

Public Service Commission Meeting  
February 23, 2016

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TRANSCRIPT OF THE  
PUBLIC SERVICE COMMISSION  
COMMISSION MEETING

TUESDAY, FEBRUARY 23, 2016

90 CHURCH STREET

BOROUGH OF MANHATTAN

10:31 a.m.

Reported By:

Jennifer Cassella

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HEARING CONVENED AT 10:31 a.m.  
PRESENT:  
AUDREY ZIBELMAN, CHAIRPERSON  
DIANE X. BURMAN, COMMISSIONER  
GREGG C. SAYRE, COMMISSIONER  
PATRICIA L. ACAMPORA, COMMISSIONER  
KATHLEEN H. BURGESS  
JALILA AISSI  
JUDITH LEE  
PETER MCGOWAN  
TOM CONGDON  
MICHAEL CORSO  
LAUANN SCHERER  
KIMBERLY HARRIMAN  
PAUL AGRESTA  
ALJ CASUTTO  
SEAN MULLANY  
RAJ ADDEPALLI  
PAUL AGRESTA  
MICHAEL WORDEN  
DORIS STOUT  
SCOTT WEINER  
MIKE ROWLEY

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2 THE CHAIRPERSON: Well, it's nice to  
3 see so many friendly faces. Welcome to New  
4 York City. I'm going to call the session  
5 of the Public Service Commission to order.

6 Secretary Burgess, are there any  
7 changes or additions to the final agenda?

8 MS. BURGESS: Good morning, Chair,  
9 and Commissioners. There's no changes to  
10 the final agenda.

11 THE CHAIRPERSON: So this morning we  
12 have a number of items for discussion. The  
13 first item is item 201 which -- and it's a  
14 number of related cases including the  
15 matter of Eligibility Criteria for Energy  
16 Services Companies going to be presented  
17 today by Kim Harriman, our General Counsel.  
18 Welcome, Kim, and please begin.

19 MS. HARRIMAN: Thank you, Chair.  
20 Good morning, Chair and Commissioners.

21 Item 201 is a draft order that, if  
22 approved, would reset the landscape from  
23 the residential and small commercial retail  
24 market within ten days of issuance of the  
25 order. Further, it would direct record

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2 development regarding that market and it  
3 would tighten enforcement tools. Back in  
4 1998, the Commission embarked upon the  
5 development of both a wholesale and retail  
6 marketplace. Specifically with respect to  
7 retail marketplace, the Commission  
8 determined and set forth protocols and  
9 rules to allow customers to obtain their  
10 commodity supply from somebody other than  
11 the utility. The companies that step  
12 forward to provide this commodity supply  
13 are known as Energy Services Companies or  
14 ESCOs. Those markets were open for large  
15 and industrial customers, as well as large  
16 commercial customers and for mass market  
17 customers, which are comprised of  
18 residential and small commercial customers.  
19 With the opening of these markets, the  
20 Commission established rules for operation  
21 for ESCOs known as the Uniform Business  
22 Practices. Those rules were originally  
23 established in 1999.

24 Periodically since then, the  
25 Commission has reviewed the status of the

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2 market and the sufficiency of the rules.  
3 Today, we have over 200 ESCOs that operate  
4 in the state. One of the reviews the  
5 Commission embarked upon was in case  
6 12-M-0476. This docket was opened to  
7 review the operation of the market,  
8 particularly with focus on mass market  
9 customers. In that docket, the Commission  
10 evaluated the ease of price comparison for  
11 customers between the ESCO commodity  
12 offerings and the utility commodity  
13 offerings. It also questioned the ability  
14 of commodity only products to be  
15 competitive with utility commodity only  
16 products.

17 Lastly, it recognized the value that  
18 was already being received and continued to  
19 be received by industrial and large  
20 commercial customers, and it called on  
21 parties and staff to define and to better  
22 understand value-added services when in  
23 fact in 1998 when the Commission opened the  
24 marketplace, it was envisioned that such  
25 services would be coupled with commodity

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supply but that product's niche value added in addition to commodity had failed to materialize.

The Commission took subsequent steps both in 2014 and '15 orders that changed and enhanced price transparency requirements, it improved marketing rules, and it provided price protection for a certain low-income customers. Specifically out of the docket 12-M-0476, the Commission required independent third-party verification for ESCOs that were enrolling customers for door-to-door telephonic marketing. It also required ESCOs that were serving assistance program participants, these are the customers that receive utility low-income discounts, and to basically have the ESCOs guarantee to that customer sector that those customers would pay no more on an annual basis than they would have paid if they were a full service utility customer, or that the ESCO would be providing that customer a value-added service. A directed staff

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worked collaboratively to define what is meant by energy-related value-added products and services.

Subsequent to that, the Commission opened a docket 15-M-0180 which, among other things, specifically focused down on the rules for ESCO eligibility and standards. In that docket, the Commission reviewed a number of possible numerals for ESCOs eligibility, including additive requirements for ESCOs with high complaint rates, improvement plans for where there's been high complaint rates, as well as a consideration of in cases where ESCOs received a high level of complaints, whether or not the revocation of their eligibility should occur.

Staff additionally recommended tightening down of enforcement periods. Specifically, they recommended that the cure period in this situation if an ESCO violates a UBP provision under the existing rules of the time, the ESCO had an opportunity to cure the violation and

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2 proceed with business. In that case, staff  
3 recommended that the cure period be shrunk  
4 to basically zero for ESCOs that had a  
5 repetitive failure of the UBP violations  
6 within a three-year period, or the  
7 violations themselves were egregious enough  
8 to warrant more specific and direct action.

9 So a couple of factual observances,  
10 both from the '98 case as well as the 12  
11 docket and the 15 docket. What we have  
12 seen is pretty significant and that is one  
13 that should be clear, that the ESCO  
14 community is providing value to industrial  
15 and large commercial customers. The  
16 dockets and the ample record have  
17 demonstrated that. Two, that there appears  
18 to be significant and severe deficiencies  
19 with respect to the operation of the retail  
20 market for mass market customers. Again,  
21 this is the residential and the small  
22 commercial customers.

23 With the steps taken by the  
24 Commission to continue to ratchet up  
25 enforcement and to tighten requirements for

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2 operation, we have not seen a corresponding  
3 decline of customer complaints, meaning  
4 that the customer complaints continue to  
5 persist at a serious and significant level  
6 despite the enforcement tools and rules put  
7 in place by the Commission. We've had  
8 advocates, consumer advocates in both  
9 dockets recommend that the Commission take  
10 steps to eliminate the residential market  
11 and the small commercial market in its  
12 entirety. We've had advocates, numerous  
13 comments on the fact that ESCO customers  
14 are being significantly overcharged in  
15 comparison to the utility full service  
16 customers.

17 Right now, we have a vast majority  
18 of ESCO customers that are serving mass  
19 market and only commodity service  
20 offerings. They market to customers  
21 through both door-to-door telemarketing and  
22 direct kiosk operation, and this marketing  
23 takes a significant amount of capital by  
24 the ESCOs. Because there's a low  
25 likelihood that an offering from an ESCO

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with commodity service only will be able to ever beat the utility price, we are seeing complaints that are mirroring this reality.

For example, in 2015, the Commission received approximately 5,000 initial customer complaints. Over 1,000 of those complaints were ESCO-related complaints. The makeup of those complaints comprised about 30 percent that dealt with questionable marketing practices. 25 percent involved dissatisfaction of prices, no savings. And 22 percent addresses slamming. That is when an ESCO enrolls a customer without the authorization of the customer.

So the state of the land is this, that the nature of the ESCO retail market for residential and small commercial customers on a commodity only basis is simply not working. The complaints demonstrate that and our own anecdotal evidence that have been amassed from '98 forward demonstrate that there is very little to no value being provided to

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residential customers in this commodity  
only market.

So the draft order before you finds  
that it is no longer in the public interest  
for ESCOs to provide commodity supply only  
products for mass market customers with  
certain exceptions. Specifically, within  
ten calendar days from the date of this  
order, enrollments of mass market customers  
or renewals of contracts with mass market  
customers will only be allowed for ESCO  
products that provide guaranteed savings  
for an annual period as compared to the  
utility commodity service, or that the  
commodity provided by the ESCOs represents  
at least 30 percent of energy from a  
renewable energy source. Moreover, for  
customers renewing from a fixed or  
guaranteed savings contract, the draft  
order would require that any ESCO switching  
from that contract to a renewable product  
offering obtain affirmative customer  
consent. So ESCOs who have customers who  
are rolling into -- off of a fixed or

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2 guaranteed price contract into a green  
3 product to be compliant with the order, the  
4 ESCO must obtain customer consent for that  
5 transition.

6 In addition, the draft order would  
7 require CEOs or their equivalent corporate  
8 officer to make a filing within that same  
9 ten-day period certifying that any  
10 enrollments that were provided to utilities  
11 as of the 10th -- 11th day of the order  
12 would have to comply with the order. So  
13 they're going to certify, in fact, that  
14 their products will be in compliance for  
15 any enrollments that are provided to  
16 utilities after the ten-day period.

17 Now, during the 60-day period, the  
18 draft order would have additional record  
19 development regarding the long term  
20 conditions that should be implemented for  
21 ESCO eligibility and conditions for service  
22 to mass market customers. To that end, the  
23 Commission could continue the criteria set  
24 forth in the order that enrollments would  
25 only be allowed for customers that are

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2 receiving guaranteed price product from the  
3 utility as -- or the ESCO as compared to  
4 the utility or a at least 30 percent green  
5 product. But the Commission could also  
6 look at and add or modify those conditions  
7 after the 60-day record development period,  
8 and that could include consideration of a  
9 marketplace that would have commodity plus  
10 value-added services being a qualified  
11 product offering for an ESCO to provide to  
12 mass market customers.

13 To this end, a notice would be  
14 issued providing this more granular review  
15 regarding the long term conditions for  
16 market operation and specifically the  
17 notice would posit whether or not these  
18 conditions should be modified, how we would  
19 define energy-related value-added services,  
20 whether or not there should be an  
21 extension of, a three-day waiting period  
22 for customer rescission on contracts.  
23 This speaks to the component that -- the  
24 complimentary side of this which is  
25 enforcement and customer protection, and

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right now there is a three-day period in which the customer can rescind a contract. Should that be longer? Should the customer have a longer period of time to do more research and analysis?

In addition, the notice will solicit comments on whether or not ESCOs should provide performance bonds or demonstration of financial capability so that they can follow through on their commitments and promises to customers, especially as you have this requirement that they provide guaranteed savings. The last thing we want to see is that customers pull up stakes at the end of the annual period because they can't provide guaranteed savings and then the customer is out that money. So we really need to look at how we make sure they have financial stake in the game.

Lastly, the notice would solicit comments on whether or not the Public Service Law provision regarding penalties found in 25 in their provisions should be applicable to ESCOs. Currently, the

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2 Commission has not rendered an opinion on  
3 the applicability of PSL-25. PSL-25 is a  
4 penalty provision that allows the  
5 Commission to assess through civil court  
6 proceedings \$100,000 a day against any  
7 regulated entity that has been in violation  
8 or is in violation of Commission order.  
9 That is a tool that has been useful and  
10 used by the Commission and it should be  
11 evaluated as to its applicability to the  
12 ESCO marketplace.

