

5/2/2023

PHILADELPHIA WATER, SEWER AND STORM WATER  
RATE BOARD PREHEARING CONFERENCE  
2023 RATE PROCEEDING  
FOR RATE PERIOD: FY 2024 AND 2025

Tuesday, May 2, 2023  
Philadelphia, Pennsylvania

TIME: 9:00 a.m.

LOCATION: Virtually

HELD BEFORE: MARLANE R. CHESTNUT  
Hearing Officer

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5/2/2023

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(Proceedings commenced at 9:04 a.m.)

HEARING OFFICER CHESTNUT: This is the hearing that's been scheduled in the 2023 General Rate Proceeding of the Philadelphia Water Department. This is an on-the-record hearing. Today's hearing is for the purpose of discussing procedural matters related to the technical hearings which will be held tomorrow, Thursday and Friday, if necessary, as well as any other briefing or procedural matters.

I'm the Hearing Officer Marlane Chestnut. I will note that representatives of the participants seem to be here. And I will just ask you to identify yourself for the record.

We will start with you, Mr. Dasent.

MR. DASENT: Good morning, Your Honor. Andre Dasent for Philadelphia Water Department.

HEARING OFFICER CHESTNUT: Thank you. I'm sorry.

MR. DASENT: With me is Carl

5/2/2023

1 Shultz. And I see Kevin Birriel, also.

2 HEARING OFFICER CHESTNUT: Okay.

3 Mr. Ballenger?

4 MR. BALLENGER: Good morning, Your  
5 Honor. Robert Ballenger. And Joline Price  
6 is with me for the Public Advocate.

7 HEARING OFFICER CHESTNUT: And  
8 Mr. Haver?

9 MR. HAVER: Lance Haver, Pro Se.

10 HEARING OFFICER CHESTNUT: And  
11 Mr. Gery?

12 MR. GERY: Good morning, everyone.  
13 Travis Gery on behalf of PECO.

14 HEARING OFFICER CHESTNUT: Is there  
15 anybody else that needs to identify  
16 yourself on the record? If so, I think  
17 you're unmuted. I will ask Heather to mute  
18 everybody once we get started.

19 MR. BAKARE: Good morning, Your  
20 Honor.

21 HEARING OFFICER CHESTNUT: I'm  
22 sorry. I completely forgot. I missed you.  
23 I'm sorry about that.

24 MR. BAKARE: That's okay.

5/2/2023

1 HEARING OFFICER CHESTNUT: Yeah.

2 MR. BAKARE: Adeolu Bakare on  
3 behalf of the Philadelphia Large Users  
4 Group.

5 HEARING OFFICER CHESTNUT: Okay.  
6 Anybody else?

7 MR. MARKUS: Ed Markus of Amawalk  
8 Consulting. Technical consultant to the  
9 Rate Board.

10 HEARING OFFICER CHESTNUT: Okay.  
11 We don't really need that, Ed.

12 MR. MARKUS: Okay.

13 HEARING OFFICER CHESTNUT: This is  
14 just participants.

15 MR. MARKUS: Sure.

16 HEARING OFFICER CHESTNUT: Thanks  
17 for speaking up. Okay.

18 I guess, I don't really have a  
19 specific agenda. Some items I think we  
20 need to discuss. I don't have a particular  
21 order. I was going to start with any  
22 stipulations or agreed issues that we can  
23 dispose of.

24 MR. HAVER: Before that, Your

5/2/2023

1 Honor. I have a quick question about  
2 discovery request.

3 HEARING OFFICER CHESTNUT: We will  
4 get to that.

5 MR. DASENT: We have no  
6 stipulations as of right now to bring to  
7 your attention. There are several or at  
8 least two areas where I can see that we can  
9 move towards sort of adjustments that we  
10 may agree with the Public Advocate on. And  
11 I will explore those with him offline.

12 We have also discussed the  
13 possibility of shortening cross-examination  
14 by coming up with either a compromise or a  
15 stipulation on certain points.

16 We haven't specifically talked  
17 about storm water cost recovery with the  
18 Public Advocate. But if we can come up  
19 with some language that's agreeable to both  
20 parties, I think we are both of the same  
21 mind that a discussion is needed. But it's  
22 just a question of getting all the  
23 stakeholders in the room.

24 So, those are the areas we will be

5/2/2023

1 exploring later today, and try to narrow  
2 the issues to help with the brief at the  
3 very least, Your Honor. And also, it will  
4 shorten cross.

5 HEARING OFFICER CHESTNUT: Okay.

6 MR. BALLENGER: I will just note,  
7 that I think PLUG's witness is requesting  
8 to be used. I would hope that perhaps  
9 Mr. Mierzwa could also be excused. But I  
10 note that Mr. Haver indicated he had some  
11 cross for him. If that's necessary, we can  
12 bring Mr. Mierzwa. But his issues are  
13 really quite technical.

14 So, I guess I'm asking Mr. Haver if  
15 he needs to cross Mr. Mierzwa?

16 MR. HAVER: I realize they're  
17 technical, and people like me have a very,  
18 very difficult time, in your opinion,  
19 understanding technical issues. I'm sorry  
20 that you feel so little of everybody other  
21 than your own judgment.

22 But, yes, I will cross-examine him  
23 even though he's a technical expert and  
24 only you and a handful of people can

5/2/2023

1 understand technical expertise.

2 MR. BALLENGER: I know the  
3 Department and PLUG do not have cross for  
4 Mr. Mierzwa, so.

5 HEARING OFFICER CHESTNUT: Okay.  
6 Well in looking at the cross-examination  
7 matrix, it's kind of a brutal schedule in  
8 terms of anticipated cross. So anything  
9 anybody can do to cut down on that.

10 MR. BAKARE: Hearing Officer  
11 Chestnut, this is Ade Bakare. Just a  
12 suggestion for Mr. Ballenger and Mr. Haver  
13 that might assist with that situation.

14 Since we have four days of hearing,  
15 I wonder if Mr. Ballenger made Mr. Mierzwa  
16 available for informal teleconference,  
17 perhaps that could be a way of addressing  
18 Mr. Haver's questions and see if that  
19 resolves the need for formal cross.

20 HEARING OFFICER CHESTNUT: I don't  
21 see any point to that. I mean, certainly,  
22 the parties are free to talk to each  
23 other -- participants, I should say, are  
24 free to talk to each other.

5/2/2023

1 Well, I will leave it up to you,  
2 Mr. Haver. Is that enough to satisfy you?

3 MR. HAVER: I don't know until I  
4 try. Happy to try. If it doesn't work,  
5 then I want it on the record. If it does  
6 work, then I agree, there's no point.

7 MR. BALLENGER: I will -- I will  
8 email you and Mr. Mierzwa and see if  
9 there's a time that works for us to hop on  
10 the phone call or a Zoom. And see if we  
11 can address any concerns you have,  
12 Mr. Haver.

13 MR. HAVER: Any concerns?

14 HEARING OFFICER CHESTNUT: Relevant  
15 concerns.

16 MR. BALLENGER: Relevant to  
17 Mr. Mierzwa's testimony.

18 MR. DASENT: More generally, Your  
19 Honor, if I might. We proposed an order of  
20 witnesses in the form of the witness  
21 availability chart that was circulated  
22 earlier. We would start tomorrow with a  
23 financial panel which, quite frankly, also  
24 includes Black and Veatch because the



5/2/2023

1 projections are Black and Veatch. And the  
2 financial background is offered by the  
3 financial panel more generally.

4 Also, even though the schedule  
5 looks sort of brutal and extensive, because  
6 those two are combined, we may spend a fair  
7 amount of time on that during the course of  
8 the day. But I think it will be more  
9 efficient than it appears.

10 In addition to that, the Capital  
11 Panel and the Operations Panel will be  
12 available. And I think because those  
13 issues dovetail with our rebuttal testimony  
14 particularly in the issues more generally,  
15 in other words, Operations is driving  
16 because of inflation the need for rate  
17 relief in large part. But in fact, the  
18 projections are the focus of much of the  
19 controversy and some of the adjustments.

20 The Capital Panel is there also  
21 because their testimony interfaces with,  
22 you know, some of the adjustments. So, I  
23 think it's more of an efficient day than it  
24 appears. But you know, Mr. Ballenger and I

5/2/2023

1 will try to manage that as best we can.  
2 And obviously, Mr. Haver also will be  
3 involved in the discussions.

4 HEARING OFFICER CHESTNUT: Okay.  
5 Because I went through and I added up the  
6 anticipated time just on a rough basis to  
7 give the court reporting company an idea of  
8 how long each day will be, and it was kind  
9 of horrible. I did request one-day  
10 transcript, turnaround for the transcript.  
11 But if these days go long, obviously,  
12 that's not going to be possible.

13 MR. BALLENGER: Just to be clear, I  
14 mentioned this to Mr. Dasent yesterday.  
15 Where I've marked on our cross-examination  
16 matrix that I have extensive cross, for  
17 example, the Financial Panel and Black and  
18 Veatch, I'm really addressing extensive  
19 cross to both of them as -- as a panel. If  
20 they were lumped together, they would only  
21 be one.

22 HEARING OFFICER CHESTNUT: Oh,  
23 okay.

24 MR. BALLENGER: Right. I don't

5/2/2023

1 have cross-examination specific to, you  
2 know, Black and Veatch as opposed to the  
3 Deputy Commissioner of Finance. I think  
4 the questions will largely be to all of  
5 them as a panel. So adding it all up,  
6 probably overstates the amount of cross  
7 that I'm planning.

8 HEARING OFFICER CHESTNUT: Well,  
9 that's helpful. Because I really find that  
10 having, you know, long days really is not  
11 always as productive as we might like.  
12 Maybe because I'm old. But frankly, I  
13 would like us to wrap up by late afternoon  
14 certainly each day not, if not earlier.  
15 But you know, you take the time that you  
16 need to establish the record that you need.

17 But yes, I was counting as separate  
18 witnesses. So that is -- that is helpful.

19 MR. DASENT: And the second day is  
20 the Water Commissioner. And the Water  
21 Commissioner is there first thing in the  
22 morning. So hopefully, we can get him in  
23 and out because he's got other things on  
24 City Council and other folks during the

5/2/2023

1 course of the day. So, I want to be as  
2 efficient as we can with him. I know  
3 Mr. Ballenger has questions for him as does  
4 Mr. Haver.

5 The Exeter Panel is also on  
6 Thursday and any carryover from Wednesday,  
7 but I'm hopeful that we will be done.

8 HEARING OFFICER CHESTNUT: You are  
9 talking about Mr. Morgan and --

10 MR. DASENT: Yes.

11 HEARING OFFICER CHESTNUT: Just  
12 them?

13 MR. DASENT: Yes.

14 MR. HAVER: My time questioning the  
15 Water Commissioner would be a lot less if  
16 the Water Commissioner and you, Mr. Dasent,  
17 would enter into the record his testimony  
18 at City Council.

19 MR. DASENT: Oh, I will -- thank  
20 you for raising that. I will explore that.  
21 That may help us all answer a bunch of  
22 questions, so thank you. I will ask it  
23 right after the meeting.

24 MR. HAVER: Specifically, he

5/2/2023

1 offered a document with a legal opinion as  
2 to how the inflation/anti-inflation fund  
3 can be used.

4 MR. DASENT: Okay.

5 MR. HAVER: The City's  
6 anti-inflation fund.

7 HEARING OFFICER CHESTNUT: Was this  
8 the hearing that was held yesterday?

9 MR. HAVER: Ms. Chestnut, how would  
10 I know what you saw yesterday?

11 HEARING OFFICER CHESTNUT: There  
12 was a hearing scheduled at City Council  
13 before the Committee on May 1, wasn't it?

14 MR. BALLENGER: That got pushed to  
15 next week.

16 HEARING OFFICER CHESTNUT: Oh,  
17 okay.

18 MR. HAVER: No. You're confusing  
19 two issues. The issue of what the Water  
20 Commissioner asked for from the City  
21 Budget.

22 HEARING OFFICER CHESTNUT: Okay.  
23 This is the budgeting process then?

24 MR. HAVER: Right. Versus the

5/2/2023

1 hearing regarding the Water Rate increase.

2 HEARING OFFICER CHESTNUT: Okay.

3 MR. DASENT: That clears it up for  
4 me, too, also. Thank you.

5 HEARING OFFICER CHESTNUT: Yeah.  
6 Thank you.

7 MR. HAVER: There is -- again, to  
8 be clear, there is a document he offered  
9 with Council President and Councilmember  
10 Gilmore Richardson. I'm waiting for that  
11 document. If he decides that he's made it  
12 available and you can get it before his  
13 testimony, will certainly limit the amount  
14 of time.

15 MR. DASENT: Okay.

16 MR. BALLENGER: That's probably a  
17 public document anyway. Just a matter of  
18 if it's been published somewhere that  
19 Mr. Dasent can locate or provide.

