customer takes it, for  
 22 whatever reason, that's a little bit of a benefit to the  
 23 residential customers, because they have not switched.

24 Now, it may, as Mr. Rodier has pointed  
 {DE 11-216} [Day 2] {11-26-12}

1 out, cause residential customers to go get a supplier,  
2 because they will now suddenly have knowledge about their  
3 options that they didn't have before. It's not -- it  
4 doesn't unduly burden competition. It is not a purely  
5 competitive rate, as has been pointed out, but it's not an  
6 undue burden to protect residential customers during the  
7 transition. Thank you.

8 CHAIRMAN IGNATIUS: Thank you. Ms.  
9 Amidon.

10 MS. AMIDON: Thank you. Staff  
11 participated in the development of the Partial Settlement  
12 Agreement. And, we believe it is a just and reasonable  
13 resolution of the issues it addresses, and it is in the  
14 public interest. We also believe that the Commission can  
15 enact this rate pursuant to the authority to approve an  
16 alternate means of providing default service, under RSA  
17 374-F:3, V(e).

18 As you know the one issue that we  
19 disagree is the -- with the Company is the term of service  
20 for the rate. Staff recommends a 12-month term of service  
21 for the myriad reasons it referred to in its testimony,  
22 and I won't repeat them here. I will say, though, in  
23 balance, we believe that the concerns we have that support  
24 the 12-month term of service outweighs any rationale  
{DE 11-216} [Day 2] {11-26-12}

1 In response to the Commission's concern,  
2 PSNH did offer redesigned Rate ADE. And, in its  
3 testimony, Staff agreed that the adjustments provided by  
4 -- proposed by PSNH, in fact, address the Commission's  
5 concerns, and the OCA just a few months ago agreed.  
6 Staff, the Company, the OCA presented a settlement of most  
7 of the terms relevant to the implementation of Rate ADE,  
8 in line with the revised proposal of the Commission,  
9 subject to some minor amendments, and PSNH believes that  
10 this Settlement presents a fair and reasonable means to  
11 implement a new rate, and that the Settlement should be  
12 affirmed.

13 As to the one issue outstanding under  
14 the Settlement, the length of the term of service,  
15 testimony presented, we believe, showed the 24-month term  
16 is the more appropriate choice, because it effectively  
17 balances the interests and benefiting customers remaining  
18 on Rate DE, with the interest in recovering costs to  
19 provide service. And, as Dr. Estomin testified, 24-month  
20 term of service provides more benefits and prevents -- and  
21 presents a term of service more attractive to customers.

22 The 12 months proposed by Staff, while  
23 appealing, perhaps, insofar as it might sound right, is  
24 simply too short to fully recognize the full benefits of  
{DE 11-216} [Day 2] {11-26-12}

1 advanced by the Company to support a 24-month term of  
2 service. And, we request that the Commission approve our  
3 recommended 12-month term of service. Thank you.

4 CHAIRMAN IGNATIUS: Thank you. Mr.  
5 Fossum.

6 MR. FOSSUM: Thank you. The Commission  
7 itself laid the groundwork for the proposal that was  
8 presented by the Partial Settlement Agreement in this  
9 docket. More than a year ago, in Order 25,256, in docket  
10 DE 10-160, the Commission concluded, consistent with RSA  
11 374-F, that it is "reasonable that PSNH be allowed to  
12 charge customers who return to its Default Service an  
13 alternative Default Service rate reflecting the marginal  
14 cost to serve that load." The Commission then outlined  
15 various considerations that would be accounted for in that  
16 rate, and directed PSNH to file tariffs and supporting  
17 documentation to support that rate.

18 Consistent with the directive of the  
19 Commission and its conclusion that an alternative Default  
20 Service rate for returning customers is reasonable, PSNH  
21 presented its initial proposal for Rate ADE. However, not  
22 agreeing with the first proposal for Rate ADE, the  
23 Commission did reaffirm its earlier decision to require a  
24 proposed alternative default rate.

{DE 11-216} [Day 2] {11-26-12}

1 the rate.

2 As to the issues beyond the Settlement,  
3 first, I did want to point out that there was a prior  
4 motion to dismiss this filing, as contrary to various  
5 provisions of RSA 374-F, RSA 369-B, and RSA 378, and the  
6 Commission denied that motion. As noted in PSNH's  
7 objection to that motion, this rate has been proposed  
8 consistent with multiple Commission orders produced over  
9 more than a year, and none of those orders have been the  
10 subject of a motion for rehearing or appeal by those who  
11 now seek to have the Commission discard it. The  
12 Commission has consistently reaffirmed that it directed  
13 PSNH to create this rate, and it should not now entertain  
14 arguments, such as the one Mr. Rodier just made, that the  
15 rate is unlawful on its face.

16 I'd also like to point out that the  
17 adoption and implementation of the ADE is supported by the  
18 restructuring law. RSA 374-F:1, as the Commission has  
19 heard, states clearly that the most compelling reason to  
20 restructure is to "reduce costs to customers". To the  
21 extent that customers avail themselves of Rate ADE, will  
22 be because they perceive it as beneficial to reducing  
23 their costs. And, if customers perceive the rate is  
24 beneficial and migrate to it, that migration may incent

{DE 11-216} [Day 2] {11-26-12}

1 other suppliers to find a way of reducing costs to their  
2 customers. In this way, Rate ADE will be directly serving  
3 the purpose of the law, to reduce costs.

4 Importantly, customers are not required  
5 to take or remain on Rate ADE, and may depart for  
6 competitive supply, just as customers do on Rate DE. And,  
7 if customers believe that there is a way to reduce their  
8 costs by switching suppliers, they are still free to do  
9 so. In this way provides another choice to customers, as  
10 anticipated by the Legislature in RSA 374-F:3, II, where  
11 it noted that "allowing customers to choose among  
12 electricity suppliers will help ensure fully competitive  
13 and innovative markets."

14 Further, customers returning to Rate ADE  
15 would be contributing to PSNH's fixed costs and providing  
16 a means to spread costs over a wider base of customers,  
17 plus benefiting the customers who remain on Rate DE.

18 I would also point out that RSA 374-F  
19 promotes the development of default service appropriate to  
20 the circumstances of each utility. Rate ADE is another  
21 option for customers to examine in determining their  
22 energy needs, and allows PSNH to provide a default service  
23 appropriate to its particular circumstances.

24 I would also note that, in the  
{DE 11-216} [Day 2] {11-26-12}

1 contract binding customers to ADD -- ADE, and no penalties  
2 for returning to competitive supply. In such  
3 circumstances, there is simply no perceptible harm to  
4 competition, and it is just another offering in the  
5 marketplace, and one that customers are free not to take.

6 For these reasons, we request the  
7 Commission accept and approve the Partial Settlement  
8 Agreement that was filed here, and set the term of service  
9 at 24 months, and permit PSNH to implement the rate as  
10 soon as possible.

11 CHAIRMAN IGNATIUS: Thank you. Thank  
12 you for everyone's attention in providing very succinct  
13 closings. We appreciate that after a long afternoon.  
14 Unless there's anything further?

15 (No verbal response)

16 CHAIRMAN IGNATIUS: Seeing nothing from  
17 my colleagues and from any parties, we will take all of  
18 this under advisement, and issue an order as soon as we  
19 can. Thank you. We're adjourned.

20 (Whereupon the hearing ended at 4:53  
21 p.m.)  
22  
23  
24

{DE 11-216} [Day 2] {11-26-12}

1 Commission's last order in this docket, it referenced  
2 provisions of RSA 369-B:3, IV(b)(1) as applying here. In  
3 that statute, in RSA 369-B:3, IV(b)(1)(A), it provides  
4 that PSNH is to supply default service to recover on its  
5 generation assets in a manner approved by the Commission,  
6 and ADE does precisely that. Redesignated Rate ADE, as it  
7 is in the Settlement Agreement, provides a Default Service  
8 offering allowing PSNH to recover on its generation  
9 assets, and does so in a manner acceptable to the  
10 Commission, because it addresses the Commission's  
11 concerns, as expressed in its orders and in Docket 10-160.

12 As to some of the arguments about the  
13 introduction of Rate ADE being harmful to competition, I  
14 point out, as did Ms. Chamberlin a few months ago, that an  
15 alternative default service offering is appropriate under  
16 RSA 374-F:3, V(e), if it -- yes, under (e), if it "does  
17 not unduly harm the development of competitive markets",  
18 and the term "unduly" is indeed a meaningful term there.  
19 By offering Rate ADE, PSNH is providing another option to  
20 the marketplace, based on its costs, including the  
21 non-operating costs of the Scrubber.

22 No customers are compelled to take  
23 service on Rate ADE. Customers remain free to leave Rate  
24 ADE and return to competitive supply. There are no

{DE 11-216} [Day 2] {11-26-12}

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| <b>\$</b>   | 75/19 81/8 140/12 151/9<br>24-month [16] 7/6 8/13 8/24 10/7 11/20<br>12/4 17/8 17/12 17/18 53/20 53/21 55/19<br>56/5 146/1 147/15 147/19<br>25 [2] 2/6 127/9  | 56/20 60/17 66/19 67/12 67/22 68/2<br>72/3 74/10 74/22 75/5 76/17 78/4 87/13<br>88/9 89/23 89/23 89/24 93/4 93/18 98/24<br>100/14 101/12 110/4 110/5 110/6 110/6<br>110/7 114/8 114/18 115/2 115/14 118/2<br>120/6 132/21 132/22 137/10 142/2 145/2<br>150/12<br>above [8] 15/5 16/10 48/9 50/6 61/2 74/9<br>100/12 115/5<br>absolute [1] 122/19<br>absolutely [3] 29/14 29/14 139/7<br>absorb [1] 126/12<br>abundance [1] 114/15<br>accept [1] 151/7<br>acceptable [3] 6/1 60/15 150/9<br>access [2] 133/1 133/11<br>accommodate [1] 120/9<br>accomplish [5] 49/11 58/21 59/3 59/4<br>59/14<br>accomplishing [1] 58/2<br>accomplishment [1] 87/8<br>according [1] 91/7<br>account [3] 9/4 119/9 121/7<br>accounted [2] 137/14 146/15<br>accounting [1] 126/5<br>accounts [1] 88/6<br>accumulated [1] 123/15<br>accurate [14] 19/6 86/11 86/11 93/3 93/7<br>93/15 93/16 102/11 107/2 107/18 110/19<br>111/7 137/18 138/20<br>accurately [6] 97/13 101/24 102/8 104/21<br>105/10 106/21<br>acknowledge [1] 132/14<br>act [4] 136/9 140/8 142/3 142/20<br>acting [1] 91/21<br>action [2] 8/9 124/16<br>actions [2] 50/23 144/5<br>active [1] 89/7<br>actively [1] 92/7<br>activities [1] 92/3<br>activity [1] 78/4<br>actor [2] 111/13 111/14<br>actual [25] 34/15 59/20 70/8 93/8 98/14<br>101/21 102/3 102/6 102/10 102/15 102/18<br>102/22 103/7 103/9 103/11 103/16 104/1<br>104/2 112/11 112/14 112/16 113/4 113/5<br>136/15 138/14<br>actually [13] 7/19 15/2 30/2 48/17 48/19<br>56/3 64/17 75/2 97/18 98/9 114/5 130/7<br>141/11<br>actuals [3] 71/4 71/10 71/10<br>AD [1] 14/12<br>ADA [4] 80/21 82/6 83/23 125/14<br>add [6] 11/17 33/16 35/22 61/6 108/15<br>151/1<br>added [1] 137/7<br>adder [29] 13/17 14/18 14/21 14/24 20/9<br>33/12 33/12 34/12 34/17 34/22 35/17 37/10<br>49/24 51/7 53/3 55/7 58/5 58/13 59/6 62/7<br>70/6 71/6 72/19 73/15 82/13 82/14 118/16<br>119/16 134/8<br>addition [6] 137/11 137/16 137/19 138/16<br>140/7 140/20<br>additional [8] 37/11 39/9 51/8 51/10 51/11<br>52/1 52/7 53/1<br>address [4] 49/18 53/6 106/6 147/4<br>addresses [5] 45/1 45/7 144/14 145/13<br>150/10<br>addressing [3] 70/6 126/10 130/15<br>ADE [198]<br>adequate [1] 77/20<br>adjourned [1] 151/19<br>adjudicative [1] 78/15<br>adjust [3] 95/16 95/19 120/9<br>adjusted [1] 71/9 |
| \$10,000 [1] 108/23   | 25,230 [5] 136/8 136/10 138/22 139/18<br>142/21<br>25,256 [1] 146/9<br>25,320 [5] 136/8 136/10 138/22 139/18<br>142/21<br>25,372 [2] 46/2 46/14<br>26 [1] 1/4<br>27 [1] 2/6<br>27th [1] 70/13<br>29 [1] 139/4   |   |
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| 001 [2] 3/4 9/24<br>01 [1] 3/4<br>08-10-12 [1] 3/4<br>08-24-12 [1] 3/6  |   |   |
| <b>1</b>  |   |   |
| 1.3 [1] 25/23<br>10 [4] 27/20 28/13 28/13 101/11<br>10 percent [1] 83/23<br>10-160 [5] 45/2 49/17 52/15 146/10 150/11<br>11 [2] 3/4 139/4<br>11-216 [2] 1/6 4/3<br>112 [1] 2/12<br>12 [45] 2/5 3/4 3/6 7/14 7/16 11/23 11/24<br>13/1 16/12 17/22 18/8 21/20 26/15 28/16<br>54/21 54/22 56/20 56/21 57/4 64/2 64/10<br>65/20 66/2 66/6 66/9 75/8 75/15 75/18<br>75/19 75/22 75/22 75/24 76/1 76/22 77/5<br>80/17 80/19 80/20 81/8 81/11 81/13 84/8<br>101/11 139/5 147/22<br>12-month [15] 7/8 8/1 9/4 12/5 18/2 18/6<br>53/22 66/17 73/12 77/3 77/8 83/14 145/20<br>145/24 146/3<br>120 [1] 2/13<br>125 [1] 2/13<br>125-O [2] 36/9 37/22<br>125-O:18 [6] 33/17 33/20 37/3 37/13 37/20<br>133/24<br>13 [1] 56/22<br>132 [1] 2/18<br>136 [1] 2/19<br>14 [5] 16/3 57/15 57/15 127/24 129/10<br>142 [1] 2/20<br>145 [1] 2/21<br>146 [1] 2/22<br>15 [7] 3/4 10/17 11/13 127/8 127/24<br>129/10 140/21<br>15th [1] 72/10<br>16 [3] 3/5 86/18 86/21<br>160 [5] 45/2 49/17 52/15 146/10 150/11<br>170 [2] 15/21 16/3<br>18 [2] 16/4 65/23<br>19 [1] 70/21<br>1:10 [1] 1/4<br>1st [17] 28/17 28/18 28/18 28/19 29/21<br>29/22 55/16 55/24 56/1 65/6 72/13 73/5<br>73/9 73/13 73/21 79/19 79/21 | <b>3</b><br>36 [4] 69/4 123/24 124/2 140/11<br>36-month [5] 8/10 8/13 8/15 68/17 80/7<br>363-B:3 [1] 135/2<br>369-B [3] 45/13 101/20 148/5<br>369-B:3 [4] 46/17 135/2 150/2 150/3<br>374-F [13] 21/8 45/12 46/18 60/2 97/12<br>98/15 100/11 101/3 132/21 133/10 146/11<br>148/5 149/18<br>374-F:1 [5] 97/16 97/18 98/8 98/24 148/18<br>374-F:2 [2] 105/19 114/7<br>374-F:3 [7] 50/2 60/2 104/15 142/3 145/17<br>149/10 150/16<br>377 [1] 46/18<br>378 [1] 148/5<br>3:02 [1] 85/12<br>3:15 [1] 85/10<br>3:18 [1] 85/13 |   |
| 1.3 [1] 25/23<br>10 [4] 27/20 28/13 28/13 101/11<br>10 percent [1] 83/23<br>10-160 [5] 45/2 49/17 52/15 146/10 150/11<br>11 [2] 3/4 139/4<br>11-216 [2] 1/6 4/3<br>112 [1] 2/12<br>12 [45] 2/5 3/4 3/6 7/14 7/16 11/23 11/24<br>13/1 16/12 17/22 18/8 21/20 26/15 28/16<br>54/21 54/22 56/20 56/21 57/4 64/2 64/10<br>65/20 66/2 66/6 66/9 75/8 75/15 75/18<br>75/19 75/22 75/22 75/24 76/1 76/22 77/5<br>80/17 80/19 80/20 81/8 81/11 81/13 84/8<br>101/11 139/5 147/22<br>12-month [15] 7/8 8/1 9/4 12/5 18/2 18/6<br>53/22 66/17 73/12 77/3 77/8 83/14 145/20<br>145/24 146/3<br>120 [1] 2/13<br>125 [1] 2/13<br>125-O [2] 36/9 37/22<br>125-O:18 [6] 33/17 33/20 37/3 37/13 37/20<br>133/24<br>13 [1] 56/22<br>132 [1] 2/18<br>136 [1] 2/19<br>14 [5] 16/3 57/15 57/15 127/24 129/10<br>142 [1] 2/20<br>145 [1] 2/21<br>146 [1] 2/22<br>15 [7] 3/4 10/17 11/13 127/8 127/24<br>129/10 140/21<br>15th [1] 72/10<br>16 [3] 3/5 86/18 86/21<br>160 [5] 45/2 49/17 52/15 146/10 150/11<br>170 [2] 15/21 16/3<br>18 [2] 16/4 65/23<br>19 [1] 70/21<br>1:10 [1] 1/4<br>1st [17] 28/17 28/18 28/18 28/19 29/21<br>29/22 55/16 55/24 56/1 65/6 72/13 73/5<br>73/9 73/13 73/21 79/19 79/21 | <b>4</b><br>47 [1] 2/7<br>49 [1] 2/7<br>4:20 [1] 130/24<br>4:30 [1] 41/6<br>4:53 [1] 151/20   |   |
| 1.3 [1] 25/23<br>10 [4] 27/20 28/13 28/13 101/11<br>10 percent [1] 83/23<br>10-160 [5] 45/2 49/17 52/15 146/10 150/11<br>11 [2] 3/4 139/4<br>11-216 [2] 1/6 4/3<br>112 [1] 2/12<br>12 [45] 2/5 3/4 3/6 7/14 7/16 11/23 11/24<br>13/1 16/12 17/22 18/8 21/20 26/15 28/16<br>54/21 54/22 56/20 56/21 57/4 64/2 64/10<br>65/20 66/2 66/6 66/9 75/8 75/15 75/18<br>75/19 75/22 75/22 75/24 76/1 76/22 77/5<br>80/17 80/19 80/20 81/8 81/11 81/13 84/8<br>101/11 139/5 147/22<br>12-month [15] 7/8 8/1 9/4 12/5 18/2 18/6<br>53/22 66/17 73/12 77/3 77/8 83/14 145/20<br>145/24 146/3<br>120 [1] 2/13<br>125 [1] 2/13<br>125-O [2] 36/9 37/22<br>125-O:18 [6] 33/17 33/20 37/3 37/13 37/20<br>133/24<br>13 [1] 56/22<br>132 [1] 2/18<br>136 [1] 2/19<br>14 [5] 16/3 57/15 57/15 127/24 129/10<br>142 [1] 2/20<br>145 [1] 2/21<br>146 [1] 2/22<br>15 [7] 3/4 10/17 11/13 127/8 127/24<br>129/10 140/21<br>15th [1] 72/10<br>16 [3] 3/5 86/18 86/21<br>160 [5] 45/2 49/17 52/15 146/10 150/11<br>170 [2] 15/21 16/3<br>18 [2] 16/4 65/23<br>19 [1] 70/21<br>1:10 [1] 1/4<br>1st [17] 28/17 28/18 28/18 28/19 29/21<br>29/22 55/16 55/24 56/1 65/6 72/13 73/5<br>73/9 73/13 73/21 79/19 79/21 | <b>5</b><br>5-7 [1] 131/14<br>51 [1] 28/9<br>52 [3] 1/23 27/6 27/17<br>5:00 [3] 131/3 131/4 131/13  |   |
| 1.3 [1] 25/23<br>10 [4] 27/20 28/13 28/13 101/11<br>10 percent [1] 83/23<br>10-160 [5] 45/2 49/17 52/15 146/10 150/11<br>11 [2] 3/4 139/4<br>11-216 [2] 1/6 4/3<br>112 [1] 2/12<br>12 [45] 2/5 3/4 3/6 7/14 7/16 11/23 11/24<br>13/1 16/12 17/22 18/8 21/20 26/15 28/16<br>54/21 54/22 56/20 56/21 57/4 64/2 64/10<br>65/20 66/2 66/6 66/9 75/8 75/15 75/18<br>75/19 75/22 75/22 75/24 76/1 76/22 77/5<br>80/17 80/19 80/20 81/8 81/11 81/13 84/8<br>101/11 139/5 147/22<br>12-month [15] 7/8 8/1 9/4 12/5 18/2 18/6<br>53/22 66/17 73/12 77/3 77/8 83/14 145/20<br>145/24 146/3<br>120 [1] 2/13<br>125 [1] 2/13<br>125-O [2] 36/9 37/22<br>125-O:18 [6] 33/17 33/20 37/3 37/13 37/20<br>133/24<br>13 [1] 56/22<br>132 [1] 2/18<br>136 [1] 2/19<br>14 [5] 16/3 57/15 57/15 127/24 129/10<br>142 [1] 2/20<br>145 [1] 2/21<br>146 [1] 2/22<br>15 [7] 3/4 10/17 11/13 127/8 127/24<br>129/10 140/21<br>15th [1] 72/10<br>16 [3] 3/5 86/18 86/21<br>160 [5] 45/2 49/17 52/15 146/10 150/11<br>170 [2] 15/21 16/3<br>18 [2] 16/4 65/23<br>19 [1] 70/21<br>1:10 [1] 1/4<br>1st [17] 28/17 28/18 28/18 28/19 29/21<br>29/22 55/16 55/24 56/1 65/6 72/13 73/5<br>73/9 73/13 73/21 79/19 79/21 | <b>6</b><br>63 [1] 2/8<br>69 [1] 2/8  |   |
| 1.3 [1] 25/23<br>10 [4] 27/20 28/13 28/13 101/11<br>10 percent [1] 83/23<br>10-160 [5] 45/2 49/17 52/15 146/10 150/11<br>11 [2] 3/4 139/4<br>11-216 [2] 1/6 4/3<br>112 [1] 2/12<br>12 [45] 2/5 3/4 3/6 7/14 7/16 11/23 11/24<br>13/1 16/12 17/22 18/8 21/20 26/15 28/16<br>54/21 54/22 56/20 56/21 57/4 64/2 64/10<br>65/20 66/2 66/6 66/9 75/8 75/15 75/18<br>75/19 75/22 75/22 75/24 76/1 76/22 77/5<br>80/17 80/19 80/20 81/8 81/11 81/13 84/8<br>101/11 139/5 147/22<br>12-month [15] 7/8 8/1 9/4 12/5 18/2 18/6<br>53/22 66/17 73/12 77/3 77/8 83/14 145/20<br>145/24 146/3<br>120 [1] 2/13<br>125 [1] 2/13<br>125-O [2] 36/9 37/22<br>125-O:18 [6] 33/17 33/20 37/3 37/13 37/20<br>133/24<br>13 [1] 56/22<br>132 [1] 2/18<br>136 [1] 2/19<br>14 [5] 16/3 57/15 57/15 127/24 129/10<br>142 [1] 2/20<br>145 [1] 2/21<br>146 [1] 2/22<br>15 [7] 3/4 10/17 11/13 127/8 127/24<br>129/10 140/21<br>15th [1] 72/10<br>16 [3] 3/5 86/18 86/21<br>160 [5] 45/2 49/17 52/15 146/10 150/11<br>170 [2] 15/21 16/3<br>18 [2] 16/4 65/23<br>19 [1] 70/21<br>1:10 [1] 1/4<br>1st [17] 28/17 28/18 28/18 28/19 29/21<br>29/22 55/16 55/24 56/1 65/6 72/13 73/5<br>73/9 73/13 73/21 79/19 79/21 | <b>7</b><br>7.11 [2] 65/5 65/9<br>75 percent [6] 13/16 13/17 55/6 72/19<br>72/21 73/3   |   |
| 1.3 [1] 25/23<br>10 [4] 27/20 28/13 28/13 101/11<br>10 percent [1] 83/23<br>10-160 [5] 45/2 49/17 52/15 146/10 150/11<br>11 [2] 3/4 139/4<br>11-216 [2] 1/6 4/3<br>112 [1] 2/12<br>12 [45] 2/5 3/4 3/6 7/14 7/16 11/23 11/24<br>13/1 16/12 17/22 18/8 21/20 26/15 28/16<br>54/21 54/22 56/20 56/21 57/4 64/2 64/10<br>65/20 66/2 66/6 66/9 75/8 75/15 75/18<br>75/19 75/22 75/22 75/24 76/1 76/22 77/5<br>80/17 80/19 80/20 81/8 81/11 81/13 84/8<br>101/11 139/5 147/22<br>12-month [15] 7/8 8/1 9/4 12/5 18/2 18/6<br>53/22 66/17 73/12 77/3 77/8 83/14 145/20<br>145/24 146/3<br>120 [1] 2/13<br>125 [1] 2/13<br>125-O [2] 36/9 37/22<br>125-O:18 [6] 33/17 33/20 37/3 37/13 37/20<br>133/24<br>13 [1] 56/22<br>132 [1] 2/18<br>136 [1] 2/19<br>14 [5] 16/3 57/15 57/15 127/24 129/10<br>142 [1] 2/20<br>145 [1] 2/21<br>146 [1] 2/22<br>15 [7] 3/4 10/17 11/13 127/8 127/24<br>129/10 140/21<br>15th [1] 72/10<br>16 [3] 3/5 86/18 86/21<br>160 [5] 45/2 49/17 52/15 146/10 150/11<br>170 [2] 15/21 16/3<br>18 [2] 16/4 65/23<br>19 [1] 70/21<br>1:10 [1] 1/4<br>1st [17] 28/17 28/18 28/18 28/19 29/21<br>29/22 55/16 55/24 56/1 65/6 72/13 73/5<br>73/9 73/13 73/21 79/19 79/21 | <b>8</b><br>80 [1] 2/7<br>80 percent [1] 104/16<br>86 [2] 2/11 3/5<br>8th [2] 46/2 46/15  |   |
| 1.3 [1] 25/23<br>10 [4] 27/20 28/13 28/13 101/11<br>10 percent [1] 83/23<br>10-160 [5] 45/2 49/17 52/15 146/10 150/11<br>11 [2] 3/4 139/4<br>11-216 [2] 1/6 4/3<br>112 [1] 2/12<br>12 [45] 2/5 3/4 3/6 7/14 7/16 11/23 11/24<br>13/1 16/12 17/22 18/8 21/20 26/15 28/16<br>54/21 54/22 56/20 56/21 57/4 64/2 64/10<br>65/20 66/2 66/6 66/9 75/8 75/15 75/18<br>75/19 75/22 75/22 75/24 76/1 76/22 77/5<br>80/17 80/19 80/20 81/8 81/11 81/13 84/8<br>101/11 139/5 147/22<br>12-month [15] 7/8 8/1 9/4 12/5 18/2 18/6<br>53/22 66/17 73/12 77/3 77/8 83/14 145/20<br>145/24 146/3<br>120 [1] 2/13<br>125 [1] 2/13<br>125-O [2] 36/9 37/22<br>125-O:18 [6] 33/17 33/20 37/3 37/13 37/20<br>133/24<br>13 [1] 56/22<br>132 [1] 2/18<br>136 [1] 2/19<br>14 [5] 16/3 57/15 57/15 127/24 129/10<br>142 [1] 2/20<br>145 [1] 2/21<br>146 [1] 2/22<br>15 [7] 3/4 10/17 11/13 127/8 127/24<br>129/10 140/21<br>15th [1] 72/10<br>16 [3] 3/5 86/18 86/21<br>160 [5] 45/2 49/17 52/15 146/10 150/11<br>170 [2] 15/21 16/3<br>18 [2] 16/4 65/23<br>19 [1] 70/21<br>1:10 [1] 1/4<br>1st [17] 28/17 28/18 28/18 28/19 29/21<br>29/22 55/16 55/24 56/1 65/6 72/13 73/5<br>73/9 73/13 73/21 79/19 79/21 | <b>9</b><br>900-pound [1] 91/4<br>93 [1] 2/11<br>96 [1] 2/12  |   |
| 1.3 [1] 25/23<br>10 [4] 27/20 28/13 28/13 101/11<br>10 percent [1] 83/23<br>10-160 [5] 45/2 49/17 52/15 146/10 150/11<br>11 [2] 3/4 139/4<br>11-216 [2] 1/6 4/3<br>112 [1] 2/12<br>12 [45] 2/5 3/4 3/6 7/14 7/16 11/23 11/24<br>13/1 16/12 17/22 18/8 21/20 26/15 28/16<br>54/21 54/22 56/20 56/21 57/4 64/2 64/10<br>65/20 66/2 66/6 66/9 75/8 75/15 75/18<br>75/19 75/22 75/22 75/24 76/1 76/22 77/5<br>80/17 80/19 80/20 81/8 81/11 81/13 84/8<br>101/11 139/5 147/22<br>12-month [15] 7/8 8/1 9/4 12/5 18/2 18/6<br>53/22 66/17 73/12 77/3 77/8 83/14 145/20<br>145/24 146/3<br>120 [1] 2/13<br>125 [1] 2/13<br>125-O [2] 36/9 37/22<br>125-O:18 [6] 33/17 33/20 37/3 37/13 37/20<br>133/24<br>13 [1] 56/22<br>132 [1] 2/18<br>136 [1] 2/19<br>14 [5] 16/3 57/15 57/15 127/24 129/10<br>142 [1] 2/20<br>145 [1] 2/21<br>146 [1] 2/22<br>15 [7] 3/4 10/17 11/13 127/8 127/24<br>129/10 140/21<br>15th [1] 72/10<br>16 [3] 3/5 86/18 86/21<br>160 [5] 45/2 49/17 52/15 146/10 150/11<br>170 [2] 15/21 16/3<br>18 [2] 16/4 65/23<br>19 [1] 70/21<br>1:10 [1] 1/4<br>1st [17] 28/17 28/18 28/18 28/19 29/21<br>29/22 55/16 55/24 56/1 65/6 72/13 73/5<br>73/9 73/13 73/21 79/19 79/21 | <b>A</b><br>ability [1] 109/13<br>able [11] 7/12 8/16 67/4 67/19 76/3 77/21<br>80/21 109/4 131/1 131/3 131/12<br>about [62] 6/24 7/21 8/5 14/7 15/17 16/23<br>17/8 20/21 22/5 22/7 30/2 32/23 33/4 33/12<br>34/24 38/6 39/3 41/8 43/2 47/3 50/4 52/13   |   |

