

ATTACHMENT F

**FEBRUARY 4, 2019 DENIAL OF REQUEST FOR
EXECUTIVE LEVEL DISCUSSION**

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Writer's Direct Access
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February 4, 2019

Via Electronic Mail

Maria Brown
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW
Suite 800
Washington, D.C. 20006-3401

Re: MAW Communications and PPL

Dear Maria:

We have been engaged by PPL Electric Utilities Corporation ("PPL"), and this letter responds to your January 28, 2019 letter to PPL Counsel Mike Shafer regarding disputes your client MAW Communications, Inc. ("MAW") alleges to have with PPL.

You mention there is pending a breach of contract complaint by PPL against MAW in the Court of Common Pleas of Lehigh County, Pennsylvania ("Lehigh County Court"). The Lehigh County Court already has issued the attached April 13, 2018 Order in that docket, pursuant to which: (i) PPL is entitled to remove or remediate MAW's unauthorized attachments at MAW's sole cost and expense; (ii) MAW is required to maintain a \$75,000 escrow account to ensure PPL is reimbursed; (iii) MAW must provide a certificate of insurance to PPL; and (iv) MAW must reimburse PPL for the costs for survey work already performed by PPL's contractor Katapult. As of today, MAW has violated the Order by failing to restore the \$75,000 escrow account balance.

The April 13, 2018 Lehigh County Court Order was rendered after two days of testimony, attached hereto, in which PPL's Ryan Yanek provided evidence that MAW had made 1086 attachments to PPL's poles without authorization, and that half of them violated safety codes by being located too close to power. *See* March 23, 2018 Transcript at 117-120. MAW's own former employee Joseph Staboleski testified that MAW's unauthorized attachments were made throughout the City of Lancaster in disregard of PPL's standards, in disregard of known NESC standards, and in disregard of third party attachment rights. *Id.* at 48. Mr. Staboleski further explained that: (i) MAW's applications were never authorized because MAW's President did not want to pay the make-ready costs (*Id.* at 23-24); (ii) there was nothing unreasonable about PPL's standards (*Id.* at 28); (iii) MAW's violations of the 40-inch safety space were very dangerous (*Id.* at 30); and (iv) he left MAW because he was hounded for months by MAW's decision to continue to build illegally (*Id.*).

MAW's decision to attach without authorization was a conscious decision based on the attached 10-page document prepared by MAW entitled, "PPL Make Ready Policy Brief." In that document, MAW proposed to reject paying PPL's make-ready charges, reject seeking FCC relief, and instead simply move forward with constructing MAW's network without PPL approval. The final option was recommended because: (i) it would take years for the FCC to require compliance with PPL's make-ready policy; (ii) in the meanwhile the network would be constructed and functioning; (iii) and once the network is in place it would be harder for PPL to justify compliance with its attachment policy. *See* PPL Make Ready Policy Brief at 8-10. This shocking recommendation to attach without permission called for MAW to notify PPL of its intent to construct the network, but MAW kept the entire process under wraps and never even notified PPL. *See* March 28, 2018 Transcript at 39-51.

Such reckless and dangerous behavior is not condoned by the FCC. In a similar proceeding, denying a Petition for Stay to prevent the removal of another attacher's reckless and dangerous unauthorized attachments, the Enforcement Bureau explained the proper course was not to disregard the application and make-ready process, but instead to pay the disputed make-ready charges and seek refunds:

Salsgiver claims that Penelec's proposed make-ready charges (1) failed to provide sufficient detail, and (2) would have required Salsgiver to "correct existing violations of previous attachers." Yet Salsgiver had the option of first paying Penelec's make-ready charges, under protest; filing a complaint with the Commission alleging that the charges violate section 224 of the Act; and, if successful, recovering those overcharges. Such a course would have obviated any alleged harm, and Salsgiver offers no explanation of why it could not have proceeded this way. Rather, Salsgiver, by its own admission, attached in violation of various communications and electrical standards. We cannot condone Salsgiver's decision simply to disregard Penelec's application/make-ready process."

See attached Salsgiver Stay Petition Letter Order at 3. It is difficult to envision the Commission treating MAW's premeditated, secretive, reckless and dangerous behavior any differently.

MAW is a bad actor that jeopardized the safety of its own employees, PPL's linemen, and every other person accessing PPL's pole distribution system in Lancaster. MAW's reckless and dangerous actions have caused PPL to incur considerable legal and contractor expenses to discover and catalog MAW's unauthorized attachments and to defend its pole distribution system against MAW's reckless and egregious behavior. This is in addition to the time and expense incurred by the Lehigh County Court. MAW at this moment is defying the Lehigh County Court Order to restore its \$75,000 escrow fund.

Given this astounding disreputable and dangerous activity, PPL believes the best path to resolving this dispute is for MAW immediately to comply with the Lehigh County Court Order. MAW should in addition reimburse PPL for its legal and other expenses to protect its pole distribution system and everyone who needs to access it.

KELLER AND HECKMAN LLP

Maria Browne

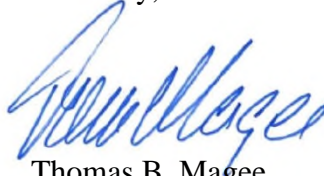
February 4, 2019

Page 3

PPL is prepared to explain all of this and more to the FCC and explain how a bad actor like MAW has made it more hazardous and expensive for legitimate attaching entities to access electric utility poles. In the meanwhile, once MAW has restored the \$75,000 necessary to comply with the Lehigh County Court Order, PPL can discuss meeting with MAW.

Please let us know how soon we can expect MAW's compliance.

Sincerely,



Thomas B. Magee
Partner

Enclosures:

- (1) April 13, 2018 Lehigh County Court Order
- (2) March 23, 2018 Hearing Transcript
- (3) March 28, 2018 Hearing Transcript
- (4) MAW's "PPL Make Ready Policy Brief"
- (5) Salsgiver Stay Petition Letter Order

cc: Mike Shafer, Esq.

Attachment (1)

**IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION**

PPL Electric Utilities Corporation, Formerly
Known As Pennsylvania Power & Light Co

- VS -

MAW Communications Inc, Frank T Wiczowski,
President

:
:
:
:
:
:
:

File No. 2017-C-3755

Assigned Judge: Edward D. Reibman

ORDER

AND NOW, this 13 day of April, 2018, upon consideration of Plaintiff PPL Electric Utilities Corporation's Motion to Vacate Stipulation and Order, filed on February 6, 2018; Defendants' Response thereto, filed on March 9, 2018; Plaintiff's Petition for Civil Contempt against Defendant Maw Communications, Inc., filed on February 6, 2018; Defendants' Response thereto, filed on March 7, 2018; the City of Lancaster's Petition to Intervene, filed on February 26, 2018; and Plaintiff's Response thereto, filed on March 22, 2018; after hearing thereon on March 23 and 28, 2018, and conferences with counsel; and pending further order of court and without prejudice to any party with respect to the underlying merits, including any issue as to contempt and sanctions,

IT IS ORDERED:

1. The City of Lancaster's Petition to Intervene is GRANTED, and the caption of the case shall be amended to read PPL Electric Utilities Corporation, Formerly Known as Pennsylvania Power & Light Co., Plaintiff, v. MAW Communications, Inc., and Frank T. Wiczowski, President, Defendants, and City of Lancaster, Intervenor.

2. The Stipulation dated December 19, 2017, and Order of December 22, 2017, approving the Stipulation, are VACATED.

3. Within ten (10) days from the date of this Order, Defendant MAW Communications, Inc. ("MAW") shall file with the Court, with a copy to all parties, two proposed notices, a general notice to the public ("general notice") that as a result of modifications necessary to MAW's fiber optic system, internet service to customers of LanCity Connect may be disrupted without further notice and a follow-up notice to its individual customers ("follow-up notice") that as a result of modifications necessary to MAW's fiber optic system, internet service to such individual customers may be disrupted without further notice and a description of when and how such notifications will be made. Within seven (7) days thereafter, Plaintiff PPL Electric Utilities Corporation ("PPL") and Intervenor City of Lancaster ("City") shall respond to the Court with any objections to such proposed notices, timeline and methodology. The general notice shall be issued before the commencement of any potentially disruptive work to MAW's system, and the follow-up notice shall be issued to individual customers fifteen (15) days before the commencement of any potentially disruptive work to such individual customers.

4. MAW is prohibited from accessing, working on, or connecting to any of PPL's poles, including those on which MAW has already made attachments, without the prior approval of PPL. PPL shall respond to any such requests for approval as promptly as the situation may reasonably require giving priority to safety concerns and minimizing disruption of service to critical public services.

5. For all unauthorized attachments to PPL's poles, MAW shall, in strict accordance with the 2003 Attachment Agreement, proceed forthwith to file in the Online Application Management Tool ("Portal") applications to attach to PPL's poles.

6. Before affixing any approved attachment to a PPL pole, and as part of the “make ready” process, PPL may, at MAW’s sole cost and expense, remove or remediate any unauthorized attachment to the PPL pole made by MAW, subject to paragraph 4, above.

7. MAW shall follow the 2003 Attachment Agreement process through the Portal when submitting applications for any future work involving the rebuild of the Lancaster Community Safety Coalition network and/or any service drops.

8. MAW shall place \$75,000.00 in escrow with PPL to ensure reimbursement to PPL for any costs, fees, expenses or damages it has incurred in enforcing this Order or the parties’ 2003 Attachment Agreement, and MAW shall maintain such balance in the event PPL may draw down upon such account in accordance with the 2003 Attachment Agreement or order of court.

9. In order to avoid or minimize any potential disruption of service to the City of Lancaster’s traffic light system or the Lancaster Community Safety Coalition’s cameras, PPL shall retain qualified personnel with knowledge of fiber optic networks to work with such designee of the City of Lancaster and the Lancaster Community Safety Coalition to coordinate any removal of MAW’s unauthorized attachments to PPL poles, including any unauthorized new build, overlash and re-build, including but not limited to “j and raise.” If, however, there has been insufficient collaborative progress within ninety (90) days from the date of this Order, through no fault of PPL, in determining which of MAW’s unauthorized attachments are necessary for the operation of the City of Lancaster’s traffic lights or the Lancaster Community Safety Coalition’s cameras, then PPL may take unilateral action to remove all of MAW’s unauthorized attachments. Any

costs incurred by PPL associated with such efforts and any other contractually permitted penalties or compensable costs shall be assessed against MAW.

10. MAW shall, no later than April 23, 2018, provide to PPL or its designated consultant all non-privileged electronic data and/or records, including data from MAW's "n-drive," which reflect MAW's network attachments, builds, alleged improvements and service drops within and around the City of Lancaster from January 2015 through the date of this Order. Such data and records shall be kept confidential and for the limited purpose of assuring MAW's compliance with this order and the 2003 Attachment Agreement.

11. Within fourteen (14) days from the date of this Order, MAW shall provide to PPL a certificate of insurance in accordance with Article 17 of the 2003 Attachment Agreement that specifically includes an endorsement by the insurance carrier that PPL is an additional insured under such policy.

12. Separate and apart from MAW's requirement to place \$75,000 in escrow, as set forth in Paragraph 8, *supra*, MAW shall, within thirty (30) days from the date of this Order, reimburse PPL for the costs, not to exceed \$40,000.00, of the Katapult survey performed by PPL, and within seven (7) days thereafter PPL shall provide MAW with all meta-data received from Katapult with respect to PPL's poles affected by MAW's attachments in a usable, industry-standard spatial data file format, such as a KMZ file, and, if readily available to PPL, a CSV or XLS file that includes machine-readable attachment and midspan data.

13. MAW shall take all necessary steps to ensure that all of its attachments to PPL's poles are timely and properly recorded with PPL.

14. Within five (5) days of the date of this order, the City of Lancaster shall serve a copy of this Order upon the Lancaster Community Safety Coalition.

15. All other provisions of the 2003 Attachment Agreement not inconsistent with this Order remain in full force and effect.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Edward D. Reibman', written over a horizontal line.


Edward D. Reibman, P.J.

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CIVIL COURT DIVISION

Document Distribution List

File No.: 2017-C-3755

4/13/2018 

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236 NOTICE

Pursuant to Pa.R.C.P. § 236, notice is hereby given that an order, decree, or judgment in the above captioned matter has been entered.

Andrea E. Naugle
Clerk of Judicial Records

Attachment (2)

COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CIVIL DIVISION

PPL ELECTRIC UTILITIES	:	
CORPORATION, Formerly	:	
Known as Pennsylvania	:	
Power & Light Co.	:	
	:	
- vs -	:	No. 2017-C-3755
	:	
MAW COMMUNICATIONS, INC.,	:	
FRANK T. WICZKOWSKI,	:	
PRESIDENT	:	

Transcript of Proceedings

BEFORE: HON. EDWARD D. REIBMAN, P.J.

Friday, March 23, 2018
10:00 o'clock a.m.
Courtroom No. 2 A
Lehigh County Courthouse
Allentown, Pennsylvania

APPEARANCES:

JOSEPH S. D'AMICO, JR., ESQUIRE
-- For the Plaintiffs

ERIC E. WINTER, ESQUIRE
-- For the Defendants

NEIL ALBERT, ESQUIRE.
-- For Lancaster City

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19
20
21
22
23
24
25

INDEX TO WITNESSES

<u>Plaintiff PPL Witnesses</u>	<u>Page</u>
Joseph Staboleski	
Direct Examination by Mr. D'Amico:	14
Cross-Examination by Mr. Winter:	31
Redirect Examination by Mr. D'Amico:	47
Ryan Yanek	
Direct Examination by Mr. D'Amico:	49
Cross-Examination by Mr. Winter:	129
Redirect Examination by Mr. D'Amico:	150
Examination by the Court:	157
Recross-Examination by Mr. Winter:	161
Redirect Examination by Mr. D'Amico:	162
Further Examination by the Court:	163
Kristie Rippke	
Direct Examination by Mr. D'Amico:	165
* * *	
<u>Defendant MAW Witnesses</u>	<u>Page</u>
Frank Wiczkowski	
Direct Examination by Mr. Winter:	174
Cross-Examination by Mr. Albert:	213
Cross-Examination by Mr. D'Amico:	221
Examination by the Court:	245
Redirect Examination by Mr. Winter:	247
Recross-Examination by Mr. D'Amico:	248
Further Examination by the Court:	250
Contd. Recross-Examination by Mr. D'Amico:	252
Further Examination by the Court:	253

1		
2	Contd. Recross-Examination by Mr. D'Amico:	255
3	Redirect Examination by Mr. Winter:	257
4		
5	Jeffrey Kobilka	
6	Direct Examination on Qualifications	
7	by Mr. Winter:	260
8	Cross-Examination on Qualifications	
9	by Mr. D'Amico:	262
10	Direct Examination by Mr. Winter:	267
11	Recross-Examination by Mr. D'Amico:	277
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

<u>Defendant's Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
D - 1 - C. V. Jeffrey Kobilka	**	277
D - 2 - Report Jeffrey Kobilka	**	277

** Exhibits were pre-marked.

1
2
3
4
5
6
7
8
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10
11
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Friday, March 23, 2018

10:00 o'clock a.m.

Courtroom No. 2 A

Lehigh County Courthouse

THE COURT: The next matter is PP&L versus
MAW. We are getting set up, so we will take a brief
break. Everybody in the courtroom interested in that
matter, there is nothing else; right? Looks like it.

Okay, we will take a break. We will come
back in about ten minutes, and hopefully everything
will be ready to go.

(Whereupon, a brief recess was taken.)

AFTER RECESS

THE COURT: The electronics all connected?
We are in business? All right.

All right, I think we are here on PPL's
motion to start with, so Mr. D'Amico?

MR. D'AMICO: Yes, Your Honor. At this time
I would like to call Mr. Joseph Staboleski.

MR. WINTER: Can I address one thing before
we begin testimony?

THE COURT: Sure.

MR. WINTER: Your Honor, I believe that we
are at a point where this matter could and should be
resolved, and based upon the conference we had with the

1 Court yesterday, I put together a proposal which I
2 provided to opposing counsel as to how we could proceed
3 by appointing an independent expert to deal with many
4 of the issues that are before the Court.

5 THE COURT: Before you hand that to me, is
6 there any objection to me seeing that? It's a
7 settlement proposal, I take it.

8 MR. D'AMICO: Absolutely, Your Honor. We
9 are opposed to anything going outside the contract. We
10 are here on a contract action, and we just want to
11 pursue our contract rights.

12 THE COURT: Okay. That wasn't my question.
13 My question was, is there any opposition to me looking
14 at what I gather -- what has been described as a
15 settlement proposal?

16 MR. D'AMICO: Yes, Your Honor.

17 THE COURT: There is objection.

18 MR. D'AMICO: There is objection.

19 THE COURT: Okay. Then I won't look at it.

20 MR. WINTER: To be clear, it's not a
21 settlement proposal per se. It is a procedural
22 proposal as to how the Court could go from here,
23 because no matter what happens today, there are going
24 to be dozens, if not hundreds of issues remaining. And
25 there are sizeable questions about who and how those

1 issues are going to get resolved. That's a proposal
2 for that mechanism.

3 THE COURT: So yesterday -- And I don't
4 remember whether you were in on this conversation, Mr.
5 D'Amico -- we had a conference yesterday with counsel
6 for MAW, counsel from the City of Lancaster in person,
7 present before we, and counsel for PP&L by telephone,
8 and the issue came up about the participation of a
9 representative from the Public Utility Commission.

10 And I wrote a letter after our December
11 meeting to the gentlemen from the PUC who was here in
12 December, telling him that I thought his participation
13 and his presence was very constructive and helpful, and
14 let him know that we had some other matters pending,
15 and that they would be heard today. I didn't order him
16 to come, because he's not a party, but I indicated that
17 he could be helpful again.

18 It was represented to me yesterday that I
19 think Mr. Winter had contact with PPL -- with the PUC,
20 and indicated that in all likelihood they would not --
21 PUC would not send a representative, and they were not
22 interested in participating.

23 So now I don't remember whether you were on
24 the phone at that point -- at this point or not, Mr.
25 D'Amico, but Mr. Winter gave me the name and telephone

1 number of a gentleman at the Public Utility Commission
2 who I think Mr. Winter represented was the Deputy Chief
3 Prosecutor --

4 MR. WINTER: Correct.

5 THE COURT: -- and was Mr. Gorter's
6 supervisor.

7 MR. WINTER: Right.

8 THE COURT: I took the liberty yesterday of
9 calling, and I got Mr. Swindler, his name is Michael
10 Swindler, on the phone, and we had a relatively brief
11 conversation. It was very clear that he felt that the
12 PUC did not want to be involved at this point. They
13 would not send a representative, and that if there was
14 a safety issue out in the field, that they would then
15 deal with it in their good order.

16 I said to him that I was not conversant in
17 the electrical code or the regulations pertaining to
18 some of the technical aspects that I anticipated would
19 be raised here today. And I also indicated that I
20 could readily imagine that there may be some problems
21 going forward in terms of whether individual
22 connections met standards or did not meet standards.
23 And so therefore, the Court might find it helpful to
24 have a master, or a -- somebody in that type of role,
25 that had the familiarity and competence to deal with

1 the technical matters that I anticipate are going to be
2 presented today, and also that remain in the future.

3 And I have to tell you that the gentleman was
4 absolutely of no help in terms of giving me some
5 suggestions about who or what to look for. So if we
6 are going to follow up with this notion of an
7 ombudsman, a master, or somebody to cut through some of
8 the technical issues that may arise in the future, I am
9 going to look to counsel in this case to provide me
10 with a list of entities or individuals who might fill
11 that capacity. Right now I don't have any.

12 I mean, I could call my electrician in who
13 comes to the house, but he is too expensive, and
14 doesn't do a good enough job anyway.

15 MR. D'AMICO: Your Honor, we believe the
16 issues are simple enough. If you can read a stick
17 diagram, you can understand the nature of code
18 violations.

19 THE COURT: You give me too much credit.

20 MR. D'AMICO: Well, alls we are asking for
21 is the opportunity to present the evidence. And I
22 think it will become clear to the Court.

23 THE COURT: We will do that. But I wanted
24 to put on the record what happened yesterday, and then
25 especially my off the record telephone conversation

1 with the gentleman from the Public Utility Commission.
2 I wanted you all to know that.

3 MR. D'AMICO: And I will represent to Your
4 Honor, a lot of the data that we will be presenting
5 today comes from the entity called Katapult
6 Engineering, retained by Mr. Yanek from PPL. Katapult
7 Engineering is also an entity that Mr. Wiczkowski
8 reached out to to perform survey services before he
9 decided he didn't want to follow the application
10 process.

11 So we have the gentleman here. We have the
12 data here.

13 THE COURT: Okay.

14 MR. D'AMICO: If the Court is worried about
15 what it looks like, these are the photographs with all
16 the information and details that we look forward to
17 showing the Court --

18 THE COURT: Okay.

19 MR. D'AMICO: -- so it makes it very easy to
20 follow.

21 THE COURT: Well, you can proceed. I just
22 wanted to put on the table what occurred yesterday, and
23 also I wanted everybody to be aware of what I perceive
24 to be my own technical limitations in terms of the
25 subject matter that we may be involved in, and so you

1 can be guided accordingly in terms of making your
2 presentations intelligible and intelligent.

3 MR. D'AMICO: And I will represent, I also
4 have Kristie Rippke here, a professional engineer,
5 electrical engineer, and she will be discussing the
6 NESC Code, and she will be showing the stick figure
7 diagrams that are presented so that everybody can
8 understand where they are not supposed to be.

9 THE COURT: From your client's perspective.

10 MR. D'AMICO: No, from the NESC perspective.
11 It's pretty simple.

12 THE COURT: And the issue is, I don't know
13 whether somebody else will say that's not what the code
14 requires. I don't know. That's my only point.

15 MR. D'AMICO: Given the opportunity, we will
16 sustain our burden.

17 THE COURT: Well, you may call your first
18 witness.

19 MR. D'AMICO: It's Mr. Staboleski, Your
20 Honor.

21 MR. WINTER: Your Honor, unfortunately I
22 have to ask for an offer of proof in relation to Mr.
23 Staboleski, and I will most likely have a relevance
24 objection.

25 MR. D'AMICO: Sure. Mr. Staboleski is a

1 former MAW employee. One of the issues before Your
2 Honor, is the sanctions of Mr. Wiczowski and his
3 company, for that failure to in good faith cooperate
4 with the proposed stipulation in identifying each and
5 every pole.

6 Mr. Staboleski will be able to establish that
7 Mr. Wiczowski was quite familiar with the process, not
8 only through the application process, which he should
9 have followed, but abandoned, of identifying the poles,
10 but would have been able to utilize the online access
11 portal system, to simply identify to PPL, which poles
12 they attached to, and where.

13 It's such a simple process, Your Honor, once
14 one gets an opportunity to see it, Mr. Staboleski will
15 be able to help us establish the fact that Mr.
16 Wiczowski has willingly and purposefully not only
17 previously abandoned the application process and
18 breached the contract, but clearly as of December, when
19 he had an obligation to identify his attachments in
20 detail and he took absolutely no effort in continue --
21 continuing efforts to try to obfuscate.

22 MR. WINTER: And Your Honor, I do have a
23 relevancy objection.

24 Number one, what we are here for today is
25 they have filed two motions which are virtually

1 identical in terms of content. And their motion to
2 vacate, as well as their motion for contempt, both
3 state that MAW had failed to identify the poles with
4 requisite specificity.

5 And so in this case, the entire issue is,
6 after this Order was entered in December, what did MAW
7 provide to them, and whether that was not in accordance
8 with the Court Order. What Mr. Staboleski who ceased
9 to be a MAW employee in October of 2017, did or did not
10 do, has nothing to do with what happened after this
11 agreement in December of 2017.

12 Again, we concede the information that we
13 provided to them. Are they arguing that we could have
14 provided more detail? We believe that we did provide
15 the detail sufficient to satisfy the Court Order. We
16 provided the detail that we had, so therefore we are
17 not seeing any relevance to Mr. Staboleski at this
18 time.

19 THE COURT: Objection is overruled. You may
20 proceed.

21 MR. D'AMICO: Thank you.

22 Mr. Staboleski, will you please take the
23 stand?

24 JOSEPH STABOLESKI, being called as a witness,
25 was first duly sworn, and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. D'AMICO:

3 Q Good morning, Mr. Staboleski. I subpoenaed you
4 to appear here today; correct?

5 A Yes.

6 Q Can you please identify yourself for the Court?

7 A Joseph Staboleski.

8 Q And where --

9 THE COURT: Spell your last name, please.

10 THE WITNESS: S-t-a-b-o-l-e-s-k-i.

11 BY MR. D'AMICO:

12 Q Where do you reside, sir?

13 A 19 Rosemary Drive, Sinking Spring, Pennsylvania,
14 19608.

15 Q Are you employed, sir?

16 A Yes.

17 Q What do you do for a living?

18 A Fiberoptic splicing, testing, and auditing.

19 Q And who are you employed by?

20 A Adtell Integrations.

21 Q Prior to Adtell, did you have a relationship
22 with MAW Communications?

23 A Yes, I did.

24 Q What was your role with MAW Communications?

25 A Outside plant manager, splice tech.

1 Q What does that mean, outside plant manager?

2 A I oversaw the team that did the fiberoptic
3 splicing and cable installation that happened at MAW,
4 Pennsylvania hot permits, applications for attachment
5 permits, city -- the hand pole installations.

6 Q Okay. I'm going to break down a little bit of
7 that, because some of what you're talking about is
8 certainly going to be new to the Court, and it's new to
9 me as well.

10 But you talked about attachment applications.
11 What specifically from your perspective and experience
12 -- By the way, how long were you with MAW?

13 A From February of 2015 to October of 2017.

14 Q What is an attachment application from your
15 experience, what -- describe that for the Court.

16 A There is a -- You sign up to get a user
17 interface on Katapult, and you go through, you pick the
18 path that you are choosing to build new plan.

19 Q When you say new plan, are you talking about
20 stringing the wires in the cable?

21 A Yes.

22 Q Okay.

23 A A new strand and fiberoptic cable.

24 On there it's pretty much of a point and click,
25 and you just hover over the little circle icon, and it

1 tells you the pole number ID, you click it, it
2 automatically adds it to the application.

3 Q Okay. So just so we understand, you are able to
4 generate a map of where you want to string your cable?

5 A Yes.

6 Q And with respect to PPL, was that an online
7 process?

8 A Yes.

9 Q In the past, has it also been a paper process?

10 A Yes.

11 Q With other companies is it sometimes paper;
12 sometimes online?

13 A Yes.

14 Q Have you dealt with numerous utilities in terms
15 of attempts to attach to poles?

16 A Yes, I also dealt with Met Ed Utility.

17 Q I'm going to have Mr. Yanek give an example of
18 the application process, but were you involved in any
19 applications for attachments involving PPL electric
20 poles in the City of Lancaster?

21 A Yes, I was.

22 Q And when did you get involved in those?

23 A 2016.

24 Q And did you work with anybody else at MAW in
25 terms of any applications to attach to PPL electric

1 poles?

2 A Mr. Wiczkowski and myself picked the paths
3 together. I would build in Katapult, and define that
4 path to PP&L, and wait for the make ready report to
5 come back.

6 Q If you could, just explain the make ready pro --
7 the application or make ready process to the Court, so
8 that we understand what you are talking about.

9 I know it's something that you do every day, or
10 do a lot, so it seems natural to you. To us it's new.

11 A Okay, so when you submit an application to
12 attach to poles, some poles have more cables on than
13 others. So it --

14 Q You mean other company cables?

15 A Other utilities, yes. Comcast, Verizon, what
16 have you.

17 So if there is a spot on the pole that's the
18 communications only area, if that part of the pole is
19 taken up, and there is no room for the legal separation
20 of a new com --

21 Q A new com being something like MAW wanted to do?

22 A Yes.

23 MR. WINTER: Objection. I mean, we have Mr.
24 D'Amico constantly interjecting information to his
25 witness. It's leading. The witness needs to answer

1 the questions based on the information he has.

2 THE COURT: I appreciate the fact that he is
3 trying to define a technical term, but I just don't
4 want you to be leading.

5 MR. D'AMICO: Certainly, Your Honor. I
6 apologize.

7 THE COURT: So you can ask him, what do you
8 mean by that?

9 BY MR. D'AMICO:

10 Q What do you mean by a com? That's fine.

11 A A new communication cable.

12 Q Okay.

13 A So if there is no room for the new communication
14 cable to be accessed on the pole, and movements have to
15 be made, or a pole replacement needs to be done, that
16 comes back on the report, and with the costs of what
17 that movement would be for the new attachment.

18 Q When you complete an application for an
19 attachment, are you able to determine whether or not
20 there were other utilities already on that same pole?

21 A Yes.

22 Q Are there different spaces on the pole from the
23 perspective of you in the communications business?

24 A Yes. There is a power space at the top.

25 Q Who is that for?

1 A That's for the power guys, for worker safety, to
2 keep everybody out of their hot zone.

3 Q Power guys. Identify for us who the power guy
4 is?

5 A Well, in Lancaster it would be PP&L.

6 Q Okay. And is there another space after the
7 powers?

8 A Yes, then there is a com space after the
9 separation of power, by 40 inches.

10 Q And when you say there is a separation, please
11 explain in further detail what you mean by that.

12 A Separation is defined for worker safety, so that
13 somebody working in a -- like a non-insulated bucket,
14 and other facilities, won't get into a danger zone with
15 electricity.

16 Q So you have your power space, you have your
17 communication space. Is there anything in between
18 them?

19 A There is -- I don't know what it's referred to.
20 It's just like a neutral area for separation.

21 Q Is that the 40 inches?

22 A Yeah.

23 Q In your role and in your work at MAW, were you
24 aware that communication fibers could not be strung
25 within that 40 inch area?

1 A Yes.

2 MR. WINTER: I'm going to object to lack of
3 foundation.

4 Again, are we talking about something he had
5 in his training, something he was told by somebody
6 else, something he is relying on a regulation for?

7 THE COURT: Overruled. You can cross-examine
8 him.

9 MR. WINTER: All right.

10 BY MR. D'AMICO:

11 Q Let me ask you this, how did you learn about
12 that 40-inch space?

13 A When I first was on board at MAW Communications,
14 Mr. Wiczkowski took me through my first walk out to
15 prove strength continuity, and take all the
16 measurements of every attachment on a pole, and a run
17 that we did in the City of Reading, the beginning of
18 2017.

19 So that we can further define, Mr. Wiczkowski
20 purchased a National Electric Safety Code manual that
21 further defines what those spaces are, and what their
22 rules and guidelines are to attach.

23 Q You mentioned you left in October of 2017. When
24 you left, was there any question in your mind that MAW
25 had the ability to identify poles that it wished to

1 attach to?

2 A No. There was no doubt in my mind that they
3 could identify them.

4 Q And was it a regular part of your
5 responsibilities to keep a record at MAW, of poles that
6 you attached to?

7 A Yes.

8 Q Is that expected in your business that you could
9 identify where you have attached?

10 A Yes.

11 Q Is there any reason to your knowledge, as of
12 October of '17, MAW could not identify poles in
13 Lancaster that it attached to?

14 A No.

15 THE COURT: Prior to your departure in
16 October of 2017, did you; in fact, identify for your
17 employer, MAW, the location by pole number, of every
18 attachment that you made?

19 THE WITNESS: There was -- We have
20 accumulated over a thousand pole profile sheets of
21 where MAW's attachments are in the City of Lancaster
22 that has pole numbers, other attachments on the pole,
23 everything spelled out by footage.

24 THE COURT: And every pole you say has an
25 I.D. number, there is a metal band on the pole?

1 THE WITNESS: Yes, sir.

2 THE COURT: And it has numbers, and I don't
3 know if it has letters as well --

4 THE WITNESS: Um-hum.

5 THE COURT: -- but it -- every pole has its
6 own separate identifier? That's what that metal band
7 is?

8 THE WITNESS: Yes.

9 THE COURT: And when you attached -- While
10 you were working for MAW, when you attached your cable,
11 the MAW cable to a PP&L pole --

12 THE WITNESS: Um-hum.

13 THE COURT: -- you would keep a record by
14 pole number, of every pole where you had made the
15 attachment?

16 THE WITNESS: Yes, on the bill maps that I
17 would give to contractors pulling our cable, it was
18 spelled out by pole, each pole they were attaching to,
19 and where the storage -- or the tail would sit.

20 THE COURT: And do you know what happened to
21 that information --

22 THE WITNESS: I do not.

23 THE COURT: -- in terms of whether it was
24 transmitted to the corporate headquarters for MAW?

25 THE WITNESS: I do not.

1 THE COURT: Did you tran -- What did you do
2 with that information?

3 THE WITNESS: It's stored in what was the N
4 drive. It was like the master --

5 THE COURT: N drive?

6 THE WITNESS: Yeah.

7 THE COURT: And what is an N drive?

8 THE WITNESS: It's the master storage
9 location and the network where all information is kept
10 for MAW.

11 THE COURT: So that would be MAW's
12 database --

13 THE WITNESS: Yes.

14 THE COURT: -- is that right?

15 THE WITNESS: Yes.

16 BY MR. D'AMICO:

17 Q By the way, you completed -- submitted several
18 applications to PP&L Electric; did you not?

19 A Yes, I did.

20 Q Did those applications ever generate permits?

21 A No.

22 Q Why not?

23 A Once we had the make ready report back, Mr.
24 Wiczkowski chose not to pay the make ready costs, and
25 said that it was basically outrageous, and there had to

1 **be a different way.**

2 Q When you say, when we got the make ready report
3 back, who did he get that back from?

4 A **I believe it comes from Hinkles & McCoy.**

5 Q Do you know what relationship Hinkles & McCoy
6 has with PPL Electric?

7 A **I believe Hinkles does all the load**
8 **calibrations, and -- for the poles for PP&L, all the**
9 **engineering.**

10 Q And if you could, please explain to us what kind
11 of data or information is provided on the make ready
12 report? Why is the information that important to you,
13 to you as MAW, and PPL Electric?

14 A **It provides if the pole would be over work --**
15 **overloaded with another attachment to where it would be**
16 **an unsafe structure, if there would be any movements**
17 **needed so that you wouldn't be in a danger zone for**
18 **power.**

19 **So if you had to either raise a street light,**
20 **change the height of a neutral cable, replace the pole**
21 **in general, just to get -- for a bigger pole, so that**
22 **we have more room in the communication zone, and proper**
23 **guying, it tells you if there is like a guy-wire**
24 **needed.**

25 THE COURT: Well, let me understand this.

1 When you refer to a make ready --

2 THE WITNESS: Yeah.

3 THE COURT: -- does that mean that as the

4 pole then exists --

5 THE WITNESS: Um-hum.

6 THE COURT: -- it's not ready to accept the

7 MAW cable?

8 THE WITNESS: Correct.

9 THE COURT: Some adjustment has to be made

10 to that?

11 THE WITNESS: Yes.

12 THE COURT: And the make ready, does it

13 specify precisely what has to be done?

14 THE WITNESS: Yes. Very clearly.

15 THE COURT: And how is that data captured?

16 How is it created, and how -- and where is it captured?

17 THE WITNESS: They go out and execute field

18 studies and they take a measurement.

19 THE COURT: They being who?

20 THE WITNESS: I believe they use Katapult.

21 PP&L uses Katapult for field engineering.

22 THE COURT: Okay.

23 THE WITNESS: And then they give that

24 information back to HMI and PP&L.

25 THE COURT: So PPL goes out and determines

1 that an existing pole is not ready for the MAW
2 attachment?

3 THE WITNESS: Yes.

4 THE COURT: And there is a printout of the
5 precise information that needs to be corrected or
6 done --

7 THE WITNESS: Yes.

8 THE COURT: -- to make the pole ready for
9 you to attach -- for MAW to attach its wire?

10 THE WITNESS: Correct.

11 THE COURT: Okay.

12 BY MR. D'AMICO:

13 Q If you don't get a permit from PPL to attach via
14 the make ready process, do you believe you are supposed
15 to be allowed to attach?

16 A **I do not believe that.**

17 Q Did MAW, to your knowledge, begin attaching to
18 PPL's poles in the City of Lancaster in 2016 or 2017?

19 A **Yes, in 2016.**

20 Q Did you ever raise that with your boss, Mr.
21 Wiczkowski?

22 A **Several times.**

23 Q What was discussed?

24 A **We met as a company the one day, and basically**
25 **presented two approaches, to continue building, and**

1 have PPL stop us, or -- that was Mr. Wiczkowski's
2 presentation -- or my way, do everything the legal way.
3 Get permits.

4 We basically would have had to string the whole
5 city for the type of network that we were deploying.
6 And the entire company, including Mr. Wiczkowski, stood
7 on my side of the room, saying that my side was better.

8 Q Was there any issues -- when MAW began stringing
9 fiber without permits from PPL, do you know whether or
10 not MAW ever told PPL what it was doing?

11 A We met with PP&L on several different
12 occasions, trying to come up with a solution for
13 overlooking the -- Every new attacher goes to the top
14 of the communication space, which we have heard back
15 every time that they were not going to supersede their
16 procedures for this one company, because they were
17 going to have to do it for everybody.

18 And we -- Up until the time that I left, we
19 were never able to work out with PP&L to come up with
20 one off design just for us.

21 Q Let me ask you this, just back up for a moment.
22 When you go into the application process, do you have
23 access to the type of information in terms of either
24 the standards that PPL expects, or the codes that it
25 applies, for anybody who wishes to attach?

1 A **Yes.**

2 Q Is that available on PPL's website, the portal I
3 mentioned earlier?

4 A **Yes, it is.**

5 Q So you can tell as you are doing it, what you
6 may need to do?

7 A **Exactly.**

8 Q Did you find anything unreasonable about the
9 standards that PPL employed for third party attachers?

10 A **Not at all.**

11 Q In October of '17, MAW has been running cable
12 throughout the City of Lancaster without permits;
13 correct?

14 A **Yes.**

15 Q Were you able in your work ever to get out in
16 the field, to see if there were any issues with the
17 way that the cables were being -- or fiber was being
18 strung throughout Lancaster without permits?

19 A **Yes, I was.**

20 Q What were some of the things you observed?

21 A **Because we had new strand to attach our network
22 to, splice cases were being attached directly to the
23 pole.**

24 Q Is that proper?

25 A **No, it's not.**

1 Q Is that inconsistent with what you understood to
2 be PPL's standards?

3 A Very inconsistent.

4 Q Anything else you observed?

5 A Yes. All the network extensions were being done
6 on just a J hook with self support cable. And then
7 residential drops were being supported from that to go
8 to each house.

9 Q When you say J hook, is that just --

10 A It's just a --

11 Q Describe what a J hook is.

12 A It's just a pole that you beat in -- a hook that
13 you beat into the pole. And then you just use two
14 quick clamps on either side to put a little tension
15 back and forth.

16 Q Is that intended to be a permanent -- Strike
17 that.

18 If you know -- Excuse me. If you know,
19 according to PPL's printed published standards for
20 attachers, is that consistent with what they require
21 for secure attachments on its facilities?

22 A No.

23 Q Is that supposed to be just a purely
24 temporary --

25 A Yes, sir.

1 Q -- thing while on a permanent rebuild?

2 A That's a temporary solution for a design, it is
3 not a permanent fixture.

4 Q In other words, would that be a way to get
5 something out of the way while you put in the proper
6 clamp?

7 A Yes.

8 Q Were there any issues with the running any fiber
9 or anything in that 40-inch space between the power
10 supply zone and the communication zone?

11 A In some instances, that 40 inches got cheated,
12 yes.

13 Q And is that dangerous?

14 A Very dangerous. All the equipment that we had
15 was -- to go up in the air for aerial lifts were
16 non-insulated buckets.

17 Q You said you left MAW in October of 2017. Why
18 did you leave?

19 A It was a series of situations, but one of the
20 major things that were really hounding me for months
21 is the decision to continue to build illegally in
22 Lancaster City.

23 Q If you were still at MAW, and if information
24 were not removed or destroyed, would you be able to
25 retrieve where MAW had attached to PPL poles in the

1 City of Lancaster during 2016 or 2017?

2 A Yes, sir.

3 Q Would you be able to identify it by pole number?

4 A By memory, pole number?

5 Q No, no, by -- through the information on the --

6 A Oh, yeah, yeah.

7 Q -- the M drive or N drive that you mentioned?

8 A Yes, yes. Pole numbers were listed.

9 Q And how quickly could that information be
10 retrieved if things had remained the same since you
11 were there in October of 2017?

12 A Minutes.

13 Q Thank you.

14 A You're welcome.

15 MR. D'AMICO: That's all I have of Mr.
16 Staboleski.

17 THE COURT: Cross-examination?

18 MR. WINTER: Okay.

19 CROSS-EXAMINATION

20 BY MR. WINTER:

21 Q Mr. Staboleski, isn't it true that in August of
22 2017, there was an incident involving you misusing the
23 company credit card?

24 A Does that have anything to do with this case?

25 MR. WINTER: Yes.

1 THE COURT: I will decide that. If there is
2 no objection, you may proceed.

3 THE WITNESS: Yes.

4 BY MR. WINTER:

5 Q Okay, and at that point, weren't you given a
6 warning, and MAW said that they would continue to try
7 and work with you?

8 A **Yes.**

9 Q And in September of '17, wasn't there another
10 incident involving you misusing the company credit
11 card?

12 A **Yes.**

13 Q Okay, and didn't the misuse of the company
14 credit card charges total more than \$6,000?

15 A **I'm not sure the extent of the totals.**

16 Q Is it possible it exceeded more than \$6,000?

17 A **I don't have that information, sir. I do not**
18 **know.**

19 Q And did this involve you using the company
20 credit card to do things like purchase gym memberships,
21 and go out to restaurants?

22 A **Yes.**

23 Q Yes. In October of 2017, was there an incident
24 in which you planted an electronic device on a
25 co-worker's vehicle in an attempt to track her?

1 A **Yes.**

2 Q And again, this was not for any legitimate
3 purpose. This was because you wanted to see where this
4 female was going; correct?

5 A **Yes.**

6 Q Okay, and at that point, did MAW confront you
7 about this?

8 A **No.**

9 Q Okay. I'm sorry, let me put it this way. Was
10 there a point in early October of 2017 in which you
11 sent a text message stating that you were going to
12 resign from MAW after all of this information arose?

13 A **Yes. I said I was going to quit.**

14 Q Okay. All right, and at that point, didn't Mr.
15 Wickowski indicate he was accepting your resignation?

16 A **Yes.**

17 Q And shortly after that, didn't you send another
18 message to Mr. Wickowski demanding your job back?

19 A **I asked if there was anything that we could do
20 to come to a mutual ground and settle everything, yes.**

21 Q Did you state something to the effect of -- to
22 other people -- that if MAW did not give you your job
23 back, you intended to burn them to the ground?

24 A **I never said burn anybody to the ground.**

25 Q Did you say something to the effect that you

1 intended to ruin MAW if they would not give you your
2 job back?

3 A I clearly stated that I would assist in the
4 information to PP&L, of what was really going out --
5 going on out in the field, and causing hazards, yes.

6 Q Okay, and so at that point when MAW refused to
7 give you your job back, that's when you went to PP&L;
8 right?

9 A I contacted PP&L beforehand, sir.

10 Q All right, and -- Well, you contacted PP&L
11 before you demanded your job back?

12 A Yes, sir.

13 Q Okay. Why would you demand your job back after
14 contacting PP&L?

15 A Still gotta work.

16 Q Okay, and you contacted the Pennsylvania Public
17 Utility Commission as well; correct?

18 A I did not.

19 Q Okay. Did you contact the FCC?

20 A I did not.

21 Q Did you contact any other entities?

22 A No, sir.

23 Q Okay. Did you state to anyone that you wanted
24 to go and set up your own competing company to MAW?

25 A Not a competing company to MAW, no.

1 Q You wanted to set up another company; correct?

2 A If I couldn't find proper work, I would become a

3 contractor for splicing, yes.

4 Q Okay, and you attempted to hire away at least

5 one or two of MAW's employees to come and work for you

6 in your new company; correct?

7 A No.

8 Q Okay. Did you solicit employees of MAW to

9 potentially come and work for you?

10 A I never had a company, so no.

11 Q Okay. Did you talk with employees of MAW, about

12 potentially working for you if you established this

13 company?

14 A While I was still employed there, yes.

15 Q Okay. All right, but you are saying that after

16 you left MAW, that you did not do that?

17 A No.

18 Q Okay. Now, you stated that you were involved in

19 these PPL applications; correct?

20 A Yes.

21 Q Okay. Isn't it true that you were involved in

22 fewer than six of these applications?

23 A Yes.

24 Q Okay. So again, we are not talking dozens of

25 applications, we are talking fewer than six; right?

1 A Yes. There is a limit to how many applications
2 that the system wants you to put in, which is five.
3 And because we never closed out any of the applications
4 that we had open, we were at our limit.

5 Q Okay. And am I understanding correctly, during
6 your time from MAW, you eventually rose to be in a
7 supervisory position; correct?

8 A Yes.

9 Q Okay. So I believe -- If I'm understanding
10 correctly, there were thousands of poles in the
11 Lancaster area involved in that, would you -- Correct?

12 A Yes. Correct, sir.

13 Q You were not there for the installations on all
14 the poles; correct?

15 A Not on every pole, no.

16 Q And it's fair to say, at least from what I am
17 understanding here, that a lot of your knowledge about
18 what should be done here was information that was
19 taught to you; given to you by Mr. Wiczkowski; correct?

20 A Yes.

21 Q Okay, so again, this is not you -- Well, what is
22 your background?

23 I mean, do you have any training apart from
24 your employment at MAW, in terms of installations on
25 electric utility poles?

1 A **I do not.**

2 Q Okay. So do you have any type of technical
3 degree?

4 A **No, sir.**

5 Q Okay have you been to any type of trade school
6 for this?

7 A **No, sir.**

8 Q Okay. So -- In terms of this, have you been to
9 any type of continuing education course that would
10 certify you to do this?

11 A **No.**

12 Q Okay. So everything you say today is based on
13 your own opinion, and what you kind of gleaned from
14 working while at MAW; correct?

15 A **Yes, sir.**

16 Q Okay.

17 MR. WINTER: Can I have a moment?

18 BY MR. WINTER:

19 Q Okay, sir, these applications that you were
20 involved in submitting to PP&L, okay, do you remember
21 generally what was in those applications?

22 A **It was -- They were just three network extension**
23 **runs within the limitations of a hundred poles. I**
24 **believe one was 86 poles. One was 93, somewhere around**
25 **there.**

1 Q Okay. So if I'm understanding your testimony
2 correctly, you just specifically remember three
3 applications?

4 A Yes.

5 Q Okay, and in terms of the three applications you
6 were involved in, to your knowledge, did MAW ever build
7 those?

8 A No.

9 Q Okay. So they submitted applications, and
10 again, applications were never approved, they were
11 submitted to make ready, and MAW subsequently didn't
12 build them?

13 A Yeah.

14 Q Okay. All right.

15 There is another term, and it's a newer term to
16 me; probably new to the Court as well. It was a term
17 called a service drop. Are you familiar with what that
18 is?

19 A Yes.

20 Q Okay. What's a service drop?

21 A A service drop is a drop that comes off of your
22 main network to provide service to an end user.

23 Q And basically that's the connection between --
24 And please correct me if I'm wrong -- that's the
25 connection between the pole and the home, or the pole

1 and the business; is that right?

2 A **Correct. Yes.**

3 Q All right, are applications required for service

4 drops?

5 A **No.**

6 Q Okay. Just wanted to be clear on that, okay.

7 And are you also familiar with -- Was there a

8 pre-existing network there called the Lancaster

9 Community Safety Coalition?

10 A **Yes, there is.**

11 Q Okay. Also known as LCSC?

12 A **Yes.**

13 Q Okay. And the Lancaster Community Safety

14 Coalition, if you know -- And again, I'm just looking

15 for your experience here, but we will try and cover it

16 while we are on the subject -- What is the Lancaster

17 Community Safety Coalition Network?

18 A **It's a camera based system that monitors about**

19 **170 cameras throughout the City of Lancaster.**

20 Q Okay. And do you know what -- I know we are

21 starting to get technical here. What type of wires are

22 we talking about?

23 A **They are on fiberoptic cables.**

24 Q Okay. And again, I have a vague idea what

25 fiberoptics are, so what I'm going to ask you to do is

1 just explain to the Court, what's a fiberoptic cable?

2 How does it work? What does it do?

3 A A fiberoptic cable is communication cable for
4 glass, and it transmits a light source for
5 communications.

6 Q Okay, and if I understand correctly, isn't it
7 that fiberoptic cable essentially sends pulses of
8 light, and that's how data is transmitted through these
9 cables?

10 A Yes.

11 Q Okay. All right, and so there had been a
12 pre-existing network; correct?

13 A Correct.

14 Q Okay, and the LCSC network was a fiberoptic
15 cable network?

16 A Yes, it was.

17 Q Okay. And was -- As part of MAW's job, was MAW
18 building onto that LCSC network?

19 A Yes.

20 Q And so there were pre-existing permits in place
21 for that LCSC network; correct?

22 MR. D'AMICO: Objection, Your Honor --

23 MR. WINTER: If he knows.

24 MR. D'AMICO: -- lack of foundation. If you
25 want to refer to the contract at issue for the date.

1 THE COURT: I missed your objection.
2 MR. D'AMICO: Lack of foundation.
3 MR. WINTER: I'm asking if he knows.
4 MR. D'AMICO: Is he familiar with the
5 Lancaster Safety Coalition Contract?
6 THE COURT: Overruled.
7 MR. WINTER: Okay.
8 BY MR. WINTER:
9 Q Are you familiar with whether there were
10 permits in place for the LCSC network?
11 A I believe so, yes --
12 Q Okay.
13 A -- because we received documentation from the
14 LCSC showing that -- their pole profiling sheets.
15 Q Okay, and you didn't mention this at the
16 beginning, but I think we can go back and cover this at
17 this point.
18 What was the purpose of what you guys were
19 doing in Lancaster? What was the end all? What were
20 you trying to build?
21 A It was -- It's a couple of layers. They were
22 building the fiber lit home solution, a municipal base
23 broad band network, they were replacing the multi-load
24 with single mode for the camera networks for the LCSC
25 that you brought up.

1 The water reading -- water monitoring
2 infrastructure for the Water Authority. Also, the
3 connectivity between City Government, and then the
4 traffic network for traffic control.

5 Q And a component of all of this is something that
6 came to be known as Land City Connect. Do you know
7 what I'm talking about?

8 A Yes.

9 Q Okay. Explain in terms of what you just said,
10 what Land City Connect is.

11 A Land City Connect is the fiber to the home
12 municipal broad band internet service provider that has
13 developed out of the new network that's being installed
14 in Lancaster.

15 Q Okay. So it's fair to say that this project had
16 a whole bunch of different components, one of which was
17 this Land City Connect?

18 A Correct.

19 Q All right. In terms of -- Were you involved --
20 We talked a minute ago about service drops, okay? Were
21 you involved in service drops, personally?

22 A No, I did not install any service drops.

23 Q Okay. Were there individuals that you
24 supervised that were involved in doing the service
25 drops?

1 A **Correct.**

2 Q Okay. And do you know whether those individuals
3 that you supervised with service drops, whether they
4 were regularly keeping track of pole numbers?

5 A **I don't believe they were monitoring pole**
6 **numbers at that time. They were just doing the drops**
7 **and monitoring house numbers.**

8 Q Okay. So in terms of this, if I'm understanding
9 your testimony correctly, in terms of the locations for
10 the service drops, MAW was keeping track of, I would
11 assume, the blocks; correct --

12 A **Um-hum.**

13 Q -- the streets, the house numbers to which these
14 service drops occurred; correct?

15 A **Yes.**

16 Q Okay, and if you know, was MAW also keeping any
17 GPS data as to where these poles were?

18 A **Yes.**

19 Q Okay. So again, MAW had a specific, I mean,
20 satellite coordinate of where each of those poles were
21 that was involved; correct?

22 A **Yes.**

23 Q Okay, and -- All right, and when MAW was
24 dispatching you, I mean, was it normally by street and
25 GPS location?

1 A **Usually.**

2 Q Okay.

3 And -- Yeah, just to be clear on this, for the
4 Land City Connect portion of the project, are you aware
5 if any pole number data was collected in relation to
6 that portion of the project?

7 A **The fiber poles that the contractors did, pole
8 numbers were listed on those build maps, yes.**

9 Q Okay. Well, let me be clear about that, because
10 that's a good point, okay. This project was more than
11 just MAW doing the work; correct?

12 A **Yes.**

13 Q And to be clear to the Court, there were
14 subcontractors -- Well, contractors, subcontractors,
15 whatever you want to call them, they were doing work
16 alongside MAW; correct?

17 A **Yes.**

18 Q And if you recall, who were the contractors and
19 subcontractors that were assisting in the work?

20 A **ECSI, which is East Coast Splicing. They did,
21 most of the cable pulls. After that contractor pulled
22 out, MAW's own employees were doing some of the
23 fiberoptic pulls.**

24 Q So this East Coast Splicing, I'm assuming you --
25 you are a manager. You had dealings with them

1 regularly; is that fair?

2 A Yes.

3 Q Were you actually supervising them?

4 A No.

5 Q Okay. I'm assuming that as a subcontractor,

6 that basically, they are told what to do, and they

7 manage their own operation; is that fair?

8 A Pretty much, yes.

9 Q Okay. So in terms of that, do you know what

10 data they were collecting?

11 A I do not.

12 Q Okay, and in addition to that subcontractor you

13 just mentioned, isn't it true that there were also at

14 least three other subcontractors that worked in various

15 portions of the project --

16 A Yes.

17 Q -- if you know? Okay, and who were those other

18 subcontractors?

19 A Precision Fiber Splicing did some of the

20 splicing work. Rhino Cable was coming on at the end

21 right before I left, to do some cable pulling.

22 Q All right. Any other subcontractors that you

23 recall?

24 A Not off the top of my head, no, sir.

25 Q Okay, and in terms of those other subcontractors

1 similar to East Coast, do you have any idea what
2 information they were collecting?

3 A No.

4 Q Okay, and is it possible that those other
5 subcontractors were not collecting this pole data
6 information?

7 A Yes. Anything is possible.

8 Q Okay. In terms of the Land City Connect portion
9 of it, what were you actually doing in relation to the
10 Land City Connect portion of the project?

11 A Spelling out for the contractors, or the cable
12 -- MAW's five man crew, where the cable would be pulled
13 for network extensions, so that we can separate a new
14 block. And then assigning fiber that would light that
15 neighborhood, that would go back to the head end.

16 Q Okay. Well -- And to be clear, were you
17 actually doing the work, or were you just supervising
18 the work?

19 A Supervising.

20 Q Okay. In terms of supervising the work, do you
21 know what data was being collected?

22 A We were -- Like on the build maps, we had the
23 pole numbers. There was a spread sheet that started
24 for fiber identification, for which fiber lit which
25 neighborhood.

1 Q Okay, but again, you don't know what was
2 actually being connected at each of the service drops;
3 do you?

4 A No.

5 Q Okay.

6 MR. WINTER: I think that's all I have, Your
7 Honor.

8 MR. ALBERT: No questions, Your Honor.

9 THE COURT: Mr. D'Amico, any redirect?

10 MR. D'AMICO: Yes.

11 REDIRECT EXAMINATION

12 BY MR. D'AMICO:

13 Q It sounds like you did a couple of really stupid
14 things while you were at MAW?

15 A Yes.

16 Q Did they have anything to do with the attachment
17 application process that we discussed earlier?

18 A No.

19 Q Is there anything about that -- Strike that.

20 To your knowledge, is the information about what
21 was submitted to PPL, and what was provided to MAW in
22 terms of make ready, information that remains on the
23 system and available to MAW at all times?

24 A Yes. It should be available.

25 Q So there should have been no reason why MAW

1 couldn't follow the contract if it wished to; correct?

2 A **Correct.**

3 Q If I understand correctly, based on your

4 testimony, MAW has proceeded to run fiber of various

5 types, for various reasons, without any load

6 engineering analysis, throughout the City of Lancaster?

7 A **That is correct.**

8 Q And it has done that on PPL's property?

9 A **Yes, sir.**

10 Q And it knowingly did that?

11 A **Yes, sir.**

12 Q And it did it in disregard of PPL's standard?

13 A **Yes.**

14 Q And it did it in disregard of understood and

15 comprehended NESC code standards?

16 A **Yes, sir.**

17 Q And it did it in disregard of other third

18 parties' rights --

19 A **Yes.**

20 Q -- to attach?

21 A **Yes.**

22 Q Thank you, sir.

23 A **You're welcome.**

24 THE COURT: Mr. Winter, anything else?

25 MR. WINTER: No, Your Honor.

1 THE COURT: You may step down. Thank you,
2 Mr. Staboleski.

3 Next witness?

4 MR. D'AMICO: Yes. I would like to call Mr.
5 Ryan Yanek.

6 Your Honor, we have a -- significant exhibit
7 books that we will be referencing, but also this is the
8 portion where I said we will be able to show --
9 hopefully the Internet connection holds up -- the
10 online access, the interactive portion of it, so that
11 we don't have to try to read the very small print when
12 we print these things out.

13 THE COURT: Okay.

14 RYAN YANEK, being called as a witness, was
15 first duly sworn, and testified as follows:

16 DIRECT EXAMINATION

17 MR. D'AMICO: Okay. We can take that down
18 for now.

19 All set, Mr. Chapman?

20 MR. CHAPMAN: Go ahead. Yes.

21 BY MR. D'AMICO:

22 Q Mr. Yanek, could you please identify yourself?

23 A Yes. I am Ryan Yanek, project manager in charge
24 of the attachment group for PPL Electric Utilities.

25 Q And could you give us a little bit of a

1 background in your education and professional work
2 background?

3 A Sure. I have been with PPL for eight years.
4 Prior to that I worked for two other companies in the
5 fields of electric utilities, project management, and
6 construction.

7 Prior to that, I had a Bachelor's of Applied
8 Science in Engineering Technology degree from the
9 University of Delaware. And I currently hold a project
10 management professional certification, PMP, through
11 PMI.

12 Q You gave us your title a few minutes ago, but if
13 you could just tell us, what does that mean?

14 A Sure. So I'm in charge of a couple functions at
15 PPL, one of which is administering all of the
16 applications to attach communication equipment to PPL
17 utility poles.

18 Q How many utility poles does PPL electric have in
19 the Keystone State?

20 A Right around 900,000.

21 Q And it's your group that monitors that?

22 A Yes, that's correct.

23 Q What is the interaction or the interplay between
24 PPL and other utilities in terms of attachments?

25 A As far as other electric utility or other

1 communication companies?

2 Q Other -- Can other electric utilities attach to
3 your poles?

4 A Yes. When you end up in a territory near
5 another utility, there is some crossover to insure
6 customers are all served, and that is all regulated
7 through the PUC.

8 Q That's not what we're talking about in this
9 particular case; is it?

10 A No, it's not.

11 Q We are talking about the communications area?

12 A That's correct.

13 Q Why don't we limit our focus to that then, okay,
14 sir?

15 A Yes, sir.

16 Q If you could, what's the interplay between
17 communication or cable companies, and PPL?

18 A Okay, so communication companies have the
19 ability to set up a license agreement with PPL in order
20 to attach to our poles.

21 That license agreement lays out all the terms
22 and conditions to insure that it's done in a safe
23 manner, and insures that it's compliant with our
24 specifications code, and insures the safety of the
25 workers, and insures the safe reliable electric system

1 **for our customers.**

2 Q I'm going to ask you to -- You should have --

3 MR. D'AMICO: Your Honor, may I approach the

4 witness?

5 THE COURT: You may.

6 MR. D'AMICO: Mr. Chapman -- And any

7 objection by counsel if we present the exhibits on the

8 board?

9 MR. WINTER: No.

10 MR. ALBERT: No.

11 MR. D'AMICO: Mr. Chapman, could we have

12 Bates number one?

13 BY MR. D'AMICO:

14 Q If for some reason things go down, this is what

15 we are going to use.

16 A **Understood.**

17 Q But otherwise, you will be able to see it on the

18 screen. Perhaps I will just put it here.

19 A **Okay.**

20 Q Don't knock it over.

21 A **Okay.**

22 Q Tell me this. While we are doing this technical

23 stuff, is there a license agreement between PPL and MAW

24 Communications?

25 A **Yes, there is.**

1 Q I'm going to hand you a laser. If at any point
2 you want to specify a specific area, you could use
3 that. Just be careful of the court reporter.

4 A Okay.

5 Q And you won't believe how much your hand
6 actually shakes when you hold a laser.

7 A Okay.

8 MR. D'AMICO: If we could, Mr. Chapman,
9 Bates No. 1?

10 BY MR. D'AMICO:

11 Q Do you recognize that document?

12 A Yes. That's the license agreement with MAW
13 Communications and PPL.

14 Q Is that one of the items that's under your
15 purview or management?

16 A Yes, it is.

17 Q How many different utilities do you work with?

18 A There are from a communication company
19 standpoint, roughly 80 we do business with on a regular
20 basis.

21 So we have approximately 80 communication
22 companies that we do business with on a regular basis.
23 And then additionally there is categories for public
24 and private attachments as well. So we have up to 400
25 agreements that we administer in my group.

1 Q And so are you responsible for making sure what
2 -- you understand what's in the agreements between you
3 and a particular utility?

4 A Yes.

5 Q And are you familiar with the MAW agreement?

6 A Yes, I am.

7 Q Does the MAW agreement spell out how MAW is
8 allowed to attach?

9 A It does.

10 Q And does it provide definitions?

11 A It does provide definitions.

12 Q I'm not going to ask you to define the contract,
13 but I am going to ask you to point out to the Court
14 particular provisions of the agreement that you believe
15 are pertinent to the proceedings today in terms of
16 whether or not MAW was able to identify poles, and the
17 process by which MAW should have proceeded in
18 connection with this dispute.

19 A Okay.

20 Q First of all, does the agreement provide -- We
21 have heard questions from Mr. Winter of Mr. Staboleski
22 about service drop. Is that an issue that's raised in
23 the agreement?

24 A It is. It's defined in the beginning of the
25 agreement.

1 Q Do you recall the section?

2 A I believe it's Section 1.19, article one,
3 definitions.

4 Q If I told you it was 1.18 on page seven, would
5 you disagree me?

6 A I wouldn't disagree with you, no.

7 MR. D'AMICO: That would be Bates seven, Mr.
8 Chapman.

9 BY MR. D'AMICO:

10 Q Could you please identify for the Court, the
11 service drop attachment? Is that part of the MAW
12 agreement?

13 A Yes, it is.

14 Q Now, there was a question asked of Mr.
15 Staboleski whether or not there was any application
16 required for service drops. Is there, from PPL's
17 perspective?

18 A There is.

19 Q And can you explain to the Court the basis for
20 that?

21 A Certainly. We need to know what is attached to
22 our poles, and where. And the online access
23 application management tool that I refer to as the
24 portal, allows for all the attachers to let us know
25 where those service drops are.

1 Q Why do you need to know?

2 A Because when it comes down to administering both
3 the make ready application process, and then notifying
4 attachers who transfer the poles that are replaced, we
5 need to know what facilities are on those poles so we
6 can make the proper notification.

7 Q Why do you even need to go through a make ready
8 process?

9 A Because not all poles have space as they
10 currently reside. So in order to make space or make
11 them ready to accept new communications attachments, we
12 need to do a survey and engineering analysis to
13 determine what is attached to the poles as they stand
14 today, to determine if the new attachments can be made
15 in a manner consistent with our standards, and could be
16 done in a safe manner.

17 And if they can, then we would release the
18 application and allow that to occur. Otherwise, we
19 might need some construction work to rearrange the
20 facilities and make space, or possibly put in a new,
21 taller pole.

22 Q Does the agreement between MAW and PPL spell out
23 that process?

24 A Yes, it does.

25 Q Okay. Is there any particular sections you wish

1 to draw the Court's attention to in that respect, sir,
2 in terms of the application process?

3 A The exact section where the application process
4 is outlined escapes me.

5 Q If I directed your attention to article 6?

6 A Article 6?

7 Q You want to take a look?

8 A Yes, please.

9 MR. D'AMICO: Mr. Chapman, that would be
10 page 13 -- Bates 13, sir.

11 THE WITNESS: Thank you. Article six
12 outlines the attachment installation, pre-survey
13 application process.

14 BY MR. D'AMICO:

15 Q Mr. Yanek, I will point out -- If it's easier
16 for you to leaf through the contract itself, there is a
17 copy of it there in the binder.

18 If you could, generally describe to the Court
19 that process.

20 A Certainly. So the process for application, the
21 applying company has to do some pre-survey work to
22 determine what poles it wishes to attach to, that are
23 PPL's. And so after that pre-survey work is done, they
24 would make an application through our online portal, to
25 let us know what poles they would like to attach to.

1 After that's completed, we will do a survey and
2 engineering analysis to determine what would need to be
3 done to accommodate those requested attachments.

4 Afterwards we will send the engineering, the report,
5 the foreign utility notification, along with an invoice
6 for the work, to the applicant, and if they choose to
7 move forward with the process, a date for that work
8 would then schedule and execute make ready
9 construction, which would make all those poles ready
10 for their attachments, consistent with the design that
11 was completed.

12 And so at the end of that process we would
13 issue a permit after all the make ready work for the
14 electric space, as well as the communication space was
15 completed, and then the applicant could move ahead with
16 their attachments.

17 Q Well, what happens with the other third parties
18 who already had attachments or cables run on the poles?

19 A They get a foreign utility notification at the
20 end of the design, letting them know where they need to
21 relocate their facilities to.

22 That report is provided to the attaching
23 entity, and they use that to coordinate those moves
24 with the existing third parties. And all of that make
25 ready takes place after all of the electric

1 construction is completed, so that everyone can work
2 safely.

3 Q In terms of the City of Lancaster, to your
4 knowledge, are there other internet providers in the
5 City of Lancaster that attach to PPL poles?

6 A Yes, there are.

7 Q Who are they?

8 A Companies such as Comcast, Wind Stream, there is
9 communication companies like Zayo that aren't well
10 known that do backbone fibers mostly. But there are a
11 number of entities.

12 Q And those companies would have to coordinate
13 with MAW if MAW wanted to run cable through this
14 application process?

15 A Yes, when it came time for rearrangements if
16 they were necessary, MAW would have to coordinate with
17 them to make those moves.

18 Q What if you found that something that Verizon,
19 or one of these other companies had done was not
20 compliant with PPL's standards, somebody had made a
21 mistake, what happens in that instance?

22 MR. WINTER: Objection. Again, I'm -- Lack
23 of foundation. I'm not sure that that's necessarily
24 relevant.

25 THE COURT: It's a hypothetical. You may

1 proceed. Overruled.

2 BY MR. D'AMICO:

3 Q Do you understand the question, sir?

4 A Could you repeat it, please?

5 Q Sure. What happens if during that process of
6 engineering, you find that maybe somebody's not where
7 they were supposed to be, there was a mistake made, or
8 they have done something that requires a change,
9 unrelated to MAW's application?

10 A So what we will do is we will look at the
11 license agreement with that attached entity, and we
12 will follow the process for remedying that.

13 If it's an honest mistake, they are attached to
14 the wrong location, there is a remedy for that in the
15 contract for a non-compliant attachment. So we would
16 follow that process depending on the particular
17 agreement.

18 BY MR. D'AMICO:

19 Q What if there's costs associated with that?

20 A If there is costs associated with an existing
21 violation, it would be the responsibility of the
22 attached entity that caused the violation.

23 And we do call out existing issues, such as
24 uncompliant guying, that is passed through in the
25 foreign utility notification, to the applicant, and

1 then he can use that to have the existing attacher make
2 those adjustments at no charge to them, as part of the
3 foreign utility relocations.

4 Q All right. I'm going to change subjects, but
5 still talking about the agreement.

6 At one time was the application process a paper
7 process?

8 A It was.

9 Q And is it to this day a paper process?

10 A It is not.

11 Q When it was a paper process, did the contract
12 provide somebody like MAW, a third party utility,
13 notice of the standards or codes it must comply with?

14 A Yes.

15 Q And does PPL still provide to it's potential
16 licensees, the code for standards it must comply with
17 if it wishes to attach?

18 A It does.

19 Q And where is that located?

20 A It's available on our public facing website for
21 pole attachment services.

22 Q Let's talk about the portal. That's the current
23 way to apply to attach to a pole?

24 A Yes.

25 Q And was that portal available to MAW

1 Communications in 2016 and 2017?

2 A **Yes, it was.**

3 Q Was that portal available to MAW Communications
4 in connection with any of the work it was doing in the
5 City of Lancaster?

6 A **Yes, it was available.**

7 Q Would you be able to show -- Strike that.

8 To your knowledge, did MAW take any steps to
9 undertake an application to attach to PPL poles in the
10 City of Lancaster in 2016 or 2017.

11 A **Yes, there were a couple applications that were**
12 **actually submitted. There were four of them that came**
13 **in, and we performed make ready survey and engineering**
14 **on them, and at that point they did not go any further.**

15 **There was a fifth application that was**
16 **submitted that sits in an incomplete status. And since**
17 **then, there have been 12 others that were submitted in**
18 **draft status, but were not -- I should not say**
19 **submitted. They were put in through the portal. They**
20 **were not submitted for any action.**

21 Q Are they still available for viewing?

22 A **They are.**

23 Q Okay. We are going to get to those in a moment.

24 MR. D'AMICO: I'm going to ask, Mr. Chapman,
25 if you could go to Bates Stamp 69, Exhibit 2.

1 BY MR. D'AMICO:

2 Q Do you recognize that, Mr. Yanek?

3 A Yes. That's our standard for requirements of
4 attachment of communication cable facilities to PPL
5 poles.

6 Q And is that something that is updated on
7 occasion?

8 A Yes, it is.

9 Q Why is it updated?

10 A It's updated routinely because codes and
11 standards do change, and as a utility, we want to make
12 sure we are always compliant with those code changes.

13 Additionally, we are always looking at best
14 practices, and best ways to do business. So
15 periodically updates are made outside of the code to
16 insure that we're, say, keeping up with the times,
17 and doing business the best way possible.

18 Q This particular exhibit, the effective date of
19 October 30th, 2017, does that hold any significance?

20 A That is the most recent update to that
21 particular specification.

22 Q And if someone somehow wanted to attach, and had
23 a license agreement to attach, but were not familiar
24 with the process, does PPL provide any guidance to its
25 potential licensees as to the process?

1 A **Yes.**

2 Q All right. I'm going to stop you there.

3 MR. D'AMICO: Mr. Chapman, can you please

4 turn to Exhibit 3, Bates Stamp 83?

5 BY MR. D'AMICO:

6 Q Do you recognize that, sir?

7 A **Yes, I do.**

8 Q Could you explain to the Court what that is?

9 A **Yes, that is on -- again, on our public facing**

10 **website. And that shows the attachment process for**

11 **third parties.**

12 It outlines the steps that the customer would

13 be taking, the actions that PPL would be taking, and it

14 outlines all of the obligations that follow our

15 process.

16 MR. D'AMICO: Mr. Chapman, if you could just

17 begin to enlarge this?

18 BY MR. D'AMICO:

19 Q So it's color coded; is it not?

20 A **Yes.**

21 Q Blue means -- Blue falls on who?

22 A **Blue is the customer action required.**

23 Q And the first process is to submit the

24 application?

25 A **Correct.**

1 Q And then it falls upon PPL to take action?

2 A Yes, it does.

3 Q And then the next -- What's -- When it says
4 generate survey/design invoice, does that have to do
5 with the make ready that we have been talking about?

6 A It does. So if I may, I can explain the process
7 here in a little more detail.

8 So before we go out and do the survey and the
9 design work, we ask for payment from the applicant up
10 front to fund that work, because we are working for
11 them on the application.

12 So we have a three-step billing process where
13 we bill ahead of survey and design, ahead of
14 construction, and at the end of the project we
15 reconcile costs to insure that the customer is only
16 paying for the work necessary to make their application
17 and their attachments.

18 Q How far in the process did MAW get in this
19 multi-stage process in terms of any connections in the
20 City of Lancaster?

21 A The process that MAW put their applications in
22 under actually predates this process. So at that time
23 we were only invoicing once in the process, after
24 engineering, and before construction.

25 MR. WINTER: Your Honor, then I'm going to

1 object to relevance.

2 MR. D'AMICO: This is the process that they
3 should be following, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: So they got as far as, made
6 the applications. We went ahead and did the survey and
7 the engineering work on the first four applications,
8 and then we got to the awaiting payment stage, and they
9 have not moved further.

10 BY MR. D'AMICO:

11 Q Okay. I'm going to ask you to walk us through
12 what information there is on the online access portal
13 concerning MAW and the City of Lancaster.

14 And I'm going to direct Mr. Chapman to pull up
15 Petitioner's Exhibit 6 at Bates Stamp 113. And before
16 you get on the computer, Mr. Yanek, I am going to ask
17 if you recognize that document? I know the print is
18 extremely small. Is this something you did a screen
19 shot of for me, at my request?

20 A Yes, I did.

21 Q And what is this a screen shot of?

22 A This is the cue where all of our applications
23 come in, specifically filtered for MAW as the customer.

24 Q So you are able to see when MAW bid online, and
25 when they have done any work towards a potential

1 application process?

2 A Yes, I can see that.

3 Q And this stays of record?

4 A It stays of record while the applications are
5 active.

6 Q Are there -- I think you mentioned earlier there
7 were completed and submitted applications, and then
8 there were partially completed applications. Do you
9 get to see both of those?

10 A Yes. I can see all of them.

11 Q Are you able to -- If you could, would you be
12 able to walk the Court through the portal process so
13 that we can see what it is that MAW could do, and what
14 it has done?

15 A Yes, sir. Certainly.

16 MR. WINTER: Your Honor, I'm going to object
17 to all of this, on the grounds of relevance.

18 Look, we stipulate, all of this happened.
19 There is no question about it, but it's not relevant to
20 the proceedings today, which are a motion to vacate,
21 and a motion for contempt. And none of this, as far as
22 I can see, has anything to do with the motion to vacate
23 or the motion for contempt.

24 THE COURT: Suppose I conclude the
25 stipulation in December to be, that you were obligated

1 to provide the identifying information by pole number.
2 Yesterday we discussed that that was not your
3 understanding, and that you didn't have the ability to
4 do that.

5 MR. WINTER: Right.

6 THE COURT: Suppose the evidence today shows
7 that you did.

8 MR. WINTER: And I don't believe that this
9 is going to show that they had the ability -- that MAW
10 had the ability to do this.

11 THE COURT: I don't know what the
12 application shows in terms of whether it identifies
13 pole numbers or not. I don't know. Does it?

14 MR. D'AMICO: Yes.

15 THE COURT: Okay.

16 MR. WINTER: Okay.

17 THE COURT: Maybe counsel should talk.
18 Maybe a conference -- a recess and a conference might
19 be productive.

20 I mean, I -- You know, I have got all day,
21 but if it shows the pole numbers, and I conclude that
22 the stipulation required you to produce -- identifying
23 the poles by pole numbers, you're going to have a
24 problem.

25 MR. WINTER: And Your Honor, to be clear, we

1 have never said that we had no pole numbers. We said
2 we did not have all the pole numbers, and we provided
3 what we had. And we will be getting to what was
4 actually provided.

5 THE COURT: I extend the invitation. I
6 believe that the parties are better able to resolve
7 disputes than the Court is, but I am here to help.

8 You want to talk and try to get this thing
9 resolved, I encourage you to do that, and I will
10 facilitate it. But if not, we push on.

11 MR. WINTER: We are certainly willing to
12 conference, Your Honor.

13 MR. D'AMICO: Not at this time, Your Honor.
14 I think you need to understand how simple a process
15 this was. Then maybe they will be more realistic in
16 our discussions.

17 THE COURT: Let's proceed.

18 MR. D'AMICO: We are going to switch to the
19 computer, okay?

20 BY MR. D'AMICO:

21 Q Mr. Yanek, are you prepared to describe to the
22 Court, and demonstrate through the portal, how one
23 could, either during the application process or later,
24 identify poles where they wish to attach, or where they
25 have already attached without authorization?

1 A Yes, I am.

2 Q Okay. Please start the process. And you need
3 to verbalize so that we understand. And I will
4 interrupt you to make sure that you are not going too
5 far afield.

6 A Okay. Yes, please, if I give too much detail,
7 help me bring it up.

8 So, I think the most effective way to show this
9 is go to one of the un-submitted applications, because
10 they are in progress. And allow everyone to see on a
11 one-by-one basis what that looks like.

12 So if I go here to this un-submitted
13 application, it will take just a second to load up here
14 while we are on the wireless. So what you will be able
15 to see here, is that on the left-hand side there is a
16 map, similar to a Google street overlay that we are all
17 familiar with, that also shows on it, poles.

18 Q What are those circles?

19 A Those are the -- The empty circles, or the white
20 circles are the PPL Company. You can see the grid
21 numbers there. And the grid numbers are pole numbers.
22 Sorry if I'm speaking in jargon.

23 And the ones that are half black, half white,
24 are telephone company poles. In this case, this one is
25 Verizon Pennsylvania, Inc., which also has the pole

1 number on it.

2 MR. D'AMICO: I don't know, Mr. Chapman, are
3 you able to expand that?

4 MR. CHAPMAN: Unfortunately, no.

5 THE COURT: Is this a demonstration, or is
6 this the actual -- is this the City of Lancaster?

7 THE WITNESS: This is the City of Lancaster.

8 THE COURT: Okay.

9 THE WITNESS: And this is a draft
10 application.

11 THE COURT: Okay.

12 BY MR. D'AMICO:

13 Q So just show the Court what it would take in
14 order to identify a pole if you clicked on one of those
15 dots?

16 A Okay. So if you clicked on this dot here, you
17 can see down here there were originally two, now there
18 is a third one that happens to be added. So simply
19 just click on the dot on the map, and it pulls it into
20 the application.

21 Q Now, this is if they had followed the
22 application process; correct?

23 A Correct.

24 Q Does this also have the ability that they could
25 have, in December, gone back and told us where they had

1 run, if they knew the streets?

2 A Yes, that could have been done.

3 Something else I would like to point out while
4 we are here is, once you select a pole, there is
5 different actions that you can choose, to attach,
6 overlash, or remove, so we can keep track of what is
7 happening with the attachments.

8 And then over here there is a drop down to let
9 you know what is going on the pole. So the bolted
10 cable would be our normal communication connection, but
11 additionally this allows applications for the cabinets
12 that you see, for some -- a cable company, guys which
13 are used to offset tensions on the pole. And then
14 service drops, and then there is another category for
15 telephone cables.

16 Q Is there any other information at the
17 application process available to an applicant such as
18 MAW, that they know exactly what they -- They can map
19 out what it is they want to do, and how to do it in
20 compliance with the PPL standards and codes that are
21 available to them?

22 A Sure. In addition to this, there is publicly
23 available solutions such as Google Street View that
24 could be used. And anyone could go out and walk around
25 their service territory, document the poles, and with a

1 copy of our standards in hand, as well as binoculars
2 and a laser range finder, could determine what the
3 existing conditions on the pole were, and what existing
4 clearances look like to determine how congested they
5 might be.

6 So that's available to anyone -- anyone at any
7 time, because the specs are publicly available.

8 Q When you say congested, you mean how many other
9 people are already up there?

10 A Correct.

11 Q Earlier today Mr. Staboleski described to us
12 two different areas, the supply area, and communication
13 area. Are you familiar with those?

14 A Yes, I am.

15 Q If you could, what's your understanding of what
16 those are, and how they work together?

17 A The supply area is for the electric utilities.
18 That's our power supply cables. And down below that is
19 the communication worker safety space, which generally
20 speaking is 40 inches below the lowest supply cable.
21 And then down below that is the communications space.

22 THE COURT: Why do you say generally
23 40 inches?

24 THE WITNESS: There are exceptions to that,
25 depending upon what the type of equipment there is

1 clearance from.

2 So for example, something like a service drip
3 loop off of a street light, the clearance is 12 inches,
4 and the street light bracket itself is now 40 inches in
5 the most current code, but in the prior codes it was
6 20 inches. So, generally speaking it's 40 inches, but
7 there are a few exceptions here and there.

8 BY MR. D'AMICO:

9 Q So if someone ten years ago ran fiberoptic cable
10 under that old standard, 20 inches, would they be
11 grandfathered?

12 A They would be grandfathered until there was work
13 being done on that pole, and it would have to be
14 brought into compliance with the current code.

15 Q Just like any other code, you have to bring it
16 up to the current?

17 A Correct.

18 Q Now, we talked about some --

19 THE COURT: Just so that I'm clear, you
20 don't have to bring it up to the new code standard
21 unless there is an application for a change on that
22 pole; correct? For example --

23 THE WITNESS: Yes.

24 THE COURT: You used the example of a
25 traffic light that was 20 inches; now it's 40 inches.

1 When that change went into effect, you were not
2 required to go back out to every pole that has a
3 traffic light, and create a 40-inch zone where there
4 had been 20 inches, you are obligated to -- If I
5 understood your testimony, you're obligated to do that,
6 only when somebody wants to touch that pole, and do
7 something to the pole?

8 THE WITNESS: That's correct. And that
9 could be a third party request, or it could be our own
10 utility work, but -- And just one minor correction,
11 Your Honor, street light rather than a traffic light

12 THE COURT: What's the difference -- Oh, I
13 see.

14 THE WITNESS: Street light.

15 THE COURT: -- street light is to illuminate
16 the pavement and the street --

17 THE WITNESS: Correct.

18 THE COURT: -- and traffic light is red
19 light -- red, yellow, green?

20 THE WITNESS: Yes.

21 THE COURT: All right. I'm with you.
22 See what I mean, folks?

23 BY MR. D'AMICO:

24 Q All right. Is there anything else on the
25 application -- the un-submitted application process

1 that would assist the Court in understanding how easy
2 it would have been for MAW to identify poles, either if
3 it had followed the process, or as the result of the
4 stipulation?

5 A There is a -- So there is a couple additional
6 pieces of information that need to be added up top
7 here, which is very easy to add as far as what the
8 attaching company happens to be, the job name, notes.
9 And then there is some characteristics related to cable
10 looking to be attached as well.

11 I could go to another application
12 where that's filled out if that helps demonstrate
13 what's being added, but it's very simple. It's either
14 adding that information, or checking on the poles in
15 that map to add them to the application, and selecting
16 the facilities from the drop downs.

17 THE COURT: I'm not sure that I just
18 followed you, but I guess my question is, I see on your
19 on screen that for each pole number, you have the -- I
20 can't read the word there, it starts with a C. There
21 is a drop down there, and it has under that, that all
22 of the different communication companies, Comcast, I
23 can't read the others, that are on that pole; correct?

24 THE WITNESS: Right now it does not have who
25 the other folks that are attached are.

1 THE COURT: Okay.

2 THE WITNESS: That's available at this
3 point.

4 THE COURT: All right. Because my question
5 was going to be, if MAW had attached its wire to a
6 pole, would you be able to give me a printout of every
7 pole that had the MAW wire on it?

8 In other words, the data, I assumed was in
9 there, and -- for Comcast, I see Comcast. If I wanted
10 to know every pole in Lancaster that has a Comcast wire
11 attached to it, could I ask that computer to give me
12 the information of -- just print out every pole that
13 has a Comcast wire to it?

14 THE WITNESS: You would not be able to do
15 that through this application.

16 If -- If you were an employee of Comcast,
17 or an authorized user of Comcast and you wanted that
18 report, we could certainly produce it, but from a
19 security standpoint, we don't allow just anyone to ask
20 for records of other companies.

21 THE COURT: Okay. So if MAW wanted a
22 printout from you in terms of every pole that has a
23 MAW wire on it, could you do that?

24 THE WITNESS: Yes, we could, for the ones
25 that we know that were actually applied for and

1 followed the process.

2 THE COURT: It has to be on the application?

3 THE WITNESS: It would have to be on the
4 application.

5 THE COURT: And if they didn't put it on an
6 application, or they didn't apply, then you wouldn't
7 know it --

8 THE WITNESS: That's correct.

9 THE COURT: -- unless you actually went out
10 there physically and looked at the pole?

11 THE WITNESS: That's correct.

12 MR. D'AMICO: Let me further clarify that,
13 Judge.

14 BY MR. D'AMICO:

15 Q Is it for -- Would you be able to tell them all
16 of the permitted attachments?

17 A **Yes, I would be able to tell them all of the**
18 **permitted attachments.**

19 Q So if they started an application, but never
20 followed through the process and abandoned it, would
21 you have that reported as a MAW attachment?

22 A **No, we would not.**

23 Q Okay. So it's only if the utility follows the
24 process; follows the contract, that you would have that
25 information, sir?

1 A **That's correct.**

2 THE COURT: And actually installed the wire?
3 Suppose they make the application; they get an approval
4 for a particular pole number, but they don't go ahead
5 and install it? Then what happens? Is it there?

6 THE WITNESS: What would happen at that
7 point is, there's a -- in all of the contracts there is
8 a time period. We will just say for purposes of
9 illustration, 180 days for which they have to make
10 their attachment. At which point, if they are not
11 made, we follow the process in the contract where they
12 may have to reply again because conditions may have
13 changed.

14 THE COURT: But if they haven't attached --
15 If they included a pole number in their application;
16 they haven't attached the wire in 180 days, you don't
17 know whether they actually attached it or not?

18 THE WITNESS: No, we wouldn't.

19 THE COURT: Okay.

20 THE WITNESS: Not without additional field
21 survey to verify that.

22 THE COURT: And you would rely on them to
23 come back and say after 180 days, we didn't attach the
24 wire; we want to make a new application?

25 THE WITNESS: Correct.

1 THE COURT: And if they did not follow
2 through with that, then you would have no idea whether
3 the wire is there or not, unless you physically looked
4 at it?

5 THE WITNESS: Correct.

6 BY MR. D'AMICO:

7 Q Do you have the binder in front of you, sir?

8 MR. D'AMICO: Are you able to switch back
9 and forth?

10 MR. CHAPMAN: Yeah.

11 BY MR. D'AMICO:

12 Q I'm going to direct your attention to Exhibit 7.
13 Could you just leaf through that, Mr. Yanek?

14 MR. D'AMICO: That's 117, Mr. Chapman.
15 This is extremely small print, unfortunately.

16 BY MR. D'AMICO:

17 Q Do you have a recognition of what is reflected
18 by Exhibit 7? Did you gather this information at my
19 request?

20 A Yes, I did.

21 Q And what does this reflect?

22 A That reflects the first application that MAW did
23 submit, that we moved forward with survey and design
24 on.

25 Q So they actually did follow the process up until

1 a certain point?

2 A They did, on four applications.

3 Q And I know it's difficult to read, but if this
4 was a good copy, would you be able to tell the Court by
5 reading this, what specific poles they proposed to
6 attach to at one point?

7 A Yes, I would be able to do that.

8 Q Did this ever follow through to the point where
9 they told you that they did attach?

10 A No, it didn't.

11 Q At what stage of the process did it breakdown?

12 A It broke down when MAW was required to send us
13 payment for the engineering work ahead of the
14 construction work.

15 Q I'm going to ask you to take a look at
16 Petitioner's Exhibit 8.

17 MR. D'AMICO: That's 129, Mr. Chapman.

18 BY MR. D'AMICO:

19 Q Do you recognize that document?

20 A Yes, I do.

21 Q Can you explain to the Court what this is?

22 A That's the summary of make ready work required.
23 And you can see that there's the -- This has been
24 prepared for the MAW application that we had just
25 looked at.

1 There are categories there for the grid numbers,
2 the pole that they wish to attach, and then the summary
3 of what make ready is required at that pole for both
4 PPL facilities, and foreign utilities to which would be
5 the communication companies.

6 Q Is that the FU?

7 A Yes, that's correct.

8 Q Okay. You guys probably ought to change that.

9 MR. D'AMICO: Can we just go down a little
10 further on that, Mr. Chapman?

11 BY MR. D'AMICO:

12 Q I see an area here in red. Is this what an
13 applicant such as MAW would see?

14 A Yes.

15 Q What does that mean?

16 A That lets them know that the pole failed loading
17 analysis because Verizon needed to install a span guy.

18 And so, armed with that information when they
19 do their coordination work with Verizon, that span guy
20 should be installed by Verizon at no cost to MAW,
21 because it was an existing condition. And you can see
22 that the pole passes as long as that span guy is
23 installed.

24 Q Why do you guys go through this whole
25 engineering process?

1 A **To insure we have a safe, reliable system.**

2 Q If we can turn to the next page, sir. About
3 two-thirds of the way down I see another area in red.
4 Is that a similar situation to what you identified
5 before?

6 A **Yes.**

7 Q So part of the process is to make sure that this
8 pole is reliable for you?

9 A **Reliable for us, reliable for our customers, and**
10 **reliable for all of those who are attached.**

11 Q All right. For you and I and counsel, and Your
12 Honor, I have an extra copy of the exhibit book. I'm
13 just going to race through a few other examples, rather
14 than put them up on the screen.

15 I'm going to ask you to turn to Petitioner's
16 Exhibit 9. Do you recognize that document?

17 A **Yes, I do.**

18 Q Could you just identify for the Court what that
19 represents?

20 A **Yes. That's another of the applications that**
21 **MAW had submitted, and that similar to the first, to**
22 **move forward with survey and engineering, sent an**
23 **invoice for payment, and did not receive payment. So**
24 **it is stalled at the same spot as the first.**

25 Q And have more than 180 days passed since those

1 were submitted?

2 A **Yes.**

3 Q By the way, were any of these applications

4 submitted by Mr. Staboleski on behalf of MAW?

5 A **Yes, they were.**

6 Q Are you able to tell who the submitter was on

7 the online portal?

8 A **Yes, I can see the e-mail address that they came**

9 **from.**

10 Q And if we turn to Petitioner's Exhibit 10, is

11 that the make ready survey related to that second

12 application that was submitted?

13 A **That's the summary of the make ready we**

14 **required.**

15 Q Did MAW ever follow through on that?

16 A **No.**

17 Q So no permits were ever issued?

18 A **Correct. No permits issued.**

19 Q So if any of the poles -- If any attachments or

20 cables were run, they would be without permission from

21 PPL?

22 A **Correct.**

23 Q I'm going to ask you to turn to Petitioner's

24 Exhibit 11. Do you recognize that?

25 A **Yes. Yes, that is a third, similar to the**

1 **first two.**

2 Q Okay, and did that generate a summary -- a make
3 ready analysis and summary provided to MAW?

4 A **Yes, it did.**

5 Q Would that be Exhibit 12, sir?

6 A **Yes, it is.**

7 Q And did that go any further than, here's what
8 it's going to cost to make this system capable of
9 holding your attachments?

10 A **No, it stalled. Same as the first two.**

11 Q And then I'm going to direct your attention to
12 13 -- Petitioner's Exhibit 13 and 13-A. Do you
13 recognize those?

14 A **Yes, that is the fourth application that**
15 **stalled, along with the first three, and summary make**
16 **ready required for that.**

17 Q And again, did that also stall with the other
18 ones?

19 A **Yes, it did.**

20 Q Did PPL actually issue invoices to MAW?

21 A **For those first four, yes.**

22 Q And I'm going to ask you to turn to Petitioner's
23 Exhibit 15. Other than my summary page, take a look at
24 the underlying documents.

25 MR. D'AMICO: Can we pull up 194, sir?

1 BY MR. D'AMICO:

2 Q And generally speaking, I'm going to ask you to
3 just take a look. Tell the Court the dates of those
4 invoices?

5 A The first one is dated 4/7/2016. That's for
6 \$34,157. The second is dated 11/15/16, for a total of
7 \$3,417. The third is from 11/15/16, for a total of
8 \$93,263. And the fourth is from 12/1/16, for \$67,113.

9 Q And none of those were paid?

10 A I'm sorry, could you repeat that?

11 Q None of those were paid?

12 A None of those were paid.

13 Q Did you consider those applications abandoned?

14 A It would be evidence that they are abandoned.
15 Unfortunately, there is still payment owed for them.

16 Q Let me ask you this, though. To your knowledge,
17 did you believe as of December of 2016, that MAW was
18 taking any steps to install any fiberoptic cable in the
19 City of Lancaster?