20 MR. DASENT: And on Thursday, also,  
21 we have, I guess, a limited cross for  
22 Mr. Mierzwa possibly and Roger Colton. The  
23 department's listed moderate cross for  
24 Colton. We are trying to sort of deal with

5/2/2023

1 that issue now to see if we can make that  
2 more efficient. So, we will keep you  
3 posted on that and try to make that day  
4 more efficient also, Judge Chestnut.

5 HEARING OFFICER CHESTNUT: Great.

6 MR. DASENT: Friday is the WRB  
7 Panel. Rob and I had a conversation about  
8 how to narrow that particular exchange on  
9 the record, also. And we are exploring  
10 that now. And the RFC Panel supports WRB.  
11 So it looks a little more -- it looks a  
12 little more extensive than it would be in  
13 any event.

14 And Ms. Crosby is only available  
15 from twelve -- from nine to twelve in any  
16 event. And Rob knows that. We are  
17 planning around her schedule. She's out of  
18 town and literally, I think, in Charlotte,  
19 North Carolina. And we want to get her on  
20 the plane home. So between nine and twelve  
21 is the window we have for her.

22 Mr. Haver's cross is -- also, it  
23 will either be on Thursday or Friday. And  
24 the Public Advocate indicated slight cross

5/2/2023

1 for him. That's really it.

2 And you know, when you're looking  
3 at a lot of different matrixes and trying  
4 to figure out how it all fits together, it  
5 looks more extensive. But after a  
6 conversation with Mr. Ballenger, I came to  
7 the view that it can be managed. And  
8 Wednesday and Thursday will be significant  
9 days, but Friday will be probably a short  
10 day.

11 HEARING OFFICER CHESTNUT: Okay.  
12 Heather, can you unmute Mr. Skiendzielwski  
13 as he has his hand up.

14 MR. SKIENDZIELWSKI: You still have  
15 me down listed for cross-examination with  
16 the Commissioner and others?

17 HEARING OFFICER CHESTNUT: Yes.

18 MR. SKIENDZIELWSKI: You do? And  
19 what day is that?

20 MR. DASENT: Thursday. I'm sorry.

21 MR. SKIENDZIELWSKI: Thursday?

22 MR. DASENT: Nine a.m.

23 MR. SKIENDZIELWSKI: What time is  
24 that?



5/2/2023

1 HEARING OFFICER CHESTNUT: Nine  
2 o'clock.

3 MR. SKIENDZIELWSKI: Nine o'clock.

4 HEARING OFFICER CHESTNUT: Do you  
5 have cross-examination for the Water  
6 Commissioner, Mr. Skiendzielwski? Because  
7 if you don't, he may not need to appear.

8 MR. SKIENDZIELWSKI: Of course. Of  
9 course I have cross-examination for the  
10 Water Commissioner.

11 Where have you been?

12 HEARING OFFICER CHESTNUT: Do you  
13 have cross-examination on issues relevant  
14 to this proceeding, which is the  
15 perspective rate for Fiscal Year 2024 and  
16 Fiscal Year 2025?

17 MR. SKIENDZIELWSKI: Of course.

18 HEARING OFFICER CHESTNUT: It has  
19 to relate to his testimony.

20 MR. SKIENDZIELWSKI: That's your  
21 decision determination. Let's see what he  
22 has to say.

23 HEARING OFFICER CHESTNUT: No. I  
24 make those --

5/2/2023

1 MR. SKIENDZIELWSKI: He is the --  
2 HEARING OFFICER CHESTNUT: Mr.  
3 Skiendzielwski, I make the decisions.

4 MR. SKIENDZIELWSKI: However you  
5 want. You still are ignoring clear,  
6 definite reasonable principles. You  
7 decide --

8 HEARING OFFICER CHESTNUT: Mr.  
9 Skiendzielwski --

10 MR. SKIENDZIELWSKI: -- what you  
11 are looking at as to cross, and then you  
12 ignore the rest.

13 HEARING OFFICER CHESTNUT: You have  
14 got to stop this. You know, we have a lot  
15 of issues that we need to address in  
16 connection with this case. And you've been  
17 told in many orders and directly --

18 MR. SKIENDZIELWSKI: Oh, thank you  
19 very much.

20 HEARING OFFICER CHESTNUT: -- that  
21 the issue you want to raise --

22 MR. SKIENDZIELWSKI: Are you my  
23 teacher?

24 HEARING OFFICER CHESTNUT: -- is

5/2/2023

1 not going to be addressed in this  
2 proceeding.

3 MR. SKIENDZIELWSKI: I'm going to  
4 continue to raise them. And you are going  
5 to continue to act in the manner that you  
6 do.

7 HEARING OFFICER CHESTNUT: Yes.

8 And --

9 MR. SKIENDZIELWSKI: I can see  
10 that. That's because of your contract.

11 HEARING OFFICER CHESTNUT: Honest  
12 to -- really, Mr. Skiendzielwski, I used to  
13 give you the benefit of the doubt that you  
14 didn't understand and that you were --

15 MR. SKIENDZIELWSKI: Don't give me  
16 any benefit of your doubt.

17 HEARING OFFICER CHESTNUT: At this  
18 point, you're not. You have to understand  
19 that this isn't an appropriate issue for  
20 this particular board.

21 MR. HAVER: You know, Your Honor  
22 keeps saying that. But the cost of lateral  
23 replacement is part of the cost of service.

24 MR. SKIENDZIELWSKI: Yeah.

5/2/2023

1 HEARING OFFICER CHESTNUT: That's  
2 not -- that's not his concern.

3 MR. HAVER: He can ask about how  
4 many laterals have been paid for by the  
5 Water Department and why they make that  
6 determination. That is within the scope of  
7 these hearings.

8 HEARING OFFICER CHESTNUT: Right.  
9 But the Water Commissioner isn't the  
10 witness to address that.

11 MR. HAVER: That may be true.  
12 Maybe the Water Commissioner doesn't know  
13 that level.

14 HEARING OFFICER CHESTNUT: That's  
15 the Operations Panel, isn't it?

16 MR. HAVER: If you want to --

17 MR. SKIENDZIELWSKI: I have it --

18 MR. HAVER: But to say it's not  
19 germane is really a mistake. How much we  
20 pay for lost water, how much we pay for  
21 missing water, how much we pay to make the  
22 repairs are certainly issues of cost to  
23 service.

24 HEARING OFFICER CHESTNUT: Yes,

5/2/2023

1 absolutely. But that's not the issue  
2 Mr. Skiendzielwski is raising.

3 MR. HAVER: I don't mean to open up  
4 another discussion.

5 I do have for Mr. Dasent -- I'm a  
6 little unclear now. You said the Water  
7 Commissioner would be there the second day.

8 MR. DASENT: Yes.

9 MR. HAVER: Did I misunderstand?

10 MR. DASENT: No. Nine a.m on  
11 Thursday.

12 MR. HAVER: So -- so, tomorrow is  
13 Wednesday. Thursday at nine a.m.

14 MR. DASENT: Yes.

15 MR. HAVER: Okay.

16 MR. SKIENDZIELWSKI: I might want  
17 to say one more thing.

18 HEARING OFFICER CHESTNUT: Go  
19 ahead.

20 MR. SKIENDZIELWSKI: You do  
21 understand that the time of the entire  
22 installation at this location, inspectors  
23 for L&I were locked up and charge and went  
24 to jail, okay, for accepting bribes for

5/2/2023

1 installation, okay? Do you understand  
2 that?

3 HEARING OFFICER CHESTNUT: Again,  
4 that is not relevant.

5 MR. SKIENDZIELWSKI: It's not  
6 relevant? That's your decision.

7 HEARING OFFICER CHESTNUT: Yes.

8 MR. SKIENDZIELWSKI: That is  
9 relevant. As Mr. Haver said, I am entitled  
10 in the minimum, in the minimum, to know the  
11 cost of it. And how can possibly asking  
12 for the operations manual, how they  
13 monitor, install, investigate, plan for  
14 excavation, how can that be not relevant?

15 How?

16 HEARING OFFICER CHESTNUT: Okay.

17 MR. SKIENDZIELWSKI: Just tell me  
18 how? How is that overburdensome?

19 HEARING OFFICER CHESTNUT: I'm not  
20 going to get into that with you.

21 MR. SKIENDZIELWSKI: But guess  
22 what, because you can't get into it.

23 HEARING OFFICER CHESTNUT: I issued  
24 an order. You need to read the orders from

5/2/2023

1 all the prior orders. I'm sorry.

2 MR. SKIENDZIELWSKI: You have just  
3 unilaterally decided --

4 HEARING OFFICER CHESTNUT: Mr.  
5 Skiendzielwski, we have spent enough time  
6 on this issue.

7 MR. SKIENDZIELWSKI: -- you are  
8 not -- there is no reason for them not to  
9 turn that over.

10 HEARING OFFICER CHESTNUT: Okay.

11 Heather, you need to mute  
12 Mr. Skiendzielwski, I think. And let's  
13 move on with this.

14 MR. DASENT: If, Your Honor,  
15 please, you did circulate -- and I am  
16 concerning the scope of the record. And I  
17 reviewed that. And it looks fine to me.

18 The only other issue that I could  
19 raise would be the errata for PWD Statement  
20 5 and any other errata of any other party  
21 or participant would also be included in  
22 that list. It was sort of implicit in the  
23 memo. Because I just produced it, I  
24 thought I'd mention it.

5/2/2023

1 HEARING OFFICER CHESTNUT: Right.

2 As you understand, again, that's  
3 not a formal document. That really is just  
4 for my keeping track of things. But yes, I  
5 did note on here -- I will note the thing  
6 about the revision. And I assume at some  
7 point, you know, Steven not being there,  
8 it's a bit of a delay in getting stuff  
9 posted. I think they are pretty much up to  
10 date now. We will check that.

11 MR. HAVER: So, when is appropriate  
12 to raise discovery questions?

13 HEARING OFFICER CHESTNUT: Well, we  
14 can do it now if you want. I thought we'd  
15 go through the hearing and nail down the  
16 witnesses.

17 MR. HAVER: The reason why I'd like  
18 to address it --

19 HEARING OFFICER CHESTNUT: Before  
20 you go on, Mr. Haver, are there any other  
21 scheduling issues with respect to the  
22 hearings and witnesses?

23 MR. HAVER: Well, I recognize, Your  
24 Honor, is unlikely to grant it. Mr. Dasent



5/2/2023

1 owes me discovery requests. It's now ten  
2 days old. I was counting on those  
3 discovery requests to shape my questions.  
4 Unless he can get it to me today, I would  
5 ask for a postponement of the hearings.

6 HEARING OFFICER CHESTNUT: Okay,  
7 that's not going to happen. So, let's see  
8 how we can accommodate you and Mr. Dasent.  
9 But we can't postpone the hearings.

10 MR. DASENT: We are working on  
11 those responses right now. And I will, in  
12 fact, have a meeting at eleven o'clock to  
13 try to get as many of those responses out  
14 today as we can, Mr. Haver. We were just  
15 sort of distracted with getting the matrix  
16 out and so many other things we are doing.

17 Forgive me for that. I will get  
18 your responses.

19 MR. HAVER: I understand --

20 HEARING OFFICER CHESTNUT: Can you  
21 have Mr. Haver talk directly? Would that  
22 accommodate, Mr. Haver?

23 MR. DASENT: We certainly can do  
24 that. But I was trying to get the written

5/2/2023

1 responses out as many as we could.

2 MR. HAVER: I need the written  
3 responses. And I recognize Your Honor is  
4 going to rule against it, but I want to put  
5 it on the record. That because Mr. Dasent  
6 has chosen not to respond to my discovery  
7 request timely, I have been put in an  
8 unfair situation. And I believe it's  
9 prejudicial ruling on your behalf.

10 You would never have allowed  
11 Mr. Ballenger's discovery request to linger  
12 for so long. And the unfair, unequal  
13 treatment is prejudicial.

14 MR. DASENT: I believe the last 38  
15 responses were due Monday. And I was  
16 distracted by a family emergency yesterday.  
17 And I will be working on discovery  
18 responses today with the Department. And  
19 we will get as many to you as we can.

20 And we apologize for the delay,  
21 sir.

22 MR. HAVER: I am sorry for your  
23 difficulties, but an email saying that  
24 might have clarified things. It doesn't

5/2/2023

1 change my on-the-record statement that this  
2 is prejudicial against my case and unfair  
3 and unjust.

4 HEARING OFFICER CHESTNUT: We just  
5 have to make allowances and do the best we  
6 can. It's a tight schedule, and we will do  
7 the best we can. See what you can do to  
8 help Mr. Haver out here, but we do have to  
9 maintain the schedule as it is.

10 MR. HAVER: Again, Your Honor,  
11 respectfully, we do not have to. It is  
12 within your purview to say because  
13 Mr. Dasent did not act in a timely fashion,  
14 that the hearings will be delayed.