|  |   |  |
|--|---|--|
| <p><b>A</b></p> <p>adjustment [1] 79/8<br/> adjustments [4] 18/23 23/10 79/9 147/3<br/> administration [2] 38/19 113/2<br/> administrative [1] 137/13<br/> admittedly [2] 38/10 112/23<br/> adoption [1] 148/17<br/> advance [1] 93/13<br/> advanced [1] 146/1<br/> advancement [1] 91/2<br/> advantage [11] 5/21 31/19 58/19 59/6<br/> 68/8 91/18 111/1 111/12 120/14 120/16<br/> 128/18<br/> advantageous [1] 128/20<br/> adverse [1] 136/13<br/> advisement [2] 123/6 151/18<br/> Advocate [4] 1/17 1/18 5/5 142/23<br/> Affairs [1] 42/15<br/> affirmed [1] 147/12<br/> after [8] 28/17 77/2 83/14 84/8 91/6 95/3<br/> 141/24 151/13<br/> afternoon [19] 4/17 4/20 4/21 4/23 5/3 5/4<br/> 5/7 5/8 5/10 6/4 47/14 47/16 79/22 92/23<br/> 92/24 119/24 120/1 130/9 151/13<br/> again [43] 9/18 10/12 19/14 22/16 28/18<br/> 28/18 28/19 31/9 34/23 36/8 36/22 39/2<br/> 40/2 40/24 49/15 52/16 58/3 58/8 58/11<br/> 59/13 60/22 61/1 61/2 62/11 62/18 64/19<br/> 64/23 65/7 66/1 66/4 66/11 73/12 76/18<br/> 76/22 77/12 81/2 84/14 103/23 112/24<br/> 120/6 121/22 135/11 140/10<br/> against [8] 52/2 60/9 71/19 117/19 118/7<br/> 118/11 135/19 135/23<br/> aggregate [1] 88/20<br/> aggregator [1] 88/19<br/> ago [10] 6/22 27/22 84/12 101/11 110/14<br/> 127/9 129/9 146/9 147/5 150/14<br/> agree [22] 16/24 17/11 19/2 20/1 20/14<br/> 21/10 26/7 28/21 36/4 39/8 39/20 63/16<br/> 90/7 90/10 93/3 98/14 99/8 99/8 99/9<br/> 104/23 114/11 120/18<br/> agreed [5] 35/2 36/20 99/19 147/3 147/5<br/> agreeing [1] 146/22<br/> agreement [26] 5/18 5/19 6/24 7/19 7/20<br/> 9/8 12/12 13/8 25/22 26/6 26/8 29/16 29/17<br/> 29/21 69/24 72/1 77/16 80/2 80/5 142/17<br/> 143/3 143/5 145/12 146/8 150/7 151/8<br/> ahead [1] 103/5<br/> all [86] 5/23 6/6 9/3 11/8 12/1 20/13 20/19<br/> 21/11 22/9 26/19 27/11 27/15 28/7 29/5<br/> 31/14 31/15 35/7 35/22 39/15 39/19 42/20<br/> 42/22 44/20 46/23 49/3 56/16 58/16 60/24<br/> 62/3 63/4 63/5 65/3 65/12 68/13 68/14<br/> 69/10 69/12 69/20 70/20 71/5 72/1 73/8<br/> 73/17 79/6 80/9 85/8 92/3 92/9 97/21 98/11<br/> 98/15 99/13 99/14 101/5 101/14 106/9<br/> 108/10 108/14 110/8 112/2 113/11 113/17<br/> 116/2 119/20 119/21 121/1 122/6 126/12<br/> 127/6 128/4 128/5 129/22 130/6 131/10<br/> 132/5 132/20 134/22 135/3 135/3 136/14<br/> 138/4 139/1 143/14 143/17 144/18 151/17<br/> alleviate [1] 21/4<br/> allocated [2] 34/9 110/1<br/> allocating [1] 137/12<br/> allocations [1] 134/6<br/> allow [4] 74/13 75/3 76/17 78/9<br/> allowable [1] 35/9<br/> allowed [1] 146/11<br/> allowing [2] 149/11 150/8<br/> allows [2] 47/20 149/22<br/> almost [4] 65/7 90/3 91/1 117/1<br/> alone [1] 128/10<br/> along [6] 5/1 27/14 39/15 112/21 114/23<br/> 134/10</p> | <p>already [10] 43/10 43/14 56/5 61/24<br/> 103/18 107/16 120/4 125/22 133/23 137/23<br/> also [41] 7/17 8/1 8/3 8/18 18/19 20/6<br/> 20/20 23/20 34/9 40/11 40/11 48/3 48/8<br/> 48/11 57/22 60/2 60/3 61/8 67/12 67/16<br/> 68/23 75/2 79/5 95/3 97/3 97/16 99/13<br/> 110/11 110/20 110/20 117/9 122/7 124/3<br/> 125/8 128/21 138/22 141/17 145/14 148/16<br/> 149/18 149/24<br/> alter [1] 62/10<br/> alternate [5] 52/6 58/23 135/15 135/20<br/> 145/16<br/> alternative [18] 1/7 7/2 25/2 38/1 54/13<br/> 60/5 66/7 121/24 136/2 136/7 136/11<br/> 136/11 138/23 142/19 146/13 146/19<br/> 146/24 150/15<br/> although [4] 6/2 74/4 74/17 131/17<br/> always [4] 4/13 42/21 124/11 133/12<br/> am [3] 42/15 64/11 100/18<br/> ambiguous [1] 121/9<br/> amend [1] 30/7<br/> amendments [1] 147/9<br/> American [2] 96/11 97/4<br/> Amidon [8] 1/19 2/5 2/21 5/9 11/4 85/6<br/> 111/24 145/9<br/> among [3] 16/22 131/23 149/11<br/> amount [8] 8/6 13/17 24/24 58/13 123/13<br/> 124/10 139/24 140/2<br/> Amy [1] 1/9<br/> analysis [8] 81/22 83/10 83/18 84/16<br/> 84/22 85/1 134/7 143/19<br/> analyze [1] 71/4<br/> angry [1] 43/2<br/> annual [17] 7/24 8/2 18/19 18/20 19/3<br/> 20/13 30/8 31/15 62/8 71/8 72/9 72/16<br/> 73/11 79/3 79/16 122/11 137/17<br/> annually [1] 78/4<br/> another [21] 8/8 44/2 61/8 62/17 64/12<br/> 66/7 68/12 69/5 76/20 80/11 94/22 98/21<br/> 103/10 115/24 119/11 128/7 131/13 149/9<br/> 149/20 150/19 151/4<br/> Anselm's [1] 88/3<br/> answer [13] 10/4 28/5 28/12 28/19 31/17<br/> 42/13 42/20 54/10 54/23 103/20 109/15<br/> 118/20 125/7<br/> answered [3] 37/22 103/18 120/4<br/> anti [11] 8/5 20/21 76/7 76/16 90/19<br/> 107/18 109/9 109/21 110/19 111/17 122/14<br/> anti-competitive [11] 8/5 20/21 76/7<br/> 76/16 90/19 107/18 109/9 109/21 110/19<br/> 111/17 122/14<br/> anticipate [1] 74/15<br/> anticipated [4] 70/8 101/7 130/23 149/10<br/> anticipation [1] 73/18<br/> antithetical [1] 132/9<br/> any [75] 4/12 4/15 8/4 8/7 10/22 14/3<br/> 14/16 18/23 27/8 30/11 31/7 31/21 33/23<br/> 35/8 36/14 36/24 38/10 38/18 39/9 39/11<br/> 39/23 42/12 44/23 46/24 50/8 50/15 53/1<br/> 53/3 55/14 56/21 59/7 60/3 61/5 71/6 75/13<br/> 77/6 77/23 79/9 81/4 81/22 82/8 83/4 83/8<br/> 83/10 83/11 83/12 84/16 84/24 85/2 86/8<br/> 88/2 92/18 98/19 104/8 105/12 105/15<br/> 105/16 106/8 106/19 106/24 108/20 112/23<br/> 120/16 121/9 121/11 122/15 126/19 129/14<br/> 130/1 130/15 130/18 134/14 143/14 145/24<br/> 151/17<br/> anybody [3] 31/2 86/24 87/22<br/> anyhow [1] 40/3<br/> anymore [1] 53/18<br/> anyone [2] 84/23 130/12<br/> anything [14] 4/14 5/12 6/7 9/7 23/5 25/10<br/> 33/24 34/20 44/24 46/14 86/8 105/24 122/1<br/> 151/14<br/> anyway [1] 50/12</p> | <p>apologize [6] 32/12 100/7 105/4 105/5<br/> 109/7 120/4<br/> apparent [1] 102/20<br/> appeal [1] 148/10<br/> appealing [1] 147/23<br/> appear [2] 70/3 104/8<br/> appearances [4] 1/12 4/11 4/16 101/14<br/> appears [1] 81/23<br/> applicable [2] 37/13 37/14<br/> applied [5] 52/2 82/18 92/2 127/21 128/3<br/> applies [2] 37/23 136/23<br/> apply [2] 37/20 135/3<br/> applying [1] 150/2<br/> appreciate [2] 129/24 151/13<br/> approach [1] 98/3<br/> appropriate [10] 37/18 37/24 104/19<br/> 105/1 138/18 138/19 147/16 149/19 149/23<br/> 150/15<br/> appropriately [1] 129/7<br/> approval [1] 142/16<br/> approve [10] 30/5 37/16 37/24 60/5 98/18<br/> 135/15 142/17 145/15 146/2 151/7<br/> approved [4] 31/5 35/19 74/6 150/5<br/> approximately [1] 117/10<br/> April [2] 28/18 70/13<br/> April 1st [1] 28/18<br/> are [164]<br/> aren't [14] 19/17 19/23 29/2 34/3 36/24<br/> 39/11 40/6 51/13 54/4 54/12 94/8 94/9<br/> 102/24 103/2<br/> argued [1] 137/6<br/> argument [3] 17/11 107/9 133/3<br/> arguments [7] 17/7 17/21 131/12 133/22<br/> 143/17 148/14 150/12<br/> around [6] 49/3 79/20 112/9 121/13 131/2<br/> 134/17<br/> arrangement [1] 114/19<br/> arrived [1] 108/8<br/> artificially [2] 93/21 123/23<br/> as [154]<br/> ascertained [1] 128/2<br/> ask [13] 5/15 12/16 12/19 22/5 27/21<br/> 38/17 64/12 74/10 88/9 89/7 89/17 120/3<br/> 142/15<br/> asked [7] 15/24 16/2 28/12 32/12 37/20<br/> 79/22 109/7<br/> asking [5] 75/5 99/18 106/5 110/13 122/11<br/> asks [2] 105/24 142/15<br/> aspect [1] 135/12<br/> aspects [2] 99/15 108/11<br/> assert [1] 118/22<br/> asserting [1] 97/1<br/> assessed [2] 68/22 129/6<br/> assessment [2] 8/2 69/10<br/> assets [6] 99/14 113/12 135/5 135/8 150/5<br/> 150/9<br/> assigned [5] 14/6 81/19 83/16 108/20<br/> 121/9<br/> assigning [1] 51/17<br/> associated [9] 39/6 47/21 49/21 119/9<br/> 136/17 136/22 137/3 137/12 138/8<br/> Association [3] 1/15 5/2 47/14<br/> assume [8] 27/13 40/14 41/24 51/5 57/21<br/> 73/8 74/19 143/18<br/> assumes [2] 22/2 42/5<br/> assuming [10] 5/21 19/24 24/5 58/14<br/> 72/12 73/4 73/13 83/18 95/6 122/13<br/> assumption [1] 63/20<br/> at [125] 5/23 7/14 7/22 7/24 8/15 8/18 9/10<br/> 9/11 9/14 11/1 11/23 13/1 13/8 13/12 13/14<br/> 13/16 13/19 14/12 15/9 15/21 16/3 20/11<br/> 22/20 28/4 29/12 32/16 33/2 34/6 38/5 41/6<br/> 44/9 44/20 48/11 50/2 52/5 55/4 57/4 57/12<br/> 57/16 57/22 58/15 60/2 61/11 61/12 61/17<br/> 62/5 62/9 64/4 65/15 66/9 66/9 66/11 67/3</p> |
|--|---|--|

|   |   |  |
|---|---|--|
| <p><b>A</b></p> <p>at... [72] 68/6 68/12 68/18 68/19 68/24 69/11 69/12 69/24 70/12 70/17 70/21 71/3 71/15 71/17 72/2 72/7 72/9 72/17 72/22 73/12 74/1 74/15 75/22 77/17 77/24 78/21 79/5 79/9 80/19 80/20 81/11 83/4 83/11 84/9 84/15 84/19 85/12 85/13 86/9 87/8 93/9 95/7 96/23 97/10 103/18 105/6 107/21 108/8 109/6 111/7 111/16 113/8 114/7 114/13 115/8 117/15 118/3 118/23 119/5 119/10 120/11 120/21 122/14 127/4 127/17 130/24 131/4 135/13 137/19 143/14 151/9 151/20</p> <p>attachment [2] 70/18 70/19</p> <p>attachments [1] 70/17</p> <p>attempt [1] 26/3</p> <p>attention [1] 151/12</p> <p>attorney [2] 21/5 140/7</p> <p>attract [1] 58/6</p> <p>attractive [2] 17/18 147/21</p> <p>attracts [1] 84/18</p> <p>attributes [1] 97/15</p> <p>Atty [3] 11/4 11/4 98/5</p> <p>AUGUST [6] 2/10 3/5 85/20 85/24 93/20 93/22</p> <p>authority [5] 80/6 96/18 104/8 104/24 145/15</p> <p>authorization [1] 14/2</p> <p>avail [1] 148/21</p> <p>availability [3] 14/3 114/23 120/18</p> <p>available [12] 5/20 12/9 15/8 22/16 43/6 56/3 105/8 105/21 113/17 114/9 117/12 132/18</p> <p>average [1] 137/16</p> <p>avoid [7] 17/12 17/14 18/14 19/3 19/15 19/16 136/13</p> <p>avoids [2] 19/18 19/20</p> <p>aware [10] 42/15 44/6 44/7 50/9 65/8 74/18 83/10 96/11 113/24 123/12</p> <p>away [4] 91/8 91/9 91/23 124/12</p> <p>awkward [1] 135/1</p> | <p>basically [15] 22/13 31/19 31/22 32/1 39/3 57/4 58/13 60/1 61/7 69/16 87/10 116/17 118/17 124/5 124/7</p> <p>basing [2] 137/20 137/23</p> <p>basis [25] 7/22 7/24 11/7 13/13 21/20 21/23 34/12 34/16 56/21 61/4 62/8 71/1 71/8 71/9 71/15 72/6 73/11 79/3 79/16 109/23 114/1 115/24 119/17 123/11 143/2</p> <p>Bay [2] 41/11 41/15</p> <p>be [314]</p> <p>bearing [2] 56/9 131/20</p> <p>beat [1] 38/3</p> <p>became [1] 82/5</p> <p>because [60] 8/5 10/20 19/22 23/14 30/14 33/17 36/8 38/22 39/1 39/14 39/18 43/11 44/11 44/22 48/12 50/10 51/12 53/2 57/17 57/23 61/1 61/23 74/19 76/8 79/4 82/12 83/7 83/18 91/18 106/23 107/3 108/4 110/17 111/9 113/1 113/4 115/20 115/22 115/22 116/18 118/21 119/3 119/8 120/15 121/4 121/9 123/14 124/10 127/12 128/22 131/17 134/6 137/23 141/11 141/14 144/23 145/2 147/16 148/22 150/10</p> <p>become [3] 12/22 119/12 120/24</p> <p>becomes [1] 68/11</p> <p>been [48] 5/18 5/19 6/10 12/16 12/24 20/24 28/23 32/12 39/15 40/19 41/22 46/11 49/3 51/21 53/21 54/1 55/12 55/13 56/7 56/12 57/1 57/2 57/13 57/14 81/22 83/18 84/16 91/12 91/19 96/24 103/17 108/20 117/5 118/6 118/6 120/6 121/12 125/22 135/10 142/17 143/12 143/15 143/18 143/23 144/1 145/5 148/7 148/9</p> <p>before [20] 4/15 6/3 6/13 18/9 26/10 55/2 66/11 73/21 76/20 78/9 80/17 85/18 89/11 90/18 94/18 94/22 113/14 113/16 140/23 145/3</p> <p>begin [7] 4/11 96/4 98/9 99/5 100/13 131/21 132/6</p> <p>beginning [8] 71/17 72/9 72/17 74/16 78/1 113/8 117/4 118/3</p> <p>begins [3] 28/2 75/2 97/18</p> <p>behalf [5] 4/18 5/1 47/13 88/13 96/14</p> <p>behavior [2] 107/6 138/18</p> <p>behind [1] 140/4</p> <p>being [37] 7/22 8/5 8/10 8/14 8/23 15/24 17/13 20/21 24/10 36/13 39/5 40/6 40/23 49/11 58/9 58/10 61/12 67/10 78/12 83/15 91/10 94/18 107/8 109/10 109/11 109/22 124/12 124/14 124/15 125/12 125/18 128/5 130/9 135/7 137/1 139/8 150/13</p> <p>belabor [1] 41/7</p> <p>belief [5] 86/12 107/1 107/3 109/8 114/2</p> <p>believe [29] 4/10 16/12 16/13 17/21 23/2 28/3 28/8 31/13 32/4 37/22 41/10 46/13 50/13 62/13 64/15 66/18 73/19 80/3 94/6 96/12 97/17 99/12 107/17 110/17 145/12 145/14 145/23 147/15 149/7</p> <p>believed [2] 17/18 64/13</p> <p>believer [1] 121/1</p> <p>believes [2] 106/18 147/9</p> <p>below [10] 9/13 14/10 14/12 14/12 65/9 91/5 108/1 111/16 115/5 118/5</p> <p>benchmark [4] 117/19 141/2 141/4 141/14</p> <p>benchmarked [1] 118/7</p> <p>beneficial [2] 148/22 148/24</p> <p>benefit [19] 20/9 37/11 53/1 58/3 58/10 59/7 61/10 62/1 68/23 82/18 82/20 83/13 84/15 125/20 139/21 140/1 140/3 141/3 144/22</p> <p>benefited [1] 52/5</p> <p>benefiting [4] 58/22 142/8 147/17 149/17</p> <p>benefits [6] 17/8 19/5 20/3 21/24 147/20 147/24</p> <p>best [3] 84/4 86/12 105/12</p> | <p>bet [1] 41/14</p> <p>better [17] 7/11 7/16 8/2 8/8 18/5 18/6 18/19 20/17 26/11 26/15 26/17 50/22 56/16 64/11 93/4 112/18 143/4</p> <p>between [7] 7/4 36/24 64/23 69/3 78/5 125/6 131/22</p> <p>beyond [1] 148/2</p> <p>big [1] 121/1</p> <p>billing [1] 137/4</p> <p>bills [1] 127/19</p> <p>binding [1] 151/1</p> <p>bit [8] 53/5 67/6 95/14 112/9 131/1 131/12 144/8 144/22</p> <p>blandishment [1] 42/10</p> <p>blessing [1] 124/16</p> <p>block [1] 53/20</p> <p>board [1] 142/18</p> <p>body [1] 123/20</p> <p>book [2] 98/5 104/12</p> <p>booked [9] 101/21 102/6 102/11 102/18 103/8 103/8 103/14 112/11 112/14</p> <p>books [1] 91/17</p> <p>both [11] 27/7 37/7 57/14 59/16 60/14 66/14 71/2 114/3 122/20 126/22 136/7</p> <p>bother [1] 132/21</p> <p>bottom [5] 72/2 75/3 97/9 97/10 99/24</p> <p>box [6] 53/9 54/8 54/8 55/18 55/19 56/19</p> <p>boxes [1] 54/3</p> <p>boy [1] 135/1</p> <p>brand [1] 121/12</p> <p>break [2] 85/10 121/16</p> <p>brevity [1] 30/13</p> <p>brief [3] 131/8 132/3 133/3</p> <p>briefly [5] 12/22 15/15 33/11 36/7 87/8</p> <p>bring [4] 82/11 84/7 92/8 125/23</p> <p>bringing [3] 6/22 82/21 139/17</p> <p>brings [2] 43/19 45/8</p> <p>broadcast [1] 108/13</p> <p>broken [1] 51/3</p> <p>brush [1] 68/14</p> <p>bucket [1] 116/16</p> <p>budget [1] 108/20</p> <p>built [1] 91/17</p> <p>bulk [1] 14/19</p> <p>burden [3] 131/20 145/4 145/6</p> <p>business [6] 57/11 57/21 59/17 92/8 110/7 118/21</p> <p>businesses [1] 126/4</p> <p>but [92] 4/16 10/19 11/24 13/9 14/1 20/18 21/7 23/11 23/21 25/4 31/1 32/6 34/9 36/22 40/2 42/15 43/8 44/3 45/9 45/18 48/8 48/11 53/5 56/13 56/24 57/19 58/1 58/8 58/21 59/3 59/14 62/3 62/18 64/8 65/5 65/9 66/5 67/16 68/12 75/15 76/2 76/17 77/5 78/13 79/9 80/10 82/20 83/10 84/5 84/8 85/2 89/1 89/18 90/20 91/15 92/4 103/4 103/9 107/14 108/10 109/14 110/22 114/1 115/4 115/9 116/20 116/21 118/5 118/24 119/4 120/5 121/11 122/5 123/19 124/3 125/8 129/4 129/23 130/3 130/9 132/6 132/11 133/18 135/2 137/8 137/21 138/5 139/12 141/3 144/4 144/16 145/5</p> <p>buy [1] 118/18</p> <p>buying [7] 55/12 55/13 59/17 113/14 113/21 113/22 129/1</p> |
| <p><b>B</b></p> <p>B:3 [5] 46/17 135/2 135/2 150/2 150/3</p> <p>baby [1] 65/23</p> <p>back [97] 4/2 4/14 6/22 18/12 18/16 18/17 19/16 19/19 19/20 28/17 28/18 29/3 29/4 29/7 32/19 37/11 41/5 42/3 53/16 53/19 54/2 54/6 54/7 54/15 55/15 56/8 56/9 57/13 58/1 59/12 62/18 62/24 63/17 64/23 65/18 67/4 67/14 67/17 67/22 68/7 68/14 70/18 72/1 74/10 75/17 75/21 75/23 76/6 76/15 76/18 76/19 77/2 78/1 80/21 81/1 81/2 81/10 81/12 81/15 82/6 82/7 82/11 82/12 82/21 83/7 83/17 83/20 83/24 84/3 84/7 84/14 84/20 85/14 87/5 91/1 92/1 92/8 105/4 106/16 122/3 122/22 124/14 124/15 125/24 127/8 128/9 128/16 128/24 129/3 131/11 131/24 133/6 138/10 139/17 139/23 141/6 142/18</p> <p>back-and-forth [2] 19/19 19/20</p> <p>backwards [1] 56/1</p> <p>bad [5] 67/23 67/24 68/10 115/16 127/20</p> <p>balance [1] 145/23</p> <p>balances [1] 147/17</p> <p>ball [3] 64/10 64/24 65/12</p> <p>base [9] 40/6 40/10 40/14 40/23 52/21 93/12 134/20 138/11 149/16</p> <p>based [24] 22/11 34/15 34/15 35/1 45/5 51/12 55/11 55/20 61/13 61/17 62/24 101/21 101/23 103/8 107/4 109/9 109/11 112/14 136/12 136/14 136/15 136/21 137/2 150/20</p> <p>basic [2] 49/10 132/9</p>  | <p>beginning [8] 71/17 72/9 72/17 74/16 78/1 113/8 117/4 118/3</p> <p>begins [3] 28/2 75/2 97/18</p> <p>behalf [5] 4/18 5/1 47/13 88/13 96/14</p> <p>behavior [2] 107/6 138/18</p> <p>behind [1] 140/4</p> <p>being [37] 7/22 8/5 8/10 8/14 8/23 15/24 17/13 20/21 24/10 36/13 39/5 40/6 40/23 49/11 58/9 58/10 61/12 67/10 78/12 83/15 91/10 94/18 107/8 109/10 109/11 109/22 124/12 124/14 124/15 125/12 125/18 128/5 130/9 135/7 137/1 139/8 150/13</p> <p>belabor [1] 41/7</p> <p>belief [5] 86/12 107/1 107/3 109/8 114/2</p> <p>believe [29] 4/10 16/12 16/13 17/21 23/2 28/3 28/8 31/13 32/4 37/22 41/10 46/13 50/13 62/13 64/15 66/18 73/19 80/3 94/6 96/12 97/17 99/12 107/17 110/17 145/12 145/14 145/23 147/15 149/7</p> <p>believed [2] 17/18 64/13</p> <p>believer [1] 121/1</p> <p>believes [2] 106/18 147/9</p> <p>below [10] 9/13 14/10 14/12 14/12 65/9 91/5 108/1 111/16 115/5 118/5</p> <p>benchmark [4] 117/19 141/2 141/4 141/14</p> <p>benchmarked [1] 118/7</p> <p>beneficial [2] 148/22 148/24</p> <p>benefit [19] 20/9 37/11 53/1 58/3 58/10 59/7 61/10 62/1 68/23 82/18 82/20 83/13 84/15 125/20 139/21 140/1 140/3 141/3 144/22</p> <p>benefited [1] 52/5</p> <p>benefiting [4] 58/22 142/8 147/17 149/17</p> <p>benefits [6] 17/8 19/5 20/3 21/24 147/20 147/24</p> <p>best [3] 84/4 86/12 105/12</p>   | <p><b>C</b></p> <p>calculated [6] 14/22 22/11 34/14 62/4 70/11 95/9</p> <p>calculation [7] 38/9 52/1 62/7 73/14 102/7 112/22 117/20</p> <p>calculations [1] 108/9</p> <p>calendar [1] 73/12</p> <p>calibrate [1] 117/19</p> <p>call [2] 131/4 132/4</p>  |