20 A I didn't believe that at that time.

21 Q Now, Mr. Staboleski mentioned earlier that there
22 had been some meetings between MAW and PPL; correct?

23 A Yes.

24 Q Where did those meetings take place?

25 A Some took place at our general office down the

1 street here at 9th and Hamilton, and some took place at
2 the Lancaster Service Center.

3 Q What was the purpose of those meetings?

4 A The initial one was to meet and discuss the
5 scope of the proposed build out.

6 Q Is this the Land City Connect that Mr. Winter
7 referenced earlier?

8 A Yes.

9 Q I apologize. I interrupted you.

10 A That's okay.

11 And at that initial kick off meeting, we also
12 met and talked about the application process, and what
13 needed to be followed to move forward with those
14 applications.

15 And there was some discussion at that point
16 about requests for deviation from the process. And so
17 we explained why our process is in place, and why we do
18 things the way that we do them, and how we insure that
19 we treat everyone equally, and that we are consistent
20 with all our attachers.

21 But we took those requests at that time under
22 advisement, and we took a look at our processes, and
23 said, is there anything here that was requested that we
24 might potentially be willing to do here, and do for
25 others?

1 And so I took that back, and looked within our
2 department, and looked within our management, and we
3 said, is there anything here that, you know, maybe we
4 are off base on? And after the course of that
5 analysis, we came back, and for the most part the
6 answer was no.

7 But we wanted to meet and discuss that a little
8 bit further. So that led to meeting number two --

9 Q Let me interrupt you there. That first meeting,
10 had there been any applications submitted at that
11 point, or was this even before the application process?

12 A There were some applications submitted at that
13 point.

14 Q Okay. You were going to discuss meeting number
15 two?

16 A Yep. So we scheduled meeting number two as a
17 follow-up to number one, to make sure that we were
18 coming back after considering those requests.

19 And so we met at Lancaster along with the folks
20 in our operations group who would also be impacted by
21 the scope of the project, and had a little bit further
22 discussion; came back that the exceptions that were
23 requested really couldn't be considered for very
24 specific reasons.

25 And basically at that point there was a

1 request for another meeting back at the office with
2 myself and my supervisor to talk about it further. So
3 that led to a third meeting at the office with myself,
4 my supervisor, and a representative of MAW, where we
5 again talked about --

6 Q Who were the representatives from MAW at that
7 meeting?

8 A I remember Frank Wiczkowski was there, Mr.
9 Staboleski was there. I believe Brian Kelly from the
10 company was there at that time. I believe that was it.

11 Q Based on what occurred at that meeting, would
12 there be -- Do you think that it was clear that PPL let
13 MAW know that they couldn't deviate from the standards
14 and specifications under the application process?

15 A Yes, we were clear on that.

16 Q And were you adhering to the -- From your
17 perspective, was PPL adhering to the contract, both its
18 rights and obligations under that agreement?

19 A Yes.

20 Q And did you have any idea that MAW was going to
21 take the actions with respect to running fiberoptic
22 cables in the City of Lancaster in derogation of the
23 agreement at that point in time?

24 A No, I didn't.

25 Q Eventually you learned that MAW had strung some

1 cable in the City of Lancaster without your knowledge;
2 correct?

3 A That's correct.

4 Q Is that as the result of a call from Mr.
5 Staboleski?

6 A It started out as a -- There was an e-mail
7 question to our pole attachment service's in-box, which
8 I responded to. And when I called that number it was
9 Mr. Staboleski on the other end of the line.

10 And we proceeded to have a conversation about
11 our process and our standards. And during the course
12 of that conversation he made me aware of all of the
13 unauthorized attachments that had been put up, and were
14 being put up within the city.

15 Q Did you take Mr. Staboleski at his word, or did
16 you go out and verify yourself?

17 A I went out and verified myself.

18 Q Tell us what you did.

19 A I met with one of our liability engineers at the
20 local service center so that there would be two of us
21 out auditing.

22 And we went out to the City, and we started
23 looking at potential areas that lined up with the
24 publicly available Land City Connect maps to determine
25 where we might find some unauthorized attachments. And

1 there were specific attributes that Mr. Staboleski had
2 made me aware of, such as the splice cases that were
3 zip tied to the poles, that would be indicators of that
4 build out.

5 And without a whole lot of searching we were
6 able to find a starting point on day one that led to a
7 series of 30 unauthorized attachments that were made on
8 J hooks throughout portions of the City.

9 Q And I'm just going to ask you to refer to your
10 book rather than put it up. Did that lead to requests
11 by PPL to MAW to cease attaching cables in the City?

12 A Yes, it did.

13 Q And did they ask you -- Did you make a request
14 that they remove the cables that were attached without
15 a permit, at that time?

16 A Which exhibit are you referring to?

17 Q I'm going to direct your attention to
18 Petitioner's Exhibit 17.

19 MR. WINTER: And again, Your Honor, I mean,
20 we are willing to stipulate to this. But this does not
21 have any relevance to the reasons that we are here
22 today.

23 There were multiple communications between
24 PPL and MAW during this time period. That has nothing
25 to do with the issues that we are here for today.

1 MR. D'AMICO: Your Honor, I certainly will
2 accept the stipulation. I think -- Let's make sure we
3 are clear. You stipulate that --

4 MR. WINTER: We would stipulate that
5 Exhibit 17 was prepared by PP&L, and was sent to my
6 client.

7 MR. D'AMICO: Let's stipulate to what
8 happened though, as opposed to just the letter, that
9 there were unauthorized attachments that were
10 discovered, and a request was made of MAW, consistent
11 with the contract, to remove those unauthorized
12 attachments.

13 Are you prepared to stipulate to that?

14 MR. WINTER: That's not what we are
15 stipulating to. What we would stipulate to is that
16 PP&L discovered what they believed to be unauthorized
17 attachments. And again, that's beyond the scope of
18 what we are here for --

19 THE COURT: Well, were they authorized or
20 not?

21 MR. WINTER: And we take the position that
22 many of them were authorized. And we will also offer
23 testimony about that.

24 THE COURT: Okay. Then let's push on.

25 MR. D'AMICO: Okay.

1 BY MR. D'AMICO:

2 Q Why don't we do that? Why don't we address this
3 issue of authorized or unauthorized attachments. You
4 take the position that these were unauthorized
5 attachments throughout the City; do you not?

6 A I do.

7 Q And are you going to be able to demonstrate to
8 the Court today why these are unauthorized attachments?

9 A Yes.

10 Q Okay. Let's talk about different categories of
11 authorized -- unauthorized attachments. You have given
12 through Mr. Shafer's letters to MAW, notice of the
13 initial discoveries; correct --

14 A Yes.

15 Q -- as reflected in the correspondence reflected
16 by Exhibit 17, 19 and 20; correct?

17 A Yes.

18 Q That's just approximately 70 poles that we
19 discovered in a few weeks time though, isn't it?

20 A It was 83 over the course of the first three
21 batches, yes.

22 Q Did there come a point in time when you sought
23 the assistance of the PUC in connection with these
24 issues?

25 A Yes, there was.

1 Q And was there a meeting between the PUC, PPL,
2 and MAW, in Lancaster, in early December of 2017?

3 A Yes, there was.

4 Q Tell us about that meeting from your
5 perspective, what you observed, or what Mr. Wiczkowski
6 may have discussed with you. I don't want to hear
7 about the PUC. They're not here.

8 A Okay. So in the course of that meeting we got
9 together to talk about our concerns with the
10 unauthorized attachments that we had found. And we
11 wanted to actually go out and observe those in the
12 field. So we met at the service center first, and then
13 proceeded out into an area in Lancaster where I had
14 observed the unauthorized attachments.

15 And during the course of that site meeting we
16 talked about what was attached to the poles, and how it
17 was not conforming with our specifications, or with any
18 code, and that they were definite safety issues. And
19 they were safety issues for the workers that put them
20 up, and safety issues for any workers who would have to
21 access them.

22 And so during the course of that meeting, Frank
23 Wiczkowski did identify that those were MAW's cables on
24 the poles.

25 Q He admitted that?

1 A **He did.**

2 Q Did he contend that they were authorized?

3 A **He did not contend that they were authorized.**

4 Q Were there specific discussions that these were
5 unauthorized attachments?

6 A **Yes, there were.**

7 Q Do you know the location approximately where
8 this took place?

9 A **I do. On East Roth Street.**

10 Q Did you; in fact, observe MAW employees or the
11 contractors installing as you arrived at the site?

12 A **That was the second stop during our site visit.**
13 **We actually moved to a second area within the City, and**
14 **we did see MAW workers splicing on unauthorized**
15 **attachments during the course of that site visit.**

16 THE COURT: Just a minute, Mr. D'Amico.

17 Okay, let's take a ten-minute break.

18 (Whereupon, a brief recess was taken.)

19 AFTER RECESS

20 (Whereupon, off the record discussions were
21 held between the Court and counsel at approximately.
22 11:30 a.m.)

23 THE COURT: Ladies and gentlemen, as you
24 noticed, we have had what we call a sidebar discussion,
25 and the discussion focused on scheduling today, and

1 more broadly, how we move forward in this case.

2 I know that I have only heard a portion of
3 PPL'S witnesses, and none of MAW's witnesses, but based
4 upon discussions, I think it would be -- And I think
5 counsel agrees -- it would be productive if we adjourn
6 now for lunch; come back -- plan to come back at 1:30,
7 and during that time, counsel and their clients and
8 representatives would like to have the opportunity to
9 sit and discuss a productive way forward that would
10 meet everybody's legitimate concerns.

11 And I believe that more often than not,
12 results are better if the parties themselves craft a
13 resolution rather than the Court impose one on the
14 parties, because the parties then if they come up with
15 a resolution, they will have bought into the
16 resolution, and they will be committed to see it
17 through, and it will be a result that they know they
18 can live with; otherwise, presumably they would not
19 have agreed to it.

20 On the other hand, if the Court imposes a
21 resolution, then the parties risk, highly, that the
22 Court didn't understand it, and came up with some
23 solution that is impractical, not workable, or
24 otherwise unacceptable.

25 So I always give litigants every opportunity

1 to maintain control over the outcome of their
2 litigation, rather than lose control to the Court,
3 because the Court could very easily come up with a
4 result that one or the other is going to find
5 completely unworkable, or unacceptable, or undesirable.
6 And that's an invitation for an appeal, which takes the
7 case out another year or two, and that's probably in
8 nobody's interest to do that.

9 So let's take advantage of the time between
10 now and 1:30; see if counsel can come up with some
11 proposal that would meet everybody's legitimate
12 concerns. So Linda, you can put the Court in recess
13 until 1:30.

14 I told counsel they can have use of the
15 courtroom during that period of time. So those who are
16 not to be included in those conversations, I would ask
17 you, with all due respect, to please leave the
18 courtroom, and come back at 1:30.

19 And we will see where we are, whether we are
20 going to resume with testimony, or whether we are going
21 to keep negotiating, or whether we have a resolution to
22 it. Let's see what happens at 1:30.

23 Thank you.

24 (Whereupon, the lunch recess was taken.)

25 AFTER LUNCH RECESS

1 BY MR. D'AMICO:

2 Q Now, when we broke, Mr. Yanek, we were talking
3 about the site visit in early December with Mr.
4 Wiczkowski and others from MAW, or on behalf of MAW,
5 the PUC, and yourself.

6 Without discussing the PUC's position, you were
7 discussing unauthorized attachments, and you went to a
8 second location?

9 A Yes, that's correct.

10 Q And where was that?

11 A That was further to the northwest corner of the
12 City.

13 Q And is that the location where you observed --
14 Strike that.

15 Did you observe any active cabling going on at
16 that time?

17 A At that time when we walked to the second
18 location we had found a van on the street working on
19 what appeared to be splicing, on what appeared to be
20 the unauthorized attachments. So through the course of
21 the discussion on site, I asked, are these MAW's
22 attachments?

23 Q Who did you ask?

24 A I asked Frank Wiczkowski.

25 Q I'm sorry, I will try to come over here. And

1 did he respond?

2 A He did, he said that that was his crew. They
3 were working on his attachments.

4 Q Okay, and you took a photo of that?

5 A Yes, I took a photo of that.

6 MR. D'AMICO: Could we go to the Bates 220,
7 marked as Petitioner's Exhibit 21?

8 And I'm going to really start to hasten it,
9 Your Honor.

10 BY MR. D'AMICO:

11 Q And is that a copy of the photo that you or Mr.
12 Gallo from PPL took?

13 A Yes.

14 Q And that white van with the bucket --

15 A Yes, that was the van.

16 THE COURT: Looks like the Quirk Hotel; is
17 it? Mr. Albert, you can recognize that?

18 MR. ALBERT: Not sure, Your Honor.

19 THE COURT: Go ahead.

20 BY MR. D'AMICO:

21 Q Okay. You have been out and done some
22 surveying; correct?

23 A Yes, I have.

24 Q And you also retained others to survey at your
25 direction and supervision?

1 A **Yes, I have. Yes.**

2 Q In an effort to expedite, counsel will interrupt
3 me if I am leading, but I want you to just generally
4 identify for us, issues. Then maybe we will discuss
5 those and show some examples of it. Then we are going
6 to talk about the results of the surveying after the
7 process in December.

8 A **Okay.**

9 Q Generally, describe for us some of the
10 conditions that you found, either prior to filing the
11 lawsuit, or since that time?

12 A **Okay.**

13 MR. WINTER: Your Honor, again, I'm going to
14 object. I'm not entirely sure what this has to do with
15 the contempt or the vacate issue that we are here for
16 today. The issues that occurred, they relate to the
17 complaint. We are not here for collateral.

18 THE COURT: Overruled.

19 BY MR. D'AMICO:

20 Q Are you attempting to pull something up?

21 A **Yeah. I was trying to make sure that that was**
22 **the issue here.**

23 Q Okay.

24 A **So --**

25 Q Just generally describe for us the conditions.

1 A Okay. The conditions that we found, were
2 unauthorized three-bolt clamps, which would be one
3 method of attachment to a pole, unauthorized J hooks,
4 splice cases which were attached to the pole through
5 what appeared to be zip ties, and undocumented
6 overlashing.

7 Q Okay. I'm going to ask Mr. Chapman to go to
8 Bates Stamp 265, Petitioner's Exhibit 21. Is this an
9 example of an issue that you identified?

10 A Yes.

11 Q 26, I'm sorry. Petitioner's 26?

12 A Yes.

13 Q And if you could tell us, why are those
14 problems?

15 A Those are problems because a J hook is an
16 appropriate piece of hardware to use while temporarily
17 rebuilding a line, and is an appropriate piece of
18 hardware to run a service drop from a pole to a
19 customer in a short distance.

20 It is not an appropriate piece of hardware to
21 run in the fashion that you see here. It is not a
22 robust attachment that goes through the pole, and is
23 mechanically sound. It is temporarily just driven into
24 the pole, and it's basically like a long nail with a
25 hook on the end to keep the cable in place, and then

1 above that the splice case that's on the pole.

2 Number one, if you would have a lineman who had
3 to access that pole and climb it, that would
4 potentially be an access issue. Secondly, we can't
5 verify what kind of strength qualities those zip ties
6 have on the pole, and if those were to potentially come
7 loose, that could be a definitive hazard for those that
8 are below. That would be people, public, or property.

9 Q Where is this splice case supposed to go
10 according to the -- to your specifications?

11 A Specifications, it should be mounted in line
12 with the cable. Thank you. You should see it
13 somewhere out over here, far enough away from the pole
14 that it preserves climbing space, but it should be
15 mounted in the strand, similar to the way you see this
16 connection block here for the cable T.V.

17 Q If we could go to Petitioner's Exhibit 27, No.
18 270, Bates Stamp 270. Do you recognize that?

19 A Yes.

20 Q And what are the issues that exist there that
21 you would like to share with the Court?

22 A Another situation of the splice case being zip
23 tied to the pole. And then this big coiled wire here,
24 that's not something that should be there in a
25 permanent fashion.

1 I understand that if there is authorized work
2 going on, there may be some conditions where the
3 strands are there, but that shouldn't be there, rolled
4 up, and then it's difficult to see, but in this picture
5 as well, there is another -- there is a J hook over I
6 believe on the other side of the pole here where you
7 can kind of see those attachments coming off. It's
8 hidden by the mess of wires.

9 Another thing that's noteworthy is the
10 relationship between the splice case and that street
11 light bracket. That's way too close. There should be
12 40 inches of separation from that bracket, down to
13 where that splice case should be on the next
14 connection.

15 Q Is that just a PPL issue?

16 A No. That's consistent with the National
17 Electric Safety Code.

18 Q And rather than go through -- Well, why don't we
19 just do that. Can we go to Petitioner's Exhibit 28?
20 I'll just give a couple more examples, then we will
21 move on. Page 270 -- I'm sorry, 272. And then if we
22 can go to 273.

23 By the way, 272, does that identify it as a PPL
24 pole?

25 A Yes, it does. And you can tell by this

1 ownership tag in the top left corner, that gray
2 attachment. It says PPL or PP&L Company. If it was
3 not a PPL pole, that tag there would say ATTCH, which
4 would mean we were attached to a telephone company
5 pole. That's how you can tell the difference in
6 ownership, by looking at the tag.

7 Q So someone would be able to -- Even if they
8 somehow didn't want to use the portal, could have gone
9 out and identified who they were attached to by a
10 physical survey?

11 A That's correct.

12 Q Okay.

13 MR. D'AMICO: Can we go to 272 -- 273?

14 BY MR. D'AMICO:

15 Q Is that the same pole?

16 A No, that's a different pole.

17 Q Okay. Can you tell us what the issues are
18 there?

19 A So if we can zoom in up on this area here. The
20 resolution on the picture is not the greatest, but
21 there is a J hook attachment that is hidden back behind
22 here on this one, which again is unauthorized, and too
23 close to that street light bracket.

24 Q How far away should it be?

25 A It should be 40 inches.

1 Q So that means that some sort of worker had to
2 come within less than 40 inches of the street light?

3 A **Correct.**

4 MR. D'AMICO: We have got other examples,
5 Your Honor, but I'm going to move it on.

6 BY MR. D'AMICO:

7 Q Following the events of December 19th, did you
8 have an expectation that you were going to receive data
9 from MAW that would allow you to know what poles they
10 attached to?

11 A **Yes. I expected I would get a list, by pole, of**
12 **where they were attached to.**

13 Q Did you get that?

14 A **No, we did not.**

15 Q What did you get?

16 A **We got a list of streets and block numbers**
17 **within the City of Lancaster, with no pole references**
18 **whatsoever.**

19 Q Is that useful?

20 A **Not very useful at all.**

21 Q Are there other poles there that may not be PPL
22 poles?

23 A **Yes.**

24 Q So what did you and PPL do once you got that?

25 A **Once we received that list, we took it upon**

1 ourselves to retain Katapult to begin survey work
2 within the city to identify where the other
3 unauthorized attachments were, since it became apparent
4 that MAW would not identify them.

5 So we began our own survey of those facilities
6 to determine where they were, so we could understand
7 the extent of the conditions.

8 Q By the way, let me just step back for a moment.
9 I apologize in my haste.

10 We referenced the power supply. What's the
11 voltage on the power lines up there, and why do you
12 want to keep people away from them?

13 A Our primary voltage is 12,000 volts.

14 Q Is that enough to hurt someone?

15 A Absolutely. And when we look at the secondary
16 voltage, it's down at the 120 to 240 volt range, which
17 is similar to residential, but still very harmful to
18 someone not properly trained, who doesn't have the
19 proper tools, work methods, equipment.

20 Q And I'm going to step back one more time.

21 After you received the street information, was
22 it a case where PPL still provided details on poles as
23 to what its complaints were?

24 A Yes.

25 Q Did you receive any feedback from MAW to some of

1 the lists?

2 A The feedback that we received to the initial
3 lists were that they were not specific enough, which we
4 gave them plenty of specificity regarding the pole
5 number, the type of attachment that we found, the
6 street that it was found on. So very descriptive.

7 Additionally, pictures of the observed
8 conditions were communicated as well. It was very
9 clear in my mind what we had found, and what we
10 presented.

11 Q I'm just trying to -- I am going to ask you to
12 take a look at Petitioner's Exhibit 34.

13 MR. D'AMICO: That's Bates Stamp 286, Mr.
14 Chapman.

15 BY MR. D'AMICO:

16 Q You were copied on that. This is one of the
17 initial submissions to MAW letting them know where you
18 had concerns?

19 A Yeah, this was re-sent following the Court
20 stipulation. We restarted the clock on this one.

21 Q And was there anything attached to this?

22 A Yes. There was an Excel Sheet with all the
23 locations, as well as pictures of the observed
24 locations.

25 MR. D'AMICO: I am going to ask you to go to

1 Bates Stamp 287, Mr. Chapman. If you can blow that up
2 a little bit.

3 BY MR. D'AMICO:

4 Q Do you recognize that?

5 A Yes.

6 Q This is PPL's attempt, consistent with the
7 stipulation, to provide MAW details as to why there is
8 concern?

9 A Yes, this was my attempt at categorizing and
10 documenting what was found, why it was an issue, and
11 then under the stipulation, whether it needed to be
12 removed or not because of its exigent status.

13 So there were items that were too close to
14 power that needed to be removed. And then there were
15 other items that because those that had to be removed
16 that were too close to the power would also need to
17 come down as well, interspersed in a line.

18 Q You created this spread sheet?

19 A I did.

20 Q You used the yellow for emphasis or to
21 segregate?

22 A Yeah, to try to draw attention to those that
23 were too close to the power that are exigent safety
24 concerns.

25 Q Right now I'm going to ask you to turn to

1 Petitioner's Exhibit 35. Do you recall what MAW did
2 with your spread sheet?

3 A My recollection was that we got a response back,
4 saying that we were not specific enough, and therefore
5 they could not address my concerns. That was the
6 general tone.

7 Q Okay.

8 MR. D'AMICO: If we could move to the right,
9 Mr. Chapman?

10 BY MR. D'AMICO:

11 Q Do you recognize any of this as being the
12 comments from MAW?

13 A Yes. Yes, that's correct.

14 Q That's the feedback you got when you told them
15 that they were less than 40 inches away? Ambiguous?

16 A Yes, that's correct. That's what I got.

17 Q Anybody in electric -- that is involved in
18 electrical issues understand the 40 inch issues from
19 your perspective? Is that a difficult concept?

20 A No, it's not.

21 Q Did you then attempt to send additional lists
22 consistent with -- And I want you to just review
23 through the book, Petitioner's Exhibit 36. We are just
24 going to quickly identify them so that they are in the
25 record.

1 A Go ahead.

2 Q Did you provide again, a spread sheet
3 documenting by pole number, where you found violations
4 or concerns, and share that with them?

5 A Yes.

6 Q And is 37, again, the response you received from
7 MAW?

8 A Yes.

9 Q And again, is it a case where MAW provided
10 comments in response to your detail, claiming you were
11 being ambiguous?

12 A Yes.

13 Q A few minutes ago we started talking about
14 Katapult.

15 A Yes.

16 Q Why did you bring Katapult into play?

17 A Because after the initial survey, it became --
18 and after the meeting at the courthouse, it became
19 apparent there were a very large number of unauthorized
20 attachments, that was far beyond what I could handle
21 myself, so we retained Katapult to get survey for us.
22 It was so hard --

23 Q Who is Katapult?

24 A Katapult is a contractor who works with us on
25 our make ready process, or general process. They

1 handle the survey portion of the application
2 management. They facilitate all of the online
3 application actually that we have in place today.

4 And then, additionally, they are involved with
5 receiving those applications and going out to perform
6 survey work on all of those make ready applications.
7 So they are very familiar with the tools, very familiar
8 with the process, very familiar with the utility poles.

9 Q And do you have a representative of Katapult
10 here just in case we need them?

11 A Yes, I do.

12 Q Is Katapult finished its process, its surveying?

13 A For what we have found in the field, yes, they
14 have finished that process, but if there is others that
15 we are not aware of, then it could continue.

16 Q So were you required to go out and physically
17 survey, because the information -- Strike that. What
18 did MAW's non-specific response consistent with the
19 stipulation, cause you to do?

20 A So because we didn't get specific pole location
21 where the runoff has attachments, we had to go out and
22 find them for ourselves. So we then were required to
23 take on this task, so that we could find those
24 conditions.

25 So said differently, we were required to hire

1 Katapult to find all of these conditions, because they
2 were not provided to us under the stipulation as we
3 expected.

4 Q And did they document the conditions that were
5 observed?

6 A Yes, they did.

7 Q And are you able -- Is one able to go into the
8 system -- Would MAW have been able to go into the
9 system to identify these conditions and its attachments
10 if it was so inclined?

11 A Yes --

12 MR. WINTER: Objection. I'm not sure what
13 conditions you are referring to at this point.

14 BY MR. D'AMICO:

15 Q Where it put its attachments and how it put its
16 attachments up?

17 A So yes. It could have gone into and submitted
18 applications where the unauthorized attachments were
19 found as a method of identifying where they were, or
20 they could have provided an Excel Spread Sheet with all
21 of the information on it as well.

22 We would have accepted the spread sheet. We
23 would have accepted something through the portal, but
24 nothing was provided.

25 Q Can you show Judge Reibman some of the

1 information that has been gathered in an effort to
2 determine whether or not there are issues that need to
3 be addressed by MAW which we haven't previously
4 discussed in either the first couple of lists?

5 A Yes. Are you looking for me to review our table
6 of conditions, or are we looking for more specific
7 instances?

8 Q Can we give some photographic evidence of the
9 type of things that were observed? Then we will go to
10 the summary and the back up spread sheet that you
11 prepared.

12 A Certainly we can do that.

13 Okay. So, Your Honor, what we have here, this
14 represents the City of Lancaster, and the lines that
15 you see here are utility lines. On every pole that you
16 see here -- And the poles are represented by either the
17 red hexagon, or in this case the green circle. And the
18 blue triangles are just mid-spans.

19 THE COURT: I'm sorry, the blue triangles
20 are?

21 THE WITNESS: It's a mid-span height. So
22 for the number of poles you want to focus on red
23 hexagons, and blue -- I'm sorry, green circles.

24 So on this particular pole, what we have
25 found over here was another unauthorized splice case

1 zip tied to the pole. And then up above here, a J hook
2 with that fiber.

3 Now what you will see is it goes across the
4 street. So as we go over to the next pole, we again
5 see we have a clearance issue. There is less than
6 40 inches between those items. And then there is the J
7 hook.

8 So as we work our way up the line, every
9 time you see one of these items in red, it's a
10 definitive safety violation, violation of code, in this
11 case, too close to a street light.

12 MR. D'AMICO: And Your Honor, this is the
13 situation where I explained to you and counsel
14 yesterday. If you want to pick a pole, just tell us;
15 we will go to it. We are not trying to mislead the
16 Court in any way. Anybody can pick a pole on any page
17 that are on this spread sheet; we will be happy to go
18 to it and review it.

19 THE WITNESS: So to give some flavor or
20 variety, we have seen a splice case, we have seen a J
21 hook, in this case another J hook too close to this
22 power transformer bank.

23 So we have electrical violation next to
24 street lights. We also have them against this type of
25 equipment, which is extremely dangerous for unqualified

1 people to be working near.

2 So -- Would you like me to continue with
3 other examples?

4 BY MR. D'AMICO:

5 Q Sure. If you think you can. I just want to
6 give a few to the Court, then we will start to talk
7 statistics.

8 A Sure.

9 Q But you can do this throughout the entire survey
10 that Katapult performed?

11 A I could. So this gives at least one visual
12 example of each type of case that we have seen here,
13 minus some overlashing, but I think it illustrates for
14 the Court, as I try to zoom out just in this particular
15 area alone, this is just one of the batches that we had
16 surveyed. There were quite a few of them.

17 Q Have you been able to get through all of the
18 information that Katapult has gathered together for you
19 since early January?

20 A I have been through all of it at least once,
21 many of it multiple times.

22 MR. D'AMICO: I guess -- Keep that
23 available.

24 BY MR. D'AMICO:

25 Q Let's talk about what you did now to try to

1 analyze and figure out what really is at stake here?

2 A Okay.

3 Q Would your spread sheet help?

4 A Yes, it would.

5 Q Okay.

6 MR. D'AMICO: Counsel, and Your Honor, we
7 are going to be reviewing Petitioner's Exhibit No. 46,
8 and there is actually a 46-A and a 46-B associated with
9 it.

10 But start with 46-A, Mr. Chapman. It's page
11 412.

12 THE WITNESS: This is a -- a version of
13 that.

14 BY MR. D'AMICO:

15 Q Okay.

16 A So it's already -- If we stick with this, it
17 matches up with what's in the exhibit.

18 Q Very good. Can you please explain to the Court
19 what you did, and how you did it?

20 A Okay.

21 MR. WINTER: Your Honor, I am going to make
22 the same objection I have made before in this similar
23 area.

24 Now they are getting into violations they
25 discovered after the information was provided. I am

1 not entirely sure how that is relevant to the motions
2 we are here for today.

3 THE COURT: Mr. D'Amico?

4 MR. D'AMICO: I think, Your Honor, that the
5 understanding of the scope, and how easy some of these
6 things could have been identified, this helps summarize
7 for what we believe was a purposeful attempt to be
8 evasive, because you have to go out -- If you don't --
9 If you don't tell us where you're at, you have to go
10 out and do this survey.

11 This relates to our request for sanctions.
12 This is everything that Mr. Yanek had to go through,
13 and now he is going to tell you why it's so
14 significant.

15 THE COURT: I will take it, because I think
16 it's going to help with sanctions, which may well be
17 appropriate.

18 THE WITNESS: Okay. So I would show -- So
19 the exhibit --

20 BY MR. D'AMICO:

21 Q Keep your voice up.

22 A **So this exhibit here --**

23 THE COURT: And this is Exhibit 46?

24 THE WITNESS: 46, yes. This defines all of
25 the cases of what we found in the field, categorizes

1 new unauthorized build, overlash to existing attachers.

2 All the ones that you see highlighted in red
3 here, or in pink, those are the ones that are too close
4 to power, so there are electrical concerns. These
5 others here are still unauthorized, but they weren't
6 too close to power.

7 So you can see the first part of this list
8 here, are individual cases found on poles. And then
9 down below here is the conditions with multiple cases
10 found on poles.

11 As we started going through this, we tried to
12 keep it as simple as possible, but there were a number
13 of cases where it just required a new case and action.
14 So what we have done is categorize these cases based on
15 what we --

16 BY MR. D'AMICO:

17 Q Let me interrupt you there. When you say there
18 is individual cases, you mean there is -- like line one
19 would be the number of poles that only have one
20 problem?

21 A **Correct.**

22 Q And then the bottom is where there is multiple
23 problems on that same --

24 A **On that same pole.**

25 Q -- on the same pole?

1 A Correct.

2 Q What's the other -- the columns to the right
3 that we are not looking at yet?

4 A Right. So this column here, actions, is actions
5 based on condition found. And then as we move a little
6 further to the right we are looking at, number of
7 unauthorized attachments for each of those conditions.

8 There were four instances where we found
9 non-compliant attachments where MAW was documented to
10 be on the pole, but was non-conforming. So those are
11 not unauthorized, it is non-compliant, which is
12 different scenario.

13 Q That just needed to be fixed?

14 A Just needs to be fixed.

15 Q Four out of how many?

16 A Four out of just shy of 1100.

17 So on this category you can see the percentage
18 of each of those being unauthorized, and then the
19 percentage of electrical violations.

20 So those are our categories. And as you pan
21 down -- Let's see if I can -- I don't want to make this
22 smaller than I have to, but I don't want to lose sight
23 of our headers. So when you look at number of
24 electrical violations, it's 511 out of a total
25 attributed -- So unauthorized attachments attributed to

1 MAW where it was clear it was not on record, 1086.

2 So almost half of them were too close to the
3 power, and someone was put at risk to put those
4 attachments up in the first place.

5 And when we look at cases of what appears to
6 be new build, cases one, two, and seven, that was 65
7 percent of what was being found, and rebuilding
8 documented Safety Coalition cables was only 18 percent.

9 So it seemed to me that there was definitely a
10 clear pattern of what was happening here. And this was
11 our best attempt to categorize what we found, and what
12 the actions to remediate it needed to be.

13 Q Let's talk about the back up. Do you have some
14 back up spread sheets there?

15 A Yes. So the other tab which is also there in
16 the exhibit --

17 MR. D'AMICO: This would be 46-A, Your
18 Honor.

19 BY MR. D'AMICO:

20 Q Did you break it down by, pole by pole?

21 A Yes, we did.

22 So the case inactions that I just summarized the
23 overview of, are here in the first couple columns. And
24 what we did was we went through each of the batches,
25 the poles, and by pole, listed what the condition was,

1 what the action should be, what we have found per
2 comment, the street that it was found on.

3 This is a personal check to insure we have a
4 picture for each one of those. Since it became
5 apparent that after the first few batches, the exigent
6 safety concern process was not being followed under the
7 stipulation. Some of these are set here to know, but
8 these columns were all consistent with what we had in
9 our communications from batch one through nine that
10 were sent over.

11 So the format remains the same, and then over
12 here were all of the columns that were unused, because
13 the stipulation wasn't being followed. The category
14 here for pole numbers and where MAW was on record to
15 insure that if they were on the pole, we didn't
16 misidentify something, that they really had
17 authorization to be there.

18 MR. D'AMICO: And Your Honor, I would
19 reference that that's 46-A, which is -- appears to be
20 14 or 15 pages. In the book, in addition to the
21 Exhibit Number, it's Bates Stamped 413 through 427.

22 BY MR. D'AMICO:

23 Q There has been some issues raised about the
24 Lancaster -- See if I get it right -- the Safety
25 Coalition.

1 Did you make an attempt to determine whether or
2 not the Safety Coalition cables were impacted by what
3 was being observed because of the survey that you had
4 to undertake because you did not receive information
5 from MAW?

6 A Yes, we did. We --

7 Q Tell us that process, and what you think you
8 found?

9 A Certainly. What we did, we went back through
10 all of the lists to insure that there wasn't any MAW --
11 any attachments attributed to MAW, that could have been
12 categorized under the city, the Safety Coalition, or
13 the traffic cables, to insure that those were all
14 labeled accurately.

15 And then additionally, after that we went back
16 and looked at where all the documented Safety Coalition
17 cables were, where all the documented traffic
18 interconnect cables were, and insured that in each
19 instance where those were unique, what kind of an
20 impact it would be if it was removed.

21 And in 95 percent of the cases that are up
22 here, the traffic interconnect cables, and the Safety
23 Coalition cable is not impacted by what we had
24 identified.

25 THE COURT: What does that mean? No break

1 in service?

2 THE WITNESS: I'm sorry, could you repeat
3 that?

4 THE COURT: What does that mean, as a
5 practical matter, no break in service to the customer?

6 THE WITNESS: So what that meant was, what
7 we identified as an unauthorized was at a different
8 location than one of the other documented attachments,
9 there would be no break in service to the customers on
10 that unauthorized attachment.

11 THE COURT: You mean if you repair -- An
12 unauthorized attachment, any repair required, you could
13 do that without breaking service to the customer?

14 THE WITNESS: No. If we removed that
15 unauthorized attachment, it wouldn't impact the others,
16 because it was unique. It wasn't in place of.

17 THE COURT: Okay.

18 BY MR. D'AMICO:

19 Q Now, there were some questions asked earlier to
20 suggest that there was not overlapping of cable. Did
21 you observe overlapping of cable that you attributed to
22 MAW?

23 A Yes, we did.

24 Q Can you give the Court any examples of that, or
25 what you found in that regard?

1 A **Absolutely. The number of conditions of**
2 **anything that has overlashing in the title, where we**
3 **found cables that were uniquely MAW, but became**
4 **overlashed to other cables -- Should I explain what**
5 **overlashing is?**

6 THE COURT: Please.

7 THE WITNESS: Okay. What overlashing means,
8 is that there is existing cable in place, then a new
9 cable is attached to it, and the lashing is small metal
10 that runs around it that fastens those both together.
11 So there's two individual cables connected to each
12 other in the same position on the pole.

13 BY MR. D'AMICO:

14 Q Is that a way that sometimes if allowed, that
15 you don't have to create a new communication space?

16 A **Correct. That's one way.**

17 Q Would someone who wanted to overlash on someone
18 else's cable have to get their permission?

19 A **Yes, they would.**

20 Q Did MAW have any cable that it could overlash
21 on?

22 A **MAW could overlash on its own documented cables.**

23 Q Which were four -- four attachments?

24 A **MAW has -- MAW has more than four documented**
25 **attachments within the city.**

1 Q Okay. Did you find overlash that were on
2 non-MAW permitted attachments?

3 A Yes, we did. We found them on Safety Coalition,
4 Lancaster General Hospital, and the City of Lancaster.

5 Q Any permits or agreements to reflect that MAW
6 had authority to overlash on other people's cables?

7 A No.

8 MR. WINTER: Objection. Lack of foundation,
9 I am not sure that he would even have that information.

10 THE COURT: Mr. D'Amico?

11 BY MR. D'AMICO:

12 Q If someone was going to allow MAW to overlash on
13 their cable, would they be required to give you notice?

14 A Yes. We would require notice of both parties,
15 the overlashing, the existing attacher, and the new
16 one. We would require one document that said we were
17 authorized.

18 So in this case, we would require a document
19 from the Safety Coalition saying MAW is allowed to be
20 overlashd to our cables, establishing that that
21 relationship was allowed.

22 Q And why is that important to know that somebody
23 else is allowing them to overlash on their cables?

24 A Because you want to insure that their property
25 isn't being impacted by someone outside of their

1 control. You want to make sure it's a conscious
2 decision, so people can't just go put their facilities
3 up on other people's facilities unknowingly.

4 Q Is there any load concern as well, if you're
5 doubling up the cable?

6 A Yes. You definitely make that attachment
7 thicker, so therefore you have different concerns and
8 considerations for ice and wind loading.

9 Q Okay. Does that have to be looked at?

10 A Yes, it does.

11 Q Did that happen in this instance?

12 A No, it did not.

13 Q Did you find attachments by MAW that you
14 considered unauthorized on streets that he did not even
15 disclose in the general list he provided?

16 A Yes, we found unauthorized attachments on
17 seventeen additional streets to the list that was
18 provided.

19 Q So in addition to not giving pole numbers, he
20 didn't give you even a full overview?

21 A Correct.

22 Q There has been a lot of discussion about J and
23 Raise. Just so the Court understands, can you explain
24 to the Court what a J hook is, and what a J and Raise
25 is, and how it's supposed to work in the attachment

1 application process?

2 A Yes. So in a J and Raise, what we would do is
3 we would receive an application for that rebuild. And
4 the existing cable would be put on a J hook, which you
5 saw some examples of, temporarily in the one foot of
6 space above the existing attachment. So that way the
7 customers stay in service on that cable.

8 Then the rebuild, the new cable would be put in, in the
9 bolted position that was occupied by that original
10 cable. And then after that new service was cut over,
11 the J hooks in the old facility would be removed.
12 That's the way a J and Raise should work.

13 Q And were there J and Raise issues that were not
14 consistent with that process that you observed?

15 A Yes.

16 Q And you attribute those to MAW?

17 A Yes, I do.

18 Q Tell the Court what sort of conditions you have
19 observed.

20 A What we observed was J hooks that were put above
21 the highest attacher on the pole, unrelated to any MAW
22 facilities that were on the poles. And on those
23 facilities, I'm not even sure what -- I don't know how
24 to categorize the construction other than temporarily
25 not -- temporary non-conformant. And none of that was

1 done under a permit.

2 So we found it, and there was multiple issues
3 with it. It's nowhere near close to the J and Raise
4 process that is industry recognized.

5 Q Is some of that done within the gap where there
6 is not supposed to be any cables?

7 A Yes. Some of that was found in the
8 communication worker safety space, too close to power.

9 Q Oh, I do have one other area I just wanted to
10 raise with you.

11 There has been a lot of -- I understand there
12 has been issues in the past about, they wanted to be
13 the lowest on the pole, meaning MAW, and that was one
14 of the requests made of you?

15 A Yes. That was a request for variance.

16 Q Can you explain to the Court the question that
17 was presented to you, and why you responded -- what
18 your response was, and why you responded that way?

19 A Sure. So the lowest position on the pole is for
20 the incumbent local exchange carrier, which is the
21 telephone company. They have large heavy copper
22 facilities, which sag a lot because of the make up of
23 the wires.

24 They're heavy. They're at the lowest portion
25 of the pole. So from an engineering standpoint, they

1 have much more sag than those above them. Smaller,
2 lighter fibers should not go below that, because
3 they have much less sag. So from an engineering
4 standpoint --

5 THE COURT: So the telephone wire wouldn't
6 interfere with anybody else?

7 THE WITNESS: Correct. So that we keep them
8 on the bottom, and that's very standard across the
9 industry.

10 BY MR. D'AMICO:

11 Q And is that one of the standards that you
12 upheld?

13 A Yes.

14 Q All right, Mr. Yanek. I think that's all I have
15 for you today. Thank you.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. WINTER:

19 Q If we could go to --

20 THE WITNESS: Your Honor, do you --

21 THE COURT: I don't mind if you stay there.
22 Especially if you need your computer to go back on the
23 screen if Mr. Winter wants you to do --

24 MR. WINTER: I may be asking some questions
25 related to that.

1 THE WITNESS: Okay. Then I will stay here.

2 THE COURT: And Mr. Winter, however is
3 comfortable for you. You can stay there, or you can
4 get up and go across the table, across from Mr. Yanek,
5 if that would be helpful to you.

6 MR. WINTER: I will try to stay here for the
7 moment if I can.

8 THE COURT: Okay.

9 MR. WINTER: Hopefully Mr. Yanek can hear me
10 without a problem.

11 BY MR. WINTER:

12 Q All right. Mr. Yanek, one of the first things
13 that you had said this morning, was that there was an
14 application required for service drops; correct?

15 A **Correct.**

16 Q Okay. Can we go to Bates Stamp page 14, please?

17 MR. CHAPMAN: Bates Stamp 14 you said?

18 MR. WINTER: Bates Stamp 14, please. All
19 right.

20 BY MR. WINTER:

21 Q And sir, I'm going to ask you to take a look at
22 paragraph 6.4 on that page. If I'm reading the
23 contract correctly, it's stating there that neither
24 service drops nor lashing requires an application.

25 A **So lashing to licensee's own cable would not**

1 require a unique application, but lashing to other
2 people's cable would require an application.

3 Q Okay.

4 A And the way that you are reading service drop as
5 it appears here, I understand why you read it that
6 way --

7 Q Right.

8 A -- there are other provisions in the contract
9 that allow for changes in the process....

10 (Whereupon, the court reporter requested the
11 witness to speak louder.)

12 THE COURT: Yeah, you're going to have to
13 face us. It's real important -- It's most important
14 that the court reporter be able to hear you.

15 MR. WINTER: I'll come over this way and see
16 if that works better.

17 BY MR. WINTER:

18 Q Go ahead.

19 A So -- Can you hear me okay now?

20 Q Yeah.

21 A So their contract allows for changes in the
22 process, and for those to evolve over time, one of
23 those would include notifying us where service drops
24 are being placed, which is done through the portal.

25 Q Okay, and so, is there an indication that MAW

1 Communications was notified in some way that this
2 provision had been changed?

3 A Since my time in the position, which is roughly
4 two-and-a-half years, I have not specifically addressed
5 that change in process. I have addressed what is the
6 process.

7 Q Okay, but -- Again, Exhibit 1, that's the
8 contract that MAW had signed back in 2003, I believe;
9 is that right?

10 A 2003.

11 Q Okay, and there has not been a subsequently
12 signed contract by them; correct?

13 A Correct.

14 Q Nor during that time did they -- did anyone,
15 whether it be Frank Wiczowski, or anybody from MAW,
16 sign any type of acknowledgment of a change in
17 contractual provisions; have they?

18 A No.

19 Q Nor as you're sitting here today, have there
20 been any type of electronic authorizations where you
21 went online to the portal and hit a check box thing,
22 I accept these new conditions, that you're aware of?

23 A Not that I'm aware of.

24 Q Okay. Now, in terms of the pole numbers, do
25 you recall that there has been settlement meetings

1 occurring over at the old courthouse back on
2 December 19th?

3 A Yes.

4 Q And do you recall during those settlement
5 meetings, there was a meeting where we sat in the one
6 conference room, and Mr. Wiczkowski was there, and you
7 were there, and your counsel was there?

8 A Yes.

9 Q And at that point, do you recall Mr. Gorter
10 being told that MAW did not have pole numbers for all
11 locations?

12 A I don't recall if he did not have them at that
13 time. I do not recall that he didn't have them and
14 couldn't provide them.

15 Q Okay. So you were told on that day that MAW did
16 not have all these numbers?

17 THE COURT: Woah. That's not what he just
18 said.

19 MR. WINTER: Okay.

20 MR. D'AMICO: I think I have to object. You
21 can handle that one.

22 MR. WINTER: Okay. All right. So --

23 THE COURT: If you want him to clarify the
24 answer, he could, but I thought his answer was, he was
25 not told on -- he was not told at that December

1 settlement conference that MAW had the pole numbers
2 right then and there, at that time, but he did not say
3 that MAW did not have pole numbers available to it.
4 Right?

5 MR. WINTER: All right, and this may be
6 important.

7 BY MR. WINTER:

8 Q To the best of your recollection, what is it
9 that you recall Mr. Wiczkowski saying about that?

10 A I recall talking about the extent of conditions,
11 and that as we were trying to work through the timeline
12 of how long it would take MAW to identify those
13 locations, and then for us through a response, as part
14 of a remediation discussion, there was some discussion
15 of timeline.

16 I recall Mr. Wiczkowski saying those would be
17 provided, I believe it was two days from when we had
18 met in Court. And so then we had the time period after
19 that to provide information. They had an opportunity
20 to respond.

21 So I'm kind of rehashing the stipulation
22 process. I recall, related to the pole information --

23 Q Right.

24 A -- that we have that within two days of the --
25 of that stipulation going in place, us leaving court

1 **through that process.**

2 Q And you were there when that stipulation was put
3 on the record; correct?

4 A **Yes, I was.**

5 Q And you're aware that at that point the words
6 pole numbers is not part of that stipulation; correct?

7 MR. D'AMICO: Objection.

8 THE COURT: Well, the stipulation will --

9 MR. WINTER: It speaks for itself.

10 THE COURT: -- will speak for itself.

11 MR. WINTER: Okay.

12 BY MR. WINTER:

13 Q Let me ask you this. In terms of the process
14 you went through, okay, you had shown 46 and 46-A to
15 the Court; right?

16 A **Yes.**

17 Q And you obviously spent a huge amount of time
18 putting this together?

19 A **Yes.**

20 Q I mean, it probably became your job for weeks
21 just assembling all this information, okay?

22 A **Yes.**

23 Q If you had been provided with the specific pole
24 numbers, wouldn't you still have assembled all of this
25 information?

1 A If we were provided with the pole numbers, I
2 could have certainly taken a different course of action
3 instead of having to retain Katapult to figure it out
4 for ourselves. We would have gotten a list that we
5 could have went to and audited, and determined if we --
6 You know, if we agreed with what had been presented.

7 There is a big difference in trying to find
8 things when you don't know where they are, versus
9 auditing for correctness when you do know where they
10 are.

11 Q And let me be clear about that. You were
12 provided with street and block numbers; correct?

13 A Yes.

14 Q Okay. And -- So my understanding, it was not
15 PPL itself, it was Katapult that went out and looked at
16 these street and blocks; correct?

17 A The first three batches I looked at myself, but
18 four on, yes, Katapult was used for that.

19 Q Okay. And so when Katapult went out, they went
20 ahead and they looked at all of the PPL poles on that
21 block; correct?

22 A Yes.

23 Q Okay, and if you had been given all the pole
24 numbers, they still would have looked at all the poles
25 on that block; correct?

1 A **Yes.**

2 Q Okay, and the spread sheet would have been no
3 different; correct?

4 A **Spread sheet may have ended up the same.**

5 Q Um-hum.

6 A **The amount of time and effort put into finding**
7 **them, as opposed to auditing them would have been**
8 **significantly different.**

9 Q Okay.

10 A **It would have been a much lower level of effort**
11 **to audit what was given, versus trying to find and**
12 **create.**

13 Q Okay. But they were on -- They were on those
14 blocks anyway; correct?

15 A **Katapult was on those blocks?**

16 Q Katapult was on those blocks anyway?

17 A **Yes.**

18 Q Okay. So -- All right.

19 Now, in terms of this, if we can also take a
20 look at Bates page 61, you had talked about a splice
21 case not being permitted on the pole; correct?

22 A **Yes.**

23 Q Below the com space; right?

24 A **Yes.**

25 Q Okay. Now, correct me if I'm wrong -- and

1 again, I'm a layperson trying to digest all of this --
2 as I interpret the top of that page, isn't that
3 referring to the cabinet section? Isn't that referring
4 to splice cases?

5 A The cabinet is telephone cross connect, cable
6 T.V. amplifiers, power supplies. Those are cabinets
7 directly mounted on the surface of the bowl.

8 Q Right.

9 A Those are not splice cases which should be
10 mounted in a strand.

11 Q Okay. Are splice cases ever considered to be
12 cabinets?

13 A No.

14 MR. D'AMICO: Your Honor, I will just
15 mention counsel is cross-examining him on the 2003
16 standard, not the current standard, which we have
17 marked.

18 THE COURT: Well, the two thousand -- I'm
19 assuming the 2003 standards was in effect -- were in
20 effect.

21 MR. D'AMICO: In 2003.

22 THE COURT: Well, and I don't know when the
23 particular violation -- alleged violation occurred.

24 MR. WINTER: Right.

25 Well -- And Your Honor, here's the other

1 part of this, the 2003 standards are what they have
2 introduced, and have stipulated -- and have submitted
3 to be the contract to the Court.

4 If they are submitting that there have been
5 contractual changes, they have to show what those
6 changes were, and they have got to show that my client
7 was aware of those changes, which --

8 MR. D'AMICO: We did, Your Honor. That's
9 Petitioner's Exhibit 2. That's the updated standard.
10 We already went through those. So why should he
11 question him on that?

12 MR. WINTER: But again, they have not shown
13 that MAW ever acknowledged those change in standards.

14 MR. D'AMICO: I would be happy to point out
15 the contract clauses.

16 THE COURT: Well, save it for redirect.

17 MR. D'AMICO: Okay.

18 MR. WINTER: Okay.

19 BY MR. WINTER:

20 Q All right. In terms of -- You had also talked
21 about the street lights on the poles; correct?

22 A Yes.

23 Q All right. Is there any indication as to how
24 long those street lights have been there?

25 A I know that there are records for how long the

1 street lights have been there. I don't know how long
2 they have been there.

3 Q Is it fair to say that those street lights
4 substantially pre-dated any involvement of MAW in
5 Lancaster City?

6 A I can say that the street lights are not a new
7 addition. I can't say exactly when each one has been
8 installed.

9 Q Okay. So is there any indication that MAW did
10 anything to those street lights?

11 A The streets lights themselves?

12 Q Right.

13 A No.

14 Q Okay. Is it a standard practice in terms of the
15 street light -- Or isn't it an acceptable practice in
16 terms of the street lights, to go and ground those
17 street lights to deal with some of the electrical
18 issues that you have been talking about?

19 A Yes. That is an accepted practice or standard.

20 Q Maybe you can elaborate on that for the Court,
21 please.

22 A Okay. So the code and clearance of street
23 lights is one of the items that changed during the
24 latest revision to NESC. From my recollection, that
25 became effective February of 2017, but it had been in

1 process longer. NESC updates on a recurring basis. So
2 those changes do come from time to time.

3 So with that new change, ungrounded street
4 light clearance moving from what it used to be,
5 20 inches, to now 40 inches, that created some
6 different conditions for make ready now, than it did
7 prior to 2017.

8 So one of the things that can be done to
9 lessen the clearance to an ungrounded street light
10 bracket, is to ground it. Then the clearance can be
11 reduced from 40 inches, to four inches, and someone can
12 still safely work there.

13 Now, if there is a drip loop that comes down,
14 towards the bottom of the drip loop is the feed from
15 our secondary up into the light. It's called a drip
16 loop so that the water doesn't run down into the
17 fixture, it runs down and drips off the bottom, that
18 clearance is 12 inches. So if you had a grounded
19 street light bracket, it could be within four inches,
20 but if the drip loop hangs down below that, you have to
21 be 12 inches from that.

22 Q Okay. So in terms of this, if you know, or if
23 you can easily give us a number, how many of the
24 clearance issues that we have dealt with, or clearance
25 as you have addressed in your spread sheets, involved

1 these street lights?

2 A I don't have an exact number.

3 Q Okay.

4 A There is a fair amount of clearance issues of

5 street lights, but I don't have an exact number.

6 Q Okay, so in terms of, if you can give an

7 estimate, I mean, are we talking ten, are we talking a

8 hundred, are we talking 200? How many are we talking

9 about, if you can give us a ballpark number?

10 A I would really be remiss to just guess on a

11 percentage, other than to say there is a fair amount of

12 clearance issues with street lights.

13 Q Okay. And so it's fair to say that those --

14 your concerns with those, could many of them, or a

15 large number of them be solved by grounding the street

16 lights?

17 A You would have to look at each one, verify what

18 the clearances are, but that could be part of the make

19 ready solution, to reduce clearance and have everyone

20 work safely.

21 Q Okay. Mr. Yanek, in terms of the portal,

22 obviously -- The portal was not designed by you; right,

23 the Internet portal?

24 A No, it was not.

25 Q Okay, and is that a piece of software that was

1 developed by PPL, or is that a piece of software people
2 purchased from some other source?

3 A PPL purchased that from Katapult.

4 Q Okay, and in terms of that, are you aware if
5 your access to information is any different than an end
6 user's access?

7 A Let me repeat back what I think your question
8 is. I think you're asking, is my access personally
9 different than Frank's access, for example?

10 Q That would be -- Right.

11 A Yes, we have different access.

12 Q Okay. And so therefore, the information that
13 you're able to search for, is that different than; for
14 example, Frank Wiczowski's access?

15 A Yes, it is.

16 Q Okay, and therefore -- If you know, do you know
17 if an end user like Frank Wiczowski can search a
18 street address to find the nearest pole?

19 A Can he search -- I'm sorry. I'm trying to
20 understand the question.

21 Q Yeah, let me rephrase --

22 A Please.

23 Q -- okay?

24 Again, you've been saying that you believe that
25 MAW had an obligation to go into the captive database,

1 and pull up these pole numbers. Could Frank Wiczowski
2 simply have sat down, typed in a street address, done a
3 search for it, and come up with the nearest pole?

4 A No.

5 Q Okay. So again, if he did not know -- And am I
6 understanding the database correctly? You can search
7 by pole number, but you cannot search by street?

8 A When you say the database, you can --

9 Q Or Katapult? I mean, the application, whatever
10 you want to call it.

11 A So the application -- Let me try to address your
12 question --

13 Q Sure.

14 A -- this way. So you can go to the map --

15 Q Um-hum.

16 A -- and you can scroll to see where the street
17 is, and then you can see the pole numbers that are on
18 that street.

19 And part of the application process is to have
20 a take off pole. So when you have a take off pole
21 number, that's where everything begins. That's where
22 the application starts. So when you have that pole
23 number, that does get you in the neighborhood. And
24 then you can select the additional poles that go along
25 with that application.

1 So can you -- So that I think I'm answering
2 your question by saying, can you directly type in Nevin
3 Street and have it go there? No, I don't believe you
4 can. But if you have the pole number that you needed
5 to find in the pre-survey work, you can type that in --
6 Q Okay.
7 A -- and you can get close.
8 Q But again, if you did not have a pole number for
9 a particular street, you wouldn't be able to get there
10 either; correct?
11 A I think that's a fair statement.
12 Q Okay. All right, and Mr. Yanek, when did
13 Katapult begin the survey process that you have
14 referred to specifically?
15 A Related to finding the unauthorized attachments?
16 Q Yep.
17 A We began in January of 2018.
18 Q Okay. So again, had any type of survey work
19 been done prior to the December 19th settlement
20 conference we had?
21 A By Katapult, no. By me, yes.
22 Q Okay. So what survey work had you done prior to
23 that date?
24 A I had gone out to the city three separate times,
25 and I looked in three separate locations, which I have

1 identified as batches one, two, and three. And I had
2 found unauthorized attachments consistent with MAW, and
3 what we had been seeing, and I had documented those in
4 my spread sheets.

5 Q Okay, and so in terms of your spread sheets, I
6 mean you had; obviously, noted the pole numbers on each
7 of these poles; correct?

8 A Yes.

9 Q Okay. So in terms of your spread sheets one,
10 two, and three, if you know -- And I can certainly go
11 to the book and add it up if you don't -- but how many
12 poles did you look at between spread sheet one, two,
13 and three?

14 A I looked at 30 in batch one, 40 in batch two, 13
15 in batch three.

16 Q Okay.

17 A So 83 total across all three of them.

18 Q Okay. So you had already had those pole
19 numbers, and that information, coming into the
20 settlement conference?

21 A One and two I did. Three was shortly after the
22 settlement conference.

23 Q Okay, and -- One minute.

24 All right. Now, there had also -- You
25 discussed in your testimony this morning that there had

1 been some applications that had been submitted online
2 by MAW, and that MAW had subsequently met with your
3 office; correct?

4 A **Yes.**

5 Q Okay. Do you know how many times during 2017,
6 or 2016 into 2017 for that matter, that MAW met with
7 you or either a representative from PP&L about their
8 applications?

9 A **There were three meetings that I was involved**
10 **with, with MAW representatives.**

11 Q Okay. Is it possible there was another meeting
12 that you were not involved in?

13 A **Yes, that's possible.**

14 Q Okay, and in terms of these meetings, what --
15 Was MAW given any type of NESC, National Electric
16 Safety Code compliance information at those meetings?

17 A **I can't say that that was handed over during the**
18 **course of those three meetings, because the content was**
19 **really about process.**

20 Q Okay. I mean, what -- Had there been discussion
21 that there were issues in terms of NESC compliance?

22 A **So I would say that NESC as it relates to the**
23 **situation I described to you earlier, as to why MAW**
24 **could not put fiber underneath copper --**

25 Q Right.

1 A -- yes, that would relate there, yes.

2 Q Okay. And so -- Am I understanding what

3 happened at these meetings correctly, essentially is

4 that you told Frank, or you told MAW that there would

5 be NESC compliance issues, but you did not specifically

6 identify what those issues were?

7 A I am sorry, I'm trying to recall all of those

8 meetings --

9 Q Yeah, please.

10 A It was a little while ago --

11 Q Yeah.

12 A -- and I don't recall Frank raising a lot of

13 questions about NESC compliance at those meetings.

14 Q Okay. All right, but was that one of their

15 concerns? Did it come up at some point during the

16 course of those meetings?

17 A So when you're -- May I ask you to be a little

18 more specific on NESC concerns?

19 Q Okay.

20 A What are we --

21 Q The fiber and copper issue you referred to

22 before?

23 A Yes --

24 Q Okay.

25 A -- we definitely talked about that.

1 Q All right. They brought that up -- or somebody
2 brought that up at the meeting?

3 A They brought up the request to be -- just be
4 able to pick their position, which is not consistent
5 with our process. And one of the reasons why they
6 couldn't pick their position below the existing
7 telephone companies was that, and that is related to an
8 NESC code issue. So yes, that's how that was
9 discussed.

10 Q All right. Okay.

11 You had mentioned something about zip ties being
12 used --

13 A Yes.

14 Q -- for the splice cases?

15 A Yes.

16 Q Okay. And how closely did you examine those?

17 A From ground level.

18 Q Okay. So is it possible that it was something
19 other than zip ties holding those in place?

20 A It could be. That's my best description of what
21 I saw.

22 Q Okay. And are you familiar with Deltec straps?

23 A No, I'm not.

24 Q Okay. All right.

25 MR. WINTER: I believe that's all I have

1 then.

2 THE COURT: Any redirect?

3 MR. D'AMICO: Yes. If we could turn to --

4 THE COURT: Speak up.

5 MR. D'AMICO: -- Petitioner's Exhibit 1,

6 Bates Stamp page ten.

7 THE COURT: The contract?

8 MR. D'AMICO: Yes.

9 REDIRECT EXAMINATION

10 BY MR. D'AMICO:

11 Q I direct your attention, sir, to Section 5.1.

12 Is that part of the agreement?

13 A **Yes, it is.**

14 MR. D'AMICO: Can we go to the next page,

15 Mr. Chapman?

16 BY MR. D'AMICO:

17 Q Can you read that out loud, Subsection A?

18 A **Certainly. National Electric Safety Code, NESC,**

19 **including all current and future supplements, as well**

20 **as the National Electric Code, NEC, were applicable.**

21 Q And could you read B to us?

22 A **PPL'S written communication cable attachment**

23 **specifications attached hereto as Appendix D as amended**

24 **from time to time.**

25 Q And Subsection D?

1 A **All applicable engineering standards governing**
2 **clearance, strength, and grounding requirements.**

3 Q Now, counsel was asking you questions of page 61
4 about the standard in place in 2003. If we can go to
5 Bates Stamp 61 in Petitioner's Exhibit 1. I'm going to
6 direct your attention to one area that I don't think
7 counsel pointed out to you, about these cabinets.

8 By the way, these cabinets are not the same
9 thing that you identified for the Court earlier as
10 being problematic; correct?

11 A **Correct. They are different.**

12 Q All right, and where are the cabinets allowed?

13 A **They are mounted in the un-useable space.**

14 Q Is that in the communication worker safety
15 space?

16 A **No. The un-useable space is the space from the**
17 **ground, up to the lowest communication attachment on**
18 **the pole.**

19 Q So that would be below the telephone wire?

20 A **Correct.**

21 Q Now, counsel asked you whether or not you ever
22 let MAW know that the supplements have been updated --
23 the standards, I'm sorry, have been updated. Are those
24 standards on the website?

25 A **They are.**

1 Q Do you think you have a duty to advise what you
2 would assume would be a responsible utility, to update
3 them on any NESC changes that may apply to their line
4 of work?

5 MR. WINTER: Objection.

6 THE COURT: Sustained.

7 BY MR. D'AMICO:

8 Q Is there any reason why MAW could not access the
9 current standards that were in place if it had followed
10 the application process?

11 A No.

12 Q Counsel asked you lots of questions about
13 specific addresses identifying poles. You showed us
14 the application process?

15 A Yes.

16 Q This is an interactive map; is it not?

17 A Yes.

18 Q And if one goes to the interactive map, and they
19 know they want to map out something -- if they are
20 doing it properly, if they are going to map out what
21 they plan to do, do they click on a -- on a street?

22 A They would click on a pole.

23 Q Okay. They expanded the map?

24 A Yes. They would expand the map of the street.

25 Q Okay, and then they -- They see the dots, and

1 they can click on a dot, which represents a pole?

2 A Yes.

3 Q So they could tell where they -- where they want
4 to put a cable?

5 MR. WINTER: Objection.

6 THE COURT: Basis?

7 MR. WINTER: Leading.

8 THE COURT: Sustained.

9 BY MR. D'AMICO:

10 Q Could they tell where they want to put a pole?

11 A Yes, they could go to the portal, and they could
12 -- they could look at the poles, they could select
13 those poles in terms of where they wanted to run their
14 cable.

15 Q So if Mr. Wiczkowski wanted to make any good
16 faith effort at compliance with the stipulation, and
17 tell you what poles he had run on, because he already
18 knew what -- most of the streets that he had run on,
19 was there a process that he could have done that for
20 you?

21 MR. WINTER: Objection.

22 THE COURT : Basis?

23 MR. WINTER: A, calling for a legal
24 conclusion in terms of good faith effort, and B --

25 THE COURT: I will deny the good faith

1 effort. I will omit that from the question.

2 MR. WINTER: Okay.

3 THE COURT: The question is could he have
4 done it?

5 BY MR. D'AMICO:

6 Q Could he have told you the pole numbers?

7 A Yes.

8 Q Can you -- Explain to the Court how and why he
9 could have done that?

10 A So if I'm putting myself in that scenario, there
11 is an obligation --

12 THE COURT: You want me to hold you in
13 Contempt of Court, too?

14 THE WITNESS: No, thank you.

15 THE COURT: It was a joke. Just kidding.

16 THE WITNESS: So if I was going to try and
17 follow that thought line, and that strategy, what I
18 would do is, I would know at least one pole number on
19 each one of those blocks, that I could use to get me
20 there within the portal. Then I would know I would be
21 able to select the additional concurrent poles.

22 THE COURT: Well, you would pull up the map
23 that would have the streets on it?

24 THE WITNESS: Yes, so that --

25 THE COURT: And you would just enlarge the

1 map, and that would show the poles?

2 THE WITNESS: That shows the pole locations,
3 yes.

4 THE COURT: And then you would click on each
5 little dot, the pole, and that would give you the pole
6 number?

7 THE WITNESS: Yes.

8 THE COURT: Can you get into the portal
9 without having the pole number? Can you get into the
10 portal with just a street?

11 THE WITNESS: No. The street would not be
12 the reference. You need a take off pole number to
13 begin.

14 THE COURT: Okay.

15 BY MR. D'AMICO:

16 Q Were the applications that were submitted by
17 MAW, proof that they knew how to access the portal, and
18 identify pole numbers?

19 MR. WINTER: Objection. It calls for
20 multiple conclusions. I think that's an inference for
21 the Court to make.

22 THE COURT: Overruled.

23 THE WITNESS: Yes. The applications that
24 were submitted where we did perform work, was evidence
25 to me that MAW knew how to make applications.

1 BY MR. D'AMICO:

2 Q Knew how to identify poles?`

3 A Yes.

4 Q Counsel asked you a lot of questions about,
5 well, Katapult had to go out there anyway, right? The
6 whole reason we are there is because MAW didn't follow
7 the application process; isn't that correct?

8 A Correct.

9 Q And then they exacer -- Was it exacerbated, the
10 expense to PPL, because MAW didn't provide the
11 information that you believe was required under the
12 stipulation?

13 A Yes.

14 Q Cause you any Agita? Do you know what Agita is?

15 MR. WINTER: Objection.

16 THE COURT: Sustained. His health is not at
17 issue.

18 MR. D'AMICO: Okay.

19 BY MR. D'AMICO:

20 Q And if -- Counsel asked you a lot of questions
21 about, well how -- you know, whether or not NESC Code
22 questions were raised at any of these meetings.

23 Did Mr. Wiczkowski ever tell you that he was
24 going to intend to put up cable without following the
25 application process, so that you would have been on

1 notice to make sure he complied with the NESC?

2 A No.

3 Q Do you expect the utilities just to know, and
4 comply with the NESC?

5 A Yes.

6 Q If he had followed the application process, and
7 had provided information, does the make ready
8 evaluation alert to any potential conditions of the
9 NESC, or any of the PPL standards?

10 A Yes. That's the purpose of the process.

11 Q So, if there were any issues or confusion by MAW
12 about the standard, or the codes, could they have been
13 identified if MAW had simply done what it was
14 contractually obligated to do?

15 A Yes.

16 Q Thank you, sir.

17 EXAMINATION

18 BY THE COURT:

19 Q Let me ask you this. You made some comment
20 about when you were in the other building back on
21 December the 12th, we were all here, and you were at
22 the -- You were present when counsel discussed a
23 settlement, and then we went in -- you went into the --
24 you joined everybody else who came into the courtroom,
25 and that settlement was put on the record; correct?

1 A **Yes.**

2 Q At either time; that is, when you were in the
3 conference room, not in open court, but in the
4 conference room discussing what the terms would be; and
5 then secondly, when you came into the courtroom, and it
6 was put on the record, did you have any basis to
7 believe that MAW would not -- that MAW did not have
8 pole number information?

9 A **I had no basis to believe that they did not have**
10 **it.**

11 Q Did you have any basis to believe that they did?

12 A **My basis would be, any responsible utility would**
13 **know where its facilities were attached. So I would**
14 **expect any responsible company to have grid locations**
15 **of their facilities.**

16 Q The -- I don't know what occurred in the
17 conference room, but the stipulation, the written
18 agreement, the transcript refers to poles. It doesn't
19 refer to pole numbers, it refers to poles.

20 Was there any -- Can you help me in trying to
21 understand the context of that reference to poles; if
22 in fact, MAW didn't have pole numbers? Do you
23 understand what I'm asking?

24 A **No, I don't. Could --**

25 Q Okay.

1 A -- you please repeat the question, or rephrase
2 it?

3 Q Sure. I'm on page three of the transcript, line
4 number 20.

5 And this is Mr. Gorter, who was the individual
6 from the PUC who was speaking, and it says PPL has
7 committed to starting to provide feedback on all
8 identified poles by the end of this month, the last
9 business day of this month.

10 And this is after, I think -- So, do you have
11 any basis to believe that MAW did not have pole number
12 information to refer to these identified poles?

13 A No. I had no basis to believe they didn't have
14 access to it, or ability to get it.

15 Q Did you understand that MAW was to provide
16 information in terms of where the wires were strung?

17 A Yes.

18 Q And did you have an understanding as to how that
19 information would be communicated to PPL; in other
20 words, in what form?

21 A So my --

22 Q I don't mean paper or electronic --

23 A No. Understood.

24 Q -- I mean identifying information?

25 A So being that I had already communicated two

1 lists by the time we had our meeting, of what we found
2 and what I saw, my expectation is that I would see the
3 same information back, because it was clearly
4 identified in my mind what I found, and I would expect
5 the same in return.

6 Q And --

7 A So there were examples of what I would expect.

8 Q And the language that you were talking, or the
9 currency that you were using, was it by pole number, or
10 was it by street and block?

11 A It was definitely by pole, not by street and
12 block.

13 Q Was there any discussion either in the
14 conference room, or in open court, that these areas of
15 concern were going to be identified by street and
16 block, as opposed to pole number, for example?

17 A No.

18 Q And then, Mr. D'Amico, further on in this
19 transcript talks about -- I lost it here, but he talks
20 about, we have already identified poles, and PPL has
21 committed to starting to provide feedback on all
22 identified poles.

23 Was it your understanding again, that these
24 poles were being identified by pole number?

25 A Yes, that was my understanding.

1 THE COURT: Okay. My questions and Mr.
2 Yanek's answers cause any follow-up questions?

3 I will let you go first, Mr. Winter, and then
4 Mr. D'Amico can rehabilitate him if necessary.

5 MR. WINTER: Not to your questions, but in
6 relation to the redirect.

7 THE COURT: Go ahead.

8 MR. WINTER: Okay.

9 RECROSS-EXAMINATION

10 BY MR. WINTER:

11 Q Mr. Yanek, from looking at those applications
12 for MAW that you had testified to, how many of those
13 applications were submitted by Mr. Staboleski?

14 A All four that we had completed the survey and
15 engineering on. The one that was incomplete, those
16 five were submitted by Mr. Staboleski.

17 Q Okay. Those five?

18 A Those five, yes.

19 Q Okay. So again, you're saying that based on
20 knowledge of the system, that someone would be able to
21 identify pole locations; correct?

22 A Yes.

23 Q Okay. But in this case, all five applications
24 that you received were not from Mr. Wiczkowski, they
25 were from Mr. Staboleski?

1 A **Correct.**

2 Q Okay, and there is no indication as to what role
3 Mr. Wiczkowski played or did not play in terms of those
4 applications; correct?

5 A **Correct.**

6 Q Okay.

7 MR. WINTER: I believe that's all I have.

8 THE COURT: Mr. D'Amico?

9 REDIRECT EXAMINATION

10 BY MR. D'AMICO:

11 Q Can you tell the Court again the partial or
12 un-submitted applications indicated they were being
13 prepared by Mr. Wiczkowski? Would it help you to look
14 at that list?

15 A So what I can say is there were 12 others. So
16 there are seventeen total right now that are in the
17 queue. I would have to look at each individual one to
18 see who the submitter was.

19 Q Do you have a recollection that Mr. Wiczkowski
20 is the identified preparer or submitter of those
21 partial applications -- partially complete
22 applications?

23 A **That's my recollection.**

24 Q Is it your experience that a regulated public
25 utility has someone on staff who understands how to

1 identify poles?

2 MR. WINTER: Objection.

3 THE COURT: Sustained.

4 BY MR. D'AMICO:

5 Q In your business dealings with utilities, when
6 someone is asked to identify a pole, what does that
7 entail? Is there anything other -- besides the pole
8 numbers that you can be talking about?

9 MR. WINTER: Objection.

10 THE COURT: Overruled. We're talking the
11 customs of the trade.

12 MR. WINTER: Okay.

13 THE WITNESS: The pole number is by far and
14 away the most common. You can additionally describe it
15 by latitude and longitude, but the number is the unique
16 identifier.

17 FURTHER EXAMINATION

18 BY THE COURT:

19 Q I'm just curious, when I go to my nearest pole,
20 and I see the metal plate on it --

21 A Um-hum.

22 Q -- and it's a series of numbers --

23 A Yes.

24 Q -- is that a random selection of numbers, or do
25 the numbers themselves have some meaning in the sense

1 that it might be latitude, or longitude, or township,
2 or road, or street, or anything like that?

3 A The -- So the way that our numbers are, it's
4 five numbers, and then an N or an S for north or south,
5 depending upon which part of the territory you're in,
6 and then another five numbers after that.

7 The first three of those five relate to the
8 Pennsylvania grid system, and the last two relate to
9 the pole itself as our asset. So they are based on
10 geography. So there is -- There is an order to our
11 grid numbers.

12 Q So if I call in that number -- Let me ask you
13 this. So the next pole in line would have a very
14 similar number, but be close in numerical order?

15 A Correct.

16 Q So there is a logic to the way the numbers are
17 located in -- for each --

18 A Yes, that's correct.

19 Q -- pole? It's not just a random number for each
20 pole?

21 A No.

22 Q Okay. Thanks.

23 THE COURT: May he be excused? I mean, he's
24 finished. No other questions?

25 MR. D'AMICO: Yes.

1 THE COURT: Okay. Next witness?

2 MR. D'AMICO: At this time I would like to
3 call Miss Kristie Rippke.

4 KRISTIE RIPPKE, being called as a witness,
5 was first duly sworn, and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. D'AMICO:

8 Q Miss Rippke, I'm going to ask you to keep your
9 voice up, or get close to the microphone.

10 A Okay.

11 Q Okay. Can you please identify yourself for the
12 Court?

13 A Yes. My name is Kristie Rippke.

14 Q What is your profession, Ma'am?

15 A I'm a professional engineer.

16 Q Do you have a sub-specialty in engineering?

17 A Electrical.

18 Q And how long have you been a professional
19 engineer?

20 A I received my professional engineering license
21 in 2006.

22 Q What's your educational background?

23 A I have a Bachelor's of Science in electrical
24 engineering from Lafayette College.

25 Q And have you been involved in electrical

1 engineering in one form or another since you graduated
2 from college?

3 A No, I -- My first job was with Lockheed Martin
4 in New Jersey. I was only there a year. I started
5 working as an employee at PPL in 2001, and I worked
6 there full time until 2008.

7 I then left to be a stay-at-home mom for five
8 years. And in 2013 I began working for Mainline Energy
9 Consultants as a contractor for PPL, and I am still
10 doing that today.

11 Q So you work for Mainline, but you are assigned
12 to PPL?

13 A That's correct.

14 Q What's your role at PPL?

15 A I work in the Distribution Standards Department
16 at PPL.

17 Q What does that entail?

18 A So, Distribution Standards is responsible for
19 writing all the specifications related to how to build
20 the system on the distribution side.

21 There is two main documents that we produce.
22 They are the distribution and construction
23 specifications, and the distribution and engineering
24 instructions.

25 Q Do you have any role with respect to creating

1 instructions, or packages related to attachments on PPL
2 facilities?

3 A So, I was personally involved in a specification
4 that was related to attachments, yes.

5 Q And earlier today we reviewed Petitioner's
6 Exhibit 2, which is a set of specifications and
7 standards.

8 MR. D'AMICO: Could you pull that up, Mr.
9 Chapman? It's at Bates Stamp 69.

10 BY MR. D'AMICO:

11 Q Are you familiar with that document, Ma'am?

12 A Yes, I am.

13 Q Did you have some involvement in the current set
14 of documents that this represents?

15 A I did not. I was not involved in number 601140,
16 no.

17 Q Are you familiar with what's in 601140?

18 A I am.

19 Q And other than PPL'S standards in terms of what
20 it likes to attach to its pole, does it rely on any
21 other sources to establish what must be done in terms
22 of attachments, to your knowledge?

23 MR. WINTER: Your Honor, at this point I
24 have to object. I really am not seeing the relevance
25 to the issues we're here for today.

1 MR. D'AMICO: Your Honor, Miss Rippke is
2 going to establish how simple it would have been for
3 MAW to stay outside -- to understand the communication
4 worker safety zone.

5 This idea that somehow there is confusion
6 about it, I think relates to MAW's culpability, not in
7 the overall -- in the overall action, as well as its
8 good faith conduct with respect to the obfuscation that
9 we believe exists following the December 19th,
10 stipulation.

11 THE COURT: Overruled. Go ahead.

12 BY MR. D'AMICO:

13 Q Are you familiar with the NESC?

14 A I am, yes.

15 Q Is that a common document utilized in the
16 utility industry?

17 A Yes.

18 Q And we have discussed a lot of issues regarding
19 certain codes and specifications; that there have been
20 changes to them. Have any of those changes -- Strike
21 that. Are those commonly understood and utilized
22 standards in the PPL specifications?

23 A Yes.

24 Q Let's talk about the issue of the communication
25 worker safety zone.

1 If someone wanted to start up a utility, and run
2 fiberoptic cable, would they be able to figure out by
3 reviewing communi -- the National Electric Safety Code,
4 what they would have to comply with, and if they can,
5 I would like you to show us how they would have done
6 that.

7 MR. WINTER: Objection. Again, it calls for
8 speculation as to what someone else might do. And I
9 still am not seeing the relevance.

10 THE COURT: Yeah. I think that's right.
11 The question is not what someone else might do, but
12 what happened here. I think there may be a different
13 way to --

14 MR. D'AMICO: Okay.

15 THE COURT: -- show how easy it is. You can
16 just show us how it's done.

17 MR. D'AMICO: Sure.

18 BY MR. D'AMICO:

19 Q Earlier today Mr. Staboleski testified that MAW
20 had the NESC Code handbook at its facilities. If it
21 had the handbook at its facilities, would it have been
22 able to discern where the communication worker safety
23 zone is created?

24 A **Yes. It is defined in the NESC.**

25 Q Did I ask you to gather together pertinent

1 excerpts from the Code, so that we could submit them as
2 an exhibit to the Court today?

3 A Yes.

4 Q And did you bring the entire code with you
5 today?

6 A I did.

7 Q Did you tab the ones that we discussed
8 previously?

9 A Yes, I did.

10 Q Okay.

11 All right. I'm going to ask you to walk the
12 Court through those, and why they are pertinent to the
13 issues here.

14 A Okay. Well, you asked me about the
15 communication space on the pole. There is a
16 definitions section in the beginning of the book. It's
17 called Section 2, definitions.

18 And on page eight, there is a definition of the
19 communication space accompanied by figure D-1, which
20 kind of lays out all of the different spaces on the
21 pole.

22 MR. D'AMICO: Mr. Chapman, can you please
23 pull up -- First we will start with page 3 -- Bates
24 368.

25 BY MR. D'AMICO:

1 Q Is that the cover page of the current edition of
2 the NESC?

3 A Yes.

4 Q And then let me direct your attention to page
5 371. Is this the definitions section, Miss Rippke?

6 A Yes. So I am talking about the figure D-1 there
7 that you see in the middle of the page.

8 It shows the supply space at the top of the
9 pole. That's for electric conductors, the
10 communication worker safety zone that we have been
11 speaking about, and then the communication space for
12 communication cables.

13 Q What's supposed to go in this area?

14 THE COURT: Just so the record is clear --
15 BY MR. D'AMICO:

16 Q This area being the communication worker safety
17 zone?

18 A There are some exceptions in the NESC, but in
19 general it's supposed to be an empty area, to insure
20 the safety of the communications workers who are
21 working lower on the pole.

22 Q Any of the information that you've heard today
23 about what MAW was doing, did they fit any of those
24 exceptions?

25 A So there is one exception for a fiberoptic

1 **cable, yes.**

2 MR. WINTER: Again, I'm going to object. It
3 was such a broad question, anything that MAW did today,
4 and --

5 THE COURT: Sustained.

6 And we haven't heard what MAW -- Well, I
7 haven't heard what MAW did from its perspective, but
8 the objection is sustained.

9 MR. D'AMICO: All right.

10 BY MR. D'AMICO:

11 Q In terms of --

12 THE COURT: It may be better for rebuttal.

13 MR. D'AMICO: Okay.

14 BY MR. D'AMICO:

15 Q In terms of other sections of the code, in terms
16 of establishing what should be done, is there any other
17 information you wish to share with the court?

18 A **So, Section 23 of the NESC is all about**
19 **clearances.**

20 Q What page is that, Ma'am?

21 A **So, Section 23 begins -- It's a big section --**
22 **on page 90.**

23 THE COURT: Nine zero?

24 THE WITNESS: Yes.

25 MR. D'AMICO: That would be Bates Stamp 278,

1 Mr. Chapman.

2 THE WITNESS: So, Section 23 goes through
3 all of the different clearances as it relates to all of
4 the number of different possible attachments that could
5 be on a pole.

6 BY MR. D'AMICO:

7 Q Is that at the bottom of the page, Section
8 three?

9 A So, there is a whole bunch of rules, and then
10 there is tables towards the end of the section. And
11 the table that is most useful is table 235-5, which
12 appears on page 175 of the book.

13 MR. D'AMICO: That would be Bates 389, Mr.
14 Chapman.

15 THE COURT: I'm sorry, what number?

16 MR. D'AMICO: Bates Stamp 389, Your Honor.

17 THE WITNESS: This table lays out the
18 vertical clearances between conductors that are on the
19 same pole.

20 BY MR. D'AMICO:

21 Q So this is the type of information that someone
22 if they wanted to research what they had to do in order
23 to comply with the NESC, they could consult with this?

24 A They could, yes.

25 Q Thank you, Miss Rippke.

1 MR. D'AMICO: That's all I have.
2 THE COURT: Cross-examination?
3 MR. WINTER: I have no questions.
4 THE COURT: You may step down. Thank you,
5 Ma'am.
6 Next witness?
7 MR. D'AMICO: Your Honor, at this point I
8 rest. I have a couple people as potential rebuttal
9 witnesses.
10 THE COURT: Okay. Let's take a ten-minute
11 break. We'll come back and we'll start with MAW's side
12 of the case.
13 (Whereupon, a ten-minute recess was taken.)
14 AFTER RECESS
15 THE COURT: Mr. Winter, you may call your
16 first witness.
17 MR. WINTER: I call Frank Wiczkowski
18 FRANK WICZKOWSKI, being called as a witness,
19 was first duly sworn, and testified as follows:
20 DIRECT EXAMINATION
21 BY MR. WINTER:
22 Q Mr. Wiczkowski, to kind of move right into this,
23 are you familiar with a business known as MAW
24 Communications, Inc.?
25 A Yes.

1 Q Okay, and how are you familiar with that
2 business?

3 A **I am the president and owner of the company.**

4 Q Okay. Are you the sole owner?

5 A **Yes.**

6 Q Okay, and can you give the Court a little bit of
7 history of MAW Communications, when was it founded, and
8 when -- When did you actually begin operations, I guess
9 would be the next question?

10 A **MAW was founded in 1997, and began operations in**
11 **1997.**

12 Q Okay, and when you founded MAW in 1997, what
13 type of work was MAW doing during that period of time?

14 A **Facilities based telecommunications carrier.**

15 Q For those of us that don't speak
16 telecommunications, or utilities, what does that mean?
17 What were you doing?

18 A **That means that we provided network**
19 **connectivity, like a telephone company, to anybody**
20 **else.**

21 Q Okay, and for how long was that one of the
22 things that MAW was doing?

23 A **Since its inception.**

24 Q And does MAW continue that purpose today?

25 A **Yes.**

1 Q Okay, and in terms of MAW -- At some point, did
2 MAW begin a project with Internet service for the City
3 of Lancaster?

4 A Yes.

5 Q Okay. Can you tell the Court how that came
6 about?

7 A That -- That service was called Land City
8 Connect. It was established after we had already
9 established a relationship with the City of Lancaster.

10 Q Okay. So --

11 A It was to offer fiber to the home services,
12 first of its kind in Pennsylvania.

13 Q Okay, so again, when did that relationship come
14 about?

15 A The relationship with --

16 Q Lancaster.

17 A -- the City?

18 Q Yeah.

19 A That came about, I believe in 2014.

20 Q And what were the suggestions? What were you
21 planning on doing with Lancaster during that period of
22 time?

23 A The discussion, and the project was to take
24 their existing network, and build a backbone network, a
25 fiber backbone network throughout the City to offer for

1 all kinds of services, public services, as well as
2 other services along the lines of fiber to the home.

3 Q Okay, and --

4 A Specifically, public works projects, and other
5 city and municipal connectivity.

6 Q Yeah, and was there ultimately a contract
7 reached with Lancaster in order to do this?

8 A Yes, sir.

9 Q Okay. In terms of MAW today, where is MAW's
10 main office located?

11 A We have two offices. One is in Lancaster, and
12 the other is in Reading.

13 Q And how many employees does MAW have?

14 A At the moment, eleven.

15 Q Does MAW regularly subcontract its services
16 where need be?

17 A Yes.

18 Q Okay, and in terms of the Lancaster project,
19 when is it that you actually began work on that
20 project?

21 A We began engineering work in the beginning of
22 2015. We had done some documentation work, and
23 documenting the existing infrastructure. And that had
24 really -- was started, really in 2014, rolled over into
25 2015. Construction actually began in April of -- April

1 or May of 2015.

2 Q Okay, and in terms of the construction work in
3 April of 2015, what was the initial work?

4 A The initial work was to -- Initially it was to
5 look at potentially overlashing the existing network of
6 the Lancaster Safety Coalition, and the city traffic
7 network.

8 Once we looked at it, we saw that there was
9 varying different cable types, different types of fiber
10 used, and it didn't make any sense since the fiber was
11 obsolete, to overlash over the top of it, and leave all
12 of that obsolete plant in place, so we decided to J and
13 Raise the network, which --

14 Q Okay. Now, let me just stop you there so we
15 kind of go through this piece by piece.

16 If I'm understanding you correctly, you are
17 saying that the fiber that was already in place for
18 LCSC was obsolete?

19 A That's correct.

20 Q Okay. Why was it obsolete?

21 A Because of the types of fibers that they did.
22 There's two types of fiber used today, for the most
23 part. One is called multi-mode fiber, which allows --
24 it's inexpensive equipment to attach to. In other
25 words, like an LED can pass through information.

1 However, it is very distance sensitive. It can be in
2 the order of a hundred -- couple hundred feet, versus
3 single mode, which can go hundreds of miles.

4 Q Okay.

5 A It's also about band width, how much speed, or
6 how much information you can move per second.

7 Q Okay. So my understand -- If I'm understanding
8 your testimony correctly, you're saying the decision
9 was made to replace the multi-mode, with the single
10 mode.

11 A Yes.

12 Q Okay. All right.

13 And in terms of that, was there also a
14 decision -- I think you mentioned this briefly -- to
15 begin offering Internet services to residences and
16 businesses?

17 A Yes. That didn't happen until much later.

18 Q Okay. And when was that decision made?

19 A I believe it was in early 2016.

20 Q Okay, and is part of that -- How did that
21 project come about? I guess that's probably the best
22 way to put it.

23 A The project came about because the City looked
24 at this, and saw what was a service that could add
25 value to --

1 MR. D'AMICO: Objection, Your Honor.

2 THE WITNESS: -- the entire --

3 THE COURT: Basis?

4 MR. D'AMICO: The relevancy, as to what the
5 City thought it might want.

6 THE COURT: I get it. This is background
7 information to give me some measure of perspective.
8 Overruled.

9 MR. WINTER: Right.

10 THE WITNESS: I'm sorry, where did I leave
11 off?

12 BY MR. WINTER:

13 Q You were saying that the City felt that it was
14 adding value to provide --

15 A To the residents, by offering fiber to the home
16 services.

17 Q And so if this network that was planned was
18 fully built out, what would it offer to the citizens of
19 Lancaster?

20 A Well, it would offer complete connectivity
21 across the City. It will offer the Lancaster Safety
22 Coalition the ability to put cameras anywhere. It will
23 allow public works systems to advance their engineering
24 infrastructure through the watering system -- through
25 their water system. It allowed WIFI services, free

1 services throughout the downtown area.

2 And of course, connectivity through public
3 works, and all of the other services, as well as
4 enabling codes, police departments, to get additional
5 information, a lot of public works services and
6 projects, fiber to the home being part of that.

7 Q And MAW ultimately obtained the contract to do
8 this; correct?

9 A Yes.

10 Q Now, in terms of the work that was being done on
11 this during, we will say 2017, what was the status of
12 the work that occurred during 2017?

13 A As of the time of 2017, at this point we had
14 already established that PPL'S make ready process was
15 an issue, so we were not doing any pole attachments.

16 We had done no new through bolt attachments, or
17 backbone network builds throughout the whole time. In
18 other words the backbone growth to complete throughout
19 the City, which we had approximately 60 percent of the
20 City covered, our first application was to start to
21 fill in the other 40 percent.

22 Q Let me flesh this out a bit. There has been
23 some testimony earlier in the day about PPL'S online
24 portal; correct?

25 A Yes.

1 Q That online portal system, did you personally
2 use that system?

3 A No.

4 Q Okay. Who from your staff was using that
5 system?

6 A Mr. Staboleski was ultimately responsible for
7 that during that time.

8 Q Okay, and in terms of the PP&L application
9 system, did you, or did MAW submit applications, as has
10 been testified to, to PP&L?

11 A Yes, sir.

12 Q Okay, and if you recall, how many applications
13 were submitted?

14 A I believe our -- We summarized them into three
15 applications. Although, because of the number of poles
16 that are limited, I believe it was actually six or so.
17 We ended up with about 300 or so poles, total, in our
18 submissions.

19 Q Okay. So the testimony that has been given
20 earlier was, the applications were submitted, and there
21 was make ready information returned to MAW; is that
22 correct?

23 A Yes, sir.

24 Q Okay. After MAW received that make ready
25 information, what did MAW do with that information?

1 A Well, our first -- Our first input and first
2 response was shock, because we couldn't believe how
3 much make ready was involved with just several -- At
4 this point, I think it was 48 poles.

5 Q Okay.

6 A I believe it was 48 or 84. I can't remember
7 which number is actually right, but our first
8 application.

9 And it took several months for us to get the
10 make ready back, the make ready information and cost
11 factors. And that's when we then reached out to PPL to
12 try to discuss, and figure out what happened.

13 After that, we had had bunches of -- We had
14 several meetings, one up in Allentown, where we
15 originally met with Mr. Yanek and one of his teammates,
16 where we brought to them the whole project, and said we
17 are finished with the overlash at this point. We are
18 looking for a new application. We put the new
19 application in, in January.

20 Once we filed that application we got the data
21 back, and then that's when we said, hey, what's going
22 on here? What about other ways to potentially connect?

23 Because it took us, after several meetings, um,
24 I believe it was about in the summer, after about four
25 meetings with PPL, that we discovered that PPL was

1 assigning everyone into the top most position of
2 their -- of the positions available within the
3 communication space.

4 And once we sought that out, that explained why
5 there was no other make ready -- or no other options
6 were available. Some places there may be five, six, or
7 even ten, or even fifteen paths to -- or locations to
8 attach to the pole. However, PPL was assigned to the
9 top most position, so none of that mattered.

10 Q Okay, and --

11 A And that's why it was creating make ready,
12 because in a lot of instances, the first attacher is
13 typically higher. And if there is more than one
14 attachment there, then all the attachments have to move
15 down in order to make room for you. So that's a
16 timeframe for each one of those attachments to go by.

17 Q Okay. So if I'm understanding your testimony
18 correctly, you're saying that because you were being
19 assigned to the top position, the other attachments
20 already on the pole would have had to be moved down,
21 which caused substantial cost?