15 HEARING OFFICER CHESTNUT: Well, a  
16 one-day delay in getting your answers, I  
17 think, is not really sufficient reason to  
18 throw out the schedule.

19 Yes, they were due Monday. You  
20 will get them, what, today or tomorrow?  
21 Hopefully today. And maybe you can talk  
22 and resolve things. If necessary, you can  
23 ask the questions at the hearing.

24 MR. HAVER: Well, again, Your Honor

5/2/2023

1 puts me in an awkward position. Your Honor  
2 says make it quick, and then I try and make  
3 it fast by having discovery information so  
4 I don't have to ask the questions again.

5 Your Honor has to decide.

6 HEARING OFFICER CHESTNUT: I don't  
7 have to decide. I just expect people to do  
8 their best to make this work.

9 MR. HAVER: And when the best isn't  
10 following the rules of procedure, what  
11 then?

12 HEARING OFFICER CHESTNUT: I don't  
13 even understand that point. You know, the  
14 fact is, we have these hearings scheduled.  
15 Yes, there is a delay, one-day delay in you  
16 getting your responses. You determine when  
17 you send out the interrogatories. And we  
18 are trying to accommodate that.

19 I've asked -- Mr. Dasent will get  
20 you the responses as quickly as possible.  
21 If you want to talk directly to Mr. Dasent  
22 and his witnesses, or else you can ask the  
23 questions on cross. Yes. It will take  
24 longer at the hearing, but that's the way

5/2/2023

1           it is.

2                     But we're not throwing the schedule  
3 out, because we can't. It's a very tight  
4 schedule. There's statutory time that this  
5 has to be completed in. And it's going to  
6 be hard enough as it is.

7                     Now, I don't want anybody to be  
8 prejudiced. The fact is, we do have to  
9 work together to make this work as much as  
10 we can. All right, Mr. Dasent?

11                    MR. DASENT: Yes. We will comply  
12 as best as we can today and tomorrow. And  
13 I, again, do apologize for the delay.

14                    HEARING OFFICER CHESTNUT: See what  
15 you can do to accommodate Mr. Haver.  
16 Because he has a legitimate point about  
17 being ready for the hearing.

18                    Anything else from Mr. Haver at  
19 this point in terms of your discovery  
20 requests?

21                    MR. HAVER: Again, I put on the  
22 record my objections and my request. Your  
23 Honor has ruled against me. And I don't  
24 think there is a point in taking more time

5/2/2023

1 to discuss it. This is prejudicial against  
2 me. I have said it on the record.  
3 Whatever comes next, it will be there.

4 HEARING OFFICER CHESTNUT: Okay.

5 Well, let's see. We talked about  
6 stipulations and narrowing issues,  
7 narrowing the cross. I mentioned  
8 Mr. Haver's discovery that's outstanding.

9 I think the next issue that I  
10 have -- before we move away from the  
11 hearing issues, does anybody have anything  
12 else they want to raise about them?

13 MR. DASENT: Nothing more.

14 HEARING OFFICER CHESTNUT: I was  
15 going to talk about the brief at this  
16 point.

17 MR. BALLENGER: No. Just, Your  
18 Honor, that I think we would like to sort  
19 of follow past practices. And if the  
20 witnesses are asked questions that are  
21 beyond the scope of their testimony, they  
22 would be permitted to, you know, say so.  
23 Identify that their -- you know, their  
24 testimony addresses certain topics and not

5/2/2023

1 others, for example.

2 HEARING OFFICER CHESTNUT: I don't  
3 understand this. Because you can always  
4 object. Why do you not object? If it's  
5 outside the scope of their testimony,  
6 that's a perfectly proper objection.

7 MR. BALLENGER: Okay. We can. It  
8 just helps to get through the hearing, I  
9 think, for the witness to at least say  
10 something.

11 HEARING OFFICER CHESTNUT: Well --

12 MR. BALLENGER: We can handle it  
13 that way. That's fine.

14 HEARING OFFICER CHESTNUT: I think  
15 the scope of the hearing is pretty clear.  
16 Which is the perspective rates and charges  
17 for Fiscal Year 2024, Fiscal Year 2025.

18 Now, the question about whether  
19 it's in the scope of their testimony is  
20 another issue. But I understand you want  
21 to be cooperative. But on the other hand,  
22 there's nothing to prevent you from making  
23 objections. If they're justified, it will  
24 be sustained. If they are not, it will be

5/2/2023

1 denied.

2 But, no. I take a pretty clear  
3 view that it is part of my responsibility  
4 to make sure the record does not contain  
5 irrelevant or incompetent information.

6 Is that enough, Mr. Ballenger?

7 MR. BALLENGER: Fair enough. Thank  
8 you.

9 HEARING OFFICER CHESTNUT: All  
10 right. Let's talk about briefs then.

11 I asked you to come up with a  
12 consensus format which you did, and I  
13 appreciate. It looks generally --  
14 everybody has that?

15 MR. HAVER: I do not.

16 HEARING OFFICER CHESTNUT: Okay.

17 MR. HAVER: I wasn't sent whatever  
18 it is that you're referring to.

19 HEARING OFFICER CHESTNUT: Okay.

20 I guess I will send a -- send it to  
21 you.

22 MR. HAVER: If you just give me the  
23 dates, I don't think that would be an issue  
24 for me.



5/2/2023

1 HEARING OFFICER CHESTNUT: Dates of  
2 what?

3 MR. HAVER: You said you had a  
4 briefing schedule.

5 HEARING OFFICER CHESTNUT: That's  
6 already part of the prehearing order. The  
7 briefs are due May 16.

8 MR. HAVER: So then, I'm not clear  
9 on what you're talking about.

10 HEARING OFFICER CHESTNUT: I'm  
11 talking about the format of the brief.

12 MR. HAVER: Okay.

13 HEARING OFFICER CHESTNUT: The  
14 outline, the way that it's presented.  
15 There are a lot of issues. And I know that  
16 it's usually very -- usually, it helps to  
17 have parties address issues in the same  
18 order and same format. And I don't have a  
19 problem with your -- with your outline.  
20 But I would not comply with it completely.

21 I have been working off of my most  
22 recent rate report, which was, I guess,  
23 2021. And I've been looking at the Rate  
24 Board's determination from 2018 to see how

5/2/2023

1           they organized their determination. And I  
2           think your substantive areas are fine, but  
3           they are pretty straightforward.

4                       But for example, on the background  
5           procedural history, I do things a little  
6           bit differently. I do have an  
7           introduction, a brief introduction which I  
8           think of it as context, setting a context.  
9           And I discuss the procedural history. But  
10          I would put the -- what I will do, is put  
11          the public input as a separate -- separate  
12          section.

13                      MR. DASENT: Okay.

14                      HEARING OFFICER CHESTNUT: And I  
15          move orders around a little bit thing. But  
16          generally, I don't have a problem with --  
17          and I would like you to comply with this.  
18          And whether you -- not everybody is going  
19          to address all the issues, well, aside from  
20          Mr. Dasent and Mr. Ballenger. At least you  
21          can put a heading on it so I know if, for  
22          example, it's a revenue adjustment,  
23          indicate it's a revenue adjustment so I can  
24          discuss it with the other revenue

5/2/2023

1 adjustments.

2 Since there's not a lot of  
3 participants who probably will be filing  
4 briefs, I don't think it should be a huge  
5 problem. But I do want to make sure I  
6 don't miss anything, okay? So if you want  
7 to use this format for your briefs, that's  
8 fine. But just be aware, I'm not going to  
9 probably -- my report is not going to  
10 follow it exactly.

11 Mr. Dasent, comments or anybody any  
12 comments?

13 MR. HAVER: I would just like a  
14 copy of whatever it is you are discussing.

15 HEARING OFFICER CHESTNUT: Sure.  
16 Absolutely. Like I say, it's pretty  
17 straightforward.

18 MR. BALLENGER: Should we give  
19 today with those changes?

20 HEARING OFFICER CHESTNUT: No. I  
21 wasn't expecting to.

22 MR. BALLENGER: Well, I didn't know  
23 if maybe Andre or I should plan to -- to  
24 recirculate it with those changes.

5/2/2023

1 HEARING OFFICER CHESTNUT: You  
2 mean, the briefing outline?

3 MR. BALLENGER: Yes.

4 HEARING OFFICER CHESTNUT: Well, if  
5 you can, that would be great. But  
6 otherwise, if you want to go with this one,  
7 that would be fine. Just be aware, I'm not  
8 going to follow it exactly.

9 MR. BALLENGER: Oh, okay. Okay. I  
10 thought you wanted --

11 HEARING OFFICER CHESTNUT: No. I'm  
12 not issuing any kind of order or anything.  
13 It's just to make it easier for everybody.

14 MR. BALLENGER: Okay.

15 MR. DASENT: Having started, I hope  
16 we can keep the same outline.

17 HEARING OFFICER CHESTNUT: Yeah.  
18 Better be started, I'm sure. Just like  
19 I've done as much of my report as I can at  
20 this point. Yeah.

21 And as always, you know, keep it  
22 brief. Summarize as much as you can  
23 because of the time. I'm going to be doing  
24 a lot of cutting and pasting. So please,

5/2/2023

1 provide a copy in Word as well as your pdf.  
2 And there probably won't be a lot of  
3 discussion, but that doesn't mean I haven't  
4 read and understood all your arguments.  
5 Just means I haven't had time to actually  
6 write it in the report. But hopefully,  
7 your report will address all the  
8 outstanding issues and offer the Rate Board  
9 to make its determination.

10 And I will be using in compliance  
11 with the regs, I will be using Ed's model  
12 to generate the revenue requirement for the  
13 rates. Now I assume, Mr. Ballenger, you  
14 are going to use that model for your case?

15 MR. BALLENGER: We did use that  
16 model for our testimony and provided the  
17 spreadsheets to PWD in response to a  
18 discovery request. So our case was built  
19 on the rate model, the publicly available  
20 rate model. If it would help to send that  
21 to Ed, we are happy to do that. I think  
22 he's probably more skilled at using it than  
23 we are. So, I'm sure he can handle it.

24 HEARING OFFICER CHESTNUT: Okay.

5/2/2023

1 MR. DASENT: The Department only  
2 notes in terms of the final product, the C  
3 tables and the like, the details and the  
4 proof of revenues and all the other support  
5 that comes with the Black and Veatch model,  
6 we'd like to produce that so that the  
7 Department -- the Department will have  
8 rates that recover whatever revenue  
9 requirement you approve. And that -- that  
10 detail support would be available.

11 MR. BALLENGER: That would be the  
12 compliance filing, Andre?

13 MR. DASENT: Yes.

14 HEARING OFFICER CHESTNUT: Well,  
15 again, I would expect that you would use  
16 the B&V model for the actual generation of  
17 the rates. But for purposes of this  
18 proceeding and the Rate Board's  
19 determination, that's what this -- is what  
20 they're mandated to use.

21 That pretty much ends the issues  
22 that I had enlisted.

23 Does anybody have anything else,  
24 Mr. Dasent?

5/2/2023

1 MR. DASENT: Nothing for the  
2 Department.

3 HEARING OFFICER CHESTNUT:  
4 Mr. Ballenger?

5 MR. BALLENGER: Nothing for the  
6 Public Advocate.

7 HEARING OFFICER CHESTNUT:  
8 Mr. Haver?

9 MR. HAVER: Nothing, Your Honor.

10 HEARING OFFICER CHESTNUT: Okay.

11 Then I guess we will resume at nine  
12 o'clock tomorrow with --

13 MR. BALLENGER: Actually, just one  
14 quick thing occurred to me if it's okay.  
15 Just hearing exhibits.

16 Presumably, you know, we are  
17 putting ours together for tomorrow. Hope  
18 to have them out this afternoon. Is it  
19 okay that we submit them the day before  
20 their intended use? Is that acceptable to  
21 the Department, Mr. Haver, all others?

22 MR. DASENT: Yes.

23 MR. BALLENGER: And likewise, if  
24 you have hearing exhibits, we appreciate

5/2/2023

1 getting them --

2 MR. DASENT: Mine are tomorrow.

3 HEARING OFFICER CHESTNUT: I assume  
4 when you say hearing exhibits, you are  
5 talking about compilations of discovery  
6 responses?

7 MR. BALLENGER: Yeah. Discovery  
8 responses primarily and other -- you know,  
9 to the extent there are other relevant, you  
10 know, tables or assumptions. You know, we  
11 have talked a little bit in our testimony  
12 and the Department's rebuttal about, you  
13 know, which indexes to use for inflation.  
14 You know, we may want to revisit some of  
15 that in the hearing.

16 So whatever we have, we would put  
17 in the hearing exhibit for cross. We will,  
18 also, be filing a hearing exhibit  
19 supporting all of the outreach work that  
20 was done pursuant to our contract. That  
21 would be submitted on the record, as well.