13 With respect to enhancement of  
14 enforcement, the draft order before you  
15 takes the staff's recommendations on  
16 shrinking the cure period and goes one step  
17 further. Specifically, it would allow the  
18 Commission through modification of the UBP  
19 to proceed directly to an order to show  
20 cause route. An order to show cause is  
21 issued that would call on an ESCO to  
22 respond whether or not their actions  
23 warranted either a revocation of  
24 eligibility or some lesser appropriate  
25 response. Right now, as we talked about

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2 previously, there is a cure period where  
3 the ESCO can, if found to be in violation  
4 of the UBP, make corrective steps and  
5 proceed in marketing and operation. The  
6 draft order would have the UBP modified so  
7 that no cure period would exist for even  
8 one violation, so there's no pattern of  
9 violations or no serious or egregious  
10 violations that need to take place. The  
11 Commission would say, one strike and you're  
12 possibly out. It is a tool that is to be  
13 used at your discretion and it's not a  
14 mandatory response as far as revocation of  
15 eligibility or proceeding to order to show  
16 cause with only one violation, but it does  
17 provide a more direct and immediate  
18 response for the Commission to employ where  
19 warranted.

20 Lastly, one of the things that we've  
21 seen over the past several years is a  
22 pattern of high complaints that well, when  
23 you look down into the weeds of these  
24 complaints they may not necessarily rise to  
25 the level of a UBP violation, they're

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2 serious enough and significant enough that  
3 you have to question whether or not that  
4 ESCO should continue operating in this  
5 state. The draft order before you would  
6 also allow the Commission to take action as  
7 appropriate, whether it's revocation of  
8 eligibility to operate or some lesser  
9 action, to address ESCOs that are having  
10 very significant complaint rates on a  
11 historic basis and a going forward basis.

12 In addition, the UBP would also be  
13 modified pursuant to the draft order before  
14 you to allow the Commission to consider any  
15 violations of federal, state, or local  
16 sales or marketing regulations, or failure  
17 to respect the "No Solicitation" signs to  
18 be basically in violation of the UBP. So  
19 right now there are rules of engagement out  
20 there in municipalities with respect to  
21 door-to-door marketing by any entity. We  
22 expect the ESCOs to comply with those  
23 rules. In addition, we expect them to  
24 comply with signage in businesses that say  
25 "No Solicitation". Failure to respect both

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2 these rules and the signage clearly posted  
3 would be treated as a UBP violation and  
4 could have subsequent consequences,  
5 including revocation of eligibility to  
6 operate, as well as any lesser appropriate  
7 response.

8 Both the change in the marketplace,  
9 the landscape, the refining of the offering  
10 to only be those that provide savings as  
11 compared to the utility commodity offering  
12 as well as the 30 percent -- at least  
13 30 percent renewable product offering, as  
14 well as the other enhancement tools with  
15 respect to marketing practices door-to-door  
16 are all well and good but we have to make  
17 sure that we're on top of this in auditing,  
18 and to that extent, the draft order  
19 reflects the direction to staff to audit  
20 the ESCO records and to ensure that these  
21 enrollments that occur post the ten days  
22 are compliant with the order. And to that  
23 end, we will be formulating a team  
24 internally that is comprised of not just  
25 OCS, but it's a multidisciplinary team with

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2 experts in auditing to take on this task.

3 That concludes my remarks. If you  
4 have any questions, I'll be happy to answer  
5 them.

6 THE CHAIRPERSON: Thank you. And I  
7 don't want to neglect the fact that in  
8 addition to Kim, Michael Corso and LuAnn  
9 Scherer are here to -- also available to  
10 answer questions on this matter.

11 So, you know, I was thinking about  
12 this order and realized that almost, I  
13 think from the first day that I arrived at  
14 the Commission in 2013, we've been talking  
15 about ESCOs and ESCO challenges. In fact,  
16 I think it was the first conversation I had  
17 with Commissioner Sayre. It was something  
18 that he was deeply involved in and I know  
19 that this has been a matter of great  
20 concern for the Commission, not just  
21 beginning in 2012 when the Commission began  
22 this proceeding to take a look at the mass  
23 market for ESCOs, but actually well before  
24 that, and since then Commissioner Acampora  
25 has certainly enlightened me that this has

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been one of the most frustrating aspects of her tenure at the Commission.

There's clearly, I think as the Commission said in 2014 in their order, when we talk about the mass market, and I think as Kim has said, we're really talking about the residential and small commercial areas. We're not talking about the large commercial industrial, where people actually have the ability to negotiate good prices for themselves. The market simply is not a competitive market. I think what the Commission found in 2014 definitely holds true today. When we think about competitive markets, it's not just about having multiple suppliers. It's actually having customers with the type of information so that they can command the ability to make decisions that help them.

The problem we have in the retail commodity market when it comes to residential and small business customers is that it's a really obscure product. People really don't -- they understand

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2 electricity in the sense that they  
3 understand they want lights. They  
4 understand gas in the sense that they  
5 understand they want heat, but to really  
6 start understanding what it means to be a  
7 kWh price, and what's fixed, and what's  
8 firm, and what's comparative is very, very  
9 difficult for people to understand. And  
10 that's why when the Commission looked at  
11 this and the staff looked into it in 2012  
12 and when we looked at it again in 2014,  
13 what we found is that the prevalent  
14 practice for residential customers and  
15 small business customers was that they were  
16 paying more for this commodity than if they  
17 stayed with the utility.

18 And so when you combine the fact  
19 that really people don't have the  
20 information necessarily to make decisions,  
21 so it is not a competitive market, and the  
22 fact that we have an obligation to offer  
23 just and reasonable rates, the fact of the  
24 matter is is that when people are paying  
25 two times, four times, as much as eight

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times more than they would get if they bought it from the retail utility, that's not just and reasonable, and we simply cannot tolerate that kind of behavior.

The other thing that I think is remarkable is the fact that this isn't ancient history. This is, in fact, we look back and staff received some information January, 2016, this past month, National Grid customers paid \$17 million more in one month for energy from ESCOs than they would have paid if they just stayed with National Grid. For some customers, that is an average of \$29 more in one month per customer. We fight major rate cases over those types of issues. The fact that people are in this position is simply intolerable.

So, you know, that is really the fact that -- you know, that alone I would say is a problem. When you take that on top of some of the practices that we have seen in this industry, and people have seen the videos and we hear about these stories, and LuAnn and Michael tell me all the time

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2 about the various things they hear about,  
3 it's really horrible. You have people who  
4 don't speak English very well, maybe new  
5 immigrants being preyed upon to buy  
6 products. We have salespeople telling  
7 people that their utility is not going to  
8 sell them electricity anymore so they have  
9 to buy from them. We have people coming in  
10 and saying, oh, I work for Con Ed, buy from  
11 me, and it's not true. And then we have  
12 people who don't even know they're changing  
13 providers and find out later that they've  
14 been switched. I mean, that's --  
15 and I wish that I could say that we took  
16 care of that and we did issue a bunch -- a  
17 lot of changes in our rules in 2014 to  
18 address those problems. And I've talked to  
19 a number of ESCOs -- retailers and I know  
20 that my fellow Commissioners have done as  
21 well, and I hear from a lot of retailers  
22 that they want to offer real value to their  
23 customers, they want to offer green  
24 pricing, they want to offer energy  
25 efficiency, but the problem is is that

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there are still way too many people who are out there not offering real value, and as a result, customers are suffering. And so we have to act. I don't think that there is sort of -- we just can't simply say well, let's find and fix the rules again. So that's, I think where we are.

In terms of that, I think the Commission has done a number of things. We've made the rule changes that Kim went through in 2014. We put in place a consumer advocate. We told our consumer advocates we wanted he and his team to be aggressive. I think we've done a number of changes, and again, you know, we've gotten assurances from a number of ESCOs that they would like things to change. But, you know, simply saying people want things to happen and making them happen I think are two different things, and we really need to take some action.

I'm aware that we've heard from a number of consumer advocates that we should simply shut down the market, that they

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think that's the best thing to do. They're at a position where I think that they think that they're no good to be had here. I can tell you I personally am not there. I still very much believe in markets. I still very much believe in innovation. I think that with the right products and the right rules, New York can lead in this space like we lead in so many other areas, and I think it's really up to the Commission to really put those into place.

And, you know, and we do see glimmers of this. There are a number of companies who are offering green products, where they're really offering renewables that not just at the mix that we have in our resource pool in New York, some as much as a hundred percent green and we want those kind of products to continue. I see a number of companies who are looking to offer energy efficiency products but we have to define how those can be offered and how those can be priced.

So in the mean time, I look at it

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2 and I believe there are really three paths  
3 that the Commission can take. The first  
4 path that a number of the consumer  
5 advocates offer is simply shut down the  
6 market, simply say for the residential and  
7 mass market customers, we'll stop, doesn't  
8 work, we shouldn't allow competition  
9 anymore. The other is the process that the  
10 Commission has been using, which is  
11 basically to take a look at our rules,  
12 tighten them up further, see what other  
13 problems that we can take out of the market  
14 and continue to use moral persuasion,  
15 nagging, revocations as a way to persuade  
16 people to get where we want to go. I don't  
17 think that, at least for me, I don't think  
18 we can take that path anymore.

19 The third, which is really I think  
20 the appropriate one, is the one that's  
21 being recommended in this order. And  
22 what's being recommended is that we take  
23 very decisive and very bold action, and be  
24 very clear on what we allow and what we  
25 won't. And so to do that -- and again, I'm

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not going to try to rephrase everything Kim said, but I want to be very clear. We think that clearly, if a retailer wants to come in and offer guaranteed savings to customers, that should be offered. We want that to happen. We've already done that for the low-income. There's no reason why we would ever want people to be deprived of an opportunity to save money. I've never met a customer who says I want to pay more for electricity or gas, but many people would say they would like to pay less. So if they can do that, great, let's do it.

The other is to say if a retailer wants to come in and is able to offer a product that is renewable-based and is more than the 26 percent that we already have at, our midst, so it's a minimum of 30 percent and they can guarantee that, we'd want them to do that.

The other piece that I think is going to be equally important is that over the next 60 days, we're going to be working very, very hard to define those additional

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2 products that can be offered and will  
3 provide value to customers. This is not a  
4 stop of the market. This is not even a  
5 moratorium. What it is is a full stop,  
6 let's get out the bad stuff. Let's bring  
7 in the good stuff and be very clear on what  
8 we want so people have the guidelines and  
9 they can construct their businesses  
10 accordingly.

11 The other piece that I think is very  
12 important is something I know that  
13 Commissioner Burman and  
14 Commissioner Acampora have talked to me  
15 about as well as Commissioner Sayre, is the  
16 fact that we may have been too tolerant.  
17 We may have been allowing people to say,  
18 oh, I'm really, really sorry, I promise I  
19 won't do it again, and then we let them go  
20 on, but we can't do that anymore. If  
21 there's a problem, if we find a violation,  
22 the Commission wants to hear about it and  
23 we'll make the decision whether that  
24 company is going to continue to operate in  
25 this state or not. We want to make it

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absolutely clear that no New Yorker should be in a position where they're finding themselves paying more for electricity because they were deceived into buying a product they didn't want, or they were deceived into thinking they were buying from someone they didn't even know, or they felt that it was a nice name and someone promised them that they would have savings and they didn't get those savings which is not going to happen anymore.

So while I know this is disruptive and I know that for many of us we'd like to see the markets go, we want the markets to blossom, but sometimes for government it's nice to guide and say this is where we would like to go, but sometimes you have to be disruptive in order to break things a little to make it better. And I think in this instance, with what this Commission has done, what the staff has done to try to get people, the companies to a position where they were offering value, and the fact that we were not able to please them

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means that we do need to take decisive action and to do that today so that we feel better knowing that no further New Yorker is ever going to be put in a position that so many New Yorkers have found themselves in.