|  |  |   |
|--|--|---|
| <p><b>C</b></p> <p>called [1] 87/3<br/> calls [5] 42/13 43/2 77/17 134/14 140/8<br/> came [13] 7/19 7/20 44/18 52/15 53/5 54/6<br/> 56/8 56/9 57/17 82/6 84/20 115/20 135/11<br/> campaign [2] 92/7 121/6<br/> can [63] 8/9 8/10 13/3 15/5 16/19 18/15<br/> 28/17 29/2 29/3 31/18 32/5 34/14 37/16<br/> 37/24 41/23 41/23 42/3 46/7 53/4 53/6<br/> 53/23 55/18 59/5 60/14 62/4 62/6 62/10<br/> 62/11 67/5 69/3 70/11 70/21 75/13 76/10<br/> 76/20 77/6 83/22 84/22 87/18 87/22 89/14<br/> 92/1 92/1 93/4 93/7 93/15 113/12 119/8<br/> 120/23 128/21 130/8 130/10 131/14 133/5<br/> 136/1 136/2 139/13 139/17 140/11 140/23<br/> 144/3 145/14 151/19<br/> can't [12] 31/4 39/24 42/14 43/3 45/18<br/> 74/17 76/15 84/23 97/22 124/4 131/6<br/> 138/20<br/> cannot [4] 63/2 101/19 113/4 144/4<br/> capable [1] 132/11<br/> capacity [5] 89/10 119/4 119/6 119/8<br/> 119/10<br/> capital [1] 110/6<br/> care [1] 131/22<br/> careful [1] 108/9<br/> case [20] 18/14 23/16 24/3 31/22 40/16<br/> 50/11 65/20 65/21 84/4 97/3 108/18 108/22<br/> 111/18 112/13 117/23 126/6 133/4 133/15<br/> 138/5 144/11<br/> cases [1] 71/2<br/> causation [3] 138/8 138/12 138/17<br/> cause [4] 60/24 62/15 117/17 145/1<br/> caused [2] 45/5 116/22<br/> causes [1] 92/4<br/> cents [7] 65/5 65/7 65/9 117/10 117/18<br/> 118/1 120/7<br/> CEO [2] 88/10 96/7<br/> certain [1] 127/16<br/> certainly [17] 51/2 59/3 60/11 60/12 64/18<br/> 76/7 78/17 90/3 98/17 104/2 105/3 116/3<br/> 123/16 125/18 132/1 133/18 143/15<br/> Chair [1] 89/24<br/> Chairman [12] 1/9 2/8 2/13 5/14 10/24<br/> 46/22 86/15 89/21 89/24 92/10 100/3 130/3<br/> Chamberlin [7] 1/17 2/6 2/20 5/5 25/12<br/> 111/22 150/14<br/> chance [1] 131/15<br/> chances [1] 84/10<br/> change [10] 12/1 24/6 24/21 29/24 30/15<br/> 34/21 55/6 63/17 65/5 79/21<br/> changed [1] 24/20<br/> changes [13] 16/20 24/24 30/11 30/12<br/> 30/21 31/4 31/8 31/9 42/21 50/5 69/3 74/14<br/> 79/15<br/> changing [1] 62/8<br/> Chapter [2] 46/18 98/15<br/> characterization [6] 20/18 42/11 101/1<br/> 102/11 107/1 112/18<br/> characterize [1] 10/8<br/> charge [3] 119/6 119/10 146/12<br/> charged [4] 40/8 40/9 58/14 141/24<br/> charges [2] 119/5 119/9<br/> charging [2] 59/19 136/18<br/> chart [4] 10/9 10/19 54/4 140/21<br/> cheaper [1] 113/23<br/> chest [1] 108/15<br/> choice [27] 24/6 24/7 24/8 24/18 25/4 50/6<br/> 50/15 60/1 99/3 99/10 99/19 107/9 115/3<br/> 115/10 123/3 123/4 139/20 140/6 140/18<br/> 140/18 140/24 142/8 142/9 142/12 143/15<br/> 147/16 149/9<br/> choices [9] 24/20 24/21 50/8 59/12 93/4<br/> 115/7 138/21 140/22 142/5</p> | <p>choose [4] 77/7 139/2 142/12 149/11<br/> chooses [2] 10/5 66/5<br/> choosing [1] 141/19<br/> chose [2] 53/12 142/14<br/> circumstance [4] 23/19 52/23 54/9 55/2<br/> circumstances [12] 13/3 13/6 16/15 42/5<br/> 55/12 104/19 105/1 106/3 139/24 149/20<br/> 149/23 151/3<br/> citation [2] 45/21 135/1<br/> cite [3] 97/22 115/8 132/22<br/> citing [1] 107/14<br/> claims [2] 141/2 141/17<br/> clarification [2] 40/17 120/5<br/> clarified [1] 125/18<br/> clarify [1] 12/20<br/> class [2] 71/11 91/22<br/> classes [1] 74/14<br/> clear [6] 87/20 109/22 122/6 122/7 133/18<br/> 141/1<br/> clearly [2] 132/8 148/19<br/> Clerk [1] 1/11<br/> client [1] 30/18<br/> clock [17] 10/7 10/12 12/4 12/5 53/21<br/> 53/22 54/11 54/19 54/21 55/19 56/5 75/20<br/> 75/23 77/5 81/4 81/9 83/14<br/> clock's [1] 54/17<br/> close [2] 13/4 14/1<br/> closed [10] 13/20 14/4 55/1 55/7 55/9<br/> 71/11 71/12 71/13 72/20 141/10<br/> closer [1] 73/4<br/> closing [2] 2/17 131/11<br/> closings [3] 130/24 130/24 151/13<br/> Cmsr [4] 2/7 2/8 2/12 2/13<br/> Co [1] 1/12<br/> coincidence [1] 144/4<br/> Cole [4] 1/15 1/16 4/24 47/13<br/> colleague [1] 5/1<br/> colleagues [1] 151/17<br/> College [1] 88/3<br/> color [1] 10/20<br/> combine [1] 88/20<br/> come [35] 18/13 28/18 29/4 42/3 50/21<br/> 53/16 54/21 57/12 57/16 64/5 73/20 75/4<br/> 75/13 75/23 76/3 76/17 77/2 77/6 77/13<br/> 78/22 79/3 80/21 81/2 82/10 83/7 84/3 84/6<br/> 91/16 122/3 123/14 124/6 124/14 124/15<br/> 131/24 142/18<br/> comes [7] 29/23 37/3 51/8 78/10 79/17<br/> 82/21 134/16<br/> coming [12] 48/13 48/23 54/15 83/20<br/> 110/21 110/23 111/10 111/15 119/15<br/> 121/11 141/6 144/18<br/> comment [1] 64/24<br/> comments [1] 132/3<br/> commercial [4] 52/19 88/1 115/3 143/21<br/> commission [75] 1/2 5/9 8/19 10/18 25/19<br/> 26/1 26/8 26/10 29/20 29/23 30/5 30/9<br/> 30/14 31/5 32/16 32/20 32/21 32/22 32/22<br/> 34/9 34/11 34/18 35/8 35/15 35/19 37/16<br/> 37/23 42/17 43/2 43/20 43/24 44/1 44/4<br/> 44/15 45/10 46/15 46/16 49/16 49/17 50/3<br/> 60/5 60/10 65/22 66/4 78/14 80/6 90/18<br/> 95/12 98/18 104/18 104/23 104/24 124/15<br/> 127/11 135/14 135/16 136/10 142/16<br/> 144/13 145/14 146/2 146/6 146/10 146/14<br/> 146/19 146/23 147/8 148/6 148/8 148/11<br/> 148/12 148/18 150/5 150/10 151/7<br/> Commission's [8] 34/24 45/1 90/2 136/8<br/> 147/1 147/4 150/1 150/10<br/> Commissioner [14] 1/9 1/10 15/17 49/6<br/> 63/6 80/10 83/21 112/3 113/24 118/21<br/> 119/23 120/4 135/10 140/1<br/> Commissioners [4] 4/24 5/5 49/4 112/3<br/> Commissioners' [1] 68/2<br/> commitment [1] 131/13</p> | <p>common [1] 128/22<br/> companies [11] 42/10 88/10 88/22 110/24<br/> 111/4 111/18 116/3 116/7 125/6 127/22<br/> 128/2<br/> company [17] 1/6 4/18 74/4 84/23 88/16<br/> 96/11 97/4 108/22 109/12 110/16 110/24<br/> 111/10 115/24 126/13 145/19 146/1 147/6<br/> comparable [1] 61/7<br/> compare [2] 72/8 72/14<br/> compared [5] 13/17 29/13 34/8 71/16<br/> 115/24<br/> compares [1] 58/14<br/> comparing [3] 71/18 73/5 111/9<br/> comparison [3] 13/14 72/22 126/1<br/> compelled [1] 150/22<br/> compelling [5] 97/19 98/9 101/4 101/6<br/> 148/19<br/> compete [1] 118/1<br/> competing [2] 110/23 122/8<br/> competition [21] 66/19 66/24 67/8 68/5<br/> 107/23 108/2 108/5 115/13 115/13 124/20<br/> 126/22 136/13 139/11 139/15 139/20<br/> 140/15 140/16 143/12 145/4 150/13 151/4<br/> competitive [164]<br/> competitor [3] 107/20 108/1 109/18<br/> competitors [1] 64/5<br/> complaining [1] 42/13<br/> complete [1] 92/4<br/> completely [2] 92/4 119/16<br/> completion [1] 72/4<br/> complex [1] 140/21<br/> compliance [1] 73/18<br/> complicates [1] 132/15<br/> component [2] 33/23 35/17<br/> components [3] 40/12 41/1 41/2<br/> computer [1] 74/13<br/> concede [2] 132/13 133/16<br/> concept [1] 127/23<br/> concern [9] 20/24 22/6 34/24 49/19 91/7<br/> 110/12 121/3 123/19 147/1<br/> concerned [1] 89/12<br/> concerns [16] 8/5 20/21 21/3 21/4 26/1<br/> 26/4 26/8 26/14 34/10 114/20 126/10<br/> 144/13 144/14 145/23 147/5 150/11<br/> conclude [1] 47/7<br/> concluded [1] 146/10<br/> concluding [1] 113/10<br/> conclusion [2] 104/7 146/19<br/> Concord [1] 1/4<br/> conference [1] 131/4<br/> conflict [1] 50/1<br/> conforming [1] 87/19<br/> confused [3] 57/23 59/13 124/18<br/> confusion [3] 50/3 59/23 90/20<br/> connection [1] 9/22<br/> consecutive [11] 7/14 13/2 16/12 18/9<br/> 54/22 56/20 75/8 75/13 75/18 75/22 81/11<br/> consequence [3] 51/2 107/7 142/11<br/> consequences [7] 32/11 32/15 50/7 50/15<br/> 50/23 59/11 142/4<br/> conservation [2] 93/17 138/20<br/> conserve [1] 93/22<br/> consider [1] 44/5<br/> considerable [1] 123/13<br/> consideration [2] 98/22 110/10<br/> considerations [1] 146/15<br/> considered [2] 66/13 115/17<br/> considering [4] 44/12 44/18 57/19 94/7<br/> consist [2] 121/6 121/7<br/> consistent [5] 45/12 143/11 146/10<br/> 146/18 148/8<br/> consistently [1] 148/12<br/> consists [1] 10/3<br/> constant [1] 84/18<br/> construct [1] 108/8</p> |
|--|--|---|

|  |  |  |
|--|--|--|
| <p><b>C</b></p> <p>construed [1] 80/6<br/> consult [1] 30/16<br/> consumer [6] 1/17 1/18 5/5 22/10 42/15 142/23<br/> consumers [8] 21/11 21/16 21/23 22/9 97/21 98/11 98/16 124/10<br/> contain [1] 112/23<br/> context [1] 5/16<br/> continually [2] 118/10 118/10<br/> continue [7] 12/11 23/17 69/1 75/20 75/20 81/8 135/16<br/> continued [1] 126/15<br/> continuing [1] 10/12<br/> contract [3] 122/24 128/20 151/1<br/> contracts [2] 123/1 123/10<br/> contrary [1] 148/4<br/> contributing [1] 149/15<br/> coop [1] 41/16<br/> cooperative [1] 30/17<br/> cooperatively [2] 30/10 31/7<br/> coordinate [1] 88/7<br/> copies [1] 10/19<br/> copy [6] 9/24 29/17 86/6 86/24 97/6 97/24<br/> corner [1] 53/8<br/> corollary [1] 77/3<br/> correct [92] 4/6 10/7 10/17 12/7 17/1 17/5 17/23 18/4 21/6 23/1 24/16 24/17 25/17 25/20 26/4 26/12 26/18 29/1 29/9 29/14 29/21 32/17 33/10 33/14 33/23 34/1 35/20 36/1 40/17 44/3 44/12 47/22 48/1 48/6 48/10 49/23 50/13 50/19 51/14 53/13 53/14 55/21 55/22 56/10 57/9 57/18 58/24 59/1 59/7 63/12 66/20 71/21 71/24 75/9 75/10 80/1 80/14 80/18 82/16 86/9 87/12 88/15 89/4 93/10 93/11 93/13 93/23 93/24 94/1 94/11 94/13 94/14 94/19 94/20 94/24 95/4 95/16 95/20 96/7 96/8 96/15 97/2 97/16 103/12 104/10 112/17 113/6 117/7 120/7 126/13 126/17 129/13<br/> corrected [1] 9/8<br/> correction [1] 18/11<br/> correctly [6] 18/11 18/24 25/24 68/4 113/1 140/1<br/> cost [69] 14/19 14/20 29/13 33/21 38/18 39/6 45/5 48/8 49/12 51/4 51/16 58/15 61/2 61/13 62/24 70/23 82/13 102/2 102/3 102/6 102/6 102/10 102/11 102/18 102/18 103/10 103/13 103/13 103/15 103/16 104/1 104/2 109/23 110/6 110/8 110/22 112/17 113/4 113/19 115/24 116/22 118/14 118/15 118/16 118/17 119/15 128/11 128/17 128/18 129/7 136/12 136/14 136/15 136/16 136/17 136/17 136/19 136/21 136/21 136/23 137/2 137/8 137/10 137/14 138/7 138/12 138/16 142/13 146/14<br/> cost-based [7] 61/13 62/24 136/12 136/14 136/15 136/21 137/2<br/> costs [139] 13/12 13/14 13/18 14/14 14/17 14/22 15/1 21/11 21/16 21/22 22/8 22/12 29/6 33/12 33/15 33/17 34/3 34/3 34/3 34/7 34/9 34/13 34/19 35/3 35/6 35/7 35/7 35/8 35/12 35/23 35/24 36/3 36/9 36/22 36/24 37/3 37/7 38/10 38/18 38/22 39/3 39/10 39/12 40/22 41/3 47/21 47/24 48/4 49/21 51/9 51/10 51/11 51/12 51/20 51/22 51/23 52/9 52/14 52/21 55/5 59/20 60/10 61/14 61/15 70/5 70/7 71/14 71/15 72/7 78/6 82/3 97/21 98/11 98/15 101/5 101/5 101/21 101/21 101/23 102/14 102/15 102/19 102/22 103/7 103/8 103/9 103/9 103/10 103/11 103/14 104/1 104/2 104/4 108/9 110/2 110/4 112/11 112/11 112/14 112/15 112/23 113/5 118/13 119/2 122/6 125/12</p> | <p>125/14 125/22 125/23 126/13 126/24 133/24 133/24 134/4 134/5 134/5 134/7 134/9 134/11 134/22 136/15 136/19 137/3 137/5 137/5 137/11 138/6 138/8 144/2 147/18 148/20 148/23 149/1 149/3 149/8 149/15 149/16 150/20 150/21<br/> could [108] 8/7 8/14 9/1 9/17 10/24 11/16 13/7 13/20 14/16 15/9 15/18 16/10 16/20 20/22 21/15 21/18 22/8 23/7 23/8 23/11 23/13 23/15 23/22 25/7 28/20 29/6 29/10 31/24 32/7 32/9 32/9 32/10 32/15 38/12 40/18 41/16 42/17 42/22 43/1 43/2 43/22 46/1 46/3 48/4 48/7 48/8 48/11 48/15 50/15 50/17 52/24 55/7 57/22 58/18 58/19 59/15 63/3 64/7 67/15 67/16 68/3 69/4 71/10 72/20 74/24 76/7 77/1 78/22 79/23 80/24 81/7 81/12 81/15 85/18 86/16 95/5 102/17 102/19 104/15 105/19 106/7 106/10 106/11 106/12 106/24 107/11 109/1 109/6 114/19 118/9 118/18 119/19 120/19 121/6 121/6 122/12 122/18 123/17 123/21 123/21 123/22 124/22 127/21 128/1 128/2 128/3 128/12 131/1<br/> couldn't [2] 42/18 42/23<br/> counter [1] 142/19<br/> couple [8] 29/15 56/18 65/19 67/14 87/2 105/4 125/5 135/10<br/> course [5] 78/12 116/10 120/12 121/17 127/9<br/> court [5] 1/23 32/13 85/21 87/10 131/5<br/> cover [2] 23/6 23/12<br/> covering [1] 82/13<br/> create [3] 90/21 120/19 148/13<br/> created [3] 82/8 124/9 138/7<br/> creates [3] 51/24 124/17 141/2<br/> creating [3] 60/9 63/24 90/20<br/> credentials [2] 90/3 128/1<br/> credible [1] 143/1<br/> credit [4] 106/13 114/18 114/20 127/19<br/> criteria [4] 7/11 20/12 42/7 56/13<br/> cross [16] 2/5 2/6 2/6 2/7 2/11 2/12 4/9 4/10 5/12 5/17 12/9 12/14 47/19 48/3 92/19 93/1<br/> cross-examination [15] 2/5 2/6 2/6 2/7 2/11 2/12 4/9 4/10 5/12 5/17 12/9 12/14 47/19 48/3 93/1<br/> crystal [3] 64/10 64/24 65/12<br/> curious [1] 47/3<br/> current [4] 64/1 71/19 137/7 137/12<br/> currently [15] 14/9 24/1 35/16 36/13 37/7 39/5 43/8 48/18 63/19 77/13 77/15 83/13 107/9 107/10 137/11<br/> curve [1] 118/7<br/> customer [93] 7/13 8/7 8/23 10/5 10/10 12/22 12/24 15/8 15/10 15/18 16/11 18/8 22/6 22/20 22/22 22/23 23/23 25/1 28/2 28/15 38/20 40/19 40/22 41/15 43/11 48/18 48/19 50/3 50/6 50/14 50/15 50/20 52/21 53/9 53/12 53/16 53/24 54/5 55/21 60/7 62/23 63/16 64/1 64/7 64/13 65/11 68/6 68/8 68/13 75/11 82/5 82/6 82/14 91/17 93/7 94/7 95/3 95/6 98/19 99/3 99/10 99/19 105/13 105/16 106/1 106/7 106/10 106/12 106/23 114/21 122/2 123/9 126/11 128/12 128/12 129/8 133/7 134/12 134/12 135/17 135/22 138/11 138/18 138/19 139/20 140/6 140/11 140/22 141/4 141/6 141/11 143/19 144/21<br/> customer's [2] 140/18 140/18<br/> customers [167]</p> | <p>date [3] 30/5 30/7 124/18<br/> dates [1] 74/7<br/> day [13] 1/4 15/13 23/20 68/18 69/11 69/12 72/11 93/9 94/1 108/19 118/3 137/19 139/5<br/> days [1] 139/4<br/> DE [55] 1/6 4/3 10/11 14/6 14/10 14/13 15/6 16/10 19/19 19/21 19/24 20/10 24/14 35/20 36/23 37/8 42/4 45/2 48/9 48/18 49/16 52/9 52/15 56/8 57/18 58/4 59/6 59/7 59/21 60/1 62/1 71/5 71/7 71/23 74/2 81/15 81/20 82/2 82/5 83/2 94/10 101/22 102/7 103/8 112/14 113/11 120/19 138/11 141/11 142/7 142/10 146/10 147/18 149/6 149/17<br/> deadline [1] 74/4<br/> deal [3] 53/17 94/15 108/13<br/> dealing [1] 53/10<br/> decade [1] 91/13<br/> December [4] 72/12 72/16 73/4 79/18<br/> decent [1] 78/19<br/> decide [3] 59/16 76/18 142/7<br/> decided [1] 53/16<br/> deciding [1] 141/6<br/> decision [9] 10/9 10/21 30/18 60/3 75/1 84/11 87/9 142/1 146/23<br/> decision-making [1] 75/1<br/> decisions [4] 11/24 74/22 93/17 93/17<br/> decrease [3] 13/24 14/2 48/15<br/> deems [2] 37/18 37/24<br/> deep [3] 109/12 110/17 115/15<br/> default [121] 1/7 7/2 14/5 15/10 24/2 24/7 24/9 24/15 24/20 25/2 25/3 33/18 33/22 35/4 35/9 35/10 35/13 35/18 35/21 36/10 36/13 36/15 36/19 36/21 36/23 37/4 37/12 37/14 37/18 37/23 37/24 38/2 49/14 49/22 49/22 50/9 50/16 50/16 50/17 50/23 51/21 51/23 52/2 52/4 52/9 52/11 53/2 53/11 54/4 58/4 58/22 60/6 61/18 62/21 62/22 63/23 64/1 65/1 65/4 69/11 69/16 74/23 76/9 76/11 77/14 79/1 79/10 79/13 82/18 83/16 83/16 84/5 84/9 91/10 92/7 100/1 100/15 100/22 101/2 104/9 104/10 104/18 104/24 105/7 105/20 106/18 113/11 114/8 121/24 125/13 132/17 132/20 132/23 132/23 133/1 133/13 133/15 134/2 134/3 135/4 135/15 135/21 136/2 136/7 136/11 138/23 140/8 140/9 140/13 140/19 143/24 145/16 146/12 146/13 146/19 146/24 149/19 149/22 150/4 150/7 150/15<br/> deferred [1] 60/9<br/> defines [1] 105/20<br/> definition [1] 132/17<br/> definitions [2] 101/20 105/20<br/> degree [1] 127/3<br/> delay [2] 74/11 123/14<br/> denied [2] 45/23 148/6<br/> Deno [1] 1/11<br/> deny [1] 142/16<br/> depart [1] 149/5<br/> department [1] 42/16<br/> depend [6] 15/9 15/9 29/12 40/2 40/3 58/13<br/> dependent [2] 91/10 140/2<br/> depending [7] 10/5 24/10 39/19 40/24 48/10 48/14 67/18<br/> depends [5] 40/7 40/8 43/17 71/14 121/2<br/> depicts [1] 10/4<br/> deploy [1] 39/14<br/> deployed [1] 39/22<br/> describe [2] 72/3 111/14<br/> described [5] 11/12 13/10 55/2 86/20 92/3<br/> describes [1] 78/3<br/> description [1] 13/9<br/> design [4] 30/11 31/8 100/14 100/20<br/> designed [4] 60/7 74/16 132/24 135/17</p> |
| <p><b>D</b></p> <p>daily [1] 114/1<br/> damage [1] 123/21<br/> data [2] 38/8 38/13</p>   |  |  |

|  |  |   |
|--|--|---|
| <p><b>D</b></p> <p>desirable [1] 114/18<br/> desire [1] 111/5<br/> despite [1] 17/21<br/> detailed [1] 109/24<br/> determine [4] 46/17 69/12 94/16 140/23<br/> determines [2] 35/15 60/10<br/> determining [1] 149/21<br/> detrimental [1] 68/11<br/> develop [7] 30/11 31/7 45/3 49/18 60/5 61/14 135/14<br/> developed [3] 45/11 46/16 52/22<br/> developing [1] 58/8<br/> development [9] 60/8 60/18 61/19 99/3 135/18 135/23 145/11 149/19 150/17<br/> diagram [2] 10/4 53/4<br/> did [33] 9/7 26/24 27/1 27/23 55/20 65/23 70/16 70/17 73/2 86/3 86/5 87/13 87/15 94/3 94/6 97/13 97/14 101/24 102/1 102/7 102/9 104/20 104/22 105/10 106/21 106/22 132/8 132/13 144/15 146/23 147/2 148/3 150/14<br/> didn't [6] 23/21 27/21 34/18 82/7 127/14 145/3<br/> difference [8] 7/4 11/22 43/14 64/23 78/5 112/16 125/6 125/11<br/> different [22] 16/16 16/17 20/13 23/12 31/24 44/24 59/22 60/15 61/16 68/15 68/16 94/4 96/20 101/20 112/12 116/24 119/6 119/17 126/4 138/11 139/1 139/4<br/> difficulty [1] 139/17<br/> direct [12] 2/5 2/11 4/5 4/9 5/16 6/18 12/18 18/1 20/20 58/11 86/1 107/17<br/> directed [4] 143/23 144/1 146/16 148/12<br/> direction [2] 13/7 124/20<br/> directionally [1] 124/19<br/> directive [1] 146/18<br/> directly [5] 61/21 87/18 88/2 100/12 149/2<br/> Director [2] 96/6 96/17<br/> disadvantage [4] 111/12 116/2 119/8 119/11<br/> disagree [1] 145/19<br/> disagreement [2] 16/22 17/3<br/> discard [1] 148/11<br/> disclosures [1] 108/22<br/> discount [1] 20/4<br/> discounted [5] 17/13 100/1 100/15 100/22 101/1<br/> discourage [2] 133/19 133/19<br/> discouragement [1] 140/9<br/> discovery [2] 9/23 89/17<br/> discriminatory [4] 136/12 138/24 139/7 139/12<br/> discuss [1] 30/7<br/> discussed [4] 72/6 74/2 106/24 117/9<br/> discussion [6] 34/5 39/2 92/18 112/10 115/12 131/8<br/> discussions [1] 30/9<br/> disincentive [1] 129/3<br/> dismiss [2] 45/23 148/4<br/> distinction [1] 121/15<br/> distort [3] 137/17 138/4 138/17<br/> distorted [2] 123/22 124/18<br/> distorting [1] 138/13<br/> distortion [1] 138/2<br/> distribution [1] 40/15<br/> district [1] 41/12<br/> divestiture [1] 99/13<br/> do [116] 4/16 5/15 9/24 10/2 15/16 15/20 16/4 16/6 16/10 16/23 17/6 17/17 20/3 23/2 23/23 26/9 27/4 27/5 28/21 29/10 30/2 32/3 32/7 34/24 38/17 39/8 41/14 42/12 42/23 42/23 43/2 44/14 44/14 45/9 45/20 46/24 54/7 54/9 57/3 58/6 59/17 59/22 60/19 61/5</p> | <p>62/6 63/12 63/21 64/15 65/13 65/19 65/22 66/5 66/22 68/17 68/19 68/19 71/3 74/15 76/22 81/7 81/12 83/4 83/8 84/14 85/6 86/6 86/7 88/5 88/7 90/13 90/24 95/7 95/10 96/17 96/19 97/6 97/8 99/8 99/9 100/1 104/12 104/14 109/19 110/15 114/11 116/20 116/23 117/21 120/18 121/5 122/15 122/16 123/10 123/11 126/4 126/16 126/19 128/20 128/21 129/14 130/3 130/15 130/23 131/19 132/6 133/9 134/6 134/17 135/16 135/20 137/9 137/18 141/24 142/9 149/6 149/8<br/> doable [1] 78/17<br/> docket [21] 4/3 5/19 6/21 43/23 43/24 44/7 45/2 45/18 49/16 73/16 73/19 96/9 96/23 115/1 126/9 126/10 130/20 146/9 146/9 150/1 150/11<br/> dockets [3] 78/23 79/1 79/8<br/> document [3] 11/4 11/12 86/20<br/> documentation [1] 146/17<br/> does [67] 12/22 13/23 14/13 14/16 14/24 15/2 16/7 19/18 20/8 21/19 25/6 33/19 34/20 35/6 37/10 37/13 37/20 38/10 45/7 45/8 47/7 47/9 51/24 54/11 54/17 54/24 55/14 55/15 55/23 58/20 61/8 68/19 79/13 81/5 86/9 86/23 87/4 87/5 92/4 96/20 98/8 98/13 99/2 99/5 99/7 99/22 102/10 104/8 105/12 105/15 107/9 107/10 110/21 111/6 112/23 113/13 116/13 116/18 118/5 118/24 122/4 122/5 125/9 133/23 150/6 150/9 150/16<br/> doesn't [15] 30/24 31/1 32/21 58/1 61/19 70/7 71/9 74/4 106/6 106/10 116/1 134/4 140/3 141/4 145/4<br/> doing [14] 39/15 39/15 40/7 51/16 64/9 69/14 81/23 82/4 91/19 114/4 119/18 121/19 125/15 130/9<br/> don't [52] 4/11 12/11 19/2 25/9 27/8 27/12 27/13 30/22 36/6 36/8 36/14 38/14 38/22 40/19 40/19 43/24 44/20 44/22 50/13 51/21 53/17 54/3 58/8 60/22 60/23 62/13 62/14 63/1 63/11 66/15 72/21 75/14 75/14 85/7 88/2 92/17 93/21 97/22 102/19 103/4 106/3 110/4 114/5 116/14 118/20 118/24 118/24 126/6 131/1 131/22 134/5 140/17<br/> done [17] 41/24 58/9 58/10 68/10 70/10 70/24 71/5 71/8 73/12 73/19 81/22 83/18 123/21 124/4 128/10 128/11 130/9<br/> door [1] 41/9<br/> double [1] 109/1<br/> down [16] 29/6 37/3 51/4 52/10 54/10 54/21 64/2 99/1 104/17 109/1 109/2 113/17 122/13 122/15 129/10 134/16<br/> Dr [1] 17/17<br/> Dr. [3] 16/3 132/7 147/19<br/> Dr. Estomin [3] 16/3 132/7 147/19<br/> draw [1] 113/17<br/> drawing [1] 142/18<br/> drive [1] 136/1<br/> drop [1] 130/4<br/> dropping [1] 125/14<br/> Dubuque [1] 41/10<br/> duly [1] 85/20<br/> duration [2] 123/9 128/15<br/> during [9] 8/17 14/3 34/6 52/16 52/16 79/17 93/20 144/8 145/6<br/> dynamic [1] 55/11</p> | <p>economic [1] 114/4<br/> edgewise [1] 30/20<br/> education [2] 42/1 43/5<br/> effect [18] 21/16 21/19 21/22 22/8 55/24 60/19 60/21 61/15 72/13 73/13 79/15 117/12 121/20 121/23 136/13 139/19 140/6 144/21<br/> effectively [2] 120/7 147/16<br/> effects [6] 139/10 139/15 139/16 139/21 140/14 140/15<br/> efficiency [2] 93/17 138/21<br/> effort [1] 125/23<br/> efforts [2] 74/15 116/11<br/> either [11] 15/16 19/8 24/14 24/15 26/14 36/24 78/4 100/6 120/14 128/13 131/21<br/> elaborate [1] 113/13<br/> elaborating [1] 107/16<br/> elect [1] 106/19<br/> electric [8] 55/21 97/20 98/10 114/14 120/8 120/20 129/17 135/4<br/> electricity [22] 21/12 21/17 21/23 22/9 48/5 48/8 55/13 97/21 98/12 98/16 105/8 105/10 105/21 105/23 106/1 114/8 114/10 115/20 118/18 124/11 133/2 149/12<br/> element [3] 99/10 99/20 110/1<br/> elements [1] 99/4<br/> eligibility [12] 7/11 12/21 18/3 18/7 19/1 20/12 42/7 75/6 76/20 76/24 77/4 77/9<br/> eligible [16] 7/12 8/7 12/22 43/9 54/12 57/7 64/2 74/20 75/11 76/1 76/2 80/17 94/18 94/23 120/24 139/1<br/> else [8] 6/7 39/24 45/15 50/10 61/6 84/23 113/15 118/23<br/> elsewhere [2] 116/11 124/24<br/> embedded [1] 136/23<br/> employed [1] 39/5<br/> employees [3] 134/16 137/7 137/12<br/> enable [1] 114/21<br/> enact [1] 145/15<br/> encourage [3] 104/9 133/14 133/21<br/> encourages [1] 133/13<br/> end [24] 8/15 9/11 22/23 23/4 23/17 30/13 32/16 33/2 68/18 68/19 68/20 69/4 69/11 69/12 77/18 80/7 84/19 87/17 90/1 95/7 116/6 119/5 127/5 131/5<br/> end-user [1] 119/5<br/> ended [2] 135/24 151/20<br/> ending [1] 8/11<br/> ends [1] 22/21<br/> energy [40] 1/7 1/15 5/2 7/2 25/2 25/3 25/4 47/14 49/14 52/2 59/18 70/11 87/4 87/5 88/10 88/12 91/11 91/21 93/5 93/17 93/22 96/11 97/4 101/15 106/21 108/10 114/22 115/4 115/5 117/23 118/9 118/23 119/2 127/7 136/7 136/11 138/20 138/21 138/23 149/22<br/> engaged [1] 122/23<br/> England [2] 87/14 89/8<br/> enhance [1] 44/16<br/> enhancements [3] 43/21 44/5 44/12<br/> enormous [1] 109/2<br/> enough [5] 41/5 89/19 114/7 123/24 124/3<br/> enroll [1] 108/17<br/> ensued [1] 131/9<br/> ensure [6] 18/11 20/3 21/24 50/3 132/24 149/12<br/> enter [1] 91/4<br/> entered [2] 107/20 143/3<br/> entering [2] 101/12 111/4<br/> entertain [1] 148/13<br/> entire [2] 8/17 22/3<br/> entirely [1] 138/11<br/> entity [5] 87/17 96/18 97/1 110/21 115/14<br/> entrant [1] 121/12<br/> entrants [1] 124/21</p> |
|  | <p><b>E</b></p> <p>each [7] 30/16 41/9 71/15 82/14 104/20 117/20 149/20<br/> earlier [10] 44/18 49/16 57/24 68/2 71/19 79/22 87/6 96/9 136/23 146/23<br/> easier [1] 10/20<br/> easy [1] 62/7</p>  |   |