22 HEARING OFFICER CHESTNUT: Okay.

23 MR. HAVER: When will that be  
24 submitted?



5/2/2023

1 MR. BALLENGER: I intend to submit  
2 it hopefully today.

3 MR. HAVER: I have a problem with  
4 that in that I asked for that information  
5 on discovery. And Mr. Ballenger answered  
6 that information on discovery.

7 MR. BALLENGER: We answered it at  
8 that time. The discovery timeline requires  
9 us to give you the answer within seven  
10 days, which we did.

11 That was early in the case. And  
12 our responses indicated we were currently  
13 engaged in outreach. This would document  
14 those outreach activities that were  
15 undertaken.

16 MR. HAVER: That is not what the  
17 document that you submitted said. And I  
18 would object to this filing. You can't  
19 have it both ways. You can't answer a  
20 question under discovery and lie.

21 So, either you gave me the correct  
22 answer the first time, or you lied.

23 HEARING OFFICER CHESTNUT: You're  
24 not lying. Seriously, Mr. Haver, you know,

5/2/2023

1           you got to dial it down.

2                   MR. HAVER:   Why is that, Your  
3           Honor?

4                   HEARING OFFICER CHESTNUT:   You  
5           know, really.

6                   MR. HAVER:   He answered the  
7           question under discovery.  Now he's trying  
8           to say what I told you before isn't  
9           correct.  He can't have it both ways.  And  
10          the fact that you are going to allow him  
11          to, is an indication of how prejudiced you  
12          are.

13                   HEARING OFFICER CHESTNUT:   Yes, of  
14          course.

15                   Mr. Ballenger, did you want to  
16          respond briefly to this?

17                   MR. BALLENGER:   I'm at a loss of  
18          words.  We are -- responded that, I  
19          believe, we had purchased the Facebook ad.  
20          So, that ran after the deadline for  
21          responding to discovery.  But I now know  
22          the results of that advertisement and how  
23          much traffic it generated.

24                   I -- you know, I have paralegals

5/2/2023

1 and staff who were engaged in reaching out  
2 to a number of different organizations.  
3 And at the time of the response, I  
4 indicated that that outreach was ongoing.

5 Now that it has concluded, I think  
6 it's only appropriate given that we are  
7 required to do outreach by our contract,  
8 that we provide that on the record to see  
9 it. And we have been tracking page views.  
10 We have been tracking social media. And  
11 we've been engaged in email outreach in  
12 English and Spanish to a variety of  
13 stakeholders.

14 There is nothing contradictory in  
15 my discovery requests with the facts as  
16 they are today. It's simply a point of  
17 time. I responded at the point that I was  
18 required to respond. And since then, we  
19 have continued to perform as required by  
20 our contract. And that's what the exhibit  
21 will show.

22 HEARING OFFICER CHESTNUT: Thank  
23 you. I don't think it -- it shouldn't need  
24 to be said. But the fact that someone is

5/2/2023

1 updating a discovery response with  
2 additional information does not indicate  
3 lying on the original response, but okay.  
4 We will accept it obviously when you  
5 present it.

6 Anything else, Mr. Ballenger?

7 MR. BALLENGER: Nothing further.

8 I guess, Ms. Price, if you have  
9 anything, if I left anything out.

10 MS. PRICE: No.

11 MR. BAKARE: Hearing Officer  
12 Chestnut, this one matter for PLUG.  
13 Mr. Ballenger referenced a request to have  
14 Ms. LaConte excused from the hearing. And  
15 I think you nodded, but I wanted to make  
16 sure you actually made that decision.

17 HEARING OFFICER CHESTNUT: I'm  
18 sorry it wasn't clear. Yes. The witness,  
19 if there is nobody to take cross for  
20 witness, certainly they can be excused.

21 MR. BAKARE: Thank you, Your Honor.

22 HEARING OFFICER CHESTNUT:

23 Mr. Haver, did you have anything  
24 else then before we conclude?

5/2/2023

1 MR. HAVER: Just want to make sure  
2 I understand. I'm going to get all the  
3 exhibits before the witnesses one -- at  
4 least one day before the witnesses appear;  
5 is that correct?

6 HEARING OFFICER CHESTNUT: I don't  
7 think anybody said that. Are you talking  
8 about the hearing exhibits?

9 MR. DASENT: There will be  
10 cross-examination exhibits.

11 HEARING OFFICER CHESTNUT: Yeah.  
12 They are cross-examination exhibits. They  
13 don't really actually have to be supplied  
14 until the witness is presented for cross.  
15 In fact, if you can do them ahead of time,  
16 that's great.

17 MR. HAVER: So, I'm not going to  
18 get them a day ahead of time?

19 MR. DASENT: You will get them a  
20 day ahead of time.

21 HEARING OFFICER CHESTNUT: Great.

22 MR. BALLENGER: The day before is  
23 what, I think, we were discussing having  
24 them out hopefully the day before the

5/2/2023

1 relevant witnesses appear.

2 HEARING OFFICER CHESTNUT: Okay,  
3 good.

4 MR. BALLENGER: We will have them.  
5 They can be distributed.

6 HEARING OFFICER CHESTNUT: Okay.

7 MR. BALLENGER: Best efforts,  
8 though. We are up against the clock, so  
9 that's our hope and our expectation. If  
10 for some reason we need something the day  
11 of that we haven't included, we would hope  
12 and expect that we would be able to utilize  
13 it nonetheless.

14 But our hope, again, is that we are  
15 going to have everything on the day before  
16 the relevant witnesses appear.

17 HEARING OFFICER CHESTNUT: Okay.  
18 Well, I am sure you will use your best  
19 efforts to accommodate to do that.

20 MR. HAVER: I am expecting  
21 Mr. Dasent to respond to my discovery  
22 requests by the close of business today.

23 HEARING OFFICER CHESTNUT: Yeah. I  
24 do want to emphasize that I expect

5/2/2023

1 Mr. Dasent to do whatever he can to  
2 accommodate you.

3 MR. HAVER: Just going by  
4 Mr. Dasent's own words. I just want to  
5 make sure I understand them.

6 Have I misunderstood?

7 MR. DASENT: You should understand  
8 that we will get as many discovery  
9 responses out today as we can. I have a  
10 meeting with the Department at  
11 eleven o'clock today. And that's the whole  
12 purpose of the meeting.

13 But until, you know, we get through  
14 the meeting and see that we have all the  
15 responses, I don't want to overpromise.  
16 But I do want to tell you we will get a lot  
17 of responses out to you today.

18 MR. HAVER: And the responses in  
19 the first set of discovery that you said  
20 you were going to get to me, for example,  
21 the contract for renovating your office,  
22 when should I expect those?

23 MR. DASENT: I will ask that at  
24 eleven this morning and get as many

5/2/2023

1 responses out to you today as I can.

2 MR. HAVER: I'm --

3 MR. DASENT: Some of those are in  
4 the works. Sometimes you have to go to  
5 different departments, like the Department  
6 of Public Property for issues like that,  
7 Mr. Haver. So, it's not as easy as  
8 snapping my fingers.

9 I've real fingers. I'm trying to  
10 move as fast as we can. And I apologize  
11 for delay.

12 MR. HAVER: And I'm expecting an  
13 email to speak to Mr. Ballenger's technical  
14 expert who most humans can't possibly  
15 understand. But I'm going to be given a  
16 chance to discuss with him to see if I can  
17 understand his and Mr. Ballenger's  
18 expertise, and see if I can formulate a  
19 question that a mere layperson can  
20 understand; is that correct?

21 MR. BALLENGER: Yes. I've  
22 corresponded with him. And I know his  
23 availability. I will be emailing you  
24 shortly.



5/2/2023

1 MR. HAVER: Well, how do I address  
2 him? As sir or doctor?

3 MR. BALLENGER: His name is Jerry  
4 Mierzwa. And informally, I typically  
5 address him as Jerry. On the record, I am  
6 going to suggest that he be addressed as  
7 Mr. Mierzwa.

8 MR. HAVER: He is not a doctor?  
9 Doesn't have a PhD.

10 MR. BALLENGER: His resume was  
11 attached to his testimony. His credentials  
12 are there.

13 MR. HAVER: Does he have a  
14 doctorate?

15 HEARING OFFICER CHESTNUT: Why  
16 are -- we don't need to spend time on this.  
17 You know, you can look at his resume.

18 MR. HAVER: I just want to see if I  
19 need a dictionary.

20 HEARING OFFICER CHESTNUT: Come on.

21 MR. HAVER: I just want to see --

22 HEARING OFFICER CHESTNUT: You  
23 don't need to --

24 MR. HAVER: I want to see if I need

5/2/2023

1 a dictionary to speak with him.

2 HEARING OFFICER CHESTNUT: Okay.

3 Is there any other issues relating  
4 to the hearings or the briefs or any other  
5 housekeeping matters?

6 Mr. Haver?

7 MR. HAVER: No. I have made all my  
8 requests on the record. You have denied  
9 them. What a shock there.

10 HEARING OFFICER CHESTNUT: Okay.

11 Mr. Ballenger, do you have anything  
12 further?

13 MR. BALLENGER: No.

14 HEARING OFFICER CHESTNUT:

15 Mr. Dasent, do you have anything?

16 MR. DASENT: Nothing more. Thank  
17 you.

18 HEARING OFFICER CHESTNUT: Mr.

19 Bakare? We have addressed --

20 MR. BAKARE: Nothing for me, Your  
21 Honor. Thank you.

22 HEARING OFFICER CHESTNUT: All  
23 right. Nobody has anything further -- I  
24 guess tomorrow, how much are we talking

5/2/2023

1 about then? I am trying to get some feel  
2 here so we let the court reporter know what  
3 to expect as well as ourselves.

4 MR. DASENT: I would expect a full  
5 day tomorrow. But I will be pleasantly  
6 surprised if we can sort of wrap it up  
7 because we are efficient in dealing with  
8 Black and Veatch and the Financial Panel  
9 together. And those questions, I think,  
10 can be logically organized. It will spill  
11 out past the morning. And then, Mr. Haver,  
12 you know will ask his questions, as well.

13 So, I think we'll be pleasantly  
14 surprised that we can manage all this. And  
15 those first four witnesses can be  
16 completed.

17 HEARING OFFICER CHESTNUT: Okay.  
18 Great. All right then.

19 Thank you all. I look forward to  
20 seeing you tomorrow at nine o'clock.

21 MR. DASENT: Thank you.

22 MR. BALLENGER: Thank you.

23 HEARING OFFICER CHESTNUT: And  
24 thank you, Heather, for dealing with this.

5/2/2023

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(At this time, the Conference  
adjourned at 9:49 a.m.)

5/2/2023

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

I, hereby certify that the proceedings and evidence noted are contained fully and accurately in the stenographic notes taken by me in the foregoing matter, and that this is a correct transcript of the same.