22 A Yes.

23 Q Okay. Now, in terms of this --

24 THE COURT: Let me ask you this, why? Do
25 you know why you would be assigned the top position,

1 and everybody else would have to be moved down, or why
2 is -- why wouldn't the others just remain where they
3 were, and MAW go beneath them?

4 THE WITNESS: Your Honor, I thought the same
5 thing. And I went and I asked them. And they said
6 that their software determined it.

7 And then they -- Mr. Yanek's supervisor then
8 indicated to me in a meeting, that it would cost
9 \$200,000 to change the software. We offered to pay the
10 \$200,000. Because we were looking at several million
11 dollars of make ready, \$200,000 was an easy way out.
12 But they then came back in that same meeting and said
13 that they were not willing to change anything.

14 BY MR. WINTER:

15 Q So, in terms of the attachments, or the
16 attachment applications that had been submitted to
17 PP&L, did MAW subsequently perform any of that work?

18 A No.

19 Q Okay. What work was MAW performing?

20 A MAW was adding service drops to the network, to
21 the existing backbone network.

22 Q Okay, and just so I -- We mentioned it earlier,
23 but I'm just going to ask it again. Just what is a
24 service drop?

25 A A service drop is a connection from our network,

1 in this case the backbone network, and I believe the
2 backbone network is connected with specific cable
3 called drop cable, that is attached to a telephone
4 pole, or a pole, with a J hook and a clamp. And I have
5 a sample here if you would like to see it.

6 Q Okay. So again, you are saying primarily what
7 was happening was service drops?

8 A Yes, sir.

9 Q Okay. In terms of the network situation, you
10 had mentioned earlier LCSC the Lancaster Community
11 Safety Coalition; right?

12 A Yes, sir.

13 Q Okay. What is your -- or what was MAW'S
14 relationship to the Lancaster Community Safety
15 Coalition?

16 A Our relationship was, in the case of -- The City
17 indicated to us that the LCSC have their own
18 attachments along with the City attachments, and that
19 we approached the Lancaster Safety Coalition, and with
20 -- in cooperation with the City, and said that because
21 of our new agreement, the right thing to do was to
22 transfer the pole attachments to MAW.

23 Q All right.

24 A And then we; in fact, did that, and executed
25 that.

1 Q Okay, so -- And just to clear this up, if you
2 know, what is the Lancaster Community Safety Coalition?

3 A The Lancaster City Safety Coalition is an
4 organization that is established to create a safety
5 camera network throughout the City of Lancaster.

6 Q Okay, and the attachments that were formerly
7 owned by the Lancaster Community Safety Coalition, you
8 said those were transferred to MAW?

9 A Not all of the attachments.

10 Q Okay.

11 A Typically for a camera if it's attached to a PPL
12 pole, it requires at least three attachments.

13 The first attachment would be the network to
14 get the network there, the second attachment would be
15 the physical camera itself; and the third would be a
16 small box that would draw power from the power company,
17 and be a connection point for the fiber and for the
18 camera.

19 Q Okay.

20 A So we only took over the fiber connections.

21 Q Okay, and do you recall approximately how many
22 attachments did you take over from LCSC?

23 A Of the 743, I believe there were about 345 of
24 them.

25 Q Okay. Other than service drops, was there any

1 other work MAW was doing during 2016 - 2017?

2 A No, not on PPL's plan.

3 Q Okay. In terms -- In terms of the work that was
4 being done, there has been a lot said about the data
5 that was being collected by MAW during that period of
6 time.

7 A Yes, sir.

8 Q And the data that was being collected -- There
9 has been a lot of discussion about pole numbers. Were
10 pole numbers being collected as a standard piece of
11 information?

12 A In September, the types of connections you're
13 talking about, and the timeframe that you're talking
14 about, if we looked at our original J and Raise
15 process, when we went out there we looked at the
16 network, and we saw that in some cases the network,
17 with our 300 attachments, we went out and started to
18 trace them and find each camera, and we saw that there
19 were some pieces of missing information.

20 So we went back and said, no, what we need to do
21 is follow PPL's process at the time, which was I think
22 implemented with Katapult, where they would go out,
23 profile the pole, and take pictures, and measure each
24 one of the attachments. And then -- We did this before
25 we actually did any attachments.

1 That information we collected, and we collected
2 all the profile sheets, compiled it all together and
3 offered it to PPL when we were done in January, and
4 told them in April of 2015 -- This was all in 2015.

5 Q Um-hum.

6 A With that we would want to be finished and give
7 them their data, because we didn't have it as we were
8 doing it. As we were -- We were profiling the area,
9 and then build, and we had construction drawings, we
10 kept all of that profile information until we were
11 finished.

12 Q Okay.

13 A In terms of the service drops, because we don't
14 need a prior application, we were not counting or
15 keeping track of the poles. We knew what streets we
16 were on, but we did not have any specific pole
17 information --

18 Q Okay.

19 A -- for those streets, for the service drops that
20 we were doing.

21 Q Was there some particular reason that you were
22 not collecting pole identification information, or pole
23 numbers for service drops?

24 A We didn't believe we needed it.

25 Q Okay. And in terms of the work that was being

1 done, and I think Mr. Staboleski has referred to this
2 early this morning, was it all MAW employees doing
3 this, or were there contractors that were also working?

4 A Well, contractors were working with us, but they
5 were under our direction.

6 Q Okay, and to your knowledge, were the
7 contractors collecting these -- these pole numbers
8 either?

9 A No, sir.

10 Q Okay, and just so I'm clear about this, you had
11 stated that you did not believe that there was any
12 application required to do a service drop; correct?

13 A Yes, sir.

14 Q Okay, and we also -- We looked at paragraph 6.4
15 of the agreement earlier today. Are you familiar with
16 that paragraph?

17 A Yes, I am.

18 Q Okay, and I'm not going to have that brought up
19 now. Is that what you based that opinion on?

20 A Yes, sir.

21 Q Okay. Were you aware, or -- Were you aware
22 throughout any of this, of any change in policy by PPL
23 in relation to service drops?

24 A No.

25 Q Okay. In terms of meetings and communications

1 that you had with PP&L, did PP&L ever tell you of a
2 change in policy in relation to service drops?

3 A No, sir.

4 Q Okay. Let's be clear for the Court about this.
5 In terms of the pole information that had been
6 discussed in December of 2017, what information did you
7 have at the time of that settlement conference?

8 A At the time, we had old information which as of
9 this point was from 2014 and 2015 that we had collected
10 of the J and Raise process. We although at that time
11 -- by December at that time, that data was suspect.

12 We also knew what streets because we have a
13 geo information -- a geographical information system,
14 that tracks everything by coordinates. So we -- We've
15 got a -- We've got County data, from the County, that
16 was -- from 1990 was the freshest. That included poles
17 as well. They were geo located poles. However, there
18 was no information at all, just physically where the
19 physical pole was, no whose it was, or anything else.

20 So we looked back and tried to say, is there
21 any way -- We tried to go through categories to see if
22 we could get the data, to do it that way. We
23 recognized, no, there was no way we could get the data
24 on the streets that we were doing service drops on.

25 So the only way to present the data to PPL was

1 on streets, by street, a hundred blocks, because that's
2 all we knew. We knew where our network was. We didn't
3 what poles they were on.

4 Q Let me be clear about that. There was a series
5 of meetings next door in the conference room; correct?

6 A Yes.

7 Q Okay. And when we were in those conference
8 rooms, did you have discussions either with Mr. Gorter,
9 or with PP&L representatives, about what information
10 you had available?

11 A Yes.

12 Q Okay. What -- What did you tell them?

13 A I told them that we did not have pole numbers.
14 We weren't sure what poles we were attached to.

15 Q Okay. Did you tell them anything about
16 attempting to obtain that information?

17 A Well, I agreed to try to -- that we could put
18 something together within the next two days, which is
19 -- We wanted much longer, but they asked us to -- They
20 said what could you do in two days? Can you provide us
21 information? We had -- We said yes.

22 And that's what we did. We provided what we
23 had. What we knew we were absolutely sure we could
24 give them, and be accurate on, was each hundred block,
25 because that's all the information we had.

1 Q Okay. And to the best of your knowledge, did
2 you provide PPL with all street information that you
3 had?

4 A Absolutely. I just learned today that they said
5 seventeen streets. I've never heard that before, that
6 we were missing any data up until now.

7 Q Okay. In terms of attempting to obtain this
8 pole number information, how do you go about trying to
9 to obtain that information?

10 A Well, since we began, the first thing we did was
11 we looked at their existing lists. They mentioned they
12 sent us two lists in the beginning, with the PUC, and
13 then another after.

14 We started going through this list and trying
15 to compare, and we find out, you know, what were these
16 poles. So we had to do the same thing PPL did, and
17 that's to go out and look at each one of the poles.
18 And that's what we started the process of doing. We
19 have been trying to stay on top of it. PPL has been
20 sending us lists almost every other day at one point.

21 Q Okay.

22 A Until I got to the 500 -- Well, we saw 499
23 unique poles that they had brought into question --

24 Q Okay.

25 A -- over the last several months.

1 Q There has been testimony earlier today about the
2 online application, or the online portal.

3 A Katapult.

4 Q All right. And -- Are you familiar with that?

5 A I'm familiar with the application. I have never
6 actually used it myself.

7 Q Okay. Did you have someone attempt to get pole
8 data information for you?

9 A Yes.

10 Q Okay, and tell the Court what happened with
11 that?

12 A Well, before you -- The first thing is, you
13 can't -- Katapult is based on -- You probably have the
14 profile sheet somewhere in front of you, that you have
15 been out in the field, and you collected all the data.
16 Because the first thing is, you log in and right after
17 you log in, the first thing it asks you is the pole
18 number. So if you don't have a pole number, or place
19 to start, that's all you get.

20 Once you do have that pole number, until you
21 move -- You can move and see one pole over if you move
22 the cursor over to see the next pole, but there is no
23 other information beyond that. So we would have had
24 to go pole by pole, and the problem is if there was no
25 -- There is a thing called metadata. Metadata is a

1 term that applies with electronics today, where you
2 have a piece of information, like in photographs.

3 The metadata for photographs could be where it
4 was taken, the date, all of those other -- the type of
5 image, what camera it was taken off of, all kinds of
6 things like that. In the case of poles, there is a lot
7 of metadata that is available in Katapult, which
8 includes as they have shown on their screens, location
9 information of each attacher, all of that. None of
10 that information is available at all. All you get is
11 an I.D. And in our case, our entire database, was geo
12 located.

13 So when you look at pole streets -- you look at
14 the streets, you can't tell which pole is which, unless
15 you have an exact geo location to know where that pole
16 is. We didn't have that information, so -- And we
17 couldn't get it from Katapult, because Katapult doesn't
18 have it. You can click on the pole and say there is a
19 pole, but you don't know if there is another pole right
20 next to it, or how far away it is, any of that stuff.
21 So we didn't know what we were attached to at that
22 point, because we were counting service drops, and
23 Katapult did not help us.

24 Q Did you provide all the information you have as
25 to pole locations to PP&L?

1 A Yes.

2 Q Is there anything now from looking back, that
3 you may have forgotten about, anything that may have
4 been withheld in some way?

5 A I'm concerned about the seventeen streets, that
6 somehow we missed that. Because I don't believe -- I
7 didn't -- I don't know how we did that. Because our --
8 according to our database, we knew what streets we were
9 on, we knew what customers we were providing to. I
10 don't know how those seventeen streets got through.

11 Q Well, let me ask this, in terms of the plan for
12 going out and setting up this network, how were the
13 locations that you deployed to, selected?

14 A Well, we started with -- Basically, you started
15 with initially letting the community know we were
16 there. We did that through just recording the City
17 Council meeting. We ended up with 2000 entries over
18 the next three or four months, with people reaching to
19 our website requesting service.

20 So we took that, and we created again using our
21 geo database, mapped each one of those locations, and
22 end up with a heat map, what's called a heat map, which
23 is a concentration map showing where the concentration
24 of users were. We took that and we --

25 THE COURT: Prospective users.

1 THE WITNESS: Yes, sorry. Prospective
2 users, customers.

3 And we used those concentration, and worked
4 with the City to work with a system to systematically
5 work through the area. We picked the northwest to
6 start.

7 BY MR. WINTER:

8 Q Okay. As of today, how many customers does this
9 network have?

10 A On the Land City Connect side, the residential,
11 or the fiber to the home and business section of the
12 project, there is a little over 300. I believe it's
13 320.

14 Q Okay, and in terms of those, if you can give an
15 approximation, how many of those are business; how many
16 of those are residential?

17 A Probably 90, 95 percent of them are residential.

18 Q Okay.

19 A We are not necessarily focused on the business
20 right away.

21 Q Okay. In terms of the businesses, are there any
22 significant businesses that use the network?

23 A Yes.

24 Q What are the significant businesses?

25 A There is health care services, and some small

1 businesses that are on our network. The health care
2 services has five or six offices throughout. They
3 provide non-profit -- or low income medical services.

4 Q Okay, and I believe we had also discussed at one
5 point -- Are there any hospitals on that network?

6 A Yes, one of the -- One of our other contractual
7 clients is a hospital. And the hospital that has been
8 working with us to extend their network, and add
9 additional connectivity.

10 Q All right, Mr. Wiczkowski, have you reviewed the
11 various code and safety issues, contractual issues that
12 have been raised by PP&L?

13 A Yes, sir. Although it seems there may be new
14 information we are learning today.

15 Q Okay, and in terms of those, I mean, I think
16 it's fair to say that those issues fall into, I think
17 there are some different buckets, or broad categories;
18 correct?

19 A That's correct.

20 Q Okay. In terms of the issues, in terms of the
21 safety clearances, what do you know about the safety
22 clearance issues?

23 A Well, what we now know is, is that PPL is
24 talking, and saying that; for example, in their spread
25 sheet, this connection is greater than -- You know, it

1 needs 40 inches from power.

2 There has never been an NESC reference to come
3 back and say, this is the reference we're specifically
4 using. Especially because the type of cable we're
5 using is service drop cable, manufactured by Corning.
6 And it's all dielectric self supported. All dielectric
7 means it will not conduct any form of electrical
8 signals.

9 Q Okay. So is your understand that the dielectric
10 cable is different than other types of cable?

11 A Yes, sir.

12 Q Okay. And you started to go into it, but I'm
13 going to ask you to get into as much as detail as you
14 can. Explain the difference to the Court.

15 A Sure. A standard cable -- a standard fiberoptic
16 cable can have an aluminum sheath inside it. So it
17 starts with a strength member that's typically an
18 Aramid, or Kevlar kind of material, and fiberglass,
19 as well, mixed together. So it's going to be very
20 strong.

21 The fiber is there, which is made of glass, and
22 plastic surrounding them to separate them, and manage
23 them, and it's called a loose buffer, because they are
24 allowed to slide in to buffer. And it gives it
25 flexibility to allow the cable to be flexed, and not

1 breaking it, since it's glass.

2 That is the initial cable. That type of cable
3 typically requires what's called a messenger. A
4 messenger is quarter inch strand steel cable that will
5 go from pole to pole to connect -- to provide basically
6 a path to allow you to support the fiberoptic cable.

7 And as we learned earlier today, you take a
8 wire that is very small, not much bigger than -- much
9 wider than a hair almost, which is called lashing wire,
10 which you then wrap around the cable as it moves.

11 So you lay up the cable, and then you take the
12 steel cable, the fiberoptic cable -- sorry -- and then
13 you wrap this wire around it, which lashes it, and then
14 it bonds the cable to the messenger. That is what we
15 would call the through bolt connection, because to
16 support that you have to go through the pole to attach
17 it and get the maximum strength.

18 In the case of an all dielectric self support
19 cable, it weighs significantly less, it has no strand
20 requirement, because it's self supporting. That's what
21 they call ADSS. It's all dielectric which means not
22 conducting any electricity whatsoever, and then self
23 supporting, which means it doesn't require any
24 messenger to hold it up.

25 Q Okay.

1 A So all dielectric self supported cable has
2 different NEC requirements because of that.

3 Q Okay, and then to be clear about this, the big
4 safety concern has been possible electrocution?

5 A Yes.

6 Q Due to the dielectric cable, is there a risk of
7 electrocution involving a dielectric cable?

8 A No.

9 Q And that is because it does not conduct
10 electricity?

11 A Yes.

12 Q Okay. Is your understanding that -- What is
13 your understanding how the National Electric Safety
14 Code deals with dielectric cable?

15 A It deals with that the same as it does with
16 what's called a neutral. A neutral connection is what
17 would typically be a ground connection on a pole, which
18 means that -- It's kind of like this, electricity, just
19 like you see when a lightening bolt strikes, it seeks
20 the ground. It seeks the lowest potential for it to
21 equalize the charge energies between the two.

22 In this case of lightening, it would be the sky
23 and the ground, and then anywhere else, a neutral would
24 be taking one of the high voltage lines Mr. Yanek
25 talked about, and putting that to ground. And that

1 could be effectively what -- how you could look at it
2 as neutral.

3 Q Okay.

4 A Although, in some cases, depending on how the
5 situation is, and the type of voltage, neutral can be
6 separated from ground.

7 Q So how do you become aware that PP&L has a
8 different interpretation of the National Electric
9 Safety Code than you do in relation to dielectric?

10 A Yes, and we not -- we have passed over and over
11 again to get any specifics whatsoever about the
12 National Electrical Safety Code violations they say
13 were stated, other than giving us 40 inches of
14 clearance, so that we can go back and reference it and
15 see where they were saying that. And we couldn't find
16 it because --

17 THE COURT: Go ahead. You can finish your
18 answer.

19 THE WITNESS: Because I don't believe that
20 it exists, from what we saw. Our professional
21 engineers said the same thing. We looked at it and
22 said --

23 MR. D'AMICO: Objection, Your Honor.

24 THE COURT: Hearsay?

25 MR. D'AMICO: I have allowed him to testify

1 like -- He wants you to think he's a professional
2 engineer, and he's not. Now he is representing what he
3 says, I've consulted professional engineers --

4 THE COURT: Well, his professional
5 engineers, I don't know if they are in house or not.

6 MR. D'AMICO: Ask him. I think we better
7 lay a foundation.

8 MR. WINTER: Okay. And again -- Okay, so
9 what's he looking for, the foundation of who he talked
10 to?

11 THE COURT: Well, I think so. Because if
12 it's an outside, it could be hearsay. If it's within
13 his purview, or he is the supervisor, then it would be
14 admitted.

15 MR. WINTER: Okay.

16 BY MR. WINTER:

17 Q Who have you consulted in relation to the --

18 A **Robson Forensic R-o-b-s-o-n.**

19 MR. D'AMICO: The trial experts.

20 THE COURT: Pardon me?

21 MR. D'AMICO: The trial expert firm.

22 MR. WINTER: Well, no, they are -- They are
23 professional experts, they don't do just trial work.

24 BY MR. WINTER:

25 Q And so you put -- In addition -- Let me put it

1 this way --

2 THE COURT: We will strike the editorial
3 comment.

4 MR. WINTER: I'm sorry, Your Honor?

5 THE COURT: We will strike Mr. D'Amico's
6 editorial comment.

7 MR. WINTER: All right.

8 BY MR. WINTER:

9 Q Mr. Wiczkowski, the opinion that you just
10 stated, is that your own opinion?

11 A **No. It is my own opinion, and Robson Forensics.**

12 MR. D'AMICO: Objection.

13 THE COURT: His opinion, overruled. The
14 outside opinion, sustained.

15 MR. WINTER: All right.

16 MR. D'AMICO: Thank you.

17 BY MR. WINTER:

18 Q And again, to be clear, how long have you been
19 working with, I guess utility poles, and utility
20 wiring?

21 A **Since -- So that's 27 -- Just one moment --**
22 **32 years.**

23 Q Okay, and during that time, have you had the
24 opportunity to observe various type of utility poles,
25 with various types of wiring?

1 A **Yes.**

2 Q Okay, and in terms of how often you deal with
3 it, how often do you deal with utility poles and wiring
4 issues? Is this something you deal with once a week,
5 once a month, once a year, how often?

6 A **Well, under normal circumstances it's not that**
7 **much. It's something that the company deals with, but**
8 **it's not something I personally deal with on a daily**
9 **basis.**

10 Q Okay. But how often are you dealing with it?

11 A **Unless there is need, or supervision, not often.**

12 Q Okay. Is it fair to say that you disagree with
13 PP&L as to their safety concerns in relation to the
14 dielectric cable?

15 A **Yes.**

16 Q Okay, are there any other aspects of PP&L'S
17 safety concerns that you disagree with?

18 A **Yes.**

19 Q Can you tell the Court what else you disagree
20 with?

21 A **Well, most of their violations that they report**
22 **about are related to street lights. The street lights**
23 **are -- The street lights are all about being grounded.**
24 **The city is purchasing those street lights. So PPL has**
25 **to have those lights grounded before that sale happens.**

1 So that's a factor that's into play.

2 The other part that we've noticed was, through
3 this -- the safety aspects, that the City -- the light
4 space -- When Ryan Yanek had -- or one of their
5 professional -- their engineer, their PE, had that
6 picture up that showed the safety zones, the street
7 lights are actually located now, in the communication
8 space.

9 That's what caused the NEC to change the plan,
10 because they recognized that the communication space
11 includes the street lights, and since that cannot
12 change, the only way to make it safe for all workers,
13 outside of just communication workers, but all workers,
14 was to ground the street lights. So that's an issue
15 that we saw, that's from the beginning.

16 Also, the NESC also has rules that say that
17 because their rules change, and it takes time to adopt,
18 there is also what is called a grandfather clause that
19 allows you to work to the previous standard before, so
20 that it takes time to eventually implement that new
21 standard.

22 The other part that is most important, I think,
23 is they claim that there was public safety, where none
24 of our connections are -- It's ADSS cable that we
25 used --

1 Q I'm going to have to stop you there. What is
2 ADSS now?

3 A All dielectric self support cable.

4 Q Okay.

5 A That is extremely light, so there is very little
6 load, if any, to it -- to the poles at all. And it
7 creates a network with very little problem, and very,
8 very, very little safety risk, because it does not
9 conduct any electricity whatsoever.

10 Q Okay. Are there any other aspects of their
11 safety concerns that you want to address at this time?

12 A Another one is the splice cases. If we can --
13 All we had to do would be to move the splice cases
14 down. That would take us several minutes. And Mr.
15 Yanek indicated that --

16 Q You know what, let me stop you there, because I
17 don't think that's been explained. What is a splice
18 case?

19 A A splice case can be considered a piece of
20 equipment. It can be considered a cabinet or
21 enclosure. It's an enclosure that holds the body
22 that's called a pas -- in our case, a passive optical
23 network body called a splitter, where you take signals
24 that come in, and it joins them to a common signal.
25 So that is encased inside a plastic case, and

1 then its attached with the straps that are called
2 Deltec straps. All of these straps and everything else
3 is all dielectric. So there is no metal that is used
4 to attach these. They are -- Deltec straps are very
5 strong, and are used as an industry standard for all
6 kinds of things.

7 Q Okay. So in terms of the concerns about splice
8 cases, are you agreeing that those -- there were
9 legitimate concerns, or are you not?

10 A I am agreeing that there were legitimate
11 concerns because they were installed not per our
12 specifications. They were supposed to go below the
13 communication space. Instead, they ended up at a
14 higher point, and all they really need to do is to be
15 lowered.

16 Q And to keep this moving, we had previously
17 looked at page -- Bates page 61 of the contract, and --
18 In fact, we had that up on the screen with Mr. Yanek.
19 Do you remember that?

20 A I'm not sure, sir.

21 Q Okay.

22 MR. WINTER: It's already been marked. So
23 if I can just show him the page, I think that may help,
24 Your Honor.

25 THE COURT: Oh, I'm sorry. I was waiting

1 for you.

2 MR. WINTER: Oh. I'm sorry, Your Honor --

3 THE COURT: I'm waiting for you. I'm just
4 paging through the contract.

5 MR. WINTER: Okay. I just wanted to
6 approach and show him what's already marked.

7 THE COURT: Sure.

8 BY MR. WINTER:

9 Q Sir, I'm showing you what has been marked as
10 Plaintiff's -- I guess Bates Stamp page 61?

11 A Yes, sir.

12 Q Okay. Is that a page that had been reviewed
13 previously?

14 A Yes.

15 Q Okay. How does that page, in your estimation,
16 relate to splice cases?

17 A I believe it's a cabinet, because it is holding
18 a device that is allowing us to terminate these cables.
19 It's a splice case, or a cabinet enclosure, or an
20 equipment enclosure, any way you look at it. That's
21 what -- a splice case is actually called a closure.

22 Q Okay. So in terms of this, when you instructed
23 your employees as to how to put up splice cases, was
24 that page within your awareness?

25 A Yes.

1 Q Okay, and in terms of the instruction that you
2 gave your employees as to how to locate splice cases,
3 what did you tell them?

4 A I told them that they should be at the lowest
5 point of the communication space.

6 Q Okay. Did you become aware of some cases in
7 which the splice cases were not at that location?

8 A Yes.

9 Q Okay. And do you agree that those need to be
10 remedied?

11 A Yes.

12 Q Do you know how that occurred?

13 A Yes, sir.

14 Q Okay, and basically, how did it occur?

15 A It occurred by Mr. Staboleski ignoring, and
16 doing exactly the opposite of what I told him to do.

17 Q Okay, and as part of you -- As part of you being
18 the President of MAW, were you out at these job sites?

19 A No.

20 Q Okay, and generally how often were you in the
21 field, dealing with this?

22 A Once a month, maybe once, on average.

23 Q How many people did you have in management
24 positions that were supposed to be supervising this?

25 A There was Mr. Staboleski, myself, and several

1 other team members were overall working together, as
2 well as the construction workers.

3 Q Okay, and in terms of subcontractors, how many
4 subcontractors were working on this project?

5 A About five, total.

6 Q Okay.

7 A Construction, physical construction was a lot
8 more limited, because most of it was -- you know, one
9 or two of them were splice -- splicers, things like
10 that, really didn't build physical network. They were
11 just splicing.

12 Q In terms of the subcontractors, were you giving
13 them specific instructions as to how to do their jobs,
14 or were you just kind of saying, you're qualified, go
15 ahead and do it?

16 A We made clear that they needed to comply with
17 all industry standards, and perform the work in a
18 workman-like manner, including any NESC standards.

19 Q Okay. All right.

20 Mr. Wiczkowski, did MAW go ahead and
21 intentionally violate any terms of the contract with
22 PP&L?

23 A No.

24 Q Okay. In terms of contractual violations that
25 have occurred, you are admitting there were some

1 problems that did occur; correct?

2 A Yes.

3 Q Okay. Does MAW want to take responsibility for
4 those?

5 A Yes.

6 Q Is MAW willing to go through, and pay for those,
7 or again, follow appropriate procedures to correct any
8 of those errors?

9 A Yes.

10 Q Okay. And is it MAW's hope to proceed with this
11 project and cooperate with PP&L in doing that?

12 A Yes.

13 MR. WINTER: I believe that's all I have,
14 Your Honor.

15 THE COURT: Cross-examination?

16 MR. ALBERT: Excuse me, Your Honor, if I
17 may, counsel?

18 Your Honor, before counsel begins his
19 cross-examination, I would note that the City of
20 Lancaster would want to question the witness at the
21 appropriate time, regarding whether the City of
22 Lancaster has any legally enforceable interests in this
23 matter. I believe the witness can testify about that.
24 I can wait to another part of the case, or I can --

25 THE COURT: Why don't you do it now, and put

1 it on the record.

2 MR. ALBERT: Thank you.

3 MR. D'AMICO: This is subject to my
4 continued opposition to the intervention, Your Honor.

5 THE COURT: I understand.

6 No, you may go ahead.

7 MR. ALBERT: Thank you.

8 THE COURT: You may go ahead, I just -- Mr.
9 D'Amico just wanted to make sure the record reflected
10 the fact that he's opposed to this.

11 MR. ALBERT: Oh. No, I understand. Thank
12 you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. ALBERT:

15 Q Okay, sir, you mentioned that the Lancaster
16 Community Safety Coalition had existing cable -- an
17 existing fiberoptic network when you acquired that
18 system?

19 A Yes.

20 Q Okay, and you conducted a procedure on this
21 called the J and Raise, to move it?

22 A Yes.

23 Q Okay, and it was moved from its existing
24 location to a new location on various poles, including
25 PPL poles?

1 A Wherever possible it was located immediately
2 adjacent to it, within four to six inches.

3 Q Okay, and was that system, the old cabling, the
4 multi-mode cabling, is that left in a functional
5 condition?

6 A Yes.

7 Q It was simply relocated?

8 A Yes.

9 Q Okay. And you mentioned -- You mentioned as far
10 as the Safety Coalition, 700 -- that MAW took over 345
11 of the 743 cameras, or is that -- or what?

12 A No. Those were pole attachments.

13 Q Pole attachments?

14 A And it was an approximate number.

15 Q Okay. Pole attachments is different from
16 cameras?

17 A Yes, sir.

18 Q They were simply -- They are cable attachments
19 on 743 poles; you took over 345 of those?

20 A Yes, sir.

21 Q And you relocated them on those poles?

22 A Yes, sir.

23 Q Okay, and I assume the rest were not relocated,
24 or --

25 A The rest?

1 Q Or were they all relocated?

2 A You mean like the physical camera, or anything

3 else belonging with that attachment?

4 Q Yes, sir.

5 A No, sir. We did not touch them.

6 Q Okay. Is there an inter-connection between some

7 of the cameras and the City traffic signaling system?

8 A Yes. They are intermingled.

9 Q Explain that to the Court.

10 A Well, in a lot of cases, some intersections are

11 not only a safety concern, but also a legal concern

12 where, you know, you want to have the camera there to

13 monitor what's going on --

14 THE COURT: Potential crime?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay.

17 THE WITNESS: So in a lot of cases cameras

18 and both -- and traffic signals are mounted on the same

19 structure, or very close to each other.

20 BY MR. ALBERT:

21 Q Okay, and if the connection to the Safety

22 Coalition camera was terminated, that would terminate

23 the -- that would interfere with the signalization of

24 those intersections?

25 A Yes.

1 Q Do you know -- Do you have an idea of how many
2 intersections, or how many lights are affected -- are
3 cross connected that way?

4 A Well over a hundred.

5 Q Okay. You also mentioned in addition to the
6 Safety Coalition cabling, that the City of Lancaster
7 had its own separate system for signalization of
8 traffic signals?

9 A I'm sorry?

10 Q Okay. In addition to the Lancaster Community
11 Safety Coalition system we talked about, you also
12 talked about -- Well, maybe I misunderstood your
13 testimony.

14 Would there -- Is there a completely separate
15 system for the traffic signalization, or is it all
16 together?

17 A Well, they are really all together in that they
18 are overlaid together in this common network, and in a
19 lot of cases, common locations as well. But it was the
20 common network throughout that provided that, both
21 traffic and the LSC.

22 Q Okay. When you say common network, are these
23 two cables like joined together, wrapped together, or
24 is it in one cable?

25 A No, sir. It's a question of -- It's a

1 combination of all of that. In some cases, some of the
2 cables, some of the fibers are -- Like on our backbone,
3 we will have 96 or 144 fibers. So a connection will
4 leave a local camera that may come up on 12 fibers, and
5 then attach to the backbone network, go through the
6 backbone network, and come out to the new location.

7 The same is true with the LSC's network. That
8 was true as well. Some of the connections were -- In
9 other words, certain sections of the network had many
10 cameras in a single cable.

11 Q Yes, and what about traffic signals?

12 A Traffic signals were also riding potentially in
13 the same cables. They just were diverted to City Hall
14 versus to the Coalition.

15 Q So looking at a piece of cable, you can't tell
16 to what extent any particular section of this old --
17 the older cable is going -- is running a traffic signal
18 versus running a camera --

19 A That's correct.

20 Q -- versus doing something else?

21 A That's correct.

22 Q Okay.

23 And when you talk about the J and Raise
24 configuration, you raised both -- all the -- all of
25 those cables, both cable systems, all of that got out

1 of the way.

2 A Yes, sir. It's really -- To us we saw it as one
3 system. When you are attached to a pole, it's still
4 one system whether it's, you know, multiple cables
5 lashed together, or one cable in joint use.

6 Q Okay. What happens if your -- if that system
7 were to be disconnected?

8 A It would cause havoc in the City.

9 Q Well, can you be more specific?

10 A Well, you can't remote control or have any
11 control over the traffic. The traffic controllers
12 themselves communicate with the slave intersections.
13 All of that will get interrupted, as well this -- the
14 Lancaster Safety Coalition.

15 Q Okay.

16 Does the -- Does your -- Does your new system
17 provide any exclusively municipal services? Is there
18 anything you're doing for the City that involves PP&L
19 poles on your new system?

20 A Yes. And that is the advanced metering
21 infrastructure, as well as WIFI connectivity down town,
22 as well as public works projects that are, again,
23 taking data from codes, being able to get that out,
24 connectivity between buildings, connectivity between
25 city locations.

1 Q Okay. To what extent is that operative as of
2 today, right now --

3 A Well, most of it --

4 Q -- as affecting the City?

5 A Most of the -- I just have to think a moment,
6 sir.

7 Q Yeah.

8 A Most of the city facilities are connected, and
9 are relying on our connections to communicate,
10 including the police department and County
11 connectivity.

12 Q Can you be more specific on what that means?

13 A Well, that means City Hall administration, and
14 all of their connections, both to the Internet and to
15 their administrative services, which are serviced by
16 the County, out sourced, we provide that connectivity
17 from City Hall to the County.

18 And in the case of the police department, there
19 is a voice over IP system that is operating throughout
20 the City. That voice over IP system is also located in
21 the police department. So other than police
22 connectivity, we are also providing connectivity
23 between the locations to provide voice services as
24 well. Connectivity.

25 Q In other words, the phone line is actually going

1 over the internet to use a lay person's --

2 A Well, you would say the Internet, but it's not
3 really the Internet. It's a private -- a private
4 circuit between -- a fiberoptic private circuit between
5 a location in the city -- in this case; for example,
6 City Hall, and the police department, and it's a --
7 what is called -- Once you have light passing through a
8 fiber it's called photons, and once you have -- we
9 provide photonic connectivity, which means point to
10 point connections in one form or another.

11 THE COURT: So this is your 911 facility;
12 for example?

13 THE WITNESS: Not necessarily, but the
14 police department -- I don't know if they are doing 911
15 services, but they rely on County and municipal
16 services for both administrative, as well as their
17 duties enforcing.

18 THE COURT: And when you say the photons go
19 from one point to another, does that mean, in my terms,
20 it's a closed system, it's not on the Internet?

21 THE WITNESS: That's correct, sir.

22 BY MR. ALBERT:

23 Q Okay, are there any other ways in which -- As of
24 right now, not talking about what is planned for the
25 future --

1 A **I understand.**

2 Q -- but if you had to shut down today, other ways
3 in which municipal services are affected?

4 A **Well, I'm just thinking, we discussed pretty**
5 **much all of them. And I already said, it would cripple**
6 **the City.**

7 MR. ALBERT: That's all.

8 THE COURT: Mr. D'Amico?

9 CROSS-EXAMINATION

10 BY MR. D'AMICO:

11 Q So we're talking about some critical services
12 that you believe you provide the City through your
13 network; correct?

14 A **Yes.**

15 Q And in 2015, isn't it true, you did not have a
16 single permitted attachment in the City of Lancaster
17 with respect to PPL?

18 A **That's correct.**

19 Q Okay, and you began attaching and overloading on
20 the network of the City of Lancaster in 2015?

21 A **Could you say that again, sir?**

22 Q Isn't that what you testified to, you began
23 overloading and attaching to the City of Lancaster's
24 network in 2015?

25 A **Yes, sir.**

1 Q And you run service drops from the network, from
2 the City of Lancaster, that you started utilizing in
3 2015?

4 A Yes, sir.

5 Q Okay. Let's take a look at the contract.
6 You were asked about, by your counsel, Section 6.4.

7 MR. D'AMICO: If we could go to Exhibit 1,
8 page 14, Mr. Chapman?

9 BY MR. D'AMICO:

10 Q By the way, do you question -- You admit that
11 you signed the attachment agreement with PPL; did you
12 not?

13 A Yes.

14 Q And Exhibit 1 is a true and correct copy of the
15 attachment agreement you signed in 2003 -- 2002,
16 effective 2003?

17 A I'm assuming it is.

18 Q Okay.

19 MR. D'AMICO: Your Honor, with reference to
20 the pleadings, they have admitted to it. If we could
21 go to section 6.4.

22 BY MR. D'AMICO:

23 Q I will read it out loud for you. You tell me if
24 I get it right.

25 With the exception of service drop attachments

1 and lashing attachments to licensee's own cable, no
2 initial or additional attachment is allowed on a PPL
3 pole without prior submission of an attachment
4 installation application, and PPL'S subsequent written
5 authorization. You don't have either of those; do you,
6 sir?

7 A Service drops did not occur until 2016.

8 Q It wasn't on your cable, was it, sir? Unless
9 it's new unauthorized cable; correct?

10 A Our service drop cable does not -- is not
11 necessarily on the same poles as our backbone cable, if
12 that's what you're trying to say.

13 Q Well, you didn't have anything prior --
14 Overlashing, whatever you did in 2015, and everything
15 since then, you've done without permission from PPL;
16 isn't that correct?

17 A No.

18 Q You haven't -- You haven't run service drops?

19 A Well, we hadn't notified them -- had PPL told us
20 that we were not authorized -- not until just recently.

21 Q Okay. Let's go to page -- You're saying you
22 didn't realize you had to go through an attachment
23 application to install assets, new build in the City of
24 Lancaster? Is that my understanding of your testimony?

25 A No, sir. That is not.

1 Q Okay. Because you agree you are supposed to
2 submit applications to PPL when you want to bring
3 something new into the -- into the network?

4 A No, I don't

5 Q Don't you?

6 A It depends on the type of attach -- type of
7 attachment.

8 Q Well, you couldn't attach to your own cable for
9 a service drop or lashing, because you didn't have any
10 in 2015?

11 A We didn't add -- didn't have any service drops
12 in 2015.

13 Q Yeah, but you lashed; didn't you?

14 A No. We didn't lash.

15 Q Isn't that what you testified to earlier?

16 A No, sir.

17 Q Okay. And then -- Obviously then, you can
18 produce to us permits to show that you were allowed to
19 build and install the new network within the city?

20 A We have the Lancaster Safety Coalition permits
21 that --

22 Q Okay. You don't have --

23 A -- permit the original --

24 Q -- the MAW Communications permits do you, sir?

25 A I'm sorry?

1 Q You don't have a single MAW Communications
2 permit from PPL with respect to the issues we were
3 discussing today, do you, sir?

4 A **No.**

5 Q Okay, but you knew you were supposed to seek
6 permits for much of the work you were doing; didn't
7 you, sir?

8 A **It depends on the type of work.**

9 Q Okay. Well, if you're attaching -- If you're
10 attaching a service drop to a new line, you've got to
11 get permission to run the new line before you can
12 attach the service drop to it; don't you agree?

13 A **Yes, sir.**

14 Q And you can't produce any new line permits for
15 us; can you, sir?

16 A **We assumed existing attachments from the
17 Lancaster Safety Coalition.**

18 Q Sir, those weren't your attachments, were they?

19 A **Not in the beginning --**

20 Q You didn't own them?

21 A **-- no.**

22 THE COURT: One at a time.

23 BY MR. D'AMICO:

24 Q You didn't own them; did you?

25 A **No, sir.**

1 Q So you are attaching to other people's property?

2 A **No. We got approval from the Lancaster Safety**

3 **Coalition to transfer the pole attachments to MAW.**

4 Q After the fact; isn't that true, sir?

5 A **No, sir.**

6 Q Now, let's go to section 6.1 of the agreement, I

7 believe.

8 Would you agree that that explains the

9 attachment installation process that you're supposed to

10 go through with PPL?

11 A **It depends on the attachment.**

12 Q Would you agree with me that there is a process

13 explained in your contract that you have to follow if

14 it's -- if it's a new attachment?

15 A **Yes.**

16 Q Okay, and would you agree with me that you did

17 not do that, sir, at all, with respect to the City of

18 Lancaster --

19 A **No.**

20 Q -- any of the work?

21 A **No. Because we did submit applications when it**

22 **came time for new work in January of 2016.**

23 Q And that lays out the process that Mr. Yanek

24 described earlier where there has to be some make ready

25 engineering; correct?

1 A **Yes.**

2 Q And then you get presented the make ready
3 engineering work order and invoice; correct?

4 A **Correct.**

5 Q And you didn't like that?

6 A **I wouldn't say that I didn't like it. I would**
7 **say that I thought economically it did not seem**
8 **feasible.**

9 Q Okay. So you decided you would just drop it and
10 proceed from there?

11 A **No, sir.**

12 Q Would you agree with me that -- You keep
13 testifying you installed to industry standards. That's
14 not the measure here; is it, sir?

15 A **I think the measure is the National Electrical**
16 **Safety Code Standards, the FCC Standards, PUC**
17 **Standards, and the PPL Standards.**

18 Q Okay, and if we can go to Exhibit 10 -- Bates
19 Stamp 10, of Exhibit 1.

20 Would you agree with me that this is the section
21 of your contract that lays out the specifications and
22 safety of attachments?

23 A **I do.**

24 Q And if we turn to page 11, Section A, would you
25 agree that -- You would agree that you would adhere to

1 the National Electrical Safety Code, including all
2 current and future supplements?

3 A Yes, sir.

4 Q In adjusting down, you would adhere to PPL's
5 written communication cable attachment specification,
6 attached hereto as Appendix D, and as amended from time
7 to time?

8 A Yes, as long as it doesn't conflict with the FCC
9 or any of the other higher orders that control those
10 kinds of aspects, yes, sir.

11 Q Well, fortunately the contract provides what
12 happens in that instance; does it not, sir?

13 A I don't know. Does it?

14 Q Well, why don't you read out loud, this
15 paragraph here, where it begins, where.

16 A Well, that's for a more stringent --

17 Q Let's read out loud --

18 A -- that's not necessarily another issue --

19 Q Why don't you read out --

20 A -- it indicates if more stringent, it looks like
21 PPL standards prevail.

22 Q Okay. So you agree that if there is a more
23 stringent standard between the code and PPL, you have
24 to adhere to what PPL wants?

25 A Per the agreement, yes.

1 Q Because it's its property?

2 A **Per the agreement, yes.**

3 Q Because it's its -- It's PPL's property that you

4 want to attach to; is it not?

5 A **Per the agreement, yes.**

6 Q Sir, you gave a lot of technical data discussing

7 how the City system allegedly works, or might be

8 impacted. How would you know that without knowing

9 where you have attached to, and where the City is

10 attached to by identifying a pole?

11 A **We know where we are attached to. We told you**

12 **where we were attached to on all the streets, in all**

13 **the hundred blocks.**

14 Q Well --

15 A **We know where our network is.**

16 Q Yeah, so -- And I also understand you testified

17 that you had geo data information available to you at

18 all times, latitude and longitude; correct?

19 A **We had a geo information database.**

20 Q And you didn't provide that within two days of

21 our --

22 A **Because the database was not --**

23 (Whereupon, the court reporter asked Mr.

24 D'Amico and the witness to speak one at a time.)

25 THE WITNESS: My apologies.

1 BY MR. D'AMICO:

2 Q You talked a lot about J and Raise. You would
3 agree that you were installing new cable in place of
4 the old cable; correct?

5 A Yes.

6 Q And you need an application and a permit for
7 that; don't you?

8 A We need to notify PPL. It did not seem that
9 there was a permit per the application. We needed to
10 notify them per the form. We notified PPL, but we did
11 not use the form.

12 Q Where is the notification of where you were
13 doing the J and Raise throughout the City? Where is
14 the -- If you don't think you even had to do an
15 application, and get a permit, so they can analyze in
16 engineering what you were doing with it, where is the
17 information where you told them what you were doing,
18 and when you were doing it?

19 A It was in an e-mail communications, and verbal
20 communications with Mr. William Klokis --

21 Q You would agree --

22 A -- of PPL.

23 Q -- that there is no provision in the contract
24 that provides, hey, I can send you an e-mail, or give
25 you a call and tell you generally what I want to do;

1 correct?

2 A Yes. However, normal customary standard
3 practices were that this occurred, especially on such a
4 major project, that they were available and they were
5 actually -- Mr. Klokis was excited that we were working
6 with him, because he knew that we were -- we were a
7 telecommunication carrier in good standing with PPL
8 over the last 20 years. Because we had also provided
9 service and worked with them in network, back up in
10 Reading ten years earlier. PPL hired us to build a
11 network for them.

12 Q Your counsel spent some time with you with page
13 61, the standards that were in place regarding
14 cabinets, back in 2003. You don't have to look at it,
15 but do you recall --

16 A You are talking about 61?

17 Q Yes.

18 A Yes, sir.

19 Q You would agree with me that the standards --
20 the book of standards, the compilation of standards,
21 has been updated since then? You were aware of that;
22 correct? Not -- not just specific to cabinets, but in
23 general, it's been updated?

24 A Well, clearly PPL has indicated it has been
25 updated. They have not given us any formal

1 notification of any updates or changes.

2 Q Your office had the ability to log into the
3 portal, whether or not you had that information
4 available; correct?

5 A Yes.

6 Q Don't you think it would be incumbent upon you
7 to have the competency to insure what the current
8 standards were when you start a new project?

9 A Yes.

10 Q And you didn't do that in this instance, then?

11 A Yes, we did. We looked at their existing
12 agreement, and the existing agreement said if there
13 were any changes, PPL had to notify us.

14 We didn't even know at that time that they had
15 a new application process. We tried to reach out to
16 Mr. Klokis in January, and found that the call went
17 nowhere, and the only way to reach PPL in the pole
18 attachment group, was through an e-mail.

19 THE COURT: Where does it say that PPL is
20 obligated to notify you --

21 MR. D'AMICO: That's right. Thank you.

22 THE COURT: -- if there was a change?

23 THE WITNESS: If there was a change in the
24 agreement, it says that it -- both parties have to
25 agree to any changes.

1 BY MR. D'AMICO:

2 Q Weren't you notified that you -- by signing the
3 agreement, that you were required to comply with the
4 updated standards at all times?

5 A Yes.

6 Q Okay. So you were aware that you better make
7 sure I know what the standards are when I start new
8 work?

9 A Yes, sir.

10 Q And you had the ability to go on the portal,
11 because Mr. Staboleski did it, where those standards
12 are maintained; isn't that true?

13 A Yes.

14 Q And isn't it true, according to Mr. Yanek, that
15 that information is also publicly available, even if
16 you don't go into the portal?

17 A Yes.

18 I have not personally been on the portal to see
19 whether or not those standards are there, but PPL says
20 they are there, so I'm assuming they are.

21 Q And you know from experience, that permits for
22 any attachments are issued by pole numbers; correct?

23 A Yes.

24 Q So you knew that in order to get a permit, you
25 would have to know the poles that you wanted to attach

1 to?

2 A Yes, which is why we did our original work early
3 on, collecting that pole number information. At this
4 point you don't need that anymore. You need something
5 to start the application process.

6 According to PPL'S paperwork, we also need to
7 submit profile sheets, which they no longer accept.

8 Q Because it's now on the online portal, and you
9 get to do drop and click, or click and drop, or drop
10 and drag, whatever you want to call it?

11 A Well --

12 Q It's a lot --

13 A -- initially --

14 Q -- easier process for you --

15 A -- initially we were -- We were to collect the
16 data, which included all attachments. Now if you go on
17 to the portal, PPL is billing us to do that work,
18 rather than us doing it ourselves.

19 Q And; in fact, that's consistent with the
20 contract that you signed; is it not, sir?

21 A The submitting the attach -- the profile sheets
22 are. PPL not accepting them is part of the new
23 process, and is contra to the agreement.

24 Q Now, what PPL does is once you tell them where
25 you want to attach, they do the make ready analysis.

1 They do the engineering to determine whether or not
2 there is a load issue; correct?

3 A **Again, depending on the type of attachment, yes.**

4 Q And whether or not there is a space issue?

5 A **Yes.**

6 Q And if you don't submit any of that information
7 to PPL, they have no idea what you're doing; isn't that
8 correct?

9 A **Yes.**

10 Q So then what you're doing is potentially
11 imposing upon not only PPL, but other attachers who
12 followed the process correctly, and sought permits, and
13 provided the information so that everybody is aware
14 what exists and how it exists; correct?

15 A **The only --**

16 Q Isn't that correct?

17 A **-- paper that we believe we missed, was we did**
18 **not file the J and Raise form. That was a notification**
19 **form, which we did effectively through an e-mail and**
20 **direct communications. As far as service drops, per**
21 **the applications, per the agreement -- And I don't know**
22 **where it is on PPL'S website that says service drops**
23 **need to be approved.**

24 Q Well, you're regulated -- Don't you think it's
25 incumbent upon you to try to figure out how to do your

1 job?

2 A But what I'm saying is, I don't know that the
3 issue about service drops was the only attachments that
4 we did that were not, quote, permitted, and I don't
5 know where on the PPL'S website it tells us that
6 service drops need to be permitted.

7 Q We were talking about the cab -- what you
8 contend were the splice cases. You tried to qualify
9 those as a cabinet; correct? Is that your proffer to
10 us?

11 A They are a closure, which is equivalent to a
12 cabinet.

13 Q The only issue is, though, you don't need a
14 splice case unless you are running new fiber; isn't
15 that correct?

16 A Unless you're connecting to fiber.

17 Q Yeah, but if you're not adding new fiber, you
18 don't need to connect new fiber?

19 A That's not necessarily true. We can go back in
20 splice cases where we have fold backs, and things like
21 that, where we're splicing existing fiber and existing
22 attachments.

23 Q But that's not what you were doing with respect
24 to the splice cases we were seeing. That's new fiber
25 you were running; isn't it?

1 A It was -- New fiber was being run as service
2 drops, yes, sir.

3 Q And with respect to the cabinet issue, you would
4 agree that you weren't supposed to put those on the
5 pole; correct?

6 A No.

7 Q Did you think you could?

8 A Yes.

9 Q But you also know that you couldn't do it
10 without PPL'S permission; isn't that correct?

11 A According to this section that you asked me to
12 refer, it doesn't need PPL'S permission. It just says
13 it's below the com space.

14 Q Really? Why don't you go down a little further
15 on 61. I will give you a chance to correct yourself.

16 A So far it says CATV power supply. I am
17 continuing to read.

18 Q If we go to page 61. PPL must approve the pole
19 chosen prior to the installation of all --

20 (Whereupon, the court reporter asked Mr.
21 D'Amico to speak more slowly.)

22 MR. D'AMICO: I'm sorry. I do it all the
23 time.

24 THE WITNESS: That says CATV power supply.
25 We have no CATV or power supplies. We are -- We're not

1 a CATV provider.

2 BY MR. D'AMICO:

3 Q Great. Now let's go to current standards, page

4 74. What's that say?

5 A I can't read that from here.

6 Q I'll read it for you. PPL --

7 A I can see it now.

8 Q PPL must approve the pole chosen prior to the

9 installation of all new cabinets and equipment cases,

10 to confirm that the pole is suitable. It doesn't have

11 that little exception that you're trying to argue now;

12 does it?

13 A No. Because you're right. There it is. I'm

14 not going to argue with the language.

15 Q And the reason that you didn't comply with that

16 -- You didn't comply with that; did you, sir?

17 A No.

18 Q Because it doesn't matter to you what the

19 standards are; isn't that correct?

20 A No. That's not correct.

21 Q You talked about J and Raise. You never

22 submitted a J and Raise application; did you, sir?

23 A The application is not really an application.

24 It's a notification according to the current pole

25 attachment agreement, but if you look at the form, it

1 **says you need to notify PPL of the area that you are J**
2 **and Raising, in this case, by the municipality.**

3 Q And this is supposed to be something temporary;
4 is it not, the J and Raise? Well, you move the
5 existing lines --

6 A **Just the raise part of it is temporary.**

7 Q Yeah. But that's not what's happening now. How
8 long have these J's been in place, a year, two years?

9 A **It depends on what you determine temporary. In**
10 **the case of the Lancaster Safety Coalition, they have**
11 **been working towards getting funding to get this**
12 **problem solved, and get their cameras replaced.**

13 Q So why would you move their fiber until they had
14 the funding in place? You did it so you could put your
15 new fiber in their location, even though you knew it
16 wouldn't work with their current system?

17 A **It was to expand the system, and also to work**
18 **with the City for traffic and everything else. It was**
19 **a precursor to other projects.**

20 Q You put in a new line, without getting
21 permission from PPL, knowing that that line could not
22 support the City's system; isn't that correct?

23 A **No. The City was planning on migrating all of**
24 **that technology. That's not the case.**

25 Q But they didn't have the ability to do that yet,

1 but yet you went ahead and put your line in so you can
2 serve your residential, for profit customers; isn't
3 that correct?

4 A No, it's not, because we were focused on the
5 City, and it was the City process that we were doing,
6 and we were focused on first getting the network in
7 place, so that it could then be migrated.

8 Q So then we can move your lines so we could put
9 the City's line back in place. Wouldn't that be the
10 right thing to do?

11 A No, because existing services -- new services
12 are working on that, which includes a lot of
13 connectivity, and a lot of the services that we talked
14 about earlier, that I testified earlier were provided
15 to the City.

16 Q But all of this occurred because you decided
17 that you weren't going to comport with the contract,
18 and the standards that PPL shared with you, or had made
19 available to you; isn't that correct, sir?

20 A We never -- We missed a form on the J and Raise.
21 We did the notification, which at the time was normal
22 and customary. I talked with Mr. Klokis personally,
23 and told him what we were doing, and then confirmed it
24 in an e-mail.

25 I didn't know what else we could have done,

1 because that's all the form actually required, was
2 notification by -- by county. I actually thought I was
3 in compliance.

4 Q Except subsequent to your so-called conversation
5 with Mr. Klokis, you had numerous meetings with this
6 gentleman; right?

7 A Yes, sir.

8 Q And you never told him that you had run new
9 fiber, and just J and Raised wherever it might fit,
10 until you determined -- or the City determined it had
11 the funding to make changes, you never did that; did
12 you?

13 A No, that's not true. We did do that. We told
14 them at your first meeting, and actually even brought
15 the data with us. And we had told them in January,
16 before that, when we did our original e-mail when we
17 learned that Mr. Klokis had -- And the entire pole
18 attachment agreement, or pole attachment group
19 disappeared, and the only way to reach them was through
20 an e-mail.

21 Q What data did you have if you can't even
22 identify where you were running cables?

23 A At that time we had -- We had what we said
24 earlier, we had a profile of all of the sheets, and
25 mirrored -- as we told Mr. Klokis what we were going to

1 do -- mirrored PPL'S process.

2 Q Did you ever seek any rebuild permits for the
3 LCSC network?

4 A As we just discussed, I believe I responded to
5 that requirement for the form, because it was normal
6 and customary, and Mr. Klokis was aware of anything
7 that we were doing at the time.

8 Q Was there a form that you failed to complete
9 because you didn't want to?

10 A No. There was a form that I failed to complete
11 as an oversight.

12 Q You talked about the City acquiring street
13 lights, but that hasn't happened; isn't that correct?

14 A Part of the reason it hasn't happened is because
15 the street lights aren't grounded.

16 Q Okay. So everything that you're -- You're
17 relying on something happening in the future, to excuse
18 your past breach?

19 A No.

20 Q Well, you don't have permits to construct within
21 -- Let me get this right -- communications worker
22 safety space? You don't have any permits for that; do
23 you?

24 A As we established before, I think we said that
25 we don't have any permits from PPL.

1 Q And you went on about the dielectric, or the
2 type of cable that is, but that space is intended to
3 protect the worker, not the cable; correct?

4 A **It's to protect the workers, depending on where**
5 **they are in the network.**

6 Q Yeah, and if you are running cable within that
7 40 inches of communication worker safety space, then
8 the communication worker has to reach into the
9 communication worker safety space; do they not?

10 A **Yes.**

11 Q And that's a violation of the NESC; isn't it,
12 sir?

13 A **No. It depends on how it occurs.**

14 Q I found the word, dielectric cable is what you
15 called it; correct?

16 A **All dielectric self supporting ADSS.**

17 Q So back in December you were out at a meeting
18 with your counsel, Mr. Franklin, Mr. Shafer, Mr. Yanek,
19 an individual from the PUC.

20 A **Is there a question?**

21 Q Two individuals from the PUC; correct?

22 A **I'm sorry, I didn't catch the question.**

23 Q Back in early December, you were out in
24 Lancaster with your counsel, Mr. Franklin, Mr. Yanek,
25 Mr. Shafer, and two individuals from the PUC?

1 A **Yes.**

2 Q And did you admit -- When you were taking the
3 site visit, did you admit to them that you had
4 performed new build, without seeking permits from PPL?

5 A **No. We admitted that we had placed service**
6 **drops with -- according to what we believed was the**
7 **pole attachment agreement, and per our specifications**
8 **and PPL'S specifications.**

9 Q But not per the agreement that you signed;
10 correct?

11 A **Per the agreement, not necessarily per some**
12 **current thing that you still haven't showed me where**
13 **PPL says that service drops need to be applied for.**

14 Q Well, what service drop runs along the 30 to 40
15 poles before it connects to a building?

16 A **A service drop that is extended to reach a**
17 **specific customer.**

18 Q A service drop is something that runs from
19 mid-span, or the pole, right to the house, or right to
20 the front door; does it not? It's a short distance?

21 A **No, sir, that's not true, not in my opinion.**

22 Q Not in your opinion, but what about in the
23 opinion of other responsible and competent utilities?

24 A **I think the service drop is a service drop. It**
25 **depends on the point of origin, and the point of**

1 **termination. If the point of termination is a**
2 **customer, it's a service drop.**

3 Q So you could run a cable from here to a business
4 in Lancaster, and in your opinion that's a service
5 drop?

6 A **That's an extreme case.**

7 Q Well, I'm just trying to follow your logic.
8 Isn't that your logic?

9 A **The logic is correct.**

10 Q Okay.

11 A **Although what you said did not seem feasible, or**
12 **would not seem feasible.**

13 MR. D'AMICO: That's all I have. Thank you.

14 EXAMINATION

15 BY THE COURT:

16 Q Mr. Wiczkowski, I want to go back to this
17 December stipulation.

18 A **Yes, sir.**

19 Q And if you want to look at it, I would be happy
20 to show it to you, but Mr. Gorter from the PUC says
21 that MAW has agreed that they will provide a full list
22 of all facilities to PPL.

23 And I take it your position is, that didn't mean
24 by pole number, it meant by street and block; is that
25 right?

1 A **Yes. Because we didn't have pole information.**
2 **We told them in that meeting that we didn't have that.**

3 Q Okay. And then it goes on to say that -- Mr.
4 Gorter again is speaking -- PPL has committed to
5 starting to provide feedback on all identified poles by
6 the end of this month.

7 So the poles really weren't being identified by
8 you, it was the street and block that was being
9 identified, because you tell me you didn't have pole
10 numbers; right?

11 A **Yes, sir.**

12 Q So why didn't you or somebody on your behalf
13 speak up and say, wait a minute, we may have a
14 miscommunication here. There may be some confusion.
15 We don't -- We cannot identify poles. We can only
16 identify street and block?

17 A **We told them that, Your Honor.**

18 Q But it wasn't told on the record. And I have to
19 deal with what was on the record.

20 A **Because in our situation, we looked, and we**
21 **said, well, what do we have available within -- in this**
22 **case, I believe it was 48 hours of the Order?**

23 And what we had available was the location of
24 our network, but not all the poles. We needed to make
25 sure that we covered them all, and we knew that if we

1 gave PPL a hundred block of the street, they had the
2 poles that we were attached to, or potentially could
3 have been attached to.

4 Because in some blocks we might have been only
5 attached to one or two poles, we weren't sure. So what
6 we were sure of, we were within that block, and we knew
7 PPL -- once we gave PPL the block, that they had the
8 pole information that they needed.

9 Q Okay.

10 THE COURT: All right. Redirect?

11 MR. WINTER: Very, very briefly. Can we
12 pull up Bates 74 again?

13 REDIRECT EXAMINATION

14 BY MR. WINTER:

15 Q Looking at the top, what's the effective date on
16 that page, Mr. Wiczkowski?

17 A I can't see it from here.

18 Q Okay. If I were to tell you that it's October
19 30th of 2017, could that be correct?

20 A Yes.

21 Q Okay, and how much of the splice case work was
22 done prior to October 30th of 2017?

23 A Ninety percent of it.

24 Q Okay, and was anything done to make you aware of
25 those changes that occurred on October 30th of 2017?

1 A **No.**

2 Q Okay.

3 MR. WINTER: I believe that's all I have for
4 Mr. Wiczkowski.

5 THE COURT: Recross?

6 RE CROSS EXAMINATION

7 BY MR. D'AMICO:

8 Q If that same standard applied prior to
9 October 30th, 2017, would you agree that you haven't
10 complied with it?

11 A **Yes.**

12 Q And would you agree that you should be able to
13 tell us when you installed your splice cases so we can
14 confirm that you violated this agreement?

15 A **I think we can tell you when we -- I believe**
16 **we can tell you when we installed the splice cases,**
17 **yes.**

18 Q Because you know where you put your -- where you
19 put your facilities, you just haven't told us; isn't
20 that correct?

21 A **No. We told you where we were. We just didn't**
22 **know the pole numbers. And it's not really that we**
23 **didn't know the pole numbers, we didn't know all the**
24 **pole numbers.**

25 Q Oh, so you knew some of them, but you didn't

1 share --

2 A Not enough of them --

3 Q You didn't --

4 MR. WINTER: I'm going to object --

5 THE COURT: One at a -- One at a time. You

6 ask the question, Mr. D'Amico --

7 MR. D'AMICO: So you --

8 THE COURT: -- and then allow him to answer

9 it.

10 MR. D'AMICO: I apologize, Your Honor. You

11 know me.

12 BY MR. D'AMICO:

13 Q You knew some of the pole numbers?

14 A Yes.

15 Q But you didn't make any effort to say, this is

16 as much detail as I've got. I got to get you more, but

17 this is what I know so far?

18 MR. WINTER: Objection.

19 THE WITNESS: We believe --

20 MR. WINTER: Objection. Asked and answered.

21 It's also beyond the scope of my redirect.

22 THE COURT: Overruled. Go ahead and answer

23 the question.

24 THE WITNESS: We believe once PPL had the

25 streets, they clearly knew what poles they had on their

1 own blocks. So we knew if we told them what blocks we
2 were on, they would know -- know beyond a shadow of a
3 doubt, that all of the poles that we were on, on that
4 block --

5 THE COURT: But they --

6 THE WITNESS: -- within one or two.

7 FURTHER EXAMINATION

8 BY THE COURT:

9 Q But they wouldn't know what your attachments
10 were on that pole. They would have to go for every
11 pole on the block and do a visual inspection; wouldn't
12 they?

13 A Yes.

14 Q If you remember --

15 A And so did we.

16 Q Pardon me?

17 A And so did we. We went back and started that
18 process as well, Your Honor, but we couldn't get it
19 done in the two days.

20 Q Well, I think Mr. D'Amico's point is, if you had
21 the pole numbers, even if it wasn't a complete set of
22 information, why didn't you provide pole number
23 information to PPL within those two days.

24 A Because at that time, most of the information
25 was suspect, because Mr. Staboleski was at the root of

1 all that. We had determined that he was doing things
2 that were contra to what I was doing.

3 I couldn't rely on any of the data. The only
4 data that I could rely on was our GIS data that showed
5 where our network was, and the connections that we had
6 for the customers that were there.

7 Q And that may be fair enough, but why didn't you
8 then tell PPL, look, we have some pole information, but
9 I don't know how reliable it is, because the employee
10 who did it was unreliable, not credible, and we fired
11 him?

12 A We were in no dialogue with PPL at that point.
13 We were doing everything we could with the PUC, and
14 working with the PUC to do whatever we could to try to
15 make sure that we were in compliance with everything,
16 especially the Order.

17 Q No, no. I mean in December of 2017.

18 If I understood your testimony correctly, you
19 indicated to me that you had some pole number
20 information, but you did not have a complete set.

21 All you had -- Or you had a complete set of
22 street and block numbers as to your system. And you
23 had some pole information, but you weren't sure that
24 the pole information was reliable, because the employee
25 who put it together, in your judgment, was an

1 unreliable employee?

2 A **Right.**

3 Q Well, why didn't you disclose to PPL --

4 A **We did. I offered this information to them**
5 **several times. They had rejected it.**

6 Q The pole number information?

7 A **Yes.**

8 Q Okay.

9 A **Including the profile sheets, everything.**

10 Q And -- All right. And when was it offered, and
11 when was it rejected?

12 A **It was offered several times. It was offered**
13 **back in 2016, and it was offered again when we met with**
14 **Ryan and Mr. -- with Mr. Yanek, the first time, and it**
15 **was offered again when we were at PUC -- with the PUC**
16 **in a meeting.**

17 Q Okay.

18 THE COURT: Any other questions of Mr.
19 Wiczkowski?

20 MR. D'AMICO: A couple follow ups, and I
21 think one exhibit to address that.

22 CONTINUED RECROSS-EXAMINATION

23 BY MR. D'AMICO:

24 Q So you made that offer because you didn't want
25 to utilize the online portal, although you knew it

1 existed.

2 A No, we couldn't use the online portal to get the
3 information that we needed.

4 MR. D'AMICO: Can we please turn to --

5 EXAMINATION

6 BY THE COURT:

7 Q No, wait. Now, I -- Now I'm lost. You couldn't
8 use the online portal, I thought, because --

9 A Because we didn't have the pole numbers.

10 Q But I thought you did have pole number
11 information, not a complete set of it, and you offered
12 it to PPL two or three times. So why couldn't you have
13 taken the pole information that you had, and used that
14 as your starting base to find out where the other poles
15 were?

16 A The pole information that we had was old
17 information from J and Raise information that was --
18 Put it this way. The service drop network was here.
19 Our backbone network was here. Yes there is a
20 connection point.

21 There was no way for us to know, to make sure
22 we were giving accurate information. The only accurate
23 information we knew, or were absolutely sure of, is
24 where our fiber was, and what street it was.

25 Q And the reason you couldn't give accurate

1 information was, if you had a pole number, you could
2 have pulled up the pole number, and you would have seen
3 that because you didn't have any approved applications.
4 There was no MAW system on that pole, so it would have
5 been useless information anyway; wouldn't it?

6 A Yes.

7 Q Because you didn't have any applications
8 approved, so PPL didn't know that you had your wires on
9 a pole.

10 You tell me you knew some pole information. You
11 weren't sure if it was reliable because you had a
12 problem with the employee; right?

13 A Yes.

14 Q But if you had the pole information, the pole
15 number, you could have pulled it up on the computer,
16 and it would have been of no help anyway, because you
17 were not authorized to put any wires on the pole. You
18 hadn't had any approved app -- Your applications hadn't
19 been approved?

20 A That's true, but then from our perspective, our
21 service drops, we didn't know we needed to account for
22 that, because the service drops didn't need to account
23 by pole, we needed to account by service drops.

24 Q Well, I'm not talking about the -- Let's assume,
25 that you're right about the service drops -- but you

1 had other wires on that pole --

2 A No, sir. Not on the same poles --

3 Q -- in addition to service drops? Pardon me?

4 A If we had it on the same poles, if we knew that
5 -- If we knew that we had a pole here, and that was --
6 and we had an old connection, and that was all of our
7 connections, we would have been able to do that. There
8 were no cases where there were streets that -- that we
9 didn't know anything, where all we had was a service
10 drop.

11 THE COURT: Okay.

12 CONTINUED RECROSS EXAMINATION

13 BY MR. D'AMICO:

14 Q If I understand your testimony from a few
15 minutes ago correctly, though, you had pole information
16 from J and Raise that you didn't share with PPL;
17 correct?

18 A We had some information prior to J and Raise,
19 that -- the profile sheets before the J and Raise,
20 which are now three years old.

21 Q Okay. So you had the information three years
22 ago about pole numbers, because you J and Raised it,
23 but you didn't share that, consistent with the --
24 consistent with at least PPL's understanding of the
25 stipulation? The information you had available to you,

1 you didn't utilize?

2 A No. I believe, and we believed as a company,
3 that if we were providing all of the street
4 information, PPL knew what poles they had on each
5 street. So if we told them what streets we were in, we
6 knew we were telling PPL what poles we were on.

7 Q And I apologize if I asked you this, but I'm
8 sure I will get an objection.

9 You didn't want to utilize the online portal
10 application system; is that correct?

11 A No. We could not utilize the portal system to
12 accurately get our data in a timely fashion, or in any
13 fashion.

14 MR. D'AMICO: Can we go to Petitioner's
15 Exhibit 11? That would be page, I believe 163, Mr.
16 Chapman. Can we expand that?

17 BY MR. D'AMICO:

18 Q Do you recognize that as something completed by
19 your company in September of 2016?

20 A It looks familiar.

21 Q And who submitted it?

22 A That was using my ID, but not necessarily, it
23 was not me. We might have lost Mr. Staboleski's
24 attachment -- or ID, or originally it was mine I
25 believe that started it, and Mr. Staboleski signed it,

1 but afterwards. So he might have been using mine
2 initially.

3 Q So you knew about the portal, because you had
4 the online password, and you had a way to log in before
5 Mr. Staboleski did, if I understand you correctly?

6 A Yes, but I did not use the log in. I provided
7 it to my team.

8 Q So you -- And you're responsible for whatever
9 your team does, would you agree, as president and chief
10 executive officer, sole owner, and chief cook and
11 bottle washer, of all communications?

12 A Yes.

13 MR. D'AMICO: That's all I have, Your Honor.

14 THE COURT: Mr. Winter?

15 MR. WINTER: Your Honor, I did have one
16 question based on the Court's questioning.

17 REDIRECT EXAMINATION

18 BY MR. WINTER:

19 Q The Court had gone over with you the fact that
20 Mr. Gorter had stated that you offered to provide
21 facilities information; correct?

22 A Yes.

23 Q If Mr. Gorter had stated that MAW was going to
24 be providing pole identification number information,
25 would you have said something?

1 A **Absolutely.**

2 Q Okay. Would you have instructed me to say

3 something?

4 A **Absolutely.**

5 Q Okay.

6 MR. WINTER: Thank you.

7 THE COURT: Okay. May Mr. Wiczkowski step

8 down?

9 MR. D'AMICO: I just want to take one quick

10 look at the stipulation, because I believe Mr. Gorter

11 identified that they were going to provide a detailed

12 list of all facilities.

13 THE COURT: Well, I think the answer by the

14 witness would be, we did, and -- but we did it in a

15 street and block form, not in a pole number form.

16 MR. WINTER: Right.

17 MR. D'AMICO: I would just direct the

18 Court's attention to page two, line 23 of the

19 stipulation, in addition to what Your Honor has

20 previously discussed. And I have no further questions.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you.

24 Mr. Winter, do you have any other witnesses

25 or evidence?

1 MR. WINTER: I do, Your Honor.

2 THE COURT: Go ahead.

3 MR. WINTER: Okay. This is Jeffrey Kobilka.

4 MR. D'AMICO: You're Honor, I'm just being

5 handed this today at this time, obviously if they

6 intended to call this gentleman, they could have

7 produced --

8 THE COURT: I'm sorry, you received --

9 MR. D'AMICO: -- a report they just handed

10 me at this very moment.

11 THE COURT: Well, your comment is noted.

12 The question is, what are you -- Are you making a

13 motion or not?

14 MR. D'AMICO: I don't know. I would like an

15 opportunity to review it, but considering that I shared

16 all of my exhibits at the very beginning of the day so

17 they can review them, I think that courtesy would have

18 been appropriate.

19 THE COURT: Okay. Let's take a few minutes

20 for you to read that. Let us know when you're

21 finished.

22 MR. D'AMICO: Thank you. I would like to be

23 able to review with those who know a little more about

24 this stuff.

25 THE COURT: That's fine.

1 MR. D'AMICO: Can we take a --

2 THE COURT: Ten-minute break?

3 MR. D'AMICO: Yeah.

4 THE COURT: Okay. Ten-minute break.

5 (Whereupon, a ten-minute recess was taken.)

6 AFTER RECESS

7 MR. D'AMICO: And if they have a C.V., I
8 would like that, Your Honor.

9 THE COURT: Pardon me?

10 MR. D'AMICO: If they have a C.V. from this
11 gentleman, I would like that.

12 MR. WINTER: I don't have a copy of that
13 today, no.

14 JEFFREY KOBILKA, being called as a witness,
15 was first duly sworn, and testified as follows:D.

16 DIRECT EXAMINATION

17 QUALIFICATIONS

18 THE COURT: Mr. Winter?

19 MR. WINTER: Thank you, Your Honor.

20 BY MR. WINTER:

21 Q If I may, I am showing you what has been marked
22 as --

23 THE COURT: Let's get his name on the record
24 first.

25 MR. WINTER: We call Jeffrey Kobilka,

1 K-o-b-i-l-k-a. And I don't know if you have been
2 sworn yet.

3 THE COURT: Yes.

4 MR. WINTER: He has. Okay, very good.

5 BY MR. WINTER:

6 Q Sir, I'm showing you what has been marked as
7 Defendant's Exhibit 2. What is Defendant's Exhibit 2?

8 A This is my C.V.

9 Q Okay, and is that a true and accurate
10 representation of your qualifications as a professional
11 engineer?

12 A Yes. I believe since this was printed, I had
13 this copy, I've added more states affecting my
14 licenses, but otherwise accurate.

15 Q Okay. So what I'm going to ask you to do,
16 rather than go through the whole thing in detail, is
17 very briefly tell the Court, where is your degree from?

18 A My degree is from the Pennsylvania State
19 University, Penn State.

20 Q Okay.

21 A I'm an electrical engineer.

22 Q And in terms of accreditation, where do you hold
23 accreditation from?

24 A I'm licensed in the State of Pennsylvania as an
25 electrical engineer.

1 Q Okay. All right.

2 MR. WINTER: Your Honor, at this point, we
3 are offering him as an expert in terms of electrical
4 engineering.

5 THE COURT: Any cross-examination as to
6 qualifications?

7 MR. D'AMICO: Yes.

8 CROSS-EXAMINATION

9 QUALIFICATIONS

10 BY MR. D'AMICO:

11 Q Mr. Kobilka, I see you are associated with
12 Robson Forensics?

13 A Yes.

14 Q And in that respect you are only there as a
15 consulting engineer; correct?

16 A I perform forensic investigation in -- with
17 cases involving electrical engineering.

18 Q And it's all litigation oriented; is it not,
19 sir?

20 A Primarily. There is other consulting work that
21 can occur.

22 Q And none of the consulting work that you have
23 done for Robson Forensics has involved distribution --
24 electrical distribution systems; has it, sir?

25 A No.

1 Q And if we go back to your past experience at
2 Keystone Engineering Group, where you were from 2006 to
3 2013, you were never involved in any electric
4 distribution analysis or projects; were you, sir?

5 A I have designed power systems for municipal
6 plants, water -- waste water facilities. And I did
7 design a fiberoptic distribution network for a
8 university.

9 Q Okay. You designed it from the ground up,
10 versus working with a regulated public utility;
11 correct?

12 A Excuse me, could you repeat the question?

13 Q Sure. You designed something from the ground up
14 for an internal system, versus a regulated public
15 utility.

16 A It was for an internal system, that is correct.

17 Q And prior to that, your job was a construction
18 estimator?

19 A Electrician/estimator, when I was in school.

20 Q Did you in preparation -- in your effort to
21 prepare your analysis and report, have to consult
22 materials that were new to you in your profession?

23 A I consulted the NESC. It was not the first time
24 I have had to utilize it.

25 Q Have you ever utilized it in connection with

1 electrical distribution systems?

2 A **No.**

3 Q So this is the very first time that you have
4 ever tried to offer an opinion with respect to electric
5 distribution systems, and how the code should be
6 interpreted with respect to fiberoptic cables; is it
7 not, sir?

8 A **I applied my education, experience, and training
9 to this situation, correct.**

10 Q And you have never performed any services for a
11 utility; have you, sir?

12 A **An electric utility?**

13 Q Electric utility, thank you. Good point. Is
14 that correct?

15 A **That is correct.**

16 Q And you have no familiarity then with issues of
17 what is considered a service drop, versus new build;
18 would you, sir?

19 A **My understanding of a service drop has to do
20 with where it begins and where it terminates. And
21 there has been some discrepancies with maybe a
22 traditional understanding from like 2003, and with what
23 the technology today utilizes as a service drop.**

24 Q Have you ever in your profession had to deal
25 with issues of service drops before today?

1 A **Not from a design prospective, no.**

2 Q And have you ever had to deal with issues of

3 analyzing load on a distribution network for any

4 potential new additions to the network?

5 A **When you say load, what do you mean? Can you**

6 **clarify --**

7 Q What does load mean to you as a --

8 A **When you say load, do you mean electrical load?**

9 Q Or just the physical stresses on the

10 infrastructure.

11 A **I'm familiar with the calculations for those --**

12 **for load onto a utility pole.**

13 Q Okay.

14 A **Is that what you are getting at?**

15 Q Are you familiar with that? Have you ever done

16 it?

17 A **Not -- Not in conjunction with a previous**

18 **project.**

19 Q Have you ever been involved in an attachment

20 application process --

21 MR. WINTER: Your Honor --

22 MR. D'AMICO: -- with respect to PPL

23 utilities with respect to any electronic -- electric

24 utility poles?

25 THE WITNESS: No.

1 MR. WINTER: Your Honor, I'm going to object
2 at this point. Mr. D'Amico's line of questioning is
3 not going to qualifications, it's going to weight.

4 THE COURT: Credibility.

5 MR. WINTER: Right.

6 THE COURT: Yep.

7 MR. WINTER: So again, I believe that this
8 is an appropriate line of cross-examination after he's
9 been qualified.

10 THE COURT: Well, it's also appropriate in
11 terms of his qualifications.

12 MR. WINTER: Okay.

13 THE COURT: It's going to come either way.

14 MR. WINTER: Okay.

15 BY MR. D'AMICO:

16 Q Sir, do you have an appreciation of the
17 difference between fiberoptic supply cable, and
18 fiberoptic communication cable?

19 A **No.**

20 Q Okay.

21 MR. D'AMICO: Your Honor, I don't know that
22 he's qualified -- even as a Penn Stater, and by default
23 I like him, I don't believe he is qualified.

24 THE COURT: Any recross on the issue of
25 qualifications?

1 MR. WINTER: Your Honor, I can certainly go
2 through his C.V. in detail if you want me to. He has
3 already adopted that.

4 However, again, I believe based on his C.V.
5 he is certainly qualified to do this. I think Mr.
6 D'Amico's questioning goes merely to weight of his
7 testimony, and I would ask the Court to consider it for
8 that.

9 THE COURT: He will be received as an expert
10 in electrical engineering. He graduated with a degree,
11 and he is a professional engineer registered in
12 Pennsylvania.

13 MR. WINTER: Very good.

14 DIRECT EXAMINATION

15 BY MR. WINTER:

16 Q All right. Sir, I'm going to show you what has
17 been marked as Defendant's Exhibit 1. Do you recognize
18 that document?

19 A Yes.

20 Q Okay, and what is that?

21 A That's a report that I wrote and co-signed with
22 colleague Daryl Ebersole, PE.

23 Q And just so the Court is clear, who is Mr.
24 Ebersole in relation to you?

25 A Mr. Ebersole is a colleague at Robson Forensic.

1 **He is the practice group leader for electrical**
2 **engineering.**

3 Q And in terms of this, did you either write, or
4 fully review this report?

5 A **Yes.**

6 Q Are all of the opinions that you are -- Are all
7 the opinions expressed in your report, are they your
8 opinions?

9 A **They are.**

10 Q Okay. Can you walk the Court through -- Again,
11 I don't intend to have you read this word-for-word --
12 walk the Court through what you were asked to review in
13 this case for MAW?

14 A **I received an issue of the exigent safety**
15 **issues. And the scope of my investigation was to**
16 **determine if the issues raised were; in fact, a public**
17 **safety risk -- an exigent public safety risk, and/or a**
18 **worker safety risk.**

19 Q Okay, and in terms of this, what -- which of the
20 -- What did you look at to come up with that list of
21 safety issues?

22 A **The list that was provided to me by MAW, which I**
23 **understood to be provided to them by PPL.**

24 Q Okay, and from looking at your report, there is
25 what's noted as -- I believe it's December 21st, 2017,

1 list one, from PPL to MAW. Is that what you reviewed?

2 A Correct.

3 Q Okay, and can you explain, what process did you
4 go through in terms of analyzing this report and this
5 information?

6 A One of the things we did was go to the sites
7 that were mentioned, and examined them. Also, compared
8 their comments as far as the risk to NESC and to PPL
9 standards.

10 Q I think it's probably going to be cleanest and
11 most efficient if I just work through your report in
12 order.

13 You had done some analysis in terms of MAW
14 fiberoptic cable materials. Can you please clarify
15 what had occurred in terms of that?

16 A The materials used were all dielectric self
17 supporting, or ADSS. This means that they do not
18 conduct electricity. The importance there is that they
19 do not represent a risk of conducting electricity from
20 pole to pole, or from pole to ground, should the cable
21 break.

22 Q Would the Court like a copy to follow along?

23 THE COURT: Sure. If there is no objection.

24 MR. D'AMICO: None other than previously
25 stated, Your Honor.

1 THE COURT: Okay.

2 BY MR. WINTER:

3 Q So, again, you had heard some testimony before
4 about ADSS fiberoptic cables. And in terms of that
5 testimony about it being non-conductive, do you agree
6 with that?

7 A That's correct. The material does not conduct
8 electricity.

9 Q Okay.

10 A It can be used in applications right up against
11 power carrying cables.

12 Q Okay. Did you conduct any analysis in terms of
13 ADSS clearance from power in a supply space?

14 A In the supply space, no clearance is specified,
15 which means no clearance is required.

16 The only requirement is that there not be a
17 mechanical abrasion risk in the attachment of the cable
18 to the power cable -- of the ADSS cable to the power.

19 Q Okay. And so when you are saying no clearance
20 is specified, what specifically were you looking at,
21 what provision?

22 A In table 235-5, vertical clearance between
23 conductors at supports, there is a footnote, footnote
24 10, which states that no clearance is specified between
25 fiberoptic supply cables, meeting Rule 230F1B, which is

1 **the ADSS definition and supply cables and conductors.**

2 Q This is the National Electric Safety Code that
3 you are quoting?

4 MR. D'AMICO: I'm going to object, Judge.
5 I don't -- I think he already testified that he doesn't
6 even know what a supply cable is, and how it differs
7 from a communication cable.

8 THE COURT: I don't think he said he doesn't
9 know what a supply cable is. I think he said he had no
10 experience in terms of designing a supply cable.

11 MR. D'AMICO: Okay.

12 THE WITNESS: There was an attempt at a
13 differentiation between the fiberoptic communications
14 cable, and a cable that in this definition is supplying
15 fiberoptic communications. And I don't think there is
16 a difference between fiberoptic, between those two
17 definitions.

18 And right here, the definition that we are
19 speaking of is Rule 230F1B. That's where this cable
20 type is defined.

21 BY MR. WINTER:

22 Q Okay. And again, the rule that you're referring
23 to, that's the National Electric Safety Code; correct?

24 A **Correct.**

25 Q And again, all the provisions that you are

1 referring to today, are these based upon a review of
2 the National Electric Safety Code?

3 A They are.

4 Q Okay. So just to be clear about this, are you
5 seeing any clearance safety issue in relation to the
6 dielectric cables not having the clearance that PP&L is
7 asking for?

8 A There is a safety issue with luminaires being
9 within the -- ungrounded luminaires being within the
10 communications worker safety zone, if the workers are
11 not using supply space rules.

12 Q Okay. And you are getting a little bit ahead of
13 me in terms of the report because we get to luminaires
14 actually two sections from now. But we will come back
15 to that.

16 So, did you analyze the situation to see if
17 there was an exigent public safety risk?

18 A So the risks that were considered to the general
19 public with cables that are already installed, would be
20 if there was a low hanging conductor, that could pose a
21 risk of electric shock, or entanglement. Or a broken
22 conductor, that could also propose a risk of electric
23 shock if it was energized.

24 The cables in question cannot pose such a risk
25 to the general public. They are out of reach, and

1 should they become in reach, there is no risk of
2 electric shock.

3 Q Okay.

4 THE COURT: How about worker safety?

5 BY MR. WINTER:

6 Q Worker safety?

7 A Worker safety with clearance from -- in this
8 case we have been talking about the underground
9 luminaire brackets, and the luminaires themselves.
10 It's not appropriate for those brackets to be within
11 such a close proximity to a MAW cable, but also to the
12 other cables that are in the same area as the MAW
13 facilities.

14 The safest recommendation is to ground the
15 luminaires. The other way to resolve the problem is to
16 require supply space work rules and equipment when
17 workers are at those poles working on those facilities.

18 Q And I believe that was the next thing that we
19 are getting into. And just so we are clear about this,
20 when you are referring to a luminaire, you're referring
21 to a street light?

22 A Street light.

23 Q So what did you find in terms of the street
24 lights?

25 A Well, the street lights -- There are rules for

1 clearance, and it's been discussed here. There's
2 grounded and ungrounded rules.

3 The PPL standards are, to my knowledge, that
4 I have seen with the most recent standards, that are
5 these 2017 standards, the same, that they require forty
6 inches or four inches, if it is effectively grounded.

7 Q So, did you find safety concerns in terms of the
8 street lights?

9 A Well, the street lights that are ungrounded is a
10 safety concern.

11 Q Okay.

12 A And it is a safety concern not just for MAW
13 workers if they are not following supply space rules,
14 but for all communication workers, because those
15 facilities, the street lights, I have observed this to
16 be within 40 inches of other company's facilities as
17 well.

18 Q Now just let me be clear about this, those
19 street lights, that would be a safety concern based on
20 their position, whether or not MAW cables would have
21 been there; correct?

22 A Correct.

23 Q Okay. So again, it is not -- MAW did not
24 install the street lights that created the condition,
25 to your knowledge?

1 A **Correct.**

2 Q Okay, and as you see it, is there a relatively

3 simple fix for dealing with the luminaire and street

4 light issue?

5 A **Yes. To effectively ground them.**

6 Q And just so the Court is aware, how much effort

7 does it involve to effectively ground the street

8 lights?

9 A **The lineman and cableman's guide recommends that**

10 **all luminaires be grounded on wood poles. It**

11 **recommends attaching to a neutral, or driving a ground**

12 **rod.**

13 Q Okay.

14 A **So either it's something that's already on the**

15 **pole, or if that's not feasible for some reason, to**

16 **drive a ground rod in the vicinity of the pole.**

17 Q You next looked at the clearance from neutral

18 issue. Could you explain to the Court what you were

19 referring to there?

20 A **There is the exceptions -- and this was brought**

21 **up earlier today -- about different clearances that are**

22 **required for -- from different facilities on the pole.**

23 **And clearance from neutral is reduced to 30 inches if**

24 **you have the ADSS rule, 230F1B cable.**

25 **So instead of 40 inches for that, it's 30**

1 inches. And the issue that was presented by PPL was
2 that they were at 30 inches.

3 Q Is it --

4 A That's not a violation.

5 Q -- is it fair to say that you disagree with PPL
6 that that is a safety issue?

7 A I disagree that it's a safety issue, because
8 it's not recognized as a violation according to NESC.

9 Q Okay. Finally, you looked at clearance from
10 drip loops. You want to explain to the Court what that
11 is?

12 A This is clearance from the drip loop. As
13 expressed before, the line that goes down below the
14 light, and comes back up to it so that the rain water
15 goes down, and not into the light.

16 If there are clearances that are less than
17 12 inches, there needs to be a remedy, and that is a
18 cover -- non-metallic cover to protect from access to
19 that drip loop.

20 Q Okay.

21 A So it's a fairly simple fix, but it is something
22 that should be remediated.

23 Q Just so I'm clear on this, you agree with PP&L
24 that that is a safety issue, but you're saying that
25 this is a fairly easily fixable safety issue?

1 A Correct. It's a safety issue, and it's one that
2 should be fixed, and it can be.

3 Q Okay, and in terms of offering that opinion,
4 you're assuming that these three light dish, or these
5 drip loops at issue, are not already insulated in some
6 way; correct?

7 A Correct. I'm not aware if there is a plastic
8 cover at the site.

9 Q Okay. In terms of this report, is this report
10 true and accurate, and based upon reasonable,
11 professional expertise?

12 A It is.

13 MR. WINTER: Your Honor, I think at this
14 point what I am going to do is I will move the C.V. and
15 the report, D-1 and D-2 into evidence. And I believe
16 that's all I will have for this witness.

17 THE COURT: Mr. D'Amico, does that mean the
18 exhibits will be admitted without objection?

19 MR. D'AMICO: None, other than previously --
20 No objection, Your Honor.

21 THE COURT: They will be admitted without
22 objection.

23 CROSS-EXAMINATION

24 BY MR. D'AMICO:

25 Q Mr. Kobilka, do you have a copy of the NESC in

1 front of you?

2 A Yeah. I have one.

3 Q Why don't you pull up the definitions section.

4 You talked a lot about the supply cable; correct?

5 A Is there a particular page you want me to go to?

6 Q Well -- I'll get you there, but you talked a lot

7 about the supply cable; did you not?

8 A Rule 230F1B cable.

9 Q So it would be important for you to know what a

10 supply cable is; isn't that correct?

11 A It's important, I think, to understand the cable

12 that is utilized in this.

13 Q So the word supply in the NESC actually has a

14 very specific meaning; does it not?

15 A It does.

16 Q And it actually means the electric company's

17 supply cable; does it not?

18 A I could go to the definitions section and read

19 that to you.

20 Q Well, I'll be happy to point you to section 11

21 -- I'm sorry, page 11 --

22 A Our pages may not --

23 Q -- at the top?

24 A -- line up exactly.

25 Q Do you mind if I come and stand next to you?

1 A **No, I do not.**

2 Q Sir, just so we -- Would you agree that I'm

3 showing you a copy of the current NESC Code?

4 A **I do.**

5 Q Okay, and it's marked 2017 National Electric

6 Safety Code, C-2-2017. I'm going to direct your

7 attention the page 11, the second definition,

8 fiberoptic cable - communications. Do you want to read

9 that out loud for us?

10 A **I do. Fiberoptic cable - communications.**

11 **Fiberoptic cable meeting the requirements for a**

12 **communication line and located in the communications**

13 **space of overhead or underground facilities.**

14 Q And the next definition is what, sir?

15 A **Fiberoptic cable supply. Fiberoptic cable**

16 **located in the supply space of overhead or underground**

17 **facilities.**

18 Q And if we look further in the definitions,

19 whenever we see supply, would you agree with me it

20 refers to the electric company?

21 A **It refers to the location of the cable. It**

22 **doesn't refer to ownership.**

23 Q So when they use the word supply equipment, it

24 says, see electric supply equipment; does it not?

25 A **Supply space. This I think is the part of the**

1 page you have here. Supply space. So it's fiberoptic
2 cable that exists in this space.

3 Q Okay. Sir, allow me -- We will get to that.
4 I'll be happy to use the chart.

5 Supply equipment, it says see electric supply
6 equipment; does it not, in the definitions?

7 A Sure.

8 Q Why don't we go back to electric supply
9 equipment. Maybe you didn't do this.

10 You want to read to the Court what electric
11 supply equipment is?

12 A Equipment that produces, modifies, regulates
13 controls, or safeguards the supplying of electric
14 energy for the electrical power supply grid that is
15 transferred to supply lines or used to provide power
16 and/or control for other electric supply equipment.
17 Used to provide power to devices of another utility,
18 relevance to -- Could you --

19 Q Sir, did you learn something today?

20 A No, I don't think it said anything of import to
21 the matter at hand.

22 Q Okay. You wanted to point out the chart. In
23 fact, we have that. If we can go to Exhibit 41. Give
24 me a moment; we will put it up. That way everybody can
25 see it. Exhibit 41, page 375.

1 So we know that supply space is where supply
2 facilities are separated from the communication space;
3 isn't that correct?