So I feel very comfortable about the order. I think we're on the right path. I think we will get the retailers where they need to go and I fully endorse it, so thank you, and I thank the staff for doing such a good job on this decision.

Let me turn then -- I'll turn to Commissioner Acampora.

COMMR. ACAMPORA: Can I say Amen to what you just said? Here we go down memory lane again. I've been here a long time. This is something that's really very important to me. LuAnn, we've gone through story after story after story, and I consider myself the queen of flexibility. We've been flexible to the point of where the flexibility just isn't working anymore and so I wholeheartedly agree with this

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2 order.

3 And Kim, you mentioned about one  
4 strike and you're possibly out. I love  
5 that. That's something I've been waiting  
6 to hear for a very long time. It is our  
7 responsibility to protect consumers and,  
8 you know, how many times can you keep going  
9 back to the UBP and trying to make it into  
10 something that really works. We haven't  
11 really been successful in doing that  
12 because consumers still need protection,  
13 and so I believe that this order will  
14 address that.

15 And, you know, you stated in the  
16 beginning of your summation of this, we have  
17 over 200 ESCOs in this state. Other states  
18 have maybe you can count on one and a half  
19 hands and they're large states too. And so  
20 to whittle this down, we know the  
21 commercial and large industrial has been  
22 very successful, but we wrestle with  
23 residential and small businesses, and we  
24 wrestle with the fact that because New York  
25 is such a diverse state and because we do

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2 have people of many ethnicities that are  
3 here, that are coming here, do not speak  
4 English or understand English well, that  
5 sometimes some of these companies, this is  
6 where they prey. They prey on low-income,  
7 they prey on people who are new immigrants,  
8 and they prey on the elderly, and this just  
9 is not acceptable in New York. So I will  
10 wholeheartedly support this measure.

11 THE CHAIRPERSON: Thank you.

12 Commissioner Sayre.

13 COMMR. SAYRE: This is a very  
14 serious step we're taking but we're  
15 addressing a very serious problem. The  
16 mass market for ESCO services has simply  
17 not developed, as Chair Zibelman said, in  
18 the way we hoped in terms of savings  
19 combined with energy-related services.

20 Economically it seems pretty simple  
21 to me. For an energy only service, how can  
22 you expect ESCOs to beat the utility rate,  
23 the default rate on a consistent basis  
24 where the ESCO but not the utility needs to  
25 make a profit on the transaction, and where

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2 the ESCO but not the utility has a high  
3 cost to acquire each customer through  
4 marketing and sales, and both the ESCO and  
5 the utility are buying the energy in the  
6 same wholesale market? Now, maybe  
7 somebody's got a secret sauce. That's the  
8 American way, and if they can guarantee  
9 savings, that's fine, and our order  
10 provides for that. But for the most part,  
11 the data shows that the market is not  
12 working, that the non-green energy only  
13 market is not working for New York  
14 consumers and it's our job to look out for  
15 those consumers. So I support this item  
16 wholeheartedly as well.

17 I'd also ask the staff to take a  
18 look at the issue of violation of Do Not  
19 Call Laws. Do Not Knock Laws are mentioned  
20 in the order, but the order is borad enough  
21 to cover Do Not Call Laws on both the  
22 federal and the state side, and I must say,  
23 I've received some ESCO calls illegally  
24 because I'm on a Do Not Call list and I bet  
25 a lot of other people in this room can say

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2 the same thing.

3 So congratulations. This is a good  
4 order.

5 THE CHAIRPERSON: Commissioner Burman.

6 COMMR. BURMAN: So I just  
7 have -- before I make my comments, I have a  
8 couple of questions just to make sure that  
9 it's clear, especially because I think  
10 people are listening in and making sure  
11 that they understand while we await the  
12 order.

13 Can you walk me through what we'll  
14 be doing in the next 60 days and what the  
15 expectations are for the ESCOs in going  
16 forward once the order is issued?

17 MS. HARRIMAN: Thanks,  
18 Commissioner Burman.

19 So the first thing we're going to be  
20 doing is reaching out to the ESCOs to talk  
21 to them about the requirements that are  
22 going to be put in place, ten days post  
23 issuance of the order. So as we've  
24 discussed, the ESCO enrollments that happen  
25 after that tenth day have to be for

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2 products that guarantee a price savings off  
3 the utility and commodity service rate  
4 and/or have to be at least 30 percent  
5 renewable product. The order has language  
6 in it that is instructive to the ESCOs  
7 about how to tailor their product offerings  
8 to ensure compliance with Commission order  
9 and as always, I don't think there's an  
10 ESCO in this state that doesn't know  
11 LuAnn Sherer. We will be engaged with  
12 them -- in a good and not so good way  
13 sometimes.

14 THE CHAIRPERSON: Lucky LuAnn.

15 MS. HARRIMAN: We will be engaged on  
16 all levels within the Department with the  
17 ESCO community to help facilitate their  
18 transition to this new product offering.

19 In addition to that -- so that's the  
20 near term, how do we get to day 11. How do  
21 we get from here to 60 days is this:  
22 There's going to be a notice that's going  
23 to be issued and it's going to posit a  
24 series of questions. Some of these  
25 questions are going to require ESCOs in the

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2 stakeholder community to more granularly  
3 focus on, for example, the definition of  
4 energy-related value-added services. That  
5 was a task that was given to staff and the  
6 stakeholders out of the previous orders of  
7 the Commission and I think folks tried and  
8 maybe didn't put a wholehearted effort into  
9 getting to that definition. Well, they  
10 sure is -- they will now, let's just say.  
11 Because that's another pathway that we can  
12 come back to the Commission to say this can  
13 too be an eligible product that can be  
14 offered by an ESCO by a mass market  
15 customer.

16 So I think it has to be an open  
17 dialogue and communication because there  
18 are ESCOs out there that are good ESCOs,  
19 they want to operate as a value to the  
20 residents of the state and the  
21 business -- small businesses, and so we  
22 want to work with them to facilitate that.  
23 And as the Chair mentioned, there's many  
24 ESCOs who are already compliant because  
25 they're offering green product that exceeds

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even the 30 percent standard the Commission has set forth in the order if adopted.

COMMR. BURMAN: When you talk about the 30 percent, the 30 percent is per customer, not globally, correct?

MS. HARRIMAN: Correct.

COMMR. BURMAN: And what about door-to-door marketing?

MS. HARRIMAN: So door-to-door marketing is not being prohibited by this order. What the Commission does with this order is basically say in the UBP, you have to comply ESCO with federal, state, and local laws with respect to door-to-door marketing and with any signage that is posted. What we found through a review of the complaints, especially some of the small business customers, and as Commissioner Acampora mentioned, the ethnicity issue of not having English as a primary language, that we've had -- we've seen ESCO marketing door-to-door to those kind of ethnic small businesses where there's pressure tactics, there may be some

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deception. And so we want to ensure that if those businesses post do not -- "No Solicitation" signs, whether it's at a small business or residence, that they're respected by the ESCO.

Just like Commissioner Sayre mentioned, the Do Not Call List, it's a Do Not Knock list, which we want to ensure that if the ESCO does not comply with those requirements or the signage, that that could be treated as a violation of the UBP and under the one strike and you're out rule, acted upon by the Commission.

So door-to-door marketing is still going to be allowed under the rules that have already been set out in the UBP, and as now tightened if adopted in the order with respect to respecting both laws and signage for no solicitations.

COMMR. BURMAN: Thanks for that clarification.

So when we have no new enrollments unless guaranteed savings, or 30 percent, or customers renewables, who makes the

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2 determination on what the green product is?

3 MS. HARRIMAN: So part of the work  
4 that we're going to have to do over the  
5 next ten days, maybe work some weekends in  
6 there, but is to ensure that the ESCOs  
7 understand whether or not their product is  
8 compliant with that 30 percent requirement,  
9 and we have some detail in the order that I  
10 didn't go over that's pretty specific about  
11 how to be compliant, but it's going to have  
12 to be a dialogue.

13 More importantly, and I just want to  
14 make this point because I think it's a good  
15 one to make, we're not asking the utilities  
16 who receive the EDI transaction to enroll,  
17 to be the policeman of this, to second  
18 guess whether or not that enrollment I just  
19 received is providing compliant product,  
20 but what we're going to do, and that's the  
21 last point in my presentation this morning,  
22 we're going to have an audit function.  
23 We're going to go in and we're going to  
24 assemble a multidisciplinary team in the  
25 Department to go out and to audit. Any CEO

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or corporate officer has certified that their product is going to be compliant and we know they're going to operate in the market post day ten, we're going to go out and audit on a regulated -- or regular schedule basis. We may not get to every 200 ESCOs within the first day, but we're going to go through them and audit them to make sure they're compliant.

THE CHAIRPERSON: I just want to add, because I think this is important. So I do think over the next ten days, because we don't want folks to inadvertently be out of the compliance simply because they didn't quite understand it, so I do think the order -- I know the order contains what would constitute a green product. What I have asked staff to do is to get with the ESCOs, provide a guidance document and so that way when the CEO certifies to us they're in compliance, they're certifying on the basis of a much more detailed document so they now understand what they need to do to be in compliance so there's

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2 no surprises and there's no obscurity about  
3 that. And I would fully expect that  
4 because the ESCOs are very familiar with  
5 our processes and our staff, that if there  
6 are any questions that they're not sure of,  
7 they'll be able to get them answered  
8 promptly, so they're in the best position  
9 to make sure they know what they have to do  
10 to comply.

11 So that, I think that should, at  
12 least for folks who are wondering what do I  
13 do tomorrow, that's what we're going to do,  
14 is make sure that people are really in that  
15 position. And then as Kim noted, I think  
16 it's important that we also very quickly do  
17 an audit to make sure that everybody is in  
18 compliance so that we don't find  
19 inadvertent failures.

20 COMMR. BURMAN: And what about -- so  
21 we're not touching existing contracts?

22 MS. HARRIMAN: That's correct.

23 COMMR. BURMAN: What about contracts  
24 that have a fixed rate and then go to a  
25 variable after month-to-month, or go just

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month-to-month? Is that considered an existing contract or a new contract?

MS. HARRIMAN: So it would be contract specific in how the contract is structured and that's where that engagement with the ESCO is going to be really important. So I would recommend, and I won't give LuAnn's phone number out right now, but I would recommend that that's the kind of open dialogue we need to have where ESCOs can come in and say look, I have this product or I have this contract, here's what it looks like, you know, help me navigate what's going to happen day 11.

Specifically, any contract that's in existence is not being touched by this order. Any contract that is in a renewal situation, okay, some of these roll off after a certain period of time to month-to-month renewals so they're automatically renewed, but once you have that word "renewed" in there, you're triggering the provisions of the order and so the requirements for the product

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2 offering would apply. But we're going  
3 to -- this is something that we're going to  
4 want to work hand-in-hand in because again,  
5 our job isn't to frustrate the market and  
6 to eliminate it. It's to ensure that those  
7 who want to come and provide good products  
8 and savings to the customers are able to do  
9 so, so we're going to be working  
10 cooperatively with them.