-----  
ANGELA M. KING, RPR,  
Court Reporter, Notary Public

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5/2/2023

| <u>WORD</u><br><u>INDEX</u> |                       |                        |                       |                        |                        |
|-----------------------------|-----------------------|------------------------|-----------------------|------------------------|------------------------|
| < 1 >                       | <b>addressed</b>      | 45:4 46:1, 16          | 46:4, 7 48:21         | <b>certain</b> 5:15    | <b>chosen</b> 26:6     |
| <b>1</b> 13:13              | 19:1 49:6             | <b>appears</b> 9:9, 24 | 49:3, 10 50:11,       | 30:24                  | <b>circulate</b> 23:15 |
| <b>16</b> 33:7              | 50:19                 | <b>apply</b> 53:1      | 13 51:22              | <b>certainly</b> 7:21  | <b>circulated</b> 8:21 |
| < 2 >                       | <b>addresses</b>      | <b>appreciate</b>      | <b>Ballenger's</b>    | 11:14 14:13            | <b>City</b> 11:24      |
| <b>2</b> 1:1                | 30:24                 | 32:13 39:24            | 26:11 48:13,          | 20:22 25:23            | 12:18 13:12,           |
| <b>2018</b> 33:24           | <b>addressing</b>     | 19:19 24:11            | 17                    | 44:20                  | 20                     |
| <b>2021</b> 33:23           | 7:17 10:18            | 43:6                   | <b>basis</b> 10:6     | <b>certification</b>   | <b>City's</b> 13:5     |
| <b>2023</b> 1:1 2:5         | <b>Ade</b> 7:11       | <b>approve</b> 38:9    | <b>behalf</b> 3:13    | 53:1                   | <b>clarified</b> 26:24 |
| <b>2024</b> 1:1             | <b>Adeolu</b> 4:2     | <b>areas</b> 5:8, 24   | 4:3 26:9              | <b>certify</b> 53:1    | <b>clear</b> 10:13     |
| 17:15 31:17                 | <b>adjourned</b>      | 34:2                   | <b>believe</b> 26:8,  | <b>certifying</b> 53:1 | 14:8 18:5              |
| <b>2025</b> 1:1             | 52:2                  | <b>arguments</b>       | 14 42:19              | <b>chance</b> 48:16    | 31:15 32:2             |
| 17:16 31:17                 | <b>adjustment</b>     | 37:4                   | <b>benefit</b> 19:13, | <b>change</b> 27:1     | 33:8 44:18             |
| < 3 >                       | 34:22, 23             | <b>aside</b> 34:19     | 16                    | <b>changes</b> 35:19,  | <b>clears</b> 14:3     |
| <b>38</b> 26:14             | <b>adjustments</b>    | <b>asked</b> 13:20     | <b>best</b> 10:1      | 24                     | <b>clock</b> 46:8      |
| < 5 >                       | 5:9 9:19, 22          | 28:19 30:20            | 27:5, 7 28:8, 9       | <b>charge</b> 21:23    | <b>close</b> 46:22     |
| <b>5</b> 23:20              | 35:1                  | 32:11 41:4             | 29:12 46:7, 18        | <b>charges</b> 31:16   | <b>Colton</b> 14:22,   |
| < 9 >                       | <b>advertisement</b>  | <b>asking</b> 6:14     | <b>Better</b> 36:18   | <b>Charlotte</b>       | 24                     |
| <b>38</b> 26:14             | 42:22                 | 22:11                  | <b>beyond</b> 30:21   | 15:18                  | <b>combined</b> 9:6    |
| < 5 >                       | <b>Advocate</b> 3:6   | <b>assist</b> 7:13     | <b>Birriel</b> 3:1    | <b>chart</b> 8:21      | <b>come</b> 5:18       |
| <b>5</b> 23:20              | 5:10, 18 15:24        | <b>assume</b> 24:6     | <b>bit</b> 24:8 34:6, | <b>check</b> 24:10     | 32:11 49:20            |
| < 9 >                       | 39:6                  | 37:13 40:3             | 15 40:11              | <b>CHESTNUT</b>        | <b>comes</b> 30:3      |
| <b>9:00</b> 1:1             | <b>afternoon</b>      | <b>assumptions</b>     | <b>Black</b> 8:24     | 1:1 2:3, 14, 22        | 38:5                   |
| <b>9:04</b> 2:2             | 11:13 39:18           | 40:10                  | 9:1 10:17             | 3:2, 7, 10, 14,        | <b>coming</b> 5:14     |
| <b>9:49</b> 52:2            | <b>agenda</b> 4:19    | <b>attached</b> 49:11  | 11:2 38:5             | 21 4:1, 5, 10,         | <b>commenced</b>       |
| < A >                       | <b>agree</b> 5:10 8:6 | <b>attention</b> 5:7   | 51:8                  | 13, 16 5:3 6:5         | 2:2                    |
| <b>a.m</b> 1:1 2:2          | <b>agreeable</b> 5:19 | <b>availability</b>    | <b>BOARD</b> 1:1      | 7:5, 11, 20            | <b>comments</b>        |
| 16:22 21:10,                | <b>agreed</b> 4:22    | 8:21 48:23             | 4:9 19:20             | 8:14 10:4, 22          | 35:11, 12              |
| 13 52:2                     | <b>ahead</b> 21:19    | <b>available</b> 7:16  | 37:8                  | 11:8 12:8, 11          | <b>Commissioner</b>    |
| <b>able</b> 46:12           | 45:15, 18, 20         | 9:12 14:12             | <b>Board's</b> 33:24  | 13:7, 9, 11, 16,       | 11:3, 20, 21           |
| <b>absolutely</b>           | <b>allow</b> 42:10    | 15:14 37:19            | 38:18                 | 22 14:2, 5             | 12:15, 16              |
| 21:1 35:16                  | <b>allowances</b>     | 38:10                  | <b>bribes</b> 21:24   | 15:4, 5 16:11,         | 13:20 16:16            |
| <b>accept</b> 44:4          | 27:5                  | <b>aware</b> 35:8      | <b>brief</b> 6:2      | 17 17:1, 4, 12,        | 17:6, 10 20:9,         |
| <b>acceptable</b>           | <b>allowed</b> 26:10  | 36:7                   | 30:15 33:11           | 18, 23 18:2, 8,        | 12 21:7                |
| 39:20                       | <b>Amawalk</b> 4:7    | <b>awkward</b> 28:1    | 34:7 36:22            | 13, 20, 24 19:7,       | <b>Committee</b>       |
| <b>accepting</b>            | <b>amount</b> 9:7     | < B >                  | <b>briefing</b> 2:12  | 11, 17 20:1, 8,        | 13:13                  |
| 21:24                       | 11:6 14:13            | <b>B &amp; V</b> 38:16 | 33:4 36:2             | 14, 24 21:18           | <b>company</b> 10:7    |
| <b>accommodate</b>          | <b>and/or</b> 53:1    | <b>background</b>      | <b>briefly</b> 42:16  | 22:3, 7, 16, 19,       | <b>compilations</b>    |
| 25:8, 22 28:18              | <b>Andre</b> 2:20     | 9:2 34:4               | <b>briefs</b> 32:10   | 23 23:4, 10            | 40:5                   |
| 29:15 46:19                 | 35:23 38:12           | <b>BAKARE</b>          | 33:7 35:4, 7          | 24:1, 13, 19           | <b>completed</b>       |
| 47:2                        | <b>ANGELA</b> 53:1    | 3:19, 24 4:2           | 50:4                  | 25:6, 20 27:4,         | 29:5 51:16             |
| <b>accurately</b>           | <b>answer</b> 12:21   | 7:10, 11 44:11,        | <b>bring</b> 5:6 6:12 | 15 28:6, 12            | <b>completely</b>      |
| 53:1                        | 41:9, 19, 22          | 21 50:19, 20           | <b>brutal</b> 7:7 9:5 | 29:14 30:4, 14         | 3:22 33:20             |
| <b>act</b> 19:5 27:13       | <b>answered</b> 41:5, | <b>Ballenger</b> 3:3,  | <b>Budget</b> 13:21   | 31:2, 11, 14           | <b>compliance</b>      |
| <b>activities</b> 41:14     | 7 42:6                | 4, 5 6:6 7:2,          | <b>budgeting</b>      | 32:9, 16, 19           | 37:10 38:12            |
| <b>actual</b> 38:16         | <b>answers</b> 27:16  | 12, 15 8:7, 16         | 13:23                 | 33:1, 5, 10, 13        | <b>comply</b> 29:11    |
| <b>ad</b> 42:19             | <b>anticipated</b>    | 9:24 10:13, 24         | <b>built</b> 37:18    | 34:14 35:15,           | 33:20 34:17            |
| <b>added</b> 10:5           | 7:8 10:6              | 12:3 13:14             | <b>bunch</b> 12:21    | 20 36:1, 4, 11,        | <b>compromise</b>      |
| <b>adding</b> 11:5          | 13:6                  | 14:16 16:6             | <b>business</b> 46:22 | 17 37:24               | 5:14                   |
| <b>addition</b> 9:10        | <b>anybody</b> 3:15   | 30:17 31:7, 12         | < C >                 | 38:14 39:3, 7,         | <b>concern</b> 20:2    |
| <b>additional</b> 44:2      | 4:6 7:9 29:7          | 32:6, 7 34:20          | <b>call</b> 8:10      | 10 40:3, 22            | <b>concerning</b>      |
| <b>address</b> 8:11         | 30:11 35:11           | 35:18, 22 36:3,        | <b>Capital</b> 9:10,  | 41:23 42:4, 13         | 23:16                  |
| 18:15 20:10                 | 38:23 45:7            | 9, 14 37:13, 15        | 20                    | 43:22 44:12,           | <b>concerns</b> 8:11,  |
| 24:18 33:17                 | <b>anyway</b> 14:17   | 38:11 39:4, 5,         | <b>Carl</b> 2:24      | 17, 22 45:6, 11,       | 13, 15                 |
| 34:19 37:7                  | <b>apologize</b>      | 13, 23 40:7            | <b>Carolina</b> 15:19 | 21 46:2, 6, 17,        | <b>conclude</b> 44:24  |
| 49:1, 5                     | 26:20 29:13           | 41:1, 5, 7             | <b>carryover</b> 12:6 | 23 49:15, 20,          | <b>concluded</b> 43:5  |
|                             | 48:10                 | 42:15, 17 44:6,        | <b>case</b> 18:16     | 22 50:2, 10, 14,       | <b>CONFERENC</b>       |
|                             | <b>appear</b> 17:7    | 7, 13 45:22            | 27:2 37:14, 18        | 18, 22 51:17,          | <b>E</b> 1:1 52:1      |
|                             |                       |                        | 41:11                 | 23                     | <b>confusing</b>       |
|                             |                       |                        |                       |                        | 13:18                  |