4 A There can be communications facilities in the
5 supply space. That's what is meant by SOS space.

6 Q But that's not what we're discussing today. We
7 were discussing communication fiber being in the
8 communication worker safety zone, or in the supply
9 space that doesn't comply with the code, because it
10 wasn't installed in accordance with the utility
11 standards; correct?

12 A The report and I have not claimed that the
13 supply space rules requiring no clearance, are what
14 govern the communication space cable.

15 Q And you would agree that the whole purpose of
16 the communication worker safety zone, is to protect the
17 employees?

18 A I do agree with that.

19 Q And an employee who is not an appropriate
20 electric -- for lack of better term, I know I
21 simplify -- but properly trained electrician, or
22 electrical worker, should not even be reaching into
23 that space?

24 A I agree with that comment. And the difference,
25 and I think the key separation here, is that the

1 luminaires are in the communication worker safety zone
2 in many of these instances. I can't speak for every
3 single pole, but for the one that's included in my
4 report, that luminaire is in the communication worker
5 safety zone whether MAW has their cable there or not.

6 Q And let's be clear. You analyzed how many
7 poles, 80?

8 A Not that many. There was not 80 in that first
9 list.

10 Q Okay. So you have no idea, given that there was
11 11 -- over 1100 attachments that are in dispute then?

12 A No idea of what?

13 Q The amount of potential issues. You just
14 noticed a few out of the less than 80 that you looked
15 at?

16 A I noticed the ones that were given to us in that
17 first list.

18 Q Okay. You haven't gone back and utilized all
19 the other information that has been provided to MAW in
20 terms of where we found attachments, and notified them?

21 A I have seen there was two and three. I have not
22 seen any other items.

23 Q Were they not provided to you, or you just
24 didn't look at it?

25 A They weren't provided in time to -- for this

1 **report.**

2 Q But since then, have you been asked to look at
3 the additional information that has been sent to them,
4 so you have an understanding of the scope and magnitude
5 of the issues we are discussing today?

6 A **Is there a particular issue -- I have reviewed**
7 **them. Is there an issue you're asking about? Is there**
8 **a particular issue you are asking about?**

9 Q Okay --

10 A **Is it the luminaire clearance?**

11 Q I understand now what your clarification is.

12 You haven't gone and then looked and determined
13 the actual scope, because you mentioned a few minutes
14 ago that there is just a couple that you saw out of 80.
15 You have no idea the actual numbers with all the
16 information that is provided to date, then?

17 A **As has been done, these issues seem to be broken**
18 **out into certain categories. And one of the categories**
19 **that we observed is clearance from luminaires.**

20 And to that effect, I agree that the luminaires
21 represent a safety risk to communication workers who
22 are not utilizing supply space rules, and that the
23 luminaires should be grounded because they represent
24 that risk.

25 Q And you would agree that if something were

1 consistent with the code in the past, and is untouched,
2 the fact that the code changes, they might be
3 grandfathered; correct?

4 A Understood, yes.

5 Q But if something new is done, if a change is
6 made, it would have to comply with the current code;
7 would it not?

8 A It should, absolutely.

9 MR. D'AMICO: That's all I have.

10 THE COURT: Any redirect?

11 MR. WINTER: No.

12 THE COURT: You may step down, Mr. Kobilka.

13 Thank you.

14 Mr. Winter, any other witnesses or evidence?

15 MR. WINTER: One second, Your Honor. Your
16 Honor, I believe we are going to rest.

17 THE COURT: Any rebuttal?

18 MR. D'AMICO: Yes, Your Honor. I was going
19 to ask to have the opportunity to speak with Miss
20 Rippke on the rebuttal on the code issues, but I can
21 call Mr. Yanek. If you want to finish today, we can
22 try to. If you don't want to, I get it.

23 THE COURT: Well, that's up to you. I have
24 -- What do I have next week?

25 MR. D'AMICO: Okay.

1 THE COURT: I have custody next week. Then
2 I have -- I can't do anything on Monday, I have
3 incapacities, but I have time the rest of the -- during
4 the week. If you want to resume then, or do you want
5 to push on? I don't know how long your rebuttal is
6 going to be.

7 MR. D'AMICO: I Gotcha.

8 THE COURT: It's twenty of 6:00. Pardon
9 me?

10 MR. D'AMICO: That's my concern as well,
11 Your Honor.

12 THE COURT: You tell me. It's your motion,
13 and you're the one that believes that there is exigent
14 circumstances.

15 If you want to resume next week, that's
16 fine. If you want to push on, that's fine with me.

17 MR. D'AMICO: I think we should reschedule
18 -- continue it, Your Honor.

19 THE COURT: Okay.

20 MR. D'AMICO: It's a long day, and I
21 appreciate everybody's patience, but --

22 THE COURT: Linda, would you go into the
23 schedule, Lori's schedule on the in-box for next week

24 How about Tuesday? Check your calendars.

25 Thursday is out. I think I have to go to Dickinson, I

1 think. Tuesday is -- We're pretty sure Tuesday --

2 MR. D'AMICO: Yes, Your Honor. That works
3 for me, Your Honor.

4 MR. WINTER: The morning or the afternoon?

5 THE COURT: You tell me.

6 MR. WINTER: Here is what I have Tuesday.
7 I'm actually here with a CYS hearing at 10:00 a.m. on
8 Tuesday. So I don't know if we can work around it.

9 I do not anticipate the CYS -- I anticipate the CYS
10 hearing to be continued, but I still have to be here.

11 THE COURT: 1:30.

12 MR. WINTER: 1:30 I already have a hearing
13 in Reading on Tuesday.

14 THE COURT: Oh. So you have only Tuesday
15 morning available, and maybe not even then.

16 MR. WINTER: Right. If we're doing it next
17 week, I can do Wednesday afternoon.

18 THE COURT: Wednesday afternoon works for
19 me.

20 MR. WINTER: And I can do Friday afternoon.

21 THE COURT: Friday we're closed. Well, what
22 about Wednesday?

23 MR. D'AMICO: Wednesday works, Your Honor,
24 for me.

25 THE COURT: Wednesday?

1 MR. ALBERT: Wednesday afternoon works for
2 me.

3 THE COURT: 9:30?

4 MR. WINTER: I can do the afternoon.
5 I can't do the morning.

6 THE COURT: All right. So 1:30 Wednesday?

7 MR. D'AMICO: Yes, Your Honor.

8 THE COURT: You want to check with your
9 witness?

10 MR. D'AMICO: I did.

11 All right. We will see you at 1:30 on
12 Wednesday.

13 (Whereupon, the proceeding was adjourned
14 until Wednesday, March 28, 2018, at 1:30 o'clock p.m.)

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CERTIFICATION

I hereby certify that this transcript of proceedings is true and correct and meets the format specifications established by the Supreme Court of Pennsylvania in Rule 4010.

07/12/2018

DATE

A handwritten signature in blue ink, reading "Matthew Giovannini, Jr.", is written over a horizontal line.

MATTHEW GIOVANNINI, JR., RPR
Official Court Reporter

\$	175:12 19th [4] - 105:7, 133:2, 145:19, 168:9 1:30 [7] - 96:6, 97:10, 97:13, 97:18, 97:22, 286:11, 286:12	260 [1] - 3:6 262 [1] - 3:7 265 [1] - 101:8 267 [1] - 3:7 27 [2] - 102:17, 204:21 270 [3] - 102:18, 103:21 272 [3] - 103:21, 103:23, 104:13 273 [2] - 103:22, 104:13 277 [3] - 3:8, 4:7, 4:8 278 [1] - 172:25 28 [1] - 103:19 286 [1] - 107:13 287 [1] - 108:1	46-B [1] - 116:8 48 [3] - 183:4, 183:6, 246:22 499 [1] - 193:22	
'	2	3	5	
'17 [3] - 21:12, 28:11, 32:9	2 [8] - 4:8, 5:3, 62:25, 139:9, 167:6, 170:17, 261:7 20 [8] - 74:6, 74:10, 74:25, 75:4, 93:16, 141:5, 159:4, 231:8 200 [1] - 142:8 2000 [1] - 196:17 2001 [1] - 166:5 2002 [1] - 222:15 2003 [11] - 132:8, 132:10, 138:15, 138:19, 138:21, 139:1, 151:4, 222:15, 222:16, 231:14, 264:22 2006 [2] - 165:21, 263:2 2008 [1] - 166:6 2013 [2] - 166:8, 263:3 2014 [3] - 176:19, 177:24, 191:9 2015 [15] - 15:13, 177:22, 177:25, 178:1, 178:3, 189:4, 191:9, 221:15, 221:20, 221:24, 222:3, 223:14, 224:10, 224:12 2016 [14] - 16:23, 26:18, 26:19, 31:1, 62:1, 62:10, 86:17, 147:6, 179:19, 188:1, 223:7, 226:22, 252:13, 256:19 2017 [34] - 13:9, 13:11, 15:13, 20:18, 20:23, 21:16, 26:18, 30:17, 31:1, 31:11, 31:22, 32:23, 33:10, 62:1, 62:10, 63:19, 94:2, 140:25, 141:7, 147:5, 147:6, 181:11, 181:12, 181:13, 188:1, 191:6, 247:19, 247:22, 247:25, 248:9, 251:17, 268:25, 274:5, 279:5 2018 [2] - 5:1, 145:17 21 [2] - 99:7, 101:8 21st [1] - 268:25 220 [1] - 99:6 23 [5] - 5:1, 172:18, 172:21, 173:2, 258:18 230F1B [4] - 270:25, 271:19, 275:24, 278:8 235-5 [2] - 173:11, 270:22 240 [1] - 106:16 255 [1] - 3:2 257 [1] - 3:2 26 [2] - 101:11	3 [2] - 64:4, 170:23 30 [6] - 91:7, 146:14, 244:14, 275:23, 275:25, 276:2 300 [3] - 182:17, 188:17, 197:12 30th [5] - 63:19, 247:19, 247:22, 247:25, 248:9 32 [1] - 204:22 320 [1] - 197:13 34 [1] - 107:12 345 [3] - 187:23, 214:10, 214:19 35 [1] - 109:1 36 [1] - 109:23 368 [1] - 170:24 37 [1] - 110:6 371 [1] - 171:5 375 [1] - 280:25 389 [2] - 173:13, 173:16	46-B [1] - 116:8 48 [3] - 183:4, 183:6, 246:22 499 [1] - 193:22	5 5.1 [1] - 150:11 500 [1] - 193:22 511 [1] - 119:24
1	2	3	6	
1 [9] - 4:7, 53:9, 132:7, 150:5, 151:5, 222:7, 222:14, 227:19, 267:17 1.18 [1] - 55:4 1.19 [1] - 55:2 10 [4] - 84:10, 227:18, 227:19, 270:24 1086 [1] - 120:1 10:00 [2] - 5:2, 286:7 11 [7] - 84:24, 227:24, 256:15, 278:20, 278:21, 279:7, 282:11 11/15/16 [2] - 86:6, 86:7 1100 [2] - 119:16, 282:11 113 [1] - 66:15 117 [1] - 80:14 11:30 [1] - 95:22 12 [8] - 62:17, 74:3, 85:5, 141:18, 141:21, 162:15, 217:4, 276:17 12,000 [1] - 106:13 12/1/16 [1] - 86:8 120 [1] - 106:16 129 [1] - 81:17 12th [1] - 157:21 13 [5] - 57:10, 85:12, 146:14 13-A [1] - 85:12 14 [5] - 121:20, 130:16, 130:17, 130:18, 222:8 144 [1] - 217:3 15 [2] - 85:23, 121:20 163 [1] - 256:15 17 [3] - 91:18, 92:5, 93:16 170 [1] - 39:19 175 [1] - 173:12 18 [1] - 120:8 180 [4] - 79:9, 79:16, 79:23, 83:25 19 [2] - 14:13, 93:16 194 [1] - 85:25 19608 [1] - 14:14 1990 [1] - 191:16 1997 [3] - 175:10, 175:11,	2 2 [8] - 4:8, 5:3, 62:25, 139:9, 167:6, 170:17, 261:7 20 [8] - 74:6, 74:10, 74:25, 75:4, 93:16, 141:5, 159:4, 231:8 200 [1] - 142:8 2000 [1] - 196:17 2001 [1] - 166:5 2002 [1] - 222:15 2003 [11] - 132:8, 132:10, 138:15, 138:19, 138:21, 139:1, 151:4, 222:15, 222:16, 231:14, 264:22 2006 [2] - 165:21, 263:2 2008 [1] - 166:6 2013 [2] - 166:8, 263:3 2014 [3] - 176:19, 177:24, 191:9 2015 [15] - 15:13, 177:22, 177:25, 178:1, 178:3, 189:4, 191:9, 221:15, 221:20, 221:24, 222:3, 223:14, 224:10, 224:12 2016 [14] - 16:23, 26:18, 26:19, 31:1, 62:1, 62:10, 86:17, 147:6, 179:19, 188:1, 223:7, 226:22, 252:13, 256:19 2017 [34] - 13:9, 13:11, 15:13, 20:18, 20:23, 21:16, 26:18, 30:17, 31:1, 31:11, 31:22, 32:23, 33:10, 62:1, 62:10, 63:19, 94:2, 140:25, 141:7, 147:5, 147:6, 181:11, 181:12, 181:13, 188:1, 191:6, 247:19, 247:22, 247:25, 248:9, 251:17, 268:25, 274:5, 279:5 2018 [2] - 5:1, 145:17 21 [2] - 99:7, 101:8 21st [1] - 268:25 220 [1] - 99:6 23 [5] - 5:1, 172:18, 172:21, 173:2, 258:18 230F1B [4] - 270:25, 271:19, 275:24, 278:8 235-5 [2] - 173:11, 270:22 240 [1] - 106:16 255 [1] - 3:2 257 [1] - 3:2 26 [2] - 101:11	3 3 [2] - 64:4, 170:23 30 [6] - 91:7, 146:14, 244:14, 275:23, 275:25, 276:2 300 [3] - 182:17, 188:17, 197:12 30th [5] - 63:19, 247:19, 247:22, 247:25, 248:9 32 [1] - 204:22 320 [1] - 197:13 34 [1] - 107:12 345 [3] - 187:23, 214:10, 214:19 35 [1] - 109:1 36 [1] - 109:23 368 [1] - 170:24 37 [1] - 110:6 371 [1] - 171:5 375 [1] - 280:25 389 [2] - 173:13, 173:16	6 6 [3] - 57:5, 57:6, 66:15 6.1 [1] - 226:6 6.4 [4] - 130:22, 190:14, 222:6, 222:21 60 [1] - 181:19 601140 [2] - 167:15, 167:17 61 [9] - 137:20, 151:3, 151:5, 208:17, 209:10, 231:13, 231:16, 237:15, 237:18 65 [1] - 120:6 69 [2] - 62:25, 167:9 6:00 [1] - 285:8	
1	2	3	7	
1 [9] - 4:7, 53:9, 132:7, 150:5, 151:5, 222:7, 222:14, 227:19, 267:17 1.18 [1] - 55:4 1.19 [1] - 55:2 10 [4] - 84:10, 227:18, 227:19, 270:24 1086 [1] - 120:1 10:00 [2] - 5:2, 286:7 11 [7] - 84:24, 227:24, 256:15, 278:20, 278:21, 279:7, 282:11 11/15/16 [2] - 86:6, 86:7 1100 [2] - 119:16, 282:11 113 [1] - 66:15 117 [1] - 80:14 11:30 [1] - 95:22 12 [8] - 62:17, 74:3, 85:5, 141:18, 141:21, 162:15, 217:4, 276:17 12,000 [1] - 106:13 12/1/16 [1] - 86:8 120 [1] - 106:16 129 [1] - 81:17 12th [1] - 157:21 13 [5] - 57:10, 85:12, 146:14 13-A [1] - 85:12 14 [5] - 121:20, 130:16, 130:17, 130:18, 222:8 144 [1] - 217:3 15 [2] - 85:23, 121:20 163 [1] - 256:15 17 [3] - 91:18, 92:5, 93:16 170 [1] - 39:19 175 [1] - 173:12 18 [1] - 120:8 180 [4] - 79:9, 79:16, 79:23, 83:25 19 [2] - 14:13, 93:16 194 [1] - 85:25 19608 [1] - 14:14 1990 [1] - 191:16 1997 [3] - 175:10, 175:11,	2 2 [8] - 4:8, 5:3, 62:25, 139:9, 167:6, 170:17, 261:7 20 [8] - 74:6, 74:10, 74:25, 75:4, 93:16, 141:5, 159:4, 231:8 200 [1] - 142:8 2000 [1] - 196:17 2001 [1] - 166:5 2002 [1] - 222:15 2003 [11] - 132:8, 132:10, 138:15, 138:19, 138:21, 139:1, 151:4, 222:15, 222:16, 231:14, 264:22 2006 [2] - 165:21, 263:2 2008 [1] - 166:6 2013 [2] - 166:8, 263:3 2014 [3] - 176:19, 177:24, 191:9 2015 [15] - 15:13, 177:22, 177:25, 178:1, 178:3, 189:4, 191:9, 221:15, 221:20, 221:24, 222:3, 223:14, 224:10, 224:12 2016 [14] - 16:23, 26:18, 26:19, 31:1, 62:1, 62:10, 86:17, 147:6, 179:19, 188:1, 223:7, 226:22, 252:13, 256:19 2017 [34] - 13:9, 13:11, 15:13, 20:18, 20:23, 21:16, 26:18, 30:17, 31:1, 31:11, 31:22, 32:23, 33:10, 62:1, 62:10, 63:19, 94:2, 140:25, 141:7, 147:5, 147:6, 181:11, 181:12, 181:13, 188:1, 191:6, 247:19, 247:22, 247:25, 248:9, 251:17, 268:25, 274:5, 279:5 2018 [2] - 5:1, 145:17 21 [2] - 99:7, 101:8 21st [1] - 268:25 220 [1] - 99:6 23 [5] - 5:1, 172:18, 172:21, 173:2, 258:18 230F1B [4] - 270:25, 271:19, 275:24, 278:8 235-5 [2] - 173:11, 270:22 240 [1] - 106:16 255 [1] - 3:2 257 [1] - 3:2 26 [2] - 101:11	3 3 [2] - 64:4, 170:23 30 [6] - 91:7, 146:14, 244:14, 275:23, 275:25, 276:2 300 [3] - 182:17, 188:17, 197:12 30th [5] - 63:19, 247:19, 247:22, 247:25, 248:9 32 [1] - 204:22 320 [1] - 197:13 34 [1] - 107:12 345 [3] - 187:23, 214:10, 214:19 35 [1] - 109:1 36 [1] - 109:23 368 [1] - 170:24 37 [1] - 110:6 371 [1] - 171:5 375 [1] - 280:25 389 [2] - 173:13, 173:16	7 7 [2] - 80:12, 80:18 70 [1] - 93:18 700 [1] - 214:10 74 [2] - 238:4, 247:12 743 [3] - 187:23, 214:11, 214:19	
1	2	3	8	
1 [9] - 4:7, 53:9, 132:7, 150:5, 151:5, 222:7, 222:14, 227:19, 267:17 1.18 [1] - 55:4 1.19 [1] - 55:2 10 [4] - 84:10, 227:18, 227:19, 270:24 1086 [1] - 120:1 10:00 [2] - 5:2, 286:7 11 [7] - 84:24, 227:24, 256:15, 278:20, 278:21, 279:7, 282:11 11/15/16 [2] - 86:6, 86:7 1100 [2] - 119:16, 282:11 113 [1] - 66:15 117 [1] - 80:14 11:30 [1] - 95:22 12 [8] - 62:17, 74:3, 85:5, 141:18, 141:21, 162:15, 217:4, 276:17 12,000 [1] - 106:13 12/1/16 [1] - 86:8 120 [1] - 106:16 129 [1] - 81:17 12th [1] - 157:21 13 [5] - 57:10, 85:12, 146:14 13-A [1] - 85:12 14 [5] - 121:20, 130:16, 130:17, 130:18, 222:8 144 [1] - 217:3 15 [2] - 85:23, 121:20 163 [1] - 256:15 17 [3] - 91:18, 92:5, 93:16 170 [1] - 39:19 175 [1] - 173:12 18 [1] - 120:8 180 [4] - 79:9, 79:16, 79:23, 83:25 19 [2] - 14:13, 93:16 194 [1] - 85:25 19608 [1] - 14:14 1990 [1] - 191:16 1997 [3] - 175:10, 175:11,	2 2 [8] - 4:8, 5:3, 62:25, 139:9, 167:6, 170:17, 261:7 20 [8] - 74:6, 74:10, 74:25, 75:4, 93:16, 141:5, 159:4, 231:8 200 [1] - 142:8 2000 [1] - 196:17 2001 [1] - 166:5 2002 [1] - 222:15 2003 [11] - 132:8, 132:10, 138:15, 138:19, 138:21, 139:1, 151:4, 222:15, 222:16, 231:14, 264:22 2006 [2] - 165:21, 263:2 2008 [1] - 166:6 2013 [2] - 166:8, 263:3 2014 [3] - 176:19, 177:24, 191:9 2015 [15] - 15:13, 177:22, 177:25, 178:1, 178:3, 189:4, 191:9, 221:15, 221:20, 221:24, 222:3, 223:14, 224:10, 224:12 2016 [14] - 16:23, 26:18, 26:19, 31:1, 62:1, 62:10, 86:17, 147:6, 179:19, 188:1, 223:7, 226:22, 252:13, 256:19 2017 [34] - 13:9, 13:11, 15:13, 20:18, 20:23, 21:16, 26:18, 30:17, 31:1, 31:11, 31:22, 32:23, 33:10, 62:1, 62:10, 63:19, 94:2, 140:25, 141:7, 147:5, 147:6, 181:11, 181:12, 181:13, 188:1, 191:6, 247:19, 247:22, 247:25, 248:9, 251:17, 268:25, 274:5, 279:5 2018 [2] - 5:1, 145:17 21 [2] - 99:7, 101:8 21st [1] - 268:25 220 [1] - 99:6 23 [5] - 5:1, 172:18, 172:21, 173:2, 258:18 230F1B [4] - 270:25, 271:19, 275:24, 278:8 235-5 [2] - 173:11, 270:22 240 [1] - 106:16 255 [1] - 3:2 257 [1] - 3:2 26 [2] - 101:11	3 3 [2] - 64:4, 170:23 30 [6] - 91:7, 146:14, 244:14, 275:23, 275:25, 276:2 300 [3] - 182:17, 188:17, 197:12 30th [5] - 63:19, 247:19, 247:22, 247:25, 248:9 32 [1] - 204:22 320 [1] - 197:13 34 [1] - 107:12 345 [3] - 187:23, 214:10, 214:19 35 [1] - 109:1 36 [1] - 109:23 368 [1] - 170:24 37 [1] - 110:6 371 [1] - 171:5 375 [1] - 280:25 389 [2] - 173:13, 173:16	8 8 [1] - 81:16 80 [6] - 53:19, 53:21, 282:7, 282:8, 282:14, 283:14 83 [3] - 64:4, 93:20, 146:17 84 [1] - 183:6 86 [1] - 37:24	
1	2	3	9	
1 [9] - 4:7, 53:9, 132:7, 150:5, 151:5, 222:7, 222:14, 227:19, 267:17 1.18 [1] - 55:4 1.19 [1] - 55:2 10 [4] - 84:10, 227:18, 227:19, 270:24 1086 [1] - 120:1 10:00 [2] - 5:2, 286:7 11 [7] - 84:24, 227:24, 256:15, 278:20, 278:21, 279:7, 282:11 11/15/16 [2] - 86:6, 86:7 1100 [2] - 119:16, 282:11 113 [1] - 66:15 117 [1] - 80:14 11:30 [1] - 95:22 12 [8] - 62:17, 74:3, 85:5, 141:18, 141:21, 162:15, 217:4, 276:17 12,000 [1] - 106:13 12/1/16 [1] - 86:8 120 [1] - 106:16 129 [1] - 81:17 12th [1] - 157:21 13 [5] - 57:10, 85:12, 146:14 13-A [1] - 85:12 14 [5] - 121:20, 130:16, 130:17, 130:18, 222:8 144 [1] - 217:3 15 [2] - 85:23, 121:20 163 [1] - 256:15 17 [3] - 91:18, 92:5, 93:16 170 [1] - 39:19 175 [1] - 173:12 18 [1] - 120:8 180 [4] - 79:9, 79:16, 79:23, 83:25 19 [2] - 14:13, 93:16 194 [1] - 85:25 19608 [1] - 14:14 1990 [1] - 191:16 1997 [3] - 175:10, 175:11,	2 2 [8] - 4:8, 5:3, 62:25, 139:9, 167:6, 170:17, 261:7 20			

12:17, 78:20, 86:13, 86:14
ability [11] - 20:25, 51:19, 68:3, 68:9, 68:10, 71:24, 159:14, 180:22, 232:2, 233:10, 239:25
able [46] - 12:6, 12:10, 12:15, 16:3, 18:19, 27:19, 28:15, 30:24, 31:3, 49:8, 52:17, 54:16, 62:7, 66:24, 67:11, 67:12, 69:6, 70:14, 71:3, 77:6, 77:14, 78:15, 78:17, 80:8, 81:4, 81:7, 84:6, 91:6, 93:7, 104:7, 112:7, 112:8, 115:17, 131:14, 143:13, 145:9, 149:4, 154:21, 161:20, 169:2, 169:22, 218:23, 248:12, 255:7, 259:23
abrasion [1] - 270:17
absolutely [11] - 6:8, 9:4, 12:20, 106:15, 124:1, 192:23, 193:4, 253:23, 258:1, 258:4, 284:8
accept [5] - 25:6, 56:11, 92:2, 132:22, 234:7
acceptable [1] - 140:15
accepted [3] - 112:22, 112:23, 140:19
accepting [2] - 33:15, 234:22
access [18] - 12:10, 27:23, 49:10, 55:22, 66:12, 94:21, 102:3, 102:4, 143:5, 143:6, 143:8, 143:9, 143:11, 143:14, 152:8, 155:17, 159:14, 276:18
accessed [1] - 18:14
accommodate [1] - 58:3
accompanied [1] - 170:19
accordance [2] - 13:7, 281:10
according [9] - 29:19, 102:10, 196:8, 233:14, 234:6, 237:11, 238:24, 244:6, 276:8
accordingly [1] - 11:1
account [3] - 254:21, 254:22, 254:23
accreditation [2] - 261:22, 261:23
accumulated [1] - 21:20
accurate [7] - 192:24, 253:22, 253:25, 261:9, 261:14, 277:10
accurately [2] - 122:14, 256:12
acknowledged [1] - 139:13
acknowledgment [1] - 132:16
acquired [1] - 213:17

acquiring [1] - 242:12
action [8] - 6:10, 62:20, 64:22, 65:1, 118:13, 121:1, 136:2, 168:7
actions [6] - 64:13, 72:5, 89:21, 119:4, 120:12
active [2] - 67:5, 98:15
actual [3] - 71:6, 283:13, 283:15
add [6] - 76:7, 76:15, 146:11, 179:24, 198:8, 224:11
added [4] - 71:18, 76:6, 76:13, 261:13
adding [4] - 76:14, 180:14, 185:20, 236:17
addition [10] - 45:12, 72:22, 121:20, 126:19, 140:7, 203:25, 216:5, 216:10, 255:3, 258:19
additional [10] - 76:5, 79:20, 109:21, 126:17, 144:24, 154:21, 181:4, 198:9, 223:2, 283:3
additionally [7] - 53:23, 63:13, 72:11, 107:7, 111:4, 122:15, 163:14
additions [1] - 265:4
address [9] - 5:20, 84:8, 93:2, 109:5, 143:18, 144:2, 144:11, 207:11, 252:21
addressed [4] - 113:3, 132:4, 132:5, 141:25
addresses [1] - 152:13
adds [1] - 16:2
adhere [3] - 227:25, 228:4, 228:24
adhering [2] - 89:16, 89:17
adjacent [1] - 214:2
adjourn [1] - 96:5
adjusting [1] - 228:4
adjustment [1] - 25:9
adjustments [1] - 61:2
administer [1] - 53:25
administering [2] - 50:15, 56:2
administration [1] - 219:13
administrative [2] - 219:15, 220:16
admit [3] - 222:10, 244:2, 244:3
Admitted [1] - 4:6
admitted [6] - 94:25, 203:14, 222:20, 244:5, 277:18, 277:21
admitting [1] - 211:25
adopt [1] - 206:17
adopted [1] - 267:3
ADSS [10] - 200:21, 206:24, 207:2, 243:16, 269:17,

270:4, 270:13, 270:18, 271:1, 275:24
Adtell [2] - 14:20, 14:21
advance [1] - 180:23
advanced [1] - 218:20
advantage [1] - 97:9
advise [1] - 152:1
advisement [1] - 87:22
aerial [1] - 30:15
affected [2] - 216:2, 221:3
affecting [2] - 219:4, 261:13
afield [1] - 70:5
AFTER [5] - 5:13, 95:19, 97:25, 174:14, 260:6
afternoon [4] - 286:4, 286:17, 286:18, 286:20
afterwards [2] - 58:4, 257:1
Agita [2] - 156:14
ago [8] - 42:20, 50:12, 74:9, 110:13, 148:10, 255:15, 255:22, 283:14
agree [28] - 210:9, 224:1, 225:12, 226:8, 226:12, 226:16, 227:12, 227:20, 227:25, 228:22, 230:3, 230:21, 231:19, 232:25, 237:4, 248:9, 248:12, 257:9, 270:5, 276:23, 279:2, 279:19, 281:15, 281:18, 281:24, 283:20, 283:25
agreed [4] - 96:19, 136:6, 192:17, 245:21
agreeing [2] - 208:8, 208:10
agreement [41] - 13:11, 51:19, 51:21, 52:23, 53:12, 54:5, 54:7, 54:14, 54:20, 54:23, 54:25, 55:12, 56:22, 60:11, 60:17, 61:5, 63:23, 89:18, 89:23, 150:12, 158:18, 186:21, 190:15, 222:11, 222:15, 226:6, 228:25, 229:2, 229:5, 232:12, 232:24, 233:3, 234:23, 235:21, 238:25, 241:18, 244:7, 244:9, 244:11, 248:14
agreements [3] - 53:25, 54:2, 125:5
agrees [1] - 96:5
ahead [22] - 49:20, 58:15, 65:13, 66:6, 79:4, 81:13, 99:19, 110:1, 131:18, 136:20, 161:7, 168:11, 202:17, 211:15, 211:20, 213:6, 213:8, 240:1, 249:22, 259:2, 272:12
air [1] - 30:15
Albert [1] - 99:17

ALBERT [11] - 47:8, 52:10, 99:18, 212:16, 213:2, 213:7, 213:11, 213:14, 215:20, 220:22, 221:7
alert [1] - 157:8
alleged [1] - 138:23
allegedly [1] - 229:7
Allentown [1] - 183:14
allow [11] - 56:18, 70:10, 77:19, 105:9, 125:12, 131:9, 180:23, 199:25, 200:6, 249:8, 280:3
allowed [11] - 26:15, 54:8, 124:14, 125:19, 125:21, 151:12, 180:25, 199:24, 202:25, 223:2, 224:18
allowing [2] - 125:23, 209:18
allows [5] - 55:24, 72:11, 131:21, 178:23, 206:19
alls [1] - 9:20
almost [3] - 120:2, 193:20, 200:9
alone [1] - 115:15
alongside [1] - 44:16
aluminum [1] - 199:16
ambiguous [2] - 109:15, 110:11
amended [2] - 150:23, 228:6
amount [5] - 135:17, 137:6, 142:4, 142:11, 282:13
amplifiers [1] - 138:6
analysis [11] - 48:6, 56:12, 58:2, 82:17, 85:3, 88:5, 234:25, 263:4, 263:21, 269:13, 270:12
analyze [3] - 116:1, 230:15, 272:16
analyzed [1] - 282:6
analyzing [2] - 265:3, 269:4
another [29] - 19:6, 24:15, 32:9, 33:17, 35:1, 38:15, 51:5, 72:14, 76:11, 83:3, 83:20, 89:1, 97:7, 102:22, 103:5, 103:9, 113:25, 114:21, 147:11, 164:6, 166:1, 193:13, 195:19, 207:12, 212:24, 220:10, 220:19, 228:18, 280:17
answer [8] - 17:25, 88:6, 133:24, 202:18, 249:8, 249:22, 258:13
answered [1] - 249:20
answering [1] - 145:1
answers [1] - 161:2
anticipate [3] - 9:1, 286:9
anticipated [1] - 8:18
any [164] - 6:6, 6:13, 9:11, 13:17, 16:18, 16:25, 20:24,

21:11, 24:16, 27:8, 28:16,
30:8, 33:2, 34:21, 36:3,
36:23, 37:2, 37:5, 37:9,
42:22, 43:16, 44:5, 45:22,
46:1, 47:9, 48:5, 52:6, 53:1,
55:15, 56:25, 62:4, 62:8,
62:14, 62:20, 63:19, 63:24,
65:19, 66:25, 72:16, 73:6,
74:15, 84:3, 84:19, 85:7,
86:18, 88:10, 89:20, 91:21,
94:17, 94:20, 98:15, 106:25,
109:11, 114:16, 122:10,
122:11, 123:12, 123:24,
124:20, 125:5, 126:4,
127:21, 128:6, 132:16,
132:20, 139:23, 140:4,
140:9, 143:5, 145:18,
147:15, 150:2, 152:3, 152:8,
153:15, 156:14, 156:22,
157:8, 157:9, 157:11, 158:6,
158:11, 158:12, 158:14,
158:20, 159:11, 160:13,
161:2, 166:25, 167:20,
168:20, 171:22, 171:23,
172:16, 178:10, 181:15,
185:17, 187:25, 188:25,
189:16, 190:11, 190:22,
191:21, 193:6, 195:20,
197:21, 198:5, 199:7,
200:22, 200:23, 202:11,
205:16, 207:6, 207:9,
207:10, 209:20, 211:18,
211:21, 212:7, 212:22,
217:16, 218:10, 218:17,
220:23, 224:9, 224:11,
225:14, 226:20, 228:9,
231:25, 232:1, 232:13,
232:25, 233:22, 235:6,
242:2, 242:22, 242:25,
249:15, 251:3, 252:18,
254:3, 254:7, 254:17,
254:18, 256:12, 258:24,
262:5, 263:3, 264:10, 265:3,
265:23, 266:24, 270:12,
272:5, 282:22, 284:10,
284:14, 284:17
anyway [6] - 9:14, 137:14,
137:16, 156:5, 254:5, 254:16
apart [1] - 36:23
apologies [1] - 229:25
apologize [5] - 18:6, 87:9,
106:9, 249:10, 256:7
app [1] - 254:18
apparent [3] - 106:3,
110:19, 121:5
appeal [1] - 97:6
appear [1] - 14:4
appeared [3] - 98:19, 101:5
Appendix [2] - 150:23,
228:6

applicable [2] - 150:20,
151:1
applicant [6] - 58:6, 58:15,
60:25, 65:9, 72:17, 82:13
application [96] - 10:9,
12:8, 12:17, 15:14, 16:2,
16:18, 17:7, 17:11, 18:18,
27:22, 47:17, 55:15, 55:23,
56:3, 56:18, 57:2, 57:3,
57:13, 57:20, 57:24, 59:14,
60:9, 61:6, 62:9, 62:15,
64:24, 65:11, 65:16, 67:1,
68:12, 69:23, 70:13, 71:10,
71:20, 71:22, 72:17, 74:21,
75:25, 76:11, 76:15, 77:15,
78:2, 78:4, 78:6, 78:19, 79:3,
79:15, 79:24, 80:22, 81:24,
84:12, 85:14, 87:12, 88:11,
89:14, 111:1, 111:3, 127:1,
127:3, 130:14, 130:24,
131:1, 131:2, 144:9, 144:11,
144:19, 144:22, 144:25,
152:10, 152:14, 156:7,
156:25, 157:6, 181:20,
182:8, 183:8, 183:18,
183:19, 183:20, 189:14,
190:12, 194:2, 194:5, 223:4,
223:23, 230:6, 230:9,
230:15, 232:15, 234:5,
238:22, 238:23, 256:10,
265:20
applications [63] - 15:4,
15:10, 16:19, 16:25, 23:18,
23:20, 35:19, 35:22, 35:25,
36:1, 36:3, 37:19, 37:21,
38:3, 38:5, 38:9, 38:10, 39:3,
50:16, 62:11, 65:21, 66:6,
66:7, 66:22, 67:4, 67:7, 67:8,
70:9, 72:11, 81:2, 83:20,
84:3, 86:13, 87:14, 88:10,
88:12, 111:5, 111:6, 112:18,
147:1, 147:8, 155:16,
155:23, 155:25, 161:11,
161:13, 161:23, 162:4,
162:12, 162:21, 162:22,
182:9, 182:12, 182:15,
182:20, 185:16, 224:2,
226:21, 235:21, 254:3,
254:7, 254:18, 270:10
applied [4] - 77:25, 244:13,
248:8, 264:8
Applied [1] - 50:7
applies [2] - 27:25, 195:1
apply [3] - 61:23, 78:6,
152:3
applying [1] - 57:21
appointing [1] - 6:3
appreciate [2] - 18:2,
285:21
appreciation [1] - 266:16

approach [2] - 52:3, 209:6
approached [1] - 186:19
approaches [1] - 26:25
appropriate [11] - 101:16,
101:17, 101:20, 117:17,
212:7, 212:21, 259:18,
266:8, 266:10, 273:10,
281:19
approval [2] - 79:3, 226:2
approve [2] - 237:18, 238:8
approved [6] - 38:10,
235:23, 254:3, 254:8,
254:18, 254:19
approximate [1] - 214:14
approximation [1] - 197:15
April [4] - 177:25, 178:3,
189:4
Aramid [1] - 199:18
area [26] - 17:18, 19:20,
19:25, 36:11, 51:11, 53:2,
73:12, 73:13, 73:17, 82:12,
83:3, 94:13, 95:13, 104:19,
115:15, 116:23, 128:9,
151:6, 171:13, 171:16,
171:19, 181:1, 189:8, 197:5,
239:1, 273:12
areas [3] - 73:12, 90:23,
160:14
argue [2] - 238:11, 238:14
arguing [1] - 13:13
arise [1] - 9:8
armed [1] - 82:18
arose [1] - 33:12
arrived [1] - 95:11
article [4] - 55:2, 57:5, 57:6,
57:11
aspects [5] - 8:18, 205:16,
206:3, 207:10, 228:10
assembled [1] - 135:24
assembling [1] - 135:21
asset [1] - 164:9
assets [1] - 223:23
assigned [4] - 166:11,
184:8, 184:19, 184:25
assigning [2] - 46:14, 184:1
assist [2] - 34:3, 76:1
assistance [1] - 93:23
assisting [1] - 44:19
associated [4] - 60:19,
60:20, 116:8, 262:11
assume [4] - 43:11, 152:2,
214:23, 254:24
assumed [2] - 77:8, 225:16
assuming [6] - 44:24, 45:5,
138:19, 222:17, 233:20,
277:4
attach [43] - 16:15, 16:25,
17:12, 20:22, 21:1, 26:9,
26:13, 26:15, 27:25, 28:21,
48:20, 50:16, 51:2, 51:20,

54:8, 57:22, 57:25, 59:5,
61:17, 61:23, 62:9, 63:22,
63:23, 69:24, 72:5, 79:23,
81:6, 81:9, 82:2, 167:20,
178:24, 184:8, 200:16,
208:4, 217:5, 224:6, 224:8,
225:12, 229:4, 233:25,
234:21, 234:25
attached [47] - 12:12, 21:6,
21:9, 21:13, 22:9, 22:10,
28:22, 30:25, 55:21, 56:13,
60:11, 60:13, 60:22, 69:25,
76:10, 76:25, 77:5, 77:11,
79:14, 79:16, 79:17, 83:10,
91:14, 94:16, 101:4, 104:4,
104:9, 105:10, 105:12,
107:21, 124:9, 150:23,
158:13, 186:3, 187:11,
192:14, 195:21, 208:1,
218:3, 228:6, 229:9, 229:10,
229:11, 229:12, 247:2,
247:3, 247:5
attacher [6] - 27:13, 61:1,
125:15, 127:21, 184:12,
195:9
attachers [7] - 28:9, 29:20,
55:24, 56:4, 87:20, 118:1,
235:11
attaching [11] - 22:18,
26:17, 58:22, 76:8, 91:11,
221:19, 221:23, 225:9,
225:10, 226:1, 275:11
attachment [59] - 15:4,
15:10, 15:14, 18:17, 18:19,
20:16, 21:18, 22:15, 24:15,
26:2, 47:16, 49:24, 55:11,
57:12, 60:15, 61:21, 63:4,
64:10, 78:21, 79:10, 90:7,
101:3, 101:22, 104:2,
104:21, 107:5, 123:10,
123:12, 123:15, 126:6,
126:25, 127:6, 150:22,
151:17, 184:14, 185:16,
187:13, 187:14, 215:3,
221:16, 222:11, 222:15,
223:2, 223:3, 223:22, 224:7,
226:9, 226:11, 226:14,
228:5, 232:18, 235:3,
238:25, 241:18, 244:7,
256:24, 265:19, 270:17
attachments [95] - 12:19,
16:19, 21:21, 21:22, 29:21,
50:24, 53:24, 56:11, 56:14,
58:3, 58:10, 58:16, 58:18,
65:17, 72:7, 78:16, 78:18,
84:19, 85:9, 90:13, 90:25,
91:7, 92:9, 92:12, 92:17,
93:3, 93:5, 93:8, 93:11,
94:10, 94:14, 95:5, 95:15,
98:7, 98:20, 98:22, 99:3,

103:7, 106:3, 110:20,
111:21, 112:9, 112:15,
112:16, 112:18, 119:7,
119:9, 119:25, 120:4,
122:11, 123:8, 124:23,
124:25, 125:2, 126:13,
126:16, 145:15, 146:2,
167:1, 167:4, 167:22, 173:4,
181:15, 181:16, 184:14,
184:16, 184:19, 185:15,
186:18, 186:22, 187:6,
187:9, 187:12, 187:22,
188:17, 188:24, 188:25,
214:12, 214:13, 214:15,
214:18, 222:25, 223:1,
225:16, 225:18, 226:3,
227:22, 233:22, 234:16,
236:3, 236:22, 250:9,
282:11, 282:20

ATTCH [1] - 104:3
attempt [9] - 32:25, 108:6,
108:9, 109:21, 117:7,
120:11, 122:1, 194:7, 271:12
attempted [1] - 35:4
attempting [3] - 100:20,
192:16, 193:7
attempts [1] - 16:15
attention [11] - 57:1, 57:5,
80:12, 85:11, 91:17, 108:22,
150:11, 151:6, 171:4,
258:18, 279:7
attribute [1] - 127:16
attributed [4] - 119:25,
122:11, 123:21
attributes [1] - 91:1
audit [1] - 137:11
audited [1] - 136:5
auditing [4] - 14:18, 90:21,
136:9, 137:7
August [1] - 31:21
authority [1] - 125:6
Authority [1] - 42:2
authorization [3] - 69:25,
121:17, 223:5
authorizations [1] - 132:20
authorized [11] - 77:17,
92:19, 92:22, 93:3, 93:11,
95:2, 95:3, 103:1, 125:17,
223:20, 254:17
automatically [1] - 16:2
available [31] - 28:2, 47:23,
47:24, 61:20, 61:25, 62:3,
62:6, 62:21, 72:17, 72:21,
72:23, 73:6, 73:7, 77:2,
90:24, 115:23, 134:3, 184:2,
184:6, 192:10, 195:7,
195:10, 229:17, 231:4,
232:4, 233:15, 240:19,
246:21, 246:23, 255:25,
286:15

average [1] - 210:22
awaiting [1] - 66:8
aware [22] - 10:23, 19:24,
44:4, 90:12, 91:2, 111:15,
132:22, 132:23, 135:5,
139:7, 143:4, 190:21, 202:7,
210:6, 231:21, 233:6,
235:13, 242:6, 247:24,
275:6, 277:7
awareness [1] - 209:24

B

Bachelor's [2] - 50:7,
165:23
backbone [13] - 59:10,
176:24, 176:25, 181:17,
181:18, 185:21, 186:1,
186:2, 217:2, 217:5, 217:6,
223:11, 253:19
background [5] - 36:22,
50:1, 50:2, 165:22, 180:6
backs [1] - 236:20
ballpark [1] - 142:9
band [5] - 21:25, 22:6,
41:23, 42:12, 179:5
bank [1] - 114:22
base [3] - 41:22, 88:4,
253:14
based [19] - 5:25, 18:1,
37:12, 39:18, 48:3, 89:11,
96:3, 118:14, 119:5, 161:19,
164:9, 175:14, 190:19,
194:13, 257:16, 267:4,
272:1, 274:19, 277:10
basis [15] - 53:20, 53:22,
55:19, 70:11, 141:1, 153:6,
153:22, 158:6, 158:9,
158:11, 158:12, 159:11,
159:13, 180:3, 205:9
batch [4] - 121:9, 146:14,
146:15
batches [6] - 93:21, 115:15,
120:24, 121:5, 136:17, 146:1
Bates [28] - 52:12, 53:9,
55:7, 57:10, 62:25, 64:4,
66:15, 99:6, 101:8, 102:18,
107:13, 108:1, 121:21,
130:16, 130:17, 130:18,
137:20, 150:6, 151:5, 167:9,
170:23, 172:25, 173:13,
173:16, 208:17, 209:10,
227:18, 247:12
beat [2] - 29:12, 29:13
became [7] - 106:3, 110:17,
110:18, 121:4, 124:3,
135:20, 140:25
become [5] - 9:22, 35:2,
202:7, 210:6, 273:1
beforehand [1] - 34:9

began [11] - 27:8, 106:5,
145:17, 166:8, 175:10,
177:19, 177:21, 177:25,
193:10, 221:19, 221:22
begin [9] - 5:21, 26:17,
64:17, 106:1, 145:13,
155:13, 175:8, 176:2, 179:15
beginning [9] - 20:17,
41:16, 54:24, 170:16,
177:21, 193:12, 206:15,
225:19, 259:16
begins [5] - 144:21, 172:21,
212:18, 228:15, 264:20
behalf [3] - 84:4, 98:4,
246:12
behind [1] - 104:21
believes [1] - 285:13
belonging [1] - 215:3
below [13] - 73:18, 73:20,
73:21, 102:8, 118:9, 129:2,
137:23, 141:20, 149:6,
151:19, 208:12, 237:13,
276:13
beneath [1] - 185:3
best [8] - 63:13, 63:14,
63:17, 120:11, 134:8,
149:20, 179:21, 193:1
better [8] - 27:7, 69:6,
96:12, 131:16, 172:12,
203:6, 233:6, 281:20
between [33] - 19:17, 30:9,
38:23, 38:25, 42:3, 50:23,
51:16, 52:23, 54:2, 56:22,
86:22, 91:23, 94:1, 95:21,
97:9, 103:10, 114:6, 146:12,
173:18, 201:21, 215:6,
218:24, 219:23, 220:4,
228:23, 266:17, 270:22,
270:24, 271:13, 271:16
beyond [5] - 92:17, 110:20,
194:23, 249:21, 250:2
bid [1] - 66:24
big [4] - 102:23, 136:7,
172:21, 201:3
bigger [2] - 24:21, 200:8
bill [2] - 22:16, 65:13
billing [2] - 65:12, 234:17
binder [2] - 57:17, 80:7
binoculars [1] - 73:1
bit [8] - 15:6, 49:25, 88:8,
88:21, 108:2, 175:6, 181:22,
272:12
black [1] - 70:23
block [20] - 46:14, 102:16,
105:16, 136:12, 136:21,
136:25, 160:10, 160:12,
160:16, 192:24, 245:24,
246:8, 246:16, 247:1, 247:6,
247:7, 250:4, 250:11,
251:22, 258:15

blocks [11] - 43:11, 136:16,
137:14, 137:15, 137:16,
154:19, 192:1, 229:13,
247:4, 250:1
blow [1] - 108:1
blue [5] - 64:21, 64:22,
113:18, 113:19, 113:23
Blue [1] - 64:21
board [2] - 20:13, 52:8
body [2] - 207:21, 207:23
bolt [4] - 101:2, 181:16,
200:15, 201:19
bolted [2] - 72:9, 127:9
bonds [1] - 200:14
book [8] - 83:12, 91:10,
109:23, 121:20, 146:11,
170:16, 173:12, 231:20
books [1] - 49:7
boss [1] - 26:20
bottle [1] - 257:11
bottom [5] - 118:22, 129:8,
141:14, 141:17, 173:7
bought [1] - 96:15
bowl [1] - 138:7
box [4] - 90:7, 132:21,
187:16, 285:23
bracket [6] - 74:4, 103:11,
103:12, 104:23, 141:10,
141:19
brackets [2] - 273:9, 273:10
breach [1] - 242:18
breached [1] - 12:18
break [12] - 5:7, 5:9, 15:6,
95:17, 120:20, 122:25,
123:5, 123:9, 174:11, 260:2,
260:4, 269:21
breakdown [1] - 81:11
breaking [2] - 123:13,
200:1
Brian [1] - 89:9
brief [4] - 5:6, 5:12, 8:10,
95:18
briefly [3] - 179:14, 247:11,
261:17
bring [6] - 70:7, 74:15,
74:20, 110:16, 170:4, 224:2
broad [4] - 41:23, 42:12,
172:3, 198:17
broadly [1] - 96:1
broke [2] - 81:12, 98:2
broken [2] - 272:21, 283:17
brought [10] - 41:25, 74:14,
149:1, 149:2, 149:3, 183:16,
190:18, 193:23, 241:14,
275:20
bucket [2] - 19:13, 99:14
buckets [2] - 30:16, 198:17
buffer [2] - 199:23, 199:24
build [21] - 15:18, 17:3,
30:21, 38:6, 38:12, 41:20,

44:8, 46:22, 87:5, 91:4,
118:1, 120:6, 166:19,
176:24, 189:9, 211:10,
223:23, 224:19, 231:10,
244:4, 264:17
building [5] - 26:25, 40:18,
41:22, 157:20, 244:15
buildings [1] - 218:24
builds [1] - 181:17
built [1] - 180:18
bunch [2] - 42:16, 173:9
bunches [1] - 183:13
burden [1] - 11:16
burn [2] - 33:23, 33:24
business [16] - 5:15, 18:23,
21:8, 39:1, 53:19, 53:22,
63:14, 63:17, 159:9, 163:5,
174:23, 175:2, 197:11,
197:15, 197:19, 245:3
businesses [5] - 179:16,
197:21, 197:22, 197:24,
198:1

C

C-2-2017 [1] - 279:6
C.V [6] - 260:7, 260:10,
261:8, 267:2, 267:4, 277:14
cab [1] - 236:7
cabinet [8] - 138:3, 138:5,
207:20, 209:17, 209:19,
236:9, 236:12, 237:3
cabinets [9] - 72:11, 138:6,
138:12, 151:7, 151:8,
151:12, 231:14, 231:22,
238:9
cable [137] - 15:3, 15:20,
15:23, 16:4, 18:11, 18:14,
22:10, 22:11, 22:17, 24:20,
25:7, 28:11, 29:6, 40:1, 40:3,
40:7, 40:15, 44:21, 45:21,
46:11, 46:12, 51:17, 59:13,
63:4, 72:10, 72:12, 73:20,
74:9, 76:9, 86:18, 90:1,
101:25, 102:12, 102:16,
122:23, 123:20, 123:21,
124:8, 124:9, 124:18,
124:20, 125:13, 126:5,
127:4, 127:7, 127:8, 127:10,
130:25, 131:2, 138:5,
150:22, 153:4, 153:14,
156:24, 169:2, 172:1, 178:9,
186:2, 186:3, 199:4, 199:5,
199:10, 199:15, 199:16,
199:25, 200:2, 200:4, 200:6,
200:10, 200:11, 200:12,
200:14, 200:19, 201:1,
201:6, 201:7, 201:14,
205:14, 206:24, 207:3,
213:16, 214:18, 216:24,

217:10, 217:15, 217:17,
217:25, 218:5, 223:1, 223:8,
223:9, 223:10, 223:11,
224:8, 228:5, 230:3, 230:4,
243:2, 243:3, 243:6, 243:14,
245:3, 266:17, 266:18,
269:14, 269:20, 270:17,
270:18, 271:6, 271:7, 271:9,
271:10, 271:14, 271:19,
273:11, 275:24, 278:4,
278:7, 278:8, 278:10,
278:11, 278:17, 279:8,
279:10, 279:11, 279:15,
279:21, 280:2, 281:14, 282:5
Cable [1] - 45:20
cableman's [1] - 275:9
cables [45] - 17:12, 17:14,
28:17, 39:23, 40:9, 58:18,
72:15, 73:18, 84:20, 89:22,
91:11, 91:14, 94:23, 120:8,
122:2, 122:13, 122:17,
122:18, 122:22, 124:3,
124:4, 124:11, 124:22,
125:6, 125:20, 125:23,
128:6, 171:12, 209:18,
216:23, 217:2, 217:13,
217:25, 218:4, 241:22,
264:6, 270:4, 270:11,
270:25, 271:1, 272:6,
272:19, 272:24, 273:12,
274:20
cabling [4] - 98:15, 214:3,
214:4, 216:6
calculations [1] - 265:11
calendars [1] - 285:24
calibrations [1] - 24:8
camera [13] - 39:18, 41:24,
187:5, 187:11, 187:15,
187:18, 188:18, 195:5,
215:2, 215:12, 215:22,
217:4, 217:18
cameras [8] - 39:19,
180:22, 214:11, 214:16,
215:7, 215:17, 217:10,
239:12
cannot [4] - 144:7, 206:11,
246:15, 272:24
capable [1] - 85:8
capacity [1] - 9:11
captive [1] - 143:25
captured [2] - 25:15, 25:16
card [4] - 31:23, 32:11,
32:14, 32:20
care [2] - 197:25, 198:1
careful [1] - 53:3
carrier [3] - 128:20, 175:14,
231:7
carrying [1] - 270:11
cases [38] - 28:22, 91:2,
101:4, 117:25, 118:8, 118:9,

118:13, 118:14, 118:18,
120:5, 120:6, 122:21, 138:4,
138:9, 138:11, 149:14,
188:16, 202:4, 207:12,
207:13, 208:8, 209:16,
209:23, 210:2, 210:6, 210:7,
215:10, 215:17, 216:19,
217:1, 236:8, 236:20,
236:24, 238:9, 248:13,
248:16, 255:8, 262:17
catch [1] - 243:22
categories [8] - 53:23,
82:1, 93:10, 119:20, 191:21,
198:17, 283:18
categorize [3] - 118:14,
120:11, 127:24
categorized [1] - 122:12
categorizes [1] - 117:25
categorizing [1] - 108:9
category [3] - 72:14,
119:17, 121:13
CATV [4] - 237:16, 237:24,
237:25, 238:1
caused [3] - 60:22, 184:21,
206:9
causing [1] - 34:5
cease [1] - 91:11
ceased [1] - 13:8
Center [1] - 87:2
center [2] - 90:20, 94:12
certain [4] - 81:1, 168:19,
217:9, 283:18
certainly [15] - 15:8, 18:5,
55:21, 57:20, 67:15, 69:11,
77:18, 92:1, 113:12, 122:9,
136:2, 146:10, 150:18,
267:1, 267:5
certification [1] - 50:10
certify [1] - 37:10
chance [1] - 237:15
change [21] - 24:20, 60:8,
61:4, 63:11, 74:21, 75:1,
82:8, 132:5, 132:16, 139:13,
141:3, 185:9, 185:13,
190:22, 191:2, 206:9,
206:12, 206:17, 232:22,
232:23, 284:5
changed [3] - 79:13, 132:2,
140:23
changes [16] - 63:12,
131:9, 131:21, 139:5, 139:6,
139:7, 141:2, 152:3, 168:20,
232:1, 232:13, 232:25,
241:11, 247:25, 284:2
Chapman [26] - 49:19,
52:6, 52:11, 53:8, 55:8, 57:9,
62:24, 64:3, 64:16, 66:14,
71:2, 80:14, 81:17, 82:10,
101:7, 107:14, 108:1, 109:9,
116:10, 150:15, 167:9,

170:22, 173:1, 173:14,
222:8, 256:16
CHAPMAN [4] - 49:20,
71:4, 80:10, 130:17
characteristics [1] - 76:9
charge [4] - 49:23, 50:14,
61:2, 201:21
charges [1] - 32:14
chart [2] - 280:4, 280:22
cheated [1] - 30:11
check [3] - 121:3, 132:21,
285:24
checking [1] - 76:14
Chief [1] - 8:2
chief [2] - 257:9, 257:10
choose [2] - 58:6, 72:5
choosing [1] - 15:18
chose [1] - 23:24
chosen [2] - 237:19, 238:8
circle [2] - 15:25, 113:17
circles [4] - 70:18, 70:19,
70:20, 113:23
circuit [2] - 220:4
circumstances [2] - 205:6,
285:14
citizens [1] - 180:18
City [91] - 7:6, 16:20, 20:17,
21:21, 26:18, 28:12, 30:22,
31:1, 39:19, 42:3, 42:6,
42:10, 42:11, 42:17, 44:4,
46:8, 46:10, 48:6, 59:3, 59:5,
62:5, 62:10, 65:20, 66:13,
71:6, 71:7, 86:19, 87:6,
89:22, 90:1, 90:22, 90:24,
91:8, 91:11, 93:5, 95:13,
98:12, 105:17, 113:14,
125:4, 140:5, 176:2, 176:7,
176:9, 176:17, 176:25,
179:23, 180:5, 180:13,
180:21, 181:19, 181:20,
186:16, 186:18, 186:20,
187:3, 187:5, 196:16, 197:4,
197:10, 206:3, 212:19,
212:21, 215:7, 216:6,
217:13, 218:8, 218:18,
219:4, 219:13, 219:17,
219:20, 220:6, 221:6,
221:12, 221:16, 221:20,
221:23, 222:2, 223:23,
226:17, 229:7, 229:9,
230:13, 239:18, 239:23,
240:5, 240:15, 241:10,
242:12
city [14] - 15:5, 27:5, 90:14,
106:2, 122:12, 124:25,
145:24, 177:5, 178:6,
205:24, 218:25, 219:8,
220:5, 224:19
City's [2] - 239:22, 240:9
claim [1] - 206:23

claimed ^[1] - 281:12
claiming ^[1] - 110:10
clamp ^[2] - 30:6, 186:4
clamps ^[2] - 29:14, 101:2
clarification ^[1] - 283:11
clarify ^[4] - 78:12, 133:23, 265:6, 269:14
clause ^[1] - 206:18
clauses ^[1] - 139:15
cleanest ^[1] - 269:10
clear ^[31] - 6:20, 8:11, 9:22, 39:6, 44:3, 44:9, 44:13, 46:16, 68:25, 74:19, 89:12, 89:15, 92:3, 107:9, 120:1, 120:10, 136:11, 171:14, 187:1, 190:10, 191:4, 192:4, 201:3, 204:18, 211:16, 267:23, 272:4, 273:19, 274:18, 276:23, 282:6
clearance ^[33] - 74:1, 74:3, 114:5, 140:22, 141:4, 141:9, 141:10, 141:18, 141:24, 142:4, 142:12, 142:19, 151:2, 198:22, 202:14, 270:13, 270:14, 270:15, 270:19, 270:22, 270:24, 272:5, 272:6, 273:7, 274:1, 275:17, 275:23, 276:9, 276:12, 281:13, 283:10, 283:19
clearances ^[8] - 73:4, 142:18, 172:19, 173:3, 173:18, 198:21, 275:21, 276:16
clearly ^[6] - 12:18, 25:14, 34:3, 160:3, 231:24, 249:25
click ^[10] - 15:24, 16:1, 71:19, 152:21, 152:22, 153:1, 155:4, 195:18, 234:9
clicked ^[2] - 71:14, 71:16
client ^[2] - 92:6, 139:6
client's ^[1] - 11:9
clients ^[2] - 96:7, 198:7
climb ^[1] - 102:3
climbing ^[1] - 102:14
clock ^[1] - 107:20
close ^[17] - 103:11, 104:23, 108:13, 108:16, 108:23, 114:11, 114:21, 118:3, 118:6, 120:2, 128:3, 128:8, 145:7, 164:14, 165:9, 215:19, 273:11
closed ^[3] - 36:3, 220:20, 286:21
closely ^[1] - 149:16
closure ^[2] - 209:21, 236:11
co ^[2] - 32:25, 267:21
co-signed ^[1] - 267:21
co-worker's ^[1] - 32:25
Coalition ^[31] - 39:9, 39:14,

39:17, 41:5, 120:8, 121:25, 122:2, 122:12, 122:16, 122:23, 125:3, 125:19, 178:6, 180:22, 186:11, 186:15, 186:19, 187:2, 187:3, 187:7, 213:16, 214:10, 215:22, 216:6, 216:11, 217:14, 218:14, 224:20, 225:17, 226:3, 239:10
Coast ^[3] - 44:20, 44:24, 46:1
code ^[26] - 8:17, 9:17, 11:13, 48:15, 51:24, 61:16, 63:12, 63:15, 74:5, 74:14, 74:15, 74:20, 94:18, 114:10, 140:22, 149:8, 170:4, 172:15, 198:11, 228:23, 264:5, 281:9, 284:1, 284:2, 284:6, 284:20
Code ^[20] - 11:6, 20:20, 103:17, 147:16, 150:18, 150:20, 156:21, 169:3, 169:20, 170:1, 201:14, 202:9, 202:12, 227:16, 228:1, 271:2, 271:23, 272:2, 279:3, 279:6
coded ^[1] - 64:19
codes ^[9] - 27:24, 61:13, 63:10, 72:20, 74:5, 157:12, 168:19, 181:4, 218:23
coiled ^[1] - 102:23
collateral ^[1] - 100:17
colleague ^[2] - 267:22, 267:25
collect ^[1] - 234:15
collected ^[9] - 44:5, 46:21, 188:5, 188:8, 188:10, 189:1, 191:9, 194:15
collecting ^[6] - 45:10, 46:2, 46:5, 189:22, 190:7, 234:3
College ^[1] - 165:24
college ^[1] - 166:2
color ^[1] - 64:19
column ^[1] - 119:4
columns ^[4] - 119:2, 120:23, 121:8, 121:12
com ^[6] - 17:20, 17:21, 18:10, 19:8, 137:23, 237:13
combination ^[1] - 217:1
Comcast ^[9] - 17:15, 59:8, 76:22, 77:9, 77:10, 77:13, 77:16, 77:17
comfortable ^[1] - 130:3
coming ^[4] - 45:20, 88:18, 103:7, 146:19
comment ^[6] - 121:2, 157:19, 204:3, 204:6, 259:11, 281:24
comments ^[3] - 109:12,

110:10, 269:8
Commission ^[4] - 7:9, 8:1, 10:1, 34:17
committed ^[4] - 96:16, 159:7, 160:21, 246:4
common ^[7] - 163:14, 168:15, 207:24, 216:18, 216:19, 216:20, 216:22
commonly ^[1] - 168:21
communi ^[1] - 169:3
communicate ^[2] - 218:12, 219:9
communicated ^[3] - 107:8, 159:19, 159:25
communication ^[58] - 18:11, 18:13, 19:17, 19:24, 24:22, 27:14, 30:10, 40:3, 50:16, 51:1, 51:17, 51:18, 53:18, 53:21, 58:14, 59:9, 63:4, 72:10, 73:12, 73:19, 76:22, 82:5, 124:15, 128:8, 150:22, 151:14, 151:17, 168:3, 168:24, 169:22, 170:15, 170:19, 171:10, 171:11, 171:12, 171:16, 184:3, 206:7, 206:10, 206:13, 208:13, 210:5, 228:5, 243:7, 243:8, 243:9, 266:18, 271:7, 274:14, 279:12, 281:2, 281:7, 281:8, 281:14, 281:16, 282:1, 282:4, 283:21
Communications ^[12] - 14:22, 14:24, 20:13, 52:24, 53:13, 62:1, 62:3, 132:1, 174:24, 175:7, 224:24, 225:1
communications ^[22] - 17:18, 18:23, 40:5, 51:11, 56:11, 73:21, 91:23, 121:9, 171:20, 190:25, 230:19, 230:20, 235:20, 242:21, 257:11, 271:13, 271:15, 272:10, 279:8, 279:10, 279:12, 281:4
community ^[1] - 196:15
Community ^[9] - 39:9, 39:13, 39:17, 186:10, 186:14, 187:2, 187:7, 213:16, 216:10
companies ^[14] - 16:11, 50:4, 51:1, 51:17, 51:18, 53:22, 59:8, 59:9, 59:12, 59:19, 76:22, 77:20, 82:5, 149:7
Company ^[2] - 70:20, 104:2
company ^[31] - 12:3, 17:14, 26:24, 27:6, 27:16, 31:23, 32:10, 32:13, 32:19, 34:24, 34:25, 35:1, 35:6, 35:10, 35:13, 53:18, 57:21, 70:24,

72:12, 76:8, 89:10, 104:4, 128:21, 158:14, 175:3, 175:19, 187:16, 205:7, 256:2, 256:19, 279:20
company's ^[2] - 274:16, 278:16
compare ^[1] - 193:15
compared ^[1] - 269:7
competence ^[1] - 8:25
competency ^[1] - 232:7
competent ^[1] - 244:23
competing ^[2] - 34:24, 34:25
compilation ^[1] - 231:20
compiled ^[1] - 189:2
complaint ^[1] - 100:17
complaints ^[1] - 106:23
complete ^[10] - 18:18, 162:21, 180:20, 181:18, 242:8, 242:10, 250:21, 251:20, 251:21, 253:11
completed ^[9] - 23:17, 58:1, 58:11, 58:15, 59:1, 67:7, 67:8, 161:14, 256:18
completely ^[2] - 97:5, 216:14
compliance ^[9] - 72:20, 74:14, 147:16, 147:21, 148:5, 148:13, 153:16, 241:3, 251:15
compliant ^[6] - 51:23, 59:20, 60:15, 63:12, 119:9, 119:11
complied ^[2] - 157:1, 248:10
comply ^[11] - 61:13, 61:16, 157:4, 169:4, 173:23, 211:16, 233:3, 238:15, 238:16, 281:9, 284:6
component ^[1] - 42:5
components ^[1] - 42:16
comport ^[1] - 240:17
comprehended ^[1] - 48:15
computer ^[5] - 66:16, 69:19, 77:11, 129:22, 254:15
concede ^[1] - 13:12
concentration ^[3] - 196:23, 197:3
concept ^[1] - 109:19
concern ^[11] - 108:8, 121:6, 126:4, 160:15, 201:4, 215:11, 274:10, 274:12, 274:19, 285:10
concerned ^[1] - 196:5
concerning ^[1] - 66:13
concerns ^[19] - 94:9, 96:10, 97:12, 107:18, 108:24, 109:5, 110:4, 118:4, 126:7, 142:14, 148:15, 148:18, 205:13, 205:17, 207:11,

208:7, 208:9, 208:11, 274:7
conclude [2] - 67:24, 68:21
conclusion [1] - 153:24
conclusions [1] - 155:20
concurrent [1] - 154:21
condition [5] - 82:21,
 119:5, 120:25, 214:5, 274:24
conditions [23] - 51:22,
 73:3, 79:12, 100:10, 100:25,
 101:1, 103:2, 106:7, 107:8,
 111:24, 112:1, 112:4, 112:9,
 112:13, 113:6, 118:9, 119:7,
 124:1, 127:18, 132:22,
 134:10, 141:6, 157:8
conduct [7] - 168:8, 199:7,
 201:9, 207:9, 269:18, 270:7,
 270:12
conducted [1] - 213:20
conducting [2] - 200:22,
 269:19
conductive [1] - 270:5
conductor [2] - 272:20,
 272:22
conductors [4] - 171:9,
 173:18, 270:23, 271:1
conference [17] - 5:25, 7:5,
 68:18, 69:12, 133:6, 134:1,
 145:20, 146:20, 146:22,
 158:3, 158:4, 158:17,
 160:14, 191:7, 192:5, 192:7
configuration [1] - 217:24
confirm [2] - 238:10,
 248:14
confirmed [1] - 240:23
conflict [1] - 228:8
conformant [1] - 127:25
conforming [2] - 94:17,
 119:10
confront [1] - 33:6
confusion [3] - 157:11,
 168:5, 246:14
congested [2] - 73:4, 73:8
conjunction [1] - 265:17
connect [4] - 138:5, 183:22,
 200:5, 236:18
Connect [11] - 42:6, 42:10,
 42:11, 42:17, 44:4, 46:8,
 46:10, 87:6, 90:24, 176:8,
 197:10
connected [6] - 5:14, 47:2,
 124:11, 186:2, 216:3, 219:8
connecting [1] - 236:16
connection [21] - 38:23,
 38:25, 49:9, 54:18, 62:4,
 72:10, 93:23, 102:16,
 103:14, 185:25, 187:17,
 198:25, 200:15, 201:16,
 201:17, 215:6, 215:21,
 217:3, 253:20, 255:6, 263:25
connections [11] - 8:22,

65:19, 187:20, 188:12,
 206:24, 217:8, 219:9,
 219:14, 220:10, 251:5, 255:7
connectivity [16] - 42:3,
 175:19, 177:5, 180:20,
 181:2, 198:9, 218:21,
 218:24, 219:11, 219:16,
 219:22, 219:24, 220:9,
 240:13
connects [1] - 244:15
conscious [1] - 126:1
consider [2] - 86:13, 267:7
considerations [1] - 126:8
considered [7] - 88:23,
 126:14, 138:11, 207:19,
 207:20, 264:17, 272:18
considering [2] - 88:18,
 259:15
consistent [17] - 29:20,
 56:15, 58:10, 87:19, 92:10,
 103:16, 108:6, 109:22,
 111:18, 121:8, 127:14,
 146:2, 149:4, 234:19,
 255:23, 255:24, 284:1
constantly [1] - 17:24
construct [1] - 242:20
construction [16] - 50:6,
 56:19, 58:9, 59:1, 65:14,
 65:24, 81:14, 127:24,
 166:22, 177:25, 178:2,
 189:9, 211:2, 211:7, 263:17
constructive [1] - 7:13
consult [2] - 173:23, 263:21
Consultants [1] - 166:9
consulted [3] - 203:3,
 203:17, 263:23
consulting [3] - 262:15,
 262:20, 262:22
contact [3] - 7:19, 34:19,
 34:21
contacted [3] - 34:9, 34:10,
 34:16
contacting [1] - 34:14
Contd [1] - 3:2
Contempt [1] - 154:13
contempt [4] - 13:2, 67:21,
 67:23, 100:15
contend [3] - 95:2, 95:3,
 236:8
content [2] - 13:1, 147:18
context [1] - 158:21
continue [8] - 12:20, 26:25,
 30:21, 32:6, 111:15, 115:2,
 175:24, 285:18
CONTINUED [2] - 252:22,
 255:12
continued [2] - 213:4,
 286:10
continuing [3] - 12:21,
 37:9, 237:17

continuity [1] - 20:15
contra [2] - 234:23, 251:2
Contract [1] - 41:5
contract [34] - 6:9, 6:10,
 6:11, 12:18, 40:25, 48:1,
 54:12, 57:16, 60:15, 61:11,
 78:24, 79:11, 89:17, 92:11,
 130:23, 131:8, 131:21,
 132:8, 132:12, 139:3,
 139:15, 150:7, 177:6, 181:7,
 208:17, 209:4, 211:21,
 222:5, 226:13, 227:21,
 228:11, 230:23, 234:20,
 240:17
contractor [4] - 35:3, 44:21,
 110:24, 166:9
contractors [9] - 22:17,
 44:7, 44:14, 44:18, 46:11,
 95:11, 190:3, 190:4, 190:7
contracts [1] - 79:7
contractual [5] - 132:17,
 139:5, 198:6, 198:11, 211:24
contractually [1] - 157:14
control [8] - 42:4, 97:1,
 97:2, 126:1, 218:10, 218:11,
 228:9, 280:16
controllers [1] - 218:11
controls [1] - 280:13
conversant [1] - 8:16
conversation [6] - 7:4,
 8:11, 9:25, 90:10, 90:12,
 241:4
conversations [1] - 97:16
cook [1] - 257:10
cooperate [2] - 12:3,
 212:11
cooperation [1] - 186:20
coordinate [4] - 43:20,
 58:23, 59:12, 59:16
coordinates [1] - 191:14
coordination [1] - 82:19
copied [1] - 107:16
copper [3] - 128:21,
 147:24, 148:21
copy [11] - 57:17, 73:1,
 81:4, 83:12, 99:11, 222:14,
 260:12, 261:13, 269:22,
 277:25, 279:3
corner [2] - 98:11, 104:1
Corning [1] - 199:5
corporate [1] - 22:24
Correct [22] - 36:11, 39:2,
 42:18, 43:1, 64:25, 71:23,
 79:25, 80:5, 84:22, 105:3,
 118:21, 124:16, 126:21,
 129:7, 130:15, 156:8, 162:5,
 164:15, 227:4, 269:2, 275:1,
 277:1
correct [148] - 8:4, 14:4,
 25:8, 26:10, 28:13, 33:4,

34:17, 35:1, 35:6, 35:19,
 36:7, 36:12, 36:14, 36:19,
 37:14, 38:24, 40:12, 40:13,
 40:21, 43:11, 43:14, 43:21,
 44:11, 44:16, 48:1, 48:2,
 48:7, 50:22, 51:12, 71:22,
 73:10, 74:17, 74:22, 75:8,
 75:17, 76:23, 78:8, 78:11,
 79:1, 82:7, 84:18, 86:22,
 90:2, 90:3, 93:13, 93:16,
 98:9, 99:22, 104:11, 109:13,
 109:16, 119:1, 130:14,
 132:12, 132:13, 135:3,
 135:6, 136:12, 136:16,
 136:21, 136:25, 137:3,
 137:14, 137:21, 137:25,
 139:21, 145:10, 146:7,
 147:3, 151:10, 151:11,
 151:20, 156:7, 157:25,
 161:21, 162:1, 162:4,
 164:18, 166:13, 178:19,
 181:8, 181:24, 182:22,
 190:12, 192:5, 198:18,
 198:19, 212:1, 212:7,
 217:19, 217:21, 220:21,
 221:13, 221:18, 222:14,
 223:9, 223:16, 226:25,
 227:3, 229:18, 230:4, 231:1,
 231:22, 232:4, 233:22,
 235:2, 235:8, 235:14,
 235:16, 236:9, 236:15,
 237:5, 237:10, 237:15,
 238:19, 238:20, 239:22,
 240:3, 240:19, 242:13,
 243:3, 243:15, 243:21,
 244:10, 245:9, 247:19,
 248:20, 255:17, 256:10,
 257:21, 262:15, 263:11,
 263:16, 264:9, 264:14,
 264:15, 270:7, 271:23,
 271:24, 274:21, 274:22,
 277:6, 277:7, 278:4, 278:10,
 281:3, 281:11, 284:3
corrected [1] - 26:5
correction [1] - 75:10
correctly [16] - 36:5, 36:10,
 38:2, 40:6, 43:9, 48:3,
 130:23, 144:6, 148:3,
 178:16, 179:8, 184:18,
 235:12, 251:18, 255:15,
 257:5
correctness [1] - 136:9
correspondence [1] -
 93:15
cost [5] - 82:20, 85:8,
 183:10, 184:21, 185:8
costs [5] - 18:16, 23:24,
 60:19, 60:20, 65:15
Council [1] - 196:17
Counsel [1] - 156:20

counsel [30] - 6:2, 7:5, 7:6, 7:7, 9:9, 52:7, 68:17, 83:11, 95:21, 96:5, 96:7, 97:10, 97:14, 100:2, 114:13, 116:6, 133:7, 138:15, 151:3, 151:7, 151:21, 152:12, 156:4, 157:22, 212:17, 212:18, 222:6, 231:12, 243:18, 243:24

counting [2] - 189:14, 195:22

County [7] - 5:4, 191:15, 219:10, 219:16, 219:17, 220:15

county [1] - 241:2

couple [12] - 41:21, 47:13, 50:14, 62:11, 76:5, 103:20, 113:4, 120:23, 174:8, 179:2, 252:20, 283:14

course [13] - 37:9, 88:4, 90:11, 93:20, 94:8, 94:15, 94:22, 95:15, 98:20, 136:2, 147:18, 148:16, 181:2

court [9] - 53:3, 131:10, 131:14, 134:25, 158:3, 160:14, 172:17, 229:23, 237:20

Court [79] - 6:1, 6:4, 6:22, 8:23, 9:22, 10:14, 10:17, 13:8, 13:15, 14:6, 15:8, 15:15, 17:7, 38:16, 40:1, 44:13, 54:13, 55:10, 55:19, 57:18, 64:8, 67:12, 69:7, 69:22, 71:13, 76:1, 81:4, 81:21, 83:18, 86:3, 93:8, 95:21, 96:13, 96:20, 96:22, 97:2, 97:3, 97:12, 102:21, 107:19, 114:16, 115:6, 115:14, 116:18, 123:24, 126:23, 126:24, 127:18, 128:16, 134:18, 135:15, 139:3, 140:20, 151:9, 154:8, 154:13, 155:21, 162:11, 165:12, 170:2, 170:12, 175:6, 176:5, 191:4, 194:10, 199:14, 205:19, 215:9, 257:19, 261:17, 267:7, 267:23, 268:10, 268:12, 269:22, 275:6, 275:18, 276:10, 280:10

Court's [3] - 57:1, 257:16, 258:18

courtesy [1] - 259:17

courthouse [2] - 110:18, 133:1

Courthouse [1] - 5:4

Courtroom [1] - 5:3

courtroom [5] - 5:7, 97:15, 97:18, 157:24, 158:5

cover [6] - 39:15, 41:16,

171:1, 276:18, 277:8

covered [2] - 181:20, 246:25

craft [1] - 96:12

create [4] - 75:3, 124:15, 137:12, 187:4

created [6] - 25:16, 108:18, 141:5, 169:23, 196:20, 274:24

creates [1] - 207:7

creating [2] - 166:25, 184:11

credibility [1] - 266:4

credible [1] - 251:10

credit [5] - 9:19, 31:23,

32:10, 32:14, 32:20

crew [2] - 46:12, 99:2

crime [1] - 215:14

cripple [1] - 221:5

critical [1] - 221:11

CROSS [5] - 31:19, 129:17, 221:9, 262:8, 277:23

Cross [1] - 3:6

cross [12] - 20:7, 31:17,

129:16, 138:5, 138:15,

174:2, 212:15, 212:19,

213:13, 216:3, 262:5, 266:8

cross-examination [8] -

31:17, 129:16, 174:2,

212:15, 212:19, 213:13,

262:5, 266:8

Cross-Examination [1] - 3:6

CROSS-EXAMINATION [5]

- 31:19, 129:17, 221:9,

262:8, 277:23

cross-examine [1] - 20:7

cross-examining [1] - 138:15

crossover [1] - 51:5

cue [1] - 66:22

culpability [1] - 168:6

curious [1] - 163:19

currency [1] - 160:9

current [17] - 61:22, 74:5,

74:14, 74:16, 138:16,

150:19, 152:9, 167:13,

171:1, 228:2, 232:7, 238:3,

238:24, 239:16, 244:12,

279:3, 284:6

cursor [1] - 194:22

custody [1] - 285:1

customary [3] - 231:2, 240:22, 242:6

customer [9] - 64:12,

64:22, 65:15, 66:23, 101:19,

123:5, 123:13, 244:17, 245:2

customers [10] - 51:6, 52:1,

83:9, 123:9, 127:7, 196:9,

197:2, 197:8, 240:2, 251:6

customs [1] - 163:11

cut [2] - 9:7, 127:10

CYS [3] - 286:7, 286:9

D

D'AMICO [218] - 5:18, 6:8,

6:16, 6:18, 9:15, 9:20, 10:3,

10:14, 10:19, 11:3, 11:10,

11:15, 11:19, 11:25, 13:21,

14:2, 14:11, 18:5, 18:9,

20:10, 23:16, 26:12, 31:15,

40:22, 40:24, 41:2, 41:4,

47:10, 47:12, 49:4, 49:17,

49:21, 52:3, 52:6, 52:11,

52:13, 53:8, 53:10, 55:7,

55:9, 57:9, 57:14, 60:2,

60:18, 62:24, 63:1, 64:3,

64:5, 64:16, 64:18, 66:2,

66:10, 68:14, 69:13, 69:18,

69:20, 71:2, 71:12, 74:8,

75:23, 78:12, 78:14, 80:6,

80:8, 80:11, 80:14, 80:16,

81:17, 81:18, 82:9, 82:11,

85:25, 86:1, 92:1, 92:7,

92:25, 93:1, 98:1, 99:6,

99:10, 99:20, 100:19,

104:13, 104:14, 105:4,

105:6, 107:13, 107:15,

107:25, 108:3, 109:8,

109:10, 112:14, 114:12,

115:4, 115:22, 115:24,

116:6, 116:14, 117:4,

117:20, 118:16, 120:17,

120:19, 121:18, 121:22,

123:18, 124:13, 125:11,

129:10, 133:20, 135:7,

138:14, 138:21, 139:8,

139:14, 139:17, 150:3,

150:5, 150:8, 150:10,

150:14, 150:16, 152:7,

153:9, 154:5, 155:15, 156:1,

156:18, 156:19, 162:10,

163:4, 164:25, 165:2, 165:7,

167:8, 167:10, 168:1,

168:12, 169:14, 169:17,

169:18, 170:22, 170:25,

171:15, 172:9, 172:10,

172:13, 172:14, 172:25,

173:6, 173:13, 173:16,

173:20, 174:1, 174:7, 180:1,

180:4, 202:23, 202:25,

203:6, 203:19, 203:21,

204:12, 204:16, 213:3,

221:10, 222:7, 222:9,

222:19, 222:22, 225:23,

230:1, 232:21, 233:1,

237:22, 238:2, 245:13,

248:7, 249:7, 249:10,

249:12, 252:20, 252:23,

253:4, 255:13, 256:14,

256:17, 257:13, 258:9, 258:17, 259:4, 259:9, 259:14, 259:22, 260:1, 260:3, 260:7, 260:10, 262:7, 262:10, 265:22, 266:15, 266:21, 269:24, 271:4, 271:11, 277:19, 277:24, 284:9, 284:18, 284:25, 285:7, 285:10, 285:17, 285:20, 286:2, 286:23

D'Amico [20] - 3:2, 3:7, 3:8, 5:17, 7:5, 7:25, 17:24, 47:9, 95:16, 117:3, 125:10, 160:18, 161:4, 162:8, 213:9, 221:8, 229:24, 237:21, 249:6, 277:17

D'Amico's [4] - 204:5,

250:20, 266:2, 267:6

D-1 [3] - 170:19, 171:6, 277:15

D-2 [1] - 277:15

daily [1] - 205:8

danger [2] - 19:14, 24:17

dangerous [3] - 30:13,

30:14, 114:25

Daryl [1] - 267:22

data [34] - 10:4, 10:12, 24:11, 25:15, 40:8, 43:17, 44:5, 45:10, 46:5, 46:21, 77:8, 105:8, 183:20, 188:4,

188:8, 189:7, 191:11,

191:15, 191:22, 191:23,

191:25, 193:6, 194:8,

194:15, 218:23, 229:6,

229:17, 234:16, 241:15,

241:21, 251:3, 251:4, 256:12

database [9] - 23:12,

143:25, 144:6, 144:8,

195:11, 196:8, 196:21,

229:19, 229:22

date [7] - 40:25, 58:7,

63:18, 145:23, 195:4,

247:15, 283:16

dated [3] - 86:5, 86:6, 140:4

dates [1] - 86:3

days [11] - 79:9, 79:16,

79:23, 83:25, 134:17,

134:24, 192:18, 192:20,

229:20, 250:19, 250:23

deal [11] - 6:3, 8:15, 8:25,

140:17, 205:2, 205:3, 205:4,

205:8, 246:19, 264:24, 265:2

dealing [3] - 205:10,

210:21, 275:3

dealings [2] - 44:25, 163:5

deals [3] - 201:14, 201:15, 205:7

dealt [3] - 16:14, 16:16, 141:24

December [24] - 7:10, 7:12,

12:18, 13:6, 13:11, 67:25, 71:25, 86:17, 94:2, 98:3, 100:7, 105:7, 133:2, 133:25, 145:19, 157:21, 168:9, 191:6, 191:11, 243:17, 243:23, 245:17, 251:17, 268:25

decide [1] - 32:1

decided [4] - 10:9, 178:12, 227:9, 240:16

decision [5] - 30:21, 126:2, 179:8, 179:14, 179:18

default [1] - 266:22

Defendant's [4] - 4:6, 261:7, 267:17

define [4] - 17:3, 18:3, 20:19, 54:12

defined [4] - 19:12, 54:24, 169:24, 271:20

defines [2] - 20:21, 117:24

definite [1] - 94:18

definitely [4] - 120:9, 126:6, 148:25, 160:11

definition [6] - 170:18, 271:1, 271:14, 271:18, 279:7, 279:14

definitions [11] - 54:10, 54:11, 55:3, 170:16, 170:17, 171:5, 271:17, 278:3, 278:18, 279:18, 280:6

definitive [2] - 102:7, 114:10

degree [5] - 37:3, 50:8, 261:17, 261:18, 267:10

Delaware [1] - 50:9

Deltec [3] - 149:22, 208:2, 208:4

demand [1] - 34:13

demanded [1] - 34:11

demanding [1] - 33:18

demonstrate [3] - 69:22, 76:12, 93:7

demonstration [1] - 71:5

deny [1] - 153:25

Department [1] - 166:15

department [6] - 88:2, 219:10, 219:18, 219:21, 220:6, 220:14

departments [1] - 181:4

departure [1] - 21:15

deployed [1] - 196:13

deploying [1] - 27:5

Deputy [1] - 8:2

derogation [1] - 89:22

describe [7] - 15:15, 29:11, 57:18, 69:21, 100:9, 100:25, 163:14

described [4] - 6:14, 73:11, 147:23, 226:24

description [1] - 149:20

descriptive [1] - 107:6

design [9] - 27:20, 30:2, 58:10, 58:20, 65:9, 65:13, 80:23, 263:7, 265:1

designed [4] - 142:22, 263:5, 263:9, 263:13

designing [1] - 271:10

destroyed [1] - 30:24

detail [12] - 12:20, 13:14, 13:15, 13:16, 19:11, 65:7, 70:6, 110:10, 199:13, 249:16, 261:16, 267:2

detailed [1] - 258:11

details [3] - 10:16, 106:22, 108:7

determine [14] - 18:19, 56:13, 56:14, 57:22, 58:2, 73:2, 73:4, 90:24, 106:6, 113:2, 122:1, 235:1, 239:9, 268:16

determined [6] - 136:5, 185:6, 241:10, 251:1, 283:12

determines [1] - 25:25

developed [2] - 42:13, 143:1

deviate [1] - 89:13

deviation [1] - 87:16

device [2] - 32:24, 209:18

devices [1] - 280:17

diagram [1] - 9:17

diagrams [1] - 11:7

dialogue [1] - 251:12

Dickinson [1] - 285:25

dielectric [18] - 199:6, 199:9, 200:18, 200:21, 201:1, 201:6, 201:7, 201:14, 202:9, 205:14, 207:3, 208:3, 243:1, 243:14, 243:16, 269:16, 272:6

difference [7] - 75:12, 104:5, 136:7, 199:14, 266:17, 271:16, 281:24

different [35] - 18:22, 24:1, 27:11, 42:16, 53:17, 72:5, 73:12, 76:22, 93:10, 104:16, 119:12, 123:7, 126:7, 136:2, 137:3, 137:8, 141:6, 143:5, 143:9, 143:11, 143:13, 151:11, 169:12, 170:20, 173:3, 173:4, 178:9, 198:17, 199:10, 201:2, 202:8, 214:15, 275:21, 275:22

differentiation [1] - 271:13

differently [1] - 111:25

differs [1] - 271:6

difficult [3] - 81:3, 103:4, 109:19

digest [1] - 138:1

DIRECT [6] - 14:1, 49:16, 165:6, 174:20, 260:16,

267:14

Direct [2] - 3:5, 3:7

direct [10] - 66:14, 80:12, 85:11, 91:17, 150:11, 151:6, 171:4, 235:20, 258:17, 279:6

directed [1] - 57:5

direction [2] - 99:25, 190:5

directly [3] - 28:22, 138:7, 145:2

disagree [7] - 55:5, 55:6, 205:12, 205:17, 205:19, 276:5, 276:7

disappeared [1] - 241:19

discern [1] - 169:22

disclose [2] - 126:15, 252:3

disconnected [1] - 218:7

discovered [5] - 92:10, 92:16, 93:19, 116:25, 183:25

discoveries [1] - 93:13

discrepancies [1] - 264:21

discuss [6] - 87:4, 88:7, 88:14, 96:9, 100:4, 183:12

discussed [16] - 26:23, 47:17, 68:2, 94:6, 113:4, 146:25, 149:9, 157:22, 168:18, 170:7, 191:6, 198:4, 221:4, 242:4, 258:20, 274:1

discussing [9] - 11:5, 98:6, 98:7, 158:4, 225:3, 229:6, 281:6, 281:7, 283:5

discussion [12] - 87:15, 88:22, 95:24, 95:25, 98:21, 126:22, 134:14, 147:20, 160:13, 176:23, 188:9

discussions [5] - 69:16, 95:4, 95:20, 96:4, 192:8

dish [1] - 277:4

dispatching [1] - 43:24

dispute [2] - 54:18, 282:11

disputes [1] - 69:7

disregard [3] - 48:12, 48:14, 48:17

distance [3] - 101:19, 179:1, 244:20

distribution [10] - 166:20, 166:22, 166:23, 262:23, 262:24, 263:4, 263:7, 264:1, 264:5, 265:3

Distribution [2] - 166:15, 166:18

diverted [1] - 217:13

document [11] - 53:11, 66:17, 72:25, 81:19, 83:16, 112:4, 125:16, 125:18, 167:11, 168:15, 267:18

documentation [2] - 41:13, 177:22

documented [8] - 119:9, 120:8, 122:16, 122:17, 123:8, 124:22, 124:24, 146:3

documenting [3] - 108:10, 110:3, 177:23

documents [3] - 85:24, 166:21, 167:14

dollars [1] - 185:11

done [49] - 18:15, 25:13, 26:6, 29:5, 36:18, 48:8, 51:22, 56:16, 57:23, 58:3, 59:19, 60:8, 66:25, 67:14, 72:2, 74:13, 99:21, 118:14, 128:1, 128:5, 131:24, 141:8, 144:2, 145:19, 145:22, 153:19, 154:4, 154:9, 157:13, 167:21, 169:5, 169:16, 172:16, 177:22, 181:10, 181:16, 188:4, 189:3, 190:1, 223:15, 240:25, 247:22, 247:24, 250:19, 262:23, 265:15, 269:13, 283:17, 284:5

door [2] - 192:5, 244:20

dot [4] - 71:16, 71:19, 153:1, 155:5

dots [2] - 71:15, 152:25

doubling [1] - 126:5

doubt [2] - 21:2, 250:3

down [39] - 15:6, 49:1, 49:17, 52:14, 56:2, 71:17, 72:8, 73:18, 73:21, 76:21, 81:12, 82:9, 83:3, 86:25, 103:12, 106:16, 108:17, 118:9, 119:21, 120:20, 141:13, 141:16, 141:17, 141:20, 144:2, 174:4, 184:15, 184:20, 185:1, 207:14, 218:21, 221:2, 228:4, 237:14, 258:8, 258:21, 276:13, 276:15, 284:12

downs [1] - 76:16

downtown [1] - 181:1

dozens [2] - 6:24, 35:24

draft [2] - 62:18, 71:9

drag [1] - 234:10

draw [3] - 57:1, 108:22, 187:16

drawings [1] - 189:9

drip [9] - 74:2, 141:13, 141:14, 141:15, 141:20, 276:10, 276:12, 276:19, 277:5

drips [1] - 141:17

Drive [1] - 14:13

drive [6] - 23:4, 23:5, 23:7, 31:7, 275:16

driven [1] - 101:23

driving [1] - 275:11

drop [37] - 38:17, 38:20, 38:21, 54:22, 55:11, 72:8, 76:16, 76:21, 101:18, 131:4,