11 COMM. BURMAN: And I know there was  
12 discussion on getting rid of the extensive  
13 notice and opportunity to respond in cure  
14 period, but I kind of look at that as there  
15 are times when an opportunity to respond  
16 and to cure may be helpful. What may not  
17 be helpful is if they don't cure and if  
18 changes don't happen, and just like how  
19 we're talking about not tripping up people  
20 who are, you know, good actors, I do think  
21 that we should keep in mind that that  
22 process, that due process which we've had  
23 established in the UBP and in our order to  
24 show causes has been done as an instructive  
25 way of ensuring that we're working with

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2 them and not necessarily harming a good  
3 actor or customers but actually trying to  
4 get at the crux of changing for positive  
5 forward action.

6 MS. HARRIMAN: So let me just  
7 clarify. The modification, and LuAnn will  
8 tell me if I'm wrong, but the modification  
9 to the UBP that we're proposing in the  
10 draft order in front of you doesn't  
11 necessarily eliminate the ability to cure.  
12 What it does is it gives the Commission a  
13 clear tool and it puts the ESCO on notice  
14 that you may not be given the opportunity  
15 to cure, you may be taken right to an order  
16 to show cause.

17 And I want to address your due  
18 process concern. The vehicle of an order  
19 to show cause is the ultimate due process,  
20 because what it is is it's an exchange of  
21 positions on the record before official  
22 action is taken. So due process is  
23 preserved by you so the order to show  
24 cause. But I agree with you, there are  
25 certain situations where an ESCO's behavior

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2 may not warrant the one strike rule and  
3 that's going to be something we're going to  
4 have to work through, but it's important  
5 that ESCOs be aware that it could be a one  
6 strike and that's what we're giving them  
7 notice now, that they have to take  
8 seriously the requirements of the UBP and  
9 instead of taking a process that may take  
10 us months to get to an action of the  
11 Commission, we want to shorten that period  
12 of time. But it will be at the discretion  
13 of the Commission. It's not mandatory,  
14 it's discretionary.

15 COMMR. BURMAN: Thank you. That was  
16 very helpful.

17 When I look at this, you know, I see  
18 we have a long history of having ESCOs in  
19 New York and working collaboratively with  
20 customers, with ESCOs, and with utilities.  
21 You know, we have a consumer bill of  
22 rights, we have an ESCO score card, and we  
23 have consumer complaint statistics that can  
24 give us a window into what we're seeing in  
25 terms of issues or concerns. And, you

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2 know, from my focus is in making sure that  
3 we don't with a broad-brush, you know,  
4 paint everybody as a bad actor, but rather  
5 look at what we need to do to help in  
6 ensuring that we are going forward in a  
7 positive way.

8 You know, I do know that the  
9 legislature had in 2014 and 2015, bills on  
10 telemarketing standards for ESCOs which  
11 were vetoed and there was discussion on the  
12 need to focus on the Department of State,  
13 and Department of Public Service, and LIPA  
14 working together in looking at the  
15 telemarketing complaints. I just wonder what  
16 the status of that is.

17 MS. SCHERER: So the veto message  
18 occurred on, I believe November 30th, and  
19 the message requires that UIU or Department  
20 of State, LIPA and DPS refer violations of  
21 telemarketing rules to the AG. What we're  
22 doing at this point is reviewing all of the  
23 telemarketing complaints that come in, the  
24 call center -- or the Consumer Assistance  
25 Group is reviewing all the telemarketing

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2 complaints and we're flagging ones that we  
3 believe should be referred to the AG. We  
4 have not referred anything up to this  
5 point.

6 However, I think, you know, it is  
7 likely that this order, the draft order if  
8 it's approved, will result in a significant  
9 decrease in the telemarketing complaints  
10 and all other complaints that we receive  
11 against ESCOs.

12 COMMR. BURMAN: Okay. Great. I'm  
13 going to wrap in a minute. I just have one  
14 or two more questions before I speak on my  
15 comments specifically.

16 But one of the things that I'm  
17 looking at is the focus on the  
18 Environmental Disclosure Labeling and  
19 knowing that we have a proceeding that's  
20 ongoing with that and working with NYSERDA.  
21 How does that fit here?

22 MS. HARRIMAN: So we're working with  
23 NYSERDA on what they call NYGATS, because  
24 we love acronyms, and that will become even  
25 more relevant as the Commission builds the

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2 record on CES and we move into that vain.  
3 So Commissioner, the Environmental  
4 Disclosure Labeling program is the current  
5 program in place that will be used as part  
6 of the compliance mechanism or basically  
7 informative to the ESCOs as to what would  
8 qualify as that green product. If the  
9 Environmental Disclosure Labeling program  
10 is changed and replaced by NYGATS which is  
11 out for comment right now, we would have  
12 that be the successor in interest to the  
13 Environmental Disclosure Program.

14 So we're going to make sure that  
15 there's not a gap in any ESCO's ability to  
16 determine whether or not their product is  
17 compliant and, as we said, we're going to  
18 come back to you in 60 days and I believe  
19 that should be one of the things we report  
20 back on, depending on where we are with the  
21 review and movement on the NYGATS reporting  
22 mechanism.

23 COMMR. BURMAN: Okay. Well, that's  
24 helpful.

25 You know, the Uniform Business

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1 Practices constitutes the rules and  
2 practices that govern ESCO interactions  
3 with customers and utilities.  
4

5 Historically, the Commission has several  
6 times revised the UBP to reflect necessary  
7 changes, as the Chair mentioned. In fact,  
8 the Commission has consistent with the  
9 provisions in the General Business Law  
10 which deals specifically with energy  
11 services companies and their marketing  
12 energy services including door-to-door  
13 sales, modified the UBP accordingly. So  
14 changing the UBP and revising it to reflect  
15 current practices and what needs to be done  
16 to move forward is not something that is  
17 unique in this situation.

18 However, for each revision,  
19 modification and change to the UBP or  
20 specific changes to the ESCO market, the  
21 Commission has traditionally enjoyed a rich  
22 history of significant collaborative  
23 processes with ESCOs utilities and consumer  
24 groups before any such changes were made.  
25 The two main goals have been to ensure

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2 consistency in standard operating practices  
3 for retail access and to ensure that all  
4 customers are afforded appropriate  
5 protections in dealing with their ESCOS.  
6 And our Reforming Energy Vision framework  
7 has incorporated the expectation that ESCOs  
8 and our third-party providers will play a  
9 significant and important part in achieving  
10 our REV goals. That has in turn initiated  
11 several proceedings to examine what is  
12 needed to have a thriving competitive  
13 marketplace, and also to ensure consumers  
14 are afforded proper protections.

15 In essence, that aligns with the two  
16 core goals that have been at the heart of  
17 the ESCO process at the Commission from the  
18 beginning, again, to ensure consistency in  
19 standard operating practices for retail  
20 access, and to ensure that all customers  
21 are afforded appropriate protections in  
22 dealing with their ESCOs.

23 We see this in pending matters such  
24 as case 15-M-0180 in the matter of  
25 regulations and oversight of distributed

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2 energy resource providers and products,  
3 case 15-M-0127, in the matter of  
4 eligibility criteria for energy service  
5 companies, and various matters that seek to  
6 address low-income customer concerns  
7 centering on the residential retail energy  
8 markets in New York State, not only with  
9 ESCOs but with utilities as well.

10 And prior to any regulatory  
11 decision, we need to ensure we have  
12 properly established a robust record,  
13 ensure due process concerns are addressed,  
14 looked at unintended consequences from our  
15 actions, and ensure that we will have the  
16 tools necessary to properly implement our  
17 decision. I strongly believe that bad  
18 actors in the ESCO market should not be  
19 allowed to continue to do business in New  
20 York State and we need to ensure that we  
21 have vigorous standards of operating  
22 procedures in place, and that we provide  
23 proper oversight, guidance and opportunity  
24 to improve performance, such that we hope  
25 to have a thriving marketplace that

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2 protects consumers. This includes  
3 addressing quickly the market participants  
4 who exercise poor or illegal conduct.

5 I am a little concerned about any  
6 unintended consequences of potentially  
7 halting, virtually overnight in many  
8 respects, residential and small commercial  
9 energy service markets to new customers  
10 without a drill-down analysis of who the bad  
11 market participants are. Good companies with  
12 hardworking employees and happy customers  
13 can in one broad-brush be grouped with the  
14 bad action of others. So for me, I look at  
15 the regulatory uncertainty and what the  
16 future holds and make sure that we are  
17 moving forward in a path that gets us to a  
18 place where the marketplace is one that's  
19 thriving and protecting customers.

20 So I would like to ensure that when  
21 when we do do the report and the drilling  
22 down of the telemarketing complaints, that  
23 we really are looking significantly at all  
24 of the tools that we have and making sure  
25 that we're working, again, back to the rich

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history of these, historically focusing on a collaborative process with the ESCOs of the utilities and the consumers, and others that may be looking to come into New York to do business.

I would like to see that we take a strategic, deliberative and specific way of reviewing the current complaints and where appropriate, bringing an order to show cause against specific actors, and after proper due process, imposing penalties such as revoking, if necessary, an ESCO's eligibility to sell energy services. I support coming back to the Commission within 60 days, and I do not support the secretary being able to unilaterally extend the timeframes in this order, as I want to ensure the certainty in the Commission having it come back to us in that 60-day timeframe and, you know, taking a look at what we need to do.

I do know that we do have an outstanding pilot program or community choice aggregation where ESCOs will be

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2 focused on that and so for me, when we look  
3 at the pilot and drilling down on -- with a  
4 status of that, we should also be looking  
5 at how that is playing in the marketplace  
6 and with consumers and municipalities and  
7 what we may need to do there. So I do hope  
8 that this is getting us on the road of  
9 helping us to get to a place where we can  
10 feel confident in the marketplace and can  
11 feel confident that customers have the  
12 protections that are afforded in the UBP,  
13 and part of it comes down to our looking at  
14 what we need to do from an enforcement  
15 perspective, as well as looking at the  
16 certification, and the recertification, and  
17 the consumer complaints that are out there.  
18 So, thank you.

19 THE CHAIRPERSON: Thank you.

20 Just a couple of observations I just  
21 want came to -- that came to mind. One is  
22 that I'm aware and I think we're all aware,  
23 that there are a number of retailers who  
24 have invested substantially in providing  
25 retail services to the mass market, and one

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2 of the, you know, off-putting adages of  
3 business is that it takes ten times more  
4 money to win back a customer than it does  
5 to lose them, and that applies whether it's  
6 your own customer or someone else. One of  
7 the concerns that I personally have with  
8 REV is this issue, is that we want  
9 customers to be willing to accept new types  
10 of services from vendors that provide them  
11 real value. One of my concerns is actually  
12 the fact that as we have bad actors who  
13 make everyone feel that anyone but the  
14 utility is not to be trusted, our ability  
15 to help vendors get into the market who are  
16 able to offer good services, we're just  
17 increasing their cost of customer  
18 acquisition.

19 And so by becoming very firm in what  
20 can be offered, what can't be offered and  
21 acting very quickly, because I agree with  
22 Commissioner Burman, I think we all agree,  
23 we want people to be able to get out there  
24 and offer real things of value as quickly  
25 as we can, is something that this is about.

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2 But in order for that to occur in an  
3 effective way, we need to weed out the  
4 problems that are really plaguing this  
5 industry.

6 And the other issue that I think is  
7 really problematic that we're going to have  
8 to address in the 60-day period is that  
9 even good players have a difficulty when  
10 they hire someone and that person is on  
11 commission and they are just trying to get  
12 the sale and they'll do it at any price.  
13 And so one of the things that I'm hoping  
14 that we can address during this period,  
15 because I agree with you, sometimes someone  
16 can just hire someone and it's just the  
17 individual, it's not the company, is how do  
18 we differentiate that, what kind of  
19 standards are we going to put in place to  
20 make sure that kind of action doesn't happen  
21 anymore.