5/2/2023

|  |  |   |   |   |   |
|--|--|---|---|---|---|
| <b>connection</b><br>18:16   | <b>cross-examination</b><br>5:13 7:6<br>10:15 11:1<br>16:15 17:5, 9,<br>13 45:10, 12   | <b>decision</b> 17:21<br>22:6 44:16   | <b>discussion</b><br>5:21 21:4<br>37:3                    | <b>errata</b> 23:19,<br>20                                | <b>fast</b> 28:3<br>48:10                     |
| <b>consensus</b><br>32:12  | <b>cross-examine</b><br>6:22   | <b>decisions</b> 18:3   | <b>discussions</b><br>10:3                                | <b>establish</b> 11:16                                    | <b>feel</b> 6:20 51:1                         |
| <b>consultant</b> 4:8  | <b>currently</b><br>41:12  | <b>definite</b> 18:6  | <b>dispose</b> 4:23                                       | <b>event</b> 15:13, 16                                    | <b>figure</b> 16:4                            |
| <b>Consulting</b> 4:8  | <b>cut</b> 7:9   | <b>delay</b> 24:8<br>26:20 27:16  | <b>distracted</b><br>25:15 26:16                          | <b>everybody</b><br>3:18 6:20<br>32:14 34:18<br>36:13     | <b>filing</b> 35:3<br>38:12 40:18<br>41:18    |
| <b>contain</b> 32:4  | <b>cutting</b> 36:24   | <b>denied</b> 32:1<br>50:8  | <b>distributed</b><br>46:5                                | <b>evidence</b> 53:1                                      | <b>final</b> 38:2                             |
| <b>contained</b> 53:1  | < D >  | <b>delayed</b> 27:14  | <b>doctor</b> 49:2, 8                                     | <b>exactly</b> 35:10<br>36:8                              | <b>Finance</b> 11:3                           |
| <b>context</b> 34:8  | <b>Dasent</b> 2:18,<br>19, 20, 24 5:5<br>8:18 10:14<br>11:19 12:10,<br>13, 16, 19 13:4<br>14:3, 15, 19, 20<br>15:6 16:20, 22<br>21:5, 8, 10, 14<br>23:14 24:24<br>25:8, 10, 23<br>26:5, 14 27:13<br>28:19, 21<br>29:10, 11<br>30:13 34:13,<br>20 35:11<br>36:15 38:1, 13,<br>24 39:1, 22<br>40:2 45:9, 19<br>46:21 47:1, 7,<br>23 48:3 50:15,<br>16 51:4, 21 | <b>denied</b> 32:1<br>50:8  | <b>doctorate</b><br>49:14                                 | <b>example</b> 10:17<br>31:1 34:4, 22<br>47:20            | <b>financial</b> 8:23<br>9:2, 3 10:17<br>51:8 |
| <b>continue</b> 19:4,<br>5   | <b>date</b> 24:10  | <b>Department</b><br>2:6, 21 7:3<br>20:5 26:18<br>38:1, 7 39:2,<br>21 47:10 48:5  | <b>document</b><br>13:1 14:8, 11,<br>17 24:3 41:13,<br>17 | <b>excavation</b><br>22:14                                | <b>fine</b> 23:17<br>31:13 34:2<br>35:8 36:7  |
| <b>continued</b><br>43:19  | <b>dates</b> 32:23<br>33:1   | <b>departments</b><br>48:5  | <b>doing</b> 25:16<br>36:23                               | <b>exchange</b> 15:8                                      | <b>fingers</b> 48:8, 9                        |
| <b>contract</b> 19:10<br>40:20 43:7, 20<br>47:21   | <b>day</b> 9:8, 23<br>10:8 11:14, 19<br>12:1 15:3<br>16:10, 19 21:7<br>39:19 45:4, 18,<br>20, 22, 24<br>46:10, 15 51:5   | <b>department's</b><br>14:23 40:12  | <b>doubt</b> 19:13,<br>16                                 | <b>excused</b> 6:9<br>44:14, 20                           | <b>first</b> 11:21<br>41:22 47:19<br>51:15    |
| <b>contradictory</b><br>43:14  | <b>Dasent's</b> 47:4   | <b>Deputy</b> 11:3  | <b>dovetail</b> 9:13                                      | <b>Exeter</b> 12:5  | <b>Fiscal</b> 17:15,<br>16 31:17              |
| <b>control</b> 53:1  | <b>date</b> 24:10  | <b>detail</b> 38:10   | <b>driving</b> 9:15                                       | <b>exhibit</b> 40:17,<br>18 43:20                         | <b>fits</b> 16:4                              |
| <b>controversy</b><br>9:19   | <b>dates</b> 32:23<br>33:1   | <b>details</b> 38:3   | <b>due</b> 26:15<br>27:19 33:7                            | <b>exhibits</b> 39:15,<br>24 40:4 45:3,<br>8, 10, 12      | <b>focus</b> 9:18                             |
| <b>conversation</b><br>15:7 16:6   | <b>day</b> 9:8, 23<br>10:8 11:14, 19<br>12:1 15:3<br>16:10, 19 21:7<br>39:19 45:4, 18,<br>20, 22, 24<br>46:10, 15 51:5   | <b>determination</b><br>17:21 20:6<br>33:24 34:1<br>37:9 38:19  | < E >   | <b>expect</b> 28:7<br>38:15 46:12,<br>24 47:22 51:3,<br>4 | <b>folks</b> 11:24                            |
| <b>cooperative</b><br>31:21  | <b>days</b> 7:14<br>10:11 11:10<br>16:9 25:2<br>41:10  | <b>determine</b><br>28:16   | <b>earlier</b> 8:22<br>11:14                              | <b>expectation</b><br>46:9                                | <b>follow</b> 30:19<br>35:10 36:8             |
| <b>copy</b> 35:14<br>37:1  | <b>deal</b> 14:24  | <b>dial</b> 42:1  | <b>early</b> 41:11  | <b>expecting</b><br>35:21 46:20<br>48:12                  | <b>following</b><br>28:10                     |
| <b>correct</b> 41:21<br>42:9 45:5<br>48:20 53:1  | <b>dealing</b> 51:7,<br>24   | <b>dictionary</b><br>49:19 50:1   | <b>easier</b> 36:13                                       | <b>expert</b> 6:23<br>48:14                               | <b>foregoing</b> 53:1                         |
| <b>corresponded</b><br>48:22   | <b>decide</b> 18:7<br>28:5, 7  | <b>different</b> 16:3<br>43:2 48:5  | <b>easy</b> 48:7  | <b>expertise</b> 7:1<br>48:18                             | <b>Forgive</b> 25:17                          |
| <b>cost</b> 5:17<br>19:22, 23<br>20:22 22:11   | <b>decided</b> 23:3  | <b>differently</b><br>34:6  | <b>Ed</b> 4:7, 11<br>37:21                                | <b>explore</b> 5:11<br>12:20                              | <b>forgot</b> 3:22                            |
| <b>Council</b> 11:24<br>12:18 13:12<br>14:9  | <b>decides</b> 14:11   | <b>difficult</b> 6:18   | <b>Ed's</b> 37:11   | <b>exploring</b> 6:1<br>15:9                              | <b>form</b> 8:20                              |
| <b>Councilmember</b><br>14:9   |  | <b>difficulties</b><br>26:23  | <b>efficient</b> 9:9,<br>23 12:2 15:2,<br>4 51:7          | <b>extensive</b> 9:5<br>10:16, 18<br>15:12 16:5           | <b>formal</b> 7:19<br>24:3                    |
| <b>counting</b><br>11:17 25:2  |  | <b>direct</b> 53:1  | <b>efforts</b> 46:7, 19                                   | <b>extent</b> 40:9  | <b>format</b> 32:12<br>33:11, 18 35:7         |
| <b>course</b> 9:7<br>12:1 17:8, 9,<br>17 42:14   |  | <b>directly</b> 18:17<br>25:21 28:21  | <b>either</b> 5:14<br>15:23 41:21                         | <b>explore</b> 5:11<br>12:20                              | <b>formulate</b><br>48:18                     |
| <b>court</b> 10:7<br>51:2 53:1   |  | <b>discovery</b> 5:2<br>24:12 25:1, 3<br>26:6, 11, 17<br>28:3 29:19<br>30:8 37:18<br>40:5, 7 41:5, 6,<br>8, 20 42:7, 21<br>43:15 44:1<br>46:21 47:8, 19 | <b>eleven</b> 25:12<br>47:11, 24                          | <b>exploring</b> 6:1<br>15:9                              | <b>forward</b> 51:19                          |
| <b>credentials</b><br>49:11  |  | <b>discuss</b> 4:20<br>30:1 34:9, 24<br>48:16   | <b>email</b> 8:8<br>26:23 43:11<br>48:13                  | <b>extensive</b> 9:5<br>10:16, 18<br>15:12 16:5           | <b>four</b> 7:14<br>51:15                     |
| <b>Crosby</b> 15:14  |  | <b>discussed</b> 5:12   | <b>emailing</b> 48:23                                     | <b>extent</b> 40:9  | <b>frankly</b> 8:23<br>11:12                  |
| <b>cross</b> 6:4, 11,<br>15 7:3, 8, 19<br>10:16, 19 11:6<br>14:21, 23<br>15:22, 24<br>18:11 28:23<br>30:7 40:17<br>44:19 45:14 |  | <b>discussing</b> 2:8<br>35:14 45:23  | <b>emergency</b><br>26:16                                 | <b>Facebook</b><br>42:19                                  | <b>free</b> 7:22, 24                          |

5/2/2023

|   |   |  |  |  |   |
|---|---|--|--|--|---|
| 34:16<br><b>generate</b> 37:12<br><b>generated</b><br>42:23<br><b>generation</b><br>38:16<br><b>germane</b> 20:19<br><b>Gery</b> 3:11, 12,<br>13<br><b>getting</b> 5:22<br>24:8 25:15<br>27:16 28:16<br>40:1<br><b>Gilmore</b> 14:10<br><b>give</b> 10:7<br>19:13, 15<br>32:22 35:18<br>41:9<br><b>given</b> 43:6<br>48:15<br><b>go</b> 10:11<br>21:18 24:15,<br>20 36:6 48:4<br><b>going</b> 4:21<br>10:12 19:1, 3,<br>4 22:20 25:7<br>26:4 29:5<br>30:15 34:18<br>35:8, 9 36:8,<br>23 37:14<br>42:10 45:2, 17<br>46:15 47:3, 20<br>48:15 49:6<br><b>Good</b> 2:19<br>3:4, 12, 19<br>46:3<br><b>grant</b> 24:24<br><b>Great</b> 15:5<br>36:5 45:16, 21<br>51:18<br><b>Group</b> 4:4<br><b>guess</b> 4:18<br>6:14 14:21<br>22:21 32:20<br>33:22 39:11<br>44:8 50:24<br><br>< H ><br><b>hand</b> 16:13<br>31:21<br><b>handful</b> 6:24<br><b>handle</b> 31:12<br>37:23<br><b>happen</b> 25:7<br><b>Happy</b> 8:4<br>37:21<br><b>hard</b> 29:6<br><b>Haver</b> 3:8, 9<br>4:24 6:10, 14, | 16 7:12 8:2, 3,<br>12, 13 10:2<br>12:4, 14, 24<br>13:5, 9, 18, 24<br>14:7 19:21<br>20:3, 11, 16, 18<br>21:3, 9, 12, 15<br>22:9 24:11, 17,<br>20, 23 25:14,<br>19, 21, 22 26:2,<br>22 27:8, 10, 24<br>28:9 29:15, 18,<br>21 32:15, 17,<br>22 33:3, 8, 12<br>35:13 39:8, 9,<br>21 40:23 41:3,<br>16, 24 42:2, 6<br>44:23 45:1, 17<br>46:20 47:3, 18<br>48:2, 7, 12<br>49:1, 8, 13, 18,<br>21, 24 50:6, 7<br>51:11<br><b>Haver's</b> 7:18<br>15:22 30:8<br><b>heading</b> 34:21<br><b>Hearing</b> 1:1<br>2:3, 4, 7, 13, 22<br>3:2, 7, 10, 14,<br>21 4:1, 5, 10,<br>13, 16 5:3 6:5<br>7:5, 10, 14, 20<br>8:14 10:4, 22<br>11:8 12:8, 11<br>13:7, 8, 11, 12,<br>16, 22 14:1, 2,<br>5 15:5 16:11,<br>17 17:1, 4, 12,<br>18, 23 18:2, 8,<br>13, 20, 24 19:7,<br>11, 17 20:1, 8,<br>14, 24 21:18<br>22:3, 7, 16, 19,<br>23 23:4, 10<br>24:1, 13, 15, 19<br>25:6, 20 27:4,<br>15, 23 28:6, 12,<br>24 29:14, 17<br>30:4, 11, 14<br>31:2, 8, 11, 14,<br>15 32:9, 16, 19<br>33:1, 5, 10, 13<br>34:14 35:15,<br>20 36:1, 4, 11,<br>17 37:24<br>38:14 39:3, 7,<br>10, 15, 24 40:3,<br>4, 15, 17, 18, 22<br>41:23 42:4, 13 | 43:22 44:11,<br>14, 17, 22 45:6,<br>8, 11, 21 46:2,<br>6, 17, 23 49:15,<br>20, 22 50:2, 10,<br>14, 18, 22<br>51:17, 23<br><b>hearings</b> 2:9<br>20:7 24:22<br>25:5, 9 27:14<br>28:14 50:4<br><b>Heather</b> 3:17<br>16:12 23:11<br>51:24<br><b>HELD</b> 1:1<br>2:10 13:8<br><b>help</b> 6:2<br>12:21 27:8<br>37:20<br><b>helpful</b> 11:9,<br>18<br><b>helps</b> 31:8<br>33:16<br><b>history</b> 34:5, 9<br><b>home</b> 15:20<br><b>Honest</b> 19:11<br><b>Honor</b> 2:20<br>3:5, 20 5:1<br>6:3 8:19<br>19:21 23:14<br>24:24 26:3<br>27:10, 24 28:1,<br>5 29:23 30:18<br>39:9 42:3<br>44:21 50:21<br><b>hop</b> 8:9<br><b>hope</b> 6:8<br>36:15 39:17<br>46:9, 11, 14<br><b>hopeful</b> 12:7<br><b>hopefully</b><br>11:22 27:21<br>37:6 41:2<br>45:24<br><b>horrible</b> 10:9<br><b>housekeeping</b><br>50:5<br><b>huge</b> 35:4<br><b>humans</b> 48:14<br><br>< I ><br><b>idea</b> 10:7<br><b>identify</b> 2:16<br>3:15 30:23<br><b>ignore</b> 18:12<br><b>ignoring</b> 18:5<br><b>implicit</b> 23:22<br><b>included</b> | 23:21 46:11<br><b>includes</b> 8:24<br><b>incompetent</b><br>32:5<br><b>increase</b> 14:1<br><b>indexes</b> 40:13<br><b>indicate</b> 34:23<br>44:2<br><b>indicated</b> 6:10<br>15:24 41:12<br>43:4<br><b>indication</b><br>42:11<br><b>inflation</b> 9:16<br>40:13<br><b>inflation/anti-</b><br><b>inflation</b> 13:2<br><b>informal</b> 7:16<br><b>informally</b><br>49:4<br><b>information</b><br>28:3 32:5<br>41:4, 6 44:2<br><b>input</b> 34:11<br><b>inspectors</b><br>21:22<br><b>install</b> 22:13<br><b>installation</b><br>21:22 22:1<br><b>intend</b> 41:1<br><b>intended</b> 39:20<br><b>interfaces</b> 9:21<br><b>interrogatories</b><br>28:17<br><b>introduction</b><br>34:7<br><b>investigate</b><br>22:13<br><b>involved</b> 10:3<br><b>irrelevant</b> 32:5<br><b>issue</b> 13:19<br>15:1 18:21<br>19:19 21:1<br>23:6, 18 30:9<br>31:20 32:23<br><b>issued</b> 22:23<br><b>issues</b> 4:22<br>6:2, 12, 19<br>9:13, 14 13:19<br>17:13 18:15<br>20:22 24:21<br>30:6, 11 33:15,<br>17 34:19 37:8<br>38:21 48:6<br>50:3<br><b>issuing</b> 36:12<br><b>items</b> 4:19<br><b>its</b> 37:9 | < J ><br><b>jail</b> 21:24<br><b>Jerry</b> 49:3, 5<br><b>Joline</b> 3:5<br><b>Judge</b> 15:4<br><b>judgment</b> 6:21<br><b>justified</b> 31:23<br><br>< K ><br><b>keep</b> 15:2<br>36:16, 21<br><b>keeping</b> 24:4<br><b>keeps</b> 19:22<br><b>Kevin</b> 3:1<br><b>kind</b> 7:7 10:8<br>36:12<br><b>KING</b> 53:1<br><b>know</b> 7:2 8:3<br>9:22, 24 11:2,<br>10, 15 12:2<br>13:10 16:2<br>18:14 19:21<br>20:12 22:10<br>24:7 28:13<br>30:22, 23<br>33:15 34:21<br>35:22 36:21<br>39:16 40:8, 10,<br>13, 14 41:24<br>42:5, 21, 24<br>47:13 48:22<br>49:17 51:2, 12<br><b>knows</b> 15:16<br><br>< L ><br><b>L&amp;I</b> 21:23<br><b>LaConte</b> 44:14<br><b>Lance</b> 3:9<br><b>language</b> 5:19<br><b>Large</b> 4:3<br>9:17<br><b>largely</b> 11:4<br><b>late</b> 11:13<br><b>lateral</b> 19:22<br><b>laterals</b> 20:4<br><b>layperson</b><br>48:19<br><b>leave</b> 8:1<br><b>left</b> 44:9<br><b>legal</b> 13:1<br><b>legitimate</b><br>29:16<br><b>level</b> 20:13<br><b>lie</b> 41:20<br><b>lied</b> 41:22<br><b>likewise</b> 39:23<br><b>limit</b> 14:13 | <b>limited</b> 14:21<br><b>linger</b> 26:11<br><b>list</b> 23:22<br><b>listed</b> 14:23<br>16:15<br><b>literally</b> 15:18<br><b>little</b> 6:20<br>15:11, 12 21:6<br>34:5, 15 40:11<br><b>location</b> 14:19<br><b>LOCATION</b><br>1:1 21:22<br><b>locking</b> 21:23<br><b>logically</b> 51:10<br><b>long</b> 10:8, 11<br>11:10 26:12<br><b>longer</b> 28:24<br><b>look</b> 49:17<br>51:19<br><b>looking</b> 7:6<br>16:2 18:11<br>33:23<br><b>looks</b> 9:5<br>15:11 16:5<br>23:17 32:13<br><b>loss</b> 42:17<br><b>lost</b> 20:20<br><b>lot</b> 12:15 16:3<br>18:14 33:15<br>35:2 36:24<br>37:2 47:16<br><b>lumped</b> 10:20<br><b>lying</b> 41:24<br>44:3<br><br>< M ><br><b>maintain</b> 27:9<br><b>making</b> 31:22<br><b>manage</b> 10:1<br>51:14<br><b>managed</b> 16:7<br><b>mandated</b><br>38:20<br><b>manner</b> 19:5<br><b>manual</b> 22:12<br><b>marked</b> 10:15<br><b>MARKUS</b> 4:7,<br>12, 15<br><b>MARLANE</b><br>1:1 2:13<br><b>matrix</b> 7:7<br>10:16 25:15<br><b>matrixes</b> 16:3<br><b>matter</b> 14:17<br>44:12 53:1<br><b>matters</b> 2:9,<br>12 50:5 |
|---|---|--|--|--|---|