185:24, 185:25, 186:3,
190:12, 199:5, 222:25,
223:10, 224:9, 225:10,
225:12, 227:9, 234:9,
244:14, 244:16, 244:18,
244:24, 245:2, 245:5,
253:18, 255:10, 264:17,
264:19, 264:23
drops [44] - 29:7, 39:4,
42:20, 42:21, 42:22, 42:25,
43:3, 43:6, 43:10, 43:14,
47:2, 55:16, 55:25, 72:14,
130:14, 130:24, 131:23,
185:20, 186:7, 187:25,
189:13, 189:19, 189:23,
190:23, 191:2, 191:24,
195:22, 222:1, 223:7,
223:18, 224:11, 235:20,
235:22, 236:3, 236:6, 237:2,
244:6, 244:13, 254:21,
254:22, 254:23, 254:25,
255:3, 264:25
due [2] - 97:17, 201:6
duly [5] - 13:25, 49:15,
165:5, 174:19, 260:15
during [27] - 31:1, 36:5,
60:5, 69:23, 90:11, 91:24,
94:15, 94:22, 95:12, 95:15,
96:7, 97:15, 132:14, 133:4,
140:23, 147:5, 147:17,
148:15, 175:13, 176:21,
181:11, 181:12, 182:7,
188:1, 188:5, 204:23, 285:3
duties [1] - 220:17
duty [1] - 152:1

E

e-mail [9] - 84:8, 90:6,
230:19, 230:24, 232:18,
235:19, 240:24, 241:16,
241:20
early [8] - 33:10, 94:2, 98:3,
115:19, 179:19, 190:2,
234:2, 243:23
easier [2] - 57:15, 234:14
easily [3] - 97:3, 141:23,
276:25
East [4] - 44:20, 44:24,
46:1, 95:9
easy [6] - 10:19, 76:1, 76:7,
117:5, 169:15, 185:11
Ebersole [3] - 267:22,
267:24, 267:25
economically [1] - 227:7
ECSI [1] - 44:20
Ed [1] - 16:16
edition [1] - 171:1
editorial [2] - 204:2, 204:6
education [3] - 37:9, 50:1,

264:8
educational [1] - 165:22
effect [6] - 33:21, 33:25,
75:1, 138:19, 138:20, 283:20
effective [5] - 63:18, 70:8,
140:25, 222:16, 247:15
effectively [5] - 202:1,
235:19, 274:6, 275:5, 275:7
efficient [1] - 269:11
effort [11] - 12:20, 100:2,
113:1, 137:6, 137:10,
153:16, 153:24, 154:1,
249:15, 263:20, 275:6
efforts [1] - 12:21
eight [2] - 50:3, 170:18
either [19] - 24:19, 27:23,
29:14, 69:23, 76:2, 76:13,
100:10, 113:4, 113:16,
145:10, 147:7, 158:2,
160:13, 190:8, 192:8, 223:5,
266:13, 268:3, 275:14
elaborate [1] - 140:20
electric [30] - 16:19, 16:25,
36:25, 50:5, 50:18, 50:25,
51:2, 51:25, 58:14, 58:25,
73:17, 109:17, 171:9, 263:3,
264:4, 264:12, 264:13,
265:23, 272:21, 272:22,
273:2, 278:16, 279:20,
279:24, 280:5, 280:8,
280:10, 280:13, 280:16,
281:20
Electric [16] - 20:20, 23:18,
24:6, 24:13, 49:24, 103:17,
147:15, 150:18, 150:20,
169:3, 201:13, 202:8, 271:2,
271:23, 272:2, 279:5
electrical [23] - 8:17, 11:5,
109:18, 114:23, 118:4,
119:19, 119:24, 140:17,
165:17, 165:23, 165:25,
199:7, 261:21, 261:25,
262:3, 262:17, 262:24,
264:1, 265:8, 267:10, 268:1,
280:14, 281:22
Electrical [3] - 202:12,
227:15, 228:1
electrician [2] - 9:12,
281:21
electrician/estimator [1] -
263:19
electricity [8] - 19:15,
200:22, 201:10, 201:18,
207:9, 269:18, 269:19, 270:8
electrocution [2] - 201:4,
201:7
electronic [4] - 32:24,
132:20, 159:22, 265:23
electronics [2] - 5:14,
195:1

eleven [1] - 177:14
emphasis [1] - 108:20
employed [4] - 14:15,
14:19, 28:9, 35:14
employee [9] - 12:1, 13:9,
77:16, 166:5, 251:9, 251:24,
252:1, 254:12, 281:19
employees [10] - 35:5,
35:8, 35:11, 44:22, 95:10,
177:13, 190:2, 209:23,
210:2, 281:17
employer [1] - 21:17
employment [1] - 36:24
empty [2] - 70:19, 171:19
enabling [1] - 181:4
encased [1] - 207:25
enclosure [4] - 207:21,
209:19, 209:20
encourage [1] - 69:9
end [16] - 38:22, 41:19,
45:20, 46:15, 51:4, 58:12,
58:20, 65:14, 90:9, 101:25,
143:5, 143:17, 159:8,
173:10, 196:22, 246:6
ended [4] - 137:4, 182:17,
196:17, 208:13
energies [1] - 201:21
energized [1] - 272:23
Energy [1] - 166:8
energy [1] - 280:14
enforceable [1] - 212:22
enforcing [1] - 220:17
engineer [11] - 11:4, 11:5,
165:15, 165:19, 203:2,
206:5, 261:11, 261:21,
261:25, 262:15, 267:11
Engineering [4] - 10:6,
10:7, 50:8, 263:2
engineering [32] - 24:9,
25:21, 48:6, 56:12, 58:2,
58:4, 60:6, 62:13, 65:24,
66:7, 81:13, 82:25, 83:22,
128:25, 129:3, 151:1,
161:15, 165:16, 165:20,
165:24, 166:1, 166:23,
177:21, 180:23, 226:25,
227:3, 230:16, 235:1, 262:4,
262:17, 267:10, 268:2
engineers [4] - 90:19,
202:21, 203:3, 203:5
enlarge [2] - 64:17, 154:25
entail [2] - 163:7, 166:17
entanglement [1] - 272:21
entered [1] - 13:6
entire [7] - 13:5, 27:6,
115:9, 170:4, 180:2, 195:11,
241:17
entirely [2] - 100:14, 117:1
entities [3] - 9:10, 34:21,
59:11

entity [5] - 10:5, 10:7,
58:23, 60:11, 60:22
entries [1] - 196:17
equalize [1] - 201:21
equally [1] - 87:19
equipment [18] - 30:14,
50:16, 73:25, 106:19,
114:25, 178:24, 207:20,
209:20, 238:9, 273:16,
279:23, 279:24, 280:5,
280:6, 280:9, 280:11,
280:12, 280:16
equivalent [1] - 236:11
errors [1] - 212:8
escapes [1] - 57:4
especially [5] - 9:25,
129:22, 199:4, 231:3, 251:16
essentially [2] - 40:7, 148:3
establish [4] - 12:6, 12:15,
167:21, 168:2
established [6] - 35:12,
176:8, 176:9, 181:14, 187:4,
242:24
establishing [2] - 125:20,
172:16
estimate [1] - 142:7
estimation [1] - 209:15
estimator [1] - 263:18
evaluation [1] - 157:8
evasive [1] - 117:8
events [1] - 105:7
eventually [3] - 36:6, 89:25,
206:20
evidence [8] - 9:21, 68:6,
86:14, 113:8, 155:24,
258:25, 277:15, 284:14
evolve [1] - 131:22
exacer [1] - 156:9
exacerbated [1] - 156:9
exact [4] - 57:3, 142:2,
142:5, 195:15
exactly [5] - 28:7, 72:18,
140:7, 210:16, 278:24
Examination [6] - 3:2, 3:2,
3:5, 3:6, 3:7, 3:8
EXAMINATION [26] - 14:1,
31:19, 47:11, 49:16, 129:17,
150:9, 157:17, 161:9, 162:9,
163:17, 165:6, 174:20,
213:13, 221:9, 245:14,
247:13, 248:6, 250:7,
252:22, 253:5, 255:12,
257:17, 260:16, 262:8,
267:14, 277:23
examination [7] - 31:17,
129:16, 174:2, 212:15,
212:19, 262:5, 266:8
examine [2] - 20:7, 149:16
examined [1] - 269:7
examining [1] - 138:15

example ^[12] - 16:17, 74:2, 74:22, 74:24, 101:9, 115:12, 143:9, 143:14, 160:16, 198:24, 220:5, 220:12
examples ^[8] - 83:13, 100:5, 103:20, 105:4, 115:3, 123:24, 127:5, 160:7
exceeded ^[1] - 32:16
Excel ^[2] - 107:22, 112:20
except ^[1] - 241:4
exception ^[3] - 171:25, 222:25, 238:11
exceptions ^[6] - 73:24, 74:7, 88:22, 171:18, 171:24, 275:20
excerpts ^[1] - 170:1
exchange ^[1] - 128:20
excited ^[1] - 231:5
exclusively ^[1] - 218:17
Excuse ^[2] - 29:18, 212:16
excuse ^[2] - 242:17, 263:12
excused ^[1] - 164:23
execute ^[2] - 25:17, 58:8
executed ^[1] - 186:24
executive ^[1] - 257:10
exhibit ^[10] - 49:6, 63:18, 83:12, 91:16, 116:17, 117:19, 117:22, 120:16, 170:2, 252:21
Exhibit ^[40] - 62:25, 64:4, 66:15, 80:12, 80:18, 81:16, 83:16, 84:10, 84:24, 85:5, 85:12, 85:23, 91:18, 92:5, 93:16, 99:7, 101:8, 102:17, 103:19, 107:12, 109:1, 109:23, 116:7, 117:23, 121:21, 132:7, 139:9, 150:5, 151:5, 167:6, 222:7, 222:14, 227:18, 227:19, 256:15, 261:7, 267:17, 280:23, 280:25
exhibits ^[3] - 52:7, 259:16, 277:18
EXHIBITS ^[1] - 4:2
Exhibits ^[2] - 4:6, 4:25
exigent ^[7] - 108:12, 108:23, 121:5, 268:14, 268:17, 272:17, 285:13
exist ^[1] - 102:20
existed ^[1] - 253:1
existing ^[32] - 26:1, 39:8, 40:12, 40:20, 58:24, 60:20, 60:23, 61:1, 73:3, 82:21, 118:1, 124:8, 125:15, 127:4, 127:6, 149:6, 176:24, 177:23, 178:5, 185:21, 193:11, 213:16, 213:17, 213:23, 225:16, 232:11, 232:12, 236:21, 239:5, 240:11

exists ^[6] - 25:4, 168:9, 202:20, 235:14, 280:2
expand ^[4] - 71:3, 152:24, 239:17, 256:16
expanded ^[1] - 152:23
expect ^[4] - 157:3, 158:14, 160:4, 160:7
expectation ^[2] - 105:8, 160:2
expected ^[3] - 21:8, 105:11, 112:3
expects ^[1] - 27:24
expedite ^[1] - 100:2
expense ^[1] - 156:10
expensive ^[1] - 9:13
experience ^[8] - 15:11, 15:15, 39:15, 162:24, 233:21, 263:1, 264:8, 271:10
expert ^[4] - 6:3, 203:21, 262:3, 267:9
expertise ^[1] - 277:11
experts ^[2] - 203:19, 203:23
explain ^[18] - 17:6, 19:11, 24:10, 40:1, 42:9, 55:19, 64:8, 65:6, 81:21, 116:18, 124:4, 126:23, 128:16, 199:14, 215:9, 269:3, 275:18, 276:10
Explain ^[1] - 154:8
explained ^[5] - 87:17, 114:13, 184:4, 207:17, 226:13
explains ^[1] - 226:8
expressed ^[2] - 268:7, 276:13
extend ^[2] - 69:5, 198:8
extended ^[1] - 244:16
extension ^[1] - 37:22
extensions ^[2] - 29:5, 46:13
extent ^[5] - 32:15, 106:7, 134:10, 217:16, 219:1
extra ^[1] - 83:12
extreme ^[1] - 245:6
extremely ^[4] - 66:18, 80:15, 114:25, 207:5

F

face ^[1] - 131:13
facilitate ^[2] - 69:10, 111:2
facilities ^[35] - 19:14, 29:21, 56:5, 56:20, 58:21, 63:4, 76:16, 82:4, 106:5, 126:2, 126:3, 127:22, 127:23, 128:22, 158:13, 158:15, 167:2, 169:20, 169:21, 175:14, 219:8, 245:22, 248:19, 257:21, 258:12, 263:6, 273:13, 273:17, 274:15, 274:16,

275:22, 279:13, 279:17, 281:2, 281:4
facility ^[2] - 127:11, 220:11
facing ^[2] - 61:20, 64:9
fact ^[14] - 12:15, 18:2, 21:16, 95:10, 158:22, 186:24, 208:18, 213:10, 226:4, 234:19, 257:19, 268:16, 280:23, 284:2
factor ^[1] - 206:1
factors ^[1] - 183:11
failed ^[4] - 13:3, 82:16, 242:8, 242:10
failure ^[1] - 12:3
fair ^[13] - 36:16, 42:15, 45:1, 45:7, 140:3, 142:4, 142:11, 142:13, 145:11, 198:16, 205:12, 251:7, 276:5
fairly ^[2] - 276:21, 276:25
faith ^[5] - 12:3, 153:16, 153:24, 153:25, 168:8
fall ^[1] - 198:16
falls ^[2] - 64:21, 65:1
familiar ^[24] - 12:7, 38:17, 39:7, 41:4, 41:9, 54:5, 63:23, 70:17, 73:13, 111:7, 111:8, 149:22, 167:11, 167:17, 168:13, 174:23, 175:1, 190:15, 194:4, 194:5, 256:20, 265:11, 265:15
familiarity ^[2] - 8:25, 264:16
far ^[16] - 50:25, 65:18, 66:5, 67:21, 70:5, 76:7, 102:13, 104:24, 110:20, 163:13, 195:20, 214:9, 235:20, 237:16, 249:17, 269:8
fashion ^[4] - 101:21, 102:25, 256:12, 256:13
fastens ^[1] - 124:10
FCC ^[3] - 34:19, 227:16, 228:8
feasible ^[4] - 227:8, 245:11, 245:12, 275:15
February ^[2] - 15:13, 140:25
feed ^[1] - 141:14
feedback ^[6] - 106:25, 107:2, 109:14, 159:7, 160:21, 246:5
feet ^[1] - 179:2
felt ^[2] - 8:11, 180:13
female ^[1] - 33:4
few ^[12] - 50:12, 74:7, 83:13, 93:19, 110:13, 115:6, 115:16, 121:5, 255:14, 259:19, 282:14, 283:13
fewer ^[2] - 35:22, 35:25
Fiber ^[1] - 45:19
fiber ^[40] - 27:9, 28:17,

30:8, 41:22, 42:11, 44:7, 46:14, 46:24, 48:4, 114:2, 147:24, 148:21, 176:11, 176:25, 177:2, 178:9, 178:10, 178:17, 178:22, 178:23, 180:15, 181:6, 187:17, 187:20, 197:11, 199:21, 220:8, 236:14, 236:16, 236:17, 236:18, 236:21, 236:24, 237:1, 239:13, 239:15, 241:9, 253:24, 281:7
fiberglass ^[1] - 199:18
fiberoptic ^[35] - 14:18, 15:2, 15:23, 39:23, 40:1, 40:3, 40:7, 40:14, 44:23, 74:9, 86:18, 89:21, 169:2, 171:25, 199:15, 200:6, 200:12, 213:17, 220:4, 263:7, 264:6, 266:17, 266:18, 269:14, 270:4, 270:25, 271:13, 271:15, 271:16, 279:8, 279:10, 279:11, 279:15, 280:1
fiberoptics ^[1] - 39:25
fibers ^[7] - 19:24, 59:10, 129:2, 178:21, 217:2, 217:3, 217:4
field ^[11] - 8:14, 25:17, 25:21, 28:16, 34:5, 79:20, 94:12, 111:13, 117:25, 194:15, 210:21
fields ^[1] - 50:5
fifteen ^[1] - 184:7
fifth ^[1] - 62:15
figure ^[8] - 11:6, 116:1, 136:3, 169:2, 170:19, 171:6, 183:12, 235:25
file ^[1] - 235:18
filed ^[2] - 12:25, 183:20
filing ^[1] - 100:10
fill ^[2] - 9:10, 181:21
filled ^[1] - 76:12
filtered ^[1] - 66:23
finally ^[1] - 276:9
finder ^[1] - 73:2
fine ^[4] - 18:10, 259:25, 285:16
finish ^[2] - 202:17, 284:21
finished ^[7] - 111:12, 111:14, 164:24, 183:17, 189:6, 189:11, 259:21
fired ^[1] - 251:10
firm ^[1] - 203:21
first ^[53] - 11:17, 13:25, 20:13, 20:14, 49:15, 54:20, 64:23, 66:7, 80:22, 83:21, 83:24, 85:1, 85:10, 85:15, 85:21, 86:5, 88:9, 93:20, 94:12, 113:4, 118:7, 120:4,

120:23, 121:5, 130:12, 136:17, 161:3, 164:7, 165:5, 166:3, 174:16, 174:19, 176:12, 181:20, 183:1, 183:7, 184:12, 187:13, 193:10, 194:12, 194:16, 194:17, 240:6, 241:14, 252:14, 260:15, 260:24, 263:23, 264:3, 282:8, 282:17
First [1] - 170:23
fit [2] - 171:23, 241:9
five [13] - 36:2, 46:12, 161:16, 161:17, 161:18, 161:23, 164:4, 164:6, 164:7, 166:7, 184:6, 198:2, 211:5
fix [2] - 275:3, 276:21
fixable [1] - 276:25
fixed [3] - 119:13, 119:14, 277:2
fixture [2] - 30:3, 141:17
flavor [1] - 114:19
flesh [1] - 181:22
flexed [1] - 199:25
flexibility [1] - 199:25
focus [2] - 51:13, 113:22
focused [4] - 95:25, 197:19, 240:4, 240:6
fold [1] - 236:20
folks [3] - 75:22, 76:25, 88:19
follow [22] - 9:6, 10:9, 10:20, 48:1, 60:12, 60:16, 64:14, 79:11, 80:1, 80:25, 81:8, 84:15, 88:17, 154:17, 156:6, 161:2, 188:21, 212:7, 226:13, 245:7, 252:20, 269:22
follow-up [2] - 88:17, 161:2
followed [12] - 12:9, 71:21, 76:3, 76:18, 78:1, 78:20, 87:13, 121:6, 121:13, 152:9, 157:6, 235:12
following [6] - 66:3, 105:7, 107:19, 156:24, 168:9, 274:13
follows [6] - 13:25, 49:15, 78:23, 78:24, 165:5, 174:19
follows:D [1] - 260:15
foot [1] - 127:5
footage [1] - 21:23
footnote [2] - 270:23
foreign [5] - 58:5, 58:19, 60:25, 61:3, 82:4
Forensic [2] - 203:18, 267:25
forensic [1] - 262:16
Forensics [3] - 204:11, 262:12, 262:23
forgotten [1] - 196:3
form [16] - 159:20, 166:1,

199:7, 220:10, 230:10, 230:11, 235:18, 235:19, 238:25, 240:20, 241:1, 242:5, 242:8, 242:10, 258:15
format [1] - 231:25
format [1] - 121:11
former [1] - 12:1
formerly [1] - 187:6
forth [2] - 29:15, 80:9
fortunately [1] - 228:11
forty [1] - 274:5
forward [8] - 8:21, 10:16, 58:7, 80:23, 83:22, 87:13, 96:1, 96:9
foundation [7] - 20:3, 40:24, 41:2, 59:23, 125:8, 203:7, 203:9
founded [3] - 175:7, 175:10, 175:12
four [18] - 62:12, 66:7, 81:2, 85:21, 119:8, 119:15, 119:16, 124:23, 124:24, 136:18, 141:11, 141:19, 161:14, 183:24, 196:18, 214:2, 274:6
fourth [2] - 85:14, 86:8
FRANK [1] - 174:18
Frank [10] - 89:8, 94:22, 98:24, 132:15, 143:14, 143:17, 144:1, 148:4, 148:12, 174:17
Frank's [1] - 143:9
Franklin [2] - 243:18, 243:24
free [1] - 180:25
frehest [1] - 191:16
Friday [3] - 5:1, 286:20, 286:21
front [5] - 65:10, 80:7, 194:14, 244:20, 278:1
FU [1] - 82:6
full [3] - 126:20, 166:6, 245:21
fully [2] - 180:18, 268:4
functional [1] - 214:4
functions [1] - 50:14
fund [1] - 65:10
funding [3] - 239:11, 239:14, 241:11
FURTHER [2] - 163:17, 250:7
future [6] - 9:2, 9:8, 150:19, 220:25, 228:2, 242:17

G

Gallo [1] - 99:12
gap [1] - 128:5
gather [3] - 6:14, 80:18, 169:25

gathered [2] - 113:1, 115:18
general [9] - 24:21, 86:25, 109:6, 110:25, 126:15, 171:19, 231:23, 272:18, 272:25
General [1] - 125:4
generally [11] - 37:21, 57:18, 73:19, 73:22, 74:6, 86:2, 100:3, 100:9, 100:25, 210:20, 230:25
generate [4] - 16:4, 23:20, 65:4, 85:2
gentleman [7] - 8:1, 9:3, 10:1, 10:11, 241:6, 259:6, 260:11
gentlemen [2] - 7:11, 95:23
geo [7] - 191:13, 191:17, 195:11, 195:15, 196:21, 229:17, 229:19
geographical [1] - 191:13
geography [1] - 164:10
GIS [1] - 251:4
given [11] - 11:15, 32:5, 36:19, 93:11, 136:23, 137:11, 147:15, 182:19, 231:25, 282:10, 282:16
glass [3] - 40:4, 199:21, 200:1
gleaned [1] - 37:13
Google [2] - 70:16, 72:23
Gorter [8] - 133:9, 159:5, 192:8, 245:20, 246:4, 257:20, 257:23, 258:10
Gorter's [1] - 8:5
Gotcha [1] - 285:7
gotta [1] - 34:15
govern [1] - 281:14
governing [1] - 151:1
Government [1] - 42:3
GPS [2] - 43:17, 43:25
graduated [2] - 166:1, 267:10
grandfather [1] - 206:18
grandfathered [3] - 74:11, 74:12, 284:3
gray [1] - 104:1
great [1] - 238:3
greater [1] - 198:25
greatest [1] - 104:20
green [3] - 75:19, 113:17, 113:23
grid [7] - 70:20, 70:21, 82:1, 158:14, 164:8, 164:11, 280:14
ground [21] - 33:20, 33:23, 33:24, 140:16, 141:10, 149:17, 151:17, 201:17, 201:20, 201:23, 201:25, 202:6, 206:14, 263:9,

263:13, 269:20, 273:14, 275:5, 275:7, 275:11, 275:16
grounded [8] - 141:18, 205:23, 205:25, 242:15, 274:2, 274:6, 275:10, 283:23
grounding [2] - 142:15, 151:2
grounds [1] - 67:17
group [7] - 49:24, 50:21, 53:25, 88:20, 232:18, 241:18, 268:1
Group [1] - 263:2
growth [1] - 181:18
guess [7] - 76:18, 115:22, 142:10, 175:8, 179:21, 204:19, 209:10
guidance [1] - 63:24
guide [1] - 275:9
guided [1] - 11:1
guidelines [1] - 20:22
guy [5] - 19:3, 24:23, 82:17, 82:19, 82:22
guy-wire [1] - 24:23
guying [2] - 24:23, 60:24
guys [6] - 19:1, 19:3, 41:18, 72:12, 82:8, 82:24
gym [1] - 32:20

H

hair [1] - 200:9
half [4] - 70:23, 120:2, 132:4
Hall [4] - 217:13, 219:13, 219:17, 220:6
Hamilton [1] - 87:1
hand [8] - 6:5, 15:5, 53:1, 53:5, 70:15, 73:1, 96:20, 280:21
handbook [2] - 169:20, 169:21
handed [3] - 147:17, 259:5, 259:9
handle [3] - 110:20, 111:1, 133:21
hanging [1] - 272:20
hangs [1] - 141:20
happy [5] - 114:17, 139:14, 245:19, 278:20, 280:4
hard [1] - 110:22
hardware [3] - 101:16, 101:18, 101:20
harmful [1] - 106:17
haste [1] - 106:9
hasten [1] - 99:8
havoc [1] - 218:8
hazard [1] - 102:7
hazards [1] - 34:5
head [2] - 45:24, 46:15
headers [1] - 119:23

headquarters [1] - 22:24
health [3] - 156:16, 197:25, 198:1
hear [4] - 94:6, 130:9, 131:14, 131:19
heard [9] - 7:15, 27:14, 54:21, 96:2, 171:22, 172:6, 172:7, 193:5, 270:3
hearing [3] - 286:7, 286:10, 286:12
hearsay [2] - 202:24, 203:12
heat [2] - 196:22
heavy [2] - 128:21, 128:24
height [2] - 24:20, 113:21
held [1] - 95:21
help [11] - 9:4, 12:15, 69:7, 70:7, 116:3, 117:16, 158:20, 162:13, 195:23, 208:23, 254:16
helpful [4] - 7:13, 7:17, 8:23, 130:5
helps [2] - 76:12, 117:6
hereto [2] - 150:23, 228:6
hexagon [1] - 113:17
hexagons [1] - 113:23
hidden [2] - 103:8, 104:21
high [1] - 201:24
higher [3] - 184:13, 208:14, 228:9
highest [1] - 127:21
highlighted [1] - 118:2
highly [1] - 96:21
Hinkles [3] - 24:4, 24:5, 24:7
hire [2] - 35:4, 111:25
hired [1] - 231:10
history [1] - 175:7
hit [1] - 132:21
HMI [1] - 25:24
hold [6] - 50:9, 53:6, 63:19, 154:12, 200:24, 261:22
holding [3] - 85:9, 149:19, 209:17
holds [2] - 49:9, 207:21
home [9] - 38:25, 41:22, 42:11, 166:7, 176:11, 177:2, 180:15, 181:6, 197:11
honest [1] - 60:13
Honor [85] - 5:18, 5:23, 6:8, 6:16, 9:15, 10:4, 11:20, 11:21, 12:2, 12:13, 12:22, 18:5, 40:22, 47:7, 47:8, 48:25, 49:6, 52:3, 65:25, 66:3, 67:16, 68:25, 69:12, 69:13, 75:11, 83:12, 91:19, 92:1, 99:9, 99:18, 100:13, 105:5, 113:13, 114:12, 116:6, 116:21, 117:4, 120:18, 121:18, 129:20,

138:14, 138:25, 139:8, 167:23, 168:1, 173:16, 174:7, 180:1, 185:4, 202:23, 204:4, 208:24, 209:2, 212:14, 212:16, 212:18, 213:4, 213:12, 222:19, 246:17, 249:10, 250:18, 257:13, 257:15, 258:19, 259:1, 259:4, 260:8, 260:19, 262:2, 265:21, 266:1, 266:21, 267:1, 269:25, 277:13, 277:20, 284:15, 284:16, 284:18, 285:11, 285:18, 286:2, 286:3, 286:23
hook [15] - 29:6, 29:9, 29:11, 29:12, 101:15, 101:25, 103:5, 104:21, 114:1, 114:7, 114:21, 126:24, 127:4, 186:4
hooks [4] - 91:8, 101:3, 127:11, 127:20
hope [1] - 212:10
hopefully [2] - 5:10, 49:9
Hopefully [1] - 130:9
Hospital [1] - 125:4
hospital [2] - 198:7
hospitals [1] - 198:5
hot [2] - 15:4, 19:2
Hotel [1] - 99:16
hounding [1] - 30:20
hours [1] - 246:22
house [6] - 9:13, 29:8, 43:7, 43:13, 203:5, 244:19
hover [1] - 15:25
huge [1] - 135:17
hum [8] - 22:4, 22:12, 25:5, 43:12, 137:5, 144:15, 163:21, 189:5
hundred [9] - 37:23, 142:8, 179:2, 192:1, 192:24, 216:4, 229:13, 247:1
hundreds [2] - 6:24, 179:3
hurt [1] - 106:14
hypothetical [1] - 59:25

I

I.D [2] - 21:25, 195:11
ice [1] - 126:8
icon [1] - 15:25
ID [3] - 16:1, 256:22, 256:24
idea [10] - 39:24, 46:1, 80:2, 89:20, 168:5, 216:1, 235:7, 282:10, 282:12, 283:15
identical [1] - 13:1
identification [3] - 46:24, 189:22, 257:24
identified [21] - 83:4, 101:9, 104:9, 117:6, 122:24, 123:7, 146:1, 151:9, 157:13, 159:8,

159:12, 160:4, 160:15, 160:20, 160:22, 160:24, 162:20, 246:5, 246:7, 246:9, 258:11
identifier [2] - 22:6, 163:16
identifies [1] - 68:12
identify [36] - 12:11, 12:19, 13:3, 14:6, 19:3, 20:25, 21:3, 21:9, 21:12, 21:16, 31:3, 49:22, 54:16, 55:10, 69:24, 71:14, 76:2, 83:18, 94:23, 100:4, 103:23, 106:2, 106:4, 109:24, 112:9, 134:12, 148:6, 155:18, 156:2, 161:21, 163:1, 163:6, 165:11, 241:22, 246:15, 246:16
identifying [8] - 12:4, 12:9, 68:1, 68:22, 112:19, 152:13, 159:24, 229:10
ignoring [1] - 210:15
illegally [1] - 30:21
illuminate [1] - 75:15
illustrates [1] - 115:13
illustration [1] - 79:9
image [1] - 195:5
imagine [1] - 8:20
immediately [1] - 214:1
impact [2] - 122:20, 123:15
impacted [5] - 88:20, 122:2, 122:23, 125:25, 229:8
implement [1] - 206:20
implemented [1] - 188:22
import [1] - 280:20
importance [1] - 269:18
important [8] - 24:12, 125:22, 131:13, 134:6, 206:22, 278:9, 278:11
impose [1] - 96:13
imposes [1] - 96:20
imposing [1] - 235:11
impractical [1] - 96:23
in-box [2] - 90:7, 285:23
inactions [1] - 120:22
Inc [2] - 70:25, 174:24
incapacities [1] - 285:3
inception [1] - 175:23
inch [3] - 19:25, 109:18, 200:4
inches [37] - 19:9, 19:21, 30:11, 73:20, 73:23, 74:3, 74:4, 74:6, 74:10, 74:25, 75:4, 103:12, 104:25, 105:2, 109:15, 114:6, 141:5, 141:11, 141:18, 141:19, 141:21, 199:1, 202:13, 214:2, 243:7, 274:6, 274:16, 275:23, 275:25, 276:1, 276:2, 276:17
incident [3] - 31:22, 32:10,

32:23
inclined [1] - 112:10
include [1] - 131:23
included [5] - 79:15, 97:16, 191:16, 234:16, 282:3
includes [3] - 195:8, 206:11, 240:12
including [7] - 27:6, 150:19, 211:18, 213:24, 219:10, 228:1, 252:9
income [1] - 198:3
incomplete [2] - 62:16, 161:15
inconsistent [2] - 29:1, 29:3
incumbent [3] - 128:20, 232:6, 235:25
independent [1] - 6:3
INDEX [1] - 4:2
indicate [1] - 33:15
indicated [9] - 7:16, 7:20, 8:19, 162:12, 185:8, 186:17, 207:15, 231:24, 251:19
indicates [1] - 228:20
indication [4] - 131:25, 139:23, 140:9, 162:2
indicators [1] - 91:3
individual [7] - 8:21, 118:8, 118:18, 124:11, 159:5, 162:17, 243:19
individuals [5] - 9:10, 42:23, 43:2, 243:21, 243:25
industry [6] - 128:4, 129:9, 168:16, 208:5, 211:17, 227:13
inexpensive [1] - 178:24
inference [1] - 155:20
information [136] - 10:16, 13:12, 17:24, 18:1, 22:21, 23:2, 23:9, 24:11, 24:12, 25:24, 26:5, 27:23, 30:23, 31:5, 31:9, 32:17, 33:12, 34:4, 36:18, 46:2, 46:6, 47:20, 47:22, 66:12, 68:1, 72:16, 76:6, 76:14, 77:12, 78:25, 80:18, 82:18, 106:21, 111:17, 112:21, 113:1, 115:18, 116:25, 122:4, 125:9, 134:19, 134:22, 135:21, 135:25, 143:5, 143:12, 146:19, 147:16, 156:11, 157:7, 158:8, 159:12, 159:16, 159:19, 159:24, 160:3, 171:22, 172:17, 173:21, 178:25, 179:6, 180:7, 181:5, 182:21, 182:25, 183:10, 188:11, 188:19, 189:1, 189:10, 189:17, 189:22, 191:5, 191:6, 191:8, 191:13,

191:18, 192:9, 192:16,
192:21, 192:25, 193:2,
193:8, 193:9, 194:8, 194:23,
195:2, 195:9, 195:10,
195:16, 195:24, 198:14,
229:17, 229:19, 230:17,
232:3, 233:15, 234:3, 235:6,
235:13, 246:1, 247:8,
250:22, 250:23, 250:24,
251:8, 251:20, 251:23,
251:24, 252:4, 252:6, 253:3,
253:11, 253:13, 253:16,
253:17, 253:22, 253:23,
254:1, 254:5, 254:10,
254:14, 255:15, 255:18,
255:21, 255:25, 256:4,
257:21, 257:24, 269:5,
282:19, 283:3, 283:16
infrastructure [5] - 42:2,
177:23, 180:24, 218:21,
265:10
initial [10] - 87:4, 87:11,
93:13, 107:2, 107:17,
110:17, 178:3, 178:4, 200:2,
223:2
input [1] - 183:1
inside [2] - 199:16, 207:25
inspection [1] - 250:11
install [7] - 42:22, 79:5,
82:17, 86:18, 223:23,
224:19, 274:24
installation [6] - 15:3,
57:12, 223:4, 226:9, 237:19,
238:9
installations [3] - 15:5,
36:13, 36:24
installed [11] - 42:13, 79:2,
82:20, 82:23, 140:8, 208:11,
227:13, 248:13, 248:16,
272:19, 281:10
installing [2] - 95:11, 230:3
instance [5] - 59:21,
122:19, 126:11, 228:12,
232:10
instances [5] - 30:11,
113:7, 119:8, 184:12, 282:2
instead [3] - 136:3, 208:13,
275:25
instructed [2] - 209:22,
258:2
instruction [1] - 210:1
instructions [3] - 166:24,
167:1, 211:13
insulated [3] - 19:13, 30:16,
277:5
insure [13] - 51:5, 51:22,
63:16, 65:15, 83:1, 87:18,
121:3, 121:15, 122:10,
122:13, 125:24, 171:19,
232:7

insured [1] - 122:18
insures [3] - 51:23, 51:24,
51:25
Integrations [1] - 14:20
intelligent [1] - 11:2
intelligible [1] - 11:2
intend [2] - 156:24, 268:11
intended [5] - 29:16, 33:23,
34:1, 243:2, 259:6
intentionally [1] - 211:21
inter [1] - 215:6
inter-connection [1] -
215:6
interaction [1] - 50:23
interactive [3] - 49:10,
152:16, 152:18
interconnect [2] - 122:18,
122:22
interest [1] - 97:8
interested [2] - 5:7, 7:22
interests [1] - 212:22
interface [1] - 15:17
interfere [2] - 129:6, 215:23
interjecting [1] - 17:24
intermingled [1] - 215:8
internal [2] - 263:14,
263:16
internet [3] - 42:12, 59:4,
220:1
Internet [8] - 49:9, 142:23,
176:2, 179:15, 219:14,
220:2, 220:3, 220:20
interplay [2] - 50:23, 51:16
interpret [1] - 138:2
interpretation [1] - 202:8
interpreted [1] - 264:6
interrupt [4] - 70:4, 88:9,
100:2, 118:17
interrupted [2] - 87:9,
218:13
intersections [4] - 215:10,
215:24, 216:2, 218:12
interspersed [1] - 108:17
intervention [1] - 213:4
introduced [1] - 139:2
investigation [2] - 262:16,
268:15
invitation [2] - 69:5, 97:6
invoice [4] - 58:5, 65:4,
83:23, 227:3
invoices [2] - 85:20, 86:4
invoicing [1] - 65:23
involve [2] - 32:19, 275:7
involved [25] - 8:12, 10:25,
16:18, 16:22, 35:18, 35:21,
36:11, 37:20, 38:6, 42:19,
42:21, 42:24, 43:21, 109:17,
111:4, 141:25, 147:9,
147:12, 165:25, 167:3,
167:15, 183:3, 262:23,

263:3, 265:19
involvement [2] - 140:4,
167:13
involves [1] - 218:18
involving [5] - 16:19, 31:22,
32:10, 201:7, 262:17
IP [2] - 219:19, 219:20
issue [44] - 7:8, 8:14, 11:12,
13:5, 40:25, 54:22, 58:13,
85:20, 93:3, 100:15, 100:22,
101:9, 102:4, 103:15,
108:10, 114:5, 148:21,
149:8, 156:17, 168:24,
181:15, 206:14, 228:18,
235:2, 235:4, 236:3, 236:13,
237:3, 266:24, 268:14,
272:5, 272:8, 275:4, 275:18,
276:1, 276:6, 276:7, 276:24,
276:25, 277:1, 277:5, 283:6,
283:7, 283:8
issued [3] - 84:17, 84:18,
233:22
issues [54] - 6:4, 6:24, 7:1,
9:8, 9:16, 12:1, 27:8, 28:16,
30:8, 60:23, 91:25, 93:24,
94:18, 94:19, 94:20, 100:4,
100:16, 102:20, 104:17,
109:18, 113:2, 121:23,
127:13, 128:2, 128:12,
140:18, 141:24, 142:4,
142:12, 147:21, 148:5,
148:6, 157:11, 167:25,
168:18, 170:13, 198:11,
198:16, 198:20, 198:22,
205:4, 225:2, 264:16,
264:25, 265:2, 268:15,
268:16, 268:21, 282:13,
283:5, 283:17, 284:20
items [7] - 53:14, 108:13,
108:15, 114:6, 114:9,
140:23, 282:22
itself [7] - 57:16, 74:4,
135:9, 135:10, 136:15,
164:9, 187:15

J

J's [1] - 239:8
January [7] - 115:19,
145:17, 183:19, 189:3,
226:22, 232:16, 241:15
jargon [1] - 70:22
Jeffrey [5] - 3:4, 4:7, 4:8,
259:3, 260:25
JEFFREY [1] - 260:14
Jersey [1] - 166:4
job [14] - 9:14, 33:18,
33:22, 34:2, 34:7, 34:11,
34:13, 40:17, 76:8, 135:20,
166:3, 210:18, 236:1, 263:17

jobs [1] - 211:13
joined [2] - 157:24, 216:23
joins [1] - 207:24
joint [1] - 218:5
joke [1] - 154:15
JOSEPH [1] - 13:24
Joseph [2] - 5:19, 14:7
Judge [3] - 78:13, 112:25,
271:4
judgment [1] - 251:25

K

K-o-b-i-l-k-a [1] - 261:1
Katapult [35] - 10:5, 10:6,
15:17, 17:3, 25:20, 25:21,
106:1, 110:14, 110:16,
110:21, 110:23, 110:24,
111:9, 111:12, 112:1,
115:10, 115:18, 136:3,
136:15, 136:18, 136:19,
137:15, 137:16, 143:3,
144:9, 145:13, 145:21,
156:5, 188:22, 194:3,
194:13, 195:7, 195:17,
195:23
keep [13] - 19:2, 21:5,
22:13, 72:6, 97:21, 101:25,
106:12, 117:21, 118:12,
129:7, 165:8, 208:16, 227:12
Keep [1] - 115:22
keeping [5] - 43:4, 43:10,
43:16, 63:16, 189:15
Kelly [1] - 89:9
kept [2] - 23:9, 189:10
Kevlar [1] - 199:18
key [1] - 281:25
Keystone [2] - 50:19, 263:2
kick [1] - 87:11
kidding [1] - 154:15
kind [13] - 24:10, 37:13,
102:5, 103:7, 122:19,
134:21, 170:20, 174:22,
176:12, 178:15, 199:18,
201:18, 211:14
kinds [4] - 177:1, 195:5,
208:6, 228:10
Klokis [8] - 230:20, 231:5,
232:16, 240:22, 241:5,
241:17, 241:25, 242:6
knock [1] - 52:20
knowing [2] - 229:8, 239:21
knowingly [1] - 48:10
knowledge [15] - 21:11,
26:17, 36:17, 38:6, 47:20,
59:4, 62:8, 86:16, 90:1,
161:20, 167:22, 190:6,
193:1, 274:3, 274:25
known [4] - 39:11, 42:6,
59:10, 174:23

knows [2] - 40:23, 41:3
KOBILKA [1] - 260:14
Kobilka [8] - 3:4, 4:7, 4:8, 259:3, 260:25, 262:11, 277:25, 284:12
Kristie [3] - 11:4, 165:3, 165:13
KRISTIE [1] - 165:4

L

labeled [1] - 122:14
lack [4] - 20:2, 40:24, 125:8, 281:20
Lack [2] - 41:2, 59:22
ladies [1] - 95:23
Lafayette [1] - 165:24
Lancaster [75] - 7:6, 16:20, 19:5, 21:13, 21:21, 26:18, 28:12, 28:18, 30:22, 31:1, 36:11, 39:8, 39:13, 39:16, 39:19, 41:5, 41:19, 42:14, 48:6, 59:3, 59:5, 62:5, 62:10, 65:20, 66:13, 71:6, 71:7, 77:10, 86:19, 87:2, 88:19, 89:22, 90:1, 94:2, 94:13, 105:17, 113:14, 121:24, 125:4, 140:5, 176:3, 176:9, 176:16, 176:21, 177:7, 177:11, 177:18, 178:6, 180:19, 180:21, 186:10, 186:14, 186:19, 187:2, 187:3, 187:5, 187:7, 212:20, 212:22, 213:15, 216:6, 216:10, 218:14, 221:16, 221:20, 222:2, 223:24, 224:20, 225:17, 226:2, 226:18, 239:10, 243:24, 245:4
Lancaster's [1] - 221:23
Land [11] - 42:6, 42:10, 42:11, 42:17, 44:4, 46:8, 46:10, 87:6, 90:24, 176:7, 197:10
language [2] - 160:8, 238:14
large [3] - 110:19, 128:21, 142:15
laser [3] - 53:1, 53:6, 73:2
lash [1] - 224:14
lashed [2] - 218:5, 224:13
lashes [1] - 200:13
lashing [7] - 124:9, 130:24, 130:25, 131:1, 200:9, 223:1, 224:9
last [5] - 14:9, 159:8, 164:8, 193:25, 231:8
latest [1] - 140:24
latitude [3] - 163:15, 164:1, 229:18

lawsuit [1] - 100:11
lay [3] - 200:11, 203:7, 220:1
layers [1] - 41:21
layperson [1] - 138:1
lays [5] - 51:21, 170:20, 173:17, 226:23, 227:21
LCSC [12] - 39:11, 40:14, 40:18, 40:21, 41:10, 41:14, 41:24, 178:18, 186:10, 186:17, 187:22, 242:3
lead [1] - 91:10
leader [1] - 268:1
leading [4] - 17:25, 18:4, 100:3, 153:7
leaf [2] - 57:16, 80:13
learn [2] - 20:11, 280:19
learned [4] - 89:25, 193:4, 200:7, 241:17
learning [1] - 198:14
least [8] - 35:4, 36:16, 45:14, 115:11, 115:20, 154:18, 187:12, 255:24
leave [5] - 30:18, 97:17, 178:11, 180:10, 217:4
leaving [1] - 134:25
LED [1] - 178:25
led [3] - 88:8, 89:3, 91:6
left [10] - 20:23, 20:24, 27:18, 30:17, 35:16, 45:21, 70:15, 104:1, 166:7, 214:4
left-hand [1] - 70:15
legal [4] - 17:19, 27:2, 153:23, 215:11
legally [1] - 212:22
legitimate [5] - 33:2, 96:10, 97:11, 208:9, 208:10
Lehigh [1] - 5:4
less [7] - 105:2, 109:15, 114:5, 129:3, 200:19, 276:16, 282:14
lessen [1] - 141:9
letter [2] - 7:10, 92:8
letters [2] - 22:3, 93:12
letting [3] - 58:20, 107:17, 196:15
level [2] - 137:10, 149:17
liability [1] - 90:19
liberty [1] - 8:8
license [7] - 51:19, 51:21, 52:23, 53:12, 60:11, 63:23, 165:20
licensed [1] - 261:24
licensee's [2] - 130:25, 223:1
licensees [2] - 61:16, 63:25
licenses [1] - 261:14
lifts [1] - 30:15
light [32] - 24:19, 40:4, 40:8, 46:14, 74:3, 74:4,

74:25, 75:3, 75:11, 75:14, 75:15, 75:18, 75:19, 103:11, 104:23, 105:2, 114:11, 140:15, 141:4, 141:9, 141:15, 141:19, 206:3, 207:5, 220:7, 273:21, 273:22, 275:4, 276:14, 276:15, 277:4
lightening [2] - 201:19, 201:22
lighter [1] - 129:2
lights [34] - 114:24, 139:21, 139:24, 140:1, 140:3, 140:6, 140:10, 140:11, 140:16, 140:17, 140:23, 142:1, 142:5, 142:12, 142:16, 205:22, 205:23, 205:24, 205:25, 206:7, 206:11, 206:14, 216:2, 242:13, 242:15, 273:24, 273:25, 274:8, 274:9, 274:15, 274:19, 274:24, 275:8
likelihood [1] - 7:20
likely [1] - 11:23
limit [3] - 36:1, 36:4, 51:13
limitations [2] - 10:24, 37:23
limited [2] - 182:16, 211:8
Linda [2] - 97:12, 285:22
line [24] - 90:9, 101:17, 102:11, 108:17, 114:8, 118:18, 152:3, 154:17, 159:3, 164:13, 219:25, 225:10, 225:11, 225:14, 239:20, 239:21, 240:1, 240:9, 258:18, 266:2, 266:8, 276:13, 278:24, 279:12
lined [1] - 90:23
lineman [2] - 102:2, 275:9
lines [8] - 106:11, 113:14, 113:15, 177:2, 201:24, 239:5, 240:8, 280:15
list [17] - 9:10, 105:11, 105:16, 105:25, 118:7, 126:15, 126:17, 136:4, 162:14, 193:14, 245:21, 258:12, 268:20, 268:22, 269:1, 282:9, 282:17
listed [3] - 31:8, 44:8, 120:25
lists [9] - 107:1, 107:3, 109:21, 113:4, 122:10, 160:1, 193:11, 193:12, 193:20
lit [2] - 41:22, 46:24
litigants [1] - 96:25
litigation [2] - 97:2, 262:18
live [1] - 96:18
living [1] - 14:17
load [13] - 24:7, 41:23,

48:5, 70:13, 126:4, 207:6, 235:2, 265:3, 265:5, 265:7, 265:8, 265:12
loading [2] - 82:16, 126:8
local [3] - 90:20, 128:20, 217:4
locate [1] - 210:2
located [10] - 61:19, 164:17, 177:10, 191:17, 195:12, 206:7, 214:1, 219:20, 279:12, 279:16
location [20] - 21:17, 23:9, 43:25, 60:14, 95:7, 98:8, 98:13, 98:18, 111:20, 123:8, 195:8, 195:15, 210:7, 213:24, 217:6, 220:5, 239:15, 246:23, 279:21
locations [16] - 43:9, 107:23, 107:24, 133:11, 134:13, 145:25, 155:2, 158:14, 161:21, 184:7, 195:25, 196:13, 196:21, 216:19, 218:25, 219:23
Lockheed [1] - 166:3
log [5] - 194:16, 194:17, 232:2, 257:4, 257:6
logic [4] - 164:16, 245:7, 245:8, 245:9
longitude [3] - 163:15, 164:1, 229:18
look [39] - 6:19, 9:5, 9:9, 10:16, 57:7, 60:10, 67:18, 73:4, 81:15, 85:23, 86:3, 87:22, 106:15, 107:12, 119:23, 120:5, 130:21, 137:20, 142:17, 146:12, 153:12, 162:13, 162:17, 178:5, 193:17, 195:13, 202:1, 209:20, 222:5, 231:14, 238:25, 245:19, 251:8, 258:10, 268:20, 279:18, 282:24, 283:2
looked [28] - 78:10, 80:3, 81:25, 88:1, 88:2, 122:16, 126:9, 136:15, 136:17, 136:20, 136:24, 145:25, 146:14, 178:8, 179:23, 188:14, 188:15, 190:14, 191:20, 193:11, 202:21, 208:17, 232:11, 246:20, 275:17, 276:9, 282:14, 283:12
looking [19] - 6:13, 39:14, 63:13, 76:10, 90:23, 104:6, 113:5, 113:6, 119:3, 119:6, 161:11, 183:18, 185:10, 196:2, 203:9, 217:15, 247:15, 268:24, 270:20
looks [6] - 5:8, 10:15, 70:11, 99:16, 228:20, 256:20

loop [7] - 74:3, 141:13, 141:14, 141:16, 141:20, 276:12, 276:19
loops [2] - 276:10, 277:5
loose [2] - 102:7, 199:23
Lori's [1] - 285:23
lose [2] - 97:2, 119:22
lost [3] - 160:19, 253:7, 256:23
loud [5] - 150:17, 222:23, 228:14, 228:17, 279:9
louder [1] - 131:11
low [2] - 198:3, 272:20
lower [2] - 137:10, 171:21
lowered [1] - 208:15
lowest [7] - 73:20, 128:13, 128:19, 128:24, 151:17, 201:20, 210:4
LSC [1] - 216:21
LSC's [1] - 217:7
luminaire [5] - 273:9, 273:20, 275:3, 282:4, 283:10
luminaires [10] - 272:8, 272:9, 272:13, 273:9, 273:15, 275:10, 282:1, 283:19, 283:20, 283:23
lunch [2] - 96:6, 97:24
LUNCH [1] - 97:25

M

Ma'am [4] - 165:14, 167:11, 172:20, 174:5
magnitude [1] - 283:4
mail [9] - 84:8, 90:6, 230:19, 230:24, 232:18, 235:19, 240:24, 241:16, 241:20
main [3] - 38:22, 166:21, 177:10
Mainline [2] - 166:8, 166:11
maintain [1] - 97:1
maintained [1] - 233:12
major [2] - 30:20, 231:4
man [1] - 46:12
manage [2] - 45:7, 199:22
management [7] - 50:5, 50:10, 53:15, 55:23, 88:2, 111:2, 210:23
manager [4] - 14:25, 15:1, 44:25, 49:23
manner [4] - 51:23, 56:15, 56:16, 211:18
manual [1] - 20:20
manufactured [1] - 199:5
map [17] - 16:4, 70:16, 71:19, 72:18, 76:15, 144:14, 152:16, 152:18, 152:19, 152:20, 152:23, 152:24, 154:22, 155:1, 196:22,

196:23
mapped [1] - 196:21
maps [4] - 22:16, 44:8, 46:22, 90:24
March [1] - 5:1
Marked [1] - 4:6
marked [10] - 4:25, 99:7, 138:17, 208:22, 209:6, 209:9, 260:21, 261:6, 267:17, 279:5
Martin [1] - 166:3
master [4] - 8:24, 9:7, 23:4, 23:8
matches [1] - 116:17
material [2] - 199:18, 270:7
materials [3] - 263:22, 269:14, 269:16
matter [10] - 5:5, 5:8, 5:24, 6:23, 10:25, 123:5, 147:6, 212:23, 238:18, 280:21
mattered [1] - 184:9
matters [2] - 7:14, 9:1
MAW [236] - 5:6, 7:6, 12:1, 13:3, 13:6, 13:9, 14:22, 14:24, 15:3, 15:12, 16:24, 17:21, 19:23, 20:13, 20:24, 21:5, 21:12, 21:17, 22:10, 22:11, 22:24, 23:10, 24:13, 25:7, 26:1, 26:9, 26:17, 27:8, 27:10, 28:11, 30:17, 30:23, 30:25, 32:6, 33:6, 33:12, 33:22, 34:1, 34:6, 34:24, 34:25, 35:8, 35:11, 35:16, 36:6, 36:24, 37:14, 38:6, 38:11, 40:17, 43:10, 43:16, 43:19, 43:23, 44:11, 44:16, 47:14, 47:21, 47:23, 47:25, 48:4, 52:23, 53:12, 54:5, 54:7, 54:16, 54:17, 55:11, 56:22, 59:13, 59:16, 61:12, 61:25, 62:3, 62:8, 65:18, 65:21, 66:13, 66:23, 66:24, 67:13, 68:9, 72:18, 76:2, 77:5, 77:7, 77:21, 77:23, 78:21, 80:22, 81:12, 81:24, 82:13, 82:20, 83:21, 84:4, 84:15, 85:3, 85:20, 86:17, 86:22, 89:4, 89:6, 89:13, 89:20, 89:25, 91:11, 91:24, 92:10, 93:12, 94:2, 95:10, 95:14, 98:4, 105:9, 106:4, 106:25, 107:17, 108:7, 109:1, 109:12, 110:7, 110:9, 112:8, 113:3, 119:9, 120:1, 121:14, 122:5, 122:10, 122:11, 123:22, 124:3, 124:20, 124:22, 124:24, 125:2, 125:5, 125:12, 125:19, 126:13, 127:16, 127:21, 128:13, 131:25,

132:8, 132:15, 133:10, 133:15, 134:1, 134:3, 134:12, 139:13, 140:4, 140:9, 143:25, 146:2, 147:2, 147:6, 147:10, 147:15, 147:23, 148:4, 151:22, 152:8, 155:17, 155:25, 156:6, 156:10, 157:11, 157:13, 158:7, 158:22, 159:11, 159:15, 161:12, 168:3, 169:19, 171:23, 172:3, 172:6, 172:7, 174:23, 175:7, 175:10, 175:12, 175:13, 175:22, 175:24, 176:1, 176:2, 177:9, 177:13, 177:15, 181:7, 182:9, 182:21, 182:24, 182:25, 185:3, 185:17, 185:19, 185:20, 186:22, 187:8, 188:1, 188:5, 190:2, 210:18, 211:20, 212:3, 212:6, 214:10, 224:24, 225:1, 226:3, 245:21, 254:4, 257:23, 268:13, 268:22, 269:1, 269:13, 273:11, 273:12, 274:12, 274:20, 274:23, 282:5, 282:19
MAW's [15] - 21:21, 23:11, 35:5, 40:17, 44:22, 46:12, 60:9, 94:23, 96:3, 98:21, 111:18, 168:6, 174:11, 177:9, 212:10
MAW'S [1] - 186:13
maximum [1] - 200:17
McCoy [2] - 24:4, 24:5
mean [40] - 9:12, 15:1, 17:14, 17:23, 18:8, 18:10, 19:11, 25:3, 36:23, 43:19, 43:24, 50:13, 68:20, 73:8, 75:22, 82:15, 91:19, 104:4, 118:18, 122:25, 123:4, 123:11, 135:20, 142:7, 144:9, 146:6, 147:20, 159:22, 159:24, 164:23, 175:16, 198:15, 215:2, 220:19, 245:23, 251:17, 265:5, 265:7, 265:8, 277:17
meaning [3] - 128:13, 163:25, 278:14
means [14] - 64:21, 105:1, 124:7, 175:18, 199:7, 200:21, 200:23, 201:18, 219:12, 219:13, 220:9, 269:17, 270:15, 278:16
meant [3] - 123:6, 245:24, 281:5
measure [4] - 180:7, 188:23, 227:14, 227:15
measurement [1] - 25:18
measurements [1] - 20:16

mechanical [1] - 270:17
mechanically [1] - 101:23
mechanism [1] - 7:2
medical [1] - 198:3
meet [5] - 8:22, 87:4, 88:7, 96:10, 97:11
meeting [29] - 7:11, 87:11, 88:8, 88:9, 88:14, 88:16, 89:1, 89:3, 89:7, 89:11, 94:1, 94:4, 94:8, 94:15, 94:22, 110:18, 133:5, 147:11, 149:2, 160:1, 185:8, 185:12, 196:17, 241:14, 243:17, 246:2, 252:16, 270:25, 279:11
meetings [20] - 86:22, 86:24, 87:3, 132:25, 133:5, 147:9, 147:14, 147:16, 147:18, 148:3, 148:8, 148:13, 148:16, 156:22, 183:14, 183:23, 183:25, 190:25, 192:5, 241:5
member [1] - 199:17
members [1] - 211:1
memberships [1] - 32:20
memory [1] - 31:4
mention [2] - 41:15, 138:15
mentioned [17] - 20:23, 28:3, 31:7, 45:13, 67:6, 86:21, 149:11, 179:14, 185:22, 186:10, 193:11, 213:15, 214:9, 216:5, 269:7, 283:13
merely [1] - 267:6
mess [1] - 103:8
message [2] - 33:11, 33:18
messenger [4] - 200:3, 200:4, 200:14, 200:24
met [12] - 8:22, 26:24, 27:11, 87:12, 88:19, 90:19, 94:12, 134:18, 147:2, 147:6, 183:15, 252:13
Met [1] - 16:16
metadata [4] - 194:25, 195:3, 195:7
metal [5] - 21:25, 22:6, 124:9, 163:20, 208:3
metallic [1] - 276:18
metering [1] - 218:20
method [2] - 101:3, 112:19
methods [1] - 106:19
Michael [1] - 8:9
microphone [1] - 165:9
mid [3] - 113:18, 113:21, 244:19
mid-span [2] - 113:21, 244:19
mid-spans [1] - 113:18
middle [1] - 171:7
might [17] - 8:23, 9:10,

56:19, 68:18, 73:5, 87:24,
90:25, 164:1, 169:8, 169:11,
180:5, 229:7, 241:9, 247:4,
256:23, 257:1, 284:2
migrated [1] - 240:7
migrating [1] - 239:23
miles [1] - 179:3
million [1] - 185:10
mind [6] - 20:24, 21:2,
107:9, 129:21, 160:4, 278:25
mine [2] - 256:24, 257:1
minor [1] - 75:10
minus [1] - 115:13
minute [10] - 42:20, 95:16,
95:17, 146:23, 174:10,
174:13, 246:13, 260:2,
260:4, 260:5
minutes [8] - 5:10, 31:12,
50:12, 110:13, 207:14,
255:15, 259:19, 283:13
mirrored [2] - 241:25, 242:1
miscommunication [1] -
246:14
misidentify [1] - 121:16
mislead [1] - 114:15
Miss [6] - 165:3, 165:8,
168:1, 171:5, 173:25, 284:19
missed [4] - 41:1, 196:6,
235:17, 240:20
missing [2] - 188:19, 193:6
mistake [3] - 59:21, 60:7,
60:13
misunderstood [1] -
216:12
misuse [1] - 32:13
misusing [2] - 31:22, 32:10
mixed [1] - 199:19
mode [5] - 41:24, 179:3,
179:9, 179:10, 214:4
modem [1] - 178:23
modifies [1] - 280:12
mom [1] - 166:7
moment [10] - 27:21, 37:17,
62:23, 106:8, 130:7, 177:14,
204:21, 219:5, 259:10,
280:24
Monday [1] - 285:2
monitor [1] - 215:13
monitoring [3] - 42:1, 43:5,
43:7
monitors [2] - 39:18, 50:21
month [5] - 159:8, 159:9,
205:5, 210:22, 246:6
months [4] - 30:20, 183:9,
193:25, 196:18
morning [6] - 14:3, 130:13,
146:25, 190:2, 286:4, 286:15
most [21] - 11:23, 44:21,
63:20, 70:8, 74:5, 88:5,
131:13, 153:18, 163:14,

173:11, 178:22, 184:1,
184:9, 205:21, 206:22,
211:8, 219:3, 219:8, 250:24,
269:11, 274:4
Most [1] - 219:5
mostly [1] - 59:10
motion [9] - 5:17, 13:1,
13:2, 67:20, 67:21, 67:22,
67:23, 259:13, 285:12
motions [2] - 12:25, 117:1
mounted [6] - 102:11,
102:15, 138:7, 138:10,
151:13, 215:18
move [21] - 58:7, 58:15,
83:22, 87:13, 96:1, 103:21,
105:5, 109:8, 119:5, 174:22,
179:6, 184:14, 194:21,
207:13, 213:21, 239:4,
239:13, 240:8, 277:14
moved [6] - 66:9, 80:23,
95:13, 184:20, 185:1, 213:23
movement [1] - 18:17
movements [2] - 18:14,
24:16
moves [3] - 58:23, 59:17,
200:10
moving [2] - 141:4, 208:16
multi [5] - 41:23, 65:19,
178:23, 179:9, 214:4
multi-load [1] - 41:23
multi-mode [2] - 179:9,
214:4
multi-modem [1] - 178:23
multi-stage [1] - 65:19
multiple [7] - 91:23, 115:21,
118:9, 118:22, 128:2,
155:20, 218:4
municipal [7] - 41:22,
42:12, 177:5, 218:17,
220:15, 221:3, 263:5
municipality [1] - 239:2
must [5] - 61:13, 61:16,
167:21, 237:18, 238:8
mutual [1] - 33:20

N

nail [1] - 101:24
name [6] - 7:25, 8:9, 14:9,
76:8, 165:13, 260:23
National [15] - 20:20,
103:16, 147:15, 150:18,
150:20, 169:3, 201:13,
202:8, 202:12, 227:15,
228:1, 271:2, 271:23, 272:2,
279:5
natural [1] - 17:10
nature [1] - 9:17
near [3] - 51:4, 115:1, 128:3
nearest [3] - 143:18, 144:3,

163:19
NEC [3] - 150:20, 201:2,
206:9
necessarily [8] - 59:23,
197:19, 220:13, 223:11,
228:18, 236:19, 244:11,
256:22
necessary [3] - 59:16,
65:16, 161:4
need [36] - 28:6, 55:21,
56:1, 56:5, 56:7, 56:12,
56:19, 58:2, 58:20, 69:14,
70:2, 76:6, 108:16, 111:10,
113:2, 129:22, 155:12,
177:16, 188:20, 189:14,
205:11, 208:14, 210:9,
230:6, 230:8, 234:4, 234:6,
235:23, 236:6, 236:13,
236:18, 237:12, 239:1,
244:13, 254:22
needed [17] - 24:17, 24:24,
82:17, 87:13, 108:11,
108:14, 119:13, 120:12,
145:4, 189:24, 211:16,
230:9, 246:24, 247:8, 253:3,
254:21, 254:23
needs [6] - 17:25, 18:15,
26:5, 119:14, 199:1, 276:17
negotiating [1] - 97:21
neighborhood [3] - 46:15,
46:25, 144:23
NESC [35] - 11:6, 11:10,
48:15, 140:24, 141:1,
147:15, 147:21, 147:22,
148:5, 148:13, 148:18,
149:8, 150:18, 152:3,
156:21, 157:1, 157:4, 157:9,
168:13, 169:20, 169:24,
171:2, 171:18, 172:18,
173:23, 199:2, 206:16,
211:18, 243:11, 263:23,
269:8, 276:8, 277:25,
278:13, 279:3
Network [1] - 39:17
network [74] - 23:9, 27:5,
28:21, 29:5, 37:22, 38:22,
39:8, 40:12, 40:14, 40:15,
40:18, 40:21, 41:10, 41:23,
42:4, 42:13, 46:13, 175:18,
176:24, 176:25, 178:5,
178:7, 178:13, 180:17,
181:17, 185:20, 185:21,
185:25, 186:1, 186:2, 186:9,
187:5, 187:13, 187:14,
188:16, 192:2, 196:12,
197:9, 197:22, 198:1, 198:5,
198:8, 207:7, 207:23,
211:10, 213:17, 216:18,
216:20, 216:22, 217:5,
217:6, 217:7, 217:9, 221:13,

221:20, 221:24, 222:1,
224:3, 224:19, 229:15,
231:9, 231:11, 240:6, 242:3,
243:5, 246:24, 251:5,
253:18, 253:19, 263:7,
265:3, 265:4
networks [1] - 41:24
neutral [10] - 19:20, 24:20,
201:16, 201:23, 202:2,
202:5, 275:11, 275:17,
275:23
never [16] - 27:19, 33:24,
35:10, 36:3, 38:10, 69:1,
78:19, 193:5, 194:5, 199:2,
238:21, 240:20, 241:8,
241:11, 263:3, 264:10
Nevin [1] - 145:2
New [2] - 166:4, 237:1
new [71] - 15:8, 15:18,
15:19, 15:23, 17:10, 17:20,
17:21, 18:11, 18:13, 18:17,
27:13, 28:21, 35:6, 38:16,
42:13, 46:13, 56:11, 56:14,
56:20, 74:20, 79:24, 118:1,
118:13, 120:6, 124:8,
124:15, 125:15, 127:8,
127:10, 132:22, 140:6,
141:3, 181:16, 183:18,
186:21, 198:13, 206:20,
213:24, 217:6, 218:16,
218:19, 223:9, 223:23,
224:3, 224:19, 225:10,
225:11, 225:14, 226:14,
226:22, 230:3, 232:8,
232:15, 233:7, 234:22,
236:14, 236:17, 236:18,
236:24, 238:9, 239:15,
239:20, 240:11, 241:8,
244:4, 263:22, 264:17,
265:4, 284:5
newer [1] - 38:15
Next [1] - 174:6
next [25] - 5:5, 49:3, 65:3,
83:2, 103:13, 114:4, 114:23,
150:14, 164:13, 165:1,
175:9, 192:5, 192:18,
194:22, 195:20, 196:18,
273:18, 275:17, 278:25,
279:14, 284:24, 285:1,
285:15, 285:23, 286:16
nine [1] - 121:9
Nine [1] - 172:23
Ninety [1] - 247:23
nobody's [1] - 97:8
non [12] - 19:13, 30:16,
60:15, 111:18, 119:9,
119:10, 119:11, 125:2,
127:25, 198:3, 270:5, 276:18
non-compliant [3] - 60:15,
119:9, 119:11

non-conductive [1] - 270:5
non-conformant [1] - 127:25
non-conforming [1] - 119:10
non-insulated [2] - 19:13, 30:16
non-MAW [1] - 125:2
non-metallic [1] - 276:18
non-profit [1] - 198:3
non-specific [1] - 111:18
none [12] - 67:21, 86:9, 86:11, 86:12, 96:3, 127:25, 184:9, 195:9, 206:23, 262:22, 269:24, 277:19
normal [5] - 72:10, 205:6, 231:2, 240:21, 242:5
normally [1] - 43:24
north [1] - 164:4
northwest [2] - 98:11, 197:5
note [1] - 212:19
noted [3] - 146:6, 259:11, 268:25
notes [1] - 76:8
noteworthy [1] - 103:9
nothing [4] - 5:8, 13:10, 91:24, 112:24
notice [5] - 61:13, 93:12, 125:13, 125:14, 157:1
noticed [4] - 95:24, 206:2, 282:14, 282:16
notification [10] - 56:6, 58:5, 58:19, 60:25, 230:12, 232:1, 235:18, 238:24, 240:21, 241:2
notified [5] - 132:1, 223:19, 230:10, 233:2, 282:20
notify [5] - 230:8, 230:10, 232:13, 232:20, 239:1
notifying [2] - 56:3, 131:23
notion [1] - 9:6
nowhere [2] - 128:3, 232:17
Number [1] - 121:21
number [77] - 8:1, 12:24, 16:1, 21:17, 21:25, 22:14, 31:3, 31:4, 44:5, 52:12, 59:11, 68:1, 71:1, 76:19, 79:4, 79:15, 88:8, 88:14, 88:16, 88:17, 90:8, 102:2, 107:5, 110:3, 110:19, 113:22, 118:12, 118:19, 119:6, 119:23, 124:1, 141:23, 142:2, 142:5, 142:9, 142:15, 144:7, 144:21, 144:23, 145:4, 145:8, 154:18, 155:6, 155:9, 155:12, 158:8, 159:4, 159:11, 160:9, 160:16, 160:24, 163:13, 163:15,

164:12, 164:14, 164:19, 167:15, 173:4, 173:15, 182:15, 183:7, 193:8, 194:18, 194:20, 214:14, 234:3, 245:24, 250:22, 251:19, 252:6, 253:10, 254:1, 254:2, 254:15, 257:24, 258:15
numbers [64] - 21:22, 22:2, 31:8, 43:4, 43:6, 43:7, 43:13, 44:8, 46:23, 68:13, 68:21, 68:23, 69:1, 69:2, 70:21, 82:1, 105:16, 121:14, 126:19, 132:24, 133:10, 133:16, 134:1, 134:3, 135:6, 135:24, 136:1, 136:12, 136:24, 144:1, 144:17, 146:6, 146:19, 154:6, 155:18, 158:19, 158:22, 163:8, 163:22, 163:24, 163:25, 164:3, 164:4, 164:6, 164:11, 164:16, 188:9, 188:10, 189:23, 190:7, 192:13, 233:22, 246:10, 248:22, 248:23, 248:24, 249:13, 250:21, 251:22, 253:9, 255:22, 283:15
numerical [1] - 164:14
numerous [2] - 16:14, 241:5

O

o'clock [1] - 5:2
obfuscate [1] - 12:21
obfuscation [1] - 168:8
object [10] - 20:2, 66:1, 67:16, 100:14, 133:20, 167:24, 172:2, 249:4, 266:1, 271:4
objection [35] - 6:6, 6:17, 6:18, 11:24, 12:23, 13:19, 17:23, 32:2, 40:22, 41:1, 52:7, 59:22, 112:12, 116:22, 125:8, 135:7, 152:5, 153:5, 153:21, 155:19, 156:15, 163:2, 163:9, 169:7, 172:8, 180:1, 202:23, 204:12, 249:18, 249:20, 256:8, 269:23, 277:18, 277:20, 277:22
obligated [5] - 67:25, 75:4, 75:5, 157:14, 232:20
obligation [3] - 12:19, 143:25, 154:11
obligations [2] - 64:14, 89:18
observe [5] - 94:11, 95:10, 98:15, 123:21, 204:24
observed [15] - 28:20, 29:4,

94:5, 94:14, 98:13, 107:7, 107:23, 112:5, 113:9, 122:3, 127:14, 127:19, 127:20, 274:15, 283:19
obsolete [4] - 178:11, 178:12, 178:18, 178:20
obtain [3] - 192:16, 193:7, 193:9
obtained [1] - 181:7
obviously [4] - 135:17, 142:22, 146:6, 259:5
Obviously [1] - 224:17
occasion [1] - 63:7
occasions [1] - 27:12
occupied [1] - 127:9
occur [5] - 56:18, 210:14, 212:1, 223:7, 262:21
occurred [14] - 10:22, 43:14, 89:11, 100:16, 138:23, 158:16, 181:12, 210:12, 210:15, 211:25, 231:3, 240:16, 247:25, 269:15
occurring [1] - 133:1
occurs [1] - 243:13
October [15] - 13:9, 15:13, 20:23, 21:12, 21:16, 28:11, 30:17, 31:11, 32:23, 33:10, 63:19, 247:18, 247:22, 247:25, 248:9
offer [9] - 11:22, 92:22, 176:11, 176:25, 180:18, 180:20, 180:21, 252:24, 264:4
offered [10] - 185:9, 189:3, 252:4, 252:10, 252:12, 252:13, 252:15, 253:11, 257:20
offering [4] - 179:15, 180:15, 262:3, 277:3
office [6] - 86:25, 89:1, 89:3, 147:3, 177:10, 232:2
officer [1] - 257:10
offices [2] - 177:11, 198:2
offset [1] - 72:13
often [7] - 96:11, 205:2, 205:3, 205:5, 205:10, 205:11, 210:20
old [10] - 74:10, 127:11, 133:1, 191:8, 214:3, 217:16, 230:4, 253:16, 255:6, 255:20
older [1] - 217:17
ombudsman [1] - 9:7
omit [1] - 154:1
Once [2] - 194:20, 220:7
once [19] - 12:13, 23:23, 65:23, 72:4, 105:24, 105:25, 115:20, 178:8, 183:20, 184:4, 205:4, 205:5, 210:22, 220:8, 234:24, 247:7, 249:24

one [121] - 5:20, 12:1, 12:14, 12:24, 26:24, 27:16, 27:20, 30:19, 35:5, 37:24, 42:16, 50:15, 52:12, 53:14, 55:2, 59:19, 61:6, 69:22, 70:9, 70:11, 70:24, 71:14, 71:18, 75:10, 81:6, 86:5, 87:4, 88:17, 90:19, 91:6, 96:13, 97:4, 101:2, 102:2, 104:22, 106:20, 107:16, 107:20, 112:7, 114:9, 115:11, 115:15, 118:18, 118:19, 120:6, 121:4, 121:9, 123:8, 124:16, 125:16, 127:5, 128:9, 128:13, 129:11, 130:12, 131:22, 133:5, 133:21, 140:7, 140:23, 141:8, 142:17, 146:1, 146:9, 146:12, 146:14, 146:21, 148:14, 149:5, 151:6, 152:18, 154:18, 154:19, 161:15, 162:17, 166:1, 171:25, 175:21, 177:11, 178:23, 183:14, 183:15, 184:13, 184:16, 188:24, 193:17, 193:20, 194:21, 196:21, 198:4, 198:6, 201:24, 204:21, 206:4, 207:12, 211:8, 216:24, 218:2, 218:4, 218:5, 220:10, 220:19, 225:22, 229:24, 247:5, 249:5, 250:6, 252:21, 257:15, 258:9, 269:1, 269:6, 277:1, 278:2, 282:3, 283:18, 284:15, 285:13
One [3] - 146:23, 198:6, 249:5
one-by-one [1] - 70:11
ones [7] - 70:23, 77:24, 85:18, 118:2, 118:3, 170:7, 282:16
online [22] - 12:10, 16:6, 16:12, 49:10, 55:22, 57:24, 66:12, 66:24, 84:7, 111:2, 132:21, 147:1, 181:23, 182:1, 194:2, 234:8, 252:25, 253:2, 253:8, 256:9, 257:4
open [3] - 36:4, 158:3, 160:14
operating [1] - 219:19
operation [1] - 45:7
operations [3] - 88:20, 175:8, 175:10
operative [1] - 219:1
opinion [13] - 37:13, 190:19, 204:9, 204:10, 204:11, 204:13, 204:14, 244:21, 244:22, 244:23, 245:4, 264:4, 277:3

opinions [3] - 268:6, 268:7, 268:8
opportunity [9] - 9:21, 11:15, 12:14, 96:8, 96:25, 134:19, 204:24, 259:15, 284:19
opposed [5] - 6:9, 92:8, 137:7, 160:16, 213:10
opposing [1] - 6:2
opposite [1] - 210:16
opposition [2] - 6:13, 213:4
optical [1] - 207:22
options [1] - 184:5
order [14] - 7:15, 8:15, 51:19, 56:10, 71:14, 164:10, 164:14, 173:22, 177:7, 179:2, 184:15, 227:3, 233:24, 269:12
Order [5] - 13:6, 13:8, 13:15, 246:22, 251:16
orders [1] - 228:9
organization [1] - 187:4
oriented [1] - 262:18
origin [1] - 244:25
original [5] - 127:9, 188:14, 224:23, 234:2, 241:16
originally [3] - 71:17, 183:15, 256:24
otherwise [5] - 52:17, 56:18, 96:18, 96:24, 261:14
ought [1] - 82:8
ourselves [4] - 106:1, 111:22, 136:4, 234:18
outcome [1] - 97:1
outlined [1] - 57:4
outlines [3] - 57:12, 64:12, 64:14
outrageous [1] - 23:25
outside [9] - 6:9, 14:25, 15:1, 63:15, 125:25, 168:3, 203:12, 204:14, 206:13
overall [3] - 168:7, 211:1
overhead [2] - 279:13, 279:16
overlaid [1] - 216:18
overlash [11] - 72:6, 118:1, 124:17, 124:20, 124:22, 125:1, 125:6, 125:12, 125:23, 178:11, 183:17
overlashed [2] - 124:4, 125:20
overlapping [11] - 101:6, 115:13, 123:20, 123:21, 124:2, 124:5, 124:7, 125:15, 178:5, 221:19, 221:23
Overlapping [1] - 223:14
overlay [1] - 70:16
overloaded [1] - 24:15
overlooking [1] - 27:13
overruled [12] - 13:19, 20:7,

41:6, 60:1, 66:4, 100:18, 155:22, 163:10, 168:11, 180:8, 204:13, 249:22
oversaw [1] - 15:2
oversight [1] - 242:11
overview [2] - 120:23, 126:20
owed [1] - 86:15
own [19] - 10:24, 22:6, 34:24, 37:13, 44:22, 45:7, 75:9, 106:5, 124:22, 130:25, 186:17, 204:10, 204:11, 216:7, 223:1, 224:8, 225:20, 225:24, 250:1
owned [1] - 187:7
owner [3] - 175:3, 175:4, 257:10
ownership [3] - 104:1, 104:6, 279:22

P

packages [1] - 167:1
page [45] - 55:4, 57:10, 83:2, 85:23, 103:21, 114:16, 116:10, 130:16, 130:22, 137:20, 138:2, 150:6, 150:14, 151:3, 159:3, 170:18, 170:23, 171:1, 171:4, 171:7, 172:20, 172:22, 173:7, 173:12, 208:17, 208:23, 209:10, 209:12, 209:15, 209:24, 222:8, 223:21, 227:24, 231:12, 237:18, 238:3, 247:16, 256:15, 258:18, 278:5, 278:21, 279:7, 280:1, 280:25
pages [2] - 121:20, 278:22
paging [1] - 209:4
paid [3] - 86:9, 86:11, 86:12
pan [1] - 119:20
paper [7] - 16:9, 16:11, 61:6, 61:9, 61:11, 159:22, 235:17
paperwork [1] - 234:6
paragraph [4] - 130:22, 190:14, 190:16, 228:15
Pardon [4] - 203:20, 255:3, 260:9, 285:8
pardon [1] - 250:16
part [27] - 17:18, 21:4, 40:17, 55:11, 61:2, 83:7, 88:5, 118:7, 134:13, 135:6, 139:1, 142:18, 144:19, 150:12, 164:5, 178:23, 179:20, 181:6, 206:2, 206:22, 210:17, 212:24, 234:22, 239:6, 242:14, 279:25

partial [2] - 162:11, 162:21
partially [2] - 67:8, 162:21
participating [1] - 7:22
participation [2] - 7:8, 7:12
particular [17] - 51:9, 54:3, 54:14, 56:25, 60:16, 63:18, 63:21, 79:4, 113:24, 115:14, 138:23, 145:9, 189:21, 217:16, 278:5, 283:6, 283:8
parties [10] - 58:17, 58:24, 64:11, 69:6, 96:12, 96:14, 96:21, 125:14, 232:24
parties' [1] - 48:18
party [4] - 7:16, 28:9, 61:12, 75:9
pas [1] - 207:22
pass [1] - 178:25
passed [3] - 60:24, 83:25, 202:10
passes [1] - 82:22
passing [1] - 220:7
passive [1] - 207:22
password [1] - 257:4
past [5] - 16:9, 128:12, 242:18, 263:1, 284:1
path [3] - 15:18, 17:4, 200:6
paths [2] - 17:2, 184:7
patience [1] - 285:21
pattern [1] - 120:10
pavement [1] - 75:16
pay [3] - 23:24, 185:9, 212:6
paying [1] - 65:16
payment [6] - 65:9, 66:8, 81:13, 83:23, 86:15
PE [2] - 206:5, 267:22
pending [1] - 7:14
Penn [2] - 261:19, 266:22
Pennsylvania [9] - 14:13, 15:4, 34:16, 70:25, 164:8, 176:12, 261:18, 261:24, 267:12
people [10] - 33:22, 73:9, 102:8, 106:12, 115:1, 126:2, 143:1, 174:8, 196:18, 210:23
people's [4] - 125:6, 126:3, 131:2, 226:1
per [15] - 6:21, 121:1, 179:6, 208:11, 228:25, 229:2, 229:5, 230:9, 230:10, 235:20, 235:21, 244:7, 244:9, 244:11
perceive [1] - 10:23
percent [7] - 120:7, 120:8, 122:21, 181:19, 181:21, 197:17, 247:23
percentage [3] - 119:17, 119:19, 142:11
perform [6] - 10:8, 111:5, 155:24, 185:17, 211:17,

262:16
performed [4] - 62:13, 115:10, 244:4, 264:10
performing [1] - 185:19
perhaps [1] - 52:18
period [7] - 79:8, 91:24, 97:15, 134:18, 175:13, 176:21, 188:5
periodically [1] - 63:15
permanent [4] - 29:16, 30:1, 30:3, 102:25
permission [7] - 84:20, 124:18, 223:15, 225:11, 237:10, 237:12, 239:21
permit [10] - 26:13, 58:13, 91:15, 128:1, 224:23, 225:2, 230:6, 230:9, 230:15, 233:24
permits [24] - 15:4, 15:5, 23:20, 27:3, 27:9, 28:12, 28:18, 40:20, 41:10, 84:17, 84:18, 125:5, 224:18, 224:20, 224:24, 225:6, 225:14, 233:21, 235:12, 242:2, 242:20, 242:22, 242:25, 244:4
permitted [7] - 78:16, 78:18, 125:2, 137:21, 221:16, 236:4, 236:6
person [1] - 7:6
person's [1] - 220:1
personal [1] - 121:3
personally [7] - 42:21, 143:8, 167:3, 182:1, 205:8, 233:18, 240:22
perspective [11] - 11:9, 11:10, 15:11, 18:23, 55:17, 89:17, 94:5, 109:19, 172:7, 180:7, 254:20
pertaining [1] - 8:17
pertinent [3] - 54:15, 169:25, 170:12
Petitioner's [22] - 66:15, 81:16, 83:15, 84:10, 84:23, 85:12, 85:22, 91:18, 99:7, 101:8, 101:11, 102:17, 103:19, 107:12, 109:1, 109:23, 116:7, 139:9, 150:5, 151:5, 167:5, 256:14
phone [3] - 7:24, 8:10, 219:25
photo [3] - 99:4, 99:5, 99:11
photographic [1] - 113:8
photographs [3] - 10:15, 195:2, 195:3
photonic [1] - 220:9
photons [2] - 220:8, 220:18
physical [7] - 104:10, 187:15, 191:19, 211:7, 211:10, 215:2, 265:9

physically [4] - 78:10, 80:3, 111:16, 191:18
pick [5] - 15:17, 114:14, 114:16, 149:4, 149:6
picked [2] - 17:2, 197:5
picture [4] - 103:4, 104:20, 121:4, 206:6
pictures [3] - 107:7, 107:23, 188:23
piece [11] - 101:16, 101:17, 101:20, 142:25, 143:1, 178:15, 188:10, 195:2, 207:19, 217:15
pieces [2] - 76:6, 188:19
pink [1] - 118:3
place [26] - 40:20, 41:10, 58:25, 86:24, 86:25, 87:1, 87:17, 95:8, 101:25, 111:3, 120:4, 123:16, 124:8, 134:25, 149:19, 151:4, 152:9, 178:12, 178:17, 194:18, 230:3, 231:13, 239:8, 239:14, 240:7, 240:9
placed [2] - 131:24, 244:5
places [1] - 184:6
Plaintiffs [1] - 209:10
plan [7] - 15:18, 15:19, 96:6, 152:21, 188:2, 196:11, 206:9
planned [2] - 180:17, 220:24
planning [2] - 176:21, 239:23
plant [3] - 14:25, 15:1, 178:12
planted [1] - 32:24
plants [1] - 263:6
plastic [3] - 199:22, 207:25, 277:7
plate [1] - 163:20
play [3] - 110:16, 162:3, 206:1
played [1] - 162:3
pleadings [1] - 222:20
plenty [1] - 107:4
PMI [1] - 50:11
PMP [1] - 50:10
point [65] - 5:24, 7:24, 8:12, 11:14, 15:24, 32:5, 33:6, 33:10, 33:14, 34:6, 41:17, 44:10, 53:1, 54:13, 57:15, 62:14, 72:3, 77:3, 79:7, 79:10, 81:1, 81:6, 81:8, 87:15, 88:11, 88:13, 88:25, 89:23, 91:6, 93:22, 112:13, 133:9, 135:5, 139:14, 148:15, 167:23, 174:7, 176:1, 181:13, 183:4, 183:17, 187:17, 191:9, 193:20, 195:22, 198:5,

208:14, 210:5, 220:9, 220:10, 220:19, 234:4, 244:25, 245:1, 250:20, 251:12, 253:20, 262:2, 264:13, 266:2, 277:14, 278:20, 280:22
pointed [1] - 151:7
pole [280] - 12:5, 15:5, 16:1, 17:17, 17:18, 18:14, 18:15, 18:20, 18:22, 20:16, 21:17, 21:20, 21:22, 21:24, 21:25, 22:5, 22:11, 22:14, 22:18, 24:14, 24:20, 24:21, 25:4, 26:1, 26:8, 28:23, 29:12, 29:13, 31:3, 31:4, 31:8, 36:15, 38:25, 41:14, 43:4, 43:5, 44:5, 44:7, 46:5, 46:23, 56:21, 61:21, 61:23, 68:1, 68:13, 68:21, 68:23, 69:1, 69:2, 70:21, 70:25, 71:14, 72:4, 72:9, 72:13, 73:3, 74:13, 74:22, 75:2, 75:6, 75:7, 76:19, 76:23, 77:6, 77:7, 77:10, 77:12, 77:22, 78:10, 79:4, 79:15, 82:2, 82:3, 82:16, 82:22, 83:8, 90:7, 101:3, 101:4, 101:18, 101:22, 101:24, 102:1, 102:3, 102:6, 102:13, 102:23, 103:6, 103:24, 104:3, 104:5, 104:15, 104:16, 105:11, 105:17, 107:4, 110:3, 111:20, 113:15, 113:24, 114:1, 114:4, 114:14, 114:16, 118:24, 118:25, 119:10, 120:20, 120:25, 121:14, 121:15, 124:12, 126:19, 127:21, 128:13, 128:19, 128:25, 132:24, 133:10, 134:1, 134:3, 134:22, 135:6, 135:23, 136:1, 136:23, 137:21, 143:18, 144:1, 144:3, 144:7, 144:17, 144:20, 144:22, 145:4, 145:8, 146:6, 146:18, 151:18, 152:22, 153:1, 153:10, 154:6, 154:18, 155:2, 155:5, 155:9, 155:12, 155:18, 158:8, 158:19, 158:22, 159:11, 160:9, 160:11, 160:16, 160:24, 161:21, 163:6, 163:7, 163:13, 163:19, 164:9, 164:13, 164:19, 164:20, 167:20, 170:15, 170:21, 171:9, 171:21, 173:5, 173:19, 181:15, 184:8, 184:20, 186:4, 186:22, 187:12, 188:9, 188:10, 188:23, 189:16, 189:22,

190:7, 191:5, 191:19, 192:13, 193:8, 194:7, 194:17, 194:18, 194:20, 194:21, 194:22, 194:24, 195:13, 195:14, 195:15, 195:18, 195:19, 195:25, 200:5, 200:16, 201:17, 214:12, 214:13, 214:15, 218:3, 223:3, 226:3, 229:10, 232:17, 233:22, 234:3, 237:5, 237:18, 238:8, 238:10, 238:24, 241:17, 241:18, 244:7, 244:19, 245:24, 246:1, 246:9, 247:8, 248:22, 248:23, 248:24, 249:13, 250:10, 250:11, 250:21, 250:22, 251:8, 251:19, 251:23, 251:24, 252:6, 253:9, 253:10, 253:13, 253:16, 254:1, 254:2, 254:4, 254:9, 254:10, 254:14, 254:17, 254:23, 255:1, 255:5, 255:15, 255:22, 257:24, 258:15, 265:12, 269:20, 275:15, 275:16, 275:22, 282:3
poles [127] - 12:9, 12:11, 13:3, 16:15, 16:20, 17:1, 17:12, 20:25, 21:5, 21:12, 24:8, 26:18, 30:25, 36:10, 36:14, 36:25, 37:23, 37:24, 43:17, 43:20, 44:7, 50:17, 50:18, 51:3, 51:20, 54:16, 55:22, 56:4, 56:5, 56:9, 56:13, 57:22, 57:25, 58:9, 58:18, 59:5, 62:9, 63:5, 68:23, 69:24, 70:17, 70:24, 72:25, 76:2, 76:14, 81:5, 84:19, 91:3, 93:18, 94:16, 94:24, 105:9, 105:21, 105:22, 106:22, 111:8, 113:16, 113:22, 118:8, 118:10, 118:19, 120:25, 127:22, 136:20, 136:24, 139:21, 144:24, 146:7, 146:12, 152:13, 153:12, 153:13, 153:17, 154:21, 155:1, 156:2, 158:18, 158:19, 158:21, 159:8, 159:12, 160:20, 160:22, 160:24, 163:1, 182:15, 182:17, 183:4, 189:15, 191:16, 191:17, 192:3, 192:14, 193:16, 193:17, 193:23, 195:6, 204:19, 204:24, 205:3, 207:6, 213:24, 213:25, 214:19, 214:21, 218:19, 223:11, 233:25, 244:15, 246:5, 246:7, 246:15, 246:24, 247:2, 247:5, 249:25, 250:3,

253:14, 255:2, 255:4, 256:4, 256:6, 265:24, 273:17, 275:10, 282:7
police [7] - 181:4, 219:10, 219:18, 219:21, 220:6, 220:14
policy [2] - 190:22, 191:2
portal [39] - 12:11, 28:2, 55:24, 57:24, 61:22, 61:25, 62:3, 62:19, 66:12, 67:12, 69:22, 84:7, 104:8, 112:23, 131:24, 132:21, 142:21, 142:22, 142:23, 153:11, 154:20, 155:8, 155:10, 155:17, 181:24, 182:1, 194:2, 232:3, 233:10, 233:16, 233:18, 234:8, 234:17, 252:25, 253:2, 253:8, 256:9, 256:11, 257:3
portion [9] - 44:4, 44:6, 46:8, 46:10, 49:8, 49:10, 96:2, 111:1, 128:24
portions [2] - 45:15, 91:8
pose [2] - 272:20, 272:24
position [16] - 36:7, 92:21, 93:4, 98:6, 124:12, 127:9, 128:19, 132:3, 149:4, 149:6, 184:1, 184:9, 184:19, 184:25, 245:23, 274:20
positions [2] - 184:2, 210:24
possible [11] - 32:16, 46:4, 46:7, 63:17, 118:12, 147:11, 147:13, 149:18, 173:4, 201:4, 214:1
possibly [1] - 56:20
potential [10] - 61:15, 63:25, 66:25, 90:23, 157:8, 174:8, 201:20, 215:14, 265:4, 282:13
potentially [10] - 35:9, 35:12, 87:24, 102:4, 102:6, 178:5, 183:22, 217:12, 235:10, 247:2
power [34] - 18:24, 19:1, 19:3, 19:9, 19:16, 24:18, 30:9, 73:18, 106:10, 106:11, 108:14, 108:16, 108:23, 114:22, 118:4, 118:6, 120:3, 128:8, 138:6, 187:16, 199:1, 237:16, 237:24, 237:25, 263:5, 270:11, 270:13, 270:18, 280:14, 280:15, 280:17
powers [1] - 19:7
PP&L [36] - 5:5, 7:7, 17:4, 19:5, 22:11, 23:18, 24:8, 25:21, 25:24, 27:11, 27:19, 34:4, 34:7, 34:9, 34:10, 34:14, 37:20, 92:5, 92:16,

104:2, 147:7, 182:8, 182:10,
185:17, 191:1, 192:9,
195:25, 198:12, 202:7,
205:13, 211:22, 212:11,
218:18, 272:6, 276:23