22 So I think that there, you know,  
23 this is -- I don't want to say this is a  
24 glass half full or glass half empty, but I  
25 do think that by putting a full stop, it's

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not so much that we're saying we don't want competition, we just really want to be very clear about what products are not going to be offered and then what products can be offered so that we give companies an opportunity to build businesses that consumers will value. I think that is really our role that we can play to make sure REV becomes a very positive outcome for all consumers in New York.

On the community aggregation, and we talk about this in the order, or the order speaks to this, that is actually an opportunity where we can see the mass market getting an advantage and that is the type of activity that I think can happen. Because what happens is is that when you have enough customers aggregated, you can provide retailers to develop that magic sauce that Gregg just Sayre talked about, where they can provide real value, where it's not just commodity but other services. And that's why I'm optimistic that these types of programs actually get the mass market

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2 the same types of benefits that the large  
3 scale -- larger customers historically has,  
4 specific as you get scale.

5 So I appreciate, frankly, all the  
6 Commissioners' comments. I know that this  
7 has been one of the most challenging topics  
8 that this Commission has dealt with for a  
9 long time, but as I said previously, I  
10 think that we are taking the right type of  
11 decisive action to get this market right,  
12 and I do appreciate the work of the staff in  
13 getting this done.

14 COMMR. ACAMPORA: I have a question.

15 THE CHAIRPERSON: Sure.

16 COMMR. ACAMPORA: I'd just like to  
17 go into the application of consumer  
18 knowledge and how we plan on getting some  
19 of this new information out to consumers.

20 MS. SCHERER: So I think that's  
21 something we're going to be working  
22 collaboratively with the ESCOs over the  
23 next 60 days to think through, but I think  
24 it's an important issue and we will be  
25 working with them as we have always done in

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1  
2 the past.

3           COMMR. ACAMPORA: I know we have our  
4 consumer outreach people and I am  
5 wondering, you know, they also have a lot  
6 of information when they're out there among  
7 the community. Will we be making anything  
8 new and will we also have a no knock, no  
9 solicitation sticker for people because I'd  
10 like to get one of those myself?

11           MS. HARRIMAN: We'll be producing  
12 them later on.

13           MS. SCHERER: We do have some ESCO  
14 specific outreach material which I think we're  
15 going to have to take another look at  
16 depending on the results of the 60-day period.

17           COMMR. ACAMPORA: Because everything  
18 we do won't work unless the consumers, we  
19 educate them.

20           MS. HARRIMAN: Right. And one of  
21 the things that Michael does so great as a  
22 consumer advocate, and I'll toot his own  
23 horn for him, is that he works with the  
24 consumer outreach groups and those are the  
25 groups like PULP, AARP, and other consumer

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focused groups that really get -- help us get the message out, and that's what we're, you know, I'm sure Michael will be working with those and every line of communication as possible.

COMMR. ACAMPORA: Yeah. Because it's really important that they have the tools to be able to make these decisions.

THE CHAIRPERSON: Michael, did you want to say something?

MR. CORSO: I just want to add -- thank you, Kim -- to Commissioner Acampora, we have a Consumer Advisory Council that you're aware of and we're going to have a March meeting to discuss this very topic with the members of the Consumer Advisory Council so they can interact with us, ask questions and understand where we're heading, and we'll work collaboratively with them so they can get messages and communications out to the constituents too. We use those networks effectively together, each other, to effectuate the changes that we're trying to

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work out, so we will be robustly working on that.

COMMR. ACAMPORA: Glad to hear it.  
Thank you.

THE CHAIRPERSON: We can go on and on in this, but let me -- just the other piece too is I think we do have the Power to Choose website and one of the things that the Commission identified in the Track 1 order was a desirability of really getting a standardized mechanism so people can compare, and I think one aspect of this order is maybe we can start to standardize products which will make it much easier for customers to compare across vendors. You know, and I think that like many of our orders, this would be one that the 60 days will identify maybe the first series of products but over time will continue to add. And so as part of this process, I would hope in the 60 days we'll define the process by which ESCOs can introduce new products that they think will be of value to customers that are beyond our thinking

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2 because that's really what innovation is about.

3 Anyway, I want to thank everybody  
4 for their patience on this and unless  
5 there's something more, I'm going to move  
6 to a vote.

7 So all those in favor of the  
8 recommendation to enhance enforcement  
9 provision of the UBP and restrict ESCO  
10 sales for residential and small commercial  
11 customers to contracts that guarantee  
12 savings or provide at least 30 percent  
13 renewable energy supply as described today,  
14 please indicate by saying aye.

15 (Chorus of Ayes.)

16 COMMR. BURMAN: And I concur  
17 reflective of my comments at session.

18 THE CHAIRPERSON: And so to three ayes  
19 and one concurrence, there being no opposition,  
20 the recommendations are adopted. Thank you  
21 very much, and thank you to my fellow  
22 Commissioners working with us this morning.

23 So while people are moving and to  
24 move things along, we're going to be moving  
25 to item 303, which is a petition for

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2 Certificate of Environmental Compatibility  
3 and Public Need for the Construction of a  
4 Transmission Facility in Cayuga County, and  
5 that will be presented by  
6 Judge Kevin Casutto.

7 Kevin, before you begin, I'm going  
8 to ask our audience, and I appreciate your  
9 attention and I definitely -- we all  
10 appreciate your interest. We do have a  
11 rule in this Commission, we do like people  
12 to be able to see so if you have a sign,  
13 please keep it chest high just so those  
14 behind you get to see our lovely faces.

15 Judge Casutto, please begin.

16 MR. CASUTTO: Thank you. Good  
17 morning, Chair and Commissioners. This  
18 case concerns the joint application of  
19 NYSEG and National Grid for a 14.5-mile,  
20 115 KV transmission facility in Cayuga  
21 County and Onondaga County, and upgrades to  
22 existing facilities to increase electric  
23 transmission capacity in the Auburn area.

24 The application was filed in  
25 May 2013 and the project is planned in two

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2 phases. Phase 1 is the new 115 KV line,  
3 which would run from the State Street  
4 Substation in Auburn, traveling North for  
5 approximately 4.2 miles to its intersection  
6 with the National Grid existing  
7 right-of-way. From there, the transmission  
8 line will follow the National Grid  
9 right-of-way generally east for 10.3 miles  
10 to the Elbridge Substation in Onondaga  
11 County.

12 Phase 2 would include modifications  
13 to existing transmission facilities in  
14 these rights-of-way to increase electric  
15 transmission system capacity in NYSEG's  
16 Auburn area. The Cayuga Operating Company  
17 owns two coal-fired generating units in  
18 this area, each approximately 150 MW.  
19 These units are located in Lansing. Cayuga  
20 participated as a party in this case.

21 From January 2014 to June 2015, the  
22 parties engaged in settlement negotiations  
23 and on June 22, 2015, a joint proposal was  
24 filed which was signed by the following  
25 parties: The Applicants Department Trial

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2 Staff, the Department of Environmental  
3 Conservation, the Department of Agriculture  
4 and Markets, Nucor Steel, the Sierra Club,  
5 and a citizen group identified as  
6 Ratepayers and Community Intervenors.

7 Cayuga acknowledged the need for Phase 1 of  
8 the project but opposed Phase 2 and did not  
9 sign the joint proposal. An evidentiary  
10 hearing was held on August 17, 2015, and on  
11 November 18, 2015, a recommended decision  
12 was issued which recommended granting a  
13 certificate to the applicants.

14 The proposed order concludes that  
15 the project is needed to address  
16 transmission system reliability and would  
17 grant the certificate. On  
18 December 11, 2015, Article VII was amended  
19 to add a new finding regarding minimization  
20 of impacts to active farming operations.  
21 The proposed order addresses the new  
22 statutory finding.

23 Some new property rights are  
24 required for this project. The proposed  
25 order concludes that the project is needed

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for system reliability in the Auburn area and therefore finds that the extent of additional property rights required for the project has been minimized.

That concludes my presentation. I'm available if the Commission has questions.

THE CHAIRPERSON: Thank you, Judge Casutto.

Any questions?

(No response.)

THE CHAIRPERSON: I am certainly in favor of the JP. I think that the record in this case is abundantly clear: The transmission is needed. I appreciate the work of the company and the parties in addressing our concerns and as we build transmissions, we minimize the impact on local land use and try to maximize the use of existing rights-of-way. I certainly think the fact that we have consumer groups as well as environmental groups working with the staff and the company is indicative that we did find the right path, so I intend to vote in

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2 favor of this item.

3 Any other further comments or  
4 questions?

5 (No response.)

6 THE CHAIRPERSON: Hearing none, let's  
7 move item 303, which is the Petition for  
8 Certificate of Environmental Compatibility  
9 and Public Need for Construction of  
10 Transmission Facilities.

11 All those in favor indicate by  
12 saying aye.

13 (Chorus of Ayes.)

14 THE CHAIRPERSON: Opposed?

15 (No response.)

16 THE CHAIRPERSON: Hearing no  
17 opposition, there being none, the  
18 recommendation is adopted.

19 So Judge Casutto has set a new  
20 standard for expediency. Thank you.

21 MR. CASUTTO: Thank you.

22 THE CHAIRPERSON: We'll move on to  
23 the next item. This is item No. 302, and this  
24 is Proposal for the Continued Operation of the  
25 Ginna Nuclear Power Plant presented by

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Judge Mullany. Welcome, Sean.

MR. MULLANY: Good morning,  
Chair Zibelman and Commissioners.

Item 302 is a draft order that would adopt the terms of a joint proposal filed by Rochester Gas & Electric Corporation on October 21 of 2015. The joint proposal, which includes an Amended and Restated Reliability Support Services Agreement or RSSA, would protect the reliability of New York State's electric system pending the construction of an implementation of needed system upgrades by ensuring the continued operation of the R.E. Ginna Nuclear Power Plant during that interim period.

The joint proposal was signed and is actively supported by Rochester Gas & Electric Corporation, the R.E. Ginna Nuclear Power Plant, the staff of the Department of Public Service, the Utility Intervention Unit of the New York State Department of State and multiple intervenors. These parties represent a wide range of competing interests. If the

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2 joint proposal is adopted as proposed  
3 without material modification by the  
4 Commission and also by the Federal Energy  
5 Regulatory Commission, it will result in a  
6 global settlement at the state and federal  
7 levels.

8 The joint proposal is opposed in  
9 part by the Alliance for a Green Economy  
10 and the Citizen's Environmental Coalition.  
11 They claim that RG&E imprudently failed to  
12 plan for the potential retirement of the  
13 R.E. Ginna Nuclear Power Plant and that  
14 therefore ratepayers should not be asked to  
15 bear the costs of the joint proposal, and  
16 Amended and Restated Reliability Support  
17 Services agreement. The proposed order  
18 before you would reject these arguments  
19 because, although given a fair opportunity  
20 to do so, the Alliance for a Green Economy  
21 and the Citizens Environmental Coalition  
22 did not make a prima facie showing of  
23 imprudence on the part of Rochester Gas &  
24 Electric Corporation. The signatories  
25 stress that the joint proposal is in the

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public interest and should be adopted, and I would note that the Senior Advisory Staff of the Department concurs with our recommendation.

Signatories say that the 24-month term of the joint proposal is aligned with the time needed to implement the Ginna Retirement Transmission Alternative, which is the long-term solution to the potential retirement of the R.E. Ginna Nuclear Power Plant.