|  |  |   |
|--|--|---|
| <p><b>E</b></p> <p>entry [3] 87/19 111/2 128/13<br/> environment [1] 110/3<br/> equation [1] 118/3<br/> equilibrium [1] 84/17<br/> equipped [1] 128/4<br/> equivalent [1] 110/20<br/> erroneous [3] 107/2 107/3 107/8<br/> erroneously [1] 106/18<br/> errors [1] 86/8<br/> especially [4] 8/9 20/8 52/16 52/18<br/> Esq [6] 1/12 1/14 1/15 1/16 1/17 1/19<br/> essence [1] 33/21<br/> essentially [11] 7/4 10/9 14/21 18/3 20/13 24/3 25/5 49/23 91/11 108/16 125/21<br/> establish [3] 90/1 104/18 104/24<br/> established [2] 49/11 61/24<br/> estimate [1] 83/8<br/> estimated [3] 101/23 112/15 112/17<br/> Estomin [5] 16/2 16/3 132/7 132/7 147/19<br/> Estomin's [1] 17/17<br/> etcetera [6] 33/9 112/24 112/24 113/3 130/4 130/4<br/> evaluate [2] 73/17 77/21<br/> evaluated [2] 31/18 32/20<br/> evaluating [1] 78/11<br/> evaluation [1] 32/2<br/> even [15] 14/12 48/18 60/13 74/19 76/9 77/24 78/9 82/9 100/3 115/4 135/1 137/24 138/6 142/13 144/21<br/> event [2] 128/18 134/15<br/> events [1] 144/4<br/> eventually [1] 127/6<br/> ever [1] 139/17<br/> every [7] 23/11 75/16 81/6 110/24 117/23 137/8 137/8<br/> everybody [5] 55/23 56/2 114/16 118/4 118/23<br/> everyone [6] 5/11 6/2 89/16 131/4 131/15 139/9<br/> everyone's [1] 151/12<br/> everything [1] 69/6<br/> everywhere [1] 143/11<br/> evidence [2] 4/4 4/16<br/> evident [1] 91/19<br/> exacerbated [1] 126/17<br/> exactly [4] 41/11 54/24 96/5 107/21<br/> examination [19] 2/5 2/5 2/6 2/6 2/7 2/11 2/11 2/12 4/9 4/10 5/12 5/17 6/18 12/9 12/14 47/19 48/3 86/1 93/1<br/> examine [1] 149/21<br/> example [7] 10/7 12/3 70/12 87/23 106/12 114/17 127/20<br/> excerpt [1] 27/19<br/> excess [1] 128/15<br/> excessively [1] 20/5<br/> exclude [1] 31/2<br/> exclusive [1] 87/11<br/> exclusively [1] 89/1<br/> excuse [5] 16/3 46/3 46/5 92/19 102/21<br/> excused [2] 85/9 130/7<br/> exhibit [17] 3/3 5/20 9/10 10/16 10/17 10/23 11/9 11/13 46/4 46/6 66/16 70/12 70/14 70/15 86/18 86/21 140/21<br/> Exhibit 16 [1] 86/18<br/> Exhibit 7 [1] 70/12<br/> Exhibit 9 [2] 5/20 9/10<br/> exhibits [3] 130/16 130/19 130/20<br/> exist [5] 25/6 38/22 38/23 107/9 107/10<br/> existence [2] 38/24 39/1<br/> existing [2] 29/13 40/5<br/> exists [2] 25/5 77/15<br/> exit [1] 127/13<br/> exited [1] 139/16</p> | <p>expansive [2] 109/4 115/10<br/> expect [3] 50/7 50/14 144/5<br/> expected [1] 64/22<br/> expended [1] 125/22<br/> expense [1] 52/5<br/> experience [2] 126/19 127/1<br/> expires [1] 95/4<br/> explain [5] 14/16 20/22 53/23 76/10 102/20<br/> explanation [1] 72/4<br/> explicitly [1] 30/24<br/> explored [1] 106/4<br/> exploring [1] 44/13<br/> expressed [2] 43/20 150/11<br/> extend [3] 21/24 33/3 77/19<br/> extended [5] 17/13 17/15 20/4 20/5 21/2<br/> extent [8] 28/23 30/12 39/6 61/9 72/18 74/21 142/12 148/21<br/> extra [3] 82/15 82/17 84/8</p> <p><b>F</b></p> <p>F:1 [5] 97/16 97/18 98/8 98/24 148/18<br/> F:2 [2] 105/19 114/7<br/> F:3 [9] 50/2 50/2 60/2 104/15 140/24 142/3 145/17 149/10 150/16<br/> face [1] 148/15<br/> fact [14] 16/9 38/24 45/23 56/7 90/17 107/1 109/3 109/9 109/11 123/3 128/18 139/6 143/14 147/4<br/> factor [1] 118/2<br/> factoring [1] 117/24<br/> facts [1] 132/5<br/> factual [1] 46/15<br/> fair [5] 41/5 96/22 114/7 128/7 147/10<br/> fairly [2] 83/19 135/12<br/> familiar [4] 21/7 65/7 95/12 129/19<br/> far [4] 59/17 69/13 89/14 130/11<br/> fast [1] 144/20<br/> favor [1] 18/2<br/> February [1] 72/11<br/> fee [1] 128/14<br/> feel [3] 67/19 119/7 126/6<br/> felt [3] 9/8 133/12 140/16<br/> few [19] 6/22 11/21 12/19 23/14 23/17 25/13 27/21 47/17 49/5 69/21 70/1 75/16 77/1 77/2 79/23 110/14 112/5 147/5 150/14<br/> fewer [3] 73/5 126/24 126/24<br/> field [1] 122/9<br/> Fifteen [2] 11/10 11/11<br/> figure [7] 30/1 56/18 64/2 64/10 130/8 139/13 141/7<br/> figured [1] 51/23<br/> figuring [1] 61/19<br/> file [3] 14/1 33/3 146/16<br/> filed [8] 5/19 6/21 30/8 46/11 78/7 79/20 123/15 151/8<br/> filing [10] 25/17 26/3 73/18 74/5 74/7 78/3 78/8 78/10 79/14 148/4<br/> filings [1] 82/1<br/> final [2] 81/21 144/9<br/> Finally [2] 9/22 135/9<br/> financial [6] 109/18 110/15 114/4 115/15 116/4 116/19<br/> financially [1] 109/14<br/> find [6] 9/7 46/7 109/1 125/23 127/6 149/1<br/> finding [3] 61/18 80/4 100/4<br/> finds [1] 35/8<br/> fine [3] 44/6 81/21 86/10<br/> finish [2] 131/3 131/13<br/> firm [1] 91/15<br/> first [45] 4/16 5/13 12/3 12/17 15/13 17/6 18/1 23/20 25/19 29/16 31/15 32/6 34/7 34/10 54/15 56/3 59/24 65/15 70/3 75/7 84/12 87/3 88/16 88/19 89/2 91/6 92/20 94/1 96/5 101/3 106/16 108/19 111/4 113/9</p> | <p>113/12 113/13 113/16 115/11 116/2 131/19 136/14 138/3 141/12 146/22 148/3<br/> fit [1] 54/9<br/> five [3] 11/3 40/20 99/1<br/> fixed [11] 14/14 14/17 14/20 15/1 47/21 51/12 52/21 126/12 136/23 144/2 149/15<br/> flat [1] 34/11<br/> flew [1] 41/16<br/> flipped [1] 74/10<br/> floating [1] 127/5<br/> flock [2] 120/23 121/7<br/> floodgates [1] 32/8<br/> flow [7] 10/9 10/19 53/4 59/7 62/21 84/18 140/21<br/> flowing [1] 112/18<br/> fluctuations [1] 115/5<br/> focus [1] 90/9<br/> focuses [1] 90/17<br/> focusing [1] 124/5<br/> fold [2] 62/16 92/1<br/> folks [6] 91/8 123/12 126/2 127/14 127/19 128/8<br/> follow [8] 5/17 10/20 18/24 46/24 52/6 80/13 110/13 111/3<br/> follow-up [2] 46/24 110/13<br/> following [5] 18/10 21/21 63/9 70/2 73/9<br/> follows [1] 28/15<br/> Foods [1] 88/4<br/> footnote [1] 97/15<br/> footnotes [1] 100/13<br/> force [1] 120/11<br/> forced [3] 50/9 98/19 127/13<br/> forecast [12] 71/14 71/16 72/11 72/17 72/22 73/6 73/14 91/7 93/12 137/17 137/22 137/24<br/> forecasted [10] 70/8 70/22 70/23 71/3 72/7 72/14 72/15 72/18 73/6 137/17<br/> forecasting [2] 70/5 71/2<br/> forecasts [6] 71/19 71/20 72/18 72/24 138/9 138/9<br/> forever [1] 131/6<br/> forgive [1] 66/16<br/> forgotten [1] 74/9<br/> form [1] 129/11<br/> forth [11] 18/12 18/16 18/17 19/17 19/19 19/20 68/7 68/14 81/12 112/11 142/18<br/> forthcoming [1] 125/19<br/> forward [12] 13/23 44/16 62/5 118/7 118/12 118/14 118/22 121/4 137/20 137/21 138/1 144/16<br/> Fossum [11] 1/12 2/5 2/12 2/22 4/18 55/3 79/23 96/1 98/5 103/5 146/5<br/> found [4] 9/9 30/3 100/6 143/1<br/> foundation [1] 64/19<br/> four [1] 98/24<br/> frame [1] 55/14<br/> franchise [1] 87/11<br/> frankly [1] 123/22<br/> free [5] 66/4 76/11 149/8 150/23 151/5<br/> Freedom [9] 87/3 87/4 87/13 89/23 96/6 96/9 96/17 96/20 96/23<br/> fresh [3] 55/15 55/23 56/2<br/> FROMUTH [20] 2/10 3/5 4/22 85/11 85/15 85/20 85/24 86/3 87/2 89/24 90/16 92/10 92/23 96/4 109/5 125/5 130/7 131/24 132/13 134/20<br/> Fromuth's [3] 4/9 45/24 46/9<br/> front [7] 10/1 16/5 27/4 27/24 29/17 38/14 104/12<br/> frustrate [1] 91/1<br/> fulfilled [1] 99/17<br/> fulfilling [1] 8/12<br/> full [12] 8/12 8/16 75/15 75/24 76/1 118/15 118/17 119/16 126/2 130/20 143/18 147/24<br/> fully [4] 110/1 144/5 147/24 149/12</p> |
|--|--|---|

|  |   |  |
|--|---|--|
| <b>F</b>   | 126/22 128/22<br>gorilla [1] 91/4<br>got [19] 29/16 32/6 42/23 46/13 58/6 61/2<br>61/16 80/14 112/5 121/3 125/15 127/21<br>131/4 131/5 132/10 133/9 133/9 134/3<br>134/22<br>gotten [1] 4/4<br>governor [1] 144/18<br>Granted [1] 67/11<br>great [4] 27/2 108/12 111/12 124/9<br>green [4] 12/4 54/8 55/19 56/19<br>grew [1] 126/9<br>Grid [1] 87/18<br>ground [2] 38/3 121/17<br>groundwork [1] 146/7<br>grow [1] 126/15<br>guaranteed [1] 127/18<br>gubernatorial [1] 91/13<br>guess [14] 19/12 20/11 49/9 53/21 54/4<br>58/21 61/11 68/1 82/12 84/3 103/15 111/3<br>112/12 119/14  | having [13] 6/10 7/15 17/14 23/17 24/1<br>66/23 68/24 69/7 78/9 100/3 109/1 110/14<br>128/13<br>he [8] 7/17 7/22 17/17 34/6 41/23 102/22<br>132/8 132/8<br>he's [3] 39/3 102/23 134/21<br>head [1] 29/19<br>hear [3] 23/21 94/3 103/19<br>heard [8] 6/22 33/9 41/7 87/22 108/18<br>110/9 135/13 148/19<br>hearing [11] 12/17 15/14 17/6 23/20 32/23<br>33/7 34/6 85/13 94/1 137/19 151/20<br>hearings [1] 79/18<br>held [1] 60/14<br>help [13] 12/20 18/14 19/2 20/21 53/4 53/6<br>59/6 67/6 74/24 82/2 102/17 122/12 149/12<br>helpful [3] 10/18 35/2 131/15<br>helping [1] 124/7<br>helps [4] 8/3 8/4 21/4 81/21<br>here [56] 6/3 11/21 13/8 29/19 29/24 30/15<br>30/20 36/2 36/18 40/18 41/6 42/20 44/15<br>44/16 46/1 49/10 56/18 59/3 60/13 61/21<br>74/1 82/1 85/18 87/23 88/13 91/24 94/1<br>96/14 97/22 100/18 101/11 105/3 108/19<br>112/13 115/8 116/3 116/8 117/4 121/17<br>122/10 126/21 127/21 129/4 130/5 132/3<br>132/10 133/15 133/22 134/13 135/9 135/20<br>139/2 141/19 145/22 150/2 151/8<br>here's [2] 34/21 37/2<br>herewith [2] 11/13 86/21<br>hesitate [1] 39/17<br>high [2] 20/5 88/3<br>higher [8] 17/14 29/8 63/13 63/18 65/1<br>109/6 113/20 117/18<br>highlighted [1] 7/3<br>him [2] 122/11 143/1<br>his [9] 4/5 5/15 90/1 90/2 90/11 102/22<br>114/17 132/12 143/2<br>historical [1] 33/5<br>hit [2] 72/21 73/3<br>hmm [1] 89/5<br>holiday [1] 26/24<br>home [2] 62/16 123/14<br>hope [1] 127/4<br>hoped [1] 126/16<br>hoping [1] 49/11<br>host [8] 90/23 92/6 127/13 128/9 128/14<br>128/19 128/24 129/3<br>hour [4] 70/24 117/11 128/14 130/4<br>hours [1] 78/5<br>households [2] 88/20 88/21<br>how [59] 8/11 10/8 11/22 12/22 14/8 18/22<br>24/10 30/20 31/18 31/18 31/21 34/24 41/23<br>42/8 53/7 55/13 56/17 57/1 58/13 58/16<br>58/17 59/22 61/19 62/4 62/11 62/13 63/1<br>65/13 66/22 66/22 66/22 67/8 67/12 67/22<br>69/8 72/4 73/10 74/18 79/13 81/5 83/4 83/6<br>84/16 89/24 94/16 94/21 95/9 115/16 118/8<br>119/1 121/2 122/16 122/16 123/15 126/20<br>133/5 141/5 141/8 141/8<br>how's [1] 68/22<br>however [10] 19/17 19/18 43/17 55/4<br>64/19 136/18 138/24 140/14 142/6 146/21<br>hybrid [1] 129/16 |
| <b>G</b>   | <b>H</b>  |  |
| gain [1] 92/2<br>gaming [12] 18/14 18/18 19/3 27/21 28/24<br>67/22 67/23 68/2 68/4 68/7 68/15 129/4<br>gave [1] 110/14<br>general [3] 38/7 39/17 79/14<br>generally [2] 21/9 114/2<br>generated [1] 78/12<br>generating [1] 99/14<br>generation [6] 113/12 113/18 135/5 135/8<br>150/5 150/8<br>generis [1] 132/14<br>geographically [1] 100/19<br>get [59] 4/12 4/15 6/3 20/11 27/17 30/1<br>30/16 30/20 31/5 31/20 32/5 36/10 41/6<br>41/23 42/14 42/23 43/2 43/3 46/1 50/16<br>51/3 53/7 55/18 57/16 57/18 57/23 57/24<br>59/4 59/12 61/14 61/21 62/18 62/20 71/9<br>72/10 73/4 73/8 74/13 75/6 75/11 75/12<br>77/9 80/21 81/2 82/7 82/10 82/15 82/17<br>83/3 83/20 83/22 108/17 113/19 115/21<br>121/5 122/3 126/21 133/15 145/1<br>get it [1] 46/1<br>gets [5] 52/1 52/2 55/2 71/5 71/7<br>getting [3] 43/3 43/11 134/19<br>give [9] 5/16 9/17 13/7 46/4 70/16 72/3<br>87/23 131/15 135/2<br>given [4] 12/18 28/11 123/6 138/19<br>gives [2] 8/8 34/20<br>glad [2] 74/10 142/24<br>go [76] 4/5 4/14 6/7 8/13 12/3 28/17 29/7<br>31/15 32/6 41/12 41/17 44/16 50/16 52/8<br>53/12 54/5 54/20 54/23 55/14 55/15 55/24<br>56/13 57/21 60/20 62/16 64/16 64/23 65/13<br>65/18 67/14 74/23 75/13 75/14 75/15 75/15<br>75/17 75/21 76/3 76/12 76/15 76/19 77/6<br>77/13 78/1 79/7 79/15 81/1 81/14 81/15<br>83/24 84/13 84/20 87/3 87/5 89/12 92/21<br>103/4 108/10 109/13 110/8 117/18 118/18<br>124/24 127/12 128/9 129/3 130/23 131/6<br>131/7 131/11 131/19 131/20 133/8 142/14<br>143/9 145/1<br>goal [2] 58/21 61/21<br>goes [12] 30/14 37/11 43/5 72/13 73/13<br>91/3 108/6 116/16 118/2 129/5 133/2 133/2<br>going [82] 9/9 17/24 18/12 18/16 19/15<br>19/16 27/19 27/20 29/12 32/19 32/23 35/12<br>35/13 38/4 41/7 41/18 41/22 44/23 51/8<br>51/13 54/10 58/12 58/18 60/23 62/1 62/15<br>64/3 64/11 64/14 67/1 67/18 68/21 69/2<br>69/12 70/10 72/1 74/18 76/5 78/3 78/7 82/9<br>83/17 83/22 83/23 84/11 84/13 84/17 84/19<br>89/19 90/4 105/4 110/1 112/20 114/23<br>118/14 120/3 120/11 121/4 121/16 121/18<br>121/21 123/7 123/18 125/1 132/3 133/8<br>134/13 134/14 134/18 134/19 135/20 137/6<br>137/23 137/24 138/6 138/7 140/5 141/12<br>141/23 144/19 144/19 144/19<br>going-forward [1] 118/14<br>gone [1] 54/2<br>good [37] 4/17 4/20 4/21 4/23 5/3 5/4 5/7<br>5/8 5/10 6/7 7/23 10/13 26/24 31/20 33/11<br>47/14 47/16 64/9 64/18 65/20 66/18 68/10<br>69/10 77/8 78/9 78/11 85/19 92/4 92/22<br>92/24 115/13 115/16 119/1 119/24 120/1 | had [42] 4/3 4/5 4/5 7/17 7/21 8/23 16/22<br>17/24 18/1 18/19 22/19 23/21 34/5 34/11<br>39/2 53/24 54/1 57/13 64/18 66/11 66/13<br>74/9 76/9 96/9 96/24 112/12 112/19 114/17<br>114/18 115/15 122/21 124/19 125/7 125/7<br>125/7 127/10 127/11 127/12 130/23 138/23<br>143/13 144/13<br>halfway [1] 133/22<br>Halifax [2] 96/11 97/3<br>Hall [4] 28/8 32/4 34/5 39/3<br>Hall's [5] 7/17 20/1 28/5 28/12 28/19<br>HAMPSHIRE [17] 1/1 1/4 1/6 1/12 4/19<br>87/10 87/24 88/17 89/3 91/12 97/20 98/10<br>111/16 114/12 115/20 117/14 129/15<br>hand [4] 44/15 44/17 53/8 124/7<br>handed [1] 99/2<br>handing [2] 11/4 98/5<br>handle [3] 56/17 64/18 119/1<br>happen [21] 10/6 13/23 16/19 16/20 18/15<br>23/7 23/8 23/11 23/15 31/23 32/1 32/9 58/2<br>58/24 63/3 82/4 107/6 124/22 129/14<br>144/19 144/20<br>happened [4] 52/19 78/20 144/3 144/4<br>happening [2] 122/17 142/7<br>happens [4] 13/22 14/4 61/24 62/23<br>happy [3] 97/24 130/4 144/14<br>hard [7] 4/13 61/18 68/13 118/8 121/20<br>125/21 133/17<br>hard-wired [1] 125/21<br>harkens [1] 127/8<br>harm [8] 60/7 60/18 61/19 124/4 135/18<br>135/22 150/17 151/3<br>harmful [6] 61/21 63/2 107/22 108/2 108/5<br>150/13<br>harness [1] 97/12<br>Harrington [10] 1/9 2/7 2/12 15/17 49/7<br>80/11 112/4 120/5 135/10 140/1<br>has [59] 10/12 21/22 25/17 28/15 32/16<br>34/17 35/19 41/22 43/20 43/21 43/24 44/1<br>56/9 58/22 65/6 79/4 81/22 83/18 84/16<br>91/19 96/23 99/14 103/17 104/23 104/24<br>108/8 108/12 108/14 109/3 109/18 109/23<br>109/24 110/17 110/24 115/23 116/20<br>116/22 118/4 118/6 123/8 124/6 124/6<br>124/8 125/9 127/8 133/7 133/9 133/9<br>134/20 140/22 141/7 141/11 143/12 143/15<br>144/24 145/5 148/7 148/12 148/18<br>hasn't [1] 46/11<br>hasten [2] 127/10 127/11<br>have [247]<br>haven't [6] 23/10 82/7 84/22 85/2 91/23<br>100/5 |  |
|  | <b>I</b>  |  |
|  | I'd [7] 48/22 96/4 103/19 130/3 131/18<br>131/21 148/16<br>I'll [6] 19/1 19/12 30/13 64/2 83/24 112/8<br>I'm [84] 4/5 5/21 14/7 15/22 18/10 20/11<br>21/21 21/21 27/18 27/19 27/20 28/13 28/16<br>30/2 30/4 31/6 31/16 37/19 38/4 41/6 44/7<br>45/14 46/8 46/12 50/1 50/9 52/6 53/6 53/6<br>56/18 58/17 59/12 60/2 61/18 62/18 63/15<br>64/11 65/3 65/7 65/8 65/9 65/21 70/4 70/14  |  |

|   |  |  |
|---|--|--|
| I | Indirectly [1] 88/18<br>individual [3] 22/6 22/10 55/12<br>individuals [1] 40/2<br>induce [1] 84/6<br>induced [3] 124/14 124/15 128/12<br>inducement [4] 63/22 64/15 90/24 108/17<br>industrial [1] 143/20<br>industry [8] 97/20 98/11 99/5 99/11 99/21<br>101/4 126/20 132/9<br>ineligible [2] 105/23 114/11<br>influx [1] 65/16<br>inform [1] 74/24<br>information [17] 33/4 67/2 78/7 79/20<br>86/12 89/18 108/24 114/2 123/3 123/8<br>123/8 123/15 123/20 137/10 141/1 142/1<br>143/18<br>informed [1] 50/4<br>initial [4] 13/19 55/18 124/13 146/21<br>initially [2] 77/9 79/16<br>injure [1] 90/19<br>innovative [2] 127/23 149/13<br>input [1] 31/11<br>insofar [1] 147/23<br>instance [12] 57/10 65/24 66/8 72/10 75/7<br>93/22 94/9 94/17 111/11 113/12 113/14<br>119/4<br>insurance [4] 15/19 16/4 16/14 16/18<br>intended [1] 19/5<br>intent [2] 57/24 128/23<br>intention [1] 124/13<br>interest [5] 43/20 46/20 60/11 145/14<br>147/18<br>interested [2] 44/11 44/13<br>interesting [1] 89/18<br>interests [1] 147/17<br>interim [3] 74/24 78/8 141/18<br>internal [1] 114/6<br>Interrogatories [6] 2/7 2/8 2/8 2/12 2/13<br>2/13<br>interrupting [1] 109/7<br>interruption [1] 32/13<br>intervene [2] 73/16 96/10<br>into [39] 4/15 9/3 28/1 31/11 35/9 38/3<br>51/4 55/24 56/14 60/20 64/5 71/7 72/13<br>73/13 75/11 79/15 89/19 91/16 92/1 101/13<br>108/6 108/10 108/24 110/8 110/23 111/2<br>111/15 116/16 116/18 118/2 120/11 121/11<br>121/14 124/21 128/5 128/23 141/15 143/3<br>144/7<br>introduced [1] 143/12<br>introduction [3] 107/7 115/1 150/13<br>introductory [12] 87/2 94/4 94/7 94/18<br>94/23 95/2 95/4 95/6 95/8 141/20 141/24<br>142/2<br>investment [4] 91/15 116/22 125/8 126/6<br>investors [3] 110/11 125/7 126/3<br>involved [4] 75/7 81/5 117/5 126/5<br>irreversible [1] 140/15<br>is [529]<br>isn't [21] 8/20 28/10 30/17 33/16 35/11<br>35/11 35/20 36/15 40/10 41/22 50/22 54/11<br>69/11 79/8 83/13 89/22 97/18 107/1 108/19<br>120/16 134/23<br>ISO [2] 89/7 113/21<br>ISO-New [1] 89/7<br>isolated [1] 111/11<br>issue [7] 16/21 18/1 132/4 135/11 145/18<br>147/13 151/18<br>issued [1] 45/10<br>issues [9] 17/24 45/11 46/15 90/9 100/11<br>132/16 144/10 145/13 148/2<br>it [336]<br>it's [127] 4/13 7/10 7/16 7/23 8/20 10/9<br>10/9 10/13 10/20 12/16 13/14 14/18 16/11<br>18/17 19/5 19/15 19/16 25/16 25/23 26/14 | 26/16 27/9 28/5 28/7 30/22 31/18 32/1 32/2<br>34/2 34/15 34/15 34/22 35/22 35/23 36/23<br>37/14 40/9 43/6 44/17 45/5 45/24 48/17<br>56/23 56/24 58/12 59/2 59/3 60/11 60/22<br>61/13 63/21 66/12 66/23 68/8 68/10 68/12<br>69/15 70/8 70/17 70/18 70/24 71/18 74/18<br>76/4 76/4 78/17 81/13 82/1 82/2 84/19<br>86/10 86/11 86/11 87/17 87/17 87/21 89/17<br>103/1 107/13 108/4 108/4 109/10 109/11<br>110/20 110/20 113/4 114/1 115/9 117/1<br>118/8 121/8 121/20 123/3 124/3 125/20<br>127/23 127/24 128/17 128/18 129/3 129/5<br>130/24 131/17 131/18 132/4 132/17 134/1<br>135/2 135/12 136/21 136/24 137/1 139/11<br>139/12 139/22 140/5 140/5 140/10 140/11<br>140/20 141/3 141/10 141/17 143/2 143/12<br>145/3 145/5<br>items [1] 87/20<br>its [25] 14/14 14/17 15/1 49/17 72/7 72/16<br>74/13 77/22 92/8 95/11 113/12 135/4 135/5<br>145/21 146/12 146/19 146/21 146/23 147/2<br>148/15 149/23 150/4 150/8 150/11 150/20<br>itself [5] 14/18 33/7 117/20 124/8 146/7<br>IV [5] 46/17 135/2 135/2 150/2 150/3 |
|   | J  |  |
|   | James [1] 1/14<br>January [16] 28/17 29/21 29/22 30/6<br>55/16 55/24 56/1 65/6 72/13 73/5 73/9<br>73/13 73/21 79/19 95/17 144/20<br>January 1 [2] 30/6 144/20<br>January 1st [13] 28/17 29/21 29/22 55/16<br>55/24 56/1 65/6 72/13 73/5 73/9 73/13<br>73/21 79/19<br>Jim [1] 4/21<br>job [2] 39/19 40/3<br>Joey [3] 1/15 4/24 47/13<br>joint [1] 96/10<br>Jon [1] 5/1<br>Jonathan [1] 1/16<br>July [3] 28/18 79/21 95/17<br>July 1st [2] 28/18 79/21<br>jump [1] 29/6<br>jumping [1] 112/8<br>June [2] 46/2 46/15<br>jurisdiction [1] 104/20<br>just [95] 5/16 7/10 7/16 8/23 9/4 9/9 10/13<br>11/1 11/3 11/16 12/16 12/19 12/21 14/18<br>15/23 19/3 20/17 22/18 23/6 27/13 27/19<br>29/18 30/15 30/23 30/24 31/6 31/19 33/16<br>34/2 34/22 35/6 35/23 36/20 37/22 38/8<br>38/17 46/8 46/12 46/13 47/2 47/17 51/3<br>53/4 53/7 53/7 59/12 60/1 60/17 62/16 63/9<br>65/18 68/5 68/8 69/10 70/1 72/3 72/3 72/6<br>72/22 73/24 74/9 80/12 80/13 81/5 81/13<br>82/4 82/9 83/16 83/24 87/3 88/9 89/5 90/1<br>90/20 91/15 99/18 106/23 108/7 108/10<br>109/2 110/14 112/20 116/5 120/5 130/4<br>132/5 133/4 134/4 136/24 141/24 145/12<br>147/5 148/14 149/6 151/4<br>justify [1] 122/7<br>juxtaposition [1] 92/5  |  |
|   | K  |  |
|   | keep [8] 15/19 21/1 27/8 31/22 76/5 81/5<br>109/2 132/3<br>key [7] 99/4 99/10 99/20 121/7 132/16<br>135/9 135/12<br>kicks [1] 78/14<br>kilowatt [3] 78/5 117/11 128/14<br>kilowatt-hour [2] 117/11 128/14<br>kilowatt-hours [1] 78/5<br>kind [9] 6/3 16/18 41/18 58/16 67/12 68/24<br>88/2 114/23 132/6<br>know [93] 5/17 6/2 7/23 8/20 12/17 16/16  |  |