PP&L'S [1] - 205:16

PPL [143] - 7:19, 10:6,
12:11, 16:6, 16:19, 16:25,
24:6, 24:13, 25:25, 26:13,
27:1, 27:9, 27:10, 27:24,
28:9, 30:25, 35:19, 47:21,
49:24, 50:3, 50:15, 50:16,
50:18, 50:24, 51:17, 51:19,
52:23, 53:13, 56:22, 59:5,
61:15, 62:9, 63:4, 63:24,
64:13, 65:1, 70:20, 72:20,
82:4, 84:21, 85:20, 86:22,
89:12, 89:17, 91:11, 91:24,
94:1, 99:12, 103:15, 103:23,
104:2, 104:3, 105:21,
105:24, 106:22, 136:15,
136:20, 143:1, 143:3,
156:10, 157:9, 159:6,
159:19, 160:20, 166:5,
166:9, 166:12, 166:14,
166:16, 167:1, 168:22,
183:11, 183:25, 184:8,
187:11, 189:3, 190:22,
191:25, 193:2, 193:16,
193:19, 198:23, 205:24,
213:25, 221:17, 222:11,
223:2, 223:15, 223:19,
224:2, 225:2, 226:10,
227:17, 228:21, 228:23,
228:24, 230:8, 230:10,
230:22, 231:7, 231:10,
231:24, 232:13, 232:17,
232:19, 233:19, 234:17,
234:22, 234:24, 235:7,
235:11, 237:18, 238:6,
238:8, 239:1, 239:21,
240:18, 242:25, 244:4,
244:13, 245:22, 246:4,
247:1, 247:7, 249:24,
250:23, 251:8, 251:12,
252:3, 253:12, 254:8,
255:16, 256:4, 256:6,
265:22, 268:23, 269:1,
269:8, 274:3, 276:1, 276:5

PPL'S [13] - 96:3, 150:22,
167:19, 181:14, 181:23,
223:4, 234:6, 235:22, 236:5,
237:10, 237:12, 242:1, 244:8

PPL's [16] - 5:16, 26:18,
28:2, 29:2, 29:19, 48:8,
48:12, 55:16, 57:23, 59:20,
108:6, 188:2, 188:21, 228:4,
229:3, 255:24

practical [1] - 123:5

practice [4] - 140:14,

140:15, 140:19, 268:1

practices [2] - 63:14, 231:3

pre [9] - 4:25, 39:8, 40:12,
40:20, 57:12, 57:21, 57:23,
140:4, 145:5

pre-dated [1] - 140:4

pre-existing [3] - 39:8,
40:12, 40:20

pre-marked [1] - 4:25

pre-survey [4] - 57:12,

57:21, 57:23, 145:5

precise [1] - 26:5

precisely [1] - 25:13

Precision [1] - 45:19

precursor [1] - 239:19

predates [1] - 65:22

preparation [1] - 263:20

prepare [1] - 263:21

prepared [6] - 69:21, 81:24,

92:5, 92:13, 113:11, 162:13

preparer [1] - 162:20

presence [1] - 7:13

present [5] - 7:7, 9:21,

52:7, 157:22, 191:25

presentation [1] - 27:2

presentations [1] - 11:2

presented [8] - 9:2, 11:7,

26:25, 107:10, 128:17,

136:6, 227:2, 276:1

presenting [1] - 10:4

preserves [1] - 102:14

president [2] - 175:3, 257:9

President [1] - 210:18

presumably [1] - 96:18

pretty [5] - 11:11, 15:24,

45:8, 221:4, 286:1

prevail [1] - 228:21

previous [2] - 206:19,

265:17

previously [8] - 12:17,

113:3, 170:8, 208:16,

209:13, 258:20, 269:24,

277:19

primarily [2] - 186:6,

262:20

primary [1] - 106:13

print [5] - 49:11, 49:12,

66:17, 77:12, 80:15

printed [2] - 29:19, 261:12

printout [3] - 26:4, 77:6,

77:22

private [4] - 53:24, 220:3,

220:4

pro [1] - 17:6

problem [8] - 68:24,

118:20, 130:10, 194:24,

207:7, 239:12, 254:12,

273:15

problematic [1] - 151:10

problems [5] - 8:20,

101:14, 101:15, 118:23,
212:1

procedural [1] - 6:21

procedure [1] - 213:20

procedures [2] - 27:16,

212:7

proceed [8] - 6:2, 10:21,

13:20, 32:2, 60:1, 69:17,

212:10, 227:10

proceeded [4] - 48:4,

54:17, 90:10, 94:13

proceedings [2] - 54:15,

67:20

process [114] - 10:10, 12:7,

12:8, 12:13, 12:17, 16:7,

16:9, 16:18, 17:7, 26:14,

27:22, 47:17, 54:17, 56:3,

56:8, 56:23, 57:2, 57:3,

57:13, 57:19, 57:20, 58:7,

58:12, 59:14, 60:5, 60:12,

60:16, 61:6, 61:7, 61:9,

61:11, 63:24, 63:25, 64:10,

64:15, 64:23, 65:6, 65:12,

65:18, 65:19, 65:21, 65:22,

65:23, 66:2, 67:1, 67:12,

69:14, 69:23, 70:2, 71:22,

72:17, 75:25, 76:3, 78:1,

78:20, 78:24, 79:11, 80:25,

81:11, 82:25, 83:7, 87:12,

87:16, 87:17, 88:11, 89:14,

90:11, 100:7, 110:25, 111:8,

111:12, 111:14, 121:6,

122:7, 127:1, 127:14, 128:4,

131:22, 132:5, 132:6,

134:22, 135:1, 135:13,

141:1, 144:19, 145:13,

147:19, 149:5, 152:10,

152:14, 153:19, 156:7,

156:25, 157:6, 157:10,

181:14, 188:15, 188:21,

191:10, 193:18, 226:9,

226:12, 226:23, 232:15,

234:5, 234:14, 234:23,

235:12, 240:5, 242:1,

250:18, 265:20, 269:3

process... [1] - 131:9

processes [1] - 87:22

produce [5] - 68:22, 77:18,

166:21, 224:18, 225:14

produced [1] - 259:7

produces [1] - 280:12

productive [3] - 68:19,

96:5, 96:9

profession [3] - 165:14,

263:22, 264:24

professional [15] - 11:4,

50:1, 50:10, 165:15, 165:18,

165:20, 202:20, 203:1,

203:3, 203:4, 203:23, 206:5,

261:10, 267:11, 277:11

proffer [1] - 236:9

profile [10] - 21:20, 188:23,

189:2, 189:10, 194:14,

234:7, 234:21, 241:24,

252:9, 255:19

profiling [2] - 41:14, 189:8

profit [2] - 198:3, 240:2

progress [1] - 70:10

project [24] - 42:15, 44:4,

44:6, 44:10, 45:15, 46:10,

49:23, 50:5, 50:9, 65:14,

88:21, 176:2, 176:23,

177:18, 177:20, 179:21,

179:23, 183:16, 197:12,

211:4, 212:11, 231:4, 232:8,

265:18

projects [5] - 177:4, 181:6,

218:22, 239:19, 263:4

proof [2] - 11:22, 155:17

proper [6] - 24:22, 28:24,

30:5, 35:2, 56:6, 106:19

properly [3] - 106:18,

152:20, 281:21

property [6] - 48:8, 102:8,

125:24, 226:1, 229:1, 229:3

proposal [7] - 6:1, 6:7,

6:15, 6:21, 6:22, 7:1, 97:11

propose [1] - 272:22

proposed [3] - 12:4, 81:5,

87:5

Prosecutor [1] - 8:3

prospective [3] - 196:25,

197:1, 265:1

protect [4] - 243:3, 243:4,

276:18, 281:16

prove [1] - 20:15

provide [38] - 9:9, 13:7,

13:14, 38:22, 54:10, 54:11,

54:20, 61:12, 61:15, 63:24,

68:1, 108:7, 110:2, 133:14,

134:19, 156:10, 159:7,

159:15, 160:21, 180:14,

192:20, 193:2, 195:24,

198:3, 200:5, 218:17,

219:16, 219:23, 220:9,

221:12, 229:20, 245:21,

246:5, 250:22, 257:20,

258:11, 280:15, 280:17

provided [36] - 6:2, 13:13,

13:14, 13:16, 24:11, 47:21,

58:22, 69:2, 69:4, 85:3,

106:22, 110:9, 112:2,

112:20, 112:24, 116:25,

126:15, 126:18, 134:17,

135:23, 136:1, 136:12,

157:7, 175:18, 192:22,

216:20, 231:8, 235:13,

240:14, 257:6, 268:22,

268:23, 282:19, 282:23,

282:25, 283:16

provider [2] - 42:12, 238:1
providers [1] - 59:4
provides [3] - 24:14, 228:11, 230:24
providing [4] - 196:9, 219:22, 256:3, 257:24
provision [3] - 132:2, 230:23, 270:21
provisions [4] - 54:14, 131:8, 132:17, 271:25
proximity [1] - 273:11
public [19] - 53:23, 61:20, 64:9, 102:8, 162:24, 177:1, 177:4, 180:23, 181:2, 181:5, 206:23, 218:22, 263:10, 263:14, 268:16, 268:17, 272:17, 272:19, 272:25
Public [4] - 7:9, 8:1, 10:1, 34:16
publicly [4] - 72:22, 73:7, 90:24, 233:15
published [1] - 29:19
PUC [20] - 7:11, 7:19, 7:21, 8:12, 51:7, 93:23, 94:1, 94:7, 98:5, 159:6, 193:12, 227:16, 243:19, 243:21, 243:25, 245:20, 251:13, 251:14, 252:15
PUC's [1] - 98:6
pull [9] - 66:14, 85:25, 100:20, 144:1, 154:22, 167:8, 170:23, 247:12, 278:3
pulled [4] - 44:21, 46:12, 254:2, 254:15
pulling [2] - 22:17, 45:21
pulls [3] - 44:21, 44:23, 71:19
pulses [1] - 40:7
purchase [1] - 32:20
purchased [3] - 20:20, 143:2, 143:3
purchasing [1] - 205:24
purely [1] - 29:23
purpose [6] - 33:3, 41:18, 87:3, 157:10, 175:24, 281:15
purposeful [1] - 117:7
purposefully [1] - 12:16
purposes [1] - 79:8
pursue [1] - 6:11
purview [2] - 53:15, 203:13
push [4] - 69:10, 92:24, 285:5, 285:16
Put [1] - 253:18
put [52] - 6:1, 9:24, 10:22, 29:14, 30:5, 33:9, 36:2, 52:18, 56:20, 62:19, 65:21, 78:5, 83:14, 90:13, 90:14, 91:10, 94:19, 97:12, 112:15, 120:3, 126:2, 127:4, 127:8, 127:20, 135:2, 137:6,

147:24, 153:4, 153:10, 156:24, 157:25, 158:6, 179:22, 180:22, 183:18, 192:17, 203:25, 209:23, 212:25, 237:4, 239:14, 239:20, 240:1, 240:8, 248:18, 248:19, 251:25, 254:17, 280:24
putting [3] - 135:18, 154:10, 201:25

Q

Qualifications [2] - 3:5, 3:6
QUALIFICATIONS [2] - 260:17, 262:9
qualifications [5] - 261:10, 262:6, 266:3, 266:11, 266:25
qualified [5] - 211:14, 266:9, 266:22, 266:23, 267:5
qualify [1] - 236:8
qualities [1] - 102:5
quarter [1] - 200:4
questioning [3] - 257:16, 266:2, 267:6
questions [19] - 6:25, 18:1, 47:8, 54:21, 123:19, 129:24, 148:13, 151:3, 152:12, 156:4, 156:20, 156:22, 161:1, 161:2, 161:5, 164:24, 174:3, 252:18, 258:20
queue [1] - 162:17
quick [2] - 29:14, 258:9
quickly [2] - 31:9, 109:24
Quirk [1] - 99:16
quit [1] - 33:13
quite [2] - 12:7, 115:16
quote [1] - 236:4
quoting [1] - 271:3

R

R-o-b-s-o-n [1] - 203:18
race [1] - 83:13
rain [1] - 276:14
raise [4] - 24:19, 26:20, 128:10, 239:6
Raise [22] - 126:23, 126:24, 127:2, 127:12, 127:13, 128:3, 178:13, 188:14, 191:10, 213:21, 217:23, 230:2, 230:13, 235:18, 238:21, 238:22, 239:4, 240:20, 253:17, 255:16, 255:18, 255:19
Raised [2] - 241:9, 255:22
raised [7] - 8:19, 54:22, 121:23, 156:22, 198:12, 217:24, 268:16
Raising [1] - 239:2

raising [1] - 148:12
ran [1] - 74:9
random [2] - 163:24, 164:19
range [2] - 73:2, 106:16
rather [8] - 75:11, 83:13, 91:10, 96:13, 97:2, 103:18, 234:18, 261:16
re [1] - 107:19
re-sent [1] - 107:19
reach [7] - 232:15, 232:17, 241:19, 243:8, 244:16, 272:25, 273:1
reached [3] - 10:8, 177:7, 183:11
reaching [2] - 196:18, 281:22
read [20] - 9:16, 49:11, 76:20, 76:23, 81:3, 131:5, 150:17, 150:21, 222:23, 228:14, 228:17, 228:19, 237:17, 238:5, 238:6, 259:20, 268:11, 278:18, 279:8, 280:10
readily [1] - 8:20
Reading [4] - 20:17, 177:12, 231:10, 286:13
reading [4] - 42:1, 81:5, 130:22, 131:4
ready [48] - 5:11, 17:4, 17:6, 17:7, 23:23, 23:24, 24:2, 24:11, 25:1, 25:6, 25:12, 26:1, 26:8, 26:14, 38:11, 47:22, 56:3, 56:7, 56:11, 58:8, 58:9, 58:13, 58:25, 62:13, 65:5, 81:22, 82:3, 84:11, 84:13, 85:3, 85:16, 110:25, 111:6, 141:6, 142:19, 157:7, 181:14, 182:21, 182:24, 183:3, 183:10, 184:5, 184:11, 185:11, 226:24, 227:2, 234:25
real [1] - 131:13
realistic [1] - 69:15
realize [1] - 223:22
really [21] - 30:20, 34:4, 47:13, 88:23, 99:8, 116:1, 121:16, 142:10, 147:19, 167:24, 177:24, 208:14, 211:10, 216:17, 218:2, 220:3, 237:14, 238:23, 246:7, 248:22
rearrange [1] - 56:19
rearrangements [1] - 59:15
reason [10] - 21:11, 47:25, 52:14, 152:8, 156:6, 189:21, 238:15, 242:14, 253:25, 275:15
reasonable [1] - 277:10

reasons [4] - 48:5, 88:24, 91:21, 149:5
rebuild [4] - 30:1, 127:3, 127:8, 242:2
rebuilding [2] - 101:17, 120:7
rebuttal [5] - 172:12, 174:8, 284:17, 284:20, 285:5
receive [5] - 83:23, 105:8, 106:25, 122:4, 127:3
received [11] - 41:13, 105:25, 106:21, 107:2, 110:6, 161:24, 165:20, 182:24, 259:8, 267:9, 268:14
receiving [1] - 111:5
recent [2] - 63:20, 274:4
recently [1] - 223:20
recess [7] - 5:12, 68:18, 95:18, 97:12, 97:24, 174:13, 260:5
RECESS [5] - 5:13, 95:19, 97:25, 174:14, 260:6
recognition [1] - 80:17
recognize [14] - 53:11, 63:2, 64:6, 66:17, 81:19, 83:16, 84:24, 85:13, 99:17, 102:18, 108:4, 109:11, 256:18, 267:17
recognized [4] - 128:4, 191:23, 206:10, 276:8
recollection [5] - 109:3, 134:8, 140:24, 162:19, 162:23
recommendation [1] - 273:14
recommends [2] - 275:9, 275:11
reconcile [1] - 65:15
record [19] - 9:24, 9:25, 21:5, 22:13, 67:3, 67:4, 95:20, 109:25, 120:1, 121:14, 135:3, 157:25, 158:6, 171:14, 213:1, 213:9, 246:18, 246:19, 260:23
recording [1] - 196:16
records [2] - 77:20, 139:25
RECROSS [4] - 161:9, 248:6, 252:22, 255:12
recross [2] - 248:5, 266:24
Recross [2] - 3:2, 3:8
RECROSS-EXAMINATION [2] - 161:9, 252:22
Recross-Examination [2] - 3:2, 3:8
recurring [1] - 141:1
red [8] - 75:18, 75:19, 82:12, 83:3, 113:17, 113:22, 114:9, 118:2
redirect [7] - 47:9, 139:16,

150:2, 161:6, 247:10, 249:21, 284:10
Redirect [1] - 3:2
REDIRECT [5] - 47:11,
 150:9, 162:9, 247:13, 257:17
reduce [1] - 142:19
reduced [2] - 141:11,
 275:23
refer [8] - 25:1, 40:25,
 55:23, 91:9, 158:19, 159:12,
 237:12, 279:22
reference [7] - 121:19,
 155:12, 158:21, 199:2,
 199:3, 202:14, 222:19
referenced [2] - 87:7,
 106:10
references [1] - 105:17
referencing [1] - 49:7
referred [4] - 19:19, 145:14,
 148:21, 190:1
referring [9] - 91:16,
 112:13, 138:3, 271:22,
 272:1, 273:20, 275:19
refers [4] - 158:18, 158:19,
 279:20, 279:21
reflect [2] - 80:21, 125:5
reflected [4] - 80:17, 93:15,
 213:9
reflects [1] - 80:22
refused [1] - 34:6
regard [1] - 123:25
regarding [4] - 107:4,
 168:18, 212:21, 231:13
registered [1] - 267:11
regular [3] - 21:4, 53:19,
 53:22
regularly [3] - 43:4, 45:1,
 177:15
regulated [5] - 51:6,
 162:24, 235:24, 263:10,
 263:14
regulates [1] - 280:12
regulation [1] - 20:6
regulations [1] - 8:17
rehabilitate [1] - 161:4
rehashing [1] - 134:21
Reibman [1] - 112:25
rejected [2] - 252:5, 252:11
relate [5] - 100:16, 148:1,
 164:7, 164:8, 209:16
related [10] - 76:9, 84:11,
 129:25, 134:22, 145:15,
 149:7, 166:19, 167:1, 167:4,
 205:22
relates [4] - 117:11, 147:22,
 168:6, 173:3
relation [11] - 11:22, 44:5,
 46:9, 161:6, 190:23, 191:2,
 202:9, 203:17, 205:13,
 267:24, 272:5

relationship [9] - 14:21,
 24:5, 103:10, 125:21, 176:9,
 176:13, 176:15, 186:14,
 186:16
relatively [2] - 8:10, 275:2
release [1] - 56:17
relevance [8] - 11:23,
 13:17, 66:1, 67:17, 91:21,
 167:24, 169:9, 280:18
relevancy [2] - 12:23, 180:4
relevant [3] - 59:24, 67:19,
 117:1
reliable [9] - 51:25, 83:1,
 83:8, 83:9, 83:10, 251:9,
 251:24, 254:11
relocate [1] - 58:21
relocated [4] - 214:7,
 214:21, 214:23, 215:1
relocations [1] - 61:3
rely [5] - 79:22, 167:20,
 220:15, 251:3, 251:4
relying [3] - 20:6, 219:9,
 242:17
remain [2] - 9:2, 185:2
remained [1] - 31:10
remaining [1] - 6:24
remains [2] - 47:22, 121:11
remediate [1] - 120:12
remediated [1] - 276:22
remediation [1] - 134:14
remedied [1] - 210:10
remedy [2] - 60:14, 276:17
remedying [1] - 60:12
remember [8] - 7:4, 7:23,
 37:20, 38:2, 89:8, 183:6,
 208:19, 250:14
remiss [1] - 142:10
remote [1] - 218:10
remove [3] - 72:6, 91:14,
 92:11
removed [7] - 30:24,
 108:12, 108:14, 108:15,
 122:20, 123:14, 127:11
repair [2] - 123:11, 123:12
repeat [6] - 60:4, 86:10,
 123:2, 143:7, 159:1, 263:12
rephrase [2] - 143:21,
 159:1
replace [2] - 24:20, 179:9
replaced [2] - 56:4, 239:12
replacement [1] - 18:15
replacing [1] - 41:23
reply [1] - 79:12
report [24] - 17:4, 18:16,
 23:23, 24:2, 24:12, 58:4,
 58:22, 77:18, 205:21, 259:9,
 263:21, 267:21, 268:4,
 268:7, 268:24, 269:4,
 269:11, 272:13, 277:9,
 277:15, 281:12, 282:4, 283:1

Report [1] - 4:8
reported [1] - 78:21
reporter [5] - 53:3, 131:10,
 131:14, 229:23, 237:20
represent [5] - 10:3, 11:3,
 269:19, 283:21, 283:23
representation [1] - 261:10
representative [6] - 7:9,
 7:21, 8:13, 89:4, 111:9,
 147:7
representatives [4] - 89:6,
 96:8, 147:10, 192:9
represented [3] - 7:18, 8:2,
 113:16
representing [1] - 203:2
represents [4] - 83:19,
 113:14, 153:1, 167:14
request [9] - 66:19, 75:9,
 80:19, 89:1, 91:13, 92:10,
 117:11, 128:15, 149:3
requested [4] - 58:3, 87:23,
 88:23, 131:10
requesting [1] - 196:19
requests [5] - 87:16, 87:21,
 88:18, 91:10, 128:14
require [9] - 29:20, 125:14,
 125:16, 125:18, 131:1,
 131:2, 200:23, 273:16, 274:5
required [23] - 39:3, 55:16,
 64:22, 68:22, 75:2, 81:12,
 81:22, 82:3, 84:14, 85:16,
 111:16, 111:22, 111:25,
 118:13, 123:12, 125:13,
 130:14, 156:11, 190:12,
 233:3, 241:1, 270:15, 275:22
requirement [3] - 200:20,
 242:5, 270:16
requirements [4] - 63:3,
 151:2, 201:2, 279:11
requires [5] - 11:14, 60:8,
 130:24, 187:12, 200:3
requiring [1] - 281:13
requisite [1] - 13:4
reschedule [1] - 285:17
research [1] - 173:22
reside [2] - 14:12, 56:10
residences [1] - 179:15
residential [6] - 29:7,
 106:17, 197:10, 197:16,
 197:17, 240:2
residents [1] - 180:15
resign [1] - 33:12
resignation [1] - 33:15
resolution [6] - 96:13,
 96:15, 96:16, 96:21, 97:21,
 104:20
resolve [2] - 69:6, 273:15
resolved [3] - 5:25, 7:1,
 69:9
respect [16] - 16:6, 57:1,

89:21, 97:17, 166:25, 168:8,
 221:17, 225:2, 226:17,
 236:23, 237:3, 262:14,
 264:4, 264:6, 265:22, 265:23
respond [2] - 99:1, 134:20
responded [4] - 90:8,
 128:17, 128:18, 242:4
response [7] - 109:3,
 110:6, 110:10, 111:18,
 128:18, 134:13, 183:2
responsibilities [1] - 21:5
responsibility [2] - 60:21,
 212:3
responsible [8] - 54:1,
 152:2, 158:12, 158:14,
 166:18, 182:6, 244:23, 257:8
rest [5] - 174:8, 214:23,
 214:25, 284:16, 285:3
restarted [1] - 107:20
restaurants [1] - 32:21
result [4] - 76:3, 90:4,
 96:17, 97:4
results [2] - 96:12, 100:6
resume [3] - 97:20, 285:4,
 285:15
retain [2] - 106:1, 136:3
retained [3] - 10:6, 99:24,
 110:21
retrieve [1] - 30:25
retrieved [1] - 31:10
return [1] - 160:5
returned [1] - 182:21
review [9] - 109:22, 113:5,
 114:18, 259:15, 259:17,
 259:23, 268:4, 268:12, 272:1
reviewed [5] - 167:5,
 198:10, 209:12, 269:1, 283:6
reviewing [2] - 116:7, 169:3
revision [1] - 140:24
Rhino [1] - 45:20
riding [1] - 217:12
rights [3] - 6:11, 48:18,
 89:18
Rippke [8] - 11:4, 165:3,
 165:8, 165:13, 168:1, 171:5,
 173:25, 284:20
RIPPKE [1] - 165:4
risk [17] - 96:21, 120:3,
 201:6, 207:8, 268:17,
 268:18, 269:8, 269:19,
 270:17, 272:17, 272:21,
 272:22, 272:24, 273:1,
 283:21, 283:24
risks [1] - 272:18
road [1] - 164:2
Robson [5] - 203:18,
 204:11, 262:12, 262:23,
 267:25
robust [1] - 101:22
rod [2] - 275:12, 275:16

role [6] - 8:24, 14:24, 19:23, 162:2, 166:14, 166:25
rolled [2] - 103:3, 177:24
room [11] - 17:19, 18:13, 24:22, 27:7, 133:6, 158:3, 158:4, 158:17, 160:14, 184:15, 192:5
rooms [1] - 192:8
root [1] - 250:25
rose [1] - 36:6
Rosemary [1] - 14:13
Roth [1] - 95:9
roughly [2] - 53:19, 132:3
routinely [1] - 63:10
ruin [1] - 34:1
Rule [2] - 270:25, 271:19
rule [3] - 271:22, 275:24, 278:8
rules [11] - 20:22, 173:9, 206:16, 206:17, 272:11, 273:16, 273:25, 274:2, 274:13, 281:13, 283:22
run [19] - 20:16, 48:4, 58:18, 59:13, 72:1, 84:20, 101:18, 101:21, 141:16, 153:13, 153:17, 153:18, 169:1, 222:1, 223:18, 225:11, 237:1, 241:8, 245:3
running [9] - 28:11, 30:8, 89:21, 217:17, 217:18, 236:14, 236:25, 241:22, 243:6
runoff [1] - 111:21
runs [5] - 37:23, 124:10, 141:17, 244:14, 244:18
Ryan [4] - 49:5, 49:23, 206:4, 252:14
RYAN [1] - 49:14

S

S-t-a-b-o-l-e-s-k-i [1] - 14:10
safe [5] - 51:22, 51:25, 56:16, 83:1, 206:12
safeguards [1] - 280:13
safely [3] - 59:2, 141:12, 142:20
safest [1] - 273:14
safety [62] - 8:14, 19:1, 19:12, 51:24, 73:19, 94:18, 94:19, 94:20, 108:23, 114:10, 121:6, 128:8, 151:14, 168:4, 168:25, 169:22, 171:10, 171:16, 171:20, 187:4, 198:11, 198:21, 201:4, 205:13, 205:17, 206:3, 206:6, 206:23, 207:8, 207:11, 215:11, 227:22, 242:22,

243:7, 243:9, 268:14, 268:17, 268:18, 268:21, 272:5, 272:8, 272:10, 272:17, 273:4, 273:6, 273:7, 274:7, 274:10, 274:12, 274:19, 276:6, 276:7, 276:24, 276:25, 277:1, 281:8, 281:16, 282:1, 282:5, 283:21
Safety [44] - 20:20, 39:9, 39:13, 39:17, 41:5, 103:17, 120:8, 121:24, 122:2, 122:12, 122:16, 122:22, 125:3, 125:19, 147:16, 150:18, 169:3, 178:6, 180:21, 186:11, 186:14, 186:19, 187:2, 187:3, 187:7, 201:13, 202:9, 202:12, 213:16, 214:10, 215:21, 216:6, 216:11, 218:14, 224:20, 225:17, 226:2, 227:16, 228:1, 239:10, 271:2, 271:23, 272:2, 279:6
sag [3] - 128:22, 129:1, 129:3
sale [1] - 205:25
sample [1] - 186:5
sanctions [3] - 12:2, 117:11, 117:16
sat [2] - 133:5, 144:2
satellite [1] - 43:20
satisfy [1] - 13:15
save [1] - 139:16
saw [12] - 127:5, 149:21, 160:2, 178:8, 179:24, 188:16, 188:18, 193:22, 202:20, 206:15, 218:2, 283:14
scenario [2] - 119:12, 154:10
schedule [3] - 58:8, 285:23
scheduled [1] - 88:16
scheduling [1] - 95:25
school [2] - 37:5, 263:19
Science [2] - 50:8, 165:23
scope [8] - 87:5, 88:21, 92:17, 117:5, 249:21, 268:15, 283:4, 283:13
screen [7] - 52:18, 66:18, 66:21, 76:19, 83:14, 129:23, 208:18
screens [1] - 195:8
scroll [1] - 144:16
se [1] - 6:21
search [6] - 143:13, 143:17, 143:19, 144:3, 144:6, 144:7
searching [1] - 91:5
second [11] - 70:13, 84:11, 86:6, 95:12, 95:13, 98:8, 98:17, 179:6, 187:14, 279:7,

284:15
secondary [2] - 106:15, 141:15
secondly [2] - 102:4, 158:5
section [16] - 55:1, 57:3, 138:3, 170:16, 171:5, 172:21, 173:10, 197:11, 217:16, 222:21, 226:6, 227:20, 237:11, 278:3, 278:18, 278:20
Section [9] - 55:2, 150:11, 170:17, 172:18, 172:21, 173:2, 173:7, 222:6, 227:24
sections [4] - 56:25, 172:15, 217:9, 272:14
secure [1] - 29:21
security [1] - 77:19
see [68] - 12:14, 28:16, 33:3, 52:17, 66:24, 67:2, 67:9, 67:10, 67:13, 67:22, 70:10, 70:15, 70:20, 71:17, 72:12, 75:13, 75:22, 76:18, 77:9, 81:23, 82:12, 82:13, 82:21, 83:3, 84:8, 95:14, 96:16, 97:10, 97:19, 97:22, 101:21, 102:12, 102:15, 103:4, 103:7, 113:15, 113:16, 114:3, 114:5, 114:9, 118:2, 118:7, 119:17, 119:21, 131:15, 144:16, 144:17, 152:25, 160:2, 162:18, 163:20, 171:7, 186:5, 191:21, 194:21, 194:22, 201:19, 202:15, 233:18, 238:7, 247:17, 262:11, 272:16, 275:2, 279:19, 279:24, 280:5, 280:25
See [1] - 121:24
seeing [7] - 6:6, 13:17, 146:3, 167:24, 169:9, 236:24, 272:5
seek [2] - 225:5, 242:2
seeking [1] - 244:4
seeks [2] - 201:19, 201:20
seem [5] - 227:7, 230:8, 245:11, 245:12, 283:17
segregate [1] - 108:21
select [4] - 72:4, 144:24, 153:12, 154:21
selected [1] - 196:13
selecting [1] - 76:15
selection [1] - 163:24
self [9] - 29:6, 199:6, 200:18, 200:20, 200:22, 201:1, 207:3, 243:16, 269:16
send [7] - 7:21, 8:13, 33:17, 58:4, 81:12, 109:21, 230:24
sending [1] - 193:20
sends [1] - 40:7

sense [2] - 163:25, 178:10
sensitive [1] - 179:1
sent [7] - 33:11, 83:22, 92:5, 107:19, 121:10, 193:12, 283:3
separate [7] - 22:6, 46:13, 145:24, 145:25, 199:22, 216:7, 216:14
separated [2] - 202:6, 281:2
separation [7] - 17:19, 19:9, 19:10, 19:12, 19:20, 103:12, 281:25
September [3] - 32:9, 188:12, 256:19
series [4] - 30:19, 91:7, 163:22, 192:4
serve [1] - 240:2
served [1] - 51:6
service [87] - 38:17, 38:20, 38:21, 38:22, 39:3, 42:12, 42:20, 42:21, 42:22, 42:24, 43:3, 43:10, 43:14, 47:2, 54:22, 55:11, 55:16, 55:25, 72:14, 72:25, 74:2, 90:20, 94:12, 101:18, 123:1, 123:5, 123:9, 123:13, 127:7, 127:10, 130:14, 130:24, 131:4, 131:23, 176:2, 176:7, 179:24, 185:20, 185:24, 185:25, 186:7, 187:25, 189:13, 189:19, 189:23, 190:12, 190:23, 191:2, 191:24, 195:22, 196:19, 199:5, 222:1, 222:25, 223:7, 223:10, 223:18, 224:9, 224:11, 225:10, 225:12, 231:9, 235:20, 235:22, 236:3, 236:6, 237:1, 244:5, 244:13, 244:14, 244:16, 244:18, 244:24, 245:2, 254:4, 253:18, 254:21, 254:22, 254:23, 254:25, 255:3, 255:9, 264:17, 264:19, 264:23, 264:25
Service [1] - 87:2
service's [1] - 90:7
serviced [1] - 219:15
services [27] - 10:8, 61:21, 176:11, 177:1, 177:2, 177:15, 179:15, 180:16, 180:25, 181:1, 181:3, 181:5, 197:25, 198:2, 198:3, 218:17, 219:15, 219:23, 220:15, 220:16, 221:3, 221:11, 240:11, 240:13, 264:10
set [12] - 5:6, 34:24, 35:1, 49:19, 51:19, 121:7, 167:6, 167:13, 250:21, 251:20,

251:21, 253:11
setting [1] - 196:12
settle [1] - 33:20
settlement [12] - 6:7, 6:15, 6:21, 132:25, 133:4, 134:1, 145:19, 146:20, 146:22, 157:23, 157:25, 191:7
seven [3] - 55:4, 55:7, 120:6
seventeen [5] - 126:17, 162:16, 193:5, 196:5, 196:10
several [13] - 23:17, 26:22, 27:11, 183:3, 183:9, 183:14, 183:23, 185:10, 193:25, 207:14, 210:25, 252:5, 252:12
shadow [1] - 250:2
Shafer [2] - 243:18, 243:25
Shafer's [1] - 93:12
shakes [1] - 53:6
share [6] - 102:21, 110:4, 172:17, 249:1, 255:16, 255:23
shared [2] - 240:18, 259:15
sheath [1] - 199:16
Sheet [2] - 107:22, 112:20
sheet [13] - 46:23, 108:18, 109:2, 110:2, 112:22, 113:10, 114:17, 116:3, 137:2, 137:4, 146:12, 194:14, 198:25
sheets [13] - 21:20, 41:14, 120:14, 141:25, 146:4, 146:5, 146:9, 189:2, 234:7, 234:21, 241:24, 252:9, 255:19
shock [4] - 183:2, 272:21, 272:23, 273:2
short [2] - 101:19, 244:20
shortly [2] - 33:17, 146:21
shot [2] - 66:19, 66:21
show [19] - 49:8, 62:7, 68:9, 70:8, 71:13, 100:5, 112:25, 117:18, 139:5, 139:6, 155:1, 169:5, 169:15, 169:16, 208:23, 209:6, 224:18, 245:20, 267:16
showed [4] - 152:13, 206:6, 244:12, 251:4
showing [8] - 10:17, 11:6, 41:14, 196:23, 209:9, 260:21, 261:6, 279:3
shown [3] - 135:14, 139:12, 195:8
shows [7] - 64:10, 68:6, 68:12, 68:21, 70:17, 155:2, 171:8
shut [1] - 221:2
shy [1] - 119:16
side [8] - 27:7, 29:14,

70:15, 103:6, 166:20, 174:11, 197:10
sidebar [1] - 95:24
sight [1] - 119:22
sign [2] - 15:16, 132:16
signal [2] - 207:24, 217:17
signaling [1] - 215:7
signals [6] - 199:8, 207:23, 215:18, 216:8, 217:11, 217:12
signed [8] - 132:8, 132:12, 222:11, 222:15, 234:20, 244:9, 256:25, 267:21
significance [1] - 63:19
significant [4] - 49:6, 117:14, 197:22, 197:24
significantly [2] - 137:8, 200:19
signing [1] - 233:2
similar [9] - 46:1, 70:16, 83:4, 83:21, 84:25, 102:15, 106:17, 116:22, 164:14
simple [9] - 9:16, 11:11, 12:13, 69:14, 76:13, 118:12, 168:2, 275:3, 276:21
simplify [1] - 281:21
simply [6] - 12:11, 71:18, 144:2, 157:13, 214:7, 214:18
single [7] - 41:24, 179:3, 179:9, 217:10, 221:16, 225:1, 282:3
Sinking [1] - 14:13
sit [2] - 22:19, 96:9
site [8] - 94:15, 95:11, 95:12, 95:15, 98:3, 98:21, 244:3, 277:8
sites [2] - 210:18, 269:6
sits [1] - 62:16
sitting [1] - 132:19
situation [9] - 83:4, 102:22, 114:13, 147:23, 186:9, 202:5, 246:20, 264:9, 272:16
situations [1] - 30:19
six [7] - 35:22, 35:25, 57:11, 182:16, 184:6, 198:2, 214:2
sizeable [1] - 6:25
sky [1] - 201:22
slave [1] - 218:12
slide [1] - 199:24
slowly [1] - 237:21
small [7] - 49:11, 66:18, 80:15, 124:9, 187:16, 197:25, 200:8
smaller [2] - 119:22, 129:1
so-called [1] - 241:4
software [4] - 142:25, 143:1, 185:6, 185:9
sole [2] - 175:4, 257:10
solicit [1] - 35:8

solution [5] - 27:12, 30:2, 41:22, 96:23, 142:19
solutions [1] - 72:23
solved [2] - 142:15, 239:12
someone [19] - 63:22, 74:9, 104:7, 106:14, 106:18, 120:3, 124:17, 125:12, 125:25, 141:11, 161:20, 162:25, 163:6, 169:1, 169:8, 169:11, 173:21, 194:7
sometimes [3] - 16:11, 16:12, 124:14
somewhere [3] - 37:24, 102:13, 194:14
sorry [25] - 33:9, 70:22, 86:10, 98:25, 101:11, 103:21, 113:19, 113:23, 123:2, 143:19, 148:7, 151:23, 173:15, 180:10, 197:1, 200:12, 204:4, 208:25, 209:2, 216:9, 224:25, 237:22, 243:22, 259:8, 278:21
sort [2] - 105:1, 127:18
SOS [1] - 281:5
sought [3] - 93:22, 184:4, 235:12
sound [1] - 101:23
sounds [1] - 47:13
source [2] - 40:4, 143:2
sourced [1] - 219:16
sources [1] - 167:21
south [1] - 164:4
space [59] - 18:24, 19:6, 19:8, 19:16, 19:17, 20:12, 27:14, 30:9, 56:9, 56:10, 56:20, 58:14, 73:19, 73:21, 102:14, 124:15, 127:6, 128:8, 137:23, 151:13, 151:15, 151:16, 170:15, 170:19, 171:8, 171:11, 184:3, 206:4, 206:8, 206:10, 208:13, 210:5, 235:4, 237:13, 242:22, 243:2, 243:7, 243:9, 270:13, 270:14, 272:11, 273:16, 274:13, 279:13, 279:16, 279:25, 280:1, 280:2, 281:1, 281:2, 281:5, 281:9, 281:13, 281:14, 281:23, 283:22
spaces [3] - 18:22, 20:21, 170:20
span [5] - 82:17, 82:19, 82:22, 113:21, 244:19
spans [1] - 113:18
speaking [8] - 70:22, 73:20, 74:6, 86:2, 159:6, 171:11, 246:4, 271:19
speaks [1] - 135:9
specialty [1] - 165:16

specific [22] - 43:19, 53:2, 81:5, 88:24, 91:1, 95:4, 107:3, 109:4, 111:18, 111:20, 113:6, 135:23, 148:18, 152:13, 186:2, 189:16, 211:13, 218:9, 219:12, 231:22, 244:17, 278:14
specifically [9] - 15:11, 38:2, 66:23, 132:4, 145:14, 148:5, 177:4, 199:3, 270:20
specification [3] - 63:21, 167:3, 228:5
specifications [15] - 51:24, 89:14, 94:17, 102:10, 102:11, 150:23, 166:19, 166:23, 167:6, 168:19, 168:22, 208:12, 227:21, 244:7, 244:8
specificity [2] - 13:4, 107:4
specifics [1] - 202:11
specified [3] - 270:14, 270:20, 270:24
specify [2] - 25:13, 53:2
specs [1] - 73:7
speculation [1] - 169:8
speed [1] - 179:5
spell [3] - 14:9, 54:7, 56:22
spelled [2] - 21:23, 22:18
spelling [1] - 46:11
spent [2] - 135:17, 231:12
splice [35] - 14:25, 28:22, 91:2, 101:4, 102:1, 102:9, 102:22, 103:10, 103:13, 113:25, 114:20, 137:20, 138:4, 138:9, 138:11, 149:14, 207:12, 207:13, 207:17, 207:19, 208:7, 209:16, 209:19, 209:21, 209:23, 210:2, 210:7, 211:9, 236:8, 236:14, 236:20, 236:24, 247:21, 248:13, 248:16
splicers [1] - 211:9
Splicing [3] - 44:20, 44:24, 45:19
splicing [8] - 14:18, 15:3, 35:3, 45:20, 95:14, 98:19, 211:11, 236:21
splitter [1] - 207:23
spot [2] - 17:17, 83:24
Spread [1] - 112:20
spread [17] - 46:23, 108:18, 109:2, 110:2, 112:22, 113:10, 114:17, 116:3, 120:14, 137:2, 137:4, 141:25, 146:4, 146:5, 146:9, 146:12, 198:24
Spring [1] - 14:13
STABOLESKI [1] - 13:24

<p>Staboleski [36] - 5:19, 11:19, 11:23, 11:25, 12:6, 12:14, 13:8, 13:17, 13:22, 14:3, 14:7, 31:16, 31:21, 49:2, 54:21, 55:15, 73:11, 84:4, 86:21, 89:9, 90:5, 90:9, 90:15, 91:1, 161:13, 161:16, 161:25, 169:19, 182:6, 190:1, 210:15, 210:25, 233:11, 250:25, 256:25, 257:5</p> <p>Staboleski's [1] - 256:23</p> <p>staff [2] - 162:25, 182:4</p> <p>stage [3] - 65:19, 66:8, 81:11</p> <p>stake [1] - 116:1</p> <p>stall [1] - 85:17</p> <p>stalled [3] - 83:24, 85:10, 85:15</p> <p>Stamp [17] - 62:25, 64:4, 66:15, 101:8, 102:18, 107:13, 108:1, 130:16, 130:17, 130:18, 150:6, 151:5, 167:9, 172:25, 173:16, 209:10, 227:19</p> <p>Stamped [1] - 121:21</p> <p>stand [3] - 13:23, 56:13, 278:25</p> <p>standard [21] - 48:12, 63:3, 74:10, 74:20, 129:8, 138:16, 139:9, 140:14, 140:19, 151:4, 157:12, 188:10, 199:15, 206:19, 206:21, 208:5, 228:23, 231:2, 248:8</p> <p>standards [49] - 8:22, 27:24, 28:9, 29:2, 29:19, 48:15, 56:15, 59:20, 61:13, 61:16, 63:11, 72:20, 73:1, 89:13, 90:11, 129:11, 138:19, 139:1, 139:13, 151:1, 151:23, 151:24, 152:9, 157:9, 167:7, 167:19, 168:22, 211:17, 211:18, 227:13, 228:21, 231:13, 231:19, 231:20, 232:8, 233:4, 233:7, 233:11, 233:19, 238:3, 238:19, 240:18, 269:9, 274:3, 274:4, 274:5, 281:11</p> <p>Standards [6] - 166:15, 166:18, 227:16, 227:17</p> <p>standing [1] - 231:7</p> <p>standpoint [4] - 53:19, 77:19, 128:25, 129:4</p> <p>start [14] - 5:17, 70:2, 99:8, 115:6, 116:10, 169:1, 170:23, 174:11, 181:20, 194:19, 197:6, 232:8, 233:7, 234:5</p> <p>started [17] - 46:23, 78:19,</p>	<p>90:6, 90:22, 110:13, 118:11, 166:4, 177:24, 188:17, 193:14, 193:18, 196:14, 199:12, 222:2, 250:17, 256:25</p> <p>starting [6] - 39:21, 91:6, 159:7, 160:21, 246:5, 253:14</p> <p>starts [3] - 76:20, 144:22, 199:17</p> <p>state [3] - 13:3, 33:21, 34:23</p> <p>State [4] - 50:19, 261:18, 261:19, 261:24</p> <p>statement [1] - 145:11</p> <p>Stater [1] - 266:22</p> <p>states [2] - 261:13, 270:24</p> <p>stating [2] - 33:11, 130:23</p> <p>statistics [1] - 115:7</p> <p>status [4] - 62:16, 62:18, 108:12, 181:11</p> <p>stay [8] - 127:7, 129:21, 130:1, 130:3, 130:6, 166:7, 168:3, 193:19</p> <p>stay-at-home [1] - 166:7</p> <p>stays [2] - 67:3, 67:4</p> <p>steel [2] - 200:4, 200:12</p> <p>step [8] - 49:1, 65:12, 106:8, 106:20, 174:4, 258:7, 258:21, 284:12</p> <p>steps [3] - 62:8, 64:12, 86:18</p> <p>stick [3] - 9:16, 11:6, 116:16</p> <p>still [18] - 30:23, 34:15, 35:14, 61:5, 61:15, 62:21, 86:15, 106:17, 106:22, 118:5, 135:24, 136:24, 141:12, 166:9, 169:9, 218:3, 244:12, 286:10</p> <p>stipulate [7] - 67:18, 91:20, 92:3, 92:4, 92:7, 92:13, 92:15</p> <p>stipulated [1] - 139:2</p> <p>stipulating [1] - 92:15</p> <p>stipulation [25] - 12:4, 67:25, 68:22, 76:4, 92:2, 107:20, 108:7, 108:11, 111:19, 112:2, 121:7, 121:13, 134:21, 134:25, 135:2, 135:6, 135:8, 153:16, 156:12, 158:17, 168:10, 245:17, 255:25, 258:10, 258:19</p> <p>stood [1] - 27:6</p> <p>stop [6] - 27:1, 64:2, 95:12, 178:14, 207:1, 207:16</p> <p>storage [2] - 22:19, 23:8</p> <p>stored [1] - 23:3</p> <p>strand [6] - 15:23, 28:21, 102:15, 138:10, 200:4,</p>	<p>200:19</p> <p>strands [1] - 103:3</p> <p>straps [5] - 149:22, 208:1, 208:2, 208:4</p> <p>strategy [1] - 154:17</p> <p>Stream [1] - 59:8</p> <p>Street [3] - 72:23, 95:9, 145:3</p> <p>street [84] - 24:19, 43:24, 70:16, 74:3, 74:4, 75:11, 75:14, 75:15, 75:16, 87:1, 98:18, 103:10, 104:23, 105:2, 106:21, 107:6, 114:4, 114:11, 114:24, 121:2, 136:12, 136:16, 139:21, 139:24, 140:1, 140:3, 140:6, 140:10, 140:15, 140:16, 140:17, 140:22, 141:3, 141:9, 141:19, 142:1, 142:5, 142:12, 142:15, 143:18, 144:2, 144:7, 144:16, 144:18, 145:9, 152:21, 152:24, 155:10, 155:11, 160:10, 160:11, 160:15, 164:2, 192:1, 193:2, 205:22, 205:23, 205:24, 206:6, 206:11, 206:14, 242:12, 242:15, 245:24, 246:8, 246:16, 247:1, 251:22, 253:24, 256:3, 256:5, 258:15, 273:21, 273:22, 273:23, 273:25, 274:8, 274:9, 274:15, 274:19, 274:24, 275:3, 275:7</p> <p>streets [23] - 43:13, 72:1, 105:16, 126:14, 126:17, 140:11, 153:18, 154:23, 189:15, 189:19, 191:12, 191:24, 192:1, 193:5, 195:13, 195:14, 196:5, 196:8, 196:10, 229:12, 249:25, 255:8, 256:5</p> <p>strength [5] - 20:15, 102:5, 151:2, 199:17, 200:17</p> <p>stresses [1] - 265:9</p> <p>Strike [6] - 29:16, 47:19, 62:7, 98:14, 111:17, 168:20</p> <p>strike [2] - 204:2, 204:5</p> <p>strikes [1] - 201:19</p> <p>string [2] - 16:4, 27:4</p> <p>stringent [3] - 228:16, 228:20, 228:23</p> <p>stringing [2] - 15:20, 27:8</p> <p>strong [2] - 199:20, 208:5</p> <p>structure [2] - 24:16, 215:19</p> <p>strung [4] - 19:24, 28:18, 89:25, 159:16</p> <p>studies [1] - 25:18</p> <p>stuff [3] - 52:23, 195:20,</p>	<p>259:24</p> <p>stupid [1] - 47:13</p> <p>sub [1] - 165:16</p> <p>sub-specialty [1] - 165:16</p> <p>subcontract [1] - 177:15</p> <p>subcontractor [2] - 45:5, 45:12</p> <p>subcontractors [11] - 44:14, 44:19, 45:14, 45:18, 45:22, 45:25, 46:5, 211:3, 211:4, 211:12</p> <p>subject [3] - 10:25, 39:16, 213:3</p> <p>subjects [1] - 61:4</p> <p>submission [1] - 223:3</p> <p>submissions [2] - 107:17, 182:18</p> <p>submit [9] - 17:11, 64:23, 80:23, 170:1, 182:9, 224:2, 226:21, 234:7, 235:6</p> <p>submitted [32] - 23:17, 38:9, 38:11, 47:21, 62:12, 62:16, 62:17, 62:19, 62:20, 67:7, 70:9, 70:12, 75:25, 83:21, 84:1, 84:4, 84:12, 88:10, 88:12, 112:17, 139:2, 147:1, 155:16, 155:24, 161:13, 161:16, 162:12, 182:13, 182:20, 185:16, 238:22, 256:21</p> <p>submitter [3] - 84:6, 162:18, 162:20</p> <p>submitting [3] - 37:20, 139:4, 234:21</p> <p>subpoenaed [1] - 14:3</p> <p>Subsection [2] - 150:17, 150:25</p> <p>subsequent [2] - 223:4, 241:4</p> <p>subsequently [4] - 38:11, 132:11, 147:2, 185:17</p> <p>substantial [1] - 184:21</p> <p>substantially [1] - 140:4</p> <p>sufficient [1] - 13:15</p> <p>suggest [1] - 123:20</p> <p>suggestions [2] - 9:5, 176:20</p> <p>suitable [1] - 238:10</p> <p>summarize [1] - 117:6</p> <p>summarized [2] - 120:22, 182:14</p> <p>summary [8] - 81:22, 82:2, 84:13, 85:2, 85:3, 85:15, 85:23, 113:10</p> <p>summer [1] - 183:24</p> <p>supersede [1] - 27:15</p> <p>supervised [2] - 42:24, 43:3</p> <p>supervising [5] - 45:3, 46:17, 46:19, 46:20, 210:24</p>
--	--	--	--

supervision [2] - 99:25, 205:11
supervisor [5] - 8:6, 89:2, 89:4, 185:7, 203:13
supervisory [1] - 36:7
supplements [3] - 150:19, 151:22, 228:2
supplies [2] - 138:6, 237:25
supply [45] - 30:10, 73:12, 73:17, 73:18, 73:20, 106:10, 171:8, 237:16, 237:24, 266:17, 270:13, 270:14, 270:25, 271:1, 271:6, 271:9, 271:10, 272:11, 273:16, 274:13, 278:4, 278:7, 278:10, 278:13, 278:17, 279:15, 279:16, 279:19, 279:23, 279:24, 279:25, 280:1, 280:5, 280:8, 280:11, 280:14, 280:15, 280:16, 281:1, 281:5, 281:8, 281:13, 283:22
supplying [2] - 271:14, 280:13
support [6] - 29:6, 200:6, 200:16, 200:18, 207:3, 239:22
supported [3] - 29:7, 199:6, 201:1
supporting [4] - 200:20, 200:23, 243:16, 269:17
supports [1] - 270:23
suppose [3] - 67:24, 68:6, 79:3
supposed [16] - 11:8, 26:14, 29:23, 60:7, 102:9, 126:25, 128:6, 171:13, 171:19, 208:12, 210:24, 224:1, 225:5, 226:9, 237:4, 239:3
surface [1] - 138:7
surrounding [1] - 199:22
survey [31] - 10:8, 56:12, 57:12, 57:21, 57:23, 58:1, 62:13, 65:8, 65:13, 66:6, 79:21, 80:23, 83:22, 84:11, 99:24, 104:10, 106:1, 106:5, 110:17, 110:21, 111:1, 111:6, 111:17, 115:9, 117:10, 122:3, 145:5, 145:13, 145:18, 145:22, 161:14
survey/design [1] - 65:4
surveyed [1] - 115:16
surveying [3] - 99:22, 100:6, 111:12
suspect [2] - 191:11, 250:25
sustain [1] - 11:16
Sustained [3] - 152:6,

153:8, 163:3
sustained [4] - 156:16, 172:5, 172:8, 204:14
Swindler [2] - 8:9, 8:10
switch [2] - 69:18, 80:8
sworn [6] - 13:25, 49:15, 165:5, 174:19, 260:15, 261:2
system [44] - 12:11, 36:2, 39:18, 47:23, 51:25, 83:1, 85:8, 112:8, 112:9, 161:20, 164:8, 166:20, 180:24, 180:25, 182:1, 182:2, 182:5, 182:9, 191:13, 197:4, 213:18, 214:3, 215:7, 216:7, 216:11, 216:15, 218:3, 218:4, 218:6, 218:16, 218:19, 219:19, 219:20, 220:20, 229:7, 239:16, 239:17, 239:22, 251:22, 254:4, 256:10, 256:11, 263:14, 263:16
systematically [1] - 197:4
systems [6] - 180:23, 217:25, 262:24, 263:5, 264:1, 264:5

T

T.V [2] - 102:16, 138:6
tab [2] - 120:15, 170:7
table [7] - 10:22, 113:5, 130:4, 173:11, 173:17, 270:22
tables [1] - 173:10
tag [3] - 104:1, 104:3, 104:6
tail [1] - 22:19
talks [2] - 160:19
taller [1] - 56:21
task [1] - 111:23
taught [1] - 36:19
team [4] - 15:2, 211:1, 257:7, 257:9
teammates [1] - 183:15
tech [1] - 14:25
technical [9] - 8:18, 9:1, 9:8, 10:24, 18:3, 37:2, 39:21, 52:22, 229:6
Technology [1] - 50:8
technology [2] - 239:24, 264:23
telecommunication [1] - 231:7
telecommunications [2] - 175:14, 175:16
telephone [13] - 7:7, 7:25, 9:25, 70:24, 72:15, 104:4, 128:21, 129:5, 138:5, 149:7, 151:19, 175:19, 186:3
temporarily [4] - 101:16, 101:23, 127:5, 127:24

temporary [6] - 29:24, 30:2, 127:25, 239:3, 239:6, 239:9
ten [12] - 5:10, 74:9, 95:17, 142:7, 150:6, 174:10, 174:13, 184:7, 231:10, 260:2, 260:4, 260:5
ten-minute [6] - 95:17, 174:10, 174:13, 260:2, 260:4, 260:5
tension [1] - 29:14
tensions [1] - 72:13
term [6] - 18:3, 38:15, 38:16, 195:1, 281:20
terminate [2] - 209:18, 215:22
terminated [1] - 215:22
terminates [1] - 264:20
termination [2] - 245:1
terms [102] - 8:21, 9:4, 10:24, 11:1, 13:1, 16:14, 16:25, 22:23, 27:23, 36:24, 37:8, 38:5, 42:9, 42:19, 43:8, 43:9, 45:9, 45:25, 46:8, 46:20, 47:22, 50:24, 51:21, 54:15, 57:2, 59:3, 65:19, 68:12, 77:22, 132:24, 135:13, 137:19, 139:20, 140:14, 140:16, 141:22, 142:6, 142:21, 143:4, 146:5, 146:9, 147:14, 147:21, 153:13, 153:24, 158:4, 159:16, 162:3, 167:19, 167:21, 172:11, 172:15, 176:1, 177:9, 177:18, 178:2, 179:13, 181:10, 182:8, 184:23, 185:15, 186:9, 188:3, 189:13, 189:25, 190:25, 191:5, 193:7, 196:11, 197:14, 197:21, 198:15, 198:20, 205:2, 208:7, 209:22, 210:1, 211:3, 211:12, 211:21, 211:24, 220:19, 261:22, 262:3, 266:11, 268:3, 268:19, 269:4, 269:13, 269:15, 270:4, 270:12, 271:10, 272:13, 273:23, 274:7, 277:3, 277:9, 282:20
territory [3] - 51:4, 72:25, 164:5
testified [13] - 13:25, 49:15, 161:12, 165:5, 169:19, 174:19, 182:10, 221:22, 224:15, 229:16, 240:14, 260:15, 271:5
testify [2] - 202:25, 212:23
testifying [1] - 227:13
testimony [20] - 5:21, 38:1, 43:9, 48:4, 75:5, 92:23, 97:20, 146:25, 179:8,

181:23, 182:19, 184:17, 194:1, 216:13, 223:24, 251:18, 255:14, 267:7, 270:3, 270:5
testing [1] - 14:18
text [1] - 33:11
themselves [5] - 96:12, 140:11, 163:25, 218:12, 273:9
therefore [6] - 8:23, 13:16, 109:4, 126:7, 143:12, 143:16
thicker [1] - 126:7
thinking [1] - 221:4
third [12] - 28:9, 48:17, 58:17, 58:24, 61:12, 64:11, 71:18, 75:9, 84:25, 86:7, 89:3, 187:15
thirds [1] - 83:3
thousand [2] - 21:20, 138:18
thousands [1] - 36:10
three [30] - 37:22, 38:2, 38:5, 45:14, 65:12, 85:15, 93:20, 101:2, 136:17, 145:24, 145:25, 146:1, 146:10, 146:13, 146:15, 146:17, 146:21, 147:9, 147:18, 159:3, 164:7, 173:8, 182:14, 187:12, 196:18, 253:12, 255:20, 255:21, 277:4, 282:21
three-bolt [1] - 101:2
three-step [1] - 65:12
throughout [17] - 28:12, 28:18, 39:19, 48:6, 91:8, 93:5, 115:9, 176:25, 181:1, 181:17, 181:18, 187:5, 190:22, 198:2, 216:20, 219:19, 230:13
Thursday [1] - 285:25
tied [3] - 91:3, 102:23, 114:1
ties [4] - 101:5, 102:5, 149:11, 149:19
timeframe [2] - 184:16, 188:13
timeline [2] - 134:11, 134:15
timely [1] - 256:12
title [2] - 50:12, 124:2
TO [1] - 4:2
today [53] - 6:23, 7:15, 8:19, 9:2, 10:5, 12:24, 14:4, 37:12, 54:15, 56:14, 67:20, 68:6, 73:11, 91:22, 91:25, 93:8, 95:25, 100:16, 111:3, 117:2, 129:15, 132:19, 166:10, 167:5, 167:25, 169:19, 170:2, 170:5, 171:22, 172:3, 175:24,

177:9, 178:22, 190:15,
193:4, 194:1, 195:1, 197:8,
198:14, 200:7, 219:2, 221:2,
225:3, 259:5, 260:13,
264:23, 264:25, 272:1,
275:21, 280:19, 281:6,
283:5, 284:21
together [19] - 6:1, 17:3,
73:16, 94:9, 115:18, 124:10,
135:18, 169:25, 189:2,
192:18, 199:19, 211:1,
216:16, 216:17, 216:18,
216:23, 218:5, 251:25
tone [1] - 109:6
took [20] - 8:8, 12:20,
20:14, 86:25, 87:1, 87:21,
87:22, 88:1, 95:8, 99:4, 99:5,
99:12, 105:25, 183:9,
183:23, 187:20, 196:20,
196:24, 214:10, 214:19
tool [1] - 55:23
tools [2] - 106:19, 111:7
top [15] - 18:24, 27:13,
45:24, 76:6, 104:1, 138:2,
171:8, 178:11, 184:1, 184:9,
184:19, 184:25, 193:19,
247:15, 278:23
total [8] - 32:14, 86:6, 86:7,
119:24, 146:17, 162:16,
182:17, 211:5
totals [1] - 32:15
touch [2] - 75:6, 215:5
towards [4] - 66:25, 141:14,
173:10, 239:11
town [1] - 218:21
township [1] - 164:1
trace [1] - 188:18
track [4] - 32:25, 43:4, 72:6,
189:15
tracks [1] - 191:14
tract [1] - 43:10
trade [2] - 37:5, 163:11
traditional [1] - 264:22
traffic [21] - 42:4, 74:25,
75:3, 75:11, 75:18, 122:13,
122:17, 122:22, 178:6,
215:7, 215:18, 216:8,
216:15, 216:21, 217:11,
217:12, 217:17, 218:11,
239:18
trained [2] - 106:18, 281:21
training [3] - 20:5, 36:23,
264:8
tran [1] - 23:1
transcript [3] - 158:18,
159:3, 160:19
transfer [3] - 56:4, 186:22,
226:3
transferred [2] - 187:8,
280:15

transformer [1] - 114:22
transmits [1] - 40:4
transmitted [2] - 22:24,
40:8
treat [1] - 87:19
trial [3] - 203:19, 203:21,
203:23
triangles [2] - 113:18,
113:19
tried [6] - 118:11, 191:20,
191:21, 232:15, 236:8, 264:4
true [16] - 31:21, 35:21,
45:13, 217:7, 217:8, 221:15,
222:14, 226:4, 233:12,
233:14, 236:19, 241:13,
244:21, 254:20, 261:9,
277:10
try [17] - 12:21, 32:6, 39:15,
49:11, 69:8, 98:25, 108:22,
115:14, 115:25, 130:6,
144:11, 154:16, 183:12,
192:17, 235:25, 251:14,
284:22
trying [19] - 18:3, 27:12,
41:20, 100:21, 107:11,
114:15, 134:11, 136:7,
137:11, 138:1, 143:19,
148:7, 158:20, 193:8,
193:14, 193:19, 223:12,
238:11, 245:7
Tuesday [7] - 285:24,
286:1, 286:6, 286:8, 286:13,
286:14
turn [10] - 64:4, 83:2, 83:15,
84:10, 84:23, 85:22, 108:25,
150:3, 227:24, 253:4
twenty [1] - 285:8
two [50] - 12:25, 26:25,
29:13, 35:5, 50:4, 71:17,
73:12, 83:3, 85:1, 85:10,
88:8, 88:15, 88:16, 90:20,
97:7, 120:6, 124:11, 132:4,
134:17, 134:24, 138:18,
146:1, 146:10, 146:12,
146:14, 146:21, 159:25,
164:8, 166:21, 177:11,
178:22, 192:18, 192:20,
193:12, 201:21, 211:9,
216:23, 229:20, 239:8,
243:21, 243:25, 247:5,
250:6, 250:19, 250:23,
253:12, 258:18, 271:16,
272:14, 282:21
two-and-a-half [1] - 132:4
two-thirds [1] - 83:3
type [31] - 8:24, 27:5, 27:23,
37:2, 37:5, 37:9, 39:21,
73:25, 107:5, 113:9, 114:24,
115:12, 132:16, 132:20,
145:2, 145:5, 145:18,

147:15, 173:21, 175:13,
195:4, 199:4, 200:2, 202:5,
204:24, 224:6, 225:8, 235:3,
243:2, 271:20
typed [1] - 144:2
types [8] - 48:5, 178:9,
178:21, 178:22, 188:12,
199:10, 204:25
typically [5] - 184:13,
187:11, 199:17, 200:3,
201:17

U

ultimately [3] - 177:6,
181:7, 182:6
um-hum [8] - 22:4, 22:12,
25:5, 43:12, 137:5, 144:15,
163:21, 189:5
un-submitted [4] - 70:9,
70:12, 75:25, 162:12
un-useable [2] - 151:13,
151:16
unacceptable [2] - 96:24,
97:5
unauthorized [38] - 90:13,
90:25, 91:7, 92:9, 92:11,
92:16, 93:3, 93:4, 93:8,
93:11, 94:10, 94:14, 95:5,
95:14, 98:7, 98:20, 101:2,
101:3, 104:22, 106:3,
110:19, 112:18, 113:25,
118:1, 118:5, 119:7, 119:11,
119:18, 119:25, 123:7,
123:10, 123:12, 123:15,
126:14, 126:16, 145:15,
146:2, 223:9
uncompliant [1] - 60:24
under [15] - 53:14, 65:22,
74:10, 76:21, 87:21, 89:14,
89:18, 108:11, 112:2, 121:6,
122:12, 128:1, 156:11,
190:5, 205:6
underground [3] - 273:8,
279:13, 279:16
underlying [1] - 85:24
underneath [1] - 147:24
understood [9] - 29:1,
48:14, 52:16, 75:5, 159:23,
168:21, 251:18, 268:23,
284:4
undertake [2] - 62:9, 122:4
undesirable [1] - 97:5
undocumented [1] - 101:5
unfortunately [4] - 11:21,
71:4, 80:15, 86:15
ungrounded [5] - 141:3,
141:9, 272:9, 274:2, 274:9
unique [5] - 122:19, 123:16,
131:1, 163:15, 193:23

uniquely [1] - 124:3
university [1] - 263:8
University [2] - 50:9,
261:19
unknowingly [1] - 126:3
unless [8] - 74:21, 78:9,
80:3, 195:14, 205:11, 223:8,
236:14, 236:16
unqualified [1] - 114:25
unreasonable [1] - 28:8
unrelated [2] - 60:9, 127:21
unreliable [2] - 251:10,
252:1
unsafe [1] - 24:16
untouched [1] - 284:1
unused [1] - 121:12
unworkable [1] - 97:5
up [105] - 5:6, 7:8, 9:6,
15:16, 17:19, 27:12, 27:19,
27:21, 30:15, 34:24, 35:1,
41:25, 49:9, 51:4, 51:19,
53:24, 63:16, 65:9, 66:14,
70:7, 70:13, 73:9, 74:16,
74:20, 76:6, 80:25, 83:14,
85:25, 88:17, 90:13, 90:14,
90:23, 91:10, 94:20, 96:14,
96:22, 97:3, 97:10, 100:20,
103:4, 104:19, 106:11,
108:1, 112:16, 113:10,
114:1, 114:8, 116:17,
117:21, 120:4, 120:13,
120:14, 122:21, 126:3,
126:5, 128:22, 130:4, 137:4,
141:15, 144:1, 144:3,
146:11, 148:15, 149:1,
149:2, 149:3, 150:4, 151:17,
154:22, 156:24, 161:2,
165:9, 167:8, 169:1, 170:23,
182:17, 183:14, 187:1,
190:18, 193:6, 196:12,
196:17, 196:22, 200:11,
200:24, 206:6, 208:13,
208:18, 209:23, 217:4,
231:9, 246:13, 247:12,
254:2, 254:15, 263:9,
263:13, 268:20, 270:10,
275:21, 276:14, 278:3,
278:24, 280:24, 284:23
Up [1] - 27:18
update [2] - 63:20, 152:2
updated [10] - 63:6, 63:9,
63:10, 139:9, 151:22,
151:23, 231:21, 231:23,
231:25, 233:4
updates [3] - 63:15, 141:1,
232:1
upheld [1] - 129:12
ups [1] - 252:20
useable [2] - 151:13,
151:16

useful [3] - 105:19, 105:20, 173:11
useless [1] - 254:5
user [4] - 15:16, 38:22, 77:17, 143:17
user's [1] - 143:6
users [3] - 196:24, 196:25, 197:2
uses [1] - 25:21
utilities [14] - 16:14, 17:15, 18:20, 50:5, 50:24, 51:2, 53:17, 73:17, 82:4, 157:3, 163:5, 175:16, 244:23, 265:23
Utilities [1] - 49:24
Utility [5] - 7:9, 8:1, 10:1, 16:16, 34:17
utility [34] - 36:25, 50:17, 50:18, 50:25, 51:5, 54:3, 58:5, 58:19, 60:25, 61:3, 61:12, 63:11, 75:10, 78:23, 111:8, 113:15, 152:2, 158:12, 162:25, 168:16, 169:1, 204:19, 204:24, 205:3, 263:10, 263:15, 264:11, 264:12, 264:13, 265:12, 265:24, 280:17, 281:10
utilize [6] - 12:10, 252:25, 256:1, 256:9, 256:11, 263:24
utilized [5] - 168:15, 168:21, 263:25, 278:12, 282:18
utilizes [1] - 264:23
utilizing [2] - 222:2, 283:22

W

vacate [4] - 13:2, 67:20, 67:22, 100:15
vague [1] - 39:24
value [2] - 179:25, 180:14
van [3] - 98:18, 99:14, 99:15
variance [1] - 128:15
variety [1] - 114:20
various [7] - 45:14, 48:4, 48:5, 198:11, 204:24, 204:25, 213:24
varying [1] - 178:9
vehicle [1] - 32:25
verbal [1] - 230:19
verbalize [1] - 70:3
verified [1] - 90:17
verify [4] - 79:21, 90:16, 102:5, 142:17
Verizon [6] - 17:15, 59:18, 70:25, 82:17, 82:19, 82:20
version [1] - 116:12
versus [10] - 5:5, 136:8,

137:11, 179:2, 217:14, 217:18, 217:20, 263:10, 263:14, 264:17
vertical [2] - 173:18, 270:22
via [1] - 26:13
vicinity [1] - 275:16
View [1] - 72:23
viewing [1] - 62:21
violate [1] - 211:21
violated [1] - 248:14
violation [10] - 60:21, 60:22, 114:10, 114:23, 138:23, 243:11, 276:4, 276:8
violations [8] - 9:18, 110:3, 116:24, 119:19, 119:24, 202:12, 205:21, 211:24
virtually [1] - 12:25
visit [4] - 95:12, 95:15, 98:3, 244:3
visual [2] - 115:11, 250:11
voice [5] - 117:21, 165:9, 219:19, 219:20, 219:23
volt [1] - 106:16
voltage [5] - 106:11, 106:13, 106:16, 201:24, 202:5
volts [1] - 106:13

W

wait [4] - 17:4, 212:24, 246:13, 253:7
waiting [2] - 208:25, 209:3
walk [7] - 20:14, 66:11, 67:12, 72:24, 170:11, 268:10, 268:12
walked [1] - 98:17
wants [5] - 36:2, 75:6, 129:23, 203:1, 228:24
warning [1] - 32:6
washer [1] - 257:11
waste [1] - 263:6
water [7] - 42:1, 141:16, 180:25, 263:6, 276:14
Water [1] - 42:2
watering [1] - 180:24
ways [4] - 63:14, 183:22, 220:23, 221:2
website [7] - 28:2, 61:20, 64:10, 151:24, 196:19, 235:22, 236:5
Wednesday [5] - 286:17, 286:18, 286:22, 286:23, 286:25
week [7] - 205:4, 284:24, 285:1, 285:4, 285:15, 285:23, 286:17
weeks [2] - 93:19, 135:20
weighs [1] - 200:19
weight [2] - 266:3, 267:6

welcome [2] - 31:14, 48:23
whatsoever [4] - 105:18, 200:22, 202:11, 207:9
white [3] - 70:19, 70:23, 99:14
whole [10] - 27:4, 42:16, 82:24, 91:5, 156:6, 173:9, 181:17, 183:16, 261:16, 281:15
WICZKOWSKI [1] - 174:18
Wiczkowski [40] - 10:7, 12:2, 12:7, 12:16, 17:2, 20:14, 20:19, 23:24, 26:21, 27:6, 33:15, 33:18, 36:19, 89:8, 94:5, 94:23, 98:4, 98:24, 132:15, 133:6, 134:9, 134:16, 143:17, 144:1, 153:15, 156:23, 161:24, 162:3, 162:13, 162:19, 174:17, 174:22, 198:10, 204:9, 211:20, 245:16, 247:16, 248:4, 252:19, 258:7
Wiczkowski's [2] - 27:1, 143:14
wider [1] - 200:9
width [1] - 179:5
WIFI [2] - 180:25, 218:21
William [1] - 230:20
willing [5] - 69:11, 87:24, 91:20, 185:13, 212:6
willingly [1] - 12:16
Wind [1] - 59:8
wind [1] - 126:8
WINTER [139] - 5:20, 5:23, 6:20, 8:4, 8:7, 11:21, 12:22, 17:23, 20:2, 20:9, 31:18, 31:20, 31:25, 32:4, 37:17, 37:18, 40:23, 41:3, 41:7, 41:8, 47:6, 48:25, 52:9, 59:22, 65:25, 67:16, 68:5, 68:8, 68:16, 68:25, 69:11, 91:19, 92:4, 92:14, 92:21, 100:13, 112:12, 116:21, 125:8, 129:18, 129:24, 130:6, 130:9, 130:11, 130:18, 130:20, 131:15, 131:17, 133:19, 133:22, 134:5, 134:7, 135:9, 135:11, 135:12, 138:24, 139:12, 139:18, 139:19, 149:25, 152:5, 153:5, 153:7, 153:21, 153:23, 154:2, 155:19, 156:15, 161:5, 161:8, 161:10, 162:7, 163:2, 163:9, 163:12, 167:23, 169:7, 172:2, 174:3, 174:17, 174:21, 180:9, 180:12, 185:14, 197:7, 203:8, 203:15, 203:16, 203:22, 203:24, 204:4, 204:7, 204:8,

204:15, 204:17, 208:22, 209:2, 209:5, 209:8, 212:13, 247:11, 247:14, 248:3, 249:4, 249:18, 249:20, 257:15, 257:18, 258:6, 258:16, 259:1, 259:3, 260:12, 260:19, 260:20, 260:25, 261:4, 261:5, 262:2, 265:21, 266:1, 266:5, 266:7, 266:12, 266:14, 267:1, 267:13, 267:15, 270:2, 271:21, 273:5, 277:13, 284:11, 284:15, 286:4, 286:6, 286:12, 286:16, 286:20
Winter [17] - 3:2, 3:6, 3:7, 7:19, 7:25, 8:2, 48:24, 54:21, 87:6, 129:23, 130:2, 161:3, 174:15, 257:14, 258:24, 260:18, 284:14
wire [17] - 24:23, 26:9, 77:5, 77:7, 77:10, 77:13, 77:23, 79:2, 79:16, 79:24, 80:3, 102:23, 129:5, 151:19, 200:8, 200:9, 200:13
wireless [1] - 70:14
wires [8] - 15:20, 39:21, 103:8, 128:23, 159:16, 254:8, 254:17, 255:1
wiring [3] - 204:20, 204:25, 205:3
wish [4] - 56:25, 69:24, 82:2, 172:17
wished [2] - 20:25, 48:1
wishes [3] - 27:25, 57:22, 61:17
withheld [1] - 196:4
WITNESS [89] - 14:10, 21:19, 22:1, 22:4, 22:8, 22:12, 22:16, 22:22, 22:25, 23:3, 23:6, 23:8, 23:13, 23:15, 25:2, 25:5, 25:8, 25:11, 25:14, 25:17, 25:20, 25:23, 26:3, 26:7, 26:10, 32:3, 57:11, 66:5, 71:7, 71:9, 73:24, 74:23, 75:8, 75:14, 75:17, 75:20, 76:24, 77:2, 77:14, 77:24, 78:3, 78:8, 78:11, 79:6, 79:18, 79:20, 79:25, 80:5, 113:21, 114:19, 116:12, 117:18, 117:24, 123:2, 123:6, 123:14, 124:7, 129:7, 129:20, 130:1, 154:14, 154:16, 154:24, 155:2, 155:7, 155:11, 155:23, 163:13, 172:24, 173:2, 173:17, 180:2, 180:10, 185:4, 197:1, 202:19, 215:15, 215:17, 220:13, 220:21, 229:25,

<p>232:23, 237:24, 249:19, 249:24, 250:6, 258:22, 265:25, 271:12</p> <p>witness ^[19] - 11:18, 13:24, 17:25, 49:3, 49:14, 52:4, 131:11, 165:1, 165:4, 174:6, 174:16, 174:18, 212:20, 212:23, 229:24, 258:14, 260:14, 277:16</p> <p>witnesses ^[5] - 96:3, 174:9, 258:24, 284:14</p> <p>woah ^[1] - 133:17</p> <p>wood ^[1] - 275:10</p> <p>word ^[7] - 76:20, 90:15, 243:14, 268:11, 278:13, 279:23</p> <p>word-for-word ^[1] - 268:11</p> <p>words ^[8] - 30:4, 77:8, 135:5, 159:20, 178:25, 181:18, 217:9, 219:25</p> <p>workable ^[1] - 96:23</p> <p>worker ^[26] - 19:1, 19:12, 73:19, 105:1, 128:8, 151:14, 168:4, 168:25, 169:22, 171:10, 171:16, 242:21, 243:3, 243:7, 243:8, 243:9, 268:18, 272:10, 273:4, 273:6, 273:7, 281:8, 281:16, 281:22, 282:1, 282:4</p> <p>worker's ^[1] - 32:25</p> <p>workers ^[15] - 51:25, 94:19, 94:20, 95:14, 171:20, 206:12, 206:13, 211:2, 243:4, 272:10, 273:17, 274:13, 274:14, 283:21</p> <p>workman ^[1] - 211:18</p> <p>workman-like ^[1] - 211:18</p> <p>works ^[11] - 110:24, 131:16, 177:4, 180:23, 181:3, 181:5, 218:22, 229:7, 286:2, 286:18, 286:23</p> <p>worried ^[1] - 10:14</p> <p>wrap ^[2] - 200:10, 200:13</p> <p>wrapped ^[1] - 216:23</p> <p>write ^[1] - 268:3</p> <p>writing ^[1] - 166:19</p> <p>written ^[4] - 150:22, 158:17, 223:4, 228:5</p> <p>wrote ^[2] - 7:10, 267:21</p>	<p>243:18, 243:24, 252:14, 284:21</p> <p>YANEK ^[1] - 49:14</p> <p>Yanek's ^[2] - 161:2, 185:7</p> <p>year ^[4] - 97:7, 166:4, 205:5, 239:8</p> <p>years ^[10] - 50:3, 74:9, 132:4, 166:8, 204:22, 231:8, 231:10, 239:8, 255:20, 255:21</p> <p>yellow ^[2] - 75:19, 108:20</p> <p>yesterday ^[9] - 6:1, 7:3, 7:5, 7:18, 8:8, 9:24, 10:22, 68:2, 114:14</p> <p>yourself ^[6] - 14:6, 49:22, 90:16, 98:5, 165:11, 237:15</p>
Z	
<p>Zayo ^[1] - 59:9</p> <p>zero ^[1] - 172:23</p> <p>zip ^[7] - 91:3, 101:5, 102:5, 102:22, 114:1, 149:11, 149:19</p> <p>zone ^[17] - 19:2, 19:14, 24:17, 24:22, 30:10, 75:3, 168:4, 168:25, 169:23, 171:10, 171:17, 272:10, 281:8, 281:16, 282:1, 282:5</p> <p>zones ^[1] - 206:6</p> <p>zoom ^[2] - 104:19, 115:14</p>	
Y	
<p>Yanek ^[30] - 10:6, 16:17, 49:5, 49:22, 49:23, 57:15, 63:2, 66:16, 69:21, 80:13, 98:2, 117:12, 129:14, 130:4, 130:9, 130:12, 142:21, 145:12, 161:11, 183:15, 201:24, 206:4, 207:15, 208:18, 226:23, 233:14,</p>	

Attachment (3)

COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CIVIL DIVISION

PPL ELECTRIC UTILITIES	:	
CORPORATION, Formerly	:	
Known as Pennsylvania	:	
Power & Light Co.	:	
	:	
- vs -	:	No. 2017-C-3755
	:	
MAW COMMUNICATIONS, INC.,	:	
FRANK T. WICZKOWSKI,	:	
PRESIDENT	:	

Transcript of Proceedings

BEFORE: HON. EDWARD D. REIBMAN, P.J.

Wednesday, March 28, 2018
1:30 o'clock a.m.
Courtroom No. 2 A
Lehigh County Courthouse
Allentown, Pennsylvania

APPEARANCES:

JOSEPH S. D'AMICO, JR., ESQUIRE
-- For the Plaintiffs

ERIC E. WINTER, ESQUIRE
-- For the Defendants

NEIL ALBERT, ESQUIRE
-- For Lancaster City

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12
13
14
15
16
17
18
19
20
21
22
23
24
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INDEX TO WITNESSES

<u>Plaintiff PPL Witnesses</u>	<u>Page</u>
Joseph Staboleski	
Direct Examination by Mr. D'Amico:	14
Cross-Examination by Mr. Winter:	31
Redirect Examination by Mr. D'Amico:	47
Ryan Yanek	
Direct Examination by Mr. D'Amico:	49
Cross-Examination by Mr. Winter:	129
Redirect Examination by Mr. D'Amico:	150
Examination by the Court:	157
Recross-Examination by Mr. Winter:	161
Redirect Examination by Mr. D'Amico:	162
Further Examination by the Court:	163
Kristie Rippke	
Direct Examination by Mr. D'Amico:	165
* * *	
<u>Defendant MAW Witnesses</u>	<u>Page</u>
Frank Wiczkowski	
Direct Examination by Mr. Winter:	174
Cross-Examination by Mr. Albert:	213
Cross-Examination by Mr. D'Amico:	221
Examination by the Court:	245
Redirect Examination by Mr. Winter:	247
Recross-Examination by Mr. D'Amico:	248
Further Examination by the Court:	250
Contd. Recross-Examination by Mr. D'Amico:	252
Further Examination by the Court:	253

1		
2	Contd. Recross-Examination by Mr. D'Amico:	255
3	Redirect Examination by Mr. Winter:	257
4		
5	Jeffrey Kobilka	
6	Direct Examination on Qualifications	
7	by Mr. Winter:	260
8	Cross-Examination on Qualifications	
9	by Mr. D'Amico:	262
10	Direct Examination by Mr. Winter:	267
11	Recross-Examination by Mr. D'Amico:	277
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

<u>Defendant's Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
D - 1 - C. V. Jeffrey Kobilka	**	277
D - 2 - Report Jeffrey Kobilka	**	277

** Exhibits were pre-marked.

1
2
3
4
5
6
7
8
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10
11
12
13
14
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16
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Wednesday March 28, 2018
1:30 o'clock p.m.
Courtroom No. 2 A
Lehigh County Courthouse

(Whereupon, off the record discussions took place between the Court and counsel.)

(Whereupon, a Document was marked for purposes of identification as Intervenor's Exhibit No. 1.)

THE COURT: So we were supposed to start at 1:30. It's now 2:36 according to the County clock. And I apologize for those of you who have been very patiently sitting in the audience.

We have been talking in, I call it the woodshed, and trying to explore ways that we could cut through some of the issues, and resolve all, or at least some of the aspects of the case.

And so we are -- We made a good faith effort. I appreciate very much everybody's participation in that, and good faith in trying to get it resolved, but it just didn't work out. We just can't put the pieces together at this point, so we are going to resume our hearing.

And I think we are going to finish the evidence this afternoon, and then I will take it under

1 advisement, and I will get an order out as quickly as I
2 can.

3 Okay. So the next witness, by agreement, is
4 going to be the Chief of Police of the City of
5 Lancaster.

6 MR. ALBERT: Yes. That's correct, Your
7 Honor.

8 The City of Lancaster calls Chief Jarrad
9 Birkihiser. Please come forward.

10 JARRAD P. BIRKIHISER, being called as a
11 witness, was first duly sworn, and testified as
12 follows:

13 DIRECT EXAMINATION

14 THE COURT: Go ahead.

15 BY MR. ALBERT:

16 Q Please state your name for the record.

17 A Jarrad Birkihiser. I am the Chief of Police for
18 the City of Lancaster.

19 Q Okay, sir, how long have you worked for the City
20 of Lancaster?

21 A 24 years.

22 Q And what have your positions been during that
23 time?

24 A I started as a patrolman; worked my way into
25 narcotics investigation. From there I went into the

1 Detective Division; worked as a detective in our
2 Violent Crime Unit for several years. I was promoted
3 to Sergeant. I worked patrols, and the criminal
4 investigative division again, as a Sergeant.

5 When I was promoted to Lieutenant, I went back
6 to the criminal investigative division as -- in charge
7 of our special investigations units, which was child
8 abuse, sexual assault.

9 I was a Lieutenant for two years. From there I
10 was promoted to Captain. Once I was promoted to
11 Captain, I took over the patrol division, which is our
12 largest division within the police department. And
13 from there, I was named interim chief in November of
14 2017.

15 Q Okay. Chief, do you have a document in front
16 of you, a two-page printout from the Lancaster Safety
17 Coalition?

18 A Yes, I do.

19 MR. ALBERT: For the record, Your Honor,
20 that has been marked as City of Lancaster/Intervenor
21 Exhibit No. 1, and copies have been distributed to
22 counsel, and I believe the Court has a copy?

23 THE COURT: I do.

24 BY MR. ALBERT:

25 Q Are you familiar with the Lancaster Safety

1 Coalition?

2 A Yes.

3 Q What is the Lancaster Safety Coalition?

4 A It's a non-profit organization that began back
5 in the early 2000s. It was in response to -- We had a
6 Lancaster Crime Commission at that time. They were
7 established to find solutions to ongoing gang violence
8 and drug crimes that we were seeing in the City at the
9 time.

10 One of their recommendations was a camera
11 surveillance system throughout the City of Lancaster.
12 We got pushback from certain people and groups within
13 the city, about the law enforcement, the police
14 department monitoring those cameras. So the Lancaster
15 Safety Coalition was born out of that.

16 It's a third party organization, it's a
17 non-profit, and they are responsible for fundraising
18 for the cameras, placing the cameras, and monitoring
19 the cameras.

20 Q Okay, and as far as the organization, this
21 private corporation, does it have a board of directors?

22 A Yes, sir, it does.

23 Q Are you aware of who's on it, just generally?

24 A I am aware of some of them -- some of the
25 people. The City has a representative, the District

1 Attorney's Office has a represent, the police bureau
2 had a representative until he retired, and I'm probably
3 going to take his place on that Board at some point.

4 And then there were other stakeholders within
5 the Community from Lancaster General Health, Penn
6 Medicine, and some others, who have a general desire,
7 or somehow benefit from the camera system throughout
8 the City.

9 Q Okay, and does the Safety Coalition have
10 employees who monitor the cameras?

11 A Yes, sir, they do. They monitor them for
12 several hours throughout the day. There is only a
13 period between I believe 2:00 a.m. and 3:00 a.m. until
14 6:00 a.m. that they are unmonitored.

15 Q Is this camera system common to most cities in
16 the Commonwealth, or is this kind of an unusual
17 situation?

18 A It is kind of an unusual situation, with the
19 fact that there is a third party that is monitoring the
20 cameras, and doing the video evidence storage for
21 anything that we have requested, or other law
22 enforcement agencies, or public city entities that have
23 requested.

24 I am aware that Reading City has some cameras,
25 and they are monitored by the police department. I

1 think what Lancaster has is a more vast network of
2 cameras than other cities in the Commonwealth of
3 Pennsylvania.

4 Q Okay. Well, let's talk about that for a moment,
5 Chief.

6 The first page of the Lancaster Safety Coalition
7 printout, it has what seems to be a picture entitled
8 LSC camera map, November 2017. Do you see that?

9 A Yes, sir.

10 Q Are you -- With all your years on the force,
11 Chief, are you familiar with the layout of the cameras
12 in the City?

13 A Yes, sir. We have -- We actually have a map
14 similar to this in our police station so that officers
15 can look to see if an investigation that they are
16 working on may have been captured on any one of the
17 cameras the Lancaster Safety Coalition has.

18 Q And if I may, Chief, it seems to me that the
19 cameras are not distributed randomly around the City.
20 Is there a reason for that?

21 A So when we were looking at the -- from the crime
22 commissions report we first started, and they actually
23 got our input from the police department where we
24 wanted cameras.

25 And we were looking at placing these cameras in

1 areas of the City that we were seeing the most violent
2 crime. That's where that started placing -- where they
3 started placing the cameras at our request. A lot of
4 them are street corners that were open area drug
5 markets where we were seeing the most violence at the
6 time.

7 And then we also wanted to establish a good
8 camera network within our downtown business district,
9 because business owners felt safer with this camera
10 network downtown.

11 Q Okay. So that's why there's more cameras in the
12 downtown, and the southeast, than out at the north end
13 of town?

14 A Correct.

15 Q Okay. As far as what these cameras look like,
16 Chief, at the upper left-hand corner of this printout,
17 there is a Lancaster Safety Coalition, and then a
18 picture of a camera next to it.

19 A Yes, sir.

20 Q If I were to go around Lancaster, that's what
21 they look like?

22 A Yes, sir.

23 Q Looks like a little tiny streetlight, sort of?

24 A Correct.

25 Q And they are mounted in various places?

1 A That is correct.

2 Q Okay. And are these still, live video? How do
3 the cameras get information to the City, or to other
4 people who need their information?

5 A So they have a -- They are live feed. They have
6 -- the Safety Coalition, like I said before, has
7 employees that monitor the cameras for several hours
8 throughout the day.

9 They also have the ability to pipe a live feed
10 to Lancaster County Communications, which is a dispatch
11 center, so -- and the Lancaster Safety Coalition
12 monitors both our police and fire, and EMS dispatch
13 through radios.

14 And if they hear an incident being dispatched,
15 their camera monitors will put a camera on that
16 incident. And if it's an active incident, they will
17 pipe a live feed to Lancaster County Radio. Lancaster
18 County Radio can then give us live updates as we are
19 responding to the event.

20 Q Okay. That's an on demand thing. It's not
21 constant, though; right? It requires somebody to be
22 look -- seeing the situation?

23 A Right, and there -- You know, there is over 160
24 cameras. So one or two camera operators are not going
25 to be able to see everything that is happening on all

1 of those cameras at one time, but you know, they listen
2 to our dispatch, fire and EMS. They train the cameras.

3 They also report to us when they have seen
4 crimes in progress. Everything from what they believe
5 to be a drug transaction, we have caught homicides on
6 video, from them, you know, training the cameras on a
7 large group that they might see beginning a fight, and
8 we have caught homicides on those videos.

9 In addition to that, our officers on a regular
10 basis are calling them for footage to look for vehicle
11 accident investigation. Did this -- You know, did the
12 car -- unit one run a red light, you know, actually run
13 the red light and strike unit two, things like that.

14 We are in contact with the Safety Coalition
15 from county dispatch on a daily basis.

16 Q Okay. What -- If you -- You have been involved
17 with dealing with the Safety Coalition cameras since
18 before you were the chief, as a patrolman, and as a
19 captain; correct?

20 A Yes.

21 Q How frequently is the City relying upon
22 information from these cameras?

23 A Like I said, every day. You know, we just had a
24 homicide over the weekend. We caught information
25 that's vital to that homicide investigation on video

1 from Lancaster Safety Coalition.

2 And I can think of at least four other
3 homicides where we have caught information. Our
4 detectives use them on a regular basis. And they
5 are great to -- you know, we are not always dealing
6 with some of the best witnesses in homicide
7 investigations. And we a lot of times use this footage
8 to corroborate witness statements. And we also use it
9 when we are interrogating, or interviewing the suspect
10 to corroborate the information he or she is giving us,
11 also.

12 And quite honestly, it saved the Court of Common
13 Pleas quite a bit of money, because a lot of crimes
14 have been caught on video; once we show it to the
15 Defendant and his attorney, it ends up in a guilty plea
16 more often than not.

17 Q Other than straight criminal work, what other
18 importance is the camera system for the police
19 department?

20 A Well, on a daily basis the operators are
21 monitoring -- You know, we're a four or five-square
22 mile City. We have 60,000 residents that live in this
23 four or five-square mile area.

24 We have multiple high schools, elementary
25 schools, middle schools. So camera operators actually

1 monitor the children as they are walking to and from
2 school, when school is in session.

3 They -- They monitor busy intersections where
4 we have had multiple vehicle accidents. They -- Like
5 just today we had a fire in downtown Lancaster. The
6 Safety Coalition trained the cameras on that, and they
7 were able to provide dispatchers with information prior
8 to the firefighter's arrival.

9 So the fire department uses them, we have been
10 able to use them on vehicle accidents that involve
11 tractor trailers, tankers that may be carrying
12 hazardous materials, prior to officers, first
13 responders getting there, they are able to put this up
14 on the camera and see if, you know, we may have a
15 hazardous materials incident, before they arrive. And
16 we can coordinate our response for the arrival on
17 something like that.

18 And the one weekend in February, they were
19 able to capture seven drug overdoses on camera, where
20 we were able to get medical aid to those people, to get
21 them to the hospital.

22 Q You mean the cameras caught someone who like
23 collapsed on the street?

24 A Correct, staggering in the street, staggering
25 down the sidewalk, and they initiated our response. So

1 they called -- the camera operators called our County
2 dispatchers, and we got EMS and police to these -- to
3 those people.