They also assert that the joint proposal will assure just and reasonable rates. In exchange for the continued operation of the Ginna Plant, Rochester Gas & Electric Corporation will pay Ginna \$15.42 million per month during the effective term of the Amended Restated RSSA. This will be offset each month by 70 percent of the revenues that Ginna gets from its sales of energy and capacity and 100 percent of the revenues that it receives from its provision of ancillary services in markets -- wholesale markets

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administered by the New York Independent System Operator.

After the RSSA expires, RG&E will also pay Ginna a one-time settlement payment of \$11.458 million. After accounting for Ginna's wholesale revenues, staff estimates that RG&E's total payments to Ginna would be \$166.7 million. Ginna's total compensation would be subject to a floor of \$425 million and a ceiling of \$510 million. These limits correspond with Ginna's going forward costs and its full cost of service. These terms ensure that the joint proposal would protect customers from excessive costs and ensure that this agreement will be consistent with relevant orders of the Federal Energy Regulatory Commission.

RG&E would fund its cost through two mechanisms. First, the company would implement a permanent surcharge which would supplant the temporary rate surcharge that the Commission approved in August of last year. The new surcharge designed to

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collect \$2.25 million per month, will protect RG&E's cash flow, its credit ratings, and it's access to capital markets.

Second, RG&E would use up to \$110 million in existing customer credits to pay down the cost of the RSSA. The signatories argue that this use of customer credits would be reasonable and will mitigate the bill impacts of the joint proposal. Staff, in particular, points out that when the Commission approved the temporary rate surcharge in August of last year, the Commission explicitly noted that the use of one-time credits to pay down one-time costs is a sound ratemaking practice.

The signatories also advocate that the bill impacts of the joint proposal would be just and reasonable. After cost offsets from Ginna's wholesale revenues and from the application of existing customer credits, RG&E's base rates would increase by just over \$2 a month for a typical

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2 customer having a bill of about \$95 a  
3 month.

4 In summary, the joint proposal and  
5 the Amended RSSA will ensure continued  
6 system reliability pending needed system  
7 upgrades, ensure RG&E's long-term  
8 viability, and protect ratepayers from  
9 unjust or unreasonable rates. For these  
10 reasons, the terms of the joint proposal,  
11 including the RSSA, are consistent with  
12 State and Commission policies and in the  
13 public interest. Accordingly, the terms of  
14 the joint proposal should be adopted. This  
15 concludes my presentation.

16 THE CHAIRPERSON: Thank you.

17 First of all, I do appreciate the  
18 fact that the joint proposal does reflect a  
19 good balance of both the use of credits and  
20 the recognition that we also need to make  
21 sure that our utilities retain their  
22 financial health in their cash flow because  
23 that also affects rates, so I appreciate  
24 the work of the staff and the parties.

25 And I also want to note in

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2 particular in this case, the concurrence of  
3 the FERC staff, that they joined in on the  
4 joint proposal that's going to FERC which  
5 is unusual and I think is indicative of the  
6 fact that folks worked very, very hard to  
7 address the right balance of interest in  
8 this case. Certainly this is a matter that  
9 the Commission had before us. We put in a  
10 temporary surcharge and I'm certainly in  
11 favor of moving to a permanent surcharge.

12 I also read the record and do agree  
13 strongly that there is simply no evidence  
14 of imprudence on the part of NYSEG in this  
15 case and I will -- it struck me that if  
16 utility, in the circumstances with that  
17 they found themselves several years ago,  
18 came to the Commission and said we want to  
19 build transmission because we think a  
20 nuclear generator may shut down because we  
21 think the gas prices may drop and we think  
22 that therefore it may become uneconomic, in  
23 all likelihood, the Commission would have  
24 said thank you, see you later. So I doubt  
25 that we would have allowed them to go out

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2 and build transmission in that types of  
3 circumstances.

4 Certainly things have changed in the  
5 market. We are encouraging utilities to  
6 take a look at at risk generators and we  
7 find ourselves in this position, but at  
8 that time I don't think anyone would have  
9 seen the downturn in the market in terms of  
10 pricing that we're witnessing today. So I  
11 clearly think there's no issue of  
12 imprudence. And with that, I intend to  
13 vote for the item. Thank you.

14 Any further questions?

15 Commissioner Sayre.

16 COMMR. SAYRE: I've lived in the  
17 general area of Ginna for the last 25 years  
18 on the East side of Rochester and I can say  
19 that they have been a good neighbor to the  
20 community. If you're driving down  
21 Lake Road and you're not looking for the  
22 sign, you probably won't even notice that  
23 the plant's there.

24 The main complaint that I hear about  
25 Ginna is from fishermen who can't get up

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2 real close to the plant anymore like they  
3 used to where the slightly warmer in that  
4 part of Lake Ontario attracts a lot of  
5 fish, but we have to blame the Homeland  
6 Security and the Nuclear Regulatory  
7 Commission for closing that off to  
8 anglers. They provide 600 plus good jobs  
9 in a relatively depressed area of Upstate  
10 New York and I'm happy to see them continue  
11 to run.

12 THE CHAIRPERSON: Commissioner Burman.

13 MS. BURNAM: I just have a question  
14 for Raj.

15 Is this needed for reliability?

16 MR. ADDEPALLI: Yes, Commissioner.  
17 Based on the studies done by the ISO and RG&E,  
18 they are needed for reliability.

19 COMMR. BURMAN: I have no further  
20 questions.

21 THE CHAIRPERSON: All right. So for  
22 item 302, all those in favor of the  
23 recommendation to adopt the terms of the  
24 joint proposal as described, please  
25 indicate by saying aye.

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2 (Chorus of Ayes.)

3 THE CHAIRPERSON: Opposed?

4 (No response.)

5 THE CHAIRPERSON: And I'm going to do  
6 a particular shoutout in case he's listening,  
7 to Mr. D'Ambrosia, who's retired now but I  
8 know was very instrumental in this case. So  
9 thank you.

10 Hearing no opposition, the  
11 recommendations are adopted.

12 Going on to item 304. That's in the  
13 matter of the Implementation of a Large  
14 Scale Renewal Program and Clean Energy  
15 Standard. Paul Agresta, Deputy General  
16 Counsel. Paul, please begin.

17 MR. AGRESTA: Thank you. If I ever  
18 manage to retire, I won't be listening in.

19 THE CHAIRPERSON: Yes, you will. You  
20 will miss me so much.

21 MR. AGRESTA: Item 304 is a  
22 procedural item that would expand the scope  
23 of the Clean Energy Standard proceeding to  
24 include the consideration of a program to  
25 provide expedited financial support to

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2 maintain the viability of certain nuclear  
3 power plants, in order to not lose their  
4 zero-emission attributes.

5 The Staff White Paper on the Clean  
6 Energy Standard issued last month already  
7 proposed that a Tier be created within the  
8 CES mandate, in the form of a separate  
9 obligation on Load-Serving Entities, to  
10 procure MWh hour production credits from  
11 qualifying nuclear resources.

12 But in the brief time since the  
13 White Paper was issued, two things have  
14 happened. First, the New York Independent  
15 System Operator issued a Generator  
16 Deactivation Assessment of the FitzPatrick  
17 nuclear facility that concluded that loss  
18 of the FitzPatrick plant along with a  
19 number of other plant retirements,  
20 including the Ginna nuclear plant, creates  
21 a statewide resource deficiency that  
22 constitutes a reliability need that would  
23 occur starting in 2019. The New York State  
24 ISO has issued a solicitation for what it  
25 calls a "GAP" solution to address that need

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2 through new or retained capacity resources.

3           The second thing that happened is  
4 that the owners of the FitzPatrick and  
5 Ginna plants have both indicated that the  
6 proposed CES mandate is not certain or  
7 timely enough to keep the plants open.  
8 Both of these plants are highly sensitive  
9 to timing, particularly due to their  
10 current fuel cycles and the need to commit  
11 financially, and to procure fuel supply  
12 well in advance of a running cycle.

13           To enable more expeditious action  
14 that can be provided by the CES mandate,  
15 this program would be modeled on the  
16 existing Renewable Portfolio Standard  
17 maintenance program and be funded by the  
18 ratepayers of the six jurisdictional  
19 electric utilities in the same manner as  
20 the RPS maintenance program. The program  
21 would provide certainty in the form of  
22 short-term contracts ensuring that the  
23 nuclear facilities receive revenues to  
24 support their going-forward costs necessary  
25 to keep the plants in operation until the

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CES mandate or other solutions can be implemented.

If, after receiving comments, the Commission approves the expedited program, maintenance contracts could conceivably be put in place in the third quarter of this year. If confidence is provided to the New York ISO that one or more of these plants will remain open due to these maintenance contracts, the New York ISO may also be able to withdraw as unnecessary its request for a reliability GAP solution.

But the action today is merely to expand the proceeding and put this proposal out for comment and further consideration. This concludes my presentation.

THE CHAIRPERSON: Thank you.

So let me just add my observations to this. We are in a position now in the state as the ISO has recently identified that with all of the announced retirements and that would include lastly the FitzPatrick Unit but there are others as well, Dunkirk, Huntley, Ginna, and Astoria,

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2 we're going to find ourselves in a position  
3 as early -- I believe it's 2019, Raj?

4 MR. ADDEPALLI: Yes, that's correct,  
5 2019.

6 THE CHAIRPERSON: -- where we would  
7 not have sufficient generation available to  
8 meet our obligation to have reserves to  
9 maintain the adequacy of generation in New  
10 York.

11 From my perspective, I believe that  
12 we will be looking at the CES and I'm fully  
13 confident that within the CES we will have  
14 a zero-emission standard which will allow  
15 for us to address the issue that we have in  
16 nuclear power in Upstate New York, the  
17 availability of resources that are able to  
18 provide zero-emission energy that's base  
19 load and helps us maintain reliability and  
20 provide us a good transition to a future  
21 where we want to go in this state which is  
22 50 percent renewable by 2030.

23 The difference, however, is that in  
24 the case of fossil units, they can announce  
25 a mothballing, meaning that they will

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2 temporarily shut down and then come back if  
3 the price is right. In the case of  
4 nuclear, that kind of flexibility is not  
5 there and I think it would be a shame if  
6 we saw units retire because we have low  
7 prices, because of a timing issue, only  
8 to find out we have either a new unit  
9 coming on to replace them that we might  
10 not need or find out four months later that  
11 the Clean Energy Standard would have met  
12 their concerns and we could have met our  
13 economic needs, which is to have a good  
14 transition into the Renewable Energy  
15 Standard and retain these jobs, such as the  
16 jobs we're talking about at Ginna as well  
17 as the 700 jobs at FitzPatrick.

18 So with all of that, it, to me, what  
19 this order does, it provides the Commission  
20 an opportunity to say very decisively we do  
21 not want to see a plant retire for want of  
22 a short-term solution to a longer term  
23 opportunity, and that therefore we are  
24 going to take comments to see how we can  
25 address the near term needs of the nuclear

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units so that they can get the confidence that they are going to be able to have the resources necessary so they can provide the clean energy attributes that we want in this state. The alternative is really probably more cost to consumers, and certainly not having what we want which is a diverse fuel mix that also includes zero carbon resources, particularly as we build out the renewable energy portfolio we want to have.

So for that, I, you know, I believe it's one of these, again, moments that we can act decisively, we can take steps forward, we can find a solution that really works for consumers and works for the market and then gives us -- all ourselves an opportunity to get where we want to go in a way that's least cost. So I intend to vote for it.