|  |   |   |
|--|---|---|
| <p><b>K</b></p> <p>know... [87] 20/23 22/15 23/5 23/8 23/10 27/17 30/19 31/20 34/15 34/16 34/16 34/17 34/24 40/19 40/19 41/5 41/13 45/9 48/22 51/1 53/5 54/3 56/23 57/2 57/4 57/4 59/19 60/12 60/23 61/3 61/5 62/4 62/5 62/6 62/10 62/11 62/12 62/14 63/24 64/4 64/7 66/1 66/4 66/5 66/23 67/10 67/15 68/1 68/6 68/9 68/18 68/22 68/24 69/2 69/7 69/9 76/4 78/18 81/24 82/4 90/2 92/17 95/7 99/14 108/21 109/3 114/5 115/23 119/2 121/21 122/17 129/3 129/4 129/14 130/12 131/1 131/2 132/12 133/19 134/21 139/12 141/4 141/11 141/14 141/23 142/1 145/18</p> <p>knowing [2] 64/3 69/6</p> <p>knowledge [5] 86/12 105/12 123/8 126/20 145/2</p> <p>knows [1] 62/13</p>   | <p>limited [1] 136/1</p> <p>limiting [1] 77/12</p> <p>line [12] 28/13 28/14 70/21 99/1 100/8 100/8 100/13 100/16 100/18 115/2 134/10 147/8</p> <p>Liner [1] 88/3</p> <p>lines [3] 16/3 27/19 100/14</p> <p>little [14] 4/13 53/5 56/16 59/13 67/6 72/4 89/12 100/3 100/4 112/9 112/21 115/3 144/8 144/22</p> <p>live [1] 41/9</p> <p>load [3] 140/2 140/3 146/14</p> <p>located [1] 87/21</p> <p>logic [2] 75/24 77/7</p> <p>Logistics [6] 87/4 87/5 89/23 96/7 96/9 96/17</p> <p>long [21] 24/10 57/1 69/8 75/14 79/13 94/16 94/22 104/10 124/6 133/13 133/14 133/21 139/15 140/9 140/13 140/14 140/19 141/8 141/8 141/15 151/13</p> <p>long-term [9] 104/10 133/13 133/14 133/21 139/15 140/9 140/13 140/14 140/19</p> <p>longer [6] 22/14 23/22 67/11 77/10 115/6 127/23</p> <p>look [27] 7/24 9/10 9/14 11/1 11/23 13/8 28/9 44/9 45/3 48/11 57/22 61/11 61/12 68/6 68/12 68/24 70/12 70/21 72/7 73/12 79/5 83/11 86/9 115/8 116/23 118/22 118/22</p> <p>looked [5] 7/22 57/4 66/11 71/15 117/15</p> <p>looking [17] 13/12 29/21 29/22 31/16 44/16 50/2 56/1 60/2 62/5 67/3 69/24 72/22 84/9 114/7 115/8 122/14 128/24</p> <p>looks [1] 55/4</p> <p>loop [1] 82/4</p> <p>loophole [1] 135/24</p> <p>lose [3] 61/1 84/8 121/24</p> <p>lost [2] 22/4 55/17</p> <p>lot [14] 18/12 19/18 29/12 69/3 78/7 84/21 90/8 112/10 115/12 115/15 121/13 124/23 130/2 134/14</p> <p>lots [5] 10/14 16/16 16/16 31/24 32/9</p> <p>low [2] 93/21 123/23</p> <p>lower [17] 32/5 41/23 42/3 43/3 48/4 48/18 49/21 57/16 61/17 84/2 84/4 84/5 84/13 101/13 112/21 120/19 122/3</p> <p>lowering [4] 21/22 22/8 52/8 52/13</p> <p>loyal [5] 41/15 41/22 42/4 42/6 42/9</p> <p>luck [1] 42/4</p> <p>lure [3] 90/24 91/24 133/6</p> | <p>many [14] 21/13 31/18 45/10 46/15 52/17 67/12 83/4 83/6 91/16 91/16 91/21 111/18 127/11 128/18</p> <p>March [2] 72/12 72/15</p> <p>margin [8] 58/14 61/6 110/5 110/11 117/24 118/5 118/10 122/7</p> <p>marginal [38] 13/12 13/14 13/18 14/18 22/12 51/4 51/10 51/11 51/13 55/5 58/15 61/2 70/5 71/14 71/15 72/7 72/14 72/15 72/19 78/6 82/13 101/23 102/2 102/14 102/19 103/10 103/13 103/15 104/1 104/2 109/24 112/15 118/14 118/15 118/16 119/15 136/16 146/13</p> <p>mark [2] 10/16 11/9</p> <p>marked [3] 11/13 86/16 86/21</p> <p>market [63] 14/21 15/9 16/19 21/2 22/13 22/15 29/12 43/20 44/5 44/11 44/12 44/16 48/10 54/2 58/15 61/4 61/14 61/17 63/2 64/5 64/20 64/21 67/11 69/1 69/17 76/6 87/14 87/17 88/11 88/16 89/2 91/4 107/5 107/6 107/21 108/17 109/13 110/3 110/22 110/23 111/2 113/16 113/21 115/4 116/9 116/18 117/2 118/12 118/23 121/11 123/21 123/22 124/4 124/6 124/21 126/2 126/8 137/20 137/22 139/16 141/3 143/19 144/16</p> <p>market-based [1] 61/17</p> <p>marketers [4] 60/24 117/17 117/21 124/22</p> <p>marketing [15] 38/7 38/10 38/18 38/19 40/21 40/21 41/19 74/15 108/20 108/24 112/23 113/2 134/11 137/3 137/13</p> <p>marketplace [19] 22/9 67/18 68/9 90/19 91/2 101/7 101/9 101/13 108/14 116/19 117/3 117/16 118/8 120/17 121/15 124/18 124/19 150/20 151/5</p> <p>markets [14] 60/4 60/8 60/19 60/20 61/11 61/20 97/13 99/4 121/8 135/14 135/18 135/23 149/13 150/17</p> <p>marketwise [1] 32/1</p> <p>marking [1] 10/23</p> <p>match [8] 7/11 7/17 8/2 18/5 18/6 18/19 20/17 58/18</p> <p>matched [1] 18/3</p> <p>matches [1] 58/17</p> <p>materials [2] 38/19 113/2</p> <p>matter [1] 45/23</p> <p>matters [3] 4/12 4/15 130/15</p> <p>Matthew [2] 1/12 4/17</p> <p>matured [1] 124/6</p> <p>may [28] 5/14 10/15 22/5 29/6 48/19 56/7 56/7 60/5 77/7 79/20 85/22 98/3 109/13 109/14 110/18 122/10 123/4 131/24 133/19 133/19 133/20 135/14 135/16 143/19 143/20 144/24 148/24 149/5</p> <p>maybe [11] 10/3 55/18 59/2 67/13 72/2 72/4 76/23 80/13 122/12 133/17 135/13</p> <p>me [49] 4/13 4/22 16/3 26/7 27/17 29/17 29/18 32/7 33/16 34/2 36/6 38/8 38/15 39/20 41/7 43/19 45/8 46/1 46/3 46/5 47/1 49/9 49/9 53/4 55/17 61/20 63/12 64/12 64/16 65/18 66/16 67/6 67/22 70/11 72/4 75/5 80/3 80/10 87/3 92/19 102/17 102/21 102/23 107/11 118/8 122/12 125/15 128/21 135/16</p> <p>mean [20] 23/7 31/1 35/6 35/7 40/4 54/17 54/20 56/13 56/22 78/17 78/21 81/23 82/2 83/4 83/8 92/18 105/21 113/14 127/11 134/4</p> <p>meaning [2] 33/23 41/2</p> <p>meaningful [1] 150/18</p> <p>means [17] 32/21 32/22 51/20 53/23 54/11 54/14 60/5 60/10 100/21 105/8 114/8 114/15 135/15 135/20 145/16 147/10 149/16</p> <p>meant [1] 115/12</p> <p>measure [5] 66/22 121/20 122/16 127/18</p> |
| <p><b>L</b></p> <p>labor [1] 110/6</p> <p>lack [1] 77/22</p> <p>lag [1] 144/17</p> <p>laid [1] 146/7</p> <p>lapsed [1] 123/2</p> <p>large [7] 52/20 67/9 109/12 127/3 134/13 143/20 144/2</p> <p>largely [3] 128/9 128/17 140/2</p> <p>last [15] 4/3 45/8 80/4 100/8 100/13 100/13 100/16 106/17 131/20 132/22 137/19 139/18 143/11 144/5 150/1</p> <p>lastly [1] 142/2</p> <p>late [2] 131/1 131/12</p> <p>later [1] 7/20</p> <p>law [12] 21/11 105/7 105/12 105/15 132/6 134/7 135/7 135/13 143/24 144/1 148/18 149/3</p> <p>laws [1] 134/24</p> <p>LCR [1] 1/23</p> <p>Leader [1] 88/4</p> <p>leads [1] 64/1</p> <p>leash [3] 30/19 31/22 132/11</p> <p>least [17] 7/14 13/1 13/16 33/2 65/15 75/22 77/17 78/21 80/19 80/20 81/11 84/15 103/18 111/7 114/13 120/21 135/13</p> <p>leave [17] 15/18 16/11 28/18 28/19 50/15 61/22 63/22 64/16 75/12 76/11 76/18 77/2 124/24 128/8 133/8 141/7 150/23</p> <p>Lee [3] 1/15 4/24 47/13</p> <p>left [15] 4/14 9/2 28/24 42/3 52/20 53/8 54/5 56/8 56/8 57/12 83/5 84/12 90/9 126/12 126/24</p> <p>left-hand [1] 53/8</p> <p>legislature [3] 129/18 144/18 149/10</p> <p>length [3] 17/3 34/6 147/14</p> <p>lengthy [1] 39/2</p> <p>less [5] 51/5 64/14 75/18 114/18 119/9</p> <p>let [13] 27/17 29/18 33/16 38/8 46/1 49/9 49/9 64/12 65/18 67/22 70/11 87/2 135/16</p> <p>let's [12] 4/16 8/18 26/22 38/6 41/11 73/8 81/13 85/9 85/10 109/22 115/18 131/7</p> <p>letter [2] 101/17 101/19</p> <p>letters [1] 82/1</p> <p>level [3] 107/22 120/11 122/9</p> <p>levels [2] 73/6 120/12</p> <p>life [1] 50/22</p> <p>light [2] 16/9 16/9</p> <p>like [25] 5/15 10/11 29/5 30/19 31/12 33/24 34/20 39/17 40/24 41/3 42/10 43/23 66/10 78/24 91/21 96/4 98/1 103/19 117/5 119/14 125/6 126/3 130/3 131/19 148/16</p> <p>liked [1] 143/1</p> <p>likely [5] 16/11 23/3 63/17 64/21 84/19</p> <p>limit [5] 8/6 21/20 23/23 80/6 131/14</p> | <p><b>M</b></p> <p>madam [8] 5/14 10/24 46/22 86/15 89/21 92/9 100/3 130/3</p> <p>made [10] 18/23 25/17 65/20 65/21 77/23 84/11 114/20 118/13 143/18 148/14</p> <p>magic [1] 56/23</p> <p>mailing [1] 137/8</p> <p>main [2] 7/9 100/8</p> <p>maintain [1] 120/13</p> <p>major [2] 112/16 121/6</p> <p>make [34] 19/4 30/20 31/4 39/17 41/6 41/11 46/13 50/22 63/10 74/5 74/22 77/19 77/22 80/14 83/7 84/11 93/4 93/16 105/3 112/20 116/9 116/21 121/18 122/4 122/5 123/11 128/3 133/1 133/3 138/20 140/22 142/1 142/7 142/9</p> <p>makes [2] 30/23 117/3</p> <p>making [8] 75/1 83/22 108/4 108/6 121/14 130/20 137/21 138/1</p> <p>management [1] 93/5</p> <p>managing [3] 88/5 96/6 96/17</p> <p>Manchester [2] 41/9 88/4</p> <p>mandatory [1] 134/2</p> <p>manner [3] 70/10 150/5 150/9</p>  |   |

|  |  |  |
|--|--|--|
| <p><b>M</b></p> <p>measure... [1] 143/8<br/> measurement [1] 116/6<br/> mechanical [1] 70/1<br/> mechanism [2] 116/24 128/7<br/> media [3] 108/24 121/6 137/9<br/> meet [4] 26/3 26/8 80/20 101/6<br/> meets [1] 26/14<br/> Megawatt [1] 70/24<br/> Megawatt-Hour [1] 70/24<br/> memorized [1] 46/13<br/> memory [1] 73/24<br/> mention [2] 23/21 87/22<br/> mentioned [7] 7/18 18/19 20/20 23/21<br/> 45/24 66/14 129/9<br/> merely [3] 108/7 110/13 110/22<br/> Merrimack [2] 70/22 113/20<br/> met [3] 42/6 76/24 127/16<br/> method [1] 119/15<br/> methods [1] 38/1<br/> metric [1] 126/5<br/> metrics [1] 122/17<br/> Michael [1] 1/9<br/> mid [2] 79/19 87/5<br/> mid-year [1] 79/19<br/> middle [2] 79/20 112/10<br/> middleman [1] 88/3<br/> might [14] 10/14 10/18 18/16 18/16 22/5<br/> 28/23 28/24 40/15 68/6 68/7 74/20 106/12<br/> 124/24 147/23<br/> migrate [3] 124/12 143/11 148/24<br/> migrated [6] 45/4 45/6 49/15 100/23<br/> 127/15 128/4<br/> migrating [3] 49/13 91/9 132/19<br/> migration [11] 52/11 69/13 122/22 123/17<br/> 124/23 126/11 139/22 139/23 139/23 140/4<br/> 148/24<br/> million [1] 129/23<br/> mind [5] 27/8 90/2 124/11 125/11 134/21<br/> minded [1] 124/19<br/> mindfulness [1] 126/23<br/> mini [1] 117/5<br/> mini-resumé [1] 117/5<br/> minimize [3] 60/7 135/17 135/22<br/> minimized [1] 50/4<br/> minor [1] 147/9<br/> minutes [3] 85/10 110/14 131/14<br/> Miranda [10] 1/15 2/7 2/11 2/19 4/24<br/> 47/11 47/13 92/21 131/22 136/5<br/> mischaracterizes [1] 102/22<br/> missed [1] 80/2<br/> missing [2] 113/4 130/12<br/> misunderstanding [1] 76/23<br/> misuse [1] 133/20<br/> mitigate [10] 8/3 8/4 20/21 45/3 49/12<br/> 60/8 82/2 135/18 135/23 139/22<br/> model [1] 127/8<br/> modifications [1] 77/23<br/> modified [1] 31/21<br/> modify [2] 33/3 77/20<br/> modifying [1] 137/4<br/> moment [2] 27/22 129/9<br/> money [1] 111/5<br/> month [45] 7/6 7/8 8/1 8/10 8/13 8/13 8/15<br/> 8/24 9/4 10/7 11/20 12/4 12/5 17/8 17/12<br/> 17/18 18/2 18/6 53/20 53/21 53/22 55/19<br/> 56/5 57/2 66/17 68/17 73/12 74/11 75/16<br/> 77/3 77/8 78/8 78/13 79/17 80/7 83/14 93/9<br/> 93/20 108/23 145/20 145/24 146/1 146/3<br/> 147/15 147/19<br/> monthly [6] 13/13 13/13 55/5 71/15 72/6<br/> 78/4<br/> months [87] 7/15 7/16 11/22 11/23 11/24<br/> 13/2 13/15 16/13 17/22 18/9 21/20 21/24</p> | <p>26/15 26/16 28/16 33/2 54/21 54/22 56/20<br/> 56/21 56/22 56/22 56/24 57/4 57/15 57/15<br/> 57/15 57/17 62/9 64/2 64/10 65/20 65/21<br/> 65/23 66/2 66/6 66/9 66/9 67/14 69/4 71/17<br/> 72/15 72/24 73/5 73/20 74/20 74/21 75/8<br/> 75/15 75/16 75/18 75/19 75/19 75/22 75/24<br/> 76/1 76/22 77/1 77/2 77/5 77/18 77/20<br/> 78/16 78/21 78/24 80/17 80/19 80/20 81/1<br/> 81/2 81/6 81/8 81/8 81/11 81/13 84/8 84/12<br/> 123/24 124/2 139/4 139/5 140/11 140/12<br/> 147/5 147/22 150/14 151/9<br/> more [43] 8/9 8/10 13/15 17/18 36/6 43/22<br/> 46/1 48/19 51/5 55/6 64/4 64/4 64/5 67/6<br/> 69/22 71/19 72/4 72/19 72/23 73/17 75/14<br/> 75/21 77/14 78/24 82/8 84/14 84/19 91/12<br/> 100/3 104/15 112/9 115/10 119/12 123/18<br/> 124/20 124/20 134/24 144/8 146/9 147/16<br/> 147/20 147/21 148/9<br/> moreover [3] 104/7 112/22 113/10<br/> most [10] 23/3 64/21 83/21 93/7 97/19<br/> 98/9 101/3 122/23 147/6 148/19<br/> motion [5] 45/23 148/4 148/6 148/7<br/> 148/10<br/> motivation [4] 116/13 116/15 117/2 117/2<br/> motivations [1] 117/1<br/> motive [1] 111/5<br/> mouth [1] 63/12<br/> move [9] 18/17 29/3 38/4 68/15 90/4 90/4<br/> 128/13 128/23 144/16<br/> movement [6] 67/4 67/15 67/17 68/13<br/> 68/14 129/16<br/> movements [1] 16/19<br/> moving [3] 19/16 68/7 80/13<br/> MPEU [2] 87/16 87/23<br/> MPEUs [2] 87/14 89/23<br/> Mr [53] 2/5 2/6 2/11 2/12 2/18 2/22 4/5 4/9<br/> 5/11 5/15 6/20 7/17 9/7 9/22 10/23 12/16<br/> 16/2 20/1 21/5 23/20 25/16 26/22 26/23<br/> 27/17 28/5 28/8 28/19 32/4 38/17 39/2<br/> 45/20 45/24 46/9 49/9 55/3 69/24 75/5<br/> 79/22 85/15 85/16 86/3 89/11 89/24 95/24<br/> 103/5 109/5 122/10 130/1 131/21 132/7<br/> 144/24 146/4 148/14<br/> Mr. [22] 4/9 4/22 6/2 6/12 28/12 34/5 47/15<br/> 63/10 85/9 85/11 87/2 90/16 92/10 92/23<br/> 96/4 96/13 114/12 125/5 130/7 131/24<br/> 132/13 134/20<br/> Mr. Fromuth [12] 4/22 85/11 87/2 90/16<br/> 92/10 92/23 96/4 125/5 130/7 131/24<br/> 132/13 134/20<br/> Mr. Fromuth's [1] 4/9<br/> Mr. Hall [1] 34/5<br/> Mr. Hall's [1] 28/12<br/> Mr. Mullen [6] 6/2 6/12 47/15 63/10 85/9<br/> 114/12<br/> Mr. Rodier's [1] 96/13<br/> Ms [9] 2/5 2/6 2/7 2/11 2/19 2/20 2/21 85/5<br/> 145/8<br/> Ms. [8] 25/12 47/11 92/21 111/22 111/24<br/> 131/22 136/5 150/14<br/> Ms. Amidon [1] 111/24<br/> Ms. Chamberlin [3] 25/12 111/22 150/14<br/> Ms. Miranda [4] 47/11 92/21 131/22 136/5<br/> much [15] 42/3 43/17 90/22 106/8 107/10<br/> 108/23 109/6 112/18 115/10 116/24 119/5<br/> 119/12 132/2 141/5 142/1<br/> MULLEN [25] 2/4 4/5 4/9 5/15 6/2 6/9 6/12<br/> 6/17 6/20 9/7 9/22 12/16 21/5 23/20 25/16<br/> 26/23 27/17 38/17 47/15 49/9 63/10 69/24<br/> 85/9 114/12 122/10<br/> Mullen's [1] 5/12<br/> multi [1] 33/16<br/> multiple [1] 148/8<br/> must [15] 7/13 12/24 33/21 34/19 35/3<br/> 36/3 36/19 37/4 87/20 108/15 110/8 113/10</p> | <p>117/21 134/1 136/12<br/> my [49] 5/1 7/2 7/4 7/7 7/21 8/21 9/4 19/1<br/> 22/4 28/7 28/10 29/17 29/19 30/14 30/17<br/> 42/15 43/19 45/8 45/23 53/6 58/11 63/20<br/> 64/23 68/1 73/24 90/17 91/7 91/15 91/20<br/> 92/12 93/14 95/18 98/8 107/9 107/13<br/> 108/22 114/1 114/1 122/5 122/6 123/7<br/> 123/19 125/17 126/1 127/1 127/20 132/3<br/> 133/3 151/17<br/> myriad [1] 145/21<br/> myself [1] 126/3</p> <p><b>N</b></p> <p>nature [2] 40/3 140/5<br/> near [1] 99/23<br/> necessarily [4] 18/18 31/2 37/5 67/23<br/> necessary [2] 30/12 135/5<br/> need [9] 18/23 36/8 46/16 66/16 83/8<br/> 86/24 90/5 121/4 142/1<br/> needed [1] 9/8<br/> needs [3] 50/20 144/9 149/22<br/> negative [7] 66/23 68/3 124/1 139/10<br/> 139/19 139/20 140/6<br/> neighbor [1] 43/3<br/> NEPOOL [3] 89/7 89/10 89/24<br/> net [2] 132/24 133/10<br/> Nevertheless [1] 16/1<br/> new [43] 1/1 1/4 1/6 1/12 4/18 13/4 13/21<br/> 39/16 41/23 57/3 60/9 61/23 62/20 65/16<br/> 72/18 72/18 75/23 78/18 87/9 87/14 87/24<br/> 88/17 89/3 89/7 91/12 92/8 97/20 98/10<br/> 107/20 107/20 108/1 111/15 114/12 115/20<br/> 117/13 121/12 121/17 127/23 129/15 141/2<br/> 144/17 144/18 147/11<br/> newcomer [1] 88/11<br/> newer [1] 101/13<br/> next [6] 41/9 43/19 53/20 85/15 101/16<br/> 102/5<br/> nine [3] 74/11 74/20 74/21<br/> no [83] 1/23 2/3 2/17 3/3 3/3 6/8 9/15 11/7<br/> 14/15 20/16 23/14 23/17 23/19 28/9 28/24<br/> 30/22 34/12 38/21 38/23 39/13 44/7 46/8<br/> 46/21 46/21 47/2 50/13 51/23 52/12 54/10<br/> 54/14 54/20 54/21 56/9 56/23 56/23 62/1<br/> 67/11 70/16 71/13 71/22 77/3 77/10 79/24<br/> 83/18 84/14 85/7 86/10 87/10 94/3 94/12<br/> 95/22 96/21 98/20 100/7 102/4 102/16<br/> 103/19 106/6 106/13 107/24 108/3 111/18<br/> 111/23 115/6 123/8 125/18 127/23 129/23<br/> 129/24 130/11 130/13 130/17 130/21<br/> 130/22 137/7 139/23 140/3 140/12 150/22<br/> 150/24 151/1 151/3 151/15<br/> nobody [7] 50/10 52/24 56/4 56/5 58/19<br/> 114/12 133/2<br/> noes [1] 12/1<br/> non [27] 14/22 26/22 33/12 34/2 34/7<br/> 34/13 35/11 35/23 37/7 49/13 61/16 66/8<br/> 70/7 70/23 92/20 114/21 115/19 119/2<br/> 128/17 131/19 134/5 134/9 136/12 136/19<br/> 138/24 139/7 150/21<br/> non-competitive [1] 61/16<br/> non-cost [1] 128/17<br/> non-discriminatory [2] 136/12 138/24<br/> non-energy [1] 119/2<br/> non-migrating [1] 49/13<br/> non-operating [14] 14/22 33/12 34/2 34/7<br/> 34/13 35/11 35/23 37/7 70/7 70/23 134/5<br/> 134/9 136/19 150/21<br/> non-PSNH [1] 114/21<br/> non-public [1] 115/19<br/> non-residential [1] 66/8<br/> non-settling [3] 26/22 92/20 131/19<br/> none [4] 89/15 110/9 137/5 148/9<br/> nonetheless [1] 113/22<br/> nor [1] 121/10</p> |
|--|--|--|

|  |   |   |
|--|---|---|
| <p><b>N</b></p> <p>normalized [1] 128/15<br/> normally [1] 55/4<br/> North [2] 41/11 41/15<br/> not [175]<br/> note [2] 143/7 149/24<br/> noted [2] 148/6 149/11<br/> notes [1] 29/18<br/> nothing [15] 11/6 27/12 34/17 34/18 66/11<br/> 80/5 111/19 112/1 130/14 133/9 133/20<br/> 134/10 134/15 134/17 151/16<br/> notice [2] 11/6 33/8<br/> notification [1] 123/11<br/> notion [2] 91/8 91/24<br/> Notwithstanding [1] 60/3<br/> November [1] 1/4<br/> now [86] 14/7 15/23 16/21 17/24 19/8<br/> 20/20 21/2 21/5 23/2 23/8 29/14 29/23 30/2<br/> 30/9 31/14 32/16 32/20 36/15 39/16 40/4<br/> 40/7 40/20 41/18 45/8 50/8 53/15 55/17<br/> 56/17 58/10 58/17 61/4 61/16 62/19 65/1<br/> 65/4 65/6 69/3 69/6 74/21 74/21 76/8 76/14<br/> 77/13 80/3 81/21 83/6 84/14 88/9 89/5<br/> 89/20 91/6 95/19 97/10 98/18 98/24 101/2<br/> 104/12 104/17 106/16 107/14 114/14<br/> 114/17 115/10 117/9 117/20 118/16 121/9<br/> 123/18 125/15 127/21 129/24 131/11<br/> 132/10 132/16 132/22 133/12 133/22 137/6<br/> 139/13 139/14 140/24 143/17 144/24 145/2<br/> 148/11 148/13<br/> number [21] 8/14 42/19 46/2 46/4 46/6<br/> 46/14 56/23 56/24 58/12 58/18 67/2 67/9<br/> 73/20 78/5 83/23 87/24 99/15 117/6 118/4<br/> 122/21 127/1<br/> numbered [2] 97/11 105/6<br/> numbers [4] 34/15 71/3 83/4 100/8<br/> numerical [1] 122/19</p> | <p>Office [2] 1/18 142/22<br/> oh [6] 46/10 76/13 89/6 103/3 113/7 132/1<br/> okay [105] 6/22 12/3 15/22 17/21 27/10<br/> 27/19 27/24 28/8 28/14 28/23 29/11 29/23<br/> 30/12 30/23 31/14 32/10 33/8 33/11 34/2<br/> 35/2 36/6 36/15 36/18 37/2 37/13 37/15<br/> 38/3 38/6 38/24 39/11 39/14 40/13 41/2<br/> 41/5 41/14 41/22 42/2 42/12 42/17 44/8<br/> 44/14 45/17 46/10 47/4 47/6 48/17 48/24<br/> 50/1 50/20 51/7 51/11 51/16 51/20 52/10<br/> 52/13 53/4 53/15 53/20 54/10 54/17 55/10<br/> 55/23 56/16 59/2 59/10 60/13 60/17 62/18<br/> 63/4 63/16 65/18 66/14 67/22 68/4 69/6<br/> 69/19 75/16 81/21 82/20 82/24 83/3 83/14<br/> 85/4 86/11 86/15 86/23 87/13 88/5 88/9<br/> 88/22 89/5 90/7 92/14 101/16 103/21<br/> 110/13 112/20 114/7 114/23 115/12 117/9<br/> 119/20 120/3 134/7 134/15<br/> on [241]<br/> once [8] 24/5 75/11 76/2 76/24 77/4 80/20<br/> 81/17 95/20<br/> one [81] 7/4 7/10 10/3 13/13 18/15 20/6<br/> 21/13 22/18 22/19 26/14 29/16 31/14 34/10<br/> 34/23 36/6 37/1 38/3 38/8 39/23 41/15<br/> 41/22 42/4 42/5 44/1 44/15 50/22 51/1 51/2<br/> 51/4 52/15 57/7 57/14 57/15 57/15 57/17<br/> 57/20 60/1 60/22 65/9 66/9 66/21 67/5 68/6<br/> 68/11 68/21 69/5 69/15 70/17 74/10 81/21<br/> 83/10 87/13 88/9 88/22 91/17 98/17 98/24<br/> 101/8 101/21 106/4 111/7 112/16 112/17<br/> 116/3 116/8 117/21 120/22 121/12 122/12<br/> 124/21 128/8 132/16 133/10 133/22 135/9<br/> 139/5 144/21 145/18 147/13 148/14 151/5<br/> one's [1] 126/5<br/> one-page [1] 10/3<br/> ones [1] 49/13<br/> ongoing [1] 123/11<br/> only [20] 11/22 17/3 17/3 24/23 49/1 56/11<br/> 56/13 57/12 62/22 81/9 89/6 95/19 96/14<br/> 108/4 116/8 128/6 135/21 136/17 140/11<br/> 143/12<br/> onto [1] 51/7<br/> open [15] 19/24 32/8 43/24 44/9 54/24<br/> 54/24 55/4 55/8 73/2 73/16 125/18 128/20<br/> 135/24 141/9 141/10<br/> open-ended [1] 135/24<br/> opening [1] 126/9<br/> operate [3] 72/5 88/2 114/2<br/> operating [24] 14/22 33/12 34/2 34/3 34/7<br/> 34/13 35/11 35/11 35/23 36/3 36/22 37/7<br/> 37/7 70/7 70/23 110/7 127/24 133/23 134/5<br/> 134/5 134/7 134/9 136/19 150/21<br/> operation [2] 79/5 110/2<br/> operations [1] 125/12<br/> opining [1] 107/14<br/> opinion [3] 22/22 65/23 108/4<br/> opportunities [1] 68/9<br/> opportunity [13] 14/13 14/17 14/24 19/4<br/> 31/11 32/17 33/8 39/11 89/17 114/13 116/9<br/> 116/10 131/16<br/> opposed [1] 22/10<br/> opt [1] 77/1<br/> option [15] 24/1 24/13 24/15 44/24 57/12<br/> 60/22 61/8 61/17 62/17 76/8 83/15 98/21<br/> 104/9 149/21 150/19<br/> options [8] 23/23 52/17 57/20 64/6 77/12<br/> 114/24 143/14 145/3<br/> opts [1] 75/11<br/> or [125] 9/13 9/14 9/20 10/11 10/12 11/24<br/> 15/9 15/16 20/3 20/4 21/3 22/14 22/21 23/9<br/> 23/14 23/17 24/9 24/14 24/19 25/6 25/8<br/> 32/1 33/3 33/24 34/19 35/6 35/13 36/2<br/> 38/10 38/20 41/3 41/23 44/1 45/15 48/1<br/> 48/15 50/17 51/5 54/9 54/17 55/1 55/8<br/> 55/13 55/24 56/7 56/22 56/22 57/3 58/23</p> | <p>59/21 60/6 60/17 61/6 61/18 66/7 66/16<br/> 66/22 67/13 68/10 68/11 69/5 69/9 70/8<br/> 70/16 71/14 73/17 74/23 75/16 75/19 77/19<br/> 77/20 77/22 77/23 78/4 79/24 81/8 81/15<br/> 83/2 83/14 83/17 84/12 84/23 86/8 86/9<br/> 87/5 91/6 91/10 93/9 95/8 101/11 107/5<br/> 109/1 109/2 109/19 110/2 110/22 111/16<br/> 115/15 115/16 115/17 115/22 120/15<br/> 121/12 122/4 126/20 127/23 127/24 128/14<br/> 129/5 129/10 131/21 132/7 133/17 134/1<br/> 135/15 136/20 136/24 138/10 140/11<br/> 140/16 141/5 141/6 143/24 148/10 149/5<br/> oral [1] 130/24<br/> order [31] 5/21 7/12 29/23 44/4 45/9 45/21<br/> 45/22 46/1 46/14 46/16 47/3 58/6 58/21<br/> 59/7 64/10 68/2 70/2 73/23 76/2 82/3 92/18<br/> 92/19 131/15 136/8 136/9 138/22 139/18<br/> 142/21 146/9 150/1 151/18<br/> orders [5] 30/15 49/17 148/8 148/9 150/11<br/> organized [1] 112/8<br/> oriented [1] 4/13<br/> original [6] 7/21 26/1 26/14 73/6 95/11<br/> 95/15<br/> originally [1] 9/15<br/> other [59] 4/12 4/15 10/11 10/18 12/11<br/> 18/13 19/12 20/9 22/19 30/6 30/17 31/14<br/> 33/23 39/21 40/12 41/1 41/2 41/9 41/16<br/> 44/17 57/19 58/4 58/10 60/22 61/10 66/9<br/> 68/23 78/3 81/4 82/18 83/19 87/13 87/20<br/> 88/10 89/6 101/22 106/3 108/11 109/14<br/> 110/24 110/24 111/4 115/19 116/6 116/23<br/> 116/23 117/17 125/12 126/19 127/1 127/2<br/> 129/19 129/20 129/23 129/24 130/11<br/> 130/15 144/15 149/1<br/> others [7] 34/8 43/6 57/22 65/10 65/21<br/> 68/7 91/16<br/> otherwise [17] 29/1 32/1 39/21 82/10<br/> 82/16 82/21 83/1 105/9 105/13 105/16<br/> 105/22 106/1 114/10 114/13 132/18 132/19<br/> 133/6<br/> ought [1] 119/6<br/> our [11] 30/20 79/14 90/18 110/8 110/11<br/> 118/21 129/17 131/2 137/7 143/1 146/2<br/> ourselves [1] 109/1<br/> out [65] 9/12 21/1 29/23 30/1 36/9 41/6<br/> 42/4 49/9 50/8 51/8 56/18 57/1 57/2 57/11<br/> 57/20 57/21 60/22 61/17 61/19 62/17 62/19<br/> 64/6 64/8 64/10 67/6 74/18 75/4 75/16 77/5<br/> 78/14 80/13 81/17 81/23 83/15 83/21<br/> 107/11 107/13 108/14 108/24 111/10<br/> 114/15 117/12 118/18 121/5 121/7 122/12<br/> 125/14 126/9 127/22 130/8 132/5 132/7<br/> 134/20 137/8 139/13 140/1 140/8 141/8<br/> 141/21 145/1 145/5 148/3 148/16 149/18<br/> 150/14<br/> outages [1] 79/6<br/> outcome [3] 64/19 66/1 66/12<br/> outcomes [3] 16/17 23/7 23/12<br/> outfit [1] 128/6<br/> outlined [1] 146/14<br/> outreach [7] 38/11 38/18 40/21 41/19 42/1<br/> 112/24 137/4<br/> outside [1] 144/10<br/> outstanding [1] 147/13<br/> outweighs [1] 145/24<br/> over [19] 4/14 34/21 52/21 54/23 55/13<br/> 78/12 78/20 102/7 118/8 123/16 127/15<br/> 134/19 138/10 140/16 141/24 142/8 144/3<br/> 148/8 149/16<br/> overtake [1] 144/5<br/> own [5] 15/16 113/12 113/17 117/21<br/> 142/11</p> <p><b>P</b></p> <p>p.m [4] 1/4 85/12 85/13 151/21</p> |
|--|---|---|