4 Q Did the cameras provide any role in providing
5 safety for officers responding to situations?

6 A Absolutely. As I testified, they can bring up
7 that live feed. Our Platoon Lieutenant, who is the
8 shift commander, both for day shift and night shift, he
9 can see that live feed also within his office, as well
10 as our desk sergeant. We have a Sergeant that sits at
11 our front desk 24 hours a day, so they can radio
12 updates to the officers while they are responding to
13 the incident.

14 The other thing it has provided us with, is
15 information, because we do have times where our
16 officers step out of line, commit policy violations,
17 and this actually brought us assistance in doing those
18 types of investigations also where we capture officers
19 on video, maybe not doing what they are supposed to,
20 and it's aided us in that as well.

21 Q Chief, what would happen if there was
22 interruption of service of the camera network or part
23 of it?

24 A It's such a vital part of our crime reduction
25 strategy, and investigative strategy with our crimes,

1 it would be absolutely detrimental if there is any
2 interruption.

3 MR. ALBERT: That's all of my questions.

4 THE COURT: Cross-examination? Why don't we
5 go to MAW first, and then we will give you a chance.

6 MR. WINTER: Okay. Chief, thank you very
7 much for being here. I have no more questions for you.

8 CROSS-EXAMINATION

9 BY MR. D'AMICO:

10 Q You mind if I call you Chief? I didn't catch
11 your last name.

12 A **Sure. That's fine.**

13 Q Okay. I apologize, sir.

14 Let's just make sure I'm clear, though. The
15 Lancaster Safety Coalition, the LCS, it's not a police
16 department agency in any respect?

17 A **No, sir.**

18 Q And you're not here representing the Lancaster
19 Safety Coalition; correct?

20 A **I am not.**

21 Q Okay, and you have no ability to bind it in any
22 way?

23 A **I'm sorry.**

24 Q You have no ability to bind it in any way?

25 A **No, sir.**

1 Q Earlier I thought you testified that in addition
2 to the diagram that counsel shared with you, and had
3 you explain, that you had some additional information
4 as to the location of the cameras. Do I understand
5 that correctly?

6 A We have a similar map in the police station,
7 both on our second floor, which is our Patrol Division,
8 and in our detective division.

9 So if we have a crime that occurs, like the
10 homicide that we had over the weekend, if we know a
11 path of travel of the victim, and the suspect, we can
12 start requesting the footage from Lancaster Safety
13 Coalition based on those camera locations.

14 Q And with respect to that information would it
15 give you detail as to what it's attached to, or what it
16 can or can't see, and what its limitations are?

17 A The only way we know what the limitations are,
18 is when we start watching the video.

19 We know that the cameras are on a
20 pre-programmed tour, when they are not being moved by
21 the operator. So they are on a pre-programmed tour,
22 where they are zooming in and zooming out, and the
23 camera is moving on this tour. Once a camera operator
24 takes control of it, then that camera operator can move
25 it.

1 **As far as -- You know, we -- unless we**
2 **absolutely go out and look to see where the camera was**
3 **at to see if it may have captured anything, that's the**
4 **only time we really know whether that camera is affixed**
5 **to, whether it's a pole, a building, and I know we have**
6 **both.**

7 Q Okay, and do I understand that it's up to the
8 discretion of the operators to determine what it is, if
9 they want to focus in on something?

10 A **That's correct.**

11 Q So you don't monitor whether or not they are
12 doing any appropriate focusing, like profiling, if they
13 see a group in an area of the town that they don't
14 necessarily --

15 A **I can't testify to what they -- what they focus**
16 **in on. I really can't.**

17 Q If I understand your testimony correctly,
18 though, Chief, your concern is you would like to make
19 sure that the system stays in place. It has some
20 benefit to the City; correct?

21 A **It has an absolute benefit.**

22 Q So you would have no issue if the city worked
23 with PPL Electric to address unauthorized attachments
24 by MAW, if it can be done so in a manner that doesn't
25 disrupt the service; is that correct?

1 A The best way I can answer that is we want no
2 interruption in the camera service.

3 Q Okay, but you don't have a concern --

4 A As far as what agreements, that's above my pay
5 grade.

6 Q But --

7 A I'm a police officer. I'm concerned about these
8 cameras staying in place, that's it.

9 Q And that's what I want to understand. From the
10 prospective of the chief law enforcement officer in the
11 City of Lancaster, it doesn't matter to you if MAW's
12 unauthorized attachments come down, as long as the City
13 on your behalf, can work with PPL Electric to make sure
14 that you still have access to your cameras?

15 A That would be accurate.

16 Q Do you have any knowledge, just from your work,
17 whether or not the City was aware that MAW was moving
18 the lines that operate the cameras, from their approved
19 attachment location?

20 A I was not.

21 Q Did you ever come to learn that MAW had been
22 running cable that was not going to be compatible with
23 operation of the existing camera system?

24 A I was not, no, sir.

25 Q Have you since learned it as the result of being

1 here today, that MAW has run cable that can't operate
2 the camera system?

3 A I just know that there is a legal battle back
4 and forth just from what I have briefly read in the
5 newspaper, and what I am privy to as being part of the
6 Mayor's Safety Coalition.

7 Q What are you privy to as part of the Mayor's
8 team?

9 A I would be privy to certain information, which
10 means that we collectively have as part of the Mayor's
11 executive leadership.

12 Q And what is that information?

13 A Just that there is this ongoing court battle.
14 Other than that I am kind of disinterested in that
15 information, because it doesn't directly affect
16 day-to-day police operations, as far as what the legal
17 wranglings are between PP&L and MAW.

18 Q Was the City aware that MAW had been attaching
19 to PPL poles without getting approval from PPL?

20 A That I can't answer. I don't know.

21 Q Thank you, sir.

22 THE COURT: Any redirect?

23 MR. ALBERT: None, Your Honor.

24 THE COURT: Okay.

25 MR. ALBERT: Your Honor, may this witness be

1 excused?

2 THE COURT: Any objection?

3 MR. D'AMICO: No, objection, Your Honor.

4 Thank you, Chief.

5 MR. WINTER: No objection.

6 THE COURT: Thank you for coming, and you

7 may be excused.

8 THE WITNESS: Thank you, Your Honor.

9 MR. ALBERT: Thank you very much. You can

10 get back to Lancaster.

11 THE WITNESS: Thank you.

12 MR. ALBERT: We would move the exhibit --

13 for the admission of our exhibit.

14 THE COURT: City of Lancaster Exhibit No. 1

15 will be admitted without objection.

16 MR. D'AMICO: No objection, Your Honor.

17 MR. WINTER: No objection.

18 THE COURT: Okay. All right. I think we

19 are at rebuttal?

20 MR. D'AMICO: Yes, Your Honor. We have two

21 rebuttal witnesses. Hopefully they will be very brief.

22 I would like to recall Miss Rippke.

23 THE COURT: Miss Rippke, you have been

24 previously sworn to tell the truth, and you remain so

25 sworn.

1 MISS RIPPKE: Okay.

2 THE COURT: Okay.

3 KRISTIE RIPPKE, having been previously sworn,
4 was recalled as a witness on rebuttal, testified as
5 follows:

6 DIRECT EXAMINATION

7 ON REBUTTAL

8 BY MR. D'AMICO:

9 Q Welcome back, Miss Rippke.

10 A Thank you.

11 Q You were happy when I told you that you were
12 coming back today; weren't you?

13 You were present on Friday when the gentleman
14 from Robson Forensic testified and offered some
15 opinions based upon a report that he and another
16 professional from his office had authored; correct?

17 A That's correct.

18 Q Do you think, based on your knowledge and
19 experience working with the NESC, and the transition
20 distribution work that you do with electric utility,
21 did he make any erroneous assumptions, or statements
22 about the NESC that you would like to explain to the
23 Court?

24 A Yes, I think that he did.

25 Q Did anything have to do with the definitions of

1 -- different definitions of fiberoptic cable?

2 A Yes.

3 Q Can you explain to the Court what the issue was?

4 A So, he talked a lot about ADSS cable being all
5 dielectric, which means that it can't conduct
6 electricity, which is all true.

7 So because ADSS cable cannot conduct
8 electricity the NESC defines two different types of
9 fiberoptic cables. They define fiberoptic cables that
10 can be used in the supply space, or supply cable, and
11 fiberoptic cables that can be in the communications
12 space. And there are different rules associated with
13 the different types of cables.

14 The only difference between the two types of
15 cables, is where they can be located in the pole. So
16 if it's a fiberoptic supply cable, it can be located in
17 the supply space. And if it's a fiberoptic
18 communications cable, it needs to be located in the
19 communications space.

20 Q Do I understand correctly supply cable means
21 it's the power company?

22 A So, there is a rule. It's Rule 224 in the NESC,
23 that says that in order for a wire to be installed in
24 the supply space on the pole, you need to be a
25 qualified worker to work in the supply space.

1 So basically what that means is, you have to be
2 a lineman. You have to be trained in electrical work.
3 You have to have the proper equipment, the proper
4 tools, the proper truck to work in the supply space.
5 So in order to install a fiberoptic cable in the supply
6 space, then yes, you need to be an electric company
7 with trained workers.

8 Q The -- Last Friday when Mr. Yanek was
9 testifying, we put some things up on the screen. Were
10 you able to observe whether or not the photographs
11 depicting some of the active MAW work that was
12 discovered in late 2017, was that being performed in a
13 manner that indicates to you it would be consistent
14 with a qualified electrical worker?

15 A It appeared to --

16 MR. WINTER: I'm going to object. Lack of
17 foundation. I am not sure that -- She is not a
18 qualified electrical worker herself. I don't know that
19 she can offer this opinion.

20 BY MR. D'AMICO:

21 Q Let me ask you a different question.

22 MR. D'AMICO: I will try to lay a
23 foundation.

24 BY MR. D'AMICO:

25 Q You saw the photos of the van and the lift?

1 A **Yes.**

2 Q In your field, are you able to make a
3 determination whether or not that would comply with
4 proper standards under the NESC?

5 A **I can tell you that in order to work in the
6 supply space you need to be in an insulated bucket. It
7 did not appear like that was the case in that photo.**

8 Q That's something that you in your field -- You
9 in your specialty, you would recognize an insulated
10 bucket if you saw it; wouldn't you?

11 A **Yes.**

12 Q There has been a lot of talk about supply space,
13 and communication space, and then in between is the
14 communication worker safety space; correct?

15 A **That's correct.**

16 Q Is it ever permissible to have anything within
17 that communication worker safety space?

18 A **So the code does allow a few exceptions for
19 items that are allowed in the communication worker
20 safety zone. They are street lights, traffic signals,
21 and trolley cables. Other than that, nothing is
22 supposed to be in that zone.**

23 Q So a J and Raise in the communication worker
24 safety space, that would not comply with the Code?

25 A **That's correct.**

1 Q A fiberoptic cable moved by MAW in the
2 communication worker safety space would not comply with
3 the code?

4 A **That's correct.**

5 Q Would the splice boxes that they strapped to the
6 pole within the communication worker safety space
7 comply with the code?

8 A **No, that doesn't comply.**

9 Q Those shouldn't be there?

10 A **They shouldn't be there, no.**

11 Q Is that a -- Is that anything that is novel, or
12 difficult to comprehend in your business?

13 A **No, and the purpose is for the safety of the
14 workers, the communications workers.**

15 MR. D'AMICO: That's all I have, Ma'am.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 ON REBUTTAL

19 BY MR. WINTER:

20 Q Ma'am, maybe you can just clear up this point,
21 because I'm a little bit confused.

22 If I understood correctly, you said that
23 dielectric cable is non-conductive?

24 A **Correct.**

25 Q And if I understood the first part of your

1 testimony correctly, you had stated that a dielectric
2 cable, wherever it would be on the pole, even if it's
3 within the safety zone, would not pose a risk because
4 it's non-conductive; is that correct?

5 A It cannot conduct electricity, correct.

6 Q Okay. So that would not create any type of
7 safety risk for it to be in the communication worker
8 safety zone?

9 A So the code is pretty clear that it cannot be in
10 a communication worker safety zone.

11 Q Okay. So -- And again, the provision of the
12 code that you are relying on, is which provision for
13 that?

14 A So, it's Rule 235. And it goes into all the
15 different clearances required.

16 Q Okay.

17 A So it -- There is actually a footnote number
18 five that specifically refers to fiberoptic cables.

19 Q Okay, and is that part of the exhibit that was
20 previously offered that specific provision?

21 A Yes.

22 MR. D'AMICO: That's 41, Your Honor. May I
23 approach, Your Honor?

24 THE COURT: You may.

25 MR. D'AMICO: I know you have the complete

1 volume there, but I have provided the excerpts so that
2 we don't have to be printing the entire book. You want
3 to turn to 41 and point that out to counsel.

4 BY MR. WINTER:

5 Q Ma'am, maybe you can point me to specifically
6 where I should be looking. I'm looking at Rule 235.

7 A So -- Sure. It's marked as page 176 --

8 Q Okay.

9 A -- in the NESC.

10 Q Okay. I haven't gotten that far. Okay.

11 A And that's the second part of the table that
12 begins on the page prior, but the footnote that I'm
13 referring to is on page 176, footnote five.

14 Q Okay, and -- And just to be clear about this,
15 Robson Forensic also looked at that same rule, and
16 specifically they had looked at the table that begins
17 on the page before, and continues onto that page,
18 235-5?

19 A Right.

20 Q Okay, and they had concluded, based upon that
21 table, and -- what was it -- footnote ten -- Okay, well
22 footnote ten. So no clearance is specified between
23 fiberoptic supply cables, that there was not a problem
24 necessarily with putting dielectric cable within the
25 communication worker safety zone; correct?

1 A So, that's correct. And that -- that footnote
2 specifically refers to fiberoptic supply cables, which
3 means it's referring to fiberoptic cables that are
4 installed in the supply space. The problem is that you
5 cannot install fiberoptic cables in the supply space,
6 unless you are a qualified worker.

7 Q Okay. Well, let me put it this way. Assuming
8 that the cables that are at issue in this case have
9 been installed by a qualified worker, is there any
10 safety problem with them, then?

11 A Well, it seemed to me like from the evidence I
12 saw, these cables weren't in the supply space or the
13 communication space, but in the communication worker
14 safety zone.

15 Q Okay.

16 A So, if that's true, then no, it's still a
17 problem.

18 Q Okay, and in terms of cable types, what is the
19 difference between a supply cable, and other types of
20 cables? Aren't they essentially the same cable it's
21 just the difference in terms of the use?

22 A In this case, yes, the ADSS cable is the same
23 type of cable. The only difference is where it's
24 located on the pole.

25 Q Okay. So I just want to make sure of that. I

1 mean, in terms of functionality, in terms of design,
2 the only difference is the location?

3 A That's correct.

4 Q Okay, and so the fact that you are concluding
5 that this is a supply cable, it's solely based upon
6 its location on the pole, not on -- not any other
7 factors?

8 A That's correct.

9 Q Okay. In your opinion -- I think you are aware,
10 there has been an issue with the street lights being
11 grounded; correct?

12 A Correct.

13 Q Okay, and in terms of the street lights, if the
14 street lights were properly grounded, okay, so again,
15 assuming that the street lights that were at issue --
16 And I think there is a couple hundred street lights
17 that need to be grounded in some way -- would that
18 change the comm space back to what it had been
19 previously?

20 A So this is something that just changed in the
21 latest code revision, in that 2017 code, they changed
22 from requiring 20 inches of clearance from
23 communications cables, to the base of a street light
24 bracket, to 40 inches. Anything that was installed
25 prior to February 1st of 2017 is grandfathered in under

1 the old code, which was 20 inches.

2 So, when they made that change, in order to
3 facilitate things, PPL made a change to our specs that
4 says, we are willing to ground street lights so that
5 you can reduce that clearance. And according to NESC,
6 if you ground the street light, you can reduce that
7 clearance all the way to four inches.

8 Q Okay, and I'm sorry, you said four inches?

9 A Four inches to the base of the street light if
10 the street light is grounded.

11 Q Okay.

12 A You still need to have the 12 inches to the base
13 of the drip loop.

14 Q Okay. Let me put it this way, and again, I
15 think as everyone knows, I have no electrical
16 engineering experience, so I'm doing my best to frame
17 the questions properly for you and your expertise,
18 okay, assuming that these street lights were
19 grounded --

20 A Yes.

21 Q -- and we went to that four inch clearance that
22 you just refused to --

23 A Yes.

24 Q -- based on your knowledge of the issues here,
25 would that resolve the issues with the fiberoptic

1 cables and their clearances?

2 A I don't know what all the issues are --

3 Q Okay.

4 A -- so, it's hard for me to answer that question.

5 Q Would it resolve some of the clearance issues,
6 based on what you know?

7 A It probably would resolve some of them.

8 Q Okay. So again, assuming that the street lights
9 were grounded, that would resolve some of the clearance
10 issues, and it would most likely mean that these poles
11 were within both your specifications, as well as the
12 NESC specifications; correct?

13 A It would resolve it moving forward, yes.

14 Q Okay. Ma'am, if I were to show the types of
15 cable that are at issue, would you be able to recognize
16 those cables?

17 A Possibly, possibly not. I know the types of
18 cables that PPL uses, but I'm not an expert in all of
19 the different types of cables that communication
20 companies might use.

21 Q Okay. I will try then.

22 MR. WINTER: If I can get this marked then, I
23 guess as Defendant's Exhibit 3.

24 (Whereupon, a piece of cable was marked
25 for purposes of identification as Plaintiff's Exhibit

1 No. 3.)

2 MR. WINTER: And if I may approach?

3 THE COURT: You may.

4 BY MR. WINTER:

5 Q Ma'am, I'm showing you what has been marked as
6 Defendant's Exhibit 3. Would you know what that is?

7 A It looks like there is two wires in it, but I am
8 not quite sure what the material is. It has some kind
9 of insulation on it, and possibly a structural member
10 in the center.

11 Q Okay. Could that be consistent with the ADSS
12 cables that we have been talking about all through
13 these hearings?

14 A Oh, I am just noticing now, it does say Corning
15 Optical Cable. So yes, I am assuming that this is some
16 kind of fiberoptic wire.

17 Q And if you know, I mean, would that be the
18 standard size I guess width of and ADSS cable that
19 might be used in this type of case?

20 A I'm not sure. I know that typically when PPL
21 installs this type of cable it's much larger than this.

22 Q Okay, and do you know why -- Is there a reason
23 why you might install a larger fiberoptic cable as
24 opposed to a smaller fiberoptic cable?

25 A Well, as I understand it, fiberoptic cables are

1 designed by the number of glass threads that run
2 through them. So the more glass that's in it, the more
3 data you can send.

4 Q Okay.

5 MR. WINTER: That's all I have, Your Honor.

6 THE COURT: Redirect?

7 MR. D'AMICO: One question.

8 REDIRECT EXAMINATION

9 ON REBUTTAL

10 BY MR. D'AMICO:

11 Q Miss Rippke, is there any circumstance under
12 which PPL can allow a third party to install any
13 fiberoptic cable, whether or not it's ADSS, within the
14 supply zone?

15 A That's a difficult question to answer. I want
16 to say no, except there is one exception.

17 And that is, at one point PPL had it's own
18 telecom business, and they installed fiberoptic cables
19 in the supply space. That business was sold off. As I
20 understand it, they are no longer allowed to add to
21 that system, but they are allowed to maintain it, and
22 they must do so with qualified electrical workers.

23 Q If MAW started its activities in 2015, would it
24 ever have been allowed to install any fiberoptic within
25 the supply zone?

1 A **No, I don't think so.**

2 MR. D'AMICO: Thank you.

3 THE COURT: Recross, Mr. Winter?

4 MR. WINTER: One question.

5 RE CROSS-EXAMINATION

6 ON REBUTTAL

7 BY MR. WITNER:

8 Q In terms of regulations of the supply space, is

9 that space also subject to FCC Regulations?

10 A **I'm not sure I can answer that question.**

11 Q Okay. So again, that's something that is

12 outside the scope of your training and expertise; is

13 that fair?

14 A **Yes.**

15 MR. WINTER: Okay. That's all I have then.

16 THE COURT: May Miss Rippke step down?

17 MR. WINTER: I have no objection.

18 MR. D'AMICO: Yes, sir.

19 THE COURT: You may step down, Miss Rippke.

20 Thank you again.

21 THE WITNESS: Yes.

22 THE COURT: Next witness?

23 MR. D'AMICO: Yes. I would like to recall

24 Mr. Ryan Yanek.

25 THE COURT: Mr. Yanek?

1 RYAN YANEK, having been previously sworn, was
2 recalled as a witness on rebuttal, testified as
3 follows:

4 DIRECT EXAMINATION
5 ON REBUTTAL

6 BY MR. D'AMICO:

7 Q Mr. Yanek, you are still under oath.

8 A Yes.

9 THE COURT: Yes you are still under oath.

10 THE WITNESS: Yes, I understand.

11 BY MR. D'AMICO:

12 Q Did you have an understanding of whether Mr.
13 Wiczkowski indicated he was unfamiliar with the online
14 access portal process?

15 A My understanding was that he was familiar with
16 the online access portal, and the application process.
17 And I had saw that demonstrated in an e-mail that
18 pre-dated my time in the position sent to my
19 predecessor Bill Klokis.

20 MR. WINTER: I have got to object at this
21 point. We are referring to an e-mail that I have never
22 never seen, that was not sent to him. So I think we
23 are implicating the best evidence rule. I believe we
24 also at this point are getting into something that may
25 or may not be hearsay.

1 MR. D'AMICO: It's marked Petitioner's
2 Exhibit 5. He just got ahead of me. I was going to
3 ask him to identify it.

4 THE COURT: All right. You went too fast
5 for me.

6 MR. WINTER: Okay.

7 MR. D'AMICO: It is Petitioner's Exhibit 5,
8 Your Honor.

9 MR. WINTER: All right.

10 MR. D'AMICO: It's premarked. They have had
11 it for months.

12 THE COURT: Overruled.

13 BY MR. D'AMICO:

14 Q Did Mr. Wiczkowski in that e-mail reference
15 anything about using the portal? Could you point that
16 out to the Court?

17 A Yes, he did. And that would be in paragraph,
18 one, two, three -- four. It begins with, I have talked
19 with Andrew from Stine, fourth paragraph.

20 Q Read it out loud, and tell us why it reflects
21 that Mr. Wiczkowski is familiar with the portal, sir.
22 And when was this e-mail sent, by the way?

23 A It was April 7th, 2015.

24 Q Okay, so early 2015?

25 A Correct.

1 Q All right, so -- And I interrupted you.
2 I apologize.

3 A Not a problem.

4 He indicated -- And this says, I have talked
5 with Andrew from Stine. He indicated that for our new
6 build, the best approach is to utilize the existing PPL
7 website, and application process. Would you like me to
8 continue?

9 Q That's good. Is there anything else you're
10 relying on to indicate that he knew what the process
11 was?

12 A Yes. I initially discussed it with him in our
13 meetings that we had in early 2016.

14 Q Did he indicate at that time in April of 2015,
15 when communicating with PPL, that he was going to
16 submit attachments through that process?

17 A Yes, he did.

18 Q I direct your attention to the second to last
19 paragraph of his e-mail. Is that where he indicated
20 that to PPL?

21 A Yes, he did indicate that.

22 Q We heard a lot about -- You used the expression
23 the J and Raise. You are familiar with that; right?

24 A Yes, I am.

25 Q Is that another way of saying we're going to

1 rebuild something?

2 A Yes. That's correct.

3 Q Is there a process an attacher is to follow for
4 a rebuild, or a J and Raise, and does it matter what
5 role that attacher is?

6 A Yes, there is a process. Would you like me to
7 briefly describe it?

8 Q Well, yeah. Let -- And I -- That was a very
9 poor question by me, and I apologize.

10 Are there different types of attachers?

11 A Yes, there are different types of attachers.

12 Q When dealing with something for the City, or for
13 LSC, MAW's intending to rebuild or J and Raise that,
14 what type of attacher are they?

15 A So if MAW was working on behalf -- So we always
16 default to this -- the owner of the cable. That would
17 be the party that would be making the application, or
18 making us aware that there is an authorized party that
19 can work on their behalf.

20 So in the instance where the Safety Coalition;
21 for example, or the City would want someone to work on
22 or rebuild their network, it would be their
23 responsibility to submit the applications for, or to
24 notify us, of someone that would be their designee to
25 make those applications, and to do that work, so we

1 would be aware of it.

2 Q And is there a specific form that they are
3 supposed to follow?

4 A For rebuild we have a specific form.

5 Q And is that something that would have been
6 available on the portal?

7 A That form is actually available on our public
8 facing website, and the instructions to follow that are
9 out there on the website as well.

10 What it involves is filling out the form to
11 notify us where the rebuild work will be taking place,
12 a system map and description of the work to take place,
13 and then we work to issue that permit back for the
14 rebuild work. It's good for a 12-month time period,
15 and it describes; using a J and Raise, or lag,
16 temporary type attachment to keep the existing cables
17 and service within the 12 inches of space that the
18 existing cable has, while a new network is built at its
19 final resting place.

20 Q Did Mr. Wiczkowski ever tell you that MAW had
21 either actively done a rebuild, or was doing a rebuild?

22 A No, he did not.

23 Q If he had indicated to you that they were out
24 there actively working, prior to discovery in November
25 of 2017, what would you have done?

1 A I would have definitely reached out, and I would
2 have taken action sooner to stop what was going on.

3 Q Last week Mr. Wiczkowski talked about pole
4 profile sheets, meaning the paper process that he
5 wanted to submit. Did he offer that up to you at any
6 point in time?

7 A Yes, that was offered to me on a couple of
8 occasions, and I declined to take them in lieu of our
9 online access application process.

10 Q Why?

11 A Because we had advanced from that paper
12 application process back in 2013, so everything was
13 online. So receiving those pole profile sheets didn't
14 do anything to further the applications.

15 Q If he had pole profile sheets though, would he
16 have been able to provide you information consistent
17 with the stipulation of December of 2017.

18 MR. WINTER: Objection.

19 THE COURT: Basis?

20 MR. WINTER: It calls for him to
21 interpretate -- interpret the stipulation of December
22 of 2017. And again, he is not a legal expert. He
23 can't offer a legal opinion on it.

24 MR. D'AMICO: Well, let's -- I will be happy
25 to rephrase it.

1 BY MR. D'AMICO:

2 Q If Mr. Wiczkowski says he had pole profile
3 sheets, would those profile sheets have the information
4 that would have assisted PPL in learning where poles
5 were, consistent with what you believed was MAW's
6 responsibilities under the December 19th stipulation?

7 A If those pole profile sheets were for the same
8 locations where we found unauthorized attachments, it
9 would have assisted us in finding those attachments and
10 auditing them.

11 Q From your perspective, has the way that MAW has
12 gone about this, created issues, besides the idea of,
13 he's not following the right process?

14 A Yes. There's -- There's definitely been an
15 impact to other existing agencies, the City and Safety
16 Coalition, as the result of which this process has
17 unravelled.

18 Q And what other types of impact; if at all, has
19 it had?

20 A I'm sorry. Could you repeat the question,
21 please?

22 Q Sure.

23 Is there any other impact that you can think of,
24 or that you feel is had, by MAW going about it the way
25 that it has, instead of following the application

1 process?

2 MR. WINTER: I'm going to object. I'm not
3 sure what relevance this has to the petitions that are
4 currently before the Court.

5 MR. D'AMICO: Your Honor, only the
6 complications it created is relevant to the issue
7 of --

8 THE COURT: Of a remedy? Part of the
9 problem, there's been a lot of discussion here of what
10 interruption would be consequential as the result of a
11 remedy that might be imposed.

12 Objection is overruled.

13 BY MR. D'AMICO:

14 Q Do you understand the questions, Mr. Yanek?

15 A I believe I do.

16 So the way the process has been gone about,
17 there could be unintended consequences to removing what
18 we believe is an unauthorized attachment, because there
19 has been no disclosure of information, of how the
20 network would be impacted.

21 We have heard a lot of talk that it would be
22 impacted if you remove the wrong cable, but no
23 information about what that impact is, and where the
24 impact would be. There has been no facts presented for
25 us to understand what that means, other than there has

1 been some statements made about it.

2 The way this has been gone under, has made it
3 very difficult for us to understand what the impact
4 could be, and very difficult to administer our
5 contract.

6 Q Tell me this, when you learned that MAW had
7 undertaken work as part of an alleged rebuild, or
8 J and Raise thing, did you seek out any information
9 from Mr. Wiczkowski about that?

10 A I did not reach out to him directly as the
11 result of that.

12 Q Did you ever ask him to show you an example when
13 you -- say, when you met with them out in the City of
14 Lancaster?

15 A Yes. The one time we did have a meeting in the
16 field. It was the late December meeting where PPL,
17 MAW, and representatives of the PUC were all gathered
18 together in Lancaster.

19 Q If I may correct you. May it have been early
20 December?

21 A It would have been early December.

22 Q Okay. You said late. I just wanted to, make
23 sure.

24 A I apologize.

25 Q There was only one on site meeting out there;

1 correct?

2 A Yes, and that was in early December.

3 Q Do you recall whether or not the issue of
4 rebuild -- Once you learned of it, did you raise any
5 issue with Mr. Wiczkowski at that time?

6 A I did.

7 Just to recap a couple of highlights of the
8 events, we went to two different locations where we
9 looked at what I had identified in my own survey as new
10 build.

11 And so, as we were wrapping up our discussions
12 at the second location, I offered to Mr. Wiczkowski, is
13 there a location within the city where we can go and
14 take a look at existing J and Raise, and rebuild
15 activities that you were describing to us earlier in
16 the day?

17 The response I received was, no, there is no
18 location we can go to. So that struck me as odd that
19 the description of what was being undertaken, a J and
20 Raise and a rebuild, and the meeting taking place
21 on-site with all parties, we couldn't go look at one
22 instance within the whole city to understand what was
23 going on.

24 Q And does that put -- And did you -- That
25 necessitated you having to ask Katapult to identify

1 some of these conditions?

2 A **Yes, it did.**

3 Q On Friday Mr. Wiczkowski attempted to, I
4 believe, suggest the splice cases strapped to the
5 poles, fit the definition of a cabinet under the
6 standard. Were you present -- Do you recall that
7 testimony?

8 A **I do recall that testimony.**

9 Q Do you agree with this contention?

10 A **No, I don't.**

11 Q Okay. Why not?

12 A **Because the splice case is different than**
13 **cabinet. I think the definition of cabinet was being,**
14 **say, creatively reframed to try and encompass the**
15 **splice enclosures, which are typically located out in**
16 **the strand; certainly never in the communication worker**
17 **safety space.**

18 Q Is there an issue -- There is a reason why Mr.
19 Wiczkowski's company attached splice boxes to the pole;
20 correct?

21 A **Yes.**

22 Q Why is that?

23 A **Because they did not have any permissions to**
24 **attach them, period. I am not certain why they**
25 **attached them to the poles where they did.**

1 Q Could the cable that they were utilizing have
2 had in-line splice boxes and support them?

3 A I don't believe so.

4 Q So they had to do something outside the
5 standard, in order to splice?

6 A Yes, that's my understanding.

7 Q Is that because the ADSS, while it's
8 self-supporting, can't support other things?

9 A Yes.

10 Q Is there any circumstance under which a splice
11 box would be allowed, or communication cable, within
12 the communication worker safety zone?

13 A No. None that I can think of.

14 Q And I apologize. If we did go over this, I'm
15 sure counsel will object, but even if you attach a
16 cabinet, or something to the pole, is a strap --
17 strapping system, is that consistent with PPL standard?

18 A No. All of those have to be mechanically
19 fastened to the pole. And the best method would be
20 through bolting them, because that is the most secure.

21 Q Finally, have there been other occasions when
22 you've gone over -- You talked about meetings with Mr.
23 Wiczkowski. Have there been occasions where you have
24 gone over in detail the reasons why you were rejecting
25 his attempts to short circuit, either the process, or

1 the standards?

2 A Yes.

3 Q I'm going to direct your attention to
4 Petitioner's Exhibit 45. Do you recognize that e-mail
5 trail?

6 A Yes, I do.

7 Q Could you identify -- First of all, give the
8 Court just a general date of start finish, and what the
9 trail involves?

10 A Yes. The content of this particular e-mail is a
11 summary following our third meeting, to discuss the
12 process, and the project. It took place in the midst
13 of 2016, so some of the e-mails or correspondence have
14 an early July date on them. Some of that stretches to
15 late July.

16 But this was a summary of all the different
17 points that we had, that had been requested, that we
18 had considered, and that -- for each case,
19 justification as to why we would consider the request,
20 but ultimately I had to take the position to decide
21 against it.

22 So this was a summary of items that we had
23 discussed in our prior meetings. And this was to
24 document the final outcome of the third meeting.

25 Q And what -- Did -- Would that point by point

1 explanation begin at page 406, and go through 408, sir?

2 A Yes, it does.

3 Q I am going to direct your attention to No. 11,
4 which is on page 408 of Petitioner's Exhibit 45. Do
5 you recognize that?

6 A Yes, I do.

7 Q Is that something you wrote?

8 A It is.

9 Q Can you explain to the Court the significance of
10 that issue?

11 A Certainly. That point addresses the request
12 for, over the course of the project, MAW to both build
13 out new plant, as well as remove existing plant, to
14 some of the existing attachers.

15 In this case it was possibly attachments
16 related to the City of Lancaster. And what I had
17 indicated was, we would certainly allow that kind of
18 work to happen in parallel, as long as the party that
19 was removed, the City of Lancaster, gave us
20 authorization that MAW could work on it and remove
21 those facilities.

22 And ultimately those would have to be applied
23 for in a removal permit so that we knew that those
24 attachments were coming off of the poles.

25 Q And at that point in time, did you have any

1 understanding that actual work had been done by MAW to
2 move the so-called obsolete attachments of third
3 parties?

4 A No, I didn't.

5 Q Did he volunteer to you that he has already
6 begun that work?

7 A No, he did not.

8 Q Did he volunteer to you that he had already
9 completed that work?

10 A No.

11 Q Do you think there was -- you had enough
12 interaction with Mr. Wiczkowski that if he wanted you
13 to know what he was doing, he could have told you?

14 A Yes.

15 Q Even if he didn't want to follow the process?

16 A Yes. There were ample opportunities to alert me
17 to what was going on.

18 Q Did there ever come a point in time when you
19 were not unwilling to take a call from Mr. Wiczkowski?

20 A No.

21 Q Was there ever a point in time when you would
22 ignore Mr. Wiczkowski if he sent you an e-mail?

23 A No.

24 Q You just gave him the answers he didn't want to
25 hear?

1 A **Correct.**

2 MR. D'AMICO: That's all I have, Judge.

3 Thank you.

4 THE COURT: Cross-examination?

5 MR. WINTER: Yeah.

6 CROSS-EXAMINATION

7 BY MR. WINTER:

8 Q Just a few questions. Starting with the e-mail

9 I believe that was Petitioner's 5. That e-mail doesn't

10 actually say that Mr. Wiczkowski is familiar with the

11 portal; correct? All it's saying is he has been

12 advised to use the portal?

13 A What is indicated there was, he was -- he talked

14 with Andrew and indicated the best approach was to

15 utilize the online portal.

16 Q Right. So again, it indicated that he is

17 familiar with the fact that the portal existed, but

18 there is nothing in there that indicated that he

19 ever actually used the portal to any significant

20 extent?

21 A Not in that e-mail alone, no.

22 Q Nor in any of these other e-mails; correct?

23 A When you say any of these other e-mails can you

24 be --

25 Q Well, by --

1 A -- more specific, please?

2 Q Well, we have just gone through several e-mails
3 that were exchanged by Mr. Wiczkowski and yourself,
4 okay. And again, none of that indicates that Mr.
5 Wiczkowski was proficient, had any type of regular use,
6 had any type of great understanding of this portal
7 system; correct?

8 A So you are referring to that -- You're looking
9 at Petitioner's Exhibit 5, and just those four or five
10 e-mails --

11 Q Right.

12 A So in the content of that e-mail itself, no,
13 those words are not there.

14 Q Okay. Now, in terms of this, just so we're
15 clear on this, you were disappointed in the information
16 that you received after the December 19th agreement;
17 correct?

18 A Yes, I was.

19 Q However -- I mean, you received lists, correct,
20 multiple lists, from MAW; correct?

21 A Well, what I received was the list that I
22 provided, with nondescript comments back on them. So
23 there were no additional lists provided, aside from the
24 Excel Spread Sheet with the block, and street, and
25 names and numbers --

1 Q Right.

2 A -- on them. If that's the list that you're

3 referring to --

4 Q Right.

5 A Okay. So yes, that was the only list that they

6 produced, which I didn't produce first.

7 Q Okay. So, again, they responded to your list.

8 They also produced an Excel spread sheet, which listed

9 how many locations on it? Round about, ballpark?

10 A Ballpark, I believe it was over 50 -- 50

11 streets.

12 Q Okay, and those 50 streets, those had, what

13 dozens of pole numbers on each street -- or dozens of

14 poles on each street?

15 A There would be dozens of poles on the street,

16 but there were no pole numbers listed in the document.

17 Q Right, right. So again, you were told where the

18 facilities that MAW had installed, were located;

19 correct?

20 A I was --

21 Q In terms of streets?

22 A In terms of streets, yes.

23 Q Okay. Now, in terms of this -- And this is

24 something that has continued to confuse me about this,

25 since Friday, the -- is PP&L requiring applications to

1 be made through the portal system, for service drops?

2 A Yes.

3 Q Okay, and just correct me if I'm wrong. I

4 thought the general idea of a service drop was a

5 telecommunication -- a communication provider, or a

6 cable company, or whatever we want to call them --

7 again, I don't know all the technical terms you guys

8 use, okay -- they want to go ahead, and they want to

9 run a line to somebody's house; right?

10 A Correct.

11 Q That's the purpose of a service drop?

12 A Correct.

13 Q Now, my understanding is the typical application

14 procedure takes what, two months, three months?

15 A The -- So the typical application procedure for

16 a new attachment, following with the FCC times, it

17 varies based on the number of poles applied for --

18 Q Okay.

19 A -- but yes, it can take a couple of months.

20 Q Okay. And in terms of the service drops, the

21 whole idea of a service drop is -- And I did this

22 myself a number of years back. I want to get cable

23 installed in my house, I call up the cable company, I

24 say can you run cable? They show up two days later,

25 they do the service drop, and congratulations, I now

1 have cable TV into my house. So again, why is the
2 service drop application required with that type of
3 timeline?

4 A The service drop application is required so that
5 we understand what equipment is being attached to our
6 poles.

7 And the service drop application process, when
8 they come in, we're notified, we release those
9 applications immediately. We do not go out and do
10 survey engineering and construction for service drops
11 because they would be coming off of lawful documented
12 attachments on a pole to a premises. So it is a
13 different process, but it's still the same tool to put
14 the submissions in. It's just we handle those
15 differently.

16 Q Okay. Now, obviously we talked on Friday, the
17 2003 contract did not require service drops to have
18 applications; correct?

19 A The language there did not specifically call
20 that out.

21 Q Okay. Now, obviously over time, that changed at
22 some point?

23 A Yes.

24 Q When did that change?

25 A I don't know the exact date of the policy

1 changes other than, for my whole time in this position
2 that policy has been consistent.

3 Q Okay, and I know you said it, I mean, you have
4 been in this position, was it two years?

5 A Two-and-a-half years.

6 Q Okay. All right. And do you know if in any
7 way, MAW was informed of that policy change?

8 A I don't know.

9 Q Okay. Are you familiar with the policy in
10 relation to service drops on the PP&L website?

11 A Yes, I am familiar with it.

12 Q Okay. Do you know where in there it talks about
13 the requirement for an application for service drops?

14 A Not sure I understand the question, other than
15 the customer facing website gives an avenue to the
16 portal to make those.

17 Q Okay. So what I have been looking at was one of
18 the things that has been discussed about them Friday, a
19 and this is a document called requirements for the
20 attachment of communication cable facilities on PPL
21 poles. Are you familiar with this document?

22 A Are you referencing our Specification 6-01-140?

23 Q In fact, I am.

24 A Okay. Then yes, I am familiar with that
25 document.

1 Q Okay. Did that document anywhere in that
2 document discuss the requirement of an application for
3 a service drop?

4 THE COURT: Do you have it in front of you?

5 THE WITNESS: Yeah. If you give me a moment
6 to turn to --

7 THE COURT: Sure.

8 THE WITNESS: -- Petitioner's Exhibit No. 2,
9 what I will say -- I will save everyone the time of me
10 paging through the pages here.

11 These specifications are technical
12 specifications on the content, and how the attachments
13 are to be made. These are not intended to be full
14 procedural reference on exactly how this is done.

15 BY MR. WINTER:

16 Q Okay.

17 A So this is how attachments must reside on the
18 poles. They don't provide every detail of how we get
19 there.

20 Q Okay. So is your answer then, from reviewing
21 Document 6-01-140, that it does not appear anywhere in
22 there, that an application is required for a service
23 drop?

24 A For a service drop, the appropriate spot for
25 that to be referenced would be elsewhere, not in here.

1 So I will agree that it may not give that direction in
2 here.

3 Q Okay, and specifically where would that
4 information be located for a telecommunications
5 provider like MAW? How would they readily find that
6 you would change the policy?

7 A Well -- So the -- without seeing exactly the
8 language on our website, I know there is an avenue to
9 provide that there, making a change.

10 You know, as far as being aware of the policy
11 change, I don't know how that was handled in the past.
12 Policy change in the future, we would certainly make
13 that information available on that public facing site.

14 Q And you don't know where it would be available
15 on the public facing site?

16 A There would be verbiage on the site that would
17 detail that.

18 Q Okay. And let me be clear about that. You have
19 used the term public facing site several times;
20 correct?

21 A Yes.

22 Q Okay. Am I understanding you correctly, the
23 public facing site is the website that anyone in the
24 general public can look at; correct?

25 A Yes.

1 Q Okay. In fact, it's supposed to be a general
2 website where if me as a PP&L customer wants to go
3 ahead and find out more about PP&L's operation, I could
4 look at that website?

5 A There is a lot of content out there about PPL.
6 Yes, you could find many things there.

7 Q Okay, and somewhere on a separate, either
8 portion of that site, or a separate site entirely,
9 there is content for providers like MAW; correct?

10 A Yes.

11 Q Okay, and what you were saying, if I understood
12 your testimony correctly, is a change of policy would
13 not be available on a site that was specifically
14 designed for providers like MAW, it would be somewhere
15 on the general public website?

16 A I'm sorry, could you please repeat that?

17 Q If I understood what you just testified to, the
18 information as to the requirement for an application
19 for a service drop, that is information that would not
20 be available on the site -- on the portion of the site
21 that's geared towards MAW, but it would be somewhere,
22 and you're not sure where, on the public facing portion
23 of the site?

24 A Well, the third party attachers portion of the
25 site is where the avenues are to apply for the new

1 build, for the re-build, for the service drops, for
2 overlashing.

3 So, without looking at it directly in front of
4 me, I can't tell you with 100 percent certainty that it
5 is there, but it's my recollection that's where it's
6 residing.

7 Q Okay.

8 Now, we talked a bit about the luminaires, the
9 street lights. And again, I was struggling for this
10 number earlier today. Of the issues that you
11 discovered, approximately how many of them had to do
12 with the street lights?

13 A Don't have an approximate number.

14 Q Okay. I mean, I know we had your chart before,
15 and if you were to look at your chart, are you able to
16 refresh your recollection from that?

17 A No, because the issue at hand is the
18 unauthorized attachments --

19 Q Okay.

20 A -- and the street lights is one of the reasons
21 why they are unauthorized, and can be clearance issues.
22 So they categorize them that way, but the issue at hand
23 is the unauthorized attachment, not the clearance of
24 the street light bracket.

25 Q Okay. One of the things that has been discussed

1 extensively, is a large part of the problem is the
2 street lights are ungrounded; correct?

3 A I don't know if I would necessarily say that
4 it's a problem. It's certainly a condition on a pole.

5 Q Okay. And would you agree, if the street lights
6 were properly grounded, that would reduce that
7 clearance to four inches; correct?

8 A I agree that if they were grounded it would
9 reduce the clearance down to four inches.

10 Q Okay, and would you agree with me that if that
11 clearance were reduced to four inches, that would in
12 turn remedy some of the other attachment issues that
13 have been identified throughout your documents?

14 A Well, since they weren't applied for, we didn't
15 get to do a full survey or engineering analysis --

16 Q Right.

17 A -- so that individual condition, the clearance
18 to that bracket, it would remedy, but there could be
19 other conditions as well that have to be accounted for,
20 and I can't speak to those.

21 Q And that's a fair answer. I appreciate that.

22 In terms of the cabinet issues that you
23 testified about earlier, if the cabinets were lowered,
24 and if they were properly attached, would that resolve
25 your issues with those?

1 A We don't currently have anything in our
2 specification to handle a situation like that. So we
3 would have to start working with our standards group,
4 if that was something that upon review could be
5 accommodated. We don't currently have something in our
6 standard that would allow that.

7 THE COURT: Well, if an application were
8 made from the beginning, and that the -- the attachment
9 -- the -- We are talking about the splice box?

10 MR. WINTER: Right. We are talking about
11 the splice box.

12 EXAMINATION BY THE COURT

13 THE COURT: If the splice box was lowered?

14 MR. WINTER: Right.

15 Q Would that be approved?

16 A If they were applied for?

17 Q Yeah.

18 A And that was specifically requested?

19 Q Right.

20 A There would have to be some conversation about
21 that. So the application wouldn't be complete at that
22 point, because we would have a request for something
23 that was non-standard that we don't address in our
24 specifications.

25 At that point, we would have to have a

1 discussion with our standard group about how do we
2 address something like this, because it's something we
3 have never dealt with before.

4 Q I guess my question is this, as I understand it,
5 one of your complaints, PPL's complaints, is that these
6 splice boxes are up too high?

7 A Yes.

8 Q And I think what Mr. Winter is asking is, okay,
9 if you went on out there with a bucket truck, and you
10 lowered it, and reattached it to the pole, same thing,
11 just lowered it, to your specifics, would that be good
12 enough?

13 A Not solely on its own, because -- not that
14 activity in and of itself. That could be potentially
15 an outcome, but we would have to look at other
16 conditions on the pole as well.

17 MR. WINTER: Right.

18 BY THE COURT:

19 Q Assuming nothing else was affected, they just
20 lowered the box. That was the only violation -- two
21 violations, one they didn't seek the application
22 beforehand; right?

23 A Yes.

24 Q I get that. And secondly, it's too high.
25 So let's say, all right, forget the fact that

1 they didn't make the application. If they just lowered
2 the box, and there were no other violations, would that
3 be acceptable?

4 A So if I can -- Let me try answering it this way;
5 let me know. So provided that we -- they applied,
6 there was our survey and engineering analysis; there
7 were no other issues. The only make ready would be
8 then, could qualified workers move that down, and by
9 some use standard that doesn't exist, fasten that so
10 they could safely be attached to the pole, that would
11 remedy that situation. That's something that we could
12 consider.

13 But I want you to understand that there is
14 work that we would have to do to try to figure out
15 how to accommodate that request, meaning that we don't
16 have a specification right now that we could use for
17 that.

18 Q Well, if you don't have a specification for it
19 now, if they made the application, how would you
20 address it?

21 A I would work with our standards group to see,
22 how could we safely accommodate that request on the
23 pole?

24 BY MR. WINTER:

25 Q And just so we are clear with this issue, the

1 splice case issue, the cabinet issue, whatever we want
2 to call it, I mean, that's occurred dozens of times;
3 correct?

4 A Found many instances of that throughout the
5 City.

6 Q Okay, and again, looking at your own notes, any
7 ballpark figure, how many of these issues that we are
8 dealing with, have to deal with locations of those
9 splice cases --

10 THE COURT: Only.

11 MR. WINTER: -- only?

12 THE COURT: That is, no other violation?

13 THE WITNESS: No other violations but the
14 splice case, I don't have stats on that, because again,
15 I didn't view it through that lens. I looked at it as
16 an unauthorized attachment --

17 BY MR. WINTER:

18 Q Understood.

19 A -- so I can't answer that.

20 Q And just so I'm clear about that, other than the
21 location, is there anything else inherently dangerous
22 about using a splice case of the type that MAW used in
23 this case?

24 A The attachment method. Could be the Deltac
25 straps, or your zip ties, or whatever -- whatever you

1 want to agree upon --

2 Q Right.

3 A -- for the fastening method.

4 Q Okay.

5 A That's the other issue.

6 Q Okay. And I believe you said you wanted it

7 bolted to the pole --

8 A (Whereupon, the witness nodded in the

9 affirmative.)

10 Q -- so, like I said, they take off the Deltec

11 straps, it gets moved down, it gets bolted to the pole.

12 Is it safe -- from what you can see, assuming no other

13 problems, is it safe at that point?

14 A So, me sitting here, I'm not qualified to answer

15 that. It would have to go through our standards group.

16 But that is certainly something that we could look at,

17 and --

18 Q Okay.

19 A -- we could look at what type of hardwares, what

20 type of bracket is on the market that could accommodate

21 that splice case in that location. That's certainly

22 something we could do, if the rest of the process is

23 being followed.

24 Q Understood. Okay.

25 Sir, if you know, why is it that when PP&L

1 changes the requirements, they don't send out a letter,
2 or an e-mail, or some type of notification directly to
3 providers like MAW?

4 A Why is that? I can certainly say it has never
5 presented a problem with anyone else before.

6 Q Okay.

7 A And in this instance, it's certainly something
8 that I will look at going forward.

9 Q Okay. And again, just to be clear -- And we are
10 talking about Petitioner's Exhibit 2, which we were
11 just talking about. I believe, and I want to make sure
12 I am correct, you had testified previously that to your
13 knowledge, MAW was never directly notified of that in
14 any way. The changes were merely posted on your
15 website?

16 A Yes. Sitting here, I can't recall specifically
17 notifying MAW of that, other than keeping it current on
18 the website.

19 Q Can you clarify one thing about this for me?

20 There is two dates on there. Okay, up at the
21 top it says effective date October 30th of 2017, and
22 then it says there is a printing date of November 22nd
23 of 2017. So when did this actually become posted in
24 some way that a member of the public could have found
25 it?

1 A So I don't recall the exact date, but I know
2 that it was in early November, following the completion
3 of this revision.

4 Q Okay. All right.

5 MR. WINTER: I believe that's all I have.
6 Thank you.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MR. D'AMICO:

10 Q I'm going to ask you to turn to Petitioner's
11 Exhibit 5.

12 Counsel was asking you about how Mr. Wiczkowski
13 may or may not know how to utilize the portal. I'm
14 going to direct your attention to the -- I guess it's
15 the third to the last paragraph.

16 Did he not say to your predecessor, on
17 April 7th, 2015, Andrew indicated that the new
18 attachment approval process is typically around two
19 weeks, therefore we will submit our new attachments in
20 logical segments that will facilitate the construction
21 and approval of our engineering?

22 A Yes. That's what it says there.

23 Q And the new attachment process is the online
24 portal?

25 A Yes.

1 Q Actually, at that point it's not that new; is
2 it?

3 A No. It's been in place since 2013.

4 Q Counsel asked you some questions about the
5 so-called service drops. And I'm trying to recall
6 exactly how he asked it to you, but is the issue that
7 he was suggesting, that service drops are consistent
8 with what you believe both the NESC and PPL's contract
9 provides as a service drop?

10 A No.

11 Q Why not?

12 A Because for starters, you are looking at service
13 from the existing authorized attachment to serve an end
14 customer. And that's generally from one pole to an end
15 customer. It's certainly sometimes where the point of
16 origin and point of termination may involve a second
17 pole, but certainly not 30 poles in a row.

18 So I think the justification of using service
19 drop, was grossly inflated to ultimately facilitate a
20 build out of the network, without following the
21 process.

22 Q Would the splice boxes that counsel was asking
23 you questions about, are those utilized for service
24 drops?

25 A They are -- So they are to facilitate conversion

1 from one fiber to another. So yes, they can be used,
2 and they are used to facilitate service drops.

3 Q Counsel was asking you questions about how --
4 whether or not could it be lowered. Would that require
5 then running cables up and down the pole itself, all
6 the splicing?

7 A Yes.

8 Q Doesn't that interfere with the lineman's
9 ability to climb?

10 A Yes, it would.

11 Q Is that why your standards require splice boxes
12 to be out on the wires themselves?

13 A Yes. The standards to address how the -- how to
14 do that properly.

15 MR. D'AMICO: Thank you.

16 THE COURT: Recross?

17 MR. WINTER: Just on that last point.

18 RE CROSS-EXAMINATION

19 BY MR. WINTER:

20 Q And again, this is my own ignorance of this,
21 fiberoptic cables, and maybe you know this, if I can
22 approach. We had shown Defendant's Exhibit 3. Do you
23 know what that is?

24 A So based on the earlier discussion that we had
25 here, I am seeing this as fiberoptic cables.

1 Q Okay, and would that be consistent with the type
2 that MAW is using throughout the project that has been
3 done here?

4 A That I don't know.

5 Q Okay. You hadn't looked at it that closely?

6 A No. I could only view it from ground level.

7 Q Okay. Leading up to that last point, in terms
8 of splicing fiberoptic cable, there had been testimony
9 earlier that fiberoptic cable like that could not be
10 spliced on the actual wire itself; correct? It had to
11 be spliced on a pole?

12 A If I recall correctly we were talking about the
13 location of the splice box itself, not the splicing
14 activity.

15 Q Okay. Could the splice box be on a wire between
16 poles for fiberoptic cable like that?

17 A There is -- Yes, there's plenty of instances
18 where splice cases on fiberoptic cable is built with
19 stranded messenger egress.

20 Q All right. So the splice case, I mean, could be
21 on the pole, could be on a different location in the
22 pole, or it could; in fact, be on the wire? Is that
23 your testimony?

24 A Yes.

25 Q Okay.

1 MR. WINTER: I believe that's all I have
2 then.

3 MR. D'AMICO: Your Honor, with that I rest
4 other than I'm not sure I moved for the admission of my
5 exhibits on Friday. So I would like to clean up.

6 THE COURT: I don't know, but -- Any
7 objection to the Plaintiff's exhibits? I don't think
8 you did move them in.

9 MR. WINTER: I don't recall them being moved
10 in. And my issue is, I don't believe that Plaintiff
11 has identified all of their exhibits during this case.

12 MR. D'AMICO: That's what I was going to
13 suggest, which ones I have identified, Your Honor. But
14 it's probably easier to just point out the ones I did
15 not identify.

16 MR. WINTER: Okay.

17 MR. D'AMICO: May I just for a moment?

18 THE COURT: Go ahead.

19 MR. WINTER: Again, Your Honor, I believe
20 that the exhibits that were identified to the Court may
21 be admitted. I'm not objecting to any of them. There
22 are approximately 10 to 15 exhibits that Mr. D'Amico
23 has just shown me on his list, which he does not
24 believe he identified. So obviously I would object to
25 those.

1 MR. D'AMICO: And I was just going to
2 identify -- I'm more than happy to identify the ones
3 that I --

4 THE COURT: Well, which ones are you moving
5 into evidence?

6 MR. D'AMICO: Your Honor, 1 through 11.

7 THE COURT: One through eleven.

8 MR. WINTER: I agree that 1 through 11 were
9 all discussed, and were all identified.

10 MR. D'AMICO: 12 through 15?

11 MR. WINTER: I agree.

12 MR. D'AMICO: Seventeen.

13 MR. WINTER: I agree.

14 MR. D'AMICO: 21 to 23.

15 MR. WINTER: I agree.

16 MR. D'AMICO: 25 to 28.

17 MR. WINTER: I agree.

18 MR. D'AMICO: 30 to 31.

19 THE COURT: 30 and 31?

20 MR. D'AMICO: Yes, Your Honor.

21 MR. WINTER: I agree.

22 MR. D'AMICO: 34 through 41.

23 MR. WINTER: I agree.

24 MR. D'AMICO: 45 and 46, 46 being multiple
25 parts, 46 A and B.

1 MR. WINTER: I agree.
2 THE COURT: Okay.
3 Surrebuttal?
4 MR. WINTER: Can we take five minutes,
5 possibly, Your Honor?
6 THE COURT: Sure.
7 MR. WINTER: Okay. Thank you.
8 (Whereupon, a five-minute recess was taken.)
9 AFTER RECESS
10 THE COURT: Mr. Winter, is there any
11 surrebuttal?
12 MR. WINTER: No, Your Honor. We are
13 satisfied with what has been presented. And in terms
14 of -- I think I have got two exhibits hanging out
15 there, so I would move those in.
16 THE COURT: Admitted without objection?
17 MR. D'AMICO: Which two were they? I
18 thought he moved on Friday, so --
19 MR. WINTER: Right.
20 MR. D'AMICO: There was something that you
21 used today, was there not?
22 MR. WINTER: Oh, I'm sorry, just one out
23 there then.
24 MR. D'AMICO: That was -- Yes, the cable.
25 MR. WINTER: Yep.

1 MR. D'AMICO: Okay.

2 THE COURT: All right, does -- Do we have
3 all the exhibits? Make sure that we have all the
4 exhibits.

5 MR. WINTER: You appear to have mine, yes.

6 THE COURT: You do?

7 MR. D'AMICO: And I have --

8 THE COURT: You have the book?

9 MR. D'AMICO: Yes.

10 MR. ALBERT: Your Honor, I have -- The City
11 of Lancaster has one witness who I would like to make
12 an offer of proof about. Perhaps we can avoid the
13 necessity of calling her as a live witness.

14 THE COURT: Okay. The offer of proof -- The
15 name of the witness is Donna Jessup. She is the
16 Operations Manager of the City of Lancaster.

17 She would testify that the City of Lancaster
18 has 121 traffic lights, 92 of which are a synchronized
19 loop. They are controlled by four master units. If
20 there was an interruption of service at any point along
21 synchronized loop, depending upon the relationship of
22 where the interruption was in relation to a Master, it
23 would affect anywhere from one to 26 intersections.

24 THE COURT: Okay.

25 MR. ALBERT: And the effect would be that

1 the intersections involved would become unsynchronized.
2 The traffic would not be able to move in a smooth
3 fashion. It would create backup.

4 Also, Miss Jessup would testify that as
5 far as the camera system that the chief testified to,
6 that system performs an important goal for the City of
7 Lancaster as far as the Department of Public Works, in
8 that it allows the city to monitor activities in parks
9 and public places, such as activities of the homeless,
10 vandalism, things like that, needs for city services.

11 And also, the city uses it in a civil manner
12 to identify hit and run drivers who cause damage to
13 city property. And the city saves 50 to \$75,000 a year
14 by being able to identify hit and run motorists who
15 damage city property, because we have camera footage,
16 we can track those people and identify them and make
17 claims with their insurance companies.

18 That would be the offer of proof as to what
19 Miss Jessup would testify to if called.

20 THE COURT: Mr. Winter, any objection to
21 receiving the offer of proof?

22 MR. WINTER: Your Honor, no. We are willing
23 to enter into a stipulation to those facts.

24 THE COURT: Mr. D'Amico?

25 MR. D'AMICO: Your Honor, I do have some

1 questions.

2 Maybe they can be addressed by additional
3 offer, but I would ask explanation of the redundancies
4 in the system, as well as the back up to the system.

5 MR. ALBERT: Redundancies and back up -- I'm
6 not -- I'm not qualified. If you want to -- If you
7 want to ask questions on that --

8 MR. D'AMICO: I will accept his offer of
9 proof, but I think I have to ask --

10 THE COURT: Okay.

11 MR. D'AMICO: -- the witness certain
12 questions.

13 THE COURT: Miss Jessup, why don't you come
14 on up.

15 Since you made the trip from Lancaster,
16 we'll give you the -- We'll give you the full
17 treatment. We don't want to deprive you of the
18 opportunity to be sworn in, and to testify in Lehigh
19 County. You've probably never done that before.

20 THE WITNESS: No, I didn't.

21 THE COURT: New experiences are good.

22 All right, we're going to swear her in to
23 tell the truth.

24 DONNA JESSUP, being called as a witness,
25 was first duly sworn, and testified as follows:

1 DIRECT EXAMINATION

2 BY THE COURT:

3 Q Your name is Donna Jessup?

4 A **Correct.**

5 Q Okay. And Miss Jessup, you're the Operations
6 Manager for the City of Lancaster?

7 A **Correct.**

8 Q And you heard the representation, or what we
9 call the offer of proof, by Attorney Albert on behalf
10 of the City?

11 A **Yes.**

12 Q And that's accurate?

13 A **Yes, sir.**

14 Q Okay, and Mr. D'Amico now has some questions
15 that he would like to follow up with you.

16 A **Okay.**

17 MR. D'AMICO: Just to be clear, Your Honor,
18 I am not going to be questioning necessarily on the
19 offer of proof.

20 THE COURT: I understand that. That's
21 accepted. You have accepted the offer of proof; you
22 just have some follow-up questions.

23 MR. D'AMICO: Yes.

24 THE COURT: Okay.

25

1

CROSS-EXAMINATION

2

BY MR. D'AMICO:

3

Q With respect to your system, Ma'am, does the city -- Does not the city have either a redundancy, or a backup to address this issue when lights go out?

6

A No, we do not. We have a very old system.

7

Q Do you have a diagram of your system?

8

A I do not. My technical people -- My technician does. I do not.

9

10

Q Would that information have been shared with MAW, because it was taking over the signal to operate this system?

11

12

13

A I cannot answer that. I wasn't involved in those meetings.

14

15

Q Okay. So you don't know whether or not -- Do you know whether or not -- what MAW has done, would impact your system if PPL removed its unauthorized attachments?

16

17

18

19

A It's my understanding that that if he did -- I don't know a whole lot about it. Again, I'm not privy to those meetings, but from what I do understand, if that is done, it would cause issues with our traffic signals.

20

21

22

23

24

And downtown -- Our traffic signals maintained downtown are PennDOT highways. So we have a lot of

25

1 traffic going in and out of our city, and it would be
2 an issue in our downtown area.

3 Q So would it have been prudent for the City to
4 have been assured that MAW was following the proper
5 process so it didn't jeopardize this crucial system
6 that you have?

7 MR. ALBERT: I'm going to object to this,
8 Your Honor. If the offer has been accepted, this is
9 collateral to what counsel represented he was going to
10 examine the witness about.

11 THE COURT: Well, I don't know that she is
12 capable of answering that question.

13 THE WITNESS: I'm not.

14 THE COURT: I think that's not within her
15 wheelhouse.

16 I think you are able to ask her about the
17 system that they have, and also about any redundancies,
18 and what the interruptions might mean to the City.

19 BY MR. D'AMICO:

20 Q So you don't have an appreciation of what may
21 take -- what may render the system inoperable as it
22 relates to MAW; is that correct?

23 A Correct.

24 Q So you're offering an opinion that you don't
25 want an interruption in the system, but you can't say

1 with any specificity that anything PPL might do to
2 remove an unauthorized attachment, would affect that
3 sytem; correct, Ma'am?

4 A **If it does affect the system, again --**

5 Q That's not my question, Ma'am.

6 A **Okay.**

7 Q That's not my question. You have nothing to
8 offer that it would affect the system? You don't know
9 one way or the other; do you, Ma'am?

10 A **I do not know.**

11 Q I'm sorry to interrupt.

12 A **That's okay.**

13 Q Ma'am, you certainly -- Are you here to speak on
14 behalf of the City?

15 A **I am.**

16 Q So, you would agree with me, the City would have
17 no trouble working with PPL, in an expeditious manner,
18 to insure that they are able to enforce their contract
19 rights if they were to work cooperatively with you to
20 address your concerns about the traffic light system;
21 is that correct?

22 A **Those decisions are not mine to make.**

23 Q I just asked you if you were the person here on
24 behalf of the City?

25 MR. ALBERT: It's been asked and answered,

1 Your Honor.

2 THE COURT: I think she's here on behalf of
3 the City to a limited -- to the limited extent of her
4 portfolio. She's not the City's representative in this
5 litigation. Fair enough, Mr. Albert?

6 MR. ALBERT: Yes, Your Honor. That's
7 correct.

8 BY MR. D'AMICO:

9 Q So you cannot offer any protest to say the City
10 couldn't work with PPL Electric so that your system
11 operates while they enforce their rights?

12 MR. ALBERT: Same objection, Your Honor.
13 Also beyond the scope of her knowledge.

14 THE COURT: I think what she's just here to
15 testify is that interruption to the system would be
16 very dislocating to the City of Lancaster?

17 THE WITNESS: Yes.

18 THE COURT: And I think that's the extent of
19 her testimony.

20 MR. D'AMICO: Thank you, Ma'am.

21 THE COURT: You are looking at me, Mr.
22 Winter, surprised. Is that --

23 MR. WINTER: No, I just had a question or
24 two for her --

25 THE COURT: Oh, go ahead.

1 MR. WINTER: -- based on that.

2 THE COURT: Okay.

3 BY MR. WINTER:

4 Q Ma'am, just so we're clear on this. I believe
5 this was mentioned by Mr. Albert. This is a
6 synchronized system of traffic lights; correct?

7 A Yes. There is 92 intersections that are
8 synchronized.

9 Q Okay. And by that, it means that the lights are
10 set so that someone will not have to stop too many
11 times when they are trying to get in or out of
12 Lancaster; correct?

13 A Correct, to keep traffic flowing.

14 Q And that helps to reduce traffic congestion
15 during rush hour times; correct?

16 A Correct.

17 Q Okay, and I also know it's something I very much
18 appreciate, because it makes it very quick to get into
19 Lancaster with only having to stop once or twice with
20 multiple lights; correct?

21 A Correct.

22 Q Okay. And Lancaster also hosts a variety of
23 public events. So there is a great deal going on in
24 Allentown -- or in Lancaster downtown; correct?

25 A Correct. As well as our pedestrian traffic.

1 Q Is it fair to say that if those lights were not
2 able to communicate with each other, then there could
3 essential -- There -- The lights would no longer be
4 synchronized?

5 A **Correct, and it would be a bit of gridlock.**

6 Q Okay.

7 MR. WINTER: That's all I have. Thank you.

8 THE COURT: So Miss Jessup, I thought -- Is
9 it Jessup?

10 THE WITNESS: Correct.

11 THE COURT: I thought that by having the
12 City synchronize the lights, instead of making traffic
13 move more efficiently and quickly in and out of the
14 City, that the purpose was just the opposite, that
15 between the City and the Chamber of Commerce, you
16 wanted to keep all of those vehicles in the downtown
17 business districts. That's what I thought synchronized
18 meant.

19 THE WITNESS: No.

20 THE COURT: You had to stop at every
21 intersection so you could look around and see --

22 THE WITNESS: The merchants might like
23 that --

24 THE COURT: -- what stores there are.

25 Pardon me?

1 THE WITNESS: The merchants might like that,
2 but as the street supervisor, I do not.

3 THE COURT: All right. I'm only kidding.
4 Any other questions for Miss Jessup?

5 MR. D'AMICO: No, Your Honor. Thank you.

6 THE COURT: Thank you. Miss Jessup, you may
7 step down.

8 MR. ALBERT: No redirect, Your Honor. Thank
9 you. The City has no other witnesses to offer.

10 THE COURT: Okay.

11 Counsel, may I just see you for a minute
12 here at sidebar? And then you can all pack up and get
13 ready to go home.

14 (Whereupon, an off the record discussion was
15 held between the Court and counsel.)

16 THE COURT: Okay. We are adjourned.

17 (Whereupon, the hearing was adjourned at
18 4:35 o'clock p.m.)

19

20

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CERTIFICATION

I hereby certify that this transcript of proceedings is true and correct and meets the format specifications established by the Supreme Court of Pennsylvania in Rule 4010.

07/12/2018

DATE



MATTHEW GIOVANNINI, JR., RPR
Official Court Reporter

\$	31 [2] - 74:18, 74:19 34 [1] - 74:22 3:00 [1] - 9:13	action [1] - 42:2 active [2] - 12:16, 25:11 actively [2] - 41:21, 41:24 activities [4] - 35:23, 46:15, 77:8, 77:9 activity [2] - 64:14, 72:14 actual [2] - 51:1, 72:10 add [1] - 35:20 addition [2] - 13:9, 18:1 additional [3] - 18:3, 53:23, 78:2 address [7] - 19:23, 63:23, 64:2, 65:20, 71:13, 80:5, 82:20 addressed [1] - 78:2 addresses [1] - 50:11 administer [1] - 45:4 admission [2] - 22:13, 73:4 Admitted [1] - 4:6 admitted [3] - 22:15, 73:21, 75:16 ADSS [7] - 24:4, 24:7, 30:22, 34:11, 34:18, 35:13, 48:7 advanced [1] - 42:11 advised [1] - 52:12 advisement [1] - 6:1 affect [5] - 21:15, 76:23, 82:2, 82:4, 82:8 affected [1] - 64:19 affirmative [1] - 67:9 affixed [1] - 19:4 AFTER [1] - 75:9 afternoon [1] - 5:25 agencies [2] - 9:22, 43:15 agency [1] - 17:16 agree [15] - 47:9, 59:1, 62:5, 62:8, 62:10, 67:1, 74:8, 74:11, 74:13, 74:15, 74:17, 74:21, 74:23, 75:1, 82:16 agreement [2] - 6:3, 53:16 agreements [1] - 20:4 ahead [6] - 6:14, 38:2, 55:8, 60:3, 73:18, 83:25 aid [1] - 15:20 aided [1] - 16:20 Albert [3] - 79:9, 83:5, 84:5 ALBERT [16] - 6:6, 6:15, 7:19, 7:24, 17:3, 21:23, 21:25, 22:9, 22:12, 76:10, 76:25, 78:5, 81:7, 82:25, 83:6, 83:12 alert [1] - 51:16 alleged [1] - 45:7 Allentown [1] - 84:24 allow [4] - 26:18, 35:12, 50:17, 63:6 allowed [5] - 26:19, 35:20, 35:21, 35:24, 48:11	allows [1] - 77:8 alone [1] - 52:21 ample [1] - 51:16 analysis [2] - 62:15, 65:6 Andrew [4] - 38:19, 39:5, 52:14, 69:17 another [3] - 23:15, 39:25, 71:1 answer [10] - 20:1, 21:20, 33:4, 35:15, 36:10, 58:20, 62:21, 66:19, 67:14, 80:13 answered [1] - 82:25 answering [2] - 65:4, 81:12 answers [1] - 51:24 any [39] - 10:16, 16:4, 17:1, 17:16, 17:21, 17:24, 19:12, 20:16, 21:22, 22:2, 23:21, 28:6, 30:9, 31:6, 35:11, 35:12, 35:24, 42:5, 43:23, 45:8, 46:4, 47:23, 48:10, 50:25, 52:19, 52:22, 52:23, 53:5, 53:6, 57:6, 66:6, 68:14, 73:21, 75:10, 76:20, 77:20, 81:17, 82:1, 83:9 Any [1] - 73:6 apologize [6] - 5:12, 17:13, 39:2, 40:9, 45:24, 48:14 appear [3] - 26:7, 58:21, 76:5 appeared [1] - 25:15 application [20] - 37:16, 39:7, 40:17, 42:9, 42:12, 43:25, 55:13, 55:15, 56:2, 56:4, 56:7, 57:13, 58:2, 58:22, 60:18, 63:7, 63:21, 64:21, 65:1, 65:19 applications [6] - 40:23, 40:25, 42:14, 54:25, 56:9, 56:18 applied [5] - 50:22, 55:17, 62:14, 63:16, 65:5 apply [1] - 60:25 appreciate [3] - 5:19, 62:21, 84:18 appreciation [1] - 81:20 approach [5] - 28:23, 34:2, 39:6, 52:14, 71:22 appropriate [2] - 19:12, 58:24 approval [3] - 21:19, 69:18, 69:21 approved [2] - 20:18, 63:15 approximate [1] - 61:13 April [3] - 38:23, 39:14, 69:17 area [4] - 11:4, 14:23, 19:13, 81:2 areas [1] - 11:1 arrival [2] - 15:8, 15:16 arrive [1] - 15:15
\$75,000 [1] - 77:13			
1	4		
1 [6] - 4:7, 5:9, 7:21, 22:14, 74:6, 74:8 10 [1] - 73:22 100 [1] - 61:4 11 [3] - 50:3, 74:6, 74:8 12 [3] - 32:12, 41:17, 74:10 12-month [1] - 41:14 121 [1] - 76:18 15 [2] - 73:22, 74:10 160 [1] - 12:23 176 [2] - 29:7, 29:13 19th [2] - 43:6, 53:16 1:30 [2] - 5:2, 5:11 1st [1] - 31:25	40 [1] - 31:24 406 [1] - 50:1 408 [2] - 50:1, 50:4 41 [3] - 28:22, 29:3, 74:22 45 [3] - 49:4, 50:4, 74:24 46 [3] - 74:24, 74:25		
	5		
	5 [5] - 38:2, 38:7, 52:9, 53:9, 69:11 50 [4] - 54:10, 54:12, 77:13		
	6		
	6-01-140 [2] - 57:22, 58:21 60,000 [1] - 14:22 6:00 [1] - 9:14		
	7		
	7th [2] - 38:23, 69:17		
	9		
	92 [2] - 76:18, 84:7		
	A		
	a.m [3] - 9:13, 9:14 ability [4] - 12:9, 17:21, 17:24, 71:9 able [16] - 12:25, 15:7, 15:10, 15:13, 15:19, 15:20, 25:10, 26:2, 33:15, 42:16, 61:15, 77:2, 77:14, 81:16, 82:18, 85:2 absolute [1] - 19:21 absolutely [3] - 16:6, 17:1, 19:2 abuse [1] - 7:8 accept [1] - 78:8 acceptable [1] - 65:3 accepted [3] - 79:21, 81:8 access [4] - 20:14, 37:14, 37:16, 42:9 accident [1] - 13:11 accidents [2] - 15:4, 15:10 accommodate [3] - 65:15, 65:22, 67:20 accommodated [1] - 63:5 according [2] - 5:11, 32:5 accounted [1] - 62:19 accurate [2] - 20:15, 79:12		
2			
2 [4] - 4:8, 5:3, 58:8, 68:10 20 [2] - 31:22, 32:1 2000s [1] - 8:5 2003 [1] - 56:17 2013 [2] - 42:12, 70:3 2015 [5] - 35:23, 38:23, 38:24, 39:14, 69:17 2016 [2] - 39:13, 49:13 2017 [10] - 7:14, 10:8, 25:12, 31:21, 31:25, 41:25, 42:17, 42:22, 68:21, 68:23 2018 [1] - 5:1 21 [1] - 74:14 224 [1] - 24:22 22nd [1] - 68:22 23 [1] - 74:14 235 [2] - 28:14, 29:6 235-5 [1] - 29:18 24 [2] - 6:21, 16:11 25 [1] - 74:16 255 [1] - 3:2 257 [1] - 3:2 26 [1] - 76:23 260 [1] - 3:6 262 [1] - 3:7 267 [1] - 3:7 277 [3] - 3:8, 4:7, 4:8 28 [2] - 5:1, 74:16 2:00 [1] - 9:13 2:36 [1] - 5:11			
3			
3 [4] - 33:23, 34:1, 34:6, 71:22 30 [3] - 70:17, 74:18, 74:19 30th [1] - 68:21			

aside [1] - 53:23
aspects [1] - 5:17
assault [1] - 7:8
assistance [1] - 16:17
assisted [2] - 43:4, 43:9
associated [1] - 24:12
assuming [7] - 30:7, 31:15, 32:18, 33:8, 34:15, 64:19, 67:12
assumptions [1] - 23:21
assured [1] - 81:4
attach [2] - 47:24, 48:15
attached [6] - 18:15, 47:19, 47:25, 56:5, 62:24, 65:10
attacher [3] - 40:3, 40:5, 40:14
attachers [4] - 40:10, 40:11, 50:14, 60:24
attaching [1] - 21:18
attachment [14] - 20:19, 41:16, 44:18, 55:16, 57:20, 61:23, 62:12, 63:8, 66:16, 66:24, 69:18, 69:23, 70:13, 82:2
attachments [14] - 19:23, 20:12, 39:16, 43:8, 43:9, 50:15, 50:24, 51:2, 56:12, 58:12, 58:17, 61:18, 69:19, 80:18
attempted [1] - 47:3
attempts [1] - 48:25
attention [4] - 39:18, 49:3, 50:3, 69:14
Attorney [1] - 79:9
attorney [1] - 14:15
Attorney's [1] - 9:1
audience [1] - 5:13
auditing [1] - 43:10
authored [1] - 23:16
authorization [1] - 50:20
authorized [2] - 40:18, 70:13
available [6] - 41:6, 41:7, 59:13, 59:14, 60:13, 60:20
avenue [2] - 57:15, 59:8
avenues [1] - 60:25
avoid [1] - 76:12
aware [9] - 8:23, 8:24, 9:24, 20:17, 21:18, 31:9, 40:18, 41:1, 59:10

B

backup [2] - 77:3, 80:5
ballbark [1] - 54:9
ballpark [2] - 54:10, 66:7
base [3] - 31:23, 32:9, 32:12
based [10] - 18:13, 23:15, 23:18, 29:20, 31:5, 32:24,

33:6, 55:17, 71:24, 84:1
basis [5] - 13:10, 13:15, 14:4, 14:20, 42:19
battle [2] - 21:3, 21:13
become [2] - 68:23, 77:1
beforehand [1] - 64:22
began [1] - 8:4
begin [1] - 50:1
beginning [2] - 13:7, 63:8
begins [3] - 29:12, 29:16, 38:18
begun [1] - 51:6
behalf [7] - 20:13, 40:15, 40:19, 79:9, 82:14, 82:24, 83:2
benefit [3] - 9:7, 19:20, 19:21
best [7] - 14:6, 20:1, 32:16, 37:23, 39:6, 48:19, 52:14
between [9] - 5:6, 9:13, 21:17, 24:14, 26:13, 29:22, 30:19, 72:15, 85:15
beyond [1] - 83:13
Bill [1] - 37:19
bind [2] - 17:21, 17:24
Birkihiser [2] - 6:9, 6:17
BIRKIHISER [1] - 6:10
bit [4] - 14:13, 27:21, 61:8, 85:5
block [1] - 53:24
board [1] - 8:21
Board [1] - 9:3
bolted [2] - 67:7, 67:11
bolting [1] - 48:20
book [2] - 29:2, 76:8
born [1] - 8:15
box [8] - 48:11, 63:9, 63:11, 63:13, 64:20, 65:2, 72:13, 72:15
boxes [6] - 27:5, 47:19, 48:2, 64:6, 70:22, 71:11
bracket [4] - 31:24, 61:24, 62:18, 67:20
brief [1] - 22:21
briefly [2] - 21:4, 40:7
bring [1] - 16:6
brought [1] - 16:17
bucket [3] - 26:6, 26:10, 64:9
build [6] - 39:6, 46:10, 50:12, 61:1, 70:20
building [1] - 19:5
built [2] - 41:18, 72:18
bureau [1] - 9:1
business [6] - 11:8, 11:9, 27:12, 35:18, 35:19, 85:17
busy [1] - 15:3

C

cabinet [6] - 47:5, 47:13, 48:16, 62:22, 66:1
cabinets [1] - 62:23
cable [43] - 20:22, 21:1, 24:1, 24:4, 24:7, 24:10, 24:16, 24:18, 24:20, 25:5, 27:1, 27:23, 28:2, 29:24, 30:18, 30:19, 30:20, 30:22, 30:23, 31:5, 33:15, 33:24, 34:18, 34:21, 34:23, 34:24, 35:13, 40:16, 41:18, 44:22, 48:1, 48:11, 55:6, 55:22, 55:23, 55:24, 56:1, 57:20, 72:8, 72:9, 72:16, 72:18, 75:24
Cable [1] - 34:15
cables [26] - 24:9, 24:11, 24:13, 24:15, 26:21, 28:18, 29:23, 30:2, 30:3, 30:5, 30:8, 30:12, 30:20, 31:23, 33:1, 33:16, 33:18, 33:19, 34:12, 34:25, 35:18, 41:16, 71:5, 71:21, 71:25
camera [27] - 8:10, 9:7, 9:15, 10:8, 11:8, 11:9, 11:18, 12:15, 12:24, 14:18, 14:25, 15:14, 15:19, 16:1, 16:22, 18:13, 18:23, 18:24, 19:2, 19:4, 20:2, 20:23, 21:2, 77:5, 77:15
cameras [32] - 8:14, 8:18, 8:19, 9:10, 9:20, 9:24, 10:2, 10:11, 10:17, 10:19, 10:24, 10:25, 11:3, 11:11, 11:15, 12:3, 12:7, 12:24, 13:1, 13:2, 13:6, 13:17, 13:22, 15:6, 15:22, 16:4, 18:4, 18:19, 20:8, 20:14, 20:18
cannot [6] - 24:7, 28:5, 28:9, 30:5, 80:13, 83:9
capable [1] - 81:12
Captain [2] - 7:10, 7:11
captain [1] - 13:19
capture [2] - 15:19, 16:18
captured [2] - 10:16, 19:3
car [1] - 13:12
carrying [1] - 15:11
cases [3] - 47:4, 66:9, 72:18
catch [1] - 17:10
categorize [1] - 61:22
caught [6] - 13:5, 13:8, 13:24, 14:3, 14:14, 15:22
center [2] - 12:11, 34:10
certain [4] - 8:12, 21:9, 47:24, 78:11
certainly [12] - 47:16, 50:11, 50:17, 59:12, 62:4,

67:16, 67:21, 68:4, 68:7, 70:15, 70:17, 82:13
certainty [1] - 61:4
Chamber [1] - 85:15
chance [1] - 17:5
change [10] - 31:18, 32:2, 32:3, 56:24, 57:7, 59:6, 59:9, 59:11, 59:12, 60:12
changed [3] - 31:20, 31:21, 56:21
changes [3] - 57:1, 68:1, 68:14
charge [1] - 7:6
chart [2] - 61:14, 61:15
chief [6] - 7:13, 7:15, 13:18, 16:21, 20:10, 77:5
Chief [11] - 6:4, 6:8, 6:17, 10:5, 10:11, 10:18, 11:16, 17:6, 17:10, 19:18, 22:4
child [1] - 7:7
children [1] - 15:1
circuit [1] - 48:25
circumstance [2] - 35:11, 48:10
cities [2] - 9:15, 10:2
City [46] - 6:4, 6:8, 6:18, 6:19, 7:20, 8:8, 8:11, 8:25, 9:8, 9:24, 10:12, 10:19, 11:1, 12:3, 13:21, 14:22, 19:20, 20:11, 20:12, 20:17, 21:18, 22:14, 40:12, 40:21, 43:15, 45:13, 50:16, 50:19, 66:5, 76:10, 76:16, 76:17, 77:6, 79:6, 79:10, 81:3, 81:18, 82:14, 82:16, 82:24, 83:3, 83:9, 83:16, 85:12, 85:14, 85:15
city [14] - 8:13, 9:22, 19:22, 46:13, 46:22, 77:8, 77:10, 77:11, 77:13, 77:15, 80:4, 81:1
City's [1] - 83:4
civil [1] - 77:11
claims [1] - 77:17
clarify [1] - 68:19
clean [1] - 73:5
clear [11] - 17:14, 27:20, 28:9, 29:14, 53:15, 59:18, 65:25, 66:20, 68:9, 79:17, 84:4
clearance [13] - 29:22, 31:22, 32:5, 32:7, 32:21, 33:5, 33:9, 61:21, 61:23, 62:7, 62:9, 62:11, 62:17
clearances [2] - 28:15, 33:1
climb [1] - 71:9
clock [1] - 5:11
closely [1] - 72:5
Coalition [20] - 7:17, 8:1, 8:3, 8:15, 9:9, 10:6, 10:17,

11:17, 12:6, 12:11, 13:14, 13:17, 14:1, 15:6, 17:15, 17:19, 18:13, 21:6, 40:20, 43:16
code [8] - 26:18, 27:3, 27:7, 28:9, 28:12, 31:21, 32:1
Code [1] - 26:24
collapsed [1] - 15:23
collateral [1] - 81:9
collectively [1] - 21:10
coming [4] - 22:6, 23:12, 50:24, 56:11
comm [1] - 31:18
commander [1] - 16:8
comments [1] - 53:22
Commerce [1] - 85:15
Commission [1] - 8:6
commissions [1] - 10:22
commit [1] - 16:16
Common [1] - 14:12
common [1] - 9:15
Commonwealth [2] - 9:16, 10:2
communicate [1] - 85:2
communicating [1] - 39:15
communication [18] - 26:13, 26:14, 26:17, 26:19, 26:23, 27:2, 27:6, 28:7, 28:10, 29:25, 30:13, 33:19, 47:16, 48:11, 48:12, 55:5, 57:20
Communications [1] - 12:10
communications [5] - 24:11, 24:18, 24:19, 27:14, 31:23
Community [1] - 9:5
companies [2] - 33:20, 77:17
company [5] - 24:21, 25:6, 47:19, 55:6, 55:23
compatible [1] - 20:22
complaints [2] - 64:5
complete [2] - 28:25, 63:21
completed [1] - 51:9
completion [1] - 69:2
complications [1] - 44:6
comply [5] - 26:3, 26:24, 27:2, 27:7, 27:8
comprehend [1] - 27:12
concern [2] - 19:18, 20:3
concerned [1] - 20:7
concerns [1] - 82:20
concluded [1] - 29:20
concluding [1] - 31:4
condition [2] - 62:4, 62:17
conditions [3] - 47:1, 62:19, 64:16
conduct [3] - 24:5, 24:7, 28:5

conductive [2] - 27:23, 28:4
confuse [1] - 54:24
confused [1] - 27:21
congestion [1] - 84:14
congratulations [1] - 55:25
consequences [1] - 44:17
consequential [1] - 44:10
consider [2] - 49:19, 65:12
considered [1] - 49:18
consistent [8] - 25:13, 34:11, 42:16, 43:5, 48:17, 57:2, 70:7, 72:1
constant [1] - 12:21
construction [2] - 56:10, 69:20
contact [1] - 13:14
Contd [1] - 3:2
content [5] - 49:10, 53:12, 58:12, 60:5, 60:9
contention [1] - 47:9
continue [1] - 39:8
continued [1] - 54:24
continues [1] - 29:17
contract [4] - 45:5, 56:17, 70:8, 82:18
control [1] - 18:24
controlled [1] - 76:19
conversation [1] - 63:20
conversion [1] - 70:25
cooperatively [1] - 82:19
coordinate [1] - 15:16
copies [1] - 7:21
copy [1] - 7:22
corner [1] - 11:16
corners [1] - 11:4
Corning [1] - 34:14
corporation [1] - 8:21
correct [60] - 6:6, 11:24, 12:1, 13:19, 15:24, 17:19, 19:10, 19:20, 19:25, 23:16, 23:17, 26:14, 26:15, 26:25, 27:4, 27:24, 28:4, 28:5, 29:25, 30:1, 31:3, 31:8, 31:11, 31:12, 33:12, 40:2, 45:19, 46:1, 47:20, 52:11, 52:22, 53:7, 53:17, 53:19, 53:20, 54:19, 55:3, 56:18, 59:20, 59:24, 60:9, 62:2, 62:7, 66:3, 68:12, 72:10, 79:4, 81:22, 81:23, 82:3, 82:21, 83:7, 84:6, 84:12, 84:15, 84:16, 84:20, 84:21, 84:24, 85:5
Correct [9] - 11:14, 38:25, 52:1, 55:10, 55:12, 79:7, 84:13, 84:25, 85:10
correctly [8] - 18:5, 19:17, 24:20, 27:22, 28:1, 59:22, 60:12, 72:12

correspondence [1] - 49:13
corroborate [2] - 14:8, 14:10
counsel [10] - 5:6, 7:22, 18:2, 29:3, 48:15, 69:12, 70:4, 70:22, 71:3, 81:9
county [1] - 13:15
County [7] - 5:4, 5:11, 12:10, 12:17, 12:18, 16:1, 78:19
couple [4] - 31:16, 42:7, 46:7, 55:19
course [1] - 50:12
Court [10] - 5:6, 7:22, 14:12, 23:23, 24:3, 38:16, 44:4, 49:8, 50:9, 73:20
court [1] - 21:13
Courthouse [1] - 5:4
Courtroom [1] - 5:3
create [2] - 28:6, 77:3
created [2] - 43:12, 44:6
creatively [1] - 47:14
crime [4] - 10:21, 11:2, 16:24, 18:9
Crime [2] - 7:2, 8:6
crimes [4] - 8:8, 13:4, 14:13, 16:25
criminal [3] - 7:3, 7:6, 14:17
cross [3] - 17:4, 27:16, 52:4
Cross [1] - 3:6
CROSS [4] - 17:8, 27:17, 52:6, 80:1
Cross-Examination [1] - 3:6
cross-examination [3] - 17:4, 27:16, 52:4
CROSS-EXAMINATION [4] - 17:8, 27:17, 52:6, 80:1
crucial [1] - 81:5
current [1] - 68:17
customer [4] - 57:15, 60:2, 70:14, 70:15
cut [1] - 5:16

D

D'AMICO [57] - 17:9, 22:3, 22:16, 22:20, 23:8, 25:20, 25:22, 25:24, 27:15, 28:22, 28:25, 35:7, 35:10, 36:2, 36:18, 36:23, 37:6, 37:11, 38:1, 38:7, 38:10, 38:13, 42:24, 43:1, 44:5, 44:13, 52:2, 69:9, 71:15, 73:3, 73:12, 73:17, 74:1, 74:6, 74:10, 74:12, 74:14, 74:16, 74:18, 74:20, 74:22, 74:24, 75:17, 75:20, 75:24, 76:1, 76:7, 76:9, 77:25, 78:8,

78:11, 79:17, 79:23, 80:2, 81:19, 83:8, 83:20
D'Amico [6] - 3:2, 3:7, 3:8, 73:22, 77:24, 79:14
daily [2] - 13:15, 14:20
damage [2] - 77:12, 77:15
dangerous [1] - 66:21
data [1] - 35:3
date [6] - 49:8, 49:14, 56:25, 68:21, 68:22, 69:1
dated [1] - 37:18
dates [1] - 68:20
day-to-day [1] - 21:16
days [1] - 55:24
deal [2] - 66:8, 84:23
dealing [4] - 13:17, 14:5, 40:12, 66:8
dealt [1] - 64:3
December [8] - 42:17, 42:21, 43:6, 45:16, 45:20, 45:21, 46:2, 53:16
decide [1] - 49:20
decisions [1] - 82:22
declined [1] - 42:8
default [1] - 40:16
Defendant [1] - 14:15
Defendant's [4] - 4:6, 33:23, 34:6, 71:22
define [1] - 24:9
defines [1] - 24:8
definitely [2] - 42:1, 43:14
definition [2] - 47:5, 47:13
definitions [2] - 23:25, 24:1
Deltac [1] - 66:24
Deltec [1] - 67:10
demand [1] - 12:20
demonstrated [1] - 37:17
department [7] - 7:12, 8:14, 9:25, 10:23, 14:19, 15:9, 17:16
Department [1] - 77:7
depicting [1] - 25:11
deprive [1] - 78:17
describe [1] - 40:7
describes [1] - 41:15
describing [1] - 46:15
description [2] - 41:12, 46:19
design [1] - 31:1
designed [2] - 35:1, 60:14
designee [1] - 40:24
desire [1] - 9:6
desk [2] - 16:10, 16:11
detail [4] - 18:15, 48:24, 58:18, 59:17
Detective [1] - 7:1
detective [2] - 7:1, 18:8
detectives [1] - 14:4
determination [1] - 26:3

determine [1] - 19:8
detrimental [1] - 17:1
diagram [2] - 18:2, 80:7
dielectric [4] - 24:5, 27:23, 28:1, 29:24
difference [5] - 24:14, 30:19, 30:21, 30:23, 31:2
different [14] - 24:1, 24:8, 24:12, 24:13, 25:21, 28:15, 33:19, 40:10, 40:11, 46:8, 47:12, 49:16, 56:13, 72:21
differently [1] - 56:15
difficult [4] - 27:12, 35:15, 45:3, 45:4
DIRECT [4] - 6:13, 23:6, 37:4, 79:1
Direct [2] - 3:5, 3:7
direct [4] - 39:18, 49:3, 50:3, 69:14
direction [1] - 59:1
directly [5] - 21:15, 45:10, 61:3, 68:2, 68:13
directors [1] - 8:21
disappointed [1] - 53:15
disclosure [1] - 44:19
discovered [2] - 25:12, 61:11
discovery [1] - 41:24
discretion [1] - 19:8
discuss [2] - 49:11, 58:2
discussed [5] - 39:12, 49:23, 57:18, 61:25, 74:9
discussion [3] - 44:9, 64:1, 71:24
discussions [2] - 5:5, 46:11
disinterested [1] - 21:14
dislocating [1] - 83:16
dispatch [4] - 12:10, 12:12, 13:2, 13:15
dispatched [1] - 12:14
dispatchers [2] - 15:7, 16:2
disrupt [1] - 19:25
distributed [2] - 7:21, 10:19
distribution [1] - 23:20
District [1] - 8:25
district [1] - 11:8
districts [1] - 85:17
Division [2] - 7:1, 18:7
division [5] - 7:4, 7:6, 7:11, 7:12, 18:8
Document [2] - 5:7, 58:21
document [8] - 7:15, 49:24, 54:16, 57:19, 57:21, 57:25, 58:1, 58:2
documented [1] - 56:11
documents [1] - 62:13
done [9] - 19:24, 41:21, 41:25, 51:1, 58:14, 72:3, 78:19, 80:16, 80:22