Any questions or comments about this item?

Commissioner Acampora.

COMMR. ACAMPORA: Paul, as, you

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2 know, I was briefed on this. I asked the  
3 question and I'd like it to be on the  
4 record. Is this a national problem?

5 MR. AGRESTA: Yes, it is,  
6 Commissioner. The markets that are  
7 designed by FERC do not look at  
8 environmental attributes. They only look  
9 at price, and due to the recent change in  
10 gas prices where gas prices are very low,  
11 there are nuclear plants throughout the  
12 county that are threatening to close or are  
13 already closing and it is a national  
14 problem.

15 COMMR. ACAMPORA: Is FERC planning  
16 any action in the near future?

17 MR. AGRESTA: My understanding is  
18 that FERC feels that it may not under a  
19 statute distinguish between plants based on  
20 attributes and it must rely only on one  
21 price, and so my understanding is that they  
22 are not planning on taking any action.

23 COMMR. ACAMPORA: I think it would  
24 be a good idea, again, you know, I'm happy  
25 to work on something where New York would

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2 lead, but I think it would be imprudent to  
3 let the federal side of this issue get off  
4 the hook. And I really think that, you  
5 know, we need to stand up, write a letter  
6 to FERC along with our congressional  
7 delegates to let them know how we feel  
8 about this and that this is a national  
9 matter of interest. I mean, if it's an  
10 interest in New York, it's certainly an  
11 interest in other states, particularly  
12 those states that are now building new  
13 nuclear plants. What are they going to do?  
14 How does this affect them financially,  
15 also?

16 Raj, do you know?

17 MR. ADDEPALLI: Clearly there are  
18 two types of regimes in the country today,  
19 those that have restructured markets like  
20 us, New York, or PJM New England, California,  
21 Texas, and the others are still integrated  
22 fully costs service-based. This problem is  
23 an acute that we are taking about in  
24 restructured markets where the generated  
25 revenues are dependent on the market

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2 prices.

3 In the non-restructured states, the  
4 Commission still had to ability to provide  
5 them full embedded cost of service, so some  
6 of those units perhaps in Georgia or other  
7 places they're still at the cost of service-  
8 based. With that said, your identification of  
9 if it's a national issue is relevant in all of  
10 these restructured markets where nukes are  
11 finding it hard to be financially viable.

12 COMMR. ACAMPORA: So I think, you  
13 know, it really is incumbent upon us while  
14 we're taking this action to kind of push  
15 the envelope further.

16 THE CHAIRPERSON: Commissioner Acampora,  
17 I think, I mean, the challenge we have and as  
18 Raj stated, if we were -- we had not  
19 restructured and that's why, as you know,  
20 even in Ohio they're looking at re-regulation  
21 for this very purpose is that nuclear power  
22 plants that live in where you have fully  
23 integrated utilities, Commissions are addressing  
24 this issue by simply allowing utilities to raise  
25 the rates. In a wholesale market, the

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1 utility -- the generators are totally  
2 dependent on the market revenues. These  
3 market revenues are made because under the  
4 Federal Power Act, they are -- have to be  
5 indifferent to the technology, so the fact  
6 that in New York, like many states, we  
7 worry about CO2, that's something that FERC  
8 just simply does not have in its arsenal of  
9 tools to address.  
10

11 The other issue, quite frankly we  
12 are all stuck on and I hate to get into  
13 politics here, but the matter of fact is  
14 that the federal government sought to  
15 address this issue through the Clean Power  
16 Plan and looking at reduced emissions, as  
17 we all know, that Clean Power Plan now is  
18 stuck in Supreme Court which -- and we  
19 don't know where that's going to end up.  
20 So in the meantime, New York has to act and  
21 we have in fact, Governor Cuomo has joined  
22 many states in saying we're going to  
23 continue to implement the Clean Power Plan  
24 irrespective of what's happening at the  
25 federal level, and has also joined in with

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2 16 other governors to talk about their  
3 commitment to clean energy, and so we are  
4 decisively acting and frankly telling  
5 Congress we would like to see something  
6 happen here, or tell the Federal government.

7 But that gets back, I think, to our  
8 dilemma, we hate to see a nuclear power  
9 plant such as Fitz, or such as Ginna, which  
10 is in a region that it's in license, it's  
11 fully capable of operating and would retire  
12 simply because we're not able to develop a  
13 process to address the fact that they are  
14 providing a valuable attribute to us, i.e.  
15 zero emission energy, in a time that they  
16 can then make a decision. So for all of  
17 that, I think that's why we're acting, but  
18 I definitely think we as New Yorkers are  
19 speaking loudly and clearly that we're  
20 acting because we are missing a good clean  
21 power plant in this country.

22 COMMR. ACAMPORA: I totally agree  
23 with everything that you said and I think  
24 it would be important to share what we've  
25 done with our federal representatives. I

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2 mean, we're doing something here. We're in  
3 the state. They're at another level.  
4 Sometimes they just don't know what we're  
5 doing and how important it is, so I think  
6 it might be a good idea to have some kind  
7 of a correspondence with them also.

8 THE CHAIRPERSON: We will. Thank you.  
9 Commissioner Sayre.

10 COMMR. SAYRE: I have a question  
11 about the cost to the consumer for Raj.

12 Could you give us a rough estimate,  
13 rough comparison of the cost per megawatt  
14 hour that we are currently paying for new  
15 fully renewable generation sources versus  
16 the estimated costs under this plan for a  
17 period of time to keep the nuclear plants  
18 afloat?

19 MR. ADDEPALLI: For the nuclear  
20 costs, the example would be the one you  
21 just approved a few minutes back, the Ginna  
22 power plant RSSA. So their costs were  
23 thoroughly examined by us and all the other  
24 parties and federal government, FERC staff,  
25 too. And the price in that contract varies.

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There's a floor and a ceiling. By the way, it's a pretty innovative and complicated proposal that you just approved. It may look simple, but it took a lot of effort and time for the parties to craft the settlement that Sean just presented.

In that, the cost varies but roughly I would say it's in the ballpark of about \$49 megawatt hour to \$50 megawatt hour expected price paid to Ginna effectively. And so when you say the cost, the way I would define cost is what would they get in the marketplace compared to what are they being paid through this contract. So what they'll get in the marketplace is the functional market prices that was just said. Clearly we know the historical prices. The future prices are estimates and we do have futures markets to give us a clue as to what the price may be.

For example, today we are in the range of maybe around \$35 a megawatt hour, \$36 a megawatt hour, all in, which is energy and capacity roughly in that

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1 location and that area. These are all on  
2 an annual basis, as you well know. They  
3 are varied by time and location. So if you  
4 use those two parameters of cost of about  
5 \$50 and market price over 35, that  
6 translates to roughly about \$15 per  
7 megawatt hour, so-called the low market  
8 price or the out of market price.

9  
10 What have we been paying for  
11 renewables through a large scale renewable  
12 program in the past auctions, they vary  
13 between \$20 and \$30 roughly, maybe around  
14 \$25 a megawatt hour, so you are paying for  
15 the attribute there too which is carbon  
16 free emissions. So the nuclear out of  
17 market costs you are paying although Ginna  
18 was premised on reliability considerations.  
19 Looking forward in the Clean Energy  
20 Standard, we are looking at carbon  
21 attribute pricing, so that provides you  
22 perspective of the nuclear, although it's  
23 15, it could be between 10 and 20, depending  
24 on the cost structure of the particular unit  
25 that maybe -- that we'll be looking at. And

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2 the renewables as of now, it's in the range of  
3 \$20 to \$30, but in the future we'll see  
4 what those prices are going to be as  
5 technology evolves.

6 COMMR. SAYRE: But as of now, it's  
7 cheaper to keep the nuclear plants going  
8 than to -- for ratepayers?

9 MR. ADDEPALLI: Not only is that  
10 true -- yes, your observation is absolutely  
11 right. But also I would note that if you  
12 were to shut down a plant like Ginna, 600  
13 megawatts or 850 megawatts of Fitz, what  
14 does it take to replace equal amount of  
15 energy? Energy is big with these nuclear  
16 plants because they're on 95 percent of the  
17 time. What type of renewable energy would  
18 you need, resources? For a 600 megawatt  
19 Ginna power plant, you're looking at  
20 replacing it with maybe about 2,000  
21 megawatts of onshore wind.

22 So if you put it in context, in the  
23 last decade plus, in the RPS program,  
24 that's the amount of renewables that were  
25 dealt with 9,800 megawatts. So it's not

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2 just the price, but just the physical  
3 ability to get those resources in place in  
4 a hurry is also a constraint.

5 So for a 900 -- 850 megawatts of  
6 Fitz, you're looking at over 2,500  
7 megawatts of equal onshore wind, and if  
8 you're talking about solar, it will be  
9 much, much higher. So getting those  
10 resources in a hurry is not going to be  
11 easy, physically just not possible. So by  
12 necessity, you would be replacing some of  
13 them with fossil fuels in the near term if  
14 they were to shut down.

15 COMMR. SAYRE: Thank you.

16 THE CHAIRPERSON: Commissioner Burman.

17 COMMR. BURMAN: So I have a couple  
18 of questions. When we look at the ISO and  
19 their reliability assessment and the GAP  
20 solution, my understanding is that the  
21 analysis that was done was that in 2019, we  
22 may have a reliability issue; is that  
23 correct?

24 MR. ADDEPALLI: Yes. The latest  
25 assessment of the ISO put out in the

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2 last -- this month is with the potential  
3 retirement of Fitz next Spring. They're  
4 looking at the resource adequacy violation  
5 sometime in 2019. And they compute what is  
6 called a deficiency amount or how many  
7 megawatts would it take to replace to meet  
8 their minimum reliability requirements,  
9 that's about 325 megawatts or so.

10 THE CHAIRPERSON: So can I just --  
11 I just want to, because I know people are  
12 listening, I just want to be clear. We  
13 always talk in terms of reliability but  
14 really there are two types of reliability.  
15 When we were talking in terms of the  
16 transmission, this is really system  
17 reliability. The ISO -- and that's the same  
18 issue we found with the Ginna, it was  
19 actually the transmission system would become  
20 unreliable with the loss of that unit.

21 The ISO finding, while we talk in  
22 terms of reliability, is really in terms of  
23 adequacy of generation, meaning that you  
24 have enough generation available at peak,  
25 and I think just for the point of people

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2 who are wondering how and why we're not  
3 looking at transmission, the issue is not a  
4 transmission issue, it's actually a  
5 generation issue.

6 MR. ADDEPALLI: That's absolutely  
7 right.

8 COMMR. BURMAN: Thank you for that  
9 clarification.

10 I think it's important from, you  
11 know, the beginning, for me, it's about  
12 reliability in all aspects and how things  
13 fit together. So when we look at solutions  
14 in New York, you know, recognizing that we  
15 need to make sure that we're planning for  
16 the short and the long-term and working  
17 with numerous folks who might be able to  
18 help us with that planning so that we are  
19 looking comprehensively and holistically.

20 So, for me, the ISO's assessment was  
21 one that I very much appreciated because it  
22 gives us an opportunity to look at where  
23 the ISO is from a reliability perspective  
24 and an assessment perspective moving out,  
25 not only in the hearing now on this

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2 specific plant, but, you know, where we  
3 will be.