|  |   |  |
|--|---|--|
| <p><b>P</b></p> <p>page [40] 2/3 2/17 3/3 9/10 10/3 13/9<br/>13/11 15/21 16/3 25/22 27/6 28/9 28/13<br/>30/3 33/1 70/3 70/16 70/18 72/2 75/2 75/3<br/>77/16 78/2 80/4 89/22 96/5 97/9 99/24<br/>100/9 101/16 101/17 104/5 104/17 105/5<br/>105/6 106/16 112/9 112/10 113/7 114/24</p> <p>Page 1 [1] 89/22<br/>Page 2 [1] 97/9<br/>Page 3 [2] 99/24 105/5<br/>Page 4 [1] 75/3<br/>Page 5 [2] 9/10 104/5<br/>Page 52 [1] 27/6<br/>Page 6 [2] 70/3 72/2<br/>Page 8 [3] 30/3 33/1 77/16<br/>pages [1] 105/5<br/>paid [5] 39/5 39/15 48/20 52/9 134/19<br/>paint [1] 68/13<br/>panel [1] 28/4<br/>paragraph [11] 25/23 97/10 101/18 104/6<br/>104/7 105/6 105/19 106/17 112/21 113/9<br/>113/9<br/>parentheses [2] 101/22 101/24<br/>part [9] 12/17 17/6 31/6 33/16 34/19 35/6<br/>51/16 61/13 115/21<br/>Partial [6] 5/18 6/24 131/18 145/11 146/8<br/>151/7<br/>Participant [1] 87/17<br/>participants [1] 26/22<br/>participate [1] 114/21<br/>participated [1] 145/11<br/>participation [1] 78/16<br/>particular [20] 20/16 22/18 23/6 23/19<br/>46/14 71/17 93/9 93/9 94/17 104/19 105/1<br/>107/15 113/7 119/5 136/9 141/21 141/23<br/>142/3 144/11 149/23<br/>parties [12] 5/20 10/19 29/20 30/1 49/3<br/>73/16 92/20 92/21 131/19 131/20 143/1<br/>151/17<br/>parties' [1] 78/15<br/>partly [1] 139/23<br/>pass [1] 51/5<br/>pass-through [1] 51/5<br/>past [4] 55/14 56/8 56/11 108/21<br/>Patnaude [1] 1/23<br/>pay [6] 17/14 48/19 127/19 128/13 128/14<br/>139/4<br/>paying [13] 43/10 43/15 48/9 48/12 52/5<br/>59/5 63/19 82/14 93/8 139/1 141/5 142/9<br/>142/13<br/>pedal [1] 121/8<br/>pejorative [1] 129/5<br/>penalties [1] 151/1<br/>penny [2] 34/11 34/23<br/>people [46] 18/15 18/17 19/16 19/17 21/1<br/>22/2 29/2 29/2 31/12 31/19 32/5 39/4 39/14<br/>39/18 39/20 42/12 42/13 42/19 42/23 49/21<br/>51/17 52/4 52/5 57/14 57/14 58/6 58/19<br/>61/22 63/22 68/6 77/21 78/9 78/11 82/21<br/>83/20 83/21 84/3 84/6 84/16 84/18 108/17<br/>117/12 120/22 125/7 131/1 131/14<br/>per [3] 95/16 95/20 128/14<br/>perceive [2] 148/22 148/23<br/>percent [8] 13/16 13/17 55/6 72/19 72/21<br/>73/3 83/23 104/16<br/>perceptible [1] 151/3<br/>perception [1] 90/21<br/>performance [1] 33/5<br/>performed [2] 84/22 84/24<br/>performing [1] 39/4<br/>perhaps [5] 32/24 102/17 123/17 143/13<br/>147/23<br/>period [33] 8/16 9/1 9/4 13/1 13/15 17/15<br/>20/4 20/5 21/2 22/3 22/21 23/4 32/2 32/2</p> | <p>32/16 33/3 52/17 57/5 72/12 75/17 75/21<br/>76/20 77/4 77/9 77/18 78/13 78/23 80/8<br/>81/10 83/14 94/10 95/8 127/20<br/>periods [2] 13/19 75/13<br/>permanent [2] 140/15 144/6<br/>permissible [1] 135/21<br/>permit [1] 151/9<br/>permitted [2] 60/12 103/10<br/>perspective [2] 62/12 136/21<br/>petition [1] 96/10<br/>petitioned [1] 96/10<br/>phrase [4] 44/18 98/9 99/6 103/15<br/>pick [2] 5/11 124/24<br/>picked [1] 125/12<br/>pictorial [1] 10/13<br/>picture [1] 61/12<br/>piece [1] 137/8<br/>pilot [19] 7/22 8/10 8/14 8/15 22/21 23/4<br/>31/16 32/16 32/19 33/2 68/17 77/18 78/13<br/>80/8 132/10 133/16 139/12 140/10 140/17<br/>pioneer [1] 87/14<br/>pipes [1] 128/6<br/>place [7] 45/18 58/3 73/8 79/10 123/7<br/>127/23 144/7<br/>plan [2] 66/22 121/10<br/>planning [1] 93/12<br/>plant [2] 113/20 113/22<br/>plants [2] 79/5 114/3<br/>play [1] 74/18<br/>player [1] 116/19<br/>players [3] 58/16 101/8 126/7<br/>playing [1] 122/9<br/>please [16] 6/15 6/20 9/18 11/2 11/18 19/2<br/>38/12 46/4 63/12 85/23 86/16 90/16 97/10<br/>98/4 104/15 105/19<br/>plenty [1] 124/2<br/>plus [8] 62/7 82/13 108/11 109/24 110/10<br/>118/16 119/16 149/17<br/>PNE [15] 1/13 4/22 31/12 42/10 88/10<br/>88/13 88/16 88/18 89/1 96/7 96/14 96/20<br/>96/24 96/24 122/2<br/>pocket [1] 109/12<br/>pockets [2] 110/18 115/15<br/>point [20] 5/24 20/7 38/5 42/2 71/3 77/24<br/>78/11 86/9 87/9 89/16 106/4 107/11 127/3<br/>127/4 130/24 143/16 148/3 148/16 149/18<br/>150/14<br/>pointed [7] 36/9 83/21 111/10 140/1 140/7<br/>144/24 145/5<br/>pointing [1] 132/7<br/>points [2] 10/21 135/9<br/>policy [13] 15/19 16/4 16/14 16/18 25/20<br/>91/12 114/6 117/1 124/8 128/22 143/9<br/>143/17 144/2<br/>pool [3] 87/19 88/1 126/12<br/>poor [2] 106/13 127/19<br/>POR [1] 43/23<br/>portion [1] 111/7<br/>portraying [1] 107/8<br/>pose [1] 114/5<br/>posed [2] 111/1 116/2<br/>position [7] 7/5 7/5 8/21 12/5 53/22 96/20<br/>107/4<br/>positions [2] 96/22 97/1<br/>possibility [2] 23/22 122/4<br/>possible [12] 15/5 15/7 23/13 30/17 48/17<br/>48/22 57/19 63/21 65/17 106/7 133/4<br/>151/10<br/>possibly [5] 40/24 62/9 64/8 124/22 133/5<br/>potential [9] 8/4 23/6 23/12 28/24 65/14<br/>66/1 66/12 120/21 139/10<br/>potentially [3] 139/11 141/6 141/15<br/>pound [1] 91/4<br/>power [20] 14/19 14/21 51/5 82/13 87/18<br/>87/19 88/1 88/7 88/19 88/20 93/9 93/18</p> | <p>97/12 113/14 113/17 113/21 114/3 117/6<br/>129/1 135/6<br/>practices [1] 113/24<br/>precipitate [2] 42/17 42/22<br/>precipitated [1] 44/3<br/>precisely [1] 150/6<br/>precluded [2] 30/21 30/22<br/>preface [1] 94/15<br/>preference [2] 9/5 131/23<br/>preferred [1] 17/22<br/>profile [1] 86/3<br/>prefiled [5] 7/7 58/11 89/15 89/16 89/19<br/>preliminary [1] 89/6<br/>premature [1] 133/17<br/>premise [2] 132/9 140/4<br/>prepare [1] 5/22<br/>prescribed [1] 99/13<br/>PRESENT [1] 1/9<br/>presented [5] 65/11 146/8 146/21 147/6<br/>147/15<br/>presently [1] 62/22<br/>presents [2] 147/10 147/21<br/>Presiding [1] 1/9<br/>pressed [1] 118/11<br/>pressures [1] 117/17<br/>presumably [3] 82/9 84/3 123/1<br/>pretty [6] 30/19 62/6 64/9 64/18 106/8<br/>129/19<br/>prevent [1] 122/1<br/>prevents [1] 147/20<br/>previous [2] 20/1 28/9<br/>previously [12] 6/10 6/17 18/13 41/8 54/1<br/>54/14 55/20 56/4 76/9 117/9 141/8 144/13<br/>price [51] 14/8 14/8 14/9 14/12 14/21 15/8<br/>22/13 58/15 60/9 61/4 61/5 61/17 64/3<br/>69/16 69/17 74/1 90/24 91/5 91/18 93/4<br/>93/7 93/8 93/15 93/16 93/20 108/6 110/9<br/>113/21 115/4 118/7 118/11 119/4 119/10<br/>120/10 120/12 128/10 128/10 128/19<br/>135/19 135/24 137/17 137/17 137/19 138/3<br/>138/5 138/13 138/15 138/17 138/19 138/20<br/>141/1<br/>priced [2] 61/2 119/2<br/>prices [22] 13/23 15/9 16/19 22/16 29/8<br/>29/12 62/5 64/20 64/21 72/8 72/14 72/15<br/>72/19 73/14 107/21 108/1 111/16 118/23<br/>120/9 123/23 137/17 137/21<br/>pricing [7] 48/15 63/21 93/13 119/11<br/>120/14 120/16 141/15<br/>primarily [1] 52/20<br/>primary [1] 21/10<br/>principles [5] 136/9 138/8 138/13 138/17<br/>142/20<br/>prior [10] 23/4 33/2 45/2 77/18 78/8 80/7<br/>92/6 110/13 126/10 148/3<br/>private [7] 111/10 111/13 111/14 117/2<br/>117/23 124/10 126/7<br/>probably [8] 7/23 32/11 55/15 114/19<br/>116/4 124/3 129/7 133/17<br/>problem [7] 36/14 110/18 116/6 117/22<br/>122/5 126/16 139/14<br/>procedural [2] 4/12 130/15<br/>proceed [1] 6/16<br/>proceeding [2] 86/4 135/12<br/>process [16] 31/12 52/3 71/6 71/17 72/10<br/>72/17 73/19 73/23 75/1 78/14 78/15 79/10<br/>79/11 127/5 129/6 140/21<br/>prodigal [1] 42/2<br/>produced [1] 148/8<br/>product [2] 109/13 121/14<br/>productively [1] 134/18<br/>profit [12] 110/5 110/11 110/21 110/24<br/>111/5 116/9 116/15 116/16 116/21 117/24<br/>118/5 125/8<br/>program [21] 39/16 41/19 42/1 45/12</p> |
|--|---|--|

|   |  |   |
|---|--|---|
| <p><b>P</b></p> <p>program... [17] 72/23 73/1 74/16 75/7 75/15 76/1 76/3 77/4 77/6 77/9 77/21 82/20 83/7 84/15 122/2 132/10 133/16</p> <p>programs [1] 38/11</p> <p>project [1] 40/5</p> <p>projected [1] 13/12</p> <p>projections [3] 13/18 55/5 55/6</p> <p>projects [1] 39/22</p> <p>promote [1] 108/12</p> <p>promotes [1] 149/19</p> <p>promoting [1] 121/14</p> <p>promotion [2] 40/21 134/12</p> <p>promotional [2] 38/19 113/2</p> <p>proposal [17] 26/11 45/3 45/7 45/15 49/18 52/22 57/3 59/24 68/17 69/4 81/24 95/15 144/14 146/7 146/21 146/22 147/8</p> <p>proposed [18] 14/9 34/10 34/11 38/9 46/18 65/6 74/7 95/11 95/15 109/23 112/22 117/10 136/12 144/12 146/24 147/4 147/22 148/7</p> <p>proposing [2] 95/19 100/20</p> <p>proposing...a [1] 100/15</p> <p>prospective [1] 70/24</p> <p>protect [2] 144/7 145/6</p> <p>provide [26] 14/13 14/16 14/24 19/3 19/5 20/3 20/7 37/10 58/3 58/10 69/10 72/11 83/12 83/13 88/5 97/24 98/21 105/12 105/15 118/15 118/16 119/15 132/24 137/18 147/19 149/22</p> <p>provided [9] 9/23 11/19 19/14 22/1 58/5 95/2 123/4 141/1 147/3</p> <p>providence [1] 87/4</p> <p>provider [12] 88/12 91/22 101/15 108/12 108/15 114/16 114/20 123/5 127/7 128/8 129/2 132/22</p> <p>provider-of-last-resort [1] 132/22</p> <p>providers [8] 101/9 114/15 117/23 118/9 120/13 120/17 120/20 120/23</p> <p>provides [8] 20/9 61/8 61/9 69/5 147/20 149/9 150/3 150/7</p> <p>providing [14] 14/19 19/5 38/2 60/6 67/1 68/23 135/15 135/21 137/9 137/13 145/16 149/15 150/19 151/12</p> <p>proving [1] 127/22</p> <p>provision [6] 29/19 29/24 62/8 72/5 74/9 80/1</p> <p>provisions [3] 75/3 148/5 150/2</p> <p>prudent [2] 59/20 136/15</p> <p>PSNH [125] 3/4 4/4 6/23 7/6 7/6 9/23 11/19 12/12 13/11 14/1 14/13 14/17 14/20 14/24 15/10 17/7 17/11 24/13 25/8 25/17 25/22 26/16 27/21 28/3 30/6 30/10 30/16 31/1 31/3 31/6 33/3 34/9 34/11 35/15 39/21 41/8 41/15 42/22 43/10 44/23 45/2 47/19 47/20 47/24 48/4 48/19 49/18 55/4 62/6 62/12 63/18 63/23 64/13 64/16 65/6 66/3 67/1 68/3 72/6 72/11 74/13 76/13 77/18 78/3 81/19 90/22 93/12 94/3 94/10 94/17 95/11 100/14 100/20 105/2 106/18 108/2 108/4 108/18 108/21 109/3 109/10 109/23 110/17 111/6 111/11 111/12 111/16 113/10 114/1 114/21 118/5 119/8 121/16 122/9 123/7 123/7 125/6 125/8 129/18 133/6 135/2 136/12 136/16 137/6 137/19 138/5 138/23 139/21 141/2 141/7 141/17 141/21 142/18 146/11 146/16 146/20 147/2 147/4 147/9 148/13 149/22 150/4 150/8 150/19 151/9</p> <p>PSNH's [28] 17/11 24/2 24/9 24/19 26/3 38/8 38/9 49/14 65/4 70/10 70/13 76/1 79/5 99/14 101/10 107/1 107/3 107/22 111/2 112/22 118/2 118/11 125/12 135/8 136/6 142/16 148/6 149/15</p> | <p>public [47] 1/2 1/6 1/12 4/18 32/5 35/13 42/9 46/19 50/11 53/5 53/12 53/19 54/5 54/6 57/13 58/1 59/17 60/11 61/12 61/23 63/1 80/21 81/14 82/8 82/15 83/5 83/24 91/12 91/20 101/12 110/10 110/12 115/18 115/19 115/23 116/5 116/13 117/1 119/2 119/4 121/3 124/7 124/12 126/7 133/8 134/22 145/14</p> <p>publicized [2] 121/2 121/19</p> <p>PUC [5] 1/19 42/12 91/14 104/8 115/1</p> <p>purchase [1] 137/24</p> <p>purchases [4] 113/16 135/6 137/21 138/1</p> <p>purchasing [1] 137/22</p> <p>pure [1] 143/8</p> <p>purely [1] 145/4</p> <p>purpose [23] 18/6 18/7 18/10 18/20 18/24 19/9 19/10 19/13 20/2 20/16 20/19 21/10 49/10 49/12 52/10 58/8 58/9 62/2 62/20 97/11 98/14 133/5 149/3</p> <p>purposes [8] 16/1 19/8 20/14 98/17 133/10 135/19 135/22 136/2</p> <p>pursuant [2] 46/17 145/15</p> <p>purview [1] 144/10</p> <p>push [1] 133/17</p> <p>put [14] 51/7 58/3 63/11 66/9 77/10 78/14 89/19 108/14 110/17 120/23 121/4 121/13 142/17 144/7</p> <p>puts [1] 116/18</p> <p>putting [2] 81/23 108/24</p> | <p>re-enter [1] 91/4</p> <p>re-entering [1] 101/12</p> <p>re-entry [1] 128/13</p> <p>reached [1] 123/20</p> <p>react [4] 8/11 31/21 97/22 138/18</p> <p>reactions [1] 8/17</p> <p>read [17] 27/19 28/1 28/11 28/12 38/8 60/17 97/13 98/1 99/2 101/2 101/24 102/7 104/20 105/10 106/21 112/12 132/21</p> <p>readily [1] 34/7</p> <p>reading [6] 27/13 46/7 46/8 46/13 100/18 113/1</p> <p>reads [4] 28/15 102/5 104/17 106/18</p> <p>ready [1] 85/16</p> <p>reaffirm [1] 146/23</p> <p>reaffirmed [1] 148/12</p> <p>real [1] 113/21</p> <p>real-time [1] 113/21</p> <p>realities [1] 126/23</p> <p>reality [1] 90/22</p> <p>realize [1] 118/10</p> <p>reallocated [1] 137/1</p> <p>really [21] 8/20 8/21 9/13 23/10 30/14 53/24 68/12 78/13 82/6 92/20 108/19 120/16 121/1 132/3 134/21 135/1 137/7 139/14 140/12 141/3 141/14</p> <p>reason [24] 8/8 8/18 9/2 23/3 27/20 53/15 59/16 74/11 77/6 77/8 91/18 93/21 97/19 98/10 101/4 101/6 105/13 105/16 106/8 106/19 106/24 116/8 144/22 148/19</p> <p>reasonable [9] 46/19 56/24 57/5 59/20 136/15 145/12 146/11 146/20 147/10</p> <p>reasons [15] 7/9 9/12 22/17 22/19 25/20 25/23 66/2 66/4 68/16 106/9 114/4 123/5 128/10 145/21 151/6</p> <p>reassess [1] 69/6</p> <p>rebuttal [1] 7/17</p> <p>recall [13] 7/12 15/17 15/24 17/6 17/16 17/17 17/20 23/23 32/3 32/7 45/9 79/5 122/10</p> <p>recalled [1] 6/9</p> <p>receive [5] 20/4 43/9 82/16 93/8 138/5</p> <p>received [2] 52/7 78/6</p> <p>receiving [1] 12/24</p> <p>recent [1] 11/7</p> <p>recently [2] 8/23 143/12</p> <p>Recess [1] 85/12</p> <p>recognize [1] 147/24</p> <p>recollection [6] 15/16 16/2 16/7 25/24 45/16 95/18</p> <p>recommended [8] 7/8 7/21 8/1 30/11 30/21 31/8 31/9 146/3</p> <p>recommends [1] 145/20</p> <p>reconcile [3] 59/22 138/6 138/10</p> <p>reconciliation [9] 52/3 71/5 71/7 71/22 78/23 79/1 79/8 79/10 79/12</p> <p>reconciliations [2] 138/3 138/4</p> <p>record [9] 28/1 47/13 69/7 78/19 79/14 85/15 131/7 131/8 131/11</p> <p>recover [13] 14/14 14/17 15/1 33/21 35/14 35/15 47/20 52/21 125/24 134/4 134/22 150/4 150/8</p> <p>recoverable [1] 35/16</p> <p>recovered [13] 33/18 35/3 36/10 36/13 36/19 36/24 37/4 40/6 40/9 40/23 52/1 134/1 134/2</p> <p>recoveries [4] 138/10 138/10 142/8 142/10</p> <p>recovering [1] 147/18</p> <p>recovery [8] 37/11 39/9 61/14 110/9 110/22 125/21 142/13 144/1</p> <p>red [1] 53/8</p> <p>redesigned [3] 46/19 147/2 150/6</p> <p>redirect [4] 85/6 91/8 116/11 130/1</p> <p>reduce [8] 21/11 97/20 98/11 98/15 101/5</p> |
| <p><b>Q</b></p> <p>Q-TECH-001 [1] 3/4</p> <p>qualifying [2] 18/9 103/2</p> <p>quantify [1] 122/20</p> <p>question [39] 15/23 15/24 16/2 18/11 21/21 26/10 28/3 28/7 28/8 28/10 28/14 30/14 32/12 33/16 36/2 36/5 37/19 39/21 41/8 43/19 45/8 46/12 48/22 64/12 68/1 80/11 81/22 84/21 96/13 98/8 102/23 103/2 103/5 103/17 103/22 105/18 109/8 116/12 118/20</p> <p>questioner [1] 27/8</p> <p>questioning [4] 47/8 54/9 55/3 63/9</p> <p>questions [30] 12/19 15/17 25/12 25/13 27/21 29/15 32/4 42/20 46/22 47/17 49/1 49/3 53/6 63/5 65/19 69/22 70/1 80/10 87/2 89/17 95/23 111/22 111/23 112/3 112/6 119/21 122/11 129/23 129/23 129/24</p> <p>quick [2] 12/18 65/19</p> <p>quickly [2] 41/5 87/3</p> <p>quite [1] 112/8</p> <p>quotation [1] 97/16</p> <p>quote [1] 115/1</p>   | <p><b>R</b></p> <p>raised [5] 17/24 18/2 22/19 126/10 135/11</p> <p>random [3] 118/1 123/10 127/15</p> <p>rate [343]</p> <p>rate-setting [2] 79/11 79/13</p> <p>Rated [1] 101/22</p> <p>ratepayers [2] 1/17 5/6</p> <p>rates [40] 16/20 20/4 20/5 31/5 35/9 35/10 35/13 35/19 36/11 36/14 36/20 37/1 37/5 37/14 37/23 38/1 40/6 40/10 40/11 40/12 40/14 40/15 40/23 60/14 62/14 81/15 83/24 84/2 84/5 84/7 84/9 84/10 94/4 95/16 95/19 113/11 115/5 117/17 134/20 139/1</p> <p>rather [5] 25/2 34/22 113/22 124/11 144/2</p> <p>rational [2] 63/16 83/21</p> <p>rationale [2] 56/19 145/24</p> <p>re [7] 1/6 39/14 39/22 91/4 101/12 120/3 128/13</p> <p>re-ask [1] 120/3</p> <p>re-deploy [1] 39/14</p> <p>re-deployed [1] 39/22</p>  | <p>re-enter [1] 91/4</p> <p>re-entering [1] 101/12</p> <p>re-entry [1] 128/13</p> <p>reached [1] 123/20</p> <p>react [4] 8/11 31/21 97/22 138/18</p> <p>reactions [1] 8/17</p> <p>read [17] 27/19 28/1 28/11 28/12 38/8 60/17 97/13 98/1 99/2 101/2 101/24 102/7 104/20 105/10 106/21 112/12 132/21</p> <p>readily [1] 34/7</p> <p>reading [6] 27/13 46/7 46/8 46/13 100/18 113/1</p> <p>reads [4] 28/15 102/5 104/17 106/18</p> <p>ready [1] 85/16</p> <p>reaffirm [1] 146/23</p> <p>reaffirmed [1] 148/12</p> <p>real [1] 113/21</p> <p>real-time [1] 113/21</p> <p>realities [1] 126/23</p> <p>reality [1] 90/22</p> <p>realize [1] 118/10</p> <p>reallocated [1] 137/1</p> <p>really [21] 8/20 8/21 9/13 23/10 30/14 53/24 68/12 78/13 82/6 92/20 108/19 120/16 121/1 132/3 134/21 135/1 137/7 139/14 140/12 141/3 141/14</p> <p>reason [24] 8/8 8/18 9/2 23/3 27/20 53/15 59/16 74/11 77/6 77/8 91/18 93/21 97/19 98/10 101/4 101/6 105/13 105/16 106/8 106/19 106/24 116/8 144/22 148/19</p> <p>reasonable [9] 46/19 56/24 57/5 59/20 136/15 145/12 146/11 146/20 147/10</p> <p>reasons [15] 7/9 9/12 22/17 22/19 25/20 25/23 66/2 66/4 68/16 106/9 114/4 123/5 128/10 145/21 151/6</p> <p>reassess [1] 69/6</p> <p>rebuttal [1] 7/17</p> <p>recall [13] 7/12 15/17 15/24 17/6 17/16 17/17 17/20 23/23 32/3 32/7 45/9 79/5 122/10</p> <p>recalled [1] 6/9</p> <p>receive [5] 20/4 43/9 82/16 93/8 138/5</p> <p>received [2] 52/7 78/6</p> <p>receiving [1] 12/24</p> <p>recent [1] 11/7</p> <p>recently [2] 8/23 143/12</p> <p>Recess [1] 85/12</p> <p>recognize [1] 147/24</p> <p>recollection [6] 15/16 16/2 16/7 25/24 45/16 95/18</p> <p>recommended [8] 7/8 7/21 8/1 30/11 30/21 31/8 31/9 146/3</p> <p>recommends [1] 145/20</p> <p>reconcile [3] 59/22 138/6 138/10</p> <p>reconciliation [9] 52/3 71/5 71/7 71/22 78/23 79/1 79/8 79/10 79/12</p> <p>reconciliations [2] 138/3 138/4</p> <p>record [9] 28/1 47/13 69/7 78/19 79/14 85/15 131/7 131/8 131/11</p> <p>recover [13] 14/14 14/17 15/1 33/21 35/14 35/15 47/20 52/21 125/24 134/4 134/22 150/4 150/8</p> <p>recoverable [1] 35/16</p> <p>recovered [13] 33/18 35/3 36/10 36/13 36/19 36/24 37/4 40/6 40/9 40/23 52/1 134/1 134/2</p> <p>recoveries [4] 138/10 138/10 142/8 142/10</p> <p>recovering [1] 147/18</p> <p>recovery [8] 37/11 39/9 61/14 110/9 110/22 125/21 142/13 144/1</p> <p>red [1] 53/8</p> <p>redesigned [3] 46/19 147/2 150/6</p> <p>redirect [4] 85/6 91/8 116/11 130/1</p> <p>reduce [8] 21/11 97/20 98/11 98/15 101/5</p> |