Donna [2] - 76:15, 79:3
DONNA [1] - 78:24
down [8] - 15:25, 20:12, 36:16, 36:19, 62:9, 65:8, 67:11, 71:5
downtown [9] - 11:8, 11:10, 11:12, 15:5, 80:24, 80:25, 81:2, 84:24, 85:16
dozens [4] - 54:13, 54:15, 66:2
drip [1] - 32:13
drivers [1] - 77:12
drop [13] - 55:4, 55:11, 55:21, 55:25, 56:2, 56:4, 56:7, 58:3, 58:23, 58:24, 60:19, 70:9, 70:19
drops [11] - 55:1, 55:20, 56:10, 56:17, 57:10, 57:13, 61:1, 70:5, 70:7, 70:24, 71:2
drug [4] - 8:8, 11:4, 13:5, 15:19
duly [2] - 6:11, 78:25
during [3] - 6:22, 73:11, 84:15

E

e-mail [13] - 37:17, 37:21, 38:14, 38:22, 39:19, 49:4, 49:10, 51:22, 52:8, 52:9, 52:21, 53:12, 68:2
e-mails [5] - 49:13, 52:22, 52:23, 53:2, 53:10
early [8] - 8:5, 38:24, 39:13, 45:19, 45:21, 46:2, 49:14, 69:2
easier [1] - 73:14
effect [1] - 76:25
effective [1] - 68:21
efficiently [1] - 85:13
effort [1] - 5:18
egress [1] - 72:19
either [4] - 41:21, 48:25, 60:7, 80:4
Electric [3] - 19:23, 20:13, 83:10
electric [2] - 23:20, 25:6
electrical [5] - 25:2, 25:14, 25:18, 32:15, 35:22
electricity [3] - 24:6, 24:8, 28:5
elementary [1] - 14:24
eleven [1] - 74:7
elsewhere [1] - 58:25
employees [2] - 9:10, 12:7
EMS [3] - 12:12, 13:2, 16:2
enclosures [1] - 47:15
encompass [1] - 47:14
end [3] - 11:12, 70:13, 70:14

ends [1] - 14:15
enforce [2] - 82:18, 83:11
enforcement [3] - 8:13, 9:22, 20:10
engineering [5] - 32:16, 56:10, 62:15, 65:6, 69:21
enter [1] - 77:23
entire [1] - 29:2
entirely [1] - 60:8
entities [1] - 9:22
entitled [1] - 10:7
equipment [2] - 25:3, 56:5
erroneous [1] - 23:21
essential [1] - 85:3
essentially [1] - 30:20
establish [1] - 11:7
established [1] - 8:7
event [1] - 12:19
events [2] - 46:8, 84:23
evidence [5] - 5:25, 9:20, 30:11, 37:23, 74:5
exact [2] - 56:25, 69:1
exactly [3] - 58:14, 59:7, 70:6
EXAMINATION [13] - 6:13, 17:8, 23:6, 27:17, 35:8, 36:5, 37:4, 52:6, 63:12, 69:8, 71:18, 79:1, 80:1
Examination [6] - 3:2, 3:2, 3:5, 3:6, 3:7, 3:8
examination [3] - 17:4, 27:16, 52:4
examine [1] - 81:10
example [2] - 40:21, 45:12
Excel [2] - 53:24, 54:8
except [1] - 35:16
exception [1] - 35:16
exceptions [1] - 26:18
excerpts [1] - 29:1
exchanged [1] - 53:3
excused [2] - 22:1, 22:7
executive [1] - 21:11
Exhibit [15] - 5:8, 7:21, 22:14, 33:23, 33:25, 34:6, 38:2, 38:7, 49:4, 50:4, 53:9, 58:8, 68:10, 69:11, 71:22
exhibit [3] - 22:12, 22:13, 28:19
exhibits [8] - 73:5, 73:7, 73:11, 73:20, 73:22, 75:14, 76:3, 76:4
EXHIBITS [1] - 4:2
Exhibits [2] - 4:6, 4:25
exist [1] - 65:9
existed [1] - 52:17
existing [9] - 20:23, 39:6, 41:16, 41:18, 43:15, 46:14, 50:13, 50:14, 70:13
expeditious [1] - 82:17

experience [2] - 23:19, 32:16
experiences [1] - 78:21
expert [2] - 33:18, 42:22
expertise [2] - 32:17, 36:12
explain [4] - 18:3, 23:22, 24:3, 50:9
explanation [2] - 50:1, 78:3
explore [1] - 5:15
expression [1] - 39:22
extensively [1] - 62:1
extent [3] - 52:20, 83:3, 83:18

F

facilitate [5] - 32:3, 69:20, 70:19, 70:25, 71:2
facilities [3] - 50:21, 54:18, 57:20
facing [7] - 41:8, 57:15, 59:13, 59:15, 59:19, 59:23, 60:22
fact [7] - 9:19, 31:4, 52:17, 57:23, 60:1, 64:25, 72:22
factors [1] - 31:7
facts [2] - 44:24, 77:23
fair [4] - 36:13, 62:21, 83:5, 85:1
faith [2] - 5:18, 5:20
familiar [11] - 7:25, 10:11, 37:15, 38:21, 39:23, 52:10, 52:17, 57:9, 57:11, 57:21, 57:24
far [9] - 8:20, 11:15, 19:1, 20:4, 21:16, 29:10, 59:10, 77:5, 77:7
fashion [1] - 77:3
fast [1] - 38:4
fasten [1] - 65:9
fastened [1] - 48:19
fastening [1] - 67:3
FCC [2] - 36:9, 55:16
February [2] - 15:18, 31:25
feed [5] - 12:5, 12:9, 12:17, 16:7, 16:9
felt [1] - 11:9
few [2] - 26:18, 52:8
fiber [1] - 71:1
fiberoptic [27] - 24:1, 24:9, 24:11, 24:16, 24:17, 25:5, 27:1, 28:18, 29:23, 30:2, 30:3, 30:5, 32:25, 34:16, 34:23, 34:24, 34:25, 35:13, 35:18, 35:24, 71:21, 71:25, 72:8, 72:9, 72:16, 72:18
field [3] - 26:2, 26:8, 45:16
fight [1] - 13:7
figure [2] - 65:14, 66:7
filling [1] - 41:10

final [2] - 41:19, 49:24
finally [1] - 48:21
fine [1] - 17:12
finish [2] - 5:24, 49:8
fire [4] - 12:12, 13:2, 15:5, 15:9
firefighter's [1] - 15:8
first [8] - 6:11, 10:6, 10:22, 15:12, 17:5, 27:25, 54:6, 78:25
First [1] - 49:7
fit [1] - 47:5
five [7] - 14:21, 14:23, 28:18, 29:13, 53:9, 75:4, 75:8
five-minute [1] - 75:8
five-square [2] - 14:21, 14:23
floor [1] - 18:7
flowing [1] - 84:13
focus [2] - 19:9, 19:15
focusing [1] - 19:12
follow [6] - 40:3, 41:3, 41:8, 51:15, 79:15, 79:22
follow-up [1] - 79:22
followed [1] - 67:23
following [7] - 43:13, 43:25, 49:11, 55:16, 69:2, 70:20, 81:4
follows [4] - 6:12, 23:5, 37:3, 78:25
footage [4] - 13:10, 14:7, 18:12, 77:15
footnote [6] - 28:17, 29:12, 29:13, 29:21, 29:22, 30:1
force [1] - 10:10
Forensic [2] - 23:14, 29:15
forget [1] - 64:25
form [4] - 41:2, 41:4, 41:7, 41:10
forth [1] - 21:4
forward [3] - 6:9, 33:13, 68:8
foundation [2] - 25:17, 25:23
four [13] - 14:2, 14:21, 14:23, 32:7, 32:8, 32:9, 32:21, 38:18, 53:9, 62:7, 62:9, 62:11, 76:19
fourth [1] - 38:19
frame [1] - 32:16
frequently [1] - 13:21
Friday [8] - 23:13, 25:8, 47:3, 54:25, 56:16, 57:18, 73:5, 75:18
front [4] - 7:15, 16:11, 58:4, 61:3
full [3] - 58:13, 62:15, 78:16
functionality [1] - 31:1
fundraising [1] - 8:17

future [1] - 59:12

G

gang [1] - 8:7
gathered [1] - 45:17
geared [1] - 60:21
General [1] - 9:5
general [6] - 9:6, 49:8, 55:4, 59:24, 60:1, 60:15
generally [2] - 8:23, 70:14
gentleman [1] - 23:13
glass [2] - 35:1, 35:2
goal [1] - 77:6
grade [1] - 20:5
grandfathered [1] - 31:25
great [3] - 14:5, 53:6, 84:23
gridlock [1] - 85:5
grossly [1] - 70:19
ground [3] - 32:4, 32:6, 72:6
grounded [8] - 31:11, 31:14, 31:17, 32:10, 32:19, 33:9, 62:6, 62:8
group [6] - 13:7, 19:13, 63:3, 64:1, 65:21, 67:15
groups [1] - 8:12
guess [4] - 33:23, 34:18, 64:4, 69:14
guilty [1] - 14:15
guys [1] - 55:7

H

half [1] - 57:5
hand [3] - 11:16, 61:17, 61:22
handle [2] - 56:14, 63:2
handled [1] - 59:11
hanging [1] - 75:14
happy [3] - 23:11, 42:24, 74:2
hard [1] - 33:4
hardwares [1] - 67:19
hazardous [2] - 15:12, 15:15
Health [1] - 9:5
hear [2] - 12:14, 51:25
heard [3] - 39:22, 44:21, 79:8
hearing [1] - 5:23
hearings [1] - 34:13
hearsay [1] - 37:25
helps [1] - 84:14
herself [1] - 25:18
high [3] - 14:24, 64:6, 64:24
highlights [1] - 46:7
highways [1] - 80:25
hit [2] - 77:12, 77:14
homeless [1] - 77:9

homicide [4] - 13:24, 13:25, 14:6, 18:10
homicides [3] - 13:5, 13:8, 14:3
honestly [1] - 14:12
Honor [28] - 6:7, 7:19, 21:23, 21:25, 22:3, 22:8, 22:16, 22:20, 28:22, 28:23, 35:5, 38:8, 44:5, 73:3, 73:13, 73:19, 74:6, 74:20, 75:5, 75:12, 76:10, 77:22, 77:25, 79:17, 81:8, 83:1, 83:6, 83:12
hopefully [1] - 22:21
hospital [1] - 15:21
hosts [1] - 84:22
hour [1] - 84:15
hours [3] - 9:12, 12:7, 16:11
house [3] - 55:9, 55:23, 56:1
hundred [1] - 31:16

I

idea [3] - 43:12, 55:4, 55:21
identification [2] - 5:8, 33:25
identified [7] - 46:9, 62:13, 73:11, 73:13, 73:20, 73:24, 74:9
identify [9] - 38:3, 46:25, 49:7, 73:15, 74:2, 77:12, 77:14, 77:16
ignorance [1] - 71:20
ignore [1] - 51:22
immediately [1] - 56:9
impact [7] - 43:15, 43:18, 43:23, 44:23, 44:24, 45:3, 80:17
impacted [2] - 44:20, 44:22
implicating [1] - 37:23
importance [1] - 14:18
important [1] - 77:6
imposed [1] - 44:11
in-line [1] - 48:2
inch [1] - 32:21
inches [11] - 31:22, 31:24, 32:1, 32:7, 32:8, 32:9, 32:12, 41:17, 62:7, 62:9, 62:11
incident [5] - 12:14, 12:16, 15:15, 16:13
INDEX [1] - 4:2
indicate [3] - 39:10, 39:14, 39:21
indicated [11] - 37:13, 39:4, 39:5, 39:19, 41:23, 50:17, 52:13, 52:14, 52:16, 52:18, 69:17
indicates [2] - 25:13, 53:4

individual [1] - 62:17
inflated [1] - 70:19
information [24] - 12:3, 12:4, 13:22, 13:24, 14:3, 14:10, 15:7, 16:15, 18:3, 18:14, 21:9, 21:12, 21:15, 42:16, 43:3, 44:19, 44:23, 45:8, 53:15, 59:4, 59:13, 60:18, 60:19, 80:10
informed [1] - 57:7
inherently [1] - 66:21
initiated [1] - 15:25
inoperable [1] - 81:21
input [1] - 10:23
install [5] - 25:5, 30:5, 34:23, 35:12, 35:24
installed [7] - 24:23, 30:4, 30:9, 31:24, 35:18, 54:18, 55:23
installs [1] - 34:21
instance [3] - 40:20, 46:22, 68:7
instances [2] - 66:4, 72:17
instead [2] - 43:25, 85:12
instructions [1] - 41:8
insulated [2] - 26:6, 26:9
insulation [1] - 34:9
insurance [1] - 77:17
insure [1] - 82:18
intended [1] - 58:13
intending [1] - 40:13
interaction [1] - 51:12
interfere [1] - 71:8
interim [1] - 7:13
interpret [1] - 42:21
interpretate [1] - 42:21
interrogating [1] - 14:9
interrupt [1] - 82:11
interrupted [1] - 39:1
interruption [8] - 16:22, 17:2, 20:2, 44:10, 76:20, 76:22, 81:25, 83:15
interruptions [1] - 81:18
intersection [1] - 85:21
intersections [4] - 15:3, 76:23, 77:1, 84:7
Intervenor's [1] - 5:8
interviewing [1] - 14:9
investigation [4] - 6:25, 10:15, 13:11, 13:25
investigations [3] - 7:7, 14:7, 16:18
investigative [3] - 7:4, 7:6, 16:25
involve [2] - 15:10, 70:16
involved [3] - 13:16, 77:1, 80:13
involves [2] - 41:10, 49:9
issue [22] - 19:22, 24:3,

<p>30:8, 31:10, 31:15, 33:15, 41:13, 44:6, 46:3, 46:5, 47:18, 50:10, 61:17, 61:22, 65:25, 66:1, 67:5, 70:6, 73:10, 80:5, 81:2</p> <p>issues [15] - 5:16, 32:24, 32:25, 33:2, 33:5, 33:10, 43:12, 61:10, 61:21, 62:12, 62:22, 62:25, 65:7, 66:7, 80:22</p> <p>items [2] - 26:19, 49:22</p> <p>itself [5] - 53:12, 64:14, 71:5, 72:10, 72:13</p>	<p>7:20</p> <p>language [2] - 56:19, 59:8</p> <p>large [2] - 13:7, 62:1</p> <p>larger [2] - 34:21, 34:23</p> <p>largest [1] - 7:12</p> <p>Last [1] - 25:8</p> <p>last [6] - 17:11, 39:18, 42:3, 69:15, 71:17, 72:7</p> <p>late [4] - 25:12, 45:16, 45:22, 49:15</p> <p>latest [1] - 31:21</p> <p>law [3] - 8:13, 9:21, 20:10</p> <p>lawful [1] - 56:11</p> <p>lay [1] - 25:22</p> <p>layout [1] - 10:11</p> <p>LCS [1] - 17:15</p> <p>leadership [1] - 21:11</p> <p>leading [1] - 72:7</p> <p>learn [1] - 20:21</p> <p>learned [3] - 20:25, 45:6, 46:4</p> <p>learning [1] - 43:4</p> <p>least [2] - 5:17, 14:2</p> <p>left [1] - 11:16</p> <p>left-hand [1] - 11:16</p> <p>legal [4] - 21:3, 21:16, 42:22, 42:23</p> <p>Lehigh [2] - 5:4, 78:18</p> <p>lens [1] - 66:15</p> <p>letter [1] - 68:1</p> <p>level [1] - 72:6</p> <p>lieu [1] - 42:8</p> <p>Lieutenant [3] - 7:5, 7:9, 16:7</p> <p>lift [1] - 25:25</p> <p>light [8] - 13:12, 13:13, 31:23, 32:6, 32:9, 32:10, 61:24, 82:20</p> <p>lights [22] - 26:20, 31:10, 31:13, 31:14, 31:15, 31:16, 32:4, 32:18, 33:8, 61:9, 61:12, 61:20, 62:2, 62:5, 76:18, 80:5, 84:6, 84:9, 84:20, 85:1, 85:3, 85:12</p> <p>likely [1] - 33:10</p> <p>limitations [2] - 18:16, 18:17</p> <p>limited [2] - 83:3</p> <p>line [3] - 16:16, 48:2, 55:9</p> <p>lineman [1] - 25:2</p> <p>lineman's [1] - 71:8</p> <p>lines [1] - 20:18</p> <p>list [5] - 53:21, 54:2, 54:5, 54:7, 73:23</p> <p>listed [2] - 54:8, 54:16</p> <p>listen [1] - 13:1</p> <p>lists [3] - 53:19, 53:20, 53:23</p> <p>litigation [1] - 83:5</p>	<p>live [9] - 12:2, 12:5, 12:9, 12:17, 12:18, 14:22, 16:7, 16:9, 76:13</p> <p>located [7] - 24:15, 24:16, 24:18, 30:24, 47:15, 54:18, 59:4</p> <p>location [11] - 18:4, 20:19, 31:2, 31:6, 46:12, 46:13, 46:18, 66:21, 67:21, 72:13, 72:21</p> <p>locations [5] - 18:13, 43:8, 46:8, 54:9, 66:8</p> <p>logical [1] - 69:20</p> <p>look [16] - 10:15, 11:15, 11:21, 12:22, 13:10, 19:2, 46:14, 46:21, 59:24, 60:4, 61:15, 64:15, 67:16, 67:19, 68:8, 85:21</p> <p>looked [5] - 29:15, 29:16, 46:9, 66:15, 72:5</p> <p>looking [10] - 10:21, 10:25, 29:6, 53:8, 57:17, 61:3, 66:6, 70:12, 83:21</p> <p>looks [2] - 11:23, 34:7</p> <p>loop [3] - 32:13, 76:19, 76:21</p> <p>loud [1] - 38:20</p> <p>lowered [7] - 62:23, 63:13, 64:10, 64:11, 64:20, 65:1, 71:4</p> <p>LSC [2] - 10:8, 40:13</p> <p>luminaires [1] - 61:8</p>	<p>Master [1] - 76:22</p> <p>material [1] - 34:8</p> <p>materials [2] - 15:12, 15:15</p> <p>matter [2] - 20:11, 40:4</p> <p>MAW [35] - 17:5, 19:24, 20:17, 20:21, 21:1, 21:17, 21:18, 25:11, 27:1, 35:23, 40:15, 41:20, 43:11, 43:24, 45:6, 45:17, 50:12, 50:20, 51:1, 53:20, 54:18, 57:7, 59:5, 60:9, 60:14, 60:21, 66:22, 68:3, 68:13, 68:17, 72:2, 80:11, 80:16, 81:4, 81:22</p> <p>MAW's [3] - 20:11, 40:13, 43:5</p> <p>Mayor's [3] - 21:6, 21:7, 21:10</p> <p>mean [10] - 15:22, 31:1, 33:10, 34:17, 53:19, 57:3, 61:14, 66:2, 72:20, 81:18</p> <p>meaning [2] - 42:4, 65:15</p> <p>means [7] - 21:10, 24:5, 24:20, 25:1, 30:3, 44:25, 84:9</p> <p>meant [1] - 85:18</p> <p>mechanically [1] - 48:18</p> <p>medical [1] - 15:20</p> <p>Medicine [1] - 9:6</p> <p>meeting [6] - 45:15, 45:16, 45:25, 46:20, 49:11, 49:24</p> <p>meetings [5] - 39:13, 48:22, 49:23, 80:14, 80:21</p> <p>member [2] - 34:9, 68:24</p> <p>mentioned [1] - 84:5</p> <p>merchants [1] - 85:22</p> <p>merely [1] - 68:14</p> <p>messenger [1] - 72:19</p> <p>met [1] - 45:13</p> <p>method [3] - 48:19, 66:24, 67:3</p> <p>middle [1] - 14:25</p> <p>midst [1] - 49:12</p> <p>might [8] - 13:7, 33:20, 34:19, 34:23, 44:11, 81:18, 82:1, 85:22</p> <p>mile [2] - 14:22, 14:23</p> <p>mind [1] - 17:10</p> <p>mine [2] - 76:5, 82:22</p> <p>minute [1] - 75:8</p> <p>minutes [1] - 75:4</p> <p>Miss [11] - 22:22, 22:23, 23:9, 35:11, 36:16, 36:19, 77:4, 77:19, 78:13, 79:5, 85:8</p> <p>MISS [1] - 23:1</p> <p>moment [3] - 10:4, 58:5, 73:17</p> <p>money [1] - 14:13</p> <p>monitor [7] - 9:10, 9:11, 9:12</p>
J			
<p>Jarrad [2] - 6:8, 6:17</p> <p>JARRAD [1] - 6:10</p> <p>Jeffrey [3] - 3:4, 4:7, 4:8</p> <p>jeopardize [1] - 81:5</p> <p>Jessup [8] - 76:15, 77:4, 77:19, 78:13, 79:3, 79:5, 85:8, 85:9</p> <p>JESSUP [1] - 78:24</p> <p>Judge [1] - 52:2</p> <p>July [2] - 49:14, 49:15</p> <p>justification [2] - 49:19, 70:18</p>			
K			
<p>Katapult [1] - 46:25</p> <p>keep [3] - 41:16, 84:13, 85:16</p> <p>keeping [1] - 68:17</p> <p>kind [6] - 9:16, 9:18, 21:14, 34:8, 34:16, 50:17</p> <p>Klokis [1] - 37:19</p> <p>knowledge [5] - 20:16, 23:18, 32:24, 68:13, 83:13</p> <p>knows [1] - 32:15</p> <p>Kobilka [3] - 3:4, 4:7, 4:8</p> <p>KRISTIE [1] - 23:3</p>			
L			
<p>lack [1] - 25:16</p> <p>lag [1] - 41:15</p> <p>Lancaster [43] - 6:5, 6:8, 6:18, 6:20, 7:16, 7:25, 8:3, 8:6, 8:11, 8:14, 9:5, 10:1, 10:6, 10:17, 11:17, 11:20, 12:10, 12:11, 12:17, 14:1, 15:5, 17:15, 17:18, 18:12, 20:11, 22:10, 22:14, 45:14, 45:18, 50:16, 50:19, 76:11, 76:16, 76:17, 77:7, 78:15, 79:6, 83:16, 84:12, 84:19, 84:22, 84:24</p> <p>Lancaster/Intervenor [1] -</p>			
M			
<p>Ma'am [6] - 27:15, 80:3, 82:3, 82:5, 82:9, 83:20</p> <p>ma'am [6] - 27:20, 29:5, 33:14, 34:5, 82:13, 84:4</p> <p>mail [13] - 37:17, 37:21, 38:14, 38:22, 39:19, 49:4, 49:10, 51:22, 52:8, 52:9, 52:21, 53:12, 68:2</p> <p>mails [5] - 49:13, 52:22, 52:23, 53:2, 53:10</p> <p>maintain [1] - 35:21</p> <p>maintained [1] - 80:24</p> <p>Manager [2] - 76:16, 79:6</p> <p>manner [4] - 19:24, 25:13, 77:11, 82:17</p> <p>map [4] - 10:8, 10:13, 18:6, 41:12</p> <p>March [1] - 5:1</p> <p>Marked [1] - 4:6</p> <p>marked [8] - 4:25, 5:7, 7:20, 29:7, 33:22, 33:24, 34:5, 38:1</p> <p>market [1] - 67:20</p> <p>markets [1] - 11:5</p> <p>master [1] - 76:19</p>			

<p>12:7, 15:1, 15:3, 19:11, 77:8 monitored [1] - 9:25 monitoring [4] - 8:14, 8:18, 9:19, 14:21 monitors [2] - 12:12, 12:15 months [4] - 38:11, 55:14, 55:19 most [5] - 9:15, 11:1, 11:5, 33:10, 48:20 motorists [1] - 77:14 mounted [1] - 11:25 move [8] - 18:24, 22:12, 51:2, 65:8, 73:8, 75:15, 77:2, 85:13 moved [6] - 18:20, 27:1, 67:11, 73:4, 73:9, 75:18 moving [4] - 18:23, 20:17, 33:13, 74:4 multiple [5] - 14:24, 15:4, 53:20, 74:24, 84:20 must [2] - 35:22, 58:17</p>	<p>north [1] - 11:12 notes [1] - 66:6 nothing [4] - 26:21, 52:18, 64:19, 82:7 noticing [1] - 34:14 notification [1] - 68:2 notified [2] - 56:8, 68:13 notify [2] - 40:24, 41:11 notifying [1] - 68:17 novel [1] - 27:11 November [5] - 7:13, 10:8, 41:24, 68:22, 69:2 number [6] - 28:17, 35:1, 55:17, 55:22, 61:10, 61:13 numbers [3] - 53:25, 54:13, 54:16</p>	<p>one [27] - 8:10, 10:16, 12:24, 13:1, 13:12, 15:18, 35:7, 35:16, 35:17, 36:4, 38:18, 45:15, 45:25, 46:21, 57:17, 61:20, 61:25, 64:5, 64:21, 68:19, 70:14, 71:1, 74:7, 75:22, 76:11, 76:23, 82:9 ones [4] - 73:13, 73:14, 74:2, 74:4 ongoing [2] - 8:7, 21:13 online [6] - 37:13, 37:16, 42:9, 42:13, 52:15, 69:23 open [1] - 11:4 operate [3] - 20:18, 21:1, 80:11 operates [1] - 83:11 operation [2] - 20:23, 60:3 Operations [2] - 76:16, 79:5 operations [1] - 21:16 operator [3] - 18:21, 18:23, 18:24 operators [5] - 12:24, 14:20, 14:25, 16:1, 19:8 opinion [4] - 25:19, 31:9, 42:23, 81:24 opinions [1] - 23:15 opportunities [1] - 51:16 opportunity [1] - 78:18 opposed [1] - 34:24 opposite [1] - 85:14 Optical [1] - 34:15 order [6] - 6:1, 24:23, 25:5, 26:5, 32:2, 48:5 organization [3] - 8:4, 8:16, 8:20 origin [1] - 70:16 outcome [2] - 49:24, 64:15 outside [2] - 36:12, 48:4 overdoses [1] - 15:19 overlapping [1] - 61:2 overruled [2] - 38:12, 44:12 own [5] - 35:17, 46:9, 64:13, 66:6, 71:20 owner [1] - 40:16 owners [1] - 11:9</p>	<p>Pardon [1] - 85:25 parks [1] - 77:8 part [11] - 16:22, 16:24, 21:5, 21:7, 21:10, 27:25, 28:19, 29:11, 44:8, 45:7, 62:1 participation [1] - 5:19 particular [1] - 49:10 parties [2] - 46:21, 51:3 parts [1] - 74:25 party [7] - 8:16, 9:19, 35:12, 40:17, 40:18, 50:18, 60:24 past [1] - 59:11 path [1] - 18:11 patiently [1] - 5:13 patrol [1] - 7:11 Patrol [1] - 18:7 patrolman [2] - 6:24, 13:18 patrols [1] - 7:3 pay [1] - 20:4 pedestrian [1] - 84:25 Penn [1] - 9:5 PennDOT [1] - 80:25 Pennsylvania [1] - 10:3 people [7] - 8:12, 8:25, 12:4, 15:20, 16:3, 77:16, 80:8 percent [1] - 61:4 performed [1] - 25:12 performs [1] - 77:6 perhaps [1] - 76:12 period [3] - 9:13, 41:14, 47:24 permissible [1] - 26:16 permissions [1] - 47:23 permit [2] - 41:13, 50:23 person [1] - 82:23 perspective [1] - 43:11 Petitioner's [9] - 38:1, 38:7, 49:4, 50:4, 52:9, 53:9, 58:8, 68:10, 69:10 petitions [1] - 44:3 photo [1] - 26:7 photographs [1] - 25:10 photos [1] - 25:25 picture [2] - 10:7, 11:18 piece [1] - 33:24 pieces [1] - 5:21 pipe [2] - 12:9, 12:17 place [10] - 5:6, 9:3, 19:19, 20:8, 41:11, 41:12, 41:19, 46:20, 49:12, 70:3 places [2] - 11:25, 77:9 placing [4] - 8:18, 10:25, 11:2, 11:3 Plaintiff [1] - 73:10 Plaintiff's [2] - 33:25, 73:7 plant [2] - 50:13 Platoon [1] - 16:7</p>
N			
<p>name [4] - 6:16, 17:11, 76:15, 79:3 named [1] - 7:13 names [1] - 53:25 narcotics [1] - 6:25 necessarily [4] - 19:14, 29:24, 62:3, 79:18 necessitated [1] - 46:25 necessity [1] - 76:13 need [6] - 12:4, 24:24, 25:6, 26:6, 31:17, 32:12 needs [2] - 24:18, 77:10 NESC [9] - 23:19, 23:22, 24:8, 24:22, 26:4, 29:9, 32:5, 33:12, 70:8 network [8] - 10:1, 11:8, 11:10, 16:22, 40:22, 41:18, 44:20, 70:20 never [7] - 37:21, 37:22, 47:16, 64:3, 68:4, 68:13, 78:19 new [11] - 39:5, 41:18, 46:9, 50:13, 55:16, 60:25, 69:17, 69:19, 69:23, 70:1, 78:21 newspaper [1] - 21:5 next [3] - 6:3, 11:18, 36:22 night [1] - 16:8 non [5] - 8:4, 8:17, 27:23, 28:4, 63:23 non-conductive [2] - 27:23, 28:4 non-profit [2] - 8:4, 8:17 non-standard [1] - 63:23 nondescript [1] - 53:22 none [3] - 21:23, 48:13, 53:4</p>	<p>o'clock [1] - 5:2 oath [2] - 37:7, 37:9 object [6] - 25:16, 37:20, 44:2, 48:15, 73:24, 81:7 objecting [1] - 73:21 objection [13] - 22:2, 22:3, 22:5, 22:15, 22:16, 22:17, 36:17, 42:18, 44:12, 73:7, 75:16, 77:20, 83:12 observe [1] - 25:10 obsolete [1] - 51:2 obviously [3] - 56:16, 56:21, 73:24 occasions [3] - 42:8, 48:21, 48:23 occurred [1] - 66:2 occurs [1] - 18:9 October [1] - 68:21 odd [1] - 46:18 offer [15] - 25:19, 42:5, 42:23, 76:12, 76:14, 77:18, 77:21, 78:3, 78:8, 79:9, 79:19, 79:21, 81:8, 82:8, 83:9 offered [4] - 23:14, 28:20, 42:7, 46:12 offering [1] - 81:24 office [2] - 16:9, 23:16 Office [1] - 9:1 officer [2] - 20:7, 20:10 officers [7] - 10:14, 13:9, 15:12, 16:5, 16:12, 16:16, 16:18 often [1] - 14:16 old [2] - 32:1, 80:6 ON [5] - 23:7, 27:18, 35:9, 36:6, 37:5 on-site [1] - 46:21 Once [2] - 7:10, 46:4 once [3] - 14:14, 18:23, 84:19</p>	O	
P			
<p>p.m [1] - 5:2 page [9] - 7:16, 10:6, 29:7, 29:12, 29:13, 29:17, 50:1, 50:4 pages [1] - 58:10 paging [1] - 58:10 paper [2] - 42:4, 42:11 paragraph [4] - 38:17, 38:19, 39:19, 69:15 parallel [1] - 50:18</p>			

plea [1] - 14:15
Pleas [1] - 14:13
plenty [1] - 72:17
point [27] - 5:22, 9:3, 27:20, 29:3, 29:5, 35:17, 37:21, 37:24, 38:15, 42:6, 49:25, 50:11, 50:25, 51:18, 51:21, 56:22, 63:22, 63:25, 67:13, 70:1, 70:15, 70:16, 71:17, 72:7, 73:14, 76:20
points [1] - 49:17
pole [31] - 19:5, 24:15, 24:24, 27:6, 28:2, 30:24, 31:6, 42:3, 42:13, 42:15, 43:2, 43:7, 47:19, 48:16, 48:19, 54:13, 54:16, 56:12, 62:4, 64:10, 64:16, 65:10, 65:23, 67:7, 67:11, 70:14, 70:17, 71:5, 72:11, 72:21, 72:22
poles [14] - 21:19, 33:10, 43:4, 47:5, 47:25, 50:24, 54:14, 54:15, 55:17, 56:6, 57:21, 58:18, 70:17, 72:16
Police [2] - 6:4, 6:17
police [13] - 7:12, 8:13, 9:1, 9:25, 10:14, 10:23, 12:12, 14:18, 16:2, 17:15, 18:6, 20:7, 21:16
policy [9] - 16:16, 56:25, 57:2, 57:7, 57:9, 59:6, 59:10, 59:12, 60:12
poor [1] - 40:9
portal [15] - 37:14, 37:16, 38:15, 38:21, 41:6, 52:11, 52:12, 52:15, 52:17, 52:19, 53:6, 55:1, 57:16, 69:13, 69:24
portfolio [1] - 83:4
portion [4] - 60:8, 60:20, 60:22, 60:24
pose [1] - 28:3
position [4] - 37:18, 49:20, 57:1, 57:4
positions [1] - 6:22
possibly [5] - 33:17, 34:9, 50:15, 75:5
posted [2] - 68:14, 68:23
potentially [1] - 64:14
power [1] - 24:21
PP&L [5] - 21:17, 54:25, 57:10, 60:2, 67:25
PP&L's [1] - 60:3
PPL [21] - 19:23, 20:13, 21:19, 32:3, 33:18, 34:20, 35:12, 35:17, 39:6, 39:15, 39:20, 43:4, 45:16, 48:17, 57:20, 60:5, 80:17, 82:1, 82:17, 83:10
PPL's [2] - 64:5, 70:8

pre [4] - 4:25, 18:20, 18:21, 37:18
pre-dated [1] - 37:18
pre-marked [1] - 4:25
pre-programmed [2] - 18:20, 18:21
predecessor [2] - 37:19, 69:16
premarked [1] - 38:10
premises [1] - 56:12
present [2] - 23:13, 47:6
presented [3] - 44:24, 68:5, 75:13
pretty [1] - 28:9
previously [6] - 22:24, 23:3, 28:20, 31:19, 37:1, 68:12
printing [2] - 29:2, 68:22
printout [3] - 7:16, 10:7, 11:16
private [1] - 8:21
privy [4] - 21:5, 21:7, 21:9, 80:20
problem [9] - 29:23, 30:4, 30:10, 30:17, 39:3, 44:9, 62:1, 62:4, 68:5
problems [1] - 67:13
procedural [1] - 58:14
procedure [2] - 55:14, 55:15
process [24] - 37:14, 37:16, 39:7, 39:10, 39:16, 40:3, 40:6, 42:4, 42:9, 42:12, 43:13, 43:16, 44:1, 44:16, 48:25, 49:12, 51:15, 56:7, 56:13, 67:22, 69:18, 69:23, 70:21, 81:5
produce [1] - 54:6
produced [2] - 54:6, 54:8
professional [1] - 23:16
proficient [1] - 53:5
profile [6] - 42:4, 42:13, 42:15, 43:2, 43:3, 43:7
profiling [1] - 19:12
profit [2] - 8:4, 8:17
programmed [2] - 18:20, 18:21
progress [1] - 13:4
project [3] - 49:12, 50:12, 72:2
promoted [4] - 7:2, 7:5, 7:10
proof [8] - 76:12, 76:14, 77:18, 77:21, 78:9, 79:9, 79:19, 79:21
proper [5] - 25:3, 25:4, 26:4, 81:4
properly [5] - 31:14, 32:17, 62:6, 62:24, 71:14
property [2] - 77:13, 77:15

prospective [1] - 20:10
protest [1] - 83:9
provide [5] - 15:7, 16:4, 42:16, 58:18, 59:9
provided [5] - 16:14, 29:1, 53:22, 53:23, 65:5
provider [2] - 55:5, 59:5
providers [3] - 60:9, 60:14, 68:3
provides [1] - 70:9
providing [1] - 16:4
provision [3] - 28:11, 28:12, 28:20
prudent [1] - 81:3
Public [1] - 77:7
public [12] - 9:22, 41:7, 59:13, 59:15, 59:19, 59:23, 59:24, 60:15, 60:22, 68:24, 77:9, 84:23
PUC [1] - 45:17
purpose [3] - 27:13, 55:11, 85:14
purposes [2] - 5:8, 33:25
pushback [1] - 8:12
put [8] - 5:21, 12:15, 15:13, 25:9, 30:7, 32:14, 46:24, 56:13
putting [1] - 29:24

Q

Qualifications [2] - 3:5, 3:6
qualified [9] - 24:25, 25:14, 25:18, 30:6, 30:9, 35:22, 65:8, 67:14, 78:6
questioning [1] - 79:18
questions [13] - 17:3, 17:7, 32:17, 44:14, 52:8, 70:4, 70:23, 71:3, 78:1, 78:7, 78:12, 79:14, 79:22
quick [1] - 84:18
quickly [2] - 6:1, 85:13
quite [3] - 14:12, 14:13, 34:8

R

radio [1] - 16:11
Radio [2] - 12:17, 12:18
radios [1] - 12:13
raise [1] - 46:4
Raise [8] - 26:23, 39:23, 40:4, 40:13, 41:15, 45:8, 46:14, 46:20
randomly [1] - 10:19
re [1] - 61:1
re-build [1] - 61:1
reach [1] - 45:10
reached [1] - 42:1
read [2] - 21:4, 38:20

readily [1] - 59:5
Reading [1] - 9:24
ready [1] - 65:7
really [2] - 19:4, 19:16
reason [3] - 10:20, 34:22, 47:18
reasons [2] - 48:24, 61:20
reattached [1] - 64:10
rebuild [13] - 40:1, 40:4, 40:13, 40:22, 41:4, 41:11, 41:14, 41:21, 45:7, 46:4, 46:14, 46:20
rebuttal [4] - 22:19, 22:21, 23:4, 37:2
REBUTTAL [5] - 23:7, 27:18, 35:9, 36:6, 37:5
recalled [2] - 23:4, 37:2
recap [1] - 46:7
received [4] - 46:17, 53:16, 53:19, 53:21
receiving [2] - 42:13, 77:21
recess [1] - 75:8
RECESS [1] - 75:9
recognize [4] - 26:9, 33:15, 49:4, 50:5
recollection [2] - 61:5, 61:16
recommendations [1] - 8:10
record [3] - 5:5, 6:16, 7:19
RECROSS [2] - 36:5, 71:18
recross [1] - 71:16
Recross [3] - 3:2, 3:8, 36:3
RECROSS-EXAMINATION [2] - 36:5, 71:18
Recross-Examination [2] - 3:2, 3:8
red [2] - 13:12, 13:13
REDIRECT [2] - 35:8, 69:8
Redirect [1] - 3:2
redirect [3] - 21:22, 35:6, 69:7
reduce [5] - 32:5, 32:6, 62:6, 62:9, 84:14
reduced [1] - 62:11
reduction [1] - 16:24
redundancies [3] - 78:3, 78:5, 81:17
redundancy [1] - 80:4
reference [2] - 38:14, 58:14
referenced [1] - 58:25
referencing [1] - 57:22
referring [5] - 29:13, 30:3, 37:21, 53:8, 54:3
refers [2] - 28:18, 30:2
reflects [1] - 38:20
reframed [1] - 47:14
refresh [1] - 61:16

refused ^[1] - 32:22
regular ^[3] - 13:9, 14:4, 53:5
regulations ^[1] - 36:8
Regulations ^[1] - 36:9
rejecting ^[1] - 48:24
related ^[1] - 50:16
relates ^[1] - 81:22
relation ^[2] - 57:10, 76:22
relationship ^[1] - 76:21
release ^[1] - 56:8
relevance ^[1] - 44:3
relevant ^[1] - 44:6
relying ^[3] - 13:21, 28:12, 39:10
remain ^[1] - 22:24
remedy ^[5] - 44:8, 44:11, 62:12, 62:18, 65:11
removal ^[1] - 50:23
remove ^[4] - 44:22, 50:13, 50:20, 82:2
removed ^[2] - 50:19, 80:17
removing ^[1] - 44:17
render ^[1] - 81:21
repeat ^[2] - 43:20, 60:16
rephrase ^[1] - 42:25
report ^[3] - 10:22, 13:3, 23:15
Report ^[1] - 4:8
represent ^[1] - 9:1
representation ^[1] - 79:8
representative ^[3] - 8:25, 9:2, 83:4
representatives ^[1] - 45:17
represented ^[1] - 81:9
representing ^[1] - 17:18
request ^[6] - 11:3, 49:19, 50:11, 63:22, 65:15, 65:22
requested ^[4] - 9:21, 9:23, 49:17, 63:18
requesting ^[1] - 18:12
require ^[3] - 56:17, 71:4, 71:11
required ^[4] - 28:15, 56:2, 56:4, 58:22
requirement ^[3] - 57:13, 58:2, 60:18
requirements ^[2] - 57:19, 68:1
requires ^[1] - 12:21
requiring ^[2] - 31:22, 54:25
reside ^[1] - 58:17
residents ^[1] - 14:22
residing ^[1] - 61:6
resolve ^[7] - 5:16, 32:25, 33:5, 33:7, 33:9, 33:13, 62:24
resolved ^[1] - 5:20
respect ^[3] - 17:16, 18:14,

80:3
responded ^[1] - 54:7
responders ^[1] - 15:13
responding ^[3] - 12:19, 16:5, 16:12
response ^[4] - 8:5, 15:16, 15:25, 46:17
responsibilities ^[1] - 43:6
responsibility ^[1] - 40:23
responsible ^[1] - 8:17
rest ^[2] - 67:22, 73:3
resting ^[1] - 41:19
result ^[4] - 20:25, 43:16, 44:10, 45:11
resume ^[1] - 5:22
retired ^[1] - 9:2
review ^[1] - 63:4
reviewing ^[1] - 58:20
revision ^[2] - 31:21, 69:3
rights ^[2] - 82:19, 83:11
Rippke ^[6] - 22:22, 22:23, 23:9, 35:11, 36:16, 36:19
RIPPKE ^[2] - 23:1, 23:3
risk ^[2] - 28:3, 28:7
Robson ^[2] - 23:14, 29:15
role ^[2] - 16:4, 40:5
round ^[1] - 54:9
row ^[1] - 70:17
rule ^[3] - 24:22, 29:15, 37:23
Rule ^[3] - 24:22, 28:14, 29:6
rules ^[1] - 24:12
run ^[8] - 13:12, 21:1, 35:1, 55:9, 55:24, 77:12, 77:14
running ^[2] - 20:22, 71:5
rush ^[1] - 84:15
Ryan ^[1] - 36:24
RYAN ^[1] - 37:1

S

safe ^[2] - 67:12, 67:13
safely ^[2] - 65:10, 65:22
safer ^[1] - 11:9
Safety ^[20] - 7:16, 7:25, 8:3, 8:15, 9:9, 10:6, 10:17, 11:17, 12:6, 12:11, 13:14, 13:17, 14:1, 15:6, 17:15, 17:19, 18:12, 21:6, 40:20, 43:15
safety ^[17] - 16:5, 26:14, 26:17, 26:20, 26:24, 27:2, 27:6, 27:13, 28:3, 28:7, 28:8, 28:10, 29:25, 30:10, 30:14, 47:17, 48:12
satisfied ^[1] - 75:13
save ^[1] - 58:9
saved ^[1] - 14:12
saves ^[1] - 77:13
saw ^[4] - 25:25, 26:10, 30:12, 37:17

school ^[2] - 15:2
schools ^[3] - 14:24, 14:25
scope ^[2] - 36:12, 83:13
screen ^[1] - 25:9
second ^[5] - 18:7, 29:11, 39:18, 46:12, 70:16
secondly ^[1] - 64:24
secure ^[1] - 48:20
see ^[13] - 10:8, 10:15, 12:25, 13:7, 15:14, 16:9, 18:16, 19:2, 19:3, 19:13, 65:21, 67:12, 85:21
seeing ^[6] - 8:8, 11:1, 11:5, 12:22, 59:7, 71:25
seek ^[2] - 45:8, 64:21
segments ^[1] - 69:20
self ^[1] - 48:8
self-supporting ^[1] - 48:8
send ^[2] - 35:3, 68:1
sent ^[4] - 37:18, 37:22, 38:22, 51:22
separate ^[2] - 60:7, 60:8
Sergeant ^[3] - 7:3, 7:4, 16:10
sergeant ^[1] - 16:10
serve ^[1] - 70:13
service ^[30] - 16:22, 19:25, 20:2, 41:17, 55:1, 55:4, 55:11, 55:20, 55:21, 55:25, 56:2, 56:4, 56:7, 56:10, 56:17, 57:10, 57:13, 58:3, 58:22, 58:24, 60:19, 61:1, 70:5, 70:7, 70:9, 70:12, 70:18, 70:23, 71:2, 76:20
services ^[1] - 77:10
session ^[1] - 15:2
set ^[1] - 84:10
seven ^[1] - 15:19
seventeen ^[1] - 74:12
several ^[5] - 7:2, 9:12, 12:7, 53:2, 59:19
sexual ^[1] - 7:8
shared ^[2] - 18:2, 80:10
Sheet ^[1] - 53:24
sheet ^[1] - 54:8
sheets ^[6] - 42:4, 42:13, 42:15, 43:3, 43:7
shift ^[3] - 16:8
short ^[1] - 48:25
show ^[4] - 14:14, 33:14, 45:12, 55:24
showing ^[1] - 34:5
shown ^[2] - 71:22, 73:23
sidewalk ^[1] - 15:25
signal ^[1] - 80:11
signals ^[3] - 26:20, 80:23, 80:24
significance ^[1] - 50:9
significant ^[1] - 52:19

similar ^[2] - 10:14, 18:6
site ^[14] - 45:25, 46:21, 59:13, 59:15, 59:16, 59:19, 59:23, 60:8, 60:13, 60:20, 60:23, 60:25
sits ^[1] - 16:10
sitting ^[3] - 5:13, 67:14, 68:16
situation ^[5] - 9:17, 9:18, 12:22, 63:2, 65:11
situations ^[1] - 16:5
size ^[1] - 34:18
smaller ^[1] - 34:24
smooth ^[1] - 77:2
so-called ^[2] - 51:2, 70:5
sold ^[1] - 35:19
solely ^[2] - 31:5, 64:13
solutions ^[1] - 8:7
someone ^[4] - 15:22, 40:21, 40:24, 84:10
sometimes ^[1] - 70:15
somewhere ^[3] - 60:7, 60:14, 60:21
sooner ^[1] - 42:2
sorry ^[6] - 17:23, 32:8, 43:20, 60:16, 75:22, 82:11
sort ^[1] - 11:23
southeast ^[1] - 11:12
space ^[26] - 24:10, 24:12, 24:17, 24:19, 24:24, 24:25, 25:4, 25:6, 26:6, 26:12, 26:13, 26:14, 26:17, 26:24, 27:2, 27:6, 30:4, 30:5, 30:12, 30:13, 31:18, 35:19, 36:8, 36:9, 41:17, 47:17
special ^[1] - 7:7
specialty ^[1] - 26:9
specific ^[4] - 28:20, 41:2, 41:4, 53:1
specifically ^[9] - 28:18, 29:5, 29:16, 30:2, 56:19, 59:3, 60:13, 63:18, 68:16
specification ^[3] - 63:2, 65:16, 65:18
Specification ^[1] - 57:22
specifications ^[5] - 33:11, 33:12, 58:11, 58:12, 63:24
specificity ^[1] - 82:1
specifics ^[1] - 64:11
specified ^[1] - 29:22
specs ^[1] - 32:3
splice ^[23] - 27:5, 47:4, 47:12, 47:15, 47:19, 48:2, 48:5, 48:10, 63:9, 63:11, 63:13, 64:6, 66:1, 66:9, 66:14, 66:22, 67:21, 70:22, 71:11, 72:13, 72:15, 72:18, 72:20
spliced ^[2] - 72:10, 72:11
splicing ^[3] - 71:6, 72:8,

72:13
spot [1] - 58:24
Spread [1] - 53:24
spread [1] - 54:8
square [2] - 14:21, 14:23
staggering [2] - 15:24
stakeholders [1] - 9:4
standard [8] - 34:18, 47:6, 48:5, 48:17, 63:6, 63:23, 64:1, 65:9
standards [7] - 26:4, 49:1, 63:3, 65:21, 67:15, 71:11, 71:13
start [5] - 5:10, 18:12, 18:18, 49:8, 63:3
started [5] - 6:24, 10:22, 11:2, 11:3, 35:23
starters [1] - 70:12
starting [1] - 52:8
state [1] - 6:16
statements [3] - 14:8, 23:21, 45:1
station [2] - 10:14, 18:6
stats [1] - 66:14
staying [1] - 20:8
stays [1] - 19:19
step [3] - 16:16, 36:16, 36:19
still [7] - 12:2, 20:14, 30:16, 32:12, 37:7, 37:9, 56:13
Stine [2] - 38:19, 39:5
stipulation [4] - 42:17, 42:21, 43:6, 77:23
stop [4] - 42:2, 84:10, 84:19, 85:20
storage [1] - 9:20
stores [1] - 85:24
straight [1] - 14:17
strand [1] - 47:16
stranded [1] - 72:19
strap [1] - 48:16
strapped [2] - 27:5, 47:4
strapping [1] - 48:17
straps [2] - 66:25, 67:11
strategy [2] - 16:25
street [26] - 11:4, 15:23, 15:24, 26:20, 31:10, 31:13, 31:14, 31:15, 31:16, 31:23, 32:4, 32:6, 32:9, 32:10, 32:18, 33:8, 53:24, 54:13, 54:14, 54:15, 61:9, 61:12, 61:20, 61:24, 62:2, 62:5
streetlight [1] - 11:23
streets [4] - 54:11, 54:12, 54:21, 54:22
stretches [1] - 49:14
strike [1] - 13:13
struck [1] - 46:18
structural [1] - 34:9

struggling [1] - 61:9
subject [1] - 36:9
submissions [1] - 56:14
submit [4] - 39:16, 40:23, 42:5, 69:19
suggest [2] - 47:4, 73:13
suggesting [1] - 70:7
summary [3] - 49:11, 49:16, 49:22
supply [22] - 24:10, 24:16, 24:17, 24:20, 24:24, 24:25, 25:4, 25:5, 26:6, 26:12, 29:23, 30:2, 30:4, 30:5, 30:12, 30:19, 31:5, 35:14, 35:19, 35:25, 36:8
support [2] - 48:2, 48:8
supporting [1] - 48:8
supposed [5] - 5:10, 16:19, 26:22, 41:3, 60:1
surprised [1] - 83:22
surrebuttal [2] - 75:3, 75:11
surveillance [1] - 8:11
survey [4] - 46:9, 56:10, 62:15, 65:6
suspect [2] - 14:9, 18:11
swear [1] - 78:22
sworn [7] - 6:11, 22:24, 22:25, 23:3, 37:1, 78:18, 78:25
synchronize [1] - 85:12
synchronized [6] - 76:18, 76:21, 84:6, 84:8, 85:4, 85:17
system [31] - 8:11, 9:7, 9:15, 14:18, 19:19, 20:23, 21:2, 35:21, 41:12, 48:17, 53:7, 55:1, 77:5, 77:6, 78:4, 80:3, 80:6, 80:7, 80:12, 80:17, 81:5, 81:17, 81:21, 81:25, 82:4, 82:8, 82:20, 83:10, 83:15, 84:6
sytem [1] - 82:3

T

table [3] - 29:11, 29:16, 29:21
talks [1] - 57:12
tankers [1] - 15:11
team [1] - 21:8
technical [3] - 55:7, 58:11, 80:8
technician [1] - 80:8
telecom [1] - 35:18
telecommunication [1] - 55:5
telecommunications [1] - 59:4
temporary [1] - 41:16
ten [2] - 29:21, 29:22

term [1] - 59:19
termination [1] - 70:16
terms [15] - 30:18, 30:21, 31:1, 31:13, 36:8, 53:14, 54:21, 54:22, 54:23, 55:7, 55:20, 62:22, 72:7, 75:13
testified [11] - 6:11, 16:6, 18:1, 23:4, 23:14, 37:2, 60:17, 62:23, 68:12, 77:5, 78:25
testify [6] - 19:15, 76:17, 77:4, 77:19, 78:18, 83:15
testifying [1] - 25:9
testimony [8] - 19:17, 28:1, 47:7, 47:8, 60:12, 72:8, 72:23, 83:19
themselves [1] - 71:12
therefore [1] - 69:19
third [8] - 8:16, 9:19, 35:12, 49:11, 49:24, 51:2, 60:24, 69:15
threads [1] - 35:1
three [2] - 38:18, 55:14
throughout [7] - 8:11, 9:7, 9:12, 12:8, 62:13, 66:4, 72:2
ties [1] - 66:25
timeline [1] - 56:3
tiny [1] - 11:23
TO [1] - 4:2
today [5] - 15:5, 21:1, 23:12, 61:10, 75:21
together [2] - 5:22, 45:18
took [3] - 5:5, 7:11, 49:12
tool [1] - 56:13
tools [1] - 25:4
top [1] - 68:21
tour [3] - 18:20, 18:21, 18:23
towards [1] - 60:21
town [2] - 11:13, 19:13
track [1] - 77:16
tractor [1] - 15:11
traffic [12] - 26:20, 76:18, 77:2, 80:22, 80:24, 81:1, 82:20, 84:6, 84:13, 84:14, 84:25, 85:12
trail [2] - 49:5, 49:9
trailers [1] - 15:11
train [1] - 13:2
trained [3] - 15:6, 25:2, 25:7
training [2] - 13:6, 36:12
transaction [1] - 13:5
transition [1] - 23:19
travel [1] - 18:11
treatment [1] - 78:17
trip [1] - 78:15
trolley [1] - 26:21
trouble [1] - 82:17

truck [2] - 25:4, 64:9
true [2] - 24:6, 30:16
truth [2] - 22:24, 78:23
try [5] - 25:22, 33:21, 47:14, 65:4, 65:14
trying [4] - 5:15, 5:20, 70:5, 84:11
turn [4] - 29:3, 58:6, 62:12, 69:10
TV [1] - 56:1
twice [1] - 84:19
two [20] - 7:9, 7:16, 12:24, 13:13, 22:20, 24:8, 24:14, 34:7, 38:18, 46:8, 55:14, 55:24, 57:4, 57:5, 64:20, 68:20, 69:18, 75:14, 75:17, 83:24
two-and-a-half [1] - 57:5
two-page [1] - 7:16
type [14] - 28:6, 30:23, 34:19, 34:21, 40:14, 41:16, 53:5, 53:6, 56:2, 66:22, 67:19, 67:20, 68:2, 72:1
types [12] - 16:18, 24:8, 24:13, 24:14, 30:18, 30:19, 33:14, 33:17, 33:19, 40:10, 40:11, 43:18
typical [2] - 55:13, 55:15
typically [3] - 34:20, 47:15, 69:18

U

ultimately [3] - 49:20, 50:22, 70:19
unauthorized [10] - 19:23, 20:12, 43:8, 44:18, 61:18, 61:21, 61:23, 66:16, 80:17, 82:2
under [10] - 5:25, 26:4, 31:25, 35:11, 37:7, 37:9, 43:6, 45:2, 47:5, 48:10
understood [6] - 27:22, 27:25, 60:11, 60:17, 66:18, 67:24
undertaken [2] - 45:7, 46:19
unfamiliar [1] - 37:13
ungrounded [1] - 62:2
unintended [1] - 44:17
unit [2] - 13:12, 13:13
Unit [1] - 7:2
units [2] - 7:7, 76:19
unless [2] - 19:1, 30:6
unmonitored [1] - 9:14
unravalled [1] - 43:17
unsynchronized [1] - 77:1
unusual [2] - 9:16, 9:18
unwilling [1] - 51:19
up [20] - 14:15, 15:13, 16:6,

<p>19:7, 25:9, 27:20, 42:5, 46:11, 55:23, 55:24, 64:6, 68:20, 71:5, 72:7, 73:5, 78:4, 78:5, 78:14, 79:15, 79:22</p> <p>updates [2] - 12:18, 16:12</p> <p>upper [1] - 11:16</p> <p>uses [3] - 15:9, 33:18, 77:11</p> <p>utility [1] - 23:20</p> <p>utilize [3] - 39:6, 52:15, 69:13</p> <p>utilized [1] - 70:23</p> <p>utilizing [1] - 48:1</p>	<p>Wiczkowski [18] - 37:13, 38:14, 38:21, 41:20, 42:3, 43:2, 45:9, 46:5, 46:12, 47:3, 48:23, 51:12, 51:19, 51:22, 52:10, 53:3, 53:5, 69:12</p> <p>Wiczkowski's [1] - 47:19</p> <p>width [1] - 34:18</p> <p>willing [2] - 32:4, 77:22</p> <p>Winter [8] - 3:2, 3:6, 3:7, 36:3, 64:8, 75:10, 77:20, 83:22</p> <p>WINTER [55] - 17:6, 22:5, 22:17, 25:16, 27:19, 29:4, 33:22, 34:2, 34:4, 35:5, 36:4, 36:15, 36:17, 37:20, 38:6, 38:9, 42:18, 42:20, 44:2, 52:5, 52:7, 58:15, 63:10, 63:14, 64:17, 65:24, 66:11, 66:17, 69:5, 71:17, 71:19, 73:1, 73:9, 73:16, 73:19, 74:8, 74:11, 74:13, 74:15, 74:17, 74:21, 74:23, 75:1, 75:4, 75:7, 75:12, 75:19, 75:22, 75:25, 76:5, 77:22, 83:23, 84:1, 84:3, 85:7</p> <p>wire [5] - 24:23, 34:16, 72:10, 72:15, 72:22</p> <p>wires [2] - 34:7, 71:12</p> <p>WITNER [1] - 36:7</p> <p>witness [14] - 6:3, 6:11, 14:8, 21:25, 23:4, 36:22, 37:2, 67:8, 76:11, 76:13, 76:15, 78:11, 78:24, 81:10</p> <p>WITNESS [13] - 22:8, 22:11, 36:21, 37:10, 58:5, 58:8, 66:13, 78:20, 81:13, 83:17, 85:10, 85:19, 85:22</p> <p>witnesses [2] - 14:6, 22:21</p> <p>woodshed [1] - 5:15</p> <p>words [1] - 53:13</p> <p>worker [17] - 24:25, 25:14, 25:18, 26:14, 26:17, 26:19, 26:23, 27:2, 27:6, 28:7, 28:10, 29:25, 30:6, 30:9, 30:13, 47:16, 48:12</p> <p>workers [5] - 25:7, 27:14, 35:22, 65:8</p> <p>Works [1] - 77:7</p> <p>wranglings [1] - 21:17</p> <p>wrapping [1] - 46:11</p> <p>wrote [1] - 50:7</p>	<p>yourself [1] - 53:3</p>
V	Z	
<p>van [1] - 25:25</p> <p>vandalism [1] - 77:10</p> <p>varies [1] - 55:17</p> <p>variety [1] - 84:22</p> <p>various [1] - 11:25</p> <p>vast [1] - 10:1</p> <p>vehicle [3] - 13:10, 15:4, 15:10</p> <p>vehicles [1] - 85:16</p> <p>verbiage [1] - 59:16</p> <p>victim [1] - 18:11</p> <p>video [7] - 9:20, 12:2, 13:6, 13:25, 14:14, 16:19, 18:18</p> <p>videos [1] - 13:8</p> <p>view [2] - 66:15, 72:6</p> <p>violation [2] - 64:20, 66:12</p> <p>violations [4] - 16:16, 64:21, 65:2, 66:13</p> <p>violence [2] - 8:7, 11:5</p> <p>Violent [1] - 7:2</p> <p>violent [1] - 11:1</p> <p>vital [2] - 13:25, 16:24</p> <p>volume [1] - 29:1</p> <p>volunteer [2] - 51:5, 51:8</p>		<p>zip [1] - 66:25</p> <p>zone [10] - 26:20, 26:22, 28:3, 28:8, 28:10, 29:25, 30:14, 35:14, 35:25, 48:12</p> <p>zooming [2] - 18:22</p>
W	Y	
<p>walking [1] - 15:1</p> <p>wants [1] - 60:2</p> <p>watching [1] - 18:18</p> <p>ways [1] - 5:15</p> <p>website [12] - 39:7, 41:8, 41:9, 57:10, 57:15, 59:8, 59:23, 60:2, 60:4, 60:15, 68:15, 68:18</p> <p>Wednesday [1] - 5:1</p> <p>week [1] - 42:3</p> <p>weekend [3] - 13:24, 15:18, 18:10</p> <p>weeks [1] - 69:19</p> <p>welcome [1] - 23:9</p> <p>wheelhouse [1] - 81:15</p> <p>whole [4] - 46:22, 55:21, 57:1, 80:20</p>	<p>YANEK [1] - 37:1</p> <p>Yanek [5] - 25:8, 36:24, 36:25, 37:7, 44:14</p> <p>year [1] - 77:13</p> <p>years [7] - 6:21, 7:2, 7:9, 10:10, 55:22, 57:4, 57:5</p>	

Attachment (4)

PPL Make Ready Policy Brief- rev1

Date: January 18, 2017

Re: Pole Attachments and Make Ready Charges
for Network Construction

Prepared by: MAW Communications

Prepared for: exclusive distribution to Broadband Implementation
Team: Pat Brogan, Patrick Hopkins, Charlotte Katzenmoyer

CONFIDENTIAL

Executive summary

*entire document incl attachments

City of Lancaster has partnered with MAW Communications, a Pennsylvania Telecommunications Carrier, for the construction of critical fiber infrastructure throughout the City of Lancaster to streamline operations and create costs reductions for automated meter infrastructure, traffic signal migration, and the safety camera network. The project requires extensive aerial and underground plant construction. Phase I Aerial, already completed, included the conversion of over 18 miles of network across 976 pole attachments within the existing network footprint. Phase II Aerial will extend the network to currently unreached areas of the City, and require attachment to 550 additional utility poles. Most of the poles in Lancaster are owned and controlled by PPL Electric Utilities.

The unknown variable cost in any fiber infrastructure project is the “Make Ready” charges (engineering and construction) by the existing utility pole owners to make space available on a pole for the fiber cable attachment. In our opinion, PPL has instituted a series of pole attachment business policies that effectively ensures their utility pole infrastructure is improved without cost to PPL, while creating unnecessary Make Ready charges.

In January of 2016, MAW submitted the initial Pole Attachment application associated with this project, and was concerned by the amount of Make Ready charges required by PPL. Throughout the remainder of the year, MAW submitted additional Pole Attachment applications and entered into communication with PPL management to discuss alternatives. The minimum engineering and construction Make Ready costs for the combined submissions was \$198,550 for the 297 poles included in those applications. Consequently, through extrapolation, the projected total electric Make Ready costs for the full City of Lancaster project would approach \$600,000 once factoring in additional foreign utility Make Ready. Using National Electrical Safety Code (NESC) and FCC pole attachment specifications, MAW has engineered three (3) separate and distinct solutions along the same routes that significantly reduce the potential Make Ready costs. In fact, in all three of MAW’s designs, of which we only need one; Make Ready would be required on only two (2) poles, compared with 137 poles required through the new PPL process. If projected over the entire span of the project, this reduction equates to a potential savings of over \$550,000 in Make Ready charges.

PPL's pole attachment policy creates needless extraordinary expenses for all non-incumbent Telecommunications Carriers and ultimately their partners, customers and the constituents they serve. PPL's policy fosters an anti-competitive environment that artificially raises the costs of all non-ILEC fiber infrastructure projects by forcing unnecessary, continuously iterative Make Ready. PPL's pole attachment policy has created financial and timeline implications for the City of Lancaster Broadband Infrastructure projects, as well as another significant MAW client.

MAW believes the current PPL business practices are in direct violation of the Pennsylvania Public Utility Commission (PUC) and the Federal Communications Commission (FCC) rules and regulations with respect to access to the public rights of way and anti-competitive, discriminatory policies. These regulatory bodies oversee the management of the public right of way, and focus on eliminating anti-competitive practices, monitoring compliance with appropriate industry standards, and resolving disputes.

The FCC maintains primary jurisdiction over issues with respect to reasonableness of rates, terms and conditions of pole attachment agreements. PPL initiated a unilateral contractual change that has created an anti-competitive, discriminatory environment by forcing unnecessary Make Ready. MAW believes the new policies are an attempt to externalize the costs associated with cleaning up PPL's fault ridden utility poles, which includes over 900,000 poles representing a minimum asset value in the tens of billions of dollars.

Following 11 months of efforts, including over 6 months of negotiations, PPL has indicated their position is final. PPL is requiring all 550 poles be subject to these new processes, thus incurring the associated, inflated Make Ready. Consequently, City of Lancaster has several options moving forward with their critical infrastructure projects:

- **Action Plan #1:** Accept PPL's Make Ready policy, incurring the additional minimum \$385,000 in electrical Make Ready plus any associated costs related to additional Foreign Utility Make Ready (estimated at an additional \$200,000).
- **Action Plan #2:** Proactively seek relief from PPL's policy via the FCC and PUC, effectively halting construction until a final Opinion and Order is finalized.
- **Action plan #3:** Begin construction. Notify PPL of our intention to immediately initiate network construction, and begin construction using temporary attachments based on MAW's own engineering and in full compliance with all NESC and FCC requirements.

MAW recommends pursuing Action Plan #3, allowing us to continue expeditiously constructing the network to keep the project on schedule and minimize Make Ready costs. PPL may decide to seek relief from the FCC, but while the legal opinion is being decided with the appropriate regulatory bodies, we can continue to construct the network. Given the FCC's jurisdiction, previous FCC Opinions and Orders, and our well-documented position, we are prepared to defend our position with the facts, FCC precedent, and verifiably safe network construction.

I. Context and Importance of the Problem

City of Lancaster has partnered with MAW Communications to construct significant fiber infrastructure in Lancaster. Over 18 route miles of fiber have already been installed in Phase I, and Phase II is projected to span an additional 13 route miles and require attachment to over 550 utility poles. This project will require easements and coordination with other utilities operating in the public Right of Way.

The unknown variable cost in any fiber infrastructure project is the Make Ready charges (engineering and construction) charged by the existing utility pole owners. The current project will encounter poles predominantly in PPL territory. Over its 19-year history, MAW Communications has engineered, built and maintained over 5,000 strand-miles of fiber network and maintains pole attachment agreements with various electric and telecommunications carriers as well as owning its own utility poles.

PPL recently made unprecedented changes to its pole attachment and Make Ready procedures that have broad implications for the City of Lancaster infrastructure project. In our opinion, PPL has embarked on a set of anti-competitive business practices which distort FCC regulations to externalize outside plant repair costs onto other utilities and 3rd party attachers who operate in the public right of way.

The net impact is approximately \$600,000 in unnecessary Make Ready charges. PPL guidelines limit attachment applications to 100 poles per application. The Make Ready costs associated with the first 279 poles is \$198,550, as outlined in Appendix B. Of the 137 total poles requiring Make Ready based on PPL's engineering, 72 poles require PPL Make Ready. The Make Ready charges from PPL do not include an itemized breakdown of the construction costs associated with the Make Ready, but a simple calculation estimates the average cost per pole for PPL Make Ready at \$2,757.

The PPL Make Ready is a minimum amount, and does not include the costs of Make Ready from the other affected carriers attached to the poles. Of the 137 total poles requiring Make Ready based on PPL's engineering, 106 poles require foreign utility Make Ready. The new attacher is responsible for all Make Ready costs incurred in order to accommodate their use of the pole; affected attachers would thus send bills for the associated Make Ready costs once incurred. There is no way to precisely determine this amount, since it depends on the number of carriers per pole and the extent of the work to be performed, but a conservative estimate of \$1,000 per pole for Make Ready would project an additional \$208,000 in foreign utility Make Ready costs for the project.

MAW prides itself on quality engineering and has designed several distinct paths, only one of which is required, along the same route that significantly reduces the potential Make Ready costs. In each of the paths, Make Ready is required on only 2 out of the 279 poles from the initial submission, with estimated Make Ready construction costs of less than \$10,000. The identified paths and proposed pole attachment heights are documented in Appendix D.

This represents a reduction in the number of poles requiring Make Ready of over 98%. Assuming that projected Make Ready would be reduced by a more conservative estimate of 75%, estimated savings in PPL Make Ready would exceed \$275,000, with an additional estimated savings of \$150,000 in foreign utility Make Ready. These estimates are calculated using the average per pole Make Ready from the PPL engineering invoices (\$2,757 in electrical Make Ready plus \$1,000 per pole in foreign utility Make Ready), as described in Appendix B. The Make Ready engineering charges are assumed to be constant in all scenarios. All routes are engineered in compliance with NESC, and FCC safety and engineering guidelines.

How can PPL justify implementing such a policy without drawing any attention?

In general, utility poles are divided into three zones: electric, communications, and minimum safe attachment height. The topmost portion is reserved for the electric facilities. Telecommunications and cable providers generally operate in the communications space. The bottommost communications position has traditionally been reserved for the Incumbent Local Exchange Carrier (ILEC). Utility pole owners use Pole Attachment Agreements to manage the use of this space with multiple utilities and third party attachers.

PPL operates with two sets of standard agreements, policies and procedures for their attachments, namely Joint Use and Third Party. Joint Use is defined uniquely by PPL to mean reserved only for incumbent carriers. Third Party is also defined uniquely by PPL to mean including all other attachers. The standard definition for Third Party is any attacher that is not a Telecommunications Carrier or power company. The standard definition of Joint Use is between utilities such as a Pennsylvania Telecommunications Carrier and a Pennsylvania power company jointly using the public rights of way through jointly sharing access to utility poles. In Pennsylvania, the PUC stipulates that PPL and MAW equally have the same presumptive right to access the public rights of way throughout Pennsylvania.

Historically, utility pole owners have developed standard procedures to manage attachments to their poles in the public right of way. In our opinion, PPL's modification to these standard procedures through its use of its pole attachment business practices, have resulted in a policy that rests on the following specious pillars:

- 1. All new Pole Attachers are assigned to the topmost communications position as a standard business practice.*

PPL's topmost assignment creates an iterative Make Ready process. After enough iterations have occurred; the process will effectively ensure every PPL pole is replaced using their Make Ready process without any cost to PPL. PPL has over 900,000 poles with a replacement cost in the tens of billions of dollars. This seemingly innocuous assignment to the topmost communication's position actually has an extensive set of ramifications.

Each time a new attachment is placed, every other attachment must move down at least 12". Therefore, if only the topmost position is used by a single attachment, even though there may be room for 6 or more other attachments below, PPL's topmost assignment policy will create Make Ready to move the only attacher down thereby creating extraneous Make Ready costs for the new attacher.

Each new attachment causes a Make Ready iteration that causes an increasing number of future iterations. Dependencies and the time to complete the Make Ready grow proportionally to the number of attachments. Each move down of an attachment requires the lower attacher to move first. Consequently, the new attacher must wait through the iterative Make Ready schedule for each sequential move of all of the existing attachers.

Once the pole is full, per PPL's policy, when the lowest attacher is 12" above the ILEC, regardless of how much usable space is below the ILEC attachment, the pole will be replaced. The result is; the pole must be replaced with a taller pole and all of the attachments including the power attachments must be moved to the new pole. This process costs tens of thousands of dollars per pole and according to PPL is borne by the new attacher. The FCC has noted similar violations by power companies across the country, and incorporated new Pole Attachment standards in 2011 to help streamline some of the outdated processes (Appendix H).

In our opinion, PPL's attachment policy is discriminatory because the ILEC, as a PPL defined Joint User does not have to comply with this policy and is therefore not subject to most Make Ready. The ILEC can use the space below its existing attachments which in most cases requires little or no Make Ready.

MAW Communications has an existing Pole Attachment agreement with PPL that governs the attachment process, included here in Appendices E and F. No section of the agreement grants PPL the right to begin assigning all new attachments, excluding ILEC attachments, to the topmost pole position.

Under the guise of instituting a unilateral new Pole attachment business practice, without any options whatsoever available to the attacher, PPL's attachment policy mandates PPL performs all network engineering with impunity and with complete disregard for the Telecommunications Carrier's engineering. In our opinion, PPL's new attachment process is monopolistic and as a consequence, is preventing MAW from conducting its own engineering for the design and construction of its own outside plant facilities.

Historically, telecommunications carriers performed their own engineering which was reviewed by PPL engineers to ensure the safety and integrity of the existing plant. This is also the procedure with all of the other utility pole owners MAW has agreements with.

MAW's attachment agreements include First Energy which has millions of utility poles across three states and MAW is attached to over 1,000 of their poles. In First Energy Territory, regardless of an ILEC's attachment, if MAW designs its plant below the ILEC, the attachment is approved as long as the design meets FCC and NESC standards. MAW is the lowest attacher to hundreds of First Energy poles, including placement below the ILEC.

PPL contends that it is a standard business practice applied non-discriminatorily for all pole attachment applicants, and therefore in compliance with FCC requirements. This is not the case for the ILEC who, as a PPL-defined Joint User is not bound by this new policy. Therefore, this is a discriminatory policy favoring the ILEC and PPL. Further, FCC regulations are in place to ensure attachment terms are consistent and reasonable. In our opinion, PPL's attachment policy fails both of these tests. The FCC's goal is to prevent monopolistic behavior over the public rights of way, and prevent just these sorts of practices. There are a series of precedent cases between electric utilities and telecommunications carriers decided in favor of the carrier (Appendix H).

The FCC and PUC are in place to ensure creative implementations of their rules and regulations do not create exactly what their rules and regulations were designed to prevent. PPL's attachment policy is one of these implementations.

2. As the pole owner, PPL has the authority to make the business process changes.

Our attachment agreement with PPL requires any renegotiation of terms be approved by both parties. In this case, PPL created a unilateral change that impacts our ability to effectively operate in the public Right of Way. Although MAW has historically conducted its own engineering of outside plant with PPL, PPL's process prohibits MAW from conducting its own engineering for the design and construction of its own outside plant facilities.

The FCC and PUC are in place to resolve issues such as this, since public utilities and telecommunications carriers have not always behaved in a manner that facilitates competition. There is extensive precedent in the FCC for resolving issues such as these, as discussed in Appendix H.

In 2011, the FCC made substantial changes to its Pole Attachment Policy for the express purpose "to improve the efficiency and reduce the potentially excessive costs of deploying telecommunications, cable, and broadband networks, in order to accelerate broadband build-out." This stance was instigated by Congress, and supported in the development of a National Broadband Plan. PPL contends that their business practices were designed in order to maintain compliance with the FCC guidelines. MAW contends that these very practices violate the intent of the FCC revisions.

3. These business practice changes are required to ensure the structural integrity of PPL's poles and ensure safe conditions for workers and the community at large.

MAW engineers and builds its network to the highest standards, in full compliance with all NESC, FCC safety regulations. MAW's proposed attachment protocol with PPL did not seek a lowering of safety standards. To the contrary, and in fact, MAW voluntarily requested engineering review by PPL over all proposed routes along the proposed path at MAW's expense. The strict assignment of new attachers to the top pole position does not contribute to increased safety. To the contrary, it ensures multiple visits to each pole by each attacher's contractor who each will be impeding traffic creating needless risk to accidents due to needless iterative Make Ready work.

Excluding PPL's own Electrical Facilities, the ILEC's large, extremely heavy copper cables are the largest contributor to pole load. The ILEC's largest copper cables have conservatively 100 to 1000 times the load factor as compared to the largest fiber optic cable. Due to the extremely lightweight of fiber, it is highly unlikely that PPL's structural load calculations of MAW's fiber optic attachments would create structural "Make Ready" outside of strand termination; unless the pole itself was already in complete disrepair and should have already been replaced regardless of the addition of an extremely light weight fiber cable.

PPL's Make Ready policy utilizes load factor calculations to ensure the new attacher has to pay for 100 percent of the load on a pole by being forced to pay to replace the pole for the addition of less than 2 percent of the load on the average pole. This creates an unreasonable cost of tens of thousands of dollars for the new attacher. Each attacher's cost per pole should be a low percentage base charge plus a cost that is proportional to the load their attachment creates. The next highest load factor is a third party attacher, the local cable company.

In many situations in which the load factor test fails due to the attachment of a fiber cable attachment, the pole's structural integrity is already compromised at the time of inspection. In *Cavalier Telephone v Virginia Electric and Power*, the FCC ruled against an electrical utility for duplicative Make Ready charges inappropriately passed on to the telecommunications carrier because the new attacher is only responsible for costs associated with attaching, but clearly not for pre-existing issues, as noted in Appendix H.

4. PPL must reserve the bottom portion of the pole for the incumbent ILEC.

PPL contends that the Agreement currently in place with the ILEC effectively prohibits other carriers from attaching in the lowest position on the pole. The language in Document 6-01-140 makes reference to that requirement, which can be found in Appendix F. However, with the increase in demand for access to the communications space on poles throughout Pennsylvania, this practice has been rendered functionally obsolete through a long-standing precedent allowing other parties to occupy the bottom position. This is evident throughout PPL's territory and throughout Pennsylvania, where the ILEC does not currently occupy the bottom position and has not for quite some time.

Before fiber optic facilities became pervasive, the ILEC required the lowest position to install their extremely heavy copper facilities. Today, Verizon is actively abandoning their copper facilities in place, as they are considered functionally obsolete, as indicated in Appendix C. Consequently, their requirement to be the lowest attacher is also functionally obsolete. Further, Verizon through PPPL proxy denying MAW access to a portion of the communications space on PPL poles via some outdated, obsolete condition is anti-competitive and should be resolved between Verizon and MAW through complaints filed with the PUC and FCC. Conversely, PPL has assumed the supportive ILEC friendly anti-competitive position. Consequently, as stated in our Pole Attachment agreement in Section 6.5, MAW will directly and independently address any other "Make Ready" that is related to other attachments within the entire communications space; as is our responsibility and right as a Pennsylvania Public Utility.

Background

MAW Communications has partnered separately with City of Lancaster and the City of Lancaster for extensive network construction in and around Lancaster and Berks Counties. The combined network has an important impact on each client's respective customers and stakeholders. Both clients are impacted by these changes, and it is important that each understand what is at stake for their respective projects. Throughout 2016, MAW attempted to resolve this amicably, as is their responsibility as a registered Pennsylvania public utility. While the following represents a brief overview of the Pole Attachment Agreements efforts over the last 12 months, detailed documentation and chronology is available in Appendix G.

MAW can submit up to five packets of up to 100 poles at a time, based on its existing Pole Attachment Agreement with PPL. Pole Attachment Submission (#202916) indicated Make Ready required on 47 of the 88 poles submitted. MAW's engineering had anticipated no Make Ready costs for this route, and therefore initiated a dialogue upon receipt of the \$34,157 engineering and construction Make Ready charges.

In April through July 2016, MAW representatives met with PPL engineers and management, eventually escalating the issue to the Board of Directors. During this time, MAW and PPL engineers discussed the details of a process to ensure PPL oversight over MAW engineering, and the creation of an advance escrow account in case any electrical Make Ready would actually be required. Despite MAW's attempts to try all paths to an amicable solution between both parties, as is required by both the FCC and the PUC, PPL confirmed its intransigence regarding the excessive Make Ready dispute in an August 26th letter. The critical communications with PPL top management can be found in Appendix A.

In August 2016, MAW advised its primary clients of the situation and began developing a strategy. In September MAW submitted 2 additional Pole Attachments packets through the standard PPL process to gather additional data. As per the required timeline and FCC Pole Attachment Guidelines, PPL responded with Make Ready engineering within 30 days. Upon receiving the final quote, dated December 1, MAW got confirmation of the gravity of the situation, and felt it necessary to prepare this brief to apprise the Board of the situation.

II. Action Plan Proposals

Following 11 months of efforts, including over 6 months of negotiations, PPL has indicated their position is final. PPL is requiring all 2,000 poles be subject to these new processes, thus incurring the associated, inflated Make Ready. Consequently, City of Lancaster has several options moving forward with their critical infrastructure projects. Even though there are many differing permutations of action plans, the options have been distilled down to three plans:

Action plan #1 Accept PPL's Make Ready Policy

- By accepting the PPL process as currently enacted, City of Lancaster would assume the costs of the Make Ready for the project, currently estimated at \$400,000 in electrical Make Ready and \$200,000 in foreign utility Make Ready.

- Network construction could begin immediately, though the timeline for network construction would be contingent on the response time of other utilities to respond to the required Make Ready requests. Though the 2011 FCC Order imposes time limits on responses to Make Ready requests, additional time delays may be expected, especially in the case of multiple carriers on a single pole.
- Legal fees would be minimized.

Action plan #2 Proactively Seek Relief from PPL's policy via the FCC and PUC

- By initiating legal proceedings before the FCC and PUC, a final determination of the dispute can be obtained. This strategy may delay the project, since no network construction can begin until an Opinion and Order is finalized and vetted through the appeal process.
- There would be higher legal fees associated with this action plan.
- In the event of an affirmative legal opinion by the FCC, we could commence construction based on MAW's proposed engineering, effectively reducing Make Ready costs by over \$500,000. There is a risk of an adverse FCC decision, in which case we would commence construction of the network and abide by the PPL-proposed Make Ready as outlined.

Action plan #3 Begin Construction ... Recommended by MAW

- This action plan will allow us to continue expeditiously constructing the network. MAW will notify PPL of our intention to immediately begin constructing the network, based on its own engineering and in full compliance with all NESC and FCC requirements, using the FCC's temporary attachment regulations. The majority of the aerial plant could be constructed within several months.
- In order to prevent us from continuing construction, PPL would have to petition the FCC to enforce their current attachment policy. If PPL decides to seek relief from the FCC, while the legal opinion is being decided with the appropriate regulatory bodies, network construction could continue. This plan produces network infrastructure now and makes it more difficult for PPL to justify compliance with their attachment policy.
- This strategy could instigate PPL to initiate a formal complaint with the PUC or the FCC. Additionally, PPL could seek local injunctive relief to prevent us from continuing construction in violation of the existing Pole Attachment Agreement. Given the FCC's jurisdiction, previous FCC Opinions and Orders, and our well-documented position, we are prepared to defend our position with the facts, FCC precedent, coupled with verifiably safe network construction.
- The initial Make Ready costs are minimized. The risk exists, however minimal, that an adverse FCC opinion could require compliance with the PPL Make Ready policy. This process may take several years; in the meantime, however, we will have a functioning network to utilize and would simply need to adjust the network in the future to comply with the Make Ready standards.

MAW recommends pursuing Action Plan #3, allowing us to continue expeditiously constructing the network to keep the project on schedule and minimize Make Ready costs. PPL may decide to seek relief from the FCC, but while the legal opinion is being decided with the appropriate regulatory bodies, we can continue to construct the network. Given the FCC's jurisdiction, previous FCC Opinions and Orders, and our well-documented position, we are prepared to defend our position with the facts, FCC precedent, and verifiably safe network construction.

References:

Appendix A. Formal communication with top PPL Management

Appendix B. PPL Make Ready Charges and Engineering Changes

Appendix C. Verizon Notifications of Copper Abandonment

Appendix D. Engineered Paths

Appendix E. Existing Pole Attachment Agreement between MAW Communications and PPL

Appendix F. Document 6-01-140 Requirements for the Attachment of Communication Cable Facilities on PPL Poles

Appendix G. Summary of PPL Pole Attachment Efforts in 2016.

Appendix H. Relevant FCC Legal Cases

Attachment (5)

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., SW
Washington, DC 20554

April 4, 2014

Copies by E-Mail; Original by U.S. Mail

Petition of Salsgiver Telecom, Inc.)	
for Temporary Stay Pursuant to Section)	
1.1403(d) of the Federal Communications)	File No. EB-14-MD-005
Commission Rules)	

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Dear Counsel:

This letter order denies the Petition for Temporary Stay that Salsgiver Telecom, Inc. (Salsgiver) filed on February 28, 2014, under Commission rule 1.1403(d), 47 C.F.R. § 1.1403(d). In short, Salsgiver seeks to stay the removal of its unauthorized attachments from poles owned by Pennsylvania Electric Company (Penelec) in Altoona, Pennsylvania. As discussed below, the Petition fails to make a showing of irreparable harm as required by Commission rule 1.1403(d).

Background

In 2007, Salsgiver entered into a pole attachment agreement with Penelec.¹ In March 2013, Salsgiver submitted applications under the parties' agreement to attach to over 190 Penelec poles in and around Altoona, Pennsylvania.² On March 27, 2013, the parties engaged in a ride-out to review the poles at issue in the application. At that time, Penelec informed Salsgiver that make-ready would be necessary

¹ Petition for Temporary Stay, File No. EB-14-MD-005 (filed Feb. 28, 2014) (Petition), Exhibit 3 (Declaration of Loren Salsgiver) (Salsgiver Decl.) at 3, para. 7.

² Petition at 5; Salsgiver Decl. at 4, para. 11.

on many of the poles before Salsgiver could attach.³ On July 30, 2013, Penelec provided Salsgiver an estimate of approximately \$20,000 for the make-ready work.⁴ But Salsgiver “determined that the make-ready proposed by Penelec” was not necessary and proceeded to attach to Penelec’s poles without permission.⁵ These unauthorized attachments are the subject of the Petition. To date, Salsgiver has not filed a complaint challenging Penelec’s pole attachment policies.

Petition for Temporary Stay

A Petition for Temporary Stay is a “form of temporary relief pending resolution by the Commission of the underlying dispute.”⁶ Section 1.1403(d) of the Commission’s rules states that a Petition for Temporary Stay “shall not be considered” unless it includes, among other things, the reasons for the relief sought “including a showing of irreparable harm and likely cessation of cable television service or telecommunication service.”⁷ The Commission “adhere[s] to a strict threshold showing” of irreparable harm and likely cessation of service, and “will not hesitate to dismiss [a Petition for Temporary Stay] where inadequate support is provided.”⁸

The Petition fails to show that Salsgiver will suffer “irreparable harm” if a stay is not granted.⁹ In order to demonstrate “irreparable harm,” a party must show that the alleged harm is “‘both certain and great; ... actual and not theoretical. ... Bare allegations of what is likely to occur’ are not sufficient, because the test is whether the harm ‘will in fact occur.’”¹⁰ Thus, to demonstrate irreparable harm,

³ Salsgiver Decl. at 4, para. 11. The participants in the joint ride-out observed Salsgiver’s crews in the process of attaching to the Penelec poles that were the subject of the ride-out. Penelec directed the crews to stop. *Id.* at 4, para. 11; February 11 Letter at 1.

⁴ Salsgiver Decl. at 5, para. 16.

⁵ Petition, Exhibit 1 (Letter from Eric J. Dickson, FirstEnergy, to Loren Salsgiver, Salsgiver Telecom (dated Feb. 11, 2014) (February 11 Letter)); Salsgiver Decl. at 4, para. 12. Salsgiver alleges that its “dealings” with Penelec personnel “have proceeded on the principle that if make-ready is not necessary to provide room for Salsgiver’s proposed attachment, then Salsgiver is free to attach.” *Id.* at 6, para. 17. However, as a result of the joint-ride out and subsequent correspondence with Penelec, Salsgiver was well aware that Penelec required make-ready before Salsgiver could attach.

⁶ *In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments*, First Report and Order, 68 F.C.C.2d 1585, 1587, para. 8 (1978) (*Cable Television Pole Attachments*). *See id.* at 1587, para. 7 (noting that Congress intended to grant the Commission “power to protect cable television operators from irreparable injury pending resolution of facially supportable complaints”).

⁷ 47 C.F.R. § 1.1403(d).

⁸ *Cable Television Pole Attachments*, 68 F.C.C.2d at 1588, para. 8. Salsgiver attempts to challenge the lawfulness of the removal provision in the parties’ pole attachment agreement, and also whether Penelec’s notice complied with the agreement. Petition at 7-10. However, the Commission’s rules state only that a utility must give “no less than 60 days *written notice*” prior to removing attachments, which Penelec gave. 47 C.F.R. § 1.1403(c).

⁹ 47 C.F.R. § 1.1403(d). According to Penelec, Salsgiver also has not demonstrated that cable or telecommunications services are being provided over its attachments, which is a prerequisite to there being a likely cessation of such services. Answer to Petition for Temporary Stay, File No. EB-14-MD-005 (filed Mar. 12, 2014) (Answer) at 10-11. Because we find that Salsgiver has not made a showing of irreparable harm, we need not address the cessation of services issue.

¹⁰ *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order, 26 FCC Rcd 7792, 7794, para. 6 (WCB 2011) (*Broadband Order*) (citing *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (*Wisconsin Gas*)).

Salsgiver must provide “proof indicating that the harm is certain to occur in the near future.”¹¹ Economic loss “does not, in and of itself, constitute irreparable harm.”¹² A purely monetary injury resulting from the alleged wrongdoing is not “irreparable” if “adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation.”¹³

Salsgiver claims that Penelec’s proposed make-ready charges (1) failed to provide sufficient detail,¹⁴ and (2) would have required Salsgiver to “correct existing violations of previous attachers.”¹⁵ Yet Salsgiver had the option of first paying Penelec’s make-ready charges, under protest; filing a complaint with the Commission alleging that the charges violate section 224 of the Act;¹⁶ and, if successful, recovering those overcharges.¹⁷ Such a course would have obviated any alleged harm, and Salsgiver offers no explanation of why it could not have proceeded this way. Rather, Salsgiver, by its own admission, attached in violation of various communications and electrical standards.¹⁸ We cannot condone Salsgiver’s decision simply to disregard Penelec’s application/make-ready process.

In sum, the only harm facing Salsgiver was economic harm, which Salsgiver could have addressed in a complaint proceeding.

Conclusion

This letter ruling is issued pursuant to sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §§ 154(i), 154(j), 224, section 1.1403 of the Commission’s rules, 47 C.F.R. § 1.1403, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION



Lisa B. Griffin
Deputy Chief, Market Disputes Resolution Division
Enforcement Bureau

¹¹ *Id.*

¹² See *Broadband Order*, 26 FCC Rcd at 7794, para. 6 (citing *Wisconsin Gas*, 758 F.2d at 674); see also *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (“[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough”).

¹³ *Broadband Order*, 26 FCC Rcd at 7794, para. 6 (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974)).

¹⁴ Salsgiver Decl. at 5, para. 16.

¹⁵ Salsgiver Decl. at 6, para. 17.

¹⁶ 47 U.S.C. § 224.

¹⁷ See *Fiber Technologies Networks, L.L.C. v. Duquesne Light Co.*, Order, 18 FCC Rcd 10628, 10632, para. 12 (EB 2003).

¹⁸ See Salsgiver Decl. at 9, para. 23 (describing “a few cases” where Salsgiver attached less than 10 inches from other communications attachers and admitting that corrections to the attachments will be required); *id.* at 10, para. 25 (describing nine poles where Salsgiver’s attachments “should be adjusted”); *id.* at 10, para. 26 (describing one pole where Salsgiver, and other communications attachers, are “in electric violation”).