4 And we had the State Energy Plan  
5 which came out in 2015 that statutorily, it  
6 would have been 2013 but it was 2015, and  
7 so when we look to the next State Energy  
8 Plan, are we looking at 2017 or are we  
9 looking at 2019? Because are we going by  
10 the 2015 date so then the next one would be  
11 in four years for 2019, or are we looking  
12 at going backwards, if it came out in 2013,  
13 would it be 2017? And I don't know if you  
14 know that answer.

15 MR. ADDEPALLI: You mean when the  
16 next State Energy Plan would be issued?

17 THE CHAIRPERSON: It's the statutory,  
18 but why don't we get back to you on that.

19 MR. ADDEPALLI: We have to get back  
20 to you on that, but under reliability,  
21 Commissioner, we always look at not just  
22 next summer or next five years, but next  
23 ten years.

24 COMMR. BURMAN: The only reason I  
25 ask is I do think it's important especially

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2 because a lot of, you know, what has come  
3 with the Clean Energy Standard has been  
4 because of the 2015 State Energy Plan. So  
5 for me, I want to look forward also to  
6 making sure we're all laser focused on the  
7 short and the long-term in the next State  
8 Energy Plan which will help us in some of  
9 our formulations, and especially if the  
10 2019 is the State Energy Plan versus 2017,  
11 then at least we sort of have a pathway in  
12 terms of working through what some of the  
13 reliability pieces may be as well as the  
14 clean energy.

15 And, you know, I look at it as, you  
16 know, we need to, you know, focus in on a  
17 lot of what we have done and where we're  
18 going and make sure that we're on the right  
19 pathway, you know, with the transmission  
20 needs, as well as the natural gas needs, as  
21 well as the renewable needs, and make sure  
22 that all of the relevant entities are  
23 working together. And also on the same  
24 target dates, but also checking in with  
25 what this means now with the GAP solution

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2 because I do think that it's important to  
3 have conversations with key entities in the  
4 state that can help us in a lot of our  
5 detailed analysis that we need to do.

6 So, you know, from my perspective, I  
7 think it's just important to clarify that  
8 I'm really looking at this as what is the  
9 pathway, short-term and long-term, in  
10 making sure that we're not doing things in  
11 a silo, but that everything is sort of  
12 fitting and then we go back and make sure  
13 that we look carefully at how things now  
14 get reset, if necessary, so that things do  
15 have an understanding of where we're going.

16 And so I understand that, you know,  
17 there is a national focus and I also want  
18 to drill down on what we're doing  
19 specifically in New York with all of our  
20 relevant plants and all of our relevant  
21 energy sources, Upstate and Downstate.

22 THE CHAIRPERSON: I appreciate that.  
23 I think that while you're talking about the  
24 State Energy Plan, I also want to note  
25 though, that we expect that to be delivered

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2 soon. We are, you know, working with the  
3 ISO and utilities in developing actually a  
4 resource outlook for what the transmission  
5 needs would be and the system needs would  
6 be under various scenarios going forward,  
7 which is, I agree with you, having that in  
8 mind, understanding not just what we need  
9 today but what we're going to need over the  
10 next 10 to 15 years as it takes a long time  
11 to develop these systems is really critical  
12 in looking at it under various types of  
13 complemented resources.

14 The other piece that I know we're  
15 all keen on is also thinking in terms of  
16 what's the fuel mix going to be and making  
17 sure that we're looking at it on both the  
18 reliability of the entire system so that  
19 we're neither under-building or  
20 over-building these systems.

21 COMMR. BURMAN: Great. And thank  
22 you for reminding me on the resource  
23 planning because our July 2015 session  
24 where we looked at moving things to the ISO  
25 for planning with our generation and our

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2 transmission needs, I did reference in my  
3 concurring statement that I hope that the  
4 resource planning would come back to the  
5 Commission for some weigh-in as well, so I  
6 do appreciate that.

7 THE CHAIRPERSON: We'll give an  
8 update to all the Commissioners of where we  
9 are in that process.

10 COMMR. BURMAN: Great. Thank you.

11 THE CHAIRPERSON: So if I can, let me  
12 move then on item 304, which is in the matter  
13 of the Implementation of a Large Scale  
14 Renewable Program and Clean Energy Standard  
15 and the Recommendation to Expand the Scope  
16 of that Proceeding to include the Expedited  
17 Program to Maintain the Viability of  
18 Nuclear Power Plants Demonstrate Need.  
19 Please indicate by saying aye.

20 (Chorus of Ayes.)

21 COMMR. BURMAN: And I -- I'm sorry.  
22 I concur only to the extent of agreeing to  
23 initiate this new aspect of the proceeding  
24 to open the dialogue on this issue and it  
25 does not indicate that I make a

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2 determination one way or the other with  
3 respect to the substantive outcome on the  
4 future actions in this matter or any other  
5 related matters.

6 THE CHAIRPERSON: I'll accept that as  
7 also in support, and I believe that all of us  
8 are in that position. So with that, and  
9 there being no opposition, the  
10 recommendations are adopted. Thank you.

11 We're going to move on to the  
12 Consent Agenda. Did any of the  
13 Commissioners wish to recuse for any items  
14 on the Consent Agenda?

15 (No response.)

16 THE CHAIRPERSON: Hearing none, are  
17 there any comments on this Consent Agenda?

18 COMMR. BURMAN: I have concurring  
19 statements on five different items which  
20 I'll read and then do you want to take a  
21 vote on the whole --

22 THE CHAIRPERSON: Read the statements.

23 COMMR. BURMAN: Read the concurring  
24 statements? Okay.

25 On item 365, I do note -- I concur

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2 on this item and I do note that we have a  
3 number of outstanding proceedings that  
4 concern resolution of various net metering  
5 matters. Normally I would seek to resolve  
6 such issues together and not in a piecemeal  
7 fashion. However, this specific issue  
8 relates to administrative billing matter  
9 that due to the upcoming effective date to  
10 start such billing needs to be resolved now.  
11 I support approval of this petition request  
12 for the reasons cited by Central Hudson,  
13 especially because failure to grant such  
14 request would cause unnecessary time and  
15 expense to be incurred.

16 On item 369, I concur on this item.  
17 I do note that we have a number of  
18 outstanding proceedings. Again, that  
19 concern resolution to various net metering  
20 matters. This is one of several -- hold  
21 on, I lost my place -- this is one of  
22 several declaratory judgement petitions  
23 that have been brought seeking regulatory  
24 clarity on remote net metering.

25 Normally I would seek to resolve

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such net metering issues together and not in a piecemeal fashion. However, this specific request relates to the immediate need for certainty on a specific fact pattern related to remote net metering.

I am concurring here to give such clarity, but I do note the need for the Commission to carefully examine issues that have been raised on how far to extend the remote net metering participation of various entities and site specific locations.

On item 375, I concur on this item only to the extent that I approve the release of the draft SCIS for public comment and wholly without prejudice to any future substantive issues set forth in the draft SCIS document that will be presented in the future to the Commission including approval and adoption of the final SCIS and any regulatory action that the Commission may be called upon to render on the Clean Energy Standard.

Item 461, I concur on this item.

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New York American Water is has been actively acquiring several small water companies in New York. This is not a bad thing and in fact, such acquisition may be helpful, not just to New York American Water but to the troubled small water companies and their customers and to the impacted communities.

On August 8th, 1994 in case 93-W-0962, the New York State Public Service Commission issued a statement of policy on acquisition incentive mechanisms for small water companies. This policy was to encourage the acquisition of smaller troubled water systems by larger systems, and included a number of options to provide incentives for such acquisitions. The stated policy of consolidating where appropriate, the industry had the goal of thereby achieving safe, adequate and reasonably priced water service for the long term.

On December 17th, 2015, this Commission commenced a proceeding in case 15-W-0562 to review this policy and look at

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2 the landscape of what was happening in this  
3 area. That generic proceeding is ongoing.  
4 The final decision we may make in that  
5 generic proceedings can have as significant  
6 impact on how we move forward on such  
7 acquisitions and provide consistency in  
8 achieving our policy objectives and impact  
9 positively our actual water systems.

10 Normally I would not want to decide  
11 this type of specific proceeding while  
12 we're still examining our policy in the  
13 ongoing generic proceeding. However, I'm  
14 cognisant that here we are concerned with  
15 ensuring safe and adequate service and the  
16 long-term viability of the source supply of  
17 the water system. Thus, I support  
18 approving this acquisition at this time. I  
19 do want American Water to keep us informed  
20 on the water system and the status on the  
21 immediate and long-term infrastructure  
22 issues. I also look forward to the  
23 resolution of the ongoing generic  
24 proceeding.

25 Item 464, I concur on this item.

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2 Under Public Service Law Section 89-B, the  
3 Commission is required to ensure regulated  
4 utilities provide safe and adequate service  
5 at just and reasonable rates. Further,  
6 under Public Service Law 89-C2, the  
7 Commission has the power to examine and  
8 investigate the methods employed by Water  
9 Works Corporation in delivering or  
10 supplying water and furnishing equipment.

11 Here it has been brought to our  
12 attention that we need to address concerns  
13 with whether safe and adequate service is  
14 being provided and cognisant that on  
15 August 8th, 1994 in case 93-W-0962, the New  
16 York State Public Service Commission issued  
17 a statement of policy and acquisition  
18 incentive mechanisms for small water  
19 companies. This policy has encouraged the  
20 acquisition of smaller troubled water  
21 systems by larger systems and included a  
22 number of options for providing incentives  
23 for such acquisition. The stated policy of  
24 consolidating, where appropriate, the  
25 industry had the goal of thereby achieving

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safe, adequate and reasonably priced water service for the long term.

On December 17th, 2015, this Commission commenced a proceeding in case 15-W-0562 to review this policy and look at the landscape of what's happening in this area. That generic proceeding is ongoing. The final decision we may make in that generic proceeding can have a significant impact on how we address small water companies and provide a consistency in addressing any concerns with safe and adequate service with their actual water systems.

Normally, I would not want to decide this type of specific small water system while we're still examining the policy of the ongoing generic proceeding. However, I am cognisant that here we are concerned with ensuring safe and adequate service. Accordingly, we must act now. Thus, I support approving this item at this time which will take immediate steps to ensure safe and adequate service is being provided and to keep us informed of ongoing issues.

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I also look forward to the resolution of the ongoing generic proceeding.

Thank you, Chair.

THE CHAIRPERSON: Before we vote on the Consent, I do want to mention that on our Consent Agenda today there are two items, items 363 and 373 -- there are two items, 363 and 373, and these are essentially companion items to our proceeding that we had voted on already regarding the Auburn transmission. And I just want to note that with respect to item 363, and that is the Acquisition on the Cayuga plant, the order is in favor of the acquisition. We are, however, the order recommends that we do not approve the re-powering of the Cayuga resources finding that that is not in the public interest.

So just to be clear, you know, we are not suggesting that Cayuga could not re-power on its own but what we are finding that it would not be in the public interest or not be in the interest of NYSEG ratepayers to pay for that re-powering

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because it is more expensive and certainly not needed in light of the fact that we do need transmission regardless.

So with that, I'm going to move to vote on the Consent Agenda. All those in favor with the comments made by Commissioner Burman, please indicate by saying aye.

(Chorus of Ayes.)

THE CHAIRPERSON: Opposed?

(No response.)

THE CHAIRPERSON: Hearing none, the Consent Agenda is approved.

Is there anything else before us today, Commissioner Burgess -- Secretary Burgess?

MS. BURGESS: There are no other items today. The Commission's next session will be March 17 in the Albany office.

THE CHAIRPERSON: Thank you. Thank you, all.

(Time noted: 12:21 p.m.)



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