|  |   |  |
|--|---|--|
| <b>R</b>   |   |  |
| <p>reduce... [3] 148/20 149/3 149/7<br/> reducing [4] 21/16 101/5 148/22 149/1<br/> refer [2] 13/7 70/12<br/> reference [4] 9/12 15/20 44/4 105/3<br/> referenced [2] 9/16 150/1<br/> references [1] 9/19<br/> referred [3] 125/5 129/4 145/21<br/> referring [4] 40/15 45/16 47/3 55/8<br/> reflecting [1] 146/13<br/> reflective [1] 22/13<br/> refresh [3] 16/7 73/24 90/2<br/> refreshing [1] 16/1<br/> regarding [5] 12/21 16/4 90/12 122/11 125/8<br/> regardless [1] 51/14<br/> regular [6] 49/22 51/21 52/9 77/14 83/16 84/5<br/> regularly [1] 78/12<br/> regulated [1] 59/19<br/> regulatory [2] 114/3 144/17<br/> rehearing [1] 148/10<br/> rejected [2] 25/19 95/12<br/> related [1] 27/21<br/> relation [4] 7/18 11/17 45/14 52/22<br/> relationship [5] 69/16 88/1 122/24 128/23 129/1<br/> relative [2] 48/14 109/17<br/> relatively [2] 109/7 110/15<br/> relax [1] 130/10<br/> relevance [1] 120/17<br/> relevant [2] 99/16 147/7<br/> relief [1] 33/6<br/> remain [13] 6/13 16/13 22/22 22/23 24/18 73/2 115/4 139/3 139/5 140/11 149/5 149/17 150/23<br/> remaining [6] 8/22 13/15 49/14 72/12 72/24 147/17<br/> remarks [1] 131/14<br/> remember [3] 4/13 66/15 68/3<br/> reopens [1] 141/13<br/> reoriented [1] 6/3<br/> repeat [2] 95/5 145/22<br/> rephrase [1] 103/5<br/> report [2] 30/8 30/8<br/> reported [1] 123/16<br/> reporter [4] 1/23 32/13 85/21 131/6<br/> reports [2] 78/3 123/18<br/> reps [1] 121/7<br/> Reptg [5] 1/12 1/13 1/15 1/17 1/19<br/> request [7] 14/2 33/3 38/13 77/19 142/16 146/2 151/6<br/> requested [3] 33/6 45/2 49/17<br/> requests [1] 38/9<br/> require [1] 146/23<br/> required [12] 19/17 22/3 29/2 59/4 94/8 94/9 94/14 94/16 94/21 141/21 141/22 149/4<br/> requirement [3] 18/7 19/1 75/6<br/> requirements [5] 87/19 118/15 118/17 119/16 142/21<br/> requires [4] 20/17 23/9 23/9 70/5<br/> requiring [3] 18/8 75/24 77/8<br/> RESA [2] 92/20 142/15<br/> reset [3] 10/6 77/5 81/9<br/> Resident [2] 88/19 88/23<br/> residential [20] 1/17 5/6 41/17 44/17 52/18 53/10 66/8 66/8 88/16 89/2 115/2 143/4 143/10 143/13 143/22 143/23 144/8 144/23 145/1 145/6<br/> resisted [1] 42/10<br/> resolution [2] 73/23 145/13<br/> resolved [1] 79/4<br/> resort [1] 132/22</p> | <p>resorting [1] 113/16<br/> resources [4] 108/13 109/4 115/15 121/13<br/> respect [6] 11/20 45/11 100/11 107/6 122/8 137/9<br/> respects [1] 91/21<br/> respond [3] 34/23 120/13 127/14<br/> response [17] 3/4 6/8 9/23 9/24 11/20 28/7 37/19 38/8 46/12 47/19 48/3 96/13 130/13 130/17 130/21 147/1 151/15<br/> responses [1] 38/4<br/> responsible [5] 50/7 50/14 50/20 59/11 142/4<br/> restate [1] 98/8<br/> restrict [1] 76/5<br/> restricting [1] 76/8<br/> restrictive [1] 77/15<br/> restructure [4] 97/19 98/10 101/4 148/20<br/> restructured [3] 99/5 99/11 99/20<br/> restructuring [10] 21/8 21/11 50/5 101/8 132/10 136/9 140/8 142/3 142/20 148/18<br/> result [5] 79/7 117/16 123/24 124/1 124/3<br/> resulting [2] 45/6 50/5<br/> results [2] 30/9 142/12<br/> resume [1] 85/10<br/> resumed [4] 2/4 2/5 6/18 85/13<br/> resumé [1] 117/5<br/> retail [10] 1/15 5/2 47/14 62/19 70/23 99/4 105/9 105/22 114/9 135/4<br/> rethink [1] 128/13<br/> retire [1] 116/22<br/> retirement [1] 110/2<br/> retreat [1] 91/11<br/> return [15] 24/12 24/13 24/19 76/13 76/20 90/23 110/11 111/5 116/15 126/5 128/19 140/3 140/17 146/12 150/24<br/> returning [11] 14/4 17/19 19/23 20/8 24/7 25/1 48/19 99/23 146/20 149/14 151/2<br/> returns [2] 15/10 140/3<br/> reveal [1] 123/18<br/> revenue [13] 51/8 52/1 52/7 53/3 58/4 71/6 78/6 82/15 82/17 83/12 84/8 92/2 125/19<br/> reversal [1] 128/22<br/> reverse [3] 44/19 139/23 140/4<br/> reversed [2] 124/5 124/8<br/> review [13] 15/16 18/20 18/21 19/3 20/13 32/17 66/16 66/17 67/5 78/15 79/19 89/17 122/12<br/> reviewed [1] 15/13<br/> reviews [1] 13/14<br/> revised [2] 69/2 147/8<br/> reword [1] 55/18<br/> right [66] 5/11 6/6 8/21 11/8 13/7 23/24 27/11 27/15 28/7 28/10 29/5 29/5 30/2 31/10 33/19 35/22 37/9 39/20 40/1 40/4 40/7 42/10 42/22 43/13 43/16 44/11 45/18 46/23 54/7 56/16 58/17 63/4 63/10 65/1 65/4 65/6 70/20 71/18 72/1 73/2 75/6 80/9 85/8 86/13 87/11 88/14 88/24 91/6 94/15 95/1 95/21 96/16 97/17 103/14 106/6 107/14 112/2 113/8 115/10 119/20 121/9 129/22 130/5 130/6 131/10 147/23<br/> risk [3] 60/7 135/17 135/22<br/> road [3] 27/20 64/2 122/13<br/> Robert [1] 1/10<br/> Robinson [4] 1/15 1/16 4/24 47/13<br/> Rodier [17] 1/14 2/6 2/11 2/18 4/22 10/23 11/5 26/22 45/20 75/5 85/16 89/11 130/1 131/21 140/7 144/24 148/14<br/> Rodier's [1] 96/13<br/> role [6] 92/5 92/5 96/5 100/21 101/10 128/5<br/> room [2] 84/24 131/2<br/> roost [1] 123/14<br/> rose [1] 52/15</p> | <p>RSA [29] 21/8 33/17 46/17 46/17 46/18 97/12 97/16 97/18 98/8 98/15 98/24 100/11 101/3 101/20 104/15 105/19 132/21 135/2 145/16 146/10 148/5 148/5 148/5 148/18 149/10 149/18 150/2 150/3 150/16<br/> ruled [1] 44/1<br/> rulings [1] 91/14<br/> run [3] 75/20 81/9 113/22<br/> running [13] 12/4 12/6 53/21 53/22 54/11 54/17 54/18 54/19 54/20 54/21 55/19 56/6 113/20<br/> runs [2] 81/17 83/15</p>   |
| <b>S</b>   |   |  |
|  |   | <p>safety [2] 132/24 133/10<br/> said [26] 7/22 13/22 16/10 16/22 18/5 22/6 32/15 34/6 34/12 37/22 44/9 45/10 57/23 58/11 76/13 79/24 87/10 102/13 107/16 111/4 111/8 117/4 118/6 121/10 138/22 139/19<br/> Saint [1] 88/3<br/> sake [1] 30/13<br/> salaries [1] 40/5<br/> sales [3] 38/19 40/21 70/24<br/> same [30] 13/18 13/23 19/8 19/10 22/15 25/5 28/11 43/8 43/10 58/16 59/10 59/21 60/14 62/3 63/9 68/13 70/10 74/1 84/11 96/24 97/3 99/12 107/22 116/13 118/17 118/22 127/17 134/10 141/17 142/10<br/> Sandy [1] 1/11<br/> satisfies [1] 142/20<br/> satisfy [1] 114/20<br/> saw [2] 67/9 124/23<br/> say [44] 8/20 10/14 18/16 19/2 19/15 19/16 22/10 29/1 30/18 30/24 32/21 34/18 34/21 40/14 40/24 42/6 42/23 63/15 68/14 69/6 70/7 70/21 74/4 81/13 83/22 84/13 85/10 88/11 96/22 99/22 102/10 107/21 110/20 113/10 113/20 115/6 115/19 127/10 129/20 132/8 133/5 139/9 143/2 145/22<br/> saying [25] 23/23 31/10 34/22 36/15 36/19 37/2 37/5 39/4 39/11 49/20 59/14 60/13 61/18 76/24 82/12 91/3 102/23 113/1 115/18 119/14 129/10 129/12 133/4 134/21 143/8<br/> says [36] 9/12 11/22 12/4 29/2 29/19 30/1 30/23 31/6 33/1 33/17 33/20 33/21 34/17 36/9 37/3 50/2 50/6 55/19 60/3 70/22 78/21 80/2 80/5 99/20 100/19 102/22 104/11 112/21 113/10 115/2 133/19 133/20 133/24 135/13 140/24 142/3<br/> scale [1] 121/21<br/> scenario [7] 23/11 65/11 114/5 119/13 120/21 120/22 121/22<br/> scenarios [2] 84/21 129/19<br/> Schaefer [2] 1/16 5/1<br/> schedule [1] 88/7<br/> scheduled [1] 65/5<br/> scheme [1] 63/21<br/> schizophrenia [1] 44/15<br/> Scott [6] 1/10 2/8 2/13 63/6 83/21 119/23<br/> screwed [1] 117/3<br/> Scrubber [29] 14/22 33/13 33/15 33/18 33/22 34/4 34/14 34/19 35/3 35/12 35/19 35/23 36/10 37/4 47/21 51/13 51/17 70/7 70/22 73/15 110/2 110/4 125/24 133/24 134/1 134/4 136/19 136/22 150/21<br/> scrutiny [1] 144/3<br/> seat [1] 85/18<br/> second [5] 25/16 26/3 60/2 73/9 106/17<br/> seconds [1] 11/3<br/> section [21] 9/11 9/11 9/13 13/9 13/11 28/11 28/14 32/19 33/1 60/17 70/5 72/2 74/3 77/17 78/2 80/4 101/17 104/6 104/17 140/24 142/3</p> |

|  |   |   |
|--|---|---|
| <p><b>S</b></p> <p>Section 2.2 [2] 32/19 80/4<br/> Section 2.2.3 [2] 9/11 74/3<br/> Section 2.2.4 [1] 13/9<br/> Section 2.3.1 [1] 70/5<br/> Section 2.3.3 [1] 72/2<br/> Section 2.3.3.1 [1] 13/11<br/> Section 2.4 [1] 78/2<br/> Section 2.4.3 [2] 33/1 77/17<br/> Section 374-F:3 [1] 140/24<br/> Sector [1] 90/1<br/> see [33] 8/9 8/10 8/16 8/18 18/22 18/22 31/3 33/7 36/14 44/20 44/22 44/22 49/9 58/8 58/9 58/16 60/22 60/23 62/14 62/17 63/1 65/13 67/4 67/12 67/19 68/18 70/11 70/21 100/1 116/8 118/8 123/24 124/2<br/> seeing [6] 82/3 126/21 130/14 130/22 138/14 151/16<br/> seek [1] 148/11<br/> seeking [2] 39/9 90/22<br/> seem [2] 61/20 115/17<br/> seemingly [1] 59/23<br/> seems [4] 50/1 103/7 128/21 139/9<br/> seen [2] 85/2 123/17<br/> sees [1] 30/18<br/> select [1] 114/13<br/> sell [2] 88/20 115/20<br/> send [2] 137/8 142/18<br/> sending [1] 121/7<br/> sense [5] 77/22 107/4 122/4 122/5 128/22<br/> sensitive [1] 59/19<br/> sentence [6] 10/4 28/2 30/13 80/5 102/5 106/17<br/> September [1] 79/17<br/> serious [1] 123/21<br/> serve [4] 8/22 20/13 48/1 146/14<br/> served [22] 7/13 8/7 8/15 8/24 10/10 12/23 19/23 24/10 24/14 25/1 25/1 25/7 25/8 54/1 54/14 56/4 56/7 67/10 76/13 78/5 83/2 83/11<br/> serves [1] 46/19<br/> service [239]<br/> Service's [1] 50/11<br/> services [4] 60/6 88/5 135/16 137/13<br/> serving [3] 116/9 136/17 149/2<br/> Session [1] 3/4<br/> set [22] 9/12 14/8 57/3 62/7 62/12 62/13 71/19 71/19 72/9 73/10 73/11 74/1 74/2 74/6 79/4 79/16 107/21 117/1 118/4 126/3 127/12 151/8<br/> setting [3] 13/19 79/11 79/13<br/> settled [1] 128/5<br/> settlement [35] 5/18 5/19 6/24 7/19 7/20 9/7 9/15 9/16 12/11 13/8 25/22 26/6 26/7 29/15 29/15 29/17 69/24 72/1 77/16 80/1 131/18 131/18 142/17 143/3 143/5 144/9 145/11 146/8 147/6 147/10 147/11 147/14 148/2 150/7 151/7<br/> settling [6] 26/22 30/1 92/20 92/21 131/19 131/20<br/> setup [1] 74/6<br/> seven [4] 117/10 117/18 118/1 120/7<br/> seventh [1] 99/1<br/> shall [14] 30/7 30/8 30/8 30/10 31/7 32/19 33/3 33/4 33/18 80/5 134/1 134/2 135/3 135/3<br/> share [2] 110/22 126/24<br/> shareholders [2] 111/6 125/9<br/> she [1] 41/23<br/> shied [1] 91/23<br/> shift [1] 39/18<br/> short [6] 30/19 31/16 31/22 120/21 132/11 147/24<br/> short-term [1] 132/11</p> | <p>shorter [6] 8/4 8/6 21/3 22/14 22/17 66/6 should [39] 5/13 7/23 8/22 9/6 9/13 9/20 16/24 22/16 22/22 22/23 30/5 31/21 31/23 50/3 50/7 50/14 69/1 69/2 71/11 71/12 71/13 77/23 77/24 91/9 92/19 104/18 113/10 128/11 129/2 129/6 129/7 132/23 134/1 139/3 139/19 142/4 143/9 147/11 148/13<br/> showed [1] 147/15<br/> shows [3] 10/10 10/20 140/21<br/> side [1] 52/19<br/> sight [1] 67/20<br/> sign [1] 61/22<br/> signal [3] 93/7 138/19 138/20<br/> signals [6] 93/4 93/15 93/16 137/18 137/19 138/17<br/> signatories [2] 12/11 16/23<br/> signature [1] 87/8<br/> significant [6] 6/23 9/1 23/16 57/5 64/22 116/19<br/> significantly [1] 67/9<br/> silk [1] 41/12<br/> similar [1] 122/2<br/> similarly [1] 138/24<br/> simple [2] 109/8 125/17<br/> simplicity [1] 7/10<br/> simply [10] 103/15 107/15 125/21 127/15 136/24 143/21 144/7 144/10 147/24 151/3<br/> since [7] 12/16 12/17 27/24 38/6 53/10 106/23 118/6<br/> single [2] 119/9 124/19<br/> single-minded [1] 124/19<br/> sir [1] 117/8<br/> sit [1] 130/8<br/> sitting [1] 134/17<br/> situated [1] 138/24<br/> situation [11] 40/18 52/19 53/24 55/8 55/11 57/6 59/15 124/9 129/15 129/21 143/10<br/> situations [1] 10/5<br/> six [4] 62/9 78/24 84/11 99/1<br/> size [1] 122/21<br/> skip [1] 30/13<br/> slate [2] 55/23 56/2<br/> slightly [2] 65/9 112/12<br/> slow [1] 52/10<br/> small [3] 52/18 126/12 143/21<br/> smaller [3] 52/21 74/12 115/3<br/> so [224]<br/> so-called [1] 87/3<br/> some [67] 8/18 9/2 16/22 20/9 20/24 23/9 27/11 27/12 32/3 32/10 36/18 37/10 40/5 41/18 43/6 44/14 51/20 57/6 57/7 62/8 66/18 67/4 67/15 68/4 68/6 73/20 74/6 74/22 79/6 81/4 82/2 83/6 83/13 86/3 87/19 94/10 99/16 111/15 113/4 115/19 117/24 119/1 119/7 120/14 122/7 122/11 122/17 123/6 123/13 123/20 124/4 125/11 125/14 126/22 127/4 127/18 127/24 128/2 129/11 129/17 134/6 141/21 141/22 143/20 144/13 147/9 150/12<br/> somebody [11] 24/24 40/4 40/18 53/10 53/11 54/3 58/22 74/20 76/12 114/17 122/2<br/> someone [6] 57/10 75/4 76/17 77/10 82/4 129/6<br/> someplace [1] 113/14<br/> something [25] 11/17 29/24 30/15 31/23 39/24 41/3 45/1 45/15 49/10 60/12 60/23 62/15 66/10 66/13 68/10 74/5 109/18 113/8 120/3 121/5 127/10 128/11 129/16 137/24 144/7<br/> sometime [1] 117/6<br/> sometimes [1] 108/23<br/> somewhat [2] 20/13 61/7<br/> son [1] 42/2</p> | <p>soon [3] 41/16 151/10 151/18<br/> sooner [1] 78/22<br/> sophisticated [1] 143/19<br/> sophistication [1] 91/3<br/> sorry [9] 14/7 15/4 22/4 28/13 28/16 70/14 95/5 103/3 109/21<br/> sort [9] 73/17 88/11 117/5 122/7 123/6 127/12 127/13 128/6 132/15<br/> sorts [3] 79/6 106/9 144/18<br/> sound [2] 33/19 147/23<br/> sounds [2] 20/17 119/14<br/> source [8] 82/15 82/17 88/18 111/15 114/22 119/11 143/24 144/1<br/> sources [1] 119/3<br/> speak [2] 84/23 96/18<br/> specific [3] 43/22 46/1 100/3<br/> specifically [1] 104/16<br/> specificity [1] 123/19<br/> spelled [2] 107/11 107/13<br/> spend [5] 108/12 108/23 109/2 109/4 125/24<br/> split [2] 65/23 66/7<br/> spoke [1] 14/7<br/> spot [1] 137/22<br/> spots [1] 11/21<br/> spread [1] 149/16<br/> spring [1] 29/5<br/> Staff [14] 1/19 5/9 30/6 30/10 30/16 31/1 31/4 31/7 32/21 145/10 145/20 147/3 147/6 147/22<br/> Staff's [1] 12/5<br/> stages [1] 96/23<br/> stair [1] 87/20<br/> stair-step [1] 87/20<br/> stand [2] 6/10 7/3<br/> standard [7] 25/3 60/14 91/10 125/13 127/5 127/16 128/3<br/> standing [1] 7/1<br/> standpoint [2] 90/20 122/20<br/> start [8] 6/3 19/12 49/9 55/15 55/23 72/23 75/23 121/23<br/> started [3] 8/23 10/12 73/5<br/> starting [4] 28/1 53/8 64/21 131/4<br/> starts [3] 13/9 28/14 56/2<br/> state [10] 1/1 91/15 91/16 99/24 100/14 103/7 116/4 127/16 128/17 132/14<br/> stated [8] 21/13 46/15 62/2 66/2 66/3 81/24 98/17 139/21<br/> statement [5] 39/17 99/9 107/15 113/13 115/6<br/> STATEMENTS [1] 2/17<br/> states [16] 87/21 96/6 97/11 101/19 102/18 104/7 105/7 117/7 126/19 127/1 127/2 127/12 127/24 129/10 129/20 148/19<br/> stating [3] 17/7 46/12 97/19<br/> statute [13] 21/8 21/14 36/9 97/24 99/9 99/12 99/16 99/20 101/8 104/12 133/18 134/24 150/3<br/> stay [15] 19/17 22/2 29/3 49/22 50/17 52/4 67/13 67/13 74/22 77/1 77/10 84/1 131/1 131/12 141/21<br/> stayed [6] 42/9 48/21 69/8 81/14 81/19 82/9<br/> staying [1] 50/23<br/> step [2] 87/20 129/18<br/> Steven [4] 1/23 2/4 6/9 6/17<br/> stick [1] 132/6<br/> still [21] 4/8 8/14 17/21 24/8 24/12 25/7 25/7 29/20 50/11 51/23 62/18 63/13 64/11 66/5 80/12 82/7 84/13 86/11 104/12 130/8 149/8<br/> stockholders [1] 125/20<br/> stocking [1] 41/12<br/> stopgap [1] 143/8<br/> straight [2] 51/3 113/19</p> |
|--|---|---|

|   |  |  |
|---|--|--|
| <p><b>S</b></p> <p>straightforward [1] 109/8<br/> stream [1] 63/9<br/> Street [3] 41/10 41/11 41/15<br/> strength [4] 109/18 110/15 116/5 116/19<br/> striking [2] 119/12 130/19<br/> structure [3] 62/20 115/22 117/22<br/> subject [4] 38/7 49/16 147/9 148/10<br/> submarines [1] 116/17<br/> submitting [1] 116/14<br/> subparagraphs [1] 60/4<br/> subpart [1] 104/16<br/> subsequent [1] 45/9<br/> substantial [2] 91/17 111/15<br/> substitute [1] 11/23<br/> success [2] 77/22 77/22<br/> successful [3] 83/7 109/14 124/23<br/> successfully [2] 108/16 118/9<br/> succinct [1] 151/12<br/> such [6] 30/9 30/12 60/10 84/24 148/14 151/2<br/> suddenly [1] 145/2<br/> suggested [1] 32/3<br/> suggesting [3] 32/7 65/22 120/8<br/> suggestions [1] 122/15<br/> sui [1] 132/13<br/> summarize [5] 5/15 6/20 7/9 13/11 90/16<br/> summarized [2] 6/2 25/22<br/> summarizes [1] 25/24<br/> summary [7] 12/18 18/1 19/6 92/11 92/13 104/6 111/7<br/> summer [1] 29/8<br/> sums [1] 109/2<br/> sunset [1] 101/10<br/> supplemental [1] 135/6<br/> supplied [1] 135/8<br/> supplier [76] 7/14 13/1 24/9 24/11 24/19 28/16 29/7 32/6 41/18 48/21 50/17 53/9 53/13 53/17 54/5 54/7 54/22 56/20 57/11 57/11 57/14 57/20 57/20 62/24 63/2 63/13 63/17 64/16 75/9 75/12 76/19 80/17 81/1 81/16 82/5 83/6 83/17 84/1 84/2 84/6 84/10 88/2 88/10 94/8 94/22 94/24 95/7 100/21 101/10 105/10 105/14 105/17 105/23 106/2 106/8 106/10 106/13 106/20 106/24 107/20 108/7 114/10 114/14 119/17 121/23 122/22 122/24 132/19 132/20 133/7 133/7 133/9 141/7 141/18 141/20 145/1<br/> supplier's [1] 29/6<br/> suppliers [36] 1/15 20/24 22/7 25/8 43/12 43/17 48/12 58/14 61/1 61/3 61/22 62/3 62/10 62/13 62/16 62/19 64/20 65/3 65/8 65/15 69/13 69/18 82/22 83/1 94/5 100/23 117/13 118/18 120/8 127/15 139/2 139/16 140/17 149/1 149/8 149/12<br/> suppliers' [1] 65/2<br/> supply [44] 5/2 15/18 16/12 18/8 24/12 25/4 29/4 47/14 48/14 48/23 49/15 54/16 57/2 64/15 67/5 67/15 67/16 67/17 74/23 75/17 75/21 76/12 76/15 81/10 88/18 92/8 105/8 105/21 106/20 113/11 114/9 117/6 127/7 129/17 135/3 139/3 139/5 141/9 141/22 142/14 149/6 150/4 150/24 151/2<br/> support [8] 7/6 11/21 22/16 33/5 66/6 145/23 146/1 146/17<br/> supported [3] 66/2 66/3 148/17<br/> supporting [1] 146/16<br/> suppose [1] 66/12<br/> supposed [3] 59/11 59/18 141/1<br/> Supreme [1] 87/10<br/> sure [25] 9/19 19/4 19/7 19/22 21/21 31/24 41/6 45/14 53/6 58/17 63/10 63/15 65/3 65/9 70/1 76/16 80/14 98/2 105/18 112/20 121/14 121/18 128/3 133/1 134/17</p> | <p>Susan [2] 1/17 5/5<br/> Suzanne [2] 1/19 5/8<br/> switched [2] 143/15 144/23<br/> switches [1] 62/24<br/> switching [2] 81/6 149/8<br/> sworn [6] 6/11 6/13 6/17 85/18 85/21 85/24<br/> system [2] 50/21 137/4<br/> systems [1] 74/13</p> <p><b>T</b></p> <p>table [1] 116/12<br/> take [35] 4/16 5/13 9/3 23/14 44/9 50/9 54/5 58/7 58/12 58/19 58/23 59/5 61/9 72/7 74/17 76/14 79/10 79/24 80/24 84/7 85/9 87/18 92/20 94/23 98/19 100/20 123/7 123/12 128/4 138/8 144/21 149/5 150/22 151/5 151/17<br/> taken [3] 85/12 96/23 96/24<br/> takes [7] 52/24 79/6 85/18 95/6 101/14 144/16 144/21<br/> taking [11] 31/19 48/5 48/20 51/16 53/9 59/8 67/2 68/8 127/18 129/18 142/11<br/> talk [3] 33/11 38/6 115/14<br/> talked [2] 66/19 68/2<br/> talking [5] 32/23 72/3 101/12 118/1 120/6<br/> talks [7] 56/20 60/17 89/22 89/23 89/23 114/8 115/2<br/> targeted [1] 100/22<br/> tariff [4] 45/3 49/18 56/3 57/3<br/> tariffed [2] 31/3 31/4<br/> tariffs [3] 42/21 61/15 146/16<br/> tasks [1] 39/4<br/> TECH [3] 3/4 3/4 9/24<br/> TECH-001 [1] 9/24<br/> TECH-01 [1] 3/4<br/> technical [2] 3/4 13/10<br/> telecom [1] 127/9<br/> tell [9] 32/4 34/2 36/6 67/7 71/10 75/5 84/22 89/15 102/23<br/> telling [1] 118/12<br/> temporarily [1] 13/20<br/> temporary [3] 35/16 35/17 144/15<br/> ten [5] 85/10 91/1 91/14 102/7 124/6<br/> tend [1] 49/21<br/> tent [1] 62/16<br/> term [78] 7/5 7/6 7/8 7/15 7/18 7/20 8/1 8/4 8/6 8/11 8/12 8/13 8/17 8/22 8/24 9/5 11/20 16/23 16/24 17/4 17/8 17/12 17/13 17/18 17/22 18/2 18/3 18/13 19/9 19/10 19/13 19/14 19/20 19/22 20/2 20/12 21/3 22/14 22/14 22/17 22/24 23/18 23/22 26/11 26/15 26/17 65/18 67/13 75/18 81/7 81/13 81/17 101/21 103/11 104/10 118/14 120/21 132/11 133/13 133/14 133/21 139/15 140/9 140/13 140/14 140/19 145/19 145/20 145/24 146/1 146/3 147/14 147/15 147/20 147/21 150/18 150/18 151/8<br/> terminate [4] 8/19 33/4 77/20 80/7<br/> terminated [6] 9/2 22/21 23/3 23/13 77/24 79/23<br/> termination [1] 23/9<br/> terms [14] 7/10 8/10 20/17 21/7 26/6 26/7 43/5 56/24 65/16 78/19 91/14 123/15 143/4 147/7<br/> territory [2] 50/11 135/5<br/> test [2] 32/2 76/24<br/> tested [1] 80/3<br/> testified [10] 96/14 107/17 136/16 137/20 139/2 139/6 139/14 139/22 141/18 147/19<br/> testify [1] 94/3<br/> testifying [1] 88/13<br/> testimony [57] 3/5 5/16 6/3 6/21 6/23 7/3 7/7 7/17 7/21 17/17 20/1 26/15 26/16 45/24 46/9 58/11 66/15 70/13 86/3 89/15 90/11</p> | <p>90/16 90/17 91/23 96/5 97/6 97/10 97/11 99/23 101/16 101/17 101/19 102/2 102/5 102/10 102/12 102/14 102/18 102/22 103/7 104/5 105/5 105/7 106/16 107/12 107/13 107/15 109/17 110/14 110/16 112/9 114/24 117/4 143/2 145/21 147/3 147/15<br/> text [2] 10/14 100/9<br/> than [46] 13/16 25/3 30/6 34/22 42/3 44/23 48/18 48/20 55/6 57/16 61/17 63/13 63/18 64/11 64/14 65/2 72/19 75/14 75/18 75/21 77/15 78/22 84/2 84/4 84/5 84/19 91/13 94/4 109/6 112/19 113/20 113/22 114/18 115/10 116/23 117/18 119/6 119/10 119/17 120/19 124/12 130/15 139/4 143/5 146/9 148/9<br/> thank [78] 6/15 9/22 11/11 11/15 12/8 12/10 12/13 15/3 16/21 25/9 25/11 25/14 26/20 26/21 26/23 27/1 38/4 47/5 47/10 47/12 48/3 48/24 49/1 49/2 56/17 63/5 63/7 66/14 69/19 69/21 80/9 81/21 85/4 85/5 85/7 85/9 86/23 90/14 92/15 92/22 95/11 95/22 95/24 96/2 97/6 98/14 99/23 101/16 104/3 105/4 111/19 111/21 114/7 119/21 119/22 120/18 121/22 122/10 125/2 125/3 129/24 130/7 132/2 136/3 136/4 136/6 142/21 142/22 142/24 145/7 145/8 145/10 146/3 146/4 146/6 151/11 151/11 151/19<br/> that [891]<br/> that's [141] 5/18 5/19 9/23 10/20 12/4 13/22 14/12 14/19 14/20 14/20 15/7 17/23 18/13 18/15 20/6 20/18 21/6 21/13 23/1 23/24 24/17 26/18 26/19 31/14 32/11 33/11 33/14 33/20 35/2 35/17 35/20 35/21 36/1 36/5 40/1 44/3 44/6 48/22 49/23 50/13 50/19 51/1 51/1 51/1 51/8 51/11 55/3 55/20 56/13 57/19 58/18 60/12 60/15 60/23 62/15 62/17 63/5 64/18 65/5 65/7 65/9 65/17 66/1 66/1 66/11 66/12 66/12 66/21 67/5 68/1 68/21 69/15 69/15 69/19 71/7 73/8 74/2 75/16 76/22 78/11 79/24 80/10 80/18 82/14 82/17 82/20 84/13 87/12 88/11 88/12 88/15 88/22 89/4 90/4 90/24 91/18 92/3 92/9 93/14 93/24 94/13 95/1 95/18 95/21 96/8 96/16 96/20 97/17 103/14 104/11 106/5 106/6 108/20 109/22 110/1 111/1 111/18 112/18 113/6 117/7 118/5 119/5 119/21 121/3 121/12 121/21 122/17 125/2 126/6 126/22 129/6 129/13 132/10 132/20 132/22 132/23 133/1 141/12 142/17 143/11 144/22<br/> their [72] 8/12 8/16 8/22 20/19 22/24 38/24 39/19 40/3 40/5 40/12 43/3 50/8 50/15 50/23 52/13 54/15 55/11 55/13 59/12 61/1 61/4 61/4 61/14 62/10 62/14 62/16 66/3 74/24 84/1 88/6 88/7 91/7 91/23 93/4 93/18 94/15 95/8 98/22 106/20 107/4 107/5 109/20 113/17 115/21 115/22 116/11 117/21 119/14 120/9 120/14 120/14 120/24 121/17 121/8 121/10 122/21 123/1 123/4 125/8 127/7 127/19 129/1 131/14 142/5 142/11 143/15 145/2 148/23 149/1 149/7 149/21<br/> them [32] 50/10 50/22 57/3 57/12 59/18 61/12 61/12 66/21 76/5 76/5 82/7 83/12 84/20 88/5 88/8 88/20 91/1 106/14 116/22 118/12 123/4 123/6 126/24 127/17 127/18 129/14 130/20 133/8 138/7 138/10 139/17 145/22<br/> themselves [4] 117/19 127/22 138/4 148/21<br/> then [95] 4/12 6/6 11/7 11/8 13/20 14/24 26/21 28/10 28/12 29/7 29/18 36/20 37/3 48/22 49/2 51/7 52/2 52/10 52/13 53/1 53/12 54/6 54/10 54/12 54/23 55/16 55/24 56/8 57/6 59/15 62/19 63/24 64/23 67/6 67/14 70/6 70/23 71/3 72/20 76/6 77/2 77/5</p> |
|---|--|--|