5/2/2023

|                                       |   |   |   |  |   |
|---------------------------------------|---|---|---|--|---|
| <b>mean</b> 7:21<br>21:3 36:2<br>37:3 | <b>need</b> 4:11, 20<br>7:19 9:16<br>11:16 17:7<br>18:15 22:24<br>23:11 26:2<br>43:23 46:10<br>49:16, 19, 23,<br>24<br><b>needed</b> 5:21<br><b>needs</b> 3:15<br>6:15<br><b>never</b> 26:10<br><b>nine</b> 15:15, 20<br>16:22 17:1, 3<br>21:10, 13<br>39:11 51:20<br><b>nodded</b> 44:15<br><b>North</b> 15:19<br><b>Notary</b> 53:1<br><b>note</b> 2:14 6:6,<br>10 24:5<br><b>noted</b> 53:1<br><b>notes</b> 38:2<br>53:1<br><b>number</b> 43:2 | 10 24:1, 13, 19<br>25:6, 20 27:4,<br>15 28:6, 12<br>29:14 30:4, 14<br>31:2, 11, 14<br>32:9, 16, 19<br>33:1, 5, 10, 13<br>34:14 35:15,<br>20 36:1, 4, 11,<br>17 37:24<br>38:14 39:3, 7,<br>10 40:3, 22<br>41:23 42:4, 13<br>43:22 44:11,<br>17, 22 45:6, 11,<br>21 46:2, 6, 17,<br>23 49:15, 20,<br>22 50:2, 10, 14,<br>18, 22 51:17,<br>23<br><b>offline</b> 5:11<br><b>Oh</b> 10:22<br>12:19 13:16<br>18:18 36:9<br><b>Okay</b> 3:2, 24<br>4:5, 10, 12, 17<br>6:5 7:5 10:4,<br>23 13:4, 17, 22<br>14:2, 15 16:11<br>21:15, 24 22:1,<br>16 23:10 25:6<br>30:4 31:7<br>32:16, 19<br>33:12 34:13<br>35:6 36:9, 14<br>37:24 39:10,<br>14, 19 40:22<br>44:3 46:2, 6,<br>17 50:2, 10<br>51:17<br><b>old</b> 11:12 25:2<br><b>once</b> 3:18<br><b>one-day</b> 10:9<br>27:16 28:15<br><b>ongoing</b> 43:4<br><b>on-the-record</b><br>2:7 27:1<br><b>open</b> 21:3<br><b>Operations</b><br>9:11, 15 20:15<br>22:12<br><b>opinion</b> 6:18<br>13:1<br><b>opposed</b> 11:2<br><b>order</b> 4:21<br>8:19 22:24<br>33:6, 18 36:12 | <b>orders</b> 18:17<br>22:24 23:1<br>34:15<br><b>organizations</b><br>43:2<br><b>organized</b><br>34:1 51:10<br><b>original</b> 44:3<br><b>outline</b> 33:14,<br>19 36:2, 16<br><b>outreach</b><br>40:19 41:13,<br>14 43:4, 7, 11<br><b>outside</b> 31:5<br><b>outstanding</b><br>30:8 37:8<br><b>overburdensom<br/>e</b> 22:18<br><b>overpromise</b><br>47:15<br><b>overstates</b> 11:6<br><b>owes</b> 25:1<br><br>< P ><br><b>page</b> 43:9<br><b>paid</b> 20:4<br><b>panel</b> 8:23<br>9:3, 11, 20<br>10:17, 19 11:5<br>12:5 15:7, 10<br>20:15 51:8<br><b>paralegals</b><br>42:24<br><b>part</b> 9:17<br>19:23 32:3<br>33:6<br><b>participant</b><br>23:21<br><b>participants</b><br>2:15 4:14<br>7:23 35:3<br><b>particular</b><br>4:20 15:8<br>19:20<br><b>particularly</b><br>9:14<br><b>parties</b> 5:20<br>7:22 33:17<br><b>party</b> 23:20<br><b>pasting</b> 36:24<br><b>pay</b> 20:20, 21<br><b>pdf</b> 37:1<br><b>PECO</b> 3:13<br><b>Pennsylvania</b><br>1:1<br><b>people</b> 6:17,<br>24 28:7<br><b>perfectly</b> 31:6 | <b>perform</b> 43:19<br><b>PERIOD</b> 1:1<br><b>permitted</b><br>30:22<br><b>perspective</b><br>17:15 31:16<br><b>PhD</b> 49:9<br><b>PHILADELPH<br/>IA</b> 1:1 2:6, 20<br>4:3<br><b>phone</b> 8:10<br><b>plan</b> 22:13<br>35:23<br><b>plane</b> 15:20<br><b>planning</b> 11:7<br>15:17<br><b>pleasantly</b><br>51:5, 13<br><b>please</b> 23:15<br>36:24<br><b>PLUG</b> 7:3<br>44:12<br><b>PLUG's</b> 6:7<br><b>point</b> 7:21<br>8:6 19:18<br>24:7 28:13<br>29:16, 19, 24<br>30:16 36:20<br>43:16, 17<br><b>points</b> 5:15<br><b>position</b> 28:1<br><b>possibility</b> 5:13<br><b>possible</b> 10:12<br>28:20<br><b>possibly</b> 14:22<br>22:11 48:14<br><b>posted</b> 15:3<br>24:9<br><b>postpone</b> 25:9<br><b>postponement</b><br>25:5<br><b>practices</b> 30:19<br><br><b>PREHEARING</b><br>1:1 33:6<br><b>prejudiced</b><br>29:8 42:11<br><b>prejudicial</b><br>26:9, 13 27:2<br>30:1<br><b>present</b> 44:5<br><b>presented</b><br>33:14 45:14<br><b>President</b> 14:9<br><b>Presumably</b><br>39:16<br><b>pretty</b> 24:9<br>31:15 32:2 | 34:3 35:16<br>38:21<br><b>prevent</b> 31:22<br><b>Price</b> 3:5<br>44:8, 10<br><b>primarily</b> 40:8<br><b>principles</b> 18:6<br><b>prior</b> 23:1<br><b>Pro</b> 3:9<br><b>probably</b> 11:6<br>14:16 16:9<br>35:3, 9 37:2,<br>22<br><b>problem</b> 33:19<br>34:16 35:5<br>41:3<br><b>procedural</b><br>2:8, 12 34:5, 9<br><b>procedure</b><br>28:10<br><br><b>PROCEEDING</b><br>1:1 2:5 17:14<br>19:2 38:18<br><b>Proceedings</b><br>2:2 53:1<br><b>process</b> 13:23<br><b>produce</b> 38:6<br><b>produced</b><br>23:23<br><b>product</b> 38:2<br><b>productive</b><br>11:11<br><b>projections</b><br>9:1, 18<br><b>proof</b> 38:4<br><b>proper</b> 31:6<br><b>Property</b> 48:6<br><b>proposed</b> 8:19<br><b>provide</b> 14:19<br>37:1 43:8<br><b>provided</b> 37:16<br><b>Public</b> 3:6<br>5:10, 18 14:17<br>15:24 34:11<br>39:6 48:6<br>53:1<br><b>publicly</b> 37:19<br><b>published</b><br>14:18<br><b>purchased</b><br>42:19<br><b>purpose</b> 2:8<br>47:12<br><b>purposes</b> 38:17<br><b>pursuant</b> 40:20<br><b>purview</b> 27:12<br><b>pushed</b> 13:14 |
|---------------------------------------|---|---|---|--|---|