|   |  |   |
|---|--|---|
| <p><b>T</b></p> <p>then... [53] 77/12 78/13 79/18 79/19 80/20 80/24 81/1 81/7 81/14 82/12 83/15 84/2 84/9 85/8 92/2 92/21 99/8 99/8 99/9 101/22 101/22 101/23 102/14 102/17 109/17 113/3 114/19 115/7 116/16 119/10 120/9 120/12 121/17 122/6 123/2 123/14 124/10 126/4 127/7 127/14 128/10 129/2 130/6 130/14 130/23 131/5 131/10 131/11 131/19 140/18 141/10 141/12 146/14</p> <p>there [146] 5/12 5/18 7/15 8/14 9/15 10/22 11/21 13/3 15/22 16/24 18/16 19/14 23/16 27/18 29/19 29/24 30/4 31/10 31/11 31/13 32/10 32/15 33/1 33/8 33/15 34/12 34/16 36/18 38/17 39/11 40/4 40/20 41/18 41/19 45/10 48/15 48/17 50/8 50/8 51/14 52/7 52/17 52/20 53/1 53/2 55/10 55/14 56/4 56/21 57/20 57/21 57/22 60/22 61/17 62/1 62/17 62/19 64/5 64/6 64/7 64/8 66/10 67/15 67/16 69/3 69/24 70/4 70/9 73/16 74/5 75/6 78/19 79/8 80/1 80/3 81/4 81/4 81/22 83/3 83/8 83/13 84/16 86/8 86/8 87/22 92/18 97/15 100/16 101/18 101/18 101/19 102/12 103/9 105/20 105/24 105/24 106/9 108/19 112/10 112/19 114/3 114/12 114/15 114/15 114/19 115/7 115/12 115/14 116/3 117/12 119/8 119/11 120/16 122/1 122/17 123/5 124/15 125/18 126/11 127/2 127/3 127/4 127/22 129/2 129/9 130/8 130/12 130/18 132/5 133/20 134/6 134/11 134/15 136/24 137/11 139/13 139/20 140/3 140/22 144/9 144/12 148/3 149/7 150/18 150/24 151/3</p> <p>there's [65] 4/12 4/15 6/7 9/11 16/16 16/16 16/22 18/12 18/22 19/22 20/6 20/16 20/23 20/23 23/7 27/12 28/24 31/24 32/9 32/23 34/17 34/18 35/16 36/24 39/6 40/12 40/24 42/21 43/14 56/17 56/23 56/23 57/19 64/22 69/2 71/22 77/3 77/8 78/7 79/3 84/14 84/21 87/10 99/15 100/7 101/17 121/15 125/22 126/4 130/2 133/20 134/10 134/14 135/10 135/21 136/1 137/7 138/2 139/10 139/23 140/12 141/14 144/17 144/17 151/14</p> <p>therefore [4] 118/3 138/12 140/5 140/12</p> <p>these [13] 38/22 39/3 39/4 41/16 59/10 116/20 117/21 126/3 136/17 136/18 144/2 144/9 151/6</p> <p>they [193]</p> <p>they're [57] 22/3 39/7 39/9 39/14 39/16 39/18 40/4 40/7 40/20 43/11 43/14 44/13 48/12 48/13 48/13 51/13 59/22 67/11 76/2 76/3 76/11 82/3 84/3 84/9 84/11 93/8 94/16 94/21 95/19 104/4 107/8 115/23 121/4 121/18 121/19 124/14 129/1 133/6 133/7 134/16 134/17 134/18 134/19 136/18 137/10 137/16 137/20 137/21 137/21 137/23 137/24 138/1 138/7 141/12 141/23 142/9 142/13</p> <p>thing [13] 13/23 18/15 24/23 30/19 39/23 52/15 66/18 78/18 80/13 83/19 87/13 89/6 124/21</p> <p>things [20] 10/6 10/11 20/6 23/8 31/24 32/9 34/21 51/4 56/18 66/18 68/21 79/6 110/8 111/3 122/13 130/3 132/15 134/24 144/15 144/18</p> <p>think [117] 5/23 7/10 7/16 7/23 7/24 8/3 9/3 9/4 9/14 10/3 10/13 10/16 10/17 12/19 16/11 16/15 16/15 16/17 20/6 20/18 20/23 20/24 21/3 21/13 22/11 22/12 22/15 30/22 30/23 31/10 33/6 34/5 36/5 36/6 36/8 38/3 39/2 39/18 39/23 43/2 43/5 44/1 49/3 56/16 58/11 60/11 60/19 61/3 61/6 62/14 63/21 64/4 64/9 64/17 65/12 65/12 65/20 66/18</p> | <p>67/1 68/8 68/10 68/12 68/21 69/5 69/9 71/22 72/2 74/24 76/4 76/6 77/7 77/12 78/1 78/6 78/16 78/17 78/18 78/20 79/22 80/16 85/15 89/22 91/1 91/13 92/19 100/2 100/19 103/1 107/3 107/13 108/18 114/18 117/15 118/14 119/6 120/3 120/22 121/1 122/19 123/12 123/19 124/2 124/17 124/21 127/24 128/7 129/5 129/10 131/18 132/4 132/5 134/7 134/13 134/13 134/15 134/20 135/11</p> <p>thinking [1] 23/5</p> <p>thinks [1] 64/8</p> <p>third [5] 32/11 101/18 104/5 104/7 115/2</p> <p>this [224]</p> <p>those [70] 9/3 9/13 9/18 11/24 13/6 13/13 13/18 17/21 19/8 20/7 20/17 21/3 21/4 21/24 22/12 22/15 24/20 24/21 25/23 26/4 26/8 31/5 31/9 34/7 35/14 37/1 39/10 43/8 43/9 45/4 45/6 47/24 48/24 49/14 51/22 51/23 55/6 61/15 67/12 71/16 72/8 72/14 74/14 74/14 74/17 79/3 79/7 84/16 93/16 97/1 108/1 108/14 110/8 116/7 125/14 125/23 126/23 126/24 128/1 134/22 135/19 137/1 137/5 139/4 139/15 140/17 142/10 144/14 148/9 148/10</p> <p>though [9] 35/22 48/18 60/13 65/1 68/4 74/19 116/12 142/13 145/22</p> <p>thought [12] 22/4 23/11 35/2 63/11 64/17 64/17 76/23 92/5 112/12 113/8 124/13 140/10</p> <p>thousand [2] 83/8 83/9</p> <p>three [14] 70/18 77/17 77/20 78/8 78/13 78/16 78/21 91/13 98/24 133/16 135/13 135/21 139/13 139/14</p> <p>three-month [2] 78/8 78/13</p> <p>three-page [1] 70/18</p> <p>through [53] 4/4 4/5 9/9 15/16 16/4 20/9 23/11 27/20 28/1 32/3 33/18 33/22 33/23 35/3 36/10 36/13 36/19 37/4 40/6 40/9 40/23 41/24 49/20 49/23 51/5 52/3 58/4 61/15 63/1 71/5 72/12 72/16 73/19 73/23 78/15 79/7 79/9 79/10 90/3 91/13 92/10 108/9 125/13 126/21 129/18 133/23 134/2 135/6 135/8 136/1 138/3 142/6 144/4</p> <p>throughout [2] 91/23 107/13</p> <p>Thus [1] 142/15</p> <p>tied [1] 90/22</p> <p>till [2] 23/17 123/1</p> <p>time [63] 8/6 9/1 13/15 14/3 15/10 21/2 22/20 24/24 25/16 25/19 28/4 29/13 32/11 34/21 35/18 36/7 39/19 39/23 40/8 40/9 41/12 42/20 54/15 55/14 56/3 57/5 57/12 61/18 64/4 74/1 75/14 77/21 78/20 78/23 79/4 79/7 79/9 79/13 81/9 83/15 90/8 93/9 94/10 113/21 118/9 120/24 121/11 123/13 123/13 123/16 123/20 123/24 124/2 124/3 127/17 127/20 128/16 140/16 141/15 141/22 141/23 144/3 144/16</p> <p>times [3] 95/16 125/5 135/13</p> <p>today [23] 5/22 23/21 42/5 47/19 78/18 86/13 87/23 88/13 96/14 99/16 101/12 101/14 108/19 111/18 121/21 135/11 136/22 139/2 139/15 140/2 140/16 141/19 143/18</p> <p>today's [1] 139/24</p> <p>together [2] 4/3 30/1</p> <p>token [2] 43/8 62/3</p> <p>told [3] 53/21 95/3 124/12</p> <p>tomorrow [1] 107/21</p> <p>too [4] 41/13 78/21 133/17 147/24</p> <p>took [4] 5/21 54/6 69/8 127/17</p> <p>top [5] 29/18 30/3 75/2 89/22 105/6</p> <p>total [5] 35/7 70/22 128/23 128/24 131/17</p> <p>towards [1] 52/8</p> <p>track [3] 69/7 78/19 79/14</p> <p>tracking [2] 137/4 137/5</p> | <p>trade [1] 118/24</p> <p>traditional [1] 116/24</p> <p>train [1] 22/4</p> <p>training [1] 42/12</p> <p>trajectory [1] 127/2</p> <p>transaction [2] 116/7 116/16</p> <p>transactions [1] 116/20</p> <p>transcript [5] 5/20 15/13 15/21 27/4 27/9</p> <p>transferred [1] 134/18</p> <p>transition [10] 60/6 104/18 105/23 114/11 126/21 129/11 135/3 135/15 144/9 145/7</p> <p>transmission [2] 40/11 41/2</p> <p>transpired [1] 99/15</p> <p>tree [1] 10/10</p> <p>trend [1] 44/19</p> <p>triangle [1] 12/3</p> <p>tried [1] 132/4</p> <p>trigger [2] 72/21 73/3</p> <p>triple [1] 109/1</p> <p>trouble [1] 100/4</p> <p>truck [1] 136/1</p> <p>true [11] 25/16 37/6 86/11 97/18 106/15 115/6 125/10 141/19 143/19 143/20 143/21</p> <p>try [4] 41/7 49/12 125/23 131/14</p> <p>trying [17] 20/11 23/6 23/12 50/21 52/6 53/7 56/18 59/2 59/13 62/18 73/24 80/13 83/3 89/5 90/1 113/19 115/21</p> <p>turn [9] 16/21 26/22 27/6 33/1 70/3 77/16 97/9 104/15 105/19</p> <p>Turning [1] 104/5</p> <p>Twenty [1] 83/9</p> <p>twice [2] 103/18 135/13</p> <p>two [20] 10/4 33/16 41/8 41/14 51/4 56/1 57/14 59/15 64/23 80/24 81/2 81/6 84/12 95/16 98/24 100/14 101/20 111/3 131/22 134/24</p> <p>two-part [1] 33/16</p> <p>two-sentence [1] 10/4</p> <p>types [1] 39/3</p> <p>typically [4] 94/9 94/21 95/2 95/7</p> <p>typo [1] 9/9</p> |
|   |  | <p><b>U</b></p> <p>ultimately [1] 64/14</p> <p>unanticipated [3] 31/23 32/10 32/15</p> <p>uncertainty [1] 124/10</p> <p>under [59] 6/13 7/13 8/7 8/13 8/24 10/11 12/5 12/23 13/3 15/8 16/15 19/23 24/14 25/1 25/2 25/5 43/9 44/22 54/1 54/15 55/3 56/4 56/8 59/8 61/9 61/23 67/3 67/10 69/8 75/4 76/9 76/11 76/13 77/11 77/13 83/2 83/11 100/10 101/18 101/20 103/11 103/13 104/6 105/20 106/17 113/9 114/24 119/12 122/24 138/9 139/24 142/9 142/13 143/4 145/16 147/13 150/15 150/16 151/18</p> <p>underlying [1] 20/16</p> <p>understand [14] 14/9 40/17 42/11 70/2 80/16 94/21 99/18 102/17 105/18 126/9 139/10 139/11 140/23 141/12</p> <p>understanding [3] 93/14 96/4 125/17</p> <p>understood [4] 17/7 63/10 110/16 121/15</p> <p>undertaken [1] 122/21</p> <p>undertaking [1] 91/22</p> <p>undue [1] 145/6</p> <p>unduly [7] 60/7 60/18 135/17 135/22 145/4 150/17 150/18</p> <p>unfair [3] 111/1 125/16 134/21</p> <p>Union [1] 88/4</p> <p>unique [1] 129/21</p> <p>universal [2] 132/24 133/11</p> <p>unlawful [2] 133/14 148/15</p> <p>unless [6] 5/12 6/7 61/24 61/24 64/22 151/14</p> <p>unnecessarily [1] 140/20</p> <p>until [4] 22/23 35/18 74/21 121/21</p>  |

**U**  
untimely [1] 133/17  
up [33] 5/11 5/13 10/16 18/13 35/18 44/18 46/24 50/21 57/3 58/17 58/18 61/22 62/16 67/22 68/19 81/12 83/22 85/15 93/13 108/15 109/2 110/13 111/3 117/3 118/13 119/15 124/24 125/12 126/3 127/12 135/11 142/18 143/15  
updated [1] 72/23  
upon [7] 15/9 91/10 101/23 107/4 109/9 109/11 121/2  
upper [1] 53/8  
us [8] 6/22 9/17 46/4 67/7 70/16 109/24 119/11 127/10  
use [17] 12/13 19/1 44/18 49/20 82/11 93/5 93/16 104/10 122/18 133/13 133/14 133/21 137/7 137/12 140/9 140/13 140/19  
used [4] 53/11 62/23 72/8 72/22  
user [3] 87/17 90/1 119/5  
using [7] 27/13 34/13 42/8 71/2 82/22 83/1 137/16  
usually [1] 79/17  
utilities [4] 1/2 87/11 128/5 129/17  
utility [16] 59/19 61/13 68/19 90/23 92/6 97/20 98/11 104/20 115/19 115/23 127/14 128/9 128/14 128/16 128/24 149/20  
utilized [1] 102/6

**V**  
vague [1] 45/15  
valid [1] 21/3  
value [7] 66/10 108/20 116/5 117/24 118/11 121/10 140/23  
variety [4] 22/17 23/7 25/20 140/22  
various [9] 10/4 10/6 10/21 16/15 82/1 87/21 96/23 146/15 148/4  
verbal [5] 6/8 130/13 130/17 130/21 151/15  
verbally [1] 66/15  
verified [1] 128/2  
version [1] 99/1  
versus [4] 84/10 111/11 112/11 112/15  
very [44] 12/22 28/16 31/16 36/7 41/5 70/18 75/2 87/3 90/22 100/8 100/13 101/2 101/20 102/5 103/15 105/6 106/11 107/10 109/3 109/3 109/12 109/12 111/12 111/12 117/3 117/3 119/1 119/1 119/19 121/8 121/8 124/17 124/17 129/20 130/4 132/2 132/3 132/11 133/18 136/1 140/5 141/15 144/15 151/12  
Vice [1] 89/24  
view [10] 10/13 16/17 31/20 90/18 91/20 107/4 107/5 127/20 130/3 132/12  
viewed [2] 76/7 76/16  
violate [1] 138/7  
violating [2] 138/12 138/16  
virtually [1] 114/16  
volatility [3] 60/9 135/19 135/24

**W**  
wait [1] 123/1  
want [22] 16/21 31/14 33/11 41/6 53/16 53/17 59/16 63/10 63/11 65/13 70/1 86/9 88/9 89/5 89/6 106/10 111/3 122/14 132/4 132/6 132/6 148/3  
wanted [7] 12/16 12/19 24/11 24/13 31/14 44/5 112/20  
war [1] 108/15  
was [113] 5/20 6/9 7/3 8/24 9/2 9/9 9/15 11/12 15/23 17/12 18/2 18/5 19/15 19/15 22/7 23/6 23/12 25/19 28/20 34/11 34/12 34/23 41/10 42/6 42/8 44/3 45/1 45/14 45/22 47/2 49/16 51/4 51/5 51/7 52/16 52/20 52/22 55/16 56/4 57/12 57/21 57/24

59/21 63/11 63/18 64/12 64/14 66/17 66/17 71/17 71/18 72/9 75/5 81/4 83/8 83/20 85/20 86/20 87/9 88/16 88/18 88/19 92/6 92/18 94/2 95/12 99/18 101/1 101/11 102/23 103/2 110/13 111/9 111/9 112/10 112/14 112/16 112/16 112/17 113/8 114/18 115/12 115/13 115/14 115/14 116/2 118/14 122/2 122/10 122/11 123/3 123/7 124/13 124/13 126/11 127/10 132/11 132/12 139/2 139/7 139/7 139/8 139/13 139/18 141/8 141/9 141/18 144/12 144/12 144/15 146/7 148/3 151/8  
wasn't [5] 15/23 23/5 89/18 115/14 125/1  
way [29] 19/13 26/24 31/21 34/14 34/21 44/1 44/20 62/22 64/8 64/12 67/5 68/11 68/11 69/5 69/6 76/14 82/8 83/10 104/16 123/17 124/6 125/23 126/22 128/1 131/2 149/1 149/2 149/7 149/9  
ways [1] 116/23  
we [139] 4/2 4/3 4/3 4/5 4/11 4/14 4/14 4/15 5/11 5/11 5/12 6/7 6/22 7/11 7/23 11/7 12/11 12/20 17/3 27/8 27/12 27/12 31/2 32/23 34/24 35/2 36/2 40/18 41/6 41/6 41/14 42/19 44/14 44/14 46/7 50/21 52/13 56/13 59/4 61/24 62/19 65/23 66/7 66/22 66/23 67/5 67/8 67/9 67/10 68/2 68/19 69/7 71/22 72/3 72/6 76/23 77/7 79/5 79/18 79/19 83/4 83/8 85/17 85/17 85/18 87/24 88/7 88/7 89/19 90/4 90/5 90/5 92/9 92/19 99/14 101/11 108/21 108/23 109/1 109/6 110/4 110/4 110/5 110/6 110/6 110/10 112/1 117/15 117/15 118/21 118/24 118/24 119/2 119/3 119/6 119/7 119/7 119/7 119/10 121/21 122/13 122/13 122/15 122/16 122/16 122/17 122/18 129/15 129/15 130/8 130/11 130/15 130/23 131/2 131/5 131/11 131/13 132/10 132/14 133/15 134/5 139/9 139/11 142/15 143/8 143/10 144/15 144/17 145/12 145/14 145/18 145/23 145/23 146/2 147/15 151/6 151/13 151/17 151/18  
we'd [2] 30/19 134/6  
we'll [9] 4/16 11/9 67/3 67/19 67/19 90/13 127/7 130/23 131/12  
we're [21] 10/16 27/13 38/7 51/16 53/7 53/10 59/2 59/13 59/18 81/23 85/14 90/4 90/9 101/12 113/7 118/1 126/21 130/8 131/11 137/6 151/19  
we've [15] 38/3 49/3 53/21 87/22 101/2 106/23 108/18 117/9 120/6 124/19 126/16 127/21 131/4 131/5 135/12  
weeks [1] 6/22  
welcome [2] 47/6 92/16  
welcoming [1] 124/20  
well [119] 8/20 14/1 16/15 18/15 19/12 19/15 19/22 20/6 20/18 20/23 21/15 21/22 22/2 22/11 23/5 27/24 29/16 29/18 30/18 31/3 31/15 32/3 34/5 34/19 34/22 34/24 35/2 35/11 36/3 38/6 38/7 39/17 39/23 40/9 40/11 42/8 43/5 43/19 43/23 45/19 48/11 48/16 50/4 50/20 51/1 51/10 52/15 54/8 57/1 57/19 58/8 59/24 61/11 62/5 63/3 63/24 64/2 64/6 64/21 67/1 67/9 67/12 67/22 68/6 68/14 68/21 69/15 76/4 76/11 76/22 76/23 77/12 78/1 83/1 83/19 83/22 84/13 84/21 88/22 89/21 90/5 91/5 92/3 97/22 98/17 100/18 105/19 106/11 107/3 107/13 108/6 109/22 110/20 111/3 113/7 113/16 113/24 116/2 116/17 117/15 118/20 119/19 120/11 121/2 121/18 122/5 122/19 124/2 125/17 127/1 130/2 130/7 132/2 132/4 134/8 136/16 137/6 139/9 140/10  
well-tried [1] 132/4  
went [6] 54/7 57/10 57/11 81/10 122/13 122/15

were [56] 4/3 6/12 8/12 8/19 24/10 44/11 45/10 47/3 48/23 52/17 54/14 55/24 56/11 57/7 60/20 63/18 66/7 66/19 66/19 69/9 72/3 72/8 72/16 74/6 74/22 75/22 76/4 76/5 76/12 76/17 76/23 79/22 82/5 84/2 89/2 94/1 94/17 94/22 98/18 99/16 101/9 112/13 115/16 117/11 117/12 120/8 122/16 127/15 127/16 127/18 128/3 128/16 129/9 129/10 129/12 131/2  
weren't [4] 39/22 57/8 69/9 124/23  
what [146] 5/15 9/5 10/6 10/14 13/6 13/22 14/4 18/6 18/20 19/12 19/13 19/18 20/8 20/11 23/2 29/2 30/2 30/23 32/20 33/20 34/13 34/20 34/21 34/24 35/18 37/2 37/5 37/10 37/24 38/17 39/15 39/18 39/19 40/3 40/7 42/23 43/14 43/17 44/3 44/22 45/6 45/16 46/7 48/9 48/11 49/10 49/10 51/16 51/24 53/23 54/11 54/14 54/24 55/20 58/2 59/2 59/13 60/13 60/19 61/7 64/3 65/3 65/8 65/10 66/7 66/15 67/7 68/17 68/18 68/24 69/5 69/7 69/9 69/13 69/17 69/17 71/3 71/16 72/3 72/23 76/8 76/17 77/15 81/23 83/3 89/5 92/5 95/3 95/8 102/13 103/2 103/22 104/11 105/15 105/18 106/4 106/5 106/6 107/4 107/6 107/16 108/6 108/9 111/7 111/8 111/16 112/13 113/1 113/13 113/24 114/5 115/12 115/13 115/13 116/18 117/11 117/12 118/7 118/11 118/24 119/3 119/6 119/10 121/10 121/16 121/21 123/9 124/5 124/13 127/21 129/11 130/8 131/18 132/20 132/23 133/1 134/16 134/20 135/19 136/16 138/14 140/17 141/10 141/11 141/12 141/23  
what's [16] 7/4 56/19 65/22 67/18 70/8 74/11 75/24 77/7 78/12 78/20 87/16 89/10 91/12 123/18 125/16 142/6  
whatever [12] 35/15 37/16 43/11 53/15 56/22 59/16 61/5 61/6 83/14 106/19 132/8 144/22  
Whatever's [1] 144/19  
when [38] 4/3 7/3 9/9 10/5 13/22 27/17 29/5 29/8 32/4 34/9 37/3 40/14 52/19 55/4 72/8 72/10 78/14 79/14 84/17 93/3 93/15 94/7 95/2 95/11 114/3 115/11 118/4 122/10 126/1 127/14 128/8 128/19 131/13 133/5 133/15 141/5 141/13 144/20  
whenever [1] 84/12  
where [43] 4/14 11/21 12/20 22/11 40/8 40/18 41/13 44/15 45/2 50/2 52/17 53/24 55/11 55/12 55/15 55/17 57/6 57/23 59/15 62/19 64/11 64/19 68/11 68/19 82/20 84/20 91/5 91/6 100/13 100/19 100/24 101/11 107/11 116/3 124/18 124/24 129/1 129/15 135/12 139/16 141/12 143/10 149/10  
whereas [1] 108/22  
whereby [1] 52/1  
Whereupon [3] 6/9 85/20 151/20  
wherewithal [2] 116/4 116/20  
whether [40] 10/10 10/11 15/18 15/24 21/2 22/13 23/8 23/9 25/5 30/7 31/20 31/20 36/2 45/12 45/14 46/18 47/24 56/11 59/21 68/10 71/10 71/11 71/11 71/13 74/22 75/19 77/23 77/23 81/8 84/24 99/18 109/19 109/20 115/16 121/11 129/4 136/20 136/23 138/9 141/6  
which [50] 10/4 13/3 22/3 24/15 26/10 28/9 28/12 30/7 32/19 36/23 37/20 47/3 51/5 51/13 55/19 60/3 60/6 61/8 62/2 70/13 70/14 70/18 84/7 87/21 90/21 92/6 92/20 99/14 100/18 101/8 103/9 108/21 109/3 109/23 110/9 116/7 120/22 121/17 124/8 124/9 124/13 127/3 128/1 132/17 133/10 133/13 135/17 136/2 141/4 144/20  
while [7] 12/17 77/11 110/4 113/7 121/13 130/8 147/22

**W**  
 who [34] 25/4 41/22 42/3 42/4 42/6 45/4 49/13 49/15 51/17 54/3 62/23 64/8 82/21 100/23 105/9 105/22 106/19 114/9 115/3 116/4 122/2 122/23 126/3 126/23 127/15 131/6 139/3 139/4 141/19 142/7 142/9 146/12 148/10 149/17  
 whole [7] 20/7 62/2 89/16 91/9 117/22 126/4 140/4  
 wholesale [1] 99/4  
 whom [2] 67/24 127/7  
 whose [2] 116/21 117/17  
 why [24] 4/11 12/10 23/2 30/15 31/15 33/15 34/2 34/2 36/7 43/6 44/21 48/23 50/21 52/13 56/22 76/19 77/9 89/19 102/17 102/23 103/4 105/24 106/3 139/3  
 wider [1] 149/16  
 will [70] 5/17 6/20 10/6 13/12 14/1 15/9 21/1 35/15 38/17 46/16 49/21 50/3 50/4 52/4 52/7 52/8 58/15 60/19 62/3 62/5 62/6 62/11 63/13 64/5 68/15 72/7 72/11 72/13 74/5 75/20 77/18 78/16 82/14 90/19 90/21 91/1 91/5 91/6 91/8 95/3 95/8 95/9 107/6 117/11 117/24 119/4 121/20 127/4 127/6 127/7 127/13 131/11 139/15 139/17 139/20 141/3 141/4 141/5 141/13 141/20 143/4 144/5 144/6 144/20 145/2 145/22 148/21 149/2 149/12 151/17  
 willing [1] 106/13  
 windfall [4] 65/14 65/16 120/19 120/22  
 wing [1] 29/18  
 wired [1] 125/21  
 wires [2] 33/24 128/6  
 wish [2] 90/4 122/3  
 within [1] 143/13  
 without [25] 59/24 60/9 75/13 83/2 105/9 105/13 105/16 105/22 106/1 106/7 106/24 114/10 114/13 116/10 116/14 116/15 120/16 128/11 128/24 132/18 132/20 133/2 133/2 133/7 143/5  
 withstand [1] 144/3  
 witness [12] 2/4 2/10 6/24 12/8 27/8 85/18 98/6 100/17 130/9 132/12 139/6 143/1  
 witnesses [3] 4/4 92/18 130/11  
 won't [8] 12/1 42/19 53/1 58/23 132/21 135/1 141/14 145/22  
 wonder [2] 32/20 41/23  
 wondering [3] 15/24 22/7 37/19  
 word [4] 19/1 30/20 42/8 121/5  
 words [7] 10/14 18/13 19/12 63/11 83/19 101/3 106/3  
 work [8] 30/10 30/17 31/7 78/16 81/5 131/2 131/3 134/19  
 worked [2] 83/19 126/20  
 working [16] 8/21 16/18 18/22 31/6 31/18 39/16 39/18 39/21 39/23 39/24 40/5 40/20 49/23 68/22 89/1 89/1  
 workings [2] 7/1 13/10  
 workload [2] 42/17 42/22  
 works [3] 53/7 56/17 84/17  
 worried [1] 52/13  
 worry [5] 110/4 110/5 110/5 110/6 110/7  
 worse [1] 44/23  
 would [220]  
 wouldn't [10] 8/16 14/1 21/23 43/10 53/2 56/12 78/17 82/16 93/3 101/5  
 writing [1] 107/16  
 written [1] 115/11  
 wrong [4] 27/13 29/16 71/18 133/14  
 wrote [1] 129/9

**Y**  
 year [16] 32/7 65/15 71/16 73/9 73/13 73/14 79/19 84/19 91/7 93/13 95/16 95/20

133/16 143/13 146/9 148/9  
 years [11] 40/20 56/1 84/12 91/2 91/14 101/11 102/7 124/7 127/9 139/13 139/14  
 yes [134] 4/7 6/5 6/14 7/22 9/9 10/2 11/18 11/24 13/5 14/11 15/2 15/2 15/12 15/21 16/6 16/8 17/2 17/10 17/16 17/20 18/5 20/15 20/19 20/23 22/19 23/1 23/24 24/4 25/18 25/21 26/2 26/5 26/9 26/13 26/18 27/1 27/23 28/6 28/22 31/6 31/13 32/10 32/18 33/20 33/24 35/5 35/21 36/5 36/12 36/22 37/17 41/4 41/10 41/21 43/7 47/23 48/2 48/7 49/5 51/1 51/6 51/10 51/15 51/19 52/7 53/19 54/8 54/23 56/13 56/15 60/16 63/20 66/21 67/21 72/6 73/7 73/22 73/24 74/8 74/19 79/2 79/24 80/4 80/12 80/23 81/3 81/18 82/23 85/17 86/17 86/19 87/7 87/15 87/24 88/12 89/9 89/13 92/12 93/6 93/19 95/10 96/12 96/19 97/5 97/14 97/17 97/17 98/17 99/18 100/5 100/8 100/12 101/1 102/13 104/11 105/3 105/11 106/5 106/9 106/11 107/19 109/15 109/16 111/9 112/5 112/18 115/9 117/8 126/14 126/18 129/13 139/9 139/11 150/16  
 yet [6] 42/6 46/11 59/21 70/16 74/17 99/15  
 you [442]  
 you'd [7] 48/11 67/12 73/5 77/12 81/14 83/19 98/1  
 you'll [1] 72/21  
 you're [46] 21/5 28/10 29/14 31/10 36/15 36/18 37/2 37/5 39/11 39/23 40/14 40/17 44/5 45/16 46/7 47/6 49/20 59/14 60/13 71/2 71/18 75/11 76/8 76/14 77/4 77/5 80/17 82/9 82/12 82/12 84/17 85/9 88/10 88/13 92/16 96/6 96/14 113/1 119/14 121/11 121/12 121/12 121/16 130/7 130/9 135/20  
 you've [16] 12/18 32/6 32/11 55/17 58/6 61/2 61/16 65/20 76/24 80/3 117/5 120/3 125/5 125/15 126/19 134/3  
 your [79] 12/18 15/16 16/1 16/7 17/24 18/1 18/10 18/11 20/18 20/20 21/21 22/22 25/23 26/15 28/8 36/5 38/4 42/11 46/14 47/8 53/22 63/11 63/11 65/22 66/14 66/15 66/17 73/18 81/7 81/17 84/21 86/12 88/22 89/10 90/4 90/16 92/10 96/4 96/5 96/5 97/6 97/9 97/11 99/23 101/16 101/17 101/19 102/2 102/5 102/10 102/12 102/14 102/17 103/7 103/22 104/5 105/5 105/12 105/18 106/4 106/16 107/1 107/11 107/17 108/4 109/8 109/17 110/13 110/16 112/9 114/24 115/8 117/4 120/7 120/12 121/14 123/17 125/11 126/20  
 yours [1] 125/6  
 yourself [1] 81/24  
 yourselves [1] 131/23