5/2/2023

|   |  |   |  |   |   |
|---|--|---|--|---|---|
| <b>put</b> 26:4, 7<br>29:21 34:10,<br>21 40:16<br><b>puts</b> 28:1<br><b>putting</b> 39:17<br><b>PWD</b> 23:19<br>37:17 | <b>recirculate</b><br>35:24<br><b>recognize</b><br>24:23 26:3<br><b>record</b> 2:17<br>3:16 8:5<br>11:16 12:17<br>15:9 23:16<br>26:5 29:22<br>30:2 32:4<br>40:21 43:8<br>49:5 50:8<br><b>recover</b> 38:8<br><b>recovery</b> 5:17<br><b>referenced</b><br>44:13<br><b>referring</b> 32:18<br><b>regarding</b> 14:1<br><b>regs</b> 37:11<br><b>relate</b> 17:19<br><b>related</b> 2:9<br><b>relating</b> 50:3<br><b>Relevant</b> 8:14,<br>16 17:13 22:4,<br>6, 9, 14 40:9<br>46:1, 16<br><b>relief</b> 9:17<br><b>renovating</b><br>47:21<br><b>repairs</b> 20:22<br><b>replacement</b><br>19:23<br><b>report</b> 33:22<br>35:9 36:19<br>37:6, 7<br><b>reporter</b> 51:2<br>53:1<br><b>reporting</b> 10:7<br><b>representatives</b><br>2:14<br><b>reproduction</b><br>53:1<br><b>request</b> 5:2<br>10:9 26:7, 11<br>29:22 37:18<br>44:13<br><b>requesting</b> 6:7<br><b>requests</b> 25:1,<br>3 29:20 43:15<br>46:22 50:8<br><b>required</b> 43:7,<br>18, 19<br><b>requirement</b><br>37:12 38:9<br><b>requires</b> 41:8<br><b>resolve</b> 27:22<br><b>resolves</b> 7:19<br><b>respect</b> 24:21 | <b>respectfully</b><br>27:11<br><b>respond</b> 26:6<br>42:16 43:18<br>46:21<br><b>responded</b><br>42:18 43:17<br><b>responding</b><br>42:21<br><b>response</b><br>37:17 43:3<br>44:1, 3<br><b>responses</b><br>25:11, 13, 18<br>26:1, 3, 15, 18<br>28:16, 20 40:6,<br>8 41:12 47:9,<br>15, 17, 18 48:1<br><b>responsibility</b><br>32:3<br><b>rest</b> 18:12<br><b>results</b> 42:22<br><b>resume</b> 39:11<br>49:10, 17<br><b>revenue</b> 34:22,<br>23, 24 37:12<br>38:8<br><b>revenues</b> 38:4<br><b>reviewed</b> 23:17<br><b>revision</b> 24:6<br><b>revisit</b> 40:14<br><b>RFC</b> 15:10<br><b>Richardson</b><br>14:10<br><b>right</b> 5:6<br>10:24 12:23<br>13:24 20:8<br>24:1 25:11<br>29:10 32:10<br>50:23 51:18<br><b>Rob</b> 15:7, 16<br><b>Robert</b> 3:5<br><b>Roger</b> 14:22<br><b>room</b> 5:23<br><b>rough</b> 10:6<br><b>RPR</b> 53:1<br><b>rule</b> 26:4<br><b>ruled</b> 29:23<br><b>rules</b> 28:10<br><b>ruling</b> 26:9<br><br>< S ><br><b>satisfy</b> 8:2<br><b>saw</b> 13:10<br><b>saying</b> 19:22<br>26:23<br><b>says</b> 28:2<br><b>schedule</b> 7:7<br>9:4 15:17 | 27:6, 9, 18<br>29:2, 4 33:4<br><b>scheduled</b> 2:4<br>13:12 28:14<br><b>scheduling</b><br>24:21<br><b>scope</b> 20:6<br>23:16 30:21<br>31:5, 15, 19<br><b>Se</b> 3:9<br><b>second</b> 11:19<br>21:7<br><b>section</b> 34:12<br><b>see</b> 3:1 5:8<br>7:18, 21 8:8,<br>10 15:1 17:21<br>19:9 25:7<br>27:7 29:14<br>30:5 33:24<br>43:8 47:14<br>48:16, 18<br>49:18, 21, 24<br><b>seeing</b> 51:20<br><b>send</b> 28:17<br>32:20 37:20<br><b>sent</b> 32:17<br><b>separate</b> 11:17<br>34:11<br><b>Seriously</b><br>41:24<br><b>service</b> 19:23<br>20:23<br><b>set</b> 47:19<br><b>setting</b> 34:8<br><b>seven</b> 41:9<br><b>SEWER</b> 1:1<br><b>shape</b> 25:3<br><b>shock</b> 50:9<br><b>short</b> 16:9<br><b>shorten</b> 6:4<br><b>shortening</b><br>5:13<br><b>shortly</b> 48:24<br><b>show</b> 43:21<br><b>Shultz</b> 3:1<br><b>significant</b><br>16:8<br><b>simply</b> 43:16<br><b>sir</b> 26:21 49:2<br><b>situation</b> 7:13<br>26:8<br><b>Skiendzielwski</b><br>16:12, 14, 18,<br>21, 23 17:3, 6,<br>8, 17, 20 18:1,<br>3, 4, 9, 10, 18,<br>22 19:3, 9, 12,<br>15, 24 20:17<br>21:2, 16, 20 | 22:5, 8, 17, 21<br>23:2, 5, 7, 12<br><b>skilled</b> 37:22<br><b>slight</b> 15:24<br><b>snapping</b> 48:8<br><b>social</b> 43:10<br><b>sorry</b> 2:23<br>3:22, 23 6:19<br>16:20 23:1<br>26:22 44:18<br><b>sort</b> 5:9 9:5<br>14:24 23:22<br>25:15 30:18<br>51:6<br><b>Spanish</b> 43:12<br><b>speak</b> 48:13<br>50:1<br><b>speaking</b> 4:17<br><b>specific</b> 4:19<br>11:1<br><b>specifically</b><br>5:16 12:24<br><b>spend</b> 9:6<br>49:16<br><b>spent</b> 23:5<br><b>spill</b> 51:10<br><b>spreadsheets</b><br>37:17<br><b>staff</b> 43:1<br><b>stakeholders</b><br>5:23 43:13<br><b>start</b> 2:18<br>4:21 8:22<br><b>started</b> 3:18<br>36:15, 18<br><b>Statement</b><br>23:19 27:1<br><b>statutory</b> 29:4<br><b>stenographic</b><br>53:1<br><b>Steven</b> 24:7<br><b>stipulation</b><br>5:15<br><b>stipulations</b><br>4:22 5:6 30:6<br><b>stop</b> 18:14<br><b>STORM</b> 1:1<br>5:17<br><br><b>straightforward</b><br>34:3 35:17<br><b>stuff</b> 24:8<br><b>submit</b> 39:19<br>41:1<br><b>submitted</b><br>40:21, 24<br>41:17<br><b>substantive</b><br>34:2 | <b>sufficient</b><br>27:17<br><b>suggest</b> 49:6<br><b>suggestion</b><br>7:12<br><b>Summarize</b><br>36:22<br><b>supervision</b><br>53:1<br><b>supplied</b> 45:13<br><b>support</b> 38:4,<br>10<br><b>supporting</b><br>40:19<br><b>supports</b> 15:10<br><b>Sure</b> 4:15<br>32:4 35:5, 15<br>36:18 37:23<br>44:16 45:1<br>46:18 47:5<br><b>surprised</b> 51:6,<br>14<br><b>sustained</b><br>31:24<br><br>< T ><br><b>tables</b> 38:3<br>40:10<br><b>take</b> 11:15<br>28:23 32:2<br>44:19<br><b>taken</b> 53:1<br><b>talk</b> 7:22, 24<br>25:21 27:21<br>28:21 30:15<br>32:10<br><b>talked</b> 5:16<br>30:5 40:11<br><b>talking</b> 12:9<br>33:9, 11 40:5<br>45:7 50:24<br><b>teacher</b> 18:23<br><b>technical</b> 2:9<br>4:8 6:13, 17,<br>19, 23 7:1<br>48:13<br><b>teleconference</b><br>7:16<br><b>tell</b> 22:17<br>47:16<br><b>ten</b> 25:1<br><b>terms</b> 7:8<br>29:19 38:2<br><b>testimony</b><br>8:17 9:13, 21<br>12:17 14:13<br>17:19 30:21,<br>24 31:5, 19 |
|---|--|---|--|---|---|

5/2/2023

|  |   |   |  |
|--|---|---|--|
| <p>37:16 40:11<br/>49:11<br/><b>Thank</b> 2:22<br/>12:19, 22 14:4,<br/>6 18:18 32:7<br/>43:22 44:21<br/>50:16, 21<br/>51:19, 21, 22,<br/>24<br/><b>Thanks</b> 4:16<br/><b>thing</b> 11:21<br/>21:17 24:5<br/>34:15 39:14<br/><b>things</b> 11:23<br/>24:4 25:16<br/>26:24 27:22<br/>34:5<br/><b>think</b> 3:16<br/>4:19 5:20 6:7<br/>9:8, 12, 23<br/>11:3 15:18<br/>23:12 24:9<br/>27:17 29:24<br/>30:9, 18 31:9,<br/>14 32:23 34:2,<br/>8 35:4 37:21<br/>43:5, 23 44:15<br/>45:7, 23 51:9,<br/>13<br/><b>thought</b> 23:24<br/>24:14 36:10<br/><b>throw</b> 27:18<br/><b>throwing</b> 29:2<br/><b>Thursday</b><br/>2:10 12:6<br/>14:20 15:23<br/>16:8, 20, 21<br/>21:11, 13<br/><b>tight</b> 27:6<br/>29:3<br/><b>TIME</b> 1:1<br/>6:18 8:9 9:7<br/>10:6 11:15<br/>12:14 14:14<br/>16:23 21:21<br/>23:5 29:4, 24<br/>36:23 37:5<br/>41:8, 22 43:3,<br/>17 45:15, 18,<br/>20 49:16 52:1<br/><b>timeline</b> 41:8<br/><b>timely</b> 26:7<br/>27:13<br/><b>today</b> 6:1<br/>25:4, 14 26:18<br/>27:20, 21<br/>29:12 35:19<br/>41:2 43:16</p> | <p>46:22 47:9, 11,<br/>17 48:1<br/><b>Today's</b> 2:7<br/><b>told</b> 18:17<br/>42:8<br/><b>tomorrow</b><br/>2:10 8:22<br/>21:12 27:20<br/>29:12 39:12,<br/>17 40:2 50:24<br/>51:5, 20<br/><b>topics</b> 30:24<br/><b>town</b> 15:18<br/><b>track</b> 24:4<br/><b>tracking</b> 43:9,<br/>10<br/><b>traffic</b> 42:23<br/><b>transcript</b><br/>10:10 53:1<br/><b>Travis</b> 3:13<br/><b>treatment</b><br/>26:13<br/><b>true</b> 20:11<br/><b>try</b> 6:1 8:4<br/>10:1 15:3<br/>25:13 28:2<br/><b>trying</b> 14:24<br/>16:3 25:24<br/>28:18 42:7<br/>48:9 51:1<br/><b>Tuesday</b> 1:1<br/><b>turn</b> 23:9<br/><b>turnaround</b><br/>10:10<br/><b>twelve</b> 15:15,<br/>20<br/><b>two</b> 5:8 9:6<br/>13:19<br/><b>typically</b> 49:4<br/><br/>&lt; U &gt;<br/><b>unclear</b> 21:6<br/><b>understand</b><br/>7:1 19:14, 18<br/>21:21 22:1<br/>24:2 25:19<br/>28:13 31:3, 20<br/>45:2 47:5, 7<br/>48:15, 17, 20<br/><b>understanding</b><br/>6:19<br/><b>understood</b><br/>37:4<br/><b>undertaken</b><br/>41:15<br/><b>unequal</b> 26:12<br/><b>unfair</b> 26:8,<br/>12 27:2</p> | <p><b>unilaterally</b><br/>23:3<br/><b>unjust</b> 27:3<br/><b>unmute</b> 16:12<br/><b>unmuted</b> 3:17<br/><b>updating</b> 44:1<br/><b>use</b> 35:7<br/>37:14, 15<br/>38:15, 20<br/>39:20 40:13<br/>46:18<br/><b>Users</b> 4:3<br/><b>usually</b> 33:16<br/><b>utilize</b> 46:12<br/><br/>&lt; V &gt;<br/><b>variety</b> 43:12<br/><b>Veatch</b> 8:24<br/>9:1 10:18<br/>11:2 38:5<br/>51:8<br/><b>Versus</b> 13:24<br/><b>view</b> 16:7<br/>32:3<br/><b>views</b> 43:9<br/><b>Virtually</b> 1:1<br/><br/>&lt; W &gt;<br/><b>waiting</b> 14:10<br/><b>want</b> 8:5 12:1<br/>15:19 18:5, 21<br/>20:16 21:16<br/>24:14 26:4<br/>28:21 29:7<br/>30:12 31:20<br/>35:5, 6 36:6<br/>40:14 42:15<br/>45:1 46:24<br/>47:4, 15, 16<br/>49:18, 21, 24<br/><b>wanted</b> 36:10<br/>44:15<br/><b>WATER</b> 1:1<br/>2:6, 20 5:17<br/>11:20 12:15,<br/>16 13:19 14:1<br/>17:5, 10 20:5,<br/>9, 12, 20, 21<br/>21:6<br/><b>way</b> 7:17<br/>28:24 31:13<br/>33:14<br/><b>ways</b> 41:19<br/>42:9<br/><b>Wednesday</b><br/>12:6 16:8<br/>21:13<br/><b>week</b> 13:15</p> | <p><b>well</b> 2:11 7:6<br/>8:1 11:8<br/>24:13, 23<br/>27:15, 24 30:5<br/>31:11 34:19<br/>35:22 36:4<br/>37:1 38:14<br/>40:21 46:18<br/>49:1 51:3, 12<br/><b>went</b> 10:5<br/>21:23<br/><b>we're</b> 29:2<br/><b>we've</b> 43:11<br/><b>window</b> 15:21<br/><b>witness</b> 6:7<br/>8:20 20:10<br/>31:9 44:18, 20<br/>45:14<br/><b>witnesses</b> 8:20<br/>11:18 24:16,<br/>22 28:22<br/>30:20 45:3, 4<br/>46:1, 16 51:15<br/><b>wonder</b> 7:15<br/><b>Word</b> 37:1<br/><b>words</b> 9:15<br/>42:18 47:4<br/><b>work</b> 8:4, 6<br/>28:8 29:9<br/>40:19<br/><b>working</b> 25:10<br/>26:17 33:21<br/><b>works</b> 8:9<br/>48:4<br/><b>wrap</b> 11:13<br/>51:6<br/><b>WRB</b> 15:6, 10<br/><b>write</b> 37:6<br/><b>written</b> 25:24<br/>26:2<br/><br/>&lt; Y &gt;<br/><b>Yeah</b> 4:1<br/>14:5 19:24<br/>36:17, 20 40:7<br/>45:11 46:23<br/><b>Year</b> 17:15, 16<br/>31:17<br/><b>yesterday</b><br/>10:14 13:8, 10<br/>26:16<br/><br/>&lt; Z &gt;<br/><b>Zoom</b> 8:10</p> |
|--|---|---|--|